

-8085
jtw/magnavox/brief
3/13/85 - fdf - draft no. 1

SETTLEMENT AGREEMENT

Spencer Dale

THIS AGREEMENT, having an effective date of ~~January~~ ^{April} 1, 1985, and entered into by and between THE MAGNAVOX COMPANY, a corporation of the State of Delaware, having an office at 580 White Plains Road, Tarrytown, New York (hereinafter MAGNAVOX), SANDERS ASSOCIATES, INC., a corporation of the State of Delaware, having an office ² at Daniel Webster Highway South, Nashua, New Hampshire (hereinafter SANDERS), and ACTIVISION, INC., a corporation of the State of California having an office at Mountain View, California (hereinafter ACTIVISION):

WITNESSETH: WHEREAS, SANDERS is the owner of United States Letters Patent 3,659,284 which issued on April 25, 1972 and was reissued as United States Letters Patent Re. 28,507 on August 5, 1975 and MAGNAVOX is the exclusive licensee under said United States Letters Patent 3,659,284 and Re. 28,507;

WHEREAS, ACTIVISION has ~~been~~ made and now is engaged in the business of making, having made for it, marketing and selling game programs for use ^{with home video games and home computers} ~~with television which apparatus was~~ marketed under the name ~~apparatus~~ ACTIVISION;

WHEREAS, on September 28, 1982, MAGNAVOX and SANDERS filed a civil action in the Northern District of California entitled The Magnavox Company and Sanders Associates, Inc. v. Activision, Inc., No. C 82 5270, for infringement of said United States Letters Patent Re. 28,507, and the defendant filed First, Second and Third Counterclaims including a claim for alleged unfair competition by MAGNAVOX and SANDERS;

WHEREAS, the above named parties are desirous of resolving all controversies ^{between them;} ~~with respect to such ACTIVISION game program for use with said television apparatus and United States Letters Patent Re. 28,507;~~

WHEREAS, MAGNAVOX and ACTIVISION contemporaneously with the execution of this SETTLEMENT AGREEMENT are executing and entering into a NONEXCLUSIVE ^{USE} ~~SUBLICENSE~~ AGREEMENT which agreements, among other things, include (a) provisions for compensating MAGNAVOX for acts of infringement and contributory infringement of United States Letters Patent Re. 28,507 prior to the effective date of this SETTLEMENT AGREEMENT and (b) provisions for granting certain licenses to ACTIVISION to practice the invention of said Letters Patent Re. 28,507 and of certain other patents. (INSERT ATTACHED)

~~Activision~~

MS

However, this Agreement and the contemporaneously executed license agreement notwithstanding, Activision continues to assert that its game programs Enduro, Deception, Kyston Kapers, Fishing Derby, Stampede, Banstorm, Grand Prix, SK Jaks, and Dolphin do not infringe the claims of the 28,507 reissue patent. ~~And it may not be~~ ^{particular} The ~~the~~ agreement by Activision to pay a royalty for use of these game programs may not be material, ~~reference~~ or asserted in any manner in any future litigation involving the issue of the scope and coverage of the claims of the 28,507 patent.

~~This release covers all claims, known or unknown, which MAGNAVOX or SANDERS have, shall or may have~~

which MAGNAVOX or SANDERS have, shall or may have against the ~~the~~ ^{PARTIES} ACTIVISION ~~and its customers~~ by reason of any act of infringement or contributory infringement of United States Letters Patent Re. 28,507 and those patents listed in Exhibit A by ACTIVISION ^{in the 9th rule a use game program} ~~prior~~ ^{Agreed} to ~~January 1, 1985~~. This release shall be effective only upon entry of said FINAL JUDGMENT ON CONSENT and shall be subject to ~~the conditions subsequent of ACTIVISION tendering each payment required in said NONEXCLUSIVE SUBLICENSURE AGREEMENT.~~

and it also shall extend to all tort claims which either Magnavox or Sanders have or may have against the ACTIVISION PARTIES, bound up said patents.

except as otherwise provided in this Agreement and the accompanying Nonexclusive Sublicense Agreement

IV

A. MAGNAVOX hereby grants to ACTIVISION a worldwide, paid-up, nonexclusive license, without the right to sublicense, under the patents and applications for patent set forth in Exhibit A attached hereto and any reissues, divisions, continuations or extensions thereof, to make, use ^{or} ~~and~~ sell ~~game~~ ^{or in conjunction with} programs for home computers, it being understood that ^(attachment A) ~~no~~ licenses or any other rights are granted hereun under said paid-up license with respect to "HOME VIDEO GAMES" and/or "GAME PROGRAMS" for "HOME VIDEO GAMES", as those terms are defined in the Nonexclusive Sublicense Agreement for Home Video Game Devices effective January 1, 1985 entered into by MAGNAVOX and ACTIVISION concurrently with this Settlement Agreement ^(the "Sublicense Agreement").

