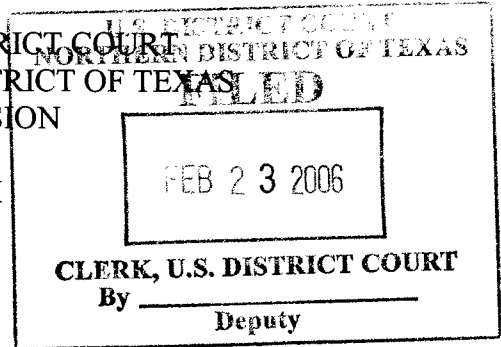


UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



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CBS BROADCASTING, INC., COLUMBIA
PICTURES INDUSTRIES, INC., DISNEY
ENTERPRISES, INC., TWENTIETH CENTURY
FOX FILM CORPORATION, and WARNER BROS.
ENTERTAINMENT INC.,

Plaintiffs,

No. _____

v.

8 - 06 CV 0.338 - R

DOES 1 - 10

Defendants.
-----X

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Plaintiffs CBS Broadcasting, Inc. ("CBS"), Columbia Pictures Industries, Inc. ("Columbia"), Disney Enterprises, Inc. ("Disney"), Twentieth Century Fox Film Corporation ("Fox"), and Warner Bros. Entertainment Inc. ("Warner Bros.") hereby allege as follows:

Nature Of The Case

1. This is a case of willful and rampant infringement of copyright over the Internet. Defendants knowingly enable, encourage, induce and profit from massive online piracy – piracy Defendants could stop but refuse to.

2. Defendants operate a website that enables and encourages users to locate and download infringing copies of Plaintiffs' valuable copyrighted motion pictures and television shows for free and without authorization. Defendants operate their website with the express object of promoting its use to infringe Plaintiffs' copyrights.

3. As a direct result of Defendants' conduct, thousands of the most popular motion pictures and television shows – from new releases that are still in theaters to blockbuster DVD releases to today's most popular television shows – are infringed every day. Absent Defendants' active and ongoing participation in the daily acts of infringement, this widespread unauthorized copying and distribution of Plaintiffs' valuable property simply could not happen on the scale that it does. The harm to Plaintiffs, who invest millions of dollars and enormous creative energies to produce their creative copyrighted works, is manifest and irreparable.

Copyright Infringement and Newsgroups

4. Defendants operate their website with the object of enabling and fostering the illegal reproduction and distribution of copies of Plaintiffs' movies and television programs protected by copyright. Simply put, the Defendants' website exists to entice and facilitate copyright infringement, and materially contribute to such infringement – enabling Internet users to quickly copy and transfer files, almost all of them infringing, many of them Plaintiffs' copyrighted movies and television programs. Defendants do so to profit unlawfully from the distribution of Plaintiffs' copyrighted movies and television programs.

5. Defendants' website indexes files – in this case files corresponding to movies and television programs – that are available for download. By clicking on the file name, an illegal copy of the movie or television program is automatically copied to a user's computer. That newly copied movie or television program is a perfect digital copy – ready to be viewed, burned to portable media like DVDs, and/or copied by and distributed to another user.

6. The files that Defendants index and distribute are known as "NZB" files. NZB files do not themselves contain actual copies of a movie or television program. Rather, NZB

files automatically and invisibly instruct a user's computer where and how to get the desired movie or television program from a server connected to the "Usenet" network.

7. The Usenet network is a set of interconnected servers that each hosts the contents of various "newsgroups." Newsgroups can be described as online bulletin boards, in which users can post and respond to messages in forums that are grouped according to topic. Users typically access newsgroups through Usenet servers provided by their individual Internet Service Providers ("ISPs"). Although the range of newsgroups available to users through their ISPs' Usenet servers varies according to their particular ISP, many ISPs make available (for a limited period of time) all material posted to the newsgroups they carry. In other words, a user connecting to a Usenet server provided by his local ISP will be able to access materials posted to newsgroups by users of other Usenet servers throughout the United States and the world.

8. Some newsgroups are text-based groups devoted to topics such as politics (*e.g.*, "alt.politics.usa.congress"). However, a substantial subset of newsgroups is devoted almost entirely to the illegal distribution of Plaintiffs' copyrighted televisions and motion pictures. These newsgroups are nothing more than places for users to upload and download copies of copyrighted motion pictures.

9. The Usenet network has existed for well over two decades. Originally a medium for public discussion, the network was designed to carry text messages of limited length. Eventually, "binary" newsgroups devoted entirely to distribution of movies, television shows, music, images, software, and other sorts of non-text files appeared. Because of their size, binary files must be broken up into smaller files in order to be posted in newsgroups for downloading by other users. While smaller binary files such as images may be split across only a few

messages, larger ones such as digital video files may have to be split across hundreds of messages posted to a newsgroup.

10. To access newsgroups on the Usenet network, users typically download a small program that they install on their computers – a Usenet “client” application – and access newsgroups through their ISPs. There are many different versions of Usenet clients, many of which are readily available on the Internet for free. However, most Usenet services do not provide the ability for these clients to search for movies or other binary files. Without websites like Defendants’, a user who wants to find a movie or television show available for download must know in advance what newsgroup to visit and must manually review each newsgroup to select potentially hundreds of individual messages to download and reassemble a single video file.

11. NZB files and the sites that distribute them streamline this process by allowing a user to search for and download complete copies of copyrighted movies and television shows from newsgroups with the click of a button. NZB files automatically and invisibly instruct a Usenet client application to download a specific set of messages from a newsgroup that form a complete movie or television show (or even an entire series of a television show). Indeed, the specific functions performed by the NZB file and client application are largely invisible to users. From a user’s perspective, once the user clicks on an NZB file, the desired movie or television program begins to download onto the user’s computer – automatically and without any further action by the user. The user need not be aware of the source of the downloaded file nor the newsgroup to which the file was posted.

The Parties

The Plaintiffs

12. Plaintiffs CBS, Columbia, Disney, Fox, and Warner Bros. are among the leading motion picture studios in the world. Plaintiffs are responsible for creating and distributing some of the world's most popular filmed entertainment.

13. Each of these Plaintiffs, including their affiliates and/or subsidiaries, owns the copyrights and/or exclusive reproduction and distribution rights to many popular motion pictures and television programs, including those listed on Exhibit A.

14. Plaintiff CBS is a New York corporation, with its principal place of business in New York.

15. Plaintiff Columbia is a Delaware corporation, with its principal place of business in California.

16. Plaintiff Disney is a Delaware corporation, with its principal place of business in California.

17. Plaintiff Fox is a Delaware corporation, with its principal place of business in California.

18. Plaintiff Warner Bros. is a Delaware corporation, with its principal place of business in California.

The Defendants

19. Defendants Does 1-10 are currently unknown to Plaintiffs. They operate a website, www.binnews.com, at the Internet Protocol address 67.19.118.115, by virtue of which Plaintiffs' copyrighted works are unlawfully copied and distributed. That website is hosted by ThePlanet.com, an ISP headquartered in Dallas, Texas, on a server physically located in Dallas,

Texas. On information and belief, all of the Defendants participate in and profit from the activities alleged herein.

Jurisdiction And Venue

20. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States, and therefore the Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. § 1338(a) (jurisdiction over copyright actions).

21. Personal jurisdiction over the Defendants is proper. Defendants have chosen to direct their infringing activities at Texas. The server hosting Defendants' website – the hub of infringing activities – is physically located in Texas. Once Defendants permit users, including Texas residents, to access the files hosted on the website, the users' computers interact with Defendants' website to download infringing copies of Plaintiffs' works, as explained herein. In fact, the voluminous acts of direct infringement for which Defendants are liable require a high level of interaction between users' computers and the website hosted by Defendants' computer server in the State of Texas. On information and belief, many of these acts of direct infringement occur in Texas, where Texas residents access Defendants' website in order to download infringing copies of Plaintiffs' works. In these and other ways, Defendants have continuous contact with the State of Texas and its residents. In addition, jurisdiction may be proper over the Doe Defendants because they may be found in Texas.

22. Venue in this District is proper under 28 U.S.C. § 1391(b) and/or 28 U.S.C. § 1400(a). Although the true identity of each Defendant is unknown to Plaintiffs at this time, on information and belief, each Defendant may be found in this District, and/or a substantial part of the acts of infringement complained of herein occurred in this District. The server hosting the website is also located in this District.

Defendants' Infringing Conduct

23. Defendants operate a website that indexes copyrighted motion pictures and television programs and distributes associated NZB files. Defendants' website is designed to allow users to quickly and easily locate and download copies of Plaintiffs' copyrighted works. In doing so, the Defendants provide a material – indeed, an essential – contribution to the infringement of Plaintiffs' copyrighted movies and television programs. Further, Defendants operate this website with the object of enticing others to infringe Plaintiffs' copyrights.

