

From: Cory Van Arsdale (LCA)
Sent: Sunday, February 28, 1999 11:05 PM
To: David Cole; Jim Alchin (Exchange); Chris Jones; Anthony Bay (Exchange); Deborah Black; Cristiano Pierry; Channing Verbeck; Bob Gomulkiewicz (LCA); Kate Seekings; Mary Snapp (LCA); Tom Burt (LCA)
Cc: Tina Brusca (Exchange); Cheryl Kritsonis
Subject: RE: ATTORNEY CLIENT PRIVILEGED: REAL - URGENT

Privileged

Jim: here is the June 1997 contract.



Progressive-Network
ks-FINAL.061...

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

From: David Cole
Sent: Sunday, February 28, 1999 8:04 PM
To: Jim Alchin (Exchange); Cory Van Arsdale (LCA); Chris Jones; Anthony Bay (Exchange); Deborah Black; Cristiano Pierry; Channing Verbeck; Bob Gomulkiewicz (LCA); Kate Seekings; Mary Snapp (LCA)
Cc: Tina Brusca (Exchange); Cheryl Kritsonis
Subject: RE: ATTORNEY CLIENT PRIVILEGED: REAL - URGENT

Tina, since you are coordinating this can we do at 9:30 or earlier instead. I have a 10 - 12 am with 50 people or more related to my OHI, blowing this one off is surely to send my score even lower. We probably need a meeting first thing to get action moving, then a follow up with jmail in early afternoon if possible.

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

From: Jim Alchin (Exchange)
Sent: Saturday, February 27, 1999 11:15 AM
To: David Cole; Cory Van Arsdale (LCA); Chris Jones; Anthony Bay (Exchange); Deborah Black; Cristiano Pierry; Channing Verbeck; Bob Gomulkiewicz (LCA); Kate Seekings; Mary Snapp (LCA)
Cc: Tina Brusca (Exchange)
Subject: RE: ATTORNEY CLIENT PRIVILEGED: REAL - URGENT

Privileged

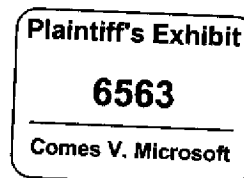
Exhibit:	29
Wit:	Bay
Date:	2-29-04
Emi Albright, CCR RPR Esquire Deposition Services	

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

From: David Cole
Sent: Saturday, February 27, 1999 10:59 AM
To: Jim Alchin (Exchange); Cory Van Arsdale (LCA); Chris Jones; Anthony Bay (Exchange); Deborah Black; Cristiano Pierry; Channing

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MS-PCAIA 5001627

Verbeck; Bob Gomulkiewicz (LCA); Kate Seelings
Cc: Tina Brusca (Exchange)
Subject: RE: ATTORNEY CLIENT PRIVILEGED: REAL - URGENT

Privileged

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

From: Jim Alchin (Exchange)
Sent: Saturday, February 27, 1999 10:48 AM
To: Cory Van Arsdale (LCA); Chris Jones; Anthony Bay (Exchange); David Cole; Deborah Black; Cristiano Perry; Channing Verbeck; Bob Gomulkiewicz (LCA); Kate Seelings
Cc: Tina Brusca (Exchange)
Subject: FW: ATTORNEY CLIENT PRIVILEGED: REAL - URGENT
Importance: High

Privileged

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

From: Jim Alchin (Exchange)
Sent: Saturday, February 27, 1999 10:14 AM
To: Cory Van Arsdale (LCA); Chris Jones; Anthony Bay (Exchange); David Cole; Deborah Black; Cristiano Perry; Channing Verbeck; Bob Gomulkiewicz (LCA)
Subject: ATTORNEY CLIENT PRIVILEGED: REAL - URGENT
Importance: High

Privileged

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

From: Dave Richards [mailto:daver@real.com]
Sent: Saturday, February 27, 1999 12:13 AM
To: David Cole
Cc: Jim Alchin (Exchange); robg@real.com

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MS-PCAJA 5001628

Subject: Urgent response needed
Importance: High

David,

Please read the attached document and respond to us before Monday morning.

Thanks,

Dave Richards << File: Microsoft 02-26-99 Letter.doc >> << File: ATT96019.txt >>

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MS-PCAIA 5001629

Agreement between Microsoft and Progressive Networks on Media Streaming Technology

This "Agreement" is entered into and effective as of June 17, 1997 (the "Effective Date") by and between MICROSOFT CORPORATION, a Washington corporation located at One Microsoft Way, Redmond, WA 98052 ("Microsoft") and PROGRESSIVE NETWORKS, INC., a Washington corporation located at 1111 Third Avenue, Suite 2900, Seattle, WA 98101 ("PN").

