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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

ORACLE USA, INC., *et al.*,
 Plaintiffs,
 v.
 SAP AG, *et al.*,
 Defendants.

CASE NO. 07-CV-01658 PJH (EDL)

**ORACLE'S RESPONSES TO
 DEFENDANTS' OBJECTIONS TO
 ORACLE'S DEPOSITION
 DESIGNATIONS**

Date: November 1, 2010
 Time: 8:30 a.m.
 Place: Courtroom 3
 Judge: Hon. Phyllis J. Hamilton

Case No. 07-CV-01658 PJH (EDL)

EXHIBIT A

<i>Testimony</i>	<i>Defendants' Objection</i>	<i>Oracle's Responses</i>
Apotheker, Leo 10/02/08		
<p>Apotheker, Leo 147:16 - 148:1 Q. Okay. Let's go to the next one. "The big issue as we know it continues to be contractual limitations." And you said, "My guess is that we will chart a course into very dangerous waters. But again, it is worth while to investigate the contractual language in Siebel and Oracle contracts?" Do you remember what you meant by "chart a course into very dangerous waters"? A. No, I don't.</p>	<p>Defendants' MIL #9. This testimony violates the Court's ruling on Defendants' MIL #9 regarding Oracle's EBS software which is not at issue. The document quoted from discusses EBS and the testimony regarding "Oracle contracts" is a reference to EBS.</p>	<p>Oracle responds to Defendants' objection to this deposition designation as follows:</p> <p>Oracle will redact the quoted document to remove references to Defendants' plan to support EBS, in accordance with MIL #9. However, the cited testimony does not refer to EBS, and thus is not subject to the relevant MIL.</p> <p>Ruling: _____</p>
Baugh, John 08/13/09		
<p>Baugh, John 128:5 - 128:16 Q. So, no later than August 28, 2007, everybody on your e-mail, Exhibit 1550, knew that these client environments were working from a shared install? MR. WILKES: Objection, form. A. Yes. Q. (By Mr. Howard) And that included Shelley Nelson? A. Yes. Q. Included Kathy Williams? A. Yes. Q. Included the Greg Lanier? MR. WILKES: Objection, form. A. Yes.</p>	<p>Speculation; No foundation. Mr. Baugh could not know what "everybody" knew on his email or even if "everybody" read his email.</p>	<p>Oracle responds to Defendants' objection to this deposition designation as follows:</p> <p>The testimony is allowed under Fed. R. Evid. 602 and 701(a), because it is rationally based on the witness's perception and personal knowledge from Exhibit 1550 (Oracle's PTX 475), attached as Exhibit B, and from his personal knowledge of subsequent actions of those involved. Baugh Tr. at 129:11-129:23 ("Q. (By Mr. Howard) Did anybody say in response to your August 28, 2007, e-mail, as Mr. Guzman writes in his meeting minutes on February 8, 2008: "These clients need to be prioritized to the front of the line in the environments project and get</p>

<i>Testimony</i>	<i>Defendants' Objection</i>	<i>Oracle's Responses</i>
		<p>completed immediately"? MR. WILKES: Objection, form. A. Not that I recall. Q. (By Mr. Howard) It wasn't until you gave your testimony under oath to me on February 6th, 2008, that such a meeting was convened and these environments were given that top priority; is that right? MR. WILKES: Objection, form. A. Yes.").</p> <p>Ruling: _____</p>
<p>Baugh, John 128:17 - 128:21 Q. (By Mr. Howard) And can you explain why these environments were not prioritized at least as of your August 28, 2007, e-mail? MR. WILKES: Objection, form. A. No.</p>	<p>Speculation; No foundation. Mr. Baugh was not in a management position and was not a decision maker. There is no foundation laid to show that he would know "why."</p>	<p>Oracle responds to Defendants' objection to this deposition designation as follows:</p> <p>The fact that the witness has no explanation is not speculation. His testimony to that fact is allowed under Fed. R. Evid. 602 and 701(a), because it is rationally based on the witness's perception and personal knowledge.</p> <p>Ruling: _____</p>
Geib, Bob 4/21/09		
<p>Geib, Bob 330:14 - 331:5 Q. And to my prior question, the sentence before it says: "Effectively, on the last read of the license and then the EEL amendment that they have, they have some problem language on the ability to provide us with access to the software. I did</p>	<p>Hearsay; Fed. R. Evid. 1002. The question seeks the deponent to confirm the truth of the matters asserted in a hearsay document. To the extent the document could be otherwise admitted, the content of the document is not being offered to demonstrate the existence of the document or the deponent's</p>	<p>Oracle responds to Defendants' objection to this deposition designation as follows:</p> <p>The testimony does not violate Fed. R. Evid. 1002 as it confirms and corroborates the contents of the document, and is not offered for the truth of the statements contained</p>

<i>Testimony</i>	<i>Defendants' Objection</i>	<i>Oracle's Responses</i>
<p>bring in Scott Trainor, he did a great job, on handling that last issue.” Do you see that? A. Yes. Q. So it appears Scott was able to handle the issue with respect to access to the software? MS. FROYD: Objection. The document speaks for itself. THE WITNESS: Yes. I don't specifically remember this, but that's what the document says.</p>	<p>understanding of the documents, and therefore is inadmissible because the document is the best evidence of what it states.</p>	<p>within the document. Ruling: _____</p>
Kreutz, Mark 02/19/08		
<p>Kreutz, Mark 204:12 - 205:3 Q. You believed at the time that it was appropriate to copy downloads taken for other customers, in order to clean up and complete the Praxair folder? MR. COWAN: Objection, form. THE WITNESS: No. I don't believe that it was part of the policy that we were supposed to be following. MR. HOWARD: Q. My question is, did you believe at the time that that was appropriate, to do what you did, when you split the master folder into the specific client folders, to populate them with downloads taken from other clients? Did you believe that was appropriate or not? Yes or no. MR. COWAN: Objection to form. THE WITNESS: No.</p>	<p>Vague and ambiguous; Legal conclusion; Compound; Fed. R. Evid 403. The use of the term “appropriate” in the question is vague and ambiguous and/or renders the question compound without discerning whether “appropriate” means the conduct at issue was compliant with: (a) TN's policies; (b) the customer's license agreement with Oracle; or (c) the law. The jury could construe “appropriate” as a synonym for “legal” and thus the question calls for a legal conclusion and would otherwise confuse and mislead the jury.</p>	<p>Oracle responds to Defendants' objection to this deposition designation as follows:</p> <p>The term “appropriate” was used by Defendants in a July 3, 2007 conference call with industry analysts following the filing of the current litigation. Specifically, SAP's then-CEO, Henning Kagermann, admitted that said “some TomorrowNow activity went beyond what is appropriate” and “TomorrowNow made some inappropriate downloads.” PTX 461, attached as Exhibit C. Defendants' objection to examination about the practices they so characterized that the term is now vague or confusing has no merit given their own use of the term.</p> <p>Moreover, the objection that the question calls for a legal conclusion is moot as the</p>

<i>Testimony</i>	<i>Defendants' Objection</i>	<i>Oracle's Responses</i>
		<p>illegality of the predicate copying and cross-use referred to is undisputed.</p> <p>The testimony is also proper under Fed. R. Evid. 602, 701(a) because it is rationally based on the witness's perception and personal knowledge. Kreutz Tr. at 169:1-10 ("Q. So under World, the customers whose downloads were put into this master library that wasn't segregated by customer were Barrie Hydro, Koontz Wagner, Lexmark, Nitta Casings, Wabash and JW Harris? A. Yes, I believe that's true. Q. And for One World, the customers whose downloads were placed into this master library that wasn't segregated by customer were Wabash, Dana, Praxair and Yazaki-Europe? A. Yes.").</p> <p>Ruling: _____</p>
Lester, Beth 4/22/09		
<p>Lester, Beth 181:15 - 181:23 Q. Do you think it's appropriate to take one client's software and copy to create a different environment for a different customer? MR. COWAN: Objection to form – MR. BYE: Objection to form. THE DEPONENT: I think it would depend upon the process. My gut feeling is no, but I think it would depend</p>	<p>Vague and ambiguous; Legal conclusion; Compound; Fed. R. Evid 403; Speculation; No foundation. The use of the term "appropriate" in the question is vague and ambiguous and/or renders the question compound without discerning whether "appropriate" means the conduct at issue was compliant with: (a) TN's policies; (b) the customer's license agreement with</p>	<p>Oracle responds to Defendants' objection to this deposition designation as follows:</p> <p>The term "appropriate" was used by Defendants in a July 3, 2007 conference call with industry analysts following the filing of the current litigation. Specifically, SAP's then-CEO, Henning Kagermann, admitted that said "some TomorrowNow activity went</p>

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upon the process and all of the steps involved to do so.	Oracle; or (c) the law. The jury could construe "appropriate" as a synonym for "legal" and thus the question calls for a legal conclusion and would otherwise confuse and mislead the jury. There is no evidence that she has personal knowledge sufficient to testify regarding "appropriateness" of the conduct if the question relates to compliance with the customer's license agreement or the law. Thus any answer by this deponent lacks foundation and would be pure speculation.	beyond what is appropriate" and "TomorrowNow made some inappropriate downloads." PTX 461, attached as Exhibit C. Defendants' objection to examination about the practices they so characterized that the term is now vague or confusing has no merit given their own use of the term. Moreover, the objection that the question calls for a legal conclusion is moot, as the illegality of the predicate copying and cross-use referred to is undisputed. Also, the testimony is proper under Fed. R. Evid. 602 and 701(a), because testimony about a "gut feeling" is rationally based on the witness's perception and personal knowledge. Ruling: _____
Nelson, Andrew 2/26/09		
Nelson, Andrew 100:9 - 100:12 MR. HOWARD: Q. Mr. Nelson, after consulting with your counsel are you able to answer the question? A. Can you please repeat it?	Defendants' MIL #6; Relevance; Fed. R. Evid. 403. The question clearly references the attorney's privilege instruction during the deposition and has no probative value. Thus, the question violates the Court's Order granting Defendants' MIL #6. Moreover, it is confusing and unfairly prejudicial.	Oracle responds to Defendants' objection to this deposition designation as follows: Oracle withdraws this designation.
Nelson, Andrew 108:9 - 109:2 THE WITNESS: Can you	Argumentative; Relevance; Fed. R. Evid. 403. The bolded portions have no probative	Oracle responds to Defendants' objection to this deposition designation as

<i>Testimony</i>	<i>Defendants' Objection</i>	<i>Oracle's Responses</i>
<p>restate that question?</p> <p>MR. HOWARD: Q. It's the same question I have asked three times. What rules did you put into place, other than maintenance end date and other than not sending fixes to customers that you weren't supporting on that release, designed to ensure that PeopleSoft's intellectual property rights were not violated?</p> <p>MR. FUCHS: Objection to form.</p> <p>THE WITNESS: Sorry for my confusion. There is just a lot there, the beforehand that you are talking about. I recall maintenance end date being an issue, something that we considered. I remember making sure that we weren't taking something that was clearly tied to a product outside of what we believed the customer was licensed for. I recall those two examples.</p>	<p>value, highlight the argumentative nature of the question and should be removed.</p>	<p>follows:</p> <p>The question is not unduly prejudicial as it was in fact asked multiple times leading up to the cited testimony due to counsel's objections and the witnesses failure to fully respond. Nelson Tr. at 106:5-106:11 ("Q. Were there any -- were there any rules at TomorrowNow prior to the acquisition by SAP designed to ensure that PeopleSoft intellectual property rights were respected? MR. FUCHS: Objection. Form. THE WITNESS: Sure."), 106:21-107:2 ("Q. Other than that maintenance end date rule that you have described, were there any other rules that you put into place at TomorrowNow designed to ensure that PeopleSoft's intellectual property rights were not violated? MR. FUCHS: Objection to form. THE WITNESS: There may have been others."), 108:4-108:7 ("MR. HOWARD: Q. I want to make sure I understand as best that you can recall today under oath what those rules were. You have said there was a rule about maintenance end date and a rule about providing a fix to a customer on a release that wasn't supported by TomorrowNow. Are there any other rules that you can recall that you put into place at TomorrowNow designed to ensure that PeopleSoft's</p>

<i>Testimony</i>	<i>Defendants' Objection</i>	<i>Oracle's Responses</i>
		<p>intellectual property rights were not violated? MR. FUCHS: Objection. Form. THE WITNESS: Can you restate that question?")</p> <p>Ruling: _____</p>
Phillips, Spencer 7/22/09		
<p>Spencer, Phillips 45:24 - 46:1 & 46:25 - 47:4 Q. Who – who is Scott Trainor? A. Scott Trainor is an SAP attorney who supported TomorrowNow in the first year I was with them. . . . Q. What was his primary responsibility with respect to TomorrowNow when he was supporting TomorrowNow? MR. COWAN: Objection, form. A. To review – to help with contract negotiations, anything that required a change for a legal term.</p>	<p>No foundation. The deponent was a TomorrowNow sales person who has no personal knowledge regarding Scott Trainor's "primary responsibility with respect to TomorrowNow."</p>	<p>Oracle responds to Defendants' objection to this deposition designation as follows:</p> <p>The testimony is admissible under Fed. R. Evid. 602 and 701(a) as it is based on the witness's perception and personal knowledge. PTX 252, attached as Exhibit D; Spencer Tr. 127:12-129:16 ("Q. So, is this the e-mail that you described earlier to Raytheon where you were relaying the contents of your - - of a conversation with Scott Trainor? A. That's -- that is correct. . . . Q. He was giving you -- did you make it clear to Scott that you were asking for this information so that you could relay it to a customer? A. I don't think -- I mean, he knew that I was in a sales cycle with this customer and that I was trying to gain an understanding of how the contracts evolved or why -- you know, just kind of how things evolved, why, et cetera. Q. So, you told Scott Trainor that you needed information to help you with your sales cycle with a customer? A. Yeah, he</p>

<i>Testimony</i>	<i>Defendants' Objection</i>	<i>Oracle's Responses</i>
		<p>-- sure. He knew I was in a sales cycle and he -- I believe, as I recall, he understood that - that I was working with a customer and my question was contract is silent here. Is there -- you know, how -- how -- why would it -- why would it not mention anything to do with third-party access?</p> <p>Ruling: _____</p>
Ravin, Seth 7/21/10		
<p>Ravin, Seth 282:17 - 283:11 MR. HOWARD: Q. Good morning, Mr. Ravin. A. Good morning. Q. Do you understand that we are here today as a continuation of your deposition on May 21st, 2009 when I deposed you at the offices of your former counsel, Wilson Sonsini? A. Yes. Q. And do you understand why you are here today? A. Yes. Q. What is that understanding? A. We are continuing the deposition that we had on May 21st of 2009. Q. Do you understand that's pursuant to a court order that requires you to answer questions related to some questions that you were instructed not to answer at that last deposition? A. I understand that this</p>	<p>Relevance. This entire line of questioning is not probative because it simply confirms the witness' understanding that he is appearing for this deposition as a result of a U.S.D.C. – Nevada Court ruling related to a discovery dispute that arose in his prior deposition in this case, which was taken under a subpoena issued from that Nevada Court.</p>	<p>Oracle responds to Defendants' objection to this deposition designation as follows:</p> <p>The testimony goes to the credibility of the witness, and impeaches the testimony designated by Defendants regarding the deponent's alleged offer to share information with Oracle.</p> <p>Specifically, Defendants designated testimony from this same witness that "On the call, Rimini Street offered to share Rimini Street internal information and/or work out an agreement that would utilize an independent third party auditor reporting back to both parties to confirm Rimini Street's compliance with its standard processes and procedures. Oracle never responded to any of Rimini Street's proposals." Ravin Tr. at 363:3-363:13. Oracle has objected to this testimony as</p>

<i>Testimony</i>	<i>Defendants' Objection</i>	<i>Oracle's Responses</i>
<p>requires me to answer questions that were posed and approved by the judge.</p>		<p>inadmissible hearsay.</p> <p>If Oracle's objection is overruled, the testimony is necessary to fairly assess the veracity of the deponent's statements, as he refused to answer questions at his previous deposition, was ordered by the United States District Court for the District of Nevada to appear for further deposition, and was held in contempt before finally agreeing to appear almost a year later to answer the original questions. Case No. 2:09-cv-01591-KJD-GWF, Dkt. Nos. 38 & 49.</p> <p>Ruling: _____</p>
<p>Ravin, Seth 369:7 - 370:10 MR. HOWARD: Q. Mr. Ravin, let me direct your attention to Exhibit 947, which is the Rimini Street press release. Do you have that in front of you? A. Just a second. I now have it in front of me. Q. Looking down at the -- towards the bottom there is a paragraph there that begins "In February 2009." Do you see that? A. Yes. Q. That paragraph is referring to a phone call that you testified about in response to Mr. Cowan's questions between counsel for Rimini Street and counsel for</p>	<p>Oracle's MIL #7; Defendants' MIL #6; Relevance; Argumentative. Exhibit 947 mentions Oracle's lawsuit against Rimini Street and Rimini's counter-claims in that same suit and thus violates the Court's Order granting Oracle's MIL #7. The deponent's refusal, at his counsel's direction, to answer the bolded question during his previous deposition in this case, is both irrelevant and violations the Court's Order granting Defendants' MIL # 6. Moreover, counsel's chiding of the deponent regarding that fact is argumentative.</p>	<p>Oracle responds to Defendants' objection to this deposition designation as follows:</p> <p>Oracle will offer Exhibit 947 into evidence with any portion of the document relating to motions in limine redacted, and thus the referenced MILs are not implicated.</p> <p>Further, the testimony goes to the credibility of the witness, and impeaches the testimony designated by Defendants regarding the deponent's alleged offer to share information with Oracle.</p> <p>Specifically, Defendants have designated testimony from the</p>

<i>Testimony</i>	<i>Defendants' Objection</i>	<i>Oracle's Responses</i>
<p>Oracle? A. Yes. Q. You misremembered the date of that call, did you not -- A. Yes. Q. -- in your testimony? A. Yes. Q. You testified that in that call your lawyer communicated that Rimini Street had local copies of Oracle software on Rimini Street systems. Is that your testimony here today? A. That's my understanding. Q. And yet you refused, at your same lawyer's direction, to answer those questions at your May 21, 2009 deposition; is that right? A. Yes.</p>		<p>same witness that "[o]n the call, Rimini Street offered to share Rimini Street internal information and/or work out an agreement that would utilize an independent third party auditor reporting back to both parties to confirm Rimini Street's compliance with its standard processes and procedures. Oracle never responded to any of Rimini Street's proposals." Ravin Tr. at 363:3-363:13. Oracle has objected to this testimony as inadmissible hearsay.</p> <p>If Oracle's objection is overruled, the testimony is necessary to fairly assess the veracity of the deponent's statements, as he refused to answer questions at his previous deposition, was ordered by the United States District Court for the District of Nevada to appear for further deposition, and was held in contempt before finally agreeing to appear almost a year later to answer the original questions. Case No. 2:09-cv-01591-KJD-GWF, Dkt. Nos. 38 & 49.</p> <p>Ruling: _____</p>
<p>Ravin, Seth 370:18 - 371:25 MR. HOWARD: Q. Now, you testified to Mr. Cowan that you reviewed and approved</p>	<p>Oracle's MIL #7; Relevance; Argumentative; Fed. R. Evid. 403. Exhibit 947 mentions Oracle's lawsuit against Rimini Street and Rimini</p>	<p>Oracle responds to Defendants' objection to this deposition designation as follows:</p>

<i>Testimony</i>	<i>Defendants' Objection</i>	<i>Oracle's Responses</i>
<p>Exhibit 947 before it was released to the public. Is that right?</p> <p>A. That is correct.</p> <p>Q. And you believe each statement in this press release to be an accurate statement of fact; is that right?</p> <p>A. Yes.</p> <p>Q. Looking at that same paragraph that begins "In February 2009," the second sentence of that paragraph, would you please read that sentence?</p> <p>A. "On the call, Rimini Street offered to share Rimini Street internal information and/or work out an agreement that would utilize an independent third party auditor reporting back to both parties to confirm Rimini Street's compliance with its standard processes and procedures."</p> <p>Q. It says that Rimini Street offered to share, does it not?</p> <p>A. Yes.</p> <p>Q. It doesn't say shared. True?</p> <p>A. Yes. But this is an additional information on top of what was already presented in the call.</p> <p>Q. Does it say that Rimini Street shared internal information, including the existence of local environments on Rimini Street systems?</p> <p>A. It does not say that.</p> <p>Q. So, which is incorrect, your testimony here today, or this press release?</p>	<p>Street's counter-claims in that same suit and thus violates the Court's Order granting Oracle's MIL #7. Moreover, counsel's insinuation that the witness stated that Rimini Street actually shared information regarding the existence of local environments on Rimini Street systems is false and thus the bolded question is argumentative, unfairly prejudicial, and misleading.</p>	<p>Oracle will offer Exhibit 947 into evidence with any portion of the document relating to motions in limine redacted, and thus the referenced MILs are not implicated.</p> <p>The testimony is also admissible because it is offered in rebuttal to designated testimony by Defendants where the witness stated "The facts that I understood from that call related to the fact that we provided Oracle with information about the fact that we kept separate silos for every client, that we only did downloads for authorized work by clients, that we only did downloads relating to each client relative to the licensed products that they represented to us in our individual agreements, and tried to -- that we did testing and development on individual environments." Ravin Tr. at 357:19-358:8. Oracle has objected to the inclusion of that testimony as inadmissible hearsay.</p> <p>If Oracle's objection is overruled, the rebuttal testimony is necessary to fairly assess the veracity of the deponent's statements, and thus serves as admissible impeachment evidence. This designation complies with the cited motions in limine as it implicates neither the attorney-client privilege nor</p>

<i>Testimony</i>	<i>Defendants' Objection</i>	<i>Oracle's Responses</i>
<p>MR. WEBB: Objection, argumentative. THE WITNESS: Neither.</p>		<p>the Oracle/Rimini lawsuit. Ruling: _____</p>
Ritchie, John 12/02/09		
<p>Ritchie, John 56:1 - 56:5 Q. And based on that experience and based on what you observed with Titan, did you conclude that Titan had crashed the Oracle website? MR. LANIER: Object to form. A. Yes.</p>	<p>No foundation; Speculation. The answer is purely speculative because the deponent confirmed that he did not ever have personal knowledge of the structure of the website that Titan accessed, including: (a) basic information such as how many servers comprised the infrastructure for that website (166:19-167:7); and (b) what percentage of downloads TomorrowNow made from Oracle's website as compared to all of the other customers (167:25-168:5). <i>See, e.g.,:</i></p> <p>Q. How many -- do you know anything about the actual operation and structure of the website that Titan would access? A. Yes. Q. How many computers was it based on? A. How many computers? Q. How many servers? A. Don't know. Q. How many servers were JDE? A. How many servers for JDE? Q. Yeah, had JDE stuff on them. A. I don't know. Q. How many had PeopleSoft? A. Don't know. (166:19-167:7)</p>	<p>Oracle responds to Defendants' objection to this deposition designation as follows:</p> <p>The Court has already overruled Defendants' objections twice, and should do so again. Defendants themselves have argued that there is foundation for the testimony.</p> <p>Defendants' Motion in Limine No. 5, seeking in part to "exclude evidence or testimony related to Ritchie's improper opinions on the technical question of the existence or cause of any purported crashes of Plaintiffs' websites," was denied in full. <i>See</i> Defs' Mots. in Limine, Dkt. 728 at 14:15-17 (moving to exclude Ritchie); Final Pretrial Order, Dkt. 914 at 3:3-4 (denying Defs.' motion). Further, in their Motion in Limine No. 5, Defendants unsuccessfully argued that Ritchie's testimony was based on his "experience" and "perspective." Dkt. 728 at 14:3.</p> <p>Earlier, in Defendants' Objections to Evidence, Dkt. 672, Defendants objected to Oracle's use of this precise testimony in support of</p>

<i>Testimony</i>	<i>Defendants' Objection</i>	<i>Oracle's Responses</i>
	<p>Q. What percentage of the downloads done from Oracle's website in any interval -- month is fine -- are done by TomorrowNow or were done by TomorrowNow as compared to all the other customers?</p> <p>A. As opposed to all other customers? I don't know all the other customers. (167:25-168:5).</p>	<p>Oracle's March 2010 motion for summary judgment. Defendants argued that the testimony constituted "improper lay opinion," noting that Ritchie was testifying about "what he believed, in his mind and based on his experience." Dkt. 672 at 5-6 (internal quotation marks and punctuation omitted). Those objections were also overruled.</p> <p>Defendants' make the same argument a third time here, and it again lacks merit. As established in testimony that Oracle cited to the Court in response to Defendants' objections at summary judgment, and referred to again in response to Defendants' motion in limine, the witness was reporting observations he personally made. <i>See</i> Oracle's Opp'n to Defs' Mots. in Limine, Dkt. 790, 17:7-12; Oracle's Response to Objections to Evidence, Dkt. 703 at 11:21-12-6; <i>id.</i> at 12:16-26. This testimony is thus admissible under Fed. R. Evid. 602 and 701(a), as it is based on the deponent's perception and personal knowledge.</p> <p>Defendants argue based on Ritchie's testimony at 166:19-167:7 and 167:25-168:5 that the witness is wrong about his observations, because there were other facts he did not know. There is no foundation</p>

<i>Testimony</i>	<i>Defendants' Objection</i>	<i>Oracle's Responses</i>
		<p>that those facts are relevant; in fact, the witness said they were not. E.g., Ritchie Tr. at 168:17-168:20 (Q. And you don't have any idea how many computers the Oracle website is actually based on, right? A. That's actually immaterial; but if you want to ask me that question, I'll say I don't know.) The application of those irrelevant facts to the testimony Defendants seek to exclude amounts to counsel's opinion about website crash events that the witness observed but counsel did not. Counsel's opinion is not supported by any disclosed expert or lay opinion in the case, and none is cited. The jury should be allowed to hear the evidence and decide issues of credibility. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge" or counsel, as Defendants seek here. <i>Reeves v. Sanderson Plumbing Products, Inc.</i>, 530 U.S. 133, 150-151 (2000).</p> <p>Ruling: _____</p>
<p>Ritchie, John 56:17 - 57:8 Q. – while Titan was running, did you conclude that the Oracle website was unavailable to any third party during those times?</p>	<p>No foundation; Speculation. The answer is purely speculative because the deponent confirmed that he did not ever have personal knowledge of the structure of the website that Titan</p>	<p>Oracle responds to Defendants' objection to this deposition designation as follows:</p> <p>Plaintiffs incorporate by reference their response to</p>

<i>Testimony</i>	<i>Defendants' Objection</i>	<i>Oracle's Responses</i>
<p>MR. LANIER: Object to form. A. That's -- that's my main concern for denial of service, is that while Titan is hitting their servers, their other customers cannot log on and get the information they need. Q. (BY MR. HOWARD) And -- and -- and did you conclude that that was the case, that during those times where you couldn't log on, that other customers also could not log on? MR. LANIER: Object to form. A. To the best of my ability, yes. Q. (BY MR. HOWARD) Did you voice those concerns regarding Titan's impact on the availability of the Oracle website to others at TomorrowNow? A. Yes.</p>	<p>accessed, including: (a) basic information such as how many servers comprised the infrastructure for that website (166:19-167:7); and (b) what percentage of downloads TomorrowNow made from Oracle's website as compared to all of the other customers (167:25-168:5). See above.</p>	<p>Defendants' objection to Ritchie 56:1-5 above, which applies equally here. In addition, Defendants' objections are overbroad: Ritchie Tr. at 57:5-8 deals with whether Ritchie "voice[d] [his] concerns . . . to others at TomorrowNow," which is subject matter clearly within the deponent's perception and personal knowledge, and thus admissible under Fed. R. Evid. 602 and 701(a).</p> <p>Ruling: _____</p>
<p>Ritchie, John 62:1 - 63:13 Q. Did anybody -- Mr. DeLing, Mr. Guzman, anybody instruct you to take any measures to modify Titan in order to minimize the impact on the Oracle website? A. No. I did it myself. Q. What did you do? A. I toned it down to 15 multiple threads at a time, maximum. Q. After you did that, did you -- A. It still was hitting the server hard, but it was crashing less. Q. Okay. So, after you modified Titan so that it only</p>	<p>No foundation; Speculation. The answers (including the statement that the Oracle website was "crashing less" and that there was a "decrease in performance of the Oracle website") are purely speculative because the deponent confirmed that he did not ever have personal knowledge of the structure of the website that Titan accessed, including: (a) basic information such as how many servers comprised the infrastructure for that website (166:19-167:7); and (b) what percentage of downloads TomorrowNow made from Oracle's website as compared</p>	<p>Oracle responds to Defendants' objection to this deposition designation as follows:</p> <p>Plaintiffs incorporate by reference their response to Defendants' objection to Ritchie 56:1-5 above, which applies equally here. In addition, Defendants' objections are overbroad. Testimony about what Ritchie was "instruct[ed]" to do, 62:1-4, and about Ritchie's own programming activity, 62:5-8; both are subject matter within the deponent's perception and personal knowledge. This testimony is admissible under</p>

<i>Testimony</i>	<i>Defendants' Objection</i>	<i>Oracle's Responses</i>
<p>was downloading 15 threads at a time, did you still observe instances where you believe that it was crashing the Oracle server?</p> <p>A. No. It seemed to be able to handle it. But like I said, logging in was still difficult. It would be very sluggish; and you could see that by just the fact that when you logged on normally under a normal circumstance, it would take, say, 3.5 seconds. Under these circumstances, we're looking at maybe 10 to 15 seconds versus, you know, trying to get logged on. And that's not even searching anything. That's just logging on.</p> <p>Q. So, did you compare manually logging on while Titan was running to manually logging on when Titan was not running?</p> <p>A. Yes.</p> <p>Q. And when Titan was running 15 threads --</p> <p>A. Big difference.</p> <p>Q. What was the difference?</p> <p>A. You're looking at -- like I said, it was very sluggish -- 15 seconds -- 10 to 15 seconds to log on only.</p> <p>Q. Compared to what, when Titan wasn't running 15 threads?</p> <p>A. Three seconds.</p> <p>Q. So, is it fair to say that you observed a decrease in the performance of the Oracle website in responding to a manual log-on while Titan was running at the 15 thread rate?</p>	<p>to all of the other customers (167:25-168:5). See above.</p>	<p>Fed. R. Evid. 602 and 701(a).</p> <p>Ruling: _____</p>

