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3 SAN LEANDRO, CA 94577

4 Telephone: [REDACTED]

5 *Pro Se*

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 DONGXIAO YUE,

11 Plaintiff,

12 v.

13  
14 STORAGE TECHNOLOGY  
15 CORPORATION, a Delaware corporation;  
16 SUN MICROSYSTEMS Inc., a Delaware  
17 corporation; Michael Melnick, an individual;  
18 Julie DeCecco, an individual; Michael P.  
19 Abramovitz, an individual; Lisa K. Rady, an  
20 individual; Jonathan Schwartz, an individual;  
21 and DOES 1-1000, inclusive,

22 Defendants.

Case No. C07-05850-SI

FIRST AMENDED COMPLAINT FOR  
COMPENSATORY DAMAGES,  
DISGORGEMENT OF PROFITS,  
INJUNCTIVE RELIEF AND  
ATTORNEYS' FEES AND COSTS FOR:  
Direct, Contributory, and Vicarious  
Copyright Infringement Under 17 U.S.C.  
Section 101 *et seq.*

DEMAND FOR JURY TRIAL

23 **COMPLAINT**

24 Plaintiff Dongxiao Yue ("Yue" or "Plaintiff") complains and alleges against  
25 defendants STORAGE TECHNOLOGY CORPORATION ("StorageTek"), a Delaware  
26 corporation; SUN MICROSYSTEMS, Inc ("SUN"), a Delaware corporation; Michael Melnick  
27 ("Melnick"), an individual; Julie DeCecco ("DeCecco"), an individual; Michael P. Abramovitz

1 (“Abramovitz”), an individual; Lisa K. Rady (“Rady”), an individual; Jonathan Schwartz  
2 (“Schwartz”), an individual; and Does 1-1000 (collectively, "Defendants") as follows:

3 **INTRODUCTION**

4 1. Since 1994, Plaintiff had been developing software he later named “PowerRPC.” In  
5 July 1996, Plaintiff founded a Delaware Limited Liability Company named “Netbula, LLC”  
6 (“Netbula”) to market the PowerRPC software. Defendants have willfully infringed Plaintiff’s  
7 copyrights in the software by making and distributing unauthorized copies of the software,  
8 creating and distributing unauthorized derivative works, and other direct and indirect infringing  
9 activities.

10 2. The copyrights infringed by Defendants in the instant action are: “Netbula  
11 PowerRPC PWRPC32.DLL 00-SDK-STK” registered October 3, 2006 with U.S. registration  
12 number TX 6-437-847, a copy of which is attached as Exhibit A (“the 00-SDK copyright”);  
13 “NETBULA POWERRPC 2K4” registered on December 15, 2006 with U.S. registration number  
14 TX 6-491-697, a copy of which is attached as Exhibit B to this complaint (“the 2K4 copyright”);  
15 and the copyrights in unpublished works Plaintiff created before July 1996, with pending  
16 copyright registration at the U.S. Copyright Office.

17 3. In September 2007, Plaintiff acquired all exclusive copyrights in the versions of  
18 PowerRPC created before January 1, 2007 by written assignment, along with all accrued and  
19 prospective claims arising from infringement of these copyrights. A copy of the copyright  
20 assignment is attached as Exhibit C.

21 4. In December 2006, Netbula filed a civil action (Case No. C-06-07391-MJJ) against  
22 defendants in the Northern District of California alleging infringement of the copyrights in  
23 “Netbula PowerRPC” published in 1996, with U.S. registration number TX 6-211-063. Part of the  
24 evidence used in this complaint was from discovery of that case.  
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1 things herein alleged is ascertained by Plaintiff, Plaintiff will amend this Complaint to set forth the  
2 same.

3 **FACTUAL DETAILS**

4 ***PLAINTIFF’S COPYRIGHTED SOFTWARE***

5  
6 13. From 1994 to July 1996, as an individual, Plaintiff had been developing a software  
7 technology which he later named as “PowerRPC”. PowerRPC was a technology that enabled a  
8 program on a computer to execute a command on a remote computer over a network and get  
9 results back. PowerRPC was developed for UNIX, Microsoft Windows NT and Windows 95  
10 platforms. Plaintiff also developed software called ONC RPC for Microsoft Windows NT/95,  
11 which incorporated most of the program files and modules in PowerRPC.

