

**EXHIBIT C**

**HOMBURGER**

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The Secretariat of the  
ICC International Court of Arbitration  
38, Cours Albert 1er  
75008 Paris  
France

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**Request for Arbitration**

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**Ladies and Gentlemen**

In the matter of

**SUSE Linux GmbH**  
Maxfeldstr. 5, 90409 Nürnberg, Germany

**Claimant**

represented by Michael A. Jacobs and/or Grant L. Kim and/or Kenneth  
W. Brakebill, Morrison & Foerster LLP, 425 Market Street, San  
Francisco, California 94105-2482, USA, and/or

Georg Rauber and/or Felix Dasser and/or David Rosenthal,  
Homburger Rechtsanwälte, Weinbergstrasse 56-58, P.O. Box 338,  
8035 Zürich, Switzerland

vs.

**The SCO Group, Inc.**  
355 South 520 West, Suite 100, Lindon, Utah 84042,  
USA

**Respondent**

In the name and on behalf of Claimant the undersigned respectfully submit this

### **Request for Arbitration**

pursuant to Article 4 of the ICC Rules of International Arbitration (the **ICC Rules**) and request the Arbitral Tribunal to grant the following

### **Prayers for Relief:**

1. **Declare that Respondent is precluded under the Master Transaction Agreement (MTA) and the UnitedLinux Joint Development Contract (JDC) from asserting any copyright infringement claims related to SUSE Linux;**
2. **Declare, in particular, that the MTA and JDC divest Respondent of ownership of any alleged intellectual property rights in any part of software included in the UnitedLinux Software (other than Pre-Existing Technology and Enhancements);**
3. **Order Respondent to refrain from alleging publicly or against third parties that the use and distribution of SUSE Linux infringes upon Claimant's copyrights, as precluded by the MTA and JDC;**
4. **Order Respondent to pay damages in an amount to be determined for breach of the MTA and JDC by improperly asserting claims against Claimant and its licensees, and by attacking and withdrawing support for the UnitedLinux project;**
5. **Order Respondent to bear all costs of the arbitration proceeding, including the costs and expenses of the ICC and of the arbitrators, as well as attorneys' fees, cost of lost executive time and expert's costs, if any; and**
6. **Award any further relief that the Tribunal deems necessary to effectuate the relief requested above.**

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## I. Introduction

- 1 The present dispute arises from the "UnitedLinux" project of Claimant, Respondent and two other vendors of the Linux computer operating system. The purpose of the project was to jointly develop and promote, through a jointly held Limited Liability Company, a version of Linux called UnitedLinux (including future enhancements and amendments thereto), with a view to encourage the widespread adoption of UnitedLinux as a standard for the information technology industry.
- 2 Consistent with this purpose, the UnitedLinux members agreed that each member would have the right to commercialize the UnitedLinux technology independently, free from claims that the other members had any proprietary rights to such technology. In particular, the UnitedLinux members agreed that each member would have broad licenses to exploit and distribute Linux products that include UnitedLinux technology. Consequently, in November 2002, Respondent and Claimant both announced the release of UnitedLinux-based products, called "SCO Linux" and "SUSE Linux", respectively. Respondent actively promoted SCO Linux as *"powered by UnitedLinux"*.
- 3 However, shortly thereafter, Respondent fundamentally changed its business strategy to the detriment of the agreements to which it is a party. Respondent abandoned its Linux business and is now attempting to undermine the very business that it had promised to promote. Contrary to its commitments in the agreements in place, Respondent is now asserting that it has proprietary rights to the technology in UnitedLinux that are not licensed to its partners. Respondent publicly claimed that SUSE Linux infringes copyrights allegedly owned by Respondent, it sent threatening letters to numerous Linux users and it also initiated lawsuits against alleged infringers of Respondent's supposed proprietary rights.
- 4 In particular, Respondent recently filed a claim in the United States District Court for the District of Utah against Claimant's parent and licensee, Novell, alleging that Novell's distribution of SUSE Linux infringes Respondent's supposed copyrights. Respondent's infringement claim against Novell threatens the Linux

business of Claimant. Claimant has initiated the present arbitration to protect its interests and to hold Respondent to the promises in the agreements that Respondent has willfully chosen to ignore.

## **II. Procedural Issues**

### **A. Preliminary Remarks**

5 The advance payment on administrative expenses required by Article 4.4 of the ICC Rules and Article 1.1 of Appendix III to the ICC Rules has been transferred by wire to the International Court of Arbitration as of today.

6 The undersigned are duly authorized to act on behalf of Claimant.

Evidence:

- Powers of attorney

Exhibit C-1 a/b

7 All evidence presented by Claimant in the course of the present arbitration proceedings will be identified as "Exhibit C-#" and numbered consecutively throughout all briefs of Claimant.

8 A glossary of special terms and abbreviations used in this Request for Arbitration is set forth in Exhibit C-2, which will be amended in the further course of the proceedings from time to time.

Enclosure:

- Glossary of Special Terms And Abbreviations

Exhibit C-2

### **B. Jurisdiction and Place of Arbitration**

9 This arbitration arises from the agreement of Claimant, Respondent, and two other companies to jointly develop and promote, through the jointly held United Linux LLC, a standard version of the Linux computer operating system, referred to as **UnitedLinux**. As further discussed below, the arbitration concerns the rights and obligations of Claimant and Respondent under two contracts related to the UnitedLinux project:

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- Master Transaction Agreement (MTA) by and between Respondent (then known as Caldera International, Inc.), Claimant (then known as SuSE Linux AG), Conectiva Inc., and Turbolinux, Inc., dated May 29, 2002;
- UnitedLinux Joint Development Contract (JDC) by and between the same parties and, in addition, UnitedLinux, LLC, dated May 29, 2002.

Evidence:

- |  |             |
|--|-------------|
| - Master Transaction Agreement, dated May 29, 2002           | Exhibit C-3 |
| - UnitedLinux Joint Development Contract, dated May 29, 2002 | Exhibit C-4 |

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- 11 Respondent has already filed claims in a U.S. court against the licensee of Claimant directed against Claimant's SUSE Linux product and has, thus, decidedly moved beyond the stage of attempting to resolve any dispute concerning copyrights to Linux amicably. As discussed below, Respondent's claims are completely inconsistent with, and precluded by, the terms of the MTA and JDC. Therefore, this dispute should be resolved by ICC arbitration as laid out in the arbitration clause in said contracts.

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**C. Law Applicable to the Merits**

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**D. Appointment of Arbitrator**

**REDACTED**

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Pursuant to Articles 4.3 and 8.4 of the ICC Rules, each party shall nominate an arbitrator. Claimant hereby nominates the following arbitrator as a member of the three person Arbitral Tribunal:

Dr. Roberto Dallafior  
Hess Dallafior Rechtsanwälte  
Rämistrasse 5  
CH-8024 Zurich  
Switzerland

Tel: +41 44 250-4950

Fax: +41 44 250-4900

E-mail: [dallafior@hdlegal.ch](mailto:dallafior@hdlegal.ch)

**E. Language of the Proceedings**

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**REDACTED**

**F. Amount In Dispute**

16 For the purpose of determining the applicable ICC fees, Claimant believes that it would be appropriate to assign a value to this arbitration of between USD 50 million and 100 million.

**G. Scope of Present Submission**

17 The present submission is limited to the essential facts, statement of claims and exhibits as required by Article 4.3 of the ICC Rules. Claimant expressly reserves the right to further substantiate its factual and legal statements and to bring new or amended claims related to the matter in dispute and to provide supporting evidence at a later stage of the proceedings.



### III. The Parties

#### A. Claimant

- 18 Claimant SUSE Linux GmbH is a German corporation specializing in the Linux operating system business. It is the legal successor of the signatory SUSE Linux AG to the MTA and JDC. The terms SUSE Linux GmbH and Claimant are used herein to refer to both companies, as appropriate.

Evidence:

- Excerpts of Commercial Register for SUSE Linux GmbH, dated October 19 and December 20, 2004, the latter with General Assembly's resolution attached

Exhibit C-5 a/b

- 19 Claimant is an indirectly owned subsidiary of Novell, Inc. (Novell), a Delaware corporation headquartered in Massachusetts, USA. Novell became the owner of Claimant in January 2004.

