

1 THE COURT: Are we ready?

2 MR. BRENNAN: I'm going to announce that I  
3 finished my questioning.

4 THE COURT: Okay. Good.

5 Will we still possibly put Mr. Stone on today,  
6 then?

7 MR. SINGER: Well, unfortunately, Mr. Stone has  
8 left or I would. So it looks like we're going to be doing  
9 the depos.

10 MR. ACKER: He's available at 8:30. We'll start  
11 with him first thing in the morning.

12 THE COURT: Thank you, Mr. Acker.

13 Ms. Malley, if you would please bring the jury in.

14 MR. SINGER: We're doing a little bit of  
15 scrambling here because we thought Mr. Brennan had another  
16 20 minutes of examination, so we're trying to -- one way or  
17 the other, we'll make sure we're not wasting any court time.

18 MR. BRENNAN: I deeply disappointed them when I  
19 told them I was done.

20 THE COURT: I can tell there is pain written all  
21 over their faces.

22 THE WITNESS: Me in particular.

23 THE COURT: I hope someone told Dr. Botosan this.

24 (Jury present)

25 //

1                   MR. BRENNAN: Your Honor, I have no further  
2 questions of Dr. Botosan and will turn the witness to  
3 Mr. Hatch.

4                   THE COURT: Thank you, Mr. Brennan.

5                   MR. HATCH: May I, Your Honor?

6                   THE COURT: Yes.

7                                   REDIRECT EXAMINATION

8 BY MR. HATCH:

9 Q       Good afternoon.

10 A       Good afternoon.

11 Q       I had to check.

12           Mr. Brennan talked to you about a lot. I am only going  
13 to talk to you about a couple of things.

14           The 2004 court decision that he talked to you about, do  
15 you recall what kind of a motion was at issue in that case?

16 A       It was the motion to dismiss.

17 Q       Yes. Do you know what the ultimate result of that was?

18 A       That it was found in favor of SCO.

19 Q       In favor of SCO. Mr. Brennan didn't tell you that, did  
20 he?

21 A       I don't recall him mentioning that.

22 Q       This 2007 decision that he talked about, do you recall  
23 what kind of a motion that was?

24 A       That was a summary judgment motion.

25 Q       And do you recall what the ultimate outcome of that was

1 after it went to the court of appeals?

2 A It was overturned.

3 Q In favor of who?

4 A In favor of SCO.

5 Q Did Mr. Brennan tell you that?

6 A I don't recall.

7 Q I believe it was the judge that told you that?

8 A Yeah. I think I asked about it actually.

9 Q And ultimately your understanding is that because of  
10 the decisions of the court in both those decisions in favor  
11 of SCO, that's why we're here today, isn't it?

12 A Correct.

13 Q Now Mr. Brennan also -- he went through in length that  
14 you had relied on Deutsche Bank. A document that he put  
15 before you was Novell Exhibit R-21.

16 MR. HATCH: Mr. Calvin, could you put that up.

17 BY MR. HATCH:

18 Q Do you recall -- he went through several risk factors  
19 with you; is that right?

20 A That's correct.

21 Q And ultimately did you take those into consideration in  
22 your analysis?

23 A For the risk factors that apply to the product markets,  
24 I did. It's incorporated into the forecasts and it's also  
25 incorporated -- did that go off? I can just talk loud.

1           It was also incorporated into Dr. Pisano's analysis.  
2       So those risk factors that are specific to the product  
3       market are relevant and are incorporated into the analysis.  
4       The risk factors that he was referring to were risk factors  
5       related to SCO as the company, it's their company risk  
6       factors that don't have to do with the product markets. And  
7       that would be relevant if we were concerned about what SCO's  
8       stock was selling for. But that is not the analysis I did.  
9       The analysis I did was how much lost profit we would get  
10      from the SCOSource.

11           THE COURT: Sandy, her microphone is not working.

12      BY MR. HATCH:

13      Q     I think everybody heard us. We won't repeat all that.

14      A     Okay.

15      Q     But even the way Deutsche Bank was looking at it -- and  
16      they listed all the risk factors, right?

17      A     Yes, they did.

18      Q     I want you to look at Exhibit R-21 that Mr. Brennan  
19      showed to you. On that first page under buy, does it  
20      indicate what the price was at the time of this report?

21      A     It does. It says the price at 13 October 2003, \$16.01.

22      Q     The date of this report is what date?

23      A     October 14, 2003.

24      Q     So the price the day before this report came out is  
25      \$16?

1 A Correct.

2 Q I take it the report lists all the risks, all the pros?

3 A Correct.

4 Q Given all that, what did Deutsche Bank, still taking  
5 into account all the risks and all the pros, what did  
6 Deutsche Bank list as the prospective target for this stock?

7 A It was the opinion of the analysts after all the  
8 analyses had been done, that the price target for the stock,  
9 and this is over a 12-month period, was \$45.

10 Q That's right here in this first line under the names,  
11 correct?

12 A That's correct.

13 Q Dr. Botosan, I just have one more question for you  
14 because I think we went for -- well, we've been here for  
15 four hours, and there's been a break, I want to put this pen  
16 right here and give you the opportunity, based on everything  
17 that you have been cross-examined on today by Mr. Brennan,  
18 just give you the opportunity to come up and change any of  
19 the numbers that you feel need to be changed.

