

Managing L'unix

Paul Murphy

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Once more on SCO

Posted by Paul Murphy @ 12:15 am

Every time I write about the SCO mess I get inundated with hate mail - lately including saddening stuff from people threatening to turn me into groklaw for anti-social thinking. Not, mind you, that this is limited to just the SCO stuff - anything that can be construed as opposed to right thinking can now lead to this kind of threat:

To: murph at winface.com
Subject: RE: I'd suggest Linux - but..a site redirection is NOT "geekiness" Paul
From: hygrocyb@bigpond.com.au
Date: Sat, 8 Dec 2007 23:27:21 -0800 (PST)

Dear Paul,

Without reading the rest of the article, to complain that a normal redirection is 'smug, arrogant, and geeky' is, quite candidly, a bit silly.....What else is a redirection site to do ? Set it up in lights with a message that Bill Gates also gives you his blessing if you bookmark it..I went to the site and got the redirection.....it seems a perfectly normal thing to do as far as I am concerned.....So tell me: just what makes it: 'smug, arrogant, and geeky' ? I'd be very interested in why you find a perfectly innocuous request has those attributes.

Regards

Dr Tony Young

PS.....this email is being copied to Pamela Jones at Groklaw and I will also, with your permission, send her your reply as I am sure she will be equally fascinated to learn your reasons.

Reading stuff like this is a bit like watching people hurting themselves for comedic effect (viz: America's Funniest Videos or YouTube): you never really know how guilty to feel about your reactions to them. What's worst about this, however, is that the "groklaw effect" has become a significant component in the overall Linux "gestalt" - and just about everything most of that mob has been led to believe about the case is wrong.

The fundamentals of the case are simple: SCO (and I use the name generically) asked IBM to pay continuing royalties under its AT&T Unix licenses; IBM said words to the effect of "Nope, we have a fully paid perpetual license"; a discussion ensued during which SCO became convinced that IBM had breached the contracts by allowing people with intimate knowledge of

the AT&T source to contribute to Linux; and so SCO issued the 90 day license suspension warning against AIX required under that contract.

At the time I expected that IBM's senior management would review the issue, recognize a problem, and settle expeditiously with SCO; but that didn't happen. Instead IBM circled the wagons and waited for SCO to do what it had to under the contract: escalate the conflict by formally suspending IBM's Unix licenses with respect to AIX and then ask a court to enforce that order against IBM.

That should have been a simple process: all SCO had to do was show the court that at least some IBM Linux contributors had significant prior or concurrent exposure to AIX source and it would have been game over for IBM. That didn't happen either: instead it appears that someone somewhere in the process saw the combination of IBM's intransigence and deep pockets with a rather obvious contractual dispute as a potential gold mine - and out of that we get the next act in which a major east coast firm, headed by the same lawyer who had been unable to prove that Microsoft benefited from an illegally obtained and enforced monopoly, gets a cost plus style contingency agreement to prosecute the case against IBM and we start to see inflammatory, and largely incorrect, claims issued in SCO's name.

Since much of what both sides said subsequently had little to do with the issue (and everything to do with valuing the settlement) I expected to see the consequent posturing roil along until the case got to court and then get swept away as irrelevant, but that hasn't happened yet. Instead, IBM pulled a wild card: lawyers working with the contracts under which Novell sold the AT&T Unix assets to SCO discovered that the section on Netware explicitly withholds copyrights for Novell's own use while the section on the Unix contracts, products, and sources transfers everything lock stock and barrel but doesn't explicitly mention copyrights - and out of that (I imagine coupled with the emotional freight delivered by east coast lawyers forced to travel to hicksville to drop pearls before rubes) we get Judge Kimbal's August ruling that Novell, the company which got SuSe with \$50 million in IBM funding and whose own CEO and key negotiator at the time testified that they were indeed selling the copyrights, hadn't actually sold the copyrights.

Since Kimbal's decision to decide on disputed testimony probably constitutes reversible error, this nonsense won't stand for ten seconds if the case gets to the appeals court in Denver - but between paying its lawyers and the relentless attacks on SCO (and thus on its business) by people using groklaw, SCO may well be defeated financially before that happens.

To the simple minded partisans who send me hate mail on the subject this sounds good: SCO bad, SCO gone, ergo all good, right? Well, sorry guys - all wrong, and all bad.

First of all, if the underlying issues aren't settled they'll fester - weakening Linux by forever undermining the skills, hard work and honest enthusiasm that has gone into Linux. Secondly, if Kimbal's judgement is never appealed, thus leaving Novell in possession, Novell's directors will face some hard choices - a situation which whoever acts for SCO's other creditors (including some of Noorda's heirs) will be duty bound to exploit.

One of the worst things about this whole mess has been that the underlying issue has little or nothing to do with Linux and any reasonable settlement on either side would have left Linux untouched. Since then, of course, the lawsuit has triggered enormous marketplace FUD, the

architectural 180 characterising the difference between the 2.4 and later kernels, and much of the us vs. them attitude underlying the “Linux is not Unix” nonsense.

As a result the resolution that’s now so hotly anticipated by the groklaw mob seems like the worst possible outcome: no resolution on the key issue; the victory of money and media manipulation over right; and, lots of aggrieved parties with axes to grind, the money to hire lawyers to do the grinding, and a pot of gold at the end of the rainbow to spur them on.



Paul Murphy (a pseudonym) is an IT consultant specializing in Unix and related technologies. See his full profile and disclosure of his industry affiliations.

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