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2   IN THE UNITED STATES DISTRICT COURT

3   FOR THE DISTRICT OF COLUMBIA

4   UNITED STATES OF AMERICA   )
)
5   Plaintiff,   )
)
6   vs.   )   Civil Action
)   No. 98-1232(TPJ)
7   MICROSOFT CORPORATION   )
)
8   Defendant.   )
)
9   _____)
)
10   STATE OF NEW YORK ex rel, Attorney   )
     General DENNIS C. VACCO, et al.,   )
11   )
                  Plaintiff,   )
12   )
     vs.   )   Civil Action
13   )   No. 98-1233(TPJ)
     MICROSOFT CORPORATION,   )
14   )
                  Defendant.   )
15   )

16

17   July 10, 1998
                                     9:58 a.m.
18   HIGHLY CONFIDENTIAL

19   Videotape deposition of RON RASMUSSEN, taken by

20   Defendant, pursuant to Subpoena, at the offices of

21   McCutchen, Doyle, Brown & Enersen, 3150 Porter Drive,

22   Palo Alto, California, before Leigh Regan, a Certified

23   Shorthand Reporter within and for the State of

24   California.

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8   Q.   Did you talk at all with any representatives

9   of the Department of Justice?

10   A.   Yes, I did.

11   Q.   With whom did you speak? Mr. Holtzman?

12   A.   Mr. Holtzman. Thank you.

13   Q.   Did you meet with Mr. Holtzman?

14   A.   Yes, I did.

15   Q.   When did you meet with Mr. Holtzman?

16   A.   Yesterday afternoon, Thursday, July whatever

17   it was.

18   Q.   I think it's the 9th.

19   A.   Thank you.

20   We also had a -- two phone conversations

21   prior to that.

22   Q.   What was the subject of the two prior phone

23   conversations?

24   A.   The subject? I guess I don't understand it.

25   Q.   If you could just tell me what you recall was

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said during those conversations.

A.   There was a number of questions about

Internet technology and our operating systems, and

Mr. Holtzman trying to understand how the technology was

working in our products.

Q.   And the meeting yesterday, how long did that

last, approximately?

A.   An hour, an hour and a quarter.

Q.   Did Mr. Holtzman ask you questions during

that meeting?

A.   Yes, he did.

Q.   Did Mr. Holtzman review with you any

documents?

A.   Yes, he did.

Q.   What generally did Mr. Holtzman ask you

yesterday?

A.   Let's see. I think the general topic was

familiarity with certain documents, whether I had seen

them before or not.

Q.   Were these documents that SCO had produced

pursuant to the subpoena?

A.   Yes, they were.

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16   Q.   I think you said that SCO's principal

17 products are operating system products.

18   A.   They are.

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6   Q.   What are the names of SCO's current operating

7   system products?

8   A.   The current operating system products that

9   are still available on the price list?

10   Q.   Yes, sir.

11   A.   They would be SCO UnixWare 7, SCO UnixWare

12   2.1.3. It's possible -- I don't know for sure whether

13   SCO UnixWare 2.1.2 is still on the price list. The

14   other product line is SCO OpenServer Release 5, and it

15   also has a number of versions, 5.0.4 and 5.0.2.

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24   Q.   Does SCO license any desktop operating system

25 products?

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2   A.   Do we sell desktop operating system products?

3   Q.   Yes.

4   A.   Yes, we do.

5   Q.   What are the names of those products, sir?

6   A.   Okay..

7   Q.   Feel free, if you'd like, to refer to

8 Exhibits 2 through 4, which list the products.

9   A.   Sure. Our desktop products are SCO UnixWare

10 2.1 Personal Edition, SCO OpenServer Desktop System, and

11 I believe that's it.

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5   Q.   Which operating system is more expensive, a

6   server system or a desktop operating system, to the

7   extent you can generalize?

8   A.   For a general-purpose desktop, a desktop will

9   be cheaper than a general-purpose server.   .

10   Q.   I know it's difficult to generalize, but for

11   SCO's products, are the desktop operating systems about

12   half the price of the server systems?

13   A.   Not necessarily. It depends which ones.

14   Q.   It's kind of impossible to --

15   A.   It's impossible to draw that kind of a

16   generalization.

