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**BODY:**

SCO Group Inc has dismissed the open source General Public License, on which Linux is based, and maintained that its legal battle against IBM Corp and Linux is part of a battle for the future of proprietary software.

The company said it had not wanted to involve the GPL in its legal case against IBM, but was now responding to IBM's inclusion of the GPL in its response to SCO's claims of misappropriation of trade secrets, breach of contract and unfair competition.

"We've been holding our tongue on the GPL until IBM put it on the table," said SCO's president and CEO, Darl McBride. "I predict that the GPL is not stable in its current form because copyright law pre-empts the GPL."

The company's vice president of worldwide marketing, Jeff Hunsaker, repeated that point of view. "We just do not believe that enterprise customers can bet their business on any operating system that is based on the GPL," he said. "We believe this will all come to a head and something will break with the GPL."

McBride's comments came after SCO's legal representative Mark Heise, of the law firm Boies Schiller and Flexner, last week said that the GPL is pre-empted by US Copyright act which he said only allows single copies of a copyrighted product to be made.

Heise's earlier comments about the GPL have drawn an angry response from Eben Moglen, who serves as general counsel for the Free Software Foundation. "If it were true, no copyright license could permit the licensee to make multiple copies of a licensed program," he said in a statement.

"That would make not just the GPL illegal. Mr Heise's supposed theory would also invalidate the BSD, Apache, AFL, OSL, MIT/X11 and all other free software licenses. It would invalidate Microsoft Shared Source license. It would also eliminate Microsoft's method for the distribution of the Windows operating system."

Despite the criticism of his statement, Heise repeated the claim. "We believe that the GPL is pre-empted by federal copyright law," he said. Heise also dismissed suggestions that the fact that SCO distributed Linux itself under the GPL diminished its claims over IP.

"The fact that SCO was selling Linux didn't convert all of its copyrights," he said. "The fact that this stuff was in the Linux kernel wasn't known by SCO until recently. You can't inadvertently, accidentally give away your copyright," Heise added. "The GPL says that the legal copyright owner has to assign copyright to the GPL. SCO hasn't done that."

SCO's criticism of the GPL is reminiscent of Microsoft Corp's comments about the open source movement circa 2001, which has led some to suggest that there may be more than meets the eye to Microsoft's licensing of SCO's Unix code in May.

Hunsaker dismissed those suggestions as conspiracy theories and said the company's relationship with Microsoft was enabling the companies to develop interoperability between Unix and Windows, and that the two shared beliefs about the nature of software copyrights and intellectual property.

Hunsaker admitted, though, he could understand why some people would have questions about forming a relationship with Microsoft. "Sometimes a relationship with Microsoft can be a double-edged sword," he said. "It's a very interesting web that is woven with all the intricacies of a Microsoft relationship."

Hunsaker also admitted SCO was carrying out a deliberate plan to expand its fight with IBM and Linux into a debate over software IP ownership. "The reason we tried to elevate the discussion beyond SCO versus IBM or SCO versus Linux is because when you personalize the fight for partners and customers they realize that the notion of free software is going to put out of business a number of companies."

The fact that SCO is appealing to the pockets of its partners and customers was evident from McBride's explanation of the company's legal fight. "We're fighting for the right in the industry to be able to make a living with software," he told the company's partners and customers. "We are fighting battles that will impact everyone. We're protecting IP not just for us, but for you."

McBride once again likened SCO's battle to that of the recording industry attempting to stop people downloading content from file swapping web sites. "The music business has lost billions of dollars because of music file sharing on the Internet," he said. "That has the effect of destroying intellectual property."

"What fundamentally is on the line here is whether the market's going to move into free software or not," he added. "The whole notion that software should be free is something that SCO doesn't stand for. We've drawn a line."

Although SCO maintains it did not bring the GPL into the fight and it appears the company is now going to stick to its claim that its actions are about protecting intellectual property from free software. "This is a hill that we will defend," said McBride. "We will die on this hill before we will go away... but our plan is not to die."

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