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 13 Theo Morra, Eray Orçunus, and Adrian Graber

14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 SAN FRANCISCO DIVISION

17 TAKE-TWO INTERACTIVE SOFTWARE, INC.,

Case No.: 3:21-cv-6831

18 Plaintiff,

19 vs.

ANSWER AND AFFIRMATIVE DEFENSES

20 ANGELO PAPENHOFF, A/K/A APP, AN
 21 INDIVIDUAL; THEO MORRA, AN INDIVIDUAL;
 22 ERAY ORÇUNUS, AN INDIVIDUAL; ADRIAN
 23 GRABER, AND INDIVIDUAL; DOE 1 A/K/A ASH R.
 24 AND ASH 735, AN INDIVIDUAL; AND DOES 2
 25 THROUGH 10, INCLUSIVE ,

26 Defendants.

27 Defendants Angelo Papenhoff, Theo Morra, Eray Orçunus, and Adrian Graber, by and
 28 through their attorneys, Erin K. Russell of The Russell Firm and Jonathan LA Phillips of Phillips
 & Bathke, P.C., respond to the allegations made against them in Plaintiff’s Complaint as follows:

PRELIMINARY STATEMENT

1. Take-Two is among the world’s preeminent publishers of video games and interactive
 entertainment products. Among the products published and sold by Take-Two is the *Grand Theft
 Auto* (“GTA”) series of video games. GTA is one of the most successful and critically acclaimed
 video game franchises of all time. Take-Two brings this lawsuit to halt the activities of a group of

ANSWER AND AFFIRMATIVE DEFENSES - 1

1 individuals who have sought to unlawfully copy, adapt, and distribute to the public infringing
2 source code for two classic GTA titles: *Grand Theft Auto III* (“GTA3”) and *Grand Theft Auto:
3 Vice City* (“Vice City”) (collectively, the “Games”), without the authorization or consent of Take-
4 Two.
5

6 ANSWER: To the extent the allegations of wrongdoing in this paragraph are directed at
7 Defendants they are denied. Defendants do not possess sufficient information to admit or deny the
8 remaining allegations contained in this paragraph, and on that basis they are denied.
9

10 2. Defendants are part of a group of computer programmers and enthusiasts from around the
11 world that collectively have worked over the past few years (and in recent months in particular) to
12 create and distribute derivative source code for the Games via code “repositories” on websites such
13 as GitHub.com. Defendants’ source code projects, known as re3 and reVC, purport to have created
14 a set of software files (which Defendants claim they “reverse engineered” from the original Game
15 software) that allow members of the public to play the Games on various hardware devices, but
16 with so-called “enhancements” and “modifications” added by Defendants. Perhaps most notably,
17 Defendants claim that their derivative GTA source code enables players to install and run the
18 Games on multiple game platforms, including those on which the Games never have been released,
19 such as the PlayStation Vita and Nintendo Switch.
20

21 ANSWER: Admitted, except to any legal conclusions or assertions concerning the use of
22 the term “derivative.” Such conclusions or assertions are legal conclusions to which no response
23 is required and to the extent a response is required it is denied.
24

25 3. Defendants’ conduct is knowing, willful, and deliberate. Defendants are well aware that
26 they do not possess the right to copy, adapt, or distribute derivative GTA source code, or the
27 audiovisual elements of the Games, and that doing so constitutes copyright infringement.
28

1 Defendant Angelo Papenhoff even stated publicly that he was “very much worried” about Take-
2 Two’s discovery of the re3 and reVC projects. And, when Take-Two attempted to remove
3 Defendants’ infringing source code from the Internet, at least three Defendants (acting in at least
4 one instance with other Defendants’ participation and direction) knowingly filed bad faith counter
5 notifications that materially misrepresented the legality of their content, apparently claiming that
6 because they allegedly “reverse engineered” the Games’ source code, they somehow cannot be
7 liable for copyright infringement. Yet while making this claim, Defendants also have bragged that
8 their derivative versions of the Games are functionally and visually identical to the originals, and
9 have even suggested they be used for unauthorized “modding purposes.” As such, Defendants’
10 software plainly infringes Take-Two’s exclusive rights to copy, adapt, and distribute the Games.
11
12

13 ANSWER: Denied.

14 4. Defendants’ conduct has caused, and is continuing to cause, irreparable harm to Take-Two.
15 By copying, adapting, and distributing derivative and original source code for the Games,
16 Defendants have made the Games fully and freely available to the public, have appropriated a
17 market that belongs to Take-Two (namely, the market for modified or handheld versions of the
18 Games), and enabled countless others to now create their own unauthorized, derivative versions
19 of the Games. Take-Two is entitled to damages, and injunctive and other equitable relief against
20 Defendants and those working in concert with them.
21

22 ANSWER: Denied.

23
24 **THE PARTIES**

25 5. Take-Two is a corporation duly organized and existing under the laws of the State of
26 Delaware, with its principal place of business in New York, New York.
27
28

1 ANSWER: Defendants do not possess sufficient information to admit or deny the
2 allegations contained in this paragraph and on that basis they are denied.

