

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

RECEIVED

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U. S. DISTRICT COURT
EASTERN DISTRICT OF MO.
ST. LOUIS

DAVIDSON & ASSOCIATES, INC., D.B.A.)
BLIZZARD ENTERTAINMENT, and)
VIVENDI UNIVERSAL GAMES, INC.,)

Plaintiffs,)

v.)

INTERNET GATEWAY, INC., TIM JUNG,)
an individual, ROSS COMBS, an individual,)
ROB CRITTENDEN, an individual, YI WANG,)
an individual, and JOHN DOES 1-50,)

Defendants.)

Case No. 4:02CV498 CAS

JURY TRIAL DEMANDED

**SECOND AMENDED COMPLAINT FOR FEDERAL COPYRIGHT
INFRINGEMENT; FEDERAL CIRCUMVENTION OF COPYRIGHT PROTECTION
SYSTEMS; FEDERAL TRADEMARK INFRINGEMENT, AND FALSE DESIGNATION
OF ORIGIN AND DILUTION; COMMON LAW TRADEMARK INFRINGEMENT AND
UNFAIR COMPETITION; AND BREACH OF CONTRACT; AND DEMAND FOR
JURY TRIAL**

Plaintiffs Davidson & Associates, Inc., d.b.a. Blizzard Entertainment, and Vivendi
Universal Games, Inc. (collectively "Blizzard"), hereby allege as follows against Defendants
Internet Gateway, Inc., Tim Jung, Ross Combs, Rob Crittenden, Yi Wang and John Does 1-50
based upon actual knowledge with respect to Plaintiffs and Plaintiffs' acts, and on upon
information and belief as to all other matters.

NATURE OF THE CASE

1 This is an action for direct and indirect infringement of a registered copyright in
violation of the Copyright Act, as amended, 17 U.S.C. §501; for direct and indirect
circumvention of copyright protection systems in violation of the Copyright Act, as amended, 17
U.S.C. §1201(a)(1)(A), and for trafficking in technology designed for the purpose of

circumventing copyright protection systems in violation of the Copyright Act, as amended, 17 U.S.C. §1201(a)(2); for infringement of a registered trademark in violation of Section 32(1) of the Lanham Act, 15 U.S.C. §1114(1); for false designation of origin in violation of Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. §1125(a)(1)(A); for trademark dilution in violation of Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c); for common law trademark infringement and unfair competition; and for breach of contract under the laws of Missouri and other states.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. §1121, and 28 U.S.C. §§1331, 1332 and 1338. The parties are citizens of diverse states, and the matter of controversy, exclusive of interest and costs, exceeds in value the sum specified by 28 U.S.C. §1332

3. Venue in this jurisdiction is proper pursuant to 28 U.S.C. §§1391 and 1400.

THE PARTIES

4. Plaintiff Davidson & Associates, Inc. is a corporation organized and existing under the laws of the state of California, with a principal place of business at 6080 Center Drive, Los Angeles, California 90045. A division of Davidson & Associates, Inc. does business as Blizzard Entertainment, which has a principal place of business at Irvine, California 92612. Plaintiff Vivendi Universal Games, Inc., is the parent corporation of Davidson & Associates, Inc. Vivendi Universal Games, Inc., is a Delaware corporation having a principal place of business at 6080 Center Drive, Los Angeles, California 90045. Plaintiffs are referred to collectively as "Blizzard."

5. On information and belief, Defendant Internet Gateway, Inc. is an Internet Service Provider (ISP) with a place of business at 1345 Triad Court, PMB No. 415, St. Peters, Missouri 63376, and is operating and doing business in this judicial district. According to the Missouri

Secretary of State's Office, Internet Gateway, Inc. (Charter No. 00419806) has been administratively dissolved for failure to file an annual report. Nonetheless, on information and belief, Defendant Internet Gateway, Inc., continues to operate within this judicial district as an unincorporated business or serves as an assumed name for the business of its principal, Tim Jung. Defendant Internet Gateway, Inc., operates by, among other activities, advertising its services as an ISP in the greater St. Louis area, and hosting the website www.bnetd.org, which has featured the BNETD computer program. The BNETD program operates servers that enable multiple players in remote locations to play Blizzard games against each other over the Internet, without the authorization of Blizzard.

6. On information and belief, Tim Jung is an individual residing at 611 Oregon Trail Drive, St. Charles, Missouri 63304, in this judicial district. Mr. Jung is the president or principal of Internet Gateway, Inc., as well as a co-developer of the BNETD program, and the registered owner and administrative contact for the www.bnetd.org website.

7. On information and belief, Defendant Ross Combs is an individual residing at 9801 Stonelake Blvd., Apartment 1733, Austin, Texas 78759. Mr. Combs is a lead co-developer of the BNETD program and developer of at least one related software program facilitating use of the BNETD program. On information and belief, Mr. Combs has worked with Internet Gateway, Inc. or Tim Jung within this judicial district to develop or maintain the BNETD program.

8. On information and belief, Robert Crittenden is an individual residing at 500 Darlene Avenue, Linthicum, Maryland 21090. Mr. Crittenden is a lead co-developer of the BNETD program. On information and belief, Mr. Crittenden has worked with Internet Gateway, Inc. or Tim Jung within this judicial district to develop or maintain the BNETD program.

