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2 IN THE UNITED STATES DISTRICT COURT

3 FOR THE DISTRICT OF COLUMBIA

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

60-7371-0014
DEPARTMENT OF JUSTICE
SEP 10 1998
ANTITRUST DIVISION
SAN FRANCISCO OFFICE

16

17 July 10, 1998
9:58 a.m.

18 HIGHLY CONFIDENTIAL

19 Videotape deposition of RON RASMUSSEN, taken by
20 Defendant, pursuant to Subpoena, at the offices of
21 McCutchen, Doyle, Brown & Enersen, 3150 Porter Drive,
22 Palo Alto, California, before Leigh Regan, a Certified
23 Shorthand Reporter within and for the State of
24 California.

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8 Q. Did you talk at all with any representatives
9 of the Department of Justice?
10 A. Yes, I did.
11 Q. With whom did you speak? Mr. Holtzman?
12 A. Mr. Holtzman. Thank you.
13 Q. Did you meet with Mr. Holtzman?
14 A. Yes, I did.
15 Q. When did you meet with Mr. Holtzman?
16 A. Yesterday afternoon, Thursday, July whatever
17 it was.
18 Q. I think it's the 9th.
19 A. Thank you.
20 We also had a -- two phone conversations
21 prior to that.
22 Q. What was the subject of the two prior phone
23 conversations?
24 A. The subject? I guess I don't understand it.
25 Q. If you could just tell me what you recall was

said during those conversations.

A. There was a number of questions about Internet technology and our operating systems, and Mr. Holtzman trying to understand how the technology was working in our products.

Q. And the meeting yesterday, how long did that last, approximately?

A. An hour, an hour and a quarter.

Q. Did Mr. Holtzman ask you questions during that meeting?

A. Yes, he did.

Q. Did Mr. Holtzman review with you any documents?

A. Yes, he did.

Q. What generally did Mr. Holtzman ask you yesterday?

A. Let's see. I think the general topic was familiarity with certain documents, whether I had seen them before or not.

Q. Were these documents that SCO had produced pursuant to the subpoena?

A. Yes, they were.

Q. I think you said that SCO's principal products are operating system products.

A. They are.

Q. What are the names of SCO's current operating system products?

A. The current operating system products that are still available on the price list?

Q. Yes, sir.

A. They would be SCO UnixWare 7, SCO UnixWare 2.1.3. It's possible -- I don't know for sure whether SCO UnixWare 2.1.2 is still on the price list. The other product line is SCO OpenServer Release 5, and it also has a number of versions, 5.0.4 and 5.0.2.

Q. Does SCO license any desktop operating system products?

A. Do we sell desktop operating system products?

Q. Yes.

A. Yes, we do.

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

A. Okay..

Q. Feel free, if you'd like, to refer to Exhibits 2 through 4, which list the products.

A. Sure. Our desktop products are SCO UnixWare 2.1 Personal Edition, SCO OpenServer Desktop System, and I believe that's it.

Q. Which operating system is more expensive, a server system or a desktop operating system, to the extent you can generalize?

A. For a general-purpose desktop, a desktop will be cheaper than a general-purpose server.

Q. I know it's difficult to generalize, but for SCO's products, are the desktop operating systems about half the price of the server systems?

A. Not necessarily. It depends which ones.

Q. It's kind of impossible to --

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

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

What type of computers do SCO's desktop operating systems run on?

A. Intel microprocessors.

Q. So it would be an accurate statement to say that SCO's desktop operating systems run on Intel-compatible computers?

A. Yes.

Q. Do SCO's operating system products compete

with any other operating system products that run on Intel PCs?

A. Yes, they do.

Q. Which other operating systems do SCO's desktop operating systems compete with?

A. On the desktop, it would be Windows 95, Windows 3.1, Windows NT workstation. That would be the bulk of it, and then the -- the extremely minor competition from the Solaris operating system from Sun on the Intel platform.

Q. What is SCO Merge 4.0?

A. SCO Merge 4.0 is a system service which allows the SCO Unix operating system to run Windows 95 on top of Unix.

Q. Allows the user to run Windows 95

applications?

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

Q. Okay. If you look also, please, on the page 2 of this document, under the heading Product Notes, the third paragraph, the first sentence reads, "The recommended Web browser is the Netscape Navigator Internet browser included with SCO OpenServer."

And my question is: Is Netscape Navigator included with SCO OpenServer?

MR. KUSINITZ: Objection.

A. Netscape Navigator is bundled with SCO OpenServer.

Q. Indeed, the statement in the Web page uses "included."

You would use the word "bundled" rather than "included"?

A. Yes.

Q. Do SCO's operating system products come with any Internet-related technologies?

MR. HOLTZMAN: Objection. Vague and ambiguous.

Q. I'm trying to make my question as broad as possible by sort of saying Internet-related technologies.

A. Right.

Q. Can you answer that question?

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

Q. Okay.

A. Maybe you could rephrase it and be a little more specific.

Q. Sure. Let's start with the desktop operating system products.

Do SCO's desktop operating system products include any technology designed to provide Internet connectivity?

A. Yes, quite a bit.

Q. Quite a bit.

Can you generally describe what that technology is? I understand it's quite a bit.

A. It is quite a bit.

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

A. Right. For us, Internet technology starts at the lowest level of the network, so the fact that our desktop operating systems allow network connectivity, that's the start. So it includes the networking protocol known as TCP/IP, so it includes that technology which is the core networking technology for machines talking to each other on the Internet or the intranet.

On top of that, the desktop operating systems provide all sorts of other necessary networking functions of named services so you can find another machine, some level of security so that other people can't get into your machine and you can get into others, and included is the ability to manage the operating system through -- through the Internet, through technologies like Telnet, which allows you to log in to the system to administer it remotely.

Q. Anything else?

A. It also includes in the most recent versions Netscape Navigator on the desktop systems. I believe it's still Navigator 3, not Communicator.

Q. Do SCO's server systems include the same Internet technologies?

A. The most recent releases of all of those -- of all the server products we've previously discussed include all of the same desktop technology as well as a Web server.

The other area that both the desktop and server have Internet technology, what's known as Internet technology now, is in the ability to read on-line documentation where we utilize HTML and the Web browser for the administrator to read the documentation.

Q. This is on the server systems?

A. Servers and desktops.

Q. And desktops. Thank you.

Why does SCO include these technologies in its desktop operating systems?

A. We include those in our desktop operating systems for -- on the desktops to be able to browse the Web and because our -- because of competitive pressures we needed to add that feature to our desktop systems.

Q. What were those competitive pressures that required you to add that technology to the operating system?

A. The inclusion of Internet browser technologies and operating systems such as NT where we compete on the desktop and with Windows 95. I guess as

of a couple of weeks ago, Windows 98.

Q. When did SCO begin including these technologies in its operating system products? I'll start with desktop operating system products.

A. The desktop operating system products, we first started in -- this will be a long, long history here -- we first started in mid-1994, using the Mosaic Web browser, configured specifically for reading local documentation on the local machine, so it was restricted to reading documentation. It could not be used as a generic Web browser.

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

A. That would have been Open Desktop at that time.

Q. How does the history go on from there?

A. We then -- let's see. We then went into a product known as Global Access, which we then used NCSA Mosaic to actually be configured so it could be both the documentation reader and a Web browser for a desktop user.

Q. When did that Global Access project begin, approximately?

A. I couldn't say for sure.

Q. At that point, you're using the Mosaic browsing technology both for a documentation reader and for accessing the Web?

A. Yes.

Q. Are there further steps in the history?

A. Oh, yes.

Q. Okay.

A. We then -- we then -- let's see. Was the question about desktops?

Q. Yes, sir.

A. In 1997 -- Global Access had a short life. We obsoleted it. But in 1997, we included Netscape Navigator as a bundle with OpenServer 5.0.4, which I believe was released to market in May of 1997, so that the OpenServer Desktop Edition had bundled with it the Netscape Navigator product as well as some new remote-access Internet technology.

