EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC., a Delaware corporation, Plaintiff/Counterclaim-Defendant, vs. NOVELL, INC., a Delaware corporation, Defendant/Counterclaim-Plaintiff.	**REPORT AND DECLARATION OF G. GERVAISE DAVIS III** **Civil No.: 2:04CV00139** Judge Dale A. Kimball Magistrate Brooke C. Wells

INTRODUCTORY MATTERS

1. My name is G. Gervaise Davis III. I was admitted to the District of Columbia Bar in 1958 and the California Bar in 1959 (CA Bar #29501). I have been admitted to nearly all the Federal courts in the State of California, as well as before the U.S. Supreme Court, the U.S. Tax Court, and numerous Federal Circuit and District Court in states other than California. I am no longer an active member of the D.C. Bar. I have been practicing law for nearly fifty years, except for the years 2003-2005, when I was inactive due to a heart condition. My Curriculum Vitae is attached hereto as Exhibit A to this Report.

2. Unless otherwise stated, I make this Report based on my personal knowledge and industry experience. I can, and will, competently testify concerning those matters if I am called as a witness thereto in this proceeding. As

to any matters set forth herein on the basis of information and belief, I believe them to be true and correct.

MY LEGAL PRACTICE BACKGROUND

3. **Scope of Practice**. During the time I practiced law as a technology and intellectual property lawyer (over forty years), I devoted approximately 90% of my time to the representation of computer software and hardware companies, as well as literally hundreds of corporate and business users of software. The subject matter of this practice covered (among other topics) the creation and development, authorship, sale, licensing, distribution and use of computer software. This involved all the usual issues arising under the federal and state laws relating to copyright, patent, and trade secret protection of computer software. During that time, I was routinely and personally involved in the negotiation of software licenses acquiring, transferring, licensing, or otherwise permitting end-user companies and individuals to use valuable software and other intellectual property assets in these businesses. My representation of clients also included situations where the software package itself was being acquired and/or licensed for further development and the future marketing of it by a second party to third party end users, rather than just an end-user license transaction.

4. **Scope of Work**. In my practice, I helped clients develop business strategies for protecting, acquiring, selling and licensing software of all types and complexities. Such legal work required that I gain a detailed understanding of the economics of software licensing and copyright ownership, including how to control usage and help clients derive maximum economic benefits from the high cost of developing, selling and acquiring such software, or conversely, how to keep the transaction costs associated with acquiring or licensing software to a minimum. Those goals were often in opposition, depending upon the client I was representing. Based on such extensive experience (among other factors), I believe I have a detailed, accurate and useful understanding of the role and critical importance of copyrights to a software business.

5. **Clients**. During the last thirty-five years, some of the major companies I have represented are Sun Microsystems, Silicon Graphics, Hewlett Packard, Atari and Fujitsu, as well as my one of my primary software clients, Digital Research, Inc., the developer of the first recognized, standardized microcomputer operating system called "CP/M" and later called "DR-DOS." On behalf of my clients I have written and/or negotiated software licenses with Apple, Microsoft, DEC, IBM, Intel, Control Data, NCR, Burroughs, Ashton Tate, Word Perfect, Novell,

Autodesk and at least a hundred or more of the smaller software and hardware companies, as well as with numerous other businesses using, acquiring, licensing, assigning or selling the copyrights and other rights in the software at issue. I have also prepared and filed many copyright registrations on various software packages written by my software author clients and companies, and prepared and negotiated copyright assignments for recording with the U. S. Copyright Office.

6. **Advice on Acquisitions and Copyrights.** In the course of my practice, I was often asked to advise my clients on specific software copyright issues and questions about copyright ownership and the specific rights such ownership creates, as well as the obligations it imposes upon the owners and licensors of the copyrights. I was also engaged to complete many software acquisitions and to draft purchase agreements relating to software businesses and software copyrights, trade secrets, trademarks and patents. As a result, I consider myself an expert in copyright, trade secrets and trademarks as these subjects relate to software, as well as the licensing issues involving software. I also have a reasonable familiarity with the impact of the more recent and growing influence of patent law on the foregoing subjects, as well as about the antitrust aspects of those subjects, although I do not consider myself an expert on those topics.

