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17 New York, NY 10019

18 UNITED STATES DISTRICT COURT  
19 WESTERN DISTRICT OF WASHINGTON

20 BUNGIE, INC.,  
21 Plaintiff,

22 v.

23 JOHN DOES NO. 1-10,  
24 Defendants.

Case No. 2:22-cv-371

COMPLAINT FOR (1) FRAUDULENT  
DMCA NOTICES UNDER 17 U.S.C. §  
512(f); (2) FALSE DESIGNATION OF  
ORIGIN UNDER 15 U.S.C. §§ 1125(a)  
and 1117(a); (3) COPYRIGHT  
INFRINGEMENT UNDER 17 U.S.C. §  
501 *et seq.*; (4) BUSINESS  
DEFAMATION; (5) VIOLATION OF  
THE WASHINGTON  
CONSUMER PROTECTION ACT, RCW  
19.86.020; and (6) BREACH OF  
CONTRACT

JURY DEMAND

1  
2 Plaintiff Bungie, Inc. (“Bungie”), as and for its complaint against Defendants  
3 John Does No. 1-10, respectfully alleges as follows:

4  
5 **INTRODUCTION**

6 1. This action arises out of a series of fraudulent Digital Millennium  
7 Copyright Act (“DMCA”) takedown notices that an unauthorized and malicious actor  
8 or actors (“Doe Defendants”) provided to YouTube with respect to content that  
9 supposedly infringed Bungie’s copyrights in its popular and successful *Destiny*  
10 franchise, disrupting Bungie’s community of players, streamers, and fans and causing  
11 Bungie nearly incalculable damage.

12  
13 2. As discussed herein, Doe Defendants were able to do this because of a  
14 hole in YouTube’s DMCA-process security, which allows any person to claim to be  
15 representing any rights holder in the world for purposes of issuing a DMCA takedown.

16  
17 3. In other words, as far as YouTube is concerned, any person, anywhere in  
18 the world, can issue takedown notices on behalf of any rights holder, anywhere. A  
19 disgruntled infringer or a competitive content producer, for example, can issue  
20 takedown notices purportedly on behalf of Disney, or Fox, or Universal – or even  
21 Google itself. All they need to do is: (1) fill out the video removal form located at  
22 [https://studio.youtube.com/channel/UCWczJmTLhYS\\_nckM0U7pLLw/copyright/hi](https://studio.youtube.com/channel/UCWczJmTLhYS_nckM0U7pLLw/copyright/hi)  
23 [story](#); (2) have a Google account – including, upon information and belief, one created  
24 that same day and with fake information; and (3) fill out information and click  
25 verification buttons fraudulently certifying that they have the right to submit the  
26

1 takedown request, with no verification done by YouTube. Between March 17, 2022 and  
2 March 22, 2022, a malicious actor or actors exploited that security loophole to issue  
3 takedowns, purportedly on behalf of Bungie, to YouTubers and streamers who had –  
4 with Bungie’s permission as granted in Bungie’s Legal Policy on Media, located at  
5 <https://www.bungie.net/7/en/Legal/IntellectualPropertyTrademarks> - uploaded  
6 videos of their gameplay to YouTube.  
7

8 4. Between March 17, 2022 and March 22, 2022, a malicious actor or actors  
9 exploited that gaping security loophole to issue takedowns, purportedly on behalf of  
10 Bungie, to YouTubers and streamers who had – with Bungie’s permission as granted in  
11 Bungie’s Legal Policy on Media, located at  
12 <https://www.bungie.net/7/en/Legal/IntellectualPropertyTrademarks> - uploaded  
13 videos of their gameplay to YouTube.  
14

15 5. Using a fake Gmail address that was, upon information and belief, newly  
16 created, which did not match the addresses used by Bungie’s brand protection vendor  
17 for legitimate DMCA notices (although it had a similar syntax to those addresses, upon  
18 information and belief having been deliberately chosen so as to cause maximum  
19 confusion among recipients and lead them to believe that it was legitimate), and via  
20 notices that were otherwise inconsistent with the substance of Bungie’s legitimate  
21 DMCA notices, Doe Defendants issued a wave of takedown notices targeting non-  
22 infringing *Destiny 2* videos.  
23

24 6. Using the same fake Gmail address that was used to issue the wave of  
25 fraudulent takedown notices, Doe Defendants circulated messaging to affected  
26

1 uploaders that appear calculated to discredit the authenticity of takedown notices  
2 legitimately issued by Bungie’s authorized brand protection vendor by claiming,  
3 falsely, that DMCA notices attaching the authorized vendor’s email address  
4 “davidthomsoncsc@gmail.com” were also fraudulent.  
5

6 7. Using a second fake Gmail address that was, upon information and belief,  
7 newly created, which did not match the addresses used by Bungie’s brand protection  
8 vendor for legitimate DMCA notices (although it had a similar syntax to those  
9 addresses), Doe Defendants sent abusive messages to the email address of Bungie’s  
10 authorized brand protection vendor.  
11

12 8. This caused Bungie significant reputational and economic damage, for  
13 obvious reasons. As discussed below, the *Destiny* community was bewildered and  
14 upset, believing that Bungie had reneged on a promise to allow players to build their  
15 own streaming communities and YouTube channels on *Destiny 2* content. *Destiny*  
16 community members were also misled to believe that Bungie’s brand protection agent  
17 was also fraudulent, causing confusion among users as to the authenticity of legitimate  
18 DMCA notices. Bungie had to devote significant internal resources to addressing it and  
19 helping its players restore their videos and channels – an effort complicated by the fact  
20 that while YouTube has a form that allows anyone to claim to represent a copyright  
21 holder and issue copyright strikes, it has no dedicated mechanism for copyright holders  
22 who are being impersonated to let YouTube know about the DMCA fraud. As detailed  
23 below, this meant that Bungie had to work through several layers of YouTube contacts  
24 before it could adequately communicate and begin addressing the problem.  
25  
26  
27

1 9. Though Bungie does not currently know the identities of Doe Defendants,  
2 whose anonymous conduct occurred just days ago, it will discover them soon, via §  
3 512(h) subpoena or otherwise, and will promptly amend this Complaint once it does.  
4

5 10. For now, though, and particularly given the ease with which malicious  
6 actors can exploit YouTube’s flawed DMCA practice and harm Bungie’s community,  
7 Bungie brings this action to recover for the Doe Defendants’ tortious and illegal  
8 conduct, and, frankly, to demonstrate to anyone else stupid enough to volunteer as a  
9 Defendant by targeting Bungie’s community for similar attack that they will be met by  
10 legal process.  
11

12 **PARTIES**

13 11. Plaintiff Bungie is a Delaware corporation with its primary place of  
14 business at 550 106th Avenue NE, Suite 207, Bellevue, Washington 98004.

