

Via Telecopier

September 8, 2003

David R. Marriott
Cravath Swaine & Moore LLP
Worldwide Place
285 Eight Avenue
New York, NY 10019

Re: SCO v. IBM

Dear Dave:

You have asked for a written response to Todd Shaughnessy's letter of August 27, 2003 (the "Objection Letter"). You have also asked us to put in writing our concerns with respect to IBM's discovery responses. We will do that by separate correspondence.

We will respond to the Objection Letter in the same order in which the concerns were set forth. Where practicable, we also will identify where IBM made identical or similar objections or responses and will expect a reciprocal resolution.

I. General Objections

General Objection Nos. 1-5, 9-11. It is correct that SCO will not withhold responsive, non-privileged documents from production on the basis of these objections, however, please be advised that with respect to General Objection No. 4, SCO will not be obtaining or searching files in the possession, custody or control of third parties. Please also note that IBM, in its Responses & Objections to SCO's First Request for the Production of Documents and First Set of Interrogatories ("IBM's Responses") makes objections which are nearly identical to SCO's Objection Nos. 1-5 and very similar to SCO's Objection No. 10. Thus, IBM needs to likewise confirm it is not withholding any documents based upon any of its General Objections. If IBM is withholding documents or otherwise not producing requested documents based upon any of its

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General Objections, then we need for you to identify the General Objections that are being used to do so.

General Objection No. 6. SCO does not generally object to producing documents which relate to a period prior to January 1, 1985 and would not withhold a document simply on that basis. The real issue is similar to that as set forth in IBM's Responses, General Objection No. 4, which addresses the reasonableness of the search. The parties must agree on the scope and methodology of what is reasonable, which would resolve this General Objection No. 6, and other General Objections.

General Objection No. 7. We decline to limit the claims in the complaint through a requested confirmation in discovery that SCO "...does not assert any rights that are not the 'the subject of those certain Software and Sublicensing Agreements'". Respectfully, our clarified definition of "Disputed Material" is the appropriate definition when read in connection with the actual requests made.

General Objection No. 8. We do not generally object to producing responsive, non-privileged electronic documents. The real issue, once again, is to agree upon what constitutes a "reasonable search" for each party on a given issue.

General Objection No. 10. We will proceed with all production of responsive, non-privileged documents but do require the execution of the mutually agreed upon confidentiality agreement prior to delivering confidential documents. We have over fifty (50) CDs ready for delivery. We are just awaiting resolution of the terms of the confidentiality agreement and execution thereof. With the exception of the procedure on who gets access to the documents, in particular, the identity of those folks, the Protective Order is ready for submission.

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II. Interrogatory Responses

First, without addressing your comment about the merits of our objection, which you apparently are misreading, we confirm that SCO is not withholding responsive non-privileged information based upon this objection.

Second, SCO has provided meaningful responses to the interrogatories and, moreover, is entitled to respond to the Interrogatories by providing documents pursuant to Rule 33(d). Your blanket complaint to all of the Interrogatories fails to recognize that most of the interrogatory responses do more than just point to Rule 33(d). Rather than debate the issue, however, the documents responsive to these interrogatories are the System V source code, the license agreements with all licensees, and the Linux 2.4 kernel and above (which you have and which is publicly available). Pursuant to Fed. R. Civ. P. 33(d), the production of these documents is responsive to the Interrogatories because the "burden of deriving or ascertaining the answer is substantially the same for IBM as it is for SCO. Indeed, we note that IBM used the Rule 33(d) device in a similar fashion in response to SCO's interrogatories 4 and 5. These documents are included into those currently available on CD. Additionally, for Interrogatory No. 5, we will produce the relevant copyrights.

If you need further clarification on any of these interrogatories regarding the relevant documents, please let us know so we can understand what you are looking for and then respond accordingly.

Third, SCO has provided complete narrative responses to these Interrogatories. Because the interrogatories relate to IBM's surreptitious actions, as noted in our response, part of this information is peculiarly within IBM's knowledge. Perhaps if you can identify what further detail you seeking, we can further respond to your objections.

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Fourth, SCO is not withholding information knowingly by Plaintiff's predecessors and is producing all relevant files in its custody, control or possession that identify those who have knowledge relating to the claims and the nature of their knowledge.