DETAILS OF MY COPYRIGHT LAW EXPERIENCE

7. **History of Software Copyrights**. Computer software historically had been protected only as a trade secret, and was usually *given* under contracts to the user as part of the purchase of then largely IBM, NCR and Control Data mainframe hardware, since the ability to copyright and license software was unclear until about 1980. In that year, Congress clarified many of these issues with the addition of 17 U.S.C. § 117 and several other definitions added to the law. As my software clients were some of the first to actually license software, I had to develop unique forms of software licenses. Because of that, many of the forms and specific provisions I initially developed were later adopted by parts of the software industry for their own use, and these provisions are now nearly standard provisions in such licenses. I estimate that my involvement in this part of my practice involved negotiating or writing probably five thousand (5,000) such software licenses -- some merely simple three-to five-page end user license agreements and other more complex ones sometimes running to fifty or more pages of detailed provisions. Some of these licenses were successfully litigated and others enforced by me by threatened litigation. These software licenses included copyright and other ownership warranties and representations, which required that I develop a detailed working knowledge of how the copyright laws relate to a software business and to

the acquisition, development, use and licensing of software, and especially when acquiring large software packages.

8. **Book Authorship**. As a result of this early experience, I authored one of the first books on software protection and licensing, entitled *Software Protection: Practical and Legal Steps to Protect and Market Computer Programs*, published in 1985 by Van Nostrand Reinhold Company. My book won several awards for excellence and established my initial reputation as an expert on software acquisition and licensing in the business environment.

9. **Consulting Work**. Because of my extensive experience in this industry, I was asked to serve as a consultant to law enforcement agencies, government agencies, and software and hardware companies -- as a lawyer, an arbitrator, a mediator, and an expert witness in disputes and litigation all over the United States, as well as in Japan. I have worked for and with the FBI, the Justice Department, the FTC, and many profit and non-profit companies in negotiation, arbitration and litigation relating to software and copyright. I personally litigated some of the earliest software licensing, trade secret and copyright infringement disputes during the 1980s and early 1990s. I believe I am still considered one of the leading original experts in the field of software protection, copyright, trade secrets and licensing as it relates to software and this industry.

10. **Teaching & Writing Experience**. I taught law school classes as an Adjunct Professor in copyright, trade secret and licensing law at the Monterey School of Law and at Santa Clara University Law School. I have written approximately one hundred or more articles for law journals and legal publications, and have taught and continue to teach and lecture on the subject for local, state and other Bar groups and for PLI and the Computer Law Association. I was a Director on the Board of the latter group (now known at the iTechLaw Association) for over twelve years, and I am now an honorary Life Member for my acknowledged contributions in this area of the law and to that organization.

OPINIONS AND REASONS

11. **Purpose.** I have been asked to describe in this Report the details of the testimony I would give on the subject matter herein if I were deposed or called to testify at trial in this case.

12. **Basis of Report.** This Report reflects my professional views based on the evidence, pleadings, briefs and other information on this case made available to

me. I understand that I may receive additional evidence and/or information taken in discovery after the submission of this Report. I therefore reserve the right to issue an updated report and to modify my opinions expressed herein, as and if any additional evidence or information warrants.

13. **Question Addressed.** In connection with the lawsuit between SCO Group, Inc. ("SCO") and Novell, Inc. ("Novell"), I have been retained by the legal counsel for SCO as a consultant and to offer expert testimony regarding the necessity of ownership of copyrights in operating a software business. Considering my experience, SCO asked me whether the copyrights relating to the UNIX operating system would be required for SCO to exercise its various legal rights with respect to the acquisition of UNIX and UnixWare technologies. These acquired rights included the right to copy and use, create new derivatives of, distribute and license the technology and the actual source and object code along with the other materials being used in the active software licensing business and purchased from Novell by SCO. Those rights also included the right to assert all of Novell's claims arising after the Closing Date of the Asset Purchase Agreement ("APA) at issue against any third parties relating to any right, property or asset included in the Business previously operated by Novell.

