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Attorneys for Defendant/Counterclaim-Plaintiff
International Business Machines Corporation

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC., by and through the Chapter 7 Trustee in Bankruptcy, Edward N. Cahn,

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS MACHINES CORPORATION,

Defendant/Counterclaim-Plaintiff.

DECLARATION OF AMY F. SORENSON IN SUPPORT OF IBM'S MOTION AND MEMORANDUM FOR PARTIAL SUMMARY JUDGMENT ON THE BASIS OF THE NOVELL JUDGMENT

Civil No. 2:03-cv-00294-DN

Honorable David Nuffer

I, Amy F. Sorenson, declare as follows:

1. I represent IBM in the lawsuit brought by SCO titled, The SCO Group, Inc. v. International Business Machines Corp., No. 2:03-cv-00294-DN (D. Utah).

2. This declaration is submitted in support of Defendant/Counterclaim-Plaintiff IBM's Motion and Memorandum for Partial Summary Judgment on the Basis of the Novell Judgment.

3. Attached hereto are true and correct copies of the following documents:

a) Exhibit 1 is a copy of an article by Graeme Burton, titled "McBride Blames IBM for 'Majority' of Linux Infringements", from Infoconomy, dated September 11, 2003.

b) Exhibit 2 is a copy of a letter from Darl McBride, President and CEO of The SCO Group, to Lucio A. Noto, Audit Committee Chair of IBM, dated May 12, 2003.

c) Exhibit 3 is a copy of an article by Patrick Thibodeau, titled "SCO Official Defends Linux Attack", from Computerworld.com, dated June 2, 2003.

d) Exhibit 4 is a copy of an article by Peter Galli, titled "SCO Group Slaps IBM with $1B Suit", from eWeek.com, dated March 6, 2003.

e) Exhibit 5 is a press release titled "SCO® Announces Immediate Termination of IBM's Right to Use and Distribute AIX Software and Files for Permanent Injunction", dated June 16, 2003.

4. These exhibits were previously submitted to the Court as attached to the September 25, 2006 and November 10, 2006 Declarations of Todd M. Shaughnessy, in connection with IBM's Memorandum in Opposition to SCO's Motion for Partial Summary Judgment on IBM's Second, Third, Fourth and Fifth Counterclaims (Dkt. # 882; Dkt. # 865 (S)). These exhibits were previously identified as follows:

a) Exhibit 1 to this Declaration was previously identified as Exhibit 604. (See Dkt. # 882 at 9 ¶ 19(h); Dkt. # 865 at 9 ¶ 19(h) (S).)

b) Exhibit 2 to this Declaration was previously identified as Exhibit 141. (See Dkt. # 882 at 8 ¶ 19(a); Dkt. # 865 at 8 ¶ 19(a) (S).)

c) Exhibit 3 to this Declaration was previously identified as Exhibit 478. (See Dkt. # 882 at 8 ¶ 19(d); Dkt. # 865 at 8 ¶ 19(d) (S).)

d) Exhibit 4 to this Declaration was previously identified as Exhibit 601. (See Dkt. # 882 at 10 ¶ 23(a); Dkt. # 865 at 10 ¶ 23(a) (S).)

e) Exhibit 5 to this Declaration was previously identified as Exhibit 247. (See Dkt. # 882 at 10 ¶ 23(e); Dkt. # 865 at 10 ¶ 23(e) (S).)

5. I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 22nd, 2013.

Salt Lake City, Utah

/s/ Amy F. Sorenson

Amy F. Sorenson

Exhibit 1

Information Age
News, analysis & insight for IT & business leaders

http://www.information-age.com

NEWS | LAWSUITS

McBride blames IBM for "majority" of Linux infringements

SCO Group CEO Darl McBride has charged IBM with being the source of the majority of Linux code that he claims was wrongly inserted into the open source operating system.
11 September 2003

SCO Group CEO Darl McBride has outlined to *Infoconomy* the basis of his company's legal action against IBM over the open source operating system Linux — and charged IBM with being the source of the majority of the contentious Linux code.

In the interview, to be published in full next week, he reiterated his belief that code that infringes SCO's Unix intellectual property was contributed to Linux from a variety of sources, not just IBM. However, IBM was nevertheless the source of the "majority" of it and much of that came from IBM's Sequent acquisition, he suggests.

