

SCO attacks open-source foundation - XOOPS

NEWS_PDF_AUTHOR: Herko

NEWS_PDF_DATE: 2003/10/29 17:41:01

[News.com](#) - In its lawsuit against IBM, the SCO Group has begun a direct challenge to the General Public License--the legal foundation for XOOPS, Linux and numerous other open-source programming projects and software. "The GPL violates the U.S. Constitution, together with copyright, antitrust and export control laws," SCO Group said in an answer filed late Friday to an IBM court filing. In addition, SCO asserted that the GPL is unenforceable.

The assertions direct even more attention to the license, which already was at the center of many of IBM's arguments against SCO in August.

"The GPL has never been tested before. This is raising the stakes on that," said David Byer, an intellectual-property attorney and partner at law firm Testa Hurwitz & Thibault law firm. If a ruling comes out declaring the GPL void, "a lot of people are going to be potentially in a pickle."

The Free Software Foundation (FSF), charged to promote the GPL's philosophy and tackle potential violations in court, strongly disputed SCO's assertions.

"It's just rubbish," said attorney and Columbia Law School professor Eben Moglen. "There's nothing about giving permission to copy, modify or redistribute that violates the U.S. Constitution or any other law of the United States."

SCO offered no details in its court filing, but it said in a statement, "Article 1 Section 8 of the U.S. copyright law says that Congress can regulate copyrights, not the FSF or any other organization."

IBM appeared unfazed. "IBM strongly believes in its counterclaims and looks forward to trying its case in the court of law," where IBM will address SCO's specific claims, such as the GPL issue, spokesman Mike Darcy said.

Numerous open-source projects besides the core, or kernel, of Linux employ the GPL, including the OpenOffice desktop software suite, the MySQL database, the Gaim instant messenger software and the Snort intrusion detection program.

Richard Stallman created the GPL in the 1980s to govern the Gnu's Not Unix (GNU) software project to clone Unix. The license permits anyone to see, modify and distribute a program's underlying source code, as long as the author of the modifications publishes them when distributing the modified version.

And SCO itself is no stranger to the GPL. Until May, it sold its own version of Linux, and to this

day it includes GPL-covered software in its two Unix products, UnixWare and OpenServer.

If the GPL is declared void, SCO could be among those damaged, Byer said. "The software under the GPL is copyrighted. Absent the GPL, the licensee has no right to use the copyrighted subject matter," Byer said.

SCO shook the computing world when it began its legal action against IBM in March. The lawsuit pits the Lindon, Utah-based company, owner of key Unix copyrights, against both the largest computing company and the most prominent corporate advocate of the Linux operating system.

SCO seeks at least \$3 billion from IBM, claiming IBM moved Unix technology to Linux in violation of its Unix contract with SCO. Meanwhile, Linux seller Red Hat initiated a lawsuit of its own against SCO in August, and SCO is now seeking direct payments from Linux users.

Though the GPL figures prominently in the SCO-IBM case, Red Hat believes the license itself might remain on the sidelines, said Bryan Sims, associate legal counsel at Red Hat. "I think the issues associated with the GPL may not even be reached, because the main issue is a contractual issue," he said.

Lawyers and businesspeople could welcome a GPL test, though. "Right now there's uncertainty, which is always difficult for business people to deal with," Byer said.

Part of the reason SCO attacked the GPL is likely procedural, so it doesn't lose the ability to make the argument later, Byer added. "If you don't raise every possible claim you think of, you waive it."

By the same token, SCO rebutted IBM's claims that SCO violated four patents in multiple ways, including declaring the patents invalid.

SCO still ships GPL software

Though SCO questions the legal underpinnings of the GPL, the company has continuing ties to software covered by it.

Most prominently, SCO itself shipped Linux up until May, when it said concerns about intellectual-property infringement required the company to stop shipping it. It still has Linux source code available for download.

In addition, the company continues to ship the GPL-covered Samba software, which lets Unix or Linux systems share files on Windows networks, as part of its UnixWare and OpenServer products.

SCO spokesman Blake Stowell said SCO doesn't offer indemnification, or legal protection, for use of Samba. As a hypothetical example, if Microsoft were to decide Samba violated its file system intellectual property and start suing companies that use the software, SCO would stop including Samba but wouldn't offer customers using the software legal protection, Stowell said.

"I'd be confident if we had any reservations that misappropriated code had gone into Samba, we ourselves would stop shipping it, and we would recommend to our users they stop using it," Stowell said. But of assuming responsibility for a Samba lawsuit, he said, "I don't think we could."

SCO's Web site states unambiguously that it's not possible to offer indemnification on GPL software: "Some customers have asked their Linux distributors to indemnify them against intellectual property infringement claims in Linux. The Linux distributors are unable to do so because of the terms and conditions in the General Public License," a page describing SCO's Unix license said.

SCO has been suggesting that IBM should indemnify its Linux customers. "If IBM is so confident that Linux is free and clear, why don't they indemnify their users against any lawsuit SCO could bring against them?" Stowell said.

Byer seemed bemused by the whole situation.

"There are some high ironies that IBM, one of the largest obtainers of patents in the world, ends up being the defender of the GPL, which is derived from the Free Software Foundation and the open-source community, which is generally skeptical and worried about overly broad patent protection," Byer said.

