

264

Brent O. Hatch (5715)
HATCH, JAMES & DODGE, P.C.
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 363-6363
Facsimile: (801) 363-6666

RECEIVED CLERK

2004 APR 19 P 8:42

COPY

U.S. DISTRICT COURT
DISTRICT OF UTAH

Stephen N. Zack
Mark J. Heise
BOIES, SCHILLER & FLEXNER LLP
100 Southeast Second Street, Suite 2800
Miami, Florida 33131
Telephone: (305) 539-8400
Facsimile: (305) 539-1307

Attorneys for Plaintiff The SCO Group, Inc.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

THE SCO GROUP, INC.
a Delaware corporation,

Plaintiff,

vs.

INTERNATIONAL BUSINESS
MACHINES CORPORATION, a
New York corporation,

Defendant.

DECLARATION OF CHRIS SONTAG

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

BEFORE ME, personally appeared the undersigned authority, **CHRISTOPHER S. SONTAG**, who being duly sworn, deposes and says:

1. I am Senior Vice President of The SCO Group, Inc. ("SCO").
2. As requested by the Court's order dated March 3, 2004 ("Order"), this Affidavit details the efforts of SCO in complying with the Order
3. After receiving this Court's Order, SCO located documents that were inadvertently not produced in response to IBM's earlier requests, including, for example, "sent" e-mails from certain executives. Because the company uses a variety of different e-mail servers, reasonable steps were taken to collect responsive documents from servers within the company and from individuals who likely would have responsive documents. Since the time of the entry of the order, SCO has collected additional documents, both electronic and hard documents, from numerous people within the company, including Albert Fu, Allan Clark, Andy Nagle, Benoy Tamang, Biff Traber, Bill Broderick, Bishop Clark, Blake Stowell, Bruce Grant, Chris Sontag, Craig Bushman, Danny Belitski, Darl McBride, Dave Prosser, David Gurr, Duff Thompson, Ed Iacobucci, Eric Hughes, Francisco Dinis, Gregory Blepp, Janet Sullivan, Jay Peterson, Jeff Hunsaker, Jim Ferrigno, Joanie Bingham, Joe Bartnik, John Boland, John Dubios, John Maciaszek, Kate Andrews, Kerri Wallach, Kevin Auger, Kevin Snow, Kristjan Christianson, Larry Gasparro, Mark Hoffman, Mary Freeman, Mary Gerbi, Michael Davidson, Michael Olson, Parul Chaudhary, Paul Hatch, Philip Langer, Porter Olsen, Randall Richards, Reg Broughton, Robert Bench, Rohit Chawla, Ryan Tibbitts, Sean Wilson, Sergey Babkin, Shaun Cutler, Simon Baldwin, Steve Boardwell and Steve Cakebread. As a result, SCO has produced approximately 183,000 pages of additional documents since the date of the Order and SCO

continues to review for any additional documents. To date, SCO has reviewed approximately 1.6 million pages of documents (not including source code) that were potentially responsive and has produced electronically over 600,000 pages of documents, not including source code, in response to IBM's requests.

4. Besides production of documents since the date of the Order, SCO has also produced a dozen CDs containing source code requested by IBM. Thus, to date, SCO has produced 58 CDs of source code representing over 400 million lines of UNIX code and approximately 300 million lines of Linux code.
5. In response to the remaining items specified on page two of the Order, SCO undertook significant efforts to provide materials responsive to each of those items. As to item 2, shortly after March 24, 2004, which is when IBM provided the limited source code it was required to provide to SCO in the requested format, SCO electronically reviewed the pertinent source code from AIX and Dynix/ptx that IBM contributed to Linux. In addition to the items previously identified, SCO identified additional specific lines of code that it could currently identify. Moreover, when SCO indicated gaps existed in the source code produced and asked IBM to voluntarily provide the missing information, IBM refused to do so voluntarily and indicated that SCO instead should file a memorandum with the Court setting forth the need for the additional source code, which SCO intends to do. In addition, although in Table A of SCO's 70-page January response SCO noted that entire files were copied almost verbatim from Dynix/ptx into Linux, which made the

identification of specific lines redundant and unnecessary, SCO nonetheless has specifically identified for IBM those lines of code contributed by IBM from Dynix/ptx.