<i>Testimony</i>	<i>Defendants' Objection</i>	<i>Oracle's Responses</i>
<p>MR. LANIER: Object to form. A. Yes.</p>		
<p>Ritchie, John 120:16 - 121:12 Q. And we've talked earlier about Titan maxing out at threads per session? A. What happens when you have multiple instances of it running? Q. Right. A. Worse. Q. But am I right that -- that -- that you would have up to 15 threads running on each individual machine that was conducting a -- a -- a download search? A. That is correct. And they had problems that they realized from this. Q. What were the problems? A. Well one of the problems before I came on board, when they were tracked doing the downloads, their IP had been blacklisted. That means basically Oracle's website did not allow any IP from TomorrowNow to access their servers. We had to manually change our IP in-house to a new one to get around that blacklisting. MR. LANIER: Object. Move to strike. A. So, these are the -- some of the problems that they ran into with running multiple instances. They were causing the server to crash more often.</p>	<p>Hearsay; Speculation. The deponent's answer confirms that the "problems" at issue occurred before he "came on board" at TomorrowNow and thus he has no personal knowledge and is simply repeating out of court assertions from one or more unidentified individuals.</p>	<p>Oracle responds to Defendants' objection to this deposition designation as follows:</p> <p>Plaintiffs incorporate by reference their response to Defendants' objection to Ritchie 56:1-5 above, which applies equally here, save that 120:16-121:12 was not the subject of Defendants' Objections to Evidence. In addition, the cited testimony relates to a functional specification and user guide written by this deponent, John Ritchie; the discussion of development "problems" is admissible to show Ritchie's state of mind regarding the functional constraints imposed upon his development activities, as well as to provide context for the effect of those constraints on Ritchie, the listener. <i>See</i> Ritchie Tr. 111:11-18 ("Q. . . . Same drill as before, Mr. Ritchie. Take whatever time you need to review this; and when you're ready, let me know if you recognize the e-mail and the attached document. A. . . . Yeah. Josh had never done documentation for Titan. So, this was my attempt to do some documentation for the program.")</p> <p>Ruling: _____</p>

EXHIBIT B

Message

From: John Baugh [/O=TOMORROWNOW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=JBAUGH]
Sent: 8/28/2007 1:33:32 PM
To: Wendi Wolfgram [/O=TOMORROWNOW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=WWolfgram]
CC: Shelley Nelson [/O=TOMORROWNOW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=SNelson]; Kathy Williams [/O=TOMORROWNOW/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=KWilliams]; Greg Lanier [tglanier@JonesDay.com]
Subject: Privileged: Clients with environments needs a full or partial rebuild

Hi Wendi,

The following clients will require a full or partial rebuild of their environments at their site during the environment migration. There may be more as we don't have complete information on the client environments in SAS.

Clients Environments working from a shared install (these are extended support customers):

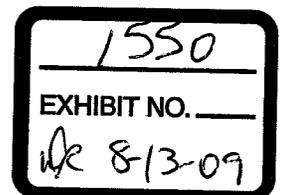
Advance Auto Parts
Bear Stearns
Heritage Valley
Universal City Studios
UT Health Science Center
University of Massachussetts

Clients with no environments installed:

Acushnet
Allied Bakeries
American Red Cross SEPA
BASF
Blue Cross/Blue Shield of Kansas
Direct Energy Marketing
Fireman's Fund Insurance
Genesis Healthcare System
Home Depot
Newport Corporation
Organon International
Petco
Pfizer Incorporated
RTKL Associates
Spokane County
Standard Register
The Longaberger Company
Travel Centers of America
Trends International

Clients having one or more environment installs in our datacenter:

Allianz Australia Services Pty Ltd
American Commercial Barge Line LLC
A.O. Smith



CONFIDENTIAL INFORMATION

TN-OR06094945

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
Case #: 07-cv-01658-PJH
PLNTF EXHIBIT NO. 0475
Date Admitted: _____
By: _____
Nichole Heuerman, Deputy Clerk

Arvin Meritor, Inc.
Baxter International Inc.
Borders Group Inc.
Children's Health System of Alabama
CompuCom
ConAgra Foods
Delta Dental Plan of Michigan
East Bay Municipal Utility District
Employees' Retirement System of Georgia
Fairchild Semiconductor
Federated Services Company
Fundamental Administrative Services
JB Hunt
Kent County Michigan
Manugistics Group, Inc.
Municipality of Anchorage
Mutual of Omaha
National Foods Services Pty Limited
Norwegian Cruise Lines
Overwaitea Food Group Limited Partnership
Pepsi Americas
Quad Graphics
Remy International
Rockwell Automation
Ross Dress for Less, Inc.
Sky Entertainment Group Limited
Southern California Edison
The Interpublic Group of Companies
Universitas 21 Global
Wakefern Foods
Wendy's

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EXHIBIT C

Final Transcript

Thomson StreetEventsSM

Conference Call Transcript SAP - SAP to Host Teleconference

Regarding its Response to Oracle Lawsuit Event Date/Time: Jul. 03. 2007 / 11:00AM ET

CORPORATE PARTICIPANTS

Herbert Heitmann
SAP - VP Global Communications

Henning Kagermann
SAP - CEO

CONFERENCE CALL PARTICIPANTS

Jeff Mode
Managing Magazine - Analyst

James Finkel
Reuters - Analyst

Mary Hayes
InformationWeek - Analyst

Sanil Daptardar
Centennial Asset Management - Analyst

Dawn Kwamoto
CNET - Analyst

Neil Steer
Redburn Partners - Analyst

Yvonne Genovese
Gartner - Analyst

Ben Camel
Bloomberg - Analyst

David Brousseau
Managing Automation Magazine - Analyst

Jessica Sebor
CRM Magazine - Analyst

Jay Boneja
Investor's Business Daily - Analyst

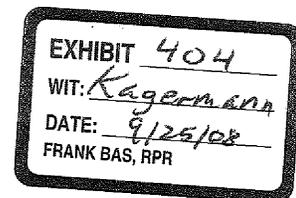
PRESENTATION

Operator

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

Herbert Heitmann - SAP - VP Global Communications

Thank you. Good morning. I am Herbert Heitmann of SAP Global Communications in Walldorf here in Germany. With me is our CEO,



Henning Kagermann, as well as Mark White, COO of SAP America, on the phone.

Today's telephone conference will focus in on SAP's answer to the Oracle complaint filed in March in U.S. District Court regarding our TomorrowNow subsidiary.

I will make some instructory remarks and then I will ask Henning to comment. Afterwards, there will be a short opportunity for questions. Our operator will assist us in staging the questions and will give instruction as to how to submit a question.

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 amended in June. The press release and full text of our court filing together represents the official SAP point of view on this matter. Both documents are available on a new Web site we have established that provides complete information about the Oracle matter. The Web site, at www.tnlawsuit.com, is a complete one-stop location for all of you who want to learn more about this case and directly excerpt the filings and SAP statements on the matter.

We note that, for our U.S. colleagues, the first call this morning was too early, why we established the second conference call here particular for journalists and analysts in the United States. In addition, we encourage all of you to take the time to read our answer to the Oracle complaint on our site, as I mentioned before. It provides much more detail than can be explained here in this conference. 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 for 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 this request. We do not have any other information on this request at this time.

One other detail, before I will ask Henning to comment -- SAP is in its quiet period, and as such, we will not answer financial questions related to the past quarter or full-year guidance. Now, comments from Henning.

