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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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THE SCO GROUP,	)	Case No. 2:03CV0294DAK
	)	
Plaintiff,	)	Hon. Dale A. Kimball
	)	Magistrate Judge Brooke C. Wells
v.	)	
	)	
INTERNATIONAL BUSINESS	)	<b>DECLARATION OF</b>
MACHINES CORPORATION,	)	<b>ERIK W. HUGHES</b>
	)	
Defendant.	)	

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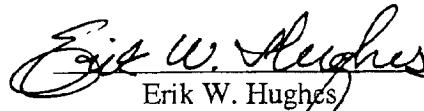
1. My name is Erik W. Hughes. As Director of Product Management for The SCO Group, Inc. ("SCO"), I have personal knowledge of the following facts. I submit this declaration in support of SCO's Memorandum in Opposition to IBM's Motion for Partial Summary Judgment on SCO's Contract Claims, in support of SCO's Memorandum in Opposition to IBM's Motion for Partial Summary Judgment on IBM's Claim of Copyright Infringement (Eighth Counterclaim), and further to my deposition of May 11, 2004.
2. As reflected in the SCO press release attached as Exhibit A, SCO released the product called SCO Linux Server 4.0 on November 19, 2002. SCO marketed and sold this product for only a few months, from November 19, 2002, until May 14, 2003.
3. As I testified at my deposition, and as reflected in the SCO press release attached as Exhibit B, SCO suspended the sale and marketing of its Linux-related products, including SCO Linux Server 4.0, on May 14, 2003. This was shortly after SCO discovered that IBM had contributed SCO's copyrighted UNIX code to Linux without SCO's approval. After that date, SCO allowed only pre-existing customers to purchase such products in accordance with its obligations to those customers. Since May 14, 2003, SCO has not entered into any further obligations to sell Linux Server 4.0 or OpenLinux 3.1.1.
4. From August 5, 2003, until May 31, 2004 (the date of the last sale), SCO sold 45 units of SCO Linux Server 4.0, for gross revenue of \$5,294. During this same period, 70 units were returned, which resulted in a loss of \$6,473, so net sales for this period were – 25 units and net revenue was – \$1,179.

5. After August 5, 2003, there were 401 sales of SCO OpenLinux 3.1.1, for total gross revenue of \$50,796. During the same period, 22 copies of this product were returned, so net revenue was \$50,025.
6. As indicated in the SCO press release attached as Exhibit C, August 5, 2003, was the first date on which SCO offered its SCO Intellectual Property License for sale. SCO determined to offer this license only because IBM had misappropriated SCO's proprietary code and contributed hundreds of thousands of lines of that code to Linux.
7. In accordance with its obligations to current customers, from May 14, 2003, until May 31, 2004, SCO sold 83 units of SCO Linux Server 4.0, for gross revenue of \$9,209. During this same period, 79 units were returned, which resulted in a loss of \$7,360, so net sales for this period were 4 units and net revenue was \$1,849.
8. As reflected in Exhibit B, and as reconfirmed in its letter of June 23, 2003, a copy of which is attached as Exhibit D, SCO has never sought to sell a SCO Intellectual Property License for Linux to anyone who received a Linux distribution from SCO. Rather, SCO has agreed to hold its Linux customers harmless from any SCO intellectual property issues regarding Linux.
9. SCO copied, advertised and distributed the Linux kernel and other related Linux software for years before 2003. At all times, SCO distributed the Linux kernel and other GPL licensed packages as expressly provided under the General Public License ("GPL"). SCO's Linux distributions complied with all of the conditions set forth in section 1 and section 3 of the GPL. No royalty or licensing fees of any nature were charged. SCO never repudiated the GPL.

10. Prior to suspending its sale of Linux-related products in May 2003, SCO had a promising Linux business with longstanding customers and pre-existing binding sales and service contracts. The Linux product line, including the operating system, services, support, professional services, education, and layered applications, had accounted for 5-10% of SCO's revenues.
11. Until December 31, 2004, SCO is required by contract to provide its Linux customers with password-protected internet access to certain Linux files. Promptly thereafter, SCO will delete all remaining Linux files from its internet servers. Thus, while SCO has not made any significant distribution of any Linux product since May 2003, SCO's Linux "distribution" will totally cease by the end of 2004.
12. Prior to the filing of its Counterclaim on August 6, 2003, IBM never provided SCO with any notice of its claim that SCO's rights under the GPL had terminated and that SCO was infringing IBM's copyrights.

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

December 7, 2004

  
Erik W. Hughes