EXHIBIT F

In The Matter Of:

THE SCO GROUP, INC. v.
INTERNATIONAL BUSINESS MACHINES CORPORATION

BURTON LEVINE
January 19, 2005

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LEVINE, BURTON - Vol.

resulting material is a combination of software product and whatever a licensee adds to the software product?

MR. NORMAND: Objection to form.

A. No.

Q. What is your definition of resulting material within the meaning of Section 2.01?

A. The resulting material, as I can broadly state it, any part of a software product -- if any part of a software product is used by the licensee to create another product, that product is a resulting material even if Unix System V code that was contained in the original product is not present in the product that the licensee makes.

Q. And what's the basis of that understanding, Mr. Levine?

MR. NORMAND: Objection, asked and answered.

A. You mean in the language of the agreement?

Q. I mean anywhere. What's the basis of your understanding that that's the meaning of

the term resulting material?

A. This has always been my understanding of what the agreement meant, was intended to mean, and does mean.

Q. And my question is: What's the basis of that understanding?

MR. NORMAND: Objection to the form, asked and answered.

A. Because the software product that is being licensed is in no way defined as Unix System V code itself.

Q. Are you done?

A. Yeah. I can answer it directly like that or I can bring, you know, just examples of --

Q. I didn't mean to cut you off. What I'm interested in knowing, you provided your definition of the term resulting material.

My question is: What's the basis of that understanding? You began to say that it's -- I don't want to put words in your mouth.

Let me ask again: What is the basis of your understanding of your definition of term resulting material?

MR. NORMAND: Objection to form.

A. I don't know if I can answer your question without just going back to the structure of the license and what it was intended to do.

The Unix license itself was intended to protect the code, the intellectual property, and all of the, quote/unquote, methods and concepts, and that wording is used in the agreement, that's contained or embodied in the product.

So the metes and bounds of what a software product is, as we have always interpreted so long as I've been in connection with the business, has been a continuum of intellectual property that includes but is not limited to the code itself. There are structures, there are various algorithms, everything else that is contained in the Unix code, so long as it remains unpublished, so long as it remains the proprietary property of the licensor, is all inclusive in the software product.

If a licensee, by virtue of being

exposed or having access to this code, learns about a particular structure, a particular portion of the licensed item, uses that structure to develop a product that is going to be similar to but not containing any of the Unix code, that is the derivative work, that is treated as a software product, and treated as a software product means being subject to the same protections that the code itself would be subject, whether or not we're talking about literal code or not. That's why I disagree with him.

Q. Let me ask you this question, Mr. Levine. Would you agree with the following statement -- I'll refer you to Mr. DeFazio's declaration where it begins, A modification or derivative work. Would you agree with the following alteration of that statement: A modification or a derivative work would constitute, quote, resulting materials, close quote, to be treated as part of the original Unix System V software product only so long as it contained any protected Unix System V source code or Unix System V methods and concepts

itself is.

In the licensing organization to talk about even a binary, a licensing may ask, for example, how much code do I have to have in a binary product in order for it to be a sublicense product subject to royalties, and the answer that we gave and we -- we gave, that we were supposed to give on that, was that even one line of code would make that a software product, and by extension on the software side, the source code side, the use of any part of a software product, whether it was the code or not, that results in a product makes that product resulting materials within the meaning of this clause.

Q. As you define the term software product, does it include resulting materials?

MR. NORMAND: Objection to the form.

A. Well, the way we put it over here is it's going to be treated as a software product. Whether you want to say that the resulting materials are a software product per se I think is probably immaterial because of the

language here. It has to be treated that way. It has to be protected that way.

Colloquially, I guess you could say if it walks like a duck and it quacks like a duck, it's a duck. So, yeah, it's a software product in substance.

Q. Did I understand you to say that if a product included only one line of Unix code and potentially, you know, millions of lines of other code, that product would, nevertheless, in your view, be a software product?

MR. NORMAND: Objection to form.

A. Yes, it would be a software product.

Q. Let me refer you to the second sentence in the portion of Mr. DeFazio's declaration I've been asking you about. He says there, source code developed by or for a licensee, even if it were included in such a modification or derivative work, would not by itself constitute resulting materials.

Do you agree with that statement?

