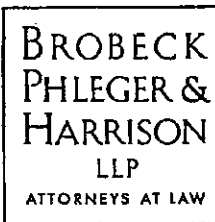# EXHIBIT 6

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September 19, 1996

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John Greaney, Esq.
Scott N. Sacks, Esq.
U.S. Department of Justice
Antitrust Division
Computer & Finance Section
600 E. Street, N.W.
Washington, D.C. 20530-3001

      Re: Santa Cruz Operation/Microsoft

Dear Messrs. Greaney and Sacks:

      We are writing to you on behalf of The Santa Cruz Operation, Inc. ("SCO")
in advance of our meeting scheduled for 9:30 a.m. October 9. This briefing
memorandum contains highly sensitive confidential business information of SCO and
should be maintained as a confidential document by the Department.

      SCO is a software company headquartered in Santa Cruz, California, which
is located twenty-five miles south of the Silicon Valley. SCO's principal product is "SCO
OpenServer" ("SCOOS"). SCOOS is a PC operating system based upon UNIX which is
designed to operate on computers employing Intel processors. Intel processors and
processors conforming to the Intel instruction set (so-called Intel "clones" such as those
offered by AMD and Cyrix) comprise the vast majority of the PC market.
Approximately 90% of all PC's utilize such Intel or Intel clone processors (we refer to
both Intel and Intel clones as "Intel PC's").

      UNIX is an operating system originally developed by AT&T thirty years
ago for what were then known as minicomputers. From its inception, UNIX was
promoted as a non-proprietary "open operating system" and was freely licensed by AT&T
throughout the computer industry. Unlike proprietary operating systems which were
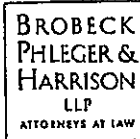unique to particular hardware vendors such as IBM's MVS or Digital Equipment's VMS,

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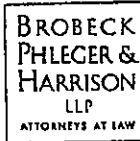**PRIVILEGED & CONFIDENTIAL
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UNIX was offered by many hardware vendors and afforded the customer a degree of freedom to migrate among different hardware platforms, all employing UNIX as the operating system, while retaining existing UNIX applications with only small changes. As it has evolved, UNIX has become an extremely advanced operating system providing true multitasking (that is, allowing the processor to work on more than one program at a time); multiple user capabilities (allowing multiple users to access a single processor), tight security (allowing different classes of users to a single computer different degrees of access); advanced networking and communication capabilities; and robustness (low rates of failure or system crashes). Indeed, UNIX was the program standard around which the Internet was originally developed. SCOOS adapts UNIX, originally developed for large systems, and enables it to function as the operating system for an Intel PC.

SCO offers a second UNIX based PC operating system known as "UnixWare." Like SCOOS, UnixWare brings UNIX to the Intel PC platform. SCO acquired the rights to UnixWare in a recent transaction with the original developer of the program, Novell. Because SCOOS and UnixWare have certain differences between them, SCO has plans to merge the two operating systems into one program, known currently by the code name "Gemini."

SCOOS and UnixWare compete with the other operating systems offered on the market for Intel PC's including Windows 95, Windows 3.1, Windows NT, IBM's O/S 2 and Novell's NetWare.

SCO's rights to create, distribute and sell UNIX software code at the time it developed SCOOS were acquired through a license chain from (1) AT&T to Microsoft and (2) Microsoft to SCO. Microsoft had acquired a non-exclusive sublicensable license to UNIX from AT&T. Pursuant to its license from AT&T, Microsoft adapted UNIX to function on Intel PC's which used the 286 processor, naming the resulting program "XENIX." XENIX is thus a derivative work of UNIX. Later, in 1987 as a result of a 1987 agreement between Microsoft and AT&T described below, Microsoft developed another version of UNIX for Intel PC's using 386 processors based upon the then current release of UNIX (System V) and XENIX. This product was named "System V/386 Rel. 3.2." System V/386 Rel. 3.2, is also a derivative work of UNIX, dependent upon AT&T's UNIX license to Microsoft. In 1988, Microsoft granted SCO a license to SystemV/386 Rel. 3.2. Under this license agreement, SCO was permitted to copy SystemV/386 Rel. 3.2, which of course was almost entirely UNIX code, and to modify

