USENIX
THE ADVANCED COMPUTING SYSTEMS ASSOCIATION

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The SCO Group, Inc. (SCO), has recently sued IBM and Novell and launched broad attacks on the legality of and the economic justification for so-called open source licensing, including the free licensing of Linux. As an organization dedicated to advancing the skills and contributions of computer researchers and developers, the USENIX Association is compelled to address and refute the position SCO has taken regarding open source software.

Since 1975, USENIX has brought together the community of engineers, system administrators, scientists, and technicians working on the cutting edge of the computing world. USENIX was here before SCO. USENIX was here before Linux. USENIX and its members serve as an unparalleled demonstration that the best way to support advances in computer programming and to create better computer programs (and to help the American economy) is by sharing innovations, rather than keeping them secret or charging large amounts of money for access to them, as SCO advocates.

SCO argues that open source software, and in particular the General Public License (GPL), by means of which Linux and many other open source programs are licensed without charging fees, are "a threat to the U.S. information technology industry." SCO's own programmers themselves use open source computer software tools, so it is difficult to explain SCO's position except by noting its hypocrisy. Many of the most popular computer development tools are available to programmers worldwide for free through the contributions of the open source development community. If their developers were to charge substantial fees for their use or to withdraw them from distribution entirely, commercial programmers such as SCO and non-commercial programmers alike would be the worse for it.

SCO specifically argues that open source (free) licensing "undermines our basic system of intellectual property rights." This assertion lacks any legal justification and therefore appears to be merely self-serving. Nothing in our intellectual property laws requires inventors to charge substantial fees for access or use of their inventions. In fact, the laws of copyright and patents, which underlie the intellectual property rights that most often protect computer software programs, give their owners complete discretion in deciding how large their licensing fees should be, or, indeed, whether to impose fees at all.

SCO specifically argues that open source software "has the potential to provide our nation's enemies or potential enemies with computing capabilities that are restricted by U.S. law." Intellectual property law is not the right place to impose restrictions on the use of computer programs abroad. That's what our export control laws do. This confusion between intellectual property licensing and export policy shows how bankrupt SCO's arguments are. Furthermore, the U.S. export control authorities have acknowledged the impossibility of restricting the geographical distribution of most computer software programs. In any event, neither area of law hinges on

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whether software programs are licensed for fees or for free, or whether the innovations are kept secret or are shared.

SCO specifically argues, "Each Open Source installation displaces or pre-empts a sale of proprietary, licensable and copyright-protected software." This would only be true if the open source applications were superior or at least equal to their proprietary counterparts. America has always asserted that the marketplace is the best regulator. Expensive products stimulate the introduction of less expensive and better substitutes. Intellectual property laws do not change that basic principle of capitalism. SCO's desire to be protected against competition is understandable, particularly if its products are inferior to those of its open source competitors. But it is unreasonable to expect that intellectual property laws will shield SCO from the normal operation of the marketplace.

Intellectual property law has always balanced the need to give inventors protection from competitors with the need to give society the benefit of their innovations and to let the marketplace regulate fees through the mechanisms of supply and demand. Intellectual property laws have never given inventors absolute protection against the competition of lower-cost substitutes. Copyright laws, for example, only protect against copying. If substitute programs are not copies, then they do not infringe, and they are free to compete with the original programs in the marketplace. Inventors who find they can't compete against lower-cost or free substitutes are compelled to find other things to sell. SCO's claims that open source developers are damaging our system of intellectual property rights and are threatening the viability of our technology industry are intellectually dishonest. Indeed, the open source community's practice of sharing innovations and of making them available for free clearly stimulates development and invigorates the technology sector. From the software that controls the majority of the world's Web servers to the software that makes tasks easier on your desktops, open source development has enhanced the American economy.

Society is better off when consumers have choices and when products compete with one another on the basis of functionality and price, and inventing is facilitated when inventors share their ideas. USENIX supports the right of programmers to choose whether to charge for their programs or to make them available for free, and we oppose any attempt to change the balance inherent in our intellectual property laws.

Sincerely,

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USENIX Board of Directors

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