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July 27, 2005

Via Hand Delivery

Mr. David Peralta
Arbortext, Inc.
1000 Victor's Way
Ann Arbor, Michigan 48108

Re: Blueberry Software Royalty Audit

Dear Mr. Peralta:

As you know, this recent round of events began with Arbortext, Inc.'s ("Arbortext") offer to buy out Blueberry Software, Inc. ("Blueberry") in the fall of 2003. My understanding of the buyout offer at that time was that Arbortext proposed to pay Blueberry a lump sum of $100,000 for a lifetime non-exclusive, royalty-free license. Blueberry rejected this offer for a number of reasons, but primarily because there were outstanding accounting and royalty payment disputes that required resolution. The back and forth continued without agreement until the parties decided to retain Mark Robinson of Plante & Moran, PLLC to conduct a royalty audit. Begun last fall, Mr. Robinson completed this audit and issued his report to the parties on March 21, 2005 (the "Audit") (Exhibit 1). The Audit disclosed three main areas of discrepancy and confirmed additional inconsistencies among the Arbortext customers that Blueberry had requested Mr. Robinson to examine. With the Audit now behind us, we take this opportunity to respond on behalf of Blueberry.

This letter takes the step that Mark Robinson deliberately did not. Where the Audit identified potential discrepancies that required a legal interpretation, Mr. Robinson deferred to the parties. When the Audit revealed certain factual inconsistencies, Mr. Robinson chose only to point them out. Our approach has been to apply a careful and reasoned analysis of the stated discrepancies within the context of the Strategic Partnering Agreement executed between the parties in July 2000 ("SPA") (Exhibit 2) and other relevant documentation. This has taken time and, as we understood your competing time constraints in allowing Mr. Robinson to complete the Audit, we have appreciated your patience as we have prepared this response.

EXHIBIT N

There are three main components to our response: the first addresses the three areas of discrepancy cited in the Audit; the second addresses additional discrepancies and includes information about the group of companies Blueberry asked Mr. Robinson to examine. The third component highlights Blueberry's concerns about the status and use of its software as Arbortext moves to its next generation of the Enterprise E-content Engine, that is, from "E3" to "Armada" to "Transition."

I. The Audit Discrepancies (Audit, p 11)

A. Allocation of E3 Revenue (Audit, p 7)

Soon after the SPA was executed on July 12, 2000, Arbortext decided to bundle its print and web software modules with Blueberry's Epic Interchange module ("Interchange"), calling the resulting product "E3," which stood for Enterprise E-content Engine. With E3, Arbortext embarked then upon an entirely new pricing concept, one that had not been negotiated in the SPA. Arbortext's plan was to give Blueberry a "credit" of $10,000 for each inclusion of Interchange in E3 instead of a percentage based on the $50,000 sale price of E3. While Arbortext was quick to present Mark Robinson with an email exchange between Kevin Dwan and Jim Sterken dated September 25, 2000, that purports to modify the SPA, this email raises more questions than it answers.

Before getting to the email, however, it's important to reiterate and understand the terms specifically negotiated in the SPA. According to these terms, Blueberry was to receive royalties of 15%, 10% or 5%, based on a sliding scale that decreased as total sales of Covered Arbortext Products accumulated. For example, Arbortext would pay a 15% royalty to Blueberry on all initial sales up to a cumulative total of $466,667. For sales over $466,667 but less than $1,166,668, the rate was 10%. Finally, Arbortext was to pay Blueberry a 5% royalty on all sales over $1,166,667. "Covered Arbortext Products" were defined in the SPA as:

> . . . those software products licensed by Arbortext, as further described in Exhibit B, which incorporate the Blueberry Software licensed under this Agreement. Covered Arbortext Products shall not include Arbortext software products that do not include Blueberry Software. (SPA, Exhibit C).

Unfortunately, Arbortext did not comply with these payment terms. Arbortext's initial royalty reports to Blueberry omitted sales of Covered Arbortext Products and showed other accounting errors. The first royalty report showed no sales at all, which, upon Blueberry's complaint, was correct with Arbortext's apologies. (Exhibit 3) As a further example of these accounting errors, the royal report for December 1, 2000, through October 31, 2001, showed debits that did not have matching credits and inconsistent zero dollar sales. (Exhibit 4). Based on these early reports, Blueberry learned to keep its own accurate records.

When Arbortext introduced the bundled E3 product it was at the base price of $50,000. Applying the terms of the SPA and depending on the total cumulative sales of Covered Arbortext Products at the time E3 was introduced and sold, Arbortext should have paid Blueberry a per product royalty that started at 15%. This did not happen. In the bundled configuration—which had to have been more beneficial to Arbortext's sales of the product or it would have sold the components separately—Arbortext proposed a new royalty calculation. This is the point at which Arbortext relies upon the email from Jim Sterken and ignores the terms of the SPA.

