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

13 METRO-GOLDWYN-MAYER
14 STUDIOS INC., a Delaware corporation;
15 DISNEY ENTERPRISES, INC., a
16 Delaware corporation; TWENTIETH
17 CENTURY FOX FILM
18 CORPORATION, a Delaware
19 corporation; COLUMBIA PICTURES
20 INDUSTRIES, INC., a Delaware
21 corporation; CPT HOLDINGS, INC., a
22 Delaware corporation; COLUMBIA
23 PICTURES TELEVISION, INC., a
24 Delaware corporation; TRISTAR
25 TELEVISION, INC., a Delaware
26 corporation; TRISTAR PICTURES, INC.,
27 a Delaware corporation; ELP
28 COMMUNICATIONS, a California
partnership; PARAMOUNT PICTURES
CORPORATION, a Delaware
corporation; UNIVERSAL CITY
STUDIOS, INC., a Delaware corporation;
TIME WARNER ENTERTAINMENT
COMPANY, L.P., a Delaware limited
partnership,

Plaintiffs,

v.

RECORDTV.COM, a California
corporation; DAVID SIMON, an
individual; and DOES 1 through 10,

Defendants.

Case No.

COMPLAINT FOR:

- (1) COPYRIGHT INFRINGEMENT,**
- (2) TRADEMARK INFRINGEMENT
IN VIOLATION OF LANHAM ACT
§ 32 (15 U.S.C. § 1114)**
- (3) UNFAIR COMPETITION IN
VIOLATION OF LANHAM ACT
§ 43(a) (15 U.S.C. § 1125(a)),**
- (4) VIOLATION OF THE CABLE
COMMUNICATIONS POLICY ACT
(47 U.S.C. § 533),**
- (5) UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. & PROF.
CODE § 17200, and**
- (6) COMMON LAW UNFAIR
COMPETITION**

1 Plaintiffs Metro-Goldwyn-Mayer Studios Inc., Disney Enterprises, Inc., Twentieth
2 Century Fox Film Corporation, Columbia Pictures Industries, Inc., CPT Holdings, Inc.,
3 Columbia Pictures Television, Inc., TriStar Television, Inc., TriStar Pictures, Inc., ELP
4 Communications, Paramount Pictures Corporation, Universal City Studios, Inc., and Time
5 Warner Entertainment Co., L.P., (collectively, “Plaintiffs”), for their Complaint against
6 Defendants RecordTV.com, David Simon, and Does 1 to 10 (collectively, “Defendants”),
7 allege and aver as follows:

8
9 **JURISDICTION AND VENUE**

10 1. Through this action, Plaintiffs assert claims against Defendants arising under
11 the Copyright Act of 1976, as amended, 17 U.S.C. § 101 *et seq.*, the Trademark Act of
12 1946, as amended, 15 U.S.C. § 1051 *et seq.*, the Cable Communications Policy Act of
13 1984, 47 U.S.C. § 553(a)(1), Cal. Bus. & Prof. Code § 17200, and California common
14 law. This Court has original subject matter jurisdiction over Plaintiffs’ federal claims
15 pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1338(a), and supplemental subject matter
16 jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C. § 1367(a).

17 2. This Court has specific personal jurisdiction over all of the defendants as each
18 has purposefully committed, within the state, the acts from which these claims arise
19 and/or has committed tortious acts outside California, knowing and intending that such
20 acts would cause injury within the state. The Court also has general personal jurisdiction
21 over Defendant RecordTV.com and Defendant David Simon as each conducts continuous,
22 systematic, and routine business within the State of California and the County of Los
23 Angeles.

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

NATURE OF THE CASE

1
2 4. Plaintiffs – copyright holders and/or motion pictures studios – bring this action
3 to put a stop to Defendants’ willful piracy on the Internet. Defendant RecordTV.com and
4 its founder, Defendant David Simon, operate a World Wide Web site through which they
5 make unauthorized copies of Plaintiffs’ copyrighted television programs and motion
6 pictures through the unlawful use of a Los Angeles area cable television signal. After
7 making these infringing copies, Defendants publicly perform them to anyone in the world
8 who has an Internet connection. RecordTV.com claims to receive more than one million
9 visitor “hits” at its site each day and to have more than 50,000 active users of its service.