20 A No. I don't feel any of the numbers need to be  
21 changed.

22 Q Okay.

23 A Except for one. Can you rub the zero out on the bottom  
24 there?

25 Q I don't know if the Judge will let me do that.

1 THE COURT: No.

2 THE WITNESS: That one.

3 MR. HATCH: We'll leave it there, if it's their  
4 argument.

5 And, Your Honor, that's all I have.

6 THE COURT: Thank you, Mr. Hatch.

7 Mr. Brennan, do you have anything else?

8 MR. BRENNAN: Yes. Just a minute, Your Honor.

9 THE COURT: Go ahead.

10 MR. BRENNAN: Just a few questions, Your Honor.

11 RE-CROSS-EXAMINATION

12 BY MR. BRENNAN:

13 Q I hate to quibble, but I guess as a lawyer I must for  
14 just a minute. The question that Mr. Hatch asked of you had  
15 to do with the district court's ruling issued on June 4th --  
16 excuse me, June 9th, 2004. Do you recall that?

17 A I do.

18 Q Do you have a copy of that in front of you?

19 A Somewhere.

20 Yes, I do.

21 Q Now if you could turn to the last page, above the  
22 judge's signature there is a heading entitled Conclusion.  
23 You understand that what was before the judge was a motion  
24 by SCO Group to remand the case from federal court back to  
25 state court, right?

1 MR. HATCH: Your Honor, now we're getting into  
2 other motions that haven't been at issue.

3 MR. BRENNAN: The only reason I am raising this,  
4 Your Honor, she was asked what the ruling was.

5 THE COURT: To the extent that the witness may  
6 have misrepresented the ruling as to that pertinent part of  
7 this order, you may question, but not beyond the pertinent  
8 part, okay.

9 MR. BRENNAN: That's all I intend to do, Your  
10 Honor, just to make sure the jury understands.

11 THE COURT: Go ahead.

12 BY MR. BRENNAN:

13 Q So you understand that before the court were three  
14 motions, right?

15 A I did not understand that. What I thought we were  
16 talking about was the motion to dismiss.

17 Q So what was before the court was a motion by SCO Group  
18 to have the case sent from the federal court to state court,  
19 right?

20 A If you purport that.

21 Q I will make that representation to you.

22 A Okay.

23 Q And did SCO win or lose that motion?

24 A I don't know because I thought we were talking about a  
25 motion to dismiss.

1 Q And if you look on page 19 of the order, it says,  
2 plaintiff's motion to remand --

3 THE COURT: Mr. Brennan, I will sustain the  
4 objection.

5 BY MR. BRENNAN:

6 Q Well, then, just so we have clarity in terms of what  
7 the consuming public thought about the ruling, I would like  
8 to have you look at Exhibit W-28, in particular at page --

9 MR. HATCH: Your Honor, beyond the scope.

10 MR. BRENNAN: Your Honor, this has to do with what  
11 was the ruling and what the public's perception was.

12 THE COURT: Well, he, on redirect, asked what the  
13 ruling was. That does not open the door to going to what  
14 the public may have viewed about the ruling.

15 MR. BRENNAN: Well, all I would like to do, Your  
16 Honor, is demonstrate that what was publicized regarding the  
17 ruling to the consuming public. That's all I intend to do.  
18 This is a news article that reports on it to the public.

19 THE COURT: I am going to sustain the objection.  
20 It goes beyond redirect.

21 MR. BRENNAN: In light of that, Your Honor, no  
22 further questions. Thank you.

23 THE COURT: All right.

24 May this witness be excused?

25 Mr. Hatch?

1           MR. HATCH: Your Honor, this witness, it's  
2 possible she will be needed as rebuttal again in the case.

3           THE COURT: Dr. Botosan, that means you may be  
4 re-called. I would ask you to make yourself available. I  
5 would also instruct you do not discuss this case with  
6 anyone, particularly in the presence of another witness or  
7 potential witness. All right.

8           THE WITNESS: All right, Your Honor.

9           THE COURT: Thank you.

10          THE WITNESS: Thank you.

11          MR. HATCH: Your Honor, in light of the time, we  
12 would call by deposition Mr. Gasparro. Regrettably, or  
13 maybe not so, we don't have a video for this. We would like  
14 to do it by reading. Mr. Normand agreed to do the answers.

15          THE COURT: Can we move the easel.

16          Ladies and gentlemen, on occasion the depositions  
17 are not videos. Those depositions you've seen to this point  
18 have all been videotaped. So it's not unusual for them to  
19 be presented in the form you are about to see, and that is  
20 where Mr. Normand will act the role of the witness in the  
21 case and will read the responses on his behalf.

22          Mr. Hatch, if you would please make sure to state  
23 the date it was taken.

24          MR. HATCH: Absolutely, Your Honor. This is the  
25 deposition of Mr. Lawrence Gasparro. It was taken October

1 7th, 2004.

2 THE COURT: For the record, could we have Gasparro  
3 spelled.

4 MR. HATCH: G-a-s-p-a-r-r-o.

5 (Deposition of Lawrence Gasparro)

6 Q Mr. Gasparro, when did you first start at SCO?

7 A 1995.

8 Q Did you and Mr. Sontag make presentations to customers?

9 A Yes.

10 Q Did you educate them on the legal basis for your  
11 actions?

12 A I believe we were successful.

13 Q Can you just tell me what it is that you explained to  
14 those customers with respect to the legal action?

15 A As I recall, we had identified certain segments within  
16 the AT&T source code agreement between AT&T, Novell and SCO.  
17 There were excerpts of that contract inserted into the slide  
18 presentation and a display of the SGI infraction of the  
19 literal copying of the source code into Linux.

20 Q Do you have an understanding of what the intellectual  
21 property license for Linux that's referred to in this  
22 document is?

23 A Yes, I do.

24 Q Can you tell me what that is?

25 A Yes. The SCO IP, affectionately called IP license for

1 Linux, was a product that we announced August 5th, 2003 to  
2 provide Linux end users with an option at their discretion  
3 to cover any issues or resolve -- resolve is the wrong word,  
4 but to, in other words, purchase a license to protect  
5 themselves against any risk associated with UNIX source code  
6 in Linux.