1. DEFINITIONS

- 1.1 "Standard Code" means all of the PN and third party code (subject to Section 2.2) used in PN's current version 4.0 streaming audio and video client and server products, including, but not limited to, PN Internal Tools, tools currently provided to third parties at no charge by PN and Software Development Kits, and including bug-fixes developed by PN during the one year following delivery by PN, for all operating system platforms, including but not limited to all versions of Microsoft Windows, all versions of UNIX, the Macintosh operating system, and the WebTV operating system. Standard Code shall not include code PN's "Splitter" products or its Player Plus software, nor shall it include future-developed technology for advertisement insertion, datatypes other than audio or video (which are not included in PN Clients or RA/RV Server), distributed networking (such as Splitter finding), tools which are value-add technology on top of base level encoders, billing and other value-added technology (technology which is not required for Compatibility purposes). It is expressly understood that base level encoding and compression technology is part of the Standard Code; further, thinning and bandwidth negotiation are part of the Standard Code to the extent such technologies are used in PN's current version 4.0 streaming audio and video client and server products. Standard Code does not include added PN or third party hardware or software technology bundled with Standard Code as part of short term sales promotions.
- 1.2 "Internal Tools" means associated documentation, specifications, and tools developed by either party, necessary to build and create derivative works of the code.
- 1.3 "Software Development Kits" means code licensed by PN to third parties for purposes of development as part of or in conjunction with PN's streaming audio and video client and server products, and code licensed by Microsoft to third parties for purposes of development as part of or in conjunction with Microsoft's streaming audio and video client and server products.
- 1.4 "Term" means the three (3) year period commencing upon the Effective Date.
- 1.5 "Confidential Information" means: (i) any trade secrets relating to either party's product or service plans, designs, costs, prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how; and (ii) the specific terms and conditions of this Agreement. "Confidential Information" shall not include information that: (i) is or becomes generally known or available, whether by publication, commercial use or otherwise, without restriction on disclosure and through no fault of the receiving party; (ii) is known and has been reduced to tangible form by the receiving party at the time of disclosure and is not subject to restriction; (iii) is independently developed or learned by the receiving party without reference to any Confidential Information of the disclosing party; and (iv) is lawfully obtained from a third party that has the right to make such disclosure.
- 1.6 "PN Clients" means PN's RealAudio and RealVideo standard player, versions 4.0.
- 1.7 "RA/RV Server" means PN's Easy Start RealAudio/RealVideo server software version 4.0, with 60 user stream capability.

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- 1.9 "Compatible" means audio/video client or server streaming software which interoperates with the PN Clients or the RA/RV Server (including current versions of the PN Clients and the RA/RV Server as of the date of a subsequent delivery of Standard Code), respectively, or as the parties may otherwise mutually agree. For purposes of this Agreement, "interoperates" means the clients and servers of both parties will operate substantially as well with PN Clients and RA/RV Server (including current versions of the PN Clients and the RA/RV Server as of the date of a subsequent delivery of Standard Code) as with its own products.

2. LICENSE GRANTS

- 2.1 Non-Exclusive License to Standard Code. PN hereby grants to Microsoft a non-exclusive, perpetual, irrevocable, worldwide, fully paid-up right and license to: (i) use, copy, modify, translate and create derivative works of the source and binary versions of the Standard Code; (ii) reproduce, license, rent, lease, broadcast, publicly display, transmit or otherwise distribute in any medium now known or hereafter devised (collectively, "Distribute") and have Distributed, to and by third parties, binary versions of the Standard Code and derivative works thereof; (iii) reproduce, license and sublicense, to and by third parties, the source versions of the Standard Code, provided that Microsoft will only reproduce, license and sublicense Standard Code source under conditions of confidentiality and the same degree of care that Microsoft applies to its Windows NT source code; and (iv) grant any and all of the rights set forth in this Section 2 in the Standard Code to third parties, including the right to license such rights to further third parties.

The foregoing license grants include a license under any current and future patents owned or licensable by PN to the extent necessary: (i) to exercise any license right granted herein; and (ii) to combine the Standard Code and/or derivative works thereof with any hardware and software.

2.2 Third Party Rights.

- (a) *PN.* If PN does not have sufficient rights in third party code included in Standard Code to grant the rights set forth in Section 2.1, then PN shall so notify Microsoft. The license grants set forth in Section 2.1 shall be presumed to grant Microsoft all the rights which PN can grant, and PN shall, at its expense, obtain or facilitate (including paying up licenses and/or lifting exclusive licenses as appropriate) all necessary rights to enable the license grant set forth in Section 2.1 to Microsoft. PN's cumulative liability under this Section 2.2(a) shall be one million dollars (\$1,000,000).
- (b) *Microsoft.* If Microsoft does not have sufficient rights in third party code included in Microsoft Code (as defined below) to grant the rights set forth in Section 2.4, then Microsoft shall so notify PN. The license grants set forth in Sections 2.4(b) and (c) shall be presumed to grant PN all the rights which Microsoft can grant, and Microsoft shall, at its expense, obtain or facilitate (including paying up licenses and/or lifting exclusive licenses as appropriate) all necessary rights to enable the license grant set forth in Sections 2.4(b) and (c) to PN. Microsoft's cumulative liability under this Section 2.2(b) shall be one million dollars (\$1,000,000).
- (c) *Cooperation.* The parties shall cooperate with respect to licensing and obtaining necessary rights to third party code. For Standard Code delivered in the initial delivery or any Microsoft Code to be delivered at the same time, within fifteen (15) days of the Effective Date each party will notify the other of any third party license issues. For subsequent deliveries of code under this Agreement, each party will, on or before such delivery, notify the other of any third party license issues.
- 2.3 Non-Exclusive License to PN Trademarks. PN hereby grants to Microsoft a non-exclusive, perpetual, irrevocable, worldwide, fully paid-up right and license to use and sublicense the use of any "PN Marks" for identification of, or in conjunction with, or as part of Microsoft products which are

Compatible. For purposes of this Section 2.3, "PN Marks" means PN trademarks and related logos for "Real Audio" and "Real Video." If Microsoft exercises its rights under Section 3.3, the PN Marks will also include those marks and associated logos which are used in connection with the applicable versions of the Compatible PN Clients and RAR/V Server.

PN agrees that it will license use of the PN Marks to third parties only for use with products that are Compatible. Microsoft may only sublicense the PN Marks for use in connection with third party products which are Compatible, and which comply with the PN quality control guidelines imposed on Microsoft under this Agreement. Microsoft will use good faith efforts to ensure that its sublicensees abide by PN's quality control guidelines, and will cooperate with PN to remedy any violation thereof by its sublicensees.

