

**PUBLIC REDACTED VERSION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ABELSON | HERRON LLP  
Michael Bruce Abelson (State Bar No. 130739)  
Leslie A. Pereira (State Bar No. 180222)  
333 South Grand Ave, Suite 650  
Los Angeles, California 90071-1559  
Telephone: (213) 402-1900  
Facsimile: (213) 402-1901  
mabelson@abelsonherron.com  
lpereira@abelsonherron.com

BERGESON, LLP  
Daniel J. Bergeson (State Bar No. 105439)  
Hway-ling Hsu (State Bar No. 196178)  
303 Almaden Boulevard, Suite 500  
San Jose, California 95110-2712  
Telephone: (408) 291-6200  
Facsimile: (408) 297-6000  
dbergeson@be-law.com  
hhsu@be-law.com

Attorneys for Plaintiff  
NETSCAPE COMMUNICATIONS CORP.  
and AMERICA ONLINE, INC.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION**

NETSCAPE COMMUNICATIONS CORPORATION, et al.,  
  
Plaintiffs,  
  
v.  
  
FEDERAL INSURANCE COMPANY, et al.,  
  
Defendants.

CASE NO. C-06-00198 JW (PVT)  
  
Case Filed: December 12, 2005  
Assigned to: Hon. James Ware  
Courtroom: 8  
  
**DECLARATION OF DAVID PARK IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT [WITH EXHIBITS A-F]**  
  
Date: March 26, 2007  
Time: 9:00 a.m.  
Judge: Hon. James Ware  
Place: 8, 4<sup>th</sup> Floor, San Jose

**DOCUMENT SUBMITTED UNDER SEAL  
PUBLIC REDACTED VERSION**

**DECLARATION OF DAVID PARK**

I, David Park, declare as follows:

1. I am Executive Director, Mobile and Web Strategy, Audience Business for AOL LLC. During the period 1998 to September, 1999, I was a senior product manager for Netscape Communication Corporation's Netcenter division, and was responsible for coordinating Netscape's efforts in developing and launching SmartDownload. At various times, I was described as the "marketing lead" or "program manager." I have personal, first-hand knowledge of the matters stated herein and, if called to testify, could and would testify competently thereto.

2. Netscape is not, and never was, an Internet Service Provider (ISP).

3. Netscape's Netcenter division was located in Mountain View, California, and that is physically where I worked while employed by Netscape in 1998 and 1999. The other Netscape employees with responsibility at this time for developing and launching SmartDownload also worked in Mountain View, California.

4. SmartDownload assists users in downloading certain types of files. During the period 1998-1999, users obtained SmartDownload by connecting to Netscape's web page and downloading the software from Netscapes's standard web servers, which were housed in Mountain View, California. Once downloaded to a users' computer, SmartDownload enabled a user who experiences a download interruption to resume the download at the point of interruption.

5. During use, the initial version of SmartDownload (Version 1.1) transmitted certain user information back to Netscape (like the URL of the file being downloaded) (the "Behavioral Data"). The Behavioral Data was sent to Netscape's standard web servers in Mountain View, California.

6. SmartDownload's behavioral targeting feature was included in the product design for technical reasons, and to develop marketing opportunities. As far as I know, Netscape never used the Behavioral Data for any purpose, including marketing purposes.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

7. During the period 1998 and 1999, I could have accessed the Behavioral Data, as could other Netscape employees in my department. Also Netscape engineers, among others, had access to the Behavioral Data for technical purposes such as insuring the data was, in fact, being recorded.

8. Attached hereto as Exhibit A is a true and correct copy of an internal Netscape memorandum I prepared regarding SmartDownload.

9. Attached hereto as Exhibit B is a true and correct copy of an e-mail message I received on or about September 18, 1998 from Robin Zucker, another Netscape marketing employee.

10. Attached hereto as Exhibit C is a true and correct copy of excerpts of a deposition I gave in connection with the underlying SmartDownload litigations against Netscape and AOL. My testimony there is true and correct, and is incorporated herein by reference.

11. Attached hereto as Exhibit D is a true and correct copy of a Software Requirements Specification for SmartDownload. A copy of this document was sent to me for my review and approval.

12. Attached hereto as Exhibit E is a true and correct copy of an internal Netscape memorandum I prepared regarding SmartDownload.

13. Attached hereto as Exhibit F is a true and correct copy of an e-mail message I received on or about September 30, 1998 from my then-supervisor, David Pann.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed this 11<sup>th</sup> day of January 2007 at Dulles, Virginia.

  
\_\_\_\_\_  
David Park

# EXHIBIT A

### Augusta Feature Plan

Marketing Lead: David Park, x3739  
Updated: 8/25/98

**Netscape Confidential -- Do Not Distribute**

#### Introduction

**Problem:** According to our Customer Service grup, number #1 problem our users face today is the inability to consistently download large files over low bandwidth and sometimes unreliable connections. It is very evident from reviewing the weekly customer support reports. As the download files become larger, continued customer frustrations can have direct impact on use of our download services. For example, the current version of Communicator is over 18mb and even with a very reliable connection, it could take over 2 hours to download using a 28.8 modem. If the user's download session is interrupted, he/she is forced to start the download process from the beginning no matter how far they got in their previous attempts.

**Solution:** Augusta is a client tool specifically designed to help our Customers downloading files from Netcenter. The key feature of Augusta is the download resume feature which allows Customers to resume an interrupted file download from the point of interruption without having to start all over from the beginning. By taking advantage of this feature, we should be able to reduce some of the frustrations users are experiencing. This would be a convenience value-add to users coming to Netcenter in search of Netscape products, plug-ins, patches, and/or shareware.

