## **EXHIBIT E**

**Defendant's Exhibit** 

155

## Novell Legal Department Memorandum

To:

Mark Calkins

Glen Mella cc:

Bruce Brereton

From:

Date:

Ryan Richards

Dave Moon

David Bradford

Ad Rietveld January 12, 1995

Bob Frankenberg

David Owen

Todd Titensor

Subject:

Windows 95 Logo Requirements

The information contained in this memorandum is PRIVILEGED AND CONFIDENTIAL and is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that dissemination, distribution or copying of this document or communication of its content are prohibited. If you have received this document in error, please immediately notify us so that it can be returned to us. Thank you.

I want to give you and those copied on this memo an update of our discussions of the Microsoft Windows 95 logo program. Glen Mella, Todd Titensor, Greg Jones, David Owen and I met this morning to try to reach a decision on a recommended response to the logo program. As you know, the program requires that software programs bearing the logo be certified as compatible with both Windows 95 and Windows NT. For reasons we have discussed at length before, while we would like to use the logo, we are not willing at this time to satisfy the Windows NT compatibility requirements. There has been much discussion on how we should approach Microsoft with our concerns about the program. A-letter addressed to Microsoft's Brad Silverberg has been prepared for your signature which sets out the technical difficulties we face in trying to satisfy the dual compatibility requirements. The letter asks that the NT compatibility requirement be dropped. If the response is no, then we must decide how to position our refusal to use the logo.

Two responses that we have considered thus far are 1) to make a high profile challenge to Microsoft's program requirements, and 2) to ignore the program and, when asked, state that we simply do not intend to support it. The point of a high-profile challenge would be to garner the pressures of the press and other ISVs to bring Microsoft to alter the logo program. In either challenging the program or ignoring it, we would be free to make clear on our packaging and in our advertisements that our products run on Windows 95.

In discussions about a high-profile approach, Greg and David noted the similarities in this logo program with Novell's YES certification and logo program. Novell's program similarly requires dual compatibility. An ISV's NetWare compatible program must also be compatible with UnixWare, Lanalyzer, and other technologies. It appears that if we are to challenge Microsoft on this program, they could throw it back in our faces. We are already experiencing substantial push back from our ISVs. There is a good argument to be made that if we push this with Microsoft, our ISVs will have increased standing to challenge the YES program. Furthermore, David, who is Vice President of Novell Labs Division where the program is administered, informed us today that there is an internal movement toward more rigorous and expansive YES program requirements.

RR

NI 2 0000120

Our conclusion today was to recommend you send the letter to Brad and see how he responds. If Microsoft either modifies the program generally, or cuts Novell its own deal, then we have what we want: use of the logo without the NT compatibility requirement. If the response is "No", then we proceed without the logo and decide how to position our decision. We certainly have good arguments to support a decision not to support the logo program: 1) NT's APIs are not the same as Windows 95's APIs, 2) achieving NT compatibility would require substantial additional development, and 3) Novell's development plans do not include NT in the immediate future. Consequently, we are choosing not to participate in the logo program. At this point, our inclination is to take the lower profile approach. There is sufficient interest in the press and among other ISVs that our decision will very quickly become known publicly.

A couple of cautions: We should take care not to discuss this with other ISVs or otherwise attempt to dissuade them from supporting the logo program as such activities could violate antitrust law. We should also take care not to give inconsistent messages as we speak with the press or in public forums. My recommendation is that, until we have heard from Brad and have decided what tack to take on this issue, we refrain from publicly challenging the logo program.

I believe Glen will give you more details of today's discussion and confirm my recommendation that the letter be sent. If you have any questions, please let me know.