1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF COLUMBIA

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4 UNITED STATES OF AMERICA,	)	
5 Plaintiff,	)	
6 v.	)	Civil Action
7 MICROSOFT CORPORATION,	)	~~No. 98-1232 (TPJ)~~
8 Defendant.	)	DEPARTMENT OF JUSTICE
9	)	OCT 09 1998
10 STATE OF NEW YORK ex rel, Attorney General DENNIS C. VACCO, et al.	)	ANTITRUST DIVISION
11	)	SAN FRANCISCO OFFICE
12 Plaintiff,	)	Civil Action No. 98-1233 (TPJ)
13 v.	)	
14 MICROSOFT CORPORATION,	)	
15 Defendant.	)	

16 H I G H L Y C O N F I D E N T I A L

17 DEPOSITION UPON ORAL EXAMINATION

18 OF

19 PHILIP BARRETT

20

21 October 7, 1998
1:50 p.m.
22 1111 Third Avenue, Suite 500
Seattle, Washington
23

24 ANNAMARIE C. SPANGRUD

25 CERTIFIED COURT REPORTER

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3 I'll just ask you: Did you attend an offsite in the
4 early part of April of 1994 while you were at Microsoft?
5 A. Yes, I did.
6 Q. Do you recall on or about when this offsite occurred?
7 A. I don't recall the specific date. It was in April of
8 1994.
9 Q. Do you recall what was the subject matter that was
10 discussed at this offsite?
11 A. Yes, it was what was Microsoft going to do about the
Internet.
13 Q. Where did this offsite take place?
14 A. In the Shumway Mansion in Kirkland, Washington.
15 Q. And you had attended this offsite?
16 A. That is correct.
17 Q. Stepping back just so we have some understanding, what is
18 an offsite? What does that refer to at Microsoft?
19 A. An offsite is a focused -- a very long focused sequence
20 of meetings where there's a single subject or a single
21 topic area, if you will, and the appropriate people from
22 within the company -- typically technologists as well as
23 marketing, business, and technology people -- get
24 together to talk about the issues, summarize strategy.
25 It has a very wide ranging -- there's a very wide range

1 of uses for it, but generally it's to focus attention on
2 an area that's either been underfocused on or the company
3 or group is doing something wrong or needs to rethink its
4 strategy.
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11 Q. Who was in your breakout group, if you remember?
12 A. Well, Bill Gates led my breakout group, and Brad
13 Silverberg was there. I believe John Ludwig was in the
14 group, and those are the only people I remember
15 explicitly. There were around eight to ten, I think,
16 total.
17 Q. What was discussed within your breakout group?
18 A. The thing that I remember the most discussion about was
19 the Internet service providers and the necessary
20 plumbing -- "plumbing" being the infrastructure -- to
21 allow large numbers of people to get online and use the
22 Internet.
23 Q. So what was it about this plumbing that you recall
24 discussing?
25 A. How to make it happen; how to encourage -- how to

1 encourage more Internet service providers to exist, to
2 create ways to make it easy for people to sign up.
3 At that time, signing up to the Internet was
4 actually a pretty torturous process, and required almost
5 a Ph.D. in mumbo jumbo.
6 Q. Those are hard to get.
7 A. I'm sorry?
8 Q. Those are hard to get, those Ph.D.'s in mumbo jumbo.
9 A. Yes.
10 MR. TAYLOR: Freely available at law
11 schools.
12 Q. [By Mr. Wilson] Was there any discussion about what it
13 was that Microsoft can do to advance this discussion of
14 plumbing or these ideas of how to make plumbing happen?
15 MR. O'BRIEN: Objection to form.
16 A. There were a number of discussions that focused on --
17 there were discussions of acquiring ISP's, of gaining
18 access to more plumbing, either through direct control or
19 indirect control. There was some discussion of making
20 sure that the processes, the products that were -- or the
21 capabilities that were in process, come to completion to
22 allow the client side, the desk top operating system, to
23 be a basis for being able to dial into Internet service
24 providers.
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16 Q. The term "Internet protocol," what does that mean to you?
17 A. Well, a protocol is just as much in diplomacy as in
18 computers, it's a prescribed way of two independent
19 entities interacting.
20 In the case of computers, it's a common language
21 that two computers can talk in order to exchange
22 information on behalf of the users of the cooperating
23 operating systems.
24 Q. W at is it that you recall at the offsite that was
25 related to these Internet protocols?