Some of the immediate benefits from Augusta include:

- resumable downloads from system crashes and network disconnects
- pause and resume downloads
- able to serve banner ads on progress bar
- can be implemented through out Netcenter including Netscape product download, shareware, and SmartUpdate
- can be used for any download site on the web
- works for both IE and Nav/Comm users
- familiar progress bar UI for customer
- introduce a new MIME type designed specifically for download sites

#### Objective

- Netscape clients

EXHIBIT Pack 8

Date: 10/20/85

Reporter: David A. Kasdan, RMR, CRR

CONFIDENTIAL-Subject  
to Court Order - Nos. 00CIV6249,  
00CIV4571 & 00CIV6219

SDB 000693

**CONFIDENTIAL**

NET/SDL0004536

Netscape clients, both Navigator and Communicator, are the most downloaded file from Netcenter. We hope to have the first implementation of Augusta to benefit those customers downloading our Client products.

Current, tentative schedule is to deliver Augusta with 4.5 RTM scheduled for end of October, 1998.

- Netcenter Integration

It is our long term objective to introduce Augusta in all download sites in Netcenter including Netscape servers/tools, SmartUpdate, Shareware, plug-ins, and Software Depot.

- Additional platforms and languages

Although initial release of Augusta will be for Win95/98/NT platform, we will develop a version for the Mac platform.

Customers outside of the United States will benefit from Augusta and we will offer localized versions of this tool.

**Related documents:**

Augusta Customer Scenarios and Benefits  
Conceptual UI Flow

**Glossary**

IDP = Internet Download Profile (MIME type) with information specific to a particular file such as the URL, product name and version, etc.

'target file' or 'target download file' = product file selected by Customer for download for which an IDP file is generated and recognized by Augusta

**Augusta Usage Scenario**

*Downloading a file with and without Augusta*

**CONFIDENTIAL**-Subject  
to Court Order - Nos. 00CIV6249,  
00CIV4871 & 00CIV6219

<p><b>Customer #1</b>  Visits Netcenter <i>without</i> Augusta installed to download Communicator, the target file</p>	<p><b>Customer #2</b>  Visits Netcenter with Augusta <i>already installed</i> to download Communicator, the target file</p>
<p><b>All Customers</b>  Customer locates the product link for Comm 4.5 and selects where to save the target file  Netcenter detects platform, client, version, and whether or not Customer's client has Augusta already installed</p>	

**CONFIDENTIAL**

**SDB 000694**

NET/SDL0004537

<b>Customer #1</b> Customer actually downloads an executable Augusta stub embedded with instructions in the IDP MIME type. Customer double-clicks on the Augusta stub to start the download of the target file Once download is complete, Customer is given a choice to keep Augusta and continue with installing Comm 4.5 or to remove it.		<b>Customer #2</b> Customer downloads only the IDP MIME type. Augusta plug-in recognizes the IDP MIME type and starts the download of the target file Once the download of Comm 4.5 is complete, Customer is asked if Augusta should continue with the install of Comm 4.5	
<b>Keep it</b> Augusta executes the target file install executable and starts the install process.	<b>Remove it</b> Customer left with target file install executable	<b>Continue</b> Augusta executes the target file install executable and starts the install process	<b>Not Continue</b> Customer left with target file install executable

*Pausing a Download*

<b>All Customers</b> While downloading target file, Augusta displays a progress window. The progress window displays a graphical representation of download progress, percentage complete, product (file) name, version, vendor name, etc. During the download, customer can choose to either pause or cancel the download.			
<b>Pause</b> Customer is asked 'Do you want to continue the download later?'		<b>Cancel</b> Customer is asked to confirm cancel of download	
<b>Okay</b> Progress Window closed Left with both Augusta stub and portion of target file downloaded	<b>Cancel</b> Returned to progress window and download continues	<b>Yes</b> Progress Window closed and portion of target file downloaded is removed	<b>No</b> Returned to progress window and download continues

*Resuming Previously Paused Downloads*

**CONFIDENTIAL**-Subject to Court Order - Nos. 00CIV6249, 00CIV4871 & 00CIV6219

<b>All Customers</b> Customer double clicks on the Augusta executable and is presented with list of files: <ul style="list-style-type: none"> <li>files that have been paused previously, percentage remaining</li> </ul>
--

**CONFIDENTIAL**

**SDB 000695**



- files that are currently being downloaded, percentage complete

Customer can decide to resume downloading on the paused files as well delete/cancel the download either paused or current.

**Summary of Features**

1. Internet Download Profile (IDP) for each download from Netcenter
2. Downloading Augusta
3. Download UI
4. Dynamic Reconnect
5. Pause and Resume Download
6. File Verification
7. Banner ads and buttons from Netscape during the download process
8. Log information about the download session transmitted back to Netscape

**Detail of Features**

	Priorities
P0	Must have
P1	Need to have
P2	Nice to have
P3	If we have time

CONFIDENTIAL-Subject to Court Order - Nos. 00CIV6249, 00CIV4871 & 00CIV6219

		priority	In-house/ Outsourced	Note
A	General Requirements Support for Win95/98/NT browser is highest priority. Support for Mac and Win 3.1 is next. No current plans for Unix support.			
1	Support for Win 95/98/NT	P0		
2	Support for Mac PPC	P1		

