

1 JOHN L. AMBROGI
2 jla@partridgepartnerspc.com
3 COLIN T.J. O'BRIEN
4 colin@partridgepartnerspc.com
5 PARTRIDGE PARTNERS, P.C.
6 321 North Clark, Suite 720
7 Chicago, Illinois 60654
8 Telephone: (312) 634-9500

9 PAUL D. SUPNIK [SBN 52842]
10 paul@supnik.com
11 9401 Wilshire Blvd., Suite 1250
12 Beverly Hills, CA 90212
13 Telephone: (310) 859-0100
14 Facsimile: (310) 388-5645

15 Attorneys for Defendant
16 STEADFAST NETWORKS, LLC

17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT COURT OF CALIFORNIA**
19 **WESTERN DIVISION**

20 ALS SCAN, INC.,
21 a Maryland Corporation,

22 Plaintiff,

23 v.

24 CLOUDFLARE, INC.
25 a Delaware corporation,
26 et al.

27 Defendants.

Case No.: 2:16-cv-05051-GW-AFM

**DEFENDANT STEADFAST
NETWORKS, LLC'S SUBMISSION
RE: APPLICABILITY OF VENTURA
CONTENT TO MOTIONS FOR
SUMMARY JUDGMENT**

Hearing Date: March 26, 2018

Hearing Time: 8:30am

Place: Courtroom 9D, 9th Fl.

350 West 1st Street

Los Angeles, CA, 90012

Judge: Hon. George H. Wu

1 The plaintiff in *Ventura Content v. Motherless, Inc.*, Nos. 13-56332, 13-
 2 56970, 2018 U.S. App. LEXIS 6307 (9th Cir. Mar. 14, 2018) (“Ventura”)
 3 challenged the district court’s grant of partial summary judgment on the defendant’s
 4 safe harbor defense, arguing, *inter alia*: (1) that genuine disputes of fact remained as
 5 to knowledge and expeditious takedown; and, (2) that the defendant did not adopt,
 6 inform, and reasonably implement a repeat infringer policy.¹ The defendant in the
 7 *Ventura* case is not analogous to *Steadfast*.² Rather the defendant in the *Ventura*
 8 case is comparable to Flixya Entertainment, the operator of <imagebam.com>,
 9 which ALS decided not to sue. Nevertheless, the *Ventura* Court’s decision
 10 reinforces *Steadfast*’s position.

11 **I. Knowledge and Expeditious Takedown Requirements: § 512(c).**

12 The *Ventura* Court reiterated what has been established law in its review of
 13 the plaintiff’s challenges to the § 512(c) requirements:

14 Basically, subsection (c) of the safe harbor provision aims at individual
 15 infringements, not the service as a whole. It uses the phrase “the material”—
 16 that is, the material for which an infringement remedy is sought—in the
 17 context of setting out what a service provider needs to do to avoid liability for
 18 the infringement of the copyrighted material at issue.

19 *Id.* at *37. There, the plaintiff did not send DMCA notices. Thus, the plaintiff had to
 20

21 ¹ The Court’s resolution of the other arguments is immaterial. ALS admits that the
 22 alleged infringement was not at the direction of *Steadfast*. Response to Statement of
 23 Genuine Disputes, Dkt. 392, ¶¶ 35-37. ALS also admits that *Steadfast* neither
 24 gained a financial benefit from ALS’s images, nor had the ability to supervise the
 25 alleged activity. *Id.* ¶¶ 70, 72.

25 ² *Steadfast* did not operate, control, or manage any functions of Flixya’s
 26 Imagebam.com website; did not have access to individual users’ content or
 27 accounts; did not provide the software that ran on Flixya’s website or provide
 28 services for users to upload content; did not in any way communicate with or
 interact with Flixya’s individual users; Flixya has its own terms and conditions that
 applied to its users, and it maintained its own DMCA agent.

1 argue that, based on some other independent source, the defendant obtained either
 2 actual or apparent knowledge of the copyrighted material at issue. *Id.* at *23-34.
 3 Once the defendant eventually received the specific URLs from the plaintiff, the
 4 defendant removed the images. *Id.* at *33-34. The plaintiff’s challenges failed.

5 In contrast, ALS has admitted that “Steadfast did not have awareness of any
 6 alleged specific infringement prior to the DMCA notification.” Dkt. 392, ¶ 62.
 7 Steadfast immediately forwarded the ineffective notices and all of the allegedly
 8 infringing material uploaded by individual users of <imagebam.com> were
 9 removed by Flixya. See Dkt. 392, ¶¶ 62-69. Knowledge and takedown of the
 10 *specific material* is all that is required to satisfy § 512(c)(1)(A). *Ventura* simply
 11 highlights this point and the frivolousness of ALS’s challenge.

12 **II. Repeat Infringer Policy: § 512(i)(1)(A).**

13 The *Ventura* Court rejected the plaintiff’s argument that the defendant failed
 14 to (A) adopt and inform account holders of the policy and (B) implement the policy
 15 reasonably under § 512(i)(1)(A).

16 **A. Adopted and Informed Account Holders of the Policy**

17 In *Ventura*, the defendant’s website provided a written policy of excluding
 18 infringing material and informed users that it would terminate repeat copyright
 19 infringers. *Id.* at *41-43. The defendant neither wrote down nor publicized its
 20 internal criteria. *Id.* at *42-43. Citing to *Corbis v. Amazon.com*, 351 F. Supp. 2d.
 21 1090, 1102 (W.D. Wash. 2004), the Court found that the defendant sufficiently
 22 adopted and informed users of its policy. See *id.* at *34 n.74. Here, Steadfast
 23 sufficiently adopted and informed users of its policy. Dkt. 391, p. 8-10 (applying
 24 *Corbis*); Dkt. 392, ¶¶ 3-7. The *Ventura* Court simply applied *Corbis*, which has
 25 been the standard for this inquiry since 2004. *Ventura* reinforces that ALS’s claims
 26 fail as a matter of law.

27 **B. Reasonably Implemented**

28 In *Ventura*, the defendant tracked information about users whose submissions

1 generated DMCA notices by saving each takedown notice along with the reason for
2 each deletion. *Id.* at *44. Some repeat infringers may not have been terminated. *Id.*
3 at *48-49. The defendant used his judgment when deciding to terminate a user. *Id.*
4 The *Ventura* Court rejected the plaintiff’s challenge, reciting what has been known
5 since *CCBill*: The “‘implementation’ is reasonable if, under ‘appropriate
6 circumstances,’ the service provider terminates users who repeatedly or blatantly
7 infringe copyright.” *Id.* at *46 (citation omitted).

8 Here, Steadfast has automated procedures that process compliant and non-
9 compliant notices. Dkt. 392, ¶¶ 11-16 (citing KZ Dep. 108:20-110:7). ALS has no
10 evidence of repeat infringers. *See id.* ¶¶ 8-10. Furthermore, there is no evidence that
11 Steadfast had either knowledge of the actions or control over the actions of the
12 individual <imagebam.com> users. *See id.* ALS’s conjecture, doubts, and policy
13 arguments are not evidence. *Ventura* at *51 (“[D]oubt is not evidence.”). Again,
14 “appropriate” cannot mean terminating clients who comply with the law. *Ventura*
15 lends further support to Steadfast’s argument that no trier of fact could conclude
16 from the evidence in the record that Steadfast failed to reasonably implement a
17 repeat infringer policy.

18 Respectfully submitted,

19 JOHN L. AMBROGI
20 PARTRIDGE PARTNERS, P.C.

21
22 Dated: March 20, 2018

23 By: s/John L. Ambrogi
24 John L. Ambrogi
25 Attorneys for Steadfast Networks, LLC
26
27
28

PROOF OF SERVICE

I, Colin T.J. O'Brien, certify that I am an attorney at law, licensed to practice in the State of Illinois and I am admitted to appear before the United States District Court for the Central District of California, and a true copy of the foregoing document **DEFENDANT STEADFAST NETWORKS, LLC'S SUBMISSION RE: APPLICABILITY OF VENTURA CONTENT TO MOTIONS FOR SUMMARY JUDGMENT** was served via electronic filing to the following parties in this action via their counsel:

ALS Scan, Inc.
Cloudflare, Inc.

A true copy of the foregoing document was hand delivered to:

Hon. George H. Wu
U.S. District Court
350 W. 1st Street
Courtroom 9D
Los Angeles, CA 90012

Via attorney service

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: March 20, 2018

s/ Colin T.J. O'Brien
Attorney for Defendant
Steadfast Networks, LLC