

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION, a  
Washington corporation,

Plaintiff,

v.

JDO MEDIA, INC., et al.,

Defendants.

No. C04-0515P

PLAINTIFF MICROSOFT  
CORPORATION'S MOTION TO  
COMPEL DOCUMENTS FROM JDO  
MEDIA, INC.

NOTE ON MOTION CALENDAR:  
DECEMBER 17, 2004

I. INTRODUCTION

Microsoft Corporation ("Microsoft") seeks an order compelling Defendant JDO Media, Inc. ("JDO") to provide certain information to Microsoft that is relevant to personal jurisdiction and that has been outstanding for almost four months. Because this information is relevant to the issue of personal jurisdiction, Microsoft requests that the Court order JDO to immediately provide that information.

II. STATEMENT OF FACTS

Microsoft filed its Complaint for Damages and Injunctive Relief ("Complaint") on March 9, 2004, and served JDO on March 10, 2004. *See* Complaint. JDO filed a Motion to Dismiss for lack of personal jurisdiction on or about April 16, 2004. *See* Motion to Dismiss. Microsoft and JDO agreed to postpone briefing and the hearing on that motion while the

1 parties conducted jurisdictional discovery. *See* Declaration of Robert J. Dzielak ¶ 2 (p. 1)  
2 (“Dzielak Decl.”). Microsoft propounded written discovery to JDO on April 26, 2004, and  
3 subsequently took the depositions of John McLeod (JDO’s President) and five members /  
4 contractors of the Iupautomated program who reside in Washington State. *Id.*

5 During McLeod’s deposition, Microsoft learned that certain information and  
6 documents exist that were not provided in response to Microsoft’s discovery requests.  
7 Accordingly, on August 4, 2004, Microsoft wrote to JDO requesting certain information. *See*  
8 Dzielak Decl. ¶ 3 (pp.1-2 and 4-5). Microsoft did not receive a response from JDO and,  
9 therefore, wrote to JDO again on August 30, 2004, requesting that JDO provide the  
10 information outlined in Microsoft’s August 4, 2004 letter. *Id.* at ¶ 3 (pp. 1-2 and 6-7). JDO,  
11 again, did not provide the requested information. *Id.* Microsoft then wrote to JDO on  
12 September 16, 2004, reiterating its request for the information outlined in its August 4, 2004  
13 letter. *Id.* at ¶ 3 (pp.1-2 and 8). JDO still did not provide the requested information. *Id.*  
14 Finally, on October 18, 2004, Microsoft again wrote to JDO requesting the information  
15 outlined in its August 4, 2004 letter. *Id.* at ¶ 3 (pp.1-2 and 9). JDO continued to fail to  
16 provide the requested information. *Id.* Throughout this ten-week period, JDO’s counsel  
17 repeatedly assured Microsoft that he was setting up a meeting with his client to obtain the  
18 information requested by Microsoft.<sup>1</sup> *Id.* at ¶ 4 (P. 2). Despite these assurances, JDO never  
19 produced the information outlined in Microsoft’s August 4, 2004 letter. *Id.* At no time did  
20 JDO ever object to producing the information requested. *Id.*

21 The parties submitted an Updated Joint Status Report on October 1, 2004, in which  
22 Microsoft and JDO agreed to extend the jurisdictional discovery cut-off date to October 22,  
23 2004. *See* Updated Status Report. Because of JDO’s failure to produce the information  
24 requested in Microsoft’s August 4, 2004 letter—information encompassed in Microsoft’s

---

25  
26 <sup>1</sup> A few of the meetings were postponed due to hurricanes in Florida. *Id.* at ¶ 4.

1 discovery requests—Microsoft has been unable to complete jurisdictional discovery. *See*  
2 Dzielak Decl. at ¶ 5 (p. 2). Once Microsoft has the requested information from JDO, the  
3 parties can proceed with agreeing upon a briefing schedule and hearing date for JDO’s motion  
4 to dismiss.

