

203-25

SIGNED ORIGINAL

PLAINTIFF'S EXHIBIT <u>373</u> Comes v. Microsoft
--

AMENDMENT NUMBER 1

Dated September 1, 1990

TO THE LICENSE AGREEMENT

Dated September 1, 1990

Numbered G150-0271

for

Microsoft[®] MS-DOS[®], Version 4.01
Microsoft[®] Works, Version 2.0

Between

MICROSOFT CORPORATION,
a Delaware Corporation,

and

VOBIS DATA COMPUTER GMBH,
a German Corporation

EXHIBIT NO. G150-0271

14.291/rc

AMENDMENT

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ENTERED
MAY 20 1990

PLAINTIFF'S EXHIBIT NO. <u>608</u> FOR IDENTIFICATION <u>5-4-90</u> DATE RPT: <u>CA</u>

MS98 0186787
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Effective September 1, 1990, the below signed parties agree that the indicated portions of the above referenced License Agreement (hereinafter the "Agreement") are hereby amended by this instrument (hereinafter the "Amendment"), as follows:

1. Exhibit B is hereby amended and as amended shall read as set forth in the attached Exhibit B.
2. In Exhibit C3 the following paragraph is added in the section ROYALTY PAYMENTS AND REPORTING REQUIREMENTS:

As between the Products set forth in Exhibit C3 and C5, COMPANY agrees that for each applicable CUSTOMER SYSTEM shipped or placed in use by or for COMPANY during the term of this Agreement, COMPANY shall license, at most either the Exhibit C3 or the Exhibit C5 Product, but no combination thereof, i.e. no more than one such Product, for use on that CUSTOMER SYSTEM. COMPANY shall still make royalty reports on a Product by Product basis.

3. In Exhibit C3, the table in subsection (a) of the ROYALTY PAYMENTS AND REPORTING REQUIREMENTS section is hereby amended and as amended shall read as follows:

<u>Customer System</u>	<u>Royalty Rate (\$US)</u>
Exhibit M2	\$ 13.05

4. New Exhibits C5, C6, C7 and C8 are hereby added and as added shall read as set forth in the attached Exhibits C5, C6, C7 and C8.

IN WITNESS WHEREOF, the parties have executed this Amendment as of September 1, 1990. All signed copies of this Amendment shall be deemed to be originals.

MICROSOFT CORPORATION

Michael R. Hallman
By

Michael R. Hallman
Name (Print)

President
Title

4/22/91
Date

VOBIS DATA COMPUTER GMBH

Theo Lieven
By

Theo Lieven
Name (Print)

General Manager
Title

March 28, 1991
Date

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**EXHIBIT B
PAYMENT SCHEDULES**

MINIMUM COMMITMENT

First Period of This Agreement

COMPANY agrees to pay a minimum of Three Million Dollars (US\$ 3,000,000.00) for Product(s) licensed under this Agreement within the first period of this Agreement as described below. The Minimum Commitment Schedule listed below sets forth the minimum cumulative amounts of payments which COMPANY shall make to MS during the first period of this Agreement. To the extent that actual earned royalties exceed the cumulative minimum commitment payments, COMPANY shall pay MS for actual earned royalties. To the extent that cumulative minimum commitment payments exceed actual earned royalties, such excess shall be known as prepaid royalties and shall be recoupable against future earned royalties during the term of this Agreement. The minimum commitment amount payable upon signing of this Agreement as set forth below is recoupable and refundable pursuant to Section 4(b) of this Agreement. All other minimum commitment payments are recoupable but not refundable.

Commencing with the first complete calendar quarter subsequent to COMPANY's shipment to a customer for revenue of Product MS-DOS(R) Version 5.0, German language version, in Exhibit C7, but no later than four (4) months after MS delivers this Product to COMPANY, minimum commitment amounts for royalty periods during the remaining term of this Agreement shall increase an additional Four Hundred Thousand Fifty Dollars (\$450,000.00) over the amounts shown in this Exhibit B. COMPANY shall give MS written notice of the first date of shipment of this Product by COMPANY to a customer for revenue within ten (10) days of shipment.