7 Q Can you identify for me the customers that purchased  
8 such a license?

9 A I can attempt to identify a few for you.

10 Q Please.

11 A Computer Associates, EV1 Web Hosting, ISP. There were  
12 a number of smaller organizations, maybe individuals that  
13 obtained this license.

14 Q Did you sell any of these golden compliance licenses,  
15 to the best your knowledge?

16 A The EV1 transaction I believe qualified for that, yes.

17 Q Were you personally involved in the EV1 sale?

18 A Yes, sir.

19 Q Who did you deal with at EV1?

20 A I dealt with the CEO.

21 Q Who was that?

22 A Mr. Robert Marsh and counsel.

23 Q Do you recall who his counsel was?

24 A I believe it's Mr. Eric Schaefer.

25 Q Do you know what law firm he might be affiliated with?

1 A It was an external firm in Houston.

2 Q Do you know the amount of the sale for that license?

3 A I do. The transaction was \$800,000 plus additional  
4 terms in marketing contribution.

5 Q Do you have any understanding of how much additional  
6 there was?

7 A I think the original agreement was three to 600,000.

8 Q And in going to the -- it may be the last point -- you  
9 were asked earlier about if you received any negative  
10 feedback from your sales force members concerning the  
11 licensing program?

12 A Yes, sir.

13 Q And you said that in your mind there was negative  
14 feedback because people weren't purchasing licenses. Was  
15 the SCO licensing program affected by Novell's claim?

16 A Dramatically.

17 Q Was the SCO licensing program also affected by IBM's  
18 funding of the Open Source Defense Fund?

19 A Yes.

20 Q Was SCO's licensing program negatively affected by  
21 Novell's claims of ownership?

22 A Yes.

23 Q My second question, was SCO's licensing program  
24 negatively affected by IBM's payment of \$10 million to the  
25 Open Source Defense Fund?

1 A Yes.

2 Q With respect to the last questions that Mr. Magnanini  
3 asked you, do you know of specific sales that were lost as a  
4 result of -- well, strike that.

5 Mr. Magnanini asked you about Novell's claims?

6 A Yes, sir.

7 Q What was your understanding of what he meant by asking  
8 that?

9 A Well, I visited with a number of large corporate Linux  
10 end users in the United States as well as my assigned team  
11 and we were providing proposals for consideration to  
12 corporate accounts and many of the accounts responded  
13 sometimes in writing of written record and/or e-mail or just  
14 in direct conference calls why they would object to  
15 obtaining such a license. And the Novell claim of copyright  
16 was a major factor as to why several customers did not sign  
17 the agreement with SCO.

18 Q Can you identify the specific customer?

19 A Yes, I have. There is a list of customers that we  
20 assembled as my sales organization that was approximately 50  
21 to \$60 million of licensing opportunities that we created in  
22 the first six months of the licensing program and were  
23 involved in discussions based on those amounts.

24 Right now a couple of those accounts that cited  
25 ownership issues I believe to be Ford Motor, Google, Cisco,

1 and there were numerous others, but I'm very familiar with  
2 the dollar amount because I owned that amount 50 to \$60  
3 million of licensed opportunity.

4 Q How did you arrive at that 50 to \$60 million amount?

5 A Thank you. The proposals that -- there are written  
6 records of the proposals that were assembled, that is the  
7 total amount of licensing opportunities that the customers  
8 ultimately denied the licensing acceptance because of  
9 specifically naming Novell in copyright ownerships.

10 Q I guess I'm trying to ask, how is that number  
11 determined? What is that based on?

12 A As an example, let's say the list price of a product  
13 was a dollar, the company A had 500, company B had quantity  
14 600, that's how we assembled those numbers. So based upon  
15 volume and unit pricing.

16 MR. HATCH: Thank you. That's the end of our  
17 reading.

18 THE COURT: Now you have a new Mr. Gasparro.

19 MR. JACOBS: A little on our side, Your Honor.  
20 Mr. Acker will be our actor.

21 THE COURT: I want you to note that counsel are to  
22 be judged by their skills as attorneys and not as witnesses.

23 MR. JACOBS: Unfortunately.

24 Q And, Mr. Gasparro, you have in front of you what's been  
25 marked as Trial Exhibit A-15, --

1                   MR. JACOBS: Your Honor, this has previously been  
2 introduced into evidence.

3 Q     -- which is an e-mail from you to Mr. McBride, it  
4 appears, dated May 21st, 2003?

5 A     Yes.

6 Q     Do you recognize this e-mail?

7 A     Yes, sir.

8 Q     The first sentence of your e-mail states, after one  
9 week of talking to our customers and reading independent  
10 articles, we need some immediate position/leverage to  
11 generate IP revenue (Q3) from end users?

12 A     Yes, sir.

13 Q     Can you explain to me what suggestion you're making to  
14 Mr. McBride?

15 A     I think there were, going back, I believe there were a  
16 lot of doubters, it wasn't a very popular position for SCO  
17 to maintain, and so the number of approximate naysayers were  
18 certainly out there.

19 Q     Did you offer Mr. McBride, apart from this e-mail, any  
20 proposals as to how to generate immediate leverage to  
21 generate revenues?

22 A     No. I had very various responsibilities at this time  
23 and I personally accepted this IP revenue task myself at  
24 this time frame.

25 Q     The third paragraph of your e-mail states, should we

1 consider publishing the results of three independent  
2 auditors without divulging actual code. Can you tell me  
3 what you were referring to there?

4 A Yes. I recall that SCO had hired a number of auditors  
5 to review UNIX code verse Linux code and found a number of  
6 issues.

