UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, PLAINTIFF, V. MICROSOFT CORPORATION, DEFENDANT.	C.A. NO. 98-1232
STATE OF NEW YORK, ET AL., PLAINTIFFS, V. MICROSOFT CORPORATION, DEFENDANT.	C.A. NO. 98-1223
MICROSOFT CORPORATION, COUNTERCLAIM-PLAINTIFF, V. DENNIS C. VACCO, ET AL., COUNTERCLAIM-DEFENDANTS.	JANUARY 13, 1999 WASHINGTON, D.C.

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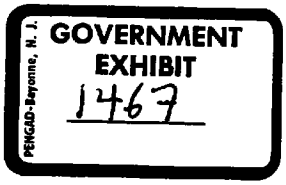
TRANSCRIBED DEPOSITION EXCERPTS

COURT REPORTER: DAVID A. KASDAN, RMR
MILLER REPORTING CO., INC.
507 C STREET, N.E.
WASHINGTON, D.C. 20003
(202) 546-6666



1 (DEPOSITION EXCERPTS OF BILL GATES.)

2 Q. YOU ARE AWARE, ARE YOU NOT, SIR, THAT

3 ONE OF THE ISSUES IN THIS CASE IS THE EXTENT TO

4 WHICH OPERATING SYSTEMS AND BROWSERS ARE OR ARE

5 NOT SEPARATE PRODUCTS?

6 A. I'M NOT A LAWYER, SO I THINK IT'S VERY

7 STRANGE FOR ME TO OPINE ON WHAT'S AN ISSUE IN THE

8 CASE. AS FAR AS I KNOW, THE ISSUES IN THE CASE

9 ARE NOT--ARE SOMETHING THAT YOU DECIDE, AND I

10 DON'T CLAIM TO HAVE ANY EXPERTISE AT ALL.

11 (EXCERPT.)

12 Q. MR. GATES, DO YOU UNDERSTAND THAT THE

13 ISSUE OF WHETHER OR NOT BROWSERS ARE A SEPARATE

14 PRODUCT ARE OR ARE NOT A SEPARATE PRODUCT FROM

15 THE OPERATING SYSTEM IS AN ISSUE IN THIS CASE?

16 A. I DON'T CONSIDER MYSELF SOMEONE WHO

17 COULD SAY IF THAT'S AN ISSUE IN THIS CASE OR NOT.

18 Q. HAVE YOU ANTICIPATED IN ANY WAY IN

19 TRYING TO GET MICROSOFT PERSONNEL TO USE LANGUAGE

20 THAT WOULD SUGGEST THAT BROWSERS AND OPERATING

21 SYSTEMS ARE NOT SEPARATE PRODUCTS?

22 A. I HAVE NO IDEA WHAT YOU MEAN BY THAT.

23 Q. WELL, HAVE YOU SEEN E-MAILS THAT URGE

24 PEOPLE WITHIN MICROSOFT NOT TO TALK ABOUT

25 BROWSERS AS IF THEY WERE SEPARATE FROM THE

1 OPERATING SYSTEM?

2 A. I DON'T RECALL SEEING ANY SUCH E-MAIL.

3 Q. ARE YOU AWARE OF ANYBODY WITHIN

4 MICROSOFT WHO HAS ASSERTED, EITHER IN AN E-MAIL

5 OR OTHERWISE, THAT PEOPLE OUGHT TO NOT TALK ABOUT

6 BROWSERS AS IF THEY WERE SEPARATE FROM THE

7 OPERATING SYSTEM?

8 A. I DON'T REMEMBER ANY SUCH E-MAIL.

9 Q. HAS MICROSOFT TRIED TO GET COMPANIES TO

10 AGREE TO STATEMENTS THAT INTERNET EXPLORER

11 COMPRISES PART OF THE OPERATING SYSTEM OF

12 WINDOWS 95 AND WINDOWS 98?

13 A. I KNOW IT'S A TRUE STATEMENT, BUT I'M

14 NOT AWARE OF US DOING ANYTHING TO TRY TO GET

15 ANYONE ELSE TO ENDORSE THE STATEMENT.

16 Q. YOU'RE NOT AWARE OF ANY EFFORT BY

17 MICROSOFT TO GET NON-MICROSOFT COMPANIES TO

18 ENDORSE THE STATEMENT THAT INTERNET EXPLORER

19 COMPRISES PART OF THE OPERATING SYSTEM OF

20 WINDOWS; IS THAT WHAT YOU'RE SAYING?

21 A. I'M NOT AWARE OF SUCH EFFORTS.

22 Q. DO YOU KNOW WHETHER MICROSOFT HAS MADE

23 ANY EFFORTS TO INCLUDE LANGUAGE LIKE THAT IN ANY

24 OF ITS LICENSE AGREEMENTS?

25 A. NO, I DON'T.

1 Q. DO YOU KNOW WHY MICROSOFT MIGHT DO
2 THAT?
3 MR. HEINER: OBJECTION.
4 THE WITNESS: I'M NOT SURE.
5 BY MR. BOIES:
6 Q. DO YOU RECOGNIZE THAT OEM'S HAVE A NEED
7 TO ACQUIRE THE WINDOWS OPERATING SYSTEM THAT
8 MICROSOFT LICENSES?
9 A. WHAT DO YOU MEAN BY OEM? IS IT A
10 TAUTOLOGY BECAUSE OF THE WAY YOU'RE DEFINING IT?
11 Q. WELL, IF YOU TAKE IBM AND COMPAQ AND
12 DELL, GATEWAY AND SOME OTHER COMPANIES, THOSE ARE
13 COMMONLY REFERRED TO AS OEM'S OR PC
14 MANUFACTURERS; CORRECT, SIR?
15 A. NO. THE TERM OEM WOULD BE QUITE A BIT
16 BROADER THAN THAT. OEM'S USED MEANS ORIGINAL
17 EQUIPMENT MANUFACTURER.
18 Q. I SEE.
19 AND DOES OEM HAVE A SPECIALIZED MEANING
20 IN YOUR BUSINESS TO REFER TO PEOPLE THAT SUPPLY
21 PERSONAL COMPUTERS?
22 A. NO. IT USUALLY MEANS OUR LICENSEES.
23 Q. AND DO YOUR LICENSEES, IN PART, SUPPLY
24 PERSONAL COMPUTERS, SIR?
25 A. SOME OF OUR LICENSEES.

1 Q. THE LICENSEES TO WHOM YOU LICENSE
2 WINDOWS ARE SUPPLIERS OF PERSONAL COMPUTERS, ARE
3 THEY NOT, SIR?
4 A. IF YOU EXCLUDE WINDOWS CE AND DEPENDING
5 ON HOW YOU TALK ABOUT WORK STATIONS AND SERVERS.
6 Q. SO THAT IF WE CAN GET ON COMMON GROUND,
7 THE LICENSEES FOR WINDOWS 95 AND WINDOWS 98 WOULD
8 BE COMPANIES THAT YOU WOULD RECOGNIZE AS PERSONAL
9 COMPUTER MANUFACTURERS; IS THAT CORRECT?
10 A. YEAH. ALMOST ALL THE LICENSEES OF
11 WINDOWS 95 AND WINDOWS 98 ARE PERSONAL COMPUTER
12 MANUFACTURERS. SOME ARE NOT, BUT THE
13 OVERWHELMING MAJORITY ARE.
14 (EXCERPT.)
15 Q. IN A NUMBER OF QUESTIONS I'VE ASKED YOU
16 ABOUT WHETHER MICROSOFT WANTED TO GAIN BROWSER
17 SHARE, AND YOU HAVE SAID, WELL, WE WANT TO HAVE
18 MORE EXPOSURE FOR OUR INNOVATIONS.
19 ARE YOU AWARE OF ANY EFFORT WITHIN
20 MICROSOFT, FOR PURPOSES OF THIS LITIGATION, TO
21 SORT OF CHANGE THE WAY YOU AND OTHERS USE TERMS?
22 A. NO.
23 Q. NONE AT ALL, SIR?
24 A. CHANGING THE WAY I USE TERMS? NO.
25 Q. HOW ABOUT CHANGING THE WAY OTHERS IN

1 MICROSOFT USE TERMS?

2 A. I'M NOT AWARE OF THAT, NO.

3 Q. ARE YOU AWARE OF ANY DISCUSSIONS WITHIN
4 MICROSOFT ABOUT CHANGING THE WAY TERMS ARE USED
5 IN ORDER TO ADVANCE YOUR INTERESTS IN THE
6 LITIGATION?

7 A. NO.

8 Q. IN YOUR ANSWERS YOU REFER OFTEN TO
9 BROWSER TECHNOLOGIES OR BROWSING TECHNOLOGIES AS
10 OPPOSED TO ANSWERING A QUESTION SIMPLY ABOUT
11 BROWSERS.

12 IS THAT RELATED AT ALL TO AVOID USING A
13 TERM THAT YOU THINK CONNOTES A SEPARATE PRODUCT?

14 A. IT'S ALL DONE WITH THE GOAL OF MAKING
15 SURE YOU'RE NOT CONFUSED ABOUT WHAT I'M REFERRING
16 TO.

17 Q. WELL, IS IT PART OF THE GOAL TO TRY TO
18 ADVANCE A PARTICULAR POINT OF VIEW IN THIS
19 LITIGATION, IS THAT PART OF WHY YOU DON'T WANT TO
20 USE IN THIS DEPOSITION WORDS LIKE BROWSER THAT
21 ARE THROUGHOUT THE DOCUMENTS OF MICROSOFT
22 CORPORATION?

23 A. I'M GLAD TO USE THE TERM "BROWSER," AND
24 I'VE USED THE TERM MANY TIMES IN THIS DEPOSITION
25 AND IN MANY OTHER CASES.

1 Q. AND WHEN YOU USE THE TERM "BROWSER,"
2 YOU KNOW WHAT IT MEANS, DO YOU NOT, SIR?
3 A. WHEN I USE TERMS IN GENERAL, I DO IT IN
4 A CONTEXT WHERE IT'S CLEAR WHAT THEY MEAN. IN
5 THE CASE OF BROWSER, AS WE'VE DISCUSSED,
6 SOMETIMES IT MIGHT INCLUDE WHAT WE'RE DOING ON
7 MACINTOSH, SOMETIMES IT MIGHT INCLUDE ONE VERSION
8 OF WINDOWS, SOMETIMES IT MIGHT INCLUDE OTHER
9 PEOPLE'S PRODUCTS THAT INCLUDE THOSE
10 CAPABILITIES. ISOLATED BY ITSELF, ARE YOU
11 SAYING, DOES THE WORD "BROWSER" WITHOUT ANY
12 CONTEXT MEAN SOMETHING THAT IS EVIDENT TO ME?
13 NO, BUT IN A SPECIFIC CONTEXT, I FREELY USE THE
14 WORD WITHOUT ANY DIFFICULTY.
15 Q. AND, FOR EXAMPLE, IN WRITING TO YOUR
16 TOP OFFICERS IN JANUARY OF 1996, YOU TALK ABOUT
17 WINNING INTERNET BROWSER SHARE AND YOU BELIEVED
18 YOU WERE BEING UNDERSTOOD; CORRECT, SIR?
19 A. ARE YOU REFERRING TO AN E-MAIL TO A
20 SINGLE PERSON, TO JOACHIM KEMPIN?
21 Q. THE ONE I HAVE IN FRONT OF ME IS
22 ADDRESSED TO MR. KEMPIN WITH COPIES TO
23 MR. SILVERBERG, MR. CHASE, MR. LUDWIG,
24 MR. BALLMER, AND A NUMBER OF OTHER PEOPLE.
25 A. BUT I THINK IN TERMS OF UNDERSTANDING

1 THE CONTEXT OF THE MESSAGE, THE FACT THAT IT IS
2 DIRECTED TO JOACHIM KEMPIN AND TALKS ABOUT OEM'S
3 HELPS ESTABLISH WHAT I PROBABLY MEANT WHEN I TALK
4 ABOUT BROWSER SHARE HERE AND BROWSERS.
5 Q. LET ME JUST BE CLEAR. WHEN YOU SENT A
6 COPY--I DON'T WANT TO GO THROUGH ALL THE NAMES
7 HERE, BUT TWO OF THE PEOPLE YOU SENT COPIES TO
8 WERE MR. BALLMER AND MR. MARITZ; IS THAT FAIR?
9 A. YES.
10 Q. AND THEY WERE TWO OF THE VERY TOP
11 OFFICERS OF MICROSOFT; CORRECT?
12 A. YES.
13 Q. NOW,LET ME GO BACK TO WHAT I WAS
14 PURSUING BEFORE.
15 IS THERE AN EFFORT AT ALL ON YOUR PART
16 OR INSOFAR AS YOU ARE AWARE ON OTHER PEOPLE'S
17 PARTS, TO CHANGE THE WAY WORDS ARE USED SO AS TO,
18 FROM YOUR STANDPOINT, CLARIFY WHAT IS MEANT FOR
19 PURPOSES OF THIS LITIGATION?
20 A. I'VE TOLD YOU I'M NOT AWARE OF AN
21 EFFORT TO CHANGE THE USE OF TERMINOLOGY RELATED
22 TO THE PURPOSES OF THIS LITIGATION.
23 Q. LET ME ASK YOU TO LOOK AT A DOCUMENT
24 THAT HAS BEEN MARKED AS GOVERNMENT TRIAL
25 EXHIBIT 377. THE FIRST E-MAIL HERE--AND THERE'S

1 AN E-MAIL FROM YOU LATER ON, BUT THE FIRST E-MAIL
2 HERE IS AN E-MAIL TO YOU AND OTHERS DATED
3 FEBRUARY 15, 1998; IS THAT CORRECT?
4 A. TO ME?
5 Q. YES.
6 A. YES.
7 Q. AND THE SUBJECT IS RE: BROWSER IN THE
8 OS.
9 DO YOU SEE THAT SUBJECT OF THE FEBRUARY
10 15, 1998, E-MAIL TO YOU?
11 A. YES.
12 Q. AND IS IT FAIR TO SAY THAT THAT E-MAIL
13 IS A RESPONSE TO AN E-MAIL FROM YOU DATED
14 FEBRUARY 14, 1998, AT 10:42 A.M.?
15 A. IT APPEARS TO BE.
16 Q. AND THE SUBJECT OF YOUR E-MAIL WAS
17 BROWSER IN THE OS; IS THAT CORRECT?
18 A. YES.
19 Q. NOW, THE NEXT TO LAST PARAGRAPH ON THE
20 FIRST PAGE OF THE MEMO TO YOU--AND THIS MEMO GOES
21 TO YOU AND TO A LARGE NUMBER OF OTHER PEOPLE; IS
22 THAT CORRECT?
23 A. I'M SORRY? I JUST WASN'T LISTENING
24 CAREFULLY.
25 Q. SURE.

