

**From:** Jason Grochowski  
**To:** Microsoft ATR  
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**Subject:** Microsoft Settlement

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RE: US v. Microsoft proposed final order

As stated in the Federal Register:

"Following a 7-day trial in late 1998 and early 1999, the United States District Court found that Microsoft had violated both sections 1 and 2 of the Sherman Act. On appeal, the United States Court of Appeals for the District of Columbia unanimously affirmed portions of the district court's finding and conclusion that Microsoft illegally maintained its operating system monopoly in violation of section 2 of the Sherman Act, but reversed and remanded other portions of the district court's determinations. Specifically, the court of appeals reversed the district court's determination that Microsoft violated section 2 by illegally attempting to monopolize the Internet browser market and remanded the district court's determination that Microsoft violated section 1 of the Sherman Act by unlawfully tying its browser to its operating system."

As Microsoft's guilt has been maintained (at least partially) and we are now in the penalty phase of the trial, I find it greatly disturbing that the current settlement does nothing to punish Microsoft for its illegal activities. It also does nothing to create an environment where competing products are given a fair chance against the colossal momentum Microsoft possesses in the software industry. After reviewing the thoughts of several others who have commented on this, particularly the letter published by Ralph Nader and James Love and the comments of Dennis E. Powell of LinuxPlanet, I would like to reiterate the following thoughts on what should be included in Microsoft's punishment:

First, in the purchase of new computers: the purchase of the operating system and the computer hardware itself should no longer be bound

together. Users who do not wish to purchase Microsoft Windows would no longer be forced to. Buyers would have the opportunity to evaluate Microsoft's product at its true cost and compare it to alternatives. This step is crucial to give competing products a foothold in the Microsoft dominated world.

Second, Microsoft must make all current and future file format specifications open to the public. This way documents created in any Microsoft application can be read by applications from competing manufacturers. Only then can the true value of their software be determined by the public. Rather than be locked into a particular application simply because of file format issues, buyers can judge the product's features, design, and usefulness on its own merits. The current settlement calls for the opening of the Windows API so third parties can better develop software that works with Windows. This is a good step forward, but this is a world that is increasingly connected electronically - that means exchanging data. We need to be able exchange data that is compatible with Microsoft and non-Microsoft applications. Also disturbing is the clause in the current settlement stating that Microsoft can withhold technical information from third parties on the grounds that they do not certify the "authenticity and viability of its business." This is an obvious attack on the Free Software movement, a key competitor for Microsoft in high-end applications and servers.

Third, any network protocols created by Microsoft need to be published in full and approved by an independent council. This way, Microsoft could not seize control of the the Internet by effectively walling off Windows users from the Linux, UNIX, Mac, etc. users of the world.

Fourth, the committee that oversees Microsoft's future conduct must have real authority. Microsoft itself should have no say in who is appointed to this committee and it should be required to make regular, public reports on Microsoft's conduct. Instead, the current agreement calls for a committee that is sworn to total secrecy, works within Microsoft's headquarters, has two-thirds of its members selected by Microsoft itself, and has limited freedom to interview employees. What possible deterrent to future violations can this provide? The five to seven years of review also seem quite brief considering the current case stems from violations of Microsoft's last agreement to mend its ways back in 1994. By setting any time limit at all, Microsoft is simply encouraged to continue its habitual stalling and legal maneuvering until the reigns are completely let loose.

Finally, the current settlement has no provisions for any penalty whatsoever. The previous points I've outlined can help prevent future abuses of power, but what of taking away some of their ill gotten gains? Possibilities include, as Nader suggests, divesting them of their browser technology or media player or providing support for companies they have illegally tried to sabotage.

Personal computing technology has already become a cornerstone of our economy, business practices, and daily lifestyle and it will only continue to become more important and more pervasive in our lives. Now is the time to set a clear path ahead that will allow free competition in this market. A dip in the stock market today, that would certainly come following Microsoft's punishment, is trivial compared to future decades dominated by this belligerent, unremorseful corporation.

Sincerely,  
Jason Grochowski