

EXHIBIT A

Max D. Wheeler (3439)
Stanley J. Preston (4119)
Maralyn M. Reger (8468)
D. Jason Hawkins (9182)
Bryan M. Scott (9381)
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, 11th Floor
P.O. Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000
Facsimile: (801) 363-0400

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

IN RE MICROSOFT CORP. ANTITRUST
LITIGATION,

OBJECTION TO SUBPOENA

MDL 1332

This document relates to:
Novell, Inc. v. Microsoft Corporation,
Civil Action No. JFM -05-1087

District of Maryland

PLEASE TAKE NOTICE that pursuant to Pursuant to Rule 45(c)(2)(B) of the Federal Rules of Civil Procedure, Snow, Christensen & Martineau, by the undersigned, hereby objects to the Subpoena served by Microsoft Corporation on Snow, Christensen & Martineau on June 30, 2008, to appear for a Rule 30(b)(6) deposition on July 17, 2008, and to produce and permit inspection and copying of all documents requested in Schedule A to the Subpoena, a copy of which is attached hereto as Exhibit 1. Snow, Christensen & Martineau's objection is based on the following grounds:

First, Snow, Christensen & Martineau is counsel for the Plaintiff in the current lawsuit and was counsel for Caldera, Inc. ("Caldera") in *Caldera, Inc. v. Microsoft Corp.*, No. 2:96 CV 0654B

(D. Utah) (the “*Caldera v. Microsoft* litigation”). As a result, the Subpoena requests the production of attorney-work product, attorney-client communications, attorney-client information obtained by communication between attorney and client, and/or otherwise requires production of confidential and proprietary information.

Second, the Subpoena requests documents relating to the case captioned *Novell, Inc. v. The Canopy Group, Inc.*, No 20030211-CA (Utah Ct. App.) (the “*Novell v. Canopy Group* litigation”). Snow, Christensen & Martineau, however, did not represent either of the parties in that lawsuit due to its prior representation of both parties in prior unrelated litigation. Moreover, a review of the firm’s file names indicates that Snow, Christensen & Martineau did not open any file for the *Novell v. Canopy Group* litigation. Based on the foregoing, Snow, Christensen & Martineau does not believe that it has any documents related to the *Novell v. Canopy Group* litigation.

Third, pursuant to Rule 26(b)(2)(C)(i) of the Federal Rules of Civil Procedure, the Subpoena requests documents that are unreasonably cumulative and duplicative, and can be obtained from some other source that is more convenient, less burdensome and less expensive. As explained in the June 16, 2008 letter from co-counsel, the requested documents were already produced by Novell and Caldera in the *Caldera v. Microsoft* litigation. By the end of that litigation, Novell had produced, either directly or indirectly, over 1,500 boxes of documents to Microsoft. It would be unfair, unreasonable, unduly burdensome and inconvenient for Snow, Christensen & Martineau to produce the very same documents that are already in Microsoft’s possession. Moreover, counsel for Microsoft previously agreed to treat the documents produced by Novell in the *Caldera v. Microsoft* litigation as though produced in the MDL. As a result, no further production of Caldera documents

is necessary. *See* Correspondence from Jeffrey M. Johnson to Steven L. Holley dated June 16, 2008, attached hereto as Exhibit 2.

Fourth, pursuant to Rule 26(b)(2)(C)(iii) of the Federal Rules of Civil Procedure, the burden and expense of Snow, Christensen & Martineau producing the requested documents substantially outweighs any potential benefit to Microsoft. Any responsive documents would be located in Snow, Christensen & Martineau's closed file relating to the *Caldera v. Microsoft* litigation. This file consists of boxes of documents, many of which contain attorney-work product, attorney-client communications and/or otherwise confidential and proprietary information. To cull through the entire file in an effort to locate any responsive documents, would be time consuming, expensive, unduly burdensome and prejudicial. This is particularly true given that any responsive documents have already been produced and are in the possession of Microsoft.

Fifth, compliance with the Subpoena would subject Snow Christensen & Martineau to significant expense. To the extent that Snow Christensen & Martineau is required to comply with the Subpoena, the Court should enter an order requiring Microsoft to pay any resulting attorneys' fees and costs.

Finally, Snow, Christensen & Martineau further objects to the Subpoena on the grounds that it is overbroad, unduly burdensome, vague, ambiguous and not reasonably calculated to lead to the discovery of admissible evidence.

For the foregoing reasons, Microsoft is not entitled to inspect and copy any of the materials requested in the Subpoena except pursuant to an order of the Court. Consequently, Snow, Christensen & Martineau and its undersigned representative will not appear at the time and place

instructed by the Subpoena, Thursday July 17, 2008, at 9:30 a.m., unless otherwise ordered by the Court.

DATED this 10th day of July, 2008.

SNOW, CHRISTENSEN & MARTINEAU

A handwritten signature in black ink, appearing to read "Max D. Wheeler", written over a horizontal line.

Max D. Wheeler
Stanley J. Preston
Maralyn M. Reger
D. Jason Hawkins
Bryan M. Scott

896166.wpd

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of July, 2008, I mailed by United States Postal Service the foregoing **OBJECTION TO SUBPOENA** to the following:

Mark M. Bettilyon, Attorney
James S. Jardine, Attorney
John W. Mackay, Attorney
Mark W. Pugsley, Attorney
RAY QUINNEY & NEBEKER
36 S. State Street, Suite 1400
P.O. Box 45385
Salt Lake City, UT 84145-0385




EXHIBIT 1

Subpoena

AO88 (Rev. 12/07) Subpoena in a Civil Case

Issued by the
UNITED STATES DISTRICT COURT

District of Utah

IN RE MICROSOFT CORP. ANTITRUST LITIGATION

SUBPOENA IN A CIVIL CASE

This Document Relates to:
Novell, Inc. v. Microsoft Corporation,
 Civil Action No. JFM-05-1087

Case Number:¹ MDL 1332
 District of Maryland

TO:

Snow, Christensen & Martineau
 10 Exchange Place
 Salt Lake City, Utah 84111

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	Ray Quinney & Nebeker 26 South State Street, Suite 1400 Salt Lake City, Utah 84111	DATE AND TIME	7/17/2008 9:30 am
Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, the subject for examination in this deposition is the collection, identification and authentication of documents produced in response to the document requests in Schedule A. Deposition to be recorded by stenographic means before a person authorized by law to administer oaths and also by audio-visual means.			