- 20 Claimant is represented in this arbitration by the following counsel:

Michael A. Jacobs, Grant L. Kim, Kenneth W. Brakebill  
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felix.dasser@homburger.ch  
david.rosenthal@homburger.ch

## **B. Respondent**

- 21 Respondent The SCO Group, Inc. is a Delaware corporation, based in Utah. Respondent's address, as specified in the MTA and JDC for the purpose of giving notices, is as follows:

355 South 520 West, Suite 100  
Lindon, Utah 84042  
USA  
Attention: Mr. Benoy Tamang

Tel: 1-801-765-4999

Fax: 1-801-765-1313

E-mail: benoy.tamang@caldera.com

Respondent later notified Claimant that Mr. Tamang had left the company and that Mr. Andy Nagle had assumed responsibility for the UnitedLinux project. Accordingly, Claimant suggests that the ICC send any notices to Mr. Andy Nagle at the address above, with a copy to Mr. Darl McBride, Respondent's current CEO.

- 22 Respondent is the legal successor to Caldera International, Inc., which signed the MTA and JDC. The terms The SCO Group, Inc. and Respondent are used herein to refer to both companies, as appropriate.

### **Evidence:**

- Respondent's Press Release, Caldera to Change Name to The SCO Group, August 26, 2002

Exhibit C-6

#### **IV. Summary Statement of Facts**

##### **A. The Linux Operating System and the "Open Source" General Public License**

- 23 Linux is a computer operating system. An operating system is computer software that controls basic operations of the computer. An operating system works together with application programs that provide additional functions, such as word processing, e-mail, and accounting.
- 24 Unlike proprietary operating systems such as Microsoft Windows, Linux has been released as open source, meaning that the source code for Linux is available to the general public.
- 25 Source code refers to the series of instructions in which a computer program is written, which can be read, understood, and modified by an experienced programmer. Source code is subsequently converted into object code, which is a series of bytes (symbols) that are required to run the program, but which are effectively unintelligible to anyone other than the computer.
- 26 Because proprietary operating systems such as Windows are normally distributed as object code only, users cannot read or modify the source code for proprietary operating systems. Moreover, proprietary operating systems are normally distributed with restrictive licenses that prohibit users from modifying the code.
- 27 Linus Torvalds, a student at the University of Helsinki, developed the earliest version of the Linux kernel in 1991. The kernel provides certain core functions of an operating system related to control and management of the Central Processing Unit or CPU (the chip at the heart of the computer) and other computer hardware (e.g., disk drives, monitor, keyboard, and printers); control and management of computer memory (RAM); and control and management of files used by the computer.
- 28 In addition to the kernel, a computer operating system generally includes software related to other functions, such as the installation, testing, and use of the operating system. The Linux kernel has been combined with other software to create what is commonly referred to as the Linux operating system.

- 29 All versions of the Linux kernel have been released under the General Public License (the GPL) for at least the past 13 years. The GPL is a widely used open source license published by the GNU Project, whose principal sponsor is the Free Software Foundation. A copy of the General Public License that is included with the Linux kernel is submitted herewith as Exhibit C-7.

Evidence:

- GNU General Public License, Version 2

Exhibit C-7

- 30 As explained in the preamble, the GPL takes a very different approach than that of restrictive, proprietary licenses:

*"The licenses for most software are designed to take away your freedom to share and change it. By contrast, the GNU General Public License is intended to guarantee your freedom to share and change free software—to make sure that the software is free for all its users."*  
(Exhibit C-7, Preamble, page 1)

- 31 The GPL authorizes any third party to distribute modified versions of a computer program subject to the GPL, but only if such modified program is "licensed as a whole at no charge to all third parties under the terms of this License" (Section 2(b)). In addition, the GPL requires the source code for any modified program to be made available to the public, "for a charge no more than [the] cost of physically performing source distribution" (Section 3(b)).
- 32 Publication of the Linux kernel under the GPL effectively laid the foundation for the worldwide success of Linux, as it allowed anyone to use and modify the source code, but only on the condition that any distributed modifications were made freely available under the same conditions.
- 33 Numerous individuals and companies around the world have contributed code to the Linux operating system as open source under the GPL. As a result, Linux has evolved into a viable alternative to proprietary operating systems such as Microsoft Windows.
- 34 The Linux open source model offers several important benefits to users. First, the existence of competitive open source alternatives to proprietary operating

systems gives users more options, and hence more bargaining leverage in dealing with vendors.

