

From: Brad Thayer
Sent: Wednesday, July 26, 2000 1:19 PM
To: Mike Moskowitz
Cc: Brad Thayer, Ed Michehl, Kyle Faulkner
Subject: FW: WM Format SDK



WMF SDK 1.0
FINAL.020700 (secu

Here's a copy of the License agreement that I obtained in february.

This is the License agreement that Bill Schiefelbein was refereing to in our conversation with Microsoft the other day.

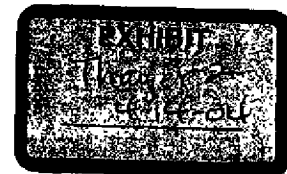
Brad

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

From: Enas Muzio (Comforce/RhoTech) [mailto:a-enasm@microsoft.com]
Sent: Thursday, February 24, 2000 12:49 PM
To: Windows Media License Agreement
Subject: WM Format SDK

> Thanks for your interest in Windows Media. Attached you will find the
> Windows Media Format SDK per the email you sent to wmla@microsoft.com.
> Please read it, complete the information on the first page, and return two
> signed complete originals to the Microsoft address below. Once we receive
> the signed license Microsoft will co-sign and send you a copy for your
> records. Microsoft will then send you the Plays Windows Media logo
> license to sign. When Microsoft receives the two signed copies of the
> Logo License Microsoft will co-sign, send you a copy and the "Plays
> Windows Media" logo in an e-mail.
>
> All correspondence should be sent to the wmla@microsoft.com e-mail address
> as the a-enasm@microsoft.com address that this mail is being sent from
> will be obsolete March 01 and all messages to it will bounce.
>
> Windows Media Format SDK:
> <<WMF SDK 1.0 FINAL.020700 (secure).doc>>
>
> Address to mail signed licenses to:
> Microsoft Corporation
> Windows Media
> Attn: Enas Muzio 6/1077
> One Microsoft Way
> Redmond WA, 98072
>
>
> Thanks
> The Windows Media Licensing Department

1



CONFIDENTIAL

BUR0259747

BUR0259747

Plaintiff's Exhibit
6809
Comes V. Microsoft

3p-DEPEX 010629

**Microsoft Windows Media™ Format
Software Development Kit License Agreement
For Commercial Use**

This Windows Media Format Software Development Kit License Agreement For Commercial Use (the "Agreement") is entered into and effective as of _____, 2000 (the "Effective Date"), by and between Microsoft Corporation, a Washington corporation located at One Microsoft Way, Redmond, WA 98052 ("Microsoft") and Company, as described below ("Company").

This Agreement is entered into with reference to the following information ("Table") as well as the definitions set forth below:

Company Information:	Name: Place of Incorporation: Address for Notices:
Company Contact:	Company Contact/Title: Telephone Number: Facsimile Number: Email:
Licensed Application(s):	<i>[Licensed Applications are defined in Section 1.16. This box should be completed with a description of Company Licensed Applications.]</i>
"Term":	Beginning on the Effective Date and continuing for a period of one (1) year.

1. Definitions

When capitalized in this Agreement, the following terms have the meanings assigned to them by this Section 1. All other initially capitalized terms have the meanings assigned to them elsewhere in this Agreement.

- 1.1 "Affiliate" means, with respect to any legally recognizable entity, any other such entity Controlling, Controlled by, or under common Control with such entity. "Control," as used herein, means the possession of the power to direct or cause the direction of the management and policies of a legally recognizable entity, through the ownership of voting shares or by contract. Where such entity is a partnership, limited liability company, corporation, or similar entity and has partners, members, or shareholders with equal ownership interests or equal control interests, by contract or otherwise, then each such partner, member, or shareholder will be deemed to possess, directly or indirectly, the power to direct or cause the direction of the management and policies of that entity.
- 1.2 "Break Interoperability" means to Transcode, Convert, or Encapsulate WMF Content into a disk-based or a network-transmitted form that is not fully supported by and interoperable with the Redistributable Components.
- 1.3 "Certificate" means a DRM Certificate and/or an SDK Certificate.
- 1.4 "Codecs" means the audio and video compression/decompression algorithms used by or provided with the SDK to compress and decompress Content into present and future Windows Media Formats.

- 1.5 "Compromise Interoperability" means exposing a means or method (including, but not limited to, publicly defined interfaces or debugging information left in a Licensed Application) by which other programs, plug-ins, or applications can access or utilize: (i) the function of the Redistributable Components; or (ii) Content extracted from WMF Content by the Licensed Application. Notwithstanding the foregoing, it will not in itself Compromise Interoperability if Company establishes a plug-in software architecture for use with other functionality or features of the Licensed Applications and which is not used to access or utilize the functionality of the Redistributable Components or Content extracted from WMF Content.
- 1.6 "Confidential Information" means: (i) any pre-release software in object code form and any source code other than Sample Source; (ii) a Certificate when not statically linked as part of a Licensed Application, as more fully specified herein; (iii) any trade secrets and/or other proprietary non-public information not generally known relating to either party's product plans, designs, costs, prices and product names, software, finances, marketing plans, technical support requests, business opportunities, research, development or know-how, regardless of how obtained by the receiving party; and (iv) the terms and conditions of this Agreement. Notwithstanding the foregoing, "Confidential Information" will not include information that: (A) is or becomes generally known or available by publication, commercial use or otherwise through no fault of the receiving party; (B) is generally known and has been reduced to tangible form by the receiving party prior to the time of disclosure and is not subject to restriction; (C) is independently developed by the receiving party without the use of the other party's Confidential Information; (D) is lawfully obtained from a third party that has the right to make such disclosure; (E) is made generally available by the disclosing party without restriction on disclosure; or (F) is released in writing by the disclosing party for publication by the receiving party.
- 1.7 "Content" means digital audio (including, but not limited to, timeline-synchronized audio, music, voice and sounds), digital video, and other digital information including data, text (including, but not limited to, script command data and related metadata such as a song title or an artist's name), animation, graphics, photographs, and artwork, and combinations of any or all of the foregoing.
- 1.8 "Convert" means: (i) to decompose WMF Content into one or more pieces of Content, and then to recompose any form other than WMF Content; or (ii) to remove the DRM protection from WMF Content for any purpose not explicitly authorized by the DRM Flags of the license for that content, including, but not limited to, writing that unprotected DRM content to disk or to a network.
- 1.9 "Digital Device" means any standalone or removable CD-R or CD-RW or DVD-RAM media device that can store Content.
- 1.10 "Distribute" means to use, reproduce, license, lease, sell, offer to sell or otherwise disseminate through any means now existing or later developed.
- 1.11 "DRM" means Microsoft's digital rights management system for Windows Media Technologies that enables enforcement of business rules and license-based access to WMF Content consistent with the terms and conditions of this Agreement.
- 1.12 "DRM Certificate" means a Microsoft provided, unique-to-Company and/or unique to each Licensed Application sub-component of the Redistributable Components that enables, in accordance with Section 2, a Licensed Application to use the portions of Redistributable

