

# **EXHIBIT 29**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ORACLE CORPORATION, a )  
Delaware corporation, ORACLE )  
USA, INC., a Colorado )  
corporation, and ORACLE )  
INTERNATIONAL CORPORATION, a )  
California corporation, )  
)  
Plaintiffs, )  
)  
vs. ) No. 07-CV-1658 (PJH)  
)  
)  
SAP AG, a German corporation, )  
SAP AMERICA, INC., a Delaware )  
corporation, TOMORROWNOW, )  
INC., a Texas corporation, and )  
DOES 1-50, inclusive, )  
)  
Defendants. )  
\_\_\_\_\_ )

DEPOSITION OF  
ARLEN R. SHENKMAN

\_\_\_\_\_  
VOLUME 2; PAGES 321 - 496

THURSDAY, JUNE 5, 2008

HIGHLY CONFIDENTIAL

REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR

(1-409545)

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10:27:12 1 MR. PICKETT: Q. Before I turn to  
10:27:13 2 Exhibit 245, let me ask you to look at another page  
10:27:15 3 of Exhibit 244. It's the page ending 021.

10:27:24 4 This is a part of a section under 6.23,  
10:27:28 5 Software and Intellectual Property. These are  
10:27:30 6 representations being made by TomorrowNow.

10:27:32 7 A. Okay.

10:27:32 8 Q. (c) on that page states that:

10:27:36 9 Schedule 6.23(c) contains a complete and  
10:27:40 10 accurate list of all company contracts,  
10:27:43 11 excluding off-the-shelf software licenses,  
10:27:46 12 pursuant to which the company or any seller  
10:27:48 13 is authorized, licensed, permitted or granted  
10:27:50 14 any right to exercise any right, title or  
10:27:53 15 interest, including, without limitation, the  
10:27:57 16 right to use, hold for use, distribute,  
10:27:59 17 reproduce, display, perform, modify, enhance,  
10:28:03 18 improve, prepare derivative works based upon,  
10:28:08 19 make, sell or offer for sale into or under  
10:28:11 20 any intellectual property owned by any person  
10:28:13 21 other than the company (third-party  
10:28:17 22 intellectual property).

10:28:19 23 Why did SAP want to get a complete and  
10:28:24 24 accurate list of all contracts authorizing  
10:28:28 25 TomorrowNow to use third-party intellectual

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10:28:30 1 property?

10:28:32 2 A. To my knowledge --

10:28:33 3 MR. McDONELL: Don't disclose privileged  
10:28:34 4 information, if there is any, of course.

10:28:37 5 THE WITNESS: To my knowledge, this is a  
10:28:38 6 clause that's in most asset purchase and stock  
10:28:41 7 purchase agreements.

10:28:42 8 MR. PICKETT: Q. And why is it in most  
10:28:44 9 agreements?

10:28:44 10 MR. McDONELL: Same instruction to you.

10:28:46 11 THE WITNESS: To obtain a list.

10:28:48 12 MR. PICKETT: Q. Well, why do you want to  
10:28:50 13 obtain a list?

10:28:51 14 A. To understand the business.

10:28:52 15 Q. Aren't you -- isn't it a little more  
10:28:54 16 specific than that, Mr. Shenkman?

10:28:56 17 Isn't it that you want to make sure what  
10:28:59 18 whatever third-party intellectual property they're  
10:29:00 19 using, you as buyer want to know what rights they  
10:29:03 20 have to that intellectual property?

10:29:04 21 A. Yes.

10:29:06 22 Q. And did TomorrowNow comply with that; that  
10:29:10 23 is, providing a complete and accurate list of all of  
10:29:13 24 its authorization for third-party intellectual  
10:29:15 25 property?

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10:29:16 1 A. I assume the answer is in here. I don't  
10:29:18 2 specifically recall.

10:29:19 3 Q. Let's look at Schedule 6.23(c), which is  
10:29:22 4 referenced in that prior paragraph. That's in  
10:29:26 5 Exhibit 245, and you have to cross-reference it  
10:29:29 6 back, unfortunately, the way it's done.

10:29:33 7 First look at page ending in 102.

10:29:36 8 A. Yep.

10:29:37 9 Q. And you'll see that that schedule, 6.23(c),  
10:29:44 10 there's a cross-reference.

10:29:46 11 A. Okay.

10:29:46 12 Q. Do you see that?

10:29:47 13 A. I do.

10:29:47 14 Q. It says, see Schedule 6.20(a)(iv).

10:29:53 15 Correct?

