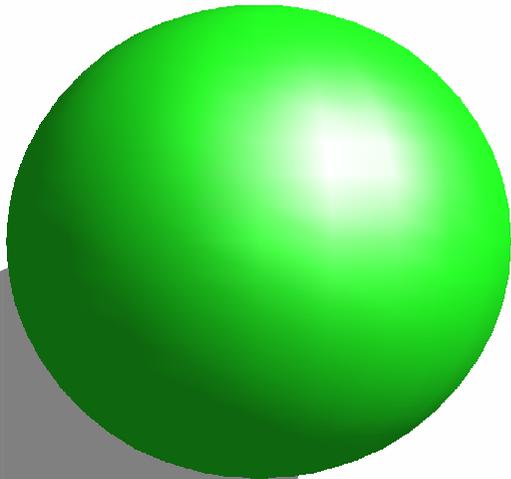


Could SCO v IBM happen to you?

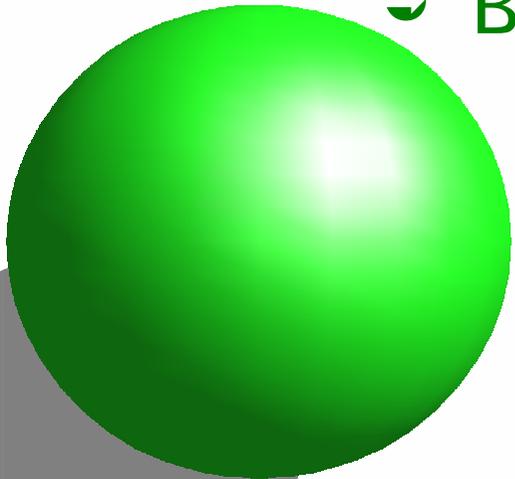
By Jeremy Malcolm <jeremy@ilaw.com.au>

Presented at the 2004 Australian Linux Conference
15 January 2004



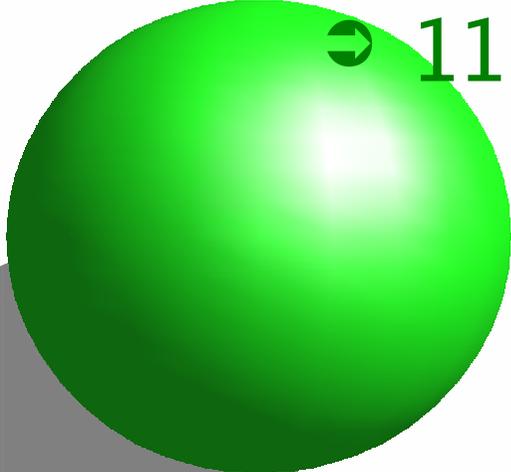
The players

- ⇒ The SCO Group
 - ⇒ As Caldera Systems bought Novell's IP
- ⇒ AT&T
 - ⇒ Original UNIX IP owner, sold to Novell
- ⇒ IBM
 - ⇒ Bought UNIX licence to develop AIX



What stage are we at?

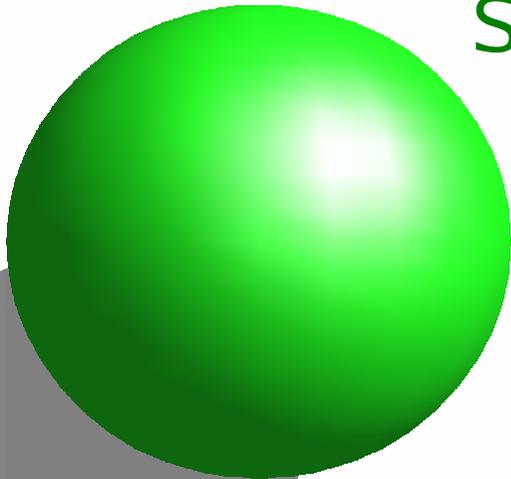
- ⇒ 6 March 2003 – SCO files its claim
- ⇒ 12 May 2003 – warns Linux users
- ⇒ 4 August 2003 – Red Hat pitches in
- ⇒ 6 August 2003 – IBM counterclaims
- ⇒ 9 January 2004 – cards on the table
- ⇒ 11 April 2005 – the trial begins



What is SCO saying?

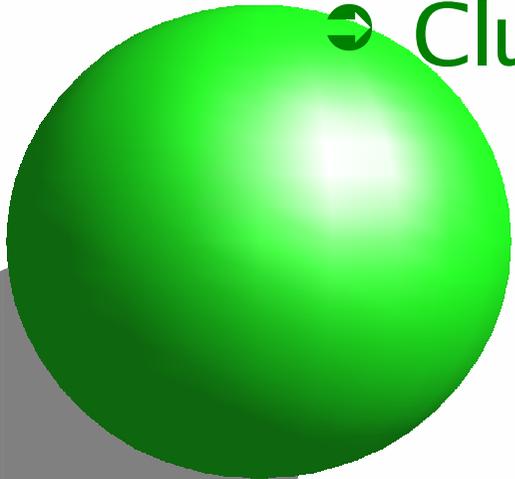
⇒ IBM:

- ⇒ is in breach of its licence agreements for the UNIX code
- ⇒ has infringed SCO IP
- ⇒ has engaged in unfair competition
- ⇒ has interfered with contracts between SCO and its customers



