

1 Jason Schultz (SBN 212600)
jason@eff.org
2 ELECTRONIC FRONTIER FOUNDATION
454 Shotwell Street
3 San Francisco, CA 94110
Telephone: (415) 436-9333 x112
4 Facsimile: (415) 436-9993

5 Marcia Hofmann (*pro hac vice* pending)
marcia@eff.org
6 ELECTRONIC FRONTIER FOUNDATION
1875 Connecticut Ave. NW
7 Suite 650
Washington, DC 20009
8 Telephone: (202) 797-9009 x12
9 Facsimile: (202) 707-9066

10 Attorneys for Plaintiff
JOHN DOE A/K/A BRIAN SAPIENT

11 **UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13 JOHN DOE A/K/A BRIAN SAPIENT,) Civil Action No. _____
14)
Plaintiff,) **COMPLAINT**
15)
v.) (Jury Trial Demanded)
16)
URI GELLER A/K/A URI GELLER FREUD)
17)
and)
18)
EXPLOROLOGIST LTD.,)
19)
Defendants.)
20 _____)

21 1. This is a civil action seeking injunctive relief and damages for misrepresentation of
22 copyright claims under the Digital Millennium Copyright Act (“DMCA”), as well as declaratory
23 relief.

24 2. This case arises out of a baseless legal threat of copyright infringement made by the
25 Defendants against Plaintiff. The threat resulted in the removal of a video Plaintiff posted to the
26 popular Internet media website YouTube, as well as the suspension of Plaintiff’s YouTube
27 account.
28

1 **PARTIES**

2 3. Plaintiff John Doe a/k/a Brian Sapien (“Sapien”) is an individual residing in
3 Pennsylvania. Due to Sapien’s controversial religious beliefs, which he discusses widely on
4 Internet websites including www.myspace.com/briansapien and www.rationalresponders.com, he
5 receives a substantial amount of abusive correspondence, including threats of physical harm
6 against him. As a result, he uses the online pseudonym “Brian Sapien” to help ensure his safety,
7 and seeks to proceed under that name in this case.

8 4. Upon information and belief, defendant Uri Geller a/k/a Uri Geller Freud (“Geller”)
9 is an individual residing in Sonning-on-Thames, Berkshire, England.

10 5. Upon information and belief, Defendant Explorologist Ltd. is a private limited
11 company with its registered office located in London, England.

12 6. Upon information and belief, Geller is a director and controlling shareholder of
13 Explorologist Ltd.

14 **JURISDICTION AND VENUE**

15 7. This Court has subject matter jurisdiction over this claim pursuant to the Copyright
16 Act (17 U.S.C. §§ 101 et seq.), 28 U.S.C. §§ 1331 and 1338, and the Declaratory Judgment Act (28
17 U.S.C. § 2291).

18 8. Sapien is informed, believes and thereon alleges that Defendants have sufficient
19 contacts with this district generally and, in particular, with the events herein alleged, that he is
20 subject to the exercise of jurisdiction of this Court.

21 **VENUE AND INTRADISTRICT ASSIGNMENT**

22 9. Venue is proper in this district under 28 U.S.C. § 1391.

23 10. Assignment to the San Francisco division is proper pursuant to Local Rule 3-2(c)
24 and (d) because a substantial portion of the events giving rise to this action occurred in this district
25 and division.

26 **FACTUAL ALLEGATIONS**

27 11. On or about October 19, 1993, the Public Broadcasting Service (“PBS”) first aired
28 “Secrets of the Psychics,” an episode of the popular television series NOVA.

1 12. Sapient is a member of the Rational Response Squad, which describes itself as “an
2 activist network that seeks to help the world overcome irrationality.” The Rational Response
3 Squad’s activities include, *inter alia*, posting videos debunking what it maintains are irrational
4 beliefs and theories on a popular website on the Internet known as “YouTube,” located at
5 <http://www.youtube.com>. YouTube is a video-sharing website where millions of Internet users
6 post videos and make them available to others for viewing. These videos range from traditional
7 home videos of personal events, to news reports, to advertisements and television programs.
8 Sapient and the Rational Response Squad rely on YouTube to reach thousands of audience
9 members and promote their activist messages and campaigns online.

10 13. On November 15, 2006, Sapient uploaded a portion of the NOVA program “Secrets
11 of the Psychics” (hereafter “NOVA Video”) from his computer to YouTube. The video was
12 available at the Internet address <<http://www.youtube.com/watch?v=M9w7jHYriFo>>.

13 14. The NOVA Video depicted, *inter alia*, the magician James Randi challenging the
14 performance techniques of Geller, a well-known performer who claims to have psychic abilities.
15 The video included clips from various Geller performances, such as one from the “The Tonight
16 Show With Johnny Carson” in which Geller was unable to demonstrate his supernatural powers in
17 front of a live studio audience. Upon information and belief, only three seconds of the content of
18 the NOVA Video is subject to a copyright owned by Geller or Explorologist Ltd. Those three
19 seconds show Dr. C. J. Hughes describing the alleged accomplishments of Geller at a public event.
20 The validity of those accomplishments is then the subject of the rest of the video and the subject
21 which Randi subsequently challenges.

