

IBM Defeats Software Co. In Copyright Fight At 2nd Circ.

By **Adam Lidgett**

Law360 (August 10, 2026, 7:36 PM EDT) -- A software company failed to persuade the Second Circuit to undo a federal judge's decision allowing IBM to dodge a copyright suit, with the appellate court on Monday agreeing the case was time-barred.

In its summary order, a three-judge panel of the Second Circuit affirmed a decision handing summary judgment to International Business Machines Corp. in a suit from Xinuos Inc., which argued that U.S. District Judge Cathy Seibel wrongly recast its infringement claim as a dispute over ownership of the copyright and then found the time period to bring ownership claims had lapsed.

But the panel shot down that argument, saying "Xinuos's copyright claim is based on the same underlying factual allegations" as those in an earlier case filed by a company that eventually sold off part of its software business to Xinuos. The panel added that "Xinuos would have been aware that IBM claimed the right to use the code no later than 2011" when it bought the business assets and acknowledged the claims in the earlier case.

"Even if we were to give Xinuos the benefit of the three-year statute of limitations of the Copyright Act, and even if we were [to] conclude that Xinuos would not have known that IBM claimed a license to use the code until the conclusion of the asset purchase agreement in 2011, Xinuos's claim filed in 2021 would still be time-barred," the panel said.

Xinuos sued in 2021, claiming IBM had conspired with another company, Red Hat Inc., to steal copyrighted code for a product called the Unix operating system.

When Xinuos sued, IBM was litigating with a company called SCO Group, the copyright's former owner, in a Utah case that was almost 20 years old and had been put on hold because of SCO's bankruptcy, according to Xinuos.

SCO's allegations were that IBM misappropriated the Unix code through fraudulent participation in a joint development agreement in the 1990s, according to Xinuos.

IBM and SCO settled, and in January 2024, Judge Seibel issued an order granting IBM's motion for summary judgment on Xinuos' copyright infringement claim.

Xinuos argued on appeal that before discovery began in the case, Judge Seibel issued an order that sua sponte recast the infringement claim as an ownership claim. The copyright claim, Xinuos argued, should

be restored and not treated as a dispute over ownership.

IBM said in a brief statement to Law360 it was happy with the Second Circuit's decision.

Counsel for Xinuos did not immediately respond to a request for comment on Monday.

U.S. Circuit Judges Steven Menashi, Sarah Merriam and Guido Calabresi sat on the panel for the Second Circuit.

Xinuos is represented by Mark Supko, Mark A. Klapow, Joachim Steinberg, Warrington S. Parker III and Jacob S. Canter of Crowell & Moring LLP.

IBM is represented by David Marriott, Danayit Musse, Uriel Hinberg and Blake Stafford of Latham & Watkins LLP.

The case is Xinuos Inc. v. International Business Machines Corp. et al., case number 25-1073, in the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Elliot Weld. Editing by Nick Siwek.