

1 THE COURT: Ready, counsel?

2 MR. ACKER: Yes.

3 MR. SINGER: Yes.

4 THE COURT: Ms. Malley, if you would please bring
5 the jury in.

6 (Jury present)

7 THE COURT: Go ahead, Mr. Singer.

8 MR. SINGER: Thank you, Your Honor. I only have a
9 few areas.

10 REDIRECT EXAMINATION

11 BY MR. SINGER:

12 Q Mr. Thompson, the document that you were looking at at
13 the end of cross-examination by Mr. Acker is something
14 called a form 10-K filed by public companies, in this case
15 SCO, with the Securities and Exchange Commission. You are
16 familiar with that type of document?

17 A Yes.

18 Q Is there a section required in these documents to
19 disclose risks of corporate action and issues that are
20 affecting the corporation?

21 A Yes.

22 Q Is that so investors and shareholders can make an
23 informed choice as to whether or not to buy or hold the
24 company stock?

25 MR. ACKER: Object to leading, Your Honor, every

1 question.

2 THE COURT: I'll overrule the objection.

3 BY MR. SINGER:

4 Q Is the discussion on page 41, which you were being
5 asked about in connection with cross-examination, part of
6 the disclosure in a context of saying that investors should
7 be aware of risks that are involved in the company?

8 A Yes, it is.

9 Q Now specifically, and I don't think this part was shown
10 you when you were being asked about this paragraph on page
11 41, is that discussion relayed back to what is said three
12 paragraphs earlier?

13 MR. SINGER: And, Mr. Calvin, if you would blow up
14 that whole section so that the jury can see it.

15 BY MR. SINGER:

16 Q Three paragraphs earlier it says, on January 20th of
17 2004, in response to Novell's actions, we brought suit
18 against Novell for slander of title. Do you see that?

19 A I see that.

20 Q So the discussion that follows in connection with this
21 very lawsuit, correct?

22 MR. ACKER: Objection, leading. I know that was.
23 That end was correct.

24 BY MR. SINGER:

25 Q Does this --

1 MR. SINGER: I'll reframe the question, Your
2 Honor.

3 THE COURT: All right.

4 BY MR. SINGER:

5 Q Does the discussion which you were being asked three
6 paragraphs below when it talks about legal action against
7 Novell refer to this lawsuit?

8 A This is the lawsuit that's being referred to, yes.

9 Q And was the discussion, then, that the efforts of
10 Novell and other Linux proponents may cause Linux ends-users
11 to be less willing -- I don't think I've -- I'm going to ask
12 the question again.

13 Does the discussion that pertains to the paragraph here
14 that Linux users may be less willing to purchase SCO IP
15 licenses, that is saying it's due to the efforts of Novell
16 and Linux proponents; is that correct?

17 MR. ACKER: Objection, is that correct.

18 MR. SINGER: I will reframe the question.

19 THE COURT: All right. Go ahead.

20 BY MR. SINGER:

21 Q What was your understanding of why the disclosure
22 statement was talking about a possible adverse effect on
23 SCO's IP licensing program?

24 A My understanding was that the action -- the conflict
25 over the question of copyrights was causing doubt in the

1 marketplace about SCO's ability to license the software.

2 Q This is a disclosure document in 2003, I believe. Did
3 you anticipate it would take time for this lawsuit to be
4 resolved?

5 A Actually, isn't this the document for the period ending
6 in 2003 and actually filed in 2004?

7 Q Yes, but the fiscal year ended in 2003.

8 A Yes.

9 Q So this would have been filed -- this was filed in
10 early 2004?

11 A Yes.

12 Q And it's referring to a January 2004 lawsuit that's
13 filed?

14 A I see that, yes.

15 Q And would you anticipate and did the board anticipate
16 that it would take some time for this lawsuit to be
17 concluded and litigated?

18 A Yes.

19 Q Did the board and you anticipate in making this
20 disclosure that shareholders should know that you would
21 be -- there would be a likely adverse effect on SCOSource
22 licensing during the time that the lawsuit is pending?

23 A Well, I think we were trying to say there could be an
24 adverse effect because of this doubt and confusion, what we
25 call the FUD factor -- fear, uncertainty and doubt -- in the

1 marketplace about whether SCO owned the technology.

2 Q And when you say even if we are successful in our legal
3 action against Novell, end-users may be less willing to
4 purchase from us, did that refer to what was being said in a
5 prior paragraph about getting the title to the copyrights
6 cleared up?

7 A Actually I didn't read any of the prior paragraphs.

8 Q If you would look at the paragraph right before that
9 where it says, in the lawsuit, we request preliminary and
10 permanent injunctive relief as well as HELP. An injunction
11 would require Novell to assign to us all copyrights that we
12 believe Novell had wrongly registered, prevent Novell from
13 representing any ownership interest in those copyrights, and
14 require Novell to retract or withdraw all representations it
15 has made regarding its purported ownership to those
16 copyrights. Do you see that?

17 A Yes.

18 Q Then it's in the following paragraph where it says,
19 even if we are successful in our legal action against
20 Novell, these efforts may have had an adverse effect on the
21 willingness of people to buy Linux -- Linux users to buy IP
22 licenses from SCO?

23 A Yes, I see that.

24 Q So that is the context -- is that the context in which
25 these statements were made?

1 A Yes.

2 Q Now with respect to how Linux users feel about the
3 program, is it true that certain Linux users have bought
4 licenses?

5 A We have sold licenses. I assume that those users also
6 have Linux within their organizations.

7 Q And when you were being asked questions by Mr. Acker
8 about what Linux users feel one way or the other, is that a
9 group that only has one voice or are there millions of
10 people who are a potential market in this area?

11 A I would assume it is the later. I don't think there is
12 any one organization for Linux. In fact, I think that's
13 kind of the Linux community, is a community of many, many
14 components and parties and participants.

15 Q In connection with the decision to pursue SCOsource
16 licensing, was information presented to the board which
17 convinced you that there was a basis to believe that UNIX
18 intellectual property was contained in Linux?

19 A Yes.

20 Q That was looked at -- was that looked at by the board?

21 A Yes.

22 Q Now turning to a second topic. On section 1.1(a) of
23 the asset purchase agreement, you were asked some questions
24 by Mr. Acker about the fact that section V talks about
25 intellectual property and doesn't mention copyrights. Do

1 you recall that question?

2 A Yes.

3 Q If you go to the first part of schedule 1.1 -- can we
4 go to the first page and can we blow up section one,
5 including the part below it -- you see where it says all
6 rights and ownership of UNIX and UnixWare?

7 A Yes, I see that.

8 Q Did you understand copyrights would be included in a
9 statement that says all rights and ownership of UNIX and
10 UnixWare?

11 A Yes.

12 Q And then the specific products are listed below?

13 A Yes.

14 Q Are there various parts of this schedule such that you
15 would need to repeat that in a later section if it's covered
16 up here?

17 A I would think not.

18 Q And do you have any understanding of any way that all
19 rights and ownership of UNIX and UnixWare, including source
20 code, could be conveyed to Santa Cruz without conveying
21 copyrights?

