

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA**

ELARGO HOLDINGS, LLC,
Plaintiff,

v.

DOE- 209.33.29.66,
Defendant

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CASE NO.: 16-480

SECTION:

DEMAND FOR JURY

COMPLAINT

Plaintiff, ELargo Holdings, LLC (“ELargo Holdings”), 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.

In addition, this Court has personal jurisdiction over Defendant because Defendant committed acts of copyright infringement within this judicial district and is believed to reside within this judicial district. Accordingly, Defendant should anticipate being haled into court in this state and judicial district.

4.

Venue in this district is proper pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(a) because Defendant is believed to reside in this district, based on Plaintiff’s investigation through the use of geolocation technology.

PARTIES

5.

Plaintiff, ELargo Holdings, is a Delaware limited liability company with its principal place of business in Hollywood, California.

The Rights of ELargo Holdings

6.

Close Range (“Motion Picture”) is a major motion picture.

7.

Plaintiff’s Motion Picture is easily discernible as a professional work. The Motion Picture was created using well-known actors and actresses, cinematographers, lighting technicians, set designers, and editors. The Motion Picture was created with professional-grade cameras, lighting, and editing equipment.

8.

The Motion Picture contains wholly original material that is copyrightable subject matter under the laws of the United States.

9.

Close Range is protected by United States copyright laws, including laws as they pertain to Registration No. PAu 3-754-870, (the “’870 Copyright”), effective December 16, 2014 and owned exclusively at all relevant times by Plaintiff ELargo Holdings. See Exhibit 1, Certificate of Registration.

10.

Under The Copyright Act, ELargo Holdings is the proprietor of copyrights and interests needed to bring suit, including the ‘870 Copyright.

11.

The Motion Picture was released in the United States on December 11, 2015.

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 marketing and copies, each of which bore a proper copyright notice.

13.

ELargo Holdings comes to Court seeking relief because *Close Range* is already the subject of significant piracy and is being illegally downloaded and distributed numerous times worldwide with many confirmed instances of infringing activity traced to Louisiana.

BACKGROUND

PEER-TO-PEER INTERNET PIRACY

14.

Defendant acted in a collective and interdependent manner with others via the Internet to unlawfully reproduce and distribute Plaintiff's copyrighted Motion Picture by means of the interactive "peer-to-peer" ("P2P") file transfer technology protocol called BitTorrent.

15.

Digital piracy, including BitTorrent piracy, costs the entertainment industry over \$80 billion per year.

16.

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.”

17.

The film industry is of particular importance to the citizens of Louisiana. It is estimated that in 2014 state tax credit programs for the film industry supported a little over \$1.048 billion in sales in Louisiana and \$727.8 million in household earnings for Louisiana state residents. The programs created 12,107 jobs for Louisiana residents. State tax credits programs for the entertainment industry generated \$53.2 million in taxes for the Louisiana state treasury and another \$34.2 million for local state governments. (See The Economic Impact of Louisiana’s Entertainment Tax Credit Programs, Report for Office of Entertainment Industry Development, Louisiana Dept. of Economic Development, 2015.)

18.

Giving effect to 17 U.S.C. §§ 101, *et seq.*, the enforcement of intellectual property rights, and in particular the fight against counterfeiting and piracy are critical issues of importance to the citizens of Louisiana and the United States.

19.

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

20.

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.

21.

Defendant's participation in the BitTorrent exchange of Plaintiff's Motion Picture is the type of activity torrent sites use to promote their business and likely directly furthered the for-profit business of at least one torrent site.

22.

Many parties, possibly including Defendant, have been compensated for their participation in expanding the availability of pirated content to others through BitTorrent networks, including Plaintiff's Motion Picture, even if only through greater or faster access to other content.

23.

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, each of whom contribute to and further the enterprise.

24.

Based on observed activity associated with Defendant's IP address, Defendant is a prolific proponent of and participant in the BitTorrent distribution system, advancing the BitTorrent economy of piracy.

25.

P2P networks, at least in their most common form, are computer systems that enable Internet users to: 1) make files (including motion pictures) stored on each user's computer available for copying by other users or "peers"; 2) search for files stored on other users' computers; and 3) transfer exact copies of files from one computer to another via the Internet. The particular P2P protocol at issue in this suit is called "BitTorrent."

26.

Defendant participated in a BitTorrent "swarm" in which numerous persons engaged in mass copyright infringement of Plaintiff's Motion Picture. Defendant participated in the illegal uploading and sharing of Plaintiff's Motion Picture within the swarm.

27.

Defendant was a willing and knowing participant in the swarm at issue and engaged in such participation for the purpose of infringing ELargo Holdings' copyright through multiple willful acts.

28.

Plaintiff's investigator verified and confirmed Defendant's participation in the swarm by downloading at least a portion of the Motion Picture from Defendant.

29.

The particular file a BitTorrent swarm is associated with has a unique “hash” (a file identifier generated by an algorithm developed and implemented by the National Security Agency). Hash SHA1: 95FDEA0F42CD80A78B09192E4BDEC1680D160F4A (“Hash SHA1: 95FD”), provides access to an unauthorized copy of Plaintiff’s copyrighted Motion Picture.

30.

Defendant initiated his or her infringing conduct by first intentionally logging into one of many BitTorrent client repositories known for their large index of copyrighted movies, television shows, and software. Defendant then intentionally obtained Hash SHA1: 95FD, the torrent file for Plaintiff’s Motion Picture, from the index and intentionally loaded that torrent file into a computer program designed to read such files.

31.

With the torrent file Hash SHA1: 95FD intentionally loaded by Defendant, his or her BitTorrent program used the BitTorrent protocol to initiate simultaneous connections with hundreds of other users possessing and “sharing” copies of the digital media described in Hash SHA1: 95FD, namely, Plaintiff’s Motion Picture. The program then coordinated the copying of Plaintiff’s Motion Picture to Defendant’s computer from other users, or peers, sharing the film. As the Motion Picture was copied to Defendant’s computer piece by piece, these downloaded pieces of Plaintiff’s Motion Picture were then immediately available to all other peers from Defendant’s computer.

32.

By performing these acts, Defendant also became an uploader, meaning that Defendant’s downloaded pieces were then made available to other users seeking to obtain the file, without

degradation in sound or picture quality. It is in this way that Defendant illegally copied and then participated in the distribution of Plaintiff's Motion Picture.

33.

This interactive, simultaneous data-sharing connection, referred to as a "swarm," leads to a rapid spreading of a file throughout peer users. As more peers join the swarm, the likelihood of a successful download increases. Because of the nature of a BitTorrent protocol, any user that has downloaded a piece prior to the time a subsequent user downloads the same file is a source for the subsequent user so long as that prior user is online at the time the subsequent user downloads a file. Thus, after a successful download of a piece, the piece is made available to all other users.

34.

Through this process, Defendant's distribution of even a single unlawful copy of the Motion Picture can result in the nearly instantaneous worldwide distribution of that single copy to a vast number of people. In this case, Defendant's copyright infringement built upon the prior infringements, resulting in a cascade of infringement.

35.

In addition, because a BitTorrent swarm is a collective enterprise where each downloader is also an uploader, the group of uploaders collaborates to speed the completion of each download of the file.

36.

Upon information and belief, Defendant also acted in concert with other swarm members by linking together globally through use of a Distributed Hash Table. A Distributed Hash Table

is a sort of worldwide telephone book, which uses each file's "infohash" (a unique identifier for each torrent file) to locate sources for the requested data.

37.

Thus, swarm members are able to access a partial list of swarm members rather than being filtered through a central computer called a tracker. Allowing members of the swarm to rely on individual computers for information not only reduces the load on the central tracker, but also means that every person that is sharing this data is also helping to hold this worldwide network together.

38.

Plaintiff's investigator confirmed the files it downloaded from Hash SHA1: 95FD swarm members including Defendant were actual copies of the Motion Picture through a visual comparison of the downloaded file and the Motion Picture.

39.

Defendant's infringing activity described above allows Defendant and others to unlawfully obtain and distribute unauthorized copies of Plaintiff's Motion Picture, for which a substantial amount of time, money, and effort was spent to produce, market, and distribute it.

40.

Despite Plaintiff's use of the best available investigative techniques, it is impossible for Plaintiff to identify Defendant by name at this time. Because the true name and capacity, whether individual, corporate, associate, or otherwise, of Defendant is currently unknown to Plaintiff, it sues Defendant as "John or Jane Doe."

41.

Plaintiff has attempted to identify Defendant by researching public information, including IP address registration databases such as WhoIs.com and WhatIsMyIPAddress.com. Despite such efforts, Plaintiff still has been unable to identify Defendant, although the searches confirm Defendant is located in this District and indicate the IP address assigned Defendant is dynamic.

42.

Defendant is known to Plaintiff by the unique Internet Protocol (“IP”) address assigned to Defendant by his or her Internet Service Provider (“ISP”) on the date and at the time at which Defendant’s infringing activity was observed. In addition, Plaintiff has learned the ISP for Defendant, the torrent file copied and distributed by Defendant, and the approximate location of Defendant at the time of download as determined by geolocation technology.¹ This information for Defendant is attached to this Complaint as Exhibit 2.

43.

Plaintiff believes that information obtained in discovery will lead to the identification of Defendant’s true name and permit Plaintiff to amend its Complaint to state the same. Specifically, Plaintiff intends to subpoena the ISP that issued the IP address used by Defendant in order to learn the identity of the account holder for that IP address. Defendant’s ISP maintains user logs identifying the subscriber assigned the IP address at the specific times and on the specific dates Defendant’s infringing activity was observed. From this log, the ISP will be able to identify its subscriber to whom Defendant’s IP address had been assigned at the time of the observed infringement. ISPs typically do not maintain such logs indefinitely; therefore, delay in obtaining this information risks loss of the information and with it, Plaintiff’s ability to prosecute this action and protect its valuable rights.

¹ Plaintiff is able to determine the city in which Defendant is located based upon publicly available information.

THE DEFENDANT

44.

Defendant, identified herein as DOE-209.33.29.66, while assigned the unique IP address of 209.33.29.66 by his or her ISP, consistently distributed Plaintiff's Motion Picture, including over 20 distributions on December 25 and 26, 2015. Plaintiff's investigator has confirmed numerous instances of Defendant actively distributing copyrighted content.

45.

Through geolocation, the IP address assigned to and used by Defendant has subsequently been traced to this District.

46.

In addition, Defendant's IP address of 209.33.29.66 has been observed as associated with the peer-to-peer exchange of over 180 other copyrighted titles through the BitTorrent network.

47.

The volume and titles of the activity associated with Defendant's IP address indicates Defendant is likely the primary subscriber of the IP address or someone who resides with the subscriber because such activity indicates Defendant is an authorized user of the IP address with consistent and permissive access.

48.

The volume of the activity associated with Defendant's IP address indicates anyone actively using or observing activity on the IP address would likely be aware of the conduct of Defendant.

49.

The volume and titles of the activity associated with Defendant's IP address indicates Defendant is not a young child.

50.

Defendant's IP address was at that time of observed infringement managed by Internet Service Provider ("ISP") Suddenlink Communications who, on information and belief, generally assigns an IP address to a single party for extended periods of time, often for months. In this instance publicly available records indicate that the assignment is dynamic.

51.

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

52.

Plaintiff intends to seek initial discovery to subpoena records from Suddenlink Communications to ascertain the true identity of Defendant.

**FIRST CLAIM FOR RELIEF
COPYRIGHT INFRINGEMENT**

53.

Plaintiff repeats and realleges each of the above allegations as if fully set forth herein.

54.

Defendant, without the permission or consent of ELargo Holdings, copied and distributed the Motion Picture owned by, and registered to, Plaintiff through a public BitTorrent network in violation of 17 U.S.C. § 106.

55.

Defendant's actions infringed ELargo Holdings' exclusive rights under the Copyright Act.

56.

The IP address used by Defendant is also associated with other file sharing activities relating to numerous copyright protected works of others, which activities occurred close in time to the infringement of Plaintiff's Motion Picture. Therefore, Defendant appears to be a willful serial copyright infringer who has demonstrated a repeated and blatant disregard for the prohibitions against copyright infringement contained within the Copyright Act and the rights of copyright owners.

57.

Defendant's acts of infringement have been willful, intentional, and in disregard of, and with indifference to, the rights of Plaintiff.

58.

Defendant's conduct has been willful, intentional, in disregard of and indifferent to ELargo Holdings' rights and with the intent to cause ELargo Holdings harm by depriving ELargo Holdings of income and impairing ELargo Holdings' ability to release and profit from its Motion Picture through legitimate means.

59.

ELargo Holdings is entitled to statutory damages pursuant to 17 U.S.C. § 504 and attorney fees and costs pursuant to 17 U.S.C. § 505.

60.

The conduct of Defendant is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiff great and irreparable injury.

61.

Pursuant to 17 U.S.C. §§ 502 and 503, ELargo Holdings is entitled to injunctive relief prohibiting Defendant from further contributing to the infringement of ELargo Holdings' copyrights and ordering Defendant to destroy all copies of the Motion Picture made in violation of ELargo Holdings' rights.

DEMAND FOR JURY TRIAL

62.

Pursuant to Fed. Rule Civ. P. 38, Plaintiff demands a trial by jury on all issues so triable.

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. And further directing Defendant to destroy all unauthorized copies of Plaintiff's Motion Picture;
- B. For entry of permanent injunction enjoining Defendant from using the BitTorrent network to distribute content in violation of U.S. copyright law in furtherance of the BitTorrent economy of piracy;
- C. Statutory damages pursuant to 17 U.S.C. § 504;
- D. For Plaintiff's reasonable costs and attorney fees pursuant to 17 U.S.C. § 505; and
- E. For such other and further relief as the Court deems proper.

Respectfully submitted,

s/Patrick H. Patrick

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PLEASE WITHHOLD ISSUANCE OF SUMMONS UNTIL DEFENDANT IS IDENTIFIED.