12 14. In July 1996, Plaintiff founded Netbula, LLC, a Delaware Limited Liability  
13 Company, to market the aforementioned RPC software that he was developing at the time.

14 15. Plaintiff did not assign or transfer the copyrights in his earlier works created before  
15 July 24, 1996 to Netbula, LLC. The PowerRPC software products were derivative works of these  
16 earlier unpublished works.

17 16. On September 26, 2007, Netbula executed a written copyright assignment,  
18 transferring all exclusive rights in all PowerRPC and ONC RPC for Windows software created  
19 before January 1, 2007 back to Dr. Dongxiao Yue -- Plaintiff. The copyright assignment further  
20 assigned all past and future claims of infringement to Plaintiff.

21 17. In the following, Plaintiff will use “PowerRPC” to refer to both “PowerRPC  
22 software” and “ONC RPC for Windows software”. Both were written by Plaintiff, and both had  
23 the same program modules with one exception -- they used different Interface Description  
24 Language (“IDL”) compilers.

25  
26 18. The PowerRPC software contained two parts: (1) the "Software Development Kit"  
27 ("SDK") that consists of the software tools which allow programmers to create applications based



1           22.     In a typical StorageTek tape library system, a separate computer controls the tape  
2 library's operation, such as the loading/unloading of the tapes. According to its product literature,  
3 StorageTek has several software products for controlling tape libraries, including "Automated  
4 Cartridge System Library Software" ("ACSLs"), "Library Manager" and "LibraryStation".

5           23.     On information and belief, StorageTek's ACSLS, Library Manager and  
6 LibryStation software use RPC as the communication mechanism. StorageTek's software which  
7 enables communication with "ACSLs" on Microsoft Windows is called "Library Attach software"  
8 or "LibAttach".

9           24.     On February 7, 2000, Michael Melnick of StorageTek emailed Netbula, inquiring  
10 about "the purchase of 8 developer licenses" and "a limited application distribution agreement."

11           25.     From January 2000 to December 2006, Netbula sold RPC runtime licenses in  
12 "paks" of different sizes, each pak granted a customer the right to make or distribute certain  
13 number of copies of the Netbula runtime software.  
14

15           26.     In February 2000, the 20-pak, which granted a customer the right to make 20  
16 copies of the runtime software, cost about \$1000.

17           27.     In February 2000, a "limited application distribution license" for PowerRPC  
18 granted a customer the right to install 1000 copies of the runtime software for one operating  
19 system.

20           28.     In a series of email exchanges, Plaintiff provided Mr. Melnick the following  
21 information for licenses: (1) "ONC RPC Win32 developer license: \$895 per developer per  
22 machine", (2) "ONC RPC Win32 limited distribution license: \$5995", and (3) "The limited  
23 distribution license is for distributing the DLLs and support programs to 1,000 machines."

24           29.     Plaintiff also provided a license agreement template to StorageTek in the email  
25 communications referenced above. Mr. Melnick then made various changes to the agreement.  
26

27           30.     In March 2000, Mr. Melnick and Plaintiff executed the final agreement (the "2000  
28

1 Agreement”). The 2000 Agreement was governed by the laws of California and “may not be  
2 assigned by either party or amended without the written consent of both parties...”

3 31. Among other things (such as provisions on copyright), the 2000 Agreement  
4 contained the following terms (with the portions drafted by Michael Melnick underlined):

5 NETBULA grants STORAGETEK, a non-exclusive, perpetual,  
6 irrevocable license for use by STORAGETEK’s employees,  
7 consultants and subsidiaries for up to ONE user(s), for each of the  
8 licenses purchased, to use the PowerRPC SDK Product under  
9 Windows NT and 95/98 platforms; each user can only use the  
10 software on one computer....

11 The license is not transferable without written permission of  
12 Nebula...

13 You must treat the software as copyrighted material. You may not  
14 copy and redistribute the software except as permitted under this  
15 Agreement.

16 ...

17 Limited Distribution. You agree to maintain reasonable records of  
18 the number of copies of the Supporting Programs distributed  
19 hereunder and to pay NETBULA as set forth in Exhibit C for  
20 such copies....

21 ...

22 Payment. You agree to pay NETBULA the amounts set forth in  
23 Exhibit C in full payment for the rights and licenses granted  
24 herein, thirty (30) days after receipt of an invoice referencing a  
25 valid purchase order number.

26 .....

