Author: Steve Wadsworth at FILM-ONLINE-GLENDALE
Date: 10/16/97 2:24 PM
Priority: Normal
TO: Jake Winebaum at FILM-ONLINE-GLENDALE
TO: Eric Aledort at FILM-ONLINE-GLENDALE
CC: Scott Bushman at FILM-ONLINE-GLENDALE
Subject: Microsoft

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I just had a very unpleasant conversation with Bill Spencer regarding the NetCaster logo. Several times, Bill referred to proceeding down the Dispute Resolution path in the Termination section of our deal (Sect 11.2) and went so far as to say they would take our icon off the Active Desktop if this is not resolved. According to Bill, they believe anything less than pure text only (not Disney script) in the NetCaster channel bar is a violation of our contract with MS, and they are not satisfied with the new logo we prepared in an effort to make them happy. He said this is a contractual issue and not a business issue of making them happy. I again told him that we do not agree with their assertion that our logo in the Netcaster channel bar is a violation of our deal and that the deal is clear.

Bill requested that Eric A. begin a dialog with MS' attorney Mary Williams to try to resolve the issue. I told him that unless Mary changed her perspective, I didn't think they would resolve it. However, we agreed to go down that path and to ask our respective attorney's to prepare a points document that can help the business people figure out how to handle the disagreement.

Bill also made it clear that Brad believes we will back down because we would be screwed to pick Netcaster over Microsoft. I pointed out to Bill that I didn't like being strongarmed and that this approach to the relationship is only going to screw it up. I also asked why Brad hasn't engaged in this if this is such a big deal, and Bill only said that Brad didn't want to and expected that we would back down (Sounds like Brad doesn't want to have to get involved in a disagreement with us). Bill said he would raise it to Brad again and see if Brad really wants to go down the Dispute Resolution / Termination path if we don't back down.

Unfortunately, Microsoft has the upper hand from a business value perspective even though they don't have it from a contractual perspective. I leave it to Eric, but it seems crystal clear to me we are in the right on the contract, but even so, it's probably not worth it to take them on. The value of the Netcaster channel is low, and if they take us off the Active Desktop while this is being resolved in court, we lose substantial value. Plus, getting into litigation over this, even though we are in the right, will clearly undermine any chance of doing more with them. We are being roughed up by the 1000 lbs. gorilla of the industry.

Recommendation: 1) We let the legal guys engage on it, 2) we force Brad to engage on it, 3) we simultaneously figure out a graceful way to resolve this (give them what they want even though they are wrong and strongarming us).