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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 MARK MAGEE

I, Mark Magee, declare as follows:

1. I am an owner of The Asset Recovery Center ("Asset Recovery"), which has its headquarters in Eatontown, New Jersey. Asset Recovery is a reseller of used computer 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 April 1983 as an attorney and manager in the contract development department in Morristown, New Jersey. In 1985, I transferred to AT&T Capital Corp., where I worked as an operations manager. In 1990, I relocated to AT&T Capital Corp.'s offices in Piscataway, New Jersey, where I managed and ran AT&T Capital Corp.'s business of remarketing surplus equipment. I held this position until I left AT&T in 1996.
4. While I was employed at AT&T Capital Corp. in Piscataway, it was in the business, among others, of remarketing surplus equipment and discontinued products of AT&T and its affiliates, including AT&T Bell Laboratories and Bell Core. It was my job to resell used or discontinued computer systems, such as 3B20, 3B5, 3B15 and 3B2 machines, in the aftermarket. During the approximately six years that I ran AT&T Capital Corp.'s surplus equipment business, I negotiated the sale of and resold thousands of AT&T computer systems, including more than 100 machines from Bell Labs.

5. All of the machines that I sold while at AT&T Capital Corp., including any operating systems and source code that may have been on them, were sold "as is". Neither I nor anyone else at AT&T Capital Corp. or any other AT&T entity, to my knowledge, cared whether there was software or source code on the machines that we sold. Our business concerned the sale of hardware, and whether there was software or source code on the systems we sold made no difference to our business plan.

6. AT&T Capital Corp. did not offer any warranty on either the equipment that it resold or any software or source code that might have been on that hardware at the time of resale. Nor did AT&T Capital Corp. place any restriction on its customers' use or resale of these materials. AT&T Capital Corp.'s customers' acquired the machines, and any operating systems and source code that might have been on them, without agreeing to modify them in any way (such as by wiping clean the disc drives). AT&T Capital Corp. resold these materials on the condition, and with the understanding, that its customers could use the machines, and any software or code they might contain, for any purpose they might choose.

7. No one at AT&T Capital Corp. or at any other company ever advised me or, to my knowledge, anyone else at AT&T Capital Corp., that the computer systems, including any software or source code that they might include, contained confidential or proprietary information or trade secrets of AT&T or any other entity. No one at AT&T Capital Corp. or any other company ever asked me to wipe clean any of the machines that it was my job to resell. To my knowledge, none of the AT&T companies considered the computer systems that AT&T Capital Corp. resold, including any software

or source code on them, to be confidential or proprietary information or subject to a claim of trade secret.

8. I am advised that some of the machines AT&T Capital Corp resold in the aftermarket contained UNIX operating systems and the source code for those systems including UNIX System V, Release 3, source code and UNIX System V, Release 4, source code. Although I do not have personal knowledge that the machines I sold contained source code, it does not surprise me.

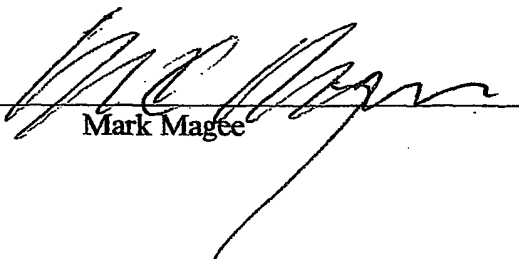
9. While I was employed by AT&T, the company did not, to my understanding, view the UNIX operating system, including the source code for the system, as a trade secret. So far as I could tell, neither AT&T nor its employees took measures to keep the UNIX operating system or the UNIX source code confidential. While I was employed at AT&T, source code for the UNIX operating system seemed to be freely available for use by AT&T employees. For example, I was never asked to keep the code confidential. I understood that it was AT&T's strategy during this period to distribute Unix, including source code, very widely to generate interest in the operating system.

10. 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 13 years at AT&T, 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. Again, I was given machines from Bell Labs and Bell Core without any regard as to whether they contained UNIX source code.

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

Executed: August <sup>22</sup>, 2003.  
Eatontown, New Jersey

  
Mark Magee