9. On information and belief, Yi Wang is an individual residing at an unknown address and is found at the email address onlyer@users.sourceforge.net. Mr. Wang is a

co-developer of the BNETD program and developer of at least one related software program facilitating use of the BNETD program. On information and belief, Mr. Wang has worked with Internet Gateway, Inc. or Tim Jung within this judicial district to develop or maintain the BNETD program

10 On information and belief, John Does 1-50 are unnamed co-developers, distributors, hosts, programmers, or other persons or entities involved in the creation, use, and dissemination of the BNETD program

BLIZZARD'S COMPUTER GAMES AND BATTLE.NET® WEBSITE

11 Blizzard is a premier publisher of entertainment software. Blizzard is best known for its high-quality computer games, including DIABLO® II, STARCRAFT®, WARCRAFT® II BATTLE.NET® EDITION, and WARCRAFT® III, as well as its online gaming service, BATTLE.NET® (also known as BNET), which is hosted at the website www.battle.net. Blizzard's BATTLE.NET® online gaming service allows multiple players in remote locations to play Blizzard games against each other over the Internet. Since establishing the Blizzard label in 1994, Blizzard quickly became one of the world's most respected and popular makers of computer games, with sales in excess of \$480 million since 1998. Thousands of players in the United States and around the world use Blizzard's BATTLE.NET® service daily, with active accounts numbering over 10 million

12. Blizzard's computer games are developed through tremendous effort and at great expense to the company. Blizzard employs numerous game designers, artists, producers and programmers who conceive and create games that ideally will appeal to a large number of players and maintain the interest of those players for many years. Blizzard's staff includes true game enthusiasts, who provide valuable insight into creating games that people will enjoy. Blizzard game players are often loyal supporters of their favorite games who trust and rely on

Blizzard to provide an enjoyable game-play experience and other game services, including customer service, technical support and product updates.

13. Blizzard's computer games are created for players of all skill levels. Blizzard games are best described as easy to learn yet difficult to master. Although unique in many ways, Blizzard games are generally categorized into three main genres: role-playing, real-time strategy, and action adventure. An example of a Blizzard game, STARCRAFT[®], including the CD-ROM, packaging and instructions, is attached hereto as Exhibit A.

14. Blizzard complies with the ratings of the Entertainment Software Rating Board (ESRB), the computer game industry's self-regulatory ratings body. Each Blizzard computer game is submitted to the ESRB to be rated for age appropriateness. The ESRB's ratings are displayed on all Blizzard products and marketing materials. See, e.g., Exhibit A.

15. The Blizzard computer games at stake here are sold on CD-ROMs for use on personal computers. The games may be played by a single player, or with other players. If the user wishes to play with multiple players, several options are available. The user could select local network play; play directly between two computers connected by cables or by modem; or play over the Internet via Blizzard's BATTLE.NET[®] service.

16. To install a Blizzard computer game on a user's computer, the user places the CD-ROM in the computer's CD-ROM drive, and is prompted to enter a unique code. The code typically is printed on a sticker attached to the CD-ROM case that comes with the game software (the "CD Key"). When the code is entered, the computer game checks to determine whether the CD Key is valid (the "Installation CD Key Check"). If the CD Key is valid, the game software completes the installation process and the CD Key is then stored on the user's computer.

17. To access the BATTLE.NET[®] service, the player simply clicks on a link in the installed Blizzard game that connects to a BATTLE.NET[®] server. The "Gateway Selection"

page on Blizzard games displays links to several BATTLE.NET[®] servers in different locations for multiple player Internet gaming. See copy of the "Gateway Selection" screen, attached as Exhibit B.

18. At the BATTLE.NET[®] server, players logging in for the first time are prompted to create an account and to log-on using a username and password. The BATTLE.NET[®] server uses the username and password to create a player's account, which is a database of that player's statistics and other information relevant to that player. Player accounts are a critical feature of the unique game environment developed by Blizzard for its games. Individual players create their own account(s) which are intended for personal and private use only. The accounts allow players to track their gameplay history and win/loss records, and keep an inventory of valuable game characters and characteristics. The player accounts encourage players to return to the BATTLE.NET[®] server, re-enter the game at the same level, and continue where the player last signed off.

19. When the player enters a username and password, specialized username/password authentication software embedded in the Blizzard game software forwards the username, encrypted password and encrypted CD Key to the BATTLE.NET[®] server. The BATTLE.NET[®] server recognizes the encrypted CD Key in an authentication sequence. The sequence functions like a "secret handshake," letting the server know that the player's game associated with that CD Key is a valid copy. In addition, the CD Key must be received and recognized by the BATTLE.NET[®] server to initiate the log-in routine, which controls access to use of Blizzard's copyrighted games in multiple player, remote play across the Internet.

