

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

COPY

1 UNITED STATES OF AMERICA, )  
 2 )  
 3 Plaintiff, ) Civil Action  
 4 ) No. 98-1232 (TPJ)  
 5 vs. )  
 6 )  
 7 MICROSOFT CORPORATION, )  
 8 Defendant. )

60-7371-0014  
 DEPARTMENT OF JUSTICE  
 JUL 13 1998  
 ANTITRUST DIVISION  
 SAN FRANCISCO OFFICE

9 STATE OF NEW YORK ex rel, )  
 10 Attorney General DENNIS C. )  
 11 VACCO, et al, )  
 12 Plaintiff, ) Civil Action  
 13 vs. ) No. 98-1233 (TPJ)  
 14 )  
 15 MICROSOFT CORPORATION, )  
 16 Defendant. )

July 9, 1998  
9:30 a.m.

HIGHLY CONFIDENTIAL

18 Videotape deposition of BRYAN SPARKS, taken  
 19 by Defendants, pursuant to notice, at the offices  
 20 of Ray, Quinney & Nebeker, 79 South Main Street,  
 21 Salt Lake City, Utah, before Vicki L. Godfrey, a  
 22 Certified Realtime Reporter and Notary Public  
 23 within and for the State of Utah.



MANHATTAN REPORTING  
A LEGALINK COMPANY

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Q In advance of this deposition, did you talk at all with any representatives of a state Attorney General's office?

A Yes.

Q With whom did you speak?

1 A Mr. Klein.

2 Q How many times did you speak with  
3 Mr. Klein?

4 A Once.

5 Q Did you meet with Mr. Klein?

6 A Yes.

7 Q How long was that meeting?

8 A A couple of hours.

9 Q Did a representative of the United  
10 States Department of Justice attend that meeting,  
11 as well?

12 A Yes.

13 Q And who attended from the Department of  
14 Justice?

15 A I'm not going to remember names, but  
16 the three individuals that are here around the  
17 table.

18 Q Three lawyers from the Department of  
19 Justice?

20 A Yes. If I got their introductions  
21 right.

22 Q And this was the same meeting that you  
23 had with Mr. Klein yesterday?

24 A Yes.

25 Q And your lawyers attended that meeting,

1 as well?

2 A Yes.

3 Q That lasted, I think you said, a couple  
4 of hours?

5 A Something like that.

6 Q What did you discuss during that  
7 meeting?

8 A The Department of Justice and Mr. Klein  
9 had some questions and I responded to them. I'm  
10 not sure how detailed I should go there, but I  
11 pretty much responded to questions

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24           Q       After you acquired the DR-DOS product,  
25 did you determine that Internet connectivity would

1 be an important feature of that product?

2 A Yes.

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5 Q The OpenLinux Standard product, is that  
6 primarily intended to be a server product?

7 A Primarily, though it does include a  
8 graphical user interface and an office productivity  
9 suite because we do appeal to some UNIX work  
10 station markets, and we include those. But the  
11 fact that it has a commercial Web server, that's  
12 how we would prefer to position the product as a  
13 server.

14 Q Can all three of these products, could  
15 they be used as a desktop operating system?

16 A Yes.

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Q Do all three of these products come  
with a Web browser?

A Yes.



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Q And DR-DOS can be used as a general  
purpose operating system?

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A Yes it can.

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24 Q If you could look at the next bullet  
25 point here on the document which is labeled 000775,

1 and it says that, "The OEM distribution channel,  
2 the strongest and largest for the desktop OS  
3 market, is basically closed to new entrants for all  
4 but the smallest OEM's."

5 A Yeah.

6 Q Do you agree with that?

7 A Yes.

8 Q And could you explain what that means?

9 A That's kind of the subject of our  
10 lawsuit where we believe that there are a number of  
11 anti competitive practices in place that make it  
12 difficult for people to get into the distribution  
13 channel, among other things. And I'm not sure how  
14 to elaborate on that, but it is difficult to break  
15 in. We also have the -- at least perceived -- I  
16 don't have direct knowledge of real, but the  
17 perceived notion -- or I can't comment on the  
18 real -- where there's the notion that it would be  
19 difficult for the OEM's to take a risk on anything  
20 other than Microsoft for retaliatory reasons.

21 Q What attempts has Caldera actually made  
22 to distribute OpenLinux through OEM's?

23 A We've tried. We've talked to some of  
24 the larger OEM's, made efforts -- came where we  
25 thought was pretty close on one or two of those.

1 Just haven't been successful. We made  
2 presentations, we've negotiated price, we've talked  
3 about market segments, we've talked about  
4 cooperative marketing and sales rollouts, and just  
5 haven't been successful in doing that.

6 Q Which of the OEM's have you talked to?

7 A We did talk to Compaq quite a while,  
8 several occasions, and another that we're still in  
9 negotiations with on this new product we're coming  
10 out with. But, you know, Compaq we came pretty  
11 close, I thought, and, you know, just couldn't  
12 consummate a deal with them.

13 Q And what was Compaq going to OpenLinux  
14 for?

15 A As an ISP -- targeted as ISP's. We  
16 have a good product there, and creating a line of  
17 PC's that was targeted at ISP's with our product on  
18 it. Which fits us well. We have good features set  
19 for them and made sense to us.

20 Q And what ultimately happened with  
21 Compaq?

22 A Couldn't get it done. Don't know why,  
23 just couldn't get it done. They weren't -- like I  
24 said, we got down the road quite a ways and then,  
25 you know, stopped. So I don't know why.

