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**IN THE US DISTRICT COURT FOR
THE DISTRICT OF RHODE ISLAND**

U.S. DISTRICT COURT
DISTRICT OF RHODE ISLAND

BENJAMIN LIGERI,)
)
 PLAINTIFF)
)
 v.)
)
 GOOGLE, INC.,)
 VIACOM, INC.,)
 LIONS GATE)
 ENTERTAINMENT CORP.,)
 and EGEDA PIRATERIA)
)
 _____)

COMPLAINT FOR UNJUST ENRICHMENT,
VIOLATIONS OF US COPYRIGHT LAW,
AND FOR INJUNCTIVE
RELIEF AND DECLARATORY RELIEF

CA 15 - 188 M

COMPLAINT

COMES NOW the Plaintiff and alleges, to the best of his knowledge and belief,
as follows:

PARTIES

1. The Plaintiff is a natural person residing at 68 Waldron Ave in
Cranston, Rhode Island.

2. Defendant Google, Inc., (herein "Google") is a technology company
headquartered at 1600 Amphitheatre Parkway, Mountain View, CA 94043, that does
business in the state of Rhode Island and subject to its jurisdiction. It is the owner of
Youtube, which is a subsidiary of Google.

3. Defendant Viacom, Inc., a media conglomerate and a publicly-traded
corporation headquartered at 1515 Broadway in New York, NY 10036 and a potentially
interested party.

4. Defendant Lions Gate Entertainment Corp. is a publicly-traded media

corporation and potentially interested party headquartered at 2700 Colorado Avenue, Suite 5000 in Santa Monica, CA 90404.

5. Defendant Egeda Pirateria holds a user account on YouTube as well as others by way of Google Plus. It is unknown where he resides or does business. His email is octavio.dapena@egeda.com.

JURISDICTION

6. The Court has subject matter jurisdiction to hear the claims alleged herein as brought pursuant to 28 USC §2201, 28 USC §1331 and 28 USC §1332 as well as various provisions of the Digital Millenium Copyright Act (DMCA proper and as passed by Pub. L. No. 105-304, 112 Stat. 2860 (Oct. 28, 1998) and subsequently amended.

BACKGROUND AND GENERAL ALLEGATIONS

7. YouTube¹ is a video sharing website owned wholly by Defendant Google. It offers users, such as the Plaintiff and Defendant Pirateria, access to its videos as well as the opportunity to create and use accounts to submit videos that would be available to users.

8. YouTube offers access to its website under its Terms of Use, which constitute an adhesion contract² and is such a contract because:

a. YouTube has superior bargaining power and offers it unilaterally with no

¹ The Plaintiff intends that the Court and the Parties assume "YouTube" means Defendant Google as stated throughout the Complaint unless otherwise and contextually differentiated.

² "terms of use", "the contract", and "adhesion contract" are synonymous and refer to YouTube's Terms of Use as dated June 9, 2010 available on its website and modified from time to time.

opportunity for offer, acceptance or negotiation;

b. YouTube profits, exclusively and unilaterally, according to the terms of said adhesion contract and by subsequent users who become account holders and submit content which YouTube then plays ads against;

c. YouTube's Terms so strongly favor it and unfairly restricts the Plaintiff in the ways to be described, *infra*, that creates a presumption that one party had no choice when entering into it;

d. YouTube, under its terms, declares itself to be the sole arbiter for user permissions, types of content that may be blocked and in terms of whether or not content violates DMCA by way of its ContentID software and other means, leaving the Plaintiff and others with no meaningful, fair or equitable recourse or just dispute resolution;

e. YouTube, under its terms, unfairly restricts the venue of choice to Santa Clara County, California and provides that any civil action brought relating to YouTube's content or terms of service must be brought within one year of when the dispute arose;

f. YouTube seeks unfair exculpation from normal civil liability, is engaged in performing a service of great importance to the public, which is often a matter of practical necessity for some members of the public in terms of the DMCA, holds itself out as willing to perform this service for any

member of the public who seeks it (or at least for any member coming within certain established standards), as a result of the essential nature of the service, in the economic setting of the transaction, YouTube possesses a decisive advantage of bargaining strength against any member of the public who seeks his services, in exercising a superior bargaining power YouTube confronts the public with a standardized adhesion contract of exculpation, YouTube makes no provision whereby a purchaser may pay additional reasonable fees and obtain protection against negligence, and finally, as a result of the transaction, the property of the Plaintiff and others is placed under the control of YouTube subject to the risk of carelessness by the seller or his agents.

9. The Plaintiff has uploaded content under the account name BetterStream, and said content as described, *infra*, serves purposes such as criticism, comment, news reporting, teaching, scholarship, and/or research, and is not an infringement of copyright as such for the purposes of 17 USC §107.

10. YouTube, in attempting to identify content that may in reality or possibly or theoretically violate copyright, utilizes two primary mechanisms. The first is a website feature that allows users or content providers to report such content as a copyright violation. The second is YouTube's ContentID Software.

