SKRIPSI

SENGKETA HAK CIPTA PROGRAM LINUX ANTARA IBM DAN SCO

VEGA NARWASTU HARYATI
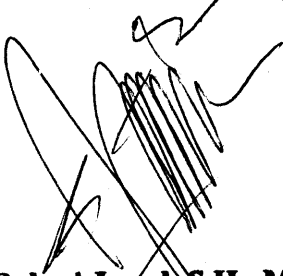### 030015074

FAKULTAS HUKUM

UNIVERSITAS AIRLANGGA

SURABAYA

2004

SENGKETA HAK CIPTA PROGRAM LINUX

ANTARA IBM DAN SCO

SKRIPSI

**Diajukan untuk Melengkapi Tugas dan Memenuhi Syarat-syarat guna
Memperoleh Gelar Sarjana Hukum**

Dosen Pembimbing

Penyusun

Rahmi Jened, S.H., M.H.
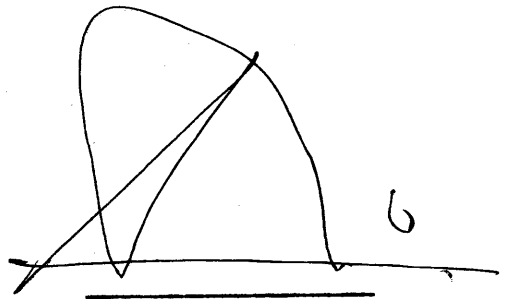**NIP. 131 923 881**

Vega Narwastu Haryati
NIM. 030015074

**FAKULTAS HUKUM
UNIVERSITAS AIRLANGGA
SURABAYA
2004**

Skripsi ini telah diuji dan dipertahankan di hadapan Panitia Penguji
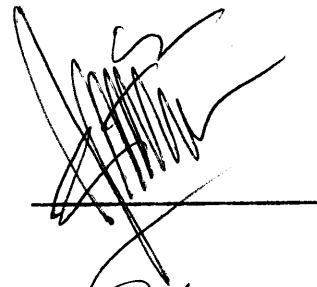
Tim Penguji :

Ketua   : **H. A. Oemar Wongsodiwiryo, S.H.**

Anggota   : **1. Rahmi Jened, S.H., M.H.**
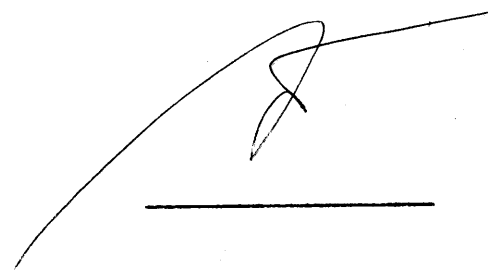
             2. Hj. Dra. Soendari Kabat, S.H., M.H.

             3. Hj. Mas Rahmah, S.H., M.H.

6. Andrew, thanks for everything, God Bless You. And Scott, thanks for your support and motivation until I did it. You're the best, always be my baby. God Bless You.

7. Teman – temanku Fakultas Hukum Unair : Danny, Juliet, Sylvia, Vandalito, Hermi, Febby, Rina, Aan, Indri, dan semua angkatan 2000 Fakultas Hukum Unair. Thanks a lots.

8. Teman Teman gereja : Monic, Dessy, terima kasih atas dukungan dan doanya selama ini. Tuhan Yesus memberkati.

9. Dan kepada pihak pihak lainnya yang belum dapat penulis sebutkan satu persatu, namun penulis ingin mengucapkan banyak terima kasih atas bantuannya selama ini sehingga penulis dapat menyelesaikan penulisan skripsi ini tepat pada waktunya.

Akhir kata penulis ingin menyampaikan bahwa penulisan ini masih jauh daripada sempurna, namun semoga penulisan ini dapat berguna bagi pihak – pihak yang berkepentingan.

Sidoarjo, 18 Oktober 2004

Penulis

ii

DAFTAR ISI

Halaman

iv

BAB I

PENDAHULUAN

1. Latar Belakang dan Rumusan Masalah.

Dalam era globalisasi saat ini banyak sektor industri yang seakan berlomba – lomba untuk maju, ditandai dengan semakin pesatnya persaingan di antara mereka. Hal ini mendorong perusahaan untuk menciptakan sesuatu yang baru, sehingga akan mendatangkan keuntungan komersial bila diperdagangkan.Salah satu sektor industri yang cukup pesat perkembangannya adalah komputer, baik perangkat keras(*hardware)* atau perangkat lunak program komputer *(software)*. Namun demikian semakin banyaknya penciptaan program komputer ditandai dengan semakin maraknya tindakan pembajakan. Pembajakan tersebut paling banyak terjadi di negara berkembang karena daya beli masyarakat yang masih sangat kecil tidak sanggup untuk membeli barang yang asli yang harganya mungkin berkisar lima sampai sepuluh kali lipat lebih mahal[1]. Kebanyakan dari barang – barang yang dibajak tersebut adalah program komputer, yang hanya berharga sekitar dua puluh ribu rupiah yang bila kita bandingkan dengan yang asli bisa sepuluh kali lipat. Dalam kaitan ini, contoh program *windows*[2] yang diproduksi oleh *Microsoft*[3]. Banyak orang yang

---

[1] Lindsey,Tim.dkk.,(ed). ***Hak Kekayaan Intelektual; suatu pengantar.***Alumni, Bandung, 2002, h.63

[2] *Windows* adalah merupakan perluasan dari *disk operating system (DOS)*. Dengan Windows kita dapat mengerjakan beberapa program sekaligus dan dapat berpindah dari satu program ke program lainnya melalui beberapa perintah pada keyboard atau mouse yang berarti mengurangi waktu yang dibutuhkan untuk berpindah dari satu aplikasi ke aplikasi lainnya, Heryanto,Dina & Gunadi,FX,*Microsoft Windows*. Jakarta : Gramedia,1992

[3] *Microsoft* adalah sebuah perusahaan yang bergerak pada bidang *software* komputer, khususnya *windows* yang didirikan pada tahun 1975 oleh William H. Gates dan Paul G. Allen, *Microsoft*, internet: *hhtp // www.microsoft.com ,2004-02-07*

menggunakan program tersebut dengan membeli CD yang berisi program *windows* bajakan, karena dengan alasan ekonomis lebih murah daripada membeli program *windows* yang asli yang dapat berkisar ratusan ribu rupiah.

Dengan diberlakukannya Undang – Undang Nomor 19 Tahun 2002 (Selanjutnya disingkat UU No 19/2002) diharapkan penegakan hak cipta termasuk perlindungan program komputer dapat menjadi lebih baik. Saat ini orang berusaha mencari alternatif lain dalam menggunakan program lunak komputer, sebagian orang mulai memanfaatkan beberapa program yang bersifat *free software*[4] seperti contohnya Linux[5].

Berkaitan dengan maraknya kasus pelanggaran Hak Cipta baru – baru ini muncul kasus gugatan *Santa Cruz Operation Group*[6] (selanjutnya disingkat SCO) atas *International Business Machine* [7](selanjutnya disingkat IBM) menjadi salah satu topik panas sejak beberapa bulan lalu.

---

[4] *Free software* adalah program komputer yang dapat digunakan oleh setiap orang secara bebas. Siapapun dapat menggunakan, meniru dan mendistribusikan secara bebas, baik program komputer yang asli maupun modifikasi dari program tersebut.. GNU, *Categories of free and non free software*, internet : *http// www.gnu.org, 2004-02-07*

[5] Sebuah sistem operasi yang bekerja dengan Linux sebagai kernel. Kernel adalah bagian dari sistem yang mengalokasikan sumberdaya untuk menjalankan program aplikasi, porsi itulah diberi nama *Linux*. Richard Stallman, *SCO merusak citra GNU/linux*, internet : *hhtp//www_abenks_com.htm, 2003.-06-26*

[6] *Santa Cruz Operation* adalah suatu perusahaan yang menjual Unix. Dibentuk oleh Doug dan Larry Michael pada tahun 1979 dimana perusahaan itu bergerak dalam bidang konsultasi dan pengembangan UNIX. *Wikipedia, the free encyclopedia, Santa Cruz Opeartion*, internet: *hhtp // www.wikipedia.com/ Santa Cruz Operation-Wikipedia.htm, 2003-12-12*

[7] International Busines Machine adalah sebuah perusahaan yang bergerak di bidang pelayana, pembuatan dan penjualan perangkat keras dan perangkat lunak dari komputer. Bertempat di New York, USA. *Wikipedia, free encyclopedia, International Business Machine*, internet : *http // www.wikipedia.com/Internatimal Business machine-wikipedia.htm. 2003-12-12*

Dalam tuntutannya SCO Group telah menuduh bahwa IBM telah melakukan pelanggaran hak cipta dalam hal mendistribusikan program Linux.[8] Tepatnya pada tanggal 7 Maret tahun 2003, SCO Group menuntut IBM yang telah mendistribusikan Linux dan mencuri kode sumber *(source code)*[9] dari UNIX [10]dan kemudian memberikannya kepada pengembang linux kernel[11].Program Unix adalah suatu program yang dikembangkan oleh SCO dan *American Telephone and Telegraph* (AT & T)[12] dalam hal ini SCO telah membeli hak untuk menggunakannya dari AT & T , maka otomatis SCO menyatakan bahwa segala hak dan versi dari program *UNIX* adalah hak penuh dari SCO. SCO juga mengatakan bahwa mereka saat ini adalah pemilik AIX berdasarkan perjanjian yang telah ditandatangani oleh IBM dan AT&T untuk mengembangkan program *AIX*[13] Dalam program

---

[8] *Program Linux* adalah sebuah program di bawah lisensi dari *GNU General Public Licence* dan kode sumber *(source code)* dari program ini dapat diakses dan diketahui oleh semua orang. Internet : *hhtp // Webmaster, Linux Online Inc,2003-12-12*

[9] Kode sumber *(source code)* adalah program komputer yang disusun dalam sebuah bahsa yan dapat dimengerti oleh manusia. Kode tersebut yang nanti akan diubah menjadi bentuk yang bias dimengerti mesin sehingga menjadi program yang mampu digunakan.Internet : hhtp // http://www.detikinet.com/index.php/detik.read/tahun/2004/bulan/05/tgl/18/time/11219/idnews/157 455/idkanal/108, 2004-21-06.

[10] *Unix* adalah sebuah sebuah sistem operasi pada komputer yang dapat dipindahkan dari satu komputer ke komputer yang lain yang dikemabangkan oleh AT&T Bell Labs oleh Ken Thompson, Dennis Ritchie, dan Douglas Mcllory. *Wikipedia,free encyclopedia, UNIX,internet:http/www. Unix.htm,2004-01-07*

[11] *Linux kernel* adalah program pengoperasian komputer yang sangat popular dan bersifat bebas, dibuat berdasarkan system operasi Linux dan dilengkapi dengan system pengoperasian seperti Unix dan Windows.Internet : *http// www. Wikipedia.com/Linux kernel.htm,2004-03-03*

[12] *AT & T* adalah sebuah perusahaan yang bergerak di bidang komunikasi ,video,data dan internet telekomunikasi yang berada dan terdaftar di *US(United State)* serta dikembangkan oleh At&T Labs,internet : *hhtp //www.AT&T.com,2003-19-11*

[13] *AIX* adalah kepanjangan dari Advance Interactive Executive, merupakan salah satu program yang dibuat oleh IBM dengan menggunakan operasi sistem dari UNIX. *Wikipedia,free encyclopedia, AIX operating System,internet: http//www.wikipedia.com/ AIX operating system.htm. 2003-19-11*

tersebut pihak IBM telah mengunakan kode sumber *(source kode)* dari metode *AIX* untuk mengembangkan beberapa program yang dikembangkan dengan menggunakan program Linux. Menurut SCO program – program tersebut adalah :[14]

    a. *Symmetric multiprocessing (SMP)* [15]

    b. *No-uniform memory acces (NUMA) multiprocessing*[16]

    c. *The read-copy update (RCU) locking strategy*[17]

    d. *SGI's Extended File System (XFS)*[18]

    e. *IBM's JFS journaling file system*[19]

       Pihak SCO mengatakan karena program – program tersebut diatas telah dikembangkan dengan menggunakan program UNIX sebab IBM menjadikan program UNIX sebagai dasar untuk mengembangkan program AIX yang kemudian dijadikan dasar oleh IBM untuk mengembangkan

---

[14] Internet : http://en.wikipedia.org/wiki/SCO_v._IBM, 2004-22-06.

[15] *SMP* adalah *desain multiprocessor* yang dapat mengakses semua processor secara bersamaan dengan penempatan memori . secara acak,*Wikipedia,freeencyclopedia,,SymetricMulti processing,internet:hhtp//www.wikipedia.com/ Symmetric multiprocessing Wikipedia.htm,2004-01-07*

[16] *Numa* adalah *memory computer* yang didesain untuk multiprocessor yang waktu akses memorinya tergantung dari penempatan memori tersebut.*Wikipedia,free encyclopedia,Non Uniform Memory,internet:http//www.wikipedia.com/Non –UniformMemory.htm,2004-0107*

[17] *RCU* adalah suatu teknologi sistem operasi kernel untuk meningkatkan kegunaan atas komputer dengan menggunakan lebih dari satu CPU,*wikipedia,free encyclopedia, **Read Copy Update**,internet: hhtp//www.Read-copy-update - Wikipedia.htm,2004-01-07*

[18] *XFS* adalah daya kreasi yang optimal dari jurnal sistem file yang diciptakan oleh SGI (silicon Graphic, Inc). *Wikipedia,free encyclopedia,XFS,internet : http//www.wikipedia.com/XFS.htm,2004-01-07*

[19] *JFS* adalah suatu sistem operasi yang diciptakan oleh IBM.Ada di bawah lisensi sebuah open source, *Wikipedia,free encycopedia, JFS,internet : hhtp // www.wikipedia.com/JFS - Wikipedia.htm,2004-01-07*

program Linux, maka SCO berpendapat bahwa program – program tersebut pada dasarnya adalah miliknya. Padahal menurut perjanjian yang dibuat oleh Novell,IBM dan SCO (SCO mula – mula) menyebutkan :

> *"On October 17, 1996, after Novell and Original SCO acquired AT&T's rights to Unix, IBM obtained additional rights with respect to Unix software. Pursuant to an agreement known as Amendment X, entered into by IBM, Novell and Original SCO, IBM acquired, for example, the " irrevocable, fully paid-up, perpetual right to exercise all of its rights" under the AT&T Agreements "* [20]

Bila diartikan dalam bahasa Indonesia kurang lebih adalah " Pada tanggal 17 Oktober 1996, setelah Novell dan SCO (SCO mula – mula) memperoleh hak dari AT & T atas UNIX, IBM mendapatkan hak tambahan secara respek untuk menggunakan perangkat lunak UNIX. Sesuai dengan persetujuan yang dikenal dengan amandemen X, melibatkan IBM, Novell dan SCO (SCO mula – mula) IBM mendapatkan, sebagai contoh " tidak dapat dibatalkan, dibayar secara penuh, hak secara terus menerus untuk menggunakan seluruh hak yang ada " berdasarkan perjanjian AT&T ". Berdasarkan pernyataan tersebut IBM diberi kewenangan untuk menggunakan dan mengembangkan program UNIX yang merupakan bagian dari AT&T, selanjutnya berdasarkan program UNIX tadi IBM menciptakan suatu program baru yang dinamakan AIX, karena IBM adalah pemilik program AIX maka IBM mempunyai kebebasan untuk mengoperasikannya dan menggunakan kode sumber *(source code)* yang

---

[20] Internet : http://www.groklaw.net/article.php?story=20031107212034397. 2004,22-06.

ada dan hal ini digunakan oleh beberapa teknisi dari IBM untuk mengembangkan program Linux dengan membuka kode sumber dari AIX[21]

Berkaitan beberapa bukti yang telah diajukan oleh pihak SCO, maka perusahaan ini menggugat IBM telah melakukan pelanggaran hak cipta sebab pada dasarnya hak untuk mengembangkan dan membuat program tersebut ada pada pihak SCO sebab SCO adalah pemilik dari AIX. Jadi seharusnya menurut SCO, pihak IBM harus meminta ijin terlebih dahulu untuk menggunakan dan mendistribusikan program Linux apalagi untuk memasyarakatkan program – program IBM yang dibuat dengan mengembangkannya dari program Linux dan mendistribusikannya pada masyarakat . Berangkat dari kasus tersebut akan ditelaah dari sisi hukum positif Indonesia, khususnya UU No 19 /2002 mengingat dapat saja kasus yang sama terjadi di Indonesia. Adapun rumusan masalah :

1. Apakah Program Linux termasuk ciptaan yang dilindungi Hak Cipta ?
2. Apakah tindakan SCO dengan menggugat IBM atas penggunaan program Linux dapat dibenarkan ?

2. Penjelasan Judul

Judul skripsi ini adalah " Sengketa Hak Cipta atas Ciptaan Program komputer Linux antara SCO dan IBM ditinjau dari UU No.19/2002 "
Kata sengketa, menurut Kamus Umum Bahasa Indonesia[22] yang dimaksud dengan sengketa adalah pertengkaran ; perbantahan ; pertikaian ;

---

[21] Internet : http://www.sco.com/ibmlawsuit/ibm5-27.qxd.pdf, 2004-22-06.
[22] WJS. Poerwadarminta, *Kamus Bahasa Indonesia*,Balai Pustaka,jakarta1985,h.916

perselisihan ; percederaan ; perkara. Menurut *Black Law Dictionary* yang dimaksud dengan sengketa (*dispute*) adalah *a conflict or controversy; a conflict of claims or rights;an assertion of rights,claims;or demand on one side,met by contrary claims or allegation the Others*[23]. Pengertian ini dalam bahasa Indonesia dapat diartikan kurang lebih adalah suatu konflik atau kontroversi; suatu konflik mengenai klaim atau hak. Pernyataan yang tegas mengenai suatu hak, klaim atau penuntutan pada salah satu pihak, dimana bertentangan dengan klaim atau pernyataan tanpa bukti pada pihak yang lainnya.

Hak Cipta menurut UU No.19 /2002 tentang Hak Cipta adalah " hak eksklusif bagi pencipta atau penerima hak untuk mengumumkan atau memperbanyak Ciptaannya atau memberikan izin untuk itu dengan tidak mengurangi pembatasan – pembatasan menurut peraturan perundang-undangan yang berlaku " (Pasal 1 ayat 1).

Program linux menurut *Webmaster, Linux Online Inc.* adalah merupakan sebuah sistem operasi yang diciptakan bermula dari hobi seorang mahasiswa yang terbilang masih sangat muda bernama Linus Tovard dari University of Helsinki dikembangkan di bawah lisensi dari *GNU General Public Licence*[24] dan kode sumber *(source code)* dari program ini dapat diakses dan diketahui oleh semua orang. Mengingat

---

[23]Campbell,Henry,*Black Law Dictionary*, West Publishing Co,St.Paul University,1990,h.472

[24] *GNU General Public licence* adalah sebuah sistem operasi lengkap mirip *Unix* berbasis perangkat lunak bebas yaitu sistem GNU, *GNU is not Unix*,internet : *http // www.gnu.org,2003 - 12-12*

semua orang dapat memperolehnya dan mengaksesnya membuat program ini sangat terkenal. Berdasarkan lisensi dari *GNU* setiap orang diperbolehkan untuk memperoleh program lengkap dengan kode sumbernya *(source code)* dan selain itu juga diperbolehkan untuk memperbanyak program tersebut sebanyak mungkin ataupun mengubah kode sumbernya, tindakan tersebut adalah legal di bawah lisensi dari *GNU*. Program Linux mempunyai maskot yaitu *penguin* yang dipilih oleh *Linus Tovard* yang menggambarkan hubungannya dengan sistem operasi yang diciptakannya.[25]

IBM adalah sebuah perusahaan yang membuat dan menjual *hardware* ,*software* dari sebuah komputer sekaligus perbaikan komputer. Perusahaan ini termasuk sebuah perusahaan yang sangat besar berskala internasional dengan logo perusahaanya yang berwarna biru menjadikan perusahaan ini sering disebut juga *Big Blue*. Sedangkan SCO (Santa Cruz Operation) adalah sebuah perusahaan pertama yang berhubungan dengan linux dan *open source*[26] juga pengerjaannya dan pendistribusi *linux server*[27]

3.Alasan Pemilihan Judul.

Dipilihnya judul sengketa hak Cipta Program Linux antara SCO dan IBM adalah karena terlihat kecenderungan masyarakat untuk menggunakan

---

[25] *Ibid.*

[26] *Open Source* adalah perangkat lunak yang dikembangkan secara gotong royong tanpa koordinasi resmi, menggunakan kode program yang tersedia secara bebas, serta didistribusikan melalui internet.Dyson,Esther,1998. Seperti yang dikutip oleh Richardus Eko Indrajit & tranggono I.S Turner. *Open Source Linux : Membangun Kekuatan baru Teknologi Informasi Dunia*.Jakarta : PT.Elex media komputindo,2002

[27] *Linux server* adalah server yang menjalankan sistem operasi Linux, Doss,George. *Server Red Hat Linux*. Jakarta: Gramedia,1999

program Linux sangat besar sehubungan dengan dikeluarkannya UU No. 19 / 2002 yang melarang segala macam bentuk pembajakan termasuk dengan demikian program komputer. Jika dulu banyak orang menggunakan *software* bajakan saat ini mereka beralih menggunakan program linux sebagai *software* komputer mereka. Akan tetapi masih banyak masyarakat yang merasa bimbang dan tidak pasti bahwa penggunaan prgram Linux tersebut dapat dibenarkan menurut UU No 19 / 2002 tentang Hak Cipta.

4.Tujuan Penulisan

Penulis skripsi ini terutama bertujuan untuk memenuhi salah satu persyaratan kurikulum akademis untuk memperoleh gelar Sarjana Hukum pada Fakultas Hukum Universitas Airlangga Surabaya.

