

I, ED CHATLOS, declare as follows:

1. I submit this Declaration in connection with the lawsuits entitled *The SCO Group v.*

*Novell, Inc. and The SCO Group v. International Business Machines Corporation.*

**I. WORK HISTORY**

2. Following my graduation from college, in 1980, I went to work for Western Electric, an AT&T subsidiary. After taking time off to obtain a Master's Degree in Computer Science in 1981, I resumed working that year at Western Electric on product management. In approximately 1984, I joined the Computer System Division of AT&T, the UNIX group working on international business development. I worked in that division through 1986.
3. In February 1987, I transferred to London and worked on licensing UNIX to European users. In 1988, I became Acting International Managing Director in Europe. In 1989, I transferred back to the United States and began working on business planning and development on UNIX issues. The UNIX business was

transferred to UNIX Systems Laboratories, Inc. ("USL") by 1991, and I continued working on strategic business issues for UNIX.

4. After Novell, Inc. ("Novell") purchased USL in 1993, I went to work for Novell on UNIX Strategic Partnerships and Business Development issues within the Strategic Relations and Mergers and Acquisitions organization. My title at Novell was Senior Director. I voluntarily left Novell in early 1996.

## **II. NOVELL'S SALE OF UNIX TO THE SANTA CRUZ OPERATION, INC. ("SCO")**

5. In 1995, I learned that Bob Frankenberg, Novell's Chief Executive Officer, had determined that Novell should explore selling the entire UNIX business which Novell had purchased from USL. Under the direction of Duff Thompson, Senior Vice President of Corporate Development, and Mike DeFazio, Executive Vice President of the UNIX System Group, Novell considered several potential purchasers. Novell thereafter began serious discussions with SCO.
6. I was assigned the responsibility of negotiating and completing the deal to sell UNIX and its business to SCO. In or about June 1995, I became the lead negotiator for

Novell in the negotiations with SCO and headed the day-to-day responsibility for the potential deal. I was the principal interface with SCO on the business negotiations for Novell.

7. During these negotiations, I met regularly with SCO representatives, sometimes several times a week from June to September 1995. Early in our discussions, it became apparent that SCO could not pay the full purchase price as contemplated by Novell. To bridge the price gap, it was ultimately agreed that Novell would retain certain binary royalty payments under UNIX licenses. It was my understanding – and intent, on behalf of Novell – that the complete UNIX business would be transferred to SCO. I am not aware of any instance in which anyone at Novell or SCO ever stated or exhibited any contrary intent or understanding, to me or anyone else.
8. SCO and Novell thereafter negotiated the Asset Purchase Agreement (“APA”) dated September 19, 1995. Under the APA, Novell received shares of SCO common stock and other consideration, and retained rights to certain binary product royalty

payments. SCO acquired all right, title, and interest in and to the UNIX and

UnixWare business, operating system, and source code. In the transaction, it was my

intent – and to my understanding was Novell's intent – to sell the entire UNIX

business to SCO, including the UNIX source code and all associated copyrights.

9. The above-described proposal was for Novell to transfer the entire UNIX business to

SCO except for certain binary product royalties that would be remitted to Novell. It

was always my understanding and intent, on behalf of Novell, that the UNIX source

code and its copyrights were part of the assets SCO purchased. I do not recall anyone

else ever suggesting that Novell would retain any copyright relating to UNIX, nor

was I present for any discussions, general or specific, during the negotiations that

contradicted my understanding of the transaction described herein. None of my

superiors at Novell ever informed me that Novell was not transferring the UNIX

copyrights to SCO. Likewise, I never communicated to SCO in any way that the

UNIX copyrights were not being sold to SCO. Nor am I aware of any instance in

which anyone from Novell ever informed SCO in any way that the UNIX copyrights were not being sold to SCO as part of this transaction.

10. Given my central role in the negotiations, I believe I would have known if the parties had agreed that Novell would retain any UNIX copyrights. My intent and understanding as the lead negotiator for Novell was that Novell was transferring the copyrights to SCO in the APA. At the time the transaction was signed and closed, I did not observe anyone at Novell or SCO stating or acting as if Novell had retained any UNIX copyrights. If they had, it would have been contrary to the intent and structure of the deal as I understood it and communicated with SCO. In fact, from the time the APA transaction closed in 1995 until this day, it has been my understanding and belief that Novell sold the UNIX copyrights to SCO as of the time of the closing in 1995.

11. I have reviewed Schedule 1.1(b), Excluded Assets of the APA (the "Excluded Assets Schedule") with attention to the question of whether Novell was to retain any UNIX copyrights. In my opinion the word "copyrights" in Paragraph V.A. refers – and was

intended by the parties to refer – to Novell copyrights other than those relating to UNIX and UnixWare, including the NetWare assets specifically referenced in Paragraphs I, II, and IV of the Excluded Assets Schedule.

12. Pursuant to a Technology Licensing Agreement signed by the parties in early December 1995, Novell licensed from SCO the use of the UNIX source code. I believe this licensing arrangement was consistent with SCO's ownership of the copyrights upon the closing of the APA.
13. Paragraph 4.16 of the APA was specifically designed and intended to protect Novell's retained binary product royalty stream. Based on the foregoing, including my understanding of the parties' intent, I do not believe Novell has any right to waive, or to direct or require SCO to waive, any of SCO's source code rights, including under customer source code licenses.
14. I declare under penalty of perjury that the foregoing is true and correct.

Executed: 10/1/04  
New York, New York

  
Ed Chatlos