

EXHIBIT 4

In The Matter Of:

**THE SCO GROUP, INC., v.
INTERNATIONAL BUSINESS MACHINES CORPORATION**

CHRISTOPHER SONTAG

April 19, 2006

LEGALINK MANHATTAN
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SONTAG, CHRISTOPHER - Vol. 1



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

-0-
THE SCO GROUP, INC., : Civil No. 2:03CV-294 DAK
Plaintiff/Counterclaim-Defendant, : (Judge Dale A. Kimball)
-v- :
INTERNATIONAL BUSINESS MACHINES : Deposition of:
CORPORATION, : CHRISTOPHER SONTAG
Defendant/Counterclaim-Plaintiff.

-0-
Place: SNELL & WILMER, L.L.P.
15 West South Temple
Suite 1200
Salt Lake City, Utah 84101
Date: April 19, 2006
9:03 a.m.
Reporter: Vickie W. Larsen, CSR/RPR
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APPEARANCES

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Also Present:
Mr. Lance Harrison (Videographer)

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1 April 19, 2006 9:03 a.m.
2
3 PROCEEDINGS
4
5 THE VIDEOGRAPHER: We're on record. My
6 name is Lance Harrison, I'm the videographer. The
7 court reporter is Vickie Larsen. We represent Tempest
8 Reporting service located in Salt Lake City, Utah.
9 The time and date indicated on the video
10 screen is 9:03 a.m., April 19th, year 2006.
11 This is the case of The SCO Group Inc. v.
12 IBM Corp., Case Number 2:03CV-294 DAK.
13 Counsel will now introduce themselves and
14 the court reporter will swear in the witness.
15 MR. JAMES: Mark James of Hatch, James &
16 Dodge on behalf of The SCO Group.
17 MR. DRAKE: Curtis Drake from Snell &
18 Wilmer on behalf of IBM.
19
20 CHRIS SONTAG,
21 called as a witness, having been duly sworn,
22 was examined and testified as follows:
23
24 MR. DRAKE: The record should reflect
25 this is the continuation of the 30(b)(6) deposition of

1 Mr. Sontag.
2
3 EXAMINATION
4 BY MR. DRAKE:
5 Q. Mr. Sontag, good morning. We've met
6 before --
7 A. Good morning.
8 Q. -- as we discussed before the deposition,
9 actually on several occasions. I appreciate your
10 coming back today and hopefully we'll be efficient and
11 quick in the questions and not take up a good portion
12 of the day in addressing the topics that I understand
13 you've been designated on.
14 I'm not going to repeat the whole litany
15 of rules, you know the rules. But I always do want to
16 repeat the one, because I often fall prey to it. If I
17 ask you a question that's not clear, please ask me to
18 rephrase. As I hope you've been able to tell, I don't
19 ask questions intentionally that are confusing but
20 sometimes that occurs. So please say I don't
21 understand or please rephrase and I'll be happy to do
22 that, okay?
23 A. Okay.
24 Q. Great. Let's begin then in some sort of
25 chronological order. As I understand it you've been

1 designated on six or seven topics which are found in
2 the 30(b)(6) notices that IBM has issued in this case.
3 The first of which comes way back from the initial
4 notice of March 19th, 2004, and I'm going to hand you
5 what we've marked as Exhibit 1364 and ask you to take
6 a quick look at Topic 23 which appears toward the end
7 of that document on Page 9.
8 (Exhibit 1364 was marked for identification.)
9 MR. JAMES: What exhibit number was this
10 again?
11 MR. DRAKE: 1364. And we will be marking
12 somewhat out of order. We will go from 1364, for the
13 reporter's benefit, and then move to 1678 and move
14 consecutively from that point forward. So if I make a
15 mistake in numbering you please catch me and make sure
16 our record is correct. Okay.
17 Q. All right. Have you had a moment to take
18 a look at Topic 23?
19 A. Yes.
20 Q. And as I understand your designation and
21 your testimony today, Mr. Sontag, yours will be
22 limited to all agreements or communications between
23 SCO and SuSe relating to Unix and Linux. Am I correct
24 in my understanding?
25 A. Yes.

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<p>1 Q. What have you done to prepare for 2 testimony on that topic, that being all agreements or 3 communications between SCO and SuSe relating to Unix 4 and Linux? 5 A. First I sent out a, at the direction 6 of -- or legal counsel sent out at my direction a 7 email to all employees of SCO requesting any 8 information they might have on this topic. And along 9 with legal counsel I reviewed all of the responses 10 that came back to see what would be pertinent. 11 And then I also talked to a number of 12 employees who had involvement with SCO and SuSe, 13 including Darl McBride, Andy Nagle, Erik Hughes. And 14 there may have been others that I also talked to. 15 Reviewed a number of documents that I thought might be 16 applicable. And that's, I think, the majority of what 17 I did in preparing for this topic. 18 Q. Great. Back in December when you were 19 deposed and presented some information on other 20 aspects of this topic, you prepared an exhibit that we 21 marked as Exhibit 320 at that time. If you could take 22 just a quick look at that. 23 While you're scanning it, as I recall 24 counsel represented this was SCO's attempt to catalog 25 the documents that it found to be responsive to</p>	<p>1 CEO level, including emails involving Darl McBride and 2 the other CEO's of the UnitedLinux consortium. 3 Q. To your knowledge have those emails all 4 been produced to IBM in this litigation? 5 A. My understanding is they have. 6 Q. Do you recall the dates, perhaps just the 7 rough inclusive dates, of the emails that you 8 reviewed? That is, about when they began and about 9 when they ended? 10 A. Well, there are emails that went all the 11 way back to before Darl McBride involving Ransom Love, 12 I think Benoy Tamang, who was another executive with 13 SCO, that were the primary executives involved with 14 the formation of UnitedLinux in conjunction with SuSe. 15 So those would have been back in I believe the 2001 16 time frame. 17 Q. Perhaps for frame of reference let's try 18 and establish when it was that discussions and efforts 19 to form UnitedLinux began. Do you recall about when 20 that was? 21 A. My understanding is it was in the 2001 22 time frame. 23 Q. Prior to that 2001 time frame do you know 24 whether there were any agreements between Caldera or 25 any of its predecessors and SuSe?</p>
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<p>1 Topic 23, at least as they existed back in December of 2 2005? 3 A. Yeah. And I don't believe it was my 4 deposition. I think it was most likely Erik Hughes's 5 deposition. 6 Q. I apologize if I misspoke, I think that's 7 correct. In any event, this document, Exhibit 320, at 8 least to my reading, does not list any documents that 9 appear to be directly responsive to SuSe or to relate 10 to SuSe, perhaps better said. 11 My question is: In preparing for your 12 testimony today did you attempt to prepare any sort of 13 a similar document or a document similar to 14 Exhibit 320 to catalog the documents that would be 15 responsive to SuSe or to relate to SuSe? 16 A. No, I did not attempt to create a 17 document similar to this. 18 Q. Are you able to list or describe in any 19 more detail the documents that you did review that you 20 believed were related to SuSe and responsive to this 21 topic? 22 A. Well, I believe there was a number of 23 emails between SCO employees and SuSe employees, 24 mostly around the formation and operation of 25 UnitedLinux at a number of different levels, at the</p>	<p>1 A. I'm not aware of any other agreements. 2 Q. Okay. How about any communications or 3 just general business relationships of any kind that 4 may have existed before 2001? 5 A. There may have been some, but none that I 6 have identified. 7 Q. And none that others whom you contacted 8 could identify, I take it? 9 A. That were -- yeah, no. 10 Q. Yeah, no. So fair to say then that the 11 most significant and perhaps the first involvement 12 between The SCO Group -- and by the way, let's make 13 clear at the outset as we've done in the past. When I 14 say "SCO" or "The SCO Group" I mean to include the 15 current SCO Group and all of its predecessors in 16 interest as appropriate in the context of the 17 question -- 18 A. Which is -- 19 Q. -- do you understand? 20 A. Yes. 21 Q. Okay. And we have been able in past 22 depositions to make that distinction, and if one needs 23 to be made please do so. In other words, if it's 24 clear that the question doesn't apply to SCO but does 25 apply specifically to a predecessor in interest, let</p>

1 me know.

2 A. Okay.

3 Q. But for shorthand purposes and efficiency
4 I'm just going to say "SCO" and "The SCO Group."

5 A. Okay.

6 Q. All right. Is it fair to say then that
7 most significant and perhaps the first involvement
8 between SCO and SuSe began with respect to the efforts
9 to form UnitedLinux?

10 A. I believe so.

11 Q. All right. As part of that effort, that
12 being the UnitedLinux project -- if I may describe it
13 as that -- were there any formal agreements that were
14 executed between SCO and SuSe?

15 A. There were formal agreements for the
16 formation of UnitedLinux that were entered into by all
17 of the parties. So SCO, SuSe, Conectiva, Turbo.

18 Q. And perhaps my question wasn't a good
19 one. I understand that that's the case and obviously
20 SuSe and SCO would have been signatories to that
21 agreement, but I meant anyone on one agreement between
22 SuSe and SCO that you're aware of?

23 A. Not that I'm aware of. I believe all of
24 the agreements were related to UnitedLinux involving
25 all the parties.

1 Q. Let's move forward then from the
2 beginning of the UnitedLinux project in around 2001,
3 and I'd like to get some idea of when SCO's
4 participation, let's say active participation, in the
5 UnitedLinux project ended?

6 A. Uh-huh.

7 Q. When in your mind did that occur?

8 A. We announced as the four companies
9 UnitedLinux in I believe November of 2002, and all the
10 companies participated in the launch and announcement.
11 And we had a product announcement of development work
12 that occurred prior to that point and a release of
13 products early into 2003.

14 Obviously we filed our lawsuit against
15 IBM in March of 2003 and then publically announced our
16 suspension of our Linux related activities and
17 business in May of 2003, though we still continued
18 participating as required in UnitedLinux all the way
19 through that point, and even beyond.

20 Not participating in any fashion that we
21 believed was -- you know, we felt we had to abide by
22 contractual obligations of our agreements with the
23 UnitedLinux, and at the same time winding down our
24 Linux related activities and winding down our
25 agreements and obligations to our customers.

1 So we continued in some capacity with
2 UnitedLinux into the fall of 2003 time frame, at which
3 point I believe when UnitedLinux itself really ceased
4 to function as a viable entity.

5 Q. Did SCO have any communications with SuSe
6 after the fall of 2003 and the effective end of the
7 UnitedLinux effort?

8 A. I'm not aware of any other communications
9 other than may have been informal that occurred.
10 There was a number of obvious communications
11 throughout the period of, you know, the suspension and
12 the effective winding down of UnitedLinux.

13 Q. But so far as you know no formal
14 communications between SCO and SuSe after the fall of
15 2003?

16 A. Not that I'm aware of, no.

17 Q. Any formal agreements between the two
18 entities after the fall of 2003?

19 A. Not that I'm aware of.

20 Q. During your last deposition you and I
21 discussed several emails and other documents, which at
22 least to my reading -- and I don't mean to unfairly
23 characterize them -- but it suggested that there was a
24 disagreement, if you will, or a difference of opinion
25 between SuSe and SCO as it pertained to the

1 UnitedLinux project and SCO's participation in that
2 project. Do you recall in general the discussion that
3 we had about those emails?

4 A. In general, yes.

5 Q. Would it be fair to say that SuSe did in
6 fact object to SCO's handling and its release of its
7 SCO Linux product?

8 A. I think it would -- there's more
9 complexity to that than -- than can be characterized
10 at that level. I would refer you to some of the
11 discussions that Darl McBride laid out in his December
12 deposition regarding his communications with
13 executives from SuSe, and I think he lays out very
14 well the nature of those discussions.

15 Q. Did you review any correspondence --
16 strike that.

17 Was there any correspondence between
18 Mr. McBride and any of the SuSe executives?

19 A. Yes, I believe there was.

20 Q. And to your knowledge -- strike that.

21 Did you review that correspondence in
22 preparing for today's testimony?

23 A. Briefly.

24 Q. And to your knowledge has all of the
25 correspondence been produced to IBM --

1 A. Yes.
 2 Q. -- in litigation?
 3 You indicated at the outset that among
 4 the folks that you spoke with were Mr. McBride,
 5 Mr. Nagle, and Mr. Hughes. What specifically did
 6 Mr. McBride have to say in response to your inquiry
 7 about information responsive to this topic?
 8 A. Mr. McBride and I had talked on a number
 9 of occasions previously, so it was not a long
 10 extensive conversation since I already knew much of
 11 his characterization of the communications he had with
 12 SuSe and the other CEO's of UnitedLinux.
 13 But we did talk about it briefly and he
 14 also referred me to his deposition in December of last
 15 year stating that that was probably the best, you
 16 know, description of the nature of those
 17 communications. And I did briefly review those
 18 portions of the deposition that related to those SuSe
 19 communications.
 20 Q. Okay. How about Mr. Nagle. What, if
 21 anything, did he have to add to your preparation for
 22 today?
 23 A. Mr. Nagle I had talked to on a number of
 24 occasions, and he also had reported to me very early
 25 in my career at SCO so I had a fair amount of

1 may use that phrase, in any sort of a business pursuit
 2 or product development, things of that nature?
 3 A. Outside of UnitedLinux?
 4 Q. Yes, sir.
 5 A. I'm not aware of any.
 6 Q. Prior to the time that Novell acquired
 7 SuSe -- and I don't mean to characterize that
 8 transaction in any specific way -- but when the two
 9 entities combined, prior to that time had SCO ever
 10 threatened to sue SuSe?
 11 A. Not to my knowledge.
 12 Q. And conversely are you aware of any
 13 communications or any indications from SuSe that
 14 indicated that it intended at any time to commence
 15 litigation or to sue SCO?
 16 A. No.
 17 Q. Is there anything else that you believe
 18 is responsive to Topic 23, and specifically the
 19 communications and agreements between SCO and SuSe
 20 that we have not discussed this morning?
 21 A. No, I do not.
 22 Q. Well, let's move on.
 23 (Exhibit 1678 was marked for identification.)
 24 MR. DRAKE: Let me hand you what we've
 25 marked as Exhibit 1678, which is the September 2nd,

1 knowledge of his activities and -- related to SuSe.
 2 And he was on the board of the UnitedLinux association
 3 and so I talked to him extensively throughout the
 4 course of managing him and also had conversations with
 5 him subsequent to that point regarding questions I had
 6 on various aspects of UnitedLinux.
 7 And fairly recently had talked to him
 8 again about was there any other documents or other
 9 information that he was aware of. But most of my
 10 information from Mr. Nagle were based on conversations
 11 over a number of years that I've had with him.
 12 Q. And finally Mr. Hughes, someone you
 13 mentioned as someone that you had interviewed, what
 14 did Mr. Hughes have to offer, if anything?
 15 A. We briefly discussed aspects of his
 16 understanding of the productizing of UnitedLinux, you
 17 know, base products. I also reviewed, you know, some
 18 of the documents that he had put together for legal
 19 counsel and briefly talked to him about if there was
 20 any other documents or information that he was aware
 21 of that would be responsive to this topic.
 22 Q. I think your earlier answers would have
 23 addressed this but let me make it clear. To your
 24 knowledge were there any efforts, apart from the
 25 UnitedLinux efforts where SCO and SuSe partnered, if I

1 2005, notice. It contains the three topics on which
 2 you've been designated this morning. If you would
 3 turn to Page 4 and just take a quick moment to review
 4 Topic 3.
 5 Q. Have you had a moment to review Topic 3?
 6 A. Yes.
 7 Q. And are you prepared this morning to
 8 discuss Topic 3?
 9 A. Yes.
 10 Q. Again for shorthand purposes and to try
 11 to expedite the deposition this morning I'm going to
 12 refer to this topic generally as communications
 13 regarding open sourcing of Unix. Are you comfortable
 14 with that characterization?
 15 A. Yes.
 16 Q. Okay. You hesitated. Tell me -- I want
 17 to make sure we're on the same page, so if there's
 18 anything we need to do to define better terms I'll
 19 certainly try to do it.
 20 A. If I think it becomes an issue I'll
 21 certainly try to help clarify.
 22 Q. Great.
 23 MR. JAMES: And let me just say, Curt,
 24 for the record, in preparing for this topic I know
 25 that Mr. Sontag focussed more on outside type

1 communications because Erik Hughes testified as a
2 30(b)(6) witness in some detail on communications
3 within SCO and plans and those sorts of things
4 relating to open sourcing Unix. And Chris knows some
5 about that but focussed more on outside third-party
6 communications.

7 MR. DRAKE: And that's certainly fair.
8 There is, and has been, some duplication. There will
9 be some more today, undoubtedly, because some of the
10 things that I want to talk to you about are internal
11 communications. So I appreciate that clarification,
12 you know, I'll apologize if there is some duplication.
13 We'll try to minimize it and work through the topic.

14 MR. JAMES: And let me also say we
15 prepared, I think to assist in this thing on this
16 topic -- and I'll give you a couple copies now -- a
17 little list that Chris and I were able to put together
18 based on what Chris has done relating to, I guess the
19 portion of Topic 3 that talks about open sourcing or
20 public disclosure of any product containing Unix code.

21 THE WITNESS: Discussion or the actual,
22 and these were the topic areas that we identified that
23 I felt was relevant to the topic.

24 MR. JAMES: And these would be outside or
25 public types of communications.

1 determined.

2 First of all tell me how did you go about
3 gathering the information that resulted in the
4 preparation of Exhibit 1679?

5 A. Sure. Again, as part of the process in
6 conjunction with our attorneys and their direction an
7 email was sent out to all of the SCO employees asking
8 for any information they may have on these topic
9 areas. And I, in conjunction with legal counsel,
10 reviewed any of the responses that came back. So that
11 was one area.

12 I also talked to a number of SCO
13 employees who I felt had familiarity with activities
14 related to open sourcing of Unix source code,
15 potentially, and to various open source licenses.

16 Q. Let me interrupt you at that point. I
17 apologize for doing so. Tell me who those employees
18 were, please.

19 A. Sure. Sandy Gupta, for one, who was our
20 chief technology officer and vice president of
21 engineering. And he also talked to a number of his
22 engineers in response to my questions.

23 I also talked to Blake Stowell, who was
24 our director of PR relations. And because I knew he
25 had some familiarity with either press releases that

1 MR. DRAKE: Okay.
2 (Exhibit 1679 was marked for identification.)
3 MR. DRAKE: If I may, let me just trade
4 documents with you there, Mr. Sontag, I'll give you
5 the one that we've marked as Exhibit 1679, which is a
6 one-page document that Mr. James has just handed me
7 and has explained a little bit about its preparation.

8 Q. Tell me if you would, please, again what
9 it is that this document represents.

10 A. This document represents, you know,
11 either discussions or disclosures of, you know, some
12 element of a Unix source into an open source entity.
13 So in some cases there was discussions of open
14 sourcing a certain utility or otherwise, and to my
15 knowledge in some of those cases the actual open
16 sourcing process did not occur.

17 So there was in some cases public
18 disclosure of the intent and some cases the follow
19 through of actually open sourcing, I do not believe,
20 in some cases occurred. But this was, you know, my
21 effort to put together a list of the categories and
22 areas that I thought were relevant to the topic.

23 Q. Great. Well, I appreciate your effort.
24 Let's take a moment and go through this so that I can
25 understand, you know, item by item what you

1 were done or previous information inside of SCO of
2 press releases and otherwise that might have related
3 to this topic.

4 And then I also did some searching myself
5 in reviewing of documents that I thought would be
6 pertinent and pulled out of any of those information
7 that I felt was appropriate to the topic and compiled
8 it into this list.

