



CULPEPPER IP, LLLC

ATTORNEY AT LAW

75-170 HUALALAI ROAD, SUITE B204
KAILUA-KONA, HAWAII 96740

TEL: (808) 464-4047
FAX: (202) 204-5181

WWW.CULPEPPERIP.COM

PATENTS, TRADEMARKS & COPYRIGHTS

Via E-mail <abuse@us.leaseweb.com>

KERRY S. CULPEPPER *

* ADMITTED TO PRACTICE IN VIRGINIA, HAWAII
AND BEFORE THE USPTO

October 22, 2020

Via Certified Mail

Leaseweb USA, Inc.
ATTN: Legal Dep't
9301 Innovation Drive, Suite 100
Manassas, VA 20110

Via Certified Mail

Piascik & Associates, P.C.
Registered Agent for Leaseweb USA, Inc.
4470 Cox Rd Ste 250
Glen Allen, VA 23060

Re: Copyright Infringement at Internet Protocol ("IP") addresses including but not limited to 209.58.139.35, 209.58.139.34, 209.58.130.210, 209.58.135.106

My Reference: 20-023P

Case Number: 19cv169-LEK-KJM (District of Hawaii)

Dear Sir or Madam,

As explained below, I am writing to you regarding the Internet service Leaseweb USA, Inc. ("Leaseweb") provides to its customers and individual subscribers including but not limited to the IP addresses ("subscribers") mentioned below. Please note that these IP addresses are shown merely to illustrate the problem. As explained more fully below, this issue extends to over 1,500 Leaseweb subscribers.

My law firm represents the owners of the copyright protected motion pictures including but not limited to those shown below:

Exhibit "A"

| NO. | OWNER | MOTION PICTURE |
|-----|--|--------------------------|
| 1 | Fallen Productions, Inc. | <i>Angel Has Fallen</i> |
| 2 | HB Productions, Inc. | <i>Hellboy</i> |
| 3 | Eve Nevada, LLC | <i>Ava</i> |
| 4 | Hunter Killer Productions, Inc. | <i>Hunter Killer</i> |
| 5 | Rambo V Productions, Inc. | <i>Rambo V</i> |
| 6 | Killing Link Distribution, LLC/CineTel Films, Inc. | <i>Kill Chain</i> |
| 7 | LHF Productions, Inc. | <i>London Has Fallen</i> |

Each of the motion pictures is an original work of art that was produced and marketed at great effort and expense of the owner.

On behalf of Hunter Killer Productions, Inc., my law firm filed a lawsuit here in Hawaii (1:19-cv-169) against operators of movie piracy websites under the name “YTS” for copyright infringement, contributory copyright infringement and intentional inducement.

We have determined hundreds of repeated infringers of the copyrights of my clients’ motion pictures utilizing your internet service, via the YTS website, among other means. Moreover, we have determined that our owners’ agents have sent over 32,600 notices styled per the Digital Millennium Copyright Action (“DMCA”) to the DMCA abuse contact listed for over 1,500 IP addresses, which are all reported as Leaseweb (abuse@us.leaseweb.com). However, it appears that Leaseweb has failed to terminate any repeat infringers or take any meaningful actions despite Leaseweb receiving numerous, consistent DMCA notices.

To illustrate a concrete example of the damage done to our clients, in the month of November, 2019 alone, the owners’ agent sent 97 notices regarding confirmed infringement of the motion picture *Rambo V*, *Angel Has Fallen*, *Hellboy*, *Kill Chain*, and *London Has Fallen* at the IP address 209.58.135.106. However, Leaseweb failed to terminate this account or take any meaningful steps to prevent continuing infringing activity. An example of just some of the IP addresses assigned to Leaseweb, and the number of notices sent to each is provided below:

| IP | Notices Sent |
|-----------------|--------------|
| 209.58.139.35 | 512 |
| 209.58.139.34 | 480 |
| 209.58.130.210 | 462 |
| 209.58.135.106 | 434 |
| 209.58.137.94 | 418 |
| 209.58.135.72 | 417 |
| 209.58.135.74 | 404 |
| 209.58.135.120 | 379 |
| 209.58.135.108 | 371 |
| 172.241.251.164 | 196 |

Nearly all of the file titles of the infringing copies have had the copyright management information (“CMI”) such as the title of the Work modified or altered to falsely include a reference to a piracy website. For example, the infringing file my clients’ agent told Leaseweb about in the Notice shown in Exhibit “1” has the title: “Hellboy (2019) [WEBRip] [1080p] [YTS.LT]”. Similarly, the infringing file my clients’ agent told you about in the Notice shown in Exhibit “2” has the title: “Ava.2020.1080p.WEBRip.x264-RARBG”. The CMI has been modified/altered to falsely refer to the notorious piracy websites YTS and the piracy group RARBG in violation of 17 U.S.C. §1202 (“DMCA violations”). My clients did not provide file titles that promote movie piracy websites or piracy groups.

Leaseweb has no safe harbor from liability for Copyright Infringement

The DMCA provides a safe harbor for qualified service providers from liability from copyright infringement. A requirement for this safe harbor is that the service provider reasonably implement, and inform subscribers and account holders of the service provider’s system or network of, a policy that provides for the **termination** in appropriate circumstances of subscribers and account holders of the service provider’s system or network who are repeat infringers. *See* 17 U.S.C. § 512(i)(1)(A). Accordingly, Leaseweb fails to qualify for the safe harbor because Leaseweb has not terminated the subscriber accounts despite the multiple notifications sent by my clients’ agents. Moreover, Leaseweb publishes ARIN Whois records that indicate Leaseweb as the abuse contact for these IP addresses. Therefore, we believe Leaseweb may be liable even if has allocated these IP addresses to other online service providers if Leaseweb failed to implement a reasonable policy.

Accordingly, my clients and I believe that Leaseweb may be liable for these infringements of my clients’ copyrights in violation of federal law under the Copyright Act, 17 U.S.C. § 501. Remedies available to my clients include: an injunction against further

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infringement; actual and statutory damages of up to \$150,000/motion picture; and costs and attorney's fees.

Further, my clients and I also believe that Leaseweb may be secondarily liable for its subscribers' DMCA violations under 17 U.S.C. § 1202. Remedies provided by 17 U.S.C. § 1203(c) include statutory damages up to \$25,000 per DMCA violation. For example, above I illustrated at least two DMCA violations (YTS and RARBG).

Nonetheless, my clients would like to resolve this issue outside of litigation if possible. To do so, we request that: (1) Leaseweb agrees to immediately terminate all Internet service to the subscribers at the above IP addresses; (2) Leaseweb agrees to take the appropriate action to terminate subscriber accounts in response to all further copyright notifications received from my clients' agent; and (3) Leaseweb agrees to pay a portion of my clients' damages.

I look forward to receiving your response by November 20, 2020 so that we can discuss this issue further. My clients would like to resolve this matter amicably but will consider any and all legal action necessary to protect their valuable intellectual property rights under federal and state law. This letter is written without prejudice to the rights and remedies of our client, all of which are expressly reserved.

Sincerely,

/ksc/ 

Kerry S. Culpepper

kculpepper@culpepperip.com

Attachment: Exhibits "1" and "2"

joshua.lee@culpepperip.com

From: notice@dmcagateway.com
Sent: Saturday, August 22, 2020 10:41 PM
To: abuse@us.leaseweb.com
Subject: Notice of Claimed Infringement [Case No. 42464160790]

-----BEGIN PGP SIGNED MESSAGE-----

Hash: SHA256

Notice of Claimed Infringement

Notice ID: 42464160790

Notice Date: 2020-08-23 08:40:43

Dear Sir or Madam:

This message is sent on behalf of HB Productions, Inc..

Under penalty of perjury, I assert that PML Process Management Ltd. is authorized to act on behalf of the owner of the exclusive copyrights that are alleged to be infringed herein.

HB Productions, Inc. owns the copyrights to the movie Hellboy. The unauthorized download and distribution of this file by your IP address constitutes copyright infringement.

Please see below details for the infringements:

Protocol: BITTORRENT

Infringed Work: Hellboy

Infringing FileName: Hellboy (2019) [WEBRip] [1080p] [YTS.LT] Infringing FileSize: 2088501368 Infringer's IP Address: 209.58.139.35 Infringer's Port: 63368 Initial Infringement Timestamp: 2020-08-22 17:44:59

And, you're also creating a security risk on your computers, devices and networks when you download unauthorized movies or allow others to do so from your Internet connection.

We respectfully ask that you stop infringing and redistributing HB Productions, Inc. copyright protected content, and take the proper steps to secure your Internet so that others do not infringe and redistribute our content as well.

We have a good faith belief that use of the copyrighted material detailed above is not authorized by the copyright owner, its agent, or the law. In addition, we have a good faith subjective belief that the use does not constitute fair use. The information in this notice is accurate and we state, under penalty of perjury, that we are authorized to act on behalf of the owner of the copyright that is allegedly infringed. This letter is not a complete statement of HB Productions, Inc.'s rights in connection with this matter, and nothing contained herein constitutes an express or implied waiver of any rights or remedies of HB Productions, Inc. in connection with this matter, all of which are expressly reserved.

We appreciate your assistance and thank you for your cooperation in this matter.

Respectfully,

Exhibit "1"

joshua.lee@culpepperip.com

From: notice@dmcagateway.com
Sent: Sunday, October 18, 2020 10:49 PM
To: abuse@us.leaseweb.com
Subject: Notice of Claimed Infringement [Case No. 43206683072]

-----BEGIN PGP SIGNED MESSAGE-----

Hash: SHA256

Notice of Claimed Infringement

Notice ID: 43206683072
Notice Date: 2020-10-19 08:48:50

Dear Sir or Madam:

This message is sent on behalf of Eve Nevada, LLC.

Under penalty of perjury, I assert that PML Process Management Ltd. is authorized to act on behalf of the owner of the exclusive copyrights that are alleged to be infringed herein.

Eve Nevada, LLC owns the copyrights to the movie Ava. The unauthorized download and distribution of this file by your IP address constitutes copyright infringement.

Please see below details for the infringements:

Protocol: BITTORRENT
Infringed Work: Ava
Infringing FileName: Ava.2020.1080p.WEBRip.x264-RARBG Infringing FileSize: 1988125665 Infringer's IP Address: 209.58.139.35 Infringer's Port: 50475 Initial Infringement Timestamp: 2020-10-18 19:32:45

And, you're also creating a security risk on your computers, devices and networks when you download unauthorized movies or allow others to do so from your Internet connection.

We respectfully ask that you stop infringing and redistributing Eve Nevada, LLC copyright protected content, and take the proper steps to secure your Internet so that others do not infringe and redistribute our content as well.

We have a good faith belief that use of the copyrighted material detailed above is not authorized by the copyright owner, its agent, or the law. In addition, we have a good faith subjective belief that the use does not constitute fair use. The information in this notice is accurate and we state, under penalty of perjury, that we are authorized to act on behalf of the owner of the copyright that is allegedly infringed. This letter is not a complete statement of Eve Nevada, LLC's rights in connection with this matter, and nothing contained herein constitutes an express or implied waiver of any rights or remedies of Eve Nevada, LLC in connection with this matter, all of which are expressly reserved.

We appreciate your assistance and thank you for your cooperation in this matter.

Respectfully,

Exhibit "2"

Catherine Hyde
PML Process Management Ltd.
notice@dmcagateway.com
Address:
Lordou Vyronos, 61-63, Floor 5
Larnaca 6023
Cyprus

```
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  </Case>
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    <Contact>Catherine Hyde</Contact>
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    <Email>notice@dmcagateway.com</Email>
  </Complainant>
  <Service_Provider>
    <Entity>Leaseweb USA</Entity>
    <Address>9480 Innovation Dr, Manassas, VA 20109, US</Address>
    <Phone>+1-571-814-3777</Phone>
    <Email>abuse@us.leaseweb.com</Email>
  </Service_Provider>
  <Source>
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    <IP_Address>209.58.139.35</IP_Address>
    <Port>50475</Port>
    <Type>BitTorrent</Type>
  </Source>
  <Content>
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      <FileSize>1988125665</FileSize>
      <Type>Movie</Type>
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    </Item>
  </Content>
</Infringement>
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-----BEGIN PGP SIGNATURE-----

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