Fifth, As you have narrowed your request, the interrogatory answer is responsive. What further information do you seek?

III. Document Responses

A. SCO has not declined to produce responsive, non-privileged documents and will produce such documents when they are ready for production. As noted, we have over fifty (50) CDs of documents ready for delivery. However, we would be remiss if we did not observe that we likewise have yet to receive a single document from IBM.

B. See our comment in General Objection No. 7 above.

C. Request Nos. 4-5, 7, 24. Obviously, we disagree that SCO's objections are meritless. We reiterate our comments in General Objection No. 7, above. Please clarify what information or types of documents you seek with respect to "value."

Request No. 16 SCO will produce responsive, non-privileged documents, if any, with your new limitation to produce only lawsuits relating to UNIX or Linux.

Request No. 34. SCO's objections are not meritless. This request seeking any agreement involving AT&T, USL, Novell, Tarantella or SCO relating to UNIX or Linux clearly is overbroad and unduly burdensome. SCO will, however, produce responsive, non-privileged documents including the 30,000 license agreements and the confidentiality and non-disclosure agreements in its possession, in

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addition to any other such responsive, non-privileged documents which SCO discovers in its continuing searches.

Request Nos. 40, 42. On Request No. 40, if you can identify the types of non-privileged documents you think might exist, then perhaps we can reach a resolution. At this time, the only documents that we can see as possibly responsive would be between SCO representatives and their counsel, which obviously would be privileged. By the way, on these privilege logs, we are assuming you are not looking to have a listing of all communications between counsel in this case and the client. We certainly are not expecting to see a privilege log listing all correspondence between Cravath and IBM relating to this case. Please confirm we are on the same page on this issue. On Request No. 42, other than claiming it is "plainly discoverable", we fail to see the relevance of a "decision to commence or pursue other lawsuits". If you could identify why you need these documents and the types of documents you are seeking, perhaps we can arrive at some resolution.

Request No. 43. SCO will not withhold responsive, non-privileged documents.

Request Nos. 46-47. SCO will produce responsive, non-privileged documents based upon the limitations that the requests relate only to UNIX or Linux.

Request No. 55. SCO will produce non-privileged, responsive documents.

Request Nos. 58-59. SCO was not a party to this litigation and does not have possession of such documents. Furthermore, the actual order regarding the destruction of documents; indeed, the whole file, is available on PACER.

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Request No. 61. As previously disclosed, SCO will produce a copy of all source code and object code relating to releases of any UNIX in its custody, control or possession.

With respect to source code and object code relating to releases of Linux, this information is "...equally accessible to..." IBM, which coincidentally is the basis for IBM's Objection No. 8 in IBM's Responses.

Request No. 63. SCO will produce responsive, non-privileged documents based upon IBM's agreed narrowing that the request relates only to UNIX and Linux.

Request Nos. 65-66. It is impossible to show all persons to whom plaintiff or plaintiff's predecessors have ever marketed, sold or distributed any products inasmuch as some marketing and sales were to the general public. However, SCO will produce the 30,000 license agreements it maintains and will deliver any other responsive, non-privileged documents in its possession. Moreover, based upon your earlier statement that you are not seeking invoices for the sale of the products, it is difficult to determine what documents other than the license agreements would be responsive to your requests.

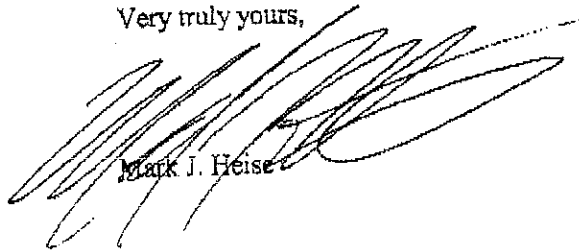
Any responses to the foregoing requests will be provided in accordance with any agreements of the parties with respect to the scope and reasonableness of the requisite searches.

Upon receipt of your response to SCO's letter outlining the deficiencies in IBM's discovery responses we can meet to resolve all of these issues and promptly proceed. SCO's letter accompanies this correspondence.

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Thank you for your attention to this matter.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read 'Mark J. Heise'.

Mark J. Heise

cc: Todd Shaughnessy, Esq.

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