17   Q.   I won't ask you to do that, then.

18   What type of computers do SCO's desktop

19   operating systems run on?

20   A.   Intel microprocessors.

21   Q.   So it would be an accurate statement to say

22   that SCO's desktop operating systems run on

23   Intel-compatible computers?

24   A.   Yes.

25   Q.   Do SCO's operating system products compete

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2   with any other operating system products that run on

3   Intel PCs?

4   A.   Yes, they do.

5   Q.   Which other operating systems do SCO's

6   desktop operating systems compete with?

7   A.   On the desktop, it would be Windows 95,

8   Windows 3.1, Windows NT workstation. That would be the

9   bulk of it, and then the -- the extremely minor

10   competition from the Solaris operating system from Sun

11   on the Intel platform.

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21   Q.   What is SCO Merge 4.0?

22   A.   SCO Merge 4.0 is a system service which

23   allows the SCO Unix operating system to run Windows 95

24   on top of Unix.

25   Q.   Allows the user to run Windows 95

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applications?

    A.   The operating system Windows 95, as well as
the applications, and it's not limited to Windows 95.
It can also run Windows 3.1 and DOS.

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Q.   Okay. If you look also, please, on the page

2 of this document, under the heading Product Notes, the

third paragraph, the first sentence reads, "The

recommended Web browser is the Netscape Navigator

Internet browser included with SCO OpenServer."

And my question is: Is Netscape Navigator

included with SCO OpenServer?

MR. KUSINITZ: Objection.

A.   Netscape Navigator is bundled with SCO

OpenServer.

Q.   Indeed, the statement in the Web page uses

"included."

You would use the word "bundled" rather than

"included"?

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2   A.   Yes.

3   Q.   Do SCO's operating system products come with

4   any Internet-related technologies?

5   MR. HOLTZMAN: Objection. Vague and

6   ambiguous.

7   Q.   I'm trying to make my question as broad as

8   possible by sort of saying Internet-related

9   technologies.   .

10   A.   Right.

11   Q.   Can you answer that question?

12   A.   I can, but I could probably take up all six

13   hours.

14   Q.   Okay.

15   A.   Maybe you could rephrase it and be a little

16   more specific.

17   Q.   Sure. Let's start with the desktop operating

18   system products.

19   Do SCO's desktop operating system products

20   include any technology designed to provide Internet

21   connectivity?

22   A.   Yes, quite a bit.

23   Q.   Quite a bit.

24   Can you generally describe what that

25   technology is? I understand it's quite a bit.

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2   A.   It is quite a bit.

3   Q.   I don't want you to take up six hours.

4   A.   Right.   For us, Internet technology starts at

5 the lowest level of the network, so the fact that our

6 desktop operating systems allow network connectivity,

7 that's the start.   So it includes the networking

8 protocol known as TCP/IP, so it includes that technology

9 which is the core networking technology for machines

10 talking to each other on the Internet or the intranet.

11   On top of that, the desktop operating systems

12 provide all sorts of other necessary networking

13 functions of named services so you can find another

14 machine, some level of security so that other people

15 can't get into your machine and you can get into others,

16 and included is the ability to manage the operating

17 system through -- through the Internet, through

18 technologies like Telnet, which allows you to log in to

19 the system to administer it remotely.

20   Q.   Anything else?

21   A.   It also includes in the most recent versions

22 Netscape Navigator on the desktop systems.   I believe

23 it's still Navigator 3, not Communicator.

24   Q.   Do SCO's server systems include the same

25 Internet technologies?

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2   A.   The most recent releases of all of those --

3   of all the server products we've previously discussed

4   include all of the same desktop technology as well as a

5   Web server.

6   The other area that both the desktop and

7   server have Internet technology, what's known as

8   Internet technology now, is in the ability to read

9   on-line documentation where we utilize HTML and the Web

10   browser for the administrator to read the documentation.

11   Q.   This is on the server systems?

12   A.   Servers and desktops.

13   Q.   And desktops. Thank you.

14   Why does SCO include these technologies in

15   its desktop operating systems?

16   A.   We include those in our desktop operating

17   systems for -- on the desktops to be able to browse the

18   Web and because our -- because of competitive pressures

19   we needed to add that feature to our desktop systems.

