

EXHIBIT 3

ORIGINAL

1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----x
SPECHT, et al., :
: :
Plaintiffs, :
: : Civil Action No.
v. : 00-CIV-4871
: (AKH) (SDNY)
NETSCAPE COMMUNICATIONS, :
et al., :
: :
Defendants. :
-----x

-----x
WEINDORF, et al., :
: :
Plaintiffs, :
: : Civil Action No.
v. : 00-CIV-6219
: (AKH) (SDNY)
NETSCAPE COMMUNICATIONS, :
et al., :
: :
Defendants. :
-----x

-----x
GRUBER, et al., :
: :
Plaintiffs, :
: : Civil Action No.
v. : 00-CIV-6249
: (AKH) (SDNY)
NETSCAPE COMMUNICATIONS, :
et al., :
: :
Defendants. :
-----x

CONFIDENTIAL--SUBJECT TO COURT ORDER

Washington, D.C.
Monday, October 20, 2003

The deposition of DAVID Y. PARK, called for examination by counsel for Plaintiffs in the above-entitled matter, pursuant to notice, in the

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offices of Wilmer, Cutler & Pickering, 2400 N Street, N.W., Conference Room 3NE, Washington, D.C., convened at 9:47 a.m., before David A. Kasdan, RDR-CRR, a notary public in and for the District of Columbia, when were present on behalf of the parties:

APPEARANCES:

On behalf of the Plaintiffs:

JOSHUA N. RUBIN, ESQ.
Abbey Gardy, L.L.P.
212 East 39th Street
New York, New York 10016
(212) 889-3700

On behalf of the Defendants:

PATRICK J. CAROME, ESQ.
LOWRY A. CROOK, ESQ.
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420
(202) 663-6000

1 PROCEEDINGS

2 Whereupon,

3 DAVID Y. PARK

4 was called for examination by counsel for Plaintiffs
5 and, after having been duly sworn by the notary
6 public, was examined and testified as follows:

7 EXAMINATION BY COUNSEL FOR PLAINTIFFS

8 BY MR. RUBIN:

9 Q. Good morning, Mr. Park.

10 A. Good morning.

11 MR. CAROME: There are a couple of
12 preliminary things I would like to go through if
13 that's all right with you.

14 MR. RUBIN: Sure.

15 MR. CAROME: Just, first of all, I'm Pat
16 Carome, and along with Lowry Crook, we are here
17 representing Mr. Park both in his personal capacity
18 as well as representing the parties, the defendants
19 to this suit, Netscape and America Online.

20 And I will note that the deposition is
21 being taken pursuant to the May 20th, 2003, letter
22 agreement between counsel for parties in this case,
23 and subject to the limitations of that letter.

24 And also just to be clear, while Netscape
25 has gone to considerable efforts to make Mr. Park

1 Q. Have you ever seen page 629 before?

2 A. No, I have not.

3 Q. If you look at the third bullet from the
4 bottom, there is a phrase, "targeted ad
5 opportunities."

6 Do you see what I'm looking at?

7 A. Yes.

8 Q. Do you understand what targeted ad
9 opportunities are?

10 MR. CAROME: Objection. Vague and
11 ambiguous.

12 MR. RUBIN: I'm not asking with respect to
13 the document but in general.

14 THE WITNESS: In general, yes.

15 BY MR. RUBIN:

16 Q. What is your understanding?

17 A. That we could show appropriate advertising
18 by understanding some aspects, some profile of the
19 user.

20 Q. Was there ever any discussion about whether
21 SmartDownload would create targeted ad
22 opportunities?

23 A. Yes.

24 Q. Who had those discussions?

25 A. I believe I had them with David Pann,

1 Software Builders, and with probably Robin Zucker.

2 Q. When did those discussions begin?

3 A. I believe again during the summer of '98.

4 Q. And did those discussions concern how ads
5 would be targeted?

6 A. I believe we did have that discussion.

7 Q. And what did you discuss about how ads
8 would be targeted?

9 A. I believe some discussions were about
10 understanding the URL of the users they were
11 downloading at that moment, and using the info
12 browser to show relevant content to that file being
13 downloaded, which would have some advertising on the
14 content.

15 Q. Was that ever done?

16 A. No, that was never done.

17 Q. Why not?

18 A. It basically lost its focus, lack of
19 resources to maintain the initiative to have
20 targeted advertising.

21 Q. Why? Why did it lose its focus?

22 A. Lack of resources.

23 Q. Were there resources that had been
24 allocated to this project that were subsequently
25 withdrawn?

1 Q. Do you have an understanding of how those
2 requests relate to the issues, if at all, the
3 security or privacy issues raised in this document?

