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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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321 STUDIOS, also known as 321 Studio, LLC

Case No.

Plaintiff,

v.

METRO-GOLDWYN-MAYER STUDIOS
INC.; TRISTAR PICTURES, INC.;
COLUMBIA PICTURES INDUSTRIES, INC.;
SONY PICTURES ENTERTAINMENT, INC.;
TIME WARNER ENTERTAINMENT
COMPANY L.P.; DISNEY ENTERPRISES,
INC.; UNIVERSAL CITY STUDIOS, INC.;
THE SAUL ZAENTZ COMPANY; and
PIXAR,

COMPLAINT FOR
DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

Defendants.

INTRODUCTION

1. This lawsuit involves the ability of a small Internet company to market and sell an instruction manual and bundled computer software that teaches legal owners of DVD movies how to make legitimate backup copies of the contents of a DVD for their own personal use. 321 Studios' package, called "DVD Copy Plus," includes an effective and easy-to-use method of

1 jurisdiction over this action under 28 U.S.C. Section 1331 (federal question), 28 U.S.C. Section
2 1338(a) (copyright), and 28 U.S.C. Section 2201 (declaratory judgment).

3 16. This Court has personal jurisdiction over each Defendant because each Defendant
4 resides or has its principal place of business in the State of California, distributes its motion
5 pictures and other video works in California, and/or has substantial contacts with California.

6 17. Venue is proper in this district pursuant to 28 U.S.C. Section 1391(b) and 28
7 U.S.C. Section 1400(a) because (1) all of the Defendants legally reside in this district under 28
8 U.S.C. 1391(c), (2) this is a judicial district in which some of the Defendants reside and maintain
9 a principle place of business, and/or (3) 321 Studios maintains a business office in the Northern
10 District of California.

11 18. A substantial part of the events which give rise to this controversy occurred in
12 Alameda County. Plaintiff 321 Studio's sales office is in Berkeley, California.

13 19. A actual case or controversy has arisen between the parties. The Defendants,
14 either individually or under the auspices of the MPAA, have threatened litigation against
15 Plaintiff and have asserted that DVD Copy Plus is illegal. These statements have caused actual
16 and/or threatened injury to the Plaintiff 321 Studios.

17 GENERAL ALLEGATIONS

18 A. The DVD Video Format

19 20. DVD, an acronym that stands for "digital versatile disc," is a well-established
20 technology that permits the storage and playback of video and films in a digital format. A DVD
21 is a five-inch-wide plastic disk, similar in size and appearance to a "compact disc" or CD used
22 for the storage of audio and computer data files. The DVD format is capable of storing the large
23 amount of digital information required to hold a full-length motion picture film or other large
24 amounts of digital data. Based on information and belief, a single DVD can hold approximately
25 4.75 gigabytes of information (equivalent to about 38 billion "bits" of digital information, stored
26 as digital 1's and 0's).

27 21. The DVD format has been widely heralded as a high-quality successor to the
28 VCR and videocassette tapes for the playback of video and movies. Because video images are

1 stored on DVDs in a digital format, rather than the analog format used on videocassettes, DVDs
2 permit the playback of video images with improved clarity and quality. DVDs can be played and
3 viewed by the purchaser of a DVD either on a television equipped with a standalone DVD player
4 or on a computer with a DVD-ROM drive and specialized playback software. The DVD format
5 allows the producers and distributors of films to take advantage of additional features, including
6 the addition of alternate soundtracks, interview clips, subtitles, alternate viewing configurations,
7 and other menu-driven options.

8 22. Thousands of video titles, including feature-length motion pictures, television
9 shows, documentaries, historical footage, and other film and video works, have been released in
10 the DVD format. These DVDs are widely available for sale in retail stores and on the Internet.
11 Individual DVDs containing movies can range in price from about \$10 to \$50.

12 23. With the widespread acceptance of the DVD format has come the recognition of
13 certain problems inherent in the DVD format. The DVD itself is comprised of a layer of
14 reflective material that actually holds the digital information, encased in clear plastic. A laser
15 reads the very dense "tracks" encoded on the reflective material. The plastic disc is very
16 sensitive to scratches and cracks on the playing surface. Because of the high density of the data
17 stored on the DVD, even the slightest scratch or imperfection in the plastic surface of the disk
18 can lead to problems playing the disk or retrieving the digital film and video information on the
19 disk. Similarly, exposing the DVD disc to heat or light can easily damage the reflective surface
20 or the plastic coating, leading to problems with the DVD or inability to play the disc.

