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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MACROVISION CORPORATION, a
Delaware corporation,

Plaintiff,

vs.

321 STUDIOS, a.k.a. 321 STUDIOS LLC,
a.k.a. TERR LLC, a Missouri corporation,

Defendant.

Civil Action No. _____
(Jury Trial Demanded)

**COMPLAINT FOR INDUCEMENT OF PATENT INFRINGEMENT AND VIOLATION
OF THE DIGITAL MILLENNIUM COPYRIGHT ACT; INJUNCTIVE RELIEF;
DAMAGES; DEMAND FOR JURY TRIAL**

Plaintiff Macrovision Corporation ("Macrovision"), for its Complaint herein, alleges as follows:

NATURE OF THE CASE

1. Plaintiff is the owner of U.S. patents pertaining to Analog Copy Protection ("ACP") methods and apparatus. Plaintiff's ACP prevents videocassette recorders ("VCRs") from making unauthorized copies of digital content from ACP enabled digital versatile discs

("DVDs"). In this action, Plaintiff seeks injunctive and other relief against an entity that manufactures and traffics in software designed to induce consumers to infringe Plaintiff's patented ACP in violation of the Patent Laws of the United States, 35 U.S.C. § 101 *et seq.*, and to circumvent Plaintiff's ACP in violation of the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. § 1201 *et seq.*

JURISDICTION AND VENUE

2. As this case arises under the Patent and Copyright laws of the United States, jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over the Defendant in that it has had continuous and ongoing business contacts with residents of New York through, among other things, the ownership or control of one or more interactive websites aimed at residents of New York and through which it entered into contracts with and distributed products to residents of New York; by intentionally engaging in acts targeted at New York that have caused harm to Plaintiff in this State; and by engaging in the wrongful acts alleged herein in New York. For the same reasons, venue for the action is proper in the Southern District of New York, pursuant to 28 U.S.C. §1391(b) and (c), and 28 U.S.C. §1400(a) and (b), because the asserted claims arose in this district and, on information and belief, defendant, at all times material hereto, has done business in this district.

THE PARTIES

4. Plaintiff Macrovision is a Delaware corporation, with a principal place of business in Santa Clara, California.

5. On information and belief, Defendant 321 Studios is the business name for Terr LLC, a limited liability corporation organized under the laws of Missouri with its principal place of business in St. Charles, Missouri.

PLAINTIFF'S ANALOG COPY PROTECTION (ACP)

6. Plaintiff Macrovision is the leading provider of copy protection solutions for motion pictures and other digitally encoded content. Macrovision has been the entertainment industry's leading provider of copy protection and rights management solutions for the past 20 years. Movie studios, cable and satellite TV networks and other video content owners use Macrovision to stop high-quality copies from being made and distributed.

7. DVDs hold full-length motion pictures (commonly along with other, related content) in digital format. DVDs are designed primarily for home viewing, to be played through the use of either a free-standing DVD player or a personal computer configured with a DVD drive and related software. The works contained on DVDs are digitally formatted and as a result provide viewers with significantly improved audio and video fidelity.

8. Macrovision has expended considerable resources in inventing and developing its unique copy protection products. Macrovision holds all right, title and interest in and to a number of United States Patents, including U.S. Patent No. 4,631,603 entitled "Method and apparatus for processing a video signal so as to prohibit the making of acceptable video tape recordings thereof" (the "'603 patent") and U.S. Patent No. 4,819,098, entitled "Method and apparatus for clustering modifications made to a video signal to inhibit the making of acceptable videotape recordings" (hereinafter "the '098 patent"). A copy of the '603 Patent is attached hereto as Exhibit A, and a copy of the '098 Patent is attached hereto as Exhibit B. These patents cover the Macrovision ACP methods and apparatus.

9. The method claims of the '603 and '098 patents are licensed to content providers, including all but one of the major motion picture studios (the "Hollywood Studios"). The Hollywood Studios are among the world's pre-eminent creators, producers, and distributors of motion pictures and other content. Each studio owns and/or possesses the exclusive

reproduction, adaptation, and/or distribution rights under United States copyright in a very large number of motion pictures and other works.

10. The Hollywood Studios distribute these copyrighted works through a variety of channels, including theatrical release, pay-per-view, and, most significant for the purposes of this Complaint, on DVDs made available to the public for rent or sale.

11. By distributing their copyrighted works in this digital format, however, the Hollywood Studios expose themselves to a heightened risk of copyright piracy. Absent access and copy control protections, works stored on DVDs can be copied without degradation to a writeable CD, DVD, or a computer hard drive. They also can be copied with some degradation to analog videotape via the now common VCR. Works copied to analog videotape in this manner represent a significant threat to copyright owners, particularly given the fact that DVDs may be rented for a couple of dollars and the resultant copy, though inferior to the original DVD, is similar in quality to the original work released by the Hollywood Studios on videotape.

12. In order to protect their copyrighted works on DVD, in addition to the "Content Scramble System," or "CSS," a technological measure that effectively controls access to works protected by the Copyright Act, and protects rights of copyright owners to control whether an end user can reproduce and/or distribute unauthorized copies of their copyrighted works, or portions thereof, the Hollywood Studios and others adopted Plaintiff's ACP copy protection system for DVDs. Plaintiff's ACP is a technological measure that effectively protects rights of copyright owners to control whether an end user can reproduce and/or distribute unauthorized copies of their copyrighted works, or portions thereof.

13. Macrovision's ACP trigger bits are placed on DVDs at the time of manufacture. They are defined as a part of the standard for encoding DVDs. When a Macrovision-enabled

DVD reader, player or computer sees an original or replica video DVD with the ACP trigger bits set to any of these three values, the selected level of Macrovision copy protection behavior is triggered. Depending on the setting of the trigger bits in Macrovision-enabled DVD reader, player or computer, the DVD is read with one of four different levels of copy protection available. As a result, the analog output of the DVD player is then modified to implement and reflect copy protection. These modifications introduce specific changes to the analog signal designed, under the Macrovision patents and system, to be invisible to ordinary television sets but to profoundly degrade the quality of the visual image on VHS and other recordings of the same analog television signals. Macrovision's copy protection technology may also be applicable to PCs, DVD recorders, Personal Video Recorders (PVR), Set Top Boxes (STB) and other devices receiving an analog source input.

THE DEFENDANT'S WRONGFUL CONDUCT

14. 321 Studios manufactures DVD-copying software products known as DVD X Copy Platinum, DVD X Copy Gold, DVD X Copy Xpress, and DVD X Copy, DVD X Copy Plus (hereafter "DVD Copying" products), among others. On information and belief, 321 Studios distributes, offers to the public, provides, and otherwise traffics in (in New York and elsewhere) these DVD Copying products through both retail channels and through a number of websites that it operates.

15. These software products, or parts thereof, are primarily designed and produced for the purpose of circumventing ACP, are marketed for the purpose of circumventing ACP, and have no commercially significant purpose or use other than to circumvent ACP. Depending on the particular 321 Studios' DVD Copying product used, it either (1) violates the DMCA by making copies without copy protection so that analog copies can be subsequently made from these thereby circumventing Plaintiff's ACP, or (2) induces infringement of Macrovision's

patents by making new unlicensed DVD copies with ACP enabled trigger bits which, upon playback, trigger patented ACP methods within licensed DVD players.

FIRST CLAIM FOR RELIEF

(Violation of 35 U.S.C. § 187 et seq., Inducement of Patent Infringement)

16. Upon information and belief, Defendant has actively induced and currently is actively inducing its customers to infringe one or more claims of the '603 patent and/or the '098 patent through its sale of DVD Copying products marketed under the name 321 Studios.

17. Upon information and belief, Defendant had engaged in conduct that in fact causes, urges, or encourages others to infringe Macrovision's patents-in-suit.

18. Upon information and belief, Defendant's inducement of infringement has been and continues to be willful and with the intent of inducing infringement of Macrovision's patents, of which 321 Studios was and is aware.

19. Upon information and belief, Defendant's actions induce conduct that constitutes direct and actual infringement in violation of 35 U.S.C. §271(a).

