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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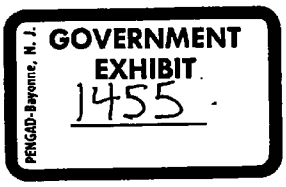

1 (DEPOSITION EXCERPTS OF BRUCE JACOBSEN.)
2 BY MS. HALE:
3 Q. WHAT LED TO THE NEGOTIATIONS FOR THE
4 CONTRACT IN JUNE OR JULY OF 1997?
5 A. IT WAS THE FACT THAT WE RECEIVED AN
6 ANONYMOUS PHONE CALL TELLING US THAT MICROSOFT
7 WAS ACQUIRING VXTREME.
8 Q. AND VXTREME IS A FIRM, I BELIEVE YOU
9 TESTIFIED, THAT DOES VIDEO STREAMING?
10 A. CORRECT.
11 Q. AND HOW DID THAT LEAD YOU TO WANT TO
12 NEGOTIATE A CONTRACT WITH MICROSOFT?
13 A. WE WEREN'T ENTIRELY SURE WHAT
14 MICROSOFT'S STRATEGY AND GOALS WERE IN THE
15 STREAMING MEDIA AREA. THE FACT THAT THEY WERE
16 ACQUIRING VXTREME MEANT THAT THEIR GOALS AND
17 AMBITIONS WERE MORE AGGRESSIVE. WE DECIDED THAT
18 WE WANTED TO SEE IF WE, TOO, COULD STRIKE A
19 FUNDAMENTAL RELATIONSHIP WITH MICROSOFT.
20 Q. AND WHEN YOU SAY YOU A FUNDAMENTAL
21 RELATIONSHIP WITH MICROSOFT, WHAT DO YOU MEAN?
22 A. OUR BUNDLING AGREEMENT WAS FOR A FINITE
23 PERIOD OF TIME AND ONLY INVOLVED OUR PLAYER
24 TECHNOLOGY. IT DID NOT INCLUDE OUR SERVING AND
25 ENCODING TECHNOLOGIES.

1 Q. SO, WAS IT YOUR EXPECTATION THAT YOU
2 WOULD TRY TO GET A CONTRACT WITH MICROSOFT THAT
3 COVERED ALL THREE TYPES OF TECHNOLOGY THAT
4 REALNETWORKS PRODUCES?
5 A. WE HAD TWO PRIMARY GOALS: ONE WAS TO
6 LENGTHEN OUR PLAYER DISTRIBUTION; THE OTHER WAS
7 TO SEEK FROM MICROSOFT TO INCLUDE BOTH OUR SERVER
8 AND ENCODING TECHNOLOGIES AS ELEMENTS OF THEIR
9 PRODUCT LINE.
10 (EXCERPT.)
11 Q. I WOULD ASK YOU TO TURN TO PAGE THREE
12 OF TRIAL EXHIBIT 1369.
13 A. YES.
14 Q. THIS IS A FAIRLY LONG PARAGRAPH. IN
15 PARTICULAR, I'M INTERESTED IN THE LAST TWO
16 SENTENCES.
17 CAN YOU TELL ME WHAT YOUR UNDERSTANDING
18 IS OF THE IMPACT ON REALNETWORKS OF THOSE LAST
19 TWO SENTENCES.
20 A. WELL, THE SENTENCES--THE PARAGRAPH
21 DISCUSSES OUR SUPPORT OF DIRECTSHOW, DIRECTDRAW,
22 AND SUBSEQUENT TECHNOLOGIES FOR DISPLAYING
23 MULTIMEDIA CONTENT.
24 IT STATES THAT IF WE AGREE TO SUPPORT A
25 COMPETING TECHNOLOGY FROM SUN OR

1 MICROSOFT--EXCUSE ME--FROM SUN OR NETSCAPE WHICH
2 PERFORMS SUBSTANTIALLY THE SAME FUNCTION AS THE
3 MICROSOFT TECHNOLOGIES, THAT WE WOULD THEN HAVE
4 TO GO ENGAGE IN, QUOTE, GOOD-FAITH
5 EXECUTIVE-LEVEL DISCUSSIONS, UNQUOTE.
6 SO, IN ESSENCE, MICROSOFT HAS RIGHTS OF
7 FIRST DISCUSSION IF WE'RE GOING TO GO SUPPORT
8 SOMETHING THAT WOULD COMPETE WITH DIRECTDRAW OR
9 DIRECTSHOW.
10 THE IMPACT ON US IS TO PUT A SPEED BUMP
11 IN DISCUSSIONS WITH SUN OR NETSCAPE BECAUSE
12 BEFORE WE COULD CONCLUDE AN AGREEMENT WITH SUN OR
13 NETSCAPE, WE WOULD HAVE TO GO TO MICROSOFT TO
14 HAVE DISCUSSIONS WITH THEM, WHICH WOULD DO TWO
15 THINGS: SLOW DOWN OUR ABILITY TO CONCLUDE AN
16 AGREEMENT WITH SUN OR NETSCAPE, AND, FRANKLY, IF
17 SUN OR NETSCAPE EVEN BECAME AWARE OF THOSE
18 DISCUSSIONS, HAVE THOSE COMPANIES QUESTION
19 WHETHER REALNETWORKS WAS A FREE AGENT IN THE
20 MARKET, OR IT WAS BEHOLDING TO MICROSOFT IN WAYS
21 THAT HAD NOT BEEN PUBLICLY DISCUSSED.
22 Q. AND AT THAT TIME THAT THIS CONTRACT WAS
23 NEGOTIATED, DID SUN MICROSYSTEMS HAVE ANY
24 PROGRAMMING INTERFACE THAT WAS SUBSTANTIALLY THE
25 SAME AS DIRECTDRAW OR DIRECTSHOW, THE MICROSOFT

