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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS  
MACHINES CORPORATION,

Defendant/Counterclaim-Plaintiff.

**PLAINTIFF/COUNTERCLAIM  
DEFENDANT SCO'S RESPONSE TO  
DEFENDANT/COUNTERCLAIM  
PLAINTIFF IBM'S SIXTH SET OF  
INTERROGATORIES AND SIXTH  
REQUEST FOR PRODUCTION OF  
DOCUMENTS**

Case No. 2:03CV0294DAK  
Honorable Dale A. Kimball  
Magistrate Judge Brooke C. Wells

Pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure, and to the Local Rules for the United States District Court for the District of Utah, Plaintiff/Counterclaim Defendant, The SCO Group, Inc, ("SCO"), hereby responds and objects to Defendant/Counterclaim Plaintiff, International Business Machine Corporation's ("IBM") Sixth Set of Interrogatories and Sixth Request for Production of Documents, as follows:

**GENERAL OBJECTIONS**

SCO hereby incorporates by reference all of the General Objections set forth in SCO's Response to IBM's First Set of Interrogatories and First Request for the Production of Documents (the "General Objections"). Each of the General Objections is incorporated by reference into each of the responses set forth below, which responses SCO makes without waiver of the General Objections. Further, and as noted herein with regard to each Interrogatory, SCO objects because IBM has exceeded the number of Interrogatories authorized under Federal Rule 33. By one count, IBM has served upon SCO, "including all discrete subparts" per Rule 33, as many as 86 interrogatories.

**SPECIFIC OBJECTIONS AND RESPONSES TO  
INTERROGATORIES**

**INTERROGATORY NO. 23:**

For each and every product licensed, sold and/or distributed by plaintiff, including but not limited to all UNIX and Linux products, please identify with specificity the name, version and release of the product and for each release of the product provide the following information:

- a. dates of availability;
- b. number of units licensed, sold or distributed;
- c. per-unit selling price or fee received;
- d. revenues received;
- e. gross profits; and
- f. incremental, marginal and net pretax or operating profit.

**RESPONSE TO INTERROGATORY NO. 23:**

In addition to its General Objections, SCO specifically objects to this Interrogatory because its discrete subparts constitute an evasion of the limitation to the number of interrogatories available to IBM in the absence of a Court order or agreement between the parties. SCO further objects to the extent this request seeks information from SCO's predecessors in interest, which is outside of SCO's custody and control. SCO further objects to the extent this request seeks information regarding profit and profit margins for particular products that SCO does not otherwise maintain in the ordinary course of business which will, by necessity, require expert witness evaluation for the purposes of this litigation and are properly the subject of expert testimony.

Subject to, as limited by, and without waiving the foregoing general objections, SCO will provide the following information maintained in the ordinary course of business:

1. a report showing the revenue and gross margin for each SCO business and/or product line (except SCOSource) on a quarterly basis from the fourth quarter of 1997 through 2004;
2. a report showing the revenue, costs, gross margin, operating expense, operating margin, and net income for SCOSource on a quarterly basis from 2003 through 2004;
3. a report showing the number of units sold and the revenue received for each SCO product on a quarterly basis from 1997 through 2004;
4. a report listing every revenue shipment from 1999 through 2004, including the date of the shipment, the product shipped, the quantity shipped, and the revenue.
5. a report showing the profit and loss statements for each quarter from 1995 to 2004, which includes information regarding all additional general and administrative costs incurred by SCO, not otherwise accounted for in the gross margin report identified in No. 1 above.
6. all available quarterly price lists; and
7. all available product announcements.

SCO reserves the right to supplement its response if additional information becomes available.

**INTERROGATORY NO. 24:**

For each of the claims asserted by plaintiff in this lawsuit, please describe in detail all of the alleged damages to plaintiff that were proximately caused by IBM, including, but not limited to:

- a. the amount of alleged damages;
- b. the basis for the alleged damages;
- c. the precise methodology by which the damages were calculated;
- d. documents or other materials relied upon or considered in determining the alleged damages; and
- e. all efforts undertaken by plaintiff to mitigate the alleged damages.

**RESPONSE TO INTERROGATORY NO. 24:**

In addition to its General Objections, SCO specifically objects to this Interrogatory because its discrete subparts constitute an evasion of the limitation to the number of interrogatories available to IBM in the absence of a Court order or agreement between the parties. SCO further objects to this Interrogatory because it is premature and requests information called for in expert reports, which will be provided on the pretrial schedule adopted by the Court for that purpose. Subject to, as limited by, and without waiving the foregoing general objections, Plaintiff responds that damages may be based on models including damages to SCO's business, the value of the property rights misappropriated by IBM, and disgorgement of IBM's profits.

**SPECIFIC OBJECTIONS AND RESPONSES TO  
DOCUMENT REQUESTS**

**REQUEST NO. 122:**

All documents concerning plaintiff's responses to Interrogatory Nos. 23 and 24.

**RESPONSE TO REQUEST NO. 122:**

In addition to the foregoing general objections, SCO objects to the extent this request seeks information from SCO's predecessors in interest, which may be outside of SCO's custody and control, and which is as accessible to Defendant as to SCO. Subject to, as limited by, and without waiving the foregoing general objections, SCO, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this request.

**REQUEST NO. 123:**

For each and every product licensed, sold and/or distributed by plaintiff or any of its alleged predecessors in interest, documents sufficient to identify:

- a. the number of units licensed, sold or distributed;
- b. the per-unit selling price or fee received;
- c. revenues received;
- d. gross profits; and
- e. incremental, marginal and net pretax or operating profit.

RESPONSE TO REQUEST NO. 123:

In addition to the foregoing general objections, SCO objects to the extent this request seeks information from SCO's predecessors in interest, which may be outside of SCO's custody and control, and which is as accessible to Defendant as to SCO. Subject to, as limited by, and without waiving the foregoing general objections, SCO, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this request.

REQUEST NO. 124:

All documents concerning the projected sales for each and every product licensed, sold and/or distributed by plaintiff or any of its alleged predecessors in interest.

RESPONSE TO REQUEST NO. 124:

In addition to the foregoing general objections, SCO objects to this request to the extent it seeks information from SCO's predecessors in interest, which may be outside of SCO's custody and control, and which is as accessible to Defendant as to SCO. Subject to, as limited by, and without waiving the foregoing general objections, SCO, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this request.



**REQUEST NO. 125:**

Documents, including but not limited to marketing materials and business plans, sufficient to show plaintiff's marketing plans and marketing strategy for the licensing, sale and distribution of its products.

**RESPONSE TO REQUEST NO. 125:**

In addition to the foregoing general objections, SCO objects to this request to the extent it seeks information from SCO's predecessors in interest, which may be outside of SCO's custody and control, and which is as accessible to Defendant as to SCO. Subject to, as limited by, and without waiving the foregoing general objections, SCO, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this request.

DATED this 2 day of March, 2005.

As to Objections:

HATCH, JAMES & DODGE, P.C.  
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Mark F. James

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Robert Silver  
Stuart H. Singer  
Stephen N. Zack  
Edward Normand  
Sean Eskovitz

By 

*Counsel for The SCO Group, Inc.*

As to Responses:

Michael Olson  
SCO


**VERIFICATION**

I hereby declare under penalty of perjury under the laws of the United States that upon reasonable investigation the foregoing answers to Interrogatories 23 and 24 are true and correct to the best of my information and belief.

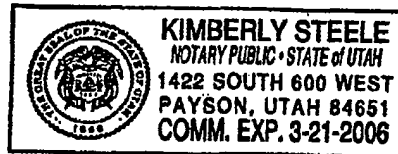


Michael Olson  
THE SCO Group, Inc.

Sworn to and subscribed before me this 2 day of March, 2005.

  
Notary Public

My commission expires on 3/21/06.



**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of **SCO'S RESPONSE TO DEFENDANT/COUNTERCLAIM PLAINTIFF IBM'S SIXTH SET OF INTERROGATORIES AND SIXTH REQUEST FOR PRODUCTION OF DOCUMENTS** to be mailed by U.S. Mail, first class postage paid, and faxed on this 2nd day of March, 2005, to the following:

Evan R. Chesler, Esq.  
Cravath, Swaine & Moore LLP  
Worldwide Plaza  
825 Eighth Avenue  
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Fax: 801-257-1800

and mailed by U.S. Mail. First class postage prepaid, to:

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

A handwritten signature in cursive script, appearing to read "Mark J. Jones", written over a horizontal line.