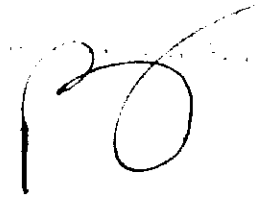THE SCO GROUP, INC.,
a Delaware corporation.

        Plaintiff,

v.

AUTOZONE, INC.,
a Nevada corporation,

        Defendant.

Case Number: CV-S-04-0237-RCJ-LRL

REPORT OF PLAINTIFF THE SCO GROUP, INC. REGARDING DISCOVERY PURSUANT TO THE ORDER OF THE COURT DATED AUGUST 6, 2004

FILED SEPARATELY

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INTRODUCTION

Plaintiff, The SCO Group, Inc. ("SCO") submits this report regarding discovery pursuant to the Court's August 6, 2004 Order, as amended, granting SCO limited discovery to determine whether or not it is necessary to move for preliminary injunctive relief against Defendant AutoZone, Inc. ("AutoZone"). In light of the many extensions of discovery that have been requested from the Court, the recent written submission of AutoZone and the substantial time which has elapsed since the entry of the Court's Order, SCO believes it is necessary and appropriate to submit this formal report to the Court regarding the current status of this action.

Contrary to public statements by AutoZone in open court and an Internet posting of AutoZone's former Senior Technology Advisor to the effect that no SCO libraries were copied during AutoZone's migration to Linux, the limited discovery ordered by this Court has uncovered extensive copying (over 110,000 copies) of what SCO believes to be programs containing SCO proprietary OpenServer code. However, after the copying of these programs was revealed in discovery, AutoZone has sworn that it has voluntarily removed all such programs from its Linux servers or certified that such programs have been recompiled without such code and SCO has confirmed such removal.[1] Accordingly, SCO has elected not to file for preliminary injunctive relief at this time.

SCO reserves its right to conduct additional discovery and to seek injunctive relief, if appropriate, and to pursue claims for damages for the copying that has occurred once the Court lifts the stay in this matter. Given that this initial discovery phase concluded only approximately two weeks ago, SCO continues to evaluate the data and information provided by AutoZone in discovery to determine whether it is necessary and appropriate to file a motion for relief from the

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[1] While SCO requested that AutoZone produce the original source code for binaries running on its Linux system, AutoZone objected and refused to do so on various grounds including undue burden. (See AutoZone's Response to SCO's First Request For Production of Documents Request Response No. 2; Ex. F to Decl. of David S. Stone). Accordingly, the conclusions set forth in this report are based upon review of the programs in binary form and related documents and data produced by AutoZone.

stay for the purpose of allowing SCO to pursue copyright infringement and related claims based solely on AutoZone's migration to Linux which are not implicated or involved in the matters encaptioned: *The SCO Group, Inc. v. International Business Machines Corporation*, Case No. 2:03CV0294 DAK (D. Utah); *The SCO Group, Inc. v. Novell, Inc.*, Case No. 2:04CV00139 (D. Utah) or; *Red Hat, Inc. v. The SCO Group, Inc.*, Case No. 03-772-SLR (D. Del.)

PROCEDURAL AND FACTUAL BACKGROUND

SCO instituted this action against AutoZone on March 3, 2004 when it filed a Complaint alleging, among other things, that AutoZone has infringed SCO's copyrights by "using, copying, modifying, and/or distributing parts of the copyrighted materials, or derivative works based on the copyrighted materials in connection with its implementation of one or more versions of the Linux operating system inconsistent with SCO's exclusive rights under the Copyright Act." (See Complaint ¶ 21). In essence, SCO alleged that, when AutoZone migrated its 3500 store computers and other computers located in its headquarters from SCO's proprietary OpenServer UNIX-based operating system to the Linux open source operating system, it violated the copyright laws by using SCO's proprietary OpenServer materials to facilitate this migration process and by copying or modifying SCO's proprietary OpenServer materials during the migration. In addition to this allegation, SCO also alleged that the version of Red Hat Linux which AutoZone was using contained SCO proprietary OpenServer materials for which AutoZone did not have a license. (See Complaint ¶ 1).