He also criticised the basis of open source software, suggesting that its spread might ultimately undermine the development of the software industry.

McBride said that he initiated an investigation into the provenance of Linux code in January this year after IBM Software Group senior vice president Steve Mills had pledged at LinuxWorld to 'transport' IBM's knowledge of AIX into Linux. "That startled us because they have contracts that state that they won't do things like that," said McBride.

"We investigated further to see if their words were matching their actions and, sure enough, they had been taking a significant amount of Unix technology and putting it into Linux. Then the question was, of those pieces, which ones were derivative works of ours? The answer was that there were a lot of them that were," he said.

Further investigation led SCO executives to believe that it was not just IBM that had infringed SCO's Unix intellectual property.

"What we found was that the infringements went way beyond just IBM's involvement and that other parties had contributed things improperly... in going through the process, we counted over a million lines of code that we allege are infringed in the Linux kernel today out of a total code base of five million," added McBride.

Nevertheless, IBM was the source of most of that allegedly tainted code, said McBride: "The vast majority of that did, in fact, come from IBM and when we say IBM, the majority of that actually came from IBM's acquisition of Sequent."

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By Graeme Burton, gburton@infoconomy.com

Exhibit 2

May 12, 2003

Mr. Lucio A. Noto
Audit Committee Chair
International Business Machines Corporation
New Orchard Road
Armonk, NY 10504

Dear Lucio:

SCO holds the rights to the UNIX operating system software originally licensed by AT&T to approximately 6,000 companies and institutions worldwide (the "UNIX Licenses"). The vast majority of UNIX software used in enterprise applications today is a derivative work of the software originally distributed under our UNIX Licenses. Like you, we have an obligation to our shareholders to protect our intellectual property and other valuable rights.

In recent years, a UNIX-like operating system has emerged and has been distributed in the enterprise marketplace by various software vendors. This system is called Linux. We believe that Linux is, in material part, an unauthorized derivative of UNIX.

As you may know, the development process for Linux has differed substantially from the development process for other enterprise operating systems. Commercial software is built by carefully selected and screened teams of programmers working to build proprietary, secure software. This process is designed to monitor the security and ownership of intellectual property rights associated with the code.

By contrast, much of Linux has been built from contributions by numerous unrelated and unknown software developers, each contributing a small section of code. There is no mechanism inherent in the Linux development process to assure that intellectual property rights, confidentiality or security are protected. The Linux process does not prevent inclusion of code that has been stolen outright, or developed by improper use of proprietary methods and concepts.

Many Linux contributors were originally UNIX developers who had access to UNIX source code distributed by AT&T and were subject to confidentiality agreements, including confidentiality of the methods and concepts involved in software design. We have evidence that portions of UNIX System V software code have been copied into Linux and that additional other portions of UNIX System V software code have been modified and copied into Linux, seemingly for the purposes of obfuscating their original source.

355 South 520 West, Linden, Utah 84042 U.S.A. phone 801.765.4999 fax 801.765.1313 www.SCO.com

As a consequence of Linux's unrestricted authoring process, it is not surprising that Linux distributors do not warrant the legal integrity of the Linux code provided to customers. Therefore legal liability that may arise from the Linux development process may also rest with the end user.

We believe that Linux infringes on our UNIX intellectual property and other rights. We intend to aggressively protect and enforce these rights. Consistent with this effort, on March 7, we initiated legal action against IBM for alleged unfair competition and breach of contract with respect to our UNIX rights. This case is pending in Utah Federal District Court. As you are aware, this case has been widely reported and commented upon in the press. If you would like additional information, a copy of the complaint and response may be viewed at our web site at www.sco.com/scosource.

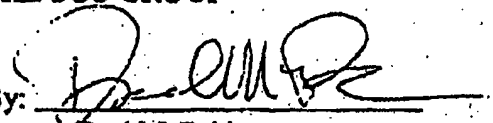
For the reasons explained above, we have also announced the suspension of our own Linux-related activities until the issues surrounding Linux intellectual property and the attendant risks are better understood and properly resolved.

Similar to analogous efforts underway in the music industry, we are prepared to take all actions necessary to stop the ongoing violation of our intellectual property or other rights.

SCO's actions may prove unpopular with those who wish to advance or otherwise benefit from Linux as a free software system for use in enterprise applications. However, our property and contract rights are important and valuable: not only to us, but to every individual and every company whose livelihood depends on the continued viability of intellectual and intangible property rights in a digital age.