20   Q.   What were those competitive pressures that

21   required you to add that technology to the operating

22   system?

23   A.   The inclusion of Internet browser

24   technologies and operating systems such as NT where we

25   compete on the desktop and with Windows 95. I guess as

2   of a couple of weeks ago, Windows 98.

3   Q.   When did SCO begin including these

4   technologies in its operating system products? I'll

5   start with desktop operating system products.

6   A.   The desktop operating system products, we

7   first started in -- this will be a long, long history

8   here -- we first started in mid-1994, using the Mosaic

9   Web browser, configured specifically for reading local

10   documentation on the local machine, so it was restricted

11   to reading documentation. It could not be used as a

12   generic Web browser.

13   Q.   In mid-1994, was that your Open Desktop

14   system?

15   A.   That would have been Open Desktop at that

16   time.

17   Q.   How does the history go on from there?

18   A.   We then -- let's see. We then went into a

19   product known as Global Access, which we then used NCSA

20   Mosaic to actually be configured so it could be both the

21   documentation reader and a Web browser for a desktop

22   user.

23   Q.   When did that Global Access project begin,

24   approximately?

25   A.   I couldn't say for sure.

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2   Q.   At that point, you're using the Mosaic

3   browsing technology both for a documentation reader and

4   for accessing the Web?

5   A.   Yes.

6   Q.   Are there further steps in the history?

7   A.   Oh, yes.

8   Q.   Okay.

9   A.   We then -- we then -- let's see. . Was the

10   question about desktops?

11   Q.   Yes, sir.

12   A.   In 1997 -- Global Access had a short life.

13   We obsoleted it. But in 1997, we included Netscape

14   Navigator as a bundle with OpenServer 5.0.4, which I

15   believe was released to market in May of 1997, so that

16   the OpenServer Desktop Edition had bundled with it the

17   Netscape Navigator product as well as some new

18   remote-access Internet technology.

19   Q.   Is there another step going from 1997 to the

20   present?

21   A.   That is still the case today.

22   Q.   When did SCO begin including support for

23   TCP/IP protocol in its desktop operating system

24   products?

25   A.   With the advent of Open Desktop, which would

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2   have been in -- I couldn't say for sure.

3   Q.   Is it in the -- it's pre mid-'94?

4   A.   It would have to be just pre mid-'94.

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22   Q.   My question was: Does SCO bundle Netscape

23   Navigator with its SCO UnixWare Personal Edition

24   operating system?

25   A.   I guess it comes down to the definition of

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2 "bundle."

3   Q.   I used that word intentionally because I

4 think you had used it earlier.

5   A.   Right. So maybe I can clarify what I mean by

6 "bundle" so that maybe throughout the rest of the day we

7 will all have the same understanding of what I'm saying,

8 anyway.

9   Q.   Please do.

10   A.   When SCO says we bundle a feature, it means

11 it's a feature which is not part of the core base

12 operating system functionality. It means that it's

13 something that the user can choose to install or remove,

14 and the operating system, whose primary function is to

15 serve applications, will still function properly.

16   So when I say "bundle," it means we have

17 added this feature, but the operating system doesn't

18 necessarily need it to do its job.

19   Q.   Does that feature come with the operating

20 system when someone buys it?

21   A.   For UnixWare 2.1 Personal Edition, the

22 Netscape Navigator is bundled. In the single price, you

23 get it.

24   Q.   There is not an additional fee for the

25 Netscape Navigator?

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A.   For the Personal Edition, no.

Q.   It's part of the price of the overall operating system?

A.   Yes, it is.

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25   Q.   If you look on the first page, in the

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2   left-hand column, under the heading Features, the third

3   bullet reads, "Netscape Navigator Web browser, graphical

4   news reader, and e-mail client."

5   Does SCO's OpenServer desktop system come

6   with Netscape Navigator Web browser?

7   A.   The 5.0.4 system does.

8   Q.   It's listed here as a feature of that

9   operating system?

10   A.   It's bundled with that operating system.

11   Q.   Does it come with -- is it part of the single

12   price for the operating system?

13   A.   Yes, it is.

14   Q.   There's no separate charge for Netscape

15   Navigator if someone --

16   A.   Not on the desktop system as a single-user

17   system.

