

1 ROBERT M. SCHWARTZ (Cal. Bar No. 117166)
MARK A. SNYDER (Cal. Bar. No. 167226)
2 O'MELVENY & MYERS LLP
1999 Avenue of the Stars, 7th Floor
3 Los Angeles, California 90067-6035
Telephone: (310) 553-6700
4 Facsimile: (310) 246-6779

5 RONALD L. KLAIN
GOODWIN LIU
6 O'MELVENY & MYERS LLP
555 13th Street, N.W., Suite 500 West
7 Washington, DC 20004-1109
Telephone: (202) 383-5300
8 Facsimile: (202) 383-5414

9 Attorneys for Plaintiffs

10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13
14 TIME WARNER ENTERTAINMENT
COMPANY, L.P., a Delaware limited
15 partnership; HOME BOX OFFICE, a
division thereof; WARNER BROS., a
16 division thereof; WARNER BROS.
TELEVISION, a division thereof;
17 TIME WARNER INC., a Delaware
corporation; TURNER
18 BROADCASTING SYSTEM, INC., a
Georgia corporation; NEW LINE
19 CINEMA CORPORATION, a
Delaware corporation; CASTLE
20 ROCK ENTERTAINMENT, a
California general partnership; and
21 THE WB TELEVISION NETWORK
PARTNERS L.P., a California limited
22 partnership d/b/a The WB Television
Network,

23 Plaintiffs,

24 v.

25 REPLAYTV, INC., a Delaware
26 corporation; and SONICblue Inc., a
Delaware corporation,

27 Defendants.
28

Case No.

COMPLAINT FOR:

1. **CONTRIBUTORY
COPYRIGHT INFRINGEMENT**
2. **VICARIOUS COPYRIGHT
INFRINGEMENT**
3. **UNFAIR BUSINESS
PRACTICES IN VIOLATION
OF CALIFORNIA BUSINESS
AND PROFESSIONS CODE
SECTION 17200**
4. **DECLARATORY RELIEF**

1 Plaintiffs Time Warner Entertainment Company, L.P., Home Box Office,
2 Warner Bros., Warner Bros. Television, Time Warner Inc., Turner Broadcasting
3 System, Inc., New Line Cinema Corporation, Castle Rock Entertainment, and The
4 WB Television Network Partners L.P. (collectively, "Plaintiffs"), for their
5 Complaint against Defendants ReplayTV, Inc. and SONICblue Inc. (collectively,
6 "Defendants"), allege and aver as follows:

7 **JURISDICTION AND VENUE**

8 1. Plaintiffs assert claims against Defendants arising under the Copyright
9 Act of 1976, as amended, 17 U.S.C. § 101 *et seq.*, California common law, and
10 California Business and Professions Code section 17200. This Court has original
11 subject matter jurisdiction over Plaintiffs' federal claims pursuant to 28 U.S.C.
12 §§ 1331 and 1338(a), and supplemental subject matter jurisdiction over Plaintiffs'
13 state law claims pursuant to 28 U.S.C. § 1367(a).

14 2. This Court has specific personal jurisdiction over all of the Defendants
15 as each has purposefully committed, within the state, the acts from which these
16 claims arise and/or has committed unlawful acts outside California, knowing and
17 intending that such acts would cause injury within the state. The Court also has
18 general personal jurisdiction over Defendants as each conducts continuous,
19 systematic, and routine business within this state and county.

20 3. Venue is proper in the United States District Court for the Central
21 District of California pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(a).

22 **NATURE OF THE CASE**

23 4. Plaintiffs create and distribute some of the most sought-after and
24 valuable intellectual property in the world. That intellectual property includes
25 copyrighted motion pictures and television programs produced by Warner Bros.,
26 New Line Cinema, and Castle Rock Entertainment. It includes the CNN, CNN
27 Headline News, TBS, and TNT cable television services. It includes The WB
28 Television Network. And it includes the HBO premium pay television channel.

1 That content is made available to millions of Americans via broadcast, satellite, and
2 cable television transmissions, on premium cable channels, via pay-per-view
3 performances, and through viewing videocassette and DVD copies of such content.

