IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Petitioner, v. MICROSOFT CORPORATION, Respondent.	Supplemental to Civil Action No. 94-1564 Hon. Thomas Penfield Jackson

PETITION BY THE UNITED STATES FOR AN ORDER TO SHOW CAUSE WHY RESPONDENT MICROSOFT CORPORATION SHOULD NOT BE FOUND IN CIVIL CONTEMPT

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The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, presents this Petition for an order requiring Respondent Microsoft Corporation ("Microsoft") to show cause why it should not be found in civil contempt of the Final Judgment entered by this Court on August 21, 1995 in *United States v. Microsoft Corporation*, Civil Action No. 94-1564 (1994) ("Final Judgment"). A copy of the Final Judgment is attached hereto as Appendix A. The United States represents to the Court as follows:

NATURE OF THE ACTION

I. Microsoft is the world's largest and most powerful personal computer software producer. Through its "Windows" operating system products, it possesses a monopoly in the market for operating system software for Intel-compatible personal computers ("PCs") and from this monopoly enjoys a corporate profit rate and market capitalization that are among the highest of any major American company.

II. Microsoft unlawfully maintained its monopoly by using exclusionary and anticompetitive contracts to market its PC operating system software. To stop this conduct, the United States sued Microsoft in July 1994 for violating Sections 1 and 2 of the Sherman Act. Microsoft settled that lawsuit by consenting to the Final Judgment, which prohibits Microsoft from imposing various anticompetitive terms in its contracts with PC original equipment manufacturers ("OEMs") that preinstall Microsoft's operating system software products on the computers they sell. Most importantly for this Petition, the Final Judgment prohibits Microsoft from conditioning the terms of an OEM's license to distribute the Windows operating system on the OEM also licensing and distributing other Microsoft products. The

purpose of that and other provisions of the Final Judgment was to prevent Microsoft from protecting or extending its operating system monopoly.

III. Microsoft distributes its Windows products to end users primarily through PC OEMs. Because a PC can perform almost no useful tasks without an operating system, and because shipping PCs without operating systems is likely to cause customer confusion and increase product support costs, OEMs consider it a commercial necessity to preinstall operating system software on nearly all of the PCs they sell. At present, no other operating system software is a commercially viable substitute for Microsoft's Windows 95 operating system. As a result, OEMs overwhelmingly license Windows 95 and preinstall it on virtually all of their PCs.

IV. Microsoft's Windows monopoly gives Microsoft substantial power to force OEMs to license and distribute other Microsoft software products by requiring the OEMs to license such products as a condition of receiving their Windows 95 operating system license. This Petition challenges Microsoft's requirements that OEMs license one such product -- Microsoft's Internet browser -- along with, and as a condition of, licensing Microsoft's commercially essential Windows 95 operating system.

V. Internet browsers are software products that enable PC users to access, view, and use information and software programs located on the Internet and World Wide Web. Since August 1995, Microsoft has produced an Internet browser product known as Internet Explorer ("IE"). Microsoft has produced and aggressively marketed several successive versions of Internet Explorer, and over the past year has been promoting the version known as IE 3.0. On September 30, 1997, Microsoft released its newest version of Internet Explorer, known as Internet Explorer 4.0. In direct violation of the Final Judgment, Microsoft has required OEMs, as part of their license for Microsoft's Windows 95 operating system and as a

condition of receiving that license, to license, preinstall, and distribute Microsoft's Internet Explorer 3.0 browser on their PCs that also have Windows 95 installed. Microsoft intends to impose similar requirements with respect to Internet Explorer 4.0 beginning on or about February 1, 1998.

VI. Microsoft's conduct -- conditioning its Windows licenses on OEMs licensing Internet Explorer -- is precisely the sort of improper use of Microsoft's market power to protect and extend its monopoly that this Court's Final Judgment sought to prevent and which it expressly prohibits. Microsoft's current and prospective conditioning constitutes a clear and serious violation of the terms and purpose of the Final Judgment, and requires the Court's intervention.

