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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NINTENDO OF AMERICA, INC.,

Plaintiff,

v.

DOES 1-20, d/b/a, ANXCHIP.COM,
AXIOGAME.COM, FLASHCARDA.COM,
MOD3DSCARDS, COM, NX-CARD.COM,
SXFLASHCARD.COM, TXSWITCH.COM,
and USACHIPSS.COM,

Defendants.

NO.

COMPLAINT

JURY DEMAND

PRELIMINARY STATEMENT

Plaintiff Nintendo of America Inc., by and through its counsel, on personal knowledge as to its own actions and on information and belief as to the actions, capabilities, and motivations of others, hereby alleges as follows:

1. Nintendo of America Inc.—along with its parent, Nintendo Co., Ltd., collectively referred to as “Nintendo”—develops and distributes the Nintendo Switch, one of the most popular video game consoles of all time, as well as the proprietary and copyrighted software that serves as Nintendo Switch’s operating system. Nintendo also makes award-winning video

1 games that can be played only on the Nintendo Switch. To protect its intellectual property
2
3 against video game piracy, and to ensure that only authorized and licensed Nintendo Switch
4
5 games can be played on the Nintendo Switch, Nintendo designed the Nintendo Switch with
6
7 sophisticated security features meant to prevent unauthorized operating systems from being used
8
9 on the Nintendo Switch, and to prevent pirated video games from being playable on the Nintendo
10
11 Switch.

12
13 2. Defendants Does 1–20 operate websites (the “Websites”)—including those with
14
15 the names “ANXCHIP.COM,” “TXSWITCH.COM,” and “USACHIPSS.COM”—through
16
17 which they offer to the public devices, the sole purpose of which is to hack the Nintendo Switch
18
19 video game console in order to allow people to play pirated video games.
20

21 3. Specifically, Defendants’ Websites sell products from an anonymous group of
22
23 hackers called “Team Xecuter.” Team Xecuter unlawfully designs and manufactures an
24
25 unauthorized operating system (“OS”) called the “SX OS,” and accompanying piracy tools that
26
27 install it (the “Circumvention Devices”). The Circumvention Devices—offered, distributed, and
28
29 trafficked by Defendants—strip away or circumvent technological protection measures (the
30
31 “Technological Measures”) that Nintendo put into place to protect its invaluable copyrighted
32
33 software and video games from unauthorized access and copying. The sole purpose of the
34
35 Circumvention Devices and the SX OS is to hijack the Nintendo Switch by circumventing its
36
37 Technological Measures, thereby allowing the Nintendo Switch to be used for massive
38
39 intellectual property theft and infringement.
40

41 4. Once this circumvention has occurred, the SX OS can run on the Nintendo
42
43 Switch, modifying the authentic, authorized Nintendo Switch operating system, thereby allowing
44
45 users to bypass the Technological Measures to obtain and play virtually any pirated game made

1 for the Nintendo Switch, all without authorization or paying a dime to Nintendo or to any of the
2
3 large number of authorized game publishers making games for Nintendo Switch. For example,
4
5 with the SX OS running, users can find pirated Nintendo Switch games online, transfer
6
7 unauthorized copies of Nintendo Switch games to a memory card, insert that card into the
8
9 Nintendo Switch, and play those infringing games on the hacked Nintendo Switch. If users
10
11 already own a *lawful*, properly purchased copy of a Nintendo Switch game, they can use the SX
12
13 OS to turn that lawful copy into an *unlawful* copy without technological protection measures,
14
15 which then allows those users to share additional unauthorized copies with more users also using
16
17 the SX OS on the Nintendo Switch.

18
19 5. Some of the Websites also offer for sale to the public flash memory cards
20
21 preloaded with pirated games, including pirated versions of iconic games in which Nintendo
22
23 owns or exclusively controls copyrights.

24
25 6. The sale and distribution of such pirated Nintendo Switch games cause direct
26
27 harm to, and financial loss for, Nintendo.

28
29 7. The main Circumvention Device that has been sold by Defendants to date is
30
31 called the “SX Pro.” Released in May 2018, the SX Pro is a small piece of hardware (or
32
33 “dongle”) that can be inserted into the Nintendo Switch. Once the dongle is inserted into the
34
35 Nintendo Switch console, the console can operate SX OS (which the user inserts with a separate
36
37 memory card), thereby allowing users to circumvent the Nintendo Switch’s Technological
38
39 Measures, and copy, share, distribute, and use pirated games.

40
41 8. In June 2018, after experiencing the tremendous harm caused by Defendants’
42
43 sales of the SX Pro and the SX Pro’s users hacking into Nintendo Switch consoles to play and
44
45 distribute pirated games, Nintendo released a technical update of the Nintendo Switch with

1 updated hardware to prevent the console from being hacked by the SX Pro. As such, the SX Pro
2
3 is not capable of hacking any post-June 2018 Nintendo Switch consoles. However,
4
5 notwithstanding that Nintendo was able to roll out its technical fix shortly after the release of the
6
7 SX Pro, there are approximately 20 million Nintendo Switch consoles that can still be
8
9 hacked by the SX Pro.

10
11 9. In late 2019, Nintendo released a new version of the Nintendo Switch with better
12
13 battery life, and introduced a new console, the Nintendo Switch Lite, which runs all the same
14
15 games as the Nintendo Switch, but is smaller and can only be played as a handheld device.¹
16
17 Since June 2018, Nintendo has sold over 35 million additional Nintendo Switch and Nintendo
18
19 Switch Lite consoles, which are not currently hackable by the SX Pro.

20
21 10. However, that is all about to change. On December 28, 2019, Team Xecuter
22
23 posted a video to their blog, TEAM-XECUTER.COM, showing the SX OS purportedly running
24
25 on a Nintendo Switch Lite, thus demonstrating that they have developed new Circumvention
26
27 Devices that can circumvent the Technological Measures on the Nintendo Switch Lite and on the
28
29 post-June 2018 Nintendo Switch consoles (which contain the same Technological Measures as
30
31 the Switch Lite). They captioned the video with a boast about their unlawful conduct: “We
32
33 rocked the Switch in 2019 and with the year soon over, here is a little teaser of one of the things
34
35 to come early 2020! Enjoy!”

36
37 11. Staying true to their year-end promise, on April 7, 2020, Team Xecuter
38
39 announced that preorders were available—through Defendants—for the two new Circumvention
40
41 Devices, which they call SX Core and SX Lite. SX Core is designed to hack the Nintendo
42

43
44 ¹ References to the Nintendo Switch herein include both the Nintendo Switch and the Nintendo Switch Lite,
45 unless a distinction is drawn in the text.

1 Switch consoles, including the millions of post-June 2018 Nintendo Switch consoles, as well as
2
3 those already hackable by the SX Pro; SX Lite is designed to hack the Nintendo Switch Lite.
4
5 Together, these new Circumvention Devices threaten to expose more than 35 million additional
6
7 Nintendo Switch consoles and Nintendo Switch Lite handheld devices to piracy. And, most
8
9 recently, on May 6, 2020, Team Xecuter announced on their blog that they had shipped samples
10
11 of the SX Core and the SX Lite to reviewers, and that “just for May [they] have already large
12
13 stocks ready to ship.”

14
15 12. But, as noted above, Team Xecuter does not sell or ship its devices directly to
16
17 customers. Rather, the devices are trafficked by “authorized resellers,” including Defendants.
18
19 Defendants not only sell the SX Pro, but also currently offer preorders for both the SX Core and
20
21 the SX Lite in the United States, accept and process payments for those preorders from U.S.
22
23 purchasers, and, upon information and belief, will send those devices, as they send the SX Pro,
24
25 into the United States and into this District.