1 THE FEBRUARY 15TH, 1998, MEMO THAT IS
2 ADDRESSED TO YOU ALSO GOES TO FURTHER OTHER
3 ADDRESSEES AND A LARGE NUMBER OF ADDITIONAL
4 COPIES; CORRECT?
5 A. THIRTEEN, YES.
6 Q. AND THIS INCLUDES, TOGETHER WITH
7 YOURSELF, THE TOP EXECUTIVES OF THE COMPANY;
8 CORRECT?
9 A. NOT ALL THE TOP EXECUTIVES, NO.
10 Q. WELL, IT INCLUDES MR. BALLMER?
11 A. IT INCLUDES SOME OF THE TOP EXECUTIVES.
12 Q. AND IT INCLUDES MR. MARITZ; CORRECT?
13 A. YES.
14 Q. AND IT INCLUDES YOURSELF; CORRECT?
15 A. YES, IN THE "TO" LINE.
16 Q. AND IT SAYS IN THE NEXT TO LAST
17 PARAGRAPH, "SAYING 'PUT THE BROWSER IN THE OS' IS
18 ALREADY A STATEMENT THAT IS PREJUDICIAL TO US."
19 A. WHERE ARE YOU LOOKING? I THOUGHT YOU
20 SAID THE NEXT TO LAST PARAGRAPH.
21 Q. NEXT TO LAST PARAGRAPH ON THE FIRST
22 PAGE.
23 A. OH, OKAY.
24 Q. IT SAYS--AND THIS IS A QUOTATION FROM
25 THE MEMO TO YOU AND OTHERS, "SAYING 'PUT THE

1 BROWSER IN THE OS" IS ALREADY A STATEMENT THAT IS
2 PREJUDICIAL TO US. THE NAME 'BROWSER' SUGGESTS A
3 SEPARATE THING."
4 DO YOU REMEMBER BEING TOLD THAT IN OR
5 ABOUT FEBRUARY OF 1998?
6 A. NO.
7 Q. DO YOU REMEMBER RECEIVING THIS E-MAIL?
8 A. I DON'T REMEMBER RECEIVING IT, BUT I
9 HAVE NO REASON TO DOUBT THAT IT WAS A PIECE OF
10 E-MAIL THAT WAS SENT.
11 Q. DOES THIS IN ANY WAY REFRESH YOUR
12 RECOLLECTION THAT WITHIN MICROSOFT THERE WERE
13 DISCUSSIONS AS TO WHAT WORDS SHOULD OR SHOULD NOT
14 BE USED?
15 A. I DON'T KNOW WHAT YOU MEAN BY REFRESH
16 MY RECOLLECTION.
17 Q. THAT IS, HAVING SEEN THIS, DOES THIS
18 MAKE YOU REMEMBER SOMETHING THAT YOU DIDN'T
19 REMEMBER BEFORE?
20 A. NO.
21 (EXCERPT.)
22 Q. I WANT TO ASK YOU ABOUT IS GOVERNMENT
23 TRIAL EXHIBIT 345, AND THIS IS A DECEMBER 31,
24 1996, E-MAIL FROM YOU TO MR. NEHRU.
25 BY MR. HOUCK:

1 Q. DO YOU RECALL ASKING MR. NEHRU, IN OR
2 ABOUT DECEMBER 1996, TO COLLECT FOR YOU
3 INFORMATION ABOUT NETSCAPE REVENUES?
4 A. NO.
5 Q. DO YOU RECALL SENDING THIS E-MAIL ON OR
6 ABOUT DECEMBER 1, 1996, TO MR. NEHRU?
7 A. NO.
8 Q. OKAY. DO YOU RECALL RECEIVING FROM
9 MR. NEHRU THE ATTACHED E-MAIL DATED NOVEMBER 27,
10 1998?
11 A. FROM TIME TO TIME WE DO REVIEWS OF
12 VARIOUS COMPETITORS, AND AT LEAST ONE POINT IN
13 TIME NETSCAPE WAS ONE OF THE PEOPLE THAT WE
14 LOOKED AT, SO IT DOESN'T SURPRISE ME, BUT I DON'T
15 REMEMBER IT SPECIFICALLY.
16 Q. ON THE SECOND PAGE OF THE EXHIBIT,
17 WHICH IS PART OF MR. NEHRU'S NOVEMBER 27, 1996,
18 E-MAIL, HE TALKS ABOUT BROWSERS.
19 A. WHAT PAGE?
20 Q. PAGE TWO.
21 A. OKAY.
22 Q. HE IDENTIFIES THERE SOURCES OF
23 NETSCAPE'S REVENUE. HE SAYS, "BROWSER REVENUE
24 FOR THE QUARTER AMOUNTED TO $45 MILLION (A 32
25 PERCENT INCREASE OVER THE LAST QUARTER)

1 REPRESENTING 60 PERCENT OF TOTAL NETSCAPE
2 REVENUE."
3 DO YOU HAVE ANY REASON TO DOUBT THE
4 ACCURACY OF THE INFORMATION REPORTED THERE?
5 A. WELL, I KNOW THAT MR. NEHRU DIDN'T WORK
6 FOR NETSCAPE, SO I'M SURE HE DIDN'T HAVE ACCESS
7 TO THE FIGURES DIRECTLY. IF YOU'RE INTERESTED IN
8 THAT, YOU SHOULD ASK NETSCAPE.
9 Q. WAS THIS THE BEST INFORMATION YOU HAD
10 IN DECEMBER OF 1996 AS TO THE PROPORTION OF
11 NETSCAPE'S REVENUE THAT WAS DERIVED FROM
12 BROWSERS?
13 A. I DON'T KNOW.
14 Q. DO YOU RECALL RECEIVING ANY OTHER
15 INFORMATION THAN THIS ON THAT SUBJECT?
16 A. I MIGHT HAVE SEEN AN ANALYST REPORT.
17 IT SAYS HERE, "WE'RE 70 PERCENT
18 CONFIDENT ABOUT OUR NUMBERS."
19 Q. DO YOU RECALL WHY IT WAS IN THIS TIME
20 FRAME YOU HAD ASKED MR. NEHRU TO COLLECT THIS
21 INFORMATION FOR YOU?
22 A. I DON'T THINK I DID. I ALREADY TOLD
23 YOU THAT.
24 Q. YOU HAVE NO RECOLLECTION OF ASKING HIM
25 FOR THIS INFORMATION?

1 A. I'M QUITE CERTAIN I WASN'T THE ONE WHO
2 ASKED FOR THE INFORMATION.
3 Q. DO YOU HAVE ANY RECOLLECTION AS TO WHO
4 DID?
5 A. PERHAPS STEVE.
6 Q. STEVE, YOU MEAN STEVE BALLMER?
7 A. UH-HUH.
8 Q. IN YOUR MEMO HERE--STRIKE THAT.
9 IN YOUR E-MAIL HERE YOU SAY, "WHAT KIND
10 OF DATA DO WE HAVE ABOUT HOW MUCH SOFTWARE
11 COMPANIES PAY NETSCAPE?"
12 DO YOU RECALL ASKING THAT QUESTION TO
13 MR. NEHRU IN OR ABOUT DECEMBER 1996?
14 A. IT LOOKS LIKE I SENT HIM THAT QUESTION
15 AFTER HE SENT OUT ONE OF THESE COMPETITIVE
16 ANALYSIS REPORTS.
17 (EXCERPT.)
18 Q. THE--EXHIBIT 345, IN PARTICULAR
19 MR. NEHRU'S MEMO, SAYS HIS CONCLUSION WAS OF THE
20 $45 MILLION IN REVENUE OBTAINED THAT QUARTER BY
21 NETSCAPE AS A RESULT OF THE BROWSERS ISP'S
22 COMMANDED THE LARGEST SHARE AT 40 PERCENT OF
23 BROWSER REVENUE.
24 DID YOU HAVE ANY REASON TO DOUBT THE
25 ACCURACY OF THAT INFORMATION OBTAINED BY

1 MR. NEHRU?

2 A. WELL, I'LL SAY TWO THINGS ABOUT THAT:

3 FIRST OF ALL, HE'S NOT INCLUDING THE

4 PRIME--WHEN HE GIVES THAT NUMBER, HE'S NOT

5 INCLUDING THE PRIMARY BROWSER REVENUE SOURCE

6 WHICH IS WHAT WAS CALLED "SERVICE REVENUES" IN

7 THIS REPORT; THAT IS, TAKING THE AD SPACE IN THE

8 BROWSER, WHICH IS PROVEN TO BE THE BIGGEST SOURCE

9 OF REVENUE AND A SIGNIFICANT SOURCE OF REVENUE

10 FOR BROWSERS. HE'S NOT INCLUDING THAT IN. SO

11 THAT WOULD BE A RATHER SIGNIFICANT CHANGE.

12 ALSO, ALTHOUGH I HAVEN'T HAD A CHANCE

13 TO READ HIS ENTIRE E-MAIL, IT SAYS THAT HIS

14 CONFIDENCE IN THESE NUMBERS IS ABOUT WHAT HE SAYS

15 70 PERCENT.

16 SO CLEARLY, THERE ARE PEOPLE AT

17 NETSCAPE WHO WOULD BE 100 PERCENT SURE ABOUT THE

18 NUMBERS.

19 Q. DO YOU KNOW WHAT, IF ANY, SERVICE

20 REVENUE NETSCAPE WAS EARNING FROM ITS BROWSERS IN

21 OR ABOUT THE FIRST QUARTER OF 1996?

22 A. NO, I DON'T.

23 Q. WAS MICROSOFT EARNING ANY SERVICE

24 REVENUE ON ITS BROWSERS THE FIRST QUARTER OF

25 1996?

1 A. IN THE FIRST QUARTER OF 1996? NO.
2 THAT DEVELOPED INTO A LARGE BUSINESS SUBSEQUENTLY
3 IN OUR CASE.
4 Q. DO YOU KNOW WHETHER NETSCAPE WAS ANY
5 DIFFERENT OR NOT?
6 A. WELL, IT'S A MEASURABLE BUSINESS FOR
7 THEM. YOU CAN JUST READ WHAT I SAY IN THE MAIL.
8 (EXCERPT.)
9 Q. DO YOU GENERALLY MAKE PUBLIC COMMENTS
10 ABOUT THE FINANCIAL HEALTH OR WELFARE OF
11 MICROSOFT'S COMPETITORS?
12 A. I'M OFTEN ASKED ABOUT VARIOUS
13 COMPANIES, AND I RESPOND TO QUESTIONS. BUT I'VE
14 NEVER GIVEN A PRESENTATION THAT HAD THAT FOCUS.
15 Q. DO YOU RECALL MAKING PUBLIC STATEMENTS
16 IN MID 1996 CALLING INTO QUESTION NETSCAPE'S
17 FINANCIAL VIABILITY?
18 A. I MAY HAVE BEEN ASKED QUESTIONS ABOUT
19 THAT BY THE PRESS, BUT I DIDN'T GO OUT AND MAKE
20 ANY SPEECHES OR STATEMENTS ABOUT IT.
21 Q. I'D LIKE TO MARK AS GOVERNMENT TRIAL
22 EXHIBIT 83, A COPY OF AN ARTICLE THAT APPEARS IN
23 THE FINANCIAL TIMES OF LONDON, DATED JULY 3,
24 1996.
25 BY MR. HOUCK:

1 Q. THE NEXT TO THE LAST PAGE OF EXHIBIT
2 356 APPEARS THE FOLLOWING QUOTE, "'OUR BUSINESS
3 MODEL WORKS EVEN IF INTERNET SOFTWARE IS FREE,'
4 SAYS MR. GATES. 'WE ARE STILL SELLING OPERATING
5 SYSTEMS. NETSCAPE, IN CONTRAST, IS DEPENDENT
6 UPON ITS INTERNET SOFTWARE FOR PROFITS,' HE
7 POINTS OUT."
8 DO YOU RECALL MAKING STATEMENTS TO THIS
9 EFFECT TO THE LONDON FINANCIAL TIMES IN OR ABOUT
10 JULY 1996?
11 A. I'M QUITE SURE I DIDN'T MAKE A
12 STATEMENT. I THINK I WAS INTERVIEWED BY LOUISE
13 KEHOE WHERE SHE KEPT SAYING TO ME HOW VARIOUS
14 PEOPLE WERE PREDICTING, INCLUDING NETSCAPE, THAT
15 WE WOULD GO OUT OF BUSINESS BECAUSE OF THE
16 INTERNET AND THAT WE WERE DOOMED BECAUSE OF THE
17 INTERNET.
18 Q. DO YOU RECALL IN OR ABOUT JULY 1996
19 PROVIDING THE INFORMATION ATTRIBUTED TO YOU HERE
20 TO THE REPORTER FOR THE LONDON FINANCIAL TIMES?
21 A. I DON'T KNOW WHAT YOU MEAN BY
22 "PROVIDING THE INFORMATION."
23 LOUISE KEHOE IS A REPORTER. SHE
24 INTERVIEWED ME ABOUT THIS TIME WITH THE
25 PROPOSITION THAT WE WERE ON OUR WAY OUT OF

1 BUSINESS. AND I SAID TO HER, "IF WE DIDN'T DO A
2 GOOD JOB FOR OUR CUSTOMERS IN TERMS OF WHAT THEY
3 WANTED, THAT WOULD BE THE CASE. BUT THAT WE
4 THOUGHT WE COULD DO--DO GOOD WORK AROUND THE NEW
5 SCENARIOS THAT CUSTOMERS WERE INTERESTED IN."
6 (EXCERPT.)
7 Q. DO YOU HAVE ANY REASON TO BELIEVE THAT
8 SHE HAS INACCURATELY QUOTED YOU HERE IN HER
9 ARTICLE?
10 A. I KNOW IT WAS AN INTERVIEW WHERE THE
11 BASIC SUPPOSITION WAS THAT NETSCAPE AND OTHERS
12 WERE GOING TO PUT US OUT OF BUSINESS. THAT MUCH
13 I RECALL. BUT IN TERMS OF THE SPECIFIC QUOTE,
14 I'M NOT SURE.
15 (EXCERPT.)
16 Q. SIR, DO YOU DENY MAKING THE STATEMENT
17 ATTRIBUTED TO YOU HERE?
18 A. I THINK IT WAS IN THE CONTEXT OF SOME
19 FAIRLY AGGRESSIVE QUESTIONS ABOUT WAS MY COMPANY
20 GOING TO GO OUT OF BUSINESS IN THE NEAR FUTURE.
21 AND I THINK IT'S--IT'S VALUABLE TO KNOW THAT
22 CONTEXT WHENEVER YOU LOOK AT AN ANSWER SOMEBODY
23 GIVES TO A QUESTION.
24 Q. WELL, CAN YOU ANSWER MY QUESTION YES OR
25 NO?

1 READ THE QUESTION BACK TO HIM, PLEASE.
2 (WHEREUPON, THE COURT REPORTER READ
3 BACK THE PREVIOUS QUESTION.)
4 THE WITNESS: I'M NOT DENYING MAKING
5 THE STATEMENT, BUT I AM POINTING OUT THAT I
6 DIDN'T JUST MAKE A STATEMENT. I WAS IN AN
7 INTERVIEW WITH A REPORTER, AND IT WOULD BE
8 VALUABLE TO UNDERSTAND HER QUESTIONS. AND I DO
9 RECALL THE GENERAL TENURE (SIC) OF THOSE
10 QUESTIONS. SO, IF YOUR INTEREST IS UNDERSTANDING
11 THE QUOTE, UNDERSTANDING THAT CONTEXT IS, I
12 THINK, QUITE VALUABLE.
13 (EXCERPT.)
14 Q. DID YOU MAKE ANY EFFORT IN 1996 TO FIND
15 OUT WHAT NETSCAPE'S REVENUES ACTUALLY WERE?
16 A. PERSONALLY?
17 Q. EITHER PERSONALLY OR THROUGH SOME OF
18 THE MANY EMPLOYEES OF MICROSOFT.
19 A. OH, I'M SURE THERE WERE PEOPLE AT
20 MICROSOFT WHO LOOKED AT NETSCAPE'S REVENUES
21 DURING THAT YEAR.
22 Q. DID THEY COMMUNICATE WITH YOU AS TO
23 WHAT THOSE REVENUES WERE AT ALL?
24 A. AMONG THE THOUSANDS AND THOUSANDS OF
25 E-MAIL MESSAGES I GET, I'M SURE THERE WERE SOME

1 THAT HAD FOR CERTAIN PERIODS OF TIME INFORMATION
2 ABOUT THAT.
3 Q. DID YOU REQUEST ANY INFORMATION
4 CONCERNING NETSCAPE'S REVENUES IN 1996?
5 A. I'M SURE I WAS IN MEETINGS WHERE THE
6 INFORMATION WAS PRESENTED, BUT I DON'T THINK I
7 WAS THE ONE WHO SPECIFICALLY ASKED FOR THE
8 PRESENTATION.
9 Q. WHETHER YOU SPECIFICALLY ASKED FOR A
10 PRESENTATION IN A MEETING OR NOT, DID YOU ASK
11 PEOPLE TO PROVIDE YOU WITH INFORMATION CONCERNING
12 NETSCAPE'S REVENUES IN 1996?
13 A. I MAY HAVE ASKED SOME QUESTIONS ABOUT
14 THEIR REVENUE.
15 Q. DO YOU RECALL DOING THAT, SIR?
16 A. NO.
17 (EXCERPT.)
18 BY MR. BOIES:
19 Q. DO YOU HAVE GOVERNMENT TRIAL EXHIBIT 71
20 IN FRONT OF YOU, SIR?
21 GOVERNMENT TRIAL EXHIBIT 83 THAT WE
22 WERE JUST TALKING ABOUT IS A JULY 3, 1996,
23 FINANCIAL TIMES ARTICLE. GOVERNMENT TRIAL
24 EXHIBIT 71 IS A JUNE 10, 1996, FINANCIAL TIMES
25 ARTICLE. AND I'D LIKE YOU TO LOOK ON THE FOURTH

