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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
173.11.224.197

Defendants.

No. 2:16-cv-00276

COMPLAINT FOR DAMAGES
AND EQUITABLE RELIEF

Plaintiff Microsoft Corporation (“Microsoft”) files this Complaint against Defendants John Does 1-10 using IP address 173.11.224.197 (“Defendants”), alleging as follows:

I. INTRODUCTION

1. This is an action for copyright and trademark infringement and certain copyrights and trademarks associated with Microsoft software. This action arises from the unauthorized copying and Microsoft’s copyrighted software and the trademarks displayed in such software.

II. PARTIES

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

3. The true identities of Defendants are not presently known to Microsoft. On information and belief, Defendants are in possession or control of the Internet Protocol (“IP”)

1 address 173.11.224.197, which was used by one or more Defendants in furtherance of the
2 unlawful conduct alleged herein.

3 III. JURISDICTION & VENUE

4 4. The Court has subject matter jurisdiction over Microsoft's claims for copyright
5 and trademark infringement pursuant to 15 U.S.C. § 1121, 17 U.S.C. § 501, and 28 U.S.C.
6 §§ 1331 and 1338(a).

7 5. The Court has personal jurisdiction over Defendants because they purposefully
8 directed their unlawful activities at Washington, and Microsoft's claims arise from those
9 activities. Defendants activated and attempted to activate at least several thousand copies of
10 Microsoft software, much of which was pirated and unlicensed. During the software activation
11 process, Defendants contacted Microsoft activation servers in Washington over two thousand
12 times from 2012 to 2015, and transmitted detailed information to those servers in order to
13 activate the software. Defendants' contact with Microsoft's activation servers was voluntary,
14 intentional and comprised a routine part of Defendants' installation of software. In addition,
15 Defendants expressly aimed their conduct at Washington because they (1) had actual or
16 constructive knowledge of Microsoft's intellectual property rights (including Microsoft's
17 registered copyrights and trademarks) and Microsoft's residence in Washington where it
18 controls its exclusive rights in its trademarks and copyrights; (2) acted, at a minimum, with
19 willful blindness to, or in reckless disregard of, Microsoft's rights, and in reckless disregard of
20 the likelihood that it was infringing Microsoft's copyrights; and (3) knew or should have known
21 that their conduct would cause harm to Microsoft in Washington, because it is foreseeable that
22 infringement of Microsoft's rights would cause harm likely to be suffered in Washington, the
23 state of its residence, incorporation, and headquarters. *See Wash. Shoe Co. v. A-Z Sporting*
24 *Goods, Inc.*, 704 F.3d 668 (9th Cir. 2012).

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

1 proper in this district pursuant to 28 U.S.C. 1391(b) because a substantial part of the events
2 giving rise to the claims occurred in the Western District of Washington.

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

6 IV. FACTS COMMON TO ALL CLAIMS

7 A. The Global Problem of Software Piracy

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

14 9. One prominent form of software piracy is known as “hard-disk loading,” the
15 unauthorized commercial copying and installation of infringing software on devices which are
16 often sold in competition with, and often for lower prices than, devices pre-installed with legally
17 licensed copies of software.

18 10. Software developers, like Microsoft, are not the only victims of software piracy.
19 Consumers are also victims, as they are often deceived by distributors of pirated software who
20 go to great lengths to make the software appear genuine. These customers may unwittingly
21 expose themselves to security risks associated with the use of pirated software. *See* Federal
22 Bureau of Investigation, *Consumer Alert: Pirated Software May Contain Malware*, Aug. 1,
23 2013, at <http://www.fbi.gov/news/stories/2013/august/pirated-software-may-contain-malware/>
24 (noting the relatively greater risk that pirated software is infected with malicious software, or
25 “malware,” which can be used to record keystrokes and thus capture sensitive information such
26 as user names, passwords, and Social Security numbers).

