

FILED

CLERK, U.S. DISTRICT COURT

Issued by the
UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

28 AUG 03 PM 3:56

THE SCO GROUP, INC., a Delaware corporation,
Plaintiff/Counterclaim-Defendant,

DISTRICT OF UTAH
SUBPOENA IN A CIVIL CASE

v.

BY: _____
Case No. 2:03CV-0294 DAK
DEPUTY CLERK

INTERNATIONAL BUSINESS MACHINES CORPORATION, a New York corporation,
Defendant/Counterclaim-Plaintiff.

Judge: Dale A. Kimball

TO:
The Canopy Group, Inc.
333 South 520 West, Suite 300
Lindon, UT 84042

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

Snell & Wilmer, 15 W. South Temple, #1200, SLC, UT 84101

September 10, 2003.

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date and time specified below (list documents or objects):

See attached Exhibit A.

PLACE

DATE AND TIME

Snell & Wilmer, 15 W. South Temple, #1200, SLC, UT 84101

September 10, 2003

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify, Federal Rules of Civil Procedure, 30(b) (6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

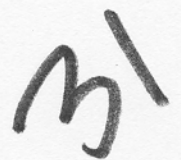


Attorney for Defendant

August 26, 2003

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Todd M. Shaughnessy, Snell & Wilmer, 15 West South Temple, Suite 1200, Salt Lake City, UT 84101
(801) 257-1900



(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

PROOF OF SERVICE		
SERVED	DATE 8-26-03 5:48 PM	PLACE 4526 PO. ULTRA PROV, UT.
SERVED ON (PRINT NAME) RALPH YANNO REGISTRAR COURT	MANNER OF SERVICE PERSONAL	
SERVED BY (PRINT NAME) ALYSON ASTON	TITLE PRIVATE INVESTIGATOR	
DECLARATION OF SERVER		
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.		
Executed on	8-26-03	<i>Alyson Aston</i>
	DATE	SIGNATURE OF SERVER
	9117 So. Hwy W #8 MIDWAY, UT. 84047.	ADDRESS OF SERVER

Rule 45, Fed.R.Civ.P., Parts (c) & (d):

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party service the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party

from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is

issued shows a substantial need for testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

ATTACHMENT A TO SUBPOENA TO THE CANOPY GROUP

You are instructed to produce the following documents at the time and place specified in the subpoena.

Documents To Be Produced

1. All documents concerning this lawsuit, plaintiff's claims or IBM's defenses or counterclaims.
2. All documents concerning any communications regarding this lawsuit, plaintiff's claims or IBM's defenses or counterclaims.
3. All documents concerning plaintiff's rights relating to UNIX or Linux.
4. All documents concerning any strategy, plan, effort, or action (actual or contemplated) to use or enforce (or to threaten to use or enforce) rights to UNIX or Linux.
5. All documents concerning any open-source license, including the GNU General Public License.
6. All documents concerning any lawsuit other than this lawsuit (actual or contemplated) involving plaintiff and relating to UNIX or Linux.
7. All documents concerning any agreement, understanding or communication with Microsoft, Sun, Computer Associates, Tarantella, AT&T, USL, HP or Novell, relating to UNIX or Linux.
8. All documents concerning plaintiff's efforts to license UNIX or Linux.

9. All documents concerning plaintiff's alleged evidence of UNIX in Linux.
10. All documents concerning plaintiff's alleged evidence of misconduct or breaches of duty by IBM.
11. All documents concerning plaintiff's UNIX or Linux businesses.
12. Documents sufficient to show the organizational structure or personnel of The Canopy Group.
13. All documents relating to the ownership of plaintiff.
14. All documents relating to purchases or sales of plaintiff's stock since January 1, 2003.
15. All documents in the possession, custody, or control of Ralph Yarrow, Jan Newman, Darcy Mott, Raymond J. Noorda, Lewena Noorda, Joyce Wiley, Mark Cusick, or Dan L. Baker relating to UNIX, Linux, or this lawsuit.
16. All documents provided to plaintiff by The Canopy Group or provided to The Canopy Group by plaintiff relating to UNIX, Linux, or this lawsuit.
17. All documents concerning the decision to commence or pursue this lawsuit or other lawsuits relating to plaintiff's alleged rights relating to UNIX or Linux.
18. All documents concerning the decision to suspend distribution of plaintiff's Linux products or code.
19. All documents concerning any analysis of any IBM conduct related to Unix or Linux.

