

CROSSWORLDS SOFTWARE INC  
Form SC 13D  
November 08, 2001

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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SCHEDULE 13D  
Under the Securities Exchange Act of 1934\*

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CROSSWORLDS SOFTWARE, INC.  
(Name of Issuer)

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Common Stock, Par Value \$0.001 Per Share  
(Title of Class of Securities)

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22769P 10 9  
(CUSIP Number)

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David L. Johnson  
International Business Machines Corporation  
New Orchard Road  
Armonk, New York 10504  
Telephone: (914) 499-4100

(Name, Address and Telephone Number of Person  
Authorized to Receive Notices and Communications)

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Copy to:  
Scott A. Barshay, Esq.  
Cravath, Swaine & Moore  
Worldwide Plaza  
825 Eighth Avenue  
New York, NY 10019  
(212) 474-1000

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October, 29, 2001  
(Date of Event Which Requires Filing of this Statement)

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If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of ss.ss. 240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box. []

NOTE: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. Seess. 240.13d-7(b) for other parties to whom copies are to be sent.

\* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

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The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

(Continued on following pages)

CUSIP No. 22769P 10 9

13D

1	NAME OF REPORTING PERSONS	International Business Machines Corporation
	I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)	I.R.S. I.D. # 13-0871985
<hr/>		
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP*	(a) <input type="checkbox"/> (b) <input type="checkbox"/>
<hr/>		
3	SEC USE ONLY	
<hr/>		
4	SOURCE OF FUNDS*	00
<hr/>		
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)	<input type="checkbox"/>
<hr/>		
6	CITIZENSHIP OR PLACE OF ORGANIZATION	New York
<hr/>		
	7	SOLE VOTING POWER None
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	8	SHARED VOTING POWER 9,422,554
	9	SOLE DISPOSITIVE POWER None
	10	SHARED DISPOSITIVE POWER 9,422,554
<hr/>		
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON	9,422,554
<hr/>		
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES*	<input type="checkbox"/>
<hr/>		
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)	35.19%

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14 TYPE OF REPORTING PERSON\*  
CO

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\*SEE INSTRUCTIONS BEFORE FILLING OUT!

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Neither the filing of this Schedule 13D nor any of its contents shall be deemed to constitute an admission by International Business Machines Corporation that it is the beneficial owner of any of the common stock of CrossWorlds Software, Inc. referred to herein for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or for any other purpose, and such beneficial ownership is expressly disclaimed. International Business Machines Corporation also disclaims any interest in any shares of common stock of CrossWorlds Software, Inc. held by any of its affiliated employee benefit plans, including pension funds and medical and dental funds, and by certain affiliated entities which may hold such shares for charitable purposes.

ITEM 1. SECURITY AND ISSUER

This statement on Schedule 13D relates to the common stock, par value \$0.001 per share (the "Issuer Common Stock"), of CrossWorlds Software, Inc., a Delaware corporation (the "Issuer"). The principal executive offices of the Issuer are located at 577 Airport Boulevard, Suite 800, Burlingame, CA 94010.

ITEM 2. IDENTITY AND BACKGROUND

(a) The name of the person filing this statement is International Business Machines Corporation, a New York corporation ("IBM").

(b) The address of the principal office and principal business of IBM is New Orchard Road, Armonk, NY 10504.

(c) IBM uses advanced information technology to provide customer solutions. The company operates primarily in a single industry using several segments that create value by offering a variety of solutions that include, either singularly or in some combination, technologies, systems, products, services, software and financing. Set forth in Schedule A hereto, which is incorporated herein by reference, is the name, business address, present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment is conducted and citizenship, of each of IBM's directors and executive officers, as of the date hereof. Other than such directors and executive officers, there are no persons controlling IBM.

(d) During the past five years, neither IBM nor, to IBM's knowledge, any person named in Schedule A hereto has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors).

(e) During the past five years, neither IBM nor, to IBM's knowledge, any person named in Schedule A hereto was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction as a result of which such person was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activity subject to, federal or state securities laws or finding any violation with respect to such laws.

