

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

FLO KELLY)
on behalf of herself and all others similarly)
situated,) **DECLARATION OF THEODORE**
) **GROSSMAN IN SUPPORT OF**
) **PLAINTIFF'S MOTION**
)
Plaintiffs,)
v.)
) No. 00-544
AMERICA ONLINE, INC.)
)
)
Defendant.)
_____)

I, THEODORE GROSSMAN, declare as follows:

1. I make this declaration based on personal knowledge. If called to do so, I could and would testify truthfully about the matters set forth herein.
2. I am currently a Senior Lecturer of Information Systems and Accounting at Babson College in Wellesley, Massachusetts. I am a computer professional, with extensive experience in both hardware and software, including the development and forensic analysis of systems and applications software. Attached as Exhibit A is my resume. I am President of Applied Solutions, Inc. a consulting company.
3. I was asked to review the extensive literature and reports describing the problems reported by users of American Online version 5.0 ("AOL 5.0") and to determine whether they were caused by AOL 5.0. I was also asked to determine whether any of the problems reported by current users of AOL 5.0 could be avoided for future consumers through further disclosure by AOL.

DECLARATION OF THEODORE GROSSMAN IN SUPPORT OF PLAINTIFF'S MOTION

4. Prior to forming my opinion, I obtained a copy of AOL 5.0 and analyzed the changes it makes to the internal operating software of the users' computers. I conducted extensive testing of the impact that installing AOL has on the functionality of other software and, in particular, its impact on the user's ability to connect to other Internet Service Providers ("ISPs"). I also reviewed the affidavits of several consumers who downloaded AOL 5.0 and then reported problems using their systems. I also conducted extensive documentary and computer research to obtain information about the effects of the AOL 5.0 program. This research included a review of AOL's web site, the Prodigy web site, discussions with technical support personnel of other ISP's, and other publicly available information about the effects of AOL's 5.0 program.

5. It is my opinion that many of the problems reported by users of AOL 5.0 are directly caused by the loading of the AOL 5.0 program. Also, the problems which many consumers would otherwise suffer as a result of loading AOL 5.0 could be prevented by, at a minimum, warning users of the potential problems and, in any event, by AOL modifying their software to conform to the practices of other Internet Service Providers (ISPs).

6. It is further my opinion that AOL 5.0 is designed in such a way as to obstruct and prevent users from successfully accessing other ISP's which are competitors of AOL. Also, AOL could modify their software to offer the benefits and functions of AOL 5.0 without interfering with consumers' use of competitor ISP's.

7. AOL 5.0 is a software program that allows AOL users to access AOL's communication network. Once connected to AOL's network, users may access a plethora of AOL supplied and sponsored products and services, as well as being able to access the Internet. Unlike most other ISP's, which use standard Microsoft products for accessing their network and, subsequently, the Internet, AOL uses its own proprietary software program for consumers to

access their network. Also, while most ISP's allow consumers to use the two industry standard software programs, called browsers, to surf the Internet, AOL copies onto its user's disk a specially modified version of Internet Explorer. While most other ISP's and Internet sites (web sites) have conformed to a set of open standards, AOL has pursued a closed architecture that does not conform to the rest of the Internet community. Until AOL released AOL 5.0, the prior versions of their software peacefully coexisted with most other ISP's software.

AOL 5.0 IS MASS MARKETED

8. AOL has an extensive marketing program to attract both existing users of older versions of AOL software, as well as new users to their AOL 5.0 product. AOL mailers containing a CD with the AOL 5.0 installation software have inundated consumers. I have received several in the mail. There are also point of sale displays in many retailers offering AOL 5.0 for free in the same or similar packaging. See Exhibit B. Each of the brightly colored packages offers a special opportunity to enjoy 250 to 500 hours of AOL free of charge. Id. The 500 hours must be used in one month, thereafter, there is a monthly charge of approximately \$20. Consumers are also presented with the opportunity to avail themselves of AOL's services when they buy new computers with AOL software preloaded on many new computers as well as the ubiquitous point of sale displays. Lastly, should the consumer miss any of those opportunities, they can also download free copies from AOL's web site on the Internet. See Exhibit C.

AOL 5.0 UNNECESSARILY INTERFERES WITH CONSUMERS' ACCESS TO AOL'S COMPETITORS

9. I investigated the changes which AOL 5.0 makes to the components of the user's Windows 95/98 operating system during installation, in particular the manner in which it modifies the network and communications configuration of the user's system. I have found that

AOL 5.0 proprietary software modifies the operating system in a manner likely to impair many user's ability to access the Internet using the services of ISP's other than AOL.

10. Key communications components of the Microsoft Windows 95/98 operating system include the Microsoft Dial Up Networking Adapter ("DUN"), also referred to as the "PPP adapter" which is used to connect the computer by modem with ISP's such as Earthlink and Mindspring. Another is the TCP/IP protocol, which binds to the dial up adapter to allow Windows programs such as the Netscape browser to send and receive packets of data over the Internet using the modem connection.

11. When an ISP provides customers with an installation package designed to connect that customer's computer by modem to that ISP, the installation software typically installs a DUN profile on the user's machine which utilizes the Microsoft DUN Adapter to dial the ISP's modem pool and establish the necessary connection. As any number of DUN profiles may coexist on the same machine, a user who subscribes to the services of a particular ISP retains the ability to access the Internet through another ISP. Users are accustomed to being able to switch ISP's at will or use multiple ISP's, either in search of superior service or in order to take advantage of favorable offers.

12. Using AOL's free software obtained through normal channels, I installed AOL 5.0 on several different Windows 95/98 systems. I discovered that during installation, AOL 5.0 altered the Network configuration of the tested personal computers. In particular, I found that, unlike most software designed to connect the personal computer to an ISP using a modem, AOL 5.0 does not utilize the standard Microsoft DUN Adapter. Instead, it installs its own unique dial up adapter, which is similar in function to the Microsoft DUN, but incompatible with non-AOL

communications software using Version 1.2 or earlier of the Microsoft DUN. In those cases, with AOL 5.0 installed, the user will not be able to connect to an ISP other than AOL.

13. During the installation process, the user logs onto AOL's network to obtain account information. Upon exiting AOL's network, AOL downloads further files to the personal computer. At that point, the AOL software merely indicates that it is downloading additional software. It never gives the user an explanation of the changes included within that software, nor the opportunity to accept or decline those changes. In fact, this is the process that occurs each and every time that a user logs onto the AOL network.

14. The AOL adapter renders the version of Microsoft DUN present on many Windows systems inoperable. The effect is that once the AOL adapter is installed, the user will no longer be able to access the Internet through any ISP but AOL. In fact, without AOL 5.0 installed on a computer, the typical ISP connection successfully uses the Microsoft DUN Adapter of the computer. When AOL 5.0 is installed on the computer, it creates a conflict with the Microsoft DUN Adapter. The result is that packets of data cannot be sent successfully over the connection using the TCP/IP protocol, rendering the user incapable of accessing any web sites on the Internet through their alternate ISP's.

15. I further tested a system installed with only AOL 5.0 to determine the effect on that system of installing another ISP after the fact. I concluded from the testing that those users who have an existing AOL 5.0 system, without an additional ISP, and who subsequently install another ISP will have their access to that alternate ISP prevented. Therefore, a consumer who only uses AOL 5.0 to access the internet now, and some time in the future chooses to utilize an alternate ISP, will not be able to access the ISP successfully, unless they download and install Microsoft DUN version 1.3 or successfully uninstall AOL 5.0.

AOL 5.0 CAUSES EXTENSIVE DAMAGE TO CONSUMERS

16. Because AOL 5.0 crippled their computer systems, many AOL 5.0 customers who utilize other ISPs for personal and business e-mail and other Internet services have suddenly lost their ability to send and receive e-mail and access necessary communications services. Many users were also forced to reinstall Windows in an effort to restore connectivity. Because AOL 5.0 adds components to the Windows operating system which Windows incorporates during the installation process, some users were forced to reformat their hard drive before reinstalling Windows operating system, in order to insure that all components added by AOL 5.0 had been removed. After reinstalling Windows, users then needed to reinstall all of their applications software, a feat which could take hours, even if the user still has the necessary installation media. In this process, which destroys all files and data on the hard drive, many users inevitably lost irreplaceable data, such as key configuration data, documents the user has created, financial information, e-mail, names, addresses and telephone numbers of correspondents, spreadsheet data and other personal and business records.

AOL ADMITS THAT AOL 5.0 CAUSES DAMAGE TO COMPUTERS

17. AOL admits that loading AOL 5.0 onto individual consumers' computers can cause damage. For example, AOL supplies instructions in the frequently asked questions (FAQs) section of their web site regarding solving the problem with the AOL 5.0 software. See Exhibit D. After replicating the problem, I attempted to use AOL's instructions. The instructions did not resolve the problem. It was impossible using their instructions to restore my computer to its state immediately prior to the installation of AOL 5.0.

