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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

321 STUDIOS, also known as 321 Studio, LLC,

Plaintiff,

v.

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

Defendants.

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

Counterclaimants,

Case No.: CV-02-01955

**ANSWER TO FIRST AMENDED  
COMPLAINT AND COUNTERCLAIM**

v.

321 STUDIOS, also known as 321 Studio, LLC;  
ROBERT MOORE, an individual; ROBERT  
SEMAAN, an individual; and VICTOR  
MATTISON, an individual,

Counterclaim Defendants.

## ANSWER

Defendants 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 LLLP, formerly known as Universal City Studios, Inc. and The Saul Zaentz Company (collectively "Defendants"), in answer to Plaintiff's First Amended Complaint for Declaratory Relief ("Complaint"), admit, deny and aver as follows:

1. In answer to the averments in paragraph 1 of the Complaint, Defendants admit and aver that this lawsuit involves, among other things, Plaintiff's marketing and sale of products it calls "DVD Copy Plus" and "DVD-X-COPY;" that DVD Copy Plus effects the transfer onto regular CD-ROMS of digital video images from DVDs encrypted with a copy protection and access control system known as "CSS;" that DVD-X-COPY allows the copying of a CSS-encrypted DVD onto a DVD R or DVD RW; and that Plaintiff's conduct violates § 1201 of the Digital Millennium Copyright Act ("DMCA"). Except as expressly admitted and averred herein, Defendants deny the averments in paragraph 1.

2. In answer to the averments in paragraph 2, Defendants admit that each of them, and the Motion Picture Association of America ("MPAA"), claims that DVD Copy Plus and DVD-X-COPY are illegal under the DMCA and seeks through this litigation to enjoin the trafficking in

1 those products, and that Plaintiff seeks a declaratory judgment in this action. Except as expressly  
2 admitted herein, Defendants deny the averments in paragraph 2.

3  
4 3. Defendants deny the averments in paragraph 3 of the Complaint, and aver that the  
5 anti-circumvention provisions of the Digital Millennium Copyright Act, 17 U.S.C. § 1201,  
6 repeatedly have been held to be constitutional and not to violate the First Amendment to the  
7 United States Constitution. Universal City Studios, Inc. v. Corley, 273 F.3d 429 (2<sup>nd</sup> Cir. 2001);  
8 United States v. Elcom Ltd., 203 F. Supp. 2d 1111 (N.D. Cal. 2002).

9  
10 4. On information and belief, Defendants admit the averments in paragraph 4 of the  
11 Complaint.

12  
13 5. In answer to the averments in paragraph 5, Defendants admit that they or their  
14 affiliated companies are engaged in the business of producing and/or distributing motion  
15 pictures; that such motion pictures are distributed in theaters, on television, on videocassette  
16 tapes and/or on other media, including optical discs embodying digital signals such as DVDs;  
17 and that they or their affiliated companies own copyrights or exclusive rights under the  
18 Copyright Act in such motion pictures and video materials. Except as expressly admitted herein,  
19 Defendants deny the averments in paragraph 5 of the Complaint.

20  
21 6. In answer to the averments in paragraph 6 of the Complaint, Defendants admit that  
22 Defendant Metro-Goldwyn-Mayer Studios Inc. produces motion pictures, and has its principal  
23 place of business in Santa Monica, California.

24  
25 7. In answer to the averments in paragraph 7 of the Complaint, Defendants admit that  
26 Defendant TriStar Pictures, Inc. has its principal place of business in Culver City, California.  
27 Except as expressly admitted herein, Defendants deny the averments in paragraph 7 of the  
28 Complaint.

1           8.     In answer to the averments in paragraph 8 of the Complaint, Defendants admit that  
2 Columbia Pictures Industries, Inc. produces motion pictures, and has its principal place of  
3 business in Culver City, California.

