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12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 Nintendo of America Inc., a Washington
15 Corporation,

16 *Plaintiff,*

17 v.

18 Jacob Mathias and Mathias Designs,
19 L.L.C., d/b/a www.LoveROMs.com and
20 www.LoveRETRO.co,

21 *Defendants.*

Case No.

COMPLAINT

**(Copyright Infringement; Trademark
Infringement; and Unfair Competition)**

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24 **PRELIMINARY STATEMENT**

25 Plaintiff Nintendo of America Inc. (“NOA” or “Nintendo”), by and through its
26 counsel, on personal knowledge as to its own actions and on information and belief as to
27 the actions, capabilities, statuses, and motivations of others, hereby alleges as follows:
28

1 1. Defendants Jacob Mathias and Mathias Designs, L.L.C. own and operate
2 two interrelated websites—www.LoveROMs.com (the “LoveROMs website”) and
3 www.LoveRETRO.co (the “LoveRETRO website”)—that are built almost entirely on the
4 brazen and mass-scale infringement of Nintendo’s intellectual property rights. The
5 LoveROMs and LoveRETRO websites are among the most open and notorious online
6 hubs for pirated video games. Through the LoveROMs and LoveRETRO websites,
7 Defendants reproduce, distribute, publicly perform and display a staggering number of
8 unauthorized copies of Nintendo’s video games, all without Nintendo’s permission. This
9 includes thousands of games developed for nearly every video game system Nintendo has
10 ever produced.

11 2. In addition to Nintendo’s video games, Defendants reproduce, distribute,
12 and publicly perform a vast library of Nintendo’s other copyrighted works on and
13 through the LoveROMs and LoveRETRO websites, including the proprietary BIOS
14 software for several of Nintendo’s video game systems and thousands of Nintendo’s
15 copyrighted musical works and audio recordings. Defendants also make extensive use of
16 Nintendo’s registered trademarks, including the Nintendo logo and the most recognizable
17 Nintendo video game characters, to encourage visitors to download and play
18 unauthorized copies of Nintendo’s copyrighted works.

19 3. Defendants have conducted their online piracy business in willful disregard
20 of Nintendo’s rights. Defendants are not casual gamers but are instead sophisticated
21 parties with extensive knowledge of Nintendo’s intellectual property and the video game
22 industry more generally. Defendants know or should know that Nintendo owns the
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1 copyrights and registered trademarks for thousands of video games, related copyrighted
2 works, and images that appear on Defendants' illicit websites. Defendants know or
3 should know that they are trafficking in pirated copies and making unauthorized use of
4 Nintendo's video games, other copyrighted works, and registered trademarks. And they
5 know or should know that Nintendo continues to produce, market, and sell many of the
6 video games that appear on the LoveROMs and LoveRETRO websites. Yet Defendants
7 continue willfully to infringe Nintendo's highly valuable intellectual property rights and,
8 in the process, to enrich themselves through, among other things, donation requests and
9 the sale of advertising space on the LoveROMs and LoveRETRO websites.

10
11
12 4. Defendants' unauthorized reproduction, distribution, display, and
13 performance of Nintendo's copyrighted video games and related works and their
14 unauthorized use of Nintendo's registered trademarks has damaged Nintendo, infringes
15 and threatens irreparable injury to Nintendo's intellectual property rights, and violates the
16 Copyright Act, 17 U.S.C. § 101 *et seq.*, and the Lanham Act, 15 U.S.C. § 1051 *et seq.*
17 Defendants' willful violations of these statutes entitle Nintendo to the relief sought
18 herein.

19 20 21 **THE PARTIES**

22
23 5. Nintendo of America Inc. ("NOA") is a Washington corporation
24 headquartered in Redmond, Washington. Nintendo of America Inc. is a wholly-owned
25 subsidiary of Nintendo Co. Ltd. ("NCL"), a Japanese company headquartered in Kyoto,
26 Japan (collectively, "Nintendo"). NCL develops and manufactures electronic video game
27 systems, video games, accessories, and other copyrighted works. NOA is responsible for
28

1 the marketing and sale of Nintendo products in the United States and elsewhere in the
2 Western Hemisphere. NOA is also responsible for enforcing Nintendo's intellectual
3 property rights in the Western Hemisphere.
4

5 6. Defendant Jacob Mathias is a natural person who resides in this District.
6 Defendant Jacob Mathias owns or controls the websites located at www.LoveROMs.com
7 and www.LoveRETRO.co, as well as several other domain names that redirect visitors to
8 www.LoveROMs.com, including www.Roms4Droid.com.
9

10 7. Defendant Mathias Designs, L.L.C. is an Arizona limited liability company
11 that was first incorporated on February 17, 2016. On their LoveROMS and LoveRETRO
12 websites, Defendants describe Mathias Designs, L.L.C. as "DBA LoveROMs" and "dba
13 LoveRetro.co."
14

15 8. The articles of organization for Defendant Mathias Designs, L.L.C. list
16 Defendant Jacob Mathias as the company's sole agent, sole manager, and sole member.
17 Defendant Mathias Designs, L.L.C. is simply the alter ego, instrument, or mere business
18 conduit of Defendant Jacob Mathias, who makes inconsistent use of the corporate form in
19 an effort to shield himself from liability for his extensive and flagrant piracy of
20 copyrighted works and infringing use of registered trademarks.
21
22

23 9. Defendants reproduce unauthorized copies of Nintendo video games and
24 related copyrighted works, distribute those copies, perform and display unauthorized
25 copies of Nintendo video games, and make extensive use of Nintendo's registered
26 trademarks for their own profit.
27
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JURISDICTION AND VENUE

1
2 10. This Court has subject matter jurisdiction over Nintendo’s claims under 28
3 U.S.C. §§ 1331 (federal question jurisdiction) and 1338(a) (trademark and copyright).

4
5 11. This Court has personal jurisdiction over the Defendants because the
6 Defendants reside and do business in this District.

7
8 12. This District is the proper venue for Nintendo’s claims under 28 U.S.C. §§
9 1391(b) and 1400(a) because a substantial part of the infringing acts occurred in this
10 District and because the Defendants reside and may be found in this District.

11 **FACTS COMMON TO ALL CLAIMS**

12 **NINTENDO’S INTELLECTUAL PROPERTY AND PRODUCTS**

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14 13. “Nintendo” is a famous brand throughout the United States and the world,
15 known by consumers of all ages for its fun and innovative video games, video game
16 systems, and its beloved video game characters.

17
18 14. For decades, Nintendo has been a leading developer and producer of video
19 games and video game systems. In 1985, Nintendo released the Nintendo Entertainment
20 System or “NES,” which introduced millions of consumers to now-classic games like
21 Super Mario Bros., Super Mario Bros. 3, The Legend of Zelda, and Donkey Kong. The
22 NES console also introduced millions of consumers to some of Nintendo’s most beloved
23 characters, including Mario and Luigi, Link, and Samus Aran. Over the ensuing decades,
24 Nintendo followed up the success of the NES console with the release of such
25 groundbreaking home video game consoles as Super Nintendo Entertainment System (or
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1 “SNES”), Nintendo 64 (or “N64”), Nintendo GameCube, Wii, Wii U, and Nintendo
2 Switch.

3 15. In addition to its highly successful home video game consoles, Nintendo
4 has long been a market leader in handheld video game systems. In 1989, Nintendo
5 released Game Boy, the first portable, handheld video game system to use
6 interchangeable video game cartridges. The Game Boy family of consoles are one of the
7 most successful video game systems ever released and introduced consumers to landmark
8 games like Tetris and Pokémon. Nintendo has continued to lead the video game industry
9 in the design and manufacture of handheld video game systems and games developed for
10 those systems, including Game Boy Color, Game Boy Advance, Nintendo DS, and
11 Nintendo 3DS.
12

13 16. Nintendo has built its popularity and market success through substantial
14 creative and financial investment in the development of new video games, products,
15 intellectual property, as well as in marketing. Nintendo has garnered tremendous
16 consumer awareness and goodwill through its commitment to developing and delivering
17 innovative, fun, and memorable video game systems and games. Nintendo’s video game
18 systems and games are enjoyed by tens of millions of consumers in the United States and
19 abroad.
20

21 17. Nintendo continues to produce, market, and sell many of the video games
22 originally developed for its earlier video game systems, including NES and SNES. In
23 2016, Nintendo released NES Classic Edition, a miniaturized version of the NES console
24 that features pre-installed copies of many of the most memorable games designed for
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1 NES. In 2017, Nintendo released SNES Classic Edition, a miniaturized version of SNES
2 which also features pre-installed copies of many iconic games designed for SNES.
3 Nintendo continues to produce, market, and sell NES Classic Edition and SNES Classic
4 Edition.
5

6 18. Nintendo also continues to produce, market, and sell many of the video
7 games it originally developed for earlier systems digitally through official Nintendo
8 online platforms. Through Nintendo's official online platforms, the Virtual Console and
9 the Nintendo eShop, consumers with a Nintendo Switch, Nintendo 3DS or 2DS handheld
10 or Wii U system can purchase and play hundreds of games originally developed for
11 Nintendo systems such as the NES, the SNES, and Game Boy Advance systems.
12

13
14 19. Nintendo has made substantial investments in the development, marketing,
15 and promotion of its innovative products and services. Nintendo has acquired intellectual
16 property and authorizes licensees who create and publish many popular video games
17 specifically and exclusively for play on Nintendo's video game systems. "Nintendo"
18 video games can take years and millions of dollars to develop.
19

20 20. NOA holds registered copyrights and registered trademarks for various
21 Nintendo video games, video game systems, commercial packaging and video game
22 characters, including without limitation those listed in Exhibit A (copyrights) and Exhibit
23 B (trademarks) hereto.
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**ONLINE PIRACY AND NINTENDO’S EFFORTS TO
PROTECT ITS INTELLECTUAL PROPERTY RIGHTS**

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3 21. The popularity of Nintendo’s video games and video game systems has
4 made Nintendo the target of intellectual property pirates, who benefit from Nintendo’s
5 investments and innovation by making and distributing unauthorized copies of Nintendo
6 video games.
7

