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**To:** Microsoft ATR  
**Date:** 1/23/02 5:22pm  
**Subject:** Microsoft Settlement

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I believe that the proposed settlement is a bad idea. The following is a section by section diagnose of problems I found within the proposed settlement.

S III.A. Paragraph 1. The three conditions specified for which Microsoft cannot retaliate do not allow an OEM to ability to ship some of its computers with only a non-Microsoft Operating System. I feel that condition 2 should be amended to read:

2. shipping a Personal Computer that (a) includes both a Windows Operating System Product and a non-Microsoft Operating System, (b) will boot with more than one Operating System, or (c) includes only a non-Microsoft Operating System; or

S III.A. Paragraph 2. Should it so desire, Microsoft can easily terminate a Covered OEM's license in two months by finding 3 minute faults in the OEM's implementation of the license's requirements despite good faith efforts of the OEM to remain in bounds of the license.

S III.C. Paragraph 1 Condition 3. An OEM licensee should be free to have any software it deems beneficial to the user and the user's computing experience launch automatically regardless of the existence of a similar Microsoft product.

S III.D. Paragraph 1. The requirement that the APIs released be used for the sole purpose of interoperating with a Windows Operating System Product severely restricts the actions of those individuals and groups involved in allowing programs written for a Microsoft Operating System Product run on a non-Microsoft Operating System. These people will be opened up to potentially bankrupting litigation to ensure that their product(s) does(do) not come to market through the claim that they infringed on the terms laid out in this statement. The requirement that the APIs be used for the sole purpose of interoperating with a Windows Operating System Product restricts competition instead of enriching it. Additionally, Microsoft has begun to create products that are integrated with the operating system but are not the operating system. Examples of this are the Internet Explorer web browser and the Windows Media Player. These programs which are becoming essential through Microsoft's perserverance provide their own APIs which remain potentially uncovered by this clause due to their circumspect nature. This clause should be modified to include operating system components in addition to the operating system itself. Also, this clause specifies a Windows Operating System Product, whereas earlier portions specify

Microsoft Operating System Products. This and subsequent clauses should be modified to use the term Microsoft Operating System Product in order to attain consistency and also to ensure that a new non-Windows operating system comes to market which could then technically continue with the behavior which this clause is seeking to remedy. Finally, the term Timely Manner at the end of this clause is potentially open to abuse. The definition of Timely Manner should be altered such that the time frame of release is better defined. The current definition seemingly relies on current Microsoft practices which are easily alterable to corrupt the intentions of this paragraph. This paragraph is seriously flawed in my opinion and will achieve none of its objectives due to the massive loopholes and inconsistent statements and naming conventions layed out above and continued in discussions further in this statement.

S III.E. Paragraph 1. This statement suffers from the same problem enumerated in the beginning of the above discussion of S III.D. Paragraph 1. The requirement of sole purpose once again opens individuals and groups up to potentially bankrupting law suits which would seek to silence them and prevent the release of products competing with Microsoft products.

S III.F. Paragraph 1 Condition 1. This entire condition is potentially inconsistent with and voided by other sections of this proposed settlement due to the conditions laid out above regarding S III.D. Paragraph 1 and S III.E. Paragraph 1. The requirement of APIs being released for the sole purpose of interoperating with a Windows Operating System Product means that an ISV developing a replacement for certain functionality in a Windows Operating System Product is open to coercion through lawsuits claiming they misappropriated the published APIs regardless of whether ISV determined the APIs through their own efforts. Microsoft would not technically be retaliating for the ISV or IHV breaking any of these conditions but rather for them misappropriating the information Microsoft published and therefore would effectively entirely circumvent the purpose of this clause.

S III.F. Paragraph 1 Condition 2. This entire condition is subject to the same potential problems and flaws laid out regarding S III.F. Paragraph 1 Condition 1.

S III.H. Paragraph 2 Condition 1. This condition allowing a Windows Operating System Product to invoke a Microsoft Middleware Product to connect to a Microsoft maintained server fails to take into account Microsoft's current .NET business plan in which computers will continually be accessing Microsoft maintained servers in order to undergo their normal operation. Not allowing specifically for OEMs to override this ability by setting a non-Microsoft Middleware Product with similar functionality the ability to be launched instead of the Microsoft Middleware Product in essence grants license to Microsoft to

continue the undesirable practices sought to be remedied here by way of new technology. Microsoft should be required to allow non-Microsoft Middleware Products with similar functionality to be launched instead of Microsoft Middleware Products at the sole discretion of the OEM or the end user to connect to Microsoft maintained servers.

S III.H. Paragraph 4 Condition 5. The word "it" in the following except, "a license to any intellectual property rights it may have," is ambiguous and therefore makes this section incomprehensible and open to interpretation which could lead to undesirable consequences.

S III.H. Paragraph 5. This paragraph potentially eliminates any requirements laid out in S III.D. Paragraph 1, S III.E. Paragraph 1, and other sections due to Microsoft's potential ability to claim that its APIs are part of its intellectual property. This grants entirely too much freedom of interpretation to Microsoft and if this paragraph is necessary to this potential remedy, it should be rewritten to take into account all of the proposals set forth in this document.

S III.J. Paragraph 1 Condition 1. Microsoft is allowed far too much freedom of interpretation by this condition. Determining what should not be released due to security restrictions should be lodged in the hands of an independent body that does not answer to Microsoft in order to ensure that everything required to be released to ISVs, IHVs, IAPs, ICPs, OEMs, and others is released. The potential for Microsoft to deem that something which it is valuable for it to retain sole access to is a potential security compromise is too great to be ignored.

S III.J. Paragraph 1 Condition 2. Microsoft is, again, allowed too much freedom of interpretation by this condition. Competitors can easily be excluded by any one of these conditions at Microsoft's sole discretion. Verification that a person or entity applying for access to any API, Documentation, or Communication Protocol that is determined to be kept secret due to security concerns should rest with an independent body due to the potential for abuse of power.

S IV.B.2.a. The time period of one year should be lengthened to two years in order to better ensure that a TC member is completely free of any allegiances.

S V.B. The one-time extension of two years should either be lengthened to five years or else the extensions should be allowed to be indefinite. This section currently fails to exhibit the seriousness of the nature of Microsoft acting to breach this agreement.

The naming and formatting conventions used in the proposed settlement

lack uniformity, which weakens the document as a whole. I strongly disagree that this proposed settlement is enough to keep Microsoft from engaging in anti-competitive behavior. I believe that monetary damages should be imposed in addition to a corrected version of this document (as I have outlined above). Thank you for your time.

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