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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.

**IBM'S MOTION FOR ENTRY OF
ORDER LIMITING SCOPE OF
IBM'S NINTH COUNTERCLAIM**

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

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DISTRICT OF UTAH
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Defendant/Counterclaim-Plaintiff International Business Machines Corporation (“IBM”) respectfully moves the Court for entry of an order limiting the scope of IBM’s Ninth Counterclaim.

SCO’s Fifth Cause of Action (Copyright Infringement) in its Second Amended Complaint alleged that IBM infringed SCO’s alleged copyrights by continuing to distribute AIX and Dynix products after SCO’s purported termination of IBM’s license agreements with AT&T. In response, IBM asserted its Ninth Counterclaim, seeking a declaration of non-infringement with respect to IBM’s UNIX activities. In asserting its Ninth Counterclaim, IBM intended to seek only a declaration that because IBM has not breached IBM’s license agreements with AT&T and SCO’s purported termination of those licenses is invalid, IBM’s continued distribution of AIX and Dynix products does not infringe SCO’s alleged copyrights.

SCO, attempting to amend its complaint for the third time and add a Tenth Cause of Action (Copyright Infringement), construes IBM’s Ninth Counterclaim broadly to encompass the conduct challenged by SCO’s proposed new copyright claim. IBM did not, and does not, intend its Ninth Counterclaim to encompass the conduct challenged by SCO’s proposed new copyright claim, and IBM does not otherwise seek a declaration in this litigation that the conduct challenged by SCO’s proposed new copyright claim does not infringe SCO’s alleged copyrights.

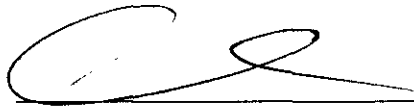
Even assuming that SCO’s reading of the text of IBM’s Ninth Counterclaim is plausible, it makes no sense to require IBM to prosecute a broader claim when IBM has no interest, in this litigation, in doing so.

IBM has asked counsel for SCO to stipulate to the entry of the attached proposed order narrowing the scope of IBM’s Ninth Counterclaim, but SCO has refused.

Based on the foregoing, IBM requests that the Court enter an Order in the form submitted herewith.

DATED this 18th day of February, 2005.

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of February, 2005 a true and correct copy of the foregoing was sent by U.S. Mail, postage prepaid, to the following:

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