21 **B. The Contents Scramble System ("CSS")**

22 24. Most DVDs manufactured, distributed or sold by the Defendants are recorded
23 onto the DVD in a scrambled format in which the data is encrypted in order to prevent
24 unauthorized access to the data contained on the DVD. On information and belief, the system is
25 called the "Contents Scramble System," or "CSS," and was developed by Matsushita Electric
26 Industrial Co. Ltd. and Toshiba Corporation. Defendants have adopted CSS as a standard
27 encryption technique to prevent access to DVD data. CSS works by scrambling the digital data
28 that makes up each frame of video images. The CSS standard, as well as the licensing of the

1 electronic encryption “keys” necessary to play back DVDs, is administered by an organization
2 known as the Copyright Control Authority (CCA). The CSS “keys” are licensed to the makers
3 of DVD players and DVD software. A CSS-protected DVD can only be played back or viewed
4 by DVD players or computer software which contain the “keys” licensed by the CCA, either
5 directly or through subcontracts. When the CSS-encrypted DVD is placed in a licensed DVD
6 player, the DVD player uses software and electronic decryption “keys” in order to unscramble
7 the data and display the frames that make up the video images.

8 25. The use and administration of CSS as a mechanism for preventing viewing of or
9 access to DVDs has no direct relation to the copyright status of any of the works placed on a
10 DVD. Regardless whether CSS is used on a DVD, the work placed on the DVD may or may not
11 be protected by copyright. For example, based on information and belief, many uncopyrighted
12 or public-domain works are distributed on DVDs that are encrypted with CSS, and these public-
13 domain works are not accessible without the licensed keys. Similarly, based on information and
14 belief, some copyrighted works are distributed in the DVD format without CSS, which has no
15 effect on the validity or enforceability of the copyright protections granted by United States law.

16 **C. The Creation and Availability of deCSS**

17 26. The software program known as “deCSS” is an open-source, freely available
18 piece of software which descrambles DVD data encrypted by CSS, permitting the access and
19 playback of legitimately-owned DVD videos on computers not equipped with the CSS
20 encryption keys. On information and belief, one of the primary authors of deCSS is Jon
21 Johanson, a 16-year-old Norwegian computer programmer. On information and belief, Mr.
22 Johanson’s goal in creating the software was to create a DVD player that would operate in the
23 Linux operating system, and had the ability to play legitimately owned DVDs encrypted with
24 CSS. Until deCSS was created, computer operators running the Linux operating system had no
25 available player because no such software existed that contained the electronic decryption “keys”
26 licensed by the CCA. On information and belief, the deCSS project was an effort to create a
27 player that could run on the Linux operating system to play legitimately owned DVD films and
28 video.

1 **D. 321 Studios' Sale of DVD Utilities and Instructions**

2 27. Beginning in August of 2001, 321 Studios began distributing and selling over the
3 Internet a package of documentation and software called "DVD Copy Plus." 321 Studios
4 distributes this software through retail and Internet sales, including on its websites
5 "www.321studios.com," "www.copymydv.com," and "www.dvdcopyplus.com." DVD Copy
6 Plus permits legal owners of DVDs to create video copies of the contents of those DVDs,
7 converting the data into a format playable by any computer and most standard DVD players. As
8 explicitly stated on 321 Studios' website, the purpose of DVD Copy Plus is to permit legitimate
9 DVD owners to create archival copies of the DVDs they already own. A copy of pages from the
10 321 Studios website is attached as Exhibit A to this complaint and incorporated herein by
11 reference. The data in the video files created by the DVD Copy Plus materials can be stored
12 using a normal CD-ROM read-write drive. DVD Copy Plus does not create a copy of the DVD
13 itself, but only a copy of some of the contents of the DVD in a different digital format. The
14 quality of the digital video files created by DVD Copy Plus is lower than the original DVD
15 video, but better than VHS videotape. DVD Copy Plus permits computer owners that have a CD
16 read-write drive, but do not have a DVD read-write drive, to make archival backup copies on a
17 CD that can be played on a home DVD player.

18 28. DVD Copy Plus cannot make a backup of the entire contents of the DVD, which
19 may include special features such as alternate soundtracks, interview clips, subtitles, alternate
20 viewing configurations, and other menu-driven options. Instead, DVD Copy Plus makes a
21 backup copy of the film only, or of a bonus track only, and the backup CD will not have the
22 menu-driven playback options of the original DVD.