Disamping itu penulisan skripsi ini juga dimaksudkan untuk sumbangan pemikiran Hak Cipta atas program komputer yang bersifat *free software.*

Skripsi ini diharapkan dapat memberikan manfaat dan pengetahuan bagi masyarakat, khusunya para pengguna program kmputer dan para pencipta program komputer serta pihak lain yang terkait dengan Hak Cipta.

5.Metode Penulisan

Berdasarkan judul dan perumusan masalah yang diajukan maka pendekatan yang digunakan adalah pendekatan Normatif yaitu suatu

pendekatan yang didasarkan aturan hukum berlaku di bidang Hak Cipta khususnya UU No.19/2002

Bahan hukum yang diperoleh berasal dari 2 (dua) sumber. Pertama, bahan hukum primer yang meliputi peraturan perundang – undangan diantaranya adalah UU No 6/1982 jo UU No 7/1987 jo UU No 12/1997(UU lama) dan UU No 19/2002 (UU baru) serta peraturan perundangan lain yang mendukung skripsi ini. Bahan hukun yang kedua adalah bahan hukum sekunder yang berupa kepustakaan yang meliputi, buku – buku tentang HAKI khususnya mengenai Hak Cipta,majalah ilmiah dan surat kabar baik dari koleksi pribadi maupun koleksi dari perpustakaan Fakultas Hukum dan perpustakaan Universitas serta informasi yang di dapat melalui internet.

Pengumpulan bahan hukum melalui inventarisasi klasifikasi sistemasi dengan cara mengevaluasi klasifikasi dengan sistem alesisi juga dilakukan dengan pengumpulan informasi dengan cara *browsing* di internet dan *mendownload* artikel – artikel yang berhubungan dan diperlukan untuk penulisan skripsi ini. Setelah bahan terkumpul kemudian dilakukan analisis secara normatif .

.6.Pertanggungjawaban Sistematika

Sistematika dalam penyusunan skripsi ini agar dapat dipertanggungjawabkan sebagai suatu karya ilmiah, maka penyusun membagi menjadi 4 bab dan tiap – tiap bab terdiri dari sub- sub bab dan

dimulai dengan pendahuluan dan diakhiri dengan penutup.Adapun susunannya sebagai berikut :

Bab I, merupakan pendahuluan yang diawali dengan latar belakang masalah dan rumusan masalah, penjelasan Judul, alasan pemilihan judul, tujuan penulisan, metode penulisan yang diuraikan dalam pendekatan masalah, sumber bahan hukum, analisis hukum dan sistematika hukum.

Bab II, merupakan analisa dari rumusan masalah yang pertama yaitu mengenai Hak Cipta Program Linux ditinjau dari UU No. 19/2002 yang meliputi kriteria perlindungan Hak Cipta dan konsep terhadap program komputer, serta perolehan hak jangka waktu perlindungan Hak Cipta terhadap suatu program komputer. Bentuk pelanggaran – pelanggaran Hak Cipta terhadap suatu program komputer itu sendiri .

Sedangkan di dalam bab III akan membahas mengenai kasus sengketa Hak Cipta antara SCO dan IBM serta keterkaitkannya dengan program linux, yaitu yang pertama akan membahas mengenai apa dan bagaimana SCO, juga apa dan bagaimana IBM , serta keterkaitannya dengan program Linux. Permasalahan mendasari pokok sengketa tersebut serta mengapa pihak – pihak tersebut terlibat di dalam sengketa, apakah dapat dibenarkan gugatan SCO terhadap IBM mengenai keterkaitannya dengan linux ? Upaya pemulihan yang mungkin dapat dilakukan berkaitan dengan sengketa tersebut.

Bab IV, pada Bab ini akan berisi suatu kesimpulan dari pembahasan bab- bab sebelumnya. Selanjutnya dalam bab ini juga akan diajukan beberapa saran yang sesuai dengan permasalahan yang dijadikan obyek kahian dalam skripsi ini.

BAB II

PROGRAM LINUX SEBAGAI CIPTAAN

YANG DILINDUNGI HAK CIPTA

1.Kriteria dan konsep Perlindungan Hak Cipta Program Komputer.

Pengaturan hak Cipta di Indonesia didasarkan pada UU No. 19 /2002 sebagai konsekuensi penandatanganan Persetujuan Pembentukan WTO yang salah satu komponennya adalah *Agreement on Trade Related aspects of Intellectual Property Rights* (disingkat Persetujuan *TRIPs*) . TRIPs adalah persetujuan yang merupakan salah satu dari 15 *issues* yang dirundingkan dalam rangka Putaran Uruguay/ GATT. Trips bertujuan untuk meningkatkan perlindungan dan penegakan hukum di bidang HAKI dalam kaitannya dengan perdagangan barang dan jasa serta memperketat aturan mengenai barang – barang palsu [28]

Persetujuan TRIPs mensyaratkan negara anggota untuk mematuhi Persetujuan TRIPs, namun memberikan kebebasan untuk menentukan cara-cara penerapannya sesuai dengan praktek dan sistem hukum di negara anggota. Negara anggota juga diijinkan untuk memberikan perlindungan yang lebih luas daripada yang diisyaratkan, asalkan hal itu tidak bertentangan dengan persetujuan TRIPs (*Article 1(1)*)[29]. Jadi persetujuan

---

[28] Rahmi Jened, *Perlindungan hak Cipta Pasca Persetujuan TRIPS*.Yuridika ,Surabaya,2001,h.5.

[29] *Ibid*,h-7

TRIPs menetapkan bahwa negara – negara anggota tidak boleh melalaikan kewajiban yang telah ada berdasarkan konvensi HKI terdahulu, khususnya Konvensi Berne dan Konvensi Roma untuk bidang Hak Cipta dan hak – Hak yang terkait dengan Hak Cipta *(article 2)*. Ketentuan ini secara implisit mengisyaratkan bahwa Konvensi Berne dan Konvensi Roma merupakan basis minimal dan rujukan bagi perlindungan Hak Cipta dan hak – hak yang Terkait dengan Hak Cipta *(Copyrights and Related Rights).*[30]

Sebelum UU No 19 /2002 terbentuk Indonesia telah mengadakan beberapa kali penyempurnaan UU Hak Cipta yang telah ada. Penyempurnaan yang pertama atas Undang – Undang No.6/1982 yang kemudian disempurnakan dengan UU No 7/1987 dengan alasan utama dari pemerintah telah terjadi pelanggaran hak Cipta terutama dalam bentuk tindak pidana pembajakan di bidang ilmu pengetahuan,seni dan sastra. Penyempurnaan kedua, yaitu dengan UU No.12 /1997, guna mengarahkan hukum Indonesia memenuhi kewajibannya pada persetujuan TRIPs *(Agreement on Trade Related Aspects of Intellectual Property Rights)* yang memberikan konsekuensi bahwa sebagai negara anggota mempunyai kewajiban untuk menyesuaikan peraturan perundang – undangan nasional di bidang HAKI terhadap persetujuan International tersebut.

Akhirnya, pada tahun 2002 dilakukan penyempurnaan yang ketiga dengan UU No.19/2002 yang diundangkan dengan mencabut dan

---

[30] *Ibid*,h - 7.

menggantikan UU No. 6/1982 jo UU No.7/1982 jo UU No.12/1997.

Perubahan – perubahan untuk disesuaikan dengan TRIPs dan

penyempurnaan beberapa hal yang perlu untuk memberi perlindungan bagi

karya- karya intelektual di bidang Hak Cipta, termasuk upaya untuk

memajukan perkembangan karya intelektual yang berasal dari

keanekaragaman seni dan budaya tradisional Indonesia. UU No.19/2002

mulai diundangkan sejak 29 Juli 2003. Adapun penyempurnaannya

meliputi :[31]

1. *Database*, merupakan salah satu ciptaan yang dilindungi.
2. Penggunaan alat apa pun baik melalui kabel maupun tanpa kabel, termasuk media internet, untuk pemutaran produk – produk cakram optik (*optical disc*) melalui sarana audio visual dan atau sarana telekomunikasi.
3. Penyelesaian sengketa oleh Pengadilan Niaga, Arbitrase atau Penyelesaian sengketa
4. Penetapan sementara pengadilan untuk mencegah kerugian sementara bagi pemegang hak.
5. Batas waktu proses perkara perdata di bidang Hak Cipta dan Hak terkait baik di Pengadilan Niaga maupun di Mahkamah agung.
6. Pencantuman hak informasi manajemen elektronik dan sarana kontrol teknologi
7. Pencantuman mekanisme pengawasan dan perlindungan terhadap produk – produk yang menggunakan sarana produksi berteknologi tinggi.
8. Ancaman pidana atas pelanggaran Hak terkait
9. Ancaman pidana dan denda minimal

---

[31] Suyud Margono, *Hukum dan perlindungan Hak Cipta (disesuaikan dengan Undang-Undang hak Cipta TH.2002)*.Novindo Pustaka Mandiri, Jakarta,2003, h-22.

10. Ancaman pidana terhadap perbanyakan penggunaan program komputer untuk kepentingan komersial secara tidak sah dan melawan hukum.

Dengan adanya UU No. 19/2002 yang merupakan salah satu wujud kesesuaian dengan TRIPs yang berarti Indonesia telah menjadi bagian dari masyarakat Internasional, maka gugatan SCO terhadap IBM berkenaan dengan Hak Cipta program Linux adalah relevan untuk dibahas.

Dalam hal penegakan hak cipta, gugatan SCO terhadap IBM yang berkenaan dengan Hak Cipta program Linux menimbulkan permasalahan di bidang HKI, khususnya Hak Cipta. Kasus gugatan SCO terhadap IBM menjadi kajian, karena hal yang sama dikemudian hari dapat terjadi di Indonesia.

Konsep dikategorikannya program komputer sebagai suatu hasil karya cipta berasal dari pandangan bahwa terdapat usaha dari programmer/pencipta dalam menuliskan perintah – perintah *(code)* dari program komputer.[32] Tentu saja kita paham, bahwa usaha penulisan kode-kode perintah tersebut *(coding)* tidaklah mudah, disamping memerlukan penguasaan pengetahuan yang cukup dalam teknik dan bahasa program, dituntut pula adanya kesabaran dan dedikasi yang tinggi untuk menulis kode – kode tersebut[33]. Melalui penulisan itu program komputer dapat digolongkan atau termasuk sebagai hasil pekerjaan yang berbasis teks atau tulisan *(literary works)*[34]hal ini didasarkan pada kenyataan bahwa kode

---

[32] Adnan, Muhammad. *Panduan Pengembang Public License di Indonesia*. BPPT, Jakarta ,2001,h.1

[33] *Ibid.*

[34] *Ibid.*

sumber dari program komputer adalah merupakan teks yang dapat dimengerti oleh bahasa pemrograman, Namun demikian kode sumber ini tidak dapat dimengerti oleh komputer, sehingga harus terlebih dahulu di – compile[35] dengan menggunakan compiler[36], agar program komputer yang berbentuk *source code* tersebut dapat dimengerti dan dapat dijalankan oleh komputer. Program komputer yang sudah di *compile* berbentuk *binary code* yang dapat dimengerti oleh komputer[37]

Ketentuan umum UU no 19 /2002, Program Komputer adalah " sekumpulan instruksi yang diwujudkan dalam bentuk bahasa, kode, skema ataupun bentuk lain , yang apabila digabungkan dengan media yang dapat dibaca dengan komputer akan mampu membuat komputer bekerja untuk melakukan fungsi – fungsi khusus atau untuk mencapai hasil yang khusus, termasuk persiapan dalam merancang instruksi – instruksi tersebut " (Pasal 1 butir 8)

Di Australia program komputer termasuk dalam perlindungan literary works. Dimana dalam Australian *Copyright Act*[38], komputer program sebagai (*copyright Information sheet, Australian Copyright Council*)

> .... *An expression, in any language, code or notation, of set of instruction (whether with or without related information) intended, either directly or after either of both the following :*

---

[35] Compile berarti memindahkan suatu program yang ditulis dengan bahasa pemrograman yang tingg dari suatu kode sumber ke kode objek. Internet :*hhtp// www.Wepodia.com/TERM/C/compile.htm,2004-18-06.*

[36] Compiler adalah seorang programmer menulis program dalam suatu format kodse sumber. Untuk menjadi sebuah kode sumber harus melalui beberapa tahap.Tahap yang pertama kode sumber tersebut akan melalui suatu compiler, yang berguna untuk menerjemahkan instruksi bahasa pemrograman tingkat ke dalam kode obyek. Internet : *http // www. Wepodia.com/TERM/C/compile.htm,2004-18-06*

[37] *Ibid,h-2*

[38] Suyud, margono,*Hukum dan Perlindungan Hak Cipta (disesuaikan dengan Undang – Undang Hak Cipta TH.2002)*. Jakarta : Novindo Pustaka Mandiri,2003. h.62-63.

(a) Conversion to another language, code or notation
(b) Reproduction in a different material form; to cause a device having digital information processing capabilities to perform a particular function

Pengertian ini dalam bahasa Indonesia dapat diartikan kurang lebih sebagai berikut :

.....Suatu ungkapan dalam segala bahasa, kode atau angka - angka, satuan insruksi (apakah dengan atau tanpa informasi terkait) yang diharapkan, yang mana secara langsung atau keduanya meliputi :

(a) Percakapan dengan bahasa lain. Kode atau angka – angka.

(b) Reproduksi dalam suatu format material berbeda, menjadikan suatu alat mempunyai kemampuan pengolahan informasi digital untuk melaksanakan fungsi tertentu.

2.Hak Eksklusif Pemegang Hak Cipta Program Komputer.

Untuk membuktikan bahwa suatu ciptaan itu dapat dinilai sebagai Hak Cipta atas karya Cipta di bidang ilmu pengetahuan, seni dan sastra ada beberapa standart yang harus dipenuhi yaitu :[39]

> *1. Fixation*
> *A work is fixed in a tangible medium of expression when its embodiment in a copy or phonerecord by or under the authority of author, is sufficiently permanent or stable to permit to be perceived, reproduced or otherwise communicated of sound imager or both, tat are being transmitted is fixed for purpose of this title if a fixation of the*

---

[39] Rahmi Jened, *Perlindungan hak Cipta pasca Persetujuan TRIPS,* Yuridika Press Fakultas Hukum Universitas Airlangga,2001.h 27

work is being made simultaneously with its transmission

2. *Originality*

The word " original " ... or the test of " originality", is not that the work be novel or unique. Even a work based upon something already in the public domain may well be original.

3. *Creativity*

Creativity as a standart of copyrightability is it a great degree simply a measure of originality. Although a work that merely copies exactly a prior work may be held not to be original, if the copy entails the independent creative judment of the author in its production , that creativity will render the work original.

Artinya :

1. Perwujudan

Suatu karya diwujudkan dalam suatu media ekspresi yang berujud manakala pembutannya ke dalam perbanyakan atau rekaman suara oleh atau berdasarkan kewenangan pencipta, secara permanen atau stabil untuk dilihat, direproduksi atau dikomunikasikan dengan cara lain, selama jangka waktu yang cukup lama. Suatu karya yang terdiri dari suara, citra atau keduanya, yan ditransmisikan adalah bertujuan diwujudkan jika suatu perwujudan karya sedang dibuat secara simultan dengan transmisinya.

2. Keaslian (orisinalitas)

Kata " asli " ... atau uji keaslian bukan berarti karya tersebut harus " betul baru " atau " unik ." bahkan suatu karya yang didasarkan pada sesuatu yang telah menjadi milik umum mungkin saja masih " asli "

3. Kreativitas

Kreativitas sebagai patokan kemampuan suatu karya dapat diberikan hak cipta adalah menunjuk secara sederhana suatu derajat

tinggi ukuran keaslian. Meskipun suatu karya merupakan tiruan yang benar – benar biasa suatu karya sebelumnya, mungkin dikatakan tidak asli, jika suatu tiruan membutuhkan penilaian kreatif mandiri dari pencipta dalam karyanya bahwa kreativitas akan menunjukkan karya asli.

Dalam kerangka perlindungan hak Cipta di Indonesia ketiga standart utama dari suatu Hak Cipta diatur dalam UU No. 19/2002, perwujudan terdapat dalam Pasal 1 Angka 2 yaitu "Pencipta seorang atau beberapa orang secara bersama- sama yang atas inspirasinya melahirkan suatu ciptaan berdasar kemampuan, pikiran, imajinasi , kecekatan, keterampilan atau keahlian yang dituangkan ke dalam bentuk yang khas dan bersifat pribadi ". Sedangkan syarat keaslian atau orisinalitas diatur dalam Pasal 1 Angka 3 yaitu " ciptaan adalah hasil setiap karya Pencipta yang menunjukkan keasliannya dalam ilmu pengetahuan,seni atau sastra ".

Sedangkan menurut Pasal 1 Angka 8 UU No.19/2002 yang dimaksud program komputer adalah " sekumpulan instruksi yang diwujudkan dalam bentuk bahasa, kode, skema ataupun bentuk lain, yang apabila digabungkan dengan media yang dapat dibaca dengan komputer akan mampu membuat komputer bekerja untuk melakukan fungsi – fungsi khusus atau untuk mencapai hasil yang khusus, termasuk persiapan dalam merancang instruksi – instruksi tersebut "

Berdasarkan penjelasan yang telah disebutkan tentang syarat – syarat suatu karya dapat disebut suatu ciptaan harus memenuhi *standart copyright*. Maka suatu program komputer, dalam hal ini kita mencontohkan program Linux yang merupakan suatu program komputer karya dari Linus Tovard, sebagai karya cipta yang pantas untuk mendapatkan Hak Cipta harus dianalisis terlebih dahulu memenuhi unsur – unsur dari *standart copyright*.

Syarat yang pertama adalah perwujudan, program komputer harus memiliki perwujudan terlebih dahulu baru program tersebut dapat dikatakan memenuhi syarat yang pertama. Ide dari seseorang untuk menciptakan program komputer baru yang diwujudkan menjadi suatu bentuk program merupakan realisasi dari perwujudan. Karena pada hak cipta yang dilindungi adalah ekspresi dari suatu ide, bukan melindungi idenya itu sendiri[40]. Konsepsi hak cipta yang tidak meberikan perlindungan atas ide yang menginspirasikan perwujudan ciptaan pertama kali digunakan oleh *Judge Learned hand*, sebagaimana dikutip oleh Robert C. dor. Anatomi konsepsi tersebut dijelaskan sebagai berikut [41]

---

[40] *Ibid. h. 28.*

[41]*Ibid* mengutip Robert. C.door dan Christopher H Munch, Protecting tarde Secret, Petents, Copyrights and Trademarks, (sebagaimana dikutib oleh Henry Soelistyo Budi, " Beberapa Permasalahan Hukum Dalam Perlindungan Hak Cipta di bidang Program Komputer ", Seminar hak Cipta dalam Industri Perangkat Lunak, FH Unair-PT Microsoft, Surabaya 1Mei 1999, h. 4 –5)
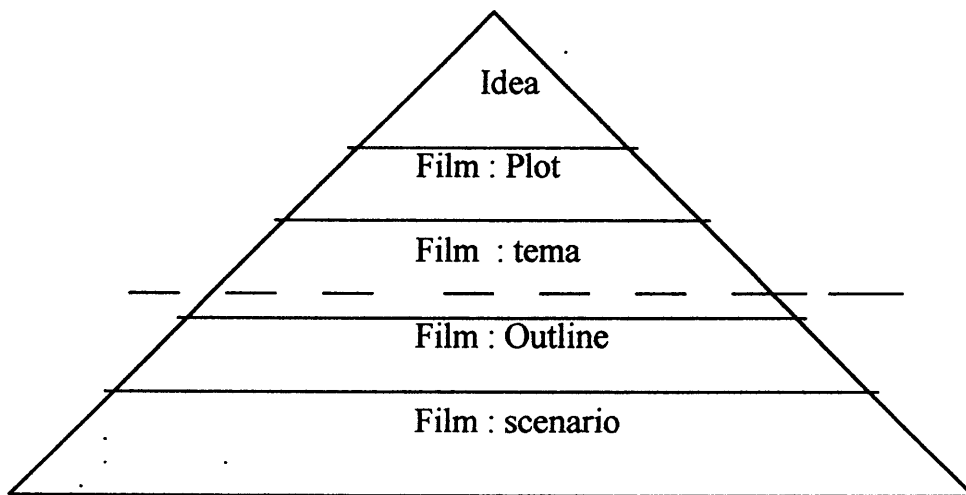
Level of abstraction Analysis

Lapisan puncak menggambarkan posisi ide suatu ciptaan. Lapisan dasar menggambarkan ekspresi ide yang telah mengambil bentuk ciptaan berwujud. Pada program komputer yang dapat dilindungi oleh hak cipta harus mempunyai bentuk yang khas, artinya program tersebut harus sudah diwujudkan dan bukan hanya sekedar ide karena hak cipta tidak memberikan perlindungan pada ide.Hal ini sejalan dengan aturan dalam pasal 4 WCT yaitu program komputer dilindungi sebagai karya kesusteraan di dalam cara dan bentuk apapun ekspresinya (dalam hal ini berupa *source code* maupun *object code* [42]), sedangkan dalam pasal 2 WCT menerangkan bahwa lingkup perlindungan hak cipta itu meliputi ekspresi dan bukan ide, prosedur dan metode operasi / konsep matematika. Sebagai contoh program linux tercipta melalui ide dan pemikiran linus tovard, hal ini berarti telah ada suatu perwujudan dari ide ke dalam bentuk karya cipta.

---

[42] Object code adalah kode yang diproduksi oleh compiler dan ditulis oleh programer dalam suatu format source code,wikipedia,free encyclopedia, Object code,internet :http //www.wikipedia.com Object code,2004-06-07.

Syarat yang kedua adalah orisinalita , persyaratan keaslian(orisinalitas)

bukan merupakan suatu hal yang teramat berat dan bukan berarti bahwa

program komputer harus sama sekali baru atau khas dalam beberapa hal.

Persyaratan tersebut semata- mata berarti bahwa program – program harus

merupakan hasil suatu keterampilan, kerja atau usaha yang cukup sederhana

dan hal itu 'orisinalitas dari pengarang '[43]. Program Linux diciptakan oleh

Linus tovard, atas pemikirannya sendiri dan tidak menjiplak program –

program komputer lainnya walaupun banyak anggapan yang mengatakan

bahwa program tersebut diciptakan berdasarkan dari program UNIX akan

tetapi kedua program tersebut berbeda maka program Linux pada dasarnya

telah memenuhi unsur orisinalitas.

Konsep *originality* dalam Anglo Saxon adalah cukup jika suatu

karya berasal dari derajat penemuan pencipta secara mandiri *(... to be*

sufficient if the work originates from author independently of the degree of

inventiveness).[44] Sedangkan konsep Eropa kontinental meminta suatu tanda

kepribadian dari pencipta atau suatu karya atau suatu tanda kepribadian

yang tercetak *(... a mark of personality of creator of the work or an*

---

[43] Brainbridge, David. *Komputer dan Hukum*, diterjemahkan oleh Prasadi T. Susmaatmadja. Jakarta: Sinar grafika,1990.h.23..

[44] *Ibid*, Rahmi Jened,*Op. Cit* ,h 46.

impoint of personality)[45] . menurut ketentuan Konvensi Berne, unsur keaslian (*originalty*) merupakan hal yang esensial agar suatu karya dapat diberi perlindungan hak cipta. Persyaratan keaslian merupakan akibat langsung dari persyartan asal ciptaan (*authorship*) . Hal ini dapat ditujukkan dalam *article* 2 (ayat (3) Konvensi Berne sebagaimana dirubah terakhir di Paris(1971) yang menyatakan bahwa: " *Translations, adaptations, arragements of music and other alterations of a literary or artistic work shall be protected as original works, without prejudice to the Copyright in original work*" artinya penterjemahan, adaptasi, aransemen musik dan perubahan – perubahan lain dari karya cipta dan seni harus dilindungi sebagai suatu karya asli, tanpa menyebabkan kerugian bagi hak cipta karya asli.[46]

Salah satu pemahaman originality pada Hak Cipta dalam konteks bahwa Hak Cipta melindungi ekspresi dari ide, informasi atau pemikiran(dan bukan ide atau pemikiran itu sendiri) yang dituangkan dalam bentuk konkrit, hal ini lebih dipertegas dengan ketentuan *Article* 9 TRIPs.[47]

---

[45] *Ibid.*

[46] *Ibid.*

[47] *Ibid. h 47*

Dalam kerangka perlindungan hak cipta di Indonesia ketiga standart utama dari hak Cipta diatur dalam UU No.19/2002, perwujudan terdapat dalam pasal 1 angka 2 yaitu " pencipta seorang atau beberapa orang secara bersama – sama yang atas aspirasinya melahirkan suatu ciptaan berdasar kemampuan, pikiran, imajinasi, kecekatan , keterampilan atau keahlian yang dituangkan ke dalam bentuk yang khas dan bersifat pribadi ". Sedangkan syarat keaslian atau orisinalitas diatur dalam pasal 1 Angka 3 yaitu " ciptaan adalah hasil setiap karya Pencipta yang menunjukkan keasliannya dalam ilmu pengetahuan,seni atau sastra". Pada dasarnya perlindungan berdasarkan *section 3 Copyright, Designs and Patents Act 1988 United Kingdom*[48], agar hak cipta itu hidup pada program komputer maka program itu harus " orisinal " dan harus dicatat. Syarat lainnya untuk program - program komputer dan karya - karya cipta tulisan, drama serta musik lainnya adalah bahwa karya itu mesti dicatatkan secara tertulis dalam bentuk lainnya(*section* 3(2)). Ketentuan ini memiliki arti yang sangat luas dan " tertulis ' didefinisikan dalam section 178 sebagai mencakup : " *"writing" includes any form of notation or code, whether by hand or otherwise and regardless of the method by which, or medium in or on which, it is recorded, and "written" shall be construed* accordingly"[49].

---

[48] Internet : http://www.hmso.gov.uk/acts/acts1988/Ukpga_19880048_en_1.htm, 2004-06-06.

[49] Internet : http://www.hmso.gov.uk/acts/acts1988/Ukpga_19880048_en_11.htm, 2004-06-06.

Pengertian ini dalam bahasa Indonesia dapat diartikan kurang lebih sebagai berikut :

" Suatu bentuk pemberitahuan atau kode, baik dengan tangan atau yang lainnya dan tanpa memperhatikan metode dengan mana, atau media dalam atau dengan mana karya cipta itu dicatatkan "[50]

Persetujuan TRIPs *Article* 10 juga mengatur bahwa program komputer merupakan bidang perlindungan hak cipta karena dianggap sebagai karya sastra yang sangat khusus[51]. Program komputer dalam bentuk kode sumber (*source code*) dan kode objek (*object code*), juga kompilasi data yang disimpan dalam komputer(*database*) dilindungi sebagai hak cipta (*Article 10*)[52]

Syarat yang ketiga adalah kreativitas, untuk menentukan suatu kretivitas maka terlebih dahulu harus dilihat apakah memenuhi syarat orisinalitas ataukah tidak sebab di dalam suatu penciptaan yang membutuhkan suatu kreativitas menunjukkan bahwa karya tersebut asli. Program Linux, merupakan sebuah program yang asli dari pemikiran ide yang kemudian diwujudkan menjadi sebuah program komputer. Maka di dalam menciptakan program tersebut melalui sebuah pemikiran yang menunjukkan telah ada suatu kreativitas .

---

[50] Brainbridge, David. *Komputer dan Hukum*, diterjemahkan oleh Prasadi T. Susmaatmadja. Jakarta: Sinar grafika,1990.h.25.

[51] rahmi Jened,*Op.Cit*,55

[52] *Ibid.*

Pada dasarnya terdapat 2(dua) macam perlindungan terhadap program

komputer *(code)*:[53]

a. Perlindungan atas Program Komputer yang pertama adalah perlindungan *Literal Similarity of Coding*. Hal ini terjadi apabila terdapat 2(dua) buah program komputer memiliki atau mempunyai *source code* yang sama. Apabila ini terjadi, maka terdapat kemungkinan salah satu program komputer tersebut telah melakukan peniruan terhadap program komputer yang lain. Berapa besarkah kesamaan dari *source code* diantara kedua buah program itu sehingga kita tidak mengatur mengenai seberapa besar kemiripan antara kedua program komputer tersebut (perlindungan yang bersifat kuantitatif). Perlindungan hukum yang diberikan di Indonesia bersifat kualitatif, dan tidak bersifat kuantitatif. Jadi, tidak terdapat berapa besar (batasan) persen kesamaan antara dua buah program komputer sehingga dapat dikatakan melanggar hak cipta orang lain. Pembatasan yang bersifat kualitatif adalah lebih menekankan kepada seberapa pentingkan bagian yang ditiru bagi suatu program komputer. Terdapat kemungkinan , hanya 5 % Kode Sumber dari program komputer tersebut yang sama, namun dapat dikategorikan sebagai pelanggaran hak cipta.

b. Terdapat pula kemungkinan tidak adanya Kode Sumber dari kedua program yang sama, namun ia dapat dikategorikan sebagai suatu pelanggaran atas hak Cipta. Kemungkinan yang kedua ini dapat muncul,dalam hal ditirunya *stucture,sequence* dan *Organization* dari sebuah program komputer, yang dikenal dengan istilah *Non-literal Similarity of Coding*[54]

---

[53] *Ibid,h.2*.

[54] Aulia,Adnan,*loc.cit.*

Dalam hal ini, Hak Cipta merupakan perlindungan hukum yang utama atas program komputer pihak yang menginginkan perlindungan hak cipta atas hasil karya ciptanya tidak perlu mendaftarkan hak Cipta agar ia mendapatkan perlindungan hukum. Berdasarkan Undang -Undang , Hak Cipta atas program komputer didapatkan oleh si pencipta secara otomatis pada saat ia menciptakan karya ciptanya. Tidak diperlukan adanya pendaftaran Hak Cipta agar karya cipta tersebut itu mendapatkan perlidungan hukum. Walaupun demikian , pendaftaran ciptaan diperlukan untuk menegaskan kepemilikan atas Hak Cipta tersebut. Keuntungan yang lain dari pendaftaran ciptaan terdapat pada saat terjadi sengketa , diperlukan adanya pembuktian akan siapakah pemilik Hak Cipta. Pihak yang sudah mendaftarkan ciptaannya dapat dengan mudah membuktikan bahwa benar sebuah ciptaan adalah miliknya berdasarkan bukti yang dimilikinya.[55] Hal ini berdasarkan pasal 39 UU No.19/2002 yang menyebutkan bahwa dalam daftar umum ciptaan dimuat antara lain:

a. Nama Pencipta dan pemegang Hak Cipta.

b. Tanggal penerimaan surat permohonan.

c. Tanggal lengkapnya persyaratan menurut pasal 37.

Ditetapkan oleh UU No.19/2002 bahwa pencipta atau penerima hak (kedua- duanya Pemegang Hak Cipta) mempunyai hak eksklusif untuk mengumumkan atau memperbanyak ciptaannya. Atau memberi izin kepada

---

[55] Bimbingan Skripsi oleh Ibu Rahmi Jened, SH,MH,21-06-2004.

orang lain untuk melakukan pengumuman dan perbanyakan Ciptaan yang

dipunyainya, tanpa mengurangi pembatasan - pembatasan yang diatur oleh

undang - undang yang berlaku (pasal 1 ayat 1)

Hak eksklusif dari pencipta oleh Miller dinyatakan bahwa :[56]

> " *The five exclusive rights : (1) the reproduction right; (2) the derivative work right; (3) the distribution right; (4) the performance right; (5) the displayright-the last three are limited to the public exercise of those right. The first two are infinged whether done publicly (performance or display to a substantial number of persons outside of family and friends) or privately .*"

> Artinya, hak khusus pencipta mencakup lima hal, yaitu : (1) hak untuk mereproduksi;(2) hak untuk menghasilkan karya derivatif atau turunan;(3) hak untuk mendistribusikan ; (4) hak untuk menampilkan dan (5) hak untuk memamerkan –tiga hak yang terakhir (catatan peneliti;hak mendistribusikan,hak menampilkan dan hak memamerkan) dibatasi untuk pelaksanaan oleh masyarakat atas hak – hak tersebut. Dua hak yang pertama (hak memproduksi dan hak menghasilkan karya derivatif) dilanggar dengan melihat apakah hal tersebut dilakukan secara umum (penampilan atau pameran di hadapan sejumlah orang diluar keluarga dan teman – teman pencipta) atau secara pribadi.[57]

Hak eksklusif tersebut meliputi antara lain Hak ekonomi dan Hak

moral[58]. Hak – Hak moral tercantum dalam pasal 6 Konvensi Bern yang

menyatakan bahwa :[59]

---

[56] Rahmi Jened,*Op.Cit*,h.32 (mengutip Arthur Miller,Michael H.D. *Intellectual Property patent, Trademarks and Copyright*, West Publishing, St. Paul minn,1990,h.32)

[57] *Ibid.*

[58] Mas rahmah, hand out kuliah Hukum Hak Cipta tgl 10 –05-2004.

[59] http://www.aph.gov.au/library/pubs/rn/1998-99/99rn17.htm, 2004-03-04

"(1)Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation.

(2)The rights granted to the author in accordance with the preceding paragraph shal,, ujwr ms death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorised by the legislation of the country where the protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death cease to be maintained "

Hak moral seperti yang tercantum dalam Konvensi Berne tersebut diterjemahkan secara garis besar oleh Suyud Margono adalah sebagai berikut :[60]

" ... Pencipta memiliki hak untuk mengklaim kepemilikan atas karyanya dan mengajukan keberaan atas distorsi, mutilasi atau perubahan – perubahan serta perbuatan pelanggaran lain ynag berkaitan dengan karya tersebut yang dapat merugikan kehormatan atau reputasi si Pengarang / Pencipta ."

Hak Moral ini dikenal dalam negara yang menganut sistem hukum anglo saxon. Undang – Undang di Inggris misalnya, memiliki Hukum *Moral Rights(1988)*, yang secara substansi mengatur yaitu[61] :

---

[60] Lindsey,Tim.dkk.,(ed). **Hak Kekayaan Intelektual; suatu pengantar.**Alumni, Bandung, 2002, h.117.

[61] Suyud, margono,*Op.cit.* h-49

1. *paternity rights*, yaitu hak untuk diakui sebagai pencipta atau pemegang hak cipta
2. *privacy right*, yaitu hak untuk dilindungi dalam hal berhubungan dengan publikasi atau perbanyakan film atau fotografi.
3. *integrity right*, yaitu hak dari pencipta melekat atas ciptannya.

Pada pokoknya terdapat dua prinsip utama dalam hak – hak moral, yaitu :[62]

1. Hak untuk diakui dari karya, yaitu hak daripencipta untuk dipublikasikan sebagai pencipta atas karyanya dalam rangka untuk mencegah pihak lain mengaku sebagai pencipta atas karya tersebut.
2. Hak keberatan, yaitu hak untuk mengajukan keberatan atas penyimpangan atas karyanya atau perubahan lain atau tindakan – tindakan lain yang dapat menurunkan kualitas karya ciptanya.

Undang – undang Hak Cipta No 19/2002 mengatur secara khusus terhadap isu Hak Moral ini. Keperluan pengaturan tentang Hak Moral ini untuk menggarisbawahi bahwa melekatnya *(integrity)* sifat khusus antara Pencipta / Pemilik Hak dengan hasil kreatifitas yang dilakukan dengan jerih payah, pengorbanan dan daya upaya sehingga perlu pengakuan, penghormatan serta perlindungan terhadap jerih payah serta penghormatan tersebut.[63]

Hak Moral menurut UU No.19/2002 diatur dalam pasal 24, yaitu

---

[62] *Ibid*,h.49-50

[63] *Ibid*,h.50

> (1) Pencipta dan ahli warisnya berhak menuntut Pemegang Hak Cipta supaya nama Pencipta tetap dicantumkan dalam ciptaannya.
>
> (2) Suatu ciptaan tidak boleh diubah walaupun Hak Ciptanya dengan persetujuan Pencipta atau dengan persetujuan ahli warisnya dalam hal Pencipta telah meninggal dunia.
>
> (3) Ketentuan sebagaimana dimaksud pada ayat (2) berlaku juga terhadap perubahan judul dan anak judul Ciptaan, pencantuman dan perubahan nama atau nama samaran Pencipta.
>
> (4) Pencipta tetap berhak mengadakan perubahan pada Ciptaannya sesuai dengan kepatutan dalam masyarakat

Makna dari Hak moral seperi diatur dalam pasal 24 UU No.19/2002 adalah bahwa dengan Hak Moral, Pencipta dari suatu karya cipta memiliki hak untuk :[64]

> a. Dicantumkan nama atau nama sarannya di dalam Ciptaannya ataupun salinannya dalam hubungan dengan penggunaan secara umum;
>
> b. Mencegah bentuk – bentuk distorsi, mutilasi atau bentuk pemotongan, perusakan, penggantian yang berhubungan dengan karya cipta yang pada akhirnya akan merusak apresiasi dan reputasi Pencipta.

Sedangkan secara ekonomi (Hak Ekonomi) hak eksklusif ini memberikan peluang bagi mereka untuk mengeksploitasi haknya secara komersial untuk mengumumkan atau mempertunjukkan karya cipta (*performing right*), memperbanyak dan menjualnya (*mechanical rights*), serta untuk memberikan lisensi kepada pihak lain.[65]

---

[64] Lindsey,Tim.dkk.,(ed). *Hak Kekayaan Intelektual; suatu pengantar.* Alumni, Bandung, 2002, h.118.

[65] Rahmi Jened, *Op.Cit*,h.35.

Pemegang Hak Cipta atas program komputer mempunyai

beberapa hak ekskusif, diantaranya:[66]

    a. Hak untuk memperbanyak program dalam sebuah *bentuk material reproduce the program in a material form* (hak ini termasuk menggandakan program tersebut dalam hard disk dari sebuah program komputer, menulis atau mencatatkan kode sumber dari program)

    b. Hak untuk mengumumkan program *publish the program*(ini berarti membuat program telah diumumkan kepada publik di Indonesia)

    c. Membuat adaptasi dari program making an " *adaption of the program* " (hal ini berarti membuat sebuah versi lain dari program tersebut) misalnya membuat versi bahasa lain, kode atau notasi dari program komputer tersebut.

Program Linux adalah merupakan sebuah sistem operasi yang

disebarluaskan secara gratis di bawah lisensi *GNU General Public License* (

GPL), yang berarti juga *Source code* Linux juga tersedia[67] Hal itulah yang

membuat Linux sangat spesial. Linux terus dikembangkan oleh kelompok-

kelompok ahli tanpa dibayar, yang banyak dijumpai di Internet , dengan

tukar menukar kode, melaporkan *bug* dan membenahi segala masalah yang

ada.[68] Setiap orang yang tertarik dipersilahkan untuk bergabung dalam

pengembangan Linux. Semua *software* ini bisa didapat secara gratis

berdasarkan lisensi GNU *General Public License* atau lisensi - lisensi yang

---

[66] Suyud, margono,*Hukum dan Perlindungan Hak Cipta (disesuaikan dengan Undang – Undang Hak Cipta TH.2002)*. Jakarta : Novindo Pustaka Mandiri,2003. h-49

[67] Andi,*Mari Mengenal Linux,* Wahana Komputer,Yogyakarta, 2001. h- 3

[68] *Ibid.*

mirip dengan itu. Berdasarkan lisensi ini, siapa pun bisa mendapatkan program baik dalam bentuk *source code*(bisa dibaca manusia) , maupun *binary*(bisa dibaca mesin). Dengan demikian program tersebut dapat diubah, diadaptasi, maupun dikembangkan lebih lanjut oleh siapa saja.[69] Keistimewaannya Linux gratis dan legal (tidak melanggar hukum walaupun meng-*copy* -nya dari tetangga)[70].

Selain sistem operasi yang bisa didapatkan setiap orang secara gratis, Linux juga mempunyai banyak keunggulan antara lain :[71]

- *Open Source* : Linux merupakan salah satu sistem *open source*, yang berarti memberi kesempatan kepada penggunanya untuk melihat program asal dan atau mengubahnya sesuai keperluan tanpa terkena sanksi *property right* di bawah lisensi GNU
- *Freeware* : Linux merupakan salah satu sisitem yang *Freeware* di bawah lisensi GNU, yang memungkinkan seorang secara pribadi, beberapa orang, maupun instansi untuk memakai dan menyebarkannya tanpa dituntut *royalty* oleh penciptanya. Hal ini sangat menguntungkan masyarakat dalam arti sempit, pengguna komputer dan negara secara luas. Selain menghemat devisa juga akan semakin memperluas pengembangan sumber daya manusia.

Seperti yang telah dijelaskan bahwa Program Linux adalah salah satu program yang berada di bawah lisensi dari GNU *General Public License* . *License* merupakan adopsi penuh dari kata " *License (noun)* " dalam bahasa Inggris yang memiliki artian " *a formal or legal permission to do*

---

[69] *Ibid.*

[70] *Ibid.*

[71] *Ibid.*

something specified;a document granting such permission; freedom to deviate from rule, practice,etc,...[72] jika diterjemahkan ke dalam bahasa Indonesia kurang lebih memiliki arti sesuatu yang resmi atau mendapat ijin yang sah sesuai dengan hukum untuk melakukan sesuatu; sebuah dokumen yang mengabulkan ~~~~ ijin atau kebebasan untuk menyimpang dari aturan, mempergunakan,dsb. Pada dasarnya merupakan suatu bentuk pemberian izin oleh seseorang atas sesuatu yang menjadi haknya kepada pihak lain.

Dalam dunia komputer , lisensi dapat digunakan untuk mengatur berbagai hal tentang persyaratan – persyaratan yang harus dipenuhi di dalam lisensi. Lisensi dapat mengatur hak dan kewajiban diantara pemberi dan penerima lisensi[73]. Saat ini terdapat dua kecenderungan utama dalam pemberian lisensi atas program komputer yaitu :

a. Kecenderungan yang pertama adalah pemberian lisensi yang semata – mata untuk penggunaan binary code dari program komputer. Berdasarkan lisensi jenis ini, penerima lisensi dapat menggunakan program komputer tersebut namun ia tidak mempunyai hak melihat atau menggunakan Kode Sumber dari program komputer. Contoh dari program komputer yang menggunakan lisensi jenis ini adalah : *Microsoft Windows, Microsoft office, Adobe acrobat.* Kode Sumber (*source code*) tetap merupakan rahasia pemberi lisensi tersebut.
b. Kecenderungan yang kedua adalah pemberian lisensi program dengan menyertakan Kode Sumber

---

[72]Adnan, Muhammad. *Panduan Pengembang Public License di Indonesia.* Jakarta : BPPT,2001, h-5

[73] *Ibid,h-6*

dari program komputer. Penerima Lisensi dapat melihat dan menggunakan Kode Sumber tersebut, terdapat berbagai macam bentuk Lisensi untuk Kode Sumber ini , misalnya : GPL, Mozilla, BSD. Contoh dari program komputer yang memberikan lisensi dengan jenis ini adalah ; GNU/ Linux, Nescape Navigator[74]

Pr~~ ~~ ~ nputer dibagi menjadi dua yaitu Program komputer bebas dan Program komputer tidak bebas (*proprietary*)[75] yang perbedaannya terletak dalam hal prinsip kebebasan *(freedom)* yang diberikan oleh pencipta kepada publik[76]. Prinsip kebebasan yang diberikan oleh lisensi *GNU General Public License(GPL)*[77]. Berbagai kebebasan yang diberikan oleh lisensi ini telah menyebabkan beberapa kalangan beranggapan bahwa lisensi dengan jenis ini telah menyebabkan beberapa kalangan beranggapan bahwa lisensi dengan jenis ini telah melanggar Hak Cipta atau tidak menghormati Hak Cipta. Bahkan, beberapa kalangan mengatakan *Free Software* merupakan gerakan anti hak Atas Kekayaan Intelektual (HKI).[78] Tentu saja pandangan ini tidak benar, kesalahan pandangan ini mungkin disebabkan ketidakmengertian akan lisensi publik. Ketidakmengertian ini masih ditambah lagi dengan banyaknya jenis lisensi yang digunakan dalam lingkungan Program Komputer bebas. Lisensi untuk Program komputer bebas dibagi menjadi lisensi yang mengandung klausula *Copyleft* [79]dan

---

[74] Adnan, Aulia , *Op. Cit* (Aulia I),h.6.

