

PRELIMINARY STATEMENT

1. This is an action for copyright infringement, trademark infringement, unfair competition and other torts to stop one of the largest and most brazen thefts of intellectual property ever committed in the United States. Defendants are seizing billions of dollars of copyrighted television programs and motion pictures and publicly performing them via the Internet to large numbers of persons throughout the United States -- without the slightest authorization from any copyright owner.

2. Plaintiffs consist of, or are affiliates of, seven motion picture studios and three broadcast television networks. Among them, plaintiffs own the U.S. copyrights or own exclusive rights under copyright in a majority of programming telecast in the U.S., including (without limitation) most of the prime-time programming broadcast by U.S. television stations, such as "E.R.," "Ally McBeal," "Frasier," "Everybody Loves Raymond," "Star Trek: Voyager," "The Drew Carey Show," "Friends," "King Of The Hill," "The Simpsons," "Mad About You," "Married With Children," "Touched By An Angel," "Walker, Texas Ranger," "Politically Incorrect," "The X-Files," "60 Minutes," and "20/20". The studio plaintiffs also own the U.S. copyrights or own exclusive rights under copyright in thousands of theatrical motion pictures, such as "Jurassic Park," "Nine Months," "Mrs. Doubtfire," "George Of The Jungle," "Simple Twist Of Fate," "Multiplicity," "Wolf," "Final Option," "Dead Man Walking," "All I Want For Christmas," "The Saint," "Daylight," "Babe," "Toys," and "The Bodyguard," which are licensed for broadcast by U.S. television stations. Finally, plaintiffs own the U.S. copyrights or own

exclusive rights under copyright in much of the programming carried by Canadian television stations.

3. Defendants, all of which are engaging in infringements of plaintiffs' U.S. copyrights in Pennsylvania and throughout the United States, include two current or recent Pittsburgh area residents, William Craig and George Simons, and a Canadian company, TVRadio Now, Corp., which does business as iCraveTV and operates a Web site located at www.icravetv.com (hereinafter the "iCraveTV.com" site). The iCraveTV.com "domain name" is owned by Defendant William R. Craig Consulting of Sewickley, Pennsylvania.

4. Defendants' piracy is driven by the desire to attract large numbers of users to their Web site so that defendants can sell advertising based on the number of users who visit the site -- including U.S. users -- and how long they watch. Because defendants have nothing of their own of any interest to Web users, defendants are stealing most of the nationally distributed programming shown by U.S. television stations and publicly performing it -- without obtaining any permission to do so -- to anyone with an Internet connection who logs onto iCraveTV.com site.

5. Defendants obtain plaintiffs' programming by picking up and converting into digital form the broadcasts of 17 television stations in Buffalo, New York, and Toronto, Canada. Defendants sell advertising both on the general portions of their Web site as well as on the same screen as and simultaneously with plaintiffs' copyrighted programming, which defendants telecast on users' computer (or television) screens by means of a process called "streaming." ("Streaming" refers to a process by which television programming is digitized and transmitted

over the Internet so that it appears on a user's computer (or television) screen with much the same appearance as a conventional television broadcast.)

6. Defendants' piracy scheme is enjoying great success. To ensure advertisers that their Web advertising is being viewed, Web sites, such as iCraveTV.com monitor and report on the number of "visits," "hits," or "impressions" the site has received. Thanks to their unauthorized theft of plaintiffs' copyrighted programming, defendants' site has received an enormous number of visits. For example, Defendant Craig has boasted to the press that the iCraveTV.com site "received 800,000 visits in December [1999]", and achieved 60 million instances of users being exposed for 30 seconds to advertisements run adjacent to plaintiffs' programming.

7. U.S. residents make up the majority of the world's Internet users and an even higher percentage of the English-speaking Internet users who are most likely to be interested in viewing the programming appearing on U.S. television stations. Notwithstanding the fact that the success of its business plan depends on U.S. users accessing its site, defendants publicly profess to exclude U.S. Internet users. However, the "security" system devised by defendants, supposedly to exclude non-Canadian visitors, is a total sham designed only to give defendants' service the false appearance of legitimacy.

8. A U.S. Internet user is permitted access to the iCraveTV.com site by simply entering the three digits of any Canadian area code -- one of which is conveniently provided to the user on the site itself -- and by clicking two other buttons. Defendants make it even easier for U.S. Internet users to revisit the site by depositing a small file (called a "cookie") in the user's

computer so that the user can automatically bypass even the bogus “screening process.” In other words, on the second and all subsequent visits, there is no “security” device at all to delay U.S. users even momentarily in gaining access to programming stolen from plaintiffs.

9. Defendants are fully aware of U.S. Internet users’ ability to easily access the iCraveTV.com site. Defendants have even posted on the iCrave TV.com site the headline “Confession: I Am a Pirate” from an article by a U.S. resident who watches iCraveTV.com. That article, to which defendants provide a direct link on their Web site, says: “In order to get to the video, I had to claim to be a Canadian citizen, and enter a Canadian telephone area code. Wow, that's security.” Many other commentators have made the same point. An Associated Press article, for example, points out that “nothing prevents a user from outside Canada from falsely indicating the computer is in Canada and proceeding.” A Charleston, West Virginia columnist suggested: “Simply insert [an area code] for the Great White North, (418 works for me) and you are on your way.” And an article in the Harrisburg, Pennsylvania *Patriot-News* said: “Supposedly, it's for Canadians only, but it's on the Internet so it's really open to the world.”

10. To address their U.S. copyright concerns, plaintiffs asked Defendants iCraveTV and TVRadio Now, in writing, inter alia, to provide an effective restriction of their service to Canadian residents. (Plaintiffs made that request without in any way conceding that defendants’ transmissions in Canada of plaintiffs’ programming are lawful.) In response, Defendants iCraveTV and TVRadio Now claimed that they were “considering” these steps. However, Defendant Craig has since publicly scoffed at any such meaningful restrictions.