Components that manipulate WMF Content protected by DRM and WMF Content not protected by DRM.

- 1.13 "DRM Flag(s)" means the flag(s) describing license condition(s) for, and set by the creator or authorized licensor of, WMF Content protected with DRM as more fully described in Exhibit A.
- 1.14 "Encapsulate" means to place any form of containment around any portion or entirety of WMF Content, whether saved to disk or written to the network, with the exception of standard file-system and network protocol containment not specific to the form or function of the Licensed Application. For purposes of this definition of "Encapsulate," example protocol and standard file-system exceptions include, but are not limited to, the Windows File Allocation Table file system, and the TCP/IP network protocol.
- 1.15 "Independent Contractor" means a third party temporary worker, company or other entity which is under written agreement with Company to develop, complete, or assist with the development or completion of research and development activities under the license rights granted under this Agreement, where such written agreement meets the terms and conditions of this Agreement, including, but not limited to, Sections 2, 5, 6, 7 and 8; provided, however, that "Independent Contractor" specifically excludes any entity that is a vendor of streaming and/or downloadable media technologies. The Distribution of a Licensed Application or selling services which involve streaming Content do not make an entity a "vendor of streaming and/or downloadable media technologies."
- 1.16 "Licensed Application" means Company's application(s) or utilities created using the SDK to enable encoding, decoding, rendering, and/or playing WMF Content in streaming and/or downloadable formats, each of which (i) are not designed for or intended to be used by third parties to develop other software products or programs (e.g., software development tools); and (ii) are designed and intended for use solely on the Platforms. A list of Company's Licensed Applications is set forth in the table on page 1 of this Agreement.
- 1.17 "Platforms" means Windows NT 4.0, Windows 9x, and Windows 200x operating systems (and Updates thereof, if any, and as may be provided by Microsoft pursuant to Section 4 during the "Term" as defined in the table on page 1 of this Agreement) on Intel x86 and compatible hardware platforms. "Platforms" do not include Windows CE or any other Microsoft or non-Microsoft operating systems, unless and to the extent they may be later supported by the SDK in Microsoft's sole discretion.
- 1.18 "Redistributable Components" means the Certificate(s) (provided separately to Company under the terms of Section 2), the Codecs, and the files located in the "Redist" folder, as installed by the SDK including such Updates thereof as may be provided pursuant to Section 4.
- 1.19 "Sample Source" means any sample, human-readable code located in the "Samples" folder of, as installed by, the SDK, including any Updates thereof provided by Microsoft pursuant to Section 4.
- 1.20 "SDK Certificate" means a Microsoft-provided, unique to Company and/or unique to each Licensed Application, sub-component of the Redistributable Components that enables, in accordance with Section 2, a Licensed Application to use the portions of Redistributable Components that manipulate WMF Content not protected by DRM. The SDK Certificate does not enable manipulation of WMF Content protected by DRM.
- 1.21 "SDK" means the Microsoft Windows Media Format Software Development Kit and, as

provided in Section 4, Updates thereof during the Term.

- 1.22 "Transcode" means to alter the current encoding or form of Content that was decomposed from WMF Content, including by way of example but not limited to: (i) decompression of an audio or video stream and recompression using a different compression algorithm; (ii) decompression of an audio or video stream and recompression using the same compression algorithm but with different settings; and (iii) adding, removing, or modifying text or images in Content.
- 1.23 "Updates" means all subsequent public releases of software (including public beta releases), including public maintenance releases, error corrections, upgrades, enhancements, additions, improvements, extensions, modifications and successor versions.
- 1.24 "Windows Media Format" means the current version, and any Updates during the Term, of formats developed by or for Microsoft for authoring, storing, editing, distributing, streaming, playing, referencing, or otherwise manipulating Content which are used by the Windows Media Technologies during the Term.
- 1.25 "Windows Media Player" means any version of Microsoft's WMF Content player technology, which Microsoft supports on the Platforms during the Term. Optional third party plug-ins to the Windows Media Player that might be present on a user's machine are expressly not part of Windows Media Player.
- 1.26 "Windows Media Server" means Microsoft's streaming media services server technology, as supported by Microsoft, in its sole discretion, on some of the Platforms or on other operating system platforms during the Term. Optional third party plug-ins to the Windows Media Server that might be present on a server machine are expressly not part of Windows Media Server.
- 1.27 "Windows Media Stream" means: (i) live or on-demand WMF Content delivered across a network, including (without limitation) wired or wireless communications media, using IP Multicast, HTTP, MMSU, MMST, MSBD, or other protocols supported by Windows Media Technologies during the Term; and (ii) WMF Content files. For a Licensed Application, a Windows Media Stream can originate from, without limitation, a Licensed Application or third party application built with the SDK pursuant to a license from Microsoft, a Windows Media Technologies component, an HTTP server, a local or network shared file system, a Content Proxy Server, or a Cache Proxy Server. For purposes of this Section: (A) "Cache Proxy Server" means an application, under a license from Microsoft, (1) that is a server that streams or delivers WMF Content that has originated solely from a Windows Media Server, and (2) that performs caching and delivery functions solely for the purpose of enhancing network performance in delivering Windows Media Streams from a Windows Media Server to a Windows Media Player or Licensed Application; and (B) "Content Proxy Server" means an application, under a license from Microsoft, that is a server which streams or manages WMF Content for purposes of distribution and tracking Windows Media Streams.
- 1.28 "Windows Media Technologies" means the currently shipping (and Updates thereof during the Term) versions of the Windows Media Player, Windows Media Server, Windows Media Encoder, Windows Media SDK and all its sub-components (including but not limited to, the Windows Media Format SDK), and WMF Content creation tools that Microsoft may choose, solely in its discretion, to release as part of the Platforms. For purposes of this Section, "Windows Media Encoder" means the current version (and Updates thereof