3 6. Take-Two is informed and believes, and on that basis alleges, that Defendant Angelo
4 Papenhoff, a/k/a “aap,” is an individual located in Germany. Papenhoff is a lead developer on the
5 software development projects known as “re3” (an acronym for “reverse- engineered GTA3”) and
6 “reVC” (an acronym for “reverse-engineered Vice City”).
7

8 ANSWER: Defendant Papenhoff admits that he is located in Germany. Defendant
9 Papenhoff admits being a developer on re3 and reVC. The remaining allegations contained in this
10 paragraph are denied, as the term “lead developer” is undefined and open to varying interpretations.
11

12 7. Take-Two is informed and believes, and on that basis alleges, that Defendant TheoMorra
13 is an individual located in New Zealand. Morra created a “fork” of the re3 and reVC repositories.
14

15 ANSWER: Denied.

16 8. Take-Two is informed and believes, and on that basis alleges, that Defendant ErayOrçunus
17 is an individual located in Turkey. Orçunus is a lead developer on the re3 and reVC projects.
18

19 ANSWER: Defendant Orçunus admits being a developer on re3 and reVC. The remaining
20 allegations contained in this paragraph are denied, as the term “lead developer” is undefined and
21 open to varying interpretations.

22 9. Take-Two is informed and believes, and on that basis alleges, that Defendant Adrian
23 Graber is an individual located in Germany. Graber is the lead developer of derivative software
24 code that allows and enables the Games to be played on the Nintendo Switch console.
25

26 ANSWER: Denied.

27 10. Take-Two is informed and believes, and on that basis alleges, that Defendant Doe1, a/k/a
28 “Ash R.” and “Ash_735” (hereinafter “Ash R.”), is an individual located in the United Kingdom.

1 Upon information and belief, Ash R. is a senior member of the re3 and reVC projects and an active
2 participant in the development, distribution, and promotion of the derivative sourcecode created
3 by these projects.

4 ANSWER: Defendants do not possess sufficient information to admit or deny the
5 allegations contained in this paragraph and on that basis they are denied.
6

7 11. The true names and capacities, whether individual, corporate, associate, or otherwise, of
8 the defendants sued herein as Does 2-10, inclusive, are unknown to Take-Two, which has therefore
9 sued said defendants by such fictitious names. Among these Doe defendants are individuals using
10 the screen names "Sergeanur," "Nick007J," and "Fire-Head." Take-Two will seek leave to amend
11 this complaint to state the true names and capacities of all Doe defendants once said defendants'
12 full identities and capacities are ascertained. Take-Two is informed and believes, and on that basis
13 alleges, that all defendants sued herein, including the Doe defendants, directly participated in all
14 or some of the acts set forth in this complaint, and therefore are liable to Take-Two. (All of the
15 aforementioned defendants collectively are referred to herein as "Defendants.")
16
17

18 ANSWER: To the extent the allegations contained in this paragraph are directed at
19 Defendants Papenhoff, Morra, Orçunus, and Graber they are denied. Defendants do not possess
20 sufficient information to admit or deny the remaining allegations contained in this paragraph, and
21 on that basis they are denied.
22

23 12. Take-Two is informed and believes, and on that basis alleges, that at all times mentioned
24 in this complaint, each of the Defendants, with the exception of Defendant Morra, was the agent
25 of each of the others and, in doing the things alleged in this complaint, was acting within the course
26 and scope of such agency. To the extent it is determined that Defendant Morra equally acted as an
27

1 agent of the other Defendants, and/or that other Defendants equally acted on behalf of Defendant
2 Morra, Take-Two will seek leave to amend this complaint to so allege.

3 ANSWER: Defendants deny that they acted in any manner as agents for one another.
4

5 **JURISDICTION AND VENUE**

6 13. This is a civil action seeking damages, injunctive relief, and other equitable relief, under
7 the Copyright Act, 17 U.S.C. § 101 *et seq.*

8 ANSWER: Admitted.

9 14. This Court has subject matter jurisdiction over Take-Two's claims for copyright
10 infringement pursuant to 28 U.S.C. §§ 1331 and 1338(a).

11 ANSWER: Denied.
12

13 15. Defendants Morra, Orçunus, and Graber have submitted to personal jurisdiction in this
14 Court because each of them submitted a counter notification pursuant to DMCA 17, U.S.C. §512,
15 which states "I consent to the jurisdiction of Federal District Court for the judicial district in which
16 my address is located (if in the United States, otherwise the Northern District of California where
17 GitHub is located), and I will accept service of process from the person who provided the DMCA
18 notification or an agent of such person." Upon information and belief, Defendants Papenhoff and
19 Ash R. actively participated in, directed, and controlled the preparation and submission of one or
20 more of these counter notifications purporting to dispute Take-Two's justified takedown of the
21 infringing software repositories. On information and belief, Papenhoff and Ash R. also sought and
22 received legal assistance in connection with one or more of the counter notifications from
23 individuals residing in this District and/or in the United States. Additionally, Take-Two is
24 informed and believes, and on that basis alleges, that all of the Defendants are subject to personal
25 jurisdiction in this Court because, among other reasons, Defendants (1) distributed their infringing
26
27
28

1 content to individuals located in this District or in the United States, (2) interacted with and entered
2 into contracts with service providers in this District, including platforms such as GitHub, Twitter,
3 Reddit, and YouTube, for purposes of furthering and promoting the infringing conduct described
4 herein, including by directly communicating with individuals residing in this District and in the
5 United States; and (3) engaged in conduct that they knew or should have known would cause harm
6 to Take-Two in this District.
7

8 ANSWER: Defendants Morra, Orçunus, and Graber admit that they submitted counter
9 notices. Defendant Papenhoff denies taking part in the submission of the counter notices.
10 Defendants deny distributing infringing content to individuals located in this District or in the
11 United States and deny entering into contracts with any service provider for the purposes of
12 furthering and promoting any allegedly infringing conduct. Defendants deny any infringing
13 conduct in this District or in the United States. The remaining allegations contained in this
14 paragraph are denied.
15

