



SUBPOENA DUCES TECUM

<p>1. TO</p> <p>Take-Two Interactive Software, Inc. c/o Alicia Batts, Esquire Proskauer Rose LLP 1001 Pennsylvania Avenue, NW Suite 400 South Washington, DC 20004</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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This subpoena requires you to appear and testify at the request of the Federal Trade Commission at a hearing [or deposition] in the proceeding described in Item 6.

<p>3. LOCATION OF HEARING</p> <p>Federal Trade Commission 601 New Jersey Ave., Room 6128 Washington, DC 20001</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p>Reid B. Horwitz</p> <hr/> <p>5. DATE AND TIME OF HEARING OR DEPOSITION</p> <p>9:00 a.m May 9, 2008</p>
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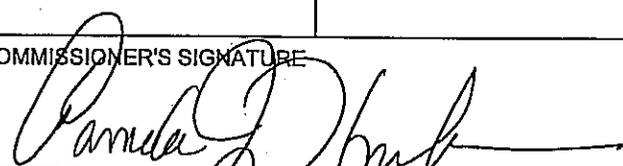
6. SUBJECT OF INVESTIGATION

Electronic Arts Inc.'s Proposed Acquisition of Take-Two Interactive Software, Inc., File No. 081-0138

7. RECORDS YOU MUST BRING WITH YOU

See attached "Specifications, Definitions and Instructions."

<p>8. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN</p> <p>Robert Tovsky, Custodian Reid H. Horwitz, Deputy Custodian</p>	<p>9. COMMISSION COUNSEL</p> <p>Reid B. Horwitz (202) 326-2037 E. Eric Elmore (202) 326-3109</p>
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<p>DATE ISSUED</p> <p>4/21/08</p>	<p>COMMISSIONER'S SIGNATURE</p> 
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GENERAL INSTRUCTIONS

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this subpoena be filed within 20 days after service or, if the return date is less than 20 days after service, prior to the return date. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission. Send one copy to the Commission Counsel named in Item 9.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this subpoena should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

on the person named herein on:

(Month, day, and year)

(Name of person making service)

(Official title)

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Unless modified by agreement with the staff of the Federal Trade Commission, each specification of this Subpoena *Duces Tecum* ("Subpoena") requires a complete search of "the company" as defined in Paragraph "A" of the Definitions and Instructions, which appear after the following Specifications. If the company believes that the required search or any other part of the Subpoena can be narrowed in any way that is consistent with the Commission's need for documents, you are encouraged to discuss such questions and possible modifications with the Commission representative identified on the last page of this Subpoena. All modifications to this Subpoena must be agreed to in writing by such representative. You may find it useful to provide the response to Specification 1 of this Subpoena promptly and discuss limiting the required search with the Commission's representative before you begin your search.

SPECIFICATIONS

1. Submit one copy of each organization chart and personnel directory in effect since January 1, 2004, for the company as a whole and for each of the company's facilities or divisions involved in any activity relating to any relevant product in any relevant area.
2. Submit all NPD (or equivalent) data that contains information on any relevant product in electronic format for each month and year since January 1, 1998.
3. For each relevant product submit all documents relating to formulas, models and programs used to make determinations about each discount and allowance, including but not limited to, rebates, promotional allowances, merchandising discounts, and co-op advertising. Submit all documents relating to the methodology for determining each of these discounts and allowances, including the extent to which the existence of other titles in a given genre factor into such determinations.
4. For each relevant product, provide the following:
 - (a) all documents relating to price sensitivity, price elasticity, price points, or product substitution, of any of the company's relevant products;
 - (b) all data compilations and underlying programs or models relating to price sensitivity, price elasticity, price points, wholesale pricing or production substitution, of any of the company's relevant products, developed by, used by, or obtained by the company or any agent of the company;
 - (c) all documents relating to the company's or any other person's prices, including but not limited to, price lists, pricing plans, pricing policies, pricing forecasts, pricing strategies, pricing analyses, market price indices or periodic market prices, and pricing decisions relating to any relevant product; and
 - (d) all documents relating to the company's compliance with the Robinson-Patman Act.

