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11 *Interim Co-Lead Counsel and Counsel for*
12 *Plaintiffs*

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

15
16
17 In Re Sony PS3 "Other OS" Litigation

CASE NO. C 10-1811 RS
**PLAINTIFFS' AMENDED INITIAL
DISCLOSURES PURSUANT TO
FEDERAL RULE OF CIVIL
PROCEDURE 26(a)(1)**

Trial Date: None

1 **INTRODUCTORY COMMENT**

2 Plaintiffs Anthony Ventura, Jonathan Huber, Antal Herz, Jason Baker and Elton Stovell
3 (collectively hereinafter “Plaintiffs”) hereby make the following amended initial disclosures
4 pursuant to Federal Rule of Civil Procedure 26(a)(1). Plaintiffs make these disclosures based
5 upon information available to them pursuant to the investigation that Plaintiffs have been able to
6 conduct to date. Plaintiffs have not yet conducted formal discovery in this matter. These
7 disclosures reflect Plaintiffs’ current understanding, belief and knowledge. While Plaintiffs and
8 their counsel have investigated sources of information immediately available to them, Plaintiffs
9 and their counsel have not yet had sufficient opportunity to interview all persons who have, or
10 may have knowledge of the facts relevant to this lawsuit or reviewed all documents which refer or
11 relate to such facts. As discovery in this lawsuit continues, additional information, persons and
12 documents may become known to Plaintiffs and their counsel. This disclosure is, therefore,
13 without prejudice to Plaintiffs’ right to amend their responses or to offer further or different
14 evidence, documents or information that may come to Plaintiffs’ attention after these disclosures.

15 Plaintiffs submit these disclosures without waiver of any applicable privilege or protection
16 and reserve the right to object to the admissibility at trial of any information contained in or
17 derived from these disclosures. Plaintiffs further reserve the right to rely upon the individuals
18 identified in these disclosures for subjects other than those identified herein in response to any
19 disclosure, evidence or testimony proffered by Defendant Sony Computer Entertainment America,
20 LLC (hereinafter “Defendant” or “SCEA”).

21 **AMENDED INITIAL DISCLOSURES**

22 **Rule 26(a)(1)(A)(i):**

23 Provide the name, and if known, the address and telephone number of each individual
24 likely to have discoverable information – along with the subjects of that information – that the
25 disclosing may use to support its claims or defenses, unless the use would be solely for
26 impeachment.

27 **Rule 26(a)(1)(A)(i) Disclosure:**

28 The following individuals are likely to have discoverable information that Plaintiffs’ may

1 use to support their claims, unless the use would be solely for impeachment. Plaintiffs, however,
2 reserve the right to identify additional witnesses who may be relevant in this case as those
3 witnesses become known during the course of this litigation:

- 4 1. Dominic Mallinson
5 DLA Piper LLP
6 c/o Luanne Sacks
7 555 Mission Street, Suite 2400
8 San Francisco, CA 94105

9 Upon information and belief, Mr. Mallinson is the current or former Director of
10 Technology in SCEA's Research and Development department. He may have relevant
11 information related to SCEA's marketing of the PlayStation®3 ("PS3") and its product packaging;
12 content on SCEA's website; the System Software License Agreement; the Terms of Service And
13 User Agreement for the PlayStation®Network ("PSN"); use of the PS3, including the Other OS
14 feature and/or the consequences and reasons for installing Linux, and access to and use of the
15 PSN; download of firmware updates, including Update 3.21; alleged injuries and damages caused
16 to the class by SCEA's mandatory implementation of Update 3.21; other facts relevant to the
17 putative class members.

- 18 2. Tom Boerger
19 DLA Piper LLP
20 c/o Luanne Sacks
21 555 Mission Street, Suite 2400
22 San Francisco, CA 94105

23 Upon information and belief, Mr. Boerger is SCEA's current or former Senior Manager of
24 Product Information Design & Development. He may have relevant information related to
25 SCEA's marketing of the PS3 and its product packaging; content on SCEA's website; the System
26 Software License Agreement; the Terms of Service And User Agreement for the PSN; use of the
27 PS3, including the Other OS feature and/or the consequences and reasons for installing Linux, and
28 access to and use of the PSN; download of firmware updates, including Update 3.21; alleged
injuries and damages caused to the class by SCEA's mandatory implementation of Update 3.21;
other facts relevant to the putative class members.