B. The license granted under this paragraph IV of this Settlement Agreement is ~~personal to ACTIVISION and nontransferable~~, *except as provided in the Sublicense Agreement.*

a home computer comprises a microprocessor or other central processing unit which can be used to write original programs and contains an addressable read only memory with ~~having~~ at least 8K bytes embodying at least one program. A home computer includes, without limitation, the Atari home computer, the Atari 400 and Atari 800, and Commodore 64, Apple II (etc.)

C. In consideration of said paid-up nonexclusive license, ACTIVISION agrees to make the following payments to MAGNAVOX:

~~(11)~~ In the event that presently pending reissue application Serial Number 810,538 or reissue application Serial Number 810,542 issues as a reissue patent with a claim similar to any one of claims 1, 13, ~~22, 40, 50, 53, 55, 56, 59, 83 or 93~~ ^{or} now pending in application Serial No. 810,538 or any one of ^{the corresponding} ~~claims 22~~ ~~3, 9, 26 to 29, 30, 31~~ now pending in application Serial Number 810,542, then ACTIVISION shall pay to MAGNAVOX the sum of Two Hundred Thousand U.S. Dollars (\$200,000), which sum shall be paid in the following installments:

~~(12)~~ One Hundred Thousand U.S. Dollars (\$100,000) shall be paid within two months of issuance of said reissue patent or April 1, 1987, whichever is later, and (b) One Hundred Thousand U.S. Dollars (\$100,000) shall be paid on the first anniversary of the date on which the initial \$100,000 payment referred to in paragraph (a) is due and payable.

-8083
jtw/magnavox/brief
3/13/85 - fdf - draft no. 1

DRAFT

NONEXCLUSIVE SUBLICENSE AGREEMENT
FOR
HOME VIDEO GAME DEVICES

AGREEMENT, having an effective date of ~~January~~ ^{April} 1, 1985,
by and between THE MAGNAVOX COMPANY (hereinafter called
MAGNAVOX), a corporation of the State of Delaware, U.S.A., having
a place of business at 580 White Plains Road, Tarrytown, New York
10591 and ACTIVISION, INC. (hereinafter called ACTIVISION) a
corporation of the State of California having a principal place
of business at Mountain View, California 94042.

W I T N E S S E T H

WHEREAS, MAGNAVOX is the exclusive licensee under a
plurality of patents and patent applications, the titles of which
reside in Sanders Associates, Inc. (hereinafter called SANDERS),
a corporation of the State of Delaware, U.S.A., having an office
at Daniel Webster Highway South, Nashua, New Hampshire 03061;

WHEREAS, MAGNAVOX has the exclusive right under an
agreement dated January 27, 1972, as amended by a supplemental
agreement effective January 1, 1976, between itself and SANDERS
(hereinafter referred to as OTHER LICENSE AGREEMENT) to grant
licenses under such plurality of patents and applications;

-8083
jtw/magnavox/brief
3/13/85 - fdf - draft no. 1

WHEREAS, MAGNAVOX, SANDERS and ACTIVISION are contemporaneously herewith entering into an agreement for settling a civil action in the United States District Court for the Northern District of California entitled, The Magnavox Company et al. v. Activision, Inc., No. C82-5270 CAL; and

WHEREAS, as part of said settlement of said civil action, MAGNAVOX and ACTIVISION agreed to enter into a nonexclusive sublicense agreement under certain patents of such OTHER LICENSE AGREEMENT;

NOW, THEREFORE, for and in consideration of the mutual understanding and obligations herein set forth, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.01 As used herein, the following terms shall have the following meanings:

(a) LICENSED PATENTS shall mean the patents and applications for patents set forth in Exhibit A attached hereto, any patents issuing on said applications and any and all reissues, divisions, continuations and extensions of any such patents and/or applications. *MAGNAVOX and SANDERS represent and warrant they have carefully examined all home video games and all home computers*

(b) HOME VIDEO GAME shall mean any consumer video game system designed primarily for playing video games in the home by displaying, on the screen of a television receiver or television monitor, one or more symbols whose position on the screen can be *games sold or distributed by ACTIVISION prior to December 31, 1984, and that such games do not infringe any patent or patent application listed in Exhibit A except for [507480, 095] and their foreign counterparts.*

controlled by the player. HOME VIDEO GAME shall ^{mean a} ~~include, without~~
~~limitation,~~ microprocessor based video game systems, such as
Atari 2600 and 5200, Intellivision and Colecovision, comprising a
control unit (hereinafter referred to as "CONTROL UNIT") and a
memory unit (hereinafter referred to as GAME PROGRAM) containing
a game program removably connected to said CONTROL UNIT, whereby
a player can play different video games depending on which GAME
PROGRAM he connects to said CONTROL UNIT.

(c) LICENSED VIDEO GAME shall mean any HOME VIDEO GAME
covered by or employing a method covered by one or more of the
LICENSED PATENTS, with such coverage being determined by and to
the extent of that provided by the law of the country of LICENSED
PATENT issuance.

(d) LICENSED GAME PROGRAM shall mean a GAME PROGRAM
which when connected to a CONTROL UNIT for operation, comprises,
in combination, a HOME VIDEO GAME covered by or employing a
method covered by one or more of the LICENSED PATENTS, with such
coverage being determined by and to the extent of that provided
by the law of the country of LICENSED PATENT issuance.

(e) LICENSED PRODUCT shall mean a LICENSED VIDEO GAME
and/or LICENSED GAME PROGRAM.

(f) NET SELLING PRICE shall mean the invoice price of
each LICENSED PRODUCT sold by ACTIVISION to any third party, ~~in~~
~~arms-length trade.~~ All invoice prices hereunder shall be
determined after deduction of ~~normal~~ trade and quantity discounts
but before deducting any other item and shall be understood not

jtw/magnavox/brief
3/13/85 - fdf - draft no. 1

to include ~~commodity~~ taxes, ^{duties,} insurance premiums for transportation, transportation costs and special packaging costs charged for separately, if any.

(g) DOLLARS shall mean United States of America Dollars.

(h) SUBSIDIARY shall mean any corporation (including any legal entity similar thereto) or other kind of business organization in which MAGNAVOX or ACTIVISION, as the case may be, now or hereafter during the term of this Agreement has a "controlling interest". The term SUBSIDIARY also includes any other corporation or other kind of business organization in which such a corporation or business organization controlled by MAGNAVOX or ACTIVISION, now or hereafter during the term of this Agreement has a "controlling interest". "Controlling interest" in the case of a corporation or business organization shall mean direct or indirect ownership or control by MAGNAVOX or ACTIVISION of that number of the shares of the said corporation, entity, or organization which represents the right to elect a majority of the directors of said corporation, or persons performing similar functions; and in the case of any other kind of business organization, it means that direct or indirect ownership or control of the capital thereof, or other interest therein, by or through which MAGNAVOX or ACTIVISION exercises or has the power to exercise in any manner, directly or indirectly, control or direction thereof.

~~(i) TERRITORY shall mean the United States of America.~~

ARTICLE II

LICENSES AND RIGHTS

2.01 MAGNAVOX hereby grants to ACTIVISION, subject to the reservations and conditions set forth herein, a nonexclusive license under LICENSED PATENTS, without the right to sublicense, to make, and have made LICENSED PRODUCTS in the TERRITORY and to use, sell, lease or otherwise dispose of such LICENSED PRODUCTS made by or for ACTIVISION ^{throughout the world} ~~in the TERRITORY~~, in any country where LICENSED PATENTS exist.

~~2.02 Nothing herein shall be construed as preventing or restricting either party from manufacturing, using, or selling any product in any country or territory, it being understood, however, that no licenses under patents expressed or implied, are hereby granted except under LICENSED PATENTS as defined in Paragraph 1.01(a) of Article I, and to the extent set forth in Paragraph 2.01 of this Article II.~~

²
2.02_R MAGNAVOX hereby warrants that it has the right to grant the license herein granted to ACTIVISION.

ARTICLE III

CONSIDERATION

3.01 In consideration of the nonexclusive licenses herein granted by MAGNAVOX to ACTIVISION, ACTIVISION agrees:

(ii) Two and One-Half Percent (2-1/2%) of the NET SELLING PRICE of each LICENSED PROGRAM if the NET SELLING PRICE thereof is between Ten (10) Dollars and Five (5) Dollars, inclusive; and

(iii) One Percent (1%) for each LICENSED PROGRAM if the NET SELLING PRICE thereof is less than Five (5) Dollars.

insert former 4.03 from P. 7

~~No royalties shall be due under this paragraph 3.01(b) on any LICENSED PROGRAM residing or incorporated in a LICENSED VIDEO GAME on which royalties were paid pursuant to paragraph 3.01(a) or on any LICENSED PROGRAM, which in combination with a CONTROL UNIT, was considered as a LICENSED VIDEO GAME on which royalties were paid pursuant to paragraph 3.01(a).~~