MINIMUM COMMITMENT SCHEDULE (FIRST PERIOD)

Date	Payment Amount (\$US)	Cumulative Amount of Payments for Period (\$US)
Signing of this Agreement (payment due upon signing)	\$ 300,000.00	\$ 300,000.00
End of the calendar quarter (FIRST PAYMENT DATE) during which the first of the following occurs: the date of first COMPANY shipment of any Product to a customer for revenue, or six (6) months after the EFFECTIVE DATE of this Agreement	525,000 \$ 600,000.00	\$ 900,000.00
3 months after the FIRST PAYMENT DATE	\$ 700,000.00	\$ 1,600,000.00
6 months after the FIRST PAYMENT DATE	\$ 700,000.00	\$ 2,300,000.00
9 months after the FIRST PAYMENT DATE	\$ 700,000.00	\$ 3,000,000.00
Total First Period Minimum Commitment	\$ 3,000,000.00	\$ 3,000,000.00

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Except for the amount due on signing, the date of payment for the above calendar quarter amounts shall be as provided in Section 3.

MINIMUM COMMITMENT

Second Period of This Agreement

COMPANY agrees to pay a minimum of Three Million Dollars (US\$ 3,000,000.00) for Product(s) licensed under this Agreement within the second period of this Agreement as described below. The Minimum Commitment Schedule listed below sets forth the minimum cumulative amounts of payments which COMPANY shall make to MS during the second period of this Agreement. Payments made during the first period of this Agreement shall not be credited towards the minimum commitment requirement in the second period. To the extent that actual earned royalties exceed the cumulative minimum commitment payments, COMPANY shall pay MS for actual earned royalties. To the extent that cumulative minimum commitment payments exceed actual earned royalties, such excess shall be known as prepaid royalties and shall be recoupable against future earned royalties during the term of this Agreement. Minimum commitment payments are recoupable but not refundable.

Commencing with the first complete calendar quarter subsequent to COMPANY's shipment to a customer for revenue of Product MS-DOS(R) Version 5.0, German language version, in Exhibit C7, but no later than four (4) months after MS delivers this Product to COMPANY, minimum commitment amounts for royalty periods during the remaining term of this Agreement shall increase an additional Four Hundred Thousand Fifty Dollars (\$450,000.00) over the amounts shown in this Exhibit B. COMPANY shall give MS written notice of the first date of shipment of this Product by COMPANY to a customer for revenue within ten (10) days of shipment.

MINIMUM COMMITMENT SCHEDULE (SECOND PERIOD)

Date	Payment Amount (\$US)	Cumulative Amount of Payments for Period (\$US)
End of the:		
12 months after the FIRST PAYMENT DATE	\$ 750,000.00	\$ 750,000.00
15 months after the FIRST PAYMENT DATE	\$ 750,000.00	\$ 1,500,000.00
18 months after the FIRST PAYMENT DATE	\$ 750,000.00	\$ 2,250,000.00
21 months after the FIRST PAYMENT DATE	\$ 750,000.00	\$ 3,000,000.00
Total Second Period Minimum Commitment	\$ 3,000,000.00	\$ 3,000,000.00

The date of payment for the above calendar quarter amounts shall be as provided in Section 3.

Exhibit to the License Agreement dated September 1, 1990, between MICROSOFT CORPORATION and VOBIS DATA COMPUTER GMBH.

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EXHIBIT C5 (SYSTEM COMMITMENT)

PRODUCT: Microsoft® Windows™

VERSION NO: 3.0

LANGUAGE VERSION:

(Do not fill in if Domestic USA Version)

PRODUCT DELIVERABLES:

- (a) Product in Object Code form.
- (b) Standard Documentation in Series Number W770-3Z that MS delivers with the Product.

