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2001 NOV 15 11:11:43

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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

**RJK**

**01 - 09801 VBKx**

METRO-GOLDWYN-MAYER STUDIOS  
INC., a Delaware corporation; ORION  
PICTURES CORPORATION, a Delaware  
corporation; TWENTIETH CENTURY FOX  
FILM CORPORATION, a Delaware  
corporation; UNIVERSAL CITY STUDIOS  
PRODUCTIONS, INC., a Delaware  
corporation; and FOX BROADCASTING  
COMPANY, a Delaware corporation,

Plaintiffs,

v.

REPLAYTV, INC., a Delaware corporation;  
and SONICblue INC., a Delaware  
corporation,

Defendants.

Case No.

**COMPLAINT FOR:**

- 1. Copyright Infringement**
- 2. Contributory Copyright Infringement**
- 3. Vicarious Copyright Infringement**
- 4. Violation of Section 553 of the Communications Act**
- 5. Violation of Section 605 of the Communications Act**
- 6. Unfair Business Practices**

1 Plaintiffs Metro-Goldwyn-Mayer Studios Inc., Orion Pictures Corporation, Twentieth  
2 Century Fox Film Corporation, Universal City Studios Productions, Inc., and Fox Broadcasting  
3 Company (hereinafter collectively referred to as "Plaintiffs"), by their counsel, allege the  
4 following against Defendants ReplayTV, Inc. ("Replay") and SONICblue Inc. ("SONICblue")  
5 (hereinafter collectively referred to as "Defendants").  
6

### 7 Jurisdiction and Venue

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

24 2. Plaintiffs bring this action to obtain declaratory and injunctive relief against an  
25 unlawful plan by Defendants to begin distribution of a new package of digital recording hardware  
26 and services. The various individual components and features of this package and the package as  
27 a whole are referred to herein as "ReplayTV 4000". ReplayTV 4000 consists of an "RTV 4040,"  
28

1 "RTV 4080," "RTV 4160," or "RTV 4320" hard disc digital video recording device (these  
2 models are individually and collectively referred to herein as the "ReplayTV 4000 device") that is  
3 integrated with continuous online Internet connections to Defendants' servers and facilities for  
4 the express purpose of illegally copying and redistributing Plaintiffs' copyrighted motion pictures  
5 and television programs. ReplayTV 4000 is designed and advertised to make unauthorized digital  
6 copies of Plaintiffs' copyrighted works, to create and organize libraries and collections of up to  
7 320 hours of such unauthorized copies in the hard drive of the device, and to distribute such  
8 copies and collections through a built-in broadband Internet connection to others on the World  
9 Wide Web. Defendants maintain an online Internet connection between ReplayTV 4000 devices  
10 and their customers, on the one hand, and Defendants' servers and facilities, on the other hand,  
11 that, *inter alia*, actively seeks, locates, and copies Plaintiffs' copyrighted works to the hard drives  
12 of ReplayTV 4000 devices. ReplayTV 4000 devices also incorporate, among other things, a  
13 feature that eliminates from the digital playback of recorded television programming the very  
14 commercial advertising that allows that programming to be provided to consumers free of direct  
15 charge in the case of over-the-air broadcast programming and at minimum tier levels in the case  
16 of subscription services ("basic cable"). Through this conduct, Defendants have engaged in and  
17 threaten to engage in direct, contributory and vicarious copyright infringement of Plaintiffs'  
18 copyrighted works, violations of the Communications Act, and unfair business practices in  
19 violation of California Business and Professions Code section 17200.

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22  
23 3. ReplayTV 4000 is a new platform, devised and newly introduced by Defendants  
24 for their profit. Unless enjoined, ReplayTV 4000 will irreparably injure Plaintiffs and the public.  
25 It has been unilaterally devised by Defendants to and will usurp and negate Plaintiffs' rights and  
26 ability to structure the presentation and distribution of their copyrighted works so as to maximize  
27 the viewing opportunities of the public through various "windows," levels of subscription service,  
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1 and media; will damage Plaintiffs' ability to develop attractive new and varying ways (including  
2 but not limited to "video on demand," "subscription on demand," and "near video on demand") to  
3 serve market demands for their works; and in all the foregoing respects will thereby seriously  
4 impair the interests of the public as well as those of the Plaintiffs.

5  
6 **The Plaintiffs**

7 4. Plaintiff Metro-Goldwyn-Mayer Studios Inc. ("MGM") is a Delaware corporation  
8 with a principal place of business at 2500 Broadway Street, Santa Monica, California 90404.

9 5. Plaintiff Orion Pictures Corporation ("Orion") is a Delaware corporation with a  
10 principal place of business at 2500 Broadway Street, Santa Monica, California 90404.

11 6. Plaintiff Twentieth Century Fox Film Corporation ("Fox") is a Delaware  
12 corporation with a principal place of business at 10201 West Pico Boulevard, Los Angeles,  
13 California 90035.

14 7. Plaintiff Universal City Studios Productions, Inc. ("Universal") is a Delaware  
15 corporation with a principal place of business at 100 Universal City Plaza, Universal City,  
16 California 91608.

17 8. Plaintiff Fox Broadcasting Company ("FBC") is a Delaware corporation with a  
18 principal place of business at 10201 West Pico Boulevard, Los Angeles, California 90035.

19 9. Plaintiffs are some of the largest, most successful producers and distributors of  
20 motion pictures and television programming in the United States. Each of the Plaintiffs is  
21 engaged in the business of producing copyrighted motion pictures and television programming, of  
22 distributing, publicly performing and displaying those motion pictures and television programs,  
23 and/or licensing those activities to others. Plaintiffs, either directly or through their affiliates or  
24 licensees, distribute copyrighted audiovisual works theatrically, through television broadcasts, on  
25 cable and direct-to-home satellite services, including basic, premium and "pay-per-view"  
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1 television services, and on portable media (such as digital versatile discs ("DVDs"), videocassette  
2 tapes and laser discs). The names and reputations of the Plaintiffs as producers and distributors of  
3 motion pictures and television programs of high artistic and technical quality, and those motion  
4 pictures and television programs, are widely and favorably known throughout this Judicial  
5 District, the United States, and the world.

6  
7 10. Plaintiffs are the owners of copyright or exclusive reproduction and/or distribution  
8 rights under United States copyright with respect to certain copyrighted motion pictures and  
9 television programs, including but not limited to those listed on Exhibit A, each of which is the  
10 subject of a valid Certificate of Copyright Registration from the Register of Copyrights (or for  
11 which an application for such a certificate is pending).

12 11. Plaintiffs have invested and continue to invest substantial sums of money, time,  
13 effort, and creative talent to find and develop screenplays and teleplays, to acquire and develop  
14 motion pictures and television programs, to nurture the creative teams behind them, to create,  
15 produce, advertise, promote, distribute, publicly perform, display, and license motion pictures and  
16 television programs, to advertise, distribute, and sell authorized copies of those works in various  
17 formats (such as DVDs, videocassette tapes and laser discs), and to explore and develop varying  
18 new forms of distribution. Plaintiffs are compensated for their creative and distributive efforts  
19 and monetary investments from a variety of sources, including home video sales and rentals,  
20 advertising fees, and license fees for televised exhibitions. Many companies and individuals  
21 depend on the revenues earned from these sources for their livelihood. Absent the ability to  
22 generate revenues to cover such costs and make profits, Plaintiffs could not continue to create,  
23 produce, and distribute the works and consider and develop new viewing opportunities for the  
24 public. If the pool of resources available for finding and promoting screenplays and teleplays,  
25 paying creative teams, and supporting distribution shrinks, the quality and availability of motion  
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1 pictures and television programs will suffer. The ultimate result is to diminish the public's broad  
2 range of access to a wide variety of high-quality motion pictures and television programs.

3 12. A significant portion of Plaintiffs' revenues comes from license fees and  
4 advertising revenue generated by telecasts of motion pictures and television programs on  
5 television, including on "network" television (*e.g.*, NBC, ABC, CBS, UPN, the WB Network, or  
6 the Fox Network operated by Plaintiff FBC), "cable" television (*e.g.*, FX, TNT, Comedy Central,  
7 the USA Network or the Lifetime Network), "independent" stations that acquire syndicated  
8 programming content, premium movie "subscription" cable and satellite services (*e.g.*, Home Box  
9 Office or Showtime), and "pay-per-view" services. Many networks, stations and services,  
10 including the Fox Network, depend upon advertising revenues to cover the costs of creating and  
11 licensing content (including from the Plaintiffs). Subscription services (such as Home Box  
12 Office) and pay-per-view services fund the purchase and creation of content by charging fees to  
13 individual subscribers or viewers.

14 13. No Plaintiff has granted any license, permission, or authorization to Defendants, or  
15 to past, present, or future customers of Defendants, either to reproduce any of their works  
16 (including those listed in Exhibit A), or to distribute, over the Internet or otherwise, through  
17 ReplayTV 4000, copies of any of their works (including those listed in Exhibit A).

18 14. In or about March 2000, Plaintiff FBC entered into an agreement with a  
19 predecessor of Defendant ReplayTV with respect to the use of certain FBC content in the limited  
20 manner and circumstances set forth in that agreement. As more fully described below, ReplayTV  
21 4000, *inter alia*, creates and organizes libraries and collections of up to 320 hours of unauthorized  
22 digital copies of FBC programming, causes and facilitates the distribution of those copies and  
23 collections to others through a built-in broadband Internet connection, and automatically  
24 eliminates commercial advertising. The agreement does not license or authorize any of these uses

1 of FBC's programming. In fact, the agreement expressly requires FBC's consent to develop  
2 service offerings in addition to those specified in the agreement, and Defendants have neither  
3 sought nor obtained such consent. In any event, the agreement does not bar any of the claims  
4 asserted herein by FBC.