35 Second, because the GPL requires any published modifications to be made freely available to the public, no individual or company has exclusive, proprietary rights to the Linux kernel or to other Linux software that is covered by the GPL. Thus, unlike proprietary operating systems, Linux is not under the control of a single company or individual.

36 Third, the open source policy empowers the user, by enabling the user to read and modify the source code. This is particularly important for users such as governments, who can check open source software for possible security flaws and modify the software without the permission or involvement of the software vendor.

Evidence:

- The Economist, Microsoft at the power point, September 11, 2003 Exhibit C-8

37 Fourth, because the Linux source code is freely available, patches that enhance or add features are frequently created by developers around the world and then made available to the public through the Internet.

38 Several companies have built businesses around the development, distribution and support of Linux and associated programs. One such company is Claimant, which was founded in 1993 and acquired by Novell in 2004. Linux vendors focus on providing services that go beyond the publicly available Linux operating system, such as additional software and technical support.

39 Although all versions of Linux include certain common functions and features, the Linux product (also called "distribution") provided by one company may vary from another company's distribution. For example, a particular distribution may include additional language support, other additional functions, and additional application programs that are packaged with the operating system. Linux distributions thus come in different flavors. This lack of standardization was perceived as one hindrance to the broader adoption of Linux.

**B. The Contracts at Issue**

40 To promote the adoption of Linux, Claimant, Respondent and two other Linux vendors (Conectiva, Inc. and Turbolinux, Inc.) agreed in May 2002 to develop a standard version of Linux called "UnitedLinux". The four UnitedLinux members were based in four different countries from four different continents, thus providing global coverage: Germany (SUSE), the U.S. (SCO), Brazil (Conectiva), and Japan (Turbolinux).

41 The purpose of the UnitedLinux project was

- (i) to develop a standard version of Linux containing those Linux components and features set forth in the JDC;
- (ii) to encourage each member to include UnitedLinux technology in their own Linux products, to be promoted under the common UnitedLinux brand;
- (iii) to encourage widespread adoption of UnitedLinux as the standard for the information technology industry, through the jointly formed and controlled UnitedLinux LLC (the LLC); and
- (iv) to have the LLC own and license to the members all IP rights the members may have in the UnitedLinux technology for the members' independent inclusion in, and marketing of, their own Linux products.

42 The Preamble of the MTA describes this purpose as follows:

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- 43 Pursuant to this agreed purpose, each of the members was free to use the UnitedLinux technology in its own Linux products, which would hopefully gain widespread industry acceptance through the successful, though independent, exploitation of the jointly developed software by each of the members.
- 44 Thus, the UnitedLinux members agreed to pool their resources for the mutual benefit of all members. This was particularly important because at that time, in 2002, the Linux market was dominated by Red Hat, a U.S. based Linux vendor that was not a member of UnitedLinux. By combining their respective expertise, intellectual property, and other resources to jointly develop and promote UnitedLinux, the UnitedLinux members sought to achieve greater market recognition than they could obtain through separate marketing of their separate Linux distributions.
- 45 Consistent with this purpose, the MTA and JDC made clear that each member was entitled to distribute its own Linux products free from claims that any of the other members had any proprietary rights in the UnitedLinux Software as used in the members' Linux products.
- 46 In particular, the UnitedLinux members agreed that each member would have an irrevocable, perpetual, and worldwide license to use and unlimitedly exploit any intellectual property rights of the other members in the UnitedLinux Software, which would be transferred to the LLC for this very purpose. Thus, the MTA and JDC contain identical provisions in Sections 3.2.2 and 8.2, respectively, stating that:

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**C. The Development and Release of UnitedLinux 1.0**

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- 57 The UnitedLinux project proceeded on schedule. UnitedLinux Version 1.0 was released to the public in November 2002, or less than six months after the contracts were signed in May 2002. The UnitedLinux press release stated:

*"UnitedLinux is the result of an industry initiative to streamline Linux development and certification around a global, uniform distribution of Linux. Founding companies of UnitedLinux are Linux industry leaders Conectiva S.A., The SCO Group (NASDAQ:SCOX), SuSE Linux AG, and Turbolinux, Inc. UnitedLinux Version 1.0 is the engine that powers products to be sold by the four companies, each with its own local language support, value-add[ed] features, and pricing."*

