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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.

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

DECLARATION OF MAX B. WICKER

I, Max B. Wicker, declare as follows:

1. From 1982 through 1989, I was an account representative with AT&T Technologies, Inc. ("AT&T Technologies"). During this period, I had responsibilities for licensing, and contracts associated with 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). Except as stated otherwise, this declaration is based upon personal knowledge.

3. In 1982, I accepted a position with American Telephone and Telegraph Company ("AT&T"), where I was responsible for licensing Unix software and related materials. In mid-year 1983, the Unix licensing group was transferred to Western Electric Company ("Western Electric"), a wholly owned subsidiary of AT&T. After the divesture by AT&T of its local telephone operations in 1984, Western Electric became AT&T Technologies, where I continued to work through 1989.

4. While employed by Western Electric and AT&T Technologies, I was responsible for a number of accounts and for a number of Unix license agreements. The standard software agreement granted the licensee the right to use and modify Unix source code for its own internal business purposes. In addition, many licensees were parties to sublicensing agreements, which granted the licensees the right to sublicense products based on Unix software to customers in object code format.

5. Although I had some dealings with International Business Machines Corporation ("IBM") during my tenure at AT&T Technologies, I did not participate in the negotiations of our license agreements with either IBM or Sequent Computer Systems, Inc. ("Sequent"), and I do not have personal knowledge of these agreements. Based upon my employment, duties and responsibilities at Western Electric and AT&T Technologies, however, I have some knowledge and experience regarding our standard license agreements relating to Unix software and related materials.

6. As I understood (and understand) them, the AT&T Technologies license agreements did not, and do not, give AT&T Technologies the right to assert ownership or control over modifications and derivative works prepared by its licensees, except to the extent of the original Unix System V source code provided by AT&T Technologies and included in such modifications or derivative works. We never intended to assert ownership or control over modifications and derivative works prepared by our licensees, except to the extent of the original Unix source code provided by AT&T Technologies and included in such modifications and derivative works. Modifications and derivative works contained Unix source code provided by AT&T Technologies and code developed by the licensee or provided to the licensee by others. The Unix source code provided by AT&T Technologies and contained in a modification or derivative work continued to be owned by AT&T Technologies, or its successors, while the code developed by the licensee or provided to the licensee by others remained the property of the licensee or provider to the licensee.

7. The license agreements that were used for Unix software and related materials during my tenure at AT&T Technologies imposed certain

confidentiality restrictions on the licensee. The purpose of these restrictions, as I understood them, was to require licensees to keep source code confidential. I know that we attempted to keep certain methods and concepts confidential at least at one point (though I do not believe we really knew how to define these terms), but I do not have personal knowledge of the extent to which we allowed licensees to disclose ideas, methods, concepts, or techniques of Unix. The idea behind the confidentiality provision in the license agreements was to protect AT&T Technologies' trade secrets, not, as I understood the restrictions, to impose obligations beyond what we could enforce under trade secret law.

8. I do not believe that AT&T Technologies sought, by way of the confidentiality provisions in the license agreements, to assert ownership or control over any portion of a modification or a derivative work that was not part of our software products. Such modifications and derivative works are not subject to the confidentiality restrictions of the agreements (except for any protected Unix source code actually included therein) because they are owned by the licensees. Licensees are free to use, copy, distribute or disclose such modifications and derivative works, provided that they do not copy, distribute or disclose any portions of the original software product provided by AT&T Technologies, except as permitted by the license agreements.

9. Because AT&T Technologies intended to widely distribute Unix source code and related information, we understood it would become increasingly difficult to require that the code and related information be kept confidential. Since we believed that our licensees held the same view, the standard software agreements provided that a licensee would not be required to keep a software product confidential if

it became "available without restriction to the general public". I believe that a software product is "available without restriction to the general public" if, for example, it is available other than under a confidentiality agreement because the licensor or owner of the software failed, even if by negligence, to take steps necessary to ensure the confidentiality of the software.

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

Executed: October 31, 2003.

Burlington, North Carolina



Max B. Wicker