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Melanie Baker

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Subject: Activity in Case 2:06-cv-00367-DF PalTalk Holdings, Inc. v. Microsoft Corporation Order on Sealed Motion

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U.S. District Court [LIVE]

Eastern District of TEXAS

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Case Name: PalTalk Holdings, Inc. v. Microsoft Corporation

Case Number: 2:06-cv-367

Filer:

Document Number: 203

Docket Text:

ORDER granting in part and denying in part [163] Motion to compel, deadlines set forth herein. Signed by Magistrate Judge Charles Everingham on 2/11/09. (ehs,)

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Louis Brucculeri lbrucculeri@counselip.com, scabello@counselip.com, wmaydwell@counselip.com

Robert Christopher Bunt rbunt@pbatyler.com, dattaway@pbatyler.com

Sidney Calvin Capshaw, III ccapshaw@capshawlaw.com, bbell@capshawlaw.com, chenry@capshawlaw.com, ederieux@capshawlaw.com, jrambin@capshawlaw.com, lonfedserv@capshawlaw.com, mavery@capshawlaw.com, mbaker@capshawlaw.com, rhurse@capshawlaw.com, risaac@capshawlaw.com

Otis W Carroll, Jr Fedserv@icklaw.com, nancy@icklaw.com

Elizabeth L DeRieux ederieux@capshawlaw.com, bbell@capshawlaw.com, ccapshaw@capshawlaw.com, chenry@capshawlaw.com, jrambin@capshawlaw.com, lonfedserv@capshawlaw.com, mavery@capshawlaw.com, mbaker@capshawlaw.com, rhurse@capshawlaw.com, risaac@capshawlaw.com

Harry Lee Gillam, Jr gil@gillamsmithlaw.com, janet@gillamsmithlaw.com

Franklin Jones, Jr maizieh@millerfirm.com

G William Lavender blav@lavenderlaw.com, lee@lavenderlaw.com, tammy@lavenderlaw.com

Robert M Parker rmparker@pbatyler.com

David T Pritikin dpritikin@sidley.com, efilingnotice@sidley.com, jstone@sidley.com

Thomas D Rein trein@sidley.com, cdavern@sidley.com, efilingnotice@sidley.com

Virgil Bryan Medlock, Jr bmedlock@sidley.com, jburriss@sidley.com

Deborah J Race drace@ickl.com, fedserv@ickl.com

Thomas John Ward, Jr jw@jwfirm.com, ak@jwfirm.com, wbc@jwfirm.com

Melissa Richards Smith melissa@gillamsmithlaw.com, mindy@gillamsmithlaw.com

Max Lalon Tribble, Jr mtribble@susmangodfrey.com, pgoff@susmangodfrey.com

Charles Ainsworth charley@pbatyler.com, pennyc@pbatyler.com

Andrew Thompson Gorham tgorham@pbatyler.com

Catherine Isabelle Casey Rajwani crajwani@sidley.com, jburriss@sidley.com, tnguyen@sidley.com,
ttarnay@sidley.com

Brooke Ashley-May Taylor btaylor@susmangodfrey.com, jwest@susmangodfrey.com,
lbass@susmangodfrey.com, sschulze@susmangodfrey.com

Michael F Heim mheim@hpcllp.com, abranum@hpcllp.com, canderson@hpcllp.com

Richard A Cederoth rcederoth@sidley.com, akeker@sidley.com, bbarbour@sidley.com,
blaughlin@sidley.com, bwilders@sidley.com, curtis.hill@sidley.com, efilingnotice@sidley.com,
jnolan@sidley.com, lschoenrock@sidley.com, puhlenhake@sidley.com, sjerez@sidley.com,
tchandler@sidley.com

Micah John Howe, I mhowe@hpcllp.com

David Charles Marcus dmarcus@susmangodfrey.com, eball@susmangodfrey.com

Kalpana Srinivasan ksrinivasan@susmangodfrey.com, hdaniels@susmangodfrey.com

Douglas Ron Wilson dwilson@hpcllp.com, nbaudoin@hpcllp.com

Laura L Donoghue ldonoghue@sidley.com, cdavern@sidley.com

Nabeel Khan nkhan@sidley.com, bdipasqu@sidley.com

Stacy Quan stacyq@microsoft.com

John W McBride jwmcbride@sidley.com, efilingnotice@sidley.com

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PALTALK HOLDINGS, INC.

vs.

MICROSOFT CORP.

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§

CASE NO. 2:06-CV-367-DF

ORDER

Before the court is PalTalk Holdings, Inc.'s ("PalTalk") motion to compel (Dkt. No. 163). The court grants-in-part the motion to compel.

1. Licensing Documents

The parties dispute the defendant's obligation to produce licensing documents. In this court's view, for discovery purposes, the scope of relevant licenses should reflect the technology in dispute. The court finds that the technology involved in this case is gaming and networks. As such, the scope of discoverable licenses are those related to gaming, networks, or software utilized in gaming and networks. Microsoft Corp.'s ("Microsoft") arguments that portfolio and/or cross licenses are *per se* irrelevant is unpersuasive. Likewise, the court rejects Microsoft's suggestion that it would be unduly burdensome to assess which licenses relate to a particular technology. After considering the arguments, the court orders the following relief.

The court orders Microsoft to produce any and all patent licensing documents, excluding settlement agreements, that relate to the following: (1) gaming or networking technology; or (2) software utilized in gaming or networking technology.

Furthermore, Microsoft is precluded from having its experts offer the opinion that the plaintiff's proposed royalty or damages calculations are multiple times larger than what Microsoft has ever paid for software licenses in the past. Microsoft has resisted producing all of

its licenses and settlement agreements, and the plaintiff has no way to challenge this assertion. Microsoft is ordered to produce its licensing documents within seven calendar days from the hearing held on February 9, 2009.

2. Online Use

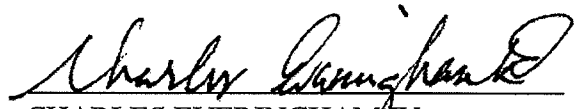
The parties also dispute the extent of Microsoft's obligation to produce its data reflecting online gaming. Microsoft contends it has already produced accurate information. After considering the arguments, the court orders the following relief.

The court orders Microsoft to produce the following information to the extent it exists: (1) total number of unique users that have played on Xbox Live in online multiplayer mode; (2) total number of unique users that have played on Xbox Live in online multiplayer mode involving four or more consoles; (3) total number of hours spent playing on Xbox Live in online multiplayer mode; and (4) total number of hours spent playing on Xbox Live in online multiplayer mode involving four or more consoles.

Microsoft is ordered to produce the user data even if it does not directly track the number of consoles; to the extent the number of consoles in use may be derived inferentially from Microsoft's use data, then Microsoft is ordered to produce such information. Microsoft is ordered to produce user data within seven calendar days from the hearing held on February 9, 2009.

There is, however, some question as to the reliability of the online user data. Accordingly, the court also orders Microsoft to produce a 30(b)(6) witness to explain the produced data set and any reliability issues related to such data. Microsoft is ordered to produce its 30(b)(6) witness within ten calendar days from the hearing held on February 9, 2009. The deposition is limited to 3.5 hours absent further order of the court.

SIGNED this 11th day of February, 2009.



CHARLES EVERINGHAM IV
UNITED STATES MAGISTRATE JUDGE