

# EXHIBIT C

Deposition of  
**GARY PISANO, PhD**

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**Case:** SCO v. NOVELL

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1 information that these -- that these  
2 respondents would have had.

3 Q They may have been influenced by SuSE,  
4 right, SuSE's statements that it didn't  
5 infringe?

6 A Absolutely.

7 The respondents would -- again,  
8 that's the real strength of this  
9 methodology, that you have these player --  
10 you have these -- these respondents  
11 expressing an interest in, you know, whether  
12 or not they're going to purchase  
13 indemnification at that time.

14 So you have a series of -- you've  
15 got -- again, let's take the 19 to 45  
16 percent. You've got the residual of that,  
17 81 to 55 percent, who have heard statements  
18 by SuSE. They've thought about issues  
19 around, you know, the infringement, et  
20 cetera, and they've decided that they're not  
21 going to be -- they're not concerned enough  
22 with the -- any of the issues.

23 But you have 19 to 45 percent who at  
24 that point are expressing concern and  
25 intentions to purchase indemnification.

1                   And that's the proxy. It's an  
2                   excellent proxy for those who would purchase  
3                   a SCO RTU.

4           Q        So what do you mean by the 55 to 81 percent  
5                   are not concerned enough with any of the  
6                   issues?

7           A        That's the -- sorry. So they -- where that  
8                   comes from, you have 19 to 45 percent in the  
9                   surveys are showing this range of -- of  
10                   concern from -- very concerned --

11                   Let me just repeat that, because I  
12                   think I mumbled the words.

13                   What the surveys -- the 55 to 81  
14                   percent are those who said, you know, these  
15                   IP issues are not a concern to us and/or we  
16                   don't plan to buy indemnification.

17                   Those -- they have taken into account  
18                   all of the information available to them in  
19                   making that -- expressing that opinion.

20                   The 19 to 45 percent have also taken  
21                   into account all the information concerning  
22                   lots of factors, and they are expressing  
23                   high degree -- you know, high degrees of  
24                   concern and/or intentions to purchase  
25                   indemnification, and they're a proxy for the

1 clients, I think -- well, I don't know if  
2 they're --

3 They're certainly giving it some  
4 degree of credibility. I don't think they  
5 would put it before their clients if they  
6 didn't think it was credible.

7 (Pause.)

8 Q Dr. Pisano, tell me what you know about the  
9 methodology for the Yankee Group 2004  
10 survey.

11 A It was a survey of companies across a  
12 size -- it's actually laid out. I believe  
13 it's right in the report itself, a  
14 thousand -- a thousand customers -- sorry, a  
15 thousand users were contacted.

16 They were asked a variety of  
17 questions, a thousand organizations that  
18 they had -- that they had contacted.

19 I think this was an online survey.  
20 The respondents filled it out online, sort  
21 of a random sample.

22 MS. BORUCHOW: Your question is about  
23 376, right? Exhibit 376?

24 MR. PERNICK: Yes.

25 THE WITNESS: Yes.

1 BY MR. PERNICK:

2 Q Is it your understanding looking at page 3  
3 that a thousand organizations were surveyed?

4 (Witness read document.)

5 A Yes.

6 Q And do you see from the question in  
7 Exhibit 1, which is the box on page 3, it  
8 says that midsize or large organizations  
9 with 5,000-plus employees were asked to  
10 respond?

11 A Right, yes.

12 Q And is that in itself sufficient to convince  
13 you that this survey was reliable?

14 MS. BORUCHOW: Object to form.

15 A It appears to be a reliable survey. I have  
16 no reason to doubt it.

17 Q Well, aside from having no reason to doubt  
18 it, what do you base your conclusion that  
19 it's a reliable survey on?

20 A Again, this is an organization, Yankee, that  
21 does these kind of surveys routinely.

22 Companies rely on them for, you know,  
23 this kind of market research. That's what  
24 these guys do for -- for a living, and it's  
25 a large sample.

1 (Pause.)

2 A It's reliable.

3 Q You say it's a large sample.

4 Do you know who responded, how  
5 many -- who at the various companies,  
6 anything like that?

7 A I don't have the details on -- on who  
8 responded.

9 Q I mean, to be clear, we know that a thousand  
10 companies were asked, I guess.

11 A Right.

12 Q We don't know anything about who responded,  
13 right?

14 A I'd have to sort of look at that. I don't  
15 recall offhand if I have the numbers on --  
16 on that, if that was reported.

17 (Pause.)

18 Q Does it matter?

19 A Response rate? Yes, I mean, the -- the  
20 specific -- which specific players respond  
21 doesn't matter, you know, Company A or  
22 Company B.

23 It doesn't -- the individual  
24 companies responding doesn't matter, but --

25 Q What do you mean?

1 A Well, you said does it matter who responded.

2 So this goes out to a thousand  
3 organizations. And think about the  
4 companies, you know, 1 through a 1,000, you  
5 know, did Company No. 2 on the list respond  
6 or Company No. 3 on the list respond?