4 A. There was a discussion with Tom Weinstein,
5 and he gave us his opinion, and he wanted to see a
6 sample version of SmartDownload.

7 Q. And was a sample version provided to him?

8 A. Not sure.

9 Q. If a sample version had been provided to
10 him, would you know?

11 A. Unless it was given to Tom independently of
12 my knowledge, no, I wouldn't.

13 Q. Would somebody have given a version to Tom
14 independently of your knowledge?

15 MR. CAROME: Objection. Hypothetical.

16 BY MR. RUBIN:

17 Q. Would you expect that somebody would have
18 told you if they had given a version to Tom?

19 A. It's possible. It certainly wasn't a
20 requirement.

21 Q. Do you know what Modem Media is, or was?

22 A. I believe at that time it was a company
23 related to serving ads on the Web.

24 Q. And do you know how they--did Netscape have
25 any relationship with Modem Media in the fall of

1 1998?

2 A. To my best recollection, I believe there
3 was some percentage of advertising done with ads
4 that were served by Modem Media.

5 Q. Netscape got advertising revenue from Modem
6 Media?

7 A. I believe the--I don't know the specifics
8 how Modem Media works, but I believe they served a
9 number of ads in an agreement with Netscape.

10 Q. When you say to serve a number of ads, did
11 Modem Media have an agreement with Netscape to serve
12 ads to the InfoBrowser window of SmartDownload?

13 A. I don't know specifically of any
14 involvement with InfoBrowser.

15 Q. Was there a meeting with Modem Media about
16 SmartDownload in September of 1998?

17 A. Not that I recall.

18 MR. RUBIN: I would like to mark as the
19 next document as 10 a document entitled--dated
20 September 18th, 1998, from Robin Zucker to
21 davidp@netscape.com with a cc to several people,
22 including the witness, and these Bates production
23 numbers 720 and 721.

24 (Park Exhibit No. 10 was
25 marked for identification.)

1 THE WITNESS: Okay.

2 BY MR. RUBIN:

3 Q. Have you ever seen this document before?

4 A. I don't remember.

5 Q. You see in the second paragraph, the last
6 sentence says, (reading) "I think this would be a
7 fantastic opportunity to differentiate Netcenter and
8 our ad products from our competition while giving
9 advertisers more innovative ways to communicate."

10 Do you see what I'm looking at?

11 A. Yes.

12 Q. Do you have an understanding of in what way
13 SmartDownload was innovative?

14 MR. CAROME: Objection. Vague and
15 ambiguous.

16 MR. RUBIN: Fair enough.

17 BY MR. RUBIN:

18 Q. Just for the record, the subject of this
19 memo is, "Re: notes from Meeting with Modern Media
20 (sic) concerning SmartDownload."

21 Do you have an understanding of in what way
22 SmartDownload gave advertisers an innovative way to
23 communicate?

24 MR. CAROME: Same objection.

25 THE WITNESS: I do recall some

1 conversations that I've had with Robin Zucker
2 regarding what we can use the InfoBrowser portion of
3 SmartDownload, and I believe what it could be
4 referring to is going beyond traditional banner ads
5 and possibly using that space to serve more media
6 rich ads.

7 BY MR. RUBIN:

8 Q. Did you have discussions with Ms. Zucker
9 about any kinds of media that could be served
10 through the InfoBrowser that couldn't be served
11 through a regular browser?

12 A. I believe we had some conversation about
13 what could be served, but what it came down to was
14 anything that we could do in the browser we could do
15 in the InfoBrowser since they were both browser.

16 Q. Is there anything that the InfoBrowser
17 could do that the browser could not?

18 A. No.

19 Q. You will see that one of the cc's is Lynn
20 Carpenter. Do you know who that is?

21 A. Yes, I do.

22 Q. Who was she?

23 A. I don't remember her exact role, but she
24 was involved in some of the advertising business
25 within Netscape.

1 Q. Do you know what kind of teasing business?

2 A. No, I don't recall.

3 Q. Do you know how she was involved in it?

4 A. I don't.

5 Q. How about David Beckwith?

6 A. David Beckwith may have been Robin Zucker's
7 manager at one point, but he was also part of the
8 Netcenter organization.

9 Q. Do you know how either Ms. Carpenter or
10 Mr. Beckwith were involved with SmartDownload?

11 A. I don't know what specific role they had
12 with SmartDownload.

13 Q. If you turn to the next page, please, in
14 the second paragraph, the last sentence reads,
15 (reading) "Again, collecting data and possible doing
16 a branding study in association with this service
17 might help distill the myth."

18 Do you have any understanding of what that
19 means, "distill the myth?"

20 MR. CAROME: Objection. Lack of
21 foundation, that there is any basis for this witness
22 to interpret the author's meaning.

23 MR. RUBIN: He's a recipient.

24 THE WITNESS: Let me read the paragraph in
25 full again.

1 (Witness reviews document.)

2 THE WITNESS: I'm not a hundred percent
3 sure what David Pann meant by this sentence.

4 BY MR. RUBIN:

5 Q. Do you have any idea? And by the way,
6 it's--well, do you have any idea?

7 A. I believe that this was probably collecting
8 some type of survey data and doing a study which is
9 common in the advertising business.

10 Q. In the next paragraph, I'm going to read
11 the first two sentences, "Robin and I agree that
12 Modem has the right experience and attitude to help
13 make the SmartDownload ad opportunity successful.
14 They gave us great insight into the various ad
15 servers and how they work and don't work with rich
16 media ads."

17 Do you see where I'm looking at?

18 A. Yes.

19 Q. Now, when SmartDownload was launched, the
20 ad server it used was a company called AdForce;
21 right?

22 A. I believe so.

23 Q. And what exactly did AdForce do?

24 MR. CAROME: Objection. Lack of
25 foundation.

1 THE WITNESS: To my best recollection, they
2 were responsible for serving the actual ad itself.

3 BY MR. RUBIN:

4 Q. And when you say they were responsible for
5 serving the ad, they would send the ad to the
6 InfoBrowser window?

7 A. I'm not sure if the InfoBrowser itself used
8 ads from AdForce, but I believe in the SmartDownload
9 client they would send some information that would
10 be displayed in SmartDownload as an ad.

11 Q. Now, when a user was using SmartDownload,
12 how did the ad server, AdForce, for example, know to
13 send information to SmartDownload on that particular
14 user's computer?

15 A. I believe there was probably a request made
16 from the client to the ad server, requesting a new
17 ad.

18 Q. And how did the client know to ask the
19 AdForce server for a new ad?

20 A. I believe somewhere in the client we had
21 put in the refresh rate of how many seconds it
22 should take to ask for a new ad.

23 Q. It's correct, isn't it, that the client was
24 set up so that Netscape could tell the client what
25 server to get an ad from?

1 A. Yes.

2 Q. And is it correct that it was set up so
3 that Netscape could designate AdForce or AOL or
4 other ad servers that could serve ads and that
5 Netscape would take directions from SmartDownload,
6 take directions from Netscape servers about where to
7 get the ads?

8 MR. CAROME: Objection. Vague and
9 ambiguous and compound.

10 THE WITNESS: There was certainly a feature
11 built in so we can tell which ad server it should
12 request an ad from.

13 BY MR. RUBIN:

14 Q. Was part of the way that SmartDownload
15 would generate revenue for Netscape based on the
16 amount of click-throughs of the InfoBrowser window?

17 A. I'm not aware of specifics that the
18 advertiser deals were structured as.

19 Q. Who does know?

20 A. Possibly Robin Zucker or somebody in the
21 advertising organization would know.

22 Q. If the deals were structured so that
23 Netscape would obtain revenues based on
24 click-throughs through the InfoBrowser window, do
25 you have an understanding of how Netscape would

1 determine how many click-throughs there were for
2 each advertiser during any particular period?

3 MR. CAROME: Objection. Hypothetical.

4 THE WITNESS: I believe that is the
5 function of company like AdForce who would report
6 the click-throughs back to Netscape.

7 BY MR. RUBIN:

8 Q. Do you know whether AdForce placed cookies
9 on SmartDownload users' hard drives?

10 A. I do not know.

11 Q. Just correct me if I'm wrong, you testified
12 earlier you don't know whether SmartDownload
13 transmitted the Netscape cookie back to Netscape?

14 A. I do not.

15 MR. RUBIN: I would like to mark as 11 a
16 document dated October--September 22nd, 1998. It
17 says Augusta Feature Plan, and it's Bates numbered
18 608 through 616. And it says at the top, Marketing
19 Lead, David Park.

20 (Park Exhibit No. 11 was
21 marked for identification.)

