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UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

October 2005 Grand Jury

UNITED STATES OF AMERICA,	)	CR 05-_____
	)	
Plaintiff,	)	<u>I N D I C T M E N T</u>
	)	
v.	)	[18 U.S.C. § 371: Conspiracy;
	)	17 U.S.C. §§ 1201(a)(2)(A),
JASON JONES,	)	1204(a): Digital Millennium
JONATHON BRYANT, and	)	Copyright Act; 17 U.S.C.
PEI "PATRICK" CAI,	)	§ 506(a)(1)(A); 18 U.S.C.
	)	§§ 2319(a), (b)(3): Copyright
	)	Infringement for Profit; 17
Defendants.	)	U.S.C. § 506(a)(1)(B); 18
	)	U.S.C. §§ 2319(a), (c)(3):
	)	Copyright Infringement]

The Grand Jury charges:

COUNT ONE

[18 U.S.C. § 371]

A. INTRODUCTORY ALLEGATIONS

1. The Microsoft Corporation manufactures and markets a digital video-game console which it calls the "Xbox." Microsoft also creates and publishes digital Xbox video games on optical disc media, and licenses other companies to create and publish such games, which are designed to be played exclusively on the Xbox video-game console. Nearly all of these games are protected

1 under the Copyright Act of 1976, Title 17, United States Code,  
2 Sections 101 *et seq.*

3 2. To protect its Xbox-related copyrights and those of its  
4 licensees, Microsoft designed a digital Xbox copyright protection  
5 system to be integrated into the software code of the Xbox  
6 console and each Xbox game on optical disc. The system includes  
7 two software designs: the first is digital encryption, and the  
8 second is the use of an authentication code.

9 3. The software code for every Xbox game is digitally  
10 encrypted according to a specific algorithm, which only the Xbox  
11 console is programmed to decrypt and thereby permit execution of  
12 the game. The encryption of the software code for each Xbox game  
13 effectively prevents the use of an alternative game platform to  
14 bypass the authentication verification process and thereby  
15 execute an unauthorized version of an Xbox game. In simple  
16 terms, this means that only authorized versions of video games  
17 designed for the Xbox can be used on an Xbox and, likewise, Xbox  
18 authorized versions of Xbox games can only be used on an Xbox.

19 4. The second protection system is the use of an  
20 authentication code. Every Xbox game disc contains an  
21 authentication code, embedded within the encrypted game code,  
22 that the Xbox console software reads to verify that the Xbox game  
23 medium is an authorized version of the game. This exchange of  
24 information, also known as an authentication code "hand-shake"  
25 between the console and the game disc, effectively prevents an  
26 Xbox console from executing an unauthorized reproduction of the  
27 encrypted game code.

1           5.     Together, then, the encryption of the Xbox game  
2 software code and the embedding of an authentication code within  
3 the encrypted game code effectively prevent a standard Xbox  
4 console, or any other platform, from executing an unauthorized  
5 version of an Xbox game.

6           6.     Those intending to defeat or "hack" this copyright  
7 protection system have developed computer chips, known as  
8 "modification chips" or "mod chips," to circumvent the copyright  
9 protection system employed by the Xbox console and its authorized  
10 and licensed games. The mod chips contain software code that  
11 circumvents the authentication process or "hand-shake" between  
12 the Xbox console and its authorized games. Once installed on the  
13 main circuit board of a Microsoft Xbox game console, the mod chip  
14 permits the console to execute both authorized versions of Xbox  
15 games and unauthorized copies, including copies stored on  
16 unauthorized game media like hard drives. Several models of mod  
17 chips have been developed and marketed since the introduction of  
18 the Microsoft Xbox.

19          7.     Those intending to defeat or "hack" this copyright  
20 protection system have also developed hardware and software  
21 combinations called "ROMS" which allow games not designed for the  
22 Xbox game console to played on an Xbox. It is not uncommon for  
23 modified Xbox consoles to have several ROMS installed to allow  
24 games designed for multiple Xbox competitors to be played on the  
25 Xbox game console.

