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December 5, 2005

VIA FACSIMILE AND U.S. MAIL

Edward Normand
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, NY 10504

Re: SCO v. IBM; IBM v. SCO

Dear Ted:

I write in follow-up to Mr. McBride's deposition, as promised at the close of the deposition. Mr. McBride's testimony raises issues that go to IBM's ability to fairly defend itself, which we intend to raise with the Court no later than the Friday of this week unless the parties have reached a satisfactory resolution.

1. Mr. McBride's Testimony Regarding the Persons or Entities Whose Relationships with SCO IBM Has Allegedly Interfered With.

As you know, IBM propounded interrogatories on June 13, 2003, asking SCO to identify for "each instance in which plaintiff alleges or contends that IBM interfered with [SCO's] agreements . . . all persons involved in the alleged interference". (IBM's First Set Of Interrogatories And First Request For The Production of Documents, Interrogatory No. 8.) IBM also requested that SCO identify for "each instance in which plaintiff alleges that IBM engaged in unfair competition . . . all persons involved in the alleged unfair competition". (*Id.* No. 7.) These interrogatories plainly required SCO to identify the persons or entities whose relationship with SCO IBM is alleged to have interfered with, and in response SCO identified 13 such persons or entities. (SCO's Supplemental Response to Defendant's First and Second Set of Interrogatories, dated 10/23/03; SCO's Revised Supplemental Response To Defendant's First And Second Set of Interrogatories, dated 1/15/2004.)

At no point in the following two years has SCO ever updated its interrogatory responses to state, or even suggested, that IBM has interfered with its relationship with persons or entities other than those listed in SCO's interrogatory responses. In fact, when

SCO finally produced a 30(b)(6) witness to address the issue (long after IBM requested), SCO confirmed that it does not contend that IBM has interfered with its relationship with any persons or entities other than those identified in SCO's interrogatory responses. (30(b)(6) Deposition of Jeff Hunsaker, at 18:3—19:15)

At his deposition, Mr. McBride was questioned about two documents that SCO produced the day before the deposition. As you know, those documents list the revenue of 12 companies whose relationship with SCO IBM is alleged to have interfered with. When asked simply to confirm that SCO does not contend that IBM has interfered with SCO's relationship with any other person or entity, Mr. McBride declined. He undertook instead to identify 10 new sets of persons or entities whose relationship with SCO IBM is alleged to have interfered with. Worse still, in addition to claiming for the first time that IBM has interfered with SCO's relationship with persons or entities never before disclosed by SCO, Mr. McBride made clear that SCO contends that IBM has interfered with SCO's relationship with many more persons or entities.

It is difficult to view Mr. McBride's testimony as anything other than a misguided attempt by SCO to gain an unfair tactical advantage by expanding the scope of its interference and unfair competition claims and trying to force an extension of the discovery schedule. If SCO were allowed to expand its claims by Mr. McBride's assertions, which (like most of his testimony) lacked any basis in personal knowledge, then IBM would be required to undertake substantial additional third-party discovery at great expense, burden and prejudice to IBM.

Please confirm by 12:00 p.m. EST on Wednesday, December 7, 2005, that (1) SCO does not contend that IBM interfered with SCO's relationship with any person or entity other than those listed in its interrogatory responses, at its 30(b)(6) deposition and in the two documents produced the day before Mr. McBride's deposition; and (2) SCO's interference and unfair competition claims are limited to IBM's alleged interference with the same persons or entities. If we have not heard from you by then, we intend to file an expedited motion asking the Court to limit SCO's claims to the scope of its interrogatory answers and 30(b)(6) testimony. Insofar as the Court has set a hearing for December 13, 2005, we intend to ask the Court to hear argument on this issue at that time.

2. Mr. McBride's Testimony Regarding SCO's Many Public Statements.

Mr. McBride was asked a number of questions about SCO's many public statements. Both Mr. McBride and counsel for SCO objected to Mr. McBride being asked about the statements without Mr. McBride being shown each statement in the context in which it was made. The problem, of course, is that unless SCO is prepared to make Mr. McBride available for several additional days of deposition, there is no way

IBM could ask him about all of SCO's statements in the 2 days allowed for Mr. McBride's deposition. Given Mr. McBride's general unwillingness to simply answer the questions asked and his tendency often to provide long unresponsive answers, we expect to have to ask the Court for more time with Mr. McBride even without showing him all of the documents containing SCO's and his public statements.

In an effort to facilitate the continuation of Mr. McBride's deposition (and otherwise prepare its case) IBM is willing to consider serving a request for admission that would ask SCO to admit that the statements publicly attributed to SCO, which we would attach to our requests for SCO's convenience, were in fact made by SCO and are true statements. Please let me know by Wednesday whether SCO would be agreeable to proceeding in this fashion, which would at a minimum expedite Mr. McBride's deposition.

3. Documents Not Produced From the Files of Mr. McBride.

Based on Mr. McBride's testimony, it is clear that SCO has not produced all of the documents kept by or for Mr. McBride that are responsive to IBM's document requests. For example, Mr. McBride's testimony makes clear that he has been a party to hundreds, if not thousands, of emails since he became CEO, including as many as 99 emails involving representatives of Microsoft alone. He also testified about the existence of documents relating to the markets in which SCO has competed and SCO's public statements (such as scripts for conference calls with analysts) that clearly have not been produced. Furthermore, based on the number of communications Mr. McBride had with the media, analysts and IBM, it is clear that SCO had not produced all of the documents IBM seeks. Please produce all responsive documents from files kept by or for Mr. McBride by the end of the week and explain why they have not previously been produced.

4. Continuation of Mr. McBride's Deposition

As you know, the parties were able to conclude only approximately 6 hours of Mr. McBride's deposition. Please advise us as to Mr. McBride's availability some time after SCO responds to the requests for admission described above, to complete the remaining approximately 8 hours of his deposition. We ask only that the deposition be scheduled after SCO would be required to respond to requests for admission about SCO's statements (assuming the parties are able to agree on this approach) but not so late in the discovery period that if IBM is unable to complete Mr. McBride's deposition in the remaining approximately 8 hours, we have the time to seek leave of the Court to seek additional deposition time before the close of general fact discovery on January 27, 2006.

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December 5, 2005
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Thank you in advance for your prompt attention to these issues. I look forward to hearing from you.

Sincerely,



Todd M. Shaughnessy

TMS:dw
cc: Brent Hatch
David Marriott
Peter Ligh
Amy Sorenson