Yours truly,

THE SCO GROUP

By: 

Darl McBride
President and CEO

Exhibit 3

COMPUTERWORLD
Software

SCO Official Defends Linux Attack

Patrick Thibodeau

June 02, 2003 (Computerworld) The SCO Group claims that beginning next week, it will show analysts where the Unix code it owns has been illegally copied into the Linux kernel. In an interview with *Computerworld*'s Patrick Thibodeau, **Chris Sontag**, senior vice president and general manager of SCOsource, the division of SCO Group that's in charge of protecting the company's intellectual property, discussed SCO's position.

Why should Linux users take your claim seriously? Think about if I was the CIO of a company and I'm going to be running my business on an operating system that has an intellectual property foundation that, by almost everyone's admission, is built on quicksand. There is no mechanism in Linux to ensure [the legality of] that intellectual property -- the source code being contributed by various people.

Your recent letter to 1,500 user companies outlining your claim was vague. What is it that you want from these companies? The one thing that we specifically want from those 1,500 companies that we directly sent those letters to is for them to not take our word on the warning that we sent ... but to seek an opinion of their legal counsel as to the issues that we raised.


Chris Sontag of The SCO Group Inc.

Should companies remove Linux from their systems? We're not making any specific recommendations at this time.

Are you considering suing Linux users that you notified? Anything is always a possibility. If you are going to enforce your contracts, claims and intellectual property, you have to be able to go to ultimately the endpoint of infringement.

How many lines of code in the Linux kernel are a direct copyright violation? It's very extensive. It is many different sections of code ranging from five to 10 to 15 lines of code in multiple places that are of issue, up to large blocks of code that have been inappropriately copied into Linux in violation of our source-code licensing contract. That's in the kernel itself, so it is significant. It is not a line or two here or there. It was quite a surprise for us.

Why did Microsoft decide to get a license from you? Completely unrelated. Microsoft has been adding more and more Unix compatibility and Unix interoperability into their products. We got in contact with them early this year to let them know that we had concerns about if they had all the appropriate intellectual property necessary to be providing that Unix capability.
We ended up in negotiations where they have licensed some of our Unix Systems V intellectual property from us for use in their Services for Unix products. ... They recognized that it was important to have appropriate intellectual property licenses for the property they are using.

Have you made a similar licensing offer to the 1,500 companies that received your letter? We have no

specific program or solution for solving this Linux intellectual property problem right now.

Exhibit 4

SCO Group Slaps IBM with $1B Suit

March 6, 2003

By Peter Galli, eSeminars

The SCO Group, which holds all the intellectual property rights to the Unix operating system, on Thursday filed suit against IBM for more than $1 billion in the State Court of Utah alleging that IBM made "concentrated efforts to improperly destroy the economic value of Unix, particularly Unix on Intel, to benefit IBM's new Linux services business."

The SCO filing, which eWEEK reported in an exclusive report last week, said that IBM originally entered into its Unix license agreement with AT&T in February 1985 in order to produce the AIX operating system. These agreements require that the Unix software code be held in confidence, and bar its unauthorized distribution or transfer.

RELATED LINKS
- SCO Group On the Licensing Warpath?
- SCO Professional Services: SCO What? (Baseline)
- SCO Group Readies New Platform

As a result of IBM's unfair competition and the resulting marketplace injury, SCO is requesting damages in an amount to be proven at trial, but no less than $1 billion, together with additional damages through and after the time of trial, according to the filing.

SCO is also demanding that IBM cease what it refers to as anti-competitive practices based on specific requirements sent in a notification letter to IBM. If the requirements are not met, SCO will have the authority to revoke IBM's AIX license 100 days following the receipt of SCO's letter.

In 1995, SCO purchased the rights and ownership of UNIX and UnixWare that had been originally owned by AT&T. This included source code, source documentation, software development contracts, licenses and other intellectual property that pertained to UNIX-related business. SCO became the successor in interest to the UNIX software licenses originally licensed by AT&T Bell Laboratories to all UNIX distributors, including Hewlett-Packard Co., IBM, Silicon Graphics, Sun Microsystems Inc., and many others.

