



CIVIL INVESTIGATIVE DEMAND
Written Interrogatories and Report

<p>1. TO</p> <p>Take-Two Interactive Software, Inc. c/o Alicia Batts, 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 demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. §57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.


3. SUBJECT OF INVESTIGATION

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

You are required by this demand to answer the interrogatories on the attached schedule or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 6 on or before the date specified in Item 4.

<p>4. DATE ANSWERS OR REPORT MUST BE SUBMITTED</p> <p>9:00 a.m. May 9, 2008</p>	<p>5. COMMISSION COUNSEL</p> <p>Reid B. Horwitz E. Eric Elmore</p>
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<p>6. RECORDS CUSTODIAN</p> <p>Robert Tovsky, Deputy Assistant Director</p>	<p>7. DEPUTY RECORDS CUSTODIAN</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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INSTRUCTIONS AND NOTICES

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The delivery of this demand 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. The answers or report in response to this demand must be submitted under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

PETITION TO LIMIT OR QUASH

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

The Commission's Rules of Practice require that any petition to limit or quash this demand 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 twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

Form of Certificate of Compliance*

I/We do certify that all of the information required by the attached Civil Investigative Demand which is in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted to a custodian named herein.

If an interrogatory or a portion of the request has not been fully answered or portion of the report has not been completed the objection to such interrogatory or uncompleted portion and the reasons for the objection have been stated.

Signature _____

Title _____

Sworn to before me this day

Notary Public

*In the event that more than one person is responsible for answering the interrogatories or preparing the report, the certificate shall identify the interrogatories or portion of the report for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

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Unless modified by agreement with the staff of the Federal Trade Commission, each specification of this Civil Investigative Demand ("CID") 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 CID can be narrowed in any way that is consistent with the Commission's need for information, you are encouraged to discuss such questions and possible modifications with the Commission representative identified on the last page of this CID. All modifications to this CID must be agreed to in writing by such representative.

SPECIFICATIONS

1. List all agents and representatives of the company, including but not limited to, all attorneys, consultants, investment bankers, product distributors, sales agents, marketing consultants, PR consultants, advertising agencies, and other persons retained by the company in any capacity relating to any relevant product in any relevant area (excluding those retained solely in connection with environmental, tax, human resources, pensions, benefits, ERISA, and OSHA issues), and their last known address and phone number.
2. List each relevant product sold by the company since 2004, and for each relevant product:
 - (a) describe the product in detail, including its genre and game rating; and
 - (b) state the division, subsidiary, or affiliate of the company that produces or sells, or has produced or sold, the product;
 - (c) state whether the company produces or sells the product on behalf of another person, or whether another person produces or sells the product on behalf of the company, in either case identifying each such person.
3. For each relevant product identified in Specification 2, and separately for each genre, state monthly and annually, for each year since January 1, 2004:
 - (a) the company's gross sales and net sales in each relevant area, stated separately in units and dollars;
 - (b) the company's production and shipment in each relevant area, stated separately in units and dollars;
 - (c) any deductions from the company's gross sales in each relevant area, identified separately by type of deduction, that the company uses to calculate net sales;
 - (d) the company's cost of goods sold stated separately in units and dollars for: total

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production cost per unit, and by the following components: (1) materials; (2) licensing fees, and within licensing fees, state separately fees paid to (i) platform manufactures, and (ii) other providers of intellectual property (e.g., professional sports leagues, player, players associations, personalities); (3) packaging; (4) direct labor; (5) production overhead costs; and (6) any other costs (itemized by title) that are used to calculate cost of goods sold, or if the product sold is purchased or co-packed provide the purchase price;

(e) the company's production cost variances stated separately by type;

(f) gross margins and state the method of computation; and

(g) total payments by the company for distribution services, and the company's spending for advertising and other promotional efforts.

4. For each relevant product identified in Specification 2, state monthly (if available, otherwise it may be provided quarterly) and annually, for each year since January 1, 2004:

(a) the company's distribution and freight-out costs, including without limitation, cost center expense summaries showing costs by type for each distribution center, expenses by type incurred for moving product from production facilities to distribution centers, retailers, or wholesalers, and expenses by type for third-party distribution and warehousing services;

(b) stated separately, the company's variable trade promotions by type, variable consumer promotions by type, fixed trade promotions by type, fixed consumer promotions by type, media advertising and expenditures by type, and any other promotional and marketing expenditures by type;

(c) the company's research and development costs;

(d) by type, assets directly dedicated to, and liabilities directly derived from, each relevant product, (or lowest product grouping available);

(e) any license and licensing fees associated with the relevant product;

(f) all advertising and marketing expenditures;

(g) all inventory costs; and

(h) the company's other costs, such as selling, general and administrative, and other overhead expenditures, by type.