16
17 16. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because this is a judicial
18 district in which a substantial part of the events giving rise to the claims occurred, and/or in which
19 Take-Two's injury was suffered, and the venue where GitHub is located and to which Defendants
20 have consented to jurisdiction.
21

22 ANSWER: Defendants deny that Plaintiff has suffered any injury as alleged in this
23 Complaint. Defendants who submitted counter notices admit that they have consented to
24 jurisdiction in this Court. Defendants admit that GitHub is located in this District. Any remaining
25 allegations contained in this paragraph are denied.
26
27
28

FACTS APPLICABLE TO ALL CLAIMS

Take-Two And *Grand Theft Auto*

17. Take-Two is the publisher of the enormously popular *Grand Theft Auto* (“GTA”) series of video games. GTA, which was developed by Take-Two subsidiary Rockstar Games, is one of the most critically acclaimed and commercially successful media franchises in the world. Since the release of the original *Grand Theft Auto* in 1997, more than 200 million copies of GTA games have been sold, and various GTA installments have won numerous awards for their game design and storylines. Take-Two, with its partners and affiliates, produces, markets, advertises, distributes, and otherwise exploits the GTA series in numerous countries throughout the world.

ANSWER: Defendants do not possess sufficient information to admit or deny the allegations contained in this paragraph and on that basis they are denied.

18. Among the games in the GTA series are the classic titles *Grand Theft Auto III* (“GTA3”) and *Grand Theft Auto: Vice City* (“Vice City”) (collectively the “Games”). First released in 2001 and 2002, respectively, GTA3 and Vice City were extraordinarily influential, and are among the first games that provided players with an interactive “open-world,” where players were free to traverse and explore a large-scale, three-dimensional virtual city. In both of the Games, players are offered the opportunity to undertake a variety of activities or missions in fully realized, living environments populated with pedestrians, police, buildings, shops, and a variety of air, land, and sea vehicles. Both Games received significant critical acclaim, sold more than 30 million copies combined, and frequently are included in lists of the greatest video games of all time. The Games, which were re-released in 2011 for updated and new platforms, continue to be available for sale on Windows PCs, video game consoles such as the Sony PlayStation and Microsoft Xbox, and certain mobile devices.

1 ANSWER: Defendants do not possess sufficient information to admit or deny the
2 allegations contained in this paragraph and on that basis they are denied.

3 19. In order to create the Games’ living virtual worlds, the developers of GTA painstakingly
4 crafted the large-scale virtual cities depicted in the Games, including streets, buildings, shops and
5 business establishments, cars, street signs, parks, computer-controlled and human-controlled
6 characters, and hundreds of other objects, models, and game “assets.” The underlying GTA
7 software code interacts with all of these assets to generate and create the interactive, dynamic
8 world that players can explore and enjoy. GTA’s virtual world, and the code that generates it, is
9 the product of thousands of hours of work by programmers, artists, designers, software engineers,
10 and others.
11

12
13 ANSWER: Defendants do not possess sufficient information to admit or deny the
14 allegations contained in this paragraph and on that basis they are denied

15 20. Take-Two is the owner of valid registered copyrights in the Games, including PA1-151-
16 010 and PA 1-151-011. Take-Two’s exclusive rights in the Games include the rights to reproduce,
17 distribute, publicly perform, and adapt the Games, including by creating derivative versions, and
18 versions of the Games that run on new platforms or technologies (sometimes referred to as
19 “ports.”).
20

21 ANSWER: Defendants do not possess sufficient information to admit or deny the
22 allegations contained in this paragraph and on that basis they are denied
23

24 **Defendants and the Infringing GTA Projects**

25 21. Take-Two is informed and believes, and on that basis alleges, that Defendants are among
26 the organizers of the projects known as “re3” and “reVC.” Additionally, Defendants are the
27

1 developers of the derivative software code created and distributed as part of the re3 and reVC
2 projects.

3 ANSWER: Admitted, except to any legal conclusions or assertions concerning the use of
4 the term “derivative.” Such conclusions or assertions are legal conclusions to which no response
5 is required and to the extent a response is required it is denied.
6

7 22. Defendants have stated that the purpose of re3 and reVC is to fully re-create the underlying
8 software code for the Games, but with certain purported “changes and improvements to the original
9 game,” such as compatibility with handheld consoles Nintendo Switch and PlayStation Vita. Take-
10 Two is informed and believes, and on that basis alleges, that in order to effectuate this purpose,
11 Defendants and those working in concert with them created a group of publically available source
12 code “repositories” on the website GitHub.com (a website that enables members of the public to
13 post, collaborate on, and distribute computer source code) (the “re3 GitHub Repositories”). Over
14 time, Defendants supplemented, refined, and updated these source code repositories until they had
15 created and posted a full set of derivative software files for the Games. From GitHub.com, the re3
16 GitHub repositories are currently being offered freely to the public.
17

18 ANSWER: Defendants deny that the re3 GitHub repositories are currently being offered
19 for free to the public. Defendants admit the remaining allegations contained in this paragraph.
20

21 23. According to Defendants, the re3 GitHub Repositories purportedly contain “the fully
22 reversed source code for GTA III... and GTA [Vice City].” More specifically, via the re3 GitHub
23 Repositories, Defendants are distributing to the public dozens, if not hundreds, of derivative source
24 code files for the Games. These source code files not only contain the derivativesoftware code
25 that enables the Games to run on a player’s computer, but also contain Take-Two’s original digital
26 content such as text, character dialog, and certain game assets. Additionally, the re3 GitHub
27

1 Repositories include links to locations where members of the public can download a complete,
2 installable build of the re3 and reVC software.

