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

ASSOCIATION FOR INFORMATION MEDIA AND EQUIPMENT, an Illinois nonprofit membership organization; and AMBROSE VIDEO PUBLISHING, INC., a New York corporation,
 Plaintiffs,

v.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation; MARK G. YUDOF, an individual; DR. GENE BLOCK, CHANCELLOR OF THE UNIVERSITY OF CALIFORNIA, LOS ANGELES, an individual; DR. SHARON FARB, an individual; LARRY LOEHER, an individual; PATRICIA O'DONNELL, an individual; and John Does 1-50,
 Defendants.

Case No.: CV 10-09378 CBM (MANx)

AMENDED COMPLAINT FOR:

- (1) Breach of Written Contract;**
 - (2) Anticipatory Breach of Written Contract**
 - (3) Copyright Infringement;**
 - (4) Declaratory Relief**
 - (5) Violation of 17 U.S.C. § 1201;**
 - (6) Breach of Covenants of Good Faith and Fair Dealing;**
 - (7) Unjust Enrichment;**
 - (8) Tortious Interference with Contractual Relations**
 - (9) Tortious Interference with Prospective Business Advantage**
- DEMAND FOR JURY TRIAL**

1 Association for Information Media and Equipment (“AIME”) and Ambrose
2 Video Publishing, Inc (“AVP” or “Ambrose”) (collectively, the “Plaintiffs”) allege as
3 follows:
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5 NATURE OF THE ACTION

6 1. The Defendants in this case are The Regents of California, (“Regents”) in their
7 official capacity as an arm of the State of California governing the University of
8 California at Los Angeles (“UCLA”), and in their individual capacities as members of
9 the Board of Regents; Mark G. Yudof, President of the University of California, in his
10 official and individual capacity (“Mr. Yudof”); Dr. Gene Block, Chancellor of UCLA,
11 in his official and individual capacity (the “UCLA Chancellor”); Dr. Sharon Farb,
12 UCLA’s Associate University Librarian for Collection Management and Scholarly
13 Communication, in her official and individual capacity (“Dr. Farb”), Larry Loehner,
14 UCLA’s Associate Vice Provost and Director of Instructional Development, in his
15 official and individual capacity (“Mr. Loehner”), and Patricia O’Donnell, Manager of
16 UCLA’s Instructional Media Collections and Services and Media Lab, in her official
17 and individual capacity (“Ms. O’Donnell”); and John Does 1-50, who are a) other
18 individuals, presently unknown to Plaintiffs, who have been designated or in the
19 future are designated to replace any of the other named Defendants in their official
20 capacity, and b) any other individuals, who in their official and individual capacities,
21 on a direct or contributory basis, participated in the actions complained of herein
22 (collectively the “Defendants”).
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1 2. The Plaintiffs in this case are AVP, an educational video producer and holder of
2 all exclusive rights associated with the specific copyrighted works in question in this
3 case; and AIME, a national trade association whose public mission is to help ensure
4 copyright education and compliance, and whose membership includes AVP and other
5 video copyright owners and/or exclusive rightsholders. A list of AIME members is
6 attached hereto as Exhibit 1.
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9 3. This case involves the Defendants' systematic actions to take copy-protected
10 DVDs, licensed by AVP and other AIME members, and copy, reformat, stream,
11 publicly distribute, publicly display and/or publicly perform these DVDs via the
12 Internet or the UCLA intranet, and to allow faculty and students to copy and perform
13 and/or display these works in flagrant disregard of existing licenses, established
14 copyright law and the Regents' and UCLA's own intellectual property policies.
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17 4. To accomplish this unlawful activity, upon information and belief, the
18 Defendants utilize Video Furnace, a system manufactured and sold by Hai Vision
19 Systems, Inc. ("HVS"). Video Furnace allows for the unauthorized recording of
20 content and then its delivery as video on demand to computers and set top boxes.
21 According to HVS 2009 publicity, UCLA helped HVS in the design of Video Furnace
22 for use on college campuses and lent its name and reputation to the marketing efforts
23 of HVS, thereby contributing to the trafficking of technology, device, service, device,
24 components or parts thereof, which are capable of facilitating violations throughout
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1 the United States of the copyright rights of AVP and other AIME members, who
2 license programs to these institutions.

3 5. As background to the dispute, on information and belief, sometime around
4 January 2006, UCLA's Instructional Media Collections & Services ("IMCS"), which
5 is directly managed and/or supervised by Defendants Dr. Farb, Mr. Loehner and Ms.
6 O'Donnell, and supported by the other Defendants, acquired HVS's Video Furnace
7 system. With the Video Furnace system, the Defendants began copying programs
8 owned by AVP and licensed to UCLA on a limited license basis, and streamed them
9 on the University's web-based intranet. In particular, IMCS illegally exploited AVP
10 programs, "The Plays of William Shakespeare," in DVD format ("AVP Shakespeare
11 DVDs"). "The Plays of William Shakespeare" were originally produced by the
12 British Broadcasting Company ("BBC") and Time Life Films, Inc. ("Time"). As a
13 result of the production agreement between BBC and Time, Time acquired exclusive
14 rights to programs in the United States. Subsequently, Time assigned all its rights in
15 these programs to AVP. In 2001, AVP created the AVP Shakespeare DVDs. At all
16 times relevant herein, AVP held and holds on an exclusive basis in the United States
17 all relevant copyright rights pertaining to the AVP Shakespeare DVDs.

18 6. On information and belief, utilizing the Video Furnace system, copies of the
19 AVP Shakespeare DVDs were made directly by or under the direction of Defendants
20 Mr. Loehner, Dr. Farb and Ms. O'Donnell, which copies were then converted to digital
21 streams, linked to course web pages and remotely accessed by students and faculty.
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1 UCLA told AVP that over a five-year period at least 13 AVP Shakespeare DVDs were
2 copied and streamed more than 130 times to an unspecified number of students and
3 faculty. Upon information and belief, once students and faculty are authorized to
4 access the digital streams, the AVP Shakespeare DVDs can be viewed by system users
5 via the UCLA network, inside or outside an educational setting, inside or outside the
6 United States; that is, wherever the authorized user may be.
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9 7. AVP learned about the streaming practice in 2009. Through AIME, AVP
10 approached the UCLA Chancellor and objected to the practice. AIME explained that
11 UCLA's streaming practice violated established copyright law. AVP also explained
12 that streaming was a violation of the AVP Shakespeare DVD license.
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14 8. Prior to 2009, AVP had anticipated the need of educational institutions for
15 streaming media. At substantial effort and expense, AVP developed and currently
16 offers educators Ambrose 2.0, high-quality, reasonably-priced institutional streaming
17 licenses that would enable UCLA to make AVP programs available lawfully. In fact,
18 Ms. O'Donnell acknowledged to Allen Dohra, AVP Vice President-Sales and
19 President of AIME Board of Directors, that she was aware of Ambrose 2.0 and that it
20 offered a superior video product. However, she declined to acquire the AVP
21 streaming license, indicating that UCLA would continue to rely on the lesser quality
22 streams it already had digitized. Upon information and belief, the UCLA streams are
23 not in compliance with federal disability laws, which require Closed Captions, nor in
24 compliance with UC's Electronic Communications Policy regarding accessibility (*see*
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1 Par. 19, *infra*). Ambrose 2.0 is in full compliance with federal disability law
2 requirements. To the extent that AVP is identified as the source of the UCLA streams
3 that are not in compliance with federal disability laws, AVP's reputation is harmed.
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5 9. Despite AIME's overtures to the UCLA Chancellor, UCLA was unrelenting.
6 Initially, UCLA claimed absolute entitlement pursuant to two provisions of copyright
7 law; 17 U.S.C. §110(1) (the public performance exemption for "face-to-face"
8 teaching) and 17 U.S.C. §107 (fair use). It later added reliance upon 17 U.S.C.
9 §110(2) (the public performance exemption for certain digital distance learning uses).
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11 10. After AVP and AIME confronted the UCLA Chancellor with the prospect of a
12 legal challenge to these theories, on information and belief, UCLA temporarily
13 desisted. After a winter-break period of reflection, the UCLA Chancellor's Office
14 notified AVP that UCLA had the right to copy the AVP DVDs and to stream the
15 content, so the practice would continue unabated. Upon information and belief, the
16 practice continues to this day and will continue in the future unless enjoined.
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19 11. If UCLA and other educational institutions are allowed to license DVDs from
20 AVP and other educational video publishers who are members of AIME, and then
21 copy and stream them to faculty and students without a license and without
22 compensation to the creators, then existing and new markets for AVP's and other
23 AIME member's pre-existing works will be unfairly preempted and the educational
24 video business of AVP and other AIME members will suffer greatly.
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1 12. Thus, this legal dispute is rooted in a) UCLA's failure to comply with
2 unambiguous provisions of the license pursuant to which the AVP Shakespeare DVD
3 were licensed to UCLA, and b) UCLA's and the Regents' practices, as implemented
4 by and through the Defendants and after notice that these actions were legally
5 indefensible, of intentionally misinterpreting three provisions of copyright law, which
6 provide only narrowly crafted educational use exceptions. Any limitation in copyright
7 law that is taken too far as the Defendants do, destroys the delicate balance between
8 the policy that inspired its formulation and the intent of copyright law to compensate
9 creators. This case is about ensuring that the delicate balance is properly respected
10 and not abused.

