

# EXHIBIT 31

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

Civil Action No. 3:07-CV-01658 (PJH)

ORACLE CORPORATION, a Delaware corporation, ORACLE  
USA, INC., a Colorado corporation, and ORACLE  
INTERNATIONAL CORPORATION, a California corporation,

Plaintiffs,

v.

SAP AG, a German corporation, SAP AMERICA, INC., a  
Delaware corporation, TOMORROWNOW, INC., a Texas  
corporation, and DOES 1-50, inclusive,

Defendants.

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HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY  
VIDEOTAPE DEPOSITION OF: PETER SURETTE  
June 19, 2009

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PURSUANT TO NOTICE, the videotape  
deposition of PETER SURETTE was taken on behalf of the  
Plaintiff at 16455 East 40th Circle, Aurora, Colorado  
80111, on June 19, 2009, at 11:36 a.m., before  
Sandra L. Bray, Registered Diplomate Reporter,  
Certified Realtime Reporter, and Notary Public within  
Colorado.

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11:52:41 1

11:52:44 2

11:52:46 3

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11:52:51 5

11:52:55 6

11:52:56 7 Q. Yes. I'm particularly interested in

11:53:00 8 rules that would relate to Oracle's intellectual

11:53:03 9 property. Were there any rules in place at

11:53:06 10 TomorrowNow relevant to how you were supposed to be

11:53:11 11 conducting downloads with respect to Oracle's

11:53:15 12 intellectual property --

11:53:16 13 MR. FUCHS: Objection, form.

11:53:18 14 Q. -- prior to the litigation?

11:53:20 15 MR. FUCHS: Objection, form.

11:53:21 16 A. The number one rule that we observed --

11:53:25 17 we never varied from it -- we never downloaded after

11:53:28 18 the maintenance end date. That was the golden rule as

11:53:30 19 we saw it.

11:53:36 20 Q. (BY MR. HOWARD) Were there any other

11:53:38 21 rules that you recall?

11:53:38 22 A. That was the main one. I mean the clock

11:53:42 23 is ticking and we have to finish before the strike of

11:53:47 24 midnight on that day, and that was the one rule we

11:53:54 25 never varied from.

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14:35:47 1

14:35:52 2

14:35:54 3

14:35:59 4

14:36:03 5

MR. HOWARD: We'll mark it as Exhibit

14:36:05 6

1459, an e-mail dated March 21, 2006 from Pete Surette

14:36:17 7

to Mark Kreutz, copy to Laura Sweetman and Keith

14:36:21 8

Shankle, with an attachment: OneWorld Download Change

14:36:35 9

Assistant Client.doc.

14:36:38 10

(Deposition Exhibit 1459 was marked.)

14:36:53 11

Q. (BY MR. HOWARD) So is Exhibit 1459 the

14:36:56 12

document that you worked on or drafted to walk a

14:37:03 13

TomorrowNow employee through the process of obtaining

14:37:07 14

OneWorld downloads from Oracle using Change Assistant?

14:37:11 15

A. Let me read it.

14:37:14 16

(Deponent perused the exhibit.)

14:39:27 17

A. I believe the question was is this

14:39:29 18

document something that was used to train TomorrowNow

14:39:32 19

employees how to download. Now, this was intended to

14:39:36 20

train customers how to download.

14:39:37 21

Q. Okay. Was there a similar document that

14:39:39 22

was created for TomorrowNow employees?

14:39:41 23

A. There could have been.

14:39:48 24

Q. Was this sent to customers?

14:39:49 25

A. It was drafted with the intent to be

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14:39:53 1 sent to customers. I can't say that it ever was.  
14:40:18 2  
14:40:21 3  
14:40:27 4  
14:40:28 5  
14:40:32 6  
14:40:32 7  
14:40:50 8  
14:40:54 9  
14:40:57 10  
14:41:01 11  
14:41:04 12  
14:41:08 13  
14:41:11 14  
14:42:10 15  
14:42:14 16  
14:42:17 17  
14:42:29 18  
14:42:33 19  
14:42:38 20  
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14:42:43 22  
14:42:44 23  
14:42:49 24  
14:42:53 25

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14:48:28 1

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14:48:39 6

14:48:42 7

14:48:44 8

14:48:46 9

14:48:47 10

14:48:47 11

14:48:56 12

14:48:57 13

14:48:58 14

14:49:04 15

14:49:05 16

Q. Exhibit 1461 is an e-mail that forwards

14:49:23 17

from Laura Sweetman to Greg Nelson at the bottom the

14:49:29 18

document that we saw as Exhibit 1459, the instruction

14:49:36 19

set that you said was prepared to send to customers.

14:49:40 20

A. Okay.

14:49:40 21

Q. So on April 21st, 2006, you sent it to

14:49:48 22

Mark Kreutz and Laura Sweetman and Keith Shankle. On

14:49:51 23

April 25th, 2006 at the bottom, she forwards it to

14:49:56 24

Greg Nelson and asks for his view about it, and then

14:50:07 25

he responds in the middle of the e-mail to Laura

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14:50:10 1 Sweetman. Do you see that?

14:50:12 2 A. Yes.

14:50:12 3 Q. And then she forwards that response at  
14:50:16 4 the top to Mr. Kreutz, to you, and to Mr. Shankle on  
14:50:20 5 April 26th, 2006. Do you see that?

14:50:24 6 A. Yes.