26
27 13. This unlawful conduct is causing and will continue to cause Nintendo tremendous
28
29 harm. Nintendo’s copyrighted games are at the heart of its popularity. For instance, *The Legend*
30
31 *of Zelda: Breath of the Wild*, one of the first games released on the Nintendo Switch, has been
32
33 called a “masterpiece” and “one of the greatest video games of all time.” Fans across the country
34
35 and across the world return to Nintendo time and time again to purchase new games and to
36
37 reconnect with some of the world’s most iconic video game characters, such as Mario and
38
39 Donkey Kong.

40
41 14. As such, Nintendo’s business necessarily relies upon the authorized and licensed
42
43 sale of authentic copies of the video games, and upon the trust it has built over decades from
44
45

1 third-party game developers that the games they develop will be secure on Nintendo’s consoles
2
3 and will not be illegally distributed and played.
4

5 15. This is exactly why Nintendo has invested and continues to invest in its
6
7 Technological Measures to secure its consoles and copyrighted games, and to ensure users
8
9 cannot use its consoles to play pirated games.
10

11 16. Recognizing the threats faced by copyright owners like Nintendo in the age of
12
13 digital piracy, Congress enacted legislation specifically designed to encourage copyright owners
14
15 to employ technological measures to protect against piracy, and to punish those who traffic in
16
17 devices designed to circumvent those measures. In 1998, Congress passed the Anti-
18
19 Circumvention and Anti-Trafficking provisions of the Digital Millennium Copyright Act
20
21 (“DMCA”), making it illegal to circumvent—or traffic in devices that circumvent—
22
23 technological protections put into place to protect against unlawful access to and copying of
24
25 copyrighted works.
26

27 17. Defendants’ unlawful conduct falls squarely within these provisions. The
28
29 Circumvention Devices (the SX Pro, as well as SX Core and SX Lite) deactivate the
30
31 Technological Measures—which Nintendo put in place to protect its copyrighted works from
32
33 unlawful access and copying—thereby enabling, and exacerbating, widespread piracy.
34

35 18. Defendants’ importation, marketing, sale, offering to the public, and/or trafficking
36
37 in the Circumvention Devices has directly injured and damaged Nintendo, infringes and
38
39 threatens irreparable injury to Nintendo’s intellectual property rights, and violates the Anti-
40
41 Trafficking provisions of the DMCA, 17 U.S.C. § 1201 *et seq.*, entitling Nintendo to the relief
42
43 sought herein.
44
45

1 this District. Defendants purposefully direct their activities into this District and to residents of
2
3 this District, consummate online transactions with residents of this District, and thereby avail
4
5 themselves of the privilege of conducting business in this District. Nintendo’s claims arise out of
6
7 and relate to Defendants’ activities in this District.
8

9 26. Indeed, Nintendo has placed preorder purchases with each of the Defendants for
10
11 the SX Core and/or the SX Lite, all for shipment to addresses within this District. The
12
13 Defendants have accepted and confirmed the orders, including some completely processed
14
15 payments, and have manifested their intent to ship the products to purchasers in this District as
16
17 soon as they become available, which is imminent.
18

19 27. Below is a true and correct copy of an image, captured on April 17, 2020, of the
20
21 Defendants behind TXSWITCH.COM prominently boasting they sold a software license key for
22
23 Team Xecuter’s SX OS software to a purchaser in Washington State.
24



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32 28. Moreover, Defendants—who traffic in unlawful devices designed solely for
33
34 Nintendo products—targeted Washington State, the location of Nintendo of America Inc.’s
35
36 headquarters. Thus, Defendants expected or should have reasonably expected their acts to have
37
38 consequences and cause harm in Washington. On information and belief, Defendants are fully
39
40 aware that Nintendo is headquartered in this District (Nintendo’s location in Washington State is
41
42 publicly available online, *e.g.*, through Google and on Nintendo’s website), fully aware that their
43
44
45

1 Circumvention Devices and SX OS solely work on Nintendo’s consoles, and thus fully aware
2
3 that their actions harm Nintendo specifically in this District.
4

5 29. In addition, Defendants’ Websites are extremely interactive. They allow users to
6
7 browse for products, write reviews of products, contact customer service, add items to a cart,
8
9 purchase items, process payments, create accounts, and obtain pirating software license keys.
10
11 Some even offer warranty and refund policies. And consumers within Washington are regularly
12
13 visiting and using the Websites. Over the past year, Washington State residents have visited
14
15 Defendants’ Websites thousands of times, and viewed pages on the Websites over 30,000 times.
16

17 30. Alternatively, Defendants are subject to the jurisdiction of this Court pursuant to
18
19 Federal Rule of Civil Procedure 4(k)(2). Nintendo’s claims arise under U.S. federal law, and
20
21 Defendants have shipped or taken preorders for Circumvention Devices and memory cards with
22
23 pirated games into the United States, and target the United States more generally.
24

25 31. For example, below is a screenshot of the main page of Defendants’ website
26
27 ANXCHIP.COM, clearly stating they will ship from the U.S., including through the USPS.
28



1 32. Indeed, Nintendo has itself confirmed receipt in the United States of either a
2
3 Circumvention Device or a memory card with pirated games from each and every Defendant.
4

5 33. Further, some of the Defendants' Websites either state that they have U.S.
6
7 warehouses or list a U.S. location on their Websites. For example, MOD3DSCARDS.COM
8
9 prominently states in bold, red text at the top of every page "USA/EU warehouses."
10
11 USACHIPSS.COM states it is a "local USA reseller." SXFLASHCARD.COM has a banner
12
13 stating "Warehouse in USA," and TXSWITCH.COM similarly has an ad stating they have
14
15 "USA&DE Warehouse[s]."
16

17 34. On information and belief, Defendants are not domiciled in any state in the United
18
19 States. Defendants are not incorporated in any state in the United States and Defendants do not
20
21 appear to be located in any state in the United States.
22

23 35. On information and belief, Defendants have provided their offerings to hundreds
24
25 of thousands of U.S. consumers and they have derived substantial revenue from interstate and
26
27 international commerce in the U.S. in furtherance of their unlawful activities.
28

29 36. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), (c), and/or 28
30
31 U.S.C. § 1400(a) in that the Defendants are entities or individuals subject to personal jurisdiction
32
33 in this District.
34

35 **THE PARTIES**
36

37 37. Nintendo of America Inc. is a Washington corporation headquartered in
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39 Redmond, Washington. Nintendo of America Inc. is a wholly-owned subsidiary of Nintendo
40
41 Co., Ltd., a Japanese company headquartered in Kyoto, Japan (collectively, Nintendo of America
42
43 Inc. and Nintendo Co., Ltd. are referred to herein as "Nintendo"). Nintendo of America Inc. is
44
45 responsible for the marketing and sale of Nintendo's products, and the enforcement of

1 Nintendo's intellectual property rights, in the United States. Nintendo Co., Ltd. develops, and
2
3 Nintendo of America Inc. markets and distributes, electronic video game consoles, games, and
4
5 accessories.

6
7 38. Defendants Does 1–20 operate the Websites through which they offer to the
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9 public, sell, and otherwise traffic in the Circumvention Devices, the sole purpose of which is to
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11 hack Nintendo's video game consoles in order to allow people to play pirated games. Some of
12
13 the Websites also sell flash memory cards preloaded with pirated games, including games in
14
15 which Nintendo owns or exclusively controls copyrights. Defendants' acts facilitate
16
17 infringement of numerous of Nintendo's copyrighted works on a massive national and
18
19 international scale.

20
21 39. Defendants deliberately obscure their identities by using privacy tools to mask
22
23 their domain registration information, and otherwise failing to provide real physical addresses for
24
25 themselves or for their Websites. As such, Nintendo has been unable to ascertain the true
26
27 identities of any of the Defendants.

28
29 40. Defendants operate eight Websites: ANXCHIP.COM, AXIOGAME.COM,
30
31 FLASHCARDA.COM, MOD3DSCARDS.COM, NX-CARD.COM, SXFLASHCARD.COM,
32
33 TXSWITCH.COM, and USACHIPSS.COM. All of Defendants' Websites offer to the public
34
35 presales of Team Xecuter's SX Core and SX Lite. All of Defendants' Websites also sell Team
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37 Xecuter's SX Pro. Prices vary, but Defendants typically offer one Circumvention Device for
38
39 around USD\$40–\$50. Further, five of Defendants' Websites—ANXCHIP.COM,
40
41 FLASHCARDA.COM, MOD3DSCARDS.COM, NX-CARD.COM, and USACHIPSS.COM—
42
43 also sell memory cards full of pirated games, including games in which Nintendo owns or
44
45 exclusively controls or licenses the copyrights.

FACTUAL BACKGROUND

1
2
3 41. Nintendo is a company and brand famous throughout the United States and the
4
5 world, known by consumers of all ages for its video games, video game consoles, and its video
6
7 game characters.

8
9 42. For decades, Nintendo has been a leading developer and producer of video games
10
11 and video game consoles. In 1983, Nintendo released the Family Computer in Japan and, in
12
13 1985, Nintendo released the Nintendo Entertainment System, or “NES,” in the United States,
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15 which introduced millions of consumers to now-classic games like Super Mario Bros., The
16
17 Legend of Zelda, and Donkey Kong. The NES console also introduced millions of consumers to
18
19 some of Nintendo’s original and long-lasting characters, including Mario and Luigi, Yoshi, Link,
20
21 Donkey Kong, and Samus Aran. Over the ensuing decades, Nintendo followed up the popularity
22
23 of the NES console with the release of such groundbreaking home video game consoles as Super
24
25 Nintendo Entertainment System, Nintendo 64, Nintendo GameCube, Wii, Wii U, and the
26
27 Nintendo Switch.

28
29 43. In addition to its home video game consoles, Nintendo has long been a market
30
31 leader in handheld video game consoles. In 1989, Nintendo released Game Boy, the first
32
33 portable, handheld video game console to use interchangeable video game cartridges. The Game
34
35 Boy family of consoles is one of the most popular video game consoles ever released, and
36
37 introduced consumers to landmark games like Tetris, Kirby’s Dream Land, and Pokémon.
38
39 Nintendo has continued to lead the video game industry in the design and development of
40
41 handheld video game consoles and games developed for those consoles, including Game Boy
42
43 Color, Game Boy Advance, Nintendo DS, Nintendo 3DS, Nintendo Switch, and recently, the
44
45 Nintendo Switch Lite (a form of the Nintendo Switch dedicated to handheld play). Since 1983,

1 Nintendo has sold more than 4.7 billion video games and more than 750 million hardware units
2 globally. Sales of Nintendo Switch alone have topped 55 million, and the top 5 Nintendo-
3 developed copyrighted Nintendo Switch games have sold over 17 million copies each, rising
4 above 95 million sales in total.
5
6
7

8
9 44. Nintendo has built its company through substantial creative and financial
10 investment in the development of new consoles, video games, products, technological security
11 protections, intellectual property, as well as in marketing. Nintendo has garnered significant
12 consumer awareness and goodwill through its commitment to developing and delivering
13 innovative, fun, and memorable video game consoles and games. Nintendo's video games are
14 creative, audiovisual works with detailed stories, characters, and elements that are wholly
15 original to Nintendo and protected by the Copyright Act. Nintendo's video game consoles and
16 games are enjoyed by tens of millions of consumers in the United States and abroad.
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25 45. Nintendo has made substantial investments in the development, marketing, and
26 promotion of its innovative products and services. Nintendo has acquired intellectual property
27 and has authorized licensees who create and publish many popular video games made
28 specifically and exclusively for play on Nintendo's video game consoles.
29
30
31
32

33 46. The popularity of Nintendo's video games and video game consoles has made
34 Nintendo the target of intellectual property pirates who benefit from Nintendo's innovation and
35 investment by making unauthorized copies of Nintendo's video games, or by creating (and
36 selling) the means by which others can play pirated copies of Nintendo's video games on a
37 Nintendo console.
38
39
40
41

42
43 47. Illegal copying, or piracy, of video game software has become a rapidly
44 worsening international problem. Nintendo has taken many steps and expended significant
45

1 resources to halt the illegal copying, marketing, sale, and distribution of Nintendo's video games
2
3 (or games made by other Nintendo-authorized licensees) designed to be played on Nintendo's
4
5 video game consoles, and to halt the illegal trafficking in devices that allow users to play
6
7 unauthorized copies of games on Nintendo's video game consoles.
8

9 48. Nintendo's efforts have included the implementation of a variety of measures to
10 protect and control access to its copyrighted works. Among these are technological security
11
12 protections in Nintendo's video game consoles that prevent unauthorized access to and copying
13
14 of Nintendo's copyrighted works, and prevent the unauthorized play of pirated games on the
15
16 console.
17

18
19 ***The Nintendo Switch's Technological Measures Protect the Nintendo Switch Against***
20 ***Piracy***

21
22 49. In March 2017, Nintendo released a new console called the Nintendo Switch, a
23
24 home video game console that can also be played "on the go" as a handheld console. It quickly
25
26 sold out in stores across the country and around the world, and, in the over three years since, has
27
28 become one of the best-selling video game consoles of all time, selling over 55 million units
29
30 worldwide.
31

32 50. As a result, the top five Nintendo-developed games released for the Nintendo
33
34 Switch alone have sold more than 95 million copies as of March 2020, and individually each title
35
36 has sold over 17 million copies. These games, as well as others produced by Nintendo, are
37
38 subject to valid, registered copyrights either owned by Nintendo or exclusively licensed by
39
40 Nintendo.
41

42 51. Like other Nintendo video game consoles, the Nintendo Switch contains
43
44 numerous Technological Measures designed to prevent unauthorized access to the console and
45

1 games, the bypassing or impairing of Nintendo’s copyrighted operating system, and the
2
3 unauthorized copying, playing, and sharing of games.
4

5 52. For example, each Nintendo Switch contains an encrypted identifier, or
6
7 “signature,” that is checked when the console boots. The operating system itself also contains
8
9 Technological Measures designed to ensure the operating system is authorized. Only if the
10
11 operating system Technological Measures, including the encrypted signatures, are confirmed as
12
13 authentic—thus proving the console and operating system are authorized by Nintendo—will the
14
15 Nintendo Switch start up normally.
16

17 53. The console’s data as well as the game data—whether stored on the Nintendo
18
19 Switch’s built-in flash memory or on a removable flash memory card inserted into the console—
20
21 is also encrypted with a key unique to each Nintendo Switch console.
22

23 54. In addition, when the Nintendo Switch attempts to connect with Nintendo’s
24
25 servers (which happens when a user attempts to play online, to purchase games, or to download
26
27 updates), those servers will check the console certificate. Users are only able to access
28
29 Nintendo’s online services if this check is successful. Nintendo also has the capability of
30
31 banning specific user accounts or specific consoles from Nintendo’s networks, should its
32
33 authentication measures detect unauthorized use.
34

35 55. In addition to the Technological Measures related to the console and the operating
36
37 system, the Nintendo Switch also contains additional Technological Measures that verify each
38
39 *game* played on the Nintendo Switch (the “Game TPMs”). The Game TPMs employ encryption
40
41 and signature checks similar to that of the Nintendo Switch’s operating system described above.
42

43 56. The Nintendo Switch allows users either to purchase physical cartridges with
44
45 games on them that are inserted into the console, or to download digital games from Nintendo’s

1 own online store while using the Nintendo Switch. Both formats are protected by encryption as
2
3 well.

4
5 57. Nintendo owns or exclusively controls numerous copyrights in software and
6
7 games that are protected from unlawful access and copying by the operation of these
8
9 Technological Measures.

10
11 58. In their ordinary course of operation, the Technological Measures require the
12
13 application of information and a process, with the authority of Nintendo, to gain access to
14
15 Nintendo's copyrighted works, and thus effectively control access to and copying of Nintendo's
16
17 copyrighted works.

18
19 ***Circumvention Devices and the SX OS***

20
21 59. On or about May 16, 2018, Team Xecuter publicly announced their creation of
22
23 the SX OS, an unauthorized operating system that can be installed only on the Nintendo Switch.
24
25 To run the SX OS on the Nintendo Switch, Team Xecuter offers several Circumvention Devices
26
27 that directly circumvent the Nintendo Switch's Technological Measures, which control access to
28
29 the console and to Nintendo Switch's copyrighted works. Once it is running, the SX OS
30
31 continues to circumvent Game TPMs, thereby allowing users to play pirated games, and
32
33 otherwise operate and manipulate the console without Nintendo detecting the circumvention,
34
35 harming Nintendo's business and decreasing revenues from Nintendo's copyrighted works.
36
37 Defendants traffic in these Circumvention Devices, created by Team Xecuter.

38
39 60. First, Defendants provide and traffic within the United States Team Xecuter's SX
40
41 Pro Circumvention Device, a small piece of hardware (or "dongle") that can be inserted into the
42
43 USB port of the Nintendo Switch. With the SX Pro inserted upon startup, the Nintendo Switch's
44
45 Technological Measures are overridden and circumvented, and the Nintendo Switch is booted

1 (i.e., started up), and can run the unauthorized operating system SX OS from the insertion of a
2
3 memory card (containing the latest version of SX OS).
4

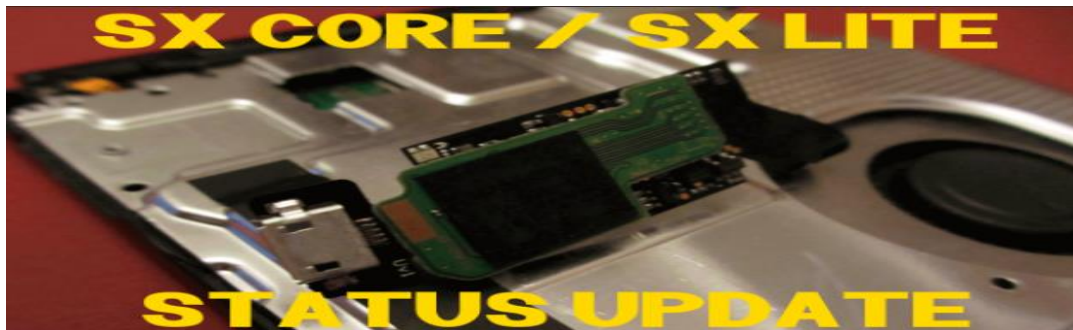
5 61. The SX Pro does this by triggering the Nintendo Switch to go into “recovery
6
7 mode” on startup. It then interferes with the normal operation of the Nintendo Switch to
8
9 interrupt and bypass the Nintendo Switch’s sequence of security checks. The SX Pro then forces
10
11 the Nintendo Switch to run Team Xecuter’s code. Using that unauthorized code, the
12
13 Circumvention Devices modify the Nintendo Switch’s official operating system—in which
14
15 Nintendo owns or exclusively controls copyrights—to, among other things, retrieve the
16
17 encryption keys necessary to access the encrypted data on the Nintendo Switch.
18

19 62. The Nintendo Switch console then loads and runs the SX OS, modifying the
20
21 authorized Nintendo Switch operating system. Because the SX OS at that point has full control
22
23 of the console and can run additional unauthorized code, the SX OS allows for the circumvention
24
25 of Nintendo’s additional Game TPMs and for infringement of Nintendo’s copyrighted games.
26
27 Defendants’ sales of Circumvention Devices also include software license keys for SX OS,
28
29 necessary to activate the SX OS, and Defendants thus also traffic unlawfully in an important
30
31 component of the SX OS.
32

33 63. Team Xecuter regularly releases updates for SX OS, including to accommodate
34
35 changes Nintendo periodically makes to its firmware. Recently, on April 23, 2020, Team
36
37 Xecuter released such an update, boasting that they had upgraded the local multiplayer
38
39 functionality to “help with newer games like Animal Crossing.” *Animal Crossing: New*
40
41 *Horizons* is a blockbuster Nintendo game released in March 2020.
42

43 64. Second, Defendants also offer to the public in the U.S. Team Xecuter’s recently-
44
45 announced Circumvention Devices called the “SX Core” and the “SX Lite.” Images on Team

1 Xecuter’s website show that the device is a hardware chip—or “modchip”—which is installed
 2 inside the casing of the Nintendo Switch after essentially breaking open the casing. Below are
 3 true and correct copies of images taken on April 17, 2020 from TEAM-XECUTER.COM. Some
 4
 5 of Defendants’ Websites also feature the same or similar images.
 6
 7

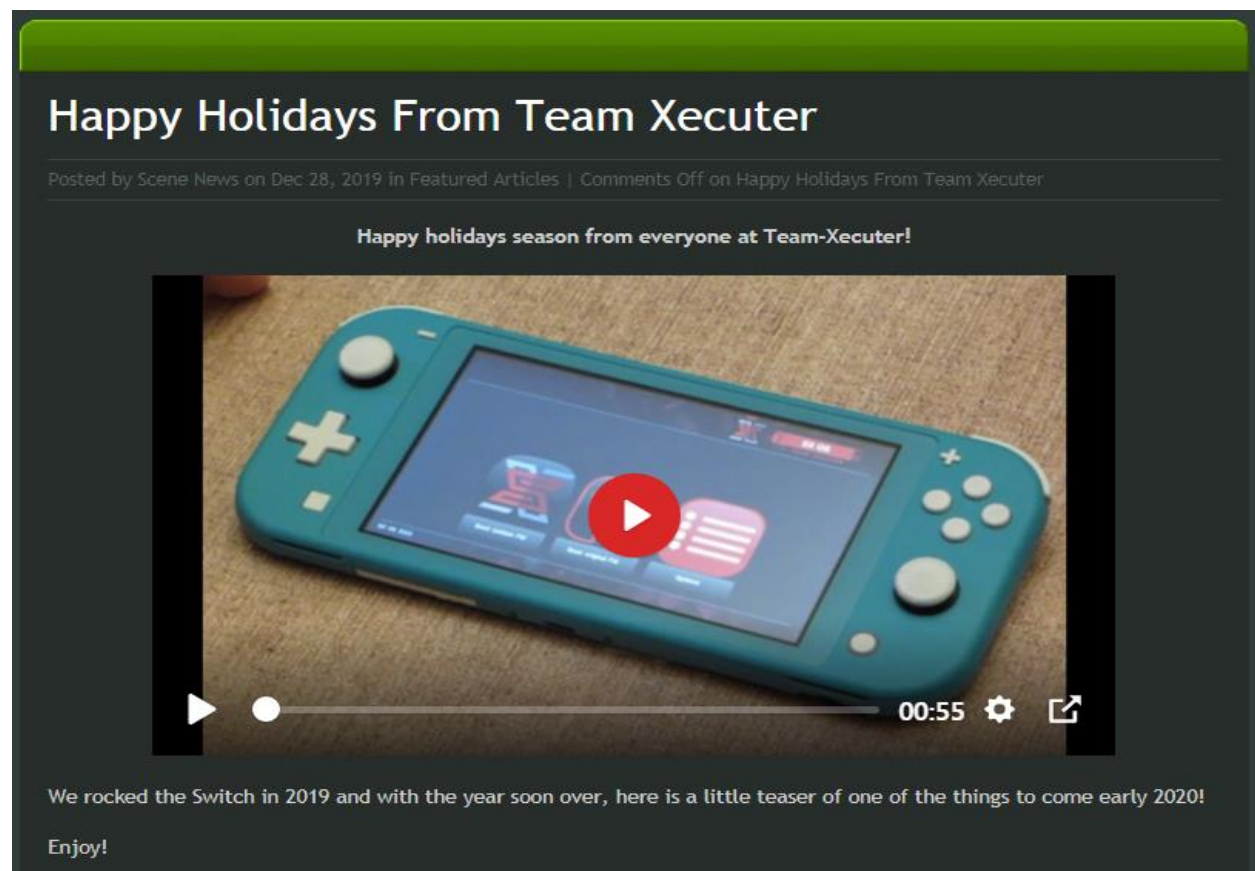


30
 31 65. On information and belief, the SX Core and the SX Lite, like the SX Pro, also
 32 interfere with the normal operation of the Nintendo Switch to interrupt and bypass the Nintendo
 33 Switch’s Technological Measures. Indeed, Defendants have boasted that these newer
 34 Circumvention Devices—SX Core and SX Lite—work on post-June 2018 Nintendo Switch
 35 consoles. In other words, the modchips work on all over 35 million currently-unhackable
 36 Nintendo Switch and Nintendo Switch Lite consoles.
 37
 38
 39
 40
 41

42
 43 66. For example, AXIOGAME.COM states SX Core works on all models “that
 44 currently can’t work with external usb dongles”—*i.e.*, those that cannot work with the SX Pro—
 45

1 and that SX Lite “works on[] Nintendo Switch Lite.” SXFLASHCARD.COM states “SX CORE
2 is for hacking Nintendo Switch patched and new Nintendo Switch 2019” and that SX Lite is
3 “ultra simple and almost plug and play.” SXFLASHCARD.COM further states one must only
4 “dismantle the console.”
5
6
7

8
9 67. Team Xecuter, who acts in concert with Defendants, has also stated that SX Core
10 works “for all regular Switch models . . . [including] unpatched Switches as well as patched and
11 Mariko,”² and that SX Lite is designed “for Switch LITE.” In fact, Team Xecuter released a
12 video on December 28, 2019 on its blog, TEAM-XECUTER.COM, showing the unauthorized
13 video on December 28, 2019 on its blog, TEAM-XECUTER.COM, showing the unauthorized
14 SX OS working on a Nintendo Switch Lite, proving that device had been hacked.
15
16
17
18



² “Mariko” refers to the most recent version of the Nintendo Switch, which is not vulnerable to the SX Pro.

1 68. Most recently, on May 6, 2020, Team Xecuter announced that they had shipped
2
3 samples of the SX Core and SX Lite to reviewers, and that “for May [they] have already large
4
5 stocks ready to ship.” They further announced that if customers “are not comfortable with
6
7 soldering”—the act of using melted metal to connect electronic components—there would be
8
9 “installer[s] near you to . . . install it for you.”

10
11 69. The SX Core and SX Lite circumvent the Nintendo Switch’s Technological
12
13 Measures, because otherwise the unauthorized SX OS could not be run on the console.

14
15 70. All of Defendants’ Websites currently offer the SX Pro for sale to U.S. customers
16
17 and are taking preorders and processing transactions for the two forthcoming Circumvention
18
19 Devices, the SX Core and SX Lite.

20
21 ***The Circumvention Devices and SX OS Enable Unlawful Copying by the***
22 ***Circumvention of the Technological Measures, Including Game TPMs***
23

24 71. In addition to the circumvention of the Technological Measures set forth above,
25
26 the SX OS also circumvents certain Game TPMs, thus allowing hackers to copy, play, and
27
28 further distribute unauthorized copies of Nintendo and its licensees’ copyrighted video games, all
29
30 without detection by Nintendo, as follows:

31
32 72. At a basic level, the SX OS—installable with the Circumvention Devices that
33
34 Defendants traffic in (“SX Pro,” “SX Core,” and “SX Lite”)—allows users to play pirated
35
36 games. Using the SX OS, users can simply find an illegal game file online—such as through a
37
38 torrent site (a peer-to-peer file-sharing website), where one might also go for pirated movies or
39
40 music—and transfer it to the Nintendo Switch. The SX OS allows these illegal game copies to
41
42 run locally, even though Nintendo’s official operating system would of course not allow a user to
43
44 run such illegal and unauthorized copies. But the SX OS provides a number of other ways to
45

1 unlawfully access and copy copyrighted works, including by allowing users to connect their
 2 consoles to servers full of infringing games. Immediately below is an image of SX OS running,
 3
 4 showing a gallery of installable pirated games:
 5
 6



73. Indeed, ANXCHIP.COM markets the Circumvention Devices as being able to “hack[] the console for playing free games.” Similarly, FLASHCARDA.COM boasts, “SX Lite is to hack Switch Lite to play free games.”

74. Nintendo has not authorized users to download or play any games on the Nintendo Switch that were not purchased lawfully.

75. Each use of these features, and others not enumerated here—which allow users to make, use, share, or distribute pirated games—causes financial harm to Nintendo.

76. The Circumvention Devices, including the SX Core and SX Lite, as well as the SX OS, are each a technology, product, service, device, component, or part thereof that are capable of circumventing and in fact do circumvent both access and copy protections on the Nintendo Switch.

1 77. Nintendo has never authorized Defendants, Team Xecuter, nor any of the users of
2
3 the Circumvention Devices to use SX OS or the Circumvention Devices in connection with the
4
5 Nintendo Switch, to circumvent the Nintendo Switch’s Technological Measures, or to gain
6
7 access to Nintendo’s copyrighted works or copy those works in this unauthorized manner.
8

9 ***Defendants’ Direct Sale of Pirated Games***

10 78. Five of Defendants’ Websites—ANXCHIP.COM, FLASHCARDA.COM,
11
12 MOD3DSCARDS.COM, NX-CARD.COM, and USACHIPSS.COM—also sell memory cards
13
14 preloaded with pirated, and thus infringing, copyrighted games for the Nintendo Switch.
15

16 79. For instance, Defendants’ Website ANXCHIP.COM, on its purchase page for the
17
18 SX Pro, allows a purchaser to add an SD card with 16, 30, or “60+” Nintendo Switch games.
19
20 The Website boldly states users can “easily crack your console to enjoy free games.” Similarly,
21
22 Defendants’ website FLASHCARDA.COM offers SD cards for sale, either bundled with an SX
23
24 Pro or on their own. Moreover, a consumer can buy cards with 16, 25, 35, or 50 games; in other
25
26 words, the more the consumer is willing to pay, the more infringing games go onto the card.
27
28 FLASHCARDA.COM describes the product as a “pre-installed sd card[] to play all Nintendo
29
30 Switch games for free.”
31

32 80. On information and belief, each of these memory cards being distributed by
33
34 Defendants contains games in which Nintendo owns or exclusively controls or licenses
35
36 copyrights. To take USACHIPSS.COM as an example, that site provides the below image with
37
38 logos of games that are on the memory card they offer.
39
40
41
42
43
44
45



81. Some of the Defendants' Websites also publish full lists of each and every game they offer on memory cards. The game lists for ANXCHIP.COM, FLASHCARDA.COM, and MOD3DSCARDS.COM are attached hereto as Exhibits 1, 2, and 3, respectively.

