

CIVIL COVER SHEET

The JS - 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I.(a) PLAINTIFFS IEA SOFTWARE, INC., a Washington corporation; COMMUNITY ISP, INC., a foreign corporation (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>Spokane</u> (EXCEPT IN U.S. PLAINTIFF CASES)	DEFENDANTS BRIAN KRABACH; TODD MYERS; and WHOLESALE ISP., INC., a foreign corporation COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Workland & Witherspoon, PLLC 601 W. Main Ave., Suite 714 Spokane, WA 99201 (509) 455-9077	ATTORNEYS (IF KNOWN) Unknown

CS-03-0486-AAM

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only) <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;"></td> <td style="width: 33%; text-align: center;">PTF DEF</td> <td style="width: 33%;"></td> <td style="width: 33%; text-align: center;">PTF DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1 <input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4 <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5 <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </table>		PTF DEF		PTF DEF	Citizen of This State	<input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6														

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)					
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	TORTS <table style="width: 100%;"> <tr> <td style="width: 50%;"> PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury </td> <td style="width: 50%;"> PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability </td> </tr> </table>	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability				
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> Appeal to District Judge from Magistrate Judgment
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VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)
 17 U.S.C. 502, et seq., copyright infringement regarding software program and text manuals

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$1,400,000 CHECK YES only if demanded in complaint. JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: December 18, 2003 SIGNATURE OF ATTORNEY OF RECORD:

RECEIVED

DEC 22 2003

CLERK, US DISTRICT COURT
SPOKANE, WASHINGTON

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DEC 22 2003

JAMES R. LARSEN, CLERK
DEPUTY,
SPOKANE, WASHINGTON

1 JAMES A. MCPHEE
2 WORKLAND & WITHERSPOON, PLLC
3 West 601 Main, Suite 714
4 Spokane, WA 99201
5 (509) 455-9077

6
7 Attorney for Plaintiffs
8

9
10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF WASHINGTON
12 AT SPOKANE
13

14 IEA SOFTWARE, INC., a Washington
15 corporation; COMMUNITY ISP, INC., a
16 foreign corporation,

17
18 Plaintiffs,

19
20 v.

21 BRIAN KRABACH; TODD MYERS;
22 and WHOLESALE ISP, INC., a foreign
23 corporation,

24
25 Defendants.
26

NO. CS-03-0486-AAM

COMPLAINT

27
28 Plaintiffs, IEA Software, Inc. and Community ISP, Inc., by and through
29 their attorneys, Workland & Witherspoon, PLLC, complain and allege as
30
31
32

COMPLAINT - 1

WORKLAND & WITHERSPOON, PLLC
714 Washington Mutual Financial Center
601 West Main Avenue
Spokane, Washington 99201-0677
Telephone (509) 455-9077 Fax (509) 624-6441

1 follows:
2

3 **Jurisdiction, Venue, and Parties**
4

5 1. This Court has subject matter jurisdiction over the claims in this
6 action which relate to copyright infringement pursuant to the provisions of 17
7 U.S.C. §501, 28 U.S.C. §1331, and 28 U.S.C. §1338(a).
8

9
10 2. This Court has supplemental jurisdiction over the claims in this
11 Complaint which arise under the statutory and common law of the State of
12 Washington pursuant to 28 U.S.C. § 1367(a), since the state law claims are so
13 related to the federal claims that they form part of the same case or controversy
14 and derive from a common nucleus of operative facts.
15
16
17
18

19 3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b).
20 The original product that is the subject of this cause of action was developed
21 and sold to Defendants in the Eastern District of Washington; the infringing
22 products that are also the subject of this litigation were offered for distribution
23 in the Eastern District of Washington; and the claims alleged in this action
24 arose in the Eastern District of Washington. Defendants have conducted
25 business within the state of Washington, Defendants have had substantial or
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pers. jx
venue

1 continuous and systematic contacts with Washington, and Defendants have
2
3 purposefully availed themselves of the privilege of conducting activities in the
4
5 state of Washington by acts including, but not limited to, maintaining an
6
7 interactive website through which consumers may purchase good or services.