9 Q. Did you speak with Jay Peterson?

10 A. Yes, I did, actually.

11 Q. Did you speak with Mike Davidson?

12 A. No, I did not.

13 Q. What did Mr. Peterson contribute, if
14 anything, to either your investigation or the
15 preparation of Exhibit 1679?

16 A. Mr. Peterson remembered that we had
17 either announced or potentially had actually open
18 sourced Cscope as a technology, and he also thought
19 there was a number of other utilities, and I think he
20 mentioned GREP, he wasn't specific in more detail than
21 that.

22 Those were the two that he specifically
23 identified which led me to ask more questions of, you
24 know, Mr. Gupta and to also do some research added to
25 that some additional items that were -- that Mr. Gupta

1 actually identified in an announcement related to AIM,
2 GREP and SREP that I also added into the list.

3 Q. For the reporter's benefits we're going
4 to be using a lot of acronyms, if you want to stop us
5 and get those at this time or you want to add them
6 later, that's -- that's fine. GREP, for instance, is
7 G-R-E-P, all caps, no periods.

8 I interrupted you with the inquiry about
9 Mr. Peterson and Mr. Davidson. You were telling me
10 other things that you did in addition to those
11 interviews to compile the information that went into
12 Exhibit 1679.

13 A. Yes. So a number of discussions with
14 Mr. Gupta, and at least one or two conversations with
15 Mr. Peterson. The email sent generally to all the
16 employees. A number of responses in that regard,
17 reviewing them, and then a number of documents that I
18 thought might be applicable, or at least have some
19 information that would help identify items that may be
20 of appropriate inclusion in this list.

21 Q. A common theme -- and you've heard this
22 question many, many times but I need to ask it -- did
23 you discover or come upon any documents that were
24 responsive to this topic that aided you in your
25 investigation that have not been produced to IBM in

1 the litigation?

2 A. Not that I'm aware of.

3 Q. All right. Well let's take it from the
4 top, as they say, and talk about ELF, that's E-I-F,
5 license agreement.

6 A. Yes.

7 Q. To T-I-S. Tell me about that, please.

8 A. All right. My understanding there was an
9 ELF license, a limited ELF license was granted to kind
10 of a consortium called the TIS committee, Tools
11 Interface Standard, that was mostly just an idea, it
12 never really amounted to much.

13 Shortly after the committee was formed it
14 was disbanded. There was no real product produced of
15 the committee. And again, like I said, it was a
16 limited license and for use only within the Tools
17 Interface Standard Committee. And with the disbanding
18 of that committee and the limitations of that license
19 my understanding of that was basically stillborn.

20 Q. Who was the source of your information
21 for the ELF license grant?

22 A. I happened to be familiar with the fact
23 that there had been a document providing a license
24 grant to the TIS committee.

25 Q. There is a discreet license that was

1 prepared at or near the time of this --

2 A. Yes.

3 Q. -- grant to the TIS committee?

4 A. And at that time it would have been by
5 one of our predecessors, it would have been Novell.

6 Q. I wasn't altogether clear with your
7 description of how this came to an end. Was the
8 license in fact granted?

9 A. The license was granted to the committee
10 but the committee shortly thereafter disbanded.

11 Q. To your knowledge did the committee use
12 the license in any way prior to the time that the
13 committee itself was disbanded?

14 A. My understanding is that they did not,
15 and my understanding is that they did not provide any
16 licenses out in any fashion.

17 Q. Do you know more about the TIS committee,
18 who formed it, the nature of the committee itself,
19 things of that nature?

20 A. Generally. It was formed by a number of
21 application tool developers, I believe Microsoft was
22 on the committee as well as a number of other tool
23 developers. I believe Borland at the time, Novell was
24 on the committee. And the purpose of the committee
25 was to develop an application tools development

1 environment for the creation of Unix applications on
2 32-bit Intel, along with some compatibility with
3 Microsoft and Windows applications in some fashion.

4 Q. Is it your understanding that SCO has
5 made allegations in this case against IBM that IBM has
6 in some manner misused the ELF code or some portion of
7 it?

8 A. Yes, that is my understanding.

9 Q. Is it also your understanding that it's
10 the same ELF code that is at issue with IBM that was
11 the subject of this limited license to the TIS group?

12 A. That is my understanding.

13 Q. You indicated that the license was
14 limited. Can you describe in a little more detail the
15 manner in which the license was limited?

16 MR. JAMES: Object to the extent that
17 calls for a legal conclusion.

18 THE WITNESS: I think the license grant
19 stands on its own, but I -- in general my
20 understanding was that it was limited to being used
21 within a TIS committee specification for purpose of
22 TIS compatibility, and no other use or license was
23 granted and all other rights were reserved to SCO.

24 Q. BY MR. DRAKE: What type of license was
25 it? Was this a source code license or was it a

1 license for use of binary form or what type of
2 license?

3 A. It was a copyright license of a
4 specification for ELF.

5 Q. Okay. Anything more about the ELF
6 license grant to the TIS group that we have not
7 discussed?

8 A. I don't think.

9 Q. Okay. Let's move on to Item Number 2,
10 which is Open S-A-R. That's capital O, small p-e-n
11 capital S-A-R, one word.

12 A. Right. My understanding was it was a
13 monitoring utility. There was some level of joint
14 development or some relationship with a company called
15 Starnix, and there was a number of emails that I
16 reviewed that showed there was some discussion of
17 potentially open sourcing a version of what was called
18 SAR with the name of OpenSAR, that required agreement
19 on the part of SCO and Starnix.

20 There was, my understanding, an
21 announcement, but ultimately there wasn't an agreement
22 on what appropriate open source license could be used
23 and so the actual open sourcing of OpenSAR, to my
24 knowledge, did not occur.

25 Q. And what type of entity is Starnix?

1 A. I don't know much about it.

2 Q. Do you know anything at all?

3 A. Not really. I know they were an entity
4 that was doing some joint development.

5 Q. You mentioned emails. Do you recall
6 which parties or which individuals were involved in
7 the emails that you reviewed?

8 A. There was internal SCO emails as well as
9 emails in conjunction with, I believe Starnix's
10 employees, on appropriateness and nature of what
11 should be open sourced and which license would be
12 appropriate and how to accomplish that.

13 Q. Again on the SCO side who was most
14 involved, if there was any one such person?

15 A. I'm not specifically aware of any one
16 person. I just obtained a string of emails, I believe
17 all of which have been produced.

18 Q. What, again, was the reason, at least
19 based upon your understanding, as to why the OpenSAR
20 material was not ultimately open sourced?

21 A. Based on our review of the emails it
22 appears that SCO and Starnix could not come to
23 agreement on which open source license and what
24 portions of the source code to open source, and so
25 just kind of trailed off is the appearance of the

1 communications that I've seen.

2 Q. Okay. The next item is A-W-K. Tell me
3 about that, if you would, please.

4 A. It's a minor Unix utility. They're -- I
5 came across some communications that stated that there
6 was discussions of open sourcing it that were a public
7 nature, but I was not able to find any other
8 communications or other information of the actual open
9 sourcing of that utility.

10 Q. You have a parenthetical reference there
11 that says "(utility)" with an asterisk, and as I
12 understand Exhibit 1679 the asterisk means "may not
13 have been open sourced." Correct?

14 A. Correct. So there was discussions of
15 open sourcing it in some public fashion, there was
16 some internal discussion as well, but then I was not
17 able to find specific information of the actual open
18 sourcing of the AWK utility.

19 Q. AWK you say, okay. You say they were
20 external discussions?

21 A. There was public communications or
22 announcements related to open sourcing the AWK
23 utility.

24 Q. Apart from just announcements was there
25 another entity, another external company or someone

1 with whom SCO was having these discussions?

2 A. Not that I'm aware of.

3 Q. And what was the method in which the open
4 sourcing of the AWK utility was being contemplated?

5 A. I am not sure, and I'm not -- I'm also
6 not sure on which license was contemplated as well.

7 Q. You've indicated the years are 1999
8 through 2001. What is that time frame intended to
9 relate?

10 A. Generally this is kind of the time frame
11 of when these kind of discussions or communications
12 may have occurred. Some of this is based on memory of
13 Jay Peterson or other engineers of thinking something
14 had occurred in this regard. But no specific
15 document, and in some cases -- or emails or otherwise
16 that help further refine that information that I was
17 able to become aware of.

18 Q. In those instances in which material code
19 was actually open sourced did SCO document the open
20 sourcing of the material?

21 A. In a number of cases it did document its
22 contributions to open source and put out a press
23 release, and that we can find a open source repository
24 publically for which we can see that open source
25 contribution had been made to and continue to be

1 maintained and otherwise.

2 In some cases for some of these we can
3 find no documentation or press release or repository
4 or any other information of a landing place for some
5 of the discussions of open sourcing that may or may
6 not have occurred.

7 Q. Well, for those -- or in those instances,
8 I should say, in which code was actually open sourced,
9 did SCO maintain a discreet file or a discreet
10 repository of information in which it maintained
11 records of the code that it actually open sourced?

12 A. For a single file across all the
13 different groupings of the company, no, I don't
14 believe that exists. There was some records for
15 specific projects. For example, the AIM Benchmark has
16 some documentation of its process of being open
17 sourced, email, other documents related to it. But
18 the -- in many other cases there isn't a specific
19 repository.

20 Q. So you were not able to go to the open
21 source file --

22 A. One location, no.

23 Q. -- if you will, open it up and find
24 everything you needed to be prepared for today?

25 A. No.

1 Q. Okay. Anything else about the AWK
2 utility that we haven't discussed that you believe is
3 germane or relevant?

4 A. No.

5 Q. Next is Cscope. Tell me about that, if
6 you would, please.

7 A. All right. Cscope was another source
8 viewing utility that was open sourced in the, again,
9 1999 to 2001 time frame for which I was able to
10 identify that it was specifically released under BSD
11 style open source license. And that's the majority of
12 the information I have on Cscope.

13 Q. Okay. Next AIM, A-I-M Benchmarks.

14 A. It is a performance test suite that we
15 announced and actually did release under a GPL style
16 open source license in August of 2001. Same with the
17 announcement of the GREP utility. However, we have
18 not been able to find any documentation or repository
19 or outside landing location for GREP or SREP that were
20 also announced in August of 2001.

21 Q. Do I understand correctly then that the
22 AIM, GREP and SREP were all intended to be open
23 sourced at near the same time --

24 A. Yes.

25 Q. -- as a package, if you will?

1 A. I don't believe it was intended to be a
2 package. I don't even recall if it was one specific
3 announcement or several open source announcements of
4 these different areas. But I was able to identify the
5 AIM Benchmark, you know, specifically being open
6 sourced and having a, you know, having a landing
7 place, so to speak, and the license for which it was
8 open sourced under.

9 I was able to identify communications and
10 public announcements for GREP and SREP, and also I
11 believe Jay Peterson had mentioned he thought that
12 they had been open sourced. But when Sandy Gupta did
13 some further due diligence on this he was unable to
14 identify if that process actually had been completed
15 and the actual open sourcing had occurred.

16 Q. Do you know what type of exercise or
17 investigation Mr. Gupta undertook to try to make that
18 determination?

19 A. I think my understanding is he talked to
20 a number of different engineers inside of the Murray
21 Hill facility who would have knowledge on these
22 various utilities and what was done with them.

23 He also did, I believe, some searching on
24 standard open source locations where he would expect,
25 you know, source forge or otherwise, these types of

1 open source donations to have landed.

2 And I believe he did a number of other
3 searches and so on but, again, his response back to me
4 is this is as much as he was able to identify and find
5 out.

6 Q. Is SCO continuing to undertake any
7 efforts to try to make this determination of whether
8 there was a landing place for these things, as you've
9 described it?

10 A. Ultimately for, you know, more
11 investigation on public repositories, given that is
12 public information that IBM or anyone could search
13 those locations as well we did, you know, spend a fair
14 amount of resource and time on that looking for them.
15 But I don't believe we were intending to spend more
16 time searching in public locations. And I'm not aware
17 of any other information or documents or additional
18 people that could be talked to that are still with SCO
19 that would have any more information on these
20 particular open sourcing activities.

21 Q. Okay. How about GCC Bug Fixes?

22 A. There were -- in the process of SCO
23 UnixWare being able to support the GCC development
24 environment there were a number of bug fixes that were
25 made by SCO employees that were assigned back to the

1 Free Software Foundation under the GPL. And that
2 activity, as I understand it, took place in 2001. And
3 again it was a very limited nature of a few bug fixes,
4 and that was the extent of the -- what was assigned or
5 licensed to the Free Software Foundation.

6 Q. What does GCC stand for, if you know?

7 A. It's just slipped my mind, but it's
8 basically a compiler and development environment.

9 Q. All right. The next item is back to ELF,
10 has a parenthetical explanation there. Tell me about
11 that if you would, please.

12 A. So there was a request in January of 2003
13 made to, actually Darl McBride and myself, from
14 executives at Ximian requesting we open source ELF.
15 And we respectfully declined at that time. And again
16 in September of 2003 a request was made of the Free
17 Standards Group for us to open source ELF, and again
18 we respectfully declined.

19 Q. Is Exhibit 1679 complete in that to your
20 knowledge it includes all of the efforts either
21 attempted or successful in which SCO open sourced
22 code?

23 A. Well, open sourced Unix related code.

24 Q. Yes.

25 A. Yes.

1 Q. In your efforts, Mr. Sontag, to go back
2 and determine the history of efforts with respect to
3 open sourcing, were you able to determine when, just
4 discussions in general, about the concept of open
5 sourcing Unix code began? And by that of course I
6 mean with respect to SCO or its predecessors.

7 A. Right. I am aware that there were
8 discussions internally inside of SCO by specifically
9 Ransom Love to possibly open source elements of the
10 Unix kernel, though those discussions were short lived
11 and determined, I think, very quickly to be an
12 inappropriate direction for the company to take.

13 Q. Were you able -- or perhaps I should say
14 better said -- do you have any information that would
15 allow you to go back to The Santa Cruz Operation and
16 determine what, if any, discussions it may have had
17 about open sourcing Unix code?

18 A. All right. Earlier on I had a number of
19 discussions with SCO employees that had come from The
20 Santa Cruz Operation, including Mike Davidson, and was
21 not made aware of any specific, major Unix source code
22 contributions anticipated or acted upon by The Santa
23 Cruz Operation.

24 (Exhibit 1680 was marked for identification.)

25 Q. BY MR. DRAKE: Let me show you what I've

1 marked as Exhibit 1680. I'm not going to have many
2 questions for you about this document, but first of
3 all let me ask you: It appears to be authored, or at
4 least refers to two individuals near the top on
5 Page 1. Juergen Kienhoefer, J-u-e-r-g-e-n,
6 K-i-e-n-h-o-e-f-e-r, and then a second individual
7 whose first name is only listed, that being Ranjit, if
8 I'm pronouncing that correctly. R-a-n-j-i-t.

9 Do you know who Mr. Kienhoefer is, if I'm
10 pronouncing that correctly?

11 A. I'm only vaguely familiar with the name.

12 Q. And what do you know about
13 Mr. Kienhoefer?

14 A. I believe at one point he was an employee
15 of SCO or one of its predecessors.

16 Q. Do you know how long he remained with SCO
17 or one of its predecessors?

18 A. I do not.

19 Q. Do you know, for instance, if he came to
20 Caldera from Santa Cruz Operation?

21 A. I do not.

22 Q. How about Ranjit? Do you recognize that
23 first name?

24 A. No, I do not.

25 Q. Turn if you would to Page 3 of that

1 exhibit. And toward the bottom of the page under the
2 category OpenSource UW7 l-i-b-c, and let me ask you:
3 Does the grouping of the four letters l-i-b-c have any
4 particular pronunciation?

5 A. I believe it would be libc.

6 Q. That's what I thought it had been
7 referred to in the past. So libc is -- is an accurate
8 reference or pronunciation. Okay.

9 In undertaking your investigation, your
10 preparation for today's testimony, did you come across
11 any information that established that SCO or any of
12 its predecessors had actually open sourced any of libc
13 code?

14 A. No.

15 Q. If the date that is referenced as Page 1
16 of the document, that being September 23rd of 1999, is
17 accurate, do you know which entity would have been
18 responsible for the preparation of this document?
19 That is, whether it would have been Santa Cruz
20 Operation or Caldera?

21 A. I believe this would be The Santa Cruz
22 Operation.

23 Q. Is it fair to say, Mr. Sontag, based upon
24 your understanding that The Santa Cruz Operation back
25 in 1999, or thereabouts, was considering, and in fact

1 endorsed the notion of open sourcing Unix code as part
2 of its business plan?

3 A. I'm vaguely aware that there was some
4 discussions, but other than creating kind of an
5 experimental emulation layer that would allow the
6 running of Linux applications, which we called LX Run,
7 there were some discussions, but my understanding
8 there was no specific activities related to open
9 sourcing any Unix materials, that I'm aware of.

10 Q. What is your understanding of LX Run?
11 What -- what is that?

12 A. It was a small emulation layer that would
13 allow system calls that would be expected to go to a
14 Linux kernel to instead be serviced by a Unix
15 operating system kernel.

16 So in other words there's no common code,
17 just kind of a mapping layer that takes one call and
18 maps it into the call expected by another operating
19 system.

20 (Exhibit 1681 was marked for identification.)

21 MR. DRAKE: Let me hand you what we've
22 marked as Exhibit 1681. And again I'm not going to
23 ask you many questions about this, but it appears to
24 be another document that was authored by
25 Mr. Kienhoefer.

1 A. I'm not sure, but it may be Kean Johnson,
2 but again, I'm not 100 percent certain.

3 Q. Fair enough.
4 (Exhibit 1682 was marked for identification.)

5 Q. BY MR. DRAKE: Exhibit 1682 is an email
6 string, take a moment just refer to that, if you
7 would, please.

8 Just in the interest of time -- and this
9 applies to every document I show you, as I hope you
10 know from past occasions -- I'll give you as much time
11 as you need to read it in as much detail as you need.
12 So I don't want to interrupt you, but I also would
13 like to move forward and not keep you here all day if
14 we don't need to.

15 A. Let me quickly scan through this and see
16 if I can get the overall gist.

17 Q. That's great.

18 A. All right.

19 Q. First of all the email is from an
20 individual whose name is Tom Hull, H-u-l-l. Do you
21 see that?

22 A. Yes.

23 Q. Do you know Mr. Hull?

24 A. I do not.

25 Q. Do you know what role he played

1 Q. Have you ever seen this document?

2 A. I believe I may have seen it a couple of
3 years ago.

4 Q. If you turn to Page 9, please. Do you
5 happen to know to whom this document or these slides
6 were presented?

7 A. I do not, but it appears to be a internal
8 kind of strategy document.

9 Q. And Slide 17 on Page 9 is captioned
10 "Other Approaches For Application Compatibility" and
11 it begins with "Common API between Unix and Linux:
12 OpenSource our libc to Linux." Do you see that?

13 A. Yes.

14 Q. What does "API" stand for?

15 A. Application programming interface.

16 Q. And the next bullet point says: "Common
17 ABI OpenABI effort (Kean)." What is ABI?

18 A. I believe that stands for application
19 binary interface.

20 Q. Okay. Can you identify the person Kean
21 whose name is referred to parenthetically there on
22 Slide 17? Do you know who that is?

23 A. I believe that would be a SCO engineer in
24 The Santa Cruz Operation.

25 Q. The last name by chance?

1 presumably with Caldera back in 2000, August of 2000

2 A. I do not.

3 Q. It's to Mr. Peterson, whom you do know, I
4 take it, correct?

5 A. Yes.

6 Q. In the third full paragraph on Page 1 the
7 second sentence says, quote:

8 "I think there is a general
9 expectation that once Caldera takes
10 over, much more/most/almost all of
11 UnixWare will be open sourced."
12 Do you see that?

