

1 KILPATRICK TOWNSEND & STOCKTON LLP
JAMES G. GILLILAND, JR. (State Bar No. 107988)
2 TIMOTHY R. CAHN (State Bar No. 162136)
MEHRNAZ BOROUMAND SMITH (State Bar No. 197271)
3 HOLLY GAUDREAU (State Bar No. 209114)
RYAN BRICKER (State Bar No. 269100)
4 Two Embarcadero Center, 8th Floor
San Francisco, California 94111
5 Telephone: (415) 576-0200
Facsimile: (415) 576-0300
6 Email: jgilliland@kilpatricktownsend.com
tcahn@kilpatricktownsend.com
7 mboroumand@kilpatricktownsend.com
hgaudreau@kilpatricktownsend.com
8 rbricker@kilpatricktownsend.com

E-filing

9 Attorneys for Plaintiff
SONY COMPUTER ENTERTAINMENT AMERICA LLC

11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

JCS

Case No. 11

0167

14 SONY COMPUTER ENTERTAINMENT
AMERICA LLC, a Delaware limited liability
15 company,

16 Plaintiff,

17 v.

18 GEORGE HOTZ; HECTOR MARTIN
CANTERO; SVEN PETER; and DOES 1 through
19 100,

20 Defendants.

DECLARATION OF RILEY R. RUSSELL
IN SUPPORT OF *EX PARTE* MOTION
FOR TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW CAUSE
RE PRELIMINARY INJUNCTION; ORDER
OF IMPOUNDMENT

Date: TBD
Time: TBD
Courtroom: TBD
Judge: TBD

ORIGINAL

1 I, Riley R. Russell declare:

2 1. I am employed as Chief Legal Officer, General Counsel and Senior Vice
3 President, Corporate Development at Sony Computer Entertainment America LLC ("SCEA")
4 and have worked at SCEA for over 14 years. As part of my job responsibilities, I am
5 responsible for supervising SCEA's efforts to investigate and stop copyright and trademark
6 infringement, counterfeiting, and other unlawful conduct that relates to SCEA's intellectual
7 property and the intellectual property under which SCEA is exclusively licensed. I have
8 personal knowledge of the facts stated in this declaration, unless otherwise indicated, and
9 could and would testify competently thereto.

10 **A. SCEA and the PlayStation® 3 Entertainment System**

11 2. SCEA is a Delaware limited liability company with its headquarters and
12 principal place of business at 919 East Hillsdale Boulevard, Foster City, California, 94404.
13 SCEA is engaged in the business of marketing and distributing computer video game
14 console hardware and peripheral accessories and developing, marketing and distributing
15 video game software. SCEA is presently a subsidiary of Sony Corporation of America
16 ("SCA"). Prior to April 1, 2010, SCEA was a wholly-owned subsidiary of Sony Computer
17 Entertainment Inc. ("SCEI"), a Japanese corporation, which is itself a wholly-owned
18 subsidiary of Sony Corporation, a Japanese corporation.

19 3. SCEA is known for its sales of home entertainment products and is highly
20 regarded in the video game industry. SCEA markets and sells the PlayStation®3, a
21 computer entertainment system featuring hardware and firmware designed for the playing of
22 video games, Blu-Ray and DVD movies (collectively "the PS3 System"). The PS3 System is
23 a highly sophisticated apparatus that usually connects to a television or monitor for use in
24 playing video game software simulating three-dimensional action. The PS3 System also
25 features PlayStation® Network ("PSN"), an entertainment network that supports multiplayer
26 online gameplay, access to the PlayStation Store to purchase video games as well as rent or
27 buy feature films and PS3 System connectivity.

1 4. SCEA has made a substantial investment of time, effort and expense in the
2 design, development, testing, manufacturing and marketing of its video game software for
3 the PS3 System. The PS3 System has enjoyed wide success throughout the United States
4 and the world. Over 41 million PS3 Systems have been sold worldwide since the product
5 release in November 2006. Hundreds of different game titles are currently available for the
6 PS3 System in the United States, which typically sell for retail prices between \$40.00 and
7 \$70.00.

8 **B. PS3 System Video Game Software**

9 5. Authentic, licensed video games for the PS3 System are mainly distributed and
10 sold in BD format or over the Internet from the online PlayStation Store. In order to play an
11 authentic, licensed PS3 disc media video game, a user must insert the game disc into the
12 disc drive of the PS3 System which then performs an authentication check of the disc.

