DECLARATION OF STEVE WADSWORTH

I, Steve Wadsworth, hereby declare:

1. The United States Department of Justice and the Texas State Attorney General's Office have requested that I provide this declaration in connection with investigations of Microsoft Corporation's conduct relating to the licensing, marketing, and distribution of operating system and Internet browser products.

2. I am the Vice President of Business Development and Strategic Planning for Disney Online ("Disney"). Disney Online is an indirect subsidiary of The Walt Disney Company. Disney Online provides Web content, including online shopping, entertainment, and games. Disney's Web content is located on Web sites such as Disney.com and Family.com. I am responsible for participating in the development of Disney's online strategy, and was involved in the negotiations with Microsoft for the Active Desktop Marketing and Distribution Agreement ("Active Desktop agreement"), effective as of July 3, 1997.

3. Disney entered into the Active Desktop agreement with Microsoft because Disney believed that having a channel leading to the Disney Web sites on virtually every personal computer desktop would be an important distribution and promotional mechanism for Disney Online's content. Because Windows is preinstalled on almost every personal computer, and because Microsoft told Disney that it was planning on distributing Internet Explorer 4.0 and its Active Desktop with Windows 95 and 98 on nearly all new personal computers sold after the release of Internet Explorer 4.0, Disney believed that having a

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considerably large sized button prominently featured on the Active Desktop was of substantial value to Disney

4 Furthermore, Disney believed that entering into a promotional deal with Microsoft was highly valuable because of Microsoft's ability to create icons or "channels" that would be located on the Windows "desktop " Disney understood that these channels would appear on the first and default screen users see when they first turn on almost any personal computer sold by all of the major personal computer manufacturers, and that the Disney channel would appear on the default screen unless the user took some action to change the default desktop. Disney also understood that the OEM retained the right to modify this default before shipment, although it was Disney's understanding from Microsoft that, based on historical practices, the OEM was not likely to do so. Although Disney could have attempted to negotiate separate deals with numerous individual personal computer manufacturers in an attempt to match the level of distribution Microsoft could provide for the Disney channel, no single company other than Microsoft could have provided the same value in terms of ubiquitous distribution.

5. In fact, during the negotiations for the Active Desktop agreement, representatives from Microsoft emphasized the advantages of having a channel on the Active Desktop, and the distribution capability Microsoft alone could offer through Windows. For example, I specifically recall Bill Spencer, a Microsoft representative who was involved in negotiating the Active Desktop agreement, telling me that the desktop is Microsoft's "crown jewel." Mr. Spencer has also characterized the IE source code that we received to be Microsoft's "crown jewel."

6. Disney and Microsoft originally began negotiating a bilateral exclusive arrangement. Such an arrangement would have restricted Disney's ability to have a channel on a competitive product such as Netscape's Netcaster, and would have restricted Microsoft from including another family entertainment channel. During the negotiations, Disney determined that an exclusive arrangement was not in its best interests because Disney seeks to distribute and promote its content as broadly as possible. Disney wanted exposure to the widest customer base possible, and did not want to limit that exposure based on an individual's browser choice. Furthermore, Disney concluded that as a content company, it was not interested in helping one company or another prevail in the battle for browser market share. Disney did not want to appear as if it were exclusively endorsing one company over another, a result Disney believed would occur if it were to have a channel on the Active Desktop only. Therefore, Disney negotiated an exception to the Active Desktop restrictions that allows it to have a channel on Netcaster, and gave up its request that Microsoft also provide Disney with exclusivity.

7. Despite efforts to do so, Disney was not able to negotiate out of other restrictions on its ability to deal with producers of "Other Browsers," although Microsoft has recently informed Disney that these restrictions no longer apply, and that it proposes to send a formal amendment to that effect. However, under the contract as originally made, Disney could not, for instance, promote an "Other Browser" on its Web sites or the Disney Online Service. This restriction prevented Disney from displaying a logo, a link, or other promotional mention of any "Other Browser" on certain Disney Web sites. Disney also could not market, promote, or license for distribution any Disney content or Disney logo

in connection with promotion of "Other Browsers." Disney also could not provide any company which produces "Other Browsers" compensation for distributing, marketing, or promoting any Disney content or Disney logo. Disney would have preferred to have not been subject to these restrictions, but agreed to them in order to conclude the deal to gain access to the Microsoft desktop. Disney was able to carve out two exceptions to these prohibitions in the original contract: (1) it was allowed to have a text-link on an "Other Browser," an exception designed to allow Disney to continue its participation in Netscape's In-Box Direct service, which is a customized information service that delivers news, sports, financial and other information directly to the user's electronic mailbox, and (2) it was able to create a Netcaster channel.

