CSIA

Computer Software Industry Association
3323 Watt Avenue, # 287, Sacramento, CA 95821 (408) 516-9827

September 11, 2000

Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Ave., NW.
Washington, D.C. 20580

Re: High-Tech Warranty Project – Comment, P994413

1   This letter responds to the request for comment regarding the Federal Trade Commission's examination of Warranty Protection for High-Tech Products and Services. I am pleased to respond on behalf of the Computer Software Industry Association (CSIA). CSIA represents over 2000 small software developers and technical consultants in California. We believe that it is essential that these interests be represented at the Commission's public forum on Warranty Protection for High-Tech Products and Services. Per the FTC's request regarding comments submitted by e-mail, we have numbered each paragraph of this letter.

2   Several of the FTC's questions concern practices of the computer information industries such as the practice of licensing instead of selling copies of computer information.   The strength of the knowledge economy and the fact that it is being fueled by these practices may, in itself, be ample evidence that the practices and products of these industries are beneficial to consumers in both their professional and consumer capacities. But what often goes unnoticed is the vehicle for many of these benefits and the mass dissemination of information products, the license itself.

3   Accordingly, licensing is the subject of this letter. What it is, why it exists, and why it is beneficial to consumers.

4   **Background**. There is nothing new about licensing software and other computer information. Licensing is as old as information. Dun and Bradstreet will tell you that it has licensed credit information since the Civil War. Software has not been around that long but it is another form of information. In the early days of main frame computers, software was "thrown in" with the sale of the computer because the focus of the then industry was to sell computers, not software applications. Those computers were very expensive and only large commercial and governmental enterprises could afford them. What characterizes and creates vibrancy in the current economy is the widespread importance and availability of software applications and other computer information and the decrease in costs that makes it all possible. What makes that possible is the license, particularly non-negotiated form licenses.

         Consider the days when only banks and licensed brokers could afford the computers and software to process and analyze financial data. Today, every consumer has access to powerful computer programs and vast data from the comfort of their own home. What happened? Part of the answer is the mass-market license: it provides a vehicle for getting a variety of rights from the rights owner to the consumer. If these arrangements had to be individually negotiated, mass

transactions would be impractical no matter how much a consumer was willing to pay. With licensing, consumers get the package of rights they need at attractive prices.

5 **Licenses provide a variety of rights, each one creating a tailored or different package of rights.** One-size-fits-all is not the watchword of the information economy. The person who compiles a massive database could recoup its costs by offering licenses only to select commercial entities that can pay the freight. By tailoring the license and the pricing, the very same database can be offered to consumers at a fraction of the commercial price if they will agree to use the product for consumer purposes only. That contract is the license. It is the vehicle for tailoring the product and the price to make it accessible by consumers.

6 To illustrate the variety of rights that come in licenses, please review the Appendix to this letter. It is a copy of the appendix to a law review article regarding licensing and we have obtained permission to reprint it here.[1] Our goal is to illustrate the variety that is evidenced by license clauses and the consequent variation in computer information products.

7 **Licenses avoid infringement.** As has been noted by commentators, critics of mass market licensing try to paint a picture of software or information licensing as amounting to nothing more than a collection of "me too" forms in which licenses simply mirror a copyright first sale. That is simply incorrect. As illustrated by the Appendix, today's mass-market licensing is characterized by contract variety and a variety of license terms. The Appendix also illustrates that these terms frequently provide users more rights than the user would have acquired had he or she simply bought a copy of the software under the first sale doctrine. Under that doctrine, the user may transfer the user's copy of software and make adaptations or a copy essential to using the computer program. That is the end of the rights available under the first sale doctrine. An economy premised on those rights is no economy at all and products that rely upon it are one-dimensional.

8 Under a license, the user may exercise, without infringement, various rights that otherwise are only exercisable by the copyright owner. As illustrated by the Appendix, mass market license rights include, for example, rights regarding reproduction, derivative works and distribution. The license is necessary to avoid infringement -- while doctrines of implied license do exist, they do not abrogate the Copyright Act and do not allow the myriad rights that are contemplated by mass-market licenses. Of course, a consumer may always defend against an infringement action by claiming fair use -- but a review of the Appendix will illustrate that the fair use defense would not apply to most of the rights granted in the licenses sampled there.

9 **Licenses provide benefits to consumers**. Several years ago an article entitled "A Brief Defense of Mass-Market Licenses" was co-authored by software licensing attorneys in an attempt to provide information about the need of all parties for licenses and some of the

---

[1] Robert W. Gomulkiewicz, *The License Is The Product: Comments On the Promise of Proposed Article 2B (Or Something Like It)For Software and Information Licensing*, 13 Berkeley Tech. L.J. 891 (1998)

differences between computer information and goods.[2] An electronic copy is enclosed for your review.   Licenses are critical to both customers and publishers in the information industries, just as sales contracts are critical to buyers and sellers, leases are critical to lessees and lessors, and service contracts are critical to service users and service providers. The nuances of each of those legal structures differ with the subject matter of the structure. Because the subject matter of mass-market licenses, i.e., computer information, is different from goods and services, differences in the legal structure follow.

