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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

TAKE-TWO INTERACTIVE SOFTWARE, INC.,

Plaintiff,

- against -

JOHNATHAN WYCKOFF and JOHN DOES 1–10,

Defendants.

Case No. 19-cv-11818

ECF Case

**COMPLAINT**

Plaintiff Take-Two Interactive Software, Inc. (“Take-Two”), by and through its attorneys, Kirkland & Ellis LLP, for its Complaint, hereby alleges against Defendants Johnathan Wyckoff (“Wyckoff”) and John Does 1–10 (“Doe Defendants”) (Wyckoff and Doe Defendants collectively referred to herein as “Defendants”) as follows:

### **NATURE OF THE ACTION**

1. Take-Two brings this action to maintain control over its world-famous video games in the face of Wyckoff's publicly stated intent to distribute unauthorized software files that would dramatically change the content of Take-Two's video games. Those unauthorized changes include but are not limited to importing the entire game map of 2010's *Red Dead Redemption* into the 2018 game *Red Dead Redemption II*, enhancing graphics and visuals in Take-Two's *Red Dead Redemption* game, and allowing players to play an enhanced version of the game on personal computer ("PCs"), a platform for which Take-Two itself has not yet released the *Red Dead Redemption* game.

2. Plaintiff is a leading worldwide publisher, developer, and distributor of interactive entertainment software, including the *Grand Theft Auto* and *Red Dead* video game series. The Western-themed action-adventure *Red Dead* series includes the installments *Red Dead Redemption* ("RDRI") and *Red Dead Redemption II* ("RDRII") (RDRI and RDRII collectively referred to herein as "RDR Games"). While the RDR Games are part of the same series, each installment takes place on a different game "map"—a huge virtual world that encompasses thousands of miles of virtual territory. RDRI takes place in a large virtual world set in a fictionalized area analogous to Texas, Mexico and Arizona, while the RDRII prequel takes place in a larger virtual world north and east of the RDRI map.

3. In contravention of Take-Two's intellectual property rights and in breach of its "Limited Software Warranty and License Agreement" ("User Agreement"), Wyckoff has created and intends to publicly release two software projects that create unauthorized versions of the RDR Games. Although Take-Two has repeatedly asked Wyckoff to cease and desist, he has refused to honor Take-Two's requests forcing Take-Two to take action against him.

4. The first software project that Wyckoff has announced modifies and alters RDRII to add the full RDRI game map to the RDRII game map (the “RDRII Project”). This significant alteration to RDRII would dramatically change the RDRII game experience, reduce the interest of players in purchasing a future RDRI PC version or RDRII add-on map product, and deprive Take-Two of control over its valuable products.

5. The second software project that Wyckoff has announced, which he calls *Red Dead Redemption Damned Enhancement Project* (“RDR-DEP”), would import modified game files from GTAV and RDRI to vastly improve the graphics and performance of the game, which players can then use to play an enhanced version of RDRI on PCs—a platform where Take-Two has not yet made the game playable—thereby destroying the market for an official, updated version from Take-Two, and creating competition for Take-Two’s PC-version of RDRII (RDRII Project and RDR-DEP collectively referred to herein as the “Infringing Programs”).

6. Wyckoff apparently believes that his RDRII Project and RDR-DEP project files are permissible because they purportedly will not work with the multiplayer versions of the RDR Games because, as explained further below, he claims he “disabled” the users’ ability to play them with his Infringing Programs by writing code that will “brick” the multiplayer version of the game. But users likely could easily circumvent that code, such that the changes that the Infringing Programs would make to the single player versions of the RDR Games would readily become available for the multiplayer versions as well.

7. Moreover, although Wyckoff portrays himself as a hobbyist who is creating the Infringing Programs for free, he actively solicits “donations” to fund the development of his unauthorized projects, which he then uses to drive followers to his social media and streaming accounts.

8. Wyckoff is well aware that the RDRII Project and RDR-DEP are unauthorized and infringe Take-Two's rights. Because Take-Two had hoped to resolve the parties' dispute without requiring judicial intervention, it contacted Wyckoff prior to bringing this lawsuit and demanded that he cease his willful and infringing conduct. Wyckoff not only refused to honor Take-Two's request, he indicated that if Take-Two tried to stop his projects, the infringing files would be "leaked" by him or others. Outside counsel for Take-Two then contacted Wyckoff again, reiterating Take-Two's concerns and requesting that he confirm by no later than November 18, 2019 that he had ceased development of his software modification projects and would not release them. Wyckoff has failed to do so, however, leading Take-Two to conclude, upon information and belief, that Wyckoff will proceed with his publicly stated plans to release the Infringing Programs.

9. Wyckoff has knowingly, intentionally, and willfully infringed Take-Two's rights and will continue to do so upon the release of the Infringing Programs unless enjoined and, upon information and belief, Wyckoff already has profited by violating Take-Two's rights and User Agreement. As a result, Take-Two has been left with no choice but to file this lawsuit seeking injunctive relief and damages that it will suffer as a result of Wyckoff's direct and contributory copyright infringement under the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.*, as well as for his breach of Take-Two's User Agreement and his tortious interference with Take-Two's contracts with other Take-Two game players using his modifications.

#### **PARTIES**

10. Plaintiff Take-Two is a Delaware corporation having its principal place of business in the State of New York and is qualified to do business and is doing business in the State of New York and in this judicial district.

11. Defendant Wyckoff is an individual who, upon information and belief, resides in the State of Texas. In a YouTube video located at <https://www.youtube.com/watch?v=O0SXmZTIwcE>, starting at 0:08, Wyckoff publicly identifies himself as “GamingDamned.”

12. Doe Defendants are individuals whose names and addresses are currently unknown to Take-Two. Discovery will be required to identify each of the Doe Defendants’ names and addresses to permit Take-Two to amend this Complaint to allege the same and to serve the Doe Defendants with process.

### **JURISDICTION AND VENUE**

13. This action arises under the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.*, and New York state law. This court has subject matter jurisdiction as to Take-Two’s copyright claim pursuant to 28 U.S.C. §§ 1331 and 1338, and has supplemental jurisdiction as to Take-Two’s state law claims pursuant to 28 U.S.C. § 1367(a) because those claims are substantially related to Take-Two’s federal claims. This Court also has diversity subject matter jurisdiction pursuant to 28 U.S.C. § 1332 as Take-Two and Wyckoff are citizens of different states and the matter in controversy exceeds \$75,000 exclusive of interests and costs.

14. This Court has personal jurisdiction over Defendants and venue is proper in this District pursuant to N.Y. C.P.L.R. § 302(a)(3), as well as 28 U.S.C. §§ 1391 and 1400. Take-Two is located and is being harmed in this District, and Defendants reasonably should expect—and, upon information and belief, do expect—that their activities will have consequences in New York and this District.

15. Upon information and belief, Wyckoff has derived revenue from interstate or international commerce as a result of his activities, including, upon information and belief, from the so-called “donations” that Wyckoff has solicited through his @TroubleDamnedz

“GamingDamned Official” Twitter account and through a YouTube video located at <https://www.youtube.com/watch?v=tYuzuAT9EsY&t=306s> for the development of the Infringing Programs. Specifically, Wyckoff has encouraged donors to make payments to him through Patreon.com and Streamlabs.com and, upon information and belief, Wyckoff has received donations from donors who reside in states other than the State of Texas and/or reside in foreign nations abroad.

16. Personal jurisdiction and venue also are proper because, as described further below, Wyckoff, and, upon information and belief, Doe Defendants, were required to affirmatively accept the terms of Take-Two’s User Agreement and the Terms & Conditions of Take-Two’s Terms of Service (“Terms of Service”) multiple times as a pre-requisite to accessing Take-Two’s games and services, including GTAV and RDRII. The User Agreement and Terms of Service contain a forum selection provision designating New York as the sole and exclusive venue for litigation and providing that the user consents to personal jurisdiction in New York. By affirmatively accepting the User Agreement and Terms of Service, Defendants affirmatively consented to personal jurisdiction and venue in New York.

### **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

#### **Take-Two and Its Award-Winning Video Games**

17. Take-Two is one of the world’s most popular and successful video game publishers. It develops and publishes numerous best-selling video games and game series, including the *Max Payne*, *Grand Theft Auto*, and *Red Dead* series.

18. Take-Two has invested vast resources, including time, effort, talent, creativity, and money, to produce its video games. In part, as a result of that investment, Take-Two has earned numerous awards for its games, which are widely recognized as some of the most popular and innovative games available on the market.

19. Take-Two is, and at all times material herein was, the sole owner and proprietor of all right, title, and interest in and to the copyrights in GTAV, RDRI, and RDRII. The copyrights in GTAV, RDRI, and RDRII are presently valid and subsisting and were valid and subsisting at all times affecting the matters complained of herein.

20. GTAV has been registered with the Copyright Office. Attached hereto as **Exhibit 1**, and incorporated herein by reference, is a true and correct copy of the Certificate of Registration issued by the Copyright Office for GTAV. Exhibit 1 reflects the date of first publication and, where applicable, the date on which the certificate was issued and the registration number assigned.

21. RDRI has been registered with the Copyright Office. Attached hereto as **Exhibit 2**, and incorporated herein by reference, is a true and correct copy of the Certificate of Registration issued by the Copyright Office for *Read Dead Redemption (for Xbox 360)*. Exhibit 2 reflects the date of first publication and, where applicable, the date on which the certificate was issued and the registration number assigned.

22. RDRII has been registered with the Copyright Office. Attached hereto as **Exhibit 3**, and incorporated herein by reference, is a true and correct copy of the Certificate of Registration issued by the Copyright Office for *Red Dead Redemption II (Xbox One) Game*. Exhibit 3 reflects the date of first publication and, where applicable, the date on which the certificate was issued and the registration number assigned.

23. The GTAV, RDRI, and RDRII video games are the product of Take-Two's skills, resources, and creative energies, and are of great value to Take-Two.

**Take-Two's User Agreement and Terms of Service**

24. As a requirement to play Take-Two's video games, including GTAV, RDRI, and RDRII, or use its services, all users must agree to the terms of Take-Two's User Agreement and

Terms of Service. Attached hereto as **Exhibit 4** is a true and correct copy of the User Agreement. Attached hereto as **Exhibit 5** is a true and correct copy of the Terms of Service.

**Prohibitions on Copying or Modification**

25. Take-Two's User Agreement expressly provides that users are (1) "not to . . . commercially exploit the Software," (2) "not to . . . make a copy of the Software or any part thereof (other than as set forth [in the User Agreement])," (3) "not to . . . use or install the Software (or permit others to do same) on a network, for on-line use, or on more than one computer or gaming unit at the same time," (4) "not to . . . copy the Software onto a hard drive or other storage device in order to bypass the requirement to run the Software from the included CD-ROM," and (5) "not to . . . prepare derivative works based on, or otherwise modify the Software, in whole or in part," as indicated in **Exhibit 4**.

26. The permission that Take-Two grants users to play its games is expressly conditioned on their acceptance of these terms. As a result, if a user breaches these conditions, his or her use of Take-Two's games, including the reproduction of the GTAV, RDRI, and RDRII software in the user's computer or console, is no longer authorized. In other words, continuing to play GTAV, RDRI, and RDRII after breaching these provisions of Take-Two's User Agreement not only constitutes a breach of the User Agreement, but also copyright infringement.

**Defendants Affirmatively Accepted the User Agreement and Terms of Service**

27. As a Take-Two games player, Wyckoff was required to affirmatively accept the terms of Take-Two's User Agreement and Terms of Service multiple times as a pre-requisite to accessing services or playing games, including GTAV and RDRII. Moreover, Wyckoff also has admitted to reviewing Take-Two's User Agreement, as he has indicated on Twitter at <https://twitter.com/TroubleDamnedz/status/1193634315395096578> that he has "followed" Take-Two's User Agreement "by the teeth."

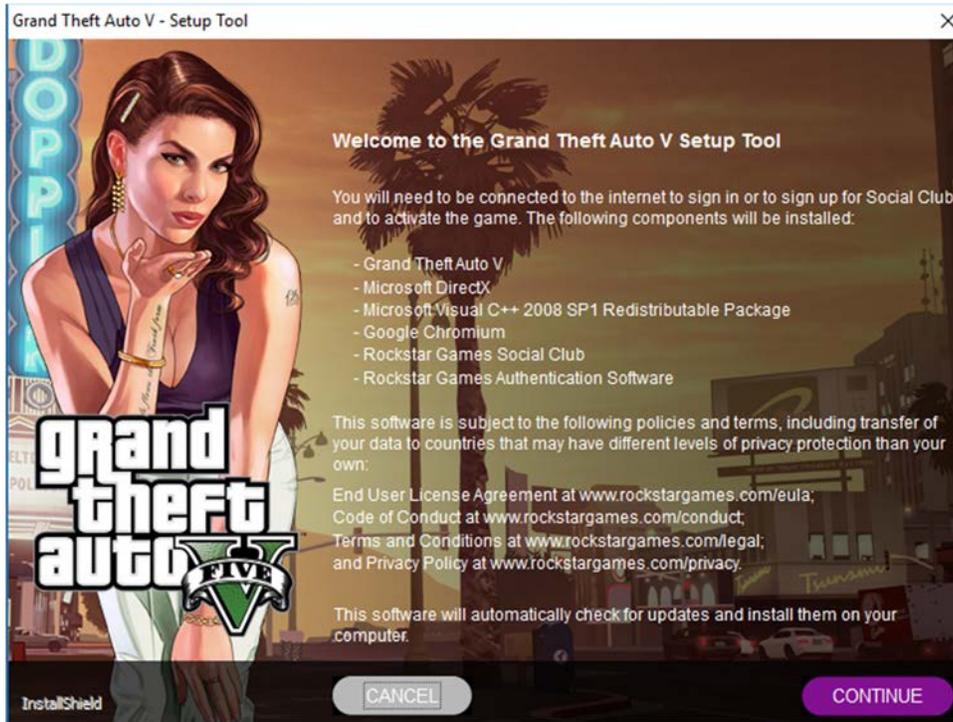
28. Upon information and belief, Doe Defendants have also similarly affirmatively accepted the terms of Take-Two's User Agreement and Terms of Service multiple times as a prerequisite to accessing services or playing games, including GTAV and RDR11.

