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Dear _____:

There is a problem with copyright infringement lawsuits against accused internet downloaders across the U.S. which I would like to bring to your attention. $150,000 statutory copyright damages is obviously an inappropriate damages amount for someone who clicks on a torrent file or downloads a piece of music, and it is my opinion that the copyright laws need to be reconsidered even in view of the statutes in place, and more specifically, the Digital Millennium Copyright Act.

Even though copyright laws do on their face appear to hold a downloader liable for copyright infringement, it is my understanding that it was not the intent of lawmakers to hold consumers liable for purchasing or acquiring copyrighted products and as a result, violating copyright laws in their acquisition. Both from the viewpoint of the copyright owners and from the viewpoint of copyright holders, there is a problem with the current state of intellectual property enforcement as it relates to internet piracy. Copyright holders face a difficult path enforcing their copyrights in that they lack a mechanism to financially benefit from the infringement that takes place over the internet, and I encourage and discuss solutions in this letter to solve the "piracy" problem.

I. COPYRIGHT LAWS AND THE INTENT OF ITS FRAMERS.

It is my understanding that the intent of the copyright lawmakers when fashioning the Copyright Acts and their corresponding legislation (e.g., the Digital Millennium Copyright Act "DMCA") were to prosecute commercial entities (e.g., movie theaters, the guy in NYC on the corner of 5th Avenue selling pirated DVDs, the gas station owners selling pirated DVDs, the online distributors who sell pirated DVDs ["burn DVD title on demand"], etc.), and to curtail piracy. Essentially, the copyright laws were written for anyone who makes a windfall off of copying or selling copyrighted media without giving the authors the choice of whether to sell and depriving the authors of the profits that they should make from their copyrighted works.

Now in my opinion, we were indoctrinated in law school to "read and obey" the law on its face. Every average lawyer does this. In my opinion, however, a lawyer should not only read the law on its face, but they must investigate the INTENT of the lawmakers, and then they ask themselves whether the law is correctly applied, or whether it needs to be reinterpreted, limited in scope, or outright changed or repealed. A lawyer is an advocate not only to uphold the law, but to interpret the law to do what is right, and here there will be many opinions [which is why we have an unbiased judiciary and lawmakers].

II. REMEDIES GIVEN TO COPYRIGHT HOLDERS UNDER THE DIGITAL MILLENNIUM COPYRIGHT ACT ("DMCA")

In 1998, Congress passed the Digital Millennium Copyright Act ("DMCA") where lawmakers were already aware of the internet, piracy, and the issues copyright holders faced in that their copyrighted works can be digitally (meaning "an exact copy") replicated, copied, and distributed essentially for free, and with zero degradation in the quality of the copied work. And, while they were aware that individual downloaders were pirating and downloading copyrighted works, rather, they gave a remedy

to copyright holders to force content providers (e.g., ISPs, website owners, etc.) to take down infringing materials [or hyperlinks thereto], or else face liability for copyright infringement themselves. This is frequently referred to as the "safe harbor" provisions which pretty much every website in the reach of U.S. courts complies with dutifully. In short, Congress put the burden of stopping piracy ON THE COPYRIGHT HOLDERS THEMSELVES to police their own intellectual property, and then they put the responsibility to stop copyright infringement ON THE WEBSITES AND CONTENT OWNERS because they were the in the best position to stop piracy.

III. "COPYRIGHT TROLLS" AND THE BITTORRENT-BASED COPYRIGHT INFRINGEMENT LAWSUITS

After more than TWO YEARS fighting the copyright trolls, I am shocked that these bittorrent lawsuits are still here and are growing in popularity by fresh and young attorneys coming out of law school. However, bittorrent lawsuits are nothing but a scheme and a scam to separate a family's lifetime savings from the ISP account holder. "Copyright trolls" (meaning, copyright holders and their lawyers who sue individual downloaders for the infringement of their copyrighted works) do not have an interest in stopping piracy. Rather, they seek to encourage piracy so that they can sue more defendants and "shake down" more unsuspecting internet users regardless of whether the internet user downloaded the content themselves or not.