VII. This violation goes to the heart of the Final Judgment. Internet browser software is not simply another software product. Rather, as detailed below, Internet browsers are an important element in a fundamental competitive challenge that is arising to Microsoft's operating system monopoly. By forcing OEMs to license and distribute Internet Explorer on every PC they ship with Windows 95, Microsoft is not only violating the Final Judgment, but in so doing is seeking to thwart this incipient competition and thereby protect its operating system monopoly. In order to stop Microsoft's ongoing violation and prevent its imminent future violation of the Final Judgment, and thereby protect the integrity and underlying purpose of the Final Judgment, the United States requests that the Court adjudge Microsoft in civil contempt of the Final Judgment and impose the relief requested below.

JURISDICTION OF THE COURT

VIII. This Petition alleges violations of the Final Judgment by Microsoft. The Court has jurisdiction over Microsoft under its inherent power to enforce compliance with its orders, pursuant to 18 U.S.C. § 401(3) (1988), and under Sections III and VII of the Final Judgment.

IX. Section III of the Final Judgment provides:

> This Final Judgment applies to Microsoft and to each of its officers, directors, agents, employees, subsidiaries, successors and assigns; and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

X. Section VII of the Final Judgment provides:

> Jurisdiction is retained by this Court over this action and the parties thereto for the purpose of enabling any of the parties thereto to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

RESPONDENT AND ITS RELEVANT PRODUCTS

XI. Microsoft is a corporation organized and existing under the laws of the State of Washington, with its principal place of business located at One Microsoft Way, Redmond, Washington.

XII. Microsoft produces a variety of operating system and application software products. Its operating system products include MS-DOS, Windows 3.11, Windows For Workgroups, and Windows 95, which currently dominates the market for PC operating system products. Its application products include many of the types of applications most commonly used by computer users.

XIII. With the growth of the Internet and the World Wide Web, consumer demand for Internet browser software products that provide access to these information sources has emerged and increased dramatically since 1994. Microsoft recognizes this demand and has developed successive versions of its Internet Explorer browser product to meet it. The initial version of Internet Explorer (version 1.0) was released in or around August 1995. Microsoft has since released three subsequent versions (2.0, 3.0, 4.0), in each case adding features and functionality to the browser product. Since at least December 1995, Microsoft has attributed great importance to capturing a major share of browsers and browser users. It has aggressively marketed and distributed its Internet Explorer product, not only by requiring OEMs, as part of and as a condition of receiving their Windows 95 license, to preinstall it, but also (as described below) by a variety of other means independent of the Windows operating system.

XIV. Microsoft's aggressive and multi-faceted marketing of the Internet Explorer browser reflects its intense competition with other, competing Internet browsers, primarily the "Navigator" browser produced by Netscape Communications Corporation ("Netscape"). Microsoft believes that the success of competing browsers poses a serious, incipient threat to its operating system monopoly. Indeed, as Microsoft fears, browsers have the potential to become both alternative "platforms" on which various software applications and programs can run and alternative "interfaces" that PC users can employ to obtain and work with such applications and programs. Significantly, competing browsers operate not only on Windows, but also on a variety of other operating systems. Microsoft fears that over time growing use and acceptance of competing browsers as alternative platforms and interfaces will reduce the significance of the particular underlying operating system on which they are running, thereby

"commoditizing" the operating system. If this happens, PC OEMs' and end users' current, critical need for Windows, and thus Microsoft's monopoly power, would be reduced or eliminated and competition could return to the operating system market.

PRIOR ORDER OF THE COURT

XV. On July 15, 1994, the United States filed a civil antitrust Complaint to restrain Microsoft from using exclusionary and anticompetitive practices to market and distribute its PC operating system software, in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 & 2. Among the practices alleged in the Complaint was that Microsoft had entered into license agreements with OEMs that required them to pay a royalty to Microsoft for each computer sold whether or not the OEM had preinstalled the Microsoft operating system product on the computer ("per processor" licenses). In addition, the license agreements often lasted three years or more, and OEMs were required to agree to large minimum commitments, with unused balances being credited to future license agreements. The effect of these practices was to exclude PC operating system competitors and monopolize the PC operating system market.

XVI. That action was settled upon consent and this Court entered a Final Judgment that enjoined Microsoft from, *inter alia*, imposing per processor licenses and binding minimum commitments on OEMs. To ensure that future Microsoft contracting practices with regard to OEMs did not replicate the anticompetitive effects of the challenged practices, the Final

Judgment imposed additional prohibitions beyond banning existing practices. These prophylactic provisions included the following Section (hereinafter, "Section IV(E)(i)"):

IV.
PROHIBITED CONDUCT

* * * * *

> E. Microsoft shall not enter into any License Agreement [with an OEM] in which the terms of that agreement are expressly or impliedly conditioned upon:
>
> (i) the licensing of any other Covered Product, Operating System Software product or other product (provided, however, that this provision in and of itself shall not be construed to prohibit Microsoft from developing integrated products).

As the Competitive Impact Statement filed with the proposed Final Judgment made clear, this provision was designed to prevent Microsoft from attempting to extend or protect its operating system monopoly by conditioning its Windows license agreements on OEM's licensing or use of other Microsoft products.

OFFENSE CHARGED

XVII. Microsoft has violated and continues to violate Section IV(E)(i) of the Final Judgment by requiring OEMs to license and preinstall Internet Explorer 3.0 as a condition of licensing Windows 95. Moreover, Microsoft will violate that Section in the future by requiring OEMs to license and distribute Internet Explorer 4.0 as a condition of licensing Windows 95. The violation is clear: (a) Microsoft enters into "License Agreements" with OEMs that provide for the licensing of Windows 95, a "Covered Product" under the Final Judgment; (b) Microsoft's Windows 95 license agreements are currently conditioned on OEMs licensing Internet Explorer 3.0 and will be conditioned on OEMs licensing Internet Explorer 4.0; and (c) each version of

Internet Explorer is an "other product" and not an "integrated product" within the meaning of the Final Judgment. The facts in support of each of these elements are set forth below.

Microsoft Licenses Windows 95, a "Covered Product," to OEMs

XVIII. Microsoft has entered into "License Agreements," as defined by Section II(4) of the Final Judgment, with virtually every major OEM. These agreements grant OEMs the right to preinstall and distribute Windows 95. Windows 95 is the commercial implementation of the product formerly code-named "Chicago," a "Covered Product" as defined by Section II(1) of the Final Judgment.

Windows 95 Licenses are Conditioned on OEMs Licensing Internet Explorer

XIX. Microsoft has conditioned the terms of OEM licensing of Windows 95 on the licensing of Internet Explorer 3.0. Microsoft licenses each version of Internet Explorer to OEMs in conjunction with its Windows 95 license agreements and delivers the software code for the two products to OEMs in a single installation package. The Windows 95 license agreements require OEMs to accept and preinstall the package as sent by Microsoft, which means they must install Internet Explorer 3.0 along with Windows 95. The agreements also prohibit OEMs from modifying or deleting IE 3.0 as delivered to them by Microsoft without Microsoft's consent. Microsoft has consistently maintained that these agreements require OEMs to preinstall IE 3.0 whenever they preinstall Windows 95. In the absence of Microsoft's license prohibitions, OEMs easily could remove Internet Explorer from the Windows 95 package they install on their PCs without compromising the functioning of Windows 95.

XX. OEMs uniformly comply with Microsoft's conditioning of its Windows licenses on the licensing of Internet Explorer. Microsoft has refused requests from at least three OEMs to

remove either the Internet Explorer program or the Internet Explorer program desktop launch button (or "icon") from the PCs they sell. Indeed, in one incident in 1996, Microsoft issued a formal notice that it intended to terminate the Windows 95 license agreement of one of the nation's largest OEMs unless that OEM continued to license and preinstall the Internet Explorer icon and another Microsoft icon exactly as shipped by Microsoft. The OEM, with no commercially viable alternatives to Windows 95, capitulated to Microsoft's threat, even though it had valuable business reasons for doing otherwise and, as required by Microsoft under the terms of the Windows 95 license agreement, has licensed and distributed Internet Explorer since that time.