82. Further, Nintendo has obtained an SD Card from FLASHCARDA.COM that contains an unlawful copy of Nintendo's most recent blockbuster game, *Animal Crossing: New Horizons*.

83. Each Website offers multiple games in which Nintendo owns or controls the copyrights, as set forth in Appendix A. The copyrights in each of these works in Appendix A are registered with the United States Copyright Office.

84. Nintendo has the exclusive right to reproduce and distribute its audiovisual works under 17 U.S.C. § 106. Nintendo has never authorized Defendants or Team Xecuter to reproduce or distribute its copyrighted works.

Defendants' Trafficking in the Unlawful Circumvention Devices

1
2
3 85. Defendants operate the Websites and traffic in the Circumvention Devices in
4 violation of the Anti-Trafficking provisions of the DMCA.
5

6
7 86. Defendants operate eight Websites, which have shipped Circumvention Devices
8 and/or infringing game cards into the United States and into this District. Six of the eight are
9 specifically enumerated as “authorized resellers” that are “based in the USA” on Team Xecuter’s
10 website. The remaining two—FLASHCARDA.COM and USACHIPSS.COM—are also listed
11 as “authorized resellers,” and list U.S. locations on their Websites.
12
13
14
15

16
17 87. All eight of Defendants’ Websites sell the SX Pro and are accepting preorders for
18 the SX Core and SX Lite.
19

20
21 88. Nintendo has placed preorder purchases with each of Defendants’ Websites for
22 the SX Core and/or SX Lite, all for shipment to addresses within this District. At least six of the
23 Websites—ANXCHIP.COM, FLASHCARDA.COM, NX-CARD.COM,
24 SXFLASHCARD.COM, TXSWITCH.COM, and USACHIPSS.COM—have already processed
25 payments for those orders; the other two have confirmed the order and payment is pending. On
26 information and belief, Defendants have accepted and confirmed many other preorders for the
27 SX Core and SX Lite to purchasers both in this District and throughout the country, and plan to
28 ship the products to purchasers in this District and in the United States more generally when they
29 become available, which is expected imminently.
30
31
32
33
34
35
36
37

38
39 89. Defendants prominently advertise that they ship to the United States, list prices in
40 U.S. dollars, and accept payment in U.S. dollars, and some advertise that they have locations in
41 the U.S. or have warehouses within the United States.
42
43
44
45

1 90. Trafficking in the Circumvention Devices is a direct violation of Nintendo’s
2
3 rights under 17 U.S.C. §§ 1201 & 1203, regardless of whether a user ever uses the
4
5 Circumvention Devices or runs the SX OS on the Nintendo Switch or Nintendo Switch Lite,
6
7 because, pursuant to the statute:
8

9 91. The Circumvention Devices are “primarily designed [and] produced for the
10
11 purpose of circumventing” the Nintendo Switch’s Technological Measures.
12

13 92. The Circumvention Devices and accompanying software have “only limited” (if
14
15 any) “commercially significant purpose[s] or use[s] other than to circumvent” the Nintendo
16
17 Switch’s Technological Measures.
18

19 93. Defendants market the Circumvention Devices and accompanying software with
20
21 knowledge that the Circumvention Devices and accompanying software are used to circumvent
22
23 the Nintendo Switch’s Technological Measures. Further, Defendants act in concert with Team
24
25 Xecuter, who also markets the Circumvention Devices and accompanying software with
26
27 knowledge of their use in circumventing the Nintendo Switch’s Technological Measures.
28

29 94. While user infringement is not necessary to establish an anti-trafficking claim, on
30
31 information and belief, the Circumvention Devices and SX OS are used primarily to play pirated
32
33 video games and are facilitating massive copyright infringement of Nintendo’s copyrighted
34
35 works.
36

37 95. The scale of harm from Defendants’ trafficking in the SX Core and SX Lite is
38
39 astounding, as it will lead to the circumvention of the Technological Measures protecting more
40
41 than 35 million additional Nintendo Switch and Nintendo Switch Lite consoles currently in the
42
43 marketplace (over and above the roughly 20 million already vulnerable to the SX Pro, also
44
45 trafficked by Defendants). Team Xecuter’s unlawful SX OS—installed with Defendants’

1 Circumvention Devices—is the most-installed piracy software on the Nintendo Switch. At its
2
3 peak, SX OS accounted for 82% of Google searches for Nintendo Switch circumvention
4
5 software, and was pre-installed on 97% of all modded/hacked Nintendo Switch products
6
7 available for illegal sale. Defendants’ unlawful conduct must be stopped.
8

9
10 **COUNT ONE**

11 **(Trafficking in Devices in Violation of 17 U.S.C. § 1201(a)(2) Against All Defendants)**

12
13 96. Plaintiff repeats and realleges every allegation contained in paragraphs 1 through
14
15 95 as if fully set forth herein.

16
17 97. Section 1201(a)(2) of the DMCA, 17 U.S.C. § 1201(a)(2), prohibits the
18
19 trafficking of devices that are primarily designed to circumvent technological protections that
20
21 effectively control access to copyrighted works. The statute provides, in pertinent part, that
22
23 “[n]o person shall manufacture, import, offer to the public, provide, or otherwise traffic in any
24
25 technology, product, service, device, component, or part thereof, that—

26
27 (A) is primarily designed or produced for the purpose of circumventing a technological
28
29 measure that effectively controls access to a work protected under [the Copyright Act];

30
31 (B) has only limited commercially significant purpose or use other than to circumvent a
32
33 technological measure that effectively controls access to a work protected under [the
34
35 Copyright Act]; or

36
37 (C) is marketed by that person or another acting in concert with that person with that
38
39 person’s knowledge for use in circumventing a technological measure that effectively
40
41 controls access to a work protected under [the Copyright Act].”
42
43
44
45

1 98. As discussed *supra*, ¶¶ 49–58, the Nintendo Switch’s Technological Measures
2 effectively control access to works protected by the Copyright Act, including the copyrighted
3 operating system of the Nintendo Switch as well as Nintendo’s video games playable thereon.
4
5

6
7 99. As also discussed *supra*, the Nintendo Switch’s Technological Measures require,
8 in the ordinary course of their operation, the application of information, or a process or a
9 treatment, with Nintendo’s authority, to gain access to the Nintendo Switch console and any
10 copyrighted games playable thereon.
11
12

13
14 100. Through the Websites, Defendants offer to the public, provide, and otherwise
15 traffic in devices and software that circumvent the Technological Measures on the Nintendo
16 Switch, in violation of 17 U.S.C. § 1201(a)(2).
17
18

19
20 101. Each such offering to the public, provision, or other act of trafficking in each such
21 Circumvention Device and accompanying software constitutes a violation of 17 U.S.C. § 1201
22 for which Nintendo is entitled to damages under 17 U.S.C. § 1203(c)(1), and injunctive relief
23 under § 1203(b)(1).
24
25

26
27 102. Defendants’ acts are willful, intentional, purposeful, and in disregard of and
28 indifferent to the rights of Plaintiff.
29
30

31
32 103. As a direct and proximate result of Defendants’ violations of 17 U.S.C. § 1201,
33 Nintendo is entitled to the maximum statutory damages, pursuant to 17 U.S.C. § 1203(c)(3)(A),
34 in the amount of \$2,500 with respect to each act of offering to the public, provision of, or
35 otherwise trafficking in Circumvention Devices, or such other amounts as may be proper under
36 17 U.S.C. § 1201(c). In the alternative, pursuant to 17 U.S.C. § 1201(c)(2), Nintendo is entitled
37 to its actual damages, as well as to Defendants’ profits from these violations, in amounts to be
38 proven at trial.
39
40
41
42
43
44
45