### 5 The Defendants

6  
7 15. Defendant Replay is a Delaware corporation with its principal place of business in  
8 Mountain View, California. Replay is a wholly owned subsidiary of Defendant SONICblue.

9 16. Defendant SONICblue is a Delaware corporation with its principal place of  
10 business in Santa Clara, California. SONICblue is the parent company of Replay.

11 17. Replay and SONICblue developed, market and sell ReplayTV 4000, including  
12 maintaining continuous connections to and integration with ReplayTV 4000 devices, all for the  
13 express purpose of illegally copying and redistributing Plaintiffs' copyrighted motion pictures and  
14 television programs.  
15

### 16 Facts Common To All Claims For Relief

#### 17 ReplayTV 4000

18 18. Defendants' ReplayTV 4000 features a ReplayTV 4000 hard disc digital video  
19 recorder ("DVR") that makes and distributes to others unauthorized digital copies of copyrighted  
20 motion pictures and television programs. Defendants' direction of, involvement with and  
21 participation in such activities does not end with the sale of a ReplayTV 4000 "box" to their  
22 customers. Defendants proclaim ReplayTV 4000 as the "first networked DVR": ReplayTV 4000  
23 includes an online Internet connection that enables Defendants to remain connected with their  
24 customers and to cause, participate in and facilitate infringement. Via that broadband connection,  
25 Defendants collect information about what their customers copy. Defendants also provide  
26 information to their customers, collect information about what their customers want or may want  
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1 to copy and/or distribute, and match that information with a frequently updated electronic  
2 program guide ("EPG") which Defendants call a "Replay Guide" to accomplish and cause such  
3 copying. Through that connection, Defendants also direct the operation of the device from distant  
4 locations, and enable their customers to distribute such copies, including over the Internet. Upon  
5 information and belief, Defendants' EPG and ReplayTV 4000 include *all* programs exhibited on  
6 television, including broadcast, basic and premium satellite and cable, and pay-per-view. Certain  
7 features of the Replay TV 4000 are described below.

9 **The Distribution Feature**

10 19. ReplayTV 4000's "Send Show" feature causes, enables and facilitates the unlawful  
11 distribution of digitally recorded programs over the Internet to others. On information and belief,  
12 ReplayTV 4000 accomplishes, causes, enables and facilitates such unlawful distribution and  
13 copying by incorporating a file transfer program that, *inter alia*, presents the customer with a  
14 menu, receives the customer's instruction, searches for a program that has been copied and stored  
15 by that device, searches for recipient addresses, and formats the program for distribution.

17 20. Defendants assure their customers that using ReplayTV 4000 to infringe  
18 copyrights will be effortless: "[W]ith its broadband connectivity, sending and receiving programs  
19 [with the ReplayTV 4000] is a breeze." The potential damage to Plaintiffs from this feature is  
20 large and growing: millions of Americans presently have high-speed Internet connections and  
21 millions more will have such connections in the near future.

22 21. ReplayTV 4000 not only carries out this unlawful conduct, but Defendants  
23 highlight it as a principal selling point. Defendants' press release about ReplayTV 4000, for  
24 example, urges customers to use the "Send Show" feature to "*trade movies [and] favorite TV*  
25 *programs.*" In a September 2001 interview with CNET, SONICblue's Vice President of  
26 Marketing said: "*If there's a great movie that you've recorded and you want to send it over to a*  
27  
28



1 *friend, you'd be able to do that over your broadband connection.*" (Emphasis added in each  
2 case.)

3 22. Defendants' web site features an online demonstration that illustrates how to use  
4 the "Send Show" feature to reproduce and distribute recorded programs to other people. The  
5 demonstration shows a ReplayTV 4000 customer employing "Send Show" to distribute to third  
6 parties digital copies of a copyrighted program. Indeed, Defendants have specifically designed  
7 and are actively marketing ReplayTV 4000 as a tool to make it easy to infringe copyrighted  
8 material.

10 23. With the "Send Show" feature, Defendants cause, accomplish, facilitate and  
11 induce the unauthorized reproduction and distribution of Plaintiffs' valuable works and encourage  
12 unauthorized access to subscription programming, in violation of both federal and state law. For  
13 example, a ReplayTV 4000 customer who has a paid subscription to Home Box Office or another  
14 subscription service can send a perfect digital copy of each and every episode of "The Sopranos"  
15 (and any other program aired on HBO or any other subscription or pay-per-view service) to any  
16 other individual who has a ReplayTV 4000 device, and, on information and belief, to others. This  
17 type of activity, which can be accomplished *whether or not the individual receiving the program*  
18 *has paid for a subscription to that service*, obviously impacts sales of subscription and "pay-per-  
19 view" services. It also impacts the sale of prerecorded DVD, videocassette tape and other copies  
20 of programs that have aired on these services, and diminishes the value of programs aired on  
21 these services for subsequent cycles of distribution through basic cable, syndication or other  
22 licensing.