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5. For each platform manufacturer, describe (a) the media (e.g. CD, DVD, proprietary cartridge, etc.) on which the relevant products identified in Specification 2 are published; (b) whether the company, the platform manufacturer, or a third party prints the relevant product onto the media; and (c) the contract terms under which the media are printed (if not by the company), including but not limited to (1) volume discounts, (2) refunds for unsold media, and (3) lead time necessary to place orders or change order size.
6. For each relevant product identified in Specification 2:
 - (a) identify and describe each discount and allowance, including but not limited to, rebates, promotional allowances, merchandising discounts, and co-op advertising. Describe 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. Describe in detail all formulas, models and programs used to make such determinations;
 - (b) state the credit terms extended by the company to retail and wholesale customers;
 - (c) state whether and under what circumstances the company pays refunds or extends credit for returned goods or otherwise accepts returns and all terms for returns to retail and wholesale customers;
 - (d) state the company's requirements, such as minimum order requirements and creditworthiness, for direct purchasing by retail or wholesale customers; and
 - (e) describe in detail the process by which the company establishes and negotiates discounts, rebates, other price concessions, or other terms such as free goods, incentives or payments to retailers or the employees of retailers, slotting allowances, or other compensation.
7. For each relevant product, provide the following:
 - (a) a detailed description of each category of documents and information (e.g., platform, genre, number of competitors, release date, Metacritic rating, etc.) used to establish the price and recommended resale price of such product, and how such information is used to establish such prices;
 - (b) a detailed description of all price checking programs or efforts, including the names of each employee or agent participating in such programs or efforts, their title or company affiliation, the role that they play or played, and the last known address and phone number of any former employees or agents involved in such programs or efforts.

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8. Identify the company's 20 largest wholesale customers, and for each such customer:
 - (a) state whether the company has a contract or other promotional agreement relating to the sales of relevant products, and;
 - (b) provide by month, by relevant product listed in response to Specification 2, in units and dollars: (i) gross sales; (ii) allowances; (iii) discounts; (iv) returns; (v) promotional payments; (vi) excise taxes; (vii) any other dollar amount deducted to reach the net sales; and (viii) net sales, where net sales is gross sales minus the deductions specified in subparts (ii)-(vii).
9. Identify the company's 20 largest retail customers, and for each such customer:
 - (a) state whether the company has a contract or other promotional agreement relating to the sales of relevant products; and
 - (b) provide by month, by relevant product listed in response to Specification 2, in units and dollars: (i) gross sales; (ii) allowances; (iii) discounts; (iv) returns; (v) promotional payments; (vi) excise taxes; (vii) any other dollar amount deducted to reach the net sales; and (viii) net sales, where net sales is gross sales minus the deductions specified in subparts (ii)-(vii).
10. State the full name and URL for each website operated by or on the company's behalf, and the purpose of each site, if it has or had content relating to any of the issues addressed by this CID or Second Request issued to the company on April 16, 2008.
11. Identify all consultants identified in response to Specification 1 who advised or assisted the company in connection with the company's concerns, expressed or otherwise, over Electronic Art's 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. Describe all documents and analyses prepared in connection with such concerns to the extent they related 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, and describe the role each consultant played, and provide each of their last known addresses and phone numbers. Identify all former employees who participated in any of the activities described above, and provide their last known addresses and phone numbers.
12. List all retailers for whom the company acts as a category captain or any type of category supervisory position.

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13. List all Metacritic ratings for each relevant product since 2000, and for each relevant product submit in Excel format, the title, publisher, developer, genre(s), players, ESRB rating, release date, release price, Metacritic rating, user rating, recommended resale price, the amount of any promotional pricing or type of promotional activity offered at the time of release, and date on which the company offered its first price discount, promotional pricing, or promotional activity after date of release.
14. State the top five video game titles (or less if five cannot be identified) that, to the company's knowledge, most constrain the price of each relevant product identified in the company's response to Specification 2 in the sports, strategy, shooter, racing and action genres, and for each such title, state the title's genre and publisher.
15. For each relevant product identified in response to Specification 2 in the sports, shooter, strategy, racing and action genres, state the top five video game titles (or less if five cannot be identified) that the company evaluated or is evaluating in deciding what product features to add.
16. Identify, provide the title and describe the contents of each financial statement, budget, profit and loss statement, customer or product line profitability report, and each other financial report regularly 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, and for each such report, state how often each is prepared and the person responsible for its preparation and provide all such reports 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. Provide the name of and link (if applicable) to each 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, in which the company or any of its employees discussed or monitored discussions of competition relating to the relevant product. Identify all user ids, log-in names, and aliases used by the company or any of its employees in connection with such forums.
18. State the name, address, telephone number and contact name of each person that has entered, attempted to enter into, or exited from, the publishing of relevant product for each video game genre from January 1, 1998 to the present. For each such person, identify the title(s) it produces or sells, or produced or sold, the genre, and such title's release date for each platform. For each entrant, state whether the entrant also produces the title. If the publisher does not produce the title, state the producer of each title. For

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each person that has exited due to an acquisition or merger, identify the acquiring person or the resulting merged person.