In this September 2000 email, Mr. Sterken suggests to Mr. Dwan that the Interchange module has a value of $10,000 so that when an E3 product is sold, Blueberry should be paid a royalty based on a sale of $10,000 as opposed to $50,000, the actual price of the Covered Arbortext Product. This logic turns the SPA on its head, for nowhere among its terms is there a provision stating that Arbortext will pay Blueberry based on the value of the Blueberry Software: in all instances, Blueberry's royalty is calculated on the total sales of Covered Arbortext Products.

It is doubtful that Mr. Dwan's initial response in this email exchange—"since including the filters [software] will now be the default, rather than requiring the user to opt-in, it will likely have the effect of increasing our sales, and our royalty"—would have been so accepting if he had been fully informed of what Arbortext had intended to do with the pricing of E3. (Audit, Exhibit C). For a modification such as this to be legal, it must have been mutual. It was not. For an amendment to be valid, there must be consideration. There was none.

From the straightforward September email, Arbortext created a complex pricing and royalty calculation for which Arbortext never once sought Blueberry's agreement or concurrence. Indeed, once Blueberry began to protest the deep discounts and "no charge" sales, Arbortext seemed more resolved than ever to diminish the value of the Blueberry product. The Audit describes the E3 pricing scheme as follows:

> A portion of the sales price received by Arbortext for E3 sales is allocated to the revenue upon which Blueberry receives a royalty (if the E3 configuration contains Interchange). The portion allocated to Blueberry depends on the configuration of E3, as shown on Exhibit B.
>
> As an example, if Arbortext sells E3 configured with the Interchange and Print options to a customer with a 3CPU server for $77,000, the amount of revenue upon which the royalty rate would be applied is $77,000 times 17.647%, or $13,588. (Audit, p 7).

When compared to the amount of revenue upon which the royalty rate would be applied under the terms of the SPA ($77,000), it's not difficult to understand why Arbortext so strongly supports its proposed pricing schedule. Paying royalties on $13,588 preserves far more margin for Arbortext than paying royalties on $77,000. Again, the terms of the SPA were clear: Arbortext is to pay royalties based on total sales of Covered Arbortext Products, not based on a unilaterally created pricing schedule.

Exhibit B from the Audit illustrates how Arbortext computed Blueberry's royalties. Arbortext gave this formula to Blueberry in May 2002, after Blueberry complained about how its royalties were being computed. This formula was not part of the email exchange between Mr. Sterken and Mr. Dwan. It was developed and applied without Blueberry's concurrence. It was also during this period in 2002 when Arbortext changed all of its previous royalty reports, claiming that it had overpaid Blueberry.

Arbortext's strategy with regard to Blueberry is confirmed by the Arbortext Price Guide, dated July 1, 2001, and attached as Exhibit 5:

> Interchange is listed only in this "internal" version of the Price Book because we should only sell it when we cannot sell E3 for the same purpose. Customer and Reseller versions of the Price Book omit all references to the Interchange option.

The logic behind this statement is clear. Arbortext would generate far greater sales revenues on a product with a list price of $50,000 than it would for products listing for $1200 or $2400. To Arbortext's market niche of medium to large corporations, a $50,000 software purchase that was subject to heavy discounts was a drop in the bucket. Arbortext's revenues soared and Blueberry was bewildered when its royalties went flat.

Arbortext may attempt to argue that the September email operates as a modification to the SPA. While Michigan case law supports the concept that parties are "free to *mutually* waive or modify their contract, . . . the principle of freedom to contract does not permit a party *unilaterally* to alter the original contract." Quality Products & Concepts Co v Nagel Precision, Inc, 469 Mich 362, 365; 666 NW2d 251 (2003). Blueberry would counter that the September 2000 email does not represent a mutually agreed modification. Kevin Dwan was a Blueberry officer at the time and he does state that the email "is in accord with what [Jim Sterken] described on the phone," but, as noted above, many other aspects of the pricing and royalty payment structure that Arbortext later adopts are absent from this email. Presumably, if there had been a writing agreeing to these specific terms, Arbortext would have produced it. No such writing exists.

