



## OPPENHEIM GROUP

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**FILED**

JUN 02 2010

Clerk, U.S. District and  
Bankruptcy Courts

June 2, 2010

Re: Infringements on [www.romulation.net](http://www.romulation.net)

Abuse@bbtn.us  
BananaBit Technologies  
4921 Vanden Road  
Vacaville, CA 95687

Case: 1:10-mc-00361  
Assigned To : Unassigned  
Assign. Date : 6/3/2010  
Description: miscellaneous

Dear DMCA Agent:

We represent the Entertainment Software Association ("ESA") and its member companies, including but not limited to Nintendo of America Inc., Warner Bros. Interactive Entertainment, Inc., Take-Two Interactive Software, Inc. and Square Enix, Inc. ESA is a U.S. trade association that represents the intellectual property interests of numerous companies that publish interactive games for video game consoles, personal computers, handheld devices and the Internet. We are authorized to act on behalf of ESA members whose copyright and other intellectual property rights ESA believes to be infringed as described herein.

We are writing to notify you of extensive copyright infringement of video games that is occurring by virtue of the operation of the Internet Website [www.Romulation.net](http://www.Romulation.net) (the "Website") which is hosted on your ISP. This notice is being provided pursuant to the Digital Millennium Copyright Act and 17 USC § 512 to make you aware of material on your network or system that infringes the exclusive copyright and other rights of one or more ESA members. We demand that you immediately take steps to ensure that the Website does not infringe upon the copyrights of ESA's member companies, including but not limited to by removing or disabling access to the infringing video games. Given the quantity of infringement on the Website, we also request that you take action against the operator of the Website as a "repeat infringer," including terminating the account of the Website operator, if appropriate (see 17 U.S.C. §512(i)). Finally, we

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\$3900  
\$31

request that you take action against the operator of the Website to the extent the Website violates your terms of service.

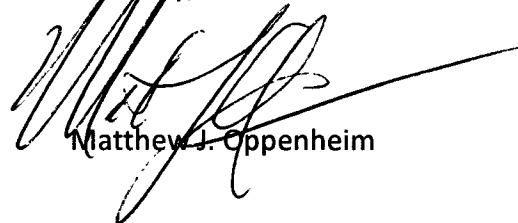
Attached as Exhibit A is a list of some of the video games that are owned or controlled by ESA's members and that are being infringed directly and/or indirectly by the Website. The exhibit describes the url location at which the infringing video games can be found. The exhibit serves as a representative sample of the larger number of infringements on the Website for which you must immediately and permanently take action. This information is sufficient for you to locate the infringing activities and remove or disable access thereto.

We also demand that the Website immediately and permanently cease and desist the widespread and unauthorized use of the ESA members' trademarks and associated inherently distinctive trade dress ("Trademarks") associated with their video games. The use of the ESA members' Trademarks is certain to cause confusion, to cause mistake, and/or to deceive as to the affiliation, connection, or association of the Website with the ESA members, in violation of the Lanham Act (15 U.S.C. §§ 1051, et seq.).

We are providing this notice based on our good faith belief that the distribution of the video games owned by the ESA members via the Website is not authorized by the copyright owners, their agents, or the law. This notification is accurate, and under penalty of perjury, we are authorized to act on behalf of the owners of the exclusive rights that are being infringed. This letter is without prejudice to the rights and remedies of the ESA members' and their affiliates, all of which are expressly reserved.

Thank you for your cooperation and prompt response in this matter.

Sincerely,



Matthew J. Oppenheim

Attachment

EXHIBIT A

**Chinatown Wars**

<http://www.romulation.net/downloads/get/26618/ODMyNTI5MTEyMjU3MjE3OQ==/>

**Scribblenauts**

<http://www.romulation.net/downloads/get/27773/Mzc2OTEyNjM5MjU3MjE3OQ==/>

**Pokemon Platinum**

<http://www.romulation.net/downloads/get/26643/NTc4NjgyMjQxMjU3MjE3OQ==/>

**Final Fantasy Crystal Chronicles: Echoes of Time**

<http://www.romulation.net/downloads/get/26679/OTI1NzU5NDIwMjU3MjE3OQ==/>

**The Legend of Zelda: Spirit Tracks**

<http://www.romulation.net/downloads/get/28354/NzMxNTM5MDQ0MjU3MjE3OQ==/>



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JUN 03 2010

Clerk, U.S. District and  
Bankruptcy Courts

June 2, 2010

Re: Infringements on www.romulation.net

mc 10-361 UNA

Angela D. Caesar  
Clerk of Court  
United States District Court  
for the District of Columbia  
333 Constitution Ave, N.W.  
Washington, D.C. 20001

Dear Ms. Caesar:

We represent the Entertainment Software Association ("ESA") and its member companies, including but not limited to Nintendo of America Inc., Warner Bros. Interactive Entertainment, Inc., Take-Two Interactive Software, Inc. and Square Enix, Inc. ESA is a U.S. trade association that represents the intellectual property interests of numerous companies that publish interactive games for video game consoles, personal computers, handheld devices and the Internet. We are authorized to act on behalf of ESA members whose copyright and other intellectual property rights it believes to be infringed as described herein. I am writing to obtain a subpoena issued by the Clerk of this Court pursuant to 17 U.S.C. 512(h).