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To the extent that any pricing analysis was performed using computerized data, submit the underlying data. Documents, programs, and information submitted, used, generated or obtained in electronic form should be produced in electronic form together with instructions, programs, and all other materials necessary to use or interpret the data or analyses provided in electronic form.

5. For each of the company's 20 largest wholesale customers:
 - (a) submit each contract or promotional agreement currently in place, or previously in effect for any period beginning January 1, 2006; and
 - (b) provide all documents relating to negotiation of the contract or promotional agreement, the implementation of the contract or promotional agreement, and the customer's compliance (or non-compliance) with the terms of the contract or promotional agreement.
6. For each of the company's 20 largest retail customers:
 - (a) submit each contract or promotional agreement currently in place, or in effect for any period beginning January 1, 2006; and
 - (b) provide all documents relating to negotiation of the contract or promotional agreement, the implementation of the contract or promotional agreement, and the customer's compliance (or non-compliance) with the terms of the contract or promotional agreement.
7. Submit a copy of each relevant product and all packaging used for such product in the sports, shooter, strategy, racing and action genres.
8. Submit each different advertisement or promotional material for each relevant product in the sports, shooter, strategy, racing and action genres in any medium, including but not limited to, newspapers, television, radio, telephone, direct mail, the Internet, or electronic mail.
9. Submit a copy of all documents relating to marketing and advertising plans for each relevant product in the sports, shooter, strategy, racing and action genres that discuss or reference competition with, how to compete with, or how to market or advertise against other relevant products. Such documents include, but are not limited to, materials about advertising and marketing strategies, themes, or concepts, media recommendations and plans, marketing reports, business studies, and creative strategies that describe or discuss the planned or actual approaches for advertising, marketing, or promoting the product.

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10. Submit a copy of all consumer research concerning all relevant products, including but not limited to: all materials relating to consumer perceptions, preferences, and beliefs about such product(s); data and analyses relating to consumer demographics, target markets, customer type, purchasing patterns, or switching behavior, including but not limited to, switching from or to any relevant product; and consumer surveys, marketing surveys and reports.
11. Submit all analyst reports that discuss any aspect of the video gaming industry, including but not limited to, any competitors within the industry or the acquisition of Take-Two by Electronic Arts.
12. Submit all documents relating to the company's concerns, expressed or otherwise, over Electronic Arts' procurement of exclusive licensing agreements involving professional sports leagues and sports brands, including but not limited to, all correspondence and communications with the U.S. Department of Justice, Federal Trade Commission, or any other entity, and all documents and analyses relating to the effects such exclusive licensing agreements might have, or had, on the company's business or on competition within the video game software industry.
13. Submit all documents relating to vendor participation with retailers on product placement in a store, through category management, category captaincy, vendor participation, or other similar activities. Provide all documents produced to retailers for whom the company acts as a category captain or any type of category supervisor, and all documents (whether internal or otherwise) that incorporate such activities.
14. Provide all documents comparing the company's video game titles in sports, shooter, strategy, racing, and action genres with those of any of other person.
15. Submit all documents relating to the company's or any other person's plans relating to any relevant product, including but not limited to: business plans; short term and long range strategies and objectives; investment banker and/or other consultant reports; title, genre, brand, or platform-specific plans; marketing plans; advertising plans and strategies, including all expenditures on advertising, selling aids and promotional materials; legislative affairs plans; purchasing plans; collaboration plans; budgets and financial projections; expansion or retrenchment plans; research and development efforts; and presentations to management committees, executive committees, and boards of directors. For regularly prepared budgets and financial projections, the company need only submit one copy of final year-end documents and cumulative year to date documents for the current year.
16. Provide all of the following reports: financial statement, budget, profit and loss statement, customer or product line profitability report, and each other financial report regularly

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prepared by or for the company on any periodic basis that relates to the production, manufacture and sale of any relevant product, or the manufacturing facility, sales office, distribution center, product line, or customer for any relevant product on both a quarterly basis and a yearly basis since January 1, 2003. If available, these reports should be provided in an electronic spreadsheet format acceptable to the Commission.

