IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. MICROSOFT CORPORATION, Defendant.	Civil Action No. 98-1232 (TPJ)
STATE OF NEW YORK *ex rel*. Attorney General DENNIS C. VACCO, *et al.*, Plaintiffs, v. MICROSOFT CORPORATION, Defendant.	Civil Action No. 98-1233 (TPJ)

PLAINTIFF' OPPOSITION TO MICROSOFT MOTION FOR PROTECTIVE ORDER WITH RESPECT TO SIXTH JOINT REQUEST FOR PRODUCTION OF DOCUMENTS

Microsoft's motion for a protective order essentially rehashes many of the arguments Microsoft has been making for the past two months while resisting production of relevant and probative data contained in its databases. These arguments continue to be without merit, and Microsoft's motion should be denied.

Scope

In fact, the plaintiffs' Sixth Request for production (attached) is narrowly tailored and sufficiently specific. It is limited to data contained in the two specifically named Microsoft databases that have been the subjects of plaintiffs' prior several motions to compel. It also is narrowly limited to data relating to a handful of Microsoft operating system products (listed in Definition 9 of the Request) and to Internet Explorer. As plaintiffs have previously noted, these products are at the very center of this case.

Burden

Microsoft's motion suggests that the Sixth Request will be quite burdensome. In fact, however, the actual experience of extracting data from these databases up to now for that portion of them to which Microsoft has permitted access -- the OEM channel -- has been relatively straightforward, and there is no reason to believe that finding and collecting data from other "channel fields" in the database will require significantly, if any, more effort -- particularly given the limited scope of the request.

Timing

Microsoft's primary attack on the Sixth Joint Request is that it is an "11th-hour" request that should have been made long ago. This argument ignores the fact that plaintiffs have been seeking this data since at least August 14, and have been unable to obtain or even learn any details about it precisely because of Microsoft's persistent efforts to block its production. Had Microsoft complied with the Third Joint Request in a timely fashion, plaintiffs would have learned weeks ago about the kind of data contained in these specific databases, and any disagreement that existed between plaintiffs and Microsoft about whether non-OEM data in the databases was

covered by that Request would have been long since raised and resolved. Instead, Microsoft's intransigence resulted in plaintiffs not seeing any of the data until last week, and only then learning that the database contained, but Microsoft would not permit access to, relevant Windows and IE data for non-OEM channels.

Accordingly, Microsoft's motion should be denied.

DATED: October 20, 1998

_____/s/_____
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