11 13. This case is also about the fair adherence to contractual agreements between
12 UCLA and AVP and other AIME members, who license use of their programs.

13 PARTIES AND THEIR STANDING

14 14. AVP is a New York corporation, whose principal business is the creation and
15 distribution of high quality video content for the educational marketplace. At all
16 times pertinent to the infringements by the Defendants, AVP held and holds all
17 exclusive rights to all the AVP Shakespeare DVDs in the United States, having
18 acquired those rights from BBC and Time. Works that the Defendants have copied
19 and streamed in violation of AVP rights are registered with the U.S. Copyright Office
20 in the name of AVP. AVP licenses its video programs to many schools and colleges
21 throughout the United States, including the State of California and UCLA.
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1 15. AIME is an Illinois non-profit membership organization offering copyright
2 information and support to teachers, librarians, media center directors, producers and
3 distributors of informational film, video, interactive technologies, computer software
4 and equipment. AIME's mission is to promote fair and appropriate use of the media
5 and equipment delivering information in a rapidly changing world. AIME asserts
6 standing to sue in this proceeding as an associational Plaintiff seeking prospective
7 injunctive relief on behalf of its members. AIME does not seek to remedy any
8 copyright infringement claim that any member may have against UCLA; however,
9 AIME asserts standing because: (1) its members who hold the necessary exclusive
10 rights to their programs have standing to sue on their own for infringement of
11 copyrights, and (2) the copyright interests that AIME seeks to protect are germane to
12 AIME's purpose. Moreover, neither the claims asserted by AIME, nor the narrow and
13 tailored declaratory relief requested by AIME, requires the participation of individual
14 members in the lawsuit. AIME only seeks a declaratory ruling that prohibits the
15 Defendants from prospectively infringing the copyrighted works of AIME members
16 who hold all relevant exclusive rights to licensed DVDs, and to prevent copying and
17 streaming of such DVDs without their consent. To reiterate, AIME is seeking
18 prospective declaratory or injunctive relief only, not monetary damages or other
19 remedies.
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26 16. AIME also has a personal stake in the outcome of this litigation, suffering
27 injury in fact. It has suffered from the diversion of its resources to deal with the
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1 Defendants' infringements of AVP's copyrighted works, the potential infringement of
2 other AIME members. AIME members whose works have been digitized and
3 streamed by Defendants include: AVP (37 titles), Bullfrog Films (10 titles), California
4 Newsreel (32 titles), Direct Cinema (9 titles), Film Media Group (1 title), Icarus Films
5 (1 title), Insight Media (2 titles), New Day Films (12 titles), PBS Video (56 titles) and
6 Questar (2 titles). *See* Exhibit 2. AIME has been forced to spend much of its limited
7 resources directly addressing the problem created by the Defendants for the
8 educational video publishers, who are AIME's members and whose membership
9 AIME seeks to maintain. If AIME is unsuccessful in enjoining the way in which the
10 Defendants' exploit educational videos of AIME members by prospective injunctive
11 relief, then the mission of AIME will be materially, if not unalterably, frustrated.
12 Directly as a result of Defendants' activities, AIME thus has been forced to divert its
13 scarce resources away from the mission of information, to the action of prospective
14 enforcement.

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19 17. The Regents is a corporation incorporated under the laws of the State of
20 California, and its power derives from Article IX, Section 9 of the California
21 Constitution. According to its Bylaws, namely Bylaw 5.1(a), the Regents has "full
22 powers of organization and government" subject only to limited legislative control.
23 The Regents is made up of a 26 member board and two nonvoting faculty members.
24 The Regents administers the University of California educational system (sometimes
25 herein "UC") as a public trust, of which UCLA is a member. The present membership
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1 of The Regents includes the following individuals: 1) Appointed Regents: Richard C.
2 Blum, Jesse Cheng, David Crane, William De La Pena, Russell Gould, Eddie Island,
3 Odessa Johnson, George Kieffer, Sherry L. Lansing, Monica Lozano, Hadi
4 Makarechian, George M. Marcus, Norman J. Pattiz, Bonnie Reiss, Frederick Ruiz,
5 Leslie Tang Schilling, Bruce D. Varner, Paul Wachter and Charlene Zettlel; 2) Ex
6 Officio Regents: Jerry Brown, Gavin Newsom, John A. Perez, Tom Torlakson, Mark
7 G. Yudof, Rex Hime and Darek DeFreece; and 3) Faculty Representatives: Dan
8 Simmons and Robert Anderson.
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11 18. Mark G. Yudof (“Mr. Yudof”) is President of the Regents. Pursuant to
12 Regents’ Standing Order 100.4(mm), the President of the Regents “is authorized to
13 develop and implement policies and procedures on matters pertaining to intellectual
14 property, including ... copyrights ... and to execute documents necessary for the
15 administration of intellectual property, including those which may contain commitments
16 existing longer than seven years. The President annually shall report to the Board on matters
17 pertaining to intellectual property.”
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20 www.universityofcalifornia.edu/regents/bylaws/so1004.html.

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22 19. Over the past 25 years, the Regents have adopted and promulgated copyright
23 policies for the entire University of California education system. Principal
24 promulgations of these policies, rules, and criteria are attached hereto as Exhibit 3.
25 Among these policies, rules, orders and criteria, which remain in place today and are
26 enforced by Mr. Yudof, are the following:
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1 a) The mandate that the University of California “uphold[ing] copyright law,”
2 www.universityofcalifornia.edu/copyright/usingcopyrightworks.html;

3 b) The commitment of the entire UC Community to compliance with applicable
4 intellectual property law, specifically including copyright law. (“The University of
5 California is committed to upholding U.S. copyright law.”)
6 www.ucop.edu/irc/policy/copycommit.html);

7 c) The policy that deems it “vital that *the University of California faculty,*
8 *students, and staff [to] understand and responsibly exercise rights accorded them*
9 *under the copyright law,* particularly now in light of new technologies and laws that
10 challenge long-standing educational and library exemptions and interpretations.”
11 www.universityofcalifornia.edu/copyright/ (emphasis supplied); and

12 d) The University of California Electronic Communications Policy (ECP) that
13 provides:

14 **II. GENERAL PROVISIONS**

15 **E. VIOLATIONS OF LAW AND POLICY**

16 **1. Law.** Federal and state law prohibit the theft or abuse of computers and
17 other electronic resources such as electronic communications resources,
18 systems, and services. Abuses include (but are not limited to) unauthorized
19 entry, use, transfer, tampering with the communications of others, and
20 interference with the work of others and with the operation of electronic
21 communications resources, systems, and services. The law classifies certain
22 types of offenses as felonies (see Appendix B, Reference).

23 **2. University Disciplinary Actions.** University policy prohibits the use of
24 University property for illegal purposes and for purposes not in support of
25 the mission of the University. In addition to legal sanctions, violators of this
26 Policy may be subject to disciplinary action up to and including dismissal or
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1 expulsion, pursuant to University policies and collective bargaining
2 agreements. ...

3 **III. ALLOWABLE USE**

4 **D. Allowable Use**

5 Use of University electronic communications resources is allowable subject
6 to the following conditions: ...

7 **9. Accessibility.** All electronic communications intended to accomplish
8 academic and administrative tasks of the University shall be accessible to
9 allowable users with disabilities in compliance with law and University
10 policies. ...

11 **10. Intellectual Property.** *The contents of all electronic communications*
12 *shall conform to laws and University policies regarding protection of*
13 *intellectual property, including laws and policies regarding copyright,*
14 *patents, and trademarks. When the content and distribution of an electronic*
15 *communication would exceed fair use as defined by the federal Copyright*
16 *Act of 1976, users of University electronic communications resources shall*
17 *secure appropriate permission to distribute protected material in any form,*
18 *including text, photographic images, audio, video, graphic illustrations, and*
19 *computer software. ...*

20 **E. ACCESS RESTRICTION**

21 ... *In compliance with the Digital Millennium Copyright Act, the University*
22 *reserves the right to suspend or terminate use of University electronic*
23 *systems and services by any user who repeatedly violates copyright law.*
24 *www.ucop.edu/ucophome/coordrev/policy/PP081805ECP.pdf.* Emphasis
25 supplied.

