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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,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant/Counterclaim Plaintiff.

**DECLARATION OF
PETER H. SALUS**

Case No. 2:03CV0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

I, Peter H. Salus, Ph.D., hereby declare under penalty of perjury as follows:

1. I am over the age of majority and am competent to testify to the facts set forth in this declaration. This declaration is submitted in connection with the lawsuit brought by The SCO Group, Inc. ("SCO") against International Business Machines Corporation ("IBM"), entitled The SCO Group, Inc. v. International Business Machines Corporation, Civil No. 2:03CV-0294 DAK (D. Utah 2003). The information provided in this declaration is true, accurate and based upon my personal knowledge.
2. From Spring 1986 through Summer 1989, I was the Executive Director of the USENIX Association ("USENIX"), the largest and oldest of the UNIX user organizations, which supports the development of UNIX variants such as AIX and Dynix. Thereafter, I served as a frequent speaker and informal historian for USENIX, until approximately 2004. As Executive Director, my duties included supervising and vetting various USENIX publications and newsletters and organizing and supervising the USENIX conferences and tutorials, among other things.
3. For a period of time, I also served as the Editor and Publisher of *;login:*, the official newsletter of USENIX, sent free of charge to all USENIX members. The *;login:* newsletter contained the following notice: "The USENIX Association is an organization of AT&T licensees, sub-licensees, and other persons formed for the purpose of exchanging information and ideas about UNIX and similar operating systems and the C programming language." (emphasis added).
4. I also attended certain of the conferences held by USENIX prior to 1986, and from June 1986 through 2004, I attended every USENIX conference, as well as a number of USENIX symposia and workshops.

5. Over the years, I attended approximately 30 USENIX events, as well as a number of other events organized by similar organizations, such as Uniforum, a vendor-organized UNIX forum, the United Kingdom Unix Users' Group ("UKUUG"), the European Unix Users' Group ("EUUG"), the Denmark Unix Users' Group ("DKUUG"), and Australia Unix Users' Group ("AUUG").
6. From at least 1985 until January 1989, I remember Otis Wilson attending each of our semiannual USENIX conferences on behalf of AT&T. At the conferences, we held what we called "Birds of a Feather" question-and-answer sessions, or BOFs, designed to appeal to conference goers with specific, targeted interests or concerns relating to UNIX. Mr. Wilson or one of his associates would contact me before the conference began to coordinate an AT&T System V Licensee BOF. As Executive Director of the USENIX conference, and later as a speaker and informal historian for the group, I was present all of these sessions.
7. At the AT&T BOFs, which were open to all USENIX conference goers but generally attended by licensees, Mr. Wilson was frequently asked questions about AT&T's position with regard to the treatment of AT&T System V source code and source code written by the licensees. During these discussions, he stressed the fact that licensees' software that did not contain System V code was not subject to the AT&T licenses. I recall him explaining on numerous occasions that so long as you did not disclose actual System V source code, the code you derived or created under the AT&T license was yours to use, distribute, or disclose as you saw fit. On many occasions at these sessions, I recall him saying what is yours is yours, what is ours is ours.
8. As I recall, the AT&T BOFs ceased after USL and the University of California

reached a settlement in the BSD litigation.

9. After The Santa Cruz Operation, Inc. ("Santa Cruz") acquired some UNIX assets from Novell in 1995, I and others were very interested in republishing *Lions' Commentary on UNIX 6th Edition with Source Code*. Dennis Ritchie, one of UNIX's two inventors at Bell Labs, contacted Doug Michels, Santa Cruz's CEO, for permission, and I contacted Michael Tilson, who at the time was Santa Cruz's Chief Information Officer and the President of the UniForum Association, a professional association for end users, developers, and vendors formed in 1981 for the promotion and exchange of information about the practices and benefits of open technologies, for the same purpose. We obtained permission from Santa Cruz to reprint *Lions' Commentary*, and did so in 1996. In fact, Mike Tilson wrote one of the two prefaces to the 1996 edition; I wrote the other.


10. In his preface to the republished *Lions' Commentary*, Mike Tilson wrote:

When this book was first published, I was astonished by how much pleasure I got from reading what should have been a dry piece of technical documentation. John Lions had created a truly brilliant technical work. The UNIX operating system kernel code was itself an elegant work, and even today it remains worthy of study. John added a line-by-line analysis that was equally elegant. The source code and the annotations were perfectly suited to each other, and I haven't seen anything to equal this achievement since. A generation of operating system developers used this work as a key learning tool, and I wonder just how much it influenced the ultimate UNIX domination of technical workstations, internet servers, and business-critical computing. At the time, the circulation was limited, because it was an annotation of proprietary source code. I'm very pleased that this work can now be made available to the public. It is part of our technical history, and we can still learn from it today.

(Michael Tilson, *Lions' Commentary*, Prefatory Notes, ix) (emphases added).

I hereby declare under penalty of perjury that the foregoing statements are true and correct pursuant to 28 U.S.C. § 1746.

DATED this 15 day of September, 2006.



PETER H. SALUS