22 A They were one in the same in my mind.

23 Q Now you were asked some questions about, well, from the
24 Novell point of view, would it have made any sense to hold
25 back the copyrights when you were selling the rest of the

1 business, and I believe your testimony was it wouldn't make
2 any sense. Do you recall that?

3 A It would not make any sense.

4 Q Right, because you were selling the business?

5 A Yes.

6 Q From the Santa Cruz perspective, however, would it make
7 a difference whether they were getting a company with the
8 copyrights as opposed to without the copyrights?

9 A Okay.

10 Q Whether they were the getting the UNIX business with
11 the copyrights and without the copyrights?

12 A So are you asking me to testify what my belief was at
13 the time we were negotiating it --

14 Q I'm asking --

15 A -- or just in general now?

16 Q Well, let's talk about at the time you were negotiating
17 it.

18 A At the time I was negotiating it, I did not represent
19 SCO's interest in that, I represented Novell's interest in
20 that, and that was something we proffered as part of the
21 sale was the entire business.

22 Q Did you do it on -- did you have any belief at that
23 time that it would make any sense to offer the entire UNIX
24 business to Santa Cruz but then say, well, you're not going
25 to get the copyrights?

1 A No.

2 Q In fact, can you tell me whether or not you would have
3 gone about selling the business to Santa Cruz, the UNIX and
4 UnixWare business, and not tell the purchaser that you are
5 going to withhold the copyrights? Is that something that
6 you would do?

7 A Well, it is an inconsistency. If there was something
8 that we were withholding, we would have told them. We
9 wouldn't have tried to sneak it in somehow on the last page
10 of a document. We would have actually had that discussion.
11 So the answer is no, I would not have the done that.

12 MR. SINGER: Thank you.

13 THE COURT: Mr. Acker.

14 MR. ACKER: One question, Your Honor.

15 THE COURT: Go ahead.

16 MR. ACKER: Can I do is from here?

17 THE COURT: You may.

18 RE-CROSS-EXAMINATION

19 BY MR. ACKER:

20 Q Sir, to your knowledge, did the lawyers and business
21 people at Santa Cruz have the opportunity to read the
22 included and excluded asset schedule before they agreed to
23 the APA?

24 A Yes.

25 MR. ACKER: That's all I've got.

1 THE COURT: Counsel, may Mr. Thompson be excused?

2 MR. ACKER: Yes, Your Honor.

3 MR. SINGER: Yes, Your Honor, subject to possible
4 re-call at the end of the case.

5 THE COURT: So he may not be excused, then, as
6 I've used that term?

7 MR. SINGER: Yes.

8 THE COURT: Mr. Thompson, it's possible that you
9 may be re-called. So if you would remain available. I do
10 have to instruct you to not discuss your testimony with any
11 other witness in this case or in the presence of any other
12 witness or in any way communicate with any other witness.
13 All right?

14 THE WITNESS: Yes.

15 THE COURT: Thank you, Mr. Thompson.

16 MR. SINGER: Mr. Normand will present our next
17 witness.

18 THE COURT: Mr. Normand, who might that be?

19 MR. NORMAND: Our next witness will be Ed Chatlos.

20 THE COURT: All right.

21 Mr. Normand, could I get you to do me a favor? A
22 lot of exhibits were left up here. Would you come and
23 retrieve those that will not be used.

24 MR. ACKER: Some of those are mine, Your Honor.

25 THE CLERK: Mr. Chatlos, do you want to come

1 forward?

2

EDWARD CHATLOS,

3

Having been duly sworn, was examined

4

and testified as follows:

5

THE CLERK: If you would please state and spell
6 your name for the Court.

7

THE WITNESS: Edward S. Chatlos. C-h-a-t-l-o-s.

8

DIRECT EXAMINATION

9

BY MR. NORMAND:

10

Q Good morning, Mr. Chatlos.

11

A Good morning.

12

Q Could you summarize your educational background?

13

A Yes. I have a bachelor's of science degree in
14 electronic engineering technology. A master's of science
15 degree in computer science from Johns Hopkins.

16

Q Can you briefly summarize your employment before you
17 joined Novell?

18

A After my bachelor's degree, I joined Western

19

Electric --

20

THE COURT: Mr. Chatlos, can I get you to scoot
21 forward, and also make certain the microphone is closer to
22 you.

23

THE WITNESS: Is that better?

24

THE COURT: I think so, yes.

25

THE WITNESS: After my bachelor's degree, I went

1 to Western Electric. Stayed there for about nine months.
2 And then left Western Electric, got my master's at John
3 Hopkins. Came back to Western Electric, and stayed there
4 for about nine months moving to the microprocessor product
5 management group, department management for software systems
6 there. Left after about a year and a half and went to the
7 AT&T microelectronic -- I'm sorry, the UNIX group in AT&T.
8 Stayed there until '87. Then, in '87, I moved to London and
9 did software licensing for UNIX in Europe for three years.
10 I came back and did business development, business planning
11 for UNIX with AT&T.

12 Q When did you join Novell?

13 A Right after the sale of UNIX to Novell by AT&T, 1993
14 maybe.

15 Q And what position did you assume?

16 A Senior director of strategic relationships.

17 Q What were your, in brief, responsibilities?

18 A I managed the big company relationships, like Computer
19 Associates, how we partnered with them.

20 Q How long were you at Novell?

21 A Through 1995, the end of 1995.

22 Q So when did you leave?

23 A Actually it was January 5th of 1996.

24 Q Why did you leave?

25 A I had an offer from AT&T and I thought it was a good

1 offer, so I left for that reason.

2 Q Did Novell want you to leave?

3 A No.

4 Q Did you have a chance to work with a man named Duff
5 Thompson during your time at Novell?

6 A Yes.

7 Q In what capacity?

8 A I worked in his organization at one time and then
9 reported to him towards the end.

10 Q Over what time span did you report to Mr. Thompson?

11 A Since I joined Novell, which was, again, '93 through
12 January of '96.

13 Q Now as of the beginning of 1995, what were the major
14 lines of business at Novell?

15 A You certainly had Netware. That was the biggest one.
16 You had UNIX. Some smaller lines of business, like
17 documentation training, WordPerfect, and may be others.

18 Q Did there come a time when Mr. Thompson -- Duff
19 Thompson spoke with you about Novell's intent to sell the
20 UNIX and UnixWare business?

21 A Yes.

22 Q Do you recall, approximately, when that occurred?

23 A In the May time frame of 1995.

24 Q What did Mr. Thompson tell you about his intent
25 regarding the sale of these assets?

1 A He said he wanted to sell the entire UNIX business to a
2 buyer. I am not sure if he said SCO at that time.

3 Q Did you have an understanding at that time as to why
4 Novell had decided to sell this entire business?

5 A I think so. It really was about Novell focusing on
6 their core NetWare products given all the competition coming
7 around them.

