

**DOS-OS/2 DEVELOPMENT AND LICENSING AGREEMENT
2/5/90 OUTLINE**

DOS-OS/2 DLA STRUCTURE

BASE DLA

- o 10 YEAR TERM; TERMINATION RIGHTS
- o PROVIDE FOR ADDENDUMS AND PHASE DOCUMENTS
- o DLA PROJECT MANAGEMENT PROCESS
- o OWNERSHIP, LICENSES AND LICENSE OPTIONS
 - COPYRIGHT
 - PATENT
 - TRADEMARK
- o STANDARD T&C'S FOR PAYMENTS AND ROYALTIES
- o INFORMATION DISCLOSURE
- o WARRANTY, INDEMNIFICATION, GENERAL, ETC.

ADDENDUMS AND PHASE DOCUMENTS

- o EXECUTE ONE ADDENDUM FOR EACH DLA PRODUCT LINE:
 - (1) OS/2 SE AND TOOLKIT
 - (2) DOS
 - (3) WINDOWS
 - (4) LAN
 - (5) EXTENDED SERVICES (INCLUDING MS COM, DB)
- o EXECUTE A PHASE I DOCUMENT TO DESIGN EACH RELEASE OF EACH PRODUCT LINE
- o EXECUTE A PHASE II DOCUMENT TO DEVELOP EACH RELEASE OF EACH PRODUCT LINE (E.G., EXECUTE WITH DLA:)

(1) OS/2 1.3 (CUTTER)	(9) LAN286 RELEASE
(2) OS/2 2.0 (CRUISER)	(10) LAN386 RELEASE
(3) OS/2 2.1 (YAWL)	
(4) OS/2 PORTABLE RELEASE 1	(11) ES 1.2
(5) OS/2 PORTABLE RELEASE 2	(12) ES 1.3
	(13) ES 2.0
(6) DOS 4.1 (NEWDOS)	(14) ES 2.1
-(7) WINDOWS 2.X	(15) ...
(8) WINDOWS 3.X	

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STANDARD T&C'S FOR PAYMENT AND ROYALTIES

ROYALTY CALCULATION

- o PERCENTAGE OR DOLLAR ROYALTY AMOUNT
- o MOST-FAVORED-CUSTOMER
- o PAID-UP LICENSE AFTER 3 1/2 YEARS
- o MULTIPROCESSORS/LANS

STANDARD ROYALTY EXEMPTIONS

- o INTERNAL USE OF ALL DLA CODE
- o MARKETING/DEMO PURPOSES
- o DOCUMENTATION, DISPLAY SCREENS, PRODUCT SPECS
- o MAINTENANCE AND MINOR FUNCTIONAL RELEASES
- o MINOR PORTIONS OF CODE (FORMULA FOR PARTIAL USE)

ROYALTY PAYMENT ADMINISTRATION

ROYALTY FOR DLA OPTION CODE, E.G.:

- o NO ADDITIONAL ROYALTY IF DEVELOPED WITHIN
PLANNED DLA RESOURCE COMMITMENT LEVEL]
- o ROYALTY FORMULA IF BEYOND PLANNED DLA RESOURCE
- o REIMBURSE ANY ROYALTY OWED TO 3D PARTY ✓

*how is
this
measured*

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DOS-OS/2 DEVELOPMENT AND LICENSING AGREEMENT
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- o CONSOLIDATE 5 PRODUCTS INTO ONE AGREEMENT
 - DOS, WINDOWS, OS/2, LAN, ES
 - INTERDEPENDENCY OF COMMON CODE, TECHNOLOGY
 - INTERDEPENDENCY OF COMMON TERMS, CONDITIONS
 - EASE OF ADDING NEW PRODUCTS, CHANGING TERMS
- o LONG TERM BASE AGREEMENT
- o ADAPT LIBRARY CARD CONCEPT
 - PRODUCT LINES
 - RELEASES OF PRODUCTS
- o PROJECT MANAGEMENT PROCESS, BOARDS
 - PROCESS TO CREATE, CHANGE PHASE DOCUMENTS
- o NEW BASE TERMS AND CONDITIONS
 - RIGHT OF FIRST REFUSAL FOR COMMON DEVELOPMENT
 - OPTION TO LICENSE SOME INDEPENDENT WORK
 - INFORMATION DISCLOSURE
 - SOURCE CODE RIGHTS
 - TRADEMARK AND PATENT RIGHTS
 - MORE COMPREHENSIVE ROYALTY TERMS