11. To derive income from their piracy, defendants are selling advertising both to U.S. companies (including Columbia Sportswear Company) and to Canadian companies that do business in the United States. Additionally, defendants are advertising on the iCraveTV.com site U.S. grocery delivery companies, including a local grocer operating in this District.

12. Acknowledging the importance of the U.S. market to their business, defendants' "International Sales Manager" is a Pittsburgh area resident, Defendant George Simons. On information and belief, Simons was selected by iCraveTV because of his extensive experience in selling advertising in the United States.

13. Defendants' business exploits the theft and unlawful public performance in the U.S. of plaintiffs' copyrighted programming. Plaintiffs seek prompt injunctive relief, as well as all other remedies available under law, for defendants' copyright infringements and other violations of law. Most immediately, plaintiffs seek a preliminary injunction holding defendants to their stated intention to ensure that no persons in the United States obtain access to the defendants' unauthorized public performances of plaintiffs' copyrighted programming.

JURISDICTION AND VENUE

14. This Court has original jurisdiction under 28 U.S.C. §§ 1331, 1332, 1338, and 1367, and under 15 U.S.C. § 1121, based on acts of copyright and trademark infringement committed in the United States. The Court may also enter a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

15. The amount in controversy in this action is in excess of \$75,000, exclusive of interest and costs.

16. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(a).

17. Each defendant is amenable to service of process, and this Court has personal jurisdiction over each defendant pursuant to Pa. Stat. Ann. Tit. 42, § 5301, Pa. Stat. Ann. Tit. 42, § 5322, and/or Fed. R. Civ. P. 4(k).

THE PARTIES

Plaintiffs

18. As detailed below, plaintiffs consist of, or are affiliates of, seven motion picture studios (collectively referred to as the “Studio Plaintiffs”) and three broadcast television networks (collectively referred to as the “Network Plaintiffs”).

The Studio Plaintiffs

19. Each of the Studio Plaintiffs owns copyrights in many television programs. Several of the Studio Plaintiffs also own copyrights in many motion pictures. The Studio Plaintiffs license their copyrighted programming and motion pictures to a variety of outlets, including national networks and free over-the-air television stations. The television stations to which the Studio Plaintiffs license television programs and motion pictures include (a) local stations affiliated with ABC, CBS and FOX (such as WTAE-TV, KDKA-TV and WPGH-TV in Pittsburgh and WKBW, WIVB and WUTV in Buffalo, New York, whose signals reach into

Pennsylvania), (b) stations affiliated with other broadcast networks (such as WCWB-TV in Pittsburgh, which is an affiliate of the WB Network), (c) independent (i.e., unaffiliated) television stations (such as WPCB-TV in Pittsburgh), and (d) public television stations (such as WQED in Pittsburgh). The Studio Plaintiffs produce and license to television broadcasters both first-run programming (such as the “Entertainment Tonight” syndicated show and episodes of primetime shows such as “Ally McBeal”) and second-run programming (such as episodes of “Frasier” from previous seasons).

20. The Studio Plaintiffs are the following:

a. Twentieth Century Fox Film Corporation (“Fox”) is a Delaware corporation with a principal place of business at 10201 West Pico Boulevard, Los Angeles, California 90035. Fox owns the U.S. copyright in many episodes of television series telecast by U.S. and/or Canadian television stations (and infringed by defendants), including “The Simpsons,” “Ally McBeal,” “The X-Files,” “Dharma & Greg,” “Buffy The Vampire Slayer,” “Roswell,” “Stark Raving Mad,” and “Chicago Hope.” Fox also owns the U.S. copyright in many theatrical motion pictures telecast by U.S. and/or Canadian television stations, such as “Toys,” “Nine Months” and “Mrs. Doubtfire.”

b. Disney Enterprises, Inc. (“Disney”) is a Delaware corporation with its principal place of business at 500 South Buena Vista Street, Burbank, California 91521. Disney owns the U.S. copyright in many episodes of television programs telecast by U.S. and/or Canadian television stations (and infringed by defendants), including “Home Improvement,” “The Wonderful World of Disney,” and “Live! With Regis & Kathie Lee.” Disney also owns the

exclusive distribution rights and U.S. copyright in many theatrical motion pictures telecast by U.S. and/or Canadian television stations, such as “George of the Jungle” and “Simple Twist of Fate.”

c. Columbia TriStar Television, Inc. is a California corporation with a principal place of business at 10202 West Washington Boulevard, Culver City, California 90232. Columbia Pictures Television, Inc. is a Delaware corporation with a principal place of business at 10202 West Washington Boulevard, Culver City, California 90232. Columbia Pictures Industries, Inc. is a Delaware corporation with a principal place of business at 10202 West Washington Boulevard, Culver City, California 90232. Columbia TriStar Television, Inc., Columbia Pictures Television, Inc. and Columbia Pictures Industries, Inc. will be collectively referred to herein as “Columbia.” Columbia owns the U.S. copyright in many episodes of television series telecast by U.S. and/or Canadian television stations (and infringed by defendants), including “Who’s the Boss,” “Mad About You,” “Married with Children” and “The Young and the Restless.” Columbia also owns the U.S. copyright in many theatrical motion pictures broadcast by U.S. and/or Canadian television stations, such as “Multiplicity” and “Wolf.”

d. Metro-Goldwyn-Mayer Studios Inc. (“MGM”) is a Delaware corporation with a principal place of business at 2500 Broadway Street, Santa Monica, California 90404. Orion Pictures Corporation (“Orion”) is a Delaware corporation with a principal place of business at 2500 Broadway Street, Santa Monica, California 90404. MGM and/or Orion owns (directly or through subsidiaries) the U.S. copyright in episodes of many television series telecast by U.S. and/or Canadian television stations (and infringed by defendants), including “Stargate