4  
5           9.     In answer to the averments in paragraph 9 of the Complaint, Defendants admit that  
6 Sony Pictures Entertainment Inc. has its principal place of business in Culver City, California.  
7 Except as expressly admitted herein, Defendants deny the averments in paragraph 9 of the  
8 Complaint.

9  
10          10.    In answer to the averments in paragraph 10 of the Complaint, Defendants admit  
11 that Time Warner Entertainment Company, LP, through certain of its divisions, is a motion  
12 picture company and has its principal place of business in New York, New York.

13  
14          11.    In answer to the averments in paragraph 11, Defendants admit that Disney  
15 Enterprises, Inc. has its principal place of business in Burbank, California. Except as expressly  
16 admitted herein, Defendants deny the averments in paragraph 11 of the Complaint.

17  
18          12.    In answer to the averments in paragraph 12, Defendants aver that Universal City  
19 Studios LLLP was formerly known as Universal City Studios, Inc., and that said entity produces  
20 motion pictures and has its principal place of business in Universal City, California.

21  
22          13.    Defendants admit the averments in paragraph 13 of the Complaint.

23  
24          14.    Defendants admit the averments in paragraph 14 of the Complaint.

25  
26          15.    Defendants admit the averments in paragraph 15 of the Complaint insofar as those  
27 averments pertain to them.

1           16. In answer to paragraph 16 of the Complaint, Defendants admit that venue is proper  
2 in this District.

3  
4           17. Defendants are without knowledge or belief sufficient to enable them to admit or  
5 deny the averments in paragraph 17 of the Complaint.

6  
7           18. In answer to the averments in paragraph 18 of the Complaint, Defendants admit  
8 that an actual case or controversy now has arisen between the parties, but deny that a justiciable  
9 case or controversy existed at the time this action was filed. Except as expressly admitted herein,  
10 Defendants deny the averments in paragraph 18.

11  
12           19. Defendants admit the averments in paragraph 19 of the Complaint.

13  
14           20. Defendants admit the averments in paragraph 20 of the Complaint, and for purpose  
15 of clarity admit that DVD format allows producers and distributors of films to "make available,"  
16 rather than "take advantage of," additional features.

17  
18           21. Defendants admit the averments in the first two sentences of paragraph 21 of the  
19 Complaint, and further admit that individual DVDs or boxed sets of DVDs containing motion  
20 pictures can range in price from under \$10 to \$50. Except as expressly admitted herein,  
21 Defendants deny the averments in paragraph 21 of the Complaint.

22  
23           22. Defendants admit the averments in the second and third sentences of paragraph 22  
24 of the Complaint. Except as expressly admitted herein, Defendants deny the averments in  
25 paragraph 22 of the Complaint.

1           23. Defendants admit the averments in the first through sixth and eighth sentences of  
2 paragraph 23 of the Complaint. Defendants deny the averments in the seventh sentence of  
3 paragraph 23 of the Complaint.  
4

5           24. Defendants are without information or belief sufficient to enable them to admit or  
6 deny the averments in the second sentence of paragraph 24 of the Complaint. Defendants admit  
7 that distribution of copyrighted works in DVD format without CSS protection would have no  
8 effect on the validity of the copyright protections granted by United States law. Except as  
9 expressly admitted or denied on information and belief herein, Defendants deny the averments in  
10 paragraph 24 of the Complaint.  
11

12           25. In answer to the averments in paragraph 25 of the Complaint, Defendants admit  
13 that DeCSS is a software application that descrambles DVD data encrypted by CSS, permitting  
14 the access and playback of DVD videos on computers not equipped with the CSS encryption  
15 keys. Except as expressly admitted herein, defendants deny the averments in paragraph 25 of the  
16 Complaint.  
17

18           26. Defendants are without information or belief sufficient to enable them to admit or  
19 deny the date Plaintiff began distributing and selling DVD Copy Plus, as averred in the first  
20 sentence in paragraph 26 of the Complaint, but admit the averments in the balance of said  
21 sentence. Defendants admit that DVD Copy Plus permits the creation of video copies of the  
22 contents of DVDs, converting the data into a format playable by any computer and most DVD  
23 players. Defendants further admit the averments in the second, sixth, seventh, and eighth  
24 sentences in paragraph 26 of the Complaint. Defendants admit that pages are attached as  
25 Exhibit A to the Complaint and aver that such pages speak for themselves. Defendants admit the  
26 averments in the last (ninth) sentence in paragraph 26 but deny that the term "archival backup  
27 copy" has any legal significance in the context of a DVD containing a copyrighted motion  
28

1 picture. Except as expressly admitted or denied on information and belief herein, Defendants  
2 deny the averments in paragraph 26 of the Complaint.

3  
4 27. In answer to the averments in paragraph 27 of the Complaint, Defendants admit  
5 that DVD Copy Plus cannot make a copy of the entire contents of a DVD, and that the copy will  
6 not have the menu-driven playback options of the original DVD. Except as expressly admitted  
7 herein, Defendants deny the averments of paragraph 27 of the Complaint.

8  
9 28. Defendants admit the averments in paragraph 28 or the Complaint.

10  
11 29. In answer to the averments in paragraph 29 of the Complaint, Defendants admit  
12 that DVD Copy Plus contains instructions on how to decode, store, and re-record video content  
13 that has been placed on a DVD, and software components that are available for free on the  
14 Internet. Except as expressly admitted herein, Defendants deny the averments in paragraph 29 of  
15 the Complaint, and deny that the freely available software components are legitimately available.

16  
17 30. Defendants are without knowledge or belief sufficient to enable them to admit or  
18 deny the averments in paragraph 30 of the Complaint.

19  
20 31. Defendants are without knowledge or belief sufficient to enable them to admit or  
21 deny the averments in paragraph 31 of the Complaint.

22  
23 32. In answer to the averments in paragraph 32 of the Complaint, Defendants aver that  
24 the language on Plaintiff's web site and in the materials it includes with DVD Copy Plus speaks  
25 for itself. Except as expressly averred herein, Defendants deny the averments in paragraph 32 of  
26 the Complaint.

1           33. Defendants deny the averments in the first sentence of paragraph 33 of the  
2 Complaint. Defendants are without knowledge sufficient to enable them to admit or deny the  
3 averments in the remaining sentences of paragraph 33 of the Complaint.

4  
5           34. In answer to the averments in paragraph 34 of the Complaint, Defendants aver that  
6 the language on the packaging of DVD Copy Plus and DVD-X COPY speaks for itself. Except  
7 as expressly averred herein, Defendants deny the averments in paragraph 34.

8  
9           35. Defendants admit the averments in paragraph 35 of the Complaint.

10  
11          36. Defendants deny the averments in paragraph 36 of the Complaint.

12  
13          37. In answer to the averments in paragraph 37 of the Complaint, Defendants admit  
14 that representatives of the MPAA asked the FBI to investigate Plaintiff's distribution of DVD  
15 Copy Plus, but deny that representatives of the MPAA made a public statement that Plaintiff has  
16 violated the DMCA. Defendants further admit that a copy of a newspaper article is attached as  
17 Exhibit B to the Complaint; that said Exhibit B speaks for itself; and that the Internet website  
18 [www.copymydv.com](http://www.copymydv.com) is owned or controlled by Plaintiff. Except as expressly admitted herein,  
19 Defendants deny the averments in paragraph 37 of the Complaint.

20  
21          38. In answer to the averments in paragraph 38 of the Complaint, Defendants admit  
22 that some of them have sued individuals and operators of Internet websites that have violated  
23 U.S.C. §1201 by unlawfully distributing or otherwise trafficking in DeCSS or other copyright-  
24 protection circumvention tools. Except as expressly admitted herein, Defendants deny the  
25 averments in paragraph 38 of the Complaint.



39. In answer to the averments in paragraph 39 of the Complaint, Defendants admit that Plaintiff seeks a declaratory judgment as averred therein, but denies that Plaintiff is entitled to such a declaratory judgment.

## ANSWER TO CLAIM ONE

40. In answer to the averments in Paragraph 40 of the Complaint, Defendants incorporate by reference the admissions, denials and averments in Paragraphs 1 through 39, inclusive, above.

41. In answer to the averments in Paragraph 41 of the Complaint, Defendants admit that each of them, and the MPAA, claims that DVD Copy Plus and DVD-X-COPY are illegal under the DMCA and seeks through this litigation to enjoin trafficking in those products. Except as expressly admitted herein, Defendants deny the averments in paragraph 41 of the Complaint.

42. Defendants deny the averments in Paragraph 42 of the Complaint.

43. In answer to the averments of Paragraph 43 of the Complaint, Defendants admit that an actual controversy now exists between Plaintiff and Defendants concerning Plaintiff's right to distribute and sell DVD Copy Plus and DVD-X COPY, but deny that a justiciable controversy existed at the time this lawsuit was filed.

44. In answer to the averments of Paragraph 44 of the Complaint, Defendants admit that Plaintiff seeks a declaratory judgment as averred in said paragraph, but deny that Plaintiff is entitled to such a declaratory judgment.

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46. In answer to the averments in Paragraph 46 of the Complaint, Defendants admit and aver that Plaintiff has directly, contributorily, and vicariously infringed their copyrights. Defendants further aver that such infringement is irrelevant to the anti-circumvention protections of 17 USC § 1201, and that because Plaintiff has violated § 1201, it is not necessary for the Court to determine the issue of Plaintiff's direct, contributory, and vicarious copyright infringement at this time.

48. In answer to the averments of Paragraph 48 of the Complaint, Defendants admit that an actual controversy now exists between Plaintiff and Defendants concerning Plaintiff's right to distribute and sell DVD Copy Plus and DVD-X COPY, but deny that a justiciable controversy existed at the time this lawsuit was filed.

49. In answer to the averments of Paragraph 49 of the Complaint, Defendants admit that Plaintiff seeks a declaratory judgment as averred in said paragraph, but deny that Plaintiff is entitled to such a declaratory judgment.

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28

1 **COUNTERCLAIM**

2

3 Counterclaimants Metro-Goldwyn-Mayer Studios Inc., TriStar Pictures, Inc., Columbia

4 Pictures Industries, Inc., Time Warner Entertainment Company, L.P., Disney Enterprises, Inc.,

5 Universal City Studios LLLP, formerly known as Universal City Studios, Inc., and The Saul

6 Zaentz Company (collectively, "Counterclaimants") aver:

7

8 **NATURE OF THE ACTION**

9

10 51. Counterclaim Defendants are trafficking in illegal products and services.

11 Counterclaimants bring this counterclaim for injunctive relief and damages to stop Counterclaim

12 Defendants' brazen violation of a carefully balanced law that Congress enacted to strengthen

13 copyright protection in the digital age by, among other things, prohibiting trafficking in any

14 technology, product, service, device, component, or part thereof that is primarily designed to

15 circumvent technological measures adopted by copyright owners to protect their works against

16 unauthorized access and copying.

17

18 52. Counterclaimants own and/or control copyrights in motion pictures, including

19 many of the most successful and critically acclaimed motion pictures released theatrically in the

20 United States and throughout the world, and are among the leading producers and distributors of

21 motion pictures in DVD format.

22

23 53. Counterclaim Defendants are traffickers in products and services they cavalierly

24 admit are specifically designed for the purpose of defeating the DVD copy protection and access

25 control system, known as the Content Control Scramble System ("CSS"), with which

26 Counterclaimants' copyrighted DVDs are encrypted. By using such products and services, users

27 unlawfully can gain access to, and/or make, distribute or otherwise electronically transmit or

28 perform unauthorized copies of Counterclaimants' copyrighted motion pictures. Counterclaim

1 Defendants market and sell this illegal software and exhort and encourage the copying of  
2 Counterclaimants' CSS-protected, copyrighted motion pictures that are embodied on DVDs.  
3 Counterclaim Defendants' unlawful conduct has caused, and continues to cause,  
4 Counterclaimants grave and irreparable harm.

5  
6 54. Counterclaimant Metro-Goldwyn-Mayer Studios Inc. is a corporation duly  
7 incorporated under the laws of the state of Delaware.

8  
9 55. Counterclaimant Columbia Pictures Industries, Inc. is a corporation duly  
10 incorporated under the laws of the state of Delaware.

11  
12 56. Counterclaimant Disney Enterprises, Inc. is a corporation duly incorporated under  
13 the laws of the state of Delaware.

14  
15 57. Counterclaimant TriStar Pictures, Inc. is a corporation duly incorporated under the  
16 laws of the state of Delaware.

17  
18 58. Counterclaimant Time Warner Entertainment Company, L.P. is a limited partnership  
19 duly organized under the laws of the state of Delaware.

20  
21 59. Counterclaimant Universal City Studios LLLP, formerly known as Universal City  
22 Studios, Inc., is a limited liability partnership duly organized under the laws of the state of  
23 Delaware.

24  
25 60. Counterclaimant The Saul Zaentz Company is a corporation duly organized under  
26 the laws of the State of Delaware.

1           61. Counterclaimants are motion picture studios or their affiliates that are engaged in  
2 the business of producing, manufacturing, and/or distributing copyrightable and copyrighted  
3 material, including motion pictures. Counterclaimants, either directly or through their affiliates,  
4 distribute motion pictures theatrically, via television transmission, and on packaged media such  
5 as videocassette tapes and digital versatile discs ("DVDs") for distribution in the home and video  
6 market.

7  
8           62. Each Counterclaimant or its predecessor in interest obtained ownership of the  
9 United States copyright or the exclusive reproduction, adaptation and/or distribution rights under  
10 United States copyright, and/or the state statutory and common law right, in various motion  
11 pictures embodied in such DVDs. Counterclaimants or their affiliated companies are among the  
12 leading producers and distributors in the United States of motion pictures in DVD format,  
13 including such recent blockbusters as Spider-Man and Monsters, Inc. Approximately 4,000 titles  
14 have been released in the United States on DVD to date. Current industry estimates place DVD  
15 sales at over 1,000,000 units per week.

16  
17           63. Counterclaimants are informed and believe, and on that basis aver, that  
18 Counterclaim Defendant 321 Studios is the business name for Terr, LLC, a corporation  
19 organized under the laws of a state other than California ("321 Studios"), which also does  
20 business as [www.321studios.com](http://www.321studios.com), [www.copymydv.com](http://www.copymydv.com), [www.dvdcopyplus.com](http://www.dvdcopyplus.com), and  
21 [www.dvdxcopy.com](http://www.dvdxcopy.com). On information and belief, 321 Studios maintains an office in Berkeley,  
22 California.

23  
24           64. Counterclaimants are informed and believe, and on that basis aver, that  
25 Counterclaim Defendant Robert Moore ("Moore") is and at all times relevant hereto was the  
26 president and a 50% owner of 321 Studios.

1           65. Counterclaimants are informed and believe, and on that basis aver, that  
2 Counterclaim Defendant Robert Semaan ("Semaan") is and at all times relevant hereto was the  
3 CEO and a 25% owner of 321 Studios.

4  
5           66. Counterclaimants are informed and believe, and on that basis aver, that  
6 Counterclaim Defendant Victor Mattison ("Mattison") is and at all times relevant hereto was a  
7 25% owner of 321 Studios.

8  
9           67. Counterclaimants are informed and believe, and on that basis aver, that Moore,  
10 Semaan and Mattison (hereinafter sometimes referred to collectively as the "Individual  
11 Counterclaim Defendants") direct, control, ratify, participate in and/or are the moving forces  
12 behind the violation of Counterclaimants' rights complained of herein.