10 5. Defendants say that RecordTV.com represents an “innovation” in the delivery
11 of television programming. In reality, Defendants are doing nothing more innovative than
12 using modern computer technology to make bootlegged copies and offer unauthorized
13 public performances and public displays of Plaintiffs’ works on an advertiser-supported
14 web site. RecordTV.com and Mr. Simon have taken what is not theirs, duplicated it, and
15 distributed it for their own commercial gain to millions of Internet users around the world.
16 RecordTV.com and Mr. Simon are fully aware that their actions violate the law.
17 Defendants have admitted that their lawyers advised them that their actions were – as
18 Defendants put it – “completely illegal.” Defendants tell anyone who reads their publicly
19 available business plan that, “The beauty of this business is that we have ZERO cost of
20 content for the web site” While Defendants may want to pay nothing for their
21 content, Plaintiffs and their affiliates have no such luxury. Plaintiffs and/or their affiliates
22 spend billions of dollars every year to develop, produce, distribute, and promote the
23 television shows, motion pictures, and other content that Defendants have paid “ZERO” to
24 copy, display, and perform publicly on their commercial site for their own profit.
25 Defendants are aware of Plaintiffs’ rights arising under copyright law but refuse to respect
26 them. Accordingly, Plaintiffs respectfully seek this Court’s assistance to stop Defendants’
27 theft of their intellectual property and to recover for the damage that Defendants have
28 already inflicted.

THE PARTIES

1
2 6. Plaintiff Metro-Goldwyn-Mayer Studios Inc. (“MGM”) is a Delaware
3 corporation with a principal place of business at 2500 Broadway Street, Santa Monica,
4 California 90404. MGM owns (directly or through subsidiaries) the United States
5 copyright in episodes of many television series telecast by United States television
6 stations, such as *Stargate SG-1*, *Cagney and Lacey*, and *In the Heat of the Night*. MGM
7 also owns (directly or through subsidiaries) the United States copyright in many theatrical
8 motion pictures telecast by United States television stations, such as *Rocky*, *Rocky II*, and
9 *Rocky III*, and the “James Bond” movies, such as *Diamonds Are Forever*, *For Your Eyes*
10 *Only*, and *The Living Daylights*.

11 7. Plaintiff Disney Enterprises, Inc. (“Disney”) is a Delaware corporation with its
12 principal place of business at 500 South Buena Vista Street, Burbank, California 91521.
13 Disney owns the United States copyright in many episodes of television programs telecast
14 by United States television stations, such as *Home Improvement* and *The Wonderful*
15 *World of Disney*. Disney also owns the exclusive distribution rights and United States
16 copyright in many theatrical motion pictures telecast by United States television stations,
17 such as *George of the Jungle*, *Honey*, *I Shrank the Kids*, and *A Simple Twist of Fate*.

18 8. Plaintiff Twentieth Century Fox Film Corporation (“Fox”) is a Delaware
19 corporation with a principal place of business at 10201 West Pico Boulevard, Los
20 Angeles, California 90035. Fox owns the United States copyright in many episodes of
21 television series telecast by United States television stations, such as *The Simpsons*, *Ally*
22 *McBeal*, *The X-Files*, *Dharma and Greg*, *Buffy The Vampire Slayer*, *King of the Hill*, *The*
23 *Practice*, and *Chicago Hope*. Fox also owns the United States copyright in many
24 theatrical motion pictures telecast by United States television stations, such as *Toys*, *Nine*
25 *Months*, and *Mrs. Doubtfire*.

26 9. Plaintiffs Columbia Pictures Industries, Inc., CPT Holdings, Inc., Columbia
27 Pictures Television, Inc., TriStar Television, Inc., and TriStar Pictures, Inc., are Delaware
28 corporations with a principal place of business at 10202 West Washington Boulevard,

1 Culver City, California 90232. Plaintiff ELP Communications is a California partnership
2 with a principal place of business at 10202 West Washington Boulevard, Culver City,
3 California 90232. Together, these six plaintiffs – collectively referred to hereinafter as
4 “Columbia” – own the United States copyright in many episodes of television series
5 telecast by United States television stations, such as *Who’s the Boss*, *Mad About You*,
6 *Married with Children*, *Designing Women*, *Party of Five*, and *The Young and the Restless*.
7 Columbia also owns the United States copyright in many theatrical motion pictures
8 telecast by United States television stations, such as *It Could Happen to You*, *Look Who’s*
9 *Talking Too*, and *Places in the Heart*.

10 10. Plaintiff Paramount Pictures Corporation (“Paramount”) is a Delaware
11 corporation with a principal place of business at 5555 Melrose Avenue, Los Angeles,
12 California 90028. Paramount owns the United States copyright in many episodes of
13 television series telecast by United States television stations, such as *Cheers*, *Frasier*,
14 *Entertainment Tonight*, *Star Trek: Voyager*, *Wings*, and *JAG*. Paramount also owns the
15 United States copyright in many theatrical motion pictures telecast by United States
16 television stations, such as *Top Gun*, *Trading Places*, *Tommy Boy*, and *The Saint*.

17 11. Plaintiff Universal City Studios, Inc. (“Universal”) is a Delaware
18 corporation with a principal place of business at 100 Universal City Plaza, Universal City,
19 California 91608. Universal owns the United States copyright in many episodes of
20 television series telecast by United States television stations, such as *Murder, She Wrote*.
21 Universal also owns the United States copyright in many theatrical motion pictures
22 telecast by United States television stations, such as *The Breakfast Club*, *Jurassic Park*,
23 and *Babe*.

24 12. Plaintiff Time Warner Entertainment Company, L.P. (“Warner Bros.”) is a
25 Delaware limited partnership with a principal place of business at 4000 Warner
26 Boulevard, Burbank, California 91522, whose divisions include Warner Bros. and Warner
27 Bros. Television. Warner Bros. owns the United States copyright in many episodes of
28 television series telecast by United States television stations, such as *E.R.*, *Friends*, *The*

1 *Drew Carey Show*, and *Night Court*. Warner Bros. also owns the exclusive distribution
2 rights under United States copyright in many theatrical motion pictures telecast by United
3 States television stations, such as *The Bodyguard*, *Batman*, *Presumed Innocent*, and
4 *Selena*.

5 13. Upon information and belief, Defendant RecordTV.com is a California
6 corporation with its principal place of business in Agoura Hills, California. It is doing
7 business within the jurisdiction of this Court.

8 14. Upon information and belief, Defendant David Simon (“Simon”) is a citizen
9 and resident of the State of California. Simon is doing business within the jurisdiction of
10 this Court.

11 15. The true names and capacities, whether individual, corporate or otherwise,
12 of the defendants named herein as Does 1 through 10 are presently unknown to Plaintiffs,
13 who therefore sue said defendants by such fictitious names. Plaintiffs will seek to amend
14 this Complaint to allege the true names and capacities of said defendants when they have
15 ascertained such information. Plaintiffs are informed and believe that each defendant
16 named herein as Does 1 through 10 has participated in some or all of the acts or conduct
17 alleged in this Complaint and is liable to Plaintiffs by reason thereof.

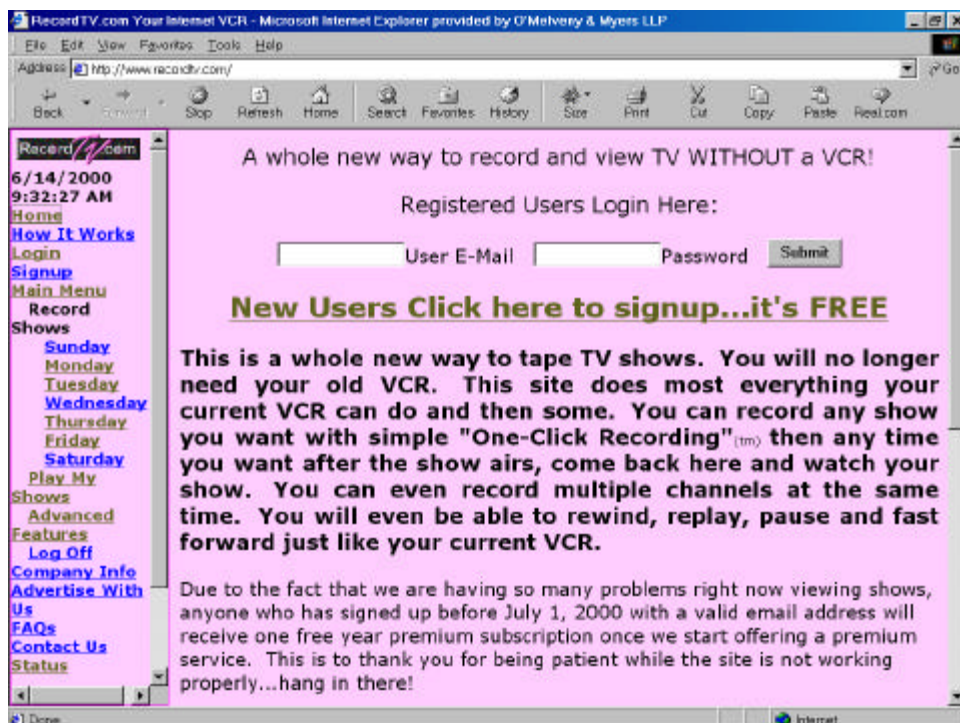
18
19 **AVERMENTS COMMON TO ALL CLAIMS**

