

Final Transcript

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Conference Call Transcript SAP - SAP to Host Teleconference
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CONFERENCE CALL PARTICIPANTS

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UBS - Analyst

James Clark
Credit Suisse - Analyst

Kevin O'Brien
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Helena Lauber
Financial Times Germany - Media

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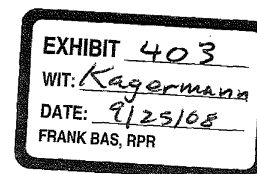
PRESENTATION

Operator

Good morning and welcome to today's SAP conference call. This call is being recorded and will be hosted by Henning Kagermann and Herbert Heitmann. I would now like to turn the call over to Mr. Heitmann. Please go ahead, sir.

Herbert Heitmann - SAP - Global Communications

Good morning. Thank you. I'm Herbert Heitmann of SAP Global Communications at Walldorf. With me here is our CEO, Henning Kagermann, and on the phone Mark White, COO of SAP America. Today's teleconference will focus on SAP's answer to the Oracle complaint filed in March in U.S. District Court regarding our TomorrowNow subsidiary. I will make some introductory remarks and then ask Henning to comment. Afterwards there will be a short opportunity for your questions. Our operator will assist us in staging the questions and will give instructions as to how to submit a question.



UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 Case #: 07-cv-01658-PJH
 PLNTF EXHIBIT NO. 0044
 Date Admitted: _____
 By: _____
 Nichole Heuerman, Deputy Clerk

First a few comments from my side. We have issued a press release that summarizes our answer to the Oracle complaint filed in March and demanded in June. The press release and full text of our court filing together represents the official SAP point of view in this matter.

Both documents are available on a new website that we have established that provides complete information about the Oracle matter. The website at www.tnlawsuit.com is a complete one-stop location for all of you who want to learn about the case and directly access the filings and SAP statements on that matter.

We know that for our U.S. colleagues who have joined this call, the hour is very late or very early. Please note that we will have a second conference call to better accommodate the U.S.-based media at 11am European Daylight Time, or 8am Pacific Daylight Time on July 3.

In addition, we encourage all of you to take the time to read our answer to the Oracle complaint on our site. It provides much more detail than can be explained here. It should be considered part of our official position on the matter. In addition, we have also posted an FAQ on the new site.

Our court filing represents the first formal response made by SAP to the Oracle complaint in the U.S. court system. We have made some public statements at the request of media since March, but the July 2 answer is the first formal response by SAP on the matter.

Because this is an active litigation matter, our comments today must be limited.

We can also inform you today that the U.S. Department of Justice has requested that SAP and TomorrowNow provide certain documents. SAP and TomorrowNow intend to fully cooperate with the request. We do not have any other information on this request at this time.

One other detail before I ask Henning to comment, SAP, as you know, is in its quiet period. As such, we will not answer any financial questions related to the past quarter or our full-year guidance.

With that, I'd like to hand it over to Henning.

Henning Kagermann - SAP - CEO

Yes. Thank you Herbert, and good morning. The filing submitted to the U.S. District Court provides tremendous detail and, in addition to Herbert, I also urge each of you to read it.

Let me add some context for my side. When we learnt of the Oracle complaint on March 22 of this year, I personally was surprised and disappointed that Oracle had not chosen to talk directly to me as soon as they felt something was wrong. We are strong competitors. But we are also partners within the industry, which has an established working practice of addressing matters of concern first between the companies, rather than going directly to the courts.

On seeing the Oracle complaint, I initiated and authorized an immediate and thorough examination of all questions raised by the Oracle allegations. That examination is still continuing and reports to me and the SAP Executive Board. While that examination is still far from complete, we now know enough to provide the court with our first formal answer to the Oracle complaint.

Oracle made more than 150 allegations in their complaint. I cannot address them all here on the call today. So I urge you to read our answer for full details.

We can say that a number of key allegations made by Oracle and examined by us appear to be unfounded. In particular, we believe that SAP did not have access to Oracle materials downloaded by TomorrowNow. Oracle's support materials and back fixes remains in TomorrowNow's separate systems and did not pass across our firewall to SAP.

However, some TomorrowNow activity went beyond what is appropriate and contravened our high standards and business procedures. Let me explain.

TomorrowNow often downloads support materials for and on behalf of its customers who have chosen third party support for their legacy Oracle applications. Third party maintenance providers, like TomorrowNow, depend on their customers, in this instance, companies who use Oracle-provided software, permitting the service provider access to support materials through the customer's password to provide support and service to those customers' Oracle applications. And even Oracle admits the appropriateness of this approach.