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Q.   Going back to the statement again that SCO

hasn't been effective as a desktop -- a supplier of

desktop operating systems, can you explain a little bit

more what you mean by that; in other words, why hasn't

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2   SCO been effective?

3   A.   The applications required to make the desktop

4   successful, the desktop operating system successful were

5   not available.   Primarily people are using personal

6   productivity applications on desktops.

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24   Q.   Do you have any understanding as to why that

25   is; in other words, why third parties have not created

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2 those applications for SCO's operating systems?

3   A.   Because the operating system today and for

4 the last few years doesn't have any momentum as a

5 desktop operating system. There is not enough of a

6 marketplace for the application vendors and the

7 application -- nobody buys an operating system for an

8 operating system. They buy the application.

9   Q.   What do you mean by that last statement?

10   A.   The operating system's whole purpose in life

11 is to run applications. So your operating system choice

12 is based on the availability of applications.

13   Q.   How does the success or failure or

14 penetration of a particular operating system affect

15 whether a third party is likely to write an application

16 for that operating system?

17   A.   All the application vendors look at market

18 share and the cost/benefit analysis of providing that

19 application on any operating system, so if it costs them

20 more than they believe they're going to get in revenue

21 or if they believe their revenue is just a trade from

22 one operating system to another, there is no financial

23 benefit for producing that application on other

24 operating systems.

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5   Q.   Do you have any understanding as to why

6   people at SCO use Windows 95, as opposed to one of SCO's

7   desktop operating systems?

8   A.   Because of the availability of personal

9   productivity applications.

10   Q.   What kind of applications are you·talking

11 about here?

12   A.   Primarily Microsoft Office suite, either

13 Office 97 or Office 95.

14   Q.   The personnel we're talking about here at SCO

15 who use Windows 95, what categories do they fall in?

16 What type of jobs are we talking about?

17   A.   Most of the managers of just about any

18 department. The salespeople with their laptops.

19   The only people who use our own system as

20 desktops are the engineers who have to develop the

21 operating system on top of the operating system itself,

22 as a general rule. Our field engineers obviously are

23 technical and need to run Unix as well to be able to

24 install it and explain it to customers.

25   Q.   Going back to UnixWare 7, what products, if

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15   Q.   What is the purpose of including or bundling

16 a browser with UnixWare 7?

17   A.   The primary purpose of that browser, it's a

18 license for a single user, even though the server itself

19 is a multi-user machine, for the administrator to use to

20 read the on-line documentation and to administer the Web

21 server which requires a browser to administer it.

22   Q.   Just to make sure I understand, so you've

23 talked about UnixWare 7 operating system is a multi-user

24 operating system?

25   A.   Yes.

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2   Q.   And what does that mean?

3   A.   That means it can have between one and, you

4   know, 10,000 users sharing the machine.

5   Q.   So if --

6   A.   Consecutively, I should say.

7   Q.   So if somebody --

8   A.   Concurrently.

9   Q.   If somebody licenses UnixWare 7 for more than

10   one user, how many of those users can use the browser

11   that they get with UnixWare 7?

12   A.   Only one of those users can use the browser

13   that's included with the operating system.

14   Q.   And for the other users of UnixWare 7, how

15   would they, if they want a browser, how would they get

16   it?

17   A.   If they want it from us, they would purchase

18   a browser as an optional product.

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Q.   Did that decision to bundle a browser with

UnixWare 7 have anything to do with any perception of

demand for the users of UnixWare 7 to go out and browse

and access the Web?

A.   No, it was a single-user license for the

administrator to administrate the Web server and read

the on-line documentation.

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18   Q.   Did that decision to bundle a browser with

19   UnixWare 7 have anything to do with any perception of

20   demand for the users of UnixWare 7 to go out and browse

21   and access the Web?

22   A.   No, it was a single-user license for the

23   administrator to administrate the Web server and read

24   the on-line documentation.

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2   Q.   Let me stop you there for a second.

3   Can you describe maybe generally what the

4   person who is installing the operating system sees?

5   A.   They see a -- a screen with a number of

6   options that can be selected and deselected for

7   installation, and one of those options is some of the

8   Internet technologies and the granularity down to the

9   browser or the Web server, depending on the operating

10   system.