supported in the SDK during the Term) of Microsoft's Windows Media Technologies real-time encoder.

1.29 "WMF Content" means Content created in Windows Media Format.

2. License Grant & Restrictions

2.1 SDK and Components License Grant. Expressly subject to the restrictions in Section 2.3, Microsoft hereby grants Company a limited, non-exclusive, non-assignable, worldwide, nontransferable, royalty-free, fully paid up, right and license during the Term to:

- (a) Use, copy, and install (i) an unlimited number of copies of the SDK and its components on computers located at premises owned or leased by Company and its Affiliates, and (ii) copies of the SDK and its components on computers located at premises owned or leased by Company's Independent Contractors in a number reasonably necessary to carry out development work for Company consistent with this Agreement; provided that such copies may be used in accordance with this Section 2.1(a) solely to develop Licensed Applications, and, if Company so elects, to develop and Distribute Company-owned and Company-licensed WMF Content; and
- (b) Distribute and have Distributed the Redistributable Components solely as part of the Distribution of a Licensed Application.

2.2 Sample Source License Grant. Expressly subject to the restrictions in Section 2.3, Microsoft hereby grants Company a limited, non-exclusive, non-assignable, worldwide, nontransferable, royalty-free, fully paid up, right and license during the Term to:

- (a) Use, copy, modify, create derivative works and install (i) an unlimited number of copies of the Sample Source on computers located at premises owned or leased by Company and its Affiliates and (ii) the Sample Source on computers located at premises owned or leased by Company's Independent Contractors in a number reasonably necessary to carry out development work for Company consistent with this Agreement; provided that such copies may be used in accordance with this Section 2.2(b) solely to develop Licensed Applications; and
- (b) Distribute and have Distributed the object code only versions of the Sample Source including any modifications or derivative works thereof, solely as part of the Distribution of a Licensed Application.

2.3 License Restrictions and Requirements.

- (a) *Preservation of Interoperability.* Except solely as expressly permitted in Sections 2.3(a)(i), 2.3(a)(ii), and 2.3(a)(iii) regarding limited right to Transcode and Convert, Company will neither develop, nor have third parties develop for Company, Licensed Applications which Break Interoperability or which Compromise Interoperability. Company will comply with the interoperability requirements set forth in Exhibit B as may be updated by Microsoft periodically during the Term.
 - (i) *Limited Right to Transcode for MP3 Devices.* Licensed Applications may Transcode Audio Content (as such term is defined in Exhibit C), that was decomposed from WMF Content, into ISO MPEG-2 Layer-3 standard compressed audio and then Convert the WMF Content with that Transcoding into the MP3 file format (the "MP3 Content") solely for the purpose of immediately transferring such WMF Content to standalone digital devices, such

as those which play MP3 and optionally other file formats ("MP3 Device"), provided that: (A) the MP3 Device does not natively support playback of Windows Media Content; (B) the DRM restrictions in Section 2.3(f) are observed by Company; and (C) the MP3 Content cannot be transferred, Transcoded, or used for any purpose other than local playback on such MP3 Devices in their normal and ordinary modes of operation. Notwithstanding the limited right to Transcode provided in this Section 2.3(a)(i), this Agreement does not cover use of the SDK to create Licensed Applications which run on platforms other than the Platforms, including MP3 Devices or other, similar digital devices. Any such use of the SDK requires a separate agreement with Microsoft.

- (ii) *Limited Right to Convert.* Licensed Applications may Convert WMF Content not protected by DRM (or if protected by DRM, then WMF Content that is licensed as specified in the DRM Flags for such purpose) into the Redbook CD audio format solely for purposes of making permitted copies of such WMF Content on Digital Devices (and not in any other file format nor on any other devices).
 - (iii) *Limited Right to Transcode for editing applications.* A Licensed Application may Transcode Content where the Licensed Application's primary function is an off-line Content editor and provided that: (A) the Licensed Application requires user interaction for each WMF Content file Transcoded (*i.e.*, the Licensed Application does not perform batch Transcoding); (B) the WMF Content is not sourced from a Windows Media Stream that is a network stream as described in Section 1.27(i), and (C) the WMF Content is not protected by DRM.
- (b) *Non-Malicious Intent.* Licensed Applications shall not be specifically designed to degrade, overload, or stress any component of Windows Media Technologies.
 - (c) *Usage of File Extensions & Metafiles.* Each Licensed Application shall comply with the file extension and metafile usage and format requirements and guidelines as set forth in Exhibit C as may be updated by Microsoft periodically during the Term.
 - (d) *Redistributable Components.* Company's rights under Section 2.1(b) with respect to Redistributable Components are expressly conditioned upon its compliance with the following obligations:
 - (i) Company will not authorize further Distribution of the Redistributable Components by end users of Licensed Applications.
 - (ii) Company will not use Microsoft's name, logo or trademarks to market or promote any Licensed Application, except: (A) as expressly set forth in Section 2.3(d)(iii), or (B) as permitted by a separate agreement between the parties.
 - (iii) Company will include in the "About Box" for all Licensed Applications a copyright notice which states the following: "Portions utilize Microsoft Windows Media Technologies. Copyright © 1999 Microsoft Corporation. All Rights Reserved."
 - (iv) Company will not use the Redistributable Components or any other part of the SDK to create a new Licensed Application that substantially duplicates the

server functionality of any version of the Windows Media Server.

