



Claim Form

In the High Court of Justice Chancery Division Intellectual Property	
Claim No.	HC03C03102

Claimant

Warner Home Video (U.K.) Limited
Warner House
99 Theobalds Road
London WC1X 8WB

Defendants

Terr LLC, trading as 321 Studios Europe (the First Defendant)
Sussex House
23 Cuckfield Road
Hurstpierpoint
West Sussex BN6 9RW

HRC Distribution Limited (the Second Defendant)

Bank House
128 High Street
Needham Market
Suffolk IP6 8DH



Brief details of claim

The Claimant's claim is in respect of the Defendants' importation and/or sale and/or offer or exposure for sale and/or advertisement for sale of certain software specifically designed or adapted to circumvent the copy-protection of copyright works issued by the Claimant to the public in an electronic form with the licence of the copyright owner(s), contrary to section 296(2) of the Copyright Designs and Patents Act 1988 ("the Software").

The Claimant seeks:

1. An injunction to restrain the Defendants and each of them (whether acting by their respective directors officers servants or agents or any of them or otherwise howsoever) from importing, selling, letting for hire, offering or exposing for sale or hire or advertising for sale or hire:-
 - (a) the Software; and/or
 - (b) any other device or means specifically designed or adapted to circumvent the copy-protection of copyright works issued by the Claimant to the public in an electronic form.
2. An order for the delivery up or the destruction (and in either case upon oath) of all devices or means in the possession power custody or control of the Defendants or either of them the

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N1 - w3 Claim form (CPR Part 7) (4.99)

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importation, sale, letting for hire, offer or exposure for sale or hire, or advertisement for sale or hire of which would be in breach of the provisions of the foregoing injunctions or either of them.

3. An inquiry as to damages in respect of each of the Defendants infringements of the Claimant's rights under section 296 of the Copyright Designs and Patents Act 1988 or at the option of the Claimant an account of all profits accruing to the Defendants by reason of their acts of infringement.
4. An order for the payment to the Claimant of:
 - (a) the sum or sums certified in answer to the said inquiry with interest to be assessed under Section 35A of the Supreme Court Act 1981; alternatively
 - (b) the sum or sums found due upon taking the said account with interest at such rate as to this Honourable Court shall seem equitable.
5. Costs
6. Further or other relief.

Value

The Claimant is at this stage unable to quantify the damages it expects to recover.

Defendants' names and addresses

First Defendant Sussex House 23 Cuckfield Road Hurstpierpoint West Sussex BN6 9RW
Second Defendant Bank House 128 High Street Needham Market Suffolk IP6 8DH

£	
Amount claimed	To be assessed
Court fee	£980
Solicitor's costs	To be assessed
Total amount	To be assessed
Issue date	29 JUN 2003

Angus

Does your claim include any issues under the Human Rights Act 1998?

Yes

No

Particulars of Claim attached.

IN THE HIGH COURT OF JUSTICE

CLAIM NO

CHANCERY DIVISION

INTELLECTUAL PROPERTY

BETWEEN:

WARNER HOME VIDEO (U.K.) LIMITED

- and -

Claimant

(1) TERR LLC trading as 321 STUDIOS EUROPE

(2) HRC DISTRIBUTION LIMITED

Defendants

PARTICULARS OF CLAIM

The Claimant

1. The Claimant carries on business in the United Kingdom which business includes the issuing to the public of Digital Versatile Disks ("DVDs"). The Claimant is one of the major distributors of DVDs in the UK and distributes many well known and popular feature films upon DVD. These DVDs are referred to below as the Claimant's DVDs. Examples of the Claimant's DVDs include: Heist, Oceans Eleven, Outbreak, Passport to Paris, The Bourne Identity, The Green Mile, The Perfect Storm and The Time Machine.
2. The Claimant's DVDs are issued to the public in the United Kingdom by the Claimant under the licence of the copyright owner of the copyright work contained upon the DVD, such copyright work being a film.
3. The Claimant's DVDs are issued to the public in the United Kingdom in an electronic form (within the meaning of section 178 of the Copyright Designs and Patents Act 1988 (the "Act")) which is copy-protected.

4. The copy protection is achieved by use of what is known as the CSS or Content Scrambling System. The CSS is a copy protection system which encrypts the contents of the DVD. CSS technology is licensed to manufacturers of DVD players (including DVD drives for use in computers). Such DVD players (including DVD drives for use in computers) are referred to below as Licensed Players.
5. The effect of the copy-protection is (i) to allow a DVD to be watched when played upon a Licensed Player; and (ii) to render any copy that is made of the DVD's contents to be of a nature such that it will not be watchable in any DVD player or DVD drive.
6. All of the Claimant's DVDs (and most other DVDs which include films in their contents and which are issued by or with the licence of third party copyright owners in the United Kingdom) incorporate copy protection in the form of the CSS.
7. For the purposes of these proceedings the Claimant relies upon a DVD containing the feature film Outbreak as an example of one of the Claimant's DVDs. That DVD is referred to below as the Outbreak DVD. A copy of the Outbreak DVD is available for inspection upon reasonable notice. The Outbreak DVD:-
 - (i) contains a film within the meaning of section 5B of the Act, which film is by virtue of section 1 of the Act a copyright work;
 - (ii) identifies a named person as the owner of the copyright in the film, such identification being effected by a notice on the DVD "© Warner Bros" and a copyright notice which is played at the end of the film which states "This motion picture © Warner Bros";
 - (iii) is issued to the public in the United Kingdom by the Claimant with the licence of the copyright owner ; and
 - (iv) incorporates the CSS the effect of which is as described at paragraph 5 above.
8. In the premises the Claimant is a person which has the benefit of the rights provided by section 296 of the Act.

The Defendants

poration organised under the laws of Missouri in the United States trading as “321 Studios” and in Europe”. It carries on business in England from an address at Cuckfield Road, Hurstpierpoint, West Sussex BN6 9RW. It also carries on business in England via the Internet website located at the url www.321studios.co.uk (the “UK Website”)

into the United Kingdom and offers for sale via the UK Website copies of the Software described as DVD X Copy (the “Software”). The Software is available for download from the UK Website in return for a payment of

the Software is available for sale via the UK Website upon receipt of payment. Such copies are despatched to purchasers by post. Such copies are available for sale via the UK Website upon receipt of payment of £77.48 made by cheque or postal order.

the UK Website are annexed hereto as Annex 1.

ed or adapted to circumvent the form of copy protection employed in the Claimant’s DVDs. It is designed or adapted to circumvent the CSS and (when used on an ordinary personal computer equipped with a DVD writable drive) makes an unencrypted copy of the contents of a CSS protected DVD in a temporary file on the hard disk of a computer and then copies that temporary file to a blank DVD media.

on the UK Website in the following terms:

our DVD movies and series with one click”

roduct from 321 Studios that allows you to make backup copies of your DVD movies. With it's ground-breaking

9. The First Defendant is a corporation incorporated in the USA. It carries on business in England from an address at Cuckfield Road, Hurstpierpoint, West Sussex BN6 9RW. It also carries on business in England via the Internet website located at the url www.321studios.co.uk (the “UK Website”)

10. The First Defendant imports into the United Kingdom via the UK Website a software program described as DVD X Copy (the “Software”). The Software is available for download from the UK Website in return for a payment of US \$119.

11. The Second Defendant is a company incorporated in England and has a registered office at Bank House, 128 High Street, Needham Market, Suffolk IP6 8DH. The First Defendant also offers for sale via the UK Website copies of the Software upon receipt of payment. Such copies are despatched to purchasers by post. Such copies are available for sale via the UK Website upon receipt of payment of £77.48 made by cheque or postal order.

12. Copies of print outs of the content of

Circumvention of Copy Protection

13. The Software is specifically designed to circumvent the form of copy protection employed in the Claimant’s DVDs. It is designed or adapted to circumvent the CSS and (when used on an ordinary personal computer equipped with a DVD writable drive) makes an unencrypted copy of the contents of a CSS protected DVD in a temporary file on the hard disk of a computer and then copies that temporary file to a blank DVD media.

14. The Defendants describe the Software as follows:

“DVD X Copy. Perfect Copies of your

“DVD X Copy is the revolutionary product that allows you to make backup copies of your DVD movies. With it's ground-breaking

technology, DVD X Copy allows anyone with a DVD burner to COPY and BURN all their DVD movies.

"Perfect Video & Audio Quality - Just like the original DVD!"

"Copies all Special Features/Menus/Subtitles & Languages"

"Copies virtually any DVD - including copy-protected DVDs"

15. On 20 August 2003 the Claimant's solicitors purchased by credit card from the UK Website a copy of the Software and downloaded a copy of the Software.

16. For the purposes of this litigation on 21 August 2003 a copy of the film Outbreak was made from the Outbreak DVD on to a previously blank DVD media using the Software and is available for inspection upon reasonable notice.

Knowledge and/or Reason to Believe

17. The First and Second Defendants each know or have reason to believe that the Software will be used to make infringing copies of the Claimant's DVDs.

Particulars

Pending disclosure and requests for further information herein the Claimant seeks to rely on the following facts and matters:

- (i) The purpose of the Software is to enable copies of DVDs to be made.
- (ii) The Defendants' advertising as referred to at paragraph 14 above and in particular the statement that the Software *"Copies virtually any DVD - including copy-protected DVDs"*.
- (iii) The Software includes means which automatically circumvent the CSS without requiring any intervention or expertise by the user of the Software.
- (iv) The Defendants purport to require users of the Software to agree that the Software is only used to make copies of DVDs already owned by the user of the Software, such copies being referred to as "archive" or "back up" copies.

