

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

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		)	
RALF HARTMANN,		)	
		)	C.A. No.
Plaintiff,		)	
		)	
v.		)	COMPLAINT AND
		)	<u>JURY DEMAND</u>
AMAZON.COM, INC. and AMAZON DIGITAL SERVICES LLC		)	
		)	
Defendants.		)	
		)	
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Plaintiff, Ralf Hartmann, by and through his attorneys, Lebowitz Law Office LLC, as and for the complaint against defendants Amazon.com Inc., ("Amazon.com) and Amazon Digital Services LLC ("Amazon Digital"), allege as follows:

#### NATURE OF THE ACTION

1. This is a civil action for damages against Defendants for violations of the United States Copyright Act of 1976, 17 U.S.C. §§ 101, et seq. This action arises out of Defendant's infringement of copyrights in numerous Motion Pictures (as defined below) to which Plaintiff owns or controls copyright and/or exclusive distribution rights.

2. Plaintiff brings this action against Defendants for direct, and contributory infringement of Plaintiff's copyrights in the Motion Pictures, in violation of the Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 et seq. (the "Copyright Act"), the Berne Convention for the Protection of Literary and Artistic Works (the "Berne Convention"), as adopted by the Copyright Act, and in violation of the copyright laws of the foreign countries identified below, where

Defendants also violated Plaintiff's copyrights by streaming, broadcasting, renting, selling and distributing the Motion Pictures, within these countries (the "Foreign Copyright Laws"). Plaintiff seeks damages for Defendants' infringements (and an injunction to prevent further unlawful use).

#### PARTIES

3. Plaintiff Ralf Hartmann ("Plaintiff" or "RH") is a citizen and resident of Germany.

4. Upon information and belief, defendant Amazon.com, Inc. is a Delaware corporation with its principal place of business in Seattle, Washington. Amazon owns and operates the Amazon.com website, and equivalent international websites in the Foreign Countries described below.

5. Upon information and belief, defendant Amazon Digital Services LLC is a Delaware Limited Liability Company with its principal place of business in Seattle, Washington.

6. Upon information and belief, Amazon Digital owns and operates the Prime Video website and service, and the Prime Video App, described below. Amazon Digital has no independent operation. Instead, it is completely controlled in every manner by defendant Amazon.

7. Amazon and Amazon Digital are collectively referred to herein as "Defendants".

#### JURISDICTION AND VENUE

8. The jurisdiction of this Court is based upon 28 U.S.C. §§ 1331 and 1338 in that this controversy arises under the Copyright Act and Copyright Revision Act of 1976 (17 U.S.C § 101 et seq.). This

action is a civil action over which this court has original jurisdiction.

9. Upon information and belief, a substantial part of the facts of infringement complained of herein occurs or has occurred in this district, and Defendants are subject to personal jurisdiction in this district because they maintain a headquarters in this district located at 7 West 34th Street, New York, NY.

10. Personal jurisdiction over Defendants is proper in this Court, among other reasons, on the grounds that Defendants, through their interactive web-based subscription service, caused the unlicensed streaming, rental, sale, broadcast and distribution of the Plaintiff's Motion Pictures throughout the State of New York, including within this judicial district.

11. This Court has personal jurisdiction over Defendants pursuant to CPLR § 302 (New York's long-arm statute) due to their continuous and systematic business activities within New York as described below. Defendants have conducted and do conduct business within New York. Defendants, directly or through intermediaries (including distributors, retailers, and others), ship, distribute, offer for sale, sell, and advertise products in the United States, and specifically to New York. Defendants purposefully and voluntarily streamed, rented, sold, broadcast and distributed Plaintiffs' Motion Pictures in New York.

12. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c) and/or 1400(a).



## GENERAL ALLEGATIONS

### The Motion Pictures

13. Pursuant to an agreement and short form assignment entered into between Capella Films, Inc. ("Capella Films") and RH dated January 1, 2008, Capella Films assigned, transferred and sold to RH all of Capella Films' interests (the "Interests") in multiple motion pictures, including the following nine (9) motion pictures: (i) *Austin Powers: International Man of Mystery*; (ii) *After the Rain*; (iii) *A Business Affair*; (iv) *Commander Hamilton*; (v) *Drop Dead Gorgeous*; (vi) *Fall*; (vii) *The Last Tattoo*; (viii) *Music From Another Room*; and (ix) *Pete's Meteor* (the "Motion Pictures").

