

WHITE O'CONNOR CURRY GATTI & AVANZADO LLP

Andrew M. White (State Bar No. 060181)
Jonathan H. Anschell (State Bar No. 162554)
Lee S. Brenner (State Bar No. 180235)
10100 Santa Monica Boulevard
Los Angeles, California 90067
Telephone (310) 712-6100
Facsimile (310) 712-6199

WILMER, CUTLER & PICKERING

Thomas P. Olson
Randolph D. Moss
Peter B. Rutledge
2445 M Street, NW
Washington, DC 20037
Telephone (202) 663-6000
Facsimile (202) 663-6363

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**PARAMOUNT PICTURES
CORPORATION; DISNEY
ENTERPRISES, INC.; NATIONAL
BROADCASTING COMPANY,
INC.; NBC STUDIOS, INC.;
SHOWTIME NETWORKS INC.;
THE UNITED PARAMOUNT
NETWORK; ABC, INC.; VIACOM
INTERNATIONAL INC.; CBS
WORLDWIDE INC.; and CBS
BROADCASTING INC.,**

Plaintiffs,

v.

**REPLAYTV, INC. and
SONICBLUE, INC.,**

Defendants.

Civ. No. _____

COMPLAINT FOR:

1. Contributory copyright infringement
2. Vicarious copyright infringement
3. Violation of Section 553 of the Communications Act
4. Violation of Section 605 of the Communications Act
5. Unfair business practices

1 Plaintiffs Paramount Pictures Corporation, Disney Enterprises, Inc.,
2 National Broadcasting Company, Inc., NBC Studios, Inc., Showtime Networks
3 Inc., The United Paramount Network, ABC, Inc., Viacom International Inc.,
4 CBS Worldwide Inc., and CBS Broadcasting Inc. (hereinafter referred to as
5 “plaintiffs”), by their counsel, allege the following against defendants Replay,
6 Inc. and SONICblue Inc. (hereinafter referred to as “defendants”).

7 **JURISDICTION AND VENUE**

8 1. This Court has subject matter jurisdiction under 28 U.S.C.
9 §§ 1331 & 1338, under the Copyright Act, 17 U.S.C. § 101 *et seq*, under the
10 Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) & 2202, and under the
11 Communications Act, 47 U.S.C. §§ 553 & 605. Pursuant to 28 U.S.C.
12 § 1367, this Court has supplemental jurisdiction over Claim V because it is so
13 related to the federal claims as to form part of the same case or controversy.
14 This Court has personal jurisdiction over defendants Replay, Inc. and
15 SONICblue Inc. due to their operation of their principal place of business in
16 this State and their extensive commercial activities in this State, including this
17 District. Venue is proper in this judicial district pursuant to 28 U.S.C. §
18 1391(b) in that a substantial part of the events or omissions giving rise to this
19 lawsuit, as well as substantial injury to the plaintiffs, have occurred or will
20 occur in this District as a result of defendants’ past and impending acts of
21 copyright infringement, violations of the Communications Act, and unfair
22 competition, as alleged in detail below. Venue is also proper in this judicial
23 district pursuant to 28 U.S.C. § 1400(a) in that the defendants may be found in
24 this district in light of their extensive commercial activities in this district.

25 **PRELIMINARY STATEMENT**

26 2. Plaintiffs bring this action to obtain preliminary and permanent
27 relief against an unlawful plan by defendants to arm their customers with -- and
28 continuously assist them in using -- unprecedented new tools for violating

1 plaintiffs' copyright interests in the programming they supply to various
2 television distribution services, including their own program services.
3 Defendants' unlawful scheme, which is centered on a new device called a
4 "ReplayTV 4000," seeks to profit from two novel methods of violating
5 plaintiffs' rights. *First*, defendants enable, assist, and induce their ReplayTV
6 4000 customers to make unauthorized digital copies of plaintiffs' copyrighted
7 television programming for the purpose of -- at the touch of a button -- viewing
8 the programming with all commercial advertising automatically deleted.
9 (Defendants offer essentially this same feature on another device, a new analog
10 videocassette recorder ("VCR") called the "DDV2120.") This unlawful
11 activity harms the potential market for and value of plaintiffs' copyrighted
12 works because commercial advertising is a crucial (and often the sole) means
13 by which plaintiffs receive payment for such programming. *Second*, defendants
14 provide their customers with a feature that makes it (in defendants' words) "a
15 breeze" to make perfect digital copies of plaintiffs' copyrighted programs,
16 including entire theatrical motion pictures, and distribute them to other people -
17 - even many other people -- through high-speed Internet connections. This
18 unlawful activity likewise deprives plaintiffs of the means of payment for, and
19 diminishes the value of, their copyrighted works. These new infringing
20 features, which defendants plan to bolster through daily contact with their
21 customers, are the principal selling points of the ReplayTV 4000 package and
22 the DDV2120 device.

23 3. The activity enabled, facilitated, and supervised by defendants
24 differs radically from the copying of over-the-air broadcast television
25 programming found to be permissible (under certain narrow circumstances and
26 using much simpler technology) in the Supreme Court's 1984 *Sony* decision.
27 (Plaintiffs do not challenge the use of either VCRs or ordinary digital video
28 recorders for that purpose.) Most importantly, the unprecedented new methods

1 of copying and distribution enabled and induced by defendants will deprive
2 plaintiffs of the means of payment for their works and erode the value of
3 plaintiffs' copyrighted programming, in which plaintiffs have invested billions
4 of dollars. In essence, the defendants are seeking to profit from the sale of
5 features that are calculated to disrupt the ability of copyright owners to market
6 their works for telecast by free, over-the-air television, by basic and premium
7 subscription services, and by pay-per-view distribution services.

8 4. Plaintiffs are willing to incur the enormous costs of creating and
9 disseminating television programming because copyright provides the
10 economic incentive to do so. Indeed, copyright protection powerfully
11 encourages free expression, since plaintiffs cannot be expected to incur the
12 large costs of producing news and entertainment content (such as television
13 programs and theatrical motion pictures) for the public unless they have a way
14 to recoup and profit from those expenditures.

15 5. Copyright owners are rewarded for the creation, production and
16 delivery of copyrighted television programming almost exclusively through one
17 or both of two methods: (i) advertiser support and (ii) subscription fees.
18 Defendants' unlawful scheme attacks both.

19 6. The licensing of most copyrighted works for television viewing is
20 dependent on payments by advertisers for the right to include commercials
21 during designated breaks within and between programs. The sale of
22 commercial time is virtually the sole means of paying for the copyrighted
23 programming offered by free, over-the-air television networks and stations,
24 such as the ABC, CBS, NBC, and UPN television networks owned by
25 plaintiffs and the hundreds of local television stations (many owned by
26 plaintiffs) that broadcast the programming of those networks. Commercial
27 advertising is also a vital source of payment for copyrighted works purchased,
28 licensed, or created by "basic" subscription program services, such as

1 plaintiffs' CNBC, Nickelodeon, and SoapNet services, which are transmitted
2 by distributors such as cable systems and satellite carriers. Both over-the-air
3 and basic subscription program services depend on being able to deliver to
4 advertisers consumer audiences of pre-determined size and demographic
5 characteristics.

6 7. Defendants' unlawful scheme attacks the fundamental economic
7 underpinnings of free television and basic nonbroadcast services and, hence,
8 the means by which plaintiffs' copyrighted works are paid for. Advertisers will
9 not pay to have their advertisements placed within television programming
10 delivered to viewers when the advertisements will be invisible to those
11 viewers. In effect, by eliminating the embedded advertising, defendants'
12 copying-and-commercial-deletion feature will (as to those viewers who employ
13 the feature) eliminate the source of payment to the copyright owner for the very
14 program being viewed. As a result, defendants' unlawful scheme impairs the
15 value of plaintiffs' works and reduces the incentive for their creation and
16 dissemination. For subscription television program services that depend in
17 part on advertising revenues, use of the AutoSkip feature has the same effect.
18 In both cases, the AutoSkip feature would fundamentally and inevitably erode
19 the means by which copyright owners are paid for their works and hence the
20 value of the programming they create.

21 8. Copyrighted works sold or licensed by cable television networks
22 are paid for, in part, by a second funding source -- payment of subscription (or
23 similar) fees. Such fees fund the purchase and creation of content by basic
24 nonbroadcast program services such as Nickelodeon, Toon Disney, and
25 MSNBC, and are virtually the sole means by which copyright owners are paid
26 for programming licensed to "premium" nonbroadcast program services such
27 as Showtime and The Movie Channel, which do not contain or derive any
28 revenues from advertising. The payment of fees to view individual programs is

1 the central feature of pay-per-view distribution systems and, in effect, the
2 means by which copyright owners are paid for content licensed to those
3 systems. Copyrighted works are licensed to all subscription and pay-per-view
4 services on the assumption that viewers of the content will be charged a fee for
5 the content they watch. The ability of copyright owners to be paid for their
6 works would plainly be undermined by any system that facilitates the
7 unauthorized dissemination of the contents of subscription or pay-per-view
8 services for free. Yet defendants' "Send Show" feature promotes and enables
9 precisely such unlawful conduct.

10 9. Defendants' ReplayTV 4000 package is centered on a "digital
11 video recorder," a computer-like device for making perfect digital copies of
12 television programming. (The device is usable only with ongoing assistance
13 from defendants in the form of data delivered from defendants' servers each
14 day.) In two key ways, the capabilities of defendants' new ReplayTV 4000 go
15 far beyond traditional home recording technology and are instead specifically
16 designed to violate the rights of copyright owners and program services.

17 10. First, defendants' ReplayTV 4000 offers the ability (without any
18 authorization from copyright owners) to make digital copies of television
19 programs and then to use an "AutoSkip" feature that -- in defendants' own
20 words -- enables viewers "to watch recorded programs totally commercial-free"
21 with a single press of a button. In fact, the ReplayTV 4000 enables the user to
22 set "AutoSkip" so that it will automatically delete all commercials in *all* future
23 playbacks of television programming, without any need to activate the feature
24 for viewing of a particular program. (Defendant SONICblue also offers a
25 different method, through use of a new dual-deck videocassette recorder called
26 the "DDV2120 Dual-Deck VCR," to block all exposure to advertising.) Here is
27 how defendants describe the ReplayTV 4000 AutoSkip feature in a "Frequently
28 Asked Question" on their web site (www.replay.com):

1 **Q. Can ReplayTV play shows without the**
2 **commercials?**

3 **A.** Yes! We call the new feature AutoSkip™. Here’s how
4 it works. You go to the Replay Guide and select a recorded
5 show that you want to watch. When you select the show, a
6 pop-up menu will ask you if you want to play it with or
7 without commercials. If you choose to skip commercials or
8 “AutoSkip™”, *then you get to sit back, relax and enjoy*
9 *your favorite show commercial-free!* (Emphasis added)
10

11 11. Although defendants position the AutoSkip feature as an option,
12 they expect it to be used routinely. Their web site, for example, says this:
13 “You’ll still have the choice to watch recorded shows with the commercials, *if*
14 *you really want to . . .*” (Emphasis added.)

15 12. When a user copies a television program with a ReplayTV 4000
16 and plays it back with the AutoSkip feature, defendants ensure that all
17 commercials are *automatically* omitted when viewing the program. Nor is it
18 necessary for a viewer to wait until the program is over for defendants’ copying-
19 and-commercial-deletion scheme to work. For example, if a viewer begins
20 watching an 8 p.m. comedy at 8:08, defendants’ scheme enables the viewer to
21 watch the program during virtually the same time slot with no exposure
22 whatsoever to commercials.

23 13. Copying a copyrighted program or film with a digital video
24 recorder is a violation of the exclusive rights of the copyright owner under
25 Section 106 of the Copyright Act. Such copying is entirely distinguishable from
26 the type of copying which, in narrow and different circumstances, might be
27 defended as a fair use. Copying programming for playback with defendants’
28 AutoSkip feature effectively circumvents the means of payment to copyright

1 owners for the programming being viewed and therefore their ability to fund it.
2 Viewers will continue to be able to watch the program, but the copyright owner
3 will be deprived of the means of obtaining payment for the programming.
4 Defendants' copying-and-commercial-deletion scheme thus constitutes
5 copyright infringement. As discussed below, the conduct also constitutes a
6 violation of California law.

7 14. The second unlawful new service offered by defendants to owners
8 of the new ReplayTV 4000 is a function – revealingly called “Send Show” -- for
9 making and distributing to third parties perfect reproductions of entire
10 copyrighted television programs and motion pictures. With this feature,
11 defendants facilitate and induce the unauthorized reproduction and distribution
12 of plaintiffs' valuable works and encourage unauthorized access to subscription
13 programming, in violation of both federal and state law. Under the Copyright
14 Act, of course, plaintiffs enjoy the exclusive right to copy and to distribute
15 copies of their copyrighted works. 17 U.S.C. § 106(1), 106(3). Nothing in the
16 Copyright Act gives defendants or their customers any right to make, for
17 *distribution to third parties*, digital copies of “Will & Grace,” “The Tonight
18 Show,” “20/20,” “Lizzie McGuire,” “Daria,” or “Rugrats,” much less entire
19 theatrical motion pictures appearing on television, such as “Quiz Show,” “Sister
20 Act 2,” “102 Dalmatians,” “Powder,” “Election,” “Planes, Trains, and
21 Automobiles” or “The Talented Mr. Ripley.” These practices violate not only
22 the Copyright Act but also the federal Communications Act and California law.

23 15. Defendants assure their customers that using the ReplayTV 4000
24 to infringe copyrights will be effortless: “[W]ith its broadband connectivity,
25 sending and receiving programs [with the ReplayTV 4000] is a breeze.” And
26 the potential customer base for this feature is large and growing: some 10
27 million U.S. households are expected to have high-speed Internet connections
28 by the end of 2001, with continued growth anticipated thereafter. There are

1 also some nine million broadband connections in college dormitory rooms
2 nationwide, and at least 30 million more in workplace, government, and
3 academic institutions.

4 16. Defendants' unlawful "Send Show" feature is designed to violate
5 plaintiffs' rights in all types of programming, from over-the-air broadcast
6 programs to basic, premium, and pay-per-view nonbroadcast offerings. For
7 example – with defendants' explicit encouragement and instruction – a
8 ReplayTV 4000 owner can record a movie exhibited on Showtime (such as
9 "The Talented Mr. Ripley") and use defendants' "Send Show" feature to
10 reproduce and transmit a perfect digital copy of the movie to many other people,
11 none of whom subscribes to Showtime or has paid for a DVD or VHS copy of
12 the movie.

13 17. Defendants not only provide the means to carry out this unlawful
14 conduct but highlight it as a principal selling point of the ReplayTV 4000.
15 Defendants' press release about the ReplayTV 4000, for example, urges
16 customers to use the "Send Show" feature to "*trade movies [and] favorite TV*
17 *programs.*" In a September 2001 interview with CNET, SONICblue's Vice
18 President of Marketing said: "*If there's a great movie that you've recorded*
19 *and you want to send it over to a friend, you'd be able to do that over your*
20 *broadband connection.*" And an October 9, 2001 email from Replay to
21 potential purchasers tells them they can use the ReplayTV 4000 to transmit
22 copies of "*TV shows & movies [to] friends & family over the Internet.*"
23 (Emphasis added in each case.)

24 18. Defendants' web site features an online demonstration that
25 illustrates how to use the "Send Show" feature to reproduce and distribute
26 recorded programs to other people. The demonstration shows a ReplayTV
27 4000 user employing "Send Show" to distribute to third parties digital copies of
28 a copyrighted program owned by one of the plaintiffs. Indeed, defendants have

1 *specifically designed and are actively marketing* their service as a tool to make
2 it easy to infringe copyrighted material.

3 19. Defendants' involvement with their customers' infringements does
4 not end with the sale of a ReplayTV 4000 box. Defendants' continued
5 involvement through a broadband connection is necessary for the updated
6 program listing, which they call a "Replay Guide." Users can engage in
7 unauthorized copying of plaintiffs' copyrighted works (for unauthorized viewing
8 without commercials through AutoSkip or for unauthorized transmission to third
9 parties through "Send Show") only by using the Replay Guide updated daily by
10 defendants. Defendants also plan to collect information about their customers'
11 use of the ReplayTV 4000 on a daily basis.

12 20. The plaintiffs in this case are among the largest creators and
13 distributors of copyrighted television programming. Plaintiffs are directly
14 threatened by defendants' marketing of features that facilitate and induce (a)
15 making unauthorized copies of copyrighted television programming for viewing
16 with all commercial advertising automatically deleted and (b) making and
17 distributing to third parties, without any authorization, digital copies of entire
18 television programs and motion pictures. Plaintiffs will be harmed in several
19 different capacities: as creators and copyright owners of the programming that
20 defendants help their users to infringe, as owners of over-the-air broadcast
21 networks and stations and subscription television program services, and as
22 distributors of pay-per-view content.

23 21. Plaintiffs seek prompt judicial relief to stop defendants from
24 violating the Copyright Act, the Communications Act, and California law
25 through provision of these unlawful capabilities to their customers, and to
26 prevent defendants from licensing these illegal features to third parties.

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PARTIES

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22. Paramount Pictures Corporation (“Paramount”) is a Delaware corporation with a principal place of business in Los Angeles, California. Paramount owns the copyright in many episodes of television series telecast on a first-run basis or otherwise by U.S. television outlets, including “Frasier,” “Soul Food,” “Enterprise,” “Raising Dad,” “Manhunt,” “Becker,” and “JAG.” Paramount also owns the U.S. copyright in many theatrical motion pictures telecast by U.S. television program services or offered through pay-per-view distributors, such as “The Talented Mr. Ripley,” “Election,” “Sabrina,” and “Planes, Trains, and Automobiles.” Among the many programs and movies in which Paramount owns the copyright are those listed in Exhibit A.

23. Disney Enterprises, Inc. ("Disney") is a Delaware corporation with its principal place of business in Burbank, California. Disney owns the copyright in many episodes of television programs, including “Lizzie McGuire,” “Book of Pooh,” “Felicity,” “The Geena Davis Show,” and “House of Mouse,” that are telecast on a first-run basis or otherwise by U.S. television outlets. Disney also owns the copyright in many theatrical motion pictures telecast by U.S. program services or offered through pay-per-view distributors, such as “Quiz Show,” “Sister Act 2,” “The Waterboy,” “High Fidelity,” “102 Dalmatians,” and “Powder.” Directly or through subsidiaries, Disney also operates numerous nonbroadcast television program services, including the Disney Channel, Toon Disney, and SoapNet. The programs in which Disney owns the copyright include, by way of illustration, those listed in Exhibit B to this Complaint.

24. The National Broadcasting Company, Inc. (“NBC”) is a Delaware corporation with its principal place of business in New York, New York and with studio facilities in Burbank, California. NBC is a diversified media company that produces news, entertainment, sports, and financial programming

1 for broadcast and cable television, and is the copyright owner of, among other
2 programs, "Saturday Night Live," "The Today Show," "Dateline NBC," and
3 "Meet The Press." NBC is the sole owner of NBC Studios, Inc. ("NBC
4 Studios"), a New York corporation with its principal place of business in
5 Burbank, California. NBC Studios produces television programming and is the
6 copyright owner of "Will & Grace," "Late Night With Conan O'Brien," "The
7 Tonight Show," "Providence," "Emeril," "Lost," "The Other Half," "The
8 Weakest Link," "Three Sisters," and "Passions" among others. In addition,
9 NBC's thirteen owned and operated television stations produce (and own the
10 copyright in) a variety of programs, including daily news shows. NBC also
11 owns CNBC, Inc., a cable network with its headquarters in Fort Lee, New
12 Jersey, and produces and owns the copyright in most of its programming.
13 Through a joint venture, NBC owns MSNBC Cable, L.L.C., a cable network
14 headquartered in Secaucus, New Jersey, and is the joint or beneficial owner of
15 much of its programming. Representative examples of copyright registrations
16 and/or applications for recently and soon-to-be broadcast programs in which
17 NBC and NBC Studios, Inc. own the copyright are listed in Exhibits C and D.

18 25. Showtime Networks Inc. ("Showtime") is a Delaware
19 corporation with its principal place of business in New York, New York.
20 Showtime offers (through cable systems, satellite carriers, and other
21 distributors) several premium television program services (including Showtime,
22 The Movie Channel, and Flix) consisting of theatrically released feature films,
23 original movies, series, and other programming to subscribers, generally for a
24 separate monthly fee. Showtime owns copyrights in episodes of its programs
25 such as "Queer as Folk" and in many feature-length films such as "Harlan
26 County War," "Out There" and "Rated X." Among the many programs in
27 which Showtime owns the copyright are those listed in Exhibit E. Showtime

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1 also operates SET (Showtime Event Television) Pay Per View, which markets
2 and distributes boxing events and concerts on a pay-per-view basis.

3 26. The United Paramount Network (“UPN”) is a Delaware
4 partnership with its principal place of business in Los Angeles, California. UPN
5 operates the UPN Network, which offers advertiser-supported free, over-the-air
6 programming to the public in many television markets throughout the United
7 States.

8 27. ABC, Inc. (“ABC”) is a New York corporation with its principal
9 place of business in New York, New York. ABC is the legal or beneficial
10 owner of copyrights in numerous ABC Television Network programs, such as
11 “Primetime Thursday,” “The View,” “Port Charles,” “All My Children,” “One
12 Life to Live,” “General Hospital,” “Good Morning America,” “Nightline,”
13 “World News Tonight,” and “20/20.” In addition, ABC’s owned and operated
14 television stations produce (and own the copyright in) a variety of programs,
15 including daily news shows. Among the many programs in which ABC owns
16 the copyright are those listed in Exhibit F.

17 28. Viacom International Inc. (“Viacom International”) is a Delaware
18 corporation with its principal place of business in New York, New York.
19 Viacom International operates numerous television programming services,
20 including MTV Music Television, MTV2, VH1 Music First, Nickelodeon, TNN
21 The National Network, CMT Country Music Television, and TV Land. Viacom
22 International owns copyrights in numerous television programs appearing on
23 these services, such as “Rugrats” (shown on Nickelodeon), “Daria” (shown on
24 MTV) and “Behind the Music” (shown on VH1). Viacom International also
25 owns copyrights in television programs shown on other U.S. television services,
26 including “The Chris Isaak Show,” “Resurrection Blvd.,” and “Sabrina, The
27 Teenage Witch.” Among the many programs in which Viacom International
28 owns the copyright are those listed in Exhibit G.

1 29. CBS Broadcasting Inc. (“CBS Broadcasting”) is a New York
2 corporation with its principal place of business in New York, New York. CBS
3 Worldwide Inc. (“CBS Worldwide”), a subsidiary of CBS Broadcasting, is a
4 Delaware corporation with a principal place of business in New York, New
5 York. CBS Worldwide owns copyrights in numerous programs broadcast on
6 the CBS Network, such as “The Ellen Show,” “Touched by an Angel,” and
7 “CSI: Crime Scene Investigation.” In addition, CBS Broadcasting’s 17 owned
8 and operated television stations produce (and own the copyright in) a variety of
9 programs, including daily news shows. Among the many programs in which
10 CBS owns the copyright are those listed in Exhibit H.

11 30. Defendant ReplayTV, Inc. (“Replay”) is a Delaware corporation
12 with its principal place of business in Mountain View, California. Replay is a
13 wholly owned subsidiary of Defendant SONICblue Inc. (“SONICblue”).
14 Replay has developed and is marketing and selling the ReplayTV 4000 device
15 and continuously facilitates its use.

16 31. Defendant SONICblue is a Delaware corporation with its
17 principal place of business in Santa Clara, California. SONICblue is the parent
18 company of Replay. SONICblue promotes and markets the ReplayTV 4000,
19 including through promotions on its own web site, and continuously facilitates
20 its use. SONICblue also promotes and markets the DDV2120 dual-deck VCR
21 designed to make commercial-free copies of television programming.

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1 **STATEMENT OF FACTS**

2 **Plaintiffs' Exclusive Rights Under the Copyright Act**

3 32. Plaintiffs are the copyright owners of many television programs
4 transmitted to television viewers in the United States. Illustrative works in
5 which one of the plaintiffs owns a copyright are listed in Exhibits A-H. Each
6 such work is an original audiovisual work fixed in a tangible medium of
7 expression. Each work listed in Exhibits A-H is copyrightable subject matter
8 within the meaning of the Copyright Act, 17 U.S.C. § 102, and each has been
9 registered (or an application has been filed) with the United States Copyright
10 Office.

11 33. Section 106 of the Copyright Act grants copyright owners the
12 exclusive right, among other things, to copy their works, to distribute copies of
13 their works, and to authorize others to do the same. No plaintiff has granted
14 any license, permission, or authorization to defendants, or to past, present, or
15 future customers of defendants, either to copy the works listed in Exhibits A-H
16 or to distribute digital copies of the works to third parties.

