

ORIGINAL

FILED
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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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Attorneys for Plaintiff
SONY COMPUTER ENTERTAINMENT AMERICA LLC

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

SONY COMPUTER ENTERTAINMENT
AMERICA LLC,

Plaintiff,

v.

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

Defendants.

Case No. CV11-00167 SI

SECURITY

Judge: Hon. Susan Illston

WHEREAS, by Orders dated January 26, 2011, attached hereto as Exhibit A, the Court has granted the *Ex Parte* Motion for Temporary Restraining Order, Order To Show Cause Re: Preliminary Injunction, And Order of Impoundment filed by Plaintiff Sony Computer Entertainment America LLC ("SCEA");

WHEREAS, the Court has ordered SCEA to post a bond in the amount of \$10,000 as security for issuance of the Temporary Restraining Order.

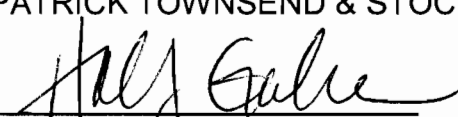
1 NOW, THEREFORE, SCEA herewith tenders a check (No. 500309) in the amount
2 of ten thousand dollars (\$10,000.00), made payable to "Clerk, U.S. District Court,
3 Northern District of California."
4

5 DATED: January 27, 2011

Respectfully submitted,

6 KILPATRICK TOWNSEND & STOCKTON LLP

7
8 By:


JAMES G. GILLILAND, JR.
TIMOTHY R. CAHN
MEHRNAZ BOROUMAND SMITH
HOLLY GAUDREAU
RYAN BRICKER

11 Attorneys for Plaintiff
12 SONY COMPUTER ENTERTAINMENT AMERICA LLC
13

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EXHIBIT A

EXHIBIT A

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2011 JAN 11 P 2:56
RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KILPATRICK TOWNSEND & STOCKTON LLP
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E-filing

Attorneys for Plaintiff
SONY COMPUTER ENTERTAINMENT AMERICA LLC

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

JCS

SONY COMPUTER ENTERTAINMENT
AMERICA LLC,

Plaintiff,

v.

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

Defendants.

Case No.

CV11 0167

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S EX PARTE MOTION
FOR TEMPORARY RESTRAINING
ORDER, ORDER TO SHOW CAUSE
RE: PRELIMINARY INJUNCTION,
AND ORDER OF IMPOUNDMENT**

Date:
Time:
Courtroom:
Judge:

**[PROPOSED] ORDER GRANTING PLAINTIFF'S EX PARTE MOTION FOR TEMPORARY
RESTRAINING ORDER, ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION, AND
ORDER OF IMPOUNDMENT
CASE NO.**

ORIGINAL



1 On January 11, 2011, Plaintiff Sony Computer Entertainment America LLC
2 ("SCEA") filed a Complaint against Defendants George Hotz ("Defendant Hotz"), Hector
3 Martin Cantero, Sven Peter and Doe Defendants 1 through 100.

4 SCEA has alleged that each Defendant, individually and in concert with the other
5 Defendants, has: (1) circumvented effective technological protection measures ("TPMs")
6 employed by SCEA to protect against unauthorized access to and/or copying of SCEA's
7 proprietary PlayStation®3 computer entertainment systems ("PS3 System"), and other
8 copyrighted works; and (2) trafficked in circumvention technology, products, services,
9 methods, codes, software tools, devices, component or part thereof, including but not
10 limited to the Elliptic Curve Digital Signature Algorithm ("ECDSA") Keys, encryption
11 and/or decryption keys, dePKG firmware decrypter program, Signing Tools, 3.55
12 Firmware Jailbreak, and/or any other technologies that enable unauthorized access to
13 and/or copying of PS3 Systems and other copyrighted works.

14 SCEA has alleged that Defendants have violated the Digital Millennium Copyright
15 Act ("DMCA") 17 U.S.C. §1201, *et seq.*; the Computer Fraud and Abuse Act ("CFAA"), 18
16 U.S.C. § 1030, *et seq.*; and has alleged contributory copyright infringement arising out of
17 the Copyright Act, 17 U.S.C. §501, *et seq.*; as well as related state and common law
18 claims for violation of the California Comprehensive Computer Data Access and Fraud
19 Act, Cal. Penal Code § 502, *et. seq.*, breach of contract, tortious interference with
20 contractual relations, trespass and common law misappropriation.

