



June 12, 2003

Sam Palmisano
Chief Executive Officer
International Business Machines Corporation
Old Orchard Road
Armonk, NY 10504

Re: Software Agreement Number Soft-00015,
Sublicensing Agreement Number Sub-00015A
Substitution Agreement Number XFER-00015B
Side Letter dated February 1, 1985
Amendment X dated October 16, 1996
Amendment 2 dated October 16, 1996
(Collectively, the Related Agreements)

Dear Mr. Palmisano:

On March 6, 2003, I informed you in exhaustive detail about IBM's breaches of the Related Agreements. These breaches include IBM's contribution to open source of Software Products (as defined in the Agreements), including derivative works and protected methods, in violation of the express terms of the Software Agreement. Despite IBM's wrongdoing detailed in the accompanying Complaint and in the termination letter, your lawyers thereafter claimed the need for more detail. We then met with your lawyers on June 2, 2003 to clarify for them IBM's improper use of the protected Software Products, including derivative works and methods. David Boies presented the overall impropriety of donating AIX to open source in violation of the Related Agreements, including a PowerPoint presentation showing IBM's contribution of protected methods to open source.

We also informed you that IBM is violating the export control provisions of the Software and Sublicensing Agreements by indirectly allowing access to the Software Products to countries and organizations who are prohibited from such access under regulations of the United States Department of Commerce, Bureau of Industry and Security.

On May 30, 2003, we sent a termination letter to your wholly owned subsidiary, Sequent Computing Systems, Inc. ("Sequent"), based on its substantial contribution of protected NUMA, SMP and RCU technology to the open source community. Sequent has Software and Sublicensing Agreements similar to IBM and was violating the terms of its agreements by contributing these protected technologies to open source. Based on Sequent's improper transfer and use of the protected Software Product, Sequent's license also has been terminated, subject to any efforts to cure during its 60 day period.

Since the time of these termination letters and our meeting at your corporate offices, several situations have arisen that are causing us concern regarding IBM's intention. As an

initial matter, at the meeting, we asked your lawyers to determine the accuracy of statements attributed to top IBM executives. Specifically, IBM personnel have stated unequivocally that IBM has contributed AIX to open source and intends to contribute **all** of AIX to open source. Clearly, such actions violate the Related Agreements and, if IBM contributed all of AIX to open source, it would be financially devastating to SCO. We have not heard from anyone providing us assurances that IBM has no intention of contributing AIX, in whole or in part, to open source. This failure to respond is hardly the good faith required by the Related Agreements during the cure period.

Other acts taken in the last two weeks, apparently at IBM's direction, make the issue of IBM's future contributions of AIX and protected methods under the Related Agreements all the more pressing. On May 28, 2003, Jack Messman, CEO of Novell, issued a false press release proclaiming that Novell, not SCO, owned the copyrights to UNIX and the UNIX source code. We confronted Mr. Messman with documents signed by Novell which established his public statements were blatantly false. According to independent sources, his false press release was timed to be issued on the same day as our earnings announcement. As a result, despite announcing record earnings, our stock lost over thirty percent of its value based on Novell's false statements. When I confronted Mr. Messman about his improper actions, he alluded to participation by IBM in the issuance of this false press release.

On June 9, 2003, I received another letter from Mr. Messman. This time Mr. Messman made clear the connection to IBM—he copied Ron Lauderdale, Vice President and Assistant General Counsel at IBM. In his latest letter, Mr. Messman undertook the ploy of directing SCO to “waive” the termination of IBM's “SVRX License”. For reasons that should have been apparent to Mr. Messman, Novell lacks the legal authority to issue such a directive.

After explaining to Mr. Messman that he is without authority to direct SCO to “waive” termination, on June 12, 2003, Mr. Messman sent a letter to SCO and IBM in which he purports to “waive” SCO's rights to terminate IBM's SVRX License. On behalf of IBM, he argues that the SVRX License is irrevocable and that Novell waives all of SCO's rights. Mr. Messman is, once again, wrong. Please be advised that IBM cannot rely upon Mr. Messman's “waiver” of the termination. To appreciate his complete lack of authority to waive SCO's right to terminate, I wanted to share with you the relevant contractual language from the Novell Asset Purchase Agreement so you can see what SCO owns and what its rights are under these agreements.