1 Q Did Caldera approach Del to try to get  
2 OpenLinux distributed through Del?

3 A We had a contact into Del through --  
4 not by me by somebody else in the company, a former  
5 Novell employee that was known, and we talked to  
6 them. You know, weren't successful there, as well,  
7 really getting an OEM agreement there. They're a  
8 very outspoken Microsoft shop at Del, and so, you  
9 know, we didn't make much headway there,  
10 apparently.

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Q Are any of those browsers -- do you consider any of those browsers to be part of the Linux operating system?

A No.

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2           Q       When Caldera distributes OpenLinux  
3 Standard through resellers, does Caldera require  
4 those resellers as a contractual matter to  
5 distribute the browser and/or install it along with  
6 the operating system?

7           A       No, we do not.

8           Q       Why not?

9           A       It doesn't make sense for us to do  
10 that. The reseller knows what the customer needs  
11 better than we do. He's closer to the customer.  
12 We let him decide that. He is buying the boxed  
13 product and has the browser, but we don't mandate  
14 he install it or configure it, if he doesn't wish  
15 to.

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Q (BY MS. GIULIANELLI) You've testified  
about the ability of end users to customize



1 OpenLinux when installing it. Would Caldera also  
2 allow OEM's to customize OpenLinux to not include a  
3 browser if they wished?

4 A Yes.

5 Q Why?

6 A Why wouldn't we? As long as we had a  
7 contract. I'm not in a position where I can't be  
8 picky on the customers I get. So if they wanted to  
9 customize it, that's fine.

10 Q Would Caldera also allow resellers to  
11 customize OpenLinux installing it?

12 A Yes.

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Q Would Caldera lower the price of  
OpenLinux Base for other customers that wanted it  
without a browser without Navigator, for instance?

A Not since Netscape has given the  
browsers away for free. Previous to that, we might  
have, but now, we bundle that in. We did that with  
Montra before Netscape gave the browsers away for  
free.

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11 Q Mr. Sparks, you've mentioned a couple  
12 of times this afternoon that your company has a  
13 lawsuit pending against Microsoft?

14 A Yes.

15 Q And that is an antitrust lawsuit?

16 A Yes.

17 Q Is one of the claims in that lawsuit, I  
18 think you used the phrase earlier, a technical tie  
19 claim?

20 A I believe that's how we characterize it  
21 in the amended complaint.

22 Q Since the United States brought  
23 litigation against Microsoft in October, 1997  
24 relating to Windows 95 and Internet Explorer, has  
25 Caldera publicly supported the United States in its

1 lawsuit against Microsoft?

2 A No.

3 MR. PEPPERMAN: Let me mark, I think  
4 it's Exhibit 24. This is dated October 21st, 1997  
5 and it's entitled Provo Company Applauds Action  
6 Against Microsoft.

7 (Whereupon, Deposition Exhibit  
8 No. 24 was marked for  
9 identification.)

10 THE WITNESS: Okay.

11 MR. KLEIN: I guess I'll register an  
12 objection as being beyond the scope.

13 MR. PEPPERMAN: It goes to bias.

14 THE WITNESS: Okay.

15 Q (BY MR. PEPPERMAN) Have you seen this  
16 article before?

17 A No, it doesn't -- I don't recall. What  
18 magazine is this?

19 Q It was produced by Caldera as part of  
20 the production. It bears the Bates No. DOJ 522.  
21 Up top, I can see a [www.daily-herald.com](http://www.daily-herald.com) com.

22 A It's probably press clips, out of the  
23 press clips that we gave you.

24 Q The title of the article as I said, was  
25 Provo Company Applauds Action Against Microsoft.

1 The action referred to there is the Department of  
2 Justice action against Microsoft that was commenced  
3 in October of '97?

4 A Well, this is -- I'm sorry, I'll have  
5 to have the question again, I apologize.

6 Q The action referred to in this article,  
7 is the action brought by the United States against  
8 Microsoft, the one that was commenced in the fall  
9 of '97?

10 A Yeah, according to the date, it must  
11 be, yeah.

12 MR. PEPPERMAN: Okay. Let me mark as  
13 Caldera Exhibit 25, an article from the Deseret  
14 News dated October 22nd, 1997.

15 (Whereupon, Deposition Exhibit  
16 No. 25 was marked for  
17 identification.)

18 Q (BY MR. PEPPERMAN) This article is  
19 entitled Utah Firm That Is Suing Microsoft Welcomes  
20 Scrutiny of Software Giant. And this article -- is  
21 this from a local Salt Lake paper, the Deseret  
22 News?

23 A It says it's from the Deseret News,  
24 yeah.

25 Q And the scrutiny that's referred to

1 there, this is again a reference to Caldera's  
2 welcoming the United States action against  
3 Microsoft?

4 A According to -- I'm sorry, I phased out  
5 there for a minute.

6 Q Sure. The scrutiny of Microsoft that  
7 Caldera is welcoming here, it is the United States  
8 action against Microsoft?

9 A That's not my title, that's his title  
10 and obviously, that refers to the original -- or  
11 the DOJ action that was taken in October. Those  
12 aren't my words, those are his words or her words.

13 Q Sure. Both of these articles, Exhibit  
14 24 and Exhibit 25, there is a gentleman in there  
15 quoted by the name of Ransom Love?

16 A Yes.

17 Q Is he an employee of Caldera?

18 A Yes.

19 Q Is he a senior Caldera executive?

20 A Yes.

21 Q Was he one of the founders?

22 A Yes. Well, that's what we call one of  
23 the founders. He came in in January.

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2 Q You were asked a number of questions  
3 about what would happen if the browser wasn't  
4 loaded and you gave answers?

5 A Yes.

6 Q And my question is, were those answers  
7 with respect to your operating system product, the  
8 OpenLinux product?

A Yes, absolutely.

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