21 On January 11, 2011, pursuant to Fed. Civ. P. 65, Civil Rules 65-1 and 7-10, SCEA
22 moved *ex parte* on its claims for violation of the DMCA and CFAA against Defendant Hotz
23 for a Temporary Restraining Order ("TRO"), an Order to Show Cause why a preliminary
24 injunction should not issue, and an Order of Impoundment (17 U.S.C. § 1203 (b) (2)). In
25 support of its motion, SCEA has submitted a Memorandum of Points and Authorities, the
26 *Declarations of Riley R. Russell, Bret Mogilefsky and Ryan Bricker In Support of Ex Parte*
27 *Motion for Temporary Restraining Order And Order To Show Cause Re Preliminary*

1 Injunction; a proposed Temporary Restraining Order, Order to Show Cause, Order of
2 Impoundment, and a copy of the Complaint. Following notice to Defendant Hotz, this
3 matter was heard on January 14, 2011.

4 Having considered all the papers and arguments, the Court finds that SCEA has
5 shown a likelihood of success on the merits of its claims for violation of the DMCA and
6 CFAA, and that it will suffer irreparable harm unless Defendant Hotz's violations are
7 enjoined. The Court also finds that a Temporary Restraining Order and Order of
8 Impoundment are necessary to prevent immediate and irreparable injury to SCEA before
9 the hearing on the Order to Show Cause regarding the preliminary injunction can take
10 place, and to preserve the status quo. The Court further finds that the balance of equity
11 and interests of justice support granting such relief. Accordingly, this Court enters the
12 following orders:

13 **TEMPORARY RESTRAINING ORDER**

14 IT IS HEREBY ORDERED that Defendant Hotz and his officers, employees,
15 attorneys and representatives, and all other persons or entities in privity or acting in
16 concert or participation with Defendant Hotz, be immediately temporarily restrained from:

17 1. Offering to the public, creating, posting online, marketing, advertising,
18 promoting, installing, distributing, providing, or otherwise trafficking in any circumvention
19 technology, products, services, methods, codes, software tools, devices, component or
20 part thereof, including but not limited to the Elliptic Curve Digital Signature Algorithm
21 ("ECDSA") Keys, encryption and/or decryption keys, dePKG firmware decrypter program,
22 Signing Tools, 3.55 Firmware Jailbreak, root keys, and/or any other technologies that
23 enable unauthorized access to and/or copying of PS3 Systems and other copyrighted
24 works (hereinafter, "Circumvention Devices").

25 2. Providing links from any website to any other website selling, offering for
26 sale, marketing, advertising, promoting, installing, importing, exporting, offering to the
27 public, distributing, providing, posting, or otherwise trafficking in any Circumvention
28

PROPOSED] ORDER GRANTING PLAINTIFF'S EX PARTE MOTION FOR TEMPORARY
RESTRAINING ORDER, ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION, AND
ORDER OF IMPOUNDMENT
CASE NO.



1 Devices.

2 3. Engaging in acts of circumvention of TPMs in the PS3 System to access,
3 obtain, remove, or traffic in copyrighted works.

4 4. Engaging in unauthorized access to the PS3 System or the PlayStation
5 Network ("PSN") in order to obtain, access, or transmit any program, code, information or
6 command therein.

7 5. Publishing, posting, or distributing any information, code, program,
8 instructions, video, or other material obtained by circumventing TPMs in the PS3 System
9 or by engaging in unauthorized access to the PS3 System or the PSN.

10 6. Assisting, facilitating or encouraging others to engage in the conduct set
11 forth above in Nos. 1-5.

12 IT IS FURTHER ORDERED that Defendant Hotz, his officers, employees, attorneys
13 or representatives, and any and all other persons acting in concert or participation with
14 Defendant Hotz, with notice of this Order, shall preserve, and not destroy, erase, delete,
15 dispose of, or alter any documents or records, in whatever format, including electronic
16 documents, computer files, computer discs and drives, that relate to, reflect, record, or
17 contain any information regarding the manufacture, distribution, promotion, marketing,
18 advertising, purchase, sale, offer to sell, trafficking, import, export, installation, payment,
19 storage, and/or shipment of any and all of the Circumvention Devices, or any
20 communications with any party concerning the manufacture, distribution, promotion,
21 marketing, advertising, purchase, sale, offer to sell, trafficking, import, export, installation
22 payment, storage, and/or shipment of any and all of the Circumvention Devices.

