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U.S. DISTRICT COURT

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OCT 16 1998

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

CALDERA, INC.

Plaintiff,

**ORDER ISSUING A LETTER OF
REQUEST**

vs.

Case No. 2:96CV 0645B

Judge Dee V. Benson

MICROSOFT CORPORATION,

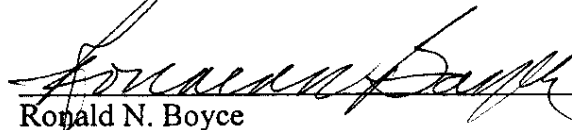
Defendant.

This matter came on regularly for hearing before the Honorable Ronald N. Boyce on plaintiff Caldera Inc.'s motion to issue a Letter of Request. Having considered the parties' memoranda, the arguments of counsel, the files and records herein, and being fully advised,

IT IS HEREBY ORDERED that Caldera's Motion is GRANTED and the Letter of Request attached hereto as Exhibit A is hereby issued.

DATED this 16th day of October, 1998.

BY THE COURT:



Ronald N. Boyce
United States Magistrate Judge

STEPHEN D. SUSMAN
CHARLES R. ESKRIDGE III
THOMAS W. PATERSON
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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

CALDERA, INC.,

Plaintiff,

vs.

**REQUEST FOR INTERNATIONAL
JUDICIAL ASSISTANCE PURSUANT
TO THE HAGUE CONVENTION OF
18 MARCH 1970 ON THE TAKING OF
EVIDENCE IN CIVIL OR COMMERCIAL
MATTERS**

Judge Dee V. Benson

MICROSOFT CORPORATION,
Defendant.

Case No. 2:96CV645B

1. A request is hereby made by the District Court of Utah, Central Division, 251 Frank E. Moss U.S. Courthouse, 350 South Main Street, Salt Lake City, Utah, 84101, to the competent authority of The United Kingdom (England and Wales) for its assistance in obtaining trial evidence testimony from the individual named below. This request is

made pursuant to the Hague Convention of 18th March 1970 (the "Convention").

2. In conformity with Articles 3 and 17 of the Convention, this Court presents its compliments to the competent judicial authority in The United Kingdom and respectfully requests international judicial assistance to obtain trial testimony in the above-captioned matter.
3. This Court requests the assistance described herein as necessary in the interests of justice. The assistance requested is that the competent judicial authority in The United Kingdom compel the appearance of

Mr. Diran Kazandjian (the "Witness")
Galleons
Sandowne
Esher
KT10 (NT)
England

At the offices of:

Lovell White Furrant
65 Holborn Viaduct
London EC1A 2DY

on a date and at a time to be determined, to provide oral testimony in the English mode under oath or affirmation before a fit and proper person within the meaning of Order 70 rule 4(1) of the English Rules of the Supreme Court 1997, the examination to be transcribed and recorded on a video tape, and to provide the document described below. The oral testimony is to comprise evidence to be used at the trial of the action described in paragraph 5 below. The Witness is to be permitted legal representation at the taking of the deposition for the purpose of taking proper objections during the course of

examination. The parties shall have the right to cross-examine. The Witness shall be entitled to privilege in respect of his communications with his attorney.

4. The names and addresses of the parties and their representatives are:

Plaintiff:

Caldera, Inc.
240 West Center Street
Orem, UT 84057

Plaintiff's attorneys:

Stephen D. Susman
Charles R. Eskridge Iii
Thomas W. Paterson
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Defendant ::

MICROSOFT CORPORATION
One Microsoft Way
Building 1
Redmond WA 98052

Defendant's attorneys:

Richard J. Urowsky
Steven L. Holley
Richard C. Pepperman, II
SULLIVAN & CROMWELL
125 Broad Street
New York, N.Y. 10004

James R. Weiss
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Salt Lake City, UT 84111

Michael F. Steinberg
SULLIVAN & CROMWELL
1888 Century Park East
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William I. Neukom
Thomas W. Burt
David A. Heiner, Jr.
MICROSOFT CORPORATION
One Microsoft Way
Building 1
Redmond WA 98052

5. The nature and purpose of the proceedings and a summary of the facts are as follows:

Plaintiff has filed this act on against Defendant in the United States District Court, District of Utah Central Division, based on Defendant's efforts to prevent and destroy competition in the computer software industry, in violation of the antitrust laws of the Unites States, including Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2.

Microsoft has erected artificial barriers to entry and growth of personal computer operating systems, *inter alia*, through its contractual licensing arrangements with original equipment manufacturers ("OEMs") of personal computers. These contractual licensing practices have included: (a) license agreements which required OEMs to pay royalties to Microsoft not only when they sold personal computers containing Microsoft's operating system, MS-DOS, but also when they sold personal computers containing competing DOS software or no DOS software; (b) unreasonably long terms for licensing agreements with OEMs for the use of Microsoft's MS-DOS software.
6. For the purpose of obtaining evidence for use at trial, the Witness will be examined by plaintiff and/or defendant on the following subjects:
 - a. His statements, as an employee of Viglen, to Mr. David Bradley of Microsoft U.K., that are memorialized in a letter to Mr. Bradley dated June 5,