8 Q When you say you think so, did you discuss this issue
9 with Mr. Thompson?

10 A I don't believe so.

11 Q Did you discuss it with anyone else?

12 A I don't remember.

13 Q What role did Mr. Thompson ask you to play with respect
14 to the sale of these assets?

15 A He asked me to lead the negotiations for selling the
16 business.

17 Q Did you have a view at that time as to why he had asked
18 you to play that role?

19 A I think it was my background. I was certainly the UNIX
20 expert, business expert. I had done a lot of negotiation
21 before. So I think that was the reason.

22 Q As of that time, late 1995, how many transactions would
23 you estimate you were part of negotiating?

24 A I don't know, anywhere between 30 and 50. I'm not
25 sure. Some small, some very big.

1 Q Was there any effort within Novell around the time you
2 learned of this intent to find a proposed purchaser?

3 A Yes, there was.

4 Q Did you come to a decision as to who an appropriate
5 purchaser would be?

6 A Yes, SCO.

7 Q On what basis did you make that decision?

8 A Primarily their market reach, their experience in UNIX,
9 their staffing. It was a really good fit. They were
10 focused on binary sales, so that was an important thing as
11 well.

12 THE COURT: Mr. Chatlos, may I ask that you slow
13 down a little bit, primarily for the court reporter.

14 MR. NORMAND: Thank you, Your Honor.

15 BY MR. NORMAND:

16 Q Now did there come a time when you took Mr. Thompson up
17 on his request and began to negotiate with this potential
18 purchaser?

19 A Yeah, that began in mid June of 1995.

20 Q With whom from Santa Cruz did you begin and continue
21 these negotiations?

22 A The daily discussions and the regular discussions were
23 with Jeff Seabrook and Jim Wilt.

24 Q Over what period of time did these negotiations occur?

25 A We started mid June of 1995 and finished early

1 September 1995, so it was throughout the summer.

2 Q Can you explain for me physically how you went about
3 doing these negotiations? Where were you?

4 A Most of the negotiations occurred in California. I
5 live in New Jersey, so I went out every week. I commuted
6 actually every week. There were several hotels we used from
7 Palo Alto, Los Gatos and Santa Cruz.

8 Q What was the general nature of the transaction that you
9 were discussing with Mr. Wilt and Mr. Seabrook?

10 A To sell the entire business to SCO so they could
11 continue with it fully.

12 Q Did you and the Santa Cruz negotiators have a nickname
13 for this proposed transaction?

14 A We did. Sleigh ride.

15 Q Why was that the nickname?

16 A The first hotel we met in June of 1995, outside -- it
17 was a Holiday Inn in Palo Alto, and outside there was a
18 Santa Claus and a sleigh. For some reason James decided to
19 call it sleigh ride.

20 Q How much of the UNIX business was to be sold in this
21 transaction, as you recall it, during your negotiations?

22 A Well, the entire business.

23 Q Was it the sale of just UnixWare?

24 A No. It was definitely UNIX and UnixWare.

25 Q What was the relationship between UNIX and UnixWare as

1 those terms sometimes get thrown around?

2 A UnixWare was the latest offer and it encompassed most
3 of the previous efforts, like UNIX. So really one can use
4 that term interchangeably.

5 Q As part of the deal you negotiated with Santa Cruz,
6 were the UNIX and UnixWare copyrights to be included or
7 excluded from the transfer?

8 A The deal with SCO was to include the copyrights.

9 Q Would holding back the copyrights have been consistent
10 with your instructions from Mr. Thompson?

11 A Absolutely not.

12 Q Did you ever instruct anyone on the deal to hold back
13 the copyrights?

14 A No.

15 Q Did you ever suggest to Santa Cruz that they were
16 buying the UNIX software business but not its copyrights?

17 A Absolutely not.

18 Q When do you first recall discussing the possibility of
19 the transaction with the Santa Cruz executives? I'm going
20 back a little bit now.

21 A Sometime in May of 1995.

22 Q Did there, after that point, arise an issue with
23 respect to the cash or money that Santa Cruz could pay for
24 the transaction?

25 A Yes. It was going to -- in one of the meetings in late

1 1995.

2 Q Can you briefly describe what the issue was?

3 A Yeah. SCO didn't have enough cash to pay up front, so
4 we constructed a deal such that there would be three payment
5 components. One is the customers that existed in Novell
6 that were licensing binary copies of UNIX, that revenue
7 would be substantially paid to Novell as one component of
8 the compensation. Second component, stock in SCO. The
9 third component is a share of the revenue that SCO got for
10 any UNIX sales in the future.

11 Q Can you, again, briefly, but can you describe the
12 distinction between what you described as the first
13 component and the third component?

14 A Yes. The first component was the binary licenses that
15 existed at the time the APA was signed.

16 Q What is a binary license?

17 A Binary is a machine readable software. It's like the
18 application you buy when you buy a Microsoft operating
19 system.

20 Q And the third component, the UnixWare?

21 A Excuse me. It's the future UnixWare offer that SCO
22 sales, a portion of those binaries.

23 Q So if Santa Cruz had sold a certain amount of UnixWare
24 licenses in the future, it's your testimony that some of
25 that money would have gone back to Novell?

1 A Correct.

2 Q Do you know whether that threshold was ever met?

3 A I don't know. I had left.

4 Q Was it ever your intent on behalf of Novell to hold
5 back the copyrights because Santa Cruz couldn't pay enough
6 cash up front?

7 A Absolutely not.

8 Q Did you form any view as to whether the payments to
9 Novell through the ongoing binary royalties, what you
10 described as the first component, did you form any view as
11 to whether that would be valuable to Novell?

12 A Yes, and we did some modeling.

13 Q Again, briefly, what were the results of the modeling,
14 if you can recall?

15 A Hundreds of millions of dollars.

16 Q Were you personally involved in the transaction up to
17 the date that the APA was signed?

18 A Yes.

19 Q Did you ever give the lawyers authority to hold back
20 any UNIX or UnixWare copyrights?

21 A Absolutely not, no.

22 Q Would it have bothered you if anyone had drafted the
23 language of the APA to hold back the copyrights from UNIX
24 and UnixWare?

25 A Absolutely.

1 Q Why?

2 A The deal I negotiated with SCO included the copyrights,
3 so we modeled it to include the copyrights. And from a
4 personal standpoint, it would have been unethical to exclude
5 them.

6 Q Now just before the APA was signed, did Novell own all
7 of the lines of businesses that you identified earlier? I
8 think you said NetWare, WordPerfect, UNIX, UnixWare.

9 A Just before the APA was signed did they own them?

10 Q Yes.

11 A I believe so, yes.

12 Q Were they transferring all of those lines of business
13 to Santa Cruz?

14 A Certainly not.

15 Q Which ones were they transferring?

16 A Just the UNIX and UnixWare business.

17 MR. NORMAND: Mr. Calvin, could we look at SCO
18 Exhibit 1.

19 BY MR. NORMAND:

20 Q Is that in front of you on your screen, Mr. Chatlos?

21 A Yes.

22 MR. NORMAND: Highlight recital A.

23 BY MR. NORMAND:

24 Q Do you see that language in from front of you, Mr.
25 Chatlos?

1 A Yes.

2 Q It says, quote, seller is engaged in the business of
3 developing in the line of software products currently known
4 as UNIX and UnixWare, the sale of binary and source code
5 licenses to various versions of UNIX and UnixWare, the
6 support of such products and the sale of other products
7 which are directly related to UNIX and UnixWare,
8 collectively, the business. Do you see that language?