[75] *Ibid.*

[76] Aulia, Adnan. *UU Haki dan Open Source*. Internet : http//www.infoLinux.com. posting: (Aulia II).

[77] *Ibid*

[78] Aulia, adnan : *Panduan Pengembang Public license di Indonesia*. Jakarta : BPPT,2001(Aulia III) ,h-1.

klausula yang tidak mengandung *Copyleft.* Perbedaannya antara keduanya

dapat dilihat dari mengetahui apa itu *Copyleft,* yaitu merupakan metoda

umum untuk membuat sebuah program menjadi perangkat lunak bebas,

serta menjamin kebebasannya untuk semua modifikasi dan versi – versi

berikutnya.[80] Secara umum, *copyleft* lisensi mengijinkan semua dengan

bebas orang untuk mendistribusikan kembali dan memodifikasi program

yang telah mendapatkan lisence serta mendistribusikan versi modifikasi

tersebut. Pada *copyleft,* hak cipta pemilik suatu lisensi tidak dapat

dibatalkan atau ditarik kembali oleh penerima suatu copy, mengijinkan

penggunaan tak terbatas yang cuma-cuma, modifikasi, dan pendistribusian

ulang (sering mencakup penjualan media atau alat bantu material yang

menggunakan suatu hak cipta lisensi yang berbeda (misal :dokumentasi))

tentang salinan.[81] Perbedaan khusus yang ada pada *lisence* adalah bahwa

semua modifikasi, jika didistribusikan kembali harus memiliki ijin yang

sama dan tersedia dalam suatu format yang memudahkan modifikasi. Atau

yang disebut Kode Sumber, dan siapapun yang mendistribusikan perangkat

lunak , dengan atau tanpa perubahan , harus memberikan kebebasan untuk

menggandakan atau mengubahnya. Patut pula diperhatikan dalam copyleft,

pemilik Hak Cipta tetap mempunyai Hak Cipta atas Program, dan Program

tidak menjadi milik publik (public domain)[82]

---

[79] Copyleft adalah merupakan merupakan metoda umum untuk membuat sebuah program menjadi perangkat lunak bebas, serta menjamin kebebasannya untuk semua modifikasi dan versi-versi berikutnya.Internet : http://gnu.fyxm.net/copyleft/copyleft.id.html, 2004-04-04

[80] Internet : www. gnu.org/copyleft. *What is Copyleft ?*, 2004-04-04

[81] *Ibid.*

[82] *Ibid.*

Sedangkan masalah yang paling sering timbul pada Program Linux adalah mengenai Hak Ciptanya. Bila kita ambil contoh mengenai perbedaan yang paling fundamental antara *Windows & Linux* adalah pada program *Windows* merupakan suatu tindakan ilegal atau melanggar hukum jika kita meng-copy atau membajak CD-nya untuk diperdagangkan. Pada Linux memang perangkat lunak tersebut bebas atau gratis bisa diperoleh di internet, dapat dicopy ke CD dengan bebas, semua tanpa ada konsekuensi pelanggaran terhadap hukum. Hal ini mengingat Linux memang menggunakan hak cipta publik yang dikenal sebagai *GNU Public License (GPL)*. Prinsip dasar dari *GPL* berbeda dengan hak cipta yang biasa · digunakan oleh banyak orang sebab *GPL* pada dasarnya berusaha memberikan kebebasan seluas-luasnya bagi si pencipta perangkat lunak untuk mengembangkan kreasi perangkatnya dan menyebarkannya secara bebas di publik. Tentunya dalam penggunaan GPL ini kita masih diikat dengan norma, nilai dan etika − misalnya tidak etis jika kita mengambil *software GPL* kemudian mengemasnya menjadi sebuah software lain dan mengaku-ngaku bahwa *software* tersebut adalah buatan kita.[83]

Dengan menggunakan *GPL software* Linux dapat digunakan secara cuma-cuma di seluruh dunia, bahkan *source code* (*listing program*) Linux terbuka dan dapat diperoleh secara cuma-cuma di Internet tanpa perlu

---

[83] *Ibid.*

membajak. Linux sendiri termasuk Program Komputer yang menggunakan Lisensi dari GNU GPL yang berarti bahwa program Linux adalah program komputer bebas yang Hak Ciptanya digunakan untuk melindungi dan juga menyebarluaskan Program Komputer bebas (dengan menggunakan klausula *Copyleft*). Dan klausula *Copyleft* merupakan bagian dan salah satu tujuan dari GPL. GPL dibuat atau dirancang sedemikian rupa sehingga dapat menyebarluaskan kebebasan. *Copyleft* lebih memberikan penekanan terhadap Kode dibandingkan dengan program komputer. GPL memperkenankan penggunaan program untuk berbagai hal termasuk untuk menciptakan Program Komputer tidak bebas, GPL tidak memperkenankan penggunaan kode untuk menciptakan program komputer turunan yang tidak menggunakan GPL. Filosofi yang mendasari GNU GPL memberikan kebebasan secara sekaligus membatasi kebebasan tersebut dengan tujuan memberikan kebebasan yang lebih besar lagi.[84] Pencipta program memberikan kebebasan atas ciptaannya namun ia membatasi kebebasan ini dengan meminta pihak lain yang akan mengembangkan, mendistribusikan dan menyalin program untuk memberikan kebebasan dalam menentukan jenis lisensi program. Pencipta telah memberikan kebebasan yang dimilikinya kepada penerima lisensi. Dengan demikian merupakan suatu

---

[84] *Ibid*,h.20.

kewajaran apabila ia juga meminta pihak yang mendapatkan kebebasan

tersebut untuk memberikan kebebasan yang dimilikinya dan hanya

mempergunakan GPL.[85]

GNU GPL menganut prinsip – prinsip sebagai berikut :[86]

1.Pemilik hak Cipta / remoeri Licensi(Licensor)
Pemilik hak Cipta adalah pemilik hak cipta atas
program komputer atau pihak yang menerima
pengalihan hak Cipta dari pemilik sebelumnya. Pihak
ini dapat merupakan pencipta dari program komputer
atau merupakan pencipta program komputer turunan
dari program komputer tersebut. Pemilik Hak Cipta
memiliki berbagai hak seperti yang diatur dalam
perangkat perundang – undangan Hak Cipta, yang
kemudian melisensikannya dengan menggunakan
GPL.
2. Penerima lisensi (License)
Penerima lisensi adalah pihak yang memperoleh hak
– hak yang telah diberikan oleh pemilik Hak Cipta
sesuai dengan ketentuan yang diatur dalam lisensi.
Penerima lisensi berhak untuk menyalin,
mengandakan dan mengubah program komputer
yang dilisensikan kepadanya. GPL mengahruskan
penerima lisensi untuk memeberikan setiap hak yang
dimilikinya apabila ia akan mendistribusikan ulang
program komputer tanpa adanya batasan apapun.
Penerima lesensi dapat juga menjadi pihak yang
meberikan lisensi dalam hal ia mendistribusikan
ulang program komputer.
3. *Free Software Foundation*
Kedudukan *Free Software Foundation* dalam lisensi
GPL adalah sebagai pihak konseptor GPL. *Free
Software Foundation* memberikan hak kepada setiap

---

[85] *Ibid.*

[86] Adnan, Muhammad. *Panduan Pengembang Public License di Indonesia*. Jakarta :
BPPT,2001, h.8

pihak untuk menggunakan GPL sebagai lisensi dari setiap program komputer.

Berdasarkan penjelasan tersebut, maka Program Linux adalah merupakan suatu Program yang termasuk komputer bebas yang menggunakan lisensi dari GNU GPL , sifat dari GPL itu sendiri adalah *copyleft,* sehingga tidak menyebabkan pelanggaran Hak Cipta. Sedangkan menurut pasal 72 ayat 3 UU No. 19 / 2002 yang termasuk pelanggaran Hak Cipta di bidang komputer adalah "memperbanyak penggunaan untuk kepentingan komersial suatu program komputer " Apabila dilihat di dalam Penjelasannya hak memperbanyak penggunaan adalah " menggandakan atau menyalin Program komputer dalam bentuk Kode Sumber *(Source · code)* atau program aplikasinya". Program Linux, yang merupakan program dimana setiap orang boleh ikut mengembangkan dan mendistribusikannya berdasarkan atas *free software Foundation,* yaitu semua orang dapat bebas mengembangkannya dan itu bukanlah suatu tindakan yang melanggar Hak Cipta karena *Free Software* juga dilindungi oleh Hak Cipta[87]

---

[87] Internet, http : // www.fsf.org , 2004-04-04.

BAB III

GUGATAN SCO TERHADAP IBM

ATAS PENGUNAAN PROGRAM LINUX DAN KAITANNYA

DENGAN PELANGGARAN HAK CIPTA

1.Kasus Posisi

SCO merupakan salah satu perusahaan yang amat sering berganti –

ganti dan berubah – ubah nama dengan kronologi sebagai berikut : [88]

- Pada tahun 1979 SCO pertama kali berdiri dan dikenal dengan nama *The Santa Cruz Operation.* Didirikan oleh Doug dan larry Michels
- Pada tahun 1993 perusahaan SCO mulai go public pada pertukaran saham Nasdaq dengan memakai symbol SCOC
- Pada tahun 1995 SCO memperoleh UNIX system teknologi yang diperoleh dari *Novell corporation* (yang memperoleh hak tersebut dari AT&T , dimana AT&T adalah perusahaan sah pemilik dari UNIX dan memberi nama produknya AT&T UNIX)
- Pada tanggal 2 Agustus 2001 SCO mengumumkan bahwa mereka menjual *server software*(perangkat lunak software) dan service divisions (pelayanan devisi), beserta juga UNIX dan teknologi *open server* mereka kepada *Caldera System,Inc.* dan selanjutnya kedua perusahaan tersebut melakukan merger. Perjanjian merger antara keduanya

---

[88] Milestoes in The History of SCO Group, Internet : http://www.sco.com/, 2004-003

ditandatangani pada tanggal 1 Augustus 2000 dan pada bulan Mei tahun 2001 *Caldera* merubah nama perusahaan tersebut menjadi *Caldera international* sedangkan dilain pihak sebagian dari perusahaan SCO tersebut merubah namanya menjadi *Tarantella,Inc.*

- Perusahaan Caldera mempunyai pimpinan baru yaitu Darl McBride.
- Pada bul... ..gusius 2002 Caldera merubah nama perusahaan itu kembali menjadi " SCO Group ". Dan perusahaan SCO group ini bukanlah Tarantella,Inc ataupun perusahaan Santa Cruz Operation yang terdahulu malainkan merupakan suatu perusahaan yang terlepas dari kedua perusahaan tersebut. Perusahaan ini berasal dari Caldera,Inc yang merubah namanya tadi.
- Pada tanggal 7 maret 2003 perusahaan SCO *(The SCO group)* ini mengajukan gugatan kepada pihak IBM

Pada tanggal 7 Maret 2003 SCO Group mengajukan tuntutan $ 1 milyar (satu milyar dollar Amerika) terhadap pihak IBM, tuntutan tersebut diajukan pada pengadilan *Salt Lake County District state of Utah* [89].

Dengan latar belakang sebagai berikut :[90]

- Unix adalah salah satu program komputer yang merupakan perangkat lunak asli yang dikembangkan oleh *AT&T Bell Laboratories(AT&T)*.SCO/UNIX merupakan salah satu modifikasi dari UNIX dan merupakan *software* yang dikembangkan oleh SCO. UNIX dan SCO/UNIX digunakan secara luas pada sitem komputer sebuah badan usaha ataupun perusahaan pribadi.
- Pada pertengahan tahun 1980, IBM memperoleh hak secara penuh untuk menggunakan *software* UNIX sesuai dengan perjanjian yang telah dibuat dengan *AT&T*

---

[89] Internet : http://www.sco.com/scosource/complaint3.06.03.html, 2004-06-06

[90] Internet : http://www.sco.com/ibmlawsuit/ibm5-27.qxd.pdf, 2004-06-06.

Technologies,Inc. Perjanjian tersebut termasuk persetujuan *software*(perjanjian nomer SOFT-00015) bertanggal 1 Februari 1985, Perjanjian Sublicensing(Perjanjian nomer SUB-0015A) bertanggal 1 Februari 1985, Perjanjian penggantian(Perjanjian nomer XFER-0015B) bertanggal 1 Februari 1985. Surat persetujuan bertanggal 1 Februari 1985 serta Persetujuan penambahan *software* 170, seperti yang terdapat pada amandemen surat persetujuan pada tanggal 25 Januari,1989.

- Berdasarkan perjanjian tersebut, maka IBM mempunyai hak untuk menggunakan UNIX, IBM mulai mengembangkan program UNIX tersebut menjadi sistem program operasi UNIX versi IBM sendiri yang disebut dengan AIX. Selama 2 dekade, IBM menperluas dan mengembangkan AIX ini secara besar – besaran, menciptakan bermilyaran macam kode asli, menggabungkannya kedalam jaringan produksi IBM dan melisensikan teknologi tersebut kepada ribuan konsumen diseluruh dunia. Dan kegiatan tersebut masih dilakukan sampai saat ini.

- Pada tahun 1993, *Novell,Inc("Novell")* memperoleh hak dari *AT&T technologies,Inc* berdasarkan perjanjian *AT&T*. Pada tahun 1995 Novell menyerahkan sebagian (tapi tidak keseluruhan) hak tersebut pada *The Santa Cruz Operation,Inc* (SCO yang pertama kali berdiri), perusahaan tersebut berganti nama menjadi *Tarantella,Inc* yang sama sekali tdak ada hubungannya dengan SCO yang saat ini sedang bersengketa dengan IBM.

- Setelah itu, IBM mendapatkan hak tambahan berkaitan dengan UNIX *software*. Berdasarkan persetujuan yang dikenal dengan Amandemen X, yang dibuat oleh IBM, Novell dan The Santa Cruz Operation pada tanggal 17 oktober 1996, maka IBM memperoleh " kepastian, keseluruhan bagian, hak untuk menggunakan secara terus menerus seluruh hak atas UNIX " yang berada di bawah ruang lingkup perjanjian AT & T.

- Pada tahun 1994 SCO yang semula bernama " Caldera, Inc " memulai bisnisnya sebagai pengembang dan pendistributor dari system operasi Linux.

- Sejak saat itu, SCO mulai mendistribusikan serangkain produk Linux diantaranya adalah SCO Linux *server*, SCO *open Linux server,* SCO *open Linux Workstation* dan Caldera OpenLinux.. SCO juga memiliki suatu web dengan

alat administrasi sistem yang didasarkan untuk memanage Linux dan sistem UNIX. Walaupun SCO menyatakan bahwa pihaknya telah menghentikan penggunakan system UNIX pada pendistribusian program Linux akan tetapi sampai pada saat ini SCO masih meneruskan membuat kode sumber dari Linux dapat di download melalui wesite tersebut.

- SCO mendistribusikan produk Linux dibawah lisensi dari ᴜɴᴜ *General Public License*. Sifat dari GPL adalah memberikan garansi " kebebasan untuk berbagi dan mengganti *free software*, untuk memastikan bahwa *software* tersebut merupakan *software* yang bebas bagi semua pengguna Linux. SCO ikut mendukung dan mensupport sebagai perusahaan pendistribusi Linux selama 8 tahun.

- IBM berpartisipasi pada kominitas *open source* dan mulai menginvestasikan bisnisnya pada Linux lebih dari 5 tahun. IBM ikut aktif dalam pengembangan program – program penting Linux yang didistribusikan melalui komunitas *open source*.

- Saat ini IBM mempunyai jaringan produk yang menjalankan Linux dan pelayanan Linux. IBM juga telah menciptakan pusat kemampuan Linux yang menawarkan pelatihan dan bantuan Linux, pengujian aplikasi, dan pengarahan teknis berdasarkan program Linux.

- Seperti para pengembang lain, IBM mengkontribusikan kode sumber pada Linux dibawah lisensi dari GPL.

- Atas keikutsertaan IBM dalam mengembangkan program Linux, SCO mengajukan tuntutan bahwa SCO mempunyai hak kepemilikan berkenaan dengan semua kode program AIX. Selain itu SCO juga mencari pembenaran untuk mengakhiri kemampuan IBM dalam memiliki dan menggunakan perangkat lunak berdasarkan persetujuan dari *AT&T technology, Inc*.

- Untuk memperkuat posisisnya dalam melawan IBM, SCO juga mengirimkan 1500 surat ancaman pada seluruh perusahaan maju di seluruh dunia. Surat tersebut menyatakan bahwa Linux telah melanggar hak kekayaan Intelektual dan hak – hak yang lain. SCO juga menyatakan bahwa pihaknya akan mencari tidak hanya perusahaan - perusahaan pengembang Linux saja melainkan juga perusahaan lain yang menggunakan teknologi Linux dalam perusahaannya.

Sedangkan AIX *(Advanced Interactive Executive)* merupakan suatu program yang dibuat oleh IBM dengan menggunakan operasi sistem dari UNIX. Untuk membuktikan bahwa suatu ciptaan itu dapat dinilai sebagai hak Cipta atas karya Cipta di bidang ilmu peng............., ...ni dan sastra ada beberapa standarat yang harus dipenuhi .

Pertama adalah syarat mengenai perwujudan (*fixation*) apakah program AIX tersebut memenuhi syarat tersebut ? AIX disini adalah program komputer buatan. Dalam hal ini IBM sesuai dengan perjanjian yang telah dibuat oleh IBM, Novell dan The santa Cruz operation pada tanggal 17 Oktober 1996, maka IBM memperoleh " kepastian, keseluruhan bagian, hak untuk menggunakan secara terus menerus seluruh hak atas UNIX " yang berada di bawah ruang lingkup perjanjian AT & T. Berdasarkan perjanjian itulah maka pihak IBM mengembangkan versi lain dari program UNIX menjadi UNIX versi IBM yang diberi nama AIX[91]. Sudah lebih dari dua dekade IBM memperluas pengembangan dari program AIX ini, termasuk menciptakan miliaran kode asli, serta bekerjasama dengan beribu – ribu pelanggan diseluruh dunia yang membutuhkan lisensi dan produk dari program ini.[92] Dan sampai saat ini IBM masih terus melaksanakan penyedian jasa tersebut. Dengan demikian dapat

---

[91] Internet : http://www.sco.com/ibmlawsuit/ibm5-27.qxd.pdf, 2004-06-06.

disimpulkan disini bahwa pencipta dari program AIX tersebut adalah pihak IBM sebab ciptaan tersebut menunjukkan adanya kemampuan, pikiran, imajinasi, kecekatan, keterampilan atau keahlian yang dituangkan kedalam bentuk yang khas dan bersifat pribadi. Unsur perwujudan telah terpenuhi disini.

Unsur kedua yang harus dipenuhi adalah unsur keaslian (*originality*), untuk dapat memenuhi suatu standart suatu ciptaan maka yang harus dipenuhi adalah unsur keaslian. Menurut James Lahore keaslian adalah " *Thus originality for the purpose of copyright law is not originality of ideas or tought but originality in the execution of the particular form required to express such ideas or thought* " artinya, jadi keaslian sebagai tujuan hak Cipta bukan keaslian ide atau pemikiran tetapi keaslian dalam menuangkannya dalam suatu bentuk khusus yang diisyaratkan untuk mengekspresikan ide atau pemikiran tersebut.[93].Di bidang program komputer menurut Paul Goldstein , " dalam hal cara mengurai satu – satunya cara untuk memepelajari ide dan elemen – elemen fungsional yang terkandung di dalam program komputer yang dilindungi hak cipta, dan dalam hal ada alasan yang masuk akal untuk mempelajari ide itu, mengurai dari sudut hukum termasuk penggunaan yang pantas karya berhak cipta bersangkutan "[94].

---

[92] *Ibid.*

[93] Rahmi jened, *Op.Cit*,h.47 (mengutip Lahore, James, *Intelectual Property Law in Australia: Copyright* Butterworths,Sydney,1977).

[94] Goldstein, Paul. Hak Cipta : *Dahulu, Kini dan Esok*, diterjemahkan oleh Masri Maris. Jakarta : Yayasan Obor Indonesia,1996. h 228.

Apabila suatu perusahaan membuat bentuk program komputer baru yang terbukti sangat berhasil , maka perusahaan – perusahaan lain akan berkeinginan untuk mengeluarkan versi – versi program mereka sendiri yang mirip dengan tipe program itu untuk mendapatkan andil dalam pasar yang dibuat atau dikembangkan oleh program pertama. Pada dasarnya, hokum hak cipta tidak melarang hal demikian sepanjang program asli tidak ditiru atau disalin[95].

Berdasarkan pernyataan – pernyataan tersebut bila diterapkan dalam kasus yang ada maka AIX memenuhi syarat – syarat keaslian sebab program AIX ini dikembangkan oleh IBM dan walaupun dalam menciptakan pihak IBM memperoleh ide tersebut dari program UNIX ,akan tetapi itu hanya sebatas ide maka belum ada Hak Ciptanya.Tujuan hak cipta bukan keaslian ide atau pemikiran tetapi keaslian dalam pemikirannya[96]. Dalam rangka mempelajari ide tersebut dalam bidang komputer dapat dilakukan dengan mengurai –elemennya satu persatu dengan alasan yang masuk akal untuk mempelajari ide tersebut maka pantas untuk mendapatkan hak Cipta , disini dengan demikian pihak IBM memang mengurai unsure elemen – elemen dalam UNIX, akan tetapi jika tidak ada satupun kode objek dan kode sumber dari UNIX yang dijadikan dasar dalam membuat program AIX, jadi dapat dikatakan disini bahwa program AIX tersebut adalah asli pemikiran dari pihak IBM yang walaupun idenya didapatkan dari program UNIX.

---

[95] Bainbridge, david, *Op.Cit*,h.31.

[96] *Rahmi Jened, Op.Cit*,h.47

Unsur yang ketiga adalah kreativitas *(creativity)* yang patokan dari unsure ini adalah kemampuan suatu karya dapat diberikan Hak Cipta bila menunjuk secara sederhana suatu derajat tinggi ukuran keaslian.[97] Program AIX buatan IBM menunjukkan suatu derajat yang tinggi dari keaslian karena program ini diciptakan berdasarkan kraetivitas pihak IBM maka program AIX ini termasuk memenuhi unsure kreativitas.

Berdasarkan uraian mengenai syarat – syarat Hak Cipta tersebut maka program AIX memenuhi standart dari Hak Cipta. Dan tuntutan dari pihak SCO yang menyatakan bahwa program AIX tersebut adalah milik mereka karena program tersebut diciptakan berdasarkan program UNIX tidaklah benar sebab hanya ide dari menciptakan program tersebut yang berdasarkan program UNIX akan tetapi di dalam program AIX tersebut tidak terdapat satupun baik kode sumber ataupun kode sumber dari program AIX.[98]

Bila kembali dilihat dari segi perjanjian yang dibuat antara pihak IBM dan SCO (Novell & SCO) maka tindakan SCO yang menuntut bahwa IBM telah melanggar hak Cipta perusahaan mereka tidaklah dapat dibenarkan karena bila kita lihat kembali dari sejarah SCO maka pada tahun 1993 yang membuat perjanjian dengan pihak Novell adalah perusahaan dari *Santa Cruz Operation* sebelum perusahaan tersebut melakukan merger dengan perusahaan *Caldera, Inc.* Pihak IBM sendiri mendapatkan hak

---

[97] *Ibid,,*h28

[98] Internet : http://www.sco.com/ibmlawsuit/ibm5-27.qxd.pdf, 2004-06-06.

penggunaan program UNIX tersebut berdasarkan perjanjian yang dibuat oleh pihak IBM dengan AT&T . Saat ini yang melakukan tuntutan adalah SCO yang berasal dari *Caldera, Inc* bukanlah perusahaan santa Cruz Operation yang dulunya membuat perjanjian tersebut. Menurut 1340 KUH Perdata menyatakan ᴜᴀⁿᵥᵃ ꜱᵘᴀtu perjanjian hanya berlaku antara pihak – pihak yang membuatnya. Maka otomatis yang membuat perjanjian dengan pihak Novell adalah pihak Santa Cruz Operation yang pertama sebelum perusahaan tersebut melakukan merger dan sebenarnya yang berhak melakuakn penuntutan adalah pihak tersebut akan tetapi dalam hal ini yang melakukan penuntutan adalah pihak SCO yang telah melakukan merger, dimana di dalam merger tersebut mereka tidak menyinggung sama sekali mengenai perjanjian – perjanjian yang pernah dibuat sebelumnya, sebab seperti diatur dalam Pasal 1338 KUH Perdata bahwa semua perjanjian yang dibuat secara sah berlaku sebagai undang – undang bagi mereka yang membuatnya, maka perjanjian yang dibuat oleh IBM adalah perjanjian antara SCO yang pertama kali berdiri (bukan SCO yang sekarang) dengan Novell. Dengan demikian pihak IBM dapat menyatakan bahwa pihak SCO tidak berhak menuntutnya sebab perjanjian yang dibuat oleh Novell adalah perjanjian Novell dengan Santa Cruz Operation. Berkaitan dengan program Linux yang turut dikembangkan oleh IBM berdasarkan program AIX yang dikembangkan oleh pihak IBM sendiri maka hal ini tidaklah sama sekali

melanggar hak Cipta karena seperti dijelaskan dan berdasarkan fakta – fakta

yang ada bahwa AIX tersebut adalah murni program ciptaan IBM [99]maka

IBM berhak untuk menggunakannya untuk mengembangkan program

Linux, berhak untuk menaruh baik kode objek ataupun kode sumber dari

program AIX tersebut ke dalam Linux untuk kemudian dikembangkan oleh

seluruh memakai Linux tanpa melanggar Hak Cipta dari pihak manapun.

Pada Pasal 1 Angka 1 UU No.19/2002 menyebutkan bahwa Hak Cipta

adalah "hak eksklusif bagi Pencipta atau penerima hak untuk

mengumumkan atau memperbanyak Ciptaannya atau memberi izin untuk

itu dengan tidak mengurangi pembatasan – pembatasan menurut peraturan

perundang – undangan yang berlaku". Maka bila dikaitan dengan IBM

beserta dengan keikitsertannya untuk mendukung dan mengembangkan

program Linux berdasarkan program AIX maka IBM mempunyai Hak

eksklusif untuk melakukan hal tersebut sebab IBM merupakan pemilik dari

Hak Cipta program tersebut.

2.Upaya Pemulihan

Berkaitan dengan kasus maka dapat diketahui bahwa IBM sebagai

pihak yang telah dirugikan atas gugatan tersebut dapat mengajukan gugatan

balik

---

[99] Internet : http://www.sco.com/ibmlawsuit/ibm5-27.qxd.pdf, 2004-06-06.

Keharusan pembayaran ganti rugi ini terdapat pada kitab Undang –

undang Hukum Perdata (KUH Perdata) Pasal 1365 KUH Perdata. Dan

bila dibandingkan dengan pengaturan hak Cipta di Indonesia, maka

dapat dikenakan pelanggran terhadap Pasal 56 ayat (1) merupakan

pemba, ─ ─── .cjumlah uang sebagai kompensasi pelanggaran yang

dilakukan. Ganti rugi lazimnya didasarkan pada jumlah yang

seyogyanya diperoleh oleh pemilik hak cipta dalam penggunaan

ciptaannya.[100]

- Jadi disini penggugat harus dapat membuktikan bahwa

   perbuatan tergugat telah mengakibatkan kerugian bagi dirinya ·

- Disini dimaksudkan meletakkan posisi penggugat sepeti

   sebelum terjadinya pelanggaran

Tuntutan pidana untuk perbuatan tersebut, jika dibandingkan dengan

pengaturan Hak cipta di Indonesia, maka hal ini dapat dikenakan ancaman

pidana dengan ketentuan Pasal 310 Kitab Undang _ Undang Hukum Pidana

(KUHP) tentang pencemaran nama baik serta Pasal 335 KUHP tentang

perbuatan tidak menyenangkan. Mengingat bahwa dengan adanya gugatan

SCO terhadap pihak IBM telah menimbulkan persepsi bahwa seolah – olah

pihak IBM telah melakukan pelanggaran Hak Cipta, yang pada

kenyataannya pihak IBM tidak melakukan itu, maka perbuatan yang

---

[100] Rahmi Jened, *Op. Cit*, h.81.

dilakukan oleh SCO ini dapat dikategorikan sebagai pencemaran nama baik dan perbuatan yang tidak menyenangkan.

Upaya pemulihan juga dapat dilakukan melalui lembaga arbitrase mengingat banyak keuntungan yang dapat diambil bila penyelesaian masalah ini melalui lembaga arbitrase, yaitu :[101]

a. Kerahasiaan dijamin para pihak yang bersengketa

b. Dapat dihindari keterlambatan yang diakibatkan karena prosedur dan administrasi

c. Para pihak dapat menentukan pilihan hukum untuk menyelesaikan masalah, proses , dan tempat penyelenggaraan arbitrase.

d. Putusan arbitrase merupakan putusan yang mengikat para pihak dan melalui tata cara atau prosedur yang sederhana dan langsung dapat dilaksanakan.

---

[101] Suyud Margono, *ADR Alternative Dispute Resolution & Arbitrase*. Ghalia Indonesia, Jakarta,2000,h.20-21

BAB IV

KESIMPULAN DAN SARAN

1.KESIMPULAN

a. Program Linux termasuk ciptaan yang dilindungi Hak Cipta yang sifat dari program Linux adalah *free software* berada di bawah lisensi dari *GNU General Public License.*

b. Tindakan SCO menggugat IBM adalah tidak dapat dibenarkan , sebab pihak IBM tidak melanggar Hak Cipta atas pengunaanya terhadap program Linux. Dan berkenaan atas gugatan tersebut pihak IBM dapat melakukan gugatan balik atas dasar perbuatan melanggar hukum, perbuatan tidak menyenangkan dan pencemaran nama baik.

2. SARAN

Saran yang dapat diberikan oleh penulis skripsi ini berkaitan dengan kasus diatas dengan pertimbangan bahwa hal yang sama mungkin terjadi di Indonesia adalah :

- Dalam Undang – Undang Hak Cipta Indonesia perlu ditambahkan sebuah klausula lagi yang lebih terperinci mengenai pelanggaran Hak

Cipta di bidang komputer, seperti apa wujudnya, apakah bila dengan meniru kode sumber(source code) atau kode object (object code) dari suatu program komputer sudah termasuk pelanggaran hak cipta atau tidak sehingga ada suatu ketegasan yang lebih jelas.

- Dalam undang – Undang Hak Cipta Ind⁻ ᴵᴵᵢelaskan lebih lanjut mengenai program komputer yang bersifat *free software* dan penegasan bahwa penggunaan program tersebut tidak melanggar Hak Cipta sehingga masyarakat umum tidak ragu – ragu dalam menggunakannya.

DAFTAR BACAAN

Buku.

Black, Henry Campbell. *Black's Law Dictionary*, West Publishing,St. Paul Minn, 1990

Brainbridge, David. (diterjemahkan oleh Prasadi T. Susmaatmadja) *Komputer dan Hukum*. Sinar Grafika, Jakarta,1993

Doss,George. *Server Red Hat Linux.* Jakarta: Gramedia,1999

Dyson,Esther,1998. Seperti yang dikutip oleh Richardus Eko Indrajit & tranggono I.S Turner. *Membangun Kekuatan baru Teknologi Informasi Dunia*. .Elex media komputindo, Jakarta, 2002

Goldstein, Paul.(diterjemahkan oleh Masri Maris) *Hak Cipta : Dahulu, Kini dan Esok,*.Yayasan Obor Indonesia,Jakarta,1996

Heryanto,Dina & Gunadi,FX,*Microsoft Windows*. Jakarta, Gramedia,1992

Lindsey,Tim.dkk.,(ed). *Hak Kekayaan Intelektual; suatu pengantar,*Alumni, Jakarta, 2002.

Margono, Suyud, *Hukum dan Perlindungan Hak cipta* (disesuaikan dengan Undang – Undang Hak Cipta Th.2002), Novindo Pustaka mandiri,Jakarta, 2003.

Andi, *Mari Mengenal Linux,*Wahana Komputer, Yogyakarta,2001

Rahmi Jened, *Perlindungan hak Cipta Pasca Persetujuan TRIPS*,Yuridika Press fakultas Hukum Universitas Airlangga, Surabaya,2001

WJS. Poerwadarminta, *Kamus Bahasa Indonesia*,Balai Pustaka.Jakarta,1985

Aulia, Adnan. . *Panduan Pengembang Public License di Indonesia*. Jakarta : BPPT,2001.

Prof.R.Subekti,S.H. & R.Tjitrosudibio, *Kitab Undang Undang Hukum Perdata (Burgerlijk Wetboek)*, PT.Pradnya Paramita, Jakarta, 1996.

Prof.Moeljatno,SH, *Kitab Undang Undang Hukum Pidana*, Bumi Aksara, Jakarta,1996.

Peraturan Perundang – Undangan

Undang – Undang No.19 tahun 2002 tentang Hak Cipta, Lembaran Negara Republik Indonesia tahun 2002 Nomor 85.

Internet

www.microsoft.com

www.gnu.org

www_abenks_com

www.wikipedia.com/Santa Cruz Operation-Wikipedia.htm

www.wikipedia.com/Internatimal Business machine-wikipedia.htm

Webmaster, Linux Online Inc,

www. Unix.htm

www.wikipedia.com/Linux kernel.htm

www.AT&T.com

www.wikipedia.com/ AIX operating system

www.wikipedia.com/ Symmetric multiprocessing Wikipedia.htm

www.wikipedia.com/Non –UniformMemory.htm

www.Read-copy-update - Wikipedia.htm

www.wikipedia.com/XFS.htm

www.wikipedia.com/JFS - Wikipedia.htm

www.gnu.org,2003

www.sco.com

www.groklaw.net

www.copyrightlaw.htm

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

David Boies
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, New York
10504
Telephone: (914) 749-8200
Facsimile: (914) 749-8300

Stephen N. Zack (Florida Bar No. 145215)
Mark J. Heise (Florida Bar No. 771090)

BOIES, SCHILLER & FLEXNER LLP

100 Southeast Second Street
Suite 2800
Miami, Florida
33131
Telephone: (305) 539-8400
Facsimile: (305) 539-1307

Attorneys for Plaintiff Caldera Systems, Inc. d/b/a The SCO Group

---

IN THE THIRD JUDICIAL DISTRICT OF SALT LAKE COUNTY

STATE OF UTAH

CALDERA SYSTEMS, INC.,

a Delaware corporation d/b/a THE SCO GROUP,

Plaintiff,

vs.

INTERNATIONAL BUSINESS MACHINES CORPORATION, a Delaware corporation,

Defendant.

COMPLAINT

(Jury Trial Demanded)

Case No. _____

Judge _____

_____

Plaintiff, Caldera Systems, Inc., a Delaware corporation doing business as The SCO Group ("SCO"), complains of Defendant International Business Machines Corporation ("IBM") and alleges as follows:

Nature of This Action

1.   UNIX is a computer operating system program and related software originally developed by AT&T Bell Laboratories ("AT&T"). SCO/UNIX is a modification of UNIX and related software developed by SCO and its predecessors. UNIX and SCO/UNIX are widely used in the corporate, or "enterprise," computing environment.

2.   As a result of its acquisition of the rights to UNIX from AT&T and its own development of UNIX and SCO/UNIX, SCO is the present owner of both UNIX and

SCO/UNIX software. UNIX and SCO/UNIX are valuable software programs and SCO and its predecessors have invested hundreds of millions of dollars in their development and enhancement. SCO (which, as used herein, includes its predecessor) has licensed UNIX and SCO/UNIX both to software vendors such as IBM and computer end-users such as McDonald's. The UNIX and SCO/UNIX licenses granted to software vendors and end-users are limited licenses, which impose restrictions and obligations on the licensees designed to protect the economic value of UNIX and SCO/UNIX.

3.   UNIX and SCO/UNIX compete with other proprietary programs and with "open source" software, which is software dedicated to the public. There are advantages of proprietary programs to end-users (including their proprietary functions in which their developers have invested large amounts of time and money). There are also advantages to open source programs to end-users (including that they do not have to pay for the program itself) and to software vendors (whom market the additional products and services that end-users who use open source programs ordinarily require). This case is not about the debate about the relative merits of proprietary versus open source software. Nor is this case about IBM's right to develop and promote open source software if it decides to do so in furtherance of its independent business objectives, so long as it does so without SCO's proprietary information. This case is, and is only, about the right of SCO not to have its proprietary software misappropriated and misused in violation of its written agreements and well-settled law.

4.   As set forth in more detail below, IBM has breached its own obligations to

SCO, induced and encouraged others to breach their obligations to SCO, interfered with SCO's business, and engaged in unfair competition with SCO, including by

a) misusing and misappropriating SCO's proprietary software;

b) inducing, encouraging, and enabling others to use and misappropriate SCO's proprietary software; and

c) incorporating (and inducing, encouraging, and enabling others to incorporate) SCO's proprietary software into open source software offerings.

Parties, Jurisdiction and Venue

5. Plaintiff SCO is a Delaware corporation with its principal place of business in Utah County, State of Utah.

6. Defendant IBM is a Delaware corporation with its principal place of business in the State of New York.

7. This Court has general jurisdiction of this action pursuant to *Utah Code Ann.* §78-3-4(1).

8. Venue is properly situated in the Third Judicial District pursuant to *Utah Code Ann.* §78-13-5-7 in that plaintiff's action arose in the State of Utah and IBM maintains an office or place of business in Salt Lake County.

9. This Court has *in personam* jurisdiction over IBM pursuant to *Utah Code Ann.* §78-27-24 on the bases that IBM (a) is transacting business within this State, (b) is

contracting to provide goods and services within this State and (c) is causing tortious injury and breach of contract within this State.

Background Facts

The UNIX Operating System

10. UNIX is a computer software operating system. Operating systems serve as the link between computer hardware and the various software programs ("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. By way of example, in the personal computing market, Microsoft Windows is the best-known operating system. The Windows operating system was designed to operate on computer processors ("chips") built by Intel. Thus, Windows serves as the link between Intel-based processors and the various software applications that run on personal computers.

12. In the business computing environment for larger corporations (often called the "enterprise" environment), UNIX is widely used.

13. The UNIX operating system was built by AT&T Bell Laboratories. Initially, UNIX was used to power AT&T's telecommunications business.

14. 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.

15.   Over the years, AT&T Technologies Inc., a wholly owned subsidiary of AT&T, and its related companies licensed UNIX for wide-spread enterprise use. IBM, Hewlett-Packard, Inc. ("HP"), Sun Microsystems, Inc. ("Sun") and Silicon Graphics, Inc. ("SGI") became some of the principal United States-based UNIX licensees.

16.   IBM, HP, Sun, SGI and the other major UNIX vendors each modified UNIX to operate on their own processors. Thus, HP-UNIX, for example, started identically to SGI-UNIX, excepting only that HP-UNIX was designed to interface with, and operate on, a different processor chip set than SGI-UNIX. Over time, each of the major vendors has included its own "value added" layer to help distinguish its marketplace offerings. These various versions of UNIX are sometimes referred to as UNIX "flavors."

17.   All commercial UNIX "flavors" in use today are based on the UNIX System V Technology ("System V Technology").

18.   SCO is the present owner of all software code and licensing rights to System V Technology.

19.   IBM has branded its version or "flavor" of the UNIX software as "AIX." All references hereinafter to AIX are so defined. AIX is a modification of AT&T/SCO's licensed UNIX that is designed to run on IBM's processor chip set, currently called the "Power PC" processor.

20.   There are multiple variants of processor chip sets in the industry. Most chip sets will not operate with the processor chip sets designed for other UNIX vendors. Thus, while the Intel chip set is commonly known to consumers because of Intel's aggressive advertising campaign, it is by no means the only chip set used in the industry. Further, processor chip sets manufactured by Intel are not inter-operable with the IBM Power PC processor chip set or other chip sets, such as Sun Microsystem's "SPARC."

21.   In the computing industry, the term "desktop computers" is sometimes used to refer to the less powerful computers used by individuals and some businesses and the term "workstation" is sometimes used to refer to the more powerful computers used primarily by enterprises.

22.   The personal computing market for relatively low-priced desktop computers came to be dominated by the Windows operating system software operating on Intel-based processor chip sets. Thus, the acronym "Wintel" became known in the industry as the combination of Windows and Intel for relatively low-priced desktop computers for the personal computing market.

23.   The enterprise computing market for high-performance (and higher priced) workstation computers came to be dominated by UNIX and the primary UNIX vendors identified above, each operating on a different processor chip set, and each using UNIX pursuant to licenses from AT&T/SCO. Except for SCO, none of the primary UNIX vendors ever developed a UNIX "flavor" to operate on an Intel-based processor chip set. This is because the earlier Intel processors were considered to

have inadequate processing power for use in the more demanding enterprise market applications.

<u>SCO's Creation of a Market for Intel – The Genesis of SCO OpenServer</u>

24.   As computers grew in popularity to perform business functions, the processing power of Intel-based processor chips also began to increase dramatically. Consistent with Intel founder Gordon Moore's famous prediction, computer chips remained inexpensive while exponentially increasing in power and performance.

25.   Seeing this emerging trend, it became evident to SCO that Intel chips would gradually gain widespread acceptance for use in the enterprise marketplace.

26.   Therefore, while other major UNIX vendors modified UNIX for their own respective non-Intel computing platforms, SCO developed and licensed SCO/UNIX for Intel-based processors for enterprise use.

27.   SCO's early engineers faced difficult design challenges in modifying UNIX for effective use on an Intel processing platform. The principal design constraint centered around the limited processing power the Intel chip possessed in the early 1980's. The Intel chip (designed as it was for personal computers) was not nearly as powerful as the enterprise chips used by IBM, Sun, SGI and others in their respective UNIX offerings.

28.   Based on the early design constraint of Intel's limited processing power, SCO found an appropriate enterprise market niche for the early versions of SCO UNIX— single-purpose applications such as point-of-sale control, inventory control and

transactions processing, with the highest possible reliability. Intel processors were fully capable of performing these relatively simple, repetitive tasks, and could do so at a lower cost and as reliably as the more powerful enterprise processing platforms sold by the other UNIX vendors, such as Sun and IBM.

29.   One example of a customer well-suited to the earlier version ᴏᵣ ᴜᴄᴏ ᴜ̤ɴIX software is McDonald's Corp. McDonald's has thousands of stores worldwide and needs all stores to operate on an integrated computing platform for ease of use, immediate access to information and uniformity. However, the actual computing requirements for each individual McDonald's location are functionally simple—sales need to be tracked and recorded, and inventory functions need to be linked to sales. SCO's UNIX reliably fulfills McDonald's computing requirements at reduced cost. ·

30.   SCO's business model provides enterprise customers the reliability, extensibility (ease of adding or changing functionality), scalability (ease of adding processors or servers to increase processing power) and security of UNIX—but on inexpensive Intel processor chips. This combination allowed customers to perform an extremely high number of transactions and, at the same time, gather and present the information from those transactions in an economical and useful way for enterprise decision makers.

31.   The simplicity and power of this "UNIX on Intel" business model helped SCO grow rapidly. SCO gained other large enterprise customers such as CitiGroup, K-Mart, Cendant, Target Stores, Texas Instruments, BMW, Walgreens, Merck, Sherwin Williams, Radio Shack, Auto Zone, British Petroleum, Papa John's Pizza, Costco

and many others.

32.   As Intel's prominence grew in the enterprise computing market, SCO's early version of UNIX also grew into the operating system of choice for enterprise customers who wanted an Intel-based computing solution for a high volume of repetitive, simple computing transactions.

33.   SCO's software offering based on its early development of UNIX for high volume, repetitive computing transactions is known in the market as "SCO OpenServer."

34.   SCO OpenServer is based on the original UNIX Software Code developed by AT&T, but was modified by SCO for the functionality described above. Thus, while performing single-function applications, SCO OpenServer did so, and continues to do so, with the 99.999% reliability of UNIX.

35.   Over 4,000 separate applications have been written by developers around the world specifically for SCO OpenServer. Most of these applications are vertical applications for targeted functions, such as point-of-sale control for specific industries, inventory control for specific industries, and funds transfer for the financial industry. Collectively, these various applications (software programs) are referred hereinafter as the "SCO OpenServer Applications."

The SCO OpenServer Libraries

36.   In creating the thousands of SCO OpenServer Applications, each designed for a specialized function in a vertical industry, software developers wrote software code

specifically for the SCO OpenServer shared libraries (hereinafter the "SCO OpenServer Shared Libraries").

37.   A "shared library" is a common set of computer code inside an operating system that performs a routine function for all the applications (software programs) designed to run on that particular operating system. Thus, Microsoft Windows has its own set of shared libraries. SCO OpenServer (UNIX designed for Intel chips) has its set of own shared libraries. Sun Solaris (UNIX designed for SPARC chips) has its own set of shared libraries.

38.   The shared libraries of all operating systems are designed with "hooks." These "hooks" are computer code that trigger the operation of certain routine functions. A software developer can shorten the development effort for any new software program and create a more efficient code base by writing programs that access the various "hooks" of the operating system, and thereby use a shared set of code built into the operating system to perform the repetitive, common functions that are involved in every program.

39.   Every one of the specialized applications (software programs) designed by various third-party software developers for use on the SCO OpenServer operating system was written to access the various "hooks" built into SCO OpenServer; and therefore designed to access the SCO OpenServer Shared Libraries.

40.   The SCO OpenServer Shared Libraries are the proprietary and confidential property of SCO. SCO OpenServer has been licensed to numerous customers subject to restrictions on use that prohibit unauthorized use of any of its software code,

including without limitation, the SCO OpenServer Shared Libraries.

41.   Shared libraries are by their nature unique creations based on various decisions to write code in certain ways, which are in great part random decisions of the software developers who create the shared library code base. There is no established way to create a specific shared library and the random choices in the location and access calls for "hooks" that are part of the creation of any shared library. Therefore, the mathematical probability of a customer being able to recreate the SCO OpenServer Shared Libraries without unauthorized access to or use of the source code of the SCO OpenServer Shared Libraries is nil.

SCO's Development of UnixWare on Intel

42.   While the original SCO OpenServer operating system performs with all the reliability and dependability of other UNIX systems, it was originally designed for the initially low processing power of Intel chips. Therefore, SCO OpenServer does not contain, or require, the same level of scalability and extensibility that other versions of UNIX offer.

43.   During or about 1992, SCO's predecessor in interest, Novell, Inc. ("Novell"), acquired all right, title and interest in and to the UNIX Software Code from AT&T for $750 million in Novell stock. For branding purposes, Novell renamed UNIX as "UnixWare."

44.   Upon SCO's acquisition of the UNIX assets from Novell, SCO owned the rights to all UNIX software designed for Intel processors. SCO retained its original

UNIX product, SCO OpenServer, which remained dedicated to the relatively low-power computing tasks identified above. SCO also had acquired UnixWare from Novell, which was designed for high-power computing tasks, and competed directly against the related UNIX products of Sun, IBM, SGI and others.

45.   Existing UnixWare customers include large companies, such as NASDAQ, Lucent Technologies, Daimler Chrysler, K-Mart, Goodyear, Comverse, and numerous others. These customers all have highly sophisticated computing needs that now can be performed on an Intel processor chip set.

46.   From and after September 1995, SCO dedicated significant amounts of funding and a large number of UNIX software engineers, many of whom were original AT&T UNIX software engineers, to upgrading UnixWare for high-performance computing on Intel processors.

47.   By approximately 1998, SCO had completed the majority of this task. That is to say, UnixWare had largely been modified, tested and "enterprise hardened" to use Intel-based processors in direct competition against IBM and Power PC chips, the Sun SPARC chip and all other high-performance computing UNIX platforms for all complex computing demands. The term "enterprise hardened" means to assure that a software product is fully capable of performing under the rigorous demands of enterprise use.

48.   SCO was ready to offer large enterprise customers a high-end UNIX computing platform based on inexpensive Intel processors. Given the rapid growth of Intel's performance capabilities and Intel's popularity in the marketplace, SCO

found itself in a highly desirable market position. In addition, SCO still has its SCO OpenServer business for retail and inventory-targeted functions, with its 4,000 applications in support.

49.   Prior to the events complained of in this action, SCO was the undisputed global leader in the design and distribution of UNIX-based operating systems ᴏ.. Intel-based processing platforms.

Project Monterey

50.   As SCO was poised and ready to expand its market and market share for UnixWare targeted to high-performance enterprise customers, IBM approached SCO to jointly develop a new 64-bit UNIX-based operating system for Intel-based processing platforms. This joint development effort was widely known as Project Monterey.

51.   Prior to this time, IBM had not developed any expertise to run UNIX on an Intel chip and instead was confined to its Power PC chip.

52.   In furtherance of Project Monterey, SCO expended substantial amounts of money and dedicated a significant portion of SCO's development team to completion of the project.

53.   Specifically, plaintiff and plaintiff's predecessor provided IBM engineers with valuable information and trade secrets with respect to architecture, schematics, and design of UnixWare and the UNIX Software Code for Intel-based processors.

54.   By about May 2001, all technical aspects of Project Monterey had been substantially completed. The only remaining tasks of Project Monterey involved marketing and branding tasks to be performed substantially by IBM.

55.   On or about May 2001, IBM notified plaintiff that it refused to proceed with Project Monterey, and that IBM considered Project Monterey to be "dead." In fact, in violation of its obligations to SCO, IBM chose to use and appropriate for its own business the proprietary information obtained from SCO.

AT&T UNIX Agreements

56.   AT&T Technologies originally licensed the UNIX operating system software code to approximately 30,000 software licensees, including defendant IBM, for the UNIX operating system software source code, object code and related schematics, documentation and derivative works (collectively, the "UNIX Software Code"). To protect the confidential and proprietary source code information, these license agreements, as detailed below, contained strict limitations on use and dissemination of UNIX Software Code.

57.   When SCO acquired the UNIX assets from Novell in 1995, it acquired rights in and to *all* (1) underlying, original UNIX software code developed by AT&T Bell Laboratories, including all claims against any parties relating to any right, property or asset used in the business of developing UNIX and UnixWare; (2) the sale of binary and source code licenses to various versions of UNIX and UnixWare; (3) the support of such products and (4) the sale of other products that are directly related to UNIX and UnixWare.

58.   As a result of this acquisition, SCO became the authorized successor in interest to the original position of AT&T Technologies with respect to all licensed UNIX software products.

59.   There are two primary types of software licensing agreements between AT&T Technologies and its various licensees:

a)   The AT&T-related software agreements are collectively referred to hereinafter as the "AT&T UNIX Software Agreements."

b)   The AT&T-related sublicensing agreements are collectively referred to hereinafter as the "AT&T UNIX Sublicensing Agreements."

The AT&T UNIX Software Agreements and the AT&T UNIX Sublicensing Agreements are sometimes collectively referred to hereinafter as the "AT&T UNIX Agreements."

60.   Plaintiff is successor in interest to, and owner of, all contractual rights arising from the AT&T UNIX Agreements.

61.   On February 1, 1985, AT&T and IBM entered into certain AT&T UNIX Agreements:

a) Software Agreement Number Soft-00015 ("AT&T / IBM Software Agreement" attached hereto and incorporated herein as Exhibit A);

b) Sublicensing Agreement Number Sub-00015A ("AT&T / IBM Sublicensing

Agreement" attached hereto and incorporated herein as Exhibit B).

62. In addition, AT&T and IBM entered into a side letter on that date ("AT&T / IBM Side Letter" attached hereto and incorporated herein as Exhibit C).

63. Thereafter, Am⁻ ' ˇ to Software Agreement SOFT-00015, as amended, was executed on or about October 16, 1996 by and among IBM, The Santa Cruz Operation, Inc. ("SCO") and Novell, Inc. ("IBM Amendment X" attached hereto and incorporated herein as Exhibit D).

64. Collectively these agreements, side letter and amendment are referred to hereinafter as the "AT&T / IBM UNIX Agreements."

65. Pursuant to the AT&T / IBM UNIX Agreements, the parties agreed, *inter alia*, to the following terms and conditions:

a) IBM recognizes the proprietary nature of the Software Products (defined to mean the UNIX Software Code) and the need to protect against its unrestricted disclosure (Side Letter, ¶9);

b) IBM may not transfer or dispose of the UNIX Software Code in whole or in part (AT&T / IBM Software Agreement §7.10);

c) IBM is required to hold all UNIX Software Code subject to the AT&T / IBM Agreements in confidence (Software Agreement §7.06(a) as amended by Side Letter ¶9); and

d)   IBM may not use the UNIX Software Code directly for others or allow any use of the UNIX Software Code by others (Software Agreement §2.05).

66.   The cumulative effect of these provisions requires IBM to protect the UNIX Software Code against *unrestricted disclosure, unauthorized transfer or disposition* and *unauthorized use* by others.

67.   In addition, IBM's ability to sublicense UNIX Software Code for the use of others is restricted under §2.01 of the Sublicensing Agreement as follows:

AT&T grants to LICENSEE personal, nontransferable and nonexclusive rights:

a)   To make copies of SUBLICENSED PRODUCTS and to furnish, either directly or through DISTRIBUTORS, such copies of SUBLICENSED PRODUCTS to customers anywhere in the world (subject to U.S. government export restrictions) for use on customer CPUs solely for each such customer's internal business purposes, provided that the entity (LICENSEE or a DISTRIBUTOR) furnishing the sublicensed products obtains agreement as specified in section 2.02 from such a customer, before or at the time of furnishing each copy of a SUBLICENSED PRODUCT, that:

i)   Only a personal, nontransferable and nonexclusive right to use such copy of the SUBLICENSED PRODUCTS on one CPU at a time is granted to such customer;

ii)   No title to the intellectual property in the SUBLICENSED PRODUCT is transferred to such customer;

iii)   Such customer will not copy the SUBLICENSED PRODUCT except as necessary to use such SUBLICENSED PRODUCT on such one CPU;

iv)   Such customer will not transfer the SUBLICENSED PRODUCT to any other party except as authorized by the entity furnishing the SUBLICENSED PRODUCT;

v)   Such customer will not export or re-export the SUBLICENSED PRODUCT without the appropriate United States or foreign government licenses;

vi)   Such customer will not reverse compile or disassemble the SUBLICENSED PRODUCT;

b)   To use SUBLICENSED PRODUCTS on LICENSEE'S CPUs solely for LICENSEE'S own internal business purposes; and

c)   To use, and to permit DISTRIBUTORS to use, SUBLICENSED PRODUCTS without fee solely for testing CPUs that are to be delivered to customers and for demonstrating SUBLICENSED PRODUCTS to prospective customers.

This sublicensing limitation prohibits, among other things, transfer of title, transfer of the software by a customer, and free use of the UNIX Software Code except for demonstration purposes.

68.   As a result of the foregoing, SCO's rights include the following five separate and distinct enforcement rights:

a)   Rights under trade secrets and developer agreements involving SCO OpenServer;

b)   Rights under customer licensing agreements involving SCO OpenServer;

c)   Rights under trade secrets and developer agreements involving SCO UnixWare;

d)   Rights under customer licensing agreements involving SCO UnixWare; and

e)   Rights under all other original UNIX licenses issued by AT&T Technologies and its successors.

Marketplace Value of UNIX

69.   UNIX's value in the enterprise marketplace is largely a function of its reliability, extensibility, and robust performance capability. That is to say, it virtually never needs repair, it performs well under a wide variety of adverse circumstances, and it can be extended throughout an enterprise and across multiple

processors to perform unified or disparate tasks in a seamless computing environment. Because of these features, UNIX-based equipment has replaced mainframe computers for all but the most demanding computing tasks. And, because UNIX-based equipment is far cheaper than mainframe computing equipment, a customer who cannot otherwise justify the cost of mainframe computers can otherwise gain the advantages of "supercomputing" operations through use of UNIX-based equipment.

70. One or more of the different versions of UNIX-based operating systems sold by Sun, IBM, SCO, SGI, and others, is the operating system of choice for large enterprise computing operations in virtually 100% of the Fortune 1000 companies.

71. UNIX gained this prominence in the computing marketplace because of twenty years of development and over one billion dollars invested by plaintiff and its predecessors to create a stable, reliable operating system to perform the mission critical work required by large enterprises.

72. The recent rise of the global technology economy has been powered in large part by UNIX. Virtually every mission critical financial application in the world is powered by UNIX, including electronic transfers of funds. Real time stock trades are powered by UNIX. Inventory controls and distributions are powered by UNIX. All major power grids and all major telecommunications systems are powered by UNIX. Many satellite control and defense control systems are powered by UNIX. Virtually every large corporation in the world currently operates part or all of its information technology systems on a UNIX operating system.

73.   Based on its value in the marketplace, UNIX has become the most widely used and widely accepted operating system for enterprise, institutional and manufacturing applications throughout the world.

The Introduction of Linux

74.   A new operating system derived from and based on UNIX recently has become popular among computer enthusiasts for use on personal, educational-based, and not-for-profit projects and initiatives. This operating system is named Linux.

75.   The name "Linux" is commonly understood in the computing industry to be a combination of the word "UNIX" (referring to the UNIX operating system) and the name "Linus." The name "Linus" was taken from the person who introduced Linux to the computing world, Linus Torvalds.

76.   The initial market positioning of Linux was to create a free UNIX-like operating system to be used by developers and computer hobbyists in personal, experimental, and not-for-profit applications. As such, Linux posed little, if any, commercial threat to UNIX.

The General Public License

77.   Related to the development of the open source software development movement in the computing world, an organization was founded by former MIT professor Richard Stallman entitled "GNU."

78.   The primary purpose of the GNU organization is to create free software based

on valuable commercial software. The primary operating system advanced by GNU is Linux.

79.   In order to assure that the Linux operating system (and other software) would remain free of charge and not-for-profit, GNU created a licensing agreement entitled the General Public License ("GPL").

80.   Any software licensed under the GPL (including Linux) must, by its terms, not be held proprietary or confidential, and may not be claimed by any party as a trade secret or copyright property.

81.   In addition, the GPL provides that, unlike SCO's UNIX operating system or IBM's AIX operating system or Sun's Solaris operating system, no warranty whatsoever runs with its software. The GPL includes the following language:

<div align="center">NO WARRANTY</div>

BECAUSE THE PROGRAM IS LICENSED FREE OF CHARGE, THERE IS NO WARRANTY FOR THE PROGRAM, TO THE EXTENT PERMITTED BY APPLICABLE LAW... THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE PROGRAM IS WITH YOU. SHOULD THE PROGRAM PROVE DEFECTIVE, YOU ASSUME THE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION.

Limitations of Linux Before IBM's Involvement

82.   Linux started as a hobby project of a 19-year old student. Linux has evolved through bits and pieces of various contributions by numerous software developers using single processor computers. Virtually none of these software developers and hobbyists had access to enterprise-scale equipment and testing facilities for Linux development. Without access to such equipment, facilities, sophisticated methods,

concepts and coordinated know-how, it would be difficult or impossible for the Linux development community to create a grade of Linux adequate for enterprise use.

83. As long as the Linux development process remained uncoordinated and random, it posed little or no threat to SCO, or to other UNIX vendors, ror at least two major reasons: (a) Linux quality was inadequate since it was not developed and tested in coordination for enterprise use and (b) enterprise customer acceptance was non-existent because Linux was viewed by enterprise customers as a "fringe" software product.

84. Prior to IBM's involvement, Linux was the software equivalent of a bicycle. UNIX was the software equivalent of a luxury car. To make Linux of necessary quality for use by enterprise customers, it must be re-designed so that Linux also becomes the software equivalent of a luxury car. This re-design is not technologically feasible or even possible at the enterprise level without (1) a high degree of design coordination, (2) access to expensive and sophisticated design and testing equipment; (3) access to UNIX code, methods and concepts; (4) UNIX architectural experience; and (5) a very significant financial investment.

85. For example, Linux is currently capable of coordinating the simultaneous performance of 4 computer processors. UNIX, on the other hand, commonly links 16 processors and can successfully link up to 32 processors for simultaneous operation. This difference in memory management performance is very significant to enterprise customers who need extremely high computing capabilities for complex

tasks. The ability to accomplish this task successfully has taken AT&T, Novell and SCO at least 20 years, with access to expensive equipment for design and testing, well-trained UNIX engineers and a wealth of experience in UNIX methods and concepts.

86.   It is not possible for Linux to rapidly reach UNIX performance standards for complete enterprise functionality without the misappropriation of UNIX code, methods or concepts to achieve such performance, and coordination by a larger developer, such as IBM.

IBM's Scheme

87.   As market awareness of Linux evolved, IBM initiated a course of conduct with the purpose and effect of using Linux to **unfairly** compete in the enterprise market. At that point in time, four important events were occurring simultaneously in the enterprise software computing marketplace:

a) Intel chips were becoming widely demanded by enterprise customers since Intel's processing power had increased and its cost had remained low;

b)   SCO's market power in the enterprise marketplace was increasing based on the combined capabilities of SCO OpenServer, SCO UnixWare and SCO's unique position as UNIX on Intel;

c)   Free Linux had carved a niche in not-for-profit and non-business uses; and

d)   IBM was in the process of evolving its business model from products to services.

88.   In the process of moving from product offerings to services offerings, IBM dramatically increased its staff of systems integrators to 120,000 strong under the marketing brand "IBM Global Services." By contrast, IBM's largest historic competitor as a seller of UNIX software, Sun Microsystems, has a staff of approximately 12,000 systems integrators. With ten times more services-related personnel than its largest competitor, IBM sought to move the corporate enterprise computing market to a services model based on free software on Intel processors.

89.   By undermining and destroying the entire marketplace value of UNIX in the enterprise market, IBM would gain even greater advantage over all its competitors whose revenue model was based on licensing of software rather than sale of services.

90.   To accomplish the end of transforming the enterprise software market to a services-driven market, IBM set about to deliberately and improperly destroy the economic value of UNIX and particularly the economic value of UNIX on Intel-based processors.

91.   Among other actions, IBM misappropriated the confidential and proprietary information from SCO in Project Monterey. IBM thereafter misused its access to the UNIX Software Code. On or about August 17, 2000, IBM and Red Hat Inc. issued a joint press release through M2 Presswire announcing, *inter alia*, as follows:

"IBM today announced a global agreement that enables Red Hat, Inc. to bundle IBM's Linux-based software.

IBM said it would contribute more than 100 printer drivers to the open source community. With these announcements, IBM is making it easier for customers to deploy e-business applications on Linux using a growing selection of hardware and software to meet their needs. *The announcements are the latest initiative in IBM's*

continuing strategy to embrace Linux across its entire product and services portfolio.

Helping build the open standard, IBM has been working closely with the open source community, contributing technologies and resources."

92.   Thereafter, on December 20, 2000, IBM Vice President Robert LeBlanc disclosed IBM's improper use of confidential and proprietary information learned from Project Monterey to bolster Linux as part of IBM's long term vision, stating:

"Project Monterey was actually started before Linux did. When we started the push to Monterey, the notion was to have one common OS for several architectures. The notion actually came through with Linux, which was open source and supported all hardware. *We continued with Monterey as an extension of AIX [IBM UNIX] to support high-end hardware.* AIX 5 has the best of Monterey. *Linux cannot fill that need today, but over time we believe it will. To help out we're making contributions to the open source movement like the journal file system.* We can't tell our customers to wait for Linux to grow up.

If Linux had all of the capabilities of AIX, where we could put the AIX code at runtime on top of Linux, then we would.

Right now the Linux kernel does not support all the capabilities of AIX. We've been working on AIX for 20 years. Linux is still young. We're helping Linux kernel up to that level. We understand where the kernel is. We have a lot of people working now as part of the kernel team. At the end of the day, the customer makes the choice, whether we write for AIX or for Linux.

We're willing to open source any part of AIX that the Linux community considers valuable. We have open-sourced the journal filesystem, print driver for the Omniprint. AIX is 1.5 million lines of code. If we dump that on the open source community then are people going to understand it? You're better off taking bits and pieces and the expertise that we bring along with it. We have made a conscious decision to keep contributing."

93.   IBM, however, was not and is not in a position legally to "open source any part part of AIX that the Linux community considers valuable." Rather, IBM is obligated *not* to open source AIX because it contains SCO's confidential and proprietary

UNIX operating system and, more importantly, the code that is essential for running mission critical applications (*e.g.,* wire transfers) for large businesses.

94.   Over time, IBM made a very substantial financing commitment to improperly put SCO's confidential and proprietary information into Linux, the free operating system. On or about May 21, 2001 IBM vice President Richard Michos, stated in an interview to Independent Newspapers, New Zealand, *inter* alia:

"IBM will put US $1 billion this year into Linux, the free operating system.

IBM wants to be part of the community that makes Linux successful. It has a development team that works on improvements to the Linux kernel, or source code. *This includes programmers who work in the company's Linux technology center, working on making the company's technology Linux-compatible."*

That team of IBM programmers is improperly extracting and using SCO's UNIX technology from the same building that was previously the UNIX technology center.

95.   In a news article issued by e-Business Developer on or about August 10, 2001, the following conduct was attributed to IBM regarding participation in the open source software movement:

"Another example is when IBM realized that the open-source operating system (OS) Linux provided an economical and reliable OS for its various hardware platforms. However, IBM needed to make changes to the source to use it on its full range of product offerings.

IBM received help from the open-source community with these changes and in return, released parts of its AIX OS to open source. IBM then sold its mainframes running Linux to Banco Mercantile and Telia Telecommunications, replacing 30 Windows NT boxes and 70 Sun boxes respectively - obviously a win for IBM, which reduced its cost of maintaining a proprietary OS while increasing its developer base. *IBM's AIX contributions were integrated into the standard Linux source tree, a*

win for open source."

96.   Again, "IBM's AIX contributions" consisted of the improper extraction, use, and dissemination of SCO'S UNIX source code and libraries, and unauthorized misuse of UNIX methods, concepts, and know-how.

97.   In a news article issued by IDC on or about August 14, 2001, the following was reported:

"IBM continued its vocal support of the Linux operating system Tuesday, saying the company will gladly drop its own version of UNIX from servers and replace it with Linux if the software matures so that it can handle the most demanding tasks.

IBM executives speaking here at the company's solutions developer conference outlined reasons for the company's Linux support, pointing to features in the operating system that could push it past UNIX for back-end computing. *While they admit that Linux still has a way to go before it can compete with the functions available on many flavors of UNIX, IBM officials said that Linux could prove more cost-effective and be a more user-friendly way to manage servers.*

'*We are happy and comfortable with the idea that Linux can become the successor, not just for AIX, but for all UNIX operating systems,*' said Steve Mills, senior vice president and group executive of the IBM Software Group, during a news conference."

98.   Continuing with its "happy and comfortable" idea that Linux succeeds at the expense of UNIX, on or about January 23, 2003, IBM executive Steve Mills' gave a keynote speech at LinuxWorld, a trade show, which was reported by Computer Reseller News, *IBM's Mills: Linux Will be on Par with UNIX in No Time*, January 23, 2003, *inter alia*, as follows:

"*IBM will exploit its expertise in AIX to bring Linux up to par with UNIX*, an IBM executive said Thursday.

During his keynote at LinuxWorld here, IBM Senior Vice President and group

executive Steve Mills acknowledged that *Linux lags behind UNIX in scalability, SMP support, fail-over capabilities and reliability—but not for long.*

'The pathway to get there is an eight-lane highway,' Mills said, noting that IBM's deep experience with AIX and its 250-member open-source development team will be applied to make the Linux kernel as strong as that of UNIX. 'The road to get there is well understood.'

* * *

Mills hinted that the company's full development capabilities will be brought to bear in engineering the Linux kernel to offer vastly improved scalability, reliability and support for mixed workloads—and to obliterate UNIX."

99.   The only way that the pathway is an "eight-lane highway" for Linux to achieve the scalability, SMP support, fail-over capabilities and reliability of UNIX is by the improper extraction, use, and dissemination of the proprietary and confidential UNIX Software Code and libraries. Indeed, UNIX was able to achieve its status as the premiere operating system only after decades of hard work, beginning with the finest computer scientists at AT&T Bell Laboratories, plaintiff's predecessor in interest.

100.   Based on other published statements, IBM currently has over 7,000 employees involved in the transfer of UNIX knowledge into the Linux business of IBM, Red Hat and SuSE (the largest European Linux distributor). On information and belief, a large number of the said IBM employees currently working in the transfer of UNIX to Linux have, or have had, access to the UNIX Software Code.

IBM's Coordination of Linux Development Efforts

101.   On information and belief, IBM has knowingly induced, encouraged, and enabled others to distribute proprietary information in an attempt to conceal its own legal liability for such distributions:

"What is wrong about this [Linux] distribution, is basically the millions of lines of code that we never have seen. We don't know if there are any patent infringements [in this code] with somebody we don't know. *We don't want to take the risk of being sued for a patent infringement. That is why we don't do distributions, and that's why we have distributors.* Because distributors are not so much exposed as we are. So that's the basic deal as I understand it."

Karl-Heinz Strassemeyer, IBM The Register, 11/19/2002, www.theregister.co.uk/content/4/28183.html

102.   IBM is affirmatively taking steps to destroy all value of UNIX by improperly extracting and using the confidential and proprietary information it acquired from UNIX and dumping that information into the open source community. As part of this effort, IBM has heavily invested in the following projects to further eliminate the viability of UNIX:

a) The Linux Technology Center was launched in 2001 with the advertised intent and foreseeable purpose of transferring and otherwise disposing of all or part of UNIX, including its concepts, ideas, and know-how, into an open source Linux environment;

b)   The IBM Linux Center of Competency was launched to assist and train financial services companies in an accelerated transfer of UNIX to Linux with the advertised intent and foreseeable purpose of transferring and otherwise disposing of all or part of UNIX, including its concepts, ideas, and know-how, into an open source Linux environment;

c) A carrier-grade Linux project has been undertaken to use UNIX code, methods, concepts, and know-how for the unlawful purpose of transforming Linux into an enterprise-hardened operating system;

d) A data center Linux project has been undertaken to use UNIX code, methods, concepts, and know-how for the unlawful purpose of transforming Linux into an enterprise-hardened operating system; and

e) Other projects and initiatives have been undertaken or supported that further evidence the impropei motive and means exercised by IBM in its efforts to eliminate UNIX and replace it with free Linux.

103. But for IBM's coordination of the development of enterprise Linux, and the misappropriation of UNIX to accomplish that objective, the Linux development community would not timely develop the quality or customer support necessary for wide-spread use in the enterprise market.

FIRST CAUSE OF ACTION

(Misappropriation of Trade Secrets—*Utah Code Ann.* §13-24-1 *et seq.*)

104. Plaintiff incorporates and re-alleges by reference paragraphs 1-103 above.

105. Plaintiff is the owner of unique know how, concepts, ideas, methodologies, standards, specifications, programming, techniques, UNIX Software Code, object code, architecture, design and schematics that allow UNIX to operate with unmatched extensibility, scalability, reliability and security (hereinafter defined as "SCO's Trade Secrets"). SCO's Trade Secrets provide SCO with an advantage over its competitors.

106. SCO's Trade Secrets are embodied within SCO's proprietary SCO OpenServer and its related shared libraries and SCO's UnixWare and its related shared libraries.

107. SCO and its predecessors in interest have expended over one billion dollars to develop SCO's Trade Secrets.

108. IBM, through improper means acquired and misappropriated SCO's Trade Secrets for its own use and benefit, for use in competition with SCO and in an effort to destroy SCO.

109. At the time that IBM acquired access to SCO's Trade Secrets, IBM knew that it had a duty to maintain the secrecy of SCO's Trade Secrets or limit their use.

110. SCO's Trade Secrets derive independent economic value, are not generally known to third persons, are not readily ascertainable by proper means by other persons who can obtain economic value from their disclosure and use, and are subject to reasonable efforts by SCO and its predecessors to maintain secrecy.

111. The acts and conduct of IBM in misappropriating and encouraging, inducing and causing others to commit material misappropriation of SCO's Trade Secrets are the direct and proximate cause of a near-complete devaluation and destruction of the market value of SCO OpenServer and SCO UnixWare that would not have otherwise occurred but for the conduct of IBM.

112. Pursuant to *Utah Code Ann.* §13-24-4, plaintiff is entitled to an award of damages against IBM in the following amounts:

a) Actual damages as a result of the theft of trade secrets; together with

b) Profits from IBM's Linux-related business on account of its misappropriation

through the time of trial; together with

c) Additional foreseeable profits for future years from IBM's Linux-related business on account of its misappropriation in an amount to be proven at the time of trial.

113.   Because IBM's misappropriation was willful, malicious, and in reckless disregard of Plaintiff's rights, SCO is entitled to an award of exemplary damages against IBM in an amount equal to two times the amount of damages, pursuant to *Utah Code Ann.* §13-24-4(2).

114.   Plaintiff is also entitled to an award of attorneys' fees and costs in an amount to be proven at the time of trial pursuant to *Utah Code Ann.* §13-24-5.

SECOND CAUSE OF ACTION

(Unfair Competition)

115.   Plaintiff incorporates and re-alleges by reference paragraphs 1-114 above.

116.   Plaintiff and its predecessors have built the UNIX System V Technology, the Unix Software Code, SCO OpenServer, UnixWare and their derivatives through very substantial efforts over a time span in excess of 20 years and expenditure of money in excess of $1 billion.

117.   IBM has engaged in a course of conduct that is intentionally and foreseeably calculated to undermine and/or destroy the economic value of the UNIX Software Code anywhere and everywhere in the world, and to undermine and/or destroy plaintiff's rights to fully exploit and benefit from its ownership rights in and to UNIX

System V Technology, the Unix Software Code, SCO OpenServer, UnixWare and their derivatives, and thereby seize the value of UNIX System V Technology, the Unix Software Code, SCO OpenServer, UnixWare and their derivatives directly for its own benefit and indirectly for the benefit of its Linux distribution partners.

118.   In furtherance of its scheme of unfair compe........, ... has engaged in the following conduct:

a) Misappropriation of trade secrets and confidential information of plaintiff;

b) Violation of confidentiality provisions running to the benefit of plaintiff;

c) Inducing and encouraging others to violate confidentiality provisions and to misappropriate trade secrets and confidential information of plaintiff;

d) Contribution of trade secret protected software code for incorporation into one or more Linux or other free UNIX-like software releases, intended for transfer of ownership to the general public and distribution to the enterprise software market under the General Public License, with the effect and intent of transferring ownership thereto;

e) Use of deceptive means and practices in dealing with plaintiff with respect to its software development efforts; and

f)   Other methods of unlawful and/or unfair competition.

119.   IBM's unfair competition has directly and/or proximately caused significant

foreseeable and consequential harm to plaintiff in the following particulars:

a) Plaintiff's revenue stream from UNIX licenses for Intel-based processing platforms has decreased substantially;

b)   _.- Intel-based processors have now become the processing platform of choice for a rapidly-increasing customer base of enterprise software users, plaintiff has been deprived of the opportunity to fairly exploit its market-leading position for UNIX on Intel-based processors, which revenue opportunity would have been very substantial on a recurring, annual basis but for IBM's unfairly competitive practices;

c) Plaintiff stands at imminent risk of being deprived of its entire stream of all UNIX licensing revenue in the foreseeably near future;

d)   Plaintiff has been deprived of the effective ability to market and sell its new UNIX-related improvements, including a 64-bit version of UNIX for Intel-based processors (based on Project Monterey) and its new web-based UNIX-related products, including UNIX System VI;

e) Plaintiff has been deprived of the effective revenue licensing opportunity to transfer its existing UNIX System V customer base to UNIX System VI; and

f)   Plaintiff has been deprived of the effective ability to otherwise fully and fairly exploit UNIX's market-leading position in enterprise software market, which deprivation is highly significant given the inability of Microsoft Windows NT to properly support large-scale enterprise applications.

120. As a result of IBM's unfair competition and the marketplace injury sustained by plaintiff as set forth above, plaintiff has suffered damages in an amount to be proven at trial, but no less than $1 billion, together with additional damages through and after the time of trial foreseeably and consequentially resulting from IBM's unfair competition in an amount to be proven at the time of trial.

121. IBM's unfairly competitive conduct was also intentionally and maliciously designed to destroy plaintiff's business livelihood and all opportunities of plaintiff to derive value from the UNIX Software Code in the marketplace. As such, IBM's wrongful acts and course of conduct has created a profoundly adverse effect on UNIX business worldwide. As such, this Court should impose an award of punitive damages against IBM in an amount to be proven and supported at trial.

THIRD CAUSE OF ACTION

(Interference with Contract)

122. Plaintiff incorporates and re-alleges by reference paragraphs 1-121 above.

123. SCO has contracts with customers around the world for licensing of UNIX Software.

124. IBM knew and should have known of these corporate software licensing agreements between SCO and its customers, including the fact that such agreements contain confidentiality provisions and provisions limiting the use to which the licensed code can be put.

125. IBM, directly and through its Linux distribution partners, has intentionally and

without justification induced SCO's customers and licensees to breach their corporate licensing agreements, including but not limited to, inducing the customers to reverse engineer, decompile, translate, create derivative works, modify or otherwise use the UNIX software in ways in violation of the license agreements. These customers include Sherwin Williams, Papa John's Pizza, and Auto Zone, among others. The licensees include Hewlett-Packard, Fujitsu, NEC and Toshiba, among others.

126.   IBM's tortious interference has directly and/or proximately caused significant foreseeable damages to SCO, including a substantial loss of revenues.

127.   IBM's tortious conduct was also intentionally and maliciously designed to destroy plaintiff's business livelihood and all opportunities of plaintiff to derive value from the UNIX Software Code in the marketplace. As such, this Court should impose an award of punitive damages against IBM in an amount to be proven and supported at trial.

FOURTH CAUSE OF ACTION

(Breach of Contract)

128.   Plaintiff incorporates and realleges by reference paragraphs 1-127 above.

129.   IBM has numerous obligations under the AT&T / IBM UNIX Agreements, some of which are detailed below.

130.   Paragraph 11 of the Side Letter contains the following language regarding the

intent of the parties to prevent unrestricted disclosure of UNIX:

You [IBM] recognize the proprietary nature of SOFTWARE PRODUCTS and the need to protect SOFTWARE PRODUCTS from unrestricted disclosure.

131. IBM is prohibited under §7.10 of the Software Agreement from transferring or disposing of UNIX in a way *ᴸ : ᵗ·ʳⁱ·ys its economic value. The applicable contract language reads as follows:

Except as provided in Section 7.06(b), nothing 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.

132. IBM has a duty of confidentiality to protect the confidentiality of SCO's trade secrets. The Side Letter ¶9 provides, in part, as follows:

LICENSEE [IBM] agrees that it shall hold SOFTWARE PRODUCTS subject to this Agreement in confidence for AT&T. LICENSEE further agrees that it shall not make any disclosure of such SOFTWARE PRODUCTS to anyone, except to employees of LICENSEE to whom such disclosure is necessary to the use for which rights are granted, LINCENSEE 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.

IBM is further required by ¶2.01 of the Sublicensing Agreement to obtain confidentiality agreements from its distributors and customers, and by ¶3 of the Side letter to obtain the same from contractors.

133. IBM is prohibited under Section 2.05 of the Software Agreement from using UNIX for others. The applicable language provides:

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.

134. The cumulative effect of these provisions requires IBM to protect SCO's

valuable UNIX trade secrets against *unrestricted disclosure*, *unauthorized transfer or disposition* and *unauthorized use* by others.

135. Notwithstanding these provisions, IBM has subjected SCO's UNIX trade secrets to unrestricted disclosure, unauthorized transfer and disposition, unauthorized use, and has otherwise encouraged others in the Linux development community to do the same. SCO, therefore, has terminated IBM's license to use UNIX-based software products. (See letter dated March 6, 2003, attached hereto and incorporated herein as Exhibit E).

136. As a result of IBM's breaches, SCO has suffered substantial damages in an amount to be proven at trial.

Prayer for Relief

WHEREFORE, having fully set forth its complaint, plaintiff prays for relief from this Court as follows:

1. For relief under the First Cause of Action for misappropriation of trade secrets arising from *Utah Code Ann.* §13-24-1 et seq., and damages for violations thereof, together with additional damages through and after the time of trial;

2. For relief under the Second Cause of Action for unfair competition arising from common law, and damages for violations thereof, together with additional damages through and after the time of trial;

3. For relief under the Third Cause of Action for tortious interference, and damages

for violations thereof, together with additional damages through and after the time of trial;

4.   For damages under the Fourth Cause of Action for breach of contract of the AT&T / IBM UNIX Agreements together with additional damages through and after the time of trial foreseeably and consequentially resulting from IBM's breach of contract in an amount to be proven at the time of trial;

5.   For punitive damages under common law for IBM's malicious and willful conduct in an amount to be proven at trial;

6.   For exemplary damages under *Utah Code Ann.* § 13-24-1 in an amount equal to twice the award under the First Cause of Action for misappropriation of trade secrets;

7.   For attorneys' fees as provided by *Utah Code Ann.* §13-24-5 and by contract in an amount to be proven at trial; and

8.   For all other relief deemed just and proper by this Court.

Jury Trial Demand

Pursuant to U.R.Civ.P. Rule 38(b), plaintiff demands trial by jury of any issue triable of right by jury and tenders the statutory jury fee upon the filing of this Complaint.

DATED this _____ day of March, 2003.

                              HATCH, JAMES & DODGE

Brent O. Hatch

Mark F. James

BOIES, SCHILLER & FLEXNER

                              David Boies

                              Stephen N. Zack

Mark J. Heise

                    By: .

_____

                              Attorneys for Plaintiff Caldera Systems,
Inc. d/b/a

The SCO Group

Plaintiff's address:

355 South 520 West

Lindon, Utah 84042

Alan L. Sullivan (3152)
Todd M. Shaughnessy (6651)
Snell & Wilmer L.L.P.
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Facsimile: (801) 257-1800

CRAVATH, SWAINE & MOORE
Evan R. Chesler (admitted pro hac vice)
Thomas G. Rafferty (admitted pro hac vice)
David R. Marriott (pending admission)
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
Telephone: (212) 474-1000

*Attorneys for Defendant International Business
Machines Corporation*

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CALDERA SYSTEMS, INC, d/b/a/ THE SCO GROUP, Plaintiff, vs. INTERNATIONAL BUSINESS MACHINES CORPORATION, Defendants.	**DEFENDANT INTERNATIONAL BUSINESS MACHINES CORPORATION'S AMENDED ANSWER TO THE COMPLAINT OF PLAINTIFF CALDERA SYSTEMS, INC. D/B/A THE SCO GROUP** **JURY TRIAL DEMANDED** Civil No. 2:03cv0294 Honorable Dale A. Kimball

In answer to the allegations of the complaint of Caldera Systems, Inc. d/b/a The

SCO Group ("Caldera"), defendant International Business Machines Corporation ("IBM"), by

and through its attorneys, states that, contrary to Caldera's allegations, by its lawsuit, Caldera

3.   Denies the averments of paragraph 3 as they relate to IBM and this case except states that there can be advantages of proprietary programs to end-users and there can be advantages of open source programs to end-users, states that it is without information sufficient to form a belief as to the truth of the averments as they relate to any other person or entity and states that the last three sentences purport to describe this action and do not require a response.

4.   Denies the averments of paragraph 4.

5.   Denies the averments of paragraph 5.

6.   Denies the averments of paragraph 6, except admits that IBM's principal place of business is in the State of New York.

7.   States that the averments of paragraph 7 purport to state a legal conclusion and do not require a response.

8.   Denies the averments of paragraph 8, except admits that IBM maintains an office or place of business in Salt Lake County.

9.   Denies the averments of paragraph 9, except admits that IBM is transacting business within this state and is contracting to provide goods and services within the state and states that, to the extent they purport to state a legal conclusion, these averments do not require a response.

10.   Denies the averments of paragraph 10, especially insofar as they purport to describe all operating systems.

19.   Denies the averments of paragraph 19, except admits that IBM markets a UNIX software product under the trade name "AIX".

20.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 20, except admits that there are variants of processor chips in the industry and Intel's chips are not the only ones in the industry.

21.   States that it is without information sufficient to form a belief a   of the averments of paragraph 21.

22.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 22, except denies the "market" averments.

23.   Denies the averments of paragraph 23.

24.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 24.

25.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 25.

26.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 26.

27.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 27, except admits that IBM POWER chips are more powerful than the intel chips described in these averments.

28.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 28.

253054.1

-5-

29. States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 29.

30. States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 30.

31. States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 31.

32. States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 32.

33. States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 33.

34. States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 34.

35. States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 35.

36. States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 36.

37. States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 37.

38. States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 38.

39.　States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 39.

40.　States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 40.

41.　States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 41.

42.　States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 42.

43.　States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 43.

44　States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 44.

45.　States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 45.

46.　States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 46.

47.　States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 47, except admits that UnixWare ran on Intel-based processors.

48.　States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 48.

49.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 49.

50.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 50, except admits that IBM and The Santa Cruz Operation, Incorporated entered into an agreement to develop a UNIX operating system for a 64-bit processing platform that was being developed by Intel and that the project was known as Project Monterey.

51.   Denies the averments of paragraph 51.

52.   Denies the averments of paragraph 52.

53.   Denies the averments of paragraph 53, except admits that The Santa Cruz Operation, Incorporated provided information to IBM concerning UnixWare and certain software.

54.   Denies the averments of paragraph 54.

55.   Denies the averments of paragraph 55.

56.   Denies the averments of paragraph 56 as they relate to IBM, except admits that AT&T Technologies, Inc. licensed certain software to IBM, refers to the license agreements for their contents and states that IBM is without information sufficient to form a belief as to the truth of the averments of paragraph 56 as they relate to any other person or entity.

57.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 57.

58.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 58.

-8-

59.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 59.

60.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 60.

61.   Denies the averments of paragraph 61, except refers to the referenced documents for their contents.

62.   Denies the averments of paragraph 62, except refers to the referenced document for its contents

63.   Denies the averments of paragraph 63, except refers to the referenced document for its contents.

64.   States that the averments of paragraph 64 purport to define a term for purposes of Caldera's complaint and do not require a response. To the extent a response is required, IBM denies the averments of paragraph 64, except refers to the referenced documents for their contents.

65.   Denies the averments of paragraph 65, except refers to the referenced documents for their contents.

66.   Denies the averments of paragraph 66, except refers to the referenced agreements for their contents.

67.   Denies the averments of paragraph 67, except refers to the referenced documents for their contents.

68.   Denies the averments of paragraph 68, except refers to the referenced documents for their contents.

69.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 69.

70.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 70.

71.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 71.

72.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 72.

73.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 73.

74.   Denies the averments of paragraph 74, except states it is without information sufficient to form a belief as to precisely how Linux was developed and whether it is popular among computer enthusiasts.

75.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 75.

76.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 76.

77.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 77.

78.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 78.

79.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 79, except refers to the referenced document for its contents.

80.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 80, except refers to the referenced document for its contents.

81.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 81, except refers to the referenced document for its contents.

82.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 82.

83.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 83.

84.   Denies the averments of paragraph 84, except states that it is without information sufficient to form a belief as to the truth of the averments except as they relate to IBM.

85.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 85.

86.   Denies the averments of paragraph 86.

87.   Denies the averments of paragraph 87.

88.   Denies the averments of paragraph 88 as they relate to IBM, except admits that IBM has increased its IBM Global Services staff and states that it is without information

sufficient to form a belief as to the truth of the averments of paragraph 88 as they relate to any other person or entity.