8 22. In the world of video game piracy, unauthorized copies of video games
9 often take the form of read-only memory files or read-only memory images, commonly
10 referred to as “ROMs.” The name refers to the process of copying the software that
11 constitutes a video game from the read-only memory found in a game cartridge or disk.
12 These unauthorized copies—or “ROMs”—can be played on computers, phones, and
13 other devices through the use of an “emulator,” a piece of software designed to mimic the
14 functionality of a physical video game system like the NES console or Game Boy
15 systems.
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18 23. Illegal copying of video game software is an international problem.
19 Nintendo has taken many steps to halt the illegal copying, marketing, sale, and
20 distribution of Nintendo video games designed to be played on Nintendo video game
21 systems. For example, Nintendo employs technological protection measures and digital
22 rights management tools to prevent piracy and supports law enforcement authorities who
23 target Internet piracy around the world.
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26 24. Nintendo’s efforts have included registration of the intellectual property
27 rights in and to its video games systems and software in the United States and around the
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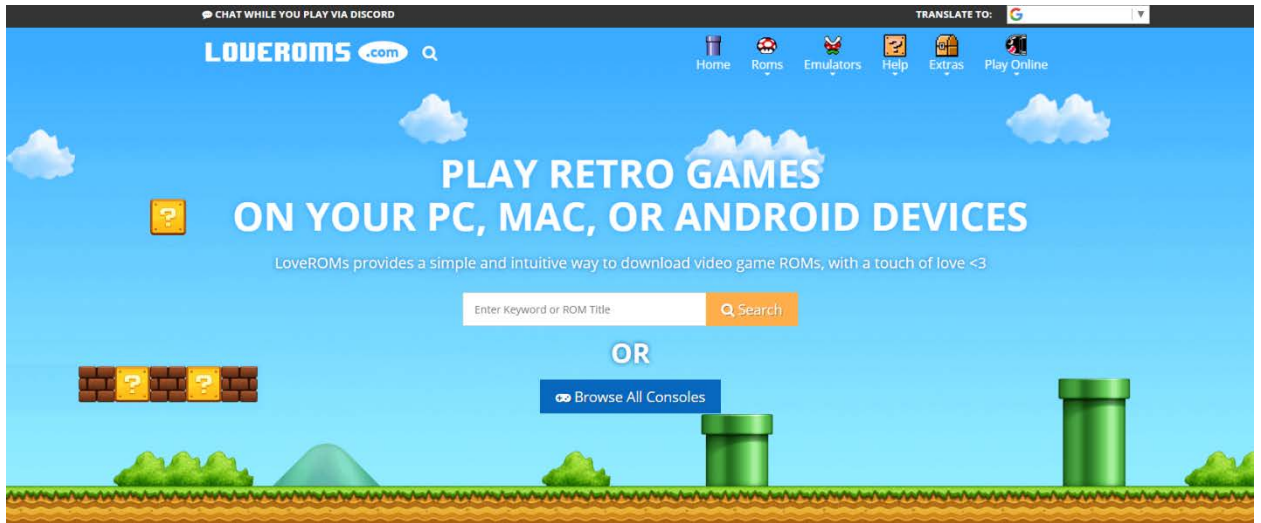
1 world. In addition, Nintendo protects and enforces its rights through legal actions
2 brought around the world to stop individuals and companies from trafficking in pirated
3 copies of its video games.
4

5 **DEFENDANTS' INFRINGING ACTIVITIES**

6 25. On February 2, 2010, Defendant Jacob Mathias posted a video on his
7 personal YouTube page titled "LoveROMs.com—Download ROMs For Your Android
8 Devices (Roms4Droid)." In the description of the video, Mathias announced that
9 www.ROMs4Droid.com, a website through which Mathias had been reproducing and
10 distributing unauthorized copies of video games, was "now LoveROMs."¹ The
11 description, which is still available online at
12 <https://www.youtube.com/watch?v=9WJFs2w8lyU>, instructs viewers on how to
13 download unauthorized copies of videogames from the LoveROMs website and how to
14 play those unauthorized copies on their cell phones. "If you need help getting the games
15 to work or anything at all," Mathias added, "please visit my site,
16 <https://www.loveroms.com!>"
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20 26. The homepage of Defendants' LoveROMs website invites visitors to the
21 site to "Play Retro Games On Your PC, Mac, Or Android Devices" and offers "a simple
22 and intuitive way to download video game ROMs," as follows:
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28 ¹ As of the date of this filing, the website www.Roms4Droid.com redirects to www.LoveROMs.com.



27. The LoveROMs website contains and offers to the public a vast library of unauthorized copies of video games, including hundreds of Nintendo video games originally designed for nearly every video game system Nintendo has ever produced. This includes Super Mario World, Mario Kart 64, Super Mario Bros 3, Super Mario All-Stars, and without limitation, the copyrighted works listed in Exhibit A.

28. Visitors to the LoveROMs website can use the search bar on the website's homepage to search for pirated games or browse through a catalog of pirated games organized by the system for which the games were originally developed:

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Console	Total ROMs	Total Views
MAME	33750	653,871
DOS	15012	215,253
ZX Spectrum	12907	895,525
Amstrad CPC	11232	958,095
Playstation	7703	9,055,630
Nintendo DS	6688	54,679,789
Playstation 2	6261	3,152,342
BBC Micro	6214	1,418,644
Atari 800	5493	1,417,562
Amiga 500	4275	1,859,489
Playstation Portable	3839	3,205,910
Super Nintendo	3753	81,197,255
Sharp X68000	3245	506,311
Nintendo	3191	14,976,039
Gameboy Advance	2672	112,325,661
Atari 2600	2549	1,241,401
Commodore 64	2482	80,530
Apple II	2352	467,398
MAME 037b11	2259	2,479,916
Sega Genesis	1939	4,634,874

19 29. Once visitors to the LoveROMs website select a particular game, they are
20 taken to a dedicated page for that game from which they can download an unauthorized
21 copy of the game or, in many cases, play the game online. These dedicated pages display
22 images of the video games' original "box art," many that include Nintendo's registered
23 copyrights for commercial packaging, and the graphic designs on the video games'
24 packaging, many of which include Nintendo's registered trademarks (for example,
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1 images of Mario or the Nintendo logo), including without limitation those listed in
 2 Exhibit B:

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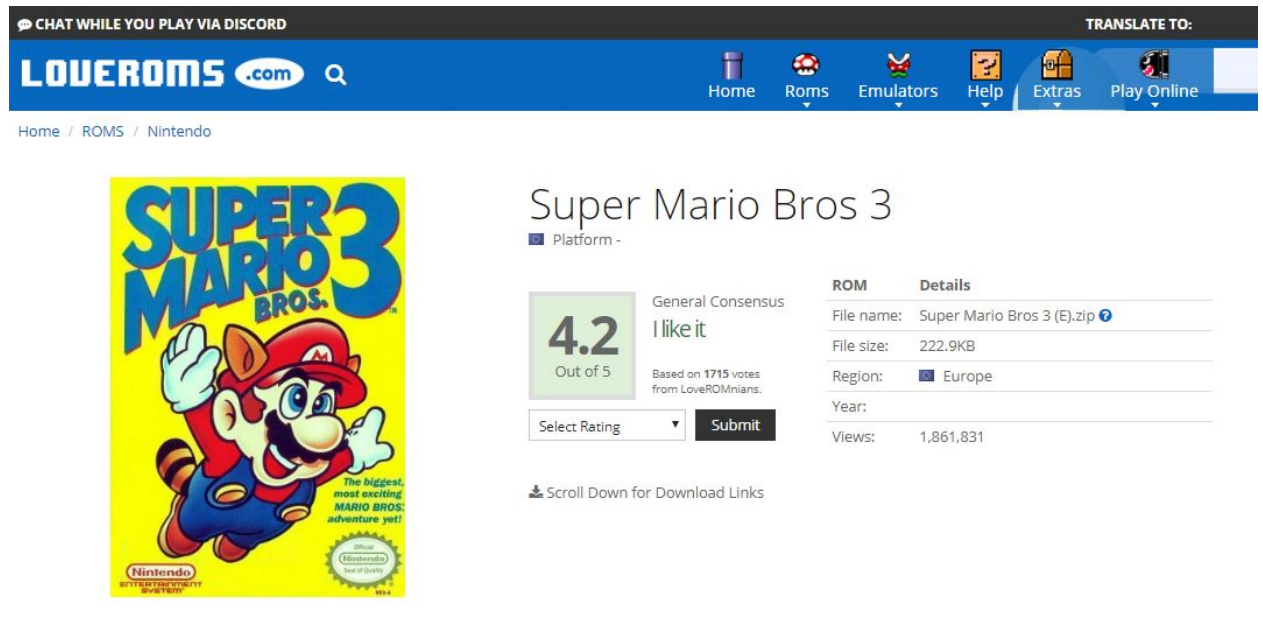
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The screenshot shows the LoveROMs website interface. At the top, there is a navigation bar with the site name 'LOVEROMS.com' and a search icon. Below the navigation bar, there are links for 'Home', 'Roms', 'Emulators', 'Help', 'Extras', and 'Play Online'. The main content area displays the game 'Super Mario Bros 3' with a yellow cover art featuring Mario. To the right of the cover art, there is a rating section showing a '4.2' rating out of 5, based on 1715 votes. Below the rating is a 'Submit' button. To the right of the rating is a table with the following details:

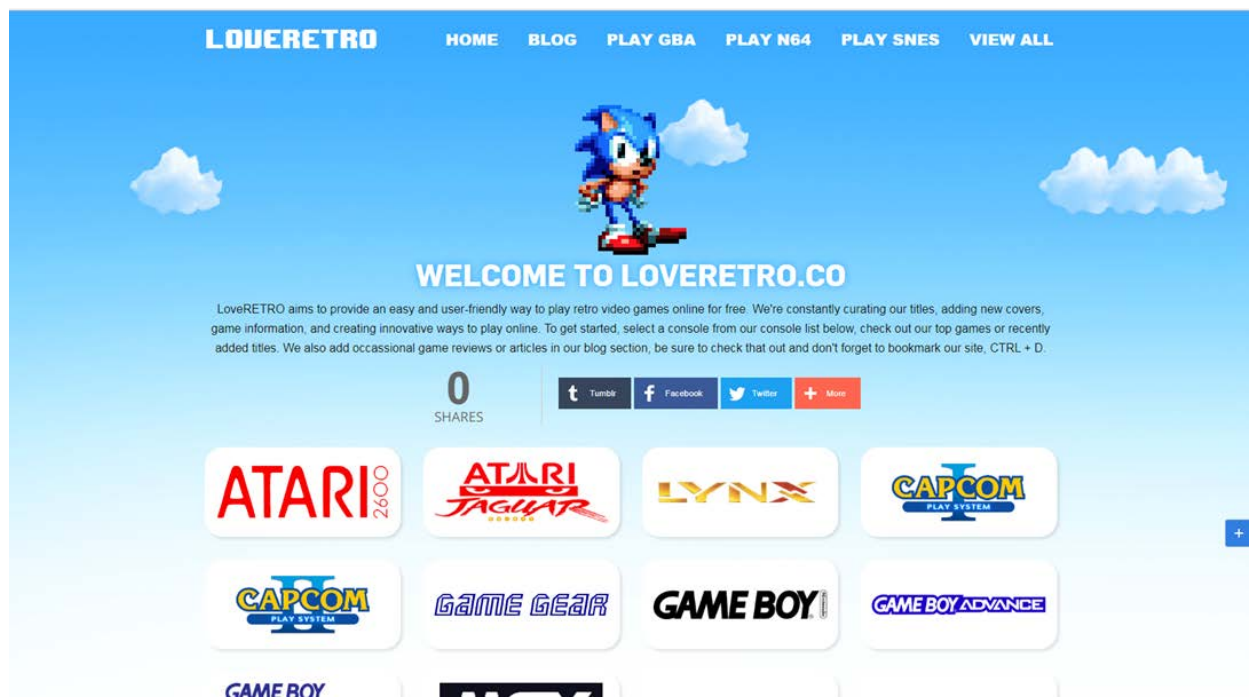
ROM	Details
File name:	Super Mario Bros 3 (E).zip
File size:	222.9KB
Region:	Europe
Year:	
Views:	1,861,831

Below the table, there is a link to 'Scroll Down for Download Links'.