ACTIVISION

3.01³ A LICENSED PRODUCT shall be deemed sold when ~~invoiced,~~ *actually collects all or substantially all sums due with less or if not invoiced, when shipped or otherwise delivered to a* ~~or if not invoiced, when shipped or otherwise delivered to a~~ *of the NET SELLING PRICE for such LICENSED PRODUCT.* ~~purchaser or user of such product.~~

3.01⁴ No royalty shall be due on LICENSED PRODUCTS which have been returned *or rejected* by the customer and when royalties have been paid on such LICENSED PRODUCTS, then such royalties *promptly* shall be credited against future royalties to be paid hereunder *repaid by MAGNAVOX.*

no

3.02 Notwithstanding any other provision hereunder, it is understood that ACTIVISION shall not be required to pay a royalty hereunder ~~to~~ *with respect to the manufacture, use or sale by ACTIVISION or its SUBSIDIARIES of any programs for or in conjunction with a home computers as defined in the Settlement Agreement.*

⁵
3.04 Anything herein to the contrary notwithstanding, no royalty payments shall be due on those LICENSED PROGRAMS:

(i) which were made by ACTIVISION prior to the effective date of this Agreement and sold thereafter outside the ~~TERRITORY~~ ^{United States of America}; and

(ii) which are covered solely by or employ a method covered solely by the foreign counterparts of either U.S. Patent No. 3,728,480 or U.S. Patent No. 3,829,095 and no other LICENSED PATENT. It is understood that royalties on LICENSED PROGRAMS made and sold after the effective date of this Agreement shall be paid in accordance with the provisions of paragraph 3.01~~(4)~~.

⁶
3.05 Anything herein to the contrary notwithstanding, no royalty payments shall be due on any HOME VIDEO GAMES and/or GAME PROGRAMS made and sold in the United States and covered solely by or employing methods covered solely by U.S. Patent No. 3,728,480 or U.S. Patent No. 3,829,095 until such time as either reissue application Serial No. 810,538 or reissue application Serial No. 810,538 or resissue application Serial No. 810,542 issues as a reissue patent with a claim covering such HOME VIDEO GAME or GAME PROGRAM, whereupon royalties shall be due and payable in accordance with the provisions of paragraph 3.01 or any HOME VIDEO GAMES and/or GAME PROGRAMS covered by such reissue patent and made, used, sold, leased or otherwise disposed of (except as scrap) subsequent to the date of issuance of such reissue patent. However, Activision reserves the right to challenge the validity

~~3.07 (ATTACHED)~~
and/or alleged infringement of the reissued ~~and~~ patents rather than paying the royalty provided in this paragraph

3.07 (ATTACHED)

3.07

~~3.07~~

used,

W

Anything herein to the contrary notwithstanding, NO royalty payments shall be due on any HOME VIDEO GAMES AND/OR GAME PROGRAMS made, or sold anywhere in the world for the Activision game titles attached hereto as exhibit B, except that royalties for exhibit B games may be due under Section 3.05 and 3.06 in accordance with the terms of those sections.

[
Attachment B will list all
Activision games other than
the 13
]

3.01 It is hereby agreed that for the first quarter of the calendar year 1985 ACTIVISION shall provide to MAGNAVOX a letter ~~estimating that~~ *confirming its estimate that sales of the* by an officer ~~confirming or correcting its estimate of sales~~ *13 cartridges alleged by MAGNAVOX to infringe the [507] patent* during that quarter ~~and if the letter confirms that the actual sales are no greater than the estimate then~~ *would not result in a royalty obligation under 3.01* Activision shall pay a royalty of \$2000.00 for said first quarter. If the letter ~~confirms sales which would bear a royalty in excess of \$2000.00,~~ *estimates that during the quarter would result in a* then ACTIVISION shall pay that greater amount.

*in excess
of
\$2000
and
if
precisely
accounts
for and*

ARTICLE IV

MAXIMUM AND MINIMUM ROYALTY SCHEDULES

4.01 Should any computed royalty payable by ACTIVISION to MAGNAVOX under the provisions of Paragraph 3.01(a) hereof for any LICENSED VIDEO GAME be less than ONE DOLLAR (\$1.00), then ACTIVISION shall make payment of a minimum royalty of ONE DOLLAR (\$1.00) for each such LICENSED VIDEO GAME in lieu of said computed royalty.

4.02 Should any computed royalty by ACTIVISION to MAGNAVOX under the provisions of Paragraph 3.01(a) hereof for any LICENSED VIDEO GAME be more than TWO DOLLARS (\$2.00) per LICENSED VIDEO GAME, then ACTIVISION shall make payment of a maximum royalty of TWO DOLLARS (\$2.00) for each such LICENSED VIDEO GAME in lieu of said computed royalty.

