MEMORANDUM

To: Mike Connors, Audrey Weil, Ted Leonsis, Barry Schuler, Jan Brandt, Wendy Goldberg, Myer Berlow, Matt Korn, Clay Cipione, David Gang, Bill Hawkins, Steve Johnson, Diane Staley, Jon Brendsel, John Gardiner, Jonathan Zeitler, Mario Shaffer, Jack Davies, Chris Hill, Danny Krifcher, Lisa Soltani

From: David Colburn and Jay Rappaport

CC: Bob Pittman (without attachment)

Date: September 23, 1997

Subject: Microsoft Active Desktop Agreement

As you are all aware, as you participated in the final sign off process, we signed the Microsoft Active Desktop Agreement last week (the agreements for the international affiliates are in the process of being completed). In this regard, attached please find the **final version** of the Executive Summary for the Microsoft Active Desktop Agreement. This summary contains not only a brief description of the major provisions of the agreement, but also includes as attachments, the exact language relating to AOL's material obligations under the agreement.

It is important that each of you review not only the Executive Summary, but the corresponding attachments, so that your group can properly implement our obligations under the agreement. If there are any questions, please do not hesitate to contact either of us.

Please keep the terms confidential and limit distribution on a "need to-know" basis.

PENGAD-Bayonne, N.J.
GOVERNMENT EXHIBIT
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Executive Summary for the Microsoft Active Desktop Agreement

Description

The Active Desktop is the content portion of Internet Explorer 4.0 that allows users to schedule the delivery of Web content for online and offline viewing -- essentially the same thing as Pointcast and AOL's Driveway product. The Active Desktop contains three levels of content partners (i) First Tier, which includes branded buttons that appear by default when a user first uses the Active Desktop, (ii) Second Tier, which includes branded buttons under categories (such as Sports, Entertainment, etc.) and (iii) Third Tier (also known as Gold channels), which does not include a button, but includes preferential promotion within the Active Desktop Channel Guide (the search and directory service for Active Desktop).

Term

1. Term. 1 year.
2. Renewal. AOL may renew the Agreement for 6 months if certain requirements with respect to upgrading AOL users to IE and MS email technology are satisfied. See **Attachment F.**

AOL Rights

1. U.S. Channels. AOL receives one First Tier channel (others include MSN, MSNBC, Disney, Warner Bros. and Pointcast), plus 3 Third Tier channels to be used for AOL Studios. If AOL agrees to send out 4 million CD-ROMs to current Win32 AOL4.0 users by March 1, 1998, then AOL will get a total of 4 Third Tier channels and if AOL sends out 6 million CD-ROMs then AOL will get 5 Third Tier channels. All of the Third Tier channels are subject to termination as described in **Attachment F.**

2. International Channels. AOL UK, France, Canada and Japan will each receive 1 Third Tier channel. AOL Germany is partnering with another party and will have a co-branded First Tier channel.

3. IEAK. AOL will have the right to use the Microsoft IEAK and SDK, which will allow AOL to strip out the third party content channels from Microsoft's Active Desktop and replace the channels with channels of AOL's choosing. AOL may then distribute this tailored Active Desktop to AOL users.

4. Access to AOL. AOL will be entitled to include in its First Tier channel content an ActiveX control that takes a user without Internet access who click on a link in the AOL channel to the AOL set-up program, instead of the Microsoft Internet Referral Server.

5. MFN. Microsoft is stating in the Agreement that AOL will not be treated less favorably than any other First Tier channel provider with respect to various provisions, including item 6 below and items 1 and 2 under the AOL Obligations, below.

6. OEM Deletion of AOL Channel. OEM's and other IEAK licensees have the right to delete the AOL channel; however, Microsoft will use reasonable efforts to prevent OEMs from deleting the AOL channel.

7. FrontPage. Microsoft will license AOL the software and technology for AOL's PrimeHost division to conduct a test using Windows NT IIS as the back-end and FrontPage as the Web publishing tool for PrimeHost's Web publishing business.

8. Lite Browser. MS will investigate developing a "Lite" browser for AOL by 12/31/97.

9. Press Release. The parties will jointly issue a press release relating to the Active Desktop and AOL will issue a press release by no later January 1, 1998 regarding its work with MS email technology

AOL Obligations

1. Exclusive Promotion of IE. AOL will promote IE, exclusive of the current top two browsers (Netscape's and Apple's browser), as the browser software of choice on (i) aol.com, (ii) any other Web site owned or controlled by AOL and branded "AOL" and (iii) on any AOL developed or distributed content. AOL will also not promote either Netscape's or Apple's browser on the web sites in (i) and (ii) above. AOL is obligated to promote IE as the "browser software of choice" by placing a logo such as "Best Viewed by IE" on (a) the aol.com homepage and on 15 other mutually agreed to webpages within aol.com and (b) on other aol.com Web pages that promote (other than advertising) other "push" products, e.g., Pointcast. AOL Studios content would generally be excluded from the above unless it is branded "AOL." Also advertising is excluded from this restriction.

2. Content Promotion Agreements. AOL cannot pay any consideration to Netscape or Apple for the distribution, transmission, marketing or promotion of any content on aol.com or content that is owned or controlled by AOL and branded "AOL." However, AOL will be entitled to pay Netscape and Apple for the distribution of products like Instant Messenger which are not typically considered content, and AOL may retain its current distribution relationship with Netscape with respect to AOL NetFind, but AOL cannot enter into a new agreement that would increase NetFind's promotion on Netscape to a premier position. Additionally, AOL will not be restricted from purchasing banner advertising from Netscape or Apple.

3. Integration of MS Email Technology. AOL will use reasonable efforts to integrate and implement certain components of Microsoft's email technology, and will implement software changes to the AOL client and host that allows AOL users to use the standalone version of Microsoft's Outlook Express email client over AOL. Development for Win 32 begins October 1, 1997, with reasonable efforts to complete development and beta testing by April 30, 1998. Specific requirements for integration are in **Attachment A.**

4. Brand Promotion. Include "e" logo in TV brand ads showing browser chrome and mention IE in a majority of brand print ads greater than 1/3 page in size and radio contest/giveaway spots. The exact requirements are set forth in **Attachment B.**

5. Marketing Promotion -- With AOLT Implications. (A summary is below and specifics are set forth in **Attachment C.**)

a. IE4 to New Users. Subject to satisfying AOL's QA requirements, AOL will commence distribution of IE4 with AOL 3.0 on Win32, Win16 and Mac within 60 days (Win32) and 90 days (Win16 and Mac) after Microsoft's release to AOL, including necessary SDKs ("RTA"), of IE4. This distribution will require AOLT to develop system detection software that allows the AOL client to determine whether to install IE3 or IE4 based on the user's computer specifications. AOL will distribute, on average, CD-ROMs with IE4 for Win32 on the lesser of 3 million units per month or 85% of the total AOL CD-ROM distribution per month, from the commencement of distribution of AOL3.0 with IE4 until March 1, 1998; and subject to timely delivery of IE4, commencing on March 1, 1998, 100% of all CD-ROMs shall include

IE4. The last sentence does not apply (i) where the AOL client is bundled with third party software and (ii) depleting then current inventory for 6 weeks.

b. Win32 Upgrade. Subject to satisfying AOL's QA requirements and timely delivery of IE4, by March 1, 1998, AOL will commence distribution of IE4 with AOL 4.0 on Win32 on CD-ROMs to at least 3 million AOL users.

c. Win16/Mac. Subject to satisfying AOL's QA requirements, AOL will integrate Win 16 and Mac IE4 into AOL4.0 within 90 days after RTA. There is no upgrade requirement.

6. Current Promotion Agreement. The following terms of the current AOL/Microsoft Promotion Agreement (a copy of which is set forth in **Attachment D**), would be extended through the term of the Active Desktop Agreement, but in any event no longer than October 1, 1998, unless AOL exercises its 6 month renewal in which event the extension goes through April 1, 1999:

a. Placement of IE logo on AOL browser chrome.
b. Bundling only AOL CD-ROMs (including IE) with all modem-related pack-ins with IE branding on such pack-ins.
c. AOL branding on at least 85% of AOL CD-ROMs shipped and 80% of the exterior packages.
d. IE branding on AOL 4.0 materials, including downloads and physical media.
e. The $1 million of unsold ad inventory given to Microsoft (for use by Microsoft or their partners in connection with the release of IE4), which was to expire on March 31, 1998, would be extended until 90 days following the release of the AOL client with IE4 .
f. As substitution for the old online promotion provision, commencing on the availability of AOL3.0 with IE4 and continuing until 3 million AOL users are upgraded to IE4, AOL will promote online the download of IE4 to non-IE4 users (to account for roughly 1/3 of such promotions) and the availability of a CD-ROM (to account for roughly 2/3 of such promotions).