If copyright holders truly cared for protecting the integrity of their intellectual property, then they would focus their efforts on 1) REMOVING CONTENT AND LINKS from the bittorrent websites, and 2) PROSECUTING INDIVIDUALS WHO COPY, UPLOAD, AND INITIALLY SEED the pirated videos. I applaud copyright holders who watermark and track their content so that if and when their content is pirated, they can identify the so-called "pirate" immediately. I also applaud copyright holders who police their intellectual property and send takedown notices to website holders. I shame, however, copyright holders who fail to do their duty to police their own copyrighted content and instead 1) sue individual downloaders without first mitigating damages (meaning, trying to stop the piracy), or 2) send threat letters or DMCA notices to ISP account holders ("subscribers") [rather than to website owners] to pay the copyright holders hundreds or thousands (or in some cases, tens of thousands) of dollars threatening, "or else we will name you in a lawsuit against you in federal court."

Copyright infringement lawsuits have been around since the formation of our United States. And, they continue even today by companies who properly protect their intellectual property. However, the reason we do not hear about most cases is because there is nothing wrong with a company who sues a vendor which, for example, is copying DVDs and selling pirated content on the Amazon Marketplace. The reason we hear so much about these "copyright trolls" and "bittorrent lawsuits" is because they are so vile in that the copyright holder is 1) failing to do their duty to police their content and issue DMCA takedown notices, 2) they are suing individual downloaders rather than going after those who initially copied and uploaded ("the initial seeder" of) the copyrighted works, and 3) they are using settlement letters and scare tactics to shame, embarrass and threaten accused downloaders that regardless of whether they are guilty or not, they must settle "or else." This is a copyright troll.

IV. THE INEQUALITY BETWEEN A COPYRIGHT HOLDER AND AN ACCUSED DEFENDANT IN A COPYRIGHT INFRINGEMENT LAWSUIT

There is a clear disadvantage an accused defendant has in the courtroom. A copyright troll uses boilerplate letters, boilerplate motions, and they have refined their extortion scheme to lower their costs. Unlike the lawsuits by the RIAA or the MPAA, copyright trolls do not take their cases to trial and they do not fight on the merits of each of their cases. Rather, they hide and conceal their methods of tracking individual downloaders, and any time a defendant tries to fight back, they dismiss him and move on to other victims who do not have the funds, the will, or the ability to retain counsel and fight back. When plaintiffs dismiss these defendants, they do so in a way which is not “on the merits,”

which deprives the prevailing defendant from receiving the attorney fees and costs that the Copyright Act provides for prevailing parties.

Further, copyright trolls encourage settlements by telling defendants that "it is cheaper to settle than it is to fight us," and this is a true statement. There is a clear disproportionate advantage a copyright troll has over an individual defendant because most defendants do not have the resources to retain counsel, and since copyright infringement is a civil matter rather than a criminal matter (as far as these cases go), there is little to no legal help or lawyers offering to represent defendants "pro bono."

Defense lawyers are often less than helpful as well in these cases. Many defense attorneys have agreements not to fight the plaintiff attorneys under the condition that the plaintiff attorneys give those lawyers a "lower settlement amount" for their clients. Some defense attorneys have outright verbal agreements to represent a client poorly to allow the plaintiff attorney to prevail over the defendant to establish some principle of law. Similarly, defense lawyers often charge large amounts of money to their clients in order to file motions in court which they know will not succeed. In addition, too often defense attorneys charge large amounts of money as far as retainers and hourly fees to represent clients, and their interest is not to represent defendants, but to push them to settle their cases. Thus a defendant in a bittorrent case often has little to no assistance from attorneys on either side, and are unable to obtain or pay for counsel to dutifully represent them in these cases. Thus, they are left without legal counsel.

Without the ability to protect themselves, defendants are often forced to attempt "self-help" legal tactics which often fail. Defendants are not lawyers, and they are unaware of the deadlines associated with lawsuits, and they are far from being experts in federal courts, the jurisdiction in which most of these cases are tried. Without assistance from those competent to try these cases, they are at the mercy of the copyright holders who consistently outmaneuver them in the courtroom.

V. PROPOSED SOLUTIONS TO SOLVE THE "PIRACY PROBLEM" WHICH BENEFITS COPYRIGHT HOLDERS AND PROTECTS INTERNET USERS.

For the above reasons, I ask that lawmakers reform the copyright laws to give accused defendants a way to protect themselves against copyright trolls, and to prevent a copyright holder from abusing the legal system by filing lawsuits against individual downloaders. I also ask the judges in the federal courts to narrowly interpret the copyright laws to prevent the injustice that takes place. My end goal is for the law to be reformed to allow copyright holders to benefit from those infringing their products, but only after they take steps to police and protect their intellectual property by filing takedown notices with the websites and content providers. There are a few solutions in order to accomplish this.