11. ContentID allows those who claim the copyright to choose whether they want to allow the content to remain online, mute the audio, monetize the content in their favor or block the content entirely. Content ID is an opaque and proprietary system where the

accuser can serve as the judge, jury and executioner.

12. ContentID allows individuals, including Defendants other than Google, to steal ad revenue from YouTube video creators en masse, with some companies claiming content they don't own deliberately or not. The inability to understand context and parody regularly leads to fair use videos getting blocked, muted or monetized. Illustrative of the weaknesses of the ContentID software were YouTube's actions taking down Mars Rover footage published by NASA.

13. Normally, under DMCA, there would be a process where the reported content would be removed for 10-14 days so any dispute could be resolved by way of notice and counter-notice.

14. ContentID and YouTube's adhesion contract are not compliant with DMCA because, at a minimum, the software's algorithm fails recognize when content may or may not be violating copyright.

15. Rather than acting as a neutral arbitrator between major content companies and independent organizations, YouTube's ContentID and adhesion contract arbitrarily favor the larger copyright holders that make use of its Content ID system over smaller creators. This software and YouTube's terms of use circumvent DMCA by creating a private arbitration mechanism. Further, a party claiming copyright infringement has no burden of proof under this private arbitration mechanism.

16. YouTube, explicitly and/or implicitly, cultivated a reputation as a harbor for copyright violations. It relied on and still relies on its users to aggregate content and drive traffic via unique distribution lines. YouTube then distributes the content of large

copyright holders, targets advertising toward it, splits the revenue between the copyright holders and then themselves and attempts to alienate the aggregator who labels, markets, grooms, uploads and catalogs the content from the profits.

17. The Defendants, in the ways described herein, control and monetize nearly all content from the early 1900's dawn of the creation of audio-visual content to the present, even material that is not infringing copyright in the ways to be described, infra, constitutes a true fair use purpose, and, in many cases, doesn't even remotely approximate the audio-visual content claimed to be the subject of copyright infringement so as to violate copyright law.

SPECIFIC ALLEGATIONS

COUNT ONE: For Injunctive Relief Seeking Compliance with DMCA

18. The Plaintiff realleges ¶¶1-17 as stated herein. The Plaintiff further alleges that, in terms of other parties similarly situated, (1) that prosecution of separate actions risks either inconsistent adjudications which would establish incompatible standards of conduct for the defendant or would as a practical matter be dispositive of the interests of others; (2) that defendants have acted or refused to act on grounds generally applicable to the class; or (3) that there are common questions of law or fact that predominate over any individual class member, questions and that a class action is superior to other methods of adjudication.

19. The Plaintiff posted content under Fair Use to Youtube, specifically a parody of a film The Girl With the Dragon Tattoo, which was based on a novel written by Stieg Larsson. This Fair Use content was on YouTube for more than a year prior to a DMCA

complaint made via YouTube's ContentID system.

20. Defendant Pirateria, a Google Plus user with 19 followers, claims to own the rights to Stieg Larsson's possibly billion-dollar franchise, The Girl With the Dragon Tattoo. Defendant Pirateria is not the rightful owner of the rights to The Girl With the Dragon Tattoo, nor did the Plaintiff's critique of it amount to copying or distribution of the movie.

21. YouTube, without justification under DMCA, issued a copyright strike against the Plaintiff's account.

22. YouTube, although Defendants Pirateria or Lion's Gate lacked any legal claim to any copyright to The Girl With the Dragon Tattoo, denied the Plaintiff's appeal pertaining to his account's copyright strike.

23. YouTube arbitrarily and unlawfully extended the legal time limits of content restoration beyond the mandates of the DMCA.

24. The process used by YouTube does not mirror mandates and expedience required by claims disposition mechanisms in DMCA.

25. YouTube claims, purports to claim and/or attempts to simulate a legal tribunal to dispose of copyright issues under United States law for the purposes of DMCA.

26. YouTube's simulated process sent the Plaintiff two emails concerning disposition, the first indicating that the copyright claim was dropped by the complaintant and the second stating that the complaintant is pursuing the claim. The time/date stamp from the communications were identical.

27. The Defendants still claim and/or reserve the right to claim ad revenues

generated by virtue of purported copyright to The Girl With the Dragon Tattoo, including those generated by material that would not have violated copyright even if it was not posted under Fair Use.

28. Despite the fact that none of the parties have filed legal action, YouTube has failed to restore the content in question within ten days.

29. The Plaintiff has had more than ten ongoing appeal disputes with the Defendants concerning the same content where the claim is purportedly removed and the Plaintiff prevailed but the content is still disabled. This process has lasted more than six months.

COUNT TWO: For Injunctive Relief Seeking Compliance with DMCA

30. The Plaintiff repeats and reallages ¶¶1-29 as if set forth verbatim. The Plaintiff further alleges that, in terms of other parties similarly situated, (1) that prosecution of separate actions risks either inconsistent adjudications which would establish incompatible standards of conduct for the defendant or would as a practical matter be dispositive of the interests of others; (2) that Defendants have acted or refused to act on grounds generally applicable to the class; or (3) that there are common questions of law or fact that predominate over any individual class member questions, and (4) that a class action is superior to other methods of adjudication.

