

Sued: a chronicle of my legal battle with Microsoft

Greed inspired Microsoft to make their suit against me and I reacted in self defense. The documents and arguments you are about to read show Microsoft engaged in predatory litigation with no evident concern for protecting copyrights or to recover damages but rather to simply extract as much money as they could from me. Microsoft assumed I would pay them rather than fight them and that I would hire a lawyer to further support the justice industry. The only good that might come from all this is that Microsoft will feel stung by this book and stop the witch hunts. I am absolutely certain they will not comment on this case or this book.

I am most proud of two things. First that despite great efforts from Microsoft, who hired Perkins Coie, arguably the best corporate legal firm in the world (hired by President Obama and Facebook) and the best efforts of at least five of some of the highest paid corporate lawyers in the world there is no confidentiality agreement. Everything is public knowledge. No doubt Microsoft could have bought me dozens of times over without hurting their bottom line, but they walked away without confidentiality.

Secondly I built strong arguments and I believe the reader will decide I could have spanked Microsoft harder if I had decided to. I made complicated arguments and put them as succinctly as it is possible to put such arguments. For example here is a paragraph from my four-page “Response in Opposition to Plaintiff’s Motion to Compel Discovery” of June 19, 2009:

Microsoft is not interested in protecting their copyrights but rather enriching their legal department, and to this end Microsoft has involved this Court and many other courts. In this case, at least, there is no violation of law, no pattern of abuse, no letter of notification, no effort to protect copyright, I could not be reasonably expected to notice minute differences which Microsoft considers to be a “trade secret”, but regardless of all this the Court is being asked to help the Plaintiff peruse my business and financial records just in case.

In my pre conference memorandum to Magistrate Judge Donna F. Martinez just before settlement I wrote:

... this is an assembly line process designed by the Microsoft legal department as a money-making venture to accuse regardless of the validity of the claim, and negotiate cash settlement.

Perhaps this judicial industry is such that Microsoft can unashamedly represent to the Court that I have broken no law, but because of these unfounded accusations the Court should allow Microsoft access to all my business records just in case. Regardless of fairness, the law, or any other consideration this is in fact what is happening.

No one knows what will happen when a case goes to court. I could have lost or won, but the way things worked out I settled for the ability to publicize this case and write this book. Microsoft fought hard to keep all these details secret.

Being sued can be like being diagnosed with cancer, losing your job or losing a beloved family member. In my story the tragedy is how unnecessary it all is, how mistaken Microsoft was, how corrupt the system is, and how much the justice industry and Microsoft earn, and all of the rest of us lose because of predatory litigation.

Like being diagnosed with illness or other catastrophe in the end we may find ourselves in a better position. Those of us who face such tragedy and grief have no idea how our lives will change. It is an appalling alarm, a call to arms. In my story there are plenty of villains; first and foremost those Microsoft lawyers who sought to enrich their legal department's balance sheet on my back. And they show with their actions and their written email, letters and court documents they do not care about facts or justice but rather do what they are told to win money, in this case from me.

I fought for and negotiated and won the right to name names, to tell the truth, and only the contents of one document, the final settlement, at Microsoft's insistence, is secret. I believe the reason they want the secret document is so that they can say they will not comment on anything in this book due to the confidentiality of the settlement. That much is true. The settlement is confidential, but nothing else is. In the interest of fairness to them and respect for the Court that facilitated the agreement I will only tell you that it is a short agreement.

I do not believe Microsoft will easily learn from their mistakes, or the Federal justice system will reform in favor of finding justice over pandering to large corporate customers like Microsoft. They will not willingly simplify the justice industry. But I can tell you how I navigated the system without hiring a lawyer and how I accomplished so many things I had to write a book to explain it all.

The day it all began was not a day like any other. The recession had started; I had recently laid off Chip Bigelow, a good friend and employee of over ten years. Chip is a competent worker and responsible husband and father. But laying him off was not an agonizing decision because I knew he would find his way and there had not been enough work to support us for over a month.

Arthur Richards is younger, lives at home and had no real expenses. He could make do with fewer hours. Several months earlier I had six employees and now it was just Art and I. My wife had moved out a year earlier. It was the third time she had moved out, and we have since divorced. As this story opens I lived in a basement apartment alone. I explain all this to show that, in retrospect, I was at a personal low point, and thought I could not go much lower, but I could and I did, with the help of Microsoft.

