

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
The SCO Group, Inc., <u>et al.</u> ,	)	
	)	Case No. 07-11337 (KG)
Debtors.	)	(Jointly Administered)

**AFFIDAVIT OF GREG JONES IN SUPPORT OF  
MOTION FOR RELIEF FROM AUTOMATIC STAY AND  
MOTION FOR ORDER DIRECTING THE DEBTORS TO REMIT ROYALTIES**

Greg Jones, being duly sworn, deposes and states the following:

1. I am Vice President, Law-Technology, of Novell, Inc. ("Novell") and submit this affidavit in support of Novell's (a) Motion for Relief From Automatic Stay to Proceed With District Court Action to (I) Apportion Revenue From SCOSource Licenses and (II) Determine SCO'S Authority to Enter Into SCOSource Licenses; and (b) Motion for Order Directing the Debtors to Remit Undisputed Future SVRX Royalties to Novell upon Receipt. Unless otherwise indicated herein, I have personal knowledge of the facts set forth in this affidavit.

**The Asset Purchase Agreement**

2. On or about September 19, 1995, Novell entered into an Asset Purchase Agreement (the "APA") with The Santa Cruz Operation, Inc. ("Santa Cruz"), who was The SCO Group, Inc.'s ("SCO") predecessor in interest.<sup>1</sup> Pursuant to the APA, Novell transferred UNIX SVRX software licenses to SCO but retained all UNIX and UnixWare copyrights (the "Unix Copyrights"). Licenses to SVRX generate a royalty payment stream paid by licensees (the "SVRX Royalties"). A true and correct copy of the APA is attached hereto as Exhibit "A."

<sup>1</sup> This Affidavit shall hereinafter refer to obligations under the APA as obligations of SCO.

3. According to Section 1.2(b) of the APA, SCO agreed to collect and remit 100% of the SVRX Royalties to Novell. SCO is entitled to a 5% administration fee. The APA requires SCO to collect and remit the entire amount to Novell and then Novell would pay SCO the administrative fee. The parties' actual practice was for SCO to account for 100% of the SVRX Royalties and remit 95% to Novell. It is my understanding that SCO does not dispute its obligation to collect and remit SVRX Royalties from at least those SVRX licenses in existence at the execution of the APA (the "Undisputed SVRX Royalties").

4. According to Novell's books and records, Novell received from SCO \$696,413.67 in Undisputed SVRX Royalties from the third quarter of 2006 through the second quarter of 2007.

5. Novell estimates that SCO will continue to remit to Novell between \$500,000 and \$800,000 annually in Undisputed SVRX Royalties (the "Undisputed Future SVRX Royalties").

6. Under the APA, SCO is given 45 days from the end of each fiscal quarter to remit the SVRX Royalties. The first payment of Undisputed Future SVRX Royalties is due on November 14, 2007, 45 days after the close of the third quarter of 2007.

7. Novell intended with the APA to retain all Unix Copyrights and to protect its interest in all SVRX Royalties. In the event that SCO ultimately went into bankruptcy, the Unix Copyrights and the SVRX Royalties would, thus, not be part of the bankruptcy estate. The retention of the Unix Copyrights also protected Novell's other Unix-related interests, including the rights to negotiate buyouts of SVRX licenses, receive future revenues, and ensure development of future versions of the UNIX operating system.

**The District Court Action and Ruling**

8. On or about January 20, 2004, SCO sued Novell for slander of title based on public statements Novell made claiming that it had retained UNIX and UnixWare copyrights pursuant to the APA.

9. Novell has pursued counterclaims to the action.

10. Both SCO and Novell submitted motions for summary judgment on the various claims and counterclaims (the "Summary Judgment Motions").

11. Hearings on the Summary Judgment Motions were held on January 23, 2007, May 31, 2007, and June 4, 2007.

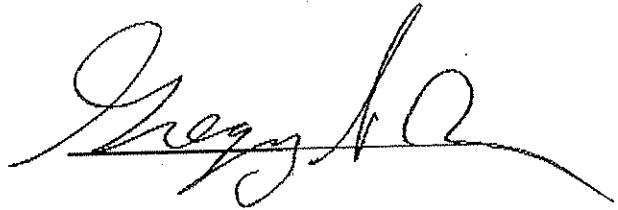
12. On August 10, 2007, the Honorable Dale A. Kimball, United States District Judge for the District of Utah, Central Division, issued a Memorandum Decision and Order in the matter of *The SCO Group, Inc. vs. Novell, Inc.* (the "District Court Rulings") on the Summary Judgment Motions. A true and correct copy of the District Court Rulings is attached hereto as Exhibit "B."

13. The District Court Rulings determined that at least two types of licenses of assets transferred under the APA generate or will generate SVRX Royalties: (1) SVRX licenses Novell assigned to SCO pursuant to the APA; and (2) SCOSource buyout licenses SCO entered into with others, including Sun Microsystems, Inc. and Microsoft Corp. in 2003 (the "Sun and Microsoft Licenses"). Exhibit B at 2, 89, 96.


14. The District Court Rulings determined that Novell is the owner of the Unix Copyrights and that SCO was in breach of the APA and owed the SVRX Royalties it had collected to Novell because of SCO's breach of fiduciary duty, conversion, unjust enrichment and breach of express contract. Exhibit B at 62, 96-97. The District Court Rulings dismissed the

majority of SCO's causes of action, including the underlying slander allegations. Exhibit B at 99-102.

15. Following entry of the District Court Rulings, the District Court scheduled a trial for September 17, 2007 to determine the amount of SVRX Royalties SCO owes to Novell for the Sun and Microsoft Licenses, as well as entitlement to revenue from additional SCOsource licenses, among other issues.



Sworn to before me this 1<sup>st</sup> day of October, 2007

  
Notary Public

