

# EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

The SCO Group, Inc., *et al.*,

Debtors.

Case No.: 07-11337 (KG)  
(Jointly Administered)

Chapter 11

Docket Ref. Nos. 1141, 1161 and  
1184

**RESERVATION OF RIGHTS OF HEWLETT-PACKARD COMPANY  
REGARDING DEBTORS' NOTICE OF CURE AMOUNTS IN CONNECTION  
WITH THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS  
AND UNEXPIRED LEASES**

Hewlett-Packard Company ("Hewlett-Packard"), by and through its undersigned counsel, hereby submits this reservation of rights ("Reservation of Rights"), in connection with the Notice of Cure Amounts in Connection with the Assumption and Assignment of Executory Contracts ("Notice") [docket No. 1184] filed by the Edward N. Cahn, Esq. ("Trustee"), the Chapter 11 Trustee in the above captioned jointly administered Chapter 11 bankruptcy cases. In support of its Reservation of Rights, Hewlett-Packard respectfully represents as follows:

**BACKGROUND**

1. Since the early 1980's Hewlett Packard and one or more of the above-captioned Debtors have been parties to a number of contracts and agreements. Additionally, as a result of mergers with and acquisitions of various entities, Hewlett Packard has become a counter-party to contracts and agreements with the Debtors.

2. Some of those contracts have expired; some remain executory. Because some of those contracts are more than 20 years old, Hewlett-Packard has not been able, despite diligent searches to locate all of them them.

3. Prior to the petition date in the above-captioned bankruptcy cases, Hewlett-Packard and one or more of the above-captioned Debtors were parties to litigation concerning their respective rights to certain intellectual property. That litigation was resolved by the parties entry into a Release of Unix Claims and Agreement dated as of August 15, 2003 (“Release”).

4. In connection with the Trustee’s motion to sell substantially all of the Debtors’ assets in this case, Hewlett-Packard’s counsel advised the Trustee’s counsel of Hewlett-Packard’s concern that the purchaser of the Debtors’ assets recognize the effects of the Release.

5. The Trustee understood Hewlett-Packard’s concerns. Consistent with Hewlett-Packard’s concerns, the Trustee agreed that the proposed form of Order approving the sale “will make it clear that the Buyer is bound by the terms of [the Release]. See the Omnibus Response of the Chapter 11 Trustee to Reservations of Rights and Informal Comments Regarding the Motion of the Chapter 11 Trustee for Order (1) Authorizing the Marketing, Auction and Sale of Substantially All of the Debtors’ Software Business Assets Consistent with Form Asset Purchase Agreement and Free of Clear of Liens, Claims and Encumbrances, (2) Authorizing Assumption, Assignment, and Sale of Certain Executory Contracts and Unexpired Leases, (3) Approving Bidding Procedures in connection with Auction, (4) Establishing Sale Hearing Date, and (5) Granting Related Relief filed in these jointly administered Chapter 11 bankruptcy on August 19, 2010. [Docket No. 1156, para. 7, p. 7]

6. On October 15, 2010, the Trustee filed the Notice. A copy was subsequently served on Hewlett-Packard. Several Exhibits attached to the Notice list contracts between the Debtor and Hewlett-Packard the Trustee seeks to assume and assign to the buyer of the Debtors’ Assets. Copies of those pages listing Hewlett-Packard contracts to be assumed have been attached as Exhibit A to this Reservation of Rights for the Court’s convenience.

7. Despite a diligent search by Hewlett-Packard personnel, Hewlett-Packard has not been able to determine completely which of its contracts with the Debtors will be assumed and assigned to the Debtors. Hewlett-Packard has located several contracts that it cannot match to the lists of Hewlett-Packard contracts the trustee proposes to assume and assign which were included in the Exhibits to the Notice.

8. For example, Hewlett-Packard has been unable to locate a copy of the Source License Agreement purportedly between Hewlett-Packard and Debtor SCO Group, Inc. that the trustee seeks to assume and assign. Hewlett-Packard has requested a copy of that agreement from the Trustee, but has not yet received it.

