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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

THE SCO GROUP,)	Case No. 2:03CV0294DAK
)	
Plaintiff,)	Hon. Dale A. Kimball
)	Magistrate Judge Brooke C. Wells
v.)	
)	
INTERNATIONAL BUSINESS)	DECLARATION OF
MACHINES CORPORATION,)	ERIK W. HUGHES
)	
Defendant.)	

1. My name is Erik W. Hughes. As Director of Product Management for The SCO Group, Inc. ("SCO"), I have personal knowledge of the following facts. I submit this declaration in support of SCO's Memorandum in Opposition to IBM's Motion for Partial Summary Judgment on SCO's Contract Claims, in support of SCO's Memorandum in Opposition to IBM's Motion for Partial Summary Judgment on IBM's Claim of Copyright Infringement (Eighth Counterclaim), and further to my deposition of May 11, 2004.
2. As reflected in the SCO press release attached as Exhibit A, SCO released the product called SCO Linux Server 4.0 on November 19, 2002. SCO marketed and sold this product for only a few months, from November 19, 2002, until May 14, 2003.
3. As I testified at my deposition, and as reflected in the SCO press release attached as Exhibit B, SCO suspended the sale and marketing of its Linux-related products, including SCO Linux Server 4.0, on May 14, 2003. This was shortly after SCO discovered that IBM had contributed SCO's copyrighted UNIX code to Linux without SCO's approval. After that date, SCO allowed only pre-existing customers to purchase such products in accordance with its obligations to those customers. Since May 14, 2003, SCO has not entered into any further obligations to sell Linux Server 4.0 or OpenLinux 3.1.1.
4. From August 5, 2003, until May 31, 2004 (the date of the last sale), SCO sold 45 units of SCO Linux Server 4.0, for gross revenue of \$5,294. During this same period, 70 units were returned, which resulted in a loss of \$6,473, so net sales for this period were - 25 units and net revenue was - \$1,179.

5. After August 5, 2003, there were 401 sales of SCO OpenLinux 3.1.1, for total gross revenue of \$50,796. During the same period, 22 copies of this product were returned, so net revenue was \$50,025.
6. As indicated in the SCO press release attached as Exhibit C, August 5, 2003, was the first date on which SCO offered its SCO Intellectual Property License for sale. SCO determined to offer this license only because IBM had misappropriated SCO's proprietary code and contributed hundreds of thousands of lines of that code to Linux.
7. In accordance with its obligations to current customers, from May 14, 2003, until May 31, 2004, SCO sold 83 units of SCO Linux Server 4.0, for gross revenue of \$9,209. During this same period, 79 units were returned, which resulted in a loss of \$7,360, so net sales for this period were 4 units and net revenue was \$1,849.
8. As reflected in Exhibit B, and as reconfirmed in its letter of June 23, 2003, a copy of which is attached as Exhibit D, SCO has never sought to sell a SCO Intellectual Property License for Linux to anyone who received a Linux distribution from SCO. Rather, SCO has agreed to hold its Linux customers harmless from any SCO intellectual property issues regarding Linux.
9. SCO copied, advertised and distributed the Linux kernel and other related Linux software for years before 2003. At all times, SCO distributed the Linux kernel and other GPL licensed packages as expressly provided under the General Public License ("GPL"). SCO's Linux distributions complied with all of the conditions set forth in section 1 and section 3 of the GPL. No royalty or licensing fees of any nature were charged. SCO never repudiated the GPL.

10. Prior to suspending its sale of Linux-related products in May 2003, SCO had a promising Linux business with longstanding customers and pre-existing binding sales and service contracts. The Linux product line, including the operating system, services, support, professional services, education, and layered applications, had accounted for 5-10% of SCO's revenues.

11. Until December 31, 2004, SCO is required by contract to provide its Linux customers with password-protected internet access to certain Linux files. Promptly thereafter, SCO will delete all remaining Linux files from its internet servers. Thus, while SCO has not made any significant distribution of any Linux product since May 2003, SCO's Linux "distribution" will totally cease by the end of 2004.

12. Prior to the filing of its Second Amended Counterclaim on March 29, 2004, IBM never provided SCO with any notice of its claim that SCO's rights under the GPL had terminated and that SCO was infringing IBM's copyrights.

