NEW ECONOMY

Legal Dispute Unnerves Linux Users

By STEVE LOHR

For the true believers in free software, Bill Gates, the chairman of Microsoft, has long been the figurative devil. Yet suddenly, Mr. Gates has a rival for their animosity. The unlikely challenger is Darl C. McBride, the 43-year-old chief executive of the SCO Group, a little company in Lindon, Utah.

Mr. McBride is engaged in an escalating legal fight with I.B.M., and its ripples are prompting concern in much of the computer industry and among the industry's corporate customers. The worries center on whether SCO can hobble the advance of a fast-emerging force in computing, the GNU Linux operating system.

This high-technology soap opera is complex, but here is a simplified version of events so far: SCO, which bought the licensing rights to the Unix operating system and its source code in 1995, sued I.B.M. in March, contending that it breached its contract with SCO by shoveling Unix code into Linux, an operating system that is closely related to Unix. Linux is the leading example of open-source software development, where the code is distributed free and is then improved and debugged by a loose-knit network of far-flung programmers. I.B.M. has been the foremost champion of Linux among big companies.

A legal spat between two companies is a parochial matter, but SCO broadened its campaign last month. It sent warning letters to 1,500 large corporations that said, "We
believe that Linux is, in material part, an unauthorized derivative of Unix." Later, the letter stated: "We believe that Linux infringes on our Unix intellectual property and other rights. We intend to aggressively protect and enforce these rights."

The move by SCO raised the stakes and sent many companies calling for their lawyers. Last week, there were further developments. Mr. McBride and his lawyers met on Monday with I.B.M. executives and their counsel in White Plains. Copies of the contract for SCO's purchase of the Unix business from Novell in 1995 began circulating, and a few days later so did a 1996 amendment to the original contract. Together, they present a somewhat murky picture of the breadth of SCO's rights, according to lawyers who have seen the papers. And an important deadline in the confrontation between SCO and I.B.M. looms on Friday. SCO has said it will revoke the license for AIX, the I.B.M. version of Unix, unless a settlement is reached.

As the SCO story moves ahead, the most important question is: do Linux customers have a real cause for concern? The best answer, according to lawyers who have looked at the documents made public to date, is that as a legal matter it may be debatable, but as a practical matter almost certainly not.

First, the SCO suit against I.B.M. is essentially a contract dispute. That is, the accusation is that I.B.M. breached its contract with SCO by taking code covered by the Unix contract and putting it into Linux. The end users of Linux — like the 1,500 industrial, financial and other corporations that received the warning letters from SCO — typically do not have contracts with SCO.

But there is a complicating wrinkle. Contracts spell out acceptable behavior between companies that have formal business relationships. Yet intellectual property rights extend to strangers, corporate or individual, as well. Though this is not part of the I.B.M. suit, SCO asserts that it has the intellectual property rights — trademark, copyright and patents — on Unix. Its intellectual property claim was the basis for its warning letters to corporate users.

The documents that came out last week rendered a mixed verdict on SCO's intellectual property rights. The 1995 contract with Novell appears to exclude them, whereas the 1996 amendment says SCO does have the trademark and copyrights to Unix, though it does not mention patents.

Legal experts say that if SCO thought it had strong intellectual property claims, it would probably have included those assertions in the I.B.M. suit. But they add that the 1996 amendment may give SCO the basis for some intellectual property claims.

"It doesn't cover patents, but it muddies the water," said Jeffrey D. Neuburger, a technology lawyer at the firm of Brown Raysman...
Millstein Felder & Stein. "But you have to see those 1,500 letters to companies mainly as a great way to put pressure on the real target, I.B.M."

Continued

Click Here for 50% off

Related Articles

- Microsoft Leader Tells Workers of I.B.M.-Linux Threat (June 5, 2003)
- Technology Briefing | Software: Microsoft Loses Munich Contract To Linux, (May 29, 2003) $
- Technology Briefing | Software: Microsoft To Buy Unix Licenses From Caldera, (May 20, 2003)
- Microsoft Official Tells of Use of Special Fund, (May 16, 2003) $

Find more results for Computer Software and Linux (Computer Operating System).

Top Technology Articles

- E-Mail Message Blitz Creates What May Be Fastest Fad Ever
- Weather Delays Launching of Mars Probe
- The Man Pushing America to Get on the Internet Faster
- Patents: An Innovation for Nail Polish
- Industry Offers a Carrot in Online Music Fight