IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11 Cases
	)	
The SCO GROUP, INC. et al.,[1]	)	Case No. 07-11337 (KG)
	)	(Jointly Administered)
Debtors.	)	**Related To Docket No. 778**

DEBTORS' MOTION TO FILE UNDER SEAL DEBTORS' APPENDIX TO THEIR RESPONSE TO MOTIONS TO DISMISS OR CONVERT

The above-captioned debtors in possession (collectively, the "Debtors") seek approval to file the Debtors' Appendix To Their Response To Motions To Dismiss Or Convert (the "Appendix") under seal pursuant to section 107(b) under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 9018-1(b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"). In support of this Motion (the "Motion"), the Debtors respectfully represent and state as follows:

Jurisdiction and Background

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

2. The statutory predicates for the relief requested herein are Section 107(b) of the Bankruptcy Code, Rule 9018 of the Bankruptcy Rules, and Local Rule 9018-1(b).

[1] The last four digits of the taxpayer identification number for The SCO Group, Inc. is 2823. The last four digits of the taxpayer identification number for SCO Operations, Inc. is 7393. The address for both Debtors is 355 South 520 West, Lindon, Utah 84042.

3. On September 14, 2007 (the "Petition Date"), the Debtors commenced these cases (the "Chapter 11 Cases") by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

4. Parties-in-interest and the Court are referred to the *Declaration of Darl C. McBride, Chief Executive Officer of the Debtors, in Support of First Day Motions* filed on the Petition Date and incorporated herein by reference for the factual background relating to the Debtors' business and their commencement of these Chapter 11 cases.

5. On June 5, 2009, the Debtors filed the Debtors' Response to Motions to Dismiss or Convert Filed by United States Trustee (D.E. #750), International Business Machines Corporation (D.E. #751), and Novell, Inc. (D.E. #753 and contemporaneously herewith, the Debtors seek to file the Debtors' Appendix To Their Response To Motions To Dismiss Or Convert (the "Appendix").

Relief Requested and Basis Therefor

6. By this Motion, the Debtors seek the entry of an order, pursuant to Section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018 and Local Bankruptcy Rule 9018-(b), authorizing the Debtors to file the Appendix under seal.

7. Section 107 of the Bankruptcy Code provides bankruptcy courts with the power to issue orders that will protect entities and individuals from potential harm:

> (b) On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may –
>
> > (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information . . . .

* * *

> (c) (1) The bankruptcy court, for cause, may protect an individual, with respect to the following types of information to the extent that the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property:
>
> (A) Any means of identification (as defined in section 1028(d) of title 18) contained in a paper filed, or to be filed, in a case under this title,
>
> (B) Other information contained in a paper described in subparagraph (A).

8. Bankruptcy Rule 9018 identifies the procedure by which a party may move for relief under section 107:

> On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information . . ..

Fed. R. Bankr. P. 9018.

9. Commercial information has been defined to include any information that would cause "an unfair advantage to competitors by providing them information as to the commercial operations of the debtor." *In re Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994) (citing *In re Itel Corp.*, 17 B.R. 942, 944 (B.A.P. 9th Cir. 1982)). In documenting how and why IBM came to transform Linux into a viable commercial operating system at the expense of UNIX and SCO's business, the Appendix throughout cites numerous IBM internal documents that IBM designated as confidential in the *SCO v. IBM* litigation. In order to comply with the protective order in effect in that action requiring that such documents be kept confidential, SCO respectfully moves this Court for leave to file this Appendix under seal. The Debtors' submit

that the information contained in the Appendix constitutes information IBM has deemed confidential that is not, to Debtor's knowledge, in the public realm and is already subject to another protective order.

10. Under Section 107(b) of the Bankruptcy Code, courts have entered orders limiting access to filed documents where parties have demonstrated good cause. *See, e.g., In re Epic Assoc. V.*, 54 B.R. 445, 450 (Bankr. E.D. Va. 1985); *In re Nunn*, 49 B.R. 963, 964-65 (Bankr. E.D. Va. 1985). Courts may deny access to judicial documents when open inspection may be used as a vehicle for an improper purpose. *In re Orion Pictures Corp.*, 21 F.3d at 27 (citing *Nixon v. Warner Comm'n, Inc.*, 435 U.S. 589, 597 (1978)).

Notice

11. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (i) the Office of the United States Trustee; (ii) the creditors holding the 20 largest unsecured claims against the Debtors' estates (on a consolidated basis); and (iii) any party which has filed a request for notices with this Court prior to the date of this Motion. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

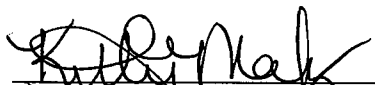
No Prior Request

12. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form as the proposed order filed herewith, (i) authorizing the Debtors to file Appendix under seal, and (ii) granting further relief as is just and proper.

Dated: June 8, 2009

PACHULSKI STANG ZIEHL & JONES LLP



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