7 Q Do you know when those analyses were performed?

8 A No, sir.

9 Q Was it just, ballpark, was it in this May 2003 time  
10 period or was it before?

11 A Oh, it would have been at some time before May 21st,  
12 but whether not it was January or March I couldn't comment,  
13 I don't know.

14 Q Did it occur sometime between the fall of 2002 and the  
15 spring of 2003?

16 A You're asking me to guess and I don't know.

17 Q Who would have knowledge with respect to when those  
18 analyses were performed?

19 A I would imagine Mr. Sontag, Mr. McBride.

20 Q Do you know who the auditors were?

21 A No.

22 Q Were you ever shown any of the work that was produced  
23 by the auditors?

24 A No.

25 Q Were any of your customers ever shown the work that was

1 produced by the auditors?

2 A Not by me.

3 Q By any members of your sales team?

4 A No.

5 Q To your knowledge, was your sales team ever presented  
6 with the results of those analyses?

7 A No.

8 Q You next ask: Can we release the reports under  
9 nondisclosure but not identify the actual code infringement.  
10 What were you suggesting be done there?

11 A I was informed that the auditors had found  
12 discrepancies within the source code and Linux code, and to  
13 assist me in my quest for communicating to the industry what  
14 was going on, needed some -- I was asking for some written  
15 documentation to support our verbal position.

16 Q Were you ever provided with any written documentation  
17 to support the verbal position?

18 A No. Per this request, no.

19 Q The last question that you have is: Can we hire a  
20 popular analyst to review the code infractions and publish a  
21 supported theory of our IP. Do you know if that was ever  
22 done?

23 A I don't believe that was ever done.

24 Q I guess just to be clear for the record, is it your  
25 understanding the result of three analyses that were

1 performed were never shown to anybody under a nondisclosure  
2 agreement?

3 A I wouldn't know that.

4 Q At least you were not involved in showing that  
5 analyses?

6 A I was not involved.

7 Q In either your discussions or -- well, in your  
8 discussions with your sales representatives regarding this  
9 intellectual property license for Linux, did you ever learn  
10 that customers were inquiring as to what specific SCO  
11 intellectual property existed in Linux 2.4 and Linux 2.5?

12 A Yes.

13 Q What was the nature of the questions that the customers  
14 posed to you?

15 A Exactly what you've just stated, they wanted more  
16 distinct information.

17 Q When you received those types of inquiries, what did  
18 you do or what did you instruct your sales team to do?

19 A We asked for additional evidence of code infraction to  
20 provide to the customer.

21 Q Who did you ask that of?

22 A It would have been back to Mr. Sontag.

23 Q Were you provided with any?

24 A We were informed under nondisclosure the customers  
25 could access SCO's evidence in Lindon, Utah.

1 Q Do you know what code was show to customers in Lindon,  
2 Utah?

3 A Do not.

4 Q Do you know if they were shown the SGI code that we  
5 talked about earlier?

6 A I don't know.

7 Q Did you ever visit the Lindon, Utah office to view the  
8 evidence yourself?

9 A No.

10 Q Do you know if any of your sales representatives ever  
11 visited the office to view the evidence themselves?

12 A They did not.

13 Q Do you know how many customers went to view the  
14 evidence themselves?

15 A No.

16 Q Did you refer customers to speak with other individuals  
17 within SCO apart from the sales team about their questions?

18 A Yes.

19 Q Who did you refer customers to?

20 A We have to -- I have to bore you again with time frame.

21 Q I guess in the -- after August 2003, when you began  
22 selling the Linux license.

23 A Through my last day at the company?

24 Q Sure, the last day.

25 A On limited occasion additional information via

1 conference call may have included Mr. Sontag, and on at  
2 least one and possibly one or two, counsel from SCO.

3 Q Sitting here today I take it you cannot identify for me  
4 the specific SCO intellectual property that's contained in  
5 the Linux 2.4 or 2.5 kernels?

6 A That's correct, Chris.

7 THE COURT: Thank you, counsel.

8 Mr. Normand.

9 MR. NORMAND: Your Honor, we would next present  
10 the deposition of Phillip Langer by video. Mr. Langer was  
11 deposed on November 5th, 2004.

12 THE COURT: Thank you.

13 (Deposition of Phillip Langer)

14 Q When did you first become employed by the SCO Group?

15 A June, I think, 30th, '98 from the original Santa Cruz  
16 operations.

17 Q What was your position when you joined Santa Cruz?

18 A Sales associate.

19 Q What were your responsibilities in that position?

20 A I was responsible -- I was responsible to a mentor who  
21 was the corporate account manager for three states in the  
22 Midwest: Illinois, Wisconsin and Indiana. And I was  
23 associated with doing sales tasks, learning cold calling,  
24 learning the sales process for the next half year and then  
25 next year.

1 Q What types of products were you selling at that point  
2 in time?

3 A UNIX. UNIX support and services.

4 Q Would that be UnixWare and OpenServer?

5 A Yes.

6 Q Both of those products?

7 A Yes.

8 Q What was the next position that you held within Santa  
9 Cruz?

10 A Corporate account manager.

11 Q When did you become corporate account manager?

12 A I think late -- let's see, late -- probably late '99,  
13 2000, right around there in the first quarter.

14 Q What was your responsibility as the corporate account  
15 manager?

16 A To deal with large corporate account end users, named  
17 account lists within my state area, which at that time I  
18 think was southern Ohio, Kentucky and Missouri.