However, TomorrowNow made some inappropriate downloads. Even a single inappropriate download is unacceptable from my perspective. We

regret very much that this occurred. I want to reassure our investors, employees, customers and partners that SAP takes any departure from the high standards we set for all of our businesses very seriously, regardless of where it occurred or how confined it may be.

I have authorized additional operational oversight at TomorrowNow which will ensure the maintenance of excellent service for TomorrowNow customers and for maintenance of the SAP firewall.

Specifically, when presented with our initial examination results, I directed my team to institute changes in TomorrowNow's operational management to ensure compliance with appropriate business practices. These include the appointment of SAP America Chief Operating Officer and former Chief Financial Officer, Mark White, as TomorrowNow's Executive Chairman to manage TomorrowNow operations, including compliance programs. Andrew Nelson, TomorrowNow's CEO, will report to Mark. Mark White will enforce existing procedures and, if required, implement new policies. He will also oversee renewed training for TomorrowNow employees to assure full understanding of the policies and procedures.

Mark is with me here on the telephone call. I thank him for taking on this important assignment. And he is happy to answer questions on his assignment.

Finally, let me be clear about our commitments to support existing TomorrowNow customers. Like the protection of IP, customer support is one of our core values. And we will continue our commitment in that regard. I have trust in Mark. He will take whatever steps are necessary in overseeing TomorrowNow, its support of customers and the heightened approach to compliant issues.

Our litigation team will move appropriately forward with this matter in the U.S. courts. And we are focused on addressing this matter as quickly as possible and will take appropriate action.

Now I am happy to take questions. But let me remind you, as this is now a matter of ongoing litigation, I am restricted in what I can say. I therefore urge you once more to study our published and detailed answer to the Oracle allegations filed with the court and available on our website.

Herbert Heitmann - SAP - Global Communications

Thank you, Henning. And operator, please submit the questions now to us.

QUESTION AND ANSWER

Operator

(OPERATOR INSTRUCTIONS). The first question comes from Mr. [Euan Karber] from Dow Jones. Please state your company name, followed by your question.

Euan Karber - Dow Jones - Media

Hello. Euan Karber, Dow Jones. Well, you said that SAP's committed to continue service existing customers at TomorrowNow. Will you also add new customers in the coming period?

Henning Kagermann - SAP - CEO

We will not change the business of TomorrowNow. But I have authorized Mark to oversee completely the operations and he will ensure that all the downloads were done in an appropriate manner.

Euan Karber - Dow Jones - Media

Okay. But for the rest there will be no change to the Safe Passage program and TomorrowNow's role in that?

Henning Kagermann - SAP - CEO

There is no reason to change the Safe Passage program because TomorrowNow is just a piece of the overall program.

Euan Karber - Dow Jones - Media

Okay. But still, just to double check, so you will continue to use TomorrowNow and add more customers to TomorrowNow, or allow it to add more customers to its business?

Henning Kagermann - SAP - CEO

Yes.

Euan Karber - Dow Jones - Media

Okay.

Herbert Heitmann - SAP - Global Communications

Thank you. Next question please.

Operator

Thank you. The next question comes from Mr. [Thomas Schmidt] from Euro am Sonntag. Please state your company name, followed by your question.

Thomas Schmidt - Euro am Sonntag - Media

Yes. Good morning everybody. Thomas Schmidt of Euro am Sonntag in Munich. Just two questions. One, how long will the investigation that you are doing yourself last at TomorrowNow? And who is doing this investigation, and how many people?

And second, do you see any or do you expect any damage for your U.S. business for the remainder of the year? Can you comment something on that? Thank you.

Henning Kagermann - SAP - CEO

Thank you. This examination, there are several people involved. We will do it as long as it's necessary. I don't see today any potential damage for our U.S. business.

Herbert Heitmann - SAP - Global Communications

Thank you. Next question please.

Operator

The next question comes from Michael Briest. Please state your company name followed by your question.

Michael Briest - UBS - Analyst

Morning. It's Michael Briest at UBS. Henning, perhaps you could update us on the size of TomorrowNow in terms of revenues and contribution to SAP.

Also in terms of whether you feel at this stage it's necessary to make any accruals for potential litigation costs or damages.

And finally, perhaps a bit more detail on what the Department of Justice is looking for from SAP and TomorrowNow.

Henning Kagermann - SAP - CEO

Yes. The Department of Justice has just requested certain documents, TomorrowNow and us provide certain documents, that's all.

The -- you know that we have -- no amounts have been accrued for any open intellectual property matters in the Q1 report. As you also know, it's now time to close our Q2 and it's obvious that we will evaluate all open litigations. It's a normal procedure. And we'll then report, let's say, on our judgment once we have our conference call about the Q2 closing.

And with the business of TomorrowNow, I think the best is looking into our annual report. It's not a significant piece of SAP business, as you know. But there are all details available.

