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14 KEITH OGDEN, GLENN FLEISHMAN  
and PHIL WRIGHT  
15

16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 PARAMOUNT PICTURES CORPORATION, )  
*et al.*, )  
19 )  
Plaintiffs, )  
20 )  
v. )  
21 )  
REPLAYTV, INC., *et al.*, )  
22 )  
Defendants. )  
23 )

Case No. 01-09358 FMC (Ex)

**DECLARATION OF GWENITH A.  
HINZE IN SUPPORT OF NEWMARK  
PLAINTIFFS' OPPOSITION TO  
ENTERTAINMENT COMPANIES'  
MOTION TO DISMISS**

DATE: January 12, 2003  
TIME: 10:00 a.m.  
PLACE: Courtroom 750

24 AND CONSOLIDATED ACTIONS.  
25 )  
26 )  
27 )  
28 )

1 I, Gwenith A. Hinze, declare as follows:

2 1. I am an attorney at law duly admitted to practice before this Court. I am a staff  
3 attorney at the Electronic Frontier Foundation, counsel of record for the Newmark Plaintiffs herein.  
4 I submit this declaration in support of the attached Newmark Plaintiffs' Opposition to the  
5 Entertainment Company Defendants' second Motion to Dismiss. The facts stated here are known  
6 to me of my own personal knowledge, except where otherwise stated. If called upon to testify  
7 thereto I could and would competently do so.

8 2. Attached hereto as Exhibit A is a true and correct copy of the transcript of the oral  
9 argument before the Court on August 12, 2002, in relation to the Entertainment Companies' first  
10 motion to dismiss, and the Newmark Plaintiffs' motion for consolidation. By Order of August 15,  
11 2002, (attached as Exhibit 1 to the Declaration of Scott Cooper in support of the Entertainment  
12 Company Defendants' second Motion to Dismiss), the Court denied the Defendants' first motion to  
13 dismiss and ordered consolidation of the lawsuit brought by the five consumer plaintiffs against the  
14 Entertainment Company Defendants and SONICblue, Inc. and ReplayTV, Inc., with the  
15 Entertainment Company Defendants' consolidated lawsuit against SONICblue, Inc. and ReplayTV,  
16 Inc.

17 3. In January 2003, in the course of the third party deposition of Mr. Chad Little, the  
18 operator of the [www.planetreplay.com](http://www.planetreplay.com) in the SONICblue litigation, the Entertainment Companies  
19 asserted that they were legally entitled to seek preservation of information collected via that  
20 website related to the use of the Send Show feature by individual ReplayTV DVR users. Attached  
21 hereto as Exhibit B is a true and correct copy of the relevant segment of the transcript of the  
22 deposition of Mr. Little including the statements made at page 110, lines 5-16.

23 4. On June 10, 2003, the purchaser of the ReplayTV assets and service, Digital  
24 Networks North America, Inc. issued a press release stating that in order to accommodate the  
25 concerns of television and motion picture copyright owners, it was disabling the Commercial  
26 Advance and Send Show features on the new 5500 model ReplayTV which was to be released in  
27 August 2003. The press release stated that:

28

1 “ReplayTV also announced that it would address concerns of content copyright  
2 holders by removing the Send Show feature in the new ReplayTV 5500. The  
3 company is also removing the Automatic Commercial Advance® feature in the new  
4 ReplayTV 5500.”

4 Attached as Exhibit C hereto is a true and correct copy of a print out of that press release from the  
5 website of SONICblue.com at <http://www.sonicblue.com/company/press.asp?ID=595ReplayTV>.

6 5. In recent months, over 90 consumer owners of ReplayTV DVRs have expressed  
7 interest in joining the Newmark Plaintiffs’ Complaint to obtain the same declaratory relief being  
8 sought by the Newmark Plaintiffs. A motion for leave to amend to add a new individual plaintiff,  
9 Thomas White, drop two existing plaintiffs, and convert the action into a class action is currently  
10 pending before the Court.

11 6. Attached hereto as Exhibit D are three recent news stories reporting on the hundreds  
12 of direct copyright infringement lawsuits recently brought by the recording industry against  
13 individual consumers for using technologies that the recorded music copyright owners maintain  
14 facilitate copyright infringement.

15 7. The major record labels which have filed these lawsuits share common ownership  
16 with, or are part of the same corporate family as at least three of the Entertainment Company  
17 Defendants. Attached hereto as Exhibit E is a table listing ten representative lawsuits filed against  
18 individuals for alleged copyright infringement arising out of use of file-sharing technologies, by  
19 recorded music copyright owners including Warner Brothers Records, Inc., Sony Music  
20 Entertainment, Inc., and UMG Recordings, Inc.

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1 **PROOF OF SERVICE**

2 ***Paramount Pictures Corporation v. ReplayTV***  
3 **CASE NO. CV 01-9358 FMC (EX)**  
4 **(Consolidated With Case No. CV 02-04445 FMC (EX))**  
5 **US District Court, Central District of California**

6 I am over the age of 18 years, am not a party to this action and am employed by Plaintiff's  
7 Counsel, Electronic Frontier Foundation.

8 On December 9, 2003, I served the within:

9 **DECLARATION OF GWENITH A. HINZE IN SUPPORT OF NEWMARK  
10 PLAINTIFFS' OPPOSITION TO ENTERTAINMENT COMPANIES' MOTION  
11 TO DISMISS**

12 on the parties in said action by US MAIL by depositing the originals or copies, as noted below, in  
13 an envelope, postage prepaid in a US MAIL BOX addressed as follows:

14 Scott P Cooper	Emmett Charles Stanton	Lawrence F Pulgram
15 Simon Block	Fenwick & West LLP	Fenwick & West
16 Proskauer Rose	Silicon Valley Center	275 Battery St., Ste 1500
17 2049 Century Park E, Ste 3200	801 California Street	San Francisco, CA 94111
18 Los Angeles, Ca 90067-3206	Mountain View, CA 94041-2008	Fax No. 415-281-1350
19 Fax No. 310-557-2193	Fax No. 650-938-5200	lpulgram@fenwick.com
20 scooper@proskauer.com	estanton@fenwick.com	
21 Robert M. Schwartz	Robert H Rotstein	
22 O'Melveny & Myers LLP	McDermott Will & Emery	
23 1999 Avenue of the Stars	2049 Century Park E, 34th Fl.	
24 Los Angeles CA 90067-6035	Los Angeles, CA 90067-3208	
25 Fax No. 310-246-6779	Fax No. 310-277-4730	
26 arader@omm.com	rrotstein@mwe.com	
27 rschwartz@omm.com		

28 I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct.

Dated: December 9, 2003

\_\_\_\_\_  
BARAK R. WEINSTEIN