Henning Kagermann - SAP - CEO

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

Let me add some context from my side. When we learned 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're also partners within the industry, which (inaudible) 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 we have to provide the courts with our first formal answer to the Oracle complaint. Oracle made more than 150 allegations in their complaint. I cannot address them all here are 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 download by TomorrowNow. Oracle support materials and (inaudible) remained in TomorrowNow's separate systems and did not past across our firewall to SAP. However, some TomorrowNow activity went beyond what is appropriate and contravenes 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 provide support and service to those customers' Oracle applications. 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 operation oversight at

TomorrowNow which will ensure the maintenance of excellent service for TomorrowNow customers and the 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 steps include 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, and Andrew Nelson, TomorrowNow's CEO, will report to Mark. Mark White will enforce existing procedures and, if required, implement new policies. He will also receive a new training for TomorrowNow employees to ensure 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's 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 compliance issues. Our litigation team will move appropriately forward with this matter in the U.S. courts. We are focused on addressing this matter as quickly as possible and will take appropriate action.

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

Herbert Heitmann - SAP - VP Global Communications

Thank you. We can now open the call for the questions.

QUESTION AND ANSWER

Operator

(OPERATOR INSTRUCTIONS). [Jeff Mode], Managing Magazine.

Jeff Mode - Managing Magazine - Analyst

What was the nature of the inappropriate downloads? What was inappropriate about them?

Henning Kagermann - SAP - CEO

Song of the materials downloaded by TomorrowNow for the customers named in the complaint were not licensed, so TomorrowNow is downloading support material on behalf of its customers. This is a normal procedures but we found cases where they downloaded to some extent more material, as I said, for customers named in the complaint than the customers had the right to get.

Operator

James [Finkel], Reuters.

James Finkel - Reuters - Analyst

I have two questions. The first is do these people still work for TomorrowNow?

Henning Kagermann - SAP - CEO

So far, we got this information recently and I have asked Mark White to do whatever actions are necessary to including personal consequences because Mark is neutral from outside and he will start working immediately.

James Finkel - Reuters - Analyst

Could you elaborate? Do you think that firing these people is -- or even perhaps turning them over to the authorities is necessary, given what you know?

Henning Kagermann - SAP - CEO

I think I have full trust in Mark that he will take the appropriate actions and I will not exclude any personal consequences.

James Finkel - Reuters - Analyst

My other question was about perhaps settling with Oracle. Given that you have said that there was some wrongdoing on your part, is that an option that your legal team is looking at?

Henning Kagermann - SAP - CEO

Just as you said, a number of key allegations made by Oracle and examined by us appear to be unfounded, so that is the reason why we will not speculate now about our legal options.

Operator

Mary Hayes, InformationWeek.

Mary Hayes - InformationWeek - Analyst

Hi, Henning. My question is what should customers' reaction be to this?

Henning Kagermann - SAP - CEO

You have to distinguish between SAP customers and TomorrowNow customers.

Mary Hayes - InformationWeek - Analyst

SAP customers.

Henning Kagermann - SAP - CEO

SAP customers' reaction so far what I have heard from neutral watchers and from our customers and from the user groups I spoke to is no reaction. They trust into the reputation of SAP and know that this is something which was done by employees of TomorrowNow and not by employees of SAP. For TomorrowNow's customers, I have reiterated that we will continue to give the support to TomorrowNow's customers and so they should not be concerned about this.

Operator

Sanil Daptardar, Centennial Asset Management.

Sanil Daptardar - Centennial Asset Management - Analyst

How do you intend to settle this with Oracle? Will it be an out-of-court settlement or do you intend to fight it legally?

Henning Kagermann - SAP - CEO

As I said already, we don't want to speculate about our legal options at this point in time. If you look to the press release, you see that, at September 4, there is, as a next scheduled event, an initial case management conference. At these conferences, the court meets with the lawyers.

Sometimes in these cases, they request the invoice parties to discuss alternative conflict resolution matters. So we will see and looking forward to this event.

Operator

(OPERATOR INSTRUCTIONS). Dawn Kwamoto, CNET.

Dawn Kwamoto - CNET - Analyst

I was wondering if you can tell me what the status will be with Andrew Nelson? Do you anticipate he will, given this change, remain with your company or are there some other plans where maybe eventually he might transition out?

Henning Kagermann - SAP - CEO

So far, I can say that, based on the results of the ongoing examinations, we have no evidence that Andrew was aware of these inappropriate downloads. I think I have full trust in Mark that he will do the right things and as for my point of view, there's no reason to speculate about Andrew.

Operator

Neil Steer, Redburn Partners.

Neil Steer - Redburn Partners - Analyst

Just a point of clarification -- were these breaches of procedure at TomorrowNow taking place only once SAP had acquired TomorrowNow or were they taking place prior to SAP's purchase of TomorrowNow as well?

Henning Kagermann - SAP - CEO

You may understand that once we got the complaints from Oracle that the examination I initiated is focusing let's say on the allegations; we have about 150 topics. You understand this is a lot for the internal examinations and I gave this first priority.

Operator

Yvonne Genovese, Gartner.

Yvonne Genovese - Gartner - Analyst

-- and that SAP publicly displayed, distributed and therefore profited from Oracle's copyrighted software. This happened between the first and the second filing.

Henning Kagermann - SAP - CEO

Excuse me, Yvonne. We couldn't hear the first half of the question. Could you please start again? Sorry for that.

Yvonne Genovese - Gartner - Analyst

Yes. In the filing by Oracle, between the first and the second one, when they came back with the second one, they filed that you guys had publicly displayed, distributed and therefore profited from Oracle's copyrighted software when they went off and copyrighted the DSP solution. You denied that piece but did not necessarily deny that the solution was like the one that TomorrowNow put out, which is what they're claiming in Line 87. Is that still under investigation or do you have an official word on that?

Henning Kagermann - SAP - CEO

I have an official word. Thank you. The official word is that certain portions of TomorrowNow (inaudible) daylight saving time solution are

substantially similar and in some instances identical to Oracle's solution.

Yvonne Genovese - Gartner - Analyst

But you denied that it was used in any way because it says you put your logo beside it or rather that TomorrowNow did, and then used it. That is what the allegations say. Is that true?

Henning Kagermann - SAP - CEO

Give me some time to look in detail into the allegation, Yvonne, and then I come back.

Yvonne Genovese - Gartner - Analyst

Yes, it is 86 and 87.

Henning Kagermann - SAP - CEO

Thank you. I will look to it.

Operator

(OPERATOR INSTRUCTIONS). [James Finkel].

James Finkel - Reuters - Analyst

Just a follow-up to your comment about when you were talking about what it means to TomorrowNow customers, you said, well, we are continuing to give support to them, so they should not be concerned about this. It seems to me that there is another issue, which is that you did something wrong and presumably they thought they were doing business with a company that didn't do wrong things. I'm wondering how you deal with this. Certainly, it would be a public relations problem, but it seems like this would be a series issue to any company.

Henning Kagermann - SAP - CEO

I'm not so sure. I think what we -- what TomorrowNow did, just in a few cases, you're right, inappropriate downloads. That is true. On the other side, really acted immediately and stopped these. If you look to the procedures in place, you see that they had clear procedures in place but apparently they weren't followed properly. As I said at the beginning, I have full trust in Mark that, once he starts overseeing the operations, that there will not be any inappropriate downloads any longer. From that point of view customers, I believe, should not be concerned.

James Finkel - Reuters - Analyst

How long ago did these things happen?

Henning Kagermann - SAP - CEO

If you look to the allegation of Oracle, then you see that they refer to some -- as they called it -- unusual heavy downloads at the end of last year.

James Finkel - Reuters - Analyst

That is what your investigation found? It was at the end of 2006?