20 16. Plaintiffs own the United States copyrights or own exclusive rights under
21 copyright in a substantial amount of television programming telecast in the United States
22 and offered on Defendants’ website, including (without limitation) a substantial amount of
23 the prime-time programming, such as *E.R.*, *Ally McBeal*, *Frasier*, *Star Trek: Voyager*, *The*
24 *Drew Carey Show*, *Friends*, *King Of The Hill*, *The Simpsons*, *Mad About You*, *Married*
25 *With Children*, and *The X-Files*. Plaintiffs also own the United States copyrights or own
26 exclusive rights under copyright in thousands of theatrical motion pictures which are
27 licensed for telecast and retransmission by United States television stations and cable
28 television system operators, including the cable system that Defendants are using.

1 17. In addition to copyrights in these television programs and movies, Plaintiffs
2 own registered and unregistered trademarks associated with these creative works, or are
3 licensees with the legal right to use these trademarks.

4 18. In total, Plaintiffs and/or their affiliates spend several billion dollars each
5 year to create, develop, produce, and distribute such programming. Plaintiffs either sell or
6 license such programming to various media outlets. For each movie or television program
7 produced by Plaintiffs, their ability to recover their respective investments depends on
8 their ability to offer licensees the exclusive right to exhibit or distribute such television
9 program or movie, either temporally or geographically.

10 19. Defendants are the operators of an Internet site called RecordTV.com. It is
11 found at <http://www.RecordTV.com>. Defendants describe the service provided by the
12 RecordTV.com web site as an advertiser-supported, commercial “Internet VCR” through
13 which users of the site may “record” television programming and movies for subsequent
14 viewing. The following is a true and correct image of Defendants’ home page, as it
15 appeared on June 14, 2000, which Plaintiffs incorporate herein by this reference:



1 20. To Internet users who visit the RecordTV.com site, Defendants offer a
 2 weekly cable television schedule from which visitors may choose television programs and
 3 movies to have copied for viewing once the authorized broadcast has been completed.
 4 The following is a true and correct image of Defendants' page of show listings, as
 5 Defendants made it available to the public on June 14, 2000, which Plaintiffs incorporate
 6 herein by this reference:



21 21. RecordTV.com will copy not only those of Plaintiffs' copyrighted works
 22 that are broadcast on free, over-the-air stations, but also those of Plaintiffs' copyrighted
 23 works that are publicly displayed on major cable television channels and that are available
 24 for viewing only by persons who pay a fee to a cable television service for permission to
 25 view such programming.
 26

27 22. Plaintiffs allege on information and belief that one or more of the defendants
 28 is a subscriber of a cable television service located in the County of Los Angeles and is

1 using the cable television signal received from that service as the source of the “services”
2 available on RecordTV.com. Each television program or movie in the weekly television
3 schedule presented to RecordTV.com users is “hot-linked.” Thus, to select a program for
4 recording, the visitor need only “click” on the listing with his or her mouse pointer.

5 23. After a user has requested a television program or movie, RecordTV.com
6 uses the signal from its cable television service provider and its computer facilities and
7 storage devices to create an unauthorized digital copy of the television program or movie.
8 RecordTV.com then stores this unauthorized, digital copy at its facilities for 10 days to
9 permit viewing by the user who requested RecordTV.com to make the unauthorized,
10 digital copy. Within 10 ten days, the user may view a “streamed” public performance and
11 public display of the unauthorized, digital copy anywhere he or she has Internet access, as
12 many times as he or she wants.