14. The Interests acquired by RH included the copyrights in the following Motion Pictures registered with the United States Copyright Office: *After The Rain*; *A Business Affair*; *Commander Hamilton*; *Fall*; *The Last Tattoo*; *Music From Another Room*; and *Pete's Meteor*. The copyright registration numbers for each of these Motion Pictures are set forth in the document annexed hereto as Exhibit A.

15. Among the bundle of rights afforded to RH under United States copyright law - which rights were acquired from Capella Films - are the exclusive rights to "Reproduce the copyrighted work," "distribute copies...of the copyrighted work to the public," "perform the copyrighted work publicly," and "display the copyright work publicly." 17 U.S.C. § 106. This includes the exclusive right "to transmit or otherwise communicate a performance or display" of the Motion Pictures "to the public by means of any device or process whether the members of the public capable of receiving the performance

or display receive it in the same place or in separate places and at the same time or at different times." Id. § 101.

16. The Interests acquired by RH from Capella Films also included the copyright in and to the following two Motion Pictures throughout the International Territory (including any renewals and extensions of copyright): *Austin Powers: International Man of Mystery*; and *Drop Dead Gorgeous*. Here, "International Territory" means the universe with the exclusion of the United States and Canada.

17. Defendants own and operate an internet video on demand and digital distribution service called Prime Video or Amazon Prime Video ("Prime Video") through which they offer films and television shows for rent or purchase, and in addition, a selection of Amazon Studios original content and other films which are made available, to stream on demand - as part of the Prime Video subscription included with any membership (free trial and paid monthly or yearly) to Amazon Prime.

18. Upon information and belief, Prime Video is currently available in over 200 countries and territories with an eligible Prime Video or Amazon Prime membership.

19. Upon information and belief, in the United States, United Kingdom, Germany, and many other territories, access to Prime Video is also available through a video-only membership, which does not require a full subscription to Amazon Prime.

20. Prime Video is available as a web-based service at Amazon.com and equivalent international websites in foreign countries, including, but not limited to United Kingdom (Amazon.co.uk), Germany

(Amazon.de), Australia (Amazon.com.au), Japan (Amazon.co.jp), and France (Amazon.fr) (the "Foreign Countries").

21. Prime Video is also available via a Prime Video "app" which is available for download on a range of smart televisions (e.g., Sony, Samsung), Amazon branded devices (e.g., Fire Stick, Fire TV, Kindle Fire tablet) mobile devices, Blu-ray players, games consoles (e.g., Sony PlayStation) and streaming media devices (e.g., Roku).

22. Beginning in July 2017, Defendants, without obtaining either license or authorization from RH, made the Motion Pictures *Commander Hamilton* and *After the Rain* available for digital distribution either via streaming on demand, and/or for rent or sale on its Prime Video service in the United States.

23. Upon information and belief, Defendants continued to make the Motion Pictures *Commander Hamilton* and *After the Rain* available for digital distribution either via streaming on demand, and/or for rent or sale on its Prime Video service in the United States, thru December 2017, and upon information and belief, thereafter into 2018.

24. Upon information and belief, collectively, during this period, the Motion Pictures *Commander Hamilton* and *After the Rain* were collectively streamed on demand, rented or purchased hundreds of times or more by Prime Video subscribers.

25. Moreover, upon information and belief, also beginning in July 2017, Defendants, without obtaining either license or authorization from RH, made the Motion Pictures *After the Rain*, *Commander Hamilton*, *Austin Powers: International Man of Mystery*, and *Drop Dead Gorgeous* available for digital distribution either via



streaming on demand, and/or for rent or sale on its Prime Video service, in the Foreign Countries, including, but not limited to, United Kingdom, Germany and Australia.

26. Upon information and belief, Defendants continued to make the Motion Pictures *Commander Hamilton*, *After the Rain*, *Austin Powers: International Man of Mystery* and *Drop Dead Gorgeous* available for digital distribution either via streaming on demand, and/or for rent or sale on its Prime Video service, in the Foreign Countries thru December 2017, and upon information and belief, thereafter into 2018.

27. Upon information and belief, during this time, collectively, the Motion Pictures *Commander Hamilton*, *After the Rain*, *Austin Powers: International Man of Mystery* and *Drop Dead Gorgeous* were collectively streamed on demand, rented or purchased thousands of times or more by Prime Video subscribers in the Foreign Countries.

28. Because the two Motion Pictures - *Commander Hamilton* and *After the Rain* - were hosted on Amazon's servers based in the United States and were streamed on demand or distributed for rent or sale from these servers to Prime Video customers or subscribers within the United States, each such distribution by Amazon was without proper license or authorization and a violation of the Copyright Act.

29. Because the four Motion Pictures - *Commander Hamilton*, *After the Rain*, *Austin Powers: International Man of Mystery* and *Drop Dead Gorgeous* - were hosted on Defendants' servers based in the United States and were streamed on demand or distributed for rent or sale from these servers to Prime Video customers or subscribers in the Foreign Countries, each such distribution by Defendants was without

proper license or authorization and also a violation of the Copyright Act.

30. It is impossible at this time to know the full extent of Defendants' wrongful distribution of the Motion Pictures at this time. This information was sought by subpoena to Amazon in the case Screen Media Ventures, LLC v. Capella International, Inc. et al, (Sup Ct. NY County Index No. 600941/06) (the "State Court Screen Media Case") which subpoena was objected to by Amazon and no information was provided. Furthermore, Screen Media Ventures has failed to produce documents related to Defendants' distribution of the Motion Pictures in the State Court Screen Media Case and is under a contempt order to provide such documentation by July 15, 2020 or have, among other things, their claims stricken.

31. Because information regarding Defendants' full use of RH's Motion Pictures remains incomplete or in Defendants' sole possession, the full and complete scope of Defendants' infringing activities and infringing uses of RH's Motion Pictures has not yet been fully ascertained.

32. Upon information and belief, a reasonable opportunity for further investigation and discovery will yield evidence that Defendants' unauthorized, unlicensed, and/or infringing use and exploitation of the Motion Pictures is not limited to the uses described herein.

33. Defendants' pattern of unlicensed, unauthorized, and uncompensated use of the Motion Pictures injured Plaintiff, including by depriving Plaintiff of his rightful compensation for the use of the



Motion Pictures and infringing on Plaintiff's exclusive rights to control the reproduction, use, distribution, and sale of the Motion Pictures.

CLAIMS FOR RELIEF

COUNT I

**Direct Infringement of Copyright in the United States**

25. RH incorporates by reference each and all of his prior allegations as if set forth herein.

26. Defendants violated the exclusive rights of Plaintiff by distributing the Motion Pictures *Commander Hamilton* and *After the Rain* in the United States via streaming on demand, and/or for rent or sale on its Prime Video service from July 2017 to a date presently unknown, but to be confirmed through discovery.

27. Defendants distribution of the Motion Pictures *Commander Hamilton* and *After the Rain* in the United States via streaming on demand, and/or for rent or sale on its Prime Video service was done without obtaining Plaintiff's license, approval or authorization.

28. The acts of infringement by Defendants have been willful, intentional, and in disregard and with indifference to the rights of Plaintiff.

29. As a direct and proximate result of Defendants' infringement of RH's copyrights and exclusive rights under copyright in the Motion Pictures, RH is entitled to maximum statutory damages, pursuant to 17 U.S.C. § 504(c), in the amount of \$150,000 with respect to each work infringed, or such other amounts as may be proper under 17 U.S.C. § 504(c). Alternatively,

at RH's election, pursuant to 17 U.S.C. § 504(b), RH shall be entitled to its actual damages, including Defendants' profits from infringement, as will be proven at trial.

30. RH is entitled to his costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

## COUNT II

### **Contributory Infringement of Copyrights in the United States**

31. RH incorporates by reference each and all of his prior allegations as if set forth herein.

32. Defendants maintain the website Amazon.com and offer the Prime Video service to subscribers via Amazon.com, through which Defendants violated the exclusive rights of RH by distributing, without Plaintiff's license or authorization, the Motion Pictures *Commander Hamilton* and *After the Rain* via on demand stream, rental and/or sale to Prime Video subscribers.

33. Defendants also develop, maintain and distribute the Prime Video App and offer the Prime Video service to subscribers via the Prime Video App, through which Defendants violated the exclusive rights of RH by distributing, without Plaintiff's license or authorization, the Motion Pictures *Commander Hamilton* and *After the Rain* via on demand stream, rental and/or sale to Prime Video subscribers.

34. Defendants, by facilitating, managing or directing unauthorized distributions of the Motion Pictures *Commander Hamilton* and *After the Rain*, to which RH owns or holds the exclusive rights, materially contributed to the violation of the copyright laws by Prime

Video subscribers in that Defendants have offered to, and entered into agreements with, subscribers of Prime Video, resulting in the unauthorized and unlicensed distribution, streaming, rental and/or purchase of the Motion Pictures *Commander Hamilton* and *After the Rain*, by Prime Video subscribers, either through the Amazon.com website or the Prime Video App.

35. The acts of contributory infringement by Defendants have been committed willfully and with the knowledge that their conduct aided and abetted Prime Video subscribers' violations of the exclusive rights of Plaintiff to distribute the Motion Pictures *Commander Hamilton* and *After the Rain*.

36. Each unlawful distribution of the Motion Pictures *Commander Hamilton* and *After the Rain* - whether by on demand stream, rental and/or sale - constitutes a separate act of contributory infringement for which Plaintiff is entitled to actual damages.

37. As a direct and proximate result of Defendants' contributory infringement of RH's copyrights and exclusive rights under copyright, RH is entitled to maximum statutory damages, pursuant to 17 U.S.C. § 504(c), in the amount of \$150,000 with respect to each work infringed, or such other amounts as may be proper under 17 U.S.C. § 504(c). Alternatively, at RH's election, pursuant to 17 U.S.C. § 504(b), RH shall be entitled to his actual damages, including Defendant's profits from infringement, as will be proven at trial.

38. RH is entitled to his costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.



COUNT III

**Contributory Infringement of Copyrights in Motion Pictures  
Streamed or Distributed To Foreign Countries From  
Servers Hosted in the United States**

40. RH incorporates by reference each and all of its prior allegations as if set forth herein.

41. Defendants' stored digital copies of the Motion Pictures *Commander Hamilton*, *After the Rain*, *Austin Powers: International Man of Mystery* and *Drop Dead Gorgeous* on their servers located in the United States.

42. Defendants' distributed these Motion Pictures - *Commander Hamilton*, *After the Rain*, *Austin Powers: International Man of Mystery* and *Drop Dead Gorgeous* - from its servers in the United States, to Prime Video subscribers located in the Foreign Countries by way of Amazon's Prime service, which was accessible to Prime Video subscribers in the Foreign Countries via Amazon.com or Defendants' equivalent websites in the Foreign Countries, as well as through the Prime Video App.

35. Because copies of these four Motion Pictures - *Commander Hamilton*, *After the Rain*, *Austin Powers: International Man of Mystery* and *Drop Dead Gorgeous* - were, without RH's license or authorization, hosted on Defendants' servers based in the United States and then distributed from these servers to Prime Video subscribers in Foreign Countries, each such distribution of *Commander Hamilton*, *After the Rain*, *Austin Powers: International Man of Mystery* and *Drop Dead Gorgeous* by Defendants to Prime Video subscribers in the Foreign Countries - whether by on demand stream, rental or sale - was without

proper license or authorization and therefore, a violation of the Copyright Act.

43. Defendants, by facilitating, managing or directing unauthorized distributions of the Motion Pictures *Commander Hamilton*, *After the Rain*, *Austin Powers: International Man of Mystery* and *Drop Dead Gorgeous*, to which RH owns or holds the exclusive rights, materially contributed to the violation of the copyright laws by Prime Video subscribers in Foreign Countries in that Defendants have offered to, and entered into agreements with, subscribers of Prime Video in Foreign Countries, resulting in the unauthorized and unlicensed distribution, streaming, rental and/or purchase of the Motion Pictures *Commander Hamilton*, *After the Rain*, *Austin Powers: International Man of Mystery* and *Drop Dead Gorgeous*, by Prime Video subscribers in Foreign Countries, either through the Amazon.com or equivalent websites in the Foreign Countries, or the Prime Video App.

44. The acts of contributory infringement by Defendants have been committed willfully and with the knowledge that their conduct aided and abetted violations of the exclusive rights of Plaintiff to distribute the Motion Pictures *Commander Hamilton*, *After the Rain*, *Austin Powers: International Man of Mystery* and *Drop Dead Gorgeous* in the Foreign Countries.

39. Each such unlawful distribution of any of these Motion Pictures - *Commander Hamilton*, *After the Rain*, *Austin Powers: International Man of Mystery* and *Drop Dead Gorgeous* - from Defendants' servers in the United States to Prime Video subscribers in the Foreign

Countries, constitutes a separate act of contributory infringement for which Plaintiff is entitled to actual damages.

45. As a direct and proximate result of Defendants' infringement of RH's copyrights and exclusive rights under copyright, RH is entitled to maximum statutory damages, pursuant to 17 U.S.C. § 504(c), in the amount of \$150,000 with respect to each work infringed, or such other amounts as may be proper under 17 U.S.C. § 504(c). Alternatively, at RH's election, pursuant to 17 U.S.C. § 504(b), RH shall be entitled to its actual damages, including Defendants' profits from infringement, as will be proven at trial.

46. RH is entitled to its costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

#### COUNT IV

##### **Vicarious Infringement of Copyrights in the United States**

47. RH incorporates by reference each and all of its prior allegations as if set forth herein.

48. Amazon has a right and ability to supervise Amazon Digital and its video streaming service, Prime Video.

49. Moreover, Amazon's right and ability to supervise Amazon Digital coalesced with an obvious and direct financial interest in the exploitation of the Motion Pictures by Amazon Digital via the Prime Video service.

50. By failing to supervise Amazon Digital, Amazon is vicariously liable for the direct copyright infringement by Amazon Digital in streaming the Motion Pictures *Commander Hamilton* and



*After the Rain* in the United States via the Prime Video service on Amazon.com and the Prime Video App.

COUNT V

**Copyright Infringement In Violation Of The  
Foreign Copyright Laws**

51. RH incorporates by reference each and all of its prior allegations as if set forth herein.

52. Defendants' stored digital copies of the Motion Pictures - *Commander Hamilton*, *After the Rain*, *Austin Powers: International Man of Mystery* and *Drop Dead Gorgeous* - on their servers located in the United States.

53. Defendants' utilized the Prime Video service to stream the Motion Pictures - *Commander Hamilton*, *After the Rain*, *Austin Powers: International Man of Mystery* and *Drop Dead Gorgeous* - from their servers in the United States and/or the Foreign Countries, to Prime Video subscribers in the Foreign Countries.

54. Plaintiff's exclusive rights in the Motion Pictures - *Commander Hamilton*, *After the Rain*, *Austin Powers: International Man of Mystery* and *Drop Dead Gorgeous* - are protectable under Foreign Copyright Laws of countries that are signatories to the Berne Convention.

55. Defendants' actions of distributing copies of RH's copyright protected Motion Pictures - *Commander Hamilton*, *After the Rain*, *Austin Powers: International Man of Mystery* and *Drop Dead Gorgeous* - to Prime Video subscribers in the Foreign Countries, through the Prime Video service accessible via Amazon.com or

Defendants' equivalent websites in the Foreign Countries, or via the Prime Video App, without RH's authorization or consent, constitutes copyright infringement under the Foreign Copyright Laws, entitling RH to money damages under the Foreign Copyright Laws, including, where applicable, statutory damages for each infringing act.

WHEREFORE, Plaintiff Ralf Hartmann prays that this Court enter judgment against Defendants Amazon.com, Inc. and Amazon Digital Services LLC, as follows:

- (a) That Defendants be held to have infringed upon Plaintiff's copyrights in violation of the Copyright Act of 1976, 17 U.S.C. §§ 501 et seq.;
- (b) that Defendants be held to have willfully infringed upon Plaintiff's copyrights in violation of the Copyright Act of 1976, 17 U.S.C. §§ 501 et seq.;
- (c) that an accounting be had and judgment be rendered against Defendants for the profits, gains, and advantages derived from their wrongful actions, with such amounts to be increased and trebled as provided by law because of the willful and deliberate nature of Defendants' actions;
- (d) compensatory damages and full restitution of all funds acquired from Defendant's unfair business practices, including disgorgement of profits;
- (e) actual damages suffered by Plaintiff;
- (f) and/or statutory damages upon Plaintiff's election;
- (g) punitive damages, to be awarded to Plaintiff;
- (h) costs of suit herein;
- (i) costs of investigation;
- (j) both pre- and post-judgment interest on any amounts awarded;
- (k) payment of reasonable attorneys' fees;
- (l) declaratory relief; and

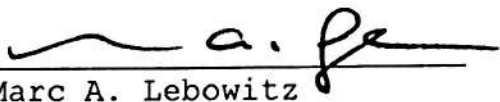
(m) such other and further relief as the Court may deem just and proper.

DEMAND FOR A JURY TRIAL

As to all causes of action, where applicable, Plaintiff demands a jury trial.

Dated: New York, New York  
June 26, 2020

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