

# **ADDENDUM A**

**Addendum A**

- 06/13/2003 IBM serves interrogatory asking SCO to "identify, with specificity (by product, file and line of code, where appropriate) . . . any confidential or proprietary information that plaintiff alleges or contends IBM misappropriated or misused". (IBM's First Set of Interrogs. No. 1.)
- 09/16/2003 IBM serves interrogatory asking SCO to "identify, with specificity (by file and line of code), (a) all source code . . . to which Plaintiff has rights" and to "state whether (a) IBM has infringed plaintiff's rights, and for any rights IBM is alleged to have infringed, describe in detail how IBM is alleged to have infringed plaintiff's rights". (IBM's Second Set of Interrogs. and Second Request for Produc. of Docs., Interrog. Nos. 12-13.)
- 10/01/2003 Following SCO's failures to comply with IBM's requests, IBM moves to compel, arguing that SCO failed to "identify the files and lines of code that IBM has allegedly misappropriated". (IBM's Mem. in Supp. of Mot. to Compel Disc. at 3.)
- 11/06/2003 IBM makes a second motion to compel, asking that SCO be required to particularize its claims. (IBM's Mem. in Supp. of Second Mot. to Compel Disc.)
- 12/05/2003 At the hearing on IBM's motions to compel, the Court orders SCO to provide responses that "identify, with specificity, the source codes that you are claiming form the basis for your action." (12/05/2003 Hr'g Tr. at 53.)
- 12/12/2003 The Court issues a formal order requiring SCO "[t]o respond fully and in detail to Interrogatory Nos. 12 and 13 as stated in IBM's Second Set of Interrogatories . . . [and] [t]o identify and state with specificity the source code(s) that SCO is claiming form the basis of their action against IBM." (12/12/2003 Order at 2.)
- 02/05/2004 In IBM's report to the Court on SCO's alleged compliance with the December 12, 2003 Order, IBM argues that the "primary problem with [SCO's] Revised Response, however, is that: (1) SCO refuses to disclose from what lines of UNIX System V code these alleged contributions are supposed to derive . . . and (2) a number of the allegedly improper contributions are not disclosed with adequate particularity (e.g., SCO claims IBM improperly disclosed 'SMP' but does not specify the files or lines of code allegedly 'dumped' into Linux, or the files and lines of Linux in which they are supposedly found." (IBM's Report on SCO's Compliance with the Court's Dec. 12, 2003 Order at 3-4.)
- 02/06/2004 At the hearing on SCO's compliance with the Court's December 12, 2003 Order, IBM argued that SCO had failed to comply with the Court's requirement that SCO "identify by file and line of code, what it is they say [IBM] took from Unix System Five, and where it is exactly in Linux that they say that [IBM] put that." (02/06/2004 Hr'g Tr. at 5.) IBM argues that SCO failed "to link up the A.I.X. Dynix code which they say we dumped into Linux with the System Five code from which they say it is derived." (02/06/2004 Hr'g Tr. at 6.)

- 03/03/2004 Following the hearing on SCO's compliance with the Court's December 12, 2003 Order, the Court again orders SCO to "provide and identify all specific lines of code that IBM is alleged to have contributed to Linux from either AIX or Dynix" and "to provide and identify all specific lines of code from Unix System V from which IBM's contributions from AIX or Dynix are alleged to be derived". (03/03/2004 Order at 2.)
- 05/18/2004 Based on SCO's continued failure to comply, IBM moves for partial summary judgment, arguing that SCO "did not detail the nature of its alleged rights, including whether and, if so, how it derives from UNIX code (i.e., by listing—line by line—the versions, files and lines of UNIX code from which the listed Linux code allegedly derives)". (IBM's Mem. in Supp. of Its Cross-Mot. for Part. Summ. J. on Its Claim for Decl. J. of Non-Infringement at 27.)
- 06/23/2004 In opposing SCO's motion to compel, IBM argues that SCO is requesting discovery to obscure the fact that it has failed "to identify the precise lines of Linux code in which it claims rights, and the precise lines of code in the UNIX software from which SCO alleges the Linux code is copied or derives." (IBM's Resp. to SCO's Mem. Regarding Disc. at 13.)
- 02/08/2005 The Court defers summary judgment but states that "it is astonishing that SCO has not offered any competent evidence to create a disputed fact regarding whether IBM has infringed SCO's alleged copyrights through IBM's Linux activities." (02/08/2005 Order at 10.)
- 03/25/2005 In support of its proposed scheduling order, IBM argues that both parties should be required to "identify and match up the allegedly infringing and allegedly infringed material by version, file and line of code." IBM proposes that "the Court should set deadlines for both parties to disclose the particulars of their claims (first by an interim deadline and then by a final deadline) before the close of all fact discovery." (Mem. in Supp. of IBM's Proposed Scheduling Order at 5, n.4 and at 6.)
- 04/01/2005 SCO opposes IBM's proposal. (04/01/2005 Mem. in Supp. of SCO's Proposed Scheduling Order at 9-12.)
- 04/21/2005 At oral argument, IBM reiterates its position that "it is critical that the Court enter a proposed scheduling order that includes a provision which requires both parties to disclose the allegedly misused material, whatever it is, by a date certain, and that the parties then have an opportunity subsequent to the disclosure of that allegedly misused material to take discovery with respect to that material." (04/21/2005 Hr'g Tr. at 93.)
- 07/01/2005 The Court adopts IBM's proposal to set interim deadlines for the disclosure of all allegedly misused material. (07/01/2005 Order.) The Court sets October 28, 2005 as the "Interim Deadline for Parties to Disclose with Specificity All Allegedly Misused Material". The Court sets December 22, 2005 as the "Final

Deadline for Parties to Identify with Specificity All Allegedly Misused Material". (07/01/2005 Order at 4.)

09/02/2005 Despite having received from IBM hundreds of millions of lines of source code (which SCO could have used to comply with the Court's orders), SCO once again demands that IBM produce hundreds of millions of lines of additional code, programmer's notes and design documents, which IBM ultimately produced. (SCO's Renewed Mot. to Compel.)

10/28/2005 SCO serves its Interim Disclosures, which like its prior discovery responses concerning the allegedly misused materials, fails to describe all of the allegedly misused materials by version, file and line of code.

12/05/2005 Upon review of SCO's Interim Disclosures, IBM immediately notifies SCO that it failed "to identify the allegedly misused material by version, file and line of code", "to identify and match up the allegedly infringing and allegedly infringed material by version, file and line of code", "to identify the material alleged to have been contributed improperly by version, file and line of code", and to identify, "to the extent the allegedly contributed material is not Unix System V code, but is in any sense alleged to have been based on or resulted from Unix System V code, the version, file and line of Unix System V code from which the allegedly contributed material is alleged to derive or result." (12/05/2005 Letter from T. Shaughnessy to T. Normand at 1.)

IBM notifies SCO that unless SCO complies with the specificity required by the Court's many orders, "IBM intends to ask the Court to preclude SCO from pursuing any claims regarding allegedly misused material not properly disclosed on or before December 22, 2005." (12/05/2005 Letter from T. Shaughnessy to T. Normand at 2.)

12/22/2005 SCO serves its Final Disclosures, again largely failing to describe all of the allegedly misused materials by version, file and line of code.







Items	System V			AK			LWAK			LWAK		
	V	F	L	V	F	L	V	F	L	V	F	L
187											X	
188											X	
189											X	
190											X	
191											X	
192											X	
193											X	
232										X	X	
233										X	X	
234										X	X	
235										X	X	
236										X	X	
237										X	X	
238										X	X	
239										X	X	
240										X	X	
241										X	X	
242										X	X	
243										X	X	
244										X	X	
245										X	X	
246										X	X	
247										X	X	
248											X	
249											X	
250										X	X	
251										X	X	
252											X	
253											X	
254											X	
255											X	
256										X	X	
257											*	
258											X	
259											X	
260										X	X	
261											X	
262											X	
263											X	
264											X	
265										X	X	
266											X	
267											X	
268											X	
269											X	
270										X	X	



Items	System V			AIX			Darwin			Linux		
	V	F	L	V	F	L	V	F	L	V	F	L
271												
272										*	*	
287												
288												
289												
290												
291												
292												
293												
294												
295												
296												
297												
298												
299												
300												
301												
302												
303												

V = Product version identified

F = File name identified

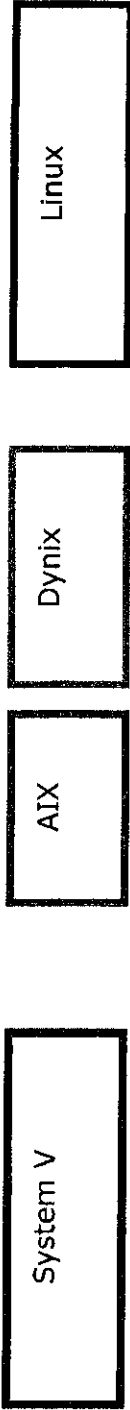
L = Lines of code identified

\* Indicates that only Linux patch information is given

\*\* Indicates that some lines of code are displayed, but none specifically identified as misused

† Indicates that only Linux Test Project (LTP) information is given

# **ADDENDUM C**



**12/12/03 Order**

- “To identify and state with specificity the source code(s) that SCO is claiming form the basis of their action against IBM.” (¶ 4)
- “To respond fully and in detail to Interrogatory Nos. 1-9 as stated in IBM’s First Set of Interrogatories.” (¶ 1)

**Interrogatory 1:** “Please identify, with specificity (by product, file and line of code, where appropriate) all of the alleged trade secrets and any confidential or proprietary information that plaintiff alleges or contends IBM misappropriated or misused. . . .”

**Interrogatory 3:** “[P]lease . . . describe, in detail, . . . all places or locations where the alleged trade secret or confidential or proprietary information may be found or accessed.”

**Interrogatory 4:** “[P]lease describe, in detail, . . . with respect to any code or method plaintiff alleges or contends that IBM misappropriated or misused, the location of each portion of such code or method in any product, such as AIX, in Linux, in open source, or in the public domain.”

- “To respond fully and in detail to Interrogatory Nos. 12 and 13 as stated in IBM’s Second Set of Interrogatories.” (¶ 2)

**Interrogatory 12:** “Please identify, with specificity (by file and line of code), (a) all source code and other material in Linux . . . to which plaintiff has rights; and . . . how the code or other material derives from UNIX.”

**Interrogatory 13:** “[P]lease . . . describe in detail how IBM is alleged to have infringed plaintiff’s rights . . . .”

**3/3/04 Order**

- “SCO is to provide and identify all specific lines of code from Unix System V from which IBM’s contributions from AIX or Dynix are alleged to be derived.” (¶ 3)
- “As previously ordered, SCO is to provide and identify all specific lines of code that IBM is alleged to have contributed to Linux from either AIX or Dynix.” (¶ 2)
- “SCO is to provide and identify with specificity all lines of code in Linux that it claims rights to.” (¶ 4)

**7/1/05 Order**

- The court sets an “Interim Deadline for Parties to Disclose with Specificity All Allegedly Misused Material Identified to Date and to Update Interrogatory Responses Accordingly” and a “Final Deadline for Parties to Identify with Specificity All Allegedly Misused Material.”