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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MICROSOFT CORPORATION, )  
 )  
Defendant. )

STATE OF NEW YORK ex rel, )  
Attorney General DENNIS C. )  
VACCO, et al. )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MICROSOFT CORPORATION, )  
 )  
Defendant. )

Civil Action  
No. 98-1232 (TPJ)  
**DEPARTMENT OF JUSTICE**  
OCT 09 1998  
**ANTITRUST DIVISION**  
**SAN FRANCISCO OFFICE**

Civil Action  
No. 98-1233 (TPJ)

H I G H L Y C O N F I D E N T I A L

DEPOSITION UPON ORAL EXAMINATION

OF

PHILIP BARRETT

October 7, 1998  
1:50 p.m.  
1111 Third Avenue, Suite 500  
Seattle, Washington

ANNAMARIE C. SPANGRUD

CERTIFIED COURT REPORTER

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A P P E A R A N C E S

FOR MR. BARRETT: PAUL R. TAYLOR  
Attorney at Law  
1000 Second Avenue, 38th Floor  
Seattle, WA 98104

FOR REALNETWORKS: BRUCE J. PRAGER  
Attorney at Law  
Latham & Watkins  
885 Third Avenue  
New York, NY 10022-4802

U. S. DEPARTMENT OF JUSTICE: MICHAEL C. WILSON  
Attorney at Law  
Antitrust Division  
450 Golden Gate Ave., Room 10-0101  
San Francisco, CA 94102-3478

DAVID B. FEIN  
Attorney at Law  
Wiggin & Dana  
Three Stamford Plaza  
Stamford, CT 06911-0325

FOR MICROSOFT CORPORATION: SEAN R. O'BRIEN  
Attorney at Law  
Sullivan & Cromwell  
125 Broad Street  
New York, NY 10004

VIDEOGRAPHER: DOUGLAS PATTERSON  
ProVideo Productions  
80 South Washington, Suite 200  
Seattle, WA 98104

COURT REPORTER: ANNAMARIE C. SPANGRUD  
Certified Court Reporter  
Word for Word Court Reporters  
11809 200th Avenue Northeast  
Redmond, WA 98053  
License No.: SP-AN-GA-C445MZ

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I'll just ask you: Did you attend an offsite in the early part of April of 1994 while you were at Microsoft?

A. Yes, I did.

Q. Do you recall on or about when this offsite occurred?

A. I don't recall the specific date. It was in April of 1994.

Q. Do you recall what was the subject matter that was discussed at this offsite?

A. Yes, it was what was Microsoft going to do about the Internet.

Q. Where did this offsite take place?

A. In the Shumway Mansion in Kirkland, Washington.

Q. And you had attended this offsite?

A. That is correct.

Q. Stepping back just so we have some understanding, what is an offsite? What does that refer to at Microsoft?

A. An offsite is a focused -- a very long focused sequence of meetings where there's a single subject or a single topic area, if you will, and the appropriate people from within the company -- typically technologists as well as marketing, business, and technology people -- get together to talk about the issues, summarize strategy. It has a very wide ranging -- there's a very wide range

1 of uses for it, but generally it's to focus attention on  
2 an area that's either been underfocused on or the company  
3 or group is doing something wrong or needs to rethink its  
4 strategy.

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11 Q. Who was in your breakout group, if you remember?

12 A. Well, Bill Gates led my breakout group, and Brad  
13 Silverberg was there. I believe John Ludwig was in the  
14 group, and those are the only people I remember  
15 explicitly. There were around eight to ten, I think,  
16 total.

17 Q. What was discussed within your breakout group?

18 A. The thing that I remember the most discussion about was  
19 the Internet service providers and the necessary  
20 plumbing -- "plumbing" being the infrastructure -- to  
21 allow large numbers of people to get online and use the  
22 Internet.

23 Q. So what was it about this plumbing that you recall  
24 discussing?

25 A. How to make it happen; how to encourage -- how to

1 encourage more Internet service providers to exist, to  
2 create ways to make it easy for people to sign up.

3 At that time, signing up to the Internet was  
4 actually a pretty torturous process, and required almost  
5 a Ph.D. in mumbo jumbo.

6 Q. Those are hard to get.

7 A. I'm sorry?

8 Q. Those are hard to get, those Ph.D.'s in mumbo jumbo.

9 A. Yes.

10 MR. TAYLOR: Freely available at law  
11 schools.

12 Q. [By Mr. Wilson] Was there any discussion about what it  
13 was that Microsoft can do to advance this discussion of  
14 plumbing or these ideas of how to make plumbing happen?

15 MR. O'BRIEN: Objection to form.

16 A. There were a number of discussions that focused on --  
17 there were discussions of acquiring ISP's, of gaining  
18 access to more plumbing, either through direct control or  
19 indirect control. There was some discussion of making  
20 sure that the processes, the products that were -- or the  
21 capabilities that were in process, come to completion to  
22 allow the client side, the desk top operating system, to  
23 be a basis for being able to dial into Internet service  
24 providers.

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Q. The term "Internet protocol," what does that mean to you?

A. Well, a protocol is just as much in diplomacy as in computers, it's a prescribed way of two independent entities interacting.

In the case of computers, it's a common language that two computers can talk in order to exchange information on behalf of the users of the cooperating operating systems.

Q. What is it that you recall at the offsite that was related to these Internet protocols?

1 MR. O'BRIEN: Objection to form; vague.

2 Q. [By Mr. Wilson] Did you understand the question? Can  
3 you answer that question or should I --

4 A. Yes, I can answer your question.

5 Q. Thank you.

6 A. There was discussion of a protocol called TCP/IP, which  
7 stands for -- well, it's an Internet protocol -- the  
8 underlying Internet protocol.

9 There was a discussion of ensuring that that  
10 capability is easy to install in an operating system and  
11 that, you know, it's a best of breed.

12 There was also discussion of other protocols,  
13 including something called PPP and SLIP, which are  
14 dial-up connection protocols. SLIP -- S-L-I-P, stands  
15 for subscriber line interface protocol -- was an earlier  
16 form, and that was in the process of being supplanted --

17 THE WITNESS: Am I going too fast for you?

18 THE COURT REPORTER: No, but thank you.

19 A. -- in the process of being supplanted by PPP, which  
20 stands for point-to-point protocol. There was discussion  
21 about ensuring that PPP was brought into the operating  
22 system in a timely fashion, but that was a small portion  
23 of the discussion.

24 Q. [By Mr. Wilson] Do you know whether these particular  
25 protocols that you described were being developed at

1 Microsoft at or around the time of this offsite?

2 MR. O'BRIEN: Objection to form; vague.

3 A. I'll answer it. Yes, all of those implementations of  
4 those protocols were being developed. The protocols  
5 themselves had been developed elsewhere, particularly by  
6 standards, bodies, or groups -- affiliated with  
7 standards, bodies. The implementations were being done  
8 mostly in the Windows NT group.

9 Q. [By Mr. Wilson] Can you just describe generally what it  
10 is that the implementation of these protocols serves? I  
11 mean, you had described bringing it into the operating  
12 system -- you described SLIP being brought into the  
13 operating system.

14 What services did these type of Internet protocols  
15 serve in the operating system?

16 MR. O'BRIEN: Objection: Mischaracterizes  
17 the testimony and vague.

18 A. I'll be honest, I don't know how to answer that  
19 question.

20 Q. [By Mr. Wilson] Okay. What plans were you aware of at  
21 or around this time to include Internet protocols into  
22 the next version of Windows?

23 MR. O'BRIEN: Objection: Foundation.

24 A. The plans were to put a TC/PIP pack, the underlying  
25 thing, and then dial up modem support, called dial-up

1 networking -- often referred to as D-U-N, DUN -- into  
2 either Windows 95 or into -- I don't know if they called  
3 it service pack, but the subsequent release.