1 TECHNOLOGY?

2 A. I THINK YOU'D REALLY HAVE TO ASK SUN OR

3 MICROSOFT FOR THE MOST EXPERT OPINION. IN MY

4 OPINION, IT WOULD BE A JUDGMENT CALL IF AT THAT

5 TIME PERIOD THEY DID. SUBSEQUENTLY, THEY DO HAVE

6 SOMETHING THAT'S COMPETITIVE.

7 Q. AND WHAT ABOUT NETSCAPE? DID THEY HAVE

8 SOMETHING THEN THAT WAS COMPETITIVE?

9 A. I DON'T THINK SO.

10 Q. DOES NETSCAPE HAVE SOMETHING

11 COMPETITIVE TODAY?

12 A. I DON'T THINK SO.

13 Q. IS IT YOUR UNDERSTANDING, MR. JACOBSEN,

14 THAT THIS PARAGRAPH 4.1 PERMITS YOU TO GO AHEAD

15 WITH SUN OR NETSCAPE COMPETING TECHNOLOGY?

16 MR. O'BRIEN: OBJECTION, TO THE EXTENT

17 IT CALLS FOR HIM TO JUST RE-READ THE PARAGRAPH.

18 I MEAN, THE LANGUAGE IS THERE, BUT GO AHEAD.

19 BY MS. HALE:

20 Q. I'LL REPHRASE THE QUESTION.

21 DOES THE LANGUAGE THAT YOU SEE IN THE

22 LAST TWO SENTENCES OF THE CONTRACT SUGGEST TO YOU

23 THAT YOUR REQUIREMENT OF ENGAGING IN GOOD-FAITH

24 DISCUSSIONS WITH MICROSOFT COULD BE NECESSARY IF

25 YOU WERE PLANNING TO REPLACE OR USE THESE SUN

1 MICROSYSTEMS OR NETSCAPE TECHNOLOGIES IN PLACE OF
2 MICROSOFT?
3 MR. O'BRIEN: OBJECTION TO FORM. AND
4 AGAIN, TO THE EXTENT IT CALLS FOR HIM TO JUST
5 READ THE LANGUAGE, I OBJECT ON THAT GROUND, TOO.
6 THE WITNESS: THE LANGUAGE SAYS, "IF
7 THE PARTIES ARE UNABLE TO REACH A COMPROMISED
8 SOLUTION WITHIN A REASONABLE PERIOD OF TIME, PN
9 MAY CHOOSE TO USE AN ALTERNATIVE TO DIRECTSHOW OR
10 DIRECTDRAW IN THAT PARTICULAR INSTANCE." THE
11 SENTENCE JUST STOPS THERE, IN "THAT PARTICULAR
12 INSTANCE."
13 SO, MY UNDERSTANDING IS THAT WE HAD TO
14 TALK TO MICROSOFT. MICROSOFT WOULD TRY TO FIGURE
15 OUT SOME SOLUTION SO THAT WE WOULD GET WHAT WE
16 WANTED IN TERMS OF END-USER BENEFIT WITHOUT USING
17 A COMPETING TECHNOLOGY. IF THEY COULD PROPOSE
18 SUCH A SOLUTION, THEN WE WOULD USE IT. IF THEY
19 COULDN'T FIGURE OUT A SOLUTION LIKE THAT, THEN WE
20 WOULD HAVE THE RIGHT TO USE SOMETHING FROM SUN OR
21 NETSCAPE AS AN ALTERNATIVE TO DIRECTSHOW OR
22 DIRECTDRAW.
23 WE ALSO ASSUMED AT THE TIME THAT IF
24 THIS REMAINED AN AREA OF HIGH INTEREST TO
25 MICROSOFT IN THE INDUSTRY, AND WE ANNOUNCED THAT

1 WE WERE GOING TO CEASE SUPPORTING MICROSOFT
2 TECHNOLOGY, THAT THAT WOULD HAVE MICROSOFT ENGAGE
3 IN SOME SERIOUS DISCUSSIONS IN BETWEEN CARROTS
4 AND STICKS TO TRY TO GET US NOT TO DO THAT.
5 BY MS. HALE:
6 Q. AND WHAT IS YOUR UNDERSTANDING AS TO
7 WHY SUN MICROSYSTEMS WAS NAMED, BASICALLY, IN
8 THIS LANGUAGE? IT APPEARS AT THE BOTTOM OF PAGE
9 THREE OF EXHIBIT 1202.
10 A. THE TWO MAJOR COMPETITORS FOR MICROSOFT
11 ON THE CLIENT SIDE AT THAT PERIOD OF TIME WERE
12 SUN, PARTICULARLY WITH ITS JAVA SYSTEM, AND
13 NETSCAPE WITH ITS BROWSER. SO, THOSE WERE THE
14 TWO FOREMOST COMPETITORS AGAINST, REALLY,
15 MICROSOFT WINDOWS AND--WELL, AGAINST MICROSOFT'S
16 WINDOWS.
17 THOSE COMPANIES HAD POSITIONED
18 THEMSELVES AS POTENTIALLY BEING FUTURE
19 ALTERNATIVES TO WINDOWS.
20 Q. AND WHEN YOU SAY "WINDOWS," YOU'RE
21 REFERRING TO THE OPERATING SYSTEM, THAT THEY
22 WOULD BECOME COMPETITORS TO MICROSOFT'S OPERATING
23 SYSTEM?
24 A. CORRECT.
25 Q. AND HOW WOULD YOUR SUPPORTING--"YOUR"

1 BEING REALNETWORKS--SUPPORTING A PROGRAM
2 INTERFACE PUBLISHED BY EITHER OF THOSE TWO
3 COMPANIES CONTRIBUTE TO THEIR BEING COMPETITORS?
4 A. THREE MAIN WAYS: ONE, IT WOULD MEAN
5 THAT END USERS COULD USE THE REALPLAYER, WHICH IS
6 ONE OF THE TWO OR THREE MOST POPULAR PIECES OF
7 SOFTWARE ON THE INTERNET.
8 TWO, IT MEANS THAT INDUSTRY OBSERVERS
9 WOULD NOTE THAT ONE OF THE MAJOR SOFTWARE
10 APPLICATION COMPANIES WAS SUPPORTING AN OPERATING
11 SYSTEM THAT COMPETES WITH MICROSOFT WINDOWS SO
12 OTHER PEOPLE MAKING SIMILAR CHOICES MIGHT CHOOSE
13 TO FOLLOW THE SAME PATH AS REALNETWORKS.
14 THIRD, WE PROVIDE VALUABLE FEEDBACK TO
15 SUN OR NETSCAPE OR WHOEVER WHAT WE NEEDED IN AN
16 OPERATING SYSTEM AND HOW THEY COULD IMPROVE THEIR
17 WORK.
18 (EXCERPT.)
19 Q. ARE THERE PARTS OF THE REALNETWORKS
20 TECHNOLOGY THAT COULD BE CONSIDERED A PLATFORM?
21 A. WELL, I GUESS--WE DO NOT POSITION OUR
22 PRODUCTS AS A PLATFORM. I GUESS ONE COULD
23 CONSIDER IT AS A PLATFORM, BUT THAT'S NOT HOW WE
24 POSITION IT, OR HOW MOST PEOPLE VIEW OUR
25 PRODUCTS.