9 A Yes.

10 Q How does that language compare to your understanding of
11 the business in which Novell was engaged at the time?

12 A It reflects it.

13 MR. NORMAND: Mr. Calvin, can we have recital B?

14 BY MR. NORMAND:

15 Q This language, as you can see, Mr. Chatlos, says, the
16 boards of directors of each of seller and buyer believe it
17 is in the best interests of each company and their
18 respective stockholders that buyer acquire certain of the
19 assets and assume certain of the liabilities of seller
20 comprising the business, the, quote, acquisition. Do you
21 see that language?

22 A Yes.

23 Q How does that language comport with your understanding
24 of what Novell was intending to sell Santa Cruz?

25 A The intent was for Novell to keep its core NetWare

1 business and some other businesses and sell the UNIX and
2 UnixWare business. That reflects it.

3 THE COURT: Mr. Chatlos, again, I have to ask you
4 to please slow down.

5 THE WITNESS: I'm sorry.

6 MR. NORMAND: I will try to speak even slower and
7 you can mimic me.

8 THE COURT: Mr. Chatlos, I am serious about this,
9 that only for the court reporter, but my guess is that
10 members of the jury are having trouble following some of
11 your answers. It's very important that they hear what you
12 have to say.

13 MR. NORMAND: Thank you, Your Honor.

14 MR. NORMAND: Mr. Calvin, section 1.1(a),
15 highlight that.

16 BY MR. NORMAND:

17 Q I'm trying to save time, Mr. Chatlos. I take it you
18 are familiar with this language, you've seen it before?

19 A Yes.

20 Q If you need time to read it, let me know. How does
21 this language comport with your understanding of what the
22 assets were at issue in this transfer?

23 A It reflects it.

24 Q Do you see the reference to both schedules 1.1(a) and
25 schedule 1.1(b)?

1 A Yes.

2 MR. NORMAND: Could we go to schedule 1.1? Let's
3 bring out Roman numeral I.

4 BY MR. NORMAND:

5 Q Mr. Chatlos, this is from schedule 1.1(a), all rights
6 and ownership of UNIX and UnixWare, including but not
7 limited to all versions of UNIX and UnixWare and all copies
8 of UNIX and UnixWare, and I'll stop there. What are copies
9 of UNIX and UnixWare?

10 A The actual individual versions, and it would be the
11 source code copies and any binary copies we had.

12 Q In what forms do those exist -- or did they exist at
13 the time?

14 A They certainly did exist and they could have been on a
15 disk, a tape drive.

16 Q Were those physical materials being sent over as part
17 of the transfer, to your understanding?

18 A Yes.

19 Q Keep going, all technical, design, development,
20 installation, operation and maintenance information
21 concerning UNIX and UnixWare, including source code. I'll
22 stop there. Remind us again what source code is.

23 A Source code is human readable computer code where a
24 human can read it, understand it, modify it, and then you
25 take the compiler and compile it into binary.

1 Q You say modify it. What does that mean?

2 A Change aspects so it does something different than was
3 originally intended.

4 Q Keep going, source documentation, source listings and
5 annotations, appropriate engineering notebooks, test data
6 and test results, as well as all reference manuals and
7 support materials normally distributed by seller to
8 end-users and potential end-users in connection with the
9 distribution of UNIX and UnixWare, such assets to include
10 without limitation the following. Do you see that language?

11 A Yes.

12 Q How did that language overall comport with your
13 understanding of what assets were included in this transfer?

14 A It fully describes it.

15 Q Did you have a view at the time of the APA as to
16 whether this description, descriptions of materials such as
17 copies of UNIX and UnixWare, and the source code for UNIX
18 and UnixWare included the copyrights thereto?

19 A Without a doubt, yes.

20 MR. NORMAND: Go to schedule 1.1(b). Can we bring
21 up Roman numeral I?

22 BY MR. NORMAND:

23 Q Mr. Chatlos, you've seen this language before. Roman
24 numeral II refers to NetWare operating system and services.
25 Do you see that language?

1 A Yes.

2 Q How does that language, the inclusion of that reference
3 in the excluded asset schedule, comport with your
4 understanding of what was intended to be excluded?

5 A It was Novell's desire -- our desire to not include any
6 core business of Novell like NetWare, so we excluded it in
7 this attachment.

8 Q Did you ever intend to sell Santa Cruz the NetWare
9 business?

10 A No.

11 Q Did you ever intend to transfer to Santa Cruz any of
12 the NetWare copyrights?

13 A No.

14 Q Do you see Roman numeral IV, Mr. Chatlos?

15 A Yes.

16 THE COURT: Mr. Normand, just for the benefit of
17 the jury, you maybe want to indicate which page of the
18 Exhibit A you are referring to, title of this, please?

19 MR. NORMAND: Thank you, Your Honor.

20 BY MR. NORMAND:

21 Q Do you recognize this Roman numeral IV, Mr. Chatlos, as
22 from schedule 1.1(b) of the APA?

23 A Yes.

24 Q And do you have an understanding of the role that
25 schedule 1.1(b) was designed to serve within the APA?

1 A It was intended to identify the assets which did not go
2 to SCO and for the most part address the NetWare business
3 that would not be transferred to SCO.

4 Q I'm looking at the top of the screen, Roman numeral
5 IV-A, which says NetWare and other Novell code contained in
6 UnixWare 2.01 and Eiger. Do you see that language?

7 A Yes.

8 Q Did Novell intend to transfer NetWare and other Novell
9 code contained in UnixWare to Santa Cruz?

10 A No, certainly not.

11 Q Do you see Roman numeral V entitled intellectual
12 property?

13 A Yes.

14 Q Do you see the reference to all copyrights?

15 A Yes.

16 Q Did Novell intend to exclude from the transfer the UNIX
17 and UnixWare copyrights?

18 A No, not at all.

19 Q Do you think this language can be read to refer to the
20 exclusion of copyrights for UNIX and UnixWare?

21 A This language, section V, is in the NetWare schedule.
22 So it was certainly intended to deal with just NetWare.

23 Q You think it says NetWare?

24 A It's in a Novell attachment, so it means NetWare. That
25 was the intent of the agreement.

1 Q Was it your understanding, in your review of these
2 documents, that this referred to NetWare?

3 A Yes.

4 Q Did you have a chance to review this document before
5 the APA was signed?

6 A Yes.

7 Q Was it ever your understanding that this Roman numeral
8 V referred to the exclusion of UNIX or UnixWare copyrights?

9 A No.

10 MR. NORMAND: Section 1.6.

11 BY MR. NORMAND:

12 Q Mr. Chatlos, I'm going to direct your attention to
13 section 1.6 of the APA --

14 A Yes.

15 Q -- which is titled license back of assets. I won't
16 read this paragraph. Do you recall discussions of Novell's
17 intent regarding this prospect of a license back?