18. During the installation process for AOL 5.0, a question comes up on the screen asking the user whether they want "AOL 5.0 to be their default for e-mail, newsgroups, etc." The user has the ability to reply "yes" or "no." In fact, AOL's default for the question is "no." AOL has publicly stated that the problem only manifests itself when the user overrides the default and responds "yes." When I tested the system I found that regardless of how I responded to the question, the system malfunctioned and I was incapable of accessing my alternate ISP. In any event, AOL never warns the user of the possible ramifications of answering in the affirmative or negative.

THE DAMAGE CAUSED BY AOL 5.0 COULD EASILY BE AVOIDED

19. It is my opinion that AOL 5.0 could have been designed to utilize the standard Microsoft Windows components, eliminating the problems users experience connecting to non-AOL ISP's.

20. AOL could avoid much of the extensive injury to consumers if it would simply warn customers that AOL 5.0 might cause loss in connectivity to third party ISP's. However, at no time during the installation process does AOL 5.0 warn the user that it is modifying key Windows system components, and changing communications and configuration settings, such that the user's ability to use non-AOL services is likely to be impaired.

21. Other ISP's have also become aware that the AOL DUN Adapter prevents their customers from using their service. As reported on the Prodigy web site, "This problem occurs when there is a conflict between AOL 5.0 and an older version of the Dial-Up Networking (DUN) component in Windows 95. This conflict disables Prodigy Internet or any other ISP so that only AOL works." See Exhibit E.

22. Microsoft has published a number of technical support bulletins describing the AOL 5.0 problem. See Exhibit F. They indicate that the problem can be solved by either downloading the latest version of DUN 1.3, or uninstalling AOL 5.0. However, the process of uninstalling the AOL product is difficult and, even when complete, leaves many orphan software files on the user's hard disk. For example, a so-called "solution" attributed to AOL Technical Support on the About.Com web site includes three pages of single spaced instructions such as:

Make sure that the ONLY binding listed in this control panel with a check mark next to it is the TCP/IP -> AOL Adapter.

See Exhibit G.

23. In many cases, downloading and installing a DUN upgrade from Microsoft will solve the problem, restoring the user's system's ability to access the Internet through an ISP other than AOL. However, most users would not know that AOL 5.0 is incompatible with the Microsoft DUN on their system, and would not know where to obtain the DUN upgrade. Even if the user does discover that installing a DUN upgrade may restore connectivity with non-AOL services, downloading the needed DUN upgrade by modem will itself take more than one hour, as the file is some 2.4 megabytes in size. The vast majority of AOL users are technical novices and would also not possess the technical expertise required to install the DUN upgrade.

24. It is also possible for a technically knowledgeable user to manually remove the AOL Dial-Up Adapter from Windows, and restore the functionality of the Microsoft DUN Adapter. However, again, most AOL users lack the technical knowledge, sophistication, or expertise to undertake such an operation. Also, most AOL users, finding that they could access AOL, but not their other ISP, probably would conclude that the problem was the fault of the other ISP. They would therefore blame the other ISP, while continuing to use AOL. In fact, based on conversations with other ISP's technical support personnel, AOL has offered almost no

assistance to consumers suffering the problems of AOL 5.0. It usually falls on the other ISP's to provide the technical help to resolve the problem, even though it was caused not by them, but by AOL's software. One ISP indicated that AOL supplied them with the instructions to help resolve the problem. The ISP related that they are receiving many calls a day complaining of the problem.

25. It would also be a simple matter for the AOL 5.0 installation software to contain computer code, which checks the personal computer, to determine the compatibility of AOL 5.0 with the version of the Microsoft DUN Adapter present on that system. Where appropriate, the installation process could load an appropriate version of DUN, or at a minimum, warn the user to obtain a DUN upgrade before proceeding further. However, the AOL 5.0 installation software performs no such checks.

26. The extent of the changes which AOL 5.0 makes to the internal operating system of the computer is unknown to most users of the product. AOL provides no disclosures at the point of sale. Furthermore, because the changes go beyond those which are common in the industry and include changes which impact other computer programs and functions, the changes are not authorized by consumers who load AOL 5.0. In some cases these changes are downloaded from the Internet when the user logs off of the AOL network.

Executed this 7th day of March, 2000 at Wellesley, Massachusetts. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


Theodore Grossman

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

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CLERK OF DISTRICT COURT
S.D. OF FLA. - MIA

CLASS ACTION NO. 00-544-Civ-GOLD/SIMONTON

FLO KELLY, on behalf of herself and all)
others similarly situated,)
)
Plaintiffs,)
)
vs.)
)
America Online, Inc.)
)
Defendant.)

**SUPPLEMENTAL DECLARATION OF THEODORE GROSSMAN IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION**

I, **THEODORE GROSSMAN**, declare as follows:

1. I make this declaration based on personal knowledge.
2. I am currently a Senior Lecturer of Information Systems and Accounting at Babson College in Wellesley, Massachusetts. I am a computer professional, with extensive experience in both hardware and software, including the development and forensic analysis of systems and applications software. I am also President of Applied Solutions, Inc. a consulting company.
3. I make this declaration to supplement my declarations dated March 7th, 2000 and March 21st, 2000 in support of Plaintiff Flo Kelly's Emergency Motion For An Order Directing Defendant American Online, Inc. to Show Cause Why A Temporary Restraining Order Should Not Issue And For A Preliminary Injunction filed against the defendant America Online, Inc.

("AOL") based on tests and research I have performed, and information I received since those declarations. These declarations are reaffirmed, readopted and incorporated by reference herein.

**AOL 5.0 SWITCHES THE CONSUMER'S ISP AND MISLEADS THE CONSUMER
INTO NOT BE ABLE TO USE THEIR ALTERNATE INTERNET SERVICE
PROVIDERS**

4. AOL's traditional customer base consists, for the most part, of technically challenged consumers. See Exhibit A. AOL has compiled very detailed analyses of its subscriber base and understands its demographics, income levels, computer equipment, operating system and technical knowledge. See Exhibit B. It is therefore aware, or should be aware, that its subscriber base does not have the technical competence to understand the ramifications of some of the questions asked in the installation process. Most of those same consumers would not be capable of resolving the problems created by installing AOL 5.0, even with substantial telephone support.

5. When AOL installs its software on the consumer's computer it changes the computer's default dialer to AOL. Therefore, if the consumer had been using another ISP, e.g. Earthlink, when the user launches the Earthlink dialer, it would show that it was attempting to connect to America Online, not Earthlink. See Exhibit C. Only if the consumer was technically astute and was aware that AOL had changed the computer's default dialer for accessing ISPs, could the consumer have solved the problem. But, AOL had neither made any representation that it was changing the default dialer, had not explained what it was doing, nor had requested authorization prior to changing the default dialer. To undo the problem the consumer would need to click on the arrow to the right of America Online in the dialog box and select an alternate ISP. Then the consumer would be able to dial the alternate ISP. This is not necessarily a difficult step, but for non-intuitive users, they might never think of clicking on the arrow.

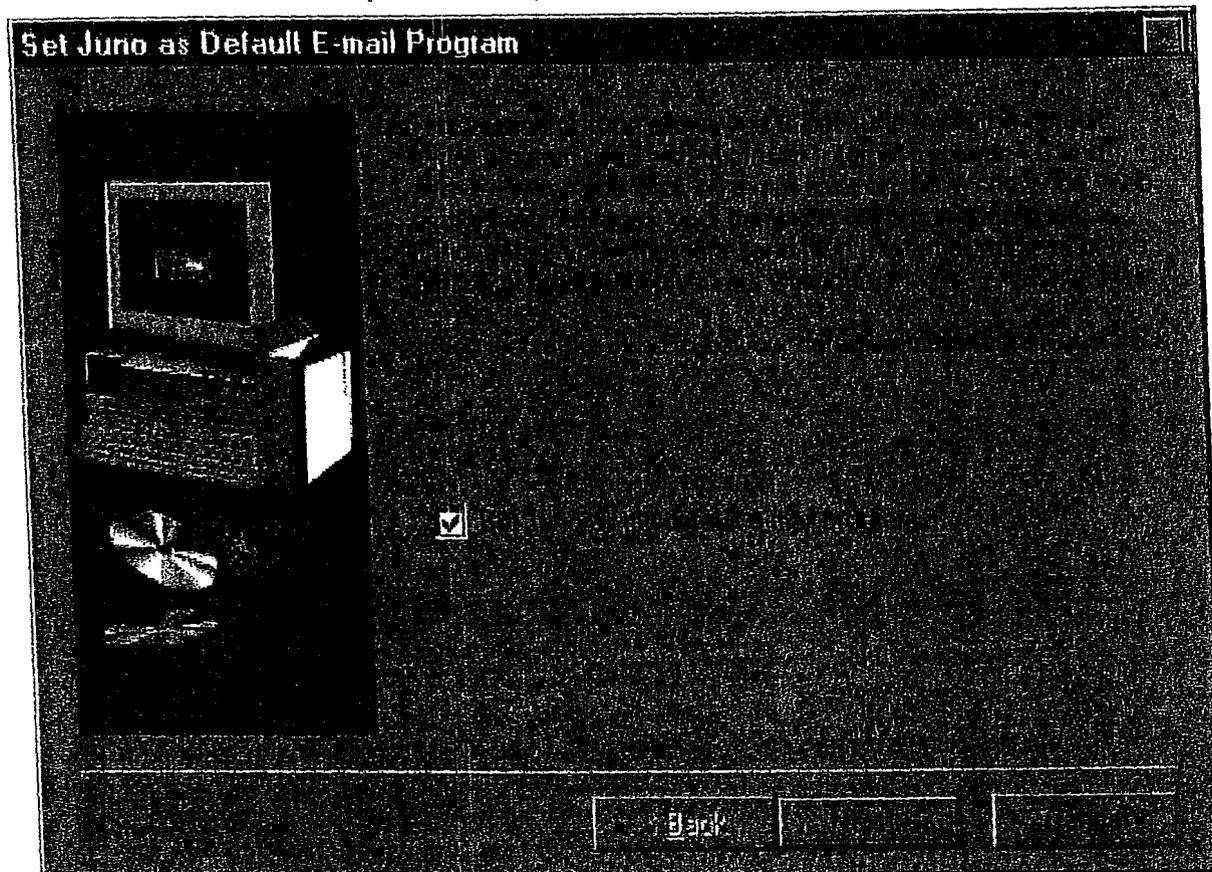
6. AOL presents to the consumer the following dialog box at the very end of the process of installing AOL 5.0:



Most consumers would have no basis for understanding the significance of this question. Only those people that understand the inner workings of the Windows operating system would understand the reason behind the question. The question itself is misleading. It does not explain that by making AOL 5.0 the default it precludes the user from accessing the Internet using another ISP when clicking on a hyperlink, either now or in the future. It does not explain to the consumer that should the consumer wish to change his/her mind at a later time that there is a procedure for changing the default. It does not explain to the consumer that by answering "Yes" they might not be able to send e-mail using their alternate service provider. Considering the nature of the typical AOL user, he or she could very well interpret this question to merely be, whether to use AOL's custom browser, rather than their original browser program, e.g. Netscape or Internet Explorer, not which ISP they use to connect to the Internet. Yet, AOL does have buried on its WEB site the exact information it should have provided the consumer when the software originally asked the question during installation. See Exhibit D. It would be a very simple process to provide an explanation on the screen that both explains the ramifications of the action, as well as the solution for changing the default back. These would be the same instructions that AOL has hidden on their web site and shown in Exhibit D.

7. Notwithstanding the information in ¶6, the question posed in the dialog box continues to be misleading, even if it could be construed as requesting permission to replace the default dialer and ISP to AOL. However, my testing showed that regardless of how I answered the question in the dialog box, the AOL software changed my default dialer and default ISP to AOL without authorization.

8. In contrast to AOL, Juno, a free ISP service, provides a more complete explanation when it installs its software on a consumer's computer. The screen that appears is as follows:



If the consumer does set Juno as their default, it doesn't impact their other ISP access.

**AOL STATES THAT IT PROVIDES A SOLUTION TO THE DEFAULT PROBLEM ON
ITS NETWORK – IF YOU CAN FIND IT**

9. AOL states that it has provided a solution to the default problem, mentioned above, on its network.¹ One of the most challenging problems in using the Internet, including

¹ America Online, Inc.'s Memorandum in Support of Motion to Transfer Pursuant to 28 U.S.C. § 1404(a)

many proprietary networks, is navigating one's way through the mass of information available to the user. That is why search engines were developed. To access the technical notes provided by AOL concerning the default settings of the consumer's computer, the consumer would first have to know to access the "keyword" AOL 5.0 on AOL's network. The appropriate "keyword" for this problem is either "help" or "AOL 5.0". There, AOL provides instructions for attempting to change the consumers system back to its original settings. See Exhibit E. If the consumer did not know the magic "keyword", the consumer would be lost.

**AOL'S INSTRUCTIONS FOR RESOLVING THE PROBLEMS FREQUENTLY DO
NOT WORK**

10. AOL's instructions for resolving both the default issue and the alternate ISP access problem frequently do not work. During my testing, I tested AOL 5.0 on several computers. On one of the computers I used Microsoft Windows' Uninstall Utility to invoke the AOL Uninstall Utility to uninstall AOL 5.0 before being able to resolve the problems. While not necessarily technically challenging, it is a process that the average AOL user would not be aware of, or comfortable executing. On another computer, the uninstall process that was documented by AOL did not fix the problem. Instead, I was forced to delete all of my Windows networking components from my operating system and reinstall them again using my Windows operating systems CD. This process is one that **even the seasoned technician** thinks at least twice before undertaking.

**AOL INSISTS ON LAUNCHING ITSELF EVEN WHEN A USER ATTEMPTS TO
CONNECT WITH AN ALTERNATE ISP CREATING CONFUSION**

11. AOL has inserted a function within AOL 5.0 that launches the AOL system anytime a consumer connects with an alternate ISP. When the computer is connecting to the

alternate ISP, a dialog box on the screen shows that the computer is connecting to the ISP and verifying the user's password. When the ISP has completed the connection, it notifies the user that he/she is connected to the ISP. All of a sudden, the AOL program launches itself and displays the AOL sign on screen, taking over the entire screen – not a small box, on the computer. The average consumer would have no idea what was going on nor what to do. AOL describes the function as allowing the consumer to request the computer to contact and connect to AOL anytime an Internet connection is established with an alternate ISP. Common sense and logic says that if the consumer wanted to establish a dial up connection to AOL, the consumer would have clicked on AOL, instead of an alternate ISP. That notwithstanding, the option exists, and a dialog box is available from the Windows task bar that allows the consumer to select from a series of options of what should occur when a connection with an alternate ISP is established. The options are as follows: See Exhibit F at 1.

- Automatically Start AOL
- Display a dialog box asking if AOL should be started
- Blink the AOL tray icon
- Do not do anything

But, when I tested the function on two different computers, one running Windows 95, the other Windows 98, **regardless of which option I chose AOL automatically launched itself and requested the consumer to access AOL.** See Exhibit F at 2. Even though AOL states that the purpose of this function is to allow users to access AOL through other ISPs, I found that clicking on the “sign on” button merely produced an error message. See Exhibit F at 3.

**AOL 5.0 PRECLUDES CONSUMERS FROM TAKING ADVANTAGE OF MANY OF
THE NEW FREE ISP PROGRAMS**

12. In recent months there have been many offerings of free Internet service. These services are being provided by new ISPs that are offering free access to the Internet in exchange for the consumer having to also see promotional advertisements for products and services. See Exhibit G. The advertisements in effect pay for the cost of accessing the network. For those consumers that have AOL 5.0, and are susceptible to the 5.0 access problem, they will never be able to avail themselves of the free Internet access service being offered. This applies both now and in the future. Once the average AOL consumer experiences the problems installing a different ISP, they will revert back to the familiar and stay with AOL.

13. As part of my testing program, I attempted to install JUNO, a free ISP service onto my computer after having AOL 5.0 installed. After installing Juno's software, and answering all of the appropriate questions, I was able to access Juno's network, but unable to establish a TCP/IP session and access any Web sites. These were the same results caused by AOL 5.0 that occurred in my earlier attempts with other ISPs aside from Juno.

AOL IS GROWING FASTER THAN EVEN IT EXPECTED

14. This past March 23rd, CNBC, the financial television network, reported that AOL disclosed in the past day that it has surpassed 22 million subscribers. CNBC also reports that AOL said that the subscriber growth exceeds even its own expectations. See Exhibit H. It appears that the AOL 5.0 promotion, offering 500 free hours, and the proliferation of AOL 5.0 CDs are having the desired effect of signing up scores of new AOL members. As more and more consumers are introduced to the problems associated with AOL 5.0, the issue of remediating all of those consumer's problems become much greater.

AOL's CLAIM OF NO RISK IS MISLEADING

15. In the March 27th, 2000 edition of TIME Magazine, AOL advertised for its service and AOL 5.0. See Exhibit I. In the advertisement, AOL states that there is a **No Risk** trial for trying AOL 5.0. However as set forth above, there is a risk to the consumer if their computer Internet connection fails as a result of AOL 5.0.

AOL KNEW OF THE PROBLEM WHEN IT RELEASED AOL 5.0 AND HAS NOT FIXED THE PROBLEM

16. Since I have not reviewed any documents in AOL's possession, it is impossible to know whether the problems associated with accessing alternate ISPs is of intentional design. However, the problems associated with AOL 5.0 were uncovered at a minimum during the beta-testing period of the product. There are published reports that the testing community documented the problems to AOL during the three month beta-testing period. See Exhibit J. The reports quote a beta tester as saying that AOL disregarded the problem and rushed to distribute AOL 5.0 to the marketplace. Id. Also, a Microsoft technical support bulletin dated October 25, 1999 describes the alternate ISP problem. See Exhibit K. The software was released to the general public in the beginning of October 1999. The problems have been known since the beginning of the distribution of the product, yet AOL has chosen not to fix the problems.