20. All documents concerning any UNIX source code, derivative works, modifications, or methods contributed to Linux or to the open source community by AT&T, USL, Novell, Tarantella, or plaintiff.

21. All documents concerning the relationship between plaintiff and The Canopy Group.

22. All documents concerning any statement, declaration, affidavit, analysis, assessment, or opinion relating to plaintiff's rights to UNIX or Linux.

23. All documents concerning any statement, affidavit, declaration, analysis, assessment, or opinion relating to this litigation.

24. All documents concerning the nature, calculation, and basis of any damages or injuries plaintiff claims in this matter.

Instructions and Definitions

IBM hereby incorporates by reference all instructions, definitions and rules contained in the Federal Rules of Civil Procedure and the local rules or individual practices of this Court and supplements them with the following definitions and instructions:

A. Definitions

1. The term "AT&T" shall mean and include, collectively and/or individually, AT&T Corporation and all its directors, officers, authorized agents, employees, consultants, attorneys, sales representatives, distributors, dealers, direct and indirect contractors, entities that were acquired by or merged with AT&T Corporation, subsidiaries of AT&T Corporation, including but not limited to AT&T Technologies, Inc., and/or all other persons acting on behalf of AT&T Corporation.

2. The term “communication” shall mean any transmittal of information, whether oral or written, including correspondence, electronic mail and other internet transmissions, web pages, Internet Relay Chat logs, telex, facsimile transmissions, telecopies, recordings in any medium of oral communication, telephone and message logs, notes or memoranda relating to written or oral communications:

3. The term “Computer Associates” shall mean and include, collectively and/or individually Computer Associates International Inc. and all its directors, officers, authorized agents, employees, consultants, attorneys, sales representatives, distributors, dealers, direct and indirect contractors, entities that were acquired by or merged with Computer Associates International Inc., subsidiaries of Computer Associates International Inc., and/or all other persons acting on behalf of Computer Associates International Inc.

4. The term “concerning” shall mean relating to, referring to, reflecting, describing, evidencing, referencing, discussing or constituting.

5. The term “document” shall be synonymous in meaning and usage to the broadest scope of the term used in Rule 34(a) of the Federal Rules of Civil Procedure. The term “document” shall include without limitation all written, phonic, graphic or recorded matter, including without limitation, information stored on computers, disks, tapes (i.e., magnetic or other storage media), World Wide Web pages, electronic mailing lists or automated fax support systems. The term “document” specifically includes electronic mail, electronic correspondence, or electronic peer-to-peer messages (“e-mail”) and any attachments and files created and maintained in electronic form in the normal course of business.

6. The term "HP" shall mean and include, collectively and/or individually Hewlett-Packard Company and all its directors, officers, authorized agents, employees, consultants, attorneys, sales representatives, distributors, dealers, direct and indirect contractors, entities that were acquired by or merged with Hewlett-Packard Company, subsidiaries of Hewlett-Packard Company, and/or all other persons acting on behalf of Hewlett-Packard Company.

7. The term "IBM" shall mean and include, collectively and/or individually, International Business Machines Corporation and all its directors, officers, authorized agents, employees, consultants, attorneys, sales representatives, distributors, dealers, direct and indirect contractors, entities that were acquired by or merged with International Business Machines Corporation, subsidiaries of International Business Machines Corporation, and/or all other persons acting on behalf of International Business Machines Corporation.

8. The term "include" or "including" shall mean including without limitation.

9. The term "Microsoft" shall mean and include, collectively and/or individually Microsoft Corporation and all its directors, officers, authorized agents, employees, consultants, attorneys, sales representatives, distributors, dealers, direct and indirect contractors, entities that were acquired by or merged with Microsoft Corporation, subsidiaries of Microsoft Corporation, and/or all other persons acting on behalf of Microsoft Corporation.

10. The term "Novell" shall mean and include, collectively and/or individually, Novell, Inc. and all its directors, officers, authorized agents, employees,

consultants, attorneys, sales representatives, distributors, dealers, direct and indirect contractors, entities that were acquired by or merged with Novell Inc., subsidiaries of Novell Inc., and/or all other persons acting on behalf of Novell Inc.

11. The term “open source” shall mean any software code that is made available in source code form without any confidentiality restrictions, including but not limited to any code made available under the General Public License, the BSD license, or the MIT license.

