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WHITE O'CONNOR CURRY GATTI & AVANZADO LLP
Andrew M. White (State Bar No. 060181)
Jonathan H. Anschell (State Bar No. 162554)
Lee S. Brenner (State Bar No. 180235)
10100 Santa Monica Boulevard
Los Angeles, California 90067-4008
Telephone (310) 712-6100
Facsimile (310) 712-6199

WILMER, CUTLER & PICKERING
Thomas P. Olson
Randolph D. Moss
Peter B. Rutledge
2445 M Street, NW
Washington, DC 20037
Telephone (202) 663-6000
Facsimile (202) 663-6363

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PARAMOUNT PICTURES
CORPORATION; DISNEY
ENTERPRISES, INC.; NATIONAL
BROADCASTING COMPANY,
INC.; NBC STUDIOS, INC.;
SHOWTIME NETWORKS INC.;
THE UNITED PARAMOUNT
NETWORK; ABC, INC.; VIACOM
INTERNATIONAL INC.; CBS
WORLDWIDE INC.; CBS
BROADCASTING INC.,

Plaintiffs,

v.

REPLAYTV, INC. and SONICBLUE,
INC.,

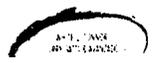
Defendants.

Civ. No. 01-09358-FMC (Ex)

AMENDED COMPLAINT FOR:

1. Direct copyright infringement
2. Contributory copyright infringement
3. Vicarious copyright infringement
4. Violation of Section 553 of the Communications Act
5. Violation of Section 605 of the Communications Act
6. Unfair business practices

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1 Plaintiffs Paramount Pictures Corporation, Disney Enterprises, Inc.,
2 National Broadcasting Company, Inc., NBC Studios, Inc., Showtime Networks
3 Inc., The United Paramount Network, ABC, Inc., Viacom International Inc., CBS
4 Worldwide Inc., and CBS Broadcasting Inc. (hereinafter referred to as
5 "plaintiffs"), by their counsel, allege the following against defendants ReplayTV,
6 Inc. and SONICblue, Inc. (hereinafter referred to as "defendants").

7 JURISDICTION AND VENUE

8 1. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 &
9 1338, under the Copyright Act, 17 U.S.C. § 101 *et seq*, under the Declaratory
10 Judgment Act, 28 U.S.C. §§ 2201(a) & 2202, and under the Communications Act,
11 47 U.S.C. §§ 553 & 605. Pursuant to 28 U.S.C. § 1367, this Court has
12 supplemental jurisdiction over Claim VI because it is so related to the federal
13 claims as to form part of the same case or controversy. This Court has personal
14 jurisdiction over defendants ReplayTV, Inc. and SONICblue, Inc. due to their
15 operation of their principal place of business in this State and their extensive
16 commercial activities in this State, including this District. Venue is proper in this
17 judicial district pursuant to 28 U.S.C. § 1391(b) in that a substantial part of the
18 events or omissions giving rise to this lawsuit, as well as substantial injury to the
19 plaintiffs, have occurred or will occur in this District as a result of defendants'
20 past and impending acts of copyright infringement, violations of the
21 Communications Act, and unfair competition, as alleged in detail below. Venue is
22 also proper in this judicial district pursuant to 28 U.S.C. § 1400(a) in that the
23 defendants may be found in this district in light of their extensive commercial
24 activities in this district.

25 PRELIMINARY STATEMENT

26 2. Plaintiffs bring this action to obtain preliminary and permanent relief
27 against an unlawful plan by defendants to arm their customers with -- and
28 continuously assist them in using -- an unprecedented set of tools for violating

1 plaintiffs' copyright interests in the programming they supply to various television
2 distribution services, including their own program services. Defendants' unlawful
3 scheme, which is centered on a new device called a "ReplayTV 4000," is
4 specifically designed to enable defendants to profit from violations of plaintiffs'
5 rights.

6 3. The first new feature that defendants offer their customers with the
7 ReplayTV 4000 -- called "AutoSkip" -- enables and induces their customers to
8 make unauthorized digital copies of plaintiffs' copyrighted television programming
9 for the purpose of, at the touch of a button, viewing the programming with all
10 commercial advertising automatically deleted. This unlawful activity harms the
11 potential market for and value of plaintiffs' copyrighted works because commercial
12 advertising is a crucial (and often the sole) means by which plaintiffs receive
13 payment for such programming.

14 4. With the second new feature, called "Send Show," defendants (in
15 their own words) make it "a breeze" to make perfect digital copies of plaintiffs'
16 copyrighted programs, including entire theatrical motion pictures, and distribute
17 them to other people -- even many other people -- through high-speed Internet
18 connections. This unlawful activity likewise deprives plaintiffs of the means of
19 payment for, and diminishes the value of, their copyrighted works. These new
20 infringing features, which defendants plan to bolster through daily contact with
21 their customers, are the principal selling points of the ReplayTV 4000 package.

22 5. Defendants not only enable and induce unauthorized copying by their
23 users, but actively participate in and cause the unauthorized copying of plaintiffs'
24 copyrighted programming. Among other things, defendants orchestrate and
25 arrange for the creation of massive unauthorized collections of theatrical films and
26 other copyrighted television programs. Each copyrighted work so recorded can
27 then be distributed through the "Send Show" feature to third parties, viewed with
28 all commercials deleted through the "AutoSkip" feature, or both.

1 6. The activity committed directly, enabled, facilitated and supervised by
2 defendants differs radically from the copying of over-the-air broadcast television
3 programming found to be permissible (under certain narrow circumstances and
4 using much simpler technology) in the Supreme Court's 1984 *Sony Betamax*
5 decision. (Plaintiffs do not challenge the use of either VCRs or ordinary digital
6 video recorders for that purpose.)

7 7. The unprecedented new methods of copying and distribution enabled
8 and induced by defendants will deprive plaintiffs of the means of payment for their
9 works and erode the value of plaintiffs' copyrighted programming, in which
10 plaintiffs have invested billions of dollars. In essence, the defendants are seeking
11 to profit from the sale of features that are calculated to disrupt the ability of
12 copyright owners to market their works for telecast by free, over-the-air
13 television, by basic and premium subscription services, and by pay-per-view
14 distribution services. They also seek to profit by creating an unlawful private
15 network for the distribution of perfect digital copies of theatrical films and other
16 copyrighted works.

17 8. Plaintiffs are willing to incur the enormous costs of creating and
18 disseminating television programming (including theatrical films) because
19 copyright provides the economic incentive to do so. Indeed, copyright protection
20 powerfully encourages free expression, since plaintiffs cannot be expected to incur
21 the large costs of producing news and entertainment content (such as television
22 series and theatrical motion pictures) for the public unless they have a way to
23 recoup and profit from those expenditures.