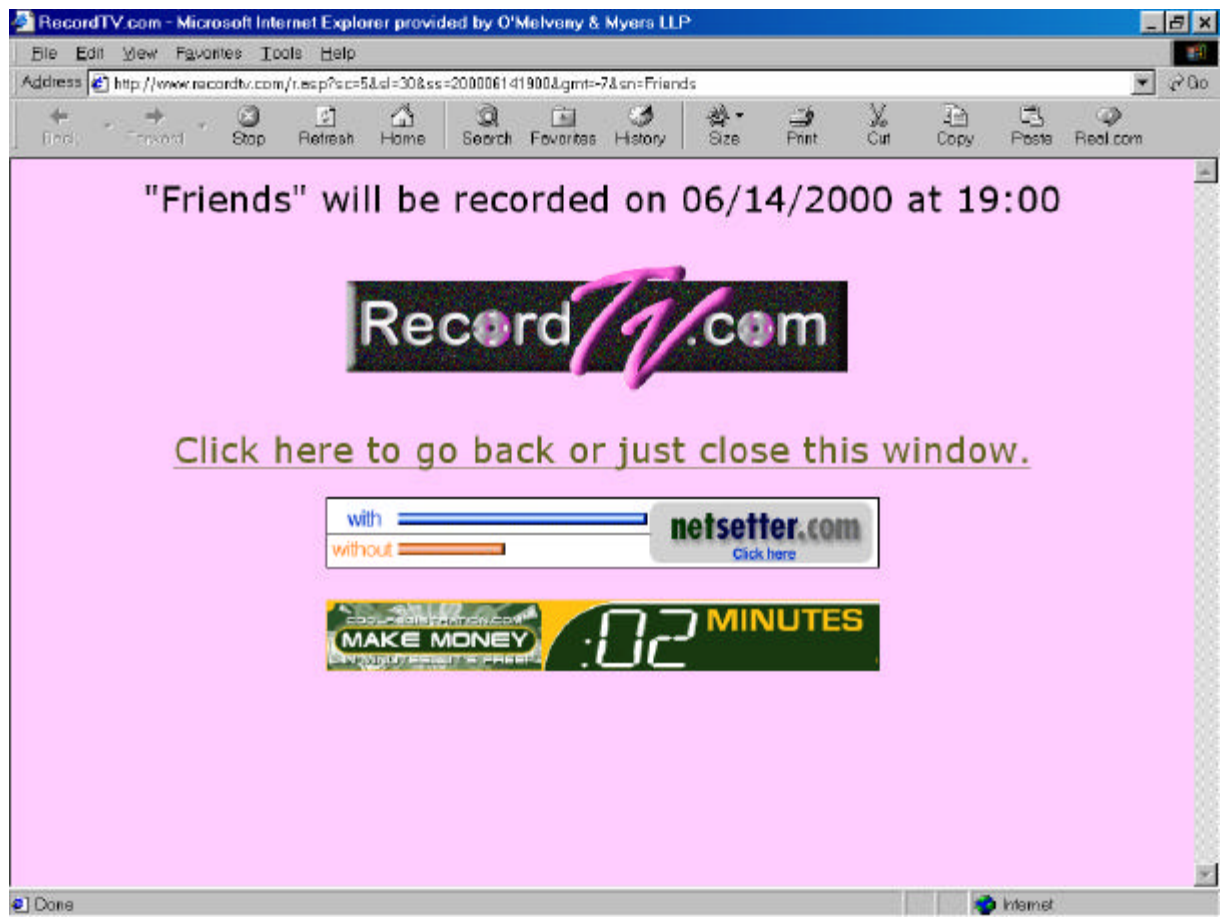
13 24. To view a copied television program or movie, the user must return to the
14 RecordTV.com web site. Once there, the individual may view a list of television
15 programs or movies that RecordTV.com has copied for the user. Each listing for a copied
16 television program or movie is “hot-linked.” To watch any one of them, the user need
17 only click on the listing for the television program or movie.

18 25. Once a copied television program or movie is selected for viewing,
19 RecordTV.com transmits the digitized television program or movie through the Internet to
20 the end-user, who is then able to watch a “streaming” or “streamed” performance of one
21 of Plaintiffs’ copyrighted works.

22 26. According to Defendants, thousands of individuals a day use the
23 RecordTV.com site to request that Plaintiffs’ television programs and movies be copied
24 and retransmitted.

25 27. On information and belief, if it were not for Defendants’ illegal activities,
26 many users of RecordTV.com, particularly those outside the Los Angeles area and/or
27 those without cable television service, would not have lawful access to the copyrighted
28 programs they view through RecordTV.com.

1 28. Defendants sell advertising space on its site to various individuals and
2 companies. The following is a true and correct image from Defendants' site, as
3 Defendants made it available to the public on June 14, 2000, which shows some of the
4 "banner ads" running on Defendants' site, and which Plaintiffs incorporate herein by this
5 reference:



21 29. According to Defendants, the revenue generated from this advertising is
22 directly related to the number of visitors to the RecordTV.com site. Thus, the more
23 individuals that visit RecordTV.com, the more money RecordTV.com's advertisers pay it.
24 Defendants estimate that the site will generate in excess of \$900,000 this year from such
25 advertisements.

26 30. Various news media outlets, including many outside of the United States,
27 have profiled Defendants' illegal practices, thereby boosting Defendants' notoriety, web
28 traffic, and revenue.

