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Page
UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
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 ORIGINAL

Brent O. Hatch (5715)
Mark F. James (5295)
HATCH, JAMES & DODGE
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 363-6363
Facsimile: (801) 363-6666

Robert Silver (admitted pro hac vice)
Edward Normand (admitted pro hac vice)
Sean Eskovitz (admitted pro hac vice)
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, New York 10504
Telephone: (914) 749-8200
Facsimile: (914) 749-8300

Stuart H. Singer (admitted pro hac vice)
BOIES, SCHILLER & FLEXNER LLP
401 East Las Olas Boulevard – Suite 1200
Ft. Lauderdale, Florida 33301
Telephone: (954) 356-0011
Facsimile: (954) 356-0022

Stephen N. Zack (admitted pro hac vice)
BOIES, SCHILLER & FLEXNER LLP
Bank of America Tower – Suite 2800
100 Southeast Second Street
Miami, Florida 33131
Telephone: (305) 539-8400
Facsimile: (305) 539-1307

Attorneys for The SCO Group, Inc.

**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.

**SCO'S REPORT IN COMPLIANCE
WITH THE COURT'S APRIL 28, 2005
ORDER REGARDING THE
UNSEALING OF DOCUMENTS**

Case No. 2:03CV0294DAK
Honorable Dale A. Kimball
Magistrate Judge Brooke C. Wells

SCO respectfully submits this report in compliance with the Court's Order of April 28, 2005 (the "Order") concerning the unsealing of documents in this matter. In that Order, the Court directed counsel for both parties to "review the documents filed thus far in this action to determine whether any such documents may be unsealed" and to "notify the court on or before May 27, 2005 as to which documents the parties agree may be unsealed." (Order at 2.)

Pursuant to that direction, we hereby report as follows:

1. In response to SCO's inquiries, counsel for IBM has advised that certain pleadings SCO filed under seal – because they referenced materials that IBM had previously designated "confidential" – may now be unsealed in their entirety. SCO therefore agrees that the following SCO pleadings may be unsealed, with the exception of any references to the October 19, 2004 hearing transcript, which the Court has sealed:

Docket No.	Date Filed	Pleading Title
245	August 19, 2004	Ex Parte Motion for Leave to File a Supplemental Memorandum Regarding Discovery
346	November 30, 2004	Memorandum in Opposition to IBM's Motion for Summary Judgment on SCO's Breach-of-Contract Claims
365	December 23, 2004	Memorandum in Support of Renewed Motion to Compel Discovery
369	December 29, 2004	Reply Memorandum in Further Support of SCO's Motion for Leave to File a Third Amended Complaint Pursuant to Federal Rules of Civil Procedure 15(a) and 16(b)
425	March 23, 2005	Memorandum in Opposition to IBM's Motion for Entry of Order Limiting Scope of IBM's Ninth Counterclaim
432	April 11, 2005	Objections to IBM's Privilege Log and Memorandum in Support of SCO's Request to Compel IBM to Provide Proper Bases for Its Privilege Claims

2. In response to SCO's inquiries, counsel for IBM has also advised SCO that certain pleadings SCO filed under seal – because they referenced materials that IBM had previously designated "confidential" – may now be unsealed in part. SCO therefore agrees that

the following SCO pleadings may be filed in redacted form, which SCO will submit to the Court for filing:

Docket No.	Date Filed	Pleading
287	August 19, 2004	Supplemental Memorandum Regarding Discovery
269	September 3, 2004	Memorandum in Reply to IBM's Opposition to SCO's Ex Parte Motion for Leave to File a Supplemental Memorandum Regarding Discovery
316	October 4, 2004	Reply Brief in Further Support of SCO's Supplemental Memorandum Regarding Discovery
323	October 14, 2004	Memorandum in Support of SCO's Motion for Leave to File a Third Amended Complaint Pursuant to Federal Rules of Civil Procedure 15(a) and 16(b)
375	January 12, 2005	Memorandum in Support of SCO's Motion to Compel IBM to Produce Samuel J. Palmisano for Deposition
409	February 25, 2005	Reply Memorandum in Further Support of Renewed Motion to Compel Discovery
419	March 11, 2005	Reply Memorandum in Support of Motion to Compel IBM to Produce Samuel J. Palmisano for Deposition

