

# **EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

THE SCO GROUP, INC., )

)

Plaintiff, )

)

vs. )

)

NOVELL, INC., ) Case No: 2:04CV00139

)

Defendant, )

\_\_\_\_\_ )

)

)

BEFORE THE HONORABLE DALE A. KIMBALL

May 31, 2007

MOTION HEARING

VOLUME I

KELLY BROWN HICKEN, RPR, CSR, RMR

Court Reporter

350 South Main Street, 209

1 Paragraph 10 and 11.

2 The website content that we're relying on which is  
3 one page which simply contains links to correspondence that  
4 predates the effective day of the act and also provides links  
5 to copyright registrations which predate the effective date of  
6 the act. That website was posted before the act became  
7 effective, and it's just stayed the same since then. So the  
8 intellectually interesting question is on the Internet,  
9 something is posted and just stays there? Is this a  
10 continuing publication even though it's staying there as soon  
11 as the act becomes effective law, now we use it?

12 Well, it turns out that no Utah court has addressed  
13 this. We found a District of Colorado decision in 2006 that  
14 addresses that issue. They considered the vast weight of  
15 authority is in favor of saying that -- it was a statute of  
16 limitation case, I should mention. But the statute of  
17 limitations case, they said, is a web page that simply stays  
18 the continuation publication for the purpose of statute of  
19 limitation or is it a single publication at the earlier date?  
20 And they said, it's a single publication at the earlier date.  
21 And we submit that is the correct rule. So this web page was  
22 published before the Unfair Competition Act became effective,  
23 so they can't rely on it.

24 Now, if Your Honor were to -- if SCO were somehow  
25 able to get up beyond these procedural hurdle, they still have

1 continued on till today to do that.

2 Now, it's odd I think in several parts in his  
3 briefing that Novell says SCO cannot rely on statements  
4 outside the second amendment complaint. They don't want us to  
5 show these types of things. And they made comments that I  
6 just found were a little odd for summary judgment. They say:

7 SCO cannot -- this is Page 6 of their reply.

8 SCO cannot properly rely on statements that  
9 were not identified in SCO's second amended  
10 complaint.

11 Well, that sounds like a motion to dismiss. Maybe  
12 it's a motion for judgment on the pleadings. But that's the  
13 basis they are coming to you today because they're saying,  
14 they can't win these motions because they didn't plead some of  
15 these specific statements, one of which is the website that he  
16 talked about where they continue to this day to publish the  
17 fact that they own the copyrights, which continues to hurt  
18 SCO, and we'll talk about that a little bit more in a minute.  
19 And they characterize it in the brief. This is SCO's improper  
20 attempt to amend its claim.

21 Well, I've never heard evidence made in discovery,  
22 found in discovery somehow as an amendment of the claim and  
23 that you're limited somehow to what you have in your  
24 complaint. That doesn't make any sense. So let's talk about  
25 what we did plead, because I think they played a small game