

TRADEMARK COEXISTENCE AGREEMENT

THIS AGREEMENT (“Agreement”) is made by and between the following parties, effective on the last date signed below by one of the parties (“Effective Date”):

Fox Television Studios, Inc., a corporation of the state of Delaware, having a principal place of business at 10201 West Pico Boulevard, CA 90035 (“Fox”).

Microsoft Corporation, a corporation of the state of Washington, having a principal place of business at One Microsoft Way, Redmond, WA 98052 (“Microsoft”).

Together, Fox and Microsoft are referred to as the “parties.”

WHEREAS, Fox is the owner of the KILLER INSTINCT trademark, which is the subject of U.S. Trademark Registration No. 3,370,331 for “entertainment services in the nature of a television series featuring drama” in Class 41 (the mark that is the subject of the foregoing registration is referred to herein as the “Fox Mark,” while the services that are the subject of the foregoing registration are referred to herein as the “Fox Services”); and

WHEREAS, Microsoft has filed an application in the United States Trademark Office (“U.S. Trademark Office”) for the mark KILLER INSTINCT, which is the subject of U.S. Serial No. 85/727,092 for “video game software” in Class 9 and “entertainment services, namely, providing online video games” in Class 41 (the mark that is the subject of the foregoing application is referred to herein as the “Microsoft Mark,” while the goods and services that are the subject of the foregoing application are referred to herein as the “Microsoft Goods and Services”); and

WHEREAS, the U.S. Trademark Office issued an non-final office action on November 29, 2012 against the Microsoft Mark for the Microsoft Goods and Services on the basis that it is likely to cause confusion with the Fox Mark for the Fox Services; and

WHEREAS, the parties do not believe confusion is likely to result from concurrent use of their respective marks for their respective goods and services, *inter alia*, because of differences in their respective goods and services, and channels of trade; and

WHEREAS, the parties desire to provide for use and registration of their respective marks under the terms and conditions of this Agreement and to provide a basis for minimizing the possibility of confusion.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Microsoft acknowledges Fox’s rights in the Fox Mark for the Fox Services, as recited in U.S. Registration No. 3,370,331, and agrees not to object to or oppose Fox’s use or registration of the Fox Mark for the Fox Services.

2. Fox agrees not to object to or oppose Microsoft's use or registration of the Microsoft Mark for the Microsoft Goods and Services.
3. The parties agree to take reasonable measures under the circumstances to market and promote their respective goods and services in such a way as to mitigate any likelihood of confusion between them. In the unlikely event that confusion occurs, the parties agree to notify each other of the confusion in writing, and to take adequate measures to prevent the likelihood of further confusion.
4. The parties agree to sign such further documents and agreements as may be consistent with and reasonably necessary to effect the intent of this Agreement, such as agreements for filing in the U.S. Trademark Office.
5. This Agreement shall be effective worldwide in all jurisdictions where the parties' marks confront each other through use, application, or registration now or in the future.
6. The terms and conditions of this Agreement shall inure to the benefit of and be binding and enforceable against each party's agents, successors, licensees, assignees, and other present or future parties in interest.
7. This Agreement may be executed by facsimile or PDF in multiple counterparts, which taken together shall constitute one and the same instrument.
8. If any one or more clauses of this Agreement be later held invalid or unenforceable, the validity of the remaining clauses shall not be affected, and the parties shall replace by mutual agreement any such clause held invalid or unenforceable.
9. This Agreement encompasses the entire agreement and understanding between the parties hereto and supersedes any and all prior understandings or agreements, whether written or oral. Any modification to this Agreement must be in a singular writing signed by duly authorized representatives of each party hereto to be binding upon either party.
10. The parties to this Agreement represent and warrant that they have the right and authority to execute this Agreement and that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any interest, right, claim or demand, or portion thereof, relating to any matter in this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement by their authorized representatives on the dates set forth below.

FOX TELEVISION
STUDIOS, INC.

J. M. Pompey
(Authorized Signature)

Tina Pompey
Printed Name

Asst. Secretary
Title/Position

3/27/2013
Date Signed

MICROSOFT CORPORATION

Russell Paugborn
(Authorized Signature)

Russell Paugborn
Printed Name

Assistant Secretary
Title/Position

3/28/13
Date Signed