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DISTRICT OF UTAH

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*Attorneys for Defendant/Counterclaim-Plaintiff
International Business Machines Corporation*

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant/Counterclaim-Plaintiff.

**DEFENDANT/COUNTERCLAIM
PLAINTIFF IBM'S MOTION FOR
PARTIAL SUMMARY JUDGMENT ON
ITS COUNTERCLAIM FOR
COPYRIGHT INFRINGEMENT
(EIGHTH COUNTERCLAIM)**

(ORAL ARGUMENT REQUESTED)

Civil No. 2:03CV0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

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Pursuant to DUCivR 56-1(a) and Federal Rule of Civil Procedure 56, Defendant/Counterclaim-Plaintiff International Business Machines Corporation (“IBM”) respectfully submits this motion for partial summary judgment on its counterclaim for copyright infringement (Eighth Counterclaim). As is set forth in the accompanying memorandum of points and authorities, IBM respectfully submits that the Court should grant summary judgment as to liability and enter a permanent injunction for IBM on its Eighth Counterclaim for the reasons summarized below.

Linux is a computer operating system that has been (and is being) developed collaboratively by thousands of developers over the Internet. Like many others, IBM has contributed source code to the development of Linux and owns valid copyrights in its contributions.

SCO has, without permission, copied code from sixteen discrete packages of copyrighted source code written by IBM for Linux and distributed those copies as part of its own Linux products. SCO has literally copied more than 783,000 lines of code from these sixteen packages of IBM’s copyrighted material. As a result of SCO’s copying and distribution of IBM’s code, SCO has unlawfully exercised IBM’s rights to its works and therefore infringed IBM’s copyrights.

Although IBM’s contributions to Linux are copyrighted, they are permitted to be copied, modified and distributed by others under the terms of the GNU General Public License (“GPL”) or the GNU Lesser General Public License (“LGPL”) (collectively, the “GPL”). However, SCO has renounced, disclaimed and breached the GPL and therefore the GPL does not give SCO permission or a license to copy and distribute IBM’s copyrighted works.

For the foregoing reasons, IBM respectfully submits that the Court should enter partial summary judgment and a permanent injunction for IBM on its Eighth Counterclaim for copyright

infringement. IBM also respectfully requests that the Court hold oral argument on this motion. This motion is further supported by the accompanying memorandum of points and authorities, the Declaration of Kathleen Bennett In Support of IBM's Motion for Partial Summary Judgment On Its Counterclaim for Copyright Infringement (Eighth Counterclaim), dated August 16, 2004, the exhibits submitted with the Declaration of Amy F. Sorenson, and by such argument as shall be presented at hearing.

DATED this 16th day of August, 2004.

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CERTIFICATE OF SERVICE

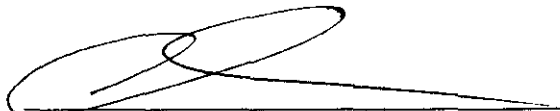
I hereby certify that on the 16th day of August, 2004, a true and correct copy of the foregoing was hand delivered to the following:

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