

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 98-1232 (TPJ)
)	
MICROSOFT CORPORATION,)	
)	
Defendant.)	
_____)	
)	
STATE OF NEW YORK, <u>ex rel.</u>)	
Attorney General DENNIS C. VACCO,)	
<u>et al.</u> ,)	
)	
Plaintiffs and)	
Counterclaim-Defendants,)	
)	
v.)	Civil Action No. 98-1233 (TPJ)
)	
MICROSOFT CORPORATION,)	
)	
Defendant and)	
Counterclaim Plaintiff.)	
_____)	

FINAL PRETRIAL ORDER

In accordance with the proceedings at the Final Pretrial Conference of October 9, 1998, it is, this ____ day of October, 1998,

ORDERED, that the Pretrial Statements of the parties, including their Schedules of Witnesses and Final Lists of Exhibits separately filed (as they may be modified or supplemented from time to time with leave of Court), are adopted and incorporated herein, and shall control the subsequent course of these actions unless this Order itself shall be modified to prevent manifest injustice; and it is

FURTHER ORDERED, that the trial of these actions shall commence at 10:00 a.m., October 19, 1998, and shall continue from day to day, and week to week, Mondays through Thursdays (the Court's calendar permitting), holidays excepted, until the taking of evidence has been completed; and it is

FURTHER ORDERED, that at the outset of their case-in-chief, the parties shall advise the Court and one another of the expected order in which their witnesses will be called, and will give the Court and their adversaries forty-eight (48) hours' advance notice of any proposed change in that order of witnesses, which will be permitted only with leave of Court; and it is

FURTHER ORDERED, that upon commencement of the trial plaintiffs shall present the direct testimony of their witnesses in writing, which each witness shall avow under oath on the record as he or she is called, and the plaintiffs shall then tender the witness for oral cross-examination by the defendant. Upon completion of each cross-examination plaintiffs may conduct an oral redirect examination of the witness, to be followed by oral recross-examination, and (with leave of Court) such further oral redirect and recross-examination as the Court may deem warranted. When examination of the witness has concluded, the Court will excuse the witness, and plaintiffs shall call the next witness in succession who shall be examined in similar fashion, and so forth, until plaintiffs' case-in-chief shall have been fully presented and plaintiffs have rested.

Upon completion of proceedings on defendant's motion for judgment as a matter of law, if any, if the motion is not granted defendant shall present its witnesses in like fashion, and cross-examination and redirect examination shall proceed as in plaintiffs' case.

IT IS FURTHER ORDERED, that the manner of presentation of rebuttal and surrebuttal evidence is reserved for later determination; and it is

FURTHER ORDERED, that any discovery heretofore initiated and not yet completed may continue to completion while trial is in progress (although in a manner not to interfere with trial), and the record shall be held open a reasonable time, if necessary, to receive relevant and material evidence developed thereby; but no new discovery shall be initiated by any party after entry of this Final Pretrial Order except with prior leave of Court for cause shown; and it is

FURTHER ORDERED, that no protective order or stipulation of confidentiality heretofore entered in this case shall preclude a reference in open court by any party or witness to any matter purportedly covered thereby, and all evidence (including exhibits) once adduced is deemed a part of the public record, and shall be accessible without restriction to the public at large unless compelling reason to the contrary is shown, see JB Pictures, Inc. v. Department of Defense, 86 F.3d 236, 239 (D.C. Cir. 1996); and it is

FURTHER ORDERED, that evidence presented by deposition (other than by way of use in cross-examination) shall be shown on videotape in open court as well as offered in transcript form, unless otherwise ordered; or, if no videotape of a deposition was made, a deposition shall be offered in transcript form alone; but all deposition testimony admitted in whatever form shall be deemed a part of the public record, and accessible to the public at large to the same extent as all other evidence in the case; and it is

FURTHER ORDERED, that the parties shall be prepared to submit proposed findings and conclusions following the close of evidence in a form and upon a schedule to be prescribed by the Court.

Thomas Penfield Jackson
U.S. District Judge

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Defendant and)	
Counterclaim Plaintiff.)	
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ORDER

Upon consideration of plaintiffs’ motion to compel Microsoft Corporation (“Microsoft”) to comply with plaintiffs’ Third Joint Request for Production of Documents, Request No. 1, Microsoft’s opposition thereto, and in accordance with the proceedings in open court at the Final Pretrial Conference of October 9, 1998, it is, this _____ day of October, 1998,

ORDERED, that Microsoft shall produce to plaintiffs, on or before 5:00 p.m. (PT), October 12, 1998, an exact duplicate of each of its own databases in the form in which Microsoft

itself maintains them, in CD-ROM machine-readable form, relating to the subjects set forth in Request No. 1 of plaintiffs' Third Joint Request for Production of Documents, together with the software Microsoft relies on to analyze and manipulate the data contained therein, and detailed and complete instructions on the use of that software to access the data. Alternatively, should Microsoft deem that the provision of the software and/or the underlying data by the date set forth above is impossible or impractical, Microsoft may comply with this Order by permitting plaintiffs access to the computer systems on which the relevant databases and associated software are maintained by Microsoft, and by providing the assistance of Microsoft personnel trained and knowledgeable in their use for as long as plaintiffs shall require, at a time mutually agreeable to the parties, but to commence not later than 10:00 a.m. (PT), October 14, 1998.

IT IS FURTHER ORDERED, that should Microsoft fail to comply with the foregoing Order for production, at the Court's discretion Microsoft shall be precluded at trial from adducing evidence of its own with respect to its licensing and shipping of operating system products, its associated revenues and costs, its discounts to particular OEMs, and any other terms of its contractual arrangements with OEMS, and may be subject to such further sanctions as the Court may deem appropriate pursuant to Fed. R. Civ. P. 37.

Thomas Penfield Jackson
U.S. District Judge

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ORDER

Upon consideration of the motion of The Associated Press, et al., to intervene for the purpose of “enforcing their and the public’s rights of access to proceedings and the record in this action,” it appearing to the Court that the purpose for which intervention is sought is sufficiently addressed by the terms of the Final Pretrial Order entered this date and the extensive arrangements currently in place for media attendance at trial, it is, this ____ day of October, 1998,

ORDERED, that the motion of the Associated Press, et al., to intervene in this action is denied.

 Thomas Penfield Jackson
 U.S. District Judge