

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Petitioner,

v.

MICROSOFT CORPORATION,

Respondent.

Supplemental to
Civil Action No. 94-1564

Hon. Thomas Penfield Jackson

**DECLARATION OF MICHAEL T. McCARTHY
IN SUPPORT OF MOTION BY THE UNITED STATES FOR JUDGMENT OF
CIVIL CONTEMPT AND TO ENFORCE PRELIMINARY INJUNCTION**

I, MICHAEL T. McCARTHY, declare as follows:

1. I am a paralegal employed by the Antitrust Division of the United States Department of Justice ("DOJ"). I have been assisting the attorneys charged with the responsibility of investigating alleged violations of the Final Judgment entered by this Court on August 21, 1995 in *United States v. Microsoft Corporation*, Civil Action No. 94-1564 (1994).

2. On December 16, 1997, I printed "Questions and Answers" from the Microsoft web site, at www.microsoft.com/corpinfo/doj.Q&A.htm, entitled "Microsoft Appeals Federal Court Order - Questions & Answers." The printed document is attached hereto as Appendix 1.

3. On December 16, 1997, I reviewed a transcript that was prepared by the Antitrust Division of a telephone press conference held by Microsoft on December 15, 1997. In reviewing the transcript, I listened to a recording of the press conference. Appendix 2 is a true and accurate transcript of the Microsoft press conference.

4. Attached as Appendix 3 appears to be a true and accurate copy of an article entitled "Cannot Uninstall Microsoft Internet Products in OSR2." Upon information and belief, this article is available in a Microsoft product support publication called TechNet.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington D.C. on December ____, 1997.

MICHAEL T. McCARTHY

Appendix 1

Press Pass

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Microsoft Appeals Federal Court Order - Questions & Answers

December 15, 1997

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What is Microsoft appealing?

Microsoft Corp. is appealing to the Federal Court of Appeals for the D.C. Circuit the preliminary injunction issued by Judge Jackson ordering Microsoft to allow computer manufacturers the option of installing a version of Windows[®] 95 without Microsoft[®] Internet Explorer 3.0 and 4.0 files. This is the only portion of the ruling Microsoft is currently appealing.

Why is Microsoft appealing the judge's decision?

Most fundamentally, we are appealing this decision because the court's order sets a dangerous precedent and threatens every American technology company's right to innovate and to define what goes into its products. This order puts the government into the business of software design.

From a legal standpoint, we are appealing because the court dismissed the petition for contempt, which should have ended the case. Instead, the court entered a preliminary injunction, based not on the consent decree but on general antitrust law, without giving Microsoft an opportunity to be heard on why no such injunction is appropriate.

The judge's order presents us with a difficult task. By stripping out Internet Explorer files from Windows 95, the government is forcing Microsoft to produce a substandard product (essentially a product that will not work) and is asking us to compromise a brand we have spent millions of hours and over \$1.5 billion in research and development creating.

Who will hear the appeal and what is the process going forward?

The appeal was filed this morning (Monday, Dec. 15, 1997) in the Federal Court of Appeals for the District of Columbia Circuit. The Appeals Court will appoint a three-judge panel to hear this matter. We're looking forward to presenting

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our appeal and we remain confident that once all judicial proceedings are complete, the courts will agree that Microsoft is complying fully with the consent decree and that integrating Internet Explorer into the operating system is good for consumers.

How long will this take?

We cannot speculate. Microsoft will be filing its detailed documents supporting its appeal in the near future, and will be asking the Court of Appeals to hear this matter as quickly as possible.

What are the legal grounds for the appeal?

There are a wide range of legal grounds for this appeal, which will be detailed in our appeal papers when they are filed. In summary, we believe it was an error for the court to impose a preliminary injunction after concluding that the Justice Department's contempt petition should be dismissed. This was only a contempt proceeding. The court's decision on that issue should have ended this case. Instead, the court considered broader antitrust issues and imposed a preliminary injunction without affording Microsoft an opportunity to address these additional issues.

From a broader standpoint, however, we are appealing this preliminary injunction because it undermines one of the most important principles of the software industry and American business — that consumers and the marketplace, not government, should decide what goes into software products.

Are you complying with the preliminary injunction during the appeal?

Yes. Even though we disagree with the court's preliminary injunction and have filed an appeal, we will comply with the judge's order until the appeal can be decided.

We have sent a letter to every computer manufacturer who licenses Windows 95, outlining their options under this court order. First, computer manufacturers are free to continue to ship the full Windows 95 product (including the integrated Internet Explorer features). We believe this choice is best for consumers.

Second, if they want a version of Windows without Internet Explorer functionality, computer manufacturers can remove all Internet Explorer files from the current version of Windows 95 provided to them, as outlined in the court's ruling. (We do not believe this product will work).

In addition, we are giving computer manufacturers a third option: They may license a version of Windows 95 equivalent to the retail version released in 1995 with no Internet Explorer code included. Unlike the option outlined by the court, this product will work and will provide a significant amount of operating system services, but it will not include the various new features that Microsoft has integrated into Windows 95 since the product was first released to take advantage of the latest hardware advances.

Will the preliminary injunction remain in force during the appeal?

Yes. We have not requested that the injunction be stayed during the appeal.

What is so burdensome about this preliminary injunction?

By ordering Microsoft to allow computer manufacturers to strip out Internet Explorer files from Windows 95, the government is forcing Microsoft to allow distribution of a substandard product (essentially a product that will not work) and is asking us to compromise a brand we have spent literally millions of hours and over \$1.5 billion in research and development creating. In addition, the court's ruling opens the door to a splintering of the Windows operating system, which would be bad for consumers, bad for independent software developers, and bad for Microsoft.

The fundamental principle here is whether Microsoft should be able to decide which products and features it builds into its software. We believe the government should not be in the business of designing software products. This sets a dangerous precedent for the whole industry.

Why are you insisting that all of the Internet Explorer files be removed? Why aren't you just allowing computer manufacturers to remove those files they wish in order to render Internet Explorer inoperative?

We are actually going the extra mile to give computer manufacturers more options than the court has required. We are offering computer manufacturers the option of shipping a version of Windows 95 equal to the "retail" version released in August 1995 with no Internet Explorer files. This is the only version of Windows 95 Microsoft has ever offered that had no integrated Internet Explorer and is the version the Justice Department has claimed is a product "separate" from Internet Explorer.

Microsoft has the right to design its products and maintain the integrity of the Windows brand. Consequently, we do not allow

computer manufacturers to pick and choose which parts of Windows they want to install. We believe we are going beyond the strict interpretation of the court's order by providing to OEMs a functional version of Windows 95 (the 1995 retail version) without Internet Explorer files.

Appendix 2

TRANSCRIPT OF MICROSOFT TELEPHONE PRESS CONFERENCE

DECEMBER 15, 1997

Ms. Mich Matthews, Group Manager Corporate Public Relations:

Thank you. Good morning everyone, thanks for taking the time to join us. I have with me Bill Neukom, our Senior Vice President of Law and Corporate Affairs at Microsoft and Brad Chase who is our Vice President of Internet marketing. I'm first going to read our statement which is just hitting the wire right now and then both Bill and Brad are going to make a few comments and then we'll go straight into Q&A. I'll now read our statement.

Microsoft announced Monday that it is appealing a preliminary injunction issued by U.S. District Court Judge Thomas Penfield Jackson on the grounds that it was error for the Court to impose a preliminary injunction after denying the Justice Department's petition to hold Microsoft in contempt. Microsoft will comply with the preliminary injunction while it is on appeal. "The matter before the Court was whether Microsoft could be held in contempt for violating a consent decree entered in 1995. The Court denied the Justice Department's petition for contempt. The case should have ended there. But on its own initiative, the Court proceeded to treat the matter as a tying case and without giving Microsoft notice or an opportunity to defend itself, issued a preliminary injunction," said William H. Neukom, Microsoft Senior Vice President for Law and Corporate Affairs. "The government could have brought a tying case, but chose instead to file a petition seeking an order of contempt. It is inappropriate for the Court to unilaterally expand the case beyond the scope of the government's petition." From a broader standpoint, Neukom said Microsoft is appealing because the Order sets a dangerous precedent. "This preliminary injunction threatens every American technology company's right to innovate and define what goes into its products. The ruling puts the government into the middle of the complex product design issues in an industry that for more than 20 years has experienced incredible growth, innovation and competition without government intervention." Last Thursday, Judge Jackson ruled that pending further judicial proceedings, Microsoft could not license Windows 95 to computer manufacturers [OEMs] on the condition that they also license Internet Explorer. The Court's preliminary ruling premised on the DOJ's argument that Internet Explorer is not part of Windows 95, but rather contractually bundled with the operating system by Microsoft. In fact, Internet Explorer has always been an integrated part of Windows 95 as provided to computer manufacturers, and the

customer development benefits of that integration have grown substantially as Microsoft has continued to develop the operating system since it was first released. The Order allows Microsoft to continue to offer OEMs the complete Windows 95 product which includes Internet Explorer as long as the OEMs also have the option of installing only that portion of Windows 95 that does not include Internet Explorer files. Today a number of Windows 95 functions, as well as third party applications are dependent on Internet Explorer technologies. These technologies provide operating system services that are important both to the operation of Windows 95 itself and to the operation of products created by other software publishers, such as the ability to display information in HTML, a document format first popularized on the Web, but now used more widely. Windows 95 would be lacking if it did not provide the system services to enable software developers to create new applications. Microsoft has challenged assertions by the DOJ that its integration of Internet technology into the operating system limits consumers' ability to choose which Web browser they wish to use. "Microsoft's current licensing practices with OEMs enable consumer choice rather than limit it," said Neukom. "Computer manufacturers are free to install Netscape Navigator on new computers with Windows 95 if they choose and many have. Customers can choose to have one or the other browser or both on their computer and many do." The central point of our position is that when a computer manufacturer licenses Windows, it should install the entire product, just as Ford requires that all its vehicles be sold with Ford engines. This is the only way to guarantee customers a consistent Windows experience and is the only way to assure software developers and hardware manufacturers that their products will be compatible with Windows. Neukom emphasized that the consent decree expressly states that Microsoft is free to develop integrated products, that Internet Explorer has been an integrated part of Windows 95 since the very first version was shipped to computer manufacturers in July 1995, and that the Department has known of the company's plans to integrate Web technology into Windows 95 even before negotiations began on the consent decree in 1994. The current legal issues will not affect the launch of Windows 98 in the first half of 1998, he added. In order to comply with the preliminary injunction, Microsoft sent a letter Monday to all licensed computer manufacturers informing them that the pending appeal: (1) they may continue to ship the full Windows 95 product including its Internet Explorer features; (2) They have the option, provided in compliance with the Court's Order, of removing Windows 95, all the files that are included in the retail version of Internet Explorer 3. Microsoft is alerting computer manufacturers that this stripped version of Windows 95 will not operate or perform as originally designed; (3) Although not required by the Court's Order, Microsoft will also provide OEMs with the version of Windows 95 from which Internet Explorer can be removed with less damage to the remaining elements of the operating system. Microsoft will give computer manufacturers the option of installing the original OEM version of Windows 95, but with all Internet Explorer 1.0 files removed. This is the version of Windows 95 that was available in the retail channel for the first year after the product launched in August 1995 and to

which the DOJ repeatedly pointed as an example of Windows 95 as a separate product. More recent OEM versions of Windows 95 have been upgraded to provide additional benefits from the integration of important Internet Explorer technology such that removing the Internet Explorer files effectively disables the operating system. That ends our statement.

I am first going to hand over to Bill Neukom who's going to make some remarks:

Neukom:

Thank you Mich, let me add my welcome to Mich's, we appreciate your making time for this press event. As you might well imagine since Microsoft received the Order late Thursday afternoon our time, we have spent a fair amount of time coming to understand the terms of that Order and the effect of that Order. We've addressed that analysis from two points of view. First of all, is the Order a sound Order?, and we have concluded that it is not and that it contains a number of serious errors and secondly, we have tried to interpret the Order to understand what the impact of the preliminary injunction would be on Microsoft and on our customers, the computer manufacturers as well as the independent software vendors who write products to run on top of Windows, and we've concluded as a result of that analysis involving, in addition to legal people, product folks and sales people that we are compelled to appeal from the preliminary injunction immediately, we have done that this morning by filing our notice of appeal with the Circuit Courts in the District of Columbia and we have also resolved that, of course, we will comply with the preliminary injunction in a way which we think is respectful of the injunction, but is also realistic in terms of the technical and business realities of our industry. From the legal standpoint, we continue to view this litigation as a contract case, pure and simple. The Department of Justice began the litigation with a petition for contempt seeking to prove that Microsoft has violated the consent decree and therefore should be held in contempt. The law is clear that the government has to prove contempt by clear and convincing evidence of a violation of a clear and unambiguous term of a consent decree. The government was unable to do that to the satisfaction of the Judge and accordingly, the Judge denied the government's petition for contempt. However, the Court proceeded on its own initiative to treat the case as though it was something more and different -- as though it were a case brought under the Sherman Act for tying

violation by the Department of Justice, and without providing Microsoft with notice for an opportunity to present our views on its own initiative, sua sponte, the Court has entered a preliminary injunction. Under the circumstances, Microsoft will also be seeking an expedited treatment of this appeal by the Circuit Court in order that these legal matters can be resolved just as soon as possible. Beyond the legal considerations that brought us to the conclusion that we needed to appeal the preliminary injunction immediately, there are other broader implications of that preliminary injunction. Microsoft, like other high technology companies have to have the ability to determine what features go into products. This preliminary injunction would inject the government into a complex of highly technical questions of software product development and design. We continue to believe that it's customers in the marketplace -- not government officials -- who should determine what goes into software products. In terms of integration, customers want and appreciate the benefits of integration in terms of performance, in terms of ease of use, in terms of reliability, in terms of economy. This is true in virtually all businesses, there used to be after-market air conditioners for automobile years ago, those are now at the feature now integrated in the automobile. It's particularly true in high technology businesses, especially computer software where there are literally hundreds of products which are integrated products all for the benefit of the customer. In addition, this preliminary injunction would make it impossible for Microsoft or other software companies with integrated products to maintain the integrity of our products. It essentially says that Microsoft has to make two versions of Windows 95 available, one the way we think that customers want it, in fact the way customers do want it from all market indication, and another the way our competitors and the Department of Justice want us to offer the technology. One of those has great contemporary Internet features and the second would have those features stripped out of it. This is a very dangerous precedent and, again, would lead to a situation where high technology companies are limited by government judgement as to what sort of feature they can integrate into their products. From a practical standpoint, we do not believe that the immediate impact of the preliminary injunction should be at all dramatic, but there are long term negative effects as I've described above that are very disturbing. In the

short term, we expect that computer manufacturers will continue to ship Windows 95 in its full version because that is what their customers want on those machines. We've already heard from many of the major computer manufacturers, to name a few, Compaq, Dell, Gateway 2000, Packard Bell, Micron and others who say that they will continue to ship the full Windows 95 product because of customer demand. It's also important to note that this notion of choice is not advanced by the preliminary injunction. We indicate in the press release, there is nothing in our licenses with computer manufacturers which has ever prevented them from adding other software to their systems -- from shipping Netscape's browser, for example, on top of Windows 95, and there is nothing which has ever or should ever limit a customer's ability to add additional browsing technology to a Windows 95 system. Even though we are appealing this matter because we believe there are serious errors underlying the sua sponte preliminary injunction, we will also comply with the Judge's Order pending that appeal. And by way of complying, we are taking a three prong approach as described in the press release and as Brad Chase will describe in more detail. Fundamentally, the choices for the OEMs will be to continue to ship the popular product that they have been shipping, the full version of Windows 95 or if they wish as provided in the Order, they may offer a version of Windows 95 which has stripped out of it those files which make up the retail version of Internet Explorer 3.0 which is the definition used in the Court Order and urged upon it by the Department of Justice and unfortunately we don't believe that that what's left of that operating system will be functional. In order to try to provide some alternative which would be functional, we have gone further and are offering to OEMs the alternative of pre-installing the version of Windows 95 in the form of which it was first released in the OEM channel in August of 1995 from which they will have to strip some files which make up the thin version of Internet Explorer 1.0. At this point, I'd like to turn this over to Brad Chase, who can talk further about the product, the integration and the compliance strategy that we are pursuing with our customers.

Chase:

Thank you Bill. Happy Holidays everyone. So, I think I should start by talking a little bit about the options we are providing PC manufacturers and make sure everyone

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understands. The Court required us to provide a version of Windows 95, a licensed version that does not include the Internet Explorer files and we are doing that as Bill and Mich both referred to. Now unfortunately, when you take out all of those files, you are left with the version of Windows 95 that doesn't boot and so while we're required by the Court's Order to provide that version, that's not a version that any of us are excited about providing to PC manufacturers or of course our final end user customers. So, we've gone back to the original version of Windows 95 and although the original version of Windows 95 that we provided to PC manufacturers included Internet Explorer 1, we did test a version and had it retail a version without Internet Explorer 1 files and as a consequence we feel pretty confident that that version will be reasonable for customers. So we are providing as an option for PC manufacturers the ability to ship the original version of Windows 95 and they'll have to take out the Internet Explorer 1.0 files. It turns out a few things won't work, I think, for example the MSN sign up won't work I believe in that version. Of course the last version that everyone can ship is the version they're shipping today which includes the latest versions of Internet Explorer and as everyone has indicated it is our belief and the feedback we're getting from our PC manufacturers that they're going to continue to ship that, because it provides the best choice for the customer. So that gets us to what we did to comply with the Judge's Order and our choices for PC manufacturers. I think it's worth noting though that there are some fundamentals of this case, that I want to go back to before we take Q&A. The first fundamental is to me one of the pleasant or unique ironies of the case, pleasant is probably the wrong word for anything to do with this case actually, and one of the basic ironies to this case is how Internet Explorer has gained market share in the first place. Our momentum, particularly strong over the last 18 months, is not because of our inclusion of Internet Explorer technologies with Windows 95. In fact, it is because our product has been proven time and time again to be the best browser for customers. It has handily won every single comparison review done by major industry or business publication. For example, just last week, *PC Magazine* awarded it the best browser for 1997. We are gaining share and developing momentum because we have the best product. That is the key tenet of our momentum and in fact we had as everyone knows,

Internet Explorer One with Windows 95 provided to PC manufacturers at the very beginning when we shipped Windows 95 in August of '95 and we had basically zero share at that time. Now we had Internet Explorer 2 with Windows 95 delivered to PC manufacturers and basically had at most maybe five or eight percent share at that time. It's when we built a better product that customers chose, that's when we started to gain market share. So, that's one key fundamental in this case. Now, another key irony of this case is that people are not only choosing Internet Explorer and it is browser of momentum, because it's a better product, but when they're choosing it, they're doing so not because it came on their PC. Conservatively, we estimate that over 80 percent of people did not choose their browser by what came with their PC. Instead, people are choosing their browser based on the recommendations of their on-line service, their Internet service provider, they're downloading it from the Internet or it's because of what their place of business has chosen. So they're choosing a better product and their choosing it from other means other than new PCs. So then people will say, well then why are you integrating Internet Explorer functionality in the operating system? Well, it's because it's fundamental. It's not some grand conspiracy. We, in fact, decided that we would start to integrate this functionality before Netscape was even formed as a company. This functionality is very key to the operating systems business. Operating systems started by giving people the ability to access files on a floppy disk and then as technology improved, we gave people the ability to access information on a hard disk and then as again things improved, we gave people the ability to access information over a local area network and even later, new technology such as CD-Roms. The Internet is just one large wide area network. And for us to be competitive, we have to provide customers an integrated view of all their information. But it's even deeper than that. The technologies represented by the Internet are key to providing a modern competitive operating system. Application vendors will use the Internet to display information. They'll use the Internet to go out and get customers new updated code to update their application. Even core functionality, such as Help, will be based on HTML. And so it's very fundamental to our ability to improve Windows to integrate Internet technologies and browsing technologies into the operating system and in fact if you look at Windows

98, there has been no debate about its integration and the value it provides. There's been no debate about that direction as a fundamental direction that is necessary and important to the improvement and evolution of the operating system. And in fact we are moving forward with Windows 98 full steam ahead because there have been some questions about that and I just wanted to clarify that. The bottom line is that no modern operating system will be competitive without Internet functionality rooted at its core. Telling an operating system vendor that it can't integrate Internet functionality is like telling an electronics manufacturer that it can't ship a CD player and it has to ship only record players. Now, another thing that people have been confused about is the fact that Internet Explorer is available separately from Windows 95 as well. Now, I actually on first thought should understand people's confusion and they say, well it's separate, well then how can it be integrated? Well, once you talk to people about it, they slowly and usually always understand the principle that just because something separate doesn't mean it can't also be integrated. It is in fact the magic of software that things that are available separately can integrate into a larger product. In fact what code does is work, the pieces of code work together to build a software product and in fact almost any software product is the integration of lots of code. Now a practical example, I think helps bring that to light even better. If you look at something like the personal computer itself, it is the integration of many components that are available separately. CD-Rom drives used to be available separately, hard disks were available separately and in fact if you go to the very core of the computer itself, the micro processor, it is also the integration of much functionality, and it is bringing all those pieces together provides lots of value for customers. PCs are not the only thing that have added that kind of value. You could go to every fundamental part of our society and look at how integration is key to the value that companies in the United States provide their customers. Automobiles coming with stereos. Automobiles coming with many other components that are available separately, such as the radio and the spark plugs and the batteries. If you even take what seems like a trite example of something like a chocolate chip cookie, it is fundamentally an integrated product. If you take flour and sugar and water and chocolate chips and put it altogether, with a few other things for all those cooks out there, you get this really great

tasty thing called a chocolate chip cookie or well at least usually. I'm not always the best baker in the world. And that is very, very fundamental. It is the baking of those ingredients that brings together something that has great value for customers. Well that's what software code does. It brings these pieces together for customers, and that is how IE can be integrated and separate at the same time. So in the end, though some people have said this is about customer choice, this isn't about customer choice. Customers have plenty of choices. This is about the ability of a company like Microsoft to fundamentally provide value to customers. It is about a fundamental American tenet of competing. It's about providing the ability for customers to get new and improve products that they can use to better their lives, have more fun and do their job better.

Matthews:

Okay, can we move to Q&A now, please?

Operator:

Ladies and Gentlemen, we will now begin the question and answer portion of today's call. If you have a question, press the one key on your touch tone phone, if you would like to withdraw your question, depress the pound key. Again, please limit your questions to one. One moment please for the first question.

David Readerman from Montgomery Securities, you may ask your question.

Readerman:

Thanks, Bill and/or Brad, could you discuss prospectively how would go forward on Windows 98 particularly, given David Cole's testimony about how tightly integrated the files are here. Will, if the Court, Bill is your interpretation of the Court ruling that you have to provide sort of a modern operating system equivalent of Win 98 without IE, or will your decision to use Win 95 1.0 be sufficient?

Chase:

A modern version of Windows 98 without IE is an oxymoron. We're going to move full steam ahead with Windows 98, and we're going to cross any other bridge when we think we come to it.

Readerman:

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Brad, I hear ya, but if we're in a situation now with Win 95 and IE 3.0 integrated together and your response is to provide Win 95 from the August release, how do you comply if you intend to go forward with the Win 98 shipment as indicated?

Chase:

You know, I understand David, I just want to stress that at this point all we've determined for Windows 98 is that we're moving full steam ahead with it, and any other actions that we may or may not take, we haven't really crossed that bridge yet when it comes to Windows 98.

Matthews:

Next question please?

Operator:

Martin Wolk from Reuters, you may ask your question.

Wolk:

Yeah, Reuters. I'm wondering if you interpret this decision as having any application to Windows NT because the language of it says basically all personal computer operating systems and including Windows 95 and subsequent versions?

Neukom:

This is Bill Neukom. We do not believe that the Order involves Windows NT. As to Windows NT Workstation in our communication with the OEMs today, we are providing them with an alternate to the current version which would not include Internet Explorer, but that is not because we feel compelled under the Order to do it.

Operator:

Elizabeth Corcoran, Washington Post, you may ask your question.

Corcoran:

Could OEMs simply take the icon for IE 4 off or IE 3 off the desktop and keep all the underlying code and still essentially be, you know, in compliance insofar as you guys are concerned, in other words, if they didn't want to go back to the original Win 95 version of the software and if they didn't want to as Brad said have software that doesn't boot, could they just take the icon off, would that be something you guys are comfortable with?

Chase:

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Alright, this is Brad. No that's not an option we're providing. We actually haven't tested any version of Windows 95 for PC manufacturers and as a consequence, we're in this sort of awkward position. The versions that we have tested, without IE is the original version that goes way back to August of '95, so that's the version we're providing. Remember too, that we have to provide a version of Windows 95 without the Internet Explorer files. That's what the Judge ordered us to do, so that's why we're doing it the way we're doing it.

Neukom:

Just as a reference on that, Elizabeth, I think the footnote at the bottom of page 16 of the Order is informative and if you read that, as well as the language on page 19 of the Order that spells out the terms of the preliminary injunction, you conclude that this is an Order which contemplates and directs that code be removed.

Corcoran:

Thanks, thanks.

Operator:

George Tibbits, Associated Press, you may ask your question.

Tibbits:

Yes, I'm wondering, you have a number of new products, one of them is Office which now is supporting HTML. Is that critical to have Internet Explorer in that, in the operating system to run that, there's also a third-party companies that are increasingly writing for HTML to work on the desktop. What happens to them, with having to separate out the IE?

Chase:

Well, clearly that's one of our concerns about the case is we're providing this Internet technology as a foundation for their applications to build on and when you remove it, then you lead to a problem for them. We're not really sure of all the implications since the Order just came down, we've only had a few days, but that just reinforces the point I was making earlier that this technology is fundamental to applications like Office or Quicken or on-line services like America Online and the Microsoft Network and that functionality is generally stuff they're depending on and so I encourage you to take a look at, for example,

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David Cole's declaration which goes into quite a bit of detail about how they're using it. But, you know, I am not exactly sure of all the implications since Quicken 98 uses it to display each HTML table, given that now we have to provide a version that doesn't have it, the implications on them will be, we're going to make their life a lot more difficult.

Matthews:

Next question please.

Operator:

Don Clark from Wall Street Journal, you may ask your question.

Clark:

Guys, your scenario for the OEMs is talking about Windows 3.0, what I'm not quite clear, you know, Windows 98 put that aside for now, but I'm not quite clear, how this works with Windows, excuse me with IE 4.0?

Matthews:

Don, don't you mean IE, you said Windows.

Clark:

I'm sorry, I'm sorry, IE 4.0, you know, because we're sort of in this intermediary period before IE 4.0 I believe is kind of integrated, so I see three scenarios: one is what you do about IE 3 and Win 95, what you do with IE 4 and Win 95 and what you do with Win 98, can you talk about the middle of those, how you deal with IE 4 and Win 95?

Neukom:

Don, it's Bill Neukom, let me try to answer that. In our communication with the OEMs, we will make clear that they are, we will continue to provide them with upgraded version of IE, we've done that just very recently, we have a few more soon to follow and the OEMs will continue to have the ability to decide whether they want to upgrade Windows 95 with those enhanced versions of Internet Explorer. So that is available to them and will continue to be available to them and frankly we expect that they will take advantage of that opportunity because the enhanced versions of Internet Explorer technology are what customers want and want more of. As to Internet Explorer 3.0, that aspect of the preliminary injunction requires the compliance efforts that we have made in the form of alternative No. 1 which is a list of files which comprise the retail version Internet

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Explorer 3.0, and by deleting those files, an OEM would then be shipping a product in compliance with the terms of the preliminary injunction. The problem is that version of an operating system isn't functional, so we've gone the extra step. But as to 4.0, there will be -- continue to be available to OEMs, the latest and the greatest Internet exploring technology that we can bring to them and they will have the ability to pre-install that in upgraded versions of Windows if they choose.

Matthews:

Next question please.

Operator:

Bob Drummond, Bloomberg News, you may ask your question.

Drummond:

Yes, Bill, indicate here that the compliant is that the Judge didn't hold you in contempt. As I read the Judge's Order, he said that he appeared to feel that the absence of some evidence of willful violations, he wasn't going to formally cite you for contempt, but he says that the fact that you didn't violate the Order willfully doesn't mean that you didn't necessarily violate the Order at all. So are you saying that the Judge basically had to do an all or nothing kind of, kind of decision in this rather than say, hey, we're not going to, I'm not going to formally cite you unless, lets get some experts in and see what the real deal is on the true meaning of these terms?

Neukom:

My reading of this 19 page Order is that the Judge was asked by the government to decide the merits of a case whose scope was determined by the petition. This was not an independent lawsuit, a separate lawsuit, under the Sherman Act. This was simply a petition by the government asking that the Court determine if Microsoft was violating the terms of the consent decree and if so, to find Microsoft in civil contempt. That's the sum and substance of the petition that started this litigation. The Judge responded to that and the result was the language on page 19 saying that he was denying their petition to find Microsoft in contempt. One of the errors of the preliminary injunction, we believe, the fundamental error is that it arose, the preliminary injunction arose, in the context of a tying analysis by this Court which was not within the scope of the petition for contempt.

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But if you will the litigation was extended or expanded beyond the scope of the government's petition. And that we consider to be inappropriate and that is the matter we are bringing to the attention of the Court of Appeals as one of multiple errors that are in this Order of December 11th.

Operator:

Rick Sherlund, Goldman Sachs, you may ask your question

Rick Sherlund from Goldman Sachs, you may ask your question

Matthews:

Well, shall we take the next question and come back to Rick?

Chase:

Anyone there?

Operator:

One moment for our next question please.

Mr. Chris Arnold of National Public Radio, you may ask your question.

Arnold:

Hi, this is Chris of NPR, you know, I wanted to take issue with you two guys throw out a lot of examples of what this is like and you know, comparing this to an automobile, you know, where the air conditioner isn't after market anymore, it's built, you know, by the manufacturer of the car, I just, you know, there are dozens of car manufacturers out there who, you know, who are popular and there's really only one primary operating system, you know. I just, I don't know what whether that image really, you know, applies here?

Neukom:

The point is the benefits of integrated technology or in lesser technology industries, the virtues and benefits to users of integrated products *per se*. That's at the heart of our product strategy and you can take the view that Microsoft is integrating more and more useful functionality into our operating system because that helps us compete or you can take the view that we are including in our operating system because that's where it performs best and that's where customers expect to find it and like to find it and use it and as Brad said, this is a particularly clear case of Microsoft simply extending a core functionality -- the ability to get access to stores of information -- extending that to a new

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store or a new site of information: The widest of all wide area networks, the Internet. So, what Microsoft has done is the most incremental straight-forward natural extension of, again, a core functionality. This is what operating systems do fundamentally and have for the last 16 years that we have been publishing them.

Chase:

Chris if I could just add for a moment, first remember there are other operating system vendors and they are also including browsing functionality in their operating system, for example, the Apple Macintosh includes browsing functionality as part of its operating system and though we have leadership, certainly in a good position of Windows that we're pleased about, we don't hold that position, and assume we're going to just keep it by standing still. If we can't integrate new functionality in the operating system, then how do we keep improving things for customers? It's, you know, it's our obligation and also desire to do so. So, the irony is you didn't, the fundamental analogies of a car or stereo or you know the many, many we can give, still apply. The situation that we are in a position with Windows, that's a good leadership position doesn't really change those analogies and in fact that's why other people like Apple are including Internet functionality with their operating system.

Neukom:

And again it's important to remember that our including this extension of core functionality is in no way limits the ability of the OEM or the end user to add competing functionality to the personal computer. This is not a lock out, this is not a discouragement at all.

Chase:

And in fact in that way, we're more, it's a much more advantageous situation for the PC manufacturers than it is for the car dealer who really can't provide an alternative engine with its Ford cars or really can't provide most of the pieces of a car in an alternative form, so we are, we do provide PC manufacturers and PC manufacturers often avail themselves of that choice.

Matthews:

Next question please.

Operator:

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Walter Winnitzki from Paine Webber, you may ask your question

Winnitzki:

Yes, thank you. Since the Judge has, you know, can do basically what he wants, is there any question here that he would look at these crippled versions or enough crippled versions of the OS say, "hey, that's not in the spirit of what I'm saying, go back in and come up with a product without the browser that really works and don't give me this old version that you had talked about," and second is relative to Windows 98, is it, by the way you answered the first question, you know, I kind of took away the fact that you may contend that Windows 98 is not covered in this agreement and prior discussions I've had with competent people in Microsoft lead me to believe that it was. I just want to clear that up a little bit, how, what you're feeling on that is right now?

Chase:

I'll start with Windows 98 and then let Bill go back on the other question. The issue for us is we're only a few days into this and trying to assess all the implications is, you know, is a time consuming process and we just haven't had the opportunity to do that. Under all circumstances, we're going forward with Windows 98 for calendar year Q2 as we've previously indicated. That's full steam ahead. If there are other implications in Windows 98, we just really haven't had the opportunity to internalize and work those through yet, so it's more a question of trying to figure all that out. And now I guess I'll let Bill go back to the first part of the question.

Neukom:

Okay, as for the first part, this is an Order which requires Microsoft to comply with a preliminary injunction immediately. And we have taken what time we've had available to us since receiving the Order to try to be reasonable and thoughtful about what we can do to comply essentially instantaneously with the terms of the preliminary injunction and as we described in the press release, in reviewing the version of Windows they get increasingly more deeply and tightly integrated with all of their functionality including the Internet Explorer technology and so we have tried to find the version which is least harmed by removing from it the Internet Explorer technology and presenting, and try to present that to the OEM channel. If there's second guessing about what we've done, we can't stop the

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second guessing, but the point is we have made every effort to be as reasonable as possible and responsive to the letter and the spirit of the preliminary injunction as we are able to under the circumstances.

Matthews:

Next question please.

Operator:

Mr. Paul Andrews of the Seattle Times, you may ask question

Andrews:

Yeah, hi Bill, hi Brad, good morning to you both, getting back to Win 98, I know we're kind of hitting this hard, but what you need to clarify would be a question of would you release Windows 98 before the preliminary injunction expires?

Chase:

Well, our timing for Windows 98 hasn't changed and I'm not even sure, I'd have to have Bill address this exactly how all the timing works with the appeal fit in. So I'm not sure Paul to be honest about that, so just to be clear I want to make sure everyone's point, my point on this is clear. The implications on Windows 98 is not something we've been able, we've figured out completely yet. Obviously, we're doing a lot just to figure out what the Judge's Order meant for Windows 95. But under any circumstances, we're moving forward with Windows 98 for Q2 release and we believe that that integration will provide value to customers, just like by the way the combination of IE 4 and Windows 95 provides today, as an integrated update to Windows 95.

Neukom:

Just to reinforce what Brad said from a legal standpoint, we are going to proceed to bring to market as soon as possible, Windows 98, under the schedule that the company has announced. Whether there are some other technologies we make available to OEMs at the same time will depend on the status of this litigation.

Matthews:

Next question please.

Operator:

{Maria Georgianis} from Dow Jones, you may ask your question.

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Georgianis:

Yeah, Georgianis, thanks for taking the call. I had two questions, which is, one, is it seems like you're leaving the door open to offer two versions of Windows 98, and the second one is if OEMs always had a choice about which browser to load on their machine, why did the Justice Department make such a big deal about your alleged threatening to take away Compaq's license to Windows 95 if they didn't put IE on the machine and put Netscape Navigator on their systems?

