

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION, a  
Washington corporation,

Plaintiff,

v.

IMMERSION CORPORATION, a  
Delaware corporation,

Defendant.

No. 2:07-cv-936RSM

**STIPULATED PROTECTIVE  
ORDER REGARDING TREATMENT  
BY THE PARTIES OF  
CONFIDENTIAL DOCUMENTS**

**I. STIPULATIONS**

In connection with litigating the parties' respective claims asserted in this action, the parties expect that they will need to exchange documents and other information during discovery regarding non-public, confidential, and sensitive commercial information, including without limitation confidential business, financial, licensing, technical and trade secret information. This information is, by nature, highly confidential and proprietary to each party and deserving of protection regarding use and dissemination. Pursuant to Fed. R. Civ. P. 26(c)(7), the Court has the authority to issue an order that "a trade secret or other

1 confidential . . . or commercial information not be revealed or be revealed only in  
2 a designated way." Accordingly, the parties request that the Court enter as an  
3 Order the following Stipulated Protective Order ("Order") which shall govern the  
4 use, handling and/or return of documents, depositions, deposition exhibits,  
5 interrogatory responses, and other written recorded or graphic material produced  
6 during discovery or on a party's own initiative for use in this action, and all copies  
7 thereof, and shall govern the use, handling, and/or return of the documents,  
8 materials and information.

9           1. Any party, or third party subject to discovery in this action, may  
10 designate the information it produces as "Confidential" if it believes, in its good  
11 faith judgment, that the material contains confidential, market sensitive or  
12 proprietary information, including without limitation financial information, trade  
13 secrets, product development information, personnel and payroll information or  
14 other commercially sensitive or personally sensitive information of a non-public  
15 nature. The party shall make this designation by placing on every document or  
16 other material (including portions of deposition transcripts) containing such  
17 information the legend "CONFIDENTIAL" (except that in the case of multipage  
18 documents, the legend need only be placed on the first page of the document in  
19 order for the entire document to be treated as "Confidential") prior to providing  
20 such document or other material pursuant to this Order.

21           2. Any party may designate the information it produces as "Attorneys  
22 and Consultants Only" if it believes, in good faith judgment, that the material is not  
23 generally known to others and has significant competitive value such that  
24 unrestricted disclosure to others would create a substantial risk of serious injury,  
25 and which the Designating Party (*i*) would not normally reveal to third parties  
26

1 except in confidence or has undertaken with others to maintain in confidence, or  
2 (ii) believes in good faith is significantly sensitive and protected by a right to  
3 privacy under federal or state law or any other applicable privilege or right related  
4 to confidentiality or privacy. The party shall make this designation by placing on  
5 every document or other material (including portions of deposition transcripts)  
6 containing such information the legend "ATTORNEYS AND CONSULTANTS  
7 ONLY" (except that in the case of multipage documents, the legend need only be  
8 placed on the first page of the document in order for the entire document to be  
9 treated as "ATTORNEYS AND CONSULTANTS ONLY") prior to providing such  
10 document or other material pursuant to this Order.

11 3. When used in this Order, the word "documents" mean all written,  
12 recorded or graphic matter whatsoever, however created and whatever the  
13 medium on which it was produced or reproduced, including, but not limited to,  
14 documents produced by any party, whether pursuant to Fed. R. Civ. P. 33 or 34,  
15 subpoena, or by agreement, and may also include deposition transcripts and  
16 exhibits, and any portions of any court papers which quote from or summarize any  
17 of the foregoing. When used in this Order, the term "other information" means  
18 any portion of any answer or response to any written discovery request.

19 4. All "Confidential" and "Attorneys and Consultants Only" documents  
20 and all information contained therein, and any other confidential information, shall  
21 be used by the parties to whom the documents are disclosed solely for the  
22 prosecution and/or defense of this action, and shall not be further disseminated,  
23 except as specifically set forth below.

24 5. Except with prior written consent of the party asserting confidential  
25 treatment, or court order, documents designated as "Confidential" and the  
26

1 information contained therein, and any other confidential information, may be  
2 disclosed only to the following persons:

3 (a) counsel for the parties (including attorneys and staff  
4 associated with or employed by the legal counsel);

5 (b) five (5) in-house business or legal representatives to whom  
6 access to the designated materials is deemed necessary for the prosecution,  
7 defense, or settlement of this litigation;

8 (c) court reporters and stenographers employed in connection  
9 with this suit;

10 (d) outside consultants and experts employed by counsel of  
11 record for the parties; and

12 (e) any witness or deponent at deposition, when such witness or  
13 deponent is believed in good faith to be the author or recipient, or otherwise have  
14 personal knowledge, of the documents or things designated as "Confidential" or  
15 the contents thereof.

16 6. Except with prior written consent of the party asserting confidential  
17 treatment, or court order, documents designated as "Attorneys and Consultants  
18 Only" and the information contained therein, and any other confidential  
19 information, may be disclosed only to the following persons:

20 (a) outside counsel of record for the parties (including attorneys  
21 and staff associated with or employed by the outside legal counsel);

22 (b) court reporters and stenographers employed in connection  
23 with this suit;

24 (c) outside consultants and experts employed by counsel of  
25 record for the parties; and  
26

1 (d) any witness or deponent at deposition, when such witness or  
2 deponent is believed in good faith to be the author or recipient, or otherwise have  
3 personal knowledge, of the documents or things designated as “Attorneys and  
4 Consultants Only” or the contents thereof.

5 7. Before disclosing “Confidential” documents or information to any  
6 person enumerated in paragraphs 5(b) or (e) above or “Attorneys and Consultants  
7 Only” documents or information to any person enumerated in paragraphs 6(d)  
8 above, counsel for the disclosing party must first inform that person that the  
9 information or document to be disclosed contains confidential or proprietary  
10 information which must be held in confidence and may be used solely for the  
11 purpose of preparing for this litigation or settlement and, further, that these  
12 restrictions are imposed by a Stipulated Protective Order signed by the parties  
13 and their counsel and entered by the Court. Each person granted access to  
14 “Confidential” or “Attorneys and Consultants Only” information shall not reveal or  
15 disclose the contents of the confidential or proprietary information for any  
16 purpose, including, without limitation, any business, professional, or commercial  
17 purpose, other than those relating to this litigation. Each such person shall read  
18 this Order or be advised by counsel as to its contents, and shall agree to be  
19 bound by its terms by signing Exhibit A, attached hereto.

20 8. It is the obligation of the party producing confidential or proprietary  
21 documents to identify specific documents as “Confidential” or “Attorneys and  
22 Consultants Only.” If the party receiving such documents objects to that  
23 identification, and counsel for the parties are unable to resolve the objection  
24 informally, the receiving party may file a motion with the Court requesting relief.  
25 The burden of persuasion to justify the designation in any such challenge  
26

1 proceeding shall be on the party asserting the designation. Unless and until the  
2 Court issues a ruling allowing disclosure, all materials designated “Confidential”  
3 or “Attorneys and Consultants Only” shall remain as designated.

4 9. Upon the production of “Confidential” or “Attorneys and Consultants  
5 Only” material from one party to another party, and in the normal course of  
6 discovery, the receiving party may seek to depose a witness from the producing  
7 party regarding these materials. During such a deposition, only counsel for the  
8 parties, party representatives of the producing party, permitted party  
9 representatives of the receiving party, expert witnesses or consultants for the  
10 parties (if permitted to attend by the rules of civil procedure and/or agreement of  
11 the parties), the witness, and the witness’s counsel may be present during any  
12 portion of the interrogation concerning the material deemed “Confidential” or  
13 “Attorneys and Consultants Only” except that party representatives of the  
14 receiving party other than counsel may not attend any portion of the deposition  
15 during which “Attorneys and Consultants Only” material is being reviewed or  
16 discussed. If appropriate, the witness may be asked to review this Order and to  
17 sign Exhibit A, attached hereto.

18 10. Deposition transcripts shall be treated as “Attorneys and  
19 Consultants Only” for a 21-day period following receipt of the transcript by all  
20 parties. Within the 21-day time period, any party may make a preliminary  
21 designation of the entire transcript, or portions of the transcript as “Confidential”  
22 or “Attorneys and Consultants Only” by page and line number, by providing  
23 written notice to all parties. Within 21 days after the day of the deposition, a  
24 designating party must make a final designation, listing only those portions of the  
25 deposition transcript by page and line that the designating party, in good faith,  
26

1 believes should be protected.

2 11. Documents containing “Confidential” material or “Attorneys and  
3 Consultants Only” material of any party shall not be filed with the Court unless it is  
4 necessary to do so for purposes of trial, substantive motions, including without  
5 limitation, motions for preliminary injunction or summary judgment, or other Court  
6 matters. The parties shall take all reasonable steps to file “Confidential” material  
7 and “Attorneys and Consultants Only” material under seal pursuant to FRCP  
8 26(c)(7) and Local Rule 5(g).

