

THE HONORABLE ROBERT J. BRYAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT R. KEPPEL,

Defendant.

NO. CR02-5719RJB

PLEA AGREEMENT

The United States of America, by and through John McKay, United States Attorney, and Annette L. Hayes, Assistant United States Attorney for the Western District of Washington, and the defendant, ROBERT R. KEPPEL, and his attorney, Michele L. Kohler, enter into the following Agreement, pursuant to Rule 11(e), Federal Rules of Criminal Procedure.

1. Waiver of Indictment. The defendant, having been advised of the right to be charged by an Indictment returned by a grand jury, agrees to waive that right and enter a plea of guilty to charges brought by the United States Attorney in an Information.

2. The Charge. The defendant, having been advised of his right to have this matter tried before a jury, agrees to waive that right and to enter a plea of guilty to the Information, charging him with knowingly converting to the economic benefit of himself and others, trade secrets belonging to Microsoft Corporation, in violation of Title 18, United States Code, Section 1832(a)(2), and Section 2. By entering this plea of guilty, the defendant hereby waives any and all objections to the filed charges predicated on the form of the charging Information.

10

1 3. The Penalties. The defendant understands and acknowledges that the statutory
2 penalties for the offense of conversion of trade secrets, as charged in the Information are as
3 follows: imprisonment for up to ten (10) years, a fine of up to two hundred fifty thousand
4 dollars (\$250,000.00), a period of supervision following release from prison of up to five (5)
5 years, and a one-hundred dollar (\$100.00) penalty assessment pursuant to Title 18, United
6 States Code, Section 3013(a)(1). The defendant agrees that the penalty assessment shall be
7 paid at or before the time of sentencing.

8 4. Rights Waived by Pleading Guilty. The defendant understands and
9 acknowledges that, by pleading guilty, the defendant knowingly and voluntarily waives the
10 following rights:

- 11 a. The right to plead not guilty, and to persist in a plea of not guilty;
- 12 b. The right to be presumed innocent until guilt has been established at trial,
13 beyond a reasonable doubt;
- 14 c. The right to trial before a jury of the defendant's peers, and at that trial,
15 the right to the effective assistance of counsel;
- 16 d. The right to confront and cross-examine witnesses against the defendant;
- 17 e. The right to compel or subpoena witnesses to appear on the defendant's
18 behalf;
- 19 f. The right to testify or to remain silent at trial at which such silence could
20 not be used against the defendant; and
- 21 g. The right to appeal a finding of guilty or any pretrial rulings.

22 5. Applicability of Sentencing Guidelines. The defendant understands and
23 acknowledges the following:

- 24 a. That the United States Sentencing Guidelines, promulgated by the United
25 States Sentencing Commission, are applicable to this case;
- 26 b. That the Court will determine the defendant's applicable Sentencing
27 Guidelines range at the time of sentencing;

1 c. That the Court may impose any sentence authorized by law, including a
2 sentence that, under some circumstances, departs from any applicable Sentencing Guidelines
3 range up to the maximum term authorized by law;

4 d. That the Court is not bound by any recommendation regarding the
5 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines range
6 offered by the parties, or by the United States Probation Department; and,

7 e. The defendant may not withdraw a guilty plea solely because of the
8 sentence imposed by the Court.

9 6. Ultimate Sentence. The defendant acknowledges that no one has promised or
10 guaranteed what sentence the Court will actually impose.

11 7. Restitution. The defendant shall make restitution to Microsoft Corporation in an
12 amount of more than \$500,000.00 but not more than \$800,000.00, the exact amount to be
13 determined by the parties by agreement prior to sentencing, or failing such agreement, to be
14 determined by the Court upon submissions by the parties. Said amount shall be due and
15 payable immediately. If the defendant is unable to pay the full amount immediately, he shall
16 make the payment in installments as ordered by the Court and the Probation Department. The
17 United States Attorney's Office will recommend to the Court that the assets forfeited pursuant
18 to Paragraph 14 of this Agreement be applied against the Defendant's restitution obligations.

19 8. Loss Amounts. The parties agree that the actual loss amount is extremely
20 difficult to ascertain and, consequently, stipulate that the loss is more than \$500,000.00 but
21 less than \$800,000.00 (the amount of the defendant's gain from committing the offense) for
22 purposes of § 2F1.1(b)(1) of the sentencing guidelines.

