

November 5, 2003

Richard M. Stallman  
Free Software Foundation, Inc.  
59 Temple Place  
Suite 330  
Boston, MA 02111

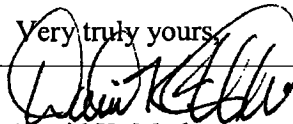
Re: The SCO Group v. International Business Machines Corporation

To Whom it May Concern:

Please find enclosed a subpoena for the production of documents to Free Software Foundation, Inc. If you have any questions about the scope of the subpoena or have any concerns about any other mater, please let me know. You need not appear at the place and time specified in the subpoena if you provide copies of the requested documents before that date.

Also enclosed is a witness fee check in the amount of \$30.00 that can be applied toward copying costs if you choose to produce the documents in lieu of a deposition. Boise Schiller & Flexner will reimburse you for all reasonable duplication costs. Thank you for your assistance in this matter.

Very truly yours,



David K. Markarian

Enclosures  
DKM/tp

**Issued by the  
UNITED STATES DISTRICT COURT**

District of Massachusetts

The SCO Group  
V.  
International Business Machines Corporation

**SUBPOENA IN A CIVIL CASE**

Case Number:<sup>1</sup> 2:03CV0294  
District of Utah

TO: Free Software Foundation, Inc.  
59 Temple Pl., Suite 330  
Boston, MA 02111

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
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YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
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**X** YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):


See Attached Exhibit A.

PLACE Boston & Waltham – Eyal Court Reporting Quincy Market – 4 Faneuil Hall Market Place South Market Bldg, 4 <sup>th</sup> Floor Boston, MA 02109	DATE AND TIME  9:00 AM on November 21, 2003. JL
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**OR you may also comply by mailing the aforesaid documents to:**  
Boies, Schiller & Flexner L.L.P.  
100 Southeast 2nd Street, Suite 2800  
Miami, FL 33131-2144

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  Attorney for Plaintiff The SCO Group, Inc.	DATE November 5, 2003
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ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER MARK J. HEISE, ESQ., Boies, Schiller & Flexner L.L.P. 100 Southeast 2nd Street, Suite 2800 Miami, FL 33131-2144 – (305) 539-8400	
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(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

**PROOF OF SERVICE**

DATE PLACE

**SERVED**

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

**Rule 45, Federal Rules of Civil Procedure, Parts C & D:**

**(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to comply production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance,
- (ii) requires a person who is not a party or an officer of a

party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in who behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) DUTIES IN RESPONDING TO SUBPOENA.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

ATTACHMENT A TO SUBPOENA TO THE FREE SOFTWARE FOUNDATION

You are instructed to produce the following documents at the time and place specified in the subpoena:

Documents to be produced

1. All documents concerning any communication between The Free Software Foundation and IBM relating to UNIX, AIX, DYNIX, LINUX, or any other UNIX based operating system.
2. All documents concerning any communication between The Free Software Foundation and IBM relating to The SCO Group.
3. All documents and communications concerning alleged, potential or actual violations of the GPL asserted or known by The Free Software Foundation against any entity or person since January 1, 1999.
4. All guidelines, policies, procedures, documents, memoranda, notes and/or manuals relating to the enforcement and enforceability of the GPL.
5. All documents sufficient to identify all assignments of software to The Free Software Foundation, the assignor of all the software assignments to The Free Software Foundation, and the date and the terms of all such assignments of software to The Free Software Foundation.
6. All guidelines, policies, procedures, and/or manuals concerning the process of reviewing or vetting source code for copyright, patent and/or trade secret violations in open source/free software development processes.
7. All documents and communications between and amongst The Free Trade Software Foundation, Richard Stallman, Eben Moglen and/or Linus Torvalds concerning:

- a. enforcement of the GPL
  - b. procedures or methods for avoiding infringement or infringement claims in open source software development.
8. All contracts or agreements with:
- a. IBM
  - b. Open Software Development Labs
  - c. Red Hat
  - d. SuSE
  - e. Any other Linux distributor or company
  - f. Linus Torvalds
  - g. Richard Stallman
  - h. Eben Moglen
  - i. Alan Cox
  - j. Andrew Morton

### Instructions and Definitions

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#### A. Definitions

1. The term "Free Software Foundation" shall mean and include, collectively and/or individually "Free Software Foundation" all of its directors, officers, authorized agents, employees, consultants, attorneys, sales representatives, distributors, dealers, direct and indirect contractors, entities, that were acquired by or merged with Free Software Foundation, subsidiaries of Free Software Foundation and/or all other persons acting on behalf of Free Software Foundation.

