

# **EXHIBIT A**

DECLARATION OF RYAN BRICKER IN SUPPORT OF  
PLAINTIFF SONY COMPUTER ENTERTAINMENT AMERICA  
LLC'S OPPOSITION TO DEFENDANT GEORGE HOTZ'S  
MOTION TO DISMISS FOR LACK OF PERSONAL  
JURISDICTION AND IMPROPER VENUE

Holly Gaudreau  
415 273 4324  
hgaudreau@kilpatricktownsend.com

February 17, 2011

*VIA EMAIL at [stewart@etrny.com](mailto:stewart@etrny.com)*

Stewart Kellar, Esq.  
E-attorney at Law™  
148 Townsend St., Ste. 2  
San Francisco, CA 94107

Re: *Sony Computer Entertainment America LLC v. Hotz, et al.*,  
Case No. C-11-00167 SI (N.D. Cal)

Dear Stewart:

This letter memorializes our discovery meet and confer session on February 14, 2011, and our subsequent telephone call on February 15, 2011 regarding the YouTube subpoena. This letter also addresses issues pertaining to impoundment and SCEA's inspection demand, as well as additional jurisdictional discovery.

### **Definition of Circumvention Devices**

The parties agreed to the following modified definition of "Circumvention Devices" to be included in the Preliminary Injunction and the discovery requests propounded by SCEA:

Offering to the public, posting online, marketing, advertising, promoting, installing, distributing, providing, or otherwise trafficking in any circumvention technology, products, services, methods, codes, software tools, devices, components or part thereof, including but not limited to the Elliptic Curve Digital Signature Algorithm ("ECDSA") Keys, encryption and/or decryption keys, dePKG firmware decrypter program, Signing Tools, 3.55 Firmware Jailbreak, root keys, and/or any other technologies that enable unauthorized access to and/or copying of the PS3 System and/or enable compatibility of unauthorized copies of other copyrighted works with the PS3 System.

## **Requests for Production**

Mr. Hotz agreed to respond to Request Nos. 1, 2, 8, 10, 13-16, 18, 25, and 30 as originally propounded. SCEA agreed to hold off propounding Request Nos. 17, 20, 24, 27-29, but reserves the right to propound these requests at a later date.

SCEA also agreed to modify Request Nos. 3-7, 9, 11-12, 19, 21-23 and 26 as set forth below, and Mr. Hotz agreed to respond to them as modified:

No. 3 All COMMUNICATIONS between YOU and any PERSON through YOUR website at [www.geohot.com](http://www.geohot.com) RELATED TO CIRCUMVENTION DEVICES.

No. 4 Any Internet Relay Chat (IRC) discussions, logs, channel and chat descriptions RELATED TO CIRCUMVENTION DEVICES between YOU and any PERSON.

No. 5 DOCUMENTS sufficient to IDENTIFY any PERSON to whom YOU personally distributed CIRCUMVENTION DEVICES.

No. 6 All DOCUMENTS RELATED TO YOUR attendance at any conferences, meetings, workshops, forums, speaking engagements, interviews, seminars and/or events in California from January 1, 2009 to the present, including but not limited to any materials that YOU provided at such conferences, meetings, workshops, forums, speaking engagements, interviews, seminars and/or events.

No. 7 All DOCUMENTS RELATED TO any donations or other benefits that YOU have received from January 1, 2009 to the present RELATED TO YOUR use and/or offering to the public, distribution, promotion, and/or posting of CIRCUMVENTION DEVICES.

No. 9 Copies of YOUR PayPal account statements reflecting or showing any payments of money RELATED to the PS3 SYSTEM and/or CIRCUMVENTION DEVICES from January 1, 2009 to the present.

No. 11 DOCUMENTS sufficient to show YOUR visits to California from January 1, 2009 to the present.

No. 12 All DOCUMENTS RELATED TO any of YOUR professional services, consulting or financial contacts with California.

No. 19 All COMMUNICATIONS RELATED TO SCEA between YOU and any PERSON prior to January 11, 2011.

Nos. 21-23 You agreed to stipulate that Mr. Hotz is a party to the standard terms and conditions of service for Google, YouTube and Twitter. You also agreed to identify any other contract with these entities to which Mr. Hotz is a party (e.g., Google Ad Sense, YouTube Partner Program).

No. 26 All COMMUNICATIONS between YOU and “Bushing.”

### **Interrogatories**

Mr. Hotz agreed to respond to Interrogatory Nos. 1, 3, 6, 8, and 9 as originally propounded.

SCEA agreed to modify Interrogatory Nos. 2, 4-5, and 7, as set forth below, and Mr. Hotz agreed to respond to them as modified:

No. 2 IDENTIFY by date each instance in which YOU entered California between January 1, 2009 and the present, and describe the reason for each of those visits, including but not limited to any conferences, meetings, workshops, speaking engagements, interviews, seminars, forums, and/or other events in which YOU participated or attended.

No. 4 IDENTIFY all COMMUNICATIONS between YOU and any PERSONS between January 1, 2010 and the present RELATED TO SCEA, the PS3 SYSTEM (including its Other OS feature and its keys) or the CIRCUMVENTION DEVICES.

No. 5 IDENTIFY all PERSONS to whom YOU personally provided, distributed and/or offered the CIRCUMVENTION DEVICES.