26          8.     Those intending to defeat or "hack" this copyright  
27 protection system will usually install a very large (200 gigabyte  
28 or more) hard drive into the modified Xbox game console that is

1 designed to work in conjunction with the modification chips.  
2 These hard drives are often pre-loaded with 50 or more  
3 unauthorized copies of video games. The hard drives allow the  
4 modified Xbox user to copy games from the optical disc reader in  
5 the Xbox directly to the hard drive for future play without the  
6 original optical disc.

7 B. OBJECTS OF THE CONSPIRACY

8 9. Beginning on a date unknown to the Grand Jury, but no  
9 later than on or about May 21, 2005, and continuing to on or  
10 about December 13, 2005, in Los Angeles County, within the  
11 Central District of California, and elsewhere, defendants JASON  
12 JONES ("JONES"), JONATHON BRYANT ("BRYANT"), and PEI "Patrick"  
13 CAI ("CAI"), and others known and unknown to the Grand Jury,  
14 knowingly conspired and agreed with each other to: (1) willfully,  
15 and for purposes of commercial advantage and private financial  
16 gain, manufacture, offer to the public, provide and traffic in a  
17 technology, product, device, and component that was primarily  
18 designed and produced for the purpose of circumventing a  
19 technological measure that effectively controls access to a  
20 copyrighted work, in violation of Title 17, United States Code,  
21 Sections 1201(a)(2)(A) and 1204(a); (2) willfully, and for  
22 purposes of commercial advantage and private financial gain,  
23 infringe the valid United States copyright of a copyrighted work,  
24 in violation of Title 17, United States Code, Section  
25 506(a)(1)(A) and Title 18, United States Code, Sections 2319(a),  
26 (b)(3); and (3) willfully infringe the valid United States  
27 copyright of a copyrighted work, by the reproduction and  
28 distribution, during a 180-day period, of at least one (1) copy

1 of one (1) or more copyrighted works which have a total retail  
2 value of more than \$1,000.00, in violation of Title 17, United  
3 States Code, Section 506(a)(1)(B) and Title 18, United States  
4 Code, Sections 2319(a), (c)(3).

5 C. MEANS BY WHICH THE OBJECTS OF THE CONSPIRACY WERE TO BE  
6 ACCOMPLISHED

7 10. The objects of the conspiracy were to be accomplished  
8 in substance as follows:

9 a. Defendants JONES and BRYANT, at their business,  
10 "ACME Game Store," would demonstrate to video game customers the  
11 use of an X-Box game console that had been modified to (1)  
12 circumvent the built-in copyright protection system, and (2)  
13 store unauthorized copies of copyrighted video games on an ACME  
14 installed hard-drive.

15 b. Defendants JONES and BRYANT would sell customers  
16 new unmodified Xbox consoles or would accept from customers the  
17 customers' unmodified Xbox consoles to be modified by ACME.

18 c. Defendant BRYANT would receive from customers a  
19 deposit toward the cost of modifying the customers' Xbox and  
20 would provide the customer with a receipt indicating that the  
21 payment was for "Xbox repair."

22 d. Defendant CAI would go to the ACME Game Store to  
23 pick up Xbox game consoles to be modified.

24 e. Defendant CAI would bring the unmodified Xbox game  
25 consoles to his residence where he would modify the game consoles  
26 by adding a "mod" chip and a large hard drive.

27 f. Defendant CAI would: (1) return the modified Xbox  
28 game consoles to ACME Game Store where defendant JONES would load

1 unauthorized copies of copyrighted video games onto the hard  
2 drive installed in the customer Xbox by defendant CAI; or  
3 (2) would himself load unauthorized copies of copyrighted video  
4 games onto the hard drive installed in the customer Xbox by  
5 defendant CAI and return the modified console to ACME Game Store.

6 g. Upon payment of the balance due from a customer,  
7 defendants JONES and BRYANT would provide the customer with the  
8 modified Xbox game console with unauthorized copies of  
9 copyrighted video games installed on the added hard drive.

10 D. OVERT ACTS

11 11. In furtherance of the conspiracy and to accomplish the  
12 objects of the conspiracy, defendants JONES, BRYANT, and CAI, and  
13 others, committed various overt acts within the Central District  
14 of California, and elsewhere, including but not limited to the  
15 following:

16 a. On or about May 21, 2005, in a meeting with two  
17 representatives of the Entertainment Software Association  
18 ("ESA"), posing undercover as video game enthusiasts, at ACME  
19 Game Store in Hollywood, California, defendants BRYANT and JONES  
20 described in detail the benefits of an Xbox modification to the  
21 ESA representatives.

