

From: Dan Neault
Sent: Saturday, February 27, 1999 4:04 PM
To: Carl Sittig; Allen Wilcox (LCA)
Subject: RE: Attorney-Client Privileged Communication: Cpq Source Code for Win98 and WinNT

1. They have quite a bit of protection from "Consistent with historical practices"; I'd be a happy Dan if we could sell them on this clause.
2. Sometimes there are files that for export reasons we don't let out of Redmond.
3. We are getting more serious about license enforcement. There are sensitive hashing algorithms that we would not want to have fall into the wrong hands. While we trust Compaq we don't trust every person at Compaq just as we don't trust all of our own people.

I'd try to sell them on 1 and talk to 2. They are right, though...

Allen?

Thanks,

--Dan

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

From: Carl Sittig
Sent: Friday, February 26, 1999 6:11 PM
To: Dan Neault
Cc: Allen Wilcox (LCA)
Subject: RE: Attorney-Client Privileged Communication: Cpq Source Code for Win98 and WinNT

Dan,

Amazing that this is still an open issue. The doc sat at Compaq for a couple months. They want the source code, are ready to sign but have a problem with one part of the language.

Additional Products - This Source Code covers the core Windows 98 Source Code as developed and delivered by the core operating system team at Microsoft Corporation. Consistent with historical practices, "Source Code" as used in Exhibit S1 does not include all files delivered as part of the operating system, and may exclude certain files developed within Microsoft and certain files developed by or licensed from third party companies.

They understand the 3rd party side of this, but would like some clarification on the "certain files developed within MS". I explained that the Windows product group is not responsible for all bit on the Win98 CD (i.e. MSN client). This is not a hard stop, but they would like maybe a few more words in this section that clarified the concept better. They feel that it is too vague and MS could just basically pick and choose ad hoc what source files we deliver. Can you or Allen suggest a few words in this section that can help me close this out.

Here is the full doc in case you need it.

<< File: Source Code Transmittal Letter.doc >>

No need to read the entire email history below, just left it intact for reference since the issue is old

Thanks

Carl Sittig
Group Manager, OEM
carsi@microsoft.com
425-936-6348

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

From: Carl Sittig
Sent: Monday, November 09, 1998 8:45 AM
To: Dan Neault
Cc: Laura Scholten; Allen Wilcox (LCA); Scott Van Vuren; Takeshi Numoto; Andrew Arluk
Subject: FW: Attorney-Client Privileged Communication: Cpq Source Code for Win98 and WinNT

Dan,

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I agree and support. Thanks for your help.
Has the letter been modified and sent with the code?

Thanks

Carl Sittig
Group Manager, OEM
carsi@microsoft.com
425-936-6348

-----Original Message-----
From: Dan Neault
Sent: Saturday, October 31, 1998 12:07 PM
To: Laura Scholten; Carl Sittig; Allen Wilcox (LCA); Scott Van Vuren; Takeshi Numoto
Cc: Andrew Arluk
Subject: FW: Attorney-Client Privileged Communication: Cpq Source Code for Win98 and WinNT

**Privilege Material
Redacted**

-----Original Message-----
From: Laura Scholten
Sent: Friday, October 30, 1998 1:41 PM
To: Dan Neault; Carl Sittig; Takeshi Numoto; Allen Wilcox (LCA); Scott Van Vuren
Subject: RE: Attorney-Client Privileged Communication: Cpq Source Code for Win98 and WinNT

Dan and Allen,
Here is the letter. If you feel it needs modification to be consistant with the planned amendment pls edit.
<< File: CPQ Source Code Cover Letter for Win98.doc >>
Thanks, L

-----Original Message-----
From: Dan Neault
Sent: Thursday, October 29, 1998 12:01 PM
To: Carl Sittig; Takeshi Numoto; Allen Wilcox (LCA); Laura Scholten; Scott Van Vuren
Subject: RE: Attorney-Client Privileged Communication: Cpq Source Code for Win98 and WinNT

No need for apologies, we are all trying hard! We sometimes use "to display" is a more explicit means to communicate "read only". On a few occasions companies have compiled and built into executables claiming that read-only surely must cover compilation (it doesn't). This is not a quintessential issue as long as they

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understand.

I already talked with Allen last Friday about turning this into an Amendment, but I haven't seen mail on this.

We will send the new CD's now that would fulfill the Amendment. Their getting this source and our saying it is in fact what we intended in the Agreement in place and what is covered under the Amendment will actually probably help you in closing the Amendment. Laura, if you would like my input on the cover letter I'm happy to provide. We can ship the CD's from here once we have the letter if you wish. I think we need to somehow address the issue of what rights they have (for Windows hardware related purposes only and not middleware or support), and we may want to set up the Amendment as well in this cover letter.

