

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

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COLUMBIA PICTURES INDUSTRIES, INC.,
DISNEY ENTERPRISES, INC.,
TWENTIETH CENTURY FOX FILM
CORPORATION, and WARNER BROS.
ENTERTAINMENT INC.,

Plaintiffs,

No. _____

v.

DOES 1 - 10

Defendants.

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COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Plaintiffs Columbia Pictures Industries, Inc. (“Columbia”), Disney Enterprises, Inc. (“Disney”), Twentieth Century Fox Film Corporation (“Fox”), and Warner Bros. Entertainment Inc. (“Warner Bros.”) hereby allege as follows:

Nature Of The Case

1. This is a case of willful and rampant infringement of copyright over the Internet. Defendants knowingly enable, encourage, induce and profit from massive online piracy – piracy Defendants could stop but refuse to.

2. Defendants operate a website as part of an online computer network known as “eDonkey.” Defendants do so to enable their users to locate and download infringing copies of Plaintiffs’ valuable copyrighted motion pictures and television shows for free and without

authorization. Defendants operate their website with the express object of promoting its use to infringe Plaintiffs' copyrights.

3. Defendants' users simultaneously distribute infringing copies of those same works to countless others around the world. As a direct result of Defendants' conduct, thousands of the most popular motion pictures and television shows – from new releases that are still in theaters to blockbuster DVD releases to today's most popular television shows – are infringed every day. Absent Defendants' active and ongoing participation in the daily acts of infringement, this widespread unauthorized copying and distribution of Plaintiffs' valuable property simply could not happen on the scale that it does. The harm to Plaintiffs, who invest millions of dollars and enormous creative energies to produce their creative copyrighted works, is manifest and irreparable.

Copyright Infringement and the eDonkey Network

4. Defendants' website is part of the eDonkey network. eDonkey is a peer-to-peer network optimized for the copying and distribution of large files. On a "peer-to-peer" network, the actual exchange of the files – *i.e.*, the actual downloading and uploading – takes place directly between users (or "peers") of the network. Whether eDonkey is used for legitimate purposes or copyright infringement is determined by those who operate its indexing websites and its servers. In this case, the Defendants operate a website with the object of enabling and fostering the illegal reproduction and distribution of copies of Plaintiffs' movies and television programs protected by copyright.

5. Defendants set up, maintain, and operate a website that, by design, fosters widescale copyright infringement by users on the eDonkey network. Simply put, the Defendants' E2dk-it website exists to entice and facilitate copyright infringement, and materially

contribute to such infringement – enabling Internet users to quickly copy and transfer files, almost all of them infringing, many of them Plaintiffs’ copyrighted movies and television programs. Defendants do so to profit unlawfully from the distribution of Plaintiffs’ copyrighted movies and television programs.

6. Downloading files using the eDonkey network is straightforward. Users access the Defendants’ website that lists files – in this case movies and television programs – that are available for download. By clicking on the file name, an illegal copy of the movie or television program is automatically copied to a user’s computer. That newly copied movie or television program is a perfect digital copy – ready to be viewed, burned to a portable media like a DVD, and/or copied by and distributed to another user.

7. The eDonkey network is made up of three principal components: (a) an eDonkey “client” application, (b) indexing websites (like E2dk-it) known as “hash link sites” and (c) individual eDonkey servers.

8. The eDonkey network works as follows: users download a small program that they install on their computers – the eDonkey “client” application. The eDonkey client is the users’ interface during the downloading process. There are many different versions of eDonkey clients, all of which are readily available on the Internet for free.

9. An eDonkey hash link site is a website that contains an index of files available on the network (generally an extensive listing of movies and television programs, among other copyrighted content). The hash link site hosts and distributes small files known as “hashes.” Hashes do not themselves hold actual copies of the movie or television program. Rather, hashes are unique identifiers corresponding to particular files available on the eDonkey network – often

a file containing a copyrighted movie or television program. Hashes automatically and invisibly instruct the eDonkey client program on a user's computer how and where to get the desired file.

10. An eDonkey server manages the actual distribution of files, connecting uploaders (those who are distributing a movie) with downloaders (those who are copying a movie). This server functions in many respects like a "traffic cop," directing an eDonkey user's computer where to find users who have a particular file, and then providing the user's computer with access to those other users to facilitate the download process. In the parlance of peer-to-peer file sharing, the eDonkey server finds other "peers" from which the user can obtain the desired file.

11. Hash link sites play an integral role in the process of using the eDonkey network to download files. Hash link sites both encourage users to upload hashes that uniquely correspond to copyrighted content and to index those hashes for easy retrieval by other users. Further, hash link sites perform a critical "quality control" function that allows users to efficiently download the best copies of movies and television shows on the eDonkey network. While hashes are typically given descriptive names – the hash "Star Wars," for example, is likely to direct a user to a copy of the film "Star Wars" to download – all hashes are not created equal. Many hashes on the eDonkey network link to files that are flawed, incomplete, corrupted, or otherwise useless to a user wishing to obtain an unauthorized copy of a copyrighted movie or television program. Hash link sites such as Defendants' are designed in part to weed out these "bad" hashes and index only hashes linking to a quality files. In the case of indexing television and movie hashes, hash link sites are intentionally designed to enable users to find the best copies of the unauthorized copyrighted works.

The Parties

The Plaintiffs

12. Plaintiffs Columbia, Disney, Fox, and Warner Bros. are among the leading motion picture studios in the world. Plaintiffs are responsible for creating and distributing some of the world's most popular filmed entertainment.

13. Each of these Plaintiffs, including their affiliates and/or subsidiaries, owns the copyrights and/or exclusive reproduction and distribution rights to many popular motion pictures and television programs, including those listed on Exhibit A.

14. Plaintiff Columbia is a Delaware corporation, with its principal place of business in California.

15. Plaintiff Disney is a Delaware corporation, with its principal place of business in California.

16. Plaintiff Fox is a Delaware corporation, with its principal place of business in California.

17. Plaintiff Warner Bros. is a Delaware corporation, with its principal place of business in California.

The Defendants

18. Defendants Does 1-10 are currently unknown to Plaintiffs. They operate a website, www.ed2k-it.com, at the Internet Protocol address 67.43.11.190, by virtue of which Plaintiffs' copyrighted works are unlawfully copied and distributed. That website is hosted by Liquid Web, an internet service provider headquartered in Lansing, Michigan, on a server located in or around Lansing, Michigan. On information and belief, all of the Defendants participate in and profit from the activities alleged herein.

Jurisdiction And Venue

19. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States, and therefore the Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. § 1338(a) (jurisdiction over copyright cases).

20. Personal jurisdiction over the Defendants is proper. Defendants have chosen to direct their infringing activities at Michigan. The server hosting Defendants' website – the hub of infringing activities – is physically located in Michigan. Once Defendants permit users, including Michigan residents, to access the hashes hosted on the website, the users' computers interact with Defendants' website to download infringing copies of Plaintiffs' works, as explained herein. In fact, the voluminous acts of direct infringement for which Defendants are liable require a high level of interaction between users' computers and the website hosted by Defendants' computer server in the State of Michigan. On information and belief, many of these acts of direct infringement occur in Michigan, where Michigan residents access Defendants' website in order to download infringing copies of Plaintiffs' works. In these and other ways, Defendants have continuous contact with the State of Michigan and its residents. In addition, jurisdiction may be proper over the Doe Defendants because they may be found in Michigan.

21. Venue in this District is proper under 28 U.S.C. § 1391(b) and/or 28 U.S.C. § 1400(a). Although the true identity of each Defendant is unknown to Plaintiffs at this time, on information and belief, each Defendant may be found in this District, and/or a substantial part of the acts of infringement complained of herein occurred in this District. The server hosting the website is also located in this District.