15 12. Doe Defendants 1-10 are persons, whose true identity is in the process of  
16 being discovered, who submitted false DMCA notifications purportedly in the name of  
17 “Bungie Inc.”.  
18

19 **JURISDICTION AND VENUE**

20 13. The Court has subject matter jurisdiction over this action pursuant to 28  
21 U.S.C. § 1331, in that Plaintiff asserts claims under federal law, including for violations  
22 of Section 512(f) of the Digital Millennium Copyright Act and infringement of Bungie’s  
23 copyrights, and supplemental jurisdiction over Bungie’s state law claims under 28  
24 U.S.C. § 1367(a).

25 14. This court has personal jurisdiction over Doe Defendants because, upon  
26 information and belief, Doe Defendants are *Destiny 2* players who consented to  
27 jurisdiction in the state and federal courts in King County, Washington by accepting the

1 terms of *Destiny 2*'s Limited Software License Agreement (the "LSLA"), which provides  
2 that the licensee: "agree[s] to submit to the personal jurisdiction of any federal or state  
3 court in King County, Washington."

4 15. Additionally, this court has personal jurisdiction over Defendants  
5 pursuant to RCW 26.50.240, the Washington Long-Arm Statute, because the Defendants  
6 committed tortious acts that caused Bungie injury in the State of Washington.

7 16. Venue is proper under 28 U.S.C. § 1391(b)(2), in that a substantial part of  
8 the events or omissions giving rise to the claims occurred in this judicial district and  
9 Defendants have harmed Bungie in this judicial district, or, in the alternative, 28 U.S.C.  
10 § 1391(b)(3), in that if venue is not proper under 28 U.S.C. § 1391(b)(2), there is no  
11 known judicial district in which venue would otherwise be proper under Section  
12 1391(b).

## 13 BACKGROUND

### 14 I. THE DESTINY COMMUNITY

15 17. *Destiny 2* is a shared-world online first-person shooter available across  
16 multiple platforms, including Playstation 4 and 5, PC, Stadia, and the Xbox One and  
17 Series X consoles.

18 18. *Destiny 2* boasts a community of tens of millions of players worldwide.

19 19. But members of the *Destiny 2* community do more than just play the game  
20 – content creators build fan followings of their own for their gameplay or commentary,  
21 which is often streamed to followers and subscribers and/or uploaded to YouTube for  
22 asynchronous viewing.

23 20. For instance, YouTubers like My Name is Byf and Datto have roughly a  
24 million or more subscribers who watch their videos about *Destiny 2*, its lore and  
25 gameplay.

26 21. And this isn't just gratifying for Bungie, though seeing the community's  
27

1 love for its game is certainly that. *Destiny's* base game is free to play, as is character  
2 levelling – gamers can play *Destiny 2* without purchasing anything at all unless they  
3 want to.

4 22. Instead, Bungie's income stream from the *Destiny 2* game is entirely based  
5 on additional content gamers choose to buy: downloadable content including  
6 expansions (additional campaigns and storylines), in-game currency ("Silver," which  
7 players can purchase for real money and use in the *Destiny 2* world to "purchase"  
8 cosmetic items for their characters), seasonal content, and other in-game features and  
9 additions.

10 23. Thus, unlike a more typical model in which companies earn income by  
11 retailing individual copies or downloads of games, Bungie generates revenue from  
12 *Destiny 2* if and only if its players find the game experience so compelling and enjoyable  
13 that they want to buy additional content.

14 24. As a result, the level of connection and community that Bungie's players  
15 share directly affects Bungie's bottom line.

16 **II. BUNGIE'S INTELLECTUAL PROPERTY POLICY AND ENFORCEMENT**

17 25. Bungie is the owner of more than 200 registered copyrights and  
18 trademarks.

19 26. Bungie's registered copyrights cover, among other things, its game  
20 software, its game as an audio-visual work, and various elements of its games,  
21 including music and art used in the games.

22 27. Because those elements are integral to the gaming experience, and because  
23 Bungie wants its community to be able to share and discuss *Destiny* gameplay and  
24 elements, but also wishes to protect its intellectual property, Bungie has adopted a  
25 comprehensive policy governing its players' use, display, and performance of Bungie's  
26 copyrighted works.

1 28. As noted in its intellectual property policy, “Bungie strongly supports the  
2 efforts of our community to produce non-commercial content using video images,  
3 footage, music, sounds, dialogue, or other assets from our games, subject to a few  
4 conditions” and “generally approves streaming or commentary through approved  
5 platforms like Twitch, YouTube, or Facebook.”

6 29. Bungie reserves the right to enforce its intellectual property rights against  
7 infringers who violate the guidelines in its intellectual property policy, community  
8 standards, or code of conduct.

9 30. Bungie permits players to create videos using *Destiny* gameplay.

10 31. Bungie permits players to upload gameplay videos to third-party video  
11 sharing services such as YouTube, including to video-on-demand services that enable  
12 players to monetize content, provided the videos contain substantial “player created  
13 content.”

14 32. Bungie specifically notes that the sharing of videos that are primarily  
15 Bungie-created content, e.g. trailers or cutscenes, is not allowed.

16 33. Similarly, simply uploading songs from Bungie soundtracks or ripped  
17 from the game files of *Destiny 2* does not comply with Bungie’s intellectual property  
18 policy.

19 34. Bungie uses a vendor, CSC Global (“CSC”), to handle its Digital  
20 Millennium Copyright Act (“DMCA”) takedown notices for infringing content that  
21 does not comply with Bungie’s intellectual property policy, including content uploaded  
22 to YouTube.

23 35. YouTube’s DMCA reporting form requires the reporting party to use a  
24 Google account if the reporting party processes DMCA requests via a YouTube content  
25 management product (Creator Studio or Content Manager).

26 36. For that reason, CSC created and uses the [davidthomsoncsc@gmail.com](mailto:davidthomsoncsc@gmail.com)  
27



1 account for its DMCA work relating to YouTube videos.

2 37. At no point does CSC issue takedown notices on YouTube uploads related  
3 to Destiny without specific approval from Bungie’s legal department.

4 38. CSC maintains a record of the DMCA takedowns it executes on Bungie’s  
5 behalf.

6 39. On or about March 2, 2022, at Bungie’s direction, CSC initiated a series of  
7 DMCA takedowns – 41 in total – relating to infringing content that had been uploaded  
8 to YouTube (the “Early March Takedowns”). All 41 Early March Takedowns related to  
9 music from Destiny 2’s original soundtracks (“OSTs”).

10 40. Upon information and belief, YouTube’s actions in response to the Early  
11 March Takedowns were complete on or about March 16, 2022.

12 **III. DOE DEFENDANTS’ RETALIATORY ATTACK ON THE *DESTINY* COMMUNITY**

13 41. Upon information and belief, Doe Defendants were among the YouTubers  
14 whose videos received legitimate DMCA takedowns as a part of the Early March  
15 Takedowns.

16 42. Upon information and belief, the email address connected with the  
17 DMCA takedown notices that impacted Doe Defendants’ accounts was  
18 davidthomsoncsc@gmail.com.

19 43. Beginning on or about March 17, 2022, Doe Defendants began submitting  
20 unauthorized DMCA takedown notices to YouTube for videos that allegedly infringed  
21 Bungie’s copyrights (the “Fraudulent Takedown Notices”).

22 44. Upon information and belief, Doe Defendants created fake  
23 [name][csc@gmail.com](mailto:csc@gmail.com) Google accounts in order to submit the Fraudulent Takedown  
24 Notices.

25 45. Upon information and belief, Doe Defendants identified themselves as  
26 “Bungie, Inc.” when submitting some or all of the Fraudulent Takedown Notices.

1           46.     Alternatively, upon information and belief, Doe Defendants identified  
2 themselves as Bungie’s authorized agents when submitting some or all of the  
3 Fraudulent Takedown Notices.

4           47.     Doe Defendants had no authority to submit *any* of the Fraudulent  
5 Takedown Notices.

6           48.     Despite that, Doe Defendants submitted Fraudulent Takedown Notices  
7 targeting many members of the *Destiny* community, including:

- 8                   a.   My Name is Byf, a *Destiny* YouTuber with 966,000 subscribers;  
9                   b.   AztecRoss, a *Destiny* YouTuber with 594,000 subscribers;  
10                  c.   The Phoenix, a *Destiny* YouTuber with 54,000 subscribers; and  
11                  d.   Promethean, Archival Mind, a *Destiny* YouTuber with 17,800  
12                   subscribers.

13           49.     Indeed, Bungie’s own official *Destiny* YouTube channel got hit with a  
14 Fraudulent Takedown Notice.

15           50.     Thanks to YouTube’s easily-gamed reporting system, the attack was a  
16 success, and videos were removed (and YouTubers given “copyright strikes” that,  
17 under YouTube rules, threaten the future viability of their YouTube channels) on the  
18 basis of the Fraudulent Takedown Notices.

19           51.     Upon information and belief, Doe Defendants disseminated  
20 misinformation via an email from the fraudulent address  
21 “jeremywildandcsc@gmail.com.” In this email, Doe Defendants claimed, falsely, that  
22 the legitimate agent’s address “davidthomsoncsc@gmail.com” had been “issuing false  
23 takedowns for years,” causing confusion among recipients of legitimate DMCA  
24 notifications and calculated to cause the recipients of legitimate takedown notices to file  
25 inappropriate copyright counter notifications with YouTube.

26           52.     Upon information and belief, Doe Defendants filed a fraudulent DMCA  
27

1 notice targeting their own YouTube channel, purportedly on behalf of Bungie, using the  
2 fraudulent alias “jeremywilandcsc@gmail.com.”

3 53. Upon information and belief, Doe Defendants filed a fraudulent copyright  
4 counter notice with YouTube claiming that both the legitimate and the fraudulent  
5 copyright notifications were fraudulent.

6 **IV. THE COMMUNITY IMPACT OF DOE DEFENDANTS’ ATTACK, AND BUNGIE’S**  
7 **RESPONSE**

8 54. Doe Defendants’ attack sent shockwaves through the *Destiny* community.

9 55. Community members described the loss of the falsely-struck content as  
10 “heartbreaking,”<sup>1</sup> “horrible,”<sup>2</sup> and “[l]egitimately a tragedy.”<sup>3</sup>

11 56. Content creators described the chilling effect the false takedowns had on  
12 their own work, saying “I’m scared to make new *Destiny* videos let alone keep the ones  
13 I’ve already made up”<sup>4</sup> and “I’m just worried that my channel is gone forever because  
14 of this.”<sup>5</sup>

15 57. As one community member explained, “Some of the people running these  
16 channels used their ‘main’ accounts for this, couldn’t take the risk. Just unlisting videos  
17 doesn’t protect them from strikes at all. It was self-delete or get permanently blacklisted  
18 by Google.”<sup>6</sup>

19 58. The community’s sorrow quickly turned to anger. Many fans reacted with  
20

21  
22 <sup>1</sup>[https://web.archive.org/web/20220317143736/https://www.reddit.com/r/DestinyTheGame/comments/tg01q1/its\\_time\\_to\\_say\\_goodbye\\_to\\_all\\_the\\_sunset\\_tracks/i10uapk/](https://web.archive.org/web/20220317143736/https://www.reddit.com/r/DestinyTheGame/comments/tg01q1/its_time_to_say_goodbye_to_all_the_sunset_tracks/i10uapk/)

23 <sup>2</sup> [https://www.youtube.com/post/Ugkx78XtbobU\\_RBv4cVHNFAtuTCk-4Nhm15a](https://www.youtube.com/post/Ugkx78XtbobU_RBv4cVHNFAtuTCk-4Nhm15a)

24 <sup>3</sup> [https://web.archive.org/web/20220317085347/https://twitter.com/Quantum\\_/status/1504380178646147073](https://web.archive.org/web/20220317085347/https://twitter.com/Quantum_/status/1504380178646147073)

25 <sup>4</sup> [https://web.archive.org/web/20220317143736/https://www.reddit.com/r/DestinyTheGame/comments/tg01q1/its\\_time\\_to\\_say\\_goodbye\\_to\\_all\\_the\\_sunset\\_tracks/i10uapk/](https://web.archive.org/web/20220317143736/https://www.reddit.com/r/DestinyTheGame/comments/tg01q1/its_time_to_say_goodbye_to_all_the_sunset_tracks/i10uapk/)

26 <sup>5</sup> <https://web.archive.org/web/20220321145312/https://twitter.com/theman34005852/status/1505920305096765443>

27 <sup>6</sup>[https://web.archive.org/web/20220317091011/https://www.reddit.com/r/DestinyTheGame/comments/tg01q1/its\\_time\\_to\\_say\\_goodbye\\_to\\_all\\_the\\_sunset\\_tracks/i0zx0f6/](https://web.archive.org/web/20220317091011/https://www.reddit.com/r/DestinyTheGame/comments/tg01q1/its_time_to_say_goodbye_to_all_the_sunset_tracks/i0zx0f6/)

1 disbelief and frustration, saying “Bungie has always been a company that isn't a shitty  
2 soulless corp with this stuff and I'd super appreciate it if y'all can send this up to  
3 flagpole to whoever can look into this”<sup>7</sup> and “[t]his is the type of thing that alienates a  
4 dev company from their fans... it's damaging the community and I don't understand it  
5 tbh.”<sup>8</sup>

6 59. Community members felt disregarded and betrayed, saying “[i]t feels like  
7 they don't care or are complicit.”<sup>9</sup>

8 60. Because the false takedown emails used the same “csc” identification style  
9 as the authorized agent, many members believed that these were authorized  
10 takedowns, saying “Bungie hired a 3rd party to enforce copyright. This is 100% on  
11 Bungie.”<sup>10</sup>

12 61. And the reaction was not confined to the *Destiny* community.

13 62. The Fraudulent Takedown Notices, and their aftermath, also garnered  
14 significant media attention, being reported on at GamesIndustry.biz<sup>11</sup>, GameSpot.com<sup>12</sup>,  
15 PC Gamer<sup>13</sup> 14, Forbes<sup>15</sup>, and even German webportal WinFuture<sup>16</sup>.

17  
18 <sup>7</sup>[https://web.archive.org/web/20220317082420/https://www.reddit.com/r/DestinyTheGame/comments/tg01q1/its\\_time\\_to\\_say\\_goodbye\\_to\\_all\\_the\\_sunset\\_tracks/i0zvtlg/](https://web.archive.org/web/20220317082420/https://www.reddit.com/r/DestinyTheGame/comments/tg01q1/its_time_to_say_goodbye_to_all_the_sunset_tracks/i0zvtlg/)

19 <sup>8</sup>[https://web.archive.org/web/20220320131945/https://www.reddit.com/r/destiny2/comments/tiacmp/bungie\\_and\\_their\\_partner\\_csc\\_are\\_now\\_extending/ileextw/](https://web.archive.org/web/20220320131945/https://www.reddit.com/r/destiny2/comments/tiacmp/bungie_and_their_partner_csc_are_now_extending/ileextw/)

20 <sup>9</sup><https://web.archive.org/web/20220320143557/https://twitter.com/Searcy306/status/1505553615439630336>

21 <sup>10</sup>[https://web.archive.org/web/20220320173445/https://www.reddit.com/r/DestinyTheGame/comments/tinzu4/cozmo\\_on\\_twitter\\_regarding\\_youtube\\_videos\\_being/ilfcuwc/](https://web.archive.org/web/20220320173445/https://www.reddit.com/r/DestinyTheGame/comments/tinzu4/cozmo_on_twitter_regarding_youtube_videos_being/ilfcuwc/)

22 <sup>11</sup><https://web.archive.org/web/20220321222220/https://www.gamesindustry.biz/articles/2022-03-21-bungie-reports-destiny-youtube-video-copyright-takedowns>

23 <sup>12</sup> <https://web.archive.org/web/20220321135521/https://www.gamespot.com/articles/destiny-2-copyright-strikes-hit-high-profile-creators-and-bungie/1100-6501726/>

24 <sup>13</sup> <https://web.archive.org/web/20220324230146/https://www.pcgamer.com/bungie-says-last-weeks-destiny-2-video-takedowns-were-fraudulent/>

25 <sup>14</sup> <https://web.archive.org/web/20220325054014/https://www.pcgamer.com/no-one-is-safe-from-destiny-copyright-strikes-not-even-bungie/>

26 <sup>15</sup> <https://www.forbes.com/sites/paultassi/2022/03/21/someone-is-weaponizing-the-dmca-against-destiny-2-creators-and-bungie-itself/?sh=2cf8201b17b1>

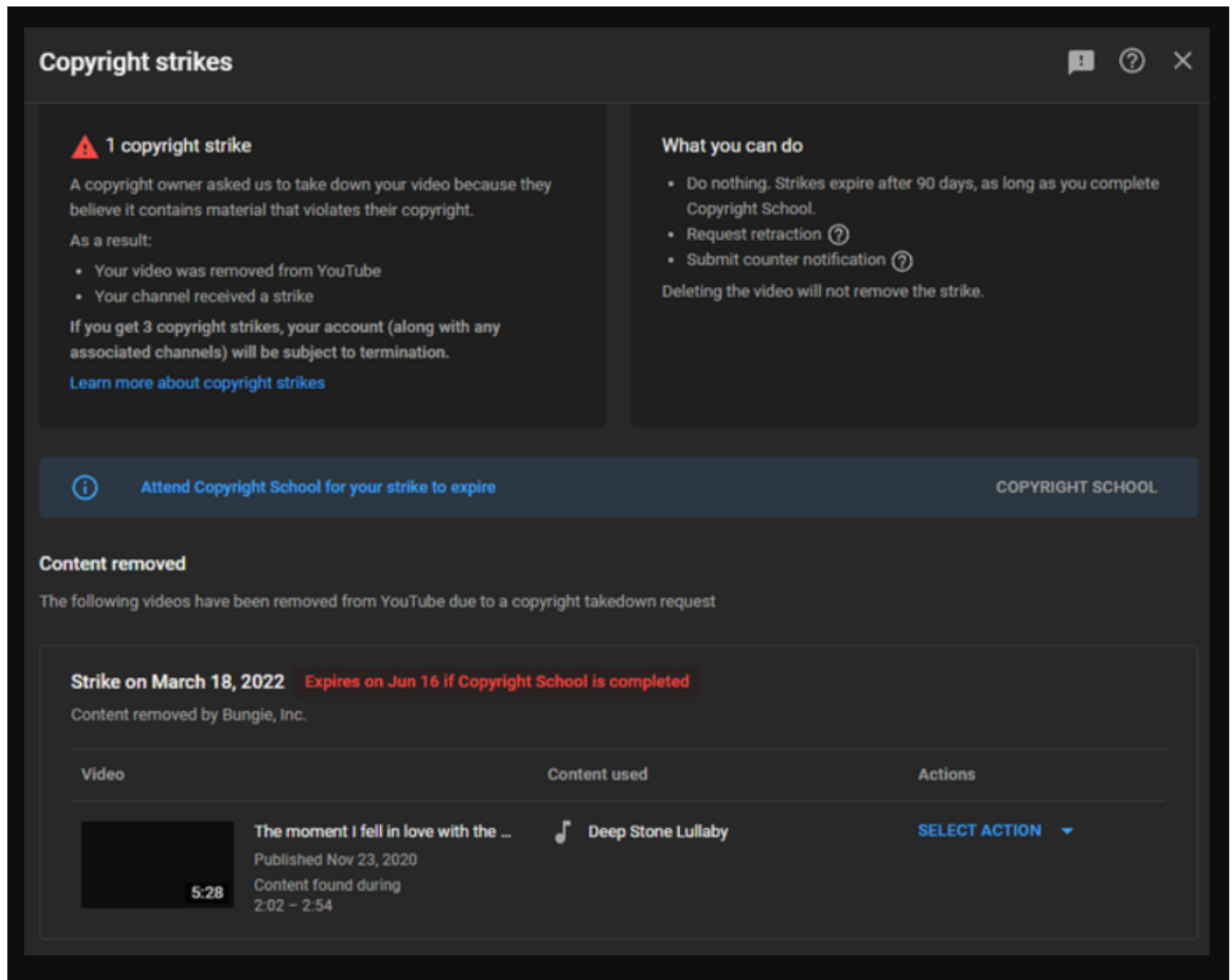
27 <sup>16</sup> <https://web.archive.org/web/20220325072105/https://winfuture.de/news,128688.html>

1           63. On March 18, 2022, when the first complaints about the takedown notices  
2 began coming to Bungie’s attention, Bungie’s Deputy General Counsel, James Barker,  
3 reached out to Bungie’s brand protection team at CSC to inquire about a suspicious  
4 takedown targeting Aztecross that was described via social media, noting that he did  
5 not see the Aztecross takedown in the CSC-provided list of completed , or any requests  
6 targeting Aztecross, and asking CSC to confirm whether there was a takedown.

7           64. By email roughly half an hour later, CSC responded that it had no such  
8 record either, nor any secondary records that would suggest any such takedown had  
9 occurred by mistake, and asked for more information so that it could confirm with  
10 certainty that it was not the source.

11           65. After being provided details on the timing of the copyright complaint  
12 filed against Aztecross, CSC confirmed that they had no record and the complaint likely  
13 did not come from them.

14           66. Mr. Barker then forwarded the image of the takedown from the user,  
15 noting the oddity of the fact that the notice indicated that content was “removed by  
16 Bungie, Inc.” when any removals handled by CSC would not have used that language,  
17 and Bungie had not authorized anyone else to issue takedowns:  
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67. Based on those issues, Mr. Barker asked if CSC believed it could be a spoof, and CSC responded that it believed so but would need until Monday, March 21 to confirm fully.

68. In response, Mr. Barker directed CSC to do what it could to get the video reinstated, as it did not violate Bungie’s guidelines.

69. CSC issued a retraction notice requesting reinstatement of the video, but on Monday, March 21 it reported that YouTube had denied the retraction request because the retraction notice was not sent from the same email that had issued the

1 initial Fraudulent Takedown Notice.

2 70. In the interim, the nature of Doe Defendants' impersonation of Bungie  
3 had become clear, and Bungie had reached out to YouTube to try to address the issue.

4 71. On Saturday, March 19, under the direction of Bungie's legal team,  
5 Bungie's Social Media Manager reached out to the account representative for Bungie's  
6 YouTube channel, Walker Adamson, to report that they had seen a number of  
7 additional users and their own channel get hit with takedowns from a "Bungie, Inc."  
8 Bungie also informed Adamson it had confirmed that it was a malicious impersonator,  
9 and asked for Google's assistance identifying Doe Defendants and next steps to prevent  
10 the attack from continuing or recurring.

11 72. 10 minutes later, after receiving an out-of-office notification from Mr.  
12 Adamson, Bungie's Social Media Manager passed the same message along to Magali  
13 Huot, Google's Head of Games Publishers and the person that the out-of-office message  
14 identified as available to help while account representative Mr. Adamson was out.

15 73. An hour later, having received no response, Mr. Barker added Bungie's  
16 legal department to the email conversation and cc'd Bungie's General Counsel, Don  
17 McGowan, indicating how serious of an issue the attack was for Bungie, providing  
18 detail on Bungie's legitimate takedown notices, and asking Google to provide  
19 information on the Doe Defendants.

20 74. Mr. Barker also instructed Google to block any new DMCA reports that  
21 purported to be on Bungie's behalf, until further notice.

22 75. Upon information and belief, Google did none of those things.

23 76. Thus, on Sunday, March 20 and having received no response, Mr. Barker  
24 emailed Ms. Huot to note that the situation was "escalating" and that "a number of  
25 trusted streamers" - including My name is Byf and Aztecross - were receiving  
26 fraudulent takedown notices.



1           77. Mr. Barker asked Ms. Huot for a response as soon as possible, information  
2 on how the Doe Defendants were able to so easily impersonate Bungie, and, most  
3 importantly information on what YouTube could “do to begin mitigating the damage  
4 done to our community streamers.”

5           78. Mr. Barker also asked for “a more reliable way to contact someone at  
6 YouTube to handle exigent issues like this one.”

7           79. Roughly 40 minutes later, having still received no response, it was the  
8 turn of Bungie’s Global Franchise Director to try to get some sort of response from  
9 Google regarding the spiraling problem.

10           80. Thus, at 2:08 Pacific, Bungie’s Global Finance Director emailed additional  
11 Google personnel – Luma Hamade, Jason Bentley, Kendra Johnson, and Andrew  
12 Conway, along with Ms. Huot – to reiterate that Bungie had “a corporate impersonator  
13 who is doing damage to some of our trusted community streamers on YouTube” and  
14 that Bungie was looking to connect with someone who could assist, and specifically to  
15 “introduce” Mr. Barker to the Google team.

16           81. Mr. Barker then responded with a recap of the issues described above,  
17 repeating the information Bungie had already provided to Google: that someone was  
18 impersonating Bungie and sending fraudulent DMCA notices to members of the Bungie  
19 community.

20           82. Mr. Barker also reiterated Bungie’s requests that Google: (1) block new  
21 takedown requests issued by any entity claiming to represent Bungie or targeting  
22 *Destiny 2* content; (2) restore any takedowns processed after March 16, 2022; and (3)  
23 obtain and provide any information on the Doe Defendants and how they were able to  
24 accomplish their takedowns.

25           83. Ms. Johnson – YouTube’s Director of Gaming Publishers and Commerce  
26 Content Partners – responded to ask whether the issue was that Bungie’s channel had



1 been compromised or only that it was being impersonated as part of DMCA takedowns,  
2 and whether Bungie had gone through standard channels to file a help ticket.

3 84. Mr. Barker replied that the issue was simply the DMCA-related  
4 impersonation, and that YouTube opaque support process was running them through a  
5 “circular loop from ‘contact us’ back to the ‘help community.’”

6 85. Ms. Johnson responded that she would connect with YouTube’s  
7 “Takedown Notice team” and report back.

8 86. On Monday the 21<sup>st</sup>, Ms. Huot responded to Mr. Barker’s email about the  
9 “escalating situation” to apologize for the delay and note that she was “looping back  
10 in” Mr. Adamson and they would get back to Bungie as quickly as possible that day.

11 87. At 11:00 am, Mr. Barker reached back out to Mr. Adamson and Ms. Huot  
12 to update them on some of the developments discussed in more detail below: that  
13 Bungie had identified [jeremywilandcsc@gmail.com](mailto:jeremywilandcsc@gmail.com) as the email address responsible for  
14 at least some of the takedown notices and [damianreynoldscsc@gmail.com](mailto:damianreynoldscsc@gmail.com) as having  
15 sent taunting and threatening emails to CSC.

16 88. Mr. Barker reiterated that the only people authorized to issue DMCA  
17 notices on YouTube were CSC, and provided the two legitimate email addresses from  
18 which such notices might come.

19 89. At 5:29 p.m., Mr. Barker emailed Mr. Adamson to note that he was  
20 looking forward to any updates, and pointed out that while several of the unauthorized  
21 takedowns had been reversed, Bungie still had no way to tell how many may have been  
22 issued but had not yet been brought to Bungie’s attention through social media.

23 90. At 8:09 p.m. that day, David from YouTube’s gaming support team  
24 responded that YouTube did not have an update yet, but should be able to provide one  
25 by Tuesday the 22<sup>nd</sup>.

26 91. On Tuesday, March 22, at 1:17 p.m., having not received the promised  
27

1 update, Mr. Barker again asked for Google to speed up its response and provide critical  
2 information:

3 We need a couple of things *urgently* in order to mitigate the harm to  
4 our community ...:

5 A list of all the channels and uploads that were actioned by the two  
6 users who used the fraudulent email addresses ... so that we can  
7 request reinstatement.

8 A list of all channels and uploads that have been actioned  
9 purportedly on behalf of Bungie, Inc., and the email addresses  
10 attached to those actions.

11 What you are able to do in order to make sure that takedowns on  
12 YouTube that are "on behalf of Bungie, Inc." are by only an  
13 approved set of email addresses ...

14 What you are able to provide about the identities of the users who  
15 have actioned "on behalf of Bungie, Inc." as these threat actors are  
16 causing active harm to CSC's reputation and to ours, and have  
17 threatened employees at CSC.

18 92. At 3:18 p.m. on March 22, Google provided an update: it had terminated  
19 the accounts that submitted the fraudulent requests and all fraudulent submissions  
20 would be reversed, but Google would not share any information identifying who the  
21 fraudulent users were, including channel identifiers, email addresses, or other  
22 identifying information, without a law enforcement request or civil process. Fortunately  
23 for the people whose videos were targeted by the Fraudulent Takedown Notices,  
24 Bungie has the financial resources to begin that civil process in order to meet Google's  
25 requirements.

## 26 V. DOE DEFENDANTS' CONFESSION, AND HARASSMENT OF CSC

27 93. While Bungie's legal department, management, and executives were  
attempting to negotiate the Byzantine procedural labyrinth Google required before it  
would address the fraud its users were committing, let alone identify who its fraudsters

1 were, Doe Defendants themselves were gloating, confessing, and threatening.

2 94. Over that weekend, the “Damian Reynolds” account began sending  
3 threatening emails to CSC, with the subject line “You’re in for it now” and telling CSC  
4 “Better start running. The clock is ticking.”

5 95. At 12:41 a.m. on Monday the 21<sup>st</sup>, “Damian Reynolds” emailed  
6 [davidthomsoncsc@gmail.com](mailto:davidthomsoncsc@gmail.com) the following: “Hope striking everyone’s content was  
7 worth it, asshat. You’ve now got Bungie’s full attention. You really oughta grow up and  
8 get a life instead of tormenting people from behind a screen like a fucking coward. If I  
9 were you, I’d delete my Google account right now because Bungie (and probably even  
10 Google) are gonna come after you hard.”

11 96. Meanwhile, two YouTubers, Aussiehalo and Breshi, each forwarded  
12 Bungie’s community team an email purporting to be from the “Jeremy Wilands”  
13 account taking credit for the fraud (the “Manifesto”).

14 97. The Manifesto reads like a hackneyed “look what you made me do” letter  
15 from the serial killer in a bad novel:

16 Greetings. I’m one of the people who filed false takedowns on videos  
17 uploaded by you and others in the *Destiny* community. The other person  
18 filing takedowns is “[davidthomsoncsc@gmail.com](mailto:davidthomsoncsc@gmail.com)”, whom I will refer to  
19 as “David Thomson”. I’m not aware of any other email addresses that are  
20 being used to issue fraudulent takedowns. I am also keeping some parts of  
21 this email confidential for obvious reasons.

22 With that said, there’s more to this that you should know.

- 23 1. As is obvious, I’m not employed by CSC and I have no  
24 affiliation with Bungie. The same applies to “David Thomson”.
- 25 2. YouTube’s copyright takedown system is incredibly flawed.  
26 Their verification system for takedown requests is so gullible  
27 that people, such as I and “David Thomson”, are able to file  
takedowns without any legitimacy to our names. If you’re  
looking to place blame, place it on YouTube for its sloppy  
copyright takedown system and Bungie for ignoring this issue

1 for so long

2 I could tell you how I got YouTube to think I was a legitimate  
3 representative for Bungie. All it took was a single sentence. No  
4 documents, no license, no private information.

5 **Also, I did not issue takedowns on Bungie's own channels.**  
6 Whoever did that is further proof that YouTube doesn't verify  
7 the identities of takedown claimants.

- 8 3. I was directly affected by false takedowns from "David  
9 Thomson" several months ago, and many others were issued  
10 false takedowns by this person over the past several years. I  
11 believed with enough attention, Bungie might have been  
12 prompted to step in. The first few channels that were hit by  
13 takedowns didn't seem to grab anyone's attention, so I had to  
14 escalate the matter.

15 *If I hadn't escalated the issue, many people would not have had their*  
16 *takedowns removed.*

17 You may choose not to believe me, but at least I responded to some of the  
18 people whose videos I took down. The other frauds like "David  
19 Thomson" never reply because they're spiteful cowards who want their  
20 victims to feel helpless and afraid. **"David Thomson" has also been**  
21 **issuing false takedowns for years** with no repercussions. Although,  
22 unlike me, they have been playing it safe up until now by only issuing  
23 takedowns on a few videos to avoid Bungie's radar. I intended to get  
24 caught so that Bungie would take heed of the corruption that has been  
25 ensuing in the center of their YouTube community.

26 I fully intended to retract my takedowns and stop issuing them after  
27 Bungie had acknowledged the issue and begun restoring people's  
videos/channels or otherwise.

If "David Thomson" went after more videos I wouldn't be able to remove  
the takedowns, since takedowns can only be retracted from the original  
claimant's email address. Otherwise, I would have undone all of their  
actions and prevented this altogether.

None of this was about copyright infringement, nor did it have anything  
to do with the Sony acquisition. In the future, you should expect the  
claimant's email address in the "**contact info**" field of a copyright  
takedown notice made on behalf of a large studio like Bungie to originate

1 from a domain other than Gmail when determining its legitimacy.

2 Finally, I know this hardly means anything, but I apologize to you and  
3 everyone else who was affected by my selfish actions. You have every  
4 right to be furious with me. My goal was to get Bungie to see the fake  
5 takedowns and stop them. That's all.

6 **FIRST CAUSE OF ACTION**  
7 **(DMCA 512(f) - FRAUDULENT NOTICE)**

8 98. Bungie repeats and realleges the allegations of Paragraphs 1- 97 of this  
9 Complaint as though fully set forth herein.

10 99. Bungie holds the copyrights to the *Destiny* and *Destiny 2* games and their  
11 components, including the music and art used in the games.

12 100. Bungie holds more than 200 copyright registrations, including  
13 Registration No. PA 2-282-670 (for *Destiny 2*), Registration No. PA 2-280-030 (for *Destiny*  
14 *2: Beyond Light*), and Registration No. SRu001441990 (for the audio recording of Deep  
15 Stone Lullaby, among other then-unpublished sound recordings).

16 101. While Bungie is not yet aware of the specific content alleged in each of the  
17 Fraudulent Takedown Notices to have been infringed, upon information and belief each  
18 alleged infringement was an alleged infringement of content for which Bungie has  
19 registered the copyright or for which only Bungie is capable of registering a copyright,  
20 including content s from *Destiny 2: The Witch Queen*.

21 102. Bungie did not authorize Doe Defendants to submit DMCA notices on its  
22 behalf.

23 103. Doe Defendants had no right to submit the Fraudulent Takedown Notices.

24 104. At least some of the content that was the subject of the Fraudulent  
25 Takedown Notices was not infringing, because, upon information and belief, it  
26 complied with Bungie's intellectual property policy and therefore the YouTubers who  
27

1 posted it did so under license from Bungie.

2 105. Upon information and belief, Doe Defendants knew they had no right to  
3 submit the Fraudulent Takedown Notices.

4 106. Upon information and belief, Doe Defendants knew that the contents of  
5 the videos they were targeting were either non-infringing or not in violation of Bungie's  
6 guidelines.

7 107. The Fraudulent Takedown Notices were based on knowing and material  
8 misrepresentations, in violation of 17 U.S.C. § 512(f).

9 108. Moreover, upon information and belief at least some of the Doe  
10 Defendants, relying on the confusion caused by their fraudulent activity, also filed  
11 knowingly false counternotices challenging the legitimacy of the valid DMCA notices  
12 addressed to their infringing content, in violation of 17 U.S.C. § 512(f).

13 109. As a result of Defendant's acts alleged herein, Bungie incurred costs and  
14 expenses, including attorneys' fees, and has suffered, is suffering, and will continue to  
15 suffer substantial damage to its business in the form of lost profits and injury to its  
16 goodwill and reputation.

17 110. Bungie is thus entitled to damages in an amount to be proven at trial, and  
18 preliminary and permanent injunctive relief.

19 **SECOND CAUSE OF ACTION**  
20 **(FALSE DESIGNATION OF ORIGIN, 15 U.S.C. § 1125(a))**

21 111. Bungie repeats and realleges the allegations of Paragraphs 1-110 of this  
22 Complaint as though fully set forth herein.

23 112. Bungie is the owner of U.S. Trademark Registration Number 2038273, for  
24 "BUNGIE" (the "BUNGIE Mark").

25 113. YouTube is a service as that term is used in the Lanham Act.  
26

1 114. YouTube’s DMCA reporting system is a service as that term is used in the  
2 Lanham Act.

3 115. Submission of a DMCA takedown notice to YouTube is an act that  
4 impacts interstate commerce and, therefore, is “commercial activity” under the Lanham  
5 Act.

6 116. By submitting the Fraudulent Takedown Notices to YouTube under the  
7 name “Bungie, Inc.,” Doe Defendants used the BUNGIE Mark in connection with a  
8 service.

9 117. Doe Defendants’ use of the BUNGIE Mark was likely to and in fact did  
10 cause confusion and mistake, and was likely to and did in fact deceive, as to the  
11 association of Doe Defendants with Bungie and as to Bungie’s sponsorship or approval  
12 of the submission of the Fraudulent Takedown Notices, in violation of 15 U.S.C. §  
13 1125(a).

14 118. Under 15 U.S.C. § 1117(a), Plaintiff is entitled to relief including, but not  
15 limited to Bungie’s damages to be proven at trial, and the costs of this action.

16 119. In addition, Doe Defendants have admitted that they were aware of the  
17 fraudulent nature of their conduct, and acted willfully.

18 120. As such, Bungie is entitled to an award of treble damages and attorneys’  
19 fees.

20 121. In addition, Bungie is entitled to preliminary and permanent injunctive  
21 relief.

22 **THIRD CAUSE OF ACTION**  
23 **(COPYRIGHT INFRINGEMENT UNDER 17 U.S.C. § 501 *et seq*)**

24 122. Bungie repeats and realleges the allegations of Paragraphs 1-121 of this  
25 Complaint as though fully set forth herein.  
26



1 123. Bungie holds more than 200 copyright registrations, including  
2 Registration No. PA 2-282-670 (for Destiny 2), Registration No. PA 2-280-030 (for  
3 *Destiny 2: Beyond Light*), and Registration No. SRu001441990 (for the audio recording of  
4 Deep Stone Lullaby, among other then-unpublished sound recordings).

5 124. While Bungie is not yet aware of the specific content alleged in each of the  
6 Fraudulent Takedown Notices to have been infringed, upon information and belief each  
7 alleged infringement was an alleged infringement of content for which Bungie has  
8 registered the copyright.

9 125. By submitting the Fraudulent Takedown Notices, Doe Defendants  
10 infringed Bungie's right under 17 U.S.C. § 106 to authorize the public display and  
11 performance of its copyrighted works.

12 126. That infringement was willful, as evidenced by the Manifesto.

13 127. As such, Bungie is entitled to damages and injunctive relief, including  
14 enhanced statutory damages of \$150,000 for each Fraudulent Takedown Notice that  
15 willfully infringed Bungie's copyrights.

16 128. In addition, upon information and belief, in or about March 2022, content  
17 uploaded to YouTube by one or more of the Doe Defendants was the subject of DMCA  
18 takedown notices submitted on Bungie's behalf.

19 129. Until Doe Defendants are identified, Bungie cannot determine with  
20 certainty which of its copyrighted content Doe Defendants infringed, but, upon  
21 information and belief, Doe Defendants infringed content in which Bungie held a  
22 registered copyright, including, *at the very least*, PA 2-282-670.

23 130. While as a general policy and in the absence of factors beyond simply an  
24 infringing upload Bungie does not typically sue infringers whose uploads were the  
25 subject of a DMCA notice, Doe Defendants' malicious conduct in filing the Fraudulent  
26 Takedown Notices is more than enough, in Bungie's judgment, to qualify as an  
27



1 “additional factor” warranting an infringement suit for any infringement that was the  
2 subject of a legitimate DMCA notice.

3 131. Bungie is thus entitled to actual or statutory damages for Doe Defendants’  
4 infringements that were the subject of the DMCA notices directed at Doe Defendants’  
5 uploads, as well as preliminary and permanent injunctive relief, costs, and attorneys’  
6 fees.

7 **FOURTH CAUSE OF ACTION**  
8 **(BUSINESS DEFAMATION)**

9 132. Bungie repeats and realleges the allegations of Paragraphs 1-131 of this  
10 Complaint as though fully set forth herein.

11 133. Doe Defendants’ Fraudulent Takedown Notices included the false claim  
12 that the Fraudulent Takedown Notices were submitted either by or on behalf and with  
13 the authorization of Bungie.

14 134. Doe Defendants made that false claim with actual knowledge of its falsity.

15 135. Doe Defendants made that false claim with actual knowledge that, in  
16 implementing a DMCA takedown, YouTube would pass along that false assertion to the  
17 targeted YouTubers.

18 136. Upon information and belief, Doe Defendants made that false claim with  
19 the intent that the targeted YouTubers would report to their subscribers, followers, and  
20 friends that Bungie had taken down their videos and/or channels.

21 137. Upon information and belief, Doe Defendants’ intent was to cause anger  
22 and consternation at Bungie within the *Destiny* community, so as to “get Bungie’s  
23 attention” and/or to stop Bungie from sending future, legitimate takedown notices  
24 against the Doe Defendants’ own illegally-uploaded content.

25 138. This intentional and malicious conduct resulted in harm to Bungie’s  
26 reputation.

1 139. As a direct result of Doe Defendant's defamatory statements, Bungie has  
2 incurred, and continues to incur, damages in an amount to be proven at trial.

3  
4 **FIFTH CAUSE OF ACTION**  
5 **(VIOLATION OF THE WASHINGTON**  
6 **CONSUMER PROTECTION ACT, RCW 19.86.020)**

7 140. Bungie repeats and realleges the allegations of Paragraphs 1-139 of this  
8 Complaint as though fully set forth herein.

9 141. Doe Defendants have engaged in unfair and deceptive acts by  
10 fraudulently impersonating Bungie to issue false takedown notices.

11 142. Doe Defendants' practices occurred in trade or commerce.

12 143. As alleged in the Counts of this Complaint, Doe Defendants' actions were  
13 unlawful.

14 144. Moreover, Doe Defendants' Manifesto, in effect, is calculated to discredit  
15 the authenticity of takedown notices legitimately issued by Bungie's authorized brand  
16 protection personnel by claiming, falsely, that DMCA notices issued by the authorized  
17 vendor were also fraudulent.

18 145. Doe Defendants' Manifesto has already resulted in confusion among the  
19 creator community, causing at least one recipient of a legitimate copyright notice to file  
20 a copyright counter notice on the improper basis that the authorized brand protection  
21 agent was otherwise.

22 146. Moreover, there is a strong public interest in protecting creators and  
23 businesses from bad actors impersonating and misrepresenting them in the marketplace  
24 in order to fraudulently exploit their intellectual property rights to the detriment of the  
25 true rightsholders and other parties.

26 147. Doe Defendants' unfair and deceptive acts have directly and proximately  
27

1 caused Bungie to incur, and to continue incurring, damages.

2 148. As a result of the foregoing, Bungie is entitled to an award of damages in  
3 an amount to be proven at trial, and treble damages and attorneys' fees as allowed  
4 under the statute.

5 **SIXTH CAUSE OF ACTION**  
6 **(BREACH OF CONTRACT)**

7 149. Bungie repeats and realleges the allegations of Paragraphs 1-148 of this  
8 Complaint as though fully set forth herein.

9 150. The LSLA is a valid, binding contract between Bungie and each individual  
10 player of *Destiny 2*.

11 151. *Destiny 2* cannot be played unless the user agrees to Bungie's LSLA.

12 152. The LSLA is displayed in full for the user in the game client prior to the  
13 user's first play.

14 153. The LSLA is also made easily and readily available on Bungie's website.

15 154. Upon information and belief, based on the fact that Doe Defendants  
16 uploaded videos that contained content infringing Bungie's copyrights and therefore  
17 must have played *Destiny 2*, Doe Defendants agreed to the LSLA.

18 155. The LSLA prohibits users from "copy[ing], reproduce[ing], distribut[ing],  
19 display[ing] or us[ing] any part of [Destiny 2] except as expressly authorized by  
20 Bungie."

21 156. Upon information and belief, Doe Defendants' display and use of *Destiny*  
22 2 to create the content that was the subject of a valid takedown request was not  
23 expressly authorized by Bungie.

24 157. Doe Defendants have thus breached the LSLA, and Bungie is entitled to  
25 damages in an amount to be proven at trial.  
26

1  
2 **JURY DEMAND**

3 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury  
4 as to all issues so triable in this action.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff Bungie, Inc., prays for the following relief:

- 7  
8 A. Damages in an amount to be proven at trial;
- 9 B. Preliminary and permanent injunctive relief barring Defendants, and  
10 anyone acting in concert with them, from impersonating Bungie or  
11 further infringing Bungie's copyrights or trademarks;
- 12 C. Costs, attorneys' fees, interest, and punitive damages as allowed by  
13 law; and
- 14 D. Such other relief as the Court deems just and proper.

15  
16 DATED this 24th day of March, 2022

17  
18 By  \_\_\_\_\_

19  
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