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that code into new products. SCOOS represents years of additions and improvements to the System V/386 Rel. 3.2 software originally licensed to SCO by Microsoft. Among other things, SCO has evolved the System V/386 Rel. 3.2 code to function with modern Intel processors. XENIX and System V/386 Rel. 3.2 were 1987 vintage programs which were designed to permit UNIX to function with Intel 286 and 386 processors. (Both 16-bit processors). SCO has written SCOOS to function with the Intel Pentium, a 32-bit processor, two generations more advanced than the processor for which System V/386 Rel. 3.2 was written. So fundamental are the changes made by SCO, that SCOOS dwarfs in size System V/386 Rel. 3.2 UNIX program licensed from Microsoft. Indeed, SCO's contains nearly five times more code than the System V/386 Rel. 3.2. SCO has converted the program from a character based program to one employing a graphical user interface; added modern networking, Internet, and multiprotocol facilities; and added security features and modern device drivers.

As a result of a chain of several transactions described below, SCO has now acquired ownership of the UNIX program itself. In November 1989, AT&T, the original developer of the UNIX Operating System, spun off the UNIX division as a separate company then known as UNIX System Laboratories, Inc. ("USL"). In June 1993, Novell, the vendor of the NetWare Operating System, acquired USL and hence became the owner of the UNIX program. In turn, in December 1995, Novell sold the ownership of UNIX to SCO. As a result, SCO now enjoys the right, as the owner of the UNIX program, to exploit that program without the necessity of a license from any other party.

It is SCO's intention to develop a new highly advanced UNIX based operating system for the next generation of Intel processors. Currently, the most advanced Intel processor on the market is known as the "P6." This processor, now only at the start of its product life-cycle, is being sold in very small volumes at extremely high prices. Although they are not the most advanced processor chips currently offered for sale by Intel, various versions of the P5 processor, known as the "Pentium" account for overwhelming portions of current sales. Virtually all Intel PC's sold currently employ Pentium processors. Although SCO's new product, envisioned for the P7 processor, is technically speaking only one generation ahead of the P6, in reality it is two generations ahead of the main stream Intel PC's being sold. SCO's work to create a new UNIX operating system for Intel's P7 based PC's will be a tremendous undertaking, which will

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involve thousands of man years of engineering time. The new product, code named "NGOS" (Next Generation Operating System), will be developed from the ground up, and will be based not upon XENIX or the SCO 1988 licensing agreement with Microsoft (System V/386 Rel. 3.2) but from UNIX itself which SCO now owns.

The 1987 Microsoft/AT&T Agreement

In 1987, Microsoft and AT&T entered into an agreement entitled "Development and License Agreement for Convergence of AT&T's UNIX® System V and Microsoft's XENIX® Operating System on Intel Microprocessors" (hereinafter the "1987 MS Agreement"). Pursuant to the 1987 MS Agreement, Microsoft was to create a version of UNIX to run on the Intel 386 processor and to be compatible with 286 processors and programs written for the 286 PC's. (The Intel 386 processor is two generations behind the current main stream Pentium. Time has passed it by. It is obsolete and no longer being sold. The 286 is at this point but a historical curiosity. Few 286 PC's even remain in use.) The resulting adaptation of UNIX to run on the Intel 386 was termed under the 1987 MS Agreement "Merged Product." (That "Merged Product" is the System V/386 Rel. 3.2 that Microsoft licensed to SCO in 1988.) The 1987 MS Agreement contemplated that both AT&T and Microsoft would sell the resulting Merged Product. As well it provided for the two companies to develop future evolutions of the first Merged Product (the 386 version) for future releases of UNIX and for future generations of Intel processors. Those future products were never developed pursuant to the 1987 MS Agreement.

·Notwithstanding the absence of evolution of the original Merged Product, the 1987 MS Agreement imposes significant restrictions on competition. It prohibits AT&T and its successors from selling any UNIX software for Intel processors (in either executable binary form or source code form) which is not a Product under the 1987 MS Agreement for as long as the 1987 MS Microsoft Agreement remains in force. The restriction on selling executable versions of UNIX for Intel PC's is found at Section 2(c) which reads:

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(c) *As to UNIX System Code, or a derivative work thereof, in
Executable File form, after one year from acceptance of the
initial Merged Product, MS and AT&T shall, except as
hereinafter provided, market and distribute only Binary
Compatible Product for Intel Microprocessor Based General
Business Computer Systems.*

"Binary Compatible Product" is defined in the Agreement as a "Product" which, in turn, is
defined as the "Merged Product" or derivative works thereof which are governed by the
1987 MS Agreement. Binary Compatible Products are also required to run and support
a listed group of application programs written for 286 Intel processor machines.

