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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ADOBE SYSTEMS INC., Plaintiff - Appellee, v. ANTHONY KORNRUMPF, AKA Tony Kornrumpf; HOOPS ENTERPRISE, LLC, Defendants - Appellants.	No. 12-16616 D.C. No. 4:10-cv-02769-CW MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Claudia Wilken, Chief District Judge, Presiding

Argued and Submitted March 12, 2014
Berkeley, California

Before: THOMAS, FISHER and BERZON, Circuit Judges.

Defendants Anthony Kornrumpf and Hoop Enterprises, LLC appeal judgment in favor of plaintiff Adobe Systems Inc. We have jurisdiction under 28 U.S.C. § 1291, we review de novo the district court's grant of summary judgment to Adobe on the defendants' first sale doctrine defense, and we affirm.

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*This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

The district court did not err in its application of *Vernor v. Autodesk, Inc.*, 621 F.3d 1102, 1111 (9th Cir. 2010), to Dell's and HP's acquisition of copies of Adobe software products. The original equipment manufacturer contracts specified that Dell and HP were granted licenses, significantly restricted Dell's and HP's ability to transfer the software and imposed notable use restrictions. A transfer of software products under these circumstances constitutes a license rather than a sale. *See Apple Inc. v. Psystar Corp.*, 658 F.3d 1150, 1159 (9th Cir. 2011); *MDY Indus., LLC v. Blizzard Entm't, Inc.*, 629 F.3d 928, 938-39 (9th Cir. 2010), *as amended*; *Vernor*, 621 F.3d at 1111-12.

The defendants seek to distinguish these cases on grounds not presented to the district court. Because the defendants raise these arguments for the first time on appeal, we decline to reach them. *See AlohaCare v. Hawaii, Dep't of Human Servs.*, 572 F.3d 740, 744 (9th Cir. 2009).

AFFIRMED.