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(f) Not applicable.

### ITEM 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION

Pursuant to the Stockholder Agreement, dated as of October 29, 2001 (the "Stockholder Agreement"), among IBM and certain stockholders of the Issuer set forth on Schedule A thereto (collectively, the "Stockholders"), IBM may be deemed to be the beneficial owner of 9,422,554 shares of Issuer Common Stock (collectively, the "Subject Shares"). IBM and the Stockholders entered into the Stockholder Agreement to induce IBM to enter into the Agreement and Plan of Merger, dated as of October 29, 2001 (the "Merger Agreement"), among IBM, Duke Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of IBM ("Merger Sub"), and the Issuer. Pursuant to the Merger Agreement, Merger Sub will merge with and into the Issuer (the "Merger"), with the Issuer continuing as the surviving corporation in the Merger (the "Surviving Corporation"), as a wholly owned subsidiary of IBM. In the Merger, each share of Issuer Common Stock will be converted into the right to receive \$4.65 in cash, without interest. The Merger is subject to certain conditions. The descriptions of the Merger Agreement and the Stockholder Agreement contained herein are qualified in their entirety by reference to such agreements, which are attached hereto as Exhibits 1 and 2, respectively.

### ITEM 4. PURPOSE OF TRANSACTION

(a)-(b) The Stockholder Agreement was entered into as a condition to the willingness of IBM to enter into the Merger Agreement and to increase the likelihood that the approval of the Issuer's stockholders required in connection with the Merger will be obtained. See the response to Item 3 for a more complete description of the Merger.

(c) Not applicable.

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(d) Upon consummation of the Merger, the directors of the Surviving Corporation shall be the existing directors of Merger Sub, until their resignation or removal or until their successor or successors are duly elected and qualified. The existing directors of Merger Sub are David L. Johnson, Gregory C. Bomberger and Jeffrey J. Doyle. The officers of the Surviving Corporation shall be the officers of the Issuer immediately prior to the consummation of the Merger, until their resignation or removal or until their respective successors are duly elected and qualified.

(e) Other than as a result of the Merger described in Item 3 above, not applicable.

(f) Not applicable.

(g) Upon consummation of the Merger, the Certificate of Incorporation of the Issuer, as in effect immediately prior to the Merger, shall be the Certificate of Incorporation of the Surviving Corporation until thereafter changed or amended. Upon consummation of the Merger, the By-laws of Merger Sub, as in effect immediately prior to the Merger, shall be the By-laws of the Surviving Corporation until thereafter changed or amended.

(h) - (i) Upon consummation of the Merger, the Issuer Common Stock

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will be delisted from The Nasdaq Stock Market Inc. and will become eligible for termination of registration pursuant to Section 12(g)(4) of the Exchange Act.

(j) Other than as described above, IBM currently has no plan or proposals that relate to, or may result in, any of the matters listed in Items 4(a) - (i) of Schedule 13D (although IBM reserves the right to develop such plans).

### ITEM 5. INTEREST IN SECURITIES OF THE ISSUER

(a)-(b) As a result of the Stockholder Agreement, IBM may be deemed to be the beneficial owner of the Subject Shares. The Subject Shares constitute approximately 35.19% of the issued and outstanding shares of Issuer Common Stock, based on the Issuer's representation in the Merger Agreement that there were 26,775,214 shares of Issuer Common Stock issued and outstanding at the close of business on October 29, 2001.