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

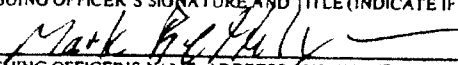
Documents requested in Schedule A

PLACE	Ray Quinney & Nebeker 26 South State Street, Suite 1400 Salt Lake City Utah 84111	DATE AND TIME	7/17/2008 9:30 am
-------	---	---------------	-------------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rule of Civil Procedure 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
 Attorney for Defendant	06/27/2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
 Mark M. Bettylion
 Ray, Quinney & Nebeker, 26 South State Street, Suite 1400, Salt Lake City, Utah 84111
 (801) 323-3307

(See Federal Rule of Civil Procedure 45(c), (d), and (e), on next page)

¹ If action is pending in district other than district of issuance, state district under case number.

Relationship _____ Date 6-20-08
 Name _____
 Address _____
 Constable Services _____ 561-4278

AO88 (Rev. 12/07) Subpoena in a Civil Case

PROOF OF SERVICE

DATE	PLACE
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____ DATE _____ SIGNATURE OF SERVER _____

ADDRESS OF SERVER _____

Federal Rule of Civil Procedure 45 (c), (d), and (e), as amended on December 1, 2007:

(C) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) **Command to Produce Materials or Permit Inspection.**

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) **Quashing or Modifying a Subpoena.**

(A) **When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(ii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information;
- (ii) disclosing an unreviewed expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or
- (iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(D) DUTIES IN RESPONDING TO A SUBPOENA.

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) **Claiming Privilege or Protection.**

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(E) **CONTEMPT.**

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(a)(3)(A)(ii).

SCHEDULE A

DEFINITIONS AND INSTRUCTIONS

1. "PERSON" or "PERSONS" means any natural person or business, legal or governmental entity or association.
2. "DOCUMENT" has the broadest meaning accorded to it by Rule 34 of the Federal Rules of Civil Procedure and includes, without limitation, any recording in any tangible form of any information, whether handwritten, typed, printed, stored on computer disks, tapes or databases (including electronic files and e-mail), or otherwise reproduced. "DOCUMENT" also includes all drafts and copies that are not identical to the original.
3. "CALDERA" refers to Caldera, Inc., its divisions, subsidiaries, predecessors or successors-in-interest (including The Canopy Group, Inc.), and joint ventures to which it may be a party, employees of those entities, any agents or other PERSONS acting at Caldera, Inc.'s direction or under its supervision or control, and all other PERSONS whose DOCUMENTS are in Caldera, Inc.'s "possession, custody or control" within the meaning of Fed. R. Civ. P. 34(a).
4. "NOVELL" refers to Plaintiff Novell, Inc., its divisions, subsidiaries, predecessors (including the WordPerfect Corporation) or successors-in-interest, and joint ventures to which it may be a party, employees of those entities, any agents or other PERSONS acting at Novell, Inc.'s direction or under its supervision or control, and all other PERSONS whose DOCUMENTS are in Novell, Inc.'s "possession, custody or control" within the meaning of Fed. R. Civ. P. 34(a).

5. "ASSET PURCHASE AGREEMENT" refers to the Asset Purchase Agreement dated July 23, 1996 by and among CALDERA and NOVELL.

6. "CONCERNING" means directly or indirectly mentioning, constituting, discussing or describing, relating to, pertaining to or being connected with a stated subject matter or any aspect thereof.

7. "INCLUDING" means including but not limited to.

8. "LICENSE AGREEMENT" refers to the Novell Cross Platform Services and Novell Products Source Code License Agreement dated July 23, 1996 by and among CALDERA and NOVELL.

9. "RESERVATION OF RIGHTS" refers to the Reservation of Rights dated July 23, 1996 by and among NOVELL and CALDERA.

10. DOCUMENTS should be produced as they are kept in your files or shall be organized and labeled to correspond with the requests below. If DOCUMENTS are not produced as they are kept in your files, sufficient information should be provided to permit identification of the source of particular DOCUMENTS from within your files.

11. All drafts of responsive DOCUMENTS, as well as non-identical copies, should be produced. Identical copies of a DOCUMENT that is being produced need not also be produced.

12. In construing these requests: (i) the singular shall include the plural and the plural shall include the singular; (ii) the conjunctions "and" and "or" shall be read either disjunctively or conjunctively so as to bring within the scope of this request all information that might otherwise be construed to be outside its scope; and (iii) the word "any" shall include, without limitation, "each and every."

13. If you claim that any document requested is immune from disclosure (in whole or in part) under any claim of privilege or immunity, please submit a written statement for each DOCUMENT withheld that: (i) identifies the person(s) who prepared or authored the DOCUMENT and all recipients or addressees, including recipients of copies; (ii) specifies the date on which the DOCUMENT was prepared; (iii) describes the type of the DOCUMENT (*e.g.*, letter, memorandum, notes, e-mail, etc.); (iv) identifies the general subject matter of the DOCUMENT; and (v) sets forth the nature or the basis for the claim of privilege or immunity asserted.

REQUESTS

1. All court records (INCLUDING all pleadings and other filings made by the parties, and all orders, decisions and opinions issued by the court), all written discovery requests and responses, all documents produced by the parties and any third parties, all deposition transcripts, and all correspondence relating to the trial court and appellate court proceedings in the case captioned *Novell, Inc. v. The Canopy Group, Inc.*, No. 20030211-CA (Utah Ct. App.).

2. All DOCUMENTS CONCERNING the court's statement in *Novell, Inc. v. The Canopy Group, Inc.*, 92 P.3d 768, 770 (Utah Ct. App. 2004), that "[t]he main purposes of this sale [of the DR DOS Products and Related technology and all claims related directly or indirectly thereto] were to obligate Canopy to bring suit against Microsoft, to allow Novell to share in the recovery, and at the same time to obfuscate Novell's role in the action against Microsoft."

3. All DOCUMENTS CONCERNING NOVELL'S involvement in *Caldera, Inc. v. Microsoft Corp.*, No. 2:96 CV 0654B (D. Utah), INCLUDING DOCUMENTS REFERRING OR RELATING TO NOVELL'S contacts with CALDERA about any aspect of the lawsuit, both before and after it was filed.

4. All DOCUMENTS CONCERNING the ASSET PURCHASE AGREEMENT, INCLUDING:

A. All DOCUMENTS CONCERNING the meaning of the terms "Transferred Assets," "DOS Products," and "Related Technology" as those terms are used in the ASSET PURCHASE AGREEMENT; and

B. All DOCUMENTS CONCERNING the provision in the ASSET PURCHASE AGREEMENT that states, "Also at Closing, Novell shall grant, transfer, convey, and assign to Caldera all of Novell's right, title, and interest in and to any and all claims or causes of action held by Novell at the Closing Date and associated directly or indirectly with any of the DOS Products or Related Technology, including, but not limited to, any claims or causes of action for declaratory or injunctive relief or damages, whether any such claim is a claim at law or in equity, and whether any such claim is matured or unmatured."

5. All DOCUMENTS CONCERNING the LICENSE AGREEMENT.

6. All DOCUMENTS CONCERNING the RESERVATION OF RIGHTS.

7. All communications, including all correspondence and all DOCUMENTS produced, between attorneys for NOVELL and attorneys for CALDERA, CONCERNING the trial court and appellate court proceedings in the case captioned *Novell, Inc. v. The Canopy Group, Inc.*, No. 200302111-CA (Utah Ct. App.) and the trial

court proceedings in the case captioned *Caldera, Inc. v. Microsoft Corp.*, No. 2:96 CV
0654B (D. Utah).

EXHIBIT 2

Letter from Jeffrey M. Johnson to Steven L. Holley dated June 16, 2008

DICKSTEINSHAPIRO LLP

1825 Eye Street NW | Washington, DC 20006-5403
TEL (202) 420-2200 | FAX (202) 420-2201 | dicksteinshapiro.com

Writer's Direct Dial: (202) 420-4726
E-Mail Address: johnson@dicksteinshapiro.com

June 16, 2008

Via Electronic Mail and U.S. Mail

Steven L. Holley
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004

Re: Novell, Inc. v. Microsoft Corp., Civil Action No. JFM-05-1087, MDL No. 1332

Dear Steve:

I write in response to your June 10, 2008 letter concerning Novell's responses to Requests 4 through 9 of Microsoft's First Set of Requests for Production. In overview, we believe that we have fully satisfied the requests and, absent your providing cogent reasons that would justify further efforts, we do not intend to take any further steps in response to these requests, all of which go to a tangential issue that the Court has previously characterized as "a far stretch."¹

Requests No. 4 and 5

We do not understand your bald assertion that our production of documents from the *Novell, Inc. v. Canopy Group* case is incomplete. As you are aware, we obtained documents concerning the *Canopy* case from Anderson & Karrenberg, Novell's counsel in that action. Anderson provided us *all* of the documents in its possession concerning that case. Thus, to our knowledge, our April 7, 2008 production contains all of the responsive documents Novell has from the *Canopy* case. Furthermore, your assertion that the April 7 production contained only a "small selection" of documents produced in *Canopy* – those used in depositions or to support dispositive motions – is incorrect. The production contains documents produced by Novell;² Canopy Group;³ and third parties Arthur Anderson⁴ and Microsoft.⁵ In addition, you fail to

¹ And your inaccurate characterization of Novell's sale of DR-DOS and claims relating thereto as a generic "sale of PC operating systems claims" does not improve your argument.

² These documents also bear the same control numbers as used in Novell's productions in the *Caldera* action, and are scattered throughout Novell's production here

³ See NOV00125849 – NOV00126115; NOV 00131020 – NOV00131139; NOV 00131850 – 00132204; and NOV00132482 – NOV00132619.

⁴ See NOV00126367 – 00126831.

⁵ See NOV00126116 – NOV00126332.

DICKSTEINSHAPIROLLP

Steven L. Holley

June 16, 2008

Page 2

identify what documents you believe are missing or the basis of any belief that documents are missing. Such information is necessary for Novell to address any concerns, because we cannot respond to conclusory assertions that do not square with the facts.

The fact that there are no large productions of documents in the *Canopy* case should come as no surprise to anyone. Both Novell and Canopy were in possession of the documents concerning the Asset Purchase Agreement and ancillary agreements. Why? Because all such documents were produced by Novell and Caldera (Canopy's predecessor) to Microsoft in the *Caldera v. Microsoft* litigation. There was obviously no point in producing such documents again in the *Canopy* action, which brings us to your second point.

Requests 6 through 9

Your statement that "Novell has not produced any documents in response" to Requests 6 through 9 is incorrect. First, those requests concern the Asset Purchase Agreement and other related documents Novell previously produced to Microsoft in the *Caldera* case. In *Caldera*, Microsoft subpoenaed Novell and requested production of, among other things, all documents concerning: 1) the Asset Purchase Agreement and any ancillary agreements; 2) any agreements between Novell and Caldera regarding the lawsuit; and 3) communications between Novell and Caldera regarding DR DOS, Microsoft or any Microsoft product⁶ -- the exact same information Microsoft seeks in Requests 6 through 9 here.⁷ In response to the subpoena, Novell produced over 600 boxes of documents to Microsoft.⁸ As part of its compliance with the subpoena, Novell also sent out a company-wide e-mail, with a copy of Microsoft's subpoena attached, requesting that each Novell employee search for and produce any documents responsive to Microsoft's subpoena. Documents collected through that effort were also produced to Microsoft.

By the end of the *Caldera* action, Novell had produced, either directly or indirectly, well over 1,500 boxes of documents to Microsoft. During the meet and confer, we specifically requested you provide us with electronic copies of, or identifying information concerning, the hundreds of thousands of documents Microsoft received from Caldera and Novell in the *Caldera* action. No such copies or other identifying information has been forthcoming. We renew that request here.