7. Active Platform Support. AOL will support various Active Platform technologies on the AOL channel and the AOL websites as more particularly set forth in **Attachment E.**

Attachment A

Email Technology Requirements

(1) AOL shall use commercially reasonable efforts to implement appropriate components of Microsoft Internet Mail Client 4.0 for Win32 ("Outlook Express" or "OE"), DHTML and related technology (such implementation to be limited to DLLs, and AOL shall have no obligation to use the OE user interface). Development will begin by October 1, 1997. AOL will use reasonable commercial efforts to complete such development and beta testing by the dates set forth in Attachment F provided that Microsoft provides the beta of OE to AOL by November 30, 1997, and the final release of OE by January 31, 1998. Following successful completion of the beta test, AOL shall implement such technology for the AOL Service as indicated in Attachment F, and AOL shall make a public announcement regarding its plans to offer email services based upon Microsoft's OE components at a mutually agreeable date after completing a detailed project plan, but in no event later than January 1, 1998. AOL will design the transport component of its implementation so that such transport can be used by standalone versions of Outlook Express (OE), provided that OE supports and facilitates cross-process access to the transport component. AOL will use reasonable efforts to complete the foregoing obligations for OE components on Win16 and Macintosh on or before the later of, for each of Win16 and Macintosh, (i) eight (8) months of Microsoft's delivery to AOL of a beta version of the OE components for such platform(s) and (ii) five (5) months from Microsoft's delivery to AOL of a final version of the OE components.

AOL shall make necessary server modifications in sufficient time to support email functions specified in this Attachment A and in Attachment F.

AOL's obligations shall be subject to the following conditions and obligations, which AOL may waive at its discretion:

- Microsoft shall provide AOL with all technology that may be necessary for AOL to create its own user interface in a manner reasonably acceptable to AOL.

- Once such technology is implemented, AOL shall have the right to terminate such implementation at any time in its discretion after the Term.

- Microsoft shall license versions of such technology released during the Term to AOL for all such purposes on a royalty-free, worldwide, non-exclusive basis in perpetuity. All Upgrades to such technology made by Microsoft through the Term of the OLS Agreement shall be promptly provided to AOL as specified in such OLS Agreement. Following the Term of such OLS Agreement, AOL shall have the right to extend such license rights under the same terms and conditions set forth in Section 15.10 of the OLS Agreement.

- AOL shall be entitled to betas, support and assistance as to such technology and Upgrades as set forth in the OLS Agreement with respect to Internet Explorer, and performance by Microsoft of such obligations shall be a material obligation of Microsoft hereunder.

- It shall be a condition to AOL's obligation that OE be available in final, fully tested format for Win32 and Win 16 by no later than 1/31/98. The components to be delivered are OE's MIME parsing engine, DHTML/MHTML engine for integrating with IE4 rendering/viewing engine and whatever other Microsoft components are reasonably required for AOL to complete its development.

- AOL shall have the right to implement other e-mail technology on Macintosh.

- AOL may refuse to ship OE technology if all cross-platform requirements have not been satisfied (see below).

- AOL will need the following development support:
  - API specifications
  - Access to source code
  - Access to "debug" versions of OE components
  - If necessary, allow for AOL developers to work on-site at Microsoft to the completion of the project or send Microsoft developers to AOL, as mutually agreed to by the parties. Each party will devote necessary resources, including personnel, to complete development. The parties shall, within forty-five (45) days of the Effective Date, establish development/manpower requirement plan.

- If Microsoft offers a standalone version of OE for use with AOL's client software, (i) Microsoft will include the ability for AOL end users to "unsend" email messages and (ii) such standalone version of OE will access the AOL email transport through the AOL client (provided that, if AOL adopts standards-based email transports, such as POP3/SMTP, Microsoft software may access such transports without going through the AOL client) if AOL allows others to do the same.

- Need ability to use AOL's custom information store.

- OE's setup program must have a completely silent mode that presents no dialogs or messages and returns a meaningful exit code to the operating system.

- The setup procedure for OE will not require a system reboot except where a system reboot is required by IE4 or where a system reboot is required because one of the DLLs being installed is already in use.

- OE must be embeddable as a UI-free engine.

- OE must eventually support table editing in composition mode.

Cross-Platform Requirements (per platform)

- Installation does not harm other software installations

- Download/disk size (compressed without IE4) is under 2MB

- Working set is under 4MB and does not degrade appreciably with large mailboxes if OE mail store is used. Test: Load AOL client with IE4, measure virtual memory usage. Then load embedded OE in addition and measure virtual memory usage and take the difference.

- Full feature set compared to Win32 platform

- Access to OE bugs database

(2) AOL shall have the right to commence a pilot program to consider implementation of NT IIS and FrontPage to let subscribers host Front Page extensions, on NT IIS. The pilot program is expected to commence in November 1997, to utilize approximately 2000 users and to be completed within 4 months after commencement. If AOL considers such test successful in its sole and absolute discretion, AOL will consider implementing such technologies on a reasonable schedule shortly after completion

of its evaluation. Microsoft shall license to AOL all Microsoft technology reasonably required for this pilot test program and provide reasonably requested technical assistance, support and tools. Implementation of this program will be subject to negotiation of acceptable licenses from Microsoft.

Attachment B

Brand Requirements

1. TV Brand Promo: Whenever the browser chrome is displayed in AOL brand TV screen shots during the Term, the Internet Explorer "e" brand shall be shown in a mutually agreeable form such that it is easily recognizable on TV.

