



Studios LLC, a/k/a Terr LLC (“321 Studios”), manufactures and traffics in software – most prominently, a software program entitled “Games X Copy” – that is designed to and does circumvent the technological protection measures that control access to and prohibit unauthorized copying of video game content. 321 Studios’ actions directly violate the Digital Millennium Copyright Act (“DMCA”), Pub. L. No. 105-304, 112 Stat. 2860 (1998), which prohibits trafficking in products or services that circumvent technological protection measures designed to prevent unauthorized access to and copying of copyrighted materials.

2. Games X Copy is merely the latest in a string of 321 Studios products that violate the DMCA. Defendant 321 Studios also has produced products similar to Games X Copy that enable a user to copy motion pictures and related content on DVDs by circumventing the technological protection measures of those DVDs. These other products include DVD X Copy Platinum, DVD X Copy Gold, DVD X Copy Xpress, and DVD Copy Plus. Federal courts – including the Honorable Richard Owen of this Court – have already determined that 321 Studios’ DVD-copying products violate the DMCA and cause copyright owners irreparable harm, and have enjoined 321 Studios’ manufacturing, offering to the public, and trafficking in such products. *See Macrovision Corp. v. 321 Studios*, No. 04-CV-80, 2004 WL 1066323 (S.D.N.Y. May 12, 2004) (Owen, J.) (issuing preliminary injunction against 321 Studios); *Paramount Pictures Corp. v. 321 Studios*, No. 03-CV-8970, 2004 WL 402756 (S.D.N.Y. Mar. 3, 2004) (Owen, J.) (same); *321 Studios v. Metro Goldwyn Mayer Studios, Inc.*, 307 F. Supp. 2d 1085 (N.D. Cal. 2004) (issuing declaratory judgment and injunction against 321 Studios); *see also Universal City Studios, Inc. v. Corley*, 273 F.3d 429 (2d Cir. 2001) (affirming permanent injunction against a product similar to 321 Studios’ DVD-copying products).

3. As with 321 Studios' DVD-copying products, Games X Copy violates the DMCA's anti-circumvention provisions because it is designed and marketed to circumvent the technological protection measures that Plaintiffs use to protect their video games, and because it has no commercially significant use other than circumvention. Indeed, 321 Studios' own website proclaims that Games X Copy has the capability to "make a PERFECT backup copy of virtually any PC Game," which "works just like the original," but "without needing the original disc." Exh. 1.

4. 321 Studios' actions and products, including Games X Copy, have caused, and will continue to cause, grave and irreparable harm to Plaintiffs, who have invested significant time, resources and creativity into their copyright-protected video games. Plaintiffs therefore seek injunctive and other relief against 321 Studios for violation of the DMCA.

#### **JURISDICTION AND VENUE**

5. This is a civil action for damages and injunctive relief under the anti-circumvention provisions of the DMCA, 17 U.S.C. §§ 1201, *et seq.*

6. As this case arises under the Copyright Act, 17 U.S.C. § 101, *et seq.*, jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over Defendant in that Defendant has had continuous and ongoing business contacts with residents of New York by, among other things, engaging in distribution and sales of its products in New York through retail channels; the ownership or control of one or more interactive websites aimed at residents of New York, through which it has entered into contracts with and has distributed products to residents of New York; intentionally engaging in acts targeted at New York that have caused harm to Plaintiffs in this State; and engaging in the wrongful acts alleged herein in New York.

8. For the same reasons described in Paragraph 7, venue lies in this District pursuant to 28 U.S.C. §§ 1400(a) and 1391(b).

### **PLAINTIFFS AND THEIR WORKS**

9. Plaintiff Atari, Inc. (formerly known as “Infogrames”) is a Delaware corporation, with its corporate office located at 417 Fifth Avenue, New York, NY, 10016. Founded in 1992, Atari is one of the world’s leading interactive entertainment software companies. It develops, publishes, and distributes interactive entertainment software products for all platforms of advanced entertainment systems, including Sony PlayStation® and PlayStation® 2; Nintendo Game Boy®, Game Boy Advance® and Nintendo GameCube™; Microsoft Xbox™; personal computers; and the Internet. Atari’s diverse portfolio of products extends over every major video game genre, including action, adventure, strategy, family, racing, and sports games. Atari’s video games include “Enter the Matrix™” and “Terminator® 3: War of the Machines™.” Atari has approximately 595 employees throughout the world, with nearly 140 employees at its New York corporate headquarters. Atari uses technological protection measures, including SecuROM, a copyright protection product made by Sony DADC (“Sony”), to protect its copyrighted video game content.