Microsoft agrees that it will comply with PN's trademark usage guidelines regarding the style and design of the PN Marks, which PN will deliver to Microsoft within two (2) weeks of the Effective Date. Microsoft agrees to cooperate with PN in facilitating PN's reasonable monitoring and review of the nature and quality of products and services bearing the PN Marks, and to supply PN with specimens of Microsoft's use of the PN Marks upon reasonable request. Microsoft understands and agrees that the use of any PN Mark in connection with this Agreement shall not create any right, title or interest in or to the use of the PN Marks and that all such use and goodwill associated with the PN Marks will inure to the benefit of PN. Except to the extent that Microsoft has a good faith objection with respect to PN's ownership of a particular mark (related to a current Microsoft trademark or a generic term with the exception of use of the term "Real" by Microsoft in a non-descriptive way), Microsoft will not contest PN's ownership in or take any actions which may impair the value of PN's rights or title in the PN Marks.

2.4 License Back

- (a) *Scope and Frequency of Delivery.* Pursuant to Section 2.4(b), Microsoft shall license back to PN (i) any and all modifications and derivative works of the Standard Code, and (ii) Microsoft software which is essentially of the same functionality as the Standard Code, and associated Microsoft Internal Tools, Software Development Kits and bug fixes (collectively "Microsoft Code"). Delivery of Microsoft Code so licensed back to PN shall occur once on a date determined by PN up to one (1) year following initial delivery or any subsequent delivery of the Standard Code by PN to Microsoft under Section 3.
- (b) *License Back - Source.* Microsoft hereby grants to PN, for the License Back Term, a non-exclusive, worldwide, fully paid-up right and license to: (i) copy, review and evaluate the source version of the Microsoft Code solely for purposes of building value-added products; (ii) use, copy, modify and create derivative works of the source versions of the Microsoft Code solely for purposes of correcting bugs or fixing errors in the Microsoft Code; and (iii) use, copy, modify and create derivative works of the source versions of the Microsoft Code solely for purposes of porting the Microsoft Code to non-Microsoft operating system platforms.
- "License Back Term" means, as applicable, (i) a period of one (1) year following initial delivery of the Standard Code by PN to Microsoft under Section 3.2, or (ii) a period of one (1) year following any subsequent delivery of Standard Code by PN to Microsoft under Section 3.3.
- (c) *License Back - Binary.* Microsoft grants to PN a non-exclusive, worldwide, perpetual (provided PN continues to meet any royalty obligations) right and license to Distribute and have Distributed, to and by third parties, binary-only versions of the Microsoft Code delivered during the License Back Term and any derivative works of thereof created by PN under Section 2.4(b).

Any Distribution to a third party of Microsoft Code in binary form is subject to a royalty as follows. If PN Distributes Microsoft Code for Microsoft operating system platforms, and if Microsoft Distributes the same or substantially similar software for no fee, or as a feature of the

operating system for no additional cost, then during the same period for which Microsoft so Distributes for free, PN shall owe no royalty. If PN Distributes Microsoft Code for Microsoft operating system platforms, and if Microsoft distributes the same or substantially similar software for a fee or as a revenue product (including if it converts from a no fee distribution model, provided such conversion shall not affect any existing agreements of PN), then PN shall pay for such Microsoft Code on terms and conditions no less favorable than those granted to any other resellers or licensees of the Microsoft Code. If PN Distributes Microsoft Code for non-Microsoft operating system platforms, then PN shall pay a royalty to Microsoft equal to fifteen percent (15%) of the net revenue PN receives for such Distribution. Should PN wish to Distribute Microsoft Code for non-Microsoft operating system platforms, the parties will enter into an agreement outlining payment terms, including but not limited to provisions for payment, audit and the like.

The foregoing license grants include a license under any current and future patents owned or licensable by Microsoft to the extent necessary: (i) to exercise any license right granted herein; and (ii) to combine the Microsoft Code and/or derivative works thereof with any hardware and software.

- 2.5 Distribution of RA/RV Server. Until Microsoft distributes a Compatible server product, Microsoft shall distribute the RA/RV Server (i) on Microsoft's website and (ii) in all territories for which PN has a localized version of the RA/RV Server and in the same manner or distribution mechanism as Microsoft distributes NetShow (or any other equivalent streaming media server) as part of a standard Microsoft product. Microsoft's website shall provide cross-links to PN's website for additional information and support of the RA/RV Server. PN shall be solely responsible for RA/RV Server end user support and shall have the discretion to create appropriate support policies for end user support.
- 2.6 Distribution of PN Clients. Section 2.6 of the License & Distribution Agreement between the parties effective August 8, 1996 (the "1996 Agreement") is hereby superseded by this Section 2.6. For a period of six (6) months from the Effective Date, Microsoft will include the PN Clients (including Promo Player Plus) with Microsoft Internet Explorer version 4.0 distributed on CD-ROM, through OEMs, via "On-Line Systems" (as defined in the 1996 Agreement) and in the same manner, place or distribution mechanism as Microsoft distributes NetShow (or any other equivalent streaming media client) as part of a standard Microsoft product, except for any configurations of Internet Explorer version 4.0 designed for minimal download size which do not include NetShow (or any other equivalent streaming media client). Provided that the parties conclude the agreement contemplated in Section 5, and further provided that PN supports DirectShow and the mutually defined ASF file format (to the extent such formats have been determined) within six (6) months of the Effective Date, Microsoft will continue to include the PN Clients (and Promo Player Plus), as set forth in this Section 2.6, during the Term. Inclusion of the PN Clients shall be subject to Microsoft's acceptance of the PN Clients, which acceptance will not be unreasonably withheld or delayed. All rights in the PN Clients shall be the same as for "Software" (as defined in the 1996 Agreement).
- 2.7 Support. During the Term, each party shall use commercially practical efforts to:
- (a) Provide quarterly opportunities to the other to be briefed on future plans and development efforts, including reasonable access to documentation and specifications, related to Standard Code and new audio/video client and server streaming technology (for Microsoft) and new audio/video client and server streaming technology which would be considered Microsoft Code, Internet technologies, new operating systems, and the NT file system (for PN);
 - (b) Provide consistent points of contact at the program manager and executive level; and
 - (c) Provide each other reasonable level of technical support.