I arrived at work Tuesday October 21, 2008 normally. Art and I were there, and we were busy. I was juggling computer jobs, email and customer phone calls when I received a

call from Jordan Fenster, the editor of the Torrington Register Citizen, a local newspaper. He told me I was being sued by Microsoft and I replied "That's news to me". Jordan emailed me a pdf copy of the 21 page complaint.

I did not worry too much about it, thinking it was an error. I had received a form letter from Microsoft from May 22 saying they had information I may have infringed on their copyrights and I had written back offering to help. I did not read the complaint document Jordan emailed me.

But the next morning I knew there would be something in the newspaper about the suit, since the newspaper had called me. So on the way to work I bought a newspaper. Wednesday October 22, 2008, there I was above the fold in an article called "Microsoft Sues Local Shop". It was the best information I got from Microsoft about the case for at least the next six months, quoting "Sharon Cates anti-piracy attorney for Microsoft" accusing me of "hard disk loading – installing unlicensed software directly onto personal computers and selling it to unsuspecting customers". The newspaper continued "Johnson's company was named in the lawsuit after Microsoft did a 'test purchase' at the business and found the computer contained unlicensed software. The test purchase consisted of an incognito agent for Microsoft purchasing hardware from the business."

I called Chip to tell him the bad news and that it looks like I am in for a tough time; not to look forward to coming back to work for me. I did not really believe anything bad would come of the accusations from Microsoft beyond the bad local publicity. Chip has a family to support, and was only receiving unemployment benefits at that time. I knew my business could not support him further and with this further bad news he needed to move on.

I was not guilty of "hard disk loading". The large package from RochePia LLC, Two Corporate Drive, Suite 234, Shelton, CT 06484 arrived and I signed for it noting how cheerful the mailman seemed, but then he is always cheerful. There were a lot more than 22 pages with the 17 exhibits attached several of which were several pages long. This time I read it. There was only one passage in it which is pertinent to me and informative. The rest is all legalese about who Microsoft is and why they can sue using which courts according to which rules.

That pertinent part says: ... "in or about July 2008, Defendant distributed to an investigator counterfeit Office 2003 Pro software components and computer systems with infringing Windows XP Pro and Office 2003 Pro software."

Convinced this was all a mistake I called Brian Roche thinking he might be able to follow the simple logic of it all. He said he has nothing to do with it, to call Microsoft Attorney Katherine Dugdale, who works for PerkinsCoie and is in charge of the case. It was morning here when I called, and she called me back later when she arrived at her West coast office. I could tell right away she was the one with experience, who knew what was going on. She tried to sound kind and ironically that scared me. She was not going to be easy to convince this was a mistake. The conversation went something like this:

“This is all a mistake.

“Well, that could be, Mr. Johnson, it will all come out soon.

“What did I do?

“I don’t have the details in front of me right now. But my we have evidence you infringed upon Microsoft copyrights.”

“I got that much, but I still don’t understand what I did. I am the only person I know who is careful with copyrights; I wrote you a letter saying I wanted to help you.”

“I can’t tell you anything specific. Mr. Johnson, I am not your lawyer. It would be much better if you would get a lawyer and that way we can get this matter settled as soon as possible. Do you have liability insurance on your business?”

I knew she would use anything I said against me later. But I was beginning to believe I would not be able to get out of this trouble I was in.

“I am on the front page of my local newspaper today. You guys say I put Windows and Office on someone’s computer violating copyrights. The complaint document you sent doesn’t say anything about hard disk loading and a test purchase. Where can I find out about that?”

“I don’t have the case in front of me right now, Mr. Johnson. Does it say who says that?”

“It says Microsoft attorney Sharon Cates”

“Well, I don’t know where Sharon got the information. But it is common for us to do local press releases about our efforts to protect our copyrights.”

I was careful not to say anything specific, and so was Dugdale. I am a person who thinks like a chess game and it was not my turn to make a move. I saw an uncertain future.

Douglas S, Malan from Incisive Media called later the day and asked me questions. He wrote a story about the case, and sent a photographer. I also talked to the Republican American newspaper from Waterbury CT. The local paper, the Register Citizen wrote another story, interviewing owners of other computer shops saying that I should have known better. It appeared that everyone thought I was guilty.

There was a comments section on line from the newspaper articles and I read them all. Some of them were insulting and untrue. I complained about the untrue ones and the newspaper deleted them. Someone called anonymously on a blocked phone number and asked for me. “This is Kent Johnson”. “You deserve to be sued, asshole.” and hung up.