10. Plaintiff Electronic Arts Inc. is a Delaware corporation. EA’s corporate office is located at 209 Redwood Shores Parkway, Redwood City, CA, 94065. Founded in 1982, EA is one of the world’s leading interactive entertainment software companies. It develops, publishes, and distributes interactive entertainment software products for the Internet, personal computers, and advanced entertainment systems such as Sony’s PlayStation® 2, Microsoft’s Xbox™, and Nintendo’s GameCube™. EA’s video games include “Madden NFL™ 2004” and “The Sims™.” EA employs over 4000 people throughout the world, and has over 1000 employees at its

Redwood City corporate headquarters. EA uses technological protection measures, including SafeDisc, a copyright protection product made by Macrovision, to protect its copyrighted video game content.

11. Plaintiff Vivendi Universal Games, Inc. is a Delaware corporation, with its corporate office located at 6080 Center Drive, 10th Floor, Los Angeles, California, 90045. VU Games is one of the world's leading providers of interactive entertainment. VU Games develops, publishes, and distributes games across all major platforms, including personal computers, video game consoles and the Internet. VU Games has over 1800 employees throughout the world, more than 1200 of which are located in the United States, primarily at its Los Angeles, CA corporate headquarters. VU Games uses technological protection measures, including SecuROM, to protect its copyrighted video game content.

12. Plaintiffs are among the world's preeminent creators, developers, publishers, and distributors of video games. Plaintiffs own and/or possess the exclusive reproduction, adaptation, and/or distribution rights under United States copyright law in a large number of video games.

13. Among other methods, Plaintiffs and their affiliates distribute these copyrighted video games on CD-ROMs and DVDs, made available to the public for rent or sale.

14. The CD-ROMs and DVDs that Plaintiffs distribute contain complete video games (sometimes with other, related content) in digital format. These games are designed primarily for home use, ordinarily to be played by using a personal computer, advanced entertainment systems, or similar devices, configured with an appropriate CD-ROM or DVD drive and related software.

15. The development and production of video games involves an enormous investment of creativity, time, and effort analogous to that involved in creating other works of art and expression, such as movies. To bring a top game to market, it often requires a team of 20 to 30 professionals – sometimes twice that number – working for two or three years to fuse together the work of writers, animators, musicians, sound engineers, software engineers, and programmers into a video game that is interactive, allowing the user to direct and control the outcome of the experience. Video games often contain extensive storylines and character development, which are the product of game developers' brainstorming and collaboration. Video games also feature the complex digital artwork of some of the best modern graphic artists, as well as music, much of it original and performed by top musicians and orchestras. A typical video game costs an average of \$5-10 million to create and market.

16. Plaintiffs have invested and continue to invest substantial sums of money, as well as time, effort, and creative talent, to create, manufacture, advertise, promote, and sell video games worldwide. Plaintiffs, including their development teams, are compensated for their creative efforts and monetary investments largely from the sale and distribution of their video games to the public.

17. Video games continue to undergo rapid technological evolution and advancement, as the digital format enables game creators to create an increasingly wide range of high-quality visual and audio effects, in turn enhancing the experience of video game players and viewers.

18. The digital format of Plaintiffs' copyrighted works also makes those works vulnerable to digital copyright piracy. Without security protections, Plaintiffs' works stored on CD-ROMs and DVDs can be copied, without degradation of quality, either to other recordable CDs (CD-Rs), writable DVDs, or computer hard drives. And once copied, the digital content

can be distributed virtually instantaneously over the Internet to millions of people. Thus, absent access- and copy-control protections, and laws to prevent circumvention of those technological protection measures, Plaintiffs' video games would be subject to a form of digital piracy that is global in scale and viral in nature. Where the typical video game now takes two to three years to create at an average cost of \$5-10 million, the risk of injury to video game copyright owners from such digital piracy is enormous.

19. Because of these piracy threats, Plaintiffs and others have adopted access-control and copy-protection systems for video games distributed on CD-ROMs and DVDs. Macrovision's SafeDisc and Sony's SecuROM are examples of some of the technological protections used by Plaintiffs. SafeDisc, SecuROM, and other such technologies, are technological protection measures that (a) effectively control access to works protected by the Copyright Act, and (b) effectively protect rights of copyright owners under the Copyright Act to control the reproduction, manufacturing, public performance, and/or distribution of their copyrighted works or portions thereof.

#### **THE DEFENDANT'S WRONGFUL CONDUCT**

20. Defendant 321 Studios is the business name for Terr LLC, a limited liability corporation organized under the laws of Missouri. 321 Studios manufactures video game-copying software known as "Games X Copy." In New York and elsewhere, 321 Studios distributes, offers to the public, provides, and otherwise traffics in Games X Copy through retail channels and through a website operated by 321 Studios.

21. Defendant 321 Studios is in the business of manufacturing and trafficking in products designed primarily to circumvent technological protection measures used to protect copyrighted works. Despite numerous rulings of this Court and other courts holding unlawful

and enjoining 321 Studios from manufacturing or trafficking in its DVD-copying products, 321 Studios recently introduced a similar product for video games – Games X Copy.

22. Like 321 Studios' DVD-copying products, Games X Copy (and/or parts thereof) is primarily designed and produced for the purpose of circumventing the technological access- and copy-control measures (including SafeDisc and SecuROM) employed by Plaintiffs to secure their copyrighted video games. Furthermore, Games X Copy is marketed for the purpose of circumventing Plaintiffs' access- and copy-control technologies, and Games X Copy has no commercially significant purpose or use other than to circumvent Plaintiffs' technological protection measures.

23. That Games X Copy is primarily designed and marketed to circumvent the technological protection measures on video games (including Plaintiffs' video games) is made clear by the website run by Defendant to advertise and distribute its product. On its website, 321 Studios describes the capability of Games X Copy to "make a PERFECT backup copy of virtually any PC Game." Exh. 1. According to 321 Studios' website, Games X Copy "creates an exact image of your PC game," and then allows a user either "to transfer the image onto a CD or DVD," or to "write the entire game to your hard disc drive." *Id.* Once Games X Copy has copied a video game, the "copy works just like the original," and a user can "either play your game from your hard drive or from the backup disc," but "without needing the original disc." *Id.* This is exactly the type of access and copying that, but for the circumvention enabled by 321 Studios' Games X Copy, would be prevented by Plaintiffs' technological protection measures.

24. 321 Studios' Games X Copy product is useful not only to the casual copyright infringer, but in fact has the capability to be used in commercial piracy to mass-produce copies of video games and/or illegally distribute copies of games via the Internet. Indeed, instances of

such commercial piracy have already occurred with respect to 321 Studios' directly analogous DVD-copying products.

**CLAIM FOR RELIEF**

(Violation of 17 U.S.C. § 1201)

25. Plaintiffs repeat and reallege every allegation contained in paragraphs 1 through 24 as if fully set forth herein.

26. Defendant 321 Studios manufactures, offers to the public, provides, or otherwise traffics in software products and services, or parts thereof, that (a) are primarily designed for the purpose of circumventing access- and copy-control technological measures that Plaintiffs use to protect their video games, and/or for the purpose of circumventing the protection afforded by such technological measures, (b) have no commercially significant purpose or use other than to circumvent Plaintiffs' access- and copy-control technological measures, and/or to circumvent the protection afforded by such technological measures, and/or (c) are marketed and sold by Defendant and/or others working in concert with Defendant, with Defendant's knowledge, for use in circumventing the access- and copy-control technological measures employed by Plaintiffs, and/or in circumventing the protections afforded by such technological measures.

27. By offering to the public, providing, or otherwise trafficking in video game-copying software products, Defendant has violated two separate provisions of the Copyright Act that govern circumvention of copyright protection systems – 17 U.S.C. § 1201(a)(2) and 17 U.S.C. § 1201(b)(1).

28. Defendant's conduct has caused and is causing, and unless enjoined and restrained by the Court, will continue to cause Plaintiffs grave and irreparable injury. Plaintiffs

have no adequate remedy at law. Pursuant to 17 U.S.C. § 1203, Plaintiffs are entitled to a permanent injunction prohibiting further violations of 17 U.S.C. § 1201.

29. As a direct and proximate result of Defendant's conduct, Plaintiffs have been injured and are entitled to damages as permitted by law, as will be proved at trial, including Defendant's profits attributable to its violations of 17 U.S.C. § 1201, pursuant to 17 U.S.C. § 1203(e).

30. Plaintiffs are further entitled to their attorneys' fees and full costs pursuant to 17 U.S.C. § 1203(b).

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

1. For a preliminary and permanent injunction enjoining Defendant and its agents, servants, employees, officers, attorneys, successors, licensees, partners, and assigns, and all persons acting in concert with it, from:

- (a) manufacturing, importing, offering to the public, providing or otherwise trafficking in Games X Copy or any products that circumvent, descramble, decrypt, or otherwise avoid, bypass, remove, deactivate, or impair any technological protection measures in any video game, whether such protections are currently employed or hereinafter developed;
- (b) manufacturing, importing, offering to the public, providing, or otherwise trafficking in, any other technology, service, product, device, component, or part thereof, that:
  - (i) is primarily designed or produced for the purpose of