1 3. John Koller
2 DLA Piper LLP
3 c/o Luanne Sacks
4 555 Mission Street, Suite 2400
5 San Francisco, CA 94105

6 Upon information and belief, Mr. Koller is SCEA's current or former Director of
7 Hardware Marketing. He may have relevant information related to SCEA's marketing of the PS3
8 and its product packaging; content on SCEA's website; the System Software License Agreement;
9 the Terms of Service And User Agreement for the PSN; use of the PS3, including the Other OS
10 feature and/or the consequences and reasons for installing Linux, and access to and use of the
11 PSN; download of firmware updates, including Update 3.21; alleged injuries and damages caused
12 to the class by SCEA's mandatory implementation of Update 3.21; other facts relevant to the
13 putative class members.

14 4. Patrick Seybold
15 DLA Piper LLP
16 c/o Luanne Sacks
17 555 Mission Street, Suite 2400
18 San Francisco, CA 94105

19 Upon information and belief, Mr. Seybold is SCEA's current or former Director of
20 Corporate Communications. He may have relevant information related to SCEA's marketing of
21 the PS3 and its product packaging; content on SCEA's website; the System Software License
22 Agreement; the Terms of Service And User Agreement for the PSN; use of the PS3, including the
23 Other OS feature and/or the consequences and reasons for installing Linux, and access to and use
24 of the PSN; download of firmware updates, including Update 3.21; alleged injuries and damages
25 caused to the class by SCEA's mandatory implementation of Update 3.21; information related to
26 postings, blogs and electronic chat on Internet sites hosted by SCEA concerning Update 3.21;
27 other facts relevant to the putative class members.

28 5. Nolan Hass
 DLA Piper LLP
 c/o Luanne Sacks
 555 Mission Street, Suite 2400
 San Francisco, CA 94105

 Upon information and belief, Mr. Hass is SCEA's current or former Senior Manager of

1 Consumer Services. He may have relevant information related to SCEA's marketing of the PS3
2 and its product packaging; content on SCEA's website; the System Software License Agreement;
3 the Terms of Service And User Agreement for the PSN; use of the PS3, including the Other OS
4 feature and/or the consequences and reasons for installing Linux, and access to and use of the
5 PSN; download of firmware updates, including Update 3.21; alleged injuries and damages caused
6 to the class by SCEA's mandatory implementation of Update 3.21; information related to
7 consumer contacts with SCEA concerning the PS3; other facts relevant to the putative class
8 members.

9 6. Ken Kutaragi

10 Upon information and belief, Mr. Kutaragi is the former President of SCEI. He may have
11 relevant information related to SCEA's marketing of the PS3 and its product packaging; content
12 on SCEA's website; the System Software License Agreement; the Terms of Service And User
13 Agreement for the PSN; use of the PS3, including the Other OS feature and/or the consequences
14 and reasons for installing Linux, and access to and use of the PSN; download of firmware updates,
15 including Update 3.21; alleged injuries and damages caused to the class by SCEA's mandatory
16 implementation of Update 3.21; other facts relevant to the putative class members.

17 7. Phil Harrison

18 Upon information and belief, Mr. Harrison is the former President of Sony Computer
19 Entertainment Worldwide Studios. He may have relevant information related to SCEA's
20 marketing of the PS3 and its product packaging; content on SCEA's website; the System Software
21 License Agreement; the Terms of Service And User Agreement for the PSN; use of the PS3,
22 including the Other OS feature and/or the consequences and reasons for installing Linux, and
23 access to and use of the PSN; download of firmware updates, including Update 3.21; alleged
24 injuries and damages caused to the class by SCEA's mandatory implementation of Update 3.21;
25 other facts relevant to the putative class members.

26 8. Geoffrey Levand

27 Upon information and belief, Mr. Levand is a current or former employee of Sony
28 America. He may have relevant information related to SCEA's marketing of the PS3 and its

1 product packaging; content on SCEA's website; the System Software License Agreement; the
2 Terms of Service And User Agreement for the PSN; use of the PS3, including the Other OS
3 feature and/or the consequences and reasons for installing Linux, and access to and use of the
4 PSN; download of firmware updates, including Update 3.21; alleged injuries and damages caused
5 to the class by SCEA's mandatory implementation of Update 3.21; other facts relevant to the
6 putative class members.

7 9. Izumi Kawanishi

8 Upon information and belief, Mr. Kawanishi is the current or former head of Sony's
9 Network System Development Section. He may have relevant information related to SCEA's
10 marketing of the PS3 and its product packaging; content on SCEA's website; the System Software
11 License Agreement; the Terms of Service And User Agreement for the PSN; use of the PS3,
12 including the Other OS feature and/or the consequences and reasons for installing Linux, and
13 access to and use of the PSN; download of firmware updates, including Update 3.21; alleged
14 injuries and damages caused to the class by SCEA's mandatory implementation of Update 3.21;
15 other facts relevant to the putative class members.