14 30. The LoveROMs website includes a “Best 100” list of the most popular
 15 games on the site. The list includes information on each game, including the video game
 16 system for which it was developed and the number of times it has been downloaded from
 17 the LoveROMs website. As of the date of this filing, all 100 of the games on this list are
 18 video games developed for Nintendo’s video game systems, and many are games for
 19 which Nintendo owns copyrights and trademarks. Indeed, just the top 10 games on the
 20 website alone are works in which Nintendo is a copyright claimant and trademark owner,
 21 and these have collectively been downloaded from the LoveROMs website more than 60
 22 million times.

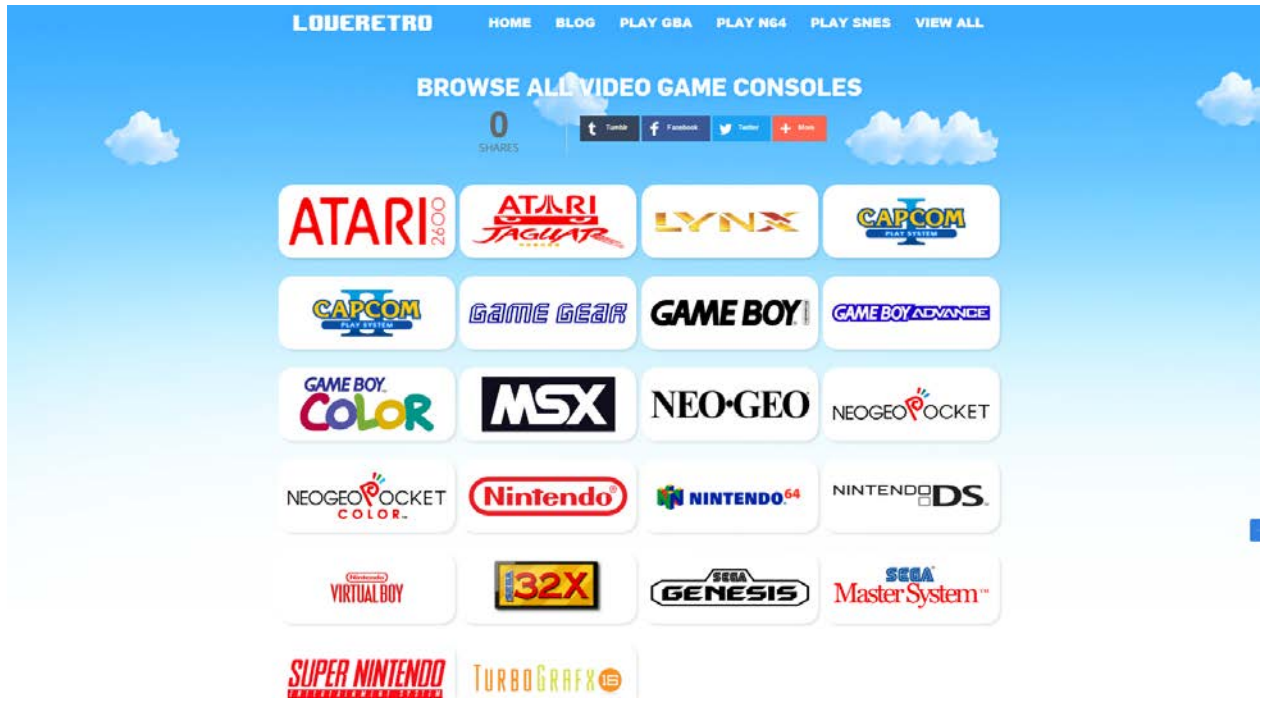
26 31. The LoveROMs website provides a prominent link to the LoveRETRO
 27 website. Like the LoveROMs website, Defendants’ LoveRETRO website also contains a
 28

1 vast library of Nintendo’s copyrighted video games that Defendants allow visitors to play
 2 on the website for free, without Nintendo’s permission. This includes thousands of
 3 Nintendo video games developed for the Game Boy, Game Boy Advance, Game Boy
 4 Color, NES, Nintendo 64, Nintendo DS, Nintendo Virtual Boy, and SNES systems. By
 5 Defendants’ own description, “LoveRETRO aims to provide an easy and user-friendly
 6 way to play retro video games online for free”:
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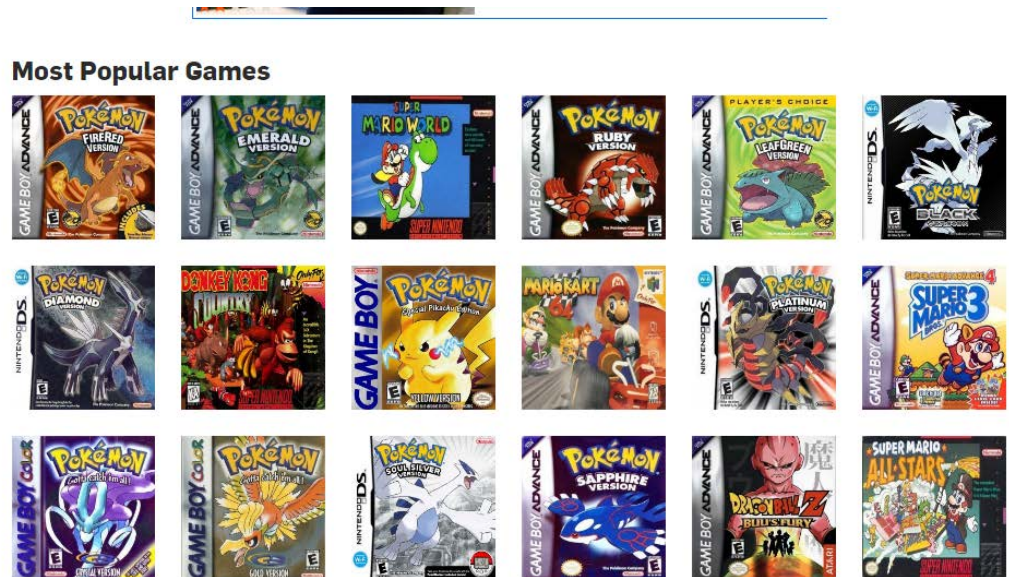


