

Civil Action No.: 5:17-cv-512

Defendant.

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3. This is a copyright infringement and breach of contract case in which the Defendant is infringing Epic's copyrights by injecting unauthorized computer code into the copyright protected code of Epic's popular Fortnite® video game.¹ In so doing, Defendant is creating unauthorized derivative works of Fortnite by modifying the game code and, thus, materially altering the game that the code creates and the experience of those who play it.

4. Defendant's cheating, and his inducing and enabling of others to cheat, is ruining the game playing experience of players who do not cheat. The software that Defendant uses to cheat infringes Epic's copyrights in the game and breaches the terms of the agreements to which Defendant agreed in order to have access to the game.

5. As a result of his conduct, Defendant has been banned from playing Fortnite at least nine times. He nevertheless continues to play by creating multiple new accounts using false names to circumvent these bans. He has also continued to cheat and to induce others to cheat at Fortnite.

THE PARTIES, JURISDICTION, AND VENUE

6. Epic is a corporation duly organized and existing under the laws of the state of Maryland. Epic is registered to do business in North Carolina and has its principal place of business in Wake County, North Carolina.

7. On information and belief, Defendant Charles Vraspir, a.k.a. "Jorealleen," is a citizen and resident of Minnesota.

8. This Court has jurisdiction over the subject matter of Plaintiff's federal claims under 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the Copyright Act, 17 U.S.C. §§ 106 and 501, *et. seq.* This Court has supplemental jurisdiction over Plaintiff's related state law claims under 28 U.S.C. § 1367(a).

¹ Game names that are registered trademarks of Epic are shown with the federal registration symbol the first time each game name appears and without it thereafter.

9. This Court has personal jurisdiction over Defendant because, until recently, he lived and worked in this District. This Court also has personal jurisdiction over Defendant because, as described below, Defendant agreed to be subject to the exercise of jurisdiction over him by the courts in this District. This Court also has personal jurisdiction over Defendant because Defendant has purposefully availed himself of the privileges of conducting activities and doing business in North Carolina and in this District, thus invoking the benefits and protections of North Carolina's laws by, among other things, entering into contractual agreements with Epic in North Carolina, and repeatedly accessing Epic's servers, which are located in this District.

10. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1400(a) because this is a District in which a substantial part of the events giving rise to Plaintiff's claims occurred, in which Defendant committed acts of copyright infringement, and/or where Plaintiff's injuries were suffered. Venue is also proper in this District because, as described below, Defendant consented to venue in this District.

FACTS APPLICABLE TO ALL CLAIMS

Epic and Fortnite

11. Founded in 1991, Epic is a Cary, North Carolina-based developer and publisher of computer games and content creation software. Epic is recognized worldwide as the creator of the Unreal®, Gears of War®, and Infinity Blade® series of games. Epic is also globally known as the creator of the Unreal Engine® content creation engine software. More recently, Epic has released the multiplayer online battle arena game Paragon®, the virtual reality game Robo Recall®, and Fortnite.

12. Fortnite is a co-op survival and building action game that has been described as being "about exploration, scavenging gear, building fortified structures and fighting waves of

encroaching monsters hellbent on killing you and your friends.”²

13. In Fortnite, players may join together online to build forts, weapons, and traps in an effort to rebuild and defend towns left vacant in the wake of “the Storm” from the monsters that populate the Fortnite world.

14. Fortnite was first released in a limited manner in October 2013.

15. Fortnite was broadly released on July 25, 2017. Fortnite’s free-to-play “Battle Royale” game mode was released to the public on September 26, 2017.

16. Fortnite has been extremely popular. It already has over seven million players and is on track to be Epic’s most successful game yet. (A true and correct screen print from the Fortnite page on Epic’s website [available at: <https://www.epicgames.com/fortnite/en-US/buy-now/battle-royale>] that provides a glimpse into Fortnite’s violent and cartoonish world is pictured below at **Figure 1**.)

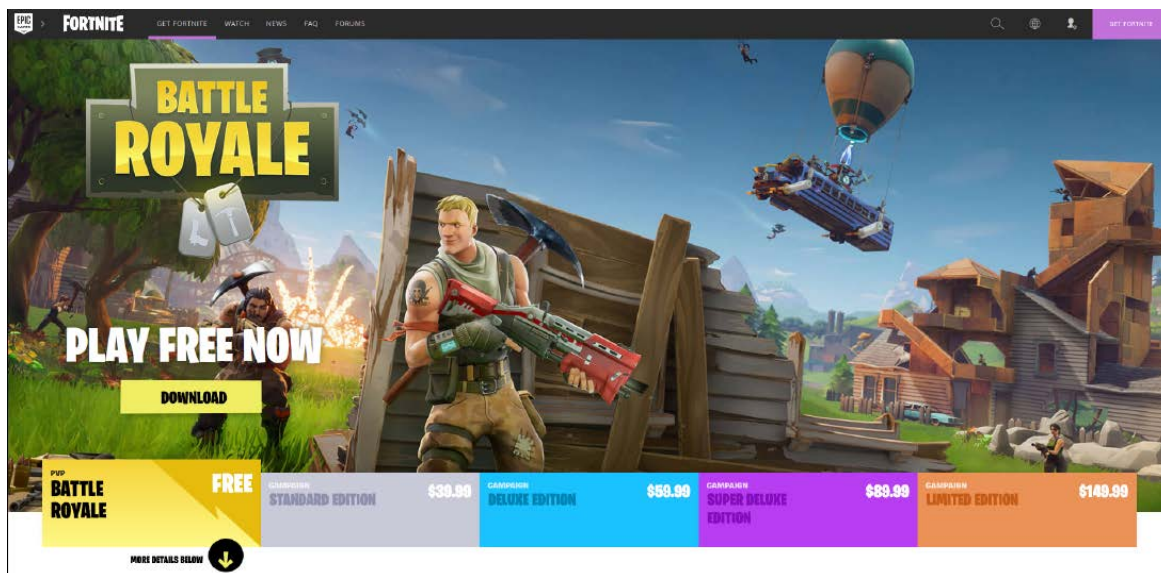


Figure 1.

² Michael McWhertor, *Epic Games’ Fortnite will be the developer’s first Unreal Engine 4 game*, July 12, 2012, available at: <https://www.polygon.com/gaming/2012/7/12/3155138/epic-games-fortnite-will-be-the-developers-first-unreal-engine-4-game>

17. Like other games in the “battle royale” genre, Fortnite’s Battle Royale game mode involves dropping (in Fortnite, by glider from a flying “battle bus,” pictured above) a limited number of players into a large map. Fortnite’s Battle Royale game mode combines Fortnite’s building skills and destructible environments with intense player vs. player (“PvP”) combat. The players battle each other until only one player remains standing. That player wins the game.

18. In designing Fortnite’s Battle Royale game mode, Epic made a conscious choice not to sell items to players that would give any player a competitive advantage in order to ensure a fair playing field for all players.

Epic’s Copyrights in Fortnite

19. Epic is the author and owner of all the rights and title to the copyrights in Fortnite, including without limitation, in its computer software.

20. Epic’s copyrights in various versions of Fortnite’s computer code are the subjects of U.S. Copyright Registration Nos. TXu01-895-864 (dated December 18, 2013), TX008-186-254 (dated July 14, 2015), TX008-254-659 (dated March 3, 2016), and TX008-352-178 (dated December 23, 2016). (True and correct copies of these certificates of registration are attached hereto collectively as **Exhibit A.**)

Epic’s Terms of Service

21. In order to play Fortnite on PC—which is the platform on which Defendant is accessing and cheating at Fortnite in this case—a would-be user must first create an account with Epic. In order to create an account, the would-be user must affirmatively acknowledge that he or she has “read and agree[d] to the Terms of Service” (the “Terms”). (A true and correct copy of the Terms of Service is attached hereto as **Exhibit B.**)

22. The Terms apply to any use of, or access to, Fortnite using one's PC, as, on information and belief, Defendant does in this case.

23. The Terms also apply to any use of Epic's websites by any "guest or registered users . . . including any content, functionality, products, and services offered on or through" Epic's websites. (*See id.* at 1.) This encompasses Epic's Fortnite website and its guests and registered users.

24. The Terms further apply to a user's "use of other Epic services that display or include the[] Terms." (*Id.* at 1.) This also covers Fortnite and those who use it.

25. The Terms request that users read the Terms "carefully" before beginning to access or use Epic's services. (*Id.*)

26. The Terms provide that "[b]y using [Epic's s]ervices, [the user] accept[s] and agree[s] to be bound and abide by these Terms . . ." (*Id.*) The Terms further provide that a user who does not want to agree to the Terms "must not use [Epic's s]ervices." (*Id.*)

27. The Terms include a section on "Governing Law and Jurisdiction," which provides that "[a]ny dispute . . . arising out of or related to these Terms ("Claim") shall be governed by North Carolina law Any legal suit, action, or proceeding arising out of, or related to, a [dispute or claim by the user arising out of or related to the Terms] shall be instituted exclusively in the federal courts of the United States or the courts of North Carolina, in each case located in Wake County." (*Id.* at 4.)

28. This section of the Terms further provides that, by agreeing to the Terms, the user "agree[s] to waive any and all objections to the exercise of jurisdiction over [the user] by such courts and to venue in such courts." (*Id.* at 4.)

29. The Terms explain that the services “including all content, features, and functionality thereof, are owned by Epic, its licensors, or other providers of such material and are protected by United States and international copyright . . . laws.” (*Id.* at 1.)

30. The Terms also inform the user that use and access of certain “software or services . . . may be subject to separate agreement . . . such as end user license agreements.” (*Id.*)

31. The Terms also include an “Intellectual Property Rights” section which sets forth the permissions users have with respect to Epic’s intellectual property and things that users are prohibited from doing. Specifically, the Terms provide that users:

a. are “permitted to use [Epic’s s]ervices for [their] personal, non-commercial use only or legitimate business purposes related to your role as a current or prospective customer of Epic”; **but**

b. **“must not copy, modify, create derivative works of, publicly display, publicly perform, republish, or transmit any of the material obtained through [Epic’s s]ervices, or delete, or alter any copyright, trademark, or other proprietary rights notices from copies of materials from [Epic’s s]ervices”;** and

c. “must not reproduce, sell, or exploit for any commercial purposes any part of [Epic’s s]ervices, access to [Epic’s s]ervices or use of [Epic’s s]ervices or any services or materials available through Epic’s [s]ervices.” (*Id.* at 2.) (emphasis added).

32. The Terms also specifically prohibit anyone to “access or use the [Epic’s services] for any purpose that is illegal or beyond the scope of the . . . intended use [of Epic’s services] (in Epic’s sole judgment).” (*Id.* at 3.)

33. By creating an account with Epic in order to access, download, and play Fortnite, and by using Epic’s services, including, without limitation, by playing Fortnite, Defendant

agreed to be bound by the Terms. And by creating multiple accounts, as Defendant did here, Defendant agreed to the Terms multiple times.

34. The Terms constitute a valid and binding contract between Defendant and Epic.

35. Defendant's conduct described herein violates the Terms and breaches Defendant's agreement with Epic.

The Fortnite End User License Agreement

36. Defendant has been and, on information and belief, continues to be, a registered account holder with Epic and has accessed Fortnite online.

