

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**UNIVERSAL CITY STUDIOS, INC.; PARAMOUNT
PICTURES CORPORATION; METRO-GOLDWYN-
MAYER STUDIOS INC.; TRISTAR PICTURES, INC.;
COLUMBIA PICTURES INDUSTRIES, INC.; TIME
WARNER ENTERTAINMENT CO., L.P.; DISNEY
ENTERPRISES, INC.; AND TWENTIETH
CENTURY FOX FILM CORPORATION;**

Plaintiffs,

v.

**SHAWN C. REIMERDES, ERIC CORLEY A/K/A
"EMMANUEL GOLDSTEIN" AND ROMAN KAZAN,**

Defendants.

00 Civ. _____

**DECLARATION OF FRITZ ATTAWAY
IN SUPPORT OF PLAINTIFFS'
APPLICATION FOR A PRELIMINARY
INJUNCTION**

Fritz Attaway declares, under penalty of perjury, as follows:

I make this declaration based upon my own personal knowledge and my familiarity with the matters recited herein and could and would testify under oath to same, should I be called as a witness before the Court.

1. I am a Senior Vice President for Government Relations and Washington General Counsel of the Motion Picture Association of America (“MPAA”), a not-for-profit trade association, incorporated in New York, representing the motion picture companies that are plaintiffs in this action. The MPAA, among other functions, combats motion picture piracy, an illegal underground industry that steals billions of dollars annually from the creative talents, tradespeople, producers, and copyright owners in the motion picture industry. The MPAA runs a comprehensive anti-piracy program that includes investigative, educational, legislative, and technical efforts in the United States and over 70 other countries. I was personally involved in the process that led to the passage of the Digital Millennium Copyright Act (“DMCA”) and in the negotiations that led to the adoption of the Contents Scramble System (“CSS”) as an industry-wide standard.

2. Each of the plaintiffs is in the business of producing and/or distributing copyrighted motion pictures which are typically first released for theatrical exhibition and subsequently (and sometimes directly) released to consumers in “home video” formats, such as videotape, laserdisc and, most recently, digital versatile disc (“DVD”). DVDs are also used to distribute video games and other software.

3. DVDs, five-inch-wide discs that hold full-length motion pictures, represent the latest technology for private home viewing of recorded motion pictures. This technology drastically improves the clarity and overall quality of a motion picture shown on a television or computer screen, and allows the inclusion of ancillary features such as multiple language tracks.

DVDs contain motion pictures in digital form. This digital format presents an enhanced risk of unauthorized reproduction and distribution because, unlike with analog formats such as VHS and laserdisc, when material is copied digitally from a DVD the quality of the copy does not degrade from generation to generation. Also, it is a relatively simple matter to transmit digital content over the Internet, which could allow pirate copies of DVDs to proliferate exponentially and thwart efforts to detect or prevent such transmissions.

4. Concerned about this enhanced risk, motion picture companies, including the plaintiffs, insisted upon the development of an access control and copy prevention system to inhibit the unauthorized reproduction and distribution of motion pictures released before they released films in the DVD format. Matsushita Electric Industrial Co. Ltd. and Toshiba Corporation developed the CSS standard for copy protection which was ultimately adopted both by content providers (including the motion picture, video game, and computer software industries) and manufacturers of consumer electronics. CSS has been licensed to hundreds of DVD player manufacturers (both hardware and software) and DVD content distributors in the United States and around the world.

5. CSS is an encryption-based, security and authentication system that requires the use of appropriately--configured hardware (for example, a DVD player or computer DVD drive) to decrypt, unscramble and play back copies of motion pictures on DVDs. Under the terms of the CSS license, such players may not enable the user to make a digital copy of a DVD movie.

6. DVD movies were first introduced in the United States in 1996. Over four thousand motion pictures have been released in the DVD format in the United States and movies are being issued in this format at the rate of over forty new titles per month, in addition to re-releases of classic films. This new format is rapidly being adopted by the American public; over

five million DVD players have been sold and DVD disc sales now exceed one million units per week.

7. I am informed that, on or about October 25, 1999, an individual or group of individuals, believed to be in Europe, managed to “hack” the DVD encryption system and began offering, via the Internet, a software utility called “DeCSS” that enables users to effectively “break” the CSS copy protection system and thereby make and distribute digital copies and distribution of DVD movies.

8. Almost immediately upon the appearance of the DeCSS hack on the Internet, the MPAA acted under the provisions of the recently enacted Digital Millennium Copyright Act (“DMCA”). The MPAA demanded that Internet access providers remove DeCSS from their servers and, at least where the identities of the individuals responsible were known, that those individuals stop posting DeCSS. These efforts succeeded in removing a considerable share of the known postings of DeCSS.

9. On December 29, 1999, the licensor of the CSS technology (DVD CCA) commenced a state court action in Santa Clara, California for the mis-appropriation of its trade secrets as embodied in the DeCSS software. When, on that same date, the court (without stating reasons) declined to issue a temporary restraining order, members of the hacker community took this as a vindication of their actions. Displaying an “in your face” attitude, hackers taunted CCA and the MPAA by stepping up their efforts to distribute DeCSS to the widest possible worldwide audience. I am informed that one enterprising individual even announced a contest with prizes (copies of DVDs) for the greatest number of copies distributed, for the most elegant distribution method, and for the “lowest tech” method.

10. As explained in the accompanying memorandum of law, DeCSS is an illegal circumvention device within the meaning of the DMCA. I also understand that various participants in the scheme to proliferate DeCSS have admitted as much.

11. DeCSS is a software utility that allows a non-CSS-compliant DVD device (for example, a computer with a DVD drive) to play, store, copy, or transmit digital copies of films or other protected DVD content. In essence, DeCSS breaks the CSS encryption. In contrast, a CSS-compliant DVD player (under the terms of the CSS license) can only allow a DVD to be played, but cannot enable the making or transmission of digital copies of the contents.

12. Plaintiffs, along with hundreds of companies in the consumer electronics and computer industries, have made substantial investments in the DVD format. Consumers have invested great sums to purchase DVD equipment and software. All of these parties would suffer if plaintiffs were to abandon DVD in favor of another format. The consequent injury to plaintiffs' businesses and goodwill would be immense.

13. Plaintiffs' potential loss from unauthorized copying of digital content is incalculable. The MPAA estimates annual lost revenues from analog content piracy in the billions of dollars. Losses from the unauthorized copying and distribution of DVDs could well be higher.

14. Plaintiffs rely upon sales of DVDs and other home media to finance increasingly expensive film productions. In most cases, revenues derived from theater ticket sales are not sufficient for a movie studio to recoup the costs of production. Thus, DVD piracy undercuts the ability of studios to finance productions. Any decline in the level of production would hurt not only the Plaintiffs but also those who work in the motion picture industry, and would narrow the range of films available to the public.

15. To my knowledge, DeCSS remains (for the moment) a "hacker phenomenon." One of our principal concerns is that, in the absence of a judicial finding that DeCSS is illegal, its

use will become more widespread. Unless the distribution of DeCSS is enjoined, the MPAA's ability to have DeCSS (and similar hacking tools) removed from websites and from Internet Service Provider servers would be severely constrained. There is even the risk that DeCSS would be commercialized and offered to the general public, either in the form of retail software or as part of a DVD player that allows users to copy DVDs, or to transmit digital copies of films over the Internet to their friends and relations. Such a development would threaten the viability of the DVD format and the worldwide investment in that format by the plaintiffs, by hundreds of other companies, and by consumers.

I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: January 13, 2000