~~4.03~~ In the first month of each calendar year, the ~~minimum~~
~~and maximum royalty~~ ^{dollar} amounts specified ^{above} in ~~Paragraphs 4.01 and~~
~~4.02, respectively, for that calendar year~~ shall be adjusted to
change in accordance with the change for the All Urban Consumers
Price Index as published by the U.S. Department of Labor. Said
adjustment shall be made by multiplying the ^{dollar} ~~minimum and maximum~~
~~royalty~~ ^{above} amounts specified in ~~Paragraphs 4.01 and 4.02,~~
respectively, by a fraction, the denominator of which is said
Consumer Price Index figure for December 1982 and the numerator
of which is said Consumer Price Index figure for December of the
year preceding said calendar year for which said adjustment is
being made.

insert
P. 7

ARTICLE IV

PAYMENTS

~~4~~
~~3~~.01 All payments made by ACTIVISION to MAGNAVOX are to be
in DOLLARS, or any other currency acceptable to LICENSOR, at
their offices in Tarrytown, State of New York, United States of
America.

~~4~~
~~2~~.02 ACTIVISION shall make timely withholding and payments
to appropriate authorities for the account of MAGNAVOX of any
applicable withholding taxes or any other appropriate
governmental taxes due from payments remitted by ACTIVISION to
MAGNAVOX. ACTIVISION shall ~~see that MAGNAVOX is given full~~

jtw/magnavox/brief
3/13/85 - fdf - draft no. 1

~~credit with the appropriate government authorities for having~~
~~paid such taxes and shall send to MAGNAVOX an official~~ ^{documentation} ~~return and~~
~~receipt~~ reflecting such payments.

ARTICLE VI²

REPORTING OF ROYALTIES

^S
A.01 Within ^{forty-five (45)} ~~thirty (30)~~ days after and as of the end of each
calendar quarter of each year during the term of this Agreement,
ACTIVISION shall furnish to MAGNAVOX a royalty report specifying:

(a) the total number of LICENSED PRODUCTS which have been
made, had made, used, sold, or otherwise disposed of by
ACTIVISION during the preceding calendar quarter:

(b) in separate listings, the number and types (by
catalogue number or the like) of LICENSED VIDEO GAMES and
LICENSED GAME PROGRAMS used and/or sold during the preceding
calendar quarter and the prices thereof upon which royalties are
based;

(c) the amount of credit due from LICENSED PRODUCTS
returned by customers and on which royalties had been paid
previously;

(d) the amount or amounts due to MAGNAVOX; and

(e) the taxes of any government withheld and paid on behalf
of MAGNAVOX pursuant to Paragraph ⁴ ~~5~~.02 above.

5
§.02 ACTIVISION shall make a written report to MAGNAVOX within ~~thirty (30)~~ ^{ninety (90)} days after the date of termination of this Agreement howsoever arising, stating in such report the number and NET SELLING PRICES of all LICENSED PRODUCTS sold or otherwise disposed of and the number of LICENSED PRODUCTS manufactured but not sold or otherwise disposed of, and upon which royalty not previously reported to MAGNAVOX is payable in consequence of such LICENSED PATENTS.

5
§.03 Each report submitted under the terms of this Article VI shall be accompanied by the payments due to MAGNAVOX.

5
§.04 ACTIVISION shall retain, for a period of ~~six (6)~~ ^{three (3)} years after making a royalty report, the records, files and books of account prepared in the normal course of business, which contain data reasonably required for the computation and verification of the amounts to be paid and the information to be given in such report. ACTIVISION shall permit the reasonable inspection, ^{upon reasonable} _{at} ^{notice and} reasonable times during normal business hours, of such records, files and books of account by a certified public accountant appointed by MAGNAVOX. Said accountant shall be permitted to inspect said records, files, and books and ACTIVISION shall give said accountant such other information as may ^{reasonably} be necessary and proper to enable the amounts of payments payable hereunder to be accurately ascertained. Neither MAGNAVOX nor said accountant shall disclose to anyone, directly or indirectly, any of the

jtw/magnavox/brief
3/13/85 - fdf - draft no. 1

information which they obtain as a result of any such inspection, and such accountant shall disclose to MAGNAVOX only such information as ACTIVISION is required to report to MAGNAVOX under this ARTICLE VI, including the amount of royalty due and payable. Such inspection by said certified public accountant shall be at MAGNAVOX' expense, ~~provided, however, that if any discrepancy or error exceeding three percent (3%) of the money actually due is found in such inspection, then the cost of such inspection shall be borne by ACTIVISION.~~

§
¶.05 ACTIVISION shall pay interest at the rate of One ~~and~~
~~One-Half~~ Percent (1 ~~and~~%) per month on any sums due from
ACTIVISION to MAGNAVOX and not paid by their due date.