14. **Compensation.** I am being compensated at the rate of $400 per hour, plus actual expenses.

15. **Limitations.** I am not herein expressing any opinions on the ultimate legal and factual issues of this case.

16. **Materials Reviewed.** In preparing this Report, I reviewed numerous briefs, motions, memoranda, declarations and deposition transcripts and exhibits thereto and many other documents submitted by both parties in this litigation. Attached as Exhibit B to my Report is a list identifying the specific documents and/or portions of documents that I reviewed in whole or in part. I do not purport to have read every single page, but I attempted to carefully review those deemed most relevant, and scanned many other pages and exhibits of the documents on the list.

17. **Other Expert Testimony.** During the past four years, I have been involved in one other case where I actually provided expert testimony. There were several other instances where I was retained but the consulting engagement never reached the point of submitting a report or testifying. In the one most recent case, I submitted a Report and provided deposition and trial testimony as an expert witness for the plaintiff in an AAA arbitration proceeding between Yield

Dynamics, Inc. and Cypress Semiconductor Corp. which was arbitrated during the past year, and which I believe is still pending. The details of that case are under Protective Orders.

18. **Nature of Software Businesses.** Any software business is primarily one of using and leveraging intellectual property rights into the creation and marketing of products based on software that is sufficiently useful to end users that they will purchase licenses to use it. In 1995, SCO purchased the entire UNIX software business, a long standing software development and licensing business, from Novell.

19. **The UNIX Operating System.** The UNIX operating system software is a very large and complex body of computer code, running into literally hundreds of thousands if not millions of lines of computer source code. An operating system is not a single set of simple programs; the process of developing such software and maintaining it over the years is a massive undertaking, because the software evolves into more and more complex software over time, as customer needs develop and usage changes because newer hardware is released. Operating system software is of little value to the copyright owner, or its licensees, *unless* the copyright owner of it continues to invest very significant sums of money to give it continuing value through creation of various generations, or versions, which reflect the necessary improvements and additions added and made over time.

20. **Massive Collection of Programs.** A computer operating system (called an O/S for short), like UNIX, is not just one single purpose software package, like a word processor or a spreadsheet. Rather, it is a complex set of thousands of programs and subprograms which permit computer users to communicate and interact from one machine to another; to run multiple applications on one or more machines; to send documents to disk drives and other storage devices and to printers or screens; and otherwise to act as a traffic cop keeping competing demands on the multiple computers involved from becoming a gigantic mess and ultimately collapsing in a useless system that dies because of its inability to deal with conflicting demands of the multiple users and demands on the system

21. **Evolution of UNIX Systems.** The UNIX operating system has evolved over many years and through its many different copyright owners. Each version is typically a significant revision of the previous version. One need only look at the multiple versions (editions) of UNIX and UnixWare programs listed on the Exhibits to the Asset Purchase Agreement between SCO and Novell dated September 19, 1995 ("the APA") to recognize this, and to understand the number

of years it took AT&T, Bell Labs and Novell, and now SCO to create, develop, improve and maintain it.

22. **Effect of Copyright Laws on Software Businesses.** The U.S. copyright laws, Title 17 of the U.S. Code, create the legal framework within which business executives and legal counsel for software companies must operate. The first premise of that body of law is that the copyright owner has certain *exclusive* rights which *only* the owner of the copyright can exercise, license or grant to others. 17 U.S.C. §§ 106-122. Any exercise of these rights by another person or entity without such a grant or license is deemed a copyright infringement. 17 U.S.C. § 501(a) and (b). The exclusive rights spelled out in Section 106 are (1) the right to reproduce or copy the work; (2) the right to prepare derivative works based on the work; (3) the right to distribute copies of the work; and (4, 5 and 6) the rights to perform or display the work, which latter three rights are usually not relevant to software.