9. The Trustee's counsel has forwarded copies of 7 agreements the Trustee proposes to assume and assign to the buyer of the Debtors assets. Those contracts are as follows:

- i. AT&T Technologies, Inc. Software Agreement (SOFT-00044), dated May 29, 1984;
- ii. AT&T Information Systems Inc. Sublicensing Agreement (SUB-00044-3) (dated June 29, 1987);
- iii. UNIX Europe Software Agreement (SOFT-UK-0023) (dated May 8, 1986);
- iv. AT&T Informatino Systems Inc. Software Agreement (F-SOFT-0223) (dated July 15, 1987);
- v. AT&T UNIX Europe Limited Sublicensing Agreement (SUBL-UK-0024) (dated January 8, 1988);
- vi. The Santa Cruz Operation Inc. OEM Distribution Agreement (dated June 26, 1987); and
- vii. Project Statement #5, Product Development, Gemini Hot Plug PCI (dated November 19, 1997).

10. However, there remain numerous Hewlett-Packard agreements the Trustee seeks to assume and assign listed on the Exhibits to the Notice, which Hewlett-Packard cannot match to contracts it has located.

11. Counsel for the Trustee and Hewlett-Packard have been attempting to identify the contracts actually being assumed, but have not been able to reach a resolution.

12. Hewlett-Packard can state, however, that there is nothing due and owing to Hewlett-Packard on any of its contracts with the Debtors.

### **RESERVATION OF RIGHTS**

13. Under the circumstances, except for the contracts identified in paragraph 9 above and excepts as necessary to give full effect to the Release, the Trustee cannot assume and assign any of the Debtors' contracts with Hewlett-Packard that have not been identified.

14. Moreover, the assumption and assignment of any Hewlett-Packard agreements must be subject to the Release.

**WHEREFORE**, Hewlett-Packard consents to the assumption and the assignment of the contracts identified in paragraph 9 above, provided that the purchaser of the Debtor's assets is bound by the terms of the release, but respectfully prays that: (i) the Trustee the Trustee be prohibited from assuming and assigning any contracts between the Debtors and Hewlett-Packard unless they are identified or are necessary to give full effect to the Release; and (iii) that the

Trustee's assumption and assignment of any such contracts between the Debtors and Hewlett-Packard be subject to the terms of the Release.

Respectfully submitted,

Dated: November 23, 2010

By: /s/ William R. Firth, III  
William R. Firth, III, Esq. (Bar No. 4356)  
**GIBBONS P.C.**  
1000 N. West Street  
Suite 1200  
Wilmington, DE 19801-1058  
Telephone: (302) 295-4875  
Facsimile: (302) 295-4876  
E-mail: [wfirth@gibbonslaw.com](mailto:wfirth@gibbonslaw.com)

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

In re:

The SCO Group, Inc., *et al.*,

Debtors.

**Case No.: 07-11337 (KG)  
(Jointly Administered)**

**Chapter 11**

**Docket Ref. Nos. 1141, 1161 and  
1184**

**CERTIFICATION OF SERVICE**

I, Roger A. Fitzgerald, of full age, hereby certify as follows:

1. I am a senior paralegal employed with the law firm of Gibbons P.C. attorneys for Hewlett-Packard Company ("Hewlett-Packard") in the above-referenced jointly administered Chapter 11 bankruptcy cases.

2. On November 22, 2010, I served on, (i) the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware 19801; (ii) Counsel for the Trustee, Blank Rome, LLP, Attn.: Bonnie G. Fatell, Esq., 1201 Market Street, Suite 800, Wilmington, Delaware 19801; and (iii) the Debtors, c/o Mr. Ryan Tibbits, General Counsel, The SCO Group, Inc., 333 South 520 West, Ste. 170, Lindon, Utah 84042, by United States first-class mail, postage prepaid a copy of Hewlett-Packard's Reservation of Rights of Hewlett-Packard Company Regarding Debtors' Notice of Cure Amounts in Connection with the Assumption and Assignment of Executory Contracts and Unexpired Leases.

I certify that the foregoing statements made by me are true. I am aware that if any of the above statements are false, I am subject to punishment.

Dated: November 23, 2010

/s/ Roger A. Fitzgerald  
Roger A. Fitzgerald

**Miscellaneous:**07-11337-KG The SCO Group, Inc.

Type: bk

Chapter: 11 v

Office: 1 (Delaware)

Assets: y

Judge: KG

Case Flag: LEAD, CLMSAGNT,  
Sealed Doc(s)**U.S. Bankruptcy Court****District of Delaware**

## Notice of Electronic Filing

The following transaction was received from William R. Firth entered on 11/23/2010 at 2:25 PM EST and filed on 11/23/2010

**Case Name:** The SCO Group, Inc.**Case Number:** 07-11337-KG**Document Number:** 1206**Docket Text:**

Reservation of Rights of *Hewlett-Packard Company Regarding Debtors' Notice of Cure Amounts in Connection with the Assumption and Assignment of Executory Contracts and Unexpired Leases* Filed by HEWLETT-PACKARD COMPANY. (Attachments: # (1) Certificate of Service) (Firth, William)

The following document(s) are associated with this transaction:

**Document description:**Main Document**Original filename:**C:\Documents and Settings\sdonat\Desktop\Res of Rights.pdf**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=983460418 [Date=11/23/2010] [FileNumber=9082303-0]  
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45b8eee0c0ae7d84b239864c56620b36dd4f08c57c8ad0bef5b9fe65672a0]]

**Document description:**Certificate of Service**Original filename:**C:\Documents and Settings\sdonat\Desktop\Cert of Service.pdf**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=983460418 [Date=11/23/2010] [FileNumber=9082303-1]  
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2b410fb55a11fa0476448c86747c9d35b1cb454d6af3e1b53d29e9992ae03]]

**07-11337-KG Notice will be electronically mailed to:**

Marc Barreca on behalf of Interested Party MSLI  
bankruptcyecf@klgates.com

Mark Browning on behalf of Creditor Texas Comptroller Of Public Accounts  
, SHERRI.SIMPSON@OAG.STATE.TX.US

# EXHIBIT B

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

In re:

The SCO Group, Inc., *et al.*,

Debtors.

**Case No.: 07-11337 (KG)  
(Jointly Administered)**

**Chapter 11**

**Docket Ref. Nos. 1141, 1161 and  
1184**

**STIPULATION BETWEEN HEWLETT-PACKARD COMPANY AND EDWARD N.  
CAHN, ESQ., CHAPTER 11 TRUSTEE CONCERNING HIS PROPOSED  
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES BETWEEN DEBTORS AND HEWLETT-PACKARD COMPANY**

**RECITALS**

**WHEREAS**, since the early 1980's Hewlett-Packard Company ("Hewlett-Packard") and one or more of the above-captioned Debtors have been parties to a number of contracts and agreements; and

**WHEREAS**, as a result of mergers with and acquisitions of various entities, Hewlett Packard has become a counter-party to additional contracts and agreements with the Debtors; and

**WHEREAS**, some of the aforesaid contracts between Hewlett-Packard and the Debtor have expired, and some remain executory; and

**WHEREAS**, because some of the aforesaid contracts between Hewlett-Packard and the Debtor are more than 20 years old, neither Hewlett-Packard nor The Trustee have not been able, despite diligent searches, to identify or locate all of them; and

**WHEREAS**, before petition date in the above-captioned bankruptcy cases, Hewlett-Packard and one or more of the above-captioned Debtors were parties to litigation concerning

their respective rights to certain intellectual property related to or governed by some or all of the aforesaid contracts between Hewlett-Packard and the Debtors (“IP Litigation”); and

**WHEREAS**, the IP Litigation was resolved by the parties’ entry into a confidential Release of Unix Claims and Agreement dated as of August 15, 2003 (“Release”), which Release set forth the parties’ respective rights to the contracts, which are the subject of the Release and this Stipulation (said contracts, being, hereafter, collectively, “IP Contracts”); and

**WHEREAS**, the parties agreed that the terms and provisions of the Release shall remain confidential; and

**WHEREAS**, pursuant to the Release, among other things, Hewlett-Packard was authorized to use certain intellectual property governed by or related to the IP Contracts that were subject to the Release (said intellectual property being, hereafter, collectively, “Intellectual Property”); and

**WHEREAS**, in connection with his motion to sell substantially all of the Debtors’ assets in this case, the Trustee proposes to assume some or all of the IP Contracts and, perhaps, other contracts between the Debtors and Hewlett-Packard, and assign them to the purchaser, which assumption and assignment is necessary to give force and effect to the Release and will, in fact, give full force and effect to the Release; and

**WHEREAS**, Hewlett-Packard is concerned that the purchaser of the Debtors’ assets and the assignee of any of the IP Contracts recognize the binding effect of the Release with respect to the IP Contracts and communicated its concern in that regard to the Trustee’s Counsel; and

**WHEREAS**, the Trustee understood Hewlett-Packard’s concern that any assignee of an IP Contract recognize the binding effect of the Release; and

**WHEREAS**, in the Omnibus Response of the Chapter 11 Trustee to Reservations of Rights and Informal Comments Regarding the Motion of the Chapter 11 Trustee for Order (1) Authorizing the Marketing, Auction and Sale of Substantially All of the Debtors' Software Business Assets Consistent with Form Asset Purchase Agreement and Free of Clear of Liens, Claims and Encumbrances, (2) Authorizing Assumption, Assignment, and Sale of Certain Executory Contracts and Unexpired Leases, (3) Approving Bidding Procedures in connection with Auction, (4) Establishing Sale Hearing Date, and (5) Granting Related Relief he filed in these jointly administered Chapter 11 bankruptcy on August 19, 2010 [Docket No. 1156, ¶ 7, p. 7], the Trustee agreed that the proposed form of Order approving the sale of the Debtors' assets "will make it clear that the Buyer is bound by the terms of [the Release];" and

**WHEREAS**, On October 15, 2010, the Trustee filed a Notice of Cure Amounts in Connection with the Assumption and Assignment of Executory Contracts ("Notice") [Docket No. 1184] in above captioned jointly administered Chapter 11 bankruptcy cases and served a copy of the Notice on Hewlett-Packard; and

**WHEREAS**, several Exhibits attached to the Notice list contracts between the Debtor and Hewlett-Packard the Trustee seeks to assume and assign to the buyer of the Debtors' assets (hereafter, "Buyer");<sup>1</sup> and

**WHEREAS**, despite a diligent search by Hewlett-Packard personnel and the production of a number of contracts by the Trustee, Hewlett-Packard and the Trustee have not been able to compile a comprehensive list of the IP Contracts that must be assumed by the Trustee and assigned to the purchaser of the Debtors' assets to give full effect to the Release; and

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<sup>1</sup> Copies of those pages listing Hewlett-Packard contracts to be assumed are attached as Exhibit A to this Stipulation.

**WHEREAS**, although desiring to preserve its rights to continue the use of the intellectual property subject to the IP Contracts, Hewlett-Packard nevertheless wishes to facilitate the sale of the Debtors' assets as proposed by the Trustee; and

**WHEREAS**, to that end, Hewlett-Packard acknowledges that there is nothing due and owing to Hewlett-Packard on any of its contracts with the Debtors.

**STIPULATION**

**NOW, THEREFORE**, Hewlett-Packard and the Trustee, by and through their undersigned counsel hereby stipulate and agree as follows:

1. The Release constitutes the operative expression of the intent of Hewlett-Packard and the Debtors that Hewlett-Packard be permitted to use the Intellectual Property.