19. For each relevant product, identify and describe any programs and/or models used to analyze the development potential of relevant products.
20. Identify, and state whether the company is a member of, or subscribes to, all trade associations, information services, and other organizations relating to the research, development, production, license, or sale of any relevant product.
21. For each electronic database maintained by the company that contains information relating to prices, sales, research and development, production, costs (including transportation costs), profits, margins, competitors, or customers for any relevant product, service, or input, provide a copy of the database, all software, user identifications, and passwords necessary to access the responsive data store, and all regularly prepared and ad hoc reports generated using information contained in the database ("reports"), and state the following information:
 - (a) the size and format of the database, including, but not limited to, the authoring application, operating system, and application version;
 - (b) a detailed description of the data contained in the database;
 - (c) the date range for which data has been input;
 - (d) a record layout and the title and description of each record or field contained in the database;
 - (e) an identification of databases, spreadsheets, or other electronic files that are linked to the database;
 - (f) the uses to which each of the reports was put; and
 - (g) for each such report, the name of the report, the distribution list for the report, the frequency with which the report is generated (e.g. daily, weekly, monthly, annually), and the person responsible for generating the report.
22. Provide a detailed description of all statements or actions by any person (identifying the person by name, title, and business address) in support of, in opposition to, or otherwise expressing opinions about the proposed acquisition or its effects.

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23. Describe 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.
24. Describe in detail the company's policies and procedures relating to the retention and destruction of documents.
25. List: (a) each federal judicial district (e.g., District of Columbia, Southern District of New York) within the United States in which the company has an agent to receive service of process as well as each such agent's name, current business and home addresses, and telephone numbers; (b) each federal judicial district within the United States in which the company is incorporated or licensed to do business or currently is doing business; and (c) each federal judicial district within the United States in which the company has an office or a facility, and, for each such office or facility, list the address and the individual in charge (with his or her title).
26. Identify the person(s) responsible for preparing the response to this CID, and describe in detail the steps taken by the company to respond to this CID, including instruction pertaining to document (written and electronic) and information preservation. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the person(s) to whom the instructions were given. For each specification, identify the individual(s) who assisted in the preparation of the response, with a listing of the persons (identified by name and corporate title or job description) whose files were searched by each person.

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DEFINITIONS AND INSTRUCTIONS

For the purposes of this CID, 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 “Civil Investigative Demand” or “CID” means this Civil Investigative Demand.
- D. The term “Subpoena *Duces Tecum*” or “Subpoena” means the Subpoena *Duces Tecum* issued by the Federal Trade Commission to the company together with this Civil Investigative Demand.
- 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.
- (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,

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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 CID. 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 CID, 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 CID.

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, 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."

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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 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

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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");

(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

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

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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: (1) documents for each of the years from January 1, 2004 to the present; and (2) information for each of the years from January 1, 2004 to the present. Where information, rather than documents, is requested, provide it separately for each year; where yearly data is not yet available, provide data for the calendar year to date. If calendar year information is not available, supply the company's fiscal year data indicating the twelve month period covered, and provide the company's best estimate of calendar year data.

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

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 CID. 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;

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(2) In lieu of original documents stored electronically, the company may submit documents in the following forms:

(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 CID.

(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 CID 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 CID, 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:

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(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 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.

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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 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 CID.
- (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

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(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.

(4) The company must retain all privileged documents that are responsive to this CID 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 or described in response to Specification 24 of this CID, 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 CID, 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 CID, 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 CID, 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.

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

Any questions you have relating to the scope or meaning of anything in this CID 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 CID 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 above for mailing instructions.

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CERTIFICATION

The response to this Civil Investigative Demand, 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:

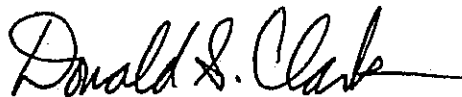
To determine whether the proposed transaction between Electronic Arts Inc. and Take-Two Interactive Software, Inc. is in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; to determine whether the aforesaid proposed transaction, if consummated, would be in violation 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