Chase:

Okay, so there are two questions there I think, and I sort of lost them in, in the, in the question, so I'm going to ask, can you help me out? Oh, yeah, two versions of Windows, was one of the questions would we provide two versions of Windows 98? And the answer to that is I don't know, we haven't figured that out. We're going forward with the version Windows 98 as we've discussed many times. I don't know what a version of Windows 98 would be without the Internet functionality, so that's sort of hard to figure out. So, we haven't figured the implications of that. And, I think your second question was about OEMs. You want to take that Bill.

Neukom:

Let me try to do that, respond to that. I think you're referring to a declaration that the government filed with its petition back in October from Compaq about some communication between Compaq and Microsoft and the up shot of all of that was never that Microsoft threatened Compaq or any other OEM on the subject of including other competing Internet browsing technology on their systems. The question was whether Compaq could remove Internet Explorer technology from the then version of Windows 95 and for all of the reasons that we have stated in these proceedings and elsewhere, we license our product as a fully integrated product intact, with the understanding that the OEM, if it wants to install the product, must install all of the product for all the obvious reasons of compatibility and product integrity that underlie that kind of a licensing approach and that is absolutely standard operating procedure in this industry. So, there's nothing controversial about Microsoft requiring an OEM to ship a full product. We have

never threatened any OEM on the grounds of their including competing technology in addition to our operating system.

Matthews:

Next question please.

Operator:

Barry Randal from Dane Boswick, you may ask your question.

Randall:

I thank you, following a question a moment ago on Win 98 and a possible release, it seems as though the way it's set up now is that you have two options here. One, and keep in mind that the Judge has, I believe he gave himself until May 31 here, you have two options, one is to create two versions of Win 98, one with and one without the browsing functionalities or possibly wait until, assuming the Judge takes that long until after he has made his decision before going ahead and releasing, so the question relates to, are you planning behind the scenes to actually do two versions as a contingency plan in case he chooses that option, so, so late in the quarter?

Chase:

Okay, so let's try to go over the Win 98 thing and see if I can rest all the Windows 98 questions. Remember that the Order doesn't require us to do anything in terms of product design. The Order is about licensing. So, the only question would be what licensing options we have to provide PC manufacturers. So, for Windows 98, let me stress the following: In terms of product design and what we're developing, we're developing Windows 98 as everyone has known, and heard about it, and hopefully loved it for a long time and we're moving forward full steam ahead with that. And that is planned for release, I think in, well, in calendar Q2. So, that hasn't changed. Then your question is, will we have to provide other licensing options to PC manufacturers. And, the answer is, we haven't figured all that out yet. We've been focusing on trying to implement and comply with the Judge's Order as it relates to Windows 95. It is, of course, part of, all of these interesting questions you ask, sort of relate to the very foundation of why we're appealing the case of appealing this Order, of course, and that remember that as well. Bill do you have anything to add?

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Neukom:

Just to say that we expect Windows 98 will be very popular. OEMs will want it, customers will want it, so we're going to provide it. If we have to do some other kind of licensing to comply with an Order, if it's still in effect after our appeal, we hope reviewed on an expedited basis and resolved in our favor, then we will do those licensing variations. But, that's why I said earlier, what if anything we do with regard to licensing some variation of Windows 98 will depend on the then status of the litigation.

Chase:

I must say I'm glad to see so much excitement about Windows 98.

Matthews:

Next question please.

Operator:

Mr. Michael Moeller of PC Week, you may ask your question

Moeller:

A quick question for you both about Windows 98 and no Brad haven't put this to rest yet. And also, OSR 2.5, which was going to be released in February or was tentatively scheduled for release in February. Can you, maybe address the second one first? Can you please tell me sort of what the status is of OSR 2.5 and, which was going to be Windows 95 with IE 4 "integrated" into it?

Chase:

Yeah, I can give you the status. It goes out this week, people are free to use it, but they don't have to use it.

Neukom:

That's what I was referring to earlier Mike when I talked about our continuing stance in Internet Explorer aspects of Windows 95 and they're absolutely free to use the new, best version and we expect that they will.

Operator:

Bruce Francis from CNBC, you may ask your question.

Francis:

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Thanks, have any OEMs, in your conversations with them, indicated that they would like one of these OSs that are dumbed down or you don't have IE in them? You mentioned the support of several key ones. Is that, "no fine, we like it the way it is." But have any said, that they wouldn't, or that they were interested in the ones that don't have IE in them? Also, if I'm a consumer who buys a PC from one of the OEMs that doesn't want IE in them and we go back to Windows 95 as of August '95, does Microsoft plan to offer me any upgrades so I get the latest wittiest form of Windows?

Chase:

Okay, to take your first question, I'm not aware of any PC manufacturer who has asked for the to use your terminology "dumbed down" version of Windows 95. And in terms of your second question, if a PC manufacturer does choose one of those versions, and a customer then gets one of those versions, and they wanted IE 4, they can easily download that from the Web.

Matthews:

Next question please.

Operator:

Mr. Mike Stanek of Lehman Brothers, you may ask your question.

Stanek:

Good morning. I've just had a question, who's the Harvard professor, what's his background and he apparently is going up the mountain here to make a lot of, I guess, decisions on to get back at the Judge on various things in and around in or around the case. I guess one of the things I'm confused is that if indeed, you know the Judge Jackson has sort of moved us off of the question that was at hand and now taken us down more of the Sherman Antitrust path, I guess what could this guy potentially come back with? What's his agenda? What sort of power does he have, and who else might be on this board, if there's, if there is such a board?

Neukom:

We can't speculate as what the professor might do if he is asked to perform some services for the Court. In terms of his background or his disposition, you're as well informed as we

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are about that. His, his career, to the extent that it's public, is available to any of you to learn about and reach your own conclusions.

Matthews:

Next question please?

Operator:

Mr. Stewart Glasscott of CMP Media, you may ask your question.