17 **Plaintiffs' Operation of Television Program Services**

18 34. In addition to producing (and owning the copyright in) thousands
19 of television programs and movies, several of the plaintiffs own and/or operate
20 television program services that deliver that programming (and/or programming
21 created by third parties, including other plaintiffs herein) to the American
22 public. Some of these services -- such as the ABC, CBS, NBC, and UPN
23 television networks -- transmit that programming to viewers by terrestrial over-
24 the-air broadcasts, which in many cases are retransmitted by cable, satellite and
25 other multichannel video services. Other television program services, such as
26 MSNBC, CNBC, the Disney Channel, Toon Disney, SoapNet, Nickelodeon,
27 MTV, VH1, TNN, CMT, TV Land, Flix, The Movie Channel, and Showtime,
28 are transmitted by distributors such as cable systems and satellite carriers to

1 subscribers who pay a subscription fee to receive these channels. In all cases,
2 the value of -- and hence the incentive for plaintiffs to create -- copyrighted
3 works will be eroded by a technology that undermines the principal means by
4 which copyright owners are paid for such works by television distributors.

5 **The Structure of the Television Industry**
6 **and the Threat Posed by Defendants**

7 35. In the United States today, there are four principal methods by
8 which television programming is transmitted to the public. The first – and
9 oldest – method is through “free,” over-the-air television networks such as
10 ABC, CBS, NBC, and UPN and the hundreds of local terrestrial broadcast
11 stations that carry their programming. Free, over-the-air television networks
12 and local stations both create and license copyrighted content – largely
13 entertainment, news and sports programming -- on which the public has come to
14 rely for information and entertainment. Virtually the sole means of payment for
15 such copyrighted content is revenue from advertisers who pay for commercials
16 that appear during, or between, television shows. It is the advertising that pays
17 for a particular show that a viewer may choose to watch. Although
18 nonbroadcast services have attracted an increasing number of viewers over the
19 past 20 years, broadcast television networks and local stations nevertheless
20 continue to account for a large percentage of all television viewing in the United
21 States.

22 36. Maintaining a nationwide system of free, over-the-air local
23 television stations, which makes news, information, and entertainment available
24 to virtually all Americans without any need to pay subscription fees, has been a
25 crucial public policy goal in the United States for many decades. The creation
26 and acquisition of the copyrighted content that has come to define free, over-
27 the-air television is made possible through commercial advertisements that are
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1 embedded in each program. In short, advertisements provide the means of
2 payment for the copyrighted works that the public enjoys at no direct charge.

3 37. The second method of television distribution is through controlled
4 access via so-called “basic” nonbroadcast channels such as Disney Channel,
5 Toon Disney, SoapNet, Nickelodeon, MTV, MTV2, VH1, TNN, CMT, TV
6 Land, CNBC, and MSNBC. The sale of commercial time to advertisers and the
7 collection of fees from distributors such as cable systems and satellite carriers
8 are the means by which such channels create or license copyrighted works.

9 38. The third model of transmission of television programming in the
10 United States is via premium television program services such as Showtime and
11 The Movie Channel. These services, which are available to subscribers to
12 cable, satellite, and other multichannel video distribution systems, are typically
13 made available to consumers for a substantial monthly fee. Premium services
14 offer original programming, theatrical motion pictures, or both, all without
15 commercial interruption – but only to those who have paid the subscription fee.
16 Subscription fees are the means by which the copyright owners are paid for
17 licensing their works to these services.

18 39. The fourth model of transmission of television programming in the
19 United States is through pay-per-view delivery, in which viewers obtain one-
20 time access to particular programs (such as feature films, live boxing events and
21 concerts) in return for payment of a fee for that access.

22 40. The creation and licensing of the overwhelming majority of
23 television programs that are offered to American viewers today is made possible
24 by and is completely dependent on the commercial advertising that is embedded
25 in that programming. Advertisements provide the means of payment for each
26 show that a viewer chooses to watch. A device that completely blocks the
27 delivery of advertising to viewers therefore deprives copyright owners of the
28 means by which they are paid for their works and diminishes both the value of

1 the works and the incentive to create and distribute original content over the
2 medium. By undermining the engine by which content is produced, the device
3 will inevitably dry up the source and diminish the quality of the programming
4 that most Americans have come to expect and demand.

5 41. Similarly, the “Send Show” feature will jeopardize the means by
6 which copyright owners are paid for the creation of copyrighted content by
7 nonbroadcast channels (whether basic or premium). Such payments are
8 generated, at least in part, by monthly subscription fees that viewers pay for the
9 privilege of viewing the nonbroadcast network’s programming. The “Send
10 Show” feature, however, enables a single person who has paid the monthly
11 subscription fee to make and to transmit to third parties perfect digital copies of
12 the programs offered by subscription channels. This feature enables the evasion
13 of payments for subscription programming, depriving the copyright owner of the
14 right to control how the work is disseminated and shrinking the subscription
15 base that pays for such programming.

16 42. Finally, the unauthorized copying and distribution of perfect
17 copies of theatrical motion pictures and other programs offered on a pay-per-
18 view basis is a clear violation of plaintiffs’ rights. These works are licensed and
19 paid for on the basis that each viewer who wishes to see a work will pay a fee
20 for such viewing. No permission is granted to reproduce and disseminate
21 copies of the work to those who have not likewise paid for its exhibition.
22 Indeed, it is self-evident that the unauthorized dissemination of works enabled
23 by the “Send Show” feature defeats the means by which the copyright owner
24 has agreed to be compensated for the exhibition of its work. Viewers who
25 obtain unauthorized digital copies of such programs from other viewers have no
26 reason to agree to pay-per-view fees to obtain access to them. Defendants’
27 unlawful service is also a threat to the legitimate sale of copies of television
28 programming (including feature films) in the form of videotapes or DVDs.

1 **Defendants’ ReplayTV 4000 and DDV2120 Dual-Deck VCR**

2 43. The ReplayTV 4000 is a type of digital video recorder. Far from
3 being a stand-alone device, the ReplayTV 4000 is capable of copying television
4 programs only through continuous assistance from defendants. Each night, the
5 ReplayTV 4000 automatically contacts SONICblue to download from
6 SONICblue’s server a current program guide. The downloaded schedule, also
7 known as the Replay Guide, lists on the television screen all television
8 programming available to the viewer. By clicking on particular programs listed
9 on the Replay Guide, including programs owned by plaintiffs, the viewer can
10 program the ReplayTV 4000 to record and store those programs onto a hard
11 drive built into the box. Significantly, and unlike standard video recorders,
12 defendants’ ReplayTV 4000 also enables users to make digital copies of
13 television programs for the unlawful purpose of playing them with all
14 commercials deleted, and to copy and distribute copyrighted programs and
15 movies without authorization to third parties.

