

FILED
DISTRICT COURT

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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 DISCLOSURE OF
MATERIAL MISUSED BY IBM**

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

The SCO Group, Inc. (“SCO”) respectfully submits the following Disclosure of Material Misused by IBM in accordance with the Court’s Pre-Trial Management order of July 1, 2005.

The Court’s Order called for the Parties to identify misused technology with specificity, in an initial report to be filed by October 28, 2005, and a final report due on December 22, 2005. This report indicates the technology that IBM has misused. The report, filed separately under seal as “EXHIBIT 1 TO SCO’S DISCLOSURE OF MATERIAL MISUSED BY IBM”, and the supporting appendices, identify the technology that has been improperly disclosed, where possible who made the disclosure and the manner in which the disclosure was made, the location of the technology in UNIX or a UNIX derivative or modified product as to which SCO claims proprietary rights, and the manner in which the disclosure has been contributed to Linux. The report identifies 293 separate technology disclosures which SCO contends are improper and are at issue in the instant case.

The present submission, which embraces several thousand pages of material, prepared with the assistance of several experienced technology consultants, is substantial, but distilled from an even larger universe of code and related materials. The numerosity and substantiality of the disclosures reflects the pervasive extent and sustained degree as to which IBM disclosed methods, concepts, and in many places, literal code, from UNIX and UNIX-derived technologies in order to enhance the ability of Linux to be used as a scalable and reliable operating system for businesses and as an alternative to proprietary UNIX systems such as those licensed by SCO and others. IBM has acknowledged – both internally and externally (*e.g.*, 2nd Am. Compl. ¶¶ 90-96) that it has sought in this way to

infuse Linux with the robustness of AIX and Dynix/ptx, both of which are derivatives and modifications of UNIX System V, and subject to SCO's contractual rights.

SCO is contemporaneously supplementing its prior responses to IBM interrogatories regarding these technological disclosures.

DATED this 22nd day of December, 2005.

Respectfully submitted,

HATCH, JAMES & DODGE, P.C.

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Mark F. James

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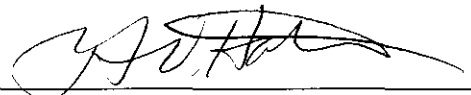
Robert Silver

Stuart H. Singer

Stephen N. Zack

Edward Normand

By



Counsel for The SCO Group, Inc.

CERTIFICATE OF SERVICE

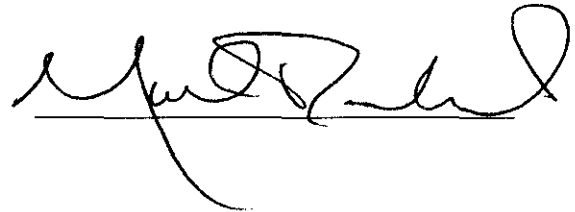
Plaintiff, The SCO Group, Inc., hereby certifies that a true and correct copy of the foregoing SCO's Disclosure of Material Misused by IBM was served on Defendant International Business Machines Corporation on the ^{22nd} day of December, 2005:

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A handwritten signature in black ink, appearing to read "David Marriott", is written over a horizontal line. The signature is cursive and includes a large loop at the end.