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S O F T W A R E

Open Source Software in Business: From the Viewpoint of a Linux Distributor

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A Few Key Points

- Open source is not new
- Linux/Open Source is the basis of a valid business model
 - For MontaVista as a distributor
 - For most of the largest software, chip and consumer electronics companies in the world
- Linux/Open Source is Safe
 - There is no SCO lawsuit regarding copyrights in Linux/open source
 - The risks may be greater with proprietary software



Who is MontaVista Software?

- MontaVista Software, Inc. is a leading global supplier of systems software for intelligent connected devices and associated infrastructure.
 - MontaVista offers a family of products that address broad-based software developer needs ranging from communications infrastructure to consumer electronics.
- Multiple Editions of MontaVista Linux are available
 - Along with complementary technology products providing powerful Java and graphics development capabilities.
- MontaVista is a member of the CE Linux Forum, Eclipse.org and other industry organizations



Awards for MontaVista and MontaVista Linux-based products

- Best embedded Linux system (Wakamaru robot)
 - Linux User and Developer Expo 2003
- "Top 100 Company"
 - Always On, 2003
- 2002 Comet Award
- Best Embedded Distribution
 - Linux Journal 2002
- Best Embedded Tool and Development Solution
 - "Electronique," 2002
- Best 30 Companies of 2002
 - Electronic Business
 - Number 3 among top 10 private companies
- And many more!



Open Source is Not New

- Open Source has existed for more than 30 years
 - Open source really predates closed source
 - Any program that allows you to see and access its source code is open source
- Linux has been around for more than a decade
 - Linux is now the fastest growing operating system in the world



Open Source: A Few Examples

- Apache web server
 - Large(st) market share
- Perl
 - Programming language
- Sendmail
 - Routes > 80% of internet email messages
- BIND
 - Basis for domain name system (routes named sites to numeric sites)
- Linux
- Mozilla



The Open Source Business Model Works

- Linux has been adopted by companies in nearly every embedded market space
- Open Source software can provide the same functionality of traditional closed source software
- For distributors like MontaVista, Linux provides a solid, revenue-generating business model
- For thousands of large and small companies worldwide developing embedded applications, Linux is the perfect alternative to traditional closed source, royalty bearing, restrictive licenses



Benefits of the Open Source Development Model

- The collaborative open development model leads to:
 - Lower development costs
 - Reduced time to market
 - Reduced risk
 - Improved return on investment
 - Quicker identification and repair of defects
 - More architectures & configurations
 - Quicker evolution of features
 - Higher levels of innovation



Benefits of the Open Source License Agreements

- Unlike proprietary agreements, open source license agreements
 - Allow you to acquire, install, inspect and use a program often with no license at all
 - Allow you to freely copy, modify and redistribute programs
 - And eliminate most all other “downstream” restrictions
 - Allow immediate and complete access to source code
 - Mostly eliminate the need for software escrows
 - Prohibit royalties



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How are Open and Closed Source Software Similar?

- When you purchase the software from a distributor, you can contract for all kinds of “extras”
- Warranties and indemnities are available under both models
 - It’s up to the distributor
 - MontaVista chooses to offer both!
- With both models you can contract for extras:
 - MontaVista offers support; training; maintenance; upgrades; revisions; updates to latest kernel version; professional services such as custom development; experienced, expert developers; reliable, QA’d binary distributions; add-on technologies like Websphere and extended graphics environments
- With both models, you can write applications to run on the O/S and retain proprietary licensing rights



Who's Using Linux?: A Small Representative List

- IBM; Intel; Sony; Panasonic; Matsushita; Nokia; Oracle; Netscape; Motorola; TI; Alcatel; Samsung; Compaq; Computer Associates; Ericsson; NASA; NEC and more...
- Most of the key high-tech players worldwide
- Products utilizing Linux work – and make money for the companies that embrace them



Open Source in Light of SCO

- There is no lawsuit regarding copyrights
- Linux is still safe
- Open Source may be safer than proprietary alternatives
- The GPL is a valid copyright license
- SCO may only be proving the point that Linux is the strongest market player with the least risk



SCO: Key Points to Remember

- There is no lawsuit over Linux copyrights
 - For all its blustering, SCO has not sued anyone over Linux copyrights. The IBM lawsuit concerns contracts/trade secret. RedHat seeks declaratory relief; SCO has not yet sued RedHat.
- All of SCO's public claims to date have been defeated
 - "Proprietary" code shown in Las Vegas; GPL "pre-empted"; "millions of lines" of infringing code
- Worldwide Linux business is continuing and growing
 - Companies are refusing to pay the SCO ransom
 - New Linux-based consumer products are being released
 - New customers are buying MontaVista Linux; existing customers are renewing their subscriptions



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Linux is Still Safe

- SCO hasn't actually sued anybody for copyright violations in Linux.
 - That means there are still no lawsuits questioning the validity of the GPL or open source development.
- SCO has sued only IBM -- a contracts and trade secret case that doesn't generally affect Linux.
- Some people consider SCO to be the "lawsuit" that many have feared.
 - But it isn't a lawsuit; it's just a lot of unsubstantiated public claims that have all be very publicly torn down to nothing by showing the clean, independent, non-infringing development of the code
 - And so far, the results have only proven that no successful lawsuit may ever exist; and that claims such as SCO's can be defeated by the exact strengths of Linux and the open development model that have long been known and relied on.