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

November 30, 2004


Erik W. Hughes

EXHIBIT A

EXHIBIT A

SCO Unveils SCO Linux 4, Powered by UnitedLinux

Stable, Reliable Linux Platform Backed with Guaranteed Support from Trusted Operating System Vendor

LAS VEGAS, NV, November 19, 2002 The SCO² Group (SCO) (Nasdaq: SCOX), in coordination with the UnitedLinux 1.0 launch at Comdex, today announced the release of SCO Linux 4.0, powered by UnitedLinux. SCO Linux 4.0 is a high-quality Linux operating system designed for mission-critical business applications, with guaranteed stability, security and worldwide support from SCO. SCO Linux 4.0 is based on UnitedLinux 1.0, the core standards-based Linux operating system co-developed in an industry initiative to streamline Linux development and certification around a global, uniform distribution of Linux. SCO Linux 4.0, powered by UnitedLinux provides customers with the base UnitedLinux operating system as well as the additional software, support and services from SCO that customers need to successfully run Linux in business environments.

"SCO understands that for any operating system to be commercially viable, especially Linux, it needs a well-defined roadmap from a trusted supplier, who is committed to and capable of supporting it," said Andy Nagle, director of SCO Linux products. "SCO is uniquely qualified to make the UnitedLinux platform viable for business because of its proven track record in successfully building, deploying and supporting stable operating platforms for more than 23 years. SCO Linux 4.0 is built upon SCO's traditional combination of top OS platform technology, and support and service features that customers can rely on to support critical business environments."

"Because Linux is built on ideas and components from so many parties and is so widely distributed, the issue of support and reliability is still a key concern of customer and vendors," said Judy Chavis, worldwide Linux director, HP industry standard servers. "Built on a secure set of unified LSB compliant standards by UnitedLinux and with full support offerings from SCO, SCO 4.0 offers our customers another strong Linux platform choice for their worldwide Linux deployments."

"For hardware and software vendors, it has become an increasingly difficult task to certify their products across the many distributions of Linux. SCO Linux 4.0, powered by UnitedLinux can help vendors overcome that obstacle by providing widespread application support across the base of UnitedLinux distributions," said Bill Claybrook, Research Director for Linux and Unix at Aberdeen Group. "This in turn benefits IT departments by providing them with greater choice and support as they deploy Linux."

SCO Linux 4.0 is an ideal platform to support small to medium businesses and replicated branch sites such as retail store operations, hotel chains and banks. In these environments, operational efficiency and flexibility to respond to new customer demands are essential. SCO Linux 4.0

provides these qualities with the support and experience of a trusted supplier.

SCO Linux 4.0 Features and Support

SCO Linux 4.0, powered by UnitedLinux adds several features and support services:

- *As an enterprise-class, industry-standard Linux operating system, UnitedLinux provides a **Single, Uniform Platform** for application development, certification and deployment, and allows Linux vendors, Independent Software Vendors (ISVs) and Independent Hardware Vendors (IHVs) to support a single Linux offering rather than many different versions. SCO offers certification services that will be accepted as support across all distributions of the "powered by UnitedLinux" family.*
- ***Stability** with SCO's commitment to operating system quality and continuous operating system uptime, worldwide support and 12-18 month release cycles. This stable, predictable maintenance and support schedule makes SCO Linux 4.0 a smart choice for business.IT needs.*
- ***Award-winning Support Services** are available from SCO for tasks including install, configuration support and 24x7 emergency response. SCO has a presence in more than 82 countries and can provide local language support worldwide. SCO's dedicated engineering services organization provides experienced support for UNIX, all other Linux platforms powered by UnitedLinux, as well as all RPM-based Linux distributions.*
- ***Maintenance** is guaranteed with every copy of SCO Linux 4.0. Each release of SCO Linux will be maintained for a minimum of two years, and SCO has a dedicated team of escalations engineers to work on fixes for the UnitedLinux platform. Maintenance includes notification of security patches and other critical upgrade information.*
- ***Customized Linux Solutions** are available through SCO's channel of more than 16,000 resellers. SCO's partners and resellers are willing to partner with OEMs to sell SCO-based solutions. SCO can incorporate the support of UnitedLinux into existing Engineering Services agreements providing a one-stop-shop for OEM customers requiring representation with SCO and the UnitedLinux development teams.*
- ***Certified Training** on UnitedLinux is available from SCO and SCO authorized education partners using award-winning SCO education materials.*

To read what the industry is saying about SCO Linux, please visit
<http://jr.sco.com/www.sco.com/company/press/quotes/scolinux.html>

Pricing and Availability

SCO Linux 4.0 is available today in four different editions:

SCO Linux 4.0 Server, powered by UnitedLinux Base Edition--\$599

- Includes SCO Update maintenance service

SCO Linux 4.0 Server, powered by UnitedLinux Classic Edition--\$699

- Includes unlimited installation and configuration technical support incidents via phone, Web or email for one year; SCO Update Service; five business hour response; designated technical support contacts; and Online Service Manager which includes access to current product technical articles and patches, ability to submit service requests online, and online support activity and status