11   Q.   This is true as to UnixWare 2.1.3?

12   A.   Yes, it is.

13   Q.   So there's something like a line with a box

14   that actually applies to the Web browser, in this case,

15   Navigator?

16   A.   Yes.

17   Q.   And so what, if anything, does the user have

18   to do to not get Navigator with UnixWare 2.1.3 in this

19   instance?

20   A.   In this instance, I forget the exact key

21   stroke. It's just, you know, tap or space bar to select

22   and deselect.

23   Q.   Are there other methods also in UnixWare

24   2.1.3 to uninstall or remove Netscape Navigator?

25   A.   Yes. If they chose to install Navigator as

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2   part of the operating system installation, they can go

3   back in with a utility to do software removal and they

4   can, again, they get a point-and-pick list and they can

5   select it for removal.

6   Q.   Doing either of these things, either not

7   installing at all or removing it once it's installed,

8   and the "it" here being Netscape Navigator, does that

9   have any impact on any other functioning of the

10   operating system?

11   A.   No.   The operating system is still capable of

12   performing its primary task of running applications.

13   Q.   Turning to UnixWare 7, is Netscape Navigator

14   uninstallable or removable from that?

15   A.   Yes, it is, in the same fashion.

16   Q.   When you say "the same fashion," what do you

17   mean?

18   A.   It's selectable and deselectable at initial

19   system load so you can choose not to even put it onto

20   the system originally when you installed UnixWare 7, and

21   if you chose to put it on UnixWare 7, you could also,

22   after it's been installed, remove it from a

23   point-and-pick list.

24   Q.   Now, turning to OpenServer Release 5, is the

25   browser that's included or bundled with that product

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2   removable?

3   A.   Yes.   It's removable both at initial system

4   load time so it never gets onto the system, and it's

5   also removable afterwards if you chose during initial

6   system load to install it.

7   Q.   Now, asking more generally as to the three

8   operating system product lines as a whole, why does SCO

9   provide the capabilities you've described, namely, to

10   either not install the browser or to have it removed?

11   A.   Not everybody wants the functionality in the

12   operating system, so we provide them that option to

13   remove it or install it at a later time.

14   Q.   You said not everyone wants the functionality

15   in the operating system.

16   What functionality are you referring to

17   there?

18   A.   In the case of Netscape Navigator, the Web

19   browsing.

20   Q.   What is the basis for what you just said,

21   that not everybody wants the ability to access the Web,

22   that functionality in the operating system?

23   A.   The basis for that is that people are buying

24   the operating systems to run applications, and if their

25   application does not require a Web browser, then perhaps

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they don't want the Web browser there. So if you're

running an accounting application and you don't need the

Web browser, perhaps you don't want to install it to

save space on the disk, or in some instances we've had

resellers tell us they consider the Web browser an

unproductivity tool as people surf the Web rather than

doing their work.

    Q.   This is something resellers of SCO products

have actually given feedback to SCO?

    A.   Absolutely.

    Q.   Are there specific resellers that you can

recall doing that?

    A.   No.

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25   Q.   Is any browser product part of the core --

2   the core of any SCO operating system product?

3   A.   No.

4   Q.   What do you mean when you use the term

5   "core"?

6   A.   Again, the basic pieces of the operating

7   system necessary to run an application.

8   Our view is that the browser is an

9   application.

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6   Q.   You testified a little bit earlier about the

7   ability to view on-line documentation using a browser.

8   A.   Yes.

9   Q.   Okay. And that's something that's

10 provided -- is that provided in all SCO operating system

11 products?

12   A.   Yes, except for maybe UnixWare 2.1. I don't

13 remember. It had its own on-line help system prior to

14 our acquisition.

15   Q.   Maybe you could explain a little bit how it

16 works, how you have -- what the on-line documentation

17 you're talking about is, and how the browser is used to

18 view that.

19   A.   The on-line documentation is the

20 documentation for the administration and use of the

21 operating system, so when we say it's on line, what we

22 mean is it's in HTML format, and that if a browser from

23 anywhere in the network or locally connects to the

24 machine at the right -- what's known as a port, then it

25 will serve up the documentation into that browser.

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2   Q.   You said a browser can do this. Does it have

3 to be the browser that's distributed with the SCO

4 operating system?