No. 7 IDENTIFY all STORAGE SYSTEMS YOU use or have used to store the CIRCUMVENTION DEVICES.

### **Third Party Subpoenas**

Mr. Hotz agreed to allow the following subpoenas to be served by SCEA for purposes of jurisdictional discovery, as modified below:

- Bluehost subpoena – SCEA agreed to narrow its requests under paragraphs 3 and 4 of the subpoena to January 1, 2009 to the present. SCEA also agreed to treat information produced by Bluehost in response to these paragraphs as Attorneys Eyes Only pursuant to entry of a suitable protective order.
- Google subpoena – SCEA agreed to narrow its request under paragraph 2 of the subpoena to January 1, 2009 to the present. SCEA also agreed to treat this information produced by Google in response to this paragraph as Attorneys Eyes Only pursuant to entry of a suitable protective order.
- Twitter subpoena – SCEA agreed to narrow its request under paragraph 2 of the subpoena to January 1, 2009 to the present. You agreed to obtain Mr. Hotz’s written consent to facilitate Twitter’s production of this information.

Mr. Hotz agreed that the YouTube and Softlayer subpoenas can be served for purposes of jurisdictional discovery in their current forms.

SCEA agreed to hold off serving the following subpoenas, but reserves the right to serve at a later date:

- PayPal subpoena for information on Cantero, Peter, Bushing, Segher and kakaroto.
- Twitter subpoena for information on Cantero, Peter, Bushing, Segher and kakaroto.
- Geeknet subpoena for information on Cantero and Bushing.
- Kickstarter subpoena for information on Bushing.
- Github subpoena for information on hermesEOL, kakaroto, kmeaw, waninkoko and grafchokolo.

### **Impoundment and Inspection Demand**

After the selection of a third party neutral, the impoundment will take place on Friday, February 18, 2011. The parties and the third party neutral will then work together to develop a protocol for the isolation, segregation and removal of information on the devices related to the circumvention of the technological protection measures in the PlayStation®3 computer entertainment system ("PS3 System"). The protocol will be agreed upon by Monday, February 28, 2011 and executed at that time.

Defendant Hotz agreed to allow Inspection Demand No. 1 (All PS3 System consoles in YOUR possession, custody or control) to go forward for purposes of jurisdictional discovery. SCEA agreed to temporarily hold off moving forward with Inspection Demand Nos. 2-4.

To the extent it was not fully addressed during our meet and confer session, we would like to clarify here: If there is other relevant material (jurisdictional or merit based) on the impounded devices aside from the circumvention devices themselves, it would be most efficient to have all of this material segregated and captured at once as part of the impoundment protocol so that Mr. Hotz is not forced to turn over his computers again. SCEA would then be allowed to review any jurisdictional material therein prior to its deadline for responding to the Motion to Dismiss. In general, the portion of this material that includes the keys, software using the keys or emails transmitting either would be deleted from the storage devices. Please let us know if you agree. Certainly, the details of the protocol will need to be worked out in the coming week for the appropriate search and capture of this material. However, if you are not amenable to this approach generally, we will need to raise the issue in our letter to Magistrate Judge Spero.

### **Briefing and Discovery Schedule**

You agreed to postpone the current March 11, 2011 hearing date on the Motion to Dismiss. We discussed two potential schedules, which are set forth below. Under Proposed Schedule No. 1, SCEA will review Mr. Hotz's discovery responses and decide whether it wants to proceed with the deposition for purposes of jurisdictional discovery. If SCEA elects to go

forward with the deposition, the deposition will take place prior to the deadline for SCEA's opposition brief. Under Proposed Schedule No. 2, SCEA will proceed to take the deposition prior to the deadline for SCEA's opposition brief. We have offered to cover Mr. Hotz's travel expenses for a deposition in San Francisco, California.

Proposed Schedule No. 1

3/7/11 – Deadline for discovery responses

Week of 3/7/11 or 3/14/11 - Potential Deposition of Mr. Hotz

3/18/11 – Opposition

3/25/11 – Reply

4/8/11 – Hearing

Proposed Schedule No. 2

3/4/11 – Deadline for discovery responses

Week of 3/7/11 – Deposition of Mr. Hotz

3/11/11 – Opposition

3/18/11 – Reply

4/1/11 – Hearing

We sent you a draft stipulation on the hearing date and preliminary injunction. Please let us know which schedule you prefer so we can file the stipulation with the Court.

**Additional Jurisdictional Discovery**

You informed us of your intent to submit additional discovery via affidavit, e.g., Defendant's knowledge of SCEA. In addition, we would ask that Mr. Hotz produce any PS3 SYSTEM materials in his possession, custody or control, including, for example, any PS3 instruction or warranty manuals or any other materials, including software, distributed by SCEA. Please let us know whether you will agree to this discovery.

Finally, during the meet and confer, you stated your intent to propound discovery regarding the corporate relationship between SCEA and SCEI, and SCEA's involvement with the PS3 System.

Based on this understanding of our meet and confer, I will begin drafting our joint letter to Magistrate Judge Spero and send to you. If you have any questions or concerns, please let us know immediately.

Very truly yours,

A handwritten signature in black ink, appearing to read "Holly Gaudreau", written in a cursive style. The signature is positioned above the printed name "Holly Gaudreau".

Holly Gaudreau