

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.,

Plaintiff and
Counterclaim Defendant,

vs.

C.A. No. 2:04CV00139

NOVELL, INC.,

Defendant and
Counterclaim Plaintiff.

Deposition of
DOUGLAS MICHELS
March 28, 2007

Reported by
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CSR 1894

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1 answers. This reporter here will take down everything,
2 and as you know, you're being videotaped.

3 It's important that we try not to talk over
4 each other, so that the reporter can take down what each
5 of us says. It's also important that we keep our
6 conversation verbal, as opposed to nods of the head or
7 shrugs of the shoulder, so that she can take down
8 everything. Do you understand?

9 A. Yes, I do.

10 Q. Now, my purpose here today isn't to try to
11 trick you or trip you up. So if there's ever anything I
12 say that you don't understand, please just let me know,
13 and I'll try and rephrase the question or clarify my
14 question. Do you understand?

15 A. Sure.

16 Q. The next thing, I'm going to use the term
17 "SCO" today to refer both to the entity that's the
18 plaintiff in this action, and to the corporate entities
19 that it claims as its predecessors. If there's ever a
20 point where you feel that you need to clarify that an
21 answer applies only to one particular entity, or that my
22 question doesn't make sense in light of the different
23 corporate entities, just let me know.

24 A. Okay.

25 Q. Now, from time to time, I expect Mr. Normand

1 will make objections to my questions. Unless he
2 specifically instructs you not to answer, you can go
3 ahead and answer my question.

4 If you find his objection or any conversation
5 that he and I have had distracting, let me know, and I
6 can have the question repeated to you or I can restate
7 it myself. Do you understand that?

8 A. I do.

9 Q. All right. At the end of all this you will be
10 given a written transcript to review. You'll have the
11 opportunity to make corrections to the transcript, but
12 I'll know you made those corrections and I'll be able to
13 comment on them, so it's important that you give as
14 accurate and complete testimony as you can today. Do
15 you understand?

16 A. I do.

17 Q. Are you taking any medica- -- medication that
18 might impair your ability to give truthful, accurate
19 testimony today?

20 A. No.

21 Q. Do you have any medical condition that might
22 impair your ability to give truthful and accurate
23 testimony today?

24 A. Nope.

25 Q. What was your position at the time of the

1 execution of the Asset Purchase Agreement in September
2 of '95 at SCO?

3 A. You know, dates aren't my favorite thing, but
4 as best that I can determine, I was probably CTO at that
5 point, Executive Vice-President and then CTO.

6 Q. Are there other possibilities, or are you
7 sure --

8 A. I was there for 20 years, and I had half a
9 dozen titles, and it never really changed my job much,
10 so I never really worried about what my title was.
11 So --

12 Q. I saw in your declaration that by April '98
13 you were SCO's President and CEO. Did you have
14 different positions between being CTO in September '95
15 and those positions in April of 1998?

16 MR. NORMAND: Objection. Form.

17 THE WITNESS: I don't think so. I mean, I was
18 generally -- well, in that period I was generally
19 Executive Vice-President and CTO, or CEO, but -- I mean,
20 I was part of the -- part of the, you know, executive
21 team running the company. Exact titles didn't -- didn't
22 make much difference, other than CEO. That's a little
23 different.

24 BY MR. MELAUGH:

25 Q. Now, in terms of the negotiations that led to

1 the Asset Purchase Agreement in September '95, is it
2 fair to say that you participated in those negotiations
3 only at sort of high level, as an executive?

4 MR. NORMAND: Objection. Form.

5 THE WITNESS: I don't know what that would
6 mean.

7 BY MR. MELAUGH:

8 Q. Well, how would you characterize your
9 participation in the Asset Purchase Agreement
10 negotiations?

11 A. Well, I was very involved in the initiation of
12 it, and I was very involved in the strategy behind it,
13 and I was very involved in the high level structure of
14 the agreement, and I was involved in supervising pretty
15 directly the people who were negotiating the details of
16 the agreement.

17 Q. When you say you were involved in the
18 initiation of the agreement, can you tell me what you
19 mean by that?

20 A. Well, unfortunately this is a very long time
21 ago, and -- and I'm really bad at dates, and I know
22 that. You know, trying to -- trying to get, you know,
23 remote facts in exactly the right order.

24 But, you know, the discussion of essentially
25 acquiring UNIX had been going on for ten years. Before

1 revenue streams were on that list.
 2 I mean -- I mean, it was a very clear thing.
 3 I mean, I don't know the -- I couldn't enumerate it for
 4 you, but -- but there was never really any ambiguity
 5 about what was on the list.
 6 BY MR. MELAUGH:
 7 Q. Okay. Let's take a look at Exhibit Number 1
 8 again. This is the Asset Purchase Agreement, the large
 9 document. Could you turn -- it's about three-quarters
 10 of a way through, to page -9- -- the last three digits
 11 are -952.
 12 A. Have I got the same -- okay.
 13 Q. And looking at item number VI, V-I, at the
 14 bottom of this page, and it continues onto the next
 15 page, so it begins:
 16 All contracts relating to the SVRX
 17 Licences listed below:
 18 and then it lists a series of software, basically. Is
 19 this the list you're referring to?
 20 MR. NORMAND: Objection to form.
 21 THE WITNESS: I don't know what this is a list
 22 of.
 23 BY MR. MELAUGH:
 24 Q. So what list were you referring to? You said
 25 there's a -- a list of software for --

1 A. There was a list of specific customers who had
 2 binary license agreements for which we continued to pay
 3 95 percent of the royalties to Novell. And I don't know
 4 if the list is in the contract or not. I don't know
 5 where it is. I know there was --
 6 I mean, our royalty payment people knew
 7 which -- which royalties they got their share of. There
 8 was clearly a documented list that everybody had signed
 9 off on. Where it was in the stack of paper, I have no
 10 idea.
 11 Q. Sure. So --
 12 A. You're back -- you're back to, you know,
 13 testing me on, you know, paper. I don't do paper.
 14 Q. Making sure I understand your testimony, it's
 15 your testimony there -- there is a list of customers
 16 from which SCO owed an obligation to pass on any binary
 17 revenue collected from those --
 18 MR. NORMAND: Objection.
 19 THE WITNESS: Because of contracts.
 20 MR. NORMAND: Objection to form.
 21 THE WITNESS: I mean, new business with those
 22 customers wouldn't incur binary or royalty to Novell.
 23 Only residual business on existing contracts.
 24 BY MR. MELAUGH:
 25 Q. What if the binary SVRX rights were increased

1 in some way? They added -- it's not that -- okay. No,
 2 no, so it's more -- it's more sales from the same --
 3 under the same contracts from the same folks. Do I have
 4 that right?
 5 MR. NORMAND: Objection to form.
 6 THE WITNESS: You know, you're in -- at -- at
 7 a -- at an intent level, it was the residual revenues
 8 from the existing contracts from the existing customers.
 9 BY MR. MELAUGH:
 10 Q. And it's your testimony there's a list of
 11 those contracts and customers somewhere out there?
 12 A. It has to be. The accounting people would
 13 never have known what to pay if there wasn't. There
 14 absolutely, beyond a shadow of a doubt, exists a list of
 15 the customers for which royalties were transferred.
 16 Q. And this was --
 17 A. You know, find the royalty report. You'll
 18 find the list. I guarantee you there was a list.
 19 Q. And this is a list that was agreed upon as
 20 part of the Asset Purchase Agreement?
 21 A. I'm sure it is.
 22 MR. NORMAND: Objection to form.
 23 THE WITNESS: I mean, there was never any
 24 objection that we weren't paying them for everything
 25 they were entitled to get paid for. They knew what was

1 on the list, and we knew what was on the list.
 2 MR. MELAUGH: Why don't we take one more quick
 3 break, and then, I think, finish off?
 4 THE WITNESS: All right.
 5 THE VIDEOGRAPHER: Going off the record. The
 6 time is 1:11 p.m.
 7 (Short break.)
 8 THE VIDEOGRAPHER: Back on the record. The
 9 time is 1:18 p.m.
 10 BY MR. MELAUGH:
 11 Q. So we were just talking about what licensees
 12 and contracts were included in the batch of revenue that
 13 should be passed on to Novell and which weren't.
 14 A. Yes.
 15 Q. Okay. I take it your testimony on that is
 16 based on your memory of the intent of the deal, not on a
 17 review of the language of the Asset Purchase Agreement,
 18 or its related agreements?
 19 A. Well, it's certainly based on my view of the
 20 intent of the deal, but it's also based on the fact that
 21 the deal was executed, successfully for years, and we
 22 had an accounting department that wasn't very creative.
 23 I mean, they only did what -- they had clean lists of
 24 things to do, and there's no way they could have made
 25 those payments if somebody hadn't told them what was on

1 the list, and there's no way Novell wouldn't have
2 complained about it if it didn't match a list they had.

