



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD1751/2018

**TAKE-TWO INTERACTIVE SOFTWARE, INC** and another named in the Schedule of  
Parties  
First Applicant

**CHRISTOPHER ANDERSON**  
Respondent

### **ORDER**

**JUDGE:** JUSTICE NICHOLAS

**DATE OF ORDER:** 27 August 2021

**WHERE MADE:** Sydney

#### **THE COURT DECLARES THAT:**

1. The respondent has infringed the first applicant's copyright by:
  - (a) reproducing or making a copy of the whole or a substantial part of one or more of the GTA V Works (as defined in para 1 of schedule 1 to these orders) in material form in Australia, other than in accordance with the terms of a current licence from the first applicant;
  - (b) authorising users of the software titled "Infamous" ("Infamous Mod") to reproduce in a material form or make a copy in Australia of one or more of the GTA V Works or a substantial part thereof, other than in accordance with the terms of a current licence from the first applicant.
2. The respondent has procured or induced breaches of, and otherwise interfered with the performance of, the following agreements between one or more of the applicants and users of the Infamous Mod:
  - (a) versions of the agreement titled "Limited Software Warranty and License Agreement"; and
  - (b) versions of the agreement titled "Terms of Service".



3. The respondent has, by distributing, selling and offering for sale the Infamous Mod, contravened s 18(1) of the *Australian Consumer Law* (Cth) (“the ACL”).

**THE COURT ORDERS THAT:**

4. Pursuant to s 115(2) of the *Copyright Act 1968* (Cth) (“the Copyright Act”), the respondent be permanently restrained from doing any of the following acts, whether by himself, his servants, agents or otherwise:
  - (a) reproducing in a material form, or making a copy of, in Australia any one or more of GTA V Works or any substantial part thereof;
  - (b) authorising another person to reproduce in a material form, or make a copy of, in Australia any one or more of the GTA V Works or any substantial part thereof,where such act is done in circumstances in which one or both of the following apply:
  - (c) the act is done in conjunction with the use of the Infamous Mod or any other cheat software by the Respondent or by the other person in paragraph (b); or
  - (d) the act done is not in accordance with the terms of a current licence from the first applicant.
5. Pursuant to s 232(1) of the ACL, the respondent be permanently restrained, whether by himself, his servants, agents or otherwise, from:
  - (a) causing the applicants or any player of the video game *Grand Theft Auto V*, to receive false or misleading data about any multiplayer game in play, including data about the status and statistics of any other player or any other data,
  - (b) whether by means of the Infamous Mod or otherwise.
6. The respondent do all things necessary and desirable that are within his power to do to cause the Infamous Mod to be made permanently inoperable, including but not limited to permanently disabling any authentication service upon which the Infamous Mod relies.
7. The respondent delete and not restore or recreate, or permit restoration or recreation of, all copies of the Infamous Mod (including source code, compiled code, updates, drafts or unpublished versions) in his possession, custody, power or control.



8. The respondent file and serve an affidavit on or before 4.00pm on 17 September 2021, specifying and verifying:
  - (a) the actions he has taken pursuant to order 6; and
  - (b) the deletions he has made pursuant to order 7.
9. An account be taken of the profits made by the respondent as a result of the infringements referred to in declaration 1 above, and an assessment of the quantum of the interest thereon pursuant to s 51A of the *Federal Court of Australia Act 1976* (Cth).
10. Unless the parties agree on the quantum of profits and interest referred to in order 9 above, the proceeding be listed before Nicholas J on a date to be fixed in accordance with order 15(d) for further directions.
11. The respondent pay the applicants' costs in the proceeding to date (except those costs specifically referable to the applicants' ACL claim pleaded in paragraphs 57–60 and 64(a) of the statement of claim), in an amount as agreed or as determined in accordance with the lump-sum costs procedure in the Court's costs practice note GPN-COSTS.
12. The respondent have leave to rely upon the affidavit of Christopher Anderson affirmed 10 May 2021 at the trial of the issues identified in paragraph 15 below subject to any proper objection.
13. The respondent's interlocutory application dated 7 May 2021 be otherwise dismissed.
14. The respondent pay the applicants' costs of his interlocutory application, to be included in the costs referred to in order 11 above.

**THE COURT FURTHER DIRECTS THAT:**

15. The proceeding be set down for trial on a date to be fixed, in relation to the remaining aspects of the applicants' claims; namely:
  - (a) whether the respondent has engaged in actionable conduct under s 116AN(1) of the Copyright Act;
  - (b) whether the respondent has engaged in actionable conduct under s 116AO(1) of the Copyright Act;



- (c) if the respondent has engaged in actionable conduct under either or both sections, what remedies should be granted under s 116AQ of the Act, (together, “the TPM Matters”), and
  - (d) unless the parties agree on the quantum of profits and interest, the taking of the account referred to in order 9 above.
16. The applicants are to file and serve any evidence in reply in relation to the TPM Matters on or before 4.00pm on 17 September 2021.
  17. The proceeding be referred for mediation by a Registrar of the Court to conclude on or before 15 October 2021.
  18. The proceeding be listed for a case management hearing at 9.30am on 22 October 2021 to fix a date for trial.

Date that entry is stamped: 27 August 2021

*Sia Lagos*  
Registrar



## **Schedule 1 – GTA V Works**

1. The GTA V Works means the following works in each Relevant Version of the GTA V Executable and GTA V Library Files:
  - (a) “computer programs” within the meaning of s 10(1) of the Copyright Act, including the computer programs embodied in:
    - i. the GTA V Executable (including the GTA V Core);
    - ii. the executable GTA V Library Files; and
    - iii. the GTA V Source Code;
  - (b) “artistic works” within the meaning of s 10(1) of the Copyright Act, including the artistic works embodied in the non-executable GTA V Library Files (such as the graphics and models referred to in paragraph 3 above);
  - (c) “cinematograph films” within the meaning of s 10(1) of the Copyright Act, being the aggregates of the:
    - i. visual images embodied in the GTA V Library Files’ graphics and models, that are capable of being shown as moving pictures; and
    - ii. sounds embodied in the GTA V Library Files’ sound effects, being sound-tracks associated with those visual images;
  - (d) “sound recordings” within the meaning of s 10(1) of the Copyright Act, being the aggregates of the sounds embodied in the GTA V Library Files’ sound effects.

The meaning of GTA V Works is affected by paragraphs 2-4 below.

2. The GTA V Executable means the GTA V executable computer file “gta5.exe” in the GTA V software which:
  - (a) consists of object code that is the result of compiling and linking corresponding source code of the GTA V computer program (“GTA V Source Code”) into a machine readable format;
  - (b) is copied onto the hard disk of the computer of a player of GTA V (“Player”) during installation of GTA V;



- (c) contains instructions that are run by the Player's computer during gameplay;
  - (d) runs when the Player wishes to play GTA V, causing it to be executed on the Player's computer;
  - (e) when executed on the Player's computer, causes certain code contained in the GTA V Executable to be copied to the random-access memory in the Player's computer (this code being the GTA V Core). The GTA V Core is necessary to allow the elements of the game currently being played by the Player.
3. The GTA V Library Files means libraries of executable and non-executable files in the GTA V software, comprising:
- (a) graphics, being in-game artworks, textures and colours;
  - (b) models, being 3D models of in-game characters and objects;
  - (c) sound effects, being sound files associated with in-game characters, actions and objects; and
  - (d) object attributes and values being instructions that dictate the behaviour of in-game objects and their associated sound effects.
4. Since the initial publication of the PC version of GTA V, the second applicant has developed, and the first applicant has published, new versions of the GTA V Executable and GTA V Library Files as new features and downloadable content ("DLC"). A reference to the GTA V Executable or the GTA V Library Files in this schedule include a reference to each and every version of the GTA V Executable or GTA V Library Files (including DLC) developed by the second applicant and published up to and including the date of these orders by the first applicant since the initial publication of GTA V (each a Relevant Version).



## **Schedule of Parties**

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Second Applicant:            **ROCKSTAR GAMES, INC**