37. In order to play Fortnite, a would-be user must first acknowledge that he or she has read and agreed to abide by the terms in the Fortnite End User License Agreement for PC ("EULA"). (A true and correct copy of the EULA is attached hereto as **Exhibit C.**)

38. The EULA applies to any user who downloads, uses, or "otherwise indicates acceptance" of the EULA. (*Id.* at 1.)

39. Like the Terms, the EULA explicitly requests that individuals read the EULA "carefully." (*Id.* at 1.) The EULA further makes clear that the EULA "is a legal document that explains [the user's] rights and obligations" in connection with the access and use of Fortnite. (*Id.*)

40. The EULA includes a section titled "Governing Law and Jurisdiction" under which the user agrees that the EULA will be deemed to have been made and executed in the State of North Carolina, U.S.A. (*Id.* at 5-6.)

41. This section of the EULA further provides that "[a]ny action or proceeding brought to enforce the terms of this Agreement or to adjudicate any dispute must be brought in the Superior Court of Wake County, State of North Carolina or the United States District Court for the Eastern District of North Carolina." (*Id.* at 6.)

42. Under this section of the EULA, “the user agrees to the exclusive jurisdiction and venue of these courts. . . . [and to] waive any claim of inconvenient forum and any right to a jury trial.” (*Id.*)

43. The EULA grants users “a personal, non-exclusive, non-transferable, non-sublicensable limited right and license to install and use one copy of the Software on a device for [the user’s] personal entertainment use.” (*Id.*)

44. Epic includes a “License Conditions” section in its EULA. (*Id.*) In that section, the EULA specifically defines certain prohibited activities and states that **a player may not:**

- a. use Fortnite “commercially or for a promotional purpose;”
- b. “copy, reproduce, distribute, display, or use [Fortnite] in a way that is not expressly authorized in this Agreement;”
- c. **“reverse engineer, derive source code from, modify, adapt, translate, decompile, or disassemble it or make derivative works based on it;”**
- d. **“remove, disable, circumvent, or modify any proprietary notice or label or security technology included in it;”** or
- e. **“create, develop, distribute, or use any unauthorized software programs to gain advantage in any online or other game modes.”** (*Id.*) (emphasis added.)

45. By accessing, downloading and/or using Fortnite, Defendant agreed to be bound by the EULA.

46. By affirmatively indicating his acceptance of its terms, Defendant also agreed to be bound by the EULA.

47. The EULA constitutes a valid and binding agreement between Epic and Defendant.

48. Defendant's conduct described herein violates the terms of the EULA and breaches Defendant's contract with Epic.

The Defendant and His Unlawful Acts

49. Defendant is a cheater.

50. Defendant is using cheat software ("cheats" or "hacks") to unlawfully modify Fortnite's software so that he has an unfair competitive advantage over other Fortnite players.

51. Cheats give a cheater power to do or see things that others players cannot. For instance, a cheat might enable the cheater to see through solid objects, teleport, impersonate another player by "spoofing" that player's user name, or make moves other players cannot, such as a spin followed by an instant headshot to another player.

52. Nobody likes a cheater. And nobody likes playing with cheaters. These axioms are particularly true in this case.

53. Defendant uses cheats in a deliberate attempt to destroy the integrity of, and otherwise wreak havoc in, the Fortnite game. As Defendant intends, this often ruins the game for the other players, and for the many people who watch "streamers," i.e., players who video stream their gameplay for the entertainment and benefit of others.

54. Defendant is listed as a support/help person on AddictedCheats.net, a cheat provider website (the "cheat provider") that supplies its registered users with cheats and hacks in exchange for money.

55. Defendant encourages others to cheat and to buy subscriptions to support the cheat provider website. He also provides detailed instructions to help cheaters and would-be cheaters obtain and use cheats and hacks from the cheat provider website so that they may use them while playing Fortnite.

56. On information and belief, Defendant writes code for the cheats, which the cheat provider sells to its subscribers.

57. In an effort to adversely impact as many people as possible while playing (and cheating) at Fortnite, Defendant specifically targets streamers. He publicly celebrates in the cheat provider's discussion channel when he successfully stream snipes, i.e., killing streamers as they stream, by posting comments like "Yes I got them!" and "LOL I f*cked them."³

58. When asked what is the point of doing what he is doing, he responded "Because its [sic] fun to rage and see streamers cry about how loaded they are and then get them stomped anyways".

59. Defendant holds himself out as a knowledgeable and experienced hacker, bragging in one online discussion channel that he is "a former mod of ownedcore.com" and has "a LONG history of cheating and hacking . . . nothing left to learn here."

60. Defendant's unlawful conduct may be the result of a misplaced antipathy towards Epic because he was banned from Epic for cheating.

61. He posted on the cheat provider website that he "was sticking to PVE ["player versus enemy," i.e., not against real humans], but [Epic] decided to unleash the beast by banning [him] and making their PVP [player vs. player] F2P [free to play]."

62. Defendant understands the profound harm his cheating, and the cheating he promotes and induces others to commit, can cause a game like Fortnite, effectively killing it.

63. This is demonstrated by something he wrote in a post on the cheat provider website which was addressed to another cheater: "You act as though if you cheat in a certain way that Epic won't care Epic will have to care or their game will die."

³ This word has been altered by the substitution of an asterisk for a vowel so as not to repeat Defendant's foul language in this pleading while still allowing the Court to understand what was written in the actual post.

64. The cheat software used by Defendant (and those whom Defendant induces to use such software) improperly injects unauthorized code into the active memory of the game as it runs. The cheat software manipulates the functionality of the game and gives the cheater an unfair advantage over other players, changing and disrupting the game.

65. This unauthorized modification of the game's code as it runs on the cheater's computer and of the code that is sent back to Epic's servers materially changes both the game's code and the audio-visual aspects of the game generated by the code. These changes create a different version of the Fortnite game than the Fortnite game that is generated by Epic's copyright protected software.

66. In using cheat software to modify the game's code in this way, Defendant and other cheaters who use the cheat create unauthorized derivative works based on Fortnite in violation of the Copyright Act.

67. Use of the cheat software also violates the express terms of both the EULA and the Terms, both of which prohibit any modification of the game and the creation of derivative works based on Fortnite.

68. Defendant has been banned at least nine times for violating the Terms and the EULA. On information and belief, Defendant has circumvented this by creating numerous other accounts under false names and continues to play and cheat at Fortnite.

FIRST CLAIM FOR RELIEF
(Copyright Infringement in violation of
the Copyright Act, 17 U.S.C. §§ 106 and 501, *et seq.*)

69. Epic re-alleges and incorporates fully by reference the allegations in paragraphs 1 through 68 of this complaint, as if set forth fully herein.

70. Epic is the author, creator, and owner of all rights, title, and interest in a number of valid, registered, and enforceable copyrights in Fortnite.

71. These copyrights are the subjects of the copyright registration certificates referenced above and attached hereto as Exhibit A, and are incorporated by reference as if fully set forth herein.

72. Defendant has had and continues to have access to Fortnite.

73. Defendant has infringed and continues to infringe Epic's copyrights in Fortnite by improperly using computer software that injects code into Fortnite's code which then materially modifies and changes Fortnite's code, thereby creating an unauthorized derivative work of Epic's copyrighted Fortnite code.

74. Epic never authorized Defendant to create derivative works based on Fortnite.

75. In creating such unauthorized derivative works, Defendant has infringed and continues to infringe Epic's copyrights and is liable to Epic for direct and willful infringement under 17 U.S.C. § 501, *et seq.*

76. On information and belief, Epic has suffered actual damages, including lost sales and profits as a result of Defendant's infringement.

77. In addition to Epic's actual damages, Epic is entitled to receive any additional profits made by Defendant from his wrongful acts pursuant to 17 U.S.C. § 504.

78. In the alternative, Epic is entitled to statutory damages pursuant to 17 U.S.C. § 504(c). These statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2) due to Defendant's willful infringement.

79. Defendant's conduct is causing, and unless enjoined and restrained by this Court, will continue to cause, Plaintiff great and irreparable injury that cannot fully be compensated or measured in money. Epic has no adequate remedy at law for Defendant's wrongful conduct because (i) Epic's copyrights are unique and valuable property that have no readily determinable market value; (ii) Defendant's infringement constitutes an interference with Epic's goodwill and

customer relations; and (iii) Defendant's wrongful conduct, and the damages resulting therefrom, are continuing. Therefore, Epic is entitled to injunctive relief pursuant to 17 U.S.C. § 502 and to an order under 17 U.S.C. § 503(a) that prohibits Defendant from further infringing Epic's copyrights and orders Defendant to destroy all copies of the cheats he is using against Epic in violation of Epic's copyrights.

80. Epic is also entitled to recover its attorneys' fees and costs pursuant to 17 U.S.C. § 505.

SECOND CLAIM FOR RELIEF
(Contributory Copyright Infringement
in violation of the Copyright Act, 17 U.S.C. §§ 106 and 501, *et seq.*)

81. Epic re-alleges and incorporates fully by reference the allegations in paragraphs 1 through 80 of this complaint, as if set forth fully herein.

82. As set forth above, Epic is the owner of valid, registered, and enforceable copyrights in Fortnite.

83. Defendant is listed as a support/helper for a cheat provider that sells and distributes cheat software which enables its users to hack and cheat at Fortnite.

84. As described above, this cheat software unlawfully modifies Fortnite's copyrighted code in a manner that infringes Epic's copyrights by creating unauthorized derivative works of Epic's Fortnite software.

85. Defendant materially contributes to the direct infringement of Epic's copyrights by other cheaters by touting the cheats in posts on online discussion channels, actively encouraging and inducing other cheaters and would-be cheaters to purchase the cheats, and supporting their use of the cheats on Fortnite, including, without limitation, by providing help and support to cheaters and would-be cheaters who ask for support using the cheats.

86. Defendant has actual knowledge of the direct infringing activity of these other cheaters described above, and causes or contributes materially to, and/or participates substantially in, such direct infringement.

87. Defendant does so with the actual and/or constructive knowledge that the preparation of derivative works based upon Epic's Fortnite software infringes Epic's copyrights in the software.

88. On information and belief, Defendant engages in such conduct to promote the cheat software that is sold on the cheat provider website where he works because Defendant obtains some financial benefit or value in consideration for his work on the cheat provider website.

89. Accordingly, Defendant is liable for contributory copyright infringement of Epic's Fortnite game.

90. On information and belief, Epic has suffered actual damages, including lost sales and profits as a result of Defendant's contributory infringement.

91. In addition to Epic's actual damages, Epic is entitled to receive any additional profits made by Defendant from his wrongful acts pursuant to 17 U.S.C. § 504.

92. In the alternative, Epic is entitled to statutory damages pursuant to 17 U.S.C. § 504(c). These statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2) due to the Defendant's willful contributory infringement.

93. As a result of Defendant's contributory copyright infringement, Epic has suffered and will continue to suffer, substantial and irreparable damage to its business reputation and good will, as well as actual losses in an amount not yet fully ascertained, but which will be further determined according to proof. Epic's remedy at law is not adequate to redress the harm

Defendant has caused and will continue to cause unless and until his conduct is otherwise restrained and enjoined.

94. By reason of the foregoing, Epic is entitled to injunctive relief against Defendant pursuant to 17 U.S.C. § 502.

95. Epic is also entitled to recover its attorneys' fees and costs pursuant to 17 U.S.C. § 505.

THIRD CLAIM FOR RELIEF
(Breach of Contract)

96. Epic re-alleges and incorporates fully by reference the allegations in paragraphs 1 through 95 of this complaint, as if set forth fully herein.

97. Access to and use of Epic's services, including Fortnite, is governed by and subject to the Terms.

98. Access to and use of Fortnite is also governed by and subject to the EULA.

99. In order to use Epic's services, including Fortnite, all users must "read and agree" to the Terms in order to create an account with Epic.

100. In order to access Fortnite, users must "read and agree" to the terms of the EULA.

101. Defendant agreed to the Terms and the EULA by creating an account with Epic, using and accessing Epic's services, and/or downloading and accessing Fortnite. Therefore, the Terms and the EULA are both valid, enforceable contracts between Epic and the Defendant.

102. Epic has performed all of its obligations under the Terms and the EULA.

103. On information and belief, Defendant regularly used and accessed Epic's services having knowledge that he was bound by the Terms and by the EULA.

104. Defendant has and has continued to knowingly, intentionally, and materially breach the Terms and EULA by, among other things,

a. making derivative works based on Fortnite;

b. copying, reproducing, distributing, displaying, using, modifying, performing, republishing, or transmitting Fortnite in a way not authorized in the EULA or the Terms; and/or

c. creating, developing, distributing, or using unauthorized software programs to gain advantage in any online or other game modes.

105. As a direct result of Defendant's breaches of the Terms and EULA, Epic has been, and will continue to be, harmed and is entitled to injunctive relief, compensatory damages, attorneys' fees, costs, and/or other equitable relief against Defendant.

FOURTH CLAIM FOR RELIEF
(Intentional Interference with Contractual Relations)

106. Epic re-alleges and incorporates fully by reference the allegations in paragraphs 1 through 105 of this complaint, as if set forth fully herein.

107. As set forth above, in order to play Fortnite, a user must first create an account with Epic. To create an account, a user must agree to abide by the Terms. A user's agreement to abide by the Terms creates a contract between Epic and the user.

108. The Terms expressly prohibit a user from **"copy[ing], modify[ing], creat[ing] derivative works of, publicly display[ing], publicly perform[ing], republish[ing] or transmit[ing] any of the material obtained through [Epic's s]ervices."** (Exhibit B at 2) (emphasis added.)

109. In order to play Fortnite, a user must also agree to abide by the Fortnite EULA. A user's agreement to abide by the EULA also creates a contract between Epic and the user.

110. The EULA prohibits a player from **"reverse engineer[ing], deriv[ing] source code from, modify[ing], adapt[ing], translat[ing], decompil[ing,] or disassembl[ing] Fortnite] or mak[ing] derivative works based on [Fortnite]"** and **"creat[ing], develop[ing],**

distribut[ing], or us[ing] any unauthorized software programs to gain advantage in any online or other game modes.” (Exhibit C at 1) (emphasis added.)

111. Epic’s contracts with its users are valid and enforceable.

112. On information and belief, Defendant has knowledge of the contracts between Epic and its registered users, and Defendant has knowledge of the previously recited prohibitions that the Terms and the EULA place on users since Defendant is a registered user of Epic’s services and has agreed to the terms of both the EULA and the Terms.

113. Defendant, knowing that the use of cheats by Fortnite users breaches the contracts between Epic and its users, has intentionally and willfully encouraged and induced users of Fortnite to purchase and use the cheats.

114. Defendant, therefore, has intentionally interfered, and will continue to interfere, with the contracts between Epic and its users.

115. On information and belief, Defendant has acted without justification in intentionally interfering with the contracts formed between Epic and its users.

116. On information and belief, as a direct result of Defendant’s actions, Epic has suffered damages in an amount to be proven at trial including, but not limited to, loss of goodwill among users of Epic’s services, decreased profits, and lost profits from users whose accounts Epic has terminated for violations of the Terms and the Fortnite EULA.

117. As a direct result of Defendant’s actions, Epic has sustained, and will continue to sustain, substantial, immediate, and irreparable injury for which there is no adequate remedy at law. Epic is entitled to injunctive relief to restrain and enjoin Defendant’s continuing unlawful conduct.

118. As a further result of Defendant’s actions, on information and belief, Defendant has been unjustly enriched by the sales of the cheats that violate the Terms and the Fortnite

EULA. The proceeds of the sales are a direct result of Defendant's intentional interference with Epic's contracts with its users and rightfully and equitably belong to Epic. Epic requests that the Court impose a constructive trust over Defendant's proceeds.

119. Epic is further entitled to compensatory damages and any other available relief.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing, Plaintiff Epic Games, Inc. respectfully requests that the Court:

1. Enter judgment in Plaintiff's favor and against Defendant on all claims herein;
2. Adjudge Defendant to have infringed Epic's copyrights in violation of the Copyright Act, 17 U.S.C. §§ 106 and 501, *et seq.*;
3. Adjudged Defendant to have contributorily infringed Epic's copyrights in violation of the Copyright Act, 17 U.S.C. §§ 106 and 501, *et seq.*;
4. Adjudge Defendant to have breached the Terms of Service and the Fortnite End User License Agreement in violation of North Carolina law;
5. Adjudge Defendant to have tortuously interfered with contracts between Plaintiff and users of its services in violation of North Carolina law;
6. Declare that Defendant's infringement and other wrongdoings were willful in nature;
7. Enter an order pursuant to 17 U.S.C. § 502 that preliminarily and permanently enjoins Defendant from (i) infringing any of Epic's copyrighted works, including, without limitation, infringement by the use of any software or device that copies or modifies Epic's copyrighted software in violation of the Copyright Act; and/or (ii) inducing or materially contributing to the direct infringement of any of Epic's copyrighted works by others, including, without limitation, infringement by the use of any software or device that copies or modifies

Epic's copyrighted software in violation of the Copyright Act;

8. Enter an order that preliminarily and permanently enjoins Defendant from (i) violating the Terms of Service; (ii) violating the EULA; and/or (iii) intentionally interfering with Epic's contractual relations with the other parties to those agreements;

9. Enter an order pursuant to 17 U.S.C. § 502 that preliminarily and permanently enjoins Defendant by requiring the destruction of all copies of cheats or hacks in Defendant's possession, custody, or control that can be used to infringe Epic's copyrights in Fortnite so as to restrain Defendant's continued violations of Epic's copyrights in Fortnite;

10. Enter an order pursuant to 17 U.S.C. § 504 requiring that (i) Defendant pay Epic the maximum amount of statutory damages permitted under 17 U.S.C. § 504, or, in the event that Epic elects to instead to recover actual damages and Defendant's additional profits from Defendant at any time before final judgment is rendered; and/or (ii) Defendant pay Epic's actual damages and Defendant's additional profits, together with interest, including pre-judgment, as fixed by the Court;

11. Enter an order pursuant to 17 U.S.C. § 505 awarding Epic its attorneys' fees, costs, and expenses; and

12. Award Plaintiff such other and further relief as the Court deems just and proper.

This the 10th day of October, 2017.

PARKER POE ADAMS & BERNSTEIN LLP

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Attorneys for Plaintiff Epic Games, Inc.

EXHIBIT A

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
TXu 1-895-864

**Effective date of
registration:**
December 18, 2013

Title

Title of Work: Fortnite

Completion/Publication

Year of Completion: 2013

Author

■ **Author:** Epic Games, Inc.

Author Created: computer program

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Epic Games, Inc.

620 Crossroads Boulevard, Cary, NC, 27518, United States

Limitation of copyright claim

Material excluded from this claim: computer program

Previous registration and year: TXu001848153 2012

TXu001812407 2012

New material included in claim: computer program

Certification

Name: Joseph Wilbur

Date: December 18, 2013

Registration #: TXU001895864
Service Request #: 1-1053484835



Hunton & Williams LLP
Douglas W. Kenyon
P.O. Box 109
Raleigh, NC 27602-109 United States

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maura A. Pallante

United States Register of Copyrights and Director

Registration Number

TX 8-186-254

Effective Date of Registration:

July 14, 2015

Title

Title of Work: Fortnite

Completion/Publication

Year of Completion: 2015

Date of 1st Publication: May 30, 2015

Nation of 1st Publication: United States

Author

- Author:** Epic Games, Inc.
Author Created: computer program
Work made for hire: Yes
Citizen of: United States
Domiciled in: United States

Copyright Claimant

Copyright Claimant: Epic Games, Inc.
620 Crossroads Boulevard, Cary, NC, 27518, United States

Limitation of copyright claim

Material excluded from this claim: computer program

Previous registration and year: TXu001895864, 2013

TXu001848153, 2012

New material included in claim: computer program

Certification

Name: Joseph Wilbur

Date: July 14, 2015

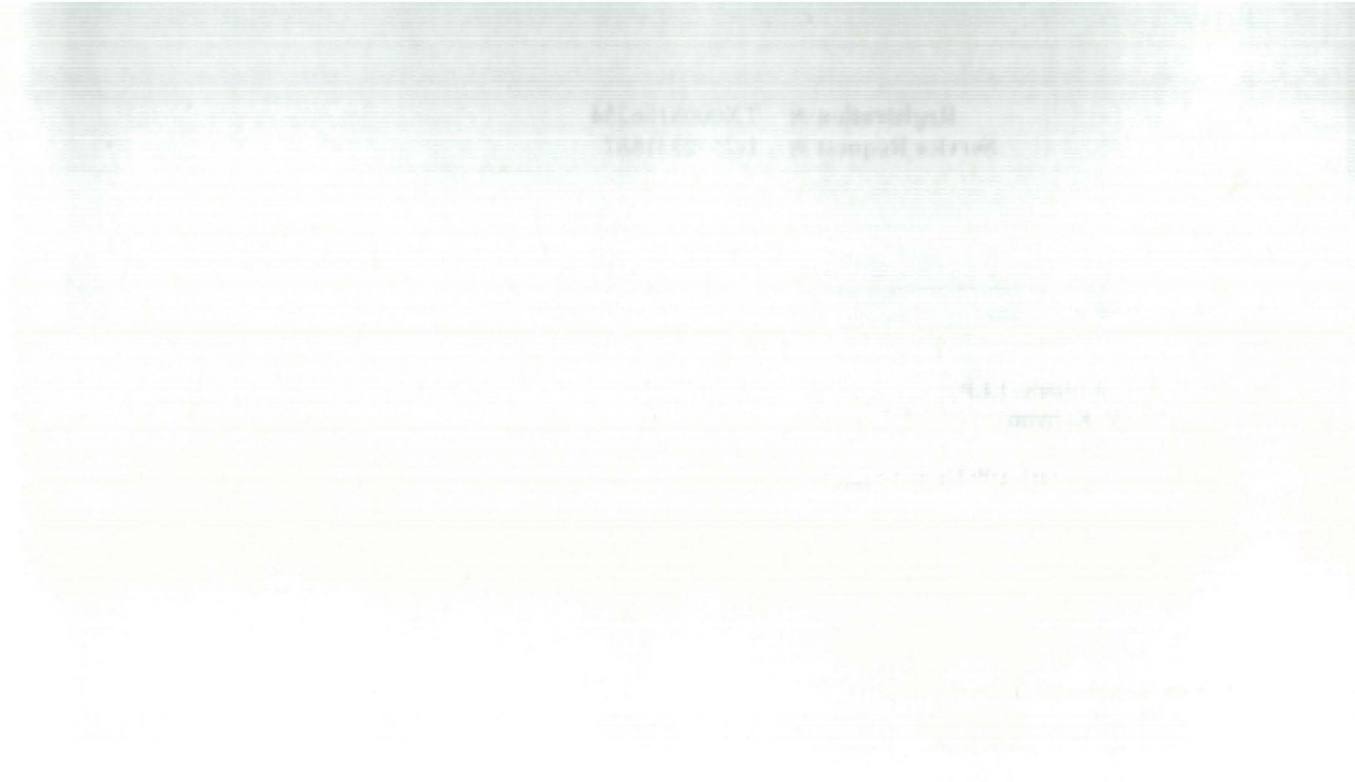
Correspondence: Yes



00001X00081862540202

Registration #: TX0008186254
Service Request #: 1-2532331887

Hunton & Williams LLP
Douglas W. Kenyon
P.O. Box 109
Raleigh, NC 27602-109 United States



0000TX00081862540201

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Maria A. Pallante

United States Register of Copyrights and Director

Registration Number

TX 8-254-659

Effective Date of Registration:

March 03, 2016

Title

Title of Work: Fortnite

Completion/Publication

Year of Completion: 2015

Date of 1st Publication: May 30, 2015

Nation of 1st Publication: United States

Author

- Author:** Epic Games, Inc.
Author Created: computer program
Work made for hire: Yes
Citizen of: United States
Domiciled in: United States

Copyright Claimant

Copyright Claimant: Epic Games, Inc.
620 Crossroads Boulevard, Raleigh, NC, 27518, United States

Limitation of copyright claim

Material excluded from this claim: computer program
Previous registration and year: TXu001895864, 2013
TXu001848153, 2012

New material included in claim: computer program

Certification

Name: Joseph Wilbur
Date: March 03, 2016

Correspondence: Yes



00001X00082546590202

Registration #: TX0008254659
Service Request #: 1-3176900287

Hunton & Williams LLP
Douglas W. Kenyon
P.O. Box 109
Raleigh, NC 27602-109 United States



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Karen Leigh Clayett

Acting United States Register of Copyrights and Director

Registration Number

TX 8-352-178

Effective Date of Registration:

December 23, 2016

Title

Title of Work: FORTNITE (2016 Rev. 2)

Completion/Publication

Year of Completion: 2016

Date of 1st Publication: November 30, 2016

Nation of 1st Publication: United States

Author

- Author: Epic Games, Inc.
Author Created: computer program
Work made for hire: Yes
Citizen of: United States
Domiciled in: United States

Copyright Claimant

Copyright Claimant: Epic Games, Inc.
620 Crossroads Boulevard, Cary, NC, 27518, United States

Limitation of copyright claim

Material excluded from this claim: computer program

Previous registration and year: TX008-254-659, 2016
TX008-186-254, 2015

New material included in claim: computer program

Certification

Name: Joseph Wilbur

Date: December 23, 2016



Registration #: TX0008352178
Service Request #: 1-4218625705

Hunton & Williams LLP
Douglas W. Kenyon
P.O. Box 109
Raleigh, NC 27609-109 United States



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EXHIBIT B

Terms of Service

Acceptance of the Terms of Service

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You represent and warrant that you own or otherwise control all of the rights to the User Contributions that you Post at the time of Posting; that the User Contributions are accurate and not fraudulent or deceptive; and that the User Contributions do not violate these Terms or the rights (intellectual property rights or otherwise) of any third party, and will not cause injury to any person or entity. You understand that your User Contributions may be copied by other Services users and discussed on and outside of the Services, and if you do not have the right to submit User Contributions for such use, it may subject you to liability. Epic takes no responsibility and assumes no liability for any content Posted by you or any third party.

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You may link to publicly available portions of the Services if you do so in a way that is fair and does not damage or take advantage of our reputation, but you must not establish a link in such a way as to suggest any form of association, approval, or endorsement on our part. The Services must not be framed on any other website or service. We reserve the right to withdraw linking permission without notice.

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You agree to defend, indemnify, and hold harmless Epic, its affiliates, and licensors, and their respective officers, directors, employees, contractors, agents, licensors, and suppliers from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including reasonable attorneys’ fees) resulting from your User Contributions or violation of these Terms.

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Any dispute or claim by you arising out of or related to these Terms (“Claim”) shall be governed by North Carolina law without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of, or related to, a Claim shall be instituted exclusively in the federal courts of the United States or the courts of North Carolina, in each case located in Wake County. You agree to waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

Language

To the fullest extent permitted by law, the controlling language for these Terms is English. Any translation has been provided for your convenience.

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No waiver of these Terms by Epic shall be deemed a further or continuing waiver of such term or condition or any other term or condition, and any failure of Epic to assert a right or provision under these Terms shall not constitute a waiver of such right or provision.

If any provision of these Terms is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of these Terms will continue in full force and effect.

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Legal Department
Epic Games, Inc.
620 Crossroads Blvd.
Cary, NC 27518
Telephone: (919) 854-0070
Email: legal@epicgames.com

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- Identify the copyrighted work that you claim has been infringed. If your DMCA Notice covers multiple works, you may provide a representative list of such works.
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- Provide your full legal name, mailing address, telephone number, and (if available) e-mail address.
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 - Provide your electronic or physical signature.

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Items in their original condition may be returned within 30 days of purchase for a full refund. Please return the items in the original shipping container with original packing materials to:

Epic Store Returns 3150 Elliott Ave. Suite 110 Seattle, WA 98121

Epic does not take title to returned items until the item arrives at such address.

Customer Service

Have questions about the Epic Store, or need help? [Contact us with this form.](#)

EXHIBIT C

Fortnite® End User License Agreement

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9. Indemnity

You agree to indemnify, pay the defense costs of, and hold Epic, its licensors, its and their affiliates, and its and their employees, officers, directors, agents, contractors, and other representatives harmless from all claims, demands, actions, losses, liabilities, and expenses (including attorneys' fees, costs, and expert witnesses' fees) that arise from or in connection with (a) any claim that, if true, would constitute a breach by you of this Agreement or negligence by you, or (b) any act or omission by you in using the Software (including any Game Currency or Content) or Services. You agree to reimburse Epic on demand for any defense costs incurred by Epic and any payments made or loss suffered by Epic, whether in a court judgment or settlement, based on any matter covered by this Section 9.

If you are prohibited by law from entering into the indemnification obligation above, then you assume, to the extent permitted by law, all liability for all claims, demands, actions, losses, liabilities, and expenses (including attorneys' fees, costs and expert witnesses' fees) that are the stated subject matter of the indemnification obligation above.

10. Privacy

By downloading or using the Software, you consent to the data collection and usage terms in Epic's privacy policy, as it may be updated from time to time. The privacy policy is available at <https://www.epicgames.com/privacypolicy>.

11. Termination

Without limiting any other rights of Epic, this Agreement will terminate automatically without notice if you fail to comply with any of its terms and conditions. You may also terminate this Agreement by deleting the Software. Upon any termination, the License will automatically terminate, you may no longer exercise any of the rights granted to you by the License, and you must destroy all copies of the Software in your possession.

Except to the extent required by law, all payments and fees are non-refundable under all circumstances, regardless of whether or not this Agreement has been terminated.

Sections 2, 5-14, and 16-18 will survive any termination of this Agreement.

12. Governing Law and Jurisdiction

You agree that this Agreement will be deemed to have been made and executed in the State of North Carolina, U.S.A., and any dispute will be resolved in accordance with the laws of North Carolina, excluding that body of law related to choice of laws, and of the United States of America. Any action or proceeding brought to enforce the terms of this Agreement or to adjudicate any dispute must be brought in the Superior Court of Wake County, State of North Carolina or the United States District Court for the Eastern District of North Carolina. You agree to the exclusive jurisdiction and venue of these courts. You waive any claim of inconvenient forum and any right to a jury trial. The Convention on Contracts for the International Sale of Goods will not apply. Any law or regulation which provides that the language of a contract shall be construed against the drafter will not apply to this Agreement.

13. Class Action Waiver

You agree not to bring or participate in a class or representative action, private attorney general action, or collective arbitration related to the Software (including any Game Currency or Content) or Services or this Agreement. You also agree not to seek to combine any action or arbitration related to the Software or Services or this Agreement with any other action or arbitration without the consent of all parties to this Agreement and all other actions or arbitrations.

14. U.S. Government Matters

The Software is a “Commercial Item” (as defined at 48 C.F.R. §2.101), consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation” (as used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable). The Software is being licensed to U.S. Government end users only as Commercial Items and with only those rights as are granted to other licensees under this Agreement.

You represent and warrant to Epic that you are not located in a country that is subject to a U.S. Government embargo or that has been designated by the U.S. Government as a “terrorist supporting” country, and that you are not listed on any U.S. Government list of prohibited or restricted parties.

15. Amendments of this Agreement

Epic may issue an amended Agreement at any time in its discretion by posting the amended Agreement on its website or by providing you with digital access to the amended Agreement when you next access the Software. If any amendment to this Agreement is not acceptable to you, you may terminate this Agreement and must stop using the Software. Your continued use of the Software will demonstrate your acceptance of the amended Agreement.

16. No Assignment

You may not, without the prior written consent of Epic, assign, transfer, charge, or sub-contract all or any of your rights or obligations under this Agreement, and any attempt without that

consent will be null and void. If restrictions on transfer of the Software in this Agreement are not enforceable under the law of your country, then this Agreement will be binding on any recipient of the Software. Epic may at any time assign, transfer, charge, or sub-contract all or any of its rights or obligations under this Agreement.

17. Definitions

As used in this Agreement, the following capitalized words have the following meanings:

“Confidential Information” means any non-public information related to the Software, including without limitation information related to gameplay or other content, Game Currency, Content, the Services, your own feedback and comments, and the feedback or comments of any other licensee of the Software or any Epic representative.

“Content” means any virtual items or other content that Epic makes available for you to access or download through or in connection with the Software.

“Epic” means, depending on the location of your primary residence:

- a. Epic Games, Inc., a Maryland Corporation having its principal business offices at Box 254, 2474 Walnut Street, Cary, North Carolina, 27518, U.S.A.; or
- b. Epic Games International S.à r.l., a Luxembourg Société à Responsabilité Limitée, located at Atrium Business Park, 33 rue du Puits Romain, L8070 Bertrange, Grand-Duchy of Luxembourg, acting through its Swiss branch, having its principal business offices at Lindenstrasse 16, 6340 Baar, Switzerland.

“Feedback” means any feedback or suggestions that you provide to Epic regarding the Software, Services or other Epic products and services.

“Services” means any services made available to you through the Software, including services to acquire, maintain and use Game Currency and Content.

“Software” means the proprietary software application known as Fortnite, and any patches, updates, and upgrades to the application, and all related content and documentation made available to you by Epic under this Agreement, including but not limited to all software code, titles, themes, objects, characters, names, dialogue, catch phrases, locations, stories, artwork, animation, concepts, sounds, audio-visual effects, methods of operation, and musical compositions that are related to the application, and any copies of any of the foregoing. Software specifically includes all Game Currency and Content for which you have paid the associated fee or otherwise acquired a license under Section 4.

18. Miscellaneous

This Agreement and any document or information referred to in this Agreement constitute the entire agreement between you and Epic relating to the subject matter covered by this Agreement.

All other communications, proposals, and representations with respect to the subject matter covered by this Agreement are excluded.

The original of this Agreement is in English; any translations are provided for reference purposes only. You waive any right you may have under the law of your country to have this Agreement written or construed in the language of any other country.

This Agreement describes certain legal rights. You may have other rights under the laws of your jurisdiction. This Agreement does not change your rights under the laws of your jurisdiction if the laws of your jurisdiction do not permit it to do so. Limitations and exclusions of warranties and remedies in this Agreement may not apply to you because your jurisdiction may not allow them in your particular circumstance. In the event that certain provisions of this Agreement are held by a court or tribunal of competent jurisdiction to be unenforceable, those provisions shall be enforced only to the furthest extent possible under applicable law and the remaining terms of this Agreement will remain in full force and effect.

Any act by Epic to exercise, or failure or delay in exercise of, any of its rights under this Agreement, at law or in equity will not be deemed a waiver of those or any other rights or remedies available in contract, at law or in equity.

You agree that this Agreement does not confer any rights or remedies on any person other than the parties to this Agreement, except as expressly stated.

Epic's obligations are subject to existing laws and legal process, and Epic may comply with law enforcement or regulatory requests or requirements despite any contrary term in this Agreement.