Arbortext's actions are similar to the plaintiff's in Quality Products, which the Michigan Supreme Court struck down as a unilateral and therefore unsupportable attempt to modify a written agreement:

> Simply put, the parties agreed to the terms of their written contract. Nevertheless, plaintiff seeks to be rewarded for proceeding in direct contradiction to the contract and in the face of the contract's written modification and anti-waiver provisions on no basis other than that defendant was aware of plaintiff's activities. There is no evidence that defendant affirmatively accepted plaintiff's activities as a modification of the original contract.
>
> In order to find for plaintiff on the facts presented, this Court must refuse to give effect to the express agreement of the parties without clear and convincing evidence of subsequent bilateral consent to alter the existing bilateral agreement. In other words, this Court would have to allow plaintiff to unilaterally modify a bilateral agreement and, in addition, do so in the face of contractual terms that precisely prohibit unilateral modification on the basis of no more than the defendant's knowing silence. Our obligation to respect and enforce the parties' unambiguous contract absent mutual assent to modify that contract precludes us from doing so. Quality Products, 469 Mich at 380-81.

The SPA is equally clear on modifications to its terms, stating that "no purchase order or other ordering document shall add to or modify the terms of this Agreement unless agreed to in a writing signed by both parties." (SPA, Section 15.12).

Even if we assume for purposes of argument that the September email modified the SPA to allow Arbortext to base its royalties on $10,000, there was still *never* any agreement by Blueberry to Arbortext's later decision to discount multiple CPU sales. This was a unilateral decision by Arbortext, never agreed to by Blueberry and is without support under Michigan law. If Arbortext is to argue that the email represents Blueberry's agreement to the E3 pricing scheme, then where are the "clear and convincing" references in that email to the discount for more than one CPU. Further, the September email never mentioned Interchange for the Covered Arbortext Products, Epic Editor Fixed License and Epic Editor Concurrent License. Interchange does not function without being incorporated into an Epic Editor product.

While the SPA stated that Arbortext was "free to set any price on the sale of licenses of the Blueberry Software to Arbortext Customers and resellers," this was only "so long as Arbortext pays Blueberry the royalties in accordance with the terms of this Agreement." (SPA, Section 4.2). Arbortext was free to set "any price" when the royalty was based on the sales of Arbortext Covered Products, not when Arbortext decided to base its royalty payments on the value of the Blueberry software. Finally, the September 2000 email did not modify the requirement under the SPA that Arbortext "shall not provide Blueberry Software to others without payment of royalty, except upon the advance written approval of Blueberry." (SPA, Exhibit C). At no time did Blueberry ever give Arbortext written notice accepting the sale of Interchange at no charge.

As we see it, therefore, there is one legally defensible position on this issue: because the evidence is not clear and convincing that the September email operated as a mutual modification of the SPA, Arbortext must comply with the terms of the SPA, and pay royalties based on the total cumulative sales of all "Covered Arbortext Products" that "incorporate the Blueberry Software."

B. Maintenance Revenue (Audit, pp 7-8)

Although the reference is only to E3, the Audit provides a good summary of how Arbortext generates income on the delivery of maintenance support and how Blueberry software is included in these support services:

> Arbortext receives both Initial Maintenance and Renewal Maintenance on Arbortext product sales that include Blueberry software. As per Arbortext's SLA with an end-user, the end-user that is paying for maintenance will receive "software update releases to the Programs which include enhancement and maintenance releases as they become available for general distribution." . . .
>
> As newer versions of Blueberry software were incorporated into maintenance releases of E3 and maintenance revenue was received by Arbortext, it could be viewed that this revenue should be included in Arbortext Product Sales discussed in Exhibit C of the SPA.
>
> From Exhibit C of the SPA:
>
>> If Blueberry Software is offered to current or past users of Arbortext Products, or any users other than new users, at some charge, then revenue from such sales will be included in the computation of Arbortext Product Sales.
>
> (Audit, p 7) (quoting from Section 9.1 of Arbortext's standard Software License Agreement and Exhibit C of the SPA).

Blueberry provided enhancements and performed bug fixes on its software and delivered them to Arbortext so that Arbortext could include them in its maintenance updates to end-users. The Audit confirms this point. The Audit also confirms that Arbortext has received revenues for the sale of maintenance support for Covered

Arbortext Products. Yet Arbortext has never paid Blueberry any royalties for maintenance.

Arbortext's failure stands in stark contrast to the legal requirement that Arbortext pay Blueberry royalties for "Blueberry Software delivered by Arbortext to both existing Arbortext Customers, whether provided on an upgrade or other basis, and to new Arbortext Customers." (SPA, Section 6). This mandate is further supported when the SPA states, "Arbortext shall not provide Blueberry Software to others without payment of royalty, except upon the advance written approval of Blueberry." (SPA, Exhibit C). Blueberry never gave Arbortext any such written approval, and Blueberry complained on many occasions about the inaccuracies in the royalty reports. Indeed, the Audit confirms this point as well, noting Arbortext's "poor record keeping practices" prior to 2003. (Audit, pp 9-10).