13 A. Yes.

14 Q. Is it your understanding that that was in
15 fact the strategy that Caldera had at the time of the
16 acquisition of the UnixWare assets from The Santa Cruz
17 Operation?

18 A. My understanding was there was some
19 internal discussions, but ultimately it was determined
20 to not be an appropriate strategy to open source the
21 Unix and UnixWare source.

22 Q. You mentioned earlier in your testimony
23 that Mr. Love had supported the notion of open
24 sourcing UnixWare code and that that -- I don't mean
25 to mischaracterize because I'm not exactly sure what

1 you said -- I thought you said was short lived or for
2 a sort period or something like that?

3 A. I think it was along the lines of there
4 was some, you know, kind of strategic strategy,
5 brainstorming kind of discussions that occurred, you
6 know, now that we have this asset, you know, what if
7 we did this or that.

8 And my understanding that was the nature
9 of the discussions and that ultimately in conjunction
10 with the executive management, in conjunction with the
11 board, the decision was made not to open source
12 significant portions of the Unix and UnixWare source
13 code.

14 Q. Can you book end that discussion for me?
15 Do you know when those discussions at Caldera began
16 and when they ended?

17 A. I would assume some of those discussions
18 may have occurred even early on in the, you know,
19 discussions with old Santa Cruz Operation even during
20 the, you know, investigation of the possible
21 acquisition all the way through the acquisition. So
22 time frame would be in the, you know, late 2000 into
23 sometime into 2001 time frame.

24 Q. Well, you correct me if I'm wrong, but my
25 recollection of the dates of that acquisition were

1 that it began in about August of 2000?

2 A. Yes.

3 Q. About the date of this -- this email that
4 we're looking at here in Exhibit 1682, and the
5 transaction closed in May of 2001. Is that consistent
6 with your memory?

7 A. Approximately that time frame, yes.

8 Q. And were the discussions about open
9 sourcing UnixWare code have extended at least
10 throughout that period of time?

11 A. I believe so, and possibly even somewhat
12 beyond after the acquisition was complete.

13 Q. You mentioned a moment ago that at some
14 point, though, the board, presumably of Caldera --
15 well, strike that.

16 Which board was it that finally made the
17 decision not to pursue this notion of open sourcing
18 UnixWare code?

19 A. Well, again, I believe it was in
20 conjunction with the management team and the board
21 that the final determination of some of these strategy
22 and brainstorming discussions was not to open source
23 the Unix and UnixWare source code.

24 Q. Would that have been a Caldera board or a
25 SCO Group board, if you know?

1 A. That would have been a Caldera board at
2 the time.

3 Q. And do you know what the reasons were for
4 the board's determination not to pursue this open
5 sourcing of UnixWare code?

6 MR. JAMES: Objection. Beyond the scope.

7 THE WITNESS: Just in general I heard
8 some discussions that from what I had heard from
9 board -- the board discussions that they had paid a
10 significant amount of money for The Santa Cruz
11 Operation and Unix Systems Laboratories assets and
12 felt that it was appropriate to maintain those assets
13 in a more traditional licensing scheme.

14 Q. BY MR. DRAKE: That basically was a
15 better business plan not to open source code, correct?

16 A. Yes.

17 Q. Would you turn to Page 2, please, of
18 Exhibit 1682. And with reference to the subparagraph
19 of one there it says, quote:

20 "Need to do a quick partition of what
21 is/is not owned by SCO, and get Legal
22 involved to clear up rough spots like
23 the HAL" -- all cap no periods --
24 "code."

25 Do you see that?

1 A. Yes.

2 Q. Do you know what is being referred to
3 there with respect to the HAL, H-A-L code?

4 A. Not specifically, but in general there --
5 in UnixWare and OpenServer there were components
6 included in those operating systems that were likely
7 like -- licensed from other entities. And my
8 understanding is it's continual process of making sure
9 that the license agreements and contracts related to
10 those license terms are, you know, upheld and sourced
11 from other sources other than internally are
12 appropriately accounted for, and if there's any issues
13 to make sure that those code modules are appropriately
14 used or removed.

15 Q. Well, are you aware of any efforts that
16 were undertaken to clear up any possible legal
17 problems with the HAL code?

18 A. Not specifically with any HAL code.
19 (Exhibit 1683 was marked for identification.)

20 Q. BY MR. DRAKE: Let me show you what we've
21 marked as Exhibit 1683. It's a lengthy document and
22 my question will only pertain to some information that
23 appears on Page 6.

24 Have you ever seen this document,
25 Mr. Sontag?

1 A. I may have, but it doesn't specifically
2 come to mind.

3 Q. Sure. There is a paragraph that appears
4 about halfway down the page that says, quote:
5 "Caldera's Open Access Model means
6 that their products will immediately
7 be placed in Quadrant Two,
8 proprietary and open. This means
9 that Caldera will provide free access
10 to the source code of those products.
11 Some of Caldera's technologies will
12 be moved immediately into Quadrant
13 One, open and public."
14 Do you see that?

15 A. Yes.

16 Q. In your view is this consistent with
17 questions that I asked you just a moment ago that
18 being that it was Caldera's business plan, at least in
19 the fall of 2000, to open source UnixWare code?

20 A. I don't know specifically the discussions
21 of these Caldera products they're talking about, the
22 other divisions of Caldera which include the Unix
23 Systems Laboratories and Santa Cruz Operations
24 products, or if this is specifically talking about the
25 Caldera products which involved some of their Linux

1 products, management products and so on.
2 (Exhibit 1684 was marked for identification.)

3 Q. BY MR. DRAKE: Let's move to another one,
4 1683. Whoops, that would be 16 --
5 MR. JAMES: 1684.
6 MR. DRAKE: -- 84.

7 Q. Do you recognize this document?

8 A. I do not.

9 Q. Well then you probably won't be able to
10 tell me who the author was, but I need to ask you
11 anyway. Do you happen to know who authored this
12 document?

13 A. No, I cannot.

14 Q. Do you happen to know what the purpose
15 was or what the intended use of the document was?

16 A. It appears to be a proposal, a
17 brainstorming-type document, an idea.

18 Q. See up in the upper right-hand corner
19 that it refers to, I assume a website, and it includes
20 a reference to Kahuna, K-a-h-u-n-a. Do you see that?

21 A. Yes.

22 Q. You and I have discussed this briefly in
23 the past, but tell me if you would again, please, what
24 your understanding of project Kahuna, what it
25 involved?

1 A. My understanding it was a brainstorming
2 kind of activity around possibly open sourcing some
3 or, you know, some portions of Unix. Again, it did
4 not go very far, as far as I'm concerned.

5 Q. Was there one particular person who was
6 tasked with developing and maintaining project Kahuna
7 during the time that it existed?

8 A. I'm not aware of any specific one person.

9 Q. Are you aware of a group or any
10 individuals at all who had any significant
11 contributions to project Kahuna?

12 A. My understanding Ransom Love was highly
13 involved with project Kahuna, but I'm not aware of
14 specific other people that were primarily tasked with
15 project Kahuna.

16 Q. Would there -- to your knowledge would
17 there have been an engineering-type person or an
18 operations-type person who would have been involved in
19 addition to Mr. Love?

20 A. Very well could have been.

21 Q. But you don't know who that might have
22 been?

23 A. No, I do not.
24 (Exhibit 1685 was marked for identification.)
25 MR. DRAKE: Exhibit 1685.

1 Q. Do you recognize this document?

2 A. Not specifically.

3 Q. I'll represent to you that based upon the
4 testimonies -- testimony of others we are informed
5 this is sort of an internal newsletter or
6 internal-type document that Caldera published from
7 time to time. This one being the issue of October
8 31st, 2000.

9 A. All right.

10 Q. Do you happen to know how this document
11 was disseminated?

12 A. I do not.

13 Q. Do you know to whom it was disseminated?

14 A. It appears to be an internal use document
15 for inside of Caldera.

16 Q. Do you know again with any more
17 specificity who might have received this document?
18 Would it have been all the employees of the company,
19 would it have been limited to management level
20 employees, things of that nature?

21 A. I do not know specifically.

22 Q. Turn to Page 2, if you would, please.
23 About halfway down the page it says, quote:
24 "Will you Open Source UnixWare?"
25 And the second line says:

1 "We plan to open source the Unix
 2 kernel 5 on which it is based."
 3 Do you see that?
 4 A. Yes.
 5 Q. Do you know who is responsible for making
 6 the statement, quote:
 7 "We plan to open source the Unix
 8 kernel 5 on which it is based"?
 9 A. No, I do not.
 10 Q. Do you know who was the editor or the
 11 primary person who was responsible for the publication
 12 of this Caldera connection newsletter, if I may
 13 describe it as such?
 14 A. I do not.
 15 Q. Do you know, for instance, whether or not
 16 Drew Spencer would have been the editor or the person
 17 responsible?
 18 A. I do know that Drew Spencer was on the
 19 executive management team of Caldera, I believe in a
 20 capacity of chief technology officer. But I don't
 21 know of his involvement specifically with the
 22 document.
 23 Q. Do you know how long Mr. Spencer remained
 24 with the company?
 25 A. I believe sometime into 2001.

1 about ELF that you placed on Exhibit 1679?
 2 A. Yes. And I may have gotten the date
 3 wrong on the -- I have it down as September 2003 and
 4 it looks like it was March of 2003. But this is the
 5 request that I was referring to here.
 6 Q. I just wanted to make sure that -- well,
 7 strike that.
 8 Was there more than one request from the
 9 Free Standards Group for the open sourcing of the ELF
 10 code?
 11 A. Not that I'm aware of.
 12 Q. So in all likelihood it took place in
 13 March or the spring of 2003 as opposed to the fall?
 14 A. Yes.
 15 Q. Great. And I take it that you indicated
 16 in your earlier testimony that --
 17 A. Was declined.
 18 Q. -- request was declined?
 19 A. Yes.
 20 (Exhibit 1687 was marked for identification.)
 21 Q. Let me hand you Exhibit 1687. And my
 22 questions with respect to this document will be
 23 limited to just one paragraph of information which
 24 appears on Page 27. It's the Bates stamp Page 590.
 25 A. Which page? 27?

1 MR. DRAKE: We've been at it for a little
 2 over an hour, let's take a quick break, let you
 3 stretch your legs and we'll get back on.
 4 THE VIDEOGRAPHER: Going off record. The
 5 time is 10:17.
 6 (There was a break taken.)
 7 (Exhibit 1686 was marked for identification.)
 8 THE VIDEOGRAPHER: Back on record. The
 9 time is 10:27.
 10 Q. BY MR. DRAKE: Mr. Sontag, I've handed
 11 you Exhibit 1686, which is an email string which
 12 involves Mr. McBride. And take a quick moment and
 13 scan that if you would, please.
 14 A. All right.
 15 Q. My question is: Toward the bottom of the
 16 first page of that document it says, quoting in part:
 17 "Just as a reminder, one of the
 18 things we talked about over dinner
 19 was getting SCO to donate the
 20 ABI/ELF" -- or ELF -- "document to
 21 the Free Standards Group."
 22 Do you see that?
 23 A. Yes.
 24 Q. This email is dated March 3rd of 2003.
 25 Does this discussion relate to one of the two entries

1 Q. Yeah, it's -- the pagination for the
 2 document is Page 27.
 3 A. All right.
 4 Q. So you can use that.
 5 A. And 590 for the Bates?
 6 Q. Right. Do you have that?
 7 A. Let me just scan a little bit to see if I
 8 can get some context.
 9 Q. Sure. With respect to timing and
 10 context, if it helps you, Page 1 of an attachment --
 11 and I'm assuming it goes with the primary document --
 12 indicates it was probably used at a shareholder
 13 meeting in 2005 by Mr. McBride.
 14 A. Could very well be. Okay.
 15 Q. On Page 27 of the exhibit in the
 16 paragraph that appears under the slide at the top it
 17 says, in part:
 18 "SCO and its predecessors have made
 19 contributions to the open source
 20 community such as the first graphical
 21 installer for Linux ..."
 22 It then refers to Open W-B-E-M. Is that
 23 a typo, the Open W-B-E-M, should that be OpenWEBM?
 24 A. There is a -- and it's a number of
 25 letters and acronyms together -- but there is a

1 W-B-E-M type or similar spelling graphical installer
 2 that Caldera did create for Linux, I believe.
 3 Q. And it is properly spelled referred to as
 4 W-B-E-M as it is here in this document?
 5 A. I'm not 100 percent certain.
 6 Q. Fair enough. To your knowledge is
 7 Mr. McBride's statement there, or at least the
 8 statement that appears in this document, correct in
 9 that SCO did contribute OpenWBEM to Linux?
 10 A. I believe so.
 11 Q. In your mind would that constitute an
 12 open source contribution?
 13 A. Yes.
 14 Q. Does that contribution appear on
 15 Exhibit 1679?
 16 A. No, it does not.
 17 Q. Do you know why it does not?
 18 A. I limited my listing on that list to Unix
 19 related open source contributions. This was a Linux
 20 related open source contributions. So it was not
 21 based on Unix source code.
 22 Q. The contribution that is referred here is
 23 not based on Unix source code --
 24 A. No, it is not.
 25 Q. -- is that your testimony? Okay.

1 Development Labs. Are you familiar with the entity
 2 known as Open Source Development Labs?
 3 A. To some extent, yes.
 4 Q. Do you know how long Caldera remained a
 5 member or had an agreement with the Open Source
 6 Development Labs?
 7 A. I'm not aware how long their membership
 8 went. I am aware that by the time I was with SCO in,
 9 you know, by the fall of 2002 to -- by early 2003 I do
 10 not believe there was any continued membership with
 11 OSDL.
 12 Q. Do you know what the purpose was or
 13 reason was for Caldera or SCO's discontinuing its
 14 participation with the Open Source Development Labs?
 15 A. No.
 16 MR. JAMES: Objection. Beyond the scope.
 17 THE WITNESS: No, I do not.
 18 (Exhibit 1690 was marked for identification.)
 19 Q. BY MR. DRAKE: Exhibit 1690 is what
 20 appears to be a collection of power point slides, the
 21 first page of which indicates that it was at least
 22 prepared for the meeting with Intel executives. Do
 23 you see that?
 24 A. Yes.
 25 Q. If you would turn to Bates Stamped

1 (Exhibit 1688 was marked for identification.)
 2 Q. BY MR. DRAKE: Exhibit 1688 is a one-page
 3 document. Have you seen this document before?
 4 A. I may have.
 5 Q. Take a quick moment and just scan as much
 6 of it as you need to, but I believe the first
 7 paragraph is all you need.
 8 A. Okay.
 9 Q. Is it your understanding that this
 10 document reflects contributions of Unix related code
 11 that were made by Caldera?
 12 A. Yes, and that would refer to the GCC Bug
 13 Fixes. This is what I was referring to was a number
 14 of bug fixes that were provided.
 15 Q. So Exhibit 1688 is just a fuller
 16 explanation of the category that you describe as GCC
 17 Bug Fixes on Exhibit 1679?
 18 A. Correct.
 19 Q. Okay.
 20 (Exhibit 1689 was marked for identification.)
 21 Q. BY MR. DRAKE: Hand you Exhibit 1689. Do
 22 you recognize Exhibit 1689?
 23 A. I do not.
 24 Q. It appears to be an agreement which was
 25 entered into by Caldera with the Open Source

1 Page 563, it's about three-fourths of the way down the
 2 document.
 3 A. Okay.
 4 Q. This slide is captioned "Caldera
 5 Proposal." I know this is before the time that you
 6 joined the company, but are you familiar with
 7 discussions that appeared to have been ongoing between
 8 Caldera and Intel back in the fall of 2000?
 9 A. I'm vaguely aware there was some
 10 discussions with Intel in that time frame.
 11 Q. Do you know what the nature of the
 12 discussions was or what the intended purpose was?
 13 A. Not specifically.
 14 Q. How about generally? Do you know what
 15 was being considered or discussed between those two
 16 entities?
 17 A. At that time frame, no.
 18 Q. Referring to the first description under
 19 the heading there which says, quote:
 20 "Caldera will 'open source' 'SCO'" --
 21 both those words being in quotes --
 22 "technology."
 23 Goes on to say:
 24 "Enhanced System V4 (now System 6)
 25 kernel" and "LKP Linux capability."

1 Does the addition of that information
2 assist you in determining what the discussion was or
3 what Intel and Caldera were talking about back in the
4 fall of 2000?

5 A. Well based solely on the document it
6 appears to have been a proposal. This was in the time
7 frame where they were, you know, brainstorming what
8 they were going to do with the new acquisition of The
9 Santa Cruz Operation and Unix Systems Laboratories
10 business. And as part of that proposal I -- it
11 appears they discussed a possibility of doing that.
12 They did not.

13 Q. And that was going to be my next
14 question: To your knowledge did those discussions
15 come to fruition?

16 A. Or the nature of this proposal was not
17 acted upon.

18 Q. Do you know why it was not acted upon or
19 why it did not ultimately come to fruition?

20 MR. JAMES: Objection. Beyond the scope.

21 THE WITNESS: And also specifically what
22 are you asking about?

23 Q. BY MR. DRAKE: Why didn't the deal get
24 done?

25 A. The deal of doing something between

1 whether or not FUR was open sourced during or shortly
2 after July of 2000?

3 A. Probably want to go back to Sandy Gupta
4 and ask of him and have him do some research with the
5 appropriate engineers and employees that may have
6 knowledge of this work.

7 Q. To your knowledge was FUR based upon Unix
8 code?

9 A. I do not know.
10 (Exhibit 1692 was marked for identification.)

11 Q. BY MR. DRAKE: Exhibit 1692 appears to be
12 a press release, and my questions will be directed to
13 material that appears at the bottom of Page 2. Again
14 not to fast forward too quickly for you, but the
15 paragraph that appears at the bottom of Page 2 refers
16 to SCO's contribution of Cscope, which we discussed
17 earlier in Exhibit 1679.

18 A. Yes.

19 Q. And also FUR, or F-U-R, that we just
20 discussed in the preceding exhibit.

21 A. Okay.

22 Q. Do you see that?

23 A. Yes.

24 Q. Does this suggest to you that in fact
25 both those materials or both those elements of code,

1 Caldera and Intel?

2 Q. Yes.

3 A. I do not know why.
4 (Exhibit 1691 was marked for identification.)

5 Q. BY MR. DRAKE: Exhibit 1691 is a string
6 of emails, and my question to you would be directed to
7 a portion of one that appears at the bottom of Page 2.

8 A. Okay. Bottom of the first page?

9 Q. Bottom of Page 2.

10 A. Bottom of Page 2.

11 Q. The quotation begins with "Within the
12 next two weeks."

13 A. Down here at the bottom, okay.

14 Q. Yes, sir. And it refers to open sourcing
15 something called FUR, F-U-R. Do you see that?

16 A. Okay.

17 Q. Are you familiar with -- am I pronouncing
18 it correctly, FUR, just like it appears?

19 A. I'm vaguely familiar with FUR. I
20 couldn't tell you much about what it is or what it
21 does.

22 Q. Well, what I'd like to know is whether or
23 not it was in fact open sourced?

24 A. I do not believe so, but I do not know.

25 Q. How would you make the determination of

1 if I may describe them as such, were open sourced by
2 SCO?

3 A. Well I know specifically that Cscope was.
4 It appears in this press release that at least FUR was
5 discussed, but I don't know specifically if FUR was
6 actually open sourced.