25 **The Seeking, Recording, Sorting and Storage Features**

26 24. Defendants cause, accomplish, facilitate and induce the unauthorized reproduction  
27 of Plaintiffs' copyrighted works in violation of law. ReplayTV 4000's "Personal Channel," "Find  
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Shows,” and “Record All Episodes” features allow Replay customers to enter keywords to request that all movies and television shows of a particular genre or in which a particular actor or character (such as James Bond) appears, or all episodes of a particular television program, be recorded. ReplayTV 4000 will actively search the “Replay Guide” EPG seeking programs that “match” customers’ keyword searches and “Personal Channel” criteria, and will cause and accomplish the copying of programs that Replay decides “match.” In this manner, a Replay TV 4000 customer who has created a “James Bond Channel” need not know, *or even suspect* whether or not, or when, a James Bond program is to be telecast, or whether it even *exists*. Defendants will cause and accomplish the copying of any program Replay considers a “James Bond” program. Replay’s own materials describe the active role played by Defendants in connection with these features: “Quickly find the show you’re looking for based on keyword searches . . . . *Let ReplayTV create a channel that continually finds and records* shows that match these interests.” Replay “*sets up personal channels that actively seek out* programs that match your interests.” (Emphasis added in each case.)

25. The ReplayTV 4000 device provides expanded storage, up to (currently) a massive 320 hour hard drive, which allows the unlawful copying and storage of a vast library of material. In order to allow customers to easily locate (and distribute, *see infra*) the programs they archive on this hard drive, Defendants offer “Show Organizer,” a feature which sorts and organizes customers’ recordings. As Defendants state: “*You’ll have more storage space than ever before*, so we’ve improved the Replay Guide to help you sort and access all those recorded shows easily with Show Organizer. Now you can *store* Barney and other related shows into the Kids category.” (Emphasis added.) ReplayTV 4000’s expanded storage and sorting features organize disparate recordings into coherent collections, and cause, facilitate, induce and encourage the storage or “librarying” of digital copies of copyrighted material, which harms the sale of DVDs,

1 videocassette tapes and other copies, usurps Plaintiffs' right to determine the degree of "air time"  
2 a particular program receives in various cycles of that program's distribution (thereby harming  
3 the value of that programming for subsequent cycles of distribution through syndication or other  
4 licensing), and materially contributes to unlicensed channels which unfairly compete with  
5 plaintiffs' licensing of their motion picture and television product.  
6

7 26. Defendants' violations are further aggravated by features of ReplayTV 4000 that  
8 direct the recording of programs, including through the "Personal Channel," "Find Show," and  
9 "Record All Episodes" features, from distant locations through a Replay TV web site, present  
10 such digital recordings and collections to the viewer in new, technologically enhanced displays  
11 and audio rendition, and cause their distribution to others, including over the Internet.  
12

13 27. If a ReplayTV customer can simply (indeed, even from distant locations) type  
14 "The X-Files" or "James Bond" and have every episode of "The X-Files" and every James Bond  
15 film recorded in perfect digital form, and organized, compiled and stored on the hard drive of his  
16 or her ReplayTV 4000 device, it will cause substantial harm to the market for prerecorded DVD,  
17 videocassette and other copies of those episodes and films, and for syndication and subsequent  
18 telecasts.  
19

### 20 **The "AutoSkip" Feature**

21 28. The ReplayTV 4000 will also detect and skip commercials on playback of  
22 recorded telecasts. Upon activation of the feature by a consumer, the ReplayTV 4000 device, on  
23 its own, finds the commercials, passes over them, and determines where the commercials end and  
24 programming resumes. Here is how Defendants describe the ReplayTV 4000 AutoSkip feature in  
25 a "Frequently Asked Question" on their web site:  
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1                   **Q. Can ReplayTV play shows without the commercials?**

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

8                   29.       When a television program is copied by ReplayTV 4000 and played back with the  
9 AutoSkip feature, Defendants ensure that all commercials are *automatically* omitted when  
10 viewing the program, even when viewed in virtually the same time slot as the originally telecast  
11 program. The elimination of commercial advertising using the AutoSkip program will cause  
12 particular harm to the market for the licensing of Plaintiffs' content for television, in that many  
13 stations, networks and services depend upon revenues from a wide variety of commercial  
14 advertising arrangements, including payments from advertisers to include commercials during  
15 designated breaks within and between programs, and so-called "barter" arrangements, to cover  
16 the costs of licensing and producing that programming.

17                                   **Claims for Relief**

18   **Count I**  
19                                   **Copyright Infringement**

20                   30.       Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1  
21 through 29 as if fully set forth herein.

22                   31.       By causing, accomplishing, participating in, and enabling the actual or imminent  
23 unauthorized copying and electronic distribution of unauthorized copies of Plaintiffs' works  
24 (including the works listed on Exhibit A) in the manner described above, Defendants are  
25 engaging in and imminently will engage in a vast number of direct copyright infringements,  
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1 including infringements of Plaintiffs' copyrighted works, in violation of sections 106 and 501 of  
2 the Copyright Act, 17 U.S.C. §§ 106 and 501.

3 32. The foregoing acts of direct infringement by Defendants are unauthorized by  
4 Plaintiffs and not otherwise permissible under the Copyright Act.

5 33. Plaintiffs are entitled to their attorneys' fees and full costs pursuant to 17 U.S.C.  
6 § 505.

7 34. Defendants' conduct is causing and, unless enjoined and restrained by this Court,  
8 will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated or  
9 measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502,  
10 Plaintiffs are entitled to preliminary and permanent injunctions prohibiting further infringements  
11 of Plaintiffs' copyrights.  
12

13  
14 **Count II**  
**Contributory Copyright Infringement**

15 35. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1  
16 through 29 as if fully set forth herein.

17 36. By participating in, facilitating, assisting, enabling, materially contributing to, and  
18 encouraging the actual or imminent unauthorized copying and electronic distribution of  
19 unauthorized copies of copyrighted works by ReplayTV 4000 customers in the manner described  
20 above, with full knowledge of their illegal consequences, Defendants are contributing to and  
21 inducing a vast number of copyright infringements, including infringements of Plaintiffs'  
22 copyrighted works (and including the works listed on Exhibit A), in violation of sections 106 and  
23 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.  
24

25 37. The unauthorized copying and distribution of Plaintiffs' copyrighted works by  
26 ReplayTV 4000 customers that Defendants participate in, facilitate, assist, induce, enable,  
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1 materially contribute to, and encourage through the schemes described above is without  
2 Plaintiffs' consent and not otherwise permissible under the Copyright Act.

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

8 39. As a result of Defendants' conduct, Plaintiffs have suffered and will continue to  
9 suffer irreparable injury.

10 **Count III**  
11 **Vicarious Copyright Infringement**

12 40. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1  
13 through 29 as if fully set forth herein.

14 41. Defendants have the right and ability to supervise and/or control the infringing  
15 conduct of ReplayTV 4000 customers, including, without limitation, by (a) maintaining a  
16 continuous broadband Internet connection between the ReplayTV 4000 devices and their  
17 customers on the one hand, and Defendants' servers and facilities on the other hand, that, *inter*  
18 *alia*, seeks, locates, and copies Plaintiffs' copyrighted works to the hard drives of the ReplayTV  
19 4000 devices, continuously collects information about what Replay customers want or may want  
20 to copy and/or distribute, and matches that information with a frequently updated electronic  
21 program guide ("EPG") which Defendants call a "Replay Guide;" and (b) specifically designing  
22 their equipment (and planning their ongoing connection to their customers) to encourage and  
23 cause the unauthorized distribution of infringing copies of copyrighted works when, on  
24 information and belief, they could have designed ReplayTV 4000 to prevent or greatly limit such  
25 activity.  
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42. Defendants have a direct financial interest in the infringements of Plaintiffs' copyrights by their customers. The infringing conduct that Defendants' seek to encourage is a major "draw" of ReplayTV 4000: indeed, the new infringing capabilities of ReplayTV 4000 are among Defendants' principal selling points. Thus, Defendants derive substantial revenue as a result of infringing activity in the form of increased sales of ReplayTV 4000. On information and belief, Defendants may also derive advertising revenues, revenues from the sale of customer data, or other revenues, by reason of infringing activity.

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

44. As a result of Defendants' conduct, Plaintiffs will suffer irreparable injury.

**Count IV**  
**Violation of Section 553 of the Communications Act**

45. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 29 as if fully set forth herein.

46. The Communications Act makes it unlawful for any person to intercept or receive or assist in intercepting or receiving any communications service offered over a cable system, unless specifically authorized to do so by a cable operator or as specifically authorized by law.

47 U.S.C. § 553. The prohibited conduct includes the manufacture or distribution of equipment intended by the manufacturer or distributor for unauthorized reception of any communications service offered over a cable system.

47. Defendants' conduct violates Section 553. Among other things, Defendants are selling equipment -- the ReplayTV 4000 device -- with a feature ("Send Show") that they intend to be used to enable persons without authorization to receive communication services offered



1 over a cable system, including but not limited to cable-delivered programming of over-the-air  
2 television stations, basic nonbroadcast services, premium services, and pay-per-view services.

3 **Count V**  
4 **Violation of Section 605 of the Communications Act**

5 48. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1  
6 through 29 as if fully set forth herein.

7 49. The Communications Act, with certain exceptions not relevant here, forbids any  
8 person receiving, assisting in receiving, transmitting, or assisting in transmitting, any interstate  
9 communication by wire or radio from divulging or publishing the contents thereof except through  
10 authorized channels. 47 U.S.C. § 605. The Act also forbids any unauthorized person from  
11 receiving or assisting in receiving any interstate communication by radio and using such  
12 communication (or any information therein contained) for his own benefit or for the benefit of  
13 another unauthorized person. *Id.* By selling (and facilitating the use of) a device which (a) assists  
14 in the receipt of interstate communications by wire or radio and the use of such communications  
15 for the benefit of unauthorized persons and/or (b) is designed and intended to be used to divulge  
16 or publish the contents of such communications through the "Send Show" feature, Defendants are  
17 violating Section 605.  
18  
19

20 **Count VI**  
21 **Unfair Business Practices**

22 50. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1  
23 through 29 as if fully set forth herein.