21 32. As with the LoveROMs website, users of the LoveRETRO website can
 22 search for pirated copies of particular games or browse Defendants’ online catalog of
 23 games organized by the particular game system for which they were developed:
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33. Defendants also encourage visitors to “check out our top games,” all of which are games designed for play on Nintendo’s game devices, and all but one of which are copyrighted works in which Nintendo is a claimant:



1 34. Once a user of the LoveRETRO website has selected a game, he or she is
2 presented with a view screen through which he or she can play the game online at the
3 LoveRETRO website via an emulator that Defendants provide:
4



20 35. Defendants' LoveROMs and LoveRETRO websites are rife with
21 unauthorized copies of Nintendo's registered trademarks, including, without limitation,
22 the following:
23





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8 Defendants' display of these and other of Nintendo's trademarked logos is without
9 Nintendo's authorization or consent, and it implies and confuses consumers into
10 believing that there is some sponsorship, affiliation, or endorsement by Nintendo.

11
12 36. Defendants are solely responsible for the contents of the LoveROMs and
13 LoveRETRO websites. In particular, Defendants uploaded and continue to upload and
14 maintain the unauthorized copies of Nintendo video games that they make available to
15 users on those websites. For example, on October 15, 2015, Defendants promoted the
16 availability of pirated copies of Nintendo's games with the following announcement to
17 the LoveROMs.com Facebook page: "The complete Nintendo DS Collection has been
18 uploaded, 5,000+ ROMs now readily available! Enjoy." More recently, on January 30,
19 2018, Defendants posted the following announcement to the LoveROMs.com Facebook
20 page: "Direct Nintendo Wii downloads coming soon! We're also adding some additional
21 titles. Stay tuned." Indeed, Defendants boast that they are "constantly curating our titles,
22 adding new covers, game information, and creating innovative ways to play online."
23
24
25

26 37. In addition to pirated copies of Nintendo's video games, Defendants also
27 reproduce and distribute unauthorized copies of other of Nintendo's copyrighted works
28

1 through the LoveROMs and LoveRETRO websites. This includes the copyrighted BIOS
2 files for the Gameboy Advance, Gameboy Color, and Nintendo DS systems.² Defendants
3 also make a vast library of unauthorized copies of Nintendo’s copyrighted musical works
4 available to download through the “Extras” section of the LoveROMs website.
5

6 38. As a direct result of Defendants’ infringement of Plaintiffs’ copyrights and
7 trademarks, Defendants’ websites have become enormously popular. The LoveROMs
8 website alone receives 17 million visitors each month. Such visitors are drawn to the
9 website by the widespread availability of free, unauthorized copies of Nintendo’s video
10 games and other highly valuable intellectual property. The resulting popularity of
11 Defendants’ LoveROMs and LoveRETRO websites has allowed Defendants to reap
12 substantial ill-gotten gains, including through donations and the sale of advertising on the
13 LoveROMs and LoveRETRO websites.
14
15

16 **CAUSES OF ACTION**

17 **COUNT ONE**

18 **COPYRIGHT INFRINGEMENT**
19 **(The Copyright Act, 17 U.S.C. §§ 106 *et seq.* and § 501)**

20
21 39. Nintendo incorporates by reference and re-alleges paragraphs 1–38.

22 40. NOA owns numerous registered copyrights related to Nintendo video
23 games, characters, BIOS firmware for Nintendo video game systems, Nintendo musical
24

25 _____
26 ² “BIOS” is an acronym for “Basic Input/Output System.” A BIOS file is a piece
27 of proprietary software stored on a memory chip in a video game system’s motherboard.
28 Many emulators used to play unauthorized copies of video games would not work
without the BIOS file of the video game system for which the game was originally
developed.

1 compositions and audio recordings. These include, without limitation, the copyrighted
2 works identified in Exhibit A. Nintendo has received Certificates of Copyright
3 Registration from the Register of Copyrights for each of the copyrighted works identified
4 in Exhibit A. These copyrights are in full force and effect and are enforceable by
5 Nintendo.
6

7 41. Through their LoveROMs and LoveRETRO websites, Defendants regularly
8 reproduce, distribute, publicly perform and display unauthorized copies of Nintendo
9 video games, commercial packaging, and other copyrighted works, including the
10 copyrighted works identified in Exhibit A, all without Nintendo's permission.
11

12 42. The foregoing acts of Defendants constitute direct infringement in violation
13 of Nintendo's exclusive rights in its copyrighted works under 17 U.S.C. § 106.
14

15 43. Defendants are also liable under the Copyright Act for inducing the
16 infringing acts of the users of the LoveROMs and LoveRETRO websites. Defendants
17 operate the LoveROMs and LoveRETRO websites with the object of promoting their use
18 to infringe Nintendo's copyrights.
19

20 44. Defendants are also liable under the Copyright Act as contributory
21 infringers for the infringing acts of users of the LoveROMs and LoveRETRO websites.
22 Defendants have actual and constructive knowledge of the infringing activity of users of
23 LoveROMs and LoveRETRO websites and knowingly cause or otherwise materially
24 contribute to those infringements of Nintendo's copyrights.
25
26

27 45. Defendants are also vicariously liable for the infringing acts of users of the
28 LoveROMs and LoveRETRO websites. Defendants have the right and ability to

1 supervise and control the infringing activities that occur through the use of their websites,
2 and at all relevant times have derived a direct financial benefit from the infringement of
3 Nintendo's copyrights. Defendants are therefore vicariously liable for the unauthorized
4 reproduction, distribution, public performance, and display of Nintendo's copyrighted
5 works, including without limitation the copyrighted works listed in Exhibit A hereto.
6

7 46. The foregoing acts of infringement by Defendants have been willful,
8 intentional, and purposeful, or in reckless disregard of Nintendo's rights.
9

10 47. As a direct and proximate result of Defendants' infringement of Nintendo's
11 exclusive rights under Section 106 of the Copyright Act, Nintendo is entitled to damages
12 as well as Defendants' profits under 17 U.S.C. § 504(b).
13

14 48. Alternatively, and at Nintendo's election, Nintendo is entitled to the
15 maximum statutory damages available under 17 U.S.C. § 504(c) in the amount of
16 \$150,000 for the infringement of each Nintendo copyrighted work or for such other
17 amount as may be proper under 17 U.S.C. § 504(c).
18

19 49. Nintendo is entitled to its attorneys' fees and full costs pursuant to 17
20 U.S.C. § 505.
21

22 50. Defendants' conduct is causing, and unless enjoined and restrained by this
23 Court will continue to cause, Nintendo great and irreparable injury that cannot be fully
24 compensated for or measured in money. Nintendo has no adequate remedy at law.
25 Under 17 U.S.C. § 502, Nintendo is entitled to a preliminary and permanent injunction
26 prohibiting any further infringement of NOA's exclusive rights under the Copyright Act.
27
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COUNT TWO

**TRADEMARK INFRINGEMENT
(The Lanham Act, 15 U.S.C. §§ 1114 and 1125(a))**

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4 51. Nintendo incorporates by reference and re-alleges paragraphs 1-38.

5 52. Nintendo owns federal registrations for the trademarks identified in Exhibit
6 B hereto. These registrations are in full force and effect and are enforceable.
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8 53. In connection with Defendants' unauthorized reproduction, distribution,
9 public performance, and display of Nintendo's copyrighted works on the LoveROMs and
10 LoveRETRO websites, Defendants use Nintendo's federally registered trademarks
11 throughout these websites, including without limitation the trademarks identified in
12 Exhibit B, to promote their business and to encourage visitors to download or play
13 unauthorized copies of Nintendo's copyrighted works, thereby infringing Nintendo's
14 registered trademarks.
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16

17 54. Defendants' actions constitute use in interstate commerce of a false
18 designation of origin, false or misleading description of fact, or false or misleading
19 representation of fact that is likely to cause confusion or mistake, or to deceive as to the
20 affiliation, connection, or association of the goods and services with Nintendo, or as to
21 the origin, sponsorship, or approval of the goods and services provided by Defendants in
22 violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).
23
24

25 55. Defendants' actions also constitute the use in interstate commerce of a
26 reproduction, counterfeit, copy, or colorable imitation of a registered trademark of
27 Nintendo in connection with the sale, offering for sale, distribution, or advertising of
28

1 goods or services on or in connection with which such use is likely to cause confusion or
2 mistake, or to deceive, in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

3 56. Defendants knew or should have known of Nintendo's rights, and
4 Defendants' infringement has been knowing, willful, and deliberate, making this an
5 exceptional case within the meaning of 15 U.S.C. § 1117.
6

7 57. The infringing acts alleged above have a foreseeable effect on U.S.
8 commerce.
9

10 58. Nintendo has been and continues to be damaged by Defendants' wrongful
11 acts in a manner that cannot be fully measured or compensated in economic terms, and
12 Nintendo has no adequate remedy at law. Defendants' acts have damaged, and threaten
13 to continue to damage, Nintendo's reputation and goodwill.
14

15 59. Defendants' infringement will continue unless enjoined by the Court.

16 60. The interests of and links to U.S. commerce are strong in relation to those
17 of other nations given that, among other things, enforcement of Nintendo's rights under
18 the Lanham Act does not conflict with, but rather supports, the interests of other countries
19 in enforcing Nintendo's similar rights under the laws of those countries, and the
20 significance of Defendant's illegal acts is greatest in the United States because NOA is a
21 U.S. corporation with a general sales territory in the Western Hemisphere, including the
22 United States.
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COUNT THREE

**UNFAIR COMPETITION
(Arizona Common Law)**

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4 61. Nintendo incorporates by reference and re-alleges paragraphs 1–38.

5 62. Defendants’ conduct constitutes unfair competition that is contrary to
6 honest practice in commercial matters under Arizona common law. Specifically,
7 Defendants have traded on Nintendo’s reputation for quality and integrity in order to pass
8 off their unauthorized copies of Nintendo video games and other copyrighted works to
9 consumers. By advertising these copies as genuine Nintendo products, Defendants have
10 actively misled consumers about the true source of these copies.
11

12
13 63. Nintendo has suffered injuries as a direct and proximate result of
14 Defendants’ unfair competitive activities, and Nintendo is therefore entitled to damages.
15

16 64. Because Defendants have acted in willful disregard of Nintendo’s rights,
17 Nintendo is entitled to punitive damages for Defendants’ unfair competitive activities.
18

19 65. Defendants’ unfair competitive activities and willful disregard of
20 Nintendo’s rights continue to cause Nintendo great and irreparable injury that cannot be
21 fully compensated for or measured in money. Unless enjoined and restrained by this
22 Court, Defendants will continue to cause Nintendo great and irreparable injury. Nintendo
23 is entitled to a preliminary and permanent injunction prohibiting Defendants from
24 unfairly competing with Nintendo.
25

26 **PRAYER FOR RELIEF**

27 Nintendo seeks the following relief:
28

1 1. An award of compensatory damages, including consequential and
2 incidental damages, in an amount to be proved at trial.