- circumventing (or circumventing the protection afforded by) SafeDisc, SecuROM, or any other technological protection measure that effectively controls access to copyrighted video games or effectively protects copyright owners' rights to control the reproduction, manufacturing, public performance, and/or distribution of their copyrighted video games or portions thereof;
- (ii) has only limited commercially significant purposes or uses other than to circumvent (or to circumvent the protection afforded by) SafeDisc, SecuROM, or any other technological protection measure that effectively controls access to copyrighted video games or effectively protects copyright owners' rights to control the reproduction, manufacturing, public performance, and/or distribution of their copyrighted video games or portions thereof;
- or
- (iii) is marketed by Defendant and/or others acting in concert with Defendant, with Defendant's knowledge, for use in circumventing (or in circumventing the protection afforded by) SafeDisc, SecuROM, or any other technological protection measure that effectively controls access to copyrighted video games or effectively protects copyright owners' rights to control the reproduction, manufacturing, public performance, and/or distribution of their copyrighted video games or portions thereof.

2. For an order requiring Defendant to deliver upon oath, to be surrendered to Plaintiffs or to be destroyed, all computer discs, computer drives, and other physical objects embodying all or any part of the computer software that comprises the product known as Games X Copy, or similar products, that are in the possession, custody or control of Defendant and/or its agents or representatives.

3. Further, for an order requiring Defendant to retrieve all copies of the product known as Games X Copy, or similar products, from all retail outlets, and requiring Defendant to advise all retail outlets of that order.

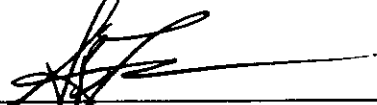
4. For damages as provided for by law, including, but not limited to, Plaintiffs' lost profits and Defendant's profits.

5. For prejudgment interest according to law.

6. For Plaintiffs' attorneys' fees, full costs, and disbursements in this action.

7. For such other and further relief as the Court may deem proper and just.

Respectfully submitted,



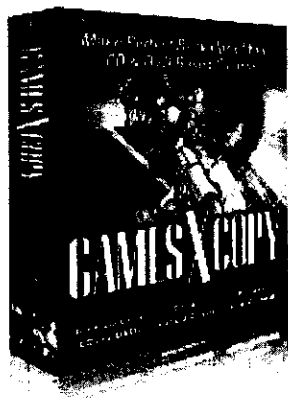
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Dated: June 14, 2004

**EXHIBIT 1**  
**TO PLAINTIFFS' COMPLAINT**



**\$59.99**



# GAMESXCOPY™

- Backup your CDs or DVDs
- Create virtual Drives
- Preserve your originals



**Buy Download**



**Buy CD**

## GAMESXCOPY™

## SCREENSHOTS

> Screenshot



## TOUR GAMESXCOPY

> Take the Tour (359Kb)



## OTHER INFORMATION

- > System requirements
- > Support
- > FAQ
- > Users Guide



### 1. Back Up your ENTIRE PC Game collection!

- GAMESXCOPY lets you make a PERFECT backup copy of virtually any PC Game. GAMESXCOPY is a powerful utility and all you need is a PC with either a CD or a DVD burner. No more threat of losing a game due to theft, scratches, skipping, freezing or other media imperfections. Your copy works just like the original; your entire collection can be archived and your investment protected.
- Either use a blank disc or write the entire game to your hard disc drive. Imagine the possibilities of playing a game without needing the original disc.

### 2. How GAMESXCOPY works:

- GAMESXCOPY does not change any of the original game content. GAMESXCOPY creates an exact image of your PC game. GAMESXCOPY then uses exclusive AUTO-BURN technology to transfer the image onto a CD or DVD. Once backed up, you can store your original PC game safe on the shelf and then either play your game from your hard drive or from the backup disc.

### 3. Work with all popular blank media or just use your PC's hard disc drive:

- GAMESXCOPY works with CD-R, DVD-R, DVD-RW, DVD-RAM, DVD+RW and DVD+R media. It can also be used with different types of CD/DVD burners such as CD-RW, DVD-RW, DVD+RW, DVD-RAM in IDE, SCSI, USB and IEEE1394. GAMESXCOPY is designed to work with current and future technology.

### 4. Lifetime Updates

- Compare to the competition! Technology changes and only GAMESXCOPY protects both your PC Game collection and the rights to future game announcements by providing you with free lifetime upgrades to the software.

### 5. Novice and Expert Modes

- GAMESXCOPY is simple, yet powerful to use. Children and busy adults appreciate the automatic features of the Novice mode. Expert gamers love the ability to customize the experience or create virtual drives.

#### 6. Bonus Features

- GAMESXCOPY can even back up music and video CDs or DVDs directly from the originals.
- You can use the hard drive instead of the disc by creating a virtual drive that can be loaded with game images allowing several discs to appear to be loaded at one time.
- Use the virtual image now and burn a new CD or DVD later.



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