

From: Ed McCahill
Sent: Monday, June 01, 1998 12:55 PM
To: Jodi Granston; Amy Acher (LCA); Ken Goetsch; Vahe Torossian
Cc: Ben Waldman
Subject: RE: 5/29/98 Status Update



Two additional points:

1. Whatever is done for Apple here will essentially set the bar for all future negotiations with Apple. Be careful!
2. Shipping a product that is not preinstalled promotes unbundling by the end customer, which may lead to lost retail revenues over time. It also doesn't give the user the best possible experience since they need to install it themselves.

I like Jodi's idea of extending the agreement to the US, but would encourage you to try for the 2:1 license transfer. Since Europe has chosen not to use them all in Europe, then they will be wasted (i.e. worthless) unless they can extend them to the US market. Getting a concession from them would be appropriate here.

Ed McCahill
OEM Product Manager
Applications & Tools Group
425.936.6619

—Original Message—

From: Jodi Granston
Sent: Monday, June 01, 1998 1:29 AM
To: Amy Acher (LCA); Ken Goetsch; Vahe Torossian
Cc: Ben Waldman; Ed McCahill
Subject: RE: 5/29/98 Status Update
Importance: High

Attorney/Client Privileged do not forward

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—Original Message—

From: Amy Acher (LCA)
Sent: Friday, May 29, 1998 7:48 PM
To: Jodi Granston; Ken Goetsch; Vahe Torossian
Cc: Ben Waldman; Ed McCahill
Subject: RE: 5/29/98 Status Update
Importance: High

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Vahe we should probably talk on Monday if possible.
We need to get this closed.
Thank you.
aa

-----Original Message-----

From: Jodi Granston
Sent: Friday, May 29, 1998 4:57 PM
To: Ken Goetsch; Vahe Torossian
Cc: Amy Acher (LCA); Ben Waldman; Ed McCahill
Subject: RE: 5/29/98 Status Update

We cannot agree to fulfillment. I am actually quite opposed to any non-preinstallation so I'm unclear as to why we are discussing this. I thought the plan of action was to negotiate 2:1 licenses or something w/ Apple to warrant non-preinstallation. Fulfillment is just not at all an option since Apple will want to account for this as each person who actually fulfills = one license. The way we think about it is everywhere apple gives the opportunity for fulfillment (regardless of whether or not it is fulfilled) = one license.

What happened to the last plan for negotiation regarding preinstallation?? I'm cc'ing ed mccaill on here since he has broad understanding of our office OEM business and why we cannot support fulfillment or non-preinstallation. I think we should be willing to be flexible (which we have by opening up geographies) but only to a reasonable point. Apple is really asking for a lot here.

Finally, apple knows they must pay all support and cogs for any deal right?
Thanks
Jodi

-----Original Message-----

From: Ken Goetsch
Sent: Friday, May 29, 1998 2:44 PM
To: Vahe Torossian; Jodi Granston
Cc: Amy Acher (LCA)
Subject: FW: 5/29/98 Status Update

Vahe - Susan called me this week and wanted to understand why we are so opposed to shipping Office 98 in OEM packaging after the sale (coupon redemption). I explained the price difference being one area and yet she countered with the fact that Apple will continue to do support and they have made other changes that MS should value (restriction on shipping within first 90 days).

I told her to put her issues in writing and they seem valid - but this is your deal. Jodi - I hope you understand that this is not truly a "fulfillment" deal and can support Vahe to do this if OEM mgmt. agrees. I think we need to go the extra mile with Apple on this deal or it we will never get done.

Finally - I have CC'ed Amy since she asked about where we are with Apple.

Ken

-----Original Message-----

From: Susan Priore [<mailto:priore.s@apple.com>]
Sent: Friday, May 29, 1998 2:01 PM
To: Vahe Torossian
Cc: Cheryl Houser; Susan Priore; Ken Goetsch; Jodi Granston
Subject: 5/29/98 Status Update

Vahe,

Thank you for your time on Wednesday. I wanted to respond to your question on the number of outstanding licenses, as well as, outline where we are with respect to getting closure:

1) Apple Finance has reported the number of licenses is: 56,103

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2) You will prepare a new agreement draft which reflects the terms agreed upon two months ago and forward to me next week.

3) You believe Microsoft will agree to allow Apple to distribute MSO, in OEM packaging, in the CPU accessory kit and NOT require preinstallation on the hard drive. Please confirm this in writing.

4) Apple has additionally requested the ability to distribute MSO, in OEM packaging, to customers after the CPU purchase. Microsoft has said this type of "fulfillment" is not acceptable, but it is unclear why this is a problem. I'd like to point out a few things which might better capture what we are trying to achieve:

- a) packaging would remain unchanged: OEM package
- b) support would remain unchanged: consistent with the terms of the original OEM agreement for the European licenses
- c) given Apple is being restricted by Microsoft to holding distribution until 90 days after Microsoft's release AND limiting the term of distribution to 6 months, flexibility in distribution is key to the success of any promotion Apple might build around these licenses.