17. Industry practice dictates any software developer to perform regression testing of all new products prior to releasing the product to the public. This requires the developing company to test the software on various hardware, operating systems, and application software configurations to ensure backward compatibility of the software. AOL specifies in its literature that AOL 5.0 runs under both Windows 95 and Windows 98. AOL makes no other specifications or requirements aside from the operating system. Therefore it was incumbent upon AOL to

ensure that the software would run under any configuration using either Windows 95 or Windows 98.

**AOL HAS PRODUCED AND DISTRIBUTED DIFFERENT VERSIONS OF AOL 5.0
AND POSSIBLY FIXED SOME PROBLEMS, YET CREATED OTHERS**

18. AOL has distributed different versions of AOL 5.0 over the past 6 months. I have tested at least 5 versions as part of my opinion. In some versions certain functions worked properly, in other versions they did not. When I tested one of the earlier versions on a Windows 98 machine, at one point in my testing, I was repeatedly unable to dial an alternate ISP. It was only after I uninstalled AOL 5.0 that I was able to connect with the alternate ISP.

19. AOL has the ability to fix all of the software problems associated with this lawsuit. It has the ability to distribute a fixed version of the software through the Internet. It currently makes a version of AOL 5.0 available through downloading from its Internet web site. There is no reason why that version, at a minimum, needs to be a flawed version that merely perpetuates the problems that were originally discovered during the beta-testing phase. AOL also has the names and addresses of each individual that has installed AOL 5.0 and registered with their network. AOL could mail those individuals a CD containing the fixed software. For many of those users, AOL 5.0 is a time bomb waiting to explode should they attempt to add an additional ISP to their computer. Lastly, AOL has the facility to download files to the consumer each time the consumer logs on to the AOL network. When I tested the software, I noticed that at the end of each online session, AOL downloaded a file containing program updates. Each time the AOL 5.0 program version number changed. AOL should be able to download the necessary fixes to the consumer's computers at that time.

Executed this 10th day of April, 2000 at Wellesley, Massachusetts. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Theodore Grossman

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the following:

1. Supplemental Declaration of Theodore Grossman in Support of Motion for Preliminary Injunction.
2. Declaration of Colin Steele in Support of Plaintiffs' Motion for Temporary Injunction.
3. Notice of Designation of Declaration Testimony Regarding Hearing on Motion for Preliminary Injunction.
4. Declaration of Juau C. Cofino.
5. Declaration of William J. Doyle II in Support of Motion for Preliminary Injunction.

were furnished via Hand Delivery to: Thomas Julin, Esq., **Steel Hector & Davis**, 200 South Biscayne Blvd., Suite 4000, Miami, Florida 33131 and to: Eugene P. Assaf, Esq., **Kirkland & Ellis**, 655 Fifteenth Street, NW, Suite 1200, Washington, DC 20005 via Federal Express on this 10th day of April, 2000.



JOSEPH M. MATTHEWS



Wave of the future: Barry Schuler, AOL's president of interactive services, says the company is convinced that consumers will want AOL-TV. Some features of the product, coming out in June, include Net access and programming VCRs remotely.

Devices put Web everywhere

AOL to make Net appliances

By Paul Davidson
USA TODAY

DULLES, Va. — It's 3:30 p.m. You're on a conference call in this office when you figure your 10-year-old has come home from school and traipsed into the kitchen. You bang out an instant message on your America Online-based PC: "Do your homework!" To the child's dismay, it appears on a small AOL Internet appliance on the wall.

Minutes later, you hop in a cab for a meeting when your cellular phone comes to life with an AOL e-mail reminder: Ally McBeal is on at 9 p.m. Realizing you won't catch it because of a late meeting, you punch a few buttons on your phone. Presto: Your AOL TV has programmed your VCR to record Ally.

A long-awaited world in which consumers, wherever they may be, are linked to the Net, their gadgets, their stock portfolios and each other appears to be at hand. But do they really want it? AOL announced at Internet World Wednesday that, in partnership with Gateway, it will roll out a family of appliances late this year that will unleash the Web from the desktop PC and sprinkle it around the house.

The No. 1 online service also unveiled its Netscape 6.0 Web browser aimed at giving subscribers access to the same stock quotes, e-mail, personal address books and other data — whether they're on cellular phones, interactive TVs, PCs or other home appliances. In recent interviews, Barry Schuler, president of AOL interactive services, also disclosed fresh details about AOL-TV and its other new-age services. "We have people who spend two, three hours a day online, and there are other places (besides a PC) they want to do it."

AOL will charge existing subscribers nothing extra or a small premium for pumping its service into the new devices. By getting them to spend more time online, it generates more ad and commerce revenues, Schuler says.

AOL isn't the first company to launch next-generation Web devices: Netpliance markets Web appliances; Micro-Soft has WebTV; and AT&T, Sprint and others offer wireless gadgets. Sales have languished, largely because of a dearth of compelling features.

The move this year by AOL — with 22 million households and 40 million users — to make its "AOL Anywhere" vision a reality should give the markets a big shove. "It's much easier to roll their cus-



Making alterations: Schuler, left, and Jordan Lazaro, AOL's product design director, discuss a new welcome screen for the Internet provider.

tomers and say they can synchronize your e-mail and other services on these appliances for an extra \$5 or \$10 a month," says Zia Wigger of Jupiter Communications.

But some say even AOL's potent brand and marketing clout won't spur blasé consumers, especially AOL's moneymaking audience. "Now they have to convince people they really need all this extraneous stuff," says Jupiter analyst Seanus McAteer. "I don't, do you?"

Schuler concedes building a mass audience could take five or 10 years. But he says the company's research and uncertainty fuel for consumer cravings convince it that, one day, they will have to have these conveniences. Among them:

► **Internet appliances.** The counter-top or wall device, to be rolled out by Christmas, is designed for those who want Web access in the kitchen but don't want to "worry about spilling Betty Crocker batter on a PC," Schuler says. "People want to look up recipes, find a plumber. Or you walk in, drop your stuff, check e-mail."

A small Web pad that can be toted around the house for e-mail or Web surfing is slated for early 2001 release. And a desktop appliance, to be offered by year's end, will be a low-cost alternative to the PC, supplying Web access and Net-based software that resides at remote servers and runs on a browser instead of a Windows-based PC. AOL will strike deals with suppliers of games and other applications. Using you on the AOL screen, turbocharging the Web-based application market. "Five years from now, you won't go to the store to buy a box of software," he says.

While prices have not been set, Net appliances generally cost \$500 or less, but the main appeal is simplicity, says Rob Enderle of Giga Information Group. Unlike PCs, they boot up instantly and go right to the Web.

But with many PCs costing next to nothing when a customer signs up for Net access for three years, McAteer is skeptical about the gadgets taking off.

► **AOL-TV set-top boxes,** rolling out in June to some of Time Warner's 12 million cable subscribers and DirecTV's 8 million satellite customers. AOL is buying Time Warner and has a stake in DirecTV. Eventually, AOL might simply give all subscribers an AOL-TV box. "We can jump-start the category," Schuler says.

Schuler says the most compelling feature is easier navigation of the cable dial, especially as it expands to 300 channels or more. News channels, for example, would be in the 100s, movies in the 700s. "We have tested this heavily and people love it," he says. "Finding movies on cable is such a pain."

AOL-TV also brings the Net to TV screens. Customers will be able to program e-mail reminders of shows and program VCRs remotely. They can send instant messages to friends while watching a show, learn more about a news report or buy a sweater.

Jupiter's Jim Penhune isn't bullish, saying, "If people want to lean forward and type notes to friends, they're not going to be watching TV."

► **Sprint PCS wireless phones** offering the AOL service are slated to roll out May 26. They will feature news, sports, stock quotes and local information, such as directions and movie times. The focus will be on personalized time- and location-sensitive reports that, for example, alert subscribers when a stock plummets. "You just get the stuff that's really important to you," Schuler says.

customers. Bell Atlantic closed its zone Wireless joint venture with Time AirTouch Monday, becoming USA's biggest wireless carrier with more than 24 million customers.

The two new national giants compete hard with AT&T and PCS, which will lead to better, consistent service and lower prices, consumers, experts say. The 63 calling plans that Verizon wireless day are generally lower than AT&T's, higher than those of Sprint PCS.

Customers who only use their phones for occasional calling will benefit from new plans aimed at them, says Wireless CEO Denny Strigel.

Heavy phone users and business were already clamoring for alternatives, says SBC Chief Executive Executive. BellSouth and SBC didn't join to survive, but they say a shake-up in their rivals and prices.

Going national was critical for Bell Atlantic and Vodafone AirTouch. "I've known for some time that we're bigger in order to grow," Strigel says.

The wireless business in the U.S. started as a local service. Even when they linked, the Bells were major players, with SBC alone claiming more than 11 million customers. But the wireless is toward nationwide services that include long-distance, new Internet services that work nationwide networks.

"Footprint is king," says America Securities analyst Steven. The trend could spur even more consolidation as the remaining smaller get scooped up to plug holes in systems, he says.

The need for a coherent system could work to AT&T's advantage; the Bells still have disparate services, an AT&T spokesman says. PCS and Nextel, which covers businesses, also could have that term advantage.