13  
14           68. Each of the Counterclaim Defendants is, and at all times mentioned herein was, a  
15 party to the unlawful activities complained of herein, and has conspired with and/or acted in  
16 concert or combination with each of the other Counterclaim Defendants and/or has aided and  
17 abetted such other Counterclaim Defendant and/or has acted as an agent for each of the other  
18 Counterclaim Defendants with respect to the actions and matters described in this Counterclaim,  
19 and/or has controlled each of the other Counterclaim Defendants and the infringing conduct  
20 herein alleged.

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## BACKGROUND AVERMENTS

### DVD Technology

72. With the advent of the VCR and videocassette tapes, home viewing of motion pictures became a convenient, inexpensive way to enjoy motion pictures. The most current technological advancement for private home viewing of motion pictures is the DVD. DVDs are 5-inch wide discs that hold full-length motion pictures in digital format. This technology significantly improves the clarity and the overall quality of the motion picture when played on a television screen or a computer monitor.

73. DVDs containing full-length motion pictures, together with additional and ancillary features such as interviews and alternative sound tracks, can be played back for viewing in the home by dedicated, free standing "DVD players" and by personal computers configured with a DVD "drive" and additional hardware or software modules sometimes referred to as "media players."

74. DVDs contain digital information. Unlike the material on analog media (such as videocassettes), digital information can be copied without degradation from generation to generation. Thus, when motion pictures in digital format are copied or transmitted, the clarity and quality of the motion picture do not suffer. Because motion pictures contained on DVDs are in digital format, without protection unauthorized copies of motion pictures from DVDs unlawfully can be transmitted over the Internet, stored in computer memory, and duplicated for unlawful sale, transfer or exchange. Once such unauthorized copies are in the hands of another user, the unlawful process can begin anew and result in multiple unauthorized copies, because the copies have the clarity and quality of the original DVD containing the motion picture.



1 **The Content Scramble System ("CSS")**

2  
3 75. Motion pictures in unprotected digital format on DVDs would be subject to  
4 unlimited copying and worldwide distribution over the Internet and otherwise, thus creating an  
5 enormous risk of piracy and a threat to the viability of the DVD market. Therefore,  
6 Counterclaimants adopted a copy protection and access control system for DVDs called the  
7 Content Scramble System ("CSS").  
8

9 76. CSS is a technological measure that (a) effectively controls access to works  
10 protected by the Copyright Act, and (b) effectively protects rights of copyright owners to control  
11 whether an end user can reproduce, manufacture, adapt, publicly perform and/or distribute  
12 unauthorized copies of their copyrighted works, or portions thereof.  
13

14 77. Over 4,000 motion pictures now have been released in the United States in CSS-  
15 protected DVD format, and movies are being issued on DVD at the rate of over 40 new titles per  
16 month, in addition to re-releases of classic films.  
17

18 **The Descrambling of CSS and the Creation of the "DeCSS" Program**

19  
20 78. Counterclaimants are informed and believe, and on that basis aver, that hackers  
21 were able to discover the CSS encryption algorithm and keys, and that these hackers used this  
22 information to create and post on the World Wide Web an unauthorized utility or computer  
23 program commonly referred to as "DeCSS." DeCSS enables users to "decrypt" or break the CSS  
24 copy protection system, and thereby illegally to access DVDs containing copyrighted motion  
25 pictures and to copy them onto computer hard drives, from whence they can be copied or  
26 "burned" onto blank DVDs or compact discs ("CDs.")  
27  
28

1 **Counterclaim Defendants' Unlawful Trafficking in CSS Circumvention Tools**

2  
3 79. Counterclaim Defendants have developed and now operate a business that is  
4 designed for and built upon the unlawful marketing, distribution and sale to the public of  
5 software (including, on information and belief, DeCSS or a similar application) that is  
6 specifically designed for the purpose of decrypting CSS-protected DVDs, including those  
7 containing copyrighted motion pictures owned by Counterclaimants. The decrypted DVDs then  
8 are used to make unauthorized copies of Counterclaimants' copyrighted motion pictures.  
9 Counterclaimants exhort purchasers, including through their advertising and promotional efforts  
10 to do precisely that.