8
9 4. IEA Software, Inc. ("IEA Software"), a Washington Corporation
10
11 with its principal place of business in Spokane, Washington, is a developer,
12
13 promoter, advertiser, marketer, distributor, and licensor of software for
14
15 computers, and is doing substantial business in this district. IEA Software is
16
17 organized and existing under the laws of the state of Washington and has paid
18
19 all necessary fees to remain in good standing.

20 5. IEA Software has assigned, transferred, and set over to
21
22 Community ISP, Inc. ("CISP") a portion of its right and interest in and to any
23
24 claim or cause of action against Todd Myers, Brian Krabach and Wholesale,
25
26 ISP, Inc., including but not limited to violations of IEA Software's copyrights
27
28 and other intellectual property rights in and relating to its software program
29
30 entitled the Emerald Management Suite and the accompanying documentation.
31
32

I

1 6. CISP is a Delaware corporation authorized to do business in the
2
3 State of Washington and the State of Ohio with offices in the City of Toledo,
4
5 County of Lucas, State of Ohio.

6
7 7. Brian Krabach is a resident of the City of Lambertville, County of
8
9 Monroe, State of Michigan.

10 8. Todd Myers is a resident of the City of Sylvania, County of
11
12 Lucas, State of Ohio.

13
14 9. Wholesale ISP, Inc., is a corporation organized under the laws of
15
16 the State of Ohio with its principal place of business in Toledo, Ohio.

17
18 10. Personal jurisdiction over the Defendants is appropriate pursuant
19
20 to RCW 4.28.185(1)(a) as Defendants have conducted business within the
21
22 state of Washington, Defendants have had substantial or continuous and
23
24 systematic contacts with Washington, and Defendants have purposefully
25
26 availed themselves of the privilege of conducting activities in the state of
27
28 Washington by acts including, but not limited to, maintaining an interactive
29
30 website through which consumers may purchase good or services.
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11-27-00

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Defendants' Personal Liability

11. Defendants Todd Myers and Brian Krabach, principal officers of Wholesale ISP, Inc., are individually liable for the infringing activities described herein.

12. Plaintiffs are informed and believe, and on that basis allege, that at all relevant times Defendants Todd Myers and Brian Krabach personally participated in and/or had the ability and right to supervise, direct, and control the infringing activities.

13. Plaintiffs are informed and believe, and on that basis allege, that Defendants Todd Myers and Brian Krabach derived direct financial benefits from the infringing activities.

Facts Common To All Claims For Relief

14. IEA Software is in the business of developing, promoting, advertising, marketing, distributing, and licensing computer software programs. IEA Software packages and distributes its software together with associated user's guides, user's manuals, and other documentation. IEA Software's primary business is internet service provider billing and

D
D
D
A IEA sold software in the past I remember

1 management systems.
2

3 15. IEA Software has developed, promoted, advertised, marketed,
4 distributed, and licensed a software product known as The Emerald
5 Management Suite.
6
7

8 16. The Emerald Management Suite is a management suite for
9 internet service providers and small telephone companies that performs a
10 number of computer-related operations including, but not limited to, the
11 management of user information, sending out bills, receiving payments, and
12 processing credit cards.
13
14
15
16

17 17. When a customer purchases The Emerald Management Suite, the
18 customer does not own the software outright. Rather, IEA Software licenses
19 its software to customers without transferring ownership.
20
21

22 18. When customers purchase a license for The Emerald Management
23 Suite, they are provided with a User's Guide and a Technical Guide. These
24 documents contain The Emerald Management Suite License Agreement
25 ("License Agreement"). Consent is required before installation and use.
26
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2 19. The License Agreement contains the following provision:

3 You acknowledge and agree that the computer program(s) and
4 associated documentation contained with the Emerald Management
5 Suite, (collectively the 'Software') are owned exclusively by IEA
6 Software, Inc. and/or its licensors. The Software contained in the
7 package is protected under copyright laws and all copyright and other
8 intellectual property rights relating to the Software are and remain the
9 exclusive property of IEA Software, Inc. and/or its licensors. You may
10 not rent or lease the Software, but you may transfer the Software and
11 accompanying materials on a permanent basis provided you retain no
12 copies and the recipient agrees to the terms of this Agreement.