16 10. Kai Staats

17 Upon information and belief, Mr. Staats is the current or former CEO of Terra Soft. He
18 may have relevant information related to SCEA's marketing of the PS3 and its product packaging;
19 content on SCEA's website; the System Software License Agreement; the Terms of Service And
20 User Agreement for the PSN; use of the PS3, including the Other OS feature and/or the
21 consequences and reasons for installing Linux, and access to and use of the PSN; download of
22 firmware updates, including Update 3.21; alleged injuries and damages caused to the class by
23 SCEA's mandatory implementation of Update 3.21; other facts relevant to the putative class
24 members.

1 11. Plaintiff Anthony Ventura
2 CALVO & CLARK, LLP
3 c/o James Q. Quadra
4 One Lombard Street, Second Floor
5 San Francisco, CA 94111
6 Telephone: (415) 374-8370

7 Mr. Ventura is a plaintiff class representative and purchaser of a PS3 system at issue in this
8 lawsuit. He may have relevant information related to SCEA's marketing of the PS3 and its
9 product packaging; use of the PS3, including the Other OS feature and/or the consequences of
10 installing Linux, and access to and use of the PSN; download of firmware updates, including
11 Update 3.21; alleged injuries and damages caused to himself and the class by SCEA's mandatory
12 implementation of Update 3.21; other facts relevant to the putative class members.

13 12. Plaintiff Jonathan Huber
14 CALVO & CLARK, LLP
15 c/o James Q. Quadra
16 One Lombard Street, Second Floor
17 San Francisco, CA 94111
18 Telephone: (415) 374-8370

19 Mr. Huber is a plaintiff class representative and purchaser of a PS3 system at issue in this
20 lawsuit. He may have relevant information related to SCEA's marketing of the PS3 and its
21 product packaging; use of the PS3, including the Other OS feature and/or the consequences of
22 installing Linux, and access to and use of the PSN; download of firmware updates, including
23 Update 3.21; alleged injuries and damages caused to himself and the class by SCEA's mandatory
24 implementation of Update 3.21; other facts relevant to the putative class members.

25 13. Plaintiff Antal Herz
26 CALVO & CLARK, LLP
27 c/o James Q. Quadra
28 One Lombard Street, Second Floor
29 San Francisco, CA 94111
30 Telephone: (415) 374-8370

31 Mr. Herz is a plaintiff class representative and purchaser of a PS3 system at issue in this
32 lawsuit. He may have relevant information related to SCEA's marketing of the PS3 and its

1 product packaging; use of the PS3, including the Other OS feature and/or the consequences of
2 installing Linux, and access to and use of the PSN; download of firmware updates, including
3 Update 3.21; alleged injuries and damages caused to himself and the class by SCEA's mandatory
4 implementation of Update 3.21; other facts relevant to the putative class members.

5
6 14. Plaintiff Jason Baker
7 CALVO & CLARK, LLP
8 c/o James Q. Quadra
9 One Lombard Street, Second Floor
10 San Francisco, CA 94111
11 Telephone: (415) 374-8370

12 Mr. Baker is a plaintiff class representative and purchaser of a PS3 system at issue in this
13 lawsuit. He may have relevant information related to SCEA's marketing of the PS3 and its
14 product packaging; use of the PS3, including the Other OS feature and/or the consequences of
15 installing Linux, and access to and use of the PSN; download of firmware updates, including
16 Update 3.21; alleged injuries and damages caused to himself and the class by SCEA's mandatory
17 implementation of Update 3.21; other facts relevant to the putative class members.

18 15. Plaintiff Elton Stovell
19 CALVO & CLARK, LLP
20 c/o James Q. Quadra
21 One Lombard Street, Second Floor
22 San Francisco, CA 94111
23 Telephone: (415) 374-8370

24 Mr. Stovell is a plaintiff class representative and purchaser of a PS3 system at issue in this
25 lawsuit. He may have relevant information related to SCEA's marketing of the PS3 and its
26 product packaging; use of the PS3, including the Other OS feature and/or the consequences of
27 installing Linux, and access to and use of the PSN; download of firmware updates, including
28 Update 3.21; alleged injuries and damages caused to himself and the class by SCEA's mandatory
implementation of Update 3.21; other facts relevant to the putative class members.

Rule 26(a)(1)(A)(ii):

Provide a copy – or description by category and location – of all documents, electronically

1 stored information, and tangible things that disclosing party has in its possession, custody or
2 control it may use to supports its claims or defenses, unless the use would be solely for
3 impeachment.

4 **Rule 26(a)(1)(A)(ii) Disclosure:**

5 The categories of documents listed below are within the possession, custody, or control of
6 Plaintiffs and may be used to support their claims in this lawsuit. Plaintiffs, however, reserve the
7 right to identify and produce additional documents that may be relevant in this case as those
8 documents become known or available during the course of this litigation.