20. The BATTLE.NET[®] server then performs an authentication sequence to determine whether the CD Key is valid (the "Log-on CD Key Check"). If the Log-on CD Key Check is successful, the BATTLE.NET[®] server also conducts another check by detecting

whether any other user currently logged on to the server is using the same CD Key (the “Duplicate CD Key Check”). If no duplicate CD Key is found, the BATTLE.NET[®] server sends an acceptance message to the game on the user’s computer, and allows the user to play the game on the BATTLE.NET[®] site.

21. The Log-in CD Key Check and the Duplicate CD Key Check are proprietary, technological measures employed by Blizzard to limit access to use of legitimate copies of Blizzard games in multiple player, remote play over the Internet. These technological measures were designed to effectively protect Blizzard’s copyrights and help prevent piracy of Blizzard’s games.

22. Blizzard relies on its CD Keys and related technology as its most valuable protection against piracy of its games. Without these security measures, Blizzard would have little protection against widespread illicit pirating of its game software. This would greatly impede Blizzard’s development and sales of games and would ultimately affect the entire online gaming community.

23. Blizzard’s BATTLE.NET[®] service provides the only authorized forum in which Blizzard’s games may be played with multiple players from remote locations on a large scale over the Internet. Through the BATTLE.NET[®] service, tens of thousands of players from around the United States and the world may participate in a variety of on-going Blizzard games at any time. A large number of simultaneous players is necessary to provide the exciting interactions and challenging gameplay expected by customers participating in Internet play of Blizzard games. Players are ranked through the BATTLE.NET[®] service and compete in matches with up to seven other players of comparable skill. The BATTLE.NET[®] service thus insures the quality and diversity of its multiple player gaming experience.

Through the BATTLE.NET[®] service, players who have won several games may become eligible to compete in Blizzard-sponsored online tournaments, with the opportunity to advance in tournaments through elimination rounds.

25. Blizzard further promotes the quality of the gaming experience through its BATTLE.NET[®] service by deploying frequent updates to users' games, as needed, when they log-on to the service.

26. The BATTLE.NET[®] service is free to users. This service creates value for Blizzard by encouraging purchases of Blizzard games. Further, Blizzard sells advertising that is displayed to players while they are logged on to the BATTLE.NET[®] server but before they join a game.

In addition, persons interested in Blizzard games and the BATTLE.NET[®] service may visit Blizzard's website, www.battle.net, to learn more about the games and multi-player gaming. Announcements promoting sales of Blizzard games are displayed on this website. The website also offers for sale a variety of game-related products, including apparel and books.

BLIZZARD'S COPYRIGHTS

28. Blizzard owns several registered copyrights for its games, as listed in the table below. These registrations are in full force and effect, and copies of each are attached as Exhibit C. These copyrights cover nearly all aspects of Blizzard's games as they are distributed in the marketplace, including, without limitation, (a) all of the human and machine readable computer code and any other data distributed on CD-ROM with each game, (b) all graphical and textual elements of the screens that appear in each game when the same is executed on a personal computer, (c) all graphical and textual elements of manuals and other documents distributed with the games, and (d) all motion picture and sound recordings, and other audio visual elements distributed with the games.

Title	Number	Registration Date	Publication Date
DIABLO® II	PA 974-041	06/29/00	06/28/00
DIABLO® II: LORD OF DESTRUCTION	PA 1-039-239	07/05/01	06/26/01
STARCRRAFT®	PA 822-523	03/31/98	03/31/98
STARCRRAFT®: BROOD WAR®	PA 875-327	12/21/98	12/17/98
WARCRAFT® II: TIDES OF DARKNESS	PA 795-742	01/30/96	12/3/95
WARCRAFT® II EXPANSION SET: BEYOND THE DARK PORTAL	TX 4-420-784	08/30/96	05/8/96
WARCRAFT® II: BATTLE.NET® EDITION	PA 983-532	11/18/99	10/8/99
WARCRAFT® II: BATTLE.NET® EDITION	PA 960-074	06/15/00	(Supplementary to PA 983-532)
BATTLE.NET®	TX 747-736	04/17/02	N/A

29. Blizzard's registered copyrights cover its original, proprietary username/password authentication software, discussed above, which is distributed on CD-ROMs along with Blizzard's game programs. One of the algorithms (i.e., steps to implement a process) used in this software is an original, proprietary variation of an encryption algorithm.

30. Blizzard's username/password authentication software was distributed to users in product releases containing a bug, i.e., a programming error. With the bug, the username/password authentication software performs the function for which it was designed, but the bug causes the software to produce a systematically different result from the publicly available version and is easily identified. The bug causes the username/password authentication software to produce results that would be impossible to identify or replicate, absent direct copying. On information and belief, these results could not be replicated, for example, through the analysis of the network traffic (traveling messages) between a Blizzard game and BATTLE.NET® server.

BLIZZARD'S TRADEMARKS

31. Blizzard owns U.S. Trademark Reg. No. 2,324,717 for BATTLE.NET[®] for use in connection with entertainment services, namely, providing on-line computer games, and featuring tips and strategies for computer games. A copy of the certificate of registration is attached as Exhibit D. Blizzard has used the BATTLE.NET[®] mark in commerce continuously since at least as early as November, 1996, well before Defendants' infringing activities began.

32. Blizzard's BATTLE.NET[®] trademark is known by more than 10 million active users of BATTLE.NET[®] service around the world, and by countless others who are familiar with the service through previous use, advertising or word of mouth. BATTLE.NET[®] is registered as a trademark in 16 countries for use in connection with on-line gaming services and applications for trademark registration are pending in additional countries.

33. Blizzard's BATTLE.NET[®] trademark is inherently distinctive or has acquired distinctiveness through substantial advertising, promotion, and consumer use.

34. Blizzard's BATTLE.NET[®] trademark is famous in the minds of computer game players.

35. Blizzard's BATTLE.NET[®] trademark is often referred to by users as BNET, a shortened version of Blizzard's mark. The BNET mark is widely used and recognized in connection with Blizzard's BATTLE.NET[®] trademark among the more than 10 million active users of the BATTLE.NET[®] service, and by others who are familiar with the service.

BLIZZARD'S CONTRACTS WITH PLAYERS

36. Before installation of a Blizzard computer game on the user's computer, the game software presents the user with an End User License Agreement (EULA) governing use of the Blizzard game. If the user agrees to the terms of the EULA, the user may enter into the agreement by clicking "I AGREE," "OK," or the like. If the user does not click "I AGREE,"

“OK,” or the like, the game will not open or install. As stated in the opening paragraph of each EULA, if the player does not agree to the terms of the EULA, the unused software may be returned to the place of purchase or to Blizzard customer service for a full refund within 30 days of purchase. The EULAs for STARCRAFT[®], STARCRAFT[®]: BROOD WAR[®], WARCRAFT[®] II: BATTLE.NET[®] EDITION and DIABLO[®] II, as they were distributed with the original software releases of these games, are attached as Exhibit E. The provisions of these EULAs relevant to this Complaint have not materially changed since then.

37. Among other provisions, each of the attached EULAs permits the user to use the game software on a home or portable computer. The STARCRAFT[®]: BROOD WAR[®] and DIABLO[®] II EULAs also permit use on a business computer. The STARCRAFT[®] and WARCRAFT[®] II: BATTLE.NET[®] EDITION EULAs permit use of the single copy of game software in multi-player mode, for up to 8 concurrent players. All of the EULAs state that Blizzard may offer a separate Site License Agreement to permit commercial use of the game. The STARCRAFT[®], STARCRAFT[®]: BROOD WAR[®], and WARCRAFT[®] II BATTLE.NET[®] EDITION EULAs further permit the user to create custom levels or materials within the game for personal use. All of the EULAs allow the user to transfer all rights under the game. See Exhibit E.

38. Each EULA prohibits (a) disassembling, decompiling or reverse engineering the Blizzard computer game software (i.e., analyzing the computer-language instructions to determine the way in which the programs were written); (b) hosting or providing matchmaking services for the game (i.e., creating environments to allow users to play against each other); (c) using a “utility program” (i.e., a discrete computer program for a particular task) to enable network play of the game over the Internet; and (d) commercially exploiting the game. In addition, beginning with the release of the STARCRAFT[®] game in 1998, Blizzard’s EULAs also

have prohibited emulating (mimicking) or redirecting the communication protocols (i.e., rules) used by Blizzard for its Internet gaming services.

39. The EULAs provide commercially reasonable contractual protection of Blizzard's rights in its games and copyrights.

40. When a player logs on to the BATTLE.NET[®] server to create an account, or revisits the server after the Terms of Use have been revised, the server presents the player with the BATTLE.NET[®] Terms of Use, which govern all use of the BATTLE.NET[®] service. If the player agrees to the Terms of Use, the player may indicate agreement by clicking "AGREE." If the player clicks "DISAGREE," access to BATTLE.NET[®] is denied. The BATTLE.NET[®] Terms of Use were first posted in 1997. The provisions of the BATTLE.NET[®] Terms of Use relevant to this Complaint have not materially changed since that time. The current BATTLE.NET[®] Terms of Use are attached as Exhibit F.

41. The BATTLE.NET[®] Terms of Use prohibit the user from (a) disassembling, decompiling or reverse engineering any BATTLE.NET[®] software; (b) hosting or providing matchmaking services for any Blizzard games; (c) using a utility program to enable network play of the game over the Internet; (d) commercially exploiting any Blizzard game; and (e) emulating or redirecting the communication protocols used by Blizzard as part of the BATTLE.NET[®] service.

42. The BATTLE.NET[®] Terms of Use provide commercially reasonable contractual protection of Blizzard's rights in its games and copyrights.

DEFENDANTS' ACTIVITIES

43. BNETD is a server program that emulates (mimics) Blizzard's BATTLE.NET[®] (BNET) service and enables large-scale, multi-player Internet play of Blizzard games.

Defendants' BNETD server program is not authorized by Blizzard. It violates the express

prohibitions of Blizzard's End User License Agreements (EULAs) and BATTLE.NET[®] Terms of Use. See Exhibits E and F.

44 Unlike the BATTLE.NET[®] service, the BNETD server program does not require players to provide a valid or unique CD Key to verify that they are using a legitimate copy of the Blizzard game. Instead, the BNETD server program circumvents Blizzard's anti-piracy technological measures to allow players to use illicit game copies in an online environment that simulates Blizzard's BATTLE.NET[®] multi-player service. The BNETD server program "tricks" the player's game into "thinking" that the server has conducted certain anti-piracy technological measures, and into continuing its connection to the server even if the player is not using a valid or unique CD Key.

45 Further, the BNETD server program uses an unauthorized copy of Blizzard's proprietary username/password authentication program through which it is able to create, maintain and secure individual player accounts. These accounts are critical to players enjoyment of the multiple player, remote gaming experience over the Internet.

46. On information and belief, Defendants Tim Jung, Ross Combs, Rob Crittenden and Yi Wang, acting in concert, and John Does 1-50 acting in concert with them, co-developed the BNETD server program beginning in or about 1999. On information and belief, Ross Combs and Rob Crittenden were the lead developers who were most active in the development. On information and belief, Internet Gateway, Inc. and Tim Jung provided a repository for this development through the website located at www.bnetd.org, which is hosted by Internet Gateway, Inc. and Tim Jung, and operated by Tim Jung in this judicial district.

47 On information and belief, Defendants Tim Jung, Ross Combs, Rob Crittenden or Yi Wang, acting in concert, or others acting in concert with them, purchased or otherwise obtained copies of Blizzard computer games, such as DIABLO[®] II, STARCRAFT[®].

STARCRRAFT®: BROOD WAR®, or WARCRAFT® II: BATTLE.NET® EDITION. Each such game was subject to a EULA barring disassembly, decompiling or reverse engineering, hosting or matchmaking services or emulation, and commercial use.

48. On information and belief, Defendants Tim Jung, Ross Combs, Rob Crittenden or Yi Wang, acting in concert, or others acting in concert with them, installed one or more Blizzard games on a computer, and the EULA for each such game was presented. On information and belief, Defendants clicked “OK” or “I AGREE” or the like, thus indicating their assent to and entering into one or more of the EULAs attached as Exhibit E (or variations thereof) for each of the games.

49. On information and belief, Defendants Tim Jung, Ross Combs, Rob Crittenden or Yi Wang, acting in concert, or others acting in concert with them, used Blizzard games to log-on to Blizzard’s BATTLE.NET® service, where the BATTLE.NET® Terms of Use were presented. On information and belief, Defendants clicked “AGREE” and thereby indicated agreement to the Terms of Use substantially in the form attached as Exhibit F. This enabled them to proceed to access the BATTLE.NET® gaming environment. Once they gained access to the BATTLE.NET® server, on information and belief, Defendants began to intercept and analyze the messages passing between various Blizzard games and the BATTLE.NET® server as the games were played through the server.

50. On information and belief, in the course of development of the BNETD server program, Defendants Tim Jung, Ross Combs, Rob Crittenden or Yi Wang, acting in concert, or others acting in concert with them, disassembled, decompiled or otherwise reverse engineered portions of the Blizzard game software, and in doing so created a virtually identical copy of Blizzard’s proprietary and copyright-registered username/password authentication software. On information and belief, Defendants used the copy in the BNETD server program.

51 Defendants deliberately copied and incorporated Blizzard's proprietary software, or an unauthorized derivative work thereof, into the BNETD server program to enable the BNETD server program to recognize usernames, encrypted passwords and encrypted CD Keys in the same manner as the BATTLE.NET[®] server. Defendants' copying was so blatant that Defendants included the programming bug from Blizzard's proprietary username/password authentication software directly into the BNETD code. The BNETD program's duplication of this unique code shows wholesale, deliberate and willful copying on Defendants' part.

52. On information and belief, Defendants illegally copied other portions of copyrighted code from Blizzard games and incorporated these portions into the BNETD server program. On information and belief, Defendants' BNETD server program contains copied material that is substantially similar to portions of Blizzard's protected computer code.

53. On information and belief, Defendants Tim Jung, Ross Combs, Rob Crittenden, and Yi Wang, acting in concert, and others acting in concert, intentionally designed the BNETD server program to circumvent Blizzard's technological measures that check for valid, non-duplicate CD Keys before allowing access to Blizzard games in the multiple player, remote Internet gaming environment. The BNETD server software recognizes the CD Key signal that the player's game forwards to the BNETD server, which is necessary to proceed with the log-in routine. This sequence imitates the "secret handshake" used by BATTLE.NET[®] servers. However, unlike BATTLE.NET[®] servers, the BNETD server program then deliberately skips the Log-in CD Key Check for validity of the CD Key and the Duplicate CD Key Check that would be performed by the BATTLE.NET[®] server. Instead, in response to the CD Key signal, the BNETD server always sends an acceptance message to the player's game, regardless of whether the CD Key is invalid or already in use.

54. This circumvention of Blizzard's technological measures enables users of pirated copies of Blizzard games with unauthorized or duplicate CD Keys to gain access to Blizzard games for multiple player, remote play over the Internet, using the BNETD server. On information and belief, Defendants Tim Jung, Ross Combs, Rob Crittenden, Yi Wang, and John Does 1-50 understood that the CD Keys are valuable anti-piracy tools.

55. On information and belief, Defendants could have included some anti-piracy controls in the BNETD server program that would have limited access by users with pirated games, without copying Blizzard's proprietary software. For example, Defendants could have designed the BNETD server program to check for duplicate CD Keys. Defendants chose not to do so.

56. The BNETD server program and emulator servers based on the BNETD program (a) are primarily designed to circumvent Blizzard's technological measures that control access to Blizzard games; (b) have no other significant commercial purpose; and/or (c) are marketed to the gaming public as a known means of circumventing Blizzard's technological measures to control access.

57. Like other developers in the computer games industry, Blizzard specifically protects its valuable games against piracy by designing technological measures to limit multiple player, remote play over the Internet to those who have valid, non-duplicate CD Keys. Defendants' circumvention of Blizzard's technological measures promotes game piracy by allowing players with invalid or duplicate CD Keys to play illicit copies of Blizzard games over the Internet through Defendants' BNETD server program.

58. Until February of 2002, the BNETD server program could be accessed through the BNETD website (www.bnetd.org), hosted by Defendants Internet Gateway, Inc. and Tim Jung. A copy of excerpts of the BNETD website referring to the BNETD server program, as the

site existed on September 23, 2001, and on April 4, 2002, is attached as Exhibit G. The BNETD computer code currently is available to the public at www.SourceForge.net.

59. While the BNETD server program was posted at www.bnetd.org, the BNETD website openly invited others to copy, download and use the BNETD server program, and to host other BNETD sites, for unauthorized Internet play of Blizzard games without anti-piracy protection. On information and belief, Defendants, acting in concert, distributed the BNETD server program to third parties via the Internet. Third parties have operated and presently operate servers using the BNETD server program, or variations thereof, for multiple player, remote play over the Internet of Blizzard games, including a large number of pirated copies of those games. Thus, players with pirated copies of Blizzard games, who do not have a valid, unique CD Key and may be prevented from using infringing game copies through the BATTLE.NET[®] server, are able to use infringing game copies through Defendants' BNETD server and other emulator servers.

60. Some or all Defendants have developed utility programs that facilitate use of the BNETD server program. For example, on information and belief, Defendant Ross Combs wrote a software utility called BNET Selector (BNS) that alters the appearance of Blizzard game software to add an unauthorized link to Defendants' BNETD server or other emulator servers based on the BNETD server program. This unauthorized link is placed on the player's "Gateway Selection" page, and is presented in a manner that is indistinguishable from legitimate Blizzard server selections. See Exhibit H attached hereto (altered "Gateway Selection" page includes "WarForge" link to unauthorized BNETD server); compare Exhibit B (unaltered original "Gateway Selection" page with links only to the authorized BATTLE.NET[®] servers at different locations).

61. The link placed on the Blizzard game by the BNS utility program enables the game to connect to Defendants' BNETD servers or variations thereof, rather than to the legitimate Blizzard BATTLE.NET® servers, while giving the appearance of a link authorized by Blizzard. By altering the "Gateway Selection" page, the BNS utility program creates an unauthorized derivative work and encourages players to connect to Defendants' infringing server software to gain access to pirated copies of Blizzard games for multiple player, remote play over the Internet.

62. Due to Defendants' deliberate posting and encouragement of use, copying and hosting of the BNETD server program, their server program has been repeatedly copied, adapted, used and hosted worldwide. The widespread availability of this program allows for multiple player remote Internet play of pirated Blizzard games and has led to the growth of a huge "black market" for illegal copies of Blizzard games.

63. Pirated copies of Blizzard games are offered over the Internet and widely available on file-sharing networks such as KaZaA (found at www.KaZaA.com). Computer users may gain access to copies of Blizzard games with the click of a button. Blizzard games may be easily copied onto inexpensive CD-ROM media by using widely-available personal CD-ROM burners. It takes only about 10 minutes to copy a computer game onto a CD-ROM.

64. In addition, unscrupulous individuals may illegally pirate Blizzard games even without an illegally copied CD-ROM. These individuals may download illegal utility programs, offered over the Internet, that tricks a computer into behaving as if a Blizzard game CD-ROM is present in the computer's CD-ROM drive, when no CD-ROM is there. On information and belief, an example of such utility programs, known as the D2Loader utility, was developed by defendant Yi Wang and is used to enable individuals to play pirated copies of Blizzard's DIABLO® II games.

65. To play these illegal copies of Blizzard games, some users obtain unauthorized CD Keys that are capable of passing the Installation CD Key Check. These unauthorized CD Keys are illicitly copied from legitimately purchased copies of Blizzard games, or are obtained over the Internet from illegal software programs that generate unauthorized CD Keys.

66. The proliferation of pirated games drains thousands of players away from Blizzard's BATTLE.NET® servers, creates confusion for players, and dissuades consumers from buying legitimate copies of Blizzard games. According to Interactive Digital Software Association (IDSA) estimates, piracy has cost the United States entertainment software industry over \$4 billion in 2001 alone. Piracy can negatively impact future game development, which ultimately hurts consumers.

67. On information and belief, Defendants, acting in concert, through the BNETD website and BNETD server program, have engaged in unauthorized public performance of Blizzard computer games by receiving and retransmitting portions of the Blizzard computer games to end users engaging in multiple player, remote play of Blizzard games over the Internet.