23. **Copyright Even Prohibits Use of Software.** It is by virtue of Section 106 and Section 202 that the right to use, modify and copy software can be shared and granted by a license to users of the software and yet they not become infringers. To actually *use* the software for anything other than merely to possess a physical copy or read it, the party must either own or co-own the copyrights at issue, have some license to do so, or enjoy some grant of rights to do so from the owner of the copyrights. Inherent in *any* use of software is the necessity to make an electronic copy of the software code in the computer memory, so that even *using* the software without a license or some expressed exception in the Copyright Act would be a copyright infringement. This is why even end users of simple consumer level software, like a word processor, must hold a license to use it on their computers. Far more extensive rights, as explained above, are needed to continue development and marketing of software, and these rights are the ownership of the copyrights themselves.

24. **Copyright Covers the Expression in the Code.** Copyright is coextensive with the expression in each UNIX version; i.e., each time a programmer writes new code and adds to or modifies the old code, he is creating a new copyrighted work. A new copyright exists from the time the work (the software source code) is created for each of these versions, and it also necessarily involves the use of the copyrights on the older code in the previous versions. Creation of a new version is an infringement of the original copyright, unless the author of the new version owns the copyright on the earlier code, because it is otherwise an illegal derivative.

25. **Entire Software Business, Not Just a Software Program.** The SCO/Novell APA documents relate to the sale of an on-going software business that was based upon the years of development and licensing to others of copyrighted software – namely, the UNIX operating system. I understand Novell to say that it sold and assigned to The Santa Cruz Operation, Inc. ("Santa Cruz") all of its assets and rights in the source, object code and other documentation of the UNIX operating system, as well as all the other assets used in a software creation and licensing business (except the small Netware software segment which it retained), but that it did not thereby also transfer the existing copyrights to such works. That argument is similar to someone today purchasing from Microsoft the Windows operating systems and all related assets of that business, and yet not receiving the ownership of the underlying copyrights to the thousands of programs which make up that operating system and its many previous versions and editions.

26. **No Express or Implied Licenses Exist Here.** In my experience, there are only very limited instances under which a simple software package might still be further developed and marketed under an *express* license to do so. Novell does not argue that Santa Cruz obtained such a license from Novell, but rather argues that SCO had an "implied" license to take all of the steps outlined above in operating the software business acquired from Novell. I have never seen a transaction in which a developer obtained only an implied license to create, market, and license complex derivative versions of a business software system. Both in my experience and as a practical matter, such license would not be sufficient for a developer to undertake such activities. By definition, the terms of an implied copyright license are not spelled out in the documentation. Such a license thus leaves undefined and uncertain the scope of the licensee's implied rights. Just as significantly, such licensees (and third parties) cannot determine the precise scope of the implied rights. Such a license provides insufficient clarity or transparency for anyone seeking to determine or evaluate the licensee's precise rights. An implied license is not a practical or viable means by which the licensee could operate an entire software business involving a complex set of copyrighted works, and I believe that is why I have never come across such a license for such activities.

27. **Implied Licenses.** The only implied licenses I have encountered relate to simple end-user software packages and the implied right to use the software *binary or object code* only. Even those packages normally have long End User Licenses (like Microsoft's twenty-one page EULA for its Word program) spelling out the extensive limitations on its use. I have not encountered any implied license for the licensee to copy *source code*, let alone to operate, develop, and evolve an entire

source code-based business. The APA bears no resemblance to any implied license I have encountered.

28. **Software Businesses Are Based on Copyrights.** Without any license to take all the steps described above to operate the business, the copyrights to the UNIX and UnixWare software, documentation and underlying technologies are necessary for SCO to exercise the rights to the UNIX and UnixWare technology that SCO acquired. The continued development, maintenance, distribution, and licensing of UNIX and UnixWare technologies that is part of that business would require ownership of the core UNIX copyrights that came from AT&T, Unix System Laboratories, Novell, and Santa Cruz. Without these copyrights, SCO would be an infringer subject to suit from the first day it commenced operations with this software, because of the express provisions of 17 U.S.C. § 106 and § 501.

29. **Every New Version or Sublicense Is an Infringement.** Without any license, SCO could not continue to develop, market and license the code in the Business that it acquired from Novell without the UNIX and UnixWare copyrights, because it could not legally serve its customer base without infringing the Novell retained copyrights with every transaction it made unless it owned the copyrights on the software assets involved. In case of the instant disputed software assets, without the UNIX copyrights SCO could not enforce or protect any of its copyright or other legal rights and claims as provided for under the APA.

