No Concession From I.B.M. in Linux Fight

By STEVE LOHR

I.B.M. said yesterday that it had no intention of reaching a quick settlement with the SCO Group, a small company based in Lindon, Utah, in a legal fight that is causing concern among the many corporations that use the increasingly popular Linux operating system to handle some computing chores.

The SCO Group filed a suit against I.B.M. in March, arguing that I.B.M. violated its contract with SCO by copying code from the Unix operating system to Linux, which is distributed free and is used by I.B.M. on some of its computers.

SCO gave I.B.M. 100 days to settle the case, a deadline that expired yesterday.

"We've got a strong defense case, and we're going to fight it," Trink Guarino, a spokeswoman for I.B.M., said yesterday.

The dispute between SCO and I.B.M. has not yet slowed the advance of Linux in the marketplace, according to industry executives. But the prospect that the suit may linger indefinitely can only add to the anxiety of corporate technology buyers.

"They're really concerned," noted George Weiss, an analyst at Gartner. "The significance of this case is unclear, but there's no question it has gotten the attention of people."

The case, regardless of its outcome, also points to a broader issue that will not go away: how to manage the meeting of two worlds of programming. The traditional kind produces proprietary software guarded by strict intellectual property laws of copyright and patent, while the fast-growing open-source movement, responsible for software like Linux, has thrived by freely sharing code and shunning the constraints of intellectual property.

In 1995, SCO bought from Novell the licensing rights and source code to Unix, which is closely related to Linux. Unix was initially developed at AT&T's Bell Labs in the late 1960's, but many companies including I.B.M., Sun Microsystems and Hewlett-Packard developed their own flavors of Unix over the years. SCO has threatened to revoke the license on I.B.M.'s version of Unix, called AIX, once the 100-day deadline passes.

The SCO executives were consulting with their lawyers all day yesterday. Their legal options include revoking the I.B.M. license to Unix and asking a court for a temporary injunction to halt the shipment of AIX products. A SCO spokesman said the company planned to make an announcement before the opening of the stock market Monday morning.

SCO would scarcely seem a match for I.B.M., the world's largest computer company. But SCO certainly has name-brand legal representation in the firm of Boies, Schiller & Flexner, which is led by David Boies, the lead trial lawyer for the Justice Department in the Microsoft antitrust case.

For years, SCO — whose previous corporate name was Caldera Systems — has tried to build a
Linux business of its own. Since Linux's code is distributed free and is improved and debugged by a loose-knit, far-flung network of programmers, most companies pursuing a business in Linux try to make money by offering technical support for Linux or developing specialized software that runs on Linux.

A year ago, SCO brought in a new chief executive, Darl C. McBride. He quickly decided the company was losing ground "chasing the Linux dream," he said in a recent interview. So he decided the company's best path was to focus on its Unix business, largely by aggressively enforcing its license rights. But lawyers who have looked at its license agreements question whether SCO owns the broad rights it asserts.

To date, SCO has signed new licensing deals with two companies. One is Microsoft; the other has not been identified. Microsoft says the deal was intended to make sure its products could communicate with Unix systems without intellectual property violations. But Microsoft's critics regard the deal as a tactic to support SCO's campaign against Linux, which has become a serious challenger in some markets to Microsoft's Windows operating system.

SCO has focused on I.B.M. as the leading big-company promoter of Linux. The company has 250 developers working on 29 separate Linux projects worldwide, according to Ken King, director of technical strategy for I.B.M.'s software group.

The I.B.M. strategy, he says, is to make contributions to Linux technology so that the operating system becomes more powerful and reliable, thus enabling it to handle the demanding computing tasks in corporate data centers.

Mr. McBride argues this is being done with a "don't ask, don't tell mentality" that shows a cavalier disregard for intellectual property rights in general and SCO's license contracts in particular. "I.B.M. is the ringleader," he said.

I.B.M. declined to spell out what steps it is taking to monitor the technology it contributes to open-source projects like Linux and to ensure that its Linux development does not violate the intellectual property rights or licenses of others. I.B.M. contends that that these matters will be evidence if the SCO suit goes to trial.

Yet other companies who handle both propriety and open-source software say it is a straightforward management issue. "You have to be careful, but you have to careful with any software license," observed Martin Fink, vice president for Linux projects at Hewlett-Packard.

Hewlett-Packard has a six-member review board, which includes intellectual property lawyers, to examine all significant decisions the company makes with open source software, Mr. Fink said.

To date, the SCO-I.B.M. dispute has not hurt the Linux market. "It's caused a great deal of angst within the open-source community, but there has been no slowdown whatsoever in the progress Linux is making," said Matthew Szulik, chief executive of Red Hat, the largest distributor of Linux.