The restriction on source code distribution is similar and found at Section
2(d):

(d) *After ninety (90) days from acceptance of the initial Merged Product,
any source code license granted by AT&T for UNIX System Code for
an Intel Microprocessor, or any source code license granted by MS for
a derivative work of UNIX System Code for an Intel Microprocessor,
shall be for Product only. Source code licenses granted by either party
prior to the ninety first (91st) day after acceptance of the initial Merged
Product shall continue in full force and effect.*

Again, "Product" is a defined term in the Agreement which covers the "Merged Product"
and derivative works thereof.

As a consequence of these restrictions, AT&T and its successors are
prevented from offering any UNIX product for Intel PC's that is not based upon the
original Microsoft "Merged Product" developed under the 1987 MS Agreement. That is
to say, these restrictions compel AT&T and its successors to sell only Merged Product or
derivative works based upon the 1987 Merged Product for so long as the contract
remains in force.

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The consequences of these restrictions on competition are enormous. First, they stifle innovation in the development of new forms of UNIX for Intel PC's free of the structure, facilities and code created for 16 bit processors and application programs no longer being sold and which are as many as five generations behind the 64 bit P7. Incorporating these facilities in a program is both unnecessary and costly. Indeed, some of the programs required to be supported have not been sold for nearly a decade. Second, they compel the payment of royalties to Microsoft where none is needed or deserved. Under the 1987 MS Agreement, Microsoft established a continuing obligation to have paid to it a $15 per copy royalty for each copy of a program covered by the 1987 MS Agreement which was sold by AT&T or its downstream licensees. By restricting competition in the development and sale of an alternative UNIX based Intel PC program, Microsoft insured that all such software would be subject to a royalty to it. In effect, the provision operates like the per processor license agreements which were the subject of the Department's earlier proceedings against Microsoft. The 1987 MS Agreement forces use of Microsoft code in circumstances where it is not needed or desired and it provides Microsoft a royalty for an unnecessary product. Of course, the technical means to develop a new independent UNIX or Intel PC program have been available at all times; the restriction on pursuing that course insures that all such software remains under Microsoft's foot.

The anti-competitive effect of these restrictions is magnified by the term provisions of the Agreement which keep the Agreement in force, and thus the restrictions and royalty provisions in force, until such time as neither party (AT&T and its successors or Microsoft) has commercially released a new generation product for a new Intel processor or new release of UNIX for a period of two years. (See Section 14) The 1987 MS Agreement in every practical respect is thus evergreen. It will continue with its restrictions in force under its express terms forever unless both parties have failed to offer products for new Intel processors or new variations of UNIX. A two year hiatus in the offer of new UNIX software products for new Intel processors or new releases of UNIX, necessary to release AT&T or its successors from the 1987 MS Agreement, is in all commercial respects equivalent to termination of business. It is well known in the electronics industry that such a failure to advance product offerings would cause the customer base to migrate irrevocably to other competitive up-to-date operating system products -- in this circumstance undoubtedly those offered by Microsoft.

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Effect on SCO

The anti-competitive restrictions in the 1987 MS Agreement significantly imperil SCO's development of NGOS. First, the restrictions by their express terms prevent effective product innovation to create a new product for the 64 bit P7 processors. Rather than being free to take the UNIX software that it now owns and develop a revolutionary new UNIX operating system to run on the P7 processor, the terms of the 1987 MS Agreement constrain SCO to manipulate and adapt Microsoft's original work done for 16 bit processors. The effect hobbles innovation since it compels continued use of features and constructs no longer relevant ten years after the 1987 MS Agreement was made.

By handcuffing all future product evolution of UNIX for Intel PC's to its original work done for the 386 chip in 1987, Microsoft seeks for itself a competitive advantage in its offer of its own programs Windows 95 and Windows NT which compete with UNIX. Although, in theory, Microsoft is subject to the same restrictions under the terms of the 1987 MS Agreement -- it, too, can only offer UNIX for Intel PC's which is based upon or a derivative work of Merged Product -- the restrictions have no meaning in reality for Microsoft. After it developed the so-called Merged Product for the 386, Microsoft decided not to bring it to market. It has not offered for sale any UNIX for Intel PC product for years. Hence it is not restricted at all. The restriction operates only upon Microsoft's competitor SCO and upon programs that compete with Windows.