27 Support is for SDK Products and Supporting Programs on the  
28 specific platforms only...

#### EXHIBIT B

#### NETBULA COMPONENTS PERMITTED TO BE DISTRIBUTED

...

\* Pmapsvc.exe The portmapper service for Windows NT



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EXHIBIT C  
PAYMENT

STORAGETEK shall pay NETBULA a one-time fee of \$895 per license for all rights granted under this Agreement with respect to the SDK Product, and one-time fee of \$5,995 for the right to distribute up to 1000 units of software containing the Supporting Programs, thirty (30) days after receipt of an invoice referencing a valid purchase order number. NETBULA agrees that future SDK license purchases will be at a mutually agreed to price. NETBULA agrees to offer STORAGETEK additional units of Supporting Program licenses for the limited distribution license, at the cumulative license purchased prices as provided listed below. Pricing is based on cumulative purchases, not single purchase events. Additional licenses purchased are subject to the terms and conditions of this Agreement.

32. Pursuant to the 2000 Agreement, StorageTek issued a purchase order for the purchasing of eight (8) developer licenses and 1000 runtime licenses. Plaintiff then created a customized copy of the PowerRPC software embedded with license information and delivered the software to StorageTek on a CD with the following information on the CD label: name of the software, name of licensee (“StorageTek”), invoice number (“1605”), license type and license quantity (“8 Developers 1000 runtime”).

33. StorageTek later paid invoice 1605 in full, as required by the 2000 Agreement.

34. On May 1, 2000, Scott Painter, an engineer at StorageTek, emailed Netbula about customizing Netbula’s “PowerRPC Portmapper” software, that email was copied to Michael Abramovitz, who was also a StorageTek engineer.

35. In June 2001, a StorageTek developer named Anton Vatchky requested a Windows 2000 version of PowerRPC for testing a software product called REELs.

36. In May 2001, Netbula sent a license usage audit request to StorageTek.

**COPYRIGHT INFRINGEMENT FACTS**

1           37.     On June 21, 2001, Tracy Gagnon, Program Manager of the Backup & Recovery  
2 Software at StorageTek, sent an email to Mr. Melnick with the subject title “Netbula License  
3 Report for Audit 06/21 – REELNT Product”. She wrote:

4                     Enclosed are the Netbula licenses for the REELNT product I  
5 am showing to date. I arrived at these numbers by going  
6 through the history report from SCH. I am not sure if I have  
7 caught all the data points...

8           38.     On June 22, 2001, Mike Melnick responded to Netbula’s audit request via email,  
9 stating:

10                    The license count you request is 107, this leaves us the rights  
11 to distribute 893...

12 Mr. Melnick did not inform Netbula that the report for REELNT was probably incomplete.

13           39.     On September 9, 2002, responding to another audit request, Mike Melnick sent an  
14 email stating that StorageTek ceased distributing PowerRPC in 2002. Mr. Melnick wrote:

15                    We no longer distribute the runtimes with our products. Our  
16 count remains the same as provided to you in June of 01.

17           40.     In fact, StorageTek had been developing and distributing PowerRPC with other  
18 StorageTek products, including LibAttach and LibAttach Integrators’ Kit. On March 2, 2004, Lisa  
19 Rady, the program manager at StorageTek in charge of LibAttach development, wrote in an  
20 internal StorageTek email:

21                    As you can see, we have exceeded the 1,000 distributions that  
22 we had right to with Netbula.... I think it is obvious that  
23 engineering has not and did not monitor the distributions on  
24 this product.

25           In another email to Mr. Melnick, Lisa Rady wrote:

26                    I have a CD in my hand called “Netbula ONC RPC for Win32  
27 Development Toolkit”, licensed to StorageTek (1605) 8  
28 Developers 1000 runtime. Inside the CD was the Receipt that  
included the PO number CCOL122576, your name as the buyer,  
and a date of 3/24/2000.

1 Responding to Ms. Rady's email message, Mr. Melnick wrote:

2 The agreement is specific to platform (Win NT and 95/98  
3 platforms) types of Netbula software (PowerRPC SDK). This  
4 concerns me greatly as we have already told them we are no  
5 longer shipping it with our product.

6 41. After the above internal discussion, Mr. Melnick sent an email to Netbula, stating:

7 Could you provide me with the StorageTek sales  
8 representative or if possible give me a quote on distributing  
9 an additional 1000 units of RPC? The platform used will  
10 need to be Windows 2003.