24 9. Copyright owners are rewarded for the creation, production and
25 delivery of copyrighted television programming almost exclusively through one or
26 both of two methods: (i) advertiser support and (ii) subscription fees. In addition,
27 there is a significant market for the sale of theatrical films and many other
28 television programs in the form of videocassettes and DVDs. Defendants'

1 unlawful scheme violates plaintiffs' rights and undermines all of these methods of
2 compensating plaintiffs for the exploitation of their copyrighted works.

3 10. The licensing of most copyrighted works for television viewing is
4 dependent on payments by advertisers for the right to include commercials during
5 designated breaks within and between programs. The sale of commercial time is
6 virtually the sole means of paying for the copyrighted programming offered by
7 free, over-the-air television networks and stations, such as the ABC, CBS, NBC,
8 and UPN television networks owned by plaintiffs and the hundreds of local
9 television stations (many owned by plaintiffs) that broadcast the programming of
10 those networks. Commercial advertising is also a vital source of payment for
11 copyrighted works purchased, licensed, or created by "basic" subscription
12 program services, such as plaintiffs' CNBC, Nickelodeon, and SoapNet services,
13 which are transmitted by distributors such as cable systems and satellite carriers.
14 Both over-the-air and basic subscription program services depend on being able to
15 deliver to advertisers consumer audiences of pre-determined size and demographic
16 characteristics.

17 11. Defendants' unlawful scheme attacks the fundamental economic
18 underpinnings of free television and basic nonbroadcast services and, hence, the
19 means by which plaintiffs' copyrighted works are paid for. Advertisers will not
20 pay to have their advertisements placed within television programming delivered to
21 viewers when the advertisements will be invisible to those viewers. In effect, by
22 eliminating the embedded advertising, defendants' copying-and-commercial-
23 deletion feature will (as to those viewers who employ the feature) eliminate the
24 source of payment to the copyright owner for the very program being viewed. As
25 a result, defendants' unlawful scheme impairs the value of plaintiffs' works and
26 reduces the incentive for their creation and dissemination. For subscription
27 television program services that depend in part on advertising revenues, use of the
28 "AutoSkip" feature has the same effect. In both cases, the "AutoSkip" feature

1 would fundamentally and inevitably erode the means by which copyright owners
2 are paid for their works and hence the value of the programming they create.

3 12. Copyrighted works created or licensed by cable television networks
4 are paid for, in part, by a second funding source -- payment of subscription (or
5 similar) fees. Such fees help to fund the purchase and creation of content by basic
6 nonbroadcast program services such as Nickelodeon, Toon Disney, and MSNBC,
7 and are virtually the sole means by which copyright owners are paid for
8 programming licensed to "premium" nonbroadcast program services such as
9 Showtime and The Movie Channel, which do not contain or derive any revenues
10 from advertising. The payment of fees to view individual programs is the central
11 feature of pay-per-view distribution systems and, in effect, the means by which
12 copyright owners are paid for content licensed to those systems. Copyrighted
13 works are licensed to all subscription and pay-per-view services on the assumption
14 that viewers of the content will be charged a fee for the content they watch. The
15 ability of copyright owners to be paid for their works would plainly be undermined
16 by any system that facilitates the unauthorized dissemination of the contents of
17 subscription or pay-per-view services for free. Yet defendants' "Send Show"
18 feature promotes and enables precisely such unlawful conduct.

19 13. Defendants' ReplayTV 4000 package is centered on a "digital video
20 recorder," a computer-like device for making perfect digital copies of television
21 programming. The device is usable only with ongoing assistance from defendants
22 in the form of data delivered from defendants' servers each day. The capabilities
23 of defendants' new ReplayTV 4000 go far beyond traditional home recording
24 technology and are instead specifically designed to violate the rights of copyright
25 owners and program services.

26 14. For example, defendants' ReplayTV 4000 offers the ability (without
27 any authorization from copyright owners) to make digital copies of television
28 programs and then to use an "AutoSkip" feature that -- in defendants' own words

1 -- enables viewers "to watch recorded programs totally commercial-free" with a
2 single press of a button. In fact, the ReplayTV 4000 enables the user to set
3 "AutoSkip" so that it will automatically delete all commercials in *all* future
4 playbacks of television programming, without any need to activate the feature for
5 viewing of a particular program. Here is how defendants describe the ReplayTV
6 4000 "AutoSkip" feature in a "Frequently Asked Question" on their web site
7 (www.replay.com):

8 Q. Can ReplayTV play shows without the commercials?

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

16 15. Among the commercials that are automatically eliminated by
17 defendants are many purchased by plaintiffs, some of which are major purchasers
18 of advertising time for, among other things, films currently playing in theaters.
19 Defendant's "AutoSkip" feature also automatically blocks exposure to public
20 service announcements and to advertisements by political candidates -- all of which
21 become invisible to viewers.

22 16. Although defendants position the "AutoSkip" feature as an option,
23 they expect it to be used routinely. Their web site, for example, says this:
24 "You'll still have the choice to watch recorded shows with the commercials, *if you*
25 *really want to*" (Emphasis added.)

26 17. When a user copies a television program with a ReplayTV 4000 and
27 plays it back with the "AutoSkip" feature, defendants ensure that all commercials
28 are *automatically* omitted when viewing the program. Nor is it necessary for a

1 viewer to wait until the program is over for defendants' copying-and-commercial-
2 deletion scheme to work. For example, if a viewer uses the ReplayTV 4000 to
3 record a half-hour comedy that begins at 8 p.m., but starts watching the program
4 at 8:08 with the "AutoSkip" feature, defendants enable the viewer to watch the
5 recorded program at nearly the same time it is being telecast live with no exposure
6 whatsoever to commercials.

7 18. Copying a copyrighted program with a digital video recorder is a
8 violation of the exclusive rights of the copyright owner under Section 106 of the
9 Copyright Act. Such copying is entirely distinguishable from the type of copying
10 which, in narrow and different circumstances, might be defended as a fair use.
11 Copying programming for playback with defendants' "AutoSkip" feature
12 effectively circumvents the means of payment to copyright owners for the
13 programming being viewed and therefore their ability to fund it. Viewers will
14 continue to be able to watch the program, but the copyright owner will be deprived
15 of the means of obtaining payment for the programming. Defendants'
16 copying-and-commercial-deletion scheme thus constitutes copyright infringement.
17 As discussed below, the conduct also constitutes a violation of California law.

18 19. A second new feature offered by defendants to owners of the new
19 ReplayTV 4000 is a function -- revealingly called "Send Show" -- for making and
20 distributing to third parties perfect reproductions of entire copyrighted television
21 programs, including motion pictures. With this feature, defendants facilitate and
22 induce the unauthorized reproduction and distribution of plaintiffs' valuable works
23 and encourage unauthorized access to subscription programming, in violation of
24 both federal and state law.