Open Source May be Safer Than Proprietary Alternatives

- Open source has existed for more than 30 years; Linux has been around since 1991. In all that time, no lawsuit has really challenged the validity of open source
 - The few lawsuits to date which involved Linux companies focused on typical trademark or breach of contract claims not specifically related to open source, and never questioned the validity of the GPL or of open source licensing
- Conversely, in the last decade alone, proprietary interests have launched thousands of lawsuits involving tens of thousands of claims over copyright, patents, trade secrets, and contractual business arrangements.
 - A few examples from the embedded world include lawsuits involving GreenHills Software, Microtec Research, ISI, Wind River Systems, IKOS Systems, Cadence Design Systems, Unidata, RealNetworks, Caldera, Microsoft, and others.
 - Issues included claims of illegal derivation, breach of contract, patent infringement, copyright infringement, and violation of antitrust laws.
- In the proprietary embedded world, litigation appears to be almost a certainty.



What is the substance of the Red Hat lawsuit against SCO?

- Red Hat asks the court to rule that Red Hat's technologies do not infringe SCO intellectual
- The suit holds SCO accountable for unfair and deceptive actions, and requests a permanent injunction to stop SCO's anti-Linux campaign.
- To respond, SCO must specify the extent of its copyright and trade secrets supposedly in Linux
- The sooner SCO reveals the extent of that code, the sooner two further actions can occur:
 - Legal and technical experts can begin evaluating extent of any contested code that might actually have its origins in SCO licensed versions of Linux
 - Open Source developers can begin replacing any remaining questionable code.





The GPL is quite valid, despite SCO's claims to the contrary

- SCO asserts “by allowing unlimited copying and modification, [the GPL] conflicts with federal copyright law, which allows software buyers to make only a single backup copy.”
- SCO is simply wrong: U.S. federal copyright law expressly grants the copyright holder the right to let anyone make as many copies as they want (and to modify, distribute, and make derivative copies)
 - Section 106: “the owner of copyright under this title has the exclusive rights to do and to authorize” copying, derivative works, and redistribution.
 - Like any valid copyright license, the GPL is a legal agreement by which the copyright holder exercises these rights.
- Claims by SCO are both a misreading of the GPL and a misstatement of federal law.





What if (for argument's sake) SCO was right about the GPL?



- SCO spent many years distributing the GPL Linux kernel
 - Linux kernel, OS and other code contains thousands of valid copyrights
- If SCO's current claims were legitimate (that a license authorizing multiple copies is illegal), then:
 - SCO would be admitting that they infringed the copyrights of all other Linux contributors
 - All Linux copyright holders could sue SCO for copyright infringement
 - All other copyright licenses in the world which allow multiple copies, including Microsoft's database license, would be illegal!



How should developers view SCO's attempt to charge a US\$32 royalty?

- SCO has not proved its claims that Linux contains SCO trade secrets or copyrighted material
 - SCO is saying: "Pay us; but we won't tell you what you're paying for or show you why you have to pay."
- The \$32 royalty does not make sense in the world of high-volume embedded distributions.
 - It shows that SCO is not trying to do business – they are instead trying to obstruct business – in the embedded world
- SCO already contractually agreed not to charge royalties by distributing the code under the GPL
- OEMs are protected by IBM's position that neither trade secrets nor copyrighted material are in Linux
 - If the courts favor IBM, no OEM would have to pay SCO
 - If the courts favor SCO, any award granted to SCO from IBM would settle SCO's claims
 - SCO would not be able to charge twice for the same IP
 - If the OEM pays the license fee, the customer doesn't have to pay it again.



You can't worry if there's nothing to worry about...

- SCO claims its copyrights are being infringed, but produces no evidence
- Rather than focus on selling its products SCO demands Linux users pay royalties, but refuses to disclose any basis for such claims
- SCO expedited registration of recent copyrights, but never followed up with any legal enforcement action
- SCO is sending invoices to companies asking them to pay for licenses to code that SCO can't even identify
 - SCO says: "no refunds, even if turns out you shouldn't have paid"



The Company who Cried “Wolf!”

- A few examples of SCO backtracking:
 - SCO claims to have met with officers of the CE Linux Forum in Japan
 - None of the founding members or CELF officers was contacted by SCO. Reportedly, SCO staffers were in Japan merely to give a sales seminar
 - SCO claims that MIT researches examined Linux code and found violations
 - Later claimed that the researchers used to be at MIT; then later that at least one of the researches had been associated with MIT.
 - “Millions of lines” of code new to the 2.4 kernel infringes SCO’s copyrights
 - “Millions” of lines of new code in the 2.4 kernel do not exist. SCO would have to have authored every single new piece of code in the 2.4 kernel.
 - Code shown in Las Vegas is sample of infringing code
 - Linux community immediately shows independent derivation and previous public licensing
- Meanwhile, SCO executives cash in stock to take advantage of its current, inflated price
 - SCO might not end up just looking bad: it’s possible that their executives could go to jail.



Open Source is the choice for today... and the future

- For distributors, it's a solid, validated, revenue-generating basis for a successful business model
- For commercial deployers, it's a clear choice for licensing ease, technical functionality, time to market, and return on investment
- From a legal standpoint, it may be the safest bet of the O/S options



Coming Soon: Open Bar

www.open-bar.org

Open Bar