16 44. The DDV2120 Dual-Deck VCR recently introduced by defendant
17 SONICblue is an analog videocassette recorder. With the DDV2120, according
18 to defendant SONICblue, “you can record all your favorite shows, and make
19 commercial-free copies of them for viewing or archiving.” The device
20 accomplishes this by making an initial copy of television programming for the
21 unlawful purpose of then making a second-generation unauthorized copy that
22 omits all commercials.

23 **Defendants’ Commercial Deletion Technology**

24 45. As defendants themselves boast in their marketing materials, the
25 ReplayTV 4000 “does what no other [digital video recorder] on the market can
26 do”: it enables viewers to make unauthorized digital copies of copyrighted
27 television programs and then use defendants’ “AutoSkip” function to eliminate
28 any exposure to the advertising that is the lifeblood of most television channels.

1 On their web site, defendants explain the AutoSkip function as follows: it
2 “[a]llows ReplayTV 4000 users to playback recorded programming while
3 automatically bypassing all commercials. It's commercial-free television.”

4 46. A demonstration program on defendants’ web site
5 (www.replay.com) shows potential customers how AutoSkip works. The
6 demonstration shows a Replay Guide (the on-screen program guide updated
7 daily by defendants), which lists several copyrighted television programs such
8 as “CSI: Crime Scene Investigation” (CBS), “Friends” (NBC), “Just Shoot
9 Me” (NBC), and “General Hospital” (ABC). The demonstration instructs users
10 to “select the show you want to watch from your Replay Guide” and highlights
11 the listing for ABC’s “General Hospital.” Another frame then displays a pop-
12 up menu within the Replay Guide and explains that this “pop-up menu gives
13 you the option to play the show without any commercials.” The demonstration
14 directs the viewer to select the option “Skip Commercials,” and then announces
15 that the viewer can now enjoy “commercial-free entertainment!” According to
16 the demonstration, the program can be played commercial-free only by using the
17 Replay Guide supplied (and updated daily) by defendants. Copies of this
18 segment of defendants’ demonstration are attached as Exhibit I.

19 47. Defendants’ DDV2120 accomplishes the destruction of all
20 commercial advertising in a different, but equally unlawful, manner. The
21 DDV2120 offers (in defendants’ words) “One-Touch Commercial Free Copying
22 For Ad-Free Tapes.” To do this, defendants’ DDV2120 makes a copy of an
23 entire television transmission, including commercials, for the unlawful purpose
24 of then making an unauthorized second-generation tape that omits all
25 commercials.

26 48. The unauthorized making of copies of television programming for
27 the purpose of viewing with all commercials automatically deleted is not a fair
28 use, and goes far beyond the narrowly circumscribed conduct discussed by the

1 Supreme Court in the 1984 *Sony Betamax* decision. The same is true of the
2 creation (with the DDV2120) of two unauthorized copies of television
3 programming -- a first-generation copy with commercials and a second-
4 generation copy without them.

5 **Defendants' Facilitation of Unauthorized**
6 **Distribution of Plaintiffs' Programs and Films**

7 49. The "Send Show" feature of the ReplayTV 4000 package enables
8 owners of a ReplayTV 4000 (in Replay's own words) to "share programs with
9 friends who also own ReplayTV 4000." Defendants' "Send Show" feature
10 enables, materially contributes to, and induces the unlawful distribution of
11 copyrighted works owned by plaintiffs.

12 50. For example, according to defendants' web site, a ReplayTV 4000
13 owner could, with a few clicks on a remote control, send any television program
14 whatsoever -- including, for example, a theatrical film such as "Con Air" or
15 "The Talented Mr. Ripley" exhibited on the Showtime service -- to a large
16 number of third parties, regardless of whether the third parties themselves had a
17 subscription to the program service from which the program was copied. This
18 would make it unnecessary for those third parties to subscribe to Showtime,
19 jeopardizing its business and (over time) its existence. A ReplayTV 4000
20 owner could do the same with many theatrical motion pictures, boxing events,
21 concerts and other copyrighted works owned by plaintiffs and transmitted on a
22 pay-per-view basis, or with works owned by others and transmitted by a pay-
23 per-view service operated by plaintiffs.

24 51. Defendants' on-line demonstration shows potential ReplayTV
25 4000 customers how to use the "Send Show" feature. The demonstration
26 illustrates how easy it is to use the feature by showing how to send a copy of the
27 show "General Hospital" -- owned by one of the plaintiffs -- to a third party.
28 Copies of this segment of defendants' demo program are attached as Exhibit J.

1 52. The “Send Show” function is similar to the music infringement
2 scheme recently enjoined in the *Napster* case. Just as Napster established a
3 commercial business that was predicated on -- and knowingly benefited from --
4 the unlawful copying and distribution of music files by users, defendants plan to
5 create a network in which they facilitate, induce, and profit from the unlawful
6 distribution of television shows and feature films costing millions (and in some
7 cases tens or hundreds of millions of dollars) to produce.

8 53. The “Send Show” feature also jeopardizes, in many ways, the
9 system by which costly copyrighted programming is offered by free, over-the-
10 air television networks and local stations. For example, advertisers who pay
11 stations to run advertisements of purely local relevance will not be willing to
12 pay for viewers in their local area who see the station’s national programming
13 via an unauthorized copy distributed by a viewer (through defendants’ “Send
14 Show” service) in another market with different local advertisements. (Of
15 course, if the AutoSkip feature is not stopped, few ReplayTV users will see
16 commercial advertising or promotional spots in any event.)

17 54. The unauthorized dissemination of copyrighted over-the-air
18 programming will also impair the ability of copyright owners to realize its value
19 – and fund the costs of that programming -- through so-called “repurposing.”
20 Daytime dramas broadcast by ABC television stations, for example, are later
21 shown on SoapNet, a nonbroadcast channel available to cable and satellite
22 viewers; network newscasts are often broadcast again on local cable news
23 channels; and several popular network prime-time dramas are shown on
24 nonbroadcast program services shortly after their initial network broadcast. By
25 enabling, inducing, and continuously facilitating the unauthorized copying and
26 distribution of this programming, defendants diminish plaintiffs’ ability to
27 market these repurposing rights.

