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*Attorneys for Plaintiff, The SCO Group, Inc.*

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

<p>THE SCO GROUP, INC., by and through the          Chapter 11 Trustee in Bankruptcy, Edward N.          Cahn,</p> <p style="text-align: center;">Plaintiff/Counterclaim-Defendant,</p> <p>vs.</p> <p>NOVELL, INC., a Delaware corporation,</p> <p style="text-align: center;">Defendant/Counterclaim-Plaintiff.</p>	<p><b>SCO'S MOTION IN LIMINE NO. 1 TO          PRECLUDE MISLEADING          STATEMENTS OR EVIDENCE          CONCERNING LANGUAGE IN THE          APA REMOVED BY          AMENDMENT NO. 2</b></p> <p>Civil No. 2:04 CV-00139</p> <p>Judge Ted Stewart</p>
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Plaintiff, The SCO Group, Inc. (“SCO”), moves in limine to preclude misleading statements concerning language in the Asset Purchase Agreement (“APA”) that was changed by Amendment No. 2 to that Agreement.

### **ARGUMENT**

The APA was amended by Amendment No. 2 to replace the language regarding the exclusion of “all copyrights.” The Tenth Circuit’s decision makes clear that the APA is to be interpreted together with Amendment No. 2. The Court expressly stated that “Amendment No. 2 must be considered together with the APA as a unified document.” SCO Group, Inc. v. Novell, Inc., 578 F.3d 1201, 1211 (10th Cir. 2009). Amendment No. 2 was not “meant to substantively change the intent of the APA,” but “merely clarified or affirmed the intent of the APA.” Id. at 1214 n.2. As the Court of Appeals further noted: “Even if we considered the language of the APA and Amendment No. 2 to be mutually antagonistic, California law still dictates that we construe them together, following Amendment No. 2 wherever its language contradicts the APA.” Id.

Novell previously made extensive arguments to the Court referring to the language excluding “all copyrights” that was replaced by Amendment No. 2. That language is no longer in the APA and it would be misleading for Novel to make arguments in the presence of the jury that suggest the APA in fact still contains such language. SCO recognizes that in presenting extrinsic evidence it may be necessary to refer to the language that existed before Amendment No. 2 was adopted. In doing so, however, the parties should be clear that this is not the current state of the contractual language that is to be considered by the jury.

Accordingly, SCO requests that the Court enter an order in limine to preclude misleading statements by the parties concerning language in the un-amended APA that was changed by Amendment No. 2 to that Agreement, and for counsel to inform witnesses to abide by this order.

DATED this 8th day of February, 2010.

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**CERTIFICATE OF SERVICE**

I, Edward Normand, hereby certify that on this 8th day of February 2010, a true and correct copy of the foregoing **SCO'S MOTION IN LIMINE NO. 1** was filed with the Court and served via electronic mail to the following recipients:

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