1 2	ROBERT G. BADAL (Bar No. ) HELLER EHRMAN WHITE & McAULIFF	E llp	Note: Addresses & phone numbers edited out		
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5 6	Attorneys for Defendant WARNER BROS. PICTURES INC.				
7 8	UNITED STATES DISTRICT COURT				
9	NORTHERN DISTRICT OF CALIFORNIA				
10	SAN FRANCISCO DIVISION				
11 12	NOT THE ENEMY MEDIA and PETE LIVINGSTON,	Case No.: C	02-05717 JSW		
13 14	Plaintiffs, v.		NT WARNER BROS. INC.'S ANSWER TO		
<ol> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> </ol>	UNIVERSAL STUDIOS CONSUMER PRODUCTS, INC., FOX ENTERTAINMENT GROUP, DISNEY ENTERPRISES, INC., LUCASFILM LTD., MGM/UA, INC., LE STUDIO CANAL + MUSIC, INC., PARAMOUNT PICTURES CORPORATION, WARNER COMMUNICATIONS INC., and DOES I-XXX, Defendants.	FOR DECL	FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF; AFFIRMATIVE DEFENSES		
25 26 27 28					
	WARNER BROS. PICTURES INC.'S ANSWER TO FIRST				

AMENDED COMPLAINT FOR DECLARATORY RELIEF

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

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### ANSWER TO INTRODUCTORY ALLEGATIONS

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

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

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

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WARNER BROS. PICTURES INC.'S ANSWER TO FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF CASE NO. CO2 05717 JSW - 2 -

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### ANSWER TO PARTY ALLEGATIONS

4. Warner is without knowledge or information sufficient to form a belief
as to the truth of the allegations of Paragraph 4 and on that basis denies said
allegations.

5 5. With regard to Paragraph 5, Warner admits that it, or its subsidiaries or 6 affiliates, holds exclusive U.S. distribution rights, among other rights, to the motion 7 pictures "Batman," "Twister" and "Gone With The Wind." Warner further admits 8 that it, or its subsidiaries or affiliates, distributes motion pictures in theaters, on 9 television, on videocassette tapes, and/or on digital media such as DVDs. Warner is 10 without knowledge or information sufficient to form a belief as to the truth of the 11 remaining allegations of Paragraph 5 and on that basis denies said allegations.

6. Warner admits that it is in the business of producing and exploiting
entertainment programming and has its principal place of business in Burbank,
California. Warner is without knowledge or information sufficient to form a belief as
to the truth of the remaining allegations of Paragraph 6 and on that basis denies said
allegations.

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#### ANSWER TO VENUE AND JURISDICTION ALLEGATIONS

7. Warner admits that Plaintiffs purport to assert a claim under the U.S.
Copyright Act. With regard to the remaining allegations of Paragraph 7, Warner is
without knowledge or information sufficient to form a belief as to the truth of the
allegations contained therein and on that basis denies said allegations.

8. Warner admits that its principal place of business is in the State of
California, and that it engages in business activities within the State. With regard to
the remaining allegations of Paragraph 8, Warner is without knowledge or
information sufficient to form a belief as to the truth of the allegations contained
therein and on that basis denies said allegations.

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9. Warner is without knowledge or information sufficient to form a belief
 as to the truth of the allegations of Paragraph 9 and on that basis denies said
 allegations.

4 10. Warner is without knowledge or information sufficient to form a belief
5 as to the truth of the allegations of Paragraph 10 and on that basis denies said
6 allegations.

7 11. Warner is without knowledge or information sufficient to form a belief
8 as to the truth of the allegations of Paragraph 11 and on that basis denies said
9 allegations.

10 12. With regard to the first sentence of Paragraph 12, Warner admits that it 11 declined to grant permission to Plaintiffs to use clips from Warner's motion pictures, 12 but Warner has not made any claim as to whether or not Plaintiffs' work, or its 13 distribution or display, constitutes copyright infringement. With regard to the 14 remaining allegations of Paragraph 12, Warner is without knowledge or information 15 sufficient to form a belief as to the truth of the allegations contained therein and on 16 that basis denies said allegations.