26 20. Since 1978, UC has applied for 1,762 copyright registrations with the United
27 States Copyright Office. See Exhibit 4.

28 21. In addition to the UC system policy, rules and orders, UCLA has issued
copyright policy statements and guidelines that commit UCLA to compliance with
copyright law. In particular, with respect to audiovisual materials, UCLA copyright
policy states:

*Audiovisual materials copied in a different format: Copying audiovisual
material when change of format results is permitted when the conditions*

1 for replacement copying or preservation copying are met *or when*
2 *permission to change the format is granted by the publisher.*
3 www.library.ucla.edu/copyright/2141.cfm (emphasis supplied).

4 Streaming requires a change in format and the compression of digital files. Therefore,
5 UCLA requires consent of owners of programming, including AVP, which consent
6 UCLA failed to seek or secure. UCLA has also issued the following warnings
7 concerning copyright restrictions:
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9 1) The copyright law of the United States (Title 17, United States Code)
10 governs the making of photocopies of other reproductions of
11 copyrighted materials. . . . This institution reserves the right to refuse to
12 accept a copying order if, in its judgment, fulfillment of the order
13 would involve violation of Copyright Law.
14 www.library.ucla.edu/copyright/2135.cfm.

15 2) If electronic transmission of reserve material is used for purposes in
16 excess of what constitutes "fair use," that user may be liable for
17 copyright infringement. www.library.ucla.edu/copyright/2131.cfm.

18 Exhibit 5.

19 22. Collectively, the UC and UCLA orders, policies, and actions go well beyond
20 merely discouraging copyright infringement; rather, they constitute an affirmative
21 public commitment to "upholding the [copyright] law." As a result, these orders,
22 policies and actions have brought the UC system, including all the Defendants, within
23 the federal copyright system. They thus constitute an express waiver of any claim to
24 sovereign immunity with respect to Plaintiffs' claims herein.

25 23. Moreover, the Defendants, including the UCLA Chancellor, Dr. Farb, Mr. Loehner
26 and Ms. O'Donnell, have, by virtue of UCLA's agreement to the Terms and
27 Conditions set forth in the 2006-2007 AVP License for the AVP Shakespeare DVDs
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1 (the “2006-2007 AVP License”) (Exhibit 6) and the Terms and conditions set forth in
2 the 2008-2011 AVP License for other DVDs licensed by UCLA (the “2008-2011
3 AVP License”) (Exhibit 7) (collectively, the 2006-2007 AVP License and the 2008-
4 2011 AVP License, the “AVP Licenses”) have expressly waived any claim to
5 sovereign immunity or qualified immunity. Both the AVP Licenses both expressly
6 provide: “Nothing herein shall derogate from any rights of Ambrose ... under the
7 United States Copyright Law.” (Section 1, 2006-2007 AVP License Exhibit 6, and
8 Section 1, 2008-2011 AVP License Exhibit 7).
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11 24. Pursuant to Standing Order 100.6 of the Regents, the UCLA Chancellor is “the
12 chief campus officer thereof and shall be the executive head of all activities on that
13 campus The Chancellor shall be responsible for the organization and operation of
14 the campus, its internal administration, and its discipline; and decisions made by the
15 Chancellor in accordance with the provisions of the budget and with policies
16 established by the Board or the President of the University shall be final.” Exhibit 3.
17
18 As the chief campus officer, the UCLA Chancellor received correspondence from
19 AVP and AIME, and upon information and belief, instructed his legal counsel, who
20 works within the Office of the Chancellor, and other UCLA staff to respond thereto.
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23 25. Dr. Farb is the individual responsible for overseeing the activities of the UCLA
24 library system in connection with digital collections management and licensing and
25 copyright management issues.
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1 26. Mr. Loehner, in his role as Director of the Office of Instructional Development,
2 is responsible for directly supervising Ms. O'Donnell and ensuring that her conduct is
3 consistent with UCLA's objectives and legal policy.

4
5 27. Ms. O'Donnell presides over the IMCS, which is UCLA's primary resource for
6 acquiring educational films, videos and DVDs and for advising faculty members
7 respecting the classroom use of such media.

8
9 28. John Does 1-50 are persons presently unknown to Plaintiffs, who either
10 contributed to the infringements of the AVP Shakespeare DVDs, or who have
11 replaced or will replace the particular individuals identified herein and who thus need
12 to come within the terms of any prospective injunction.

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14 29. The Regents personally named in Paragraph 15 hereinabove, the UCLA
15 Chancellor, Mr. Yudof, Dr. Farb, Mr. Loehner and Ms. O'Donnell are sued in their
16 individual capacities for directly infringing or contributing to the infringements of
17 AVP's copyrights and violations of AVP's licenses.

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20 JURISDICTION AND VENUE

21 30. This is a civil action for breach of contract, breach of covenants, anticipatory
22 breach of contract, unjust enrichment and tortious interference with business
23 relationships under common law, and violation of the Copyright Act of 1976, as
24 amended, 17 U.S.C. §101, *et. seq.* and for declaratory relief.

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26 31. The Court has personal jurisdiction over the Regents as a corporation
27 incorporated under the laws of California, and over the individual Regents identified
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1 in Paragraph 15 hereinabove, the UCLA Chancellor, Dr. Farb, Mr. Loehner and Ms.
2 O'Donnell, as individuals residing in the State of California.

3 32. This Court has subject matter jurisdiction to hear Plaintiff's copyright
4 infringement claim under 17 U.S.C. §101 et seq., 28 U.S.C. §§ 1331 and 1338,
5 supplemental jurisdiction to hear all other claims under 28 U.S.C. §1367, and
6 jurisdiction over declaratory relief requested under 28 U.S.C. §§2201(a) and 2202.
7
8 Venue is proper under 28 U.S.C. §1391(b) and 28 U.S.C. §1400(a).

10 FACTS

11 I. DEFENDANTS INFRINGED AMBROSE'S COPYRIGHTS FOR THE AVP 12 SHAKESPEARE DVDS AND BREACHED THE AVP LICENSES

13 *A. The AVP Educational DVD Offerings*

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15 33. For more than twenty years, AVP has produced and distributed high quality
16 programs in science, history and drama. Not only has AVP produced award winning
17 programs, but also it has acquired works from third parties, such as the BBC,
18 Discovery Channel and independent producers pursuant to license agreements
19 providing for royalty payments and containing other terms and conditions. AVP
20 programs are licensed to educational institutions in all digital formats. DVDs have
21 been available since the year 2000 and Mpeg files in other formats have been
22 available since 2002. Individual professors and students, as well as institutions,
23 purchase the DVDs.
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1 34. Many AVP titles feature supplemental educational content, such as concept
2 clips, closed captioning, Spanish subtitles, research guides, maps, timelines, and
3 historical documents using computer graphics, all to enrich the learning experience for
4 students and teachers. Exhibit 8 is the Ambrose Educational DVD Catalog 2009-
5 2010.
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7 35. In addition to licensing programs for classrooms and libraries, a number of
8 years ago, AVP made a substantial investment to create Ambrose Video 2.0, a
9 download program and video streaming website (located at www.ambrosedigital.com)
10 that allows educational clients to access more easily the AVP catalog in a number of
11 digital formats. Given the ever-growing needs of educational institutions to provide
12 varied and flexible content delivery systems for its faculty and student body, Ambrose
13 Video 2.0 has become one of AVP's primary delivery options for educational
14 offerings. To initiate Ambrose Video 2.0, older video programs, along with newer
15 ones, had to be encoded, captioned and stored. Then, the technological system to
16 enable efficient real-time delivery had to be developed and implemented. Ambrose
17 Video 2.0 puts AVP at the forefront of educational video publishers who strive to
18 serve the growing needs and interests of the educational community. Exhibit 9
19 consists of pages from the Ambrose Educational DVD Catalog providing further
20 detail on Ambrose Video 2.0.
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26 36. To meet its obligations to program producers and its own financial needs, AVP
27 has established terms and conditions that control the use of DVD programs. It
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1 licenses schools and universities, including UCLA, the right to use copyrighted
2 programs available in DVD format as set forth in the AVP Licenses. In connection
3 with DVDs that AVP has licensed to UCLA since 2006, there are two relevant AVP
4 licenses.
5

6 37. The terms of the license applicable to Defendants' use of the AVP Shakespeare
7 DVDs are 2006-2007 AVP License. In addition to all "The Plays of William
8 Shakespeare," acquired by UCLA in 2006, UCLA also acquired the "Childhood Set"
9 DVD series in 2007. The 2006-2007 AVP License, set forth in Exhibit 6, provides in
10 pertinent part:
11

12
13 **1. License:** Ambrose grants Customer and Customer accepts from Ambrose
14 the limited license under copyright to exhibit one or more of the films, video
15 and/or sound filmstrip programs or both ordered or rented by Customer
16 (hereinafter called "Programs"), but only for exhibition to non-paying private
17 audiences during the period set forth and in accordance with the specific terms
18 of said order or rental....