SCO Linux 4.0 Server, powered by UnitedLinux Business Edition--\$1249

- Includes unlimited technical support incidents via phone, Web or email for one year; SCO Update Service; three business hour response; designated technical support contacts; Online Service Manager (same access as Classic Edition)

SCO Linux 4.0 Server, powered by UnitedLinux Enterprise Edition--\$2199

- Includes unlimited technical support incidents via phone, Web or email for one year; SCO Update Service; one business hour response during regular business hours; designated technical support contacts; 24x7 after-hours emergency service telephone support; Administrative Account Manager; Office Service Manager (same access as Classic Edition)

About SCO

The SCO Group (Nasdaq: SCOX), formerly called Caldera International, provides "Powerful Choices" for businesses through its UNIX, Linux and Volution product lines and services. Based in Lindon, UT, SCO has representation in 82 countries and 16,000+ resellers worldwide. SCO Global Services provides reliable localized support and services to partners and customers. For more information on SCO products and services, visit <http://www.sco.com>.

SCO and the associated SCO logo are trademarks or registered trademarks of Caldera International, Inc. in the U.S. and other countries. UNIX and UnixWare, used under an exclusive license, are registered trademarks of The Open Group in the United States and other countries. Linux is a registered trademark of Linus Torvalds. All other brand or product names are or may be trademarks of, and are used to identify products or services of, their respective owners.

EXHIBIT B

EXHIBIT B

**SCO Suspends Distribution of Linux Pending Intellectual Property Clarification;
Announces Greater Focus on UNIX and SCOx Strategy**

**SCO Suspends Sales of Linux, Alerts Customers That Linux Is an Unauthorized Derivative
of UNIX and That Legal Liability May Extend to Commercial Users SCO Reaffirms
Commitment to SCOx, SCO's Growth Strategy Through Web Services**

LINDON, Utah, May 14, 2003 -- The SCO® Group (SCO)(Nasdaq: SCOX), the owner of the UNIX operating system, today warned that Linux is an unauthorized derivative of UNIX and that legal liability for the use of Linux may extend to commercial users. SCO issued this alert based on its findings of illegal inclusions of SCO UNIX intellectual property in Linux. The company also indicated that until the attendant risks with Linux are better understood and properly resolved, the company will suspend all of its future sales of the Linux operating system.

"SCO is taking this important step because there are intellectual property issues with Linux," said Chris Sontag, senior vice president and general manager of SCOsource, The SCO Group. "When SCO's own UNIX software code is being illegally copied into Linux, we believe we have an obligation to educate commercial users of the potential liability that could rest with them for using such software to run their business. We feel so strongly about this issue that we are suspending sales and distribution of SCO Linux until these issues are resolved."

SCO will continue to support existing SCO Linux and Caldera OpenLinux customers and hold them harmless from any SCO intellectual property issues regarding SCO Linux and Caldera OpenLinux products.

Going forward, SCO will have a stronger focus on UNIX and the company's growth strategy around Web services, SCOx. The company introduced SCOx in April as the company's Web services framework and plans to introduce new Web services applications from third party developers in August at SCO Forum, the company's annual conference.

"SCO remains committed to servicing our customers and as such, we intend to continue our growth strategy around SCOx -- the Web services framework for small-to-medium businesses and branch offices," said Darl McBride, president and CEO, The SCO Group.

In a separate announcement released today, SCO gave guidance on expected results for its 2nd fiscal quarter. The company expects to report net income of \$4.0 million on revenue of \$21 million.

In addition, SCO today also posted an analyst report from Gartner to their Web site at www.sco.com/scosource entitled, "SCO Lawsuit Sends a Warning to Linux IS Shops." The executive summary of the report asks whether Linux is safe from encumbrances.

About The SCO Group

The SCO Group (Nasdaq: SCOX) helps millions of customers in more than 82 countries to grow their businesses everyday. Headquartered in Lindon, Utah, SCO has a worldwide network of more than 11,000 resellers and 8,000 developers. SCO Global Services provides reliable localized support and services to all partners and customers. For more information on SCO products and services visit <http://www.sco.com> .

SCO and the associated SCO logo are trademarks or registered trademarks of Caldera International, Inc. in the U.S. and other countries. UNIX, used under an exclusive license, is a registered trademark of The Open Group in the United States and other countries. Linux is a registered trademark of Linus Torvalds. All other brand or product names are or may be trademarks of their respective owners.

EXHIBIT C

EXHIBIT C

SCO Announces Intellectual Property License for Linux

SCO Provides Commercial Linux Users With Run-Time, Binary License to Run SCO's Intellectual Property in Linux

LINDON, Utah, Aug 5, 2003 –

The SCO Group, Inc. (Nasdaq: SCOX), the owner and licensor of the core UNIX® operating system source code, today announced the availability of the SCO Intellectual Property License for Linux®. The run-time license permits the use of SCO's intellectual property, in binary form only, as contained in Linux distributions. By purchasing a SCO Intellectual Property License, customers avoid infringement of SCO's intellectual property rights in Linux 2.4 and Linux 2.5 kernels. Because the SCO license authorizes run-time use only, customers also comply with the General Public License, under which Linux is distributed.