30. **SCO Has No Rights Without the Copyrights.** In my view of the APA, and based on my experience, the only rational conclusion is that the UNIX and UnixWare copyrights are necessary for SCO to exercise its rights with respect to the UNIX and UnixWare assets and technologies it acquired under the APA, if it is to operate the business and use the software assets Novell sold to SCO.

CONCLUSION

31. **Summary.** Based on my experience in the software business, my intellectual property law practice, and a comprehensive review of the many documents and party statements in this case, my opinion is that the UNIX and UnixWare copyrights were and are necessary for SCO to operate its software business and to exercise its rights and obligations under the APA with respect to the UNIX and UnixWare technologies.

I DECLARE UNDER PENALTY OF PERJURY, under the laws of the State of California, that the foregoing is true and correct and that this Declaration was

EXECUTED on May 29, 2007, at Monterey, California, United States of America.

G. Gervaise Davis III, Esq.

EXHIBIT A

G. Gervaise Davis III
1150 Alta Mesa Road
Monterey, CA 93940

Mr. Davis is a member of the State Bar of California, as well as being admitted to practice before the U.S. Supreme Court, the U.S. Tax Court, many of the U.S. Circuit Courts of Appeal, the Federal Court of Appeals for the Federal Circuit, and numerous U.S. District Courts. Mr. Davis has served as an Adjunct Professor of Law at Santa Clara University Law School, where he taught courses in Intellectual Property and the Internet in both the JD and Masters of Law programs. He also taught an IP law survey course at the Monterey School of Law, Monterey, CA. He graduated from Georgetown University Law Center, Washington, D.C., with his J.D., and also holds a B.S. in Foreign Service from Georgetown.

Mr. Davis was the founding principal of the internationally-known Monterey, California, law firm of Davis & Schroeder, a boutique business and intellectual property firm, specializing in matters relating to protection, development and licensing of software for businesses and non-profits, as well as the complex legal issues arising from the Internet. He was lead Counsel in several landmark trademark and domain name cases at the Federal Appellate level, such as Avery Dennison Corp. v. Sumpton, 189 F.3d 868 (9th Cir. 1999) . He also served on the WIPO Domain Name Disputes Panel during the early stages of it. He has been with Terra Law LLP since 2003 and currently is Of Counsel to the Terra Law LLP.

Mr. Davis is an expert in copyright law, trademarks, domain names, trade secrets and intellectual property licensing. He has, for many years, advised multinational and domestic for profit and non-profit companies in these areas of the law. He serves as a frequent expert witness, mediator, or arbitrator in high tech litigation and dispute matters. He is an active arbitration panelist for the National Arbitration Forum, www.arb-forum.org, where he rules on disputed domain names under the ICANN/UDRP procedures.

Mr. Davis is much in demand as a speaker on Intellectual Property law subjects and has served as an author and speaker for the Practicing Law Institute, NYC, for more than twenty years, principally on copyright and trademark matters. He also advises photographers and artists on protection of their work under the copyright laws.

He is also the author of literally hundreds of articles in legal and business publications, in the area of copyrights, trademarks, Internet law and software licensing. In 1983, he authored one of the first books on the subject of protecting software, entitled **Software Protection: Practical and Legal Steps to Protect and Market Computer Programs**, now out of print. The book won several awards for excellence.

Bar Admissions:

District of Columbia, 1958
California, 1959
U.S. Supreme Court, 1965
U.S. Court of Appeals 4th Circuit
U.S. Court of Appeals 9th Circuit
U.S. Court of Appeals 10th Circuit
U.S. Court of Appeals 11th Circuit
U.S. Tax Court, 1961
U.S. District Court Northern District of California
U.S. District Court Central District of California
U.S. District Court Eastern District of California

Education:

Georgetown University Law Center, Washington, D.C.
J.D., Doctor of Jurisprudence, 1958
Law Review: GU Law Review, 1957 – 1958
Georgetown University, Washington, D.C.
B.S.F.S, Bachelor of Science in Foreign Service, 1954

Classes/Seminars Taught:

Intellectual Property Law Seminar, Monterey Law School
Computers & Internet Law, Santa Clara Univ. Law School
Computers & Copyright Law, PLI, 1978 – 2006
Computer Law and Licensing, CLA, 1983 – 2001

Professional Associations and Memberships:

Computer Law Association, 1986 – Present

The Computer Lawyer, 1986 – Present
Editorial Board

University of Santa Clara High Technology Law Journal, 1986 – Present
Advisory Board

University of California Berkeley High Technology Law Journal, 1986 – Present
Executive Advisory Board

Past Employment Positions:

Davis & Schroeder, Founding Principal, 1968 - 2003

Published Works:

Davis, G. Gervaise, III. "Can You Keep a (Trade) Secret?" Computerworld Vol. 16, No. 35a, pp: 21-28, Sep 1, 1982.

Davis, GG. "It's the Law." DATAMATION, V 28, N12 , pp. 221-222 (1982).

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G. Gervaise Davis, III. "REACHING THE LIMITS OF COPYRIGHT: PROTECTING PROGRAMMING LANGUAGES, MACROS, FORMATS AND COMPUTER HARDWARE UNDER THE COPYRIGHT LAWS," Practicing Law Institute PLI Order No. G4-3832, May 9, 1989 Presentation on Computer Law: Current Trends and Developments A. Satellite Program, 272 PLI/Pat 171 (1989).

G. Gervaise Davis III. "CONTRACT ISSUES IN SOFTWARE DEVELOPMENT, ACQUISITION, MARKETING, AND USE," Practicing Law Institute PLI Order No. G4-3835, July 1, 1989 Presentation on Computer Software 1989: Protection and Marketing, 276 PLI/Pat 359 (1989).

G. Gervaise Davis III. "Airing both sides of the 'look and feel' debate." (copyright protection for software products)(Viewpoint) Computerworld (8/13/90)

G. Gervaise Davis, III. "NETWORK LICENSING POLICIES AND ECONOMICS: LEGAL AND ECONOMIC ISSUES IN AN INDUSTRY IN TRANSITION," Practicing Law Institute PLI Order No. G4-3867 October 24-25, 1991, 13th Annual Computer Law Institute, 322 PLI/Pat 513 (1991).

Davis, G. Gervaise, III. "The Digital Dilemma: Coping With Copyright In A Digital World," The Computer Law Association Bulletin, Vol. 8, No. 1 (1992).

G. Gervaise Davis, III. "PROTECTING COMPUTER SCREENS AND OTHER MYSTERIES RELATING TO COMPUTER SOFTWARE, COPYRIGHTS AND PATENTS," Practicing Law Institute PLI Order No. G4-3891, October 15-16, 1992 14th Annual Computer Law Institute, 345 PLI/Pat 259 (1992).

G. Gervaise Davis, III. "SCOPE OF PROTECTION OF COMPUTER-BASED WORKS: REVERSE ENGINEERING, CLEAN ROOMS AND DECOMPILATION," Practicing Law Institute PLI Order No. G4-3905, October-November, 1993, 15th Annual Computer Law Institute 370 PLI/Pat 115 (1993).

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G. Gervaise Davis, III. "Internet Domain Names and Trademarks." 10 No. 2 Software L. Bull. 35, (February 1997).

Stephen J. Davidson, Nicole A. Engisch. "A SURVEY OF THE LAW OF COPYRIGHT MISUSE AND FRAUD ON THE COPYRIGHT OFFICE: LEGITIMATE RESTRAINTS ON COPYRIGHT OWNERS OR EXCUSES FOR COPYRIGHT INFRINGERS?" Practicing Law Institute PLI Order No. G4-4003, June & July 1997. Revised and updated by G. Gervaise Davis III, 483 PLI/Pat 295 (1997).

G. Gervaise Davis III . "INTERNET DOMAIN NAMES AND TRADEMARKS: A GROWING AREA OF DISPUTE," Practicing Law Institute PLI Order No. G4-4008, September, 1997 PLI's Third Annual Institute for Intellectual Property Law, 489 PLI/Pat 649 (1997).

