

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

VOLTAGE HOLDINGS, LLC;
WONDER ONE, LLC; VENICE PI,
LLC; and MON, LLC,

Plaintiffs,

vs.

EARTHLINK, LLC,

Defendant.

COMPLAINT

Plaintiffs VOLTAGE HOLDINGS, LLC, VENICE PI, LLC, WONDER ONE, LLC; and MON, LLC (“Plaintiffs”) file this Complaint against Defendant EARTHLINK, LLC (“Defendant”) and allege as follows:

I. NATURE OF THE ACTION

1. This matter arises under the United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101, et seq. (the “Copyright Act”).

2. The Plaintiffs allege that Defendant is secondarily liable for copyright infringement in violation of 17 U.S.C. §§ 106 and 501 and violations of the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. § 1202.

II. JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 17 U.S.C. §§ 101, et. seq., (the Copyright Act), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. § 1338 (patents, copyrights, trademarks, and unfair competition).

4. Defendant either resides in, solicits, transacts, or is doing business within this jurisdiction, and has committed unlawful and tortious acts both within and outside this jurisdiction with the full knowledge that its acts would cause injury in this jurisdiction. As such, Defendant has sufficient contacts with this judicial district to permit the Court's exercise of personal jurisdiction over Defendant.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) - (c) because: (a) all or a substantial part of the events or omissions giving rise to the claims occurred in this District; and, (b) the Defendant resides, and therefore can be found, in this State. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1400(a) (venue for copyright cases), because the Defendant or Defendant's agents reside or may be found in this District.

III. PARTIES

A. The Plaintiffs

6. The Plaintiffs are owners of the copyrights for the motion pictures (“Works”), respectively, as shown in Exhibit “A.”

7. Plaintiffs are producers of popular motion pictures currently available for sale online and in brick-and-mortar retail stores. Many of these critically acclaimed motion pictures were released in theaters throughout the world and feature A-list actors such as Bruce Willis, Amy Schumer, Gerard Butler, Alison Brie, and Willem Dafoe.

8. Plaintiffs invested significant financial resources, time and effort in making and marketing these motion pictures based upon the expectation that they would have an opportunity to get a return on their investment from rentals and sales. Massive piracy of these motion pictures on the Internet via peer-to-peer networks by subscribers of Internet Service Providers (“ISPs”) such as Defendant’s and the willful failure of the ISPs to deal with this issue despite clear notice of it have hindered this opportunity.

9. Plaintiff VOLTAGE HOLDINGS, LLC is a limited liability company registered under the laws of the State of Nevada, has principal offices in Los Angeles, California.

10. Plaintiff WONDER ONE, LLC is a Wyoming limited liability company with its principal place of business at Sherman Oaks, CA.

11. Plaintiff VENICE PI, LLC is a California limited liability company with its principal place of business at Los Angeles, CA.

12. Plaintiff MON, LLC is a California limited liability company with its principal place of business at Beverly Hills, CA.

B. The Defendant

13. Defendant EARTHLINK, LLC is a limited liability company organized and existing under the laws of the State of Delaware, with its headquarters at 1439 Peachtree St. NE, Atlanta, GA 30309.

14. Defendant is an ISP, which also offers premium email, web hosting and privacy and data security products.

15. Defendant and Charter Communications Operating, LLC (“Charter”) (through its predecessor Time Warner Cable, Inc.) were parties to a High-Speed Service Agreement (the “HSSA”) of November 2000 pursuant to which Defendant sold a branded high-speed data service over Charter’s cable network. Defendant’s customers could receive Internet service from Defendant with voice and video services from Charter’s Spectrum brand.

16. Defendant and Charter terminated the HSSA on October 31, 2020.

17. Under the terms of the HSSA, Charter's predecessor Time Warner Cable, Inc. ("TWC") sold Defendant an unbranded, wholesale version of TWC's high-speed data service that Defendant branded, marketed and resold as EarthLink high-speed service ("EarthLink High-Speed Service") over TWC's systems to consumers/residential customers ("subscribers"). In addition to access to the Internet, EarthLink also provided some subscribers with EarthLink email addresses.

18. In order to connect to the Internet via their EarthLink High-Speed Service, Defendant's subscribers needed access to IP addresses. Therefore, Defendant and TWC agreed in the HSSA that TWC would supply Defendant's subscribers with public Internet Protocol ("IP") addresses in order to allow subscribers to access their EarthLink High-Speed Service.

19. At the time of the November 2000 Agreement, it was unclear how many subscribers there would be. Therefore, Defendant set aside a block of approximately 1,000,000 IP addresses that it controlled in order to service the relationship with TWC (the "1,000,000 Address Block"). Defendant supplied the 1,000,000 Address Block to TWC so TWC could supply IP addresses from the block as necessary to Defendant's subscribers during the term of the HSSA.

20. Defendant is a member of The American Registry of Internet Numbers (“ARIN”), which is a nonprofit, member-based organization that manages and distributes Internet number resources such as IP addresses and Autonomous System Numbers.

21. Defendant has an ARIN “Org” kind handle “EL-1036” with full name “EarthLink.

22. Defendant did not agree to transfer its ARIN registration of the 1,000,000 Address Block or any subset thereof to TWC or Charter after its merger with TWC.

23. In March 2017, Defendant was acquired by Windstream. In connection with the acquisition of Defendant, Windstream acquired the 1,000,000 Address Block.

24. As a result of Windstream’s acquisition of Defendant, Charter elected to terminate the HSSA on October 31, 2017. However, pursuant to the HSSA, Defendant and Charter operated in a “Transition Period,” during which, existing subscribers were still eligible to receive EarthLink High-Speed Service until October 31, 2020.

25. As of December 31, 2018, Windstream sold Defendant to Trive Capital (“Trive”). In connection with that transaction, and pursuant to the terms of

the transaction documents, including a Transition Services Agreement dated December 31, 2018 (“TSA”) with Windstream, Defendant acquired a subset of IP addresses within the 1,000,000 IP Address Block from Windstream, which included the IP addresses in use by Charter at the time of the HSSA’s termination and thereafter. The IP addresses Defendant acquired from Windstream are referred to herein as the “EarthLink IP Addresses.”

26. In connection with Trive’s acquisition, Windstream represented to Defendant that Windstream controlled the use of the EarthLink IP Addresses and represented and warranted that it had the ability to transfer them to Defendant.

27. After the expiration of the Transition Period, Defendant and Windstream formally completed the transfer of the ARIN registration of the EarthLink IP Addresses back into Defendant’s name.

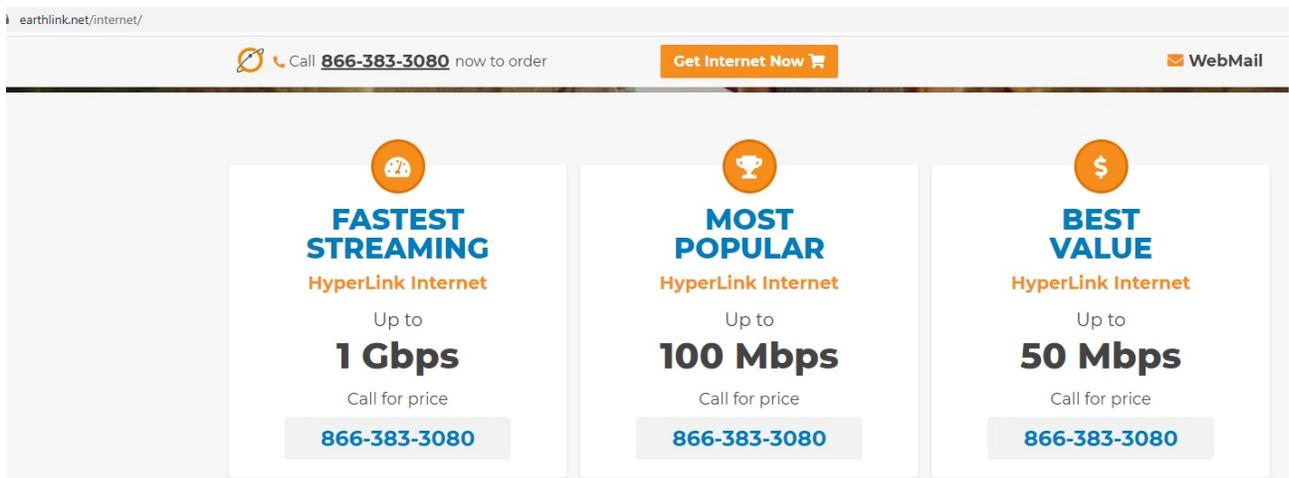
28. Defendant is successively liable for its subscribers’ piracy at the Earthlink IP addresses while they were controlled by Windstream.

29. Many of Defendant’s subscribers were motivated to subscribe to Defendant’s service because it allows them to download movies and other copyrighted content—including unauthorized content—as efficiently as possible.

30. Accordingly, Defendant promoted its service to download and upload large amounts of content for subscribers for “playing competitive games online, high-definition streaming, and large file downloading.”



31. In exchange for this service, Defendant charges its subscribers monthly fees ranging in price based on the speed of service.



32. At all relevant times, Defendant knew that its subscribers routinely used its network for illegally downloading and uploading copyrighted works, particularly Plaintiffs' Works. As described below, Plaintiffs' agent sent over 3,700 notices styled per 17 U.S.C. §512(c)(3) to Defendant's designated abuse contact per ARIN records and/or Defendant's website informing Defendant that many of its subscribers were actively utilizing their service to infringe Plaintiffs' Works. Those notices gave Defendant the specific identities of its infringing subscribers, referred to by their Earthlink IP addresses, port numbers and time of infringement (to the second) and the infringing file name. Nonetheless, Defendant persistently turned a blind eye to the massive infringement of Plaintiffs' Works occurring over its network. Defendant allowed the illegal activity because it was popular with subscribers and acted as a draw to attract and retain new and existing subscribers. Defendant's subscribers, in turn, purchased more bandwidth and continued using Defendant's services to infringe Plaintiffs' Works.

33. Defendant knew that if it terminated or otherwise prevented repeat infringer subscribers from using its service to infringe, or made it less attractive for such use, Defendant would enroll fewer new subscribers, lose existing subscribers, and ultimately lose revenue. For those account holders and subscribers who wanted to download files illegally at faster speeds, Defendant obliged them in exchange

for higher rates. In other words, the greater the bandwidth its subscribers required for pirating content, the more money Defendant made.

IV. JOINDER

34. Pursuant to Fed. R. Civ. P. 20(a)(1), each of the Plaintiffs was properly joined because, as set forth in more detail below, the Plaintiffs assert that the infringements complained of herein by Defendant were part of a series of transactions and occurrences involving Defendant's subscribers, namely Defendant's subscribers widespread use of piracy applications to pirate Plaintiffs' Work and Defendant's failure to take any measures to stop its subscribers' infringing activities.

V. FACTUAL BACKGROUND

A. The Plaintiffs Own the Copyrights to the Works

35. As shown in Exhibit "A," the Plaintiffs are the registered owners of the copyrights for the Works.

36. Plaintiffs are the owners and/or beneficial owners of the exclusive rights to the copyrights for the Works.

37. Each of the Works contains original material that is copyrightable subject matter under the laws of the United States.

38. The Works are currently offered for sale in commerce.

39. Defendant had notice of Plaintiffs' rights through copyright notices that appeared on the packaging for the Works or the credits.

40. Defendant also had notice of Plaintiffs' rights through notices that were sent to Defendant's abuse contact.

B. Defendant's subscribers Infringe Plaintiffs' Copyrights.

41. Defendant's subscribers infringe Plaintiffs' exclusive rights of reproduction, publication and distribution using BitTorrent.

42. Within the last three years, Plaintiffs discovered Defendant's involvement in its subscribers' piracy. Prior to such time, Plaintiffs could not discover and could not have reasonably discovered Defendant's involvement in its subscribers' piracy.

43. BitTorrent is one of the most common peer-to-peer file sharing protocols (in other words, set of computer rules) used for distributing large amounts of data.

44. The BitTorrent protocol's popularity stems from its ability to distribute a large file without creating a heavy load on the source computer and network. In short, to reduce the load on the source computer, rather than downloading a file from a single source computer (one computer directly connected to another), the BitTorrent protocol allows users to join a "swarm" of

host computers to download and upload from each other simultaneously (one computer connected to numerous computers).

45. In a report from January 2011, a survey conducted by the firm Envisional estimated that 11.4 percent of all Internet traffic involved the unauthorized distribution of non-pornographic copyrighted content via BitTorrent. *See* Envisional, “Technical report: An Estimate of Infringing Use of the Internet,” January 2011, https://www.ics.uci.edu/~sjordan/courses/ics11/case_studies/Envisional-Internet_Usage-Jan2011-4.pdf [last accessed August 30, 2021].

46. A more recent study by Sandvine determined that file-sharing accounts for 3 percent of global downstream and 22 percent of upstream traffic, with 97% of that traffic in turn being BitTorrent. *See* Sandvine, “The Global Internet Phenomena Report”, October 2018, <https://www.sandvine.com/hubfs/downloads/phenomena/2018-phenomena-report.pdf> [last accessed on August 30, 2021].

1) The Initial Seed, Torrent, Hash and Tracker

47. A BitTorrent user that wants to upload the new file, known as an “initial seeder,” starts by creating a “torrent” descriptor file using, for example, the Client he or she installed onto his or her computer.

48. The initial user or seeder of a file used a process referred to as “ripping” to create a copy of motion pictures from either Blu-ray or legal streaming services.

49. The initial seeder often modifies the file title of the Work to include a wording such as “FGT,” “RARBG” or “YTS” in the title of the torrent files and file copies in order to enhance a reputation for the quality of his or her torrent files and attract users to his or her piracy website.

50. The Client takes the target computer file, the “initial seed,” here the copyrighted Work, and divides it into identically sized groups of bits known as “pieces.”

51. The Client then gives each one of the computer file’s pieces, in this case, pieces of the copyrighted Works, a random and unique alphanumeric identifier known as a “hash” and records these hash identifiers in the torrent file.

52. When another peer later receives a particular piece, the hash identifier for that piece is compared to the hash identifier recorded in the torrent file for that piece to test that the piece is error-free. In this way, the hash identifier works like an electronic fingerprint to identify the source and origin of the piece and that the piece is authentic and uncorrupted.

53. Torrent files also have an "announce" section, which specifies the URL (Uniform Resource Locator) of a "tracker," and an "info" section, containing (suggested) names for the files, their lengths, the piece length used, and the hash identifier for each piece, all of which are used by Clients on peer computers to verify the integrity of the data they receive.

54. The "tracker" is a computer or set of computers that a torrent file specifies and to which the torrent file provides peers with the URL address(es).

55. The tracker computer or computers direct a peer user's computer to other peer user's computers that have particular pieces of the file, here the copyrighted Work, on them and facilitates the exchange of data among the computers.

56. Depending on the BitTorrent Client, a tracker can either be a dedicated computer (centralized tracking) or each peer can act as a tracker (decentralized tracking.)

2) Torrent Sites

57. "Torrent sites" are websites that index torrent files that are currently being made available for copying and distribution by people using the BitTorrent protocol. There are numerous torrent websites including the notorious YTS, The Pirate Bay and RARBG websites. These websites were noted by the Office of the

United States Trade Representative (“USTR”) as examples of Notorious Markets defined as an online marketplace reportedly engaged in and facilitating substantial piracy. *See* USTR, 2014 Out-of-Cycle Review of Notorious Markets, Mar. 5, 2015, pg. 17, Available at https://ustr.gov/sites/default/files/2014%20Notorious%20Markets%20List%20-%20Published_0.pdf [last accessed on May 7, 2021]; *see also* USTR, 2018 Out-of-Cycle Review of Notorious Markets, April 2019, pgs. 24, 27-28, Available at https://ustr.gov/sites/default/files/2018_Notorious_Markets_List.pdf [accessed on May 7, 2021].

3) Defendant’s subscribers access torrent sites from IP addresses provided by Defendant.

58. Defendant’s subscribers accessed torrent sites and/or used notorious piracy applications such as Popcorn Time to upload and download copies of Plaintiffs’ copyrighted Works from IP addresses controlled by Defendant including but not limited to the Earthlink IP addresses.

59. For example, Defendant’s subscribers registered for accounts with the notorious piracy website YTS using their Earthlink email addresses and used said accounts to access the torrent website YTS to download d files for copyright protected content.

4) Uploading and Downloading a Work Through a BitTorrent Swarm

60. Once the initial seeder has created a torrent and uploaded it onto one or more torrent sites, then other peers begin to download and upload the computer file to which the torrent is linked (here the copyrighted Works) using the BitTorrent protocol and BitTorrent Client that the peers installed on their computers.

61. The BitTorrent protocol causes the initial seeder's computer to send different pieces of the computer file, here the copyrighted Work, to the peers seeking to download the computer file.

62. Once a peer receives a piece of the computer file, here a piece of the copyrighted Work, it starts transmitting that piece to the other peers. Defendant transmits the pieces to the peers.

63. In this way, all of the peers and seeders are working together in what is called a "swarm."

64. Here, the Defendant's subscribers participated in a swarm and directly interacted and communicated with other members of the swarm through digital handshakes, the passing along of computer instructions, uploading and downloading, and by other types of transmissions, Plaintiffs' Works.

65. Defendant distributed the subscribers' transmissions to other members of the swarm on behalf of its subscribers.

66. Once a peer has downloaded the full file, the BitTorrent Client reassembles the pieces and the peer is able to view the movie. Also, once a peer has downloaded the full file, that peer becomes known as "an additional seed," because it continues to distribute the copyrighted Work.

5) The Plaintiffs' Computer Investigator Identified Defendant's subscribers at Earthlink IP Addresses as Participants in Swarms That Were Distributing Plaintiffs' Copyrighted Works.

67. The Plaintiffs engaged Maverickeye UG ("MEU") to identify the IP addresses that are being used by those people that are using the BitTorrent protocol and the Internet to reproduce, distribute, display or perform the Plaintiffs' copyrighted Works.

68. MEU used forensic software to enable the scanning of peer-to-peer networks for the presence of infringing transactions.

69. MEU extracted the resulting data emanating from the investigation, reviewed the evidence logs, and isolated the transactions and the IP addresses associated therewith for the files identified by the SHA-1 hash value of the Unique Hash Number.

70. MEU logged information including the IP addresses, Unique Hash Numbers, and hit dates that show that Defendant's subscribers distributed pieces of the Plaintiffs' copyrighted Works identified by the Unique Hash Number.

71. Defendant's subscribers' computers used the identified IP addresses to connect to the investigative server in order to transmit a full copy, or a portion thereof, of a digital media file identified by the Unique Hash Number.

72. MEU's agent analyzed each BitTorrent "piece" distributed by the IP addresses and verified that re-assembly of the pieces using a BitTorrent Client results in a fully playable digital motion picture of the Works.

73. MEU's agent viewed the Works side-by-side with the digital media file that correlates to the Unique Hash Number and determined that they were identical, strikingly similar or substantially similar.

74. For example, MEU logged records showing that the Work *Once Upon a Time in Venice* was shared under the file name "Once.Upon.a.Time.in.Venice.2017.HDRip.1.46Gb.MegaPeer.avi" over 4000 times from IP address 24.110.28.41.

C. Defendant's subscribers reproduced, distributed and publicly performed copies of Plaintiffs' Works from the Earthlink IP addresses.

75. Defendant's subscribers downloaded and therefore reproduced copies of each of Plaintiffs' Works over network connections provided by Defendant.

76. Defendant's subscribers streamed copies of the Work and therefore publicly performed copies of each of Plaintiffs' Works over network connections provided by Defendant.

77. Defendant's subscribers shared copies of the Work with other peers in the Swarm and therefore distributed copies of each of Plaintiffs' Works over network connections provided by Defendant.

78. For example, Defendant's subscriber at IP address 24.110.28.41 downloaded a copy of the Work *Once Upon a Time in Venice* and distributed thousands of copies of the Work.

D. Defendant's subscribers knew the Copyright Management Information included in the files they distributed to other peers had been removed or altered without the authority of Plaintiffs.

79. A legitimate file copy of each of the Works includes copyright management information ("CMI") indicating the title.

80. The initial seeders of the infringing file copies of Plaintiffs' Works added wording to the file titles to "brand" the quality of piracy files he or she released and attract further traffic to his or her website.

81. For example, the initial seeder of the infringing file copies of the Works *Once Upon a Time in Venice* added the wording "MEGA" to the file titles

to brand the quality of piracy files he or she released and attract further traffic to the MEGA piracy websites/cyber locker services.

82. The word MEGA or HDRip is not included in the file title of legitimate copies or streams of the Works. The initial seeder of the Work altered the title to falsely include these words in the CMI.

83. The file copies Defendant's subscribers distributed to other peers in the Swarm included the altered CMI in the file title.

84. Defendant's subscribers knew that the website or peer from which they obtained their torrent files was distributing illegal copies of the Work.

85. Defendant's subscribers knew that the entity included in the false or altered CMI such as MEGA or YTS was not the author of Plaintiffs' Works.

86. Defendant's subscribers knew that the entity included in the false or altered CMI such as MEGA or YTS was not a licensed distributor of Plaintiffs' Works. Indeed, the MEGA website was the successor to the website MegaUpload that was taken down by the U.S. government for criminal copyright infringement. Kim Dotcom, the operator of MegaUpload, was indicted for criminal copyright infringement. Further, some of the subscribers registered for accounts with the piracy website YTS using their Earthlink email addresses.

87. Defendant's subscribers knew that the false or altered CMI in the file names was false.

88. Defendant's subscribers knew that the false or altered CMI in the titles would induce, enable, facilitate or conceal infringements of the Works when they distributed the false CMI, altered CMI or the Work including the false or altered CMI.

89. Namely, Defendant's subscribers knew that other recipients would see the file titles and use the altered CMI to go to the websites such as MEGA, YTS or RARBG from where the torrent files originated to obtain unlicensed copies of the Work.

90. By providing the altered CMI to others, Defendant's subscribers induced, enabled and facilitated further infringements of the Work.

91. MEU determined that Defendant's subscribers distributed Plaintiffs' Works with altered CMI.

E. Defendant had knowledge that its subscribers were infringing Plaintiffs' Works and distributing file copies of the Works with altered CMI but continued to provide service to their subscribers.

92. Plaintiffs engaged MEU to generate Notices of infringements ("Notices") styled per 17 U.S.C. §512(c)(3) of the Digital Millennium Copyright

Act (“DMCA”) to be sent to service providers of IP addresses where MEU confirmed infringement of copyright protected content.

93. Each Notice included at least the name of the copyright owner, the title of the Work, the manner by which it was infringed, the infringing file name which includes the altered Copyright Management Information, the IP address and port number at where infringement was confirmed and the time of infringement down to the second. *See Exhibit “B” (excerpt below).*

Protocol: BITTORRENT
Infringed Work: Once Upon A Time in Venice
Infringing FileName: Once.Upon.a.Time.in.Venice.2017.HDRip.1.46Gb.MegaPeer.avi
Infringing FileSize: 1568288768
Infringer's IP Address: 24.110.28.41
Infringer's Port: 56925
Initial Infringement Timestamp: 2018-11-20 00:16:36

94. MEU determines the proper service provider assigned the IP addresses at issue from publicly available information from ARIN.

95. MEU determines the proper abuse contact email address for the service provider assigned the IP addresses from the ARIN records, DMCA designated directory and Defendant’s website.

96. Plaintiffs’ agent sends the Notice to the abuse contact email address.

97. Defendant is required to update the WHOIS records for the IP addresses it reassigns or reallocates per its registration agreement with ARIN.

98. Plaintiffs' agent has sent over 3,700 Notices to Defendant and/or Windstream concerning infringements of copyright protected Works including Plaintiffs' at the Earthlink IP addresses.

99. For example, Plaintiffs' agent sent over 450 Notices to Defendant and/or Windstream concerning infringement of the motion picture *Once Upon a Time in Venice* at Earthlink IP addresses assigned to Defendant from ARIN.

100. For example, Plaintiffs' agent sent over 200 Notices to Defendant and/or Windstream concerning infringement of the motion pictures *I Feel Pretty* at Earthlink IP addresses assigned to Defendant from ARIN.

101. Plaintiffs' agent sent over 200 Notices to Defendant and/or Windstream concerning observed infringements at IP addresses 24.110.28.41.

102. Upon information and belief, other rightsholders had similar Notices sent to Defendant and/or Windstream concerning infringing activity at the Earthlink IP addresses.

103. Defendant failed to terminate the subscribers of the accounts associated with these Earthlink IP addresses or take any meaningful action such as giving written warnings, suspensions of service, or null-routing service in response to these Notices.

104. Upon information and belief, Defendant often failed to even forward the Notices to their subscribers.

105. Defendant continued to provide service to the subscribers despite knowledge that its subscribers were using the service to engage and facilitate massive piracy of copyright protected Works including the Copyright Plaintiffs.’

106. Plaintiffs’ counsel sent first and second letters to Defendant detailing these concerns and pointing to detailed examples of prolific piracy behavior by subscribers that Defendant completely ignored. *See* Exhibit “C.”

107. Defendant’s failure to terminate or take any meaningful action against its subscribers resulted in a cascade of piracy of Plaintiffs’ Works.

F. Defendant controls the conduct of its subscribers.

108. Defendant can terminate the accounts of their subscribers at any time.

109. Defendant has the ability to determine whether its subscriber’s service is being used for operating file-sharing programs such as BitTorrent and whether the subscriber’s service is being used to distribute copies of copyright protected content.

110. Defendant states that it “...may use automatic data collection technologies to collect or generate certain Personal Information about your equipment, browsing actions, and patterns, including...Details about your visits to

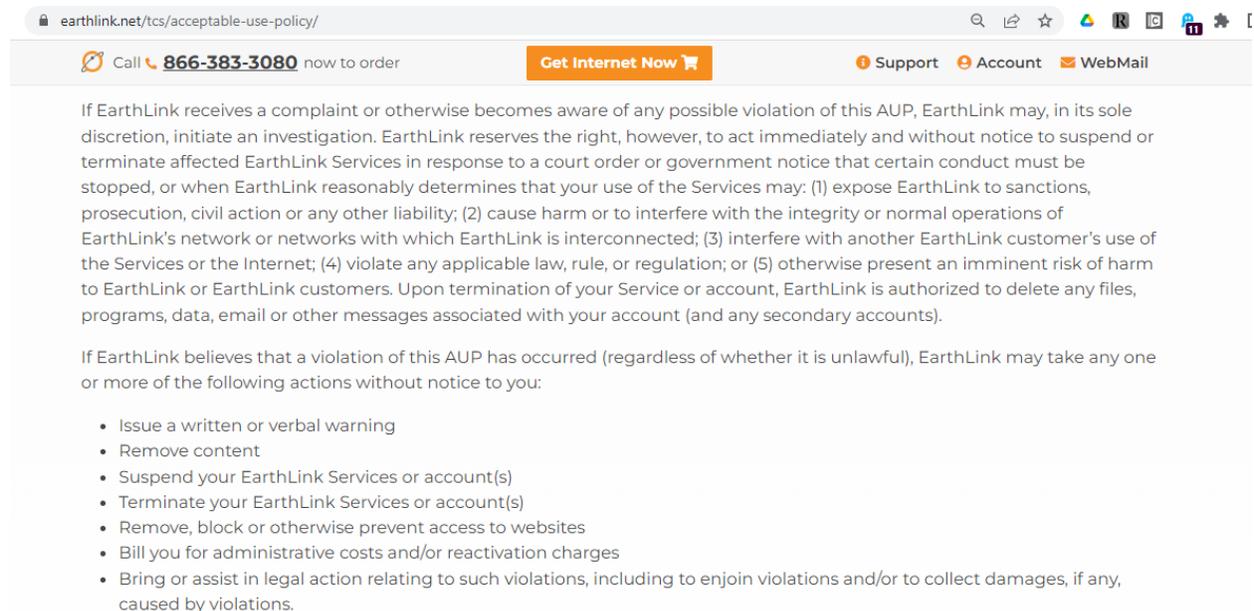
our Services, including traffic data, location data, logs, and other communication data and the resources that you access and use on our Services.”

<https://www.earthlink.net/tcs/privacy-policy/> [last accessed on May 12, 2022].

111. Upon information and belief, Defendant promptly terminates subscriber accounts for committing any prohibited or abusive activities or failing to pay for the Service.

112. Indeed, Defendant explicitly states that they have the right to suspend or terminate a subscriber’s account without notice if it becomes aware of any possible violation of its acceptable use policy (“AUP”).

<https://www.earthlink.net/tcs/acceptable-use-policy/> [last accessed on May 12, 2022].



G. Defendant does not have a safe harbor from liability.

113. As part of the DMCA, Congress created a safe harbor that limits the liability of a service provider for copyright infringement when their involvement is limited to, among other things, “transmitting, routing, or providing connections for, material through a system or network controlled or operated by or for the service provider.” 17 U.S.C. § 512(a). To benefit from this safe harbor, however, an ISP must demonstrate that it “has adopted and reasonably implemented...a policy that provides for the termination in appropriate circumstances of subscribers...who are repeat infringers.” 17 U.S.C. § 512(i)(1)(A).

114. Defendant does not have a policy of terminating repeat infringers consistent with § 512(i)(1)(A).

115. Plaintiffs’ agent has sent over 3,700 Notices to Defendant concerning infringements at IP addresses Defendants publish as assigned to them.

116. Defendant failed to terminate the accounts and/or take any meaningful actions against its subscribers in response to the Notices consistent with a reasonably implemented policy for termination of subscribers and account holders of the service provider’s system or network who are repeat infringers necessary to support a safe harbor from liability (“policy”).

117. Below are examples of Defendant's failure to reasonably implement the requisite Policy.

118. Defendant failed to terminate the account and/or take any meaningful action against their subscribers at IP addresses 24.110.28.41 and 64.131.220.93 even after Plaintiffs' agent sent over 100 Notices for each of these IP addresses to Defendant and/or Windstream.

H. The copyright infringements arise from Defendant's advertisements.

119. At all relevant times, Defendant's subscribers have paid substantial subscription fees for access to Defendant's high-speed Internet network.

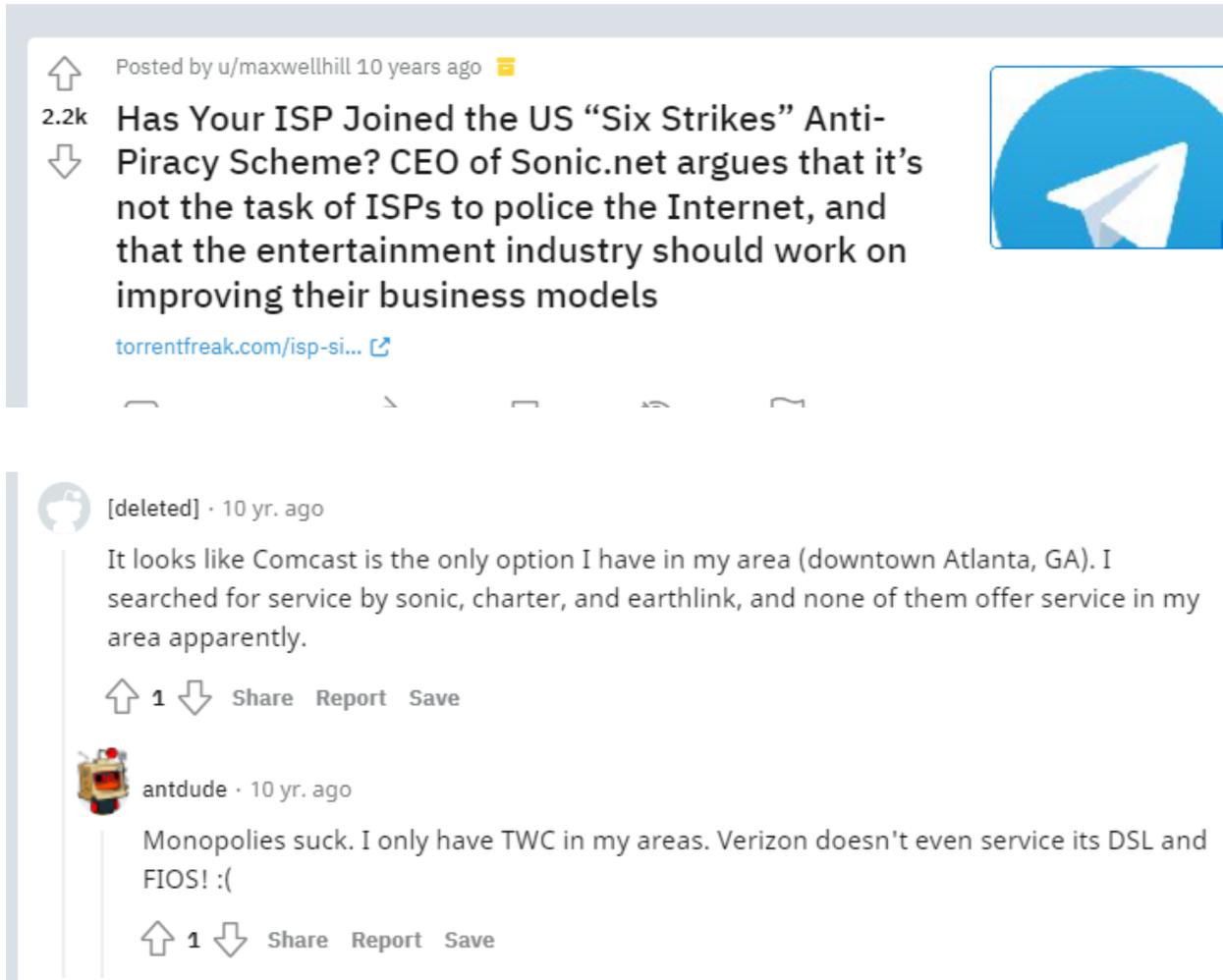
120. Defendant offers a tiered pricing structure so its subscribers can have even higher downloading and uploading speed for a higher monthly fee.

121. Defendant's subscribers are motivated to become subscribers from Defendants' advertisements.

122. Defendant's subscribers are motivated to become subscribers from the knowledge of Defendants' practice of ignoring notices of infringements or failing to take any meaningful action.

123. For example, a Reddit forum was dedicated to determining which ISPs had joined the "Six Strikes" Anti-piracy program. Some commentors noted that Earthlink had not joined and looked to seek service from Earthlink.

https://www.reddit.com/r/technology/comments/xo8z8/has_your_isp_joined_the_us_six_strikes_antipiracy/ [last accessed on May 12, 2022].



The screenshot shows a Reddit thread with two comments. The top comment is by user 'u/maxwellhill' and has 2.2k upvotes. The bottom comment is by user 'antdude' and has 1 upvote. Both comments discuss ISP monopolies and service availability in Atlanta, GA.

↑ Posted by u/maxwellhill 10 years ago

2.2k ↓ **Has Your ISP Joined the US “Six Strikes” Anti-Piracy Scheme? CEO of Sonic.net argues that it’s not the task of ISPs to police the Internet, and that the entertainment industry should work on improving their business models**

torrentfreak.com/isp-si...

↑ [deleted] · 10 yr. ago

It looks like Comcast is the only option I have in my area (downtown Atlanta, GA). I searched for service by sonic, charter, and earthlink, and none of them offer service in my area apparently.

↑ 1 ↓ Share Report Save

 antdude · 10 yr. ago

Monopolies suck. I only have TWC in my areas. Verizon doesn't even service its DSL and FIOS! :(

↑ 1 ↓ Share Report Save

VI. CLAIM FOR RELIEF

(Contributory Copyright Infringement)

124. Plaintiffs re-alleges and incorporate by reference the allegations contained in each of the foregoing paragraphs.

125. Plaintiffs are the owners of the copyrights in the Works.

126. Defendants' subscribers directly infringe Plaintiffs' exclusive rights in the copyright in the Works including Plaintiffs exclusive rights of reproduction, distribution and public performance.

127. Through its activities, Defendant knowingly and intentionally took steps that are substantially certain to result in direct infringement of Copyright Plaintiffs' Copyrighted Works, and that have resulted in such direct infringement in violation of Plaintiffs' copyrights.

128. Despite Defendant's knowledge that its subscribers were using its service to engage in widescale copyright infringements, Defendant has failed to take reasonable steps to minimize the infringing capabilities of its service.

129. Defendants' actions of providing transmission, routing, or connections for said copies of the Works to its subscribers is a direct and proximate cause of the infringements of Plaintiffs' Works.

130. Defendant is liable as a contributory copyright infringer for the infringing acts of its subscribers. Defendant has actual and constructive knowledge of the infringing activity of its subscribers. Defendant knowingly caused and otherwise materially contributed to these unauthorized public performances, distributions and reproductions of Plaintiffs' Works.

131. Defendant's contributory infringements were committed "willfully" within the meaning of 17 U.S.C. § 504(c)(2).

132. By engaging in the contributory infringement alleged in this Complaint, Defendant deprived not only the producers of the Works from income that could have been derived when the respective film was shown in public theaters and offered for sale or rental, but also all persons involved in the production and marketing of this film, numerous owners of local theaters and retail outlets and their employees, and, ultimately, the local economy. Defendant's misconduct therefore offends public policy.

133. Plaintiffs are further entitled to costs and reasonable attorneys' fees.

134. As a direct and proximate result of the infringement to which Defendant knowingly and materially contributes and contributed, Plaintiffs are entitled to injunctive or other equitable relief as provided by, for example, 17 U.S.C. §§ 512(j)(1)(A) and (B) including but not limited to an order restraining the

Defendant from providing access to infringing material or activity residing at movie piracy websites including but not limited to: (a) YTS; (b) Piratebay; (c) Rarbg; and (d) 1337x; and/or taking reasonable steps to block access to said movie piracy websites.

VII. SECOND CLAIM FOR RELIEF

(Vicarious Infringement)

135. Plaintiffs re-allege and incorporate by reference the allegations contained in each of the foregoing paragraphs 1-123.

136. Plaintiffs are the owners of the copyrights in the Works.

137. Defendants' subscribers directly infringe Plaintiffs' exclusive rights in the copyright in the Works including Plaintiffs exclusive rights of reproduction, distribution and public performance.

138. Defendant is vicariously liable for the infringing acts of its subscribers.

139. Defendant has refused to take any meaningful action to prevent the widespread infringement by its subscribers.

140. Defendant could take simple measures such as null-routing IP addresses assigned to its subscribers to stop unauthorized infringements of Plaintiffs' Works by its subscribers but purposefully refuses to do so.

141. Defendant could take simple measures such as sending warning notices to subscribers of the IP addresses to stop further unauthorized infringements of Plaintiffs' Works by its subscribers but purposefully refuses to do so.

142. Defendant could take simple measures such as temporarily suspending Internet service of the subscribers of the IP addresses to stop further unauthorized distribution of Plaintiffs' Works but purposefully refuses to do so.

143. Defendant could take simple measures such as terminating Internet service of the subscribers of the IP addresses to stop further unauthorized distribution of Plaintiffs' Works after multiple notices but purposefully refuses to do so.

144. Defendant has the right and ability to supervise and control the infringing activities that occur through the use of its service, namely from the Earthlink IP addresses, and at all relevant times has derived a direct financial benefit from the infringement of Plaintiffs' copyrights.

145. Indeed, the ability of subscribers to use Defendant's service to pirate copyright protected content including Plaintiffs' Works is a powerful draw for users of Defendant's service.

146. Defendant's subscribers are also motivated to become subscribers of Defendant due to their knowledge that they can pirate copyright protected content including Plaintiffs' Works without any consequence because of Defendant's policy of failing to take meaningful action in response to notices of infringement.

147. Some of Defendant's subscribers are so emboldened to use Defendant's service to engage in piracy that they use their Earthlink email addresses to register for service with notorious piracy websites such as YTS.

148. Defendant directly benefits from its subscribers' piracy of Plaintiffs Works. As Defendant's subscribers use more bandwidth for unlimited piracy, Defendant's subscribers purchase more expensive data plans.

149. Defendant is therefore vicariously liable for the unauthorized reproduction, distribution, and public performance of Plaintiffs' Works.

VIII. THIRD CLAIM FOR RELIEF

(Secondary Liability for Digital Millennium Copyright Act Violations)

150. Plaintiffs re-allege and incorporate by reference the allegations contained in each of the foregoing paragraphs 1-123.

151. Defendant's subscribers knowingly and with the intent to induce, enable, facilitate, or conceal infringement of the Plaintiffs' copyright protected Works, distributed copyright management information ("CMI") that falsely

included wording such as ‘RARBG,’ ‘YTS’ and ‘MEGA’ in violation of 17 U.S.C. § 1202(a)(2).

152. Defendant’s subscribers knowingly and with the intent to induce, enable, facilitate, or conceal infringement of the copyright protected Works distributed CMI that falsely included the wording such as ‘RARBG,’ ‘YTS’ and ‘MEGA’ in violation of 17 U.S.C. § 1202(a)(2).

153. Defendant’s subscribers knowingly and with the intent to induce, enable, facilitate, or conceal infringement of the copyright protected Works distributed CMI that falsely included the wording such as ‘RARBG,’ ‘YTS’ and ‘MEGA’ in violation of 17 U.S.C. § 1202(a)(2).

154. Defendant’s subscribers, without the authority of Plaintiffs or the law, distributed removed or altered CMI knowing that the CMI had been removed or altered to include wording such as ‘RARBG’, ‘MEGA’ and ‘YTS’ without the authority of the Plaintiffs and knowing, or having reasonable grounds to know, that it will induce, enable, facilitate, or conceal infringement of Plaintiffs’ Copyright protected Works in violation of 17 U.S.C. § 1202(b)(2).

155. Defendant’s subscribers, without the authority of Plaintiffs or the law, distributed Plaintiffs’ Copyright protected Works knowing that the CMI had been removed or altered to include wording such as ‘RARBG’, ‘MEGA’ and ‘YTS’,

and knowing, or having reasonable grounds to know, that it will induce, enable, facilitate, or conceal infringement of the copyright protected Works in violation of 17 U.S.C. § 1202(b)(3).

156. Particularly, Defendant’s subscribers knew that the CMI in the file names of the pieces of the Work had been altered to include wording such as “RARBG,” “MEGA” or “YTS.”

157. Particularly, the Defendant’s subscribers distributed the file names that included CMI that had been altered to include the wording “RARBG,” “MEGA” or “YTS.”

158. Defendant’s subscribers knew that the wording “MEGA” originated from notorious movie piracy website for which its founder Kim Dotcom was indicted for criminal copyright infringement and widely publicized incident.

159. Defendant’s subscribers knew that the wording “YTS” originated from notorious movie piracy website for which they have registered accounts.

160. Defendant’s subscribers knew that the wording “RARBG” originated from notorious movie piracy website for which they have registered accounts.

161. Defendant’s subscribers’ acts constitute violations under the Digital Millennium Copyright Act (“DMCA violation”), 17 U.S.C. § 1202.

162. Through its conduct, Defendant knowingly and intentionally induced, enticed, persuaded, and caused its subscribers to constitute DMCA violations.

163. Through its activities, Defendant knowingly and intentionally takes or took steps that are substantially certain to result in its subscribers committing DMCA violations, and that have resulted in DMCA violations.

164. Despite Defendant's knowledge that its subscribers use its service to commit DMCA violations, Defendant has failed to take reasonable steps to minimize the capabilities of its service to facilitate DMCA violations.

165. Defendant is secondarily liable for the DMCA violations of its subscribers. Defendant has actual and constructive knowledge of its subscribers' DMCA violations. Defendant knowingly caused and otherwise materially contributed to these DMCA violations.

166. Defendant is vicariously liable for the DMCA violations of its subscribers. Defendant has the right and ability to supervise and control the DMCA violations that occur through the use of its service, and at all relevant times has derived a direct financial benefit from the DMCA violations complained of herein. Defendant has refused to take any meaningful action to prevent the widespread DMCA violations by its subscribers. Indeed, the ability of Defendant's subscribers to use Defendant's service to engage in widespread DMCA violations while

pirating content without having their services terminated or even suspended despite multiple notices being sent to Defendant acts as a powerful draw for subscribers of Defendant's service. Defendant is therefore vicariously liable for the DMCA violations.

167. Indeed, some of Defendant's subscribers are so emboldened to use Defendant's service to engage in piracy and widespread DMCA violations that they use their Earthlink email addresses to register for service with notorious piracy websites such as YTS.

168. Plaintiffs are entitled to an injunction to prevent Defendant from engaging in and/or contributing to further violations of 17 U.S.C. § 1202.

169. Plaintiffs are entitled to recover from Defendant the actual damages suffered by Plaintiffs and any profits Defendant has obtained as a result of its wrongful acts that are not taken into account in computing the actual damages. Plaintiffs are currently unable to ascertain the full extent of the profits Defendant has realized by its violations of 17 U.S.C. § 1202.

170. Plaintiffs are entitled to elect to recover from Defendant statutory damages for their violations of 17 U.S.C. § 1202.

171. Plaintiffs are further entitled to costs and reasonable attorneys' fees.

IX. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully requests that this Court:

(A) permanently enjoin Defendant from continuing to contribute to its subscribers' infringements of the Plaintiffs' copyrighted Works and DMCA violations;

(B) order Defendant to adopt a policy that provides for the prompt suspension of service for subscribers for which Defendants receive more than three unique notices of infringements of copyright protected Works within 72 hours without receiving a counter notification from said subscriber;

(C) order Defendant to block subscribers from accessing notorious piracy websites of foreign origin that are listed in the annual trade report of Notorious Foreign Markets published by the United States Government on all networks under their control to prevent further pirating of Plaintiffs' Works via the BitTorrent protocol;

(D) order the Defendant to disclose to Plaintiffs the identifications of the subscribers who used and use Defendant's service to infringe Plaintiffs' Works on an ongoing basis after said subscribers are provided notice as required by 47 U.S.C. § 551;

(E) award the Plaintiffs their actual damages from the copyright infringements

and Defendant's profits in such amount as may be found; alternatively, at Plaintiffs' election, for statutory damages pursuant to 17 U.S.C. § 504(a) and (c) against Defendant;

(F) award the Plaintiffs their actual damages from the DMCA violations and Defendant's profits in such amount as may be found; or, in the alternative, at Plaintiff's election, for maximum statutory damages of \$25,000 for each DMCA violation pursuant to 17 U.S.C. § 1203(c);

(G) award the Plaintiffs their reasonable attorneys' fees and costs pursuant to 17 U.S.C. § 505 and/or 17 U.S.C. § 1203(b)(5); and

(F) grant the Plaintiffs any and all other and further relief that this Court deems just and proper.

X. JURY DEMAND

The Plaintiffs hereby demand a trial by jury on all issues properly triable by jury.

Dated: June 28, 2022

Respectfully submitted,

/s/ Joel B. Rothman

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1.C

Counsel for Stross hereby certifies that this pleading was prepared in Times New Roman font, 14 Point, in compliance with Local Rule 5.1.C.

DATED: June 28, 2022

Respectfully submitted,

/s/ Joel B. Rothman

JOEL B. ROTHMAN

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