

# **EXHIBIT 89**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

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**THE SCO GROUP, INC.,**  
a Delaware corporation,

Plaintiff/Counterclaim-Defendant,

vs.

**NOVELL, INC.,**  
a Delaware corporation,

Defendant/Counterclaim-Plaintiff.

**DECLARATION OF SANDEEP GUPTA  
IN SUPPORT OF SCO'S OPPOSITION TO  
NOVELL'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

Civil No.: 2:04CV00139

Judge Dale A. Kimball  
Magistrate Brooke C. Wells

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### DECLARATION OF SANDEEP GUPTA

1. My name is Sandeep Gupta and I am Vice President of Engineering and Chief Technology Officer for The SCO Group, Inc. My office is located at SCO's offices at 430 Mountain Avenue, Murray Hill, New Jersey 07974. This declaration is based upon my personal knowledge. To the best of my knowledge, information, and belief, the facts set forth herein are true and correct.
2. I submit this Declaration in connection with the lawsuit entitled The SCO Group, Inc. v. Novell, Inc., Civil No. 2:04CV00139, before the United States District Court for the District of Utah.
3. I was asked to examine the copyright notices found in UNIX and UnixWare that was transferred to the Santa Cruz Operation by Novell in 1995 after Santa Cruz purchased the UNIX assets from Novell. The UnixWare source code evolved from the Unix SVR4.2MP code base.
4. I directed Dean Flamberg, a build engineer with much UNIX experience and who has been with SCO and its predecessors since 1988 to assist me with this investigation.
5. Mr. Flamberg and I discovered modification request (MR) number ul95-30606 (See report attached as Exhibit A). A modification request is a typical way of documenting requests for changes to the source code. The request contained in this particular modification report was made by Novell on November 2, 1995 as the UNIX and UnixWare businesses were in the process of being transitioned to SCO.
6. The modification report contains a request for Novell engineers to modify the copyright notice in UnixWare 2.1 (code named Eiger) to reflect the change in ownership of the copyrights in UNIX and UnixWare from Novell to SCO.

7. The UnixWare MR Review Board (MRRB) approved this request as stated in the MR report.
8. Mr. Flamberg and I confirmed that the copyright notices were changed by Novell engineers. (See report attached as Exhibit C). We obtained confirmation by checking the references created from the modification request and the corresponding change in the source tree. We noted that the packages relating to UNIX and UnixWare were changed to contain a SCO copyright. These changes were made by Novell engineers and were made on preexisting UNIX and UnixWare code.
- 9.

REDACTED

I declare under penalty of perjury that the foregoing is true and correct.

May 10<sup>th</sup>, 2007



Sandeep Gupta

**List of Exhibits**

**Exhibit A**

**Exhibit u195-30606 Novell project change report, created on November 2, 1995, to change the UnixWare source to reflect SCO copyrights**

**Exhibit B**

**u195-30606.history; A more detailed version of this change report showing the full CMTS history.**

**Exhibit C**

**u195-30606.files; Output from Source control showing deltas done by Novell engineers in 1995 to sources file using this change report number.**

**Exhibit D**

**The copyright notices time stamped 1995 on the UW2.1 for all packages with few exceptions such as Netware/NUC related packages and third party components like Mergs.**

**Exhibit A**

**REDACTED**

**Exhibit B**

**REDACTED**

**exhibit c**

**REDACTED**



**REDACTED**

**Exhibit D**

**REDACTED**

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