PN will receive such information at such quarterly meetings and to the same extent provided to Microsoft's own internal streaming media operations.

3. LICENSE FEE; DELIVERY; CONSULTING

- 3.1 Initial Delivery. On a date within thirty (30) days of signing this agreement, such date to be set by Microsoft at its sole discretion, PN shall make delivery to Microsoft of the Standard Code. At that time, PN shall deliver to Microsoft, PN's latest version of the Standard Code, including any and all works in progress whether or not such works have been released by PN. PN shall also provide Microsoft with six (6) man-months of free consulting help by knowledgeable PN employee's to train Microsoft with respect to the Standard Code, including but not limited to how to build and create derivative works of the Standard Code.
- 3.2 License Fee. In consideration for the rights and licenses granted under this Agreement, Microsoft shall pay PN the sum of thirty million dollars (\$30,000,000). Of this amount, twenty million dollars (\$20,000,000) shall be paid within thirty (30) days of the Effective Date, and ten million dollars (\$10,000,000) shall be paid within thirty (30) days of the earlier of (i) PN's completion of the associated six (6) man months of consulting services and (ii) six (6) months after the initial delivery of the Standard Code from PN.
- 3.3 Subsequent Deliveries. During the first and second years following initial delivery of the Standard Code, Microsoft shall have the option, at its sole discretion, of receiving further deliveries, each with associated six (6) months of free consulting, of PN's latest versions of Standard Code, including any and all works in progress whether or not such works have been released by PN. If Microsoft takes the first optional delivery in the first year following initial delivery of the Standard Code, it shall pay PN a flat fee of twenty-five million dollars (\$25,000,000). If Microsoft takes the second optional delivery, it shall pay PN a further flat fee of thirty-five million dollars (\$35,000,000). Within the time periods specified, Microsoft shall decide the dates for such deliveries at its sole discretion. If such deliveries are made, then the code delivered shall be considered Standard Code for purposes of this agreement and shall be subject to all the terms of this agreement. For amounts due under this Section 3.3, sixty-six percent (66%) shall be paid within thirty (30) days of the subsequent delivery of the Standard Code, and thirty-four percent (34%) shall be paid within thirty (30) days of the earlier of (i) PN's completion of the associated six (6) man months of consulting services and (ii) six (6) months after the subsequent delivery of the Standard Code from PN.
- 3.4 Bug Fixes. PN shall deliver any bug fixes to the Standard Code on a quarterly basis in the twelve (12) months following the initial or any subsequent delivery of the Standard Code.
- 3.5 UNIX Port. Regardless of whether Microsoft exercises its rights to subsequent deliveries of Standard Code, PN shall deliver to Microsoft any UNIX port of Microsoft Code which PN makes which PN does not distribute or ceases to distribute. Such UNIX port shall be considered licensed royalty-free to Microsoft under the terms of Section 2.1.

4. PATENT ISSUES

- 4.1 Patent Covenant. PN covenants not to (a) sue or (b) bring, prosecute, assist or participate in any judicial, administrative or other proceedings of any kind against Microsoft or its licensees (including but not limited to OEMs and other distributors) for infringement of PN Patents which occurs during the Immunity Period on account of the manufacture, use, sale, importation, promotion or distribution of any Microsoft audio and video client and server streaming functionality included in any Microsoft products and technology (except Foundry products and technology), regardless of whether such products and technology is marketed under a Microsoft trademark regardless of whether such products include Standard Code. "PN Patents" as used in this Section 4.1 means (i) any and all patents (other than design patents or the equivalent), or the inventions, ideas or applications thereof, worldwide, whether currently existing, or later developed, applied for, issued prior to the Term, or issuing during

the Term, and under which patents (or the inventions, ideas or applications therefor) PN, or any of its Affiliates, now has or obtains during the Term, the ability or right to license or grant immunity from suit; and (ii) all extensions, divisionals, continuations, continuations-in-art, re-examinations and reissue patents of such patents, as well as patent applications thereof, to the extent rights attach to such applications. The "Immunity Period" shall commence upon the first to issue and shall terminate upon the last to expire, of any of the PN Patents (in any jurisdiction).

For purposes of this Section 4, "Foundry" means a product or technology manufactured, reproduced, sold, leased, licensed or otherwise transferred ("Transferred") by one party to this Agreement (the "Acting Party") to a third party, wherein the product or technology is (i) designed by or for a third Party without substantial input from the Acting Party and Transferred from the Acting Party to such third party or such third party's customers on an exclusive or substantially exclusive basis; or (ii) otherwise Transferred through or by the Acting Party for the purpose of circumventing any patent rights of the other Party to this Agreement.