10   As for the content of mass-market licenses, the FTC questions seem to assume that they routinely contain objectionable terms. In fact, as to contractual issues they are no different from the many other contracts that make our society function.   The terms of licenses, however, tend to be more affected by the marketplace because there is a dynamic community of vocal users. The marketplace for digital information products in this country is one of the most vibrant and diverse market economies ever seen in the world. Mass-market licenses should be judged on the basis of the tremendous benefits they provide to software users, society and publishers, not on the few provisions that critics can find to criticize. The market will punish those who employ such measures. Traditional contract law also places clear limitations on abusive practices when they exist.[3] Consumer protections laws such as unfair acts and practices laws, and doctrines such as unconscionability, construing contract terms against the drafter, and copyright misuse provide powerful checks as well.[4] The latter doctrine, copyright misuse, is irrelevant in the world of goods but powerful in the world of software and computer information.

11   **Warranties.** Finally, a word about warranties. FTC Questions 10 and 11 focus on implied warranties and disclaimers of warranties. Again, two articles have been written by the same licensing attorney on those topics which we also enclose. They reveal several things:

12   —   Part of the software industry depends upon the ability to disclaim warranties -- the open source movement, for example, uses licenses and disclaimers to protect the "open" or "free" character of source code and to allow innovation.[5]

13   —   Part of the software community disclaims implied warranties for the same reasons that vendors in the goods industries disclaim them under Article 2 of the Uniform Commercial

---

[2] Robert W. Gomulkiewicz and Mary L. Williamson, *A Brief Defense of Mass Market Software License Agreements*, 22 Rutgers Computer & Tech. L.J. 335 (1996).

[3] The Uniform Computer Information Transactions Act contains powerful protection in this regard that is not contained in Article 2 of the Uniform Commercial Code or in the common law, at least on a uniform basis. Section 105(b) of UCITA provides as follows: "If a term of a contract violates a fundamental public policy, the court may refuse to enforce the contract, enforce the remainder of the contract without the impermissible term, or limit the application of the impermissible term so as to avoid a result contrary to public policy, in each case to the extent that the interest in enforcement is clearly outweighed by a public policy against enforcement of the term." The official comments alert courts to the kinds of public policies that can inform computer information products that typically are not as relevant to goods, such as freedom expression, copyright fair use and competition policy.

[4] *See e.g.,* Nimmer, Ray, *"Breaking Barriers: The Relation Between Contract And Intellectual Property Law,"* 13 Berkeley Technology Journal 827 at 848 (Fall 1999).

[5] See Robert W. Gomulkiewicz, *How Copyleft Uses License Rights To Succeed in the Open Source Software Revolution and the Implications for Article 2B,* XVI JOHN MARSHALL JOURNAL OF COMPUTER & INFORMATIONAL LAW No. 2 at 195 (1997).

Code: when products are unique, no one knows what an implied warranty means with respect to that product and disclaimer is the best way to avoid costly litigation. This is especially important for small developers such as those who belong to the CSIA. If small developers must provide ambiguous implied warranties, there will be no small developers – any implied warranty pertaining to the "ordinary use" of a computer information product is fraught with litigation potential because uses are infinite even when customers comply with use restrictions (e.g., a consumer who complies with a "personal use only" restriction still has only the sky as the limit for the arguable range of "ordinary" uses). This is a special problem for computer information: there are only a few things one can ordinarily use a good such as a toaster for – that simply is not the case for computer information. In fact, dreaming up new uses is exactly what is creating the vibrancy in our economy. In addition, computer software is generally used in a wide variety of environments – different brands of computers, different add-on peripherals, different versions of operating systems, even different software sharing the same computer. Non-disclaimable warranties are likely to result in use restrictions to only certain specific brands of computers machines with no, or limited, add-on devices. This would result in vastly limited competition for both software and hardware – a result that would be quite harmful to consumers.

14 — Part of the industry provides written warranties but also disclaims implied warranties – again, they do this because they wish to avoid the ambiguities created by implied warranties but also wish to provide their customers a written warranty that can be crafted to fit the product in question. Many such companies voluntarily format these written warranties by analogy to the Magnuson-Moss Warranty Act in order to increase consumer understanding of them.

15 If the Magnuson-Moss Warranty Act were extended to apply to computer information, small developers would only retain the ability to disclaim implied warranties by *not* providing an express warranty or by not providing a service contract that promises to repair or remedy defects. That is an astonishing rule that is incredibly harmful to consumers in the context of the computer information industries: if the developer seeks to help its customers by providing a service contract or a written warranty, it cannot avoid the litigation that must come from the consequent inability to disclaim implied warranties. Therefore, it is best not to provide a written warranty or a service contract at all – therefore it is best to leave consumers hanging. The FTC should reject suggestions from supposed representatives of consumers for that result. That result only helps class action attorneys at the expense of consumers.

16 — Part of the industry does not disclaim implied warranties because the common law largely does not create implied warranties and it is not clear that Article 2 applies to software. While some courts have said that it does apply, examination of those decisions usually indicates little intellectual basis for that conclusion.