25 20. Under the Copyright Act, of course, plaintiffs enjoy the exclusive
26 right to copy and to distribute copies of their copyrighted works. 17 U.S.C. §
27 106(1), 106(3). Nothing in the Copyright Act gives defendants or their customers
28 any right to make, for *distribution to third parties*, digital copies of "Will &

1 Grace," "The Tonight Show," "20/20," "Lizzie McGuire," "Daria," or "Rugrats,"
2 much less entire theatrical motion pictures appearing on television, such as "Quiz
3 Show," "Sister Act 2," "102 Dalmatians," "Powder," "Election," "Planes, Trains,
4 and Automobiles" or "The Talented Mr. Ripley." These practices violate not only
5 the Copyright Act but also the federal Communications Act and California law.

6 21. Defendants assure their customers that using the ReplayTV 4000 to
7 infringe copyrights will be effortless: "[W]ith its broadband connectivity, sending
8 and receiving programs [with the ReplayTV 4000] is a breeze." And the potential
9 customer base for this feature is large and growing: some 10 million U.S.
10 households are expected to have high-speed Internet connections by the end of
11 2001, with continued growth anticipated thereafter. There are also some nine
12 million broadband connections in college dormitory rooms nationwide, and at least
13 30 million more in workplace, government, and academic institutions.

14 22. Defendants' unlawful "Send Show" feature is designed to violate
15 plaintiffs' rights in all types of programming, from over-the-air broadcast
16 programs to basic, premium, and pay-per-view nonbroadcast offerings. For
17 example - with defendants' explicit encouragement and instruction - a ReplayTV
18 4000 owner can record a movie exhibited on Showtime (such as "The Talented
19 Mr. Ripley") and use defendants' "Send Show" feature to reproduce and transmit a
20 perfect digital copy of the movie to many other people, none of whom subscribes
21 to Showtime. This unlawful scheme not only jeopardizes the ability of plaintiffs to
22 obtain payments for subscription and premium channels but also undermines the
23 many other ways in which plaintiffs market their copyrighted works, including
24 pay-per-view transmissions, sale of authorized copies of plaintiffs' works in the
25 form of DVDs and videocassettes, syndication to over-the-air and basic program
26 services, and the developing market for the authorized online distribution of
27 copyrighted works.

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1 23. Defendants not only provide the means to carry out this unlawful
2 conduct but highlight it as a principal selling point of the ReplayTV 4000.
3 Defendants' press release about the ReplayTV 4000, for example, urges customers
4 to use the "Send Show" feature to "*trade movies [and] favorite TV programs.*" In
5 a September 2001 interview with CNET, SONICblue's Vice President of
6 Marketing said: "*If there's a great movie that you've recorded and you want to*
7 *send it over to a friend, you'd be able to do that over your broadband connection.*"
8 And an October 9, 2001 email from ReplayTV to potential purchasers tells them
9 they can use the ReplayTV 4000 to transmit copies of "*TV shows & movies [to]*
10 *friends & family over the Internet.*" (Emphasis added in each case.)

11 24. Defendants' web site features an online demonstration that illustrates
12 how to use the "Send Show" feature to reproduce and distribute recorded programs
13 to other people. The demonstration shows a ReplayTV 4000 user employing
14 "Send Show" to distribute to third parties digital copies of a copyrighted program
15 owned by one of the plaintiffs. Indeed, defendants have *specifically designed and*
16 *are actively marketing* their service as a tool to make it easy to infringe
17 copyrighted material.

18 25. Defendants' participation in the unauthorized reproduction and
19 distribution of plaintiffs' works does not end with the sale of a ReplayTV 4000
20 box. Defendants' continued involvement through a broadband connection is
21 necessary for the updated program listing, which they call a "Replay Guide."
22 Users can engage in unauthorized copying of plaintiffs' copyrighted works (for
23 unauthorized viewing without commercials through "AutoSkip" or for
24 unauthorized transmission to third parties through "Send Show") only by using the
25 Replay Guide updated daily by defendants. Defendants also plan to collect
26 information about their customers' use of the ReplayTV 4000 on a daily basis.

27 26. Defendants themselves often directly cause the making of
28 unauthorized copies of plaintiffs' copyrighted works. Each such copy can then be

1 viewed with all commercials deleted or distributed to other parties though the
2 "Send Show" feature. With the "Personal Channels" feature, for example,
3 defendants make discretionary determinations about what programs a user may
4 wish to view, based on limited input from the user, and arrange for the ReplayTV
5 4000 devices to copy particular programs. Defendants also orchestrate the
6 copying of multiple episodes of programming over a period of months.
7 Defendants' customers can view each such unauthorized copy with all commercials
8 deleted. They can also distribute copies of the complete set to third parties --
9 becoming, in effect, unauthorized syndicators of plaintiffs' copyrighted series.

10 27. The plaintiffs in this case are among the largest creators and
11 distributors of copyrighted television programming. Plaintiffs are directly
12 threatened by defendants' marketing, distribution, and sale of tools specifically
13 designed to facilitate and induce infringement of plaintiffs' copyrights by their
14 customers as well as by defendants' own direct infringements. Plaintiffs will be
15 harmed in several different capacities: as creators and copyright owners of the
16 programming that defendants help their users to infringe, as owners of over-the-air
17 broadcast networks and stations and subscription television program services, and
18 as distributors of pay-per-view content.

19 28. Plaintiffs seek prompt judicial relief to stop defendants from violating
20 the Copyright Act, the Communications Act, and California law in these ways,
21 and to prevent defendants from licensing these illegal features to third parties.

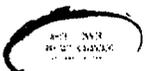
22 PARTIES

23 29. Paramount Pictures Corporation ("Paramount") is a Delaware
24 corporation with a principal place of business in Los Angeles, California.
25 Paramount owns the copyright in many episodes of television series telecast on a
26 first-run basis or otherwise by U.S. television outlets, including "Frasier," "Soul
27 Food," "Enterprise," "Raising Dad," "Manhunt," "Becker," and "JAG."
28 Paramount also owns the U.S. copyright in many theatrical motion pictures

1 telecast by U.S. television program services or offered through pay-per-view
2 distributors, such as "The Talented Mr. Ripley," "Election," "Sabrina," and
3 "Planes, Trains, and Automobiles." Among the many programs and movies in
4 which Paramount owns the copyright are those listed in Exhibit A.

5 30. Disney Enterprises, Inc. ("Disney") is a Delaware corporation with its
6 principal place of business in Burbank, California. Disney owns the copyright in
7 many episodes of television programs, including "Lizzie McGuire," "Book of
8 Pooh," "Felicity," and "House of Mouse," that are telecast on a first-run basis or
9 otherwise by U.S. television outlets. Disney also owns the copyright in many
10 theatrical motion pictures telecast by U.S. program services or offered through
11 pay-per-view distributors, such as "Quiz Show," "Sister Act 2," "The Waterboy,"
12 "High Fidelity," "102 Dalmatians," and "Powder." Directly or through
13 subsidiaries, Disney also operates numerous nonbroadcast television program
14 services, including the Disney Channel, Toon Disney, and SoapNet. The
15 programs in which Disney owns the copyright include, by way of illustration,
16 those listed in Exhibit B to this Complaint.

17 31. The National Broadcasting Company, Inc. ("NBC") is a Delaware
18 corporation with its principal place of business in New York, New York and with
19 studio facilities in Burbank, California. NBC is a diversified media company that
20 produces news, entertainment, sports, and financial programming for broadcast
21 and cable television, and is the copyright owner of, among other programs,
22 "Saturday Night Live," "The Today Show," "Dateline NBC," and "Meet The
23 Press." NBC is the sole owner of NBC Studios, Inc. ("NBC Studios"), a New
24 York corporation with its principal place of business in Burbank, California. NBC
25 Studios produces television programming and is the copyright owner of "Will &
26 Grace," "Late Night With Conan O'Brien," "The Tonight Show," "Providence,"
27 "Emeril," "Lost," "The Other Half," "The Weakest Link," "Three Sisters," and
28 "Passions" among others. In addition, NBC's thirteen owned and operated



1 television stations produce (and own the copyright in) a variety of programs,
2 including daily news shows. NBC also owns CNBC, Inc., a cable network with
3 its headquarters in Fort Lee, New Jersey, and produces and owns the copyright in
4 most of its programming. Through a joint venture, NBC owns MSNBC Cable,
5 L.L.C., a cable network headquartered in Secaucus, New Jersey, and is the joint
6 or beneficial owner of much of its programming. Representative examples of
7 copyright registrations and/or applications for recently and soon-to-be broadcast
8 programs in which NBC and NBC Studios, Inc. own the copyright are listed in
9 Exhibits C and D.

10 32. Showtime Networks Inc. ("Showtime") is a Delaware corporation
11 with its principal place of business in New York, New York. Showtime offers
12 (through cable systems, satellite carriers, and other distributors) several premium
13 television program services (including Showtime, The Movie Channel, and Flix)
14 consisting of theatrically released feature films, original movies, series, and other
15 programming to subscribers, generally for a separate monthly fee. Showtime
16 owns copyrights in episodes of its programs such as "Queer as Folk" and in many
17 feature-length films such as "Harlan County War," "Out There" and "Rated X."
18 Among the many programs in which Showtime owns the copyright are those listed
19 in Exhibit E. Showtime also operates SET (Showtime Event Television) Pay Per
20 View, which markets and distributes boxing events and concerts on a pay-per-view
21 basis.

22 33. The United Paramount Network ("UPN") is a Delaware partnership
23 with its principal place of business in Los Angeles, California. UPN operates the
24 UPN Network, which offers advertiser-supported free, over-the-air programming
25 to the public in many television markets throughout the United States.

26 34. ABC, Inc. ("ABC") is a New York corporation with its principal
27 place of business in New York, New York. ABC is the legal or beneficial owner
28 of copyrights in numerous ABC Television Network programs, such as

1 "Primetime Thursday," "The View," "Port Charles," "All My Children," "One
2 Life to Live," "General Hospital," "Good Morning America," "Nightline,"
3 "World News Tonight," and "20/20." In addition, ABC's owned and operated
4 television stations produce (and own the copyright in) a variety of programs,
5 including daily news shows. Among the many programs in which ABC owns the
6 copyright are those listed in Exhibit F.

7 35. Viacom International Inc. ("Viacom International") is a Delaware
8 corporation with its principal place of business in New York, New York. Viacom
9 International operates numerous television programming services, including MTV
10 Music Television, MTV2, VH1 Music First, Nickelodeon, TNN The National
11 Network, CMT Country Music Television, and TV Land. Viacom International
12 owns copyrights in numerous television programs appearing on these services,
13 such as "Rugrats" (shown on Nickelodeon), "Daria" (shown on MTV) and
14 "Behind the Music" (shown on VH1). Viacom International also owns copyrights
15 in television programs shown on other U.S. television services, including "The
16 Chris Isaak Show," "Resurrection Blvd.," and "Sabrina, The Teenage Witch."
17 Among the many programs in which Viacom International owns the copyright are
18 those listed in Exhibit G.

19 36. CBS Broadcasting Inc. ("CBS Broadcasting") is a New York
20 corporation with its principal place of business in New York, New York. CBS
21 Worldwide Inc. ("CBS Worldwide"), a subsidiary of CBS Broadcasting, is a
22 Delaware corporation with a principal place of business in New York, New York.
23 CBS Worldwide owns copyrights in numerous programs broadcast on the CBS
24 Network, such as "The Ellen Show," "Touched by an Angel," and "CSI: Crime
25 Scene Investigation." In addition, CBS Broadcasting's 17 owned and operated
26 television stations produce (and own the copyright in) a variety of programs,
27 including daily news shows. Among the many programs in which CBS owns the
28 copyright are those listed in Exhibit H.

1 37. Defendant ReplayTV, Inc. ("Replay") is a Delaware corporation with
2 its principal place of business in Mountain View, California. Replay is a wholly
3 owned subsidiary of Defendant SONICblue, Inc. ("SONICblue"). Replay has
4 developed and is marketing and selling the ReplayTV 4000 device and
5 continuously facilitates its use.

6 38. Defendant SONICblue is a Delaware corporation with its principal
7 place of business in Santa Clara, California. SONICblue is the parent company of
8 Replay. SONICblue promotes and markets the ReplayTV 4000, including through
9 promotions on its own web site, and continuously facilitates its use.

10 **STATEMENT OF FACTS**

11 **Plaintiffs' Exclusive Rights Under the Copyright Act**

12 39. Plaintiffs are the copyright owners of many television programs
13 transmitted to television viewers in the United States. Illustrative works in which
14 one of the plaintiffs owns a copyright are listed in Exhibits A-H. Each such work
15 is an original audiovisual work fixed in a tangible medium of expression. Each
16 work listed in Exhibits A-H is copyrightable subject matter within the meaning of
17 the Copyright Act, 17 U.S.C. § 102, and each has been registered (or an
18 application has been filed) with the United States Copyright Office.

19 40. Section 106 of the Copyright Act grants copyright owners the
20 exclusive right, among other things, to copy their works, to distribute copies of
21 their works, and to authorize others to do the same. Neither defendants nor their
22 customers have any license, permission, or authorization either to copy the works
23 listed in Exhibits A-H or to distribute digital copies of the works to third parties.

24 **Plaintiffs' Operation of Television Program Services**

25 41. In addition to creating (and owning the copyright in) thousands of
26 television programs (including many theatrical films), several of the plaintiffs own
27 and/or operate television program services that deliver that programming (and/or
28 programming created by third parties, including other plaintiffs herein) to the

1 American public. Some of these services -- such as the ABC, CBS, NBC, and
2 UPN television networks -- transmit that programming to viewers by terrestrial
3 over-the-air broadcasts, which in many cases are retransmitted by cable, satellite
4 and other multichannel video services. Other television program services, such as
5 MSNBC, CNBC, the Disney Channel, Toon Disney, SoapNet, Nickelodeon,
6 MTV, VH1, TNN, CMT, TV Land, Flix, The Movie Channel, and Showtime,
7 are transmitted by distributors such as cable systems and satellite carriers to
8 subscribers who pay a subscription fee to receive these channels. In all cases, the
9 value of -- and hence the incentive for plaintiffs to create -- copyrighted works will
10 be eroded by a technology that undermines the principal means by which copyright
11 owners are paid for such works by television distributors.

12 **The Structure of the Television Industry**
13 **and the Threat Posed by Defendants**

14 42. In the United States today, there are four principal methods by which
15 television programming is transmitted to the public. The first -- and oldest --
16 method is through "free," over-the-air television networks such as ABC, CBS,
17 NBC, and UPN and the hundreds of local terrestrial broadcast stations that carry
18 their programming. Free, over-the-air television networks and local stations both
19 create and license copyrighted content -- largely entertainment, news and sports
20 programming -- on which the public has come to rely for information and
21 entertainment. Virtually the sole means of payment for such copyrighted content
22 is revenue from advertisers who pay for commercials that appear during, or
23 between, television shows. It is the advertising that pays for a particular show that
24 a viewer may choose to watch, whether a first-run program, a rerun during the
25 same season, or a previously aired program offered through syndication.

26 Although nonbroadcast services have attracted an increasing number of viewers

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28 ///

1 over the past 20 years, broadcast television networks and local stations
2 nevertheless continue to account for a large percentage of all television viewing in
3 the United States.

4 43. Maintaining a nationwide system of free, over-the-air local television
5 stations, which makes news, information, and entertainment available to virtually
6 all Americans without any need to pay subscription fees, has been a crucial public
7 policy goal in the United States for many decades. The creation and acquisition of
8 the copyrighted content that has come to define free, over-the-air television is
9 made possible through commercial advertisements that are embedded in each
10 program. In short, advertisements provide the means of payment for the
11 copyrighted works that the public enjoys at no direct charge.

12 44. The second method of television distribution is through controlled
13 access via so-called "basic" nonbroadcast channels such as Disney Channel, Toon
14 Disney, SoapNet, Nickelodeon, MTV, MTV2, VH1, TNN, CMT, TV Land,
15 CNBC, and MSNBC. The sale of commercial time to advertisers and the
16 collection of fees from distributors such as cable systems and satellite carriers are
17 the means by which such channels create or license copyrighted works. As with
18 over-the-air broadcasting, copyright owners license their works both on a first-run
19 basis and for later telecast in syndication.

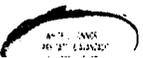
20 45. The third model of transmission of television programming in the
21 United States is via premium television program services such as Showtime and
22 The Movie Channel. These services, which are available to subscribers to cable,
23 satellite, and other multichannel video distribution systems, are typically made
24 available to consumers for a substantial monthly fee. Premium services offer
25 original programming, theatrical motion pictures, or both, all without commercial
26 interruption - but only to those who have paid the subscription fee. Subscription
27 fees are the means by which the copyright owners are paid for licensing their
28 works to these services.

1 46. The fourth model of transmission of television programming in the
2 United States is through pay-per-view delivery, in which viewers obtain one-time
3 access to particular programs (such as feature films, live boxing events and
4 concerts) in return for payment of a fee for that access.

5 47. In addition, there is a significant market for the sale of DVDs and
6 videocassettes of theatrical films and other television programs. In the near future,
7 a market is likely to develop for the authorized distribution of theatrical films and
8 other copyrighted programming through broadband Internet connections.

9 48. The creation and licensing of the overwhelming majority of television
10 programs that are offered to American viewers today is made possible by and is
11 completely dependent on the commercial advertising that is embedded in that
12 programming. Advertisements provide the means of payment for each show that a
13 viewer chooses to watch. A feature that completely blocks the delivery of
14 advertising to viewers therefore deprives copyright owners of the means by which
15 they are paid for their works and diminishes both the value of the works and the
16 incentive to create and distribute original content over the medium. By
17 undermining the engine by which content is produced, this unlawful feature will
18 inevitably dry up the source and diminish the quality of the programming that most
19 Americans have come to expect and demand.

20 49. Similarly, the "Send Show" feature will jeopardize the means by
21 which copyright owners are paid for the creation of copyrighted content by
22 nonbroadcast channels (whether basic or premium). Such payments are generated,
23 at least in part, by monthly subscription fees that viewers pay for the privilege of
24 viewing the nonbroadcast network's programming. The "Send Show" feature,
25 however, enables a single person who has paid the monthly subscription fee to
26 make and to transmit to third parties perfect digital copies of the programs offered
27 by subscription channels. This unlawful feature enables the evasion of payments
28 for subscription programming, depriving the copyright owner of the right to



1 control how the work is disseminated and shrinking the subscription base that pays
2 for such programming.

3 50. Finally, the unauthorized copying and distribution of perfect copies of
4 theatrical motion pictures and other programs offered on a pay-per-view basis is a
5 clear violation of plaintiffs' rights. These works are licensed and paid for on the
6 basis that each viewer who wishes to see a work will pay a fee for such viewing.
7 No permission is granted to reproduce and disseminate copies of the work to those
8 who have not likewise paid for its exhibition. Indeed, it is self-evident that the
9 unauthorized dissemination of works enabled by the "Send Show" feature defeats
10 the means by which the copyright owner has agreed to be compensated for the
11 exhibition of its work. Viewers who obtain unauthorized digital copies of such
12 programs from other viewers have no reason to agree to pay-per-view fees to
13 obtain access to them. Defendants' unlawful service is also a direct threat to the
14 legitimate sale of copies of television programming (including feature films) in the
15 form of videotapes or DVDs.

16 Defendants' ReplayTV 4000

17 51. The ReplayTV 4000 is a type of digital video recorder. (The
18 ReplayTV 4000 line consists of at least four specific models, the "RTV 4040,"
19 "RTV 4080," "RTV 4160," and "RTV 4320.") Far from being a stand-alone
20 device, the ReplayTV 4000 is capable of copying television programs only through
21 continuous assistance from defendants. Via a broadband connection, defendants
22 continuously collect information about what their customers want or may want to
23 copy and/or distribute, and match that information with a daily updated electronic
24 program guide ("EPG"), which defendants call a "Replay Guide." The Replay
25 Guide lists on the television screen all television programming available to the
26 viewer. By clicking on particular programs listed on the Replay Guide, including
27 programs owned by plaintiffs, the viewer can program the ReplayTV 4000 to
28 record and store those programs onto a hard drive built into the box.

1 Significantly, and unlike standard video recorders, defendants' ReplayTV 4000
2 also enables users to make digital copies of television programs for the unlawful
3 purpose of playing them with all commercials deleted, and to copy and distribute
4 copyrighted works without authorization to third parties.

5 **Defendants' Commercial Deletion Technology**

6 52. As defendants themselves boast in their marketing materials, the
7 ReplayTV 4000 "does what no other [digital video recorder] on the market can
8 do": it enables viewers to make unauthorized digital copies of copyrighted
9 television programs and then use defendants' "AutoSkip" function (also called
10 "Commercial Advance") to eliminate any exposure to the advertising that is the
11 lifeblood of most television channels. On their web site, defendants explain the
12 "AutoSkip" function as follows: it "[a]llows ReplayTV 4000 users to playback
13 recorded programming while automatically bypassing all commercials. It's
14 commercial-free television."

15 53. A demonstration program on defendants' web site (www.replay.com)
16 shows potential customers how "AutoSkip" works. The demonstration shows a
17 Replay Guide (the on-screen program guide updated daily by defendants), which
18 lists several copyrighted television programs such as "CSI: Crime Scene
19 Investigation" (CBS), "Friends" (NBC), "Just Shoot Me" (NBC), and "General
20 Hospital" (ABC). The demonstration instructs users to "select the show you want
21 to watch from your Replay Guide" and highlights the listing for ABC's "General
22 Hospital." Another frame then displays a pop-up menu within the Replay Guide
23 and explains that this "pop-up menu gives you the option to play the show without
24 any commercials." The demonstration directs the viewer to select the option "Skip
25 Commercials," and then announces that the viewer can now enjoy
26 "commercial-free entertainment!" According to the demonstration, the program

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1 can be played commercial-free only by using the Replay Guide supplied (and
2 updated daily) by defendants. Copies of this segment of defendants' demonstration
3 are attached as Exhibit I.

4 54. The unauthorized making of copies of television programming for the
5 purpose of viewing with all commercials (and all public service announcements
6 and all political advertisements) automatically deleted is not a fair use, and goes
7 far beyond the narrowly circumscribed conduct discussed by the Supreme Court in
8 the 1984 *Sony Betamax* decision.

9 **Defendants' Facilitation of Unauthorized**

10 **Distribution of Plaintiffs' Programs and Films**

11 55. The "Send Show" feature of the ReplayTV 4000 package enables
12 owners of a ReplayTV 4000 (in Replay's own words) to "share programs with
13 friends who also own ReplayTV 4000." Defendants' "Send Show" feature
14 enables, materially contributes to, and induces the unlawful distribution of
15 copyrighted works owned by plaintiffs.

16 56. For example, according to defendants' web site, a ReplayTV 4000
17 owner could, with a few clicks on a remote control, send any television program
18 whatsoever -- including, for example, a theatrical film such as "Con Air" or "The
19 Talented Mr. Ripley" exhibited on the Showtime service -- to a large number of
20 third parties, regardless of whether the third parties themselves had a subscription
21 to the program service from which the program was copied. This would make it
22 unnecessary for those third parties to subscribe to Showtime, jeopardizing its
23 business and (over time) its existence, as well as the market for the sale of
24 copyrighted works to Showtime and similar premium services. A ReplayTV 4000
25 owner could do the same with many theatrical motion pictures, boxing events,
26 concerts and other copyrighted works owned by plaintiffs and transmitted on a
27 pay-per-view basis.

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1 57. Defendants' on-line demonstration shows potential ReplayTV 4000
2 customers how to use the "Send Show" feature. The demonstration illustrates how
3 easy it is to use the feature by showing how to send a copy of the show "General
4 Hospital" -- owned by one of the plaintiffs -- to a third party. Copies of this
5 segment of defendants' demo program are attached as Exhibit J.

6 58. The "Send Show" function is similar to the music infringement
7 scheme recently enjoined in the *Napster* case. Just as Napster established a
8 commercial business that was predicated on -- and knowingly benefited from -- the
9 unlawful copying and distribution of music files by users, defendants plan to create
10 a network in which they facilitate, induce, and profit from the unlawful
11 distribution of feature films and other television programming costing millions
12 (and in some cases tens or hundreds of millions of dollars) to produce.

13 59. With the "Send Show" feature, defendants facilitate and induce the
14 unauthorized reproduction and distribution of plaintiffs' valuable works and
15 encourage unauthorized access to subscription programming, in violation of both
16 federal and state law. For example, a ReplayTV 4000 user who has a paid
17 subscription to Showtime can (and is encouraged by defendants to) create a
18 permanent copy of all of the episodes that make up an entire season of a Showtime
19 series such as "Queer as Folk," and can (and is urged by defendants to) distribute
20 the complete set to third parties, whether or not the individual receiving the
21 program has paid for a subscription to Showtime. (Defendants themselves arrange
22 for the copying of the many episodes that make up the season.) On information
23 and belief, customers can use the "PC Connectivity" feature of the ReplayTV 4000
24 to distribute copyrighted programs and films to anyone with a PC and a broadband
25 connection.

26 60. The "Send Show" feature also jeopardizes, in many ways, the system
27 by which costly copyrighted programming is offered by free, over-the-air
28 television networks and local stations. For example, advertisers who pay stations

1 to run advertisements of purely local relevance will not be willing to pay for
2 viewers in their local area who see the station's national programming via an
3 unauthorized copy distributed by a viewer (through defendants' "Send Show"
4 service) in another market with different local advertisements. (Of course, if the
5 "AutoSkip" feature is not stopped, few ReplayTV users will see commercial
6 advertising or promotional spots in any event.)

7 61. The unauthorized dissemination of copyrighted over-the-air
8 programming will also impair the ability of copyright owners to realize its value
9 and fund the costs of that programming through reuse of the programming in a
10 variety of ways. Daytime dramas broadcast by ABC television stations, for
11 example, are later shown on SoapNet, a nonbroadcast channel available to cable
12 and satellite viewers; network newscasts are often broadcast again on local cable
13 news channels; many episodes of primetime and late night programs are televised
14 again during the same season as reruns; several popular network prime-time
15 dramas are shown on nonbroadcast program services shortly after their initial
16 network broadcast; and many television series are shown in syndication after their
17 initial network run. By enabling, inducing, and continuously facilitating the
18 unauthorized copying and distribution of this programming, defendants diminish
19 plaintiffs' ability to market these reuse rights.

20 62. The "Send Show" feature will also harm several of the plaintiffs in
21 their capacity as owners of television stations in a number of U.S. television
22 markets and as copyright owners who seek to achieve maximum value from their
23 programming through repurposing.

24 63. Sending a copy of a copyrighted television program to a third party
25 goes far beyond the scope of the fair use defense. Indeed, defendants have
26 specifically designed and customized the "Send Show" function to encourage and
27 provide for the easy infringement of copyrighted works delivered by program
28 services.

1 copyright owners of the works listed in Exhibits A-H as well as many other
2 copyrighted works telecast by U.S. television program services. The plaintiffs
3 have obtained (or applied for) copyright registration certificates for each work
4 listed in Exhibits A-H.

5 68. On information and belief, employees or agents of defendants, other
6 users of the ReplayTV 4000, including testers, have already infringed (or will
7 soon infringe) plaintiffs' exclusive rights under 17 U.S.C. § 106 in many
8 copyrighted works, including the illustrative works identified in Exhibits A-H
9 hereto.

10 69. More generally, defendants actively participate in the actual or
11 imminent unauthorized copying, distribution, and creation of derivative works
12 based on, unauthorized copies of plaintiffs' works (including the works listed on
13 Exhibits A-H) in the ways described above. By these acts, defendants are
14 engaging in a vast number of copyright infringements, including infringements of
15 plaintiffs' copyrighted television programs and motion pictures, in violation of
16 sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

17 70. Each infringement by defendants of each of plaintiffs' rights in and to
18 their copyrighted works constitutes a separate and distinct act of infringement.

19 71. The foregoing acts of infringement by defendants have occurred
20 without plaintiffs' consent and are not otherwise permissible under the Copyright
21 Act.

22 72. The foregoing acts of infringement by defendants have been willful,
23 intentional, and purposeful, in disregard of and with indifference to plaintiffs'
24 rights, and are causing and will continue to cause irreparable injury to plaintiffs.

25 **COUNT II: Contributory Copyright Infringement**

26 73. Plaintiffs repeat and incorporate by reference, as if fully set forth
27 herein, the allegations of ¶¶ 1-65 and 67-72 above.

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1 74. Use of the ReplayTV 4000 to copy and distribute plaintiffs'
2 copyrighted works without authorization is a violation of plaintiffs' exclusive
3 rights under 17 U.S.C. § 106.

4 75. Among other things, and without limitation, this conduct amounts to
5 (a) unauthorized reproduction of plaintiffs' copyrighted works, (b) unauthorized
6 distribution of copies of plaintiffs' copyrighted works to the public, and (c)
7 unauthorized creation of derivative works based on plaintiffs' works.

8 76. Defendants' activities described above cause and facilitate
9 infringements of plaintiffs' copyrights.

10 77. The unauthorized copying and distribution of plaintiffs' copyrighted
11 works that defendants enable, encourage, and facilitate through the schemes
12 described above is without plaintiffs' consent and not otherwise permissible under
13 the Copyright Act.

14 78. On information and belief, employees or agents of defendants, other
15 users of the ReplayTV 4000, including testers, have already infringed (or will
16 soon infringe) plaintiffs' exclusive rights under 17 U.S.C. § 106 in many
17 copyrighted works, including the illustrative works identified in Exhibits A-H
18 hereto.

19 79. Defendants know or have reason to know of the direct infringement of
20 plaintiffs' copyrights. Indeed, defendants actively promote the infringements as a
21 reason to purchase their products, provide tools that are indispensable to these
22 infringements, and continuously facilitate the infringements.

23 80. Defendants, through their own conduct, have induced, caused,
24 encouraged, assisted and/or materially contributed to this infringing activity.

25 81. The foregoing acts of infringement by defendants have been willful,
26 intentional and purposeful, in disregard of and with indifference to the rights of
27 plaintiffs.

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1 82. Defendants' conduct constitutes contributory infringement of
2 plaintiffs' copyrights and exclusive rights under copyright in violation of Sections
3 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 & 501.

4 83. As a result of defendants' conduct, plaintiffs have suffered and will
5 continue to suffer irreparable injury.

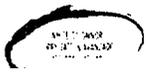
6 **COUNT III: Vicarious Copyright Infringement**

7 84. Plaintiffs repeat and incorporate by reference, as if fully set forth
8 herein, the allegations of ¶¶ 1-65, 67-72, and 74-83 above.

9 85. Defendants have the right and ability to supervise and/or control the
10 infringing conduct of users of the ReplayTV 4000. *First*, defendants have made a
11 deliberate decision to offer their users features that are specifically designed to
12 enable widespread infringements, when they have the ability to control or greatly
13 limit that conduct by declining to offer or to facilitate or support use of those
14 unlawful features. *Second*, although defendants could, on information and belief,
15 have designed (or could alter) their equipment to control the unauthorized
16 distribution of copyrighted works delivered by television program services (such as
17 NBC, the Disney Channel, and Showtime) or on a pay-per-view basis, they instead
18 specifically designed their equipment (and planned their ongoing assistance to their
19 customers) to encourage distribution of such copyrighted works. *Third*,
20 defendants' regular involvement is an indispensable link in their customers'
21 infringing conduct.

22 86. Defendants have a direct financial interest in the infringements of
23 plaintiffs' copyrights by their customers. Defendants' economic success is directly
24 tied to the popularity of the infringing conduct that they seek to encourage.
25 Indeed, the defendants have candidly admitted that the ReplayTV 4000 is designed
26 to enable users to copy programming for viewing with automatic deletion of

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1 commercials, and that the ReplayTV 4000 is designed to enable users to distribute
2 perfect digital copies of entire copyrighted works to others. These new infringing
3 capabilities of the ReplayTV 4000 are among defendants' principal selling points.

4 87. Defendants' acts have been willful, intentional and purposeful, in
5 disregard of and with indifference to the plaintiffs' rights.

6 88. Defendants' conduct constitutes vicarious infringement of plaintiffs'
7 copyrights and exclusive rights under copyright in violation of Sections 106 and
8 501 of the Copyright Act, 17 U.S.C. §§ 106, 501.

9 89. As a result of defendants' conduct, plaintiffs will suffer irreparable
10 injury.

11 **COUNT IV -- Violation of Section 553 of the Communications Act**

12 90. Plaintiffs repeat and incorporate by reference, as if fully set forth
13 herein, the allegations of ¶¶ 1-65, 67-72, 74-83, and 85-89 above.

14 91. The Communications Act makes it unlawful for any person to
15 intercept or receive or assist in intercepting or receiving any communications
16 service offered over a cable system, unless specifically authorized to do so by a
17 cable operator or as specifically authorized by law. 47 U.S.C. § 553. The
18 prohibited conduct includes the manufacture or distribution of equipment intended
19 by the manufacturer or distributor for unauthorized reception of any
20 communications service offered over a cable system.

21 92. Defendants' conduct violates Section 553. Among other things,
22 defendants are selling equipment -- the ReplayTV 4000 device -- with a feature
23 ("Send Show") that they intend to be used to enable persons without authorization
24 to receive communication services offered over a cable system, including but not
25 limited to cable-delivered programming of over-the-air television stations, basic
26 nonbroadcast services, premium services, and pay-per-view services.

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1 **COUNT V -- Violation of Section 605 of the Communications Act**

2 93. Plaintiffs repeat and incorporate by reference, as if fully set forth
3 herein, the allegations of ¶¶ 1-65, 67-72, 74-83, 85-89, and 91-92 above.