B. Microsoft's Software and Intellectual Property

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

12. **Windows 8:** Microsoft has developed, advertises, markets, distributes, and licenses a computer operating system called Microsoft Windows 8 ("Windows 8"). Windows 8 is available in a number of different versions, each of which includes certain combinations of products, programs, and features. Versions of Windows 8 include Windows 8 and Windows 8 Professional. Microsoft holds a valid copyright in Windows 8 Professional, the most expansive version of Windows 8. As a result, Microsoft's copyright in Windows 8 Professional encompasses all other versions of Windows 8. Microsoft's copyright in Windows 8 Professional was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft Windows 8 Professional, bearing the number TX 7-601-008, is attached as Exhibit 1.

13. **Windows 7:** Microsoft has developed, advertises, markets, distributes, and licenses a computer operating system called Microsoft Windows 7 ("Windows 7"). Windows 7 is available in a number of different versions including Windows 7 Ultimate, Windows 7 Professional, Windows 7 Home Premium, and Windows 7 Enterprise. Microsoft holds a valid copyright in Windows 7 Ultimate, the most expansive version of Windows 7. As a result, Microsoft's copyright in Windows 7 Ultimate encompasses all other versions of Windows 7. Microsoft's copyright in Windows 7 Ultimate was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft Windows 7 Ultimate, bearing the number TX 7-009-361, is attached as Exhibit 2.

14. **Office 2010:** Microsoft has developed, advertises, markets, distributes, and licenses a suite of productivity software for business, home, and educational use called Microsoft Office 2010 ("Office 2010"). Office 2010 is available in a number of different

1 versions, each of which includes certain combinations of products, programs, and features.
2 Versions of Office 2010 include Office 2010 Professional, Office 2010 Professional Plus, Office
3 2010 Home and Business, and Office 2010 Home and Student. Microsoft holds a valid
4 copyright in Office 2010 Professional Plus, the most expansive version of Office 2010. As a
5 result, Microsoft's copyright in Office 2010 Professional Plus encompasses all other versions of
6 Office 2010. Microsoft's copyright in Office 2010 Professional Plus was duly and properly
7 registered with the United States Copyright Office. A true and correct copy of the Registration
8 Certificate for Office 2010 Professional Plus, bearing the number TX 7-151-840, is attached as
9 Exhibit 3.

10 15. **Windows Server 2012:** Microsoft has developed, advertises, markets,
11 distributes, and licenses a line of server operating systems for business use called Windows
12 Server 2012. Windows Server 2012 is available in a number of different versions, each of
13 which includes certain combinations of products, programs, and features. Versions of Windows
14 Server 2012 include Windows Server Standard 2012 R2, Windows Server Standard 2012,
15 Windows Web Server 2012 R2, and Windows Web Server 2012. Microsoft holds a valid
16 copyright in Windows Server, which encompasses all versions of Windows Server. Microsoft's
17 copyright in Windows Server was duly and properly registered with the United States Copyright
18 Office. A true and correct copy of the Registration Certificate for Windows Server 2012,
19 bearing the number TX 7-622-123, is attached as Exhibit 4.

20 16. **Windows Server 2008:** Microsoft has developed, advertises, markets,
21 distributes, and licenses a line of server operating systems for business use called Windows
22 Server 2008. Windows Server 2008 is available in a number of different versions, each of
23 which includes certain combinations of products, programs, and features. Versions of Windows
24 Server 2008 include Windows Server Standard 2008 R2, Windows Server Standard 2008,
25 Windows Web Server 2008 R2, and Windows Web Server 2008. Microsoft holds a valid
26 copyright in Windows Server, which encompasses all versions of Windows Server. Microsoft's
27 copyright in Windows Server was duly and properly registered with the United States Copyright

1 Office. A true and correct copy of the Registration Certificate for Windows Server, bearing the
2 number TX 6-880-740, is attached as Exhibit 5.