11 Mr. Melnick concealed from Netbula the fact that StorageTek had been distributing  
12 PowerRPC, had exceeded the purchased license count, and had used and distributed PowerRPC on  
13 unauthorized platforms.

14 42. Since 2000, Netbula increased its prices. In 2003, the price for a 1000-copy client  
15 runtime license was about \$18,000, while the price for a server runtime license was about \$800.

16 43. In March 2004, Netbula and StorageTek negotiated an agreement for the 2004  
17 version of PowerRPC. Netbula provided the then current license agreement template with the  
18 price of \$18,000 for 1000 client runtime licenses, and \$800 for one server runtime license.  
19 Michael Melnick represented that StorageTek's use of the PowerRPC software was for client only  
20 and deleted the server license portion of the agreement and changed the prices.

21 44. Netbula and StorageTek signed a second license agreement (the "2004  
22 Agreement") in March 2004. Because StorageTek previously represented that it only used 107  
23 licenses out of the 1000 licenses purchased (thus with 893 licenses wasted), Netbula gave  
24 StorageTek price much lower than the standard pricing at the time.

25 45. Pursuant to the 2004 Agreement, StorageTek issued a purchase order for one (1)  
26 developer license and 1000 runtime licenses.

27 46. Pursuant to the 2004 Agreement and this purchase order, Plaintiff mailed the 2004  
28 version of the RPC software to StorageTek on a CD which had a label with the license type and

1 license quantity information similar to the CD delivered to StorageTek in 2000.

2 47. Netbula invoiced StorageTek for the amount on the purchase order. StorageTek  
3 later paid the invoiced amount in full.

4 48. StorageTek made no other license purchases for PowerRPC licenses.

5 49. On information and belief, Lisa Rady and other StorageTek employees devised a  
6 new scheme of selling LibAttach in large blocks, including a 1000-license package and an  
7 unlimited package.

8 50. On October 25, 2004, Michael Abramovitz, an engineer involved in the  
9 development of REEL and LibAttach software, sent an email to Netbula, stating that StorageTek  
10 bundled PowerRPC into several StorageTek products. On the same day, Netbula emailed  
11 StorageTek requesting a license usage report. StorageTek did not provide any report for this  
12 request.

13 51. On June 15, 2005, Netbula emailed StorageTek again for an audit of license usage  
14 and inquired about the impending SUN- StorageTek merger. Mr. Melnick responded:

15 As for Sun, it should be completed by the end of summer... The  
16 only thing that you and I may have to do is for you to allow  
17 assignment of the agreement to Sun. The agreements calls [*sic*]  
18 for your approval. I assume you would allow [*sic*] this as if you  
19 did not the agreement would be terminated.

20 52. On June 20, 2005, Holly Wagner, a Software Product Planner at StorageTek,  
21 emailed Michael Melnick, Lisa Rady, Michael Abramovitz and others, stating:

22 The SAP query I ran this morning shows 2,386 models shipped.  
23 This number is low due to the fact that the query does not have  
24 the capability of pulling the client feature quantities that were  
25 released in November of last year.

26 Responding to this email, Mr. Melnick wrote on June 28, 2005:

27 The number that Holly has provided and thought it may be low  
28 causes quite a problem for you. We have only made 2  
purchases for the rights to distribute a total of 2000 licenses.





1 the infringement to continue at SUN and its customers. One of SUN's planned strategies was to  
2 sue Plaintiff personally by alleging trademark infringement on the JAVA and SUN marks.

3           63. On information and belief, Schwartz owned millions shares of SUN stocks and  
4 derivative securities and was involved in the day-to-day management of SUN's operations,  
5 including operating a blog and answering questions from customers or prospective customers.  
6

7           64. On information and belief, after Michael Abramovitz learned of the dispute  
8 between Netbula and SUN/StorageTek, he and potentially other StorageTek employees,  
9 presumably under direction of SUN's managing agents, systematically erased the Netbula SDK  
10 software from their computers, thus destroying part of the evidence.

11           65. On information and belief, the LibAttach software is a crucial technology for SUN  
12 and StorageTek's tape products. LibAttach allows a Windows application to control a tape library  
13 by executing RPC commands on an ACSLS server (or Library Station/Library Manager) over a  
14 network, which is essential for utilizing the StorageTek tape libraries from Windows.