13
14 20. The Licensing Agreement also contains the following provision:

15
16 IEA Software, Inc. grants to you, and you accept, a limited, non-
17 exclusive and revocable license to use the Software. You agree to use
18 the Software in machine-readable object code form only as authorized in
19 this License Agreement. This License Agreement does not convey any
20 title or interest in the Software to you. You may only use the licensed
21 number of Master Billing Records (MBRs) with the Software as stated
22 in your purchase agreement.

23
24 21. The Licensing Agreement also contains the following provision:

25
26 You may not make any changes or modifications to the Software,
27 and you may not decompile, disassemble, or otherwise reverse engineer
28 the Software. You may not load, rent, lease or sublicense the Software
29 or any copy to others for any purpose. You agree to use reasonable
30 efforts to protect the Software from unauthorized use, modifications,
31 reproduction, distribution and publication. You are not permitted to
32 make any uses or copies of the Software that are not specifically
authorized by the terms of this License Agreement.

WORKLAND & WITHERSPOON, PLLC
714 Washington Mutual Financial Center
601 West Main Avenue
Spokane, Washington 99201-0677
Telephone (509) 455-9077 Fax (509) 624-6441

1 22. The Licensing Agreement also contains the following provision:
2

3 No part of this document may be reproduced or transmitted in any
4 form or by any means, electronic or mechanical, without the express
5 written consent of IEA Software, Inc. †

6
7 23. The copyright in The Emerald Management Suite was registered
8
9 with the United States Copyright Office in compliance with the Copyright
10 Revision Act of 1976 (17 U.S.C. § 101 et seq.) and Copyright Office
11 Regulations. A true and correct copy of The Emerald Management Suite
12 Registration Certificate, which bears Registration No. TX 5-835-043, is
13
14 attached to this Complaint as Exhibit A and incorporated by this reference.
15
16

17
18 24. IEA Software never sold the right to The Emerald Management
19 Suite database schema or documentation to Defendants. D

20
21 25. IEA Software never authorized defendants to copy The Emerald
22 Management Suite database schema or documentation for any purpose. D

23
24
25 **Defendants' Unlawful Conduct**

26
27 26. Plaintiffs are informed and believe, and on that basis allege, that
28 Defendants created applications including, but not limited to, a program called
29 the Admin Control Panel ("ACP"). In creating said applications, Defendants
30
31
32

*A creating ACP
D remainder*

1 knowingly copied portions of The Emerald Management Suite database
2
3 schema and intentionally included those portions in the ACP program.
4

5 27. Plaintiffs are informed and believe, and on that basis allege, that
6
7 Defendants created documentations including, but not limited to, the ACP
8
9 Documentation. In creating said documentation, Defendants knowingly
10
11 copied documentation from The Emerald Management Suite User's Guide
12
13 and/or Technical Guide and intentionally included that copied documentation
14
15 in the ACP documentation and other documentations.

16 28. Plaintiffs are informed and believe, and on that basis allege, that
17
18 Defendants:

- 19 a. have represented that the aforementioned applications and
20
21 documentations were proprietary,
22
23 b. have represented that they owned the intellectual property
24
25 rights to the same,
26
27 c. have sold The Emerald Management Suite as its asset,
28
29 d. have utilized it under these circumstances,
30
31 e. have failed to contact IEA Software to transfer the license,
32

*A creating doc.
D remainder*

I/O

1 f. have utilized advertising and marketing including an
2
3 interactive website through which consumers may purchase said software,
4
5 documentation, and/or components thereof; and

6
7 g. have unlawfully profited at Plaintiffs' expense in an
8
9 amount not yet ascertained, but which will be determined according to proof.
10
11 Although difficult to calculate prior to discovery, this amount is currently
12
13 estimated to be in excess of \$1,400,000.00.

14 29. Plaintiffs are informed and believe, and on that basis allege, that
15
16 Defendants have committed and are committing acts of copyright infringement
17
18 willfully, deliberately and with prior notice and knowledge of IEA Software's
19
20 copyrights. Defendants have engaged in similar activities that constitute
21
22 deliberate and willful copyright infringement and other violations of its rights.

23
24 **First Claim**
25 **Copyright Infringement – 17 U.S.C. §502, et seq.**

26 30. Since the creation of Emerald Management Suite, IEA Software
27
28 has been, and remains, the sole owner of or otherwise licenses all rights, title,
29
30 and interest in and to the corresponding copyrights and Certificates of
31
32 Registration.