1 (EXCERPT.)

2 Q. AT ANY TIME, HAVE YOU HAD DISCUSSIONS

3 WITH ANYONE FROM MICROSOFT THAT LED YOU TO

4 BELIEVE THAT MICROSOFT HAD AN EXPECTATION THAT

5 REALNETWORKS WOULD CEASE TO BE A COMPETITOR IN

6 MEDIA STREAMING?

7 A. I'VE HAD CONVERSATIONS WHERE I'M NOT

8 SURE IF IT'S THE EXPECTATION, BUT THE HOPE AND

9 DESIRE OF THE MICROSOFT PERSON WAS THAT WE WOULD

10 CEASE TO BE A COMPETITOR OF THEM IN WHAT WE CALL

11 THE CORE OR THE FUNDAMENTAL MEDIA STREAMING AREA,

12 AND THAT WE WOULD FOCUS OUR EFFORTS IN

13 VALUE-ADDED AREAS.

14 Q. WELL, FIRST OF ALL, DEFINE YOUR TERM OF

15 CORE MEDIA STREAMING AREA.

16 A. WELL, IN SOME WAYS, THE EASIEST

17 DEFINITIONS ARE ACTUALLY IN THE CONTRACT, BECAUSE

18 WHAT WE LICENSED TO MICROSOFT IS DESCRIBED AS

19 CORE OR FUNDAMENTAL.

20 THE CORE IS THE BASIC CAPABILITY FOR AN

21 END USER TO BE ABLE TO CLICK ON AN INTERNET LINK

22 AND HAVE IT PLAY BACK AUDIO OR VIDEO. SO IT'S

23 THE FUNDAMENTALS, IF YOU LIKE, OF PLAYING BACK

24 AUDIO OR VIDEO OVER THE INTERNET. SO THAT WOULD

25 INCLUDE THE BASIC COMPRESSION AND DECOMPRESSION

1 TECHNOLOGY; IT WOULD INCLUDE THE BASIC TECHNOLOGY
2 TO HAVE THE CLIENT AND THE SERVER ESTABLISH
3 COMMON LANGUAGE TO SPEAK TO EACH OTHER; AND IT
4 WOULD INCLUDE A TECHNOLOGY TO MAKE UP FOR
5 TRANSMISSION ERRORS THAT WERE ENCOUNTERED AS THE
6 MATERIAL WAS BROADCAST OVER THE INTERNET.
7 Q. AND HOW MANY SUCH CONVERSATIONS DO YOU
8 RECALL HAVING WITH MICROSOFT PEOPLE ABOUT
9 REALNETWORKS'S CONTINUING TO BE ABLE A COMPETITOR
10 IN THIS CORE AREA?
11 A. MYSELF PERSONALLY?
12 Q. YES.
13 A. ONE IN-DEPTH ONE, ONE VERY CASUAL ONE.
14 Q. AND WHO WAS THE IN-DEPTH CONVERSATION
15 WITH?
16 A. BOB MUGLIA.
17 Q. AND WHEN WAS THAT?
18 A. THAT WAS IN JULY OF '97.
19 Q. AND WHAT WAS THE CONTEXT OF THE
20 CONVERSATION WITH MR. MUGLIA?
21 A. BOB HAD NOT BEEN INVOLVED IN
22 NEGOTIATING THE FIRST CONTRACT BECAUSE HE WAS
23 EITHER ON VACATION OR A PERSONAL LEAVE FROM
24 MICROSOFT, SO I BELIEVE HE WAS OUT OF THE
25 COUNTRY. AND THOUGH HE NEGOTIATED SIGNIFICANT

1 ELEMENTS OF THE SECOND CONTRACT, THE BASIC
2 STRUCTURE OF THE SECOND CONTRACT HAD BEEN
3 ESTABLISHED BETWEEN THE PARTIES AND DURING
4 DISCUSSIONS ON SOME OF THE LANGUAGE OF THE FIRST
5 CONTRACT.
6 SO, IN CONVERSATIONS WITH BOB WHEN WE
7 WERE DISCUSSING THE ANNOUNCEMENT STRATEGY FOR
8 THIS, HE SAID HE WOULD LIKE TO COME OVER AT SOME
9 POINT TO REALNETWORKS AND JUST HAVE A DISCUSSION
10 WITH ME ABOUT THE LAY OF THE LAND, HOW THE
11 COMPANIES WOULD DEAL WITH EACH OTHER, COEXIST IN
12 THE FUTURE ONCE THIS DEAL HAD BEEN SIGNED AND
13 ALSO ANNOUNCED.
14 Q. AND WHAT IS IT THAT HE SAID THAT GAVE
15 YOU THIS UNDERSTANDING ABOUT MICROSOFT'S
16 EXPECTATIONS REGARDING REALNETWORKS AS A
17 COMPETITOR?
18 A. WELL, TO PUT IT BRIEFLY, WE STARTED THE
19 CONVERSATION AFTER SUCH NICETIES, WITH BASICALLY
20 SAYING, "HEY, LET'S DISCUSS THE LAY OF THE LAND,
21 WHAT'S GOING ON IN, YOU KNOW, REALLY THE SOFTWARE
22 BUSINESS, AND WHAT'S MICROSOFT UP TO THESE DAYS."
23 AND SO BOB BASICALLY EXPLAINED THAT, OBVIOUSLY,
24 MICROSOFT SEEKS TO BE THE UNDOUBTED LEADER IN THE
25 OPERATING SYSTEM SPACE, AND THAT THEY HAD ALSO