17. Submit all documents relating to competition in the relevant product, including but not limited to, market studies, forecasts and surveys, and all other documents relating to:
 - (a) the market share or competitive position of the company and any of its competitors;
 - (b) the relative strength or weakness of companies selling or offering each relevant product;
 - (c) supply and demand conditions;
 - (d) allegations by any person that any company that sells or offers any relevant product is not behaving in a competitive manner, including, but not limited to, customer and competitor complaints, threatened, pending or completed lawsuits, and federal and state investigations;
 - (e) competition between any relevant product and any other product, such as music videos, movie videos, music or video downloads, or other entertainment products;
 - (f) any actual or potential effect on the supply, demand, cost or price of any relevant product, as a result of competition from any other possible substitute product;
 - (g) any actual or potential effect on supply or demand as a result of the wholesale or retail price or fee schedule of a relevant product;
 - (h) attempts to win customers from other companies and losses of customers to other companies including, but not limited to, all sales personnel call reports;
 - (i) product reviews;
 - (j) the development, marketing, advertising, and value of each company brand, including brand equity studies;
 - (k) competition to reduce the number of "glitches" in products;
 - (l) NPD reports or studies;
 - (m) differences in purchasing preferences and product demand between consumers inside and outside the United States; and
 - (n) discussions in any forum including internet forums such as web logs ("blogs"), message boards, discussion boards, discussion groups or forums, bulletin boards, or any other type of internet communication.
18. Submit all documents relating to any Intellectual Property ("IP") agreements relating to the relevant product, including but not limited to, the actual agreements, negotiations over such agreements, and how such agreements would or could impact competition.
19. For any relevant product, submit all documents relating to economies of scale and economies of scope, including advantages of producing, selling, or distributing multiple relevant products.
20. For each relevant product submit all documents relating to:
 - (a) requirements for entry into the development, production, sale, or distribution of the relevant product in each relevant area, including but not limited to, research and development, planning and design, production requirements, personnel, distribution sys-

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tems, reputation, patents, licenses, sales and marketing activities, development of databases and customer support systems, development of an Internet site, and any necessary governmental and customer approvals, and the components of, and time necessary to meet, each such requirement;

(b) the total costs required for entry into the development, production, sale or distribution of the relevant product; the amount of such costs that would be recoverable if the entrant were unsuccessful or elected to exit the development, production or sale of the product; the methods and amount of time necessary to recover such costs; and the total sunk costs entailed in satisfying the requirements for entry;

(c) possible new entrants into the development, production, sale or distribution of the relevant product in each relevant area; and an estimate of the time it would take each such potential entrant to (i) produce a commercially viable product and (ii) achieve competitively significant sales of that product (including a detailed description of the bases for each estimate);

(d) the minimum viable scale, the minimum and optimum research and development organization, sales volume, requirements for multi-center, or vertically integrated operations; or other factors required to attain any available cost savings or other efficiencies necessary to compete profitably in providing the relevant product;

(e) the extent to which a new entrant into the development, production, manufacture or sale of any relevant product would benefit from also being (or would suffer a disadvantage from not also being) a developer, producer or seller of any other relevant product or any product or service purchased, used or sold in conjunction with any relevant product; and

(f) any programs and/or models used to analyze the development potential of relevant products.

The company shall provide its response to this specification in terms of entry that would enable an entrant to develop, produce and sell products that compete directly (including, but not limited to, competition on performance and price) with each relevant product developed, produced, provided or sold by Take-Two. If the company contends that entry by entrants that do not compete directly may have competitive significance, then the company shall provide documents relating to each form of such entry.

21. Submit one copy of all documents that discuss or describe research, development, production, licensing, sale, prices, competition, or entry conditions relating to any relevant product submitted by the company or any other person to all trade associations, information services, and other organizations relating to the research, development,

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production, license, or sale of any relevant product association, service, and organization or its agent. Submit one copy of all documents that discuss or describe research, development, production, licensing, sale, prices, competition, or entry conditions relating to any relevant product received by the company or any other person from each such association, service, and organization or its agent.