1 MR. O'BRIEN: Objection to form; vague.
2 Q. [By Mr. Wilson] Did you understand the question? Can
3 you answer that question or should I --
4 A. Yes, I can answer your question.
5 Q. Thank you.
6 A. There was discussion of a protocol called TCP/IP, which
7 stands for -- well, it's an Internet protocol -- the
8 underlying Internet protocol.
9 There was a discussion of ensuring that that
10 capability is easy to install in an operating system and
11 that, you know, it's a best of breed.
12 There was also discussion of other protocols,
13 including something called PPP and SLIP, which are
14 dial-up connection protocols. SLIP -- S-L-I-P, stands
15 for subscriber line interface protocol -- was an earlier
16 form, and that was in the process of being supplanted --
17 THE WITNESS: Am I going too fast for you?
18 THE COURT REPORTER: No, but thank you.
19 A. -- in the process of being supplanted by PPP, which
20 stands for point-to-point protocol. There was discussion
21 about ensuring that PPP was brought into the operating
22 system in a timely fashion, but that was a small portion
23 of the discussion.
24 Q. [By Mr. Wilson] Do you know whether these particular
25 protocols that you described were being developed at

1 Microsoft at or around the time of this offsite?
2 MR. O'BRIEN: Objection to form; vague.
3 A. I'll answer it. Yes, all of those implementations of
4 those protocols were being developed. The protocols
5 themselves had been developed elsewhere, particularly by
6 standards, bodies, or groups -- affiliated with
7 standards, bodies. The implementations were being done
8 mostly in the Windows NT group.
9 Q. [By Mr. Wilson] Can you just describe generally what it
10 is that the implementation of these protocols serves? I
11 mean, you had described bringing it into the operating
12 system -- you described SLIP being brought into the
13 operating system.
14 What services did these type of Internet protocols
15 serve in the operating system?
16 MR. O'BRIEN: Objection: Mischaracterizes
17 the testimony and vague.
18 A. I'll be honest, I don't know how to answer that
19 question.
20 Q. [By Mr. Wilson] Okay. What plans were you aware of at
21 or around this time to include Internet protocols into
22 the next version of Windows?
23 MR. O'BRIEN: Objection: Foundation.
24 A. The plans were to put a TC/PIP pack, the underlying
25 thing, and then dial up modem support, called dial-up

1 networking -- often referred to as D-U-N, DUN -- into
2 either Windows 95 or into -- I don't know if they called
3 it service pack, but the subsequent release.
4 Q. [By Mr. Wilson] During the offsite, were there
5 discussions related to Web browsers?
6 A. That wasn't in my focus group, so I don't recall any of
7 that, obviously.
8 I do recall that there was another group that
9 focused on that, although I believe -- I just don't
10 recall what was said in great detail.
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3 Q. Were there discussions about building a Web browser into
4 the next release of Windows 95?
5 MR. O'BRIEN: Objection: Foundation.
6 A. I do not recall any discussions taking place, although
7 they could have, but I just don't know.
8 Q. [By Mr. Wilson] You attended the offsite, but as far as
9 you know, there weren't any plans made to build a Web
10 browser into Windows 95?
11 MR. O'BRIEN: Objection: Mischaracterizes
12 the testimony and leading.
13 THE WITNESS: Would you read back the
14 question, please?
15 THE COURT REPORTER: Question: You
16 attended the offsite, but as far as you know,
17 there weren't any plans made to build a Web
18 browser into Windows 95?
19 Q. [By Mr. Wilson] Actually, I can just take the leading
20 out of the question. Who knows, this might matter
21 someday.
22 At the conclusion of the offsite, were there any
23 plans made to build a browser into Windows 95, at least
24 that you're aware of?
25 A. To my knowledge, no, there were not.

1 Q. After the offsite, what did you do at Microsoft? Did
2 your job position change?
3 A. Yes. I was actually -- during the offsite, I was
4 actually part of the advanced consumer technology group,
5 and I was in transition to work in the Windows group.
6 So, after that, I did transition into the Windows group
7 to focus on Internet technology.
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18 Q. During this April '94 to October '94 time frame, did you
19 create any plans for developing a browser?
20 A. No, I did not.
21 Q. What instructions from your management did you have with
22 respect to the development of the browser?
23 A. To figure out a strategy.
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25 Q. [By Mr. Wilson] Earlier you said you formally left

1 Microsoft in October of 1994.
2 By the time that you had left Microsoft, do you know
3 whether a Web browser had been built yet?
4 A. No, I don't.
5 Q. Was a browser built then?
6 A. No.
7 Q. Did your group accomplish building a prototype of a
8 browser?
9 A. No.
10 Q. Were there any plans to build a browser to be released in
11 the next version of Windows?
12 MR. O'BRIEN: Objection to form.
13 A. I know of no plans in that forum.
14 Q. [By Mr. Wilson] In the position that you were in, would
15 you have been someone who would have known about such
16 plans?
17 MR. O'BRIEN: Objection to form.
18 A. Yes, I would have.
19 Q. [By Mr. Wilson] Why do you think you would have been
20 someone who would have known about such plans?
21 A. Because that would have fallen into my area of
22 responsibility.
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12 Q. [By Mr. Wilson] I'll show you what's been marked
13 Government Exhibit 1206. It is an article that's been
14 downloaded from the Internet, entitled Gates Browser
15 Conceived Before Netscape was Born. It appears that this
16 article was originally published August 16, 1998, in the
17 Seattle Times.
18 You may not have seen it in this particular form,
19 but have you seen this article in one form or another
20 before?
21 A. Yes, I have. I believe I've seen this one also.
22 Q. Were you interviewed for this particular article?
23 A. No, I wasn't.
24 Q. I'm going to ask just a very few questions about this.
25 In the second paragraph of this article, there's a