23 9. Nature (Elements) of the Offense. The parties agree that the below-related facts
24 constitute evidence of each of the elements of the offense to which the defendant is pleading
25 guilty, that is, conversion of trade secrets: First, that the defendant stole or appropriated
26 without authorization from the owner, Microsoft Certified Systems Engineer (MCSE) and
27 Microsoft Certified Solution Developer (MCSD) exams and answers; Second, that the
28 defendant knew or had a firm belief that the MCSE and MCSD exams and answers were trade

1 secrets; Third, that the MCSE and MCSD exams and answers were in fact trade secrets;
2 Fourth, that the defendant intended to convert the trade secrets to the economic benefit of
3 anyone other than the owner; Fifth, that the defendant intended or knew the theft would
4 injure the owner of the trade secret; and Sixth, that the trade secret was related to or was
5 included in a product that was produced for or placed in interstate or foreign commerce.

6 10. Statement of Facts. The parties agree that the following facts constitute proof of
7 each of the elements of criminal conversion of trade secrets and constitute relevant conduct for
8 purposes of calculating the base offense level of the sentencing guidelines:

9 a. At all times relevant to the Information, the domain www.cheet-
10 sheets.com was registered to Keen Interactive, Postal Mail Box 141, 6663 SW Beaverton-
11 Hilldale Highway, Portland, Oregon 97225. From July 1997 to July 1999, Keen Interactive
12 was registered with the State of Oregon to ROBERT R. KEPPEL, with a business address of
13 4321 SW Terlyn Court, Portland, Oregon 97221. This address is the residence of John R.
14 Keppel and Cynthia R. Keppel, the parents of ROBERT R. KEPPEL. After July 1999,
15 "Keen Interactive" continued to be used by KEPPEL as a d/b/a.

16 b. Beginning sometime in 1999, ROBERT R. KEPPEL began selling
17 Microsoft Certified System Engineer (MCSE) and Microsoft Certified Solution Developer
18 (MCSD) exams and answers via the Internet websites www.cheet-sheets.com and
19 www.cheetsheets.com, hosted by HostPro, 3250 Wilshire Blvd., Suite 1301, Los Angeles,
20 California 90010, and Nameserve Systems, 3326 160th Avenue SE, Suite 400, Bellevue,
21 Washington 98008, respectively.

22 c. Microsoft Corporation has certification programs for network engineers,
23 called Microsoft Certified Systems Engineer (MCSE), and Microsoft Certified Solution
24 Developer (MCSD), which involve passing approximately 28 exams that test expertise in
25 different MS software areas. Many of these areas include MS operating systems, data bases,
26 and networking issues. MS has this certification program so when a third party user of their
27 software hires an individual who is certified as a MCSE or MCSD, that individual will have a
28 known level of expertise in order to properly administer the MS system. The MCSE and

1 MCSD certifications are difficult to acquire, but once an individual has the certification, that
2 individual is highly marketable to companies that use MS products, and just having the MCSE
3 or MCSD certification usually raises salaries substantially. These exams are administered on
4 Microsoft's behalf world-wide.

5 d. When the tests are administered, there are two separate "banner" pages
6 that the test taker encounters before the test starts. These "banner" pages require the test taker
7 to agree to certain terms regarding the test material including an agreement to not copy or
8 release the test material. By the terms of its contracts with the testing sites, MS does not
9 allow the test material outside of the testing locations for any reason. Consequently, the sale
10 and distribution of these "cheat-sheets" violated MS copyright and constituted a conversion of
11 MS proprietary information for personal gain. Microsoft's development costs for each test is
12 approximately \$100,000.00. In addition, when companies hire people who have obtained
13 MCSE and MCSD certificates by cheating, but who, in fact, cannot install and maintain the
14 systems correctly because they have neither experience nor expertise in the MS products
15 commensurate with the certificates, those companies then tend to blame the MS product, and
16 become reluctant to buy further products.

17 e. Beginning sometime in January 2001, ROBERT R. KEPPEL began to
18 purchase from an individual in Pakistan, actual copies of the Microsoft MCSE and MCSD
19 exams and answers, which that individual obtained by photographing and/or videotaping the
20 actual tests at a site in Pakistan. ROBERT R. KEPPEL marketed those exams and answers
21 via www.cheat-sheets.com, fully realizing that they were copies of the actual exams and
22 answers developed by Microsoft Corporation.

23 f. Between July 2000 and October 17, 2001, ROBERT R. KEPPEL
24 marketed numerous copies of MCSE and MCSD exams and answers via his website
25 www.cheat-sheets.com, selling them to persons throughout the United States, including
26 persons residing in the Western District of Washington.

27 g. U.S. Bankcorp bank records reflect that there were three bank accounts
28 and one credit card listed for ROBERT KEPPEL and Keen Interactive, including a personal

1 checking account (account number 153604461670) and a money market account (account
 2 number 153591054652), both in the name of ROBERT KEPPEL, 4321 SW Terlyn Court,
 3 Portland, Oregon, 07221-3686; and a merchant account (account number 153607353031)
 4 listed in the name of KEEN INTERACTIVE, 4321 SW Terlyn Court, Portland, Oregon
 5 97221-3686. The 153591054652 account was opened on January 26, 2001, and the
 6 153607353031 account was opened on July 21, 1997. U.S. Bank records reflect that among
 7 the Internet billing companies that were disbursing funds into the merchant account of
 8 153607353031 was NOVA, a company that does billing for VISA and MASTERCARD.
 9 NOVA records reflect that an account was opened by ROBERT KEPPEL, as owner of Keen
 10 Interactive, on or about July 6, 2000. Since the NOVA account was opened, there was a total
 11 of approximately \$756,633.03 deposited into the merchant account (153607353031). All of
 12 those funds constitute proceeds from the sale of MCSE and MCS D exams and answers, as
 13 well as other exams that were proprietary information belonging to Microsoft Corporation,
 14 Cisco, and other businesses, in violation of Title 18, United States Code, Section 1832(a)(2),
 15 and Section 2.

16 h. In addition, during the time period covered by the Information, ROBERT
 17 R. KEPPEL caused numerous transfers of monies from the merchant bank account
 18 153607353031, to KEPPEL's personal checking account 153604461670, and savings (money
 19 market) account 153591054652. The following table displays the main transfers from the
 20 merchant account to the Personal Money Market Account:
 21

	Merchant Account	Personal Money Market Account
	<u>153607353031</u>	<u>153591054652</u>
Date:	Amount Withdrawn	Amount Deposited
1 Feb 2001	\$9,800.00	\$9,800.00
2 Feb 2001	\$9,500.00	\$9,500.00
6 Feb 2001	\$9,450.00	\$9,450.00
7 Feb 2001	\$9,000.00	\$9,000.00

	<u>153607353031</u>	<u>153591054652</u>
Date:	Amount Withdrawn	Amount Deposited
12 Feb 2001	\$9,700.00	\$9,700.00
13 Feb 2001	\$8,400.00	\$8,400.00
20 Feb 2001	\$8,350.00	\$8,350.00
26 Mar 2001	\$20,500.00	\$20,500.00
3 Apr 2001	\$4,500.00	\$4,500.00
11 Apr 2001	\$7,000.00	\$7,000.00
20 Apr 2001	\$9,100.00	\$9,100.00
15 Apr 2001	\$4,500.00	\$4,500.00
7 May 2001	\$4,500.00	\$4,500.00
14 May 2001	\$9,700.00	\$9,700.00
17 May 2001	\$9,500.00	\$9,500.00
18 May 2001	\$9,500.00	\$9,500.00
24 May 2001	\$3,000.00	\$3,000.00
31 May 2001	\$4,500.00	\$4,500.00
1 Jun 2001	\$9,700.00	\$9,700.00
4 Jun 2001	\$7,500.00	\$7,500.00
TOTAL	\$167,700.00	\$167,700.00

The following table displays the main transfers from the merchant account to the personal checking account:

	Merchant Account	Personal Checking Account
	<u>153607353031</u>	<u>153604461670</u>
Date:	Amount Withdrawn	Amount Deposited
31 Aug 2000	\$16,000.00	\$16,000.00
22 Sep 2000	\$19,000.00	\$19,000.00
16 Oct 2000	\$9,000.00	\$9,000.00
9 Nov 2000	\$4,500.00	\$4,500.00
10 Nov 2000	\$4,500.00	\$4,500.00
15 Nov 2000	\$16,500.00	\$16,500.00

	Merchant Account	Personal Checking Account
	<u>153607353031</u>	<u>153604461670</u>
Date:	Amount Withdrawn	Amount Deposited
28 Nov 2000	\$9,200.00	\$9,200.00
29 Nov 2000	\$9,500.00	\$9,500.00
4 Dec 2000	\$9,500.00	\$9,500.00
5 Dec 2000	\$9,500.00	\$9,500.00
12 Dec 2000	\$7,500.00	\$7,500.00
22 Dec 2000	\$9,500.00	\$9,500.00
26 Dec 2000	\$9,500.00	\$9,500.00
09 Jan 2001	\$9,500.00	\$9,500.00
16 Jan 2001	\$9,500.00	\$9,500.00
22 Jan 2001	\$7,000.00	\$7,000.00
26 Jan 2001	\$9,500.00	\$9,500.00
11 Apr 2001	\$7,000.00	\$7,000.00
25 Apr 2001	\$4,500.00	\$4,500.00
1 May 2001	\$6,000.00	\$6,000.00
31 May 2001	\$4,500.00	\$4,500.00
18 Jun 2001	\$9,000.00	\$9,000.00
TOTAL	\$200,200.00	\$200,200.00

i. U.S. Bank documents reveal that, on September 14, 2001, KEPPEL opened new merchant account number 153691259540 in the name of CHEET SHEETS. The ensuing deposits into this account were from credit card receipts constituting proceeds from the sale of MCSE and MCSD exams and answers, as well as other exams that were proprietary information belonging to Microsoft Corporation, Cisco, and other businesses, in violation of Title 18, United States Code, Section 1832(a)(2), and Section 2.

j. On February 26, 2001, KEPPEL wrote check number 100, drawn on his Money Market account, to Lexus of Portland, in the amount of \$38,703.40, for a new, white, Lexus RX300, Vehicle Identification Number (VIN) JTJHF10U910197713. This vehicle was

1 purchased with proceeds from KEPPEL's sale of trade secrets, in violation of Title 18, United
2 States Code, Section 1832(a)(2) and Section 2.

3 k. On or about July 27, 2001, KEPPEL caused a wire transfer in the amount
4 of \$112,000.00, to be made from his US Bank Money Market Account number
5 153591054652, to the credit of Premier Financial Services, in payment for a 1997 Ferrari 355
6 Spider, VIN ZFFXR48A0V0107499. This vehicle was purchased with proceeds from
7 KEPPEL's sale of trade secrets, in violation of Title 18, United States Code, Section
8 1832(a)(2) and Section 2.

9 11. Other Charges. In exchange for his acceptance of this Plea Agreement, the
10 United States agrees to not prosecute ROBERT R. KEPPEL for wire fraud, interstate
11 transportation of stolen property, or other offenses stemming from his sale of MCSE and
12 MCSD exams and answers during the period covered by the Information.

13 12. Cooperation and Acceptance of Responsibility. If the defendant has accepted
14 responsibility for the offense and the United States Probation Office recommends to the Court
15 that the defendant receive a downward adjustment to the sentencing guidelines range because
16 of his acceptance of responsibility, and if the defendant accepts this plea agreement and enters
17 a plea, the United States will recommend an appropriate downward adjustment, pursuant to
18 the United States Sentencing Guidelines, Section 3E1.1(b). In addition, the defendant has
19 agreed to cooperate with the Federal Bureau of Investigation in the investigation and
20 prosecution of others who may have assisted him in his offense or who may have been
21 engaged in similar illegal conduct. Such assistance is to include communicating with others,
22 under the direct supervision of the FBI, in an effort to elicit and memorialize evidence of their
23 criminal wrongdoing. The Government agrees to bring to the attention of the Court prior to
24 sentencing the nature, scope, and value of any such cooperation. In the event that, in the
25 judgment of the FBI and the Office of the United States Attorney, such cooperation renders
26 "substantial assistance" in the investigation or prosecution of others, the Government will file
27 a Motion pursuant to U.S.S.G. § 5K1.1 which would allow the Court to depart downward
28 from the Sentencing Guidelines when imposing sentence.

1 13. Good Behavior. The defendant agrees to obey all local, state, and Federal laws
2 between the time of pleading and sentencing, and to serve any sentence imposed by the Court.

3 14. Voluntariness of Plea. The defendant acknowledges that he has entered this plea
4 agreement freely and voluntarily, and that no threats or promises, other than the promises
5 contained in this plea agreement, were made to induce the defendant to enter this plea of
6 guilty.

7 15. Forfeiture.

8 a. Defendant agrees to forfeit to the United States immediately all of his
9 right, title and interest in any and all property, real or personal, constituting, or derived from,
10 any proceeds Defendant obtained, directly or indirectly, as the result of such offenses, that are
11 subject to forfeiture pursuant to Title 18, United States Code, Section 1834(a), including the
12 following assets:

13 i. \$12,552.77 seized from Keen Interactive Business Account
14 Number 153607353031 at US Bank;

15 ii. \$1,062.12 seized from Personal Money Market Account Number
16 153591054652 in the name of Robert Keppel at US Bank;

17 iii. \$1,570.16 seized from personal checking Account Number
18 153604461670 in the name of Robert Keppel at US Bank;

19 iv. \$41,785.93 seized from Cheat Sheets Business Account Number
20 153691259540 at US Bank;

21 v. A 2001 Lexus RX300 automobile, bearing VIN #
22 JTJHF10U910197713; and

23 vi. A 1997 Ferrari 355 Spider convertible automobile, bearing VIN #
24 ZFFXR48A0V0107499.

25 b. Defendant agrees that each of the listed assets is the proceeds of unlawful
26 activity (conversion of trade secrets violations) as set forth in the Information.

27 c. Defendant agrees to fully assist the United States in the forfeiture of the
28 listed assets and to take whatever steps are necessary to pass clear title to the United States,

1 including but not limited to: surrendering title and executing any documents necessary to
2 effectuate such forfeiture; assisting in bringing any assets located outside the United States
3 within the jurisdiction of the United States; and taking whatever steps are necessary to ensure
4 that assets subject to forfeiture are not sold, disbursed, wasted, hidden, or otherwise made
5 unavailable for forfeiture. Defendant agrees not to file a claim to any of the listed property in
6 any civil forfeiture proceeding, administrative or judicial, which may be initiated.

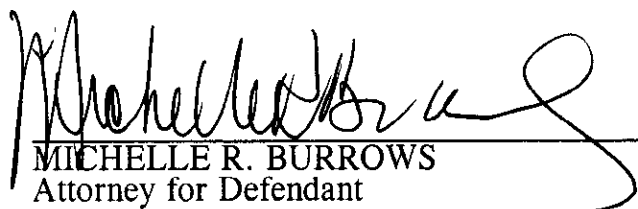
7 16. Breach and Waiver. The defendant understands and agrees that if the defendant
8 either breaches or seeks to repudiate the plea agreement, the defendant may be prosecuted and
9 sentenced for all of the offenses the defendant may have committed. The defendant agrees
10 that if the defendant breaches this plea agreement, the United States Attorney reserves the
11 right to take whatever steps are necessary to nullify the plea agreement, including the filing of
12 a motion to withdraw from the plea agreement and/or to set aside the conviction and sentence.
13 The defendant also agrees that if he is in breach of this plea agreement, the defendant is
14 deemed to have waived objection to the reinstatement of any charges under the Indictment
15 which may have not been previously prosecuted. The defendant further agrees that if he is in
16 breach of this agreement, the defendant is deemed to have also waived objection to the filing
17 of any additional charges against him.

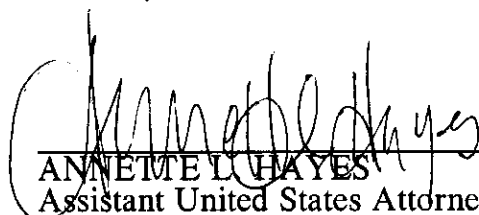
18 //
19 //
20 //
21 //
22 //
23 //
24 //
25 //
26 //
27 //
28 //

1 17. Completeness of Agreement. The Government and the defendant acknowledge
2 that these terms constitute the entire plea agreement between the parties.

3 DATED this 23 day of August, 2002.
4
5
6

7 
8 ROBERT R. KEPPEL
9 Defendant

10 
11 MICHELLE R. BURROWS
12 Attorney for Defendant

13 
14 ANNETTE L. HAYES
15 Assistant United States Attorney
16
17
18
19
20
21
22
23
24
25
26
27
28