17 The Uniform Computer Information Transactions Act changes the common law. UCITA imposes an implied warranty of merchantability on computer programs as well as an implied warranty regarding particular purpose. Additionally, it imposes an implied warranty of accuracy on information that is not published informational content. As in Article 2 of the U.C.C., all of these warranties may be disclaimed. The warranties are crafted, however, to make them slightly

less susceptible to a need for disclaimer[6] and the wording for disclaimer was intentionally drafted to follow the wording of states concerned that consumers might not understand traditional words like "merchantability."[7]   In short, UCITA improves consumer protections but does not fully solve the problems that small developers face.

18   Both Article 2 of the UCC and UCITA properly allow disclaimer of implied warranties and that is critical to the software industry, whether large or small company and whether open or closed source computer programs. This ability to disclaim is critical given the impossibility of crafting perfect implied warranties, the complexity of software, the difficulty of defining defects, the benefits and wider availability of wide dissemination of software, and the need of the entire industry to maintain the ability of small developers to take part and survive.

19   I hope the enclosed information is helpful to your review.

Sincerely,
COMPUTER SOFTWARE INDUSTRY ASSOCIATION

By Kaye Caldwell
President
KCaldwell@SoftwareIndustry.org
Direct Line: 916-486-6334

Attached as a separate file, with permission of authors: **A BRIEF DEFENSE OF MASS MARKET SOFTWARE LICENSE AGREEMENTS**

---

[6] See Robert W. Gomulkiewicz, *The Implied Warranty of Merchantability In Software Contracts: A warranty No One Dares to Give And How to Change That"* (XVI John Marshall Journal of Computer & Information Law No. 2 at 393 (1997).
[7] See e.g., UCITA Section 406(b)(3): "Except for express warranties stated in this contract, if any, this `information' `computer program' is provided with all faults, and the entire risk as to satisfactory quality, performance, accuracy, and effort is with the user".

Appendix excerpted from *The License Is The Product: Comments on the Promise of Article 2B for Software and Information Licensing* by Robert W. Gomulkiewicz

V.   Appendix of Selected License Terms
A.   3Com
                1.   PalmPilot Pro End User Software License Agreement
                Multiple Copies: "With respect to the PalmPilot Desktop Software, you may reproduce and provide one (1) copy of such Software for each personal computer or PalmPilot product on which such Software is used as permitted hereunder. With respect to the PalmPilot Device Software, you may use such Software only on one (1) PalmPilot product."
B.   3G Graphics, Inc.
                1.   Art à la Carte
                Derivative Works; Distribution: "You may use the contents of your 3G Graphics product as illustrative or decorative material that is included as part of a total graphic design for print or multimedia communication, produced for you, your employer, or a client."
C.   Adobe Systems, Inc.
                1.   Acrobat Reader 3.01 Electronic End-User License Agreement
                Unlimited Copies and Distribution: "You may make and distribute unlimited copies of the Software, including copies for commercial distribution, as long as each copy that you make and distribute contains this Agreement, the Acrobat Reader installer, and the same copyright and other proprietary notices pertaining to this Software that appear in the Software."
                Install on Network or Multiple Computers: "You may ... install and use the Software on a file server for use on a network for the purposes of (i) permanent installation onto hard disks or other storage devices or (ii) use of the Software over such network."
                2.   PageMaker 6.5 End User License Agreement
                Home Use: "The primary user of each computer on which the Software is installed or used may also install the Software on one home or portable computer. [So long as there is no concurrent use]."
                Copying and Distribution Rights for Font Software: Rights include the ability to download the fonts to a printer, take a copy of the fonts to a commercial printer (if the commercial printer also has a license for the fonts), and "convert ... the font software into another format for use in other environments, subject to [additional] conditions." For example, this section would allow TrueType fonts to be converted to Bitmap fonts.
                3.   Type on Call Electronic End User License Agreement
                Authorized to Use Unencrypted Software: "Notwithstanding anything else in this Agreement, you acknowledge that although Type On Call contains Software for a number of typefaces and other product(s), you agree that you will use, and that the licenses set forth below apply to, only that Software which has not been encrypted or for which you have received access codes from Adobe."
                Choice in Network Configuration: "Provided the Software is configured for network use, [you may] install and use the Software on a single file server for use on a single local area network for either (but

not both) of the following purposes:

(1) permanent installation onto a hard disk or other storage device of up to the Permitted Number of Computers; or

(2) use of the Software over such network, provided the number of different computers on which the Software is used does not exceed the Permitted Number of Computers. For example, if there are 100 computers connected to the server, with no more than fifteen computers ever using the Software concurrently, but the Software will be used on 25 different computers at various points in time, the Permitted Number of Computers for which you need a license is 25."

Home Use: "The primary user of each computer on which the Software is installed or used may also install the Software on one home or portable computer. However, the Software may not be used on the secondary computer by another person at the same time the Software on the primary computer is being used."

Copy Fonts to Printer: Licensee may "[d]ownload the font software to the memory (hard disk or RAM) of one output device connected to at least one of the computers on which the font software is installed for the purpose of having such font software remain resident in the output device."