3 ANSWER: Defendants deny that the source code files contain Take-Two’s original digital
4 content such as text, character dialog, and certain game assets. As to any legal conclusions or
5 assertions concerning the use of the term “derivative,” such conclusions or assertions are legal
6 conclusions to which no response is required and to the extent a response is required it is denied.
7

8 The remaining allegations contained in this paragraph are admitted.

9
10 24. Take-Two is informed and believes, and on that basis alleges, that by combining the
11 software contained in the re3 GitHub Repositories (or the compiled, installable build linked to in
12 the Repositories) with certain pre-existing assets and artwork from the Games, members of the
13 public will possess, and can play, complete versions of the Games. These derivative versions of
14 the Games are virtually identical to the original Games in function, appearance, and gameplay,
15 except for certain variations and modifications added by Defendants. Thus, a player in possession
16 of Defendants’ derivative version of the Games can experience the exact same sights, sounds, story,
17 setting, dialog, and other creative content as they would experience in Take-Two’s original version
18 of the Games.
19

20 ANSWER: Admitted, except to any legal conclusions or assertions concerning the use of
21 the term “derivative.” Such conclusions or assertions are legal conclusions to which no response
22 is required and to the extent a response is required it is denied.
23

24 25. Take-Two is further informed and believes, and on that basis alleges, that in addition to
25 creating, providing, and populating the re3 GitHub Repositories, Defendants, including at
26 minimum Defendants Papenhoff, Ash R., Orçunus, and Graber, maintain and foster a community
27 of developers and users of the derivative source code via social media websites and apps, including
28

1 a so-called “server” on the U.S.-based Discord group-chatting platform with approximately 1,000
2 listed members. Via their dedicated Discord channel, Defendants offer technical support, tips,
3 encouragement, and other advice about the re3 and reVC projects, coordinate their activities
4 relating to the creating and promoting of these projects, and strategize concerning the legal
5 consequences of these activities, including the actions taken or expected to be taken by Take-Two.
6 Upon information and belief, Defendant Papenhoff is the official “server owner” of this Discord
7 channel and has personally made more than 5,000 postings, while Defendants Ash R. and Orçunus
8 have each contributed more than 2,000 postings.
9

10 ANSWER: Defendants object to the compound nature of this paragraph which includes
11 multiple allegations in a single paragraph. Such compound pleading is confusing, rendering the
12 ability to answer clearly impossible. Defendants cannot answer this paragraph as drafted and
13 therefore must deny the allegations to prevent any misunderstanding or unintentional admissions.¹
14

15 26. Defendants have been public about their intent to create and distribute their own pirated
16 version of the Games, and have used social media and the press to promote the infringing projects
17 visibility as well as to recruit users and developers. For example, on or about February 12, 2021,
18 Defendant Ash R. posted links to the re3 and reVC GitHub repositories to his personal account on
19 the U.S.-based social media platform Twitter, announcing to his hundreds of followers (including,
20 on information and belief, ones he knew to reside in the United States) that both GTA3 and Vice
21
22
23
24

25
26
27 ¹ There are various compound paragraphs in the Complaint that are similarly impossible to
28 accurately answer. Rather than state objections repeatedly, Defendants will simply state they cannot answer the
paragraph as drafted. Given the compound and confusing pleadings, unless an allegation is specifically admitted, it
should be denied.

1 City had “been FULLY reverse engineered!”² Soon after, Ash R. followed up his announcements
2 with another Twitter post offering a hyperlinked “invite” to the group’s Discord channel in order
3 to solicit “help” with the projects, and communicated directly in response with one or more
4 individuals who, upon information and belief, reside in the United States.³ Upon information and
5 belief, including as a result of these activities, the re3 GitHub Repositories received more than
6 3,800 “stars” from users as of February 18, 2021, including from users in the United States.
7

8 ANSWER: Defendants cannot answer this paragraph as drafted and therefore must deny
9 the allegations to prevent any misunderstanding or unintentional admissions. Insofar as the
10 allegations concern a non-responding defendant, Defendants are without sufficient information or
11 belief to respond to the allegations and must deny the same.
12

13 27. Upon information and belief, Defendants Papenhoff, Ash R., and Orçunus coordinated
14 such public statements to garner maximum attention for the re3 and reVC projects both globally
15 and within the United States. For example, on or about February 13, 2021, Defendant Orçunus,
16 introducing himself as a member of the “re3 team,” posted a thread to the U.S.-based social media
17 platform Reddit, titled “GTA III and Vice City fully reverse engineered, with ports to many
18 platforms,” that also linked to the re3 GitHub Repositories.⁴ Within days, Defendant Papenhoff,
19 a/k/a “aap,” offered detailed statements to Eurogamer, a UK-based games journalism website,
20 explaining exactly how he and other project members had reworked the GTA3 and Vice City code
21 to create games for the PC and Switch that look almost identical to the original games, with the
22
23

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25
26 ² See https://twitter.com/Ash_735/status/1360664655904059398;
27 https://twitter.com/Ash_735/status/1360665006224912384

³ See https://twitter.com/Ash_735/status/1361032557282828289.

28 ⁴ See https://www.reddit.com/r/GTA/comments/lj4x1n/gta_iii_and_vice_city_fully_reverse_engineered/.

1 admitted goal of providing an “open source GTA.” See <https://www.eurogamer.net/articles/2021-02-17-how-a-small-group-of-gta-fanatics-reverse-engineered-gta-3-and-vice-city-without-so-far-getting-shut-down-by-take-two>.