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Sorry for throwing the flag but it seemed the right thing to do. Now, I'm back on the redistribution issue for their Home Networking - there are issues for sure with a small number of the files. We are tracking down the potential impact to raise to JimAll. We will get back with you and George on this.

Thanks,

-Dan

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

From: Carl Sittig
Sent: Thursday, October 29, 1998 11:12 AM
To: Dan Neault; Takeshi Numoto; Allen Wilcox (LCA); Laura Scholten; Scott Van Vuren
Subject: RE: Attorney-Client Privileged Communication: Cpq Source Code for Win98 and WinNT

Dan,

Now my turn to apologize. I have been heads down prepping for the BillG/Eckhard review and am on the plane to houston now. The changes look fine. One question, you specifically spelled out "read only", which was the way this was negotiated from day one. JBal put this together with JoeWill originally and I see the word later in the sentence that says "to display" so I thought that covered the "read only" issue. Agree?

How will Compaq respond... they will bitch. But I think our reasons are valid, so we will push forward. Next steps? Do you want us to create an amendment out of the proposed language below?

We will have an issue in that they will expect delivery of the code, but I know it will take some time to negotiate this once they see our amendment. I suggest we send the correct subset of code that we are allowed to send now, as we continue to negotiate the new terms.

regarding what rights they have, in the LOI that we closed before finalizing the contract language, we agreed to this concept "Source code - read only rights to the Win9x and NTW operating systems. No modification or distribution rights" and that is what we attempted to negotiate into the deal

thanks

Carl Sittig
Group Manager, OEM
carsi@microsoft.com
425-936-6348

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

From: Dan Neault
Sent: Thursday, October 22, 1998 5:47 PM
To: Takeshi Numoto; Allen Wilcox (LCA); Carl Sittig; Laura Scholten; Scott Van Vuren
Subject: FW: Attorney-Client Privileged Communication: Cpq Source Code for Win98 and WinNT

Progress report:

- The CD is being rewritten for delivery to Compaq.
- The attached document outlines proposed wording changes. AM team, it would be good to get your input on how Compaq will react to these changes.

One item that also needs clarification by the AM team is what purposes Compaq expects to have these sources for. If this is purely for hardware-related purposes, which would be ideal, then we should specify this. If they expect to be able to use this for other purposes, we should try to limit these as much as possible and in any case have these only related to Windows. Specifically, do they expect

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to be able to use these for:

- support – they would be the only OEM and this would be a cause of significant concern, even given the other limitations.
- middleware development (e.g. home networking) – N.B. this would be a big Red flag
- work unrelated to Windows (e.g. Linux) – this is hard to specify.

I think it would be by far the best to define Customer Systems to be purely hardware.

Thanks,

--Dan

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

From: Takeshi Numoto
Sent: Thursday, October 22, 1998 4:53 PM
To: Dan Neault; Allen Wilcox (LCA)
Subject: RE: Attorney-Client Privileged Communication; Cpq Source Code for Win98 and WinNT

**Privilege Material
Redacted**

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

From: Dan Neault
Sent: Thursday, October 22, 1998 1:54 PM
To: Takeshi Numoto; Allen Wilcox (LCA)
Subject: FW: Attorney-Client Privileged Communication; Cpq Source Code for Win98 and WinNT

**Privilege Material
Redacted**

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

From: Carl Sittig
Sent: Tuesday, October 20, 1998 9:30 AM
To: Dan Neault
Cc: Allen Wilcox (LCA)
Subject: RE: Attorney-Client Privileged Communication; Cpq Source Code for Win98 and WinNT

Dan,

Here is the WDF. Allen Wilcox is the OEM attorney.

Thanks

<< File: Compaq WDF Final.doc >>

Carl Sittig

Group Manager, OEM
carlsi@microsoft.com
425-936-6348

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

From: Dan Neault
Sent: Tuesday, October 20, 1998 9:12 AM
To: Carl Sittig; Bob Gornikiewicz (LCA); Cory Van Arsdale (LCA); David Blachman (LCA); Laura Scholten; Ian Gregg; David Pankowski; John Gray
Cc: Carl Stark (Exchange)
Subject: RE: Attorney-Client Privileged Communication; Cpq Source Code for Win98 and WinNT

Super, thanks much for the cooperation. The WDF may be useful in having consistent definitions and I would appreciate a copy (ecopy or hard as is convenient). Once I have this, I

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will draft language and drive review by LCA before handing off to you for negotiation. Is it DavidBI from LCA for OEM?

Also, I am delayed a day in returning so I won't be in the office until tomorrow.