PRODUCT SPECIFICATIONS:

The Product will have features as specified in the above-referenced Product documentation.

ROYALTY PAYMENTS AND REPORTING REQUIREMENTS:

COMPANY agrees to pay MS, according to, and comply with Exhibit C3.

ROYALTIES FOR NEW VERSION RELEASES:

MS may elect to increase the per system royalty applicable to new Version Releases, which royalty shall apply to succeeding releases until changed hereunder or by agreement of the parties. The maximum per system royalty for a new Version Release shall be determined as follows:

$$\text{Maximum royalty} = R + (R * N * 1.5\%),$$

where R is the initial per system royalty described above and N is the number of months (rounded to the nearest whole number) that have elapsed from the Effective Date until MS delivers the new Version Release.

ROYALTIES FOR UPGRADES:

COMPANY may elect to pay MS a royalty of fifty percent (50%) of the highest applicable royalty stated in this Exhibit C (i.e., the initial royalty stated above plus increases, if any, for new Version Releases) for each full or partial copy of the Product, including Update Releases and Version Releases, licensed or otherwise disposed of by COMPANY as an Upgrade during the term of this Agreement. Upgrade Product shall conform to the definition contained in Section 1 of the Agreement.

ADDITIONAL PROVISIONS:

The Product Microsoft Windows described in this Exhibit contains Version 7.0 of the Microsoft mouse driver ("MS Driver") (files designated as MOUSE.COM and MOUSE.SYS), which is MS proprietary software designed for use with the Microsoft Mouse. In the event COMPANY ships a non-MS mouse or pointing device with the MS Driver to end user purchasers of COMPANY's Customer Systems, COMPANY agrees to pay MS an additional royalty of Five Dollars (US\$ 5.00) for each copy of the Driver so shipped by COMPANY. Reporting and payment of such Driver royalties shall be in accordance with this Exhibit and Section 3 ("Price and Payment") of this Agreement.

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COPYRIGHT NOTICE:

COPYRIGHT © MICROSOFT CORPORATION, 1985 - 1989. All rights reserved.

PRODUCT NAME AND ASSOCIATED TRADEMARK: Microsoft® Windows™

OTHER ASSOCIATED TRADEMARKS AND DESCRIPTOR:

Exhibit to the License Agreement dated September 1, 1990, between MICROSOFT CORPORATION and
VOBIS DATA COMPUTER GMBH.
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EXHIBIT CE

ADDITIONAL LANGUAGE VERSIONS

The Product described in Exhibit CS ("Reference Exhibit") shall include the additional language versions identified below. COMPANY shall license at most one language version of the Product for use on each applicable CUSTOMER SYSTEM. COMPANY's royalty obligations shall be as set forth in the Reference Exhibit regardless of the language version licensed with each applicable CUSTOMER SYSTEM. Notwithstanding the preceding sentence, COMPANY shall pay MS an additional language version royalty equal to fifteen percent (15%) of the royalty otherwise payable to MS for each full or partial copy of each language version of the Product identified below which is licensed or otherwise disposed of by COMPANY during the term of this Agreement. COMPANY shall report, on a language version by language version basis, and pay such language version royalties pursuant to and as part of its royalty payment and reporting obligations under the Royalty Payments and Reporting Requirements section of the Reference Exhibit. The Product Name and Associated Trademark are, in all Language Versions listed below, the same as in the Reference Exhibit.

1. Language Version: French

Product Deliverables:

- (a) Product in Object Code Form
- (b) Standard document in Series Number W770-3F that MS delivers with the Product.

Copyright Notice (if not completed, the Copyright Notice shall be as set forth in the Reference Exhibit):
COPYRIGHT © MICROSOFT CORPORATION, 1985 - 1990 . All rights reserved.

2. Language Version: German

Product Deliverables:

- (a) Product in Object Code Form
- (b) Standard document in Series Number W770-3D that MS delivers with the Product.