Pursuant to the Stockholder Agreement, the Stockholders have agreed, among other things, (a) to vote the Subject Shares in favor of (i) the adoption of the Merger Agreement, (ii) the approval of the terms of the Merger Agreement and (iii) the approval of the Merger and each of the other transactions contemplated by the Merger Agreement, (b) to vote the Subject Shares against (i) any Takeover Proposal (as such term is defined in Section 4.02 of the Merger Agreement) and (ii) any amendment of the Issuer's Amended and Restated Certificate of Incorporation or Amended and Restated By-laws or other proposal, action or transaction involving the Issuer or any of its subsidiaries or any of its stockholders, in each case that could reasonably be expected to prevent or materially impede or delay the consummation of the Merger or the other transactions contemplated by the Merger Agreement or the consummation of the transactions contemplated by the Stockholder Agreement or to dilute in any material respect the benefits to IBM of the Merger and the other transactions contemplated by the Merger Agreement or the transactions contemplated by the Stockholder Agreement, or change in any manner the voting rights of the Issuer Common Stock, (c) prior to the Stockholders Meeting (as defined in Section 5.01(b) of the Merger Agreement), not to sell, transfer, pledge, assign, tender or otherwise dispose of any Subject Shares (or consent to any such action) or enter into any contract, option or other arrangement with respect to the sale, transfer, pledge, assignment or other disposition of such Subject Shares unless, prior to any such action, the transferee enters into a Stockholder Agreement with IBM that is substantially identical to the Stockholder Agreement and (d) not to enter into any voting agreement or arrangement in connection with any Takeover Proposal or Frustrating Transaction (as such term is defined in Section 3(b) of the Stockholder Agreement) with respect to any Subject Shares, other than pursuant to the Stockholder Agreement.

By their execution of the Stockholder Agreement, each Stockholder has irrevocably appointed IBM and David S. Hershberg, Vice President - Assistant General Counsel of IBM, Andrew Bonzani, Assistant Secretary and Senior Counsel of IBM, and David L. Johnson, Vice President of Corporate Development of IBM, in their respective capacities as designees of IBM, and any individual who shall thereafter succeed to any such office of IBM, and each of them individually, as his or her proxy and attorney-in-fact (the "Attorney"). The name of each Stockholder and the number of Subject Shares owned of record or beneficially by each Stockholder are set forth in Schedule A to the Stockholder Agreement, which is attached as Exhibit 2 hereto. In exercising its right to vote the Subject Shares as proxy and attorney-in-fact of the Stockholders, the Attorney's rights are limited to voting the Subject Shares, or granting a consent or approval with respect to the Subject Shares, (a) in favor of the adoption of the Merger Agreement and approval of the terms thereof and of the Merger and each of the other transactions contemplated by

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the Merger Agreement, (b) against any Takeover Proposal or any Frustrating Transaction and (c) otherwise in accordance with the covenants of each Stockholder in Section 3 of the Stockholder Agreement. The proxy granted in the Stockholder Agreement terminates upon termination of the Stockholder Agreement.

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In addition to the voting agreements and arrangements described above, each Stockholder has granted IBM an option to purchase any and all of the Subject Shares of such Stockholder, within three business days following the later of (a) a request by IBM to purchase such Subject Shares and (b) the last to occur of (i) expiration or termination of any waiting period (and any extension thereof) applicable to such sale and purchase under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, or any other applicable competition, merger control, antitrust or similar law or regulation and (ii) the receipt of any other regulatory approvals applicable to such sale and purchase, for a purchase price equal to \$4.65 per share in cash.

Further, the Stockholder Agreement contains provisions (the "profit provisions") pursuant to which if (a) the Termination Fee (as such term is defined in the Stockholder Agreement) becomes payable pursuant to the Merger Agreement and a Takeover Proposal is consummated or (b) a Takeover Proposal made by IBM (including any amendment of the Merger Agreement) which provides for Transaction Consideration (as such term is defined in the Stockholder Agreement) in excess of \$4.65, is consummated, then each Stockholder is required to pay to IBM the amount in cash equal to such Stockholder's Profit (as such term is defined in the Stockholder Agreement), provided, however, that if all or any part of the Transaction Consideration which such Stockholder is entitled to receive is not cash, then such Stockholder's Profit shall be paid to IBM in each type of consideration paid to such Stockholder and in the same proportions as the types of consideration comprising the Transaction Consideration which such Stockholder is entitled to receive, in each case determined at the close of business on the date of the consummation of the Takeover Proposal referred to in clause (a) or (b) of this paragraph in the manner set forth in the Stockholder Agreement.