1 CONCLUDED THAT VARIOUS PRODUCTS THAT
2 TRADITIONALLY GET THEIR APPLICATIONS, LIKE
3 MICROSOFT WORD, WERE REALLY PART AND PARCEL OR
4 PART OF THE OPERATING SYSTEM, AS FUNDAMENTAL TO
5 MICROSOFT'S POSITION IN THE OPERATING SYSTEM AS
6 WINDOWS ITSELF, BECAUSE FROM AN END USER'S
7 PERSPECTIVE, WHAT OPERATING SYSTEMS ALLOW ONE TO
8 DO IS TO SEE TEXT OR SEE GRAPHS IN EXCEL, AND
9 THAT IF MICROSOFT LOST ITS POSITION IN BEING ABLE
10 TO GO DISPLAY TEXT OR DISPLAY NUMBERS, THAT WOULD
11 THREATEN ITS WINDOWS FRANCHISE.
12 HE THEN EXPLAINED TO ME THAT HE AND
13 MICROSOFT VIEWED VIDEO--HE REALLY EXPRESSED HIS
14 PERSONAL ENTHUSIASM FOR VIDEO AS BEING ONE OF THE
15 MOST CRUCIAL THINGS THAT END USERS WOULD
16 EXPERIENCE IN PERSONAL COMPUTERS DURING THE NEXT,
17 YOU KNOW, FIVE YEARS, TEN YEARS, BECAUSE, IN HIS
18 VIEW, A VIDEO, A, IS A VERY COMPELLING TYPE OF
19 VIEWING MATERIAL; AND B, PEOPLE ARE STARING AT PC
20 MONITORS, SO IT WOULD BE NATURAL FOR THEM TO WANT
21 TO SEE SOMETHING THAT WAS VIDEO.
22 HE EXPLAINED THAT MICROSOFT BASICALLY
23 HAD WON MOST OF THE OPERATING SYSTEM WARS, THAT
24 THE ONLY PEOPLE WHO REMAINED THREATS WERE ORACLE
25 AND SUN, AND THAT THEY WERE TRYING TO REDUCE THE

1 ECONOMIC VIABILITY OF THOSE COMPANIES SO THEY
2 WOULDN'T HAVE THE WHEREWITHAL TO INVEST AND
3 POSITION THEMSELVES AS OPERATING SYSTEM
4 COMPETITORS OF MICROSOFT.
5 HE USED ADOBE AS AN EXAMPLE OF A
6 COMPANY THAT HAD BEEN IN SORT OF THE OPERATING
7 SYSTEM VIS-A-VIS POSTSCRIPT, HAD EXITED, HAD SOME
8 OPERATING SYSTEM PRETENSES, OR SOME WORD LIKE
9 THAT, OR PRETENSIONS, WITH ITS ACROBAT STUFF, BUT
10 THAT WAS BASICALLY BEING CHASED OUT OF THE SPACE.
11 AND THEN HE BASICALLY SAID, "HEY, WHAT
12 WE WANT YOU TO DO IS TO BE LIKE A
13 PEOPLESOFT"--AND I'LL EXPLAIN WHAT A PEOPLESOFT
14 IS IN A SECOND--"BUT BE LIKE A PEOPLESOFT, ADD
15 VALUE ON CORE MICROSOFT TECHNOLOGIES, IN WHICH
16 CASE WE'LL BE A GREAT FRIEND; WE'LL DO EVERYTHING
17 WE CAN TO SUPPORT YOU.
18 "ON THE OTHER HAND, IF YOU TRY TO DO
19 THE FUNDAMENTALS OF STREAMING AUDIO AND VIDEO,
20 THEN WE WOULD VIEW YOU AS A CORE COMPETITOR AND
21 USE ALL OUR RESOURCES TO HURT YOU IN YOUR CORE
22 BUSINESSES."
23 PEOPLESOFT IS A CASE IN POINT OF A
24 SUCCESSFUL COMPANY THAT DOES APPLICATIONS LIKE HR
25 TOOLS, BUT IT BUILDS ITS PRODUCTS ON TOP OF OTHER

1 PEOPLE'S DATABASES LIKE ORACLE, SO MICROSOFT
2 VIEWS THEM AS A COMPANY THAT'S NOT THREATENING A
3 CORE PART OF THE COMPUTING ENVIRONMENT LIKE
4 DATABASES, BUT THAT BUILDS VALUE ADDED; AND
5 THEREFORE, THEY CAN BE A FRIEND OF MICROSOFT,
6 WHEREAS ORACLE, BECAUSE THEY COMPETE IN THE CORE
7 SPACE LIKE DATABASES, IS VIEWED AS A RIVAL OF
8 MICROSOFT AND A COMPANY TO BE TARGETED.
9 Q. AND WHAT WAS YOUR REACTION TO THESE
10 THINGS THAT MR. MUGLIA SAID TO YOU?
11 A. WELL, PERSONALLY I WAS A LITTLE BIT
12 SURPRISED THAT ROB--EXCUSE ME, BOB--WAS SO
13 DIRECT. IT WAS SURPRISING TO ME HOW THEY
14 WERE--THEY WERE POSITIONING KEY APPLICATIONS LIKE
15 WORD AS REALLY ALMOST BEING PART OF THE OPERATING
16 SYSTEM, THOUGH I UNDERSTOOD THE LOGIC OF THAT
17 POSITION.
18 WHAT I DID ORALLY WITH BOB, JUST TO
19 MAKE SURE I UNDERSTOOD BASICALLY AND TO CONTINUE
20 THE DISCUSSION GOING AHEAD, WAS TO SAY, "SO WHAT
21 YOU'RE ASKING IS FOR US TO ABANDON CORE STREAMING
22 AUDIO AND VIDEO," OR WHAT I TEND TO CALL THE
23 PLUMBING OF STREAMING MEDIA, "AND BUILD OUR STUFF
24 ON TOP OF NETSHOW," AND HE SAID "YES," OR
25 SOMETHING TO THAT EFFECT.

1 AND I SAID, "WELL, HERE'S WHY I DON'T
2 THINK IT MAKES SENSE FOR REALNETWORKS TO DO THIS
3 AT THIS TIME. IT MAY MAKE SENSE TO DO IT IN TWO
4 OR THREE YEARS AS THE INDUSTRY UNFOLDS AND AS
5 REALNETWORKS CONTINUES TO GROW AS A COMPANY, BUT
6 IT WOULDN'T MAKE SENSE AT THIS PERIOD OF TIME TO
7 DO THAT."
8 Q. WHAT WAS HIS RESPONSE TO YOUR SAYING IT
9 DIDN'T MAKE SENSE TO DO IT AT THIS TIME?
10 A. THE DISCUSSION WAS ALWAYS CIVIL, AND,
11 TO BE HONEST, THERE WAS NO RESPONSE THAT'S
12 PARTICULARLY MEMORABLE TO ME.
13 (EXCERPT.)
14 BY MS. HALE:
15 Q. IF YOU WOULD TAKE A LOOK AT THE
16 DOCUMENT THAT'S BEEN MARKED AS TRIAL
17 EXHIBIT 1368.
18 A. (THE WITNESS COMPLIES.)
19 Q. CAN YOU TELL ME WHAT THIS DOCUMENT IS.
20 A. YEAH. THAT'S THE NOTES I WROTE OF THE
21 BOB MUGLIA CONVERSATION.
22 Q. AND I BELIEVE YOU TESTIFIED THAT YOU
23 WROTE THEM AFTER THE CONVERSATION?
24 A. UH-HUH.
25 Q. HOW LONG AFTER?