A. I would.

MR. NORMAND: Objection to form.

A. I would agree with it to this extent. If that source code that was developed by the licensee was independently developed and tacked on to whatever they did to derive something from the actual software product under license and it was a mixture, if you will, that I wouldn't say that that independent part that was sold in connection with the resulting material would be part of the resulting material.

Q. The next sentence in this declaration Mr. DeFazio says, "The purpose of treating portions of Unix System V source code included in modifications and derivative works as part of the original software produce was to ensure that the Unix System V source code provided by AT&T, USL or Novell and contained in the licensee's derivative works would continue to be protected as if it were a stand-alone Unix System V source code."

Do you agree with that?

MR. NORMAND: Objection to form.

A. It's a correct statement but it's not sufficient.

Q. Why isn't it sufficient?

A. It's not only the Unix System V code that's contained in there that would do it. It's the fact that it was derived using any part of the software product.

So what he says here is true, if the product actually only contained Unix source code, so that part is true, but -- again, it's not a complete statement, as far as I can see.

Q. Direct your attention to Paragraph 17. There Mr. DeFazio states, "The agreements did not and do not give AT&T, USL, Novell or any of their successors or assigns the right to assert ownership or control over modifications and derivative works prepared by its licensees, except to the extent of the original Unix System V source code included in such modifications and derivative works."

Do you agree with that statement?

A. No, I don't.

MR. NORMAND: Objection to form.

Q. Why do you not agree with that statement?

A. I'm not necessarily addressing the

answered.
A. Yes, that's correct.
MR. MARRIOTT: With a different answer.
MR. NORMAND: From when?
MR. MARRIOTT: That's the problem.
BY MR. MARRIOTT:
Q. Would you agree, Mr. Levine, that a licensee can do with it wishes -- withdrawn.
Would you agree that a licensee can do what it wishes with respect to any product so long as that product is not either the software product, as the term is defined in the AT&T Unix licensing agreement, or resulting materials, as the term is defined in the AT&T Unix licensing agreements?
A. Yeah, I think that's a fair statement.
Q. The term software product is a defined term in the licensing agreements, correct?
A. There is a definition of software product, yeah.
Q. Is resulting materials a defined

term within the meaning of the software agreements?
A. I think in the context of the paragraph it's in, it's evident in what it means.
Q. Would you define for me then what exactly constitutes resulting materials? I want to understand what the essential elements of resulting materials are, those things without which you would not have resulting materials.
MR. NORMAND: Objection, asked and answered.
A. Resulting materials are products that are created by the licensee after having access to a software product.
Q. Is that it?
A. Yep, in short.
MR. NORMAND: Objection to form.
Q. Are you sure about that definition?
MR. NORMAND: Objection to form.
A. Pretty much.
Q. What is the basis of that definition, Mr. Levine? Can you point me to --
MR. NORMAND: Objection to form.

Q. -- a place in the licensing agreement, for example, from which you derive that definition?
A. I don't know if I can or I can't.
Q. The IBM/AT&T Technologies software agreement is at Exhibit 279, if you'd like to take a look at that. You should have it in front of you there.
MR. NORMAND: What's the pending question?
(Record read.)
A. In my view, it's Section 2.01, three lines from the bottom. The resulting materials are the end result of preparing derivative works and modifications, and derivative works, in my view, are works that are created by the licensee after having access to the software product.
Q. Do you distinguish in meaning for purposes of your understanding of Section 2.01 between the term derivative work -- or works -- and the term modification?
A. I don't know that I would make a big distinctions other than the scope of the

rights here. Modifications are a smaller one. Scope, it would seem to me then, in preparing derivative works that could be a whole operating system.
Q. Would you agree that the term derivative works is not defined in this agreement?
A. It is not defined in this agreement, that's correct.
Q. And in what sense do you use the term derivative works, in the sense of the copyright law or in some other sense?
MR. NORMAND: Objection to form.
A. No, not necessarily in the sense of the copyright law.
Q. Are you aware of any deposition of the term derivative work outside the context of copyright law?
MR. NORMAND: Objection to form.
A. You mean besides what appears here?
Q. Is there any accepted definition of the term derivative works of which you're aware outside the copyright law context?
MR. NORMAND: Objection to form.