7 Q. The conclusion of that paragraph says,
8 quote:

9 "... and currently offers a free Open
10 License Software Supplement
11 (SkunkWare) CD that includes many
12 cutting-edge Open Source
13 technologies."

14 Do you see that?

15 A. Yes.

16 Q. What does that mean? What is the
17 SkunkWare that was being offered pursuant to a free
18 open source or open license, I should say?

19 A. My expectation that would be various open
20 source packages that could be combined and added on to
21 the Santa Cruz operating -- Santa Cruz operating
22 system products.

23 Q. Would these be open source products that
24 Santa Cruz had obtained from third parties or would
25 they be packages that Santa Cruz itself had developed?

1 A. It could be both.
 2 Q. Are you familiar with the SkunkWare
 3 product?
 4 A. No.
 5 Q. All right. Let's move to Topic 4, and
 6 just for your ease of reference try to retrieve the
 7 notice for you so that you can get some background.
 8 I've handed you the portion of the
 9 September 2nd, 2005, notice which includes Topic 4.
 10 Take just a moment and refer to that, if you would,
 11 please.
 12 A. All right.
 13 Q. Are you prepared to discuss Topic 4 this
 14 morning?
 15 A. Yes, I am.
 16 Q. Tell me what you did, if anything, to
 17 specifically prepare to testify on Topic 4.
 18 A. I reviewed a number of documents, which
 19 were the correspondence between SCO and IBM related to
 20 our notices, and then terminations of UnixWare and the
 21 Sequent -- no, I'm sorry -- the AIX and Sequent-based
 22 operating systems, as well as discussions with Darl
 23 McBride.
 24 And I also, at the direction of legal
 25 counsel, did send a request out to SCO employees

1 requesting any information they may have on these
 2 communications. But primarily was the correspondence
 3 and the communication with Mr. McBride.
 4 Q. Let's start in reverse order in terms of
 5 the things you've just listed for me. What, if
 6 anything, resulted from the request that you sent out
 7 to SCO employees to elicit any information that they
 8 might have?
 9 A. I don't believe this was anything that
 10 was pertinent.
 11 Q. Okay. How about anything from the
 12 discussions with Mr. McBride, anything that was
 13 significant or different than the information
 14 contained in the correspondence in the notices that
 15 you referred to?
 16 A. No. He simply provided me with some
 17 additional chronology of discussions that occurred,
 18 most of which I was already aware of.
 19 Q. Run down that chronology for me. I know
 20 that might be tedious, but do your best.
 21 A. All right. So we have related to the
 22 Topic 4, communications with IBM consisted of the
 23 initial notice letter that was sent on our issues with
 24 AIX. It was sent, I believe, March 6th of 2003 from
 25 Darl McBride to Mr. Palmisano, the CEO of IBM, in

1 conjunction with our filing of the lawsuit.
 2 I believe also shortly thereafter there
 3 was also a letter sent regarding notice on Sequent
 4 that was sent in the same time frame, and then the
 5 actual termination letters that were sent either 100
 6 days or 60 days after those notices -- notice letters
 7 had been sent, also to either legal department of
 8 Sequent or to Mr. Palmisano of IBM.
 9 You want me to continue?
 10 Q. Please.
 11 A. There was a face-to-face discussion that
 12 occurred between representatives of IBM and SCO and
 13 its legal counsel that occurred, I believe, in
 14 June 3rd of 2003. And then there was some subsequent
 15 meetings between Mr. McBride, Mr. Darl McBride, Kevin
 16 McBride, Mr. Palmisano the CEO of IBM, and Mr. Lineen,
 17 who was at the time chief corporate counsel for IBM.
 18 And Armonk --
 19 Q. I'm sorry, did you say Mr. Lavine?
 20 A. Lineen, sorry, the corporate counsel of
 21 IBM at the time.
 22 Q. Mr. Lauderdale.
 23 A. No. Ed Lineen.
 24 Q. Lineen, I'm sorry. I'm confusing with
 25 Mr. Lavine.

1 A. Oh, no, Lineen.
 2 Q. Great. Okay.
 3 A. That was in Armonk, and that was in the
 4 fall of 2003. And then there was a number of
 5 follow-up meetings with Mr. Lineen and Mr. Darl
 6 McBride. I believe on one occasion another
 7 face-to-face that involved another IBM executive, I
 8 believe by the name of Mr. Zeidler. And then a number
 9 of phone conversations that followed later into the
 10 year of 2000 -- late into 2003, possibly into 2004, to
 11 some extent.
 12 Q. Who was involved in the phone calls that
 13 you've just referred to?
 14 A. I believe primarily Mr. Darl McBride and
 15 in most cases it was Mr. Lineen.
 16 Q. To your knowledge were any notes
 17 maintained of the conversation that Mr. McBride had
 18 with Mr. Lineen?
 19 A. I'm not aware of any notes.
 20 Q. Are you aware of any written
 21 documentation whatsoever of the conversations that
 22 took place between Mr. McBride and Mr. Lineen?
 23 A. I'm not aware of any.
 24 Q. Okay. Anything else, any other
 25 communications that you're aware of between SCO and

1 IBM after late 2003, early 2004?
 2 A. Not that I'm aware of.
 3 Q. To your knowledge were there any either
 4 written or oral communications between SCO and IBM
 5 concerning the alleged breach of either the IBM or the
 6 Sequent Unix licensing agreements prior to March 6th
 7 of 2003?
 8 A. Prior to March 6, 2003, Mr. McBride had
 9 made me aware that he had a discussion with a Mr. Tony
 10 Befi who was, as Mr. Befi referred to, the pep
 11 executive responsible for SCO. Had an initial meeting
 12 with him in the late summer, early fall of 2002
 13 introducing himself. And I think that conversation,
 14 that's also, I believe, discussed in fair amount of
 15 details in Mr. McBride's deposition.
 16 Q. Did you -- I'm sorry to interrupt you --
 17 did you review Mr. McBride's discussion of that topic
 18 in his deposition in preparation for --
 19 A. I did.
 20 Q. Okay. Please continue.
 21 A. At his request.
 22 And based on talking to Mr. McBride and
 23 also the deposition, he had a follow on conversation
 24 where he called Mr. Befi, who said if you have any
 25 issues or problems to give him a call.

1 A. No.
 2 Q. You listed -- strike that.
 3 Apart from these discussions between
 4 Mr. McBride and Mr. Befi are you aware of any
 5 discussions or communications on this topic that
 6 preceded March 6th of 2003?
 7 A. On this topic, no.
 8 Q. You listed a number of documents that
 9 included so-called notice letters, termination
 10 letters, things of that nature. Did you review or did
 11 you become aware of any documents that have not been
 12 produced to IBM and which are responsive to Topic 4
 13 and that we're discussing this morning?
 14 A. No, I'm not aware of any.
 15 Q. Are you aware of any internal memoranda
 16 that SCO has prepared that contain information or
 17 contain a discussion of these issues? And I want to
 18 make a distinction between the letters and the notice
 19 documents that we've discussed.
 20 A. I believe there was some correspondence
 21 in conjunction with legal counsel that I believe would
 22 be, you know, work product, protected.
 23 MR. JAMES: Or even attorney-client
 24 privilege.
 25 THE WITNESS: That too.

1 Mr. McBride called him with concerns that
 2 he was becoming aware of in the October time frame of
 3 2002 regarding things he was hearing about project
 4 Monterey that had been in joint development between
 5 IBM and SCO. And he made his concerns about what he
 6 was hearing about project Monterey known to Mr. Befi
 7 requesting that he look into the project Monterey
 8 issue and respond back to him.
 9 There was no follow-up conversation from
 10 Mr. Befi until early in March of 2003, a few days
 11 before we filed the lawsuit, but nothing of substance.
 12 Q. And as I understand your testimony then
 13 you have spoken to Mr. McBride in preparation for
 14 today's testimony and you have also, at his request,
 15 reviewed his deposition testimony as it would be
 16 relevant to this topic; is that correct?
 17 A. That is correct.
 18 Q. In talking to Mr. McBride in preparation
 19 for today did you gain any additional information
 20 about these conversations or communications that is
 21 not reflected in Mr. McBride's deposition testimony?
 22 A. I don't believe so.
 23 Q. In other words, did Mr. McBride have
 24 anything to add to what he said in his deposition on
 25 this topic?

1 Q. BY MR. DRAKE: You should be learning
 2 these things. Part of Topic 4, Mr. Sontag, includes
 3 the concluding phrase, quote:
 4 "... and any curative measures
 5 proposed to IBM by SCO prior to the
 6 purported termination."
 7 Do you see that?
 8 A. Yes.
 9 Q. Do you understand what the phrase
 10 "curative measures" means in that context?
 11 A. Not being an attorney, probably not the
 12 full nature of what that means. But in a general
 13 level, yes.
 14 Q. Well, tell me just generally so that
 15 we're certain we understand one another what you
 16 understand "curative measures" to mean in that
 17 context.
 18 A. Any proposed remedies or otherwise to
 19 solve the problem.
 20 Q. Well said.
 21 Are you aware of any such measures or
 22 proposals to solve the problems that were made by SCO
 23 to IBM prior to March 6th of 2003?
 24 A. Prior to March 6th?
 25 Q. Yes, sir.

1 A. Related to Topic 4?
 2 Q. Yes, sir.
 3 A. Other than what's in the documents, the
 4 correspondence with IBM documents and the
 5 communications in the meeting that was held on
 6 June 3rd and possibly additional conversations beyond
 7 that point that I've already laid out, I'm not aware
 8 of anything.
 9 Q. And I meant to limit my question to those
 10 curative measures offered before March 6th. So the
 11 June 3rd conversations and things would not apply,
 12 correct?
 13 A. All right. So no.
 14 Q. Are you aware of any other communications
 15 that are responsive to Topic 4 that we have not
 16 discussed this morning or that are not reflected in
 17 documents that have been produced to IBM in the
 18 litigation?
 19 A. I'm not aware of any.
 20 (Exhibit 1693 was marked for identification.)
 21 Q. BY MR. DRAKE: Let me show you what we've
 22 marked as Exhibit 1693. My question will pertain to a
 23 quote from Mr. McBride that appears about
 24 three-fourths of the way down on the first page of
 25 Exhibit 1693, and it refers to what Mr. McBride

1 describes as a conversation that he recalls having
 2 with Mr. Steve Solazzo, S-o-l-a-z-z-o, on
 3 December 9th, presumably of 2002. Do you see that?
 4 A. Yes.
 5 Q. Are you aware of any document which
 6 memorialize any aspect of the conversation that
 7 Mr. McBride supposedly had with Mr. Solazzo on
 8 December 9th of 2002?
 9 A. I believe there was a document that
 10 Mr. McBride created at the request of legal counsel
 11 that was a memo that he generated for legal counsel of
 12 his conversations leading up until end of January of
 13 2003, including his conversations with Mr. Solazzo,
 14 Karen Smith, I believe was her name, and a number of
 15 other conversations that he participated, some of
 16 which I participated in as well.
 17 Q. But the documents that were created which
 18 memorialize some or all of these discussions were
 19 created at the direction of counsel?
 20 A. That is correct.
 21 Q. And have not presumably been produced in
 22 this litigation?
 23 A. Though I believe Mr. McBride has
 24 explained a lot of those meetings and conversations in
 25 his deposition that he gave in December of last year.

1 Q. Indeed he has, but I just want to make
 2 sure that whether there's any documentation that
 3 exists that has not been produced to which a claim of
 4 privilege has not been made?
 5 A. Not that I'm aware.
 6 Q. The second page of Exhibit 1693 at the
 7 top is a continuation of Mr. McBride's quote, actually
 8 it's answered in the next question. But he says in
 9 part:
 10 "... so we sat down in early January
 11 with IBM for three or four more
 12 discussions."
 13 Do you see that?
 14 A. Okay. Yes.
 15 Q. Did you participate in any of those
 16 discussions or those meeting?
 17 A. Yes, I did.
 18 Q. How many, if you know?
 19 A. I believe it was two or three
 20 conversations that occurred.
 21 Q. Can you take me through each of those in
 22 sequence.
 23 MR. JAMES: I think I may be able to help
 24 some here. You're crossing over, I think to some
 25 degree, on two topics, Topic 4 and Topic 19. And

1 Chris prepared and brought with him today I think a
 2 little chronology to the best he could put together
 3 about some of the meetings and the approximate dates
 4 and who participated. And let me just give those to
 5 you so you can mark them if you choose.
 6 MR. DRAKE: Thanks. Let's go off the
 7 record for just a minute, that will give us a chance
 8 to change tape and give me a chance to digest this and
 9 we'll get back on.
 10 THE VIDEOGRAPHER: Going off record.
 11 This is the end of Tape Number 1. The time is 11:04.
 12 (There was a break taken.)
 13 (Exhibit 1694 was marked for identification.)
 14 THE VIDEOGRAPHER: Back on the record.
 15 This is the beginning of Tape Number 2. The time is
 16 11:12.
 17 Q. BY MR. DRAKE: Mr. Sontag, I agree with
 18 the comments made by Mr. James before the break, that
 19 is, that there is a duplication and overlap between a
 20 couple of the topics on which you've been designated
 21 today.
 22 And I understand that what we've marked
 23 as Exhibit 1694 is a document that you prepared
 24 primarily to be responsive to another topic, but which
 25 in my judgment does apply to the discussion we've been

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<p>1 having.</p> <p>2 So I'd like to take a moment and just go</p> <p>3 through and make sure I understand how this document</p> <p>4 was prepared, what it was intended to portray, things</p> <p>5 of that nature. So if you would begin at the top and</p> <p>6 with respect to the entry of December 9th, 2002, tell</p> <p>7 me what Exhibit 1694 portrays and what is intended to</p> <p>8 explain?</p> <p>9 A. Specifically created for Topic 19, but it</p> <p>10 is a number of communications and meetings between SCO</p> <p>11 and IBM from November 1st, 2002, through March 6th of</p> <p>12 2003 related to our concerns about intellectual</p> <p>13 property in Linux.</p> <p>14 Q. The December 9th entry indicates</p> <p>15 telephone call from Solazzo to McBride; is that</p> <p>16 correct?</p> <p>17 A. Steve Solazzo, yes, to Darl McBride.</p> <p>18 Q. Yes. To your knowledge were there any</p> <p>19 other participants in the phone call?</p> <p>20 A. Not that I'm aware of.</p> <p>21 Q. And what is your understanding of the</p> <p>22 substance of the conversation that took place on that</p> <p>23 date?</p> <p>24 A. We had been briefing -- SCO had been</p> <p>25 briefing a number of partners on our forthcoming</p>	<p>1 have a follow on meeting and set up a meeting for the</p> <p>2 following day that involved a number of IBM attorneys</p> <p>3 and a few IBM executive employees in a conference call</p> <p>4 for us to explain to a larger group of people inside</p> <p>5 of IBM what we were doing with the SCOsource</p> <p>6 announcement.</p> <p>7 So that's the meeting on December 12th.</p> <p>8 Q. December 10th?</p> <p>9 A. I'm sorry, December 10th. And I was</p> <p>10 involved with Mr. McBride on that call.</p> <p>11 Q. Tell me what was discussed in the</p> <p>12 conference call of December 10th, 2002, please.</p> <p>13 A. That conference call we explained to them</p> <p>14 in general what we were planning on announcing with</p> <p>15 regard to SCOsource, how the program worked, how we</p> <p>16 believed it was friendly to the Linux community. That</p> <p>17 we were not the first to raise issues about</p> <p>18 intellectual property in Linux, but we felt that we</p> <p>19 had at least a significant solution to a lot of the</p> <p>20 problems with the SCOsource product.</p> <p>21 And we also strongly expressed that we</p> <p>22 had concerns about intellectual property possibly</p> <p>23 being in Linux, specifically statements that had been</p> <p>24 made by IBM executives and by Red Hat executives of</p> <p>25 their concerns about intellectual property in Linux.</p>
<p>Page 78</p> <p>1 announcement of SCOsource and the -- I believe this</p> <p>2 telephone call was set up between Mr. McBride and</p> <p>3 Mr. Solazzo to brief Mr. Solazzo on what we were doing</p> <p>4 with SCOsource, the briefings with other partners and</p> <p>5 so on -- because I had done many of them -- had been,</p> <p>6 I believe, very positive.</p> <p>7 The briefing that Mr. McBride had with</p> <p>8 Mr. Solazzo was not, according to Mr. McBride, very</p> <p>9 positive. It was a great deal of contention and</p> <p>10 Mr. Solazzo saying things like, you know, I've heard</p> <p>11 about this SCOsource announcement and our general</p> <p>12 counsel said words that, you know, can't be said in</p> <p>13 public about it, blah, blah, blah.</p> <p>14 He, I believe, immediately pushed for SCO</p> <p>15 to not make the announcement because of IBM's concerns</p> <p>16 that our raising any issues around intellectual</p> <p>17 property and Linux would be very damaging to Linux.</p> <p>18 Our view was that -- and I believe this</p> <p>19 was expressed by Mr. McBride in this call -- was that</p> <p>20 we were doing a very community friendly announcement</p> <p>21 of SCOsource, that it was an add on to Linux, that it</p> <p>22 was a license of additional libraries and additional</p> <p>23 intellectual property protection, which is allowed for</p> <p>24 within Linux in terms of warranties and otherwise.</p> <p>25 Mr. Solazzo strongly requested that we</p>	<p>Page 80</p> <p>1 And we raised that we were concerned about that.</p> <p>2 We raised that we were concerned about</p> <p>3 getting value for our intellectual property that may</p> <p>4 be -- may be contained in Linux and that IBM</p> <p>5 executives on the meeting or someone on the call</p> <p>6 stated that they understood what we were trying to</p> <p>7 accomplish and thought they had a possible plan or</p> <p>8 they understood, and let's have a follow-up</p> <p>9 conversation and strongly requested of us that we</p> <p>10 postpone our SCOsource announcement from going to be</p> <p>11 within one or two days of December 10th until January.</p> <p>12 So we agreed to postpone our announcement</p> <p>13 of SCOsource, because IBM was a very large and</p> <p>14 important partner to SCO. And a follow-up meeting was</p> <p>15 scheduled for January 15th of 2003 to follow up on the</p> <p>16 ideas of what could be done as a -- to help SCO get</p> <p>17 value for its intellectual property, that it was</p> <p>18 possibly a different plan from what SCO was already</p> <p>19 proposing with SCOsource that it was planning on</p> <p>20 announcing.</p> <p>21 So that was the basis for the follow-up</p> <p>22 meeting of January 15 that involved Karen Smith and</p> <p>23 Bob Butler, Darl McBride and myself.</p> <p>24 Q. Before moving to that conference call of</p> <p>25 January 15th, did anyone other than you and</p>

20 (Pages 77 to 80)

1 Mr. McBride participate in the conference call on
2 December 10th on behalf of SCO?

3 A. No.

4 Q. Were any of your -- SCO's attorneys
5 present or did they participate in that conversation?

6 A. No. And we felt significantly outgunned
7 just having Mr. McBride and myself on a phone call
8 with a large number of IBM attorneys.

9 Q. Well, did you understand who would be
10 participating on behalf of IBM before the call took
11 place?

12 A. Yes.

13 Q. All right. So you could have had your
14 own attorneys participate with you if you chosen to,
15 correct?

16 A. At this point we did not have a full-time
17 in-house attorney, so we were the only available
18 resources instead.

19 Q. But you had retained the Boies, Schiller
20 firm as of December 10th, 2002, had you not?

21 A. I'm not sure specifically the date that
22 we retained them, but it was still in the process of
23 them getting involved with us and there was no Boies,
24 Schiller attorneys available on December 10th in
25 Lindon, Utah for this call.

