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UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION  
10

11 ADOBE INC.,

12 Plaintiff,

13 vs.

14 SILK ROAD TECHNOLOGY, INC.,

15 Defendant.  
16

Case No.

**COMPLAINT FOR (1) COPYRIGHT  
INFRINGEMENT AND (2) BREACH OF  
CONTRACT**

DEMAND FOR JURY TRIAL

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1 Plaintiff Adobe Inc. (Adobe) alleges:

2 **INTRODUCTION**

3 1. This case arises because defendant Silk Road Technology, Inc. (Silk Road) has  
4 breached its software licensing agreement with Adobe relating to an Adobe product called  
5 ColdFusion. Silk Road has also infringed Adobe’s copyrights that protect several versions of  
6 ColdFusion.

7 2. Adobe provides some of the most popular and widely used software in the world.  
8 Using Adobe products, individuals can express their creativity with professional digital imaging,  
9 drawing, illustration, and photo and video editing software; developers can build and maintain  
10 cutting edge websites and online tools; and businesses can provide a comprehensive digital  
11 experience for their customers with website development, database management, marketing, and  
12 customer relationship management software. Adobe licenses its software products to individuals  
13 and enterprises using a variety of licensing programs.

14 3. ColdFusion is Adobe software that provides a platform for users to build and  
15 deploy websites and mobile applications. Unless a licensee obtains a custom license, Adobe’s  
16 license for ColdFusion permits licensees to use ColdFusion only for internal use. For example,  
17 ColdFusion licensees use the product to create websites internal to their companies where their  
18 employees can submit expense reports or track inventory.

19 4. Adobe’s ColdFusion license prohibits licensees from using ColdFusion to build  
20 websites or applications for or to be used by third parties. The license prohibits licensees, for  
21 example, from offering ColdFusion-based websites or applications to third parties under a  
22 “software as a service” arrangement or from using ColdFusion to build websites or applications  
23 for third parties to use. Licensees who wish to use ColdFusion to build products for third parties  
24 must negotiate custom “hosting” licenses with Adobe to account for the fact that multiple parties,  
25 not just the licensee, will benefit from and use ColdFusion technology.

26 5. Silk Road purchased version 10 of ColdFusion in October 2012. As part of its  
27 purchase, Silk Road agreed to the license agreement attached as Exhibit 1 (the “ColdFusion  
28 License”). In executing this agreement, Silk Road promised it would not use ColdFusion “on

1 behalf of third parties” or use “the Software in a computer service business” or as “part of a hosted  
2 service.”

3 6. Silk Road has broken all these promises. Among other things, Silk Road offers  
4 third parties a recruiting and human resources software product called OpenHire that was built  
5 using ColdFusion and runs on ColdFusion code. By using ColdFusion in connection with its  
6 OpenHire product in this way, Silk Road is breaching the ColdFusion License.

7 7. Silk Road’s OpenHire product also infringes Adobe’s copyrights in ColdFusion  
8 because it is a derivative work for which Silk Road has no license.

9 8. Adobe informed Silk Road that its use of ColdFusion violated the ColdFusion  
10 License and Adobe’s copyrights, but Silk Road has refused to negotiate a proper license or stop its  
11 numerous breaches of the ColdFusion License, including offering its infringing product and  
12 services.

13 9. As a result, Adobe is left with no choice but to seek judicial relief. Silk Road’s past  
14 and continuing use and copying of ColdFusion infringes Adobe’s copyrights and deprives Adobe  
15 of licensing revenue, while exposing Silk Road’s customers to potential security risks through the  
16 use of a version of the software no longer supported by Adobe. Accordingly, Adobe brings this  
17 suit for federal copyright infringement and breach of contract, as explained in more detail below.

#### 18 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

19 10. This action arises under the United States Copyright Act, 17 U.S.C. § 101, *et seq.*  
20 This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338  
21 because Adobe asserts a claim based on federal copyright law.

22 11. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Adobe’s  
23 claim for breach of contract because that claim is so related to Adobe’s claim under federal law  
24 that it forms part of the same case or controversy.

25 12. This Court has personal jurisdiction over Silk Road because Silk Road agreed in  
26 the ColdFusion License to be subject to the jurisdiction of the state and federal courts in Santa  
27 Clara County, California for all disputes relating to the agreement.