22. For each business consultant, investment banker, and economic consultant (collectively "consultant") identified in response to Specification 1 of the CID issued to the company together with this Subpoena and that was engaged by the company with respect to the proposed acquisition of Take-Two by Electronic Arts, submit (a) all documents and data provided to and received from each such consultant; and (b) all reports and analyses generated by, and the underlying econometric programs, models and data used by, any such consultant to generate such reports and analyses. Documents, programs, and information submitted, used, generated or obtained in electronic form should be printed and produced in hard copy and produced in electronic form together with instructions, programs, and all other materials necessary to use or interpret the data or analyses provided in electronic form.
23. Submit all documents (except documents solely relating to environmental, tax, human resources, OSHA, or ERISA issues) relating to the proposed acquisition by Electronic Arts of Take-Two.
24. Submit all documents relating to contemplated efficiencies in the production, distribution, or sale of the relevant product that will be achieved because of the acquisition.
25. Submit all documents relating to any plans of, interest in, or efforts undertaken by the company or any other person for any acquisition, divestiture, joint venture, alliance or merger of any kind involving the manufacture or sale of any interactive video games other than the acquisition of Take-Two by Electronic Arts.
26. Submit all documents relating to the company's plans or attempts to: reduce its costs; improve products or services; expand its sales or distribution efforts; introduce new products; improve its operating performance, financial condition, or competitive viability; or become more competitive in any other way, including, but not limited to, plans or attempts to close, consolidate or rationalize any facility, discontinue the research, development, manufacture or sale of any relevant product, research, develop, manufacture or sell any relevant product in conjunction with any other product or service.
27. Submit all documents previously submitted electronically to the Federal Trade Commission in conjunction with this investigation to the extent that previously submitted documents were not submitted in a machine-readable format as required in Instruction X.

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28. Submit documents sufficient to show the company's policies and procedures relating to the retention and destruction of documents.
29. Submit a copy of all instructions prepared by the company relating to the steps taken to respond to this Subpoena, including instruction pertaining to document (written and electronic) and information preservation.

DEFINITIONS AND INSTRUCTIONS

For the purposes of this Subpoena, the following definitions and instructions apply:

- A. The term "the company" or "Take-Two" means Take-Two Interactive Software, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. The terms "subsidiary," "affiliate" and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control between Take-Two and any other person.
- B. The term "Electronic Arts" means Electronic Arts, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. The terms "subsidiary," "affiliate" and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control between the company and any other person.
- C. The term "Subpoena *Duces Tecum*" or "Subpoena" means this Subpoena *Duces Tecum*.
- D. The term "Civil Investigative Demand" or "CID" means the Civil Investigative Demand issued by the Federal Trade Commission to the company together with this Subpoena *Duces Tecum*.
- E. The term "proposed acquisition" means the proposed acquisition of certain stock or assets of Take-Two as described in Item 3(a) of the company's Premerger Notification and Report Form.
- F. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in the possession, custody or control of the company. The term "documents" includes, without limitation: electronic mail messages; electronic correspondence and drafts of documents; metadata and other bibliographic or historical data describing or relating to documents created, revised, or distributed on computer systems; copies of documents that are not identical duplicates of the originals in that person's files; and copies of documents the originals of which are not in the possession, custody or control of the company.

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(1) Unless otherwise specified, the term "documents" excludes (a) bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature; (b) architectural plans and engineering blueprints; and (c) documents solely relating to tax, human resources, OSHA, or ERISA issues.

(2) The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Thus, the company should produce documents that exist in machine-readable form, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off company premises. If the company believes that the required search of backup disks and tapes and archive disks and tapes can be narrowed in any way that is consistent with the Commission's need for documents and information, you are encouraged to discuss a possible modification to this instruction with the Commission representatives identified on the last page of this Subpoena. The Commission representative will consider modifying this instruction to:

(a) exclude the search and production of files from backup disks and tapes and archive disks and tapes unless it appears that files are missing from files that exist in personal computers, portable computers, workstations, minicomputers, mainframes, and servers searched by the company;

(b) limit the portion of backup disks and tapes and archive disks and tapes that need to be searched and produced to certain key individuals, or certain time periods or certain specifications identified by Commission representatives; or

(c) include other proposals consistent with Commission policy and the facts of the case.