19 CUSTOMER ACKNOWLEDGES THAT THE PROGRAMS MAY NOT BE
20 DUPLICATED, BROADCAST, TRANSMITTED BY CABLE OR
21 OTHERWISE, ON ANY MULTI-RECEIVER OPEN OR INTERNET
22 SYSTEM, OR DISPLAYED BEFORE THE PUBLIC, WHETHER OR NOT
23 ADMISSION IS CHARGED...

24 Customer shall not ... part with possession of any Program received by
25 Customer hereunder. ... Nothing herein shall derogate from any rights of
26 Ambrose or any other copyright proprietor of any Program under the United
27 States Copyright Law....

28 38. In addition to the AVP Shakespeare DVDs and the Childhood Set DVDs,
UCLA also licensed another AVP DVD series entitled "Long Search" in 2009. The
terms of the license applicable to these DVDs are set forth in the 2008-2011 AVP

1 License, set forth on the AVP's website at <http://www.ambrosevideo.com/order.cfm>.

2 Exhibit 7.

3 39. The 2008-2011 AVP License provides in pertinent part:

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5 **1. Grant of License:** AVP grants to the Licensee a limited, non-exclusive,
6 revocable license to use the Content (as defined below) in an educational OR
7 home video setting.

8 **CUSTOMER ACKNOWLEDGES THAT THE PROGRAMS MAY NOT**
9 **BE DUPLICATED, BROADCAST, TRANSMITTED BY CABLE OR**
10 **OTHERWISE, ON ANY MULTI-RECEIVER OPEN OR INTERNET**
11 **SYSTEM, OR DISPLAYED BEFORE THE PUBLIC, WHETHER OR**
12 **NOT ADMISSION IS CHARGED. CUSTOMER SHALL EXHIBIT THE**
13 **PROGRAMS ONLY AS HEREIN SPECIFIED AND USE THE**
14 **PROGRAMS FOR NO OTHER PURPOSE.**

15 Customer shall not sublicense, sublease or part with possession of any Program
16 received by Customer hereunder. Performing rights to music contained in any
17 Program are not granted herein. Nothing herein shall derogate from any rights
18 of Ambrose or any other copyright proprietor of any Program under the United
19 States Copyright Law or any applicable foreign copyright laws. The Content is
20 licensed solely for classroom teaching, research, educational non-commercial
21 multimedia projects, classroom presentations, and individual presentations for
22 use in educational institutions or public libraries.

23 40. Both AVP Licenses provide that in the event of default AVP has the right to
24 terminate the license "in addition to and without prejudice to any right or remedy in
25 law or equity or provided for elsewhere in this agreement on account of any violation
26 or breach."

27 *B. Streaming of AVP Shakespeare DVDs*

28 41. While UCLA's use of AVP Shakespeare DVDs is subject to the 2006-2007
AVP License, AVP also offers educational institutions the ability to acquire streaming
rights to programs via Ambrose Video 2.0.

1 42. "Streaming" is the process whereby content is a) copied to conform to the
2 format of a transmitting unit, b) publicly distributed in compressed form over the
3 Internet, c) copied onto the user's computer and d) then publicly displayed by a
4 viewer in real time. When received by the user, the user does not have wait to
5 download an entire program to begin viewing; rather, the compressed data is
6 decompressed and transmitted from a temporary file to a video display as a continuous
7 "stream" of video files.
8

9
10 43. To produce the stream, the source (e.g. IMCS) needs a device that copies,
11 conforms the work to a usable digital format and transmits it. To see the streamed
12 content, the viewer needs a player, which is a special program that receives (copies)
13 the files, decompresses the content, and sends video data to the display screen and
14 audio data to the speakers.
15

16
17 44. The process of digitally streaming video programs implicates a number of
18 exclusive copyright rights of educational video publishers and exclusive distributors
19 like AVP, including the right to reproduce or copy a work, the right to publicly
20 perform a work, the right to publicly distribute a work and the right to publicly display
21 a work. 17 U.S.C. §106.
22

23
24 45. When the streamed work is accessed by the viewer, it is displayed on a screen
25 and the contents are performed. If the screen is in a public place, like a classroom or
26 auditorium, the display and/or performance is "public." Similarly, if many persons
27 can view the content in different remote locations, like a number of dorm rooms or
28

1 apartments, the copyright law deems such multiple performances “public.” 17 U.S.C.
2 §101.

3 46. Upon information and belief, a viewer of the AVP Shakespeare DVDs streamed
4 by UCLA does not have to be in an educational setting. For example, the student with
5 access to the UCLA network can be in a WiFi hot spot anywhere, such as at Starbucks
6 coffee shops off campus. Upon information and belief, the viewer does not even have
7 to be in the United States. As long as there is authorized access to the UCLA via the
8 Internet, the program may be performed. If the streamed content is subject to the
9 2008-2011 AVP License, then that use would be in violation of the 2008-2011 AVP
10 License, which restricts UCLA’s use to educational or home video settings.

11 47. As noted, Ambrose Video 2.0 is an affordable video streaming offering for
12 individuals and all kinds of educational institutions, from home schoolers to research
13 institutions of higher education. Ambrose Video 2.0 has been designed to ensure not
14 only that its programs are made available for use with the newest technological
15 innovations, but also that these uses are consistent with the rights and obligations that
16 AVP owes third parties, like the BBC, music authors, screenwriters, photographers
17 and others whose works are distributed or incorporated into AVP programs. Ambrose
18 Video 2.0 thus incorporates Digital Rights Management (“DRM”), or technological
19 measures designed to control access to and copying of the DVDs.

20 48. The pricing of AVP streaming rights to video programs is tailored to every
21 institutional need. For example, a license for an unlimited simultaneous stream of the
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1 AVP Shakespeare DVD “Measure for Measure,” with closed captioning to all students
2 and faculty served by the UCLA Los Angeles campus for one year can be acquired for
3 \$24.99. AVP bundles up to 50 hours of programming for \$889.00. *See* Exhibit 9.
4
5 Lower priced options are available for home schools and individual teachers.

6
7 *C. UCLA’s Breach of Contract and Copyright Infringements*

8
9 49. Pursuant to the 2006-2007 AVP License, UCLA licensed (a) AVP Shakespeare
10 DVDs consisting of 37 DVDs, the entire series, “The Plays of William Shakespeare”
11 in 2006; and (b) “Childhood Set” in 2007. The AVP Shakespeare DVDs are among
12 AVP’s most popular offerings. Pursuant to the 2008-2011 AVP License, UCLA
13 acquired AVP’s DVD series “Long Search.” AVP holds all pertinent exclusive
14 copyright rights to all these works in the United States.
15

16
17 50. Given the license restrictions on streaming AVP videos and the reasonableness
18 of the Ambrose Video 2.0 streaming license, it came as a rude shock when AVP
19 learned that IMCS had been streaming AVP programs for years without prior request,
20 approval, or any effort on their part to ascertain whether such a license was deemed
21 necessary or available.
22

23
24 51. At the time of this infringement discovery and aware that UCLA’s actions
25 could affect many other, similarly-situated educational video publishers, AVP enlisted
26 the support of AIME. On May 19, 2009, Betty G. Ehlinger, Executive Director of
27 AIME, wrote Ross Bollens, Director of Information Technology Security of UCLA’s
28

1 Office of Information Technology, regarding the revelation by Ms. O'Donnell that she
2 had been utilizing Video Furnace to copy, digitize and stream AVP Shakespeare
3 DVDs for many years. Exhibit 10. Writing on behalf of AVP, Ms. Ehlinger advised
4 Mr. Bollens that this practice violated copyright law and sought an accounting of the
5 activities and assurance of future compliance with licenses and the law.
6

7 52. Mr. Bollens did not respond, so on June 18, 2009, Ms. Ehlinger wrote to the
8 UCLA Chancellor. Exhibit 11. On July 24, 2009, L. Amy Blum, Senior Campus
9 Counsel in the Office of the Chancellor, responded to both of Ms. Ehlinger's letters.
10 Exhibit 12. In her response, Ms. Blum set forth legal defenses for UCLA's digitizing
11 and streaming practices, citing Sections 107 and 110(1) of the Copyright Act. 17
12 U.S.C. §§107 and 110(1).
13

14 53. On September 16, 2009, Arnold P. Lutzker, Counsel for AIME, replied to Ms.
15 Blum's analysis, in which he contested both prongs of UCLA's defense, indicating
16 that neither Section 107 nor Section 110(1) authorized or allowed the UCLA
17 practices. Exhibit 13. Mr. Lutzker urged that the parties should meet to see if a
18 resolution of the dispute was feasible, but that before such meeting, UCLA should
19 provide more details regarding digitizing and streaming of AIME member programs.
20
21

22 54. On October 21, 2009, UCLA responded, indicating that it would meet with
23 AIME and that IMCS would temporarily stop streaming content outside the Library
24 commencing December 20, 2009. Exhibit 14. In her response, Ms. Blum sought to
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26
27
28

1 narrow UCLA's liability, but that suggestion was rejected by letter dated October 28,
2 2009. Exhibit 15.