§
¶.06 ~~In order to insure to MAGNAVOX the full royalty payment contemplated hereunder,~~ ACTIVISION agrees that, in the event any LICENSED PRODUCTS shall be sold: (1) to a corporation, firm, or association which, or individual who shall own a controlling interest in ACTIVISION by stock ownership or otherwise, or (2) to a corporation, firm or association in which ACTIVISION or stockholders of the ACTIVISION, or any subsidiary company of the ACTIVISION shall own, directly or indirectly, a controlling interest by stock ownership or otherwise, or (3) to a corporation, firm, or association with which, or individual with whom ACTIVISION or its stockholders or subsidiary companies shall have any agreement, understanding, or arrangement (such as, among

jtw/magnavox/brief
3/13/85 - fdf - draft no. 1

other things, an option to purchase stock, or an arrangement involving a division of profits or special rebates) ~~or allowances~~ without which agreement, understanding, or arrangement, prices paid by such corporation, firm, association, or individual for LICENSED PRODUCTS would be higher than the NET SELLING PRICE reported by the ACTIVISION, or if such agreement, understanding, or arrangement results in extending to such corporation, firm, association, or individual lower prices for LICENSED PRODUCTS than those charged to outside concerns buying similar merchandise in similar amounts and under similar conditions, then, and in any of such events, the royalties to be paid hereunder in respect of such LICENSED PRODUCTS shall be based upon the NET SELLING PRICE at which the purchaser of LICENSED PRODUCTS so sold resells such PRODUCTS rather than upon the NET SELLING PRICE of ~~the~~

ACTIVISION, provided, however, that the ACTIVISION shall not be obligated under the foregoing to pay royalty based upon selling prices ~~in excess~~ ^{in excess} of the standard net selling price at which it or any of the organizations or individuals associated with it as specified in this Paragraph shall sell LICENSED PRODUCTS to any ~~wholly~~ independent jobber or distributor.

ARTICLE VI

TERM AND TERMINATION

6
7.01 The word "termination" and cognate words such as "term" and "terminate" used in this Article VII are to be read, except where the contrary is specifically indicated, as omitting from

but in no event shall the Net Selling Price be more than charged to outside concerns buying similar merchandise in similar amounts and under similar conditions

jtw/magnavox/brief
3/13/85 - fdf - draft no. 1

their effect the following rights and obligations, all of which shall survive any termination to the degree necessary to permit their complete fulfillment or discharge:

(a) ACTIVISION's obligation to supply a terminal report as specified in Paragraph 6.02 of Article VI;

(b) MAGNAVOX' right to receive or recover and ACTIVISION's obligation to pay royalties accrued or accruable for payment at the time of any termination;

(c) ACTIVISION's obligation to maintain records and MAGNAVOX' right to conduct a final audit as provided in Paragraph 6.04 of Article VI;

(d) Licenses under LICENSED PATENTS running in favor of customers or transferees of ACTIVISION in respect to LICENSED PRODUCTS sold or transferred by ACTIVISION prior to any termination of this Agreement, subject to payment by ACTIVISION of any royalties payable with respect to such LICENSED PRODUCTS; and

(e) any cause of action or claim of either party, accrued or to accrue, because of any breach or default by the other party.

⁶
~~7~~.02 Unless terminated as provided in Paragraphs ⁶~~7~~.03 ~~or~~
~~7-04~~ of this Article VII, this Agreement shall run to the end of the life of the last to expire of the LICENSED PATENTS and shall thereupon terminate.

~~7.03 Unless otherwise specified herein, if either MAGNAVOX or ACTIVISION shall default in the performance of any of the terms and provisions of this Agreement to be performed by it, and such default shall not be cured within sixty (60) days after written notice of such default is given by the nondefaulting party to the defaulting party, then at any time after the expiration of such sixty (60) days, the nondefaulting party may give written notice to the defaulting party of its election to terminate this Agreement. Thereupon, this Agreement shall terminate on the date specified in such notice, which shall not be less than thirty (30) days following the receipt of such last mentioned notice. Such right of termination shall not be exclusive of any other remedies or means of redress to which the nondefaulting party may be lawfully entitled, it being intended that all such remedies be cumulative.~~

^{6 3}
~~7.04~~ If either MAGNAVOX or ACTIVISION should be dissolved, or should file a voluntary petition in bankruptcy, or an order should be entered pursuant to any law relating to bankruptcy or insolvency appointing a receiver or trustee for said party, then MAGNAVOX or ACTIVISION, as the case may be, within sixty (60) days thereafter may give written notice to the party filing such petition in bankruptcy or subject to such order of its desire to terminate this Agreement. Thereupon, this Agreement shall

*rescinded
which order is not rescinded within 60 days*

terminate on the date specified in such notice, which shall not be less than thirty (30) days following the filing of such notice.

