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Getting a glimpse at SCO's evidence

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LAS VEGAS--When SCO Group first filed its lawsuit against IBM in March, critics characterized the move as the last gasp of an ailing company hoping to strike a series of lucrative licensing deals.

Since then the company has come out swinging even harder, bashing its detractors, standing by its allegations, and most recently, posting a profit that SCO said would allow it to continue its aggressive intellectual property fight.

At the SCO Forum here Monday, the company pulled out its latest weapon: lines and lines of disputed code that were allegedly copied from SCO's Unix into IBM's version of Linux. The company claims that IBM illegally copied Unix code into its version of Linux, and it's warning Linux customers that they may be violating copyright by using the operating system without paying SCO. It's also recently announced a new licensing plan that would require Linux customers to pay between $199 and $699 per computer.

In a quiet conference room tucked into the conference center at the MGM Grand, SCO offered customers, partners and the merely curious the chance to view the code for themselves, as long as they signed a nondisclosure agreement.

Companies involved in litigation traditionally keep such information under wraps in order not to tip their legal hand, but SCO said it decided to display the code because its critics were charging that it didn't have a case.

"Given the nature of this case and that there may be a significant period of time before it's resolved and that people were clamoring to see it, we decided to show a few pieces of evidence," said Chris Sontag, senior vice president of the SCOsource unit, which is charged with protecting SCO's Unix-related intellectual property.

As of the end of the day on Monday, more than 150 people had seen the code presentation, which the company said includes a small portion of the infringing code it has found so far. Sontag said the company has uncovered more than a million lines of copied code in Linux, with the help of pattern recognition experts.

A compelling case?
According to those who viewed the code at SCO Forum, company representatives showed off several categories of code that allegedly infringed its copyrights, including some lines that appeared to be directly copied, some that were derivative works and some that were obfuscated, such as code from which legal disclaimers had been removed. (This reporter declined to sign the nondisclosure agreement required to attend the special sessions where the companies showed off a special side-by-side comparison of the code, opting instead to gather reactions from people who saw the presentation.)

After viewing the code, Don Price, general manager of Price Data Systems, said he was surprised at the volume that was allegedly copied. "It's compelling," he said. "Some people were either extremely sloppy, or copied and thought no

one would go after them."

Neil Abraham, with SCO reseller Kerridge Computer, said SCO made the right decision to pursue IBM. "I think they've got a very firm case," he said, after looking at the code. "It's not just one line. It's huge chunks."

Bob Ungetti, of Raven Technologies, who was milling about waiting to get into a room where the code was being shown off, said he wanted to see the code because his customers have been asking him about the suit. "I want to see the code myself just to substantiate the claims SCO is making, so when I talk to my customers about the credibility of the lawsuit, I can say I saw it for myself," said Ungetti, whose company is a reseller for SCO. "If they're interested in using Linux, they're concerned they may be adversely affected; my SCO customers are concerned that if the company loses the lawsuit, it may be out of business."

Ungetti said a keynote address on Monday morning had already convinced him that SCO had a pretty solid case. During a speech, SCO representatives showed a few slides containing the allegedly infringing code, offering attendees a taste of what they could see if they signed the nondisclosure agreement.

"The spelling errors and comments (copied into the code) are the real kicker. To me, that's the nail in the coffin," Ungetti said.

Many attendees of the conference are longtime SCO fans, so convincing them that the company has a case by showing them the code probably wasn't too tough. However, at least one attendee was appalled by SCO's decision to sue IBM. The man, an exhibitor on the show floor who asked that his name not be used, said that SCO's hands aren't clean either, because the company has probably taken code from other sources and incorporated it into its products. "It looks to me like there's been a lot of cross-pollination" between Unix and Linux, said the attendee, who jokingly called SCO's legal saga "As the Stomach Turns."

Legal experts agreed that SCO faces a challenge of proving that it has the original rights to the code--a task that could prove especially daunting because of a special license popular among makers of free and open-source software known as the General Public License, or GPL. The GPL requires companies that incorporate code into their product to share their changes. In its response to SCO's legal filing, IBM claims that SCO can't assert claims to the disputed code because it was originally covered under the GPL.

"Even if there is literal copying, you'll have to say, 'What's the source of the code?'" said Stuart Meyer, a partner with Fenwick & West, who is not involved in the case.

SCO has denied that the disputed code is covered by the GPL. An attorney for the company said Monday that even if it were, federal copyright laws protecting the company's intellectual property would trump the free software license, an argument that could form the crux of the case should it go to trial.