Second, in addition to initially producing all responsive documents to Microsoft in the *Caldera* action, Novell also produced documents to Microsoft and plaintiffs in response to subpoenas served in *In re Microsoft Antitrust Litigation*, 00-MDL-1332, (D. Md.) and *Microsoft Cases*, J.C.C.P. No. 4106 (Cal. Super. Ct.). Both plaintiffs' subpoenas and Microsoft's subpoenas demanded that Novell produce the same documents Novell had previously produced

⁶ See July 10, 1997 Subpoena (Ex. A).

⁷ Microsoft's First Request for Production (Ex. B).

⁸ See April 10, 1998 letter from John Mullen to Michael H. Steinberg (Ex. C).

DICKSTEINSHAPIRO LLP

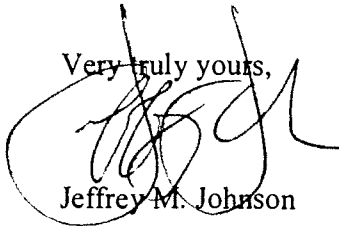
Steven L. Holley
June 16, 2008
Page 3

in the *Caldera* action. Because these documents were already in Microsoft's possession, Novell objected to these requests. In response, Microsoft acquiesced, agreeing to treat the documents produced by Novell in the *Caldera* case as though produced in the MDL and California actions.⁹ Why would we do anything differently here? Given that Microsoft has already agreed to treat Novell's *Caldera* production as produced in this MDL action, what further production of *Caldera* documents could possibly be accomplished now.

Microsoft's Current Motion To Compel

Finally, we note your stated intention to file the previously briefed motion to compel. That motion, however, and our response thereto, is hopelessly out of date and does not reflect any of the facts developed in our meet and confer conferences or the productions previously made. Given our production of counsel's complete files in the *Canopy* case, and the documents produced to Microsoft in response to nearly identical requests in the *Caldera* action, now a part of this MDL proceeding by prior agreement, we are hard-pressed to understand what it is you want us to do. We would of course be happy to discuss this with you further. It is not our intention to be difficult, but we see no point (only needless time and expense) in trying to produce that which you already have in this action.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeffrey M. Johnson", is written over the typed name. The signature is stylized and somewhat cursive.

Jeffrey M. Johnson

JMJ/kyw
Attachments

⁹ See February 23, 2001 Letter from Joseph E. Neuhaus to John Mullen (Ex. D).

EXHIBIT A

Exhibit B

United States District Court

CENTRAL DIVISION, DISTRICT OF UTAH

JUL 11 1997

CALDERA, INC.,

v.

244849 SUBPOENA IN A CIVIL CASE

MICROSOFT CORPORATION.

DUCES TECUM

CASE NUMBER: 2:96 CV 0645B 2:46R

To: Novell, Inc.
c/o C T Corporation System
50 West Broadway, 8th Floor
Salt Lake City, Utah 84101-2006

11 July 97
SOW 30058 800
Cindy Paul - 97
CONSTABLE RET, SALT LAKE COUNTY, UT
COURT

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF TESTIMONY	DATE AND TIME
--------------------	---------------

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):


SEE ATTACHED EXHIBIT "A"

PLACE OF TESTIMONY	DATE AND TIME
RAY, QUINNEY & NEBEKER 79 South Main Street, Suite 600 Salt Lake City, UT 84111	July 23, 1997 1:30 P.M.

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PLACE OF TESTIMONY	DATE AND TIME
--------------------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, director, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedures, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
 Mark M. Bettilyon, Attorney for Defendant	July 10, 1997

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

James S. Jardine
Mark M. Bettilyon
RAY, QUINNEY & NEBEKER
79 South Main Street
P.O. Box 45385
Salt Lake City, UT 84145-0385

(801) 532-1500

PROOF OF SERVICE

	DATE	PLACE
SERVED ON (PRINT NAME)	MANNER OF SERVICE	
SERVED ON (PRINT NAME)	TITLE	

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
 Date Signature of Server

 Address of Server

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order by the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any persons who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance.
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be com-

- manded to travel from any such place within the state which the trial is held or,
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies,
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information; or
- (ii) requires disclosure of an unretained expert opinion or information not describing specific events or occurrences in dispute and resulting from the expert study made not at the request of any party; or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, protect a person subject to or affected by the subpoena by quashing or modifying the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that is privileged or subject to protection as trade preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

"EXHIBIT A" TO NOVELL, INC. SUBPOENA

DOCUMENTS REQUESTED

1. Produce all documents concerning the Asset Purchase Agreement dated July 23, 1996 between Caldera and Novell, including, without limitation, (1) all drafts of (a) the Asset Purchase Agreement, (b) any exhibits thereto and (c) any ancillary agreements; (2) any analyses by Novell of any aspect of the transaction; (3) any materials presented to or reviewed by the Board of Directors of Novell regarding the transaction; (4) any minutes of meetings of the Board of Directors of Novell mentioning or discussing the transaction; and (5) any communications between Novell and Caldera regarding the Asset Purchase Agreement or any transfers of assets or other transactions occurring pursuant to that agreement.
2. Produce all documents constituting or concerning any agreements between Novell and Caldera regarding this lawsuit.
3. Produce all documents constituting or concerning communications between Novell and Caldera regarding DR DOS, Microsoft or any Microsoft product.
4. Produce all documents concerning the compatibility or incompatibility of DR DOS with any other software product.
5. Produce all documents constituting or concerning any customer complaints regarding DR DOS, including, without limitation, complaints regarding DR DOS's incompatibility with any other software product.

6. Produce all documents concerning any efforts by Novell or DRI to test the compatibility of DR DOS with any other software product.
7. Produce all documents concerning any efforts by any third party to test the compatibility of DR DOS with any other software product.
8. Produce all documents concerning alleged demands by Microsoft to OEMs that they license MS-DOS in order to obtain a license to Windows.
9. Produce all documents constituting or concerning Novell's or DRI's policies and practices with regard to providing beta test releases of its software products to its direct competitors.
10. Produce all documents constituting or concerning Novell's or DRI's policies and practices with regard to bundling two or more software products as a package.
11. Produce all documents concerning any efforts by Novell or DRI to bundle DR DOS with any other software product, including, without limitation, NetWare Lite.
12. Produce all documents constituting or concerning any volume discount program offered by Novell or DRI for DR DOS.
13. Produce all documents constituting or concerning any minimum purchase requirements used by Novell or DRI in any license of DR DOS.
14. Produce all documents concerning any analyses by Novell or DRI regarding actual or potential pricing of DR DOS or MS-DOS.

15. Produce all documents constituting or concerning any evaluation by Novell or DRI of consumer demand for, or consumer perception of, DR DOS, MS-DOS or any other operating system software product.

16. Produce all documents constituting or concerning Novell's or DRI's policies and practices with regard to public announcements of new software products still under development.

17. Produce all documents concerning Novell's or DRI's involvement in investigations of Microsoft by the FTC, DOJ, DG IV, the Korean Fair Trade Commission or any other antitrust enforcement agency anywhere in the world.

18. Produce all documents concerning the Consent Decree that Microsoft entered into with the DOJ on July 15, 1994, or the parallel Undertaking that Microsoft simultaneously gave to DG IV, including, without limitation, all press releases issued or analyses by Novell regarding those agreements or their possible effects.

19. Produce all documents concerning any efforts by Novell or DRI to develop a product to compete with any version of Windows.

20. Produce all documents concerning Novell's acquisition of DRI in 1991, including, without limitation, (1) any analyses by Novell or DRI of the transaction, (2) any materials presented to the Board of Directors of Novell or DRI regarding the transaction, (3) any minutes of meetings of the Board of Directors of Novell or DRI mentioning or discussing the transaction, and (4) any communications between Novell and DRI regarding the transaction.

21. Produce all documents concerning Microsoft's agreements with OEMs regarding the licensing of MS-DOS or Windows.
22. Produce all documents concerning Microsoft's beta-test releases of any version of Windows.
23. Produce all documents constituting or concerning beta exchange agreements entered into between Microsoft and Novell.
24. Produce all documents concerning Novell's decision to stop marketing and developing DR DOS.
25. Produce all documents concerning competition between various versions of the UNIX operating system and MS-DOS, DR DOS or any other operating system product.
26. Produce all documents concerning any efforts by Novell or DRI to distribute DR DOS through the retail channel.
27. Produce all documents concerning any efforts by Novell or DRI to distribute DR DOS directly to end users.
28. Produce all documents concerning any efforts by Novell or DRI to reduce the number of pirated or counterfeit copies of DR DOS.
29. Produce all documents concerning Novell's share of sales of network operating systems for Intel-based computers.
30. Produce all documents concerning joint efforts by Novell and Apple Computer, Inc. (code-named "Star Trek") to develop a new operating system.

31. Produce documents sufficient to identify each and every OEM approached by Novell or DRI concerning the actual or potential licensing of DR DOS.

32. Produce all documents concerning any potential or actual transaction or joint venture between International Business Machines Corporation and Novell or DRI with regard to DR DOS.

33. Produce all documents constituting or concerning any communications by Novell or DRI with any OEM regarding MS-DOS or Windows.

34. Produce all press releases concerning the actual or proposed release by Novell or DRI of any product.

35. Produce all documents concerning Project Snowman.

36. Produce all documents concerning Project Finder.

37. Produce all documents constituting or concerning any communication by Novell or DRI with any software industry publication with regard to DR DOS, MS-DOS or Windows.

38. Produce all documents concerning any efforts by Novell or DRI to remedy any incompatibility between DR DOS and any Microsoft product.

39. Produce all documents concerning any complaints that Novell or DRI has not documented all of the APIs in its operating system software products.

40. Produce all documents constituting or concerning any analysis by Novell or DRI of the functionality of MS-DOS.

41. Produce documents sufficient to identify Novell's and DRI's document retention policy.

42. Produce all documents concerning any analysis by Novell of a potential combination between Microsoft and Novell.

DEFINITIONS AND INSTRUCTIONS

A. "Caldera" refers to plaintiff Caldera, Inc.; its parent, subsidiary or affiliated entities; and its controlling shareholders, officers, directors, employees, agents, attorneys, representatives, predecessors, successors, assigns or any person acting on behalf of any of the foregoing.

B. "Microsoft" refers to defendant Microsoft Corporation; its subsidiary or affiliated entities; and its officers, directors, employees, agents, representatives, predecessors, successors, assigns or any person acting on behalf of any of the foregoing.

C. "Novell" refers to Novell, Inc.; its parent, subsidiary or affiliated entities; and its controlling shareholders, officers, directors, employees, agents, attorneys, representatives, predecessors, successors, assigns or any person acting on behalf of any of the foregoing.

D. "DRI" refers to Digital Research, Inc.; its parent, subsidiary or affiliated entities; and its controlling shareholders, officers, directors, employees, agents, attorneys, representatives, predecessors, successors, assigns or any person acting on behalf of any of the foregoing.

E. "DR DOS" refers to character-based operating system software products developed by DRI and/or Novell to compete with MS-DOS, and includes all versions of DR DOS and Novell DOS.

F. "OEM" refers to any original equipment manufacturer of personal computers.

G. "FTC" refers to the Federal Trade Commission.

H. "DOJ" refers to the Antitrust Division of the U.S. Department of Justice.

I. "DG IV" refers to Directorate-General IV, the competition arm of the European Commission.

J. "Document" has the broadest meaning accorded to it by Rule 34(a) of the Federal Rules of Civil Procedure, and includes, but is not limited to, all of the matters defined in Rule 1001 of the Federal Rules of Evidence.

K. "Communication" refers to every manner or means of disclosure, transfer or exchange, and every disclosure, transfer or exchange, of information.

L. "Person" refers to and includes any individual, corporation, partnership, association, foundation, trust or other legal entity.

M. "This lawsuit" refers to the action commenced by Caldera against Microsoft on July 23, 1996 in the United States District Court for the District of Utah (Case No. 2:96 CV 0645B).

N. The term “concerning” means directly or indirectly mentioning, discussing or describing, pertaining to or being connected with, a stated subject matter or any aspect thereof.

O. Documents shall be produced as they are kept in the usual course of business.

P. All responsive documents in Novell’s possession, custody or control shall be produced, including documents that were originally in the possession, custody or control of DRI before Novell’s acquisition of DRI.

Q. All drafts of responsive documents shall be produced as well as all non-identical copies.

R. In construing these requests: (i) the singular shall include the plural and the plural shall include the singular; (ii) masculine, feminine or neuter pronouns shall not exclude other genders; (iii) the conjunctions “and” and “or” shall be read either disjunctively or conjunctively so as to bring within the scope of this request all information that might otherwise be construed to be outside of its scope; and (iv) the word “any” shall be read to mean each and every.

S. If you claim that any requested document is immune from disclosure under a claim of privilege or immunity, submit within 30 days of the production of documents responsive to this request a written statement that for each document withheld:

- (i) identifies the person(s) who prepared or authored the document and all recipients or addresses, including recipients of copies;

- (ii) specifies the date on which the document was prepared;
- (iii) describes the nature of the document (*e.g.*, letter, memorandum, electronic-mail message, etc.);
- (iv) identifies the general subject matter of the document; and
- (v) sets forth the nature of the basis for the claim of privilege or immunity asserted.

T. This request shall be deemed continuing so as to require further and supplemental production of documents to the extent set forth in Rule 26(e) of the Federal Rules of Procedure.

Docket #244849

CONSTABLE'S RETURN

Case/Judge: 296CV0645B
MICROSOFT CORPORATION

I, ORSON MADSEN

being first duly sworn on oath and say: I am a duly appointed Deputy Constable, SALT LAKE County, State of UTAH, a citizen of the United States over the age of 21 years at the time of service herein, and not a part of or interested in the within action.

I received the within and hereto annexed,
SUBPOENA
& EXHIBIT A

on July 11, 1997, and served the same upon
NOVELL, INC.

a within named Witness in said article(s) by serving a true copy of said article(s) for the witness with

CINDY PAUL (AGENT)

a person of suitable age and discretion there residing at

50 W 300 S #800, SALT LAKE CITY

his/her usual place of BUSINESS,

on July 11, 1997

I further certify that at the time of service of the said article(s), I endorsed the date and place of service and added my name and official title thereto.

on July 11, 1997



Deputy

SL 802

ROBERT J. "BOB" REITZ, CONSTABLE, SALT LAKE Count
7304 SOUTH 300 WEST SUITE 203, MIDVALE, UTAH 84047, 255-552

MILEAGE CHARGE:	2.0
SERVICE CHARGES:	6.0
TOTAL CHARGES:	\$8.0

NOTES

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

IN RE MICROSOFT CORP.
ANTITRUST LITIGATION

This Document Relates to:
Novell, Inc. v. Microsoft Corporation,
Civil Action No. JFM-05-1087

MDL Docket No. 1332
Hon. J. Frederick Motz

MICROSOFT'S FIRST SET OF REQUESTS FOR PRODUCTION

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant MICROSOFT CORPORATION hereby requests that Plaintiff NOVELL, INC. produce the following documents within thirty days of service at the offices of Sullivan & Cromwell LLP, 125 Broad Street, New York, New York 10004 or at such other location as may be mutually agreeable.

DEFINITIONS

For purposes of this Request, capitalized terms shall have the definitions set forth below. The terms included under the heading "Uniform Definitions" are adopted from the Court's Uniform Instructions and Definitions for Use in Discovery Requests. See L.R., App. D. Additional terms are defined under the heading "Supplemental Definitions."

Uniform Definitions

1. The present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. "All" means "any and all";

4. All court records (including all briefs and all court orders and opinions), all written discovery requests and responses, all documents produced by parties and third parties, all deposition transcripts, and all substantive correspondence in the trial court and appellate court proceedings in *Novell, Inc. v. The Canopy Group, Inc.*, No. 20030211-CA (Utah Ct. App.).

5. All DOCUMENTS CONCERNING the court's statement in *Novell, Inc. v. The Canopy Group, Inc.*, 92 P.3d 768, 770 (Utah Ct. App. 2004) that "[t]he main purposes of this sale [of DR DOS to Canopy] were to obligate Canopy to bring suit against Microsoft, to allow Novell to share in the recovery, and at the same time to obfuscate Novell's role in the action against Microsoft."

6. All DOCUMENTS CONCERNING NOVELL'S involvement in *Caldera, Inc. v. Microsoft Corp.*, No. 2:96 CV 0654B (D. Utah), including DOCUMENTS CONCERNING NOVELL'S contacts with Caldera, Inc. (including Caldera, Inc.'s divisions, subsidiaries, predecessors-in-interest, joint ventures to which it may be a party, employees, and any agents or other PERSONS acting at Caldera, Inc.'s direction or under its supervision or control) CONCERNING the lawsuit both before and after it was filed.

7. All DOCUMENTS CONCERNING the ASSET PURCHASE AGREEMENT, including:

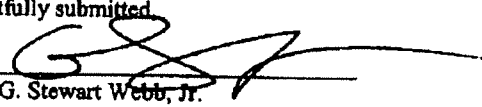
A. All DOCUMENTS CONCERNING the meaning of the terms "Transferred Assets," "DOS Products," and "Related Technology" as those terms are used in the ASSET PURCHASE AGREEMENT; and

- B. All DOCUMENTS CONCERNING the provision in the ASSET PURCHASE AGREEMENT that states, "Also at Closing, Novell shall grant, transfer, convey, and assign to Caldera all of Novell's right, title, and interest in and to any and all claims or causes of action held by Novell at the Closing Date and associated directly or indirectly with any of the DOS Products or Related Technology, including, but not limited to, any claims or causes of action for declaratory or injunctive relief or damages, whether any such claim is a claim at law or in equity, and whether any such claim is matured or unmatured."
8. All DOCUMENTS CONCERNING the LICENSE AGREEMENT.
9. All DOCUMENTS CONCERNING the RESERVATION OF RIGHTS.
10. All DOCUMENTS provided to potential investors in connection with NOVELL'S equity, debt or other security offerings, including private placement memoranda and presentations.
11. All securities analysts' reports CONCERNING NOVELL.
12. All DOCUMENTS provided to NOVELL'S Board of Directors and all drafts thereof CONCERNING:
- A. Strategies or proposed strategies for the development, marketing, pricing and distribution of NOVELL'S OFFICE PRODUCTIVITY APPLICATIONS;

56. All DOCUMENTS CONCERNING OEMs' cost of providing technical support for NOVELL'S OFFICE PRODUCTIVITY APPLICATIONS.

Respectfully submitted,

By:


G. Stewart Webb, Jr.
(Fed. Bar No. 00828)

Of Counsel:

Thomas W. Burt
Steven J. Aeschbacher
MICROSOFT CORPORATION
One Microsoft Way
Redmond, Washington 98052
Phone: (425) 706-8080
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Robert A. Rosenfeld
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McAULIFFE LLP
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San Francisco, CA 94104
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VENABLE LLP
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2 Hopkins Plaza
Baltimore, Maryland 21201
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David B. Tulchin
Steven L. Holley
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
Phone: (212) 558-4000
Facsimile: (212) 558-3588

Attorneys for Microsoft Corporation

July 20, 2005

EXHIBIT C

LAW OFFICES
ANDERSON & KARRENBERG
A PROFESSIONAL CORPORATION

ROSS C. ANDERSON
THOMAS R. KARRENBERG
LARRY G. REED
JOHN T. ANDERSON
STEVEN W. DOUGHERTY
SCOTT A. CALL
JOHN P. MULLEN
NATHAN B. WILCOX
VICTORIA P. COOMBS
KRISTINA L. JEZAIRIAN
SHAYNE R. KOHLER

700 BANK ONE TOWER
50 WEST BROADWAY
SALT LAKE CITY, UTAH 84101-2006

TELEPHONE (801) 534-1700
TELECOPIER (801) 364-7697

April 10, 1998

JON V. HARPER
Of Counsel

VIA FACSIMILE

Michael H. Steinberg
SULLIVAN & CROMWELL
444 South Flower Street
Los Angeles, CA 90071-2901

RE: Caldera v. Microsoft

Dear Mr. Steinberg:

This letter is in response to your letters of March 27, 1998 and March 31, 1998. I note that your letter of March 31, 1998, arrived while I was in New Jersey for a week.

First, I note that Microsoft has not supplied us with a list of the documents already reviewed and copied by Microsoft. As you know, many of Novell's former DRI documents were in Caldera's possession and were produced by Caldera to Microsoft. A description of the documents Microsoft copied would enable Novell to determine whether some of the documents requested by Microsoft still existed in archives or were turned over to Caldera.

Second, with reference to Microsoft's tally of documents "authored" by Mr. Tucker, and Microsoft's conclusion that this somehow proves that Novell has been "dilatatory" in its compliance with the subpoena, Microsoft is simply wrong. Microsoft's claim that Novell has never provided an assurance that it has undertaken an appropriate search for Mr. Tucker's files is also wrong. As I informed you previously, and as Mr. Lundberg confirmed at the Meet and Confer, Mr. Lundberg spoke to Mr. Tucker and Mr. Tucker indicated that his files had all been archived. Please see Mr. Lundberg's Affidavit at paragraph 21, page 10. Additionally, Mr. Tucker was deposed at length by Microsoft. Please send me a copy of Mr. Tucker's deposition so that I can find the pages wherein Mr. Tucker describes the documents that he authored. This may make it easier to locate those documents, if they ever existed. At the very least, please supply Novell with at least a general description of the documents Mr. Tucker described in his deposition as having been authored by him.

Michael H. Steinberg, Esq.
April 10, 1998
Page 2

I also note that Microsoft concedes that it has not finished coding its data base. I interpret this to mean that Microsoft is unsure at this point of all of the documents it has received in discovery.

Finally, at least 90%, if not more, of the DOS related documents that at one time existed in Novell's files have either been archived or turned over to Caldera as part of the Asset Purchase Agreement. All of these documents have now been produced to Microsoft. Anything left in any of the Novell departments is nothing more than the remaining bits and pieces of documents that were simply missed by the original archiving effort. Thus, Novell has not been "dilatatory" in complying with the July Subpoena. Instead, Novell has turned over to Microsoft over 90% of all of the relevant documents requested by the Subpoena.

As Microsoft knows, Novell produced over 600 boxes of documents from its archives in Provo/Orem directly to Microsoft after the Subpoena was served. An almost equal amount of DOS related documents were produced via Caldera from the documents Caldera obtained from Novell pursuant to the Asset Purchase Agreement. Clearly, production of 600 documents is a very, very substantial production.

Microsoft apparently is unable to come to grips with the concept that virtually all of the Novell's DOS related documents have been archived. Microsoft continues to labor under the apparent belief that there are "live" DOS files floating around Novell. Except for the OEM files, which are necessarily kept active because of Novell's continuing relationship with OEMs, most of the "live" DOS related files were archived long ago. Novell's production of these 600 archived boxes of documents, coupled with Caldera's production of an equal amount of documents transferred to Caldera under the Asset Purchase Agreement, when added to Novell's attempts to locate any remaining documents that had somehow been left behind, have been more than sufficient to comply with the Subpoena.

Additionally, although Novell first objected to producing Mr. Lundberg for a deposition, it voluntarily made him available rather than fighting this issue in court and increasing the costs of this case to Novell. Although Microsoft complains that Mr. Lundberg's deposition was insufficient, this is simply not the case. Mr. Lundberg more than sufficiently described all of his efforts, but simply forgot the names of the some of the people he had contacted.

During the deposition, Microsoft also complained that Novell had not sent the Subpoena company-wide in an E-mail, and that Novell had not provide the Subpoena in its entirety to those persons whom it had contacted. In response to Microsoft's complaints, Novell commenced work on the Herculean task of sending a company-wide E-mail containing the entire Subpoena to virtually every employee at Novell. Nonetheless, as soon as Microsoft understood Novell had

Michael H. Steinberg, Esq.
April 10, 1998
Page 3

complied with Microsoft's request for a company-wide E-mail, Microsoft began complaining about the E-mail effort.

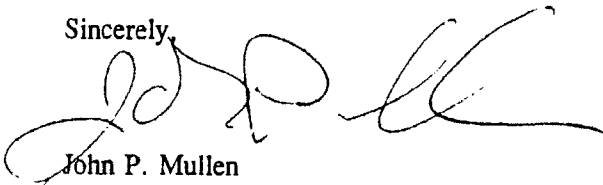
Microsoft also complained that Mr. Lundberg had not contacted Mr. Tucker and talked to him concerning his documents. Accordingly, Mr. Lundberg contacted Mr. Tucker and talked to him. Mr. Tucker stated that his documents had been archived. Yet, Microsoft now complains that few "authored" documents have been found. Thus, Microsoft's complaint about "Mr. Tucker's files" has now been narrowed by Microsoft to only those documents "authored" by Mr. Tucker. This "narrowing" is an obvious result of the fact that Caldera can document the production to Microsoft of several thousand pages of documents relating to Mr. Tucker.

Novell has also conducted a key word search through its archives on virtually every name that Microsoft has come up with. Yet, Microsoft still complains that this is not enough.

Novell has continued its search efforts and has uncovered new documents. For example, it was Mr. Lundberg's persistence in tracking down Kathy Yao, a former Novell employee, that led to the discovery of "missing" Santa Clara documents. It was also Mr. Lundberg's persistence in investigating the Vantive data base that led to the discovery of the "incompatibility" documents that have been produced.

It appears to me that Microsoft will never be satisfied with Novell's efforts and that Microsoft's requests are a constantly moving target. Microsoft's goal appears to be to make life miserable for Novell because Microsoft believes that Novell is "trafficking" in the present litigation between Caldera and Microsoft. Your March 12, 1998, indicates as much when it requests that Novell conduct individual contact with each engineer and member of the marketing groups. As Mr. Lundberg informed you at the Meet and Confer meeting, this is several thousand people. In fact, your letter goes as far as to claim that Novell must not only interview these people individually, but must ask each of them individually, and document for each individual, what each of them individually did to look for documents. This request goes far beyond anything required by Rule 45.

Sincerely,



John P. Mullen

JPM/klm

cc: Jim Lundberg, Esq.
Thomas R. Karrenberg, Esq.

EXHIBIT D

SULLIVAN & CROMWELL

TELEPHONE: 1-212-558-4000
FACSIMILE: 1-212-558-3588
WWW.SULLCROM.COM

*125 Broad Street
New York, NY 10004-2498*

LOS ANGELES • PALO ALTO • WASHINGTON, D.C.

FRANKFURT • LONDON • PARIS

BEIJING • HONG KONG • TOKYO

MELBOURNE

February 23, 2001

By Facsimile

John P. Mullen, Esq.,
Anderson & Karrenberg,
700 Bank One Tower,
50 West Broadway,
Salt Lake City, Utah 84101-2006.

RE: Subpoenas served on Novell, Inc. in In re Microsoft Corp.
Antitrust Litigation, 00-MDL-1332, (D. Md.), and Microsoft
Cases, J.C.C.P. No. 4106 (Calif. Superior Court)

Dear John:

As discussed in our telephone conference on February 13, 2001, here are our initial responses to the objections that you have served to the MDL subpoena and that we have deemed to apply to the identical requests in the California subpoena.

1. You object to producing again documents already produced in the Caldera litigation. As long as we get copies of whatever may be produced to plaintiffs, that is acceptable to us, except that I understand that the protective order in Caldera would bar use of those documents in these cases and disclosure to counsel and experts who were not part of that litigation. I suggest that we simply agree to treat the documents produced by Novell in Caldera as though produced in the above-captioned cases and subject to the protective orders in the above-captioned cases. Please let me know if that is acceptable to you.
2. In general, you have limited your response to an undertaking to conduct a computerized word search of the Novell archives. In our conversation on February 13th, you indicated that the index that you will be searching frequently contains no more detail than, for example, "Files of Mr. X." Consequently, we cannot agree that the searching you propose will finally discharge your obligation to search for responsive documents, but only, as the parties discussed in that conversation, that we would proceed with

John P. Mullen, Esq.

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such searching as an initial matter. It may be that such searching will ultimately be satisfactory, but that depends on the nature of the index, the nature of the searches you and the parties are able to develop, and their results. In our conversation, we discussed certain procedures for such initial searching. You agreed that you would provide the parties with a list of the search terms used. You and the parties also agreed that, as an initial matter, the parties would attempt to identify, from the organization charts and other documents that you are producing, individuals whose files should be searched for. You and the parties contemplated discussing later how the resulting files would be searched.

3. Your responses also generally limited your search and production of documents to "documents . . . in Novell's archives responsive to this request and relating to the WordPerfect or Quattro Pro applications prior to Novell's divestiture of the WordPerfect and/or Quantum Pro Products, or relating to productivity suites containing those products prior to Novell's divestiture of these products." We understand (a) that you are limiting your search to the archives because no responsive documents relating to those products exist elsewhere in the company; and (b) that you are not limiting your search or production to documents created prior to Novell's divestiture of the products. On the latter point, for example, a retrospective review of the products or sale generated after the divestiture would be produced. Please let me know if these understandings are not correct.
4. With respect to the response to Doc. Request No. 16, please produce the price lists referred to in your response.
5. As you appear to have noticed, Doc. Request No. 32 contains an error. The word "LOTUS's" should read "YOUR." You also object that the document request is "broad and vague." It might help if I broke the request into two parts. First, we are seeking documents relating to policies and practices regarding disclosure to in-house or independent word processing and spreadsheet software developers of technical information regarding the APIs of DR-DOS or any other Novell Operating System (but not Netware) or regarding tools, new developments or features, or functions of any such Operating System. Second, we are also seeking documents relating to policies and practices regarding disclosure to independent applications developers of data file formats, new developments, features or functions for Novell's own word processing and spreadsheet applications. With this clarification, please respond to the request.

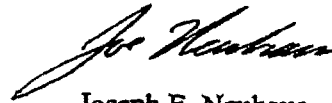
John P. Mullen, Esq.

-3-

6. While in general we do not object to your exclusion of Netware from your responses, Doc. Request No. 34 is an exception. Here we are seeking documents relating to the effect or potential effect on Novell of server- or Internet-based word processing and spreadsheet applications. These documents would logically exist in files connected with Netware and in documents generated more recently than the disposition of WordPerfect and Quattro Pro. On this one, we see no reason to limit the search to the archives.

I look forward to continuing to work with you on your response to Microsoft's subpoenas.

Sincerely,



Joseph E. Neuhaus

cc: R. Stephen Berry, Esq.
(Berry & Leftwich)
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