1 104. Nintendo is entitled to its costs, including reasonable attorneys' fees, pursuant to
2
3 17 U.S.C. § 1203(b).
4

5 105. Defendants' conduct is causing and, unless enjoined by this Court, will continue
6
7 to cause Nintendo great and irreparable injury for which there is no adequate remedy at law.
8
9 Pursuant to 17 U.S.C. § 1203(b)(1), Nintendo is entitled to permanent injunctive relief
10
11 prohibiting Defendants from engaging in further acts of offering to the public, providing, or
12
13 otherwise trafficking in the Circumvention Devices and accompanying software.
14

15 **COUNT TWO**

16 **(Trafficking in Devices in Violation of 17 U.S.C. § 1201(b)(1) Against All Defendants)**

17
18
19 106. Plaintiff repeats and realleges every allegation contained in paragraphs 1 through
20
21 105 as if fully set forth herein.
22

23 107. Section 1201(b) of the DMCA, 17 U.S.C. § 1201(b), in a general sense, prohibits
24
25 the trafficking in devices that are primarily designed to circumvent technological protection
26
27 measures that protect against the unlawful copying of copyrighted works. The statute provides,
28
29 in pertinent part, that “[n]o person shall manufacture, import, offer to the public, provide, or
30
31 otherwise traffic in any technology, product, service, device, component, or part thereof, that—
32

33 (A) is primarily designed or produced for the purpose of circumventing protection
34
35 afforded by a technological measure that effectively protects a right of a copyright owner
36
37 under [the Copyright Act] in a work or a portion thereof;

38
39 (B) has only limited commercially significant purpose or use other than to circumvent
40
41 protection afforded by a technological measure that effectively protects a right of a
42
43 copyright owner under [the Copyright Act] in a work or a portion thereof; or
44
45

1 (C) is marketed by that person or another acting in concert with that person with that
2
3 person's knowledge for use in circumventing protection afforded by a technological
4
5 measure that effectively protects a right of a copyright owner under [the Copyright Act]
6
7 in a work or a portion thereof."
8

9 108. As discussed *supra*, the Nintendo Switch's Technological Measures effectively
10
11 protect the rights of copyright owners in works protected by the Copyright Act. These
12
13 copyrighted works include the Nintendo Switch operating system and Nintendo's video games
14
15 playable on the Nintendo Switch.

16
17 109. As discussed *supra*, the Nintendo Switch's Technological Measures, in the
18
19 ordinary course of their operation, prevent, restrict, or otherwise limit the exercise of a right of a
20
21 copyright owner under the Copyright Act, by controlling or managing whether the Nintendo
22
23 Switch user may *copy* Nintendo's copyrighted works, and whether the user may *play*
24
25 unauthorized copies of Nintendo's copyrighted works on the Nintendo Switch.

26
27 110. Through their Websites, Defendants offer to the public, provide, and otherwise
28
29 traffic in devices and software that circumvent the Technological Measures on the Nintendo
30
31 Switch, which effectively protect Nintendo's rights in its copyrighted works, in violation of 17
32
33 U.S.C. § 1201(b)(1).

34
35 111. Each such offering to the public, provision, or other act of trafficking in each such
36
37 Circumvention Device and accompanying software constitutes a violation of 17 U.S.C. § 1201
38
39 for which Nintendo is entitled to damages under 17 U.S.C. § 1203(c) and injunctive relief under
40
41 § 1203(b)(1).

42
43 112. Defendants' acts are willful, intentional, purposeful, and in disregard of and
44
45 indifferent to the rights of Plaintiff.

1 113. As a direct and proximate result of Defendants' violations of 17 U.S.C. § 1201,
2
3 Plaintiff is entitled to the maximum statutory damages, pursuant to 17 U.S.C. § 1203(c)(3)(A), in
4
5 the amount of \$2,500 with respect to each act of offering to the public, provision, or otherwise
6
7 trafficking in the Circumvention Devices and software, or such other amounts as may be proper
8
9 under 17 U.S.C. § 1201(c). In the alternative, pursuant to 17 U.S.C. § 1203(c)(2), Nintendo is
10
11 entitled to its actual damages, as well as to Defendants' profits from these violations, in amounts
12
13 to be proven at trial.

14
15 114. Nintendo is entitled to its costs, including reasonable attorneys' fees, pursuant to
16
17 17 U.S.C. § 1203(b).

18
19 115. Defendants' conduct is causing and, unless enjoined by this Court, will continue
20
21 to cause Nintendo great and irreparable injury for which there is no adequate remedy at law.
22
23 Pursuant to 17 U.S.C. § 1203(b)(1), Nintendo is entitled to permanent injunctive relief
24
25 prohibiting Defendants from engaging in further acts of offering to the public, providing, or
26
27 otherwise trafficking in circumvention devices and software.

28
29 **COUNT THREE**

30
31 **(Reproduction and Distribution of Protected Works in Violation of 17 U.S.C. § 501(a)**
32 **Against Doe Defendants d/b/a ANXCHIP.COM, FLASHCARDA.COM,**
33 **MOD3DSCARDS.COM, NX-CARD.COM, and USACHIPSS.COM)**

34
35 116. Plaintiff repeats and realleges every allegation contained in paragraphs 1 through
36
37 115 as if fully set forth herein.

38
39 117. Section 106 of the Copyright Act, 17 U.S.C. § 106, provides, in pertinent part,
40
41 that the owner of a copyright under the Copyright Act has the exclusive right to reproduce its
42
43 copyrighted work, and to distribute copies of its copyrighted work.
44
45

1 118. Nintendo holds valid, registered, copyrights in “Animal Crossing: New
2
3 Horizons,” “ARMS,” “Captain Toad: Treasure Tracker,” “Donkey Kong Country: Tropical
4
5 Freeze,” “Luigi’s Mansion 3,” “Mario Kart 8 Deluxe,” “New Super Mario Bros. Deluxe,”
6
7 “Splatoon 2,” “Super Mario Maker 2,” “Super Mario Odyssey,” “Super Mario Party,” “The
8
9 Legend of Zelda: Link’s Awakening,” “The Legend of Zelda: Breath of the Wild,” and “Yoshi’s
10
11 Crafted World,” all video games created by Nintendo for the Nintendo Switch. *See* Appendix A.
12

13 119. Defendants operating the above-captioned Websites offer and sell memory cards
14
15 filled with pirated versions of some subset of these Nintendo copyrighted games, as set forth in
16
17 Appendix A. By creating the memory cards, thus reproducing the games, and by selling the
18
19 cards, thus distributing those games, Defendants are in violation of 17 U.S.C. § 501(a).
20

21 120. Each work constitutes a violation of 17 U.S.C. § 501(a) for which Nintendo is
22
23 entitled to damages under 17 U.S.C. § 504 and injunctive relief under § 502.
24

25 121. Defendants’ acts are willful, intentional, purposeful, and in disregard of and
26
27 indifferent to the rights of Nintendo.
28

29 122. As a direct and proximate result of Defendants’ violations of 17 U.S.C. § 501(a),
30
31 Plaintiff is entitled to the maximum statutory damages, pursuant to 17 U.S.C. § 504(c)(2), in the
32
33 amount of \$150,000 with respect to each copyrighted work, or such other amounts as may be
34
35 proper under 17 U.S.C. § 504(c). In the alternative, pursuant to 17 U.S.C. § 504(b), Nintendo is
36
37 entitled to its actual damages, as well as to Defendants’ profits from these violations, in amounts
38
39 to be proven at trial.
40

41 123. Nintendo is entitled to its full costs, including reasonable attorneys’ fees, pursuant
42
43 to 17 U.S.C. § 505.
44
45

1 124. Defendants' conduct is causing and, unless enjoined by this Court, will continue
2
3 to cause Nintendo great and irreparable injury for which there is no adequate remedy at law.
4
5 Pursuant to 17 U.S.C. § 502, Nintendo is entitled to preliminary and permanent injunctive relief
6
7 prohibiting Defendants from engaging in further acts of reproducing or distributing Nintendo's
8
9 protected works.
10

11 **PRAYER FOR RELIEF**

12
13 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

14
15 1. For a declaration that Defendants' activities as alleged herein constitute violations
16
17 of 17 U.S.C. § 1201 and 17 U.S.C. §§ 106, 501.