28

1 55. The “Send Show” feature will also harm several of the plaintiffs in
2 their capacity as owners of television stations in a number of U.S. television
3 markets and as copyright owners who seek to achieve maximum value from
4 their programming through repurposing.

5 56. Sending a copy of a copyrighted television program or film to a
6 third party goes far beyond the scope of the fair use defense. Indeed,
7 defendants have specifically designed and customized the “Send Show”
8 function to encourage and provide for the easy infringement of copyrighted
9 works delivered by program services.

10 57. Nor is there any geographic limit to the infringements that
11 defendants encourage their users to commit through the “Send Show” feature.
12 On information and belief, ReplayTV 4000 users in the United States can and
13 will retransmit copyrighted television programs and movies from the United
14 States to ReplayTV 4000 users in Canada, Mexico, or any other country that
15 offers broadband connections. A recent news article about the ReplayTV 4000
16 machine specifically highlighted this capability: “Couch potatoes can rejoice:
17 Soon, you’ll be able to lie around for nearly two weeks without running out of
18 recorded programs to watch on your TV. And you’ll be able to share the shows
19 with someone in the next room -- *or the next continent.*” (Emphasis added).
20 The unauthorized copying and retransmission of copyrighted works to persons
21 in other countries only magnifies the harm that defendants’ service will cause to
22 plaintiffs.

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1 **CLAIMS FOR RELIEF**

2 **COUNT I: Contributory Copyright Infringement**

3 58. Plaintiffs repeat and incorporate by reference, as if fully set forth
4 herein, the allegations of ¶¶ 1-57 above.

5 59. Plaintiffs Paramount Pictures Corporation, Disney Enterprises,
6 Inc., National Broadcasting Company, Inc., NBC Studios, Inc., Showtime
7 Networks Inc., ABC, Inc., Viacom International Inc., and CBS Worldwide Inc.
8 are the copyright owners of the works listed in Exhibits A-H as well as many
9 other copyrighted works telecast by U.S. television program services. The
10 plaintiffs have obtained (or applied for) copyright registration certificates for
11 each work listed in Exhibits A-H.

12 60. Use of the ReplayTV 4000 to copy and distribute plaintiffs'
13 copyrighted works without authorization is a violation of plaintiffs' exclusive
14 rights under 17 U.S.C. § 106. Among other things, and without limitation, this
15 conduct amounts to (a) unauthorized reproduction of plaintiffs' copyrighted
16 works and (b) unauthorized distribution of copies of plaintiffs' copyrighted
17 works to the public.

18 61. Use of the DDV2120 to copy plaintiffs' copyrighted works
19 without authorization is a violation of plaintiffs' exclusive rights under 17
20 U.S.C. § 106. Among other things, and without limitation, this conduct
21 amounts to unauthorized reproduction of plaintiffs' copyrighted works.

22 62. The unauthorized copying and distribution of plaintiffs'
23 copyrighted works that defendants enable, encourage, and facilitate through the
24 schemes described above is without plaintiffs' consent and not otherwise
25 permissible under the Copyright Act.

26 63. On information and belief, employees or agents of defendants,
27 other users of the ReplayTV 4000, including testers, and customers who have
28 purchased the DDV2120 device have already infringed (or will soon infringe)

1 plaintiffs' exclusive rights under 17 U.S.C. § 106 in many copyrighted works,
2 including the illustrative works identified in Exhibits A-H hereto.

3 64. Defendants know or have reason to know of the direct
4 infringement of plaintiffs' copyrights. Indeed, defendants actively promote the
5 infringements as a reason to purchase their products, provide tools that are
6 indispensable to these infringements, and continuously facilitate the
7 infringements.

8 65. Defendants, through their own conduct, have induced, caused,
9 encouraged, assisted and/or materially contributed to this infringing activity.

10 66. The foregoing acts of infringement by defendants have been
11 willful, intentional and purposeful, in disregard of and with indifference to the
12 rights of plaintiffs.

13 67. Defendants' conduct constitutes contributory infringement of
14 plaintiffs' copyrights and exclusive rights under copyright in violation of
15 Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106, 501.

16 68. As a result of defendants' conduct, plaintiffs have suffered and
17 will continue to suffer irreparable injury.

18 **COUNT II: Vicarious Copyright Infringement**

19 69. Plaintiffs repeat and incorporate by reference, as if fully set forth
20 herein, the allegations of ¶¶ 1-57 and ¶¶ 59-68 above.

21 70. Defendants have the right and ability to supervise and/or control
22 the infringing conduct of users of the ReplayTV 4000 and DDV2120. *First*,
23 defendants have made a deliberate decision to offer their users features that are
24 specifically designed to enable widespread infringements, when they could
25 have prevented or greatly limited that conduct by declining to offer or to
26 facilitate or support use of those unlawful features. *Second*, although
27 defendants could, on information and belief, have designed their equipment to
28 prevent the unauthorized distribution of copyrighted works delivered by

1 television program services (such as NBC, the Disney Channel, and Showtime)
2 or on a pay-per-view basis, they instead specifically designed their equipment
3 (and planned their ongoing assistance to their customers) to encourage
4 distribution of such copyrighted works. *Third*, defendants' regular involvement
5 is an indispensable link in their customers' infringing conduct.

6 71. Defendants have a direct financial interest in the infringements of
7 plaintiffs' copyrights by their customers. Defendants' economic success is
8 directly tied to the popularity of the infringing conduct that they seek to
9 encourage. Indeed, the defendants have candidly admitted that the ReplayTV
10 4000 and DDV2120 are designed to enable users to copy programming for
11 viewing with automatic deletion of commercials, and that the ReplayTV 4000
12 is designed to enable users to distribute perfect digital copies of entire
13 copyrighted works to others. These new infringing capabilities of the
14 ReplayTV 4000 and DDV2120 are among defendants' principal selling points.

15 72. Defendants' acts have been willful, intentional and purposeful, in
16 disregard of and with indifference to the plaintiffs' rights.

17 73. Defendants' conduct constitutes vicarious infringement of
18 plaintiffs' copyrights and exclusive rights under copyright in violation of
19 Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106, 501.