68. On information and belief, Defendants intentionally designed the BNETD server program to copy the look and feel of the BATTLE.NET® service. Defendants' BNETD server program was designed to and does create a gaming experience and visual environment that is virtually identical to and indistinguishable from the BATTLE.NET® gaming experience. The BNETD server program creates confusion in the gaming community because players are led to believe they are playing over the BATTLE.NET® server, when they are not. The BNETD server also hinders Blizzard's ability to provide customer support and technical advice for players, because Blizzard cannot help players who are using a BNETD server. Further, the BNETD server program promotes piracy by making the BATTLE.NET® gaming experience available without checking for invalid or duplicate CD Keys.

69. On information and belief, Defendants, acting in concert, through the BNETD website and BNETD server program, have committed contributory copyright infringement by providing an online, verification-free forum by which end users may make and have made unauthorized public performances of illegally copied Blizzard computer games.

70. Defendants Internet Gateway, Inc. and Tim Jung induced participation in infringement and violation of Blizzard's rights by advertising that Internet Gateway users who are "serious game fanatics" may access any number of game server programs provided by Internet Gateway, Inc., including servers to accommodate play of WARCRAFT®II: BATTLE.NET®EDITION, STARCRAFT®, and STARCRAFT®: BROOD WAR® See Exhibit I.

71. Attached as Exhibit I is a printout of two separate pages from Defendants Internet Gateway, Inc.'s and Tim Jung's website (www.igateway.net) which advertise Internet Gateway's BNETD game servers as an inducement for users to subscribe to Defendant Internet Gateway, Inc.'s ISP services. Defendants Internet Gateway, Inc. and Tim Jung directly profited by providing verification-free BNETD servers to entice users of pirated copies of Blizzard game programs to subscribe to Defendants' ISP services, and are vicariously liable for copyright infringement and violation of Blizzard's rights by end users. Defendants also engaged in these illicit activities to establish personal notoriety and enhance their reputation within the on-line gaming community.

72. Defendants' activities constitute a direct infringement of Blizzard's copyrights because they contribute so substantially to the actions of users of pirated games that Defendants are directly liable for the users' infringing activity.

73. Defendants' illegal copying was not authorized by Blizzard, and was performed without Blizzard's knowledge

74. Defendants' copying was willful.

75. On information and belief, Defendants adopted the name BNETD for the server program and the domain name www.bnetd.org to trade off Blizzard's rights and good will. BNETD is a shortened expression for BATTLE.NET® (also known as BNET) DAEMON. A daemon is a type of program that runs continuously and exists for the purpose of handling periodic service requests that a computer system expects to receive. It is common software industry practice to identify server programs with names that end in "D."

76. On information and belief, Defendants began using the BNETD name in 1999, well after Blizzard had first used its trademark BATTLE.NET®; after the mark has been shortened to BNET; and after the trademark and shortened mark had become famous in the minds of consumers.

77. Defendants used the BNETD name and domain name www.bnetd.org without Blizzard's authorization.

78. Defendants' BNETD name incorporates and is nearly identical in appearance, pronunciation, meaning and overall commercial impression to Blizzard's federally registered BATTLE.NET® mark and the BNET shortened version of Blizzard's mark.

79. On information and belief, consumers who select, purchase and/or use Blizzard's computer games and BATTLE.NET® online gaming service overlap with consumers who use Defendants' BNETD online gaming service.

80. Blizzard's computer games and BATTLE.NET® (BNET) online gaming services are offered in similar channels of trade as Defendants' BNET online gaming services, for example, via the Internet.

81. Defendants' use of BNETD as the name of its server program, and www.bnetd.org as the domain name of the website at which the BNETD server program and

related information has been offered, is likely to cause consumer confusion as to whether Defendants' BNETD server program and online gaming services originate from Blizzard, or are affiliated with or sponsored by Blizzard's BATTLE.NET[®] (BNET) servers and online gaming services.

82. Defendants' creation and dissemination of the BNETD server program with an appearance that is virtually identical to that of Blizzard's BATTLE.NET[®] online gaming services is likely to cause consumer confusion, mistake or deception as to whether Defendants' BNETD server program and online gaming services originate from Blizzard, or are affiliated with or sponsored by Blizzard or its BATTLE.NET[®] services.

83. Defendants' activities have severely impaired and, if allowed to continue, will continue to severely impair the value of Blizzard's BATTLE.NET[®] mark and BNET shortened mark, its trade dress, its online gaming services, its retail sales of proprietary game software, and its related goodwill.

84. Defendants' activities, and its infringement and dilution of Blizzard's rights and unfair competition, are willful and exceptional.

85. On information and belief, Defendants Tim Jung, Ross Combs, Rob Crittenden or Yi Wang, acting in concert, and John Does 1-50, acting in concert, created the BNETD server program for the purpose of hosting or providing matchmaking services for Blizzard games, or for emulating or redirecting the communications protocols used by Blizzard to enable network play of the games over the Internet, or for commercially exploiting the games. Defendants have used the BNETD server program for one or more of those purposes in violation of the EULAs and the BATTLE.NET[®] Terms of Use.