22 b. On or about May 21, 2005, in that meeting with two  
23 representatives of the ESA posing undercover as video game  
24 enthusiasts, defendant JONES agreed to provide to the ESA  
25 representatives a new Xbox game console modified with a 200  
26 gigabyte hard drive, a modification chip, and platform ROMS.

27 c. On or about May 21, 2005, in that meeting with two  
28 representatives of the ESA posing undercover as video game

1 enthusiasts, defendant JONES further agreed to install copies of  
2 seven video games on the hard drive to be installed on the Xbox  
3 console by ACME.

4 d. On or about May 21, 2005, in that meeting with two  
5 representatives of the ESA posing undercover as video game  
6 enthusiasts, defendant BRYANT accepted from the ESA  
7 representatives a pre-payment of \$547.89, via credit card, for  
8 the agreed upon modified Xbox System, and provided the ESA  
9 representative with a receipt for the transaction.

10 e. On or about June 4, 2005, defendant JONES provided  
11 to the ESA representative an Xbox game console that had been  
12 modified by ACME with a mod chip, ROMS and a hard drive, and had  
13 been loaded with unauthorized copies of copyrighted video games,  
14 including: "Forza Motorsport," Copyright Reg. No. TX-6-125-547;  
15 "Spiderman 2," Copyright Reg. No. TX 6-036-425; and "Halo 2,"  
16 Copyright Reg. No. TXu-1-193-313.

17 f. On or about November 4, 2005, at ACME Game Store,  
18 defendants JONES and BRYANT met with two Department of Homeland  
19 Security Special Agents, posing undercover as video game  
20 enthusiasts ("Undercover DHS Agents"), for the purpose of selling  
21 a modification to an Xbox video game console provided by the  
22 Undercover DHS Agents that would allow the modified console to  
23 play unauthorized copies of video games from a hard drive to be  
24 installed as part of the modification.

25 g. On or about November 4, 2005, during that meeting  
26 at ACME Game Store, defendant JONES explained to Undercover DHS  
27 Agents how to record games onto the modified Xbox console and  
28 told the Undercover DHS Agents, "Once you get a mod, come see me,

1 get something new and I'll put it on for you. I can keep my  
2 games; you keep your stuff, everyone's happy. Give me \$40 and  
3 I'll give you six to eight games; it's cheaper than renting."

4 h. On or about November 4, 2005, during that meeting  
5 at ACME Game Store, defendant JONES explained to the Undercover  
6 DHS Agents that, once modified, the Xbox game console could not  
7 be used on the Internet because the modification would be  
8 detected by Microsoft and told the Undercover DHS Agents, "You  
9 got to remember, this is highly illegal."

10 i. On or about November 4, 2005, during that meeting  
11 at ACME Game Store, defendant JONES negotiated with the  
12 Undercover DHS Agents for a fee of \$265 to modify the Undercover  
13 DHS Agents' Xbox game console with a 200 gigabyte hard drive,  
14 pre-loaded with multiple video games.

15 j. On or about November 4, 2005, during that meeting  
16 at ACME Game Store, defendant BRYANT accepted from the Undercover  
17 DHS Agents a down payment of \$200 and provided the Undercover DHS  
18 Agents with a receipt indicating that payment was for "Xbox  
19 repair."

20 k. On or about November 4, 2005, defendant CAI drove  
21 to ACME Game Store, picked up the Undercover DHS Agents' Xbox  
22 console to be modified by defendant CAI, and returned to his  
23 (defendant CAI's) residence.

24 l. On or about November 9, 2005, in a meeting at ACME  
25 Game Store, defendant JONES met with Undercover DHS Agents for  
26 the purpose of providing to Undercover DHS Agents the Xbox game  
27 console that had been modified by defendant CAI for ACME with a  
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1 mod chip and hard drive, and had been loaded with unauthorized  
2 copies of copyrighted video games.