20 74. As a result of defendants' conduct, plaintiffs will suffer irreparable
21 injury.

22 **COUNT III -- Violation of Section 553 of the Communications Act**

23 75. Plaintiffs repeat and incorporate by reference, as if fully set forth
24 herein, the allegations of ¶¶ 1-57, ¶¶ 59-68, and ¶¶ 70-74 above.

25 76. The Communications Act makes it unlawful for any person to
26 intercept or receive or assist in intercepting or receiving any communications
27 service offered over a cable system, unless specifically authorized to do so by a
28 cable operator or as specifically authorized by law. 47 U.S.C. § 553. The

1 prohibited conduct includes the manufacture or distribution of equipment
2 intended by the manufacturer or distributor for unauthorized reception of any
3 communications service offered over a cable system.

4 77. Defendants' conduct violates Section 553. Among other things,
5 defendants are selling equipment -- the ReplayTV 4000 device -- with a feature
6 ("Send Show") that they intend to be used to enable persons without
7 authorization to receive communication services offered over a cable system,
8 including but not limited to cable-delivered programming of over-the-air
9 television stations, basic nonbroadcast services, premium services, and pay-
10 per-view services.

11 **COUNT IV -- Violation of Section 605 of the Communications Act**

12 78. Plaintiffs repeat and incorporate by reference, as if fully set forth
13 herein, the allegations of ¶¶ 1-57, ¶¶ 59-68, ¶¶ 70-74, and ¶¶ 76-77 above.

14 79. Defendants' conduct violates 47 U.S.C. § 605, which, with certain
15 exceptions not relevant here, forbids any person receiving, assisting in
16 receiving, transmitting, or assisting in transmitting, any interstate
17 communication by radio from publishing the contents thereof except through
18 authorized channels. By selling (and facilitating the use of) a device
19 intentionally designed and intended to be used to publish the contents of
20 communications by radio through the "Send Show" feature, defendants are
21 violating Section 605.

22 **COUNT V -- Unfair Competition under Cal. Bus. & Prof. Code § 17200**

23 80. Plaintiffs repeat and incorporate by reference, as if fully set forth
24 herein, the allegations of ¶¶ 1-57, ¶¶ 76-77, and ¶ 79 above.

25 81. California Business & Professions Code § 17200 provides for
26 injunctive and other relief against "any unlawful, unfair or fraudulent business
27 act or practice." Defendants are engaged in, or propose to engage in, several
28 such practices.

1 82. Plaintiffs operate numerous television program services that are
2 available only by subscription, including the Disney Channel, Toon Disney,
3 SoapNet, Nickelodeon, MTV Music Television, MTV2, VH1 Music First,
4 Nickelodeon, TNN The National Network, CMT Country Music Television,
5 TV Land, CNBC, MSNBC, The Movie Channel, Flix, and Showtime.

6 83. In their capacity as owners and operators of television program
7 services, plaintiffs operate a lawful business of packaging attractive content
8 with advertising paid for by third parties. A basic premise of this business is
9 that the advertising is tied to the attractive content. Defendants have engaged
10 in one or more unfair business acts and/or unfair business practices by
11 providing a device that enables users to instantly and completely eradicate an
12 essential revenue-producing aspect of plaintiffs' business. By doing so,
13 defendants have engaged (or propose to engage) in a highly unfair business
14 practice.

15 84. The public policy of the State of California favors the maximum
16 production of news and entertainment programming by means of television.
17 Defendants' conduct works to defeat that policy by sabotaging the ability of
18 plaintiffs to obtain compensation for their news and entertainment
19 programming.

20 85. As set forth above, defendant's conduct is unlawful under
21 Sections 553 and 605 of the Federal Communications Act. In addition,
22 unlawful reception of subscription television services, and facilitation of such
23 unlawful reception, is a violation of California law. Cal. Penal Code §§ 593d,
24 593e. By facilitating and encouraging conduct that amounts to receipt by
25 nonsubscribers of content offered on a subscription-only basis, defendants are
26 engaging in conduct that has the functional effect of a violation of Cal. Penal
27 Code §§ 593d and 593e. This is a grossly unfair business practice.

28

1 (e) require defendants and their officers, agents, servants, employees and
2 those persons in active concert to cease any activity that encourages viewers to
3 block access to commercial content transmitted during television programming
4 owned by plaintiffs or offered on a television network owned and/or operated
5 by plaintiffs, or that encourages or permits users to transmit copies of such
6 programming to other persons;

7 (f) award plaintiffs costs and reasonable attorney's fees in accordance
8 with 17 U.S.C. § 505, 47 U.S.C. §§ 553 & 605, and other applicable law; and

9 (g) award plaintiffs such further and additional relief as the Court may
10 deem just and proper.

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Respectfully submitted,

Andrew M. White (STATE BAR NO. 060181)
Jonathan H. Anschell (STATE BAR NO. 162554)
Lee S. Brenner (STATE BAR NO. 180235)
White O'Connor Curry Gatti & Avanzado LLP
10100 Santa Monica Boulevard
Suite 2300
Los Angeles, California 90067
Phone: (310) 712-6100
Facsimile: (310) 712-6199

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Thomas P. Olson
Randolph D. Moss
Peter B. Rutledge
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
Phone: (202) 663-6000
Facsimile: (202) 663-6363
Attorneys for Plaintiffs

DATED: October 31, 2001

1 **TABLE OF EXHIBITS**

2

3 A. Table of illustrative copyright registrations for programs owned by
4 Paramount Pictures Corporation

5

6 B. Table of illustrative copyright registrations for programs owned by
7 Disney Enterprises, Inc.

8

9 C. Table of illustrative copyright registrations for programs owned by
10 National Broadcasting Co.

11

12 D. Table of illustrative copyright registrations for programs owned by NBC
13 Studios, Inc.

14

15 E. Table of illustrative copyright registrations for programs owned by
16 Showtime Networks Inc.

17

18 F. Table of illustrative copyright registrations for programs owned by ABC,
19 Inc.

20

21 G. Table of illustrative copyright registrations for programs owned by
22 Viacom International Inc.

23

24 H. Table of illustrative copyright registrations for programs owned by CBS
25 Broadcasting Inc.

26

27 I. Segments about AutoSkip feature from demonstration video

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1 J. Segments about “Send Show” feature from demonstration video

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