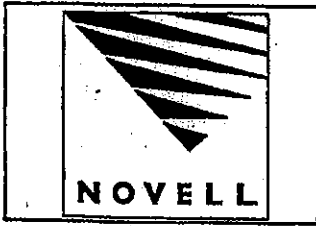


EXHIBIT 11



**Confidential - Attorney Work Product
Privileged & Confidential/Attorney-Client Communication**

**Novell, Inc.
Internal Legal Memorandum**

To: Kanwal Rekhi

From: David R. Bradford *DRB*

Re: Avoidance of \$15.00 Per Copy Royalty to Microsoft

Date: November 19, 1993

Copies: Ray Noorda, Sandy Tannenbaum

Enclosure: Yes

Via: Hand Delivery and Fax

Dear Kanwal:

As a follow up to our conversation the other day, I have been reviewing the possible legal bases upon which Novell would have a legitimate reason to refuse providing Microsoft a \$15.00 per copy fee for each copy of UNIXWare sold on the Intel platform. I have had conversations with Sandy Tannenbaum about these issues. Subsequently, Sandy sent me a copy of a memorandum he wrote approximately 2½ years ago analyzing these very issues. The memorandum was extensive so let me summarize it with the following points:

- In the February 1987 development and license agreement between USL and Microsoft, Microsoft agreed that binary versions of UNIX System V (or derivatives thereof) marketed and distributed by Microsoft for Intel based computers must be "binary compatible." USL could argue that the \$15.00 payment was especially conditioned on the marketing obligation by Microsoft to assure binary compatibility, and that Microsoft has breached this obligation. Microsoft violated its contractual obligations by: (1) not making available a binary compatible product offering; and (2) permitting Santa Cruz Operations (SCO), as the Microsoft value added distributor responsible for the shipment of 80X86 implementations of UNIX System V, to modify their product in a manner that destroyed binary compatibility.

- Microsoft has some counter arguments that the primary purpose of the Microsoft/USL agreement and AT&T's agreement to pay Microsoft \$15.00 was in exchange for the Xenix source code and that the Microsoft agreement to market a binary compatible product was not material to the contract. Sandy believed at the time that USL's chances of success based on a breach of contract theory against Microsoft were 35 percent or less. I feel the chances of success on such a theory are somewhat higher but that it would clearly be a tough case. Perhaps you have some thoughts on what Microsoft and SCO have done in the Intel platform over the last 2½ years which would shed further light on the degree to which Microsoft actually has continued to be in

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breach of the 1987 contract.

Assuming for one second that Novell determined that it was on solid legal ground in claiming that Microsoft is in breach of contract, what are our alternatives? Sandy's memo cites four:

1. Litigation (either initiated by USL or Microsoft);
2. Negotiation;
3. Novell could develop a Xenix-free substitute for its UNIX Operating System; however, Sandy seems to indicate that even if we ship a Xenix-free substitute for the UNIX Operating System on the 80X86 platform, the royalty obligation is still owed to Microsoft;
4. Allow the development and licensing agreement to expire.

As Sandy points out, any attempt on our part to repudiate our payment obligations under the agreement by stopping payment of the \$15.00 fee, would force Microsoft to consider filing a lawsuit. However, since Microsoft nets these payments against the royalties they owe USL it would be a pragmatic problem in stopping payment of the \$15.00 per copy fees. On the other hand, if we don't care about ever receiving payments again from SCO, the netting issue might go away.

With respect to the possible expiration of the \$15.00 obligation, section 14a of the agreement permits the agreement to expire if AT&T or its successor fails to distribute a binary compatible 80386 or 80486 binary implementation until at least two years after the date of commercial availability of such microprocessors. However, I believe we are already distributing such an implementation and therefore the "expiration theory" is not a likely winner.

Given the foregoing, I tend to believe that our best argument is the one which says that Microsoft originally breached its obligations under the 1987 agreements by permitting (and perhaps encouraging) SCO to market a non-compatible binary product, on which Microsoft itself receives a royalty. This in turn, deprived AT&T, USL and now Novell of the benefits of a unified UNIX market.

I have asked Sandy Tannenbaum to analyze his 1991 memorandum in light of recent events to determine that there is another legal basis upon which we can refuse royalty payments to Microsoft. Such a current analysis would have to include the fact that Microsoft is now marketing NT which Bill Gates himself has called "A Disciplined UNIX" and that this product has failed to be "binary-compatible" resulting in further splintering of the UNIX market place. Also, the NT product itself may be violative of certain UNIX copyrighted code. We are attempting to obtain some NT source code in order to analyze it based on possible copyright infringement.

I recognize that this is a key issue for Novell moving forward and we are anxious to work with you closely in aggressively asserting Novell's rights.

Sandy: Can you provide to me an update on your analysis. The 1991 paper was great but I would like to know your views given today's market place.

Thank you,
David