3. There are a number of documents that SCO filed under seal -- either because IBM had designated them "confidential" or because they referenced materials that IBM had designated "confidential" -- that SCO does not agree warrant such treatment. Despite SCO's inquiries, IBM has continued to insist that such documents remain under seal. Pursuant to paragraph 3 of the Court's Order, SCO intends to pursue this matter further with IBM and, if necessary, the Court.¹

¹ At approximately 2 p.m. EST on May 27, 2005 -- the Court-imposed deadline for filing the parties' reports -- counsel for IBM sent counsel for SCO a letter notifying SCO concerning IBM's position with respect to approximately twenty filings and their associated exhibits. (Exh. 1.) IBM's new position with respect to several such documents appears to be at odds with the position that IBM articulated just one month ago in response to SCO's written inquiries. Compare *id.* with Letters from Amy F. Sorenson to Edward Normand, April 21 & 26, 2005 (Exh. 2). The timing of IBM's letter prevented counsel for SCO from reviewing it in detail before finalizing this report. We have notified counsel for IBM that we intend to confer with them concerning their latest proposal after we have had an adequate opportunity to review it. To the extent that IBM's latest letter changes the nature of the parties' agreements set forth herein, SCO will file an amended report to the Court.

4. SCO believes that the following exhibits to SCO pleadings may be unsealed, either in their entirety or, where indicated, in redacted form (which SCO will submit to the Court for filing):

<u>Docket No.</u>	<u>Date</u>	<u>Sealed Documents</u>	<u>Filed With</u>
191	07/06/04	Exhibit I	SCO's Memorandum in Support of Motion to Compel
197	07/08/04	Gupta Decl. (Redacted), Exhibits B-G, K, N, Q, T, DD	SCO's Opposition to IBM's Cross-Motion for Summary on Tenth Counterclaim (Non-Infringement)
198	07/08/04	Sontag Decl. (Redacted), Exhibit P	SCO's Motion for Continuance Pursuant to Rule 56(f)
203	07/12/04	Sontag Decl. (Redacted), Exhibits 2-5	SCO's Reply Memorandum Regarding Discovery
206	07/09/04	Exhibits S-2, S-7	SCO's Opposition to IBM's Cross-Motion for Summary Judgment on Tenth Counterclaim (Non-Infringement)
288	08/19/04	Evans Decl. (Redacted), Howe Decl.	SCO's Supplemental Memorandum Regarding Discovery
293	09/09/04	Exhibit 8	SCO's Memorandum in Support of Expedited Motion to Enforce the Court's Amended Scheduling Order
316	10/04/04	Evans Decl. (Redacted), Exhibits 1-7, Exhibits A-E	SCO's Reply Supplemental Memorandum Regarding Discovery
350	12/01/04	Exhibit S1	SCO's Memorandum in Opposition to IBM's Motion for Summary Judgment on SCO's Contract Claims
365	12/23/04	Exhibits A-E, K-N	SCO's Memorandum in Support of Renewed Motion to Compel
369	12/29/04	Exhibits A-E, A1, A2	SCO's Reply Memorandum in Further Support of Motion for Leave to File a Third Amended Complaint
375	01/12/05	Exhibits A-C, E, G, I-K, N-Q	SCO's Memorandum in Support of Motion to Compel IBM to Produce Samuel J. Palmisano
409	02/25/05	Exhibits 1, 3, A-C	SCO's Reply to Renewed Motion to Compel
419	03/11/05	Exhibits 1, A-F	SCO's Reply Memorandum in Support of Motion to Compel IBM to Produce Samuel J. Palmisano
425	03/23/05	Exhibits A-B	SCO's Memorandum in Opposition to IBM's Motion for Entry of Order Limiting Scope of Ninth Counterclaim

432	04/11/05	Exhibits A-C	SCO's Objections to IBM's Privilege Log and Memorandum in Support of SCO's Request to Compel IBM to Provide Proper Bases for Privilege Claims
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5. Finally, SCO believes that the following exhibits to IBM pleadings, and any corresponding references to such exhibits in IBM pleadings, may be unsealed:

<u>Docket No.</u>	<u>Date</u>	<u>Sealed Documents</u>	<u>Filed With</u>
234	08/13/04	Exhibits 5, 7, 40, 53, 57-59	Declaration of Todd Shaughnessy in Support of IBM's Memorandum in Support of its Motion for Partial Summary Judgment on Breach of Contract Claims
239	08/16/04	Exhibits 1, 23 24, 32, 34, 37, 38	Declaration of Amy Sorenson in Support of IBM's Memorandum in Support of IBM's Motion for Partial Summary Judgment on Copyright Infringement Claim
251	08/23/04	Exhibits 7, 22	Declaration of Todd Shaughnessy in Support of IBM's Reply Memorandum in Further Support of its Cross-Motion for Partial Summary Judgment on its Claim for Declaratory Judgment of Non-Infringement
345	11/30/04	Exhibits 1, 10, 11, 13	Declaration of Todd Shaughnessy in Support of IBM's Opposition to SCO's Motion for Leave to File a Third Amended Complaint

DATED this 27th day of May, 2005.

Respectfully submitted,

HATCH, JAMES & DODGE, P.C.
Brent O. Hatch
Mark F. James

BOIES, SCHILLER & FLEXNER LLP
Robert Silver
Stuart H. Singer
Stephen N. Zack
Edward Normand
Sean Eskovitz

By 

Counsel for The SCO Group, Inc.

CERTIFICATE OF SERVICE

Plaintiff/Counterclaim Defendant, The SCO Group, Inc., hereby certifies that a true and correct copy of the foregoing SCO's Report in Compliance with the Court's April 28, 2005 Order Regarding the Unsealing of Documents was served by mail on Defendant IBM on the 27th day of May, 2005, by U.S. Mail to:

David Marriott, Esq.
Cravath, Swaine & Moore LLP
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019

Donald J. Rosenberg, Esq.
1133 Westchester Avenue
White Plains, New York 10604

Todd Shaughnessy, Esq.
Snell & Wilmer LLP
1200 Gateway Tower West
15 West South Temple
Salt Lake City, Utah 84101-1004



Snell & Wilmer

LLP
LAW OFFICES

15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101
(801) 257-1900
Fax: (801) 257-1800
www.swlaw.com

Amy F. Sorenson (801) 257-1907
asorenson@swlaw.com

SALT LAKE CITY, UTAH
PHOENIX, ARIZONA
TUCSON, ARIZONA
IRVINE, CALIFORNIA
DENVER, COLORADO
LAS VEGAS, NEVADA

May 27, 2005

By Facsimile & Mail

Edward Normand
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, NY 10504

Re: SCO v. IBM, Civil No. 2:03CV-0294DAK

Dear Ted:

As you know, Judge Kimball's April 28, 2005 Order required the parties to review the documents filed under seal in this case to date and to notify the Court on or before May 27, 2005 as to which documents the parties agree may be unsealed. Accordingly, IBM intends to notify the Court today that, as far as IBM is concerned, the following documents may be unsealed, and that it will provide the Court with redacted or unsealed versions of its pleadings as soon as possible:

- Exhibits I and J to the 7/6/04 Memorandum in Support of Renewed Motion by SCO Group to Compel Discovery can be unsealed; Exhibits G and H should remain under seal;
- 7/8/04 SCO's Sealed Exhibits to Memorandum in Opposition to IBM's Motion for Partial Summary Judgment on its Tenth Counterclaim for Non-Infringement may be unsealed, except for the first full paragraph on page 13 of Exhibit S-3, and for Exhibit S-6, which should remain under seal or be redacted;
- 7/9/04 Declaration of Chris Sontag in Support of SCO's Opposition to IBM's Motion for Partial Summary Judgment and all exhibits thereto;
- 7/12/04 Sealed Declaration of Chris Sontag in Support of Reply Memorandum Regarding Discovery and all exhibits thereto;
- 8/4/04 Declaration of Amy F. Sorenson in Support of IBM's Memorandum in Opposition to SCO's "Renewed" Motion to Compel, except for portions of Exhibit 5;