3 m. On or about November 9, 2005, during that meeting  
4 at ACME Game Store, defendant JONES provided to the Undercover  
5 DHS Agents the Xbox game console that had been modified by ACME  
6 with a mod chip and hard drive, and had been loaded with  
7 unauthorized copies of copyrighted video games including: "True  
8 Crime: Streets of L.A.," Copyright Reg. No. TX-5-894-602;  
9 "Burnout 3: Takedown," Copyright Reg. No. PA 1-241-870; "Madden:  
10 NFL 06," Copyright Reg. No. PA 1-293-097; "NBA Street V3,"  
11 Copyright Reg. No. PA 1-247-298; "NCAA Football 06," Copyright  
12 Reg. No. PA 1-293-683; "The Lord of the Rings: The Two Towers,"  
13 Copyright Reg. No. PA 1-131-073; "Tiger Woods: PGA Tour 05,"  
14 Copyright Reg. No. PA 1-245-925; "Forza Motorsport," Copyright  
15 Reg. No. TX-6-125-547; "Halo," Copyright Reg. No. TX-5-593-817;  
16 "Halo 2," Copyright Reg. No. TXu-1-193-313; "Rallisport  
17 Challenge," Copyright Reg. No. PA-1-205-929; "Soul Calibur II,"  
18 Copyright Reg. No. PA-1-156-802; "Grand Theft Auto: San Andreas,"  
19 Copyright Reg. No. PA-1-262-869; "Full Spectrum Warrior,"  
20 Copyright Reg. No. PAu-2-804-010; "Prince of Persia: The Sands of  
21 Time," Copyright Reg. No. TX-5-945-092; "Topspin," Copyright Reg.  
22 No. PA-1-247-529; "The Chronicles of Riddick: Escape from Butcher  
23 Bay," Copyright Reg. No. PA-1-232-220; "Dead or Alive Ultimate,"  
24 Copyright Reg. No. PA-1-266-904; and "Ninja Gaiden," Copyright  
25 Reg. No. PA-1-232-223.

26 n. On or about December 1, 2005, during a telephone  
27 conversation, defendant CAI told Undercover DHS Agents that he  
28 could modify an Xbox game console with a mod chip and a 200

1 gigabyte hard drive that would allow about 70 games to be copied  
2 onto the hard drive.

3 o. On or about December 1, 2005, during a telephone  
4 conversation, defendant CAI told Undercover DHS Agents that it  
5 would cost \$40 to install the mod chip and \$120 for the hard  
6 drive, and that the mod chip would allow "burned" (illegally  
7 copied) games to be played on the console.

8 p. On or about December 9, 2005, during a meeting at  
9 ACME Game Store, defendant JONES agreed to copy "40-50" games  
10 onto a hard drive previously installed in an Xbox game console by  
11 ACME, and took delivery of the previously modified Xbox game  
12 console in order to complete the copying.

13 q. On or about December 13, 2005, defendant CAI  
14 possessed in his residence the modified Xbox game console that  
15 had been delivered to defendant JONES at ACME on or about  
16 December 9, 2005, that contained a hard drive loaded with  
17 unauthorized versions of approximately 66 video games.

18 r. On or about December 13, 2005, defendants JONES  
19 and BRYANT possessed at ACME game store two modified Xbox game  
20 consoles that contained hard drives loaded with unauthorized  
21 versions of approximately 59 and 57 video games, respectively.  
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COUNT TWO

[17 U.S.C. §§ 1201(a)(2)(A) and 1204(a)]

12. Paragraphs 1-6 are hereby incorporated and re-alleged as if set forth herein.

13. Between on or about May 21, 2005, and on or about June 4, 2005, in Los Angeles County, within the Central District of California, and elsewhere, defendants JASON JONES, JONATHON BRYANT and PEI "Patrick" CAI willfully, and for purposes of commercial advantage and private financial gain, manufactured, offered to the public, provided and trafficked in a technology, product, service, device, and component knowing that the technology, products, services, devices and components were primarily designed and produced for the purpose of circumventing a technological measure that effectively controls access to a copyrighted work, namely Xbox video games.

