

# **EXHIBIT E**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION  
Case No. 2:03CV0294DAK

THE SCO GROUP,

Plaintiff,

vs

INTERNATIONAL BUSINESS  
MACHINES CORPORATION,  
Defendant.

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VIDEO DEPOSITION UNDER ORAL EXAMINATION OF  
GEOFFREY GREEN

DATE: November 15, 2004

REPORTED BY: CHARLENE FRIEDMAN, CSR, RPR, CRR

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G. Green

<p style="text-align: right;">110</p> <p>1 MR. ESKOVITZ: I'm talking about</p> <p>2 AT&amp;T's intent with respect to paragraph</p> <p>3 1.04.</p> <p>4 A 1.04 was focusing on what was</p> <p>5 actually to be physically sent to the</p> <p>6 licensee, and so that -- physical items</p> <p>7 included the software itself and various</p> <p>8 documents.</p> <p>9 Q Okay. Your understanding of what</p> <p>10 software product meant was it was just the</p> <p>11 actual physical items that were being given</p> <p>12 to the licensee?</p> <p>13 A Yes.</p> <p>14 Q Okay. Is the definition of -- let</p> <p>15 me just refer you down to 2.01, for example,</p> <p>16 the first sentence of 2.01 where the</p> <p>17 capitalized term software product is used.</p> <p>18 That's the same -- software product means the</p> <p>19 same thing in 2.01, for example, as it does</p> <p>20 in 1.04; is that right?</p> <p>21 A Yes.</p> <p>22 Q Okay. Let's take 2.01. It says,</p> <p>23 "AT&amp;T grants to licensee a personal</p> <p>24 non-transferrable and non-exclusive right to</p> <p>25 use in the United States each software</p>	<p style="text-align: right;">112</p> <p>1 and the fees for use of the software were</p> <p>2 based on how many designated CPU's there</p> <p>3 were.</p> <p>4 Q So one of the reasons, at least,</p> <p>5 one of the important reasons was to ensure</p> <p>6 that AT&amp;T was paid for the licensee's full</p> <p>7 use of the licensed product?</p> <p>8 MR KAO: Objection to the form.</p> <p>9 A Yes.</p> <p>10 Q The next sentence of 2.01 says</p> <p>11 that, "Such right to use includes the right</p> <p>12 to modify such software product and to</p> <p>13 prepare derivative works based on such</p> <p>14 software product."</p> <p>15 What was the intent, AT&amp;T's intent,</p> <p>16 with respect to that provision?</p> <p>17 MR FELTOON: To the portion that</p> <p>18 you read?</p> <p>19 MR ESKOVITZ: Yes.</p> <p>20 A I think just what it says, that the</p> <p>21 licensee could modify the product and prepare</p> <p>22 works based on the product.</p> <p>23 Q And what is your understanding or</p> <p>24 what was AT&amp;T's intent -- strike that.</p> <p>25 What was AT&amp;T's intent with respect</p>
<p style="text-align: right;">111</p> <p>1 product identified in the one or more</p> <p>2 supplements hereto, solely for licensee's own</p> <p>3 internal business purposes and solely on or</p> <p>4 in conjunction with designated CPU's for such</p> <p>5 software product."</p> <p>6 What was AT&amp;T's intent with respect</p> <p>7 to the requirement that licensees only use</p> <p>8 software products for their own internal</p> <p>9 business purposes?</p> <p>10 A The intent was that the use of</p> <p>11 would be for the licensee's own business</p> <p>12 needs and not to provide some kind of service</p> <p>13 for other people on the licensee's computers.</p> <p>14 Q Okay. Is that one of the reasons</p> <p>15 why the sublicensing agreements were needed</p> <p>16 for licensees to be able to distribute the</p> <p>17 product in object code format to others?</p> <p>18 A It's one of the reasons, yes.</p> <p>19 Q Okay. And what was the reason for</p> <p>20 the limitation on the use being only in</p> <p>21 conjunction with designated CPU's for such</p> <p>22 software product?</p> <p>23 A Most of the software agreements, as</p> <p>24 I recall, had provisions for designating</p> <p>25 CPU's on which the software could be used,</p>	<p style="text-align: right;">113</p> <p>1 to the meaning of the term "derivative</p> <p>2 works"?</p> <p>3 A Something that was based on the</p> <p>4 licensed product, and that would be</p> <p>5 considered to probably be in a variation of</p> <p>6 the product or would somehow include the</p> <p>7 product or part of the product.</p> <p>8 Q Okay. And when you say include</p> <p>9 part of the product, would you include in the</p> <p>10 meaning of product the ideas, methods and</p> <p>11 concepts of that product?</p> <p>12 A At some point in time, yes.</p> <p>13 Q As of 1985, was that true?</p> <p>14 A Probably, yes.</p> <p>15 Q And the next provision -- the next</p> <p>16 clause of that -- the end of 2.01 says,</p> <p>17 "Provided the resulting materials are treated</p> <p>18 hereunder as part of the original software</p> <p>19 product."</p> <p>20 Let me just break it down. I want</p> <p>21 to ask you about a couple different portions</p> <p>22 of that. First of all, would you agree with</p> <p>23 me that when the 2.01 refers to resulting</p> <p>24 materials, that it's referring to the</p> <p>25 derivative works or modifications that are</p>