12. The term “person” refers to natural persons or all private or public entities.

13. The term “plaintiff” shall mean and include, collectively and/or individually, plaintiff Caldera Systems, Inc., Caldera International, Inc., or The SCO Group, Inc., and all its directors, officers, authorized agents, employees, consultants, attorneys, sales representatives, distributors, dealers, direct and indirect contractors, entities that were in part or in whole acquired by or merged with Caldera Systems, Inc., Caldera International, Inc., or The SCO Group, Inc., affiliates, subsidiaries or predecessor companies of Caldera Systems, Inc., Caldera International, Inc., or The SCO Group, Inc., and/or all other persons acting on behalf of Caldera Systems, Inc., Caldera International, Inc., or The SCO Group, Inc. This includes the Server Software and Professional Services divisions acquired in 2001 by Caldera International, Inc. from Tarantella, Inc., f/k/a The Santa Cruz Operation, Inc (“Tarantella”).

14. The term “Sun” shall mean and include, collectively and/or individually Sun Microsystems Inc. and all its directors, officers, authorized agents, employees, consultants, attorneys, sales representatives, distributors, dealers, direct and

indirect contractors, entities that were acquired by or merged with Sun Microsystems Inc., subsidiaries of Sun Microsystems Inc., and/or all other persons acting on behalf of Sun Microsystems Inc.

15. The term "Tarantella" shall mean and include, collectively and/or individually, Tarantella, Inc. f/k/a The Santa Cruz Operation, Inc. and all its directors, officers, authorized agents, employees, consultants, attorneys, sales representatives, distributors, dealers, direct and indirect contractors, entities that were acquired by or merged with Tarantella Inc., subsidiaries of Tarantella Inc., and/or all other persons acting on behalf of Tarantella Inc.

16. The term "UNIX" shall mean any and all versions, flavors, or other variants of any UNIX computer operating system, including but not limited to all operating systems certified as conforming to the UNIX-brand standards set by The Open Group, the owner of the UNIX trademark.

17. The term "USL" shall mean and include, collectively and/or individually, UNIX Systems Laboratories, Inc. and all its directors, officers, authorized agents, employees, consultants, attorneys, sales representatives, distributors, dealers, direct and indirect contractors, entities that were acquired by or merged with UNIX Systems Laboratories, Inc., subsidiaries of UNIX Systems Laboratories, Inc., and/or all other persons acting on behalf of UNIX Systems Laboratories, Inc.

B. Instructions

1. Each paragraph herein should be construed independently and, unless otherwise directed, without reference to any other paragraph for the purpose of limitation.

2. The use of any definition for the purposes of this request shall not be deemed to constitute an agreement or acknowledgment on the part of IBM that such definition is accurate, meaningful or appropriate for any other purpose in this action.

3. Unless otherwise specified, the documents requested are the responsive documents in your possession, control or custody that were prepared, written, sent, dated, received, applicable or in effect at any time up to the date of your compliance with this demand.

4. Each requested document shall be produced in its entirety. If a document responsive to any request cannot be produced in full, it shall be produced to the extent possible with an explanation stating why production of the remainder is not possible.

5. Each page or sheet produced is to be marked with a consecutive document control number.

6. All documents produced in response to this subpoena shall be produced in the same order as they are kept or maintained in the ordinary course of business and, where attached, shall not be separated or disassembled.

7. With respect to any document responsive to this request that is withheld from production based upon a claim of privilege, please provide the information required pursuant to the Federal Rules of Civil Procedure.

8. If, for reasons other than a claim of privilege, you refuse to produce any document requested herein, state the grounds upon which the refusal is based with sufficient specificity to permit a determination of the propriety of such refusal.

9. If there are no documents responsive to any paragraph or subparagraph set forth in the requests, please provide a written response so stating.

Snell & Wilmer
L.L.P.
LAW OFFICES

15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101
(801) 257-1900
Fax: (801) 257-1800
www.swlaw.com

SALT LAKE CITY, UTAH
PHOENIX, ARIZONA
TUCSON, ARIZONA
IRVINE, CALIFORNIA
DENVER, COLORADO
LAS VEGAS, NEVADA

Todd M. Shaughnessy (801) 257-1937
tshaughnessy@swlaw.com

August 26, 2003

The Canopy Group, Inc.
Attn: Ralph Yarro
Registered Agent
333 South 520 West, Suite 300
Lindon, Utah 84042

Re: The SCO Group v. International Business Machines Corporation

To Whom it May Concern:

Please find enclosed a subpoena for the production of documents to The Canopy Group, Inc. If you have questions about the scope of the subpoena or have concerns about any other matter, please let me know. You need not appear at the place and time specified in the subpoena if you provide copies of the requested documents before that date.