Q. Is there another step going from 1997 to the present?

A. That is still the case today.

Q. When did SCO begin including support for TCP/IP protocol in its desktop operating system products?

A. With the advent of Open Desktop, which would

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

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

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

Q. My question was: Does SCO bundle Netscape Navigator with its SCO UnixWare Personal Edition operating system?

A. I guess it comes down to the definition of

"bundle."

Q. I used that word intentionally because I think you had used it earlier.

A. Right. So maybe I can clarify what I mean by "bundle" so that maybe throughout the rest of the day we will all have the same understanding of what I'm saying, anyway.

Q. Please do.

A. When SCO says we bundle a feature, it means it's a feature which is not part of the core base operating system functionality. It means that it's something that the user can choose to install or remove, and the operating system, whose primary function is to serve applications, will still function properly.

So when I say "bundle," it means we have added this feature, but the operating system doesn't necessarily need it to do its job.

Q. Does that feature come with the operating system when someone buys it?

A. For UnixWare 2.1 Personal Edition, the Netscape Navigator is bundled. In the single price, you get it.

Q. There is not an additional fee for the Netscape Navigator?

A. For the Personal Edition, no.

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

A. Yes, it is.

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

left-hand column, under the heading Features, the third bullet reads, "Netscape Navigator Web browser, graphical news reader, and e-mail client."

Does SCO's OpenServer desktop system come with Netscape Navigator Web browser?

A. The 5.0.4 system does.

Q. It's listed here as a feature of that operating system?

A. It's bundled with that operating system.

Q. Does it come with -- is it part of the single price for the operating system?

A. Yes, it is.

Q. There's no separate charge for Netscape Navigator if someone --

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

Q. Going back to the statement again that SCO hasn't been effective as a desktop -- a supplier of desktop operating systems, can you explain a little bit more what you mean by that; in other words, why hasn't

SCO been effective?

A. The applications required to make the desktop successful, the desktop operating system successful were not available. Primarily people are using personal productivity applications on desktops.

Q. Do you have any understanding as to why that is; in other words, why third parties have not created

those applications for SCO's operating systems?

A. Because the operating system today and for the last few years doesn't have any momentum as a desktop operating system. There is not enough of a marketplace for the application vendors and the application -- nobody buys an operating system for an operating system. They buy the application.

Q. What do you mean by that last statement?

A. The operating system's whole purpose in life is to run applications. So your operating system choice is based on the availability of applications.

Q. How does the success or failure or penetration of a particular operating system affect whether a third party is likely to write an application for that operating system?

A. All the application vendors look at market share and the cost/benefit analysis of providing that application on any operating system, so if it costs them more than they believe they're going to get in revenue or if they believe their revenue is just a trade from one operating system to another, there is no financial benefit for producing that application on other operating systems.

Q. Do you have any understanding as to why people at SCO use Windows 95, as opposed to one of SCO's desktop operating systems?

A. Because of the availability of personal productivity applications.

Q. What kind of applications are you talking about here?

A. Primarily Microsoft Office suite, either Office 97 or Office 95.

Q. The personnel we're talking about here at SCO who use Windows 95, what categories do they fall in? What type of jobs are we talking about?

A. Most of the managers of just about any department. The salespeople with their laptops.

The only people who use our own system as desktops are the engineers who have to develop the operating system on top of the operating system itself, as a general rule. Our field engineers obviously are technical and need to run Unix as well to be able to install it and explain it to customers.

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

Q. What is the purpose of including or bundling a browser with UnixWare 7?

A. The primary purpose of that browser, it's a license for a single user, even though the server itself is a multi-user machine, for the administrator to use to read the on-line documentation and to administer the Web server which requires a browser to administer it.

Q. Just to make sure I understand, so you've talked about UnixWare 7 operating system is a multi-user operating system?

A. Yes.

Q. And what does that mean?

A. That means it can have between one and, you know, 10,000 users sharing the machine.

Q. So if --

A. Consecutively, I should say.

Q. So if somebody --

A. Concurrently.

Q. If somebody licenses UnixWare 7 for more than one user, how many of those users can use the browser that they get with UnixWare 7?

