

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

THE SCO GROUP, INC., :
a Delaware corporation, :
 Plaintiff, :
VS. :
NOVELL, INC., :
a Delaware corporation, :
 Defendant. :

VIDEOTAPED DEPOSITION OF CHRISTOPHER M. STONE,
a witness called by and on behalf of the
Plaintiff, taken pursuant to the applicable
provisions of the Federal Rules of Civil
Procedure, before Sandra L. Bray, Registered
Diplomate Reporter, CSR Number 103593, and
Notary Public in and for the Commonwealth of
Massachusetts, at the offices of Ropes & Gray,
One International Place, Boston, Massachusetts,
on Tuesday, February 6, 2007, commencing at
9:51 a.m.

1 A. Perhaps the engineering folks at that point,
2 Stewart Nelson.

3 Q. Do you know if Novell licensed UNIX to anyone
4 during your second tenure at Novell?

5 A. No, I don't know.

6 Q. And who might know the answer to that question?

7 A. No idea. It's not a business that I or anyone I
8 was involved with was involved in. We were not
9 licensing UNIX.

10 MR. NORMAND: Ken, you want to take a
11 break, five minutes?

12 MR. BRAKEBILL: That would be great.
13 Yes.

14 THE VIDEOGRAPHER: The time is 10:58
15 on February 6th, 2007. This is the end of Tape
16 Number 1 of the videotaped deposition of
17 Mr. Christopher Stone.

18 (Recess)

19 THE VIDEOGRAPHER: The time is
20 11:13 a.m. on February 6th, 2007. This is Tape
21 Number 2 of the videotaped deposition of
22 Mr. Christopher Stone.

23 Q. Mr. Stone, do you know whether in this lawsuit
24 between SCO and Novell Novell is claiming the

1 right to money that Sun and Microsoft paid to
2 SCO in connection with the agreements that those
3 companies entered into with SCO in 2003?

4 A. Could you ask that again? Whether -- I'm not
5 quite sure I understood.

6 Q. Do you know whether in this lawsuit Novell is
7 claiming the right to certain monies that SCO
8 received from Sun and Microsoft in connection
9 with agreements that SCO entered into with
10 Sunday and Microsoft in 2003?

11 A. I'm not familiar with it, no. I'm not familiar
12 with it.

13 Q. Do you know anything about those agreements that
14 SCO entered into --

15 A. I've never read those -- seen those agreements,
16 no.

17 Q. -- with Sun? We need to have you let me finish
18 my question for her.

19 A. Sorry.

20 Q. I wanted to ask you a question, Mr. Stone, about
21 the APA. We had reviewed earlier under the
22 recitals Paragraph A, which states -- let me
23 read it into the record, quote, "Seller is
24 engaged in the business of developing a line of

1 software products currently known as UNIX and
2 UnixWare, the sale of binary and source code
3 licenses to various versions of UNIX and
4 UnixWare, the support of such products and the
5 sale of other products which are directly
6 related to UNIX and UnixWare (collectively, the
7 Business)." Do you see that language?

8 A. Yes.

9 Q. Do you know whether after the APA Santa Cruz was
10 engaged in the business of selling source code
11 licenses for UNIX or UnixWare?

12 A. No.

13 Q. Do you have a view from your licensing
14 experience as to whether Santa Cruz was
15 authorized to do so, to enter into such source
16 code licenses if it did not own the UNIX
17 copyrights?

18 MR. BRAKEBILL: Calls for speculation.
19 Calls for legal conclusion.

20 A. No.

21 Q. And your answer was no?

22 A. No.

23 Q. Mr. Stone, do you recall giving a speech at the
24 Open Source Business Conference in 2004?

1 A. Yes.

2 Q. Do you recall making the following statement in
3 your speech, quote, "Sorry, Darl, again. Al
4 Gore didn't invent the Internet, and you didn't
5 invent Linux or intellectual property law. We
6 still own UNIX. And we believe, that UNIX is
7 not in Linux, and that Linux is a free, and is
8 an open distribution, and should be. And always
9 will be," end quote?

10 A. Yes.

11 Q. I'm going to mark as an exhibit a transcript
12 that we've created of that conversation that
13 really it's for you if you want to refer to it.
14 (Speech Transcript from CNET was marked
15 Exhibit Number 1010 for identification.)

16 MR. NORMAND: This transcript has been
17 marked as Exhibit, I guess, 1010.

18 MR. BRAKEBILL: So this is a document
19 that Boies Schiller created?

20 MR. NORMAND: This is a document we
21 created. We created a transcript from a video
22 feed of the speech that is available on CNET, as
23 I understand it.

24 Q. And the language that I read into the record on

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1 this transcript, Mr. Stone, is on the last page,
2 Page 5? Who is the Darl to whom you're
3 referring to?
4 A. Darl McBride.
5 Q. And at the time, he was the CEO of SCO?
6 A. Correct.
7 Q. And in the beginning part of the language I read
8 into the record, you say, "Sorry, Darl." Why
9 are you saying sorry to Darl?
10 A. This is in response to claims of the copyright
11 and trademarks issue with respect to UNIX and
12 then Linux.
13 Q. And so why are you saying sorry?
14 A. For exactly those reasons, that Novell per the
15 contract retains the right to the copyrights and
16 trademarks and patents.
17 Q. And you tell Mr. McBride that, "You didn't
18 invent Linux." Do you see that language?
19 A. Yes, I do.
20 Q. And did you believe at that time that
21 Mr. McBride had claimed to invent Linux?
22 A. No, I did not believe that.
23 Q. So you're being sarcastic?
24 A. Absolutely.

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1 Q. What did you understand Mr. McBride to be
2 claiming with respect to Linux?
3 A. My understanding, it was very clear that he
4 claimed that because he -- that SCO owned the
5 copyrights, patents, and trademarks to UNIX,
6 they, therefore, owned Linux.
7 Q. And do you still understand that that's what SCO
8 claims?
9 A. Yes.
10 Q. Now, do you have a view as to the merits of that
11 claim, as you understand it?
12 MR. BRAKEBILL: Calls for speculation.
13 A. No. I don't have a particular view to the
14 merits. I will stand -- my view is that --
15 well, my view is basically on the contract.
16 Those are the merits as far as I'm concerned, is
17 that they don't --
18 Q. When you say --
19 A. -- per the contract.
20 Q. I'm sorry. When you say the contract, what do
21 you mean? The APA?
22 A. The APA.
23 Q. Did you understand at this time in 2004 that SCO
24 had asserted breach of contract claims against

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1 IBM?
2 A. Yes, I was aware of all of that.
3 Q. And did you have occasion to read the contracts
4 that SCO was alleging IBM had breached?
5 A. I never read any agreements between SCO and IBM.
6 Q. So your view of the merits of SCO contract
7 claims against IBM, to the extent you understood
8 it, was not based on any review of the
9 agreements --
10 A. I did not read agreements between SCO and IBM.
11 Q. Did you have a view in 2004 as to the merits of
12 SCO's contract claims against IBM?
13 A. No, only with respect to Novell and Linux.
14 Q. You then say in this language that I read into
15 the record to Mr. McBride that you didn't invent
16 intellectual property law. Do you see that
17 language?
18 A. Yes.
19 Q. Did you claim at the time that Mr. McBride
20 claimed to invent intellectual property law?
21 A. No. I was being sarcastic.
22 Q. And what did you understand Mr. McBride to be
23 claiming with respect to intellectual property
24 law, if anything?

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1 A. That SCO owned the intellectual property to
2 Linux, therefore, Linux, and that was the
3 sarcasm.
4 Q. Did you understand Mr. McBride to be claiming on
5 behalf of SCO certain proprietary rights over
6 material in Linux or proprietary rights over
7 Linux in its entirety?
8 A. I understood Mr. McBride and SCO to be claiming
9 that there was offending code in Linux that was
10 in UNIX. That's what I understand.
11 Q. Okay. So did you understand him to be claiming
12 that or did you understand him to be claiming
13 that SCO owned UNIX and Linux as a whole?
14 A. Both.
15 Q. And is that still your understanding of that
16 claim?
17 A. To this day, yes.
18 Q. You then state in the language I read into the
19 record, quote, "We still own UNIX." Do you see
20 that language?
21 A. Yes, I was referring to copyrights and
22 trademarks and patents.
23 Q. And who is the "we" in that statement?
24 A. Novell.

17 (Pages 62 to 65)

1 Q. So you did not mean to state that Novell owns
2 the business?
3 A. That's correct, that it owns the copyrights,
4 trademarks and patents per the agreement.
5 Q. When you look back on that phrasing, do you
6 think it wasn't particularly careful?
7 MR. BRAKEBILL: Calls for speculation.
8 A. I thought it was fine.
9 Q. I mean, would you say now -- would you
10 characterize your view now of the merits as
11 Novell owns UNIX?
12 A. No. I would add that as a little bit of sarcasm
13 as well, keeping with the context of the rest of
14 the comments, but that the -- it still refers to
15 the fact that Novell owns the copyrights and the
16 trademarks and patents.
17 Q. And why were you making these statements at this
18 time in this context?
19 A. Because this was a big issue and it was
20 discussed and there were questions in the
21 audience and it was on everyone's mind. I
22 couldn't go anywhere without someone asked this
23 question.
24 Q. And what result did you hope to achieve in

1 making the statements you made?
2 MR. BRAKEBILL: Foundation.
3 A. I was stating a position.
4 Q. What did you think the reaction to the position
5 that you were stating would be?
6 MR. BRAKEBILL: Calls for speculation.
7 A. Support.
8 Q. Did you know at the time whether anyone from SCO
9 was in the audience?
10 A. I did not know.
11 Q. Is the fact that you expected support for the
12 statement one of the reasons you made the
13 statement?
14 A. No. As I said earlier, I'd been asked this
15 question incessantly.
16 Q. And you are still being asked?
17 A. And I'm still being asked. So just I felt I
18 needed to take a position, so I did.
19 Q. And did you speak with anyone Novell -- anyone
20 at Novell about making such statements before
21 you made them?
22 A. We reviewed my speech, if that's what you're
23 asking.
24 Q. Who reviewed the speech?

1 A. People that worked for me, some product managers
2 because it had some product detail in it. It
3 had some directional information about Novell.
4 That's pretty much it.
5 Q. Have you had occasion to discuss the content of
6 your speech with anyone at Novell other than
7 counsel?
8 A. The speech at the conference?
9 Q. Yes. After the speech.
10 A. Oh. Not that I recall.
11 Q. You go on to say in the language I read into the
12 record that, "We believe that UNIX is not in
13 Linux." Do you see that language?
14 A. That is correct.
15 Q. What did you mean in that statement?
16 A. That Linux -- that UNIX is not in Linux, exactly
17 what it means.
18 Q. That there's no source code from UNIX --
19 A. That's correct.
20 Q. -- in the Linux operating system?
21 A. That's correct.
22 Q. What was your basis for making that statement at
23 the time?
24 MR. BRAKEBILL: Object to the extent

1 this calls for any attorney-client privileged
2 communications or any information that was
3 learned as a result of the attorney work product
4 doctrine.
5 A. So it's privileged.
6 MR. NORMAND: So you're instructing
7 him not to answer the question?
8 MR. BRAKEBILL: Unless he has any
9 information outside of privileged information, I
10 would instruct him not to answer.
11 A. Privileged.
12 Q. So you hadn't personally undertaken, whether at
13 the direction of counsel or otherwise, to figure
14 out whether there's any UNIX source code in
15 Linux; is that fair to say?
16 A. Privileged.
17 MR. BRAKEBILL: Objection.
18 Q. That was actually phrased in an awful way
19 because if an attorney had asked you to do it,
20 you can't answer it.
21 MR. BRAKEBILL: Which was my
22 objection.
23 A. Right. I think that's his point.
24 Q. And is it still your view today that there is no