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G. Gervaise Davis, III. "INTERNET DOMAIN NAMES AND TRADEMARKS: A GROWING AREA OF DOMESTIC AND INTERNATIONAL DISPUTES," Practicing Law Institute PLI Order No. G0-0024, October-November, 1998, PLI's Fourth Annual Institute for Intellectual Property Law, 532 PLI/Pat 383 (1998).

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G. Gervaise Davis, III. "THE RAPIDLY GROWING DEFENSE OF COPYRIGHT MISUSE AND EFFORTS TO ESTABLISH TRADEMARK MISUSE: LEGITIMATE RESTRAINTS ON COPYRIGHT OWNERS OR ESCAPE ROUTES FOR COPYRIGHT INFRINGERS? WAYS OF PROTECTING DOMAIN NAMES?" Practicing Law Institute PLI Order No. G0-005M, New York City, June 24-25, 1999 566 PLI/Pat 639 (1999).

G. Gervaise Davis III, Esq. "INTERNET DOMAIN NAMES AND TRADEMARKS: A PRIMER ON THE TECHNOLOGY AND CURRENT DEVELOPMENTS IN DOMESTIC AND INTERNATIONAL DISPUTES," Practicing Law Institute PLI Order No. G0-007N, New York City, October 7-8, 1999, PLI's Fifth Annual Institute for Intellectual Property 574 PLI/Pat 527 (1999).

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G. Gervaise Davis III, Esq. "INTERNET DOMAIN NAMES AND TRADEMARKS: HISTORY AND RECENT DEVELOPMENTS IN DOMESTIC AND INTERNATIONAL DISPUTES: ENABLING ELECTRONIC COMMERCE ON THE INTERNET," Practicing Law Institute PLI Order No. G0-00PS, Presented September 2001 in New York City and November 2001 in San Francisco, at PLI's Seventh Annual Institute for Intellectual Property Law 670 PLI/Pat 551 (2001).

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G. Gervaise Davis III, Esq. "INTERNET DOMAIN NAMES AND TRADEMARKS: HISTORY AND RECENT DEVELOPMENTS IN DOMESTIC AND INTERNATIONAL DISPUTES: ENABLING ELECTRONIC COMMERCE ON THE INTERNET," Practicing Law Institute PLI Order No. G0-0124, September 26-27, 2002, New York City. Presented November 14-15, 2002, San Francisco at PLI's Eighth Annual Institute for Intellectual Property Law 716 PLI/Pat 307 (2002).

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G. Gervaise Davis III, Esq. "COPYRIGHT AND TRADEMARK MISUSE: FRAUD ON THE COPYRIGHT OFFICE," Practicing Law Institute PLI Order Number 2792, 792 PLI/Pat 211 (June 2004).

G. Gervaise Davis. "COPYRIGHT & TRADEMARK MISUSE; FRAUD ON THE COPYRIGHT OFFICE," Practicing Law Institute PLI Order Number 6250, 832 PLI/Pat 205 (June 13, 2005).

G. Gervaise Davis III . "THE AFFIRMATIVE DEFENSE OF COPYRIGHT MISUSE AND EFFORTS TO ESTABLISH TRADEMARK MISUSE, AND FRAUD ON THE COPYRIGHT OFFICE: ESTABLISHING LIMITATIONS ON THE SCOPE OF COPYRIGHT OWNERS RIGHTS BASED ON SEVERAL THEORIES" Practicing Law Institute PLI Order No. 8816, 867 PLI/Pat 103 (June, 2006).

EXHIBIT B

Materials Considered By G. Gervaise Davis, III

Pleadings

Memorandum Decision and Order, dated 6/9/04

Memorandum in Support of Novell, Inc.'s Motion to Dismiss, dated 8/6/04

Memorandum in Opposition to Novell, Inc.'s Motion to Dismiss SCO's Amended Complaint, dated 10/4/04

Reply in Support of Novell's Motion to Dismiss Amended Complaint, dated 11/8/04

Memorandum Decision and Order, dated 6/27/05

Novell, Inc.'s Response to SCO Group, Inc.'s Second Set of Requests for Production and Second Set of Interrogatories, date 11/6/06

