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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** T57

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

1 3. Within days of the product's release, Defendants illicitly uploaded a copy of
2
3 *Player's Handbook 2* to a file-sharing website, making it available for limitless unauthorized
4
5 distribution for free.

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7 4. Wizards brings this action to stop Defendants' illegal copying and distribution, to
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9 deter future illicit uploading, and to recover its substantial lost sales and profits as a
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11 consequence of Defendants' willful infringement of Wizards' copyrights in *Player's*
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13 *Handbook 2*.

14 15 II. PARTIES

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17 5. Plaintiff Wizards is a Delaware limited liability company with its principal place
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19 of business in Renton, Washington, and is a wholly-owned subsidiary of Hasbro, Inc. Wizards
20
21 is the worldwide leader in the table-top and role-playing game category, and is a leading
22
23 developer and publisher of game-based entertainment products.

24
25 6. Upon information and belief, Defendant Thomas Patrick Nolan is a citizen of
26
27 Florida, residing in Pensacola, Florida.

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29 7. Upon information and belief, Defendant Stefan Osmena is a citizen of the
30
31 Philippines.

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33 8. Defendants Nolan and Osmena are joined in this action pursuant to Federal Rule
34
35 of Civil Procedure 20(a).

36 37 III. JURISDICTION AND VENUE

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39 9. This Court has subject-matter jurisdiction over Wizards' claims pursuant to 28
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41 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1338(a) (copyright).

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43 10. Venue is proper in this district under 28 U.S.C. § 1400(a) and 28 U.S.C.
44
45 § 1391(d).

IV. FACTS AND BACKGROUND

A. WIZARDS OF THE COAST AND DUNGEONS & DRAGONS

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.
2
3 Since that time, the game's rules have principally been detailed in updated versions of those two
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5 rulebooks along with the *Monster Manual*® core rulebook. These three core rulebooks have
6
7 been revised and released in highly anticipated updated editions over the past two decades.
8
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
13 core rulebooks. This substantially revised set of core rulebooks was released in 2000. Updated
14
15 to reflect fan feedback, in 2003, Wizards released revised versions of the 3rd edition of core
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17 rulebooks (version 3.5). These editions enjoyed worldwide success and formed the basis for
18
19 hundreds of supplemental D&D role-playing game products over the ensuing decade.

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21 17. After years of additional development, and again inspired in part by player
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23 feedback, Wizards released a 4th edition of Dungeons & Dragons in 2008. The 4th edition
24
25 provided for more streamlined game play, plus new options for character creation and
26
27 interaction. Again, the rules were detailed in the three core 4th edition rulebooks. Release of
28
29 the rulebooks was highly anticipated, and Wizards sponsored a Worldwide Dungeons &
30
31 Dragons Game Day and coordinated release of the 4th edition with D&D events held around
32
33 the globe. The core 4th edition rulebooks have sold hundreds of thousands of copies and are
34
35 now in their third printing.

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37 18. Wizards' Dungeons & Dragons website (www.wizards.com/dnd) offers additional
38
39 resources for players, including online community message boards, chat rooms, and discussion
40
41 lists. In late 2008, Wizards launched D&D Insider™, a subscription service offering articles,
42
43 software tools, and other resources to players to enhance their D&D game experience.

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45 19. Dungeons & Dragons has enjoyed widespread success, generating hundreds of
46
47 millions of dollars from the role-playing games and other entertainment products such as video
48
49 games, movies, and novels.
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1 **B. WIZARDS RELEASES *DUNGEONS & DRAGONS, PLAYER'S HANDBOOK 2***

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3 20. In March 2009, Wizards began its rollout of a second and supplemental set of
4 core D&D rulebooks, beginning with *Player's Handbook 2*. The new rulebooks complement
5 the core rulebooks and include new content to support higher-level game play, with expanded
6 options for character creation, nonplayer character creation, monsters, and the design of game
7 encounters.
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12 21. *Player's Handbook 2* was released on March 17, 2009, and again was highly
13 anticipated among D&D players. In coordination with the release, Wizards hosted a March 21
14 *Player's Handbook 2* Game Day. At more than 1,250 registered locations worldwide, players
15 could experience exclusive adventures arising from new features in *Player's Handbook 2*.
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19 22. In its first week on sale, *Player's Handbook 2* reached #28 of the USA Today
20 Bestseller List, for all genres, and #4 of the Wall Street Journal Nonfiction Best-sellers List. As
21 of April 1, 2009, *Player's Handbook 2* had already sold out of its initial print run.
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25 23. Wizards owns all rights, title, and interest in *Player's Handbook 2*. Wizards has
26 obtained a copyright registration for *Player's Handbook 2*, as set forth below:
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Reg. No.	Reg. Date	Title
TX6-908-841	March 27, 2009	Dungeons & Dragons Player's Handbook 2

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

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40 24. Hardcover copies of *Player's Handbook 2* are available for purchase through
41 various retailers. In addition, the rulebook and other Wizards' publications can be purchased in
42 electronic format from third-party vendors that have entered into distribution agreements with
43 Wizards.
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47 25. In March 2009, the relevant period in this action, authorized vendors selling
48 *Player's Handbook 2* in electronic format included OneBookShelf, Inc., which offered the
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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).
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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.
39