4 5. Plaintiffs bring this action to obtain preliminary and permanent
5 injunctive relief against Defendants for their contributory and vicarious
6 infringement of Plaintiffs' copyrighted works and their unfair business practices.
7 Defendants have designed and manufactured – and are currently advertising,
8 promoting, offering for sale, and accepting purchase orders for – a device that
9 illegally copies Plaintiffs' copyrighted works, strips them of commercial
10 advertisements during playback, and distributes them over the Internet to others.
11 On information and belief, Defendants not only manufacture and sell the device,
12 they intend to maintain a permanent, continuous relationship with their customers'
13 devices. After the device is installed, it will communicate with Defendants every
14 day so that Defendants can tell its customers what programs are available for
15 copying and so that Defendants can encourage, assist, induce, cause, materially
16 contribute to, supervise, and/or control the infringing conduct of the users of
17 Defendants' device.

18 6. The subject of this case is Defendants' personal video recorder
19 ("PVR"), and Defendants' post-sale interaction with it, known as the "ReplayTV
20 4000." (A true and correct copy of information regarding the unit as it appears on
21 Defendants' website is attached hereto as Exhibit A.) In contrast to conventional
22 videocassette recorders ("VCRs") or other PVR systems, the ReplayTV 4000 goes
23 far beyond traditional home recording technology in ways that lie outside the scope
24 of the defense potentially accorded such technologies by *Sony Corp. of America v.*
25 *Universal City Studios*, 464 U.S. 417 (1984) (the Betamax case), and that clearly
26 violate the rights of copyright owners. Defendants' ReplayTV 4000: (a) takes
27 television signals that carry Plaintiffs' content, including cable, satellite, and pay-
28 per-view signals, and converts them into unauthorized digital copies of Plaintiffs'

1 copyrighted works; (b) can automatically delete all commercials from such copies
2 of Plaintiffs' television programming during playback; (c) creates libraries, indexed
3 and stored on the device, containing up to 320 hours of those works, and
4 (d) distributes copies of those works over the Internet to others. In so doing, it
5 deprives Plaintiffs of the revenue streams to which they are entitled and the
6 economic value of their intellectual property. Further, the removal of commercial
7 messages by itself robs the advertisers of the value of their purchase of advertising
8 time, depresses the value of such advertising time, and undermines the economic
9 models by which television programming is provided to consumers free of direct
10 charge (in the case of broadcast television) or at a cost lower than it would be
11 absent the revenues paid by advertisers (in the case of basic cable television).

12 7. Defendants' conduct threatens to cause extraordinary and continuous
13 harm to Plaintiffs' businesses in the future. Unless enjoined, Defendants'
14 distribution of the ReplayTV 4000 devices and their active facilitation of the use of
15 those devices to illegally copy and distribute Plaintiffs' copyrighted works will
16 result in significant financial loss and irreparable injury to Plaintiffs.

17 8. Defendant Replay TV, Inc.'s conduct also constitutes a breach of a
18 July 1999 license agreement between Replay Networks, Inc. (now known as
19 ReplayTV, Inc.) and Plaintiffs Time Warner Inc. and Turner Broadcasting System,
20 Inc. that, *inter alia*, prohibits ReplayTV from offering and interacting with products
21 that include the ReplayTV 4000's infringing features, as alleged below.

22 **THE PARTIES**

23 9. Plaintiff Time Warner Entertainment Company, L.P. ("TWE") is a
24 Delaware limited partnership, with its principal place of business in New York,
25 New York. Among many other things, it is involved in all aspects of motion
26 picture and television production and distribution and the operation of television
27 networks and cable television channels and program services.
28

1 10. Plaintiff Home Box Office (“HBO”) is a division of TWE. HBO is a
2 “pay” or “subscription” cable and satellite service. Programming that HBO
3 provides to its subscribers for a monthly fee includes original programs produced
4 by HBO (e.g., episodic series, miniseries, and movies) and movies produced by
5 other entities that typically (but not necessarily) were exhibited in movie theaters
6 before being shown on HBO. It owns the copyrights to programs such as *The*
7 *Sopranos*, *Sex and the City*, and *Band of Brothers*. HBO also operates other cable
8 services, including HBO Family, HBO Comedy and HBO Latino.

9 11. Plaintiff Warner Bros. is a division of TWE. It is involved in the
10 production, distribution, exhibition, and licensing of motion pictures. It owns the
11 copyrights to such movies as *Batman*, *The Matrix*, and the upcoming *Harry Potter*
12 *& The Sorcerer’s Stone*.