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#### **ANSWER TO GENERAL ALLEGATIONS**

19 13. Warner admits that the original domestic theatrical distribution of the
20 work "Gone With the Wind" began in 1939; that the original domestic theatrical
21 distribution of the work "Batman" began in June 1989; and that the original domestic
22 theatrical distribution of the work "Twister" began in May 1996. Warner is without
23 knowledge or information sufficient to form a belief as to the truth of the remaining
24 allegations of Paragraph 13 and on that basis denies said allegations.

14. Warner objects to Paragraph 14 because it consists of argument, rather
than a short and plain statement of the case as required by Rule 8 of the Federal Rules
of Civil Procedure. To the extent Paragraph 14 contains proper allegations, Warner is

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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34. Warner admits that Plaintiffs seek a declaratory judgment but otherwise
 is without knowledge or information sufficient to form a belief as to the truth of the
 allegations of Paragraph 34 and on that basis denies said allegations.

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# ANSWER TO CLAIMS FOR RELIEF

35. Warner incorporates by reference its answers to Paragraphs 1 through 34
above, as though fully set forth herein.

36. Warner admits that it declined to grant permission to Plaintiffs to use
clips from Warner's motion pictures, but Warner has not made any claim as to
whether or not Plaintiffs' work, or its distribution or display, constitutes copyright
infringement. Warner is without knowledge or information sufficient to form a belief
as to the truth of the remaining allegations of Paragraph 36 and on that basis denies
said allegations.

37. Warner is without knowledge or information sufficient to form a belief
as to the truth of the allegations in Paragraph 37 and on that basis denies said
allegations.

38. Warner admits that it declined to grant permission to Plaintiffs to use
clips from Warner's motion pictures, but Warner has not made any claim as to
whether or not Plaintiffs' work, or its distribution or display, constitutes copyright
infringement. Warner is without knowledge or information sufficient to form a belief
as to the truth of the remaining allegations of Paragraph 38 and on that basis denies
said allegations.

39. Warner admits that Plaintiffs seek a declaratory judgment, but is without
knowledge or information sufficient to form a belief as to the truth of the allegations
of Paragraph 39 and on that basis denies said allegations.

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# AFFIRMATIVE AND OTHER DEFENSES

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Warner sets forth the following affirmative and other defenses. In
 asserting these defenses, Warner is not assuming the burden to establish any fact or

WARNER BROS. PICTURES INC.'S ANSWER TO FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF CASE NO. CO2 05717 JSW

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.			
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5	FIRST AFFIRMATIVE DEFENSE			
6	(Failure to State a Claim)			
7	2.	Plaintiffs fail to state a claim upon which relief may be granted.		
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9	SECOND AFFIRMATIVE DEFENSE			
10		(Laches)		
11	3.	Plaintiffs' claim for relief is barred by the doctrine of laches.		
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13	THIRD AFFIRMATIVE DEFENSE			
14		(Waiver and Estoppel)		
15	4.	Plaintiffs' claim for relief is barred by the doctrines of waiver and		
16	estoppel.			
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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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	WARNER BRO	- 10 - S. PICTURES INC.'S ANSWER TO FIRST		
	AMENDED COMPLAINT FOR DECLARATORY RELIEF			

1		PRAYER FOR RELIEF		
2		WHEREFORE, Warner prays for a judgment as follows:		
3	1.	That Plaintiffs take nothing by reason of their First Amended Complaint		
4	herein;			
5	2.	That Judgment be entered in favor of Warner and against Plaintiffs;		
6	3.	That Warner be awarded its costs and attorneys' fees; and		
7	4.	That Warner be awarded such other relief as this Court deems just and		
8	proper.			
9				
10	DATED:	April 11, 2003 HELLER EHRMAN WHITE & McAULIFFE LLP		
11				
12		By <u>s/ Robert G. Badal</u> Robert G. Badal		
13		Attorneys for Defendant		
14		Warner Bros. Pictures Inc.		
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