2
3
4 ANSWER: Defendants admit the articles and posts referenced in this paragraph exists and
5 that they speak for themselves. Insofar as an allegation is not specifically and expressly contained
6 within those articles and posts, any characterization by Plaintiff is denied. All other allegations
7 contained within this compound paragraph are denied.
8

9
10 1. 28. Papenhoff has admitted that the source code developed via the re3 and
11 reVC projects is not original, but rather is (and was intended to be) a copy of the original. In
12 fact, Defendants have bragged that their derivative source code was created by working
13 backwards from Take-Two’s final “machine” code to re-create the human-readable code in
14 which GTA was programmed:

15 “GTA 3 and Vice City were originally written in [programming
16 language] C++ . . . The compiled executables that are shipped are
17 in machine code. So the general task is to go from machine code
18 back to C++. To go back to C++ is by no means a simple 1:1
19 mapping, but
20 over the last 10 or so years decompilers have appeared that help with
21 this process. So what we typically do is work with the output of the
22 decompiler and massage it back into readable C++.” *Id.*

23 ANSWER: Denied.

24 29. Similarly, Defendant Morra has admitted that the result of Defendants’ efforts
25 is a pair of video games playable on PCs and the Nintendo Switch that look and
26 function almost identically to the original Games, based on Defendants’ derivative
27 code that is at minimum “functionally identical” to Take-Two’s copyrighted original
28

1 code.⁵ In other words, Defendants slavishly recreated the original code to play the
2 Games by “decompiling” the Games’ object (or “machine”) code and then working
3 with that material to create a game experience that is identical to the original Games.
4

5 ANSWER: Defendants admit only that the article referenced exists and it
6 speaks for itself, without admitting the veracity or characterizations of any statements
7 in the article. As to any legal conclusions or assertions concerning the use of the term
8 “derivative,” such conclusions or assertions are legal conclusions to which no
9 response is required and to the extent a response is required it is denied. All other
10 allegations are denied.
11

12 30. Defendants have also been public about adding new “features” to the Games
13 that may be toggled on and off by users at will, including “new cheats” (which are
14 strictly prohibited under Take-Two’s terms of service).⁶ In essence, Defendants’
15 derivative code creates unauthorized adaptations of the original Games while
16 simultaneously allowing what Defendant Orçunus has bragged is “the accurate vanilla
17 GTA III/VC experi[e]nce to the extent we’ve been able to achieve.” *Id.* Defendants
18 (specifically Defendant Papenhoff) even outwardly promote these of the re3 and
19 reVC projects for further unauthorized “modding purposes,” encouraging users to
20 further infringe the original Games and to violate their agreements with Take-Two
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22
23
24

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26
27 ⁵ See <https://torrentfreak.com/github-restores-reverse-engineered-gta-code-following-dmca-counter-notice-210507/>.

28 ⁶ See https://www.reddit.com/r/GTA/comments/lj4x1n/gta_iii_and_vice_city_fully_reverse_engineered/.

1 that prohibit such activities.⁷

2 ANSWER: Defendants deny encouraging users to infringe or to violate any
3 agreements with Take-Two that prohibit infringement. The remaining allegations
4 contained in this paragraph are denied.
5

6 31. Defendants are well aware that their conduct is unlawful and infringes Take-
7 Two’s copyrights. In fact, articles in the gaming press specifically have questioned
8 why the re3 and reVC projects have not been shut down by Take-Two. Papenhoff
9 admitted that he was “very much worried about that and tried to stay under the radar
10 for as long as possible,” knowing that as soon as Take-Two learned of the project legal
11 action would undoubtedly ensue.⁸
12

13 ANSWER: Denied.

14 32. Papenhoff also has admitted to currently creating infringing derivative source
15 code for Take-Two’s copyrighted video game GTA-Liberty City Stories dubbed
16 “reLCS,” described as “currently work in progress,” and that he plans to do the same
17 with GTA-Vice City Stories, described by him as “probably the holy grail of GTA
18 reversing right now.”⁹
19

20 ANSWER: Defendants deny that any of the statements in this paragraph
21 attributed to Defendant Papenhoff constitute admissions of creating infringing code.
22 Any remaining allegations in this paragraph are denied.
23

24 _____
25
26 ⁷ See, e.g., <https://www.eurogamer.net/articles/2021-02-17-how-a-small-group-of-gta-fanatics-reverse-engineered-gta-3-and-vice-city-without-so-far-getting-shut-down-by-take-two>.

27 ⁸ See *id.*

28 ⁹ See *id.*; <https://github.com/GTAmocking/re3>. Take-Two owns valid registered copyrights in these two games as well, including PA 1-347-154 and PA 1-355-501.

1 33. On or about February 19, 2021, Take-Two submitted a “takedown” notice to
2 GitHub pursuant to the Digital Millennium Copyright Act, 17 U.S.C. § 512, that
3 requested the disabling and/or removal of the re3 GitHub Repositories. In at least three
4 separate instances between April and June of 2021, Defendants Orçunus, Morra, and
5 Graber submitted sworn counter notifications to GitHub claiming the takedown of the
6 repositories was mistaken or otherwise not legitimate. Take-Two is informed and
7 believes, and on that basis alleges, that these counter notifications were made in bad
8 faith, and knowingly and deliberately misrepresented to GitHub the contents of the
9 re3 GitHub Repositories. After GitHub received the counter notifications, the re3
10 GitHub Repositories were restored to public accessibility.
11
12

13 ANSWER: Defendants are without sufficient information to admit or deny
14 Take-Two’s supposed actions alleged in this compound paragraph. Defendants further
15 object that this compound paragraph intermingles alleged instances of actions by
16 Defendants without identifying which Defendant took which actions, and therefore
17 they cannot respond. Accordingly, they deny the allegations. Defendants deny any
18 allegations of misrepresentation, acting knowingly, or bad faith. Insofar as the use of
19 the terms “misrepresentation,” “knowingly,” and “bad faith” are used as legally
20 significant terms, they are legal conclusions to which no response is required and are
21 denied. Defendants admit only that GitHub, at some point, elected to restore
22 accessibility to repositories, denying all other allegations.
23
24

25 34. Upon information and belief, the counter notification signed by Defendant
26 Orçunus was in fact submitted on behalf of the entire re3 “team,” with active
27 participation and direction from Defendants Papenhoff and Ash R., who sought out
28

1 legal advice from individuals in the United States concerning a counter notification
2 while strategizing on the group’s Discord channel. On Discord, Defendants Papenhoff
3 and Ash R. summarized and explained these legal discussions and gave periodic
4 updates on the group’s decision making. For example, Defendant Papenhoff posted to
5 Discord on June 2, 2021, “we will send a counter notice soon,” on June 6, 2021, that
6 the “counter has been sent,” and then on June 24, 2021, the day the re3 GitHub
7 Repositories were restored: “they either sue us or something or they don’t.” That same
8 day, Defendant Ash R. posted: “even now it’s still a case of WHEN and not IF Take-
9 Two try and strike back.”
10
11

12 ANSWER: Denied.

13 35. By their conduct, Defendants have caused and continue to cause irreparable
14 harm to Take-Two. Specifically, by creating and distributing re3 and reVC,
15 Defendants have appropriated for their own benefit Take-Two’s immensely valuable
16 intellectual property. Moreover, by creating derivative code and console “ports” of the
17 Games, Defendants have sought to exploit a potential market that belongs exclusively
18 to Take-Two. And, because Defendants have distributed their infringing source code
19 for free over the Internet, it has been copied and re- distributed countless times.
20 Defendants’ conduct has resulted in damage to Take-Two in an amount to be proven
21 at trial. Unless and until Defendants are preliminarily or permanently enjoined, Take-
22 Two will continue to suffer severe harm.
23
24

25 ANSWER: Denied.
26
27
28

1 **CLAIM I**

2 **(Against All Defendants)**

3 **COPYRIGHT INFRINGEMENT**

4
5 36. Take-Two realleges and incorporates by reference the allegations in
6 paragraphs 1 through 35, as if set forth fully herein.

7 ANSWER: Defendants adopt and incorporate their responses to paragraphs 1-
8 35 above as if fully set forth herein.

9
10 37. Take-Two is the owner of valid and enforceable registered copyrights in the
11 Games. By virtue of such copyrights, Take-Two possesses the exclusive rights to
12 reproduce, publicly perform, distribute, publicly display, and adapt the Games, and
13 Take-Two's other copyrighted video games.

14 ANSWER: Defendants do not possess sufficient information to admit or
15 deny the allegations contained in this paragraph and on that basis they are denied.

16
17 38. By copying, adapting, and distributing source code and other content related
18 to the Games, Defendants have deliberately and intentionally infringed Take-Two's
19 protectable expression. Take-Two has never authorized or given consent to
20 Defendants to use their copyrighted works in the manner complained of herein.
21 Accordingly, Defendants have infringed Take-Two's exclusive rights under copyright,
22 pursuant to 17 U.S.C. § 501 *et seq.*

23
24 ANSWER: Denied.

25 39. Defendants' acts of infringement are willful and malicious.

26 ANSWER: Denied.

27 40. As a direct and proximate result of the infringements alleged herein, Take-Two
28

1 is entitled to damages in amounts to be proven at trial, which are not currently
2 ascertainable. Alternatively, Take-Two is entitled to maximum statutory damages of
3 \$150,000 for each work infringed, or in such other amount as may be proper under 17
4 U.S.C. § 504(c).

5
6 ANSWER: Denied.

7 41. Take-Two further is entitled to its attorneys' fees and full costs pursuant to 17
8 U.S.C. § 505.

9
10 ANSWER: Denied.

11 42. As a result of Defendants' acts and conduct, Take-Two has sustained and will
12 continue to sustain, substantial, immediate, and irreparable injury for which there is
13 no adequate remedy at law. Take-Two is informed and believes, and on that basis
14 alleges, that unless enjoined and restrained by this Court, Defendants will continue to
15 infringe Take-Two's rights in the Games. Take-Two is entitled to temporary,
16 preliminary, and permanent injunctive relief to restrain and enjoin Defendants'
17 continuing infringing conduct.

18
19 ANSWER: Denied.

20
21 **CLAIM II**

22 **(Against Defendants Orçunus, Morra, and Graber)**

23 **VIOLATION OF U.S.C. § 512(f)**

24 43. Take-Two realleges and incorporates by reference the allegations in
25 paragraphs 1 through 42, as if set forth fully herein.

26 ANSWER: Defendants adopt and incorporate their responses to paragraphs 1-
27 42 above as if fully set forth herein.

1 44. On or about February 19, 2021, Take-Two submitted a statutorily compliant
2 DMCA notice and takedown to GitHub for, among others, the software repository
3 located at <https://github.com/GTAmodding/re3>. On or shortly after that date, GitHub
4 removed and disabled the materials available at that location from its site pursuant to
5 17 U.S.C. § 512. On or about June 6, 2021, Defendant Orçunus submitted to GitHub
6 a Section 512(g)(2)(b) counter notice, stating, under penalty of perjury, that the
7 repository available at <https://github.com/GTAmodding/re3> was removed and
8 disabled by GitHub by mistake because “[t]he code in this repo was developed by
9 reverse engineering object code that is not contained in this repo. We believe that any
10 code in this repo that is similar to code or other content owned by Take-Two is either
11 unprotected by copyright or is permitted under fair use.” Upon information and belief,
12 this counter notification referred to “We” because it was submitted in consultation
13 with, and under the direction of, other developers and leaders on the re3 and reVC
14 projects, including Defendants Papenhoff and Ash R., on whose behalf it was in part
15 submitted.