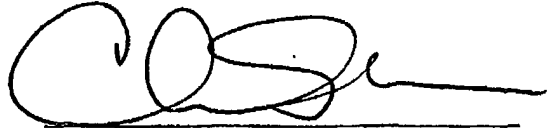
6. As to Item 3, the kernels of AIX and Dynix/ptx in their entirety are modifications and derivative works based on UNIX System V. Nonetheless, SCO had its engineers and/or consultants identify all of the files in AIX and Dynix/ptx that have attributions to AT&T, SCO's predecessor in interest and the creator of UNIX. SCO thereafter undertook the task of identifying specific lines within those files that came from UNIX System V and from which AIX and Dynix/ptx are necessarily derived. However, because of the delay involved in getting the source code in the appropriate format from IBM, the time-consuming nature of identifying specific lines in each file, and IBM's ongoing refusal to produce design documentation, programmer notes and change logs for the files of code, I am advised that there are likely significant additional portions of AIX and Dynix/ptx that may be identified by SCO as its investigation continues. Of course, for the continuing investigation to be meaningful, it is imperative that SCO be provided copies of all versions of AIX and Dynix/ptx since their inception, together with all design documents, programmer notes and version control data, because earlier versions will have much more lines of code from UNIX System V showing that AIX and Dynix/ptx are modifications or derivative works based on UNIX System V.

7. As to item 4, SCO's engineers and consultants have identified lines of code in the Linux kernel to which SCO claims rights in addition to those previously identified in SCO's supplemental answers to interrogatories served in January 2004. Because some of this

copying involves non-literal copying (i.e., structures, sequences and organization of UNIX System V that appear in Linux), many of the files are identified in their entirety. If a certain file, however, contains literal copying of material, then those specific lines have been identified.

8. As to item 5, in addition to the response previously provided by SCO in its January 2004 responses to interrogatories, SCO has identified lines of code, besides those of IBM, that SCO has distributed, to whom the code was released, on what date and under what circumstances such code was released. This information was provided as to IBM earlier and SCO has supplemented it to include distribution of lines of code besides those contributed by IBM.

9. Compliance with the Court's Order has required hundreds of hours of time of SCO employees and consultants. There were daily phone calls with various persons regarding the status and progress of the production and compliance with the Court's Order. Moreover, as the deadline approached, SCO had to transfer engineers off of product development to provide further assistance to ensure that SCO timely complied with the Court's Order. Based on the information currently in SCO's possession, the answers given and materials produced in response to the Order are given to the best of SCO's knowledge and are complete, detailed, and thorough.

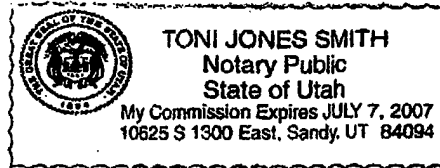


Christopher Sontag
Sr. Vice President/General Manager
SCOsourc Division
The SCO Group, Inc.

STATE OF UTAH)
 Salt Lake: ss
County of ~~Utah~~)

The above signed Christopher S. Sontag, being duly sworn upon oath, deposes and says that he has read the above and that the information contained therein is true to the best of his knowledge, information and belief.

 4-19-2004
Notary Public



CERTIFICATE OF SERVICE

Plaintiff, The SCO Group, hereby certifies that a true and correct copy of

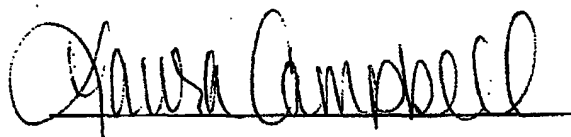
DECLARATION OF CHRIS SONTAG was served on Defendant International Business

Machines Corporation on this 19th day of April, 2004, by U.S. Mail to:

**Alan L. Sullivan, Esq.
Todd Shaughnessy, Esq.
Snell & Wilmer L.L.P.
15 West South Temple, Ste. 1200
Gateway Tower West
Salt Lake City, Utah 84101-1004**

**Evan R. Chesler, Esq.
David Marriott, Esq.
Cravath, Swaine & Moore LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019**

**Donald J. Rosenberg, Esq.
1133 Westchester Avenue
White Plains, New York 10604**

A handwritten signature in black ink that reads "Gaura Campbell". The signature is written in a cursive style and is positioned above a horizontal line.