31. The Plaintiff posted, under Fair Use, a critique of the 2014 remake of Teenage Mutant Ninja Turtles (TMNT), comparing it to previous older versions.

32. A claim was made with YouTube on behalf of Defendant Viacom.

33. Defendant Viacom does not have a legal or valid copyright to TMNT.

34. Defendant YouTube allowed Viacom the option to mute, disable or monetize the Plaintiff's Fair Use content.

35. The process used by YouTube does not mirror mandates and expedience required by claims disposition mechanisms in DMCA.

36. YouTube claims, purports to claim and/or attempts to simulate a legal tribunal to dispose of copyright issues under United States law for the purposes of DMCA.

COUNT THREE: For Unjust Enrichment

37. The Plaintiff repeats and reallages ¶¶1-36 as if set forth verbatim. The Plaintiff further alleges that, in terms of other parties similarly situated, (1) that prosecution of separate actions risks either inconsistent adjudications which would establish incompatible standards of conduct for the defendant or would as a practical matter be dispositive of the interests of others; (2) that Defendants have acted or refused to act on grounds generally applicable to the class; or (3) that there are common questions of law or fact that predominate over any individual class member questions, and (4) that a class action is superior to other methods of adjudication.

38. The Defendants, individually and collectively, have monetarily benefited from the Plaintiff's labor in promoting, organizing, grooming and uploading his Fair Use content while claiming or attempting to reserve a claim to monetization rights to the same.

39. The Defendants have received a benefit conferred upon them by the Plaintiff.

40. The Defendants have unfairly enjoyed the appreciation of benefits so provided by the Plaintiff.

41. The Defendants' acceptance and retention of the benefits under these circumstances make it inequitable for the defendant to retain it without paying the value obtained.

COUNT FOUR: For Declaratory Judgment Pertaining to YouTube's Terms of Use

42. The Plaintiff repeats and reallages ¶¶1-41 as if set forth verbatim. The Plaintiff further alleges that, in terms of other parties similarly situated, (1) that prosecution of separate actions risks either inconsistent adjudications which would establish incompatible standards of conduct for the defendant or would as a practical matter be dispositive of the interests of others; (2) that Defendants have acted or refused to act on grounds generally applicable to the class; or (3) that there are common questions of law or fact that predominate over any individual class member questions, and (4) that a class action is superior to other methods of adjudication.

43. Defendant Google unjustly benefits from simulating a legal process to adjudicate federal copyright issues under YouTube's Terms of Use.

44. The Terms of Use arbitrarily, unfairly and unlawfully deprive the Plaintiff and others similarly situated from bringing a cause of action in the jurisdictions where he and others so similarly situated reside and where Defendant Google has chosen to do business and profit in by operation of, minimally, respective States' long arm statutes establishing such jurisdiction.

45. The Terms of Use arbitrarily, unfairly and unlawfully enable the Defendants to prosecute false copyright claims for pecuniary benefit.

46. The Terms of Use arbitrarily, unfairly and unlawfully abrogate statutes of limitation set by the Plaintiff's State and those in other States who are similarly situated relative to contracts and causes of action by stating that a civil action must be brought within one year of any legal injury sustained.

COUNT FIVE: For Declaratory Judgment Pertaining to Pirateria's, Viacom's and Lion's Gate's Copyrights

47. The Plaintiff repeats and reallages ¶¶1-41 as if set forth verbatim.

48. The Plaintiff asserts that it did not violate any copyright to The Girl with the Dragon Tatoo or Teenage Mutant Ninja Turtles, and that the material submitted was submitted under Fair Use.

WHEREFORE, the Plaintiff claims:

A. A temporary and permanent injunction ordering Defendant Google to restore the content described by Counts One and Two and otherwise comply with DMCA;

B. Declaratory judgment that the Plaintiff did not infringe any copyright legally owned or held by Defendants Viacom, Lion's Gate or Pirateria;

C. Declaratory judgment that YouTube's Terms of Use are void as a contract in the ways complained of and nonbinding in terms of: (1) venue; (2) limitations on civil actions; (3) recourse insofar that it may ignore or fail to comply with DMCA; (4) any implied element of offer, consideration, meeting of the minds or acceptance;

D. Class certification as to Counts One through Four;

E. Nominal damages of \$10,000;

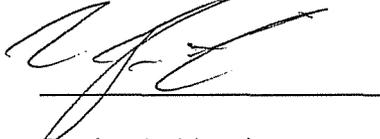
F. Special damages of \$1,000,000;

G. Punitive damages;

H. Costs;

I. Other relief the Court deems appropriate

THE PLAINTIFF:

A handwritten signature in black ink, appearing to read 'B. Ligeri', is written over a horizontal line.

Benjamin Ligeri
68 Waldron Ave
Cranston, RI 02910
508-266-5130

DATED:

5-7-15