19 Q Again, you were selling UnixWare and OpenServer at that  
20 point in time?

21 A UnixWare, OpenServer, support and services around then.

22 Q How long did you hold that position?

23 A Until -- through December -- or actually through  
24 January of 2004.

25 Q Through January 2004?

1 A Yes.

2 Q In January 2004, what position did you take at The SCO  
3 Group?

4 A I took the position of the regional director of  
5 intellectual property licensing.

6 Q What were your responsibilities in that role?

7 A My responsibilities were sales of our UNIX Linux IP  
8 license.

9 Q You held that position until you left in August 2004?

10 A Right, correct.

11 Q Who did you report to from January 2004 to August 2004?

12 A Larry Gasparro.

13 Q Now after February 2004, when you became the regional  
14 director for intellectual property licensing, did you then  
15 have any sales of licenses to customers?

16 A Yes.

17 Q Can you tell me which customers you were involved in  
18 selling licenses to?

19 A I got -- well, we did deal with Questar, which I think  
20 I got credit for, but I didn't have any dealings with. So  
21 it came into my bucket, so to speak, and I probably got the  
22 last contract faxed from them, but I didn't do any of the  
23 selling. And then we did the EV1 deal, and everyone's  
24 entered in. Those were the only two. I can't think if  
25 there was like little onesie, twosie things. I can't

1 remember, but those were the two significant.

2 Q Did you have any involvement with Computer Associates?

3 A No.

4 Q So those were the only two customers that you can  
5 recall that actually purchased licenses?

6 A Right.

7 Q Do you recall who you contacted to purchase licenses  
8 during that time period, from February to August 2004?

9 A No. I mean, I contacted a lot of people. I couldn't  
10 tell you off the top of my head.

11 Q And how was the responsibility divided? Did you  
12 contact all the people within this Midwestern region or was  
13 it nationwide?

14 A I had the west region, which went from Illinois  
15 basically down over, except for northern California,  
16 Washington and Oregon. I had southern California and the  
17 rest of the western states.

18 Q Did there become a point in time when Novell raised a  
19 question over the title to SCO's IP in UNIX?

20 A Yes.

21 Q Do you recall them making those pronouncements  
22 publicly?

23 A Yes.

24 Q And did the fact that Novell made those public  
25 pronouncements questioning SCO's ownership of UNIX's IP

1 negatively impact your ability to sell licenses?

2 A Yes.

3 Q Do you know when Novell made this announcement that you  
4 talked about with Mr. Samuels?

5 A Novell first made the announcement, it was last year in  
6 2003, that they were questioning the claims of the UNIX that  
7 I think we -- we came out with our Amendment 2. They  
8 recanted. Then they came out later, I think it was like  
9 August 2003, that kind of time frame, they started leaking  
10 that they owned it. Then once the suit was filed, it came  
11 to kind of a hold. I mean, we were always -- we started to  
12 get a lot more once Novell started that they owned and they  
13 can indemnify because they had UNIX rights, were making that  
14 public. Then all the licensees -- potential licensees  
15 became very interested in, well, if you don't own it, we're  
16 not going to buy a license from you, which really, you know,  
17 put a hold to selling licenses.

18 Q So it's your testimony that you were unable to sell  
19 licenses because of Novell's announcement?

20 A Yeah. I mean, it put a pretty big dampening effect on  
21 how we were able to approach people when the intellectual  
22 property you're trying to license to them is in question of  
23 ownership.

24 Q Did you ever do anything to show to customers that you  
25 were in fact the owner of the copyrights at issue?

1 A I mean, we would tell them to look at our Web site for  
2 Amendment 2 and read through the contracts. You can see  
3 that it was transferred. You know, we've been selling UNIX  
4 for six years. Up until now there has never been -- you  
5 know, customers were paying for UNIX. Other licensees had  
6 licensed UNIX's intellectual property. You know, we had  
7 this -- you know, to us, it was a no-brainer. We had owned  
8 it. We had been spelling UNIX. It was ours.

9 Q Have you --

10 A So we went into our Web site with our contracts.

11 Q Did you ever make any presentations to customers about  
12 the ownership issue?

13 A No, I mean, not specifically on that. We may have  
14 mentioned that, you know, look at our -- I mean, we'd point  
15 them to the contracts and here are the contracts. You take  
16 a look -- have your legal team look over the contracts,  
17 advise you of what to do.

18 Q Have you personally ever reviewed the contracts that  
19 you are talking about?

20 A I've looked them over as -- you know, I am not an  
21 attorney, so it's a contract.

22 Q Did you have any projections of what revenues you could  
23 have obtained were it not for Novell's announcement?

24 A I don't have any projections on hand. I know we had a  
25 pipeline that we're starting to build, and when the Novell

1 issue started to come up, I mean, I thought we were going to  
2 be able to do at least -- I mean, a couple million to three  
3 million in my territory I was hoping for. But when that  
4 type of -- once the questioning of the ownership came out,  
5 the pipeline was killed.

6 Q And this pipeline that you're talking about, are you  
7 using pipeline in the same sense that you were reviewing --  
8 you were using the word pipeline in response to the earlier  
9 exhibit that we looked at? Exhibit 239 I believe it was.

10 A Similar, in that these were companies I had talked to,  
11 involved with, had talked about or we were in dealings with  
12 to set up meetings. So there was potential there. But, no,  
13 there was no one exactly on the front doorstep ready to  
14 purchase a license.

15 Q So you didn't have any reasonable expectation of this  
16 revenue?

17 A We did have an expectation because we were in  
18 involvement with them and they were interested in hearing  
19 about our licensing and possibly buying a license.

20 Q So -- just so we're clear, when you used the word  
21 pipeline with respect to the Linux sales, you had no  
22 reasonable expectation of sales, but when you used the word  
23 pipeline here, you did have a reasonable expectation of  
24 sales; is that what you're saying?