13 12. Plaintiff Warner Bros. Television is a division of TWE. It is involved
14 in the production, distribution, and licensing of television programs. It owns the
15 copyrights to many episodes of television series telecast by United States television
16 networks and individual stations, including such series as *ER*, *The West Wing*,
17 *Friends*, and *The Drew Carey Show*.

18 13. Plaintiff Time Warner Inc. (“TWI”) is a Delaware corporation with its
19 principal place of business in New York, New York. TWI is an affiliate of TWE.

20 14. Plaintiff Turner Broadcasting System, Inc. (“Turner Broadcasting”) is
21 a Georgia corporation with its principal place of business in Atlanta, Georgia. It is
22 a major producer of news and entertainment programs and the leading provider of
23 programming for the basic cable industry. It owns cable networks and program
24 services, such as TBS, TNT, Cartoon Network, Turner Classic Movies, and the
25 various CNN networks (such as CNN, CNN Headline News, CNNfn, and CNN SI).
26 Turner Broadcasting owns the copyrights to programs such as *The Powerpuff Girls*
27 and *Dexter’s Laboratory*, movies produced by Turner Broadcasting (such as
28

1 *Pirates of Silicon Valley* and *Running Mates*), and movies produced by others (such
2 as *Gone With the Wind*, *The Wizard of Oz*, and *Dr. Zhivago*).

3 15. Plaintiff New Line Cinema Corporation is a Delaware corporation with
4 its principal place of business in Los Angeles, California. It is involved in the
5 production, distribution, exhibition, and licensing of motion pictures and television
6 programs. It owns the copyrights to such movies as *Rush Hour*, *Austin Powers:*
7 *International Man of Mystery*, and the upcoming *Lord of the Rings* trilogy.

8 16. Plaintiff Castle Rock Entertainment is a California general partnership
9 with its principal place of business in Beverly Hills, California. It is involved in the
10 production, distribution, exhibition, and licensing of motion pictures and television
11 programs. It owns the copyrights to such movies as *When Harry Met Sally*, *A Few*
12 *Good Men*, *The Shawshank Redemption*, and *The Green Mile*.

13 17. Plaintiff The WB Television Network Partners L.P. (“The WB
14 Television Network”) is a California limited partnership d/b/a The WB Television
15 Network. WB Communications, the General Partner, is a division of TWE. The
16 WB Television Network is involved in the production, distribution, and broadcast
17 of television programs.

18 18. Collectively, Plaintiffs are the legal or beneficial owners of numerous
19 United States copyrights in and to a substantial amount of television programs and
20 movies currently available through United States broadcast, satellite, and cable
21 television channels. Plaintiffs have registered these copyrights with the Copyright
22 Office and possess valid registrations for each copyrighted motion picture and
23 television program on which this lawsuit is based. Attached hereto as Exhibit B is a
24 schedule of illustrative copyright registrations for certain of Plaintiffs’ works, or
25 works to which Plaintiffs hold exclusive distribution rights thereto, susceptible to
26 infringement by Defendants’ ReplayTV 4000 system.

27 19. Upon information and belief, Defendant ReplayTV, Inc. (“Replay”) is
28 a Delaware corporation with its principal place of business in Santa Clara,

1 California. Replay was formerly known as Replay Networks, Inc. According to
2 documents publicly filed by Defendant SONICblue Inc. (“SONICblue”), Replay is
3 a wholly owned subsidiary of SONICblue. Replay has developed and is marketing
4 and offering for sale the ReplayTV 4000 and intends to continuously facilitate its
5 use through, among other things, electronic program guides and related recording
6 instructions that it transmits every night to every ReplayTV unit.

7 20. Upon information and belief, Defendant SONICblue is a Delaware
8 corporation with its principal place of business in Santa Clara, California.
9 SONICblue is the parent company of Replay. SONICblue promotes and markets
10 the ReplayTV 4000, including through promotions on its own website, and
11 continuously facilitates its use.

