

Questioning the Kernel

I went to see Darl McBride's presentation, "Defending Intellectual Property in the Digital Age," because I wanted to learn more about his company, SCO, and its challenge to open source software. I also went because I love protests. The event had all the necessary ingredients for a rowdy, political evening: enraged leftist software programmers, a spokesperson for corporate America, and the backdrop of a college campus. When McBride entered the Harvard lecture hall with two bodyguards, my suspicions were confirmed (though, as I learned later, one of stern men was actually a Harvard police officer—Harvard policy requires bodyguards to be escorted by campus police). The introducers even alluded to the edginess in the room by emphasizing the need to be "polite and respectful" during the question period. I sat in the rolling chair and waited for the firestorm.



But the protest was not to be. The lack of drama was not a result of McBride and the audience finding common ground over the course of the night, but instead because the two sides seemed unable to speak the same language. Stocky, suited, and tan, McBride was highly mismatched as a spokesperson to the group of agitated, tech-savvy students. McBride opened his talk with a Super Bowl reference, which would have been a good strategy considering the Patriots' dramatic win the previous day, but sports jokes were not the way to court this audience. The programmers and law students barely cracked a smile at that joke or the subsequent references to the "Big Game" (I counted eight through the whole speech).

In a telling moment that revealed the difference in McBride's expectations and those of the audience, McBride held up an IBM ad in USA Today that referred to Linux. "Now how many of you in here had even heard of this thing called Linux before?" he asked. Nearly all attendees raised their hands. McBride paused. "Well, I appreciate the fact that we're coming to a well-educated audience on this issue," he continued.

1.0 The Speech

McBride spoke at the event, sponsored by Harvard Law School's Journal of Law and Technology, to represent his company's claims against IBM that have raised questions about the Linux kernel and the future of open source software. McBride alleges that "key portions of code that [were] protected under our rights had been taken by IBM and donated into this Linux environment." The company is now suing to reclaim damages it contends to have suffered.



If its claims are upheld, according to McBride, any Linux user could potentially owe SCO money. “If you’re an academic institution, we’re probably not going to come after you,” he reassured the audience, “but if you’re getting a great deal of benefit of portions of our intellectual property, then we might have a reason to enforce those rights.” McBride did not provide specifics about the company's legal claims, which have been hotly contested by defenders of open source software, but offered the more general explanation, that “the rule of law... is set up to deal with problems. We have problems, and we went into the court system, and that’s the way we’re working through our problems.”

In the second half of his talk, McBride moved to the subject of “cyber-terrorism” and the recent *MyDoom* virus that disabled the SCO webpage with a distributed denial of service attack. He criticized the “harassment,” but the event that seemed to pique him more was a lesser known DDOS attack – the one launched against his house. McBride explained that, after his home phone number was posted on Slashdot, his phone was “ringing off the hook” throughout the entire Super Bowl.

2.0 The Response

If McBride faulted on the sports-reference end of the spectrum, the audience erred in favor of calculator watches and math jokes. When he opened the floor to questions, his opponents were tightly wound and ready to pounce but, unlike the Slashdot offensive, unsure where to direct the attack. Questions clustered around several themes – Novell’s challenge to SCO’s copyright claims; SCO’s refusal to disclose which portions of source code have allegedly been taken; SCO’s use of Samba, an open source application, while it simultaneously challenges the legal basis of such software in court; and the potential fallout if SCO’s claims are upheld in the lawsuit.



At the heart of all these questions is the legal status of the GNU general public license (GPL), the most common way of licensing free/libre and open source software. The GPL has never been confirmed by the courts as an enforceable contract, and SCO’s suit exploits this potential vulnerability of open source. While McBride’s address at the JOLT forum may not have been the best arena for clarifying these issues, the event did clarify the ideological and cultural chasm separating the two sides. While McBride’s talk focused on how to enable companies to collect money for uses of their intellectual property, his opponents were handing out free gifts. Two MIT students passed out folders before and after the speech with information about SCO, Linux, the GPL, and open source software. In the back of every folder they distributed was a shiny new CD – bootable copies of Knoppix, an operating system and an office suite of software built from open source code, for all who attended.

3.0 Further Reading

Background about the Event:

- JOLT homepage -- watch a recording of the event and get information about future speakers: <http://jolt.law.harvard.edu/>
- Darl McBride's Bio on SCO:
<http://cyber.law.harvard.edu/briefings/extras/htmlArea/www.caldera.com/company/execs/dmcbride.html>
- GNU Project homepage: <http://www.gnu.org/>
- an account of the event on Groklaw:
<http://www.groklaw.net/article.php?story=20040202204801978#comments>
- Boston Globe reporter Hiawatha Bray's profile of McBride:
http://www.boston.com/business/technology/articles/2004/02/04/mr_unpopular/

Legal Resources:

- Free Software Foundation's response to SCO's legal claims:
<http://www.fsf.org/philosophy/sco-statement.html>
- SCO's letter to the Open Source Community:
<http://linuxworld.com/story/34007.htm>
- Groklaw's response to SCO's letter:
<http://www.groklaw.net/staticpages/index.php?page=20030923112622826>
- Groklaw's archive of legal documents related to the case:
<http://www.groklaw.net/staticpages/index.php?page=legal-docs>
- information about *Progress Software Corp. v. MySQL*, a lawsuit which raises questions about the legal status of the GPL:
<http://216.239.37.104/search?q=cache:9eVpRHX4Yg0J:articles.corporate.findlaw.com/articles/file/00050/008924+Moglen+GPL+MySQL&hl=en&start=10&ie=UTF-8>

For suggestions and feedback, please contact Mary Bridges -- mbridges AT cyber.law.harvard.edu.