"SCO is in the enviable position of owning the UNIX operating system," said Darl McBride, president and CEO, SCO, in an interview with eWeek Thursday. "It is clear from our stand point that we have an extremely compelling case against IBM. SCO has more than 30,000 contracts with UNIX licensees and

upholding these contracts is as important today as the day they were signed."

McBride said the bottom line was that SCO owned the source code to Unix and the right to that operating system. IBM had taken AIX and made it available to the Linux community in an unlawful way.

"IBM has been happily giving part of the AIX code away to the Linux community, but the problem is that they don't own the AIX code," he said. "And so it's a huge problem for us. We have been talking to IBM in this regard since early December and have reached an impasse. This was thus the only way forward for us."

The Unix contracts held by SCO were "extremely powerful and one of the remedies under the contract is that we have the ability to revoke their AIX license," he said. "We have to give them 100 days notice before we do that. If they don't cure the problems we have then we will revoke their license. We sent them a letter today informing them of that, so the 100-day clock has started."

Sun Microsystems, whose Solaris operating system is based on Unix, moved quickly Thursday to assure its customers that its licenses were all in order. John Loiacono, the vice president of Sun's operating platforms group, told eWeek on Thursday that the company had assured its customers and partners that it has licensing rights to Unix, for both SPARC and the recently available x86 systems.

"As part of a series of licensing agreements, Sun acquired rights to make and ship derivative products based on the intellectual property in Unix. This forms the foundation for the Solaris operating system that ships today.

"Sun's complete line of Solaris and Linux products -- including Solaris for the SPARC and x86 platforms, Trusted Solaris, the highly secure operating system, and Sun Linux - are all covered by Sun's portfolio of Unix licensing agreements. As such, Solaris and Sun Linux represent safe choices for those companies that develop and deploy services based on Unix systems," he said.

IBM corporate spokesman Bill Hughes told eWEEK on Friday morning that the company had not yet seen the lawsuit and was thus unable to comment on it at his time. A spokeswoman for Linux distributor Red Hat told eWEEK recently that the company had not been contacted by SCO with regard to any violations of its IP or other rights. A Microsoft spokesman declined immediate comment.

SCO, formerly Caldera International Inc., recently created the SCOsource division to create new licensing programs and products for its intellectual property. That move followed news last month that the firm was planning to make some users pay for some Unix software they were running, unlicensed, on Linux. The first deliverable from SCOsource was the licensing of its Unix shared libraries under a new product license called SCO System V for Linux. That product lets Linux customers run Unix applications, originally written for SCO OpenServer and SCO UnixWare, under Linux in an Intel environment.

"There has never been a mechanism in place to license the libraries to individuals and companies until now. In fact, the SCO OpenServer and UnixWare licenses expressly said that the libraries could not be used outside of those two operating systems," McBride said at the time.

At that time he also confirmed to eWeek that the company had hired high-profile attorney David Boies and his legal firm to investigate whether Windows, Mac OS X, Linux and versions of BSD infringed on the Unix intellectual property it owned. As SCO was concerned about a number of other issues relating to its IP, it had approached Boies to deal with the matter

While McBride said SCO expects much of the $10 million in licensing revenue to be raised amicably, it was willing to litigate in order to enforce its IP and other rights.

The company had received a lot of positive response to its SCOsource initiative, including calls from companies who were concerned they could be infringing on its intellectual property. "We have very positive programs for working through these issues as they arise.

"Some 95 percent of the companies we are in discussions with are co-operating well, but there are a

handful of cases where the discussions are not as amicable," he said, declining to be more specific about which companies were being uncooperative.

While SCO expected to get at least $10 million in revenue from SCOsource-related activities in the current quarter, "we cannot predict at this point what happens to that revenue stream in coming quarters. It's very early on in the process," he said.

But it appears that more legal action could well be on the cards going forward as McBride told eWeek that the unlicensed use of its Unix shared libraries was just the "tip of the iceberg as there is so much IP we're dealing with here, ranging from copyright, trade secrets, patents, source code and licensing issues.

"Because this range of IP-related issues is so broad-based and there is such a wide-range of players involved, we're just making sure we move forward very sure-footedly. We don't want to start running before we can walk. We're trying to take things in the right order," he said.

eWeek has also learned that a market research company is conducting a survey among open source and Linux shops to gauge how they would feel and react if SCO pursues legal action against those companies it believes are violating its intellectual property and technology rights. The president of an exclusively Linux/Open Source shop told eWeek last week that he had recently participated in a 20 minute phone survey that began with a statement to the effect that a company named SCO was pursuing legal remedy to protect its intellectual property.