ARTICLE VIII

NO LEGAL REPRESENTATION

7
§.01 Nothing contained in this Agreement shall be construed as conferring any license or right with respect to any trademark, trade, or brand name, the corporate name of either party or any of its subsidiaries, or any other name or mark, or any contraction, abbreviation, or simulation thereof.

ARTICLE ~~IX~~ VIII

DISCLAIMER OF WARRANTIES-SAVE HARMLESS

§.01 To the best of MAGNAVOX' knowledge, all LICENSED PATENTS are valid, but MAGNAVOX does not guarantee the validity thereof. MAGNAVOX further does not warrant that the manufacture, use, installation, or sale by ACTIVISION of the LICENSED PRODUCTS does not or shall not infringe the patents or other rights of persons not a party hereto. MAGNAVOX shall not be obliged to defend or hold ACTIVISION harmless against any suit, claim, demand, or action based on actual or alleged infringement of any patents or other rights belonging to persons not a party to this Agreement. Any such infringement by ACTIVISION shall not relieve it from performance of its obligations hereunder.

jtw/magnavox/brief
3/13/85 - fdf - draft no. 1

⁸
~~8~~.02 MAGNAVOX hereby disclaims any and all liability or responsibility whatsoever for any loss or damage arising out of the production, design, sale, installation, or use of LICENSED PRODUCTS manufactured or sold by ACTIVISION under this Agreement. MAGNAVOX does not warrant that such LICENSED PRODUCTS are or will be of merchantable quality or fit for any particular purpose for which they may be bought or used.

ARTICLE IX

INFRINGEMENT BY THIRD PARTIES

⁹
~~10~~.01 ACTIVISION shall promptly inform MAGNAVOX upon learning of any infringement of LICENSED PATENTS.

⁹
~~10~~.02 MAGNAVOX agrees to bring and prosecute such suits for infringement of the LICENSED PATENTS as may reasonably be necessary to protect unlicensed competition from materially interfering with the business of ACTIVISION hereunder. However, MAGNAVOX shall not be obligated to bring more than one such suit at a time, or against more than one type of infringing device at a time.

ARTICLE X

SUBSIDIARIES

⁰
~~11~~.01 This Agreement shall be binding upon and inure to the benefit of the SUBSIDIARIES of each party hereto. It shall not be otherwise assignable by either of the parties hereto, in whole

or in part, to any third party whatsoever, nor shall the rights hereof of either of the parties hereto otherwise be or become in any way, directly or indirectly, transferable or available to, or divisible or capable of being shared with, or inure to the benefit of any third party without the prior written consent of the other party hereto.

⁰
17.02 ACTIVISION shall be responsible for, and hereby assumes full liability in respect of all royalty reports and payments for all LICENSED PRODUCTS made, made for, used, sold, or otherwise disposed of by its SUBSIDIARIES during the term of this Agreement.

ARTICLE XI

MARKING

17.01 ACTIVISION agrees to ^{reasonably} mark all LICENSED PRODUCTS sold by it under the license herein granted with the word "Patents" or "Patent", respectively, and the numbers or number of the applicable patents or patent of the country of sale. MAGNAVOX shall give ACTIVISION timely notice of any additional patents issuing pertaining to LICENSED PRODUCTS.

as reasonably
specified by
MAGNAVOX.

ARTICLE XIII

CONVERSION OF LICENSOR LICENSE
WITH SANDERS TO A NONEXCLUSIVE LICENSE

~~13.01~~ In the event that MAGNAVOX converts its license from SANDERS to a nonexclusive license, then ACTIVISION shall from the date of notice of such conversion to a nonexclusive license, consider SANDERS the licensor in this Agreement and shall make all payments and be responsible for all obligations under this Agreement to SANDERS.

ARTICLE ~~XIV~~^{XIII}

NOTICES

³
~~14.01~~ Any notice or request required or permitted to be given under or in connection with this Agreement or the subject matter hereof shall be deemed to have been sufficiently given when, if given to ACTIVISION, it shall be addressed to:

and when, if given to MAGNAVOX, it shall be addressed to:

Director of Licensing
The Magnavox Company
580 White Plains Road
Tarrytown, New York 10591

and in each case sent by Registered Mail, postage prepaid.
Unless otherwise stated herein, the date on which a notice or request is mailed shall be deemed to be the date on which such notice or request has been given. Each party may give written

notice of a change of address; and after notice of such change has been received, any notice or request shall thereafter be given to such party as above provided at such changed address.