Herbert Heitmann - SAP - Global Communications

Thank you. Next question please.

Operator

(OPERATOR INSTRUCTIONS). The next question comes from Mr. James Clark from Credit Suisse. Please go ahead, sir.

James Clark - Credit Suisse - Analyst

Thank you. Good morning gentlemen. You said there the Department of Justice had requested certain documents, but I'm not sure that clarified for any of us quite what it was that they were looking for. If you could expand on that, I'd be grateful.

My second question is whether or not you are continuing to sell the TomorrowNow offering to new customers since the instigation of this lawsuit and whether you will continue to download materials from Oracle on behalf of those new customers into the future.

Henning Kagermann - SAP - CEO

Thank you. We have no further information from the Department of Justice. They just requested this last week. So I cannot share more information at this time.

We, as I said, will continue to support customers and we will continue to deliver on request of new customers. As I said, most, if you look to the press release, most of the downloads were done in an appropriate manner. That we found through our examinations. I said that some downloads were inappropriate. And from that point of view, we can continue with downloads if people follow the procedures that are in place at TomorrowNow.

James Clark - Credit Suisse - Analyst

Thank you very much.

Operator

Thank you. The next question comes from Mr. Kevin O'Brien from New York Times International. Please state your question.

Kevin O'Brien - International Herald Tribune, New York Times - Media

This is Kevin O'Brien with the International Herald Tribune, New York Times. Two questions, Mr. Kagermann. You mentioned that some inappropriate downloads had occurred. Could you be more specific? What was downloaded that was inappropriate?

The second question is you mentioned you'd like to settle this as quickly as possible raises the possibility to me, at least, are you attempting to settle this out of court? Have you made an offer to Oracle to settle this and the litigation?

Henning Kagermann - SAP - CEO

Yes. Thank you for your questions. And let me say that because the number of key allegations made by Oracle and examined by us appeared to be unfounded, we don't want to speculate today about our legal options. It's too early.

You know that it's typical in civil litigations in the U.S. that the courts have rules that require the parties to discuss alternative resolution, dispute resolution methods. And we will comply with that. That's also sure.

When I mentioned inappropriate downloads, then I can say that TomorrowNow had clear procedures in place but they were not apparently, not followed properly in all cases. And that means that not in all cases exactly the material was downloaded they were allowed to do so.

Herbert Heitmann - SAP - Global Communications

Thank you. Next question please.

Operator

Thank you, sir. There appears to be no further questions at this time. Please continue with any other points you wish to raise.

Herbert Heitmann - SAP - Global Communications

So if you have any further questions, please indicate to the operator. Otherwise we would suggest that you go to the website that I mentioned, www.tnlawsuit.com to access all the available material, and certainly we will be available throughout the day for further questions. But here now is the opportunity. If you have any further questions, please indicate now.

Operator

We do have a further question, sir. Miss [Helena Lauber] from Financial Times, Germany. Please state your question, madam.

Helena Lauber - Financial Times Germany - Media

Yes. Hello, Mr. Kagermann. It's a follow-up on the question by the colleague from the New York Times. It's still not quite clear to me what was downloaded inappropriately by some of the TomorrowNow people. Could you maybe give some more detailed sort of information they downloaded?

Henning Kagermann - SAP - CEO

Thank you. That might be explained a little bit the -- what TomorrowNow is doing. As I said in my opening remarks, TomorrowNow is supporting Oracle-acquired software applications on behalf of customers. In order to do so, the customers share their password with TomorrowNow so that they can download the support material in order to provide the services. This is an accepted, let's say, business practice in the industry.

Now what you have to do is you have to have procedures which exactly define what support material people are allowed to download. These procedures, as far as our examination today indicates, are in place, properly in place. But, as I said, in some cases they were not followed properly. And that tells us that people have downloaded support material for some customers they were not allowed to download.

Herbert Heitmann - SAP - Global Communications

Next question please.

Operator

Thank you. The next question comes from Mr. Thomas Schmidt from Euro am Sonntag. Please state your question, sir.

Thomas Schmidt - Euro am Sonntag - Media

Yes. Thank you. Just one more question on Oracle. Do you have any contacts right now with Oracle, or are you seeking to have these contacts

within the next couple of days or weeks to maybe to look for a potential solution for this case?

Henning Kagermann - SAP - CEO

Let me also remind you what I said. As far as we know, and if you look to the allegations, then you see that Oracle seemed to become aware of some, from their point of view, surprising or strange downloads at the end of last year. They went to court on March 22. We were not contacted by them before or after. And from that point of view you can understand that we expect that the next scheduled event will be the initial case management conference at September 4.