On April 23, 2004, AutoZone filed a motion to stay this action or, in the alternative, for a more definite statement, and a motion to transfer venue from this Court to the United States District Court for the Western District of Tennessee. In its motion papers and at oral argument, AutoZone aggressively asserted that SCO had "no cause of action against AutoZone" and further that discovery into AutoZone's alleged infringement "ultimately will not be fruitful." (See July

12, 2004 Oral Argument Tr. 13:21-22, 27:22-28:1).[2] The Court denied AutoZone's motion for a more definite statement and to transfer venue and granted AutoZone's motion to stay, in part, in light of ongoing related proceedings in the United States District Court for the District of Utah and the United States District Court for the District of Delaware which also involve SCO. (See August 6, 2004 Order).

In response to SCO's claim that it had a reasonable basis to believe that it may be irreparably harmed if AutoZone continued to use SCO proprietary materials during the pendency of the stay, the Court ordered that the parties should conduct limited discovery to permit SCO to determine whether or not it was appropriate for SCO to move for a preliminary injunction at this time. (See July 12, 2004 Oral Argument Tr. 22:12-19, 24:9-10, 25:8-12). While the Court did not explicitly limit discovery, the Court indicated it did not wish SCO to impinge upon copyright issues which were implicated in the matters encaptioned: *The SCO Group, Inc. v. International Business Machines Corporation*, Case No. 2:03CV0294 DAK (D. Utah); *The SCO Group, Inc. v. Novell, Inc.*, Case No. 2:04CV00139 (D. Utah) or; *Red Hat, Inc. v. The SCO Group, Inc.*, Case No. 03-772-SLR (D. Del.), but, rather, to focus on the issue of AutoZone's migration to Linux and its possible use of SCO licensed materials in connection with that migration. (See, e.g. July 12, 2004 Oral Argument Tr. 22:3-14; September 9, 2004 Oral Argument Tr. 5:1-6:1).

However, shortly after the Court entered its August 6, 2004 Order providing for such discovery, AutoZone again attempted to prevent such discovery from occurring by filing a "Emergency Motion To Stay All Remaining Proceedings Related To The Issue Of Preliminary

[2] SCO has submitted what it believes to be the most relevant sections of pertinent documents referenced in this report as Exhibits to the Declaration of David S. Stone which has been submitted herewith. However, given the relatively voluminous nature of the record and the fact that SCO has elected not to file for a preliminary injunction at this time, SCO has not submitted every document from discovery which is referenced in this report. However, SCO has prepared a comprehensive appendix which contains the entire record of the discovery which has been conducted and will, of course, provide portions of such appendix or the entire appendix to the Court and AutoZone's Counsel should either desire to review them. Defendant AutoZone has copies of all of the underlying documents and, indeed, is the author of many of them.

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1 Injunctive Relief" claiming SCO's intent to pursue discovery – and thereby determine whether or

2 not AutoZone was indeed infringing its OpenServer code – was "nothing more than a fishing

3 expedition." (See Defendant AutoZone, Inc.'s Memorandum of Law in Support of its

4 Emergency Motion to Stay p. 1). Previously, Jim Greer, one of AutoZone's Senior Technology

5 Advisors, and one of the primary AutoZone developers in charge of the migration had posted a

6 statement on the Internet denying categorically that AutoZone had copied any SCO files or code

7 during the migration process. (See Deposition of James Greer Tr. 20:22-21:3, 84:20-85:24,

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9 151:24-153:22; Ex. D to Decl. of David S. Stone). Defendant alluded to this public posting to

10 justify its emergency motion for a stay. (See September 9, 2004 Oral Argument Tr. 6:7-10).[3]

11 At oral argument on September 9, 2004, in response to a query from the Court as to why

12 SCO should not be allowed to take the limited expedited discovery previously ordered by the

13 Court, Counsel for AutoZone represented to the Court that SCO had not shown why AutoZone

14 couldn't have "written around those libraries" and "didn't need them" (i.e., copyrighted SCO

15 OpenServer libraries). (See September 9, 2004 Oral Argument Tr. 6:7-17). Therefore,

16 AutoZone claimed, the Court should not allow SCO to conduct discovery into the alleged

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18 copyright infringement. (See September 9, 2004 Oral Argument Tr. 6:7-10). In rejecting

19 AutoZone's arguments and denying its emergency motion to stay, the Court made clear that the

20 purpose of the limited discovery was to permit SCO to get access to the code and other materials

21 in AutoZone's possession to determine whether infringement had occurred and whether or not

22 irreparable harm existed. (See September 9, 2004 Oral Argument Tr. 9:15-16, 10:1-4). SCO's

23 counsel advised the Court and AutoZone at that oral argument that it intended to report to the

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25 Court at the end of discovery on its findings and whether or not it intended to file for a

26 preliminary injunction motion. (See September 9, 2004 Oral Argument Tr. 14:17-22).