SG-1.” MGM and/or Orion also own (directly or through subsidiaries) the U.S. copyright in many theatrical motion pictures telecast by U.S. and/or Canadian television stations, such as “Final Option” and “Dead Man Walking.”

e. Paramount Pictures Corporation (“Paramount”) is a Delaware corporation with a principal place of business at 5555 Melrose Avenue, Los Angeles, California 90028. Paramount owns the U.S. copyright in many episodes of television series telecast by U.S. and/or Canadian television stations (and infringed by defendants), including “Frasier,” “Entertainment Tonight,” “Star Trek: Voyager,” and “JAG.” Paramount also owns the U.S. copyright in many theatrical motion pictures telecast by U.S. and/or Canadian television stations, such as “All I Want For Christmas” and “The Saint.”

f. Universal City Studios, Inc. (“Universal”) is a Delaware corporation with a principal place of business at 100 Universal City Plaza, Universal City, California 91608. Universal owns the U.S. copyright in many episodes of television series telecast by U.S. and/or Canadian television stations (and infringed by defendants), including “Law and Order” and “Xena.” Universal also owns the U.S. copyright in many theatrical motion pictures telecast by U.S. and/or Canadian television stations, such as “Daylight,” “Jurassic Park” and “Babe.”

g. Time Warner Entertainment Company, L.P. (“Warner Bros.”) is a Delaware limited partnership with a principal place of business at 4000 Warner Boulevard, Burbank, California 91522. Its divisions include Warner Bros. and Warner Bros. Television. This plaintiff and its affiliates and divisions are herein collectively referred to as “Warner Bros.”

Warner Bros. owns the U.S. copyright in many episodes of television series telecast by U.S. and/or Canadian television stations (and infringed by defendants), including “The Drew Carey Show” and “The Rosie O’Donnell Show.” Warner Bros. also owns the exclusive distribution rights under U.S. copyright in many theatrical motion pictures telecast by U.S. and/or Canadian television stations, such as “The Bodyguard.”

The Network Plaintiffs

21. The Network Plaintiffs are ABC, Inc. (“ABC”), CBS Broadcasting Inc. (“CBS”), and Fox Broadcasting Company (“FBC”). ABC is a New York corporation with its principal place of business at 77 W. 66th Street, New York, New York 10023; CBS is a New York corporation with a principal place of business at 51 W. 52nd Street, New York, New York 10019; and Fox Broadcasting Company (“FBC”) is a Delaware corporation with a principal place of business at 10201 West Pico Boulevard, Los Angeles, California 90035.

22. Each of the Network Plaintiffs is engaged, among other things, in the business of distributing television programming through a network of free over-the-air television stations in more than 150 markets across the United States. Some of these television stations, such as the CBS station in Pittsburgh (KDKA), are owned and operated by the Network Plaintiffs themselves (or by companies under common ownership with the Network Plaintiffs), but the majority of television stations (such as WTAE-TV (ABC) in Pittsburgh) are owned by third parties who enter into affiliation agreements with the networks. Each of the Network Plaintiffs has an affiliated station in Buffalo, New York -- WKBW (ABC), WIVB (CBS) and WUTV (FBC) -- whose broadcasts are being unlawfully publicly performed by defendants on the

iCraveTV.com site to persons in the Western District of Pennsylvania and other parts of the United States.

23. The television programs that the Network Plaintiffs make available for telecast by their affiliated stations include both (a) programs produced by the Network Plaintiffs themselves, whether news programs (such as “20/20,” “Nightline,” “The CBS Evening News,” and “60 Minutes”) or entertainment programs (such as “Touched by an Angel” or “All My Children”) and (b) programs produced by one or more of the Studio Plaintiffs or other third parties (such as “Ally McBeal” (produced by Fox and broadcast through FBC) and “The Drew Carey Show” (produced by Warner Bros. and broadcast through ABC). The Network Plaintiffs are either the U.S. copyright owners or the legal or beneficial owners of exclusive rights under the U.S. Copyright Act in most of the programming they make available for telecast by their affiliates. The Network Plaintiffs are also either the U.S. copyright owners or the legal or beneficial owners of exclusive rights under the U.S. Copyright Act in a substantial amount of programming licensed to Canadian television stations, including the Toronto stations whose signals are being “streamed” over the Internet into the United States by Defendants.

Defendants

24. **William R. Craig.** As stated on the iCraveTV.com site, Craig purports to be the President and Chief Executive Officer of iCraveTV. On information and belief, Mr. Craig is also an officer, director, and/or shareholder of TVRadio Now. On information and belief, Craig is a dual citizen of the United States and Canada.

25. Defendant Craig and others created iCraveTV and TVRadio Now for the purpose of carrying out the infringing and other damaging activities described in this Complaint. Defendant Craig has knowingly initiated and participated in each of these infringing and damaging activities. On information and belief, Craig hatched the scheme complained of herein while residing in this District.

26. Craig has lived and worked in the Pittsburgh area for the past ten years, through at least mid-1999. Until October 1997, Defendant Craig was the Vice President and General Manager of Fox Sports Net Pittsburgh, a regional sports network located in Pittsburgh. After leaving Fox Sports Net Pittsburgh, Defendant Craig went to work for the Pittsburgh Penguins, a National Hockey League Club. With the Penguins, Craig devised a scheme to terminate a long-term rights agreement with his former employer. Eventually, in an action captioned Liberty/Fox KBL, L.P. d/b/a Fox Sports Net Pittsburgh v. Pittsburgh Hockey Associates, No. 98-3706 (C.C.P. Alleg. Cty.), a consent decree was entered, prohibiting the Penguins and Craig from improperly terminating the Rights Agreement.