(3) If the company intends to utilize any De-duplication or Near-de-duplication software or services when collecting or reviewing information that is stored in the company's computer systems or electronic storage media in response to this Subpoena, or if the company's computer systems contain or utilize such software, the company must contact Commission representatives to determine, with the assistance of the appropriate government technical officials, whether and in what manner the company may use such software or services when producing materials in response to this Subpoena.

G. The term "advertisement" shall mean any written or verbal statement, illustration, or depiction, that is designed to effect a sale or create interest in the purchasing of goods or services, whether it appears on or in a label, package, package insert, radio, television, cable television, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display,

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film, slide, audio program transmitted over a telephone system, telemarketing script, onhold script, upsell script, training materials provided to telemarketing firms, program-length commercial (“infomercial”), the Internet, or any other medium. Promotional materials and items, and Web pages are included in the term “advertisement.”

H. The term “promotional material” shall mean any expenditure, written or verbal statement, illustration, or depiction, that is designed to create interest in the purchasing of goods, including but not limited to, press releases, video news releases, and other communications with any print, television, or radio media, or any website designer, developer, manager, or host, or any online service, coupons, and payments for shelf space or product placement in any media.

I. A “copy” of an “advertisement” shall mean:

(1) In the case of print ads, including transit/outdoor, direct mail, and free standing inserts, the ad in the form made available for customers to read.

(2) In the case of radio ads, a compact disc (CD) recording and a written script.

(3) In the case of television ads and infomercials, a DVD, as well as a photoboard or a transcription of the advertisement.

(4) In the case of ads displayed or accessible as Web pages on the Internet or in a similar format on a commercial online service, a printout of all screens or pages displayed or accessible online; the date the information was initially placed online; all information necessary to view or access the information online (*i.e.* for Web pages, all electronic addresses, or URLs, at which the information is accessible, including any “mirrored” sites and *all documents showing metatags for the pages*). For similar advertising on commercial online services, provide the name of the commercial online services and the appropriate “Key” “Go” or “Jump” words; a transcript of any audio or video clips contained in the screens or pages, and identification of any audio, video, or other programs necessary to hear or view the clips; the name, mailing address, and telephone number of any entity with whom you arranged for placement of the information online (*i.e.* the owner of the Internet domain name(s) and, if different, the owner of the server(s) through which the Web page is made accessible on the Internet).

(5) In the case of files archived or accessible online (*e.g.* at FTP sites, on bulletin boards, or as part of a Web page), the filename and file date of the file, along with the date it initially was posted online; a printout of the file, if feasible; all information necessary to locate, download, and view the file, including, where applicable, the name of the bulletin board and the category, topic, or file area where the file is located; and the identity of any software necessary to decompress the files. In the case of files archived on forums or bulletin boards found in commercial online services, provide the name of the online

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service and the "Key" "Go" or "Jump" words to access the bulletin board; in the case of files archived or accessible on the Internet at FTP sites, at USENET sites, or on Web pages, all electronic addresses at which the file is available, including any "mirrored" sites; in the case of files archived on dial-in bulletin boards, provide the telephone number to access the bulletin board, and the name, business telephone number, and mailing address of the owner or operator of the bulletin board.

(6) In the case of messages posted on bulletin boards, a printout of the message posted, the date(s) it was posted, and information sufficient to locate and access the bulletin board areas where the information was posted.

(7) In the case of messages disseminated via e-mail, a printout of the e-mail message, the date(s) it was sent, and the electronic address from which the message was sent. In addition, if a LISTSERV or other mass mailing mechanism was utilized, provide the name of the LIST used to send the message, the e-mail address for subscribing to the LISTSERV or similar mechanism, and, if different, the e-mail address to which messages are submitted for mass mailing.