11  
12 80. Counterclaimants currently market, distribute and sell products they call "DVD  
13 Copy Plus" and "DVD-X COPY."

14  
15 81. DVD Copy Plus includes three applications: SmartRipper, DVDx, and  
16 PowerCDR. A user of DVD Copy Plus inserts a CSS-protected DVD into the DVD drive of his  
17 or her computer and launches SmartRipper by clicking on a "launch" button. The user then  
18 clicks the "start" button, and SmartRipper decrypts and strips the CSS copy protection of the  
19 DVD and actually copies the contents of the copyrighted DVD onto the user's hard drive **without**  
20 the CSS protection. Next, the user launches the DVDx application, which is used to re-encode  
21 the DVD from MPEG-2 to MPEG-1 format. By this re-coding, the DVDx application permits  
22 compression of the decrypted files to sizes that readily fit on a writeable Video CD ("VCD").  
23 The final software application in the DVD Copy Plus product is PowerCDR, which permits the  
24 MPEG-1 file on the user's hard drive to be copied or "burned" onto a VCD using a CD-R burner.  
25 In sum, Counterclaim Defendants' DVD Copy Plus decrypts and strips CSS protection from a  
26 copyrighted DVD, actually makes a copy of the copyrighted DVD without CSS protection,  
27 compresses the digital content so that it can readily be copied or distributed, and provides the  
28 ability to copy (unlimited times) the copyrighted DVD onto a VCD. Copies of such VCDs can

1 be copied and distributed as easily as other pirated intellectual property, including over the  
2 Internet.

3  
4 82. Counterclaim Defendants' newly-announced product, DVD-X COPY, is promoted  
5 by them as being similar to, but better than, DVD Copy Plus in that, after stripping a DVD of its  
6 CSS access and copy protection, DVD- X COPY enables users to copy the contents of a DVD  
7 onto a blank DVD, rather than onto a VCD. Counterclaimants boast in their advertising for their  
8 DVD-X COPY product that users can "Make Perfect Copies Of Your DVDs," that users can  
9 "COPY and BURN" their own DVDs, including "all menus, trailers & special features," and that  
10 every copy the user makes with DVD-X COPY "is EXACTLY like the original. Nothing is  
11 compressed or left off the disc."

12  
13 **CLAIM FOR RELIEF**  
14 **(Violation of 17 U.S.C. § 1201)**  
15

16 83. Counterclaimants incorporate by reference the averments contained in paragraphs  
17 51 through 82, inclusive.

18  
19 84. Counterclaim Defendants, and each of them, offer to the public, provide, or  
20 otherwise traffic in DeCSS or similar software products and services that (a) are primarily  
21 designed for the purpose of circumventing CSS or the protection afforded by CSS, (b) have only  
22 limited (if any) commercially significant purpose or use other than to circumvent CSS or the  
23 protection offered by CSS, and/or (c) are marketed and sold by Counterclaim Defendants and/or  
24 others acting in concert with them with the knowledge of the use of DeCSS or the similar  
25 software programs is circumventing CSS or the protection afforded by CSS.

26  
27 85. By offering to the public, providing, or otherwise trafficking in DeCSS or similar  
28 software products and services, Counterclaim Defendants, and each of them, have violated the

1 provisions governing circumvention of copyright protection systems set forth in the Copyright  
2 Act, 17 U.S.C. § 1201.

3  
4 86. The conduct of Counterclaim Defendants, and each of them, has caused and is  
5 causing, and unless enjoined and restrained by the Court will continue to cause Counterclaimants  
6 grave and irreparable injury. Counterclaimants have no adequate remedy at law. Pursuant to 17  
7 U.S.C. §1203, Counterclaimants are entitled to a permanent injunction prohibiting further  
8 violations of §1201.