Novell, Inc.'s First Supplemental Response to The SCO Group, Inc.'s First Set of Interrogatories, dated 2/2/07

SCO's Memorandum in Support of Its Motion of Partial Summary Judgment on Its First, Second and Fifth Causes of Action and For Summary Judgment on Novell's First Counterclaim dated 4/9/07, Declaration of Edward Normand in Support, and Exhibits 1-31

Novell's Memorandum in Support of Novell's Opposition to SCO's Motion for Partial Summary Judgment on SCO's First, Second and Fifth Causes of Action and For Summary Judgment on Novell's First Counterclaim (Copyright Ownership) dated 5/14/07

Novell's Motion for Summary Judgment on SCO's First Claim for Slander of Title and Third Claim for Specific Performance dated 4/20/07, Declarations of Allison Amadia, Tor Braham, Kenneth W. Brakebill, David Bradford, and James R. Tolonen, and supporting exhibits

SCO's Memorandum in Opposition to Novell's Motion for Summary Judgment on SCO's First Claim for Slander of Title and Third Claim for Specific Performance dated May 18, 2007

Summary Judgment Pleadings and Materials filed in *SCO v. IBM*

Excerpts of powerpoint presentation regarding the APA, from SCO's Summary Judgment Hearing Binder used during SCO's argument on IBM's Motion for Summary Judgment on its Claim for Declaratory Judmgent of Non-Infringement (IBM's Tenth Counterclaim)

IBM Ex. 123 (12/19/95 Asset Purchase Agreement between The Santa Cruz Group, Inc. and Novell)

IBM Ex. 444 (10/16/96 Amendment No. 2 to the Asset Purchase Agreement)

SCO Ex. 17 (11/9/06 Declaration of Alok Mohan)

SCO Oppos. Ex. 18 (11/9/06 Declaration of Duff Thompson)

SCO Oppos. Ex. 30 (12/6/95 Bill of Sale between The Santa Cruz Group, Inc.) and Novell, SCO1185881)

SCO Oppos. Ex. 35 3/28/96 Software Agreement between Modcomp/Cerplex L.P. and The Santa Cruz Group, Inc.)

SCO Oppos. Ex. 38 (11/4/06 Declaration of Kim Madsen)

SCO Oppos. Ex. 39 (10/1/04 Declaration of Ed Chatlos)

SCO Oppos. Ex. 40 (11/23/04 Declaration of Jim Wilt)

SCO Oppos. Ex. 42 (11/19/04 Declaration of Steve Sabbath)

SCO Oppos. Ex. 48 (12/6/95 Technology License Agreement between Novell and The Santa Cruz Group, Inc., Dep. Ex. 957)

SCO Oppos. Ex. 50 (11/3/04 Declaration of Lawrence Bouffard)

SCO Oppos. Exs. 258-268 (UNIX Copyright registrations)

SCO Oppos. Ex. 322 (SCO's Memorandum in Support of its Motion to Compel Discovery, dated 10/27/05)

SCO Oppos. Ex. 333 (11/7/06 Declaration of William M. Broderick)

SCO Oppos. Ex. 355 (11/9/06 Declaration of John Maciaszek)

Depositions and Deposition Exhibits

2/10/07 Robert Frankenberg Deposition Transcript and Deposition Exhibits 1045-1047

Mattingly Deposition Exhibit 2 (11/8/04 Declaration of Kellie Carlton in Support of Novell's Motion to Dismiss with attached 9/18/95 Novell Board Meeting Minutes)

Thompson Deposition Exhibit 29 (11/9/06 Declaration of R. Duff Thompson)

Stone Deposition Exhibit 1008 (12/6/95 Technology License Agreement between Novell and SCO)

Stone Deposition Exhibit 1009 (10/16/96 Amendment No. 2 to the Asset Purchase Agreement)

Messman Deposition Exhibit 1026 (12/6/95 Amendment No. 1 to the Asset Purchase Agreement)

Messman Deposition Exhibit. 1028 (9/20/95 SCO Press Release)

Messman Deposition Exhibit. 1030 (9/20/95 Article from the Wall Street Journal)