

4/26/90

Meeting in Somers, N.Y.

IBM: Cannavino, Guarino, Linzen, Corbett, Seymour
Susan —, Ralph Datoe

MS: Gates, Ballmer, Sivbol, Andino, Pope.

1. Products
2. Licenses
3. Termination
4. Process/Dev. Costs
5. Royalties

Order of
discussion

1. Products

- idea is that there is no
divergence between MS and IBM
in DOS/OS/2/NT/OS/2/Windows - derivative
operating systems products -
- Cannavino: wants flexibility to
provide ideas, improvement, etc.

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2. Licenses -

- how much divergence before the
partnership is over - obviously device
drivers is OK, but can't change
APIs or end user control language, etc.
- where draw the line?
- things MS agrees to are not probes

- Gates: doesn't want IBM doing DWS w/out notice to MS -

→ device drivers: distinguish between vanilla drivers and those for new cutting edge IBM devices -

- Cannarino: needs latitude to work on OS work -

- notice to MS of such work?

- IBM OS Ail-ons -

- [IBM can't do ~~IBM~~ DWS which fall under OS works]

-- Trademarks - mandatory -

- source code - IBM right to disclose under ^{an} NDA?

3. Termination

a. w/out cause -

- Gates: doesn't want the "fault" system b/c the other P can make life miserable -

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b. w/ cause -

- Steve B ~~refers to~~

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- No hiring of employees - liquidated damage
- should be a mutual prohibition
- ~~not~~ limited to guys working on the project - ~~but~~ OK if after 6 months? 2 years?
- no solicitation -

4. Process / Costs

IBM doesn't pay unless it does it agree to an annual bill
Steve explained this section -

20% of dev costs reimbursement @ risk if IBM is not profitable on the software (20-x % rebate) -

Management process - attach - Rulph's charts

Changes in schedules, etc. get escalated quickly if no agreement -
- penalty for unilateral action?
- 20% of annual dev. costs?

5.

Royalties

- ~~no~~ cross channel in perpetuity -
- MS owes no cross channel royalties after termination >

IBM installed base - MS Windows ?

IBM wants to treat 4 categories differently -

- ① ~~Excluded~~ Core System
- ② Excluded Systems
- ③ IBM pre-ED
- ④ OEM systems

Some majority of the 286 higher systems must be "covered systems"

International weighting -

- increase per system in proportion to increase in ~~MSRP~~ MS SRP USA → foreign (or in relation to wholesale prices) -

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Issues:

1. Termination w/out cause -
- IBM to make a "no fault" proposal
2. Process -
- how deal w/ unilateral change - 20%?
- MS?
3. Products - refine -
- IBM
4. IBM MS right to do OSW or DW -
5. Device Drivers.
- MS?
6. TM license - IBM
7. Patents - IBM
8. Development expenses - MS
9. Royalties - IBM (Conflict royalties continue — yrs after term)