24. The blatant infringements using Defendants' website are obvious – and are well-known to Defendants. Anyone who visits the website, including Defendants themselves, can immediately observe the site's catalog of infringing files. Popular movies and television shows such as "CSI," "Catwoman," and "The Dukes of Hazzard" are clearly offered for download. Defendants provide lists of "Latest Releases" and "Hottest NZBs," both of which are full of Plaintiffs' copyrighted works – a recent "Hottest NZB" was the movie "Saw II," a film *still available in theaters* at the time it was offered for download. The "Latest Releases" section constantly updates with many NZB files corresponding to Plaintiffs' copyrighted movies and television shows.

25. Further, according to the website, Defendants' staff members themselves post NZB files on the site, including those that are indexed in the "Latest Releases" section. The online application for staff members even asks applicants to edit potential site postings that clearly show postings of numerous copyrighted works. In addition, Defendants choose to provide categories of available files that include "Movies" and "TV," and they choose to index and provide listings of movies by format, including DVD, DivX, SVCD, and VCD. And when users browse NZB files for movies or television programs, Defendants provide links to searches for the movie or television title at Internet Movie Database (imdb.com), VCDquality.com,

Movies.com, and RottenTomatoes.com – all sites that present information about movies and television shows. In these and many other ways, Defendants know that their website is causing and/or materially contributing to infringing conduct, and Defendants themselves are inducing such conduct.

26. Defendants exercise control over the infringing activity on their website.

Defendants decide exactly what NZB files are indexed on their site and uploaded by their staff members, and Defendants easily could prevent infringement of Plaintiffs' copyrighted works by not indexing NZB files corresponding to Plaintiffs' copyrighted works. In fact, one of the Defendants recently posted that he removed a corrupted NZB file corresponding to a copyrighted film "War of the Worlds." Defendants also have the ability to decide which users can access their website, including the right and ability to exclude or ban specific users, such as by not allowing users with particular login names to access and download NZB files. Indeed, Defendants state on their website that they "have extensive records of all login activity," and Defendants require users to register with an email address before users can gain access to the NZB files on the site.

27. Defendants profit from the infringement they encourage and make possible via their website. In particular, Defendants charge users a monthly fee to access and download NZB files, and Defendants also sell advertising that they display on their website. For Defendants, the value of their site and the financial benefits they receive are directly dependent upon the number of users attracted to their site – the more users, the greater the financial benefit. Plaintiffs' popular movies and television shows are the draw that attracts users to their site. Not only do Defendants profit from the widespread infringement that they facilitate, but that is the essential business model on which their venture is premised.

28. As demonstrated in paragraphs 23-27 above, Defendants clearly seek to induce copyright infringement of Plaintiffs' works, and operate their website with the object of promoting their use to infringe copyright. The evidence of inducement is flagrant and voluminous and includes, but is not limited to, the overwhelming infringing content available on Defendants' website, the posting by Defendants' staff members of NZB files on the site, including those indexed in the "Latest Releases" section for copyrighted content, and the subscription fee charged for access to the NZB files available on the website. Ultimately, even a single look at Defendants' website reveals that Defendants' website exists for the purpose of trafficking in infringing content.

Claim For Relief

(For Copyright Infringement Pursuant to 17 U.S.C. § 501 *et seq.*)

29. Plaintiffs repeat and reallege every allegation contained in paragraphs 1 through 28 as if fully set forth herein.

30. Motion pictures and television programs owned by Plaintiffs have been and continue to be illegally reproduced and distributed, without authorization, using Defendants' website. Plaintiffs own the copyrights, or the exclusive reproduction and distribution rights, in the copyrighted works listed on Exhibit A, all of which have been infringed with the active assistance of Defendants.

31. Defendants are liable under the Copyright Act for inducing the infringing acts of the users of their website. Defendants operate and maintain their website with the object of promoting its use to infringe Plaintiffs' copyrighted motion pictures and television programs. Defendants' inducement of copyright infringement is apparent from, among other things, the overwhelming infringing content available on Defendants' website, the posting by Defendants' staff members of NZB files on the site, including those indexed in the "Latest Releases" section

for copyrighted content, and the subscription fee charged for access to the NZB files available on the website. Through their creation, maintenance, and operation of their website, Defendants knowingly induce the unauthorized reproduction and distribution of copyrighted motion pictures and television programs, including those listed on Exhibit A hereto, in violation of Plaintiffs' exclusive rights under the copyright laws of the United States. 17 U.S.C. § 106.