- 9 1. The PS3 packaging.
- 10 2. The documents provided by SCEA with the PS3.
- 11 3. Communications between Plaintiffs and SCEA and/or SCEA's agents.
- 12 4. Communications between Plaintiffs and third parties regarding removal of the
13 Other OS feature from the PS3.
- 14 5. Communications between Plaintiffs and the Better Business Bureau.
- 15 6. Communications between Plaintiffs and the Federal Trade Commission.
- 16 7. Screen shots from the SCEA website regarding the PS3.
- 17 8. Documents evidencing and relating to Plaintiffs' purchase of their PS3 and related
18 items.
- 19 9. Documents regarding the "Other OS" function and the operation, installation and
20 use of Linux on the PS3.
- 21 10. Plaintiffs' PS3 units.¹

22 **Rule 26(a)(1)(A)(iii):**

23 Provide the computation of each category of damages claimed by the disclosing party –
24 who must also make available for inspection and copying as under Rule 34 the documents or other
25 evidentiary material unless privilege or protected from disclosure on which each computation is
26 _____

27 ¹ Plaintiffs dispute SCEA's position pertaining to preservation and inspection of the Plaintiffs'
28 PS3 units and accordingly reserve all their rights thereto.

1 based, including materials bearing the nature and extent of injuries suffered.

2 **Rule 26(a)(1)(A)(iii) Disclosure:**

3 Any computation or estimate of any category of damages is premature at this stage of the
4 litigation. Plaintiffs reserve their right to supplement this disclosure upon completion of their
5 ongoing evaluation of damages to Plaintiffs and the proposed class and, at the appropriate time,
6 will make disclosure of expert testimony pursuant to Rule 26(a)(2). Without waiving such
7 objection and right to supplement this disclosure, Plaintiffs are seeking a full and/or partial refund
8 of the total purchase price of each PS3 console and any funds in PSN wallets that are inaccessible
9 due to Firmware Update 3.21, in addition to attorneys' fees and costs of litigation.

11 **Rule 26(a)(1)(A)(iv):**

12 Provide for inspection and copying as under Rule 34 any insurance agreement under which
13 an insurance business may be liable to satisfy all or part of a possible judgment in the action or to
14 indemnify or reimburse for payments made to satisfy the judgment.

15 **Rule 26(a)(1)(A)(iv) Disclosure:**

16 After a thorough search and reasonable inquiry, Plaintiffs are currently unaware of any
17 insurance coverage purchased by Defendant and any claims made there under. Therefore,
18 Plaintiffs cannot provide any further information responsive to this disclosure.

20 Dated: December 10, 2010

Respectfully submitted,

21 **CALVO & CLARK, LLP**

22 /s/ James A. Quadra

23 James A. Quadra

24 Rebecca Coll

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26 San Francisco, California 94111

27 Telephone: 415-374-8370

28 Facsimile: 415-374-8373

1 Dated: December 10, 2010

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4 Rosemary M. Rivas
5 Tracy Tien
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7 San Francisco, California 94104
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11 1050 30th Street, NW
12 Washington, DC 20007
13 Telephone: 202-337-8000
14 Facsimile: 202-337-8090

15 Dated: December 10, 2010

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16 /s/ James Pizzirusso _____

17 James Pizzirusso (*pro hac vice*)
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19 Washington, DC 20006
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21 Facsimile: 202-540-7201

22 Michael P. Lehman

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23 44 Montgomery Street, Suite 3400
24 San Francisco, California 94104
25 Telephone: 415-633-1908
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27 *Co-Interim Lead Counsel for Plaintiffs*

28 Bruce L. Simon

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D. Greg Blankinship (*pro hac vice*)
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Facsimile: 281-335-5871

Counsel for Plaintiffs

1 **PROOF OF SERVICE**

2 I am employed with the law firm of Calvo & Clark, LLP, located at One Lombard
3 Street, 2nd Floor, San Francisco, California 94111. I am not a party to the within cause. I am
4 over eighteen years of age and I am readily familiar with Calvo & Clark's practice for collection
5 and processing of correspondence and documents for delivery and distribution.

6 On December 10, 2010 I served the party below a copy of:

7 **PLAINTIFFS' AMENDED INITIAL DISCLOSURES PURSUANT TO**
8 **FEDERAL RULE OF CIVIL PROCEDURE 26(a)(1)**



10 by placing the document(s) listed above in a sealed Federal Express envelope or
11 other overnight delivery service and affixing a pre-paid air bill, and causing the

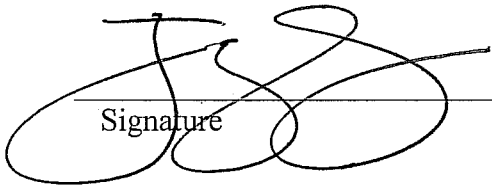
12 George J. Gigounas
13 Deborah McCrimmon
14 Carter W. Ott
15 DLA PIPER LLP (US)
16 555 Mission Street, Suite 2400
17 San Francisco, CA 94105
18 Tel: (415) 836-2526, Fax: (415) 836-2501
19 Email: Deborah.mccrimmon@dlapiper.com
20 Email: george.gigounas@dlapiper.com
21 Email: carter.ott@dlapiper.com

22 *Counsel for Defendants Sony Computer Entertainment America, LLC; Sony Computer*
23 *Entertainment America, Inc.*

24 I declare under penalty of perjury under the laws of the State of California that the above
25 is true and correct. Executed on December 10, 2010 at San Francisco, California.

26 Joy A. Valdez

27 _____
28 Name


Signature

PROOF OF SERVICE

EXHIBIT 2





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nt gratuit au réseau PLA

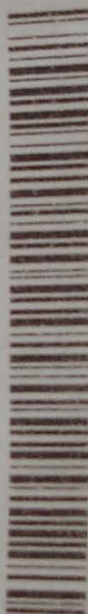
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UC2

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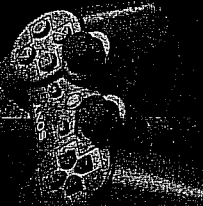
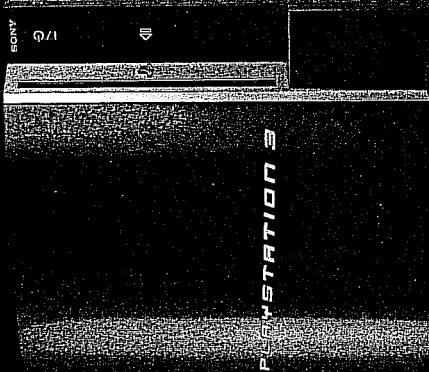
Serial # For Registration

CK023470088

SERIAL: CK023470088 - CECCHK01



SONY



PLAYSTATION®3

FREE PLAYSTATION®Network Registration* / Enregistrement gratuit du réseau PLAYSTATION®Network* / Registro gratuito en PLAYSTATION®Network*

This model of the PLAYSTATION®3 system is designed to play PLAYSTATION®3 format software and has limited backward compatibility. This system is not compatible with and will not play PlayStation®2 format software. Some PlayStation®2 format software may play on this system. For more information, visit www.us.playstation.com.

*User responsible for all applicable internet fees. Some services may require additional fees.

Co modelo de sistema PLAYSTATION®3 net compatible con PlayStation®3 en formato. El PLAYSTATION®3 et PlayStation®2 en otros formatos de software. Este sistema no es compatible con los juegos de formato PlayStation®2 en este sistema. Para más información, visite www.us.playstation.com.

Este modelo del sistema PLAYSTATION®3 está diseñado para reproducir software de formato PLAYSTATION®3 y tiene compatibilidad retroactiva limitada. Este sistema no es compatible y no reproducirá software de formato PlayStation®2. Es posible reproducir software de formato PlayStation®2 en este sistema. Para más información, visite www.us.playstation.com.

*El usuario es responsable de todas las tarifas de acceso a Internet. Algunos servicios o funciones pueden requerir tarifas adicionales.

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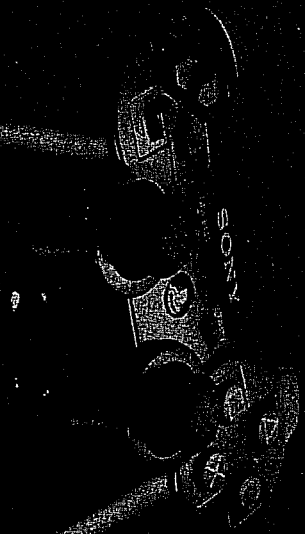


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Sony Computer Entertainment Inc. CECHK01

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PLAYSTATION 3

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DUALSHOCK 3

Sony Computer Entertainment Inc. CECHK01



This model of the PLAYSTATION 3 system is designed to play PLAYSTATION 3 format software and has limited backward compatibility. It is not designed to play PS2 format software. For more information visit www.us.playstation.com.

Ce modèle de système PLAYSTATION 3 est conçu pour l'exécution des logiciels au format PLAYSTATION 3 et offre une compatibilité rétroactive limitée. Ce système n'est pas compatible avec les logiciels au format PS2. Pour plus d'informations, visitez www.us.playstation.com.