**CONFIDENTIAL**

SDB 00069A

NET/SDL0004539



3	Support for Win 3.1	P2		4.5 client will not be offered in Win16
4	Support for 3.x Navigator and 4.x Communicator/Navigator	P0		
5	Support for 2.x Navigator	P2		
6	Support for 3.x and 4.x IE	P0		
7	Support for FTP, HTTP, and HTTPS ( for 128bit downloads)	P0		
8	SmartUpdatable using JAR format	P2		
9	Localized for non-English customers	P1		See section B
B	<b>Internet Download Profile (IDP) MIME type</b> This profile information supplied to Augusta will differentiate download experience from Netcenter from other download sites.		in-house	
1	For each download file, IDP MIME type will maintain: <ul style="list-style-type: none"><li>• URL for primary and up to 4 alternate sites</li><li>• target download file size</li><li>• target file product name</li><li>• product version</li><li>• product description</li><li>• name of developer of product</li><li>• Augusta customer support e-mail address</li><li>• comments related to download</li><li>• Augusta download log send destination address</li></ul>	P0	in-house	IDP MIME type can also be extended to include localized text which can then be used in the international version of Augusta UI. The executable would be the same as one offered on the US sites but the UI can be easily localized using IDP.  New MIME type must be registered with a governing body.  What format will IDP be in? <ul style="list-style-type: none"><li>• ascii for the first release</li><li>• XML for subsequent releases</li></ul>
2	scan in content from Cnet shareware pages for FTP/HTTP/HTTPS address sequenced by reliability rating. Generate IDP MIME type.	P1	in-house	Currently being implemented outside of PDMS. May not be an issue with first release of Augusta.
3	content generated by and maintained in PDMS		in-house	addition of new fields and modification to PDMS database may be required
	Downloading Augusta Experience			

**CONFIDENTIAL**

SDB 000697

CONFIDENTIAL-Subject to Court Order - Nos. 00CIV6249, 00CIV4871 & 00CIV6219

C	<p>Depending on whether or not the customer already has Augusta installed, the download experience will be different.</p>			
1	<p>Customers without Augusta:</p> <ul style="list-style-type: none"> <li>Customer downloads Augusta executable with profile from IDP MIME type for the target download file</li> <li>Customer double clicks on the downloaded Augusta executable file to initiate the remaining download process</li> </ul>	PO		<p>Spoke to Sven about using server resources to dynamically link the executable with the IDP MIME type. Further discussion of how this will be implemented required. Preference would be to link them together versus having the Customer download Augusta first then the IDP MIME type.</p>
2	<p>Customer with Augusta:</p> <ul style="list-style-type: none"> <li>Customer downloads only IDP MIME type for the target download file</li> <li>Existing Augusta plug-in recognizes the IDP MIME type and immediately initiates the download using the profile maintained in IDP</li> </ul>	PO		
D	<p><b>Download UI</b></p> <p>It is very important that the UI has the look/feel of being native to the platform. Customer should feel comfortable using Augusta with having to learn a new set of commands and peculiarity of the UI. All components of UI should adhere to this guideline.</p>			<p>UI requirement</p>
1	<p>When maximized, display download information:</p> <ul style="list-style-type: none"> <li>Moving progress bar with percentage complete</li> <li>complete product name if downloading from Netcenter and file name only from all other sites</li> <li>file size and bytes downloaded</li> </ul>	PO		<p>UI requirement</p>

CONFIDENTIAL-Subject to Court Order - Nos. 00CIV6249, 00CIV4871 & 00CIV6219

**CONFIDENTIAL**

**SDB 000698**

NET/SDL0004541

	<ul style="list-style-type: none"> <li>time left in min.sec</li> <li>FTP/HTTP/HTTPS host server currently connected</li> </ul>			
2	When minimized, <ul style="list-style-type: none"> <li>display percent complete in button on the task bar</li> <li>mouse over displays product name if downloading from Netcenter and file name only from all other sites</li> </ul>	P2		UI requirement Win95/98/NT only
3	Detect presence of network connection and generate warning message if disconnected during download	P0		UI requirement
<b>E Dynamic Reconnect with Server</b>				
1	When connection with a server is lost, Augusta automatically makes connection to an alternate site specified in the IDP MIME type.	P0		
2	Transparent to the Customer. No detectable disruption to the download process.	P0		
3	Detect server that does not support byte-range and alert Customer that server does not support Download Resume	P0		UI requirement
<b>F Pause and Resume Download</b>				
1	Maintain target file downloads in progress in temp file	P0		
2	Support for multiple instances of downloads	P0		
3	Reconnect to FTP/HTTP servers supporting byte range and attempt to reinitiate download from point of interruption	P0		
4	Customer can pause and resume target file download using Augusta	P0		
5	Detect presence of network connection and generate warning message if not connected when Augusta executable is launched	P0		
	Present Customer with both			UI requirement

CONFIDENTIAL-Subject to Court Order - Nos. 00CIV6249, 00CIV4871 & 00CIV6219

SDB 000699

**CONFIDENTIAL**

NET/SDL0004542

6	download in progress and downloads that can be resumed	P0		
<b>G File Verification</b>				
1	Verify that target file downloaded successfully without corruption	P0		
<b>H Banner Ads and Buttons from Netscape</b>				
1	support for banner ads and related URL click on banner opens new browser window pointing to URL from ad	P0		
2	support for displaying downloading product name at task bar mouse-over on minimized Augusta	P2		Win 95/98/NT only
3	Permanent buttons promoting Netscape Netcenter and 3rd party vendor(s) with related URL Click on button opens new browser window displaying pointing to URL in the button	P0		
4	serve ads only when the progress windows is active	P0		does not impact download performance when in background
1	<b>Transmit Download Information back to Netscape</b> information about the download session is sent back to Netscape's log.			Currently trying to determine complete set of log requirement and process
1	FTP/HTTP/HTTPS host server	P0		
2	Target file name	P0		
3	Number of times Augusta was paused before download	P0		
4	Netcenter user name	P2		