13 **C. SCEA's Copyrights, Exclusive Copyright Licenses And Copy Protection**
14 **Mechanisms**

15 6. SCEA develops and publishes its own video game software for the PS3
16 System and also licenses third party interactive software developers to develop interactive
17 entertainment software products for the PS3 System. These licenses authorize the third-
18 party licensees to use proprietary PlayStation 3 technology to develop games for the PS3
19 System. The third party licensees are authorized to publish and distribute their games
20 incorporating the proprietary PlayStation 3 technology and to use the PlayStation trademarks
21 and copyrighted designs in connection with those games. SCEA receives royalties on each
22 PlayStation 3 game manufactured pursuant to its licenses with third party publishers.

23 7. SCEA's games include a significant quantity of creative audiovisual material,
24 stories, and characters that are wholly original to SCEA. SCEA owns the valuable copyrights
25 to the audiovisual images, stories, characters and other protectable features of the
26 copyrighted works. Among other copyright registrations, SCEA has registered Copyright
27 Nos. PA 1-616-055 (*Ratchet & Clank Future: Tools of Destruction*), PA 1-619-506
28 (*Resistance 2*), and PA 1-611-286 (*Uncharted Drake's Fortune*) for the video game software.

1 Attached hereto as Exhibit A are true and correct copies of these registered copyright
2 certificates.

3 8. SCEA is the licensee of the registered copyright for the PS3 Programmer Tools
4 (Copyright No. TX0007208564) and is authorized to sublicense its rights to use, copy and
5 distribute the Tools in the U.S. SCEI has authorized SCEA to sublicense these rights to third
6 party video game developers and publishers. Attached hereto as Exhibit B is a true and
7 correct copy of the registered copyright certificate for the PS3 Programmer Tools.

8 **D. Harm to SCEA**

9 9. I am aware that Defendants are using, offering to the public, and distributing
10 designed circumvention devices and components thereof in the Northern District of California
11 and elsewhere. I am informed and believe that the circumvention devices that Defendants
12 are using, offering to the public, and distributing provide an easy way for others to play
13 pirated video games on the PS3 System.

14 10. In my experience in the computer game entertainment industry, once hackers
15 develop code to bypass technological protection measures, they will write code to facilitate
16 piracy and eventually package those programs into software that can be used by the
17 average console owner to accomplish piracy. This enables the following activities, among
18 others, to occur:

- 19 a) The large scale copying of PS3 video games from PS3 video games available
20 for rental or from friends and acquaintances, thus avoiding the need to
21 purchase a legitimate copy of the PS3 video game;
- 22 b) The uploading of copies of PS3 video games onto the Internet for sharing in
23 any of the available Internet file sharing systems, such as BitTorrent; and
- 24 c) The large scale copying of PS3 video games in order to commercialize and sell
25 pirated copies of the video games throughout the world.

26 11. The further proliferation of PS3 videogame piracy activities identified above will
27 irreparably harm SCEA by: (1) undermining SCEA's monumental investment in the
28

1 distribution of its copyrighted works; (3) harming SCEA's reputation with third party game
2 developers; and (4) diminishing the sales of legitimate PS3 video games by SCEA and its
3 authorized retailers.

4 12. SCEA's affiliates invested hundreds of millions of dollars developing the PS3
5 System, including the System's technological security measures. The widespread
6 distribution of devices that disable or circumvent these measures, however, eradicates the
7 investment in the technology and undermines the values that these security measures are
8 meant to preserve. Primary among these values is SCEA's ability to control distribution of its
9 copyrighted videogames, as well as those games owned by third party licensees. For each
10 new consumer that gains access to Defendants' circumvention devices, SCEA loses the
11 ability to prevent that consumer from copying and playing copied SCEA-copyrighted video
12 games. Once these devices are in the hands of consumers, the loss of control over SCEA's
13 copyrighted material is permanent and irreparable. Equally serious is the damage to SCEA's
14 reputation and goodwill with third party game developers, whose own copyrighted games are
15 pirated for use with the PS3 System as well. All of this piracy adds up ultimately to lost sales
16 for SCEA and other game publishers as an enormous number of consumers naturally prefer
17 free copies of video games over spending money to purchase the originals.

18 I declare under penalty of perjury on this date under the laws of the United States in
19 Foster City, California that the foregoing is true and correct.