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

1        52.        As set forth above, Defendants are engaged in, or propose to engage in, conduct  
2 unlawful under Sections 553 and 605 of the Federal Communications Act.

3        53.        A significant portion of Plaintiffs' licensing revenue comes from license fees  
4 generated by broadcasts of the motion pictures on television, including on "network" television,  
5 "cable" television, "independent" stations that acquire syndicated programming content, premium  
6 movie "subscription" cable and satellite services, and "pay-per-view" services. Many of those  
7 stations, networks and services (including the Fox Network operated by Plaintiff FBC) depend  
8 upon revenues from a wide variety of commercial advertising arrangements, including payments  
9 from advertisers for the inclusion of commercials during designated breaks within and between  
10 programs, and so-called barter arrangements, to cover the costs of licensing Plaintiffs'  
11 programming, and producing their own programming. By enabling the instant and complete  
12 eradication of an essential revenue-producing aspect of Plaintiffs' business, Defendants are  
13 engaged in, or propose to engage in, one or more unfair business acts or practices causing  
14 particular harm to the market for the licensing or other exploitation of Plaintiffs' content.  
15

16        54.        Plaintiffs have created, developed, invested in, marketed, and branded with a  
17 unique and recognizable identity, various television channels and other services. The public has  
18 come to recognize these channels and services as inherently distinctive and unique. By recording  
19 and organizing recordings of programs from disparate channels and services into coherent  
20 collections, including for delivery to others through the "Send Show" function, and by packaging  
21 and branding those recordings and collections in such a manner as to cause confusion as to the  
22 source or sponsorship of those recordings and collections and to materially contribute to  
23 unlicensed channels, and by other conduct alleged above, Defendants are engaged in, or propose  
24 to engage in, one or more unfair business acts or practices causing particular harm to the market  
25 for the licensing of Plaintiffs' content.  
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55. Each of the aforementioned business acts and/or practices is oppressive and/or substantially injurious to Plaintiffs and/or the general public. With respect to each of the aforementioned business acts and/or practices, the gravity of the harm to Plaintiffs and the general public outweighs the utility, if any, of Defendants' conduct.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor and against Defendants as follows:

(a) adjudge and declare that Defendants' activities constitute direct, contributory and vicarious copyright infringement, violate Sections 553 and 605 of the Communications Act, and constitute an unlawful, unfair or fraudulent business act or practice under Section 17200 of the California Business & Professions Code;

(b) preliminarily and permanently enjoin, pursuant to 17 U.S.C. § 502, Defendants, their officers, agents, servants, employees and those persons in active concert or participation with them, from directly, contributorily and/or vicariously infringing by any means Plaintiffs' exclusive rights under the Copyright Act, including without limitation any of Plaintiffs' rights in any of the works listed on Exhibit A, and from licensing any other person to do the same;

(c) preliminarily and permanently enjoin Defendants, their officers, agents, servants, employees and those persons in active concert or participation with them, from violating Sections 553 and 605 of the Communications Act, including but not limited to, by engaging in any activity that enables persons to transmit copies of cable television programming to other persons, or enables persons without authorization to receive such programming;

(d) preliminarily and permanently enjoin, pursuant to Cal. Bus.& Prof. Code § 17200, Defendants, their officers, agents, servants, employees and those persons in active concert or participation with them, from engaging in one or more unfair and/or unlawful business acts or

1 practices, including but not limited to any activity that encourages viewers to block access to  
2 commercial content transmitted during television programming owned by Plaintiffs or offered on  
3 a television network owned and/or operated by Plaintiffs, or that encourages or permits customers  
4 to transmit copies of such programming to other persons;

5 (e) award Plaintiffs costs and reasonable attorneys' fees in accordance with 17 U.S.C.  
6 § 505, 47 U.S.C. §§ 553 and 605, and other applicable law; and  
7

8 (f) award Plaintiffs such further and additional relief as the Court may deem just and  
9 proper.

10  
11 Dated: November 14, 2001

SCOTT P. COOPER  
JON A. BAUMGARTEN  
FRANK P. SCIBILIA  
PROSKAUER ROSE LLP

14 By: 

SCOTT P. COOPER

16 Attorneys for Plaintiffs METRO-GOLDWYN-MAYER  
17 STUDIOS INC., a Delaware corporation; ORION  
18 PICTURES CORPORATION, a Delaware corporation;  
19 TWENTIETH CENTURY FOX FILM CORPORATION, a  
20 Delaware corporation; UNIVERSAL CITY STUDIOS  
21 PRODUCTIONS, INC., a Delaware corporation; and FOX  
22 BROADCASTING COMPANY, a Delaware corporation  
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**EXHIBIT A**