The Stockholder Agreement terminates upon the earlier of (i) such date and time as the Merger shall become effective in accordance with the terms of the Merger Agreement and (ii) the date of termination of the Merger Agreement if the Merger Agreement is terminated according to its terms, provided, however, that if the Merger Agreement is terminated following one the following events: (a) (i) a Takeover Proposal has been made to the Issuer or its stockholders or any person has announced an intention to make a Takeover Proposal or a Takeover Proposal otherwise becomes known to the stockholders of the Issuer or any person or group acquires ownership of 10% or more of the Issuer Common Stock; (ii) thereafter the Merger Agreement is terminated due to the lack of consummation of the Merger by March 31, 2002, or the failure to obtain the approval of the Issuer's stockholders to the Merger; and (iii) within 12 months after such termination the Issuer or any of its subsidiaries enters into any Acquisition Agreement (as such term is defined in Section 4.02(b) of the Merger Agreement) with respect to, or consummates, any Takeover Proposal (for this purpose, as such term is defined in Section 5.06(b) of the Merger Agreement); or (b) the Merger Agreement is terminated by IBM in the event that (i) the Board of Directors of the Issuer or any committee thereof shall withdraw or adversely modify, or propose publicly or agree to withdraw or adversely modify, the recommendation or declaration of

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advisability by such Board of Directors or any such committee of the Merger Agreement or the Merger, or shall resolve or agree to take any such action, or (ii) the Board of Directors of the Issuer or any committee thereof shall have failed to confirm its recommendation and declaration of advisability of the Merger Agreement and the Merger within ten business days after a written request by IBM that it do so, then (A) the profit provisions and any other related provisions of the Stockholder Agreement shall continue in full force and effect during the 12 month period described in clause (a) of this paragraph and (B) the option granted under the Stockholder Agreement and any other related provisions of the Stockholder Agreement shall continue in full force and effect for six months following the termination of the Merger Agreement.

(c) Neither IBM nor, to the knowledge of IBM, any person named in Schedule A, has effected any transaction in the Issuer Common Stock during the past 60 days.

(d) Not applicable.

(e) Not applicable.

ITEM 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER

Other than as described in Items 3, 4 and 5 and the agreements incorporated herein by reference and set forth as exhibits hereto, to the knowledge of IBM, there are no contracts, arrangements, understandings or relationships (legal or otherwise) among the persons named in Item 2 and between such persons and any person with respect to any securities of the Issuer, including but not limited to transfer or voting of any of the securities, finder's fees, joint

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ventures, loan or option arrangements, puts or calls, guarantees of profits, division of profits or loss, or the giving or withholding of proxies.

ITEM 7. MATERIALS TO BE FILED AS EXHIBITS

The following documents are filed as exhibits:

EXHIBIT NUMBER	EXHIBIT NAME
-----	-----
1.	Agreement and Plan of Merger dated as of October 29, 2001, among International Business Machines Corporation, a New York corporation, Duke Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of International Business Machines Corporation, and CrossWorlds Software, Inc., a Delaware corporation.
2.	Stockholder Agreement dated as of October 29, 2001, among International Business Machines Corporation, a New York corporation, and certain stockholders of CrossWorlds Software, Inc., a Delaware corporation.

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

INTERNATIONAL BUSINESS  
MACHINES CORPORATION,

by

/s/ David L. Johnson  
-----

Name: David L. Johnson  
Title: Vice President,  
Corporate Development

Dated: November 8, 2001

EXHIBIT INDEX

Exhibit Number -----	Exhibit Name -----
1.	Agreement and Plan of Merger dated as of October 29, 2001, among International Business Machines Corporation, a New York corporation, Duke Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of International Business Machines Corporation, and CrossWorlds Software, Inc., a Delaware corporation.
2.	Stockholder Agreement dated as of October 29, 2001, among International Business Machines Corporation, a New York corporation, and certain stockholders of CrossWorlds Software, Inc., a Delaware corporation.