Thanks,

--Dan

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

From: Carl Sittig
Sent: Monday, October 19, 1998 4:31 PM
To: Dan Neault; Bob Gomulkiewicz (LCA); Cory Van Arsdale (LCA); David Blachman (LCA); Laura Scholten; Ian Gregg; David Pankowski; John Gray
Cc: Carl Stork (Exchange)
Subject: RE: Attorney-Client Privileged Communication: Cpq Source Code for Win98 and WinNT

Dan,

This needs to be done on an amendment to the Compaq WDF license. You have the Exhibit(s) S1 and S2, and I will be glad to send you the rest of the WDF. Could you please draft the amendment and we will execute it. Normally we would handle the amendment from our end, but in this case I feel it is best for you to be involved since we have no visibility on the issues that you are facing with the 3rd parties.

Thanks

Carl Sittig

Group Manager, OEM
carsi@microsoft.com
425-936-6348

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

From: Dan Neault
Sent: Friday, October 16, 1998 3:51 PM
To: Bob Gomulkiewicz (LCA); Cory Van Arsdale (LCA); David Blachman (LCA); Laura Scholten; Ian Gregg; David Pankowski; John Gray; Carl Sittig
Cc: Carl Stork (Exchange)
Subject: Attorney-Client Privileged Communication: Cpq Source Code for Win98 and WinNT

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Redacted**

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**Privilege Material
Redacted**

—Original Message—

From: Laura Scholten
Sent: Friday, October 16, 1998 1:45 PM
To: Dan Neault; John Gray; Carl Stork (Exchange); Kurt Kolb
Cc: Moshe Dunie; Bill Veghte; Ian Gregg; Carl Sittig; John Balciunas
Subject: RE: Cpq Source Code for Win98

In answer to your questions -

1) This source code license was done as part of the new contract which was negotiated some time ago. The product group was involved, including CarlS, Jbal, DaveWill, and others. JoeWill has the historical details if you want them. We understand and agree with your concerns about providing source. The new license does have much more severely limited access and we will work to further reduce/eliminate this in the next round.

2) The MSLI letter, created by John, Ian, legal, and myself, repeated the terms at a high level, but the license itself, not the letter, is the controlling document.

3) There are no third party rights to the source.

4) NT is included. Here is the a copy of the S1 and S2 in the license. Pls do not forward.

<< File: EXHIBITS S1, S2.doc >>

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Cutting to the bottom line - the license is agreed on and in place, the code is done. JimAll has ok'd, we're over a month past our commitment, our customer is anxious. Ian, has the code gone out?

Thanks, Laura

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

From: Dan Neault
Sent: Saturday, October 10, 1998 9:13 AM
To: John Gray; Carl Stork (Exchange); Kurt Kolb; Laura Scholten
Cc: Moshe Dunie; Bill Veghte; Ian Gregg
Subject: RE: Cpq Source Code for Win98

I haven't been involved in Win98 sources code licensing historically and don't know the background on this particular license. However, please note points 3 and 4 below.

With regards to NT source code licensing, PaulMa and JimAll agreed several months ago that source code licenses would come from PBSG -- with a screening process that, if a license is granted, narrows right carefully to avoid the issues CarlS points out below. I believe Kurt is up to speed on this issue, and my business development team is working through a few such requests right now.

Specific to this recent agreement with Compaq:

- 1) If "Compaq's Customer Systems" are defined to be solely hardware, then the concerns are lessened. I would then put on the cover letter precisely what Compaq can use it for (e.g. no middleware or value-added code development, no support purposes, etc.)
- 2) Was Compaq licensed to NT sources as well? If so I would like to get a copy of the S1.
- 3) LCA is generally good about catching this, but how did we describe the Win98 sources to which they have a license? Did we caveat this to include only those sources that we have rights to distribute? Specifically, does this include IE? I understand that there are many licenses to code for in IE for which we do not have source distribution rights. **JohnGray;IanG**, this raises the issue of what is in your source drop -- we can talk offline, or if you start another thread on this let's include **CoryV**.
- 4) Is Compaq allowed to have 3rd parties doing work for them look at the sources? Given both point 3 and who we know they are considering working with, this concern is higher than in the past. I am referring not only to IP in residuals, but the range of 3rd parties that might discover code that they licensed to Msft under restricted source distribution terms.

Thanks,

--Dan

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

From: Carl Stork (Exchange)
Sent: Saturday, October 10, 1998 6:49 AM
To: Jim Allchin (Exchange); John Gray
Cc: Moshe Dunie; Bill Veghte; Dan Neault; Laura Scholten; Kurt Kolb; Ian Gregg; Tina Brusca (Exchange)
Subject: RE: Cpq Source Code for Win98

I know we have to deliver this source code to Compaq per our license agreement, but I want to go on the record (again) saying that we should remove this obligation in the future. Despite the restrictions the limit Compaq use of the source code to display, over the years the following things have occurred:

- > They find a bug. Instead of telling us about it, they look at source to

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understand it. Then they either figure out a private workaround and never tell us (the goal being that Compaq's product work better than other OEMs'), or they figure out a fix and ask us for permission to ship it.