22 (Brief recess.)

23 BY MR. RUBIN:

24 Q. Have you ever seen this document before?

25 A. Again, I saw this one during--in preparing

1 SmartDownload, in the right-hand column where it
2 says next, the entry in that box says, integration
3 with SmartUpdate.

4 A. Yes.

5 Q. In January of 1999, was that the next
6 priority for SmartDownload integrating with
7 SmartUpdate?

8 A. I don't remember what the priorities next
9 days of the project were going to be.

10 MR. RUBIN: I would like to mark as 17 for
11 identification a document entitled "SmartDownload
12 1.3 Product Requirements Document--Draft" with the
13 witness's name at the top. And these are pages 430
14 through 435.

15 (Park Exhibit No. 17 was
16 marked for identification.)

17 BY MR. RUBIN:

18 Q. Let me know when you are ready, please.

19 (Witness reviews document.)

20 A. Okay.

21 Q. Okay. Did you write this document?

22 A. I believe so.

23 Q. And did you do so on or about January 19th
24 of 1999?

25 A. It seems to indicate that, yes.

1 Q. Now, please look at the second page of this
2 document. There appear to be one or two diagrams on
3 this page. Can you tell me whether I'm looking at
4 one diagram or two?

5 A. I believe it's two diagrams.

6 Q. Okay. Can you explain to me what these two
7 diagrams represent?

8 A. Looks like the first one shows a diagram of
9 SmartDownload client with the associated InfoBrowser
10 window.

11 And the second diagram seems to show only
12 the SmartDownload client by itself.

13 Q. Do the lines and arrows between the boxes
14 on these diagrams represent information flow?

15 MR. CAROME: Objection. Vague and
16 ambiguous.

17 BY MR. RUBIN:

18 Q. Let me ask you: What do the lines with
19 arrows on these diagrams represent?

20 A. I believe that shows where the information
21 is coming from.

22 Q. Are there arrows that point to a box which
23 shows where information is coming from?

24 A. I believe so.

25 Q. So, for example, in the schematic or

1 diagram at the top of the page that shows that
2 information would be coming from Netscape/Netcenter
3 and going to the ad server?

4 A. Which one are you referring to again?

5 Q. The top diagram.

6 A. Can you repeat the question.

7 (Whereupon, the Court Reporter read back
8 the previous question.)

9 THE WITNESS: I believe what that shows is
10 that whatever page is being displayed in the
11 InfoBrowser is coming from the Netcenter servers.

12 BY MR. RUBIN

13 Q. Okay. But I'm asking a slightly different
14 question. I'm asking about the line between the box
15 that says Netscape/Netcenter and the box that says
16 ad server. What I'm asking you is what the line
17 between those two boxes represents.

18 MR. CAROME: Unfortunately, it's very
19 difficult to read, the content of what the witness
20 indicated is the client window, but you might--it's
21 also not completely clear what line you're talking
22 about. What line do you think he's asking about
23 here?

24 THE WITNESS: This line here?

25 MR. RUBIN: Let the record reflect that the

1 answer is yes, that I'm referring to the line
2 between those two boxes. It's the line on the far
3 right of the topmost diagram.

4 THE WITNESS: Okay. I don't specifically
5 remember exactly what that line means, but I believe
6 it would indicate that if the page from Netcenter
7 was displayed in InfoBrowser and the page contains
8 ads, it would come from an ad server.

9 BY MR. RUBIN:

10 Q. Does that line represent information being
11 transmitted from Netcenter to the ad server?

12 MR. CAROME: Objection. Vague and
13 ambiguous.

14 THE WITNESS: I think the line was drawn
15 there because I just didn't want to go through the
16 trouble of drawing out another box. It certainly
17 could have been a separate box. All I meant was
18 there was there was an server associated with those
19 pages.

20 BY MR. RUBIN:

21 Q. If you had drawn another box, where would
22 you have drawn it?

23 MR. CAROME: Objection. Hypothetical.

24 MR. RUBIN: I asked what he means.

25 THE WITNESS: I probably would have drawn

1 yet another box that would feed into the
2 Netscape/Netcenter box.