D

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1 31. Defendants have willfully infringed the copyrights in IEA
2
3 Software including, but not limited to Emerald Management Suite, by copying,
4
5 distributing, and/or making other infringing use of this software, its
6
7 documentation and/or components thereof in the United States of America
8
9 without authorization from IEA Software.

10 32. As a result of the foregoing activity, Defendants are liable to IEA
11
12 Software for willful copyright infringement. 17 U.S.C. § 501.

13
14 33. IEA Software has suffered, and will continue to suffer, substantial
15
16 damage to its business reputation and goodwill, as well as diversion of trade
17
18 and losses in an amount not yet ascertained, but which will be determined
19
20 according to proof. Although difficult to calculate prior to discovery, damages
21
22 are currently estimated to be in excess of \$1,400,000.00.

23 34. In addition to its actual damages, IEA Software is entitled to
24
25 receive the profits made by Defendants from their wrongful acts, pursuant to
26
27 17 U.S.C. § 504.

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Second Claim
Copyright Infringement – 17 U.S.C. §502, et seq.

35. In the alternative, IEA Software is entitled to statutory damages pursuant to 17 U.S.C. § 504(c) and these statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2) because of Defendants' willful copyright infringement. D

36. IEA Software has no adequate remedy at law for the Defendants' wrongful conduct in that (i) its copyrights are unique and valuable property that have no readily determinable market value, (ii) the infringement by Defendants constitutes interference with IEA Software's goodwill and customer's relationships; and (iii) Defendants' wrongful conduct, and the damages resulting to IEA Software therefrom, is continuing. Defendants' acts of copyright infringement have caused IEA Software irreparable injury and Defendants threaten to continue to commit these acts. Accordingly, IEA Software is entitled to injunctive relief pursuant to 17 U.S.C. § 501, and to an order under 17 U.S.C. § 503 that the infringing software, documentation and/or components thereof be impounded and destroyed. D

1 37. IEA Software is entitled to recover its attorneys' fees and costs of
2
3 suit pursuant to 17 U.S.C. § 505.
4

5 **Third Claim**
6 **Breach of Contract**

7
8 38. Defendants acts and/or omissions stated herein were contrary to
9
10 the Licensing Agreement and constitute a breach of the Licensing Agreement.

11 39. As a direct and proximate result of said breach of contract, IEA
12
13 Software has sustained damages in an amount to be proved at trial. Although
14
15 difficult to calculate prior to discovery, damages are currently estimated to be
16
17 in excess of \$1,400,000.00.

18
19 **Fourth Claim**
20 **Consumer Protection Act Violation**

21 40. Defendants' activities as alleged above in this Complaint
22
23 constitute unfair or deceptive acts or practices in violation of R.C.W. §
24
25 19.86.020, et seq.

26
27 41. Defendants' deceptive acts and practices are intended to, and are
28
29 likely to, lead to confusion, mistake or deception among the public as to the
30
31 source, origin, or approval of the infringing software, documentation, and/or
32
components.

1 42. As a result of Defendants' deceptive acts and practices, and the
2
3 resulting consumer confusion, IEA Software has suffered and will continue to
4
5 suffer losses and irreparable injury to its business reputation and goodwill in
6
7 amounts not yet ascertained. IEA Software's remedy at law is not itself
8
9 adequate to compensate it for injuries inflicted and threatened by Defendants.

10 43. Accordingly, pursuant to R.C.W. § 13.86.020, IEA Software is
11
12 entitled to injunctive relief, actual and trebled damages, attorneys' fees, and
13
14 costs of suit. Although difficult to calculate prior to discovery, damages are
15
16 currently estimated to be in excess of \$1,400,000.00.

17
18 **Fifth Claim**
19 **Washington Common Law Unfair Competition**

20 44. The acts and conduct of Defendants as alleged above in this
21
22 Complaint (i) constitute unfair competition under Washington common law,
23
24 and (ii) constitute infringement of IEA Software's Washington common law
25
26 rights in its copyrights and improper and unfair competition with IEA
27
28 Software.

