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3 UNITED STATES DISTRICT COURT  
4 NORTHERN DISTRICT OF CALIFORNIA  
5

6 **MICROSOFT CORPORATION,**

7 Plaintiff,

8 v.

9 **A&S ELECTRONICS, INC., ET AL.,**

10 Defendants.

Case No. 15-cv-03570-YGR

**ORDER RE: DISCOVERY DISPUTE**

**DKT. NO. 67**

11 The parties submitted their joint discovery letter on August 30, 2016, seeking resolution of  
12 a dispute concerning the scope of discovery authorized by the Court in connection with the  
13 parties' cross-motions for summary judgment on the issue of whether the initial transfer of the two  
14 software product keys alleged in the Third Amended Complaint ("TAC") was license, not a sale  
15 for purposes of the first sale doctrine. The Court reviewed the dispute and exhibits, and conducted  
16 a phone conference with counsel on September 1, 2016.

17 As a general matter, and based upon the limited early summary judgment motions  
18 authorized by the Court on the issue of whether the software at issue in this action was obtained by  
19 the initial holder under a license or a sale for purposes of the first sale doctrine, the Court **ORDERS**  
20 that discovery at this phase of the case is limited to Defendants' purchase and/or acquisition of the  
21 two particular products alleged in the TAC at paragraphs 19-29, 30-36, and Exhibits 9 and 11.

22 (1) Microsoft has agreed to limit its requests stated in its Rule 30(b)(6) Deposition notice,  
23 request for production of documents, and interrogatories to these two transactions, and the Court  
24 so orders. Thus, for example, in the Rule 30(b)(6) deposition notice, Topics 1 and 2 are  
25 appropriate to the extent they are limited to A&S's purchase of the product key/software, while  
26 Topics 3-19 are overbroad and not authorized at this point in the case to the extent they inquire  
27 about the stated subjects beyond the two specific transactions and identified product keys as  
28 alleged in the TAC.

1 (2) With respect to the subpoena directed to **FBT/Flashback Technologies**, the  
2 deposition may proceed as to Topics 1, 2, 4, 5, 6, 7, 12, and 13. The deposition with respect to  
3 Topics 3, 8, 9, 10, and 11 is limited to such topics to the extent they pertain to the purchase and/or  
4 acquisition, sale and/or distribution of the “Microsoft Office 2013 Professional Plus 32/64-Bit  
5 Promo Full Version DVD with Product Key” alleged in Paragraphs 19-29 and Exhibit 9 of the  
6 TAC, specifically key card 9NR4X-RW376-B7FG9-HDFKT-BPXXKQ (“Product Key 1”).  
7 Likewise, the document requests may proceed as to Requests 1, 2, 4, 5, 6, 7, 12 and 13, but are  
8 permitted with respect to Requests 3, 8, 9, 10, and 11 only to the extent they pertain to Product  
9 Key 1.

10 (3) With respect to the subpoena directed to **Jon Cossin**, the deposition inquiry is limited  
11 to the purchase and/or acquisition, sale and/or distribution of Product Key 1. The document  
12 requests may proceed as to Requests 1, 2, 4, 5, 6, 7, 12, and 13, but are permitted with respect to  
13 Requests 3, 8, 9, 10, 11, 14, 15, and 16 only to the extent they pertain to Product Key 1.

14 (4) With respect to the subpoena directed to **FBT/Flashback Technologies World**  
15 **Trading Inc.**, the deposition may proceed as to Topics 1, 2, 4, 5, 6, 7, 12, and 13. The deposition  
16 with respect to Topics 3, 8, 9, 10, and 11 is limited to such topics to the extent they pertain to the  
17 purchase and/or acquisition, sale and/or distribution of the “Microsoft Office Professional 2010  
18 Product Key” alleged in Paragraphs 30-36 and Exhibit 11 of the TAC, product key 2KMPF-  
19 7CYYW-6WQRR-Q6QJM-BQ8H3 (“Product Key 2”). Likewise, the document requests may  
20 proceed as to Requests 1, 2, 4, 5, 6, 7, 12 and 13, but are permitted with respect to Requests 3, 8,  
21 9, 10, and 11 only to the extent they pertain to Product Key 2.

22 Therefore, the Court **ORDERS** that discovery is limited as set forth above. This order is  
23 without prejudice to any party seeking such discovery later in the case, after the initial summary  
24 judgment on the license issue has been decided.

25 **IT IS SO ORDERED.**

26 Dated: September 1, 2016

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28 **YVONNE GONZALEZ ROGERS**  
**UNITED STATES DISTRICT COURT JUDGE**