18 A Yes.

19 Q Can you briefly describe what the point of the license
20 back was?

21 A Since Novell was transferring the entire business to
22 SCO, there were groups within Novell that were using some of
23 the UNIX and UnixWare technology, both within labs and
24 within product that is distributed to customers. This
25 section covered Novell continuing to have the right to use

1 some of that UNIX code and include portions in their binary
2 products. So it's licensing from SCO to Novell the right to
3 use the source code and create some limited derivative
4 works.

5 Q Did you have a view, during the course of your
6 negotiations, as to why it would be necessary for Novell to
7 have a license back?

8 A Well, we were instructed to transfer the entire
9 business to SCO, so Novell would have no rights to it, so
10 this section covered giving back rights to Novell.

11 Q Mr. Chatlos, we're going to bring you back to schedule
12 1.1(b), the excluded assets schedule, and we're going to
13 look at the old language of the APA, the language that was
14 replaced referring to all copyrights. To your
15 understanding, if Novell had retained the UNIX and UnixWare
16 copyrights, would it have needed a license back?

17 A Absolutely not.

18 Q Why not?

19 A Retaining the copyrights is tantamount to having rights
20 to modify the source code.

21 Q Now you will recall, Mr. Chatlos, we had just looked at
22 section 1.6 of the APA which referred to a license back. We
23 now have on the screen Exhibit 162 titled Technology License
24 Agreement. Do you recognize this document?

25 A Yes.

1 Q Did you have an understanding at the time as to the
2 substance of this document?

3 A Yes.

4 Q Could you briefly describe that?

5 A Sure. This addressed that previous paragraph we saw.
6 This was a license back to Novell and the terms in which
7 they could use source code and make derivative works.

8 Q Do you recall whether Novell intended to agree to any
9 restrictions on the extent to which they could use this UNIX
10 and UnixWare technology in selling products?

11 A There are restrictions in this document.

12 Q Why?

13 A We didn't -- excuse me -- SCO didn't want Novell to use
14 the technology they are getting back from SCO to create
15 competitive offer. So the restrictions, if I remember
16 correctly, were the source code could be used in the labs
17 and they could create derivative works. And then the binary
18 versions of those could be used in their NetWare product or
19 other products, but only in a very minor way. It couldn't
20 be considered a primary component of the developing product.

21 Q Were those restrictions subsequently imposed in the
22 technology license agreement?

23 A Yes. They are in a subsequent section, I believe.

24 Q If Novell had retained the UNIX and UnixWare
25 copyrights, wouldn't it have been able to do anything it

1 wanted to do with the source code?

2 A Exactly right.

3 Q Mr. Chatlos, we're going to bring up section 1.2 of the
4 asset purchase agreement which is titled payments, and we're
5 going to keep it on two pages for a second. Do you see
6 there are three subsections, (a), (b), (c), and then running
7 down to (d)?

8 A Yes.

9 Q How does this language comport with your understanding
10 and intent as to what consideration Santa Cruz was giving
11 Novell for this transfer of assets?

12 A I think I said earlier that there were three components
13 to Novell being compensated for selling the business to SCO.
14 Paragraph (a) reflects the stock aspect of that. Paragraph
15 (b) reflects the royalty payments that would go back to
16 Novell of those existing customers. And paragraph (b), the
17 second half, reflects the future royalty -- sorry, the
18 future share of royalty payments SCO would receive for sales
19 of UnixWare.

20 Q Did you consider both of those components part of the
21 consideration that Novell was receiving?

22 A All three of those components, yes.

23 Q Now you are aware of Amendment No. 1 to the APA?

24 A Yes.

25 Q Were you part of the negotiation or discussion at that

1 time?

2 A More of the discussion, correct.

3 Q And how did that come about that you were involved with
4 that?

5 A After the APA was signed, Novell created -- we created
6 a transition team consisting of mostly Novell people --
7 Novell people, but it included some SCO people. The members
8 of this team were HR, development, support, so forth. The
9 team was to work on how do you now effect this agreement and
10 transfer the business to SCO.

11 Q What was your role with respect to that transition
12 team?

13 A I was an adviser to all the individual team leaders for
14 the subsections.

15 Q Do you recall when the APA closed?

16 A Yes.

17 Q What is a closing, by the way, in your experience?

18 A Very uneventful. It's where both parties sign the
19 agreements in front of each other. That's it.

20 Q It's like signing legislation into law?

21 A Yes.

22 Q Who was at the closing?

23 A I don't remember everybody, but on Novell's side, it
24 was Duff Thompson and myself. There may have been a lawyer
25 or two and maybe a banker.

1 Q On this issue of Amendment No. 1 in your transition
2 work, did the issue of copyrights ever come up?

3 A No.

4 Q Was it ever suggested to you by anyone that Novell had
5 retained copyrights?

6 A Absolutely not.

7 Q In your transition teamwork, did you ever tell anyone
8 that Novell had retained the copyrights?

9 A No, I didn't. I didn't need to.

10 Q Why not?

11 A The whole business went. And when you are in the
12 software business, you understand copyrights are associated
13 with software.

14 Q Was it your intent to have the copyrights transferred?

15 A Without a doubt.

16 Q At the beginning of the negotiations?

17 A In the beginning and in the end.

18 Q And in the middle?

19 A In the middle, yes.

20 MR. NORMAND: Can we look at section 4.16.

21 BY MR. NORMAND:

22 Q We're looking, Mr. Chatlos, at section 4.16 of the
23 asset purchase agreement, and I take it you are familiar
24 with subsection (a)?

25 A Yes.

1 Q There is reference to SVRX royalties in the third line.

2 Do you see that?

3 A Yes.

4 Q Did you have an understanding or intent as to what SVDX
5 royalties were and why they are referenced here?

6 A Yes. This was one of the compensation components I
7 mentioned earlier, and that is the royalty stream from the
8 existing licensees that SCO would collect and pay Novell a
9 substantial portion of.

10 Q Do you see subsection (b)?

11 A Yes.

12 Q Do you see on the third line there is a sentence that
13 begins in addition, at seller's sole discretion and
14 direction?

15 A Yes.

16 Q Buyer shall amend, supplement, modify or waive any
17 rights under, or shall assign any rights to, any SVRX
18 licensee to the extent so directed and in the manner or
19 respect by seller?

20 A Yes.

21 Q Did have you an understanding or intent as to what that
22 provision was intended to accomplish?

23 A Yeah. This is dealing with the binary revenue stream
24 mentioned in (a). And we were trying to give Novell the
25 flexibility to modify the payment terms of that binary

1 royalty stream so it could be accelerated if they wanted
2 more cash up front. So instead of the computer companies or
3 the resellers of the binary paying over time as they
4 distributed the product, Novell could get them to pay up
5 front, almost like paying off your house or paying off your
6 car.