Evidence:

- UnitedLinux Press Release, UnitedLinux Releases Version 1.0, November 19, 2002

Exhibit C-9

**D. Respondent's Support for UnitedLinux and Release of SCO Linux 4.0, "Powered by United Linux"**

- 58 Respondent was initially a strong supporter of UnitedLinux and the open source model associated therewith. For example, Ransom Love, then the Chairman and CEO of Respondent (then called "Caldera") announced in May 2002 that:

*"Caldera sees the formation of UnitedLinux as a tremendous benefit to the industry, to our customers, to our 16,000-member reseller*

*channel, and to our IHV and ISV partners. Linux and Open Source have already changed the way software is developed in the new online world. UnitedLinux now offers a viable business model and creates a unified environment that will attract many more global business solutions to Linux enabling far greater adoption and use. Caldera plans to make Linux not just an alternative OS, but the dominant choice for businesses worldwide who are wanting to take advantage of the benefits of online services."*

Evidence:

- UnitedLinux Press Release, Caldera, Conectiva, SuSE, Turbolinux Partner To Create UnitedLinux, And Produce A Uniform Version Of Linux For Business, May 30, 2002

Exhibit C-10

- 59 Darl McBride, Respondent's current CEO, confirmed upon his appointment in June 2002 that "*UnitedLinux will be critical to the success of [Respondent]*" and that Respondent sought to make "*UnitedLinux a standard in our industry*".

Evidence:

- Respondent's Press Release, Caldera Names Darl McBride as New CEO, June 27, 2002

Exhibit C-11

- 60 In November 2002, Respondent proudly announced the release of SCO Linux 4.0, "*powered by UnitedLinux*". Respondent emphasized that:

*"SCO Linux 4.0 is based on UnitedLinux 1.0, the core standards-based Linux operating system co-developed in an industry initiative to streamline Linux development and certification around a global, uniform distribution of Linux."*

Respondent further stated that UnitedLinux is

*"an enterprise-class, industry-standard Linux operating system", which "provides a Single, Uniform Platform for application development, certification and deployment, and allows Linux vendors, Independent Software Vendors (ISVs) and Independent Hardware Vendors (IHVs) to support a single Linux offering rather than many different versions" (emphasis in the original).*

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Evidence:

- Respondent's Press Release, SCO Unveils SCO Linux 4, Powered by UnitedLinux, November 19, 2002

Exhibit C-12

61 UnitedLinux 1.0 included a modified form of Linux kernel version 2.4.19, which was subject to the GPL. Thus, Respondent's November 2002 release of its product "*powered by UnitedLinux 1.0*" triggered Respondent's obligation under the MTA and JDC to make the source code for the modified Linux kernel freely available to the public under the terms of the GPL.

62 Also in November 2002, Claimant announced its release of SUSE Linux, "*[b]ased on the joint industry standard, UnitedLinux 1.0*".

Evidence:

- Claimant's Press Release, SUSE LINUX Unveils the Next Generation of SUSE Linux Enterprise Server, November 19, 2002

Exhibit C-13

**E. Respondent's Sudden Change in Position and Assertion of Claims Against Linux**

63 Although Respondent continued to distribute its Linux product for a number of months, Respondent suddenly changed its position and began attacking the Linux operating system and the UnitedLinux project.

64 In March 2003, Respondent filed a lawsuit in the U.S. against IBM, alleging that (a) Respondent owned proprietary rights to the UNIX operating system; and (b) IBM had infringed on these rights by contributing UNIX code, methods, and concepts to the Linux operating system. Respondent initially asserted claims for misappropriation of trade secrets and unfair competition (as well as other theories), and later added a claim for copyright infringement. Respondent has demanded over USD 1 billion in damages.

65 Even after suing IBM in March 2003, Respondent continued to market and distribute SCO Linux 4.0, "*powered by UnitedLinux*". Indeed, in April 2003, Respondent announced the release of SCO Linux Server 4.0 for the Intel Itanium 64-bit processor, which included the base UnitedLinux operating system.

Evidence:

- Respondent's Press Release, SCO Ships SCO Linux Server 4.0 for the Itanium Processor Family, April 15, 2003

Exhibit C-14

- 66 However, in May 2003, Respondent announced that it would cease distribution of Linux. Respondent asserted that it had only recently discovered that Linux included code that infringed on Respondent's alleged proprietary rights, even though Respondent had been distributing Linux since 2001, and had participated in the development of UnitedLinux in 2002.