1 significant that we haven't discussed?

2 A. Just my distinct recollection that, you
3 know, we had strongly said we have concerns about, you
4 know, intellectual property issues. SCO intellectual
5 property issues in Linux and that we felt it important
6 to put out a program to monetize it and, you know, if
7 IBM had concerns about that, had other proposals that,
8 you know, we were -- because they were an important
9 partner of ours that they we would be willing to
10 listen to them on it.

11 Q. You mentioned a moment ago that a
12 representative of Red Hat had made comments about
13 concerns about Linux and intellectual property issues,
14 or words to that effect. I don't mean to
15 mischaracterize what you said earlier. Do you
16 remember that testimony?

17 A. Yes.

18 Q. Who at Red Hat were you referring to?

19 A. I believe it was Matthew Zulik, who was
20 the CEO of Red Hat.

21 Q. Okay. Were there any discussions between
22 SCO and IBM on this topic between December 10th and
23 January 15th of 2003?

24 A. No.

25 Q. Let's move to that next conference call

1 Q. Was Mr. Tibbitts general counsel to SCO
2 as of December 10th, 2002?

3 A. I can't remember the exact date when he
4 started full time. It was probably right around this
5 time, but he was not available for this meeting.

6 Q. Well, would you agree that if you had
7 felt it necessary to have counsel you could have made
8 arrangements to have counsel participate with you?

9 A. Yes.

10 MR. JAMES: Objection. Beyond the scope.

11 Q. BY MR. DRAKE: Did you make any
12 contemporaneous notes of the discussion or the
13 conference call that took place on December 10th?

14 A. No, I did not.

15 Q. To your knowledge did Mr. McBride?

16 A. I do not believe he did either.

17 Q. About how long did the conference call
18 last?

19 A. Somewhere between -- around an hour, I
20 believe.

21 Q. Was it just a audible conference as
22 opposed to a video teleconference?

23 A. Yes.

24 Q. Okay. Anything else about that
25 conference call of December 10th that you think is

1 then and tell me what took place on that occasion.

2 A. So this was the follow-up conference call
3 that was on January 15th that we -- Mr. McBride and
4 myself had an expectation that IBM would come into
5 this conference call with proposals or suggestions or
6 solutions for a better program to help SCO monetize
7 its intellectual property with regard to Linux, then
8 the SCOSource program for which we had already briefed
9 them on.

10 There was no substantive ideas or
11 suggestions or recommendations made by either Karen
12 Smith or Bob Butler on that phone call. And I believe
13 at that point we let them know that we were planning
14 on moving forward with our SCOSource announcement that
15 we had postponed on their behalf from December.

16 And that was the last discussion we had
17 with -- with IBM before we, I believe, actually put
18 out the press release and had conducted a number of
19 press interviews leading up to the Linux World show
20 later in January of 2003.

21 Q. Was this conference call that took place
22 on January 15th a scheduled call, if you will? That
23 is, you knew it was coming some period of time in
24 advance?

25 A. Yes, I believe so.

1 Q. Had SCO decided that it was going to sue
2 IBM as of January 15th, 2003?
3 MR. JAMES: Objection. Beyond the scope.
4 THE WITNESS: To my knowledge, no.
5 Q. BY MR. DRAKE: When was that decision
6 made?
7 MR. JAMES: Same objection.
8 THE WITNESS: It was a very serious
9 decision and one that was not made over night. But it
10 was made over a period of time leading up until March
11 of 2003. But mostly in the February and early March
12 time frame that decision was made.
13 Q. BY MR. DRAKE: Well, there comes a point
14 in time when one decides to file suit and sue someone,
15 would you agree?
16 A. Yes.
17 Q. Do you know when that discreet point in
18 time occurred with respect to SCO's decision to sue
19 IBM?
20 MR. JAMES: Beyond the scope.
21 THE WITNESS: Again, I don't view it as a
22 discreet point. It was a very heavy decision that we
23 had to make that was, you know, carefully made, like I
24 said, mostly through February into early March of
25 2003.

1 Q. BY MR. DRAKE: Well, you agreed with me
2 that there is a discreet point in time when one makes
3 a decision to file suit. Did we not reach agreement
4 on that point?
5 A. That final determination and decision was
6 made probably on March 3rd or March 4th or March 5th.
7 Q. That's all I'm trying to get at. If it's
8 your testimony that the final decision to sue IBM was
9 made on March 3rd, 4th or 5th --
10 A. Early March, yes.
11 Q. -- and not before, that's fine.
12 A. Yes.
13 Q. And that decision was made by whom, if it
14 was one person?
15 MR. JAMES: Objection. Beyond the scope.
16 THE WITNESS: Primarily by Mr. McBride in
17 consultation with legal counsel and in consultation
18 with the board of directors.
19 Q. BY MR. DRAKE: Would it be fair to say
20 that even though the final decision had not been made
21 as of January 15th, 2003, that that was one of the
22 options that SCO was considering, that is the option
23 of filing suit against IBM?
24 MR. JAMES: Objection. Beyond the scope.
25 THE WITNESS: I think it was starting to

1 become an option by mid January of 2003. Mostly
2 primarily due to the -- the conversations and -- and
3 the unusual demands from IBM in December of 2002 that
4 gave us first rise to having concern about IBM, who
5 was a significant partner to SCO.
6 Q. BY MR. DRAKE: Have you told me
7 everything that you can recall about the discussion
8 that took place on January 15th, 2003?
9 A. Again, I think you can refer to
10 Mr. McBride's deposition, he may have some additional
11 elements of the conversation that may be in his
12 deposition that I haven't specifically alluded to, but
13 as much as I can recall right now, yes.
14 Q. I'm just -- and indeed he does discuss
15 that. I'm just interested in anything that you may
16 have to add that we haven't already discussed.
17 A. No, I think basically I've raised the
18 most salient points.
19 Q. And do you recall how things were left,
20 if I may describe it as such, at the end of that
21 conference call January 15th, 2003?
22 A. I believe it was some, you know, we
23 agreed to disagree, for the most part, was my view on
24 how that conversation ended. That we let them know we
25 were planning on moving forward. I think we also let

1 them know that we were fairly disappointed that they
2 did not have any concrete proposals that we would view
3 were a better solution than what we were already
4 planning on doing with the SCOSource announcement.
5 And I think that's the primary nature of the
6 conclusion of that conversation.
7 Q. Okay. The next entry on Exhibit 1694
8 refers to a phone call that took place, as it
9 indicates here, sometime between January 15th and
10 January 23rd of 2003. What can you tell me about that
11 conversation?
12 A. And I think it was likely closer to
13 January 23rd, either the 22nd or 23rd. But it was a
14 conversation, I'm not sure who initiated, between Darl
15 McBride and Karen Smith for which she, I believe, had
16 seen that we had announced our SCOSource program and
17 that we had done a number of press interviews leading
18 up to, you know, kind of our announcement that we were
19 planning on doing at a Linux World show of the
20 SCOSource program.
21 My understanding from Mr. McBride was
22 that it was a contentious conversation. My
23 recollection was I was right next to Mr. McBride while
24 he was on the phone as we were traveling together to
25 Linux World, but I did not hear the conversation

1 specifically.

2 It appeared to be very animated and
3 concluded with her being very mad that we had
4 announced the program that we had suspended, that we
5 had told them that we were going to announce on the
6 15th. And either in this phone call on the 24th or
7 the face-to-face meeting that Mr. McBride and Karen
8 Smith had on the 24th, my understanding is that
9 Ms. Smith demanded that we retract the press release
10 and withdraw the announcement.

11 And that was the nature of what I
12 understand to be predominant parts of that cell phone
13 conversation on the -- somewhere between the 15th and
14 23rd.

15 Q. You said a moment ago that you weren't
16 sure who placed the call to whom. This indicates a
17 cell phone call from McBride at airport to Smith in
18 her office.

19 A. That could very well be.

20 Q. Anything more about that conversation
21 that you have to add that we haven't discussed?

22 A. Again, there may be additional in
23 Mr. McBride's deposition, but that's my recollections
24 of that conversation.

25 Q. And then the meeting the next day on

1 Q. BY MR. DRAKE: This would be a
2 face-to-face download, as it were?

3 A. Yes.

4 Q. Okay. All right. Anything else to add
5 that explains more about the face-to-face meeting
6 between Mr. McBride and Ms. Smith?

7 A. No.

8 Q. Okay. Let's move on to the last category
9 that's described as late January of 2003. Tell me
10 what's intended by that entry?

11 A. I was aware that there was a conversation
12 between a number of IBM attorneys and one of SCO's
13 attorneys, Mark Heise, that occurred in late January
14 of 2003 regarding various legal questions that I
15 believe IBM had. And I believe Mr. Heise made best
16 attempts based on what we knew at the time to answer
17 those questions.

18 Q. Okay. A few moments ago you indicated
19 that you participated in some meetings with IBM
20 representatives in January of 2003, correct?

21 A. Yes.

22 Q. We now moved through each of those as you
23 recall them. Would you explain for me what you
24 remember being discussed or what took place during
25 those meetings?

1 January 24th of 2003 took place at the Linux World
2 conference; is that correct?

3 A. That is correct.

4 Q. Were you present during that face-to-face
5 meeting?

6 A. I was not.

7 Q. Do you have any additional information
8 that explains what took place during that meeting
9 apart from what Mr. McBride has already described in
10 his deposition?

11 A. I was aware that the meeting was going to
12 take place, it was a breakfast meeting between
13 Mr. McBride and Ms. Smith. And I did shortly after
14 the meeting get a download from Mr. McBride of the
15 nature of the meeting, that Ms. Smith was basically
16 yelling at Mr. McBride, making threats, telling him
17 that we had to withdraw the SCOsource program, that
18 IBM would discontinue significant business with SCO.
19 A number of other topics as well.

20 Q. When you say you received a download, do
21 you mean to say you received an email?

22 A. No. Mr. McBride talked to me after the
23 conversation, within an hour or two after the
24 breakfast meeting.

25 MR. JAMES: It's techy-talk, Curt.

1 A. Well those would be the January 10th --
2 I'm sorry, January 15th meeting, and then was
3 Mr. McBride that participated in the meeting with
4 Ms. Smith later in January of 2003.

5 Q. I see.

6 A. So I had one phone call in January of
7 2003 that I participated in.

8 Q. So you did not participate in any
9 face-to-face meetings with IBM representatives in
10 December or January -- December of 2002 or January of
11 2003, correct?

12 A. That is correct.

13 Q. Go back to Exhibit 1693, if you would,
14 please, and turn to the second page. This is the
15 quote that I referred to -- referred to earlier in
16 which Mr. McBride says, quote:

17 "So we sat down in early January with
18 IBM for three or four more
19 discussions."

20 Do you see that?

21 A. Yes.

22 Q. That quote suggests to me that he's
23 referring to face-to-face meetings, and I don't want
24 to unfairly characterize it but I want to make sure
25 I'm aware of all the face-to-face meetings that took

1 place between any SCO representative and any IBM
2 representative in January 2003.

3 A. I don't know if I necessarily view his
4 statement that we sat down being that all of these
5 were face to face.

6 Q. And that's all I want to clarify.

7 A. Yes.

8 Q. That may very well be just a phrase that
9 he used not intending it to be literally interpreted
10 as sit down face-to-face meetings.

11 A. Yes.

12 Q. So with that in mind let me just ask you
13 then: Does Exhibit 1694 include all of the
14 conversations, be they phone calls or face-to-face
15 meetings, that took place between SCO representatives
16 and IBM representatives from December of 2002 to late
17 2003?

18 A. Yes, I believe so.

19 Q. Great. And I believe I misspoke, I meant
20 to say late January of 2003.

21 A. That's the way I took it, yes.

22 Q. Well, based upon recent questions and
23 answers then we have moved forward to Topic 19 of the
24 February 19th notice, which I've not shown you but I
25 didn't mean to omit that, but just for completeness

1 September 2nd notice. I didn't highlight that for you
2 but --

3 A. Topic 11 --

4 Q. -- find it easily. Yes, Topic 11,
5 please. Have you had a moment to look at that?

6 A. I did.

7 Q. And as I understand your designation,
8 Mr. Sontag, see if it agrees with your understanding.
9 You are here to talk this morning about SCO's business
10 relationships with Microsoft and Sun, correct?

11 A. Yes.

12 Q. What have you done -- and let's start
13 with Microsoft, if we may -- what have you done to
14 prepare to testify on the topic that involves SCO's
15 business relationships with Microsoft?

16 A. Again, I sent out an email to all -- or
17 requested that our legal counsel send out a letter to
18 all of our -- email to all of our SCO employees
19 requesting if they had any information on the topic,
20 and given that I was familiar with most of the people
21 that were involved in these relationships, for the
22 most part, I talked to those who had participated in
23 those relationships either recently or further back in
24 the past, but still felt I was very familiar with the
25 nature of the conversations and communications and

1 sake let's do that at this point.

2 (Exhibit 1695 was marked for identification.)

3 Q. BY MR. DRAKE: I'll hand you
4 Exhibit 1695, which includes Topic 19. Have you take
5 a quick look and make sure that we have in fact
6 exhausted that topic.

7 A. Okay.

8 Q. Are there any other communications and
9 meetings that took place between SCO representatives
10 and IBM representatives between November 1st, 2002,
11 and March 6, 2003, that we have not discussed?

12 A. No. The only thing I would add is that I
13 would view the Tony Befi call from October of 2002 to
14 be somewhat related, but given the dates these are all
15 the communications for which I am aware of.

16 Q. And similarly with respect to the overlap
17 between Topic 4 of the September 2nd, 2005, notice and
18 Topic 19 of the February 14th, 2006, notice, let me
19 just refer you back to Topic 4 and ask you whether we
20 have also now completed a full discussion of all the
21 communications between SCO and IBM concerning IBM's
22 alleged breach of the agreements. Have we talked
23 about all the communications of which you are aware?

24 A. I believe so.

25 Q. Okay. Let's move to Topic 11 then of the

1 discussions that occurred.

2 Reviewed a number of documents that I was
3 aware of that were involved -- involved in the
4 relationship with Microsoft and Sun. That was my
5 primary preparation for this topic.

6 Q. Starting at present and kind of working
7 back in time let me ask you: Is there a person today
8 at SCO who is tasked with or given the responsibility
9 of being the primary contact or liaison between SCO
10 and Microsoft?

11 A. That would be either Darl McBride or
12 myself.

13 Q. And how long has that been the case that
14 either you or Mr. McBride would be the primary contact
15 or liaison with Microsoft?

16 A. Since we started a relationship with them
17 in early 2003.

18 Q. Prior to that time was there a similar
19 designation of a person from SCO or Caldera, its
20 predecessors, who was given the responsibility of
21 being a primary Microsoft contact?

22 A. I don't believe there was much
23 relationship between Caldera and Microsoft. And with
24 the old Santa Cruz Operation and Microsoft that
25 relationship had been from a long time ago when they

1 had been involved with Xenix development together in
2 the, I believe, 1980's time frame.

3 And I wouldn't recall specifically who
4 those people would have been way back in those kind of
5 time frames.

6 Q. Well, The Santa Cruz Operation did have a
7 fairly longstanding relationship with Microsoft, did
8 it not, for the very reason that you just
9 identified --

10 A. Yes.

11 Q. -- as Xenix code?

12 A. Yes.

13 Q. Did that relationship continue with the
14 acquisition of the UnixWare assets and the Unix code
15 by Caldera?

16 A. I believe there was very little
17 interaction between Santa Cruz Operation and Caldera
18 and Microsoft.

19 Q. It may be obvious but tell me why there
20 was little, if any, relationship between -- a positive
21 productive business relationship between Caldera and
22 Microsoft?

23 A. My understanding is they had kind of gone
24 their separate directions on their business and
25 Microsoft had very little involvement with continued

1 operating system products.

2 Q. BY MR. DRAKE: That --

3 A. Obviously very different platforms.

4 Q. That competed with one another and were
5 very different, correct?

6 A. To a certain extent. I mean, you know,
7 the businesses primarily were interested in a Unix or
8 Unix-like solution or were primarily interested in a
9 Windows solution, chose that path, though there are
10 some that would choose a heterogeneous environment
11 that would have some of both.

12 Q. Between let's say May of 2001 when the
13 acquisition of the UnixWare product -- Unix assets was
14 completed and early 2003, the time frame that you
15 mentioned a moment ago, are you aware of any instances
16 in which Caldera or SCO partnered with Microsoft to
17 pursue any common business strategy?

18 A. I'm not aware of anything.

19 Q. What was it in early 2003 that prompted
20 or began the business relationship between SCO and
21 Microsoft?

22 A. As we were forming up the, you know,
23 SCOsource and IP licensing programs we had become
24 aware that Microsoft was starting to pursue a
25 increased Unix compatibility functionality in their

1 Xenix development or participation, and that was
2 mostly being done by The Santa Cruz Operation and
3 there was little reason for them to be discussing
4 joint business at that point.

5 Q. In your judgment would the absence of a
6 business relationship between Caldera and Microsoft be
7 due to the fact that Caldera was perceived in pursuing
8 a business plan as a Linux company and Microsoft was
9 not?

10 A. That would be speculation on my part.
11 There's a possibility.

12 Q. Is it consistent with your understanding
13 of the business plans and the business directions of
14 those two companies?

15 MR. JAMES: Objection. Beyond the scope.

16 THE WITNESS: The companies -- both
17 companies were certainly pursuing different business
18 strategies and didn't have very much overlap at all.

19 Q. BY MR. DRAKE: Wasn't Microsoft perceived
20 as a competitor of Caldera?

21 A. To a certain extent, I believe so.

22 Q. To what extent would Microsoft have been
23 considered a competitor of Caldera?

24 MR. JAMES: Objection. Beyond the scope.

25 THE WITNESS: They both provided server

1 products. And we approached them in I think the early
2 part of 2003 letting them know that we had Unix
3 intellectual property, A, that we were concerned about
4 if they might have issue, but B, that we had licensing
5 programs that they may be interested for additional
6 technologies that they could apply into their Windows
7 products. Specifically a product that was called
8 Services for Unix by Microsoft.

9 Q. Were there meetings that took place,
10 face-to-face meetings in this time frame, early 2003,
11 that took place between SCO and Microsoft to explore
12 any of the issues that you just described?

13 A. My understanding was most of -- or my
14 recollection is most of the meetings were done over
15 the phone via conference calls. There were a number
16 of times in, you know, the early part of 2003 that we
17 did meet face to face, but primarily most of the
18 conversations we had with Microsoft were scheduled
19 teleconference calls.

20 Q. Were records or the equivalent of minutes
21 maintained that would document what was discussed
22 during these conference calls and teleconferences
23 between Microsoft and SCO?

24 A. No, not really. I mean, I'm not one that
25 generally takes notes and I was, for SCO, the primary

1 person driving the meetings. Generally my approach
2 was to work from working documents, as we got to a
3 draft of a legal document of a license with them that
4 was what I used as the basis for our discussion points
5 in many of the meetings that we had.

6 Q. So is it your testimony that you never
7 made any notes of the conference calls and the
8 discussions that you had with Microsoft?

9 A. Generally it wasn't necessary because we
10 were having early on very preliminary discussions, and
11 then later on as they determined it was appropriate,
12 you know, we made a -- a presentation of a memorandum
13 of understanding of a term sheet, and then ultimately
14 working legal documents for their licensing of some of
15 the SCO UnixWare intellectual property for use in
16 their services for Unix product. It was fairly
17 straightforward.