1 A. I BELIEVE THAT NIGHT.

2 Q. AND WHY DID YOU WRITE NOTES FROM THAT

3 CONVERSATION?

4 A. AS YOU ALL KNOW, SINCE YOU HAVE ACCESS

5 TO ALL MY DOCUMENTS, I WROTE UP, EITHER AS WORD

6 DOCUMENTS OR AS E-MAIL MESSAGES, ALL

7 CONVERSATIONS THAT I THOUGHT WERE CRUCIAL

8 CONVERSATIONS BETWEEN REALNETWORKS AND MICROSOFT.

9 I THOUGHT THAT WAS A GOOD BUSINESS PRACTICE FOR

10 SEVERAL REASONS.

11 Q. AND WHAT ARE THOSE REASONS?

12 A. ONE, OUR RELATIONSHIP TO MICROSOFT WAS

13 CRUCIAL. HAVING WRITTEN SUMMARIES SO WE'D REALLY

14 REMEMBER WHAT HAD GONE ON IN THE CONVERSATIONS

15 WAS A LARGE BENEFIT.

16 TWO, WE WERE UNDER DOJ INVESTIGATION

17 VIS-A-VIS OUR RELATIONSHIP WITH MICROSOFT, SINCE

18 BOB HAD SUGGESTED, IN ESSENCE, THAT WE SORT OF

19 DIVIDE AND CONQUER THE MARKET, AND I KNOW THAT

20 THE DOJ IS SORT OF SENSITIVE TO THESE THINGS.

21 BASED ON PRIOR DISCUSSIONS WITH THE DOJ, I

22 THOUGHT IT WAS GOOD TO WRITE DOWN THAT IT WAS AN

23 OFFER THAT WE HAD PASSED ON.

24 THIRD, MICROSOFT, FRANKLY, HAS

25 SOMETIMES HAD CONTENTIONS WITH PARTNERS--EXCUSE

1 ME--NOT WITH PARTNERS, WITH COMPANIES IT HAS
2 AGREEMENTS WITH, SUN, JAVA, DOJ CONSENT
3 AGREEMENT--SO, FOR THE THIRD REASON, I THOUGHT
4 HAVING SUMMARIES OF WHAT WE HAD AGREED TO AND
5 WHAT CONVERSATIONS WERE WOULD BE A GOOD IDEA IN
6 CASE WE EVER HAPPENED TO BE IN A SITUATION WHERE
7 WE WERE IN AN ADVERSARIAL SETTING.
8 Q. AND THE HANDWRITTEN NOTES IN THE UPPER
9 RIGHT-HAND CORNER, DO YOU RECOGNIZE THOSE?
10 A. WELL, THERE'S SOME ON THE EXTREME RIGHT
11 WHICH SAYS, "BRUCE JACOBSEN NOTE TO HIS FILE
12 7/97." THAT'S NOT MY HANDWRITING. AND THEN
13 THERE'S SOMETHING WRITTEN WHICH I CAN'T READ.
14 (EXCERPT.)
15 Q. WELL, WAS IT YOUR SENSE FROM THE
16 CONVERSATION THAT YOU HAD WITH MR. MUGLIA THAT
17 REALNETWORKS SHOULD BE TAKING STEPS TO EXIT THE
18 MEDIA STREAMING BUSINESS?
19 MR. O'BRIEN: OBJECTION TO FORM.
20 THE WITNESS: WHAT BOB TOLD ME WAS THAT
21 MICROSOFT WOULD AGGRESSIVELY TARGET US AS A
22 COMPANY, USING ALL OF MICROSOFT'S RESOURCES, IF
23 WE STAYED IN THE AUDIO AND VIDEO SPACE. THAT'S
24 NOT A VERY GREAT POSITION TO BE IN IF YOU'RE A
25 400-PERSON COMPANY. THERE'S A LOT OF RESOURCES

1 AT MICROSOFT.

2 BOB ALSO SAID, AND I AGREED WITH HIM,
3 THAT MICROSOFT HAD BEEN SUCCESSFUL PRIOR IN
4 TARGETING COMPANIES AND HAVING SEVERE ECONOMIC
5 EFFECTS ON THEM. BOB DID NOT USE BORLAND AS AN
6 EXAMPLE, BUT BORLAND CERTAINLY POPPED TO MY MIND.
7 BY MS. HALE:
8 Q. WHAT IS BORLAND?
9 A. BORLAND IS A SOFTWARE COMPANY IN
10 CALIFORNIA, AND THE PHRASE THAT RUNS THROUGH THE
11 INDUSTRY IS THAT MICROSOFT PERFORMED A CASHECTOMY
12 ON BORLAND, THAT IT LOWERED THE PRICES OF ITS
13 PRODUCT, WHICH CAUSED SEVERE DISRUPTIONS IN
14 BORLAND'S CASH FLOW AND ALSO IN THEIR STOCK
15 PRICE, WHICH CAUSED BORLAND TO TAKE A SERIES OF
16 SIGNIFICANT STEPS, INCLUDING DISPOSING OF SOME
17 PRODUCTS WHICH HISTORICALLY HAD BEEN SIGNIFICANT
18 COMPETITORS TO MICROSOFT PRODUCTS.
19 THE EXAMPLE HE DID USE OF ADOBE WHERE
20 MICROSOFT HAD CHOSEN TO BUNDLE ITS OWN COMPETING
21 FONT TECHNOLOGY IN WINDOWS WAS ALSO AN EXAMPLE OF
22 WHERE MICROSOFT HAD HAD A VERY SIGNIFICANT EFFORT
23 AND SUCCESS IN CHANGING THE DESTINY OF A COMPANY.
24 SO, THERE WAS A VERY CLEAR MESSAGE THAT
25 THEY WANTED US TO LEAVE THE SPACE, AND THAT THERE