18
19 2. For such equitable relief under Titles 17 and 28, and this Court's inherent
20
21 equitable powers, as is necessary to prevent or restrain Defendants' further violations of 17
22
23 U.S.C. § 1201 and 17 U.S.C. §§ 106, 501, including: (a) a permanent injunction prohibiting
24
25 Defendants and their officers, agents, servants, employees, attorneys, and others in active concert
26
27 or participation with any of them from: (i) offering to the public, providing, or otherwise
28
29 trafficking in the Circumvention Devices—including the SX Pro, SX Core, and SX Lite—
30
31 accompanying SX OS software, and any other circumvention devices or software that target
32
33 Nintendo or Nintendo's consoles or copyrighted works; or (ii) infringing, or causing, enabling,
34
35 facilitating, encouraging, promoting, and inducing or participating in the infringement of, any of
36
37 Plaintiff's copyrights protected by the Copyright Act, whether now in existence or hereafter
38
39 created; (2) enjoining Defendants and all third parties with notice of the Order from supporting
40
41 or facilitating access to any or all domain names, URLs, websites (including, without limitation,
42
43 ANXCHIP.COM, AXIOGAME.COM, FLASHCARDA.COM, MOD3DSCARDS.COM, NX-
44
45 CARD.COM, SXFLASHCARD.COM, TXSWITCH.COM, and USACHIPSS.COM),

1 chatrooms, and other social media websites or apps through which Defendants traffic in
2
3 circumvention devices that threaten Plaintiff's Technological Measures or which infringe
4
5 Plaintiff's rights under the Copyright Act; and (3) prohibiting Defendants from engaging in any
6
7 other violation of the DMCA or Copyright Act, or any other federal or state law, as respects
8
9 Nintendo.

10
11 3. For entry of an Order, pursuant to Sections 502 and 1203 of the Copyright Act (17
12
13 U.S.C. §§ 502, 1203), 28 U.S.C. § 1651(a), and this Court's inherent equitable powers: (1)
14
15 requiring Defendants and their officers, agents, servants, employees, attorneys, and others in
16
17 active concert or participation with any of them: (a) to surrender, and cease to use, the domain
18
19 names ANXCHIP.COM, AXIOGAME.COM, FLASHCARDA.COM, MOD3DSCARDS.COM,
20
21 NX-CARD.COM, SXFLASHCARD.COM, TXSWITCH.COM, and USACHIPSS.COM, and
22
23 any variant thereof controlled by Defendants; and (b) to immediately transfer the domain names
24
25 ANXCHIP.COM, AXIOGAME.COM, FLASHCARDA.COM, MOD3DSCARDS.COM, NX-
26
27 CARD.COM, SXFLASHCARD.COM, TXSWITCH.COM, and USACHIPSS.COM, and any
28
29 variant thereof controlled by Defendants, to Plaintiff's control; and (2) enjoining Defendants and
30
31 all third parties with notice of the Order from supporting or facilitating access to any or all
32
33 domain names, URLs, and websites (including, without limitation, ANXCHIP.COM,
34
35 AXIOGAME.COM, FLASHCARDA.COM, MOD3DSCARDS.COM, NX-CARD.COM,
36
37 SXFLASHCARD.COM, TXSWITCH.COM, and USACHIPSS.COM) through which
38
39 Defendants infringe Plaintiff's copyrights.

40
41 4. An order pursuant to 17 U.S.C. §§ 503 & 1203 providing for the seizure,
42
43 impoundment, and destruction of all Circumvention Devices, all copies of SX OS, and all other
44
45 electronic material or physical devices within Defendants' custody, possession, or control—

1 including any hard drives or other electronic storage devices containing such material—that
2
3 violate Nintendo’s rights under the DMCA or infringe upon copyrights owned or exclusively
4
5 licensed by Nintendo.
6

7 5. For entry of an Order requiring Defendants, within thirty (30) days after service of
8
9 judgment with notice of entry thereof upon it, to file with the Court and serve upon Nintendo a
10
11 written report under oath setting forth in detail the manner in which Defendants have complied
12
13 with paragraphs 2, 3, and 4 of this Prayer for Relief.
14

15 6. For an award of statutory damages pursuant to 17 U.S.C. §§ 504 & 1203(c) in the
16
17 amount of \$2,500 per violation of 17 U.S.C. § 1201, arising from Defendants’ willful violations
18
19 of the Anti-Trafficking provisions of the DMCA, and in the amount of \$150,000 per violation of
20
21 17 U.S.C. §§ 106 & 501 arising from Defendants’ willful violations of Nintendo’s exclusive
22
23 rights under the Copyright Act. In the alternative, pursuant to 17 U.S.C. § 1203(c)(2) and 17
24
25 U.S.C. § 504(b), Nintendo may elect to receive actual damages as well as Defendants’ profits
26
27 from their violations of 17 U.S.C. § 1201 and 17 U.S.C. §§ 106 & 501, in amounts to be proven
28
29 at trial.
30

31 7. For an accounting, the imposition of a constructive trust, restitution of
32
33 Defendants’ unlawful proceeds from their violations of 17 U.S.C. § 1201 and 17 U.S.C. §§ 106
34
35 & 501, and damages according to proof.
36

37 8. For Plaintiff’s costs and reasonable attorneys’ fees, pursuant to 17 U.S.C.
38
39 § 1203(b) and 17 U.S.C. § 505.
40

41 9. For prejudgment and post-judgment interest; and
42

43 10. For such other relief as the Court may deem just and proper.
44

45 Plaintiff hereby demands a trial by jury.

1 DATED this 15th day of May, 2020.
2

3 Respectfully submitted,
4

5 GORDON TILDEN THOMAS &
6 CORDELL LLP

7 /s/ Michael P. Brown

8 Michael Brown, WSBA #45618
9

10 /s/ Michael Rosenberger

11 Michael Rosenberger, WSBA #17730
12

13 One Union Square
14

15 600 University Street, Suite 2915
16

17 Seattle, WA 98101
18

19 Telephone: (206) 467-6477
20

21 mrosenberger@gordontilden.com
22

23 mbrown@gordontilden.com
24

Respectfully submitted,

JENNER & BLOCK LLP

Alison I. Stein (*Pro Hac Vice Pending*)

Cayman C. Mitchell (*Pro Hac Vice Pending*)*

919 Third Avenue

38th Floor

New York, NY 10022

Telephone: (212) 891-1600

Facsimile: (212) 891-1699

astein@jenner.com

cmitchell@jenner.com

Christopher S. Lindsay (*Pro Hac Vice Pending*)

633 West 5th Street

Suite 3600

Los Angeles, CA 90071

Tel: (213) 239-5100

clindsay@jenner.com

Attorneys for Plaintiff Nintendo of America Inc.

*Admitted only in Massachusetts, not admitted in
New York. Practicing under the supervision of
the partnership of Jenner & Block LLP*