3 55. A meeting of the parties was held on January 19, 2010. Mr. Dohra represented
4 AVP and AIME, and Dr. Farb, Ms. O'Donnell and Mr. Loehner represented UCLA.
5
6 The meeting did not resolve the dispute.

7 56. On information and belief, by public pronouncement and by letter dated March
8 2, 2010, UCLA publicly announced and advised AVP that it would resume copying
9 and streaming DVDs from its libraries, adding Section 110(2), 17 U.S.C. §110(2), as
10 an additional justification for its practice, and indicating that it would require
11 professors to articulate a pedagogical purpose for any streaming request. Exhibit 16.
12

13
14 *D. UCLA's Actions Violate the Copyright Law Including the DMCA*

15 57. On information and belief, UCLA uses HVS's Video Furnace to copy,
16 distribute, perform and display AVP Shakespeare DVDs, all in violation of AVP's
17 exclusive copyright rights and in breach of the covenants in the 2006-2007 AVP
18 License.
19

20
21 58. On information and belief, the making of copies of AVP Shakespeare DVDs
22 utilizing Video Furnace also entails the bypassing of copy-guarded codes embedded
23 within each AVP Shakespeare DVD. Copy-guarded codes are an integral part of
24 AVP's Digital Rights Management ("DRM") system, or technological measures that
25 AVP employs to prevent unauthorized access, copying and use of AVP Shakespeare
26 DVDs. Such codes are a key mechanism not only for implementing the license
27
28

1 restrictions in the 2006-2007 AVP License, as well as the 2008-2011 AVP License,
2 but also for assuring compliance with AVP's obligations to third parties, whose
3 programs it distributes or works it incorporates within AVP DVDs.
4

5 59. On information and belief, the circumvention of AVP's DRM constitutes
6 violations of Sections 1201(a) and (b) of the Copyright Act. 17 U.S.C. §1201(a) and
7 (b). On information and belief, the Defendants are liable in their individual and
8 official capacities for UCLA's actions to circumvent AVP's technological measures
9 that effectively control access to and copying of its programs.
10

11 60. On information and belief, UCLA worked in close coordination with HVS and
12 a few other universities, to develop Video Furnace applications for use by higher
13 education. According to statements that have appeared on HVS's website:
14

15 HaiVision's Video Furnace is the premier package for end-to-end
16 delivery of content for higher education and K-12 institutions. Video
17 Furnace is ideal for delivering cable content in dormitories and across the
18 campus, for providing video-on-demand content for use within classes
19 and by students at their leisure, for launching campus TV stations, for
20 making special classes or events available to everyone, and for recording
21 classes and events for later review. ... *Video Furnace was initially
developed in close collaboration with a number of leading universities
including Northwestern, Dartmouth, and UCLA.*

22 <http://www.haivision.com/applications/education> (accessed September
23 13, 2009.) Emphasis supplied.

24 61. On information and belief, based on its direct assistance to HVS and their
25 willingness to lend their name and reputation to the marketing efforts of HVS,
26 Defendants have trafficked in Video Furnace, which is a technology, product, service,
27 device, component, or part thereof, that (A) is primarily designed or produced for the
28

1 purpose of circumventing a technological measure that effectively controls access to a
2 work protected under this title; (B) has only limited commercially significant purpose
3 or use other than to circumvent a technological measure that effectively controls
4 access to a work protected under this title; and (C) has been marketed by HVS in
5 concert with UCLA with knowledge of its use in circumventing a technological
6 measure that effectively controls access to a work protected under copyright law, in
7 violation of 17 U.S.C. §1201(a).
8

9
10 62. On information and belief, UCLA acted in concert with HVS in the
11 development of Video Furnace, with knowledge that Video Furnace can be used to
12 circumvent technological measures, like those employed by AVP on AVP
13 Shakespeare DVDs, to limit access to its copyrighted DVDs, in violation of 17 U.S.C.
14 §1201(a).
15

16
17 63. On information and belief, based on its direct assistance to HVS and their
18 willingness to lend their name and reputation to the marketing efforts of HVS,
19 Defendants have trafficked in Video Furnace, a technology, product, service, device,
20 component, or part thereof, that (A) is primarily designed or produced for the purpose
21 of circumventing protection afforded by a technological measure that effectively
22 protects a right of a copyright owner under this title in a work or a portion thereof; (B)
23 has only limited commercially significant purpose or use other than to circumvent
24 protection afforded by a technological measure that effectively protects a right of a
25 copyright owner under this title in a work or a portion thereof; and (C) has been
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1 marketed by HVS in concert with UCLA with knowledge of its use in circumventing
2 protection afforded by a technological measure that effectively protects a right of a
3 copyright owner under this title, in violation of 17 U.S.C. §1201(b).

4
5 64. On information and belief, UCLA acted in concert with HVS in the
6 development of Video Furnace, with knowledge that Video Furnace can be used to
7 circumvent protection afforded by a technological measure that effectively protects a
8 right of a copyright owner under copyright law, like the copy-guard DRM employed
9 by AVP on AVP DVDs, in violation of 17 U.S.C. §1201(b).

10
11 *E. None of the Copyright Defenses Asserted by Defendants Supports Their*
12 *Infringing Actions*

13
14 65. AVP has registered the AVP Shakespeare DVDs exploited by UCLA with the
15 U.S. Copyright Office. Copies of the Registration Certificates for AVP Shakespeare
16 DVDs are attached hereto. Exhibit 17.

17
18 66. Contrary to the Defendants' assertions, Section 110(1), 17 U.S.C. §110(1), does
19 not sanction UCLA's copying and streaming of AVP Shakespeare DVDs. Section
20 110(1) only permits the public performance or public display of copyrighted works in
21 the course of face-to-face teaching activities of instructors and students of non-profit
22 educational institutions in classrooms or similar places of teaching. Moreover,
23 Section 110(1) does not exempt the copying of any work, which is done each time the
24 Defendants prepare a work for streaming using Video Furnace, nor does it exempt
25 distribution of video programming from a remote location (like UCLA's media
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1 center), nor does it permit performance in places that are not similar to classrooms,
2 such as dormitories, apartments, commercial venues where WiFi is present, or to
3 auditoriums where the audience is not confined to a particular academic class.

4
5 67. Section 110(1) also intends that viewing be simultaneous between teacher and
6 students in order for the face to face teaching exception to apply. Since the streaming
7 activities by UCLA allow students and faculty to view the copyrighted material at any
8 time and at different times from each other, the uses do not fall under Section 110(1).

9
10 68. Further, Section 110(1) only authorizes the performance of a motion picture
11 from a copy that was lawfully made. Since the streaming was effectuated using an
12 unauthorized copy of a licensed DVD, which expressly prohibits copying, the use of
13 the unlawful copy places this activity outside the scope of Section 110(1).

14
15 69. Contrary to the Defendants' assertion, Section 110(2), 17 U.S.C. §110(2), does
16 not sanction UCLA's copying and streaming of AVP Shakespeare DVDs. Section
17 110(2), also known as The TEACH Act, is a limited exemption designed to allow use
18 of certain copyrighted materials in the context of digital distance education. Most
19 pertinent for purposes of this case is the fact that the statute excludes works, such as
20 AVP Shakespeare DVDs, which are separately marketed for licensed streaming for
21 use in classrooms as part of "mediated instructional activities" as defined under
22 copyright law. Section 110(2) expressly provides that the exception is inapplicable to
23 works "produced or marketed primarily for performance or display as part of mediated
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1 instructional activities transmitted via digital networks.” With the development of
2 Ambrose 2.0, the AVP Shakespeare DVDs qualify as such works.