5   A.   No, it doesn't.

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11   Q. Have OEMs or resellers ever expressed a

12 desire to you or anybody else at SCO that you're aware

13 of to have multiple browsers they can choose from?

14   A. Yes.

15   MR. PEPPERMAN: Objection. Hearsay.

16   A. Yes, they have.

17   Q. Do you have any understanding as to why

18 there's that desire?

19   MR. PEPPERMAN: Same objection.

20   A. The users want to have choice in the

21 browsers.

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2   Q.   Are you aware of their -- anyone ever

3   expressing a desire to have Microsoft's Internet

4   Explorer be ported to any SCO operating system?

5   . MR. PEPPERMAN: Objection. Hearsay.

6   A.   Yes, resellers have asked us for Internet

7   Explorer on SCO right after Microsoft made their

8   announcement about porting Internet Explorer to Unix

9   systems.

10   Q.   What, if anything, did you do in response to

11   these expressions of interest?

12   A.   I called the business -- business manager,

13   product manager, who was assigned to SCO, and asked him

14   if they were going to do SCO. He was in the middle of a

15   job transition to Chicago, and he pointed me at the new

16   guy, and I had a discussion with that individual at

17   Microsoft, who said they were not going to port Internet

18   Explorer to SCO.

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17   Q.   Okay. What did you do with respect to the

18 second telephone conversation?

19   A.   I asked the individual if they planned to

20 port Internet Explorer to SCO and explained to them, in

21 case they didn't know, the number of units and SCO's

22 position in the Unix industry, and the answer was no, we

23 don't plan to port it to SCO because SCO is a server

24 operating system, not a desktop operating system,

25 according to market share data.

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2   browser has the HTML functionality as a browser.

3   Q.   Is having competition among browser products

4   an important thing to SCO?

5   A.   It's important to SCO that there's a number

6   of choices and innovation in browser products because

7   that will be the display of these applications in the

8   network computing model.

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13   Q.   Let me withdraw that question.

14   Does SCO, organizationally, have concerns

15   about one browser product becoming dominant?

16   MR. PEPPERMAN: Objection. Lack of

17   foundation.

18   A.   We have concerns about a single browser,

19   regardless of whose browser it is, becoming the only

20   viable pervasive browser.

21   Q.   Why is that a concern?

22   A.   Because in the network computing model that

23   is part of our core strategy, the browser and the Java

24   that it can run will be the user interface for the

25   application on the server. And so if there is one

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2   person or one company who controlled the browser and its

3   look and feel and how it presented applications, it

4   could severely enhance or detract from the application

5   functionality of the -- on the server.

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25   Q.   In the market today -- what browser products

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2 are out there that you see in the market today?

3   A.   The browsers that we see in the market, and

4 supported by industry research, are Internet Explorer,

5 Netscape Navigator, and to a far lesser degree today,

6 Mosaic and Spry and Lynx, and there's probably loads of

7 others I've never heard of.

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22   Q.   So is it a fair characterization that the

23 Internet Explorer is, although ported to different

24 operating systems, is not ported to as many operating

25 systems as Navigator?

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2   A.   That is my understanding.

3   Q.   Does that affect in any way your assessment

4 as to whether there are concerns about Internet Explorer

5 versus Navigator becoming dominant among browsers?

6   MR. PEPPERMAN: Objection to the form of the

7 question.

8   A.   The concern for SCO is that the primary

9 client device is the Windows operating system, where the

10 Internet Explorer does exist.

11   Q.   Is that something that makes you concerned

12 about Internet Explorer becoming dominant?

13   A.   Yes, it is.

14   Q.   Just how so?

15   A.   If the primary client device is the Windows

16 operating system, then the primary interface to these

17 network computing applications will be controlled

18 through Internet Explorer.

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20   Q.   Mr. Holtzman asked you these series of

21   questions about the removability of the Netscape

22   Navigator browser, the option I think you said to not

23   install it originally or to uninstall it when -- after

24   it had already been installed.

25   When you were answering those questions,

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2   those questions were -- your answers were limited to the

3   circumstances with the SCO UnixWare and SCO OpenServer

4   operating systems?

5   A.   Right.

6   Q.   You weren't talking about the relationship,

7   for example, between Internet Explorer and the Microsoft

8   Windows operating systems?

9   A.   I was not.

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