

# Media Update

**RE:  
IOWA COURT CASE  
Comes vs. Microsoft, Inc.**

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## **For immediate release:**

**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.**

Microsoft took the deposition of Plaintiffs' expert Andrew Schulman this week. Mr. Schulman previously reported that Microsoft had not documented Application Programming Interface ("API") 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."

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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 Ms. Conlin observed in a November 11, 2006 hearing: “Microsoft has made statements, public statements, reported statements that governments and third-party security auditors have conducted thorough and exhaustive reviews of its Windows source code. That, of course, can’t be true if, in fact, they don’t seem to have all of their Windows source code.” (11-09-2006, Tr at 54:11-54:17). During that hearing, counsel for Microsoft confirm that Microsoft *still* is unable to keep track of its Windows source code.

Due to intense public interest in this issue, Plaintiffs have requested and received permission from the Court to post the Schulman deposition on their web site regarding the *Comes v. Microsoft* case, [www.iowaconsumercase.com](http://www.iowaconsumercase.com). The posted deposition includes the entire certified transcript and all exhibits, including Mr. Schulman’s December 19, 2006 Supplemental Expert Report which details many examples of undocumented Windows APIs used by Microsoft applications and middleware developers. Schulman is expected to testify against Microsoft in the coming weeks.

### **Case background:**

*Comes v. Microsoft* is an Iowa state court class action brought by consumers, small businesses, and other indirect purchasers of Microsoft software products. Plaintiffs allege that from May 18, 1994 through June 30, 2006, Microsoft engaged in illegal

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monopolization and other anticompetitive conduct in the markets for operating systems, word processing, spreadsheets, and office suite software. Plaintiffs contend that Microsoft charged higher prices than it would have charged had it not engaged in the anticompetitive conduct. Plaintiffs also contend that Microsoft's conduct caused its operating systems software to be more vulnerable to security breaches. Plaintiffs seek damages for their injuries. Trial is expected to continue until the spring of 2007.

## **About the firms:**

Roxanne Conlin & Associates P.C. is owned by Roxanne Barton Conlin, a Plaintiffs' attorney whose practice is focused on personal injury and civil rights cases. Ms. Conlin is a former President of the Association of Trial Lawyers of America and a member of the Inner Circle of Advocates. She is co-editor of a 6-volume treatise, *ATLA's Litigating Tort Cases*, published by West Publishing Company (June, 2003). She has also served as United States Attorney for the Southern District of Iowa.

Zelle, Hofmann, Voelbel, Mason & Gette LLP is a national dispute resolution and litigation law firm with offices in Boston, Dallas, Los Angeles, Minneapolis, San Francisco and Washington, D.C. The Zelle Firm handles complex litigation and disputes on a national and international basis. The Firm has about 85 attorneys and represents both defendants and plaintiffs in its trial and dispute resolution practice. The Firm's broad litigation experience includes antitrust, banking, business torts, class action, commercial, employment, environmental, ERISA, financial services, insurance coverage, intellectual property, mass tort, mold claims, personal injury, product liability, professional liability, reinsurance, securities, subrogation third-party recovery, unfair business practice and unfair competition litigation. Co-Lead Counsel Rick Hagstrom has successfully pursued Microsoft in two other class actions. In 2004, Rick, as co-lead counsel, was successful in reaching a settlement with Microsoft of \$182 million on behalf of Minnesota businesses and consumers. In 2006 on behalf of Wisconsin businesses, consumers, school districts, and governmental entities, Rick and co-lead counsel reached a \$224 million settlement with Microsoft. In 2005, Rick was honored as a Minnesota Attorney of the Year.