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Alan L. Sullivan (3152)
Todd M. Shaughnessy (6651)
Snell & Wilmer L.L.P.
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Facsimile: (801) 257-1800

CRAVATH, SWAINE & MOORE LLP
Evan R. Chesler (admitted pro hac vice)
Thomas G. Rafferty (admitted pro hac vice)
David R. Marriott (7572)
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
(212) 474-1000

*Attorneys for Defendant International Business
Machines Corporation*

**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH**

THE SCO GROUP, INC., a Delaware
corporation,

Plaintiff/Counterclaim-Defendant,

-against-

INTERNATIONAL BUSINESS
MACHINES CORPORATION, a New York
corporation,

Defendant/Counterclaim-Plaintiff.

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

DECLARATION OF ROBERT F. BUCCO

I, Robert F. Bucco, declare as follows:

1. I am a partner at CBM of America, Inc., ("CBM"), which has its headquarters in Deerfield Beach, Florida, and an office in Raritan, New Jersey. CBM is a company primarily involved in the resale of telecommunications equipment.

2. This declaration is submitted in connection with the lawsuit filed by The SCO Group against International Business Machines Corporation, known as SCO v. IBM, Civil Action No. 2:03CV-0294 DAK (D. Utah 2003). Except as may be stated otherwise, this declaration is based upon personal knowledge.

3. I joined AT&T in 1970 as an electrical engineer. In 1976 I joined the UNIX department of AT&T in Murray Hill, New Jersey as an intern. Thereafter I accepted an assignment in White Plains, working for the Long Lines department of AT&T. Beginning in approximately 1979, I headed a support team with responsibility for both AT&T hardware and software, including UNIX. I held this position until I left AT&T in 1989.

4. During the approximately 19 years that I was employed by AT&T, I worked extensively with UNIX operating systems, including the source code for those systems. Specifically, I worked with early versions of UNIX, such as the First, Fifth, Sixth and Seventh Editions, System III and the various releases of System V. While I was an intern in the UNIX department of AT&T in Murray Hill, for example, it was my job to prepare and send tapes of UNIX operating systems, including source code, to universities. At this time, AT&T began to widely license UNIX operating systems to universities for \$1. AT&T shipped source code with the operating systems for no

additional charge. Later, I worked with UNIX operating systems and UNIX source code as a programmer and then as a trouble shooter.

5. While I was employed by AT&T, the company did not, to my understanding, view the UNIX operating system, including the source code for the system, as a significant commercial asset. To my knowledge, no one within AT&T viewed the UNIX operating system, including its source code, as a trade secret. That is in part because there were limits before 1984 on the businesses in which AT&T could participate. AT&T's Bell Labs developed UNIX technology for internal use at AT&T. Even when AT&T entered the computer business, however, AT&T did not view UNIX source code as a significant commercial asset. It was not until after I left AT&T that I understand there was a real effort to commercialize UNIX.

6. So far as I could tell, neither AT&T nor its employees took special measures to keep the UNIX operating system or the UNIX source code confidential. While I was employed at AT&T, source code for the UNIX operating system was freely available for use by AT&T employees. Employees were, for example, permitted remote access to the UNIX source code. I was never asked or required to keep confidential any of my work with UNIX source code. Nor was I asked to keep the code itself confidential.

7. In addition to being freely available within AT&T, AT&T made UNIX source code widely available outside of the company, including in particular, to universities. At times, the code was distributed outside of AT&T, without any restriction on its use. It was AT&T's strategy during this period to distribute Unix, including source code, very widely to generate interest in the Operating System and to lay the groundwork for the potential future development of a UNIX customer base. I do not believe that

AT&T placed any significant restrictions on use of the source code during the period I was employed at AT&T.

8. During my tenure at AT&T, it did not, to my knowledge and so far as I could tell, have a practice or policy systematically to ensure or enforce the confidentiality of UNIX source code. I am not aware of a single instance in my 19 years at AT&T, during which I worked extensively with UNIX source code, in which AT&T took measures to enforce a breach of confidentiality with respect to UNIX source code. I am not aware of any occasion on which, for example, an AT&T employee was disciplined for not keeping UNIX source code confidential. Nor am I aware of any instance in which AT&T enforced a confidentiality provision in any of its UNIX licenses. This is because, in my view, people at AT&T did not really view UNIX source code as confidential.