EXAMPLE supporting the need to move quickly and with flexibility: Microsoft released the US English version of MSO on or about 3/15/98. Apple's first opportunity to distribute this version would be 6/15/98, assuming an agreement was put in place in time. Given where the contract stands today and the amount of time it has taken to move forward, Apple will lose significant leverage with any promotion by the time rights are granted. The market will have been significantly saturated, and with prices already beginning to fall, Apple's margin for a system with a \$150 license adder is quickly eroding.

The quicker Apple can get a promotion communicated and distributed to customer, the faster the licenses can be utilized, reasonable margins can be achieved and product can get into the customers hands.

It would seem we have a very unique situation, with very unique terms, that would warrant flexibility in distribution. If Microsoft in fact cannot agree to this type of distribution, I'd like to request that you expand on the reasons/concerns and forward to me in writing.

If you could forward both the contract draft and the reasons why Apple cannot distribute MSO OEM product after the CPU purchase before our call, I'd appreciate it. Apple's Marketing team is anxious to begin plans for promotions, but does need to have reasonable options for distribution or clearly understand what the issues are for Microsoft. Anything you can do to address the above would be appreciated.

As we discussed, I will be out of the office Monday and Tuesday, but will be available after that. If you should have questions before our next conference call on Friday, June 5th, please feel free to contact me.

I look forward to speaking with you soon!

Regards,
Susan

>Hi Suzan,
>

>I'm sorry for the delay and I propose you to organize a conf call together
>in order to speed up the process. As you know I took all the informations
>only a few weeks ago and I really want we find the best solution for both
>Apple and Microsoft as soon as possible.

>
>Can I call you tomorrow monday 25th at 7 pm (my time) - it must be 10 am
>your time ?

>Possible for your ?
>best regards

>VahÉ

>> -----Message d'origine-----

>> De: Susan Priore [SMTP:priore.s@apple.com]

>> Date: samedi 16 mai 1998 01:03

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>> From: Vane Torossian
>> Cc: Susan Priore; Grant Duers; Ken Goetsch; Kim Cooper; Mark Donnelly;
>> Cheryl Houser
>> Objct: Re: OEM Agreement Draft
>>
>> Hi Vahe.
>>
>> I haven't heard from you since sending the message below
>> on 5/6/98, so I thought I'd check on the status. Will you be
>> forwarding an agreement which reflects the terms of the
>> Apple proposal?
>>
>> URGENT ISSUE: I've been advised by Ken that Microsoft
>> may not allow Apple to distribute the MSO licenses as part
>> of the CPU accessory kit, but rather will require Apple
>> preinstall the software.
>>
>> Apple has not been formally advised this by Microsoft and it
>> is rather a significant issue at this end, as previously
>> communicated to Jodi and Ken. I cannot stress enough the
>> need to get clarification and agreement on this point. Please
>> advise immediately.
>>
>> There is an additional interest on Apple's part to be able
>> to distribute these licenses through fulfillment without
>> disruption to our current manufacturing schedule. This
>> request would be limited to the licenses we are discussing,
>> but it would be EXTREMELY helpful in getting through them
>> quickly (which is what we thought was Microsoft's goal as
>> well). I had not discussed this concept with Jodi previously, so
>> I'm looking for your input on the concept.
>>
>> I'd appreciate if you could respond by close of business Monday,
>> 5/18/98 (if you are in the office!). We are anxious to see closure
>> on this agreement as soon as possible.
>>
>> Regards,
>> Susan
>>
>> >Hi Vahe,
>> >
>> >I've begun reviewing the OEM agreement and noticed that
>> >it does not appear to be tailored to the terms agreed upon
>> >between Apple and Microsoft for the disposition of the
>> >european licenses. I'm wondering if you could forward a
>> >draft that does specifically include the terms discussed?
>> >
>> >There are a few key points that I noticed just quickly looking
>> >through the language:
>> >
>> >1) Since the licenses have been paid for, there shouldn't be
>> > a need to reference minimum payments, etc.
>> >2) The agreement appears to be for Office "97"??
>> >3) Apple will not be preinstalling Office. We will have very
>> > little time to put distribution plans together and expect to
>> > be including Office in the CPU accessory kit, or possibly
>> > through fulfillment, although I've not discussed this last
>> > option with Ken yet.
>> >4) The term of the agreement must extend at least 9 months
>> > beyond Microsoft's release of the last localized version.
>> > Apple's right to distribute would begin on the 91st day of
>> > any localized release and continues for a period of 6 months.
>> >5) Apple's distribution rights should be worldwide.
>> >
>> >Please let me know if another draft would be forthcoming.
>> >Thank you in advance.
>> >
>> >Regards,
>> >Susan
>> >
>> >.....
>> >Susan Priore

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