27. Along with being a Pittsburgh-area resident for many years and having numerous ties to the Pittsburgh community, Defendant Craig has many other significant contacts with the Western District of Pennsylvania, including, but not limited to: (i) filing and prosecuting a multi-million dollar claim in a case in the Bankruptcy Court for the Western District of Pennsylvania captioned In re: Pittsburgh Sports Associates Holding Company; Pittsburgh Hockey Associates and HBRM, No. 98-28174BM (Bankr. W.D. Pa.), (ii) being a defendant in the lawsuit captioned Liberty/Fox KBL, L.P. d/b/a Fox Sports Net Pittsburgh v. William Craig, et al., No. 98-3706 (C.C.P. Alleg. Cty.), in which Defendant Craig is bound by a November 4, 1999

Consent Decree entered by and subject to the continuing jurisdiction of the Court of Common Pleas of Allegheny County, Pennsylvania; (iii) being subject to an unsatisfied judgment and a pending bench warrant (specifying a \$1,000,000 cash bond) in a divorce action captioned Craig v. Craig, No. 99-09128 (C.C.P., Family Division, Allegheny Cty.); and (iv) being a party to an agreement entered into and executed in Pittsburgh regarding post-employment obligations he owes to Liberty/Fox KBL, L.P. d/b/a Fox Sports Net Pittsburgh, a company affiliated with both Fox and FBC.

28. **George Simons.** Simons is a longtime and current Pittsburgh area resident. As the iCraveTV.com site explains, Simons has the crucial role of “International Sales Manager” for Defendant iCraveTV, a role he carries out from his office in Pittsburgh. Simons is one of the top four officials of Defendant iCraveTV listed on the iCraveTV.com site, and he is knowingly and significantly participating in the infringing and other damaging activities described in this Complaint.

29. On information and belief, Simons was selected as *International Sales Manager* (which in this context principally refers to the United States) based on his extensive U.S. advertising sales experience gained while working with Craig at Fox Sports Net Pittsburgh. While located in this District, Simons has offered to sell and, on information and belief, has sold advertising on the iCraveTV.com site.

30. **William R. Craig Consulting.** Defendant William R. Craig Consulting is an entity of unknown form, created by Craig, with its principal business address (as listed by the official Network Solutions, Inc. Web site, www.nsi.com) at 904 Beaver Street, Sewickley,

Pennsylvania 15143. On or about October 26, 1999, Craig used this entity (and its Sewickley address) to obtain the domain name registration www.icravetv.com from Network Solutions, Inc. That website address, owned by a Pennsylvania entity, is a central asset used in the infringements described in this Complaint.

31. **iCraveTV and TVRadio Now, Corp.** Defendant iCraveTV is, according to the iCraveTV.com site, a “private Canadian company.” Defendant TVRadio Now, Corp. (“TVRadio Now”) is a Canadian company, incorporated under the laws of Nova Scotia, with its principal place of business at 2 Bloor Street West, Toronto M4W 3E2, Ontario, Canada. Defendant TVRadio Now does business under, *inter alia*, the name iCraveTV. Defendants iCraveTV and/or TVRadio Now operate the iCraveTV.com site.

32. Defendant Craig registered the domain name www.tvradionow.com with Network Solutions, Inc., a domain name registrar located in the United States. The registration address for www.tvradionow.com is 904 Beaver Street, Sewickley, Pennsylvania 15143.

33. Since approximately November 30, 1999, defendants have engaged in the unauthorized public performance in the U.S. through the iCraveTV.com site of copyrighted television programming and motion pictures (a sampling of which are identified in this Complaint). Defendants appropriate these copyrighted works by picking up off the air, and then digitizing and transmitting over the Internet, broadcasts of 17 television stations in Buffalo, New York and Toronto, Ontario.

34. Defendants iCraveTV and TVRadio Now use a Web address registered and owned by a Pennsylvania entity, rely on an International Sales Manager located in Pittsburgh, are

knowingly publicly performing plaintiffs' copyrighted programming without authorization via the Internet in Pennsylvania and throughout the United States, and are selling advertising time (to U.S. companies and to other companies targeting Pennsylvania and other U.S. residents) based in substantial part on "hits" in Pennsylvania and other parts of the United States.

**Plaintiffs' Exclusive Rights Under the Copyright Act
and Defendants' Violations of Those Rights**

35. The U.S. Copyright Act grants a series of exclusive rights to the owners of copyright in audiovisual works such as television programs or theatrical motion pictures. 17 U.S.C. § 106(1)-(5). Among other things, the Act grants the owner of copyright in a television program or theatrical motion picture the exclusive right to perform and to display that copyrighted work publicly and to authorize a public performance or display of the work. These broad rights include the right to control public performances of these copyrighted works in any medium, whether in movie theatres, through television broadcasts, through non-broadcast media such as cable or satellite, or through on-line methods, including World Wide Web sites on the Internet.

36. By granting copyright owners the exclusive right of public performance and other exclusive rights, the Copyright Act creates a free marketplace in which parties can (if they choose) license their copyrighted works to third parties for a negotiated price. In this free marketplace, each copyright owner has a right to decide the time, place and manner by which a copyrighted work will be disseminated.

37. The Studio Plaintiffs, for example, own television programs and/or theatrical motion pictures and license those works under specified terms to a variety of entities, including the Network Plaintiffs. The Network Plaintiffs likewise create news and entertainment television programs as well as made-for-television motion pictures. In their capacity as distributors of programming, the Network Plaintiffs license works in which they have the rights (whether acquired from the Studio Plaintiffs or from sports organizations, or as a result of creating the works themselves) to their affiliated television stations throughout the United States. Both the Studio Plaintiffs and the Network Plaintiffs also license programming to Canadian television stations, including the Toronto television stations being unlawfully “streamed” by defendants into the United States.

