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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.

**DECLARATION OF KATHLEEN  
BENNETT IN SUPPORT OF  
IBM'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT ON ITS  
COUNTERCLAIM FOR  
COPYRIGHT INFRINGEMENT  
(EIGHTH COUNTERCLAIM)**

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

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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. As a result, I am familiar with and have personal knowledge of IBM's Linux activities.

4. IBM employs programmers who write computer code and programs at the company's direction. IBM owns the copyrights to these works, many of which IBM has registered with the United States Copyright Office.

5. Among the copyrighted works for which IBM holds copyright registration certificates are the following sixteen works of original computer source code (described briefly below), which I refer to herein as the "IBM Copyrighted Works":

- (i) Enterprise Volume Management System, TX 5-757-696 (Enterprise Volume Management System manages a system's online storage using a logical volume concept to provide flexibility and extensibility.);

- (ii) Enterprise Class Event Logging, TX 5-757-697 (Enterprise Class Event Logging provides a platform-independent event logging facility for the Linux operating system and Linux applications.);
- (iii) Dynamic Probes, TX 5-757-698 (Dynamic Probes is a generic debugging facility that can be used to insert software probes into executing code modules.);
- (iv) Linux Support Power PC64, TX 5-757-699 (Linux Support Power PC64 is a port of the Linux kernel to 64-bit PowerPC processors.);
- (v) Omni Print Driver, TX 5-757-700 (Omni Print Driver provides support for hundreds of printers using the Ghostscript framework.);
- (vi) Journaled File System, TX 5-757-701 (Journaled File System provides a file system that manages and organizes stored data.);
- (vii) Next Generation Posix Threading, TX 5-757-702 (Next Generation POSIX Threading provides an implementation of the POSIX threads specification.);
- (viii) Linux Kernel Support for JFS, TX 5-856-466 (Linux Kernel Support for JFS provides support for IBM's journaled file system technology, which is designed for high-throughput server environments.);
- (ix) Linux Kernel S390 Support, TX 5-856-467 (Linux Kernel S390 Support is a port of the Linux kernel to the S/390 architecture.);
- (x) Linux Kernel Support for Service Processor, TX 5-856-468 (Linux Kernel Support for Service Processor is a device driver for the Service Processor hardware component of IBM eServer systems.);
- (xi) Linux Kernel Support for Memory Expansion Technology, TX 5-856-469 (Linux Kernel Support for Memory Expansion Technology is software that enables Memory eXpansion Technology, which is a hardware technology for compressing main memory contents.);
- (xii) Linux Kernel Support for IBM eServer iSeries Devices, TX 5-856-470 (Linux Kernel Support for IBM eServer iSeries Devices provides Linux support for certain devices that are unique to the IBM iSeries environment.);
- (xiii) Linux Kernel Support for PCI Hotplug, TX 5-856-471 (Linux Kernel Support for PCI Hotplug provides the infrastructure for PCI Hotplug on Linux, which is a facility that supports dynamic (re)configuration of the Linux operating system.);
- (xiv) Linux Kernel Support for pSeries Hypervisor Terminal, TX 5-856-472 (Linux Kernel Support for pSeries Hypervisor Terminal is a device driver for providing system admin access to the pSeries Hypervisor hardware component.);

- (xv) Linux Kernel PPC64 Support, TX 5-856-473 (Linux Kernel PPC64 Support is a port of the Linux kernel to 64-bit PowerPC processors.); and
- (xvi) Linux Kernel Support for Mwave Modem, TX 5-856-474 (Linux Kernel Support for Mwave Modem is code that supports IBM ThinkPad models with the Mwave Modem chipset.).

The registration of each of these IBM Copyrighted Works was made within five years of the first publication of the relevant work.

6. True and correct copies of the relevant portions (i.e., those files literally copied by SCO) of the IBM Copyrighted Works and their accompanying copyright registration certificates are attached as Exhibits 5.1 through 20.1 (Works) and 5 through 20 (Registration Certificates) to the accompanying Declaration of Amy F. Sorenson ("Sorenson Declaration"). At no time has IBM abandoned its copyrights to the IBM Copyrighted Works.

7. IBM contributed the IBM Copyrighted Works to the Linux and open source communities by posting them on the Internet as part of the Linux development process. IBM has not authorized the copying, modification or distribution of the IBM Copyrighted Works, except pursuant to the terms of the GNU General Public License or the GNU Lesser General Public License. Everyone, including SCO, has had access to the IBM Copyrighted Works through the Internet.

8. In addition, SCO has had access to the IBM Copyrighted Works through SCO's involvement in the UnitedLinux consortium. Code from fifteen of the sixteen IBM Copyrighted Works (all but Omni Print Driver) is included in the UnitedLinux 1.0 release of Linux. It is a matter of public record that SCO was a partner in UnitedLinux, which developed UnitedLinux 1.0.

9. Under my direction, a team of IBM programmers compared the IBM Copyrighted Works to code that has been produced by SCO in this litigation. We found, in SCO

Linux Server 4.0 and SCO Open Linux 3.1.1 Asia, verbatim copies of files from the IBM Copyrighted Works appearing at Exhibits 5.1 through 20.1 of the accompanying Sorenson Declaration. The files in SCO's Linux products that are verbatim copies of files within the IBM Copyrighted Works comprise approximately 783,000 lines of code, and appear at Exhibits 5.2 through 20.2 of the Sorenson Declaration.

10. Also under my direction, our team of programmers compared the IBM Copyrighted Works to code we found available for download on SCO's website. On January 9, 2004, I observed while a member of my team accessed via the Internet the following four SCO web pages, and downloaded code from these web pages:

- (1) <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>.

11. The code posted and made available for download via the Internet from SCO's website included verbatim copies of files from the IBM Copyrighted Works appearing at Exhibits 5.1 through 20.1 of the accompanying Sorenson Declaration. The files from SCO's website that are verbatim copies of files within the IBM Copyrighted Works comprise approximately 783,000 lines of code, and appear at Exhibits 5.3 through 20.3 of the Sorenson Declaration.

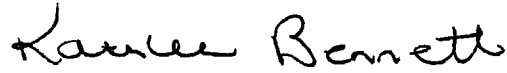
12. My team and I accessed SCO's website from the Internet, using a standard computer and web browser. Any person with access to the Internet, a standard web browser and a personal computer or laptop could access SCO's website and download Linux code, just as my team and I did. No special expertise would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

13. On August 4, 2004, my team again visited the SCO web pages listed in Paragraph 10, and confirmed that all of the code attached as Exhibits 5.3 through 20.3 of the Sorenson Declaration was still available for download from SCO's website.

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

Executed: August 16, 2004

Austin, Texas



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Kathleen Bennett

**CERTIFICATE OF SERVICE**

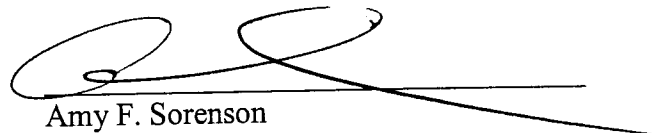
I hereby certify that on the 16<sup>th</sup> day of August, 2004, a true and correct copy of the foregoing was hand delivered to the following:

Brent O. Hatch  
Mark F. James  
HATCH, JAMES & DODGE, P.C.  
10 West Broadway, Suite 400  
Salt Lake City, Utah 84101

and was sent by U.S. Mail, postage prepaid, to the following:

Stephen N. Zack  
Mark J. Heise  
BOIES, SCHILLER & FLEXNER LLP  
100 Southeast Second Street, Suite 2800  
Miami, Florida 33131

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Armonk, New York 10504

  
Amy F. Sorenson