From: James Austin
To: Microsoft ATR
Date: 1/28/02 12:07am
Subject: Microsoft Settlement

As a concerned citizen, I wish to offer comment concerning the proposed settlement of United States v. Microsoft.

I am a civilian employee of an agency of the United States Government, where my job function is the administration of a network of personal computers and the technical support of the users of those computers. However, I offer the following comments purely as a private citizen, without the encouragement or even the knowledge of my employer.

I have been an interested observer of the computer industry in various capacities for more than twenty years, and have been professionally involved in the industry for ten. In that time I have seen the development of the industry from a perspective rather different from that usually discussed. My experience is that of someone who has directly used the technology and helped others to use the technology, working alongside both the users of that technology and others whose professional duties were similar to my own.

These experiences have taught me several things which I am compelled to share.

First: The case of United States v. Microsoft is almost certainly one of the most important cases of all time, for how this is resolved will have repercussions certain to outlive anyone of this generation now participating in the actual case.

What is at stake is not merely the future practices of one corporation, or even the future structure of one industry. What is at stake is nothing less than the nature of access to information, from the individual citizen to the largest private and public institutions.

Many years ago, I heard of a Jesuit philosopher who had written about an idea he called the "knowlosphere." He imagined that as more and more information was transmitted via computer technology, there would arise around the earth a sort of "sphere of knowledge" that would surround the earth the same way the atmosphere does, and that there would come a point in which the essential sum total of all human knowledge would exist within this sphere. Furthermore, this would eventually become so important to the lives of people that it would become impossible to switch off once switched on.

Though he imagined this in terms of communications satellites (the highest technology available to him at the time), I maintain that a world of personal computers all connected via the worldwide Internet is the true realization of this vision.

We must now ask ourselves this question: do we wish to allow, indeed do we dare allow, the fundamental infrastructure of human knowledge and thought to become in practice (if not directly in law) the private commercial domain of one corporation?

Second: Microsoft already monopolizes several areas of computer technology, and is working hard to monopolize others.

This point seems hardly worth discussing, because as I write this, the courts have repeatedly ruled that Microsoft is indeed a monopoly and is guilty of breaking the law. What is more interesting is that to this very day, I am unaware of any admission Microsoft has ever offered, to anyone at any time, that it has been found guilty of breaking any law. Indeed, only within the last few months has it acknowledged in any public statements that any court rulings went against it, and vaguely at that.

Third: Microsoft has proven repeatedly that it cannot be trusted even with the level of power it enjoys today.

Microsoft portrays all concern over its power and actions as solely the product of disgruntled competitors. While even that would justify intervention if the competitors were disgruntled because of actions which broke the law (as the courts have repeatedly ruled was in fact the case), what is more significant is Microsoft's actions not against its competition but against its own customers.

Consider that under the First Amendment, I have the legal right to criticize my government, perhaps even harshly so, and I may even do so in a forum sponsored by that same government. The courts have interpreted this right to extend further; for instance, I may use a telephone and still criticize whatever company provides my telephone service. But I may NOT utilize Microsoft products to criticize Microsoft. This is not a paranoid fantasy, it is a direct reading of clauses in the licenses of several of their products, which explicitly forbid one to "criticize or disparage Microsoft and/or its products and/or services." Indeed one license actually forbids the "parody" of Microsoft products and services.

Microsoft demands that companies engaged in any joint ventures waive their rights to sue Microsoft for patent infringement "even should evidence arise that such infringement has occurred." And there are more additional examples than I have time to list, of Microsoft using the courts to squelch criticism and then thumbing its nose at the courts when they issue rulings Microsoft does not wish.

We must now ask ourselves whether the interest of the people of the United States is served when one company not only has the power to behave in this

manner, but actually does so, and thus far with impunity.

Fourth: Microsoft's already dangerous power is increasing.

It has been widely noted that when the Internet first began to become a household word, Microsoft largely ignored the whole phenomenon. Now that Microsoft has taken notice, their objective is nothing less than the total control of the Internet. During the time between the filing of United States v. Microsoft and today, Microsoft's plans to destroy Netscape (publishers of what was at the time overwhelmingly the most widely-used browser for the World Wide Web) have come to fruition, and they now face essentially no competition in that area.

One has to ask why Microsoft wanted to destroy Netscape so badly that they would give away a competing product for free. One reason is that control of the web browser gives one control of the choke point for information and commerce on the Internet. The other reason is that Netscape had ambitious plans to enhance their browser and ultimately to "grow the browser into an operating system of its own" which would have threatened Microsoft's monopoly. Perhaps such a scheme would have proved beneficial to the public, but it was a threat to Microsoft, and like all such threats before, could not resist Microsoft's destructive power.

Today Microsoft controls the web browser, and much evidence exists that its ultimate plan is to take control of the basic protocols that servers use to communicate with each other across the Internet itself. Once that happens they will essentially have the level of power that a company would have if they controlled all bank ATM machines, all telephones, all newspapers, and all radio and television stations. All access to information in any form from anywhere at any time would generate profit for Microsoft, and be subject to their approval.

We must now ask whether this is a desirable future for a free people.

Fifth: People like me, in the trenches, have long considered Microsoft dangerous.

I could tell you so many stories. Just the jokes we tell to each other betray a deepening gloom about the future. Alas, I am facing a strict deadline for public comment and this must leave them for another time.

Sixth: The proposed settlement of United States v. Microsoft is NOT sufficient.

It contains insufficient punishment for past transgressions of the law, insufficient guarantees against future transgressions of law, NO

compensation for victims of those transgressions of law, and insufficient remedies for the consequences of past transgressions of law.

Much more needs to be said, but as the period for public comment is ending I must draw to a close.

But I cannot urge strongly enough that this settlement NOT be accepted as is.

Sincerely,

James R. Austin

(Should this be required by law, my full address is as follows:
James R. Austin
155 Watkins Mill RD
Apt. C
Gaithersburg, MD 20879-3336)