Tentative Development Schedule

CONFIDENTIAL-Subject to Court Order - Nos. 00CIV6249, 00CIV4871 & 00CIV6219

SDB 000700

**CONFIDENTIAL**

NET/SDL0004543

Milestone	start	end	notes
negotiations with developer partner		8/21/98	
start development	8/24/98		
alpha		9/4/98	
Beta1		9/18/98	
internal QA	9/18/98	9/23/98	
Beta2	9/28/98		
internal QA	9/28/98	10/2/98	
Internal release	10/14/98		
GA	10/22/98		same as current scheduled RTM for Communicator 4.5

### Issues/Concerns

1. Time pressure for roll-out in 4th quarter and current plans to launch with Communicator 4.5 release
2. QA resources from both Netcenter and CPD required for testing Augusta with both Netscape browser and 3rd party browsers including IE.
3. Lack of Netcenter engineering resources
4. Potentially significant modification to existing PDMS
5. Integration of Cnet content
6. Customer feedback on Augusta and its introduction of ads during download time.
7. Registration of IDP MIME type in time for introduction
8. Low priority for Unix client support
9. Customer support
10. Capabilities of partner developer

### Follow-up Actions

1. Technical feasibility with Netcenter/CPD Engineering and Product Marketing
2. Selection of potential partner developer
3. Usability testing of UI and process
4. Coordination with CPD 4.5 team
5. Coordination with Netcenter Software Services team to work on integration with remaining services
6. Marketing plan
7. Coordination with Netcenter engineering, production, advertising and sales

**CONFIDENTIAL**

CONFIDENTIAL-Subject  
to Court Order - Nos. 00CIV6249,  
00CIV4871 & 00CIV6219

SDB 000701

NET/SDL0004544

# **EXHIBIT B**

---

From: Robin Zucker  
 Sent: Friday, September 18, 1998 2:10 AM  
 To: davidp@netscape.com  
 Cc: Mike Homer; Wayne Dyer; Lynn Carpenter; David Park; Robin Zucker; Dave Beckwith  
 Subject: Re: Notes from Meeting w/Modem Media concerning SmartDownload

All-

I think we should partner with several key advertisers, media rich companies to create a case study on the potential for use of this ad vehicle. I feel strongly that Intel can help us drive this (they have a strong media rich agenda).

The relationship potential with key advertisers combined with the use of some of the more interesting media rich formats would be a good story for us to share with the trades (ad and internet). I think this would be a fantastic opportunity to differentiate Netcenter and our ad products from our competition, while giving advertisers more innovative ways to communicate.

Here are some examples of ads that would work really well in this space...and that advertisers are excited about.

These ads allow the user to do everything from complete a transaction, register and play a game in a banner.

Play golf using with Mr. Jenkins of Tanquary fame  
<http://www.thethinkingmedia.com/portfolio/index3.html>

Banners that allow you to transact, print, play games and interact  
<http://www.enliven.com/gallery.htm>

Through my contacts at Modem I think we can get some feedback (ideally buy in) from John Nardone who heads up their media group and is a key player and thought leader in the industry.

Robin

David Pann wrote:

EXHIBIT PACK 10

Date:

10/20/03

Reporter: David A. Kasdan, RMR, CRR

Mike, Wayne, Lynn

Robin and I had a good meeting with some folks from Modem Media Poppy Tyson. We discussed the SmartDownload service/utility and the opportunity for media rich ads. Modem has worked closely with a number of thier clients to develop rich ads. They did a big campaign last year, in which Intel funded the production of the rich ads for a number of thier customers.

The feedback they gave us was that the SmartDownload utility was very clever and a good use of the time. They think it would be a good use of rich ads. They suggested Netscape

**CONFIDENTIAL**

CONFIDENTIAL-Subject

NET/SDL0004546



work with Intel to develop a campaign around this utility to showcase 5 to 10 companies. Robin knows the contact folks at Intel and we will meet with them ASAP. The goal of the campaign would be to run for 1 to 2 months, generate the traffic and numbers to produce a white paper. This information would be used to line up other advertisers for this new service.

We also discussed the purpose of the ads. Whether they should be for click-thrus or branding. While the Modem folks realize the value of branding, thier customers see the potential value but have not bought into the internet as a branding source. Modem's customers are still looking for people to come to thier site, register or execute some e-commerce transation. Again collecting data and possible doing a branding study in association with this service might help distill the myth.

Robin and I agree that Modem has the right experience and attitude to help make the SmartDownload ad opportunity successful. They gave us great insight into the various ad servers and how they work and don't work with rich media ads. Don't assume AdForce will work with enliven or other rich media technologies. Robin and I are going to talk to Intel and get back intouch with the folks from Modem.

The Modem folks mentioned that thier creative directors in NY would be great people to brainstorm with about this opportunity. They would also be able to give us more insight into the branding vs. traditional ad models. Mike, I would like to try and setup a meeting with them when we are in NY or sooner if they are come into SF. It would be great to get all the creative folks in one room and see if this branding ad concept can be adopted.