- (v) Company will not use the Codecs or any part of the Codecs in any Licensed Application or otherwise except as part of the Redistributable Components.
 - (e) *Default Encoding Format.* If a publicly Distributed Licensed Application supports multiple encoding formats and Windows Media Format is not set as the default encoding format, then the Licensed Application will enable the user to specify a default encoding format for high quality encoding (e.g., importing music from a CD or other high quality uncompressed digital format) and the default encoding format options will include the Windows Media Format's high quality encoding options.
 - (f) *DRM Restrictions.* Each Licensed Application will comply with the DRM requirements set forth in Exhibit A as may be updated by Microsoft periodically during the Term.
 - (g) *Use of Certificates.* Each Licensed Application will comply with the Certificate requirements set forth in Exhibit D as may be updated by Microsoft periodically during the Term.
 - (h) *No Further Redistribution/No Reverse Engineering.* Company will not Distribute or have Distributed the SDK or any component thereof, other than as expressly permitted in this Section 2. Company may not reverse engineer, decompile, disassemble or otherwise seek to discover the source code, components, Codecs, DRM, protocols or Windows Media Format of the SDK (other than the Sample Source), except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.
 - (i) *End User License Agreements.* Company will Distribute Licensed Applications with an end-user license agreement consistent with, and no less protective of Microsoft's rights than, this Agreement.
 - (j) *Branding.* Company will execute the logo license and comply with the branding requirements and trademark usage guidelines found at the following URL (or a replacement therefore as may be designated by Microsoft from time to time) www.microsoft.com/windows/windowsmedia or by sending an email to wmla@microsoft.com.
- 2.4 Ownership; Reservation of Rights. Microsoft retains all right, title and interest in and to the Certificates, the Codecs, the DRM, the SDK, the Windows Media Technologies and any and all components thereof. Subject to the license grant in Section 2.2 (including the restrictions of Section 2.3) and Microsoft's ownership of the underlying Sample Source, Company owns all right, title and interest in and to any modifications or derivative works of the Sample Source created by or for Company other than by Microsoft. This Agreement shall not be construed in any manner as transferring any rights of ownership or license to Certificates, the Codecs, the DRM, the SDK, the Windows Media Technologies and any and all components thereof, and/or to the features or information therein, except as expressly licensed in this Section 2. All rights not expressly granted by Microsoft are reserved. Under no circumstances will the license grants set forth in this Section 2 be construed as granting, by implication, estoppel or otherwise, a license to any Microsoft technology or under any Microsoft intellectual property other than the SDK, the Redistributable Components and the Sample Source.

3. Delivery; Acceptance

- 3.1 Delivery of SDK. The SDK is provided to Company either directly or through a general release on a Microsoft web site.
- 3.2 Acceptance. The SDK is deemed accepted by Company.
- 3.3 Delivery of Certificates. Microsoft will deliver an initial SDK Certificate with delivery of the SDK. As of the Effective Date, DRM Certificates and/or additional SDK Certificates will be delivered to Company as Company may reasonably request such additional Certificates from time to time for use by its new Licensed Applications, subject to Company's compliance with the terms and conditions of this Agreement and Microsoft's policies for issuing Certificates and/or issuing multiple Certificates.

4. SDK Updates

During the Term, Microsoft will use reasonable commercial efforts to provide Updates to the SDK, if any, as such Updates become commercially available. Updates, if any, may be provided by general posting on a Microsoft website. Microsoft may make such Updates to the SDK available pursuant to the terms of this Agreement or, in Microsoft's sole discretion, Microsoft may condition the release of such Updates to Company upon Company's execution of an amendment to this Agreement (or a separate agreement). Notwithstanding anything to the contrary in this Agreement, Microsoft has no obligation to provide maintenance, end user support, technical support or Updates to the SDK or Licensed Applications in any respect. Company shall be responsible for any and all maintenance, end user support, technical support and Updates with respect to the Licensed Applications. Company will use commercially reasonable efforts to incorporate the most recent Updates delivered or made available to it by Microsoft into all subsequent versions of Licensed Applications.

5. Confidentiality

- 5.1 Each party will 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 other than as permitted by this Agreement. Neither party will disclose to third parties the other's Confidential Information without the prior written consent of the other party, or as authorized by this Agreement. Except as expressly provided in this Agreement, no ownership or license rights is granted in any Confidential Information. This Agreement will not act as a general or master confidentiality agreement between the parties.
- 5.2 The parties' obligations of confidentiality under this Agreement will not be construed to limit either party's right to independently develop or acquire products, including products that compete with the Licensed Applications, without use of the other party's Confidential Information. Further, either party will be free to use for any purpose the Residuals resulting from access to or work with such Confidential Information, provided that such party will maintain the confidentiality of the Confidential Information as provided in this Agreement. The term "Residuals" means information in non-tangible form, which may be retained by persons who have had properly authorized access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein. Neither party will have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of Residuals. However, the foregoing will not be deemed to grant to either party a license under the other party's copyrights or patents.

- 5.3 Publicity. Neither party will make any public announcement regarding the terms of this Agreement without the other's prior written approval and consent as to the form and content of any public announcements.

