

FEDERAL COURT

BETWEEN:

PARAMOUNT PICTURES CORPORATION

COLUMBIA PICTURES INDUSTRIES, INC.

SONY PICTURES TELEVISION INC.

TWENTIETH CENTURY FOX FILM CORPORATION

UNIVERSAL CITY STUDIOS PRODUCTION LLLP

UNIVERSAL NETWORK TELEVISION LLC

WARNER BROS. ENTERTAINMENT INC.

DISNEY ENTERPRISES INC.

Plaintiffs

- and -

DAVID LEMARIER,
also d.b.a. **WASABI TECHNOLOGIE**

VPN.HT LIMITED

ROBERT ENGLISH

LOUIE POOLE

Defendants

STATEMENT OF CLAIM

(Filed on this 9th day of October, 2015)



TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the Plaintiffs' solicitor or, where the Plaintiffs do not have a solicitor, serve it on the Plaintiffs, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

October 9, 2015

Issued by: **EMMANUELLE BELICE** 
(Registry Officer)
REGISTRY OFFICER

Address of local office:
30 McGill Street
Montreal, Quebec
H2Y 3Z7
CANADA
Telephone: (514) 283-4820
Facsimile: (514) 283-6004

TO: **DAVID LEMARIER**
58, rue Elphège
Victoriaville (Québec)
G6P 8E9 Canada

AND TO: **VPN.HT LIMITED**
Suite 01, Room 1716C, Nan Fung Centre
264-298 Castle Peak Road
Tsuen Wan, Northern Territories
Hong Kong

AND TO: **ROBERT ENGLISH**
1038 Beaver Lane
Midhurst (Ontario)
L0L 1X0 Canada

AND TO: **LOUIE POOLE**
10672 Madrona Drive
North Saanich (British Columbia)
V8L 5L8 Canada

CLAIM

1. The Plaintiffs claim:

- (a) a declaration that copyright subsists in the cinematographic works listed in the tables set out in Appendix 1 hereto (hereinafter the “Plaintiff Works”) and that said copyright is owned by the Plaintiff specified for each table;
- (b) a declaration that the Defendants:
 - i. have infringed the Plaintiffs’ copyright pursuant to section 27(2.3) of the *Copyright Act* by providing services on the Internet primarily for the purpose of enabling acts of copyright infringement, including of the Plaintiff Works, leading to users of these services actually engaging in acts of copyright infringement of the Plaintiff Works;
 - ii. have induced Canadian Popcorn Time users to infringe the Plaintiffs’ copyright in the Plaintiff Works available on Popcorn Time, a sample of which is listed in the tables set out in Appendix 2 hereto;
 - iii. have authorized Canadian Popcorn Time users to infringe the Plaintiffs’ copyright, consequently infringing the Plaintiffs’ copyright in the Plaintiff Works available on Popcorn Time pursuant to the last paragraph of section 3(1) and section 27(1) of the *Copyright Act*;
 - iv. have made Plaintiff Works available on Popcorn Time by telecommunication in a way that allows a member of the public to have access to them from a place and at a time individually chosen by that member of the public, consequently infringing the Plaintiffs’ copyright in the Plaintiff Works available on Popcorn Time pursuant to sections 2.4(1.1), 3(1)(f) and 27(1) of the *Copyright Act*;

- (c) interim, interlocutory and permanent injunctions enjoining and restraining the Defendants, by themselves or by their shareholders, directors, officers, employees, representatives and agents, or by any company, partnership, trust, entity or person under their authority or control, or with which they are associated or affiliated, from directly or indirectly:
- i. enabling, inducing or authorizing the reproduction or communication to the public by telecommunication of the Plaintiff Works, including by directly or indirectly participating in the development, operation, distribution or promotion of the software application Popcorn Time, or of any similar software application;
 - ii. enabling, inducing or authorizing the reproduction or communication to the public by telecommunication of the Plaintiff Works, including by directly or indirectly developing, operating, providing or promoting Virtual Private Network (hereinafter “VPN”) services integrated in and/or coordinated with the software application Popcorn Time, or in any similar software application;
 - iii. making the Plaintiff Works available to the public by telecommunication in a way that allows a member of the public to have access to them from a place and at a time individually chosen by that member of the public, including by directly or indirectly participating in the development, operation, distribution or promotion of the software application Popcorn Time, or of any similar software application;
 - iv. participating in the development of the software application Popcorn Time, or of any similar software application;
 - v. operating the website www.popcorn.time.io, or any other website providing similar services;

- vi. promoting the software application Popcorn Time, or any similar software application;
- (d) a permanent injunction ordering David Lemarier to abandon and refrain from reactivating or prosecuting in any way U.S. Trademark Application No. 86/301,860 for the trademark POPCORN TIME;
- (e) damages suffered by the Plaintiffs and an accounting of the profits illegally made by the Defendants or, in the alternative, statutory damages, as the Plaintiffs may elect;
- (f) punitive and exemplary damages;
- (g) pre- and post-judgment interests;
- (h) costs of this action on a solicitor and client basis, plus GST and QST, including expert's fees; and
- (i) such further and other relief as to this Honourable Court may seem just.