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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1 **D. DEFENDANTS WILLFULLY INFRINGED WIZARDS' COPYRIGHT**

2 30. Upon information and belief, Defendant Osmena, using the alias "Aya
3 Shameimaru," purchased an electronic copy of *Player's Handbook 2* from DriveThruRPG on or
4 about March 17, 2009—the first day it was available for purchase.
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7 31. The electronic copy of *Player's Handbook 2* purchased by Defendant Osmena
8 included both the visible watermark added by OBS with the name of "Aya Shameimaru" and
9 Defendant Osmena's order number at the bottom of each page and the micro-watermark added
10 by OBS identifying Defendant Osmena's account number. Wizards verified Osmena's actual
11 name and address based on his e-mail and registration information provided by OBS through
12 use of Wizards' own internal database.
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14

15 32. On or about March 19, 2009, Wizards discovered an unauthorized electronic copy
16 of *Player's Handbook 2* uploaded to the document-sharing website Scribd, on the Scribd
17 webpage of Defendant Nolan. The uploaded copy allowed Scribd users to view and download
18 *Player's Handbook 2* for free.
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20 33. Wizards promptly notified Scribd and asked that the unauthorized copy be
21 removed. Scribd complied. However, by the time Scribd removed the unauthorized copy of
22 *Player's Handbook 2* from Defendant Nolan's Scribd page, approximately 1,010 copies had
23 been downloaded and 1,604 copies had been viewed. Upon information and belief, Wizards
24 believes that unauthorized copies were downloaded and/or viewed by individuals in every, or
25 nearly every, state of the United States of America.
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28 34. The unauthorized copy of *Player's Handbook 2* on Defendant Nolan's Scribd page
29 did not have a visible watermark identifying the purchaser. It did, however, have the OBS
30 micro-watermark indicating that it was the copy purchased from DriveThruRPG by Defendant
31 Osmena on March 17, 2009.
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34 35. Based on the information above, Wizards believes, and on that basis alleges, that
35 one or both Defendants removed the visible watermark identifying Defendant Osmena (*i.e.* alias
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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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20 37. Based on the information above, Wizards believes, and on that basis alleges, that
21 Defendant Nolan unlawfully uploaded the copy of *Player's Handbook 2* purchased by
22 Defendant Osmena to Defendant Nolan's Scribd page. Upon information and belief, Defendant
23 Nolan knew that, by uploading the unauthorized copy of *Player's Handbook 2* to Scribd, he was
24 illegally displaying Wizards' copyrighted work and enabling other individuals to download
25 illegally the unauthorized copy.
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32 38. Wizards did not authorize Defendant Nolan or Defendant Osmena, or anyone
33 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 41. Upon information and belief, Defendant Nolan's and Defendant Osmena's actions
2 were intentional, willful, wanton and undertaken in disregard of the rights of Wizards.
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5 **V. CAUSES OF ACTION**
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7 **FIRST CAUSE OF ACTION—DIRECT COPYRIGHT INFRINGEMENT**
8 **(17 U.S.C. § 101 et seq.)**
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10 42. Wizards realleges and incorporates by reference the allegations in paragraphs 1
11 through 41 above as if fully set forth herein.
12

13 43. Wizards has a registered copyright in *Player's Handbook 2*.
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15 44. Defendants Nolan and Osmena had access to Wizards' *Player's Handbook 2*.
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17 45. Without the authorization of Wizards or its agents, Defendants Nolan and Osmena
18 copied, reproduced, displayed, and/or distributed Wizards' copyrighted *Player's Handbook 2*.
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20 46. The foregoing acts of Defendants Nolan and Osmena constitute direct
21 infringement of Wizards' exclusive rights in its copyrighted work under 17 U.S.C. § 106.
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23 47. Wizards has been and will continue to be damaged as a result of Defendant
24 Nolan's and Defendant Osmena's unlawful infringement of Wizards' copyrighted work in an
25 amount to be proven at trial.
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27 48. Upon information and belief, Defendant Nolan's and Defendant Osmena's actions
28 were intentional, willful, wanton and performed in disregard of the rights of Wizards.
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31 **SECOND CAUSE OF ACTION—CONTRIBUTORY COPYRIGHT INFRINGEMENT**
32 **(17 U.S.C. § 101 et seq.)**
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34 49. Wizards realleges and incorporates by reference the allegations in paragraphs 1
35 through 48 above as if fully set forth herein.
36

37 50. Wizards has a registered copyright in *Player's Handbook 2*.
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39 51. Defendants Nolan and Osmena had access to Wizards' *Player's Handbook 2*.
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41 52. Upon information and belief, Defendants Nolan and Osmena knew that
42 distribution of *Player's Handbook 2* and copying by individuals other than the authorized
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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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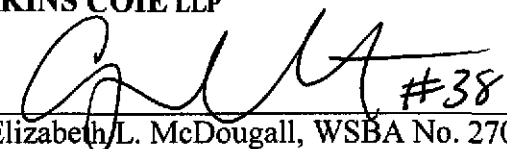
39 5. An award of prejudgment and post-judgment interest; and
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41 6. Such other relief as the Court may deem just and proper.
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2 DATED: April 6, 2009
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PERKINS COIE LLP

6 By:

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COMPLAINT – 11