6. Warranties

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MICROSOFT AND ITS SUPPLIERS PROVIDE THE CERTIFICATES, SDK, ANY CONFIDENTIAL INFORMATION AND OTHER MICROSOFT TECHNOLOGY PROVIDED UNDER THIS AGREEMENT (COLLECTIVELY "MICROSOFT TECHNOLOGY") AS IS AND WITH ALL FAULTS, AND HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY (IF ANY) IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF LACK OF VIRUSES, OF ACCURACY OR COMPLETENESS OF RESPONSES, OF RESULTS, AND OF LACK OF NEGLIGENCE OR LACK OF WORKMANLIKE EFFORT, ALL WITH REGARD TO THE MICROSOFT TECHNOLOGY. FURTHER, THERE IS NO, AND MICROSOFT DISCLAIMS ANY, WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION OR NON-INFRINGEMENT, WITH REGARD TO THE MICROSOFT TECHNOLOGY. THE ENTIRE RISK AS TO THE QUALITY OF OR ARISING OUT OF USE OR PERFORMANCE OF THE MICROSOFT TECHNOLOGY, IF ANY, REMAINS WITH COMPANY.

7. Indemnity

7.1 Indemnity. Company shall, at its expense and Microsoft's request, defend any claim or action brought by a third party against Microsoft, or Microsoft's Affiliates, directors, or officers, arising out of or related to the Licensed Application ("Company Claims"), and Company 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 outside attorneys and other professionals, that are attributable to such Company Claims. Microsoft shall: (a) provide Company reasonably prompt notice in writing of any such Company Claims and permit Company, through counsel chosen by Company, to answer and defend such Company Claims; and (b) provide the entity defending such claim information, assistance and authority, at such entity's expense, to help defend such Company Claims. Company will not be responsible for any settlement made by Microsoft without Company's written permission, which permission will not be unreasonably withheld or delayed. Company will consult with Microsoft on the choice of any counsel under this Section 7.

7.2 Settlement by Company. Unless Company obtains for Microsoft a complete release of all Company Claims, Company may not settle any Company Claim under this Section 7 on Microsoft's behalf without first obtaining Microsoft's written permission, which permission will not be unreasonably withheld or delayed. In the event Company and Microsoft agree to settle a Company Claim, Company agrees not to disclose terms of the settlement without first obtaining Microsoft's written permission, which will not be unreasonably withheld or delayed.

8. Disclaimer of Consequential Damages; Limitation Of Liability

8.1 EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER

DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL MICROSOFT AND ITS AFFILIATES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE MICROSOFT TECHNOLOGY OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF AGREEMENT, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF MICROSOFT OR ANY SUPPLIER, AND EVEN IF MICROSOFT, ANY OF ITS AFFILIATES OR COMPANY AND ANY COMPANY AFFILIATE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- 8.2. LIMITATION OF LIABILITY AND REMEDIES. NOTWITHSTANDING ANY DAMAGES THAT COMPANY MIGHT INCUR FOR ANY REASON WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ALL DAMAGES REFERENCED ABOVE AND ALL DIRECT OR GENERAL DAMAGES), THE ENTIRE AGGREGATE LIABILITY OF MICROSOFT AND ANY MICROSOFT SUPPLIER OR AFFILIATE UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE LIMITED TO THE ACTUAL AMOUNT PAID BY COMPANY UNDER THIS AGREEMENT OR FIFTY DOLLARS (\$50.00), WHICHEVER IS GREATER. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.

9. Termination

- 9.1 Term. This Agreement will continue for the Term unless earlier terminated pursuant to Section 9.2.

- 9.2 Termination for Cause. Either party may suspend performance and/or terminate this Agreement immediately upon written notice at any time if:

- (a) The other party is in material breach of any material warranty, term, condition or covenant of this Agreement, other than those contained in Section 5 and Section 2.3(g) and Exhibit D, and fails to cure that breach within fifteen (15) days after written notice thereof; or
- (b) The other party is in material breach of Section 5.

In addition, Microsoft may suspend performance and/or terminate this Agreement immediately upon written notice at any time if Company is in material breach of Section 2.3(g) and Exhibit D and fails to cure, or to takes steps to cure which are satisfactory to Microsoft in Microsoft's sole discretion, that breach within one (1) business day after written notice from Microsoft.

- 9.3 Survival of License Rights.

- (a) Unless this Agreement is terminated by Microsoft pursuant to this Section 9 for

Company's material breach of Sections 2.1, 2.2, 2.3 and/or 5, Company's Distribution rights for then-current Licensed Applications under Sections 2.1(b) and 2.2(b) (solely with respect to the then-current versions of the Redistributable Components and Sample Source as may have been delivered by Microsoft to Company, and remaining expressly subject to the obligations under Section 2.3) will survive any expiration of the Term or termination of this Agreement. Upon any such termination or expiration of the Term of this Agreement, Company will receive no further Updates to the SDK and will not be issued any further Certificates. Following the expiration of the Term, Microsoft may revoke Company's continuing rights under Sections 2.1 and 2.2 should Company breach any of the provisions of Sections 2.1, 2.2, 2.3 and/or 5.

- (b) If this Agreement is terminated for Company's material breach of Sections 2.1, 2.2, 2.3 and/or 5, then upon the effective date of termination (i) Company's rights under Sections 2.1 and 2.2 shall immediately terminate, and (ii) Company shall immediately return or, at Microsoft's option, destroy all Microsoft Confidential Information. Any Distribution prior to the effective date of termination by Company to end users of Licensed Applications including Redistributable Components or Sample Source in object code form which have been already validly granted under an end user license agreement in compliance with this Agreement shall, subject to applicable restrictions under Section 2.3, not be affected and shall remain in full force and effect. No other rights of Company shall survive termination for Company's material breach of Sections 2.1, 2.2, 2.3 and/or 5.