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- 8/13/04 Declaration of Todd M. Shaughnessy in Support of Motion for Partial Summary Judgment on Breach of Contract Claims and all exhibits thereto;
- 8/16/04 Declaration of Amy F. Sorenson in Support of IBM's Motion for Partial Summary Judgment on its Counterclaim for Copyright Infringement (Eighth Counterclaim) and all exhibits thereto;
- 8/19/04 Declaration of Jeremy O. Evans in Support of SCO's Supplemental Memorandum Regarding Discovery and all exhibits thereto;
- 8/20/04 IBM Sealed Declaration of Brian W. Kernighan and all exhibits thereto;
- 8/23/04 Reply Declaration of Todd M. Shaughnessy in Support of IBM's Cross-Motion for Partial Summary Judgment on its Claim for Declaratory Judgment of Non-Infringement and all exhibits thereto;
- 9/7/04 IBM's Reply Memorandum in Support of Motion to Strike the July 12, 2004 and August 26, 2004 Declarations of Christopher Sontag;
- 9/9/04 Memorandum in Support of SCO's Expedited Motion to Enforce the Court's Amended Scheduling Order Dated June 10, 2004, except for Exhibits 5 and 7, which should remain under seal;
- 10/4/04 Declaration of Jeremy O. Evans In Support of SCO's Reply Brief in Further Support of its Supplemental Memorandum Regarding Discovery and all exhibits thereto, except for Exhibit 10, from which the names of the individuals and their contact information at the ISVs listed should be redacted;
- 10/14/04 SCO's Memorandum in Support of Motion for Leave to File a Third Amended Complaint and all exhibits thereto, except for Exhibit 7 and page 14 of the Memorandum;
- 11/30/04 IBM's Sealed Declaration of Todd Shaughnessy in Opposition to SCO's Motion for Leave to File a Third Amended Complaint and all exhibits thereto;
- 12/01/04 SCO Sealed Exhibits to the Declaration of Jeremy O. Evans in Opposition to IBM's Motion for Summary Judgment on Breach of Contract Claims, except for Exhibits S-4 and S-6;
- 12/23/04 Plaintiff's Memorandum in Support of Renewed Motion to Compel Discovery and all exhibits thereto;

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- 12/29/04 SCO Sealed Reply Memorandum in Support of Motion for Leave to File Third Amended Complaint and all exhibits thereto, including the Declaration of Jay F. Petersen;
- 1/12/05 SCO's Memorandum in Support of Motion to Compel IBM to produce Samuel J. Palmisano for Deposition and all exhibits thereto; and
- 2/25/05 SCO's Reply Memorandum in Further Support of Renewed Motion to Compel Discovery may be unsealed, as well as all exhibits thereto, with the exception of Exhibit 1, which should remain under seal.

In conducting this review, it does not appear to us that any of SCO's exhibits are properly maintained under seal. Please let me know immediately if you have any objections to any of the foregoing, so that we can prepare IBM's pleadings and all exhibits associated therewith for filing in unsealed or redacted form as soon as possible.

Very truly yours,

Snell & Wilmer



Amy F. Sorenson

AFS:kb

cc: Brent Hatch
David Marriott
Todd Shaghnessy

Snell & Wilmer
LLP
LAW OFFICES

15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101
(801) 257-1900
Fac: (801) 257-1800
www.swlaw.com

Amy F. Sorenson (801) 257-1907
asorenson@swlaw.com

April 26, 2005

SALT LAKE CITY, UTAH
PHOENIX, ARIZONA
TUCSON, ARIZONA
IRVINE, CALIFORNIA
DENVER, COLORADO
LAS VEGAS, NEVADA

By Facsimile & Mail

Edward Normand
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, NY 10504

Re: SCO v. IBM, Civil No. 2:03CV-0294DAK

Dear Ted:

In my letter to you dated April 21, 2005, I set forth IBM's proposal regarding unsealing the briefing associated with the motions to be heard that day (with the exception of SCO's memorandum in support of its motion to amend, which required additional analysis). I also told you I hoped to provide you with similar information for the remaining briefing filed under seal in this case as quickly as possible.

IBM proposes that the below briefs filed in this case under seal be unsealed, with the exception of the confidential exhibits submitted therewith and the following: SCO's Memorandum in Support of its Motion for Leave to File Third Amended Complaint can be unsealed in its entirety, except for pages 10, 11, 12, 13, and 14.

SCO's Ex Parte Motion for Leave to File a Supplemental Memorandum Regarding Discovery can be unsealed in its entirety. (IBM did not file its opposition to SCO's Ex Parte Motion for Leave to File a Supplemental Memorandum Regarding Discovery under seal.) SCO's Reply to IBM's Opposition to SCO's Ex Parte Motion for Leave to File Supplemental Memorandum Regarding Discovery also can be unsealed, except for pages 3 and 5.