The Audit compiles a summary of maintenance revenue and total product sales revenue that should be allocated to Blueberry. Mark Robinson presented two tables in the Audit that differentiate between maintenance revenue due Blueberry Software based on figures "in a similar fashion as Arbortext allocates License revenue" (Audit, p 8, Table 1) versus maintenance based on 5% of the total E3 maintenance price that includes Interchange. Additionally, Mr. Robinson lists the total revenue for Covered Arbortext Products in the second column, labeled "License Revenue," in Table 2. (Audit, p 8). Blueberry contends that it is due 5% of Arbortext's revenues for Epic Interchange, including the total price for any product into which Interchange is incorporated. This would include Epic Editor Fixed License and Epic Editor Concurrent License. The summary tables on page 8 of the Audit do not include the amounts of Epic Editor Fixed and Concurrent Licenses that incorporate Blueberry's technology (Epic Interchange Fixed and Epic Interchange Concurrent Licenses). Thus, sales for these Covered Arbortext Products need to be included in the "Total Revenue Related to Blueberry" on page 8 of the Audit.[1]

C. The MRO.com Relationship (Audit, p 8-9)

The relationship between Arbortext and MRO.com has been a puzzlement to Blueberry. When Arbortext is asked about it, the response is that the product—known as E-Catalog or Intermarket—was never developed and that there were never any sales from the product. (Exhibit 6). Yet Blueberry has evidence of Intermarket sales, and the Audit

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1 When comparing the Table 1 to Table 2 (Audit, p 8), there is a clear discrepancy in the "Allocated Initial Maintenance Sales" and the "Allocated Renewal Maintenance" (calculated at 5 percent) columns in Table 1, with the "Initial Maintenance Revenue" and the "Renewal Maintenance Revenue" (calculated at 100 percent) columns in Table 2. For the purposes of this letter, however, we will only use the figures that are presented in the Audit.

found a current and live SKU for Intermarket. Blueberry has never received any royalties for the estimated $4 million in Intermarket sales.

Within the Audit, Mr. Robinson describes the results of his review of Arbortext's current records on MRO.com and the Intermarket product as follows:

> E-Catalog (a.k.a. Intermarket), as well as the Arbortext Site License and the Arbortext Site License maintenance, relate to Arbortext's August 2000 Application Development & Software License Agreement with MRO.com (WP-10). Arbortext was developing a product called Content Manager by extending the functionality of Arbortext programs and integrating them with MRO's Intermat product. Soon after the agreement and some licensing of the software to MRO in September 2000, the joint development effort was abandoned. The total revenue that Arbortext received that was related to E-Catalog and Site License was obtained from MRO.com (refer to Exhibit D for amounts). (Audit, pp 8-9).

The puzzlement is that Arbortext claims that Intermarket was abandoned soon after September 2000. Yet Blueberry has had conversations with the Arbortext engineer, Zoltan Gombosi, who was the leader of a team of eleven programmers charged with developing the product, and Mr. Gombosi describes an entirely different situation. Mr. Gombosi states that while he was an Arbortext employee, he developed Intermarket, and that it was released and sold. Arbortext's own website describes Intermarket version 1.0 and its release date of January 1, 2001. (Exhibit 7). Arbortext also issued a press release announcing Intermarket and the January 2001 release date, which was picked up by NetworkWorldFusion News in an article dated November 13, 2000—just about the time that Arbortext claims it abandoned the product. (Exhibit 8). The article lists the starting cost of Intermarket at $145,000, with a typical installation costing about $350,000.

The Arbortext.com home page, updated on December 3, 2000, features Intermarket, and the link to Intermarket describes it as follows: "Epic Intermarket leverages the full power of XML because it is built upon Arbortext's pioneering Epic E-Content Engine (E3), a Web-based system for aggregating, storing, assembling and distributing enriched content." (Exhibit 9). There is no doubt that Intermarket would fall within the definition of a Covered Arbortext Product. Arbortext touted the benefits of this product on its website until at least May 2001. (Exhibit 10). Further evidence of the active marketing and sale of Intermarket is in the April 5, 2001, press release between Arbortext and Documentum, in which the sub-headline states: "Solution combines Documentum 4i B2B Content Management Editions with Arbortext Intermarket™ Catalog Solution." (Exhibit 11). Intermarket was alive and well at least through late 2001.