- 4.2 Patent Covenant Microsoft covenants not to (a) sue or (b) bring, prosecute, assist or participate in any judicial, administrative or other proceedings of any kind against PN or its licensees (including but not limited to OEMs and other distributors) for infringement of Microsoft Patents which occurs during the Immunity Period on account of the manufacture, use, sale, importation, promotion or distribution of any PN audio and video client and server streaming functionality included in any PN products and technology (except Foundry products and technology), regardless of whether such products and technology is marketed under a PN trademark regardless of whether such products include Microsoft Code. "Microsoft Patents" as used in this Section 4.2 means (i) any and all patents (other than design patents or the equivalent), or the inventions, ideas or applications thereof, worldwide, whether currently existing, or later developed, applied for, issued prior to the Term, or issued during the Term, and under which patents (or the inventions, ideas or applications therefor) Microsoft, or any of its Affiliates, now has or obtains during the Term, the ability or right to license or grant immunity from suit; and (ii) all extensions, divisionals, continuations, continuations-in-art, re-examinations and reissue patents of such patents, as well as patent applications thereof, to the extent rights attach to such applications. The "Immunity Period" shall commence upon the first to issue and shall terminate upon the last to expire, of any of the Microsoft Patents (in any jurisdiction).
- 4.3 Patent Protection In addition to any indemnification obligation under Section 10, where a third party is infringing PN Patents related to audio and video client and server streaming technology, PN will, upon Microsoft's request, use its best efforts to abate or suppress such infringement, including but not limited to bringing suit against such party for patent infringement. Any settlement of such a suit shall be in good faith for valuable consideration, and, in the case where Microsoft is sued by the third party for infringement of any third party patents related to audio or video client or server streaming technology, and Microsoft is financing a cause of action by PN against such third party as set forth below, such consideration shall be mutually agreed upon by PN and Microsoft. Should Microsoft request that PN initiate a patent infringement action against a third party, Microsoft shall finance such cause of action through a loan to PN under terms and conditions to be agreed by the parties. Any proceeds, damages collected or other remuneration as a result of such action shall be used first to pay off such loan. Unless the parties otherwise agree, if PN is unable under such cause of action to collect proceeds, damages or other remuneration sufficient to repay the loan, then the loan shall be forgiven to the extent PN cannot repay the difference from any proceeds collected.
- 4.4 Covenants Personal and Non-Assignable Each party agrees that the respective covenant granted to it in Section 4.1 or Section 4.2 is personal to it and may not be assigned, licensed or otherwise transferred by it, in whole or in part, to any third party, whether under action of law or otherwise and including in connection with the insolvency or bankruptcy of such party.

5. MEDIA FILE FORMAT AGREEMENT

Microsoft and PN shall work in good faith and use best efforts to conclude, within ten (10) business days, the agreement currently being negotiated to align media file formats and client technology.

6. SOURCE DISTRIBUTION

6.1 Distribution. If, during the Term, PN licenses a third party all or a substantial portion of the server portion of the Standard Code in source form, ("Event License"), then Microsoft shall be entitled to a refund of all license fees paid for delivery of Standard Code, including any fees paid for optional deliveries of Standard Code, as follows:

	Event License within the first year of the Term	Event License within the second year of the Term	Event License within the third year of the Term
Amount of Refund of initial license fee	100%	50%	25%
Amount of refund of license fee for first optional delivery (if any)	Not applicable	100%	50%
Amount of refund of license fee for second optional delivery (if any)	Not applicable	Not applicable	100%

6.2 Clarifications

- (a) PN warrants and represents that, in the United States, it has no existing distribution agreements with Oracle, Netscape or IBM, which agreements would be an Event License.
 - (b) Notwithstanding anything to the contrary in Section 6.1, any distribution agreements entered into prior to the Effective Date shall not be considered Event Licenses. PN shall not renew such distribution agreements to the extent such renewal would be an Event License and where it can control or prevent such renewal.
 - (c) Notwithstanding anything to the contrary in Section 6.1, the following shall not be considered Event Licenses: (i) licenses to the server portions of the Standard Code so long as source and associated binary code is not redistributed; (ii) licenses for internal use of the Standard Code within a company or other organization; (iii) licenses to bundle the Standard Code with substantial hardware value-adds; (iv) distribution to an independent contractor to perform services on PN's behalf; or (v) portions of the server Standard Code reasonably equivalent to those portions currently distributed as part of PN's Software Development Kits.
- 6.3 Termination of Event License. PN may terminate any Event License promptly upon becoming aware of such Event License, and PN will not owe Microsoft any refund under this Section 6.

7. INVESTMENT

7.1 Non-Voting Preferred Stock. PN agrees to sell to Microsoft, and Microsoft agrees to purchase from PN, three million, three hundred thirty-eight thousand, three hundred seventy-four (3,338,374) shares of non-voting preferred stock of PN at a per share price of eight dollars and ninety-nine cents (\$8.99). These shares are convertible into voting or non-voting common stock (at Microsoft's option) of PN.

These preferred shares will have terms and rights and preferences comparable to existing preferred shares of PN.

