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RECEIVED

OCT 17 1991.

CLERK, U. S. DISTRICT COURT
SAN FRANCISCO

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FILED
MAR 13 1992

10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12
13 UNITED STATES OF AMERICA,)
14 Plaintiff,)
15 v.) Civil Action No. C 91 3666 M
16 BORLAND INTERNATIONAL, INC., and) FINAL JUDGMENT
17 ASHTON-TATE CORPORATION,)
18 Defendants.) ANTITRUST
19)
20) Entered: March 13, 1992

21 FINAL JUDGMENT

22 WHEREAS, Plaintiff, United States of America, having filed
23 its Complaint herein on October 17, 1991, and Plaintiff and
24 Defendants, by their respective attorneys, having consented to
25 the entry of this Final Judgment without trial or adjudication of
26 any issue of fact or law herein and without this Final Judgment
27 constituting any evidence against or an admission by any party
28 with respect to any such issue;

1 AND WHEREAS, Defendants have agreed to be bound by the
2 provisions of this Final Judgment pending its approval by the
3 Court;

4 AND WHEREAS, the essence of this Final Judgment is prompt
5 and certain remedial action to ensure that, after the acquisition
6 referred to herein, Defendants' ability to exercise market power
7 and restrain competition in the sale of relational database
8 management system software is not enhanced by an attempt to
9 enforce claims to certain alleged intellectual property rights;

10 NOW, THEREFORE, before the taking of any testimony and
11 without trial or adjudication of any issue of fact or law herein,
12 and upon consent of the parties hereto, it is hereby

13 ORDERED, ADJUDGED AND DECREED as follows:

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15 I.

16 JURISDICTION

17 This Court has jurisdiction over the subject matter of this
18 action and over each of the parties hereto. The Complaint states
19 a claim upon which relief may be granted against defendants under
20 Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

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II.

DEFINITIONS

As used in this Final Judgment:

4 A. "Acquisition" means the Merger Agreement signed by
5 Borland, Object, Inc., a wholly-owned subsidiary of Borland, and
6 Ashton-Tate on July 9, 1991, pursuant to which Borland will
7 acquire 100 percent of the common stock of Ashton-Tate in
8 exchange for Borland common stock.

9 B. "Ashton-Tate" means the defendant Ashton-Tate
10 Corporation, its successors and assigns, its parents,
11 subsidiaries, affiliates, directors, officers, managers, agents,
12 employees, attorneys, any other persons under its direct or
13 indirect control, and any other person acting for or on behalf of
14 it.

15 C. "Borland" means the defendant Borland International,
16 Inc., its successors and assigns, its parents, subsidiaries,
17 affiliates, directors, officers, managers, agents, employees,
18 attorneys, any other persons under its direct or indirect
19 control, and any other person acting for or on behalf of it.

20 D. "Ashton-Tate's dBASE family of products" means the
21 computer programs bearing the dBASE trademark for the management
22 of computer databases of which Ashton-Tate is the rightful owner
23 and publisher, the exclusive rights and privileges in and to the
24 copyrights of which Ashton-Tate owns, including revisions or
25 updates to such programs.

26 E. "The Los Angeles action" means Ashton-Tate Corp. v. Fox
27 Software, Inc., et al., No. CV 88-6837 TJH (Tx), filed in the

1 United States District Court for the Central District of
2 California.

3 F. "The Boston action" means Lotus Development Corp. v.
4 Borland International, Inc., Civil Action No 90-11662-K, filed in
5 the United States District Court for the District of
6 Massachusetts.

7 G. "Person" means any natural person, corporation,
8 association, firm, partnership, or other business or legal
9 entity.

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11 III.

12 APPLICABILITY

13 A. The provisions of this Final Judgment shall apply to
14 Defendants, to their successors and assigns, to their
15 subsidiaries, affiliates, directors, officers, managers, agents,
16 employees, attorneys, and to all other persons in active concert
17 or participation with any of them who shall have received actual
18 notice of this Final Judgment by personal service or otherwise.

19 B. Nothing herein shall suggest that any copyright or
20 other intellectual property right is legally cognizable, valid,
21 or enforceable by Defendants or any other person.

22 C. Nothing herein shall suggest that any portion of this
23 Final Judgment is or has been created for the benefit of any
24 third party, and nothing herein shall be construed to provide any
25 rights to, or create any remedies for, any third party.

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IV

INJUNCTION

3 A. Defendants are hereby enjoined and restrained from
4 initiating or making any claim or counterclaim that asserts
5 claims of copyright infringement in the command names, menu
6 items, menu command hierarchies, command languages, programming
7 languages and file structures used in and recognized by Ashton-
8 Tate's dBASE family of products, standing alone and apart from
9 other aspects of those computer programs.

10 B. Nothing in Paragraph IV.A. shall preclude defendants
11 from asserting in any litigation the legal right to use the
12 command names, menu items, menu command hierarchies, command
13 languages, programming languages and file structures or from
14 asserting copyright protection in and copyright infringement of
15 the computer program code (including its structure, sequence and
16 organization) and other aspects of the user interface of Ashton-
17 Tate's dBASE family of products.

18 C. Should the district court in the Boston action dismiss
19 Lotus Development Corporation's claims for copyright protection
20 in its menu command hierarchy, Borland shall seek prompt
21 resolution of the Los Angeles action in a manner consistent with
22 the Boston court's disposition and Paragraph IV.A., above.
23 Notwithstanding the foregoing, within a period of ninety (90)
24 days from the entry of this Final Judgment, Borland shall use its
25 best efforts to resolve the Los Angeles action in a manner
26 consistent with Paragraph IV.A., above; provided, however, that
27 Borland shall dismiss with prejudice its claims in the Los

Angeles action within fifteen (15) days following the dismissal with prejudice of Fox's counterclaims in the Los Angeles action.

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AFFIDAVITS

6 Within ten (10) business days of filing of this Final
7 Judgment and every thirty (30) days thereafter until settlement
8 or dismissal of the Los Angeles action, defendants shall deliver
9 to plaintiff an affidavit as to the fact and manner of compliance
10 with Section IV. of this Final Judgment. Each such affidavit
11 shall include the name, address, and telephone number of each
12 person who, at any time after the period covered by the last such
13 report, discussed in any way, the resolution of the Los Angeles
14 action. Defendants shall maintain full records of all efforts
15 made to resolve the Los Angeles action.

VI.

VISITORIAL PROVISIONS

19 For the purpose of determining or securing compliance with
20 this Final Judgment, and subject to any legally recognized
21 privilege, from time to time:

22 A. Duly authorized representatives of the Department of
23 Justice shall, upon written request of the Attorney General or of
24 the Assistant Attorney General in charge of the Antitrust

1 Division, and on reasonable notice to the Defendants made to
2 their principal offices, be permitted:

3 1. Access during office hours of the Defendants to
4 inspect and copy all books, ledgers, accounts,
5 correspondence, memoranda and other records and documents
6 in the possession or under the control of the Defendants,
7 who may have counsel present, relating to any matters
8 contained in this Final Judgment; and

9 2. Subject to the reasonable convenience of the
10 Defendants and without restraint or interference from it,
11 to interview officers, employees and agents of the
12 Defendants, who may have counsel present, regarding any
13 such matters.

14 B. Upon the written request of the Attorney General or of
15 the Assistant Attorney General in charge of the Antitrust
16 Division made to the Defendants' principal office, the Defendants
17 shall submit such written reports, under oath if requested, with
18 respect to any of the matters contained in this Final Judgment as
19 may be requested.

20 C. No information or documents obtained by the means
21 provided in this Section shall be divulged by any representative
22 of the Department of Justice to any person other than a duly
23 authorized representative of the Executive Branch of the United
24 States, except in the course of legal proceedings to which the
25 United States is a party (including grand jury proceedings), or
26 for the purpose of securing compliance with this Final Judgment,
27 or as otherwise required by law.

1 D. If at the time information or documents are furnished
2 by a Defendant to Plaintiff, the Defendant represents and
3 identifies in writing the material in any such information or
4 documents to which a claim of protection may be asserted under
5 Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such
6 defendant marks each pertinent page of such material, "Subject to
7 claim of protection under Rule 26(c)(7) of the Federal Rules of
8 Civil Procedure," then ten (10) days notice shall be given by
9 Plaintiff to that Defendant prior to divulging such material in
10 any legal proceeding (other than a grand jury proceeding) to
11 which that defendant is not a party.

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VII.

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EXPIRATION OF JUDGMENT

15 This Final Judgment will expire on the tenth anniversary of
16 its date of entry.

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VIII.

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RETENTION OF JURISDICTION

20 Jurisdiction is retained by this Court for the purpose of
21 enabling any of the parties to this Final Judgment to apply to
22 this Court at any time for such further orders or directions as
23 may be necessary or appropriate for the construction or carrying
24 out of this Final Judgment, for the modification of any of the
25 provisions hereof, for the enforcement of compliance herewith,
26 and for the punishment of any violations hereof.

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IX.

STATEMENT OF PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated:

MAR 13 1992

~~United States District Judge~~