3 70. Equally significant, with respect to motion pictures, the statute is very clear:
4 only “reasonable and limited portions” can be exploited, not entire programs as UCLA
5 has done. 17 U.S.C. §110(2).
6

7 71. Finally, as with Section 110(1), use of an unlawful copy voids any claim to
8 entitlement. Defendants’ making of unauthorized copies utilizing Video Furnace bars
9 reliance upon the Section 110(2) limitation on liability for public performance and
10 public display.
11

12 72. Contrary to Defendants’ assertions, Section 107, 17 U.S.C. §107, does not
13 sanction Defendants’ copying and streaming of AVP Shakespeare DVDs. Section
14 107, copyright law’s “fair use” provision, is a defense to a claim of infringement
15 based upon a factual analysis of four statutory criteria. This means that although an
16 unauthorized use or infringement has occurred, based upon an assessment of the fair
17 use criteria applied to the facts associated with the specific infringement, the use may
18 be allowed, even without the copyright owner’s consent. Since fair use requires a
19 balancing of the four criteria, no judgment can be reached without the four factors
20 being fully assessed.
21

22 73. In other words, fair use is not a blanket right to copy and stream AVP
23 Shakespeare DVDs; rather, the statutory limitation requires a factual evaluation based
24 on the four criteria, applied to specific facts and specific works. Therefore, UCLA
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1 cannot simply claim, as Defendants have, that fair use broadly exempts it from
2 liability and that it allows it to copy, stream and publicly perform any AVP
3 Shakespeare DVD it chooses. Rather, fair use requires an evaluation of the relevant
4 facts applicable to each use of each work to determine if the fair use defense is
5 applicable.
6

7 74. In this instance, Defendants have chosen to ignore the fact that UCLA acquired
8 the AVP Shakespeare DVDs pursuant to the 2006-2007 AVP License that expressly
9 grants only a limited license to exhibit the videos to non-paying audiences, while
10 prohibiting duplication and transmission “on any multi-receiver open or internet
11 system.”
12
13

14 75. Further, Defendants covenant in the AVP Licenses that “Nothing herein shall
15 derogate from any rights of Ambrose or any other copyright proprietor of any
16 Program under the United States Copyright Law or any applicable foreign copyright
17 laws.”
18

19 76. In addition, on information and belief, UCLA has not sought to exploit
20 “reasonable and limited portions” of particular AVP Shakespeare DVDs, but rather
21 has decided to exploit the copyrighted works in their entirety. That AVP has a
22 reasonably priced streaming license, which is ready and available to meet all of
23 UCLA’s pedagogical needs, is also not considered. The fact that AVP Shakespeare
24 DVDs contain DRM that is designed to control access and copying, and facilitate
25 AVP’s obligations to third parties whose works are used or distributed, is similarly
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1 ignored by the Defendants. Merely asserting that UCLA qualifies for fair use does not
2 satisfy its legal burden to prove its repeated use of each AVP Shakespeare DVD is a
3 fair use.
4

5 **II. THE DEFENDANTS' ACTIONS ARE THE TIP OF AN INFRINGEMENT**
6 **ICEBERG THAT AFFECT OTHER AIME MEMBER COMPANIES AND**
7 **REQUIRES DECLARATORY RELIEF**

8 77. The Defendants' exploitations of AVP Shakespeare DVDs are the proverbial tip
9 of the iceberg. In response to a lawful request for information by AIME on behalf of
10 its members and pursuant to California Public Records Act, Cal. Gov. Code §6252, *et*
11 *seq*, the Plaintiffs received a document detailing all the programs that UCLA has
12 streamed in the recent past. This list contains more than 2,500 program titles, many
13 owned by AIME members. Exhibit 2.
14

15 78. A review of this list reveals that the scale of the Defendants' copyright
16 infringing activities is massive. Ten AIME members, including AVP, have 162 titles
17 on the list that the Defendants have copied and streamed.
18

19 79. What Exhibit 2 does not specify and what UCLA refused to provide AIME in
20 response to the information request, is the number of times each program was
21 streamed. All AIME knows from UCLA's acknowledgement to AVP is that 13 AVP
22 DVDs were streamed by UCLA more than 130 times, or in excess of 10 times each.
23
24 If a comparable number of streams occurred with regard to other AIME members,
25 then the number of infringements against AIME members could exceed 1,100.
26

27 Whether such streaming activity constitutes infringement of AIME members
28

1 copyrights is for them to pursue individually. However, given the known
2 infringement of AVP's works, the presence of AIME members on the streaming list,
3 and the Defendants' stated determination to continue their massive streaming
4 activities, it is for these reasons that AIME seeks a prospective, declaratory injunction
5 prohibiting the Defendants from engaging in future copying and streaming of content
6 licensed from AIME members (*see* Exhibit 1) without the Defendants first obtaining
7 consent directly from the affected AIME members.
8
9

10 80. AVP and other AIME members license their video catalog to thousands of
11 educational institutions. If UCLA's actions in assisting in the development of Video
12 Furnace and lending its reputation to HVS's marketing of Video Furnace influenced
13 other institutions to purchase Video Furnace, then the huge catalog of UCLA streamed
14 titles could similarly influence other educational institutions to copy and stream their
15 catalogs, which are likely to include AIME member programs. In such event, the
16 prospective harm to the copyright interests of AIME and AIME members could be
17 magnified enormously.
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20

21
22 **COUNT I**
BREACH OF 2006-2007 AVP LICENSE

23 81. AVP realleges and incorporates herein the allegations in Paragraphs 1-80.

24 82. Plaintiff AVP has duly performed each and every covenant and/or condition of
25 the 2006-2007 AVP License.
26
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1 83. As described above, the Defendants in their official and individual capacities
2 have breached numerous covenants contained in the 2006-2007 AVP License,
3 including the following:

- 4 a. the limited license from Ambrose for the Program “in 16mm film, DVD or
5 video cassette type ordered;”
- 6 b. the term that prohibits duplication, broadcast, transmission on any multi-
7 receiver open or internet system;
- 8 c. the covenant that Ambrose’s rights under U.S. copyright law will not be
9 derogated;
- 10 d. the default provision allowing AVP to repossess the AVP Shakespeare DVDs;
- 11 e. the use requirement that each Program shall be exhibited only in its entirety and
12 that licensees “shall not copy, duplicate, sublicense or sublease or part with
13 possession thereof;”
- 14 f. the covenant limiting the exhibition of the AVP programs to “non-paying
15 private audiences,” since by providing students with passwords to view the
16 streamed programs, Defendants have surrendered the ability to control who can
17 view the programs and in what setting; and
- 18 g. the covenant requiring that no program can “be performed or exhibited without
19 complete copyright notices and credits contained therein,” since by the nature
20 of Internet streaming, the end credits cannot be performed until the program
21 has been seen in its entirety, which Defendants cannot ensure.
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1 84. Plaintiffs have suffered damages as a direct and proximate result of Defendants'
2 breaches of contractual covenants, and Defendants are liable to Plaintiff AVP for such
3 breaches, including monetary damages, payment of maximum attorneys permitted by
4 law, return of the AVP Shakespeare DVDs, and may be prospectively enjoined from
5 future breaches.
6

7
8 **COUNT II**
9 **ANTICIPATORY BREACH OF 2008-2011 AVP LICENSE**

10 85. AVP realleges and incorporates herein the allegations in Paragraphs 1-84.

11 86. Plaintiff AVP has duly performed each and every covenant and/or condition of
12 the 2008-2011 AVP License.
13

14 87. UCLA has clearly communicated to Plaintiffs its intention to continue
15 streaming DVDs by Ambrose, including DVDs licensed under the 2008-2011 AVP
16 License, which intention is without justification, thereby repudiating the following
17 obligations under that license:
18

- 19 a. the term that prohibits duplication, broadcast, transmission on any multi-
20 receiver open or internet system;
21
22 b. the covenant that Ambrose's rights under U.S. copyright law will not be
23 derogated;
24
25 c. the default provision by refusing to allow AVP to repossess the DVDs;
26
27 d. the requirement that the licensee shall not sublicense or sublease or part with
28 possession of any Program;

- 1 e. the covenant requiring that no program can “be performed or exhibited without
2 complete copyright notices and credits contained therein,” since by the nature
3 of Internet streaming, the end credits cannot be viewed unless the program has
4 been seen in its entirety;
- 5
- 6 f. the provision that the Content can be used only “in an educational OR home
7 video setting,” since faculty and students who have been provided with
8 passwords will be able to view the streamed programs outside a home or
9 educational setting;
- 10
- 11 g. the covenant prohibiting use of Plaintiff AVP’s trademarks that appear on its
12 website “without express written consent,” since the streamed AVP programs
13 contain Plaintiff AVP’s logos without its consent; and
- 14
- 15 h. the express and/or implied covenant that UCLA will pay a higher price for
16 streaming rights.
17

18 88. Such communications by UCLA constitute anticipatory breaches of its
19 obligations under the 2008-2011 AVP License.
20

21 89. Plaintiffs have suffered damages as a direct and proximate result of Defendants’
22 anticipatory breaches of contractual covenants, and Defendants are liable to Plaintiff
23 AVP for such breaches, including monetary damages, payment of maximum attorneys
24 permitted by law, return of the AVP DVDs, and may be prospectively enjoined from
25 future breaches.
26
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COUNT III
COPYRIGHT INFRINGEMENT

1
2
3 90. AVP realleges and incorporates herein the allegations in Paragraphs 1-89,
4 inclusive.