XXI. Unless restrained by the Court, beginning on February 1, 1998, Microsoft intends to invoke terms contained in its Windows 95 license agreements to require OEMs to license and distribute, and soon thereafter to preinstall, Internet Explorer 4.0 with every PC shipped with Windows 95. Until then, Microsoft will continue to require OEMs to license and distribute IE 3.0.

Internet Explorer Is an "Other Product," Not an "Integrated Product"

XXII. Internet Explorer possesses a significant commercial existence of its own, wholly apart from Microsoft's operating system. It is a separate and distinct product from Windows 95 for the following reasons, among others: (a) there is separate OEM and end user demand for Internet browser products and for Windows 95; (b) Microsoft recognizes and addresses this separate demand by separately marketing, licensing, and distributing each version of Internet Explorer to an extent far greater and in ways materially different than it does for any true, integrated feature or component of its operating system products; and (c) it is both physically and commercially possible to separate each version of Internet Explorer from Windows 95.

Accordingly, Internet Explorer is an "other product," and not an "integrated product," within the meaning of Section IV(E)(i) of the Final Judgment.

XXIII. First, there is separate demand for Internet browser products, including Internet Explorer, on the one hand, and Windows 95, on the other. As noted above, OEMs requested that Microsoft permit them to remove Internet Explorer from Windows 95. In at least some cases, OEMs have made these requests to avoid customer confusion and to allow customers to freely choose among browser products, independently of the operating system. Moreover, PC users commonly obtain Internet browsers, including Internet Explorer, as stand-alone products, entirely apart from Windows 95, and may switch from one browser to another while continuing to use Windows 95.

XXIV. Second, Microsoft has engaged, and continues to engage, in a wide variety of activities which plainly indicate that it recognizes there is separate consumer demand for Internet Explorer and Windows. These activities, which include the following, are significantly different from the ways in which Microsoft has introduced and marketed any true features or elements of its Windows products.

A. Microsoft distributes Internet Explorer to PC users as a stand-alone product through a wide variety of means that are separate and independent of the Windows 95 operating system. These means of distribution include making Internet Explorer available for PC users to electronically "download" to their PCs directly over the Internet; entering into Internet Explorer distribution agreements with on-line service providers and Internet Service Providers, firms which provide the service of connecting computer users to the Internet; preinstalling and distributing Internet Explorer on PC-related hardware devices such as printers; "bundling"

Internet Explorer with other non-operating system software application products; and selling Internet Explorer as a stand-alone retail product.

B. Microsoft has developed and distributes versions of Internet Explorer 3.0 for computer operating systems other than Windows 95 (*e.g.*, Microsoft's earlier versions of Windows, and Apple Computer's Macintosh operating system), and has stated its intention to do so for IE 4.0. These versions of Internet Explorer are marketed as the same product, with the same name and the same or substantially similar functionality as the version of Internet Explorer that Microsoft distributes along with Windows 95. The fact that PC users separately demand Internet Explorer for operating systems other than Windows 95, and even more importantly the fact that Microsoft has responded to this separate demand, amply demonstrate that Internet Explorer is a product separate from Windows 95.

C.Microsoft itself views and regularly refers to Internet Explorer as a separate product competing in a separate browser "space" or "market" against a similar Netscape product. Microsoft makes and publishes detailed comparisons between the features and performance of its Internet Explorer browser product and those of competing browsers. Moreover, Microsoft closely tracks customer usage and overall "share" of both Internet Explorer and competing Internet browser products. Microsoft's internal documents and public statements make clear that obtaining a large number of Internet Explorer browser users is a critical goal for the company. Such references contemplate and acknowledge the significant demand for Internet browsers as products separate and apart from the operating system market, operating system demand, and operating system products like Windows 95.