18 Q. If you remember you must be pretty good
19 to work without notes.

20 A. I've never really used much in terms of
21 written notes, other than occasionally I'll write
22 something down on a yellow sticky note for just a
23 brief moment until I've, you know, accomplished that,
24 and that is rare.

25 (Exhibit 1696 was marked for identification.)

1 Q. BY MR. DRAKE: Let me show you what I've
2 marked as Exhibit 1696. Ask you if you can identify
3 that document, please?

4 A. Well, this appears to be a document that
5 lists a number of agreements between, I assume it's
6 Santa Cruz Operation and Microsoft, mostly from the
7 1980's. Well before my time.

8 Q. Can you identify the document with any
9 more specificity? That is, date of creation, author,
10 circumstances that led to its preparation, anything of
11 that nature?

12 A. I cannot.

13 Q. Would you turn about halfway down through
14 the exhibit to Bates Number 238, please. In the upper
15 left-hand corner it says "Microsoft File" and then it
16 bears a series of numbers which appears to be a date
17 9-24-02. Do you see that?

18 A. Where is this?

19 Q. Upper left-hand corner.

20 A. Okay.

21 Q. Do you see that, "Microsoft File"?

22 A. Yes.

23 Q. 9-24-02. Do you know what that reference
24 pertains to, that being the Microsoft File and the
25 date?

1 A. I don't. I don't know if this is a
2 Microsoft sourced document or a SCO sourced document

3 Q. And that was going to be my next
4 question: Does SCO maintain a discreet file which it
5 designates the Microsoft File?

6 A. I believe in general we have in our
7 corporate files for most of the major customers
8 accounts or other partner relationships that we have.

9 Q. Okay. To your knowledge was SCO
10 maintaining a file for Microsoft back in September of
11 2002?

12 A. I believe so.

13 Q. To your knowledge has that Microsoft file
14 been produced in discreet form to IBM in this
15 litigation?

16 A. Yes, I believe it has.

17 (Exhibit 1697 was marked for identification.)

18 MR. DRAKE: Let me hand you Exhibit 1697.

19 Sorry.

20 MR. JAMES: Sorry. I got it.

21 Q. BY MR. DRAKE: Ask you to identify that
22 document if you can, please.

23 A. It is a SCO Microsoft Corporate Software
24 Licensing Agreement.

25 Q. And it says "Proposed Term Sheet,"

1 correct?

2 A. Yes.

3 Q. Are you able to tell whether this is a
4 complete document; that is, whether this single page
5 that I've marked as the exhibit includes all the
6 proposed terms that were being discussed by the
7 parties back in February of 2003?

8 A. Yes, I believe so. I helped create this
9 document so ...

10 Q. Well that helps. Okay. A software
11 licensing agreement was ultimately entered into
12 between SCO and Microsoft, correct?

13 A. Yes.

14 Q. Without wanting to put you through a
15 difficult task, are you able to quickly review
16 Exhibit 1697 and tell me how the terms of the final
17 agreement that was entered into compared to the terms
18 that are listed here?

19 A. I believe the source code license ended
20 up being broader than just run time libraries.

21 Q. In what respect?

22 A. To pretty much the entire UnixWare 7.1.3
23 source code base for which we could provide them with
24 And it was done in a number of pieces that they wanted
25 to be able to do an evaluation initially and then

1 determine suitability, and primarily their services
2 for Unix product offering, and then be able to
3 purchase a broader license, give them more rights than
4 just an evaluation license.

5 And then I believe there was some
6 additional term of additional licenses, even the
7 possibility of a source code sublicensing capability,
8 which my recollection is they did not opt for that
9 option.

10 So the scope is certainly greater than
11 this initial term sheet of February.

12 Q. Do you recall the date of the actual
13 software licensing agreement signed by Microsoft?

14 A. It was April or May of 2003.
15 (Exhibit 1698 was marked for identification.)

16 Q. BY MR. DRAKE: Let me hand you what's
17 been marked as Exhibit 1698. This is an email string
18 which again at the top indicates, quote:

19 "Some initial market feedback on the
20 SCO source announcement. Clearly MS
21 will use it as FUD."

22 Do you understand "MS" to refer to
23 Microsoft there?

24 A. Yes, I do.

25 Q. And "FUD" refers to what?

1 particular email applies to the business relationship
2 between Microsoft and SCO.

3 Q. BY MR. DRAKE: Well the email clearly,
4 you know, relates to Microsoft and SCO --

5 A. Not the --

6 Q. -- whether in your judgment --

7 A. -- business relationship.

8 Q. That's why we're here and I can only ask
9 you whether in your judgment information like that
10 reflected in Exhibit 1698 did affect the business
11 relationship between the two entities.

12 In your judgment did the SCOsource
13 announcement in any way affect the then developing
14 business relationship between Microsoft and SCO?

15 A. I don't believe Microsoft was interested
16 in a -- in SCOsource per se, but specifically they
17 were interested in an intellectual property license to
18 our Unix IP or use in Microsoft products that would
19 allow them greater Unix compatibility.

20 (Exhibit 1699 was marked for identification.)

21 Q. BY MR. DRAKE: Exhibit 1699 is an email
22 from Mr. Anderer to Mr. McBride, at least in part. It
23 is an email string that includes those gentlemen as
24 well as an attachment which is labeled "Confidential
25 Draft Term Sheet" and bears the date of February 21,

1 A. I would assume fear, uncertainty and
2 doubt.

3 Q. Okay. Do you recall whether or not the
4 SCOsource announcement was used by Microsoft to create
5 a fear and uncertainty and doubt in the marketplace?

6 A. I don't have a specific recollection of
7 that.

8 Q. Well, you were the primary contact along
9 with Mr. McBride, correct?

10 A. Yes.

11 Q. And you don't recall Microsoft using the
12 SCOsource announcement to create discord or fear and
13 uncertainty and doubt in the marketplace shortly after
14 the SCOsource announcement was made?

15 A. Not that I saw.

16 MR. JAMES: Objection. Beyond the scope.

17 Q. BY MR. DRAKE: Well you understand,
18 Mr. Sontag, you're here today to talk about the
19 business relationship between SCO and Microsoft?

20 A. Yes.

21 Q. Would you agree that things that might
22 affect that relationship are clearly within the scope
23 of the designated?

24 MR. JAMES: Objection. Argumentative.

25 THE WITNESS: I don't believe this

1 2003. With respect to the latter document and the one
2 to which you're referring to at this point let me ask
3 you this:

4 Did you have any role in creating the
5 draft term sheet that appears as part of Exhibit 1699?

6 A. No. I believe this is a Microsoft
7 generated term sheet.

8 Q. That came from Microsoft, correct?

9 A. I believe so, yes.

10 Q. Was there an exchange of term sheets
11 between the two parties that ultimately, you know, led
12 to the culmination of the software licensing agreement
13 being signed?

14 A. Yes, I mean, this was the initial term
15 sheet that I helped draft --

16 Q. Right. We now have --

17 A. -- that we discussed earlier.

18 Q. Sorry.

19 A. This was a -- I believe the next follow
20 on term sheet that was generated by Microsoft, and
21 then there was further negotiations, and I'm not sure
22 if we went to another term sheet or -- I believe we
23 went straight to a legal document that incorporated
24 our negotiated changes to this term sheet.

25 Q. And you've anticipated my question, which

1 was going to be: Are you aware of another term sheet
2 which existed between February 21st, 2003, and the
3 actual date that the licensing agreement was signed?

4 A. I'm not aware of any other preliminary
5 term sheets.

6 Q. Refer to Page 3 of that exhibit, and
7 about halfway -- well, three-fourths of the way down
8 under Number 2 the bullet point says:

9 "The above license would include
10 broad modification and distribution
11 rights."

12 Do you see that?

13 A. Yes.

14 Q. If this document as you believe was
15 generated by Microsoft, what was your understanding of
16 the breadth of the modification and distribution
17 rights that it was seeking?

18 A. Well I believe they were asking for the
19 moon with that bullet point. Certainly something that
20 we weren't going to provide them for the limited
21 amount of money that they were talking about paying at
22 this point.

23 Q. If they were asking for the moon -- which
24 is a very good description -- what would that include
25 in terms of, you know, rights to use code, disclose

1 code, distributed, make derivative works, things of
2 that nature? Can you explain any more fully?

3 A. Sure.

4 MR. JAMES: Objection. Lack of
5 foundation.

6 MR. DRAKE: Go ahead.

7 THE WITNESS: Want to give me a little
8 more foundation?

9 MR. DRAKE: I don't think you need it
10 because you were involved in the transaction, you
11 drafted the term sheets and you know what was going
12 on. I appreciate the objection but I'll let you
13 answer the question.

14 MR. JAMES: Well let me just object to
15 the extent that that comment suggests that Mr. Sontag
16 drafted the term sheet that he's looking at.

17 MR. DRAKE: Fair enough. Go ahead.

18 THE WITNESS: Not based on this term
19 sheet and that specific statement, but there are
20 various Unix licenses that SCO and its predecessors
21 entered into with various Unix licensees.

22 Very limited licenses that were for
23 source viewing purposes only, under a confidential
24 basis, to licenses that allowed for development of,
25 you know, derivative works products and then

1 distribution licenses for those, to even more
2 sophisticated licenses that included source code
3 sublicensing rights.

4 And that far extreme is only one party
5 for which I'm aware of, which was Sun Microsystems,
6 that a source code sublicensing right. And they paid,
7 you know, over \$100 million in total for that right.
8 And obviously the other extreme is limited license
9 that were, depending on the size of the company,
10 5,000, 10,000 to \$50,000 for a source viewing license
11 at various times.

12 Q. BY MR. DRAKE: And I don't mean to
13 interrupt you, but would it be fair then to
14 characterize with Microsoft as seeking under this term
15 sheets to be something akin to what Sun had acquired
16 in its licensing agreement?

17 A. Certainly they had made that request for
18 this bullet point, but it was not something that
19 ultimately was, you know, part of the final terms of
20 the signed agreement.

21 Q. Okay. And let's move to the terms of the
22 final agreement. And to the extent you can generally,
23 can you compare what rights Microsoft acquired in that
24 software licensing agreement to those that Sun had
25 acquired in its very broad license as you've described

1 it?

2 A. In general given -- I mean, the document
3 speak for it --

4 Q. Sure.

5 A. -- themselves. Sun did not have a source
6 code sublicensing right but they acquired in the final
7 agreements. And there was a number of agreements that
8 were part of the final Microsoft licensing agreement.

9 MR. JAMES: You may have misspoke.

10 MR. DRAKE: You just, I think did
11 misspeak, which Mr. James is going to correct you.
12 You said Sun did not --

13 THE WITNESS: I'm sorry, Microsoft did
14 not. I was trying to make the comparison to Sun but I
15 obviously said that wrong. Okay.

16 Q. BY MR. DRAKE: All right. What was the
17 final consideration, total amount that Microsoft paid
18 for its software licensing agreement, just in general
19 terms?

20 A. And again it was a number of options they
21 had, but I think in total it was on the order of 17 to
22 \$18 million that was the total amount that they
23 ultimately opted for.

24 Q. Was SCO willing back in 2003 to offer a
25 software licensing agreement that was similar in terms

1 to that with Sun? Were they willing to offer that
2 type of license to Microsoft if Microsoft had been
3 willing to pay what SCO thought the appropriate value
4 was?

5 MR. JAMES: Objection. Calls for
6 speculation.

7 THE WITNESS: I believe there was some
8 brief discussions in that regard. My recollection is
9 that Microsoft was not interested in a source code
10 sublicensing capability so it didn't go very far.

11 Q. BY MR. DRAKE: But really wasn't a topic
12 of discussion?

13 A. It wasn't a -- it wasn't a major topic of
14 discussion.

15 Q. Apart from the business relationship
16 between SCO and Microsoft that included the licensing
17 of software that we're talking about, did SCO and
18 Microsoft begin any sort of partnering efforts to
19 jointly pursue the development of products?

20 A. There were a number of discussions and
21 meetings that occurred about ongoing partnership that
22 could -- and joint business opportunities between the
23 companies that occurred through the summer and fall of
24 2003 and even continued into 2004.

25 Q. What types of business opportunities were

1 Unix products and Microsoft Windows products. Did
2 that ever come to pass --

3 A. No.

4 Q. -- that there were any actual efforts
5 undertaken to do that?

6 A. No.

7 Q. Why not?

8 A. Ultimately I think Microsoft became
9 concerned with all of the huge amounts of, you know,
10 uproar regarding SCO's lawsuit with IBM and determined
11 they didn't want to have too close of a relationship
12 with SCO. And so ultimately they backed away from
13 pursuing some of those partnerships and business
14 opportunities with us.

15 Q. With respect to this notion of
16 engineering development, if I may characterize it as
17 that as opposed to this -- the reseller component that
18 you described. Sticking with engineering development,
19 was there one person at Microsoft with whom SCO had
20 the most involvement and the most dealings in
21 discussing that option?

22 A. Our primary contact was a gentleman by
23 the name of Rich Wickham.

24 Q. How do you spell the last name?

25 A. W-i-c-k-h-a-m, I believe.

1 being discussed or pursued in that time frame?

2 A. I think some of them were along the lines
3 of us providing them with engineering support and
4 expertise on improving their Unix compatibility and
5 their products. So in some ways doing development
6 work for them of some of their services for Unix
7 products, that was discussed.

8 There was also discussions of joint
9 product deliverables or bundles of combined Microsoft
10 and SCO Unix solutions to customers we believed would
11 be interested in a heterogeneous offering of Windows,
12 Unix, Office, exchange-type solutions in conjunction
13 with Unix.

14 I think those were the primary areas of
15 discussion of how we could work together. And
16 actually I can think of one more of -- of SCO possibly
17 reselling through our channels some of the Microsoft
18 products was investigated, since we had a strong
19 channel presence in the small, medium business space.
20 Had a 4,000 or more resellers that would potentially
21 be interested and capable of selling Microsoft
22 products in conjunction with SCO product offerings.

23 Q. Let's take the first category that you
24 mentioned, this effort to explore engineering and
25 development which would increase the compatibility of

1 Q. And would you and Mr. McBride have
2 continued to be the primary SCO contacts in these
3 discussions?

4 A. Primarily, yes.

5 Q. Would there have been an engineering or
6 development person at SCO who also would have been
7 involved by chance?

8 A. Erik Hughes got involved in the marketing
9 level on the potential bundling of some, you know,
10 combined SCO and Microsoft products and the
11 feasibility of creating those combined products. So
12 he -- he ended up getting involved at a certain level
13 and participating in some discussions with Microsoft
14 personnel from that level.

15 I believe there was some level of
16 engineering discussions that occurred, I can't
17 remember who specifically would have headed that.

18 Q. When was it that Microsoft backed away,
19 as you described it, from pursuing any business
20 relationship of this nature with SCO?

21 A. It was getting sporadic by late 2003
22 that -- I mean, we were still talking and we were
23 talking well into 2004, but significant discussions
24 started to decline by late fall of 2003. And then I
25 think by the late 2004 we realized that there was not

1 going to be a business relationship with Microsoft of
 2 any form.
 3 Q. Did anyone from Microsoft ever come out
 4 and say that that was the reason that they backed
 5 away? By that I mean kind of the general reason that
 6 you gave a moment ago, concern about the lawsuit and
 7 all the other attendant issues?
 8 A. Not specifically.
 9 Q. I want to move to what I described as the
 10 reseller component that you described earlier.
 11 Did those discussions kind of follow the
 12 same timeline and the same ultimate outcome as the
 13 engineering development component we've been
 14 discussing?
 15 A. They continued on further, but ultimately
 16 the overall time lines they kind of waned
 17 approximately the times I've mentioned.
 18 Q. So the notion of reselling Microsoft
 19 products?
 20 A. Or bundled products.
 21 Q. Bundled products, thank you, took place a
 22 little longer or a little more in the future than the
 23 engineering and development component?
 24 A. That's my recollection, yes.
 25 Q. But nevertheless came to nothing at some

1 A. Yes.
 2 Q. What do you know about Vintela and what
 3 the focus of that program was?
 4 A. Again I believe they had a management
 5 product and a, I believe, directory service
 6 integration product that they believe would be
 7 valuable to both Linux, Unix and Windows customers
 8 that had to manage all of those collectively.
 9 Q. To your knowledge did the effort to work
 10 with Microsoft come to fruition with respect to the
 11 Vintela program?
 12 A. I believe Vintela did end up having some
 13 business relationship with Microsoft over time on
 14 products that they developed.
 15 Q. How extensive, if you know?
 16 A. I do not know.
 17 Q. If you refer to Page 3 of that document.
 18 The next to last -- actually about the middle portion
 19 of the page it says, in part, quote:
 20 "We need to have Microsoft and Sun
 21 take us into their reseller base and
 22 solve the problem that their
 23 resellers are having."
 24 Do you see that?
 25 A. Yes.

1 point?
 2 A. Yes.
 3 MR. DRAKE: Why don't we go off the
 4 record for just two minutes.
 5 THE VIDEOGRAPHER: Going off record. The
 6 time is 12:18.
 7 (There was a break taken.)
 8 (Exhibit 1700 was marked for identification.)
 9 THE VIDEOGRAPHER: Back on record. The
 10 time is 12:25.
 11 Q. BY MR. DRAKE: Mr. Sontag, let me show
 12 you what we've marked as Exhibit 1700. This is a
 13 rather lengthy and detailed email from Mr. Dave Wilson
 14 dated June 26th of 2003. Do you know Mr. Wilson?
 15 A. I knew him a little.
 16 Q. He's listed as the president and GM of
 17 Vintela Division, V-i-n-t-e-l-a.
 18 A. Right. That was a management solution
 19 company that was spun out of SCO.
 20 Q. About three-fourths of the way down on
 21 the first page paragraph begins:
 22 "The real opportunity is to work with
 23 Microsoft, and that is the focus of
 24 Vintela - we are getting there."
 25 Do you see that?

1 Q. Is that notion the same reseller concept
 2 that we were talking about a moment ago or is it the
 3 reverse where Microsoft was looking to take Vintela or
 4 SCO products into its reseller?
 5 A. You would have to ask Mr. Wilson, but I
 6 believe what he means by this is that some of the
 7 Vintela products solve problems for the Microsoft
 8 reseller base of these heterogeneous environments for
 9 which the solution they have do not solve. So this is
 10 something different and this is products that
 11 primarily were developed after Vintela was spun out of
 12 SCO.
 13 Q. I understand.
 14 (Exhibit 1701 was marked for identification.)
 15 Q. BY MR. DRAKE: Exhibit 1701 is an email
 16 string that includes a message from Mr. McBride,
 17 Mr. Darl McBride to, I believe, Mr. Goldfarb at
 18 Baystar. Is that -- you would understand Larry at
 19 Baystar Capital.com to be?
 20 A. Yes.
 21 Q. And it discusses what Mr. McBride
 22 describes as a "major go-to-market business
 23 transaction with Microsoft." Do you see that?
 24 A. Yes, I believe so.
 25 Q. And this email is dated September 29th,

1 2003. And as Mr. McBride's email indicates it says,
2 quote:

3 "Anticipated MS" -- or Microsoft --
4 "deal within the next few weeks will
5 be a major transaction for SCO. One
6 of the largest in its history. This
7 deal will ensure several major pieces
8 of SCO strategy going forward."

9 And then it lists several. Do you see
10 that?

11 A. Uh-huh.

12 Q. Did that major go-to-market business
13 transaction with Microsoft ever take place?

14 A. No.

15 Q. And why not?

16 A. Again, ultimately I view that Microsoft
17 didn't want to, you know, be directly involved with
18 SCO with all of the litigation and other issues that
19 were swirling around at the time.

