

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. **02-M-1662 (MJW)**

ROBERT HUNTSMAN,  
CLEAN FLICKS OF COLORADO, LLC  
Plaintiffs,

and

CLEAN CUT CINEMAS,  
CLEANFLICKS,  
et al.,  
Counterclaim Defendants

v.

STEVEN SODERBERGH,  
ROBERT ALTMAN,  
et al.,  
Defendants and Counterclaimants

and

THE DIRECTORS GUILD OF AMERICA,  
Defendant-in-Intervention and Counterclaimant-in-Intervention,

and

METRO-GOLDWYWN-MAYER STUDIOS, Inc.,  
TIME WARNER ENTERTAINMENT COMPANY, L.P.,  
SONY PICTURES ENTERTAINMENT,  
DISNEY ENTERPRISES, Inc.,  
DREAMWORKS L.L.C.,  
UNIVERSAL CITY STUDIOS, Inc.,  
TWENTIETH CENTURY FOX FILM Corporation, and,  
PARAMOUNT PICTURES Corporation,  
Co-defendants and Counterclaimants.

---

**MOTION PICTURE STUDIO DEFENDANTS'**

## STATEMENT CLARIFYING CLAIMS

---

Pursuant to the direction of the Court at the scheduling conference held on February 14, 2003, and at the request of counsel for the Plaintiffs and Counterclaim-defendants Robert Huntsman, ClearPlay, Inc., Family Shield Technologies, LLC and Trilogy Studios, Inc. (collectively the “Electronic Editing Parties”) and CleanFlicks of Colorado LLC, CleanFlicks LLC, and Family Flix U.S.A., LLC, (collectively the “Mechanical Editing Parties”) the Co-defendants and counterclaimants Metro-Goldwyn-Mayer Studios Inc., Time Warner Entertainment Company, L.P., Sony Pictures Entertainment Inc., Disney Enterprises, Inc., DreamWorks L.L.C., Universal City Studios, Inc. (now known as Universal City Studios LLLP), Twentieth Century Fox Film Corporation, and Paramount Pictures Corporation (collectively, together with their subsidiaries and affiliates, the “Studios”), by their attorneys Loeb & Loeb LLP and Faegre & Benson LLP, hereby submit the following statement clarifying their copyright claims.

The following statement, which addresses the specific questions posed in a letter dated February 25, 2003 from counsel for ClearPlay, Inc., and subsequently adopted by counsel for the remaining Plaintiffs and Counterclaim-defendants, is made without waiver of or prejudice to any and all rights of the Studios to amend their pleadings or develop, assert or pursue additional or alternative legal claims, theories, positions or arguments as the facts are discovered and developed throughout the prosecution of this action.

**Question 1. Are you asserting claims of direct or contributory infringement?**

The copyright and Lanham Act claims asserted in the Studios' counterclaims are solely for direct infringement.

**Question 2. Please clarify the nature of the direct copyright infringement.**

Based upon the facts currently known to the Studios, the Studios believe the Mechanical Editing Parties are directly infringing the Studios' copyrights in their films by creating, marketing, distributing, duplicating, renting, selling and/or offering for sale unauthorized edited versions of the Studios' films on VHS videocassettes and digital versatile discs ("DVDs").

Based upon the facts currently known to the Studios, the Studios believe the Electronic Editing Parties are directly infringing the Studios' copyrights in their films by creating, marketing, distributing, selling and/or offering for sale (1) unauthorized edited versions of the Studios' films, and (2) products (*e.g.*, software) based upon and derived from the Studios' copyrighted films and containing film-specific codes for video display devices (such as DVD players or computer DVD drives) for the playback of unauthorized edited versions of the Studios' films. The Electronic Editing Parties are creating, distributing, marketing and selling the exact same infringing end-product as the Mechanical Editing Parties – an unauthorized edited version (or versions) of a Studio's film – they are merely accomplishing these same ends utilizing different technologies.

**Question 3. Please identify each of the exclusive rights under section 106 of the Copyright Act that the Studios contend are being directly infringed and clarify the nature of the alleged infringement.**

Based upon the facts currently known to the Studios, some or all of the Mechanical Editing Parties are infringing the Studios' exclusive right of reproduction (§ 106 (1)), right to prepare derivative works (§ 106 (2)), and right to distribute copies, including copies of derivative works (§ 106 (3)). The nature of the infringement is clarified in response to Question 2 above.

Based upon the facts currently known to the Studios, some or all of the Electronic Editing Parties are infringing the Studios' exclusive right to prepare derivative works (§ 106 (2)), and the right to distribute copies, specifically, copies of derivative works (§ 106 (3)). The nature of the infringement is clarified in response to Question 2 above. Further discovery may reveal that some or all of the Electronic Editing Parties are also infringing the Studios' exclusive right of reproduction (§ 106 (1)).

Further discovery may also reveal that some or all of the Electronic Editing Parties and/or the Mechanical Editing Parties are circumventing copyright protection systems protecting the Studios' films in violation of 17 U.S.C. § 1201 *et seq.*

**Question 4. Please clarify the nature of the alleged derivative works you claim are created. In doing so, please specify (1) what copyrighted material has been incorporated in the alleged derivative works, (2) in what way the alleged derivative works are similar to the copyrighted originals, and (3) how the derivative works are fixed.**

Based upon the Studios' current knowledge and understanding of the various Mechanical Editing Parties' products or services, the derivative works created by the Mechanical Editing Parties are the unauthorized edited versions of the Studios' films which are created, duplicated, distributed, rented and sold on VHS videocassettes and DVDs. The copyrighted