- 7.2 Warrant. Simultaneously with the purchase of the preferred shares set forth in Section 7.1, PN will grant to Microsoft a warrant to purchase three million, seven hundred nine thousand, three hundred and five (3,709,305) shares of non-voting preferred stock of PN, convertible into voting or non-voting common stock (at Microsoft's option) of PN. The purchase price of each share under the warrant shall equal thirteen dollars and forty-eight cents (\$13.48), subject to standard adjustments for stock splits, stock dividends, reclassifications or reorganizations. The warrant shall have a term of two and one-half (2.5) years. In the event of an initial public offering ("IPO") of PN, the warrant shall either be exercised by Microsoft on or before the date of the IPO or shall expire.
- 7.3 Board of Directors. So long as Microsoft holds no less than (i) 3,338,374 shares of preferred stock (or common stock issued upon the conversion of the preferred shares), or (ii) five percent (5%) of the fully-diluted shares of PN, Microsoft shall have the right in its sole discretion to have either (a) a Microsoft representative appointed to the PN Board of Directors, or (b) a Microsoft representative appointed as an observer to the PN Board of Directors. PN shall have the right to approve such board member or observer, provided such approval shall not be unreasonably withheld or delayed.
- 7.4 Approvals. Microsoft acknowledges that (i) PN's obligations under this Section 7 are conditioned upon receiving certain shareholder approvals and (ii) the warrant in Section 7.2 and all shares to be purchased by Microsoft pursuant to this Section 7 will not have been registered under the Securities Act of 1933, as amended, and therefore may be issued and sold only upon Microsoft making such representations and warranties as are customary in connection with the purchase of restricted stock. Microsoft agrees to make such customary representations and warranties. PN will use its reasonable best efforts to obtain any necessary shareholder approvals identified by this Section 7.4. In the event PN is unable to obtain such shareholder approval(s) by 5 p.m., June 23, 1997, PN shall propose to Microsoft alternative terms which do not require shareholder approval. If Microsoft does not agree to such alternative terms, this Agreement shall terminate. If Microsoft does agree to such alternative terms, then notwithstanding such agreement by Microsoft, and if PN convinces its shareholders within twenty-five (25) days to accept the original transaction, then the original terms shall apply. Absent such shareholder approval of the original terms, the alternative terms proposed by PN and agreed to by Microsoft shall be the basis of the Agreement. Upon such termination, then notwithstanding anything to the contrary herein (including but not limited to Section 11.5), this Agreement shall terminate as though the parties never executed the Agreement.
- 7.5 Definitive Agreements. Each party will use all reasonable efforts to negotiate and close on any and all necessary agreements and approvals required to perfect the investment set forth in this Section 7 within thirty (30) days of the Effective Date.
- 7.6 Due Diligence. Microsoft's obligation to purchase preferred shares of PN is subject to the satisfactory completion of due diligence by Microsoft. PN will make available to Microsoft documents and information as reasonably requested, so that Microsoft can perform a full investigation of PN's business and legal conditions. Microsoft will complete its due diligence within seven (7) days of notification by PN that PN has collected and made available to Microsoft all the due diligence materials requested by Microsoft.
- 7.7 Regulatory Approval. The parties acknowledge that a material consideration of this Agreement is the ability to implement and conclude the Agreement expeditiously. If, by 5 p.m., June 23, 1997, either party, in its sole discretion, determines that any required government or regulatory approvals (solely with respect to this Agreement and not in combination with any other proposed or actual transaction) could cause unacceptable delay in successfully implementing and concluding the Agreement expeditiously, either party may terminate this Agreement. Upon such termination, then notwithstanding anything to the contrary herein (including but not limited to Section 11.5), this Agreement shall terminate as though the parties never executed the Agreement.

8. CONFIDENTIALITY; ANNOUNCEMENTS

- 8.1 **Announcement.** The parties will announce their relationship under this Agreement within thirty (30) days of the Effective Date. The precise timing and content of any announcement of this Agreement must be jointly agreed upon, but both parties will acknowledge the nature of Microsoft's distribution of PN's technology, the fact of Microsoft's investment in PN, and other matters of strategic importance agreed to by the parties. Microsoft agrees that it will not announce the acquisition of any streaming media company any time before, or within ten (10) days after, the parties' joint announcement. If Microsoft materially and deliberately breaches its foregoing obligation not to announce, then PN may terminate this Agreement. Upon such termination, then notwithstanding anything to the contrary herein (including but not limited to Section 11.5), this Agreement shall terminate as though the parties never executed the Agreement.
- 8.2 **Restrictions on Use and Disclosure.** Each party shall protect the other's Confidential Information from unauthorized dissemination and use with the same degree of care that such party uses to protect its own like information. Neither party will use the other's Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement. Each party will use its best efforts not to disclose to third parties the other's Confidential Information without the prior written consent (except with respect to source code as set forth in Section 2.1) of the other party. Except as expressly provided in this Agreement, no ownership or license rights are granted in any Confidential Information.

9. WARRANTIES

9.1 **PN.** PN warrants and covenants that:

- (a) Except as may be otherwise provided in Section 7 and Section 2.2(a), it has the sufficient authority and all necessary rights to enter into and perform according to the terms of this Agreement;
- (b) To the best of its knowledge, it has the full and exclusive right to grant Microsoft the licenses granted herein to use the Standard Code and PN trademarks; and
- (c) Except as otherwise disclosed to Microsoft, it is not aware of any lawsuits or other causes of action alleging that the Standard Code infringes the intellectual property rights of any third party, including but not limited to patent, copyright, trade secret and trademark.

The representations and covenants contained in this Section 9.1 are continuous in nature and shall be deemed to have been given by PN at execution of this Agreement and at each stage of performance hereunder. These representations, warranties, and covenants shall survive termination or expiration of this Agreement.

9.2 **Microsoft.** Microsoft warrants and covenants that:

- (a) Except as otherwise provided in Section 2.2(b), it has the sufficient authority and all necessary rights to enter into this Agreement and perform according to the terms of this Agreement;
- (b) To the best of its knowledge, it has the full and exclusive right to grant PN the licenses granted herein to use the Microsoft Code; and

- (c) It is not aware of any lawsuits or other causes of action alleging that the Microsoft Code infringes the intellectual property rights of any third party, including but not limited to patent, copyright, trade secret and trademark.

The representations and covenants contained in this Section 9.2 are continuous in nature and shall be deemed to have been given by Microsoft at execution of this Agreement and at each stage of performance hereunder. These representations, warranties, and covenants shall survive termination or expiration of this Agreement.

