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October 7, 1983

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Re: Magnavox et al. v. Activision

Dear Tom:

This letter will summarize the status of plaintiffs' outstanding discovery requests to Activision. As you know, I discussed these requests with you and Ted Wright at your offices on September 8, 1983, and you and Ted Anderson further discussed some of the requests at the deposition of James H. Levy on September 16, 1983 and during subsequent telephone conversations.

DOCUMENT REQUEST 1

We understand from you that Activision has produced the documents that exist for all Activision games.

DOCUMENT REQUEST 3

We understand from you that Activision has produced all of its responsive documents except the "VIC Programming Manual" authored by Jesse F. Cable III, and that the only reason it has not been produced is a confidentiality agreement with Mr. Cable.

During the September 8 meeting, you stated that you would consider producing the manual for inspection by outside counsel only so that we might determine if the document was worth pursuing; I also offered to receive the document under the protective order which has been entered in this case. You subsequently told Ted that you would reconsider the confidentiality agreement with Cable. We would like to know where this matter stands.

DOCUMENT REQUEST 4

Activision has produced copies of the source language program for only the four games referred to in plaintiffs' response to defendant's interrogatory 38, and the produced copies had the remarks section masked out. First, we believe we are entitled to the responsive documents for all Activision games. These documents are necessary to enable us to fully understand the operation of the games and make a determination of whether the individual games come within the Re. 28,507 patent. The game instruction manuals do not include a sufficiently detailed description of the respective games.

Second, we believe that we are entitled to the complete and unmasked source program listings including the comments. It is largely the comments which make the source listings understandable and capable of being intelligently read by anyone other than the original programmer. The comments are often necessary for the programmer himself to follow the operation of the program. While in some cases it might be possible for an expert programmer to analyze and fully understand the operation of a program with the comments removed, the presence of the comments would reduce the amount of work necessary to arrive at that level

of understanding by many fold. The source listings can also be produced under the protective order to maintain the confidentiality of any information that may be included therein.

Third, we believe any designers notes or other responsive documents are highly relevant to the development of the various games and their operation. Certainly both these matters are relevant to this action. To the extent the documents may be confidential, they may also be produced under the protective order.

DOCUMENT REQUEST 7

You have stated that the source listings are the only documents Activision has been able to find responsive to this request. Plaintiffs are entitled to full and complete copies of these listings for the reasons stated with respect to request 4. If any other responsive documents exist, plaintiffs are entitled to them also for the same reasons.

DOCUMENT REQUEST 8

We understand from you that the only relevant prior art of which Activision is aware is art which was involved in the earlier lawsuits on the Re. 28,507 patent. If Activision is or becomes aware of any other prior art, we would like to receive copies of it.

DOCUMENT REQUESTS 9 AND 10

The requests seek documents showing Activision's unit and dollar sales; they were objected to on grounds of confidentiality, relevance, and materiality. The protective order should cure any problems of confidentiality. Other than perhaps documents describing the games themselves, we can envision no documents more relevant to the recovery plaintiffs will eventually be entitled to in this action; they should be produced. I understand that Ted Anderson asked Mr. Levy a line of questions to this end. I further understand that you and Mr. Levy conferred with respect to the information and the protective order and you tentatively agreed with Ted to produce at least some information on this subject including total unit production by years and percentages of total unit production represented by the accused games. We are especially anxious to have this information.

DOCUMENT REQUESTS 15 AND 16

Our comments with regard to document request 8 apply to these document requests also.

DOCUMENT REQUEST 17

Activision's response to this request states no reason for not producing its agreement with Atari, it merely states that the agreement will not be produced absent a court order. We continue to believe the agreement should be produced subject to the protective order if necessary. This was also discussed with

Ted Anderson. The agreement, or a related document refers specifically to certain prior art with respect to the Re. 28,507 patent, as we understand it.

INTERROGATORY 7(xii)

This interrogatory seeks information similar to document requests 9 and 10. Our comments as to the document requests apply to the interrogatory as well.

We are in the process of phtocopying the documents you have requested and will have the copies to you as soon as possible.

Very truly yours,

NEUMAN, WILLIAMS, ANDERSON & OLSON

By _____
James T. Williams

JTW/sjm

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