Robin, please add your comments.

david

**CONFIDENTIAL**

CONFIDENTIAL-Subject  
to Court Order - Nos. 00CIV6249,  
00CIV4871 & 00CIV6219

**SDB 000721**

NET/SDL0004547

# EXHIBIT C

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

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

C O N T E N T S

	EXAMINATION BY COUNSEL FOR	
WITNESS	PLAINTIFFS	DEFENDANTS

DAVID Y. PARK

By Mr. Rubin 5, 196

By Mr. Carome 192

E X H I B I T S

NUMBER	MARKED FOR IDENTIFICATION
--------	---------------------------

Park No. 1 33

Park No. 2 44

Park No. 3 45

Park No. 4 46

Park No. 5 46

Park No. 6 (To be attached) 99

Park No. 7 103

Park No. 8 117

Park No. 9 122

Park No. 10 132

E X H I B I T S

NUMBER	MARKED FOR IDENTIFICATION
Park No. 11	139
Park No. 12	144
Park No. 13	149
Park No. 14	152
Park No. 15	157
Park No. 16	162
Park No. 17	163
Park No. 18	172
Park No. 19	179
Park No. 20	181

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 available at the plaintiffs' request, Mr. Park is  
2 here testifying simply as an ordinary witness, as an  
3 ordinary fact witness and not as a Rule 30(b)(6)  
4 representative of Netscape or AOL. I think that's  
5 understood. I wanted to make sure that was clear.

6 MR. RUBIN: That's fine. But presumably  
7 you're representing him not only in his individual  
8 capacity, and as representing Netscape, but  
9 representing him in his capacity as an ex-employee  
10 of Netscape?

11 MR. CAROME: Yes, all of those things,  
12 that's correct.

13 BY MR. RUBIN:

14 Q. Mr. Park, I'm Josh Rubin, and I'm one of  
15 the counsel for the plaintiffs in three cases in the  
16 Southern District of New York against Netscape.

17 Are you familiar generally with what those  
18 cases are about?

19 A. No, I'm not.

20 Q. Are you familiar with a piece of Netscape  
21 software called SmartDownload?

22 A. Yes, I am.

23 Q. I goes first of all--I guess first of all I  
24 should make a couple of preliminary requests,  
25 please, to try to let me finish my question before

1 Q. How many interviews did you have at  
2 Netscape before you were hired?

3 A. I believe I interviewed with four or five  
4 individuals.

5 Q. Do you recall who they were?

6 A. One person's name was Brian Byun, B-Y-U-N.  
7 Second person's name was Doug Sawamura,  
8 S-A-W-A-M-U-R-A. And another person's name was  
9 Eckert, E-C-K-E-R-T, Walther, W-A-L-T-H-E-R. And  
10 there was probably a couple of other individuals who  
11 I don't remember.

12 Q. Just for clarity, Eckert was the first  
13 name?

14 A. Eckert was the first name.

15 Q. And do you know who these people were?

16 A. I believe they were all in some sort of  
17 product management role. I'm not sure of their  
18 exact levels or exact title.

19 Q. Did you wind up working for or under or  
20 reporting to any of these four people?

21 A. I reported to Deepak Puri.

22 Q. And what was your position in Netscape when  
23 you started?

24 A. I believe my title was senior product  
25 manager.

1 Q. How many interviews did you have at  
2 Netscape before you were hired?

3 A. I believe I interviewed with four or five  
4 individuals.

5 Q. Do you recall who they were?

6 A. One person's name was Brian Byun, B-Y-U-N.  
7 Second person's name was Doug Sawamura,  
8 S-A-W-A-M-U-R-A. And another person's name was  
9 Eckert, E-C-K-E-R-T, Walther, W-A-L-T-H-E-R. And  
10 there was probably a couple of other individuals who  
11 I don't remember.

12 Q. Just for clarity, Eckert was the first  
13 name?

14 A. Eckert was the first name.

15 Q. And do you know who these people were?

16 A. I believe they were all in some sort of  
17 product management role. I'm not sure of their  
18 exact levels or exact title.

19 Q. Did you wind up working for or under or  
20 reporting to any of these four people?

21 A. I reported to Deepak Puri.

22 Q. And what was your position in Netscape when  
23 you started?

24 A. I believe my title was senior product  
25 manager.

1 the question.

2 Was it your choice to move to the portal  
3 space, or were you assigned to it?

4 A. It was my choice.

5 Q. And what was your position when you made  
6 that move?

7 A. I believe my title, again, was senior  
8 product manager.

9 Q. And what was the product at that point?

10 A. The product was the computing and Internet  
11 channel.

12 Q. So, this product wasn't the software  
13 product. It was a web product?

14 A. Correct.

15 Q. Now, can you tell me what your  
16 responsibilities were as senior product manager for  
17 the computing and Internet channel.

18 A. There were portions of the site that I was  
19 responsible for. In particular was the  
20 Communicator, of the browser downloads section of  
21 the site, ensuring coordination with our client  
22 division to make sure that we can effectively  
23 distribute the browser, as well as any associated  
24 web pages and working with our ad sales folks to  
25 maximize revenue on those pages.

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?

# EXHIBIT D



**EXHIBIT FILED**  
**UNDER SEAL**

# EXHIBIT E

Augusta Feature Plan

Marketing Lead: David Park, x3739  
Updated: 9/22/1998

EXHIBIT Park 11  
Date: 10/20/03  
Reporter: David A. Kasdan, RMR, CRR

**Netscape Confidential -- Do Not Distribute**

**Introduction**

**Problem:** According to our Customer Service group, number #1 problem our users face today is the inability to consistently download large files over low bandwidth and sometimes unreliable connections. It is very evident from reviewing the weekly customer support reports. As the download files become larger, continued customer frustrations can have direct impact on use of our download services. For example, the current version of Communicator is over 18mb and even with a very reliable connection, it could take over 2 hours to download using a 28.8 modem. If the user's download session is interrupted, he/she is forced to start the download process from the beginning no matter how far they got in their previous attempts.

**Solution:** Augusta is a client tool specifically designed to help our Customers downloading files from Netcenter. The key feature of Augusta is the download resume feature which allows Customers to resume an interrupted file download from the point of interruption without having to start all over from the beginning. By taking advantage of this feature, we should be able to reduce some of the frustrations users are experiencing. This would be a convenience value-add to users coming to Netcenter in search of Netscape products, plug-ins, patches, and/or shareware.

