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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 NOTICE OF SERVICE
OF SUBPOENA DUCES TECUM**

Civil No. 2:03CV0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

ORIGINAL

354

PLEASE TAKE NOTICE that, pursuant to Rule 45 of the Federal Rules of Civil Procedure, and the definitions set forth in the Subpoena attached to this Notice, as served on the parties herein, the following entity

PointServe, Inc.
110 Wild Basin, Suite 300
Austin, TX 78746

is required to produce for inspection and copying the documents specified in Attachment A to the Subpoena, at the specified location, no later than December 23, 2004.

DATED this 13th day of December, 2004.

SNELL & WILMER L.L.P.



Alan L. Sullivan
Todd M. Shaughnessy
Amy F. Sorenson

CRAVATH, SWAINE & MOORE LLP
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*Attorneys for Defendant/Counterclaim-Plaintiff International
Business Machines Corporation*

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of December, 2004, a true and correct copy of the foregoing **DEFENDANT/COUNTERCLAIM PLAINTIFF IBM'S NOTICE OF SERVICE OF SUBPOENA DUCES TECUM** was served on the following by hand delivery:

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

and on the following by U.S. Mail, postage prepaid:

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

Robert Silver
Edward Normand
Sean Eskovitz
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, NY 10504


Amy F. Sorenson

**Issued by the
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS**

THE SCO GROUP, INC., a Delaware corporation,

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS MACHINES CORPORATION, a New York corporation,

Defendant/Counterclaim-Plaintiff.

SUBPOENA IN A CIVIL CASE

Case No.: 2:03CV-0294 DAK

Pending in District of Utah, Central Division

Judge: Dale A. Kimball

TO:

**PointServe, Inc.
110 Wild Basin, Suite 300
Austin, Texas 78746**

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

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 Attachment A.

PLACE

AcuScribe Court Reporters
750 Norwood Tower
114 West 7th Street
Austin, TX 78701

DATE AND TIME

December 23, 2004

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 SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

 Attorney for Defendant

December 9, 2004

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Amy F. Sorenson, 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	PLACE
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE
DECLARATION OF SERVER		
<p style="text-align: center;">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.</p> <p>Executed on _____</p> <p style="text-align: center;">_____ DATE</p> <p style="text-align: right;">_____ SIGNATURE OF SERVER</p> <p style="text-align: right;">_____ ADDRESS OF SERVER</p>		

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 serving 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 the 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 POINTSERVE, INC.

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 (including SCO's claims and IBM's defenses and counterclaims), including but not limited to all documents concerning: (a) SCO's alleged evidence in support of its claims; and (b) any statement, affidavit, declaration, analysis, assessment or opinion concerning this Lawsuit or SCO's alleged rights or evidence.
2. All documents concerning any and all communications with SCO and/or Canopy.
3. All documents concerning any and all meetings with SCO and/or Canopy.
4. All documents concerning any and all agreements or understandings (written or oral) with or relating to SCO and/or Canopy.
5. All documents concerning any and all communications with Microsoft Corp. ("Microsoft") regarding Unix, Linux, SCO and/or Canopy.
6. All documents concerning any and all meetings involving Microsoft regarding Unix, Linux, SCO and/or Canopy.
7. All documents concerning any and all services performed for, on behalf of, or in conjunction with SCO and/or Canopy, including but not limited to any and all source code or technology comparisons or analyses.
8. All documents concerning any and all products, tools, or software created, marketed, or patented for, on behalf of, or in conjunction with SCO and/or Canopy, including but not limited to all source code comparison tools or products (including but not limited to the product known as IPx).
9. All code (in source and executable form) for any and all products, tools, or software created, marketed, or patented for, on behalf of, or in conjunction with SCO and/or

Canopy, including but not limited to all source code comparison tools or products (including but not limited to the product known as IPx).

Instructions and Definitions

A. Definitions:

1. 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, instant messages, telexes, facsimile transmissions, telecopies, recordings in any medium of oral communication, telephone or message logs, or notes or memoranda concerning written or oral communications.

2. The term “Canopy” shall mean and include, collectively and/or individually, The Canopy Group, Inc. and all its directors, officers, authorized agents, employees, consultants, attorneys, representatives, direct and indirect contractors, and/or all other persons acting on behalf of The Canopy Group, Inc.

3. The term “Linux” shall mean any and all versions, or other variants of any Linux computer operating system, including but not limited to any Linux kernel and/or GNU tools suite.

4. The term “source code” shall mean the human-readable form of a computer program written in the original and preferred form for human inspection and modification, and includes but is not limited to source code listings; compiler and/or assembler output listings for such source code; source code listings for macros or “includes” (both executable and mapping) listings used in such source code; job control language files; and/or other files required to create an executable version of a program, including but not limited to user interface components; panels, screen definitions and help text; and c-lists.

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

6. The term “document” shall be synonymous in meaning and usage with 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.

7. The term “including” shall mean including without limitation.

8. The term “Lawsuit” shall mean the action entitled The SCO Group, Inc. v. International Business Machines, Civil No. 2:03cv-0294, pending in the United States District Court for the District of Utah.

9. The term “PointServe, Inc.” shall mean and include, collectively and/or individually, PointServe, Inc., and all its directors, officers, authorized agents, employees, consultants, attorneys, representatives, direct and indirect contractors, and/or all other persons acting on behalf of PointServe, Inc.

10. The term “person” shall mean any natural person or any private or public entity.

11. The term “SCO” 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, 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., 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.

12. 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.

B. Instructions:

1. Each paragraph should herein 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. 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.
4. Each page or sheet produced is to be marked with a consecutive document control number.
5. 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.
6. All documents produced in response to this subpoena shall be produced, where available, in electronic or machine-readable form.