20 DATED: January 10, 2011

21 
RILEY R. RUSSELL

22
23 63091238 v1

Exhibit A

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Registration Number:

PA 1-616-055

Effective date of
registration:

November 24, 2008

Title _____

Title of Work: Ratchet & Clank Future: Tools Of Destruction (North American Version for PS3)

Completion/ Publication _____

Year of Completion: 2007

Date of 1st Publication: October 30, 2007

Nation of 1st Publication: United States

Author _____

▪ Author: Sony Computer Entertainment America Inc

Author Created: Audio Visual Elements

Work made for hire: Yes

Domiciled in: United States

Copyright claimant _____

Copyright Claimant: Sony Computer Entertainment America Inc

Certification _____

Name: Riley R. Russell

Date: November 5, 2008

IPN#:

Registration #: PA0001616055

Service Request #: 1-131051333

**Sony Computer Entertainment America Inc
Richard Daniels
919 E. Hillsdale Blvd
Foster City, CA 94404 United States**

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Registration Number:

PA 1-619-506

Effective date of registration:

December 29, 2008

Title _____

Title of Work: Resistance 2 (North American Version PS3)

Completion/ Publication _____

Year of Completion: 2008

Date of 1st Publication: October 31, 2008

Nation of 1st Publication: United States

Author _____

▪ **Author:** Sony Computer Entertainment America Inc

Author Created: Audio Visual Elements

Work made for hire: Yes

Domiciled in: United States

Copyright claimant _____

Copyright Claimant: Sony Computer Entertainment America Inc

919 E. Hillsdale Blvd, Foster City, CA 94404 United States

Certification _____

Name: Riley R. Russell

Date: December 24, 2008

IPN#:

Registration #: PA0001619506

Service Request #: 1-145638507

**Sony Computer Entertainment America Inc
Richard Daniels
919 E. Hillsdale Blvd
Foster City, CA 94404 United States**

Copyright

United States Copyright Office

[Help](#) [Search](#) [History](#) [Titles](#) [Start Over](#)

Public Catalog

Copyright Catalog (1978 to present)

Search Request: Builder = (pa0001611286)[in Reg Nmbr/Doc Nmbr (K017)]

Search Results: Displaying 1 of 1 entries



Labeled View

Uncharted Drakes Fortune (North American Version PS3)

Type of Work: Computer File

Registration Number / Date: PA0001611286 / 2008-11-26

Application Title: Uncharted Drakes Fortune (North American Version PS3)

Title: Uncharted Drakes Fortune (North American Version PS3)

Description: CD-ROM.

Notes: Videocassette containing ID material also deposited.

Copyright Claimant: Sony Computer Entertainment America Inc. Address: 919 E. Hillsdale Blvd, Foster City, CA, 94404

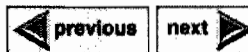
Date of Creation: 2007

Date of Publication: 2007-11-14

Nation of First Publication: United States

Authorship on Application: Sony Computer Entertainment America Inc, employer for hire; Domicile: United States. Authorship: Audio Visual Elements.

Names: Sony Computer Entertainment America Inc



Save, Print and Email (Help Page)	
Select Download Format Full Record	<input type="button" value="Format for Print/Save"/>
Enter your email address:	<input type="button" value="Email"/>

[Help](#) [Search](#) [History](#) [Titles](#) [Start Over](#)

[Contact Us](#) | [Request Copies](#) | [Get a Search Estimate](#) | [Frequently Asked Questions \(FAQs\) about Copyright](#) | [Copyright Office Home Page](#) | [Library of Congress Home Page](#)

Copyright

United States Copyright Office

[Help](#) [Search](#) [History](#) [Titles](#) [Start Over](#)

Public Catalog

Copyright Catalog (1978 to present)

Search Request: Builder = (playstation AND 3 AND programmer AND tools)[in Title (TKEY)] AND ("sony")
[in Name: Claimant (KCLN)]

Search Results: Displaying 1 of 1 entries

[◀ previous](#) [next ▶](#)

Labeled View

PlayStation 3 Programmer Tools.

Type of Work: Computer File

Registration Number / Date: TX0007208564 / 2010-09-09

Application Title: PlayStation 3 Programmer Tools.

Title: PlayStation 3 Programmer Tools.

Description: Electronic file (eService)

Copyright Claimant: Sony Computer Entertainment Inc. Address: 1-7-1 Konan, Minato-ku, Tokyo, 108-0075.

Date of Creation: 2006

Date of Publication: 2006-02-16

Nation of First Publication: Japan

Authorship on Application: Sony Computer Entertainment Inc, employer for hire; Domicile: Japan. Authorship: computer program.

Rights and Permissions: Richard Daniels, 919 E. Hillsdale Blvd, Foster City, CA, 94404, United States, (650) 655-6054, richard_daniels@playstation.sony.com

Names: Sony Computer Entertainment Inc

[◀ previous](#) [next ▶](#)

Save, Print and Email (Help Page)

Select Download Format	Full Record	<input type="button" value="Format for Print/Save"/>
Enter your email address:		<input type="button" value="Email"/>

[Help](#) [Search](#) [History](#) [Titles](#) [Start Over](#)

[Contact Us](#) | [Request Copies](#) | [Get a Search Estimate](#) | [Frequently Asked Questions \(FAQs\) about Copyright](#) | [Copyright Office Home Page](#) | [Library of Congress Home Page](#)