10. INDEMNITY

10.1 By PN.

- (a) PN shall, at its expense and Microsoft's request, defend any claim or action brought against Microsoft, and Microsoft's subsidiaries, affiliates, directors, officers, employees, agents and independent contractors, to the extent it is based upon a claim that the Standard Code and/or one (1) or more of the PN Marks infringes or violates any patent, copyright, trademark, trade secret or other proprietary right of a third party ("PN Claims"), and PN will indemnify and hold Microsoft harmless from and against any costs, damages and fees reasonably incurred by Microsoft, including but not limited to fees of attorneys and other professionals, that are attributable to such PN Claims. Microsoft shall: (i) provide PN reasonably prompt notice in writing of any PN Claims; (ii) permit PN, through counsel mutually acceptable to Microsoft and PN, to answer and defend the PN Claims; and (iii) provide PN information, assistance and authority, at PN's expense, to help PN to defend such claim or action. PN will not be responsible for any settlement made by Microsoft without PN's written permission, which permission will not be unreasonably withheld.
- (b) PN may upon written notice thereof to Microsoft undertake to conduct all proceedings or negotiations in connection with PN Claims, assume the defense thereof, and if it so undertakes, it shall also undertake all other required steps or proceedings to settle or defend the PN Claims, including the employment of counsel which shall be reasonably satisfactory to Microsoft, and payment of all expenses. Microsoft, at its own expense, shall have the right to employ separate counsel and participate in the defense of the PN Claims. PN shall reimburse Microsoft upon demand for any payments made or loss suffered by it at any time after the date hereof, based upon the judgment of any court of competent jurisdiction or pursuant to a bona fide compromise or settlement of claims, demands or actions, in respect to any damages to which the foregoing relates.
- (c) PN may not settle any PN Claim on Microsoft's behalf without first obtaining Microsoft's written permission, which permission will not be unreasonably withheld or delayed. In the event Microsoft and PN agree to settle a claim or action, PN agrees not to publicize the settlement without first obtaining Microsoft's written permission, which permission will not be unreasonably withheld or delayed.
- (d) PN shall have no liability under this Section 10.1 for any third party intellectual property infringement claim based upon the combination of the Standard Code with non-PN products, where such infringement would not have occurred but for such combination.

10.2 By Microsoft.

- (a) Microsoft shall, at its expense and PN's request, defend any claim or action brought against PN, and PN's subsidiaries, affiliates, directors, officers, employees, agents and independent contractors, to the extent it is based upon a claim that the Microsoft Code infringes or violates any patent, copyright, trademark, trade secret or other proprietary right of a third party

("Microsoft Claims"), and Microsoft will indemnify and hold PN harmless from and against any costs, damages and fees reasonably incurred by PN, including but not limited to fees of attorneys and other professionals, that are attributable to such Microsoft Claims. PN shall: (i) provide Microsoft reasonably prompt notice in writing of any Microsoft Claims; (ii) permit Microsoft, through counsel mutually acceptable to PN and Microsoft, to answer and defend the Microsoft Claims; and (iii) provide Microsoft information, assistance and authority, at Microsoft's expense, to help Microsoft to defend such claim or action. Microsoft will not be responsible for any settlement made by PN without Microsoft's written permission, which permission will not be unreasonably withheld.

- (b) Microsoft may upon written notice thereof to PN undertake to conduct all proceedings or negotiations in connection with Microsoft Claims, assume the defense thereof, and if it so undertakes, it shall also undertake all other required steps or proceedings to settle or defend the Microsoft Claims, including the employment of counsel which shall be reasonably satisfactory to PN, and payment of all expenses. PN, at its own expense, shall have the right to employ separate counsel and participate in the defense of the Microsoft Claims. Microsoft shall reimburse PN upon demand for any payments made or loss suffered by it at any time after the date hereof, based upon the judgment of any court of competent jurisdiction or pursuant to a bona fide compromise or settlement of claims, demands or actions, in respect to any damages to which the foregoing relates.
- (c) Microsoft may not settle any Microsoft Claim on PN's behalf without first obtaining PN's written permission, which permission will not be unreasonably withheld or delayed. In the event PN and Microsoft agree to settle a claim or action, Microsoft agrees not to publicize the settlement without first obtaining PN's written permission, which permission will not be unreasonably withheld or delayed.
- (d) Microsoft shall have no liability under this Section 10.2 for any third party intellectual property infringement claim based upon the combination of the Microsoft Code with non-Microsoft products, where such infringement would not have occurred but for such combination.

11. TERMINATION

- 11.1 Term. Unless earlier terminated in accordance with Section 11.2, this Agreement shall commence upon the Effective Date and continue in full force and effect through the Term.
- 11.2 Termination By Either Party For Cause. Either party may suspend performance and/or terminate this Agreement immediately upon written notice at any time if the other party is in material breach of Section 8.2 and fails to cure that breach within five (5) days after written notice thereof.
- 11.3 Dispute Resolution. If the a party is in material breach of any material warranty, term, condition or covenant of this Agreement, other than those contained in Section 8.2, such party shall cure that breach within forty-five (45) after written notice thereof. If a party contests or disputes that material breach has so occurred, the parties shall submit any dispute to structured negotiation as follows:
 - (a) Coverage. Other than actual or imminent material breaches of Section 8.2, any dispute between the parties with respect to this Agreement shall be submitted for structured negotiation. The commencement, and any resolution reached as a result, of any dispute resolution under this Section 11.3 shall be considered Confidential Information and protected under Section 8.
 - (b) Structured Negotiation. Either party may invoke this procedure by giving written notice to the other party designating a corporate officer with appropriate authority to be its representative in negotiations relating to the dispute. Upon receipt of such notice, the other party shall, within five (5) business days, designate a corporate officer with similar authority to be its

representative. The designated officers shall, following whatever investigation each deems appropriate, but no event later than twenty (20) business days after the original notice, enter into discussions concerning the dispute. If within an additional twenty (20) business days of their initial meeting, the representatives do not resolve the dispute, either party may submit the matter to binding arbitration under Section 11.3(c).