> They have a bug in some piece of hardware. Instead of fixing the hardware or working with us to implement a workaround, they find a way to do it themselves, potentially by using unpublished interfaces in the code or possibly by patching code at runtime.

> They have some new device or hardware feature they want to support. Instead of working with us (sometimes due to a desire to keep secrets from us), they find a private way to support this new feature - perhaps using unpublished interfaces.

In all three of these cases they create future upgrade compatibility problems. The use of source code provisions don't preclude such usage (it is either testing, debugging or optimizing).

I think we are better off when Compaq comes to us to solve any of these kinds of issues jointly, and in the future I recommend that we move to a business model where such a discussion is required, and then if we think Compaq should work off source code we give them the appropriate piece at that time.

By the way, was anyone in PBSG being asked for approval before the source amendment for Win98 for Compaq was signed?

Also, Laura, it is Wayne SHARUM - it would be nice to spell his name right on the transmittal letter.

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

From: Jim Allchin (Exchange)
Sent: Friday, October 09, 1998 7:12 PM
To: John Gray
Cc: Moshe Dunie; Bill Veghte; Carl Stork (Exchange); Dan Neault; Laura Scholten; Kurt Kolb; Ian Gregg; Tina Brusca (Exchange)
Subject: RE: Cpq Source Code for Win98

ok.

jim

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

From: John Gray
Sent: Thursday, October 08, 1998 4:51 PM
To: Jim Allchin (Exchange)
Cc: Moshe Dunie; Bill Veghte; Carl Stork (Exchange); Dan Neault; Laura Scholten; Kurt Kolb; Ian Gregg; Tina Brusca (Exchange)
Subject: FW: Cpq Source Code for Win98
Importance: High

Jim:

We need your approval to proceed with the following.

OEM Operations is prepared to deliver the final Windows 98 Source Code to Compaq under the terms of their current license:

- The Source Code is provided to Compaq under the terms of Exhibit S1, Source Code for Released Product, of License Agreement No. 1107-8091 (# 5000020819) dated 4/1/98.

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- X03-93058 Compaq: Windows 98 English Source Kit *SrVP Approval(jimall)*

Compaq's uses of the source code, and other restrictions, are summarized in the letter below. Specifically, Compaq may not modify or ship any modified code.

Use of Source Code - Use of the Source Code is restricted to the display purposes defined in Exhibit S1 of the License Agreement. Display purposes include testing, debugging, performance tuning, and optimizing Compaq's Customer Systems. Exhibit S1 of the License Agreement does not grant Compaq any modification rights. Upon written request by Compaq, MS will consider requests to modify Source Code on a case-by-case basis. Any modifications made without written approval by MS shall constitute a breach of the License Agreement. Any modifications approved by MS which are made to the Source Code must be sent to your Microsoft Account Manager.

The letter and source code CDs will be distributed to the people at Compaq listed below.

As you may recall, I have placed a block on shipping the Windows 9x source code CDs that requires direct confirmation by you prior to shipping. This is to prevent accidental or unauthorized shipment of source code CDs, and to make sure you are aware of the request or release of this code to all third parties.

Thanks
jg

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

From: Ian Gregg
Sent: Thursday, October 08, 1998 4:30 PM
To: John Gray
Cc: Laura Scholten; Kurt Kolb; Ian Gregg
Subject: FW: Cpq Source Code for Win98
Importance: High

John,
We are ready to ship 3 copies of the following source code kit to Compaq:

X03-93058 Compaq: Windows 98 English Source Kit *SrVP Approval(jimall)*

This kit will include the Letter attached below as well as the 3 CDs your group provided.

The following at compaq will receive each kit:

- Mary Bolt Compaq (w/Source Code)
- Bob Green (w/Source Code)
- Wayne Sherum (w/Source Code)

Please provide to me approval from JimAll.
Thanks
ian

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

From: Laura Scholten
Sent: Wednesday, September 30, 1998 8:42 AM
To: Ian Gregg; Karen Hurlbut
Cc: Scott Van Vuren; Nancy McCauley (LCA); John Gray
Subject: FW: Cpq Source Code for Win98

Here is the final CPQ Win 98 Source Code letter. It is addressed to Steve Decker, with copies to the 3 CPQ people receiving the source (one each in engineering in Consumer, Portables, and Commercial).

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Karen, would you send this MSLI license letter to CPQ please?

Ian, would you pls include a copy with each CD set and send one set to each of the 3 people identified at the bottom of the letter. Would you pls let Scott and I know when these go out?

I believe that concludes this one. Let me know if any problem arises.

Thanks all, Laura

<< File: CPQ Source Code Cover Letter for Win98.doc >>

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