

EXHIBIT 63

COPY OF TRANSCRIPT

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

THE SCO GROUP, INC., a Delaware corporation,)	Deposition of:
Plaintiff,)	<u>DARL McBRIDE</u>
vs.)	
NOVELL, INC., a Delaware corporation,)	Case No. 2:04CV00139
Defendants.)	Judge Dale A. Kimball

MARCH 27, 2007 * 8:55 a.m.

Location: Anderson & Karrenberg
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1 price was what?

2 A. We were in the low hundred million; \$200,
3 \$250 million range was basically what we were
4 targeting. In the end, they were down at \$30. We
5 eventually got our arms around the idea that there
6 was a way of doing a deal with them that was in
7 closer to the range where they were \$30, \$40 million,
8 but it would not be as wide of a scope as what all of
9 us had talked about initially. And that's when we
10 started to make some progress with that, and then
11 eventually that one fell apart.

12 Q. What's the timing on the negotiations with
13 HP that you're referring to?

14 A. It was in the summer of 2003. I would
15 bracket it from let's say August through September,
16 in that rough 60 day time frame.

17 Q. Were drafts exchanged?

18 A. There were -- discussions went back and
19 forth. I know there were things that were on paper.
20 I can't remember if it was coming from them to us or
21 if those were things that we had. The short answer
22 is I don't know.

23 Q. Were there e-mails that documented
24 potential financial amounts and other terms?

25 A. I was involved in direct discussions with

1 some of the principals over there, but I wasn't the
2 lead negotiator. So if there were e-mails, it
3 probably wouldn't have come to me directly.

4 Q. Would they have gone to Mr. Sontag?

5 A. Most likely.

6 Q. Who were you in direct contact with at HP?

7 A. We had -- the lead negotiator on their
8 side was Joe Beyers. Other people involved there.
9 He was telling us he was in direct communication with
10 Carly, who was the CEO. And for a period of time
11 there Rick Becker was involved, but more at an
12 adjunct level. He wasn't as direct in those
13 discussions.

14 Q. Was the *SCOsourc*e arrangement with HP in
15 the version in which you were closer on price, was
16 that an immunity for HP customers running Linux on HP
17 boxes?

18 MR. NORMAND: Objection to form.

19 A. It had to do with HP customers being able
20 to run Linux under our *SCOsourc*e program.

21 Q. And in what way was it narrower in scope
22 than the version you were talking about at the
23 several hundred million, low hundred millions of
24 dollars range?

25 A. I believe the idea was -- I think the --

1 we kicked around a few things. I think one idea was
2 they were concerned about their customers in total,
3 and then they had customers that were running on HP
4 hardware and those that weren't. So some might have
5 HP hardware, and then they have this broader issue.
6 So they didn't want to indemnify for HP hardware and
7 then wake up one day and see that they still have
8 lawsuit issues on the other side. I think that was
9 one differentiation. I think there were a couple
10 other things we talked about. I don't remember
11 offhand right now the details of that.

12 Q. And how do you know -- by what vehicle of
13 communication do you know that the negotiations
14 ultimately broke down because of their view that the
15 copyright issue made the transaction less valuable
16 than originally contemplated?

17 MR. NORMAND: Objection to form.

18 A. The discussions were going through August,
19 they went into September, and at some point along the
20 line there, Joe Beyers came back and essentially
21 communicated as much.

22 Q. And what do you recall of the form of the
23 communication?

24 A. A phone call.

25 Q. So to the best of your knowledge, there's

1 no -- well, is there any writing, contemporaneous
2 writing by anyone that records that HP thought --
3 strike that. Let me start over again.

4 Was there an e-mail that said it's a
5 copyright issue that's causing this to break down?

6 A. I don't know if there was or not.

7 Q. And did you take contemporaneous notes of
8 the call?

9 A. No.

10 Q. Anybody take notes?

11 A. I don't know if Chris did or not.

12 Q. So the best information you have about how
13 you know or believe that copyright was the reason the
14 negotiations broke down is this phone call from Mr.
15 Beyers?