5 III. STATEMENT OF ISSUE

6 Whether the Court should grant Microsoft’s Motion to Compel.

7 IV. EVIDENCE RELIED UPON

8 This motion is based on the Declaration of Robert J. Dzielak and the exhibits attached  
9 thereto, and the pleadings and papers previously filed.

10 V. AUTHORITY AND ARGUMENT

11 Microsoft has written four letters to JDO and has had numerous conversations with  
12 JDO regarding when JDO will provide the information set forth in Microsoft’s August 4,  
13 2004 letter. Microsoft has made a good faith effort, pursuant to CR 37, to confer with JDO  
14 regarding this outstanding discovery. *See* Dzielak Decl. ¶ 3 (pp.1-2). Despite these efforts,  
15 JDO has failed to provide this information. JDO has not objected to providing the  
16 information. Rather, JDO has simply failed to not provide the information despite assurances  
17 that it was forthcoming. Because this information is relevant to the issue of personal  
18 jurisdiction, Microsoft has requested that JDO provide this information before Microsoft  
19 responds to JDO’s motion to dismiss.<sup>2</sup> Accordingly, Microsoft requests that the Court order  
20 JDO immediately to provide the information outlined in Microsoft’s August 4, 2004 letter.

21  
22  
23  
24 <sup>2</sup> JDO’s motion to dismiss is not currently noted on the Court’s calendar because  
25 jurisdictional discovery is not complete. The only outstanding discovery is the information  
26 set forth in Microsoft’s August 4, 2004 letter. The parties agreed that once jurisdictional  
discovery was complete, they would work together to find a mutually convenient hearing date  
and briefing schedule.

1 Microsoft also requests that the Court order JDO to pay the reasonable expenses  
2 incurred by Microsoft in making this motion, including attorneys' fees, pursuant to Fed. R.  
3 Civ. P. 37(c)(4)(A).

4  
5 **VI. PROPOSED ORDER**

6 A proposed order is attached hereto.

7 DATED this 29th day of November, 2004.

8 PRESTON GATES & ELLIS LLP

9  
10  
11 By           /s/ Robert J. Dzielak            
12 David A. Bateman, WSBA # 14262  
13 Robert J. Dzielak, WSBA #26178  
14 Theodore J. Angelis, WSBA # 30300  
15 Preston Gates Ellis LLP  
16 925 Fourth Avenue, Suite 2900  
17 Seattle, WA 98104  
18 Phone: (206) 623-7580  
19 Fax: (206) 623-7022  
20 E-mail: robertd@prestongates.com  
21 Attorneys for Plaintiff  
22 Microsoft Corporation  
23  
24  
25  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**DECLARATION OF SERVICE**

I declare, under penalty of perjury, under the laws of the State of Washington, that on November 29, 2004, I electronically filed the foregoing document, along with the supporting Declaration of Robert J. Dzielak, with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

G. Wrede Kirkpatrick  
Bradford Allen Patrick  
Fowler White Boggs Banker  
501 E. Kennedy Blvd., Suite 1700  
Tampa, FL 33602  
wkirkpat@fowlerwhite.com  
bpatrick@fowlerwhite.com  
Attorneys for Defendants JDO Media, Inc.  
and Tim Roland

Tony Lampert  
1901 Tower Bridge Terrace  
St. Louis MO 63146  
pro se  
mentoryou@swbell.net

Scott T. Wilsdon  
Karin Bornstein Swope  
Yarmuth Wilsdon Calfo PLLC  
925 Fourth Avenue, Suite 2500  
Seattle, WA 98104-1153  
Kswope@yarmuth.com  
wilsdon@yarmuth.com  
Attorneys for Defendant JDO Media, Inc.  
and Tim Roland

Erik Summers  
1649 Seattle Slew Way  
Oceanside CA 92057  
pro se  
email@eriksummers.com,  
erik@liquidgoeey.com

Signed this 29<sup>th</sup> day of November, 2004, at Seattle, King County, Washington.

Rhonda Hinman  
Rhonda Hinman, Legal Secretary