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

6 (a) "MICROSOFT," Trademark and Service Mark Registration No. 1,200,236, for
7 computer programs and computer programming services;

8 (b) "WINDOWS," Trademark Registration No. 1,872,264 for computer programs
9 and manuals sold as a unit;

10 (c) "FLAG DESIGN TWO (B/W)," Trademark Registration No. 2,738,877, for
11 computer software;

12 (d) "FLAG DESIGN TWO (COLOR)," Trademark Registration No. 2,744,843, for
13 computer software;

14 (e) "MICROSOFT OFFICE," Trademark Registration No. 3,625,391, for computer
15 productivity software;

16 (f) OFFICE 2010 DESIGN, Trademark Registration No. 4,029,299, for computer
17 productivity software;

18 (g) "ACCESS," Trademark Registration No. 3,238,869, for computer database
19 management software;

20 (h) "ACCESS LAUNCH ICON (2010)," Trademark Registration No. 3,905,556, for
21 computer database management software;

22 (i) "EXCEL," Trademark Registration No. 2,942,050, for computer spreadsheet
23 software;

24 (j) "EXCEL LAUNCH ICON 2010," Trademark Registration No. 3,905,558, for
25 computer spreadsheet software;

26 (k) "ONENOTE," Trademark Registration No. 2,844,710, for computer software for
27 use in note taking;

1 (l) "ONENOTE LAUNCH ICON 2010," Trademark Registration No. 3,905,559, for
2 computer software for use in note taking;

3 (m) "OUTLOOK," Trademark Registration No. 2,188,125, for computer programs
4 for providing enhanced electronic mail and scheduling capabilities;

5 (n) "OUTLOOK LAUNCH ICON 2010," Trademark Registration No. 3,905,560, for
6 computer programs for providing enhanced electronic mail and scheduling capabilities;

7 (o) "POWERPOINT," Trademark Registration No. 1,475,795, for computer software
8 programs for creating presentations, graphics and videos;

9 (p) "POWERPOINT LAUNCH ICON 2010," Trademark Registration No.
10 3,905,561, for computer software programs for creating presentations, graphics and
11 videos;

12 (q) "WORD LAUNCH ICON 2010," Trademark Registration No. 3,909,143, for
13 word processing software.

14 (r) "WINDOWS SERVER," Trademark Registration No. 3,056,149, for operating
15 system, computer and utility programs.

16 True and correct copies of the Trademark Registrations for (a) through (r) above are
17 attached as Exhibits 6 through 23, respectively.

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

19 18. Microsoft distributes its software through a number of distribution channels,
20 including the Original Equipment Manufacturer (OEM), volume licensing, subscriptions, and
21 refurbisher channels.

22 19. The Original Equipment Manufacturer ("OEM") distribution channel is one
23 through which Microsoft software is distributed to computer and device manufacturers called
24 OEMs. OEMs customarily pre-install software on the devices they build including, most
25 commonly, the Microsoft Windows operating system.
26
27

1 20. The OEM distribution channel involves sub-channels that supply Microsoft
2 software to different categories of OEMs. Two of these sub-channels are the Commercial OEM
3 channel and the Direct OEM channel.

4 21. Through the Commercial OEM (“COEM”) channel, Microsoft and authorized
5 distributors supply what is called “system builder” software to small and medium-sized OEMs
6 for pre-installation on devices. As described in detail below, this software is required to be
7 individually activated on each device.

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

12 23. In addition to the OEM channel, Microsoft offers a number of subscription
13 programs through which it provides software to qualified groups. One example of a
14 subscription program is the Microsoft Developer Network (“MSDN”), which is for individuals
15 and entities that develop third-party software compatible with Microsoft software. MSDN
16 subscribers are able to download certain Microsoft software directly from Microsoft.

17 24. Microsoft also offers Volume Licensing (“VL”) programs for its business
18 customers. Through the VL program, customers purchase licenses for their software and can
19 add, remove, and upgrade their software as their business needs evolve.

