

Carl D. Crowell, OSB No. 982049
email: carl@crowell-law.com
Drew P. Taylor, OSB No. 135974
email: drew@crowell-law.com
CROWELL LAW
P.O. Box 923
Salem, OR 97308
(503) 581-1240
Of attorneys for plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

GLACIER FILMS (USA), INC.,

Plaintiff,

v.

DOE-71.222.32.68,

Defendant.

Case No.: 3:15-cv-02016

COMPLAINT

COPYRIGHT INFRINGEMENT

DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiff Glacier Films (USA), Inc., complains and alleges as follows:

JURISDICTION AND VENUE

1. This is a suit for copyright infringement under 17 U.S.C. §§ 101 et seq. (“The Copyright Act”).
2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).
3. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(a) as the defendant is believed to reside in this district.

PARTIES

PLAINTIFF

4. Plaintiff Glacier Films (USA), Inc., is a Delaware Corporation, a producer of motion pictures and a producer of *American Heist*.

5. Plaintiff, Glacier Films (USA), Inc., is the register holder of interests in the motion picture *American Heist*, released in 2015.

6. Plaintiff comes to court seeking relief as the motion picture *American Heist* is one of the top downloaded movies though BitTorrent with over 100,000 confirmed infringing Internet Protocol (“IP”) addresses observed in the United States and thousands of those IP addresses believed to be traced to individuals in Oregon.

The Rights of Glacier Films

7. *American Heist* is a notable motion picture that was scheduled for widespread theatrical release in North American in January of 2015, but was wrongfully released on BitTorrent and is now being widely pirated limiting its ability to gain access to and benefit from conventional market outlets.

8. Glacier Films (USA), Inc. is the registered copyright holder of the completed motion picture *American Heist*, which has been registered with the United States Copyright Office, Registration No. PA 1-938-638, 2015.

9. The motion picture contains original material that is copyrightable subject matter under the laws of the United States.

10. Under The Copyright Act, plaintiff is the proprietors of copyrights and interests necessary to being suit.

11. The motion picture is currently offered for sale in commerce.

12. Defendant had notice of plaintiff's rights through general publication and advertising and more specifically as identified in the content of the motion picture, advertising associated with the motion picture, and all packaging and copies, each of which bore a proper copyright notice.

THE DEFENDANT

13. The defendant identified herein as DOE-71.222.32.68 is currently known only by their Internet Protocol ("IP") Address 71.222.32.68 which on 09/03/2015, and at other times, was observed by plaintiff's investigators, Maverick Eye, UG as infringing the motion picture.

14. The defendant's ISP CenturyLink is known to dynamically reassign IP addresses, sometimes assigning an IP address to a party for days, and at other times only for a very short period of time.

15. Dynamically assigned IP addresses with very short durations may be problematic in identifying a specific infringer as there is only a limited window of data available to the rightsholder in the investigation of the identity of the infringer.

16. While the identity of the subscriber is readily ascertainable even if only an instant of infringing conduct is observed, limited data creates a greater burden for a rightsholder in using subscriber data to correlate with observed infringer data to identify a specific liable infringing party who acted through the IP address of the subscriber.

17. To assist in overcoming this issue, plaintiff's investigator Maverick Eye, UG has developed technology to identify other IP addresses also likely assigned the same subscriber and therefor used by the same defendant.

18. By expanding the window of known activity associated with a singular defendant across several IP addresses plaintiff is able to use a broader pool of observed activity to assist in identifying the actual infringer and liable party.

19. To assist plaintiff, Maverick Eye, UG has also identified the following other IP addresses which were also used to distribute plaintiff's motion picture at specific times on the following dates:

71.222.38.205	2015-09-10
71.222.118.207	2015-09-10
75.175.71.198	2015-09-10
67.5.237.18	2015-09-10
75.164.162.170	2015-09-18

20. Each of the observed IP addresses have been geolocated to substantially the same location.

21. Each of the observed IP addresses appear to have been assigned to the same defendant as each was recorded using the same client software, and distributing the same identical copy of plaintiff's motion picture, and each was also observed distributing the same other content.

22. The IP addresses have been observed as associated with the peer-to-peer exchange of other copyrighted titles through the BitTorrent network.

23. By identifying the party assigned each of the listed IP addresses, plaintiff will then be able to better identify the actual infringer through access to a broader pool of observed acts of infringing activity.

24. By identifying the party assigned each of the listed IP addresses, plaintiff will then be able to affirm the number and specifics of any DMCA / Infringement warning notices issued by Rightscorp, Inc., and the extent of the infringing activity that continued after such notices.

25. The activity associated with the IP addresses indicates that the defendant is likely the primary subscriber or someone who resides with the subscriber, as such activity indicates the defendant is an authorized user of the IP address with consistent and permissive access.

26. The activity associated with the IP addresses indicates that the defendant is not a young child.

27. Each of the IP addresses were at that time of observed infringement managed by Internet Service Provider (“ISP”) CenturyLink, who on information and belief, generally assigns an IP address to a single party at a time.

28. The records maintained by CenturyLink should be able to identify either the defendant, or the subscriber who contracted with CenturyLink for service who in turn is likely to have knowledge that will lead to the identity of the defendant.

29. Plaintiff intends to seek initial discovery to subpoena records from CenturyLink to obtain the identity of the subscriber assigned the IP addresses in furtherance of its efforts to learn the true identity of the defendant.

BACKGROUND

PEER-TO-PEER INTERNET PIRACY

30. As stated by Congressman Lamar Smith, “Illegal counterfeiting and piracy costs the U.S. economy \$100 billion and thousands of jobs every year.”

31. As noted by Senator Levin in Congressional hearings on peer-to-peer Internet piracy, “In the world of copyright law, taking someone’s intellectual property is a serious offense, punishable by large fines. In the real world, violations of copyright law over the Internet are so widespread and easy to accomplish that many participants seem to consider it equivalent to jaywalking – illegal but no big deal. But it is a big deal. Under U.S. law, stealing intellectual property is just that – stealing. It hurts artists, the music industry, the movie industry, and others involved in creative work. And it is unfortunate that the software being used – called ‘file sharing’ as if it were simply enabling friends to share recipes, is helping create a generation of Americans who don’t see the harm.”

32. In 2013, in recognition of the growing problems and challenges with counterfeiting and piracy, The Oregon House of Representatives passed House Memorial 2, which made the following findings:

Whereas the United States and other nations share the challenge of combating intellectual piracy and the counterfeiting of intellectual property such as ... films... and technologies that affect the quality of life; and

Whereas intellectual piracy and counterfeiting have a significant impact on Oregon's economy, and the economies of other states and of nations around the world, which results in job and earnings losses, reduced tax revenues and increased threats to public health and safety; and

...

Whereas protecting and enforcing intellectual property rights is crucial to the future of our innovation-based economy; and

Whereas industries that use intellectual property extensively generate nearly \$7.7 trillion in gross output and account for more than 60 percent of total exports from our nation; and

Whereas industries that use intellectual property extensively ... employ more than 19 million Americans, whose salaries average about 60 percent higher than salaries in industries that do not make extensive use of intellectual property; and

Whereas intellectual property infringement can undermine the nation's economic security; and

Whereas violations of intellectual property rights, ambiguities in the law and a lack of enforcement create uncertainty in the marketplace and in the legal system and undermine consumer trust; and

Whereas intellectual property, including trademarks, [are] essential ...; and

...

Whereas failing to adequately protect and enforce intellectual property rights will increase counterfeiting and illicit trade;

...

33. As such it is clear that giving effect to 17 U.S.C. §§ 101 et seq., and the enforcement of intellectual property rights, and in particular the fight against counterfeiting and piracy are critical issues of importance to the both the United States of America and the State of Oregon.

34. Internet piracy, and in particular BitTorrent piracy, though known as peer-to-peer file sharing, is often a for-profit business as many software clients, torrent sites and networks which promote and facilitate piracy generate millions of dollars in revenue through sales and advertising.

35. To increase the value of the advertising and sometimes subscription access sold by torrent sites, many parties work to expand the pool of available titles and speed of downloads available by increasing the number of member peers and thus the desirability of their clients and networks. To accomplish this they often reward participants who contribute by giving them faster download speeds, greater access, or other benefits.

36. Defendant's participation in the BitTorrent exchange of plaintiff's motion picture is the type of activity that torrent sites use to promote their business and likely directly furthered the for-profit business of at least one torrent site.

37. Many parties, and possibly defendant have been compensated for their participation in expanding the availability of pirated content to others through BitTorrent networks, including plaintiff's movie.

38. The use of BitTorrent does more than cause harm through the simple theft of intellectual property. The BitTorrent distribution of pirated files is a model of business that profits from theft through sales and advertising and provides a system of rewards and compensation to the participants such as the defendant and those working with the defendant, each of whom contribute to and further the enterprise.

39. Based on activity observed associated with defendant's IP address, defendant is a prolific proponent of the BitTorrent distribution system advancing the BitTorrent economy of piracy and causing harm to plaintiff.

FIRST CLAIM FOR RELIEF

COPYRIGHT INFRINGEMENT

40. Defendant, without the permission or consent of plaintiff, copied and distributed plaintiff's motion picture through a public BitTorrent network.

41. Defendant's actions infringed plaintiff's exclusive rights under The Copyright Act.
42. Defendant's conduct has been willful, intentional, in disregard of and indifferent to plaintiff's rights with the intent to deprive plaintiff of income and cause plaintiff harm.
43. As a direct and proximate result of defendant's conduct, plaintiff's exclusive rights under 17 U.S.C. § 106 have been violated.
44. Plaintiff is entitled to damages pursuant to 17 U.S.C. § 504 and attorney fees and costs pursuant to 17 U.S.C. § 505.
45. The conduct of defendant is causing and, unless enjoined and restrained by this Court, will continue to cause plaintiff great and irreparable injury.
46. Pursuant to 17 U.S.C. §§ 502 and 503, plaintiff is entitled to injunctive relief prohibiting defendant from further contributing to the infringement of plaintiff's copyrights and ordering that defendant destroy all copies of and motion picture made in violation of plaintiff's rights.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment against defendant as follows:

- A. For entry of permanent injunction enjoining defendant from directly, indirectly or contributory infringing plaintiff's rights, including without limitation by using the internet to reproduce or copy plaintiff's motion picture, to distribute plaintiff's motion picture, or to make plaintiff's motion picture available for distribution to the public, except pursuant to a lawful license or with the express authority of plaintiff;
- B. Directing defendant to destroy all unauthorized copies of plaintiff's motion picture;
- C. For entry of permanent injunction enjoining defendant from using the BitTorrent file protocol for the peer-to-peer exchange of unlicensed copyrighted material;
- D. Statutory damages pursuant to 17 U.S.C. § 504;

- E. For plaintiff's reasonable costs and attorney fees pursuant to 17 U.S.C. § 505; and
- F. For such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiff demands a trial by jury.

DATED: October 26, 2015.

Respectfully submitted,

CROWELL LAW

/s/ Carl D. Crowell

Carl D. Crowell, OSB No. 982049
email: carl@crowell-law.com
Drew P. Taylor, OSB No. 135974
email: drew@crowell-law.com
503-581-1240
Of attorneys for the plaintiff