**User Agreement and Terms of Service Notifications for GTAV**

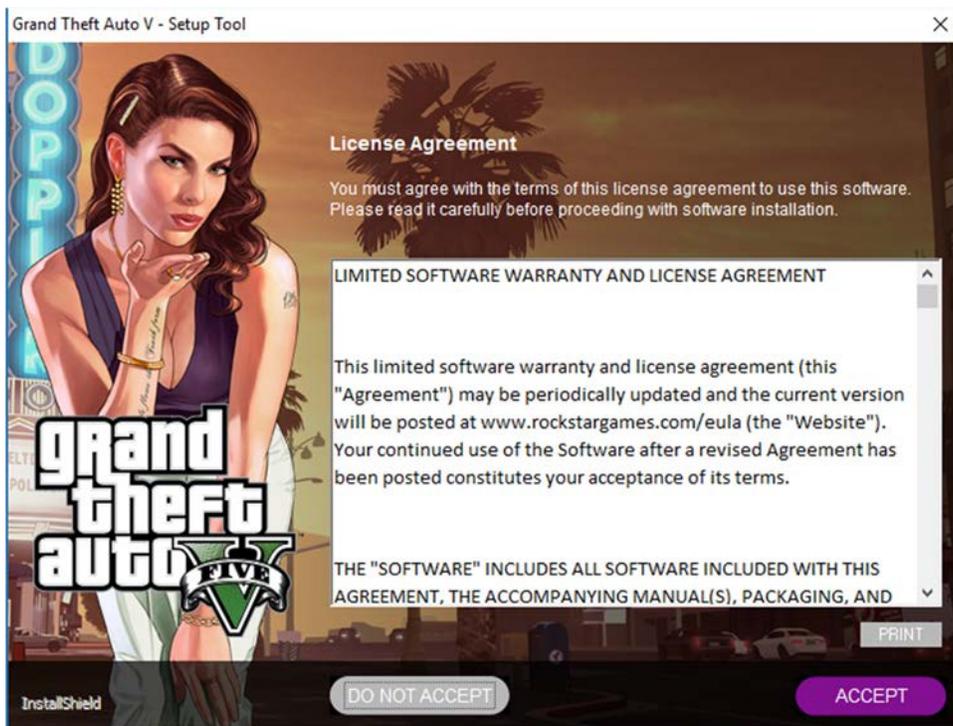
29. *First*, upon information and belief, Wyckoff and Doe Defendants were notified on the back of the GTAV box and/or during the digital purchase flow (which encompasses the online game purchase and installation process) that "Software license terms [are] in game and at rockstargames.com/eula; online account terms [are] at rockstargames.com/socialclub. Violation of EULA, Code of Conduct, or other policies may result in restriction or termination of access to game or online account," as shown in the screenshot below.



30. *Second*, Wyckoff and Doe Defendants were again notified of these policies and required to accept them during the software installation and account sign up process for GTAV. As shown below, the first screen that users, including Wyckoff and Doe Defendants, see during the GTAV installation process expressly puts users on notice that they must accept the User Agreement, as shown in the screenshot below:

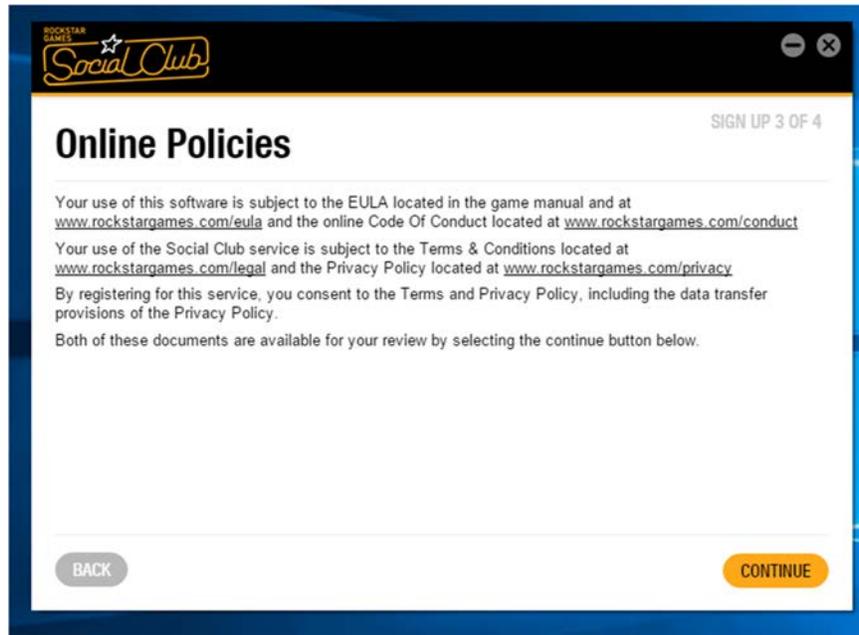


31. The second screen that users, including Wyckoff and Doe Defendants, see during the GTAV installation process requires them to review and expressly accept the User Agreement, as shown in the screenshot below:

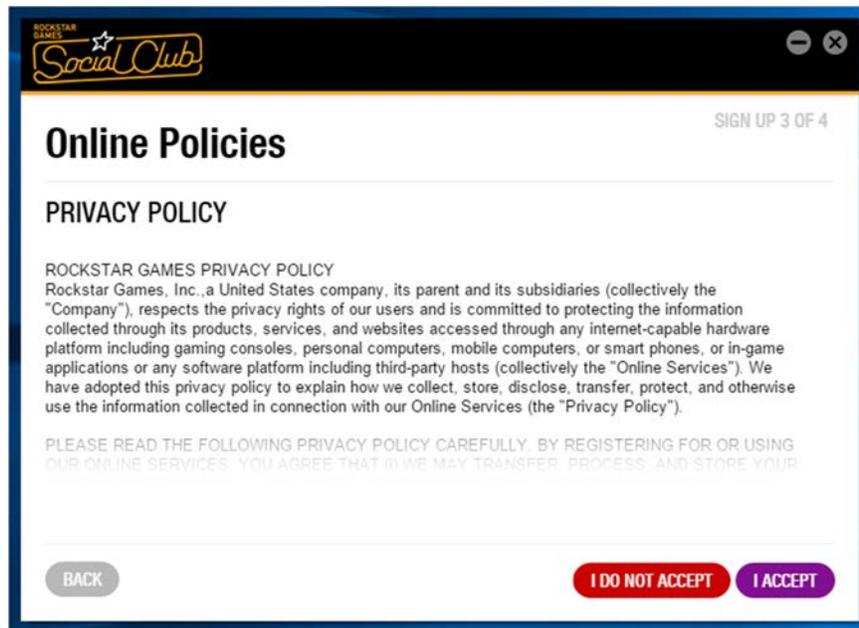


32. As shown in **Exhibit 4**, Take-Two’s User Agreement contains a mandatory forum selection clause written in a standard font size and type in clear and unambiguous language. The User Agreement expressly provides that the user agrees “to submit to the exclusive jurisdiction of the state and federal courts in New York County, New York, and to waive any jurisdictional, venue, or inconvenient forum objections to such courts.”

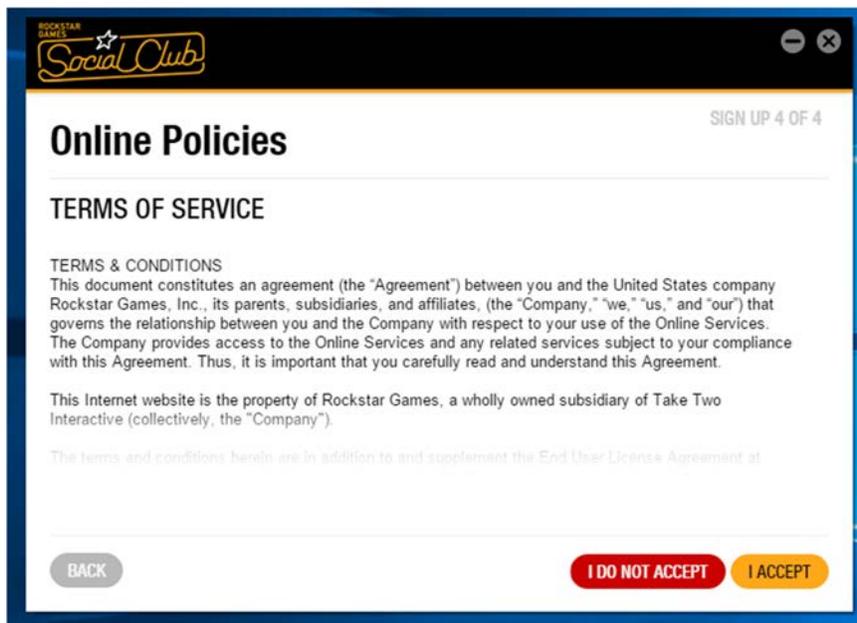
33. *Third*, all users, including Wyckoff and Doe Defendants, must sign up or sign in to the Rockstar Games Social Club before they can play GTAV. During that sign-up process, users are told that their use of the game is subject to the User Agreement and Terms of Service, which they can review by clicking links, as shown below:



34. When Wyckoff, Doe Defendants, or any other user clicks “Continue,” he or she is directed to a screen displaying Take-Two’s Privacy Policy and must affirmatively click “I ACCEPT” to continue, as shown below:



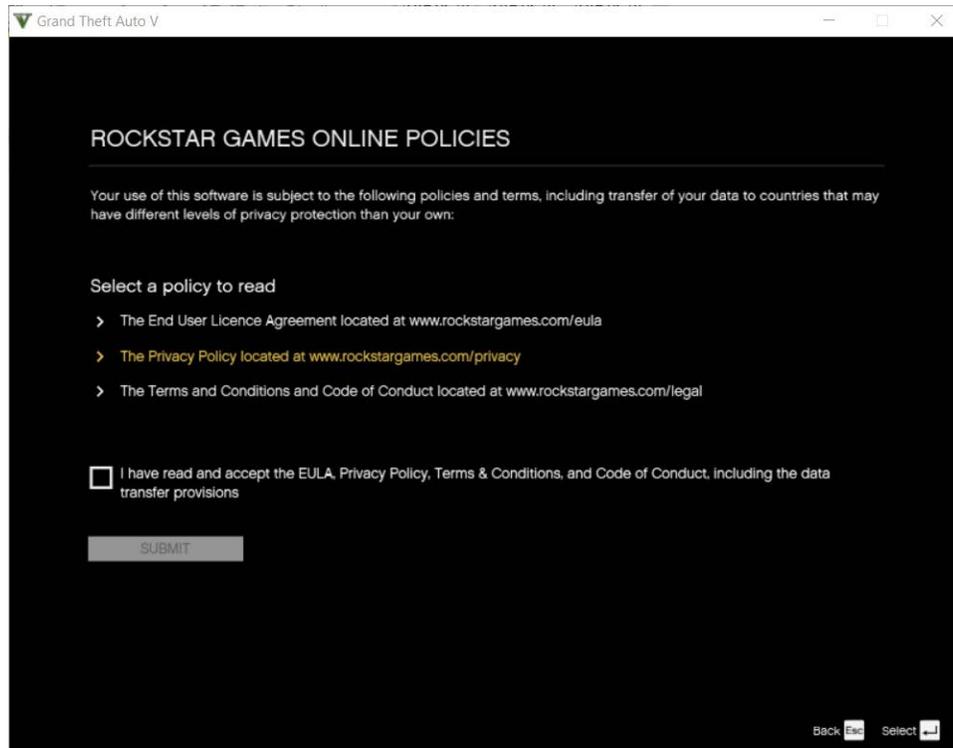
35. After clicking “I ACCEPT,” users, including Wyckoff and Doe Defendants, then see Take-Two’s Terms of Service policy and must affirmatively click “I ACCEPT” to continue, as shown below:



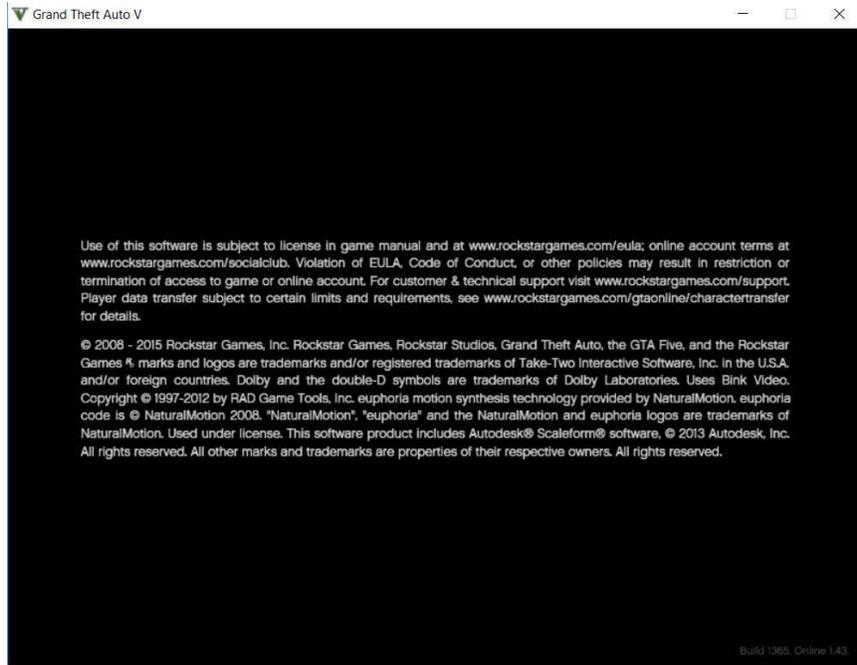
36. Take-Two’s Terms of Service contain a mandatory forum selection clause, written in a standard font size and type in clear and unambiguous language, stating that the user “agree[s] to submit to the exclusive jurisdiction of the state and federal courts in New York County, New York, and to waive any jurisdictional, venue, or inconvenient forum objections to such courts,” as indicated in **Exhibit 5**.