Operator

Thank you. The next question comes from Mr. Knut Woller from Unicredit HVB. Please state your question.

Knut Woller - Unicredit HVB - Analyst

Yes. Hello. Just one question. In the beginning, Henning, you were pretty rigorous, stating that -- or defending against the claims by Oracle. Now there is the admission of some inappropriate downloads. Can you rule out at this point of time, since your internal investigations have not been closed, that it really remains in the 'some' inappropriate downloads?

And where is -- or I'm not sure whether you can give something like a percentage, which of the downloads were correct and which were inappropriate, just to better feeling for the meaning of 'some'. Thanks.

Henning Kagermann - SAP - CEO

As you know, it's ongoing and therefore it's not possible today to give exact numbers. As we stated in the press release, most downloads we have examined so far were appropriate. But there were some inappropriate ones.

So -- and please understand, we learnt this just recently that there have been some inappropriate downloads. And, as I said, TomorrowNow had clear procedures in place, but these were apparently not followed properly in all cases. So there was no reason from my side earlier to believe that, let's say, these things were not followed properly.

Knut Woller - Unicredit HVB - Analyst

Okay. Thanks very much.

Operator

(OPERATOR INSTRUCTIONS). The next question comes from Mr. [Hoi Lam] from Citigroup. Please state your question.

Hoi Lam - Citigroup - Analyst

Good morning. I have two questions. One is related to the inappropriate downloads. And what I'm assuming from what you said is that TomorrowNow have basically used customers' passwords to download materials for their own purposes. And, as a result, what are you telling those customers for hearing their passwords have been used? And is there a possibility that they could sue SAP? That's my first question.

And the second question is if TomorrowNow basically go out to Oracle to purchase those appropriate, let's say, support, in order to download those materials that have been downloaded as inappropriate downloads, how much would they cost and do you have those figures? Thank you.

Henning Kagermann - SAP - CEO

I think the second question was too detailed to answer it now. But let's -- let me answer the first one. Again, TomorrowNow is allowed to download support material on behalf of the customer and, for this purpose, use the password of the customer. And TomorrowNow was using the downloads for these customers. That's very important.

With inappropriate, I meant that as far as we could see from our ongoing examinations, that in some cases they downloaded support material where they were not allowed to download according to the support contract of the customer.

Herbert Heitmann - SAP - Global Communications

Thank you. Next question please.

Operator

Thank you. The next question comes from Mr. Steven Goldstein from MarketWatch. Please state your question.

Steven Goldstein - MarketWatch - Media

Hello. I have two questions. The first, just to go back to the inappropriate downloads, that these were documents that TomorrowNow took. Can you explain just in a little bit more detail about where they crossed the line? It's just unclear to me.

And the second question is does it make a difference -- you say that SAP do not have access to the intellectual property. What difference from a legal perspective does that mean whether they stayed at the subsidiary or whether they went to a different part of the company?

Henning Kagermann - SAP - CEO

The -- I can just repeat what I said to the inappropriate downloads. They downloaded support material. It seems to be, in some cases, they downloaded more than they were allowed to. They kept this material in their separate systems at TomorrowNow. That's very important.

When we acquired TomorrowNow, we intentionally had chosen an organizational setup which keeps a clear firewall between TomorrowNow's operation and SAP because we didn't want SAP employees to come into contact with the Oracle support material downloaded by TomorrowNow on behalf of their customers, but kept in their systems.

I think it's very important that this firewall is intact. And from that point of view, this makes a big difference that the downloaded material is kept at TomorrowNow's site because TomorrowNow's employees have no contact to SAP's business and to the support and development of SAP products.

Herbert Heitmann - SAP - Global Communications

We take one last question please.

Operator

Thank you, sir. The last question comes from Mr. Knut Woller from Unicredit HVB. Please state your question.

Knut Woller - Unicredit HVB - Analyst

Yes. Hello. Just a follow-up. Henning, just to make sure that I understand it correctly, how is it technically possible if you only have a limited right by a password to get access to support material that you finally, if you just have chosen the certain right, isn't there any protection on the side or behalf of Oracle? Is it really always up to the customer to decide which materials can be downloaded, just to understand this process? Thanks.

Henning Kagermann - SAP - CEO

Yes. Thank you very much. I believe that's a question you should ask Oracle. I would have expected the same, but it seems to be, indeed, that the customer is to take care of this.

Knut Woller - Unicredit HVB - Analyst

Okay. Interesting. Thanks.

Herbert Heitmann - SAP - Global Communications

Thanks very much. Thank you to all for joining us. And we wish you a nice day. Thank you very much. Bye.

Operator

Thank you. This concludes today's conference call. Thank you for participating. You may now disconnect your lines.

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