Evidence:

- Respondent's Press Release, SCO Suspends Distribution of Linux Pending Intellectual Property Clarification; Announces Greater Focus on UNIX and SCOx Strategy, May 14, 2003

Exhibit C-15

- 67 Also in May 2003, Respondent sent letters to about 1'500 major corporations, asserting that portions of the UNIX operating system had been improperly copied into Linux, and that the use of Linux infringed Respondent's alleged intellectual property rights in UNIX.

Evidence:

- Respondent's Letter to Novell of May 12, 2003

Exhibit C-16

- 68 At the same time that it threatened Linux users, Respondent stated that it would grant licenses to Respondent's alleged intellectual property rights in return for payment of royalties, under a licensing program called "SCOSource". Respondent sought to undermine confidence in Linux and to persuade users to take intellectual property licenses from Respondent through a widely-reported campaign of threats and lawsuits against both Linux users and vendors.

- 69 In addition to its USD 1 billion lawsuit against IBM and its demand letters to 1'500 Linux users, Respondent took the following actions:

- Respondent filed a lawsuit against a U.S. automobile parts company, Autozone, in Nevada, asserting that Autozone's adoption of Linux to run its computer systems infringed Respondent's alleged copyrights.
- Respondent filed a lawsuit against DaimlerChrysler, in Michigan, alleging that DaimlerChrysler had not complied with certification requirements in its UNIX license when it adopted Linux.
- Respondent repeatedly asserted in software and information technology industry magazines and conferences that Respondent would prevail in its

lawsuits and that companies that deployed Linux without taking SCOSource licenses did so at their legal peril.

- 70 Respondent's allegations have been vigorously disputed. IBM denied that any copyrightable UNIX code was included in Linux. Linux developers made similar denials and called on Respondent to specify the technical basis for its claims, including the specific Linux code at issue.
- 71 Despite widespread requests to identify the specific technical basis for its claims, Respondent failed to publicly identify the specific Linux code at issue. Respondent's failure to provide support for its claims led to litigation in Germany that resulted in Respondent being enjoined from asserting that Linux violated Respondent's intellectual property rights.

Evidence:

- Computerworld Article, SCO fined USD 10,800 in Germany for Linux claims, September 3, 2003

Exhibit C-17

**F. Respondent's Threats Against Claimant and Copyright Infringement Claim Based on Novell's Distribution of SUSE Linux**

- 72 Respondent's campaign targeted at Linux was a direct threat to Claimant, whose business was based on Linux. Claimant responded by stating that Claimant and its customers were protected against Respondent's intellectual property claims by virtue of the licenses granted in the MTA and JDC.

Evidence:

- CNET News.com Article, SuSE sheltered by SCO pact, May 5, 2003

Exhibit C-18

- 73 Respondent publicly disputed Claimant's position regarding the contracts. Chris Sontag, Senior Vice President and General Manager of Respondent's "SCOSource" licensing program, stated:

*"Regarding contracts we have with SuSE and UnitedLinux, I would unequivocally state that there is nothing in those contracts that provides them with any protection or shelter in the way they are*

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*characterizing this in the press. If I were them, I would not be making those kinds of statements."*

Evidence:

- John Blau interview with Chris Sontag in Computerworld, May 13, 2003

Exhibit C-19

- 74 In the same interview, Respondent's Chris Sontag stated that Respondent had no legal action planned against Claimant "at this time", but might take action in the future (Exhibit C-19).
- 75 On January 13, 2004, Novell purchased 100% of the shares of Claimant. At the same time, Claimant granted an exclusive license to Novell to all of Claimant's intellectual property rights, including any rights under agreements and licenses with other parties. Claimant's license to Novell included Claimant's rights under the MTA and JDC.

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- 76 One week after Novell completed its acquisition of Claimant, Respondent filed a lawsuit against Novell in Utah state court. Several weeks later, Novell removed the Respondent lawsuit to the U.S. District Court for the District of Utah, which is the same court in which Respondent's lawsuit against IBM is pending.
- 77 Respondent's claims against Novell initially focused on whether Novell had "slandered" Respondent's alleged title to the UNIX copyrights by asserting that Novell had not transferred such copyrights to Respondent. Novell has denied and continues to deny that it transferred any copyrights to Respondent. Nevertheless, Respondent recently amended its complaint to add a claim that the distribution of SUSE Linux infringes Respondent's alleged UNIX copyrights.