Some of the immediate benefits from Augusta include:

- resumable downloads from system crashes and network disconnects
- pause and resume downloads
- able to serve banner ads on progress bar
- can be implemented through out Netcenter including Netscape product download, shareware, and SmartUpdate
- can be used for any download site on the web
- works for both IE and Nav/Comm users
- familiar progress bar UI for customer
- introduce a new MIME type designed specifically for download sites

**Objective**

- Netscape clients

Netscape clients, both Navigator and Communicator, are the most downloaded file from Netcenter. We hope to have the first implementation of Augusta to benefit those customers downloading our Client products.

Current, tentative schedule is to deliver Augusta with 4.5 RTM scheduled for end of October, 1998.

**CONFIDENTIAL**

SDB 000000

CONFIDENTIAL-Subject  
to Court Order - Nos. 00CIV6249,  
00CIV6271 & 00CIV6219.

NET/SDL0004548

- Netcenter Integration

It is our long term objective to introduce Augusta in all download sites in Netcenter including Netscape servers/tools, SmartUpdate, Shareware, plug-ins, and Software Depot.

- Additional platforms and languages

Although initial release of Augusta will be for Win95/98/NT platform, we will develop a version for the Mac platform.

Customers outside of the United States will benefit from Augusta and we will offer localized versions of this tool.

**Related documents:**

Augusta Customer Scenarios and Benefits  
Conceptual UI Flow

**Glossary**

IDP = Internet Download Profile (MIME type) with information specific to a particular file such as the URL, product name and version, etc.

'target file' or 'target download file' = product file selected by Customer for download for which an IDP file is generated and recognized by Augusta

**Augusta Usage Scenario**

*Downloading a file with and without Augusta*

<b>Customer #1</b> Visits Netcenter <i>without</i> Augusta installed to download Communicator, the target file	<b>Customer #2</b> Visits Netcenter with Augusta <i>already installed</i> to download Communicator, the target file
---	--

**All Customers**  
 Customer locates the product link for Comm 4.5 and selects where to save the target file.  
 Netcenter detects platform, client, version, javascript on, and whether or not Customer's client has Augusta already installed

<b>Customer #1</b> Customer actually downloads an executable Augusta stub concatenated with target file IDP MIME type. Customer double-clicks on the Augusta stub to start the download of the target file Once download is complete, Customer is given to	<b>Customer #2</b> Customer downloads only the IDP MIME type. Augusta plug-in recognizes the IDP MIME type and starts the download of the target file Once the download of Comm 4.5 is complete, Customer is asked if Augusta should continue with
---	---

**CONFIDENTIAL**

CND 000000

CONFIDENTIAL-Subject

NET/SDL0004549

continue with installing Comm 4.5

the install of Comm 4.5

**Install it**

Augusta executes the target file install executable and starts the install process.

**Install Later**

Customer left with target file install executable

*Pausing a Download*

**All Customers**

While downloading target file, Augusta displays a progress window.

The progress window displays a graphical representation of download progress, percentage complete, product (file) name, version, vendor name, etc.

During the download, customer can choose to either pause or cancel the download

<b>Pause</b>		<b>Cancel</b>	
Customer is asked 'Do you want to continue the download later?'		Customer is asked to confirm cancel of download	
<b>Okay</b>	<b>Cancel</b>	<b>Yes</b>	<b>No</b>
Progress Window closed	Returned to progress window and download continues	Progress Window closed and portion of target file downloaded is removed	Returned to progress window and download continues
Left with both Augusta stub and portion of target file downloaded			

*Disconnected Downloads*

**All Customers**

Customer is given a warning message that he/she has been disconnected from the net. Download is automatically paused.

Once reconnected, customer can resume download

**CONFIDENTIAL**

SDB 000610

CONFIDENTIAL-Subject  
to Court Order - No. 00CTV6240

NET/SDL0004550

**Summary of Features**

1. Internet Download Profile (IDP) for each download from Netcenter
2. Downloading Augusta
3. Download UI
4. Dynamic Reconnect
5. Pause and Resume Download
6. File Verification
7. Banner ads and buttons from Netscape during the download process
8. Log information about the download session transmitted back to Netscape
9. InfoBrowser

**Detail of Features**

<b>Priorities</b>
<b>P0</b> Must have
<b>P1</b> Need to have
<b>P2</b> Nice to have
<b>P3</b> If we have time

	priority	In-house/ Outsourced	Note
<b>General Requirements</b>			
A Support for Win95/98/NT browser is highest priority. Support for Mac and Win 3.1 is next. No current plans for Unix support.			
1 Support for Win 95/98/NT	P0		
2 Support for Mac PPC	P1		
3 Support for Win 3.1	P2		4.5 client will not be offered in Win16.
4 Support for 3.x Navigator and 4.x Communicator/Navigator	P0		
5 Support for 2.x Navigator	P2		
6 Support for 3.x and 4.x IE	P0		
7 Support for FTP, HTTP, and HTTPS (for 428bit-downloads)	P0		128 bit download in release 2
8 SmartUpdatable using JAR format	P2		
9 Localized for non-English customers	P1		See section <u>B</u>

**CONFIDENTIAL**

000 000011

CONFIDENTIAL-Subject  
to Court Order - Nos. 00CIV6249.

NET/SDL0004551

Localization will start with release 2

**Internet Download Profile (IDP) MIME type**

in-house

**B** This profile information supplied to Augusta will differentiate download experience from Netcenter from other download sites.

For each download file, IDP MIME type will maintain:

in-house

IDP MIME type can also be extended to include localized text which can then be used in the international version of Augusta UI. The executable would be the same as one offered on the US sites but the UI can be easily localized using IDP.

- URL for primary and up to 4 alternate sites
- target download file size
- target file product name
- product version
- product description
- 1** • name of developer of product **P0**
- Augusta customer support e-mail address
- comments related to download
- Augusta download log send destination address

New MIME type must be registered with a governing body.

What format will IDP be in?

- ascii for the first release
- XML for subsequent releases

**2** scan in content from Cnet shareware pages for FTP/HTTP/HTTPS address sequenced by reliability rating. Generate IDP MIME type. **P1**

in-house

Currently being implemented outside of PDMS. May not be an issue with first release of Augusta.

**3** content generated by and maintained in PDMS

in-house

addition of new fields and modification to PDMS database may be required

**Downloading Augusta Experience**

**C** Depending on whether or not the customer already has Augusta installed, the download experience will be different.

Customers without Augusta:

- Customer downloads Augusta executable with profile from IDP MIME type for the target download file
- 1** • Customer double clicks on the downloaded Augusta executable file to initiate the remaining download process **P0**

Spoke to Sven about using server resources to dynamically link the executable with the IDP MIME type. Further discussion of how this will be implemented required. Preference would be to link them together versus having the Customer download Augusta first then the IDP MIME type.

**2** Customer with Augusta: **P0**

**CONFIDENTIAL**

CONFIDENTIAL

NET/SDL0004552



- Customer downloads only IDP MIME type for the target download file
- Existing Augusta plug-in recognizes the IDP MIME type and immediately initiates the download using the profile maintained in IDP

**Download UI**

UI requirement

It is very important that the UI has the look/feel of being native to the platform.

D Customer should feel comfortable using Augusta with having to learn a new set of commands and peculiarity of the UI. All components of UI should adhere to this guideline.

When maximized, display download information:

UI requirement

- Moving progress bar with percentage complete
- complete product name if downloading from Netcenter and file name only from all other sites
- file size and bytes downloaded
- time left in min.sec
- FTP/HTTP/HTTPS host server currently connected

When minimized,

UI requirement

- display percent complete in button on the task bar
- mouse over displays product name if downloading from Netcenter and file name only from all other sites

Win95/98/NT only

3 Detect presence of network connection and generate warning message if disconnected during download P0

UI requirement

**E Dynamic Reconnect with Server**

1 When connection with a server is lost, Augusta automatically makes connection to an alternate site specified in the IDP MIME type. P0

2 Transparent to the Customer. No detectable P0  
 disruption to the download process.

Detect server that does not support byte- UI requirement

3 range and alert Customer that server does P0  
 not support Download Resume

**F Pause and Resume Download**

1 Maintain target file downloads in progress in P0  
 temp file

2 Support for multiple instances of downloads P0  
 Reconnect to FTP/HTTP servers supporting

3 byte range and attempt to reinitiate download P0  
 from point of interruption

4 Customer can pause and resume target file P0  
 download using Augusta

Detect presence of network connection and  
 5 generate warning message if not connected P0  
 when Augusta executable is launched

Present Customer with both download in UI requirement  
 6 progress and downloads that can be P0  
 resumed

**G File Verification**

1 Verify that target file downloaded P0  
 successfully without corruption

**H Banner Ads and Buttons from Netscape**

support for banner ads and related URL GIF and animated GIF only

1 click on banner opens new browser window P0  
 pointing to URL from ad

support for displaying downloading product Win 95/98/NT only  
 2 name at task bar mouse-over on minimized P2  
 Augusta

Permanent buttons promoting Netscape  
 Netcenter and 3rd party vendor(s) with  
 3 related URL P0

Click on button opens new browser window  
 displaying pointing to URL in the button  
 serve ads only when the progress windows is  
 4 active P2 does not impact download  
 performance when in  
 background

**Transmit Download Information back to Netscape**

1 Information about the download session is Will not be  
 sent back to Netscape's log. implemented  
 in release 1 Currently trying to determine  
 complete set of log requirement  
 and process

1 FTP/HTTP/HTTPS host server P1

2 Target file name P1

**CONFIDENTIAL**

SNR 000014

CONFIDENTIAL-Subject  
 to Court Order - Nos. 00CIV6249,  
 00CIV4871 & 00CIV4872

NET/SDL0004554

- 3 Number of times Augusta was paused before download P1
- 4 Netcenter user name P2

**InfoBrowser**

- J Display HTML pages in a chrome-less browser window
  - 1 launched and positioned when Augusta starts
  - 2 Launch only 1 browser window even during multiple downloads
  - 3 chromeless browser
  - 4 size of window controlled by server

**Tentative Development Schedule**

Milestone	start	end	notes
negotiations with developer partner		8/21/98	
start development	8/24/98		
alpha		9/4/98	
Beta1		9/18/98	
internal QA	9/18/98	9/23/98	
Beta2	9/28/98		
internal QA	9/28/98	10/2/98	
internal release	10/14/98		
GA	10/22/98		same as current scheduled RTM for Communicator 4.5

**Issues/Concerns**

1. Time pressure for roll-out in 4th quarter and current plans to launch with Communicator 4.5 release
2. QA resources from both Netcenter and CPD required for testing Augusta with both Netscape browser and 3rd party browsers including IE.
3. Lack of Netcenter engineering resources
4. Potentially significant modification to existing PDMS
5. Integration of Cnet content
6. Customer feedback on Augusta and its introduction of ads during download time.
7. Registration of IDP MIME type in time for introduction

**CONFIDENTIAL**

CONFIDENTIAL-Subject  
to Court Order - No. 00CIV6249,

NET/SDL0004555

8. Low priority for Unix client support
9. Customer support
10. Capabilities of partner developer
11. support for 128bit HTTPS downloads

