

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

ANASCAPE, LTD.,	§	
	§	
<i>Plaintiff,</i>	§	
	§	Civil Action No. 9:06-CV-158
v.	§	
	§	
MICROSOFT CORP. and NINTENDO OF	§	JUDGE RON CLARK
AMERICA, INC.,	§	
	§	
<i>Defendants.</i>	§	

ORDER DENYING UNOPPOSED MOTION TO REDACT

Defendant Nintendo of America Inc. seeks to redact information regarding their sales projections and inventory information from the transcript of the post-trial hearing on July 118, 2008. Nintendo offers no explanation for redacting the data outside the bald assertion that the data is “confidential.” This is not a valid reason under the rules. The information that Nintendo asks be redacted is neither scandalous nor dangerous to individuals or minors. Granting the request would expand the scope of the redaction rule and result in an unwarranted intrusion upon the tradition of open court proceedings. Accordingly, Nintendo’s request is denied.

Discussion

The Eastern District of Texas, in accordance with Judicial Conference Policy and amendments to Federal Rule of Civil Procedure 5.2, has adopted procedures for counsel to request the redaction of specific personal data identifiers before the transcript is made electronically available to the general public. *See* Transcript Procedures for Attorneys (2008),

available at <http://www.txed.uscourts.gov/Records/Transcripts.htm>; Local Rule CV-5.2.¹ The policy protects five categories of personal data identifiers, namely social security numbers, financial account numbers, dates of birth, names of minor children, and home addresses.

Sales figures and inventory information are obviously not personal data identifiers. Publishing a post-trial transcript in a patent case will not risk identity theft of any individuals or breach the security of any minors. The special nature of courtroom proceedings has repeatedly been recognized by the Supreme Court:

A trial is a public event. What transpires in the court room is public property. If a transcript of the court proceedings had been published, we suppose none would claim that the judge could punish the publisher for contempt. . . . Those who see and hear what transpired can report it with impunity. There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it.

Craig v. Harney, 331 U.S. 367, 374, 67 S.Ct. 1249, 1254 (1947). The parties' interests in privacy fade when the information involved is already in the public. *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 494-95; 95 S.Ct. 1029, 1046 (1975). If a privacy interest is to be protected in judicial proceedings, the parties must utilize means which avoid public documentation or other exposure of private information. *Id.* at 496.

At the post-trial hearing, every statement in question was made in open court. Nintendo made no prior request to seal an exhibit or a portion of the proceedings. By placing the

¹The following procedure 1 is implemented by the policy:

1. A transcript provided to the court by a court reporter will be available at the Clerk's Office, for inspection only, for a period of 90 days after it is filed.
2. Within five (5) business days of the filing of an official court transcript, each party wishing to redact a transcript must inform the court by filing a Notice of Intent to Redact with the clerk of court *and* the court reporter.
3. If a redaction is requested, counsel must file with the clerk of court *and* submit to the court reporter a Redaction Request within 21 days from the filing of the transcript, indicating where the personal identifiers appear in the transcript by page and line and how they are to be redacted.

information in the public domain in open court, Nintendo must be presumed to have concluded that its client's or the public's interests were being served. To ask for secrecy as an afterthought, without a very good reason, flies in the face of policies which zealously protect public access to court proceedings. This is not a case of a witness unexpectedly making an impertinent or scandalous statement, such as those covered by Fed. R. Civ. P. 12(f), or an inadvertent disclosure of a trade secret that a party has made a prior effort to protect. Court reporters simply do not have the time for after-the-fact redactions that could have been avoided by a timely and well-grounded request. Freedom of information is important to our system of government. The redaction rules were adopted to protect narrowly defined privacy interests, not to draw a veil over disputes parties choose to file in our nation's courts.

IT IS THEREFORE ORDERED that Defendant Nintendo of America, Inc.'s Unopposed Motion for Redaction of Electronic Transcript [Doc. # 400] is DENIED.

So **ORDERED** and **SIGNED** this **29** day of **August, 2008**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge