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Poker With Billions at Stake

Linux Hunter SCO Puts Everything on the Line

By Holger Dambeck

The US Software Company SCO claims that parts of the code of the free Linux operating system have been stolen and demands compensation. If it prevails in the Courts, German users may also have to pay. Perhaps its even touch and go for all of Linux.

[see source document for image]

The Linux Mascot: Profiteers are after his hide

"I have the proof here in my briefcase," says Gregory Blepp, SCO Vice President responsible for the licensing business. However, before opening the briefcase – with contents promising millions if not billions in profits – the loquacious manager first lectures for 90 minutes on the topic of SCO. There is actually no need to ask any questions – he knows all of this backwards and forwards.

Blepp explains the labyrinthine pathways by which his firm gained possession of the rights to the Unix code, why Linux poses a risk for companies, what dangers are associated with Open Source in general, why his company is antagonizing the entire Linux world and that those who will not learn will all pay in the end – and not a little at that.

The story sounds crazy, it is extremely complicated legally and has now been provoking a vehement response from the world-wide Linux community for months. "The most hated company in Technology" – that is what "Business Week" magazine calls SCO , a Utah company with a staff of 300. Torvalds, the inventor of Linux, has compared the company with "a cornered rat," wildly biting everything in sight.

Code Discovered "By Accident"

The short version of the SCO story is something like this: In 1995, a company called Santa Cruz Operations (SCO) acquired the rights to the Unix Source code of the Novell company. The Unix operating system was originally developed by AT&T for use on mainframes. The figure SCO names as the purchase price is approximately $ 150 million in stock. A few years later, SCO employees are said to have noticed "by accident" – as Blepp reports in his interview with SPIEGEL ONLINE – that program code, which had been derived from Unix, and to which SCO meanwhile holds the rights, in the current version of Linux.

[see source document for photograph]

[zoom icon]
SCO Manager Blepp: "Of course we can prove it."

"Of the approximately five million lines of Linux source code, between one and 1.5 million lines are affected," says Blepp. And now SCO is looking for compensation: its proposed pricing is 699 dollars per Linux server and 199 dollars per desktop PC. "Private individuals, schools and universities, or course, will not have to pay – non-commercial use is to continue free of charge," the manager emphasizes. And, of course, discounts are possible for major companies with hundreds or thousands of Linux systems.

There are good reasons for not believing SCO. Programmers repeatedly explain that it is not possibly simply to incorporate Unix code into Linux source texts via cut and paste. This would require complex adaptations. And whether similarly structured functionality in Unix and Linux automatically indicates that there has been code lifting that amounts to copyright infringement would also seem questionable.

Moreover, the SCO managers are curiously secretive. Proof for code rustling has not been made public to date. Anyone who wants to look at the allegedly copied lines in the programs must sign a non-disclosure agreement. Blepp explains this as the particular strategy for

legal actions in the United States. "There you don't put everything on the table at the start, but instead you bring out arguments and evidence piece by piece."

The action against IBM has been underway for about a year now. SCO is asking for at least one billion dollars for the use of Unix source code by IBM and its alleged dissemination in the Linux system. The dispute is currently making primarily lawyers and experts rich – an end is not in sight. Hundreds of thousands of pages have already been exchanged back and forth – without a tangible result.

"They Will Bomb Us Out of Court"

And, in fact, SCO seems to have encountered serious difficulties in providing the – according to its own assertions upatently obvious and unambiguous – proof against IBM. On Thursday, the attorneys for the Linux hunter from Utah once again asked the Court in Delaware for an extension. It was argued that more time was needed to track down proof.

However, SCO Vice President Blepp is convinced that the mere fact that the action is continuing is evidence that SCO is in the right. "Everybody thought the sky would be black with IBM attorneys. That they would bomb us out of court in no time." But the IT giant had not succeed in doing so, he said.

Well, it almost did. Because SCO is in danger of running out of money over the medium term. The core business with its own Unix version for Intel PCs is doing rather badly. The losses from that business and the high legal costs are said to have pushed SCO "into a difficult position" over the past year, according to Blepp. But then a former Microsoft manager, among others, helped to find new funding for the NASDAQ-listed corporation. The open source community quickly came to a firm conclusion. Microsoft wants to use SCO to eliminate the increasingly threatening competition from Linux.

[see source document for photograph]

DPA
Linux Inventor Torvalds about SCO: "A cornered Rat."

Blepp dismisses such conspiracy theories. He thinks that the indirect assistance from Redmond is hardly reprehensible. "We asked Microsoft whether they wanted to become involved with us. They did not want to do that, but they introduced us to a former manager who established contacts with new funding sources for us."

In the next few weeks and months, Blepp wants to open negotiations about licensing fees with German firms that use Linux. "But first we must get rid of the preliminary injunction against our German subsidiary." Because staff members of the local SCO branch are no longer permitted under threat of a 10,000 Euro penalty, to claim that the Linux code includes sequences copied from Unix. "Of course we can prove it," assures Blepp. This was not done, and the preliminary injunction of June 2003 was accepted for the time being for tactical reasons and due to the ongoing dispute with IBM.

German Linux Users Must Pay

But now there is to be an end to that. In four to six weeks, SCO intends to deliver the code sequences in question and get rid of the preliminary injunction. At that, Blepp opens the briefcase and shows a few pages from the Linux program code. "The lines marked in red were copied one-to-one from Unix, blue writing shows the necessary adaptations from Unix to Linux," he declares. On the first page there is not a single red line, but the following pages are predominantly red and blue. According to Blepp's statements, the section of the code that was shown involves memory management functions in Linux.

Can this man be believed? Or is SCO simply a front for clever bluffers, trying to foist questionable letters of indulgence on companies that have grown uncertain. SCO at least has firmly tied its fate to the dispute about copied lines of code. "If we loose, things could get very tight for our core business and thus for us as a company," says Blepp. "If we win there will by an impact on our balance sheet – a positive one."

On the Topic:

On the Internet:
- Homepage SCO (including various documents on the copyright dispute)
  http://www.sco.com
- Documentation of the Conflict Surrounding SCO at groklaw.net
  http://groklaw.net
- Open Source Initiative: Memo on Funding for SCO
  http://www.opensource.org/halloween/halloween10.html

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