15           66. On further information and belief, LibAttach versions 1.1 to 1.4 were developed  
16 with PowerRPC. The PowerRPC source code was incorporated into the LibAttach software, the  
17 "pwrpc32.dll" and "pmapsvc.exe" software were bundled with the LibAttach software. LibAttach  
18 was thus based on PowerRPC.

19           67. Defendants sell LibAttach licenses to end users under the "1191NLC" main  
20 product code. According to StorageTek's pricing list, it sells the single LibAttach license under  
21 the code 1191NLC-S001, 500 licenses under the code 1191NLC-S500, or 1,000 licenses under the  
22 code 1191NLC-S1K0. As Netbula later discovered, Defendants also sold unlimited LibAttach  
23 licenses under the code 1191NLC-SENT.  
24

25           68. StorageTek also develops and sells software called "LibAttach Integrator's Kit"  
26 under the product code "1191NLI" to software developers who develop data backup software for  
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1 their unlawful conduct with respect to Plaintiff's copyrighted materials, as well as from the  
2 unlawful and infringing conduct of each other and of third parties.

3         77. Each infringing act of copying, reproducing, displaying, adapting, exhibiting,  
4 and/or distributing the content of Plaintiff's RPC technology (including the "pwrpc32.dll" and  
5 "pmapsvc.exe" files), as well as the continuing threat of the same, constitutes a separate claim  
6 against Defendants, and each of them, under the Copyright Act.

7         78. Each post, copy, reproduction, adaptation, exhibition, display, and/or distribution of  
8 Plaintiff's copyrighted materials on and through Defendants' products, or by any other means,  
9 constitutes a separate and distinct act of infringement, whether committed by individual  
10 Defendants or combinations of them, and including acts of third parties for which Defendants are  
11 contributorily and/or vicariously liable.

12         79. Defendants have realized unlawful and unjust profits from the unauthorized and  
13 illegal copying, reproduction, adaptation, exhibition, and/or displaying of the above-referenced  
14 content of Plaintiff's copyrighted works. As a result of Defendants' acts of intentional direct,  
15 contributory, and/or vicarious infringement, Plaintiff is without an adequate remedy at law, in that  
16 actual damages are difficult to ascertain. Accordingly, Plaintiff requests that this Court grant the  
17 injunctive relief prayed for herein.

18         80. Plaintiff is entitled to recover from Defendants the damages he has sustained and  
19 will sustain, and any gains, profits, and advantages obtained by Defendants as a result of  
20 Defendants' acts of infringement alleged above, be they direct or indirect. At present, the amount  
21 of such damages to Plaintiff and the gains, profits, and advantages Defendants have obtained by  
22 reason of the unlawful conduct described herein cannot be fully ascertained by Plaintiff, but are  
23 likely to exceed \$20,000,000.

24         81. Furthermore, Plaintiff has no adequate remedy at law. Unless Defendants are  
25 preliminarily and permanently enjoined from committing the unlawful acts described herein,  
26 Plaintiff will continue to suffer irreparable harm. Plaintiff's harm is irreparable because  
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1                   **COUNT II: COPYRIGHT INFRINGEMENT BY MAKING UNAUTHORIZED**  
2                   **DERIVATIVE WORKS OF THE NT SDK**

3                   *(Copyright registration No. TX 6-437-847)*

4                   *(Against All Defendants. For Damages and Profits, and Injunctive Relief)*

5                   87.       Plaintiff re-alleges and incorporates herein by reference the allegations of  
6 paragraphs 1 through 86, inclusive, of this Complaint.

7                   88.       On information and belief, StorageTek developed REELS, LibAttach and  
8 LibAttach Integrators' Kit products with unauthorized copies of the NT SDK.

9                   89.       On further information and belief, the REELS, LibAttach and LibAttach  
10 Integrators' Kit products incorporated header files, "pwrpc32.dll" runtime library, "pmapsvc.exe"  
11 program and other software written by Plaintiff.

12                   90.       The REELS, LibAttach and LibAttach Integrators' Kit products developed with  
13 unauthorized copies of NT SDK were thus infringing derivative works of Plaintiff's copyrighted  
14 software.

15                   91.       On further information and belief, numerous third parties also used infringing  
16 LibAttach Integrators' Kit to create derivative works without authorization.

17                   **COUNT III: COPYRIGHT INFRINGEMENT BY CREATING UNAUTHORIZED**  
18                   **DERIVATIVE WORKS FOR WINDOWS 2000**

19                   *(Copyright registration No. TX 6-437-847)*

20                   *(Against All Defendants. For Damages and Profits, and Injunctive Relief)*

21                   92.       Plaintiff re-alleges and incorporates herein by reference the allegations of  
22 paragraphs 1 through 91, inclusive, of this Complaint.

23                   93.       The 2000 Agreement was restricted to the Windows NT/98/95 operating systems.

24                   94.       StorageTek's engineers and managers knew the 2000 Agreement was for Windows  
25 NT/98/95 only. In March 2004, Michael Melnick wrote in an internal email stating that the 2000  
26 Agreement was specific to Windows NT and 95/98 platforms). In July 2005, Michael Melnick  
27 acknowledged that the 2000 Agreement was for Windows NT/98/95 only. Lisa Rady and Michael  
28

1 Abramovitz also knew that the PowerRPC software on the CD StorageTek received was for  
2 Windows Nt/98/95 only.

3 95. But, Defendants developed LibAttach and LibAttach Integrators' Kit software for  
4 Windows 2000 with the NT SDK, without a license for Windows 2000.

5 96. On further information and belief, numerous third parties also used the LibAttach  
6 Integrators' Kit to create derivative works for unauthorized platforms.

7  
8 **COUNT IV: COPYRIGHT INFRINGEMENT BY DISTRIBUTING OR COPYING  
9 INFRINGING DERIVATIVE WORKS OF THE NT SDK**

10 *(Copyright registration No. TX 6-437-847)*  
11 *(Against All Defendants. For Damages and Profits, and Injunctive Relief)*

12 97. Plaintiff re-alleges and incorporates herein by reference the allegations of  
13 paragraphs 1 through 96, inclusive, of this Complaint.

14 98. On information and belief, Defendants, and each of them, made, offered to sell,  
15 sold, and/or distributed copies of the infringing derivative works of the NT SDK, or contributed to  
16 these activities.

17 99. Each copy, each distribution of the infringing derivative works and each  
18 authorization to do the same constitutes an act of infringement.

19 **COUNT V: COPYRIGHT INFRINGEMENT BY DISTRIBUTING MORE THAN  
20 1000 COPIES OF THE WINDOWS NT VERSION OF THE RUNTIME SOFTWARE**

21 *(Copyright registration No. TX 6-437-847)*  
22 *(Against All Defendants. For Damages and Profits, and Injunctive Relief)*

23 100. Plaintiff re-alleges and incorporates herein by reference the allegations of  
24 paragraphs 1 through 99, inclusive, of this Complaint.

25 101. StorageTek only made one license purchase for the right to distribute 1000 copies  
26 of the runtime software under the 2000 Agreement.

27 102. StorageTek knew it only had the right to distribute 1000 copies under the 2000  
28 Agreement.

1           103. StorageTek violated Plaintiff's copyright by distributing more than 1000 copies of  
2 the Windows NT version of Plaintiff's software.

3           104. StorageTek further violated Plaintiff's copyright by granting "floating" licenses  
4 which permitted its customers to make unlimited number of copies of Plaintiff's software.

5           105. In a document attached to a March 12, 2004 internal StorageTek email, Lisa Rady  
6 wrote the following about LibAttach: "There is no license key in the product, and it is apparent  
7 that the software has been copied, uncontrolled, for several years" and "engineering has not and  
8 did not monitor the distributions."  
9

10           106. Defendants thus further violated Plaintiff's copyright by willfully failing to monitor  
11 the copying of Plaintiff's software and willfully permitting others to make unauthorized copies.

12                   **COUNT VI: COPYRIGHT INFRINGEMENT BY MAKING UNAUTHORIZED**  
13                   **COPIES OF THE WINDOWS 2003 VERSION OF THE SDK**

14                   *(Copyright registration No. TX 6-491-697)*

15                   *(Against All Defendants. For Damages and Profits, and Injunctive Relief)*

16           107. Plaintiff re-alleges and incorporates herein by reference the allegations of  
17 paragraphs 1 through 106, inclusive, of this Complaint.

18           108. In March 2004, pursuant to the 2004 Agreement, StorageTek purchased one (1)  
19 SDK license to use the 2004 version of the PowerRPC software for Microsoft Windows 2003 and  
20 lower (the "2003 SDK"). Each SDK license granted one user the right to use the 2003 SDK on one  
21 computer.

