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DISTRICT OF UTAH

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AUG 10 1998

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

CALDERA, INC.,

Plaintiff,

vs.

MICROSOFT CORPORATION,

Defendant.

ORDER

Judge Dee V. Benson

Case No. 2:96CV645B

This matter came on for hearing on July 28, 1998 at 2:00 p.m., before the Honorable Ronald N. Boyce, United States Magistrate Judge, on plaintiff Caldera's Motion to Compel Production of Software Source Code and plaintiff Caldera's Motion to Compel Production of OEM License Databases. James S. Jardine, Thomas W. Burt, and Mark Battilyon appeared on behalf of defendant Microsoft Corporation. Stephen D. Susman, Parker C. Folse III, and Stephen

ORDER - 1

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J. Hill appeared on behalf of plaintiff Caldera, Inc. The Court having considered the parties' memoranda, the arguments of counsel, the files and records herein, and being fully advised,

IT IS HEREBY ORDERED as follows:

1. By no later than August 4, 1998, Microsoft shall produce to Caldera on CD ROM all source code for the following software products, which Microsoft has represented to the Court is available for production:

- MS-DOS 4.0 (manufacturing release)
- MS-DOS 5.0 (manufacturing release)
- Windows 3.1 (manufacturing release)
- MS-DOS 6.22 (manufacturing release)
- Windows 95 (selected files of manufacturing release, as previously identified by Caldera and agreed upon by Microsoft)

Microsoft shall produce written copies of the foregoing source code no later than August 11, 1998, to the extent such written copies have been maintained in the ordinary course of business.

2. Microsoft shall continue to search for source code for the beta releases of the foregoing software products, and source code for both beta and manufacturing releases of the following software products, all of which Microsoft has represented that it has not yet found:

- Q DOS
- MS-DOS 1.0
- Windows 3.0

Such source code shall be produced to Caldera both in writing and on CD ROM promptly if Microsoft locates it. With respect to any such source code that Microsoft cannot find, it shall serve on Caldera no later than October 15, 1998, a declaration executed by one or more persons based upon personal knowledge attesting to all steps Microsoft has taken to locate the source code and Microsoft's inability to find it.

3. In addition to the provisions of the Protective Order applicable to information designated as "Highly Confidential," including ¶6 thereof, the following additional provisions shall govern the use of source code produced by Microsoft pursuant to ¶¶1 and 2 of this Order:

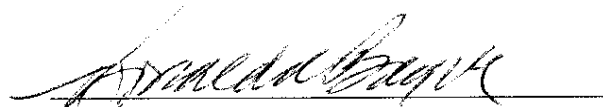
1. The source code will not be discussed with or disclosed to persons other than those described in ¶8(i) and ¶8(ii)(a)-(c) of the Protective Order, provided that the source code will not be discussed with or disclosed to any in-house counsel employed by Caldera;
2. Independent experts and consultants who are permitted access to such source code under the Protective Order shall maintain a written log identifying all persons with whom such expert discusses any such source code or to whom the expert discloses any such source code. The logs shall be delivered to counsel for Caldera and shall be preserved pending further order of the Court. Such experts and consultants shall not use the source code on any computer that is connected to any computer network;
3. Independent experts and consultants who are permitted access to the source code under the Protective Order shall not utilize that information for any other commercial purpose, nor shall they discuss it or network it with anyone outside this case.

4. Microsoft's request that disclosure of source code be conditioned upon execution of a source code license agreement is denied.

5. By no later than August 7, 1998, Microsoft shall serve on Caldera a sworn declaration describing fully and in detail the information maintained in the "Microsoft Sales" database referred to in the Declaration of Frank Donahue, filed by Microsoft in opposition to Caldera's motion to compel production of OEM license databases. The declaration shall include a description of the date ranges for the categories of information contained in the database. After reviewing the declaration, Caldera may seek further relief if appropriate.

DATED this 14th day of August, 1998.

BY THE COURT:



Ronald N. Boyce
United States Magistrate Judge

Approved as to form:

RAY, QUINNEY & NEBEKER



James S. Jardine
Attorneys for Defendant

421203

United States District Court
for the
District of Utah
August 17, 1998

* * MAILING CERTIFICATE OF CLERK * *

Re: 2:96-cv-00645

True and correct copies of the attached were mailed by the clerk to the following:

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