1 WOULD BE CONSEQUENCES IF WE DIDN'T.
2 (EXCERPT.)
3 Q. ARE USERS GETTING WHAT THEY SHOULD GET
4 BASED ON YOUR DESIGN OF THE PRODUCT?
5 MR. O'BRIEN: OBJECTION. VAGUE.
6 THE WITNESS: WE ARE STILL DOWNLOADING
7 VERSION FIVE OF OUR PRODUCT, AND WE ARE
8 DOWNLOADING VERSION G2. THE DOWNLOADS FROM OUR
9 SERVER CONTINUE TO BE--CONTINUE TO INCREASE IN
10 VOLUME.
11 WE'VE ALSO GONE PUBLIC WITH SOME ISSUES
12 WE'VE HAD ABOUT THE WINDOWS MEDIA PLAYER AND HOW
13 IT INTERACTS WITH BOTH OUR G2 PLAYER AND SEVERAL
14 VERSIONS OF OUR PLAYERPLUS.
15 BY MS. HALE:
16 Q. CAN YOU DESCRIBE TO ME IN LAYMAN'S
17 TERMS WHAT THOSE ISSUES ARE WITH THE WINDOWS
18 MEDIA PLAYER AND ITS IMPACT ON THE REALNETWORKS
19 PRODUCT.
20 A. WHEN A USER USES THE REALPLAYER OR
21 OTHER PRODUCTS TO GO VIEW THINGS ON THE INTERNET,
22 YOU CLICK--THE USER CLICKS ON A LINK. ON WEB
23 PAGES, IT'S SOMETHING THAT'S UNDERLINED OR IN A
24 DIFFERENT TYPE OF TEXT.
25 THE USER CLICKS ON IT, AND A NEW PAGE

1 IS LOADED OR AN RK'S VIDEO AND AUDIO PLAYED. IN
2 THE INDUSTRY, THAT LINK HAS INFORMATION ON IN IT
3 THAT SAYS WHAT TYPE OF MEDIA OR FILE FORMAT IT IS
4 SO THAT WHEN IT'S CLICKED ON, YOUR PERSONAL
5 COMPUTER KNOWS WHAT TYPE OF PRODUCT SHOULD GO
6 PLAY THAT BACK.
7 SO, FOR EXAMPLE, MAC OR MEDIA HAS A
8 PRODUCT CALLED SHOCK WAVE THAT DOES ANIMATION.
9 IF YOU CLICK ON A SHOCK WAVE LINK, THE PC IS
10 TOLD, "HEY, THAT'S SHOCK WAVE. LOAD THE SOFTWARE
11 ON THE PC TO GO PLAY BACK THAT SHOCK WAVE
12 ANIMATION BECAUSE THAT PLAYER KNOWS HOW TO GO DO
13 IT.
14 IN WINDOWS, THERE'S A SYSTEM THAT
15 BASICALLY LISTS MIME TYPES AND LISTS WHAT TYPE OF
16 TECHNOLOGIES CAN PLAY--WHAT PRODUCTS SHOULD BE
17 USED TO PLAY BACK THAT. WHEN MICROSOFT RELEASED
18 THE WINDOWS MEDIA PLAYER, THEY DO SOMETHING
19 THAT'S CALLED REMAPPING OR SEIZING MIME TYPES.
20 WITHOUT TELLING USERS, THEY TAKE A MIME TYPE THAT
21 THE REALPLAYER CAN PLAY BACK, AND THEY SAY, "HAVE
22 THE WINDOWS MEDIA PLAYER PLAY IT BACK."
23 WE HAVE SEVERAL OBJECTIONS WITH WHAT
24 MICROSOFT CHOSE TO DO. WE EXPRESSED THOSE
25 OBJECTIONS TO MICROSOFT PRIOR TO THEM DOING IT,

1 AND ALSO AFTER THEY DID IT. ONE IS THAT THEY
2 TAKE PRODUCTS THAT CONSUMERS PAID FOR, OUR
3 PLAYERPLUS, WHICH HAS EXTRA FUNCTIONALITY, AND
4 WITHOUT TELLING THE USER, THEY TURN IT OFF, AND
5 THEY DON'T TELL THE USER HOW TO FIND IT. SO,
6 SOMETHING THAT SOMEBODY PAID $29.95 FOR, FROM A
7 USER'S PERSPECTIVE, SORT OF DISAPPEARS. IT CAN
8 BE FOUND ON THE COMPUTER, BUT IT'S NOT THE THING
9 THAT LAUNCHES ANYMORE AUTOMATICALLY.
10 SO, I WOULD SUBMIT THAT MOST OF THE
11 TIME OUR PRODUCT IS USED BECAUSE PEOPLE CLICK ON
12 A LINK ON A WEB PAGE, THE PRODUCT FEELS LIKE IT'S
13 DISAPPEARED, AND WE'VE GOTTEN CONSUMER COMPLAINTS
14 FROM PEOPLE SAYING THAT THEY AREN'T HAPPY WITH
15 THAT. WE GENUINELY FEEL BAD BECAUSE PEOPLE PAID
16 US FOR THIS EXTRA FUNCTIONALITY, AND THAT
17 FUNCTIONALITY IS NOT FOUND IN THE WINDOWS MEDIA
18 PLAYER, AND THEY CHOSE TO GO PAY US $29.95 FOR
19 THAT.
20 THE SECOND ISSUE WE HAVE IS THAT
21 THERE'S SOME TYPES OF DATA THAT MICROSOFT
22 DEFINITELY CAN PLAY BACK, LIKE REALAUDIO AND
23 REALVIDEO, BUT THEY DON'T HAVE LICENSES NOR THE
24 TECHNOLOGY TO PLAY STUFF BACK LIKE G2. YET THEIR
25 PRODUCT HAD THE PROPERTY THAT IT WOULD GRAB THE

1 MIME TYPE AND THEN WHEN SOMEBODY CLICKED ON A
2 LINK, IT WOULD NOT BE ABLE TO PLAY IT BACK, PUT
3 UP AN INCREDIBLY OBSCURE ERROR MESSAGE. SO THE
4 USER, THE DAY BEFORE THEY MIGHT HAVE A G2
5 REALPLAYER, CLICK ON A LINK ON, SAY, NPR, AND GET
6 THE NPR.
7 AFTER THEY INSTALLED THE WINDOWS MEDIA
8 PLAYER, THEY CLICK ON THE LINK AND GET AN ERROR
9 MESSAGE THAT REALLY DOESN'T HELP VERY MUCH, LIKE
10 "FILE FORMAT UNKNOWN" OR SOMETHING LIKE THAT.
11 TRADITIONALLY, WHAT ONE DOES ON ALL THE
12 WEB BROWSERS, WHICH ALSO STRIKES ME AS TOTAL
13 COMMON SENSE, IS IF YOU CAN'T PLAY SOMETHING
14 BACK, YOU REFER THE USER TO SOMEPLACE WHERE THEY
15 CAN DOWNLOAD THE APPROPRIATE TECHNOLOGY AND HAVE
16 ACCESS TO IT, OR THE USER CAN CHOOSE TO NOT PLAY
17 IT BACK. BUT IT'S BEEN BOTH IN NETSCAPE'S
18 PRODUCTS AND IE'S PRODUCTS, THERE'S PAGES THAT
19 BASICALLY SAY, "HERE'S WHERE YOU GET THE SHOCK
20 WAVE PLAYBACK SYSTEM" OR "HERE'S WHERE YOU GET AN
21 MPEG VIEWER SYSTEM."
22 SO, WE ALSO WERE VERY UPSET THAT
23 PRODUCTS, FROM OUR PERSPECTIVE, HAD WORKED--FROM
24 PERSPECTIVE, PRODUCTS THAT HAD WORKED BEFORE
25 CEASED WORKING. SO THOSE WERE OUR OBJECTIONS.