16 MR. NORMAND: Objection to form.

17 A. The call from Joe, in the end, was the key
18 thing that indicated to us that that was the issue.
19 When I say "copyright problem is the issue," he
20 didn't, as I recall, call up and say, "Novell owns
21 the copyright so we are not doing this deal." It was
22 not that direct. Embedded in his discussion of them
23 going down this other path of doing indemnification
24 and not paying this amount that we were looking for
25 was along the way a discussion that, "Novell is

1 making these claims. You guys don't have that
2 resolved yet so it's hard for us to pay more than
3 that." I remember him clearly saying that. And this
4 being resolved was the copyright issue.

5 Q. Did he explain any other reasons why HP
6 was not interested in proceeding further with
7 negotiations?

8 A. I don't recall.

9 Q. In that communication, though, you heard
10 him say, "We are going to go down an indemnification
11 path"?

12 A. I don't think he said the exact details of
13 what path they were going down. It came out shortly
14 thereafter, and we became aware of it. So I wouldn't
15 -- I don't remember for sure whether he said that in
16 that call or whether that was just something that was
17 an outcropping of the fact that they did the program.

18 Q. And the way you were linking them up was
19 that HP had decided to address customer uncertainty
20 around Linux by indemnifying rather than buying a
21 SCO *source* license?

22 A. Right.

23 Q. Going back to the chronology a little bit
24 -- sorry. Before I leave this topic, are there any
25 other or do you have any other testimony about

1 particular instances where you believe the assertion
2 of copyright affected your ability to reach *SCSource*
3 licenses?

4 A. Yes. Also -- well, I guess you didn't ask
5 that. I won't back up. I was going to say something
6 else, but let's go forward to your question.

7 The other instances came from our team
8 that was out in the field doing *SCSource* licensing
9 discussions, primarily led by Larry Gasparro. And
10 there were a number of customers that came back and
11 cited as problematic the Novell copyright issue.

12 Q. Did you ever create a mental list of what
13 those were, and can you recount that for us?

14 A. I've got some that I can remember from the
15 discussions we had. There were a number of customers
16 that said -- that we moved down the path to license
17 with, that we didn't license. Some cited the Novell
18 issue as the reason, some did not. It would be hard
19 for me to sit here today and attach the name to them.

20 But what I can tell you is that
21 predominant around the issues of why people weren't
22 doing it was this ownership issue. Google was a good
23 example. We were in multiple levels of discussion
24 with them, and ultimately what it came down to was,
25 "Until you get some court rulings on the ownership

1 side, and on the infringement side, we can't move
2 forward with you." They did offer us some money but
3 it was a big spread away from what we were asking
4 for.

5 Q. What were you asking for from Google?

6 A. We took our \$699 list price for *SCOs* source
7 and discounted it down. It was still in -- I don't
8 remember the exact amount. It was in the hundreds of
9 dollars. And their ask was in the tens of dollars.
10 The bid, I should say. There was too far of a gap.
11 There was a decimal problem.

12 Q. An order of magnitude difference?

13 A. Yes.

14 Q. And the total revenues that were at stake
15 for SCO if the Google deal had come in at the
16 discounted price you were looking at?

17 A. They never did give us an exact count of
18 their servers, but my understanding is they are in
19 the hundreds of thousands of servers magnitude. I've
20 heard as high as 500,000. I've heard as low as
21 250,000. So if you multiplied -- CA is an example.
22 I think we did theirs for \$500 per server. If you
23 multiplied that against the 250 on the low end and
24 500 on the high end, you're talking about hundreds of
25 millions of dollars.

1 Q. And in Google's case -- strike that.

2 Any other instances in which ownership
3 affected an ongoing licensing discussion?

4 A. There were a number of investment banks
5 that we had discussions with. One of them for sure
6 had brought up the Novell ownership issue. I can't
7 remember if it was Morgan Stanley or Lehman Brothers
8 or Merrill Lynch, but one of those three, I'm pretty
9 certain.