J. The term "person" includes the company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

K. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

L. The terms "and" and "or" have both conjunctive and disjunctive meanings.

M. The term "plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.

N. The term "sales" means net sales, *i.e.*, total sales after deducting discounts, returns, allowances and excise taxes. "Sales" includes sales of the relevant product whether manufactured by the company itself or purchased from sources outside the company and resold by the company in the same manufactured form as purchased.

O. The term "platform" as used herein includes, and information shall be provided separately for:

(1) consoles, and within consoles, information shall be provided separately for: PS2, PS3, XBOX, XBOX360, Wii, and all other types of consoles (specifying each such type);

(2) personal computers ("PC");

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(3) hand-held computers, and within hand-held computers, information shall be provided separately for: Playstation Portable (“PSP”), Nintendo Handheld (“NDS”), Gameboy Adventure (“GBA”), and all other types of hand held computers (specifying each such type);

(4) mobile devices and within mobile devices, information shall be provided separately for: cellular telephones, and all other types of mobile devices (specifying each such type); and

(5) digital content, and within digital content, information shall be provided separately for: game titles that are also sold as packaged goods which are downloaded, and games titles that are played online through hosted sites.

P. The term “genre” as used herein includes, and information shall be provided separately for:

(1) action, and within action, information shall be provided separately for: each sub-genre (specifying each such sub-genre);

(2) sports, and within sports, information shall be provided separately for each type of sports game (e.g. football, basketball, baseball, hockey, soccer, tennis, golf, etc.), and within each type of sports game information shall be provided separately for simulation games and arcade-style games;

(3) shooter, and within shooter, information shall be provided separately for each sub-genre (specifying each such sub-genre);

(4) role-playing game (“RPG”), and within RPG, information shall be provided separately for each sub-genre (specifying each such sub-genre);

(5) racing, and within racing, information shall be provided separately for each sub-genre (specifying each such sub-genre);

(6) strategy, and within strategy, information shall be provided separately for each sub-genre (specifying each such sub-genre);

(7) family entertainment, and within family entertainment, information shall be provided separately for each sub-genre (specifying each such sub-genre); and

(8) and all other types of genres (specifying each such type).

Q. The term “game rating” as used herein means, and information shall be provided

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separately for: Early Childhood (“EC”), Everyone (“E”), Everyone 10+ (“E10+”), Teen (“T”), Mature (“M”), and Adult Only (“AO”).

R. The term “relevant product” as used herein means each individual video game title, which includes game titles scheduled to be released over the next two years, in active development now, and contemplated for development (in whole or in part) over the next two years. For each individual video game title, information shall be provided separately by platform.

S. The term “relevant area” means, and information shall be provided separately for: (a) the United States; (b) worldwide; and (c) each area as to which the company collects and maintains information and data within the United States.

T. The term “minimum viable scale” means the smallest amount of production at which average costs equal the price currently charged for the relevant product. It should be noted that minimum viable scale differs from the concept of minimum efficient scale, which is the smallest scale at which average costs are minimized.

U. The term “sunk costs” means the acquisition costs of tangible and intangible assets necessary to manufacture and sell the relevant product that cannot be recovered through the redeployment of these assets for other uses.

V. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for documents for each of the years from January 1, 2004 to the present.

W. This Subpoena shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this Subpoena produced or obtained by the company up to forty-five calendar days prior to the date of the company’s full compliance with this Subpoena.

X. The company shall discuss the form and method of production of responsive documents with the Commission representative identified on the last page of this Subpoena. The company shall be permitted to use any form and method of production of responsive documents that the Commission representative approves in writing. The Commission can support the following production forms and methods:

- (1) In lieu of original paper documents, the company may submit either paper or electronic copies of original documents. If the documents are provided electronically as TIFF images, they should be accompanied by OCR;
- (2) In lieu of original documents stored electronically, the company may submit documents in the following forms:

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(a) Electronically stored documents, except Microsoft Excel files and Access databases, may be produced as single-page TIFF images with a corresponding file containing the extracted text from the document, accompanied by a Opticon load file. Metadata and custodian information shall be provided in a delimited ASCII format. Microsoft Excel and Access files shall be provided natively.