1 available through United States broadcast and cable television channels. Plaintiffs have
2 registered these copyrights with the Copyright Office and possess valid registrations for
3 each copyrighted television program and movie. By way of illustration, plaintiffs are the
4 legal or beneficial owner of the following copyrighted television programs and movies:

5 (a) MGM: *Stargate SG-1* (e.g., Reg. No. PA 920-870); *Cagney and Lacey*
6 (e.g., Reg. No. PA 201-317); *In the Heat of the Night* (e.g., Reg. No. PA 380-479);
7 *Diamonds Are Forever* (e.g., Reg. No. RE 808-180); *For Your Eyes Only* (e.g.,
8 Reg. No. PA 108-671); *The Living Daylights* (e.g., Reg. No. PA 345-071); *The Spy*
9 *Who Loved Me* (e.g., Reg. No. LP 48613); *War Games* (e.g., Reg. No. PA 176-
10 384); and *You Only Live Twice* (e.g., Reg. No. RE 712-225). True and correct
11 copies of the copyright registration certificates for the foregoing works are attached
12 hereto as Exhibit A in the order identified above and incorporated herein by this
13 reference.

14 (b) Disney: *Hello Again* (e.g., Reg. No. PA 342-401); *Honey, I Shrunk the*
15 *Kids* (e.g., Reg. No. PA 416-847); *My Boyfriend's Back* (e.g., Reg. No. PA 641-
16 567); *George of the Jungle* (e.g., Reg. No. PA 671-091); and *A Simple Twist of*
17 *Fate* (e.g., Reg. No. PA 716-937). True and correct copies of the copyright
18 registration certificates for the foregoing works are attached hereto as Exhibit B in
19 the order identified above and incorporated herein by this reference.

20 (c) Fox: *Ally McBeal* (e.g., Reg. No. PA 958-102); *Buffy the Vampire*
21 *Slayer* (e.g., Reg. No. PA 963-758); *The X-Files* (e.g., Reg. No. PA 957-982); *The*
22 *Simpsons*; (e.g., Reg. No. PA 963-743); *King of the Hill* (e.g., Reg. No. PA 660-
23 457); *The Practice* (e.g., Reg. No. PA 958-332); *Mischief* (e.g., Reg. No. PA 241-
24 496); and *Alien 3* (e.g., Reg. No. PA 565-581). True and correct copies of the
25 copyright registration certificates for the foregoing works are attached hereto as
26 Exhibit C in the order identified above and incorporated herein by this reference.

27 (d) Columbia: *Designing Women* (e.g., Reg. No. PA 336-225); *Mad About*
28 *You* (e.g., Reg. No. PA 619-316); *Married . . . With Children* (e.g., Reg. No. PA

1 388-775); *The Nanny* (e.g., Reg. No. PA 736-451); *Party of Five* (e.g., Reg. No.
2 PA 751-180); *The Young and the Restless* (e.g., Reg. No. PA 937-351); *It Could*
3 *Happen to You* (e.g., Reg. No. PA 719-415); *Lady in Question* (e.g., Reg. No. R
4 440723); and *Places in the Heart* (e.g., Reg. No. PA 228-302). True and correct
5 copies of the copyright registration certificates for the foregoing works are attached
6 hereto as Exhibit D in the order identified above and incorporated herein by this
7 reference.

8 (e) Paramount: *Cheers* (e.g., Reg. No. PA 678-574); *Frasier* (e.g., Reg. No.
9 PA 775-812); *The Maury Povich Show* (e.g., Reg. No. PA 671-008); *The Montel*
10 *Williams Show* (e.g., Reg. No. PA 671-015); *Stark Trek: Voyager* (e.g., Reg. No.
11 PA 775-677); *Wings* (e.g., Reg. No. PA 678-470); *Tommy Boy* (e.g., Reg. No. PA
12 701-975); and *Trading Places* (e.g., Reg. No. PA 180-572). True and correct
13 copies of the copyright registration certificates for the foregoing works are attached
14 hereto as Exhibit E in the order identified above and incorporated herein by this
15 reference.

16 (f) Universal: *Murder She Wrote* (e.g., Reg. No. PA 751-134); *The*
17 *Breakfast Club* (e.g., Reg. No. PA 265-464); *Jaws: The Revenge* (e.g., Reg. No. PA
18 412-519); *Magnum, P.I.* (e.g., Reg. No. PA 130-196); *Northern Exposure* (e.g.,
19 Reg. No. PA 515-830); and *Simon and Simon* (e.g., Reg. No. PA 135-178). True
20 and correct copies of the copyright registration certificates for the foregoing works
21 are attached hereto as Exhibit F in the order identified above and incorporated
22 herein by this reference.

23 (g) Warner Bros.: *The Drew Carey Show* (e.g., Reg. No. PA 827-198); *The*
24 *Dukes of Hazzard* (e.g., Reg. No. PA 46-830); *E.R.* (e.g., Reg. No. PA 775-450);
25 *Friends* (e.g., Reg. No. PA 789-111); *Lois & Clark: The New Adventures of*
26 *Superman* (e.g., Reg. No. PA 758-057); *Night Court* (e.g., Reg. No. PA 208-027);
27 *Cheyenne Autumn* (e.g., Reg. Nos. LP 32384 & RE 586-377); *Hot To Trot* (e.g.,
28 Reg. No. PA 383-404); *House of Wax* (e.g., Reg. No. RE 82-028); *Presumed*

1 *Innocent* (e.g., Reg. No. PA 477-416); and *Selena* (e.g., Reg. No. PA 873-082).

2 True and correct copies of the copyright registration certificates for the foregoing
3 works are attached hereto as Exhibit G in the order identified above and
4 incorporated herein by this reference.

5 39. Defendants have made the foregoing television programs or, in some cases,
6 other episodes thereof, and the foregoing movies available for copying, public
7 performance, and public display on RecordTV.com.

8 40. Because, in the absence of discovery, Plaintiffs do not presently know
9 which of their copyrighted works Defendants have copied, publicly performed, and
10 public display, Plaintiffs cannot presently identify which of their copyrighted works
11 have been infringed and in which respects. Upon obtaining that information, Plaintiffs
12 will seek leave of this Court to amend this Complaint to allege which of their specific
13 copyrighted works Defendants have unlawfully copied, publicly performed, and publicly
14 displayed.

15 41. Through the Internet site RecordTV.com, Defendants have copied, publicly
16 performed, and publicly displayed Plaintiffs' copyrighted works without Plaintiffs'
17 authorization. Each such act is an infringement of the exclusive rights granted to
18 Plaintiffs by 17 U.S.C. § 106.

19 42. Through the Internet site RecordTV.com, Defendants intend to continue
20 copying, publicly performing, and publicly displaying Plaintiffs' copyrighted works
21 without Plaintiffs' authorization. Each such act will be an infringement of the exclusive
22 rights granted to Plaintiffs by 17 U.S.C. § 106.

23 43. Defendants' infringement has allowed them to collect profits in the
24 thousands of dollars and is adversely affecting the potential market for and value of
25 Plaintiffs' copyrighted works that Defendants have infringed and are continuing to
26 infringe.

27 44. Defendants committed each act of infringement with the knowledge that the
28 television programs and movies they were copying, publicly performing, and publicly

1 displaying were subject to valid United States copyright registrations and with the
2 knowledge that Defendants were not authorized to copy, publicly perform, or publicly
3 display such copyrighted works. Defendants' infringement was thus "willful" within the
4 meaning of 17 U.S.C. § 504(c)(2).

5 45. For Defendants' completed acts of infringement, Plaintiffs are entitled to
6 recover Plaintiffs' actual damages and any profits of Defendants not taken into account in
7 computing the actual damages or, at their election, statutory damages for willful
8 infringement in the amount of \$150,000 per copyrighted work infringed.

9 46. Monetary relief alone is not adequate to address fully the irreparable injury
10 that Defendants' illegal actions have caused and will continue to cause Plaintiffs if not
11 enjoined. Plaintiffs therefore are also entitled to preliminary and permanent injunctive
12 relief to stop Defendants' ongoing infringement of Plaintiffs' copyrights.

13 14 **SECOND CLAIM FOR RELIEF**

15 (Trademark Infringement under 15 U.S.C. § 1114, against all Defendants)

16 47. Plaintiffs reallege the allegations contained in paragraphs 1 through 36 of
17 this Complaint as though fully and completely set forth herein.

18 48. Plaintiffs are the owners of registered trademarks associated with the
19 ownership of television programs and movies whose copyrights Defendants have
20 infringed and are infringing including, by way of illustration, "MGM" (*e.g.*, Reg. Nos.
21 1,380,800 and 2,246,312), "20th Century Fox" (*e.g.*, Reg. Nos. 1,465,225 and 1,884,026),
22 "Paramount" (*e.g.*, Reg. No. 1,695,847), "Universal" (*e.g.*, Reg. No. 2,285,891), and
23 "Warner Bros." (*e.g.*, Reg. No. 1,026,466), as well as the trademarks used to identify
24 numerous individual television programs, such as *The Simpsons* (*e.g.*, Reg. No.
25 1,916,921), *The X-Files* (*e.g.*, Reg. No. 1,899,298) and *ER* (*e.g.*, Reg. No. 2,094,532).