25 A Yes, different type of -- when I use pipeline, yes,

1 different types of pipeline. For the Linux sales, that  
2 would have been new business that was outside my normal  
3 business of UNIX. This was my pipeline of my only business  
4 that I was working on at this time. So this was deals I was  
5 actually in front of daily and I had to close to make  
6 commission. So I was much more involved in that pipeline  
7 than the other.

8 Q This is starting in February 2004 that you're talking  
9 about the pipelines?

10 A Yes.

11 Q Was that before or after Novell made their  
12 announcement?

13 A That would be -- well, their initial announcement  
14 before we could counter was before I took over this.

15 Q So you were still -- you were projecting two to \$3  
16 million of revenue in your region even after Novell made  
17 their announcement; is that what you're saying?

18 A Because they recanted. They made their initial  
19 announcement. Then they recanted after Amendment 2 and then  
20 it started to trickle up. And then once a -- once we were  
21 heading to court with Novell, then it became a true -- it  
22 was viewed as the ownership issue is in question, and that  
23 was in -- I think that was in mid January or February -- mid  
24 February, because we had built up this, and then once people  
25 started to hear wind of what this lawsuit was coming down,

1 because not everybody was dealing with it like everyone  
2 else -- like we are all day to day, then it becomes they  
3 start doing their homework they realize, hey, there's a  
4 question about the ownership.

5       You know, until that gets really settled and it looks  
6 like that it's not -- you know, it looks like it may be a  
7 possible problem for you, then we're not going to talk about  
8 it until that issue has been cleared up.

9 Q     And just so we're clear, were you projecting two to  
10 three million of revenue annually, for the year, or for a  
11 specific quarter?

12 A     I thought I could do that for the year. I mean, with  
13 some of the accounts we had on, we had large accounts, and  
14 with the list pricing now, that can go up or down, depending  
15 on, you know, who's buying, who's selling.

16 Q     These would all be new customers to SCO, correct, not  
17 old customers?

18 A     Correct.

19 Q     Did any of the potential customers that you approached  
20 give you a specific reason for declining to buy a license  
21 that Novell had claimed to own the copyrights?

22 A     Regal Entertainment Group. I think that's what they  
23 are, Regal Entertainment Group. They were set. They were  
24 moving forward with looking -- looking forward to buy a  
25 license, and they wanted to get it done within the month. I

1 think this was the end of April. They finally came back and  
2 said we can't purchase a license because we can't buy your  
3 intellectual property because there is not clear title on it  
4 like we do when we buy movies, which have clear copyright  
5 title. So we can't make the same type of intellectual  
6 property investment with you as we would with our other  
7 vendors.

8 Q Do you know what the size of the potential sale to  
9 Regal was?

10 A It was -- it was on their front end. It would have  
11 been I think three to -- 300,000, \$350,000.

12 Q Apart from Regal, were there any other customers that  
13 you remember specifically saying that we were not going to  
14 purchase a license because of Novell's announcement?

15 A I had some letters back from some. I think one was --  
16 I think possibly -- I can't remember. I mean, I can't  
17 remember the exact companies, but I know I had a couple  
18 letters back that said, you know, until your ownership issue  
19 is settled, please do not contact us, then we'll be willing  
20 to sit down and work that out. But if you have an ownership  
21 issue, we cannot buy anything from you.

22 MR. NORMAND: Your Honor, that completes SCO's  
23 designations.

24 THE COURT: Thank you, Mr. Normand.

25 MR. JACOBS: We have a few moments of additional

1 testimony from Mr. Langer.

2 THE COURT: Go ahead, Mr. Jacobs.

3 Q But you don't know the specific code that's allegedly  
4 in Linux that SCO claims rights to?

5 A No, I don't know specifically.

6 Q Have you ever asked anyone to review for you what  
7 specific code there is?

8 A I have asked for more information from some of our  
9 customers, but -- or potential customers, but, no, I have  
10 not seen any.

11 Q When you asked for more information, who did you ask  
12 for more information?

13 A I would ask my boss, Larry Gasparro.

14 Q Were you ever provided with anything more?

15 A No, not really. We would get just general  
16 explanations, but no in-depth information.

17 Q First, you mentioned that customers -- potential  
18 customers of the Linux licenses you were selling requested  
19 that you do line-by-line code comparisons for them; is that  
20 correct?

21 A Yes, they wanted to be able to do their own line by  
22 line.

23 Q You told them that SCO would not do that for them; is  
24 that accurate?

25 A No, we couldn't do that.

1 Q You couldn't do it or you would not do it?

2 A We would not do it. I don't know if we -- I don't know  
3 if we can or cannot do it, but I know we would not do it.

4 Q You told those potential customers you would not do  
5 that for them?

6 A Right.

7 MR. JACOBS: That completes our additional  
8 testimony.

9 THE COURT: Thank you.

10 MR. NORMAND: Your Honor, we would again present,  
11 by play acting, the deposition of Gregory Pettit, taken  
12 October 7, 2004.

13 MR. HATCH: Did you give the date?

14 THE COURT: He did.

15 The spelling of the witness's name would be  
16 helpful.

17 MR. NORMAND: P-e-t-t-i-t.

18 (Deposition of Gregory Pettit)

19 Q Mr. Pettit, are you currently employed by The SCO  
20 Group?

21 A Yes, I am.

22 Q What is your current position?

23 A Regional director, intellectual property licensing.

24 Q What jobs have you held since graduation?

25 A I spent a year with Nixdorf Computer, a year with a

1 company called SDL, four years with Boeing Computer  
2 Services, ten years with Digital Equipment, and 11 plus  
3 years with SCO. The original SCO now The SCO Group.

4 Q Do you know what SCOSource is?

5 A SCOSource is an umbrella statement for a group of  
6 people at SCO who are worrying about SCO's intellectual  
7 property in the marketplace.