## SCHEDULE A

The following is a list of the directors and executive officers of IBM, setting forth the present principal occupation or employment and the name and principal business of any corporation or other organization in which such employment is conducted for each such person. Unless otherwise indicated, all directors and officers listed below are citizens of the United States, and their business address is: International Business Machines Corporation, New Orchard Road, Armonk, NY 10504.

## BOARD OF DIRECTORS OF IBM

NAME ----	POSITION -----	PRESENT PRINCIPAL OCCUPATION -----	BUSINESS -----
Cathleen Black	Director	President, Hearst Magazines	Hearst M The Hear 959 8th New York
Kenneth I. Chenault	Director	Chairman and Chief Executive Officer, American Express Company	American Company World Fi 200 Vese New York
Juergen Dormann Citizenship: Germany	Director	Chairman of the Board of Management, Aventis S.A.	Temporan Septembe 90 Hudso Jersey C Aventis Espace E l'Enterp 16 avenu F-67300
Louis V. Gerstner, Jr.	Chairman of the Board of Directors and Chief Executive Officer	Chairman of the Board and Chief Executive Officer, IBM	
Nannerl O. Keohane	Director	President, Duke University	Duke Uni 207 Alle Durham,
Charles F. Knight	Director	Chairman of the Board, Emerson Electric Co.	Emerson 8000 W. St. Loui
Minoru Makihara Citizenship: Japan	Director	Chairman of the Board, Mitsubishi Corporation	Mitsubis 6-3, Mar Chiyoda- Tokyo 10

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Lucio A. Noto	Director	Retired Vice Chairman of the Board, Exxon Mobil Corporation
Samuel J. Palmisano	Director	President and Chief Operating Officer, IBM

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NAME -----	POSITION -----	PRESENT PRINCIPAL OCCUPATION -----	BUSINESS -----
John B. Slaughter	Director	President and Chief Executive Officer, National Action Council for Minorities in Engineering, Inc.	NACME, I The Empi 350 Fift New York
Sidney Taurel	Director	Chairman of the Board, President and Chief Executive Officer, Eli Lilly and Company	Eli Lilly Lilly Co Indianap
John M. Thompson Citizenship: Canada	Vice Chairman of the Board of Directors	Vice Chairman of the Board, IBM	
Alex Trotman	Director	Retired Chairman of the Board and Chief Executive Officer, Ford Motor Company	Ford Mot One Park Dearborn
Lodewijk C. Van Wachem Citizenship: Netherlands	Director	Chairman of the Supervisory Board, Royal Dutch Petroleum Company	Royal Du Company 30, Care 2596 HR The Hagu Netherla
Charles M. Vest	Director	President, Massachusetts Institute of Technology	Massachu Technolo 77 Massa Cambridg

EXECUTIVE OFFICERS OF IBM

NAME -----	POSITION -----
Louis V. Gerstner, Jr.	Chairman of the Board and Chief Executive Officer
Samuel J. Palmisano	President and Chief Operating Officer
John M. Thompson	Vice Chairman of the Board

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Nicholas M. Donofrio	Senior Vice President, Corporate Technology and Manufacturing
Douglas T. Elix Citizenship: Australia	Senior Vice President and Group Executive
J. Bruce Harreld	Senior Vice President, Strategy
Paul M. Horn	Senior Vice President, Research
John R. Joyce	Senior Vice President and Chief Financial Officer
David B. Kalis	Senior Vice President, Communications
John E. Kelly, III	Senior Vice President and Group Executive
Abby F. Kohnstamm	Senior Vice President, Marketing

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NAME -----	POSITION -----
Joseph C. Lane	Senior Vice President and Group Executive, Global Financing
J. Michael Lawrie	Senior Vice President, and Group Executive
J. Randall MacDonald	Senior Vice President, Human Resources
Steven A. Mills	Senior Vice President and Group Executive
Lawrence R. Ricciardi	Senior Vice President and General Counsel
Linda S. Sanford	Senior Vice President and Group Executive
William M. Zeitler	Senior Vice President and Group Executive
Daniel E. O'Donnell	Vice President and Secretary
Mark Loughridge	Vice President and Controller
Robert F. Woods	Vice President and Treasurer

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