

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT NEW OF NEW YORK

-----X
PARAMOUNT PICTURES CORPORATION and :
TWENTIETH CENTURY FOX FILM :
CORPORATION, :

Plaintiffs, :

-against- :

321 STUDIOS, A/K/A 321 STUDIOS LLC, :
A/K/A TERR LCC, :

Defendant. :

OPINION AND ORDER
03-CV-8970 (RO)

-----X
OWEN, District Judge:

Before me is plaintiffs' motion for a preliminary injunction and defendant's motion to transfer the case to the Northern District of California.¹

Paramount alleges that 321 Studios violated the Digital Millennium Copyright Act, 17 U.S.C. §§1201("DMCA"), 17 U.S.C. § 1201(a)(2) and § 1201(b)(1) (the so-called "anti-trafficking provisions") by manufacturing and selling -- trafficking -- in a computer software product that permits the possessor of a digital versatile disk ("DVD") encoded by a protective technological measure known as the Content Scramble System ("CSS") to decode the CSS, and thereby make identical copies of such DVDs.

321 Studios' conduct at issue in this case is essentially identical to what this Court and the Second Circuit have heretofore held violates the anti-trafficking provisions of the DMCA. See Universal City Studios, Inc. v. Reimerdes, 82 F. Supp.2d 211 (ordering preliminary injunction); Universal City Studios, Inc. v. Reimerdes, 111 F. Supp.2d 294 (ordering permanent injunction); Universal City Studios, Inc. v. Corley, 273

¹ On February 19, 2004, in 321 Studios v. Metro Goldwyn Mayer Studios, Inc., No. C 02-1955 SI (N.D. Cal. Feb.19, 2004), the Northern District of California issued an injunction against the manufacture and distribution of 321 Studios' DVD-copying software. Accordingly, in the case at bar, defendant's motion to transfer this case to the Northern District of California requires no consideration.

F.3d 429 (affirming permanent injunction). In those cases the Courts found that the defendants' DeCCS software violated the DMCA. Corley, 273 F.3d at 435-444; Reimerdes, 82 F. Supp.2d at 216-17; Reimerdes, 111 F. Supp.2d at 318-19.

In Reimerdes and Corley the defendants offered their DeCSS software for free over the Internet whereas here, 321 Studios is offering such software for commercial sale.

But the rule applies here as well, and I find that manufacturing and distributing DeCSS software for sale violates the anti-trafficking provisions of the DMCA. Of identical outcome is the recent decision in the Northern District of California involving the same software at issue in this case, the Court issuing an injunction against the manufacture and distribution of 321 Studios' DVD copying software (see footnote 1, *supra*). The Court there found that "321's software is in violation of both § 1201 (a)(2) and § 1201(b)(1), because it is both primarily designed and produced to circumvent CSS, and marketed to the public for use in circumventing CSS." See 321 Studios, No. C 02-1955 SI, at 15.

In the briefing as well as during oral argument, 321 Studios adamantly insisted that its DVD copying software did not violate the DMCA because it was not "primarily designed or produced for the purpose of circumventing CSS" – urging it had other diverse uses such as:

The 321 software not only allows for decryption, it allows for the restoration and retrieval of damaged DVD[s] that are unworkable, unplayable, skippable, and they can restore it to viewable conditions....[Y]oung children play with them, they get scratched, you take a DVD out of the plastic case and sometimes they are hard to get out, they can crack and chip and warp, and there is a process of delamination.

February 5, 2004 Transcript at 8.

However, prohibition of manufacture or trafficking of any technology *primarily* designed to circumvent a technological measure that either controls access to or protects a right of a copyright owner to or in a work protected under the DMCA, obviously is not evaded by the existence of arguably limited alternative uses.

As the Court found in Reimerdes, “the only purpose or use of DeCSS is to circumvent CSS. . . .” Reimerdes, 111 F. Supp.2d at 319. I agree here.

The constitutional issues raised by 321 Studios are answered by Universal City Studios, Inc. v. Reimerdes, 111 F. Supp. 2d 294 (S.D.N.Y. 2000), *aff’ d*, Universal City Studios, Inc. v. Corley, 273 F.3d 429 (2d Cir. 2001), *see also* 321 Studios, No. C 02-1955 SI (N.D. Cal, 2004).

Accordingly, plaintiffs’ injunction is granted, and 321 Studios, and its agents, servants, employees, officers, attorneys, successors, licensees, partners, and assigns and all persons acting in concert with it, are enjoined and restrained from:

1. Manufacturing, importing, offering to the public, facilitating, encouraging the use of, linking to, providing or otherwise trafficking in DVD X Copy Platinum, DVD X Copy Gold, DVD X Copy Xpress, DVD X Copy, DVD Copy Plus, SmartRipper, CladDVD, or DeCSS, or functionally equivalent applications; and
2. Pending further proceedings herein, the above are also restrained from directly or indirectly transferring abroad, assigning or selling to a foreign corporation, individual or entity, otherwise disposing of, by transfer outside of the United States and its territories, any funds, assets, monies, securities, claims, or other real or personal property, located in the United States, owned by, controlled by, managed by or in the possession or custody of 321 Studios and its subsidiaries or

affiliates without prior application to and consent of this Court for which
jurisdiction is retained.

So Ordered.

Dated: New York, New York
March 3, 2004

A handwritten signature in black ink, appearing to be "R. D.", written over a horizontal line.

United States District Judge