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

# Novell

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

February 6, 2004

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

Re: *Sequent Computer Systems*

Dear Mr. Tibbitts:

On May 29, 2003, SCO sent a letter to Sequent Computer Systems providing notice that it would terminate Sequent's SVRX license agreement as of September 2, 2003 if Sequent did not remedy certain alleged breaches of the license agreement. On August 11, 2003, SCO sent another letter to Sequent purporting to terminate Sequent's SVRX license agreement. IBM, on behalf of Sequent, responded to these letters by letter of August 14, 2003.

As it has with IBM and other SVRX licensees, SCO appears to be taking the position that code developed by Sequent, or licensed by Sequent from a third party, which Sequent incorporated in its UNIX variant but which itself does not contain proprietary UNIX code supplied by AT&T under the license agreement between AT&T and Sequent ("Sequent Code"), must nevertheless be maintained as confidential and may not be contributed to Linux. As we have said before, SCO's position defies both logic and the terms of the SVRX license agreement.

SCO cites, as support for its position, section 2.01 of Sequent agreement, which, like other SVRX licenses, provides as follows:

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.

As we have said, however, this provision merely confirms that AT&T retained ownership of its code even if it was incorporated in a derivative work, and does not purport to impose confidentiality or use restrictions on Sequent Code.

In fact, SCO's interpretation of section 2.01 is plainly contrary to the position taken by AT&T, as author of and party to the SVRX licenses. AT&T clarified the meaning of section 2.01 in its *§ echo* publication, which AT&T described as its own newsletter "to reach

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all UNIX System V licensees through one defined medium" and "keeps them abreast of any product announcements, policy changes, company business and pricing structures."

Specifically, in an edition of *\$ echo* dated April 1985 (the same month that the Sequent license agreement was signed), AT&T announced that changes would be made to the SVRX license agreement "to clarify ownership of modifications or derivative works prepared by a licensee." AT&T said this and other announced changes were "in response to direct feedback from AT&T licensees and [were] intended to make the contracts more responsive to the needs of the licensees." AT&T then followed up by adding to section 2.01 a sentence clarifying that AT&T "claims no ownership interest in any portion of such a modification or derivative work that is not part of a SOFTWARE PRODUCT." Even more clearly, the August 1985 edition of *\$ echo* explained that this "sentence was added to assure licensees that AT&T will claim no ownership in the software that they developed - only the portion of the software developed by AT&T." Copies of the April and August 1985 editions of *\$ echo* are enclosed for your convenience.

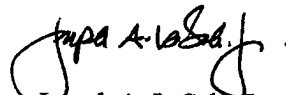
For these reasons, and the reasons stated in our October 7, 2003 letter to you about IBM-developed code, SCO's position on Sequent Code is unsupportable.

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 such 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 Sequent (or IBM as its successor) to treat Sequent Code as subject to the confidentiality obligations or use restrictions of Sequent's SVRX license.

Novell directs SCO to take these actions by noon, MDT, February 11, 2004, and to notify Novell that it has done so by that time.

Sincerely,



Joseph A. LaSala, Jr.

cc: Mr. Darl McBride  
Mr. Ronald A. Lauderdale,  
Vice President and Assistant General Counsel, IBM