Evidence:

- Respondent's Second Amended Complaint, February 3, 2006

Exhibit C-20

- 78 The Second Amended Complaint of Respondent (Exhibit C-20) alleges that:
- "On November 4, 2003, Novell announced its acquisition of SuSE Linux, one of the world's leading distributors of Linux. Since that time, Novell

*began distributing Linux worldwide."* (cf. Respondent's Second Amended Complaint, para. 46);

- *"Novell has infringed and continues to infringe SCO's copyrights by copying, reproducing, modifying, sublicensing, and/or distributing Linux products containing unauthorized contributions of SCO's copyrighted intellectual property."* (cf. Respondent's Second Amended Complaint, para. 116); and
- *"Novell's unauthorized copying in its use and distribution of SuSE Linux includes but is not limited to the appropriation of numerous data structures and algorithms contained in or derived from SCO's copyrighted material. A partial listing of these data structures and algorithms is provided at Exhibit B."* (cf. Respondent's Second Amended Complaint, para. 117).

- 79 Respondent is requesting an award of damages related to Novell's distribution of SUSE Linux, as well as an injunction prohibiting Novell from continuing to distribute SUSE Linux.
- 80 Respondent has remained vague about the specific portions of SUSE Linux that supposedly infringe Respondent's copyrights. However, all or virtually all of the allegedly infringing items identified in Exhibit B to Respondent's Second Amended Complaint (Exhibit C-20) appear to be part of the Linux kernel that was included with UnitedLinux. Indeed, Respondent has asserted that the allegedly improper code is included in any product that includes the Linux kernel 2.4 or above.
- 81 As noted above, the Pre-Existing Technology contributed by Respondent to UnitedLinux does not involve the Linux kernel. In contrast, Respondent's Infringement claim appears to be limited to certain items in the Linux kernel included in both UnitedLinux and SUSE Linux.
- 82 The MTA and JDC preclude Respondent from asserting infringement claims against any technology included in the UnitedLinux kernel for multiple reasons, including: (a) the MTA and JDC divest Respondent of ownership of any copyrights it may have claimed in any technology included in the UnitedLinux Software (except for Pre-Existing Technology, which is not at issue); (b) Claimant has a broad royalty-free license to use any intellectual property rights associated



with the UnitedLinux technology, including the right to sublicense such rights to Novell and to end-users; and (c) the MTA and JDC require the source code for the UnitedLinux kernel to be made available for free use and distribution under the GPL license terms.

- 83 Respondent's new claim in its Second Amended Complaint has created an actual controversy between Respondent and Claimant, as the developer of SUSE Linux and licensor of this product to Novell. On the one hand, Respondent alleges that Novell's distribution of SUSE Linux infringes Respondent's alleged copyrights. On the other hand, Claimant's position is that the MTA and JDC bar Respondent from asserting any copyright infringement claims based on the distribution of SUSE Linux.
- 84 Respondent's improper assertion of infringement claims against SUSE Linux is a breach of the MTA and JDC. Respondent also breached the MTA by publicly attacking the Linux operating system shortly after UnitedLinux was released and by withdrawing support for the UnitedLinux project. By doing so, Respondent impeded the very purpose of the common UnitedLinux project. Instead of advancing the enhancement and distribution of Linux as open source software and joining Claimant and the other partners in increasing their market shares for the benefit of all the partners and the open source community at large, Respondent turned against Claimant and the other partners and is now on a campaign to destroy the formerly common business.
- 85 Respondent's claim against Claimant and its exclusive licensee Novell has caused considerable damage and threatens to cause further and irreparable damage to Claimant to be further substantiated.