10 There was the Pentagon. The Department of
11 Defense we had sit down, face-to-face discussions
12 with them and that was an issue that they brought up.

13 Windham Hotels, I remember that being an
14 issue with them. Regal Entertainment, the big movie
15 theater chain; if I recall correctly that was an
16 issue for them, as well. I think there was a place
17 called Just U.S.A. Sports that had called out this
18 issue. And those are the ones that kind of come to
19 my mind as we sit here.

20 Q. As you were doing SCOSource, did someone
21 on the SCO staff create a mechanism to keep track of
22 the status of the negotiations and what issues were
23 arising therein?

24 A. That would have been Mr. Gasparro.

25 Q. And did he send that report to you

1 periodically?

2 A. Yes.

3 Q. Did it have -- was it annotated with
4 information about the issues you've been discussing
5 over the last few minutes?

6 A. As I recall, he had made comments on some
7 of those. Some of them were listed out in detail.
8 Others were not. But I do believe there were some
9 comments in his little program that he was running
10 and he was keeping updated.

11 Q. Do you remember the title of that report?

12 A. I don't remember the title.

13 Q. Do you think it's been produced in the
14 litigation?

15 A. I don't know.

16 Q. Is Gasparro still at SCO?

17 A. No. He took another job with a company
18 back east.

19 Q. Who would have inherited his SCOSource
20 files?

21 A. I'm not sure. If they haven't been
22 produced, that's probably something that we could go
23 look for. I don't know.

24 Q. And I don't know that they haven't.

25 A. Okay. I don't know where his things would

1 have ended up.

2 Q. Were they e-mailed around, the reports
3 that we were discussing?

4 A. I'm not sure. I remember reading a
5 report, I don't remember how I got access to it.

6 Q. This was a Gasparro report -- well, and is
7 Chris Sontag still in charge of *SCOsOURCE* at this
8 point?

9 A. I'm not sure. Chris was transitioning to
10 this new mobility business we were doing, and there
11 was also a period of time where Chris was focused
12 more on trying to do the big vendor deals, ala HP,
13 and I was having more direct interface with Larry.
14 So I'm not sure what Chris's involvement was at the
15 time.

16 Q. And Gasparro reported -- if not to Chris,
17 who did Gasparro report to?

18 A. He probably reported to -- well, during
19 the time that I knew him, he reported to Chris. And
20 before that it was Jeff Hunsaker. And when he wasn't
21 de facto reporting to Chris, he probably still was on
22 paper, even though he was sending me the reports.

23 Q. So aside from these annotated reports, is
24 there any other source that you can think of that
25 would corroborate your recollections of particular

1 licensees raising copyright ownership as an issue in
2 the SCOSource negotiations?

3 A. I think the testimony of Gasparro would
4 probably be the most valuable thing in that regard.
5 I don't know if he has been deposed in this case or
6 not. He was the one that was on the front line with
7 a lot of these discussions. The report that he had
8 would probably help. I'm not sure.

9 Q. Can't think of anything else?

10 A. I'm not sure what else I'd point to.

11 Q. Back on the issue of the back and forth
12 with Novell on ownership. If you go a few pages
13 further in to 148.

14 A. Yes.

15 Q. 148 is a letter to you from Joe LaSala
16 dated June 26, so twenty days after the June 6 press
17 release. And he states, "Upon closer scrutiny,
18 however, Amendment Number 2 raises as many questions
19 about copyright transfers as it answers. Indeed,
20 what is most certainly *not* the case is that 'any
21 question of whether UNIX copyrights were transferred
22 to SCO as part of the Asset Purchase Agreement was
23 clarified in Amendment Number 2' (as SCO stated in
24 its June 6 press release)." And then he goes on to
25 say that Novell disagrees with SCO's public

1 A. Well, I don't have the specifics. There
2 was -- seemed to be some relationship to the Novell
3 deal. The Novell thing was always somewhat binary;
4 it's on or it's off. Some of these other issues were
5 a little infringement, a lot of infringement. But if
6 they couldn't get over that Novell hurdle, then it
7 kind of shut down everything else.

