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FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

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**Attorneys for Defendant Novell, Inc.**

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**IN THE UNITED STATES DISTRICT COURT**  
**DISTRICT OF UTAH, CENTRAL DIVISION**

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THE SCO GROUP, INC., a Delaware  
corporation,

Plaintiff,

vs.

NOVELL, INC., a Delaware corporation,

Defendant.

**NOVELL, INC.'S MOTION TO  
DISMISS**

Case No. 2:04CV00139

Judge Dale A. Kimball

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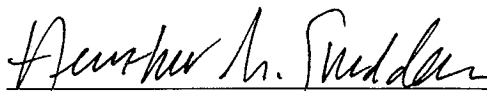
Defendant Novell, Inc. ("Novell"), by and through its attorneys of record, hereby moves this Court to dismiss the Amended Complaint filed by The SCO Group, Inc. ("SCO"), pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief may be granted.

The basis for SCO's single cause of action against Novell for slander of title is that Novell made ten "false oaths," "misleading public representations" and "wrongful assertions" concerning Novell's ownership of UNIX copyrights. (Am. Compl. ¶ 19.) However, given the context in which Novell's statements were made and the public controversy surrounding the ownership of UNIX copyrights, SCO cannot prevail on its slander of title claim against Novell because (1) Novell has a privilege to publicly assert a rival claim to the UNIX copyrights; (2) Novell has a privilege to publish its rival claim to parties with a common interest in the UNIX copyrights; and (3) SCO cannot allege malice sufficient to ground a claim for slander of title given the Court's June 9, 2004 Order.

The grounds for this Motion are more fully set forth in the supporting memorandum filed concurrently herewith.

DATED: August 6, 2004.

ANDERSON & KARRENBERG



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John P. Mullen

Heather M. Sneddon

**Attorneys for Defendant Novell, Inc.**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 6<sup>th</sup> day of August, 2004, I caused a true and correct copy of the foregoing **NOVELL, INC.'S MOTION TO DISMISS** to be served via first class mail, postage prepaid, to the following:

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