1992, and resulting course of conduct between the two companies. A copy of the June 5, 1992 letter is attached as Exhibit A. Said statements concern the March 1992 contract between the Witness' then employer Viglen, and Microsoft U.K. Ltd., for the license of MS-DOS. More specifically, these statements concern the per processor provision and long term duration of that licensing contract;

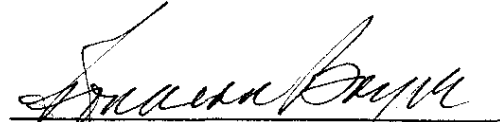
- b. The history and course of dealings between Viglen and Microsoft while the witness was employed by Viglen;
- c. The history and dealings, if any, between Viglen and DRI while the witness was employed at Viglen, including any testing of the DR DOS product;
- d. Consideration by Viglen of the license or purchase of any PC operating systems other than MS DOS or DR DOS; and
- e. The Witness' past and present relationship with Viglen.

Plaintiff and Defendant intend to introduce the Witness' videotape testimony at trial as relevant to their claims or defenses in the case.

- 7. The Witness is requested to bring to his examination a copy of his letter of June 5, 1992 to Mr. David Bradley of Microsoft UK Ltd.
- 8. The Plaintiff's attorneys and the Defendant's attorneys as detailed above shall be notified of the time and place for the execution of this request.
- 9. The parties to the action will each pay their own costs.
- 10. The English law firm Lovell White Durrant is authorized to act as agent for the Plaintiff's attorneys in executing this Letter of Request in England.

11. The District Court of Utah, Central Division, extends to the judicial authority of England the highest consideration for its courtesy and assistance in this matter. This Court also states that it shall be ready and willing to assist the courts of England in a similar matter when required.

Date 16 October 1998


District Court of Utah,
Central Division

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing document (Case Number 2:96CV 0645B, U.S. District Court, Central Division) were sent via Federal Express to:

Richard J. Urowsky
Steven L. Holley
Richard C. Pepperman, II
SULLIVAN & CROMWELL
125 Broad Street
New York, NY 10004

James R. Weiss
PRESTON, GATES, ELLIS & ROUVELS
MEEDS
1735 New York Avenue, N.W.
Washington, D.C. 20006

William H. Neukom
Thomas W. Burt
David A. Heiner, Jr.
MICROSOFT CORPORATION
One Microsoft Way
Building 8
Redmond, WA 98052

Michael H. Steinberg
Sullivan & Cromwell
444 South Flower Street
Los Angeles, California 90071-2901

and hand-delivered to:

James S. Jardine
Mark M. Bettilyon
RAY, QUINNEY & NEBEKEI
79 South Main, #500
Post Office Box 45385
Salt Lake City, Utah 84145

DATED this 14th day of October, 1998.

Connie R. Calo



Viglen

Mr. David Bradley,
Microsoft UK Ltd.,
Excel House,
Caversham Road,
Reading,
Berkshire,
RG1 8EP

CC: Sandy Duncan

30th June, 1992

Dear David,

Please find enclosed the March 1992 contract which I have duly signed.

Although we have signed this contract which I understand is the best that we could negotiate, I would for the record like to point out the three issues which we are not entirely happy with.

The first issue which you have addressed in your letter dated the 14th of April, 1992 is the long term (3 years) nature of the contract. I understand from your letter that any issue of pricing and commercial terms can be reviewed in the course of the three years if concern is raised. If this is the correct assessment of your letter then I am quite happy with that.

The second issue is the fact that the only OEM agreements you have been prepared to offer us on MS-DOS and Windows is a per processor license. Our main concern here is that a small proportion of our business involves providing Non Microsoft operating systems such as Novell and others to our customers who require it. This means that we will be paying a royalty to Microsoft even though we would not be supplying Microsoft products. We have tried many times even to get exemption on some models on which we would not be supplying Microsoft products but this has not been accepted by you. Neither has a per copy license based on the same volume of business.

The third and final issue is the Microsoft Mouse driver. The retail Windows 3.1 product that Microsoft sells and describes as Windows 3.1 includes the Microsoft Mouse driver. This is clearly stated in the manuals. We have been asked to pay an extra amount per copy of this mouse driver should we decide to ship this product with Windows 3.1. Our customers are under the impression that we are cheating them and not providing a genuine Microsoft Windows 3.1 package. Your advertisement and description of the Windows 3.1 product to the general public does not explain that an OEM Windows 3.1 package is different to a Genuine Microsoft Windows 3.1 package. So what do we use when we are licensed to put the Windows Ready To Run Logo? Do we say Microsoft Windows 3.1 Mouse Driver Ready to Run? We have always had problems like this when a retail product that you supply does not correspond to the OEM version and both are called the same name.

Any way, I hope you will understand these concerns and maybe in future you may be able to address them more fully.

Yours sincerely,

Diran Kozandjian
Technical Director

VIGLEN
Viglen House, Alport Lane, Alport, Leicestershire, NAO 1DC

EXHIBIT A

klh

United States District Court
for the
District of Utah
October 19, 1998

* * MAILING CERTIFICATE OF CLERK * *

Re: 2:96-cv-00645

True and correct copies of the attached were mailed by the clerk to the following:

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