Glasscott:

Yes, gentlemen, could you please revisit OSR 2.5 and its features. Will it have IE 4.0 fully integrated? And, if so, isn't it impacted by the immediate preliminary injunction which affects products moving forward?

Chase:

OSR 2.5, which is an update to Windows 95 we make available to PC manufacturers, has IE 4.01 and it has a few other things, and I'm actually not recalling off the top of my head what all the other things are. I think, if you want, we can get back to you with that one.

Operator:

Sandy Rimer from Hambert and Quist, you may ask your question

Rimer:

Yeah, hi, I was wondering whether there's any pricing impact on this three pronged approach? If a version without IE will be priced differently to the OEMs? Thanks.

Chase:

The answer is, no. IE is already priced to sell as part of Windows.

Matthews:

Next question please?

Operator, next question.

Operator:

One moment please.

Thanks.

Mr. Mark Boslet of Dow Jones, you may ask your question.

Boslet:

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Hello, taking it back to Windows 98, I apologize. In light of the fact that you guys are offering several versions of Windows 95, I think the question about Windows 98 that we've been asking a couple of times about, whether there might need to be different versions, is relevant and my question in this vane is, in either your dealings with the Appellate Court or with the District Court, are you folks planning to ask for elaborations from the Court as to how their decision or, or future decision may affect the Windows 98?

Chase:

I'll start and I'll let Bill chime in. First, I apologize profusely if, if anyone thinks we're trying to avoid the Windows 98 question, that's quite the opposite. It's just that there's a plethora of issues here and maybe it's hard, I haven't done a good job explaining it. So, I'll try to, I'll try this, this again, and again just keep asking if I'm not really explaining it well. The, the Court Order does not require us to do anything in terms of providing different designs of Windows 95 to PC manufacturers. It's about providing a licensing option that does not require Internet Explorer. The impact of that on Windows 98 for us, we haven't figured out fully yet because it's only been a little bit of time since the Judge's decision. There are some implications that we do know. For one, there's no impact on our ability to offer Windows 98 to our PC manufacturers, as well as of course to our end-user customers. So, we're going full steam ahead and we'll have that available in Q2 of next year, calendar Q2. Now, there is the question that you and others are asking about, which is a very legitimate question about, well, will we have to do, provide other licensing options to PC manufacturers for Windows 98, and we haven't figured that out yet. Now, hopefully that helps explain it.

Neukom:

Again, whether we have to provide any licensing alternatives for Windows 98 depends on the state of this litigation. And in response to the final part of your question, we have appealed, as of today, as we said earlier, this Order and we are not disposed to return to the District Court to get some clarification of the Order or get implications, because we believe the Order is fundamentally in error and we are pursuing our rights on appeal to have that part of the Order, the preliminary injunction, reviewed by the Circuit Court.

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Matthews:

Next question please.

Operator:

Matthew McAllester, from Newsday, you may ask your question.

McAllester:

Thanks, in the so called dumbed down version of Windows 95, maybe that's not a phrase you want to pick up, what functionality specifically will be lost? You mentioned the inability maybe to sign onto MSN, what else will the consumer miss out on?

Chase:

Well, we can go on actually for quite a while about the lack of features in, the dumbed down version of Windows 95. You actually have to talk about which version as well, but for example, the online services won't work, you won't have single integrated Explorer, you, there's certain features that ISVs take advantage of that help do things like integrate browser functionality into their application, that stuff wouldn't work as well. Of course, your fundamental ability to browse, to use mail, to do use the basic conferencing software that comes with Internet Explorer all that wouldn't be available as well. I could go on for quite a long time.

Matthews:

There is a list of this Matthew up on our web site on Press Talk of the microsoft.com web site which lists these DLLs and what they do. That may help you.

Chase:

Yeah, it's also worth mentioning that if a PC manufacturer goes back to the original build of Windows 95 for PC manufacturers, and takes out the IE 1 file and uses that build, they're also missing other types of support that we've added since then, such as support for a larger hard disks, upgrades to some of our graphics technology called Direct X, and USB Support, the universal serial bus support, which is a new standard for having easier connectivity of devices to PCs.

Matthews:

We, we can take one more question please.

Operator:

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Drew Brosseau of Cowen and Company, you may ask your question.

Brosseau:

Thank you. Following this decision, have you heard of any additional efforts by the DOJ to expand their attacks on Microsoft?

Neukom:

No, we have not.

Matthews:

Well, that concludes our call. Thank you again for all dialing in. This will be replayed in the United States and the number is 888-566-0395 and the pass code to access is 1017. Internationally, the number is 402-220-9694 and the pass code is the same, 1017. As I mentioned earlier, if you go, if you go to microsoft.com/presspass you will find a Q&A on this topic, press release. Also, there is the details about our integration argument, as well as details on this media advisory, so that's an additional source feed to go for further information. Thanks again for calling in.

Appendix 3

Cannot Uninstall Microsoft Internet Products in OSR2

PSS ID Number: Q155365

Article last modified on 01-16-1997

PSS database name: WIN95X

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WINDOWS

The information in this article applies to:

- Microsoft Windows 95
 - Microsoft Windows 95 OEM Service Release version 1
-

SYMPTOMS

When you try to uninstall Microsoft Internet Explorer or Microsoft Internet Mail and News, you find that they are not listed in the Add/Remove Programs tool in Control Panel.

CAUSE

These programs are preinstalled with Windows 95 OEM Service Release 1 (OSR1) and do not register themselves to the uninstall list.

RESOLUTION

To work around this problem, install these programs from the OSR2 CD-ROM, or from the Web.

CD-ROM location:

| Program | CD-ROM location |
|------------------------|-----------------------------|
| Internet Explorer | Other\ie30\Instie30.exe |
| Internet Mail and News | Other\MailNews\Mailnews.exe |

Web location:

<http://www.microsoft.com/ie/download/>

Installing these programs causes them to be registered in the Uninstall list. After you install them, you can uninstall them using the Add/Remove Programs tool.

KBCategory: ESetup

KBSubcategory: win95 usiew95 inetmailw95 inetnews95 osr2

Additional reference words: 95