20 Q. Would you turn to Page 2 of that exhibit,
21 please. Near the top it says in part, quote:

22 "Once the Microsoft deal and funding
23 is in place:"

24 Do you see that?

25 A. Yes.

1 Q. It goes on to say in Paragraph 1, quote:

2 "IBM and Red Hat will no longer be
3 able to discount SCO's ability to see
4 the legal actions to a full
5 conclusion if necessary."
6 Have I read that correctly?

7 A. Yes.

8 Q. In September of 2003 was SCO looking to
9 the Microsoft deal in funding to support its ability
10 to see the legal case against IBM through to
11 conclusion?

12 A. I think in that time frame we were
13 pursuing a number of funding options, equity,
14 investments and, you know, licensing or other business
15 type relation -- arrangements that would add to our
16 funding and improve our cash bottom line as a company
17 going forward.

18 Q. Well, my question is: Was SCO looking to
19 the Microsoft deal to fund its ability to continue the
20 litigation against IBM forward?

21 A. We viewed it as one potential source of
22 funding.

23 Q. For that purpose, correct?

24 A. And also for the purpose of just
25 increasing other viable business operations within the

1 company.

2 Q. Which I take it could not be funded
3 because the deal with Microsoft never came through,
4 correct?

5 A. That's correct.

6 (Exhibit 1702 was marked for identification.)

7 Q. BY MR. DRAKE: 1702. And this is a bit
8 out of order, and I apologize for that. It goes back
9 to the questions I asked earlier about discussion with

10 Microsoft about a broader IP license. This seems
11 to -- under sub part three as you'll see there --

12 suggest, or at least list, the possibility of

13 Microsoft making the one-time payment of 4 million and
14 an option to purchase a full SCO IP source license for

15 90 million. Do you see that? Am I reading those
16 terms correctly?

17 A. The third point?

18 Q. Yes.

19 A. Yes, I see that.

20 Q. All right. Have you seen this document
21 before?

22 A. No, I haven't.

23 Q. I was hoping you could tell me, or at
24 least confirm, it appears to have been prepared or
25 written by Mike Anderer. Is that how it would appear

1 to you?

2 A. That appears to be the case.

3 Q. Do you happen to know the date that this
4 document was prepared?

5 A. I do not.

6 Q. Were you a party to any discussions with
7 Microsoft wherein an option to purchase a full SCO IP
8 source license was actually discussed?

9 A. Well, again, I believe it was kind of
10 just very casually discussed with them. They did not
11 express really any interest in it. And so my
12 recollection was there was not much that came of any
13 of that discussion so we focussed on other areas.

14 Q. What is your understanding of the term "a
15 full SCO IP source license"? What does that mean?

16 MR. JAMES: Objection. Lack of
17 foundation.

18 THE WITNESS: I would assume that it
19 would be able to be applied into any of Microsoft's
20 products instead of being limited to certain class of
21 their products. But other than that I wouldn't want
22 to speculate on what I believe Mike was proposing with
23 this.

24 Q. BY MR. DRAKE: Would it be your
25 understanding that a full SCO IP license, as

1 referenced here, is analogous to the one with Sun that
 2 we discussed earlier?
 3 MR. JAMES: Lack of foundation.
 4 THE WITNESS: I don't know if that would
 5 be comparable or not.
 6 Q. BY MR. DRAKE: Do you know who it was
 7 that came up with the proposed term of \$90 million for
 8 the three-year option to purchase the full SCO IP
 9 source license?
 10 A. No, and I never dealt with a discussion
 11 of a \$90 million number.
 12 Q. What was Mr. Anderer's role in the
 13 negotiations between SCO and Microsoft with respect to
 14 this software license?
 15 A. He was a consultant for SCO who had a
 16 relationship with Microsoft and made introductions and
 17 helped participate in some of the meetings, and in
 18 this case appears to have facilitated some additional
 19 discussions for which either Mr. McBride or myself
 20 were not involved.
 21 Q. Did Mr. Anderer have authority to speak
 22 on behalf of SCO with respect to this transaction that
 23 was being considered and negotiated?
 24 A. I don't believe so.
 25 Q. Is it your testimony that neither you nor

1 Mr. McBride knew that Mr. Anderer was making this
 2 proposal to Microsoft?
 3 MR. JAMES: Objection. Assumes facts.
 4 THE WITNESS: Again I am aware that we
 5 had a number of back and forth discussions, you know,
 6 in between the various term sheets and we started
 7 moving, you know, gradually more and more to what
 8 appeared in the final, you know, legal document.
 9 Some elements of this were things I am
 10 familiar with in terms of breaking up some of the, you
 11 know, initial evaluation kind of license from a larger
 12 ongoing license, and even that there was some
 13 discussion of an IP component, IP release, but not the
 14 dollar amounts at that point. But the 90 million
 15 number I'm not familiar with.
 16 (Exhibit 1703 was marked for identification.)
 17 Q. BY MR. DRAKE: Exhibit 1703 is a series
 18 of emails, actually just a couple quite lengthy, and
 19 I'm happy to let you take a minute and look through
 20 this. I believe you have seen this email in a prior
 21 deposition, and I'm not going to repeat the questions
 22 that you were asked about it, but I do have a couple
 23 that I believe pertain to the topics for today.
 24 Let me direct your attention first to the
 25 bottom of the first page and the sentence that begins

1 on that page and continues over to the next that says,
 2 quote:
 3 "We saw just how short was and
 4 unimpressive the associated sales
 5 were when we had to submit this data
 6 to MS" -- or Microsoft -- "in the
 7 last month."
 8 Do you see that?
 9 A. Yes.
 10 Q. Are you familiar with what was taking
 11 place at the time in late 2003, January of 2004, which
 12 would give rise to SCO's submitting sales and other
 13 data to Microsoft?
 14 A. Again, I believe we were still continuing
 15 in some level of discussion with Microsoft and trying
 16 to move forward on a, you know, bundled product, you
 17 know, sales into our reseller channel and were
 18 providing them with some due diligence information for
 19 which I think, this would be Mr. MacKay, is referring
 20 to. I don't know specifically what associated sales
 21 data he's referring to.
 22 Q. Well, and that's going to eliminate a
 23 bunch of follow-up questions because I was going to
 24 ask you about your knowledge of the sales data that he
 25 refers to. You have none?

1 A. I -- I don't have any specific
 2 recollection of that.
 3 Q. So you would not know whether or not that
 4 sales data that he refers to has been produced to IBM
 5 in this litigation?
 6 A. Since I don't know what the data is I can
 7 only assume that anything that was appropriate that
 8 we've produced we have produced.
 9 Q. If you'll refer to Page 3, please, of
 10 that exhibit. The original message from Mr. Nagle to
 11 others includes the first paragraph, quote:
 12 "Microsoft has suggested that they
 13 receive a paid up license for the SFU
 14 technology ..."
 15 And then it goes on to conclude. What is
 16 the SFU technology to which Mr. Nagle refers?
 17 A. I believe this would be the services for
 18 Unix product for Microsoft.
 19 Q. Go to the next page, please, the last
 20 page of Exhibit 1703. It concludes with this
 21 sentence, quote:
 22 "So maybe a paid up license is worth
 23 50 million to 100 million. Whatever
 24 it is, we should send Darl in with a
 25 number."

1 Do you see that?

2 A. Yes.

3 Q. To your knowledge did Mr. McBride ever
4 approach Microsoft with the discreet number for a paid
5 up license as is described by Mr. Nagle in his email?

6 A. No, I don't believe so.

7 Q. Did you ever attend a meeting with
8 Microsoft in which Microsoft was given an offer to
9 purchase a fully paid up IP license for a certain
10 amount?

11 A. Again, any discussion in this regard was
12 early on in the negotiations of our, you know, early
13 2003 IP license, and it was something that Microsoft
14 did not express interest in. This I view as a
15 brainstorming effort on the part of Andy, I believe
16 this would be Andy Nagle, not being aware of the
17 previous discussions that occurred.

18 Q. Well I understand your answer, but just
19 so that I'm clear. Are you aware of any instance in
20 which SCO made an offer, whether accepted by Microsoft
21 or whether Microsoft expressed interest in it or not,
22 did SCO ever make an offer to Microsoft to say we'll
23 sell you a full IP license for X dollars?

24 A. I'm not aware of any specific offer being
25 made.

1 (Exhibit 1704 was marked for identification.)

2 Q. BY MR. DRAKE: Exhibit 1704 is a lengthy
3 document, I don't want to put you through the tedium
4 of reading the whole thing. I would -- you need to
5 refer to more of it, please do, but I want to ask you
6 to fast forward to Page 825, the Bates number, about
7 three-fourths or so of the way down the document.

8 A. 825?

9 Q. Yes, sir.

10 A. Yes.

11 Q. And this appears to be a power point
12 slide, and I don't want to ask you a lot of questions,
13 but the first bullet point there says:

14 "Reallocating Unix engineers to
15 Microsoft funded projects helps our
16 short term bottom line."

17 And my question is: Was there an
18 instance or an occasion where SCO did reallocate some
19 of its Unix engineers to Microsoft funded projects?

20 A. No.

21 Q. That was never done, was it?

22 A. No.

23 Q. All right. Let's shift gears at this
24 point to the other half of the topic, and that goes to
25 business relationship with Sun.

1 You may have addressed this as part of
2 your initial answer in terms of preparation, but tell
3 me if there was anything specific to SCO that you
4 did -- SCO -- to Sun that you did to prepare for
5 testifying on that topic today?

6 A. Same thing I did for Microsoft.

7 Q. We talked a moment ago about this
8 longstanding relationship The Santa Cruz Operation had
9 had with Microsoft. Was there a corresponding one, to
10 your knowledge, that The Santa Cruz Operation had with
11 Sun?

12 A. Santa Cruz Operation, no. But I do
13 believe that Unix Systems Laboratories, which was now
14 a portion of Santa Cruz Operation, did have a longer
15 term relationship with Sun.

16 Q. And that --

17 A. Joint development efforts on various
18 things and so forth.

19 Q. Okay. Can you describe just generally
20 for me your understanding in that regard. What type
21 of working relationship existed?

22 A. My general understanding is there was a
23 number of joint development projects that were entered
24 into between, effectively AT&T, Unix Systems
25 Laboratories division, and Sun Microsystems on some

1 level of joint development on certain compatibility of
2 Unix product offerings and some exchange of licensing
3 of intellectual property in some cases, and -- and
4 those sorts of things occurred in the, I think, late
5 '80s, early '90s time frames and -- and such.

6 Q. And carry that forward in time for me, if
7 you will, and describe any ongoing efforts that took
8 place between Sun and Novell, Santa Cruz Operation,
9 Caldera, ultimately SCO Group?

10 A. I believe there may have been some
11 additional, you know, joint business or joint
12 standards, specification works done by the companies,
13 but I'm not aware of, you know, significant joint
14 development efforts that occurred after the early to
15 mid, I think, '90s kind of time frame.

16 Q. Okay. And would that be true to the
17 present?

18 A. I believe so.

19 Q. That there are no significant partnering
20 efforts, if I may describe them as that, to co-develop
21 or market develop products?

22 A. No.

23 Q. Tell me what you know about the business
24 relationship between Caldera and then The SCO Group
25 from the point in time when you joined the company in

1 2002. Take me forward from that point to the present.

2 A. So from late 2002 to the present?

3 Q. Yes, sir.

4 A. Okay. There was a number of discussions
5 with Sun about, again, joint business opportunities
6 that were proposed, I think in the October, November
7 of 2002 time frame.

8 A meeting I believe was held down in
9 Sun's campus, for which I participated, that involved
10 Darl McBride, myself, a SCO sales -- scales or
11 alliance sales representative for SCO, I think was
12 Mike Ballengee but I'm not sure on that, and I believe
13 a number of SCO engineers, where we had a meeting with
14 a number of Sun executives to discuss possible joint
15 projects together.

16 And we introduced our concepts of what we
17 were thinking of doing with SCOsource and further IP
18 licensing and expressed if they were interested in
19 licensing up to any of the newer versions of, you
20 know, UnixWare that we'd be happy to talk to them.

21 We started having some follow-up
22 discussions with Sun in the January, February time
23 frame -- or January time frame -- number of meetings,
24 phone calls, face-to-face meetings as well. And then
25 negotiated a UnixWare 7.1.3 IP license to Sun that was

1 completed by the end of February of 2003.

2 Q. How much did Sun pay and how much has it
3 paid for the software license that was negotiated in
4 February of '03?

5 A. I believe the total amount was paid over
6 a number of quarters, but was I believe \$10 million.

7 Q. Back to your description of the joint
8 business opportunities that were discussed in the fall
9 of 2002, early 2003. Tell me a little bit more about
10 that, if you would, please. What types of things were
11 being discussed by the parties, the type of
12 opportunities were?

13 A. I believe we talked to them about, you
14 know, they have mostly a corporate and enterprise
15 product offering and sales force and, you know,
16 channel. And SCO has a, you know, small, medium
17 business focus, product set of offerings and channel.
18 And there was some level of synergy
19 between kind of those offerings, that there were cases
20 where we could be bringing them into our customers who
21 had needs for an enterprise or data center solution
22 and vice versa, you know, with our S&V or replicated
23 type capabilities of multiple, you know, stores
24 locations or retail offerings that we provided.

25 So we talked about as they're joint

1 business opportunities to work together in that regard
2 and there was some initial interest and discussion in
3 that area.

4 Q. Did any of those discussions ever come to
5 anything? Were there ever any joint development
6 efforts that were undertaken by SCO and Sun?

7 A. Joint development creating combined
8 product offerings, no.

9 Q. Joint efforts on anything, apart from the
10 software license that was entered into in February of
11 '03?

12 A. No.

13 Q. And why was that? Why, in your judgment,
14 did none of these joint discussions ever come to
15 anything?

16 A. Ultimately you'd have to ask Sun that
17 question but --

18 Q. Well, I'm interested in your perspective
19 for SCO.

20 A. My perspective would be, you know, they
21 likely didn't want to be too closely associated with
22 SCO, and though interested in potential joint, you
23 know, our small medium business opportunities and so
24 on, it wasn't a significant -- significant enough
25 market, I assume, for them to consider pursuing.

1 Q. Why in your mind would Sun not want to be
2 too closely associated with SCO?

3 A. Well again, you know, publically there
4 was a lot of, you know, issues raised about is there
5 some alliance between SCO and Sun or SCO and IBM, and
6 they did not want to be too closely associated with
7 SCO.

8 Q. Because of SCO's litigation with IBM?

9 MR. JAMES: Objection. Lack of
10 foundation.

11 THE WITNESS: Again, that's my belief.
12 (Exhibit 1705 was marked for identification.)

13 Q. BY MR. DRAKE: 1705, Mr. Sontag. Based
14 upon your prior answers I'm just going to go very
15 quickly through this.

16 This is an email string which includes
17 one from Mr. McBride to others in October of 2002, and
18 it refers in part to further discussion on how Sun can
19 play a role in SCO's UnitedLinux efforts.

20 Would that type of discussion have been
21 part of these discussions in the fall of 2002 that you
22 described for me?

23 A. Yes, I believe so.

24 (Exhibit 1706 was marked for identification.)

25 Q. BY MR. DRAKE: Exhibit 1706 is an email

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1 from Mr. Broughton to Mr. McBride, May 17th of 2003.
 2 And in the third paragraph it begins, quote:
 3 "Sun and SCO should partner, to
 4 design, engineer and launch the next
 5 generation Unix operating system for
 6 Intel, SPARC" -- that's S-P-A-R-C all
 7 caps -- "and any other processor
 8 types who wish to join."
 9 Do you see that?
 10 A. Uh-huh.
 11 Q. Did SCO ever actively pursue such an
 12 effort; that is, a partnership with Sun to develop the
 13 next generation of Unix operating system?
 14 A. No, that has not occurred.
 15 Q. And was the failure to do so based upon
 16 the same reasons you gave me earlier for your
 17 perception why Sun didn't partner with SCO?
 18 A. I suspect so.
 19 Q. Are you familiar, Mr. Sontag, with events
 20 that took place in 2003 that afforded Sun the
 21 opportunity to purchase SCO's stock?
 22 A. Excuse me?
 23 Q. Are you familiar with the arrangements
 24 that were entered into, the agreement, better said,
 25 that took place in 2003 that afforded Sun a warrant or

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1 the option to buy --
 2 A. Yes.
 3 Q. -- certain amount of SCO's stock?
 4 A. Yes.
 5 Q. Was that warrant ever exercised, to your
 6 knowledge?
 7 A. I do not believe they exercised that
 8 warrant to this point.
 9 Q. Is it still -- is it still exercisable,
 10 if you will?
 11 MR. JAMES: Object to the extent that
 12 calls for a legal conclusion.
 13 Q. BY MR. DRAKE: Does the warrant still
 14 exist? Does Sun, to your knowledge, still have the
 15 option to purchase a certain amount of SCO stock if it
 16 chooses to?
 17 A. I believe they do.
 18 Q. Does SCO consider Sun to be a competitor
 19 for any of its products at the present time?
 20 A. Only, you know, modestly. Most of Sun's
 21 product offerings and focus of their business is in
 22 the enterprise space. Most of SCO's focus and
 23 customers are in the small, medium business and
 24 replicated site business space. And there's not a
 25 high degree of overlap, but there is certainly some

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1 accounts that we would compete.
 2 (Exhibit 1707 was marked for identification.)
 3 Q. BY MR. DRAKE: Exhibit 1707. This is an
 4 email string. Have you ever seen this string of
 5 emails before?
 6 A. I may have been copied on this and may
 7 have just briefly read it.
 8 Q. Have you had a moment to glance through
 9 it? If not take what time you need.
 10 A. Okay.
 11 Q. Would you turn to Page 3, please. About
 12 a third of the way down a response from Jay Peterson
 13 indicates, quote:
 14 "Sun got rights to UnixWare 7.1.2
 15 (and I think 7.1.3 also), so for sure
 16 they have the 7.1.2 LKP code."
 17 Do you see that?
 18 A. Yes.
 19 Q. Do you know whether SCO ever determined
 20 whether in fact Sun had obtained rights to the 7.1.3
 21 UnixWare product?
 22 A. Yes, that was the version that they had
 23 licensed, and they had rights to previous versions as
 24 well.
 25 Q. Back to the second page of that exhibit,

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1 please, up toward the top. Mr. Gupta's message,
 2 quote:
 3 "Sun and Linux are our competitors in
 4 Unix for x86 space. So any advantage
 5 they get by using our code is a
 6 disadvantage for us as their platform
 7 will be more attractive than ours" --
 8 it should say -- "If they did not use
 9 our code, it will probably take them
 10 2-3 years to get where they are going
 11 to get in six months."
 12 To your knowledge did SCO ever take any
 13 efforts to track Sun's development of its own products
 14 to see whether or not they utilized code that had
 15 licensed from SCO to accelerate the development of
 16 their own products?
 17 A. No, we did not.
 18 Q. All right. Let's shift gears one more
 19 time and I'm going to direct your attention just for
 20 frame of reference to the February 14th, 2006, notice
 21 and Topic 14, which refers generally to distribution
 22 and internal use of Linux after May 14th, 2003.
 23 A. Okay.
 24 Q. You see that?
 25 A. Yes, I do.

