

From bobkr Sun Aug 29 13:20:56 1993  
To: jonl  
Subject: RE: Stuart Johnston call  
Date: Sun Aug 29 13:20:27 1993

how was the acknowledgement given? is this more a statement about "residual rights" and acknowledgement that cloning in a clean room environment is ok (from a legal standpoint)?

i'd hate to give the impression that we "license" cloning, which is how the question from stuart was worded. also, i don't want to lend credence to wabi and have tried to convey that we might take legal action against sun for wabi.

-bobkr

>From jonl Sat Aug 28 10:53:15 1993  
X-MSMail-Message-ID: 5F02F0E6  
X-MSMail-Parent-message-ID: 3B62DB8A  
X-MSMail-Conversation-ID: 3B62DB8A  
From: Jonathan Lazarus <jonl@microsoft.com>  
To: bobkr, bradsi, jimall, jonro, paulma, richt, syspr  
Date: Fri, 27 Aug 93 08:54:58 TZ  
Subject: RE: Stuart Johnston call  
Cc: billp

I'll have to teach you to be more colorful.

To be correct I believe we did give IBM rights to clone APIs (in Windows) in the sense that we acknowledged that cloning was "legal". The difference after Sep 17 is that they don't have access to the source code..

From: Bob Kruger  
To: Brad Silverberg; Jim Allchin; Jonathan Lazarus; Jonathan Roberts; Paul Maritz;  
Richard Tong; SYS PR Team Including TWG  
Cc: Bill Pope  
Subject: Stuart Johnston call  
Date: Friday, August 27, 1993 2:20PM

I just spoke w/ him re. the coming expiration of the cross-licensing agmt w/ IBM on 9/17.

Stuart hit me with the same questions he posed to IBM. They focused largely on what happens on 9/17 and what it means downstream.

I concentrated on the basics per the Q&A. We get each other's code (MS-DOS, Windows and OS/2) that's in development as of 9/17. Stuart asked about a grace period (he said 30 days) and I confirmed that we each have a short grace period to ensure a smooth transfer without getting into a legal battle, but that in reality we both initiated the exchange a while back. Plus, we've been meeting to ensure no misunderstandings.

Stuart then made a strange remark, which came from IBM. According to him, they said that we gave them rights to clone Windows in perpetuity. I refuted that statement. I said that perhaps they're confusing their interpretation of the copyright laws to mean that they could go off and clone

Plaintiff's Exhibit

9648

Comes V. Microsoft

Windows, the same as companies cloned 3270 terminals, etc., and added that we don't give anyone the right to clone our products. I then focused on how tough a job it is to build a clone (even when one has access to the original sources and talent). I also said that it doesn't make sense to confuse customers by portraying a clone as a sports car that looks like a truck that corners sort of okay, when the customer wants a sleek auto that hugs the road and delivers topnotch performance.

I did say that IBM could use the Windows code provided as of 9/17 in the same way they've been using it today. However, they will not have the benefit of enhancements made after 9/17, and that products like Chicago still have a ways to go. I believe that the message came across clearly.

Stuart also had the impression that OS/2 2.x today is a clone of Windows. I said that's not entirely correct, that it contains actual Windows code and that PM and Windows video drivers are linked.

He asked if we had any intention of coding to the Workplace Shell, to which I responded "no" because it doesn't appear to be getting wide support and Chicago seems to be a better solution. (Note: Stuart reported that both Infoworld and PC Week will likely run page 1 articles praising Chicago. He said he was VERY surprised when one usually negative person gave outstanding praise of the PDK and even decided to use Chicago full-time for his development platform.)

Stuart asked me to confirm rights to NT. He also asked about IBM's access to MS-DOS 7.0 code. I said that they get this via Chicago since it's a subset, at the moment.

Stuart asked if we had plans to actually deliver the PM support we committed for NT awhile back. I hedged by saying that we already have this developed, but that it isn't much of a necessity since there were few graphical 16-bit OS/2 apps that aren't already available on Windows; most apps were server-based. I suggested that he speak further with NT marketing. (Note: My understanding is that the PM support has been delivered in at least beta form to the Japanese market.)

In order to ensure we don't degrade the relationship with IBM, I positioned ourselves in the midst of a redefined relationship rather than a divorce. I said that we have good relations with the IBM PC Co. and that we will continue to license IBM PC Co. as they're free to license from whomever offers the products and services their customers want. I also said that we have an okay rapport with PSP and that we've been working amicably on the redefined relationship. I positioned this as beneficial to our customers.

In closing, Stuart asked for my title and suggested that it ought to be VP. I said that I'd cover that w/ Paulma as part of the next review period here. He also said he enjoyed the interview, but that I was less "flamboyant" in my statements than the "ever-colorful" Jonl.

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okr Mon Aug 30 12:09:02 1993  
Mail-Message-ID: CE68EA03  
Mail-Parent-message-ID: 529D144B  
MSMail-Conversation-ID: 529D144B  
X-MSMail-WiseRemark: Are we having fun yet?  
From: Bob Kruger <bobkr@microsoft.com>  
To: jonl  
Date: Mon, 30 Aug 93 12:08:25 PDT  
Subject: IBM's cloning rights  
Cc: collinsh paulma tonya

I read the letter signed by MS and IBM that discusses this matter.  
There are 3 relevant points:

1. We agreed that the APIs (for our and their OS products) can be used in any of our respective OS products. While this does address "necessary commands, protocols and/or similar info," it does not cover cloning our specific implementation of the APIs. Nothing is stated about how our respective clones would be developed.

2. To the extent APIs are copyrightable, we agreed not to assert our rights against one another. This includes against third parties doing works for hire.

3. Neither company was to have expressed itself on the subject of copyrightability of APIs. (I think IBM overstepped its bounds in claiming cloning rights during interviews.)

Interestingly enough, IBM could be using this letter to cover itself with regard to Wabi. In licensing Wabi, IBM gets rights to an existing Windows API clone and could more easily integrate that code into its Portable OS/2 base. Using rights to current Windows sources, it could advise Sun on its cloning effort and ensure a more current clone.

-bobkr

From: Jonathan Lazarus  
To: Bob Kruger  
Cc: Tony Audino  
Subject: RE: Stuart Johnston call  
Date: Sunday, August 29, 1993 11:01

We gave them a specific agreement -- TonyA I can provide details -- don't remember the exact details -- but it only relates to IBM I think...

From: Bob Kruger  
To: Jonathan Lazarus  
Subject: RE: Stuart Johnston call  
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