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**IN THE UNITED STATES DISTRICT COURT
 DISTRICT OF UTAH, CENTRAL DIVISION**

THE SCO GROUP, INC., a Delaware
 corporation,

Plaintiff and Counterclaim-
 Defendant,

v.

NOVELL, INC., a Delaware corporation,

Defendant and Counterclaim-
 Plaintiff.

**NOVELL'S OPPOSITION TO SCO'S
 MOTION *IN LIMINE* TO EXCLUDE
 ALL EVIDENCE RELATED TO
 OTHER LITIGATION AND
 COMMENTARY THEREON**

Case No. 2:04CV00139

Judge Dale A. Kimball

Defendant and Counterclaimant Novell, Inc. (“Novell”), through its undersigned counsel, hereby submits its Opposition to SCO’s Motion *In Limine* to Exclude All Evidence Related to Other Litigation and Commentary Thereon.

ARGUMENT

I. A TOTAL BAR ON REFERENCES TO *SCO V. IBM* IS OVERBROAD AND UNNECESSARY.

Novell does not anticipate that the *SCO v. IBM* litigation will play a significant role in the upcoming trial in this matter.¹ Novell does not intend to introduce or rely on any of the Court’s rulings in that litigation. Nevertheless, a blanket prohibition against *any* mention of the *SCO v. IBM* litigation is unwarranted and would potentially bar various legitimate references to that litigation. For example, Novell may seek to:

- Use statements made by SCO or its employees in declarations, depositions, or briefing in the *SCO v. IBM* litigation;
- Introduce exhibits that reference the *SCO v. IBM* litigation, such as SCO’s financial filings;
- If SCO witnesses attempt to minimize the value or importance of the Sun SCOsource license, cross-examine witnesses concerning the damages claims SCO made in *SCO v. IBM*.²

¹ Novell reserves the right to revisit this issue should there be any subsequent adjudication or trial in this action or any enlargement of the issues for trial beyond that contemplated by the August 17, 2007 Joint Statement.

² IBM and Sun both bought out their ongoing SVRX royalty obligations over a decade ago. In 2003, Sun bought a SCOsource license so that Sun could open source the SVRX source code in its “OpenSolaris” product without breaching confidentiality restrictions from the 1994 agreement. SCO accused IBM of doing essentially the same thing (releasing confidential code to the public by way of open source products), and sought hundreds of millions of dollars in damages. SCO’s argument, and its expert analysis of its purported IBM damages, are therefore relevant impeachment evidence should SCO attempt to minimize the significance of the provisions lifting confidentiality restrictions in the Sun SCOsource license.

For this reason, Novell opposes a total bar on references to *SCO v. IBM* and proposes instead to proceed on a case-by-case basis, with the shared understanding that the *SCO v. IBM* litigation will not feature prominently in either side's case.

II. NOVELL DOES NOT INTEND TO ELICIT TESTIMONY CONCERNING COMMENTARY ON THIS LITIGATION.

Novell does not share SCO's view of the commentary concerning the *SCO v. IBM* litigation. (Mot. at ¶ 4 (complaining of "anti-SCO bias").) To the contrary, the close scrutiny the Linux community — Groklaw in particular — has brought to bear on SCO's litigation is a testament to the power of open source ideals and their potential for application to spheres outside software.

That said, Novell does not intend to introduce evidence or elicit testimony concerning the commentary on this litigation. Should the Court find it appropriate, Novell would not oppose an order barring such testimony, provided it applies equally to both parties.³ Any such order should, however, be clear that it has no application to, for example, news articles containing admissions by SCO executives even if such articles otherwise contain "commentary" on the *SCO v. IBM* litigation.

CONCLUSION

For the reasons stated above, Novell requests that the Court deny SCO's Motion *In Limine* to Exclude All Evidence Related to Other Litigation and Commentary Thereon as it concerns the *SCO v. IBM* litigation and does not oppose the motion as it concerns third-party commentary on that litigation.

³ Novell reserves the right to revisit this issue should there be any subsequent adjudication or trial in this action or any enlargement of the issues for trial beyond that contemplated by the August 17, 2007 Joint Statement.

DATED: August 31, 2007

ANDERSON & KARREBERG

By: /s/ Heather M. Sneddon

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-and-

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of August, 2007, I caused a true and correct copy of **NOVELL'S OPPOSITION TO SCO'S MOTION *IN LIMINE* TO EXCLUDE ALL EVIDENCE RELATED TO OTHER LITIGATION AND COMMENTARY THEREON** to be served to the following:

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