29 45. Defendants' acts and conduct as alleged above have damaged and
30
31 will continue to damage IEA Software in an amount which is unknown at the
32

1 present time. Although difficult to calculate prior to discovery, damages are
2
3 currently estimated to be in excess of \$1,400,000.00.
4

5 **Sixth Claim**
6 **Conversion**
7

8 46. By their actions, Defendants have interfered with and have
9
10 deprived IEA Software property, assets, and funds properly belonging to IEA
11 Software.
12

13 47. Defendants acted willfully, maliciously and in bad faith in that
14
15 Defendants knew or should have known that their actions were wrongful.
16

17 48. As a direct and proximate result of Defendants' acts, IEA
18
19 Software has sustained damages in an amount to be proved at trial. Although
20
21 difficult to calculate prior to discovery, damages are currently estimated to be
22
23 in excess of \$1,400,000.00.
24

25 **Seventh Claim**
26 **Constructive Trust Upon Illegal Profits**
27

28 49. By reason of the acts and conduct set forth herein, Defendants
29
30 have engaged and are engaged in deceptive, fraudulent and wrongful conduct
31
32 in commerce as described herein. IEA Software believes that Defendants

maintain the illegal profits from their actions, all of which belong to IEA

1 Software.

2
3 50. By virtue of their wrongful acts, Defendants hold such illegal
4 profits, whether in the form of bank accounts or in the form of real or personal
5 property, as constructive trustees for the benefit of IEA Software.
6
7

8
9 **Eighth Claim**
10 **Accounting**

11 51. IEA Software is entitled pursuant to 17 U.S.C. § 504 to recover
12 any profits of Defendants that are attributable to their acts of infringement.
13

14 52. IEA Software is entitled pursuant to 17 U.S.C. § 504 to actual
15 damages or statutory damages sustained by virtue of Defendants' acts of
16 infringement.
17
18

19 53. Although currently estimated to be in excess of \$1,400,000.00,
20 the amount of money due from Defendants to IEA Software is unknown to
21 IEA Software and cannot be ascertained without an accounting of the number
22 of units of infringing software, documentation, and/or components thereof
23 offered for distribution and distributed by Defendants.
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PRAYER

WHEREFORE, Plaintiffs respectfully request judgment as follows:

1. That the Court enter a judgment against Defendants that they have:

a. willfully infringed the rights of IEA Software in its federally registered copyrights under 17 U.S.C. § 501;

b. competed unfairly with IEA Software at common law and in violation of R.C.W. § 19.86.020, et seq.; and

c. otherwise injured the business reputation and business of IEA Software by their acts and conduct set forth in this Complaint.

2. That the Court issue injunctive relief against Defendants, and that Defendants, their officers, agents, representatives, servants, employees, attorneys, successors and assigns, and all other in active concert or participation with Defendants, be enjoined and restrained from:

a. imitating, copying, or making any other unauthorized use or unauthorized distribution of software, documentation, and/or components thereof protected by the following Certificates of Copyright Registration No.

1 TX 5-835-043 and any other works now or hereafter protected by any
2
3 copyright;

4
5 b. manufacturing, assembling, producing, distributing,
6
7 offering for distribution, circulating, selling, offering for sale, advertising,
8
9 importing, promoting, or displaying any product or thing bearing any
10
11 simulation, reproduction, counterfeit copy, or colorable imitation of IEA
12
13 Software's software, documentation, and/or components, including, but not
14
15 limited to, the copyrights represented by the Copyright Registration No. TX 5-
16
17 835-043 listed in Section (2)(a) above;

18 c. using any simulation, reproduction, counterfeit, copy, or
19
20 colorable imitation of copyrights including, but not limited to, copyrights
21
22 represented by the Copyright Registration No. TX 5-835-043 listed in Section
23
24 (2)(a) above, in connection with the manufacture, assembly, production,
25
26 distribution, offering for distribution, circulation, sale, offering for sale,
27
28 import, advertisement, promotion, or display of any software, component or
29
30 thing not appropriately authorized or licensed;

31 d. engaging in any other activity constituting an infringement
32
33 of copyrights;

1 e. using any false designation of origin or false description
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3 which can or is likely to lead to the trade, public, or individuals to erroneously
4
5 believe that any software, component or thing has been manufactured,
6
7 assembled, produced, distributed, offered for distribution, circulated, sold,
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9 offered for sale, imported, advertised, displayed, licensed, sponsored,
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11 approved, or authorized by IEA Software when such is not true in fact;