9.4 Survival. In the event of termination or expiration of this Agreement for any reason, Sections 2.4, 5, 6, 7, 8 and 10 will survive. Neither party will be liable to the other for damages of any sort resulting solely from terminating this Agreement in accordance with its terms.

10. General Provisions

10.1 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. Any such notices to Company should be sent to the address set forth in the table on the first page of this Agreement, and sent to the attention of the Company Contact named in such table. Any such notices to Microsoft should be addressed as follows:

Address:	Copy to:
Microsoft Corporation One Microsoft Way Redmond, WA 98052-6399 Attention: Vice-President Digital Media Division	Microsoft Corporation One Microsoft Way Redmond, WA 98052-6399 Attention: Law & Corporate Affairs
Phone: (425) 882-8080	Phone: (425) 882-8080
Fax: (425) 936-7329	Fax: (425) 936-7409

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

11.2 Independent Parties. Nothing in this Agreement will be construed as creating an employer-employee relationship, an agency relationship, a partnership, or a joint venture between the

parties.

- 11.3 This Agreement will be governed by the laws of the State of Washington, as though entered into between Washington residents and performed entirely within the State of Washington. Any action or litigation concerning this Agreement will take place exclusively in the federal or state courts in King County, Washington, and the parties expressly consent to jurisdiction of and venue in such courts and waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to such courts. Company hereby agrees to service of process by mail or other method acceptable under the laws of the State of Washington.
- 11.4 Attorneys' Fees. 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 will be entitled to recover its reasonable, documented costs, including reasonable attorneys' fees and fees of other litigation-related professionals, such as expert witnesses and accountants. If such a case or suit is settled, both parties will pay their own costs and expenses, unless otherwise specified in a settlement agreement.
- 11.5 Assignment or Delegation. This Agreement and any rights or obligations hereunder may not be assigned or delegated by Company or by Microsoft without the other party's prior written approval. Any attempted assignment, delegation, impermissible sublicense, transfer, encumbrance or other disposal by a party without such consent will be null and void. Except as otherwise provided, this Agreement will be binding upon and inure to the benefit of the parties' permitted successors and lawful assigns.
- 11.6 Force Majeure. Neither party will be liable to the other under this Agreement for any delay or failure to perform its obligations under this Agreement if such delay or failure arises from any cause (including, without limitation, labor disputes, strikes, earthquake, floods, fire, lightning, utility or communications failures, earthquakes, vandalism, war, acts of terrorism, riots, insurrections, embargoes, or laws, regulations or orders of any governmental entity) beyond such party's reasonable control.
- 11.7 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. A reference to a section of this Agreement will be deemed to be inclusive of any requirements or obligations referenced by that section, such as requirements referenced in an Exhibit.
- 11.8 Entire Agreement. This Agreement does not constitute an offer by Microsoft and it shall not be effective until signed by both parties. This Agreement and its Exhibits, constitutes the entire agreement between the parties with respect to the subject matter hereof and merges all prior and contemporaneous communications. It may not be modified except by a written agreement dated subsequent to the date of this Agreement and signed on behalf of Company 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	Company
By:	By:
Name (print):	Name (print):
Title:	Title:
Date:	Date:

Exhibit A

DRM License Format Requirements

- (1) Definitions. Definitions used in this Exhibit:
- (a) "Material Security Problem" means a security breach in DRM, or a security breach attributable to Company or to any Licensed Application that is a violation of Sections 2.3(g) and/or 2.3(i), or which otherwise defeats in any way the protective settings in the DRM Flags in licenses for WMF Content.
- (2) If a Licensed Application reads or writes WMF Content protected with DRM, it will adhere to rights provided by the associated DRM license.

Included below is a table listing the available flags and the requirements:

Bit	Right	Settings	
1	Play on PC	1	Allow playback on PC.
		0	Do not allow playback on PC.
2	Transfer to a portable device that is not SDMI compliant	1	Allow transfer to a portable device that is not SDMI compliant.
		0	Do not allow transfer to a portable device that is not SDMI compliant.
4	Recover the license	1	Do not allow the license to be restored to the consumer by Windows Media License Service.
		0	Allow license recovery.
8	Burn to CD	1	Allow burning to a CD.
		0	Do not allow burning to a CD.
16	Mark as SDMI validated	1	Mark content as SDMI validated. The media file can be played on any SDMI-compliant playback device.
		0	Do not mark content as SDMI validated.
32	Limit to one-time use	1	Delete license after it is used one time.
		0	Do not restrict license to one-time use.

The Licensed Application will check the rights available for the issued license and enable/disable functionality based on the table above. The Licensed Application will provide no means (including but not limited to programming APIs, end-user selectable options, or purposeful or accidental placement of debugging information in the Licensed Application) for the enablement or disablement of the intended DRM functionality.

Any Licensed Applications that write WMF Content will not set any DRM Flags other than 1, 2, 4, 8, 16 and 32, and the numerical value of the DRM Flags settings will not be greater than 63.

Failure of a Licensed Application, as Distributed by Company, to abide by the rights issued in the WMF Content license constitutes a violation of this Agreement.

