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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION, a Washington corporation,

Plaintiff,

v.

JOHN DOES 1 – 10 using IP address 74.111.202.30,

Defendants.

No. 2:15-cv-00663

COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF

Plaintiff Microsoft Corporation (“Microsoft”) files this Complaint against Defendants John Does 1-10 using IP address 74.111.202.30 (“Defendants”), alleging as follows:

**I. INTRODUCTION**

1. This is an action for copyright infringement, trademark infringement, imposition of a constructive trust, and an accounting of Defendants’ ill-gotten gains.

2. On information and belief, Defendants have installed and activated unlicensed Microsoft software on hundreds of computer systems using unauthorized product keys, including certain keys known to have been stolen from Microsoft’s supply chain.

3. Based on the volume and pattern of their activation activity, on information and belief, Defendants appear to consist of one or more commercial entities that subsequently distributed those systems to customers who, on information and belief, were unaware they were receiving pirated software.

**II. PARTIES**

1 4. Microsoft is a Washington corporation with its principal place of business in  
2 Redmond, Washington. Microsoft develops, markets, distributes, and licenses computer  
3 software, among other products and services.

4 5. The true identities of Defendants are not presently known to Microsoft. On  
5 information and belief, Defendants are in possession or control of the Internet Protocol (“IP”)  
6 address 74.111.202.30, which was used by Defendants in furtherance of the unlawful conduct  
7 alleged herein. On information and belief, this IP address is assigned to Verizon Online LLC,  
8 an Internet Service Provider, which in turn assigned it to the Defendants for their use at certain  
9 times relevant to this complaint.

**III. JURISDICTION & VENUE**

10 6. The Court has subject matter jurisdiction over Microsoft’s claims for trademark  
11 infringement, copyright infringement, and related claims pursuant to 15 U.S.C. § 1121, 17  
12 U.S.C. § 501, and 28 U.S.C. §§ 1331 and 1338(a). The Court also has subject matter  
13 jurisdiction under 28 U.S.C. § 1332 because on information and belief, this action is between  
14 citizens of different states and the matter in controversy exceeds \$75,000, exclusive of interest  
15 and costs.

16 7. The Court has personal jurisdiction over Defendants because they purposefully  
17 directed their unlawful activities at Washington, and Microsoft’s claims arise from those  
18 activities. In activating or attempting to activate pirated Microsoft software, as described  
19 below, Defendants reached out and contacted Microsoft servers in Washington, and transmitted  
20 information to those servers and Microsoft in Washington. In addition, Defendants expressly  
21 aimed their conduct at Washington because they (1) had actual or constructive knowledge of  
22 Microsoft’s intellectual property rights (including Microsoft’s registered copyrights and  
23 trademarks) and Microsoft’s residence in Washington; (2) acted, at a minimum, with willful  
24 blindness to, or in reckless disregard of, Microsoft’s rights; and (3) knew or should have known  
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1 that their conduct would cause harm to Microsoft in Washington. *See Wash. Shoe Co. v. A-Z*  
2 *Sporting Goods, Inc.*, 704 F.3d 668 (9th Cir. 2012).

3 8. Venue is proper in this Court pursuant to 28 U.S.C. § 1400(a) because  
4 Defendants are subject to personal jurisdiction in the Western District of Washington. *See*  
5 *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124 (9th Cir. 2010).

6 9. Pursuant to Local Civil Rule 3(d), intra-district assignment to the Seattle  
7 Division is proper because the claims arose in this Division, where (a) Microsoft resides,  
8 (b) the injuries giving rise to suit occurred, and (c) Defendants directed their unlawful conduct.

#### 9 IV. FACTS COMMON TO ALL CLAIMS

##### 10 A. The Global Problem of Software Piracy

11 10. Software developers lose billions of dollars in annual revenue from software  
12 piracy, namely, the unauthorized and unlawful copying, downloading, and distributing of  
13 copyrighted and trademarked software and related components. In 2013, the commercial value  
14 of pirated software in the United States was in excess of \$9.7 billion. *See* Business Software  
15 Alliance, *The Compliance Gap: Global Software Survey* (June 2014),  
16 [http://globalstudy.bsa.org/2013/downloads/studies/2013GlobalSurvey\\_Study\\_en.pdf](http://globalstudy.bsa.org/2013/downloads/studies/2013GlobalSurvey_Study_en.pdf).

17 11. One prominent form of software piracy is known as “hard-disk loading”—the  
18 unauthorized copying and installation of infringing software on devices and offering those  
19 devices in competition with, and often for lower prices than, devices pre-installed with legally  
20 licensed copies of software.

21 12. Software developers, like Microsoft, are not the only victims of software piracy.  
22 Microsoft’s customers are also victims as they are often deceived by distributors of pirated  
23 software who often go to great lengths to make the software appear genuine. When this occurs,  
24 customers may unwittingly expose themselves to security risks associated with the use of  
25 pirated software. *See* Federal Bureau of Investigation, *Consumer Alert: Pirated Software May*  
26 *Contain Malware*, Aug. 1, 2013, at [http://www.fbi.gov/news/stories/2013/august/pirated-  
software-may-contain-malware/](http://www.fbi.gov/news/stories/2013/august/pirated-<br/>27 software-may-contain-malware/) (noting the relatively greater risk that pirated software is

1 infected with malicious software, or “malware,” which can be used to record keystrokes and  
2 thus capture sensitive information such as user names, passwords, and Social Security  
3 numbers).

4 **B. Microsoft’s Software and Intellectual Property**

5 13. Microsoft develops, advertises, markets, distributes, and licenses a number of  
6 computer software programs. Microsoft’s software programs are recorded on distributable  
7 media, such as DVDs, or are made available for download through various authorized  
8 distribution channels.

9 14. **Windows 7:** Microsoft developed—and advertises, markets, distributes, and  
10 licenses—a computer operating system called Microsoft Windows 7 (“Windows 7”).  
11 Microsoft holds a valid copyright in Windows 7 that was duly and properly registered with the  
12 United States Copyright Office. A true and correct copy of the Registration Certificate for  
13 Microsoft Windows 7, bearing the number TX 7-009-361, is attached as *Exhibit 1*.

14 15. Microsoft has also duly and properly registered a number of trademarks and  
15 service marks in the United States Patent and Trademark Office on the Principal Register,  
16 including without limitation:

- 17 (a) “MICROSOFT,” Trademark and Service Mark Registration No.  
18 1,200,236, for computer programs and computer programming services;
- 19 (b) WINDOWS, Trademark Registration No. 1,872,264 for computer  
20 programs and manuals sold as a unit;
- 21 (c) “FLAG DESIGN TWO (B/W),” Trademark Registration No. 2,738,877,  
22 for computer software;
- 23 (d) “FLAG DESIGN TWO (COLOR),” Trademark Registration No.  
24 2,744,843, for computer software;

25 True and correct copies of the Trademark Registrations for (a) through (d) above are attached  
26 as *Exhibits 2 through 5*, respectively.

**C. Microsoft's Distribution Channels for Software**

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16. Microsoft distributes its software through a number of distribution channels, including the Original Equipment Manufacturer (OEM) channel.

17. The Original Equipment Manufacturer ("OEM") distribution channel is one through which Microsoft software is distributed to computer and device manufacturers called OEMs. OEMs customarily pre-install software on the devices they build including, most commonly, the Microsoft Windows operating system.

18. The OEM distribution channel involves sub-channels that supply Microsoft software to different categories of OEMs. Two of these sub-channels are relevant for purposes of this complaint: the Commercial OEM channel and the Direct OEM channel.

19. Through the Commercial OEM ("COEM") channel, Microsoft and a large number of authorized distributors supply what is called "system builder" software to small and medium-sized OEMs for pre-installation on devices. As described in detail below, this software is required to be individually activated on each device.

20. Through the Direct OEM ("DOEM") channel, Microsoft directly provides software to large computer manufacturers, such as Dell and Lenovo, for pre-installation on devices. The DOEMs acquire some components associated with the Microsoft software from Microsoft Authorized Replicators ("ARs").

**D. Product Activation**

21. Like many other software developers, Microsoft has implemented a wide range of initiatives to protect its customers and combat theft of its intellectual property. One important tool in Microsoft's anti-piracy protection arsenal is its product activation system, which involves the activation of software through product keys.

22. A Microsoft product key is a 25-character alphanumeric string generated by Microsoft and provided to customers and OEMs. Generally, when customers or OEMs install Microsoft software on a device, they must enter the product key. Then, as part of the activation process, customers and/or OEMs voluntarily contact Microsoft's activation servers over the

1 Internet and transmit their product keys and other technical information about their device to  
2 the servers. Most or all of the activations involved in this matter contacted servers that are  
3 physically located in Tukwila, Washington.

4 23. The activation process is analogous to the activation of credit cards or mobile  
5 phones with a code provided by the financial institution or the mobile carrier. Because  
6 Microsoft's copyrighted software is capable of being installed on an unlimited number of  
7 computers, Microsoft relies on the product activation process to detect piracy and protect  
8 consumers from the risks of non-genuine software.

9 24. In the OEM channel, each copy of genuine Microsoft Windows software that is  
10 purchased is distributed with a product key unique to that copy of the software—thus, if a  
11 customer purchases ten computers with Windows 7 installed, the customer is supplied with ten  
12 unique product keys.

13 25. Windows product activation works differently in the COEM and DOEM  
14 channels. COEMs are required to use individual product keys to install and activate software  
15 on the computer system. DOEMs, on the other hand, use a master key to install Windows 7  
16 software, and provide each customer with a “recovery” product key to use if the Windows 7  
17 software ever needs to be reinstalled on that computer.

18 **E. Microsoft's Use of Cyberforensics to Combat Piracy**

19 26. To support Microsoft's global efforts to combat the piracy of its software,  
20 Microsoft recently launched the Microsoft Cybercrime Center. *See* Microsoft Cybercrime  
21 Center, [http://www.microsoft.com/government/ww/safety-defense/initiatives/Pages/  
22 cybercrime-center.aspx](http://www.microsoft.com/government/ww/safety-defense/initiatives/Pages/cybercrime-center.aspx). Among other tools, the Cybercrime Center relies on investigative  
23 methods that leverage state-of-the-art technology to detect software piracy. Microsoft refers to  
24 these methods as “cyberforensics.”

25 27. As part of its cyberforensic methods, Microsoft analyzes product key activation  
26 data voluntarily provided by users when they activate Microsoft software, including the IP  
27 address from which a given product key is activated. An IP address is a numerical identifier

1 used to uniquely identify an internet-capable device when the device is connected to the  
2 Internet. An IP address is ordinarily assigned to an internet user (whether an individual or an  
3 entity) by the user's Internet Service Provider ("ISP").

4 28. Entities charged with managing and administering internet numbering resources,  
5 including IP addresses, publish information about IP address assignment and registration in  
6 publicly searchable databases. Akin to an IP address "phone book," these databases can be  
7 used to associate each IP address with the individual or entity assigned to use that address. In  
8 some cases, the listed individual or entity is actually using the IP address; in other cases, the  
9 listed individual or entity is an ISP who has assigned the IP address to one of its customers.  
10 Thus, in some instances, the identity of the individual or entity associated with a particular IP  
11 address is publicly available; in other instances, the identity of the individual or entity can only  
12 be obtained from the ISP assigned to that IP address.

13 29. Cyberforensics allows Microsoft to analyze billions of activations of Microsoft  
14 software and identify activation patterns and characteristics that make it more likely than not  
15 that the IP address associated with the activations is an address through which pirated software  
16 is being activated. These characteristics include, but are not limited to, software activations  
17 with:

- 18 a. Product keys known to have been stolen from Microsoft's supply chain  
19 or which have never been issued by Microsoft with a valid license;
- 20 b. DOEM product keys impermissibly used in the COEM and/or  
21 refurbisher channel; or
- 22 c. Any type of product key used more times than is authorized by the  
23 applicable software license.

24 **F. Defendants' Infringing Conduct**

25 30. Microsoft's cyberforensics have identified hundreds of product key activations  
26 originating from IP address 74.111.202.30 ("the IP address"), which is presently assigned to  
27 Verizon Online LLC, and which, on information and belief, is being used by the Defendants in

1 furtherance of the unlawful conduct alleged herein. These activations have characteristics that  
2 on information and belief, establish that Defendants are using the IP address to activate pirated  
3 software.

4 31. On information and belief, Defendants have activated numerous copies of  
5 Windows 7 with product keys that have the following characteristics:

- 6 a. Product keys known to have been stolen from Microsoft's supply chain  
7 or which have never been issued by Microsoft with a valid license;  
8 b. DOEM product keys impermissibly used in the COEM and/or  
9 refurbisher channel; and  
10 c. Product keys of various types used more times than is authorized by the  
11 applicable software license.

12 32. On information and belief, each of these activations constitutes the unauthorized  
13 copying, distribution, and use of Microsoft software, in violation of Microsoft's software  
14 licenses and its intellectual property rights.

15 33. On information and belief, Defendants have committed and continue to commit  
16 acts of copyright and trademark infringement against Microsoft. On information and belief, at  
17 a minimum, Defendants acted with willful blindness to, or in reckless disregard of, Microsoft's  
18 registered copyrights, trademarks, and service mark.

19 34. On information and belief, Microsoft has been harmed by Defendants'  
20 advertising activities, including the unauthorized use of Microsoft's marks to describe the items  
21 that Defendants are distributing.

## 22 V. CAUSES OF ACTION

### 23 First Claim

#### 24 **Copyright Infringement - 17 U.S.C. § 501 *et seq.***

25 35. Microsoft is the sole owner of Microsoft Windows 7 and of the corresponding  
26 copyright and Certificate of Registration with the registration numbers listed above.  
27

1 36. Defendants have infringed Microsoft's copyrights by reproducing and/or  
2 distributing Microsoft software in the United States of America without approval or  
3 authorization from Microsoft.

4 37. At a minimum, Defendants acted with willful blindness to, or in reckless  
5 disregard of, Microsoft's registered copyrights.

6 38. As a result of Defendants' wrongful conduct, Microsoft is entitled to recover its  
7 actual damages and Defendants' profits attributable to the infringement. Alternatively,  
8 Microsoft is entitled to statutory damages under 17 U.S.C. § 504(c).

9 39. The award of statutory damages should be enhanced in accordance with 17  
10 U.S.C. § 504(c)(2).

11 40. Microsoft is further entitled to injunctive relief and an order impounding all  
12 infringing materials. Microsoft has no adequate remedy at law for Defendants' wrongful  
13 conduct because, among other things: (a) Microsoft's copyrights are unique and valuable  
14 property which have no readily determinable market value; (b) Defendants' infringement harms  
15 Microsoft such that Microsoft could not be made whole by any monetary award; and  
16 (c) Defendants' wrongful conduct, and the resulting damage to Microsoft, is continuing.

17 **Second Claim**  
18 **Trademark Infringement – 15 U.S.C. § 1114**

19 41. Defendants' activities constitute infringement of Microsoft's federally registered  
20 trademarks and service mark with the registration numbers listed above

21 42. Microsoft advertises, markets, distributes, and licenses its software and related  
22 components under the trademarks and service mark described above and uses these trademarks  
23 and service mark to distinguish Microsoft's products from the software and related items of  
24 others in the same or related fields.

25 43. Because of Microsoft's long, continuous, and exclusive use of these trademarks  
26 and service mark, they have come to mean, and are understood by customers, end users, and the  
27 public to signify, software programs and related components or services of Microsoft.





1 displaying any Microsoft software or other intellectual property bearing any simulation,  
2 reproduction, counterfeit, copy, or colorable imitation of any of Microsoft's registered  
3 trademarks, service mark, or copyrights, including, but not limited to, the Trademark, Service  
4 Mark, and Copyright Registration Numbers listed above;

5 (iii) using any simulation, reproduction, counterfeit, copy, or colorable  
6 imitation of Microsoft's registered trademarks, service mark, or copyright including, but not  
7 limited to the Trademark, Service Mark, and Copyright Registration Numbers listed above, in  
8 connection with the manufacture, assembly, production, distribution, offering for distribution,  
9 circulation, sale, offering for sale, import, advertisement, promotion, or display of any  
10 software, component, and/or other item not authorized or licensed by Microsoft;

11 (iv) engaging in any other activity constituting an infringement of any of  
12 Microsoft's trademarks, service mark and/or copyrights, or of Microsoft's rights in, or right to  
13 use or to exploit, these trademarks, service mark, and/or copyrights; and

14 (v) assisting, aiding, or abetting any other person or business entity in  
15 engaging in or performing any of the activities listed above;

16 C. That the Court enter an order pursuant to 15 U.S.C. § 1116(a)(d)(1)(A) and 17  
17 U.S.C. § 503 impounding all counterfeit and infringing copies of purported Microsoft software  
18 and/or materials bearing any of Microsoft's trademarks or service mark, and any related item,  
19 including business records, that are in Defendants' possession or under their control;

20 D. That the Court enter an order declaring that Defendants hold in trust, as  
21 constructive trustees for the benefit of Microsoft, the illegal profits obtained from their  
22 distribution of counterfeit and infringing copies of Microsoft's software, and requiring  
23 Defendants to provide Microsoft a full and complete accounting of all amounts due and owing  
24 to Microsoft as a result of Defendants' unlawful activities;

1 E. That Defendants be required to pay all general, special, actual, and statutory  
2 damages which Microsoft has sustained, or will sustain, as a consequence of Defendants'  
3 unlawful acts, and that such damages be enhanced, doubled, or trebled as provided for by 17  
4 U.S.C. § 504(c) and 15 U.S.C. § 1117(b);

5 F. That Defendants be required to pay to Microsoft both the costs of this action and  
6 the reasonable attorneys' fees incurred by Microsoft in prosecuting this action, as provided for  
7 by 15 U.S.C. § 1117 and 17 U.S.C. § 505; and

8 G. That the Court grant Microsoft such other, further, and additional relief as the  
9 Court deems just and equitable.

10 DATED this 28th day of April, 2015.

11 DAVIS WRIGHT TREMAINE LLP  
12 *Attorneys for Plaintiff Microsoft Corp.*

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