7 That doesn't matter for a survey.

8 Q What -- does it matter --

9 I mean, you don't know how many  
10 responded when you're saying that doesn't  
11 matter?

12 A No, I didn't say that.

13 The overall response rate matters. I  
14 have -- I can't recall whether they report  
15 the response rate.

16 My presumption would be in a survey  
17 like this, in an organization like this,  
18 that they're getting certain high enough  
19 response rates; otherwise, they wouldn't  
20 be --

21 You know, this is a company, again,  
22 whose primary -- they're in the primary  
23 business of doing these kind of surveys and,  
24 you know, and publishing this kind -- these  
25 kind of data.



1           You can get actually -- there's  
2           surveys with very low response rates, which,  
3           again, as long as the responses are, you  
4           know, sort of randomly distributed, not  
5           biased in the response, you actually have a  
6           very robust study.

7           Q     And how do you know in this case whether you  
8           have those conditions?

9                     (Witness read document.)

10          A     I -- I don't know 100 percent for sure.  
11           Again, I'm relying on the fact that Yankee  
12           is a well-respected organization that --

13                     You know, they -- they kind of make  
14           their -- they make their living really and  
15           their credibility in the market matters.

16                     And so I'm going to, you know,  
17           believe that they are doing a good job on  
18           the -- on the surveys.

19                     We often are forced to do that in  
20           research and in my own academic research  
21           where I don't have all the details of the  
22           surveys and response rates, but you look at  
23           the credibility of the -- of the source.

24                     And, again, this is an organization  
25           that makes its living by doing response --

1 by doing these kind of surveys.

2 And so, you know, presumably, they --  
3 they can't be out there, you know,  
4 publishing flawed studies.

5 They couldn't stay in business.

6 Q Do you know what checks were employed to  
7 make sure that this survey was done on a  
8 sound basis, what kind of procedural  
9 mechanisms?

10 A I don't have details on that, no.

11 Q Do you know generally?

12 A No.

13 I mean, there's a standard -- I mean,  
14 again, doing survey research, there's a very  
15 standard set of approaches that are -- that  
16 are kind of used in terms of, you know,  
17 sending it out, getting response rates,  
18 tracking.

19 It's -- it's -- it's not, you know --  
20 making sure you record the responses  
21 correctly.

22 Again, a company like Yankee that  
23 does this kind of stuff would be really, I  
24 think -- you know, this --

25 You know, it's like Toyota making

1 cars. They know how to make cars. These  
2 guys know how to do surveys.

3 Q You're talking about in general, though?  
4 You don't know anything about what Yankee  
5 did to conduct this survey, right?

6 MS. BORUCHOW: Object to form.

7 A I mean, I do.

8 They conducted a survey of a  
9 thousand -- you know, a thousand  
10 organizations, you know, and asked them  
11 questions.

12 That's what they did for the survey.  
13 That's what you do in surveys.

14 Q Do you know whether there was anything done  
15 to ensure that the respondents that these  
16 unknown, unnumbered entities had the  
17 authority and knowledge to answer for the  
18 companies?

19 MS. BORUCHOW: Object to form.

20 A I'm not sure I follow the question.

21 Can you --

22 Q Well, do you know if there were any checks  
23 employed to make sure that, okay, we're  
24 going to send this to Acme Company and we're  
25 going to make sure that we get a response

1 from the person who's the one who should be  
2 answering?

3 A Again, in organizations like -- they  
4 routinely administer these surveys. This is  
5 not the first survey Yankee's done. They  
6 list a whole bunch of other ones they've  
7 done.

8 So they have these things, have  
9 already kind of been worked out for who's  
10 getting them and how they're doing them.

11 They typically -- you know,  
12 there's -- you know, those kind of  
13 procedures are in place in organizations  
14 like this.

15 This is not an unknown -- Yankee  
16 Group is an extremely well-regarded,  
17 well-known, you know, information provider  
18 in this space.

19 Q Do you know anything about what procedures,  
20 though, they employed here?

21 A I don't know the specific procedures, no.

22 Q Generally do you know?

23 A The, you know, standard survey procedures.  
24 This was done -- I can't recall -- I was  
25 looking through this so I could remember the

1           specifics of whether it was done online  
2           and --

3                   I -- I don't know the specific --  
4                   I mean, what kind of procedures are  
5           you --

6       Q       I don't know. I'm asking you.

7       A       Again, it's a very standard -- standard kind  
8           of survey. Contact these organizations  
9           and -- and get responses.

10      Q       Assuming there is some kind of standard  
11           survey procedure, how do you know it was  
12           employed here?

13      A       Again, this -- Yankee Group is a very  
14           well-respected, you know, research  
15           organization. They do these kind of things  
16           all the time. Their data is used widely by  
17           organizations.

18                   It's a little like census data. I  
19           mean, you know, people use census data all  
20           the time in their research. Do they ask the  
21           questions, the details of the census? No.  
22           It's an understanding it's done -- done  
23           well.

24      Q       Did you interview any of the respondents to  
25           this survey?