9 12. Any party including “Confidential” material or “Attorneys and  
10 Consultants Only” material in a filing with the Court (whether in pleadings,  
11 declarations, exhibits, or otherwise) shall file such material pursuant to Local Rule  
12 5(g)(3), and shall contemporaneously with such filing, file a motion to seal any  
13 “Confidential” material or “Attorneys and Consultants Only” material included in  
14 the filing, regardless of which party designated the materials as such. Such a  
15 motion to seal shall be noted for consideration seven (7) judicial days after filing  
16 in accordance with Local Rule 7(d). The party filing the motion to seal will within  
17 the motion make a good faith effort to show why any materials that it designated  
18 as “Confidential” or “Attorneys and Consultants Only” should be sealed pursuant  
19 to FRCP 26(c)(7) and Local Rule 5(g). If any documents or information included  
20 in the court filing were designated “Confidential” or “Attorneys and Consultants  
21 Only” by a non-moving party, that party may file a response in support of the  
22 motion to seal no later than three (3) judicial days before the note date showing  
23 why such materials should be sealed pursuant to FRCP 26(c)(7) and Local Rule  
24 5(g).

25 13. The Clerk of the Court is directed to maintain under seal all  
26

1 documents and all transcripts of deposition testimony filed with this Court in this  
2 litigation by any party which are, in whole or in part, designated as “Confidential”  
3 or “Attorneys and Consultants Only,” including all pleadings, deposition  
4 transcripts, exhibits, discovery responses or memoranda purporting to reproduce  
5 or paraphrase such information, **PROVIDED** that such documents are ordered  
6 sealed by the Court or are the subject of a pending motion to seal. The party  
7 filing such material shall designate to the Clerk that all or a designated portion  
8 thereof is subject to this Order and is to be kept under seal. A complete,  
9 unredacted set of documents filed under seal shall be provided by the filing party  
10 to opposing counsel the same day the documents are filed.

11 14. In the event the Court denies a motion to seal documents containing  
12 either “Confidential” material or “Attorneys and Consultants Only” material, the  
13 Clerk of the Court shall remove the documents subject to the motion to seal from  
14 the Court file and such documents shall not be considered by the Court. In this  
15 situation, not later than three (3) judicial days after the date of the Court’s denial  
16 of a motion to seal, the filing party may, at its option, (a) file replacement  
17 documents that do not contain either “Confidential” material or “Attorneys and  
18 Consultants Only” material, which shall be considered by the Court, or (b) inform  
19 the Clerk of the Court that it may return to the Court file the documents which had  
20 been previously removed and allow such documents to be considered by the  
21 Court and to become part of the public Court record.

22 15. In the event that any “Confidential” material or “Attorneys and  
23 Consultants Only” material is used in any court proceeding in connection with this  
24 litigation, it shall not lose its “Confidential” or “Attorneys and Consultants Only”  
25 status through such use, and the parties shall take all steps reasonably required  
26



1 to protect its confidentiality during such use.

2 16. At the conclusion of the litigation of this action, or upon settlement or  
3 dismissal, documents or other information designated as confidential, and all  
4 copies of such documents or other information (other than exhibits of record),  
5 shall be returned, within 30 days, to the source from which they were produced or  
6 at the direction of the producing party, or destroyed with the party destroying the  
7 documents providing a certificate of destruction to the producing party.

8 17. In the event additional parties join this action they shall not have  
9 access to “Confidential” and “Attorneys and Consultants Only” material until each  
10 newly joined party by its counsel has executed and filed with the Court its  
11 agreement to be fully bound by this Order.

12 18. The inadvertent production of a confidential document without the  
13 “Confidential” or “Attorneys and Consultants Only” identifier shall not waive the  
14 confidential nature of that document and does not alter the confidential or  
15 proprietary nature of any other “Confidential” or “Attorneys and Consultants Only”  
16 documents. Upon discovery that a confidential document has been produced  
17 without the “Confidential” or “Attorneys and Consultants Only” identifier, the  
18 producing party shall promptly notify the other parties, in writing, and shall request  
19 that all parties treat the document in accordance with this Order. Such other  
20 parties may challenge the confidentiality designation in accordance with  
21 Paragraph 8, supra.

22 19. The undersigned parties and counsel shall keep material identified  
23 as “Confidential” or “Attorneys and Consultants Only” in a secure and segregated  
24 location, shall not disclose those documents, and shall not use or disclose them  
25 other than as authorized by this Order. The undersigned parties and counsel  
26

1 understand that this Order continues after the conclusion of this litigation.

2 20. In the event of a violation of this Order, the party injured by the  
3 violation shall be entitled, in addition to any other rights and remedies it may have  
4 at law or in equity, to have an injunction issued by the Court, or any court of  
5 competent jurisdiction, enjoining the party violating this Order (and/or any third  
6 party involved in the violation) from continuing such violation.

