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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>SCO'S MEMORANDUM OF POINTS AND AUTHORITIES CONCERNING THE PROPER SCOPE OF CLOSING ARGUMENTS</p> <p>Civil No. 2:04 CV-00139</p> <p>Judge Ted Stewart</p>
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Plaintiff, the SCO Group, Inc., respectfully submits this memorandum of points and authorities concerning the proper scope of closing arguments. Specifically, documents and testimony that have not been admitted into evidence at trial should not be shown or read to the jury, such as the demonstratives used by Novell during the testimony of Novell's expert, Mr. Terry Musika. SCO also objects to any attempt by Novell to argue to the jury that Novell's assertion to ownership applied only to UNIX, and not to UnixWare copyrights, extant at the time of the APA. SCO further objects to any attempt to argue to the jury points contrary to questions of law that have been decided by the Tenth Circuit opinion in this case.

ARGUMENT

I. IT WOULD BE IMPROPER TO SHOW THE JURY MR. MUSIKA'S DEMONSTRATIVES DURING CLOSING ARGUMENTS

Mr. Musika's demonstratives are not evidence. "It has been recognized that it is improper for counsel to argue matters outside the record which are not in evidence." Jacob Stein, Closing Arguments 2d § 1.21 (citing cases); see U.S. v. Mendoza, 522 F.3d 482, 491 (5th Cir. 2008) ("A prosecutor is confined in closing argument to discussing properly admitted evidence and any reasonable inferences or conclusions that can be drawn from that evidence."); Aurnou v. Craig, 184 A.D.2d 1048, 1049 (N.Y. App. Div. 1992) ("The court also erred in allowing plaintiff's counsel to comment upon a magazine article during summations. The article was not admitted into evidence, and counsel's suggestion that the substance of the article would support plaintiff's testimony regarding the structural integrity of his car was improper and highly prejudicial.") Mr. Musika's demonstratives were not admitted into evidence. While his testimony is in evidence, the demonstratives and the articles and quotes contained on the charts are not. As unadmitted evidence, any attempt to show the demonstratives to the jury would be improper and highly prejudicial.

II. NOVELL SHOULD NOT BE PERMITTED TO ARGUE THAT IT DID NOT CLAIM OWNERSHIP TO THE UNIXWARE COPYRIGHTS

Any attempt by Novell to argue that its claim to ownership did not apply to UnixWare, only to UNIX, is improper. In its Answer to SCO's Second Amended Complaint, Novell expressly stated that it "admits that on May 28, 2003, Jack Messman sent a letter to Darl McBride of SCO in order to assert Novell's claim to the UNIX and UnixWare copyrights" Answer to SCO's 2d Am. Compl. ¶ 37(a). Similar admissions were made regarding other statements. During the trial, counsel for Novell sought to amend the pleadings to reflect this dichotomy. (3/19/2010 Trial Tr. at 1740.) The Court noted at the time that this position was "completely without merit." (3/19/2010 Trial Tr. at 1742:16.) Since that exchange, Novell has presented no evidence that would support such an argument that the APA transmitted the copyrights for UnixWare – but not UNIX – to SCO, and that Novell only claimed ownership of UNIX copyrights. A closing argument to that effect would be improper.

III. NOVELL SHOULD NOT BE PERMITTED TO ARGUE ISSUES OF LAW THAT HAVE BEEN DECIDED BY THE TENTH CIRCUIT

The Tenth Circuit opinion reversing Judge Kimball's entry of summary judgment on certain issues, including the ownership of the copyrights, decided certain specific issues of law. For example, that Court expressly found that the "APA, as revised by Amendment No. 2, satisfied the Copyright Act's writing requirement." The SCO Group, Inc. v. Novell, Inc., 578 F.3d 1201, 1214 (10th Cir. 2009). The Court also held that the "Copyright Act does not require its writing requirement be fulfilled concurrently with the production of a Bill of Sale," expressly rejecting Novell's claim that the temporal difference between the Bill of Sale, the APA and Amendment No. 2 was of any legal significance. Id. at 1214 & n.2. Certain questions to witnesses yesterday raised concern that Novell may seek to argue these points to the jury. Any attempt by Novell to do so is improper.

DATED this 25th day of March, 2010.

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CERTIFICATE OF SERVICE

I, Brent O. Hatch, hereby certify that on this 25th day of March, 2010, a true and correct copy of the foregoing SCO'S MEMORANDUM OF POINTS AND AUTHORITIES CONCERNING THE PROPER SCOPE OF CLOSING ARGUMENTS was filed with the court and served via electronic mail to the following recipients:

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