## **V. Prayers for Relief**

- 86 It is, therefore, of utmost importance for Claimant that Respondent be found in breach of the MTA and JDC and, amongst others, prevented from further interfering with the distribution of SUSE Linux and that this be done before the Linux business and the open source project has been damaged even more seriously.
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- 87 Claimant has a legal interest in declaratory judgment by the Arbitral Tribunal and in an order preventing Respondent from further directly or indirectly interfering with Claimant's business.
- 88 Claimant is also entitled to damages in an amount to be determined.
- 89 Accordingly, Claimant requests that the Arbitral Tribunal award the following relief:
1. Declare that Respondent is precluded under the Master Transaction Agreement (MTA) and the UnitedLinux Joint Development Contract (JDC) from asserting any copyright infringement claims related to SUSE Linux;
  2. Declare, in particular, that the MTA and JDC divest Respondent of ownership of any alleged intellectual property rights in any part of software included in the UnitedLinux Software (other than Pre-Existing Technology and Enhancements);
  3. Order Respondent to refrain from alleging publicly or against third parties that the use and distribution of SUSE Linux infringes upon Claimant's copyrights, as precluded by the MTA and JDC;
  4. Order Respondent to pay damages in an amount to be determined for breach of the MTA and JDC by improperly asserting claims against Claimant and its licensees, and by attacking and withdrawing support for the UnitedLinux project;
  5. Order Respondent to bear all costs of the arbitration proceeding, including the costs and expenses of the ICC and of the arbitrators, as well as attorneys' fees, cost of lost executive time and expert's costs, if any; and
  6. Award any further relief that the Tribunal deems necessary to effectuate the relief requested above.
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For facts and reasons set out above, we kindly request the Arbitral Tribunal to uphold Claimant's Prayers for Relief.

Respectfully submitted,

    
Michael A. Jacobs Grant L. Kim Kenneth W. Brakebill

    
Georg Rauber Felix Dasser David Rosenthal

Exhibits as per separate list

**List of Claimant's Exhibits**

***In the Arbitration Proceeding of***

**SUSE Linux GmbH**

**vs.**

**The SCO Group, Inc.**

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**Exhibits filed with Respondent's Request for Arbitration  
of April 10, 2006**

- Exhibit C-1** Power of Attorney, dated April 7, 2006  
Power of Attorney, dated April 6, 2006
- Exhibit C-2** Glossary of Special Terms And Abbreviations
- Exhibit C-3** Master Transaction Agreement, dated May 29, 2002
- Exhibit C-4** UnitedLinux Joint Development Contract, dated May 29, 2002
- Exhibit C-5** Excerpts of Commercial Register for SUSE Linux GmbH, dated October 19 and December 20, 2004, the latter with General Assembly's resolution attached
- Exhibit C-6** Respondent's Press Release, Caldera to Change Name to The SCO Group, August 26, 2002
- Exhibit C-7** GNU General Public License, Version 2
- Exhibit C-8** The Economist, Microsoft at the power point, September 11, 2003
- Exhibit C-9** UnitedLinux Press Release, UnitedLinux Releases Version 1.0, November 19, 2002
- Exhibit C-10** UnitedLinux Press Release, Caldera, Conectiva, SuSE, Turbolinux Partner To Create UnitedLinux, And Produce A Uniform Version Of Linux For Business, May 30, 2002

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- Exhibit C-11** Respondent's Press Release, Caldera Names Darl McBride as New CEO, June 27, 2002
- Exhibit C-12** Respondent's Press Release, SCO Unveils SCO Linux 4, Powered by UnitedLinux, November 19, 2002
- Exhibit C-13** Claimant's Press Release, SUSE LINUX Unveils the Next Generation of SUSE Linux Enterprise Server, November 19, 2002
- Exhibit C-14** Respondent's Press Release, SCO Ships SCO Linux Server 4.0 for the Itanium Processor Family, April 15, 2003
- Exhibit C-15** Respondent's Press Release, SCO Suspends Distribution of Linux Pending Intellectual Property Clarification; Announces Greater Focus on UNIX and SCOx Strategy, May 14, 2003
- Exhibit C-16** Respondent's Letter to Novell of May 12, 2003
- Exhibit C-17** Computerworld Article, SCO fined USD 10,800 in Germany for Linux claims, September 3, 2003
- Exhibit C-18** CNET News.com Article, SuSE sheltered by SCO pact, May 5, 2003
- Exhibit C-19** John Blau Interview with Chris Sontag in Computerworld, May 13, 2003
- Exhibit C-20** Respondent's Second Amended Complaint, February 3, 2006