

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.

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**MOTION PICTURE STUDIO DEFENDANTS'**

## STATEMENT CLARIFYING CLAIMS

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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

material incorporated in these derivative works is the creative expression embodied in the Studios' copyrighted films. The infringing derivative works are "similar" to the copyrighted originals in that, with the exception of the alterations made by the Mechanical Editing Parties, the works consist entirely of the Studios' copyrighted material. The unauthorized derivative works created by the Mechanical Editing Parties are fixed, *inter alia*, in the VHS videocassettes and DVDs distributed, sold and rented by the Mechanical Editing Parties.

Based upon the Studios' current knowledge and understanding of the various Electronic Editing Parties' products or services, the unauthorized derivative works created by the Electronic Editing Parties include, without limitation, (1) the edited version (or versions) of a Studio's film which is created by the Electronic Editing Parties based upon the Studios' copyrighted 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 copyrighted material incorporated in these derivative works is the creative expression embodied in the Studios' copyrighted films.

With respect to the edited version (or versions) of a Studio's film which is created by the Electronic Editing Parties, the infringing derivative works are "similar" to the copyrighted originals in that, with the exception of the alterations made by the Electronic Editing Parties, the works consist entirely of the Studios' copyrighted material. With respect to the Electronic Editing Parties' film-specific software files or products, the infringing derivative works are "similar" to the copyrighted originals in that they are, without limitation, based upon, copied from and/or solely have use or purpose with respect to each of the Studios' individual

copyrighted films. The infringing derivative works are “fixed” in the Electronic Editing Parties’ film-specific software files, programs or products.

The foregoing response is made without the Studios adopting any position or making any admission or implication regarding whether there is any requirement under copyright law that in order to be deemed a “derivative work” a new work must either (1) incorporate any copyrighted material from the original work, (2) be similar to a copyrighted original work, or (3) be “fixed.”

**Question 5. Do you claim that the image a consumer sees when utilizing plaintiffs’ and counterclaim-defendants’ products constitutes an infringing derivative work?**

Yes, the unauthorized edited version of a Studio’s film (including all incorporated images) which a consumer views while utilizing either the Mechanical Editing Parties’ or the Electronic Editing Parties’ products is an infringing derivative work.

**Question 6. Please explain whether ordinary consumer users of plaintiffs’ and counterclaim-defendants’ products participate in the making of any alleged derivative works.**

Based upon the Studios’ current knowledge and understanding of the various Mechanical Editing Parties’ products or services, the Studios do not claim in this action that the ordinary consumer users of the Mechanical Editing Parties’ products participate in the making of any derivative works. The infringing derivative works are made by the Mechanical Editing

Parties. The consumer employs the Mechanical Editing Parties' products to view the unauthorized edited version of a Studio's film created by the Mechanical Editing Parties.

Based upon the Studios' current knowledge and understanding of the various Electronic Editing Parties' products or services, the Studios do not claim in this action that the ordinary consumer users of the Electronic Editing Parties' products participate in the making of any derivative works. The infringing derivative works are made by the Electronic Editing Parties. The consumer employs the Electronic Editing Parties' products, together with a DVD or VHS videocassette containing a copy of a Studio's film, to view the unauthorized edited version (or versions) of a Studio's film created by the Electronic Editing Parties.

**Question 7. Please describe how many non-identical versions exist of each motion picture and the circumstances surrounding the creation, distribution, or exhibition of each non-identical version.**

This question entails detailed factual information and is beyond the scope of the legal clarification statement directed by the Court. Subject to the foregoing, the Studios state: While it varies among Studios, generally speaking, in the United States each Studio distributes versions of some of its films for use by, among others, airlines, network television and syndicated television broadcasters which are edited to meet certain criteria such as ratings, censorship, time, and standards and practices.

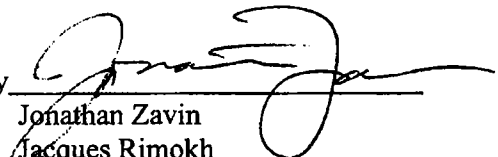
**Question 8. Please describe what focus groups, test audiences, or surveys were used with respect to each film before its release into national theatrical exhibition.**

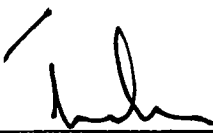
This question entails detailed factual information specific to each of more than 500 films and is beyond the scope of the legal clarification statement directed by the Court.

**Question 9. Please describe what differences exist in each film between the first version submitted for rating review and the version released into national theatrical exhibition.**

This question entails detailed factual information specific to each of more than 500 films and is beyond the scope of the legal clarification statement directed by the Court.

Respectfully submitted this 11<sup>th</sup> day of March, 2003,

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Attorneys for Studio Co-defendants/Counterclaimants/Counterclaim defendants

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**CERTIFICATE OF SERVICE**

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I hereby certify that on this 14<sup>th</sup> day of March, 2003, a true and correct copy of the foregoing **MOTION PICTURE STUDIO DEFENDANTS' STATEMENT CLARIFYING CLAIMS** was placed in the United States mail, postage prepaid, correctly addressed to the following:

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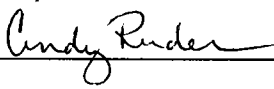
Additionally, a copy of the foregoing also was sent by Federal Express delivery to the Counterclaim Defendants Family Safe Media and EditMyMovies at the following address:

Jared Martin  
Family Safe Movies & EditMyMovies

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03/11/2003

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