ARTICLE ~~XV~~^{XIV}

WAIVER--SEVERABILITY

⁴
1~~2~~.01 The waiver by either party of a breach or default in any of the provisions of this Agreement by the other party shall not be construed as a waiver by such party of any succeeding breach of the same or other provisions; nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power, or privilege that it has or may have hereunder operate as a waiver of any such right, power or privilege by such party.

⁴
1~~2~~.02 If any term, clause or provision of this Agreement shall be judged to be invalid, the validity of any other term, clause, or provision shall not be affected; and such invalid term, clause, or provision shall be deemed deleted from the contract.

ARTICLE XV~~2~~

GOVERNING LAW

⁵
1~~2~~.01 This Agreement shall be governed by and construed, and any claim or controversy arising with respect thereto shall be determined, in accordance with the laws of the State of ~~New York~~^{California}.

Venue for any dispute shall be the United States District Court for the Northern District of California.

ARTICLE XVI~~2~~

COMPLIANCE WITH LAWS
OF PERTINENT GOVERNMENTS

⁶
1~~2~~.01 ~~Each party~~ shall at all times comply, at its own expense, with all applicable laws, regulations, and orders of any government and all departments, instrumentalities, or political subdivisions thereof, relating to or in any way affecting this Agreement and the performance ^{of its obligations} ~~by ACTIVISION~~ hereunder. ACTIVISION shall, at its own expense, negotiate and obtain any approval, license, or permit it may need in the performance of its obligations; shall declare, record, or take such other steps as required to render this Agreement binding; and shall make all payments required of it under this Agreement.

ARTICLE XVII~~2~~

ASSIGNMENT

⁷
1~~2~~.01 Except as otherwise provided herein, ACTIVISION shall not assign, transfer, sublicense, sublet, or encumber its interest in this Agreement or rights granted herein in any manner without the written consent of MAGNAVOX.

~~XVIII~~
ARTICLE ~~XIX~~

MORE FAVORABLE TERMS

⁸
1~~2~~.01 In case MAGNAVOX shall hereinafter grant a license under any LICENSED PATENTS under which a license is granted hereunder to any third party manufacturer of consumer or home

jtw/magnavox/brief
3/13/85 - fdf - draft no. 1

type amusement games in the TERRITORY, other than a company in which MAGNAVOX has a substantial interest, direct or indirect, such as N.V. Philips' Gloeilampenfabrieken, or any of its subsidiaries, of the same scope as the license herein granted at rates of royalty lower than that provided for in this Agreement ~~(excepting licenses or other arrangements made pursuant to a settlement of dispute or a court decision and licenses the consideration for which consists in whole or in part of patent rights or other rights of such substantial value as in the opinion of MAGNAVOX are sufficient to warrant a reduction in royalty rates below the rates provided for herein, or the acceptance of such rights in lieu of royalties)~~, MAGNAVOX shall notify ACTIVISION of the grant of such license and ACTIVISION shall, at its election exercisable at any time within thirty (30) days after receipt of such notice, be entitled to such lower royalty rate from the date such license agreement was entered into with said third party until the date of termination of such third party license agreement, at which time the terms of this License Agreement will again take effect, provided that ACTIVISION at the same time also accepts any less favorable terms and conditions in such third party license agreement.

jtw/magnavox/brief
3/13/85 - fdf - draft no. 1

ARTICLE ~~XX~~^{KIX}
INTEGRATION

and the Settlement Agreement entered into contemporaneously herewith

¹⁹
~~20~~.01 This instrument contains the entire and only agreement between the parties and supersedes all pre-existing agreements between them respecting its subject matter. No modification, renewal, extension, waiver, and (except as provided in Article VII hereof) no termination of this Agreement or any of its provisions shall be binding upon the party against whom enforcement of such modification, renewal, extension, waiver, or termination is sought, unless made in writing and signed on behalf of such party by one of its executive officers, or in the case of MAGNAVOX, by a duly authorized officer or the Director of Licensing. As used in this Article XX the word "termination" includes any and all means of bringing to an end prior to its expiration by its own terms this Agreement, or any provision thereof, whether by release, discharge, abandonment, or otherwise.

-8083
jtw/magnavox/brief
3/13/85 - fdf - draft no. 1

IN WITNESS WHEREOF, the parties hereto cause their corporate names to be affixed by their respective duly authorized officers or representatives.

Attest:

Attest:

THE MAGNAVOX COMPANY

By _____

Title _____

Date _____

ACTIVISION, INC.

By _____

Title _____

Date _____