27 [3] In his deposition, Mr. Greer, contrary to his well-publicized Internet post, admitted that AutoZone had copied
certain files in its migration process to Red Hat Linux which AutoZone later admitted were statically linked to SCO

28 libraries. (See Deposition of James Greer Tr. 124:21-126:10; Ex. D to Decl. of David S. Stone).

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DISCOVERY FINDINGS

The Court-Ordered limited discovery related to AutoZone's migration from OpenServer to Linux and its possible use of SCO licensed materials in connection with that migration (including depositions of Mr. Greer, the author of the Internet posting, and Bob Celmer, a senior AutoZone Information Technology Officer) has now been completed after several extensions by consent of the parties of the original discovery period ordered by the Court. The reason for these extensions was the substantial amount of material uncovered by SCO in discovery which demonstrated that, contrary to AutoZone's denials and public statements that it "wrote around the SCO libraries," (See September 9, 2004 Oral Argument Tr. 6:7-10) in fact, AutoZone made a substantial number of copies of files containing SCO's proprietary code during the migration process.

Initially, AutoZone claimed in response to SCO's Interrogatories and Requests for Admissions that it had copied only a "few minor programs . . . onto [AutoZone's] Linux image" and further, that two such programs had not been used "since 2003." (See Defendant AutoZone, Inc.'s Responses to Plaintiff's First Set of Interrogatories, Response No. 3; Ex. F to Decl. of David S. Stone). However, AutoZone later admitted that the copying was far more expansive. Indeed, discovery later revealed that during the migration process and subsequent to the process, AutoZone created over <u>110,000</u> copies[4] of OpenServer files in the COFF format[5] onto its various Linux servers located in its headquarters and its 3500 stores in the United States and Mexico, the vast majority of which, based on SCO's review of the files produced in discovery, contain SCO

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[4] The total number of copies referenced takes into account that some files were copied onto every one of AutoZone's 3500 servers throughout the United States and Mexico. (See, e.g. Deposition of Bob Celmer Tr. 67:7-21, 68:16; 80:1-9; Ex. A to Decl. of David S. Stone).

[5] As AutoZone has admitted, COFF files "are executable files in a format that is normally used only on SCO OpenServer computers." (See November 24, 2004 Letter from David J. Stewart to David S. Stone; Ex. B to Decl. of David S. Stone). Because COFF files are created to work with SCO's OpenServer, they generally contain portions of SCO proprietary code including static libraries to allow them to run efficiently (See Deposition of Bob Celmer Tr. 20:25-23:23, 29:25, 54:7-14, 57:1-12; 57:21-25; Ex. A to Decl. of David S. Stone).

proprietary code. (See, e.g., November 24, 2004 Letter from David J. Stewart to David S. Stone; Ex. B to Decl. of David S. Stone; March 4, 2005 Letter from Douglas L. Bridges to David S. Stone and enclosures thereto; Ex. E to Decl. of David S. Stone). Discovery further revealed that virtually all of these files were "statically linked" during the "compiling" process to SCO proprietary libraries or portions thereof. (See, e.g., Deposition of Bob Celmer Tr. 20:25-23:23; Ex. A to Decl. of David S. Stone; March 4, 2005 Letter from Douglas L. Bridges to David S. Stone and enclosures thereto; Ex. E to Decl. of David S. Stone).

