

JOSEPH M. BURTON (SB No. 142105)  
STEPHEN H. SUTRO (SB No. 172168)  
DUANE MORRIS LLP  
100 Spear Street, Suite 1500  
San Francisco, CA 94105  
Telephone: (415) 371-2200  
Facsimile: (415)371-2201

Attorneys for Defendant  
ELCOMSOFT COMPANY, LTD.

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

UNITED STATES OF AMERICA  Plaintiff,  v.  ELCOM LTD., a/k/a ELCOMSOFT CO., LTD.,  Defendant.		Case No.: CR 01-20138 RMW  <b>DECLARATION OF JOSEPH M. BURTON IN SUPPORT OF MOTION TO DISMISS INDICTMENT FOR VIOLATION OF DUE PROCESS</b>  Date: April 1, 2002 Time: 9:00 a.m. Judge: The Honorable Ronald M. Whyte
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I, JOSEPH M. BURTON, declare :

1. I am a partner at the law firm of Duane Morris LLP, counsel of record for defendant Elcomsoft Co. Ltd (“Elcomsoft”) in this matter. I have personal knowledge of the following facts, and if called upon to do so, could and would competently testify to them.

2. Attached hereto as Exhibit A is a true and correct copy of a document titled “Adobe Solutions for the eBook Market” that was produced by the government to Elcomsoft in this matter.

3. Attached hereto as Exhibit B is a true and correct copy of a printout dated July 4, 2001 from the portion of Elcomsoft’s website that described AEPBR (<http://www.elcomsoft.com/aebpr.html>) that was produced by the government to Elcomsoft in this matter.

4. Attached hereto as Exhibit C is a true and correct copy of the July 16, 2001 Statement of Elcomsoft Employee Dmitry Sklyarov to the FBI that was produced by the government to Elcomsoft in this matter.

5. Attached hereto as Exhibit D is a true and correct copy of the September 5, 2001 FBI Interview of Aaron Mathieson that was produced by the government to Elcomsoft in this matter.

6. Attached hereto as Exhibit E is a true and correct redacted copy of an August 28, 2001 E-mail that Aaron Mathieson sent to me.

7. Attached hereto as Exhibit F is a true and correct copy of the August 31, 2001 FBI Interview of Stephen Richard Levine that was produced by the government to Elcomsoft in this matter.

8. Following the complaints by Adobe that AEBPR violated United States law, and Elcomsoft’s termination of the sale of AEBPR, Elcomsoft received several e-mails from potential users of AEBPR requesting a full version of the software. In some cases, the potential purchasers described why they needed AEBPR. The e-mails identified in subparagraphs (a.) through (e.) below are true and correct copies of such e-mails received by Elcomsoft.

a. Attached hereto as Exhibit G is a true and correct copy of a July 5, 2001 E-mail from a potential user of AEBPR.

b. Attached hereto as Exhibit H is a true and correct copy of a July 6, 2001 E-Mail from State of Wisconsin.

c. Attached hereto as Exhibit I is a true and correct redacted copy of a July 5, 2001 E-Mail from SunGard eSourcing.

d. Attached hereto as Exhibit J is a true and correct copy of a July 5, 2001 E-Mail from Time Warner Communications.

e. Attached hereto as Exhibit K is a true and correct copy of a July 14, 2001 E-Mail from Daniel Bailey.

9. Attached hereto as Exhibit L is a true and correct copy of a facsimile dated July 23, 2001 from RegNow to the FBI regarding Advanced eBook Processor sales information that was produced by the government to Elcomsoft in this matter. The page bates numbered 000101 reflects that on July 3, 2001, Lori Mullen of Los Alamos, New Mexico, e:mail: [ggg@lanl.gov](mailto:ggg@lanl.gov), purchased AEBPR. Attached hereto as Exhibit M is a true and correct copy of the August 30, 2001 FBI Interview of Gary Garrett, an employee at Los Alamos Nuclear Laboratory, and a Government Card Services credit card statement for the period June 28, 2001 through July 12, 2001. The documents attached at Exhibit M were produced by the government to Elcomsoft in this matter.

10. Attached hereto as Exhibit N is a true and correct copy of H. Rept. 105-551 (Part I), Report of the House Judiciary Committee on H.R. 2281, WIPO Copyright Treaty Implementation Act (May 22, 1998).

11. Attached hereto as Exhibit O is a true and correct copy of H. Rept. 105-551 (Part II), Report of House Commerce Committee on H.R. 2281, the Digital Millennium Copyright Act (July 22, 1998).

12. Attached hereto as Exhibit P is a true and correct copy of S. Rept. 105-190, Report of the Senate Judiciary Committee on S. 2037, the Digital Millennium Copyright Act (May 6, 1998).

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct and that this declaration was executed in San Francisco, California on January 28, 2002.

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Joseph M. Burton

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*United States of America v. Elcom Ltd.,  
a/k/a Elcomsoft Co., Ltd.*  
Case No.: CR 01-20138 RMW

**PROOF OF SERVICE**

I am a resident of the state of California, I am over the age of 18 years, and I am not a party to this lawsuit. My business address is Duane Morris LLP, 100 Spear Street, Suite 1500, San Francisco, California 94105. On the date listed below, I served the following document(s):

**DECLARATION OF JOSEPH M. BURTON IN SUPPORT OF MOTION TO DISMISS INDICTMENT FOR VIOLATION OF DUE PROCESS**

\_\_\_\_\_ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date during normal business hours. Our facsimile machine reported the "send" as successful.

\_\_\_\_\_ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California, addressed as set forth below.

I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. According to that practice, items are deposited with the United States mail on that same day with postage thereon fully prepaid. I am aware that, on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing stated in the affidavit.

John Keker  
Keker & Van Nest  
710 Sansome Street  
San Francisco, CA 94111

\_\_\_\_\_ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, deposited with Federal Express Corporation on the same date set out below in the ordinary course of business; to the person at the address set forth below, I caused to be served a true copy of the attached document(s).

Scott H. Frewing  
Assistant United States Attorney  
United States District Court  
Northern District of California  
280 South First Street  
San Jose, CA 95113

\_\_\_\_\_ by causing personal delivery of the document(s) listed above to the person at the address set forth below.

\_\_\_\_\_ by personally delivering the document(s) listed above to the person at the address set forth below.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated: January \_\_\_\_\_, 2002 \_\_\_\_\_

SF-28589

Lea A. Chase