Este modelo del sistema PLAYSTATION 3 está diseñado para ejecutar software de formato PLAYSTATION 3 y tiene compatibilidad retroactiva limitada. Este sistema no es compatible y no reproduce software de formato PlayStation 2. Para más información, visite www.us.playstation.com.



SONY

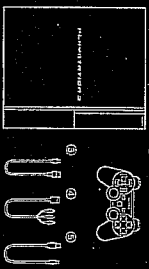
PLAYSTATION 3

FREE PLAYSTATION®Network Registration* / Enregistrement gratuit au réseau PLAYSTATION®Network*



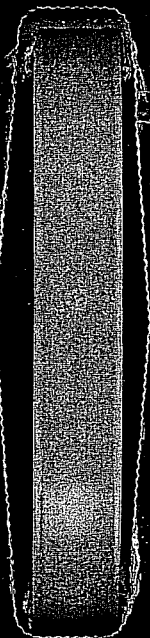
CONTENTS / CONTENU / CONTENIDO

- ① Sistema
- ② DUALSHOCK3 Wireless controller
- ③ AC power cord
- ④ AV cable
- ⑤ USB cable
- ⑥ Printed materials

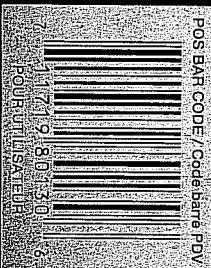


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*User responsible for all applicable Internet fees. Some services or features may require additional fees.
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Systeme fabriqué en Chine
 Contrôleur sans fil DualShock 3 fabriqué en Chine
 Câble d'alimentation AC fabriqué en Chine
 Câble AV fabriqué en Chine
 Câble USB fabriqué en Chine
 Système: Fabriqué en Chine
 Manette sans fil DualShock 3: Fabriqué en Chine
 Câble de l'alimentation AC: Fabriqué en Chine
 Câble AV: Fabriqué en Chine
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 Câble de l'alimentation AC: Fabriqué en Chine
 Câble AV: Fabriqué en Chine



UC2 CECHK01 120V

P-27437255-H

S04-2347008-A

Serial # For Registration

EXD23470088



CECHK01
4-107-618-01



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Gran Turismo 5 Prologue



Ratchet and Clank Future: Tools of Destruction



Heavenly Sword

English

COMPUTABLE SOFTWARE™

NOTE: The models of the PLAYSTATION 3 system used in this advertisement are for illustrative purposes only. The actual appearance of the system may vary. The system is not compatible with other than the PlayStation 3 system. For more information, visit www.playstation.com.

- PLAYSTATION 3 system with internet play.
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CONSUMER NOTES

