

**§ 13.11 Form: Complaint for Copyright Infringement of
Computer Software**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PLAINTIFF,

-against-

COMPLAINT

DEFENDANT CORPORATION AND
DEFENDANT INDIVIDUAL

Plaintiff, by its attorneys Smith & Smith, as and for its complaint,
alleges:

PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of Delaware, with an office and principal place of business at Broadway, New York, New York.

2. Defendant is a corporation organized and existing under the laws of the State of New York, with an office and principle place of business at Seventh Avenue, New York, New York.

3. Defendant has at all relevant times been engaged in the business of manufacturing and marketing of computer systems and related equipment.

4. The defendant individual is the owner of the defendant corporation and directly conducts the affairs of the defendant corporation. Both defendant corporation and individual defendant shall be referred to as defendant.

JURISDICTION AND VENUE

5. This action arises under the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.* (the "Copyright Act").

6. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1338, and with respect to claims under state law, by the principles of pendant jurisdiction.

FACTS

7. Plaintiff is a manufacturer and marketer of computer equipment and related computer programs which are referred to as "hardware" and "software" respectively within the industry.

8. At significant expense plaintiff has developed, tested and manufactured a computer system marketed as Supersystem-I which was introduced in January of 1984. Supersystem-I hardware includes a central processing unit ("CPU"), cathode ray tube (CRT) display, a hard disk data storage device and related peripheral equipment.

9. Supersystem-I incorporates the use of certain operating system software known as SOS-I as well as various optional application programs.

10. Operating system software refers to a collection of software programs which allow the computer to manage internal programming tasks, execute applications programs, and handle input and output tasks. Applications programs are those programs which are designed to accomplish specific end user functions, i.e., accounts payable and accounts receivable.

11. In conjunction with the development of SOS-I, plaintiff wrote the SOS-I Technical Reference Manual, which contains a detailed set of instructions with respect to the use and internal structure of the SOS—I operating system.

12. The SOS-I operating system and the SOS-I Technical Reference Manual each contain material wholly original and constitute copyrightable subject matter under the Copyright Act.

13. Plaintiff has duly complied with all statutory formalities of the copyright act with respect to both the SOS-I operating system and the SOS-I Technical Reference Manual.

14. Plaintiff published the SOS-I operating system object code on or about June, 1983 by incorporating it in a silicon computer chip known as a ROM (Read Only Memory) contained in the Supersystem-I's central processing unit. Plaintiff published portions of the SOS-I operating system as a part of the SOS-I Technical Reference Manual.

15. Plaintiff has complied with the requirements of 17 U.S.C. § 601 in that all copies of the SOS-I Technical Reference Manual have been manufactured entirely in the U.S. by Printing Corp. located at Lexington Avenue, New York, New York.

16. All copies of the SOS-I operating system incorporated in ROM chips contain appropriate copyright notices, stamped on the outside of each ROM chip and printed as the first line of code when the program is displayed on a screen or printed via a printer. All portions of the SOS-I Operating System listed in the SOS-I Technical Reference Manual contain appropriate copyright notices on the first line of code. All copies of System X Technical Reference Manual contain appropriate copyright notice on the first page.

17. Annexed to this Complaint as Exhibit 1 are true copies of plaintiff's copyright registration for the SOS-I Operating Systems and Technical Reference Manual to which plaintiff is and always has been the sole proprietor of all rights, title and interest therein.

18. Defendant manufactures and markets a computer system, known as New PC, which it claims is "compatible" with the plaintiff's Supersystem-I. Compatible in this context means that applications programs written for the Supersystem-I will run on defendant's New PC.

19. To facilitate the compatibility of New PC with the Supersystem-I, defendant has copied in whole or in part the SOS-I Operating System and has incorporated it in defendant's New PC.

20. By copying, distributing and marketing the SOS-I Operating System software the defendants have infringed and continue to infringe on plaintiff's exclusive copyright in the copyrighted SOS-I computer program.

21. Plaintiff has invested considerable time, effort and expense in the development, testing and marketing of the SOS-I operating system.

22. Plaintiff has notified defendant that it has infringed plaintiff's copyright in the SOS-I operating system. Notwithstanding such notice, defendant continues to wilfully infringe on plaintiff's copyright.

23. As a result of the aforesaid infringement, plaintiff has suffered and will continue to suffer substantial injury, loss and damages to its ownership rights in the copyrighted SOS-I program. Defendants have unlawfully derived and will continue to derive income and profits from the infringing acts thereby unjustly enriching themselves to the detriment of the plaintiff.

WHEREFORE, plaintiff demands judgment against defendants as follows:

1. Permanently enjoining defendants, their officers, agents, employees, and those persons in active concert or participation with each or any of them from directly or indirectly infringing plaintiff's copyrights in the programs in any manner or directly or indirectly exploiting plaintiff's confidential or proprietary information.

2. Awarding plaintiff such damages in an amount not less than \$500,000 for losses suffered as a result of defendants' infringement of its copyright.

3. Directing defendants to account for all revenue derived by defendants from their infringement of plaintiff's copyrights and directing that defendants pay over to plaintiff the amount of such revenues.

4. Ordering defendants to deliver for impoundment during the pendency of this action all copies of the New PC Operating System (in any form or medium) in their possession or under their control and to

deliver for destruction all infringing copies and all plates, molds, devices or other matter for making such infringing copies.

5. Awarding plaintiffs punitive damages including reasonable attorneys fees as a result of defendants' wilfull and tortious conduct.

Together with the cost and disbursement of this action and such other and further relief as this Court may deem just and proper.

Dated: New York, New York

January 1, 1985

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