

From: Brad Thayer
Sent: Tuesday, October 17, 2000 3:50 PM
To: Ed Micheht; Kyle Faulkner
Subject: FW: Proposed QuickTime/Burst.com Agenda

In case you haven't seen this...

Brad

---Original Message---

From: Thomas Dorsey
Sent: Tuesday, October 17, 2000 2:32 PM
To: 'chatfield@apple.com'; 'cassanova@apple.com'
Cc: Thomas Dorsey
Subject: Proposed QuickTime/Burst.com Agenda

Hi Frank (or Christine for Frank),

Following up on our proposed biz dev/porting Burstware to QuickTime meeting. Since you requested a "holistic how we can work together discussion", my CEO (Doug Glen) wants to attend at Apple. We really want this to be a no holds barred discussion. If it agrees with your calendar, can we make the meeting anytime on Monday, October 30, since this also works for Doug? A senior engineer on the Mac port and I will also attend.

Proposed Agenda:

- * Burst.com PowerPoint presentation about our Burstware and our live streaming plans.
- * QuickTime presentation about QT/MacOS X vs. QT/MacOS 9, including your codec and multicast plans.
- * more background info on the QT api (we're already a QT developer, but have more questions)
- * discussion about the QuickTime Component Downloader program and your embedded plug-in strategy.
- * discussion about commercial VOD opportunities requiring QoS and service level agreements (identify near term mutual customer opportunities to drive a biz dev agreement)
- * suggested additional partners/resources in the QT ecosystem
- * possible co-marketing activities (website, tradeshow, PR) once Burst QuickTime for Mac is also ready

I've looked at a lot of QuickTime, Real, Windows Media clips movie trailer clips, but the "Monsters_Inc." clip with the QuickTime 5/Sorenson 3 codec was the most impressive I've seen at broadband speed. The normal size image looked like a DVD from only a few feet away -- great contrast and color accuracy without macro-blocking or motion artifacts. Can't wait to see if Variable Bit Rate and tuning enables QT5/S3 to clearly surpass Real 8 and Windows Media 7 codec visual quality.

After QA next week, a nice Burst QuickTime for Windows clip featuring Santana music will be posted on the Burst.com Web site. I'll send you the Web page link then. For now I've attached a joint NDA or welcome yours to better facilitate our discussion. I look forward to an productive meeting.

Best regards,

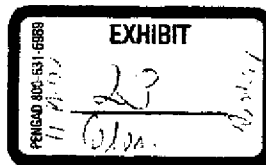
Thomas Dorsey
Director of Business Development
tdorsey@burst.com
<http://www.burst.com/home.htm>
415-391-4455 x302 office
415-596-4465 mobile



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JOINT NON-DISCLOSURE AGREEMENT

This Joint Non-Disclosure Agreement (the "Agreement") is made and entered into _____ by and between BURST.COM, INC., a Delaware corporation, with its principal offices located at 500 Sansome Street, San Francisco, California 94111 ("Burst.Com"), and _____ a _____ corporation, with its principal offices located at _____ ("Second Party"), hereinafter referred to collectively as "Parties".

In consideration of the mutual covenants and promises set forth herein, the Parties agree as follows:

1. In connection with and respect to negotiations by and between the Parties regarding valuation and pricing of Burstware® products and applications (hereinafter "Subject Matter"), the Parties have agreed to disclose certain of their respective proprietary information (hereinafter "Information") to the other Party on a confidential basis. Information shall be defined as: "All information, documentation, terms, conditions, and compensation arrangements disclosed orally or in writing, made available by one Party to the other, including, but not limited to, business activities, present and future plans, present and future products, and the policies of the disclosing Party." The disclosing Party may consider such Information proprietary under this Agreement either because it has developed the Information internally, or because it has received the Information subject to a continuing obligation to maintain the confidentiality of the Information, or because of other reasons.
2. When Information is furnished in a tangible form, the disclosing Party shall mark the Information in a manner to indicate that it is considered proprietary or confidential or otherwise subject to limited distribution as provided herein. When Information is provided orally, the disclosing Party shall, at the time of disclosure, clearly identify the information as being proprietary or confidential or otherwise subject to limited distribution as provided herein. In addition, the existence and terms of this Agreement, and the fact and substance of discussions and correspondence between the Parties concerning the Subject Matter, shall be deemed proprietary Information.
3. With respect to Information disclosed under this Agreement, the Party to whom the Information is disclosed, its employees, and employees of its affiliated companies shall:
 - a. hold the Information in confidence, exercising a degree of care not less than the care used by disclosing Party to protect its own proprietary or confidential Information that it does not wish to disclose;
 - b. restrict disclosure of the Information solely to those directors, officers, employees and/or agents/consultants with a need to know and not disclose it to any other person;
 - c. advise those persons to whom the Information was disclosed of their non-disclosure obligations with respect to the Information; and

Joint Non-Disclosure Agreement

- d. use the Information only in connection with continuing correspondence and discussions by the Parties concerning the Subject Matter and Second Party's potential use thereof for its applications, except as may otherwise be mutually agreed upon in writing.

