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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DREW TECHNOLOGIES, INC.,
A Michigan corporation,

Plaintiff,

v.

**SOCIETY OF AUTOMOTIVE
ENGINEERS, INC., a Pennsylvania non-
stock non-profit corporation, individually
and d/b/a SAE, and SAE
INTERNATIONAL,**

Defendants.

Civil Action No. 03-CV-74535DT

Hon. Nancy G. Edmunds
United States District Judge

Magistrate Judge Komives
United States Magistrate Judge

FILED
MAR 22 P 3:32
U.S. DISTRICT COURT
EASTERN DISTRICT
OF MICHIGAN
DETROIT, MICH

**ANSWER TO PLAINTIFF DREW TECHNOLOGIES, INC.
FIRST AMENDED COMPLAINT FOR COPYRIGHT INFRINGEMENT,
DECLARATORY JUDGMENT, CONTRIBUTORY
INFRINGEMENT AND VIOLATION OF LICENSE AGREEMENT**

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NOW COMES Defendants, SOCIETY OF AUTOMOTIVE ENGINEERS, INC., by its attorneys, BROOKS KUSHMAN P.C. and COHEN & GRIGSBY, P.C., and states as follows for its Answer to the First Amended Complaint:

1. The averments of paragraph 1 of the First Amended Complaint are admitted.
2. The averments of paragraph 2 of the First Amended Complaint are admitted.
3. The averments of paragraph 3 of the First Amended Complaint are admitted.
4. The averments of paragraph 4 of the First Amended Complaint are denied.
5. The averments of paragraph 5 of the First Amended Complaint are admitted.
6. The averments of paragraph 6 of the First Amended Complaint are admitted.
7. The averments of paragraph 7 of the First Amended Complaint are denied.
8. Defendant admits that Exhibit A purports to be a copy of a Copyright certificate. The defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 8 of the First Amended Complaint and, therefore, deny same.
9. The averments of paragraph 9 of the First Amended Complaint are denied.
10. Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 10 of the First Amended Complaint and, therefore, deny same.
11. Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 11 of the First Amended Complaint, therefore, deny same.
12. The averments of paragraph 12 of the First Amended Complaint are denied.
13. The averments of paragraph 13 of the First Amended Complaint are denied.



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14. The averments of paragraph 14 of the First Amended Complaint are denied.

15. Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 15 of the First Amended Complaint and, therefore, deny same.

16. Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 16 of the First Amended Complaint and, therefore, deny same.

17. Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 17 of the First Amended Complaint and, therefore, deny same.

18. Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 18 of the First Amended Complaint and, therefore, deny same.

19. Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 19 of the First Amended Complaint and, therefore, deny same.

20. Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 20 of the First Amended Complaint and, therefore, deny same.

21. Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 21 of the First Amended Complaint and, therefore, deny same.



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22. Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 22 of the First Amended Complaint and, therefore, deny same.

23. Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 23 of the First Amended Complaint and, therefore, deny same.

24. Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 24 of the First Amended Complaint and, therefore, deny same.

25. Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 25 of the First Amended Complaint and, therefore, deny same.

26. The averments of paragraph 26 of the First Amended Complaint are denied.

27. The averments of paragraph 27 of the First Amended Complaint are denied.

28. Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 28 of the First Amended Complaint and, therefore, deny same.

29. Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 29 of the First Amended Complaint, and therefore deny same.

30. Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 30 of the First Amended Complaint and, therefore, deny same.



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31. Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 31 of the First Amended Complaint and, therefore, deny same.

32. Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 32 of the First Amended Complaint and, therefore, deny same.

33. Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 33 of the First Amended Complaint and, therefore, deny same.

34. The averments of paragraph 34 of the First Amended Complaint are denied.

35. Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 35 of the First Amended Complaint and, therefore, deny same.

36. Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 36 of the First Amended Complaint and, therefore, deny same.

37. The averments of paragraph 37 of the First Amended Complaint, based on what GPL provides, speaks for itself, but to the extent a response is required, the averment is irrelevant and, therefore, deny same.

38. Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 38 of the First Amended Complaint and, therefore, deny same.



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39. Defendant is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 39 of the First Amended Complaint and, therefore, deny same except that it is admitted that DrewTech's employcc departed.

40. The averments of paragraph 40 of the First Amended Complaint are denied.

41. The averments of paragraph 41 of the First Amended Complaint are denied.

42. The averments of paragraph 42 of the First Amended Complaint are denied, except that it is admitted that a J1699c source code was posted on the Defendant's message board for nonpublic viewing by members of the SAE Task Force.

43. The averments of paragraph 43 of the First Amended Complaint are denied, except that it is admitted that members of a SAE Task Force had access to its message board.

44. The averments of paragraph 44 of the First Amended Complaint are denied, except that it is admitted that DrewTech requested that SAE take down certain files from its website.

45. The averments of paragraph 45 of the First Amended Complaint are denied.

46. The averments of paragraph 46 of the First Amended Complaint are denied.

47. The averments of paragraph 47 of the First Amended Complaint are denied, except that defendant admits that it has not identified a designated agent.

48. Defendant admits that it received a letter dated August 19, 2003 and as to the remaining averments of Paragraph 48 of the First Amended Complaint characterizing the contents of the letter, no response is required in that the letter speaks for itself.



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49. Defendant admits that it received a letter dated September 18, 2003, from Plaintiff, and as to the remaining averments of Paragraph 49 characterizing the content of such letter, no response is required in that the letter speaks for itself.

50. The averments of paragraph 50 of the First Amended Complaint are denied as stated; to the contrary, Defendant provided Plaintiff's counsel with its position that Defendant SAE is the owner of the software, not Plaintiff, and that Plaintiff converted the property without license or right from SAE.

51. Defendant admits that Plaintiff's counsel wrote a letter in response to Defendant's letter of October, which letter speaks for itself. To the extent a response to Plaintiff's characterization of the letter is required, such averments of paragraph 51 are denied.

52. The averments of paragraph 52 of the First Amended Complaint are denied.

53. Defendant's responses to paragraphs 1-52 are repeated as if reaverred in verbatim herein.

54. The averments of paragraph 54 of the First Amended Complaint are denied.

55. The averments of paragraph 55 of the First Amended Complaint are denied, except that it is admitted that Defendant has posted the J1699c source code on the SAE Forum website for its Task Force.

56. The averments of paragraph 56 of the First Amended Complaint are denied.

57. The averments of paragraph 57 of the First Amended Complaint are denied.

58. The averments of paragraph 58 of the First Amended Complaint are denied.

59. Defendant's responses to paragraphs 1-58 are repeated as if reaverred in verbatim herein.



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60. The averments of paragraph 60 of the First Amended Complaint that Defendant operates the website www.SAE.org is admitted.

61. The averments of paragraph 61 of the First Amended Complaint are denied.

62. The averments of paragraph 62 of the First Amended Complaint are denied.

63. The averments of paragraph 63 of the First Amended Complaint that Defendant is infringing is denied, but it is admitted that it has received a letter with instructions.

64. The averments of paragraph 64 of the First Amended Complaint are denied.

65. The averments of paragraph 65 of the First Amended Complaint are denied.

66. Defendant's responses to paragraphs 1-65 are repeated as if reaverred in verbatim herein.

67. The averments of paragraph 67 of the First Amended Complaint are denied.

68. The averments of paragraph 68 of the First Amended Complaint are denied.

69. The averments of paragraph 69 of the First Amended Complaint are contentions to which no response is required, but to the extent the averments are deemed to be averments of fact they are denied.

70. The averments of paragraph 70 of the First Amended Complaint are denied.

71. The averments of paragraph 71 of the First Amended Complaint are denied.

72. Defendant's responses to paragraphs 1-71 are repeated as if reaverred in verbatim herein.

73. The averments of paragraph 73 of the First Amended Complaint are admitted.



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74. The averments of paragraph 74 of the First Amended Complaint are admitted.

75. The averment of paragraph 75 of the First Amended Complaint that the SAE J1699-3 OBD II committee's document is not a work made for hire is a contention of law for which no response is required, and, to the extent a response is deemed necessary, it is denied.

76. The averment of paragraph 76 of the First Amended Complaint is denied.

77. The averments of paragraph 77 of the First Amended Complaint are denied.

78. The averment of paragraph 78 of the First Amended Complaint is denied.

79. The averment of paragraph 79 of the First Amended Complaint is a conclusion of law for which no response is required, and to the extent such a response is deemed to be required, it is denied.

80. The averments of paragraph 80 of the First Amended Complaint are denied.

81. To the extent that Defendant understands the averments of paragraph 81, Defendant denies such averments as understood and to the extent the averments represent Plaintiff's contentions, no response need be made.

82. The averments of paragraph 82 of the First Amended Complaint appear to be legal arguments or conjecture, but to the extent they purport to aver facts, they are denied.

83. To the extent that averments of paragraph 83 relate to the action commenced by Plaintiff, they are denied.

84. The averments of paragraph 84 of the First Amended Complaint are admitted.

85. The averments of paragraph 85 of the First Amended Complaint are denied.



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86. The averments of paragraph 86 of the First Amended Complaint are denied.

87. The averments of paragraph 87 of the First Amended Complaint are denied.

88. The averments of paragraph 88 (a)-(f) of the First Amended Complaint are denied.

WHEREFORE, Defendants pray this Court dismiss with prejudice the claims of Plaintiff.



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AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state a claim upon which relief can be granted.
2. Plaintiff, Drew Technologies, Inc., has no standing to bring this action against Defendant.
3. To the extent that Plaintiff has standing, its claims for relief are barred by its inequitable conduct and bad faith.
4. To the extent that Plaintiff has any rights, its claim is barred by waiver, laches and/or estoppel.
5. To the extent that Plaintiff has any rights, it has licensed those rights to Defendant.
6. In the alternative, Plaintiff has no enforceable rights in its unauthorized derivative work.
7. In the alternative, to the extent that Plaintiff has any copyright ownership in the J1699c source code, (the "Program"), such ownership is joint ownership with Defendant.

COUNTERCLAIM

SOCIETY OF AUTOMOTIVE ENGINEERS

Pursuant to Fed.R.Civ.P. 13 and 20, Defendant and Counterclaim Plaintiff, Society of Automotive Engineers, ("SAE") asserts the following as its counterclaims for relief against Plaintiff and Counterclaim Defendant, Drew Technologies, Inc. ("DrewTech").



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I. PARTIES

1. Defendant and Counterclaim Plaintiff, SAE, is a not for profit professional society incorporated and existing under the laws of the Commonwealth of Pennsylvania, with principal executive offices located at 400 Commonwealth Drive, Warrendale, Pennsylvania 15096-0001.

2. Upon information and belief, Plaintiff and Counterclaim Defendant DrewTech is a corporation existing under the laws of the State of Michigan, with a principal place of business at 7012 East M36 Suite 3B, Whitmore Lake, MI 48189.



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II. JURISDICTION

3. Jurisdiction of the subject matter of this Counterclaim arises under the Declaratory Judgment Act and specifically 28 U.S.C. §§1332 (a)(1) and 2201.

4. Jurisdiction of this Court over the person of the Plaintiff and Counterclaim Defendant is founded on Title 28 U.S.C. §1391(a) in that Counterclaim Defendant is subject to personal jurisdiction in this District. Personal jurisdiction is based on Plaintiff's presence in this District and in this Court. The amount in controversy exceeds \$75,000.



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III. BACKGROUND

5. The Society of Automotive Engineers is a society of individual engineers organized for the purpose of advancing the knowledge of the arts, sciences, standards, and engineering practices connected with the development, design, construction, and use of self-propelled machines, prime moves and related equipment.

6. SAE is an exempt organization pursuant an exemption granted by Internal Revenue Service in accordance with the requirement of §501(c)(3) of the Internal Revenue Code. Pursuant to such Code provision the membership of SAE comprises individuals and not companies or corporations. Members are required to act as individuals and not as agents or representatives of their employer or any other entity unless specifically authorized by SAE.

7. SAE has numerous Boards and Committees to accomplish its missions. One such committees is the Vehicle EE Systems Diagnostic Standards Committee (the "Committee"). One of its projects is to create a technical paper known as a recommended practice. This paper is currently known as SAE J1699-3 OBD-II Test Procedures Recommended Practice ("J1699-3 Document"). To accomplish the preparation of such recommended practice, the Committee created the SAE J1699-3 Task Force (the "Task Force"). During the fall of 2001, the California Air Resources Board ("CARB") requested the Committee develop specifications for a standardized test tool to validate compliance. On about the October 19, 2001 meeting of the Committee, the Task Force was asked by the Committee to review whether or not a compliance tool could be developed pursuant to SAE J1699-3. The Task Force was assigned the duty of monitoring the CARB request and determining whether such a tool was practical.



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8. Mr. Kerby Suhre ("Suhre") was a new member of the Committee having become an active member on June 19, 1991. Upon information and belief, Suhre was employed at that time by DrcwTech, but represented himself, as a member and as a professional engineer. Upon information and belief, Suhre continued such employment until about October 2002, but continued as a member of the Committees and Task Force.

9. During the period from October 2001 through March 2002, the Task Force developed a series of test cases. The Committee authorized the Task Force to generate C source code ("J1699c source code") to run in conformance with the SAE J2534 Pass-Thru Standard, a software interfacing protocol. From March 2002 through June of 2002, the J1699-3 Document had been placed on the SAE Forum website and the Task Force, including Suhre, began developing the J1699c source code for validation testing in strict accordance with the J1699-3 Document. This development took place through the SAE Forum website where J1699c source code for the validation tool was developed by the members, including comments and revisions to the J1699c source code. The revisions, comments and new versions were posted on the Forum website. The J1699c source code was developed as a derivative of the J1699-3 Document following the sequencing and protocol established therein. Access to this website was and is available to members of the Committee and Task Force, but not the public. In applying for and in accepting a password access to the Forum website, users agree to the SAE policies for its and their use of the site, including its intellectual property rights in making contributions to the work of Task Force or Committee or any SAE Committee or Task Force.

10. On the face of the SAE Forum website are the various policies relating to its use. As part of the policy there appearing is the provisions:

By participating in any SAE technical committee and/or participating in the creation and adoption of SAE's Intellectual



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Property, participants and committee members acknowledge that the copyright to such property, as defined in Copyright Act (17 U.S.C. § 101 *et. Seq.*) resides in SAE. Such participants and committee members agree, if necessary, to execute any and all documents deemed necessary or appropriate by SAE to transfer and effectuate ownership of all such rights, including but not limited to copyrights, they may have in SAE Intellectual Property.

Individuals who participate in SAE technical committees and related activities may, from time to time, where appropriate, be required to sign an agreement acknowledging the transfer of any rights in SAE Intellectual Property to SAE. The rights granted to SAE by this assignment shall belong to SAE in perpetuity.

11. At its meeting in October 2002, the Committee recognized the accomplishments of Suhre and Paul Baltusis for their work on the SAE J1699-3 Document and acknowledged that a version of the J1699c source code had been written to work with SAE J2534. It was recognized by the Committee that all of the functions to be tested pursuant to SAE J1699-3 were not in source code at that time.

12. Between October 2002 and June 2003, Suhre and the Task Force made a number of revisions to the J1699c source code that were posted to the Forum website. All of the versions of the J1699c source code from the first version to the last version posted on the Forum website, including those by Suhre were posted without a copyright notice or open source license notification of any kind. At all times through June 11, 2003, SAE, the Committee and Task Force deemed the SAE J1699 Document and the J1699c source code to be that of SAE, including all copyrights in such works.

13. On June 11, 2003, Michael Drew ("Drew"), who, upon information and belief was an employee of DrewTech and or Dan DeMaggio ("DeMaggio"), who upon information and belief was also an employee of DrewTech, posted on the Forum website a copy of the J1699c source code with a copyright notice, to wit, "Copyright © 2002 Drew Technologies,



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<http://sourceforge.net/projects/j1699-3/>". At no time prior to or after such listing did Drew or DeMaggio ever consult with or seek permission from SAE to use or claim a copyright in the J1699c source code or to place a copyright notice thereon.

14. At the same time as Drew and or DeMaggio posted the copyright notice on, the copy of the J1699c source code, an additional notice was placed on the source code providing that "This program is free software; you can redistribute it and/or modify it under the terms of the GNU General Public License" Neither Drew nor DeMaggio sought the permission of SAE to post the J1699c source code as free software or under the terms of the GNU General Public License.

15. Upon information and belief, either Drew or DeMaggio, after the posting of the copy of the J1699 source code with the copyright and license notices appearing on it, posted the SAE J1699c source code with DrewTech copyright and public license notices on a public website, www.sourceforge.net. By so doing, Drew or DeMaggio, or both attempted to dedicate the source code to the public without requiring attribution or payment to SAE.

16. At no time has SAE ever authorized anyone to convert the J1699c source code to a GNU General Public License or any other open source free software or ever authorized the placement of a copyright notice in a name other than SAE's on the J1699c source code. To the contrary, all documents and software developed under the auspices of the SAE and its committees is assigned to SAE by the individuals contributing to the code and the persons drafting the express language in particular.

17. Upon information and belief, the actions of Drew and DeMaggio were encouraged by DrewTech as a beneficiary of such wrongful conduct. Drew is the alter ego of DrewTech and conspired with DeMaggio to deprive SAE of its lawful property by such



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postings with wrongful and false notices of an open source license and a copyright claim of ownership in DrewTech.

18. By posting the J1699c source code to a public website and claiming copyright ownership in the J1699c source code, DrewTech has seriously and irreparably harmed and injured SAE.

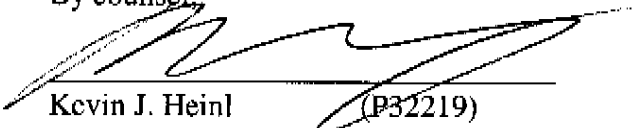
WHEREFORE, SAE prays this Court to

1. Declare the copyright notice of DrewTech in the J1699c source code as null and void.
2. Declare that SAE is the rightful copyright owner of J1699c.
3. Declare that the posting of the GNU license was and is null and void and that any such license is null and void and of no effect.
4. Enter a permanent injunction enjoining DrewTech or anyone claiming through it, including Michael Drew, from distributing or claiming any rights in the J1699c source code.
5. Award SAE its damages and costs, including attorneys fees, and such other relief as the Court deems appropriate.

Respectfully submitted,

SOCIETY OF AUTOMOTIVE
ENGINEERS, INC.

By counsel



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Counsel for Defendants

March 22, 2004



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CERTIFICATE OF SERVICE

I certify that I served:

**ANSWER TO PLAINTIFF DREW TECHNOLOGIES, INC.
FIRST AMENDED COMPLAINT FOR COPYRIGHT INFRINGEMENT,
DECLARATORY JUDGMENT, CONTRIBUTORY
INFRINGEMENT AND VIOLATION OF LICENSE AGREEMENT**

on **March 22, 2004** by:

X mailing (via First-Class Mail)

a copy to:

Eric C. Grimm, Esquire
CALLIGARO & MEYERING, P.C.
20600 Eureka Road, Suite 900
Taylor, MI 48180

Counsel for Plaintiff



Ileana Barbu



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