37. The process is essentially the same if the user is already registered as a Rockstar Games Social Club user and has signed in to a Social Club account during installation (rather than signing up for a Social Club for the first time). As with new users, the user who logs in to an existing Social Club account also will be required to click “Accept” on a screen setting forth the most recent policies within the game. That same screen provides links to Take-Two’s User Agreement, Privacy Policy, and Terms of Service. To proceed further, including accessing the

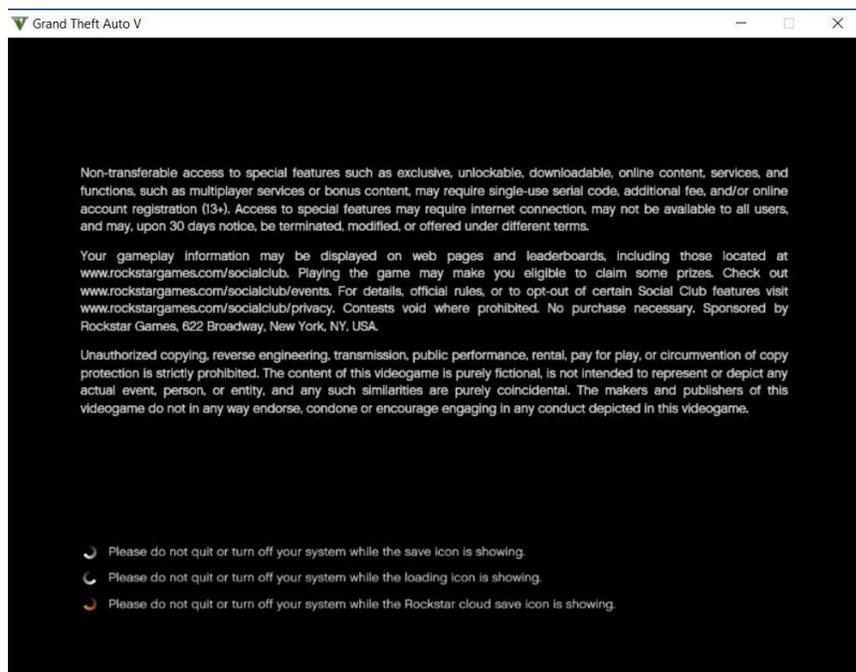
game, the user must affirmatively click a box confirming that the user has “read and accept[s] the [User Agreement], Privacy Policy, Terms [of Service], and Code of Conduct, including the data transfer provisions” and must then click “Submit.” A screenshot of this mandatory screen is shown below:



38. In addition to affirmatively accepting the terms of Take-Two’s User Agreement and Terms of Service numerous times before installing and playing GTAV, all users, including Wyckoff and Doe Defendants, also are expressly reminded when GTAV is loading that his or her use of the game is “subject to license in game manual and at [www.rockstargames.com/eula](http://www.rockstargames.com/eula); online account terms at [www.rockstargames.com/socialclub](http://www.rockstargames.com/socialclub).” A screenshot of this reminder screen is shown below:



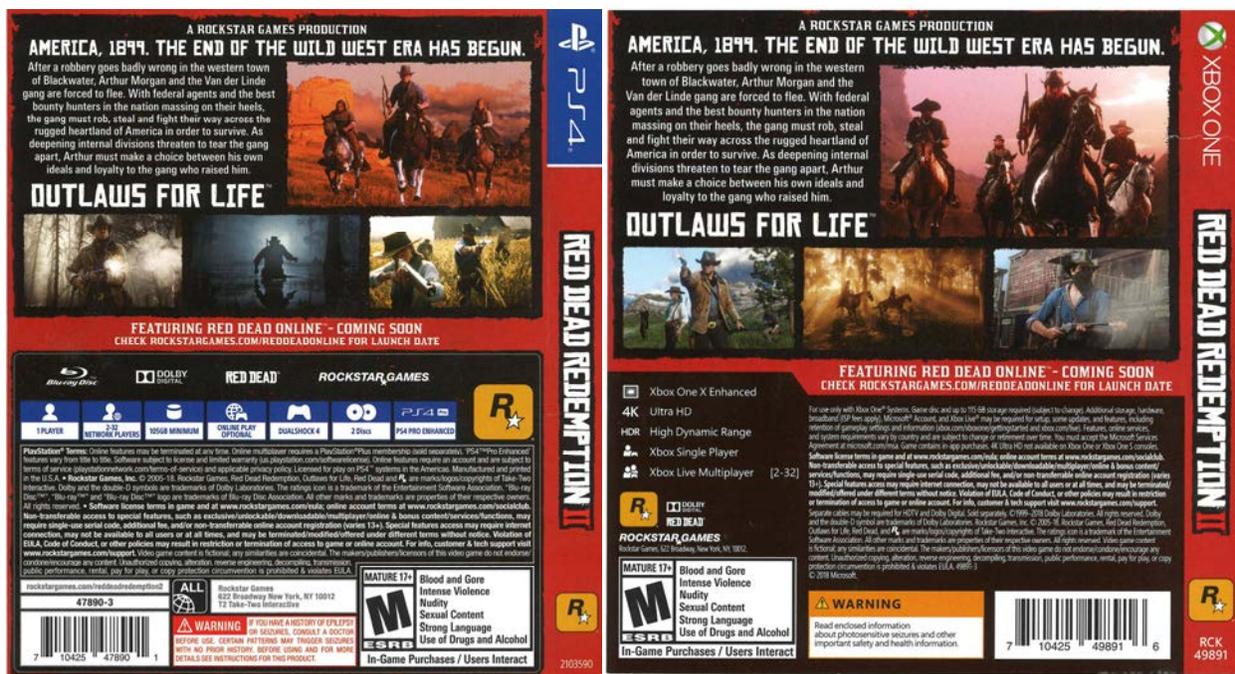
39. A second game-loading screen reminds the user that “Unauthorized copying . . . or circumvention of copy protection is strictly prohibited.” A screenshot of the second game-loading screen is shown below:



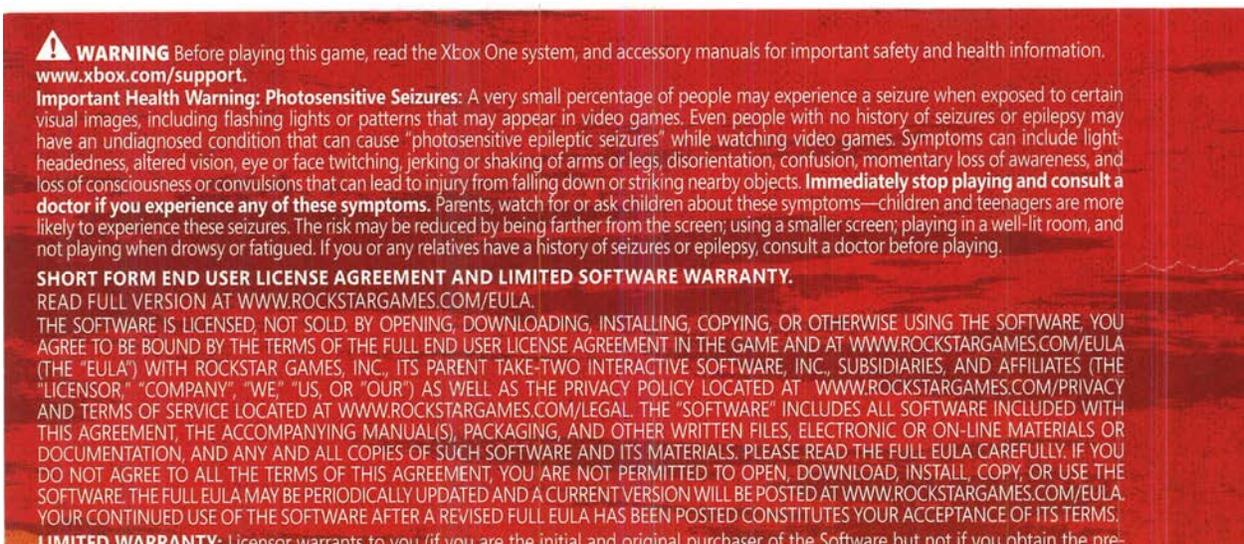
**User Agreement and Terms of Service Notifications for RDRII**

40. All users of RDRII, including Wyckoff and Doe Defendants, proceed through a similar process to that required in order to access GTAV. During that process, all users, including Wyckoff and Doe Defendants, are informed of and required to affirmatively accept the terms of Take-Two’s User Agreement and Terms of Service multiple times. This is true regardless of whether the user has purchased the game in physical disc format or purchased the game online and installed it directly onto his or her computer.

41. *First*, upon information and belief, all users, including Wyckoff and Doe Defendants, are notified on the back covers of the RDRII (for PS4) and/or RDRII (for Xbox) boxes that “Software license terms in game and at [www.rockstargames.com/eula](http://www.rockstargames.com/eula); online account terms at [www.rockstargames.com/socialclub](http://www.rockstargames.com/socialclub) . . . Violation of EULA, Code of Conduct, or other policies may result in restriction or termination of access to game or online account . . . Unauthorized copying, alteration, reverse engineering, decompiling . . . is prohibited & violates EULA.” The PS4 and Xbox box covers for RDRII are shown below.

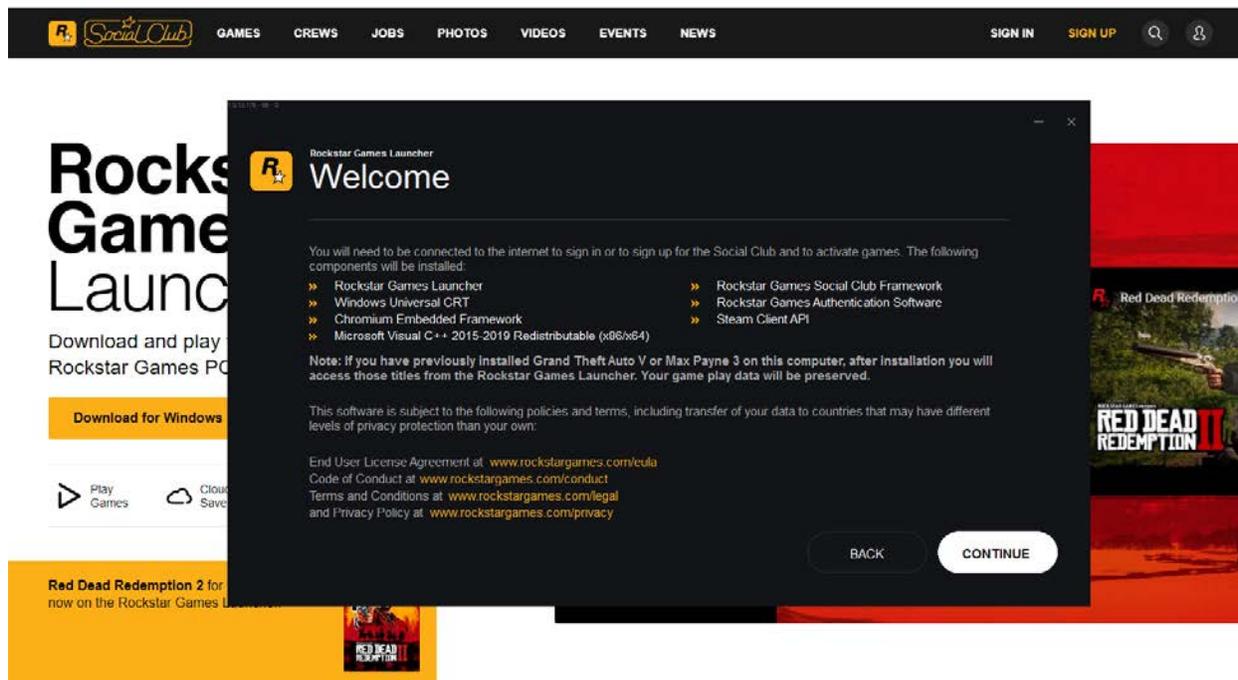


42. **Second**, upon information and belief, when opening an RDRII box, all users, including Wyckoff and Doe Defendants, are notified on the inside back cover in prominent, capitalized letters that “The software is licensed, not sold. By opening, downloading, installing, copying, or otherwise using the software, you agree to be bound by the terms of the full end user license agreement in the game and at [www.rockstargames.com/eula](http://www.rockstargames.com/eula) (the ‘EULA’) with Rockstar Games, Inc., its parent Take-Two Interactive Software, Inc., . . . as well as the privacy policy located at [www.rockstargames.com/privacy](http://www.rockstargames.com/privacy) and terms of service located at [www.rockstargames.com/legal](http://www.rockstargames.com/legal). The ‘software’ includes all software included with this agreement, the accompanying manual(s), packaging, and other written files, electronic or on-line materials or documentation, and any and all copies of such software and its materials. Please read the full EULA carefully. If you do not agree to all the terms of this agreement, you are not permitted to open, download, install, copy or use the software. The full EULA may be periodically updated and a current version will be posted at [www.rockstargames.com/eula](http://www.rockstargames.com/eula). Your continued use of the software after a revised full EULA has been posted constitutes your acceptance of its terms.” The PS4 and Xbox box covers for RDRII are shown below, respectively.



