

# Apple sues Microsoft over Windows screen displays

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In an unexpected move, Apple Computer has sued both Microsoft and Hewlett-Packard, claiming that they have violated Apple's copyrights on its Macintosh user interface's screen displays. Apple filed the suit on March 17 in US District Court in San Jose, Calif. The suit seeks to prevent distribution of both programs and to gain \$50,000 in damages per infringement, all profits generated so far by their sales, and recovery of its legal fees.

Although the suit is confined to Microsoft's Windows Version 2.03 and HP's New Wave operating environments, it may affect the joint IBM-Microsoft Presentation Manager, the graphical user interface for the new OS/2 operating system because Presentation Manager is based on Windows. Apple spokeswoman Carleen LeVasseur acknowledged that the suit against Microsoft may affect Presentation Manager, but "I would say they [such comments] are speculative. [This suit] is focused on two products and companies," she said. But LeVasseur would not deny that blocking Presentation Manager was a goal in filing the suit: "It may affect other software down the line," she said.

Ironically, Microsoft is the largest developer of software for the Macintosh. But the suit should not sever the two companies' relationship, LeVasseur said: "Companies sue each other all the time. It's a fact of [doing] business. We still have a working relationship with Microsoft." Microsoft spokeswoman Jill Pembroke would not discuss the effects of the suit on Microsoft's future business with Apple.

The suit may be further complicated when the US Copyright Office issues its guidelines this spring on screen-display copyrights. The guidelines would clarify to what degree visual displays may be copyrighted and whether visual displays must be copyrighted separately from the source code that generates them.

Courts have split over whether a copyright on the source code protects the display, since different code can produce identical displays. Several such suits are pending ("Does Software Copyright Extend to Look and Feel?" and "Clone Makers' Arguments," *Soft News*, May 1987, pp. 90-92).

**Licensing agreement.** On Nov. 22, 1985, Apple licensed its Lisa and Macintosh display technology to Microsoft for the Windows (Version 1.0), Chart, Excel, Multiplan, Word, and File programs. In the agreement, made public in late March by Microsoft, Apple granted Microsoft a "nonexclusive, worldwide, royalty-free, perpetual, nontransferable license to use these derivative works [the Microsoft visual displays derived from Macintosh displays] in present and future software programs and to license them to and through third parties for use in their software programs."

The agreement gave Apple the same rights to use any interface developed through November 1990 by Microsoft. It also prevented Microsoft from writing programs similar to its Excel spreadsheet, which uses a graphical interface markedly different from the menu interfaces common on MS-DOS spreadsheets.

**License exceeded?** Microsoft has maintained that it has always acted under this license in both the development of Windows 2.03 and the transfer of user-interface technology to Hewlett-Packard for New Wave, according to company statements. "Microsoft has not exceeded the license agreement, nor has it infringed on any Apple copyrights or patents. Specifically, no visual displays on Microsoft Windows 2.03 exceed the 1985 agreement," a March 18 statement said.

Apple has contended that Microsoft exceeded the scope of the agreement by using Macintosh screen-display technology created *after* the 1985 agreement, LeVasseur said. The agreement specifically mentioned Version 1.0 of Windows to clearly mark which technology was being licensed, she said. (It did not specify version numbers for the other programs.)

But Apple's suit does not specify what displays in Windows 2.03 are not covered by the 1985 agreement. LeVasseur said that "it was not a certain feature that went over the line" but a generally more-Macintosh-like look in Windows 2.03. Apple lawyers will try to convince the court that the look is indeed more Macintosh-like and, if the court agrees that it is, that the new look exceeded the license agreement, she said.

Microsoft's chairman, Bill Gates, told

the weekly trade newspaper *Infoworld* in its March 29 edition that one feature in Windows that Apple felt exceeded the 1985 agreement was overlapping windows, an idea that came originally from the Xerox Palo Alto Research Center. Gates also said overlapping windows is an idea, not a copyrightable expression, and so is not governed by the licensing agreement.

**Apple warnings.** Apple had warned Microsoft in mid-1986 that it thought the emerging Windows 2.03 violated some of Apple's seven visual-display and six program copyrights on Lisa, Macintosh Finder, Lisa Draw, MacDraw, MacPaint, Lisa Project, MacProject, Macintosh ROM, and Macintosh Plus ROM, LeVasseur said. Apple also warned Hewlett-Packard in December 1987 that it thought New Wave, which uses the Windows environment, violated the copyrights as well, she said.

Hewlett-Packard had sought a license from Apple to use Macintosh-like displays in New Wave, but Apple refused to grant it. LeVasseur said she did not know the reason for the refusal. Hewlett-Packard then received a license to the display technology from Microsoft.

While the Apple-Microsoft agreement permits third-party licensing, in dispute is whether Microsoft licensed more than the agreement covered. LeVasseur said that Apple's 1986 warning to Microsoft and 1987 warning to Hewlett-Packard meant that both companies knowingly pursued potential infringements.

Apple has granted screen-display licenses to several hundred Macintosh software developers, LeVasseur said. LeVasseur did not know if Apple had granted licenses to MS-DOS developers but said that the 1985 agreement with Microsoft did not prevent Apple from doing so.