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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.

**DECLARATION OF DANIEL
FRYE**

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

DECLARATION OF DANIEL FRYE

I, Daniel Frye, declare as follows:

1. I am the co-founder and Vice President responsible for managing the Linux Technology Center ("LTC") at International Business Machines Corporation ("IBM").
2. This declaration is submitted in connection with the lawsuit brought by The SCO Group, Inc. ("SCO") against IBM, entitled The SCO Group, Inc. v. International Business Machines Corporation, Civil No. 2:03CV-0294 DAK (D. Utah 2003). I make this declaration based upon personal knowledge.
3. I am responsible for overseeing IBM's Linux technical strategy and participation in the Linux development community. Based upon my duties and responsibilities at IBM, I have personal knowledge of IBM's Linux activities, including the Linux development process, and IBM's Linux business strategies.
4. IBM has made a significant contribution to Linux in both time and money, and at the expense of other opportunities. IBM developed a broad array of Linux-related products including mainframes and servers that run Linux; software offerings; and services such as deployment of Linux-based e-environments, migration of database and applications and data to Linux systems, support for Linux-based cluster computing, server consolidation, and a 24-hour technical engineering support line.
5. IBM undertook its Linux business strategy, and made contributions to Linux, in the good faith belief that these activities were permissible. IBM did not undertake its Linux activities with an intent to harm SCO and those activities were not motivated by any spite

or ill will toward SCO. On the contrary, IBM undertook its Linux strategy for competitive reasons.

6. SCO's commercial distribution of Linux, together with its work with the Linux Standard Base ("LSB") and UnitedLinux improved Linux and helped shape the Linux marketplace. IBM decided to invest in Linux due, at least in part, to the existence and activity of SCO and other commercial Linux distributors. IBM entered into a business relationship with SCO that included a contract relating to Linux.

7. IBM's decision to enter into this business relationship with SCO was based, at least in part, on representations and promotions made by SCO about Linux. In fact, IBM's decision to embrace Linux was influenced by SCO and other commercial Linux distributors.

8. SCO did not bring to IBM's attention any of the materials in Linux allegedly infringing on SCO's claimed copyrights until after the commencement of this suit. IBM relied on SCO's silence and inaction with respect to its claimed copyright in deciding to embrace Linux as heavily and as quickly as it did.

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

Executed: September 22 2006

Beaverton, Oregon



Daniel Frye