(b) Electronically stored documents, excluding e-mail other than Microsoft Outlook, may be produced natively. Please discuss logistics of native production with the commission representative identified on the last page of this subpoena.

(3) Electronic productions may be submitted in the following methods:

(a) Responsive documents may be submitted through an online repository maintained by an independent vendor;

(b) Responsive documents may be submitted directly to the Commission on any combination of the listed media types; however, the Commission prefers IDE hard drives for productions over 10GB:

- CD-R CD-ROM formatted to ISO 9660 specifications;
- DVD-ROM for Windows-compatible personal computers;
- IDE and EIDE hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data;
- USB 2.0 Flash Drives;

(4) All electronic files submitted in response to this Subpoena will be scanned for viruses. Media containing infected files will be returned for replacement.

(5) Documents submitted in hard copy shall be submitted in sturdy cartons not larger than 1.5 cubic feet. Number each such box and mark each such box with corporate identification and the name(s) of the person(s) whose files are contained in the box.

Y. All documents responsive to this Subpoena, regardless of format or form and regardless of whether submitted in paper or electronic form:

(1) shall be produced in complete form, unredacted unless privileged, and in the order in which they appear in the company's files and shall not be shuffled or otherwise rearranged. For example:

(a) if in their original condition papers were stapled, clipped or otherwise fastened together or maintained in file folders, binders, covers or containers, they shall be produced in such form, and any documents that must be removed from

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their original folders, binders, covers or containers in order to be produced shall be identified in a manner so as to clearly specify the folder, binder, cover or container from which such documents came; and

(b) if in their original condition electronic documents were maintained in folders or otherwise organized, they shall be produced in such form and information shall be produced so as to clearly specify the folder or organization format;

(2) if written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;

(3) shall be produced in color where necessary to interpret the document;

(4) shall be marked on each page with corporate identification and consecutive document control numbers;

(5) shall be accompanied by an affidavit of an officer of the company stating that the copies are true, correct and complete copies of the original documents;

(6) shall be accompanied by an index that identifies: (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that person's documents, and if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that Commission representatives determine prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission representative will provide a sample index upon request.

Z. If any documents created prior to the company's Hart-Scott-Rodino filing are withheld from production based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log (hereinafter "Complete Log") that includes each document's authors, addressees, date, a description of each document, and all recipients of the original and any copies. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the person's full name, title, and employer or firm, and denote all attorneys with an asterisk. The description of the subject matter shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable Commission staff, the Commission, or a court to assess the applicability of the privilege claimed. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all nonprivileged portions of any responsive document (including nonprivileged

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or redactable attachments) for which a claim of privilege is asserted (except where the only nonprivileged information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the company that were not directly or indirectly furnished to the company or any third-party, such as internal law firm memoranda, may be omitted from the log.

In place of a Complete Log of all documents withheld from production based on a claim of privilege, the company may elect to submit a Partial Privilege Log ("Partial Log") for each person searched by the company whose documents are withheld based on such claim and a Complete Log for a subset of those persons, as specified below:

- (1) The Partial Log will contain the following information: (a) the name of each person from whom responsive documents are withheld on the basis of a claim of privilege; and (b) the total number of documents that are withheld under a claim of privilege (stating the number of attachments separately) contained in each such person's files. Submit all nonprivileged portions of any responsive document (including nonprivileged or redactable attachments) for which a claim of privilege is asserted (except where the only nonprivileged information has already been produced in response to this instruction), noting where redactions in the document have been made.
- (2) Within five (5) business days after receipt of the Partial Log, Commission staff may identify in writing five individuals or ten percent of the total number of persons searched, whichever is greater, for which the company will be required to produce a Complete Log in order to certify compliance with this Subpoena.
- (3) For the company to exercise the option to produce a Partial Log, the company must provide a signed statement in which the company acknowledges and agrees that, in consideration for being permitted to submit a Partial Log:
 - (a) the Commission retains the right to serve a discovery request or requests regarding documents withheld on grounds of privilege in the event the Commission seeks relief through judicial or administrative proceedings;
 - (b) the company will produce a Complete Log of all documents withheld from production based on a claim of privilege no later than fifteen (15) calendar days after such a discovery request is served, which will occur promptly after the filing of the Commission's complaint; and
 - (c) the company waives all objections to such discovery, including the production of a Complete Log of all documents withheld from production based on a claim of privilege, except for any objections based strictly on privilege.

