

135

Joseph A. LaSala, Jr.
Senior Vice President,
General Counsel and Secretary

Novell.

**VIA FACSIMILE AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Mr. Ryan Tibbitts
General Counsel
The SCO Group
355 South 520 West
Lindon, UT 84042

Re: IBM Code Contributed to AIX

Dear Mr. Tibbitts:

I write further to the exchange of correspondence between Novell and SCO concerning SCO's campaign directed against the Linux community.

SCO appears to be taking the position that code developed by IBM, or licensed by IBM from a third party, which IBM incorporated in AIX but which itself does not contain proprietary UNIX code supplied by AT&T under the license agreements between AT&T and IBM ("IBM Code"), must nevertheless be maintained as confidential and may not be contributed to Linux.

For instance, at Forum 2003, SCO gave a presentation in which it asserted that particular code modules constitute "examples of significant infringing derivative works contributions to Linux 2.4/2.5 kernels." SCO concluded that over 1,500 files and more than a million lines of code were unlawfully copied from UNIX into Linux. It appears that SCO included IBM Code in its calculation.

The position that IBM Code must be maintained as confidential and subject to use restrictions is contrary to the agreements between AT&T and IBM, including Amendment X, to which Novell is a party. Section 2.01 of the Software Agreement, dated February 1, 1985, between AT&T Technologies, Inc. and IBM, states that:

AT&T grants to LICENSEE 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 the resulting materials are treated hereunder as part of the original SOFTWARE PRODUCT.

Mr. Ryan Tibbitts
IBM
Page 2 of 3
October 7, 2003

A side letter clarifying the parties' understanding of the Software Agreement, also dated February 1, 1985, states (in paragraph A.2) that:

Regarding Section 2.01, we [AT&T] agree that modifications and derivative works prepared by or for you [IBM] are owned by you. However, ownership of any portion or portions of SOFTWARE PRODUCTS included in any such modification or derivative work remains with us.

The agreements between AT&T and IBM, as amended, including the side letter (the "Agreements"), thus provide for a straightforward allocation of rights: (1) AT&T retained ownership of its code from the Software Products ("AT&T Code"), and the Agreements' restrictions on confidentiality and use apply to the AT&T Code, whether in its original form or as incorporated in a modification or derivative work, but (2) IBM retained ownership of its own code, and the Agreements' restrictions on confidentiality and use do not apply to that code so long as it does not embody any AT&T Code.

To be sure, to the extent that a modification or derivative work embodies AT&T Code, the combined work consisting of AT&T Code and IBM Code constitutes "resulting material" that is subject to the Agreements. The IBM Code itself is, however, not "resulting material." Therefore, the IBM Code is not subject to the confidentiality obligations or use restrictions of the Agreements.

This outcome is consistent with other provisions of the Agreements. For example, the side letter (as amended by Amendment X) further provides (in paragraph 9) that:

Nothing in this agreement shall prevent LICENSEE from developing or marketing products or services employing ideas, concepts, know-how or techniques relating to data processing embodied in SOFTWARE PRODUCTS subject to this Agreement, provided that LICENSEE shall not copy any code from such SOFTWARE PRODUCTS into any such product or in connection with any such service.

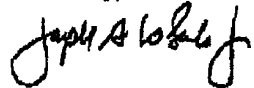
As reflected in this language, the focus of the Agreements was on protecting AT&T Code, not on restricting IBM Code just because it happened to be combined with AT&T Code in a modification or derivative work. Any other result would defy logic as well as the intent of the parties.

Mr. Ryan Tibbitts
IBM
Page 3 of 3
October 7, 2003

As you know, under Section 4.16(b) of the Asset Purchase Agreement Novell retains the right, at Novell's "sole discretion and direction," to require SCO to "amend, supplement, modify or waive any rights under, or . . . assign any rights to, any SVRX License to the extent so directed in any manner or respect by [Novell]." That section further provides that to the extent SCO "shall fail to take any action concerning the SVRX Licenses" as directed by Novell, Novell "shall be authorized, and hereby is granted, the rights to take any action on [SCO's] own behalf."

Accordingly, pursuant to Section 4.16(b) of the Asset Purchase Agreement, Novell hereby directs SCO to waive any purported right SCO may claim to require IBM to treat IBM Code itself as subject to the confidentiality obligations or use restrictions of the Agreements. Novell directs SCO to take this action by noon, MST, on October 10, 2003, and to notify Novell that it has done so by that time.

Sincerely,



Joseph A. LaSala, Jr.

cc: Mr. Darl McBride
Mr. Ron Lauderdale
Vice President, Assistant General Counsel
IBM