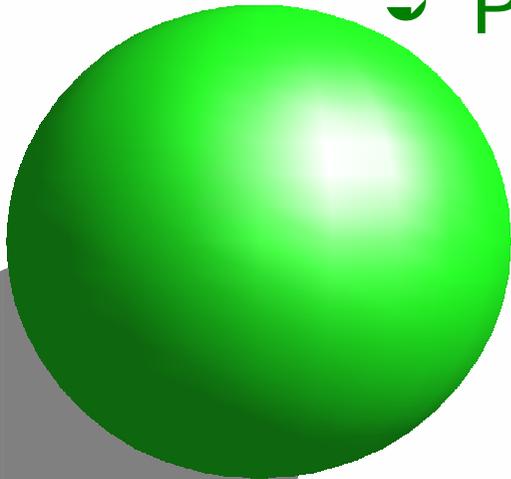
What SCO claims IBM took

- ⇒ SMP
- ⇒ LVM
- ⇒ 32 and 64 bit processing
- ⇒ Journaling filesystem
 - ⇒ Even though IBM developed JFS itself!
- ⇒ Clustering



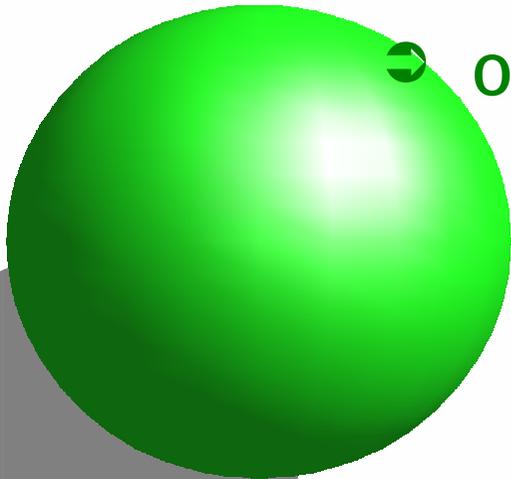
Intellectual Property Law 101

- ⇒ Copyright
 - ⇒ Protects the expression of ideas only
- ⇒ Patents
 - ⇒ Protects inventive ideas
- ⇒ Trade secrets
 - ⇒ Protects confidential information



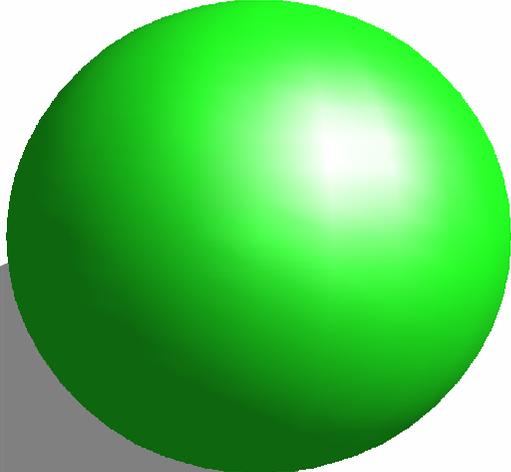
When you are allowed to copy

- ⇒ Copyright law does not apply where:
 - ⇒ the software is in the public domain
 - ⇒ for works too trivial to attract protection
 - ⇒ the copying is not a substantial part
 - ⇒ the copying is for a permitted purpose
 - ⇒ only the ideas are copied



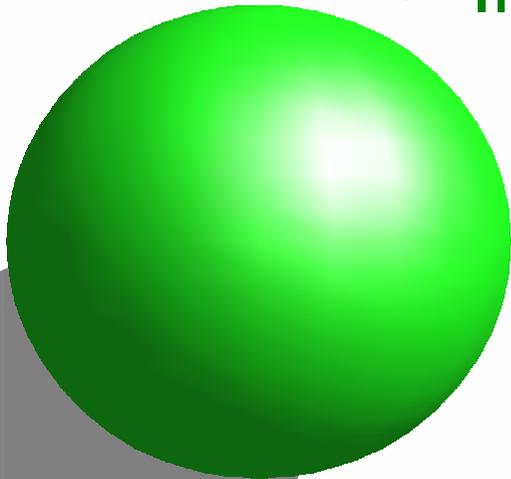
But I didn't copy anything!

- ⇒ Trade secrets trump copyright law
- ⇒ Patents trump copyright law
 - ⇒ Even if you wrote the code yourself and didn't know you were copying
- ⇒ A derivative work is an infringement
 - ⇒ WTF is a derivative work?



How to protect yourself

- ⇒ Chinese Walls
 - ⇒ Separating developers
 - ⇒ The jury is still out
- ⇒ The buck stops with the developer
 - ⇒ Declaration of code cleanliness
 - ⇒ Indemnity against liability



More ways to protect yourself

- ⇒ Choose the right licence
 - ⇒ MPL and GPL require contributors to grant free patent licences
- ⇒ Read up on patents
 - ⇒ Check literature, competitive products
- ⇒ Don't derive, plug in
 - ⇒ The more independent, the safer

Conclusion

- ⇒ Avoid being put in IBM's position:
 - ⇒ Know your IP rights and obligations
 - ⇒ Tie down developers and contributors
- ⇒ The full paper
 - ⇒ <http://jmalcolm.ilaw.com.au/>
- ⇒ Questions?