14:50:24 7 Q. So you received Mr. Nelson's response to  
14:50:29 8 the document as he writes it here on April 25th, 2006.  
14:50:34 9 Do you recall getting it?

14:50:34 10 A. 'No, I don't.

14:50:35 11 Q. And do you see in reading his response  
14:50:40 12 that he approves of and comments on specifically the  
14:50:50 13 click-through on the license agreement portion of the  
14:50:51 14 Change Assistant instruction manual?

14:51:10 15 A. I see that.

14:51:10 16 Q. Okay. Does that refresh your  
14:51:14 17 recollection that Mr. Nelson was fully aware that the  
14:51:18 18 Change Assistant tool had as a part of its process an  
14:51:24 19 agreement to terms of use and license agreement?

14:51:27 20 A. That certainly implies that he does,  
14:51:31 21 yes.

14:51:57 22

14:52:02 23

14:52:06 24

14:52:08 25

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15:56:46 1

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15:57:13 8 Q. (BY MR. HOWARD) We talked earlier about

15:57:22 9 downloads that happened from time to time after a

15:57:27 10 customer's maintenance end date, and I wanted to show

15:57:29 11 you one e-mail on that topic.

15:57:37 12 MR. HOWARD: Exhibit 1474 is an e-mail

15:57:40 13 exchange between Mark DeLing and Pete Surette and Mark

15:57:44 14 Kreutz at the top, dated October 23rd, 2006.

15:57:52 15 (Deposition Exhibit 1474 was marked.)

15:58:18 16 (Deponent perused the exhibit.)

15:58:30 17 Q. (BY MR. HOWARD) At the bottom of

15:58:31 18 Exhibit 1474, Mark DeLing e-mails you on October 23rd,

15:58:39 19 2006; is that right?

15:58:40 20 A. That's what it says here, yes.

15:58:42 21 Q. And who is Mark DeLing?

15:58:44 22 A. I believe he was Desmond Harris' boss.

15:58:51 23 Q. He says, "Pete, you had mentioned that

15:58:54 24 there were cases where you have seen files that were

15:58:56 25 downloaded the day after an MED," meaning maintenance

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15:59:00 1 end date?

15:59:01 2 A. Yes.

15:59:01 3 Q. "I would be interested in seeing a  
15:59:03 4 customer that has those. If you're able to, please  
15:59:07 5 let let (sic) me know of an example like that." Then  
15:59:15 6 you respond and you say -- your response is at the top  
15:59:18 7 of Exhibit 1474?

15:59:20 8 A. Yes.

15:59:20 9 Q. You say, "Here's the path to one such  
15:59:23 10 customer. Look at the various electronic software  
15:59:27 11 update folders." And the customer is MKS; is that  
15:59:36 12 right?

15:59:36 13 A. It would appear to be so by that file  
15:59:39 14 path.

15:59:40 15 Q. Did you at some point have a list of  
15:59:43 16 customers where you had seen that there were downloads  
15:59:46 17 after the maintenance end date?

15:59:48 18 A. It wasn't -- no, I never had a list of  
15:59:51 19 customers.

15:59:52 20 Q. Do you remember how you identified this  
15:59:57 21 particular path to provide to Mr. DeLing at his  
16:00:01 22 request?

16:00:01 23 A. I was able to provide the path most  
16:00:04 24 likely because I did an audit on this customer the day  
16:00:07 25 after their downloads were done.

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16:00:10 1 Q. Are you able to estimate how many  
16:00:12 2 customers you think had downloads that were obtained  
16:00:17 3 after their maintenance end date?

16:00:19 4 A. I could estimate.

16:00:20 5 Q. What is your estimate?

16:00:23 6 A. Be less than five.

16:00:24 7 Q. And would that include Praxair and  
16:00:27 8 Koontz-Wagner or exclude them?

16:00:29 9 A. Include them.

16:00:34 10 Q. And did you audit each customer that was  
16:00:42 11 downloaded on the OneWorld side for downloads after  
16:00:46 12 the maintenance end date?

16:00:47 13 A. Yes.

16:00:47 14

16:00:49 15

16:00:50 16

16:00:51 17

16:00:54 18

16:00:55 19

16:00:55 20

16:01:03 21

16:01:06 22

16:01:06 23

16:01:11 24

16:01:12 25

REPORTER'S CERTIFICATE

STATE OF COLORADO                    )  
  ) ss.  
CITY AND COUNTY OF DENVER        )

I, SANDRA L. BRAY, Registered Diplomate Reporter, Certified Realtime Reporter, and Notary Public, State of Colorado, do hereby certify that previous to the commencement of the examination, the said PETER SURETTE was duly sworn by me to testify to the truth in relations to the matters in controversy between the parties hereto; that the said deposition was taken in machine shorthand by me at the time and place aforesaid and was thereafter reduced to typewritten form; that the foregoing is a true transcript of the questions asked, testimony given, and proceedings had.

I further certify that I am not employed by, related to, nor of counsel for any of the parties herein nor otherwise interested in the outcome of this litigation.

IN WITNESS WHEREOF, I have affixed my signature this 23rd of June, 2009.

My commission expires January 16, 2012.

  X   Reading and Signing was requested.  
      Reading and Signing was waived.  
      Reading and Signing is not required.

SANDRA L. BRAY  
NOTARY PUBLIC  
STATE OF COLORADO

Sandra L. Bray  
Sandra L. Bray, RMR, RRR, RDR  
Certified Realtime Reporter

Date \_\_\_\_\_