UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, PLAINTIFF, V. MICROSOFT CORPORATION, DEFENDANT.	C.A. NO. 98-1232
STATE OF NEW YORK, ET AL., PLAINTIFFS, V. MICROSOFT CORPORATION, DEFENDANT.	C.A. NO. 98-1223
MICROSOFT CORPORATION, COUNTERCLAIM-PLAINTIFF, V. DENNIS C. VACCO, ET AL., COUNTERCLAIM-DEFENDANTS.	JANUARY 13, 1999 WASHINGTON, D.C.

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TRANSCRIBED DEPOSITION EXCERPTS

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1 (DEPOSITION EXCERPTS OF ROBERT E. BERAN.)
2 Q. I WOULD LIKE TO SHOW YOU A DOCUMENT
3 THAT'S BEEN MARKED FOR IDENTIFICATION AS
4 GOVERNMENT EXHIBIT 279. I ASK YOU TO TAKE A
5 SECOND TO LOOK AT IT.
6 A. OKAY.
7 Q. DO YOU RECOGNIZE THIS DOCUMENT?
8 A. YES.
9 Q. WHAT DOES IT APPEAR TO BE?
10 A. THIS WAS A PROPOSAL FROM MICROSOFT ON
11 THEIR ASK FOR BROWSER DISTRIBUTION DEAL WITH MY
12 COMPANY.
13 Q. AND I WOULD LIKE TO DIRECT YOUR
14 ATTENTION TO THE SECOND PAGE OF THE DOCUMENT THAT
15 HAS A BATES STAMPED NUMBER HEL 0325.
16 A. RIGHT.
17 Q. DO YOU SEE THAT?
18 A. YES.
19 Q. I WOULD LIKE TO DIRECT YOUR ATTENTION
20 TO THE TOP, ITEM NUMBER SIX, WHICH STATES, "BAIS
21 WILL DISTRIBUTE THE INTERNET EXPLORER AS ITS,"
22 UNDERLINED, "EXCLUSIVE," STOP UNDERLINE, "BROWSER
23 TO ITS ACCESS CUSTOMERS AND WILL PROMOTE," AGAIN
24 UNDERLINED, "INTERNET EXPLORER AS THE,"
25 UNDERLINE, "EXCLUSIVE BROWSER RECOMMENDED FOR USE

1 BY BAIS CUSTOMERS FOR ALL PLATFORMS SUPPORTED BY
2 MICROSOFT."
3 DO YOU SEE THAT?
4 A. YES.
5 Q. DO YOU SEE ALSO THE ANNOTATION IN THE
6 MARGIN THAT SAYS IN HANDWRITING, "NO," DASH,
7 "WORK ON COMPROMISE"?
8 A. YES.
9 Q. DO YOU KNOW WHOSE HANDWRITING THAT IS?
10 A. I BELIEVE IT IS BILL HEILIG'S, ONE OF
11 MY STAFF MEMBERS WHO WORKED--WHO WAS WORKING WITH
12 MICROSOFT IN THESE NEGOTIATIONS.
13 Q. WHAT IS YOUR UNDERSTANDING, IF ANY,
14 ABOUT WHAT IT MEANT BY "NO--WORK ON COMPROMISE"?
15 MR. FESSEL: OBJECTION TO THE FORM.
16 BY MR. POPOFSKY:
17 Q. YOU CAN NONETHELESS ANSWER.
18 A. THAT IS OUR NOTE THAT, NO, WE WILL NOT
19 GO EXCLUSIVE, AND WE NEED TO WORK ON A
20 COMPROMISE.
21 Q. WHY DID BAIS NOT WANT TO GO EXCLUSIVE?
22 A. EVERY FAIRLY SIMPLE. AS I STATED
23 EARLIER, OUR VIEW WAS THAT OUR ROLE IN THE
24 MARKETPLACE WAS TO LET THE CUSTOMER CHOOSE WHICH
25 BROWSER THEY WANTED TO USE, AND IT WAS OUR JOB TO

1 PROVIDE THEM WITH ACCESS TO THE LEADING BROWSERS.
2 Q. WHY DO YOU VIEW THAT AS YOUR ROLE IN A
3 MARKETPLACE, TO OFFER CUSTOMERS A CHOICE?
4 A. WE BELIEVE THAT CUSTOMERS KNOW BEST,
5 AND IT'S NOT OUR JOB TO CHOOSE FOR THEM.
6 Q. WOULD AGREEING TO THIS PROPOSED
7 PROVISION, WHICH IS NUMBERED SIX, HAVE THWARTED
8 YOUR OBJECTIVE OF PROVIDING BROWSER CHOICE?
9 A. YES.
10 Q. AND WHY?
11 A. IT WOULD NOT HAVE ALLOWED ME TO OFFER
12 NETSCAPE TO CUSTOMERS WHO WANTED IT.
13 (EXCERPT.)
14 Q. I WOULD LIKE YOU TO DIRECT YOUR
15 ATTENTION TO BERAN EXHIBIT 1, WHICH IS THE
16 CONTRACT WE WERE JUST DISCUSSING.
17 A. RIGHT.
18 Q. THE PAGE THAT'S BEEN BATES STAMPED RAA
19 0106.
20 A. 106?
21 Q. YES.
22 A. UMM-HMM.
23 Q. ARE YOU THERE, MR. BERAN?
24 A. YES.
25 Q. TOP OF THE PAGE, YOU SEE WHAT'S BEEN

1 MARKED SUBSECTION 3.1, NONEXCLUSIVITY?
2 A. UMM-HMM.
3 Q. DOES THAT REFRESH YOUR RECOLLECTION AS
4 TO WHETHER THIS AGREEMENT CALLED FOR ANY
5 PREFERENCES FOR NETSCAPE VIS-A-VIS OTHER
6 BROWSERS?
7 A. IT WAS NONEXCLUSIVE, IS WHAT THIS SAYS.
8 WE WERE FREE TO OFFER OTHER BROWSERS IF WE
9 INTENDED TO.
10 Q. AND WAS THAT IMPORTANT TO YOU AT THE
11 TIME?
12 A. YES.
13 Q. WHY IS THAT?
14 A. BECAUSE WE KNEW THERE WERE OTHER
15 BROWSERS COMING.
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