

1 RUSSELL J. FRACKMAN (State Bar No. 49087)
PATRICIA H. BENSON (State Bar No. 60656)
2 STEVEN B. FABRIZIO (*pro hac vice*)
MITCHELL SILBERBERG & KNUPP LLP

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v.
321 STUDIOS, also known as 321 Studio,
LLC.; ROBERT MOORE, an individual;
ROBERT SEMAAN, an individual; and
VICTOR MATTISON, an individual,

Counterclaim Defendants.

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 28, 2003 at 9:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Susan Illston, United States District Judge, in Courtroom 10 on the 19th Floor, 450 Golden Gate Avenue, San Francisco, California. Defendants and Counterclaimants Metro Goldwyn-Mayer Studios Inc., TriStar Pictures, Inc., Columbia Pictures Industries, Inc., Sony Pictures Entertainment Inc., Time Warner Entertainment Co. L.P., Disney Enterprises, Inc., Universal City Studios LLLP, formerly known as Universal City Studios, Inc., and The Saul Zaentz Company ("the Studios") will and hereby do move for summary adjudication in favor of the Studios and against Plaintiff/Counterclaim Defendant 321 Studios ("321") on 321's First Claim (Declaratory Relief under the DMCA, 17 U.S.C. Section 1201 *et seq.*), for summary adjudication that 321 is liable on the Studio's Counterclaim (violation of the DMCA, 17 U.S.C. § 1201), and for an order dismissing as moot 321's Second Claim (Declaratory Relief, Direct, Vicarious or Contributory Infringement, [1]7 U.S.C. Section 101 *et seq.*).

The Studios seek an order adjudicating (1) that 321 is not entitled to a declaratory judgment that its products DVD Copy Plus and DVD-X Copy are legal under 17 U.S.C. § 1201 and is not entitled to a declaratory judgment that the DMCA is invalid or unconstitutional, (2) that 321 is liable for violation of Section 17 U.S.C., and (3) dismissing 321's Second Claim for Relief as moot.

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This Motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities and Declarations of Robert W. Schumann and Marc E. Mayer served and filed concurrently herewith, on the pleadings and records on file in this action, and on such other argument and evidence as may be presented to this Court at or before the hearing on this Motion.

DATED: January 10, 2003

RUSSELL J. FRACKMAN
PATRICIA H. BENSON
STEVEN B. FABRIZIO
MITCHELL SILBERBERG & KNUPP LLP

By: _____
Russell J. Frackman
Attorneys for Plaintiffs