SCO received from Novell under the September 19, 1995 Asset Purchase Agreement the following:

All of Seller's right, title and interest in and to the assets and properties of Seller relating to the Business (collectively the “Assets”) identified on Schedule 1.1(a) hereto. (Asset Purchase Agreement, Para. 1.1)

The “Assets” are identified in Schedule 1.1(a) of the Asset Purchase Agreement to include the following:

- a. "[A]ll *rights and ownership of UNIX and UnixWare, including...source code...*" (Schedule 1.1(a), Para. I)
- b. "*Software and Sublicensing Agreements*-This includes the source code and sublicensing agreements that Seller has with its OEM, End User and Educational customers. The total number of these agreements is approximately 30,000." (Schedule 1.1(a), Para. III-L)
- c. "All of Seller's *claims... against any parties* relating to any right, property or asset included in the Business." (Schedule 1.1(a), Para. II)

As set out above, SCO acquired all of *Novell's right, title and interest*: (a) to the AT&T *Software and Sublicensing Agreements*, including the AT&T / IBM Software Agreement, and (b) to all *claims against any parties*. SCO therefore acquired all right, title and interest to enforce the Software and Sublicensing Agreements against IBM, without answering to Novell. It is ludicrous to suggest, as Mr. Messman does, that Paragraph 4.16(b) of the Asset Purchase Agreement gives Novell the unfettered right to "waive" all of SCO's ownership rights, including termination rights whenever a licensee breaches the Related Agreements. After the royalty buyout, the language designed to protect Novell's royalty stream set forth in Para. 4.16 (b) of the Asset Purchase Agreement became moot.

Novell's rights were further delineated by Amendment No. 2 to the Asset Purchase Agreement. The pertinent language of Amendment No. 2 is as follows:

Except as provided in Section C below, and *notwithstanding the provisions of Article 4.16 Sections (b) and (c) of the Agreement*, any potential transaction with an SVRX licensee which concerns a buy-out of any such licensee's royalty obligation shall be managed as follows:

* * *

This Amendment does not give Novell the right to increase any SVRX licensee's rights to SVRX source code, nor does it give Novell the right to grant new SVRX source code licenses. In addition, *Novell may not prevent SCO from exercising its rights with respect to SVRX source code in accordance with the Agreement.* [Amendment No. 2 Para. B.5)

Amendment No. 2 applies to IBM as a royalty buy-out customer. As set forth above, SCO has already acquired all of Novell's right, title and interest in and to the Software and Sublicensing Agreements that are designed to contractually protect the source code. Novell has no rights whatsoever to "direct" SCO to waive its claims against IBM under the AT&T / IBM Software and Sublicensing Agreements, the very agreements designed to protect the *integrity and confidentiality of the UNIX source code*.

Mr. Messman, on behalf of IBM, also mentioned the contract language between SCO and IBM for his attempt to waive termination of the IBM "SVRX License". Consistent with IBM's statements in ongoing press releases regarding SCO's enforcement action, Mr. Messman refers

to the "irrevocable and perpetual" language of Amendment X, Paragraph 1. Not surprisingly, he failed to refer to the remaining language in Paragraph 1, which reads as follows:

Notwithstanding the above, the irrevocable nature of the above rights will in no way be construed to limit Novell's or *SCO's rights to enjoin or otherwise prohibit* IBM from violating any and all of Novell's or *SCO's rights* under this Amendment No. X, *the Related Agreements*, or under general patent, copyright, or trademark law.

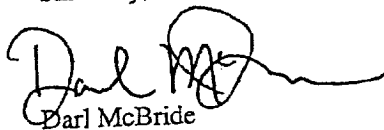
Under this language, SCO may either enjoin or otherwise prohibit IBM from violating any and all of SCO's rights under the AT&T / IBM Agreements. The Software and Sublicensing Agreements, as modified by the Side Letter, give authority to SCO to terminate such Agreements in the event of material breach by IBM, and establishes the procedure for such termination. SCO has followed this procedure.

IBM's participation in Novell's most recent activity only adds to our concern that IBM may take some precipitous action regarding AIX, other protected derivative works or protected methods. Moreover, the foregoing actions by IBM certainly cannot constitute "mutual good faith efforts to resolve any alleged breach short of termination." Thus, because IBM has violated the Related Agreements, as specified above, and has failed to cure within the 100 day notice period, IBM's right to use and distribute the Software Products including derivatives and modifications, specifically AIX, will terminate as of tomorrow, June 13, 2003. Pursuant to paragraph 6.03 of the License Agreement, IBM shall discontinue use of and return or destroy all copies of the Software Products as defined in the Related Agreements, which includes derivative works and methods. Please make the necessary arrangements to effectuate this termination by the end of tomorrow.

In addition, based on this recent action of IBM, we need written confirmation from IBM that, during the pendency of this lawsuit, IBM and its wholly owned subsidiaries, including Sequent, will not contribute any UNIX source code, any or all portions of AIX or Dynix, or any protected methods to open source. Please provide such written confirmation immediately

Thank you for your attention to these important matters.

Sincerely,



Darl McBride
President and CEO
The SCO Group, Inc.

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Encls.