1 reference here, it says -- and I'll just read it -- "In
2 an interview Friday, Gates said the decision to develop a
3 browser was made at an executive retreat on April 5,
4 1994, at the historic Shumway Mansion in Kirkland."
5 All I want to know is, based on our discussion and
6 your recollection of this offsite retreat in early April
7 at the Shumway Mansion, is this an accurate statement?
8 MR. O'BRIEN: Objection to form; calls for
9 speculation.
10 A. You want to --
11 MR. WILSON: I'm not asking him to
12 speculate.
13 Q. [By Mr. Wilson] I'm asking if this is what you recall
14 coming out of the Shumway retreat?
15 A. No, this is not consistent with my memory of the retreat.
16 Q. The following sentence in this article reads, quote, I
17 said, internal quote, Hey, we're going to get it, paren,
18 the browser, closed paren, integrated into the operating
19 system, closed quote, Gates said.
20 I just want to make clear about your recollection of
21 this offsite.
22 Is this sentence consistent with your recollection
23 of the offsite?
24 A. No, it is not.
25

1 A. No, it is not.
2 Q. [By Mr. Wilson] Let me just direct your attention to the
3 last page of this document.
4 A. Uh-huh.
5 Q. At the bottom it says "4 of 4." The top paragraph in
6 this document reads, "Soon after the Shumway session,
7 Phil Barrett, a Windows executive, was assigned to begin
8 work on a browser. Barrett, who today works for
9 RealNetworks in Seattle, made little progress, however,
10 and the project eventually was transferred to Ben
11 Slivka."
12 First of all, is it fair to assume that the Phil
13 Barrett referenced in this article would be you?
14 A. Yes.
15 Q. And the author, however, did not talk to you about this
16 article?
17 A. That is correct.
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4 Q. Focusing on the RealPlayer and the PlayerPlus, does
5 RealNetworks distribute a version of the Player that
6 includes the PlayerPlus features not activated?
7 A. Yes. The way the Player and PlayerPlus are related is
8 basically there's one Player. PlayerPlus features are
9 activated by a license key that one gets by coming to our
10 Web site and going through a secure form and purchasing
11 that license key, although they believe they are
12 purchasing PlayerPlus.
13 Q. So if a customer doesn't purchase this activation key,
14 what does the user have?
15 A. The user has the standard, what we call, ubiquity Player,
16 the free Player.
17 Q. But as a technical matter, does the user have the code
18 that implements the PlayerPlus features?
19 A. Yes.
20 Q. Is it correct to say that even if a customer has the bits
21 of code that make up the PlayerPlus, if the user does not
22 have access to the PlayerPlus features, then, as a
23 practical matter, the user doesn't have the PlayerPlus
24 product?
25 MR. O'BRIEN: Objection to form and

1 especially to the extent it calls for a legal
2 conclusion about what is and what isn't a
3 product, but go ahead.
4 A. From the user's perspective, what they have is the
5 standard Player.
6 Q. [By Mr. Wilson] But not PlayerPlus?
7 A. Correct, not PlayerPlus.
8 Q. And that's because they're unable to access the
9 PlayerPlus features?
10 A. That is correct.
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21 Q. Okay. And I believe you testified that you actually left
22 Microsoft -- ceased working there -- in September of
23 1995; is that true?
24 A. That's the best of my recollection.
25 MR. TAYLOR: '95 or '94?

1 Q. [By Mr. O'Brien] I'm sorry, in '94.
2 A. That's right. For the record, I believe that my last day
3 at Microsoft occurred in September of -- my last working
4 day at Microsoft occurred in September of 1994.
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9 Q. And so the Internet offsite that they held in April 1994
10 did not, to you, reflect a sufficient degree of interest
11 in the Internet?
12 A. What it reflected to me was that, while the chairman was
13 willing to stand up and say the Internet is important,
14 nobody was willing to put any resources behind doing the
15 sorts of things to make the Internet happen. That's what
16 I got from that.
17 Q. Okay. And what was the -- strike that.
18 What kind of resources were being put into the
19 Microsoft Network project and the Blackbird project?
20 A. I'm not personally familiar with the staffing plans and
21 that sort of thing, but I believed it to be in the, you
22 know, neighborhood of one hundred people. I think it was
23 a pretty significant effort.
24 Q. It was something that, would you characterize it,
25 Microsoft took very seriously?

1 A. Certainly parts of Microsoft took that very seriously.
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Q. [By Mr. O'Brien] When you left Microsoft in September of 1994, are you aware of any efforts that had been made on a project called Internet Shortcuts, either a project or a functionality known as Internet Shortcuts?

A. Yeah, I'm aware of Shortcuts in general. There was -- yeah, there was some discussion going on. I think there might have been a little bit of work done on Internet Shortcuts at that time frame, late summer.