12 f. using reproductions, counterfeits, copies, or colorable
13
14 imitations of the aforementioned copyrighted protected software,
15
16 documentation, components and other things in the distribution, offering for
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18 distribution, circulating, sale, offering for sale, advertising, importing,
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20 promoting, or displaying of spurious merchandise not appropriately authorized
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22 or licensed; disposing of or destroying any documents or related materials that
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24 show, indicate, reference, or otherwise document that Defendants have
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26 installed, marketed, manufactured, distributed, advertised, or duplicated
27
28 counterfeit or infringing software and/or components thereof which use, or
29
30 incorporate or adopt the aforementioned copyrighted software, documentation,
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32 components or other things, or other simulation, copy, colorable imitation, or
counterfeit of the aforementioned copyrighted and/or protected software;

1 g. engaging in any other activity constituting an infringement
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3 of any of the aforementioned copyrights, or of the rights in, or right to use or
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5 exploit said copyrights; and

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7 h. assisting, aiding, or abetting any other person or business
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9 entity in engaging in or performing any of the activities referred to in
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11 subparagraphs (a) through (h) above.

12 3. That the Court enter an order of impoundment pursuant to 17
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14 U.S.C. §§ 503 and 509(a), and 28 U.S.C. § 1651(a) impounding all counterfeit
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16 or infringing copies of the software, documentation, and/or components
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18 thereof and related items, including business records, which are in Defendants'
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20 possession or under their control;

21 4. That the Court enter an order declaring that Defendants hold in
22
23 trust illegal profits obtained from their distribution of counterfeit and
24
25 infringing copies of the software, documentation, and/or components thereof;

26
27 5. That the Court order Defendants to pay general, special, actual,
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29 and statutory damages as follows:

30 a. damages and Defendant's profits pursuant to 17 U.S.C. §
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32 504(b) or, in the alternative, enhanced statutory damages pursuant to 17 U.S.C.

1 and § 504(c)(2), for Defendant's willful infringement of the aforementioned
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3 copyrights;

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5 b. damages under the common law for Defendant's unfair and
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7 deceptive practices; and

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9 c. actual and trebled damages, attorneys' fees, and costs of
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11 suit pursuant to R.C.W. § 19.86.090.

12 6. That the Court enter an Order that Defendants hold their illegal
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14 profits as constructive trustees and requiring Defendants to provide a full and
15
16 complete accounting of all amounts due and owing to IEA Software as a result
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18 of Defendants' illegal activities.

19 7. That the Court order Defendants to pay both the costs of this
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21 action and the reasonable attorneys' fees incurred in prosecuting this action;
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23 and

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25 8. That the Court grant such other and additional relief as is just and
26
27 proper.

1 DATED this 19th day of December, 2003.
2
3

4 WORKLAND & WITHERSPOON, PLLC
5

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8 _____
9 JAMES A. MCPHEE, WSBA #26323
10 Attorneys for Plaintiffs
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CERTIFICATE OF REGISTRATION



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters
 REGISTER OF COPYRIGHTS
 United States of America

FORM TX
 For a Nondramatic Literary Work
 UNITED STATES COPYRIGHT OFFICE

TX 5-835-043



EFFECTIVE DATE OF REGISTRATION

Oct 29 2003
 Month Day Year

DO NOT WRITE ABOVE THIS LINE IF YOU NEED MORE SPACE USE A SEPARATE CONTINUATION SHEET

1 TITLE OF THIS WORK ▼
 The Emerald Management Suite *VERSION 2 0

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared Title of Collective Work ▼

If published in a periodical or serial give Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2 a NAME OF AUTHOR ▼ IEA Software Inc
 DATES OF BIRTH AND DEATH Year Born ▼ Year Died ▼

Was this contribution to the work a work made for hire? Yes No
 AUTHOR'S NATIONALITY OR DOMICILE Name of Country OR Citizen of U.S.A. Domiciled in Spokane, Washington
 WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK Anonymous? Yes No Pseudonymous? Yes No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed ▼
 Computer software that manages billing and customer service with user information