3 BY MR. RUBIN:

4 Q. Does this diagram show an information flow
5 from the SmartDownload client to Netcenter?

6 A. No, it does not.

7 Q. Did SmartDownload, in fact, transmit
8 information to Netcenter?

9 A. I believe it sent back the URL to
10 Netcenter.

11 Q. And does this diagram show Netcenter
12 transmitting information to an ad server?

13 A. No, it does not.

14 Q. Did Netcenter, in fact, transmit
15 information to an ad server in connection with
16 SmartDownload?

17 MR. CAROME: Objection. Vague and
18 ambiguous.

19 THE WITNESS: Again, it wouldn't be
20 anything specific to SmartDownload, only to request
21 another ad.

22 BY MR. RUBIN:

23 Q. Does this diagram show an ad server
24 transmitting an ad to the SmartDownload client?

25 A. I believe it indicates that it would serve

1 the request made by the SmartDownload client to
2 provide an ad to display on the SmartDownload
3 client.

4 Q. Is it your testimony that
5 Netscape/Netcenter directed the ad server to
6 transmit an ad to the SmartDownload client, that
7 that's what this schematic shows, in part?

8 A. Can you repeat that question, please.

9 (Whereupon, the Court Reporter read back
10 the previous question.)

11 THE WITNESS: In part, but it would--but it
12 was only at the request of the SmartDownload client
13 that it would serve the ad.

14 BY MR. RUBIN

15 Q. And the SmartDownload client would know to
16 request the ad from that ad server by virtue of its
17 communication with the server.ini at Netcenter?

18 A. I believe that's the way it would work.

19 Q. What information did Netscape/Netcenter
20 transmit to the ad server as shown in this diagram?

21 MR. CAROME: Objection. Lack of
22 foundation. I'm not sure there was any indication
23 that Netcenter transmitted anything to the ad
24 server. I thought he was just describing otherwise.

25 THE WITNESS: There has to be some request

1 made to the ad server, but I'm not sure exactly the
2 specifics of, at that particular time, the ad server
3 we used, what information we required to serve up an
4 ad from that.

5 BY MR. RUBIN:

6 Q. In any event, there was information
7 transmitted by Netcenter to the ad server in
8 connection with the ad server's serving the ad to
9 the SmartDownload client?

10 MR. CAROME: Objection. Lack of
11 foundation, and I believe mischaracterizes the prior
12 testimony.

13 MR. RUBIN: I'm asking him.

14 THE WITNESS: It was the SmartDownload
15 client making the request, not Netcenter.

16 BY MR. RUBIN:

17 Q. I understand that, but I'm asking a
18 different question.

19 MR. RUBIN: Could you please read back the
20 question that I asked.

21 (Whereupon, the Court Reporter read back
22 the previous question.)

23 THE WITNESS: So, are you referring to the
24 InfoBrowser as part of SmartDownload client?

25 BY MR. RUBIN:

1 Q. Yes.

2 A. For the InfoBrowser, Netscape/Netcenter
3 would send information to the ad server asking an ad
4 to serve in the InfoBrowser.

5 Q. And what information would Netcenter send
6 to the ad center or to the ad server?

7 A. What specific information required, I don't
8 know.

9 Q. Who knows?

10 A. Whichever ad server company we were using
11 at that time.

12 Q. So, when the ad server was AdForce, AdForce
13 would know what information it required?

14 A. I would assume so.

15 Q. And when the ad server was AOL, AOL would
16 be what information it required?

17 MR. CAROME: Objection. Lack of
18 foundation.

19 MR. RUBIN: Okay. Fair enough.

20 BY MR. RUBIN:

21 Q. Was there a point where AOL became the ad
22 server?

23 A. To my best recollection during my tenure
24 there, it wasn't.

25 Q. I beg your pardon. Well-taken.

1 Apart from AdForce, were there ever any
2 other ad servers used in connection with
3 SmartDownload?

4 A. Again, to my best recollection, I believe
5 it was AdForce.

6 Q. Please turn to the next page of the
7 document. The second heading is summary of features
8 for SmartDownload 1.3, and you will see the third
9 bullet from the bottom says, "resequence SDL
10 communication with Netcenter."

11 Do you see where I'm looking at?

12 A. Yes.

13 Q. Do you have an understanding of what you
14 meant by that?

15 A. I don't specifically know.

16 MR. RUBIN: I would like to mark as 18 for
17 identification a document entitled Netscape Smart--

18 MR. CAROME: I pointed the witness to two
19 pages later in the document that perhaps would be
20 pertinent to the last question you asked him to
21 refresh his recollection.

22 THE WITNESS: I believe that bullet about
23 resequencing SDL communication with Netcenter had to
24 do with how the configurations from the server.ini
25 file essentially was going to--when was going to