- (c) *Binding Arbitration.* Any dispute not settled by the parties by structured negotiation (other than actions for injunctive relief including specific performance) shall be submitted only to binding arbitration. The arbitration will be conducted in accordance with the procedures in this document and the Arbitration Rules for Commercial Arbitration Rules of the AAA ("AAA Rules"). In the event of a conflict with such rules, the provisions of this Agreement will control.

The arbitration shall take place in Seattle, Washington, before a panel of three arbitrators appointed as follows. Each party shall select a single arbitrator, and the two (2) selected arbitrators shall mutually agree upon a third. The arbitrators selected shall have knowledge and experience in the computer software business. The arbitrators shall rule on the dispute by issuing a written opinion setting forth findings of fact and the rationale for their decision within thirty (30) days after the close of hearings. The decision rendered by the arbitrators shall be final and binding and may be entered as a judgment in any court of competent jurisdiction. The arbitrator(s) shall control the scheduling so as to process the matter expeditiously. The times specified in this section may be extended upon mutual agreement of the parties by the arbitrators upon a showing of good cause.

Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the Federal Arbitration Act and resolved by the arbitrators. No potential arbitrator may serve on the panel unless he or she has agreed in writing to abide and be bound by these procedures.

All aspects of the arbitration shall be treated as Confidential Information.

Unless provided otherwise in the Agreement, the arbitrators may not award non-monetary or equitable relief of any sort. They will have no power to award damages inconsistent with the Agreement. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitrators have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction.

The parties may submit written briefs. Discovery shall be controlled by the arbitrators and shall be permitted as follows: each party may submit in writing to a party, and that party shall so respond, to a maximum of any combination of thirty-five (35) (none of which may have subparts) of interrogatories, demands to produce documents, and requests for admission.

Each party shall bear its own costs of the arbitration. A party seeking discovery shall reimburse the responding party the costs of production of documents (to include search time and reproduction costs). The parties shall equally split the fees of the arbitration and the arbitrators.

11.4 Effect of Termination.

- (a) Neither party shall be liable to the other for damages of any sort resulting solely from terminating this Agreement in accordance with its terms.
- (b) Any end user licenses already validly granted by PN as the effective date of termination shall not be affected and shall survive termination.

11.5 Survival. In the event of termination or expiration of this Agreement for any reason, Sections 2.1 (provided that Microsoft has paid the applicable license fees set forth in Section 3), 2.2, 2.4(c), 3.2 (to the extent fees are due and owing), 4, 8.2, 9, 10, 11, 12 and 13 shall survive termination.

12. LIMITATION OF LIABILITIES

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. GENERAL

13.1 Notices. All notices and requests in connection with this Agreement shall be deemed given as of the day they are received either by messenger, delivery service, or in the United States of America mails, postage prepaid, certified or registered, return receipt requested, and addressed as follows:

To PN:

Progressive Networks, Inc.
1111 Third Avenue, Suite 2900
Seattle, WA 98101
Attention: General Counsel

Phone: (206) 674-2213

Fax: (206) 674-2695

To Microsoft:

Microsoft Corporation
One Microsoft Way
Redmond, WA 98052-6399
Attention:

Phone: (425) 882-8080

Fax: (425) 936-7329

Copy to:

Microsoft Corporation
One Microsoft Way
Redmond, WA 98052-6399
Attention: Law & Corporate Affairs

Fax: (206) 936-7409

or to such other address as a party may designate pursuant to this notice provision.

13.2 Independent Contractors. PN is an independent contractor for Microsoft, and nothing in this Agreement shall be construed as creating an employer-employee relationship, a partnership, or a joint venture between the parties.

13.3 Taxes. In the event taxes are required to be withheld on payments made under this Agreement by any U.S. (state or federal) or foreign government, Microsoft may deduct such taxes from the amount owed PN and pay them to the appropriate taxing authority. Microsoft shall in turn promptly secure and deliver to PN an official receipt for any taxes withheld. Microsoft will use reasonable efforts to minimize such taxes to the extent permissible under applicable law.

13.4 Governing Law. This Agreement shall be governed by the laws of the State of Washington as though entered into between Washington residents and to be performed entirely within the State of Washington, and PN consents to jurisdiction and venue in the state and federal courts sitting in the State of Washington. In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees.

- 13.5 **Assignment.** This Agreement shall be binding upon and inure to the benefit of each party's respective successors and lawful assigns; provided, however, that PN may not assign this Agreement, in whole or in part, without the prior written approval of Microsoft. For purposes of this Agreement, a merger, consolidation, or other corporate reorganization, or a transfer or sale of any or all of a party's stock, or of all or substantially all of its assets shall be deemed to be an assignment; provided, however, that an IPO of PN stock shall not be considered an assignment.
- 13.6 **Construction.** If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. This Agreement has been negotiated by the parties and their respective counsel and will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party.
- 13.7 **Entire Agreement.** This Agreement does not constitute an offer by Microsoft and it shall not be effective until signed by both parties. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and merges all prior and contemporaneous communications. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed on behalf of PN and Microsoft by their respective duly authorized representatives.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date written above.

MICROSOFT CORPORATION	PROGRESSIVE NETWORKS
By:	By:
Name (print): Paul Maritz	Name (print): Rob Glaser
Title: Group VP, Applications & Platforms	Title: CEO
Date:	Date: