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UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE

WIZARDS OF THE COAST LLC, a Delaware limited liability company,

Plaintiff,

v.

THOMAS PATRICK NOLAN, an individual, and STEFAN OSMENA, an individual,

Defendants.

No. C09 0459 TSZ

COMPLAINT



09-CV-00459-CMP

In and for its Complaint, plaintiff Wizards of the Coast LLC ("Wizards") alleges as follows:

I. NATURE OF THE CASE

1. This action arises out of the Defendants' willful, wanton, and unauthorized copying and distribution of Wizards' publication Dungeons & Dragons® Player's Handbook® 2 ("Player's Handbook 2").

2. Dungeons & Dragons is one of the most acclaimed role-playing games of all time ("Dungeons & Dragons"), having created the category and enjoying millions of devoted players worldwide. On March 17, 2009, Wizards released for sale its highly anticipated Player's Handbook 2, an expansion of one of the core rulebooks for Dungeons & Dragons game.

COMPLAINT - 1

ORIGINAL

Perkins Coie LLP 1201 Third Avenue, Suite 4800 Seattle, WA 98101-3099 Phone: 206.359.8000 Fax: 206.359.9000



#### IV. FACTS AND BACKGROUND

##### A. WIZARDS OF THE COAST AND DUNGEONS & DRAGONS

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11. Created in 1974 by Gary Gygax and Dave Arneson, Dungeons & Dragons (also known by shorthand as D&D® ("D&D")) is the first role-playing game and the founder of the role-playing game category.

12. D&D rapidly evolved into a cultural and commercial phenomenon with millions of highly devoted players worldwide. More than 20 million people around the globe are estimated to have played D&D. Seth Schiesel, "Gary Gygax, 69, Game Pioneer, Dies," *N.Y. Times* (Mar. 5, 2008), at C11. Beyond its commercial success, D&D has had a broad cultural impact, influencing authors, filmmakers, and video game developers. By "creat[ing] the first fantasy universe that could actually be inhabited[,] . . . Dungeons & Dragons formed a bridge between the noninteractive world of books and films and the exploding interactive video game industry." *Id.*

13. D&D continues to be highly popular with devoted players worldwide. Approximately 6 million people currently play D&D.

14. To play D&D, players employ pen, paper, and various-sided dice (*e.g.*, 4-sided and 20-sided dice) to create imaginary characters with varying attributes (such as an elf wizard) and with randomly determined levels of skill; players proceed to journey through magical lands searching for treasures and battling monsters. One player is designated the Dungeon Master and is in charge of the game setting, describing the unfolding of the story and serving as game referee. A particular game can require days or weeks of play. Devoted D&D players frequently play into early hours, a reflection of the game's addictive appeal based, in part, on its focus on storytelling, imagination, and cooperative and social game play.

15. Over its 35-year history, the rules and game mechanics of D&D have been refined and further developed in line with the game's core concepts. In 1978, the original publisher of the game, TSR, released *Advanced Dungeons & Dragons*, with its comprehensive and elaborate

1 rules contained in the *Player's Handbook*® and *Dungeon Master's Guide*® core rulebooks.

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3 Since that time, the game's rules have principally been detailed in updated versions of those two  
4 rulebooks along with the *Monster Manual*® core rulebook. These three core rulebooks have  
5 been revised and released in highly anticipated updated editions over the past two decades.  
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9 TSR released 2nd editions of the core rulebooks in 1989.

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11 16. In 1997, Wizards acquired TSR and began development of 3rd editions of the  
12 core rulebooks. This substantially revised set of core rulebooks was released in 2000. Updated  
13 to reflect fan feedback, in 2003, Wizards released revised versions of the 3rd edition of core  
14 rulebooks (version 3.5). These editions enjoyed worldwide success and formed the basis for  
15 hundreds of supplemental D&D role-playing game products over the ensuing decade.  
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19 17. After years of additional development, and again inspired in part by player  
20 feedback, Wizards released a 4th edition of *Dungeons & Dragons* in 2008. The 4th edition  
21 provided for more streamlined game play, plus new options for character creation and  
22 interaction. Again, the rules were detailed in the three core 4th edition rulebooks. Release of  
23 the rulebooks was highly anticipated, and Wizards sponsored a Worldwide *Dungeons &*  
24 *Dragons* Game Day and coordinated release of the 4th edition with D&D events held around  
25 the globe. The core 4th edition rulebooks have sold hundreds of thousands of copies and are  
26 now in their third printing.  
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29 18. Wizards' *Dungeons & Dragons* website ([www.wizards.com/dnd](http://www.wizards.com/dnd)) offers additional  
30 resources for players, including online community message boards, chat rooms, and discussion  
31 lists. In late 2008, Wizards launched *D&D Insider*™, a subscription service offering articles,  
32 software tools, and other resources to players to enhance their D&D game experience.  
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35 19. *Dungeons & Dragons* has enjoyed widespread success, generating hundreds of  
36 millions of dollars from the role-playing games and other entertainment products such as video  
37 games, movies, and novels.  
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**B. WIZARDS RELEASES *DUNGEONS & DRAGONS, PLAYER'S HANDBOOK 2***

20. In March 2009, Wizards began its rollout of a second and supplemental set of core D&D rulebooks, beginning with *Player's Handbook 2*. The new rulebooks complement the core rulebooks and include new content to support higher-level game play, with expanded options for character creation, nonplayer character creation, monsters, and the design of game encounters.