As their wireless businesses grow, Bells will get via the airwaves what can't have on the ground — a big-distance business. "This is a great get into long-distance," analyst Ragan says. "They have leapt over all the hurdles."

Everywhere but New York, they are struggling to convince regulators that their markets are competitive. They can't sell long-distance, so they don't have to wait for permission.

Being able to offer a full range of services is crucial in the phone industry, analysts say. The more the Bells do to match the variety of local, long-distance, wireless and Internet services, the long-distance carriers offer, the better they will do when they enter the long-distance and the less damage it does as they go after local customers.

Wireless consumers

Subscribers with wireless phones, pagers and other Internet devices

Today	4.5 million
2003	11 million

Source: The Yankee Group

Largest nationwide wireless carriers

Until Monday, AT&T Wireless and Sprint PCS were the largest wireless phone carriers nationwide. The leaders now:

Company	Customers
Verizon Wireless	24.0 million
BellSouth/SBC	16.2 million
AT&T Wireless	12.2 million
Sprint PCS	6.0 million
Nextel	5.0 million

EXHIBIT A

ATTACHMENT / EXHIBIT

With So Much Subscriber Data, AOL Walks a Cautious Line on Privacy
By Nick Wingfield and Glenn R. Simpson

03/15/2000
The Wall Street Journal
Page B1
(Copyright (c) 2000, Dow Jones & Company, Inc.)

DoubleClick Inc. may be the current bad boy of Internet privacy. But when it comes to tracking online habits, few companies are in a more powerful -- or trickier -- position than America Online Inc.

The online service keeps records on more than 21 million subscribers, including names, addresses and credit-card numbers. While AOL says it doesn't watch users' travels on the World Wide Web, its system does automatically track their movements within AOL's proprietary service -- including chat rooms, e-mail, news services and other content -- where users spend 85% to 87% of their time online.

"AOL is probably sitting on a bigger wealth of information about consumers than any other entity," says Jeffrey Minsky, director of media convergence at WPP Group PLC's OgilvyOne, a New York ad agency.

That trove of data could bring huge revenue if AOL were to package it for sale to retailers, banks, insurers and others dying to know which AOL customers would be most likely to snap up their products and services.

Walking a cautious line, AOL says it has never sold data about its members' movements within its system. "The notion of having someone track where [individual users] go online took us in a direction we felt was inappropriate," says Kathy Bushkin, an AOL senior vice president. She says AOL's privacy policy is "one of the strongest in the industry."

Its policy leaves it room to use some of its valuable data. Like many marketers, it sells names and addresses of subscribers to junk-mailers, a practice it discloses in its privacy policy. It also buys information about its members -- such as the type of computer a subscriber owns -- from outside suppliers and uses that data to target advertising when a subscriber comes online.

AOL could gain another rich source of data when it completes its proposed acquisition of Time Warner Inc. The media giant has information on the reading and listening habits of the 65 million households that receive its books, magazines and CDs. Indeed, privacy was a major concern of lawmakers during recent Senate hearings about the deal.

Some rival online service providers aggressively track subscribers' movements and sell what their surveillance turns up. For instance, NetZero Inc., a provider of free Internet access, creates extensive personal profiles about its users partly by tracking where they go online. The company uses the information to deliver targeted advertisements to its users, according to its privacy policy. NetZero, however, insists it doesn't share with outsiders any of the personal information about users, unless they consent to it.

Another free Internet service provider, COMI Inc.'s 1stUp.com, also collects information about where users of its service go online so it can tailor advertisements to them. The company says that it doesn't connect that data to its users' personal information, though its privacy policy doesn't mention that.

Making a delicate calculus of privacy and profits, AOL has opted thus far to focus on attracting and keeping paid subscribers, who in turn lure advertisers to the single largest audience on the Internet. If AOL were to begin selling detailed information about them, it could risk a backlash by subscribers and a regulatory review. Just look at DoubleClick, the big Web ad-placement company that helps advertisers track users' online behavior. It's under investigation by the Federal Trade Commission for potential privacy violations. The company says it has done nothing wrong.

Because laws governing Internet privacy are either nonexistent or untested, AOL subscribers must rely on the company to keep information about them private. Some privacy advocates worry that, despite AOL's assurances that it has never sold navigational data about its subscribers and doesn't plan to start, the company could simply do what other companies have done: change policy.

"I won't speak to our policy changing," says Ms. Bushkin, the AOL executive. Consumer and political attitudes about online surveillance "might change, but the environment could go in the other direction as well," she says. "I think we're in the era where people are evaluating privacy."

Somewhere within AOL's network is a computer containing information about where individuals have gone within the AOL service. But an AOL spokesman says these records on individuals are technically difficult to retrieve, and AOL doesn't retrieve them. "The system was not configured to provide individualized data," he adds.

The online company uses this navigational data in the aggregate to determine which areas of its service are most popular and which are not, he says. And AOL doesn't organize the information by income or other demographic measurements, he adds, and it isn't used to market to individuals.

AOL also knows what subscribers buy in the AOL Store, what movie tickets they order through its MovieFone ticketing service, and what they listen to on its Spinner.com Internet radio service. While it uses the AOL store records to make targeted promotional offers to AOL users, the company says it doesn't use Spinner.com and MovieFone transaction records to alert advertisements at users.

AOL says its system "anonymizes" users' travels on the World Wide Web so that the company can't link an individual to the Web sites he or she visits. That means AOL doesn't do the kind of online profiling pursued by DoubleClick and others.

The company says it goes to great lengths to keep subscriber information confidential. AOL keeps its internally generated user data separate from the information it buys from outside suppliers, which compile demographic, shopping history and other personal details about individuals. And because that outside information is maintained separately from AOL's membership files, it won't be accessible to, say, an AOL customer-service agent.

AOL does match the outside lists' names with its own membership list. To preserve confidentiality, those member names are then tagged with the equivalent of a code that identifies them as, for example, a person likely to be earning more than \$100,000. That allows AOL to sell targeted ads to companies and transmit them to the right users online.

The AOL spokesman declines to specify what kinds of outside information the company buys, or from whom it buys it. The company's privacy policy says AOL uses "publicly available consumer data" on its members to help it decide "which marketing offers to make and which advertising they see." The spokesman adds that only about 2% of AOL's ads are targeted at users based on outside data.

The collection of such information -- lists of people with big houses, or parents or heavy credit-card users -- is a widely accepted practice in the direct-marketing industry. Like many other companies, Dow Jones & Co., the publisher of The Wall Street Journal, buys other publications' mailing lists to send solicitations to potential readers.