16
17
18
19 ANSWER: Defendants admit that on or about June 6, 2021 Defendant Orçunus
20 submitted a counter notice. The language contained in that counter notice speaks for
21 itself. Defendants admit that the notice included language asserting that any code
22 involved was either unprotected by copyright or fair use. Defendants deny the
23 remaining allegations contained in this paragraph.
24

25 45. On or about February 19, 2021, Take-Two submitted a statutorily compliant
26 DMCA notice and takedown to GitHub for, among others, the software repository
27 located at <https://github.com/td512/re3>. On or shortly after that date, GitHub removed
28

1 and disabled the materials available at that location from its site pursuant to 17 U.S.C.
2 § 512. On or about April 8, 2021, Defendant Morra sent to GitHub a Section
3 512(g)(2)(b) counter notice, stating, under penalty of perjury, that the repository
4 available at <https://github.com/td512/re3> was removed and disabled by GitHub “as a
5 result of a mistake or misidentification of the material to be removed or disabled.”
6

7 ANSWER: Defendants admit that on or about April 8, 2021, Defendant Morra
8 submitted a counter notice. The language of the counter notice submitted speaks for
9 itself. Defendants admit that Take-Two issued a DMCA and takedown notice to
10 GitHub. The remaining allegations contained in this paragraph are denied.
11

12 46. On or about February 19, 2021, Take-Two submitted a statutorily compliant
13 DMCA notice and takedown to GitHub for, among others, the software repository
14 located at <https://github.com/AGraber/re3-nx>. On or shortly after that date, GitHub
15 removed and disabled the materials available at that location from its site pursuant to
16 17 U.S.C. § 512. On or about May 13, 2021, Defendant Graber sent to GitHub a
17 Section 512(g)(2)(b) counter notice, stating, under penalty of perjury, that the
18 repository available at <https://github.com/AGraber/re3-nx> was removed and disabled
19 by GitHub “as a result of a mistake or misidentification of the material to be removed
20 or disabled.”
21

22 ANSWER: Defendants admit that on or about May 13, 2021 Defendant Graber
23 issued a counter notice. The language of that counter notice speaks for itself.
24 Defendants admit that Take-Two issued a DMCA notice and takedown to GitHub.
25 The remaining allegations contained in this paragraph are denied.
26

27 47. At the time Defendants Orçunus, Morra, and Graber sent their counter notices,
28

1 thematerially misrepresented that their respective counter notices were “removed or
2 disabled by mistake or misidentification.” To the contrary, Defendant Orçunus’s,
3 Morra’s, and Graber’s counter notices were submitted to GitHub in bad faith, each
4 defendant knowing that the repositories listed in their respective counter notices
5 contained derivative source code and originalsource code that infringe Take-Two’s
6 copyrights.
7

8 ANSWER: Denied.

9 48. GitHub relied upon Defendants Orçunus’s, Morra’s, and Graber’s
10 misrepresentations contained in their respective counter notices, and based upon those
11 misrepresentations, GitHub reinstated on its website the repositories identified in the
12 counter notices. As a result of such reinstatement, Take-Two has suffered and
13 continues to suffer damages, including damages caused by the further distribution of
14 the re3 and reVC code and thecosts and attorneys’ fees it incurred in addressing the
15 false counter notices.
16

17 ANSWER: Denied.

18 49. Accordingly, Defendant Orçunus, Morra, and Graber are liable for damages,
19 including costs and attorneys’ fees, incurred by Take-Two.
20

21 ANSWER: Denied.

22 **PRAYER FOR RELIEF**

23
24 WHEREFORE, Take-Two prays that this Court enter judgment in its favor and
25 award itrelief, including but not limited to an order:

26 1. Preliminarily and permanently enjoining Defendants, their officers,
27 employees, agents, subsidiaries, representatives, distributors, dealers, members,
28

1 affiliates, and all persons or entities acting in concert or participation with Defendants
2 from manufacturing, producing, distributing, adapting, displaying, advertising,
3 promoting, posting on the Internet, maintaining on the Internet, offering for sale or
4 selling, or performing any materials that are substantially similar to the Games and to
5 GTA-Liberty City Stories and GTA-Vice City Stories, and removing all infringing
6 source code and games from the internet.
7

8 ANSWER: Defendants deny that Plaintiff is entitled to any of the relief sought
9 in this paragraph. Defendants deny Plaintiff's claims of infringement.
10

11 2. Requiring Defendants to deliver to Take-Two all copies of materials that
12 infringe or violate any of Take-Two's rights described herein, including without
13 limitation all copies of the modified Games and the derivative source code for the
14 Games, and any modified versions or derivative source code for GTA-Liberty City
15 Stories and GTA-Vice City Stories.
16

17 ANSWER: Defendants deny that Plaintiff is entitled to any of the relief sought
18 in this paragraph. Defendants deny Plaintiff's claims of infringement.

19 3. Requiring Defendants to provide Take-Two with an accounting of any and all
20 sales or downloads of products or services that infringe or violate any of Take-Two's
21 rights, as described herein.
22

23 ANSWER: Defendants deny that Plaintiff is entitled to any of the relief sought
24 in this paragraph. Defendants deny Plaintiff's claims of infringement.