- (3) When transferring WMF Content that is already protected by DRM to an MP3 Device or other, similar digital device, each Licensed Application will check and comply with the security level and DRM Flags in the license associated with that WMF Content, including any associated license conditions set in such DRM Flags. Further, Licensed Applications will not use, incorporate or call or enable any other software that modifies the behavior of the Licensed Application in a manner which causes it to violate the conditions of this Exhibit.
- (4) Microsoft may, during the Term, enhance the DRM features of the SDK, including the Redistributable Components, to eliminate potential security breaches and/or enhance DRM features (including ease of use) with respect to DRM-protected WMF Content. Company acknowledges that Microsoft will provide those users who are WMF Content providers of various Windows Media rights management applications with the ability to set the minimum revision level (or minimum security level) for compatibility of DRM-protected WMF Content, and that Licensed Applications created using older versions of the SDK and/or Redistributable Components may not be fully compatible with such future WMF Content. Microsoft will use reasonable commercial efforts to: (i) provide Company with Updates to DRM that correct security breaches, though such Updates may require Company to agree to additional or alternative terms and conditions than that set forth in this Agreement; and (ii) notify Company of any actual security breaches in DRM which in Microsoft's sole and reasonable judgment would affect the Licensed Application.
- (5) If Microsoft provides Company with Updates to the SDK and Redistributable Components which correct actual or potential security breaches, Company will use commercially reasonable efforts to incorporate and/or make available to users of the Licensed Applications, through reasonable means (such as availability on a Company web site), such Updates of the Redistributable Components as part of and/or as Updates to such Licensed Applications.
- (6) To enable the DRM feature (including but not limited to playback/decode, transfer, and/or encoding/encryption) of the Redistributable Components for Company's Licensed Applications, Company must use the DRM Certificate. Company must use the DRM Certificate in accordance with the Certificate requirements of Exhibit D as such requirements may be updated periodically by Microsoft during the Term.
- (7) Company may not use the SDK or any component thereof to develop or aid in the development of Licensed Applications to archive, copy, or save to non-volatile storage, any Windows Media Stream unless the Windows Media Stream is not protected by DRM. Nothing in this Agreement shall be deemed to authorize Company to infringe the copyright or other intellectual property rights of the owners of WMF Content.
- (8) To the extent any WMF Content protected with DRM is identified by a DRM Flag as compliant with or validated for the Secure Digital Music Initiative ("SDMI") as the rules of such compliance may be developed during the Term, Company will follow such SDMI rules in any use of DRM in its Licensed Applications. To the extent that SDMI rules conflict with the rules and capabilities of the current SDK, the SDK rules will take precedence. If the conflict is resolved by an Update, Company will take commercially reasonable efforts to update the Licensed Applications to comply in a timely manner. Any SDMI watermark requirements are Company and its Affiliate's sole responsibility.
- (9) Notwithstanding any provision of this Agreement, if Company intentionally or negligently

fails to correct any Material Security Problem(s) with DRM in Licensed Application(s) and Microsoft has provided Company with five (5) business days notice of such Material Security Problem and has delivered any appropriate DRM Updates to Company with respect to such security problems as of such notice, then Microsoft may, upon five (5) business days notice, revoke any associated DRM Certificate with respect to the particular Licensed Application with a Material Security Problem.

- (10) Regardless of any express right set forth in this Exhibit, Licensed Applications will not Break Interoperability or Compromise Interoperability, or edit DRM protected WMF Content that Company does not own or have the rights to so modify, and Licensed Applications will never modify WMF Content in a manner that violates the DRM Flags in any DRM license associated with the WMF Content.

Exhibit B

Interoperability Requirements

Licensed Applications will not Break Interoperability or Compromise Interoperability.

- (1) Corrections of Interoperability Problems. Each party will diligently notify the other to the extent that any Licensed Application is alleged or found to Break Interoperability or to Compromise Interoperability for any reason. Company will, at its expense, use reasonable commercial efforts to identify the cause of the alleged or actual problem and to resolve it within ten (10) business days of said notification. Microsoft will reasonably comply with Company's requests for additional information regarding the interoperability problem. When the interoperability problem is resolved, Company will immediately release a software patch for any existing Licensed Applications, and/or immediately re-release all existing Licensed Applications which manifest the problem, and Company will incorporate the patch into, or substitute the re-released version for, Company's subsequent publicly released versions of the Licensed Application, if any.
- (2) Compatibility. WMF Content created by a Licensed Application will be fully compatible with the latest commercially available version of Windows Media Technologies, as shipped by Microsoft, without requiring additional plug-ins, applications, or other software. For purposes of this Exhibit, "fully compatible" means that a Windows Media Server is capable of streaming such WMF Content and Windows Media Player is capable of playing back such WMF Content (from local disk, as streamed from a Windows Media Server, and when hosted on an HTTP server) without any change or alteration of the WMF Content generated by a Licensed Application.
- (3) Latest Versions of Redistributable Components. Company will use reasonable commercial efforts to ship the latest commercially available Redistributable Components with new releases of the Licensed Applications and will not mix subsets of Redistributable Components from different versions of the SDK within (i) any release of the Licensed Application, or (ii) on an end-user's computer when a new version, patch, update, or feature of a Licensed Application is installed over a previous installation of the Licensed Application.
- (4) Testing. Upon any public release of a Licensed Application, including each beta release, Company will notify Microsoft and make available to Microsoft concurrent with said release, at no cost to Microsoft, one copy of the Licensed Application (in object code form only) for purposes of confidential interoperability testing and related evaluation by Microsoft. Microsoft is granted the right to make a limited and reasonable number of copies of the Licensed Application, and Company agrees to furnish Microsoft any keys, runtime licenses, or other means necessary to enable the original and copies of the Licensed Application to properly function, solely for the purpose of such testing and evaluation.
- (5) Referencing WMF Content. Licensed Applications shall reference WMF Content directly or via metafiles that are playable by the Windows Media Player, as shipped by Microsoft, without requiring additional plug-ins, applications, or other software to or with the Windows Media Player.

Exhibit C

**File Extension Usage & Format Requirements/Guidelines
Windows Media Metafile Requirements and Guidelines**

I. File Extension Usage & Format Requirements/Guidelines

Audio Content, Video Content, and Script Commands, as used in this Exhibit C are defined below.

