SNELL & WILMER L.L.P.

Alan L. Sullivan (3152)

Todd M. Shaughnessy (6651)

Amy F. Sorenson (8947)

15 West South Temple, Suite 1200

Salt Lake City, Utah 84101-1004

Telephone: (801) 257-1900 Facsimile: (801) 257-1800

CRAVATH, SWAINE & MOORE LLP

Evan R. Chesler (admitted pro hac vice)

David R. Marriott (7572)

Worldwide Plaza

825 Eighth Avenue

New York, New York 10019

Telephone: (212) 474-1000

Facsimile: (212) 474-3700

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.

**IBM'S MOTION FOR SUMMARY** JUDGMENT ON ITS CLAIM FOR **COPYRIGHT INFRINGEMENT (IBM'S EIGHTH COUNTERCLAIM**)

(ORAL ARGUMENT REQUESTED)

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

Pursuant to DUCivR 56-1(a) and Federal Rules of Civil Procedure 1, 26, 30, 33, 37 and 56, Defendant/Counterclaim-Plaintiff International Business Machines Corporation ("IBM") respectfully submits this motion for summary judgment its claim for copyright infringement (IBM's Eighth Counterclaim).

Despite its public claims, The SCO Group, Inc. ("SCO") has failed to identify any code allegedly owned by SCO and copied by IBM into Linux. By contrast, undisputed facts establish that SCO has literally copied, without alteration, hundreds of thousands of lines of code developed and copyrighted by IBM. And SCO has done so for profit, without any license to do so. While the measure of damages is not amenable to summary determination, the Court can and should enter judgment that SCO is liable for copyright infringement on IBM's Eighth Counterclaim, and should enjoin SCO from any further infringement of IBM's copyrights.

For the all foregoing reasons, and as more fully set forth in the accompanying memorandum, this Court should enter summary judgment in favor of IBM on its claim for copyright infringement (IBM's Eighth Counterclaim).

DATED this 25th day of September, 2006.

SNELL & WILMER L.L.P.

/s/ Amy F. Sorenson

Alan L. Sullivan Todd M. Shaughnessy

Amy F. Sorenson

CRAVATH, SWAINE & MOORE LLP Evan R. Chesler

David R. Marriott

Attorneys for Defendant/Counterclaim-Plaintiff International Business Machines Corporation

## Of Counsel:

INTERNATIONAL BUSINESS MACHINES CORPORATION Alec S. Berman 1133 Westchester Avenue White Plains, New York 10604 (914) 642-3000

Attorneys for Defendant/Counterclaim-Plaintiff International Business Machines Corporation

## **CERTIFICATE OF SERVICE**

I hereby certify that on the 25th day of September, 2006, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court and delivered by CM/ECF system to the following:

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

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

and by U.S. Mail, postage pre-paid to:

Robert Silver **Edward Normand** BOIES, SCHILLER & FLEXNER LLP 333 Main Street Armonk, New York 10504

/s/ Amy F. Sorenson