Copyright Notice (if not completed, the Copyright Notice shall be as set forth in the Reference Exhibit):
COPYRIGHT © MICROSOFT CORPORATION, 1985 - 1990 . All rights reserved.

3. Language Version: Portuguese

Product Deliverables:

- (a) Product in Object Code Form
- (b) Standard document in Series Number W770-3P that MS delivers with the Product.

Copyright Notice (if not completed, the Copyright Notice shall be as set forth in the Reference Exhibit):
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4. Language Version: Spanish

Product Deliverables:

- (a) Product in Object Code Form
- (b) Standard document in Series Number W770-3E that MS delivers with the Product.

Copyright Notice (If not completed, the Copyright Notice shall be as set forth in the Reference Exhibit):
COPYRIGHT © MICROSOFT CORPORATION, 1985 - 1990 . All rights reserved.

5. Language Version: Swedish

Product Deliverables:

- (a) Product in Object Code Form
- (b) Standard document in Series Number W770-3S that MS delivers with the Product.

Copyright Notice (If not completed, the Copyright Notice shall be as set forth in the Reference Exhibit):
COPYRIGHT © MICROSOFT CORPORATION, 1985 - 1990 . All rights reserved.

Exhibit to the License Agreement dated September 1, 1990, between MICROSOFT CORPORATION and
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EXHIBIT C7 (SYSTEM COMMITMENT)

PRODUCT: Microsoft® MS-DOS®

VERSION NO: 5.0
(Includes QBasic Interpreter)

VERSION NO: 5.0

LANGUAGE VERSION: _____ (Do not fill in if Domestic USA Version)

PRODUCT DELIVERABLES:

- (a) Product in Object Code form.
- (b) Standard Documentation in Series Number D781-5Z and D707-5Z that MS delivers with the Product.

PRODUCT SPECIFICATIONS:

The Product will have features as specified in the above-referenced Product documentation.

ROYALTY PAYMENTS AND REPORTING REQUIREMENTS:

- (a) For purposes of royalty payments, this Exhibit shall become effective as follows: If COMPANY promptly provides written notice to MS of the date on which COMPANY first ships this Product to any customer, then this Exhibit shall become effective on the shipment date specified in the notice; otherwise, this Exhibit shall become effective on the first day of the calendar quarter for which COMPANY files a royalty report indicating shipment of this Product.
- (b) For each Customer System identified below, COMPANY agrees to pay MS a royalty, at the applicable rate set forth below, multiplied by the greater of (i) the number of full or partial Customer System(s) shipped or placed in use by or for COMPANY during the term of this Agreement, or (ii) the number of full or partial copies of Product, including Update Releases and Version Releases, licensed or otherwise disposed of by COMPANY during the term of this Agreement for use with such Customer System, but excluding copies of the Product for which COMPANY pays royalties at the Upgrade Royalty Rate (see below).

<u>Customer System</u>	<u>Royalty Rate (\$US)</u>
Exhibit M1 _____	\$ 7.82 _____

- (c) COMPANY's report shall specify the number of Customer System(s) shipped or placed in use by or for COMPANY during that calendar quarter and the number of copies of Product, including Update Releases, Version Releases, and Upgrades licensed or otherwise disposed of by COMPANY during that calendar quarter. COMPANY shall furnish this statement for each Customer System identified in the Exhibit M(s) and shall report for each Customer System separately by processor. In the event that no Customer System(s) are shipped or placed in use by or for COMPANY during a calendar quarter and no copies of Product are licensed or otherwise disposed of by COMPANY during such calendar quarter, COMPANY shall indicate this on the royalty report.

