**From:** rsobba
**To:** Microsoft ATR
**Date:** 1/13/02 10:46am
**Subject:** Microsoft Case

To whom it may concern,

First some of my background. I have been a computer professional for 15 years, specializing in data base administration. My professional career has been mostly with mainframe data bases, but I have done extensive work from my home with personal computers. I maintain several web sites for various volunteer organizations to which I belong.

I believe the Microsoft Settlement has been a capitulation by the current administration and the Department of Justice to the big money donations of the Microsoft lobbying and campaign contributions. The US won this case! Why has the justice department settled for this woefully inadequate solution to Microsoft's conviction as a monopolist? This is the penalty phase of this case, and yet there appears to be no penalty for Microsoft, and in fact if implemented as written, could actually increase Microsoft's Monopoly.

For true justice to be served, the courts must decide the punishment and not the politically (and monitarily) motivated DOJ. For this reason, the settlement as currently written must be REJECTED!

I would like to point out several flaws in the settlement and recommend some alternatives that would seem to make more sense. I refer to the settlement found at http://www.usdoj.gov/atr/cases/f9400/9495.htm

III.A Microsoft shall not retaliate against an OEM...

Not only should Microsoft not be able to punish the OEM, but OEM pricing should be disallowed for Microsoft. The OEM vendors should be required to pay full retail price for the operating system and office products, and pass this on to the consumer. In other words, strike paragraphs III.B.2 and III.B.3 from the settlement. Furthermore, the OEM should be required to list this cost as part of total cost of the machine, and offer all machines they sell with either alternative operating systems, or no operating system at all installed. This would provide clear disclosure to consumers of the "Microsoft tax" they are paying with each new computer system. Allowing users to remove items from a purchased machine is inadequate, as they have already payed the "tax" and Microsoft goes unpunished.

III.D ...Microsoft shall disclose to ISVs, IHVs, IAPs, ICPs, and OEMs, ...the APIs and related Documentation...

While this is a step in the right direction, Microsoft should be compelled to make public, not simply to certain companies but to the public, all operating system APIs, all communication APIs, and every single file format, current

and future, created or used by any of their products. The interfaces and file formats should not be allowed to be considered "intellectual property" that would allow Microsoft to restrict access by imposing "royalties or other payment of monetary consideration" simply to interface with their products. This will promote true competition by allowing other companies and the open source community to write programs that can be fully compatible with, and have equivalent functionality to the Microsoft monopoly products.

II.J - No provision of this Final Judgment shall:

1. Require Microsoft to document, disclose or license to third parties...
2. Prevent Microsoft from conditioning any license...

This paragraph reads like a major legal loophole for Microsoft that will allow them to get away with keeping large parts of the interface to their systems a secret by saying that the disclosure would " compromise the security" of that system. The APIs and file formats I mentioned above should be excluded from this paragraph.

Section V. Termination

B. In any enforcement proceeding in which the Court has found that Microsoft has engaged in a pattern of willful and systematic violations, the Plaintiffs may apply to the Court for a one-time extension of this Final Judgment of up to two years, together with such other relief as the Court may deem appropriate.

So if I have interpreted this paragraph correctly, if Microsoft fails to comply with this settlement in the first five years, their punishment is to spend two more years not complying!? How is this an incentive for Microsoft to comply with the settlement? This section completely removes what few teeth this settlement ever had. This section should be completely rewritten such that if Microsoft fails to comply with the settlement, any and all intellectual property not in compliance will be forfeited to the public domain. That would be an incentive for compliance!

In summary, the Microsoft punishment for being a convicted monopolist should include the opening and documenting of all Application Programming Interfaces for their products, the documented specification of all file formats for documents created by their products should be public domain, and the complete prohibition of the discounts and "bundling" Microsoft currently engages in with hardware vendors. Additionally, the legal loopholes should be removed, and the penalty for non-compliance should be severe.

A settlement that truly encourages competition is very much in the national interest and national security. A study released a year ago by the highly respected Center for Strategic and International Studies, pointed out that the use of Microsoft software actually poses a national security risk. We can not allow any one company to maintain a strangle hold on something as important to this nation as the information technology infrastructure of this country. It is very important for the future of this nation that a careful

and deliberate penalty that restores true competition to the software marketplace be implemented.

Thanks you for your time,
Rick Sobba
Prairie Village, KS.