23 29. DVD Copy Plus is comprised of detailed instructions on how to decode, store and
24 rerecord video content that has been placed on a DVD, bundled with four freely-available
25 software components. Because the software is freely-available elsewhere on the Internet, the
26 value of DVD Copy Plus lies primarily in the detailed instructions which permit the use of the
27 software. The value of DVD Copy Plus also depends on 321 Studios' customer service, which
28 includes free technical support.

1 30. 321 Studios was founded by Robert Moore. Mr. Moore hoped to interest his son
2 in the computer programming industry, and the father and son team decided to embark on an “e-
3 commerce” business based on the distribution of instructions and documentation for creating
4 backup copies of DVDs. In August of 2001, father and son started selling DVD Copy Plus over
5 the Internet.

6 31. The use of DVD Copy Plus requires the use of a legal and authorized DVD player
7 installed onto the user’s personal computer.

8 32. On information and belief, it is unlikely that DVD Copy Plus has been used by
9 many customers, if any, to make bootleg or otherwise illegitimate copies of DVDs for sale or
10 distribution in a manner prohibited by the Copyright Act. First, it is impractical to use DVD
11 Copy Plus as a method of mass-producing bootleg copies of DVDs. The process of accessing
12 and making a backup of a DVD video takes between four to six hours, and the resulting copy is
13 not identical to the original. As a practical matter, therefore, DVD Copy Plus is more suitable
14 for use by the legitimate owners of DVDs to create archival backup copies. Second, the Internet
15 website operated by 321 Studios, as well as the materials included with DVD Copy Plus, explain
16 to users that the instructions and software must be used only to create legitimate backup copies
17 of the contents of DVDs in a manner consistent with the copyright laws.

18 33. Purchasers of 321 Studios’ DVD Copy Plus are informed that the software must
19 not be used for improper uses, and instead should only be used to make backup copies for the
20 personal use of the owner of the original DVD. DVD Copy Plus and its packaging materials
21 contain the following language:

22 **RESPECT THE RIGHTS OF ARTISTS**

23 DVD Copy Pro allows you to make backup copies of movies you own or movies
24 you’ve created. It is against the law to make or distribute reproductions of
25 copyrighted material for most purposes other than your own use. This software is
designed for you to make a backup copy for personal use only. We respect the
rights of artists and ask you do to the same.

26 **E. The Digital Millennium Copyright Act (“DMCA”)**

27 34. With the passage of the Digital Millennium Copyright Act in 2000, Congress
28 added a number of provisions to the Copyright Code, Title 17 of the United States Code. Among

1 the additional provisions are those purportedly aimed at the "circumvention of copyright
2 protection systems." See 17 U.S.C. § 1201 et seq. These provisions state, "No person shall
3 circumvent a technological measure that effectively controls access to a work protected under
4 this title." 17 U.S.C. § 1201(a)(1)(a). The provisions also states the following:

5 No person shall manufacture, import, offer to the public, provide, or otherwise
6 traffic in any technology, product, service, device, component, or part thereof,
7 that is primarily designed or produced for the purpose of circumventing a
8 technological measure that effectively controls access to a work protected under
9 this title; [or] has only limited commercially significant purpose or use other than
10 to circumvent a technological measure that effectively controls access to a work
11 protected under this title ...

12 17 U.S.C. § 1201(a)(2).

13 35. These provisions of the DMCA have been widely criticized by legal scholars,
14 lawmakers, and computer industry leaders. The problems with the DMCA stem from its
15 vagueness, its interaction with other copyright laws, and its inconsistencies with the First
16 Amendment protections on speech. The DMCA prohibits legitimate activity, including the fair
17 use of copyrighted works.

18 **F. 321 Studios' Dispute with Defendants**

19 36. Based on information and belief, representatives of the Motion Picture
20 Association of America have asked the FBI to investigate 321 Studios' distribution of DVD
21 Copy Plus and have stated their belief that 321 Studios has violated the 1998 Digital Millennium
22 Copyright Act. The Defendants' desire to shut down the distribution of DVD Copy Plus, and
23 their allegations that such distribution violates the DMCA, are reflected in a March 11, 2002
24 article distributed by the Gannett News Service. The article specifically referred to the website
25 operated by 321 Studios offering the DVD Copy Plus product, "www.copymydv.com." This
26 Internet website, "www.copymydv.com," is a trade name and business name utilized by
27 Plaintiff 321 Studios. A copy of this article is attached as Exhibit B to this Complaint and
28 incorporated herein by reference.

37. Likewise, several of the Defendants have sued other individuals and operators of
Internet websites that have distributed materials such as deCSS which permit access to DVD