- (v) The fact that the Defendants purport to impose such a requirement indicates that they know that the Software will be used to make copies of copyright material on DVDs which the user of the Software does not own, or to provide copies of the copyright material on DVDs to third parties.
- (vi) The contents of the UK Website and the terms of the licence agreement that is provided with the Software indicate that the Defendants know or have reason to believe that the Software will be used to make infringing copies. A copy of the licence agreement that is provided with the Software is Annex 2 to these Particulars of Claim.
- (vii) Copies that are made of copyright material on DVDs by use of the Software will inevitably include copies of the Claimant's DVDs given that the Claimant is one of the major distributors of DVDs in the UK and distributes many well known and popular films upon DVD. Each such copy is an infringing copy because

(a) ~~the making of the copy is an act restricted by the copyright in the works contained upon the DVD concerned;~~

(b) no licence has been granted by the Claimant or the copyright owner to make such a copy; and

(c) it is well known that the making of such a copy is not permitted. In that connection the Claimant will rely on the fact that each such DVD contains upon its packaging wording expressly prohibiting the making of unauthorised copies – the text of such wording on the Outbreak DVD packaging is *“The copyright proprietor has licensed the film (including its soundtrack) comprised in this DVD for home use only. All other rights are reserved. The definition of home use excludes the use of this DVD at locations such as clubs, coaches, hospitals, hotels, oil rigs, prisons and schools. Any unauthorised copying, editing, exhibition, renting, exchanging, hiring, letting, public performance, diffusion and/or broadcast of this DVD or any part thereof is strictly prohibited and any such act establishes liability for a civil action and may give rise to criminal prosecution”*.

(viii) The making of the copy of the copyright work is a circumvention of the copy-protection employed by the Claimant on the Claimant's DVDs as set out in paragraph 13 above.

(ix) The Claimant will also say that the Defendants will have knowledge of the fact that the Software will be used to make infringing copies by reason of the pleadings, evidence and submissions which have been filed by the defendants in Case No. C 02-1955 SI in the United States District Court, Northern District of California, San Francisco Division, between the First Defendant (as plaintiff) and (as defendants) Metro-Goldwyn-Mayer Studios, Inc.; Tristar Pictures, Inc.; Columbia Pictures Industries, Inc.; Sony Pictures Entertainment, Inc.; Time Warner Entertainment Co. L.P.; Disney Enterprises, Inc.; Universal City Studios, Inc.; and The Saul Zaentz Company.

18. In the premises the Claimant is entitled to the same rights against the First and Second Defendant in relation to the Software as a copyright owner has in respect of the said infringements of copyright and each of them.

19. By reasons of the Defendants' acts of importing, selling, offering or exposing for sale and advertising for sale the Claimant has suffered loss and damage. The Defendants and each of them threaten and intend to continue the acts complained of whereby the Claimant will continue to suffer loss and damage unless and until restrained by this Honourable Court.

20. The Claimant is entitled to seek and does seek interest upon all sums found due to them by way of damages or an account at such rate as may seem appropriate.

And the Claimant claims:-

(a) An injunction to restrain the Defendants and each of them (whether acting by their respective directors officers servants or agents or any of them or otherwise howsoever) from importing, selling, letting for hire, offering or exposing for sale or hire or advertising for sale or hire:-

(i) the Software; and/or

- (ii) any other device or means specifically designed or adapted to circumvent the copy-protection of copyright works issued by the Claimant to the public in an electronic form.
- (b) An order for the delivery up or the destruction (and in either case upon oath) of all devices or means in the possession, power, custody, or control of each of the Defendants or either of them, the importation, sale, letting for hire, offer or exposure for sale or hire, or advertisement for sale or hire of which would be in breach of the provisions of the foregoing injunctions or either of them.
- (c) An inquiry as to damages in respect of each of the Defendant's infringements of the Claimant's rights under section 296 of the Copyright Designs and Patents Act 1988, or at the option of the Claimant, an account of all profits accruing to the Defendants by reason of their acts of infringement.
- (d) An order for the payment to the Claimant of:
 - (i) the sum or sums certified in answer to the said inquiry with interest to be assessed under Section 35A of the Supreme Court Act 1981; alternatively
 - (ii) the sum or sums found due upon taking the said account with interest at such rate as to this Honourable Court shall seem equitable.
- (e) Costs.
- (f) Further or other relief.

Served this 29th day of August 2003

By Herbert Smith (reference 2341) of Exchange House, Primrose Street, London EC2A 2HS
Solicitors to the Claimant

Statement of Truth

The Claimant believes that the facts stated in these Particulars of Claim are true.
I am duly authorised by the Claimant to sign this statement

Full name: Nicholas John Gardner

Signed

Partner, Herbert Smith

29th August 2003

Statement of Truth

The Claimant believes that the facts stated in these particulars of claim are true.
I am duly authorised by the claimant to sign this statement

Full name **Nicholas John Gardner**

Name of claimant's solicitor's firm **Herbert Smith**

Signed  position or office held **Partner**
Claimant's solicitor (if signing on behalf of firm, company or company)

Herbert Smith
Exchange House
Primrose Street
London EC2A 2HS
DX 28

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Ref: 2341/2709/30839583

Claimant's or claimant's solicitor's address to which documents or payments should be sent if different from overleaf including (if appropriate) details of DX, fax or e-mail.