12 **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

13 **The Economics of Creating and Distributing Programming Content**

14 21. Plaintiffs invest billions of dollars each year to create and deliver
15 motion pictures, television series, news, sports, and other programming content to
16 the public. To encourage Plaintiffs and others to create these works, the law
17 permits Plaintiffs, as the owners of the copyrights, to control how, where, when,
18 and on what terms they make their works available for the public to view.

19 22. Plaintiffs’ works are made available through various forms of
20 distribution, including, but not limited to, by means of television exhibition.
21 Currently, television exhibition generally occurs through: (a) free, over-the-air
22 broadcasts, whether on national networks or individual television stations in local
23 markets; (b) exhibition on basic cable channels (e.g., TBS or TNT); (c) premium
24 pay television program services (e.g., HBO); and (d) various forms of pay-per-view
25 and video on demand. Plaintiffs’ works also are made available through other
26 means of distribution, such as through videocassette and DVD sales and rentals for
27 home viewing. Plaintiffs receive compensation for the use of their works in each
28 form of distribution, whether by direct payments from consumers or retailers (e.g.,

1 video stores), through licenses with television stations, television networks, or cable
2 and satellite television channels and system operators, or through payments by
3 advertisers.

4 a. Free, Over-the-Air Broadcasts. Over-the-air broadcasting occurs
5 through television networks such as CBS, NBC, ABC, Fox, and The WB
6 Television Network (and stations affiliated with them), and hundreds of
7 local, independent terrestrial broadcast stations around the country. Free,
8 over-the-air television networks and local stations both create and license
9 copyrighted content – largely entertainment, news, and sports programming –
10 on which the public has come to rely for information and entertainment.
11 Broadcast television networks and local stations account for a large
12 percentage of all television viewing in the United States. The creation and
13 acquisition of the copyrighted content that has come to define free, over-the-
14 air broadcasting is made possible through commercial advertisements that are
15 inserted in or adjacent to each program. Virtually the sole means of payment
16 for such copyrighted content is revenue from advertisers who pay for these
17 commercials.

18 b. Basic Cable Channels. Another method for television distribution
19 is through controlled access via so-called “basic” non-broadcast channels
20 such as CNN, TBS, TNT and Cartoon Network. The sale of commercial
21 time to advertisers and the collection of fees from distributors such as cable
22 systems and satellite carriers (who in turn receive monthly fees paid by
23 subscribers to their services) are among the principal means by which such
24 channels finance the creation of their original works and other programming.

25 c. Premium Pay Television Program Services. Programming is also
26 distributed to the public via premium pay television program services such as
27 HBO. These services, which are available to subscribers to cable, satellite,
28 and other multi-channel video distribution systems, are typically made

1 available to consumers for a monthly fee. Premium services offer original
2 programming, theatrical motion pictures, or both, all without commercial
3 interruption – but only to those who have paid the subscription fee.
4 Subscription fees are the means by which the copyright owners are paid for
5 licensing their works to these services.

6 d. Pay-Per-View and Video On Demand. In recent years, more and
7 more television programming has been transmitted for viewing by the public
8 through some form of video on demand. The various forms of video on
9 demand include, among others, pay-per-view delivery (in which a viewer
10 obtains one-time access to a particular program, such as a feature film, a live
11 boxing event, or a concert, in return for payment of a fee for that access),
12 video on demand (in which a viewer can choose to watch a particular
13 program at any time of the viewer's choosing, also in return for payment of a
14 fee for that access), and near video on demand (in which a viewer can choose
15 to watch a particular program at one of several times offered by the program
16 distributor, also in return for payment of a fee for that access).

17 e. Home Video Exhibition. Many of the Plaintiffs herein also
18 distribute their works via sales of videocassettes and DVDs directly to
19 consumers or to retailers who then sell or rent those videocassettes and
20 DVDs to the public. Each year, millions of Americans watch the copyrighted
21 works of these Plaintiffs and of other persons by playing such videocassette
22 or DVD copies of those works. The sale of videocassettes and DVDs to
23 consumers and retailers by copyright owners (such as many of the Plaintiffs
24 herein) yields substantial revenues to such copyright owners.

25 23. By not obtaining Plaintiffs' permission or compensating Plaintiffs for
26 the uses of Plaintiffs' works by Defendants' ReplayTV 4000 customers, Defendants
27 will undermine each of these forms of distribution and the means by which
28 Plaintiffs are compensated for the public's viewing and enjoyment of their works.

1 The value of – and hence the incentive for Plaintiffs to create – expressive works
2 will be eroded.

3 **The ReplayTV 4000**

4 24. Defendants’ ReplayTV 4000 is a device and system for making and
5 distributing digital copies of television programming. It contains, among other
6 things, a central data processing unit, a mechanism for communicating with
7 Defendants’ central servers, and a hard drive with substantial storage capacity.

8 25. The ReplayTV 4000 goes far beyond traditional home recording
9 technology in ways that clearly violate Plaintiffs’ copyrights. As shown by the
10 examples described below, the ReplayTV 4000 enables Defendants’ customers to
11 infringe Plaintiffs’ copyrights intentionally and flagrantly.

12 **“Send Show”**

13 26. The ReplayTV 4000 includes a function called “Send Show,” which
14 Defendants also refer to on their website as “Video Sharing Over the Internet” or
15 “Send Show Over the Internet.” This feature allows a user who has made a copy of
16 a copyrighted motion picture or television program on a ReplayTV 4000 unit to
17 distribute it to third parties who also own ReplayTV 4000 units. Defendants assure
18 their customers that using the ReplayTV 4000 to engage in the unauthorized
19 distribution of copies of Plaintiffs’ works will be effortless: “[W]ith its broadband
20 connectivity, sending and receiving programs [with the ReplayTV 4000] is a
21 breeze.”

22 27. On information and belief, the transfer of such copies is to be
23 accomplished by means of a central server, file transfer protocol, and compression
24 and encryption algorithms designed and operated by Defendants. On Defendants’
25 server, Defendants will maintain a list of active ReplayTV 4000 owners which
26 other users will access to facilitate the unauthorized distribution of unauthorized
27 copies of Plaintiffs’ copyrighted works. Defendants’ “Send Show” feature is
28 designed so as to facilitate the infringement of Plaintiffs’ rights in all types of

1 programming, from over-the-air broadcast programs to basic, premium, and pay-
2 per-view non-broadcast offerings. For example – with Defendants’ explicit
3 encouragement and instruction – a ReplayTV 4000 owner who pays for a monthly
4 HBO subscription can record a motion picture exhibited on HBO (such as *Almost*
5 *Famous*, which will debut later this month) and use Defendants’ “Send Show”
6 feature to reproduce and distribute a digital copy of the movie to third parties who
7 also own a ReplayTV 4000, even though none of those third parties subscribes to
8 HBO or has purchased or rented a DVD or VHS copy of the movie. Similarly,
9 ReplayTV 4000 users can record HBO’s exclusive programming (such as *The*
10 *Sopranos* or a particular musical concert) and distribute a copy of such
11 programming to ReplayTV owners who are not HBO subscribers and who have not
12 paid anything to receive HBO programming. Defendants have specifically
13 designed and are actively marketing the ReplayTV 4000 to make it easy to commit
14 such acts of copyright infringement.

15 **“PC Connectivity”**

16 28. Labeled on Defendants’ website as its “PC Connectivity” feature, the
17 ReplayTV 4000 has numerous output connections capable of transferring image
18 files to and from the device to a personal computer. Such transfers may also permit
19 transfer of stored audiovisual works, such as Plaintiffs’ copyrighted works, to the
20 users’ personal computers. From there, such infringing copies could be
21 redistributed to others (including persons who are not ReplayTV 4000 users) on an
22 unlimited basis. Absent some control or disabling of these outputs, the prospect of
23 widespread unauthorized distribution of Plaintiffs’ copyrighted works is substantial.

24 **“AutoSkip”**

25 29. The ReplayTV 4000’s “AutoSkip” feature (which Defendants also
26 describe on their website as “Commercial Advance”) permits viewers, in
27 Defendants’ own words, “to watch recorded programs totally commercial-free.”
28 Plaintiffs are informed and believe that, to deliver “commercial-free” television

1 viewing, the ReplayTV 4000 instantly reads ahead on the data file to skip the
2 commercial messages. To the viewer, this process is imperceptible. On
3 information and belief, Defendants expect the “AutoSkip” feature to be used
4 routinely. For example, their website says, “You’ll still have the choice to watch
5 recorded shows with the commercials, *if you really want to.*” (Emphasis added.)