[News.com](#) - In its lawsuit against IBM, the SCO Group has begun a direct challenge to the General Public License--the legal foundation for XOOPS, Linux and numerous other open-source programming projects and software. "The GPL violates the U.S. Constitution, together with copyright, antitrust and export control laws," SCO Group said in an answer filed late Friday to an IBM court filing. In addition, SCO asserted that the GPL is unenforceable.

The assertions direct even more attention to the license, which already was at the center of many of IBM's arguments against SCO in August.

"The GPL has never been tested before. This is raising the stakes on that," said David Byer, an intellectual-property attorney and partner at law firm Testa Hurwitz & Thibault law firm. If a ruling comes out declaring the GPL void, "a lot of people are going to be potentially in a pickle."

The Free Software Foundation (FSF), charged to promote the GPL's philosophy and tackle potential violations in court, strongly disputed SCO's assertions.

"It's just rubbish," said attorney and Columbia Law School professor Eben Moglen. "There's nothing about giving permission to copy, modify or redistribute that violates the U.S. Constitution or any other law of the United States."

SCO offered no details in its court filing, but it said in a statement, "Article 1 Section 8 of the U.S. copyright law says that Congress can regulate copyrights, not the FSF or any other organization."

IBM appeared unfazed. "IBM strongly believes in its counterclaims and looks forward to trying its case in the court of law," where IBM will address SCO's specific claims, such as the GPL issue, spokesman Mike Darcy said.

Numerous open-source projects besides the core, or kernel, of Linux employ the GPL, including the OpenOffice desktop software suite, the MySQL database, the Gaim instant messenger software and the Snort intrusion detection program.

Richard Stallman created the GPL in the 1980s to govern the Gnu's Not Unix (GNU) software project to clone Unix. The license permits anyone to see, modify and distribute a program's underlying source code, as long as the author of the modifications publishes them when distributing the modified version.

And SCO itself is no stranger to the GPL. Until May, it sold its own version of Linux, and to this day it includes GPL-covered software in its two Unix products, UnixWare and OpenServer.

If the GPL is declared void, SCO could be among those damaged, Byer said. "The software under the GPL is copyrighted. Absent the GPL, the licensee has no right to use the copyrighted subject matter," Byer said.

SCO shook the computing world when it began its legal action against IBM in March. The lawsuit pits the Lindon, Utah-based company, owner of key Unix copyrights, against both the

largest computing company and the most prominent corporate advocate of the Linux operating system.

SCO seeks at least \$3 billion from IBM, claiming IBM moved Unix technology to Linux in violation of its Unix contract with SCO. Meanwhile, Linux seller Red Hat initiated a lawsuit of its own against SCO in August, and SCO is now seeking direct payments from Linux users.

Though the GPL figures prominently in the SCO-IBM case, Red Hat believes the license itself might remain on the sidelines, said Bryan Sims, associate legal counsel at Red Hat. "I think the issues associated with the GPL may not even be reached, because the main issue is a contractual issue," he said.

Lawyers and businesspeople could welcome a GPL test, though. "Right now there's uncertainty, which is always difficult for business people to deal with," Byer said.

Part of the reason SCO attacked the GPL is likely procedural, so it doesn't lose the ability to make the argument later, Byer added. "If you don't raise every possible claim you think of, you waive it."

By the same token, SCO rebutted IBM's claims that SCO violated four patents in multiple ways, including declaring the patents invalid.

SCO still ships GPL software

Though SCO questions the legal underpinnings of the GPL, the company has continuing ties to software covered by it.

Most prominently, SCO itself shipped Linux up until May, when it said concerns about intellectual-property infringement required the company to stop shipping it. It still has Linux source code available for download.

In addition, the company continues to ship the GPL-covered Samba software, which lets Unix or Linux systems share files on Windows networks, as part of its UnixWare and OpenServer products.

SCO spokesman Blake Stowell said SCO doesn't offer indemnification, or legal protection, for use of Samba. As a hypothetical example, if Microsoft were to decide Samba violated its file system intellectual property and start suing companies that use the software, SCO would stop including Samba but wouldn't offer customers using the software legal protection, Stowell said.

"I'd be confident if we had any reservations that misappropriated code had gone into Samba, we ourselves would stop shipping it, and we would recommend to our users they stop using it," Stowell said. But of assuming responsibility for a Samba lawsuit, he said, "I don't think we could."

SCO's Web site states unambiguously that it's not possible to offer indemnification on GPL software: "Some customers have asked their Linux distributors to indemnify them against

intellectual property infringement claims in Linux. The Linux distributors are unable to do so because of the terms and conditions in the General Public License," a page describing SCO's Unix license said.

SCO has been suggesting that IBM should indemnify its Linux customers. "If IBM is so confident that Linux is free and clear, why don't they indemnify their users against any lawsuit SCO could bring against them?" Stowell said.

Byer seemed bemused by the whole situation.

"There are some high ironies that IBM, one of the largest obtainers of patents in the world, ends up being the defender of the GPL, which is derived from the Free Software Foundation and the open-source community, which is generally skeptical and worried about overly broad patent protection," Byer said.