EXHIBIT B

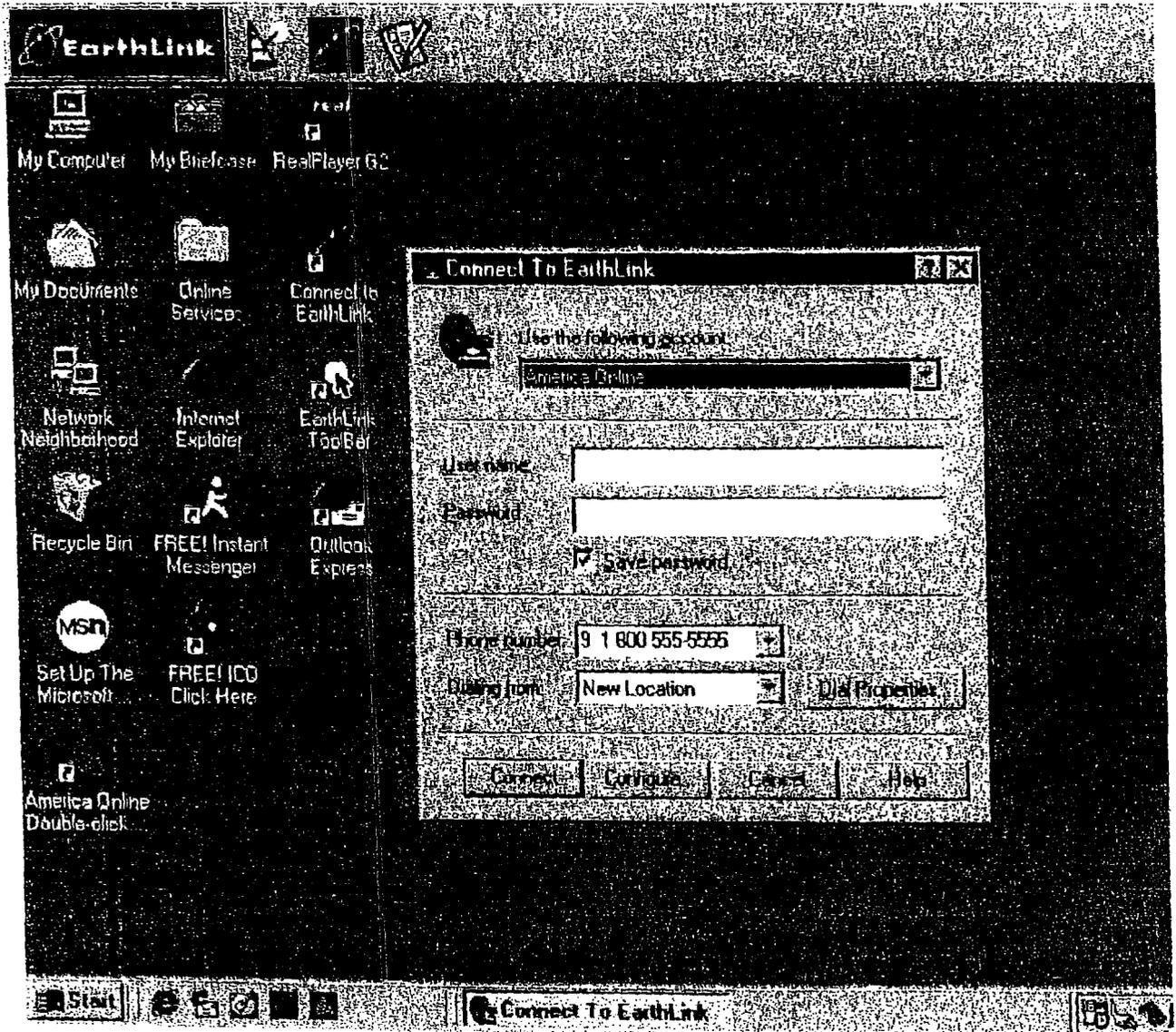


Exhibit c

If you aren't sure whether to make AOL default software for Web pages, e-mail and newsgroups, should you do? Here are some facts to help you make a decision.

- The Windows environment allows users to set applications as the "default" to eliminate inconvenient steps in accessing the Internet. America Online version 5.0 uses this Windows feature to give you a choice to automatically use AOL when accessing Internet content and services.
- If you make AOL your default choice for Web pages, e-mail and Internet newsgroups, you will save the time and effort it takes to separately select and launch specific Internet applications.
- If you use other ISPs for e-mail, newsgroups or Web pages, and click "Yes" to make AOL your default software, you can still use the other services, but might experience some difficulties in doing so. Therefore, if you frequently use other ISPs, you may want to answer "No" at the prompt. Note: If you use another Internet Service Provider (ISP) only for the purpose of connecting to the Internet, and then use America Online for everything else, clicking "Yes" to make AOL your default software may save you time and effort.

For more information, see:

[Changing your default ISP dial-up settings](#)

[Changing your default Internet software for Web pages, e-mail and newsgroups](#)

If you have more questions about this, [Ask the Staff](#)

EXHIBIT D

If you have set AOL as your default Internet software for Web pages, e-mail and newsgroups and now you want to make another software application your default, it's easy to change your settings. You can change your default applications for viewing Web pages, reading e-mail and/or newsgroups separately.

To change your default Internet software for Web pages, e-mail and newsgroups

1. Close AOL and all Internet applications that you have open.
2. On the Windows Start menu, point to Settings, then click Control Panel.
3. Double click the Internet Options icon. The Internet Properties window will appear.
4. Click the Programs tab.
5. In the Internet Programs area, you must change your default for Web pages, e-mail and newsgroups separately.
 - To change your default e-mail reader, select your preferred application/ISP from the menu to the right of E-mail.
 - To change your default newsgroup reader, select your preferred application/ISP from the menu to the right of Newsgroups.
 - To change your default application for Web pages, click to check the box beside Internet Explorer should check to see if it is the default browser.
6. When you are finished selecting your defaults, click Apply, then click Ok.
7. If you have changed your default application for Web pages, you will also need to start Microsoft Internet Explorer and when you are asked if you would like to make Internet Explorer 5 your default browser, click Yes.

Notes

- On some versions of Windows, the Internet Options icon is just labeled "Internet." And under the Programs tab, Newsgroups is just labeled "News" and E-mail is just labeled "Mail."
- On some versions of Windows you have the option to Click Reset Web Settings button in the Connection tab to reset your default for Web Page.
- If you previously chose another application as your default software for Web pages, e-mail, and newsgroups, and now you want to make AOL your default software, an easy way to do this is to use the Associations preference. On the My AOL menu on the AOL toolbar, click Preferences. Then click Associations. A confirmation screen will appear asking whether you'd like to make AOL your default software. Click Ok.

For more information, see:

[About making AOL your default Internet software for Web pages, e-mail and newsgroups](#)

[Changing your default ISP dial-up settings](#)

If you have more questions about this, [Ask the Staff](#)

Like other Internet Service Providers (ISPs), AOL installs software that makes it possible to dial into our network when you want to go online using AOL. The Windows operating system allows for a single default dialer. If you have more than one ISP, then only one of the dialers can be the Windows default. However, you can run any dialer, whether it's the default or not, by double-clicking the appropriate icon.

To change your default dialer

1. Close AOL and all Internet applications that you have open.
2. On the Windows Start menu, point to Settings, then click Control Panel.
3. Double click the Internet Options icon. The Internet Properties window will appear.
4. Click the Connections tab
5. In the Dial-up settings area, choose the dialer software you would like to use by clicking its name.
6. Make sure either Dial whenever a network connection is not present or Always dial my default connection is selected.
7. Click Set Default.
8. Click Ok. Windows will reset the dialer as requested.
9. Exit the Control Panel.

Notes

- Dialer software usually contains the name of the brand of ISP you would like to use.
- On some versions of Windows, the Internet Options icon is just labeled "Internet."
- If you are using Internet Explorer 4.0, from step 3 above, click the Connections tab, then click Connect to the Internet using a modem, then click Settings, then choose the dialer software you would like to use by choosing its name in the Use the following Dial-Up Networking Connection folder. Click Ok. Then click Ok again to close the window.

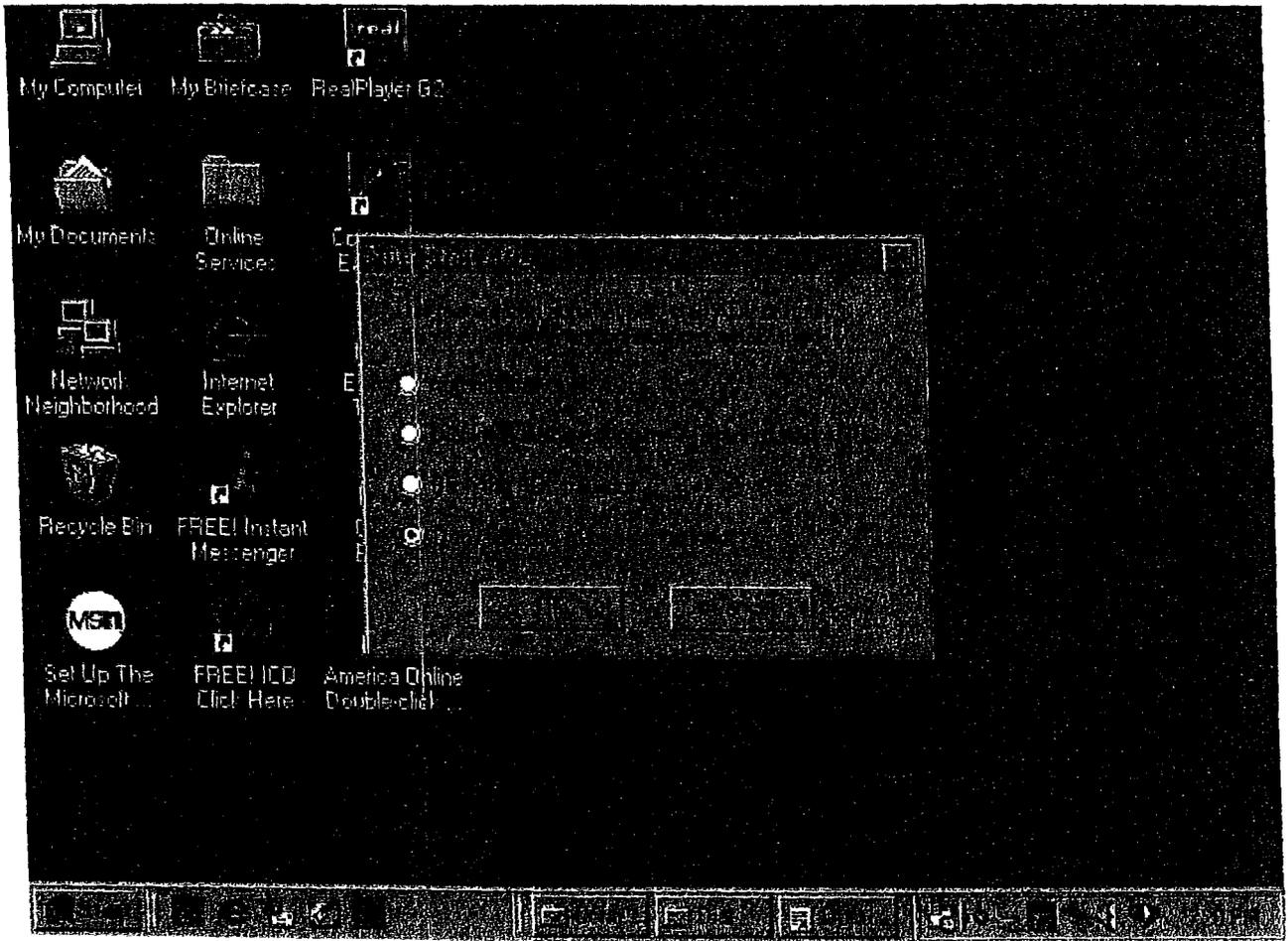
For more information, see:

[About making AOL your default Internet software for Web pages, e-mail and newsgroups](#)

[Changing your default Internet software for Web pages, e-mail and newsgroups](#)

If you have more questions about this, [Ask the Staff](#).