2. The Release does not constitute an executory contract that can be rejected in the above-captioned jointly administered Chapter 11 bankruptcy cases, but rather a fully executed waiver and release of claims that remains in full force and effect with respect to all parties thereto, as well as their successors and assigns, notwithstanding the Debtor's bankruptcy filings and any discharge the Debtors might receive in the above-captioned jointly administered Chapter 11 bankruptcy cases.

3. Notwithstanding the Debtors' bankruptcy filings and any discharge they might receive in the above-captioned jointly administered Chapter 11 bankruptcy cases, Hewlett-Packard, the Debtors their assignees and their successors shall continue to enjoy their respective rights, privileges and benefits under the Release.

4. Subject to the terms and provisions of this Stipulation, including, but not limited to the provisions of sections 5 and 6 immediately below, Hewlett-Packard consents to the assumption by the Trustee and the assignment to the Buyer all of the IP Contracts, which are

referenced in the Release, including but not limited to, the contracts identified on Exhibit B hereto.

5. The Trustee understands and agrees, and the Order approving the sale of the Debtors' assets (hereafter, "Sale Order") shall provide, that (a) the assumption of any contract between Hewlett-Packard and any of the Debtors pursuant to which Hewlett-Packard is licensed or otherwise authorized to use intellectual property and their assignment to the Buyer shall be subject to the terms and provisions of the Release; and (b) the Buyer shall be bound by the terms and provisions of the Release.

6. By way of example, and not of limitation, the Trustee understands and agrees, and the Sale Order shall provide, that the assumption of any of the IP Contract between Hewlett-Packard and any of the Debtors pursuant to which Hewlett-Packard is licensed or otherwise authorized to use the Intellectual Property and its assignment to the purchaser of the Debtors' assets is made recognizing that Hewlett-Packard has been, is now and will continue to be authorized to use the Intellectual Property, (a) Hewlett-Packard shall be authorized to continue using Intellectual Property according to the terms of (i) the applicable IP Contract or Contracts as supplemented by the Release and (ii) any other applicable law, (b) Hewlett-Packard's use of such intellectual property shall not constitute an infringement of the Buyer's rights in and to such intellectual property; and (c) the purchaser of the Debtors' assets may not prohibit Hewlett-Packard from using such intellectual property as provided by the applicable contract, the Release and other applicable law.

7. To the extent that the Trustee rejects any agreement between Hewlett-Packard and any of the Debtors pursuant to which Hewlett-Packard is licensed or otherwise authorized to use intellectual property, Hewlett-Packard shall be permitted to utilize any such intellectual property

to the full extent permitted by 11 U.S.C. § 365(n), the Release and any applicable non-bankruptcy law, and such use shall not constitute the infringement of the rights of any party in such intellectual property.

8. Any and all contracts between Hewlett-Packard and any of the Debtors pursuant to which Hewlett-Packard is licensed or otherwise authorized to use intellectual property are subject to the Release regardless of whether the Trustee assumes or rejects them.

Dated: February \_\_, 2011

**EDWARD N. CAHN, TRUSTEE**

By:

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Bonnie G. Fatell, Esq. (Bar no. \_\_\_\_\_)  
Stanley B. Tarr, Esq. (Bar No. \_\_\_\_\_)  
Blank Rome, LLP  
1201 Market St., Suite 800  
Wilmington, Delaware 19801  
Telephone: (302) 425-6479  
Facsimile: (302) 425-6464  
E-mail: fatell@blankrome.com  
E-mail: tarr@blankrome.com

Dated: February \_\_, 2011

**HEWLETT-PACKARD COMPANY**

By:

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William R. Firth, III, Esq. (Bar No. 4356)  
**GIBBONS P.C.**  
1000 N. West Street  
Suite 1200  
Wilmington, DE 19801-1058  
Telephone: (302) 295-4875  
Facsimile: (302) 295-4876  
E-mail: wfirth@gibbonslaw.com