Defendants' Infringing Conduct

22. Defendants operate an eDonkey hash link site. In doing, the Defendants provide a material – indeed, an essential – contribution to the infringement of Plaintiffs' copyrighted movies and television programs. Defendants operate this website with the object of promoting its use to infringe Plaintiffs' copyrights. The specific functions performed by hash link sites are largely invisible to users. From a user's perspective, once the user clicks on the hash file, the desired movie or television program begins to download (*i.e.*, be reproduced) onto the user's computer – automatically and without any further action by the user.

23. The blatant infringements made possible by using Defendants' website are obvious – and are well-known to and encouraged by Defendants. Anyone who visits Defendants' website, including Defendants themselves, can immediately observe the catalog of infringing files being indexed. Popular movies and television shows such as “March of the Penguins,” “The Dukes of Hazzard,” and “The Legend of Zorro” are clearly offered for download. The website home page even states that Defendants provide “verified files for the edonkey network / apps, games, movies, music and more / from the community for the community,” adding, “if you downloaded and liked it then share it.” Defendants also choose to index hashes by categories that include “High Quality DVD Rips” and “TV Show Releases” – thereby providing a user's manual for how to find and copy infringing movie and television files. In some cases, the site provides an additional index – for example, a “ED2K-IT Offical [sic] TV Release Index” that lists of dozens of copyrighted television series “to make it easier for you to find the show your [sic] looking for.”

24. Further, the site instructs users how to create and upload hashes and how to place them in appropriate locations of the website for easy access by other users. In instructing users how to upload “High Quality DVD Rips,” for example, Defendants' site counsels users to

include a short plot outline, cover art from Amazon.com, a link to the “trailer,” screenshots of the movie, and a link to imdb.com, a popular Internet movie database. Indeed, the indexed movies and television shows listed on the website are usually accompanied by copyrighted images related to the movie or television show. Further, in an effort to encourage the successful trading of illegal files, the site allows users to rate hash files based on the quality of the download and to report “fakes,” hashes that do not link to actual movie or television files. In these and many other ways, Defendants know that their website is causing and/or materially contributing to infringing conduct, and Defendants themselves are inducing such conduct.

25. Defendants exercise control over the infringing activity on their website. Defendants decide exactly which hashes are indexed on their site. In fact, Defendants specifically threaten to delete posts containing pornography or “warez” (pirated versions of commercial software), but not movies or television shows. The fact is that Defendants easily could prevent infringement of Plaintiffs’ copyrighted works by not indexing hashes corresponding to Plaintiffs’ copyrighted works. Defendants also have the ability to decide which users can access their website, including the right and ability to exclude or ban specific users, such as by not allowing users with particular login names to upload or download hashes. For example, Defendants threaten to ban users for posting sexually explicit material, which is considered “not appropriate,” or for posting messages containing “swearing.” Although they could, Defendants have failed to take the same steps for works protected by copyright.

26. Defendants profit from the infringement they encourage and make possible via their website. Defendants solicit donations from users on their website to support their infringing activities. For Defendants, the value of their site and the financial benefits they receive are directly dependent upon the number of users attracted to their site – the more users,

the greater the financial benefit. Plaintiffs' popular movies and television shows are the draw that attracts users to their site. Thus, Defendants profit from the widespread infringement that they facilitate.

27. As demonstrated in paragraphs 22-26 above, Defendants clearly seek to induce copyright infringement of Plaintiffs' works, and operate their website with the object of promoting their use to infringe copyright. The evidence of inducement is flagrant and voluminous and includes, but is not limited to, the overwhelming infringing content available on Defendants' website, the instructions on how to upload and clearly identify hashes for copyrighted content, and the display of images related to copyrighted movies and television shows. Ultimately, even a single look at Defendants' website reveals that Defendants' website exists for the purpose of trafficking in infringing content.

Claim For Relief

(For Copyright Infringement Pursuant to 17 U.S.C. § 501 *et seq.*)

28. Plaintiffs repeat and reallege every allegation contained in paragraphs 1 through 27 as if fully set forth herein.

29. Motion pictures and television programs owned by Plaintiffs have been and continue to be illegally reproduced and distributed, without authorization, using Defendants' website. Plaintiffs own the copyrights, or the exclusive reproduction and distribution rights, in the copyrighted works listed on Exhibit A, all of which have been infringed with Defendants' website.

30. Defendants are liable under the Copyright Act for inducing the infringing acts of the users of their website. Defendants operate and maintain their website with the object of promoting its use to infringe Plaintiffs' copyrighted motion pictures and television programs. Defendants' inducement of copyright infringement is apparent from, among other things, the

overwhelming infringing content available on Defendants' website, the instructions on how to upload and clearly identify hashes for copyrighted content, and the display of images related to copyrighted movies and television shows. Through their creation, maintenance, and operation of their website, Defendants knowingly induce the unauthorized reproduction and distribution of copyrighted motion pictures and television programs, including those listed on Exhibit A hereto, in violation of Plaintiffs' exclusive rights under the copyright laws of the United States. 17 U.S.C. § 106.

31. Defendants are liable as contributory copyright infringers for the infringing acts of users of their website. Defendants have actual and constructive knowledge of the infringing activity that occurs on their website. Indeed, Defendants' website is used predominantly and overwhelmingly to infringe Plaintiffs' copyrights. Through their creation, maintenance, and operation of their website, Defendants knowingly cause and/or otherwise materially contribute to the unauthorized reproduction and distribution of copyrighted motion pictures and television programs, including those listed on Exhibit A hereto, in violation of Plaintiffs' exclusive rights under the copyright laws of the United States. 17 U.S.C. § 106.

32. Defendants are vicariously liable for the infringing acts of users of their website. Defendants have the right and ability to supervise and control the infringing activities that occur through the use of their website, and at all relevant times have derived a direct financial benefit from the infringement of Plaintiffs' copyrights. Defendants receive a direct financial benefit attributable to the infringement by users of their website. Defendants are therefore vicariously liable for the unauthorized reproduction and distribution of copyrighted motion pictures and television programs, including those listed on Exhibit A hereto, in violation of Plaintiffs' exclusive rights under the copyright laws of the United States. 17 U.S.C. § 106.

33. The foregoing acts of infringement by Defendants have been willful, intentional, and purposeful, in disregard of and indifferent to Plaintiffs' rights.

34. As a direct and proximate result of Defendants' infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to damages as well as Defendants' profits pursuant to 17 U.S.C. § 504(b).

35. Alternatively, Plaintiffs are entitled to the maximum statutory damages, in the amount of \$150,000 per infringement, pursuant to 17 U.S.C. § 504(c), or for such other amount as may be proper pursuant to 17 U.S.C. § 504(c).

36. Plaintiffs further are entitled to their attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

37. Defendants' conduct is causing, and unless enjoined and restrained by this Court will continue to cause, Plaintiffs great and irreparable injury that cannot fully be compensated for or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to preliminary and permanent injunctions prohibiting further infringements of their copyrights and exclusive rights under copyright.

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

A. For a preliminary and permanent injunction enjoining Defendants and their respective agents, servants, employees, officers, attorneys, successors, licensees, partners, and assigns, and all persons acting in concert with each or any of them, from:

(i) aiding, encouraging, enabling, inducing, causing, materially contributing to, or otherwise facilitating the unauthorized reproduction,

downloading, uploading, and/or distribution of copies of Plaintiffs' copyrighted works, whether using Defendants' website or by any other means; and

(ii) downloading, uploading, and/or otherwise reproducing or distributing Plaintiffs' copyrighted works, whether using the eDonkey network or by any other means.

B. For all damages to which Plaintiffs may be entitled, including Defendants' profits, in such amounts as may be found. Alternatively, at Plaintiffs' election, for statutory damages in the maximum amount allowed by law.

C. For prejudgment interest according to law.

D. For Plaintiffs' attorneys' fees, and full costs and disbursements in this action.

E. For such other and further relief as the Court may deem proper and just.

Respectfully submitted,

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