EXHIBIT F



ATTACHMENT / EXHIBIT

F

America Online

Read Write Mail Center Print My Files My AOL Favorites

Sign On



version 5.0

Select Screen Name:

Protagonist

Password Stored

See Keyword: Preferences

Select Location:

Home

SETUP

ACCESS NUMBERS

HELP

SIGN ON

port is invalid or busy.
Attempt 2) [952-3298
is invalid or busy.

The Connection Failed



Home

version 3.0

- SETUP
- ACCESS NUMBERS
- HELP
- SIGN ON

Apr 10 00 09:11a

Ted Grossman

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p.10

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ATTACHMENT / EXHIBIT

G

Whit G

APR 10 2000 09:33

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USA: AOL stock rises with subscriber growth still strong.
By Reshma Kapadia

03/22/2000
Reuters English News Service
(C) Reuters Limited 2000.

NEW YORK, March 22 (Reuters) - Shares of America Online Inc. rose Wednesday after the No. 1 Internet service company revealed that AOL's subscriber base grew about 10 percent since December, a further sign that its planned union with Time Warner is not sapping the company's performance.

Shares of Drexel, the listed AOL were 3-14 1/8 after a 70-13/16 Wednesday afternoon, extending a week-long rebound and recovering more ground lost after the January merger announcement. Time Warner Inc. shares also rose on Tuesday, climbing 2-13/16 at 89-7/8, after reaching a fresh 52-week high of 101-1/4 earlier in the session.

"In the Internet world, speed is critical and AOL is clearly demonstrating that it is not being slowed down, and its underlying business continues to perform well," said Stewart Halpern, new media and entertainment analyst at Banc of America.

Halpern said the rebound by AOL's share price after the merger announcement in part reflected investor skepticism over the combined company's ability to sustain the relentless momentum AOL has shown in the last couple years.

Those doubts had already started to ease, amid evidence that the pending Time Warner union was not a distraction. On Tuesday, AOL disclosed plans for broad expansion of its Digital City online entertainment guides and the launch of a Digital City wireless service.

And last week, AOL said it was buying out of Bertelsmann AG's stake of their 50-50 joint venture in AOL Europe and AOL Australia, a move widely expected after the Time Warner deal was announced. The Bertelsmann sale will give AOL strategic control in the Internet market in Europe, where cellular phone use is much broader than in the United States. As a result, AOL is well-positioned for alliances with wireless partners in a market with obvious growth potential.

On Tuesday AOL reinforced the growing perception that its momentum remained strong by announcing that its flagship access service has exceeded 22 million members, marking a nearly 10 percent rise since December. The strong growth demonstrates that AOL's fundamental business is still performing well, analysts said.

In addition to the flagship service, AOL offers CompuServe, as well as an array of other services such as instant messaging, e-mail, entertainment guides and news.

The AOL service is seen on pace to add about 1.8 million net subscribers in the quarter, a bit less than the 1.75 million added in the year-ago quarter when the movie "You've Got Mail" raised the Internet service's pop culture profile.

Merill Lynch analyst Henry Blodget said in a statement released Wednesday that he was raising his subscriber estimate to 22.1 million for the AOL service, up 300,000 previously.

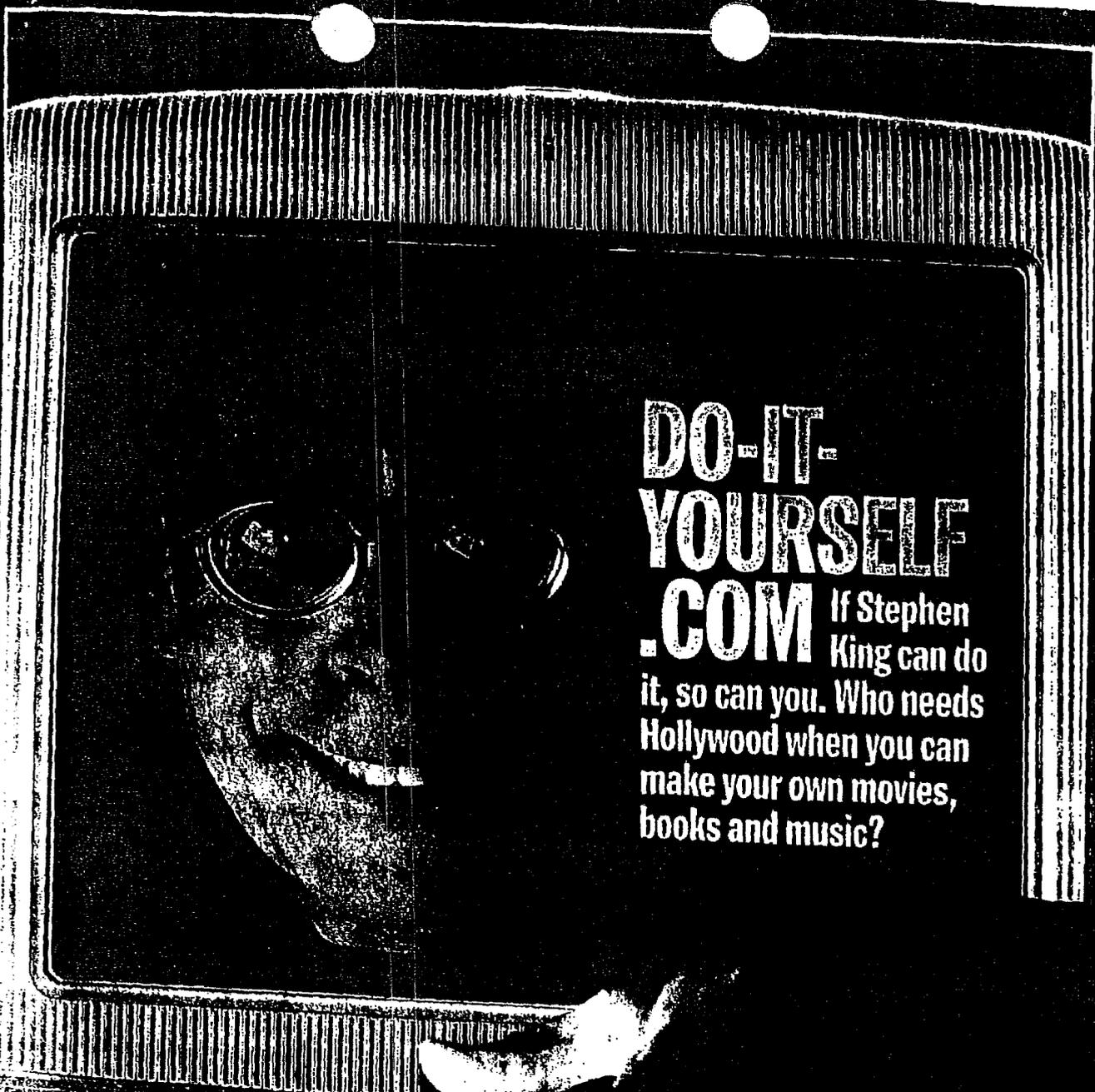
"In the last year and half, everybody has been looking for the next AOL. As we have entered a more risk-averse market, investors are saying instead of finding the next AOL, maybe we should own this AOL," said Arnold Bernick, technology strategist at W.S. Fundview.

(Reshma Kapadia, New York Newsdesk, (212) 859-1892)

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EXHIBIT H

ATTACHMENT / EXHIBIT



DO-IT-YOURSELF
.COM If Stephen King can do it, so can you. Who needs Hollywood when you can make your own movies, books and music?

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TELEVISION

Shadowland

A drama looks at mental illness, with empathy

THERE'S NO LACK OF CRAZY FOLKS on TV. As in *Stark Raving Mad*, as in "cuckoo for Cocoa Puffs," as in, that Dharma? Woo, is she cra-a-zy! Mentally ill, though, that's another story. "The shadow people," as the psychiatric drama *Wonderland* (ABC, debuts March 30, 10 p.m. E.T.) calls them, pervade overstressed hospitals and precincts in real life, yet lurk invisible in prime time's institutional dramas. This literate and impeccably executed series, alas, may prove why. From the opening scene of a patients' group session devolving into a shouting match, to the story of a multiple murderer with a Zeus complex, *Wonderland* all but begs viewers to flip to the comparatively cheery blood-baths of *ER*.

That would be a shame. *Wonderland* is not about craziness. Its much repeated mantra and true theme is "balance"—

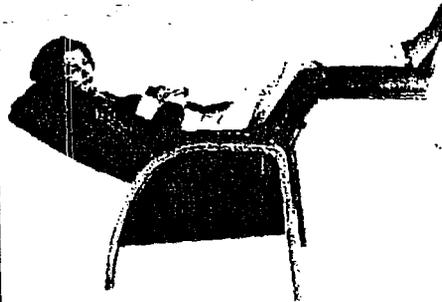


HEARTS AND MINDS: Cast members Levine, Martin Donovan, Michelle Forbes

mental, professional and personal. It's a frustrating goal for both patients and the well-cast staff, such as Dr. Robert Banger (Ted Levine), who juggles chaotic patient evaluations with Zen cool (he's the Phil Jackson of psychiatry) while fighting for custody of his kids in his spare time.

Ultimately, *Wonderland* disturbs not because it is violent or loud—though it can border on pathos—but because, unlike crime or injury, its subject defies easy blame and explanation. But creator Peter Berg (*Very Bad Things*) balances its starkness with writing of remarkable empathy. As Banger says at his custody hearing, "I have a tremendous respect for [my children's] minds, for the beauty of their minds." *Wonderland* has a tremendous respect for its audience's minds, and for the beauty of even a shattered psyche. —I.P.

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MVA.NET AOL 5.0 Alert

MVA.NET strongly requests
its customers read the following before downloading & using
AOL 5.0.

Heeding this warning could save you
hours of down time reconfiguring your computer!

THE FIX!:

Go to AOL System Information, Utilities, Clear Browser Cache, and finally Uninstall AOL Adaptor. Restart your computer and then and go on line with your preferred Internet Provider immediately!

THE PROBLEM:

AOL Downplays 'Evil Connectoid' Bug in New Version

October 12, 1999

By Brian McWilliams
InternetNews.com Correspondent

ISP News Archives

A serious bug in America Online version 5.0 that prevents users from accessing the Internet was well known to the company prior to the release of the software Oct. 5. But, according to beta testers, AOL chose to disregard their warnings and rushed the new software out anyway.

Referred to by some testers as the "Evil Connectoid," the bug appears to affect primarily AOL users who also have LAN connections or accounts with other Internet service providers. Installing AOL 5 can reset or misconfigure the TCP/IP settings of such users, rendering their Internet connections unusable and generating "server not found" messages whenever they try to connect to Web sites.

The networking flaw was the recent subject of heated postings to the private message boards for beta testers of AOL 5.0. In copies of messages obtained by InternetNews.com, several testers noted that the bug had not yet been resolved in the Gold Master version of the code which was released last week.

"I think a lot of those reports could have been prevented had testing gone on for a longer amount of time. It really seems like the development of 5.0 was rushed...and the members get the bad end of the deal," said one tester.

The concerns of testers were deflected, however, in a subsequent posting by an AOL staff member leading the beta test effort.

"We can neither identify nor eliminate all bugs," wrote the AOL staffer. "I agree it isn't perfect -- few things ever are. In some cases on some folks' machines, I believe installing tiddlywinks would probably be a problem."

ATTACHMENT / EXHIBIT

EXH. 5.7 J

MVA.NET AOL 5.0 Alert

<http://www.mva.net/aol5.html>

America Online (AOL) spokesperson Anne Brackbill said Tuesday that the company's support call center had received "an infinitesimally small" number of complaints about the connection bug in AOL 5, which has been downloaded by three million users and is currently being promoted on the service's sign-off screen.

"We will monitor it very closely and I'm not belittling what may be an issue for someone, but it's almost not noticeable in terms of the number of calls we've received about it," said Brackbill, who noted that 92 percent of AOL's 18 million subscribers use the service as their only Internet connection.

One affected user, John O'Hara, a software developer in New York, said he spent most of the past weekend trying to undue the damage from installing AOL 5.0. O'Hara said the loss of his Internet connection created a Catch-22 situation which made it difficult to get help from AOL or other sources.

"I think this is the tip of the iceberg. Once you lose access and they trash your winsock, you can't get to them. I'm fairly technical and could box my way out of this, but for the home user, this is going to be a nightmare."

According to numerous reports on AOL public message boards, the company's telephone and online technical support staff have been unable to rectify many AOL 5 users' access problems. One fix recommended by AOL online staff involves a multi-step process of emptying the browser cache, purging history files, removing and re-installing the AOL TCP/IP adapter, installing a new winsock.dll file, and reconfiguring the browser's Internet connection.

Brackbill said AOL has no immediate plans to add information about avoiding the problem to AOL 5 installation instructions or to a list of frequently asked questions in the AOL 5 Upgrade area.

Some users on the AOL 5 public message board, however, are calling for the company to stop distributing the software until the bug is fixed.

"AOL, please fess up to the problems with 5.0, warn people about it, fix it and tell us that you have done so, or pull it," wrote one user. "Don't leave your customers vulnerable and in the dark!"

AOL had a number of reasons for promptly releasing AOL 5.0, which was in beta for just over three months. Besides bringing the client software into Year 2000 compliance, the new release also finally delivers a much-delayed online photo service, developed in conjunction with Eastman Kodak, called You've Got Pictures.

But some users speculate that a key reason for shipping AOL 5 last week was a desire by the firm to mark the 10-year anniversary of AOL v1.0, which was released in October 1989 -- a motivating factor referred to by AOL CEO Steve Case last Tuesday during a launch ceremony for the software.

[Excerpt: NT Times]

America Online showed off its new baby to the world yesterday. But it could become a monster.

In some cases the new AOL 5.0 can take over a computer and knock out other connections to the Internet. Users who innocently select the option to make AOL the default web browser can find themselves with nowhere else to turn. Users who install it at work can also lose access to other programs on their network.

In tests at The Post, several users, using versions from the Internet and the CD-ROM, found that their DNS (Domain Name Server) numbers, which are stored

MVA.NET AOL 5.0 Alert

<http://www.mva.net/aol5.html>

within Microsoft Internet Explorer, were erased and had to be manually re-entered. The only solution was to uninstall AOL 5.0 and replace it with AOL 4.0. Microsoft Internet Explorer is the default browser of AOL.

"It's not a good program to install on a network," an AOL technical support representative told The Post. "We recommend you use the 16 bit version of AOL 4.0. The new one is a real big program and it's kind of greedy, so be careful...It's set to disable your DNS settings and attach itself to Internet Explorer."

webmaster@mva.net



Installing AOL 5 in Windows 95 Causes Problems for Non-AOL DUN Connections

Article ID: Q244252

Last Reviewed: October 25, 1999

Provided by Microsoft Product Support Services.

The information in this article applies to:

- Microsoft Internet Explorer versions 2.0, 3.0, 3.01, 3.02, 4.0, 4.01, 4.01 Service Pack 1, 4.01 Service Pack 2, 5 for Windows 95

SYMPTOMS

After you install America Online (AOL) 5 on a computer running Windows 95 without Dial-Up Networking (DUN) 1.3, you may not be able to browse the Web with non-AOL DUN connections. For example, Internet Explorer may be unable to browse the Web using any Internet service provider (ISP) other than AOL. After you connect to a non-AOL ISP and type a Web address, you may receive the following message:

The page cannot be displayed

RESOLUTION

To resolve this issue, install DUN 1.3. You can download DUN 1.3 from the following Microsoft Web site:

http://www.microsoft.com/windows95/downloads/contents/WURcommended/S_WUNetworking/dun13win95/Default.asp

WORKAROUND

Removing the AOL Dial-Up adapters in Device Manager allows you to connect to the Internet using other DUN connections. However, this removes the ability to connect to AOL. To remove the AOL Dial-Up adapters:

1. Right-click **My Computer**, and then click **Properties**.
2. Click the **Device Manager** tab.
3. Double-click the **Network Adapters** branch to expand it.
4. Click an AOL adapter, and then click **Remove**.
5. Repeat step 4 for any additional AOL adapters.
6. Click **OK**.

To reinstall the AOL Dial-Up adapters, reinstall AOL.

Additional query words:

Keywords : kb3rdparty dun msiew95
Version : WINDOWS:2.0,3.0,3.01,3.02,4.0,4.01,4.01 Service Pack 1,4.01 Service Pack 2,5
Platform : WINDOWS
Issue type : kbprb

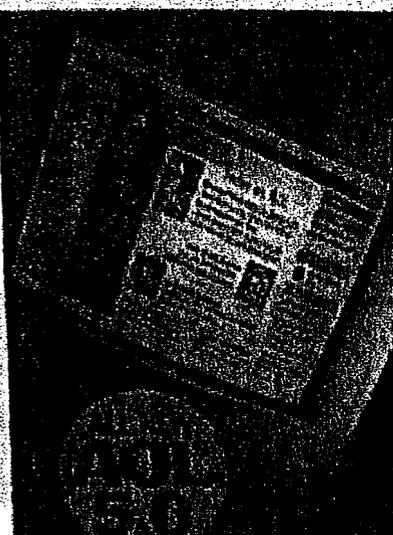
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- Yes
- No
- Did not apply

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EXHIBIT I

ATTACHMENT / EXHIBIT