6 **Defendants’ Post-Purchase Involvement in Infringing Acts**

7 30. Not only do the “Send Show,” “PC Connectivity,” and “AutoSkip”
8 features themselves enable users to infringe Plaintiffs’ copyrights, but Defendants’
9 continuous, direct involvement with their customers well after the sale of each
10 ReplayTV 4000 unit is inextricably intertwined with that infringing activity:

11 a. Defendants will maintain a data link to each unit. On a daily basis,
12 each unit will initiate contact with, and connect to, a computer server
13 operated by Defendants.

14 b. Using that connection, Defendants will gather data from each unit
15 regarding that customer’s recording and viewing behavior and preferences,
16 and then download data to enable the unit to, among other things, display on-
17 screen program guides and make copies of Plaintiffs’ copyrighted works. In
18 addition, Defendants will be able to compile this highly valuable information
19 about its users’ recording and viewing behavior and preferences and sell it to
20 advertisers and others.

21 c. Defendants will have the ability, from their own facilities, to update
22 and overwrite the software installed on their customers’ devices, which
23 ability will permit Defendants to add features to those devices, or remove
24 features from them.

25 d. To enable ReplayTV 4000 users to distribute digital copies of
26 Plaintiffs’ works to others using the “Send Show” feature, at a minimum,
27 Defendants will have to maintain a server to permit its customers to obtain a
28 unique address or other identifying information for each unit (which can then

1 be provided to other ReplayTV 4000 users), a file transfer protocol, and
2 compression and encryption algorithms.

3 **ReplayTV Inc.'s Breach of Contract**

4 31. Plaintiffs Turner Broadcasting and TWI are parties to a contract dated
5 July 30, 1999 with Replay Networks, Inc., now known as Defendant ReplayTV,
6 Inc. (the "Replay Network Agreement"). The terms of the Replay Network
7 Agreement are incorporated herein by reference as if set forth in full. (A copy of
8 the agreement will be filed with the Clerk under seal upon the entry of an
9 appropriate protective order). Pursuant to the Replay Network Agreement, Turner
10 Broadcasting granted to Replay Networks, Inc. a non-exclusive license to certain of
11 its programming and content for distribution through the ReplayTV platform and
12 the Replay Network Service for a term commencing as of July 30, 1999 and
13 expiring on July 29, 2002, unless earlier terminated.

14 32. The Replay Network Agreement provides, among other things, that
15 Replay may "not make any alterations, modifications, additions, or deletions ... to
16 any of the Turner Networks [as defined in the agreement], the Turner Content [as
17 defined in the agreement] ... or to any programming on the Turner Networks or any
18 Turner Content ... except with the prior approval of Turner in its absolute
19 discretion." These restrictions and approval rights are material terms of the
20 agreement and, as provided in the agreement, survive any termination or expiration
21 thereof. Contrary to the terms of the Replay Network Agreement, the ReplayTV
22 Model 4000 permits users to delete commercial advertisements from the content
23 licensed pursuant to the Replay Network Agreement. Turner Broadcasting has not
24 been asked to approve such a feature and has not given any approval for such a
25 feature.

26 33. The Replay Network Agreement also states that Replay intended to
27 develop a method for inserting advertising or promotional spots in the "pause" time
28 that is created through the Replay Network Service and that Replay Networks, Inc.

1 and Turner Broadcasting would share the advertising revenue generated from sale
2 of “pause” time inventory on any Turner Content or any portion of a Turner
3 Network, but that all “pause” time advertisements and promotions on any Turner
4 Content or any portion of any Turner Network would be subject to Turner
5 Broadcasting’s approval. This approval right is a material term of the agreement.
6 Upon information and belief, Replay has developed and deployed a method for
7 inserting commercial messages during the “pause” time created through the Replay
8 Network Service when Turner Content has been recorded, although Replay has not
9 requested or obtained prior approval from Turner Broadcasting.

10 34. The Replay Network Agreement also requires Turner Broadcasting’s
11 agreement to develop service offerings in addition to those specified in the Replay
12 Network Agreement. This requirement is a material term of the agreement. The
13 ReplayTV 4000 contains several such additional service offerings, including but
14 not limited to the “Send Show” feature, even though Turner Broadcasting has had
15 no involvement in the development of such additional service offerings and has not
16 agreed to their inclusion in the ReplayTV 4000.

17 35. On November 6, 2001, Plaintiffs Turner Broadcasting and TWI
18 notified Defendants that they intended to terminate the Replay Network Agreement
19 in accordance with its terms as a result of Replay’s breaches of material terms of
20 the agreement.

21 **FIRST CLAIM FOR RELIEF**

22 **Contributory Copyright Infringement**

23 **(Under 17 U.S.C. § 101 *et seq.*, against all Defendants)**

24 36. Plaintiffs reallege the allegations contained in paragraphs 1 through 35
25 of this Complaint as though fully set forth herein.

26 37. Defendants are encouraging, assisting, inducing, causing, and/or
27 materially contributing to a vast number of actual or imminent copyright
28 infringements of Plaintiffs’ works by users of the ReplayTV 4000 in violation of 17

1 U.S.C. §§ 106 and 501. Such acts of copyright infringement include the actual or
2 imminent unauthorized copying and/or distribution of Plaintiffs' works.

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

7 39. The unauthorized copying and distribution of Plaintiffs' copyrighted
8 works that Defendants encourage, assist, induce, cause and/or materially contribute
9 to through the conduct described above is without Plaintiffs' consent and not
10 otherwise permissible under the Copyright Act.

11 40. The foregoing acts of infringement by Defendants have been willful,
12 intentional, purposeful, and with indifference to Plaintiffs' rights.

13 41. Defendants' conduct is causing and, unless enjoined and restrained by
14 this Court, will continue to cause Plaintiffs great, irreparable injury that cannot fully
15 be compensated or measured in money. Plaintiffs have no adequate remedy at law.

16 **SECOND CLAIM FOR RELIEF**

17 **Vicarious Copyright Infringement**

18 **(Under 17 U.S.C. § 101 *et seq.*, against all Defendants)**

19 42. Plaintiffs reallege the allegations contained in paragraphs 1 through 35
20 of this Complaint as though fully set forth herein.

21 43. Defendants have the right and ability to supervise and/or control the
22 infringing conduct of users of the ReplayTV 4000. Defendants have the particular
23 right and ability to supervise and/or control such activity as it pertains to the
24 unauthorized copying and distribution of Plaintiffs' copyrighted works by
25 ReplayTV 4000 users.

26 44. Defendants' regular involvement is an indispensable link in their
27 customers' infringing conduct. Although Defendants could have designed the
28 ReplayTV 4000 so as to prevent the making of unauthorized digital copies and the

1 unauthorized distribution of Plaintiffs' copyrighted works, instead they specifically
2 designed the ReplayTV 4000 (and planned their ongoing communication with and
3 assistance to their customers) to facilitate the digital copying and distribution of
4 such copyrighted works. Although Defendants could have sought licenses from
5 Plaintiffs to make such uses of these works (and thereby compensated Plaintiffs for
6 the use of these works and any injury to them resulting from use of the ReplayTV
7 4000), instead they chose not to.

8 45. Defendants have a direct financial interest in the infringements of
9 Plaintiffs' copyrights by their customers. Defendants' economic success is directly
10 tied to the popularity of the infringing conduct that they seek to encourage. For
11 example, the Defendants have candidly admitted that the ReplayTV 4000 is
12 designed to enable users to copy a massive volume of programs – up to 320 hours'
13 worth – and view them without the commercials, and that the ReplayTV 4000 is
14 designed to enable users to distribute digital copies of entire copyrighted works to
15 others – all without permission of the copyright owner. These new infringing
16 capabilities of the ReplayTV 4000 are among Defendants' principal selling points.

17 46. Defendants' conduct constitutes vicarious infringement of Plaintiffs'
18 copyrights and exclusive rights under copyright in violation of 17 U.S.C. §§ 106
19 and 501.

20 47. The foregoing acts of infringement by Defendants have been willful,
21 intentional, purposeful, and with indifference to Plaintiffs' rights.

22 48. Defendants' conduct is causing and, unless enjoined and restrained by
23 this Court, will continue to cause Plaintiffs great, irreparable injury that cannot fully
24 be compensated or measured in money. Plaintiffs have no adequate remedy at law.
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THIRD CLAIM FOR RELIEF
Unfair Business Practices in Violation
of California Business and Professions Code Section 17200
(Against all Defendants)

49. Plaintiffs reallege the allegations contained in paragraphs 1 through 35 of this Complaint as though fully set forth herein.

50. Defendants actions discussed herein constitute unfair and/or unlawful business acts and/or practices within the meaning of California Business and Professions Code section 17200.

51. Pursuant to California Business and Professions Code section 17203, Plaintiffs are entitled to preliminary and permanent injunctive relief ordering Defendants to cease these unfair and/or unlawful business acts and/or practices.

FOURTH CLAIM FOR RELIEF
Declaratory Relief
(Against Defendant ReplayTV, Inc.)

52. Plaintiffs reallege the allegations contained in paragraphs 1 through 35 of this Complaint as though fully set forth herein.

53. In light of Defendant Replay’s conduct, pursuant to the Replay Network Agreement, Plaintiffs Turner Broadcasting and TWI have the right to terminate the Replay Network Agreement in accordance with its terms. Plaintiffs Turner Broadcasting and TWI have notified Replay of their intent to terminate the agreement. Upon termination of the agreement, Defendant Replay will have no further rights to use any Turner Content (as defined in the Replay Network Agreement), but Replay will not be relieved of any of its post-termination obligations with respect to the Replay Network Agreement, including the prohibition against making any “alterations, modifications, additions, or deletions ... to any of the Turner Networks, the Turner Content ... or to any programming on

1 the Turner Networks or any Turner Content ... except with the prior approval of
2 Turner in its absolute discretion.”

3 54. An actual controversy has arisen and now exists between Plaintiffs
4 Turner Broadcasting and TWI and Defendant Replay, and each of them, regarding
5 their respective rights and duties under the Replay Network Agreement,
6 specifically, whether: (a) Plaintiffs Turner Broadcasting and TWI have the right to
7 terminate the Replay Network Agreement; and (b) Defendant Replay is obligated to
8 fulfill its post-termination obligations.

9 55. Plaintiffs Turner Broadcasting and TWI desire a judicial determination
10 and declaration of the parties’ rights and duties under the Replay Network
11 Agreement. Such a determination is necessary and appropriate at this time in order
12 that Plaintiffs Turner Broadcasting and TWI may ascertain whether they have the
13 right to terminate the Replay Network Agreement. Plaintiffs Turner Broadcasting
14 and TWI desire a judicial determination and declaration in order that they may
15 ascertain whether Defendant Replay is relieved of any of its post-termination
16 obligations with respect to the Replay Network Agreement.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor
19 and against Defendants and each of them as follows:

20 1. Adjudge and declare, pursuant to the Declaratory Judgment Act, 28
21 U.S.C. §§ 2201(a) and 2202, that Defendants have contributorily and vicariously
22 infringed Plaintiffs’ exclusive rights under the Copyright Act;

23 2. Preliminarily and permanently enjoin, pursuant to 17 U.S.C. § 502,
24 Defendants, their officers, agents, servants, employees and those persons in active
25 concert or participation with them, from contributorily and/or vicariously infringing
26 by any means Plaintiffs’ exclusive rights under the Copyright Act and from
27 licensing any other person to do the same, including by means of manufacturing,
28

1 advertising, selling, offering for sale, distributing, or delivering into commerce any
2 ReplayTV 4000 unit;

3 3. Preliminarily and permanently enjoin, pursuant to California Business and
4 Professions Code section 17200, Defendants, their officers, agents, servants,
5 employees and those persons in active concert or participation with them, from
6 engaging in one or more unfair and/or unlawful business acts and/or practices, or
7 from licensing any other person to do the same;

8 4. Adjudge and declare that (a) Plaintiffs Turner Broadcasting and TWI have
9 the right to terminate the Replay Network Agreement; and (b) Defendant Replay is
10 not relieved of any of its post-termination obligations with respect to the Replay
11 Network Agreement; and

12 5. Award Plaintiffs such further relief as the Court may deem just and
13 proper.

14 Dated: November 9, 2001.

15 ROBERT M. SCHWARTZ
16 MARK A. SNYDER
17 - and -
18 RONALD L. KLAIN
19 GOODWIN LIU
20 O'MELVENY & MYERS LLP

21 By _____
22 Robert M. Schwartz
23 Attorneys for Plaintiffs
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