If the Party to whom Information has been disclosed proposes to disclose that Information to any unaffiliated consultant or agent, it shall obtain the prior written consent of the Party from whom the Information was originally received, and shall arrange for the execution by the consultant or agent of a non-disclosure agreement in a form satisfactory to the party from whom the Information was originally received.

4. The Information shall be deemed the property of the disclosing Party and, upon request, the other Party will return all Information received in tangible form to the disclosing Party or will destroy all such Information at the disclosing Party's direction. If either Party loses or makes an unauthorized disclosure of the other Party's Information, it shall notify such other Party immediately and use reasonable efforts to retrieve the lost or wrongfully disclosed information.
5. The Party to whom Information is disclosed shall have no obligation to preserve the proprietary nature of any Information which:
 - a. was previously known to such Party free of any obligation to keep it confidential; or,
 - b. is or becomes generally available to the public by other than unauthorized disclosure; or,
 - c. is developed by or on behalf of such party independent of any Information furnished under this Agreement; or,
 - d. is received from a third party whose disclosure does not violate any confidentiality obligation; or,
 - e. is required to be disclosed by law or by any governmental agency having jurisdiction pursuant to an order to produce or in the course of a legal proceeding pursuant to a lawful request for discovery, provided, however, that if a Party is so required to disclose the Information such Party shall promptly notify the other Party of the order or request in discovery and cooperate with such other Party in any reasonable manner requested in the event the other Party elects (at its expense) to intervene in the proceeding in which the order was entered or the request for discovery made for the purpose of limiting or avoiding such disclosure by any lawful means including, but not limited to *in camera* review and protective order.
6. Neither this Agreement, nor the disclosure of Information under this Agreement, nor the ongoing discussions and correspondence between the Parties, shall constitute or imply a commitment or binding obligation between the Parties or their respective affiliated companies, if any, regarding the Subject Matter or Second Party's use thereof for its applications. If, in the future, the Parties elect to enter into binding commitments regarding the Subject Matter, such commitments will be explicitly stated in a separate written agreement executed by both Parties, and the Parties hereby affirm that they do not intend their discussions, correspondence, and other activities to be construed as forming a contract regarding the Subject Matter or any other transaction between them without execution of such separate written agreement.

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7. Neither party is responsible or liable for any business decisions made or inferences drawn by the other Party in reliance on this Agreement or in reliance on actions taken or disclosures made pursuant to this Agreement. Neither Party solicits any changes in the business practices or services of the other, and no obligations are incurred with regard to the accuracy of the observations of either Party. Neither Party makes any warranty, express or implied, with respect to the information. Neither Party shall be liable to the other hereunder for amounts representing loss of profits, loss of business, or indirect, consequential, or punitive damages of the other Party in connection with the provision or use of the information hereunder.
8. This Agreement shall benefit and be binding upon the Parties hereto and their respective successors and assigns.
9. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
10. This Agreement shall become effective as of the date of execution of this Agreement as set forth below ("Effective Date"). Disclosures of Information under this Agreement may take place for a period (the "Information Disclosure Period") of 1 year after the Effective Date. The obligations of the parties contained in Paragraphs 3 and 4 shall survive and continue beyond the expiration of the Information Disclosure Period by a further period of 3 years.
11. The Parties acknowledge and understand that Burst.Com is involved in the design, development, and licensing of intellectual properties relating to interactive network applications, and Second Party is engaged in the business of _____
_____ and that this Agreement does not limit or restrict the ability of either Party to engage in its respective business, nor does it limit either Party's use or application of any information or knowledge acquired independently of the other without breach of this Agreement in the course of such business.
12. This Agreement constitutes the entire understanding between the Parties with respect to the information provided hereunder. No amendment or modification of this Agreement shall be valid or binding on the Parties unless made in writing and executed on behalf of each Party by its duly authorized representative.

Each Party represents that it has caused this Agreement to be executed on its behalf as of the Effective Date herein below by a representative empowered to bind that Party with respect to the undertakings and obligations contained herein.

Executed this _____ day of _____, 200__.

BURST.COM, INC.

(Company Name)

By:

By:

Name:

Name:

Joint Non-Disclosure Agreement

Title:

Title: