

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

FILED by *[Signature]* D.C.
MAY 10 2000
CLARENCE MAGDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. MIAMI

FLO KELLY, on behalf of herself and)
all others similarly situated,)
)
Plaintiffs.)
)
v.)
)
AMERICA ONLINE, INC.,)
)
Defendant.)

No. 00-544-CIV-Gold/Simonton

STIPULATED ORDER

WHEREAS, there have been public reports regarding allegations that certain AOL members who have the Microsoft Windows Operating System and AOL Version 5.0 software may have difficulties connecting to another Internet Service Provider, and whereas AOL has denied those reports and allegations;

WHEREAS, there have been numerous court filings in the above-captioned actions, including a Complaint, a First Amended Complaint, AOL's Motion to Transfer Based on Forum Selection Clause, AOL's Motion to Transfer Pursuant to 28 U.S.C. § 1404(a), AOL's Motion for Expedited Resolution of Threshold Venue Transfer Issue Under 28 U.S.C. § 1404(a) Or, In The Alternative, To Stay All Proceedings Pending Resolution By MDL Panel Under 28 U.S.C. § 1407(A), Plaintiffs' Motion to Consolidate Actions and Plaintiffs' Motion for a Preliminary Injunction;

WHEREAS, the parties have exchanged the direct testimony of numerous fact witnesses and expert witnesses and exhibits; and the Court has issued various Orders, including setting a status conference for May 10, 2000 regarding how to proceed with the various motions in this case;

WHEREAS, one of the core allegations raised by the plaintiffs relates to Microsoft's DUN (Dial-Up Networking) component of Microsoft's Windows operating system, specifically, that certain older versions of the Microsoft Windows 95 operating system with older versions of Microsoft's DUN (DUN version 1.0) may make it more difficult for consumers, who use software with certain dialer adapters (such as AOL Version 5.0), to connect to other ISPs;

WHEREAS, the parties have in fact determined that there are certain older versions of Microsoft Windows 95 (Gold and OSR 1) that have a Microsoft DUN version 1.0, and whereas Microsoft offers consumers a free download of DUN 1.3 on the Microsoft Windows support website at no cost, and Microsoft has recommended that consumers upgrade Microsoft Windows 95 Operating Systems to Microsoft DUN version 1.3;

WHEREAS, the parties— as well as other Internet Service Providers (such as Prodigy) — have also determined that certain allegations raised by plaintiffs and others relating to the alleged interoperability between AOL version 5.0 and older versions of Microsoft's DUN component are resolved by installing Microsoft's free upgrade for DUN version 1.3;

WHEREAS, the parties have exchanged information and whereas it has been determined that AOL has taken steps and AOL plans to continue to take steps to make it easier for AOL members who have the older versions of Microsoft Windows 95 to obtain the free upgrade to Microsoft's DUN 1.3;

It is agreed and acknowledged:

1. ***AOL Enhancements Relating To the Microsoft DUN Upgrade for AOL Members Who Have Old Versions of Microsoft Windows 95.*** AOL has implemented and/or will implement the following features for members who have different versions of Microsoft's DUN (Dial-Up Networking) present on older versions of Microsoft Windows 95 operating systems:

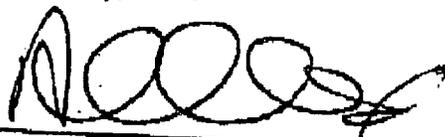
- A. **Posting of Hyperlink For Download of Microsoft DUN 1.3.** Beginning May 16, 2000, AOL will be providing a hyperlink for a download of Microsoft's DUN 1.3 on the AOL Online "Help" area in AOL. Thus, an AOL member can simply click on the hyperlink in the Online Help area and that member will be taken to the Microsoft support website for a free download of Microsoft's free DUN 1.3 upgrade (Microsoft does not currently allow AOL to provide Microsoft's DUN 1.3 directly on the AOL Help website. If Microsoft does allow AOL to provide Microsoft's DUN 1.3 upgrade directly on AOL's Help Site, AOL intends to do so).
- B. **Additional Method of Providing Microsoft DUN 1.3 Upgrade to AOL Members With Older Versions of Microsoft Windows 95.** AOL is investigating means by which to provide the Microsoft DUN 1.3 Upgrade to existing members, who are reasonably calculated to need the upgrade, (i.e., AOL members who have Windows 95 Gold and OSR 1) through the use of an e-mail or other method that will allow members to "link" to the AOL Help site referenced in paragraph 1(A) for a free Microsoft DUN 1.3 Upgrade.
- C. **Future Releases of the AOL Client Software.** AOL has been investigating and will continue to investigate the feasibility of providing Microsoft's DUN 1.3 Upgrade in future releases of the AOL 5.0 client software. AOL will undertake commercially reasonable and technologically feasible efforts to include Microsoft's DUN 1.3 in future client software.
2. **Information On The Microsoft DUN Upgrade.** AOL has provided and will continue to provide live assistance on the Microsoft DUN 1.3 Upgrade issue 24 hours a day, 7 days

a week, through its toll-free member services line. In addition, AOL will make available additional information regarding the Microsoft DUN issue, including information relating to Paragraph 1(A), through its toll-free assistance, and through its AOL Help site, and through the Frequently Asked Questions (FAQs) Section of AOL Help.

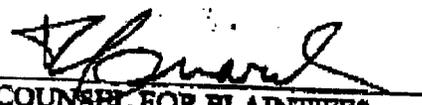
3. *No Admission of Liability.* Nothing contained in this Stipulated Order or this Stipulated Order itself (i) is an admission of liability by defendant; (ii) constitutes a release or waiver of any claim by plaintiffs or defenses by defendant; (iii) shall act as a waiver of the AOL Terms of Service or the forum selection clause contained therein in this or any other forum; or (iv) makes any determination about the suitability of or impacts class certification in this or any other forum in any way.

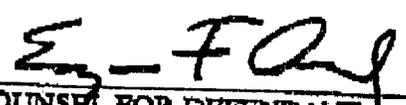
4. *Outstanding Motions.* Plaintiffs' motion for a preliminary injunction is withdrawn. Defendant's motion to transfer the cases based on the forum selection clause pursuant to 28 U.S.C. § 1404(a) is also withdrawn.

DONE AND ORDERED at Miami, Florida, this 10 day of May, 2000.


HONORABLE ALAN S. GOLD
UNITED STATES DISTRICT JUDGE

STIPULATED AND AGREED:


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disclose the risks of installing 5.0, or be forced to stop shipping it. The suit also seeks \$1,000 in damages for each member of the class. AOL estimates that 8 percent of its users also have accounts with other ISPs. Based on AOL's own estimates that more than 10 million people have installed 5.0, possible damages could total in the billions of dollars.

AOL spokesperson Rich D'Amato today said the company is still reviewing its legal options. But he said AOL stands behind the quality of version 5.0, the release of which has generated 20 percent fewer support calls than its predecessor.

"We believe we've made another leap in terms of making this easier to use and more convenient. As regards the suit, we think it has no basis in fact or law," D'Amato said.

The lawsuit also contends that AOL has interfered with the contractual relationship between affected users and their other ISPs.

Indeed, while AOL's support calls may have gone down with the release of 5.0, other ISPs support lines are busy with users who find themselves unable to connect to the ISP after installing AOL 5.0. Prodigy, for example, has fielded "thousands" of such calls, according to Bill Kirkner, chief technology officer. Some problems can be resolved easily, but others require multiple calls to Prodigy support and over an hour of time by both support staff and affected users, he said.

While their support costs have been substantial, Prodigy and other ISPs have yet to take legal action of their own to recoup expenses from getting users back up and running.

According to Kirkner, AOL has disregarded the industry's unspoken credo of doing no harm to another company's software.

"If I was an independent software developer and I released a piece of software that fooled around with the operating system, you'd be calling me a hacker and my software a virus. That's the level of what these folks did," said Kirkner.

Kirkner stopped short of accusing AOL of anti-competitive practices, but he said anti-trust regulators ought to consider the company's handling of AOL 5.0 complaints as they review its pending merger with Time Warner.

Related stories:

- [AOL Puts Brakes on Unauthorized 6.0 Distribution](#)

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Internet Properties

General | Security | Content | Connections | Programs | Advanced

Use the Connection Wizard to connect your computer to the Internet. Setup...

Dial-up settings

- | | | |
|--------------------------|----------------|--------------------------|
| Erols | ▲ | Add... |
| Erols (301) | ▲ | Remove |
| Erols (302) | ▲ | Settings... |
| Erols Internet (Default) | | |
| Juno Web | ▼ | |

- Never dial a connection
 Dial whenever a network connection is not present
 Always dial my default connection

Current default: Erols Internet Set Default

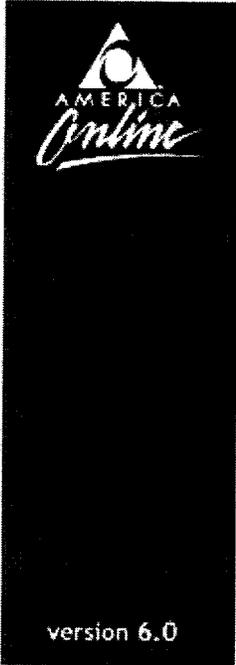
Perform system security check before dialing

Local Area Network (LAN) settings

LAN Settings...

OK Cancel Apply

File Explorer window showing a context menu with 'Copy', 'Paste', and 'Undo' options. The background shows a file named 'Erols (703)' and a folder named 'Juno'. The status bar at the bottom indicates '1 object(s) selected' and 'Chan My Computer'.



Select Destination Directory

We recommend that you install the AOL software into the following directory:

C:\America Online 6.0

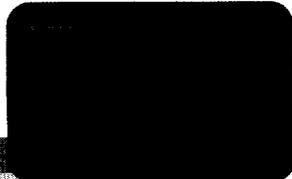
To install the AOL software into another directory, [click here](#).

Click Next to continue.





Please wait while we initialize the installation. This may take a few minutes. Thank you for your patience.



America Online

File Edit Print Window Sign On Help

Mail People AOL Services Settings Favorites

Read Write IM Chat Shop Internet AOL Anywhere My Favorites Calendar Quotes

back forward stop reload Type Keywords or Web Addresses here Go



version 6.0

Conditions of AOL Membership

AOL Member Agreement

Use of America Online is conditioned upon acceptance of the AOL Member Agreement. You can review it by clicking the Read Now button below. You must also abide by AOL Community Guidelines. You can review the Member Agreements, Community Guidelines and AOL's Privacy Policy at keyword: TOS. AOL will notify its members of any material change to the Member Agreement via E-mail, pop-up screen or U.S. mail 30 days before any changes take effect. Check keyword: TOS periodically for Privacy Policy or Community Guidelines updates.

You must be 18 years or older to register for the AOL service.

Clicking on the I Agree button below indicates your acceptance of the Member Agreement.

I Agree Read Now [Next](#)

Start America Online



"no" POSTED.
11/07/00

My Computer LapLink for Windows r3649 bdl bdt America Online Double-click

Network Neighborhood
Recycle Bin
Internet Explorer
Erols (301)
Erols (302)
Erols (703)

Internet Properties

General | Security | Content | Connections | Programs | Advanced

Use the Connection Wizard to connect your computer to the Internet. Setup...

Dial-up settings

America Online (Default)	Add...
Erols	Remove
Erols (301)	Settings...
Erols (302)	
Erols Internet	

Never dial a connection
 Dial whenever a network connection is not present
 Always dial my default connection

Current default: America Online Set Default

Perform system security check before dialing

Local Area Network (LAN) settings LAN Settings...

OK Cancel Apply

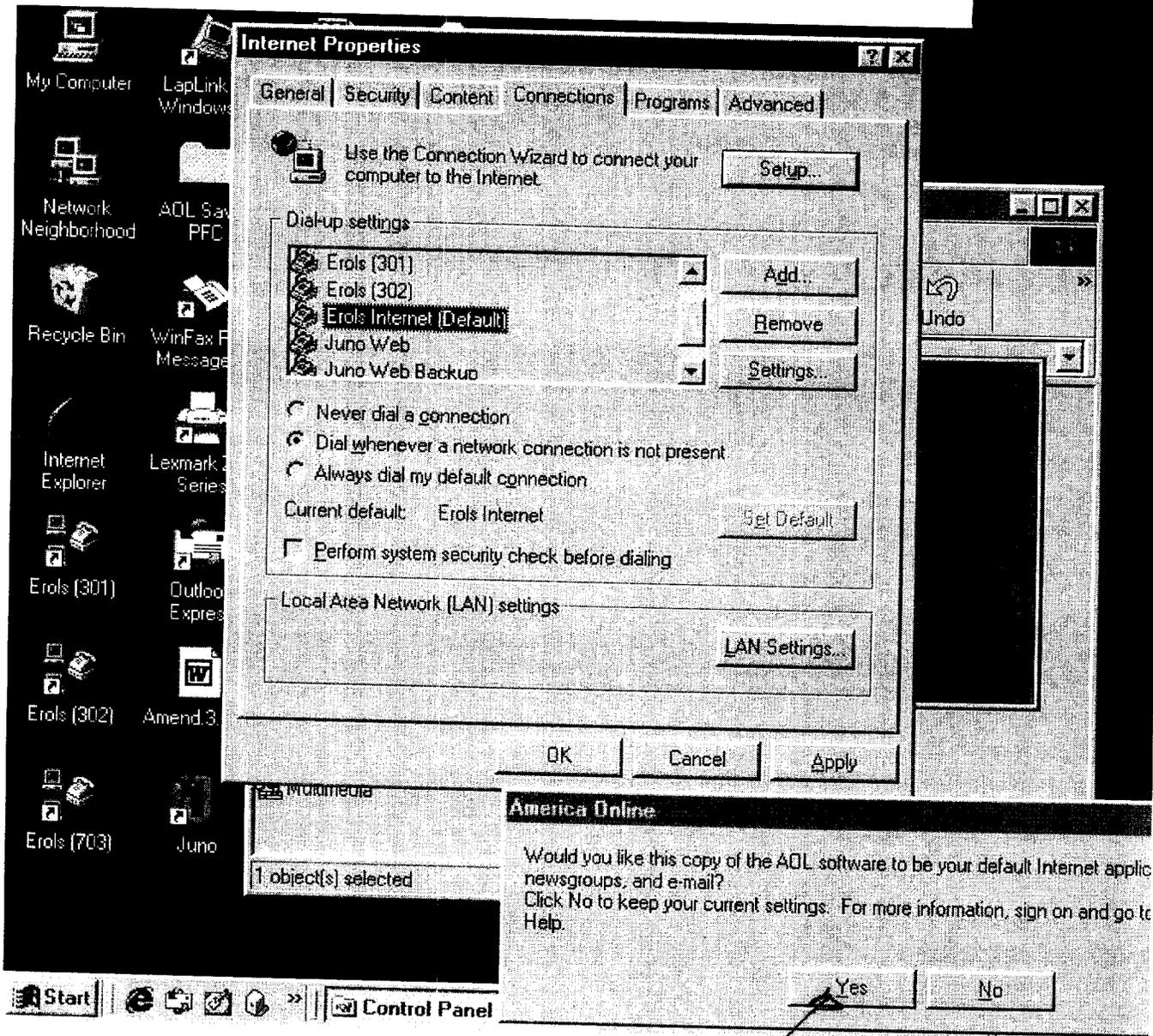
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Chan My Computer

Start Control Panel



"YES" PUSHED
11/07/00

- Mail
- Read
- Hide Channels
- AO
- Welcome
- Autos
- Careers &
- Compute
- Entertain
- Games
- Health
- House &
- Internati
- Kids Only
- Local Gui
- Music
- News
- Parenting
- Personal
- Research
- Shopping
- Sports
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- Women

Internet Properties

General | Security | Content | Connections | Programs | Advanced

Use the Connection Wizard to connect your computer to the Internet. Setup...

Dial-up settings

America Online (Default)	▲	Add..
Erols	▲	Remove
Erols (301)	▲	Settings...
Erols (302)	▲	
Erols Internet	▼	

Never dial a connection
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 Always dial my default cgnnection

Current default: America Online Set Default

Perform system security check before dialing

Local Area Network (LAN) settings LAN Settings...

OK Cancel Apply

My Favorites Calendar Quotes

Paste Undo

My P

Custom Greeting Horos Local Maps My Po People Sports Stock What White have Mem Group AOL H Go to Paren AOL Ke

1 object(s) selected Chan My Computer

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