1 Q. Guess what the next question's going to
 2 be?
 3 A. About this topic.
 4 Q. What did you do to prepare to testify on
 5 Topic 14 today?
 6 A. I, through our legal counsel, had an
 7 email sent out requesting any information from any
 8 employees on this topic. I also talked to our IT
 9 director, Mark Cowley, as well as several of his
 10 employees, John Gail -- well, specifically John Gail.
 11 I also had a brief conversation with Dean Zimmerman
 12 who is -- actually that's on the web. That's another
 13 topic.
 14 And I also talked to Sandy Gupta
 15 requesting the information from him regarding this
 16 topic as well.
 17 Q. And what did you determine based upon
 18 those conversations?
 19 MR. JAMES: Objection. Vague.
 20 THE WITNESS: I was able to compile a
 21 listing of the limited use of Linux that still
 22 continues within SCO and a number of different, you
 23 know, either competitive evaluation systems or a few
 24 internal IT systems throughout the company, and did
 25 prepare a schedule that has information in that

1 A. I am.
 2 Q. And have you confirmed that in fact that
 3 list or those materials are complete and exhaustive
 4 and include all of the sales of Linux products by SCO?
 5 A. Yes.
 6 Q. All right.
 7 (Exhibit 1708 was marked for identification.)
 8 Q. BY MR. DRAKE: With that let's move to
 9 Exhibit 1708, and tell me what this document is,
 10 please.
 11 A. This is a document that lists SCO's
 12 internal use of Linux on a number of our internal
 13 servers at -- at this point in time as of about a week
 14 ago was when this was prepared.
 15 So in Utah we have servers 40,
 16 OpenServer, UnixWare, Windows and BSD servers that we
 17 run various IT and other information applications on.
 18 And we have 26 Linux servers that we use for kind of
 19 internal applications that are basically Legacy
 20 applications that would be very difficult and
 21 expensive for us to port off of Linux, and given it's
 22 our own internal use of effectively at least a portion
 23 of our own IP for which we're concerned about, we've
 24 been slowly migrating off of our use of Linux as it
 25 was appropriate, upgrading the new systems and so on.

1 regard.
 2 MR. DRAKE: Based upon your gesture I'm
 3 hopeful that there's a document we may be able to see.
 4 MR. JAMES: Once again there is a
 5 document that is responsive to 14(b). And while
 6 you're marking that let me just say for the record
 7 with respect to 14(a), SCO sales or distribution of
 8 Linux after May 14th, 2003. To the extent that
 9 includes revenue-type information and identify --
 10 identification of the products, I think Erik Hughes in
 11 his capacity as a 30(b)(6) representative covered that
 12 thoroughly.
 13 MR. DRAKE: He did, and my examination of
 14 Mr. Sontag on that point would be very brief only to
 15 confirm that the information provided by Mr. Hughes is
 16 in fact complete and exhaustive with respect to that
 17 topic.
 18 MR. JAMES: Okay.
 19 MR. DRAKE: So I'm not going to replot
 20 that ground, but I am going to ask you -- and I might
 21 as well now -- to just confirm that point. But let's
 22 begin with some foundation.
 23 Q. Are you familiar with the information
 24 that Mr. Hughes has provided in the past with respect
 25 to sales of Linux products by SCO?

1 But we still have 26 Linux servers used
 2 in Utah. We have 97 OpenServer, UnixWare, Windows or
 3 BSD servers that are in use in our Santa Cruz facility
 4 in California. And two Linux servers that are
 5 primarily used for benchmark testing and competitive
 6 analysis.
 7 And then in our New Jersey facility we
 8 have 200 Unix servers, primarily. Predominantly
 9 UnixWare. Several OpenServer servers that are also
 10 running in New Jersey, and we have one Linux server
 11 that's being used in New Jersey half time that is
 12 being used primarily for competitive benchmark and so
 13 on.
 14 Q. You described the overall category of
 15 Linux servers as being Legacy servers. What did you
 16 mean by that?
 17 A. So certain applications -- and I've
 18 listed them below here -- that are running on those
 19 Linux server. Internal web applications, you know,
 20 expense reporting, vacation reporting, those kinds of
 21 applications are running internally. A number of
 22 databases that we have that historically were running
 23 on Oracle on top of Linux, a number of backup servers
 24 and a few other applications as well.
 25 Q. What are some of the database servers

1 that are still running?
 2 A. Well we have an Oracle database, I think
 3 it's being used for sales reporting or something that
 4 is still hosted off of a Linux server internally.
 5 Q. Any other Oracle databases that you're
 6 using other than sales reporting?
 7 A. Not that I'm aware of.
 8 Q. And why would it be difficult to move off
 9 these servers if SCO chose to do so?
 10 A. Well an estimate from, I think Mark
 11 Cowley, was that it would be in terms of, you know,
 12 porting the applications and so on as much as \$800,000
 13 in expense to us to do that work on rapid order.
 14 And given the, you know, small size of
 15 the company and limited financial resources, \$800,000
 16 is a lot of money to us. And again, like I said
 17 earlier, given our use of Linux internally is IP for
 18 which, you know, we believe we own, we don't see that
 19 to be a problem.
 20 Q. Is the \$800,000 figure a hard cost or is
 21 that --
 22 A. That's an estimate. That's an overall
 23 estimate to do the entire work to completely remove
 24 any Linux servers internally.
 25 Q. So that would include some component of

1 hardware as well as some person --
 2 A. Potentially, yeah.
 3 Q. -- hours to do the porting?
 4 A. Yes.
 5 Q. Do you have any sense of how these
 6 numbers that you've listed for the present compare to
 7 each of the past two or three years?
 8 A. Yeah. These -- the Linux numbers have
 9 been declining.
 10 Q. And can you describe that with any degree
 11 in terms of percentage of numbers or whatever over
 12 time?
 13 A. I didn't attempt to do that or request
 14 that type of information.
 15 Q. So these numbers are accurate, I believe
 16 you said, as of a month or so ago?
 17 A. About a week or two ago.
 18 Q. A week or so, okay. And is there a plan
 19 for the future in terms of moving off Linux servers?
 20 A. Yeah. We're not adding any Linux servers
 21 and as we upgrade or redeploying a new application
 22 we'll deploy it on a UnixWare or OpenServer or other
 23 operating system platform.
 24 (Exhibit 1709 was marked for identification.)
 25 Q. BY MR. DRAKE: Let me show you

1 Exhibit 1709, which is an email string from April of
 2 2004. Have you had a chance to make your way through
 3 that?
 4 A. Yeah, I'm quickly scanning it right now.
 5 Q. The first email is one from Janet
 6 Sullivan to Craig Bushman dated April 22nd, 2004.
 7 A. You're starting at the back?
 8 Q. I am. Not with any intent to confuse
 9 you. And she says, in part, quote:
 10 "As a result it has been pointed out
 11 to me that our own IT department is
 12 in the process of a server
 13 consolidation project on SuSe Linux.
 14 Can this be so?"
 15 And goes on. Are you aware of the fact
 16 that such a project was going on in April of 2004?
 17 A. Generally. I wouldn't characterize it as
 18 a server consolidation on SuSe Linux. It was a server
 19 consolidation project that was consolidating UnixWare
 20 servers, OpenServer servers. They were trying to
 21 reduce the number of servers that we had overall in
 22 the company, and I believe this project also reduced
 23 the number of Linux servers as well.
 24 Q. But in the end ended up running SuSe
 25 Linux?

1 A. There was a number of servers that
 2 continued to run on SuSe Linux.
 3 Q. Are those same servers continuing to run
 4 today?
 5 A. I suspect that to be the case.
 6 Q. Part of the group that was listed in
 7 Exhibit 1708?
 8 A. Yes.
 9 Q. Okay. You can slip that aside. Let's
 10 move to the last topic, and that would be Topic 18.
 11 On the February 14th, notice, if you have that in
 12 front of you. Please take a moment, review it.
 13 A. Yes.
 14 Q. And you anticipated the topic because you
 15 mentioned just a moment ago that you talked to
 16 somebody about websites, so tell me --
 17 A. Yes.
 18 Q. -- tell me what you've done in that
 19 regard.
 20 A. So again similar to a lot of the rest of
 21 my preparation, had an email sent out by our legal
 22 counsel, at my direction, that the -- was sent out on
 23 this topic to all of SCO's employees requesting any
 24 information back.
 25 I also talked to Mark Cowley about this

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1 particular topic and Dean Zimmerman, who has had
 2 involvement with our websites. I also talked to Sandy
 3 Gupta a fair amount regarding this topic as well, and
 4 he in turn asked a lot of questions of a number of SCO
 5 engineers in the New Jersey facility specifically
 6 about questions that I had on this topic. So that's
 7 predominantly what my preparation was.
 8 Q. Did your preparation include trying to
 9 determine how many websites SCO has maintained over
 10 the past, say, five years?
 11 A. Well, primarily we only have a number of
 12 public websites, Caldera, that's ended up becoming
 13 SCO, and a associated FTP site. With regard to
 14 project Monterey SCO never maintained any public
 15 websites or FTP sites related to project Monterey.
 16 Those were always maintained by IBM.
 17 Q. Did -- with respect to the project
 18 Monterey and related websites, did SCO have the
 19 ability to make contributions or any way control
 20 information that was posted on those websites?
 21 A. My understanding was that IBM primarily
 22 controlled what was put on those websites.
 23 Q. Yes, sir, but did SCO have the ability to
 24 make any contributions or in any manner control those
 25 websites?

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1 A. I suspect they had some ability to
 2 participate in adding some level of content in that
 3 they were a partner with IBM on project Monterey.
 4 Q. Was there a person -- strike that.
 5 Do you know when the project Monterey
 6 websites first installed, first put into operation?
 7 A. The public websites?
 8 Q. Yes, sir.
 9 A. No, I do not.
 10 Q. Was there a person at SCO who was
 11 responsible for working with IBM in terms of
 12 maintaining and contributing to the websites?
 13 A. Again, my understanding based on people
 14 that are still with SCO that would have had any
 15 understanding on this topic, there was nobody at SCO
 16 that was involved in maintaining the public IBM
 17 websites related to project Monterey.
 18 Q. Was there an internal website that SCO
 19 maintained with respect to project Monterey?
 20 A. There was for development purposes
 21 maintained a number of development documents related
 22 to project Monterey.
 23 Q. Have those documents been provided to IBM
 24 in this litigation?
 25 A. I believe they have.

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1 Q. Well, back to my initial question: Were
 2 you able to determine how many public websites SCO has
 3 control over, sponsored in the last five years or so?
 4 A. One or two.
 5 Q. Just --
 6 A. I believe so, yes.
 7 Q. The first would have been Caldera?
 8 A. And then transferring that website over
 9 to basically being SCO.com, and there's associated FTP
 10 sites for some documentation drivers, patches, updates
 11 and so on.
 12 Q. And those are still in existence?
 13 A. Yes.
 14 (Exhibit 1710 was marked for identification.)
 15 Q. BY MR. DRAKE: Exhibit 1710 is an email
 16 string from May of 2003 which includes an email toward
 17 the bottom of Page 1 that says, quote:
 18 "You may want to discuss this with
 19 Chris to see if we should temporarily
 20 change our website to the numerals
 21 instead of 'go Linux!'.
 22 Do you see that?
 23 A. Yes.
 24 Q. Would you conclude that the Chris that's
 25 referred to there would be you?

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1 A. Most likely.
 2 Q. Was such a change made after May 29th of
 3 2003, that is, the change to the numerals instead of
 4 "go Linux"?
 5 A. Well, I don't believe she was talking
 6 about a -- a website. I believe she was talking about
 7 a 800 number.
 8 Q. Okay. That may explain some of the
 9 confusion I had with numerals. So you think that's a
 10 reference to an 800 number not a website?
 11 A. If you look right above it it has a 800
 12 go Linux, and I think that's really what's being
 13 referred to. I don't believe we had a go Linux
 14 website.
 15 Q. Did, to your knowledge, the website ever
 16 include a reference to "go Linux"?
 17 A. Well up until May of 2003 we had a Linux
 18 business that we did marketing and other associated
 19 things with, so I would not be surprised.
 20 (Exhibit 1711 was marked for identification.)
 21 Q. BY MR. DRAKE: Exhibit 1711 is a email
 22 string from June 9th of 2003?
 23 THE VIDEOGRAPHER: Can we go off record
 24 for a second?
 25 MR. DRAKE: Yeah.

1 THE VIDEOGRAPHER: Going off record. The
2 time is 1:25.

3 (There was a discussion held off the record.)

4 THE VIDEOGRAPHER: We're back on record.

5 Q. BY MR. DRAKE: Mr. Sontag, I just handed
6 you Exhibit 1711, which is, as I think I indicated, is
7 an email string from June 9th of 2003. And the
8 message toward the bottom of the page indicates,
9 quote:

10 "There are some links that points" --
11 plural -- "to UnitedLinux, but also
12 when you go to 'shop,' you have the
13 option to buy some Linux materials.
14 "I am wondering if this is OK, or if
15 somebody forgot to remove it."
16 Do you see that?

17 A. Yes.

18 Q. Was any determination made in June of
19 2003 to remove the ability to buy Linux materials from
20 the SCO website?

21 A. I believe so.

22 Q. Do you know --

23 A. May have taken some period of time.

24 Q. And that was going to be my next
25 question: Do you know when that was actually

1 determined we needed to take a number of steps and
2 various executives had, you know, responsibilities,
3 including the website or contracts or otherwise.

4 (Exhibit 1712 was marked for identification.)

5 Q. BY MR. DRAKE: Show you what's been
6 marked as Exhibit 1712, and I apologize for the dark
7 highlighting residue that appears in the middle of the
8 page, but I hope you can read that.

9 It says, as I read it, quote:

10 "I would like to spend some time on
11 the Linux cleanup action that came
12 from Kit. It has implications on LKP
13 that we should discuss as a group.
14 Basically the action is to remove
15 Linux materials from SCO.com by the
16 end of 2004."

17 Do you see that?

18 A. Yes.

19 Q. Were Linux materials available on SCO.com
20 as late as the end of 2004?

21 A. In terms of being able to purchase
22 product, I do not believe so. In terms of documents
23 or otherwise, there may have been some still available
24 in certain locations on our website.

25 Kit would refer to Kit Broughton who

1 accomplished?

2 A. I believe it was done over the course of,
3 you know, June, July into the -- you know, some
4 forgotten link in some hidden corner of the web page,
5 may have been into the fall time frame and so on.

6 Q. Did SCO maintain any documentation of its
7 efforts to accomplish that task; that is, the removal
8 of the ability to purchase Linux products through its
9 website?

10 A. I don't think we specifically documented
11 the process but, you know, we did -- with the
12 suspension of Linux that we've put out that order in
13 May of 2003 we started the process of having everybody
14 go through and remove Linux related, you know, product
15 offerings and, you know, discontinue our Linux related
16 activities. Including, you know, removing Linux
17 references from our websites and -- well, that process
18 was done over time as we were able to do it.

19 Q. Was there an active directive that was
20 sent out to SCO employees shortly after May 14th of
21 2003 to actively remove Linux products from the
22 website?

23 A. I don't know if it was a directive in
24 writing, but certainly we had a discussion in
25 executive staff meetings in the end of May where we

1 reports to me, and I tasked her with, you know, when I
2 became aware that this was still some, you know, Linux
3 documents or otherwise on our website, to work with
4 appropriate people to, you know, remove all of those
5 materials.

6 Q. Well, what Linux document or Linux
7 materials were available on SCO.com in 2004?

8 A. When in 2004?

9 Q. At any time.

10 A. Well early in 2004 -- oh, we're talking
11 2004.

12 I'm not aware specifically what Linux
13 materials. I would assume marketing materials or
14 educational materials would be what this is referring
15 to.

16 Q. Would Kit Broughton know what
17 materials -- what Linux materials were available on
18 SCO.com in 2004?

19 A. Well I had talked to Kit about this and
20 she didn't specifically mention anything in
21 particular, but I'm very confident that it was likely
22 to be marketing or -- or other types of materials,
23 support, educational materials, that may have been
24 still available on the website in some obscure
25 location.

1 Q. How can you be confident of that if you
2 don't know what was there?

3 A. Because with our accounting and finance
4 department we had a system in place to not allow
5 purchase of any additional Linux product that was in
6 place shortly after May of 2003.

7 Q. So it's your testimony that shortly after
8 May of 2003 a third party could not purchase a Linux
9 product on SCO.com?

10 A. Other than, as we've already testified, a
11 customer that had an existing contract for which they
12 had a, you know, right to purchase that extend for
13 some period of time. A support contract that allowed
14 them certain level of support and patches and updates
15 for some period of time. As quickly as we could wind
16 down those contracts and discontinue the business, we
17 did so.

18 Q. At the risk of asking you questions out
19 of order -- and I certainly meant to touch on this
20 when we were talking about this topic -- but my final
21 questions relate to revisiting Topic 14(a) and the
22 materials that Mr. Hughes provided.

23 Do you recall my question to you earlier
24 about asking for you to confirm that they were
25 complete and exhaustive in nature?

1 for you, Mr. Sontag. I appreciate your being here
2 today.

3 MR. JAMES: Okay. Let's designate the
4 transcript confidential, and we'd like to reserve the
5 right to read and sign.

6 MR. DRAKE: Very good.

7 THE VIDEOGRAPHER: This concludes the
8 deposition. The time is 1:37.

9 (The deposition was concluded at 1:37 p.m.)

10 * * *

1 A. Yes.

2 Q. And you said yes. I intended to ask you
3 at that time but let me do so now. Those materials
4 that were produced by Mr. Hughes account for the sale
5 of SCO Linux products or Linux products that SCO
6 labeled as its own. Do you recall that?

7 A. Yes.

8 Q. My question is whether or not SCO sold
9 Linux products after May 14th of 2003 that were not
10 labeled specifically as its own?

11 A. No.

12 Q. Do you understand the distinction?

13 A. Yes.

14 Q. Okay. So it would be your testimony that
15 SCO did not sell any Linux product, whether it be its
16 own product, label or unlabeled?

17 A. No. If we had a OEM relationship with a
18 customer that had some purchase right to continue to
19 use our version of Linux in an OEM capacity, that's
20 the only situation I could imagine. And that would be
21 wound down as quickly as it could after May of 2003.

22 Q. But no, if I may describe, new sales of
23 Linux products were made after that time by SCO?

24 A. No.

25 MR. DRAKE: Thank you. That's all I have

1 Deponent's Certificate

2
3 I, CHRIS SONTAG, deponent herein, do
4 hereby certify and declare the within and foregoing
5 transcription to be my deposition in said action taken
6 on April 19, 2006; that I have read, corrected, and do
7 hereby affix my signature to said deposition.

8
9 DATED this _____ day of
10 _____, 2006.

11
12 _____
13 Deponent

14)
15 STATE OF UTAH) ss.
16)

17 SUBSCRIBED AND SWORN to before me this
18 day of _____, 2006.

19
20 _____
21 Notary Public residing in

22 My Commission Expires:
23 _____
24
25

1 Reporter's Certificate
2 State of Utah)
3 County of Salt Lake)

4 I, Vickie Larsen, Certified Shorthand
5 Reporter, Registered Professional Reporter, and Notary
6 Public for the State of Utah, do hereby certify:

7 THAT the foregoing proceedings were taken
8 before me at the time and place set forth herein; that
9 the witness was duly sworn to tell the truth, the
10 whole truth, and nothing but the truth; and that the
11 proceedings were taken down by me in shorthand and
12 thereafter transcribed into typewriting under my
13 direction and supervision;

14 THAT the foregoing pages contain a true
15 and correct transcription of my said shorthand notes
16 so taken.

17 IN WITNESS WHEREOF, I have subscribed my
18 name and affixed my seal this 20th day of April, 2006.
19

20 _____
21 Notary Public

22 My commission expires
23 August 27, 2006.
24
25

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