#### **Follow-up Actions**

1. Technical feasibility with Netcenter/CPD Engineering and Product Marketing
2. Selection of potential partner developer
3. Usability testing of UI and process
4. Coordination with CPD 4.5 team
5. Coordination with Netcenter Software Services team to work on integration with remaining services
6. Marketing plan
7. Coordination with Netcenter engineering, production, advertising and sales

**CONFIDENTIAL**

**SDB 000616**

**CONFIDENTIAL-Subject  
to Court Order - Nos. 00CIV6249,  
00CIV4871 & 00CIV6316**

**NET/SDL0004556**

# EXHIBIT F

Re: Updated changes to final release

**REDACTED**



**Subject:** Re: Updated changes to final release  
**Resent-Date:** Wed, 30 Sep 1998 20:40:49 -0700 (PDT)  
**Resent-From:** augusta-pd@netscape.com  
**Date:** Wed, 30 Sep 1998 20:40:42 -0700  
**From:** davidp@netscape.com (David Pann)  
**Organization:** Netscape Communications  
**To:** David Park <dpark@netscape.com>  
**CC:** augusta-pd@netscape.com

see comments

David Park wrote:

Jim, Boris, and Phil:

I've updated the 'Changes' doc that I sent you this morning. This includes some important points that came up with our engineering team.

I want to make sure that we do a feature freeze at the EOD on Thurs, 10/1 if not earlier. This is critical so we can start testing with the final release bits (currently scheduled for Mon, 10/5).

I've attached the client mock up design. Only change I request to this is to move up the 'Advanced' button away from pause/resume/cancel buttons.

Robert is working on giving you access to the public server.

**LET ME KNOW IF THERE IS ANYTHING THAT YOU NEED FROM US THAT IMPACTS THE DELIVERY OF THE FINAL RELEASE BITS.**

David Park  
Netscape Communications Corporation  
Netcenter Division  
dpark@netscape.com  
650-937-3739

Changes required to the Augusta Client, release 1.0

9/30/1998

SDB 000395

1 of 3

EXHIBIT Perk 12  
Date: 10/20/03  
Reporter: David A. Kasdan, RMR, CRR

CONFIDENTIAL-Subject  
to Court Order - Nos. 00CIV6249,  
00CIV4871 & 00CIV6219

7/6/00 4:08 PM

**CONFIDENTIAL**

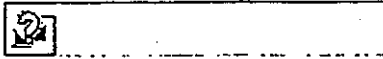
NET/SDL0004557

Re: Updated changes to final release

Most of the following changes are from discussion with team and M. Homer on 9/29/1998.

Primary goal is to slim down the Client as much as possible to maximize the InfoBrowser.

- 1. change in GIF ad size to 230x33. Same size as ad found on home page.



- 2. Add 'Click Here!' text under ad will be irrelevant if we ever disable the ad

Can the client detect if the add is real and then ad the text. This text causes users to actually click on the ad as studies have shown.

- 1.
- 2. InfoBrowser can be closed independent of the Client
- 3. If InfoBrowser is closed, relaunch the window whenever Client is made the active window
- 4. When a download session starts, send back information on site and file being downloaded to Netscape
  - o will be used in the future to personalize content of InfoBrowser
- 5. When a download session starts, send back information on version, language, platform of Augusta to Netscape
  - o will be used in the future when bug fixes and new version is available. Also will be important when the tool is localized for international customers.
- 6. remove the help button
  - o Help info will be made available from InfoBrowser
- 7. changes to the Advanced button
  - o add check box for 'Enable "Download Profiling"'
  - o
    - pre-checked
- 1. pause and resume are 2 separate buttons
- 2. Client on top with InfoBrowser on the bottom
- 3. New logo on main Client windows to state 'Powered by NetZIP'. Remove 'Free Upgrade' text but add 'Click Here!'
- 4. Logos on dialog boxes and message boxes other than the main Client window will not be clickable and are graphic images only.
- 5. changes in 'Download Successful' dialog boxes
  - o number of buttons, their order and accompanying text
- 6. Current build of Augusta gets activated when downloading 128bit HTTPS download and hangs. This needs to be disabled since we agreed that HTTPS downloads will not be supported. We are working on moving the 128bit software to HTTP/FTP in which case Augusta should work.
- 7. During install of Augusta, if the user already has an association set, we should not over-ride it. We

SDB 000397

CONFIDENTIAL-Subject  
to Court Order - Nos. 00CIV6249,  
00CIV4871 & 00CIV6219

CONFIDENTIAL

Re: Updated changes to final release

can ask them at that point whether they'd like to reset those settings AND specify the what file types we are overriding. This is a consistent behavior of other plug-ins that need to reset MIME type associations.

8. server.ini

- we will define the file naming convention for this file
- We want to avoid any possible negative press for the silent installing the Augusta plug-in. Therefore, we'd like to implement a flag in the server.ini file that Augusta would check for. If the flag is off, Augusta will prompt the user before installing. The default flag is on to do the silent install. If the user decides not to install, the download should not be interrupted.
- If and when we choose to disable the ad in the Client, the server.ini file will store location of GIF file to be downloaded
- will store ad refresh rate
- flag to turn on/off the Infobrowser. Default would be on which means that we spawn a new browser window.

9. We need to make sure that the user can do a complete uninstall of Augusta. This includes not only removing the program files but removing the MIME type associations.

David Pann <[davidp@netscape.com](mailto:davidp@netscape.com)>  
Group Manager, Software Services & Computer & Internet Channel  
Netscape Communications  
Netcenter

SDB 000398