A. Only one of those users can use the browser that's included with the operating system.

Q. And for the other users of UnixWare 7, how would they, if they want a browser, how would they get it?

A. If they want it from us, they would purchase a browser as an optional product.

Q. Did that decision to bundle a browser with UnixWare 7 have anything to do with any perception of demand for the users of UnixWare 7 to go out and browse and access the Web?

A. No, it was a single-user license for the administrator to administrate the Web server and read the on-line documentation.

Q. Did that decision to bundle a browser with UnixWare 7 have anything to do with any perception of demand for the users of UnixWare 7 to go out and browse and access the Web?

A. No, it was a single-user license for the administrator to administrate the Web server and read the on-line documentation.

Q. Let me stop you there for a second.

Can you describe maybe generally what the person who is installing the operating system sees?

A. They see a -- a screen with a number of options that can be selected and deselected for installation, and one of those options is some of the Internet technologies and the granularity down to the browser or the Web server, depending on the operating system.

Q. This is true as to UnixWare 2.1.3?

A. Yes, it is.

Q. So there's something like a line with a box that actually applies to the Web browser, in this case, Navigator?

A. Yes.

Q. And so what, if anything, does the user have to do to not get Navigator with UnixWare 2.1.3 in this instance?

A. In this instance, I forget the exact key stroke. It's just, you know, tap or space bar to select and deselect.

Q. Are there other methods also in UnixWare 2.1.3 to uninstall or remove Netscape Navigator?

A. Yes. If they chose to install Navigator as

part of the operating system installation, they can go back in with a utility to do software removal and they can, again, they get a point-and-pick list and they can select it for removal.

Q. Doing either of these things, either not installing at all or removing it once it's installed, and the "it" here being Netscape Navigator, does that have any impact on any other functioning of the operating system?

A. No. The operating system is still capable of performing its primary task of running applications.

Q. Turning to UnixWare 7, is Netscape Navigator uninstallable or removable from that?

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

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

A. It's selectable and deselectable at initial system load so you can choose not to even put it onto the system originally when you installed UnixWare 7, and if you chose to put it on UnixWare 7, you could also, after it's been installed, remove it from a point-and-pick list.

Q. Now, turning to OpenServer Release 5, is the browser that's included or bundled with that product

removable?

A. Yes. It's removable both at initial system load time so it never gets onto the system, and it's also removable afterwards if you chose during initial system load to install it.

Q. Now, asking more generally as to the three operating system product lines as a whole, why does SCO provide the capabilities you've described, namely, to either not install the browser or to have it removed?

A. Not everybody wants the functionality in the operating system, so we provide them that option to remove it or install it at a later time.

Q. You said not everyone wants the functionality in the operating system.

What functionality are you referring to there?

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

Q. What is the basis for what you just said, that not everybody wants the ability to access the Web, that functionality in the operating system?

A. The basis for that is that people are buying the operating systems to run applications, and if their application does not require a Web browser, then perhaps

they don't want the Web browser there. So if you're running an accounting application and you don't need the Web browser, perhaps you don't want to install it to save space on the disk, or in some instances we've had resellers tell us they consider the Web browser an unproductivity tool as people surf the Web rather than doing their work.

Q. This is something resellers of SCO products have actually given feedback to SCO?

A. Absolutely.

Q. Are there specific resellers that you can recall doing that?

A. No.

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

the core of any SCO operating system product?

A. No.

Q. What do you mean when you use the term "core"?

A. Again, the basic pieces of the operating system necessary to run an application.

Our view is that the browser is an application.

Q. You testified a little bit earlier about the ability to view on-line documentation using a browser.

A. Yes.

Q. Okay. And that's something that's provided -- is that provided in all SCO operating system products?

A. Yes, except for maybe UnixWare 2.1. I don't remember. It had its own on-line help system prior to our acquisition.

Q. Maybe you could explain a little bit how it works, how you have -- what the on-line documentation you're talking about is, and how the browser is used to view that.