26 49. Through the Internet site RecordTV.com, Defendants are using Plaintiffs'
27 registered trademarks in commerce without the authorization of Plaintiffs in a way that
28

1 has caused consumer confusion as to Plaintiffs' association with, affiliation with, or
2 sponsorship of Defendants' web site and the services provided thereby.

3 50. Such actions were intended to cause confusion, have caused confusion, and
4 will continue to cause confusion unless enjoined.

5 51. For each completed act of infringement, Plaintiffs are entitled to recover
6 their actual damages as well as Defendants' profits from such infringement.

7 52. Monetary relief alone is not adequate to address fully the irreparable injury
8 that Defendants' illegal actions have caused and will continue to cause Plaintiffs if not
9 enjoined. Plaintiffs therefore are also entitled to preliminary and permanent injunctive
10 relief to stop Defendants' ongoing infringement of Plaintiffs' registered trademarks.

11
12 **THIRD CLAIM FOR RELIEF**

13 (Unfair Competition under 15 U.S.C. § 1125(a), against all Defendants)

14 53. Plaintiffs reallege the allegations contained in paragraphs 1 through 36 of
15 this Complaint as though fully and completely set forth herein.

16 54. Plaintiffs are the owners of unregistered trademarks associated with the
17 television programs and movies whose copyrights Defendants have infringed and are
18 infringing including, by way of illustration, *Who's the Boss*, *Mad About You*, *Married*
19 *With Children*, and *The Young and the Restless*. Each of these trademarks is inherently
20 distinctive. Plaintiffs, moreover, have developed and maintain substantial secondary
21 meaning in each of these trademarks.

22 55. Through the Internet site RecordTV.com, Defendants are using Plaintiffs'
23 unregistered trademarks in commerce without the authorization of Plaintiffs in a way that
24 has caused consumer confusion as to Plaintiffs' association with, affiliation with, or
25 sponsorship of Defendants' web site and the services provided thereby. These actions
26 constitute unfair competition in violation of § 43(a) of the Lanham Act, 15 U.S.C. §
27 1125(a).

1 copying, altering, publicly performing, duplicating, and publicly displaying Plaintiffs'
2 copyrighted works and trademarks, or any colorable representation thereof.

3 2. That all copies of Plaintiffs' works in Defendants' possession, custody, or
4 control be destroyed, or otherwise appropriately disposed of, and that all storage devices,
5 copying, streaming, and other distribution equipment, including all computers, computer
6 servers, all hardware and software pertaining or connected thereto, and all other devices
7 by which Defendants have copied, publicly performed, or publicly displayed Plaintiffs'
8 works, be seized from Defendant and destroyed, or otherwise appropriately disposed of,
9 pursuant to 17 U.S.C. § 503.

10 3. That Defendants be required to account for all gains, profits and advantages
11 derived from their acts of infringement and for their other violations of law.

12 4. That Defendants be required to pay over to Plaintiffs the actual damages
13 suffered by them as a result of the infringement and any profits of Defendants attributable
14 to the infringement of Plaintiffs' exclusive rights under copyright and to pay such
15 damages to Plaintiffs as this Court shall deem to be just and proper within the provisions
16 of the Copyright Act, or, in the alternative, at Plaintiffs' election, statutory damages as set
17 forth in 17 U.S.C. § 504.

18 5. That Defendants be required to pay over to Plaintiffs the actual damages they
19 have suffered by Defendants' infringement of their registered and unregistered trademarks
20 as well as any profits derived by Defendants from this infringement.

21 6. That Defendants, their agents, servants and employees and all persons acting in
22 concert with them be restrained and enjoined preliminarily and permanently from
23 intercepting or receiving or assisting in intercepting or receiving any communications
24 service offered over a cable system without authorization from a cable operator, pursuant
25 to 47 U.S.C. § 553(c)(2)(A).

26 7. That Defendants be required to pay over to Plaintiffs the actual damages
27 suffered by them as a result of Defendants' violation of the Cable Communications Policy
28 Act of 1984 and any profits of Defendants not taken into account in computing the actual

1 damages or, at their election, statutory damages of up to \$50,000, pursuant to 47 U.S.C. §
2 553(c)(2)(B).

3 8. That Plaintiffs recover their costs of suit incurred herein.

4 9. That Plaintiffs recover their attorneys' fees reasonably incurred in this action.

5 10. That Plaintiffs have such other and further relief as the Court deems just and
6 proper.

7 Dated: June 15, 2000.

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