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(4) The company must retain all privileged documents that are responsive to this Subpoena until the expiration of the Hart-Scott-Rodino waiting period or the completion of any litigation challenging the acquisition of Take-Two by Electronic Arts.

(5) The Commission retains the right to require the company to produce a Complete Log for all persons searched in appropriate circumstances.

AA. If the company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the company to make an estimate, provide an explanation.

BB. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the company's document retention policy as disclosed in response to Specification 28 of this Subpoena, but the company has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify persons having knowledge of the content of such documents.

CC. Unless specifically requested by a specification in this Subpoena, do not produce any Sensitive Personally Identifiable Information ("Sensitive PII") or Sensitive Health Information ("SHI") prior to discussing the information with a Commission representative. If any document responsive to a particular specification contains unresponsive Sensitive PII or SHI, redact the unresponsive Sensitive PII or SHI prior to producing the document.

For purposes of this Subpoena, Sensitive PII means an individual's Social Security Number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security Number, driver's license number or other state identification number or a foreign country equivalent, passport number, financial account number, credit or debit card number. For purposes of this Subpoena, SHI includes medical records or other individually identifiable health information relating to the past, present, or future physical or mental condition of an individual, or the past, present, or future payment for the provision of health care to an individual.

DD. In order for the company's response to this Subpoena to be complete, the attached certification form must be executed by the official supervising compliance with this Subpoena, notarized, and submitted along with the responsive materials.

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Any questions you have relating to the scope or meaning of anything in this Subpoena or suggestions for possible modifications thereto should be directed to Victoria Lippincott at 202-326-2983 or Ben Lorigo at 202-326-3717. The response to the Subpoena shall be addressed to the attention of Victoria Lippincott or Ben Lorigo and delivered between 8:30 a.m. and 5:00 p.m. on any business day to Federal Trade Commission. If you wish to submit your response by United States mail, please call one of the staff listed above for mailing instructions.

CERTIFICATION

This response to the Subpoena *Duces Tecum*, together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the Federal Trade Commission.

Where copies rather than original documents have been submitted, the copies are true, correct, and complete. If the Commission uses such copies in any court or administrative proceeding, the company will not object based on the Commission not offering the original document.

(Signature)

(Type or Print Name and Title)

Subscribed and sworn to before me at the City of _____,

State of _____, this _____ day of _____, 20_____.

(Notary Public)

(Date Commission Expires)

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: William E. Kovacic, Chairman
Pamela Jones Harbour
Jon Leibowitz
J. Thomas Rosch

RESOLUTION DIRECTING USE OF
COMPULSORY PROCESS IN NON-PUBLIC INVESTIGATION

File No. 081-0138

Nature and Scope of Investigation:

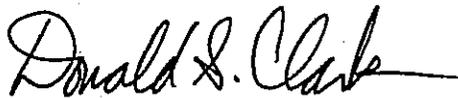
To determine whether the proposed transaction between Electronic Arts Inc. and Take-Two Interactive Software, Inc. is in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; to determine whether the aforesaid proposed transaction, if consummated, would be in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, or Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; and to determine whether the requirements of Section 7A of the Clayton Act, 15 U.S.C. § 18a, have been or will be fulfilled with respect to said transaction.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, 10 and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50 and 57b-1, as amended; Federal Trade Commission Procedures and Rules of Practice, 16 C.F.R. §§ 1.1, *et seq.*, and supplements thereto.

By direction of the Commission.



Donald S. Clark
Secretary

Dated: April 17, 2008