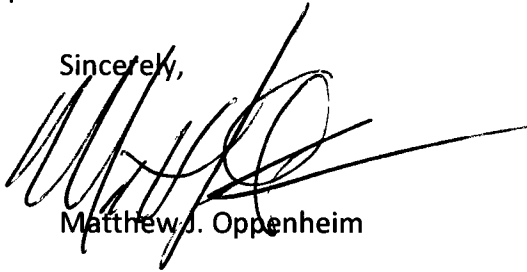
Under 512(h), a copyright owner or its agent may obtain a subpoena ("DMCA subpoena") from the Clerk of any United States District Court for the purpose of seeking the identity of an alleged copyright infringer. Section 512(h)(4) provides that the clerk shall "expeditiously issue and sign the proposed subpoena" upon presentation of three documents in proper form: (1) a DMCA notice of copyright infringement, 512(h)(2)(A); (2) a proposed subpoena, 512(h)(2)(B); and (3) a sworn declaration meeting the requirements of 512(h)(2)(C).

On behalf of the ESA members, we are seeking a DMCA subpoena, issued by the Clerk of this Court, to serve on Banana Bit Technologies to learn the identities of the individuals that have infringed the ESA members' copyrights. With this letter, we are providing a notification that complies with the DMCA, a proposed subpoena, and a declaration satisfying the requirements of the DMCA.

The accompanying DMCA notice specifies the list of copyrighted works owned by the ESA members that are alleged to have been infringed, the allegedly infringing material and information sufficient to locate those materials. Also, as required by the DMCA, the declaration attests, on penalty of perjury, that the purpose of the subpoena is to obtain the identity of an alleged copyright infringer and that information obtained in response to the subpoena will be used only to protect rights under the Copyright Act. We request that the Clerk's office issue this subpoena as soon as possible. If you have any questions, please do not hesitate to call me at 301-299-4986.

Thank you for your cooperation and prompt response in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew J. Oppenheim', with a long horizontal line extending to the right.

Matthew J. Oppenheim

Attachment

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

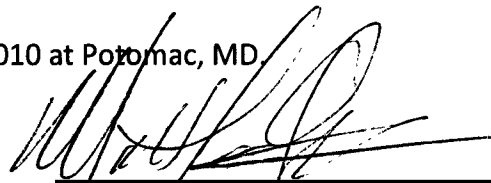
In Re: DMCA Subpoena to Banana Bit Technologies.

**DECLARATION OF MATTHEW J. OPPENHEIM, ESQ.**

I, Matthew J. Oppenheim, declare and testify as follows:

1. I am the principal of The Oppenheim Group LLP and an attorney admitted to practice law in the District of Columbia, among other jurisdictions. I represent the Entertainment Software Association ("ESA") and its member companies, including but not limited to Nintendo of America, Inc., Warner Bros. Interactive Entertainment Inc., Take-Two Interactive Software, Inc. and Square Enix, Inc.
2. On behalf of the clients described above, I am seeking a subpoena pursuant to 17 U.S.C. §512(i) to identify the operator of www.romulation.net at which my clients' copyrighted works are being infringed. The purpose for which the subpoena is sought is to obtain the identity of an alleged infringer and the information obtained therefrom will only be used for the purpose of protecting rights under 17 U.S.C. et seq.
3. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 2nd day of June, 2010 at Potomac, MD.



Matthew J. Oppenheim

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JUN 03 2010

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BarBarpr  
District and  
Courts

Issued by the  
UNITED STATES DISTRICT COURT

DISTRICT OF Columbia

In Re: Subpoena to Banana Bit Technologies

SUBPOENA IN A CIVIL CASE

V.

Case Number:<sup>1</sup> MC 10-361

TO: Banana Bit Technologies  
4921 Vanden Road  
Vacaville, CA 95687

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Identifying information for the operator(s) of www.romulation.net, including but not limited to: Name(s), address(es), telephone number(s), email address(es), and any other electronic address or contact information.

PLACE	DATE AND TIME
Coblentz, Patch, Duffy (Attn: Jeffrey Knowles) 222 Kearney Street, 7th Floor San Francisco, CA 94103	6/15/2010

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
	6/15/2010

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND STATE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
ANGELA D. CAESAR <i>[Signature]</i> DEPUTY CLERK	6/3/2010

ISSUING OFFICE'S NAME, ADDRESS AND PHONE NUMBER  
U.S. DISTRICT COURT  
333 CONSTITUTION AVE. NW  
WASHINGTON, DC 20001

**FILED**

JUN 03 2010

Clerk, U.S. District and  
Bankruptcy Courts  
MC 10-361

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.