

1 77. PSYSTAR is therefore entitled to a declaratory judgment finding APPLE's copyrights to be
2 unenforceable until that time that APPLE discontinues the use of the EULA in conjunction with the
3 misuse of its copyrights.

4
5 **Second Claim for Relief**

6 **(Declaration of Unenforceability for Copyright Misuse (DMCA))**
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8 78. PSYSTAR hereby incorporates by reference all of the allegations of paragraphs 1-77 of this
9 First Amended Counterclaim as if fully set forth herein.

10 79. APPLE possesses one or more copyrights related to the Mac OS.

11 80. APPLE causes the Mac OS to malfunction on non-Apple-Labeled Computer Hardware
12 Systems by embedding code that cause kernel panic and/or infinite loop.

13 81. The code that causes kernel panic and/or infinite loop does not constitute a technological
14 copyright protection measure.

15 82. The code that causes kernel panic and/or infinite loop does not effectively control access to
16 a copyrighted work.

17 83. PSYSTAR products have a commercially significant purpose or use other than to
18 circumvent a technological measure that effectively controls access to a copyrighted work.

19 84. Notwithstanding the foregoing, APPLE has asserted the DMCA against PSYSTAR in an
20 attempt to leverage the limited monopoly granted by the Copyright Act through the copyrights
21 corresponding to the Mac OS to areas outside the copyright monopoly or otherwise granted by the
22 Copyright Act including the installation and/or operation of the Mac OS on Apple-Labeled
23 Computer Hardware Systems.

24 85. Apple-Labeled Computer Hardware Systems are not covered by any copyright
25 corresponding to the Mac OS.

26 86. APPLE's use of the DMCA in conjunction with its copyrights in this manner is
27 anticompetitive.

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