The restrictions in the 1987 MS Agreement significantly impact SCO's NGOS in a second way. By undertaking the expense and burden of developing a new product, SCO should not be subject to payment of royalty to Microsoft. By enforcing a provision which requires that new products continue to be a derivative work of the Microsoft 386 "Merged Product," and therefore subject to royalty, no matter how irrelevant the 386 program version is four chip generations and ten years in the future, Microsoft imposes a significant financial penalty on a competitor and, thereby, a competitive price advantage for its Windows operating system products.

By restricting the development of a PC operating system that directly competes with its products and saddling competitive product offerings with unnecessary links to old software and making them subject to an unnecessary royalty, Microsoft acts unfairly to perpetuate its monopoly in the supply of PC operating systems.

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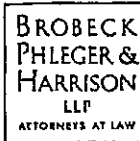
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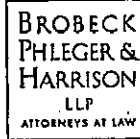PRIVILEGED & CONFIDENTIAL
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We noted above the manner in which the restrictions in the 1987 MS Agreement operate with similar effect as the per processor agreements which were the subject of the Department's prior actions and resulting consent decree. Both the per processor agreements and the 1987 MS Agreement force unwilling parties to license MS software under circumstances where it is not wanted and increase the financial cost of any non-Windows operating system alternative.

The 1987 MS Agreement as well has effects which duplicate, in this UNIX setting, other past anti-competitive DOS/Windows practices, covered by the previous action and Consent Decree. Section IV B of the Consent Decree prohibits Microsoft from entering into license agreements which restrict OEM's from sale or distribution of non-Microsoft operating systems. The 1987 MS Agreement has exactly this effect. SCO, under its terms, would be prohibited from offering new UNIX products free of the obsolete Microsoft code. The entire field of UNIX for Intel PC's, thus, becomes one where every product is a product subject to Microsoft royalty payments. Indeed the provisions of the 1987 MS Agreement are even more pernicious than those covered by the previous decree covering DOS and Windows because in this case the prohibition against using non-Microsoft software both stifles innovation for competitive UNIX products and forces inclusion of obsolete Microsoft software making UNIX products less desirable.

The term of the restrictions in the 1987 MS Agreement similarly runs afoul of the spirit of the Consent Decree in Section IVA. There Microsoft is prohibited from license agreements with terms longer than one year. Here Microsoft has created a structure, that in theory is perpetual. Indeed, the 1987 MS's prohibition against new product development is far worse than that found to be copyright misuse in Lasercomb America, Inc. v. Reynolds, 911 F.2d 970 (4th Cir. 1990). There imposition of a 99 year restriction on development of competitive software, as a condition of the grant of a software license, was found to be a form of copyright misuse. The circumstances here are threefold more exaggerated in their anti-competitive effects: (i) Microsoft possesses monopoly power which was not the case with the Lasercomb licensor; (ii) the "license" of Microsoft software is not desired by the licensee for new products, but is forced; and (iii) the term of the restriction is potentially longer.

In addition to the operation of the 1987 MS Agreement so as to enhance Microsoft's monopoly power in the market for PC operating systems, it can easily be

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seen that there is no efficiency enhancing integration of economic activity which flows from the Agreement. For purposes of developing a common version of UNIX, an agreement between AT&T and Microsoft to create such a work together, *simpliciter*, would have sufficed. Extending the arrangement beyond that boundary, so as to bar creation of competing works, does not legitimately further that purpose. On that ground alone the arrangement violates the antitrust laws. More than that, the 1987 MS Agreement actually operates to suffocate the "common" version of UNIX. Where Microsoft does not sell the "common" UNIX product, but competes against it with Windows, saddling all future versions with useless code and an unnecessary royalty furthers the demise of the "common" UNIX product to the benefit of Microsoft's own products. Under the present circumstances, Microsoft derives greater profit from the failure of UNIX for PC's in the marketplace, than success of any "common" UNIX product. Thus, the 1987 MS Agreement is in reality less of a common product agreement than it is a blunt instrument to keep UNIX competition in check clearing the field for Windows.

We look forward to our meeting on October 9 to discuss these matters further.

Respectfully submitted,

Jeffrey S. Kingston

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