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Brent O. Hatch (5715)
Mark F. James (5295)
HATCH, JAMES & DODGE
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 363-6363
Facsimile: (801) 363-6666

Robert Silver (admitted pro hac vice)
Edward Normand (admitted pro hac vice)
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, New York 10504
Telephone: (914) 749-8200
Facsimile: (914) 749-8300

Stuart H. Singer (admitted pro hac vice)
BOIES, SCHILLER & FLEXNER LLP
401 East Las Olas Boulevard – Suite 1200
Ft. Lauderdale, Florida 33301
Telephone: (954) 356-0011
Facsimile: (954) 356-0022

Stephen N. Zack (admitted pro hac vice)
BOIES, SCHILLER & FLEXNER LLP
Bank of America Tower – Suite 2800
100 Southeast Second Street
Miami, Florida 33131
Telephone: (305) 539-8400
Facsimile: (305) 539-1307

Attorneys for The SCO Group, Inc.

**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.

**SCO'S OBJECTIONS AND
RESPONSES TO PART OF IBM'S
SECOND SET OF REQUESTS FOR
ADMISSION**

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

In accordance with Rule 36 of the Federal Rules of Civil Procedure, The SCO Group, Inc. ("SCO") hereby objects and responds to part of the Second Set of Requests for Admissions propounded by International Business Machines Corporation ("IBM").

GENERAL OBJECTIONS

1. SCO objects to the Requests for Admission to the extent that they seek admissions that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.
2. SCO objects to the Requests for Admission to the extent that the individual requests are compound.
3. SCO objects to the Requests for Admission to the extent that they impose undue burdens that outweigh any probative value the admissions sought may have in this action.
4. SCO does not waive and expressly reserves the right to object to other discovery requests involving or relating to the subject matter of the Requests for Admission.
5. SCO does not waive and expressly reserves the right to object to the presence of hearsay in any of the exhibits referenced by the Requests for Admission.
6. SCO denies any Request for Admission, or any portion thereof, that it does not expressly admit below.

OBJECTIONS AND RESPONSES TO REQUESTS FOR ADMISSION

Subject to and without waiving the General Objections, SCO objects and responds to the Requests for Admission as follows:

RESPONSE TO REQUESTS FOR ADMISSION

REQUEST NO. 106:

SCO distributed a Linux product known as SCO Linux Server 4.0 beginning in November 2002. (Ex. 6 at 35:12-36:17, 92:1-22; Ex. 39 (Ex. 3(a) to May 11, 2004 Deposition of Erik Hughes showing distribution of SCO Linux Server 4.0).)

RESPONSE TO REQUEST NO. 106:

Admitted that SCO distributed a product known as "SCO Linux 4.0, powered by UnitedLinux" from November 19, 2002, until May 14, 2003.

REQUEST NO. 107:

SCO has made Linux source code available for download by its customers on its Internet website. (Ex. 6 at 69:12-90:21; Ex. 40 (Transcript of the May 12, 2004 30(b)(6) Deposition of Christopher Sontag) at 220:20-224:19; Ex. 5 ¶¶ 10-13.)

RESPONSE TO REQUEST NO. 107:

Admitted that prior to learning that its proprietary technology had been improperly contributed to Linux, SCO made Linux source code available for download by its customers on its website. All Linux source code was removed from SCO's website by the end of 2004.

REQUEST NO. 108:

SCO Linux Server 4.0 includes code identical to code in the IBM Copyrighted Works. (Ex. 5 ¶¶ 9-13; Ex. 41 (Addendum A-P to IBM's Motion for Summary Judgment on IBM's Counterclaim for Copyright Infringement).)

RESPONSE TO REQUEST NO. 108:

Admitted with respect to "SCO Linux 4.0, powered by UnitedLinux" except that SCO does not admit that IBM holds valid copyrights on the "IBM Copyrighted Works," that IBM may enforce any such copyrights, or that SCO has breached the General Public License.

REQUEST NO. 109:

The Linux code that SCO made available on its Internet website includes code identical to code in the IBM Copyrighted Works. (Ex. 5 ¶ 9-13; Ex.41.)

RESPONSE TO REQUEST NO. 109:

Admitted except that SCO does not admit that IBM holds valid copyrights on the "IBM Copyrighted Works," that IBM may enforce any such copyrights, or that SCO has breached the General Public License.

REQUEST NO. 110:

SCO Linux Server 4.0 includes over 783,000 lines of code identical to code in the IBM Copyrighted Works. (Ex. 5 ¶¶ 9-13; Ex. 41.)

RESPONSE TO REQUEST NO. 110:

Admitted with respect to "SCO Linux 4.0, powered by UnitedLinux" except that SCO does not admit that IBM holds valid copyrights on the "IBM Copyrighted Works," that IBM may enforce any such copyrights, or that SCO has breached the General Public License.

REQUEST NO. 111:

The Linux code that SCO made available on its Internet website includes over 783,000 lines of code identical to code in the IBM Copyrighted Works. (Ex. 5 ¶¶ 9-13; Ex. 41.)

RESPONSE TO REQUEST NO. 111:

Admitted except that SCO does not admit that IBM holds valid copyrights on the “IBM Copyrighted Works,” that IBM may enforce any such copyrights, or that SCO has breached the General Public License.

REQUEST NO. 112:

SCO literally copied and distributed the IBM Copyrighted Works in SCO Linux Server 4.0. (Ex. 5 ¶¶ 9-13; Ex. 41.)

RESPONSE TO REQUEST NO. 112:

SCO does not admit that IBM holds valid copyrights on the “IBM Copyrighted Works,” that IBM may enforce any such copyrights, or that SCO has breached the General Public License, and specifically objects on the ground that the request calls for a legal conclusion. Subject to the objection, SCO admits that “SCO Linux 4.0, powered by UnitedLinux” contained the “IBM Copyrighted Works.”

REQUEST NO. 113:

SCO literally copied and distributed the IBM Copyrighted Works in the Linux files that SCO made available for download on its Internet website. (Ex. 5 ¶¶ 9-13.)

RESPONSE TO REQUEST NO. 113:

SCO does not admit that IBM holds valid copyrights on the "IBM Copyrighted Works," that IBM may enforce any such copyrights, or that SCO has breached the General Public License, and specifically objects on the ground that the request calls for a legal conclusion. Subject to the objection, SCO admits that some of the Linux files that SCO made available for download prior to May 13, 2003, on its website included the "IBM Copyrighted Works."

REQUEST NO. 114:

The IBM Copyrighted Works appear verbatim and are identical to code in SCO Linux Server 4.0 and the code made available by SCO for download from its Internet website. (Ex. 41; Ex. 5 ¶¶ 9-13.)

RESPONSE TO REQUEST NO. 114:

SCO does not admit that IBM holds valid copyrights on the "IBM Copyrighted Works," that IBM may enforce any such copyrights, or that SCO has breached the General Public License, and specifically objects on the ground that the request calls for a legal conclusion. Subject to the objection, SCO admits that the "IBM Copyrighted Works" were included in "SCO Linux 4.0, powered by UnitedLinux" and the source code made available by SCO for download from its website.

REQUEST NO. 115:

Exhibits 42-57 hereto are copies of Linux files that are included in SCO Linux Server 4.0.

RESPONSE TO REQUEST NO. 115:

Admitted with respect to "SCO Linux 4.0, powered by UnitedLinux."

REQUEST NO. 116:

Exhibits 42-57 hereto are copies of Linux files from SCO Linux Server 4.0 that include the IBM Copyrighted Works.

RESPONSE TO REQUEST NO. 116:

Admitted with respect to "SCO Linux 4.0, powered by UnitedLinux" except that SCO does not admit that IBM holds valid copyrights on the "IBM Copyrighted Works," that IBM may enforce any such copyrights, or that SCO has breached the General Public License.

REQUEST NO. 117:

Exhibits 58-73 hereto are copies of Linux files that were made available for download by SCO on its Internet website.

RESPONSE TO REQUEST NO. 117:

SCO specifically objects on the grounds that IBM illegally obtained these exhibits by hacking into a password-protected sector of SCO's website. Subject to the objection, SCO admits that the referenced exhibits contain Linux files that were made available for download by SCO on its website.

REQUEST NO. 118:

Exhibits 58-73 hereto are copies of Linux files made available for download on SCO's Internet website that include IBM Copyrighted Works.

RESPONSE TO REQUEST NO. 118:

SCO specifically objects on the grounds that IBM illegally obtained these exhibits by hacking into a password-protected sector of SCO's website. Subject to the objection, SCO admits that the referenced exhibits contain Linux files that were made available for download by SCO on its website.

DATED this 28th day of February, 2006.

HATCH, JAMES & DODGE, P.C.
Brent O. Hatch
Mark F. James

BOIES, SCHILLER & FLEXNER LLP
Robert Silver
Stuart H. Singer
Stephen N. Zack
Edward Normand

By 
Counsel for The SCO Group, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of February, 2006, a true and correct copy of the foregoing **SCO'S RESPONSE TO PART OF IBM'S SECOND SET OF REQUESTS FOR ADMISSION** was delivered to the following by U.S. Mail, postage prepaid:

David Marriott, Esq.
Cravath, Swaine & Moore LLP
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019

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

Todd Shaughnessy, Esq. (also by e-mail)
Snell & Wilmer LLP
1200 Gateway Tower West
15 West South Temple
Salt Lake City, Utah 84101