3 2. An award of statutory damages as allowed by law, in an amount up to
4 \$150,000 for the infringement of each Nintendo copyrighted work and up to \$2,000,000
5 for the infringement of each Nintendo trademark.

6 3. An award of enhanced damages or profits, whichever is greater, under
7 Section 35 of the Lanham Act, 15 U.S.C. § 1117, and as otherwise provided by law.
8

9 4. An award of attorneys' fees and costs.

10 5. An award of pre-judgment and post-judgment interest at the maximum rate
11 allowed by law.
12

13 6. An accounting and an award to Nintendo of Defendants' profits, gains, or
14 unjust enrichment in an amount to be proven at trial.
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16 7. An accounting of all Defendants' receipts and disbursements, profit and
17 loss statements, advertising revenue, donations and cryptocurrency revenue and other
18 financial materials, statements, and books relating to the operation of the LoveROMs and
19 LoveRETRO websites and Defendants' reproduction, distribution, public performance
20 and display of Nintendo's copyrighted works thereon.
21

22 8. A preliminary and permanent injunction under 17 U.S.C. §§ 1203 and 502
23 and 15 U.S.C. § 1116, enjoining Defendants and their agents, servants, and employees,
24 and all those in active concert or participation with Defendants, from:
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1 a. copying, distributing, selling, performing, displaying, playing, or
2 otherwise using any unauthorized copy of a Nintendo copyrighted work, or any
3 derivative thereof, including those works identified in Exhibit A;

4 b. using, inducing, or enabling others to use any unauthorized
5 reproduction or copy of Nintendo's copyrighted works, including the works
6 identified in Exhibit A;

7 c. constructing, operating, selling, or otherwise providing any product,
8 device, website, or service that contributes to or induces the reproduction,
9 distribution, performance, display, or other use of Nintendo's copyrighted works,
10 including the works identified in Exhibit A;

11 d. using, or inducing or enabling others to use, any reproduction,
12 counterfeit, copy, or colorable imitation of Nintendo's trademarks, including those
13 trademarks identified in Exhibit B, in any manner in connection with the
14 manufacture, printing, distribution, advertising, offering for sale or sale of any
15 goods or services, including the use of Nintendo's trademarks in connection with a
16 website;

17 e. using, or inducing or enabling others to use, Nintendo's trademarks,
18 including those identified in Exhibit B, or any reproduction, counterfeit, copy, or
19 colorable imitation of said marks in any manner likely to cause others falsely to
20 believe that Defendants' products or services are connected with Nintendo or
21 legitimate Nintendo products or services bearing Nintendo's trademarks when
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1 they are not, including the use of Nintendo's trademarks in connection with a
2 website;

3 f. destroying, transferring, altering, moving, returning, concealing, or
4 in any manner secreting any and all unauthorized copies of Nintendo's
5 copyrighted works and any and all documents and records, including without
6 limitation computer tapes, computer disks, business records, e-mails, social media
7 accounts, social media posts, supplier names and addresses, books of accounts,
8 receipts, and other documentation relating or referring in any way to the
9 distribution, provision, use, or otherwise trafficking in unauthorized copies of
10 Nintendo's copyrighted works; and

11 g. unfairly competing with Nintendo.

12 9. Preliminary and permanent injunctive relief, such as may later be requested
13 before or at trial, requiring Defendants and all persons or entities in active concert or
14 participation with Defendants, immediately to:

15 a. identify every one of the Defendants' suppliers and sources of
16 unauthorized copies of Nintendo's copyrighted works; and

17 b. take steps to ensure that all unauthorized copies of Nintendo's
18 copyrighted works in Defendants' possession, custody, or control or that are in
19 shipment to Defendants are immediately seized, inspected, and delivered into
20 Nintendo's possession.

21 10. An Order pursuant to 17 U.S.C. §§ 1203 and 503 and 15 U.S.C. § 1116
22 providing for the seizure, impoundment, and destruction of all unauthorized copies of
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1 Nintendo's copyrighted works in Defendants' custody, possession or control.

2 11. An Order requiring Defendants to file with the Court and serve upon
3 Nintendo within ten (10) days after the issuance of any injunction a written report, under
4 oath, setting forth in detail the manner and form in which Defendants have complied with
5 the injunction.
6

7 12. An Order transferring to Nintendo the domain names
8 www.LoveROMS.com, www.LoveRETRO.co, www.Roms4Droid.com, and any other
9 domain names in Defendants' possession, custody, or control that redirect to these sites
10 or that are in any way connected to the unauthorized reproduction, distribution, public
11 performance, display, or other use of Nintendo's copyright works.
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13
14 13. Such other relief as the Court deems just and proper.

15 RESPECTFULLY SUBMITTED this 19th day of July, 2018.

16 **GALBUT & GALBUT, P.C.**

17
18 By: /s/ Martin R. Galbut
19 Martin R. Galbut, Esq.
20 Michaile J. Berg, Esq.

21 **JENNER & BLOCK LLP**

22
23 By: /s/ Kenneth L. Doroshov
24 Kenneth L. Doroshov, Esq.
25 Jonathan A. Langlinais, Esq.
26
27
28

NOTICE OF ELECTRONIC FILING

I hereby certify that on July 19, 2018, I electronically filed the foregoing with the Clerk of Court for filing and uploading to the CM/ECF system which will send notification of such filing to all parties of record.

/s/ N. Sunshine Nye

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