Allows Conversion of Font to Different Format (limited right to create derivative works): Licensee may "[c]onvert and install the font software into another format for use in other environments, subject to the following conditions: A computer on which the converted font software is used or installed shall be considered as one of your Permitted Number of Computers. You agree that use of the font software you have converted shall be pursuant to all the terms and conditions of this Agreement, that such font software may be used only for your own customary internal business or personal use and that such font software may not be distributed or transferred for any purpose, except in accordance with Paragraph 3 below."

D.   Apache Group

1.   Apache Web Server (Distributed as Freeware)

Unlimited Distribution: "Redistribution and use in source and binary forms, with or without modification, are permitted provided that the following conditions are met: [maintain copyright notice, acknowledge in all advertising that distributed product contains software developed by the Apache group, and not use Apache name]"

E.   "Artistic License"

1.   Alternative Free Software License

Copying and Distribution: "You may make and give away verbatim copies of the source code form of the Standard Version of this Package [collection of software files covered by the license] without restriction, provided that you duplicate all of the original copyright notices and associated disclaimers."

Modification: "You may otherwise modify your copy of this Package in any way, provided that you insert a prominent notice in each changed file stating how and when you changed the file and provided that you do at least ONE of the following [place modifications in the Public Domain, use the modified Package only within your organization, rename non-standard executables so that they do not conflict, or make other distribution

arrangements with the copyright holder]."

F.   Asymetrix

    1.   Pocketbook License Agreement for Daybook+ for Windows 3.0

    Derivative Works: The agreement allows you too make derivative works if you are a licensed user of "ToolBook." Modifications are only for internal use unless a separate distribution license is obtained.

G.   Autodesk, Inc.

    1.   General Shrink Wrap License Agreement

    Concurrent Use: "[I]f this Software is being licensed to you for use on a networked system (certain products only), you may operate the Software as a multiple-user installation with either: [the maximum use being one person at one time, or the maximum number of concurrent users being the number of people authorized by additional licenses]."

    Multiple Versions: "If the software Package contains versions designed for use on more than one operating system, ... you may install all versions of the Software but only on one computer at one location at any one time ...."

    License Packs: "If the Software is licensed to you as a Lab Pack (certain products only) and you have paid the Lab Pack license fee, then you may make four copies of the enclosed Software and Documentation. The Software may be used on a maximum of five computers simultaneously."

    Copies: "You may make unlimited copies of the .DWG files and other associated parts data contained in the Software for the exclusive purpose of incorporation into your own engineering drawings and designs."

    2.   Kinetix(tm) Software (division of Autodesk)

    Multiple Installations: "[Y]ou may install 3D Studio Software on more than one computer for the exclusive purpose of network rendering of your files.

    Modifications and Copies: "You may modify and make unlimited copies of the source code examples contained in the Software (3D Studio Max(tm)) and any resulting binary files for the exclusive purpose of incorporation into your own works and you may treat the User Works as your own creations with [some restrictions.]"

    Distribution: "You may distribute the resulting binary files of the Source Examples in User Works that are commercially distributed software applications only if [programs require 3D Studio Max to operate and you have increased the functionality]."

    Other Programs: Autodesk provides for unlimited copying, modification, and distribution rights similar to the above for its Hyperwire(tm), 3D Props(tm), and Texture Universe(tm) products.

H.   Blizzard Entertainment

    1.   Starcraft End User License Agreement

    Concurrent Use: "[T]he Program has a multi-player capability that allows up to eight players per registered version of the Program to play concurrently."

    Multiple Copies: Allows installation of "Spawned Versions" (copies made from a registered version). "You may install Spawned Versions of the Program on an unlimited number of computers. However, Spawned Versions of the Program must be played in conjunction with the registered

version of the Program from which they were spawned."

Create Derivative Works: "The Program also contains a Campaign Editor (the 'Editor') that allows you to create custom levels or other materials for your personal use in connection with the Program ('New Materials')."

I.   Berkeley Systems-style licenses

Unlimited Copying and Distribution Allowed: "Redistribution and use in source and binary forms, with or without modification, are permitted provided that the following conditions are met: [maintain copyright notices and include 'as is' disclaimer]."

J.   Free Software Foundation

1.   GNU General Public License

Copying and Distribution: "You may copy and distribute verbatim copies of the Program's source code as you receive it, in any medium, provided that you conspicuously and appropriately publish on each copy an appropriate copyright notice and disclaimer of warranty ... [and provide a copy of the GPL license]."

Modifications: "You may modify your copy or copies of the Program or any portion of it, thus forming a work based on the Program, and copy and distribute such modifications [so long as you note the modified files, license the modifications at no charge under the GPL, and provide a conspicuous copyright notice]."

2.   GNU Library General Public License ("LGPL")

Use, Copying and Distribution: The LGPL is intended to promote the same "freeware" software ideals contained in the GPL. The LGPL, however, allows a software product to use an unmodified "free" library without requiring the software product to be licensed as "freeware." Software licensed under the LGPL may be copied and distributed in combination with a "non-free" product, but the distribution must include both the object and source code of the LGPL-covered software.

