

EXHIBIT A

1 DeFazio

2 (A brief recess was taken.)

3 THE VIDEOGRAPHER: The time is 4:55

4 p.m. and we're back on the video record.

5 BY MR. MARRIOTT:

6 Q. Did there come a point, Mr. DeFazio,

7 when Novell sold certain UNIX system related

8 assets to Santa Cruz?

9 A. Yes.

10 Q. And do you recall when that was?

11 A. That was in the end of 1995.

12 Q. I believe you testified earlier that

13 you understood Novell to have retained significant

14 assets in that sale; is that right?

15 A. That is correct.

16 Q. And did the retained asset include, as

17 you understand it, important intellectual property

18 and significant substantive rights under the UNIX

19 System V source code license agreement such as the

20 IBM related agreements and the Sequent related

21 agreements?

22 MR. ESKOVITZ: Objection to form.

23 A. Yes, that's correct.

24 Q. And who was responsible for negotiating

25 the sale of Novell's UNIX business to Santa Cruz?

1 DeFazio

2 copyrights to the UNIX source code to Santa Cruz

3 under the asset purchase agreement?

4 MR. MARRIOTT: I just object to form as

5 to that one and to the one that preceded it.

6 A. Yes. Novell did not -- did not

7 transfer the copyright to the UNIX software as

8 part of the APA.

9 Q. Did Novell ever transfer the copyrights

10 to the UNIX software to Santa Cruz?

11 MR. MARRIOTT: Objection as to form.

12 A. Some people have said that Amendment 2

13 did that. I can't say for sure that it did or it

14 didn't, but the APA did not transfer.

15 Q. Was it your understanding that the APA

16 at the time was intended to transfer the

17 copyrights for UNIX to Santa Cruz?

18 MR. MARRIOTT: Objection to form, asked

19 and answered.

20 A. No. The APA as it was written retained

21 it and my understanding was that the retention was

22 as the way the team crafted the words to implement

23 the goal of bulletproofing this financial asset

24 stream. I was not involved in any discussions

25 within Novell or certainly with Santa Cruz that

1 DeFazio

2 talked about transferring the copyright or not
3 transferring it. It just appeared this way in the
4 APA and that's what was executed.

5 Q. So your testimony concerning the
6 copyright issue is based on your reading of the
7 APA; is that fair to say?

8 A. Well, it's based on two things. It's
9 my reading of the APA, but also my recalling that
10 I was not involved in any discussions one way or
11 the other keeping the copyright or transferring
12 it. It just wasn't discussed with me and wasn't
13 discussed -- wasn't an issue that was escalated
14 and certainly wasn't discussed in my meetings with
15 Santa Cruz. That would be, you know, kind of a
16 specific of the deal, not part of the broad
17 discussions on the whole concept of what we were
18 trying to do with the APA.

19 Q. But that would have been something
20 within Ed Chatlos' realm of responsibility if
21 there were discussions about that?

22 MR. MARRIOTT: Objection as to form.

23 A. If there was a discussion and an
24 impasse on that question that certainly would have
25 been escalated to me.