23 IT IS FURTHER ORDERED that Defendant Hotz, his officers, employees, attorneys
24 or representatives, and any and all other persons acting in concert or participation with
25 Defendant Hotz, with notice of this Order, shall retrieve any Circumvention Devices or any
26 information relating thereto which Hotz has previously delivered or communicated to the
27 Defendants or any third parties.

28 PROPOSED ORDER GRANTING PLAINTIFF'S EX PARTE MOTION FOR TEMPORARY
RESTRAINING ORDER, ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION, AND
ORDER OF IMPOUNDMENT
CASE NO.

1 IT IS FURTHER ORDERED that this Temporary Restraining Order shall remain in
2 effect until the date for the hearing on the Order to Show Cause set forth below, or until
3 such further dates as set by the Court or stipulated to by the parties.

4
5 **ORDER OF IMPOUNDMENT**

6 IT IS FURTHER ORDERED that, within ten (10) business days of this Order,
7 ~~Defendant Hotz shall deliver to Kilpatrick Townsend & Stockton LLP, Two Embarcadero,~~ *SUCH OFFICE IN TRENTON, NEW JERSEY AS PLAINTIFF'S COUNSEL DIRECTS*
8 ~~8th Floor, San Francisco, CA 94111~~ for impoundment any computers, hard drives, CD-
9 roms, DVDs, USB stick, and any other storage devices on which any Circumvention
10 Devices are stored in Defendant Hotz's possession, custody or control.

11
12 **SECURITY**

13 IT IS ORDERED that SCEA shall post a bond in the amount of \$ 10,000⁰⁰ as
14 security for this Court's issuance of the Temporary Restraining Order, set forth
15 hereinabove.

16 **ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION**

17 IT IS ORDERED that Defendants shall show cause, unless Defendants waive the
18 right to do so, before the Honorable SUSAN DISTON of the United States District Court for
19 the Northern District of California located at 450 Golden Gate Avenue, San Francisco,
20 California at 10:00 a.m. on January __, 2011, why a preliminary injunction should not issue
21 restraining and enjoining Defendant Hotz, his agents, employees, representatives and any
22 other persons or entities in privity or acting in concert or participation with him, from
23 offering to the public, distributing, marketing, advertising, promoting, installing, or otherwise
24 trafficking in Circumvention Devices. *THE PARTIES SHALL MEET AND*
25 *CONFERENCE REGARDING A HEARING DATE.*

26 IT IS FURTHER ORDERED that SCEA shall serve a copy of this Order on
27 Defendant Hotz on or before January __, 2011. Any response or opposition to this Order
28

1 to Show Cause must be filed and personally served on SCEA's counsel no later than
2 noon, _____, 2011, and filed with the Court, along with proof of service, on
3 _____, 2011. Plaintiff shall file and serve any reply papers by
4 _____, 2011.

5
6 IT IS SO ORDERED.

7 DATED: 1/26/11

8 
UNITED STATES DISTRICT JUDGE

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PROPOSED] ORDER GRANTING PLAINTIFF'S EX PARTE MOTION FOR TEMPORARY
RESTRAINING ORDER, ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION, AND
ORDER OF IMPOUNDMENT
CASE NO.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SONY COMPUTER ENTERTAINMENT,

No. C 11-167 SI

Plaintiff,

**ORDER GRANTING PLAINTIFF'S
MOTION FOR A TEMPORARY
RESTRAINING ORDER**

v.

GEORGE HOTZ,

Defendant.

On January 14, 2010, the Court held a hearing on plaintiff's motion for a temporary restraining order. After the hearing, the parties submitted supplemental briefs and declarations.

