

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

THE SCO GROUP, INC.,
a Delaware corporation,

Plaintiff,

vs.

DAIMLERCHRYSLER CORPORATION,
a Delaware corporation,

Defendant.

**COMPLAINT AND JURY
DEMAND**

Case No. 04



JOEL H. SERLIN (P20224)
BARRY M. ROSENBAUM (P26487)
Attorneys for Plaintiff
2000 Town Center, Suite 1500
Southfield, MI 48075
(248) 353-7620

RECEIVED FOR FILING
OAKLAND COUNTY CLERK
2004 MAR -3 P 12:06
COUNTY CLERK

THERE IS NO OTHER PENDING OR RESOLVED CIVIL ACTION ARISING OUT OF THE SAME TRANSACTION OR OCCURRENCE AS ALLEGED IN THE COMPLAINT.

NOW COMES Plaintiff, The SCO Group, Inc. ("SCO") by and through its attorneys, Seyburn, Kahn, Ginn, Bess & Serlin, P.C., and Boies, Schiller & Flexner LLP, and for its Complaint against Defendant DaimlerChrysler Corporation ("DC") alleges as follows:

Introduction

1. SCO is the exclusive licensor of software licenses for the UNIX operating system. These software licenses are agreements that restrict the permitted use of the UNIX operating system. To help insure compliance with the restrictions on such permitted

use, the licenses include a monitoring and reporting mechanism designed to detect (and thus deter) violations of those agreed limits. Specifically, the licenses require licensees to certify their compliance with those restrictions. Like all provisions in the license, these reporting and monitoring provisions exist only because they have been agreed to by the licensee.

2. SCO has requested that DC provide the contractually required certification that DC is complying with the terms of its UNIX technology license. SCO has thus asked DC to certify--as contractually it must-- that its use of UNIX technology is within the agreed parameters of permitted use established by the license.
3. DC agreed to and accepted the terms of its UNIX license. DC has received very substantial benefits as a result of entering that license and DC has never challenged the validity of that license.
4. Nevertheless, DC has refused to provide the contractually required certification of compliance that SCO requested. DC has in fact refused even to respond to SCO's request. It would be irrational and contrary to DC's self-interest for DC to violate the license's certification requirement's in this way unless DC was also violating the license's limits on permitted use of UNIX technology, precluding DC from certifying compliance.
5. By refusing to provide the certification that the license requires as a means of enabling SCO to monitor compliance with, and thus protect, the rights that DC agreed to respect, DC has compelled SCO to institute this litigation to secure a judicial remedy.

Parties, Jurisdiction and Venue

6. Plaintiff SCO is a Delaware corporation with its principal place of business in the County of Utah, State of Utah.
7. Defendant DC is a Delaware corporation with its principal place of business in the County of Oakland, State of Michigan.
8. This Court has subject matter jurisdiction over SCO's Complaint because the amount in controversy exceeds the sum of Twenty-Five Thousand (\$25,000.00) Dollars and/or is otherwise within the equitable jurisdiction of this Court.
9. Venue is properly situated in Oakland County, Michigan because DC has a place of business in Oakland County.

Background Facts

10. UNIX is a computer software operating system. Operating systems serve as the link between computer hardware and the various software programs (known as applications) that run on the computer. Operating systems allow multiple software programs to run at the same time and generally function as a "traffic control" system for the different software programs that run on a computer.
11. In the business-computing environment for the Fortune 1000 and other large corporations (often called the "enterprise computing market"), UNIX is widely used.
12. The UNIX operating system was originally developed by AT&T Bell Laboratories ("AT&T"). After successful in-house use of the UNIX software, AT&T began to

license UNIX as a commercial product for use in enterprise applications by other large companies.

13. Over the years, AT&T Technologies, Inc., a wholly owned subsidiary of AT&T, and its related companies, licensed UNIX for widespread enterprise use. Pursuant to a license with AT&T, various companies, including International Business Machines, Hewlett-Packard, Inc., Sun Microsystems, Inc., Silicon Graphics, Inc., and Sequent Computer Systems, became some of the principal United States-based UNIX vendors, among many others.
14. These license agreements place restrictions on the valuable intellectual property developed by AT&T, which allow UNIX to be available for use by others while, at the same time, protecting AT&T's (and its successor's) rights.
15. Through a series of corporate acquisitions, SCO presently owns all right, title and interest in and to UNIX and UnixWare operating system source code, software and sublicensing agreements, together with copyrights, additional licensing rights in and to UNIX and UnixWare, and claims against all parties breaching such agreements.
16. During the past few years a competing, and free, operating system known as Linux has been transformed from a non-commercial operating system into a powerful general enterprise operating system.
17. Linux is a computer software operating system that, in material respects, is a variant or clone of UNIX System V. According to leaders within the Linux community, Linux is not just a "clone," but is intended to displace UNIX System V.

**FIRST CAUSE OF ACTION
(Breach of Contract/Declaratory Judgment)**

18. Plaintiff incorporates and re-alleges paragraphs 1 - 17 above.

19. SCO is the successor to AT&T under that certain Software Agreement originally executed by and between AT&T and Chrysler Motors Corporation designated as SOFT-01341 (the "DC Software Agreement" or the "Agreement"). The DC Software Agreement specifies the terms and conditions for use of authorized distributions of UNIX System V source code, including modifications and derivative works based thereon, by Defendant. The DC Software Agreement is attached hereto as Exhibit "A."

20. With respect to the scope of rights granted for use of the System V source code under Section 2.01 of the DC Software Agreement, Defendant received the following rights in UNIX:

[A] personal, *nontransferable* and nonexclusive right to *use* in the United States each Software Product identified in the one or more Supplements hereto, *solely for Licensee's own internal business purposes* and solely on or in conjunction with Designated CPUs for such Software Product. Such right to use includes the right to *modify* such Software Product and to *prepare derivative works based on* such Software Product, provided that any such modification or derivative work that contains any part of a Software Product subject to this Agreement is *treated hereunder the same as such Software Product*. (Emphasis added.)

21. Defendant agreed in §2.06 of the DC Software Agreement to the following restrictions on *use* of the Software Product (including System V source code, derivative works and methods based thereon):

No right is granted by this Agreement for the use of Software Products directly *for others, or for any use of Software Products by others*

22. Defendant agreed in §7.09 of the DC Software Agreement to the following restrictions on *transfer* of the Software Product, including resulting modifications or derivative works of UNIX System V:

[N]othing in this Agreement grants to Licensee the right to sell, lease or otherwise transfer or dispose of a Software Product in whole or in part.

23. Defendant agreed under §7.05(a) of the DC Software Agreement to the following restrictions on *confidentiality* of the Software Product:

Licensee agrees that it shall hold all parts of the Software Products subject to this Agreement *in confidence* for [SCO]. Licensee further agrees that it *shall not make any disclosure* of any or all of such Software Products (*including methods or concepts utilized therein*) to anyone, except to employees of Licensee to whom such disclosure is necessary to the use for which rights are granted hereunder. Licensee shall appropriately notify each employee to whom any such disclosure is made that such disclosure is made in confidence and shall be kept in confidence by such employee.

24. Consistent with these restrictions, in § 2.05, Defendant also agreed to account to SCO on an annual basis regarding its use of System V software licensed pursuant to the Software Agreement. Specifically, § 2.05 provides as follows:

On [SCO's] request, but not more frequently than annually, Licensee shall furnish to [SCO] a statement, certified by an authorized representative of Licensee, listing the location, type and serial number of all Designated CPUs hereunder and stating that the use by Licensee of Software Products subject to this Agreement has been reviewed and that each such Software Product is being used solely on such Designated CPUs (or temporarily on back-up CPUs) for such Software Products *in full compliance with the provisions of this Agreement*. (Emphasis added.)

25. Section 2.05 of the Software Agreement is designed to insure compliance by DC “with the *provisions* of this Agreement,” and to do so by supplying a monitoring mechanism that prevents and deters violations of the Software Agreement.
26. By letter dated December 18, 2003, SCO requested that DC provide the writing required under § 2.05 certifying that DC was “in full compliance with the provisions of [the Software Agreement].” Although DC should have been in a position to produce such a compliance certification on shorter notice, SCO’s letter requested that the required certification be provided within 30 days of receipt of that letter. (The SCO December 18, 2003, letter is attached hereto as Exhibit “B”).
27. DC has refused to comply with its obligations under § 2.05 of the Software Agreement. Specifically, DC has refused even to respond to SCO’s request for the contractually required compliance certification within 30 days, or at any time since. DC has thereby refused to state that it is not now violating its obligations under the Software Agreement, and DC has refused to state that it has not in the past been violating its obligations under the Software Agreement. DC has refused to provide such a certification even though it is also one of DC’s express obligations under the Software Agreement to provide such a certification.
28. On information and belief, DC’s refusal to certify that it is not violating the DC Software Agreement is also based, in part, on DC’s use of UNIX technology, in violation of the DC Software Agreement, in migrating its installed base to the Linux operating system.
29. It would be irrational and contrary to DC’s self-interest for it to continue to withhold the requested certification and thereby violate the Software Agreement’s reporting

requirements if DC were not also violating the Software Agreement's non-reporting, core substantive requirements.

Prayer for Relief

Plaintiff respectfully requests that the Court:

Enter an order that DC has violated § 2.05 of the Software Agreement by refusing to provide the certification of compliance with the "provisions" of that Agreement;

Enter an order declaring that DC has not complied with, and instead has violated, the provisions of the Software Agreement with which § 2.05 required DC to certify compliance;

Enter an order permanently enjoining DC from further violations of the DC Software Agreement; and

Issue a mandatory injunction requiring DC to remedy the effects of its past violations of the DC Software Agreement; and

Award damages in an amount to be determined at trial; and

Enter judgment in favor of Plaintiff together with costs, attorneys' fees and any such other or different relief that the Court may deem to be equitable and just.

Jury Demand

SCO demands trial by jury on all issues so triable.

Respectfully submitted,

**SEYBURN, KAHN, GINN,
BESS AND SERLIN, P.C.**

By: 

Joel H. Serlin (P20224)
Barry M. Rosenbaum (P26487)
Attorneys for Plaintiff
2000 Town Center, Suite 1500
Southfield, MI 48075-1195
(248) 353-7620

Stephen N. Zack, Esq.
Mark J. Heise, Esq.
Co-Counsel for Plaintiff
Boies, Schiller & Flexner LLP
Bank of America Tower
100 South East 2nd Street, Ste. 2800
Miami, FL 33131
(305) 539-8400

Robert Silver
Boies, Schiller & Flexner LLP
Co-Counsel for Plaintiff
333 Main Street
Armonk, NY 10504
(914) 749-8200

Dated: March 3, 2004