7 Q Did you have an understanding at the time as to what an
8 SVRX license was?

9 A In this context, it was the binary sublicense agreement
10 and the associated schedule for each product.

11 Q And, again, simply as you can, you won't offend us,
12 what is the difference between a source code agreement or a
13 software agreement on the one hand and on the other hand
14 what you are describing as an SVRX license?

15 A There are three agreements that address the licensing
16 of UNIX. The first one is a software licensing agreement.
17 It gives the customer the right to modify it. Included in
18 that language is protection of trade secret and intellectual
19 property, so on and so forth. It doesn't address a
20 particular product, per se.

21 The second agreement is the software sublicensing
22 agreement. That gives the customer the right to make binary
23 copies and distribute binary copies. And it's the structure
24 in which they pay for those distributions.

25 THE COURT: Mr. Chatlos, you do have water right

1 there, if you would like to --

2 THE WITNESS: I'm going to put another cough drop
3 in. Excuse me.

4 There is a third component which is called a
5 schedule, and the schedule is associated with each specific
6 product. In that schedule are the fees. I believe it
7 includes where that source code existed. And that's it. So
8 the sublicensing fees and where the source code existed,
9 plus some up front fees for the source code.

10 Q What is sub about the sublicensing? Why sublicensing?

11 A I don't know. I wasn't involved in the original
12 definition of these agreements. But what you are doing is
13 making a derivative of a higher form, so it's sub to the
14 original source code.

15 Q Let me understand this. You have got whatever
16 entity -- and you worked at AT&T, the entity that owns the
17 source code; is that right?

18 A Correct. At one point, yes.

19 Q They enter into source code agreements with companies
20 who do what?

21 A They modify the source code.

22 Q After they modify that source code, what do they do
23 with the modified source code?

24 A First of all, they modified it to adapt it to their
25 needs. Then they would compile it down, which turns it into

1 binary. Then they would put it on their computers, or sell
2 it to stand alone and sell it.

3 Q Then they sell this third level, sublicensing
4 agreement?

5 A Correct.

6 Q Now did you have a view at the time of the APA as to
7 whether Novell had the right to waive Santa Cruz's rights
8 under the source code agreements?

9 A No, that wasn't included in this agreement. Section
10 (b) is waiving rights under the binary side.

11 Q Why did you not intend for Novell to have the right to
12 waive Santa Cruz's rights in the source code agreements?

13 A The source code is really the intellectual property of
14 the business. If Novell had a right to waive that, it could
15 have potentially created SCO's business.

16 Q Last question on this topic. Why would that have hurt
17 SCO's business?

18 A Well, Novell could have changed the rights of a source
19 code licensee so they could distribute the product however
20 they wanted to. That wouldn't have been right for us.

21 Q So I lied. One more question on this. Was it Novell's
22 intent to secure for itself the right to waive any efforts
23 Santa Cruz might make to enforce its rights in the source
24 code agreement against a third party if that third party was
25 infringing the source code agreement?

1 A I heard part of it. I want you to say it again so I
2 can parse it.

3 Q The question is whether it was Novell's intent to
4 secure for itself the right to waive Santa Cruz's claims
5 against a third party that Santa Cruz thought was violating
6 the source code agreement?

7 A No.

8 Q Why not?

9 A It wasn't Novell's intent. Novell's intent was to
10 provide SCO to protect those source code agreements. It was
11 Novell's intent to allow Novell to modify the payment terms
12 of the binary license agreement such that it could
13 accelerate payment and get cash up front.

14 Q Mr. Chatlos, are you married?

15 A Yes.

16 Q How long have you been married?

17 A Ten years in October.

18 Q What is your wife's name?

19 A Laura.

20 Q When did you meet Laura?

21 A I first met her in 1991. She joined AT&T in the UNIX
22 group.

23 Q When did you begin dating?

24 A After I left Novell, when I went to AT&T.

25 Q So Laura has been working in the UNIX and UnixWare

1 business for about 20 years?

2 A Yes. She started at AT&T, went to USL, which is the
3 subsidiary, then went to Novell, then went to SCO through
4 this transaction to Caldera, then the current SCO Group.

5 Q So she's still at SCO?

6 A She is still at SCO.

7 Q Does she hold any stock in SCO?

8 A She owns very little stock. She probably owns a couple
9 hundred shares and some options, probably less than 8,000.

10 Q Is that of any material value to you?

11 A Most of them are underwater. The strike price is above
12 the current stock price.

13 Q Now if this lawsuit were to work out successfully for
14 SCO, would that represent any material benefit to you?

15 A No, not really.

16 Q Mr. Chatlos, when you first learned in the last few
17 years that Novell was claiming to own the UNIX and UnixWare
18 copyrights, what was your reaction?

19 A I was shocked.

20 Q Why?

21 A Certainly that wasn't the deal that we did, and I
22 thought it was not right to claim that when that wasn't the
23 deal.

24 Q To your view, did the claim have any foundation?

25 A Correct. Correct.

1 Q Did it have any foundation to you?

2 A No, it didn't.

3 MR. NORMAND: No further questions, Your Honor.

4 THE COURT: Mr. Acker.

5 MR. ACKER: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. ACKER:

8 Q Let me start, Mr. Chatlos, where counsel left off with
9 you and your wife and your wife's stock ownership in SCO.

10 Let me just be clear, your wife works at SCO now?

11 A Correct.

12 Q She owns several hundred actual pieces of stock --
13 shares of stock?

14 A I think the number is around 200.

15 Q She also owns options, and it's several thousands
16 options; is that right?

17 A It's less than 8,000 at various strike prices.

18 Q So the jurors understand, an option is the ability to
19 buy a share of stock at a given price, right?

20 A Correct.

21 Q And the strike price is the price you've got to pay to
22 buy a share of stock, right?

23 A Correct.

24 Q So if you buy a share of stock at the strike price, say
25 it's a dollar, and the share of stock is actually trading at

1 \$10, you made the \$9 difference?

2 A Correct.

3 Q So if SCO would be successful in this litigation and
4 its stock price were to go higher than the strike price of
5 your wife's options, she could sell those and make money,
6 right?

7 A Correct.

8 Q So if SCO was successful in this case and that results
9 in SCO's stock price going up, your wife could make money,
10 right?

11 A Correct.

12 Q Now, sir, your tenure at Novell, I just want to be
13 clear on that. You left the company, sounds like, right at
14 the end of the year in 1995 or the first day of 1996?

15 A It was probably the first week of 1996, correct.

16 Q So really this deal sounds like the last thing you did
17 at Novell, correct?

18 A Yes.

19 Q And when I say this deal, your involvement was in the
20 original agreement that was approved by the board of
21 directors in September of 1995, right?

22 A Yes.

23 Q And then you also worked on this Amendment No. 1 that
24 was worked on between September of '95 and December of '95,
25 correct?

