EXHIBIT J

Page 1

1   IN THE UNITED STATES DISTRICT COURT
2   FOR THE DISTRICT OF UTAH, CENTRAL DIVISION
3
4   THE SCO GROUP,   )
)
5   Plaintiff,   )
)
6   vs.   ) No. 2:03CV0294DAK
)
7   INTERNATIONAL BUSINESS MACHINES)
    CORPORATION,   )
8   )
          Defendants.   )
9   _____)
10
11
12
13
14
15   .   DEPOSITION OF THOMAS L. CRONAN, III
16   San Jose, California
17   Tuesday, December 14, 2004
18
19
20
21
22
23
    Reported by:
24 SUZANNE F. BOSCHETTI
    CSR No. 5111
25 Job No. 168429

Page 38

1　modifications or derivatives of the software product?
2　　A In their -- in their entirety.
3　　Q Right. The entire modification or the entire
4　derivative would be considered --
5　　A In combination with the UNIX code.
6　　Q Would be considered a resulting material?
7　　A That's correct.
8　　Q Okay. And those were required to be treated
9　under the agreement as if they were part of the original
10　license software product, correct?
11　　A That's correct. The -- the derivative work,
12　which, as the term of art in copyright, means both the
13　changed code and the original code in combination, which
14　refers to both the code and the documentation, the
15　original documentation with any changes to it. When
16　you're done with that, that would be the resulting
17　material.
18　　Q Okay. And was it your understanding that the
19　term "derivative work" under 2.01 had the same meaning
20　as what copyright law would have assigned to that term,
21　"derivative work"?
22　　A I don't believe that was the discussion between
23　the parties.
24　　Q Okay. Did you have an understanding in your
25　own head as to that issue?

Page 39

1　　A You know, I don't know if I was sophisticated
2　enough in 1985 to know the answer to that question.
3　　Q Okay. We've talked about the term "derivative
4　work."
5　　　What about the -- what about the issue of the
6　right to -- the results of the right to modify that
7　work? Is that something that's different, in your mind,
8　than the creation of derivative works?
9　　A Let's see.
10　　　Yes, they're separate rights.
11　　Q Okay. And would it be fair to say that we can
12　call "modification" something that would result from the
13　exercise of right to modify?
14　　A That's -- that's correct.
15　　Q Okay. And in your mind, is there a distinction
16　between a modification on the one hand and a derivative
17　work on the other?
18　　A Yes, there is.
19　　Q Okay. And what is that difference?
20　　A A derivative work would be the combination of
21　any change code, any added code, any modifications which
22　would be, you know, specifically original code that was
23　changed. And in combination with the original code,
24　that would be a derivative work. So it would include
25　the UNIX System V code and any new code that was written

Page 40

1　by IBM, any modified or changed code in one body, in one
2　work.
3　　Q So if I understood you correctly, a derivative
4　work would necessarily encompass a modification?
5　　A No. The other way around. I think a
6　derivative work would necessarily include the System V
7　code.
8　　Q Right. And how does the term "modification"
9　compare to the work -- the term "derivative work"?
10　　A The right to create a modification allows you
11　to make changes and write things that become part of the
12　body of the code. Later, as we, you know, clarified
13　this in a letter, we said that if those things were
14　created and they were separate and didn't contain the
15　System V code, that they could be used and owned by IBM
16　and used separately from the derivative work.
17　　　So that's why there's a difference because you
18　have a right to go in there in your -- anything you do
19　that changes the source code tree a programmer would
20　consider a modification even if it didn't touch the
21　original code. So you have people coming in and adding,
22　you know, 200,000 lines of code to 100,000 lines of code
23　and only maybe, you know, 20,000 lines touch each other,
24　you could use that 200,000, 180,000 lines of code
25　somewhere else and rewrite the interfaces to another

Page 41

1　operating system.
2　　　So whether someone might consider those to be
3　modifications because they've been entered into and
4　changed the System V code tree, but they were created
5　differently -- so it becomes a -- something that needs
6　to be clarified between something, whether it's a
7　modification or original code, and that's why we had
8　later clarifications about the fact that who created it
9　became an important distinction between the parties.
10　Because these terms -- you can imagine, you know,
11　lawyers in 1985. Not a lot of people were that educated
12　on copyright law. I became much more educated later on.
13　　　Now, the -- the negotiations were primarily
14　between business people who cared more about what the
15　royalties were and what the -- the business terms were
16　between the parties and who -- who we could distribute
17　it to or not. There wasn't the level of sophistication
18　that you're using in trying to interpret this, nor was
19　it the level of sophistication that you might use today
20　if you were entering into a license agreement because
21　this was 1985.
22　　　So the important thing between the parties was
23　the stuff we have that's in System V today is ours.
24　Anything you guys do, you could take and use separately
25　as long as you don't use our code. I mean, that's the

11 (Pages 38 to 41)