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## Linux users have IBM on their side

### Utah firm's demand for licensing fees may end up backfiring

By Hiawatha Bray, Globe Staff, 8/11/2003

And you thought Linux was free. All of a sudden, a Utah firm wants corporate users of the upstart operating system to pay \$699 per PC to run it. A licensing fee, they call it. But what exactly gives them the right to levy such a fee? Absolutely nothing, says Columbia University law professor Eben Moglen. As general counsel for the Cambridge-based Free Software Foundation, Moglen last November launched a legal defense fund to protect developers of open-source software -- the kind that's given away free, along with the underlying source code that makes it tick. Moglen was so convinced that the traditional software powers were plotting mischief against Linux and other open-source code that he donated \$20,000 of his own money to fend off the inevitable onslaught.

Back then, Moglen was worried that some behemoth like Microsoft Corp. might use its library of software patents to cause trouble for open-source coders.

But "what I was raising money for has not come about," Moglen admits. Instead, the legal assault on Linux has come from the SCO Group, a little company which not long ago was itself a Linux distributor.

Actually, that's good news from Moglen's point of view, and not just because SCO is a lot smaller and poorer than Microsoft. Moglen is also delighted because he thinks SCO's status as a former Linux distributor is fatal for the company's case. Lawyers for IBM Corp. think so as well, and they've made Moglen's argument a key part of their countersuit against SCO.

Recall that SCO Group sued IBM Corp. earlier this year, claiming that IBM had taken some Unix code belonging to SCO and illegally added it to the Linux kernel. For a while, it looked like SCO would concentrate on attacking IBM, leaving Linux users free to sit in the bleachers, munch popcorn, and watch the fun.

But SCO expanded its claims, warning Linux users that they'd have to pay substantial license fees for using the "free" software to compensate SCO for its stolen code. Last week, SCO announced the kind of fees it had in mind -- \$699 per Linux desktop PC, with similarly extortionate levies proposed for other types of Linux computers.

Moglen argues that even if IBM misappropriated SCO software, that's a matter between IBM and SCO, not the users of Linux. Suppose you buy a book containing plagiarized material. The victim of the plagiarism could sue the publisher and the author, but he'd never get a dime from you or anyone else who'd merely bought the book. Moglen believes the same principle should apply to software.

But apart from this, Moglen believes that SCO cut its own throat when it demanded licensing fees from Linux users. To understand why, you've got to know a little about the license that governs the use of Linux software.

It's called the General Public License, or GPL, and it was born at the Free Software Foundation, a Cambridge-based outfit with a theological commitment to the unfettered exchange of computer code. Most computer software licenses set strict limits on copying and modification of the code. But code licensed under the GPL can be copied and modified freely. And nobody can levy additional licensing fees on software distributed under the GPL.

Which raises a problem for SCO Group. Up until May, SCO was itself a Linux distributor, and Linux can only be legally distributed under the terms of the GPL. Under that license, SCO cannot demand additional licensing fees on the software. The moment SCO did so, it violated the license.

SCO's Linux version included code contributed by many different firms and individuals, including -- surprise! -- IBM Corp. And so IBM is suing SCO, asserting that SCO's demand for license fees for software that IBM gave away is a violation of the GPL.

Will IBM's argument play before a judge? The legal enforceability of the GPL has never been fully tested. On the other hand, IBM's argument is no more of a stretch than SCO's tenuous and so far undocumented claims of software plagiarism.

And when you factor in last week's lawsuit against SCO by Linux distributor Red Hat Inc., the Utah firm may find that its lawyer-driven strategy to cash in on the Linux boom may not work out exactly as planned.

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