Also enclosed is a witness fee check in the amount of \$30.00 that can be applied toward copying costs if you choose to produce the documents in lieu of a deposition. Snell & Wilmer will reimburse you for all reasonable duplication costs. Thank you for your assistance in this matter.

Very truly yours,

Snell & Wilmer



Todd M. Shaughnessy

Enclosures

cc: David Marriott

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

THE SCO GROUP, INC, a Delaware
corporation,

CASE #: 2:03CV-0294 DAK

Plaintiffs/Petitioner,

vs

DECLARATION AND AFFIDAVIT OF SERVICE OF A
SUBPOENA IN A CIVIL CASE, PROTECTION
OF PERSONS SERVED WITH A SUBPOENA

INTERNATIONAL BUSINESS MACHINES
CORPORATION, a New York corporation,

ATTACHMENT A, LETTER

Defendants/Respondants

HEARING DATE:

The undersigned hereby affirms: That he/she is now and at all times herein mentioned, was a citizen of the United States and resident of the State of Utah, over the age of twenty-one, not an officer of a plaintiff corporation, not a party to, nor interested in the above entitled action, and is competent to be a witness herein.

That on 08-26-2003 at 5:40 PM, at
333 SO 520 W SUITE 300, X abode or place of employment
LINDON, UT 84042

within UTAH County, State of Utah, that I duly served the above described documents upon,
THE CANOPY GROUP INC. by then and there personally delivering, a true and correct copy(ies) thereof, by then presenting to and leaving the same with

RALPH YARRO - REGISTERED AGENT, DESCRIPTION: .

I further certify that at the time of service of said document(s), I endorsed the date and time of service and added my name and official title (if any) thereto. I also declare that, to my knowledge, none of the parties are in active duty with the military forces of the United States of America. I declare under penalty of perjury under the laws of the State of Utah that the foregoing is true and correct.

OF MILES 46
OF ATTEMPTS 1



ALYSUN ASHER
PROCESS SERVER

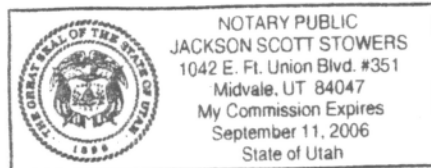
SUBSCRIBED TO BEFORE ME THIS 08-26-2003

SERVICE \$15.00
MILEAGE \$46.00
TOTALS \$61.00



NOTARY PUBLIC

PROSERVE INV#34486
7117 South 400 West # 8 MIDVALE, UT 84047 1-800-499-3844



UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

THE SCO GROUP, INC, a Delaware
corporation,

CASE #: 2:03CV-0294 DAK

Plaintiffs/Petitioner,

DECLARATION AND AFFIDAVIT OF SERVICE OF A
CHECK FOR \$30.00, LETTER

vs

INTERNATIONAL BUSINESS MACHINES
CORPORATION, a New York corporation,

Defendants/Respondants

HEARING DATE:

The undersigned hereby affirms: That he/she is now and at all times herein mentioned, was a citizen of the United States and resident of the State of Utah, over the age of twenty-one, not an officer of a plaintiff corporation, not a party to, nor interested in the above entitled action, and is competent to be a witness herein.

That on 08-27-2003 at 1:33 PM, at
333 SO 520 W SUITE 300, X abode or place of employment
LINDON, UT 84042

within UTAH County, State of Utah, that I duly served the above described documents upon,
THE CANOPY GROUP INC. by then and there personally delivering, a true and correct copy(ies) thereof, by then presenting to and leaving the same with

TERRI HASTINGS - RECEPTIONIST, DESCRIPTION: .

I further certify that at the time of service of said document(s), I endorsed the date and time of service and added my name and official title (if any) thereto. I also declare that, to my knowledge, none of the parties are in active duty with the military forces of the United States of America. I declare under penalty of perjury under the laws of the State of Utah that the foregoing is true and correct.

OF MILES 46

OF ATTEMPTS 1



DARREN REES
PROCESS SERVER

SUBSCRIBED TO BEFORE ME THIS 08-27-2003

SERVICE \$15.00
MILEAGE \$46.00
TOTALS \$61.00



NOTARY PUBLIC

PROSERVE INV#34487

7117 South 400 West # 8 MIDVALE, UT 84047 1-800-499-3844