10:29:54 16 A. Yes.

10:29:55 17 Q. All right. Let's look at 6.20(a)(iv).  
10:29:58 18 That's on page ending 083. You got to love the  
10:30:10 19 corporate lawyers.

10:30:12 20 If you look at 6.20(a)(iv), you'll see  
10:30:16 21 there are two software contracts listed. Correct?

10:30:21 22 A. I'm sorry. In (iv)? Yes.

10:30:24 23 Q. And what are those two contracts?

10:30:26 24 MR. McDONELL: Can you bear with me one  
10:30:28 25 minute while I catch up? Oh, okay. Thank you.

10:30:36 1 MR. PICKETT: Q. There are two contracts  
10:30:36 2 listed. Do you see that?

10:30:38 3 A. Yes.

10:30:38 4 Q. And they are a 2004 contract between  
10:30:40 5 TomorrowNow and Micro Focus, a Server Express  
10:30:48 6 development license; and a 2002 agreement between  
10:30:53 7 TomorrowNow and Micro Focus to obtain NetExpress  
10:31:00 8 from Micro Focus.

10:31:02 9 Do you see that?

10:31:03 10 A. Yes.

10:31:03 11 Q. And that's the entirety of the contracts  
10:31:09 12 that TomorrowNow held to authorize it to use  
10:31:15 13 third-party intellectual property. Correct?

10:31:18 14 MR. McDONELL: Argumentative, calls for a  
10:31:19 15 legal conclusion.

10:31:20 16 THE WITNESS: That is what it says.

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Q. If SAP found that TomorrowNow was performing illegal downloads and infringing IP, did SAP have the ability to terminate that activity?

MR. McDONELL: Calls for a legal conclusion, improper hypothetical, calls for speculation.

THE WITNESS: It is my understanding of corporate law that the shareholder of an entity has control over that entity and can appoint a board of directors as well as a management team.

MR. PICKETT: Q. Well, it was more than a shareholder, SAP. It had a majority on the board of directors. Correct?

A. I think that's irrelevant.

Q. So the board of directors wouldn't have the ability to terminate illegal activity under your view?

MR. McDONELL: Calls for a legal conclusion. Object to the form of the question.

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13:17:41 1 THE WITNESS: No. My point is, is that the  
13:17:43 2 company, again, going back to corporate governance  
13:17:46 3 and law, a company that owns 100 percent of a  
13:17:49 4 company can appoint -- or, you know, can appoint a  
13:17:52 5 brothers or not appoint a board of directors. It's  
13:17:55 6 up to the shareholder.

13:17:56 7 MR. PICKETT: Q. And then the board can  
13:17:57 8 take action?

13:17:58 9 A. That would be true.

13:17:58 10 Q. And that's what SAP did. It was the  
13:18:00 11 shareholder, and then it appointed the board of  
13:18:02 12 directors?

13:18:02 13 A. That would be true.

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## 1 CERTIFICATE OF REPORTER

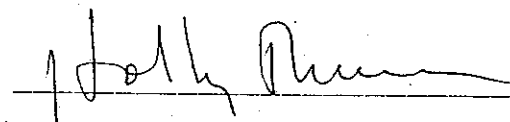
2 I, HOLLY THUMAN, a Certified Shorthand  
3 Reporter, hereby certify that the witness in the  
4 foregoing deposition was by me duly sworn to tell the  
5 truth, the whole truth, and nothing but the truth in the  
6 within-entitled cause; that said deposition was taken  
7 down in shorthand by me, a disinterested person, at the  
8 time and place therein stated, and that the testimony of  
9 the said witness was thereafter reduced to typewriting,  
10 by computer, under my direction and supervision;

11 That before completion of the deposition,  
12 review of the transcript [X] was [ ] was not requested.  
13 If requested, any changes made by the deponent (and  
14 provided to the reporter) during the period allowed are  
15 appended hereto.

16 I further certify that I am not of counsel or  
17 attorney for either or any of the parties to the said  
18 deposition, nor in any way interested in the event of  
19 this cause, and that I am not related to any of the  
20 parties thereto.

21  
22 DATED

6/9/08

23  
24 

25 HOLLY THUMAN, CSR No. 6834

**Corrections to the Transcript of the Deposition of**

**Arlen Shenkman**

**Taken on June 4, 2008**

**Volume 1, Pages 1-320**

Page	Line(s)	Reads	Should Read
15	11	TARGETING	MARKETING
44	21	WALLACE	WALLIS
68	8	BEGGIN	BEGUN

Witness Signature

Date