

1 with universities?

2 A. Yes.

3 Q. Now, if you will look at page 2 of the  
4 agreement itself and specifically at paragraph 2.01  
5 (a), if you will just take a moment to review that  
6 paragraph and let me know when you are done.

7 A. Okay.

8 Q. Now, you will notice the second sentence in  
9 that paragraph states, "Such right to use includes  
10 the right to modify such software product and to  
11 prepare derivative works based on such software  
12 product, provided that any such modification or  
13 derivative work that contains any part of a software  
14 product subject to this agreement is treated  
15 hereunder the same as such software product." What  
16 was your understanding of that provision?

17 A. My understanding is that the licensee would  
18 then treat the derivative or modified work they had  
19 created with the same care they would our own  
20 software product, meaning adhering to the same terms  
21 and conditions that were here.

22 Q. And specifically where it says that they have  
23 the right to prepare derivative works based on such  
24 software product, provided that any such modification  
25 or derivative work that contains any part of a

1 question is going to her understanding of the  
2 purpose.

3 Q. It's your understanding of the words "that  
4 contains any part of a software product subject to  
5 this agreement" --

6 A. Containing any part of the software product,  
7 according to my understanding, doesn't necessarily  
8 mean you have to have copied the exact code. You can  
9 also copy an idea or method or concept that you have  
10 presented in a different form, because there's going  
11 to be contamination, because if you have exposure to  
12 our software product, using the code or not using the  
13 code, but you have seen our code, that makes me think  
14 that that still in a way contains part of our  
15 software product.

16 Q. So your understanding at this point would be  
17 if it contains any -- "it" meaning the derivative  
18 work, any code or ideas or concepts from the software  
19 product --

20 A. Yes.

21 Q. -- then it would be required to be treated?

22 A. Yes.

23 Q. And if it does not contain any code, ideas or  
24 concepts --

25 A. If it's independently developed, then it would

1 not.

2 Q. If it does not contain any code, ideas or  
3 concepts from the licensed software, then it would  
4 not need to be treated as licensed software? Is that  
5 your understanding?

6 A. There's also a gray area as to the  
7 contamination, because anything that they have  
8 developed -- my interpretation would be anything  
9 that's developed as a result of exposure to our  
10 software should be treated as our software product,  
11 even though we claim no ownership.

12 Q. Anything that was developed as a result of  
13 exposure?

14 A. Yes.

15 Q. And what do you base that on in the language  
16 of the agreement? What's your interpretation?

17 MR. KENNEDY: Now, I'll ask her to review the  
18 entire agreement, if that's what you are asking.

19 MS. FITHIAN: If she needs to review the  
20 agreement, that's fine.

21 A. Basically in the section where it talks about  
22 the right to modify the software product and prepare  
23 derivative works based on such software products.  
24 You can prepare derivative work and you don't  
25 necessarily have to include code from our software

1 product, but based on the fact it was based on our  
2 product you must have had to have some exposure to it  
3 and that work would be contaminated by our product.

4 Q. (BY MS. FITHIAN) It seems if that's what the  
5 agreement were meant to mean, why wouldn't the  
6 agreement simply say "the right to prepare derivative  
7 works based on such software product, provided that  
8 any such modification or derivative work is treated  
9 hereunder the same as such software product"?  
10 Instead, the provision has the additional language  
11 "provided that any such modification or derivative  
12 work that contains any part of a software product  
13 subject to this agreement is treated hereunder the  
14 same as such software product." How do you reconcile  
15 in your mind your interpretation with the addition of  
16 that language in the second clause of the sentence  
17 "that contains any part of a software product"?

18 MR. KENNEDY: Objection to form.

19 A. Well, I could literally interpret that you  
20 have here modification or derivative work and then  
21 "that contains," which I believe is an adverbial  
22 phrase which modifies or which means it could modify  
23 derivative or modification or both. So that's based  
24 on my interpretation.

25 Q. Could you explain?

1 works based on such software product, provided that  
2 any such derivative work that contains -- not that's  
3 based on, but that contains any part of the software  
4 product must be treated hereunder the same as such  
5 software product.

6 MR. KENNEDY: Objection.

7 A. I consider the word "modification" here to be  
8 tied back to "based on."

9 Q. But what about the derivative work? You said  
10 the words "that contains" were modifying the words  
11 "derivative work"?

12 A. Right. That's how I interpret that.

13 Q. So if it's a derivative work, only if it  
14 contains part of a software product is it required to  
15 be treated the same as a software product subject to  
16 a license agreement?

17 A. No, I think we're missing the boat  
18 altogether. Let me just make a statement that it is  
19 my interpretation, understanding, opinion, that if  
20 something -- that if a licensee is exposed to our  
21 code and that licensee develops a modification, a  
22 derivative work, an application or any type of  
23 software product as a result of seeing our code, then  
24 that product should be treated the same as our  
25 software product.

1 those discussions?

2 A. We would have instances where licensees may  
3 call and ask about protection and then I would  
4 usually discuss that with Chuck.

5 Q. And can you recall anything specific that was  
6 discussed regarding this particular provision 2.01 in  
7 Exhibit D 25?

8 A. Chuck's standard answer would be, "If they see  
9 our code and develop something, then they need to  
10 treat it like ours."

11 Q. His standard answer to you?

12 A. Yes.

13 Q. And did you ever discuss with him the basis  
14 for that in the agreement?

15 A. No.

16 Q. Do you recall any other discussions with Mr.  
17 Greene on this paragraph 2.01?

18 A. No.

19 Q. What about Evelyn Davis?

20 A. From time to time there would be questions  
21 that licensees would have about something that they  
22 had developed, and if they had used some of the our  
23 older code as opposed to some of the newer code would  
24 that still apply, and our answer was yes.

25 Q. If they had used the code in the product?

1 A. In the licensee's product.

2 Q. Then do you mean by that that the code was in  
3 the product?

4 A. Yes.

5 Q. Did you ever discuss with Evelyn Davis an  
6 instance or hypothetical instance in which the code  
7 was not in the product?

8 A. Yes.

9 Q. And what discussions did you have on that  
10 point?

11 A. I don't remember the exact licensee's name,  
12 but they had developed a product, an application,  
13 after seeing our code, and the question we had was  
14 whether or not they owed us a fee for it, and our  
15 response was no they didn't owe us a fee, but they  
16 needed to protect the product the same as our  
17 software product.

18 Q. Merely because they had already seen your  
19 product?

20 A. Yes.

21 Q. So any time anybody has ever seen AT&T's  
22 source code, any product they ever write is subject  
23 to AT&T's license agreement, is that your  
24 understanding?

25 A. No.

1 product."

2 Q. And when you gave that response, did you refer  
3 to the agreement at that time?

4 A. No, I did not.

5 Q. Did you do anything to determine whether that  
6 was required?

7 A. No.

8 Q. Do you recall any other discussions with  
9 Evelyn Davis regarding the preparation of derivative  
10 works?

11 A. No.

12 Q. And you said you had discussions with Steve  
13 Vuksanovich?

14 A. Yes, the three of us would have had those  
15 those.

16 Q. You and Evelyn Davis?

17 A. Yes.

18 Q. And those would have been the same  
19 discussions?

20 A. Yes.

21 Q. And do you recall any other statements made by  
22 Mr. Vuksanovich?

23 A. He was in agreement.

24 Q. With what?

25 A. With the fact that the licensee should treat



1 that application the same as our software product.

2 Q. And did he refer to any provision in the  
3 agreement in connection with that statement?

4 A. No.

5 Q. Do you know whether Ms. Davis referred to any  
6 provision in the agreement with respect to that  
7 statement?

8 A. No.

9 Q. Do you know whether either Mr. Vuksanovich or  
10 Ms. Davis referred to the agreement before giving  
11 their agreement to that request?

12 A. No.

13 Q. In your discussions with Mr. Greene regarding  
14 paragraph 2.01, was there any reference to any  
15 provisions in the agreement?

16 A. No.

17 Q. Now, looking at 2.01 (b), you testified  
18 earlier with respect to the second sentence which  
19 states, "Such uses are permitted only provided  
20 that..." and skipping down to the subparagraph (ii),  
21 "such results, enhancements and modifications (all  
22 to the extent that they do not include any portion of  
23 software products) are made available to anyone," and  
24 I believe you testified earlier today that your  
25 understanding of that provision was that if a