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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.,

Plaintiff/Counterclaim-Defendant,

-against-

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant/Counterclaim-Plaintiff.

**DECLARATION OF
MICHAEL J. DEFAZIO**

Civil No. 2:03 CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

I, Michael J. DeFazio, declare as follows:

1. I was the head of the organization responsible for product management, marketing and licensing terms and conditions for the Unix operating system from 1984 until 1995, first with American Telephone and Telegraph Company (“AT&T”), then with Unix System Laboratories, Inc. (“USL”), and finally with Novell, Inc. (“Novell”). After December 1995, when Novell sold certain of its Unix related assets to The Santa Cruz Operation, Inc. (“Santa Cruz”), now known as Tarantella, Inc., I continued to be involved in Novell’s remaining Unix business primarily in an administrative and an advisory capacity.

2. This declaration is submitted in connection with the lawsuit entitled The SCO Group, Inc. v. International Business Machines Corporation, Civil Action No. 2:03CV-0294 DAK (D. Utah 2003). This declaration supplements my prior testimony in this lawsuit, which I incorporate herein. Except as stated otherwise, this declaration is based upon personal knowledge.

3. Based on my employment at AT&T, USL and Novell, I have firsthand knowledge and experience regarding AT&T’s Unix license agreements. During the period from 1984 through 1995, I was the business person with primary responsibility for licensing the Unix operating system for AT&T, USL and Novell.

4. While I was the business person with primary responsibility for licensing the Unix operating system for AT&T, USL and Novell, none of those entities sought any ownership or control rights as to the original source code or the related methods and concepts of any Unix developments or additions the licensees themselves created.

5. Licensees were told that they owned and could do as they wished with their own original works, even if those works were included in a modification or derivative work of our UNIX software, so long as they protected AT&T's Unix source code.

6. We expected that our licensees would accept and rely upon these assurances, and we understood that they did. I know, for example, that IBM was developing a flavor of Unix to which it was adding original IBM code, methods and concepts, and I understood that it would not have done so if it believed AT&T, USL and Novell would control IBM's original or homegrown works.

7. Moreover, we were aware that our licensees were publicly disclosing their own code, methods and concepts, even though they might be part of a modification or derivative work of our Unix software. They did so through a variety of media -- from highly technical manuals for programmers to more basic books designed for end users. These publications were not secret. We did not object to such disclosures because they were within the licensees' rights under the contracts, and were consistent with what we had told them over the years concerning their ownership rights to their source code.

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

Executed: September 21 2006.

Bedminster, New Jersey


Michael J. DeFazio