4 94. Defendants' conduct violates 47 U.S.C. § 605, which, with certain
5 exceptions not relevant here, forbids any person receiving, assisting in receiving,
6 transmitting, or assisting in transmitting, any interstate communication by radio
7 from publishing the contents thereof except through authorized channels. By
8 selling (and facilitating the use of) a device intentionally designed and intended to
9 be used to publish the contents of communications by radio through the "Send
10 Show" feature, defendants are violating Section 605.

11 **COUNT VI -- Unfair Competition under Cal. Bus. & Prof. Code § 17200**

12 95. Plaintiffs repeat and incorporate by reference, as if fully set forth
13 herein, the allegations of ¶¶ 1-65, 91-92, and 94 above.

14 96. California Business & Professions Code § 17200 provides for
15 injunctive and other relief against "any unlawful, unfair or fraudulent business act
16 or practice." Defendants are engaged in, or propose to engage in, several such
17 practices.

18 97. Plaintiffs operate numerous television program services that are
19 available only by subscription, including the Disney Channel, Toon Disney,
20 SoapNet, Nickelodeon, MTV Music Television, MTV2, VH1 Music First,
21 Nickelodeon, TNN The National Network, CMT Country Music Television, TV
22 Land, CNBC, MSNBC, The Movie Channel, Showtime, and Flix.

23 98. In their capacity as owners and operators of television program
24 services, plaintiffs operate a lawful business of packaging attractive content with
25 advertising paid for by third parties. A basic premise of this business is that the
26 advertising is tied to the attractive content. Defendants have engaged in one or
27 more unfair business acts and/or unfair business practices by providing a device
28 that enables users to instantly and completely eradicate an essential

1 revenue-producing aspect of plaintiffs' business. By doing so, defendants have
2 engaged (or propose to engage) in a highly unfair business practice. Plaintiffs are
3 also harmed by this unlawful practice in their capacity as advertisers (*e.g.*, of
4 current theatrical films).

5 99. The public policy of the State of California favors the maximum
6 production of news and entertainment programming by means of television.
7 Defendants' conduct works to defeat that policy by sabotaging the ability of
8 plaintiffs to obtain compensation for their news and entertainment programming.

9 100. As set forth above, defendant's conduct is unlawful under Sections
10 553 and 605 of the Federal Communications Act. In addition, unlawful reception
11 of subscription television services, and facilitation of such unlawful reception, is a
12 violation of California law. Cal. Penal Code §§ 593d, 593e. By facilitating and
13 encouraging conduct that amounts to receipt by nonsubscribers of content offered
14 on a subscription-only basis, defendants are engaging in conduct that has the
15 functional effect of a violation of Cal. Penal Code §§ 593d and 593e. This is a
16 grossly unfair business practice.

17 101. Each of the aforementioned business acts and/or practices is
18 oppressive and/or substantially injurious to plaintiffs and/or the general public.
19 With respect to each of the aforementioned business acts and/or practices, the
20 gravity of the harm to plaintiffs and the general public outweighs the utility, if any,
21 of defendants' conduct.

22 PRAYER FOR RELIEF

23 WHEREFORE, plaintiffs pray that this Court enter judgment in their favor
24 and against defendants as follows:

25 A. Adjudge and declare, pursuant to the Declaratory Judgment Act, 28
26 U.S.C. § 2201(a) & 2202, that defendants have contributorily and vicariously
27 infringed plaintiffs' exclusive rights under the Copyright Act, plaintiffs' rights
28 under the Communications Act, and plaintiffs' rights under California law;



1 B. Preliminarily and permanently enjoin, pursuant to 17 U.S.C. § 502,
2 defendants, their officers, agents, servants, employees and those persons in active
3 concert or participation with them, from directly, contributorily and/or vicariously
4 infringing by any means plaintiffs' exclusive rights under the Copyright Act, and
5 from licensing any other person to do the same,

6 C. Preliminarily and permanently enjoin defendants from violating
7 Sections 553 and 605 of the Communications Act;

8 D. Preliminarily and permanently enjoin, pursuant to Cal. Bus. & Prof.
9 Code § 17200, defendants, their officers, agents, servants, employees and those
10 persons in active concert or participation with them, from engaging in one or more
11 unfair and/or unlawful business acts or practices, including but not limited to,
12 through any provision, use or support of the "AutoSkip" or "Send Show" functions
13 or any similar functions, or from licensing any other person to do the same;

14 E. Require defendants and their officers, agents, servants, employees and
15 those persons in active concert to cease any activity that encourages viewers to
16 block access to commercial content transmitted during television programming
17 owned by plaintiffs or offered on a television network owned and/or operated by
18 plaintiffs, or that encourages or permits users to transmit copies of such
19 programming to other persons;

20 F. Award plaintiffs their costs and reasonable attorney's fees in
21 accordance with 17 U.S.C. § 505, 47 U.S.C. §§ 553 & 605, and other applicable
22 law; and

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1 G. award plaintiffs such further and additional relief as the Court may
2 deem just and proper.
3

4 Respectfully submitted,

5
6 By: 
7

8 Andrew M. White (STATE BAR NO. 060181)
9 Jonathan H. Anschell (STATE BAR NO. 162554)
10 Lee S. Brenner (STATE BAR NO. 180235)
11 White O'Connor Curry Gatti & Avanzado LLP
12 10100 Santa Monica Boulevard
13 Suite 2300
14 Los Angeles, California 90067
15 Phone: (310) 712-6100
16 Facsimile: (310) 712-6199

17 Thomas P. Olson
18 Randolph D. Moss
19 Peter B. Rutledge
20 Wilmer, Cutler & Pickering
21 2445 M Street, N.W.
22 Washington, D.C. 20037
23 Phone: (202) 663-6000
24 Facsimile: (202) 663-6363
25 Attorneys for Plaintiffs
26
27
28

Dated: November 21, 2001

1 **TABLE OF EXHIBITS**

2 A. Table of illustrative copyright registrations for programs owned by
3 Paramount Pictures Corporation

4 B. Table of illustrative copyright registrations for programs owned by
5 Disney Enterprises, Inc.

6 C. Table of illustrative copyright registrations for programs owned by
7 National Broadcasting Co.

8 D. Table of illustrative copyright registrations for programs owned by
9 NBC Studios, Inc.

10 E. Table of illustrative copyright registrations for programs owned by
11 Showtime Networks Inc.

12 F. Table of illustrative copyright registrations for programs owned by
13 ABC, Inc.

14 G. Table of illustrative copyright registrations for programs owned by
15 Viacom International Inc.

16 H. Table of illustrative copyright registrations for programs owned by
17 CBS Broadcasting Inc.

18 I. Segments about "AutoSkip" feature from demonstration video

19 J. Segments about "Send Show" feature from demonstration video
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