K.   Id Software, Inc.

1.   Quake II

Derivative Works: "ID grants to you the non-exclusive and limited right to create additional levels (the 'Levels') which are operable with the Software. You may include within the Levels certain textures and other images (the "ID Images") from the Software." [Such Levels may only be used for personal use but may be distributed to others at no charge.]

L.   Info Electronics

1.   Postal Union/SMTP(tm)

Multiple Copies: "[Y]ou are permitted to: Non-exclusive use of the enclosed software and install one copy of the service on a single machine and 3 copies of the configuration control panel."

M.   Inprise (Borland)

1.   License Terms for Development Products

Compiled Programs: "If you are the licensed, registered user of this product, you may use, reproduce, give away, or sell any program you write using this product, in executable form only, without additional license or fees, subject to all of the conditions in this statement."

Redistribution: "Under Borland's copyright, and subject to all of the conditions in this statement, Borland authorizes the licensed,

registered user of this product to reproduce and distribute exact copies of
the files designated as 'Redistributables' for this product, provided that
such copies are made from the original disks in this package."
N.   LEXIS-NEXIS
        1.   CompareRite 7.0 Software License Agreement
        Network Use Authorized: "You are authorized to make
available on a network the LEXIS®-NEXIS® Research Software for Microsoft®
Windows® 95 and Windows NT(tm) version 7.0, CheckCite(tm) version 7.0, [and
others]."
        Home Use: "You may make a single extra copy of the Software
for each Authorized Use of the Software acquired by you under this Agreement
for incidental use on a secondary portable or home computer while away from
the primary computer or workstation upon which the Software resides ... [so
long as there is no simultaneous use]."
O.   LogoExpress, Inc.
        1.   LogoWorks
        Modifications: "You can ... [u]se the logos or logo elements
as is, modified, or combined with other logo elements to create a derivative
logo or graphic design."
        Distribution: "You can ... [u]se the derivative logo design
as your own, in print or electronic form, in the normal course of business
as you would any logo."
P.   Lotus Development Corporation
        1.   Lotus Software Agreement-Communication Products
(includes Lotus Notes and related products, Lotus cc:Mail and related
products) [1997]
        Home Use: "The Software may also be installed on a home
and/or laptop computer, but only the authorized user may access the
Software."
        Additional Copies: "You may copy the Software and use it
freely for creating additional cc:Mail post offices, running multiple
instances of cc:Mail Router, or for creating mailboxes used for
administrative purposes or by gateways or network-based agents."
        Install on Additional Computers [for Adobe Type Manager
Software]: "If your Software contains Adobe Type Manager ('ATM') you may
install and use ATM software on up to three (3) computers."
        Modifications [for specified Lotus Domino products]: "You
are authorized to modify, adapt or customize the Software to suit your needs
...."
        Distribution [for Lotus Notes HiTest Tools for Visual
Basic]: "You may modify the source code versions of the Sample Files, if
any, included with the Software and redistribute such modified source code
versions in compiled, object code form only. You may also redistribute, as
part of your application(s), files designated as 'Redistributable Code.'"
        2.   Lotus Software Agreement-Desktop Products
        Home Use: "The primary user of the computer may also use the
Software on a home and/or laptop computer, provided the Software is used on
only one computer at a time."
Q.   McAfee Software, Inc.
        1.   VirusScan (OEM version) Product License Agreement

Grants Rights in Upgrades: "If the PC hardware with which the SOFTWARE was received was purchased for individual or home use, then you are further entitled to download and use all upgrades of the SOFTWARE (including virus signature files (DAT files)) released during the three month period following purchase."

R.   Microsoft Corporation

1.   FoxPro

Unlimited Copies of Software: "You may install copies of the SOFTWARE PRODUCT on an unlimited number of computers provided that you are the only individual using the SOFTWARE PRODUCT."

Modification Rights: "Microsoft grants you the right to use and modify the source code version of those portions of the SOFTWARE PRODUCT identified as [sample code] for the sole purpose of designing, developing, and testing your software product(s), and to reproduce and distribute the SAMPLE CODE along with any modifications thereof, only in object code form." [Note: The above license grant is subject to complying with a series of conditions that depend on the type of redistributable code that the user wishes to distribute.]

2.   Microsoft BackOffice Server

Choice of Software Version: "The CD or diskette(s) on which the Server Software and the Connector Software reside may contain several copies of the Server Software and the Connector Software, each of which is compatible with a different microprocessor architecture (such as the x86 architecture or various RISC architectures). You may install the Server Software and the Connector Software for use with only one of those architectures at any given time."

Multiple Types of Software Programs: The Server License for Microsoft Server Products defines the following three types of software: Server Software, Connector Software, and Client Software. The Grant of License designates specific usage rights for these different types of software, with many such rights going beyond the statutory "first-sale" rights. These rights include:

Distribution: "Microsoft hereby grants to you a limited nonexclusive, royalty-free right to reproduce and distribute those DB-Library, Net-Library, and ODBC files required for run-time execution of compiled applications ("Run-Time Files") in conjunction with and as part of your application software product that is created using the Microsoft SQL Server Software ("Application"), provided that you comply with the Distribution Requirements listed below. ... You may freely copy and distribute the Client Software accompanying Microsoft Internet Information Server for your use or (for entities) use within your organization."