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TERM AND TERMINATION

- o TERM
 - 10 YEARS FOR BASE DLA
 - LICENSES DO NOT EXPIRE
 - PHASE DOCUMENT OBLIGATIONS DO NOT EXPIRE WITH BASE DLA
- o TERMINATION
 - BASE DLA, ADDENDUMS AND PHASE DOCUMENTS TERMINABLE FOR BREACH (LICENSES IRREVOCABLE)
 - BASE DLA TERMINABLE AT WILL, BUT T&C'S SURVIVE EXCEPT PROJECT MANAGEMENT PROCESS
 - PHASE I DOCUMENTS TERMINABLE AT WILL (RIGHTS TO DESIGN DOCUMENTATION SURVIVE); BUT NOT ADDENDUMS AND PHASE II DOCUMENTS

PROVIDE FOR ADDENDUMS AND PHASE DOCUMENTS

- o DESCRIBE CONTENTS
- o ADDENDUMS TAKE PRECEDENCE OVER BASE DLA
- o PHASE DOCUMENTS TAKE PRECEDENCE OVER ADDENDUMS AND BASE DLA

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OWNERSHIP, LICENSES AND LICENSE OPTIONS

PATENTS

- o INVENTIONS (DURING TERM AND WITHIN SCOPE OF DLA):
JOINT INVENTIONS ARE JOINTLY OWNED, SEPARATE
INVENTIONS ARE OWNED BY INVENTING PARTY, WITH
PAID-UP UNRESTRICTED LICENSE TO OTHER PARTY
- o BACKGROUND PATENTS: EACH PARTY GRANTS IMMUNITY
TO OTHER PARTY AND ITS LICENSEES TO EXTENT
NEEDED TO EXERCISE COPYRIGHT LICENSES

*Some
patent
cases
discuss*

TRADEMARKS

- o BASE DLA CONTAINS COMPREHENSIVE TRADEMARK/LOGO
OWNERSHIP AND LICENSING T&C'S (ROYALTIES ?)
- o MARKETING SUPPORT BOARD APPROVES PRODUCT
TRADEMARK AND LOGO FOR THE PRODUCT; PARTY WITH
PRIMARY DEVELOPMENT RESPONSIBILITY OWNS NEW
TRADEMARKS AND LOGOS
- o EACH PARTY MUST:
 - USE PRODUCT TRADEMARKS, BUT ONLY WITH
DLA CODE OR DLA OPTION CODE PRODUCTS
 - USE DLA PACKAGING LOGO DESIGN, BUT ONLY ON
DLA PRODUCTS (NOT DLA OPTION CODE)
 - ATTRIBUTE OTHER PARTY, BUT ONLY ON
DLA PRODUCTS (NOT DLA OPTION CODE)

INFORMATION DISCLOSURE

- o NEW INFORMATION DISCLOSURE AGREEMENT TO COVER
ALL DISCLOSURES BETWEEN IBM AND MS
- o CATEGORY FOR IBM SPECIAL CONFIDENTIAL
INFORMATION
- o SPECIFIC T&C'S FOR DLA - SOURCE CODE, PRODUCT
DESIGN DOCUMENTATION, BUSINESS RELATIONSHIP

See



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DOS-OS/2 DEVELOPMENT AND LICENSING AGREEMENT
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LICENSE OPTION

- o EACH PARTY HAS OPTION TO LICENSE, AT ANY TIME WITHIN 5 YEARS AFTER FIRST GA, ANY DLA OPTION CODE OF THE OTHER PARTY
- o DLA OPTION CODE MEANS ANY CODE OWNED OR LICENSEABLE BY A PARTY DURING TERM OF DLA WHICH THE PARTY MAKES GENERALLY AVAILABLE IN A NEW RELEASE OF A DLA PRODUCT, (EITHER PACKAGED WITH IT OR PROVIDED SEPARATELY WITHOUT SEPARATE CHARGE), WHICH:
 - (1) IS SUBSTANTIALLY DERIVED FROM THE CODE OF A DLA PRODUCT, AND (A) IS PORTED TO ANOTHER HARDWARE PLATFORM, OR (B) ENHANCES THE PERFORMANCE OR FUNCTION OF THE DLA PRODUCT; OR
 - (2) OPERATES IN NATIVE MODE ON PC-DOS COMPATIBLE COMPUTERS, AND FUNCTIONALLY REPLACES A DLA PRODUCT (E.G., PROVIDES THE API); (BUT EXCLUDING ANY UNIX OPERATING SYSTEM)
- o OS/2 SE BASE, PM AND OS/2 TOOLKIT ARE TREATED AS SEPARATE PRODUCTS
- o EXCLUDES:
 - (1) TEMPORARY PROMOTIONAL OFFERINGS;
 - (2) APPLICATION PROGRAMS THAT ARE ALSO DISTRIBUTED BY THE PARTY IN SUBSTANTIAL QUANTITIES AS SEPARATELY PRICED PRODUCTS;
 - (3) FOR A PERIOD OF 3 YEARS AFTER FIRST GA, ANY IBM DEVELOPED CODE TO SUPPORT ANY HARDWARE INTERFACE WHICH IBM IS THE FIRST IN THE INDUSTRY TO SHIP; AND
 - (4) HARDWARE MICROCODE
- o DLA OPTION CODE BECOMES DLA CODE IF THE OPTION IS EXERCISED
- o ALSO OPTION TO REDISTRIBUTE, ON A MOST FAVORED DISTRIBUTOR BASIS, ANY DOS OR OS/2 COMPATIBLE PROGRAMMING TOOLS, UTILITIES OR COMPILER PACKAGES (OBJECT CODE ONLY) WHICH THE OTHER PARTY OWNS AND DISTRIBUTES THROUGH RETAIL

*IBM-developed
programming
code*

subject

*DLA
code*

*IBM-developed
programming
code*

*IBM-developed
programming
code*

DOS-OS/2 DEVELOPMENT AND LICENSING AGREEMENT
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OWNERSHIP, LICENSES AND LICENSE OPTIONS

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OWNERSHIP

- o PRODUCT DESIGN DOCUMENTATION FOR DLA PRODUCTS IS JOINTLY OWNED WITHOUT ACCOUNTING (INCLUDING ASPECTS OF DESIGN THAT ARE DESCRIBED BY PROTOTYPE SOURCE CODE)
- o CODE FOR DLA PRODUCTS IS OWNED BY THE DEVELOPING PARTY

LICENSES

- o LICENSEE OF DLA PRODUCT UNDER PHASE II DOCUMENT HAS IRREVOCABLE, NON-EXCLUSIVE, WORLDWIDE LICENSE TO:
 - (1) USE AND COPY OBJECT AND ALL SOURCE CODE INTERNALLY,
 - (2) PREPARE DERIVATIVE WORKS, AND
 - (3) SUBLICENSE 3D PARTIES TO ALL OBJECT CODE AND UNRESTRICTED SOURCE CODE, SUBJECT TO ANY EXCLUSIVE MARKETING RIGHTS
- o LICENSEE OF RESTRICTED SOURCE CODE MAY USE ONLY INTERNALLY
- o NO LICENSE TO HARDWARE PROPRIETARY "UNIQUE CODE" OF OTHER PARTY AS DESCRIBED IN PHASE II DOCUMENT, IF ANY

~~IBM EXCLUSIVE MARKETING RIGHTS FOR WINDOWS, OS LAN, DOS-RUP, OS/2 SE RUP ONLY:~~

- o ~~IBM HAS WORLDWIDE EXCLUSIVE MARKETING RIGHTS AS TO ALL: (1) DIRECT SALES TO END USERS, AND (2) DISTRIBUTION THROUGH IBM AUTHORIZED HARDWARE DEALERS AND INDUSTRY REMARKETERS~~
- o EXCLUSIVITY TERMINATES FOR A PRODUCT IF IBM FAILS TO MEET SPECIFIED MINIMUM SALES TARGETS
- o EXCLUSIVITY EXPIRES AFTER 5 YEARS, UNLESS EXTENDED

Exclusive marketing rights?

for windows?

as to what product or particular releases?

