



# Memorandum

To: Bob Frankenberg

cc: Larry Sonsini, Gary Reback, Morgan Chu, Fran Wikstrom, Steve Hill,  
Harrison Colter, Jim Lundberg, Michael Sohn

From: David R. Bradford

Date: May 10, 1995

Subject: Novell/Microsoft - Steps to Move Forward

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As a result of the litigation review meeting about Microsoft, and following our meeting last Thursday, you asked me to outline a strategy for moving forward. As I see it, with any direction we adopt, the following are essential:

- 1) Enhance Novell stock price.
- 2) Ensure we better serve our customers.
- 3) Protect our NetWare business while recognizing that competition in the networking business is necessary and essential for our own growth.
- 4) Protect Novell Management from the defocus which can arise through the time and expense of broad scale litigation.

As an alternative to litigation, I would recommend that we meet with Microsoft, set forth our complaints forcefully, and negotiate an appropriate resolution which preserves the objectives set forth above. For several reasons (which need not be enumerated here), we are in a better position to work out an agreement with Microsoft than we have been in sometime. However, the time frame for this advantage may well quickly dissipate due to events outside of Novell's control. Due to the strength of our position (and I admit, a question may remain as to whether or not Microsoft perceives this same strength), we should ask Microsoft for several things in exchange for our willingness to forego suing them for violations of antitrust law.

1. Equal Access - Microsoft will make available to Novell those Windows and NT interfaces (including application programming interfaces, service provider interfaces, binary interfaces etc.), calls,

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hooks, features, documentation or code of any type which might interact with Novell's software products at the same time and same level of specificity as those things are made available to Microsoft's own applications programmers.

2. UNIX Royalty - Eliminate the \$15 per copy royalty owed to Microsoft each time Novell ships a copy of UNIX on the Intel Platform.

3. Patent License - Obtain a fully paid up patent license to all of Microsoft's current and future patented technology.

4. NCP License - Microsoft enters into a proper license to Novell's NCP client technology (no cost) and Novell's NCP sever technology (at a price to be negotiated). As an alternative or supplement, Microsoft could also agree to incorporate Novell developed NetWare clients in Microsoft's operating systems.

Before we proceed with these discussions, Novell must lay a proper foundation by following through on the following:

- A. Receive assurance that the statute of limitations is, in fact, tolled pending the outcome of the Microsoft/DOJ Consent Decree litigation. [Reback, Sohn]
- B. Obtain further analysis of the dollar amount of our damage claim against Microsoft. (I.e. is it \$100 million or \$3 billion or somewhere in between?). [Hill, Chu]
- C. Get collaboration of John Young to speak to Dick Hackborn and possibly Sonsini to speak to Marquardt. [Bradford, Frankenberg]
- D. Decide whether to go to Microsoft with a consolidated complaint combining antitrust claim with NCP copyright claim or whether to keep them separate (however, eventually we have agreed not to bring a separate, long-term NCP copyright infringement case). [Input from Reback, Chu, Hill & Wikstrom]
- E. Take one more look at UNIX royalty questions - If the present contract were to remain in effect, how long will the Intel x.86 platform royalty exist? Does it apply to pentium? P7; P8? Is there a way to program around it? If we are going to sell UNIX as an application server only, does this matter anymore? [Harrison Colter]

Last week you received a letter from Mr. Gates. In following up to that letter, I suggest we set up a meeting to respond to Mr. Gates' concerns on the Beta Agreement, the service arrangement, and Patent Cross licenses, and let him know of our desire to discuss other issues and bring about a much better working relationship between the parties

In the interim I will proceed immediately to obtain answers to the foregoing. Let me add, that I believe this meeting should take place before the end of May. A potential negotiating team would be myself, Sonsini, and you. Let me know your thoughts. In the meantime, I will be preparing for such a meeting.

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