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**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 EX PARTE MOTION  
FOR LEAVE TO FILE OVERLENGTH  
MEMORANDUM**

Civil No. 2:03CV0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

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Pursuant to DUCivR 7-1(e), Defendant/Counterclaim-Plaintiff International Business Machines Corporation (“IBM”) respectfully submits this Ex Parte Motion for Leave to File Overlength Memorandum, submitted in support of its Motion to Strike Materials Submitted by SCO In Opposition to IBM’s Cross-Motion for Partial Summary Judgment, consisting of approximately thirteen pages of argument, exclusive of face sheet, preliminary statement, and exhibits.

In its Memorandum in Support of Motion to Strike Materials Submitted by SCO In Opposition to IBM’s Cross-Motion for Partial Summary Judgment, IBM demonstrates that SCO has submitted, and seeks to rely on, incompetent and inadmissible evidence in an attempt to create a fact dispute in opposition to IBM’s cross-motion for partial summary judgment on its Tenth Counterclaim. Specifically, SCO offers the declarations of three witnesses, Sandeep Gupta, Chris Sontag and John Harrop, consisting almost entirely of testimony not made on personal knowledge and improper opinion testimony. Furthermore, Mr. Harrop’s declaration is replete with pure legal argument (which notably is primarily addressed to SCO’s motion to dismiss, and not IBM’s motion for summary judgment). In addition, SCO seeks improperly to rely on certain news articles for the truth of their contents. That is classic inadmissible hearsay and should also be stricken.

Rather than submitting three memoranda moving to strike each of the Gupta, Sontag and Harrop Declarations, as well as submitting a separate memorandum addressing the deficiencies in the documents submitted in opposition to IBM’s cross-motion for partial summary judgment, IBM combined these arguments into a single memorandum. Submitting a combined memorandum resulted in the need for approximately thirteen pages of legal argument, exclusive of face sheet, preliminary statement, and exhibits, three additional pages of argument beyond the ten pages allotted by DUCivR 7-1(3).

Accordingly, IBM respectfully requests that it be granted leave to file a Memorandum in Support of Motion to Strike Materials Submitted by SCO In Opposition to IBM's Cross-Motion for Partial Summary Judgment, consisting of approximately thirteen pages of argument.

DATED this 23<sup>rd</sup> day of August, 2004.

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**CERTIFICATE OF SERVICE**

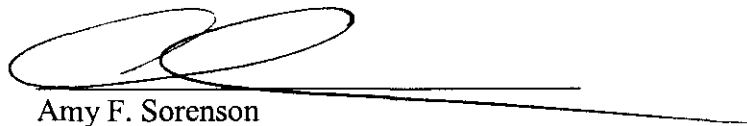
I hereby certify that on the 23<sup>rd</sup> day of August, 2004, a true and correct copy of the foregoing was hand delivered to the following:

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