20. As a result of Defendant's actions, Plaintiff has been damaged, and has suffered and will continue to suffer substantial injury, including irreparable injury, unless Defendant is enjoined by this Court.

SECOND CLAIM FOR RELIEF

(Violation of 17 U.S.C. § 1201 et seq., the Digital Millennium Copyright Act)

21. Plaintiff repeats and realleges every allegation contained in paragraphs 1 through 20 as if fully set forth herein.

22. Defendant manufactures, offers to the public, provides, or otherwise traffics in software products and services, or parts thereof, that (a) are primarily designed for the purpose of circumventing ACP or the protection afforded by ACP, (b) have no commercially significant purpose or use other than to circumvent ACP or the protection offered by ACP, and/or (c) are

marketed and sold in New York and elsewhere by Defendant and/or others working in concert with it with Defendant's knowledge for use in circumventing protection afforded by ACP.

23. By offering to the public, providing, or otherwise trafficking in DVD Copying products, Defendant has violated the provisions governing circumvention of copyright protection systems set forth in the Copyright Act, 17 U.S.C. § 1201(b)(1).

24. The conduct of Defendant has caused and is causing, and unless enjoined and restrained by the Court will continue to cause Plaintiff grave and irreparable injury. Plaintiff has no adequate remedy at law.

25. As a direct and proximate result of Defendant's conduct, Plaintiff has been damaged and, pursuant to 17 U.S.C. § 1203(c), is entitled to Defendant's profits attributable to its violations of 17 U.S.C. § 1201.

26. Pursuant to 17 U.S.C. § 1203, plaintiff is entitled to a permanent injunction prohibiting further violations of § 1201.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. For a preliminary and permanent injunction enjoining Defendant and its agents, servants, employees, officers, attorneys, successors, licensees, partners, and assigns, and all persons acting in concert with it, from:

(a) manufacturing, importing, offering to the public, providing or otherwise trafficking in DVD X Copy Platinum, DVD X Copy Gold, DVD X Copy Xpress, DVD X Copy, DVD Copy Plus, or similar products;

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

(i) infringes the claims in the patents-in-suit; and/or

(ii) is primarily designed or produced for the purpose of circumventing, or to circumvent the protection afforded by, CSS or any other technological measures adopted by Plaintiff or its customers that effectively control access to Plaintiff's or its customers' copyrighted works or effectively protect Plaintiff's or its customers' rights to control whether an end user can reproduce, manufacture, publicly perform and/or distribute unauthorized copies of their copyrighted works or portions thereof;

(iii) has no commercially significant purposes or uses other than to circumvent, or to circumvent the protection afforded by, CSS or any other technological measure adopted by Plaintiff or its customers that effectively controls access to Plaintiff's or its customers' copyrighted works or effectively protects Plaintiff's or its customers' rights to control whether an end user can reproduce, manufacture, publicly perform and/or distribute unauthorized copies of their copyrighted works or portions thereof; or

(iv) is marketed by Defendant and/or others acting in concert with it, for use in circumventing, or in circumventing the protection afforded by CSS, or any other technological measure adopted by Plaintiff or its customers that effectively controls access to Plaintiff's or its customers' copyrighted works or effectively protects Plaintiff's or its customers' rights to control whether an end user can reproduce, manufacture, publicly perform and/or distribute unauthorized copies of their copyrighted works or portions thereof.

2. For an order requiring Defendant to deliver upon oath, to be surrendered to Plaintiff or to be destroyed, all computer discs, computer drives, and other physical objects embodying all or any part of the computer software that comprises the products known as DVD X Copy Platinum, DVD X Copy Gold, DVD X Copy Xpress, DVD Copy Plus, DVD X Copy, or

similar products, that are in the possession, custody, or control of Defendant, its agents or representatives and those acting in concert with them.

3. For damages as provided for by law, including Defendant's profits.
4. For treble damages for willful patent infringement.
5. For prejudgment interest according to law.
6. For Plaintiff's attorneys' fees, full costs, and disbursements in this action.
7. For such other and further relief as the Court may deem proper and just.

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