

Comes et al.  
v.  
Microsoft  
Corp.

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in this case.

## RECENT MEDIA UPDATE:

8, 2007

**For immediate release:**

### Media Updates

**Plaintiffs' software expert Andrew Schulman concludes that Microsoft Office and Microsoft Internet Explorer make extensive use of undocumented APIs; Microsoft adopts an interpretation of the 2002 Judgment "that makes no sense;" and Microsoft cannot keep track of its source code for Windows.**

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Microsoft took the deposition of Plaintiffs' expert Andrew Schulman this week. Mr. Schulman previously reported that Microsoft had not documented Applications Programming Interfaces ("APIs") used by Microsoft "middleware" including Internet Explorer. Judge Rosenberg granted Plaintiffs' request to provide Mr. Schulman's findings to the government authorities charged with enforcing the 2002 Judgment in *United States v. Microsoft*, which requires disclosure of APIs called by Microsoft middleware.

During his deposition, Mr. Schulman testified that, based on his examination of Microsoft source code, various products, including Office and Internet Explorer, make extensive use of undocumented Windows APIs. These APIs provide functionality in Microsoft's monopoly Windows software that is not available for use by competing developers, such as Corel (whose WordPerfect Office competes against Microsoft Office) or the Mozilla group (whose Firefox web browser competes against Internet Explorer).

#### **1. To justify undocumented APIs, Microsoft adopts a "remarkable" interpretation of the 2002 Judgment "that makes no sense."**

During the deposition, Microsoft attorney Steve Holley claimed that Microsoft is documenting everything required under the Final Judgment. He indicated that shell32.dll and shlwapi.dll, two Windows modules that Schulman previously reported as including undocumented APIs used by IE, had been relocated into the version 6 update for Internet Explorer and thus were not required to be documented under the 2002 Judgment. Schulman responded that if this were true, then Microsoft could reclassify any module it shipped with an Internet Explorer update as no longer part of Windows to avoid disclosure obligations.

Schulman further explained that Microsoft's failure to document the APIs depends on such a toothless interpretation of the 2002 Judgment: "Well . . . yes, if the consent decree requires, for purposes of interface disclosure, so little, and gives Microsoft such completely free rein to redefine at any given time what constitutes middleware simply by adding another module to an update package, then yeah. It's -- if those things are true." Schulman later added that he found Holley's interpretation of "Microsoft Middleware" under the 2002 Judgment to be "a remarkable definition that I still say makes no sense."

Thus, Schulman maintains his view that Microsoft Middleware continues to use undocumented APIs, even after entry of the 2002 Judgment. He added that as a non-lawyer, at trial he does not intend to offer an opinion one way or the other as to whether Microsoft is in compliance with the 2002 Judgment.

"Microsoft appears to believe it can do or say whatever it wants, without regard for the law or the facts," remarked co-lead counsel Richard Hagstrom. "This is reminiscent of Microsoft's 'ham sandwich' approach to operating systems design."

#### **2. Microsoft can't keep track of its source code for Windows.**

Mr. Schulman's report, which was an exhibit to the deposition, reveals that Microsoft is unable to keep track of the source code for Windows. Mr. Schulman quoted from an April 2001 email written by Jim Allchin, in which Mr. Allchin complained that some components shipped with Windows did not check their source code into the Windows build tree:

"Windows as you know contains many pieces of functionality from different groups around the company. Regardless of product, good engineering practice would require us to be able to do a fresh build of a product at any time using the same tools. Unfortunately, we cannot do this with Windows today. . . . We need all the source code for Windows being built out of one place with one consistent set of tools. It is actually amazing how we have not done this for so long. . . . We need to be able to build what we ship long after we RTM. . . . There are legal obligations regarding our ability here. . . . There are 27 components . . . that are still dropping binaries [on Whistler]. . . ."

As Mr. Corliss observed in a November 11, 2006 hearing: "Microsoft has made