22 15. On information and belief, on March 23, 2007, an agent of Explorologist Ltd. and
23 Geller demanded that YouTube take down the NOVA Video pursuant to the DMCA, 17 U.S.C. §
24 512. By authorizing the demand, Geller and Explorologist Ltd. attested under penalty of perjury that
25 they owned or were authorized to act on behalf of the owner of an exclusive copyright that had
26 been infringed by the video, and that the notice of infringement they sent was accurate. See Exhibit
27 A & B.

28 16. On March 23, 2007, YouTube sent Sapient an email informing him that it had

1 removed his video in response to a third-party claim of copyright infringement from Explorologist
2 Ltd. A true and correct copy of this email is attached hereto as Exhibit C.

3 17. As a result of Defendants' copyright infringement notice, Sapient's YouTube
4 account was suspended. Sapient quickly responded by submitting a counter-notification of non-
5 infringement to YouTube under the DMCA on March 27, 2007. However, as a result of
6 Defendant's conduct, Sapient's account and all of his videos (including, but not limited to, the
7 NOVA Video) remained unavailable for more than two weeks.

8 **COUNT I: 17 U.S.C. 512(F) MISREPRESENTATION**

9 18. Sapient repeats and incorporates herein by reference the allegations in the preceding
10 paragraphs.

11 19. Upon information and belief, the NOVA Video does not infringe any copyright
12 owned by Defendants.

13 20. Upon information and belief, Defendants knew or should have known if they acted
14 with reasonable care or diligence that the NOVA Video did not infringe any of their copyrights on
15 the date they sent their DMCA complaint to YouTube. Upon information and belief, Defendants
16 did not act with reasonable care or diligence before sending their DMCA complaint to YouTube.

17 21. Defendants would have had no substantial doubt, had they been acting in good faith,
18 that the NOVA Video did not infringe any of their copyrights on the date they sent their DMCA
19 complaint to YouTube. Upon information and belief, Defendants were not acting in good faith
20 while sending their DMCA complaint to YouTube.

21 22. Accordingly, Defendants violated 17 U.S.C. § 512(f) by knowingly materially
22 misrepresenting under DMCA § 512 that the NOVA Video infringed their copyright.

23 23. As a direct and proximate result of Defendants' actions, Sapient has suffered
24 substantial and irreparable injury. Such injury includes, but is not limited to, the financial and
25 personal expenses associated with responding to Defendants' complaint to YouTube and harm to
26 Sapient's free speech rights under the First Amendment.

27 **COUNT II: DECLARATORY RELIEF OF NON-INFRINGEMENT**

28 24. Sapient repeats and incorporates herein by reference the allegations in the preceding

1 paragraphs.

2 25. There is a real and actual controversy between Sapient and Defendants regarding
3 whether the NOVA Video constitutes infringement of a copyright lawfully owned by Defendants.

4 26. Sapient contends that, consistent with the Copyright Act of the United States of
5 America, including those laws prohibiting direct, contributory or vicarious infringement, laws
6 protecting fair use and the First Amendment to the United States Constitution, and judicial
7 decisions construing such laws, doctrines, and provisions, publication of the NOVA video was and
8 is lawful.

9 27. Wherefore, Sapient requests that the Court determine and adjudge that each and
10 every one of the above-stated propositions states the law applicable to the facts involved in this
11 action.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, the Plaintiff prays for judgment as follows:

- 14 A. A declaratory judgment that the NOVA Video posted by Plaintiff does not infringe
15 any copyright owned by Defendants;
- 16 B. Injunctive relief restraining Defendants, their agents, servants, employees,
17 successors and assigns, and all others in concert and privity with them, from
18 bringing any lawsuit or threat against Plaintiff for copyright infringement in
19 connection with the NOVA Video, including but not limited to its publication,
20 distribution, performance, display, licensing, or the ability to host it online or link to
21 it from any website;
- 22 C. Damages according to proof;
- 23 D. Attorneys fees pursuant to 17 U.S.C. § 512(f), other portions of the Copyright Act
24 including Section 505, on a Private Attorney General basis, or otherwise as allowed
25 by law;
- 26 E. Plaintiff's costs and disbursements; and
- 27 F. Such other and further relief as the Court shall find just and proper.

28 Plaintiff hereby requests a jury trial for all issues triable by jury including, but not limited to, those

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issues and claims set forth in any amended complaint or consolidated action.

DATED: May 8, 2007

By _____
Jason M. Schultz, Esq.
ELECTRONIC FRONTIER FOUNDATION
454 Shotwell Street
San Francisco, CA 94110
Telephone: (415) 436-9333 x112
Facsimile: (415) 436-9993

Marcia Hofmann (*pro hac vice* pending)
ELECTRONIC FRONTIER FOUNDATION
1875 Connecticut Ave. NW
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Attorneys for Plaintiff
JOHN DOE A/K/A BRIAN SAPIENT