XXV.Third, separating each version of Internet Explorer from Windows 95 is commercially possible. Not only does Microsoft itself market and distribute Internet Explorer separately

from Windows 95, but so do its competitors, in each case for the very reason that separating the browser, on the one hand, from any particular operating system, on the other, is commercially feasible and valuable. Both Microsoft and Netscape have progressively introduced new versions of their browser products, stand-alone and separate from any particular new operating system product. These new versions offer users many or all of the same features offered by the other. This separate development and marketing of such products demonstrates that it is commercially feasible and desirable to offer Internet browsers and operating system products separately.

XXVI.Fourth, separating each version of Internet Explorer from Windows 95 is physically possible:

a. Preinstallation of Internet Explorer 3.0 is not necessary, and presintallation of Internet Explorer 4.0 will not be necessary, in order for the Windows 95 operating system itself to perform fully and effectively all of its functions. Similarly, various, different versions of Internet Explorer, or versions of other browsers, or both, can be loaded, installed, and used on, and removed from, PCs that have Windows 95 without impairing the performance of Windows 95.

b. Moreover, Microsoft's latest release of Internet Explorer demonstrates with particular clarity that Internet Explorer is a product separate from and not integrated with the operating system. Microsoft is not immediately requiring OEMs to license or distribute Internet Explorer 4.0 or to preinstall it on their PCs along with Windows 95. Instead, Microsoft is distributing IE 4.0 to OEMs on a compact disk ("CD-ROM") that is completely separate from the disk on which Windows 95 is distributed. Microsoft is not requiring OEMs to install IE 4.0 on the hard drive memory of the PC (where Windows 95

is preinstalled) or on any back-up CD-ROM containing Windows 95 that is shipped with the PC. From September 30, 1997 until February 1998, OEMs will have the option of whether or not to distribute the separate IE 4.0 disk with their PCs at all. Most OEMs that do so will simply place the separate Internet Explorer CD-ROM in the box with their PC and not preinstall it. Then, starting on or about February 1, 1998, Microsoft intends to invoke Windows 95 license agreement provisions that will require OEMs to license and distribute Internet Explorer 4.0, but still only as a physically separate CD-ROM placed in the box with the PC. During this time, physically separating IE 4.0 from Windows 95 will not simply be easy; it will be virtually the *only* way that IE 4.0 is available. Finally, sometime after February 1, 1998, Microsoft intends to require OEMs to preinstall Internet Explorer 4.0, as they currently are required to preinstall IE 3.0. Throughout this process, IE 4.0 will be the same product, with the same functionality and performance, whether it is placed in the box with a PC as a separate CD-ROM and installed (or not) by the end user or whether it is preinstalled by the OEM. Similarly, Windows 95 will be the same product whether IE 4.0 is placed in the box as a separate CD-ROM for later installation by the user (which may never happen) or preinstalled by the OEM.

XXVII. Accordingly, Microsoft's present and future requirements that OEMs license Internet Explorer as a condition of and along with licensing Windows 95 are not necessary to enable PC users to enjoy the full performance or capabilities of either product. Microsoft's decision to deliver the Internet Explorer product to OEMs along with Windows 95 and to require OEMs to license and distribute both products together is a strategic marketing and distribution decision that does not change Internet Explorer from a separate, "other" product or result in the creation of an "integrated product" within the meaning of Section IV(E)(i).