The researcher had begun with a statement to the effect that a company named SCO was pursuing legal remedy to protect its intellectual property. "I had my suspicions, but as soon as they asked my familiarity with, respect for and opinion of, Red Hat and IBM, I knew what was going on. They also asked me about Sony and Ford - I believe several automotive components run on Linux," he said.

The next set of questions, the researcher said, had to do with his understanding of intellectual property laws. They were followed by questions regarding several aspects of intellectual property rights – from music to software and copyrighted printed materials. The questions then moved on to how his opinion of a company would be affected if certain statements were used.

"And all of them had to do with the way to spin public perception of a company that is suing a lot of other popular companies for using a product that helps them make money, but for which they refuse to pay the company that produced the original product," he said.

"They spun it about 15 different ways, using different verbiage and angles," he said. "They even went as far as asking me if I'd think more highly of the litigious company if they donated a portion of the funds generated from lawsuits to some charity."

McBride said his company had nothing to do with the market research.

"We did a channel survey recently to see where our solution partners were, what platforms they were running on, and what applications they were running. I don't remember any questions like these even being part of that survey. This latest survey wasn't commissioned by us, I can tell you that," he said.

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Exhibit 5

SCO® Announces Immediate Termination of IBM's Right to Use and Distribute AIX Software and Files for Permanent Injunction

SCO Terminates IBM's Right to Use or Distribute AIX Software, and Files Amended Complaint Against IBM, Including a Permanent Injunction Against IBM For Destruction or Return of All Copies of UNIX® System V Source Code And Permanent Cessation of AIX Distribution

LINDON, Utah, Jun 16, 2003 -- The SCO® Group (SCO)(Nasdaq: SCOX), a leading provider of business software solutions, today announced that it has terminated IBM's right to use or distribute any software product that is a modification of or based on UNIX® System V source code. In terminating IBM's right to use and distribute AIX, SCO is exercising the right of termination granted under the original 1985 UNIX Software and Sublicensing Agreements between IBM and AT&T. SCO notified IBM on March 6, 2003 that it intended to terminate in 100 days, as required under the Software Agreement, as modified by a side letter, if IBM did not correct certain actions that violate the agreement. As of the deadline -- 12:00 midnight, June 13, 2003 -- IBM had not complied with SCO's request, which triggered the termination. The termination is self-effectuating.

"The Software and Sublicensing Agreements and related agreements that SCO has with IBM includes clear provisions that deal with the protection of source code, derivative works and methods," said Mark J. Heise, Boies Schiller, & Flexner, LLP. "Through contributing AIX source code to Linux and using UNIX methods to accelerate and improve Linux as a free operating system, with the resulting destruction of UNIX, IBM has clearly demonstrated its misuse of UNIX source code and has violated the terms of its contract with SCO. SCO has the right to terminate IBM's right to use and distribute AIX. Today AIX is an unauthorized derivative of the UNIX System V operating system source code and its users are, as of this date, using AIX without a valid basis to do so."

SCO is also today filing an amendment to the complaint against IBM for a permanent injunction requiring IBM to cease and desist all use and distribution of AIX and to destroy or return all copies of UNIX System V source code. In the amended complaint, SCO is seeking additional damages from IBM's multi-billion dollar AIX-related businesses that began accruing Friday, June 13th at midnight. This amended complaint was filed today with the United States District Court of Utah where SCO's court case against IBM is currently pending.

"IBM has chosen to continue the actions that violate our source code and distribution agreements," said Darl McBride, President and CEO of The SCO Group. "Over the last several months, SCO has taken all of the steps outlined in the UNIX licensing agreements to protect its rights. Today SCO is requesting that the court enforce its rights with a permanent injunction. IBM no longer has the authority to sell or distribute AIX and customers no longer have the right to use AIX software."

About SCO

The SCO Group (Nasdaq: SCOX) helps millions of customers in more than 82 countries to grow their businesses everyday. Headquartered in Lindon, Utah, SCO has a worldwide network of more than 11,000 resellers and 8,000 developers. SCO Global Services provides reliable localized support and services to partners and customers. For more information on SCO products and services, visit http://www.sco.com .