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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.

**[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:



CASE NO.

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
28 Injunction; Order for Impoundment; a proposed Temporary Restraining Order, Order to



1 Show Cause, Order of Impoundment, and a copy of the Complaint. Following notice to
2 Defendant Hotz, this matter was heard on January __, 2011.

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

12 **TEMPORARY RESTRAINING ORDER**

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

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

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

28 3. Engaging in acts of circumvention of TPMs in the PS3 System to access,



1 obtain, remove, or traffic in copyrighted works.

2 4. Engaging in unauthorized access to the PS3 System in order to obtain,
3 access, or transmit any program, code, information or command therein.

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

7 6. Assisting, facilitating or encouraging others to engage in the conduct set
8 forth above in 1-5.

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

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

23
24 **ORDER OF IMPOUNDMENT**

25 IT IS FURTHER ORDERED that, within ten (10) business days of this Order,
26 Defendant Hotz shall deliver to Kilpatrick Townsend & Stockton LLP, Two Embarcadero,
27 8th Floor, San Francisco, CA 94111 for impoundment any computers, hard drives, CD-
28 roms, DVDs, USB stick, and any other storage devices on which any Circumvention



1 Devices are stored in Defendant Hotz's possession, custody or control.

2
3 **SECURITY**

4 **IT IS ORDERED** that SCEA shall post a bond in the amount of \$_____ as
5 security for this Court's issuance of the Temporary Restraining Order, set forth
6 hereinabove.

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

8 IT IS ORDERED that Defendants shall show cause, unless Defendants waive the
9 right to do so, before the Honorable _____ of the United States District Court for
10 the Northern District of California located at 450 Golden Gate Avenue, San Francisco,
11 California at 10:00 a.m. on January __, 2011, why a preliminary injunction should not issue
12 restraining and enjoining Defendant Hotz, his agents, employees, representatives and any
13 other persons or entities in privity or acting in concert or participation with him, from
14 offering to the public, distributing, marketing, advertising, promoting, installing, or otherwise
15 trafficking in Circumvention Devices.

16
17 **IT IS FURTHER ORDERED** that SCEA shall serve a copy of this Order on
18 Defendant Hotz on or before January __, 2011. Any response or opposition to this Order
19 to Show Cause must be filed and personally served on SCEA's counsel no later than
20 noon, _____, 2011, and filed with the Court, along with proof of service, on
21 _____, 2011. Plaintiff shall file and serve any reply papers by
22 _____, 2011.

23
24 IT IS SO ORDERED.

25
26 DATED:

HON. _____

27 UNITED STATES DISTRICT JUDGE
28



1 DATED: January __, 2011

Respectfully submitted,

2 KILPATRICK TOWNSEND & STOCKTON LLP

3
4 By: _____

JAMES G. GILLILAND, JR.

TIMOTHY R. CAHN

6 MEHRNAZ BOROUMAND SMITH

7 HOLLY GAUDREAU

RYAN BRICKER

8 Attorneys for Plaintiff

9 SONY COMPUTER ENTERTAINMENT AMERICA

LLC

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