86. Defendants' activities constitute a breach of the EULAs entered into by the Defendants for each of Blizzard's games, such as DIABLO[®] II, STARCRAFT[®],

STARCRRAFT®: BROOD WAR®, and/or WARCRAFT® II: BATTLE.NET® EDITION, and a breach of the BATTLE.NET® Terms of Use.

87. Defendants' copying has violated the anti-disassembling, decompiling or reverse engineering clauses, found in Paragraph 3(A), of each of the EULAs entered into by the Defendants for Blizzard's games, such as DIABLO® II, STARCRRAFT®, STARCRRAFT®, BROOD WAR®, and/or WARCRAFT® II: BATTLE.NET® EDITION, and in the BATTLE.NET® Terms of Use.

88. Defendants' hosting the BNETD server program has violated the no-hosting, matchmaking or emulating clauses, found in Paragraph 3(C)(iii) or 3(C)(iv), of each of the EULAs entered into by the Defendants for Blizzard's games, such as DIABLO® II, STARCRRAFT®, STARCRRAFT®: BROOD WAR®, and/or WARCRAFT® II: BATTLE.NET® EDITION, and in the BATTLE.NET® Terms of Use.

89. Defendants' commercial exploitation of the BNETD server program has violated the no-commercial exploitation clauses, found in Paragraph 3(C)(ii), of each of the EULAs entered into by the Defendants for Blizzard's games, such as DIABLO® II, STARCRRAFT®, STARCRRAFT®: BROOD WAR®, and/or WARCRAFT® II: BATTLE.NET® EDITION, and in the BATTLE.NET® Terms of Use.

90. Blizzard has been damaged as a direct and proximate result of Defendants' actions, and has no adequate remedy at law.

91. On information and belief, unless enjoined, Defendants will resume actively hosting the BNETD server program to enable multiple player, remote play of pirated copies of Blizzard games over the Internet; resume posting the BNETD server program with an invitation to others to create separate emulator sites using the BNETD server program or variations thereof; and will continue to post instructions and other related information on the BNETD website that

assists others in developing, using and hosting the BNETD server program and variations thereof.

92. Defendants' activities establish that Defendants have acted inequitably and, therefore, have unclean hands which preclude them from asserting equitable claims or defenses against Blizzard.

**COUNT I – COPYRIGHT INFRINGEMENT
UNDER THE COPYRIGHT ACT §501(a)**

93. Blizzard repeats and realleges the allegations set forth in each of the above paragraphs.

94. Defendants' actions, as stated above, constitute copyright infringement arising under the Copyright Act, as amended, 17 U.S.C. §101 *et seq.* and particularly §501(a) thereof.

95. Defendants' actions, as stated above, constitute a direct infringement of Blizzard's exclusive right under copyright to reproduce and distribute copies of the copyrighted works, as defined under 17 U.S.C. §106(1) and (3).

96. Defendants' actions, as stated above, constitute a direct infringement of Blizzard's exclusive right under copyright to prepare derivative works based upon the copyrighted works, as defined under 17 U.S.C. §106(2).

97. Defendants' actions, as stated above, constitute a direct infringement of Blizzard's exclusive right under copyright to public performance of the copyrighted works, as defined under 17 U.S.C. §106(4).

98. Defendants' actions, as stated above, constitute a direct infringement of Blizzard's exclusive rights under copyright as defined under 17 U.S.C. §106 by contributing to the infringing activity of end users so substantially as to be directly liable for the end-users' infringing activity.

Defendants' actions, as stated above, constitute contributory copyright infringement of Blizzard's exclusive rights under copyright as defined under 17 U.S.C. §106.

Defendants' actions, as stated above, constitute vicarious infringement of Blizzard's exclusive rights under copyright as defined under 17 U.S.C. §106.

Defendants' actions, as stated above, constitute active inducement of infringement of Blizzard's exclusive rights under copyright as defined under 17 U.S.C. §106.

**COUNT II - CIRCUMVENTION OF COPYRIGHT PROTECTION
SYSTEMS AND TRAFFICKING IN CIRCUMVENTION
TECHNOLOGY UNDER THE COPYRIGHT ACT §1201(a)**

102. Blizzard repeats and realleges the allegations set forth in each of the above paragraphs.

The Installation CD Key Check, Log-on CD Key Check, and Duplicate CD Key Check are technological measures that effectively control access to a copyrighted work. Those technological measures control access to Blizzard games used for multiple player, remote play across the Internet with the ability to create, access, preserve and secure individual player accounts.

The proprietary username/password authentication software is a technological measure that effectively controls access to a copyrighted work, that is, Blizzard games used for multiple player, remote play across the Internet with the ability to create, access, preserve and secure individual player accounts.

105 Defendants' actions, as stated above, constitute direct circumvention of a technological measure that effectively controls access to a copyright work in violation of Section 1201(a)(1)(A) of the Copyright Act, as amended, 17 U.S.C. §1201(a)(1)(A).

106. Defendants' actions, as stated above, constitute direct offering to the public, providing or otherwise trafficking in technology that is primarily designed or produced for the