**Illustrative Copyright Registrations**

| <b><u>Rights Holder</u></b>      | <b><u>Title</u></b>                      | <b><u>Copyright No.</u></b> |
|----------------------------------|--|-----------------------------|
| Metro-Goldwyn-Mayer Studios Inc. | In the Heat of the Night (Quick Fix)     | PA 540-867                  |
| Metro-Goldwyn-Mayer Studios Inc. | In the Heat of the Night (Heart of Gold) | PA 526-692                  |
| Metro-Goldwyn-Mayer Studios Inc. | Thelma and Louise                        | PA 538-151                  |
| Metro-Goldwyn-Mayer Studios Inc. | Diggstown                                | PA 584-868                  |
| Metro-Goldwyn-Mayer Studios Inc. | Of Mice And Men                          | PA 627-324                  |
| Metro-Goldwyn-Mayer Studios Inc. | Stargate SG-1 (Nemesis)                  | PA 984-835                  |
| Metro-Goldwyn-Mayer Studios Inc. | Stargate SG-1 (New Ground)               | PA 984-836                  |
| Orion Pictures Corporation       | Mississippi Burning                      | PA 409-351                  |
| Orion Pictures Corporation       | Back to School                           | PA 298-065                  |
| Orion Pictures Corporation       | The Believers                            | PA 338-035                  |
| Orion Pictures Corporation       | Bull Durham                              | PA 392-721                  |
| Orion Pictures Corporation       | Crimes and Misdemeanors                  | PA 447-419                  |
| Orion Pictures Corporation       | Hannah and Her Sisters                   | PA 288-772                  |

|    | <b><u>Rights Holder</u></b>            | <b><u>Title</u></b>                    | <b><u>Copyright No.</u></b> |
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| 1  |  |  |                             |
| 2  | Orion Pictures Corporation             | Married to the Mob                     | PA 388-993                  |
| 3  |  |  |                             |
| 4  | Orion Pictures Corporation             | Mermaids                               | PA 495-687                  |
| 5  | Orion Pictures Corporation             | The Silence of the Lambs               | PA 512-637                  |
| 6  |  |  |                             |
| 7  | Orion Pictures Corporation             | Ulee's Gold                            | PA 857-210                  |
| 8  | Twentieth Century Fox Film Corporation | Ally McBeal (The Obstacle Course)      | PA 1-021-810                |
| 9  |  |  |                             |
| 10 | Twentieth Century Fox Film Corporation | Ally McBeal (Queen Bee)                | PA 1-022-030                |
| 11 | Twentieth Century Fox Film Corporation | Ally McBeal (Friends And Lovers)       | Application Pending         |
| 12 |  |  |                             |
| 13 | Twentieth Century Fox Film Corporation | Ally McBeal (Sideshow)                 | PA 929-880                  |
| 14 | Twentieth Century Fox Film Corporation | Ally McBeal (You Never Can Tell)       | PA 904-404                  |
| 15 |  |  |                             |
| 16 | Twentieth Century Fox Film Corporation | Boston Public (Chapter Seventeen)      | PA 1-021-805                |
| 17 | Twentieth Century Fox Film Corporation | Boston Public (Chapter Twenty)         | PA 1-022-043                |
| 18 |  |  |                             |
| 19 | Twentieth Century Fox Film Corporation | Buffy The Vampire Slayer (Forever)     | PA 1-022-018                |
| 20 | Twentieth Century Fox Film Corporation | Buffy The Vampire Slayer (The Gift)    | PA 1-039-849                |
| 21 |  |  |                             |
| 22 | Twentieth Century Fox Film Corporation | Buffy The Vampire Slayer (Life Serial) | Application Pending         |
| 23 | Twentieth Century Fox Film Corporation | Buffy The Vampire Slayer (Enemies)     | PA 929-654                  |
| 24 |  |  |                             |
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|    | <u><b>Rights Holder</b></u>                 | <u><b>Title</b></u>                       | <u><b>Copyright No.</b></u> |
|----|---|---|-----------------------------|
| 1  |   |   |                             |
| 2  | Twentieth Century Fox<br>Film Corporation   | Buffy The Vampire Slayer<br>(Superstar)   | PA 982-849                  |
| 3  |   |   |                             |
| 4  | Twentieth Century Fox<br>Film Corporation   | The Practice<br>(Home Of The Brave)       | PA 1-021-988                |
| 5  | Twentieth Century Fox<br>Film Corporation   | The Practice<br>(Poor Richard's Almanac)  | PA 1-036-655                |
| 6  |   |   |                             |
| 7  | Twentieth Century Fox<br>Film Corporation   | The Practice<br>(Vanished)                | Application<br>Pending      |
| 8  | Twentieth Century Fox<br>Film Corporation   | The Practice<br>(Judge And Jury)          | PA 918-687                  |
| 9  |   |   |                             |
| 10 | Twentieth Century Fox<br>Film Corporation   | The Practice<br>(The Blessing)            | PA 853-922                  |
| 11 | Twentieth Century Fox<br>Film Corporation   | The Simpsons<br>(Trilogy Of Error)        | PA 1-021-927                |
| 12 |   |   |                             |
| 13 | Twentieth Century Fox<br>Film Corporation   | The Simpsons<br>(I'm Goin' To Praiseland) | PA 1-021-994                |
| 14 | Twentieth Century Fox<br>Film Corporation   | The X-Files<br>(Empedocles)               | PA 1-022-024                |
| 15 |   |   |                             |
| 16 | Twentieth Century Fox<br>Film Corporation   | The X-Files<br>(Essence)                  | PA 1-036-776                |
| 17 | Twentieth Century Fox<br>Film Corporation   | The Beach                                 | PA 959-748                  |
| 18 |   |   |                             |
| 19 | Twentieth Century Fox<br>Film Corporation   | Broadcast News                            | PA 356-955                  |
| 20 | Twentieth Century Fox<br>Film Corporation   | Wall Street                               | PA 349-001                  |
| 21 |   |   |                             |
| 22 | Twentieth Century Fox<br>Film Corporation   | X-Men                                     | PA 933-920                  |
| 23 | Universal City Studios<br>Productions, Inc. | American Pie                              | PA 948-125                  |
| 24 |   |   |                             |
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| <u>1</u> | <u>Rights Holder</u>                        | <u>Title</u>   | <u>Copyright No.</u> |
|----------|---|--|----------------------|
| 2        | Universal City Studios<br>Productions, Inc. | Dante's Peak   | PA 784-073           |
| 3        | Universal City Studios<br>Productions, Inc. | Ed TV  | PA 932-641           |
| 5        | Universal City Studios<br>Productions, Inc. | Half Baked   | PA 870-529           |
| 6        | Universal City Studios<br>Productions, Inc. | Liar Liar  | PA 790-657           |
| 8        | Universal City Studios<br>Productions, Inc. | October Sky  | PA 927-235           |
| 9        | Universal City Studios<br>Productions, Inc. | The Mummy  | PA 933-218           |
| 10       | Universal City Studios<br>Productions, Inc. | The Mummy Returns                                      | PA 1-033-456         |
| 11       | Universal City Studios<br>Productions, Inc. | U-571  | PA 981-484           |
| 12       | Fox Broadcasting<br>Company                 | After Diff'rent Strokes:<br>When The Laughter Stopped  | PA 988-593           |
| 13       | Fox Broadcasting<br>Company                 | Getting Away With Murder:<br>The Jonbenet Ramsey Story | PA 975-966           |
| 14       | Fox Broadcasting<br>Company                 | Police Videos<br>(Episode 16)                          | PA 1-043-133         |
| 15       | Fox Broadcasting<br>Company                 | Police Videos<br>(Episode 17)                          | PA 1-052-696         |
| 16       | Fox Broadcasting<br>Company                 | Powers Of The Paranormal<br>Live On Stage              | PA 1-032-116         |
| 17       | Fox Broadcasting<br>Company                 | Unauthorized Brady Bunch:<br>The Final Days            | PA 988-589           |
| 18       | Fox Broadcasting<br>Company                 | Temptation Island<br>(Episode 101)                     | PA 1-007-617         |
| 19       |   |  |                      |
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|    | <b><u>Rights Holder</u></b> | <b><u>Title</u></b>     | <b><u>Copyright No.</u></b> |
|----|-----------------------------|-------------------------|-----------------------------|
| 1  |                             |                         |                             |
| 2  | Fox Broadcasting            | Temptation Island       | PA 1-007-618                |
| 3  | Company                     | (Episode 102)           |                             |
| 4  | Fox Broadcasting            | Temptation Island 2     | Application                 |
| 5  | Company                     | (Episode 201)           | Pending                     |
| 6  | Fox Broadcasting            | Love Cruise: The Maiden | Application                 |
| 7  | Company                     | Voyage (Episode 101)    | Pending                     |
| 8  | Fox Broadcasting            | Love Cruise: The Maiden | Application                 |
| 9  | Company                     | Voyage (Episode 102)    | Pending                     |
| 10 | Fox Broadcasting            | Love Cruise: The Maiden | Application                 |
| 11 | Company                     | Voyage (Episode 103)    | Pending                     |
| 12 | Fox Broadcasting            | Love Cruise: The Maiden | Application                 |
| 13 | Company                     | Voyage (Episode 104)    | Pending                     |
| 14 | Fox Broadcasting            | Love Cruise: The Maiden | Application                 |
| 15 | Company                     | Voyage (Episode 105)    | Pending                     |
| 16 | Fox Broadcasting            | Love Cruise: The Maiden | Application                 |
| 17 | Company                     | Voyage (Episode 106)    | Pending                     |
| 18 | Fox Broadcasting            | Love Cruise: The Maiden | Application                 |
| 19 | Company                     | Voyage (Episode 107)    | Pending                     |
| 20 |                             |                         |                             |
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| 28 |                             |                         |                             |