Modification: "Microsoft grants you the additional right to modify the source code version of the Source Extractor programs."

Reproduction Rights Dependent on License: "License Pak-If this package is a License Pak, you may install and use additional copies of the Server Software up to the number of copies specified above as 'Licensed Copies.'"

3.   Microsoft BackOffice Client Access License

Allows Different Licensing Options: The Client Access License for Microsoft Server Products (CAL) is closely related to the Server

License described above. It specifies the terms by which users access the Microsoft server products. For specified server products, the license provides two licensing options: Per Seat, or Per Server. Per Seat mode requires the purchase of a CAL for each workstation used to access ther server. The Per Server mode requires the acquisition of a number of CALs equal to "the maximum number of computers or workstations that will access or otherwise utilize the services of that Server at any given point in time."

      4.   Microsoft Encarta and 3D Moviemaker

      Network Use: "[Y]ou may install the setup/install program on any or all computers on your network, [so long as you only allow access to the number of people that you have a license for]."

      5.   Microsoft Office and Publisher

      Home Use: "The primary user of the computer on which the SOFTWARE PRODUCT is installed may make a second copy for his or her exclusive use on either a home or portable computer."

      License Pak: "If you have acquired this EULA in a Microsoft License Pak, you may make the number of additional copies of the computer software portion of the SOFTWARE PRODUCT authorized on the printed copy of this EULA ...."

      6.   Microsoft Visual Basic 4.0

      Unlimited Copies: "[Y]ou may install copies of the SOFTWARE PRODUCT on an unlimited number of computers provided that you are the only individual using the SOFTWARE PRODUCT."

      Modifications: "Microsoft grants you the right to use and modify the source code version of those portions of the SOFTWARE designated as 'Sample Code' ('SAMPLE CODE') for the sole purpose of designing, developing, and testing your software product(s), and to reproduce and distribute the SAMPLE CODE, along with any modifications thereof, only in object code form provided that you comply with [redistribution requirements]."

      Distribution: "Microsoft grants you a non-exclusive royalty-free right to reproduce and distribute the object code version of any portion of the SOFTWARE listed in the SOFTWARE file README.HLP ('REDISTRIBUTABLE SOFTWARE')."

      7.   Microsoft Visual C++ Version 5.0

      Unlimited Copies: "[Y]ou may install copies of the SOFTWARE PRODUCT on an unlimited number of computers provided that you are the only individual using the SOFTWARE PRODUCT."

      Distribution: Subject to specified restrictions, "Microsoft grants you a nonexeclusive, royalty-free right to reproduce and distribute the object code version of the following portions of the SOFTWARE PRODUCT (collectively, the 'REDISTRIBUTABLES')."

      Dual Media software: "You may receive the SOFTWARE PRODUCT in more than one medium. [You may only use the medium appropriate for your computer.]"

      8.   Microsoft Win32 Software Development Kit

      Modifications: "You may modify the sample source code located in the SOFTWARE PRODUCT's 'samples' directories ("Sample Code") to design, develop and test your Application."

Distribution: "You may copy and redistribute the Sample Code and/or Redistributable Code, (collectively "REDISTRIBUTABLE COMPONENTS") as described above provided that ... [specifies eight requirements for distribution]"

9. Microsoft Windows 95, North American End User License Agreement

License Pak: "If you have acquired this EULA in a Microsoft License Pak, you may make the number additional copies of the computer software portion of the SOFTWARE PRODUCT authorized on the printed copy of this EULA ...."

Dual Media Software: Manufacturer may provide User with multiple copies of Software on different media, but only authorizes User to install one of these copies.

10. Microsoft Windows 98

Systems Software: "You may install and use one copy of the SOFTWARE PRODUCT on a single computer, including a workstation, terminal or other digital electronic device ("COMPUTER"). If the SOFTWARE PRODUCT includes funcitonality that enables your single COMPUTER to act as a network server, any number of COMPUTERS may access or otherwise utilize the basic network services of that server. The basic network services, if available, are more fully described in the printed materials or electronic documentation accompanying the SOFTWARE PRODUCT."

Multiple Monitors: "If the SOFTWARE PRODUCT includes functionality that enables your COMPUTER to make use of additional displays such as additional monitors or a television: (i) any additional display must be physically and directly connected to your COMPUTER and (ii) your COMPUTER must be the only source of inputs utilized by the SOFTWARE PRODUCT."

Storage/Network Use: "You may also store or install a copy of the SOFTWARE PRODUCT on a storage device, such as a network server, used only to install or run the SOFTWARE PRODUCT on your other COMPUTERS over an internal network; however, you must acquire and dedicate a license for each separate COMPUTER on or from which the SOFTWARE PRODUCT is installed, used, accessed, displayed or run. A license for the SOFTWARE PRODUCT may not be shared or used concurrently on different COMPUTERS. Additional display devices described in the Multiple Monitors section above do not require an additional license."

License Pak: "If this package is a Microsoft License Pak, you may install and use additional copies of the computer software portion of the SOFTWARE PRODUCT up to the number of copies specified above as 'Licensed Copies.'"