4 Q. [By Mr. Wilson] During the offsite, were there  
5 discussions related to Web browsers?

6 A. That wasn't in my focus group, so I don't recall any of  
7 that, obviously.

8 I do recall that there was another group that  
9 focused on that, although I believe -- I just don't  
10 recall what was said in great detail.

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Q. Were there discussions about building a Web browser into the next release of Windows 95?

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MR. O'BRIEN: Objection: Foundation.

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A. I do not recall any discussions taking place, although they could have, but I just don't know.

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Q. [By Mr. Wilson] You attended the offsite, but as far as you know, there weren't any plans made to build a Web browser into Windows 95?

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MR. O'BRIEN: Objection: Mischaracterizes the testimony and leading.

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THE WITNESS: Would you read back the question, please?

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THE COURT REPORTER: Question: You attended the offsite, but as far as you know, there weren't any plans made to build a Web browser into Windows 95?

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Q. [By Mr. Wilson] Actually, I can just take the leading out of the question. Who knows, this might matter someday.

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At the conclusion of the offsite, were there any plans made to build a browser into Windows 95, at least that you're aware of?

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A. To my knowledge, no, there were not.

1 Q. After the offsite, what did you do at Microsoft? Did  
2 your job position change?

3 A. Yes. I was actually -- during the offsite, I was  
4 actually part of the advanced consumer technology group,  
5 and I was in transition to work in the Windows group.  
6 So, after that, I did transition into the Windows group  
7 to focus on Internet technology.

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Q. During this April '94 to October '94 time frame, did you create any plans for developing a browser?

A. No, I did not.

Q. What instructions from your management did you have with respect to the development of the browser?

A. To figure out a strategy.

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Q. [By Mr. Wilson] Earlier you said you formally left

1 Microsoft in October of 1994.

2 By the time that you had left Microsoft, do you know  
3 whether a Web browser had been built yet?

4 A. No, I don't.

5 Q. Was a browser built then?

6 A. No.

7 Q. Did your group accomplish building a prototype of a  
8 browser?

9 A. No.

10 Q. Were there any plans to build a browser to be released in  
11 the next version of Windows?

12 MR. O'BRIEN: Objection to form.

13 A. I know of no plans in that forum.

14 Q. [By Mr. Wilson] In the position that you were in, would  
15 you have been someone who would have known about such  
16 plans?

17 MR. O'BRIEN: Objection to form.

18 A. Yes, I would have.

19 Q. [By Mr. Wilson] Why do you think you would have been  
20 someone who would have known about such plans?

21 A. Because that would have fallen into my area of  
22 responsibility.

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Q. [By Mr. Wilson] I'll show you what's been ~~marked~~  
Government Exhibit 1206. It is an article that's been  
downloaded from the Internet, entitled Gates Browser  
Conceived Before Netscape was Born. It appears that this  
article was originally published August 16, 1998, in the  
Seattle Times.

You may not have seen it in this particular form,  
but have you seen this article in one form or another  
before?

A. Yes, I have. I believe I've seen this one also.

Q. Were you interviewed for this particular article?

A. No, I wasn't.

Q. I'm going to ask just a very few questions about this.

In the second paragraph of this article, there's a

1 reference here, it says -- and I'll just read it -- "In  
2 an interview Friday, Gates said the decision to develop a  
3 browser was made at an executive retreat on April 5,  
4 1994, at the historic Shumway Mansion in Kirkland."

5 All I want to know is, based on our discussion and  
6 your recollection of this offsite retreat in early April  
7 at the Shumway Mansion, is this an accurate statement?

8 MR. O'BRIEN: Objection to form; calls for  
9 speculation.

10 A. You want to --

11 MR. WILSON: I'm not asking him to  
12 speculate.

13 Q. [By Mr. Wilson] I'm asking if this is what you recall  
14 coming out of the Shumway retreat?

15 A. No, this is not consistent with my memory of the retreat.

16 Q. The following sentence in this article reads, quote, I  
17 said, internal quote, Hey, we're going to get it, paren,  
18 the browser, closed paren, integrated into the operating  
19 system, closed quote, Gates said.

20 I just want to make clear about your recollection of  
21 this offsite.

22 Is this sentence consistent with your recollection  
23 of the offsite?

24 A. No, it is not.

25

1 A. No, it is not.

2 Q. [By Mr. Wilson] Let me just direct your attention to the  
3 last page of this document.

4 A. Uh-huh.

5 Q. At the bottom it says "4 of 4." The top paragraph in  
6 this document reads, "Soon after the Shumway session,  
7 Phil Barrett, a Windows executive, was assigned to begin  
8 work on a browser. Barrett, who today works for  
9 RealNetworks in Seattle, made little progress, however,  
10 and the project eventually was transferred to Ben  
11 Slivka."

12 First of all, is it fair to assume that the Phil  
13 Barrett referenced in this article would be you?

14 A. Yes.

15 Q. And the author, however, did not talk to you about this  
16 article?

17 A. That is correct.

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Q. Focusing on the RealPlayer and the PlayerPlus, does RealNetworks distribute a version of the Player that includes the PlayerPlus features not activated?

A. Yes. The way the Player and PlayerPlus are related is basically there's one Player. PlayerPlus features are activated by a license key that one gets by coming to our Web site and going through a secure form and purchasing that license key, although they believe they are purchasing PlayerPlus.

Q. So if a customer doesn't purchase this activation key, what does the user have?

A. The user has the standard, what we call, ubiquity Player, the free Player.

Q. But as a technical matter, does the user have the code that implements the PlayerPlus features?

A. Yes.

Q. Is it correct to say that even if a customer has the bits of code that make up the PlayerPlus, if the user does not have access to the PlayerPlus features, then, as a practical matter, the user doesn't have the PlayerPlus product?

MR. O'BRIEN: Objection to form and

1                   especially to the extent it calls for a legal  
2                   conclusion about what is and what isn't a  
3                   product, but go ahead.

4           A.    From the user's perspective, what they have is the  
5                standard Player.

6           Q.    [By Mr. Wilson] But not PlayerPlus?

7           A.    Correct, not PlayerPlus.

8           Q.    And that's because they're unable to access the  
9                PlayerPlus features?

10          A.    That is correct.

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- Q. Okay. And I believe you testified that you actually left  
Microsoft -- ceased working there -- in September of  
1995; is that true?
- A. That's the best of my recollection.

MR. TAYLOR: '95 or '94?

1 Q. [By Mr. O'Brien] I'm sorry, in '94.

2 A. That's right. For the record, I believe that my last day  
3 at Microsoft occurred in September of -- my last working  
4 day at Microsoft occurred in September of 1994.

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Q. And so the Internet offsite that they held in April 1994 did not, to you, reflect a sufficient degree of interest in the Internet?

A. What it reflected to me was that, while the chairman was willing to stand up and say the Internet is important, nobody was willing to put any resources behind doing the sorts of things to make the Internet happen. That's what I got from that.

Q. Okay. And what was the -- strike that.  
What kind of resources were being put into the Microsoft Network project and the Blackbird project?

A. I'm not personally familiar with the staffing plans and that sort of thing, but I believed it to be in the, you know, neighborhood of one hundred people. I think it was a pretty significant effort.

Q. It was something that, would you characterize it, Microsoft took very seriously?

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A. Certainly parts of Microsoft took that very seriously.

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Q. [By Mr. O'Brien] When you left Microsoft in September of 1994, are you aware of any efforts that had been made on a project called Internet Shortcuts, either a project or a functionality known as Internet Shortcuts?

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A. Yeah, I'm aware of Shortcuts in general. There was -- yeah, there was some discussion going on. I think there might have been a little bit of work done on Internet Shortcuts at that time frame, late summer.

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