A WARNING: IF YOU HAVE A HISTORY OF SEIZURES, CONSULT YOUR PHYSICIAN BEFORE USING THIS PRODUCT. CERTAIN FEATURES MAY TRIGGER SEIZURES. VISIT US AT: www.playstation.com.
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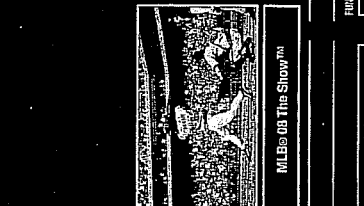
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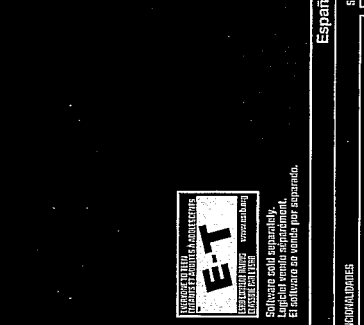
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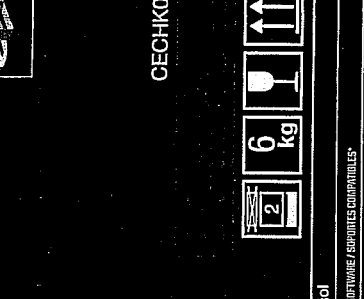
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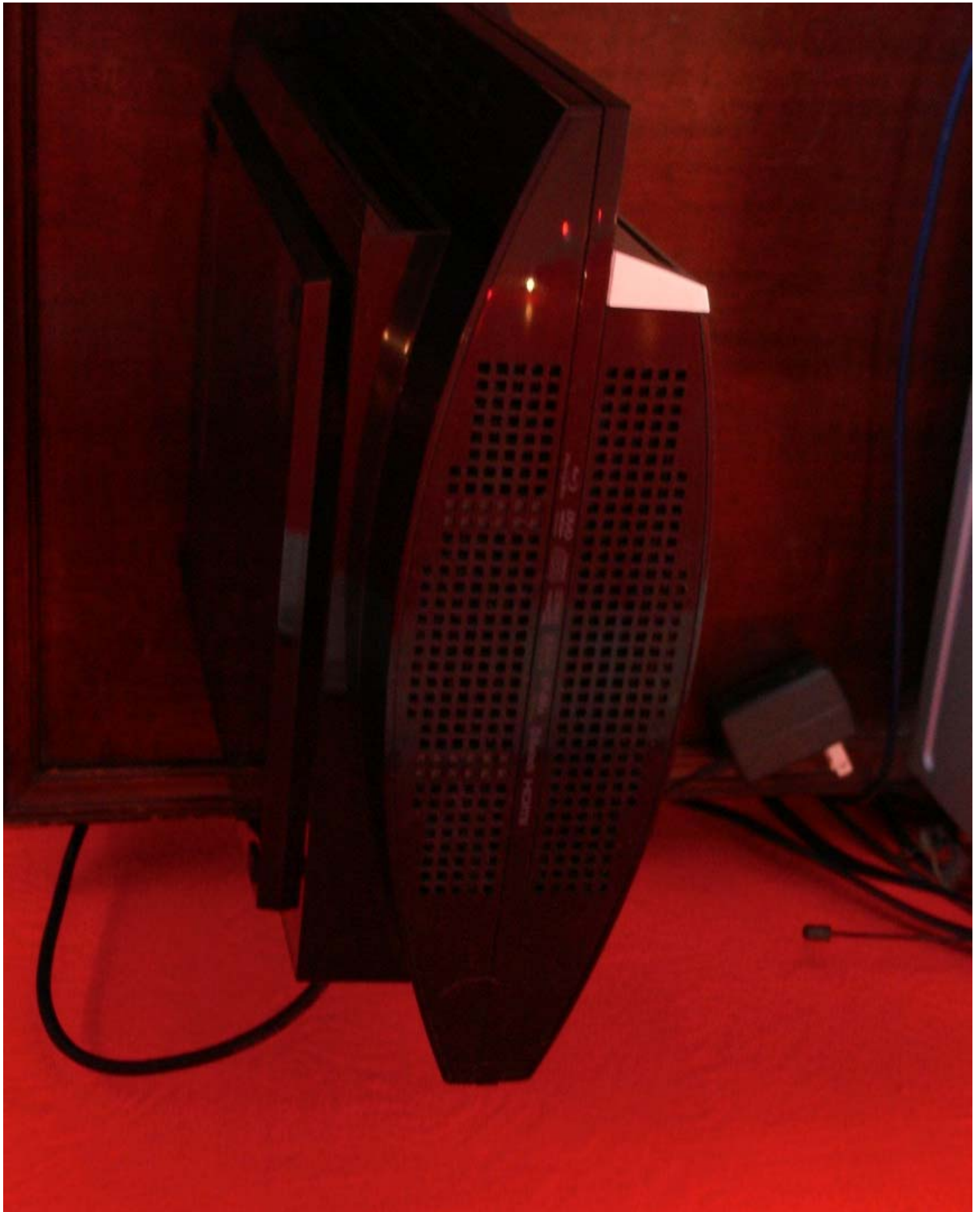
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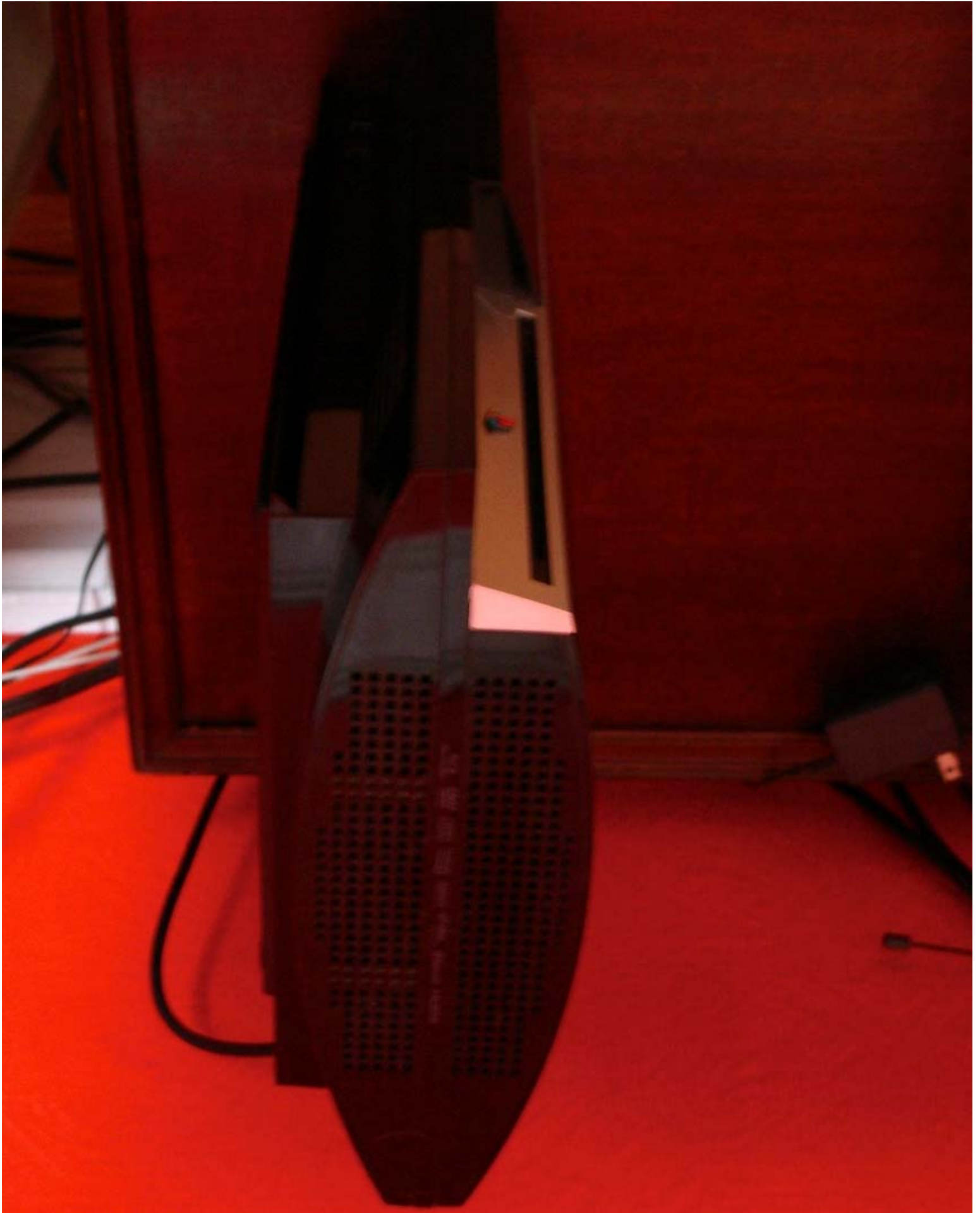