A. SOLUTION #1: COPYRIGHT HOLDERS SHOULD DEMONSTRATE THEY HAVE MITIGATED DAMAGES BY POLICING THEIR INTELLECTUAL PROPERTY

The law or the courts could make it a prerequisite to demonstrate that a copyright holder has diligently protected their copyrighted content (and thus they have mitigated damages) by filing DMCA notices with the website providing the links to the copyrighted content or to websites providing the content itself. The copyright holder would need to show 1) the actual torrent file that was downloaded, and 2) demonstrate that they filed DMCA notices to the website providers [plural] providing that content or links thereto. This solution has been proposed by both plaintiff attorneys and defense attorneys alike.

The immediate and obvious problem to this solution is that downloaders can only download torrent files which contain links, and once a DMCA notice is filed, the link will be taken down and thus the downloader will not be able to download the torrent. Thus, any downloaders who are sued for copyright infringement will have no notice that the content is copyrighted and that they might be subject to a lawsuit for downloading that file. One could argue that the law itself gives notice, but with popular websites such as Hulu, and with technologies such as TiVo which allow an individual to record and play back television shows and movies, what is legal and what is illegal becomes unclear to the average internet user.

B. SOLUTION #2: IMPLEMENT A COMPULSORY LICENSING PIRACY PROGRAM IN CONJUNCTION WITH THE "SIX STRIKES" PROGRAM With the most recent "Six Strikes" program instituted by the ISPs combined with the old model of "compulsory licensing" where radio stations pay a set amount to each artist every time a song is played, I believe that technology has created both a solution to piracy, and a way for a copyright holder to ethically and financially benefit from piracy.

With compulsory licensing, every time a radio station plays a copyrighted song, the copyright holder is entitled to a set fee which is paid to him. The fee is often a small amount of money, but the artist is compensated for each instance that their song is played.

The "Six Strikes" program is a copyright infringement warning system that has been put in place by the internet service providers (ISPs) to warn their subscribers when they take action which infringes a copyright holder's copyrights. While the goal of the Six Strikes program is to educate and curtail piracy by 1) forcing that user to acknowledge that what they are doing is illegal, and 2) forcing them in some cases to take online instructional classes to educate them about copyright laws and how to properly use the internet so as not to violate the rights of copyright holders, the Six Strikes program could also serve the function to give notice to a downloader that if they continue to download copyrighted media, then they will be forced to take a compulsory license for the unlicensed media they download. In other words, the Six Strikes program can be used to give the required notice to the downloader that his activities are illegal, and that he will be subject to fines should he continue this course of action.

Once an internet user is given notice that his activities are infringing the rights of copyright holders, either the ISPs themselves can serve as the mechanism to administer the compulsory licenses and to extract the fees from its subscribers (e.g., as a fee on the subscriber's monthly internet bill) whereas they would take a fee or a small percentage for their operating costs, or a third party company could track and administer the compulsory licensing program either independently or through the ISP.

1. DETERMINING "DAMAGES" IN A COMPULSORY LICENSING PROGRAM

As far as the amount of what the compulsory license should be, there are a few ways to look at this. Radio station compulsory licenses pay pennies on the dollar each time they play a song. Internet infringement compulsory licenses could do the same thing.

While lawmakers could determine the average cost of a movie (whether that be an adult film, or a motion picture, a song, or computer software [an application or a game]), and they could extract that amount from the internet user, they could also determine the average retail cost to purchase or rent a DVD containing the copyrighted media, and charge some multiple of that amount as a penalty because it was acquired or viewed through piracy. For example, if a movie costs $39.99 to purchase in a retail store, that amount, a fraction of that amount, or a multiple of that amount could be charged to the internet user who downloads that title. Similarly, if the content is of pornographic material where the content providers do not sell DVDs, but rather, offer membership subscriptions to their online websites (e.g., $39.99 for a month; or $129 annually, etc.) then the compulsory license could be that amount ("you break it you buy it"), it could be a fraction of that amount, or a multiple of that amount.

VI. CONCLUSION

As I write this letter, copyright infringement lawsuits against unsuspecting ISP account holders (who are often not the downloader) continue without the copyright holder taking any steps to mitigate damages, to police their content, or to curtail piracy. The lawsuits continue to be lopsided in that plaintiff attorneys ("copyright trolls") minimize their costs and maximize the efficiency of their operations, while defendants continue to be harassed and victimized by the plaintiffs and their

attorneys, often without having the ability or the benefit of legal representation. The copyright laws need to be reformed to prevent this kind of abusive litigation.

Warm regards,

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