Henning Kagermann - SAP - CEO

If you look to the allegation of Oracle, they have not informed us about this. We got them, as I said, in March 22; they went to court. From that point, we started with our examinations.

James Finkel - Reuters - Analyst

I guess what I'm saying is what you talked about today, what you told us you found -- there had been wrongdoing. When did that happen?

Henning Kagermann - SAP - CEO

Just recently.

James Finkel - Reuters - Analyst

I'm sorry?

Henning Kagermann - SAP - CEO

[Just] recently -- if you --.

James Finkel - Reuters - Analyst

Not recently. I guess -- but you said that you reacted immediately and it seems like it took you a long time to find out about it, so it raises some question about (multiple speakers) oversight.

Henning Kagermann - SAP - CEO

(multiple speakers). What is a long time from your point of view?

James Finkel - Reuters - Analyst

I'm sorry? You didn't say a long time? I had trouble hearing you then.

Henning Kagermann - SAP - CEO

No, no. I said just recently we got and therefore I think we have acted immediately.

James Finkel - Reuters - Analyst

You're saying this happened after you got the complaint from Oracle? This actually happened afterwards?

Henning Kagermann - SAP - CEO

Yes. I tried to explain to you that Oracle refers to this happening, what they saw what was unusual at the end of 2006, that Oracle sent the complaint to us on March 22. In between, nothing has happened. This just we found out from their complaint. Then we started the examination and just recently, from today on, we found out that there had been some inappropriate downloads.

James Finkel - Reuters - Analyst

Since March 22?

Henning Kagermann - SAP - CEO

No, just recently. March 22, we got the Oracle --.

James Finkel - Reuters - Analyst

I'm sorry, what does just recently mean? I'm sorry to keep asking the same question; I don't understand.

Henning Kagermann - SAP - CEO

(multiple speakers) A few days ago.

James Finkel - Reuters - Analyst

A few days ago this happened?

Henning Kagermann - SAP - CEO

No, that we found out that there was an inappropriate --.

James Finkel - Reuters - Analyst

You found out a few days ago but when did this wrongdoing occur?

Henning Kagermann - SAP - CEO

End of 2006 if we look to the Oracle allegation.

James Finkel - Reuters - Analyst

You are confirming that it was the end of 2006?

Henning Kagermann - SAP - CEO

I think so, yes.

Operator

[Ben Camel], Bloomberg.

Ben Camel - Bloomberg - Analyst

I have a question regarding the investigation or the request by the Department of Justice. Could you shed a bit more light on this? Tell us what sort of documents are being requested here and when you were first contacted by the Department of Justice? Thank you.

Henning Kagermann - SAP - CEO

So far, we requested to provide certain documents (inaudible) and SAP's is internal documents and that is also far. It was I think also some days ago, last week.

Ben Camel - Bloomberg - Analyst

You were contacted last week?

Henning Kagermann - SAP - CEO

Yes.

Operator

David Broussel, Managing Automation Magazine.

David Broussel - *Managing Automation Magazine - Analyst*

My question has to do with, based on the internal investigation and what you said you discovered to be inappropriate downloads, could you characterize what you mean by inappropriate? Were these inappropriate downloads, for example based in your internal investigation, inadvertent or were they planned and done knowingly?

Henning Kagermann - *SAP - CEO*

That is, I think, more detail than I can provide. What we did is I think the people went with the downloads and compared the materials downloaded with, as I said, the rights, let's say, to download support materials. They found cases where more support material was downloaded than it should have been. That is what we found out.

David Broussel - *Managing Automation Magazine - Analyst*

But you're not sure at this point whether it was accidental?

Henning Kagermann - *SAP - CEO*

Because -- I think it is a little bit early. What I can say, as I said, is that if you look to the processes and procedures of TomorrowNow, and we felt that they have right and clear procedures in place.

David Broussel - *Managing Automation Magazine - Analyst*

One follow-up question -- you also indicated that the internal investigation is continuing. How far along is it? Is it half done or is it three quarters done or is it much less than that? Can you give us a sense on how much is yet to be done?

Henning Kagermann - *SAP - CEO*

It is difficult for me because I told my people they should, let's say, do it as much as possible. We really want to find out everything and so I have not given them a timeline or whatever. For me, it is more important that we get entire clarity.

Operator

Jessica [Sebor], CRM Magazine.

Jessica Sebor - *CRM Magazine - Analyst*

I was just wondering how you think this will affect the third-party maintenance market?

Henning Kagermann - *SAP - CEO*

The third-party maintenance is a normal business. I think many companies are doing it. It is a well-known business practice. I hope that we come to a conclusion or that over time we all come to the conclusion that this is something which helps clients and is about customers' choice and not making it too difficult to support to the benefits of the customers' support, because it is well-known, people are doing it. As I said, we try to do our best with clear procedures, etc., to make clear that there is everything fine. On the other side, we denied, in our filing, that harm occurred to Oracle because we believe just downloading support material is not harm to the company.

Operator

[Jay Boneja], Investor's Business Daily.

Jay Boneja - *Investor's Business Daily - Analyst*

I guess I wanted to talk about this so much not in a vacuum of just the case with Oracle but in 2007 (inaudible) departure and then recently

about a week ago a hostile partner kind of having to retract a comment about the midmarket strategy, saying he was misquoted, and now the admission of wrongdoing with this TomorrowNow subsidiary. I guess I would want you to respond to the question maybe some Wall Street observers have about SAP losing its way this year and how you would react to that as a broad statement.

Henning Kagermann - SAP - CEO

Look, all these things have nothing to do with each other. We have commented in length, [Shy's] departure. I think you have got the reasons and we get let's say we departed more or less in good faith with good friends. That has nothing to do with that. [Hasul] was really misquoted and that has nothing to do with what we're discussing here. I think he gave a conference on design and people referred I think some of his comments to SAP, but it was just something which has -- was not really related to SAP. From that point of view, he felt it was right to correct these things.

Operator

(OPERATOR INSTRUCTIONS). Dawn Kwamoto, CNET.

Dawn Kwamoto - CNET - Analyst

I was wondering. Just following up on the comment about the issue about some materials in some cases being substantially similar and in some cases being identical -- two questions. One is do you plan to remove those identical materials immediately or are you going to wait to see what happens in the court process?

Then the second question being, with these materials being similar and in the finding of some of these downloads happening, do you feel that the staff at TomorrowNow is up to doing its own independent and original support materials? I guess what I'm wondering is do you feel that TomorrowNow can still remain as competitive and can quickly provide the maintenance and support as it previously had, given some of these policy changes you are putting in place, or how much of a difference did some of these downloads make to the speed in which TomorrowNow was able to respond to the market?

Henning Kagermann - SAP - CEO

Thank you, good question. I believe that TomorrowNow can stay competitive because there is no evidence that they used the downloaded material, which they were not let's say allowed to download for certain customers. So from that point of view, I have no evidence that this has had an impact on their competitiveness. So on the other side, we will do, and let me confirm this, whatever it takes, let's say, to be 100% sure. Even if Mark would come up with different procedures would impact slightly the competitiveness, he will implement them.

Operator

Sanil Daptardar, Centennial Asset Management.

Sanil Daptardar - Centennial Asset Management - Analyst

Just does TomorrowNow still continue the downloads? Are they still authorized by Oracle to do the downloads what they were authorized for?

Henning Kagermann - SAP - CEO

TomorrowNow is doing that they continue to support their customers in the appropriate way.

Operator

We have no further questions at this time. Please continue, sir.

Herbert Heitmann - SAP - VP Global Communications

Maybe you can call once again for any further questions.

Operator

Certainly, sir. (OPERATOR INSTRUCTIONS).

Herbert Heitmann - SAP - VP Global Communications

Okay, this was the case, then thank you all for joining. As I said earlier, you find excessive amount of materials at our Web site, www.tnlawsuit.com. You can stay in touch with all of us for your further questions. Thanks for joining today. Have a nice day. Bye-bye.

