

EXHIBIT N

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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

THE SCO GROUP, INC.,)

Plaintiff,)

vs.) No. 2:03CV0294

INTERNATIONAL BUSINESS)

MACHINES CORP.,)

Defendant.)

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VIDEOTAPED DEPOSITION OF MICHAEL DeFAZIO
New York, New York
Thursday, January 13, 2005

Reported by:
Jennifer A. Ocampo, CSR
JOB NO. 169142

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1 DeFazio
 2 **A. Yes.**
 3 MR. ESKOVITZ: I'm sorry, objection to
 4 form. I don't think there was a question on that
 5 one, but...
 6 MR. MARRIOTT: I don't know whether
 7 there is or not in that but let me just ask one
 8 and we'll avoid the problem.
 9 Q. Are you familiar with the terms of the
 10 early versions of the standard software agreement
 11 relating to 2.01?
 12 **A. Yes, in general.**
 13 Q. And did Section 2.01 in the early
 14 versions of the standard software agreement
 15 include the following language: Quote, Such right
 16 to use includes the right to modify such software
 17 product, all capitalized, and to prepare
 18 derivative works based upon such software product,
 19 all capitalized, comma, provided the resulting
 20 materials are treated hereunder as part of the
 21 original software product, all capitalized?
 22 **A. Yes.**
 23 Q. Are you familiar with the term
 24 resulting materials?
 25 **A. Yes.**

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1 DeFazio
 2 Q. And that term appears in Section 2.01
 3 as we've just quoted from it; correct?
 4 **A. Yes.**
 5 Q. Would you agree that a modification or
 6 a derivative work would constitute resulting
 7 materials to be treated as part of the original
 8 System V software product only so long as it
 9 contained any protected UNIX System V source code
 10 provided by AT&T, USL or Novell?
 11 MR. ESKOVITZ: Objection to form,
 12 leading.
 13 **A. That would be my understanding, yes.**
 14 Q. Well, let me ask you then in an
 15 open-ended way, Mr. DeFazio, what is your
 16 understanding of the term resulting materials?
 17 **A. The term resulting materials and**
 18 **derivative work I use kind of interchangeably as I**
 19 **described them earlier in discussion with Mr.**
 20 **Eskovitz that it's the integrated collection of**
 21 **UNIX system technology and customer value added,**
 22 **put together as a customer derived operating**
 23 **system product.**
 24 Q. A modification or derivative work is
 25 resulting materials as that term is used within

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1 DeFazio
 2 Section 2.01, as you understand it -- withdrawn.
 3 Is there -- would you agree, Mr.
 4 DeFazio, that source code developed by or for a
 5 licensee even if it were included in such a
 6 modification or derivative work would not by
 7 itself constitute resulting materials.
 8 MR. ESKOVITZ: Objection to form.
 9 **A. It would depend on whether the source**
 10 **code developed by the licensee incorporated UNIX**
 11 **system software.**
 12 Q. Okay. Let me refer you to the middle
 13 paragraph of Paragraph 16 of your declaration.
 14 There it says, a modification or a
 15 derivative work would constitute resulting
 16 materials, in quotes, to be treated as part of the
 17 original UNIX System V software product only so
 18 long as it contained any protected UNIX System V
 19 source code provided by AT&T, USL or Novell.
 20 Source code developed by or for a licensee, even
 21 if it were included in such a modification or a
 22 derivative work, would not by itself constitute
 23 resulting materials.
 24 Is that an accurate reflection of your
 25 understanding of the AT&T UNIX licensing

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1 DeFazio
 2 agreements.
 3 **A. Yes.**
 4 MR. ESKOVITZ: Objection to form, asked
 5 and answered.
 6 **A. Yes, that's correct.**
 7 Q. What was the purpose of treating
 8 portions of UNIX System V source code included in
 9 modifications and derivative works as part of the
 10 original software product?
 11 **A. The intent was to make sure that our**
 12 **UNIX system technology which was proprietary to us**
 13 **continued to be protected, the intellectual**
 14 **property aspects of it continued to be protected.**
 15 Q. The last sentence of Paragraph 16 of
 16 your declaration reads, the purpose of treating
 17 portions of UNIX System V source code included in
 18 a modification -- included in modifications and
 19 derivative works as part of the original software
 20 product was to ensure that UNIX System V source
 21 code provided by AT&T, USL or Novell and contained
 22 in the licensee's derivative works would continue
 23 to be protected as if it were stand-alone UNIX
 24 System V source code.
 25 Is that an accurate statement?