A. The on-line documentation is the documentation for the administration and use of the operating system, so when we say it's on line, what we mean is it's in HTML format, and that if a browser from anywhere in the network or locally connects to the machine at the right -- what's known as a port, then it will serve up the documentation into that browser.

Q. You said a browser can do this. Does it have to be the browser that's distributed with the SCO operating system?

A. No, it doesn't.

Q. Have OEMs or resellers ever expressed a desire to you or anybody else at SCO that you're aware of to have multiple browsers they can choose from?

A. Yes.

MR. PEPPERMAN: Objection. Hearsay.

A. Yes, they have.

Q. Do you have any understanding as to why there's that desire?

MR. PEPPERMAN: Same objection.

A. The users want to have choice in the browsers.

Q. Are you aware of their -- anyone ever expressing a desire to have Microsoft's Internet Explorer be ported to any SCO operating system?

MR. PEPPERMAN: Objection. Hearsay.

A. Yes, resellers have asked us for Internet Explorer on SCO right after Microsoft made their announcement about porting Internet Explorer to Unix systems.

Q. What, if anything, did you do in response to these expressions of interest?

A. I called the business -- business manager, product manager, who was assigned to SCO, and asked him if they were going to do SCO. He was in the middle of a job transition to Chicago, and he pointed me at the new guy, and I had a discussion with that individual at Microsoft, who said they were not going to port Internet Explorer to SCO.

Q. Okay. What did you do with respect to the second telephone conversation?

A. I asked the individual if they planned to port Internet Explorer to SCO and explained to them, in case they didn't know, the number of units and SCO's position in the Unix industry, and the answer was no, we don't plan to port it to SCO because SCO is a server operating system, not a desktop operating system, according to market share data.

browser has the HTML functionality as a browser.

Q. Is having competition among browser products an important thing to SCO?

A. It's important to SCO that there's a number of choices and innovation in browser products because that will be the display of these applications in the network computing model.

Q. Let me withdraw that question.

Does SCO, organizationally, have concerns about one browser product becoming dominant?

MR. PEPPERMAN: Objection. Lack of foundation.

A. We have concerns about a single browser, regardless of whose browser it is, becoming the only viable pervasive browser.

Q. Why is that a concern?

A. Because in the network computing model that is part of our core strategy, the browser and the Java that it can run will be the user interface for the application on the server. And so if there is one

person or one company who controlled the browser and its look and feel and how it presented applications, it could severely enhance or detract from the application functionality of the -- on the server.

Q. In the market today -- what browser products

are out there that you see in the market today?

A. The browsers that we see in the market, and supported by industry research, are Internet Explorer, Netscape Navigator, and to a far lesser degree today, Mosaic and Spry and Lynx, and there's probably loads of others I've never heard of.

Q. So is it a fair characterization that the Internet Explorer is, although ported to different operating systems, is not ported to as many operating systems as Navigator?

A. That is my understanding.

Q. Does that affect in any way your assessment as to whether there are concerns about Internet Explorer versus Navigator becoming dominant among browsers?

MR. PEPPERMAN: Objection to the form of the question.

A. The concern for SCO is that the primary client device is the Windows operating system, where the Internet Explorer does exist.

Q. Is that something that makes you concerned about Internet Explorer becoming dominant?

A. Yes, it is.

Q. Just how so?

A. If the primary client device is the Windows operating system, then the primary interface to these network computing applications will be controlled through Internet Explorer.

Q. Mr. Holtzman asked you these series of questions about the removability of the Netscape Navigator browser, the option I think you said to not install it originally or to uninstall it when -- after it had already been installed.

When you were answering those questions,

those questions were -- your answers were limited to the circumstances with the SCO UnixWare and SCO OpenServer operating systems?

A. Right.

Q. You weren't talking about the relationship, for example, between Internet Explorer and the Microsoft Windows operating systems?

A. I was not.