SCO's Supplemental Memorandum Regarding Discovery can be unsealed in its entirety, except for pages 5, 6, and 7. IBM also intends to file another Opposition to SCO's Supplemental Memorandum Regarding Discovery, redacted to protect IBM privileged and confidential information. SCO's Reply Brief in Support of its Supplemental Memorandum Regarding Discovery can be unsealed except for pages 18, 19, 20, 21, and 22.

IBM already filed a version of its Memorandum in Support of its Motion for Summary Judgment on Breach of Contract Claims which was redacted to protect information designated as confidential by SCO. IBM intends to file an unredacted version of this memorandum. In addition, SCO's memorandum in opposition to IBM's motion for summary judgment on the contract claims can be unsealed in its entirety. In light of Judge Kimball's February 9, 2005 Order, no reply memorandum was filed on this motion.

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IBM also filed a version of its Memorandum in Support of its Motion for Summary Judgment on its Eighth Counterclaim for Copyright Infringement which was redacted to protect information designated by SCO as confidential. IBM understands that SCO will not consent to unsealing this document unless IBM maintains the redactions set forth at pages 14-15. Accordingly, IBM intends to file a new version of this memorandum which will be unsealed in its entirety except as to the redactions on pages 14 and 15 (subject to the objection we have previously raised). SCO's memorandum in opposition to this motion was not filed under seal, and again no reply memoranda were filed in light of the February 9, 2005 Order.

SCO's Memorandum in Support of its Renewed Motion to Compel Discovery (Docket No. 365) also can be unsealed in its entirety. IBM's opposition to this motion was not filed under seal. SCO's Reply Memorandum in Further Support of its Renewed Motion to Compel Discovery can be unsealed, except for pages 3 and 7.

IBM's Motion for Entry of Order Limiting Scope of IBM's 9th Counterclaim was not filed under seal, nor was its reply memorandum. SCO's memorandum in opposition to this motion can be unsealed as well.

IBM did not file its objections to SCO's privilege log under seal, and IBM agrees that SCO's objections to IBM's privilege log can be unsealed.

Finally, there may be additional memoranda filed in redacted form in this case which may permit additional unsealing. We will provide you with additional information about any such briefs as quickly as possible.

Very truly yours,

Snell & Wilmer



Amy F. Sorenson

AFS:kb

cc: Brent Hatch
David Marriott
Todd Shaughnessy

Snell & Wilmer
LLP
LAW OFFICES

15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101
(801) 257-1900
Fax: (801) 257-1800
www.swlaw.com

SALT LAKE CITY, UTAH
PHOENIX, ARIZONA
TUCSON, ARIZONA
IRVINE, CALIFORNIA
DENVER, COLORADO
LAS VEGAS, NEVADA

Amy F. Sorenson (801) 257-1907
asorenson@swlaw.com

April 21, 2005

By Facsimile & Mail

Edward Normand
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, NY 10504

Re: SCO v. IBM, Civil No. 2:03CV-0294DAK

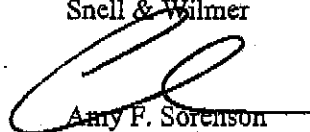
Dear Ted:

This letter follows up on the conversation we had on Monday, in which I agreed to review the briefs filed in this case and provide you with information as to which portions of those briefs could be unsealed. I further told you that I hoped to get back to you before today's hearing.

We do not believe any portions of the briefs filed under seal for today's hearing need to remain under seal, except for the confidential exhibits submitted therewith and the following: pages 2 through 5 of SCO's memorandum in support of its motion to compel Mr. Palmisano's deposition and pages 5 and 6 of SCO's reply memorandum in support of its motion to compel Mr. Palmisano's deposition. All pages of SCO's reply memorandum in support of its motion to amend can be unsealed. SCO's memorandum in support of its motion to amend is replete with quotations from and paraphrases of IBM confidential documents, and so will require further analysis. As to IBM's briefs, IBM intends to unseal all pages of its memorandum in opposition to SCO's motion to compel Mr. Palmisano's deposition, as well as all pages of its memorandum in opposition to SCO's motion to amend and of its sur-reply in further opposition to SCO's motion to amend.

I will continue to review the numerous briefs filed in this case to determine which portions thereof should remain confidential, and will try to provide you with that information as quickly as possible.

Very truly yours,
Snell & Wilmer



Amy F. Sorenson

AFS:kb

cc: Brent Hatch
David Marriott
Todd Shaughnessy

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