8 Q. But you don't have any specific
9 information about whether Novell or some other issue,
10 including the price you were charging, was the
11 principal reason that deal did not close, the web
12 hosting deal you are referring to?

13 MR. NORMAND: Objection to form.

14 A. I remember there being issues with Novell
15 but I don't remember the specifics. I do remember
16 that the Novell claims were what eventually got us to
17 just shutter up the *SCSource* licensing division for
18 a number of years. It is still technically available
19 on our web site. It has technically never really
20 been closed. But in terms of going out and spending
21 energy or cycles behind it, it just got to a point
22 where there were so many problems of trying to get
23 people to come to an understanding of where we were
24 on this, given where Novell was coming from, that we
25 basically said we've got to table this until we get

1 through with our litigation with them.

2 Q. Did you ever do projections about what
3 *SCOsource* would likely generate?

4 A. We did a lot of work around that. Doing
5 "what if" scenarios. Generating -- at the point in
6 time that we were doing our *SCOsource* licensing
7 originally and then at different steps along the way,
8 we had projected what would come from end user
9 licensing and then also from big OEM licensing. So
10 those were the two different models we looked at
11 mostly.

12 Q. What form did this modeling take?

13 A. Oh, we had -- usually I would sit down and
14 go through it on the white board with Chris or Bob
15 Bench. You know, guys on the finance side. We would
16 kind of lay out what the number of units of Linux
17 were that were in the marketplace against what our
18 list price was for the *SCOsource* license, reduced by
19 any kind of discounts that we might give for volume
20 or for being an early adopter. And it was usually a
21 pretty big number that we were talking about.

22 Q. Because there's a lot of units of Linux
23 out there.

24 A. Right.

25 Q. Did you do any board presentations about

1 the potential for recovery under *SC0source*?

2 A. I would imagine I would have talked to
3 them about some of those projections ongoing, but I
4 don't recall offhand which meeting or what form.

5 Q. You don't recall any presentation more
6 than -- you talked about a white board modeling?

7 A. Right.

8 Q. Do you recall anything more tangible than
9 that?

10 A. I remember that the models were showing --
11 we would look at IDC numbers, and there were X
12 millions of servers and growing at a certain rate.
13 And I remember specifically 4 million servers going
14 to 6 million servers over some time frame. I'd have
15 to go back and refresh what the time frames were, but
16 I remember bracketing if you've got 4 million servers
17 against our list price of \$700, you multiply that
18 out, you get \$2.8 billion. If you go up to the full
19 list -- or the list price against the 6 million then
20 you are talking about \$4.2 billion. So it was always
21 -- it's just a ridiculously big number. So okay, I
22 guess we could get finite on whether the number is \$5
23 billion or \$1 billion or \$6 billion. The point is it
24 was a lot of money for the company, and the size of
25 company that we were.

REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, Diana Kent, Registered Professional Reporter and Notary Public in and for the State of Utah, do hereby certify:

That prior to being examined, the witness, Darl McBride, was by me duly sworn to tell the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in stenotype on March 27, 2007, at the place therein named, and was thereafter transcribed and that a true and correct transcription of said testimony is set forth in the preceding pages;

I further certify that, in accordance with Rule 30(e), a request having been made to review the transcript, a reading copy was sent to Attorney Edward Normand for the witness to read and sign before a notary public and then return to me for filing with Attorney Michael Jacobs.

I further certify that I am not kin or otherwise associated with any of the parties to said cause of action and that I am not interested in the outcome thereof.

WITNESS MY HAND AND OFFICIAL SEAL this 29th day of March, 2007.

Diana Kent, RPR, CRR
Notary Public
Residing in Salt Lake County