2. The term "communication" shall mean any transmittal of information, whether oral or written, including correspondence, electronic mail and other internet transmissions, web pages, Internet Relay Chat logs, facsimile transmissions, telecopies, recordings in any medium of oral communications, telephone and message logs, and notes or memoranda relating to written or oral communications.
3. The term "concerning" shall mean relating to, referring to, reflecting, describing, evidencing, referencing, discussing, or constituting.
4. The term "document" shall be synonymous in meaning and usage to the broadest scope of the term used in Rule 34(a) of the Federal Rules of Civil Procedure. The term "document" shall include without limitation all written, phonic, graphic or recorded matter, including without limitation, information stored on computers, disks, tapes (i.e., magnetic or other storage media), World Wide Web pages, and electronic mailing lists. **The term "document" specifically includes electronic mail ("e-mail") and any attachments and files created, maintained, or existing in electronic form.**

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5. ~~The term "IBM" shall mean and include, collectively and/or individually,~~  
International Business Machines Corporation and all its directors, officers, authorized agents, employees, consultants, attorneys, sales representatives, distributors, dealers, direct and indirect contractors, entities that were acquired or merged with International Business Machines Corporation, subsidiaries of International Business Machines Corporation, and/or all other persons acting on

behalf of International Business Machines Corporation, including Sequent Computer Systems, Inc.

6. The term "include" or "including" shall mean including without limitation.
7. The term "GPL" means all versions of the GNU General Public License.
8. The term "person" includes natural persons and all private and public entities.
9. The term "you" means the Free Software Foundation and any of its directors, officers, employees, and/or trustees.
10. The term "vetting" means screening or checking.
11. The term "Red Hat" shall mean and include, collectively and/or individually "Red Hat" and all of its directors, officers, authorized agents, employees, consultants, attorneys, sales representatives, distributors, dealers, direct and indirect contractors, entities, that were acquired by or merged with Red Hat, subsidiaries of Red Hat and/or all other persons acting on behalf of Red Hat.
12. The term "SuSE" shall mean and include, collectively and/or individually "SuSE" and all of its directors, officers, authorized agents, employees, consultants, attorneys, sales representatives, distributors, dealers, direct and indirect contractors, entities, that were acquired by or merged with SuSE, subsidiaries of SuSE and/or all other persons acting on behalf of SuSE.

#### B. Instructions

1. Each paragraph herein should be construed independently and, unless otherwise stated, without reference to any other paragraph for the purpose of limitation.

2. Unless otherwise specified, the documents requested are the responsive documents in your possession, control or custody that were prepared, written, sent dated, received, applicable or in effect at any time up to the date of your compliance with this demand.
3. Each requested document shall be produced in its entirety. If a document responsive to any request cannot be produce din full, it shall be produced to the extent possible with an explanation stating why production of the remainder is not possible.
4. Unless otherwise indicated, all requests are for January 1, 1999 to the present.
5. All documents produced in response to this subpoena shall be produced in the same order as they are kept or maintained in the ordinary course of business and, where attached, shall not be separated or disassembled.
6. With respect to any document responsive to this request that is withheld from production based upon a claim of privilege, please provide the information required pursuant to the Federal Rules of Civil Procedure.
7. If, for reasons other than a claim of privilege, you refuse to provide any document requested herein, state the grounds upon which the refusal is based with sufficient specificity to permit a determination of the propriety of such refusal.
8. If there are no documents responsive to any paragraph set forth in the request, please provide a written response so stating.