38. The Studio Plaintiffs and Network Plaintiffs are the copyright owners, or the legal or beneficial owners of exclusive rights under the Copyright Act, in most of the television programs broadcast by free over-the-air television stations in the United States. Among other things, the Studio Plaintiffs and the Network Plaintiffs are the copyright owners (or the legal or beneficial owners of exclusive rights) in most of the programming telecast by the free over-the-air television stations licensed in the Buffalo, New York market (the “Buffalo stations”) that defendants are unlawfully publicly performing through the iCraveTV.com site into the United States. The Studio Plaintiffs and the Network Plaintiffs are also the copyright owners (or the legal or beneficial owners of exclusive rights) in many television programs and/or theatrical motion pictures telecast by television stations in Toronto, Canada (the “Canadian stations”), that defendants are likewise unlawfully publicly performing on the iCraveTV.com site in the United States.

39. Illustrative works infringed by defendants in which plaintiffs own a copyright, or in which one of the plaintiffs was a legal or beneficial owner of exclusive rights under the Copyright Act at the time of telecast, are listed on Exhibit A to this Complaint. Each such work is an original audiovisual work fixed in a tangible medium of expression. Each such work is copyrightable subject matter within the meaning of the Copyright Act, 17 U.S.C. § 102, and each has been registered with the United States Copyright Office.

40. The U.S. Copyright Act grants to owners the exclusive right to determine whether to license their works for public performance through any medium, to whom they will grant such licenses, and the terms on which they are willing to grant such licenses. No plaintiff has granted any license, permission, or authorization of any kind whatsoever to defendants with respect to any of plaintiffs' copyrighted works (or works in which one of plaintiffs was a legal or beneficial owner of exclusive rights under the Copyright Act), much less granted defendants permission to publicly perform these works via the Internet throughout the United States.

41. Both the Studio Plaintiffs and the Network Plaintiffs have written to Defendants iCraveTV and TVRadio Now to demand that they cease violating, inter alia, plaintiffs' U.S. copyrights. Defendants iCraveTV and TVRadio Now rejected plaintiffs' request.

42. As of this date, defendants have already infringed plaintiffs' exclusive rights under 17 U.S.C. § 106 in hundreds of copyrighted works, and every day they are infringing plaintiffs' exclusive rights in scores of additional works. Among other things, defendants are, without authorization, publicly performing plaintiffs' works in the United States both (a) by transmitting or otherwise communicating (via "streaming" on the Internet) performances of the

works to the public in the United States, and (b) by causing performances of plaintiffs' works in numerous places either open to the public or in places (such as offices) where a substantial number of persons outside of a normal circle of a family or its social acquaintances are gathered. 17 U.S.C. § 101 (definition of public performance). Also by way of illustration, defendants are infringing plaintiffs' rights by creating (and publicly performing) unauthorized derivative works through the deletion of closed captioning, parental advisory rating, and other information contained in the Vertical Blanking Interval. (The Vertical Blanking Interval consists of lines that can be viewed by adjusting the vertical hold on a television set.)

43. The Copyright Act grants this Court the authority to issue both preliminary and permanent injunctive relief on a nationwide basis to halt infringements such as those being committed by defendants. 17 U.S.C. § 502. The Act also provides for awards of statutory damages of up to \$150,000 *per work* (*e.g.*, a single episode of a television series) for willful infringements such as those being committed by defendants, for awards of attorneys' fees to the prevailing party, and for other relief.

Defendants' Sham Pretense of Avoiding Public Performances in the United States

44. To provide a cover story for their infringements, defendants have devised a meaningless “screen” that is supposedly designed to limit the public performances of plaintiffs’ copyrighted programs to Canada -- where defendants claim that they have a legal right to make such public performances through the Internet. (Plaintiffs sharply dispute that claim and expressly reserve all of their rights as to defendants’ conduct in Canada.) This supposed screen is ineffective, as defendants well know and intend, since defendants can and do profit by selling advertisements based on their U.S. “hits.” Indeed, on information and belief, a majority of the users accessing the iCraveTV.com site are located in the United States.

45. iCraveTV's supposed screening process requires a person who wishes to view the programming "streamed" on the iCraveTV.com site simply to take a moment (1) to type in a Canadian area code, such as “416” (which is listed on the site itself), and (2) to click on two buttons stating that the viewer is in Canada and agrees to comply with certain terms. (No such “agreement” between iCraveTV and a user, of course, could waive any of plaintiffs’ rights.) The iCraveTV.com site then deposits a “cookie” in the user’s computer, which makes it unnecessary to go through this sham procedure on future visits. Any Internet user in Pennsylvania, or anywhere in the United States, can thus easily access defendants’ infringing public performances of plaintiffs’ copyrighted works.

46. As iCraveTV knows and intends, its supposed screening system is completely ineffective. Many media articles about the iCraveTV.com site, including articles that iCraveTV has prominently posted on the iCraveTV.com site, have recognized that the site is readily

available to anyone. For example, defendants have posted on their own Web site the headline “Confession: I Am a Pirate” from an article by a U.S. resident who watches the iCraveTV.com site. That article, to which defendants provide a direct link on their Web site, states: “In order to get to the video, I had to claim to be a Canadian citizen, and enter a Canadian telephone area code. Wow, that's security.” Numerous other media reports about the iCraveTV.com site make the same point:

- a. Associated Press, *'Real Time' TV on Web Under Fire* (Dec. 7, 1999) (“[N]othing prevents a user from outside Canada from falsely indicating the computer is in Canada and proceeding.”)
- b. Patriot-News, *Bell Atlantic Provides High-Speed Internet Access to Harrisburg, Pa.* (Jan. 9, 2000) (“Supposedly, it's for Canadians only, but it's on the Internet so it's really open to the world.”)
- c. Telephony, *Internet vs. Networks in a TV Tussle* (Jan. 10, 2000) (“But the security provisions are very easy to skirt by any viewers who know a Canadian area code, including the one provided on the site for the main offices of TVRadioNow.”)
- d. Baltimore Sun, *Not Your Father's TV* (Dec. 13, 1999) (listing iCraveTV among “Online cinemas and networks,” with no mention of any restriction to Canada)
- e. Newsweek, *Blame Canada! (iCraveTV retransmits TV stations' signals)* (Dec. 20, 1999) (“The site tries to keep out U.S. viewers by requiring users to enter a Canadian area code, but that's hardly tight security.”) [Posted on iCraveTV Web site]
- f. Buffalo News, *Canadian Web Site Vexes Buffalo, N.Y., Local TV Stations* (Dec. 18, 1999) (“Only Canadians are supposed to view the Webcasts, but anyone can log in at www.icravetv.com, claim to be in Canada and -- if their equipment is up-to-date -- watch TV in a window on a computer screen.”)
- g. Boston Globe, *Unlikely Odyssey of the Web's 'I Kiss You' Celebrity* (Dec. 17, 1999) (“The Web site asks users to enter a Canadian area code before receiving access to the programs. Anyone can simply look up a number in the phone book and gain instant access to such fare as 'Donny and Marie.' ”)
- h. CNET, *Online TV service may spark new Net battle* (Dec. 2, 1999) (“But there is no technological bar that stops U.S. viewers--or

viewers anywhere in the world--from offering any Canadian area code and logging on to the TV service.")

- i. Edmonton Sun, *Internet TV's Fuzzy Future* (Dec. 4, 1999) ("given the global nature of the Internet, [the restriction to Canada] is virtually unenforceable")
- j. Calgary Herald, *TV Stations Hit Web* (Dec. 1, 1999) ("Web surfers around the globe can choose from nine Canadian and eight U.S. stations")
- k. Toronto Star, *Broadcast Group Aims to Unplug Net Firm* (Dec. 4, 1999) ("While the service is aimed at Canadians, it is available around the world.")
- l. Charleston (W.V.) Gazette, *Familiar Voice, Unfamiliar Arena* (Dec. 13, 1999) ("[iCraveTV] is set up to serve Canadians, but it will work for you as well. After you register, it will ask you for your area code. Simply insert one for the Great White North, (418 works for me) and you are on your way.")

47. In addition, on information and belief, defendants have received detailed reports confirming that -- as they intend -- they are publicly performing plaintiffs' copyrighted works to large numbers of viewers in Pennsylvania and elsewhere in the United States.

48. In correspondence from a representative of their trade organization, the Studio Plaintiffs formally requested that Defendants iCraveTV and TVRadio Now implement an effective restriction to Canadians, as opposed to the sham system now employed. (Again, plaintiffs dispute, and reserve all of their rights with respect to, defendants' claim of legality under Canadian law). Although defendants told the Studio Plaintiffs that they would consider this request, Craig has since publicly rebuffed it.

49. Even if defendants had a good faith belief that their screening system was effective -- which they do not -- that would be irrelevant to their violation of the U.S. Copyright Act, which is a strict liability statute under which a defendant's intent is irrelevant. In any event,

defendants are well aware that their supposed screen is a specious formality, and they profit handsomely by selling to advertisers the U.S. “hits” that they supposedly do not want.

**Defendants’ Purpose: To Maximize Visits to
Their Site to Support the Sale of Advertising**

50. Defendants are using plaintiffs’ programming to attract visitors to the iCraveTV.com site, so that defendants can promote themselves and unlawfully sell advertising to third parties in competition with the sale of advertising by the Network Plaintiffs and by other entities who lawfully televise plaintiffs’ programming. Without plaintiffs’ valuable programming, the iCraveTV.com site would be of no interest to the public (and hence of no value to advertisers). Thanks to the programming stolen from the plaintiffs, however, defendants are receiving and benefiting financially from the large numbers of users accessing the iCraveTV.com site, many of whom are located in the U.S.

51. Defendants have sold advertising space on their site to many advertisers, including at least one American company, Columbia Sportswear Company, which is headquartered in Oregon and whose products are sold through outlets in Pennsylvania and elsewhere in the United States. Defendants have also sold advertising space to a company called Peachtree Networks, which offers grocery delivery services in several U.S. cities, including Pittsburgh, and to a company called “Q” that uses an American flag to direct U.S. viewers to U.S. dollar prices for its gifts and similar products.

Other Violations by Defendants of Plaintiffs' Rights

52. Plaintiffs own or control rights under both federal law (the Lanham Act) and under state law in many trademarks, including, by way of example, "ABC," "CBS," "FOX," "20th Century Fox," "Disney," "MGM," "Paramount," "Universal," and "Warner Bros.," as well as the trademarks used to identify numerous individual programs (such as "The Simpsons," "60 Minutes," "Nightline" and "ER"). Defendants are unlawfully using these trademarks on their site and thereby improperly conveying the impression that the iCraveTV.com site is sponsored by, affiliated with, or otherwise authorized by plaintiffs. Although the boilerplate "Terms of Use" on the iCraveTV.com site purport to disclaim such sponsorship, that disclaimer is completely ineffective and misleads the user as to the ownership of the material "streamed" on the iCraveTV.com site and the defendants' alleged right to "stream" such material. Through their unauthorized use of plaintiffs' trademarks, defendants are both infringing and diluting plaintiffs' rights in those marks in violation of the Lanham Act and similar state laws.

53. If a user of the iCraveTV.com site selects "About the Presentation" from the menu bar while watching plaintiffs' "streamed" programming, the user is falsely told that the author of the program is "iCraveTV.com" and falsely told that Defendant iCraveTV has a copyright in plaintiffs' programming. This and other false and misleading representations by defendants violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and similar state laws.

54. Plaintiffs have been, and continue to be, irreparably injured by all of the violations described herein, and have no adequate remedy at law. Unless restrained by this Court, plaintiffs will continue to be irreparably injured by defendants' unlawful conduct.