- (1) Licensed Applications that create WMF Content files containing Audio Content, and optionally containing Script Commands, will use the .WMA file name extension for that WMF Content.
- (2) Licensed Applications that create WMF Content files containing Video Content and Audio Content and optionally containing Script Commands will use the .WMV file name extension for that WMF Content.
- (3) Licensed Applications that want to take ownership of the .WMA (and/or the associated audio/x-ms-wma MIME type) or .WAX (and/or the associated audio/x-ms-wax MIME type) file name association will (i) present the end user with a choice as to whether or not the Licensed Application should become the default application (only if an alternate application is already the default application), and (ii) be capable of rendering Audio Content and Script Commands, and (iii) be capable of parsing the Windows Media Metafile with the .WAX file name extension as described in Section II of this Exhibit B.
- (4) Licensed Applications that want to take ownership of the .WMV (and/or the associated video/x-ms-wmv MIME type) or .WVX (and/or the associated video/x-ms-wvx MIME type) file name association will (i) present the end user with a choice as to whether or not the Licensed Application should become the default application (only if an alternate application is already the default application), and (ii) be capable of rendering Audio Content, Video Content, and Script Commands, and (iii) be capable of parsing the Windows Media Metafile with either the .WVX or the .WMA file name extension as described in Section II of this Exhibit B.
- (5) This Agreement prohibits Licensed Applications from taking ownership of .ASF (and/or the associated video/x-ms-asf MIME type), .ASX (and/or the associated video/x-ms-asf MIME type), .WM (and/or the associated video/x-ms-wm MIME type), and .WMX (and/or the associated video/x-ms-wmx MIME type) file name extensions unless the Licensed Application also licenses and incorporates other Microsoft-licensed components or Microsoft-licensed technology (by agreement separate from this Agreement) by which a license to take such associations is explicitly granted.
- (6) Reclaiming File Extensions. Licensed Applications may reclaim media file associations changed by the Windows Media Player if they offer the user notice of the Licensed Application's desire to reset the file association and a simultaneous opportunity for the end-user to elect not to have this action undertaken. Licensed Applications may not otherwise automatically reclaim for Company applications, scripts, or operating systems, any media file associations changed by the Windows Media Player.

For purposes of this Exhibit B: "Script Commands" means: (i) the "filename" script command in WMF Content, whose purpose is to direct the Licensed Application to immediately process a

specified different file than that currently being processed; and (ii) the "URL" script command in WMF Content, whose purpose is to direct the Licensed Application to open a specified web page, either in the Licensed Application, or in a separate web browser; "Audio Content" means uncompressed audio data and audio data compressed with audio Codecs, including, without limitation, the Windows Media Audio Codec and the ACELP.net Audio Codec; "Video Content" means uncompressed video data or video data compressed in a manner that can be uncompressed with the video Codecs, including the Microsoft MPEG-4, version video Codec; "Windows Media Audio Codec" means the current version of the audio compression and decompression software, algorithms and intellectual property; and "ACELP.net Audio Codec" means the current object code version of the Algebraic Code Excited Linear Prediction vocoder software, algorithms and intellectual property licensed to Microsoft by Sipro Lab Telecom Inc., which can not be used to enable products that provide telephony functionality, including bi-directional transmission of voice and/or sound such as audio-conferencing or computer integrated telephony.

II. Windows Media Metafile Requirements and Guidelines

"Metafile" means a Windows Media metafile used by the Windows Media Player to control the local or streamed playback of Content. The Metafile consists of text in XML syntax, as fully specified in the SDK documentation. For example, the Metafile may include Content URLs, Content start time and play duration, as well as Content title/copyright/author.

A Metafile will have a .WAX or a .WVX file name extension. Metafiles with the .WAX filename extension will reference files only with the .WMA and/or .WAX file name extension. Metafiles with the .WVX filename extension will reference files only with the .WMA, .WMV, .WAX, and/or .WVX file name extensions.

The table below lists the Metafile tags that must be supported by Company and its Affiliate's Licensed Applications. The tags are the same for metafiles that have either .WAX or .WVX file extensions.

Tag
ABSTRACT
ASX
AUTHOR
BASE
COPYRIGHT
DURATION
ENDMARKER
ENTRY
ENTRYREF
MOREINFO
PREVIEWDURATION
REF
REPEAT
STARTMARKER
STARTTIME
TITLE

Exhibit D

Certificate Requirements

- (1) Each Licensed Application will:
 - (i) Statically link to the Certificate provided by Microsoft (whether a DRM Certificate or an SDK Certificate, as applicable); and
 - (ii) Use the Certificates or any one of them solely to enable the Licensed Application to interoperate with the Redistributable Components.
- (2) The Certificate(s) are Microsoft Confidential Information. Company will not (i) share or disclose Certificates or other Confidential Information received from Microsoft pursuant to the certification process with any third party other than an Independent Contractor working pursuant to this Agreement and on a need-to-know basis, or (ii) use such Confidential Information for any purpose not permitted by this Agreement.
- (3) *Revocation of Certificates.*
 - (i) Microsoft retains the right to revoke any Licensed Application Certificate if security of such Certificate has been publicly or generally compromised such that neither Microsoft nor Company can reasonably remedy the security breach.
 - (ii) Revocation may occur through a technical lockout implemented unilaterally by Microsoft, or contractually by a notice from Microsoft to Company. Company understands that revocation of a Certificate by technical means will disable a Licensed Application's ability to play or otherwise manipulate some or all WMF Content. If Microsoft revokes a Certificate by contractual notice, Company must immediately recall, update or otherwise ensure that affected Licensed Applications cannot play or otherwise manipulate WMF Content. Unless the compromise of a Certificate resulted from Company's material breach of this Agreement, Microsoft will work with Company to issue a new Certificate for the affected Licensed Application. With respect to a Licensed Application with a compromised DRM Certificate, Microsoft may, in its sole discretion, issue an SDK Certificate for such Licensed Application.