From: James M. Corey
To: Microsoft ATR
Date: 1/25/02 2:22am
Subject: Microsoft settlement

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Hello. I'm an engineer currently working in the computer field. I received my Master's degree several years ago, and am now raising a family in Oregon.

Know that I have been following the adventures of Microsoft for over 15 years now, and for the past 9 years I have been acutely aware of disturbing behavior evident in Microsoft's business practices. So I started to pay more attention to them, and what I saw I did not like. For the past 5 years now, I have avoided using their products, which is not an easy thing. I hardly need to go into detail about the damage they have done to technologically valuable initiatives such as the Java portability initiative, the world-wide-web connectivity initiative, and now the public-interest software initiative (by which I am referring to the recent trend toward volunteer software projects by and for computer users, under the open source licensing agreement that Microsoft has begun to lobby against). The trouble they have caused for hundreds of specific competitors, large and small, pales in comparison to the damage and stunted growth they have caused to the industry in general, and thus, to the populace. I think we can agree that for all its shortcomings, computer technology has brought many benefits to the modern world. I take seriously the threat posed by Microsoft to our national information infrastructure, and also the harm they have done to the progress of the computer industry in general. I take offense at their attempts to lay claim to the modest progress that has been made, in many cases despite their own efforts.

You might think it odd to hear these comments from an employee of Intel, a company seen as "co-conspirator" of Microsoft, at least in the eyes of the PC consumer. Intel is a company that seeks to be selected by consumers as a matter of choice, and indeed the consumers currently have several choices in this regard. Intel has expressed interest in the availability of similar choices in PC operating systems, such as with their interest in NeXTStep and their interest (and investment) in RedHat. However, these software ventures can not succeed in the current Microsoft-controlled climate. So, Intel is stuck with Microsoft at the helm. In fact, there is now a strong atmosphere of fear within the "troops" at Intel regarding internal departure from Microsoft products, as though Microsoft has the resources and inclination to chastise us. I can only hope that such is not the case. However, apparently Microsoft has expressed disapproval on several occasions regarding Intel projects that don't fit in with Microsoft's plans, resulting in lost opportunities for Intel. I ask you, if such large companies as Intel, IBM, and HP are frightened by Microsoft, where does that leave the consumer? Unfortunately, the public assumes our complicity is voluntary, but the truth is, it has not been entirely voluntary, nor has it been very conducive to progress. Thus our reputation suffers indirectly, by association.

But I seem to be beating a dead horse. By my understanding, the crimes of, and harm caused by, Microsoft have been established. The issue is apparently what response to provide.

I read about the dismissal of Judge Jackson with some distaste, but not nearly as much as when I heard the new proposed penalty of giving Microsoft software to primary schools. As the PENALTY? This seemed like a joke in very poor taste. The idea could only have come from Microsoft. It is hard for me to understand how they could be so lucky in escaping justice. It seemed almost as if they were being rewarded rather than punished. Something is very wrong with the way these events have been developing.

So I had my doubts when I went to review the proposed final judgment at http://www.usdoj.gov/atr/cases/f9400/9495.htm, but I am glad to see it seems to contain some restrictions. Unfortunately, it doesn't seem restrictive enough to be effective. Microsoft has

continually acted in flagrant violation of the law; they obviously think it is their right to act as they have acted. If they are not dissuaded more effectively, two things will result. First of all, I fear others will conclude that no one including the United States government can stand up to Microsoft and their lawyers, which will lead others to fear Microsoft even more than they already do. Secondly, it will continue a dangerous precedent of tolerance, of which other large organizations may take note.

I notice that the protections afforded by the judgment are heavily slanted toward middle-ware, which seems like an unnecessary distinction. Microsoft has described web browsers as an intermediate platform and API for software applications to run on, thus falling broadly under the category of middle-ware, but this is heavily colored by their fear of how quickly a combination of Java and a web browser could erode customers' dependence on their own products. Yet, the main purpose of a web browser is simply to provide a multimedia, hypertext interface to information on the web. A viewer with one-way interaction, not an operating system. Nor any kind of middle-ware, unless you consider a document viewer to be middle-ware, as it is with a Microsoft Word virus. There has been, and continues to be, a need for safe web browsers which limit the damage that can be caused to the user's computer simply by viewing a document on the web. In typical fashion, Microsoft ignores this simple need of the consumer in favor of their own selfish need to usurp control of the web viewer (and eventually web server) industry and prevent it from threatening their customer lock-in. Consider, though, that the result is the same as for many other important types of software in which they have taken an interest. Movie software, for instance, is their current target. Soon, they will take over that market and control it as they have so many others. If for some reason they should find it convenient to portray it as middle-ware, then their new operating systems would suddenly have an increased emphasis on 3D, animated interaction, thus making the multimedia layer integral to the operating system, and the computer software universe will warp to their will. But I digress. The middle-ware distinction is arbitrary.