7 21. To expedite the production of information, parties may inadvertently  
8 produce documents that are privileged or otherwise immune from discovery.  
9 Inadvertent production of privileged documents shall not be deemed a waiver of  
10 any applicable privilege. If a party unintentionally discloses documents or material  
11 that is privileged or otherwise immune from discovery, the party shall, within  
12 seven (7) business days upon discovery of the disclosure, so advise in writing the  
13 party to whom the materials were produced, request the documents or material be  
14 returned or destroyed, and attach a privilege log with an entry pertaining to the  
15 documents or material that is privileged or otherwise immune from discovery. If  
16 that request is made and the privilege log provided, no party to this action shall  
17 thereafter assert on this basis that the disclosure waived any privilege or  
18 immunity. It is further agreed that the receiving party will return or certify the  
19 destruction of the inadvertently produced documents or material, and all copies  
20 and derivations, within two (2) business days of the receiving party's receipt of a  
21 written request for the return of the documents or material. The receiving party  
22 having returned the inadvertently produced documents or material may thereafter  
23 seek production of the documents or material in accordance with the Federal  
24 Rules of Civil Procedure. To the extent that any such inadvertently produced  
25 material has been used, included, referenced or summarized in a pleading,  
26

1 deposition or other proceeding, nothing in this paragraph shall require a receiving  
2 party to purge, redact or excise any such information that has been used in good  
3 faith before a request for the return of the unintentionally produced material.

4 22. Entry of this Order is without prejudice to the right of any party to  
5 seek a protective order imposing additional restrictions upon discovery of  
6 confidential information or documents, including but not limited to an order that  
7 production thereof not be made.

8  
9 DATED this 22<sup>nd</sup> day of May, 2008.

10 RIDDELL WILLIAMS P.S.

11  
12 By \_\_\_\_\_ /s/  
13 Paul J. Kundtz, WSBA #13548  
14 Blake Marks-Dias, WSBA #28169  
15 Wendy E. Lyon, WSBA #34461  
16 Attorneys for Plaintiff MICROSOFT CORPORATION

17  
18 BYRNES & KELLER LLP

19 By \_\_\_\_\_ /s/  
20 Bradley S. Keller, WSBA #10665  
21 Jofrey M. McWilliam, WSBA #28441  
22 Attorneys for Defendant IMMERSION CORPORATION

23 IRELL & MANELLA LLP

24 By \_\_\_\_\_ /s/  
25 Richard M. Birnholz  
26 Morgan Chu  
Alan J. Heinrich  
David R. Kaplan  
Pro Hac Vice Attorneys for Defendant IMMERSION  
CORPORATION

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT REGARDING CONFIDENTIAL INFORMATION**

3  
4 The undersigned hereby acknowledges that:

5 1. I have read and understand the terms of the Stipulated Protective  
6 Order ("Order").

7 2. I hereby agree to be bound by the Order's terms with respect to any  
8 documents, material, or information marked "Confidential" or "Attorneys and  
9 Consultants Only" that are furnished to me as set forth in the Order.

10 3. I hereby agree not to disclose to anyone any documents, material or  
11 information marked "Confidential" or "Attorneys and Consultants Only" other than  
12 as permitted by the Order.

13 4. I hereby consent to the jurisdiction of the United States District Court  
14 for the Western District of Washington with regard to any proceedings to enforce  
15 the terms of the Order.

16 5. I hereby agree that any documents, materials or information marked  
17 "Confidential" or "Attorneys and Consultants Only" furnished to me will be used  
18 by me only for the purposes of this litigation and for no other purpose and will not  
19 be used by me in any business affairs of my employer or of my own or be  
20 imparted by me to any other person.

21 6. I declare under penalty of perjury that the foregoing is true and  
22 correct.

23 [signature block on following page]  
24  
25  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title or Position

\_\_\_\_\_  
Telephone Number

1 **II. ORDER**

2

3 The Court hereby orders as stipulated by the parties above.

4 DATED this 9 day of June, 2008

5

6

7 

8 **RICARDO S. MARTINEZ**  
9 **UNITED STATES DISTRICT JUDGE**

10 Presented By:

11 **RIDDELL WILLIAMS P.S.**

12

13 By: \_\_\_\_\_ /s/  
14 Paul J. Kundtz, WSBA #13548  
15 Blake Marks-Dias, WSBA #28169  
16 Wendy E. Lyon, WSBA #34461  
17 Attorneys for Plaintiff MICROSOFT CORPORATION  
18 **BYRNES & KELLER LLP**

19

20 By \_\_\_\_\_ /s/  
21 Bradley S. Keller, WSBA #10665  
22 Jofrey M. McWilliam, WSBA #28441  
23 Attorneys for Defendant IMMERSION CORPORATION  
24 **IRELL & MANELLA LLP**

25

26 By \_\_\_\_\_ /s/  
Richard M. Birnholz  
Morgan Chu  
Alan J. Heinrich  
David R. Kaplan  
Pro Hac Vice Attorneys for Defendant IMMERSION CORPORATION