3 So, I mean, just using the -- a little logic
4 along with intent, it's clear this thing was reduced to
5 a list. I mean, has to be.

6 Q. Are you familiar at all with the recent deals
7 SCO has entered into with Sun and Microsoft?

8 A. I read about it in the newspaper.

9 Q. Have you reviewed any of the language of the
10 contracts --

11 A. I have not.

12 Q. -- of those deals? Have you spoken with
13 anyone at SCO about the terms of those deals?

14 A. No more than just in the -- in the newspaper.

15 MR. MELAUGH: I think that's all I have.

16 Ed, do you have any follow-up questions?

17 EXAMINATION BY MR. NORMAND RESUMED

18 Q. Just one question. You said, in response to a
19 question from Mr. Melaugh, that you assumed the
20 copyrights were going over. Do you recall using words
21 to that effect?

22 A. Okay. I might have.

23 Q. To the extent that you did, what did you mean
24 by that?

25 A. Well, I meant that the only way that I know

1 of, and anyone on my team knew of to buy a software
2 business is to buy the copyrights, and there's no way we
3 would have ever done a deal to buy a software business
4 where we didn't get the copyrights and all the other
5 intellectual property. That's what you're buying.

6 And especially in the case of UNIX, with its
7 convoluted intellectual property history, and whatnot,
8 to not get that stuff would be to not do the deal. And
9 so it was implicit in everything we did, everything we
10 thought. Every single person on my team understood
11 that. The lawyers understood it. The business
12 development people understood it. The people at Novell
13 understood it.

14 I mean, it -- it's just so essential. It's --
15 you know, it's like breathing oxygen, you know, I mean,
16 you just -- there's no way that deal could have happened
17 without getting the copyrights.

18 MR. NORMAND: I have no further questions.

19 EXAMINATION BY MR. MELAUGH RESUMED

20 Q. And -- I'm sorry. I need to follow up on
21 that. You testified that the people at Novell
22 understood that they were transferring copyrights to
23 you. What's the basis for that testimony?

24 A. They understood that to buy a software
25 business you had to get the copyrights.

1 Q. And what's the basis for that?

2 A. Because I know them. They're smart people.
3 They do software acquisitions day and night. They're
4 business development people. And we had, you know, many
5 meetings, many dinners. I mean, it was just implicit.
6 It's in the water. I mean, you don't buy software
7 companies without buying the intellectual property, and
8 you don't buy intellectual property without buying the
9 copyrights.

10 Q. But no one from Novell ever said to you:
11 We're transferring those copyrights as part of this
12 deal?

13 A. I have no idea what people said ten years ago.

14 Q. You don't have any memory of someone saying
15 that?

16 A. Of specific words? I have no memory of any
17 specific words at all from ten years ago.

18 Q. Or words to that effect?

19 A. You know, I'm not going to testify to words I
20 don't remember. I know that -- I know with certainty
21 that everybody involved understood that copyrights were
22 part of the deal.

23 Q. But you don't have any memory of being told
24 that by anyone from Novell, do you?

25 MR. NORMAND: Objection to form. Asked and

1 answered.

2 THE WITNESS: I -- I cannot give you anything
3 more specific from ten years ago.

4 BY MR. MELAUGH:

5 Q. Is that a no?

6 MR. NORMAND: Objection. Form.

7 THE WITNESS: I can't give you anything more
8 specific from ten years ago. I mean, maybe I can do
9 some deep hypnotic recall and find it in there. I'm
10 sure it's in there, but I can't, with certainty, give
11 you a statement of a conversation that happened ten
12 years ago.

13 BY MR. MELAUGH:

14 Q. And I'm just not sure I'm understanding your
15 answer. Is your answer, no, I don't have any memory of
16 someone from Novell telling me that the UNIX copyrights
17 were being transferred?

18 MR. NORMAND: Objection to form.

19 THE WITNESS: I don't have any specific memory
20 that I can recall at this moment of an exact
21 conversation about that topic.

22 BY MR. MELAUGH:

23 Q. Or words to that effect, from Novell to --

24 A. Conversation about that topic. I mean,
25 that's -- I don't have any specific memory of any