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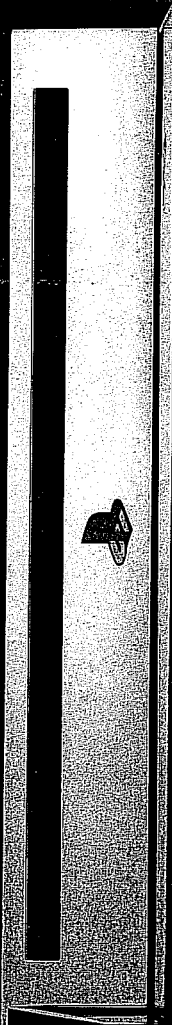
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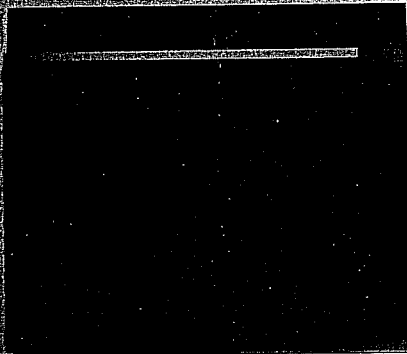
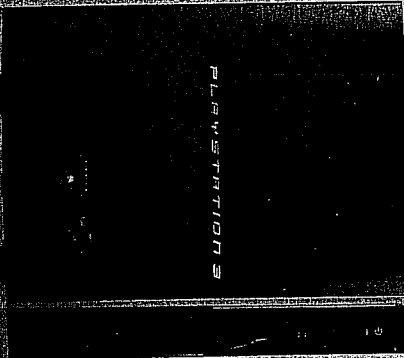
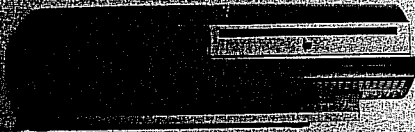
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PLAYSTATION 3

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MODEL NO.: WKB-3000UB

SERIAL NO.: 071200502



This device complies with part 15 of the FCC Rules. Operation is subject to the following two conditions:
(1) This device may not cause harmful interference and (2) This device must accept any interference received including interference that may cause undesirable operation.





