

From: Rady, Lisa K
Sent: Tuesday, March 2, 2004 10:06 AM
To: Melnick, Michael R <melnimr@stortek.com>
Subject: LibAttach/Netbula - IXOS arch1 341 KB

Hi Mike,

...As you can see, we have exceeded the 1000 distributions that we had right to, with Netbula...I think it is obvious that engineering has not and did not monitor the distributions on this product...

....

Thanks,

Lisa Rady
Automated Tape Solutions
Software Program Management

From: Murray, Thomas J (Manager, RD&E Software Engineering)
Sent: Monday, March 15, 2004 10:42 AM
To: McGonigle, Jeffrey L
Cc: Melnick, Michael R; Murray, Thomas J; Rady, Lisa K; Kennedy, Russell P (Russ)
Subject: RE: LibAttach Update
Importance: High

Hi Jeff,

...We either need to increase the Netbula license or put a stop-ship on the LibAttach product, because we have shipped LibAttach copies up to the limit of the current Netbula license (Netbula is embedded in our LibAttach product.)

Thanks,

-Tom

From: Melnick, Michael R
Sent: Tuesday, June 28, 2005 12:58 PM
To: Abramovitz, Michael P; Rady, Lisa K; Williams, Michael P; Murray, Thomas J
Cc: Wagner, Holly M
Subject: RE: Netbula

The number that Holly has provided and thought it may be low causes quite a problem for you. We have only made 2 purchases for the rights to distribute a total of 2000 licenses.

You will need to order additional distribution rights or we will be in breach of the agreement. As our pricing is based on cumulative purchases I will need to know how many additional licenses you wish to order so I can get you pricing.

Regards,
Mike Melnick
Contract Administrator, Senior Consultant
OEM Systems

DEPOSITION OF MICHAEL MELNICK ON 09/19, 2007

(page 157 of the transcript)

Question: Did you ever tell Netbula that you were selling unlimited licenses?

MR. PULGRAM (Sun's attorney) Objecting: Vague as to time.

Q: In 2005, did you tell Netbula that you were selling unlimited licenses?

Mr. Melnick: I am not aware of that, no.

Q: In 2004, did you tell Netbula that you were selling unlimited licenses?

Mr. Melnick: Not that I'm aware of, no.

Q: In 2003, did you tell Netbula that you were selling --

Mr. Melnick: Not that I'm aware of.

THE ROLES OF THE PERSONS ABOVE

Rady, Lisa K.: Manager LibAttach Software

Murray, Thomas J: Manager, RD&E Software Engineering

Melnick, Michael: The person who drafted and signed the license purchase agreement

Martin J. Jenkins Rulings on Software Piracy Cases

(Quoting from the Orders)¹

Case 1: *NETBULA, LLC v. SYMANTEC CORP.*, 516 F. Supp.2d 1137 (N.D.Cal. 2007) (order dismissing lawsuit)

The first appears in a screen shot from a [PowerRPC] program ..., and states: "Netect Ltd., One user ONC RPC Dev License." ... The second line of text, which Plaintiff claims is contained in the pwrpc32.dll file itself, states: "Netect LTD. Dev License, Non distributable."... Once more, Plaintiff again fails to show that this text was ever seen by Netect.... For the foregoing reasons, the Court GRANTS Defendants' Motion for Summary Judgment as to Plaintiff's copyright infringement claim.

Case 2: *NETBULA, LLC v. SUN MICROSYSTEMS, INC.* (N.D.Cal. 1-17-2008)

The first provision in the 2000 Agreement, titled "Netbula ONC RPC SDK and POWERRPC SDK Product License" grants to Storagetek:

“a non-exclusive, perpetual, irrevocable license for use by Storagetek's employees, consultants and subsidiaries for up to ONE user(s) for each of the licenses purchased, to use the PowerRPC SDK Product under Windows NT and 95/98 platforms; each user can only use the software on one on computer.”

...

First, turning to the number of users, both the 2000 and 2004 Agreements state that one user may use each of the licenses purchased. This provision does not limit how the software may be used, but instead defines what the purchase of one license gives the buyer. The amount charged for each license is set forth separately in Exhibit C to the contract. (Melnick Decl., Exh. 1 at 7.) The parties agree that StorageTek purchased eight licenses with the 2000 agreement and at least one with the 2004 agreement. The agreement, therefore, does not appear to limit the scope of the license. Instead, like the compatibility requirements in Sun II, the limitation on the number of users is a separate contractual promise, or covenant, that does not limit or condition the use of the license. Therefore, because this provision is not a limitation on the scope of the license, Plaintiff is not entitled to a copyright infringement claim on this issue.

...

¹ Visit <http://www.American-Justice.org> for more information

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America



Registration Number:

TXu 1-576-987

Effective date of registration:

November 27, 2007

Title

Title of Work: YUE PWRPC
Previous or Alternative Title: YRPC

Completion/Publication

Year of Completion: 1996

Author

▪ **Author:** DONGXIAO YUE
Author Created: COMPUTER PROGRAM

Work made for hire: No

Domiciled in: United States

Year Born: 1968

Anonymous: No

Pseudonymous: No

Copyright claimant

Copyright Claimant: DONGXIAO YUE
2777 ALVARADO STREET, SUITE C, SAN LEANDRO, CA, 94577

Limitation of copyright claim

Material excluded from this claim: RPC SRC 4.0

Previously registered: No

New material included in claim: New computer program text, revisions and additional text of computer program

Certification

Name: DONGXIAO YUE
Date: November 15, 2007