2. Tag Print Ads: A majority of AOL print advertising which exceeds 1/3 page in size will include "Microsoft Internet Explorer" in body copy (if there is any body copy) and include an IE logo to indicate that AOL features Internet Explorer. All ads which show browser chrome will include the Internet Explorer "e" brand in the browser chrome. This obligation shall extend throughout the Term.

3. Radio Promotions: A majority of AOL "Contest/Giveaway" radio spots meeting some reasonable criteria (length > 20 seconds) shall mention "Microsoft Internet Explorer." At AOL's request, Microsoft will provide, at no cost to AOL, Microsoft software for up to 25% of Contests/Giveaways shall include Microsoft software (mutually agreeable SKU or premium provided by Microsoft). This obligation shall extend throughout the Term.

Attachment C

Marketing Requirements

1. IE4 for New AOL Users: Subject to IE4.0 satisfying, in AOL's sole discretion, AOL's reasonable quality assurance requirements for integration of a browser within the AOL service ("QA Requirements"), AOL shall commence distribution of AOL3 and IE4 for Win32 within sixty (60) days following Microsoft's release to AOL, including necessary SDKs to integrate ("RTA") of IE4.0 for Win32, which is targeted for 9/15/97. Subject to IE4.0 satisfying AOL's QA Requirements, AOL shall integrate point releases into its CD-ROM manufacturing process within sixty (60) days following Microsoft's delivery to AOL of such releases. Subject to IE4.0 satisfying AOL's QA Requirements, AOL shall phase Win16/Mac IE4 into AOL3 CD-ROM distributions within ninety (90) days of Microsoft's RTA of such browsers. Distribution of CD-ROMs containing Win32/IE4 shall be at least 3MM units per month, or 85% of AOL CDROM distributions on average, whichever is less, until March 1, 1998. Provided that Microsoft RTA of IE4.0 has occurred by September 30, 1997, 100% of AOL CD-ROMs shall include IE4 (with either AOL3 or AOL4) by March 1, 1998 (For each day that Microsoft RTA of IE4.0 slips past September 30, 1997, the foregoing March 1, 1998 date shall be extended by one (1) day). The preceding two sentences shall not apply: (i) where the AOL client is bundled with non-AOL client software (*e.g.*, the AOL Client is bundled with CD-ROM games) provided that no other browser is integrated by AOL into the AOL client software for distribution with such non-AOL client software; and (ii) with respect to then current CD-ROM inventory of AOL client software which may be depleted by AOL in the six (6) week period following RTA.

2. Win/32 IE4 for Current AOL users: Subject to (i) RTA of IE4.0 by September 30, 1997 and (ii) IE4.0 satisfying AOL's QA Requirements, by no later than March 1, 1998, AOL shall commence distribution of AOL4/IE4 to at least 3MM then-current AOL users. For each day that Microsoft RTA of IE4.0 slips past September 30, 1997, the foregoing March 1, 1998 date shall be postponed by one (1) day.

3. Win16 and Mac for Current AOL users: Subject to IE4.0 satisfying AOL's QA Requirements, AOL shall, within ninety (90) days of Microsoft RTA of such browsers, integrate Win16 and Mac IE4 with Win16 and Mac AOL 4, respectively.

4. Gold Channels: AOL will initially be provided with promotional space for three (3) Gold Channels, comprised of Content produced by or for AOL, in the Channel Guide Server based upon its commitments as set forth in Item B.3. If, by September 30, 1997, AOL commits to deliver 4MM CD-ROMs as set forth in item B.2, AOL will be provided with promotional space for four (4) such Gold Channels in the Channel Guide Server. If, by September 30, 1997, AOL commits to deliver 6MM CD-ROMs as set forth in item B.2, AOL will be provided with promotional space for five (5) such Gold Channels in the Channel Guide Server.

With respect to items, B.1, B.2 and B.3, above, if (i) AOL does not meet its shipment obligations due to AOL's rejection of Internet Explorer (on a specific Platform) for quality reasons, (ii) Microsoft is making the version(s) of product rejected by AOL available to Microsoft's own end user customers (via Web download and/or CD-ROM shipment), and (iii) a reasonable number, as determined by Microsoft, of Microsoft's ISP distribution partners, which, counting all such ISPs in the aggregate, have a paying customer base of over two million customers (and which do not include MSN) are making such AOL-rejected software available to such partners' end users (via Web download or CD-ROM shipment), then Microsoft may as its sole and exclusive remedy for such a circumstance terminate this Agreement pursuant to Section 12.2(b) (provided that Microsoft need not give AOL time to cure as specified in Section 12.2(b) and that neither AOL nor Microsoft will have any liability arising solely as a result of or in connection with a termination pursuant to this paragraph).

Attachment D

AOL/Microsoft Promotion Agreement