

SNELL & WILMER LLP
Alan L. Sullivan (3152)
Todd M. Shaughnessy (6651)
15 West South Temple
Gateway Tower West
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Facsimile: (801) 257-1800

CRAVATH, SWAINE & MOORE LLP
Evan R. Chesler (admitted pro hac vice)
David R. Marriott (7572)
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700

*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,

-against-

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Defendant/Counterclaim-Plaintiff.

**DECLARATION OF
KATHLEEN BENNETT IN
SUPPORT OF IBM'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
ON BREACH OF CONTRACT
CLAIMS**

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

I, Kathleen Bennett, declare as follows:

1. I am currently employed by International Business Machines Corporation (“IBM”) as a Senior Software Development Manager in the Austin, Texas office of its Linux Technology Center. The IBM Linux Technology Center (“LTC”) is a worldwide development team inside IBM that collaborates with the community of software developers and computer users involved with Linux, the open source computer operating system.

2. I submit this declaration in connection with the lawsuit titled The SCO Group, Inc. v. International Business Machines Corporation, Civil No. 2:03CV-0294 DAK (D. Utah 2003). Unless stated otherwise, I make this declaration based upon personal knowledge.

3. I have been employed by IBM for 18 years, and have been involved in open source computing and Linux the last 3 years. I am presently responsible for managing the following departments within the LTC: Linux Kernel, Linux on xSeries, Linux RAS (Reliability, Availability and Serviceability) Development, and Linux Security Development.

4. On January 9, 2004, I observed while a member of my team of IBM programmers at my direction accessed via the Internet the following four SCO web pages, and downloaded code:

- (1) [http://linuxupdate.sco.com/scolinux/update/RPMS.updates](http://linuxupdate.sco.com/scolinux/update/RPMS.updates;);
- (2) <http://Linuxupdate.sco.com/scolinux/SRPMS>;
- (3) <http://linuxupdate.sco.com/scolinux/update/RPMS.scolinux>; and
- (4) <ftp://ftp.sco.com/pub/updates/OpenLinux/3.1.1/server/CSSA-2002-026.0/SRPMS>.

5. The code posted and made available for download via the Internet from SCO’s website included, among other things, the source code for the Linux 2.4 kernel, which

contains source code contributed to Linux by IBM for such technologies as IBM's Enterprise Volume Management System ("EVMS") and Journaled File System ("JFS").

6. My team and I accessed the SCO's website from the Internet, using a standard computer and web browser. Any person with access to the Internet, a standard web browser and a personal computer or laptop could access the SCO's website and download Linux source code, just as my team and I did. No special expertise would be necessary.

7. On August 4, 2004, my team again visited the SCO web pages listed in Paragraph 4, and confirmed that all of the code described in Paragraph 5 was still available for download from SCO's website.

8. I declare under penalty of perjury that the foregoing is true and correct.

Executed: August 5, 2004

Austin, Texas

Kathleen Bennett

Kathleen Bennett