- 1 A Yes.
- 2 Q That was the end of your involvement, right?
- 3 A No. I was involved in putting together the closing
4 documents for the December signing. I didn't write them. I
5 made sure they were all done and prepared.
- 6 Q After the deal got closed in December, you were done
7 with the deal?
- 8 A Correct.
- 9 Q And no involvement in anything after that, correct?
- 10 A I'm sure I did some work, but certainly not major. I
11 mean I did work at Novell at that time.
- 12 Q You worked on no amendments to this agreement after
13 Amendment No. 1?
- 14 A Correct.
- 15 Q Now this deal took place a long time ago, right, 15
16 years?
- 17 A Yes.
- 18 Q And it's true, isn't it, that the first time that you
19 had reason to focus on the intent of the meaning of the APA
20 after 1995 was when you were approached by SCO's lawyers in
21 2004; isn't that right?
- 22 A Correct.
- 23 Q And so you did a deal in 1995, nine years pass, you are
24 on to other things, correct?
- 25 A Yes.

1 Q Working other places, doing other deals, right?

2 A Yes.

3 Q Then the lawyers for the plaintiff come find you in
4 2004 and you have a conversation with them, and that's the
5 first time you focused on what the intent of the deal was
6 for the prior nine years; is that right?

7 A Probably, yes.

8 Q Nine years is a long time, isn't it, sir?

9 A Yes, it is.

10 MR. ACKER: If we could bring up one more time
11 today the schedule 1.1 of the asset purchase agreement,
12 please.

13 BY MR. ACKER:

14 Q Now you would agree with me, sir, that if we look at
15 paragraph V of 1.1(b), excluded assets, this is the
16 paragraph -- this is the paragraph in the asset purchase
17 agreement that tells us what was the intellectual property
18 that was excluded, that is did not transfer from Novell to
19 Santa Cruz under the asset purchase agreement, right?

20 MR. NORMAND: Object to the form for reasons we
21 discussed previously.

22 MR. ACKER: Let me deal with that.

23 BY MR. ACKER:

24 Q As far as you knew, in 1995, September of 1995, this
25 paragraph, paragraph V of 1.1(b), was the section that dealt

1 with what intellectual property was excluded from the
2 transfer, correct?

3 A Yes.

4 Q And as far as you knew when you left the company at the
5 end of the year, it was still this paragraph in this form is
6 what told both parties what intellectual property was
7 excluded from the deal, right?

8 A Yes.

9 Q And that paragraph reads, the intellectual property
10 paragraph of what was not transferred, in A, all copyrights
11 and trademarks, except for the trademarks UNIX and UnixWare,
12 correct?

13 A Yes, but I read this in the context of the entire
14 schedule, page 1 and page 2, and I had in my mind the intent
15 of what we were trying to accomplish.

16 Q I'm trying to focus -- and I'll get back to that in a
17 sec. I want to focus on the words here.

18 You would agree with me, wouldn't you, sir, this
19 doesn't say all NetWare copyrights, correct?

20 A That's correct. This whole language does not say that,
21 correct.

22 Q What it says is all copyrights, correct?

23 A Correct.

24 Q Now do I understand your testimony to be because there
25 were other references to NetWare in schedule 1.1(b), you

1 somehow imported the word NetWare into this exclusion? Do I
2 have that right?

3 A That's the way I read it, correct.

4 Q Despite the fact that the word NetWare is not there?

5 A Not on this page. It's in the previous bullet points.

6 Q But when talking about what intellectual property was
7 excluded, there is no reference to limiting it to NetWare
8 copyrights, correct?

9 A Correct.

10 MR. ACKER: If we could go to 4.16(b), please.

11 BY MR. ACKER:

12 Q Now this is the paragraph -- there is a lot of language
13 in there. Let me see if I can boil it down. Section
14 4.16(b) is a section that Novell wanted in the agreement to
15 allow them to tell Santa Cruz they had to waive certain
16 rights in order to protect Novell's SVRX revenue stream; is
17 that fair?

18 A Yes, it was intended to protect Novell's SVRX binary
19 royalty stream.

20 Q It's your testimony this was limited to simply waiver
21 of rights regarding binary licenses; is that true?

22 A Correct.

23 Q Now can you show me in this paragraph where it says
24 binary licenses or it's limited to binary licenses?

25 A It doesn't say binary explicitly, but it's in a section

1 that deals with binary licensing.

2 Q So in this waiver provision it says buyer shall not,
3 and shall not have the authority to, amend, modify or waive
4 any right under or assign any SVRX license without the prior
5 consent of seller. It says any SVRX license, right?

6 A It says that, yes.

7 Q It doesn't say any binary SVRX license, correct?

8 A No. But, again, you have to take the context of the
9 section.

10 Q Would you think that the same context would apply to
11 4.16(a), that that is limited solely to -- the pass through
12 of revenues for SVRX licenses was limited solely to binary
13 licenses?

14 A It's limited to binary licenses for the most part. I
15 can't see the top.

16 Q Let's go back. Let's look at 4.16(a).

17 So if I understand your position, despite the fact that
18 4.16(b) doesn't say binary licenses, you are limiting it to
19 that because it's in this 4.16 paragraph; is that right?

20 A Well, no. Yes, the language should say -- says that,
21 but also I'm going back to the intent. The intent when we
22 were sitting down around the table was for SCO to collect
23 the royalties and pay Novell 95 percent of them, in
24 paragraph (a), and then, in paragraph (b), to allow Novell
25 to modify the payment terms of those sublicensees on the

1 royalty payments.

2 Q So, again, the contract doesn't expressly say that, but
3 you are relying on your memory of a deal you did 15 years
4 ago?

5 A Without a doubt.

6 Q Now your working relationship with Tor Braham and the
7 rest of the Wilson team on the asset purchase agreement was
8 such that the lawyers drafted the APA because you did not
9 have the legal background to draft a lot of the terms in the
10 agreement; is that fair?

11 A Not completely, no. There were other lawyers involved.
12 I don't know that Tor Braham drafted the original APA.

13 Q I'm really drawing a distinction from yourself and the
14 lawyers from Wilson. The lawyers from Wilson drafted the
15 language, correct?

16 A I don't believe so. I believe it was originally
17 drafted by lawyers from Novell.

18 Q And then the lawyers from Wilson took over; is that
19 right?

20 A Most likely, yes.

21 Q So you are remembering that the lawyers at Novell
22 actually drafted the language and then the lawyers from
23 Wilson worked on it after that?

24 A I think they worked on it to reflect the intent of the
25 business relationship.

1 Q So the lawyers at Novell and the lawyers from Wilson
2 worked on the language to reflect the intent, and that is
3 the words that are in the agreement, according to you, as of
4 September of 1995?

5 A Yes.

6 Q It's your belief that the actual language in the
7 agreement, as of September 1995, reflects the deal?

8 A Yes.

9 Q Because the language, as of September of 1995, reflects
10 the deal, in your opinion, there would be absolutely no
11 reason to want to modify that deal or alter that deal after
12 you left the company in January of 1996, correct?

13 A I don't know what they would do. I think it included
14 the deal. But just as we created Amendment No. 1, there may
15 have been things they discovered afterwards that they
16 wanted.