Microsoft's Overly Broad Non-Disclosure Agreements Threaten The Ability Of Court to Enforce and the United States to Determine and Secure Microsoft's Compliance with the Final Judgment

XXVIII.Microsoft requires many of the companies and individuals with which it does business, including PC OEMs, to sign various forms of non-disclosure agreements or to include similar non-disclosure provisions in their contracts or other agreements (hereinafter collectively "NDAs") with Microsoft. These NDAs restrict the companies' and individuals' abilities to disclose what Microsoft deems "Confidential Information." While the specific terms of particular agreements vary, many define "Confidential Information" broadly, in some cases so broadly as to expressly include any non-public information that Microsoft designates as confidential or even that relates to the "marketing or promotion" of any Microsoft product or any Microsoft "business policies or practices." Many Microsoft NDAs include a blanket prohibition on any disclosure of confidential information by signatories to the NDAs. Some NDAs contain additional language stating that signatories may disclose confidential information in accordance with "judicial or other governmental order," but *only* provided they give Microsoft notice *prior* to doing so.

XXIX.Microsoft's broad non-disclosure restrictions create the serious potential for hampering the ability of the Court adequately to enforce, and of the United States to investigate whether Microsoft is complying with, the Final Judgment. Companies and businesspeople with direct knowledge of Microsoft's marketing and business practices are precisely the sources from which the United States must seek and obtain information to determine Microsoft's compliance. They also are the sources most likely to have information about potential Microsoft violations and to have a business interest in bringing those potential violations to the attention of the authorities. Yet many if not most such companies and individuals are likely to be in business relationships with Microsoft and therefore signatories to Microsoft's restrictive NDAs.

XXX.The requirement in some NDAs that these companies give Microsoft, the subject of the government's inquiry, *advance notice* before they provide the government with information about Microsoft could create a substantial disincentive for such companies to cooperate fully with the government or to provide any more information than the bare minimum required of them. In response to the United States' serious concern about these provisions, Microsoft recently has advised the Department of Justice by letter that it does not interpret its license agreements or NDAs as requiring signatories to inform Microsoft of disclosures to the Department when the Department approaches those signatories and provides them certain assurances that it will keep the Microsoft information confidential.

XXXI.However, this recent concession by Microsoft is informal and presumably subject to change. Worse yet, it does nothing to eliminate the likelihood that the NDA requirements have chilled, and unless terminated will continue to chill, the disclosure of information about possible Microsoft misconduct by companies or individuals that have not yet been approached or contacted by the government but are contemplating volunteering such information to the government. Many NDAs do not appear to permit or contemplate such disclosure at all, and some imply that, if such disclosure is possible, it may be done only after the companies first inform Microsoft that they are preparing to report Microsoft's potential misconduct to the Justice Department.

XXXII.The responsibility and authority of the United States to fully monitor and investigate whether Microsoft is complying with the Final Judgment, and of the Court to ensure that its Order is followed, are expressly granted by and are inherent purposes of the Judgment. In addition to the investigative tools regularly available to the government by statute, Section V of the Final Judgment provides the United States with other mechanisms to conduct necessary investigations

to "determine or secure compliance with this Final Judgment." This Court, of course, is empowered by Section VII(A) of the Final Judgment to issue "further orders and directions" to carry out, construe, or enforce compliance with the Judgment. Consequently, because of the threat, intended or not, that Microsoft's NDAs may pose to unfettered review and enforcement of compliance with the Final Judgment, the United States requests, and it is an appropriate and warranted use of the Court's power to order, that Microsoft delete from its NDAs any requirement of notice -- advance or otherwise -- that signatories are providing information in response to judicial or government order or are having any contacts or discussions with, or making disclosures of information to, government investigative agencies. The United States also requests that the Court order Microsoft promptly to notify all NDA signatories of these changes; to inform them that they have no obligation to notify Microsoft of any disclosures to, or contacts or discussions with, government investigative agencies; and to ensure that each of these changes is reflected in all future Microsoft NDAs.

XXXIII. At no time prior to the filing of this Petition has Microsoft ever attempted to ascertain from this Court or the United States Department of Justice whether its activities violate the Final Judgment. The United States has had various discussions with Microsoft about the conduct described in this Petition but has been unable to resolve its concerns prior to filing this Petition.

XXXIV. Through the above-described acts and failures to act, Microsoft has knowingly disobeyed and resisted the lawful orders of this Court, as set out in Section IV(E)(i) of the Final Judgment, and therefore is in civil contempt of this Court's authority.

XXXV. The above-described violations have continued to the date of filing of this Complaint, and will continue unless the relief prayed for hereinafter is granted.

PRAYER

WHEREFORE, The United States moves this Court to issue an Order directing Respondent to appear before this Court at a time and place to be fixed in said Order, to show cause why it should not be adjudged in civil contempt of this Court; and

THEREAFTER, issue an Order adjudging Respondent in civil contempt of this Court's Final Judgment, and further:

I. Order and direct Respondent forthwith to comply with the Final Judgment;

II. Order and direct Respondent to cease and desist within 30 days of the issuance of this Order from continuing to require, or in the future requiring, OEMs to license any version of Internet Explorer as an express or implied condition of licensing Windows 95 or any Covered Product, as defined in the Final Judgment;

III. Order and direct Respondent to inform each OEM that has licensed Windows 95 that the inclusion and preinstallation of Internet Explorer with Windows 95 was in violation of the Final Judgment and that the requirement that Internet Explorer be included and preinstalled on that OEM's PCs has been terminated;

IV. Order and direct Respondent to notify each purchaser of any OEM Customer System including Windows 95 who has registered that copy of Windows 95 that Microsoft required their PC OEM to package and preinstall Internet Explorer with Windows 95 in violation of the Final Judgment, that such purchaser is not required to use Internet Explorer in order for Windows 95 to function properly, that such purchaser may install and use any Windows 95 compatible Internet browser on their personal computer without harm to the operation of Windows 95, and that such other browsers are readily available; and to provide each such purchaser with simple,

easy-to-follow instructions describing how to remove the Internet Explorer icon from the Windows 95 desktop if the purchaser chooses to do so;

V. Order and direct Respondent to delete from its non-disclosure agreements or any contracts or agreements containing non-disclosure provisions any requirement that the signatories to those NDAs or agreements give Microsoft notice, advance or otherwise, that they are providing information in response to judicial or government order or that they are having contacts or discussions with or disclosing information to government investigative agencies; to notify promptly all NDA signatories of these changes; to expressly and promptly inform all NDA signatories that they have no obligation to notify Microsoft of any disclosures to, or contacts or discussions with, government investigative agencies; and to expressly state in all future NDAs that the NDA signatories have no obligation to notify Microsoft of any disclosures to, or contacts or discussions with, government investigative agencies;

VI. Order and direct Respondent to establish a compliance committee, designed by and reporting to its general counsel, to assure that no further violations of the Final Judgment take place;

VII. Order and direct that Respondent, no later than 30 days after the entry of this Order, distribute to each officer and management employee of Respondent the following material:

A. A copy of this Order and a written directive setting forth Respondent's policies regarding compliance with this Order;

B. A description of the procedures to be followed to comply with this Order, including identification of the members of the compliance committee and the procedures to be followed by that committee; and

C. An admonition that non-compliance with the Final Judgment and this Order will result, in every case, in disciplinary action, which may include dismissal, and that such non-compliance may result in conviction for contempt of court and imprisonment or fine;

VIII. Impose upon Respondent a fine of up to $1,000,000 for every day after this Court's order that Respondent fails to carry out the directions of this Court;

IX. Order and direct that Respondent, no later than 10 days after a person begins performance of his or her duties as a new officer or management employee, provide that person with a copy of the Final Judgment and a written directive setting forth Respondent's policies regarding compliance therewith, and obtain an executed certificate acknowledging its receipt;

X. Order and direct that Respondent take disciplinary action against any person under its control who refuses or fails to comply with the Final Judgment or this Order;

XI. Issue such further orders as the nature of the case may require and as the Court may deem just and proper to compel obedience to and compliance with the orders and decrees of this Court; and

XII. Grant to the United States its costs of maintaining this proceeding.

Dated: _____

Respectfully submitted.

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