32. Defendants are liable as contributory copyright infringers for the infringing acts of users of their website. Defendants have actual and constructive knowledge of the infringing activity that occurs on their website. Indeed, Defendants' website is used predominantly and overwhelmingly to infringe Plaintiffs' copyrights. Through their creation, maintenance, and operation of their website, Defendants knowingly cause and/or otherwise materially contribute to the unauthorized reproduction and distribution of copyrighted motion pictures and television programs, including those listed on Exhibit A hereto, in violation of Plaintiffs' exclusive rights under the copyright laws of the United States. 17 U.S.C. § 106.

33. Defendants are vicariously liable for the infringing acts of users of their website. Defendants have the right and ability to supervise and control the infringing activities that occur through the use of their website, and at all relevant times have derived a direct financial benefit from the infringement of Plaintiffs' copyrights. By charging a subscription fee for access to NZB files and selling advertising that is displayed on the website, Defendants receive a direct financial benefit attributable to the infringement by users of their website. Defendants are therefore vicariously liable for the unauthorized reproduction and distribution of copyrighted motion pictures and television programs, including those listed on Exhibit A hereto, in violation of Plaintiffs' exclusive rights under the copyright laws of the United States. 17 U.S.C. § 106.

34. The foregoing acts of infringement by Defendants have been willful, intentional, and purposeful, in disregard of and indifferent to Plaintiffs' rights.

35. As a direct and proximate result of Defendants' infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to damages as well as Defendants' profits pursuant to 17 U.S.C. § 504(b).

36. Alternatively, Plaintiffs are entitled to the maximum statutory damages, in the amount of \$150,000 per infringement, pursuant to 17 U.S.C. § 504(c), or for such other amount as may be proper pursuant to 17 U.S.C. § 504(c).

37. Plaintiffs further are entitled to their attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

38. Defendants' conduct is causing, and unless enjoined and restrained by this Court will continue to cause, Plaintiffs great and irreparable injury that cannot fully be compensated for or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to preliminary and permanent injunctions prohibiting further infringements of their copyrights and exclusive rights under copyright.

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

A. For a preliminary and permanent injunction enjoining Defendants and their respective agents, servants, employees, officers, attorneys, successors, licensees, partners, and assigns, and all persons acting in concert with each or any of them, from:

(i) aiding, encouraging, enabling, inducing, causing, materially contributing to, or otherwise facilitating the unauthorized reproduction,

downloading, uploading, and/or distribution of copies of Plaintiffs' copyrighted works, whether using Defendants' website or by any other means; and

(ii) downloading, uploading, and/or otherwise reproducing or distributing Plaintiffs' copyrighted works, whether using the Usenet network or by any other means.

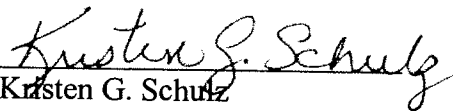
B. For all damages to which Plaintiffs may be entitled, including Defendants' profits, in such amounts as may be found. Alternatively, at Plaintiffs' election, for statutory damages in the maximum amount allowed by law.

C. For prejudgment interest according to law.

D. For Plaintiffs' attorneys' fees, and full costs and disbursements in this action.

E. For such other and further relief as the Court may deem proper and just.

Respectfully submitted,


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Attorneys for Plaintiffs

Dated: February 23, 2006

EXHIBIT A

TITLE	PLAINTIFF	COPYRIGHT	DATE
CSI - 523 & 524 - Grave Danger	CBS Broadcasting, Inc.	PA-1-275-187	6/13/2005
CSI:NY - 101 - Blink	CBS Broadcasting, Inc.	PA-1-243-358	9/29/2004
The Fog	Columbia Pictures Industries, Inc.	PENDING	PENDING
Sky High	Disney Enterprises, Inc.	PA 1-267-119	8/30/2005
Family Guy - 2ACX03 - A Very Special Family Guy Freakin' Christmas	Twentieth Century Fox Film Corporation	PA-1-068-477	1/4/2002
Family Guy - 4ACX17 - PTV	Twentieth Century Fox Film Corporation	PAU-2-906-449	11/8/2004
Roswell - 2ADA17 - Heart of Mine	Twentieth Century Fox Film Corporation	PA-1-022-005	5/17/2001
Roswell - 2ADA21 - The Departure	Twentieth Century Fox Film Corporation	PA-1-036-565	5/31/2001
Catwoman	Warner Bros. Entertainment Inc.	PA1-220-570	7/29/2004
Cinderella Story	Warner Bros. Entertainment Inc.	PA-1-233-738	8/20/2004
The Dukes of Hazzard	Warner Bros. Entertainment Inc.	PENDING	PENDING