43. *Third*, all users, including Wyckoff and Doe Defendants, are notified of these policies and required to accept them during the software installation and account sign up process for RDR11. For example, when installing RDR11, users, including Wyckoff and Doe Defendants, must first download Take-Two's Rockstar Games Launcher, where the user is presented with a screen displaying links to Take-Two's User Agreement, Code of Conduct, Terms of Service, and

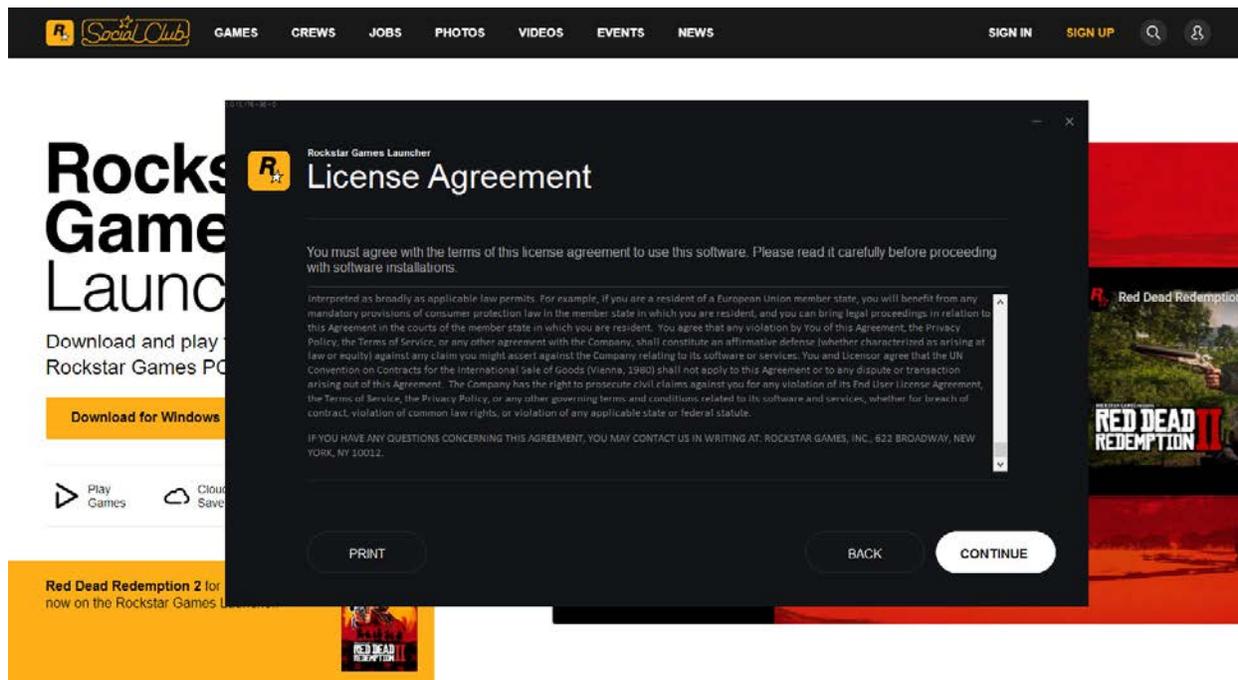
Privacy Policy, as shown in the screenshot below:



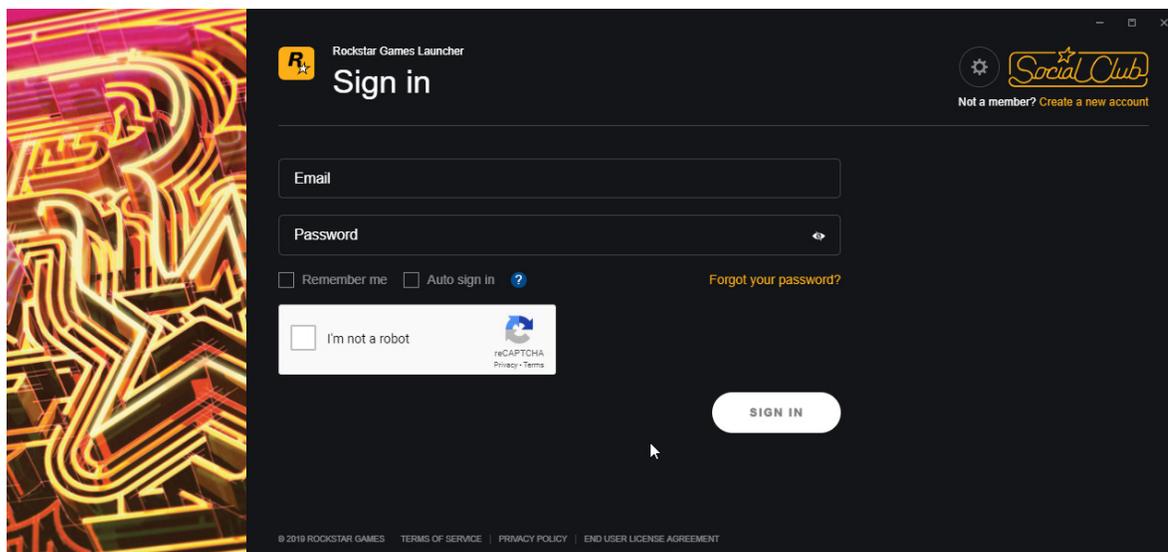
44. After clicking the “CONTINUE” button, users, including Wyckoff and Doe Defendants, are presented with the User Agreement and a statement above the User Agreement in larger font stating that “You must agree with the terms of this license agreement to use this software. Please read it carefully before proceeding with software installations.” As with GTAV, the User Agreement displayed in connection with the installation of RDR2 contains a mandatory forum selection clause written in a standard font size and type in clear and unambiguous language providing that the user agrees “to submit to the exclusive jurisdiction of the state and federal courts in New York County, New York, and to waive any jurisdictional, venue, or inconvenient forum objections to such courts.”

45. All users, including Wyckoff and Doe Defendants, are then required to scroll through the User Agreement in its entirety before affirmatively clicking “CONTINUE,” as

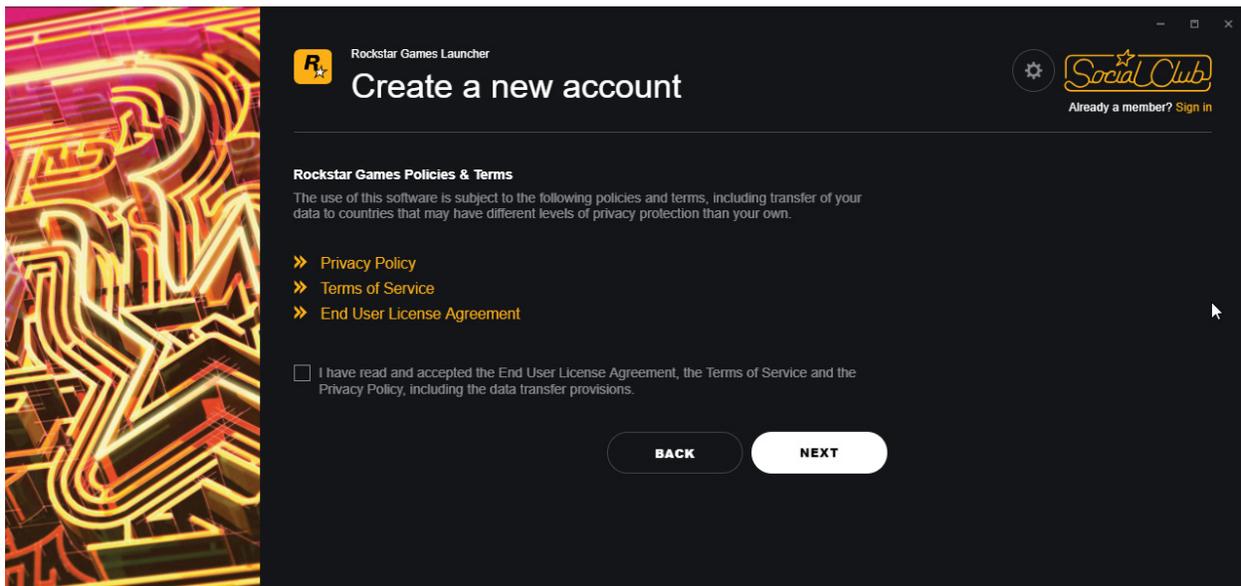
shown below:



46. After installation of the Rockstar Games Launcher, all users, including Wyckoff and Doe Defendants, are then prompted to open the Rockstar Games Launcher, where one of two screens would appear. If the user, including Wyckoff and Doe Defendants, was already a member of Take-Two's Social Club, the following login screen would appear:

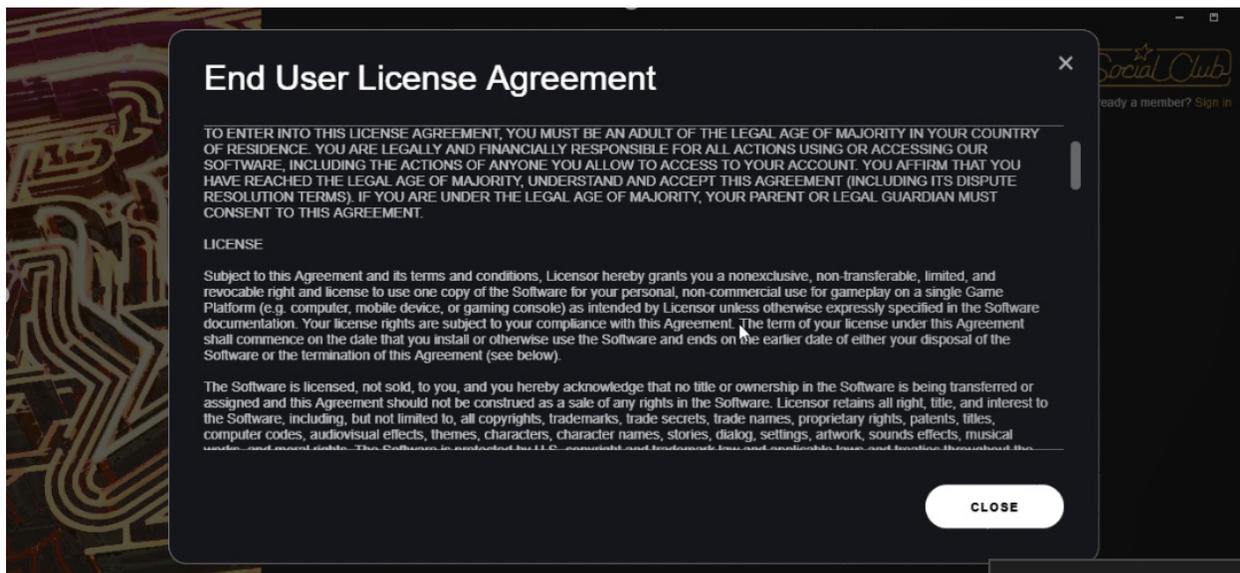


47. If the user, including Wyckoff and Doe Defendants, was not already a member of Take-Two's Social Club, the screen shown below would appear, which prompts the user to create a new account and displays links to the Privacy Policy, Terms of Service, and User Agreement. The user, including Wyckoff and Doe Defendants, would then be required to affirmatively click the box stating "I have read and accepted the [User] Agreement, the Terms of Service and the Privacy Policy, including the data transfer provisions."

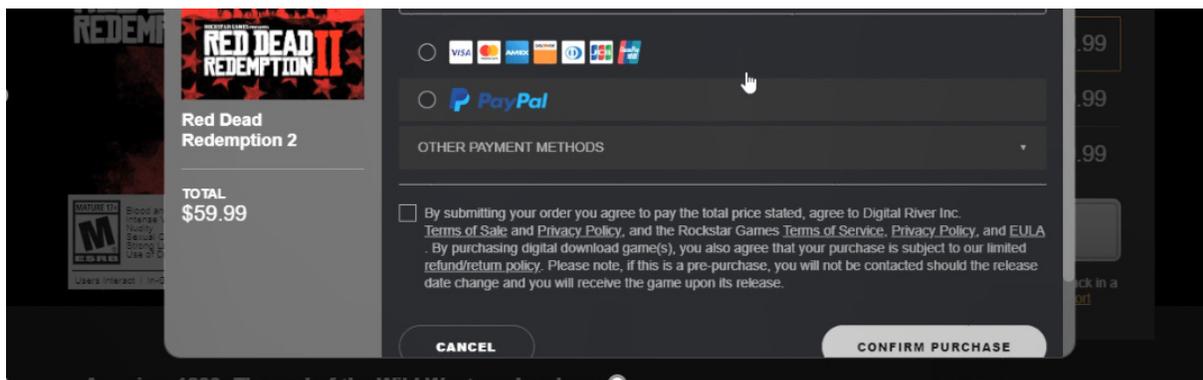


48. Upon clicking the link entitled "End User License Agreement," all users, including Wyckoff and Doe Defendants, are again presented with the User Agreement in a

standard font size and type, as shown below:

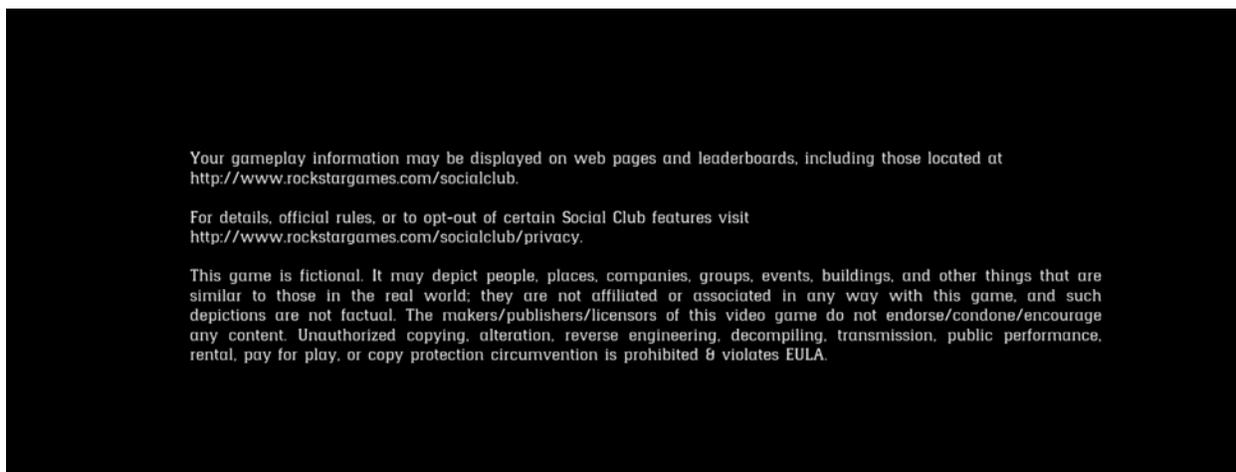
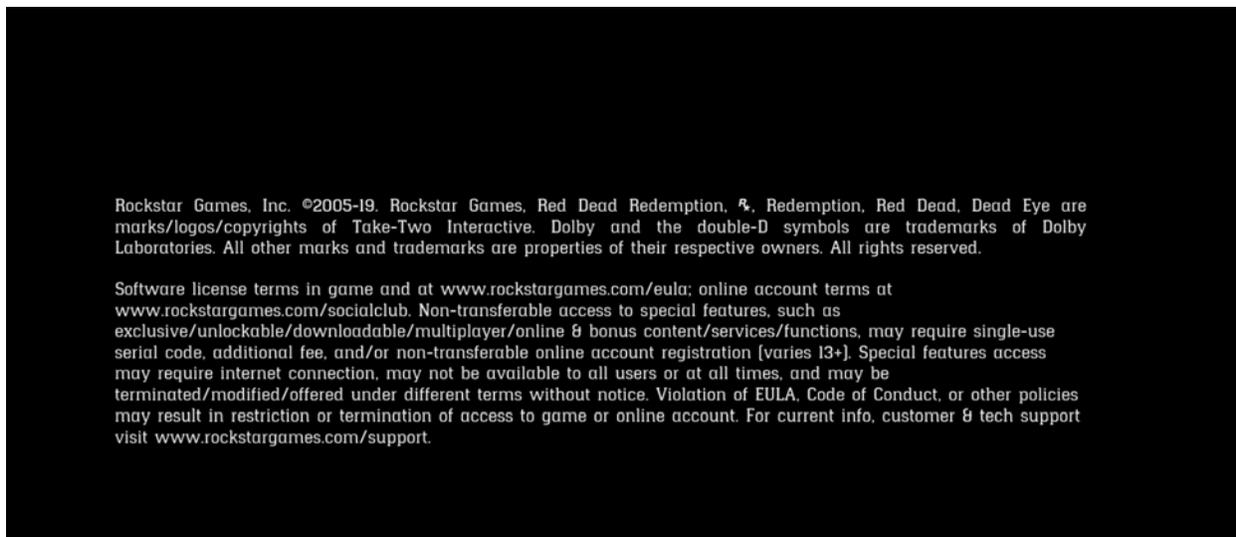


49. **Fourth**, if the user, including Wyckoff and Doe Defendants, were installing RDRII through the Rockstar Games Launcher on PC (rather than installing from a disc purchase), then after creating a “Social Club” account, the user, including Wyckoff and Doe Defendants, would proceed to purchase the game and would once again be required to click a box affirmatively assenting to the following statement: “By submitting your order you agree to ... the Rockstar Games Terms of Service, Privacy Policy, and EULA ...,” as shown below:



50. **Fifth**, in addition to affirmatively accepting the terms of Take-Two’s User Agreement and Terms of Service numerous times before installing and playing RDRII, all users, including Wyckoff and Doe Defendants, also are expressly reminded each time that RDRII is

loading that (1) “Software license terms [are] in game and at [www.rockstargames.com/eula](http://www.rockstargames.com/eula) . . . Violation of EULA, Code of Conduct, or other policies may result in restriction or termination of access to game or online account,” and (2) “Unauthorized copying, alteration, reverse engineering, decompiling, transmission, public performance, rental, pay for play, or copy protection circumvention is prohibited & violates EULA,” as shown below:



### **The Infringing Programs**

51. An individual using the online username “GamingDamned” has announced two software projects that modify Take-Two’s RDR Games. In a YouTube video located at

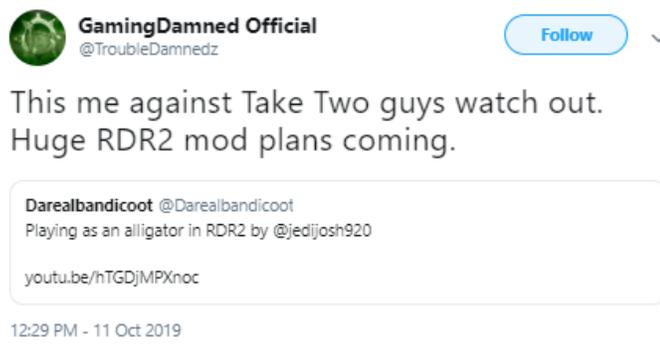
<https://www.youtube.com/watch?v=O0SXmZTIwcE>, starting at 0:08, Wyckoff identifies himself publicly as “GamingDamned.”

52. As discussed further below, one of the software projects—the RDRII Project—modifies and alters RDRII by adding the full RDRI game map to the RDRII game map and making other changes to RDRII’s graphics. The other software project—RDR-DEP—makes visual enhancements to RDRI and allows players to play an enhanced version of RDRI on PCs, a platform for which Take-Two has not yet released RDRI.

### **RDRII Project**

53. Upon information and belief, Wyckoff’s RDRII Project will add the game map from RDRI to the RDRII PC game.

54. On October 11, 2019, Wyckoff posted on Twitter at <https://twitter.com/TroubleDamnedz/status/1182739916603756544> that he has “[h]uge RDR2 mod plans coming,” as shown below:



55. Similarly, when an individual complained in a Discord chatroom about the audio in the RDRII game, Wyckoff responded, as shown below, that he “will have RDR2 project” (*i.e.*, RDRII Project) as well:



56. On November 16, 2019, Wyckoff posted a video of himself at <https://www.twitch.tv/videos/509392274>, shown below, in which he explains, starting at 35:00, that the RDRII Project will involve “*more than a graphics mod for Red Dead II.*” Specifically, he admits that RDRII Project will involve some “extensions to New Austin” and that “Mexico is going to be restored [in RDRII] completely.” He also explains that he will be making various changes to RDRII to “fix” elements of the game that he does not like, including some of the main character’s clothing and his hair. As discussed above, a territory analogous to Mexico is currently not part of RDRII’s virtual world. It is, however, a part of the virtual setting for RDRI. In other words, Wyckoff admittedly is altering and modifying RDRII by adding the RDRI game map into RDRII and making changes to the appearance of a main character in the RDR Games.



57. Wyckoff has made other statements indicating that his RDRII Project will add content to RDRII that Take-Two did not intend to include in the game. For example, on December 11, 2019, Wyckoff released a Tweet indicating that he and “others” (*i.e.*, Doe Defendants) plan to “restore” content back into RDRII.



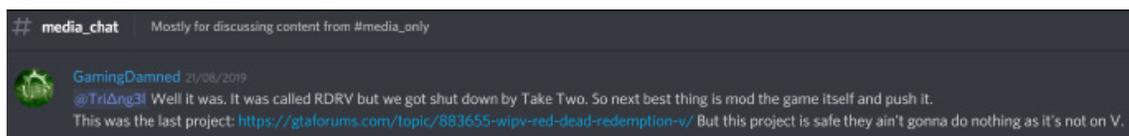
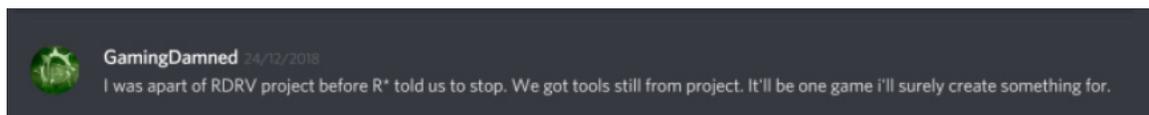
58. Upon information and belief, Wyckoff’s conduct is willful as he is already on notice that releasing modified versions of Take-Two’s games is infringement. Specifically, upon information and belief, this is not Wyckoff’s first experience modifying Take-Two’s games. As shown in the screenshots below, which are preserved online at

<https://cdn.discordapp.com/attachments/433254981974622209/623125014950051840/unknown.png> and

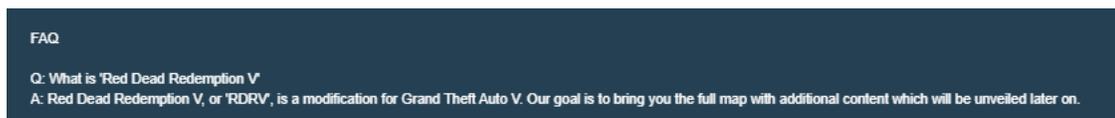
<https://cdn.discordapp.com/attachments/433254981974622209/623133127656603648/unknown.png>, Wyckoff (via his online username “GamingDamned”) has publicly admitted his

involvement with a previous project called “RDRV” that modified GTAV to import the RDRI

map into GTAV PC, and which was shut down after Take-Two demanded that the RDRV project cease and desist:

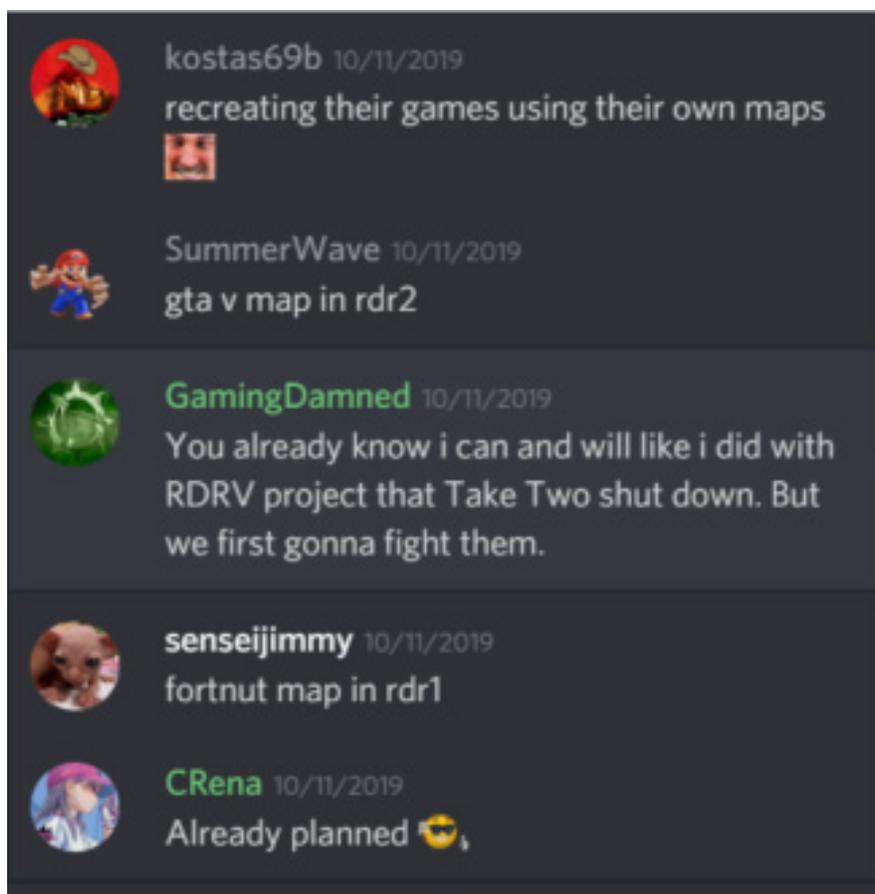


59. Upon information and belief, RDRV operated by adding RDRI game assets into the GTAV PC game to effectively recreate the RDRI game map in the GTAV PC game. As described in an online FAQ about RDRV located at <https://gtaforums.com/topic/883655-wipv-red-dead-redemption-v/>, an excerpt from which is shown below, RDRV “is a modification for Grand Theft Auto V.”



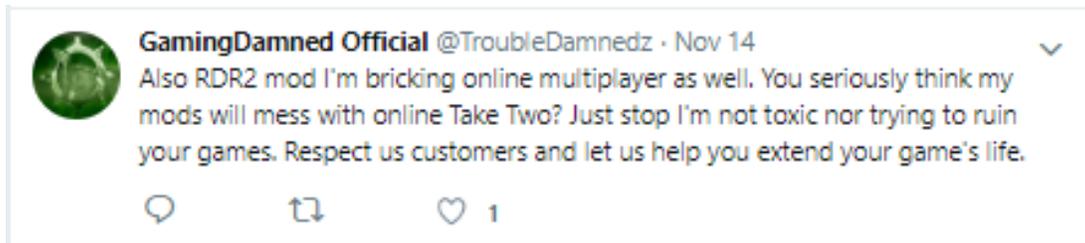
60. Although, upon information and belief, Wyckoff purportedly ceased working on RDRV following Take-Two's demand, upon information and belief, Wyckoff thereafter began working on the Infringing Programs.

61. As indicated in the below screenshot from a Discord chatroom, Wyckoff indicates that he will do something similar to the RDRV project by placing the GTAV map in RDRII. In other words, Wyckoff has admitted that he is modifying and altering RDRII to include the GTAV game map.



62. Wyckoff has claimed that the RDRII Project is permissible as it will not “mess with” the multiplayer version of RDRII because he has added “bricking” code to prevent the changes the RDRII Project makes to RDRII (including the added RDRII map) from being available in RDRII's multiplayer mode. As shown in the screenshot below located at

<https://twitter.com/TroubleDamnedz/status/1195044913064361984>, Wyckoff posted on Twitter that he is working on “bricking online multiplayer” for his “RDR2 mod” (*i.e.*, the RDRII Project), as shown below:



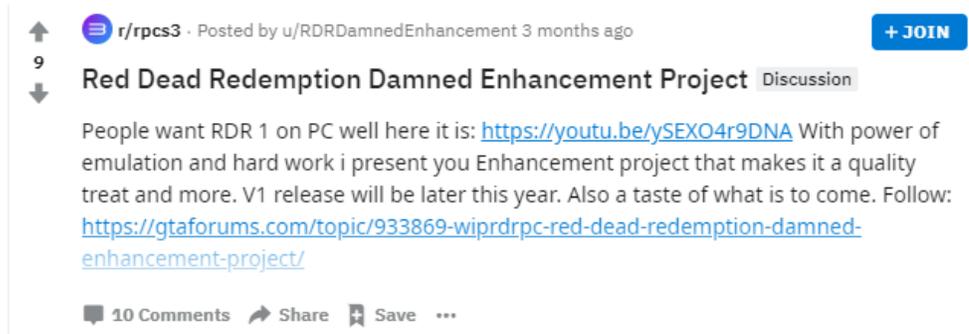
63. Upon information and belief, Wyckoff essentially has admitted to modifying and altering RDRII by writing code that will attempt to disable users’ ability to use his RDRII Project with RDRII’s multiplayer game, such that users will only be able to use the RDRII Project files to play in single player mode. Wyckoff’s reasoning that the “bricking” code makes his project permissible is flawed, however, including because the underlying assumption that the “bricking” code would be effective is itself flawed. In fact, upon information and belief, users likely would be able to easily delete or otherwise circumvent Wyckoff’s multiplayer “bricking” code, making it possible for the modifications of the RDRII Project to be available in RDRII’s multiplayer mode as well as in single player mode.

64. In short, Wyckoff’s creation and use of the RDRII Project alters and creates derivative works based on RDRI, RDRII, and GTAV without Take-Two’s permission.

### **RDR-DEP**

65. Upon information and belief, on August 20, 2019, Wyckoff posted a video on the “GamingDamned” YouTube account entitled “Red Dead Redemption Damned Enhancement Project Reveal Teaser Trailer.” The video, located at <https://www.youtube.com/watch?v=ySEXO4r9DNA&t=2s>, demonstrates to viewers the visual concept for RDR-DEP.

66. In a Reddit post linking to this video, upon information and belief, Wyckoff explains that RDR-DEP will give people “RDR 1 on PC.” A screenshot of this Reddit post, which is located at <https://www.reddit.com/user/RDRDamnedEnhancement>, is shown below.



67. Upon information and belief, on September 15, 2019, Wyckoff posted another video on the “GamingDamned” YouTube account providing viewers with an update on the status of RDR-DEP. Starting at approximately 7:48, Wyckoff also introduces his plans to create a “visual mod” for “Red Dead Redemption 2 on PC” (*i.e.*, the RDRII Project). Starting at approximately, 8:52, Wyckoff states that he does not “only do graphic mods” and explains, among other things, that he also does “textures,” “graphics design,” and “animation.”



68. As shown in the screenshot below from a forum discussing RDR-DEP, which is located at <https://gtaforums.com/topic/933869-wipdrpc-red-dead-redemption-damned-enhancement-project/#comments>, Wyckoff describes RDR-DEP as a “direct modification of a Xenia/RPCS3 (X360) (PS3) versions of the game Red Dead Redemption, running on x64 Windows PC platforms with redefined graphical elements in high quality, including but not limited to; textures, UI/UX menu elements, in-game HUD, draw optimizations, shader and model updates, Alpha/Beta Stuff and many more. The target of the project is set out to remaster\* visuals and optimize the game to run and look better, from within the Xenia/RPCS3 emulators (<https://xenia.jp/>) (<https://rpcs3.net>) on x64 Windows PC platform and console level hardware, software compatibility support (e.g., Sony PlayStation 3, Xbox 360).”

## Red Dead Redemption: Damned Enhancement Project

**Introduction:**

Red Dead Redemption: Damned Enhancement Project is a direct modification of a Xenia/RPCS3 (X360) (PS3) versions of the game Red Dead Redemption, running on x64 Windows PC platforms with redefined graphical elements in high quality, including but not limited to; textures, UI/UX menu elements, in-game HUD, draw optimizations, shader and model updates, Alpha/Beta Stuff and many more.

The target of the project is set out to remaster\* visuals and optimize the game to run and look better, from within the Xenia/RPCS3 emulators (<https://xenia.jp/>) (<https://rpcs3.net/>) on x64 Windows PC platforms and console level hardware, software compatibility support (e.g. Sony PlayStation 3, Xbox 360).

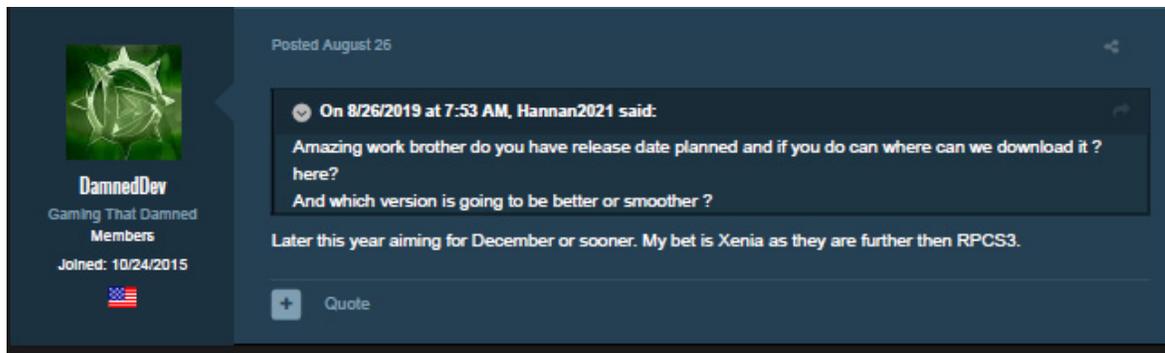
69. Upon information and belief, to make RDR-DEP work, Wyckoff, and, upon information and belief, Doe Defendants, had to create an unauthorized copy of RDRI from the Xbox 360 disc (removing Take-Two's copy protections for RDRI), place the copy of RDRI onto a computer, and modify it. As shown in the below screenshot from a forum discussing RDR-DEP, which is located at <https://gtaforums.com/topic/933869-wipdrpc-red-dead-redemption-damned-enhancement-project/#comments>, Wyckoff instructs users to "Rip and Dump" RDRI to enable users to be able to play RDRI with RDR-DEP.



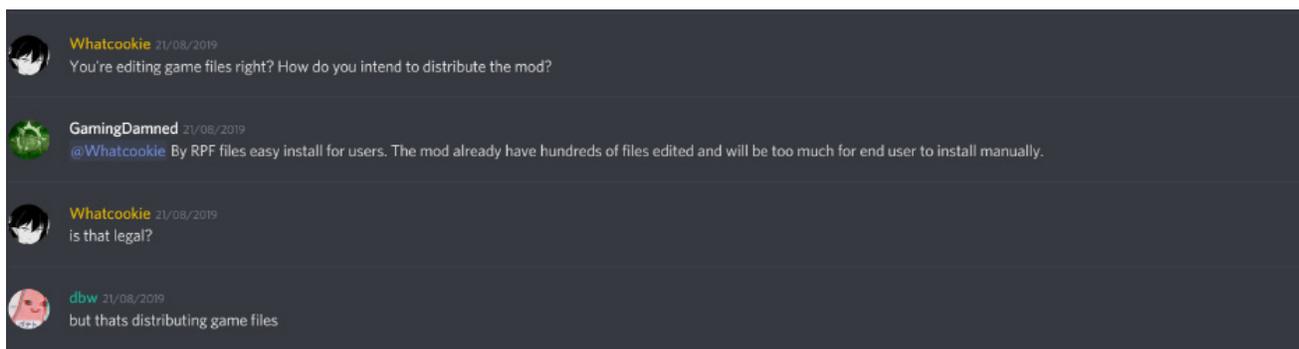
**Huge Disclaimer: You will need to buy the game. And also Rip and Dump the game. Also need to extract ISO to get raw files. The Mod will not contain the game itself just Mod. The Mod be 2 RPF Files easy install.**

In other words, upon information and belief, Wyckoff is instructing users to copy RDRI from an Xbox 360 disc and place the copy onto their computers in violation of the User Agreement.

70. Upon information and belief, once Wyckoff copied the game from the Xbox 360 disc onto his computer in violation of the User Agreement, he modified the game to create RDR-DEP and, upon information and belief, uploaded his RDR-DEP software files to an online third party platform so that, upon release of RDR-DEP, users would then be able to play a modified version of RDRI that includes enhanced graphics and visuals for free on PC with the RDR-DEP software files that Wyckoff created. As shown in the screenshot below, which is located at <https://gtaforums.com/topic/933869-wipdrpc-red-dead-redemption-damned-enhancement-project/>, Wyckoff has responded to an individual's question about RDR-DEP by explaining that he intends to release the files in or near December.



71. Moreover, as shown in the screenshot below from a Discord chatroom, Wyckoff has described RDR-DEP as using Take-Two’s “RPF files,”<sup>1</sup> which, upon information and belief, means that Wyckoff is modifying the proprietary Rockstar Games RPF game file format.



<sup>1</sup> “RPF files” for RDR1 refers to a proprietary game file format created and used by Take-Two for RDR1 that contains game data files such as player 3D models, texture graphics, and game audio.

72. As shown in the screenshot below from a Discord chatroom, Wyckoff also has referred to “heavily” modifying the RDRI “game itself” to create “super rich visuals,” as well as “fix[ing]” certain “[a]udio issues.”



73. Wyckoff also has admitted publicly to making other specific changes to RDRI. As shown in the screenshots below from a Discord chatroom, Wyckoff has referred to removing Take-Two’s “Heat Haze Effect” and “reduc[ing] fog and all bloom.” He also has referred to his plans to modify “Shadows” in RDRI.

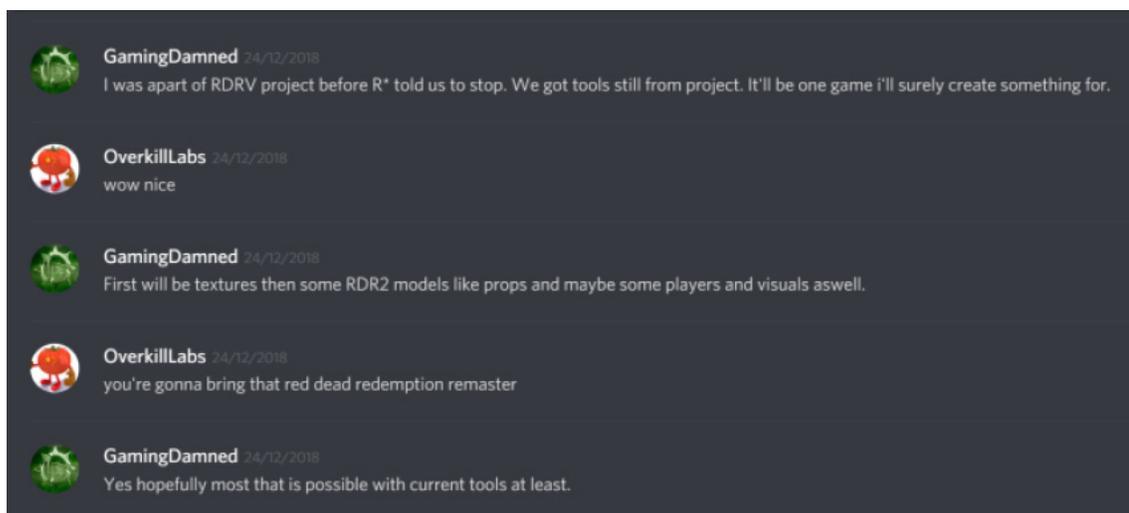




74. In other words, Wyckoff's creation and use of RDR-DEP alters and creates derivative works based on RDRI without Take-Two's permission.

75. Moreover, upon information and belief, and as shown below, Wyckoff is using "tools" from the purportedly "cancelled" RDRV project, which, as noted above, modified GTAV, to create RDR-DEP. Upon information and belief, this means that Wyckoff is still using

portions of the GTAV PC code from the RDRV project to modify RDRI and make an enhanced version of RDRI for users to play with RDRI on PC.



76. In other words, Wyckoff’s creation and use of RDR-DEP also alters and creates derivative works based on GTAV without Take-Two’s permission.

77. As shown below, Wyckoff has claimed on Twitter that RDR-DEP, like his RDRII Project, will only modify the single player RDRI game because he has “disabl[ed]” the ability of users to play RDRI’s multiplayer game with RDR-DEP, which Wyckoff apparently believes makes the project legally permissible (it does not). A screenshot of Wyckoff’s Twitter post, located at <https://twitter.com/TroubleDamnedz/status/1195041157979525120>, is shown below:



**GamingDamned Official**  
@TroubleDamnedz

Follow

I'm not standing down I took extra mile disabling the core multiplayer so they can't use in court. I need your help to make modding safe for everyone else. Project will be released in December or sooner. Podcast might be this week or next need to rest to heal my throat.

10:09 AM - 14 Nov 2019

78. Upon information and belief, any attempts to “disable” use of Wyckoff’s RDR-DEP project files with RDRI multiplayer mode can be circumvented, which, upon information and belief, means that Wyckoff’s modifications of RDRI could be available in both the single player *and* multiplayer versions of the game.

79. Moreover, once RDR-DEP is publicly released, upon information and belief, a user can then copy Wyckoff’s modifications and import them into other versions of RDRI, changing the user experience on other platforms as well.

80. In short, Wyckoff’s creation and use of RDR-DEP alters and creates derivative works based on RDRI and GTAV without Take-Two’s permission.

81. As a result of all of the actions described above, Wyckoff has breached the express conditions set forth in Take-Two’s User Agreement. Moreover, he has infringed Take-Two’s copyrights in at least three ways, namely by: (1) continuing to use GTAV, RDRI, and/or RDRII after breaching those conditions, (2) creating unauthorized derivative works based on GTAV, RDRI, and RDRII, and (3) creating an unauthorized copy of the Xbox 360 RDRI game onto his computer.

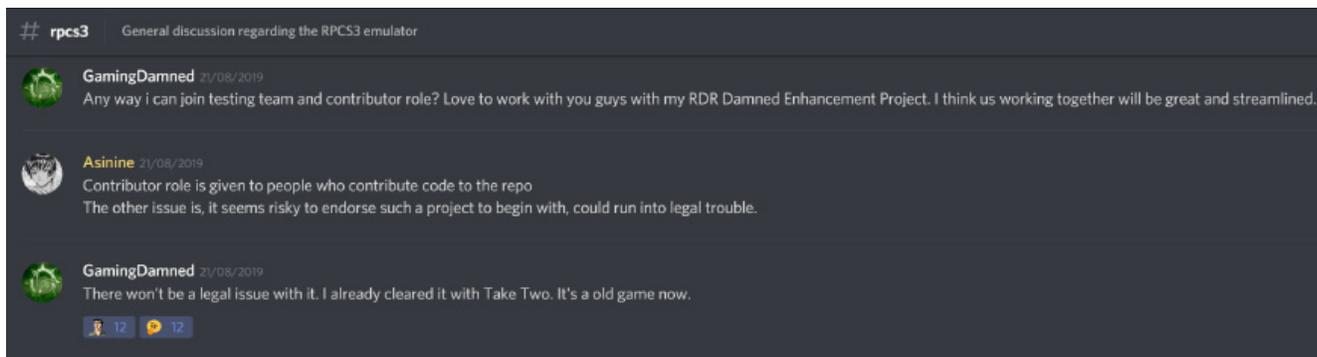
**Defendants’ Infringement is Willful and in Utter Disregard of Take-Two’s Rights**

82. Upon information and belief, Defendants know that they do not have Take-Two’s permission to create, distribute, and/or maintain any infringing software programs.

83. As noted above, Wyckoff was previously involved with the RDRV project that was shut down following Take-Two's demands to cease and desist.

84. Moreover, upon information and belief, Wyckoff falsely claimed in a Discord chatroom that he had "already cleared [RDR-DEP] with Take-Two," and suggested that Take-Two gave him permission because RDRI is "a[n] old game now." This false claim that Take-Two authorized his activities shows that Wyckoff is fully aware that what he is doing requires permission from Take-Two. A screenshot of this false statement from the Discord chatroom (which is preserved online at

<https://cdn.discordapp.com/attachments/433254981974622209/623122129067442181/unknown.png>) is shown below:



85. In addition, upon information and belief, Wyckoff has admitted online that the "video game assets" in RDR-DEP are owned by Take-Two. As shown in the screenshot below, which is located at <https://gtaforums.com/topic/933869-wipdrpc-red-dead-redemption-damned-enhancement-project/#comments>, Wyckoff admits in a forum discussing RDR-DEP that "All video game assets shared and displayed are rightful property of Rockstar Games and Take-Two Interactive software[.]"

## Credits:

**LEGAL NOTICE:** All video game assets shared and displayed are rightful property of Rockstar Games and Take-Two Interactive software, please see the links in the Special Thanks section for more details.

86. Wyckoff also has admitted his awareness of the requirements of Take-Two's User Agreement, as he has stated on Twitter at <https://twitter.com/TroubleDamnedz/status/1193634315395096578> that he has "followed" it "by the teeth."

87. Take-Two contacted Wyckoff by phone on September 5, 2019 demanding that he discontinue development of any modifications of Take-Two's games. During that call, Wyckoff was informed that his modification projects (*i.e.*, RDR-DEP and the RDRII Project) violated Take-Two's rights, including its copyrights in its games. Take-Two indicated that it would not take action against Wyckoff if he would cease and desist.

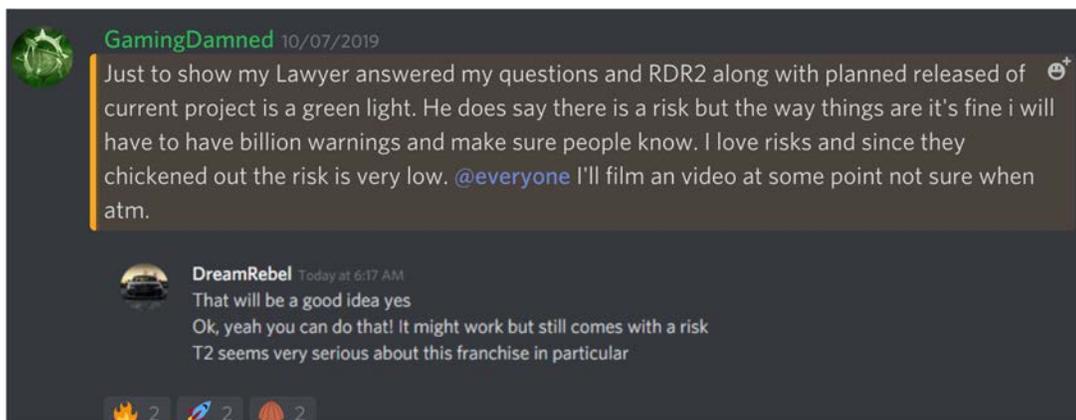
88. On September 15, 2019, Wyckoff indicated in an updated forum post that he was suspending the release of RDR-DEP. A screenshot of that post, which was previously located at <https://gtaforums.com/topic/933869-wipdrpc-red-dead-redemption-damned-enhancement-project/>, is shown below:

**Please Note Project**  
**Halted. Update**  
**Video will made and**  
**will explain. I'm Not**  
**very happy. Please**

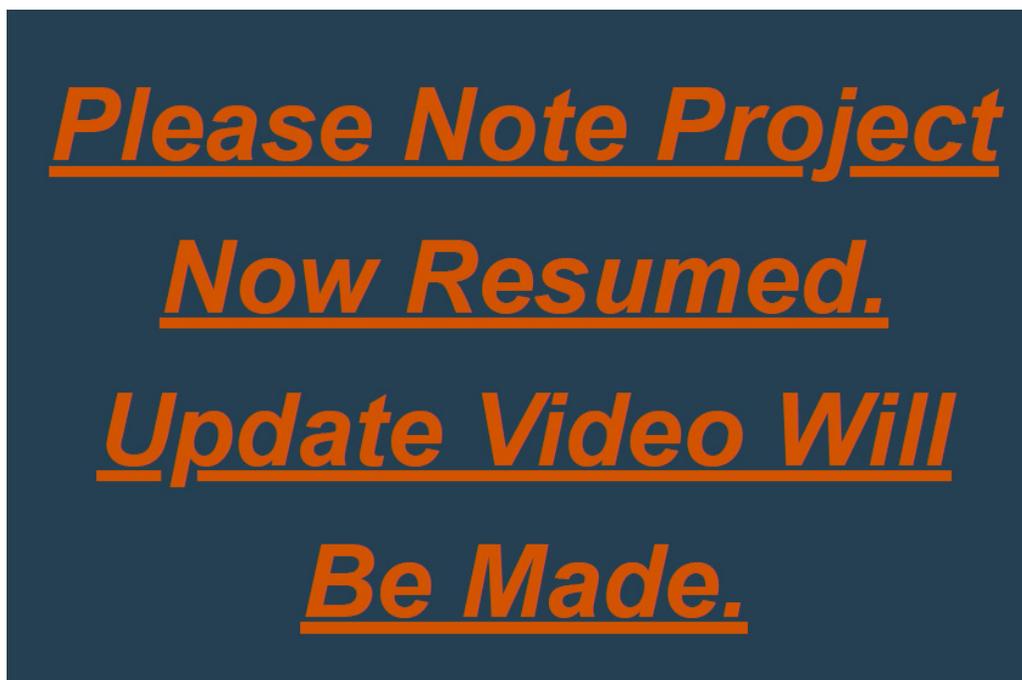
89. Wyckoff, however, later reversed course. As shown below, Wyckoff released a Tweet on October 4, 2019, located at <https://twitter.com/TroubleDamnedz/status/1180297715219083264>, in which he states that he intends to release his “current project” (*i.e.*, RDR-DEP) and the RDRII Project in December 2019.



90. On October 7, 2019, Wyckoff posted in a Discord chatroom that both of his Infringing Programs were a “green light” for imminent release, as shown below:



91. On November 5, 2019, Wyckoff indicated in an updated post that he had “[r]esumed” working on his RDR-DEP “Project.” A screenshot of that post, which is located at <https://gtaforums.com/topic/933869-wipdrpc-red-dead-redemption-damned-enhancement-project/#comments>, is shown below:



92. As a sign of Wyckoff’s willful disregard for Take-Two’s copyright rights, Wyckoff also has suggested that he will secretly release RDR-DEP. Specifically, upon information and belief, Wyckoff has stated in a Discord chatroom that if Take-Two attempts to stop his infringing conduct, RDR-DEP “may get leaked by some . . . private people” (*i.e.*, Doe

Defendants) to whom Wyckoff distributed his files or otherwise leaked anonymously via the BitTorrent communication protocol for peer-to-peer file sharing. Screenshots from an Excel data dump spreadsheet capturing Wyckoff's Discord statements are shown below:

They won't know shit we be anon with torrents to map mods.  
Let's say if it were to happen it gets leaked on torrents maybe. It can be done.

That's why i'm releasing my shit any ways what they gonna do to me? Sue me lol they can't i can prove in court.

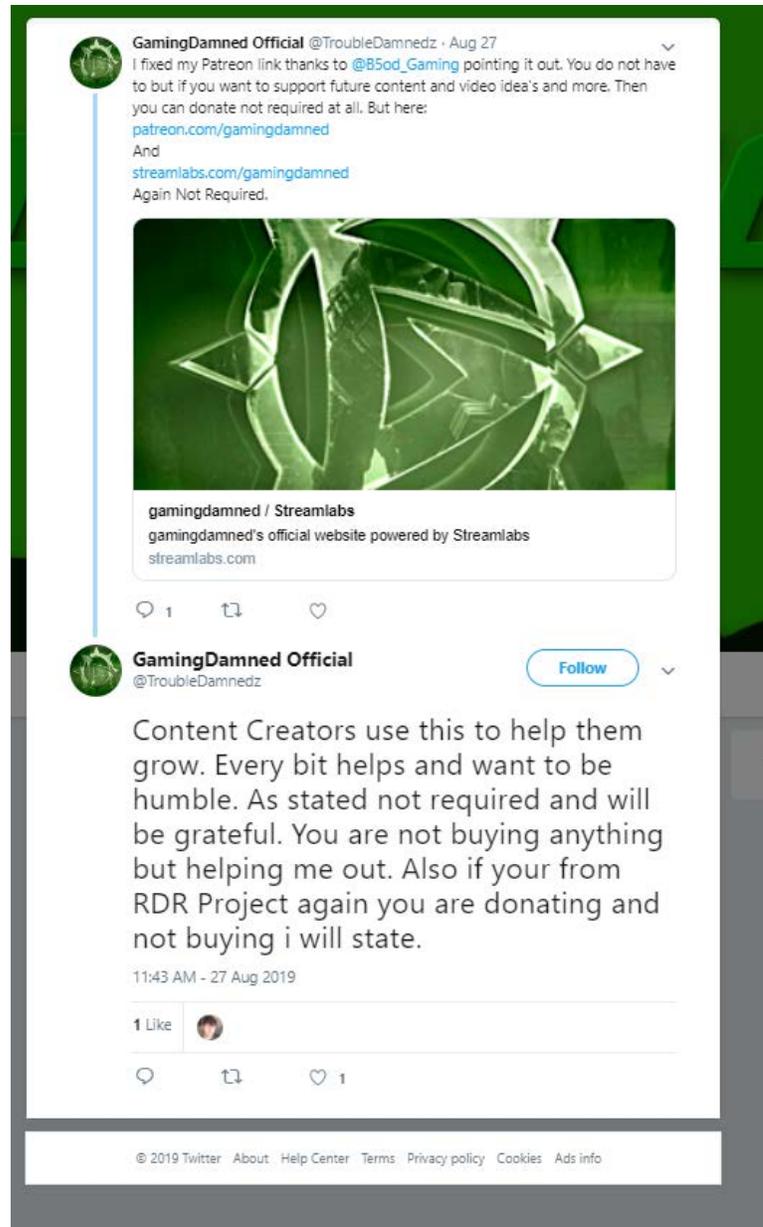
It may get leaked by some of private people i gave to but that be a last resort if it outs.

93. Upon learning that Wyckoff intended to move forward with the release of RDR-DEP and the RDRII Project, counsel for Take-Two contacted Wyckoff by e-mail on November 7, 2019, reiterating its concerns and asking him to confirm by no later than November 18, 2019 that he would not release the Infringing Programs.

94. Despite Take-Two's repeated efforts to resolve this dispute without court intervention, Wyckoff has refused to confirm that he will not release the Infringing Programs. In fact, on November 14, 2019, Wyckoff released a statement on Twitter located at <https://twitter.com/TroubleDamnedz/status/1195041157979525120> in which he indicates that he is "not standing down," thus leading Take-Two to believe that Wyckoff and/or Doe Defendants will release both of the Infringing Programs unless they are enjoined from doing so. A screenshot of Wyckoff's Twitter post is shown below:



95. Ahead of the release of his Infringing Programs, Wyckoff has solicited so-called “donations” including through his @TroubleDamnedz “GamingDamned Official” Twitter account (as shown in the screenshot below) and through a YouTube video located at <https://www.youtube.com/watch?v=tYuzuAT9EsY&t=306s>. Specifically, Wyckoff has encouraged donors to make payments to him through Patreon.com and Streamlabs.com. Wyckoff also benefits from his projects by using videos of them to drive “followers” to his social media accounts.