Application Sharing: "The SOFTWARE PRODUCT may contain Microsoft NetMeeting, a product that enables applications to be shared between two or more computers, even if an application is installed on only one of the computers. You may use this technology with all Microsoft application products for multi-party conferences. For non-Microsoft applications, you should consult the accompanying license agreement or contact the licensor to determine whether application sharing is permitted by the licensor."

S. Netscape Communications Corporation

1. Netscape One SDK End User License Agreement

Unlimited Copies for Internal Use: "You may copy and use internally ... [the source code, object code, graphic files, header files, and Java classes]."

Distribution: "[Y]ou may reproduce and redistribute the Redistributable Elements in object code form only (if the Redistributable Element is software), and only when incorporated into your software product which adds substantial and primary functionality to the Redistributable Elements."

2.   Client and Server Software End User License Agreement

a)   Terms Specific to Client Software End User License Agreement

Unlimited Copying for Personal Use: Licensee may "[r]eproduce the Standard Software for personal or internal business use, provided any copy must contain all of the original Standard Software's proprietary notices." [Applies to Netscape's no-cost software.]

Home and Work Use: Licensee may "[u]se the Professional Software on a single computer, except that (i) it may also be used on a second computer if only one copy is used at a time, and (ii) if the Professional Software is Netscape Communicator Professional Edition and was licensed by a company or organization for use by an employee, then Licensee may allow that employee to use a copy of Netscape Communicator Professional Edition at home." [Applies to Netscape Client Software that costs money, "Professional Software."]

b)   Terms Specific to Server Software

Number of Authorized Copies Dependent on Number of Users: "Install the Server Product(s) on only one computer on a single platform unless Licensee has paid fees for use by additional Users. In that case, Licensee may install one additional copy for every 50 additional licensed Users, except that if the User Table provides different information, Licensee may make the number of copies indicated in the User Table."

Provides Logo License: Licensee may "[u]se 'Powered by Netscape SuiteSpot' logo ... on its website [with some restrictions]."

Distribution: "If the Server Product(s) contain header files, [the Licensee may] copy and use the header files solely to create and distribute programs to interface with the server APIs ... [and] copy and use the Sample Java Classes solely to create and distribute programs to interface with Netscape products."

Modifications: "If the Server Product is Netscape Messenger Express ("ME"), [the Licensee may] modify ME to meet Licensee's needs."

3.   Netscape, Public License v1.0 and Mozilla Public License v1.0 (there are two licenses for the Source Code for Netscape Navigator)

Broad Right to Copy, Modify and Distribute Source and Object Code: "The Initial Developer hereby grants You a world-wide, royalty-free, non-exclusive license, subject to third party intellectual property claims: (a) to use, reproduce, modify, display, perform, sublicense and distribute the Original Code (or portions thereof) with or without Modifications, or as part of a Larger Work; and (b) under patents now or hereafter owned or controlled by Initial Developer, to make, have made, use and sell

('Utilize') the Original Code (or portions thereof), but solely to the extent that any such patent is reasonably necessary to enable You to Utilize the Original Code (or portions thereof) and not to any greater extent that may be necessary to Utilize further Modifications or combinations."

Distribution Restrictions: Requires future contributors to grant a license identical to the above. Distributors must also make their modifications available in source code form and describe the modifications that were made.

T.   Novell, Inc.

1.   IntranetWare(tm) Software License

Differing License Rights: [The product] contains various software programs with different license rights. Some of the programs are licensed for use on a single computer (network server), whereas some are licensed for use on several machines (workstations). The type of license that applies depends on the following definitions and the permitted uses specified in the documentation accompanying the Software.

Copies: The License lists and defines the following six types of software: Client Software, Host Software, Gateway Software, MPR Software, NLM Software, and Connection Management Software. The license grant describes the uses permitted for the above types of software and allows the licensee to distribute an unlimited number of copies of the Client Software so long as the simultaneous use of the Client Software is limited to the "User Count" specified on the product packaging. The license grant also specifies that the MPR Software is licensed for one port and the Gateway Software may be used by 250 users.

U.   New Vision Technologies, Inc.

1.   Task Force Clip Art

Copying and Distribution: "You can use TASK FORCE images in just about any application you want, as long as you are not reselling the images as 'clip art' that someone else can use and apply as clip art."

V.   Open Software Foundation (also The Open Group) (members include Hewlett Packard, IBM, Sun, and others)

1.   X11R6.4, CDE, and Motif (Unix User Interfaces)

Unlimited Copying and Modification: "Licensor grants to Licensee ... a non-exclusive, non-transferable, worldwide license: (i) to use, display, copy, modify and prepare derivative works of the Licensed Programs in source code form for Licensee's internal business purposes."

Distribution: "Licensor grants to Licensee ... a non-exclusive, non-transferable, worldwide license ... (ii) to use, display, copy, modify, prepare derivative works of and distribute the Licensed Programs and such derivative works thereof in object code form."