1 WE AIRED THEM AT A COMMITTEE MEETING OF SENATOR
2 HATCH, WHICH RECEIVED A LOT OF PUBLICITY.
3 Q. ARE THOSE PROBLEMS STILL OCCURRING?
4 A. NO.
5 WELL, SOME ARE, SOME AREN'T. THE G2
6 STUFF GOT FIXED. MICROSOFT IS STILL, AS FAR AS I
7 KNOW, REMAPPING THE PLAYERPLUS--OLD VERSIONS OF
8 THE PLAYERPLUS PRODUCT.
9 THE OTHER THING THAT, FROM OUR
10 PERSPECTIVE, IS NOT FIXED IS THAT WE THINK USERS
11 SHOULD BE ASKED BEFORE A PIECE OF SOFTWARE WHICH
12 THEY'VE INSTALLED ON THEIR SYSTEM IS OVERWRITTEN
13 BY ANOTHER PIECE OF SOFTWARE ON THE SYSTEM.
14 Q. SO, WOULD THAT BE LIKE A DIALOGUE BOX
15 THAT ASKS THE USER WHAT ITS CHOICE IS?
16 A. RIGHT. THAT'S THE COMMON PRACTICE AND
17 PRACTICE THAT'S USED, FRANKLY, IN LOTS OF
18 MICROSOFT PRODUCTS. IF YOU'RE GOING TO OVERWRITE
19 ANYTHING FROM A FILE TO AN APPLICATION, YOU GO,
20 "WOULD YOU LIKE US TO GO DO IT?" IT'S GOOD
21 INDUSTRY PRACTICE.
22 (EXCERPT.)
23 Q. OKAY. AND GIVEN THAT YOU KNEW THAT
24 THERE WAS AN INVESTIGATION IN PLACE, AND IT WAS
25 YOUR DESIRE TO BE ACCURATE, IS THERE ANY REASON

1 WHY YOU DIDN'T PUT A SPECIFIC DATE ON IT AND JUST
2 DATE IT AS JULY?
3 MR. PRAGER: OBJECTION. ASSUMES
4 SOMETHING NOT IN EVIDENCE. MR. JACOBSEN SAID
5 THOSE AREN'T HIS--WAS HIS HANDWRITING.
6 BY MR. O'BRIEN:
7 Q. NOT EVEN IN THE UPPER RIGHT-HAND
8 CORNER?
9 A. NO.
10 Q. SO YOU PUT NO DATE ON THE NOTES?
11 A. CORRECT, I PUT NO DATES ON THE NOTES.
12 WHEN I HAD TO GO REFRESH MY MEMORY ABOUT WHAT THE
13 DATES WERE, IT WAS SIMPLY BY LOOKING AT THE TIME
14 STAMP ON THE FILE IN MY WINDOWS DIRECTORY.
15 Q. SO, THESE ARE ON YOUR WINDOWS
16 DIRECTORY, SO WE COULD DETERMINE THE DATE ON
17 WHICH YOU CREATED THESE NOTES?
18 A. UH-HUH.
19 Q. OKAY.
20 MR. O'BRIEN: I'M GOING TO PUT ON THE
21 RECORD A REQUEST FOR INFORMATION SUFFICIENT TO
22 IDENTIFY THE DATE OF THESE NOTES.
23 BY MR. O'BRIEN:
24 Q. I'D LIKE TO DIRECT YOUR ATTENTION TO
25 THE, I GUESS, FOR LACK OF A BETTER DESCRIPTION,

1 THE LARGEST PARAGRAPH IN THE DOCUMENT, THE SECOND
2 TO LAST LINE, WHERE IT'S ENDING A SENTENCE THAT
3 SAYS--WELL, I'LL READ THE WHOLE SENTENCE. "SO
4 THE MESSAGE WAS THAT IF WANTED TO DO VALUE ADD ON
5 TOP OF THEIR VIDEO, FINE. IF NOT, WE WERE AN OS
6 CONTENDER AND MICROSOFT--MSFT SPECIFICALLY--WOULD
7 TARGET US FOR OBLITERATION."
8 DO YOU SEE THAT SENTENCE?
9 A. TO BE HONEST, NO, I DON'T.
10 MR. PRAGER: (INDICATING.)
11 THE WITNESS: OKAY, I SEE IT.
12 THANK YOU.
13 MR. PRAGER: OKAY.
14 BY MR. O'BRIEN:
15 Q. AND ISN'T IT TRUE THAT MR. MUGLIA DID
16 NOT USE THE PHRASE "TARGET US FOR OBLITERATION"?
17 A. THAT IS CORRECT.
18 (EXCERPT.)
19 Q. OKAY. MR. JACOBSEN, MY QUESTION IS
20 ACTUALLY PRETTY SIMPLE.
21 "IS THE TESTIMONY ON PAGE 42 OF YOUR
22 DEPOSITION WHERE YOU SAID, BUT THE MESSAGE WAS
23 NOT--HE DIDN'T USE PHRASES AT ALL LIKE TARGET US
24 FOR OBLITERATION," IS THAT TESTIMONY ACCURATE?
25 A. YES.

1 (EXCERPT.)

2 Q. OKAY. IS IT TRUE THAT ONE OF THE MAIN

3 GOALS OF THE AGREEMENT REACHED, OR I GUESS THE

4 AGREEMENTS REACHED, BETWEEN THE TWO PARTIES IN

5 JUNE AND JULY OF 1997 WAS THE INTEROPERABILITY OF

6 SOFTWARE PRODUCTS?

7 A. I WOULD CITE THAT AS ONE OF THE MAJOR

8 GOALS FROM MICROSOFT'S PERSPECTIVE WITH THE FIRST

9 AGREEMENT.

10 (EXCERPT.)