25 4. Awarding Take-Two actual or statutory damages for copyright infringement
26 and under 17 U.S.C. §§ 504 & 512, as appropriate.
27

28 ANSWER: Defendants deny that Plaintiff is entitled to any of the relief sought

1 in this paragraph. Defendants deny Plaintiff's claims of infringement.

2 5. Awarding Take-Two its full costs and attorneys' fees in this action.

3 ANSWER: Defendants deny that Plaintiff is entitled to any of the relief sought
4 in this paragraph. Defendants deny Plaintiff's claims of infringement.

5
6 6. Imposing a constructive trust over any proceeds unjustly obtained by
7 Defendants in the United States, and/or any other products or services that violate any
8 of Take-Two's rights described herein.

9 ANSWER: Defendants deny that Plaintiff is entitled to any of the relief sought
10 in this paragraph. Defendants deny Plaintiff's claims of infringement.

11
12 7. Awarding such other and further relief as this Court may deem just and
13 appropriate.

14 ANSWER: Defendants deny that Plaintiff is entitled to any of the relief sought
15 in this paragraph. Defendants deny Plaintiff's claims of infringement.

16
17 WHEREFORE, Defendants deny that Plaintiff is entitled to any of the relief sought in its
18 prayer for relief. Defendants respectfully request that the Court enter judgment in their favor and
19 against Plaintiff, denying Plaintiff all relief sought herein.

20
21
22 **AFFIRMATIVE DEFENSES**

23 **FIRST AFFIRMATIVE DEFENSE**

24 **FAIR USE**

25
26 1. Any complained of actions taken by the Defendants constituted fair use under
27 the Copyright Act.

28 2. Any complained of copying of copyright protected material that did occur, if
ANSWER AND AFFIRMATIVE DEFENSES - 25

1 any, was undertaken to allow for interoperability of software and fixing “bugs.”

2 3. Such actions, comprising reverse engineering, are a transformative use.

3 4. Any complained of copying of copyright protected material that did occur, if
4 any, was absolutely necessary to allow for the interoperability of software.

5 5. Any complained of copying of copyright protected material that did occur, if
6 any, was of, at least in part, materials that were minimally creative, nearly functional
7 or factual, or completely functional or factual.

8 6. Put another way, any complained of copying of copyright protected material
9 that did occur, if any, was kept to a minimally required amount.

10 7. The complained of software that was copied was for video games released over
11 fifteen years ago.

12 8. Upon information and belief, Plaintiff ceased releasing updates to the
13 complained of software, often called “patches” or “bug-fixes” years before any
14 complained of actions of Defendants.

15 9. For a third-party to make use of the software developed by Defendants, the
16 third-party must have a copy of the complained of software, i.e. the games Grand Theft
17 Auto III and Grand Theft Auto Vice City.

18 10. Upon information and belief, Plaintiff ceased making Grand Theft Auto III and
19 Grand Theft Auto Vice City, as it was released and copyright materials registered,
20 available for purchase on its online stores.

21 11. Upon information and belief, any complained of copying of copyright
22 protected material that did occur, if any, did not affect the market for the complained
23 of software.

1 12. Upon information and belief, any complained of copying of copyright
2 protected material that did occur, if any, would positively affect the market for the
3 complained of software.

4
5 13. Any complained of copying of copyright protected material that did occur, if
6 any, was not undertaken for profit or commercial purposes.

7 14. The doctrine of fair use bars the relief sought by Plaintiff.

8
9 SECOND AFFIRMATIVE DEFENSE
FUNCTIONALITY

10 15. Insofar as the Complaint alleges the copying or distribution of copyright
11 protected materials which are functional or factual, those materials are not entitled to
12 protection under the Copyright Act and the claims should be barred.

13
14 THIRD AFFIRMATIVE DEFENSE
IMPLIED LICENSE / ABANDONMENT

15 16. Upon information and belief, Plaintiff has allowed others to undertake the
16 development of “mods” of its software, including the complained of software, by
17 third-parties without any adverse action by Plaintiff.

18
19 17. Upon information and belief, Plaintiff has encouraged and supported others
20 undertaking the development of “mods” of its software, including the complained of
21 software, by third-parties.

22
23 18. Upon information and belief, Plaintiff, or its subsidiaries or predecessors in
24 interest, have showcased “mods” of its software, including the complained of
25 software, by third-parties.

26
27 19. Upon information and belief, Plaintiff, or its subsidiaries or predecessors in
28 interest, released portions of its software to the developers of “MTA,” Multi Theft

1 Auto, a “mod” project.

2 20. These supported, encouraged, or allowed “mod” projects, upon information
3 and belief, required the reverse engineering of software just as Defendants are alleged
4 to have undertaken.

5
6 21. Upon information and belief, Defendants had an implied license to undertake
7 any complained of actions or Plaintiff abandoned is copyright.

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THIRD AFFIRMATIVE DEFENSE
EXTRATERRITORIAL APPLICATION OF U.S. LAW

22. The Complaint alleges copying of copyright protected material which, to the
11 extent it occurred, was undertaken outside the United States.

12 23. The United States Copyright Act should not be applied outside the United
13 States and its territories. To the extent Plaintiff seeks to extend the application of the
14 United States Copyright Act to cover activities outside the United States, its claims
15 should be barred.

17 DATED: November 12, 2021

18 Respectfully submitted,

19
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*Attorneys for Defendants Angelo Papenhoff, Theo
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CERTIFICATE OF SERVICE

This is to certify that on November 12, 2021, a copy of the foregoing was filed via the Court's ECF filing system, thereby serving it upon all counsel of record.

/s/ Erin K. Russell