Eventually, Arbortext did decide to cease further development of Intermarket and to lay off Mr. Gombosi, but this was in November 2001, and not before Intermarket generated over $1 million in pre-release sales and $3 million in sales after its official release in January 2001. (Exhibit 12). Blueberry provided Mr. Robinson with several SKUs to research during his audit investigation and among them was a SKU for the Intermarket product. Mr. Robinson searched Arbortext's sales database, and included in the Audit the revenues from this "abandoned" product. The following summary is from the SKU list in Exhibit D to the Audit:

Product	Year	Total Revenues
Arbortext Site License	2000	$453,643.00
Arbortext Site License	2000	36,000.00
Arbortext Site License (maintenance)	2000	15,546.00
Epic Intermarket (E-Catalog Application License)	2001	100,000
Total		**$533,189.00**

Blueberry has never received royalty payments from the sale of Intermarket. The SPA clearly states, "Royalties are due and payable to Blueberry for Blueberry Software delivered by Arbortext to both existing Arbortext Customers, whether provided on an upgrade or other basis, and to new Arbortext Customers." (SPA, Section 6). Arbortext's website description of Intermarket reveals software capabilities that derive from Blueberry's Epic Interchange software. Intermarket is a Covered Arbortext Product. Why has Arbortext never acknowledged this fact? If Arbortext truly abandoned Intermarket, why is the SKU still active? Are the Intermarket sales an unfortunate victim of Arbortext's poor record keeping practices prior to 2003? Thus, Blueberry is entitled to royalties on revenues of over $4 million for the sale Intermarket.

II. Additional Discrepancies

A. Software Licenses (Valley Forge, DMSi, Teradyne) (Audit, p 9)

Blueberry has always been careful to track the use of its software. It methodically confirms the licensees listed on Arbortext's royalty reports with companies that it knows are using Blueberry software. A company can use Blueberry software only by way of a license and only with a "key," which is explained below. As a licensee of Blueberry software, Arbortext is authorized under the SPA to

> market, reproduce, sublicense and distribute the Blueberry Software . . . to Arbortext Customers . . . directly or through an Arbortext authorized reseller, solely in conjunction with the concurrent or prior licensing of the Arbortext Products in which they are incorporated. (SPA, Section 2.1).

"Arbortext Products" means those into which the Blueberry software is integrated. In practice, Arbortext could sublicense the Blueberry software directly to an Arbortext Customer or it could use a reseller for such a sublicense. The Audit provides a useful description of Arbortext's licensing practices:

> Arbortext sells directly to end users as well as through a global network of Partners (resellers, integrators, etc). The end-user customers of the Partner are required to execute a Software License Agreement directly with Arbortext as well as the Partner if the Partner has their own software integrated with Arbortext's software. Resellers and integrators are typically paid on a commission basis while other Partners have unique negotiated compensation programs. . . . All programs, whether purchased directly through Arbortext or through an Arbortext partner, require a license key that enables their use. All keys are obtained exclusively through Arbortext. (Audit, p 2).

During the audit investigation, Blueberry asked Mark Robinson to research two specific Arbortext partners, Document Management Solutions, Inc. ("DMSi"), a Marketing Alliance partner, and Valley Forge Technical Solutions, a Subcontractor. The Audit shows at Exhibit E that neither of these companies has a license for Epic Interchange, yet employees from both companies are using Blueberry software. If Arbortext's software licensing practice is to require that all programs have a license key and only Arbortext issues the keys, then how is it that DMSI and Valley Forge—as Arbortext "partners"—are using Interchange when according to Arbortext's "Key Database," neither company has purchased a license or has been issued a license key?

Blueberry has records confirming the use of Interchange by Valley Forge employee Tamara Riehle on August 3, 2004. Ms. Riehle was posting a question about Interchange (V5.0a) on a website that Arbortext had established for its partners. (Exhibit 13). Blueberry also has records confirming the existence of Interchange on the desktop of DMSi employee Mary McRae. (Exhibit 14).

It is difficult to explain the existence of Interchange on the desktops of these Arbortext partners when Arbortext appears to have no record of license sales to them. The Audit did reveal certain inconsistencies in the license data, as disclosed below:

> During our preliminary review of the "Key Database," we found several instances where a customer had additional licenses available to them as compared to purchased licenses. This discrepancy was mainly attributable to poor record keeping practices at Arbortext prior to 2003. The current key distribution system is linked with the current product sales and is automated versus manual and is less prone to errors.

> After our initial findings Arbortext performed a review of the "Key Database" to fix these errors. We reviewed the corrections to the key database with a sample of customers that had been recorded in error. Testing included matching active license keys to purchased license keys for the sample (WP-19). (Audit, pp 9-10).

Of course, these were only examples of two companies that Blueberry knew about. A third company appeared in the Audit reconciliation—Teradyne—and appears on Exhibit F of the Audit showing one license for which it paid nothing. The SPA stipulates that Arbortext "shall not provide Blueberry software to others without payment of Royalty, except upon the advance written approval of Blueberry." (SPA, Exhibit C). Blueberry was neither notified in advance of Arbortext's gift to Teradyne, nor did Blueberry approve of such gift. Thus, Blueberry contends that it is entitled to the payment of royalties based on the undiscounted standard cost of licenses for these Covered Arbortext Products.

B. Specific Companies (Audit, p. 10)

Blueberry asked Mark Robinson to investigate three companies to address certain recordkeeping discrepancies. They are Planetgarden.com, Trellis Neutech, and the United States Coast Guard. To this list, Mr. Robinson added two additional companies, LRN and DFAS. Exhibit G of the Audit identifies the five companies, lists each SKU, if any, the type of Covered Arbortext Product, the type of license, the revenues and whether the company was listed in the royalty report. (Audit, Exhibit G). The Audit confirmed Blueberry's concerns about three companies, as discussed below.

1. Planetgarden.com

The Audit finding states:

> Planetgarden – In a description contained on Arbortext's website under "Our Customers", it is suggested that Planetgarden.com has the ability to achieve results that are the same as what is accomplished with Interchange. From a review of the Key Database, there are no active licenses with Planetgarden.com for a Blueberry product. The Total Arbortext Sales Database shows that they did, however, purchase Adept Editor, Epic Editor, training, and consulting services from Arbortext. (Audit, p 10).

Arbortext has admitted that it once featured Planetgarden.com on its website as a customer case study. Arbortext's "Customer Sheet" for Planetgarden states: "Arbortext's e-content software enables Planetgarden to convert, create and manage the enormous volume of information that arrives in many different formats." (Exhibit 15).

This type of description would be the kind of statement used to illustrate the features of Blueberry's technology. Arbortext states that Planetgarden purchased Adept Editor LE and Epic Editor Fixed License. Adept is an earlier version of Epic Editor, and both are very simply, text editors. These programs cannot produce output to the Web, and they do not contain any printing capabilities.

While Planetgarden is no longer in business, it did go live with a new website before shutting down. Blueberry asked Zoltan Gombosi to examine Planetgarden's case study on Arbortext's website, and Mr. Gombosi concluded that the functionality described in the case study could not have been achieved by Epic Editor, but must have been produced with Epic Intermarket. Of course, Planetgarden could have used other web production tools that were not Arbortext products, but Arbortext would not have chosen Planetgarden as a case study if that had been the case. Yet, the Audit confirms that Planetgarden was not issued a license for a Covered Arbortext Product. How could Planetgarden have been a featured Arbortext customer using the unique features of Blueberry's software and never have purchased a license for a Covered Arbortext Product? Thus, Blueberry contends that it is entitled to the payment of royalties based on the undiscounted standard cost of one license for this Covered Arbortext Product.

2. Trellis Neutech S. Pte Ltd (Singapore) – (p. 10)

Blueberry discovered the tie between Trellis Neutech and E3 by observing activity within a Yahoo! user group known as Oracleifs. Any interested person can open a Yahoo! user group, and the administrator of this group apparently formed it to discuss product integration issues regarding Oracle's database and Arbortext's Epic suite of products. Among the users of this group was an employee of Trellis Neutech, by the name of Ram, who was having difficultly converting documents using his recently installed E3 software. Trellis Neutech is based in Singapore, and presumably the sale of any Covered Arbortext Products would have been handled through Arbortext's office in Japan. (Exhibit 16).

On February 15, 2001, Ram posted a message to the user group, saying that he had installed Arbortext's E3 and was trying to convert XML documents back to Microsoft Word. At the end of his post, he stated that he was using E3 Version 4.1, which had a release date of November 27, 2000. Blueberry has reviewed its royalty reports for the relevant time period, and there is neither any record of any sale of E3 to Trellis Neutech, nor would it have been possible for a reseller to have sold E3 to Trellis Neutech. There are only five E3 sales listed on Blueberry's royalty report between November 27, 2000, and February 15, 2001, and none of these Arbortext customers is a reseller. (Audit, Exhibit A, pp 4-5).

Because customers must have a license to use E3, and all licenses come from Arbortext, Blueberry mentioned this user group and Trellis Neutech to Arbortext, with the question of how there seemed to be certain customers using Covered Arbortext Products for which there were no records on Blueberry's royalty reports. Within a week of raising this concern, the Yahoo! Group was closed down with no explanation. The relevant pages from this user group were printed prior to its being shut down and are attached. (Exhibit 17).

For this Audit, Blueberry asked Mark Robinson to ascertain whether all sales from Arbortext's overseas offices were included in Arbortext's sales database in Michigan. The Audit does not answer this question, noting only that it was uncertain how Trellis Neutech had installed E3:

> The Internet reference suggests that Trellis Neutech has E3. Our review of the Key Database and the Total Arbortext Sales Database both agree that Trellis Neutech has never been a customer of Arbortext. It is uncertain as to how Trellis Neutech may have obtained E3. (Audit, p 10).

Thus, Blueberry contends that it is entitled to the payment of royalties based on the undiscounted standard cost of one license for this Covered Arbortext Product.

3. **U.S. Coast Guard (p. 10)**

The question about the Coast Guard arose when this Arbortext customer requested maintenance on more processor licenses than both the Key Database and Sales Database show that it owns. The Audit confirms this situation:

> A solicitation notice from the U.S. Coast Guard requests maintenance on 2 E3 single processor licenses and 2 E3 quad processor licenses. (WP18). Our review of the Key Database and the Total Arbortext Sales Database both agree that only one E3 single processor license and 1 E3 quad processor license were ever sold to the U.S. Coast Guard. This finding agrees with the Cumulative Royalty Report as well. (Audit, p 10).

Admittedly, this discrepancy occurred prior to 2003, during the period of "poor record keeping practices" at Arbortext, yet it has remained unresolved and Blueberry has not received royalties for these additional license sales.

When Blueberry first raised this issue with Arbortext's Director of Engineering, Joyce Svechota, responded with a report on or about May 2002. (Exhibit 18). Ms. Svechota notes in her report that the Coast Guard purchased E3 and other Arbortext products through Beyond.com, an Arbortext reseller. The U.S. Coast Guard had purchased E3 with all product options because that was the only configuration offered through Beyond.com. A review of Beyond.com's price list confirms that E3 was sold only with all options (Print Web and Interchange) available. (Exhibit 19). This list also shows the price for an E3 Quad Processor and an E3 Single Processor.

While the Arbortext invoice dated September 30, 2001, shows only one E3 single processor license and one E3 quad processor license were sold, this is clearly not what the Coast Guard had installed when it requested maintenance support in May 2002. It is also interesting to note that the invoice does not include a line item for maintenance on any product, even though Arbortext requires a customer to initially purchase a one-year maintenance contract for any E3 sale. Various other Arbortext products were also purchased at the same time as the E3 sales, including seven licenses for Epic Editor, Concurrent License and on license for CD Rom Composer.

In a Solicitation Notice dated May 19, 2002, the Coast Guard describes the equipment and licenses it has, specifically *two* licenses for the Epic E3 Quad Processor and *two* licenses for the E3 Single Processor, requesting maintenance contracts for the renewal period of 04/01/02-09/30/02. (Exhibit 20). The Solicitation Order requests maintenance for the following products:

Epic E3 Quad processor	(2 Licenses)
Epic E3 Single processor	(2 Licenses)
CD Rom Composer	(2 Licenses) (Invoice listed 1 license)
Epic Architect	(4 Licenses)
Epic Editor Concurrent	(20 Licenses) (Invoice listed 7 licenses)
Print Composer Concurrent	(9 Licenses)
Print Composer Fixed	(1 License)

The only reasonable conclusion to make is that the Coast Guard purchased additional products and 6 months of maintenance on September 30, 2001, which might have been reflected on another invoice that has been lost or misplaced. In any event, Blueberry was never paid any royalties for these additional licenses or for the maintenance. Thus, Blueberry contends that it is entitled to the payment of royalties based on the quoted license price for these Covered Arbortext Products.

III. The "Transition" from E3 (Audit, p.9)

Because of the numerous discrepancies cited above and Arbortext's attempts to modify the terms of the SPA unilaterally and without consideration, and the decreasingly lower level of royalties that it began to receive, Blueberry is understandably concerned when it reads press releases posted on Arbortext's website entitled, "Arbortext Closes 2003 with Record Levels of Revenue, Profit and Cash Flow." (Exhibit 21). Among the "key" customers listed in this February 5, 2004, statement is Vektas. Accordingly, Blueberry asked Mark Robinson to investigate Arbortext's relationship with Vektas, which was recently acquired (June 2, 2005) by Inmedius, Inc.

Inmedius/Vektas is listed in the Audit (p 9) as one of the 15 Arbortext Partners that Mark Robinson examined, although the Audit did not describe the type of partner relationship. Mr. Robinson later confirmed in a telephone conversation to Blueberry that Vektas was a reseller. The Audit confirmed that Vektas does not even hold a demo license for any Covered Arbortext Products. (Audit, Exhibit E).

Questions about Vektas persist, however, particularly when Vektas touts its "Armada" product as its version of Arbortext's E3. The following is a direct quote from the Vektas website discussing its "premier" partnership relationship with Arbortext:

> Vektas/Inmedius partners with Arbortext for the sale and integration of Warrior/AuthorPro with Epic Editor and Armada/Transition with E3. As a Premier Partner Vektas and Arbortext aim to work closely together for joint ventures for any industry wishing to adopt professional authoring and standards-based publishing. (Exhibit 22).

Another page of the Vektas website states:

> Armada is the Arbortext E3 based publishing engine, allowing users to easily transform from one DTD type to another, removing the need for organizations to invest in multiple COTS products to achieve output targets and removes the need to manage multiple DTD types. One good example how Vektas are building on E3 is the ability to output S1000D Data Modules to Mil-Spec or ATA outputs, saving considerable time and money over a short period of time. (Exhibit 23).

Still another web page describes the Vektas/Arbortext Premier Partnership:

> AS AN ARBORTEXT PREMIER PARTNER, Inmedius offers a full program for licensing, development, support and training of Epic Editor and E3 products. (Exhibit 24).

Finally, from the Vektas website, a description of the Inmedius product, "Transition":

> Based around the power of Arbortext's E3, Transition is the tool that acts as a core server for document assembly, processing and management.
>
> If you are required to produce different outputs from multiple sources Transition will fulfill this role. Accepting documents from a number of industry-accepted authoring tools including Microsoft's Word, Interleaf or Adobe FrameMaker, Transition will recognize and convert to your desired output. (Exhibit 25).

While it is evident that Inmedius is a reseller for Arbortext's standard products, (Epic Editor and E3), Blueberry still does not understand the full scope of what Vektas/Inmedius is doing with Armada and Transition. From the descriptions above, Blueberry believes that the Vektas product known as "Armada" and now known as Inmedius' "Transition" may have some form of Blueberry Software functionality at its core. It is certainly described in the same way as Arbortext has characterized E3.

The Audit states that Arbortext customers can get their licenses only from Arbortext. What is unknown and unanswered is how Inmedius (and Vektas before it) can sell a modified E3 product by another name (Armada/Transition)? Presumably, Inmedius is billing their customers directly for this product. What is the relationship with Arbortext and what portion of the Interchange functionality is in this Transition? Such sales would be Covered Arbortext Products for which Blueberry is entitled to royalty payments. Perhaps this is the same situation as Trellis Neutech, where Asian sales were handled by the Arbortext office in Japan. We do know that Arbortext had an office for European sales. (Exhibit 26). Blueberry, therefore, seeks either confirmation that no part of the Armada/Transition functionality incorporates Interchange or payment of royalties on the sale of these Covered Arbortext Products.

IV. Conclusion

While the Audit answered some questions, many more were raised. One of the greatest sources of concern for Blueberry was a period of time described in the Audit as one of "poor record keeping practices". It is difficult at best to attempt to confirm or review records that have been lost, misplaced, or were never accurately created.

Perhaps the best way to quantify Blueberry's royalties is to start from an audited figure, the "Total Revenue Related to Blueberry" of $12,870,000.00. (Audit, p 8). From this figure, Blueberry has subtracted the royalty amounts that Arbortext has paid, and has added royalty amounts that Arbortext should have paid, but has not. The calculation looks like this:

Total Revenue Related to Blueberry	$12,870,000.00
Plus Est. Revenue through 3Q, 2005	??
Total Revenue	$13,000,000.00
Total Royalties (x5%)	650,000.00
(Less Royalties Blueberry has rec'd to date)	(132,217.00)
Net Royalties from above	517,783.00
Total Royalties Intermarket	200,000.00
Total Royalties from "No Charge" Sales	2500.00
Total Royalties from above	720,283.00
Add Royalties from revenue through 3Q 2005	30,000.00
Total Royalties due Blueberry	750,000.00

As is evident from this letter, Blueberry has spent tremendous time and effort in keeping track of its product sales through Arbortext. From the beginning, it has sought to correct accounting errors—some of which were corrected—and has questioned certain of Arbortext's decisions and actions. With the completion of the Audit and the compilation of this letter, Blueberry is attempting to reach a final and fair resolution of its outstanding issues with Arbortext.

In summary, therefore, Blueberry makes a demand for $750,000.00 as a full and final payment of its royalties under the SPA. The courtesy of a response to this demand would be appreciated on or before August 15, 2005. After that time, Blueberry will be forced to weigh its other legal options.

Very truly yours,

Claudia Rast

Claudia Rast

CR/ms
Enclosures
cc: Mr. Steven Biegel
Ms. Mary Tarantino