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PRODUCT DESIGN AND DEVELOPMENT

- what does this stand for?*
- o DEVELOPMENT CHECKPOINT PROCESS
 - IBP KICKOFF - PROPOSE NEW PRODUCT
 - IBP EXIT - COMMIT TO DEVELOP NEW PRODUCT
 - FUNCTION/COMPONENT/SYSTEM TEST
 - ANNOUNCE/AVAILABILITY READINESS
 - o PHASE I DOCUMENT EXECUTED AT IBP START FOR A NEW RELEASE - DEVELOP IBP PRODUCT DESIGN DOCUMENTATION
 - o PHASE II DOCUMENT EXECUTED AT IBP EXIT FOR A NEW RELEASE - DEVELOP PRODUCT BASED ON IBP DESIGN DOCUMENTATION
 - o RIGHT OF FIRST REFUSAL: EACH PARTY MUST OFFER THE OTHER PARTY THE OPPORTUNITY TO EXECUTE A PHASE II DOCUMENT BEFORE PURSUING INDEPENDENT DEVELOPMENT OF DLA OPTION CODE
 - o NEITHER PARTY MAY ANNOUNCE OR PUBLICLY DISCLOSE ANY DLA PRODUCT BEFORE GA WITHOUT APPROVAL OF MANAGEMENT BOARD, BUT MAY DISCLOSE UNDER CDA'S.
 - o MARKETING SUPPORT BOARD REVIEWS PUBLIC STATEMENTS AND ANNOUNCEMENTS AND APPROVES CONFIDENTIAL DISCLOSURE CONTENT FOR CUSTOMERS, ISV'S, ETC.

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DOS-OS/2 DEVELOPMENT AND LICENSING AGREEMENT
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PROJECT MANAGEMENT PROCESS

- o DEFINE FORMAL PROCESSES FOR PARTIES TO AGREE ON PRODUCT DEVELOPMENT:
 - SEMI-ANNUAL PLAN CYCLE
 - DEVELOPMENT CHECKPOINT PROCESS
 - DCR PROCESS (ALL PRODUCT CHANGES)
- o DEFINE ROLE OF PRODUCT MANAGER
 - PARTY WITH PRIMARY DEVELOPMENT RESPONSIBILITY DESIGNATED IN ADDENDUM
 - MANAGES THE DESIGN, DEVELOPMENT, TESTING, MAINTENANCE AND SUPPORT OF PRODUCT
 - MUST FOLLOW DIRECTION OF, OR OBTAIN APPROVAL OF, DLA MANAGEMENT BOARDS FOR DEVELOPMENT ACTIVITIES, AS DESCRIBED IN DEVELOPMENT PROCESSES
- o DEFINE STRUCTURE AND ROLE OF DLA PROJECT MANAGEMENT BOARDS
 - MANAGEMENT BOARD: DIRECTS PRODUCT MANAGERS AND OTHER BOARDS AND RESOLVES DISAGREEMENTS (OR ESCALATES TO CANNAVINO-GATES LEVEL); DIRECTS CREATION OF NEW PHASE DOCUMENTS AND ADDENDUMS
 - REQUIREMENTS BOARD: DETERMINES AND PRIORITIZES CUSTOMER PRODUCT REQUIREMENTS; APPROVES NEW PRODUCTS; APPROVES PRODUCT CONTENT CHANGES
 - ARCHITECTURE BOARD: DETERMINES SYSTEM TECHNOLOGY AND STRUCTURE, TECHNICAL PRIORITIES; APPROVES PRODUCT TECHNICAL DESIGN AND CHANGES
 - MARKETING SUPPORT BOARD: APPROVES PRE-ANNOUNCEMENT DISCLOSURE CONTENT; RECOMMENDS PRODUCT ANNOUNCEMENT STRATEGY; APPROVES PRODUCT TRADEMARKS; COORDINATES DEVELOPMENT OF MARKETING, PROMOTIONAL AND TRAINING MATERIALS
 - PROCESS AND TOOLS BOARD: DETERMINES DEVELOPMENT PROCESSES AND TOOLS
 - ASSURANCE BOARD: ENSURES THAT PRODUCTS MEET CRITERIA FOR CHECKPOINT EXITS

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