

1 ROBERT G. BADAL (Bar No.)
2 HELLER EHRMAN WHITE & McAULIFFE LLP
3 Los Angeles, California 90017-5758
4 Telephone: (213) |
5 Facsimile: (213)

6 Attorneys for Defendant
7 WARNER BROS. PICTURES INC.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 NOT THE ENEMY MEDIA and PETE
12 LIVINGSTON,

13 Plaintiffs,

14 v.

15 UNIVERSAL STUDIOS CONSUMER
16 PRODUCTS, INC., FOX
17 ENTERTAINMENT GROUP, DISNEY
18 ENTERPRISES, INC., LUCASFILM
19 LTD., MGM/UA, INC., LE STUDIO
20 CANAL + MUSIC, INC.,
21 PARAMOUNT PICTURES
22 CORPORATION, WARNER
23 COMMUNICATIONS INC., and DOES
24 I-XXX,

25 Defendants.

Note:
Addresses & phone
numbers edited out
for privacy...

Case No.: C02-05717 JSW

DEFENDANT WARNER BROS.
PICTURES INC.'S ANSWER TO
FIRST AMENDED COMPLAINT
FOR DECLARATORY RELIEF;
AFFIRMATIVE DEFENSES

1 Defendant Warner Bros. Pictures Inc., a Warner Bros. Entertainment
2 Company, erroneously sued as Warner Communications Inc. (“Warner”), through its
3 attorneys, hereby answers the First Amended Complaint of Plaintiffs Not The Enemy
4 Media and Pete Livingston (“Plaintiffs”), and asserts its defenses as follows:

5 **ANSWER TO INTRODUCTORY ALLEGATIONS**

6 1. Warner objects to Paragraph 1 because it consists of argument, rather
7 than a short and plain statement of the case as required by Rule 8 of the Federal Rules
8 of Civil Procedure. To the extent Paragraph 1 contains proper allegations, Warner is
9 without knowledge or information sufficient to form a belief as to the truth of the
10 allegations contained therein and on that basis denies said allegations.

11 2. With regard to the first sentence of Paragraph 2, Warner admits that it
12 declined to grant permission to Plaintiffs to use clips from Warner’s motion pictures,
13 but Warner has not made any claim as to whether or not Plaintiffs’ work, or its
14 distribution or display, constitutes copyright infringement. Warner is without
15 knowledge or information sufficient to form a belief as to the truth of the allegations
16 of the second sentence of Paragraph 2 and on that basis denies said allegations.
17 Warner denies the allegations of the third sentence of Paragraph 2. With regard to the
18 fourth sentence of Paragraph 2, Warner admits that Plaintiffs are seeking a
19 declaratory judgment with respect to the provisions of 17 U.S.C. § 101, but otherwise
20 denies the remaining allegations of this sentence.

21 3. Warner is without knowledge or information sufficient to form a belief
22 as to the truth of the allegations of Paragraph 3 and on that basis denies said
23 allegations.

1 without knowledge or information sufficient to form a belief as to the truth of the
2 allegations and on that basis denies said allegations.

3 15. Warner objects to Paragraph 15 because it consists of argument, rather
4 than a short and plain statement of the case as required by Rule 8 of the Federal Rules
5 of Civil Procedure. To the extent Paragraph 15 contains proper allegations, Warner is
6 without knowledge or information sufficient to form a belief as to the truth of the
7 allegations and on that basis denies said allegations.

8 16. Warner objects to Paragraph 16 because it consists of argument, rather
9 than a short and plain statement of the case as required by Rule 8 of the Federal Rules
10 of Civil Procedure. To the extent Paragraph 16 contains proper allegations, Warner is
11 without knowledge or information sufficient to form a belief as to the truth of the
12 allegations and on that basis denies said allegations.

