

# FSF Statement on *SCO v. IBM*

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The lawsuit brought by the Santa Cruz Operation (SCO) against IBM has generated many requests for comment by FSF. The Foundation has refrained from making official comments on the litigation because only the plaintiff's allegations have been reported; comment on unverified allegations would ordinarily be premature. More disturbing than the lawsuit itself, however, have been public statements by representatives of SCO, which have irresponsibly suggested doubts about the legitimacy of free software overall. These statements require response.

SCO's lawsuit asserts that IBM has breached contractual obligations between the two companies, and also that IBM has incorporated trade secret information concerning the design of the UNIX operating system into what SCO calls generally "Linux." This latter claim has recently been expanded in extra-judicial statements by SCO employees and officers to include suggestions that "Linux" includes material copied from UNIX in violation of SCO's copyrights. An allegation to this effect was contained in letters apparently sent by SCO to 1500 of the world's largest companies warning against use of free software on grounds of possible infringement liability.

It is crucial to clarify certain confusions that SCO's spokesmen have shown no disposition to dispel. In the first place, SCO has used "Linux" to mean "all free software," or "all free software constituting a UNIX-like operating system." This confusion, which the Free Software Foundation warned against in the past, is here shown to have the misleading consequences the Foundation has often predicted. "Linux" is the name of the kernel most often used in free software systems. But the operating system as a whole contains many other components, some of them products of the Foundation's GNU Project, others written elsewhere and published under free software licenses; the totality is GNU, the free operating system on which we have been working since 1984. Approximately half GNU's components are copyrighted works of the Free Software Foundation, including the C-compiler GCC, the GDB debugger, the C library Glibc, the bash shell, among other essential parts. The combination of GNU and the Linux kernel produces the GNU/Linux system, which is widely used on a variety of hardware and which *taken as a whole* duplicates the functions once only performed by the UNIX operating system.

SCO's confusing use of names makes the basis of its claims unclear: has SCO alleged that trade secrets of UNIX's originator, AT&T--of which SCO is by intermediate transactions the successor in interest--have been incorporated by IBM in the kernel, Linux, or in parts of GNU? If the former, there is no justification for the broad statements urging the Fortune 1500 to be cautious about using free software, or GNU programs generally. If, on the other hand, SCO claims that GNU contains any UNIX trade secret or copyrighted

material, the claim is almost surely false. Contributors to the GNU Project promise to follow the Free Software Foundation's rules for the project, which specify--among other things--that contributors must not enter into non-disclosure agreements for technical information relevant to their work on GNU programs, and that they must not consult or make any use of source code from non-free programs, including specifically UNIX. The Foundation has no basis to believe that GNU contains any material about which SCO or anyone else could assert valid trade secret or copyright claims. Contributors could have made misrepresentations of fact in their copyright assignment statements, but failing willful misrepresentation by a contributor, which has never happened so far as the Foundation is aware, there is no significant likelihood that our supervision of the freedom of our free software has failed. The Foundation notes that despite the alarmist statements SCO's employees have made, the Foundation has not been sued, nor has SCO, despite our requests, identified any work whose copyright the Foundation holds--including all of IBM's modifications to the kernel for use with IBM's S/390 mainframe computers, assigned to the Foundation by IBM--that SCO asserts infringes its rights in any way.

Moreover, there are straightforward legal reasons why SCO's assertions concerning claims against the kernel or other free software are likely to fail. As to its trade secret claims, which are the only claims actually made in the lawsuit against IBM, there remains the simple fact that SCO has for years distributed copies of the kernel, Linux, as part of GNU/Linux free software systems. Those systems were distributed by SCO in full compliance with GPL, and therefore included complete source code. So SCO itself has continuously published, as part of its regular business, the material which it claims includes its trade secrets. There is simply no legal basis on which SCO can claim trade secret liability in others for material it widely and commercially published itself under a license that specifically permitted unrestricted copying and distribution.

The same fact stands as an irrevocable barrier to SCO's claim that ``Linux'' violates SCO's copyright on UNIX source code. Copyright, as the United States Supreme Court has repeatedly emphasized, covers *expressions*, not *ideas*. Copyright on source code covers not how a program works, but only the specific language in which the functionality is expressed. A program written from scratch to express the function of an existing program in a new way does not infringe the original program's copyright. GNU and Linux duplicate some aspects of UNIX functionality, but are independent bodies, not copies of existing expressions. But even if SCO could show that some portions of its UNIX source code were copied into the kernel, the claim of copyright infringement would fail, because SCO has itself distributed the kernel under GPL. By doing so, SCO licensed everyone everywhere to copy, modify, and redistribute that code. SCO cannot now turn around and argue that it sold people code under GPL, guaranteeing their right to copy, modify and redistribute anything included, but that it somehow did not license the copying and redistribution of any copyrighted material of their own which that code contained.

In the face of these facts, SCO's public statements are at best misleading and irresponsible. SCO has profited handily from the work of free software contributors throughout the world. Its current public statement constitute a gross abuse of the

principles of the free software community, by a participant who has employed all our work for its own economic benefit. The Free Software Foundation calls upon SCO to retract its ill-advised and irresponsible statements, and to proceed immediately to separate its commercial disagreements with IBM from its obligations and responsibilities to the free software community.

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