COUNT I

COPYRIGHT INFRINGEMENT

55. Plaintiffs repeat and incorporate by reference, as if fully set forth herein, paragraphs 1 through 51 above.

56. Plaintiffs are the copyright owners of, or the legal or beneficial owners of exclusive rights in, the copyrighted works listed in Exhibit A, as well as many other copyrighted works telecast by U.S. and Canadian television stations, including the Buffalo affiliates of the Network Plaintiffs and certain television stations located in Toronto, Canada.

57. Plaintiffs have not authorized defendants to make any use whatsoever of plaintiffs' copyrighted works, much less to publicly perform them throughout the United States and to make unauthorized derivative works based on them by, among other things, stripping out closed captioning and parental advisory information.

58. Defendants have violated the exclusive rights of plaintiffs under 17 U.S.C. § 106 in the works listed in Exhibit A. Among other things, and without limitation, defendants are (a) publicly performing and displaying the works in the United States without the consent of plaintiffs and (b) creating and publicly performing in the United States unauthorized derivative works based on plaintiffs' copyrighted works. Defendants have also violated the exclusive rights of plaintiffs under U.S. law, in the same ways, in numerous other copyrighted works. In addition, defendants have contributorily infringed plaintiffs' copyrights by knowingly and materially contributing to infringements by other persons.

59. By their course of conduct, defendants have demonstrated an intention to continue, without any authorization, to publicly perform and display plaintiffs' copyrighted programming in the United States, to create and to publicly perform and display unauthorized derivative works, and otherwise to infringe plaintiffs' copyrights.

60. Defendants' acts of copyright infringements are willful.

COUNT II

FALSE REPRESENTATIONS IN VIOLATION OF SECTION 43(a) OF THE LANHAM ACT

61. Plaintiffs repeat and incorporate by reference, as if fully set forth herein, paragraphs 1 through 54 above.

62. Through the acts described above and the false and misleading representations made by iCraveTV and presented at the iCraveTV.com site, defendants are conveying the false and misleading representation that plaintiffs, as well as the legitimate telecasters of plaintiffs' programming (such as the Network Plaintiffs and the Buffalo television stations), endorse the iCraveTV site.

63. In addition, defendants are falsely representing that iCraveTV owns the material that is "streamed" on the iCraveTV.com Internet site, including plaintiffs' programming, when iCraveTV in fact has no such ownership interest or other rights in such materials.

64. These actions are contrary to honest commercial practices and are likely to deceive customers in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

65. As a result of the defendants' false, misleading and deceptive practices, plaintiffs have been and are being irreparably harmed and are entitled to injunctive relief pursuant to 15 U.S.C. § 1116 as well as monetary damages, which can be trebled, and attorneys' fees pursuant to 15 U.S.C. § 1117.

COUNT III

INFRINGEMENT OF REGISTERED TRADEMARKS

66. Plaintiffs repeat and incorporate by reference, as if fully set forth herein, paragraphs 1 through 54 above.

67. Plaintiffs have obtained federal trademark registrations for numerous marks, including, by way of illustration, "ABC" (e.g., Reg. Nos. 755,703 and 2,066,519), "CBS" (e.g., Reg. Nos. 852,481 and 777,570), "FOX" (e.g., Reg. Nos. 1,840,919 and 1,924,143), "20th Century Fox" (e.g., Reg. Nos. 1,465,225 and 1,884,026), "Disney" (e.g., Reg. No. 826,419), "MGM" (e.g., Reg. Nos. 1,380,800 and 2,246,312), "Paramount" (e.g., Reg. No. 1,695,847), "Universal" (e.g., Reg. No. 2,285,891), and "Warner Bros." (e.g., Reg. No. 1,026,466), as well as the trademarks used to identify numerous individual programs (such as "The Simpsons" (e.g., Reg. No. 1,916,921), "60 Minutes" (e.g., Reg. No. 1,784,514), "Nightline" (e.g., Reg. No. 1,183,267) and "ER" (e.g., Reg. No. 2,094,532).

68. Defendants' unauthorized use of the Registered Marks violates Section 32 of the Lanham Act, 15 U.S.C. § 1114, because such actions constitute use in commerce of reproductions, copies, and/or colorable imitations of the Registered Marks in connection with the

sale, offering for sale, distribution, and advertising of defendants' "streaming" services in a manner likely to cause confusion, mistake, or deception.

COUNT IV

TRADEMARK DILUTION

69. Plaintiffs repeat and incorporate by reference, as if fully set forth herein, paragraphs 1-54 and 62-65 above.

70. As a result of the distinctiveness of the Registered Marks, their long and continuous use, and the extensive advertising, marketing and promotion of the programming and services of the Studio Plaintiffs and/or the Network Plaintiffs through their use, the Registered Marks are famous within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

71. Defendants' unauthorized use of the Registered Marks amounts to trademark dilution in violation of Section 43(c) of the Lanham Act.

72. Defendants have violated plaintiffs' rights in the Registered Marks with the purpose and intent of misappropriating and trading on the goodwill and reputation of plaintiffs and of diluting plaintiffs' tradenames and marks, such that plaintiffs are entitled to the remedies set forth in 15 U.S.C. §§ 1117(a) and 1118, in addition to injunctive relief. Defendants' acts involve such circumstances that damages should be trebled and reasonable attorneys' fees and costs should be assessed against defendants under 15 U.S.C. § 1117.

COUNT V

VIOLATION OF 54 Pa. C.S.A. § 1124

73. Plaintiffs repeat and incorporate by reference, as if fully set forth herein, paragraphs 1-54, 62-65, and 70-72 above.

74. Plaintiffs have earned and achieved a widespread and prestigious reputation in connection with the creation, production, marketing, distribution and telecast of their programming.

75. The acts of defendants alleged above were and are being committed with the purpose and intent of trading on the goodwill associated with the Registered Marks, the programming marketed and distributed using the Registered Marks, as well as the Network Plaintiffs' services.