9  
10 87. As a direct and proximate result of Counterclaim Defendants' conduct, pursuant to  
11 17 U.S.C. §1203©, Counterclaimants are entitled to Counterclaim Defendants' profits  
12 attributable to their violations of 17 U.S.C § 1201.

13  
14 88. Counterclaimants are further entitled to their attorneys' fees and full costs pursuant  
15 to 17 U.S.C. § 1203(b).

16  
17 WHEREFORE, Counterclaimants pray for judgment against Plaintiff and Counterclaim  
18 Defendants, and each of them, as follows:

19  
20 1. That the Court enter judgment declaring that 321 Studios is not entitled to the  
21 declaratory judgment it seeks and that each of 321 Studios' contentions as set forth in paragraphs  
22 44 and 49 of the First Amended Complaint in this action is incorrect.

23  
24 2. For a permanent injunction enjoining Counterclaim Defendants, and each of them,  
25 and their respective agents, servants, employees, officers, attorneys, successors, licensees,  
26 partners, and assigns, and all persons acting in concert or participation with each or any of them,  
27 from:  
28

1 (a) manufacturing, importing, offering to the public, providing or otherwise  
2 trafficking in DeCSS, DVD Copy Plus and/or DVDXCopy;

3  
4 (b) manufacturing, importing, offering to the public, providing, or otherwise  
5 trafficking in, any other technology, product, service, device, component, or part thereof, that:

6  
7 (i) is primarily designed or produced for the purpose of  
8 circumventing, or circumventing the protection afforded by, CSS, or any  
9 other technological measure adopted by Counterclaimants that effectively  
10 controls access to Counterclaimants' copyrighted works or effectively  
11 protects the Counterclaimants' rights to control whether an end user can  
12 reproduce, manufacture, adopt, publicly perform and/or distribute  
13 unauthorized copies of their copyrighted works or portions thereof;

14  
15 (ii) has only limited commercially significant purposes or use other  
16 than to circumvent, or to circumvent the protection afforded by, CSS, or  
17 any other technological measure adopted by Counterclaimants that  
18 effectively controls access to Counterclaimants' copyrighted works or  
19 effectively protects Counterclaimants' rights to control whether an end  
20 user can reproduce, manufacture, adapt, publicly perform and/or distribute  
21 unauthorized copies of their copyrighted works or portions thereof; or

22  
23 (iii) is marketed by Counterclaim Defendants and/or others acting in  
24 concert with them with the knowledge of its use in circumventing, or in  
25 circumventing the protection afforded by, CSS, or any other technological  
26 measure adopted by Counterclaimants that effectively controls access to  
27 Counterclaimants' copyrighted works or effectively protects  
28 Counterclaimants' rights to control whether an end user can reproduce,

1 manufacture, adapt, publicly perform and/or distribute unauthorized  
2 copies of their copyrighted works or portions thereof.

3  
4 3. For an order requiring Counterclaim Defendants to deliver up on oath, to be  
5 surrendered to Counterclaimants or to be destroyed, all computer discs, computer drives, and  
6 other physical objects embodying all or any part of the computer software that comprises the  
7 products known as DVD Copy Plus and DVD-XCOPY, that are in the possession, custody or  
8 control of Counterclaim Defendants and/or their agents or representatives.

9  
10 4. For Counterclaim Defendants' profits in such amount as may be found;

11  
12 5. For prejudgment interest according to law.

13  
14 6. For Counterclaimants' attorneys' fees, full costs, and disbursements in this action.

15  
16 7. For such other and further relief as the Court may deem just and proper.

17  
18 DATED: December \_\_, 2002

RUSSELL J. FRACKMAN  
PATRICIA H. BENSON  
MITCHELL SILBERBERG & KNUPP LLP

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21 By: \_\_\_\_\_  
22 Russell J. Frackman  
23 Attorneys for Defendants and Counterclaimants  
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