1 PAGE, THE FIRST PARAGRAPH, AND YOU CAN READ AS
2 MUCH OF THE DOCUMENT AS YOU NEED TO PUT THIS IN
3 CONTEXT. BUT THE PARAGRAPH THAT I'M INTERESTED
4 IN IS AT THE TOP OF THE PAGE, AND IT SAYS, QUOTE,
5 OUR BUSINESS MODEL WORKS EVEN IF ALL INTERNET
6 SOFTWARE IS FREE, CLOSED QUOTE, SAYS MR. GATES.
7 QUOTE, WE ARE STILL SELLING OPERATING SYSTEMS.
8 WHAT DOES NETSCAPE'S BUSINESS MODEL LOOK LIKE IF
9 THAT HAPPENS? NOT VERY GOOD, CLOSED QUOTE.
10 DID YOU SAY THOSE WORDS TO THIS
11 REPORTER, MR. GATES?
12 A. WELL, JUST UNDERSTAND WE'RE COVERING
13 EXACTLY THE SAME GROUND. I DIDN'T GIVE TWO
14 INTERVIEWS. THIS IS ALL THE SAME REPORTER, THE
15 SAME INTERVIEW. SO WE CAN GO THROUGH ALL OF THAT
16 EXACTLY LIKE WE DID. LOUISE KEHOE IS LOUISE
17 KEHOE. I GAVE ONE INTERVIEW.
18 Q. OF COURSE THE JUNE 10, 1996, ARTICLE IS
19 WRITTEN BY TWO REPORTERS; CORRECT, SIR?
20 A. AND I'VE NEVER MET OR GIVEN AN
21 INTERVIEW TO HUGO DIXON AS FAR AS I CAN RECALL.
22 Q. WELL, LET'S SEE IF LOOKING AT THIS
23 ARTICLE IN ANY WAY REFRESHES YOUR RECOLLECTION.
24 DID YOU SAY TO A FINANCIAL TIMES
25 REPORTER IN 1996, QUOTE, OUR BUSINESS MODEL

1 WORKS, EVEN IF ALL INTERNET SOFTWARE IS FREE. WE
2 ARE STILL SELLING OPERATING SYSTEMS. WHAT DOES
3 NETSCAPE'S BUSINESS MODEL LOOK LIKE IF THAT
4 HAPPENS? NOT VERY GOOD.
5 DID YOU SAY THOSE WORDS--
6 A. I DON'T REMEMBER.
7 Q. --TO A FINANCIAL TIMES REPORTER,
8 MR. GATES?
9 A. I SAID I DON'T REMEMBER.
10 (EXCERPT.)
11 Q. DO YOU HAVE ANY REASON TO BELIEVE THAT
12 THERE WOULD HAVE BEEN ANY REASON FOR THIS
13 REPORTER TO HAVE MADE UP THESE QUOTATIONS?
14 A. DIDN'T YOU ALREADY ASK THAT?
15 Q. I ASKED THAT WITH RESPECT TO THE
16 BUSINESS WEEK REPORTER. I'M NOW ASKING IT WITH
17 RESPECT TO THE FINANCIAL TIMES REPORTER.
18 A. SAME ANSWER.
19 Q. YOU DO HAVE TO GIVE IT FOR THE RECORD,
20 SIR. WHAT I'M ASKING YOU IS WHETHER YOU HAVE ANY
21 REASON TO BELIEVE THAT THE FINANCIAL TIMES
22 REPORTER WOULD HAVE MADE UP OR HAD ANY REASON TO
23 MAKE UP THE QUOTATIONS THAT ARE ATTRIBUTED TO YOU
24 HERE.
25 A. I DON'T THINK THEY'RE INFALLIBLE, BUT I

1 HAVE NO REASON TO SUSPECT IN THIS CASE THAT THEY
2 MADE IT UP.
3 (EXCERPT.)
4 Q. ON JUNE 10, 1996, IN A DOCUMENT THAT
5 HAD BEEN MARKED AS GOVERNMENT TRIAL EXHIBIT 71,
6 THE FINANCIAL TIMES ATTRIBUTED TO YOU A
7 QUOTATION, QUOTE, OUR BUSINESS MODEL WORKS EVEN
8 IF ALL INTERNET SOFTWARE IS FREE, CLOSED QUOTE,
9 SAYS MR. GATES. WE'RE STILL SELLING OPERATING
10 SYSTEMS. WHAT DOES NETSCAPE'S BUSINESS MODEL
11 LOOK LIKE IF THAT HAPPENS? NOT VERY GOOD, CLOSE
12 QUOTE.
13 DID YOU EVER CONTACT EITHER THE
14 REPORTER FOR THE FINANCIAL TIMES WHO INTERVIEWED
15 YOU OR THE FINANCIAL TIMES TO ASSERT THAT THEY
16 HAD MISQUOTED YOU IN ANY WAY?
17 A. NO.
18 Q. ON JULY 3, 1996, THE FINANCIAL TIMES
19 PUBLISHED WHAT I THINK YOU REFER TO AS A SUBSET
20 OF THAT QUOTE, QUOTE, OUR BUSINESS MODEL WORKS
21 EVEN IF ALL INTERNET SOFTWARE IS FREE, CLOSE
22 QUOTE, SAYS MR. GATES. QUOTE, WE ARE STILL
23 SELLING OPERATING SYSTEMS, CLOSE QUOTE. AND THEN
24 ADDED NOT IN QUOTES THE STATEMENT, NETSCAPE, IN
25 CONTRAST, IS DEPENDENT ON ITS INTERNET SOFTWARE

1 FOR PROFITS, HE POINTS OUT.

2 DID YOU EVER CONTACT EITHER THE

3 REPORTER OR THE FINANCIAL TIMES TO ASSERT THAT

4 EITHER THEY HAD MISQUOTED YOU OR THAT THE

5 TEXTURAL (SIC) ASSERTION ABOUT WHAT YOU SAID WAS

6 INACCURATE IN ANY WAY?

7 A. NO.

8 (EXCERPT.)

9 Q. IN 1996, DID YOU BELIEVE THAT NETSCAPE

10 POSED A SERIOUS THREAT TO MICROSOFT?

11 A. THEY WERE ONE OF OUR COMPETITORS.

12 Q. WERE THEY A SERIOUS COMPETITOR IN YOUR

13 VIEW, SIR?

14 A. YES.

15 Q. DID YOU BELIEVE THAT NETSCAPE'S BROWSER

16 WAS A SERIOUS THREAT TO YOUR--THAT IS

17 MICROSOFT'S--OPERATING SYSTEMS' BUSINESS?

18 A. WELL, YOU HAVE TO THINK ABOUT WHAT WORK

19 WE WERE GOING TO DO TO IMPROVE OUR SOFTWARE AND

20 THEN WHAT NETSCAPE AND OTHERS WERE GOING TO DO TO

21 IMPROVE THEIR SOFTWARE. YOU CAN'T JUST LOOK AT

22 IT STATICALLY. IT'S MORE THE WORK THAN--THE NEW

23 THINGS YOU DO THAN THE HISTORY.

24 Q. DID YOU BELIEVE THAT BY 1996, THAT

25 NETSCAPE AND NETSCAPE'S INTERNET BROWSER WAS A

1 SERIOUS ALTERNATIVE PLATFORM TO THE PLATFORM
2 REPRESENTED BY MICROSOFT'S WINDOWS OPERATING
3 SYSTEM?
4 A. WELL, AS WAS ARTICULATED BY MARC
5 ANDREESSEN AND OTHER PEOPLE FROM NETSCAPE, IF WE
6 DIDN'T DO NEW PRODUCT WORK, THAT WAS A VERY
7 LIKELY OUTCOME.
8 Q. WHAT WAS A VERY LIKELY OUTCOME?
9 A. THAT THE VALUE OF THE WINDOWS PLATFORM
10 WOULD BE GREATLY REDUCED.
11 Q. DID YOU BELIEVE THAT IT WAS IN
12 MICROSOFT'S INTEREST TO CONVINCE FINANCIAL
13 ANALYSTS THAT NETSCAPE WAS NOT GOING TO BE
14 FINANCIALLY VIABLE?
15 A. I NEVER HAD A GOAL TO DO THAT, AND MY
16 ONLY COMMENTS ABOUT NETSCAPE'S BUSINESS WOULD
17 HAVE COME IN RESPONSE TO DIRECT QUESTIONS ABOUT
18 THAT TOPIC FROM REPORTERS.
19 Q. WELL, LET ME ASK YOU TO LOOK AT WHAT
20 HAS BEEN PREVIOUSLY MARKED AS GOVERNMENT TRIAL
21 EXHIBIT 41, WHICH IS A MEMORANDUM FROM YOU IN MAY
22 OF 1996. AND THE LAST PARAGRAPH BEGINS, QUOTE,
23 AT SOME POINT, FINANCIAL MINDED ANALYSTS WILL
24 BEGIN TO CONSIDER HOW MUCH OF A REVENUE STREAM
25 NETSCAPE WILL BE ABLE TO GENERATE, CLOSE QUOTE.

1 WHY WAS THAT IMPORTANT TO YOU IN THIS
2 INTERNAL MEMORANDUM WHICH, OBVIOUSLY, IS NOT
3 SOMETHING WHICH YOU'RE MERELY RESPONDING TO A
4 REPORTER'S INQUIRY, BUT IT IS SOMETHING THAT IS
5 INVOLVED IN YOUR INTERNAL DELIBERATIONS WITHIN
6 MICROSOFT?
7 A. WHO SAID IT WAS IMPORTANT? IT DOESN'T
8 SAY--I MEAN, IT'S ONE OF THE MANY SENTENCES IN
9 THE MEMO.
10 Q. IS IT YOUR TESTIMONY THAT THIS IS AN
11 UNIMPORTANT SENTENCE, SIR?
12 A. I DON'T THINK IT'S ANY MORE IMPORTANT
13 THAN ANY OF THE OTHER SENTENCES IN HERE.
14 Q. IS IT ANY LESS IMPORTANT THAT (SIC) ANY
15 OF THE OTHER SENTENCES?
16 A. YEAH. IT'S NOT GERMANE TO THE PRIMARY
17 TOPIC OF THE MEMO.
18 Q. IF IT WASN'T GERMANE TO THE PRIMARY
19 TOPIC OF THE MEMO, AND IF IT WASN'T PARTICULARLY
20 IMPORTANT, WHY DID YOU INCLUDE IT, MR. GATES?
21 A. IT'S MERELY AN OBSERVATION THAT I PUT
22 INTO THIS RATHER EXTENSIVE MEMO THAT TALKS ABOUT
23 OUR PLANS IN DOING INNOVATIVE PRODUCTS, AND IT'S
24 TACKED ON AS THE LAST PARAGRAPH. AND YOU DIDN'T
25 READ THE WHOLE PARAGRAPH, BUT IT SAYS "AT SOME

1 POINT." SO IT SEEMS TO BE A PREDICTION ABOUT
2 THAT.
3 Q. YES, I AGREE, IT SEEMS TO BE A
4 PREDICTION. AND I THINK I DID READ THE AT SOME
5 POINT.
6 BUT MY POINT TO YOU IS THIS IS A
7 MEMORANDUM THAT YOU WERE SENDING TO A NUMBER OF
8 THE TOP EXECUTIVES OF MICROSOFT; CORRECT, SIR?
9 A. ALL PRODUCT PEOPLE.
10 Q. WELL, LET'S SEE. WE HAVE MR. BALLMER.
11 A. IT'S NOT TO HIM.
12 Q. HE'S GETTING A COPY?
13 A. THAT'S RIGHT.
14 Q. OKAY. AND WHAT WAS MR. BALLMER'S
15 POSITION IN MAY OF 1996?
16 A. EXECUTIVE VICE PRESIDENT.
17 Q. HOW MANY EXECUTIVE VICE PRESIDENTS DID
18 MICROSOFT HAVE AT THAT TIME?
19 A. ONE, TWO, THREE, FOUR.
20 Q. AND WHO WERE THE OTHERS?
21 A. BOB HERBOLD, PETE HIGGINS, AND PAUL
22 MARITZ--NO, NO, NO. MAYBE--NO, I THINK IT'S JUST
23 FOUR.
24 Q. SO THAT THIS MEMORANDUM WENT TO ALL
25 FOUR OF THE EXECUTIVE VICE PRESIDENTS; CORRECT,

1 SIR?

2 A. IT WENT TO PAUL MARITZ. IT WAS CALLED

3 TO THE OTHER PEOPLE THERE.

4 Q. IT WAS EITHER ADDRESSED OR COPIED TO

5 ALL FOUR OF THE EXECUTIVE VICE PRESIDENTS?

6 A. THEY'RE AMONG THE RECIPIENTS, YES.

7 (EXCERPT.)

8 Q. WHAT WAS BRAD SILVERBERG'S POSITION?

9 A. I THINK HE WAS A SENIOR VICE PRESIDENT,

10 BUT HE WORKED FOR PAUL AND DID A LOT OF THE

11 DEVELOPMENT OF SOFTWARE THAT WENT INTO WINDOWS.

12 Q. AND HE WAS ONE OF THE ADDRESSEES OF

13 THIS MEMO?

14 A. THAT'S RIGHT. IT GOES TO MARITZ, AND

15 THEN HE'S THE SECOND PERSON ON THE "TO" LINE.

16 Q. AND THE THIRD PERSON TO WHOM IT'S

17 ADDRESSED IS JIM ALLCHIN; IS THAT CORRECT?

18 A. THAT'S RIGHT.

19 Q. WHAT WAS HIS POSITION?

20 A. SENIOR VICE PRESIDENT OF THE CORE

21 WINDOWS DEVELOPMENT.

22 Q. AND THE NEXT PERSON TO WHOM IT'S

23 ADDRESSED IS BRAD CHASE. AND WHAT IS HIS

24 POSITION?

25 A. AT THAT TIME OR AT THIS TIME?

1 Q. AT THAT TIME.

2 A. AT THAT TIME HE WORKED FOR BRAD

3 SILVERBERG MANAGING OUR RELATIONSHIPS WITH ISV'S

4 BROADLY DEFINED AND SOME OF THE MARKETING

5 ACTIVITIES.

6 Q. DID HE HAVE A POSITION LIKE VICE

7 PRESIDENT?

8 A. OH, I'M SORRY. HE WAS A VICE

9 PRESIDENT.

10 Q. THE NEXT PERSON TO WHOM IT'S ADDRESSED

11 IS RICH TONG.

12 A. HE WAS A VICE PRESIDENT WITH AN

13 ANALOGOUS PERSON TO BRAD CHASE, BUT WORKING FOR

14 JIM ALLCHIN.

15 (EXCERPT.)

16 Q. ARE MEMORANDA MORE FORMAL AND MORE

17 SERIOUS THAN E-MAILS?

18 A. NO. I'D SAY THEY'RE LONGER AND MORE

19 THOUGHTFUL THAN MOST E-MAIL.

20 Q. NOW, WHAT WE'RE LOOKING AT HERE IS ONE

21 OF THE LONGER MORE THOUGHTFUL DOCUMENTS, THAT IS,

22 A MEMORANDUM; CORRECT?

23 A. RIGHT.

24 Q. AND IN THAT LONGER MORE THOUGHTFUL

25 MEMORANDUM IN THE FINAL PARAGRAPH YOU WRITE, "AT

1 SOME POINT, FINANCIAL-MINDED ANALYSTS WILL BEGIN
2 TO CONSIDER HOW MUCH OF A REVENUE STREAM NETSCAPE
3 WILL BE ABLE TO GENERATE."
4 NOW, WHAT WAS THE SIGNIFICANCE OF THAT
5 TO YOU AT THE TIME, SIR?
6 A. IT WAS A FACT THAT I STATED IN THE
7 MEMO.
8 Q. WELL, IT CLEARLY IS A FACT THAT YOU
9 STATE IN THE MEMO. BUT MY QUESTION TO YOU, SIR,
10 IS: WHAT WAS THE SIGNIFICANCE TO YOU OF THAT
11 FACT?
12 A. I'M NOT SURE WHAT YOU MEAN BY THAT.
13 Q. IN 1996, AT THE TIME THAT YOU QUOTE
14 THIS MEMORANDUM, WHAT WAS THE SIGNIFICANCE TO YOU
15 OF THE FACT THAT, QUOTE, AT SOME POINT
16 FINANCIAL-MINDED ANALYSTS WILL BEGIN TO CONSIDER
17 HOW MUCH OF A REVENUE STREAM NETSCAPE WILL BE
18 ABLE TO GENERATE?
19 A. I THINK IT MUST HAVE REFERRED TO THE
20 FACT THAT NETSCAPE WAS AT THIS POINT A PUBLIC
21 COMPANY.
22 (EXCERPT.)
23 Q. WERE YOU IN 1996 TRYING TO GET
24 FINANCIAL ANALYSTS TO DEVELOP A MORE NEGATIVE AND
25 MORE PESSIMISTIC VIEW ABOUT NETSCAPE'S BUSINESS

1 PROSPECTS?

2 A. EXCEPT THROUGH THE INDIRECT EFFECT OF
3 THEM SEEING HOW CUSTOMERS RECEIVED OUR PRODUCTS
4 AND OUR PRODUCT STRATEGIES, THAT WAS NOT GOAL.

5 Q. IF THAT WAS NOT A GOAL, SIR, WHY DID
6 YOU SAY, IN SUBSTANCE, THAT THE INTERNET BROWSER
7 WOULD BE FOREVER FREE?

8 A. THAT WAS A STATEMENT MADE SO THAT
9 CUSTOMERS COULD UNDERSTAND WHAT OUR INTENT WAS IN
10 TERMS OF THAT SET OF TECHNOLOGIES AND HOW IT
11 WOULD BE A PART OF WINDOWS AND NOT AN EXTRA COST
12 ITEM, AND SO PEOPLE WOULD HAVE THAT INFORMATION
13 IN MAKING THEIR DECISIONS ABOUT WORKING WITH US
14 ON WINDOWS.

15 Q. NOW, IS IT YOUR TESTIMONY THAT WHEN
16 MICROSOFT TOLD THE WORLD THAT ITS BROWSER WOULD
17 BE FOREVER FREE, THAT THE DESIRE TO AFFECT
18 FINANCIAL ANALYSTS' VIEW OF NETSCAPE PLAYED NO
19 ROLE IN THAT DECISION?

20 A. I CAN BE VERY CLEAR WITH YOU. THE
21 REASON WE TOLD PEOPLE THAT IT WOULD BE FOREVER
22 FREE WAS BECAUSE THAT WAS THE TRUTH. THAT'S WHY
23 WE TOLD THEM THAT, BECAUSE IT WAS THE TRUTH.

24 Q. NOW, MR. GATES, MY QUESTION TO YOU--

25 A. THAT'S THE SOLE REASON WE TOLD THEM.

1 Q. AND MY QUESTION TO YOU IS WHETHER OR
2 NOT THE TRUTH WAS, IN PART, DUE TO YOUR DESIRE TO
3 ADVERSELY AFFECT FINANCIAL ANALYSTS' VIEW OF
4 NETSCAPE. DID THAT PLAY ANY ROLE, SIR?
5 A. YOU'VE BEEN ASKING ME A QUESTION
6 SEVERAL TIMES ABOUT WHY DID WE SAY SOMETHING. WE
7 SAID IT BECAUSE WE THOUGHT OUR CUSTOMERS WOULD
8 WANT TO KNOW AND BECAUSE IT WAS THE TRUTH. AND
9 THAT EXPLAINS OUR SAYING IT COMPLETELY.
10 Q. AND WHAT I'M ASKING YOU, SIR--AND IT
11 MAY BE THAT THE ANSWER TO MY QUESTION IS, NO, IT
12 PLAYED NO ROLE, BUT IF THAT'S YOUR ANSWER, I WANT
13 TO GET IT ON THE RECORD.
14 AND MY QUESTION--
15 A. ARE YOU TALKING ABOUT SAYING IT?
16 Q. YES.
17 A. OR HOW WE CAME UP WITH OUR DECISION
18 ABOUT HOW TO PRICE OUR PRODUCTS?
19 Q. LET'S TAKE IT EACH STEP AT A TIME, ONE
20 STEP AT A TIME, SO THAT YOUR COUNSEL DOESN'T SAY
21 I'M ASKING YOU A COMPOUND QUESTION, OKAY? AND
22 FIRST LET'S TALK ABOUT SAYING IT.
23 I KNOW YOU'RE TELLING ME IT WAS THE
24 TRUTH. IN ADDITION TO IT BEING THE TRUTH, DID
25 THE FACT THAT THIS WOULD, IN YOUR VIEW, ADVERSELY

1 AFFECT THE VIEW OF FINANCIAL ANALYSTS OF NETSCAPE
2 PLAY ANY ROLE AT ALL IN YOUR DECISION TO ANNOUNCE
3 THAT YOUR BROWSER WOULD BE FOREVER FREE?
4 A. I ACTUALLY THINK THAT CAME UP IN
5 RESPONSE TO SOME QUESTIONS THAT PEOPLE ASKED IN
6 AN EVENT WE HAD ON DECEMBER 7, 1995, SO IT WASN'T
7 SO MUCH A QUESTION OF OUR SAYING, OKAY, WE'RE
8 GOING TO GO MAKE THIS A HEADLINE, BUT RATHER,
9 THAT THERE WERE QUESTIONS THAT CAME UP DURING
10 THAT INCLUDING OUR FUTURE PRICING PLANS.
11 Q. THIS WAS A MEETING ON DECEMBER 7 OF
12 WHAT YEAR?
13 A. 1995.
14 Q. AND WAS IT ATTENDED BY PEOPLE OUTSIDE
15 MICROSOFT?
16 A. IT WAS A PRESS EVENT.
17 Q. AND PRIOR TO ATTENDING THAT PRESS
18 PREVENT, HAD YOU MADE A DECISION THAT IT WOULD BE
19 FOREVER FREE?
20 A. WELL, IF YOU REALLY WANT TO PROBE INTO
21 THAT, YOU'LL HAVE TO GET INTO THE DIFFERENT WAYS
22 THAT WE MADE INTERNET TECHNOLOGY AVAILABLE.
23 IN TERMS OF WHAT WE WERE DOING WITH
24 WINDOWS 95 AND ITS SUCCESSORS, YES. IN TERMS OF
25 SOME OF THE OTHER WAYS THAT WE OFFERED THE

1 INTERNET TECHNOLOGIES, THERE WAS SOME--THERE
2 HADN'T BEEN A CLEAR DECISION ABOUT THAT.
3 Q. WHEN YOU REFER TO OTHER WAYS THAT YOU
4 OFFER INTERNET TECHNOLOGIES, WOULD YOU EXPLAIN
5 FOR THE RECORD WHAT YOU MEAN.
6 A. OH, WE CREATED AN OFFERING THAT RAN ON
7 THE MACINTOSH OS THAT OFFERED SOME BUT NOT ALL OF
8 THE CAPABILITIES THAT WE PUT INTO WINDOWS AND
9 USED A COMMON BRANDING FOR THAT. AND WE CAME UP
10 WITH A PACKAGE THAT RAN ON A PREVIOUS VERSION OF
11 WINDOWS, WINDOWS 3.1, AND MADE AN OFFERING OF
12 THAT. SUBSEQUENTLY, I MEAN, NOT ON THAT DAY, BUT
13 SUBSEQUENTLY.
14 Q. AND THOSE WERE CHARGED FOR; IS THAT
15 WHAT YOU'RE SAYING?
16 A. I'M SAYING THAT BEFORE THE DECEMBER 7TH
17 EVENT, IT WAS CLEAR TO EVERYONE THAT IN THE
18 WINDOWS 95 AND ITS SUCCESSORS, THAT THE BROWSER
19 TECHNOLOGY WOULD BE FREE FOR THOSE USERS. BUT IT
20 WAS UNCLEAR TO PEOPLE WHAT WE WERE GOING TO DO
21 WITH THE OTHER WAYS THAT WE PACKAGED UP THE
22 TECHNOLOGIES.
23 MR. BOIES: WOULD YOU READ THE QUESTION
24 BACK, PLEASE.
25 (WHEREUPON, THE COURT REPORTER READ

1 BACK THE PREVIOUS QUESTION.)

2 THE WITNESS: WELL, THEY WEREN'T

3 AVAILABLE. SO, IF WE'RE TALKING ABOUT DECEMBER

4 7, 1995, IT'S NOT A MEANINGFUL QUESTION.

5 SUBSEQUENTLY, THOSE PRODUCTS WERE MADE

6 AVAILABLE TO THE CUSTOMERS WITHOUT CHARGE. BUT

7 I'M SAYING THAT THERE WAS SOME LACK OF CLARITY

8 INSIDE MICROSOFT EVEN UP TO THE EVENT ITSELF

9 ABOUT WHAT WE WERE GOING TO DO WITH THOSE OTHER

10 WAYS WE WERE PROVIDING INTERNET EXPLORER

11 TECHNOLOGY.

12 BY MR. BOIES:

13 Q. UNCERTAINTY AS TO WHETHER YOU WOULD

14 CHARGE FOR THEM; IS THAT WHAT YOU'RE SAYING?

15 A. THAT'S RIGHT.

16 Q. OKAY. PRIOR TO THE DECEMBER 7, 1995,

17 MEETING, HAD A DECISION BEEN MADE TO ADVISE THE

18 WORLD THAT NOT ONLY WOULD THE BROWSER BE FREE,

19 BUT IT WOULD BE FOREVER FREE?

20 A. WELL, IT'S ALWAYS BEEN THE CASE THAT

21 WHEN WE PUT A FEATURE INTO WINDOWS THAT IT

22 REMAINS PART OF WINDOWS AND DOESN'T BECOME AN

23 EXTRA-COST ITEM. SO IT WOULD HAVE BEEN KIND OF A

24 SILLY THING FOR ANYONE TO ASK INCLUDING ABOUT

25 THAT PARTICULAR FEATURE. AND BY THIS TIME, OF

1 COURSE, BROWSING IS SHIPPING WITH WINDOWS 95.
2 Q. EXACTLY SORT OF THE POINT I WANTED TO
3 COME TO, MR. GATES.
4 WHEN YOU PUT THINGS INTO THE OPERATING
5 SYSTEM GENERALLY, YOU DON'T ANNOUNCE THAT THEY'RE
6 GOING TO BE FOREVER FREE, DO YOU?
7 A. YES, WE DO. IF ANYBODY--
8 Q. YOU DO?
9 A. IF ANYBODY ASKS, THAT'S OBVIOUSLY THE
10 ANSWER WE GIVE.
11 Q. HAVE YOU FINISHED YOUR ANSWER?
12 A. YES.
13 Q. OKAY. COULD YOU IDENTIFY FOR ME THE
14 PRODUCTS OTHER THAN BROWSERS THAT MICROSOFT HAS
15 ANNOUNCED THAT THEY WOULD BE FOREVER FREE,
16 EXPRESSLY SAID, THESE ARE GOING TO BE FOREVER
17 FREE?
18 A. AS I SAID TO YOU, I THINK THAT ACTUALLY
19 CAME UP ONLY IN RESPONSE TO SOME QUESTIONS. SO
20 IT'S NOT PROPER TO ASK ME AND SUGGEST THAT WE
21 ANNOUNCED IT LIKE IT WAS SOME, YOU KNOW, PRESS
22 RELEASE ANNOUNCEMENT OR SOMETHING OF THAT NATURE.
23 Q. WELL, LET ME COME BACK TO THAT ASPECT
24 OF IT AND JUST ASK YOU FOR THE PRESENT.
25 WHAT PRODUCTS HAS MICROSOFT SAID

1 PUBLICLY, WHETHER IN RESPONSE TO A QUESTION OR
2 OTHERWISE, THAT THESE WOULD EXPLICITLY BE FOREVER
3 FREE?
4 A. I'VE SAID THAT ABOUT THE BROAD FEATURE
5 SET THAT'S IN WINDOWS.
6 Q. WHEN DID YOU SAY THAT, SIR?
7 A. I REMEMBER AN ANALYST TALKING TO ME
8 ABOUT THAT ONCE AT AN ANALYST MEETING.
9 Q. WHEN WAS THAT?
10 A. IT WOULD HAVE BEEN ONE OF OUR ANNUAL
11 ANALYSTS MEETINGS.
12 Q. WHEN?
13 A. NOT THIS YEAR. EITHER LAST YEAR OR THE
14 YEAR BEFORE.
15 Q. IS THERE A TRANSCRIPT OF THAT ANALYST
16 MEETING?
17 A. NOT WITH THE CONVERSATION WITH THAT
18 ANALYST, NO.
19 Q. THERE ARE TRANSCRIPTS OF ANALYSTS
20 MEETINGS, AREN'T THERE, MR. GATES?
21 A. ONLY OF THE FORMAL Q&A, NOT OF
22 THE--MOST OF THE Q&A, WHICH IS WHERE PEOPLE ARE
23 MIXING AROUND WITH THE PRESS AND ANALYSTS WHO
24 COME TO THE EVENT.
25 Q. AND THIS QUESTION THAT YOU SAY

1 HAPPENED, HAPPENED AFTER THE TRANSCRIPT STOPPED
2 BEING TAKEN; IS THAT WHAT YOU'RE SAYING?
3 A. THAT'S MY RECOLLECTION, YES.
4 (EXCERPT.)
5 BY MR. BOIES:
6 Q. IS THAT THE TESTIMONY, THIS HAPPENED IN
7 A COCKTAIL HOUR?
8 A. I'M SAYING, YEAH, IN THE INFORMAL Q&A,
9 NOT THE FORMAL Q&A.
10 Q. THIS WAS AT THE COCKTAIL HOUR?
11 A. OR A DINNER OR A LUNCH.
12 Q. WELL, WHICH WAS IT?
13 A. I'M CERTAIN THAT IT WAS IN THE INFORMAL
14 PART OF THE Q&A. EXACTLY WAS IT ON THE WAY TO
15 THE BATHROOM OR THE COOKIE TABLE OR THE DINNER OR
16 THE COCKTAIL HOUR, I CAN'T SAY.
17 Q. SIR, SOMETIME ON THE WAY TO THE
18 BATHROOM OR COOKIE TABLE OR THE COCKTAIL HOUR--
19 A. OR LUNCH OR DINNER.
20 Q. --OR LUNCH OR DINNER, SOME ANALYST,
21 WHOSE NAME YOU DO NOT RECALL, ASKED YOU A
22 QUESTION; IS THAT WHAT YOUR TESTIMONY IS?
23 A. YES.
24 Q. AND WHAT WAS THAT QUESTION?
25 A. THEY ASKED ABOUT WERE THERE PARTS OF

1 WINDOWS THAT WOULD BECOME SEPARATE PRODUCTS AND
2 WE'D CHARGE SEPARATELY FOR IN THE FUTURE.
3 Q. AND WHAT DID YOU SAY?
4 A. I SAID NO.
5 Q. OTHER THAN THIS CONVERSATION THAT YOU
6 SAY TOOK PLACE ON THE WAY TO THE BATHROOM OR THE
7 COOKIE TABLE OR A COCKTAIL PARTY OR LUNCH OR
8 DINNER, WAS THERE EVER ANY OTHER TIME THAT
9 MICROSOFT PUBLICLY EXPLICITLY ASSERTED THAT
10 SOMETHING WOULD BE FOREVER FREE?
11 A. I'M SURE THAT IF ANYBODY EVER ASKED
12 ABOUT AN OPERATING SYSTEM FEATURE, WE WOULD HAVE
13 MADE THAT CLEAR TO THEM. I DON'T--BEYOND THE ONE
14 I'VE TALKED ABOUT, I DON'T--I DON'T RECALL THAT.
15 THEN AGAIN, YOU KNOW, IN THE CASE OF
16 THE BROWSER YOU HAVE THE CASE WHERE ANOTHER
17 COMPANY HAD--IT HAD BEEN FREE AND SO, YOU KNOW,
18 THE FACT THAT PEOPLE WERE ASKING ABOUT THAT
19 FEATURE IN SOME WAYS IS NOT SURPRISING.
20 Q. WELL, YOU SAY ANOTHER COMPANY HAD A
21 BROWSER THAT HAD BEEN FREE. WHAT COMPANY WAS
22 THAT, SIR?
23 A. WELL, CERTAINLY MOSAIC WAS FREE. AND
24 THERE ARE A NUMBER OF OTHER FREE BROWSERS. THE
25 NETSCAPE BROWSER IN ITS EARLY DAYS WAS ALSO FREE.

1 Q. IN 1996, WAS THE NETSCAPE BROWSER FREE?
2 A. I'M NOT SURE OF THE EXACT CHRONOLOGY,
3 BUT I'M PRETTY SURE THAT IN 1996, ANYBODY WHO
4 WANTED TO USE THE NETSCAPE BROWSER COULD DOWNLOAD
5 AND USE IT IN ANY WAY THEY WOULD WANT WITHOUT
6 NETSCAPE COMING AND ASKING THEM TO PAY THEM.
7 Q. MR. GATES, IN 1996, WHAT WAS MOSAIC'S
8 MARKET SHARE?
9 A. I DON'T KNOW.
10 Q. APPROXIMATELY.
11 A. I REALLY DON'T KNOW.
12 Q. CAN YOU GIVE ME ANY ESTIMATE OR RANGE?
13 A. BY 1996, PROBABLY UNDER TEN PERCENT.
14 (EXCERPT.)
15 Q. IN 1996, NETSCAPE WAS CHARGING OEM'S
16 WHO IT LICENSED TO DISTRIBUTE ITS BROWSER;
17 CORRECT, SIR?
18 A. I DON'T KNOW THAT.
19 Q. DO YOU KNOW ONE WAY OR THE OTHER?
20 A. I THINK THEY WERE CHARGING SOME, BUT
21 I'M NOT SURE THEY WERE CHARGING ALL.
22 Q. DID YOU EVER TRY TO FIND OUT?
23 A. I KNOW WE WERE ALWAYS UNCLEAR WHAT THE
24 NATURE OF THOSE DEALS WERE.
25 (EXCERPT.)

1 Q. INDEED, TODAY THE AMOUNT OF NETSCAPE'S
2 REVENUE THAT'S ATTRIBUTED TO CHARGING PEOPLE FOR
3 THE USE OF THE BROWSER IS ZERO; RIGHT, SIR?
4 A. I DON'T KNOW THAT.
5 Q. BECAUSE THEY DON'T CHARGE FOR THE
6 BROWSER; RIGHT? YOU KNOW THAT, DON'T YOU?
7 A. NO, I DON'T KNOW IF, YOU KNOW, THEY HAD
8 SOME COMMITMENT CONTRACTS WITH VARIOUS PEOPLE AND
9 YOU CAN DO SPECIAL THINGS WITH BROWSERS. AND
10 UNDERSTAND, THEY--YOU KNOW, THEY DO LOTS OF
11 DIFFERENT DEALS THAT INCLUDE VARIOUS SPECIAL
12 THINGS. AND SO I DON'T THINK IT'S FAIR FOR ME TO
13 SIT HERE AND TELL YOU WHAT NETSCAPE'S REVENUE ARE
14 (SIC) FROM A PARTICULAR SOURCE.
15 IF YOU WANT TO ASK ME ABOUT MICROSOFT,
16 THAT WOULD BE A DIFFERENT THING, BUT I'M NOT AN
17 EXPERT ON NETSCAPE REVENUE.
18 Q. AND SO YOU JUST DON'T KNOW, IS YOUR
19 ANSWER, AS YOU SIT HERE NOW?
20 A. YEAH. IT MAY HAVE DROPPED DOWN TO
21 ZERO. I DON'T KNOW.
22 Q. OKAY. WAS IT PART OF YOUR INTENT IN
23 TAKING THE ACTIONS THAT MICROSOFT TOOK TO DRIVE
24 THAT DOWN TO ZERO?
25 MR. HEINER: OBJECTION.

1 THE WITNESS: WE PRICED OUR PRODUCT,
2 WINDOWS. THAT'S THE ONLY THING WE DO RELATIVE TO
3 PRICING. THE MOST IMPORTANT THING WE DO IS WE
4 CREATE THE FEATURES OF THE PRODUCT INCLUDING
5 IMPROVED VERSIONS.
6 BY MR. BOIES:
7 Q. LET ME BE SURE MY QUESTION IS CLEAR.
8 WAS ANY PART OF MICROSOFT'S ACTIONS
9 WITH RESPECT TO ITS BROWSER OR, AS YOU SOMETIMES
10 REFER TO IT, BROWSER TECHNOLOGIES, MOTIVATED BY
11 DESIRE TO DRIVE NETSCAPE'S REVENUES FROM USERS OF
12 NETSCAPE'S BROWSER DOWN TO ZERO?
13 A. WELL, I THINK YOU'RE GETTING A LITTLE
14 BIT PSYCHOLOGICAL THERE.
15 Q. NO. I'M ASKING WHAT YOU INTENDED.
16 WHAT WAS THE PURPOSE OF WHAT YOU WERE DOING?
17 A. MY PURPOSE WAS TO MAKE WINDOWS A BETTER
18 PRODUCT AND MAINTAIN AND INCREASE THE POPULARITY
19 OF WINDOWS.
20 Q. WAS THAT THE ONLY PURPOSE?
21 A. THAT WAS THE PURPOSE ON WHICH THE
22 DECISION WAS MADE.
23 Q. I JUST WANT TO BE CLEAR.
24 IT'S YOUR TESTIMONY THAT AN INTENT TO
25 DEPRIVE NETSCAPE OF REVENUE PLAYED NO ROLE IN ANY

1 OF THE DECISIONS THAT MICROSOFT MADE WITH RESPECT
2 TO BROWSERS OR BROWSING TECHNOLOGY? IS THAT YOUR
3 TESTIMONY?
4 A. WELL, OUR DECISION TO HAVE THE BROWSER
5 BE A FEATURE OF WINDOWS WAS, IN NO WAY, MOTIVATED
6 BY SOMETHING TO DO WITH NETSCAPE. WE HAD CHOSEN
7 THAT THAT WAS A LOGICAL EVOLUTION OF THE WINDOWS
8 FEATURE SET BEFORE NETSCAPE WAS A FACTOR AT ALL.
9 Q. MR. GATES, IF YOUR ANSWER IS THAT IT
10 PLAYED NO ROLE, THAT IS YOUR ANSWER, BUT I NEED
11 TO GET ON THE RECORD WHAT YOUR ANSWER IS.
12 AND MY QUESTION IS WHETHER AN INTENT TO
13 DEPRIVE NETSCAPE OF REVENUE PLAYED ANY ROLE IN
14 ANY OF THE DECISIONS THAT MICROSOFT MADE WITH
15 RESPECT TO ITS BROWSER OR BROWSING TECHNOLOGY.
16 A. WE DECIDED THAT IT WAS A LOGICAL
17 IMPROVEMENT OF WINDOWS TO PUT THE BROWSER INTO
18 WINDOWS BEFORE WE HAD MUCH AWARENESS OF THERE
19 EVEN BEING A NETSCAPE. SO THE DECISION THAT THAT
20 WOULD BE A FEATURE--AS I'VE SAID, WHEN WE MAKE
21 SOMETHING A FEATURE OF WINDOWS, THAT MEANS THAT
22 IT'S AVAILABLE ALONG WITH ALL THE OTHER FEATURES
23 AND THE LICENSE FEE, THAT DECISION HAD BEEN MADE
24 VERY EARLY ON.
25 WE ALSO HAD A VERY EARLY RECOGNITION OF

1 THE POTENTIAL REVENUE SOURCES FROM THINGS LIKE
2 THE SEARCH BUTTON AND THE HOME PAGE AND THAT
3 THOSE WOULD BECOME QUITE SUBSTANTIAL.
4 (EXCERPT.)
5 BY MR. BOIES:
6 Q. IN OR ABOUT JANUARY OF 1996 OR
7 THEREAFTER, DID MICROSOFT TRY TO STUDY NETSCAPE
8 TO DETERMINE HOW YOU COULD REDUCE NETSCAPE'S
9 ABILITY TO COMPETE?
10 MR. HEINER: OBJECTION.
11 THE WITNESS: I DON'T KNOW WHAT YOU
12 MEAN BY THAT.
13 BY MR. BOIES:
14 Q. LET ME TRY TO BREAK IT UP INTO AS SMALL
15 A PIECES AS I CAN.
16 IN OR ABOUT JANUARY 1996 OR THEREAFTER,
17 DID MICROSOFT, TO YOUR KNOWLEDGE, UNDERTAKE TO
18 TRY TO STUDY NETSCAPE AS A COMPANY, INCLUDING
19 WHERE ITS REVENUES CAME FROM, WHAT ITS
20 DEPENDENCIES WERE THAT IT NEEDED TO REMAIN
21 VIABLE?
22 A. I'M SURE WE LOOKED AT THEIR REVENUE,
23 AND I'M SURE WE LOOKED AT THEIR PRODUCTS AND
24 THEIR ORGANIZATIONAL STRUCTURE.
25 Q. WAS THAT, IN WHOLE OR IN PART, A RESULT

1 OF AN ATTEMPT TO FIND OUT WHAT THEIR
2 VULNERABILITIES WERE, MR. GATES?
3 MR. HEINER: OBJECTION.
4 THE WITNESS: DID YOU END THE QUESTION?
5 BY MR. BOIES:
6 Q. BOTH YOUR COUNSEL AND I THOUGHT SO.
7 A. OKAY.
8 Q. BUT IF YOU DON'T UNDERSTAND IT, I'LL
9 REPHRASE IT.
10 A. WE WERE INTERESTED IN LEARNING WHAT
11 USERS LIKED ABOUT THEIR PRODUCTS AND WHAT KIND OF
12 RESPONSE CUSTOMERS HAD.
13 Q. FOR MY PRESENT QUESTION, I'M NOT ASKING
14 ABOUT LEARNING ABOUT THEIR PRODUCTS JUST FOR THE
15 SAKE OF LEARNING ABOUT THEIR PRODUCTS. WHAT I'M
16 ASKING ABOUT IS WHETHER YOU WERE TRYING TO FIGURE
17 OUT WHERE NETSCAPE'S DEPENDENCIES WERE SO THAT
18 YOU COULD ATTACK NETSCAPE AND RENDER NETSCAPE A
19 LESS EFFECTIVE COMPETITOR.
20 MR. HEINER: OBJECTION.
21 THE WITNESS: WE WERE INTERESTED IN
22 BUILDING A PRODUCT THAT USERS WOULD PREFER OVER
23 THEM.
24 BY MR. BOIES:
25 Q. MY QUESTION, SIR, IS WHETHER IN

1 ADDITION TO WHATEVER YOU DID TO IMPROVE YOUR
2 PRODUCT, WERE YOU ALSO ATTEMPTING TO ASCERTAIN
3 WHAT NETSCAPE'S DEPENDENCIES WERE SO THAT YOU
4 COULD ATTEMPT TO RENDER NETSCAPE LESS VIABLE,
5 LESS ABLE TO COMPETE WITH MICROSOFT?
6 MR. HEINER: OBJECTION.
7 THE WITNESS: WE GATHERED INFORMATION
8 ABOUT NETSCAPE LIKE WE DO A NUMBER OF COMPANIES
9 WE COMPETE WITH, INCLUDING IBM, SUN, NOVELL AND
10 MANY OTHERS.
11 (EXCERPT.)
12 BY MR. BOIES:
13 Q. THE NOVEMBER 27, 1996, NEHRU E-MAIL
14 THAT YOU SENT AROUND IS HEADED "NETSCAPE
15 REVENUES," GOVERNMENT TRIAL EXHIBIT 100; CORRECT,
16 SIR? AND IT IS A DISCUSSION OF AN ANALYSIS OF
17 NETSCAPE'S REVENUES.
18 A. I DIDN'T SEND IT AROUND. AMAR SENT IT
19 AROUND. I ENCLOSED IT.
20 Q. I THOUGHT WE ESTABLISHED THAT YOU THEN
21 SENT IT AROUND.
22 A. I ENCLOSED IT, YES.
23 Q. WHEN YOU SAY YOU "ENCLOSED IT," THAT
24 MEANS IT'S ENCLOSED WITH WHAT YOU HAVE WRITTEN SO
25 THAT IT GOES AROUND TO EVERYBODY THAT YOUR E-MAIL

1 IS DIRECTED TO; CORRECT?

2 A. WELL, AMAR HAD ALREADY SENT IT TO QUITE

3 A LARGE SUPERSET OF THE PEOPLE I COPIED ON MY

4 E-MAIL, SO HE SENT IT TO THEM.

5 Q. HE SENT IT TO THEM AND THEN YOU SENT IT

6 TO EVERYBODY THAT IS ON THE ADDRESSEE OR COPY

7 LIST OF YOUR E-MAIL; CORRECT?

8 A. I ENCLOSED IT TO THOSE PEOPLE WHO HAD

9 ALREADY ALL GOTTEN IT FROM AMAR.

10 Q. AND BY ENCLOSING IT MEANS YOU SENT IT

11 AROUND?

12 A. THAT'S NOT THE WORD I WOULD USE, BUT IT

13 WAS ENCLOSED IN THE E-MAIL I SENT TO THOSE PEOPLE

14 WHO HAD ALREADY RECEIVED IT DIRECTLY UNDER AMAR.

15 Q. SO, WHEN PEOPLE GOT YOUR E-MAIL--ALL

16 I'M TRYING TO DO IS--I DON'T THINK THIS IS

17 OBSCURE. ALL I'M TRYING TO DO IS ESTABLISH THAT

18 WHEN YOU SENT YOUR E-MAIL TO THE FIVE PEOPLE THAT

19 YOU SENT IT TO, WITH YOUR E-MAIL THEY GOT

20 MR. NEHRU'S E-MAIL?

21 A. WHICH THEY HAD ALREADY GOTTEN.

22 Q. AND THEY GOT IT AGAIN?

23 A. AS AN ENCLOSURE, YES.

24 Q. AS AN ENCLOSURE TO YOUR E-MAIL?

25 A. RIGHT.

1 Q. AND THAT E-MAIL FROM MR. NEHRU THAT YOU
2 ENCLOSED WITH YOUR E-MAIL IS A DISCUSSION OF
3 NETSCAPE'S REVENUES; CORRECT, SIR?
4 A. THAT'S THE SUBJECT LINE OF HIS E-MAIL.
5 Q. NOT ONLY IS IT THE SUBJECT LINE, THAT'S
6 WHAT THE SUBSTANCE OF THE E-MAIL IS?
7 A. DO YOU WANT ME TO LOOK AT IT?
8 Q. IF YOU NEED TO TO ANSWER THE QUESTION.
9 A. IT APPEARS TO BE A DISCUSSION OF
10 NETSCAPE'S REVENUE, OR WHAT HE WAS ABLE TO FIND
11 OUT ABOUT IT AT A 70 PERCENT CONFIDENCE.
12 Q. AND THE FIRST TIME OF YOUR MEMO THAT
13 YOU SEND TO THE FIVE PEOPLE INDICATED HERE,
14 INCLUDING MR. MARITZ AND MR. BALLMER, IS WHAT
15 KIND OF DATA DO WE HAVE ON HOW MUCH SOFTWARE
16 COMPANIES PAY NETSCAPE; CORRECT, SIR?
17 A. YES.
18 Q. AND DID THEY FURNISH YOU WITH THAT
19 INFORMATION?
20 A. I DON'T THINK SO.
21 Q. YOU SAY IN THE NEXT LINE, "IN
22 PARTICULAR, I AM CURIOUS ABOUT THEIR DEALS WITH
23 COREL, LOTUS AND INTUIT."
24 DO YOU SEE THAT?
25 A. UH-HUH.

1 Q. YOU'VE GOT TO SAY YES OR NO FOR THE--
2 A. YES.
3 Q. DID YOU EVER RECEIVE INFORMATION ABOUT
4 WHAT REVENUES NETSCAPE WAS GETTING FROM ANY OF
5 THOSE COMPANIES?
6 A. I'M QUITE SURE I DIDN'T.
7 Q. NETSCAPE WAS GETTING REVENUES FROM
8 INTUIT. YOU KNEW THAT IN DECEMBER OF '96;
9 CORRECT, SIR?
10 A. I STILL DON'T KNOW THAT.
11 Q. YOU STILL DON'T KNOW THAT? YOU TRIED
12 TO FIND THAT OUT IN DECEMBER OF 1996; CORRECT?
13 A. I DID NOT MYSELF TRY AND FIND THAT OUT.
14 Q. YOU TRIED TO FIND IT OUT BY RAISING IT
15 WITH PEOPLE WHO WORKED FOR MICROSOFT, DIDN'T YOU?
16 THAT'S WHAT THIS MESSAGE IS.
17 A. IT SAYS I'M CURIOUS ABOUT IT.
18 Q. WELL, THE FIRST LINE SAYS, "WHAT KIND
19 OF DATA DO WE HAVE ABOUT HOW MUCH SOFTWARE
20 COMPANIES PAY NETSCAPE? IN PARTICULAR, I AM
21 CURIOUS ABOUT THEIR DEALS WITH COREL, LOTUS AND
22 INTUIT."
23 THAT'S WHAT YOU WROTE TO MR. NEHRU,
24 MR. SILVERBERG, MR. CHASE, MR. BALLMER, AND
25 MR. MARITZ; CORRECT, SIR?

1 A. RIGHT, BECAUSE AMAR'S MAIL DIDN'T SEEM
2 TO HAVE ANY DATA ABOUT THAT.
3 Q. AND IS IT YOUR TESTIMONY THAT YOU NEVER
4 GOT ANY DATA ABOUT THAT?
5 A. THAT'S RIGHT. I DON'T REMEMBER GETTING
6 ANY DATA. I'M QUITE SURE THAT I DIDN'T.
7 Q. DID YOU FOLLOW UP TO TRY TO GET AN
8 ANSWER TO THOSE QUESTIONS?
9 A. NO.
10 Q. AFTER DECEMBER OF 1996, MICROSOFT
11 ENTERED INTO AN AGREEMENT WITH INTUIT THAT WOULD
12 LIMIT HOW MUCH MONEY INTUIT PAID NETSCAPE;
13 CORRECT, SIR?
14 A. I'M NOT AWARE OF THAT.
15 Q. ARE YOU AWARE OF AN AGREEMENT THAT
16 INTUIT ENTERED INTO WITH MICROSOFT?
17 A. I KNOW THERE WAS SOME KIND OF AN
18 AGREEMENT. I WASN'T PART OF NEGOTIATING IT, NOR
19 DO I KNOW WHAT WAS IN IT.
20 Q. DO YOU KNOW ANYTHING THAT WAS IN THE
21 INTUIT AGREEMENT?
22 A. I'M QUITE SURE THAT INTUIT HAD A PLAN
23 TO USE OUR COMPONENTIZED BROWSER. AND I THINK IN
24 THE AGREEMENT THEY AGREED TO MAKE THAT THEIR
25 DEFAULT BROWSER.

1 (EXCERPT.)

2 Q. LET ME SHOW YOU A DOCUMENT THAT HAS

3 BEEN MARKED AS DEPOSITION EXHIBIT NUMBER 386.

4 THE SECOND ITEM HERE PURPORTS TO BE A MESSAGE

5 FROM YOU TO A NUMBER OF PEOPLE, DATED APRIL 6,

6 1995.

7 DO YOU SEE THAT?

8 A. YES.

9 Q. DID YOU SEND THIS MESSAGE ON OR ABOUT

10 APRIL 6, 1995?

11 A. I DON'T REMEMBER SENDING IT, BUT I

12 DON'T HAVE ANY REASON TO DOUBT THAT I DID.

13 Q. NOW, ATTACHED TO THIS MESSAGE, AS IT

14 WAS PRODUCED TO US, I BELIEVE, BY MICROSOFT, IS A

15 TWO-PAGE DOCUMENT HEADED "NETSCAPE AS NETWARE."

16 DO YOU SEE THAT?

17 A. I SEE A THREE-PAGE DOCUMENT, YES.

18 Q. YES, THREE PAGES. PAGES 3558 THROUGH

19 3560.

20 HAVE YOU SEEN THIS BEFORE?

21 A. I DON'T REMEMBER SEEING IT BEFORE.

22 Q. NOW, THE TITLE OF THIS THREE-PAGE

23 ATTACHMENT IS "NETSCAPE AS NETWARE," AND THERE IS

24 A FOOTNOTE THAT SAYS, "THE ANALOGY HERE IS THAT

25 THE MAJOR SIN THAT MICROSOFT MADE WITH NETWARE

1 WAS TO LET NOVELL OFFER A BETTER (ACTUALLY
2 SMALLER AND FASTER WITH SIMPLER PROTOCOL) CLIENT
3 FOR NETWORKING. THEY GOT TO CRITICAL MASS AND
4 CAN NOW EVOLVE BOTH CLIENT AND SERVER TOGETHER."
5 DO YOU SEE THAT?
6 A. UH-HUH. YES.
7 Q. IN OR ABOUT APRIL OF 1995, WAS
8 MICROSOFT CONCERNED WITH NETSCAPE GETTING TO WHAT
9 IS REFERRED TO HERE AS CRITICAL MASS?
10 A. I DON'T KNOW WHAT PAUL MEANT IN USING
11 THAT WORD.
12 Q. DO YOU HAVE ANY UNDERSTANDING AT ALL
13 ABOUT WHAT MR. MARITZ MEANT WHEN HE REFERRED TO A
14 COMPETITOR GETTING TO CRITICAL MASS?
15 A. HE SEEMS TO BE USING THAT PHRASE WITH
16 RESPECT TO NETWARE OR NOVELL, BUT I'M NOT SURE
17 WHAT HE MEANS BY IT.
18 Q. HE IS ALSO USING IT WITH RESPECT TO
19 NETSCAPE IN THE ANALOGY; IS THAT NOT SO?
20 A. IT'S NOT CLEAR THAT THE TERM "CRITICAL
21 MASS" IS PART OF THE ANALOGY, IS IT? IT'S NOT TO
22 ME.
23 Q. OKAY. THIS DOCUMENT IS ABOUT NETSCAPE.
24 IT'S NOT ABOUT NOVELL; CORRECT, SIR?
25 A. I DIDN'T WRITE THE DOCUMENT. THE

1 DOCUMENT APPEARS TO REFER TO "NETSCAPE AS
2 NETWARE" AS ITS TITLE, SO NOVELL IS TALKED ABOUT
3 IN THIS DOCUMENT, AND A LOT OF THINGS SEEM TO BE
4 TALKED ABOUT HERE.
5 DO YOU WANT ME TO READ IT?
6 Q. IF YOU HAVE TO TO ANSWER ANY OF MY
7 QUESTIONS.
8 NETWARE IS SOMETHING FROM NOVELL;
9 CORRECT, SIR?
10 A. FACT.
11 Q. WHAT?
12 A. FACT.
13 Q. DOES THAT MEAN YES?
14 A. YES.
15 Q. AND WHAT MR. MARITZ HERE IS DOING IS
16 ANALOGIZING NETSCAPE TO NETWARE; CORRECT?
17 A. IT'S KIND OF CONFUSING BECAUSE NETSCAPE
18 IS THE NAME OF A COMPANY, AND NETWARE IS THE NAME
19 OF A PRODUCT, AND SO I'M NOT SURE WHAT HE IS
20 DOING. USUALLY, YOU THINK OF ANALOGIZING TWO
21 PRODUCTS TO EACH OTHER AND TWO COMPANIES TO EACH
22 OTHER, BUT HE APPEARS TO BE ANALOGIZING A COMPANY
23 TO A PRODUCT, WHICH IS A VERY STRANGE THING.
24 Q. WELL, SIR, IN APRIL OF 1995, INSOFAR AS
25 MICROSOFT WAS CONCERNED, WAS NETSCAPE PRIMARILY A

1 BROWSER COMPANY?

2 A. NO.

3 Q. IT WAS NOT?

4 A. NO.

5 Q. ALL RIGHT, SIR. IN THIS DOCUMENT DO

6 YOU UNDERSTAND WHAT MR. MARITZ IS SAYING IS THAT

7 MICROSOFT SHOULD NOT MAKE THE SAME MISTAKE WITH

8 NETSCAPE'S BROWSER AS IT DID WITH NOVELL'S

9 NETWARE?

10 A. I'D HAVE TO READ THE DOCUMENT. DO YOU

11 WANT ME TO?

12 (EXCERPT.)

13 Q. AND THE QUESTION IS: DO YOU UNDERSTAND

14 THAT WHAT THIS DOCUMENT IS SAYING IS THAT

15 MICROSOFT SHOULD NOT MAKE THE SAME MISTAKE WITH

16 NETSCAPE'S BROWSER AS IT DID WITH NOVELL'S

17 NETWARE? AND YOU CAN READ ANY PORTION OF THAT

18 PORTION THAT YOU WANT, BUT I AM PARTICULARLY

19 INTERESTED IN THE HEADING WHICH SAYS "NETSCAPE AS

20 NETWARE," AND THE FOOTNOTE RIGHT OFF THAT

21 HEADING. "THE ANALOGY HERE IS THAT THE MAJOR SIN

22 THAT MICROSOFT MADE WITH NETWARE WAS TO LET

23 NOVELL OFFER A BETTER (ACTUALLY SMALLER AND

24 FASTER, WITH SIMPLER PROTOCOL) CLIENT FOR

25 NETWORKING. THEY GOT TO CRITICAL MASS AND CAN

1 NOW EVOLVE BOTH CLIENT AND SERVER TOGETHER."
2 A. ARE YOU ASKING ME A QUESTION ABOUT THE
3 WHOLE DOCUMENT?
4 Q. NO, I DIDN'T THINK I WAS. I THOUGHT IT
5 WAS POSSIBLE FOR YOU TO ANSWER THE QUESTION BY
6 LOOKING AT THE TITLE AND FIRST FOOTNOTE.
7 A. I THOUGHT YOU WERE ASKING ME WHAT THE
8 DOCUMENT IS ABOUT.
9 Q. I THINK IT'S POSSIBLE TO ANSWER THE
10 QUESTION BY LOOKING AT THE HEADING AND THAT
11 FOOTNOTE.
12 MY QUESTION IS WHETHER, AS YOU
13 UNDERSTAND IT, WHAT MR. MARITZ IS SAYING HERE IS
14 THAT MICROSOFT SHOULD NOT MAKE THE SAME MISTAKE
15 WITH NETSCAPE'S BROWSER AS IT DID WITH NOVELL'S
16 NETWARE.
17 A. DOES IT SAY "MISTAKE" SOMEWHERE?
18 Q. ALL I'M ASKING YOU IS WHETHER YOU
19 INTERPRET THIS THAT WAY.
20 A. DOES IT SAY "MISTAKE" SOMEWHERE?
21 Q. MR. GATES, WE HAVE HAD A CONVERSATION
22 ABOUT HOW I ASK THE QUESTIONS AND YOU GIVE THE
23 ANSWERS. I THINK--
24 A. I DON'T SEE WHERE IT SAYS "MISTAKE."
25 Q. IT DOESN'T SAY "MISTAKE." IT SAYS

1 "MAJOR SIN." IF YOU THINK MAJOR SIN IS SOMETHING
2 DIFFERENT THAN MISTAKE, YOU CAN ANSWER THE
3 QUESTION NO, THAT'S NOT WHAT YOU THINK MR. MARITZ
4 MEANS. MY QUESTION IS CLEAR. YOU CAN ANSWER IT
5 YES, NO, OR YOU CAN'T TELL.
6 A. WHAT IS THE QUESTION?
7 Q. MY QUESTION IS WHETHER--AS YOU
8 UNDERSTAND WHAT MR. MARITZ IS SAYING HERE, IS HE
9 SAYING THAT MICROSOFT SHOULD NOT MAKE THE SAME
10 MISTAKE WITH NETSCAPE'S BROWSER AS IT DID WITH
11 NOVELL'S NETWARE?
12 A. NO, I THINK HE IS SAYING SOMETHING
13 ELSE.
14 Q. OKAY. DO YOU THINK THAT WHEN
15 MR. MARITZ USES THE TERM "MAJOR SIN" THAT
16 MICROSOFT MADE, HE IS REFERRING TO WHAT HE THINKS
17 IS A MISTAKE?
18 A. PROBABLY.
19 (EXCERPT.)
20 BY MR. HOUCK:
21 Q. I HAND YOU GOVERNMENT TRIAL EXHIBIT 16,
22 MR. GATES, AND THIS IS A SERIES OF E-MAILS, AND
23 THE SECOND ONE I WANT TO ASK YOU ABOUT IS THE ONE
24 ON THE SECOND PAGE FROM MR. SIEGELMAN TO YOURSELF
25 AND OTHERS DATED APRIL 6, 1995. TAKE A MINUTE TO

1 LOOK TAKE A LOOK AT IT.

2 HAVE YOU FINISHED REVIEWING THE E-MAIL?

3 A. I LOOKED AT IT.

4 Q. THE E-MAIL STARTS OFF AS FOLLOWS: "PAT

5 FERREL AND I HAVE BEEN THINKING ABOUT THIS

6 PROBLEM A LOT AND WATCHING NETSCAPE VERY CLOSELY.

7 I, TOO, AM VERY WORRIED."

8 WHAT POSITION DID MR. FERREL HOLD AT

9 MICROSOFT IN OR ABOUT APRIL OF 1995?

10 A. HE WASN'T INVOLVED WITH WINDOWS. HE

11 WAS INVOLVED WITH MARVEL.

12 Q. IS HE STILL A MICROSOFT EMPLOYEE?

13 A. I DON'T THINK SO. I'M NOT SURE.

14 Q. DO YOU RECALL PERSONALLY BEING WORRIED

15 ABOUT NETSCAPE IN OR ABOUT APRIL OF 1995?

16 A. NO.

17 Q. DO YOU RECALL DISCUSSING NETSCAPE WITH

18 MR. SIEGELMAN IN THIS TIME PERIOD?

19 A. I'M SURE RUSS AND I DISCUSSED THE

20 EFFECT OF THE INTERNET IN GENERAL ON ONLINE

21 SERVICE STRATEGIES LIKE THE WORK HE WAS DOING

22 THAT BECAME MSN, BUT NOT NETSCAPE IN PARTICULAR,

23 NO.

24 Q. THE NEXT SENTENCE OF THE E-MAIL SAYS,

25 "I AGREE WITH MOST OF YOUR PROBLEM STATEMENT, BUT

1 I THINK YOU UNDERESTIMATE THE PUBLISHER/ISV
2 THREAT. NETSCAPE IS ALREADY OPENING UP API HOOKS
3 IN THEIR VIEWER AND MANY ISV'S ARE HOPPING
4 ABOARD."
5 DO YOU KNOW WHAT HIS REFERENCE IS TO
6 "YOUR PROBLEM STATEMENT"?
7 A. NO.
8 Q. DO YOU UNDERSTAND WHAT HE MEANS HERE
9 WHEN HE TALKS ABOUT OPENING UP API HOOKS AND MANY
10 ISV'S HOPPING ABOARD?
11 A. I DON'T KNOW WHAT HE MEANT. I CAN
12 GUESS IF YOU WANT.
13 Q. DO YOU HAVE ANY UNDERSTANDING, AS YOU
14 SIT HERE, WHAT HE MEANT BY THE LANGUAGE USED IN
15 THIS E-MAIL?
16 A. I DON'T KNOW WHAT HE MEANT. I'D HAVE
17 TO ASK HIM WHAT HE MEANT.
18 Q. I'M ASKING FOR YOUR UNDERSTANDING. DO
19 YOU HAVE ONE OR NOT?
20 A. UNDERSTANDING OF WHAT? OF WHAT HE
21 MEANT?
22 Q. YES.
23 A. NO. OF WHAT THOSE WORDS MIGHT MEAN, I
24 CAN GUESS.
25 Q. I DON'T WANT YOU TO GUESS. I'M ASKING

1 IF YOU HAVE ANY PRESENT UNDERSTANDING OF WHAT
2 THESE WORDS MEAN.
3 A. I'VE TOLD YOU I DON'T KNOW WHO HE MEANS
4 BY YOU. I DON'T KNOW WHAT HE MEANS BY "PROBLEM
5 STATEMENT," SO I'M A LITTLE UNCLEAR ABOUT WHAT HE
6 MEANS IN THIS PARAGRAPH.
7 Q. DO YOU HAVE ANY UNDERSTANDING--STRIKE
8 THAT.
9 BY ISV, DO YOU UNDERSTAND HIM TO BE
10 REFERRING TO INDEPENDENT SOFTWARE VENDORS?
11 A. THAT ACRONYM REFERS TO INDEPENDENT
12 SOFTWARE VENDOR.
13 Q. AND WHAT DOES THE ACRONYM API REFER TO?
14 A. APPLICATION PROGRAMMING INTERFACE.
15 Q. DO YOU RECALL YOURSELF HAVING A CONCERN
16 IN OR ABOUT APRIL 1995 ABOUT THE POSSIBILITY THAT
17 NETSCAPE WAS GOING TO OPEN UP API HOOKS IN THE
18 NETSCAPE WEB BROWSER?
19 A. I CAN'T PIN ANY RECOLLECTION TO THAT
20 PARTICULAR TIME PERIOD, NO.
21 Q. DID YOU AT SOME POINT COME TO THE
22 CONCLUSION THAT THE PROSPECT THAT NETSCAPE MIGHT
23 OPEN UP API HOOKS IN THEIR BROWSER WAS A THREAT
24 TO MICROSOFT?
25 A. I THINK IN LATE '95, ANDREESSEN WAS

1 TALKING ABOUT HOW HE WAS GOING TO PUT US OUT OF
2 BUSINESS, SUGGESTING THAT THEIR BROWSER WAS A
3 PLATFORM. AND, IN FACT, THEY DID HAVE API'S IN
4 THEIR BROWSER.
5 Q. DO YOU RECALL HAVING ANY CONCERN,
6 YOURSELF, BEFORE LATE 1995 WITH RESPECT TO THE
7 THREAT POSED BY NETSCAPE OPENING UP API HOOKS IN
8 THEIR BROWSER?
9 A. NO.
10 Q. DO YOU RECALL THAT OTHER FOLKS AT
11 MICROSOFT HAD SUCH CONCERNS BEFORE LATE 1995?
12 A. IT'S HARD TO RECALL OTHER PEOPLE'S
13 CONCERNS. NO, I DON'T RECALL OTHER PEOPLE'S
14 CONCERNS.
15 (EXCERPT.)
16 MR. HOUCK: I WOULD LIKE TO MARK AS
17 GOVERNMENT TRIAL EXHIBIT 19 A SERIES OF E-MAILS,
18 FIRST ONE BEING FROM NATHAN MYHRVOLD TO
19 MR. GATES, DATED APRIL 24, 1995.
20 BY MR. HOUCK:
21 Q. BEFORE YOU TAKE A LOOK AT THAT
22 DOCUMENT, DO YOU RECALL THAT THERE WAS A GENERAL
23 DISCUSSION AT MICROSOFT AT THE TOP EXECUTIVE
24 LEVEL IN OR ABOUT APRIL 1995 WITH RESPECT TO THE
25 THREAT TO MICROSOFT POSED BY NETSCAPE?

1 A. NO.
2 (EXCERPT.)
3 BY MR. HOUCK:
4 Q. IN OR ABOUT JUNE 1995, MR. GATES, DID
5 YOU BECOME INVOLVED IN THE PLANNING FOR SOME
6 MEETINGS WITH NETSCAPE?
7 A. NO.
8 (EXCERPT.)
9 Q. THE NEXT E-MAIL, GOVERNMENT TRIAL
10 EXHIBIT 536, I WANT TO ASK YOU ABOUT IS ON PAGE
11 231 OF THE DOCUMENT, AND IT'S AN E-MAIL FROM PAUL
12 MARITZ TO VARIOUS PEOPLE, INCLUDING YOURSELF,
13 REGARDING THE NETSCAPE MEETING, AND IT'S DATED
14 JUNE 5, 1995.
15 (EXCERPT.)
16 Q. HERE MR. MARITZ REPORTS THAT HE DID NOT
17 GET THE IMPRESSION FROM THE MEETING HE HAD THAT
18 NETSCAPE WAS READY FOR A BROAD, STRATEGIC
19 RELATIONSHIP.
20 DO YOU SEE THAT?
21 A. DO YOU THINK THAT REFERS TO A MEETING
22 HE HAD? I DON'T THINK SO.
23 Q. LET ME REFER YOU TO PAGE 596, BATES
24 NUMBER 596.
25 A. OKAY.

1 Q. IT'S E-MAILED THE SAME DATE. AND IT
2 SAYS, "ATTACHED IS MY SUMMARY OF THE MEETING THAT
3 NATHAN, PAUL AND I HAD WITH JIM BARKSDALE OF
4 NETSCAPE."
5 DO YOU UNDERSTAND THE REFERENCE OF PAUL
6 TO BE A REFERENCE TO PAUL MARITZ?
7 A. OH, MAYBE HE IS TALKING ABOUT A MEETING
8 HE HAD.
9 Q. DO YOU HAVE ANY RECOLLECTION OF
10 DISCUSSING MR. MARITZ'S IMPRESSION OF THIS
11 MEETING WITH NETSCAPE?
12 A. I DIDN'T THINK PAUL HAD MET WITH
13 NETSCAPE.
14 Q. SO, YOU HAVE NO PRESENT RECOLLECTION OF
15 DISCUSSING WITH MR. MARITZ HIS VIEWS BASED ON A
16 MEETING HE HAD WITH MR. BARKSDALE IN OR ABOUT THE
17 EARLY PART OF JUNE 1995?
18 A. NO.
19 (EXCERPT.)
20 Q. LET ME SHOW YOU EXHIBIT 591--OR I GUESS
21 IT'S DEPOSITION EXHIBIT NUMBER 391. THIS
22 PURPORTS TO BE A MESSAGE TO YOU DATED APRIL 18,
23 1995, TO YOU AND OTHER PEOPLE.
24 BY MR. BOIES:
25 Q. DID YOU RECEIVE THIS MESSAGE IN OR

1 ABOUT APRIL OF 1995?

2 A. I DON'T REMEMBER RECEIVING IT, BUT I

3 HAVE NO REASON TO DOUBT THAT IT WAS SENT TO ME.

4 Q. LET ME ASK YOU TO LOOK AT THE BOTTOM OF

5 THE FIRST PAGE, NEXT TO LAST PARAGRAPH, THE

6 SENTENCE THAT BEGINS, "THIS DOES NOT MEAN THAT

7 NETSCAPE NEEDS TO BE A DIRECT COMPETITOR."

8 DO YOU SEE THAT?

9 A. YES.

10 Q. DO YOU RECALL DISCUSSIONS IN OR ABOUT

11 APRIL OF 1995 ABOUT WHETHER OR NOT NETSCAPE WOULD

12 OR WOULD NOT BE A DIRECT COMPETITOR OF MICROSOFT?

13 A. I'M SURE THERE WAS SOME DISCUSSION

14 ABOUT NETSCAPE AND THE WHOLE INTERNET PHENOMENON,

15 AND PARTICULARLY WHAT THAT MEANT ABOUT THE

16 BUSINESS NATHAN WAS IN CHARGE OF, WHICH WAS

17 MARVEL. I DON'T REMEMBER SPECIFICALLY IF WE

18 FIGURED OUT WHETHER THEY WOULD OR WOULDN'T BE A

19 COMPETITOR OR WHAT THEY WERE DOING.

20 Q. DO YOU RECALL COMMUNICATIONS WITHIN

21 MICROSOFT IN OR ABOUT APRIL OF 1995 ABOUT WHAT

22 MIGHT BE DONE TO BE SURE THAT NETSCAPE DID NOT

23 BECOME A DIRECT COMPETITOR OF MICROSOFT?

24 A. NO.

25 Q. DO YOU RECALL ANY COMMUNICATIONS WITHIN

1 MICROSOFT IN OR ABOUT APRIL OF 1997 RELATING TO
2 WHAT MICROSOFT MIGHT DO TO INFLUENCE WHETHER OR
3 NOT NETSCAPE BECAME A DIRECT COMPETITOR OF
4 MICROSOFT?
5 A. NO.
6 Q. DO YOU RECALL ANY DISCUSSIONS WITHIN
7 MICROSOFT AT ANY TIME OR ANY COMMUNICATIONS
8 WITHIN MICROSOFT AT ANY TIME RELATING TO WHAT
9 MICROSOFT MIGHT DO TO INFLUENCE WHETHER NETSCAPE
10 BECAME A DIRECT COMPETITOR OF MICROSOFT?
11 A. NO.
12 (EXCERPT.)
13 BY MR. BOIES:
14 Q. GOOD AFTERNOON, MR. GATES. LET ME SHOW
15 YOU GOVERNMENT DEPOSITION EXHIBIT NUMBER 382, AND
16 I WOULD ASK YOU IF THAT IS A DOCUMENT THAT YOU'VE
17 EVER SEEN BEFORE.
18 A. NO.
19 Q. THERE IS A REFERENCE IN THIS DOCUMENT
20 TO FISCAL YEAR 1998 WWSMM ATTENDEES. DO YOU SEE
21 THAT?
22 A. YES.
23 Q. DO YOU KNOW WHAT THAT IS?
24 A. YES.
25 Q. WHAT IS IT?

1 A. WORLDWIDE SALES AND MARKETING MEETING,
2 OTHERWISE KNOWN AS THE WWSMM.
3 Q. DID YOU ATTEND THE FISCAL YEAR 1998
4 WWSMM?
5 A. NO, I DON'T ATTEND THAT. I COME IN AND
6 SPEAK USUALLY AT THE END OF IT, BUT I DON'T
7 ATTEND IT.
8 Q. THE SUBJECT MATTER OF THIS IS THE
9 FISCAL YEAR 1998 PLANNING MEMO PRESERVING THE
10 DESKTOP PARADISE.
11 ARE YOU FAMILIAR WITH THAT?
12 A. I DON'T KNOW WHAT YOU MEAN AM I
13 FAMILIAR WITH THAT. I KNOW FISCAL YEAR 1998.
14 Q. HAVE YOU EVER SEEN THE FISCAL YEAR 1998
15 PLANNING MEMO?
16 A. THE ONE FROM BRAD CHASE? NO.
17 Q. HAVE YOU SEEN A FISCAL YEAR 1998
18 PLANNING MEMO FROM SOMEBODY ELSE?
19 A. THERE'S A LOT OF THESE. EACH GROUP
20 WRITES PLANNING MEMOS. I'M NOT COPIED ON MOST OF
21 THEM.
22 Q. ARE THERE PLANNING MEMOS FROM SOME OF
23 THE GROUPS THAT YOU RECALL RECEIVING FOR FISCAL
24 YEAR 1998?
25 A. I THINK THERE'S A MEMO STEVE WROTE THAT

1 WAS PROBABLY SENT TO ME.

2 Q. AND BY STEVE, YOU'RE REFERRING TO

3 MR. BALLMER?

4 A. YES.

5 Q. IN THE THIRD PARAGRAPH OF THIS MEMO ON

6 THE FIRST PAGE IT SAYS, "OUR COMPETITORS ARE

7 STILL HARD AT WORK TRYING TO OBSOLETE WINDOWS.

8 MORE PEOPLE THAN EVER NOW BELIEVE THEY WILL.

9 NETSCAPE AND SUN ENDEAVOR TO COMMODITIZE THE OS."

10 DO YOU KNOW WHAT IS MEANT BY

11 COMMODITIZE THE OS IN THIS CONTEXT?

12 A. IN THE CONTEXT OF THIS MEMO?

13 Q. YES.

14 A. I'D NEED TO READ THE MEMO.

15 Q. HAVE YOU EVER HEARD ANYBODY SAY THAT

16 NETSCAPE OR SUN THREATENED TO COMMODITIZE THE

17 OPERATING SYSTEM?

18 A. YES.

19 Q. HAVE YOU EVER SAID THAT?

20 A. THOSE WORDS?

21 Q. YES.

22 A. I DON'T THINK SO.

23 Q. WHETHER OTHER PEOPLE HAVE SAID THOSE

24 WORDS, WHAT HAVE YOU UNDERSTOOD THEM TO MEAN?

25 A. I THINK THE FIRST TIME I HEARD THAT WAS

1 FROM MARC ANDREESSEN, AND I NEVER HAD A CHANCE TO
2 ASK HIM WHAT HE MEANT.
3 Q. HAVE YOU HEARD THOSE WORDS FROM PEOPLE
4 WITHIN MICROSOFT?
5 A. SUBSEQUENTLY TO ANDREESSEN USING THOSE
6 WORDS, I KNOW THEY WERE REPEATED INSIDE THE
7 COMPANY QUITE A BIT.
8 (EXCERPT.)
9 Q. WHEN PEOPLE USED THE WORD WITH YOU
10 "COMMODITIZE" AS IN THE STATEMENT THAT NETSCAPE
11 WAS THREATENING OR ENDEAVORING TO COMMODITIZE THE
12 OPERATING SYSTEM, WHAT DID YOU UNDERSTAND
13 COMMODITIZE TO MEAN?
14 A. THAT THEY WERE CREATING A PRODUCT THAT
15 WOULD EITHER REDUCE THE VALUE OR ELIMINATE DEMAND
16 FOR THE WINDOWS OPERATING SYSTEM IF THEY
17 CONTINUED TO IMPROVE IT AND WE DIDN'T KEEP
18 IMPROVING OUR PRODUCT.
19 (EXCERPT.)
20 Q. LET ME SHOW YOU NEXT A DOCUMENT THAT
21 HAS BEEN MARKED AS EXHIBIT 383. THIS PURPORTS TO
22 BE AN E-MAIL FROM MR. MARITZ TO YOU AND OTHERS
23 WITH CHARTS ATTACHED TO IT.
24 (EXCERPT.)
25 Q. DID YOU RECEIVE THIS E-MAIL IN OR ABOUT

1 JANUARY 1997, THIS E-MAIL BEING A MESSAGE FROM
2 PAUL MARITZ TO YOU AND OTHERS DATED JANUARY 5,
3 1997?
4 A. I DON'T REMEMBER RECEIVING IT, BUT I
5 DON'T HAVE ANY REASON TO DOUBT THAT IT WAS SENT.
6 Q. DID YOU SEE THIS E-MAIL AT ANY TIME
7 PRIOR TO THE COMMENCEMENT OF YOUR DEPOSITION LAST
8 WEEK?
9 A. I DON'T REMEMBER SEEING IT.
10 Q. THE SUBJECT OF THIS E MAIL IS "OVERVIEW
11 SLIDES FOR BILLG/NC AND JAVA SESSION WITH 14
12 PLUSES ON MONDAY."
13 DO YOU SEE THAT?
14 A. YES.
15 Q. AND I THINK YOU IDENTIFIED THE 14
16 PLUSES AS THE--SOME GROUP OF EXECUTIVES; IS THAT
17 CORRECT?
18 A. NO.
19 Q. WHAT IS THE 14 PLUSES?
20 A. IT'S PEOPLE ABOVE A CERTAIN LEVEL,
21 PRIMARILY ENGINEERS. ALSO EXECUTIVES, BUT MOSTLY
22 ENGINEERS.
23 Q. IT'S ALL THE PEOPLE IN THE COMPANY
24 ABOVE A CERTAIN LEVEL, THE 14 LEVEL?
25 A. WHICH ARE MOSTLY ENGINEERS AND NOT

1 EXECUTIVES.

2 Q. HOW MANY PEOPLE ARE THERE IN THE 14

3 PLUSES GROUP?

4 A. IT'S A GOOD QUESTION. I THINK AROUND

5 200 TO 300.

6 Q. AND THESE WOULD BE THE PEOPLE IN THE

7 200 OR 300 TOP-RATED JOBS IN THE COMPANY; IS THAT

8 CORRECT?

9 A. IF TOP MEANS THE BEST COMPENSATION,

10 YES.

11 Q. NOW, DO YOU RECALL THE SLIDES THAT ARE

12 ATTACHED TO THIS E-MAIL?

13 A. I REMEMBER WHEN I TESTIFIED EARLIER

14 SEEING THESE AND SAYING THAT I WAS PRETTY SURE

15 THAT I NEVER PRESENTED THESE SLIDES.

16 Q. DO YOU RECALL WHETHER SOMEONE ELSE

17 PRESENTED THESE SLIDES IN JANUARY OF 1997?

18 A. I'M NOT SURE. I REMEMBER LOOKING AT

19 THE SLIDES AND THINKING PROBABLY NOT.

20 Q. LET ME ASK YOU TO LOOK AT THE THIRD

21 PAGE OF THE EXHIBIT, WHICH IS HEADED "KEY

22 PLATFORM CHALLENGE." IT IS PAGE TWO OF THE

23 CHARTS AND PAGE THREE OF DEPOSITION EXHIBIT

24 NUMBER 383, IN WHICH IT SAYS NC AND JAVA ARE

25 PLATFORM CHALLENGES.

1 DO YOU SEE THAT?

2 A. UH-HUH.

3 Q. DID YOU BELIEVE IN JANUARY OF 1997 THAT

4 JAVA WAS A PLATFORM CHALLENGE?

5 A. NOT JAVA THE LANGUAGE, BUT SOME OF THE

6 JAVA RUNTIME API'S THAT WERE BEING PROMOTED TO

7 ISP'S IN THE WAY THAT SUN AND OTHERS WERE TALKING

8 ABOUT ENHANCING THEM WERE PLATFORM CHALLENGES.

9 Q. WHEN REFERENCE IS MADE HERE TO JAVA, DO

10 YOU UNDERSTAND THAT TO REFER TO WHAT YOU REFER TO

11 AS JAVA RUNTIME API'S?

12 A. I'M NOT SURE.

13 Q. ARE YOU AWARE OF PEOPLE ASSERTING THAT

14 JAVA RUNTIME API'S WERE A PLATFORM CHALLENGE IN

15 OR ABOUT JANUARY OF 1997?

16 A. I JUST TOLD YOU THAT WE LOOKED AT WHAT

17 WAS GOING ON IN TERMS OF THE PLANS OF SUN AND

18 OTHER PEOPLE WITH JAVA RUNTIME API'S AS BEING A

19 PLATFORM CHALLENGE.

20 Q. ARE YOU AWARE OF ANY OTHER PLATFORM

21 CHALLENGE REPRESENTED BY JAVA OTHER THAN JAVA

22 RUNTIME API'S?

23 A. NO.

24 Q. SO, WOULD IT BE FAIR TO SAY THAT YOU

25 BELIEVE THAT WHEN REFERENCE IS MADE HERE TO JAVA,

1 THE REFERENCE MEANS JAVA RUNTIME API'S SINCE IT
2 ASSERTS HERE THAT JAVA IS A PLATFORM CHALLENGE?
3 A. IT'S THE BEST WAY TO MAKE SENSE OF A
4 DOCUMENT THAT I HAVEN'T SEEN UNTIL MY DEPOSITION,
5 AS FAR AS I KNOW.
6 (EXCERPT.)
7 Q. HAS MICROSOFT DONE RESEARCH TO
8 DETERMINE WHICH DISTRIBUTION CHANNELS ARE MOST
9 EFFECTIVE IN DELIVERING BROWSERS THAT ARE
10 ACTUALLY USED BY PEOPLE?
11 A. I THINK SOMEBODY DID A SURVEY TO ASK
12 PEOPLE WHERE THEY GET THEIR BROWSER AT SOME
13 POINT.
14 Q. DO YOU HAVE ANY RECOLLECTION WHO DID
15 THAT SURVEY?
16 A. NO.
17 (EXCERPT.)
18 MR. HOUCK: I WOULD LIKE TO MARK AS
19 GOVERNMENT TRIAL EXHIBIT 204 A MEMORANDUM--OR,
20 RATHER, AN E-MAIL--FROM KUMAR MEHTA TO BRAD CHASE
21 AND YUSUF MEHDI, DATED MARCH 27, 1997.
22 BY MR. HOUCK:
23 Q. IS THIS AN EXAMPLE OF THE TYPE OF
24 MEMORANDUM YOU'VE SEEN IN WHICH MICROSOFT HAS
25 ENDEAVORED TO DETERMINE WHICH DISTRIBUTION

1 CHANNELS ARE MOST EFFECTIVE IN DISTRIBUTING WEB
2 BROWSERS?
3 A. NO.
4 Q. WHAT POSITION IN THE COMPANY DID
5 MR. MEHTA HAVE IN MARCH OF 1997?
6 A. I DON'T KNOW.
7 Q. DO YOU KNOW IF ONE OF HIS
8 RESPONSIBILITIES WAS MARKET RESEARCH?
9 A. NO. I MEAN, I'M NOT COPIED ON THIS. I
10 MEAN, JUST LOOKING AT IT--AND I CERTAINLY HAVE NO
11 RECOLLECTION OF SEEING THIS. IT ALSO SEEMS TO
12 CONTRADICT SOME OTHER THINGS THAT I HAVE SEEN.
13 Q. THE E-MAIL READS AS FOLLOWS: BOB
14 FOULON IS GATHERING DATA FOR A JOHN ROBERTS
15 MEETING WITH BILL GATES TOMORROW. APPARENTLY,
16 THEY ARE GOING TO DISCUSS WHETHER IE AND MEMPHIS
17 SHOULD BE BUNDLED TOGETHER.
18 DO YOU RECALL SUCH A MEETING WITH
19 MR. FOULON AND MR. ROBERTS?
20 A. NO.
21 Q. DO YOU RECALL MR. FOULON OR MR. ROBERTS
22 SHARING WITH YOU MARKET RESEARCH DATA WITH
23 RESPECT TO HOW PEOPLE GET THEIR BROWSERS?
24 A. I DON'T KNOW BOB F-O-U.
25 Q. DO YOU UNDERSTAND THAT IS A REFERENCE

1 TO BOB FOULON?

2 A. I DON'T KNOW BOB FOULON. I DON'T KNOW

3 ANYONE WHOSE NAME IS BOB F-O-U ANYTHING.

4 Q. DO YOU KNOW JOHN ROBERTS?

5 A. YES.

6 Q. WHAT POSITION DOES HE HAVE WITH

7 MICROSOFT?

8 A. HE AT THIS TIME--IS THAT WHAT YOU'RE

9 INTERESTED IN?

10 Q. YES.

11 A. AT THIS TIME, I THINK HE WORKS FOR BRAD

12 CHASE.

13 Q. DID YOU HAVE A MEETING THAT YOU RECALL

14 WITH MR. ROBERTS AND/OR MR. CHASE IN OR ABOUT

15 MARCH OF 1997 WHERE YOU TALKED ABOUT THE RESULTS

16 OF MARKET RESEARCH TO DETERMINE HOW PEOPLE

17 OBTAINED INTERNET EXPLORER?

18 A. I DON'T REMEMBER.

19 Q. THE E-MAIL I QUOTED ATTACHES ANOTHER

20 E-MAIL DATED MARCH 27, 1997, WHICH SAYS IN THE

21 FIRST TWO PARAGRAPHS, WHICH I'LL READ, "BOB, HERE

22 IS SOME INFORMATION ON HOW PEOPLE GET AND USE IE

23 THAT MIGHT HELP YOU GUYS. MY FEELING, BASED ON

24 ALL THE IE RESEARCH WE HAVE DONE, IS THAT IT IS A

25 MISTAKE TO RELEASE MEMPHIS WITHOUT BUNDLING IE

1 WITH IT. IE USERS ARE MORE LIKELY THAN OTHER
2 BROWSER USERS TO GET IT WITH THEIR COMPUTERS.
3 OVERALL, 20 PERCENT OF PEOPLE WHO USE IE AT HOME
4 OBTAINED IT WITH THEIR COMPUTER, AND 24 PERCENT
5 OF THOSE USING IE AT WORK GOT IT WITH THEIR
6 COMPUTER. EFFECTIVELY, WE WOULD BE TAKING AWAY
7 THE DISTRIBUTION CHANNEL OF ALMOST A QUARTER OF
8 ALL IE USERS."
9 DO YOU HAVE ANY UNDERSTANDING AS TO THE
10 ACCURACY OF THE NUMBERS HE CITES HERE WITH
11 RESPECT TO THE NUMBER OF PEOPLE USING IE WHO
12 OBTAINED IT WITH THEIR COMPUTER?
13 A. I HAVE NO IDEA WHAT WE'RE TALKING ABOUT
14 IN TERMS OF WHAT KINDS OF USERS HE SURVEYED OR
15 LOOKED AT. SO NO, I HAVE NO OPINION ON IT
16 WHATSOEVER. I MEAN WHO KNOWS.
17 Q. DO YOU HAVE ANY REASON TO BELIEVE THAT
18 THE INFORMATION HE REPORTS HERE IS INACCURATE?
19 A. I DON'T HAVE ENOUGH OF A CONTEXT TO
20 EVEN STATE AN OPINION. IT DOESN'T EVEN SAY WHAT
21 KIND OF USERS OR ANYTHING.
22 (EXCERPT.)
23 BY MR. BOIES:
24 Q. MR. GATES, LET ME SHOW YOU A DOCUMENT
25 MARKED AS GOVERNMENT TRIAL EXHIBIT 55. THE FIRST

1 MESSAGE HERE PURPORTS TO BE A MESSAGE TO YOU AND
2 MR. MARITZ AND MR. ALLCHIN ON FEBRUARY 24, 1997,
3 AT 11:07 P.M.
4 DO YOU SEE THAT?
5 A. YES.
6 Q. AND IT TALKS ABOUT A FOCUS GROUP
7 REPORT, AND IT SAYS THAT MOST OF THE PEOPLE IN
8 THE FOCUS GROUP WERE NAVIGATOR USERS. AND THEN
9 IT GOES ON TO SAY ABOUT THOSE NAVIGATOR USERS,
10 THEY SAID THEY WOULD NOT SWITCH, WOULD NOT WANT
11 TO DOWNLOAD IE 4 TO REPLACE THEIR NAVIGATOR
12 BROWSER. HOWEVER, ONCE EVERYTHING IS IN THE OS
13 AND RIGHT THERE, INTEGRATED INTO THE OS, IN THEIR
14 FACE, SO TO SPEAK, THEN THEY SAID THEY WOULD USE
15 IT BECAUSE THERE WOULD BE NO MORE NEED TO USE
16 SOMETHING SEPARATE.
17 DO YOU SEE THAT?
18 A. YES.
19 Q. DO YOU RECALL BEING TOLD THAT IN OR
20 ABOUT FEBRUARY 1997?
21 A. NO.
22 Q. LET ME ASK YOU TO TURN TO THE FIFTH
23 PAGE OF THIS EXHIBIT. AND THIS IS AN ORIGINAL
24 MESSAGE DATED FEBRUARY 24TH, 1997, AT 10:38 A.M.
25 ALSO RELAYED INTO THE MEMPHIS FOCUS GROUP'S

1 REPORT.

2 A. IT'S AN ENCLOSURE TO THE MESSAGE ABOVE.

3 Q. IT'S AN ENCLOSURE TO THE MESSAGE ABOVE.

4 THAT IS WHAT YOU HAVE IS FIRST A MESSAGE DATED

5 FEBRUARY 24, 1997, AT 11:07 P.M. THAT WENT TO YOU

6 AND MR. MARITZ AND MR. ALLCHIN, AND THEN YOU HAVE

7 ANOTHER MESSAGE THAT WAS AN ENCLOSURE THAT WENT

8 TO YOU AND OTHERS; CORRECT?

9 A. YES.

10 Q. SO YOU WOULD HAVE RECEIVED THE SECOND

11 MESSAGE WHEN YOU RECEIVED THE MESSAGE THAT WAS

12 ADDRESSED TO YOU; CORRECT?

13 A. IF I DID, WHICH I TOLD YOU I DON'T

14 REMEMBER, BUT I HAVE NO REASON TO DOUBT THAT I

15 DID.

16 Q. RIGHT. THE NEXT TO LAST PARAGRAPH ON

17 THE FIFTH PAGE OF THE EXHIBIT, THE ONE THAT ENDS

18 WITH THE MICROSOFT DOCUMENT PRODUCTION STAMP

19 8179--DO YOU HAVE THAT PAGE?

20 A. YES.

21 Q. THE NEXT TO LAST PARAGRAPH OF THIS

22 MATERIAL THAT WAS SENT TO YOU ON FEBRUARY 24TH,

23 '97, IF, IN FACT, IT WAS, ON PAGE FIVE SAYS, "IT

24 SEEMS CLEAR THAT IT WILL BE VERY HARD TO INCREASE

25 BROWSER MARKET SHARE ON THE MERITS OF IE 4 ALONE.

1 IT WILL BE MORE IMPORTANT TO LEVERAGE THE OS
2 ASSET TO MAKE PEOPLE USE IE INSTEAD OF
3 NAVIGATOR."
4 DO YOU SEE THAT?
5 A. YES.
6 (EXCERPT.)
7 BY MR. BOIES:
8 Q. LET ME TRY TO BREAK THE QUESTION DOWN.
9 FIRST, DO YOU RECALL BEING TOLD IN ANY
10 CONTEXT IN OR ABOUT FEBRUARY OF 1997, IT SEEMS
11 CLEAR THAT IT WILL BE VERY HARD TO INCREASE
12 BROWSER MARKET SHARE ON THE MERITS OF IE 4 ALONE.
13 IT WILL BE MORE IMPORTANT TO LEVERAGE THE OS
14 ASSET TO MAKE PEOPLE USE IE INSTEAD OF NAVIGATOR?
15 A. THOSE WORDS?
16 Q. LET ME BEGIN WITH THAT.
17 DO YOU RECALL BEING--
18 A. NO.
19 Q. --COMMUNICATED THOSE WORDS IN OR ABOUT
20 FEBRUARY OF 1997?
21 A. I SAID NO.
22 Q. DO YOU RECALL BEING COMMUNICATED THOSE
23 WORDS AT ANY TIME, WHETHER IN OR ABOUT FEBRUARY
24 OF 1997 OR ANY OTHER TIME?
25 A. ISN'T THAT WHAT YOU JUST ANSWERED?

1 Q. PERHAPS YOU DID. I THOUGHT THE FIRST
2 ANSWER RELATED TO FEBRUARY 1997, BUT IF YOU'RE
3 TELLING ME THAT YOU DON'T RECALL EVER BEING TOLD
4 THAT, I JUST WANT THAT CLARIFIED FOR THE RECORD.
5 A. THOSE WORDS, NO.
6 (EXCERPT.)
7 BY MR. BOIES:
8 Q. THIS DOCUMENT THAT PURPORTS TO HAVE
9 GONE TO YOU, SIR, SAYS, "IT SEEMS CLEAR THAT IT
10 WILL BE VERY HARD TO INCREASE BROWSER MARKET
11 SHARE ON THE MERITS OF IE 4 ALONE. IT WILL BE
12 MORE IMPORTANT TO LEVERAGE THE OS ASSET TO MAKE
13 PEOPLE USE IE INSTEAD OF NAVIGATOR."
14 DO YOU RECALL EVER BEING TOLD OR EVER
15 RECEIVING A COMMUNICATION THAT SAID, IN
16 SUBSTANCE, WHAT IS REFLECTED THERE?
17 A. NO.
18
19
20
21
22
23
24
25