21. *Player's Handbook 2* was released on March 17, 2009, and again was highly anticipated among D&D players. In coordination with the release, Wizards hosted a March 21 *Player's Handbook 2* Game Day. At more than 1,250 registered locations worldwide, players could experience exclusive adventures arising from new features in *Player's Handbook 2*.

22. In its first week on sale, *Player's Handbook 2* reached #28 of the USA Today Bestseller List, for all genres, and #4 of the Wall Street Journal Nonfiction Best-sellers List. As of April 1, 2009, *Player's Handbook 2* had already sold out of its initial print run.

23. Wizards owns all rights, title, and interest in *Player's Handbook 2*. Wizards has obtained a copyright registration for *Player's Handbook 2*, as set forth below:

Reg. No.	Reg. Date	Title
TX6-908-841	March 27, 2009	Dungeons & Dragons Player's Handbook 2

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**C. *PLAYER'S HANDBOOK 2* CAN BE PURCHASED IN ELECTRONIC FORMAT FROM AUTHORIZED THIRD-PARTY VENDORS**

24. Hardcover copies of *Player's Handbook 2* are available for purchase through various retailers. In addition, the rulebook and other Wizards' publications can be purchased in electronic format from third-party vendors that have entered into distribution agreements with Wizards.

25. In March 2009, the relevant period in this action, authorized vendors selling *Player's Handbook 2* in electronic format included OneBookShelf, Inc., which offered the

1 rulebook through its websites located at <http://www.rpg.drivethrustuff.com> and  
2  
3 <http://www.rpgnow.com> (collectively, "DriveThruRPG" or "OBS").  
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5 26. A customer purchasing *Player's Handbook 2* from DriveThruRPG downloads the  
6 publication in Adobe PDF format. The electronic version of *Player's Handbook 2* includes all  
7 224 pages of the rulebook, including the credits page, which identifies Wizards as publisher and  
8 includes Wizards' mailing address in Renton, Washington. The product webpages for *Player's*  
9 *Handbook 2* on DriveThruRPG also identify Wizards as the publisher. The credits page within  
10 the electronic version also invites readers to visit Wizards' Dungeons & Dragons website  
11 homepage ([www.wizards.com/dnd](http://www.wizards.com/dnd)).  
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18 27. The credits page also includes the following: "This material is protected under the  
19 copyright laws of the United States of America. Any reproduction or unauthorized use of the  
20 material or artwork contained herein is prohibited without the express written permission of  
21 Wizards of the Coast LLC."  
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26 28. A customer purchasing a copy of *Player's Handbook 2* from DriveThruRPG is  
27 notified that the download type is a "Watermarked PDF." The DriveThruRPG websites  
28 explain as follows:  
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33 These eBooks are digitally watermarked to signify that you are the  
34 owner. A small message is added to the bottom of each page of the  
35 document containing your name and the order number of your  
36 eBook purchase. Warning: If any books bearing your information  
37 are found being distributed illegally, then your account will be  
38 suspended and legal action may be taken against you.  
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40 29. In addition to the watermark of the purchaser's name and order number, electronic  
41 books downloaded from DriveThruRPG also include a micro-watermark embedded in a pixel of  
42 the downloaded work that also identifies the purchaser's account number which can then be  
43 traced to the purchaser's name and address.  
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**D. DEFENDANTS WILLFULLY INFRINGED WIZARDS' COPYRIGHT**

30. Upon information and belief, Defendant Osmena, using the alias "Aya Shameimaru," purchased an electronic copy of *Player's Handbook 2* from DriveThruRPG on or about March 17, 2009—the first day it was available for purchase.

31. The electronic copy of *Player's Handbook 2* purchased by Defendant Osmena included both the visible watermark added by OBS with the name of "Aya Shameimaru" and Defendant Osmena's order number at the bottom of each page and the micro-watermark added by OBS identifying Defendant Osmena's account number. Wizards verified Osmena's actual name and address based on his e-mail and registration information provided by OBS through use of Wizards' own internal database.

32. On or about March 19, 2009, Wizards discovered an unauthorized electronic copy of *Player's Handbook 2* uploaded to the document-sharing website Scribd, on the Scribd webpage of Defendant Nolan. The uploaded copy allowed Scribd users to view and download *Player's Handbook 2* for free.

33. Wizards promptly notified Scribd and asked that the unauthorized copy be removed. Scribd complied. However, by the time Scribd removed the unauthorized copy of *Player's Handbook 2* from Defendant Nolan's Scribd page, approximately 1,010 copies had been downloaded and 1,604 copies had been viewed. Upon information and belief, Wizards believes that unauthorized copies were downloaded and/or viewed by individuals in every, or nearly every, state of the United States of America.

34. The unauthorized copy of *Player's Handbook 2* on Defendant Nolan's Scribd page did not have a visible watermark identifying the purchaser. It did, however, have the OBS micro-watermark indicating that it was the copy purchased from DriveThruRPG by Defendant Osmena on March 17, 2009.

35. Based on the information above, Wizards believes, and on that basis alleges, that one or both Defendants removed the visible watermark identifying Defendant Osmena (*i.e.* alias

1 and order number) as purchaser of the electronic copy of *Player's Handbook 2* from  
2 DriveThruRPG. Upon information and belief, such removal was done to conceal Defendant  
3 Osmena's identity and role in what was understood to be unlawful conduct in violation of  
4 United States copyright laws.  
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9 36. Based on the information above, Wizards believes, and on that basis alleges, that  
10 Defendant Osmena unlawfully provided a copy of *Player's Handbook 2* either directly to  
11 Defendant Nolan or made the copy available on a file-sharing or peer-to-peer network. Upon  
12 information and belief, Defendant Osmena knew that s/he was unlawfully copying and  
13 distributing Wizards' copyrighted work and/or was unlawfully enabling others to download an  
14 illegal copy of the work.  
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21 37. Based on the information above, Wizards believes, and on that basis alleges, that  
22 Defendant Nolan unlawfully uploaded the copy of *Player's Handbook 2* purchased by  
23 Defendant Osmena to Defendant Nolan's Scribd page. Upon information and belief, Defendant  
24 Nolan knew that, by uploading the unauthorized copy of *Player's Handbook 2* to Scribd, he was  
25 illegally displaying Wizards' copyrighted work and enabling other individuals to download  
26 illegally the unauthorized copy.  
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33 38. Wizards did not authorize Defendant Nolan or Defendant Osmena, or anyone  
34 acting on their behalf, to copy or distribute *Player's Handbook 2*.  
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37 39. As a direct and proximate result of Defendant Nolan's and Defendant Osmena's  
38 acts, Wizards has suffered irreparable harm that cannot adequately be remedied at law.  
39 Wizards is entitled to injunctive relief as well as damages in an amount to be established at trial.  
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43 40. Upon information and belief, at the time of their actions, Defendants Nolan and  
44 Osmena knew that *Player's Handbook 2* was published by Wizards, that the company's  
45 principal location is in Washington state, and that the harm from their actions would primarily  
46 be suffered in Washington state.  
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1 purchaser was unlawful and constituted an infringement of Wizards' rights in the copyrighted  
2 work.  
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5 53. Without the authorization of Wizards or its agents, Defendants Nolan and Osmena  
6 induced, caused, and/or materially contributed to the infringing conduct of others.  
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9 54. The foregoing acts of Defendants Nolan and Osmena constitute contributory  
10 infringement of Wizards' exclusive rights in its copyrighted work under 17 U.S.C. § 106.  
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13 55. Wizards has been and will continue to be damaged as a result of Defendants  
14 Nolan's and Osmena's unlawful infringement of Wizards' copyrighted work in an amount to be  
15 proven at trial.  
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18 56. Upon information and belief, Defendants Nolan's and Osmena's actions were  
19 intentional, willful, wanton and performed in disregard of the rights of Wizards.  
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## 22 VI. PRAYER FOR RELIEF

23 WHEREFORE, plaintiff Wizards of the Coast LLC prays for the following relief:  
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25 1. A permanent injunction enjoining and restraining Defendants Nolan and Osmena,  
26 and all persons in active concert or participation with them from copying, distributing,  
27 displaying, creating derivative works or otherwise using protected elements of Wizards'  
28 copyrighted works, including, but not limited to, Wizards' *Player's Handbook 2*;  
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30 2. An award of damages sustained by Wizards pursuant to 17 U.S.C. § 504(b) and as  
31 otherwise permitted by law;  
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33 3. An award of statutory damages pursuant to 17 U.S.C. § 504(c) and as otherwise  
34 permitted by law;  
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36 4. An award of Wizards' costs of suit, including reasonable attorneys' fees pursuant  
37 to 17 U.S.C. § 505 and as otherwise permitted by law;  
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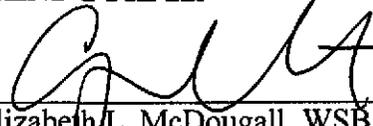
39 5. An award of prejudgment and post-judgment interest; and  
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41 6. Such other relief as the Court may deem just and proper.  
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DATED: April 6, 2009

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