22           109. On information and belief, multiple StorageTek or SUN employees, including  
23 Abramovitz, had copied the 2003 SDK on multiple computers, without internal control of inside  
24 copying, violating Plaintiff's copyright in the 2003 SDK.

25                   **COUNT VII: COPYRIGHT INFRINGEMENT BY CREATING UNAUTHORIZED**  
26                   **DERIVATIVE WORKS OF THE WINDOWS 2003 VERSION OF THE SDK**

27                   *(Copyright registration No. TX 6-491-697)*

28                   *(Against All Defendants. For Damages and Profits, and Injunctive Relief)*

1 110. Plaintiff re-alleges and incorporates herein by reference the allegations of  
2 paragraphs 1 through 109, inclusive, of this Complaint.

3 111. On information and belief, StorageTek developed LibAttach and LibAttach  
4 Integrators' Kit products with unauthorized copies of the 2003 SDK.

5 112. On further information and belief, the LibAttach and LibAttach Integrators' Kit  
6 products incorporated header files, "pwrpc32.dll" runtime library, "pmapsvc.exe" program and  
7 other software in the 2003 SDK written by Plaintiff.

8 113. The LibAttach and LibAttach Integrators' Kit products developed with  
9 unauthorized copies of 2003 SDK were thus infringing derivative works of Plaintiff's copyrighted  
10 software.

11 114. On further information and belief, numerous third parties also used the LibAttach  
12 Integrators' Kit to create derivative works without authorization.

13  
14 **COUNT VIII: COPYRIGHT INFRINGEMENT BY DISTRIBUTING MORE THAN**  
15 **1000 COPIES OF THE 2004 VERSION OF RUNTIME SOFTWARE**  
16 *(Copyright registration No. TX 6-491-697)*  
17 *(Against All Defendants. For Damages and Profits, and Injunctive Relief)*

18 115. Plaintiff re-alleges and incorporates herein by reference the allegations of  
19 paragraphs 1 through 114, inclusive, of this Complaint.

20 116. In March 2004, pursuant to the 2004 Agreement, StorageTek purchased a license to  
21 distributed 1000 copies of the 2004 version of the runtime software (the "2004 Runtime").

22 117. StorageTek knew it only had the right to distribute 1000 copies of the 2004  
23 Runtime.

24 118. On information and belief, Defendants distributed more than 1000 copies of the  
25 2004 Runtime, without the proper licenses and in violation of Plaintiff's "2K4 copyright."

26 119. Defendants further violated Plaintiff's copyright by willfully failing to monitor the  
27 copying of Plaintiff's software and willfully permitting others to make unauthorized copies.







1 (whether now in existence or hereafter created), including, without limitation, those  
2 involving the original content of and works on and in Plaintiff's RPC technology  
3 and products and from continuing to market, offer, sell, dispose of, license, lease,  
4 transfer, display, advertise, reproduce, develop, or manufacture any works derived  
5 or copied from the content of Plaintiff's copyrighted works, all as described in this  
6 Complaint;

7 (b) causing, contributing to, enabling, facilitating, supporting, aiding, or  
8 participating in any manner in the infringement of Plaintiff's protected works and/or  
9 exclusive copyright rights (whether now in existence or hereafter created),  
10 including, without limitation, the content of Plaintiff's RPC technology and  
11 products, all as described in this Complaint; and

12 (c) otherwise engaging in any conduct that unlawfully, unfairly, and/or  
13 fraudulently competes with Plaintiff and Plaintiff's RPC technology and products  
14 (including, without limitation, through the unauthorized use and infringement of  
15 Plaintiff's original works of authorship), all as described in this Complaint;

16 4. That Defendants and their officers, employees, agents, servants, attorneys,  
17 and representatives, and all other persons, firms, or corporations in active concert or privity or in  
18 participation with them, be ordered to immediately deliver to the Court for impoundment (and  
19 destruction upon entry of final judgment against Defendants) all illegal, unlicensed copies of  
20 Plaintiff's software in their possession, custody or control together with an accounting, to be  
21 provided to Plaintiff, of: (1) the number of such copies in Defendants' possession, custody or  
22 control; (2) where each copy was found; (3) the identity of the individual or individuals having  
23 possession, custody or control of each copy at the time it was found; and (4) a sworn explanation  
24 of how each copy was obtained, duplicated or distributed, including the identity of all persons  
25 involved in such activity for each such copy;  
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27  
28