In order to obtain a temporary restraining order, plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Resources Defense Council*, 129 S. Ct. 365, 374 (2008) (citations omitted). The Court has reviewed all of the filed materials, and after consideration of the record and the arguments of counsel, the Court finds that a temporary restraining order is warranted. Plaintiff has submitted substantial evidence showing that defendant George Hotz has violated the Digital Millennium Copyright Act, 17 U.S.C. §§ 1201(a)(1)(A), 1201(b)(1).¹ Plaintiff has also submitted evidence demonstrating that plaintiff is likely to suffer irreparable harm in the absence of relief, and that the balance of hardships favors plaintiff. The Court also finds that an injunction is in the public interest. *See Concrete Mach. Co. v.*

¹ For purposes of ruling on plaintiff's motion for a temporary restraining order, the Court finds it unnecessary to also assess whether plaintiff has also shown a likelihood of success on the its claim under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*

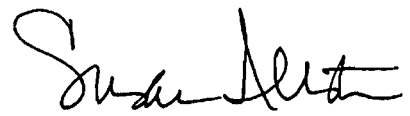
1 *Classic Lawn Ornaments, Inc.*, 843 F.2d 600, 612 (1st Cir. 1988) (“[I]t is virtually axiomatic that the
2 public interest can only be served by upholding copyright protections and, correspondingly, preventing
3 the misappropriation of the skills, creative energies, and resources which are invested in the protected
4 work.”) (quoting *Apple Computer, Inc. v. Franklin Computer Corp.*, 714 F.2d at 1255 (3d Cir. 1983)).

5 Defendant Hotz asserts that this Court lacks personal jurisdiction over him. The Court has
6 reviewed the parties’ submissions and evidence on the jurisdictional question, and finds that at this stage
7 of the litigation plaintiff has met its burden to show that the Court may exercise specific jurisdiction over
8 Hotz because he purposefully directed his activities at the forum state. *See Panavision Int’l, L.P. v.*
9 *Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998); *see also e.g.*, Brinker Decl. Ex. U. At the January 14,
10 2011 hearing, defendant’s counsel stated that defendant intended to file a motion to dismiss for lack of
11 personal jurisdiction. Defendant may present his jurisdictional challenges on a fuller factual record.

12 Accordingly, the Court GRANTS plaintiff’s motion for a temporary restraining order, and enters
13 the attached order. (Docket No. 2). The parties are directed to immediately meet and confer regarding
14 a briefing schedule and hearing date on (1) plaintiff’s motion for a preliminary injunction against
15 defendant Hotz and (2) defendant Hotz’s motion to dismiss for lack of personal jurisdiction. The parties
16 shall submit a stipulation and proposed order regarding the briefing schedule and hearing date by
17 **February 1, 2011.**

18
19 **IT IS SO ORDERED.**

20
21 Dated: January 26, 2011

22 
23
24 SUSAN ILLSTON
25 United States District Judge
26
27
28

CERTIFICATE OF SERVICE

[C.C.P. §§ 1011 and 1013, C.R.C. § 2008, F.R.C.P. Rule 5, F.R.A.P. 25]

I declare that I am employed in the City and County of San Francisco, California; I am over the age of 18 years and not a party to the within action; my business address is Two Embarcadero Center, Eighth Floor, San Francisco, California, 94111. On the date set forth below, I served a true and accurate copy of the document(s) entitled:

SECURITY

on the party(ies) in this action by placing said copy(ies) in a sealed envelope each addressed as follows:

Stewart Kellar
e-attorney at Law™
148 Townsend Street, Suite 2
San Francisco, CA 94107
Telephone No.: 415-742-2303
Email : stewart@etny.com

☒ [By First Class Mail] I am readily familiar with my employer's practice for collecting and processing documents for mailing with the United States Postal Service. On the date listed herein, following ordinary business practice, I served the within document(s) at my place of business, by placing a true copy thereof, enclosed in a sealed envelope, with postage thereon fully prepaid, for collection and mailing with the United States Postal Service where it would be deposited with the United States Postal Service that same day in the ordinary course of business.

☐ [By Overnight Courier] I caused each envelope to be delivered by a commercial carrier service for overnight delivery to the offices of the addressee(s).

☐ [By Hand] I directed each envelope to the party(ies) so designated on the service list to be delivered by courier this date.

☐ [By Facsimile Transmission] I caused said document to be sent by facsimile transmission to the fax number indicated for the party(ies) listed above.

☒ [By Electronic Transmission] I caused said document to be sent by electronic transmission to the e-mail address(es) indicated for the party(ies) listed above.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this date at San Francisco, California.

Dated: January 27, 2011


Shelley Lott

63123453 v1