COUNT THREE

[17 U.S.C. §§ 1201(a)(2)(A) and 1204(a)]

14. Paragraphs 1-6 are hereby incorporated and re-alleged as if set forth herein.

15. Between on or about November 4, 2005, and on or about November 9, 2005, in Los Angeles County, within the Central District of California, and elsewhere, defendants JASON JONES, JONATHON BRYANT and PEI "Patrick" CAI willfully, and for purposes of commercial advantage and private financial gain, manufactured, offered to the public, provided and trafficked in a technology, product, service, device, and component knowing that the technology, products, services, devices and components were primarily designed and produced for the purpose of circumventing a technological measure that effectively controls access to a copyrighted work, namely Xbox video games.

COUNT FOUR

[17 U.S.C. § 506(a) (1) (A), 18 U.S.C. §§ 2319(a), (b) (3)]

16. Paragraphs 1-6 are hereby incorporated and re-alleged as if set forth herein.

17. Between on or about May 21, 2005, and on or about November 9, 2005, in Los Angeles County, within the Central District of California, defendants JASON JONES, JONATHON BRYANT and PEI "Patrick" CAI did willfully, and for purposes of commercial advantage and private financial gain, infringe the valid United States copyright of a copyrighted work, specifically the following video game titles:

<u>TITLE</u>	<u>REGISTRATION NO.</u>
Forza Motorsport (2 copies)	TX-6-125-547
Spiderman 2	TX 6-036-425
True Crime: Streets of L.A.	TX-5-894-602
Burnout 3: Takedown	PA 1-241-870
Madden: NFL 06	PA 1-293-097
NBA Street V3	PA 1-247-298
NCAA Football 06	PA 1-293-683
The Lord of the Rings: The Two Towers	PA 1-131-073
Tiger Woods: PGA Tour 05	PA 1-245-925
Halo	TX-5-593-817
Halo 2	TXu-1-193-313
Rallisport Challenge	PA-1-205-929
Top Spin	PA 1-247-529
Soul Calibur II	PA-1-156-802
Grand Theft Auto: San Andreas	PA-1-262-869
Full Spectrum Warrior	PA-2-804-010

1	Prince of Persia: The Sands of Time	TX-5-945-092
2	The Chronicles of Riddick: Escape from Butcher Bay	PA-1-232-220
3	Dead or Alive Ultimate	PA-1-266-904
4	Ninja Gaiden	PA-1-232-223
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COUNT FIVE

[17 U.S.C. § 506(a) (1) (B), 18 U.S.C. §§ 2319(a), (c) (3)]

18. Paragraphs 1-6 are hereby incorporated and re-alleged as if set forth herein.

19. Between on or about May 21, 2005, and on or about November 9, 2005, in Los Angeles County, within the Central District of California, defendants JASON JONES, JONATHON BRYANT and PEI "Patrick" CAI did willfully infringe the valid United States copyright of a copyrighted work, by the reproduction and distribution, during a 180-day period, of at least ten (10) copies of one (1) or more copyrighted works which have a total retail value of more than \$1,000.00, specifically the following video game titles:

<u>TITLE</u>	<u>REGISTRATION NO.</u>
Forza Motorsport (2 copies)	TX 6-125-547
Spiderman 2	TX 6-036-425
True Crime: Streets of L.A.	TX 5-894-602
Burnout 3: Takedown	PA 1-241-870
Madden: NFL 06	PA 1-293-097
NBA Street V3	PA 1-247-298
NCAA Football 06	PA 1-293-683
The Lord of the Rings: The Two Towers	PA 1-131-073
Tiger Woods: PGA Tour 05	PA 1-245-925
Halo	TX 5-593-817
Halo 2	TXu 1-193-313
Rallisport Challenge	PA 1-205-929
Top Spin	PA 1-247-529

1 Soul Calibur II PA 1-156-802  
2 Grand Theft Auto: San Andreas PA 1-262-869  
3 Full Spectrum Warrior PA 2-804-010  
4 Prince of Persia: The Sands of Time TX 5-945-092  
5 The Chronicles of Riddick:  
Escape from Butcher Bay PA 1-232-220  
6 Dead or Alive Ultimate PA 1-266-904  
7 Ninja Gaiden PA 1-232-223  
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9 A TRUE BILL

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Foreperson  
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13 DEBRA WONG YANG  
United States Attorney  
14

15 THOMAS P. O'BRIEN  
Assistant United States Attorney  
16 Chief, Criminal Division

17 THOMAS E. LOESER  
Assistant United States Attorney  
18 Cyber and Intellectual Property Crime Section  
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