76. Defendants' acts herein alleged have injured and are likely to continue to injure plaintiffs' business reputation in Pennsylvania and have diluted, and are likely to continue to dilute, the distinctive quality of the plaintiffs' Registered Marks, all in violation of plaintiffs' rights under 54 Pa. C.S.A. § 1124.

77. Plaintiffs have been damaged by the conduct described above and have suffered and will continue to suffer immediate, serious and irreparable damage to their business reputation and goodwill by defendants' continued use and continued dilution of the distinctive quality of plaintiffs' Registered Marks unless defendants are enjoined as requested.

COUNT VI

COMMON LAW UNFAIR COMPETITION

78. Plaintiffs repeat and incorporate by reference, as if fully set forth herein, paragraphs 1-54, 62-65, 70-72, and 74-77 above.

79. By engaging in the conduct described above, defendants have unlawfully and without privilege engaged in unfair competition under the common law of the Commonwealth of Pennsylvania and other states to the detriment of plaintiffs in violation of the law.

80. Plaintiffs are being immediately and irreparably harmed by defendants' conduct and are without an adequate remedy at law.

81. Unless the relief requested herein by plaintiffs is granted, plaintiffs will suffer further serious, immediate and irreparable harm.

COUNT VII

CIVIL CONSPIRACY

82. Plaintiffs repeat and incorporate by reference, as if fully set forth herein, paragraphs 1-54, 56-60, 62-65, 67-68, 70-72, and 74-77 above.

83. On information and belief, by engaging in the conduct described above, defendants intentionally and willfully entered into an agreement in combination and conspiracy with the intent to unfairly compete with plaintiffs. On further information and belief, these acts were committed by defendants to advance the business interests of defendants and to harm the

business interests of plaintiffs, all in violation of plaintiffs' rights under the law of the Commonwealth of Pennsylvania.

84. As a result of the conduct described above, plaintiffs have been damaged and have suffered and will continue to suffer damage for, among other things, loss of business, loss of future business and loss of goodwill. Unless defendants are enjoined as requested, immediate, serious and irreparable harm, for which plaintiffs have no adequate remedy at law, will continue.

REQUESTED RELIEF

WHEREFORE, plaintiffs pray that judgment be entered in their favor and against the defendants, as follows:

(i) the Court adjudge and declare that defendants have infringed on plaintiffs' copyrights in violation of 17 U.S.C. § 101, et seq; have engaged in unfair competition in violation of 15 U.S.C. § 1125(a); have infringed federally registered marks in violation of 15 U.S.C. § 1114; have diluted the distinctive quality of the Registered Marks in violation of 15 U.S.C. § 1125(c); have engaged in unfair competition; have diluted the distinctiveness of the Registered Marks in violation of 54 Pa. C.S.A. § 1124; have conspired to unfairly compete with plaintiffs; and have otherwise injured plaintiffs in the manner complained herein;

(ii) the Court preliminarily and permanently enjoin defendants, their officers, agents, servants, and employees and those persons in active concert or participation with them, from infringing by any means any of plaintiffs' exclusive rights under the Copyright Act, including but not limited to, through "streaming" of plaintiffs' copyrighted programming via the iCraveTV.com site or any other Internet sites or any online facility of any kind;

(iii) the Court require defendants, their officers, agents, servants, and employees, and those persons in active concert or participation with

them to take appropriate action to prevent any person in the United States from having access to the iCraveTV.com site or any other Internet site, whether currently in operation or otherwise, which includes plaintiffs' copyrighted works without plaintiffs' authorization;

(iv) the Court require defendants, their officers, agents, servants, and employees, and those persons in active concert or participation with them to take appropriate action to prevent any person outside of Canada from having access to the iCraveTV.com site for so long as that site publicly performs plaintiffs' copyrighted works;

(v) the Court preliminarily and permanently enjoin defendants, their officers, agents, servants, and employees and those persons in active concert or participation with them from making false representations or otherwise violating Section 43(a) of the Lanham Act, infringing plaintiffs' Registered Marks, diluting the distinctive quality of plaintiffs' Registered Marks, engaging in unfair competition with plaintiffs, and conspiring to unfairly compete with plaintiffs;

(vi) the Court award plaintiffs statutory damages under the Copyright Act in the amount of \$150,000 per work infringed and/or actual and treble damages under the Lanham Act and other applicable laws;

(vii) the Court award plaintiffs punitive or exemplary damages on the basis of defendants' willful, malicious and intentional conduct;

(viii) the Court award plaintiffs their costs and disbursements, including reasonable attorneys' fees;

(ix) the Court award plaintiffs the profits derived by defendants from the wrongful use of the programming developed, created, broadcast and/or distributed by plaintiffs; and

(x) the Court grant such further and additional relief as this Court may deem just and proper.

Gregory B. Jordan
PA I.D. No. 42105
Frederick H. Colen
PA I.D. No. 21833
Christopher J. Soller
PA I.D. No. 76614
Maria N. Rullo
PA I.D. No. 70553

REED SMITH SHAW & McCLAY LLP
435 Sixth Avenue
Pittsburgh, PA 15219-1886
(412) 288-4124/4164

Counsel for the Studio Plaintiffs

Frederick N. Egler, Jr.
PA I.D. No. 28864

EGLER, GARRETT & EGLER
428 Forbes Avenue
Pittsburgh, PA 15219

Thomas P. Olson
Andrew N. Vollmer
Matthew Previn
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6000

Counsel for the Network Plaintiffs

VERIFICATION

I, Daphne Gronich, Assistant Secretary of Twentieth Century Fox Film Corporation, hereby verify that the facts set forth in this foregoing Verified Complaint are true and correct to the best of my knowledge, information and belief.

I understand that the statements in this Verification are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.