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ROYALTIES FOR NEW VERSION RELEASES:

MS may elect to increase the per system royalty applicable to new Version Releases, which royalty shall apply to succeeding releases until changed hereunder or by agreement of the parties. The maximum per system royalty for a new Version Release shall be determined as follows:

$$\text{Maximum royalty} = R + (R \cdot N \cdot 1.5\%)$$

where R is the initial per system royalty described above and N is the number of months (rounded to the nearest whole number) that have elapsed from the Effective Date until MS delivers the new Version Release.

ROYALTIES FOR UPGRADES:

COMPANY may elect to pay MS a royalty of fifty percent (50%) of the highest applicable royalty stated in this Exhibit C (i.e., the initial royalty stated above plus increases, if any, for new Version Releases) for each full or partial copy of the Product, including Update Releases and Version Releases, licensed or otherwise disposed of by COMPANY as an Upgrade during the term of this Agreement. Upgrade Product shall conform to the definition contained in Section 1 of the Agreement.

ADDITIONAL PROVISION:

Prior to distribution of product by COMPANY, COMPANY shall implement a tracking procedure (e.g., bar coding, serialization) that has been approved in writing by MS. COMPANY's tracking system shall enable COMPANY to identify its customer (i.e. distributor, dealer, end user) for each unit of the Product distributed. COMPANY shall not license or otherwise dispose of the Product unless and until such tracking system has been approved by MS and implemented by COMPANY.

COPYRIGHT NOTICE:

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PRODUCT NAME AND ASSOCIATED TRADEMARK:

Microsoft® MS-DOS®
QBasic™ Interpreter

Exhibit to the License Agreement dated September 1, 1990, between MICROSOFT CORPORATION and
VOBIS DATA COMPUTER GMBH.
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EXHIBIT C8

ADDITIONAL LANGUAGE VERSIONS

The Product described in Exhibit C7 (Reference Exhibit) shall include the additional language versions identified below. COMPANY shall license at most one language version of the Product for use on each applicable CUSTOMER SYSTEM. COMPANY's royalty obligations shall be as set forth in the Reference Exhibit regardless of the language version licensed with each applicable CUSTOMER SYSTEM. Notwithstanding the preceding sentence, COMPANY shall pay MS an additional language version royalty equal to fifteen percent (15%) of the royalty otherwise payable to MS for each full or partial copy of each language version of the Product identified below which is licensed or otherwise disposed of by COMPANY during the term of this Agreement. COMPANY shall report, on a language version by language version basis, and pay such language version royalties pursuant to and as part of its royalty payment and reporting obligations under the Royalty Payments and Reporting Requirements section of the Reference Exhibit. The Product Name and Associated Trademark are, in all Language Versions listed below, the same as in the Reference Exhibit.

1. Language Version: French

Product Deliverables:

- (a) Product in Object Code Form
- (b) Standard document in Series Number D781-5F and D707-5F that MS delivers with the Product.

Copyright Notice (if not completed, the Copyright Notice shall be as set forth in the Reference Exhibit):

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2. Language Version: German

Product Deliverables:

- (a) Product in Object Code Form
- (b) Standard document in Series Number D781-5D and D707-5D that MS delivers with the Product.

Copyright Notice (if not completed, the Copyright Notice shall be as set forth in the Reference Exhibit):

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3. Language Version: Portuguese

Product Deliverables:

- (a) Product in Object Code Form
- (b) Standard document in Series Number D781-5P and D707-5P that MS delivers with the Product.

Copyright Notice (if not completed, the Copyright Notice shall be as set forth in the Reference Exhibit):

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4. Language Version: Spanish

Product Deliverables:

- (a) Product in Object Code Form
- (b) Standard document in Series Number D781-5E and D707-5E that MS delivers with the Product.

Copyright Notice (If not completed, the Copyright Notice shall be as set forth in the Reference Exhibit):

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5. Language Version: Swedish

Product Deliverables:

- (a) Product in Object Code Form
- (b) Standard document in Series Number D781-5S and D707-5S that MS delivers with the Product.

Copyright Notice (If not completed, the Copyright Notice shall be as set forth in the Reference Exhibit):

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