NOTE

Under the law the author of a work made for hire is generally the employer not the employee (see instructions) For any part of this work that was made for hire check Yes in the space provided give the employer (or other person for whom the work was prepared) as Author of that part and leave the space for dates of birth and death blank

b NAME OF AUTHOR ▼ DATES OF BIRTH AND DEATH Year Born ▼ Year Died ▼

Was this contribution to the work a work made for hire? Yes No
 AUTHOR'S NATIONALITY OR DOMICILE Name of Country OR Citizen of _____ Domiciled in _____
 WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK Anonymous? Yes No Pseudonymous? Yes No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed ▼

c NAME OF AUTHOR ▼ DATES OF BIRTH AND DEATH Year Born ▼ Year Died ▼

Was this contribution to the work a work made for hire? Yes No
 AUTHOR'S NATIONALITY OR DOMICILE Name of Country OR Citizen of _____ Domiciled in _____
 WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK Anonymous? Yes No Pseudonymous? Yes No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed ▼

3 a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED 1995
 b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK Month: *OCTOBER Day: *1 Year: *1995



4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2 ▼
 IEA Software Inc
 516 W Riverside Suite 201
 Spokane, Washington 99201
 TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright ▼

APPLICATION RECEIVED
 OCT 29 2003
 ONE DEPOSIT RECEIVED
 OCT 29 2003 **
 TWO DEPOSITS RECEIVED
 FUNDS RECEIVED

MORE ON BACK ► Complete all applicable spaces (numbers 5-9) on the reverse side of this page See detailed instructions. Sign the form at line 8

DO NOT WRITE HERE
 Page 1 of 1 pages

Added by C O per email of 12-1. } with James
 McPhee See correspondence file
 * Later version of work accepted under a grant of
 special relief per 37 CFR 202 20(d)

EXAMINED BY 	FORM TX
CHECKED BY 	
<input checked="" type="checkbox"/> CORRESPONDENCE	FOR
<input type="checkbox"/> Yes	COPYRIGHT
	OFFICE
	USE
	ONLY

DO NOT WRITE ABOVE THIS LINE IF YOU NEED MORE SPACE USE A SEPARATE CONTINUATION SHEET

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes No If your answer is Yes why is another registration being sought? (Check appropriate box) ▾

a This is the first published edition of a work previously registered in unpublished form

b This is the first application submitted by this author as copyright claimant

c This is a changed version of the work, as shown by space 6 on this application

If your answer is Yes give Previous Registration Number ▶

Year of Registration ▶

5

DERIVATIVE WORK OR COMPILATION

Preceding Material Identify any preceding work or works that this work is based on or incorporates ▾

a 6

Material Added to This Work Give a brief general statement of the material that has been added to this work and in which copyright is claimed ▾

b See instructions before completing this space

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office give name and number of Account Name ▾ Account Number ▾

a 7

CORRESPONDENCE Give name and address to which correspondence about this application should be sent Name/Address/Apt/City/State/ZIP ▾

James A McPhee
 Workland & Witherspoon PLLC
 601 W Main Suite 714
 Spokane Washington 99201
 Area code and daytime telephone number ▶ (509) 455 9077
 Email ▶ jmcphoe@workwith.com

Fax number ▶ (509) 624 6441

b

CERTIFICATION I the undersigned, hereby certify that I am the

Check only one ▶

- author
- other copyright claimant
- owner of exclusive right(s)
- authorized agent of IEA Software, Inc

Name of author or other copyright claimant or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge

8

Typed or printed name and date ▾ If this application gives a date of publication in space 3 do not sign and submit it before that date

Jeff Albrecht

Date ▶ October 28, 2003

Handwritten signature (X) ▾

X 

Certificate will be mailed in window envelope to this address

Name ▾	TAMES A MCPHEE, WORKLAND & WITHERSPOON, PLLC
Number/Street/Apt ▾	601 W MAIN, SUITE 714
City/State/ZIP ▾	SPOKANE, WASHINGTON 99201

9

Complete all necessary spaces
 Sign your application in space 8

- Application form
- Nonrefundable filing fee in check or money order payable to Register of Copyrights
- Deposit material

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 Copyright Office
 101 Independence Avenue S E
 Washington DC 20540-8000

Fees are subject to change. For current fees check the Copyright Office website at www.copyright.gov or the Copyright Office or call (202) 707-3000

17 U.S.C. § 508(e) Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 408 or in any written statement filed in connection with the application shall be fined not more than \$2,500