W.   PhotoDisc, Inc.

1.   End User License Agreement for PhotoDisc Starter Kit

Copies: The End User License Agreement ("EULA") specifies that low resolution images may be used for "PERSONAL, INTERNAL, COMPANY and TEST or SAMPLE USE, including COMPS (i.e., rough or draft layouts for client review), and for BROWSING only."

Distribution: The high resolution images can be used for all of the above and also for advertising, any online, broadcast, or other electronic distribution, and in any product except printed books,

music/video/software product packaging, and products produced in quantities of 100,000 units or larger.

X.   PointCast Inc.

        1.   PointCast Network

Allows for multiple copies: "The Software may be installed only on (a) computers controlled by you, or (b) a network server allowing only you and other persons who have agreed to the terms and conditions of this Agreement to access the Software and the Information."

Y.   ProSoft Corp.

        1.   Carpe Diem Products (timekeeping products) Software License Agreement

Home Use: "You may also install and use network-based Software on a standalone, home or portable computer that is used by, and that remains under the custody and control of, a single Licensed User."

Indemnity for Infringement: ProSoft will indemnify user and defend against any claims by third parties to the extent that they allege that the product infringes upon the intellectual property rights of a third party.

Z.   RealNetworks, Inc.

        1.   RealPlayer 5.0

Home Use: "You may ... use the Software on a second computer so long as the first and second computers are not used simultaneously."

AA.   The Santa Cruz Operation, Inc.

        1.   General Software License Agreement [1997]

Multiple Users: "You may load, copy or transmit the Software in whole or in part, only as necessary to use the Software on a single personal computer or workstation, unless the Software is designated on the registration document as being for use on a multiuser or multiple system configuration, in which case You must take reasonable means to assure that the number of Users does not exceed the permitted number of Users."

BB.   Sun Microsystems, Inc.

        1.   Free Solaris(tm) Promotion for Non-Commercial Use, Binary Code License Agreement

Non-Commercial Use: Software is provided free of charge, but may be used for non-commercial purposes only. "'Non-commercial' means personal and not use for commercial gain or in connection with business operations (such as MIS or other internal business systems)."

        2.   Java(tm) Workshop(tm) 2.0 and Java(tm) Studio(tm) 1.0

Development and Distribution: License allows user to develop applications and incorporate specified binary runtime modules that are included with the Product. To do so, user is to required comply with certain restrictions such as not modifying the modules, not removing copyright or other proprietary notices, and prohibiting users from modifying, decompiling, disassembling, and reverse engineering the module.

        3.   SunOS(tm) Year 2000 Pack(tm)

Development and Distribution Rights: "This License authorizes Customer to develop software programs utilizing the Software [with some restrictions]. ... [provided that] incorporation of portions of Motif® in Developed Programs may require reporting of copies of Developed

Programs to Sun Microsystems."
CC.   Sybase, Inc.
          1.   Software License Agreement
          The Software License Agreement provides three different licensing options: Networked License, Stand-alone Named User License, and Standalone Seat License.
          Multiple Copies: "If the license is designated as a Standalone Named User License, the Program may be Used only by one Named User, but such Named User may copy and Use such Program on more than one Machine. ... Customer may make a reasonable number of copies of each Program exclusively for Inactive back-up or archival purposes."
          Modifications: "Customer may modify data file portions of the Program as described in the user manuals."
DD.   Symantec
          1.   Standard End User License (used for virtually all of their products, including Norton Anti-Virus and Norton Utilities)
          Home Use: "[I]f a single person uses the computer on which the Software is installed at least 80% of the time, then after returning the completed product registration card which accompanies the Software, that person may also use the Software on a single home computer."
EE.   T/Maker Company
          1.   ClickArt!, Art Parts
          Modifications: "T/Maker ... gives you permission to copy and modify the Images for your own internal use."
          Distribution: "T/Maker ... gives you permission to incorporate and distribute duplicate or modified Images as an incidental part of any non-electronic product or collection of products which are distributed commercially (i.e., distributed for profit, such as a newsletter)."
          2.   ClickArt!, Famous Magazine Cartoons
          Distribution: "This license entitles you, without additional payment or permission, to use the artwork only in: personal correspondence, slide shows, charts and diagrams, printed forms, sales brochures, in-house newsletters, annual reports, direct-mail advertising of less than 100,000 pieces, and periodical publications with circulation under 30,000 readers."
          Modification: "You may personalize the captions accompanying the artwork by changing the name of a character, company or location ...."

FF.   WinDEU 5.24
          1.   Doom Level Editor License Agreement
          Modifications: "You are allowed to modify and distribute modified versions of this program (free of charge or not) under ... conditions [including a requirement that credit is given to the developers]."
          Distribution: "You are granted the rights to copy and distribute verbatim copies of this software package, under the following conditions: [distribution at no charge]."
GG.   WP Corp
          1.   WordPerfect Office
          Home Use: "You are authorized to use a copy of the Software

on a home or portable computer as long as the extra copy is never Loaded at the same time the Software is Loaded on the primary computer on which you use the Software."

HH.   Ziff Davis

        1.   PC Magazine Utilities

        Use: "[L]icense to use the source code distributed with PC Magazine Utilities for educational, non-commercial purposes only.