

Brent O. Hatch (5715)  
Mark F. James (5295)  
HATCH, JAMES & DODGE, PC  
10 West Broadway, Suite 400  
Salt Lake City, Utah 84101  
Telephone: (801) 363-6363  
Facsimile: (801) 363-6666

Stephen N. Zack (admitted pro hac vice)  
BOIES, SCHILLER & FLEXNER LLP  
Bank of America Tower -- Suite 2800  
100 Southeast Second Street  
Miami, Florida 33131  
Telephone: (305) 539-8400  
Facsimile: (305) 539-1307

RECEIVED CLERK  
**FILED**  
MAY 23 2007  
U.S. DISTRICT COURT  
DISTRICT OF UTAH  
*[Handwritten signature]*

Robert Silver (admitted pro hac vice)  
Edward Normand (admitted pro hac vice)  
Sean Eskovitz (admitted pro hac vice)  
BOIES, SCHILLER & FLEXNER LLP  
333 Main Street  
Armonk, New York 10504  
Telephone: (914) 749-8200  
Facsimile: (914) 749-8300

*ATTORNEYS FOR THE SCO GROUP, INC.*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

<p>THE SCO GROUP, INC.,</p> <p>Plaintiff/Counterclaim-Defendant,</p> <p>v.</p> <p>INTERNATIONAL BUSINESS MACHINES CORPORATION,</p> <p>Defendant/Counterclaim-Plaintiff.</p>	<p><b>PLAINTIFF'S RENEWED MOTION TO COMPEL DISCOVERY</b></p> <p>Case No. 2:03CV0294DAK Honorable Dale A. Kimball Magistrate Judge Brooke C. Wells</p>
---	---

*366*

The SCO Group, Inc. (“SCO”) respectfully moves the Court pursuant to Rule 37(b)(2) of the Federal Rules of Civil Procedure to compel International Business Machines Corporation (“IBM”) to respond completely and properly to SCO’s discovery regarding the files of IBM’s executive management and the compel discovery regarding SCO’s Rule 30(b)(6) depositions of IBM. SCO bases its Motion on the following grounds:

In disregard of SCO’s long-standing document requests, this Court’s March 2004 Order, and now this Court’s October 2004 Order requiring IBM’s executives and Board of Directors to provide sworn affidavits on the issue, IBM has failed to produce documents regarding its “Linux strategy” – which is at the heart of this case – or to explain the glaring absence of such documents in its production. Neither SCO’s document requests nor this Court’s Orders leave any ambiguity regarding the broad scope of the Linux-related documents that IBM must produce. Nevertheless, IBM has apparently adopted, unilaterally, an unduly narrow interpretation of its obligations. Moreover, the cursory affidavits that IBM has supplied in response to the Court’s most recent Order raise more questions about IBM’s discovery practices than they answer.

In addition, IBM has improperly refused to produce Rule 30(b)(6) witnesses on several appropriate topics. For example, IBM refuses to provide any witness to testify about the nature and extent of IBM’s contributions to Linux – a core issue in this case. IBM’s intransigence thus compounds its withholding of documents and proper interrogatory responses to SCO’s prior discovery requests that seek similar, critically relevant information.

IBM has unilaterally blocked SCO from obtaining even the most rudimentary information that it needs to develop its proof for trial. In light of IBM’s longstanding delay on this critical discovery – and in light of the currently scheduled, impending close of fact discovery (on February 11, 2005) – the Court should order IBM to produce immediately (1) all documents from its

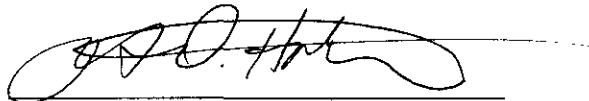
executives and Board of Directors that mention or relate in any way to Linux and (2) witnesses for deposition who can speak to the full scope of the topics SCO has noticed.

SCO's Motion is supported by the Memorandum in Support of Plaintiff's Renewed Motion to Compel submitted concurrently herewith.

DATED this 23rd day of December, 2004.

Respectfully submitted,

By:



HATCH, JAMES & DODGE, P.C.  
Brent O. Hatch  
Mark F. James

BOIES, SCHILLER & FLEXNER, L.L.P.  
Robert Silver  
Edward Normand  
Sean Eskovitz

*Counsel for The SCO Group, Inc.*

**CERTIFICATE OF SERVICE**

Plaintiff/Counterclaim Defendant, The SCO Group, Inc., hereby certifies that a true and correct copy of the foregoing Plaintiff's Renewed Motion to Compel Discovery was served by mail on Defendant International Business Machines Corporation on the 23<sup>rd</sup> day of December, 2004, by U.S. Mail to:

David Marriott, Esq.  
Cravath, Swaine & Moore LLP  
Worldwide Plaza  
825 Eighth Avenue  
New York, New York 10019

Donald J. Rosenberg, Esq.  
1133 Westchester Avenue  
White Plains, New York 10604

Todd Shaughnessy, Esq.  
Snell & Wilmer LLP  
1200 Gateway Tower West  
15 West South Temple  
Salt Lake City, Utah 84101-1004

  
\_\_\_\_\_