

SNELL & WILMER LLP
Alan L. Sullivan (3152)
Todd M. Shaughnessy (6651)
Amy F. Sorenson (8947)
15 West South Temple
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)
David R. Marriott (7572)
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
(212) 474-1000

*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
DAVID W. FRASURE**

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

I, David W. Frasure, declare as follows:

1. From 1984 through 1987, I was national sales and licensing manager at AT&T Technologies, Inc. ("AT&T") and was responsible for licensing Unix software and related materials.

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 previous declarations and deposition testimony in this matter, which I incorporate by reference. Except as stated otherwise, this declaration is based upon personal knowledge.

3. As I stated in my previous testimony, I personally negotiated, on behalf of AT&T, its UNIX licensing agreements with IBM and Sequent. I have firsthand knowledge of those agreements, as well as many other UNIX licensing agreements.

4. In addition to negotiating UNIX license agreements, I (and others at AT&T and USL) communicated with our licensees, before and after the execution of licensing agreements, concerning the parties' respective rights relating to AT&T's UNIX software. I did so in writing, or on the phone, in face-to-face conversations and in group presentations.

5. Over the years I assured our UNIX licensees on many occasions that they owned any code, methods or concepts that they developed themselves, whether or not that material was included in a modification or derivative work of our UNIX software. I assured licensees in no uncertain terms that they could do as they wished with their

original works as long as they kept our Unix software confidential (unless, of course, it was no longer confidential).

6. I do not know exactly how many licensees asked what could be done with their original works, but I know that (over the years) I communicated that message to hundreds, if not thousands, of persons or entities. My job included making public presentations and speaking on behalf of AT&T and USL at conferences, such as USENIX, which were usually attended by large groups of people. I was often asked, and often told people, that UNIX licensees could freely use and disclose their original or homegrown UNIX code, methods and concepts -- whether or not they were included in a modification or derivative work of our UNIX software.


7. I have no doubt our licensees relied on our statements. I certainly expected that licensees would take me at my word. If licensees had not felt they could take me at my word, then it would have been difficult for AT&T to manage its licensing business since a big part of the business was dealing with licensees.

8. It was my understanding that some of our licensees, like IBM and Sequent, developed their own variants of UNIX and built businesses around them. Some licensees even disclosed publicly the code, methods and concepts that they had developed and were using in their variants of UNIX. We of course took no action to stop these activities because they were perfectly consistent with what we told licensees they could do with their original or homegrown material.

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

Executed: September 4, 2006.

Wilson, North Carolina



David W. Frasure