

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC., by and through the Chapter 7 Trustee in Bankruptcy, Edward N. Cahn,  Plaintiff/Counterclaim-Defendant,  vs.  INTERNATIONAL BUSINESS MACHINES CORPORATION,  Defendant/Counterclaim-Plaintiff.	<b>MEMORANDUM DECISION AND ORDER GRANTING IN PART AND DENYING IN PART IBM'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE BASIS OF THE NOVELL JUDGMENT</b>  Civil No.: 2:03-CV-00294-DN David Nuffer
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IBM has moved for partial summary judgment on the basis of the final judgment in [SCO Group, Inc. v. Novell, Inc., No. 2:04-cv-00139-TS](#) (the “*Novell* Judgment”); and the Court has considered the arguments of both parties.

It is HEREBY ORDERED, ADJUDGED, AND DECREED that IBM’s Motion for Partial Summary Judgment on the Basis of the *Novell* Judgment<sup>1</sup> [Docket No. 1126](#) is GRANTED in part and DENIED in part as set forth below:

It is ORDERED that, on the basis of the *Novell* Judgment, judgment is entered in favor of IBM and against SCO on IBM’s counterclaims seeking a declaration of non-infringement of the copyrights to the pre-1996 UNIX source code (IBM Counterclaims IX and X).

It is further ORDERED that, on the basis of the *Novell* Judgment, partial judgment is entered in favor of IBM and against SCO on SCO’s Unfair Competition Claim (Count VI) and Tortious Interference Claims (Counts VII and IX) insofar<sup>1</sup> as they allege that SCO, and not Novell,

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<sup>1</sup> [Docket no. 1126](#), filed July 22, 2013.

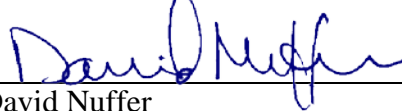
owns the copyrights to the pre-1996 UNIX source code and/or that Novell does not have the right to waive IBM's alleged breaches of the licensing agreements pursuant to which IBM licensed pre-1996 UNIX source code.

It is further ORDERED that, with respect to all remaining claims and counterclaims, SCO is bound by, and may not here re-litigate, the rulings in the *Novell* Judgment that Novell (not SCO) owns the copyrights to the pre-1996 UNIX source code, and that Novell waived SCO's contract claims against IBM for alleged breaches of the licensing agreements pursuant to which IBM licensed such source code.

It is further ORDERED that all others grounds for relief in IBM's motion are DENIED.

DATED this 15<sup>th</sup> day of December 2014.

BY THE COURT

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer

United States District Court Judge