17 Q With respect to copyrights, you think it's clear as day
18 that the copyrights exclusion only applies to NetWare and
19 there would be no reason to change that language?

20 A I believe that was our intent. Whether the language
21 needed to be tweaked to reflect that, that's an opportunity
22 I'm not aware of, but that was the intent.

23 Q Is it your position that the actual words in the
24 contract that don't refer to just NetWare copyrights being
25 excluded, is it your belief that that language is

1 inconsistent with your belief of what the intent was?

2 A I think it's consistent. I've read it and I thought it
3 was consistent.

4 Q So it's your belief that the language of the agreement
5 is consistent with what you believe the intent was?

6 A As I read it, yes.

7 Q So given that, there would be no reason to want to
8 amendment the agreement after you left in January of 1996?

9 A I can't give a view on that.

10 Q I'm asking you your view on that?

11 A I don't know the circumstances that existed when I left
12 the company to come to a conclusion that they needed to
13 modify.

14 Q When you read the agreement and you read the words at
15 the end of 1995 and you saw that it excluded all copyrights
16 and it didn't limit it to NetWare copyrights, did you think
17 that language needed to be amended?

18 A Well, my thinking was the intent of the deal was to
19 completely transfer the business, including the source code,
20 the copyrights, everything, the agreements, the revenue
21 streams. And when I read it September 15th -- 13th, I felt
22 it covered that.

23 Q By the way, did you attend a board meeting in the
24 middle of September when the deal was approved?

25 A No.

1 Q Because you were not present at that board meeting, you
2 obviously don't know what was discussed, right?

3 A Correct.

4 Q It was the Novell board that had the responsibility or
5 had the authority to approve the deal, correct?

6 A Correct.

7 Q And you don't know what was communicated from the
8 lawyers, Larry Sonsini and others from the Wilson firm or
9 in-house lawyers from Novell about what the deal was,
10 correct?

11 A I don't know what was stated in the meeting, correct.

12 Q Because you weren't there and you don't know what was
13 stated in the meeting, you don't know what was in the minds
14 of the directors when they approved the deal, correct?

15 A No. I have an idea as a result of what happened after
16 the meeting, that it was in line with the intent of the
17 agreement.

18 Q But you weren't in the room?

19 A I was not in the room, correct.

20 Q So you don't know what was in the minds of the
21 directors who approved the deal?

22 A Correct.

23 MR. ACKER: That's all I have, Your Honor.

24 THE COURT: Mr. Normand, do you have anything
25 else?

1 MR. NORMAND: Very few, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. NORMAND:

4 Q Mr. Chatlos, do you recall being asked about meeting
5 with attorneys for SCO in 2004?

6 A Yes.

7 Q By that time had you met with attorneys for IBM?

8 A Yes.

9 Q And what did you tell them about this issue of
10 copyright transfer?

11 A The same thing I'm saying today, that we transferred
12 the entire business, and that included the copyrights.

13 Q Did they propose that you sign a declaration?

14 A They did want me to sign a declaration, correct.

15 Q What happened?

16 A Well, after our meeting they said they would write up a
17 declaration and send it to me for signature.

18 Q Did they do that?

19 A They did do that.

20 Q Did you sign it?

21 A No, I didn't.

22 Q Why not?

23 A It didn't reflect anything near my conversation.

24 Q Do you have a clear recollection of your intent on
25 behalf of Novell to transfer all of the UNIX and UnixWare

1 assets?

2 A Yes, I believe so.

3 Q And whether it's nine years ago or 15 years ago, would
4 you remember something as fundamental as Novell's intent to
5 keep the copyrights?

6 A That would have destroyed the value of the deal for
7 SCO. Of course I would have remembered that.

8 MR. NORMAND: No further questions, Your Honor.

9 THE COURT: Mr. Acker.

10 MR. ACKER: Nothing else, Your Honor. Thank you.

11 THE COURT: Mr. Normand, may this witness be
12 excused, again, meaning he need not worry about being
13 re-called?

14 MR. NORMAND: Yes, Your Honor.

15 THE COURT: Mr. Acker?

16 MR. ACKER: Yes, Your Honor. Thank you.

17 THE COURT: Mr. Chatlos, thank you. That means
18 you do not need to worry about being re-called in this case.
19 You may go about your business. I will advise you to please
20 not discuss your testimony with any other witness in this
21 case or in the presence of any other witness or communicate
22 your testimony to any individual who may report that, okay?

23 THE WITNESS: Okay.

24 THE COURT: Thank you.

25 Do you have a witness you can get done in ten

1 minutes?

2 MR. SINGER: I'm afraid not, Your Honor.

3 THE COURT: I kind of figured that would be the
4 answer.

5 Ladies and gentlemen, we'll recess, then, for the
6 afternoon. I will not repeat everything that you've been
7 told now for several days, but I'll briefly remind you of
8 the importance of you not making up your mind in any way,
9 even though you have now heard two days of opening
10 statements and testimony. And, again, I will stress that
11 you are not to discuss this case with anyone or allow anyone
12 to discuss it with you. You are not to read or watch or
13 listen to anything about this case, nor are you to allow or
14 to do any research on your own or anything similar to that.

15 We'll start tomorrow morning at 8:30. We'll be in
16 recess until then.

17 (Jury excused)

18 THE COURT: I'm curious, Mr. Singer, are we on
19 schedule as you contemplate?

20 MR. SINGER: We're a bit behind schedule, Your
21 Honor. We had hoped today to get through several of the
22 video depositions. That would mean we're about an hour and
23 45 minutes behind our schedule.

24 THE COURT: You will begin tomorrow with those
25 video depositions; is that correct?

1 MR. SINGER: We would begin with Mr. Messman's
2 video. To break up the day, we probably will put on
3 Mr. Davis, then --

4 THE COURT: As a live witness?

5 MR. SINGER: As a live witness, and then return to
6 the video depositions after that.

7 THE COURT: All right.

8 MR. ACKER: Your Honor, if we could inquire, will
9 there be any live witnesses other than Mr. Davis tomorrow?

10 MR. SINGER: It's possible we would get to Bill
11 Broderick, but that would only be after a number of depositions.
12 The order which we contemplate would be Mr. Messman,
13 Mr. Davis, then going back to the Mohan, Wilt and Michels
14 videos.

15 MR. ACKER: So Broderick and Maciaszek after that?

16 MR. SINGER: Broderick would be after that if
17 there was time on Thursday.

18 MR. NORMAND: There is a travel issue. He may not
19 be here this week.

20 THE COURT: Is that all you need, Mr. Acker?

21 MR. ACKER: If they will tell me more, I'd be
22 happy to --

23 THE COURT: Well, if you want to pursue that, I'll
24 let you do it out of my presence.

25 MR. ACKER: Thank you, Your Honor.

1 THE COURT: Counsel, we do not have any hearings
2 this afternoon, so you do not have to clear the desks unless
3 you want to.

4 We'll be in recess until 8:30.

5 (Whereupon, the trial was continued to Thursday,
6 March 11, 2010 at 8:30 a.m.)

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