5 91. Defendants Ms. O'Donnell, Dr. Farb and Mr. Loehner had access to and
6 directly copied and streamed, or authorized the copying and streaming of the AVP
7 Shakespeare DVDs on the UCLA intranet or internet service for faculty and students.
8 All other Defendants contributed to her or their infringements as set forth herein.
9
10 AVP Shakespeare DVDs are original works of authorship, registered with the U.S.
11 Copyright Office. Evidence of registration of numerous programs is attached hereto
12 as Exhibit 17.
13

14 92. At all times relevant hereto, Plaintiff AVP has been and is the owner of all
15 pertinent exclusive copyright rights in and to the AVP Shakespeare DVDs and all
16 other DVDs licensed to the Defendants.
17

18 93. Defendants in their official and individual capacities have copied, or
19 authorized, allowed, contributed to or sanctioned the copying of AVP DVDs and
20 publicly distributed, publicly performed and publicly displayed them by streaming the
21 AVP Shakespeare DVDs more than 130 times.
22

23
24 94. Defendants' copying and streaming are unauthorized by Plaintiff AVP and
25 constitute violations of Plaintiff AVP's exclusive rights to control reproduction, public
26 performance, public distribution and public display of AVP Shakespeare DVDs, all in
27 violation of 17 U.S.C. §106.
28

1 95. Unless prospectively enjoined by this Court, Defendants will continue to
2 infringe Plaintiff AVP's copyrights in and relating to the AVP Shakespeare DVDs and
3 other AVP DVDs licensed to UCLA.

4
5 96. Defendants' infringements were willful in that Defendants acted with actual
6 or constructive knowledge that their actions constituted direct and/or contributory
7 infringement and they acted with reckless disregard to Plaintiff AVP's rights.

8
9 97. Plaintiff AVP is entitled to receive all appropriate injunctive relief, including
10 but not limited to prospective injunctive relief, a return of all AVP Shakespeare
11 DVDs, destruction of all digital files made from the AVP Shakespeare DVDs, and all
12 other relief available under 17 U.S.C. §§502-503.

13
14 98. Plaintiff AVP is further entitled to recover from the Defendants the damages,
15 including attorneys' fees, it has sustained and will sustain, and any gains, profits and
16 advantages obtained by Defendants as a result of Defendants' willful acts of
17 infringement alleged in this Complaint, including but not limited to such damages and
18 awards as are available under 17 U.S.C. §§ 504-505.
19
20

21 **COUNT IV**
22 **DECLARATORY RELIEF IN FAVOR OF PLAINTIFF AIME**

23 99. AIME realleges and incorporates herein the allegations in Paragraphs 1-98,
24 inclusive.
25
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1 100. AIME, in its capacity as an associational Plaintiff, seeks prospective injunctive
2 relief to prevent the Defendants from engaging in future copying and streaming
3 practices that will violate the rights of AIME members.
4

5 101. Each prospective act of copying and streaming that constitutes willful direct
6 and/or contributory copyright infringement violates the copyright interests of AIME
7 members, which interests AIME seeks to protect. The declaratory relief AIME seeks
8 is a permanent injunction pursuant to 28 U.S.C. §2201(a) and 2202, prohibiting the
9 Defendants from engaging in future copying and streaming of content licensed from
10 AIME members (*see* Exhibit 1) without the Defendants' first obtaining consent
11 directly from the affected AIME member.
12
13

14 **COUNT V**
15 **VIOLATION OF THE ANTICIRCUMVENTION**
16 **PROVISIONS OF 17 U.S.C. §1201**

17 102. AVP realleges and incorporates herein the allegations in Paragraphs 1-101
18 inclusive.
19

20 103. By the actions alleged in this Complaint, Defendants in their official and
21 individual capacities have on a direct and/or contributory and/or vicarious basis,
22 circumvented, or allowed, authorized, or sanctioned the circumvention of
23 technological measures that effectively control access to AVP Shakespeare DVDs in
24 violation of 17 U.S.C. §1201.
25

26 104. Further, by the actions alleged in this Complaint, Defendants in their official
27 and individual capacities have on a direct and/or contributory and/or vicarious basis
28

1 acted or allowed, authorized, or sanctioned the action in concert with HVS to traffic in
2 technology, products, services, devices, components or parts thereof that are primarily
3 designed or produced for the purpose of circumventing a technological measure that
4 effectively controls access to AVP Shakespeare DVDs, that have only limited
5 commercially significant purpose or use other than to circumvent a technological
6 measure that effectively controls access to a work protected under copyright law, and
7 that has been marketed by HVS in concert with the Defendants with knowledge for
8 use in circumventing technological measures that effectively control access to works
9 protected under copyright law.
10
11

12
13 105. By the actions described in this Complaint, Defendants in their official and
14 individual capacities have on a direct and/or contributory and/or vicarious basis acted
15 or allowed, authorized, or sanctioned the action in concert with HVS to traffic in
16 technology, products, services, devices, components or parts thereof that are primarily
17 designed or produced for the purpose of circumventing protection afforded to AVP of
18 a technological measure that effectively protects rights of AVP as copyright owner or
19 the owner of all exclusive rights in copyrighted works, that have only limited
20 commercially significant purpose or use other than to circumvent protections afforded
21 by a technological measure that effectively protects a right of AVP under copyright
22 law, and that has been marketed by HVS in concert with Defendants with knowledge
23 for use in circumventing protection afforded by a technological measure that
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1 effectively protects a right of AVP under copyright law, all in violation of 17 U.S.C.
2 §1201.

3 106. Defendants' actions were willful in that they acted with actual or constructive
4 knowledge that their actions directly and/or on a contributory or vicarious basis
5 constituted infringement or they acted with reckless disregard to AVP's rights.
6

7 107. AVP is entitled to receive all appropriate relief, including but not limited to the
8 damages, injunctive and declaratory relief available under 17 U.S.C. §1203 and under
9 28 U.S.C. §§2201(a) and 2202.
10

11
12 **COUNT VI**
13 **BREACH OF THE IMPLIED CONTRACTUAL**
COVENANTS OF GOOD FAITH AND FAIR DEALING

14 108. AVP realleges and incorporates herein the allegations in Paragraphs 1-107
15 inclusive.
16

17 109. As described above, Defendants in their official and individual capacities have
18 acted or allowed, authorized, or sanctioned the action in bad faith, *inter alia*, by
19 causing UCLA to breach various contractual covenants contained in the 2006-2007
20 AVP License and to anticipate the breach of the 2008-2011 AVP License.
21

22 110. The Defendants have also publicly distributed copies of the AVP Shakespeare
23 DVDs without Closed Captioning as required by law and UC policies.
24

25 111. The conduct described herein constitutes a breaches and anticipatory breaches
26 of Defendants implied-in-law covenants of good faith and fair dealing with respect to
27
28

1 the AVP Licenses, and violations of the orders, policies and commitments of UC and
2 UCLA made pursuant to public pronouncements and relied upon by the AVP.

3 112. By reason of such conduct, Defendants are liable to Plaintiff AVP for general
4 and special compensatory damages and punitive damages.
5

6 **COUNT VII**
7 **UNJUST ENRICHMENT**

8 113. AVP realleges and incorporates herein the allegations in Paragraphs 1- 112
9 inclusive.