8 Q Did any -- during the summer of 2003, did any customer  
9 approach you and ask you about SCO's alleged intellectual  
10 property rights in Linux?

11 A I'm sure we had discussions with customers who were  
12 interested in understanding why, why we were saying what we  
13 were saying.

14 Q Do you remember which customers approached you about  
15 this?

16 A NASDAQ, Getronics, CVS. Those were the folks I can  
17 think of off the top of my head.

18 Q Of the ones you've called, do you remember which ones  
19 asked for more information or were interested in setting up  
20 a meeting?

21 A I recall setting up -- actually, I did not get any  
22 successful -- I got one confirmation of a meeting. Sorry.

23 Q Which one was that?

24 A Raytheon.

25 Q I'm sorry?

1 A Raytheon.

2 Q Did you or someone else actually meet with Raytheon on  
3 this issue?

4 A Yes.

5 Q Did you go to the meeting?

6 A Yes.

7 Q Who else went?

8 A Larry Gasparro.

9 Q What additional information was given to Raytheon at  
10 the meeting?

11 A We had a presentation, as I recall, that just touched  
12 on two points, we had problems with our intellectual  
13 property in Linux in two ways; one was copyrighted material  
14 and one was by contract.

15 Q Were any specific examples of code provided to  
16 Raytheon?

17 A I don't recall if the Malloc code was shown or just  
18 referred to. I believe it was referred to.

19 Q So it was just you and Mr. Gasparro at the meeting?

20 A Yes.

21 Q What was Raytheon's response to your presentation?

22 A Basically it was thank you for the information and as a  
23 result of sensitizing them to a potential problem, they were  
24 going to just go off and investigate and understand how they  
25 were using Linux in-house.

1 Q Were there other customers who asked for more  
2 information but didn't want to set up a meeting quite yet?

3 A Yes.

4 Q Do you remember which ones those were?

5 A Again, are you asking me as a result of this?  
6 Raytheon was the only thing that happened.

7 Q As a result of this or as a result of any other  
8 communications you might have had about SCO's alleged  
9 property rights in Linux?

10 A Yes, there were several others. I want to make sure --  
11 I get confused on some of the financial shops. I believe it  
12 was -- we'll come back to them.

13 Pixar, Cisco --

14 Q Sorry. Cisco with a C or S?

15 A C.

16 -- Merrill Lynch. There were several others who  
17 expressed interest in seeing more material.

18 Q Did you offer any of the customers a license for the  
19 use of this alleged intellectual property?

20 A I was asked to prepare a proposal.

21 Q Asked by who?

22 A Merrill Lynch.

23 Q Did you ever prepare a proposal for Merrill Lynch?

24 A Yes.

25 Q What were the terms of the proposal?

1 A For this range of machines, it's this much money. For  
2 this range of machines, it's this much money.

3 Q What was Merrill Lynch's response?

4 A They chose not to pursue the proposal because of the  
5 activities of Novell, which confused the marketplace and who  
6 owned the UNIX intellectual property. And that was the  
7 primary reason for them postponing any action on the  
8 proposal.

9 Q You're looking at what has been marked as Exhibit 162.  
10 Please take a look at that and let me know if you recognize  
11 this document?

12 A Yes.

13 MR. HATCH: Your Honor, 162 in that deposition is  
14 SCO Exhibit 188. I would move its admission at this point.

15 MR. JACOBS: No objection, Your Honor.

16 THE COURT: It will be admitted.

17 (Plaintiff's Exhibit 188 was received into  
18 evidence.)

19 MR. HATCH: Mr. Calvin, just highlight that. Blow  
20 that up for us, the body of it.

21 Are we ready?

22 Q The exhibit is a letter from Sylvia Khatcherian from  
23 Morgan Stanley to yourself?

24 A Uh-huh.

25 Q Do you remember ever providing Morgan Stanley with the

1 additional information Ms. Khatcherian is asking for?

2 A I don't believe we did. Again, the point they made the  
3 licensing program was to work with people who were  
4 interested in working with us. And Morgan Stanley's  
5 position was one of show me more information and, by the  
6 way, disprove press reports SCO's claim of ownership.

7 Q You've been handed what has been marked as Exhibit 165.  
8 Would you take a look at that that and let me know if you  
9 recognize this letter?

10 A Yes.

11 MR. HATCH: Your Honor, Exhibit 165 of the  
12 deposition has now been designated as Exhibit F-27. I move  
13 its admission as well.

14 THE COURT: F-27?

15 MR. HATCH: F-27.

16 MR. JACOBS: It may already be in, Your Honor.  
17 This is the Google letter that I think we saw earlier, F-27.

18 THE COURT: It is.

19 It's in already, Mr. Hatch.

20 MR. HATCH: Thank you, Your Honor.

21 Q Do you remember if in response to this letter you or  
22 anyone else at SCO provided Goggle with any additional  
23 information regarding SCO's alleged rights to the Linux  
24 code?

25 A Yes. Again, the specifics of this letter I don't

1 recall, but we had several in interactions with Michael.  
2 Some of the interaction -- unfortunately, he had sent me  
3 correspondence I hadn't received, so that was the tone of  
4 this letter. But when we finally hooked up, the essence of  
5 the communication was, Michael, we're prepared to come in  
6 nondisclosure, walk you through the material so you can make  
7 an educated decision on what the exposure was.

8 Q Did you ever have a meeting?

9 A No.

10 Q Why not?

11 A Michael chose not.

12 Q Did he say why?

13 A I wasn't the last guy to talk to him so, no, I don't  
14 know what the answer was.

15 Q Who was the last guy to talk to him?

16 A I don't know. I know I handed it over to other people  
17 that worked with Michael for a while and then let it go.

18 Q In conjunction with the Raytheon and your discussions  
19 with them in terms of trying to get them to receive a  
20 license, at that point in time were you having difficulty  
21 with potential licensees as a result of activities by  
22 Novell?

23 A Absolutely.

24 Q Did those activities by Novell make it difficult for  
25 you to obtain licenses for companies, including Raytheon?

1 A Absolutely.

2 Q Did the activities of Novell include activities that  
3 brought into question whether you, in fact, owned the  
4 intellectual property you were trying to license?

5 A Yes.

6 Q Were those questions that were raised by Novell what  
7 caused you having great difficulty, if not impossibility, in  
8 selling any licenses?

9 A Yes.

10 MR. HATCH: Your Honor, that ends our reading.

11 THE COURT: All right.

12 MR. BRENNAN: Your Honor, with you permission, I  
13 will assume the role of the reader.

14 THE COURT: Thank you.

15 MR. JACOBS: This is some brief additional  
16 testimony of Mr. Pettit.

17 Q Did any of your -- any of the companies you called, did  
18 anyone ask you to provide them with more detail as to SCO's  
19 alleged intellectual property rights?

20 A I believe that was one of the responses.

21 Q What did you tell them when they asked?

22 A I don't -- the interaction wasn't interactive. So this  
23 was a request for a meeting. Most said no thank you.  
24 Occasionally we got a do you have something you can send me.

25 Q What would you have sent if they asked?

1 A We would have sent the -- no, actually, I don't think  
2 we would have sent anything at this point. I'm sorry. This  
3 was strictly we were trying to come in and meet with you and  
4 educate you. As it said, we were going to have an  
5 executive, one of the SCO executives, come in and actually  
6 walk them through the issues. It wasn't -- that's what the  
7 intent of this correspondence was.

8 Q So if someone asked you for more detail, your basic  
9 response would have been someone else will get back to you  
10 on this?

11 A The reason for the call was so we could come in,  
12 present this information to you. It wasn't meant to be,  
13 here's an information packet.

14 Q You spoke here of them trying to pull together some  
15 materials to present to Raytheon. Then you said they put  
16 things on hold and they never finished putting together the  
17 presentation. I guess we established that they never  
18 finished the material for Raytheon. Do you know if they  
19 made any similar presentation for other companies?

20 A Oh, okay. In that context, no.

21 Q I'm sorry. You don't know or they didn't do it?

22 A They didn't. Well, actually, I can't speak  
23 definitively. I can speak to my customer community.

24 Q You don't think they did?

25 A My customer community, no.

1           MR. JACOBS: That ends the additional testimony of  
2 Mr. Pettit.

3           THE COURT: Thank you.

4           Do you have a five-minute witness?

5           MR. HATCH: We would probably call Mr. Maciaszek,  
6 and he's certainly not a five-minute witness. He's not too  
7 long, but certainly not five minutes.

8           THE COURT: We'll go ahead and recess for the  
9 afternoon.

10           Ladies and gentlemen of the jury, I do have to  
11 specifically stress one thing. During Dr. Botosan's first  
12 testimony today you heard reference to the fact that she got  
13 on the Internet and Googled and used other means whereby she  
14 found out about this case. That is something that has been  
15 covered by this Court in instructing you what not to do. As  
16 I've told you several times, you are not to be doing any  
17 research on your own, you are not supposed to be discussing  
18 this case or doing anything on your own that will give you  
19 any information. You make your decision in this case only  
20 on what you hear in this courtroom by way of testimony, the  
21 law you will be given by the Court at the end of the case.  
22 I would again remind you that you should avoid any reading  
23 of about this case or listening to anything or watching  
24 anything on television or anything else pertaining to this  
25 matter nor should you be discussing the case with anyone.

1 I believe that's it. I hope you had a nicer lunch  
2 today than normal. It's good advertising for the guy across  
3 the street.

4 Ms. Malley, if you would please assist the jury  
5 into the jury room.

6 (Jury excused)

7 THE COURT: What's your schedule for tomorrow,  
8 counsel?

9 MR. SINGER: Your Honor, we would pick up with  
10 Mr. Stone, who I understand will be here first thing in the  
11 morning. We'll then have Ms. O'Gara's deposition. I think  
12 that's about 20 or 30 minutes in total. We would then have  
13 Mr. Maciaszek, Mr. Nagle, and Mr. Tibbitts, while at that  
14 point while not resting our case because there will be  
15 witnesses next week, Mr. Messman, Mr. Keller. I guess being  
16 an optimistic at heart, I am hopeful maybe if there is time  
17 for one witness on the other side, we would ask them to tell  
18 us who their witness would be in case we get to that point.

19 MR. BRENNAN: Your Honor, our intention at this  
20 juncture, if you get to that, is to call Mr. Terry  
21 Maciaszek, who is our damages expert rebuttal witness.

22 THE COURT: All right.

23 MR. BRENNAN: I'm sorry, I misspoke. I hope  
24 Mr. Musika is not here and heard me butcher his name.  
25 That's our intention. My apologies.

1           THE COURT: All right, counsel, is there anything  
2 before we recess?

3           MR. ACKER: Good luck this afternoon with the  
4 game, Judge. Is Utah State this afternoon?

5           THE COURT: I'll hold that good luck for tomorrow  
6 as well. Thank you very much, Mr. Acker.

7           MR. TIBBITTS: BYU won.

8           THE COURT: We'll be in recess. We do have a  
9 hearing this afternoon, counsel, so if we could clear things  
10 off, please.

11           (Whereupon, the trial was continued to Friday,  
12 March 19, 2010 at 8:30 a.m.)

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