89. Denies the averments of paragraph 89.

90. Denies the averments of paragraph 90.

91. Denies the averments of paragraph 91, except refers to the referenced document ... its contents.

92. Denies the averments of paragraph 92, except refers to the document from which Caldera appears to purport to quote for its content.

93. Denies the averments of paragraph 93 and states that IBM has not "open sourced" any part of AIX that it did not have the right to "open source".

94. Denies the averments of paragraph 94, except admits that IBM is assisting in the market success of Linux and refers to the referenced document for its contents.

95. Denies the averments of paragraph 95, except refers to the referenced document for its contents.

96. Denies the averments of paragraph 96.

97 Denies the averments of paragraph 97, except refers to the referenced document for its contents.

98 Denies the averments of paragraph 98, except refers to the referenced document for its content.

99. Denies the averments of paragraph 99, except states that it is without information sufficient to form a belief as to the truth of the averments in the second sentence of paragraph 99.

100.   Denies the averments of paragraph 100.

101.   Denies the averments of paragraph 101, except refers to the referenced document

for its contents.

102.   Denies the averments of paragraph 102.

103.   Denies the averments of paragraph 103.

FIRST ~ OF ACTION

104.   Repeats and realleges its answers to the averments contained in paragraphs 1

through 103 as if fully set forth herein.

105.   Denies the averments of paragraph 105.

106.   Denies the averments of paragraph 106.

107.   States that it is without information sufficient to form a belief as to the truth of the

averments of paragraph 107.

108.   Denies the averments of paragraph 108.

109.   Denies the averments of paragraph 109.

110.   Denies the averments of paragraph 110.

111.   Denies the averments of paragraph 111.

112.   Denies the averments of paragraph 112.

113.   Denies the averments of paragraph 113.

114.   Denies the averments of paragraph 114.

SECOND CAUSE OF ACTION

115.   Repeats and realleges its answers to the averments contained in paragraphs 1 through 114 as if fully set forth herein.

116.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 116.

117.   Denies the averments of paragraph 117.

118.   Denies the averments of paragraph 118.

119.   Denies the averments of paragraph 119.

120.   Denies the averments of paragraph 120.

121.   Denies the averments of paragraph 121.

THIRD CAUSE OF ACTION

122.   Repeats and realleges its answers to the averments contained in paragraphs 1 through 121 as if fully set forth herein.

123.   States that it is without information sufficient to form a belief as to the truth of the averments of paragraph 123.

124.   Denies the averments of paragraph 124.

125.   Denies the averments of paragraph 125.

126.   Denies the averments of paragraph 126.

127.   Denies the averments of paragraph 127.

FOURTH CAUSE OF ACTION

128. Repeats and realleges its answers to the averments contained in paragraphs 1 through 127 as if fully set forth herein.

129. Denies the averments of paragraph 129, except refers to the referenced documents for their contents.

130. Denies the averments of paragra... ... ... pt refers to the referenced document for its contents.

131. Denies the averments of paragraph 131, except refers to the referenced document for its contents.

132. Denies the averments of paragraph 132, except refers to the referenced document for its contents.

133. Denies the averments of paragraph 133, except refers to the referenced document for its contents.

134. Denies the averments of paragraph 134, except refers to the referenced document for its contents.

135. Denies the averments of paragraph 135, except refers to the referenced document for its contents.

136. Denies the averments of paragraph 136.

PRAYER FOR RELIEF

137.   States that the enumerated paragraphs 1- 8, following Caidera's prayer for relief,

contain a request for relief as to which no response is required. To the extent a response is

required, IBM denies that Caldera is entitled to the requested relief.

GENERAL DENIAL

IBM denies each allegation in the complaint that is not ,   ..._:'; admitted herein.

AFFIRMATIVE DEFENSES

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

Caldera's claims are barred because IBM has not engaged in any unlawful or unfair

business practices, and IBM's conduct was privileged, performed in the exercise of an absolute

right, proper and/or justified.

Third Defense

Caldera lacks standing to pursue its claims against IBM.

Fourth Defense

Caldera's claims are barred, in whole or in part, by the applicable statutes of limitations.

Fifth Defense

Caldera's claims are barred, in whole or in part, by the economic-loss doctrine or the

independent-duty doctrine.

:3?:-4 ;

-16-

Sixth Defense

Caldera's claims are barred by the doctrines of laches and delay.

Seventh Defense

Caldera's claims are barred by the doctrines of waiver, estoppel and unclean hands.

Eighth Defense

Caldera' claims are, in whole or in part, pre-empted by federal law.

Ninth Defense

Caldera's claims are improperly venued in this district.

WHEREFORE, defendant IBM demands judgment dismissing plaintiff's complaint and respectfully requests that the Court award IBM reasonable attorneys' fees and expenses and the costs and disbursements of defending this action along with such other and further relief as the Court deems just and proper.

JURY DEMAND

IBM hereby demands trial by jury on all issues so triable.

DATED this 20th day of May, 2003

SNELL & WILMER LLP

Alan L. Sullivan
Todd M Shaughnessy

CRAVATH, SWAINE & MOORE LLP
Evan R. Chesler
Thomas G. Rafferty
David R. Marriott
*Counsel for Defendant International Business
Machines Corporation*

-17-

Of counsel:

INTERNATIONAL BUSINESS MACHINES CORPORATION
Donald J. Rosenberg
Alec S. Berman
1133 Westchester Avenue
White Plains, New York 10604
(914) 642-3000

Attorneys for Defendant International Business Machines Corporation

253454 1

-18-

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of May, 2003, a true and correct copy of the

foregoing was sent by U.S. Mail to the following:

Brent O. Hatch
Mark F. James
HATCH, JAMES & DODGE, P.C.
10 West Broadway. Suite 400
Salt Lake City, Utah 84101

David Boies
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, New York 10504

Stephen N. Zack
Mark J. Heise
BOIES, SCHILLER & FLEXNER LLP
100 Southeast Second Street, Suite 2800
Miami, Florida 33131

Leonard K. Samuels, Esq.
Fred O. Goldberg, Esq.
BERGER SINGERMAN
350 East Las Olas Boulevard
Suite 1000
Fort Lauderdale, Florida 33301

-19-

Exhibit A

SS-Soft. Corp.-030184   . Agreement Number   <u>SOFT-00015</u>

AT&T TECHNOLOGIES, INC.
SOFTWARE AGREEMENT

1. AT&T TECHNOLOGIES, INC., a New York corporation ("AT&T"), having an office at 222 Broadway, New York, New York 10038, and INTERNATIONAL BUSINESS MACHINES CORPORATION, a New York corporation, having an office at Old Orchard Road, Armonk, New York 10504,

for itself and its SUBSIDIARIES (collectively referred to herein as "LICENSEE") agree that, after execution of this Agreement by LICENSEE and acceptance of this Agreement by AT&T, the terms and conditions set forth on pages 1 through 6 of this Agreement shall apply to use by LICENSEE of SOFTWARE PRODUCTS that become subject to this Agreement.

2. AT&T makes certain SOFTWARE PRODUCTS available under this Agreement. Each such SOFTWARE PRODUCT shall become subject to this Agreement on acceptance by AT&T of a Supplement executed by LICENSEE that identifies such SOFTWARE PRODUCT and lists the DESIGNATED CPUs therefor. The first Supplement for a specific SOFTWARE PRODUCT shall have attached a Schedule for such SOFTWARE PRODUCT. Any additional terms and conditions set forth in such Schedule shall also apply with respect to such SOFTWARE PRODUCT. Initially, Supplement(s) numbered 1, 2 and 3---------------------------- are included in and made part of this Agreement.

3. Additional Supplements may be added to this Agreement to add additional SOFTWARE PRODUCTS (and DESIGNATED CPUs therefor) or to add or replace DESIGNATED CPUs for other SOFTWARE PRODUCTS covered by previous Supplements. Each such additional Supplement shall be considered part of this Agreement when executed by LICENSEE and accepted by AT&T.

4. This Agreement and its Supplements set forth the entire agreement and understanding between the parties as to the subject matter hereof and merge all prior discussions between them, and neither of the parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to such subject matter other than as expressly provided herein or as duly set forth on or subsequent to the date of acceptance hereof in writing and signed by a proper and duly authorized representative of the party to be bound thereby. No provision appearing on any form originated by LICENSEE shall be applicable unless such provision is expressly accepted in writing by an authorized representative of AT&T.

Accepted by:

INTERNATIONAL BUSINESS
<u>MACHINES CORPORATION</u>   AT&T TECHNOLOGIES, INC.

By<u>   2/1/85 </u> By<u>   2-1-85 </u>
   (Signature)   (Date)   (Signature)   (Date)

<u>R.A. McDonough JR</u>   <u>O. L. WILSON</u>
   (Type or print name)   (Type or print name)

<u>COUNSEL - SYSTEMS PRODUCT</u>   <u>Manager, Software Sales and Marketing</u>
    (Title)   (Title)

SS-Soft. Corp -030184

I. DEFINITIONS

1.01 CPU means central processing unit.

1.02 COMPUTER PROGRAM means any instruction or instructions, in source-code or object-code form=' *-- .... olling the operation of a CPU.

1.03 DESIGNATED CPU means any CPU listed as such for a specific SOFTWARE PRODUCT in a Supplement to this Agreement.

1.04 SOFTWARE PRODUCT means materials such as COMPUTER PROGRAMS, information used or interpreted by COMPUTER PROGRAMS and documentation relating to the use of COMPUTER PROGRAMS. Materials available from AT&T for a specific SOFTWARE PRODUCT are listed in the Schedule for such SOFTWARE PRODUCT.

1.05 SUBSIDIARY of a company means a corporation or other legal entity (i) the majority of whose shares or other securities entitled to vote for election of directors (or other managing authority) is now or hereafter controlled by such company either directly or indirectly; or (ii) the majority of the equity interest in which is now or hereafter owned and controlled by such company either directly or indirectly; but any such corporation or other legal entity shall be deemed to be a SUBSIDIARY of such company only so long as such control or such ownership and control exists.

II. GRANT OF RIGHTS

2.01 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.

2.02 A single back-up CPU may be used as a substitute for a DESIGNATED CPU without notice to AT&T during any time when such DESIGNATED CPU is inoperative because it is malfunctioning or undergoing repair, maintenance or other modification.

2.03 LICENSEE may at any time notify AT&T in writing of any changes, such as replacements or additions, that LICENSEE wishes to make to the DESIGNATED CPUs for a specific SOFTWARE PRODUCT. AT&T will prepare additional Supplements as required to cover such changes. Changes covered by a Supplement shall become effective after execution of such Supplement by LICENSEE, acceptance thereof by AT&T and, in the case of each additional CPU, receipt by AT&T of the appropriate fee.

SS-Soft. Corp. 030184

2.04 On AT&T'S request, but not more frequently than annually, LICENSEE shall furnish to AT&T 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 DESIGNATED CPUs (or temporarily on back-up CPUs) for   software PRODUCTS pursuant to the provisions of this Agreement.

2.05 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.

III. DELIVERY

3.01 Within a reasonable time after AT&T receives the fee specified in the first Supplement for a SOFTWARE PRODUCT, AT&T will furnish to LICENSEE one (1) copy of such SOFTWARE PRODUCT in the form identified in the Schedule for such SOFTWARE PRODUCT.

3.02 Additional copies of SOFTWARE PRODUCTS covered by this Agreement will be furnished to LICENSEE after receipt by AT&T of the then-current distribution fee for each such copy.

IV. EXPORT

4.01 LICENSEE agrees that it will not, without the prior written consent of AT&T, export, directly or indirectly, SOFTWARE PRODUCTS covered by this Agreement to any country outside of the United States.

V. FEES AND TAXES

5.01 Within sixty (60) days after acceptance of this Agreement by AT&T, LICENSEE shall pay to AT&T the fees required by the Supplement(s) initially attached hereto for the DESIGNATED CPUs listed in such Supplement(s).

5.02 Within sixty (60) days after acceptance of each additional Supplement by AT&T, LICENSEE shall pay to AT&T any fee required by such additional Supplement for the DESIGNATED CPUs listed in such additional Supplement.

5.03 Payments to AT&T shall be made in United States dollars to AT&T at the address specified in Section 7.11(a).

5.04 LICENSEE shall pay all taxes, including any sales or use tax (and any related interest or penalty), however designated, imposed as a result of the existence or operation of this Agreement, except any income tax imposed upon AT&T by any governmental entity within the United States proper (the fifty (50) states and the District of Columbia). Fees specified in Supplement(s) to this Agreement and in Schedule(s) attached to Supplement(s) are exclusive of any taxes. If AT&T is required to collect a tax to be paid by LICENSEE, LICENSEE shall pay such tax to AT&T on demand.

VI. TERM

6.01 This Agreement shall become effective on and as of the date of acceptance by AT&T.

6.02 LICENSEE m~~ ~~ ~ur 'e its rights under this Agreement by written notice to AT&T certifying that LICENSEE has discontinued use of and returned or destroyed all copies of SOFTWARE PRODUCTS subject to this Agreement.

6.03 If LICENSEE fails to fulfill one or more of its obligations under this Agreement, AT&T may, upon its election and in addition to any other remedies that it may have, at any time terminate all the rights granted by it hereunder by not less than two (2) months' written notice to LICENSEE specifying any such breach, unless within the period of such notice all breaches specified therein shall have been remedied; upon such termination LICENSEE shall immediately discontinue use of and return or destroy all copies of SOFTWARE PRODUCTS subject to this Agreement.

6.04 In the event of termination of rights under Sections 6.02 or 6.03, AT&T shall have no obligation to refund any amounts paid to it under this Agreement.

6.05 LICENSEE agrees that when a SUBSIDIARY'S relationship to LICENSEE changes so that it is no longer a SUBSIDIARY of LICENSEE, (i) all rights of such former SUBSIDIARY to use SOFTWARE PRODUCTS subject to this Agreement shall immediately cease, and (ii) such former SUBSIDIARY shall immediately discontinue use of and return to LICENSEE o- destroy all copies of SOFTWARE PRODUCTS subject to this Agreement. No fees paid to AT&T for use of SOFTWARE PRODUCTS on DESIGNATED CPUs of such former SUBSIDIARIES shall be refunded; however, LICENSEE may substitute other CPUs for such DESIGNATED CPUs in accordance with Section 2.03.

VII. MISCELLANEOUS PROVISIONS

7.01 Nothing contained herein shall be construed as conferring by implication, estoppel or otherwise any license or right under any patent or trademark. However, in respect of patents under which AT&T can grant rights, AT&T grants to LICENSEE all such rights necessary for the use by LICENSEE, pursuant to the rights granted herein, of SOFTWARE PRODUCTS, except to the extent that such patents apply (i) independently of the use of any such SOFTWARE PRODUCT, (ii) because a DESIGNATED CPU is used in combination with other hardware or (iii) because any such SOFTWARE PRODUCT is modified from the version furnished hereunder to LICENSEE by AT&T or is used in combination with other software.

7.02 This Agreement shall prevail notwithstanding any conflicting terms or legends which may appear in a SOFTWARE PRODUCT.

7.03 AT&T warrants that it is empowered to grant the rights granted hereunder. AT&T makes no other representations or warranties, expressly or impliedly. By way of example but not of limitation, AT&T makes no representations or warranties of merchantability or fitness for any particular purpose, or that the use of any SOFTWARE PRODUCT will not infringe any patent, copyright or trademark. AT&T shall not be held to any liability with respect to any claim by LICENSEE, or a third party on account of, or arising from, the use of any SOFTWARE PRODUCT.

7.04 LICENSEE agrees that it will not, without the prior written permission of AT&T, (i) use in advertising, publicity, packaging, labeling or otherwise any trade name, trademark, trade device, service mark, symbol or any other identification or any abbreviation, contraction or simulation thereof owned by AT&T (or a corporate affiliate thereof) or used by AT&T (or such an affiliate) to identify any of its products or services, or (ii) represent, directly or indirectly, that any product or service of LICENSEE is a product or service of AT&T (or such an affiliate), or is made in accordance with or utilizes any information or documentation of AT&T (or such an affiliate).

7.05 Neither the execution of this Agreement nor anything in it or in any SOFTWARE PRODUCT shall be construed as an obligation upon AT&T to furnish any person, including LICENSEE, any assistance of any kind whatsoever, or any information or documentation other than the SOFTWARE PRODUCTS to be furnished pursuant to Sections 3.01 and 3.02.

7.06 (a) LICENSEE agrees that it shall hold all parts of the SOFTWARE PRODUCTS subject to this Agreement in confidence for AT&T. 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. If information relating to a SOFTWARE PRODUCT subject to this Agreement at any time becomes available without restriction to the general public by acts not attributable to LICENSEE or its employees, LICENSEE'S obligations under this section shall not apply to such information after such time.

(b) Notwithstanding the provisions of Section 7.06(a), LICENSEE may distribute copies of a SOFTWARE PRODUCT, either in modified or unmodified form, to third parties having licenses of equivalent scope herewith from AT&T (or a corporate affiliate thereof) for the same SOFTWARE PRODUCT, provided that LICENSEE first verifies the status of any such third party in accordance with specific instructions issued by AT&T. Such instructions may be obtained on request from AT&T at the correspondence address specified in Section 7.11(b). LICENSEE may also obtain materials based on a SOFTWARE PRODUCT subject to this Agreement from such a third party and use such materials pursuant to this Agreement, provided that LICENSEE treats such materials as if they were part of such SOFTWARE PRODUCT.

Page 5 of 6

0-040184
R-120184

Schedule for
UNIX* System V, Release 2.0 Version 1
and
UNIX System V, Release 2.0 Version 1, International Edition**

1. Fees

   (a) Right-t... ... :cus

      (i) First DESIGNATED CPU (Source) $43,000***

      (ii) Each additional DESIGNATED CPU (Source) $16,000

      (iii) Each of third and subsequent DESIGNATED CPUs
           (Source) after initial sublicensing fee has been
           paid

1-32 user system	$ 1,000
1-64 user system	$ 3,500
> 64 user system	$ 7,000
(See Notes 1 and 3)	

      (iv) DESIGNATED CPU (Object) $ 4,800

           (See Note 2)

      (v) Fees listed in items (iii) and (iv) do not
           include a distribution of software.

   (b) Distribution fee for each additional
      copy $ 400

   (c) Sublicensing fees (applicable only to
      SUBLICENSED PRODUCT under a Sublicensing
      Agreement)

      (i) Initial $25,000***

      (ii) Per-Copy

1-2 user system	$ 60
1-8 user system	$ 125
1-16 user system	$ 500
1-32 user system	$ 1,000
1-64 user system	$ 3,500
> 64 user system	$ 7,000
(See Notes 1 and 3)	

---

*UNIX is a trademark of AT&T Bell Laboratories
**Furnished to LICENSEES outside the United States
***Lower fees may apply to LICENSEES for other versions of UNIX System V

Schedule for
UNIX* System V, Release 2.0 Version 1
and
UNIX System V, Release 2.0 Version 1, International Edition**

(g) Source code for the graphics software.
     Includes the graphics make file (graf.mk) and the following
     directories and their associated files and subdirectories:

                         include
                         lib
                         src

(h) Source code of the system software includes top level make
     commands and the following directories and their associated
     subdirectories and files:

                         cmd
                         games
                         head
                         lib
                         stand
                         uts

Note: The "crypt" command and associated documentation are not
         included in UNIX System V, Release 2.0 Version 1,
         International Edition.

4. Sublicensing (under a Sublicensing Agreement)

    A SUBLICENSED PRODUCT based on UNIX System V, Release 2.0 Version 1
    or UNIX System V, Release 2.0 Version 1, International Edition, may
    include:

    (a) Copies of the documents listed in Section 2 of this schedule.

    (b) COMPUTER PROGRAMS in object-code format. All COMPUTER
         PROGRAMS may be treated as object-code except for files and
         subdirectories under directory /usr/src.

         Also, the following files in the /usr/src/cmd/spell directory

                 American   hash make
                 British   list
                 extra   htempl
                 list   local
                 hash check

NOTE: Run-time Libraries

         Routines from the following run-time libraries may be included
         in customer-developed application software without payment of
         a sublicensing fee to AT&T.

         Standard C Library   /lit/...
         Math Library   /lib/libm.a
         ObjectsFile Access Library /lib/libld.a
         Fortran Library   /usr/lib/libF77.a

Schedule for
UNIX* System V, Release 2.0 Version 1
and
UNIX System V, Release 2.0 Version 1, International Editi...

5. Other Software

The products listed below may be used in the United States on
DESIGNATED CPUs for UNIX System V, Release 2.0 Version 1 and
sublicensed for use in the United States as if they were that
product. The products may be used outside the United States on
DESIGNATED CPUs for UNIX System V, Release 2.0 Version 1,
International Edition and sublicensed for use outside the United
States as if they were that product. Only those products marked
with a pound symbol (#) may be shipped outside the United States by
AT&T. Versions of such products, except those marked with an
asterisk (*), are available from AT&T for various types of CPUs at
$400 per copy.

  UNIX System V, Release 2.0 Version 1
 #UNIX System V, Release 1.0, International Edition
 #UNIX System V, Release 2.0 Version 1, International Edition
  UNIX System V, Release 1.0
  UNIX System V, Release 1.1
  UNIX System III
  UNIX 32V Time-Sharing System, Version 1.0
  UNIX Time-Sharing System, Seventh Edition
 *UNIX Time-Sharing System, Sixth Edition
  UNIX Programmer's Workbench System, Edition 1.0
 *UNIX Mini Time-Sharing System, Version 6

6. Time Sharing

UNIX System V, Release 2.0 Version 1 or UNIX System V, Release 2.0
Version 1, International Edition, may be used on a DESIGNATED CPU
for such SOFTWARE PRODUCT to furnish a time-sharing service to
third parties. A SUBLICENSED PRODUCT based on UNIX System V,
Release 2.0 Version 1 or UNIX System V, Release 2.0 Version 1,
International Edition, may also be used to furnish a time-sharing
service to third parties.