13 17. Warner objects to Paragraph 17 because it consists of argument, rather
14 than a short and plain statement of the case as required by Rule 8 of the Federal Rules
15 of Civil Procedure. To the extent Paragraph 17 contains proper allegations, Warner is
16 without knowledge or information sufficient to form a belief as to the truth of the
17 allegations and on that basis denies said allegations.

18 18. Warner objects to Paragraph 18 because it consists of argument, rather
19 than a short and plain statement of the case as required by Rule 8 of the Federal Rules
20 of Civil Procedure. To the extent Paragraph 18 contains proper allegations, Warner is
21 without knowledge or information sufficient to form a belief as to the truth of the
22 allegations and on that basis denies said allegations.

23 19. Warner objects to Paragraph 19 because it consists of argument, rather
24 than a short and plain statement of the case as required by Rule 8 of the Federal Rules
25 of Civil Procedure. To the extent Paragraph 19 contains proper allegations, Warner is
26 without knowledge or information sufficient to form a belief as to the truth of the
27 allegations and on that basis denies said allegations.

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1 20. Warner objects to Paragraph 20 because it consists of argument, rather
2 than a short and plain statement of the case as required by Rule 8 of the Federal Rules
3 of Civil Procedure. To the extent Paragraph 20 contains proper allegations, Warner is
4 without knowledge or information sufficient to form a belief as to the truth of the
5 allegations and on that basis denies said allegations.

6 21. Warner objects to Paragraph 21 because it consists of argument, rather
7 than a short and plain statement of the case as required by Rule 8 of the Federal Rules
8 of Civil Procedure. To the extent Paragraph 21 contains proper allegations, Warner is
9 without knowledge or information sufficient to form a belief as to the truth of the
10 allegations and on that basis denies said allegations.

11 22. Warner objects to Paragraph 22 because it consists of argument, rather
12 than a short and plain statement of the case as required by Rule 8 of the Federal Rules
13 of Civil Procedure. To the extent Paragraph 22 contains proper allegations, Warner is
14 without knowledge or information sufficient to form a belief as to the truth of the
15 allegations and on that basis denies said allegations.

16 23. Warner objects to Paragraph 23 because it consists of argument, rather
17 than a short and plain statement of the case as required by Rule 8 of the Federal Rules
18 of Civil Procedure. To the extent Paragraph 23 contains proper allegations, Warner is
19 without knowledge or information sufficient to form a belief as to the truth of the
20 allegations and on that basis denies said allegations.

21 24. Warner objects to Paragraph 24 because it consists of argument, rather
22 than a short and plain statement of the case as required by Rule 8 of the Federal Rules
23 of Civil Procedure. To the extent Paragraph 24 contains proper allegations, Warner is
24 without knowledge or information sufficient to form a belief as to the truth of the
25 allegations and on that basis denies said allegations.

26 25. Warner objects to Paragraph 25 because it consists of argument, rather
27 than a short and plain statement of the case as required by Rule 8 of the Federal Rules
28 of Civil Procedure. To the extent Paragraph 25 contains proper allegations, Warner is

1 without knowledge or information sufficient to form a belief as to the truth of the
2 allegations and on that basis denies said allegations.

3 26. Warner objects to Paragraph 26 because it consists of argument, rather
4 than a short and plain statement of the case as required by Rule 8 of the Federal Rules
5 of Civil Procedure. To the extent Paragraph 26 contains proper allegations, Warner is
6 without knowledge or information sufficient to form a belief as to the truth of the
7 allegations and on that basis denies said allegations.

8 27. Warner objects to Paragraph 27 because it consists of argument, rather
9 than a short and plain statement of the case as required by Rule 8 of the Federal Rules
10 of Civil Procedure. To the extent Paragraph 27 contains proper allegations, Warner is
11 without knowledge or information sufficient to form a belief as to the truth of the
12 allegations and on that basis denies said allegations.

13 28. Warner objects to Paragraph 28 because it consists of argument, rather
14 than a short and plain statement of the case as required by Rule 8 of the Federal Rules
15 of Civil Procedure. To the extent Paragraph 28 contains proper allegations, Warner is
16 without knowledge or information sufficient to form a belief as to the truth of the
17 allegations and on that basis denies said allegations.