11 Q. OKAY. AND IF WE COULD GO BACK TO THAT

12 SECTION 4.1.

13 YOU WERE ASKED A NUMBER OF QUESTIONS

14 EARLIER ABOUT A COUPLE OF SENTENCES THAT SHOW UP

15 FURTHER DOWN IN THIS SECTION.

16 A. I'M SORRY, YOU'RE GOING TO HAVE TO

17 POINT ME TO WHERE YOU'RE LOOKING TO BE AGAIN.

18 Q. SURE. PAGE THREE OF TEN, SECTION 4.1.

19 A. OH, I'M SORRY. I'M IN THE WRONG

20 CONTRACT. SO PAGE THREE OF SEVEN, SECTION

21 4.1--OKAY, YES.

22 Q. AND DO YOU RECALL BEING DIRECTED TO A

23 COUPLE OF SENTENCES DOWN, ABOUT TWO-THIRDS OR

24 THREE QUARTERS OF THE WAY DOWN THE PARAGRAPH?

25 A. YES, I DO RECALL THAT.

1 Q. AND YOU GAVE SOME TESTIMONY--AND AGAIN,
2 IF YOU FEEL I'M MISCHARACTERIZING IT, I WOULD BE
3 HAPPY TO CHANGE IT. I'M JUST TRYING TO FOCUS
4 YOU--
5 A. YES.
6 Q. --ABOUT WHAT MIGHT HAPPEN OR THE
7 CIRCUMSTANCES UNDER WHICH THIS LANGUAGE MIGHT BE
8 INVOKED.
9 A. YES.
10 Q. IS THAT FAIR?
11 A. YES.
12 Q. WAS THIS LANGUAGE EVER INVOKED BY
13 EITHER PARTY, TO YOUR BEST KNOWLEDGE?
14 A. TO MY BEST KNOWLEDGE, NO. IT HAS NEVER
15 BEEN INVOKED BY EITHER PARTY.
16 (EXCERPT.)
17 Q. OKAY. NOW, YOU GAVE SOME TESTIMONY
18 EARLIER REGARDING SOME TECHNICAL ISSUES THAT HAD
19 ARISEN BETWEEN THE WINDOWS MEDIA PLAYER AND YOUR
20 PRODUCT AND THAT HAD BEEN BROUGHT UP DURING A
21 SENATE JUDICIARY HEARING.
22 DO YOU RECALL THAT?
23 A. YES, I DO.
24 Q. COULD YOU PLEASE DESCRIBE FOR ME, AS
25 CAREFULLY AS POSSIBLE, THE ISSUE THAT WAS

1 ADDRESSED DURING THAT HEARING. WHAT WAS THE
2 FUNCTIONALITY THAT WAS LOST BY THE WINDOWS MEDIA
3 PLAYER?
4 A. ROB TESTIFIED TO SEVERAL SETS OF
5 FUNCTIONALITY BEING LOST.
6 Q. OKAY.
7 A. HE SAID THAT PEOPLE WHO HAD THE
8 PLAYERPLUS WOULD FIND THAT THEIR PLAYERPLUS
9 FUNCTIONALITY WAS NO LONGER--WE DEBATED THE
10 PRECISE TERMS OF DISAPPEARED OR HOWEVER YOU'D
11 LIKE TO CHARACTERIZE IT, AND HAD DISCUSSIONS
12 ABOUT THE FACT THAT IT'S STILL ON THE HARD DRIVE.
13 SO I'LL LET OTHER PEOPLE DEBATE EXACTLY THE
14 LANGUAGE.
15 BUT WHEN PEOPLE CLICKED ON THE LINK
16 THAT HAD REALPLAYER CONTENT OR REALAUDIO OR
17 REALVIDEO CONTENT, THEY WOULD NO LONGER HAVE THE
18 ADDITIONAL PLAYERPLUS FUNCTIONALITY. THAT WAS, I
19 GUESS, ROB'S POINT A.
20 POINT B WAS HE TALKED ABOUT HOW IN THE
21 G2 CASE WHAT MICROSOFT HAD DONE WITH WINDOWS
22 MEDIA PLAYER MEANT THAT USERS WOULD BE CONFUSED
23 AS TO WHY THE G2 CONTENT WASN'T PLAYING BACK
24 ANYMORE.
25 Q. FOCUSING ON THE SECOND POINT, THE G2

1 POINT, DOES THAT PROBLEM STILL EXIST?
2 A. NO.
3 Q. OKAY. IS IT TRUE THAT THE VERSION USED
4 AS A DEMONSTRATION DURING THAT TESTIMONY WAS A
5 BETA VERSION?
6 A. YES.
7 (EXCERPT.)
8 BY MR. O'BRIEN:
9 Q. IS THERE ANY PROBLEM THAT AROSE WHEN
10 THE WINDOWS MEDIA PLAYER WAS INSTALLED AFTER G2
11 THAT WAS DEMONSTRATED BY MR. GLASER DURING THE
12 HATCH HEARING THAT NO LONGER EXISTS?
13 A. IS THERE ANY PROBLEM THAT WAS
14 DEMONSTRATED THAT NO LONGER--ARE ANY OF THE
15 PROBLEMS FIXED? AGAIN, NO, I DON'T BELIEVE ANY
16 OF THE PROBLEMS ACTUALLY ARE FIXED.
17 Q. OKAY. SO YOUR TESTIMONY--
18 A. TO BE PRECISE, I DO NOT BELIEVE THEY
19 ARE COMPLETELY FIXED. I WOULD CHARACTERIZE THEM
20 AS BAND-AIDED--PATCHED.
21 Q. SO, WHEN THE WINDOWS MEDIA PLAYER IS
22 INSTALLED AFTER G2 IS INSTALLED, DOES THE SAME
23 THING HAPPEN TODAY AS HAPPENED WHEN MR. GLASER
24 DEMONSTRATED IT DURING THE HATCH HEARING?
25 A. NO.

1 Q. HOW LONG AFTER THE HATCH HEARING DID IT
2 TAKE REALNETWORKS TO ENSURE THAT THAT HAPPENED?
3 A. I BELIEVE ON THE ORDER OF A WEEK. IT
4 TOOK US SEVERAL DAYS OF TALKING TO MICROSOFT TO
5 UNDERSTAND WHAT WAS CAUSING THE BEHAVIOR, AND
6 THEN PROBABLY THREE OR FOUR DAYS TO PUT IT UP AND
7 THEN TEST IT. SO I'D SAY ON THE ORDER OF SEVEN
8 TO TEN DAYS.
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