10 114. As described above, Defendants' illegal actions have enabled them to expand
11 their content offerings to its students, who pay for educational services, and resources
12 for faculty, which include access to educational content like AVP Shakespeare DVDs.
13

14 115. Defendants enjoyed the benefits of these programs without paying for the
15 privilege to use them, and thereby the Defendants profited unjustly. Despite
16 Plaintiffs' demands, Defendants failed, neglected and refused to pay the amounts due
17 and owing to Plaintiff AVP. As a consequence of Defendants' actions, Plaintiff AVP
18 has been denied financial compensation and credit in connection with exploitation of
19 their DVDs as contemplated by the AVP Licenses, all to UCLA's unjust enrichment.
20
21
22

23 **COUNT VIII**
24 **TORTIOUS INTERFERENCE WITH**
25 **CONTRACTUAL RELATIONS**

26 116. AVP realleges and incorporates herein the allegations in Paragraphs 1- 115
27 inclusive.
28

1 117. By virtue of Defendants' licensing AVP Shakespeare DVDs, Defendants
2 obtained access to works for which AVP owes a contractual duty to compensate third
3 parties, including the BBC, for certain uses of the DVDs. Further, pursuant to
4 agreements with the BBC, AVP has an obligation to pursue infringements of the AVP
5 Shakespeare DVDs copyrights and AVP Licenses.
6

7 118. However, with knowledge of and without regard to AVP's business relationship
8 with the BBC, utilizing HVS's Video Furnace, Defendants in their official and
9 individual capacities have interfered with AVP's contractual obligations to the BBC
10 and the BBC's contractual obligations to third parties by, inter alia.
11

- 12 a. Making it impossible for AVP to fulfill its payment and audit obligations to the
13 BBC;
- 14 b. Causing AVP and the BBC to breach contractual obligations to guilds and other
15 parties involved in the exploitation of the AVP Shakespeare DVDs; and
16
- 17 c. Causing AVP to breach its agreement with the BBC, pursuant to which AVP
18 acquired exclusive rights to the BBC's "The Plays of William Shakespeare"
19 only in the United States and U.S. territories, because Defendants have no
20 control over where faculty and students may stream and/or view programs.
21

22 119. The actions of Defendants were intentional and continued after notice of AVP's
23 obligations and demand to stop.
24

25 120. By reason of such conduct, Defendants have tortiously interfered with AVP's
26 contractual relationships with the BBC and others, and their contractual relationships
27
28

1 with other parties, causing harm to such relationships and rendering Plaintiff AVP
2 potentially liable to claims from such third parties.

3 121. By reason of such conduct, Defendants are liable to Plaintiff AVP for general
4 and special compensatory damages and punitive damages.
5

6
7 **COUNT IX**
8 **TORTIOUS INTERFERENCE WITH PROSPECTIVE**
9 **BUSINESS ADVANTAGE**

10 122. AVP realleges and incorporates herein the allegations in Paragraphs 1- 121
11 inclusive.

12 123. A significant part of AVP's revenue comes from the sale of its DVD products at
13 affordable prices to professors and students.

14 124. By UCLA's streaming of AVP Shakespeare DVDs to faculty and students, in
15 violation of the 2006-2007 AVP License, UCLA is depriving Plaintiffs of this huge
16 marketplace, since the professors and students can now obtain the products free via
17 streaming and no longer have any incentive to purchase them.
18

19 125. Defendants had knowledge of AVP's practice of selling DVDs to professors
20 and students.
21

22 126. The actions of Defendants were intentional and continued after notice of AVP's
23 obligations and demand to stop.
24

25 127. By reason of such conduct, Defendants have tortiously interfered with AVP's
26 prospective business advantage.
27
28

1 128. By reason of such conduct, Defendants are liable to Plaintiff AVP for general
2 and special compensatory damages and punitive damages.

3 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:
4

5 A. Permanently enjoining and restraining Defendants, their officers,
6 directors, shareholders, agents, employees, and attorneys and all those acting in
7 concert with them from:
8

- 9 1. Infringing the copyrights of AVP in the AVP Shakespeare DVDs
10 and any other AVP DVD in any manner, including but not limited to
11 reproducing, publicly distributing them, publicly displaying them, or
12 publicly performing them in any medium except as expressly authorized
13 by contract or law;
- 14 2. Circumventing DRM technology designed to limit access to and
15 copying of AVP DVD programs; and
- 16 3. Prospectively infringing the copyrights of AIME members, who
17 have licensed or will license DVD programs to UCLA, by copying and
18 streaming such DVD content without the consent of AIME members.
19
20
21

22 B. Ordering that Defendants to file with this Court and serve upon Plaintiffs
23 within 20 days after the service of such injunction, an affidavit, sworn to under
24 penalty of perjury, setting forth in detail the manner and form in which Defendants
25 have complied with such injunction.
26
27
28

1 C. Ordering an accounting of all revenues received by Defendants as a result
2 of their unlawful conduct.

3 D. Ordering Defendants to pay all license fees, including interest, due and
4 owing for the exploitation of AVP Shakespeare DVDs, maximum attorney fees
5 permitted by law, and other damages for breach of contractual obligations and
6 interference with AVP's agreements with third parties, including the BCC;
7

8 E. Awarding AVP: 1) Defendants' profits realized as a result of a) the
9 breach of contract, b) copyright infringement, c) violation of the DMCA and d) unjust
10 enrichment; 2) damages sustained by Plaintiff AVP, including damages arising from
11 Defendants' intentional and willful conduct under Sections 503 and 1203; and 3) the
12 costs of this action.
13

14 F. Awarding AVP statutory damages and attorney's fees pursuant to 17
15 U.S.C. §§ 504-505.
16

17 G. Awarding AVP punitive damages in an amount to be determined.
18

19 H. Awarding AVP prejudgment and post-judgment interest on any monetary
20 award in this action.
21

22 I. Granting such other and further relief as to this Court deems just and
23 proper.
24

25 DATED: February 14, 2011

26 Respectfully Submitted,
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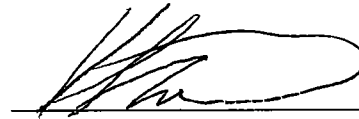
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Counsel for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues triable to a jury.

DATED: February 14, 2011



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Counsel for Plaintiffs

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF ORANGE

3 I am employed in the County of Orange, State of California. I am over the age of 18 and not
4 a party to the within action; my business address 1 Park Plaza, Suite 225, Irvine, CA 92614.

5 On **February 14, 2011**, I served document(s) described as **AMENDED COMPLAINT** on
6 the following person at the addresses and/or facsimile number below:

7 R. James Slaughter
8 Michael S. Kwun
9 Andrew F. Dawson
10 Kecker & Van Nest LLP
11 710 Sansome Street
12 San Francisco, CA 94111-1704

13 VIA FACSIMILE – Based on an agreement by the parties to accept service by fax
14 transmission, I faxed the documents from a fax machine in Irvine, California, with the
15 number 949-252-0090, to the parties and/or attorney for the parties at the facsimile
16 transmission number(s) shown herein. The facsimile transmission was reported as complete
17 without error by a transmission report, issued by the facsimile transmission upon which the
18 transmission was made, a copy of which is attached hereto.

19 BY ELECTRONIC SERVICE – Based on a court order or agreement of the parties to accept
20 service by electronic transmission, I caused the documents to be sent to the persons at the
21 electronic notification addresses listed herein on the above referenced date. I did not receive,
22 within a reasonable time after the transmission, any electronic message or other indication
23 that the transmission was unsuccessful.

24 BY MAIL - I am "readily familiar" with the firm's practice of collection and processing
25 correspondence for mailing. Under that practice it would be deposited with the U.S. postal
26 service on that same day, with postage thereon fully prepaid, at Irvine, California in the
27 ordinary course of business. I am aware that on motion of the party served, service is
28 presumed invalid if postal cancellation date or postage meter date is more than one day after
date of deposit for mailing in affidavit.

BY CERTIFIED MAIL - I am "readily familiar" with the firm's practice of collection and
processing correspondence for mailing. Under that practice it would be deposited with the
U.S. postal service on that same day, with postage thereon fully prepaid, at Irvine, California
in the ordinary course of business. I am aware that on motion of the party served, service is
presumed invalid if postal cancellation date or postage meter date is more than one day after
date of deposit for mailing in affidavit.

BY FEDERAL EXPRESS – I am readily familiar with the firm's practice of collection and
processing correspondence for Federal Express. Under that practice it would be deposited

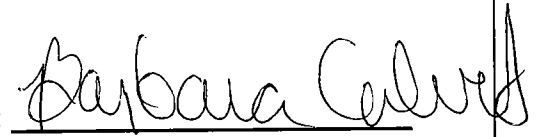
1 with Federal Express on that same day in the ordinary course of business for overnight
2 delivery with delivery costs thereon fully prepaid by sender, at Irvine, California.

3 [] BY MESSENGER SERVICE – I served the documents by placing them in an envelope or
4 package addressed to the persons at the addresses listed herein and providing them to a
5 professional messenger service for service. A declaration by the messenger service will be
6 filed separately.

7 I declare under penalty of perjury under the laws of the State of California and the United
8 States of America that the above is true and correct.

9 Executed on **February 14, 2011** at Irvine, California.

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By:



Barbara Calvert