SCO announced in July that it had registered the copyrights to its software releases of UNIX System V and UnixWare® with the U.S. Copyright office and that it would offer licenses to cure the SCO IP infringement issues for Linux operating systems. Beginning this week, SCO will start meeting with commercial Linux customers to present the details of this right to use SCO intellectual property binary licensing program.

"We have identified numerous files of unlicensed UNIX System V code and UNIX System V derivative code in the Linux 2.4 and 2.5 kernels," said Chris Sontag, senior vice president and general manager of SCOsource, the intellectual property licensing division of SCO. "We believe it is necessary for Linux customers to properly license SCO's IP if they are running Linux 2.4 kernel and later versions for commercial purposes. The license insures that customers can continue their use of binary deployments of Linux without violating SCO's intellectual property rights."

Pricing and Availability

SCO will be offering an introductory license price of \$699 for a single CPU system through October 15th, 2003. Pricing for multiple CPU systems, single CPU add-ons, desktop systems and embedded systems will also be available. Linux users who are interested in additional information or purchasing an IP License for Linux should contact their local SCO sales representative or call SCO at 1-800-726-8649 or visit our web site at <http://www.sco.com/scosource>.

About The SCO Group

The SCO Group (Nasdaq: SCOX) helps millions of customers in more than 82 countries to grow their businesses with UNIX business solutions. Headquartered in Lindon, Utah, SCO has a

worldwide network of more than 11,000 resellers and 4,000 developers. SCO Global Services provides reliable localized support and services to all partners and customers. For more information on SCO products and services visit <http://www.sco.com>.

SCO and the associated SCO logo are trademarks or registered trademarks of The SCO Group, Inc., in the U.S. and other countries. UNIX and UnixWare are registered trademarks of The Open Group in the United States and other countries. All other brand or product names are or may be trademarks of, and are used to identify products or services of, their respective owners.

EXHIBIT D

EXHIBIT D

Subject: SCO Suspends Linux Activities

Dear SCO Partner:

As a SCO Partner, we thank you for your support and continued business. Because you are a valued partner, it is important that we make you aware of important SCO business decisions and announcements as soon as possible. As such, we wanted to make you aware of an important announcement made today.

This communication is about recent efforts SCO has made to license and protect our patents, copyrights and intellectual property pertaining to the UNIX® operating system. As you know, on March 7, 2003 SCO announced that it filed legal action against IBM in the State Court of Utah, for misappropriation of trade secrets, tortious interference, unfair competition and breach of contract. The complaint alleged that IBM made concentrated efforts to improperly destroy the economic value of UNIX, particularly UNIX on Intel, to benefit IBM's new Linux services business.

As we have progressed in our discovery related to this action, SCO has found compelling evidence that the Linux operating system contains unauthorized SCO UNIX intellectual property (IP). Due to this discovery, we are taking three immediate courses of action.

- 1 - The first is to send a letter alerting commercial users to the fact that legal liability for the use of Linux by businesses may extend to end users.
- 2 - The second action we are taking is to suspend all future sales of the Linux operating system from SCO until the attendant risks with Linux are better understood and properly resolved.
- 3 - Finally, although this action affects future development and sales of SCO's Linux offerings, SCO will continue to support our SCO Linux and OpenLinux customers and partners who have previously implemented those products and we will hold them harmless from any SCO intellectual property issues regarding Linux. SCO will continue to honor all contractual obligations with existing customers including product updates, service, and support.

As many of you are already aware, SCO UNIX systems continue to sell well – including an increase in OpenServer sales over the previous quarter. Our UNIX products continue to support many of the world's largest businesses. In addition, new customer sales indicate that there is still no better option for rock-solid, dependable technology for their core businesses than our SCO UNIX solutions.

We are excited to be building on our SCO UNIX history as we roll out our next generation UNIX operating system and SCOx framework this fall. SCOx will allow small and medium business customers and branch offices to plug their existing applications into a Web services environment. Details of this strategy will be unveiled at SCO Forum in Las Vegas late this summer. (For more details, see: www.sco.com/2003forum/.)

SCO remains committed to building new business opportunities for our partners such as you. We recognize that you have depended on us to provide reliable, solid technologies for your customers for over twenty years. We look forward to helping you and your customers meet your business needs for the next twenty years.

Sincerely,

**Darl McBride
President and CEO
The SCO Group**