Henning Kagermann - SAP - CEO

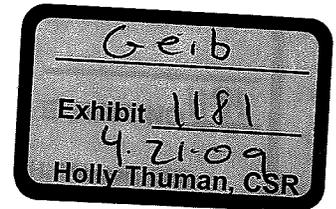
Okay, thank you. Bye.

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EXHIBIT D

Message

From: CN=Spencer Phillips/O=TomorrowNow
Sent: 11/7/2005 5:56:39 PM
To: Lori A Jagger <Lori_A_Jagger@raytheon.com>
CC: Salvatore J Tecci <Salvatore_J_Tecc@raytheon.com>
BCC: CN=Bob Geib/O=TomorrowNow
Subject: TomorrowNow follow-up for Raytheon



Lori,

Scott is unfortunately not available tomorrow. However, I did speak with him for a few moments between calls just now and he conveyed the following to me:

PeopleSoft Software License Agreements:

Agreements prior to 1995 generally did not provide a lot of language specific to a lot of things. Including the third party use of the software for implementation, upgrade, or support purposes. In fact from 1994 to 1995, the SLSA apparently went from ten Sections to fifteen Sections as some of these omissions began coming into light with the rapidly developing PeopleSoft market.

The section that allows for third party access to your PeopleSoft software is generally in the Nondisclosure (ND) section of the SLSA. The standard language provided that "Licensee may provide access to and use of the Software only to those third parties that: 1) provide a service to the licensee specific to the licensee's use of the software, 2) have agreed to the same level of nondisclosure imposed by the licensee as is provided for in the SLSA, and 3) have a need to use and access the applications to perform their duties for the licensee." Since Raytheon's contract predates this explicit verbiage, the agreement may well be silent on such third party access.

Scott suggested that the only areas where the missing ND language may have been added at a later time would have been in the Extended Enterprise License. PeopleSoft did not do so pro-actively, but many customers insisted that the previously one-sided ND language be expanded to include a more mutual arrangement. When asked to do so, PeopleSoft would provide the newer, more expansive nondisclosure language that includes the verbiage above. This might be a place to look. Additionally, Scott seemed to think that if you have an exhibit to cover ND, that the exhibit should speak to this or similar language.

The Extended Enterprise License (EEL) does point out that PeopleSoft grants Licensee the right to use the Extended Enterprise Capabilities for the sole purpose to expand the deployment of the Software in connection with Licensee's and its Designates' operations to meet Licensee's internal processing requirements. Where Designate is defined as Licensee's customers, suppliers, vendors, benefits providers and other such external parties that Licensee may provide with a right to use the licensed PeopleSoft software modules. Additionally, the EEL typically provides stronger, explicit language around a customer's rights to modify the software

Changes in PeopleSoft Ecosystem Prompted Changes to language in SLSA.

As I stated on the call today, and Scott re-iterated when I spoke with him just now, the widespread use of and PeopleSoft's dependence on the third party PeopleSoft consulting organizations to provide implementation and upgrade services prompted the additional language provided in the 1995 and beyond agreements. These services were by the very nature predicated on the third party consulting organizations access to their clients' software. Although, Raytheon did obtain a separate agreement or addendum from PeopleSoft authorizing the hosting of the PeopleSoft applications in a CSC data center, Raytheon has no doubt enlisted consultants to assist with implementations and upgrade work over the past eleven years without such additional language. And it is certain that these individuals would have required software access to perform their duties for Raytheon.

Third Party Consulting Services

In a published survey conducted by PeopleSoft in 1997 and again in 1998 (the only two years in which the results were published), nearly ninety-one percent (91%) of PeopleSoft customers used outside consulting services to implement their HRMS applications. The overwhelming majority of these consultants were, and still are today, third party consultants who access the customer's applications. And the percentages increase slightly each subsequent year.

Specifically the survey stated, "The industry is full of people who have already implemented a client/server system. If you need assistance for specialized implementation tasks, you might consider contracting with consulting organizations such

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TN-OR01754577

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
Case #: 07-cv-01658-PJH
PLNTF EXHIBIT NO. 0252
Date Admitted: _____
By: _____
Nichole Heuerman, Deputy Clerk

as PeopleSoft Professional Services, PeopleSoft implementation partners, or other third-party service providers. Consultants in these groups have in-depth knowledge and skill sets that can supplement your project team. An implementation takes careful planning and management, so many of you rely on consulting services to assist in all or specific phases of your implementation. As you will see in the table below, the majority of respondents, across all product areas, do seek outside consulting assistance for their implementations."

In fact, at the time of that survey, the average level of outside consulting for PeopleSoft customers for an implementation of HRMS was 10.33 Full Time Equivalents (FTEs), the majority of which served technical or functional roles which would require software access (ie, Functional Analyst, Technical Analyst, DBA, etc.). Additionally, these respondents employed the use of outside consulting for production support during their first year following implementation at an average of 7.29 FTEs.

Customers changing the software code using PeopleTools:

The same survey took a look at how widespread the use of PeopleTools for development purposes (ie, modifications) was employed. The survey stated, "We provide you with the same PeopleTools we use to develop our applications so that you can easily customize and enhance your PeopleSoft applications to meet your unique business needs. We thought it would be interesting to take a look at how many respondents are using PeopleTools as well as other development and reporting tools that we develop - such as EDI Manager - or tools developed by our third-party partners, such as Crystal Reports." and "As expected, almost all respondents have used PeopleTools to tailor their applications."

For PeopleSoft HRMS, 87% of the customers used PeopleTools for developing modifications to the software.

For PeopleSoft HRMS, 80% of the customers used PeopleSoft Query for developing modifications to the software and/or reports

For PeopleSoft HRMS, 80% of the customers used SQR Report Writer for developing modifications to the software and/or reports.

For PeopleSoft HRMS, 78% of the customers used Crystal Reports for developing modifications to the software and/or reports.

As you can see, not only do an overwhelming majority of PeopleSoft customers use PeopleTools and other PeopleSoft provided development tools to modify delivered applications, PeopleSoft marketed the ability to do so as a competitive differentiator to other software companies, namely SAP.

It is along these very same lines which PeopleSoft has touted in the documented publications titled "1997 PeopleSoft Implementations Report- Results of a Customer Community Survey" and "1998/1999 PeopleSoft Implementations Report - Results of a Customer Community Survey" that TomorrowNow proposes to support Raytheon's PeopleSoft applications. We use a disciplined approach to solve your company's software issues by accessing your software as a consultant or agent on your behalf and potentially making a modification to correct the issue using PeopleTools, SQR, or some other PeopleSoft provided development tool as described in the survey above. There is no difference, perceived or otherwise, between the practices which PeopleSoft describes and advises in these two publications and the services which TomorrowNow provides its customers.

With the understanding that Scott may not have much to add to the comments I shared above, he would still be more than willing to speak with you to try to provide any additional insight you may wish to get from him. Please let me know your thoughts.

Regards,

Spencer

Spencer Phillips
Senior Account Executive

TOMORROW NOW

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www.tomorrownow.com <<http://www.tomorrownow.com/>>

Lori A Jagger <Lori_A_Jagger@raytheon.com>
11/07/2005 02:46 PM To
spencer_phillips@tomorrownow.com cc Salvatore J
Tecci <Salvatore_J_Tecci@raytheon.com> Subject
Raytheon request for follow-on meeting

Spencer,

Thank you for your time this afternoon. Sal and I are both flexible for meeting with you and Scott tomorrow morning. We are available to meet as early as 8:30 ET. Please let us know a time convenient to you.

Best regards, Lori
781.642.2905 office
978.394.6662 cell