Furthermore, it is not surprising that such copying occurred since SCO's discovery also revealed that the AutoZone migration process was carried out in an ad hoc manner by developers who had worked with and were familiar with SCO's proprietary OpenServer code and materials with no formal controls in place to protect those materials. (See, e.g., Deposition of James Greer Tr. 36:18-37:17; Ex. D to Decl. of David S. Stone; Deposition of Bob Celmer Tr. 16:13-18:9, 146:17-148:13; Ex. A to Decl. of David S. Stone). For example, at his deposition, Mr. Greer admitted that, contrary to the implication of his Internet posting, no formal protections had been put in place at AutoZone to protect SCO's proprietary software and that he never examined the binaries (or underlying source code) on AutoZone's Linux servers after the migration to determine if they included any SCO code. (See Deposition of James Greer Tr. 71:24-72:6, 88:25-89:8; Ex. D to Decl. of David S. Stone). Furthermore, neither Mr. Greer nor Mr. Celmer consulted copyright counsel or any counsel prior to or during the porting process nor did they have knowledge that anyone had consulted AutoZone's licenses with SCO to determine if AutoZone's planned migration procedures were permitted by the relevant licenses. (See, e.g., Deposition of Bob Celmer Tr. 16:13-17:3, 17:22-18-9; Ex. A to Decl. of David S. Stone; Deposition of James Greer Tr. 69:9-12, 77:7-15; Ex. D to Decl. of David S. Stone). Indeed, Mr. Celmer testified that he and others responsible for implementing the migration were not focused

on protecting SCO's OpenServer copyright materials and were, instead, focused on the most efficient way to modify the binaries AutoZone created to work on OpenServer so that they would run on Linux. (See Deposition of Bob Celmer Tr. 37:13-38:18; Ex. A to Decl. of David S. Stone).

SCO's discovery to date has now confirmed that AutoZone engaged in the following activities which SCO has reason to believe violated AutoZone's licenses and the federal copyright laws:

1. AutoZone developers copied 1,681 separate COFF files onto 387 AutoZone store machines located throughout the United States. (See November 24, 2004 Letter from David J. Stewart to David S. Stone; Ex. B to Decl. of David S. Stone).

2. AutoZone developers copied 28 COFF files consisting of sort files and help utilities and other miscellaneous files onto all 3500 of its machines located in AutoZone's stores located in the United States and Mexico. (See, e.g., Deposition of Bob Celmer Tr. 76:8-80:12, 114:11-19; Ex. A to Decl. of David S. Stone; November 24, 2004 Letter from David J. Stewart to David S. Stone; Ex.B to Decl. of David S. Stone).

3. AutoZone copied two COFF files "Compx and Decompx" which were programs that it had licensed from a third party which contained proprietary SCO code onto all 3500 of its machines located in the United States and Mexico and has been using those files since at least January 2000 until AutoZone deleted them during the Court-ordered discovery process. (See, e.g., November 24, 2004 Letter from David J. Stewart to David S. Stone; Ex. B to Decl. of David S. Stone; Deposition of Bob Celmer Tr.33:18-37:7, 114:20-22; Ex. A to Decl. of David S. Stone). When AutoZone deleted Compx and Decompx from its Linux servers, the replenishment system used by AutoZone to replace inventory from its warehouses failed on approximately 650 of AutoZone's store machines as a result. (See, e.g., November 24, 2004 Letter from David J.

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Stewart to David S. Stone; Ex. B to Decl. of David S. Stone; Deposition of Bob Celmer Tr. 36:20-37:3; Ex. A to Decl. of David S. Stone).

4. AutoZone's machine load computer was found to contain a program entitled d-expand.x that was compiled under SCO's proprietary OpenServer operating system. (See, e.g., Deposition of Bob Celmer Tr. 96:23-100:11; Ex.A to Decl. of David S. Stone; November 24, 2004 Letter from David J. Stewart to David S. Stone: Ex.B to Decl. of David S. Stone).

5. Based upon SCO's review of materials and data produced by AutoZone in discovery, AutoZone copied over 4,500 programs that were compiled to run on OpenServer onto AutoZone's "Spirit Server" which was used to store AutoZone's source code located in AutoZone's headquarters. (See March 4, 2005 Letter from Douglas L. Bridges to David S. Stone enclosing an image of the Spirit Server bates-stamped AZ00473-AZ00475; Ex. E to Decl. of David S. Stone). The vast majority of these programs contain some portion of SCO's proprietary static libraries. Id. AutoZone has admitted to copying at least 1,130 programs compiled to run on OpenServer onto Spirit. (See November 24, 2004 Letter from David J. Stewart to David S. Stone; Ex. B to Decl. of David S. Stone).

6. In addition, as a result of a script written by SCO's technical consultant, AutoZone discovered an additional 15 SCO-Elf and Xenix files which were also compiled to work on SCO proprietary operating systems (earlier versions of OpenServer that were licensed by AutoZone) which AutoZone admits "likely also exist on all 3500 AutoZone store servers." (See January 11, 2005 E-Mail from David J. Stewart to David S. Stone; Ex. C to Decl. of David S. Stone).

7. SCO's review of materials and data produced by AutoZone in discovery reveals that AutoZone copied approximately 370 programs onto its Linux development machine known as "Wrangler." (See March 4, 2005 Letter from Douglas L. Bridges to David S. Stone enclosing an image of the Wrangler Server bates-stamped AZ00480-AZ00483; Ex. E to Decl. of David S.

Stone). The majority of these programs appear to contain some portion of SCO's proprietary static libraries. Id.

8. AutoZone developers copied numerous SCO files, the precise number of which has not been disclosed in discovery, onto AutoZone's "Vision" server which was used in part by AutoZone to compare the output of programs that it was porting from OpenServer to the Linux operating system to ensure that the output was identical. (See Deposition of Bob Celmer Tr. 118:1-13, 139:11-140:11; Ex A to Decl. of David S. Stone).
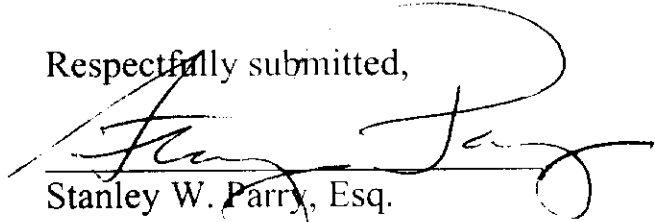
CONCLUSION

In conclusion, as a result of the discovery ordered by this Court, and contrary to the representations by AutoZone to this Court in its motion papers and even in AutoZone's preliminary responses to SCO's initial discovery requests, SCO has now established that during its migration process to Linux, and subsequent to that process, AutoZone copied and otherwise used substantial amounts of SCO proprietary code during the migration process from SCO's proprietary OpenServer operating system software to Red Hat Linux. Discovery has shown that AutoZone made over 110,000 copies of programs, binaries and/or files created to be used with SCO's proprietary OpenServer operating system, the vast majority of which contained SCO proprietary code, and placed those files on its machines running the Linux operating system.

Accordingly, this Court was well warranted in ordering the limited discovery requested. Although the limited discovery thus far conducted has not established precisely how many of these "copied" files were being used by AutoZone and at which stores, such discovery conclusively shows that some of these files clearly were being used by AutoZone in its business up until they were disclosed in discovery in this case. As a result of this Court's Order, AutoZone and SCO were able to identify the files in question and ensure that they were deleted or recompiled so that no further future use of those files on any AutoZone Linux servers would

occur. Based upon the foregoing, although SCO reserves all of its rights to pursue damages against AutoZone for the extensive copying and alleged copyright or related violations that have occurred, based on AutoZone's sworn representations that it has removed and is not currently using programs or files containing SCO proprietary materials in any of its Linux operating system servers and will not do so in the future, SCO does not believe preliminary injunctive relief is necessary at this time. SCO has reason to believe that AutoZone may also be violating SCO's copyrights and other intellectual property rights as a result of its use of the Linux operating system itself. However, it is SCO's understanding that the Court has stayed discovery and other proceedings relating to these issues pending further order of the Court and/or the resolution of the *SCO v. IBM* and/or *Red Hat v. SCO* matters which implicate these issues. Accordingly, SCO reserves its right to pursue appropriate remedies for these alleged violations once the Court has lifted the stay on these proceedings.

Respectfully submitted,

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DATED this 27th day of May, 2005

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 27th day of May, 2005, a copy of the foregoing, Report of Plaintiff the SCO Group, Inc. Regarding Discovery Pursuant to the Order of the Court Dated August 6, 2004, was served via HAND-DELIVERY on:

James J. Pisanelli, Esq.
SCHRECK BRIGNONE
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_____
An employee of Curran & Parry