9. In approximately March 1989, I left AT&T to start and operate Tech Assist, Inc., a company of which I was the sole owner. Tech Assist, which was based in Hillsborough, New Jersey, was in the business of reselling telecommunications equipment, including data switchers, routers and corporate servers. I operated Tech Assist until March of 1993, when it merged into CBM, in which I became a partner.

10. While operating Tech Assist, I purchased computer systems, which almost always included related operating systems, primarily from AT&T, AT&T Bell Labs and AT&T Capital Corp. ("AT&T companies"), for resale in the aftermarket. During the period from 1989 to March of 1993, I purchased from the AT&T companies a large number of 3B20, 3B5, 3B15 and 3B2 computer systems, many of which included related UNIX operating systems and source code. I also purchased from the AT&T

companies Sun, DEC and other computer systems, including related UNIX operating systems and source code.

11. All of the machines and operating systems, including source code, that I acquired from the AT&T companies were acquired "as is". The AT&T companies did not offer any warranty on the hardware, software or source code I acquired from them. Nor did they place any restriction on Tech Assist's use or resale of these materials. I acquired the machines, operating systems and source code without agreeing to modify them in any way (such as by wiping clean the disc drives) and on the condition, and with the understanding, that I could use the machines, and any software or code they might contain, for any purpose I might choose.

12. During this period (1989-1993), Tech Assist purchased or acquired from the AT&T companies approximately 50 3B20 machines, approximately 100 3B5 and 3B15 machines and more than 100 3B2 machines. I also purchased or acquired approximately 150 other machines, such as Sun servers, from the AT&T companies. Approximately half of the 3B20 machines and a smaller, but still significant number of the other machines I purchased or acquired included not only UNIX operating systems, but also a full set of the source code for those systems. For the most part, these machines included UNIX System V, Release 3, source code. A number of the machines included UNIX System V, Release 4, source code.

13. I specifically recall, for example, that Tech Assist resold two Sun servers to an acquaintance of mine by the name of Tom Roehr. Tech Assist acquired these servers, including a copy of UNIX System V, Release 4, source code, in "as is" condition from AT&T Capital Corp. I remember Tech Assist's purchase of these Sun

servers and software from AT&T and Tech Assist's resale of them to Mr. Roehr because I had worked with Mr. Roehr and considered him a friend. Both Mr. Roehr and I were surprised to find System V, Release 4, source code on the Sun servers purchased by Mr. Roehr because by this time (approximately 1993), it was less common to find System V, Release 4, source code on machines acquired "as is" from the AT&T companies.

14. To reiterate, all of the machines, operating systems and source code that Tech Assist acquired from the AT&T companies were acquired "as is" without any restriction on their use or any indication that they were in any respect confidential or to be kept confidential. I believe that all of Tech Assist's suppliers understood that Tech Assist purchased machines and any accompanying software and source code from them for purposes of resale in the same condition in which they were acquired, i.e., "as is", except that they might be refurbished. Moreover, I believe that all of Tech Assist's suppliers understood that the materials they acquired would very likely be resold in the same condition in which they were acquired and that these suppliers did not consider anything about them to be confidential or proprietary.

15. None of the AT&T companies or anyone else has ever advised me or, to my knowledge, anyone else at Tech Assist that the computer systems, software or source code that Tech Assist acquired from the AT&T companies contained confidential or proprietary information or trade secrets of AT&T or any other entity. Tech Assist has never been asked to wipe clean any of the machines it purchased. To the best of my understanding, none of the servers, software or source code that Tech Assist acquired from the AT&T companies constituted or incorporated any confidential or proprietary information or trade secrets. To my knowledge, the AT&T companies did not consider

either the computer systems, software or source code on them at the time of Tech Assist's acquisition to be confidential or proprietary information on or subject to a claim of trade secret. To the best of my belief, these materials, including UNIX System V source code, have been available without restriction to the general public. I understood and understand that I could and may properly use and disclose the hardware and source code as I wish.

16. As a computer reseller, Tech Assist resold computer systems, sometimes including software and source code, in the aftermarket to a variety of customers, such as local telephone companies and individuals. Tech Assist resold the machines that it acquired from the AT&T companies, including any software and source code included on the machines at the time Tech Assist acquired them. Like the AT&T companies, Tech Assist sold the machines and software that it acquired from the AT&T companies "as is". Tech Assist did not offer any warranty on these materials and did not expect or understand that there is any confidentiality obligation associated with the servers and software that it resold.

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

Executed: August 23 2003.
Deerfield Beach, Florida


Robert F. Bucco