20 **D. Product Activation**

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

25 26. A Microsoft product key is a 25-character alphanumeric string generated by
26 Microsoft and provided to customers and OEMs. Generally, when customers or OEMs install
27 Microsoft software on a device, they must enter the product key. Then, as part of the activation

1 process, customers and/or OEMs voluntarily contact Microsoft's activation servers over the
2 Internet and transmit their product keys and other technical information about their device to the
3 servers. The majority of the activations involved in this matter contacted servers that are
4 physically located in Washington.

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

10 28. In the OEM channel, each copy of genuine Microsoft Windows 8 and Windows 7
11 software is distributed with a product key unique to that copy of the software—thus, for
12 example, if a customer purchases ten copies of Windows 7, the customer is supplied with ten
13 unique product keys. For Microsoft's subscription and VL programs, customers are normally
14 supplied a single product key for each version of Microsoft software they license. For example,
15 subscription and volume licensing customers receive one reusable product key for all Office
16 2010 Professional licenses authorized under their agreements to install and activate all copies.

17 29. Microsoft Windows 7 and Windows 8 activation works differently in the COEM
18 and DOEM channels. COEMs use individual product keys to install and activate software on
19 the computer system. DOEMs, on the other hand, use either a master key to install Windows
20 software (as in the case with Windows 7) or a separate file generated from Microsoft to install
21 and activate Windows software (as in the case with Windows 8) for each device.

22 30. Microsoft Windows Server 2008 and 2012 are activated with unique product
23 keys for each software license.

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

25 31. In order to combat the global threat of software piracy of its software, Microsoft
26 relies on investigative methods that leverage state-of-the-art technology to detect software
27 piracy. Microsoft refers to these methods as "cyberforensics."

1 32. As part of its cyberforensic methods, Microsoft analyzes product key activation
2 data voluntarily provided by users when they activate Microsoft software, including the IP
3 address from which a given product key is activated. An IP address is a numerical identifier
4 used to uniquely identify an internet-capable device when the device is connected to the
5 Internet. An IP address is ordinarily assigned to an internet user (whether an individual or an
6 entity) by the user's Internet Service Provider ("ISP").

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

16 34. Cyberforensics allows Microsoft to analyze billions of activations of Microsoft
17 software and identify activation patterns and characteristics that make it more likely than not
18 that the IP address associated with the activations is an address through which pirated software
19 is being activated.

20 **F. Defendants' Infringing Conduct**

21 35. Microsoft's cyberforensics have identified several thousand product key
22 activations originating from IP address 173.11.224.197 ("the IP Address"), which is presently
23 assigned to Comcast Cable Communications, and which, on information and belief, is being
24 used by the Defendants in furtherance of the unlawful conduct alleged herein. A material
25 percentage of these activations have characteristics that, on information and belief, demonstrate
26 that Defendants are using the IP Address to activate pirated software.

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

4 44. The award of statutory damages should be enhanced in accordance with 17
5 U.S.C. § 504(c)(2).

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

12 **Second Claim**
13 **Trademark Infringement – 15 U.S.C. § 1114**

14 46. Defendants' activities constitute infringement of Microsoft's federally registered
15 trademarks and service mark with the registration numbers listed above.

16 47. Microsoft advertises, markets, distributes, and licenses its software and related
17 components under the trademarks and service mark described above and uses these trademarks
18 and service mark to distinguish Microsoft's products from the software and related items of
19 others in the same or related fields.

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

23 49. The infringing materials that Defendants have and are continuing to install are
24 likely to cause confusion, mistake, or deception as to their source, origin, or authenticity.

25 50. Further, Defendants' activities are likely to lead the public to conclude,
26 incorrectly, that the infringing materials that Defendants are installing originate with or are
27 authorized by Microsoft, thereby harming Microsoft, its licensees, and the public.

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

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

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

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

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

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

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

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

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

6 DATED this 25th day of February, 2016.

7 DAVIS WRIGHT TREMAINE LLP
8 *Attorneys for Plaintiff Microsoft Corp.*

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