Even so, if the protection must be limited to middle-ware, the restrictions are so specific regarding which product and which scenario, that they will soon be outdated and ineffective.

Here are some specific points I came across:

*. III in general, is much too kind in its careful elaboration of exactly which scenarios Microsoft isn't allowed to retaliate in. It should instead have simply barred Microsoft from retaliating against business partners for any business choices they make, by mandating a fixed price, and prohibiting the practice of selectively distributing copies of their operating system as though the supply were limited. There was no mention of this latter practice, as far as I know.
*. III.H.1 is clearly addressed to one symptom of the squeeze-out behavior. I fear that after so much worrying over one particular tactic used by Microsoft, that they will simply emphasize other tactics or invent new ones. The basic behavior of misusing their advantage must be addressed, as well as these particular methods they have come to rely on. The exceptions to III.H would appear necessary only from the viewpoint that wishes to preserve the advantage of Microsoft middle-ware over non-Microsoft middle-ware. The second exception, in particular, is so open-ended and convenient for Microsoft, that I suspect it will undo even the limited protection which III.H is meant to afford.
*. IV.B.10 and parts of IV.C.3 suggest a very limited disclosure of Microsoft's dealings with the compliance enforcers (i.e. TC). Taken together, the picture is that of a company whose run-ins with the law are kept private. Of course this has the advantage

of limiting impact to Microsoft's public image, but this is also a disadvantage. By keeping such things private, an aspiring developer, or even a consumer, is kept in the dark about dangerous situations that may be quite relevant to their own involvement with Microsoft. Also I see no reason why only officers and directors should be briefed regarding the TC. Shouldn't all Microsoft employees be aware of the arrangement? It sounds so secretive. If there is some other reason for such details, please forgive my ignorance.

*. IV.B.8.b.i is illustrative of the surplus care which has been taken to avoid impacting Microsoft. In effect if the TC wishes to talk to an employee, it will likely be categorized as an interview, notice will have to be served to Microsoft, and the employee will almost certainly be accompanied by a Microsoft lawyer. Although I wouldn't dare to suggest that anyone at the company would ever lie, on the record or off, I have to wonder what kind of incriminating evidence one would expect to gain from such a conference. From a theoretical point of view, I have some trouble imagining how the employee's career could legally be defended from taking a wrong turn if information were disclosed.

*. VI.N.ii -- Limiting protection of non-MS middle-ware to those with one million copies distributed during the previous year seems to imply that only large, well-established players will be protected. New ventures must then fight an uphill battle. Unfair.

*. V. The extension clause doesn't help much. Of course, 5 years is a long time, but not long enough. Now, if one has to get court consensus to extend by a year, I presume that the usual delay tactics could push the decision itself past one year anyway. I would have thought that if the TC had to lift one finger against Microsoft, that alone should be grounds for another 5 year extension, with no limit. I suppose the interest is in figuring out how Microsoft will circumvent the measures in the short term, which may well be the most pertinent question.

These are examples of the things that worry me when I read the judgment. I haven't the expertise to analyze the document in great detail, and that is to be expected. So I leave you with my impressions as a citizen. The proposed final judgment seems to have a lot more language granting loopholes and exceptions to Microsoft, than it contains restraints upon them. Having read this document, I fear that it is not strong enough to stop Microsoft's criminal behavior. I am dissatisfied with the judgment, even to the point that I felt slightly ill when I first read it. People are joking that Microsoft has gotten off pretty easy, and it does indeed look that way. I think Microsoft has had too much input into the proposed final judgment.

If you want my recommendation, focus on the fact that Microsoft's lock on the market, and its power over competitors, rests fundamentally on its control of standards. The only way I know of to wrest that control from them is to let an independent party, perhaps a government laboratory, to write the standards and make them publicly available for all developers and companies to work with. That would provide a positive and healthy result from this massive embroilment. This should be done regardless of whether Microsoft is to escape direct penalization.

As a prologue, after writing the above, I checked on the web for other opinions on the settlement, and it appears that I naively missed many deeper problems. In order that my correspondence not be unduly influenced, I have not rewritten it, but the situation is worse than I realized. As worded, the judgment may even work in Microsoft's favor, rather than merely failing to curtail. Please, do not let this travesty continue unchecked.

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