<p style="text-align: right;">130</p> <p>1 MR. ESKOVITZ: I'm trying to 2 understand it. 3 Q Can you explain how that's 4 consistent with your testimony before about 5 methods and concepts having been protected 6 with respect to definitive works? 7 A Well, I think methods and concepts 8 is a different subject in that even without 9 anybody developing derivative works, there 10 could be methods and concepts that could be 11 disclosed that at some point would have 12 created a breach of the agreement, but as 13 time progressed, the idea that there were 14 methods and concepts in software that could 15 be protected as trade secrets, particularly 16 with the UNIX software, became questionable. 17 Q I see. So in terms of 18 understanding the extent of the derivatives 19 and modifications protection, if a licensee 20 took the original UNIX code, studied it, and 21 created a modification in which it 22 paraphrased or copied everything about the 23 concepts, the ideas, the structure, the 24 organization, the methods from the original 25 licensed product but did not copy, literally</p>	<p style="text-align: right;">132</p> <p>1 was changed in the agreement that took it 2 out. It was taken out of the IBM agreement 3 in the side letter, but eventually, it was 4 taken out of the agreement itself, but I'm 5 not sure when that happened. 6 Q But it wasn't taken out of the 7 Sequent agreement that you're looking at 8 here? 9 A I don't believe so. The language 10 is still in the Sequent agreement. 11 Q So the derivative or modification 12 that we discussed where source code would not 13 have been literally copied would have been 14 protected under the Sequent agreement? 15 MR. KAO: Objection to the form. 16 A If it would show you can use 17 methods and concepts that were present in the 18 original software product, yes. 19 Q And not just methods or concepts, 20 but also any kind of know-how or structure or 21 sequence or organization? 22 MR. KAO: Objection to the form. 23 A I think that was all included in 24 methods and concepts. 25 Q Okay. Let me show you the end of</p>
<p style="text-align: right;">131</p> <p>1 copy the source code in the original licensed 2 product, is it your view that that would not 3 have been covered under the license 4 agreement? 5 A Again, I would say that depends on 6 when that was done. 7 Q Okay. As of April 1985 if that was 8 done? 9 A I think at that time we would have 10 considered that that would be a violation of 11 the agreement if somebody had done that or 12 such -- such a product would have been 13 covered by the agreement. 14 Q Right. And at what point did that 15 kind of a product no longer receive the 16 protection of the agreement? 17 A I can't -- I can't put down a point 18 in time. 19 Q Okay. Was it before the middle of 20 1986 when you left Greensboro? 21 A I can't pin that down. 22 Q Do you have any way of identifying 23 by reference in documents or anything else 24 when that happened? 25 A I don't remember when the language</p>	<p style="text-align: right;">133</p> <p>1 Mr. Pfeffer's -- paragraph 6 in his 2 declaration where it says, "Accordingly, 3 under section 2.01, if a licensee created a 4 modification or derivative work based on the 5 original licensed product, then the agreement 6 treated the resulting work as if it had been 7 part of the original software product, and 8 any further modifications or derivatives of 9 that resulting work would be treated in the 10 same manner." 11 Do you agree with that statement? 12 A No. 13 Q What is it that you disagree with 14 about that statement? 15 A This may have applied earlier when 16 we still considered that modification of a 17 derivative work would have to include a 18 portion of the software product, but when we 19 became more aware of the fact that that 20 wasn't always the case, then -- so it's 21 really not clear with respect to what 22 happened over time. 23 Q Let me just make sure -- maybe you 24 misspoke. I just want to make sure I'm 25 clear.</p>