28 13. In addition, this Court has personal jurisdiction over Silk Road because it has

1 substantial, continuous and systematic contacts with this district, including by regularly  
2 transacting business within the district. Silk Road has purposefully directed its activities toward,  
3 and entered into contracts within, this forum and has purposefully availed itself of the privilege of  
4 conducting activities in this forum, thereby invoking the benefits and protections of its laws. The  
5 wrongful acts alleged in this complaint arise out of and relate to Silk Road's activities within this  
6 forum, which makes this Court's exercise of jurisdiction over Silk Road reasonable.

7 14. Venue is proper in this jurisdiction under 28 U.S.C. §§ 1391(b) because a  
8 substantial part of the events that give rise to Adobe's claims occurred in this district, and Adobe  
9 has suffered substantial harm in this district. Additionally, venue is proper under 28 U.S.C.  
10 § 1400(a) because Silk Road maintains offices in Oakland, California.

11 15. This is an intellectual property action subject to district-wide assignment under  
12 Civil L.R. 3-2(c) and General Order No. 44.

### 13 PARTIES

14 16. Adobe is a Delaware corporation with its principal place of business in San Jose,  
15 California. Adobe develops and provides some of the most widely used and popular software in  
16 the world. Adobe offers a line of products and services used by creative professionals, marketers,  
17 knowledge workers, application developers, enterprises and consumers for creating, managing,  
18 delivering, measuring, optimizing and engaging with compelling content and experiences across  
19 multiple operating systems, devices and media. Its products run on personal and server-based  
20 computers, as well as on smartphones, tablets and other devices.

21 17. Silk Road is a Delaware corporation with a principal place of business in Chicago,  
22 Illinois. Silk Road maintains several other offices, including one in Oakland, California.

23 18. Silk Road offers consulting services and a suite of software products for human  
24 resources and employee management. Its clients include national and international corporations,  
25 prestigious universities, and governmental entities.

### 26 FACTUAL ALLEGATIONS

#### 27 I. ADOBE COLD FUSION

28 19. Adobe has spent years investing in and developing ColdFusion. ColdFusion

1 software provides developers with a platform and software language for quickly developing  
2 websites and applications. Today, ColdFusion is a highly popular and widely used program with  
3 thousands of customers.

4 20. ColdFusion's industry leading security features are just one aspect of the software  
5 that make it a popular platform for website development. Adobe continuously works to improve  
6 and upgrade ColdFusion's security features. Over the years, Adobe has released numerous new  
7 versions of ColdFusion and software patches to provide new and better functionality and enhance  
8 the software's security features.

9 21. Adobe offers a standard license to ColdFusion that restricts licensees to using the  
10 software to develop websites and applications for the licensee's own internal uses only. In  
11 particular, the standard ColdFusion license prohibits licensees from offering ColdFusion to be  
12 "accessed from another individual's or entity's Computer." Licensees are also prohibited from  
13 "using the Software on behalf of third parties," from granting any other "rights in the Software" on  
14 a "membership or subscription basis," and from providing use of ColdFusion software "in a  
15 computer service business" or "as part of a hosted service," among other things. Licensees also  
16 may not use "any component, library, or other technology included in the Software other than  
17 solely in connection with its use of the Software."

18 22. Adobe owns all rights to the ColdFusion software and user documentation for it,  
19 which Adobe has registered with the United States Copyright Office. The U.S. Registration  
20 Number relevant to this lawsuit is TX 7-555-186 (Adobe ColdFusion 10), attached as Exhibit 2.

## 21 **II. SILK ROAD'S ACCESS TO COLDFUSION AND THE COLDFUSION LICENSE**

22 23. Silk Road contacted Adobe through a ColdFusion distributor in 2012 seeking a  
23 ColdFusion license. Adobe informed Silk Road that, because it offered its ColdFusion-based  
24 products to third parties, Silk Road would need a custom hosting agreement.

25 24. Silk Road ignored Adobe's guidance. In October 2012, it purchased ColdFusion  
26 version 10 and obtained an internal use license to use 15 instances of ColdFusion.

27 25. Adobe maintains licensing histories for each of its customers on internal tracking  
28 systems. The system shows that the 2012 license number Silk Road obtained is 1185-5009-4654-

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