8. According to the Microsoft agreement, an "Other Browser" is third party software that is designed to view, render, browse, hear, or otherwise interact with content on the Internet, and that ranks in the top two (exclusive of Internet Explorer) most widely used browsers. In negotiating the contract with Microsoft, it was very clear that the "Other Browser" Microsoft was concerned about was Netscape Netcaster. Netscape was specifically discussed in the context of Disney's desire not to have an exclusive arrangement with Microsoft. Furthermore, products such as Pointcast that only "push" Web content to the user, but do not allow the user to actively browse the Web, are not subject to the restrictions imposed on Disney's agreements with, or marketing or promotion of, producers of "Other Browsers."

9. As a content provider, it is in Disney's best interests to have its content as widely disseminated and promoted as possible. Nevertheless, it decided to enter into an

agreement with Microsoft that imposed these limitations on its ability to market and promote Netscape or the existence of a Disney channel on Netscape Netcaster -- even though the Netscape browser had a 70% share of the browser market at the time -- because it decided that Microsoft possessed a significant advantage in the battle for browser market share. A significant reason Disney predicted Microsoft's browser market share would quickly increase was because of Microsoft's ability to broadly distribute Internet Explorer with Windows, and because Microsoft did not charge the end user or personal computer manufacturer for Internet Explorer.

10. By originally agreeing to these restrictions, Disney understood that it would be precluded from making certain future promotional deals with Netscape. For instance, Disney was precluded from having a Disney logo or the trademark Disney characters on Netscape's NetCenter, Netscape's recently launched online service that serves as its homepage. In today's marketplace, promotion of Disney characters and the Disney brand on NetCenter would be a more valuable opportunity than inclusion on the Netcaster channel bar. Although Disney might have entered into a deal with Netscape for the placement of the Disney logo on NetCenter, the Active Desktop agreement with Microsoft originally prohibited Disney from doing so. Disney has not yet determined how, if at all, it will explore these opportunities in light of Microsoft's recent decision to lift these restrictions.

11. As discussed above, Disney was only allowed to have a text link on either the Netscape browser or the Netscape home page, which was an exception to the restrictions Disney was able to carve out of the Active Desktop agreement. This meant that whatever content Disney licensed to Netscape had to be presented through printed words only; Netscape

could not use the well known Disney characters or logos in connection with its browser technology Microsoft asserted that those restrictions also prohibited Disney from allowing Netscape to print the word "Disney" in the characteristic Disney script, with the curvy font and circle over the "i"

12. As permitted by the Active Desktop agreement, Disney created a channel for Netcaster When Microsoft noticed that the Disney channel for Netcaster displayed the Disney logo and Disney characters, however, Microsoft contended that this was in violation of the Active Desktop agreement. Bill Spencer of Microsoft argued that the Active Desktop agreement prohibited Disney from having a Disney-branded logo or characters on the Netcaster channel bar. He also made it clear to Disney that Brad Chase, a senior Microsoft executive, believed Disney would back down and pull its logo from Netcaster; Bill Spencer said Chase expressed the belief that it would have been unwise for Disney to have a channel on Netcaster with the Disney logo if it meant forfeiting desktop placement. This was all, obviously, before Disney's recent receipt of notice from Microsoft that these restrictions no longer apply.

13. Although I believed that the ability to have a Disney logo on the Netcaster channel bar is exactly what Disney had carved out of the restrictions in the Active Desktop agreement, Disney decided that it should back down and agree to Microsoft's demands in order to avoid what was becoming an escalating dispute with Microsoft over the contractual issue. Therefore, Disney informed Netscape that the graphics on the Disney button on Netcaster had to be changed to a new graphic. Further, in order to meet Microsoft's concerns, Disney had re-designed its Netcaster channel bar such that it said "Disney" in plain text,

with some dalmatian spots appearing behind the text. But, this re-design is no longer necessary, since, as noted above, Disney has received notification of the revision to the Active Desktop agreement. Therefore, the Disney logo may once again be incorporated into the Netcaster channel bar

I declare under penalty of perjury that the foregoing is true and correct. Executed on Thurs, April 23rd, 1998 at The Walt Disney Company in Burbank, California.

Steve Wadsworth