18 29. Warner objects to Paragraph 29 because it consists of argument, rather
19 than a short and plain statement of the case as required by Rule 8 of the Federal Rules
20 of Civil Procedure. To the extent Paragraph 29 contains proper allegations, Warner is
21 without knowledge or information sufficient to form a belief as to the truth of the
22 allegations and on that basis denies said allegations.

23 30. Warner objects to Paragraph 30 because it consists of argument, rather
24 than a short and plain statement of the case as required by Rule 8 of the Federal Rules
25 of Civil Procedure. To the extent Paragraph 30 contains proper allegations, Warner is
26 without knowledge or information sufficient to form a belief as to the truth of the
27 allegations and on that basis denies said allegations.

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1 31. Warner objects to Paragraph 31 because it consists of argument, rather
2 than a short and plain statement of the case as required by Rule 8 of the Federal Rules
3 of Civil Procedure. To the extent Paragraph 31 contains proper allegations, Warner is
4 without knowledge or information sufficient to form a belief as to the truth of the
5 allegations and on that basis denies said allegations.

6 32. Warner admits that a video copy of a movie entitled “Over 9 Billion
7 Dead Served” was attached to Plaintiffs’ First Amended Complaint for Declaratory
8 Relief. With regard to the remaining allegations of Paragraph 32, Warner is without
9 knowledge or information sufficient to form a belief as to the truth of the allegations
10 and on that basis denies said allegations.

11 33. With regard to the first sentence of Paragraph 33, Warner admits that it
12 received a letter dated January 15, 2002 requesting Warner’s consent to use clips
13 from certain Warner motion pictures, but is without knowledge or information
14 sufficient to form a belief as to the truth of the remaining allegations in this sentence
15 and on that basis denies said allegations. With regard to the second sentence of
16 Paragraph 33, Warner admits that at some time it received a video copy of a movie
17 entitled “Over 9 Billion Dead Served,” but is without knowledge or information
18 sufficient to form a belief as to the truth of the remaining allegations in this sentence
19 and on that basis denies said allegations. With regard to the third sentence of
20 Paragraph 33, Warner is without knowledge or information sufficient to form a belief
21 as to the truth of the allegations and on that basis denies said allegations. With regard
22 to the fourth sentence of Paragraph 33, Warner admits that it received a letter dated
23 March 19, 2002, but is without knowledge or information sufficient to form a belief
24 as to the truth of the remaining allegations in this sentence and on that basis denies
25 said allegations. With regard to the remaining allegations of Paragraph 33, Warner is
26 without knowledge or information sufficient to form a belief as to the truth of the
27 allegations and on that basis denies said allegations.

28

1 proposition where that burden is properly imposed upon Plaintiffs. Warner reserves
2 the right to assert additional affirmative and other defenses at the appropriate time in
3 these proceedings.

4
5 **FIRST AFFIRMATIVE DEFENSE**

6 (Failure to State a Claim)

- 7 2. Plaintiffs fail to state a claim upon which relief may be granted.
8

9 **SECOND AFFIRMATIVE DEFENSE**

10 (Laches)

- 11 3. Plaintiffs' claim for relief is barred by the doctrine of laches.
12

13 **THIRD AFFIRMATIVE DEFENSE**

14 (Waiver and Estoppel)

- 15 4. Plaintiffs' claim for relief is barred by the doctrines of waiver and
16 estoppel.
17

18 **FOURTH AFFIRMATIVE DEFENSE**

19 (Unclean Hands)

- 20 5. Plaintiffs' claim for relief is barred by the doctrine of unclean hands.
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22 **FIFTH AFFIRMATIVE DEFENSE**

23 (Standing)

- 24 6. Plaintiffs' claim for relief is barred because Plaintiffs lack standing to
25 assert the claims alleged in the First Amended Complaint.
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