**The Infringing Programs Will Cause Irreparable Harm to Take-Two**

96. Defendants' willful infringing conduct will cause irreparable harm to Take-Two as it causes Take-Two to lose control over its copyrighted works. Specifically, Take-Two has a carefully timed plan for the release of its games on various platforms, including PCs. RDR-DEP however, usurps Take-Two's control over its exclusive right to decide whether, and when, to release RDRI for use on PCs. Similarly, by distributing the RDRII Project, Wyckoff is harming

Take-Two's ability to control whether, and when, to release an add-on map product that would allow the RDRI game map to be played in RDRII.

97. The Infringing Programs also cause Take-Two to lose control over RDRI and RDRII as Take-Two designed them. Moreover, the Infringing Programs will not contain Take-Two's careful quality control measures that ensure that game players receive a high-quality game playing experience free of crashes and other interference.

98. Further, the Infringing Programs cause Take-Two to lose control over RDRI and RDRII because, upon information and belief, once Wyckoff's modified software files are released over the Internet without Take-Two's copy protection, other users will have the ability to further modify the game, unleashing an endless possibility of infringing game variants for RDR Games on PC and console.

99. Moreover, Take-Two produces video games for which it receives revenue from video game sales and purchases within the game. Defendants' willful infringement will rob Take-Two of these revenues. The Infringing Programs (1) allow or will allow Wyckoff and/or Doe Defendants to profit commercially (*e.g.*, via "donations") without paying Take-Two anything, (2) will compete against Take-Two's sales of RDRI and RDRII PC, and (3) devalue and cause substantial harm to the value of RDRI and RDRII. Thus, Take-Two has been damaged by Defendants' conduct in an amount to be determined according to proof, but in no event less than \$500,000.00.

100. Specifically, as RDRI is an older game, the "Game of the Year" edition of RDRI currently retails for \$17.99. By contrast, RDRII PC retails for \$59.99. Users could thus buy a copy of RDRI for Xbox 360 for only \$17.99 and "rip" it to play an enhanced version of RDRI on

PC with RDR-DEP, which would be cheaper than purchasing RDRII PC from Take-Two. This clearly undermines Take-Two's sales of RDRII PC.

101. In addition, should Take-Two release a version of RDRI that is playable on PCs (as Take-Two has done with GTAV and RDRII), Take-Two's pricing for RDRI PC inevitably would be undercut as RDR-DEP already would provide an enhanced version of the game for gameplay on PCs for free. Moreover, players who play RDRII with Wyckoff's RDRII Project will be deterred from purchasing a future RDRI PC version or an RDRII add-on map product because the RDRII Project will add the full RDRI game map to RDRII, thereby eliminating the need to purchase RDRI or an RDRII add-on map product to experience the RDRI game map. All of this undermines Take-Two's business model and the pricing of its RDRII PC and RDRI PC products and is harmful to Take-Two.

102. Moreover, upon information and belief, unless enjoined by this Court, Defendants intend to continue to infringe upon Take-Two's copyrights through the release of the Infringing Programs and will profit from such infringement.

103. Accordingly, Take-Two has suffered irreparable damages. Take-Two has no adequate remedy at law to redress all of the injuries that Defendants have caused and intend to cause by their conduct. Take-Two will continue to suffer irreparable damage until the actions alleged above are enjoined by this Court.

### **CLAIMS FOR RELIEF**

#### **COUNT I**

#### **Direct Copyright Infringement (17 U.S.C. § 101 *et seq.*)**

104. Take-Two repeats and realleges each and every allegation set forth in paragraphs 1–103 above as if fully set forth herein.

105. GTAV, RDRI, and RDRII are original, creative works and copyrightable subject matter under the laws of the United States.

106. Take-Two is the owner of valid copyrights in GTAV, RDRI, and RDRII, and the Register of Copyrights has issued valid Certificates of Registration for each of GTAV, RDRI and RDRII, as shown in **Exhibits 1–3**.

107. Take-Two has complied in all respects with 17 U.S.C. § 101, *et seq.*, and has secured the exclusive rights and privileges in and to the copyrights in its video games and content.

108. By the actions alleged above, Defendants have infringed and, upon information and belief, will continue to infringe Take-Two's copyrights in and relating to GTAV, RDRI, and RDRII by, *inter alia*, (1) creating unauthorized copies of RDRI on their computers from the Xbox 360 disc, (2) creating derivative works of GTAV, RDRI, and RDRII without any authorization or other permission from Take-Two, and (3) continuing to use GTAV, RDRI, and/or RDRII having violated the conditions on such use.

109. Defendants' infringement of Take-Two's copyrights has been deliberate, willful and in utter disregard of Take-Two's rights.

110. Upon information and belief, as a direct and proximate result of their wrongful conduct, Defendants have obtained benefits, including, but not limited to, donations to which they are not entitled.

111. As a direct and proximate result of their wrongful conduct, Take-Two has been substantially and irreparably harmed in an amount not readily capable of determination. Unless restrained by this Court, Defendants will cause further irreparable injury to Take-Two.

112. Take-Two is entitled to injunctive relief enjoining Defendants, and all persons acting in concert or participation with them, from engaging in any further infringement of Take-Two's copyrighted video games and content.

113. Take-Two is further entitled to recover from Defendants the damages, including attorney's fees and costs, it has sustained and will sustain, and any gains, profits and advantages obtained by Defendants as a result of their acts of infringement as alleged above. At present, the amount of such damages, gains, profits and advantages cannot be fully ascertained by Take-Two, but in no event is less than \$500,000.00 and will be established according to proof at trial. Take-Two also is entitled to recover statutory damages for Defendants' willful infringement of its copyrights.

## **COUNT II**

### **Contributory Copyright Infringement (17 U.S.C. § 101 *et seq.*)**

114. Take-Two repeats and realleges each and every allegation set forth in paragraphs 1–113 above as if fully set forth herein.

115. GTAV, RDRI, and RDRII are original, creative works and copyrightable subject matter under the laws of the United States.

116. Take-Two is the owner of valid copyrights in GTAV, RDRI, and RDRII, and the Register of Copyrights has issued valid Certificates of Registration for each of GTAV, RDRI and RDRII, as indicated in **Exhibits 1–3**.

117. Take-Two has complied in all respects with 17 U.S.C. § 101, *et seq.*, and has secured the exclusive rights and privileges in and to the copyrights in its video games and content.

118. By the actions, alleged above, Wyckoff and/or Doe Defendants intend to provide copies, or portions thereof, of the Infringing Programs to third-parties.

119. Those third-parties, through their use of the Infringing Programs, will infringe Take-Two's copyrights, *inter alia*, (1) creating an unauthorized copy of RDRI on their computer from the Xbox 360 disc, (2) using the Infringing Programs to create derivative works of GTAV, RDRI, and RDRII without any authorization or other permission from Take-Two, and (3) continuing to use GTAV, RDRI, and/or RDRII after violating the conditions on such use.

120. Once the Infringing Programs are released, Defendants will have knowledge of the infringement of these third-parties because they, in fact, are intentionally encouraging and inducing such use. Moreover, once released, Defendants will have materially contributed to the direct infringement by creating, distributing, and/or maintaining the Infringing Programs necessary for the infringement to occur.

121. Defendants' contributory infringement of Take-Two's copyrights will be deliberate, willful and in utter disregard of Take-Two's rights.

122. Upon information and belief, as a direct and proximate result of their wrongful conduct, Wyckoff and Doe Defendants have obtained benefits, including, but not limited to, donations from supporters of the Infringing Programs to which they are not entitled.

123. As a direct and proximate result of their wrongful conduct, Take-Two has been substantially and irreparably harmed in an amount not readily capable of determination. Unless restrained by this Court, Defendants will cause further irreparable injury to Take-Two.

124. Take-Two is entitled to injunctive relief enjoining Defendants, and all persons acting in concert or participation with them, from contributing to any further infringement of Take-Two's copyrighted video games and content.

125. Take-Two is further entitled to recover from Defendants the damages, including attorney's fees and costs, it has sustained and will sustain, and any gains, profits and advantages

obtained as a result of the acts of contributory infringement as alleged above. At present, the amount of such damages, gains, profits and advantages cannot be fully ascertained by Take-Two, and will be established according to proof at trial. Take-Two also is entitled to recover statutory damages for Defendants' willful contributory infringement of its copyrights.

**COUNT III**  
**Breach of Contract**

126. Take-Two repeats and realleges each and every allegation set forth in paragraphs 1–125 above as if fully set forth herein.

127. Take-Two's User Agreement is a valid and enforceable contract. Among other things, to play Take-Two's video games, users must affirmatively agree to abide by the User Agreement.

128. Take-Two has fully performed or tendered all performance required under the User Agreement.

129. As a user of Take-Two's games, including GTAV and RDRII, Wyckoff and, upon information and belief, Doe Defendants are aware of and affirmatively agreed to the User Agreement and its obligations.

130. Despite agreeing to the User Agreement, Defendants are breaching and intend to continue breaching their obligations under the User Agreement through the release of the Infringing Programs by, among other things, (1) commercially exploiting GTAV, RDRI, and RDRII, (2) creating an unauthorized copy of RDRI on their computers from the Xbox 360 disc, (3) using and permitting others to install RDRI on a network for online use, (4) copying RDRI onto a hard drive or other storage device in order to bypass the requirement to run RDRI from the disc, and (5) altering and modifying GTAV, RDRI, and RDRII and creating derivative works based on them.

131. Take-Two is entitled to recover compensatory and consequential damages resulting from Defendants' breaches of the User Agreement.

**Count IV**  
**Tortious Interference with Contract**

132. Take-Two repeats and realleges each and every allegation set forth in paragraphs 1–131 above as if fully set forth herein.

133. As discussed above, Take-Two's users must affirmatively assent to Take-Two's User Agreement before using its services or playing its games, including GTAV and RDRII. That agreement contains specific provisions that prohibit, among other things, creating unauthorized copies of Take-Two's games or altering and creating derivative works based on them.

134. Take-Two fulfilled all of its obligations pursuant to the User Agreement.

135. Having accessed Take-Two's services and played its games, including GTAV and RDRII, Wyckoff and, upon information and belief, Doe Defendants are aware of the User Agreement and its obligations.

136. Despite agreeing to the User Agreement, Wyckoff, and, upon information and belief, Doe Defendants, will induce, other GTAV, RDRI, and RDRII players to breach their contractual responsibilities by using the Infringing Programs for purposes expressly prohibited by the User Agreement.

137. Defendants' actions in inducing these breaches of contract are intentional, illegal, and will have been engaged in for the specific purpose of inducing the GTAV, RDRI, and RDRII players using the Infringing Programs to breach their agreements with Take-Two.

138. As a proximate result of Defendants' tortious interference with contract, Take-Two has been damaged, and Defendants have been unjustly enriched, in an amount to be determined at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Take-Two respectfully requests judgment against Defendants as follows:

- A. Find that Defendants have infringed Take-Two's copyrights in GTAV, RDRI, and RDRII directly and contributorily;
- B. Find a substantial likelihood that Defendants will continue to infringe Take-Two's intellectual property unless enjoined from doing so;
- C. Find that Defendants have breached the User Agreement;
- D. Find that Defendants will tortiously interfere with Take-Two's contracts with its other GTAV, RDRI, and RDRII players unless enjoined from doing so;
- E. Issue a preliminary and permanent injunction enjoining Defendants and all persons, firms and corporations acting in concert with them, from directly or indirectly infringing Take-Two's copyrights (in whole or in part, in any medium, and through any means including but not limited to cloud streaming, vpn, or remote access), including, but not limited to, (a) creating, writing, or developing derivative works based upon any portion of Take-Two's video games, including GTAV, RDRI, and RDRII; (b) creating, writing, developing, maintaining, producing, advertising, promoting, accessing, using, and/or distributing any computer program that alters Take-Two's games, including without limitation the Infringing Programs; (c) inducing or materially contributing to the direct infringement or altering of any of Take-Two's existing or future copyrighted

works by others; (d) violating Take-Two's User Agreement by, among other things, "us[ing] or install[ing] the [Take-Two] Software (or permit[ting] others to do same) on a network, for on-line use" and "prepar[ing] derivative works based on, or otherwise modify[ing] [Take-Two] Software in whole or in part"; (e) intentionally or tortiously interfering with Take-Two's contracts with its video game players by encouraging or inducing other players of Take-Two video games, including GTAV, RDRI, and RDRII, to breach their contractual responsibilities to Take-Two; (f) operating or assisting any website designed to assist others in creating, writing, developing, maintaining, producing, advertising, promoting, possessing, accessing, using, and/or distributing any computer program that alters Take-Two's video games, including GTAV, RDRI, and RDRII; and (g) assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referenced in this Paragraph;

- F. Order Defendants to render a full and complete accounting to Take-Two for their profits, gains, advantages or the value of the business opportunities received from the foregoing acts of infringement and breach;
- G. Order Defendants to permanently delete and destroy all copies of any computer program that alters Take-Two's video games, including without limitation the Infringing Programs;
- H. Enter judgment for Take-Two against Defendants for all damages suffered by Take-Two and for any profits or gain by Defendants attributable to infringement of Take-Two's intellectual property, breach of the User Agreement, and tortious interference with contract in amounts to be determined at trial;

- I. Enter judgment for Take-Two against Defendants for statutory damages based upon Defendants' willful acts of infringement pursuant to the Copyright Act, 17 U.S.C. § 101 *et seq.*;
- J. Award Take-Two costs and disbursements of this action, including reasonable attorney's fees and costs pursuant to 17 U.S.C. § 505;
- K. Award Take-Two pre-judgment and post-judgment interest, to the fullest extent available, on the foregoing; and
- L. Grant such other, further and different relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff Take-Two demands a trial by jury on all issues so triable in this action.

Dated: New York, New York  
December 26, 2019

KIRKLAND & ELLIS LLP

*/s/ Dale M. Cendali*

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