I. THE PARTIES

- 2. The Plaintiff Paramount Pictures Corporation (hereinafter "Paramount") is a corporation incorporated and subsisting under the laws of the state of Delaware, U.S.A., having a principal place of business at 5555 Melrose Avenue, Los Angeles, California 90038, U.S.A.
- 3. The Plaintiff Columbia Pictures Industries, Inc. (hereinafter "CPII") is a corporation incorporated and subsisting under the laws of the state of Delaware, U.S.A., having a

principal place of business at 10202 West Washington Boulevard, Culver City, California 90232, U.S.A.

4. The Plaintiff Sony Pictures Television Inc. (hereinafter "SPT") is a corporation incorporated and subsisting under the laws of the state of Delaware, U.S.A., having a principal place of business at 10202 West Washington Boulevard, Culver City, California 90232, U.S.A.
5. The Plaintiffs CPII and SPT are wholly owned indirect subsidiaries of non-party Sony Pictures Entertainment Inc. (hereinafter "Sony Pictures").
6. The Plaintiff Twentieth Century Fox Film Corporation (hereinafter "Fox") is a corporation incorporated and subsisting under the laws of the state of Delaware, U.S.A., having a principal place of business at 10201 West Pico Boulevard, Los Angeles, California 90035, U.S.A.
7. The Plaintiff Universal City Studios Production LLLP (hereinafter "Universal Studios") is a limited liability limited partnership subsisting under the laws of the state of Delaware, U.S.A., having a principal place of business at 100 Universal City Plaza, Universal City, California, 91608, U.S.A.
8. The Plaintiff Universal Network Television LLC (hereinafter "Universal Television") is a corporation incorporated and subsisting under the laws of the state of Delaware, U.S.A., having a principal place of business at 100 Universal City Plaza, Universal City, California, 91608, U.S.A.
9. The Plaintiffs Universal Studios and Universal Television are affiliates of non-party Universal City Studios LLC (hereinafter "Universal").
10. The Plaintiff Warner Bros. Entertainment Inc. (hereinafter "Warner Bros.") is a corporation incorporated and subsisting under the laws of the state of Delaware, U.S.A.,

having a principal place of business at One Time Warner Center, New York, New York 10019, U.S.A.

11. The Plaintiff Disney Enterprises Inc. (hereinafter "DEI") is a corporation incorporated and subsisting under the laws of the state of Delaware, U.S.A., having a principal place of business at 500 South Buena Vista Street, Burbank, California 91521, U.S.A.
12. The Defendant David Lemarier is an individual residing at 58, rue Elphège, Victoriaville (Québec), G6P 8E9 Canada. David Lemarier does business in his personal name, under the business name Wasabi Technologie, and through the Defendant VPN.ht Limited.
13. The Defendant VPN.ht Limited is a corporation incorporated and subsisting under the laws of Hong Kong, having a registered office at Suite 01, Room 1716C, Nan Fung Centre, 264-298 Castle Peak Road, Tsuen Wan, Northern Territories, Hong Kong.
14. David Lemarier is the Chief Executive Officer of VPN.ht Limited and one of its two directors, the other director being an individual named Mohamed Amine Faouani, residing in Annaba, Algeria.
15. The Defendant Robert English is an individual residing at 1038 Beaver Lane, Midhurst (Ontario), L0L 1X0 Canada.
16. The Defendant Louie Poole is an individual residing at 10672 Madrona Drive, North Saanich (British Columbia), V8L 5L8 Canada. Louie Poole is an employee of the Defendant VPN.ht Limited.

A) *The Business and Rights of the Plaintiffs*

17. The Plaintiffs and their affiliates are well-known entertainment companies engaged in, *inter alia*, the production and distribution of feature-length motion pictures and television programs, either directly or through a parent, affiliates or subsidiaries, for some of which

the Plaintiffs own the copyright in Canada (collectively the “Plaintiff Works”, or separately the “Paramount Works”, “CPII/SPT Works”, “Fox Works”, “Universal Works”, “Warner Bros. Works” and “DEI Works”).

18. The Plaintiffs or their affiliates distribute these motion pictures and television programs in theatres, through digital services, through cable and satellite television providers and on pre-recorded physical media such as DVDs and Blu-ray discs.
19. In Canada, copyright in the Plaintiff Works is owned by:
 - (a) Paramount, for the Paramount Works;
 - (b) CPII, for the CPII/SPT Works which are motion pictures;
 - (c) SPT, for the CPII/SPT Works which are television programs;
 - (d) Fox, for the Fox Works;
 - (e) Universal Studios, for the Universal Works which are motion pictures;
 - (f) Universal Television, for the Universal Works which are television programs;
 - (g) Warner Bros., for the Warner Bros. Works; and
 - (h) DEI, for the DEI Works.
20. Lists of the Plaintiff Works separated by Plaintiff, along with copies of the Certificates of Registration of Copyright for a sample of these works, are set out in Appendix 1 hereto.

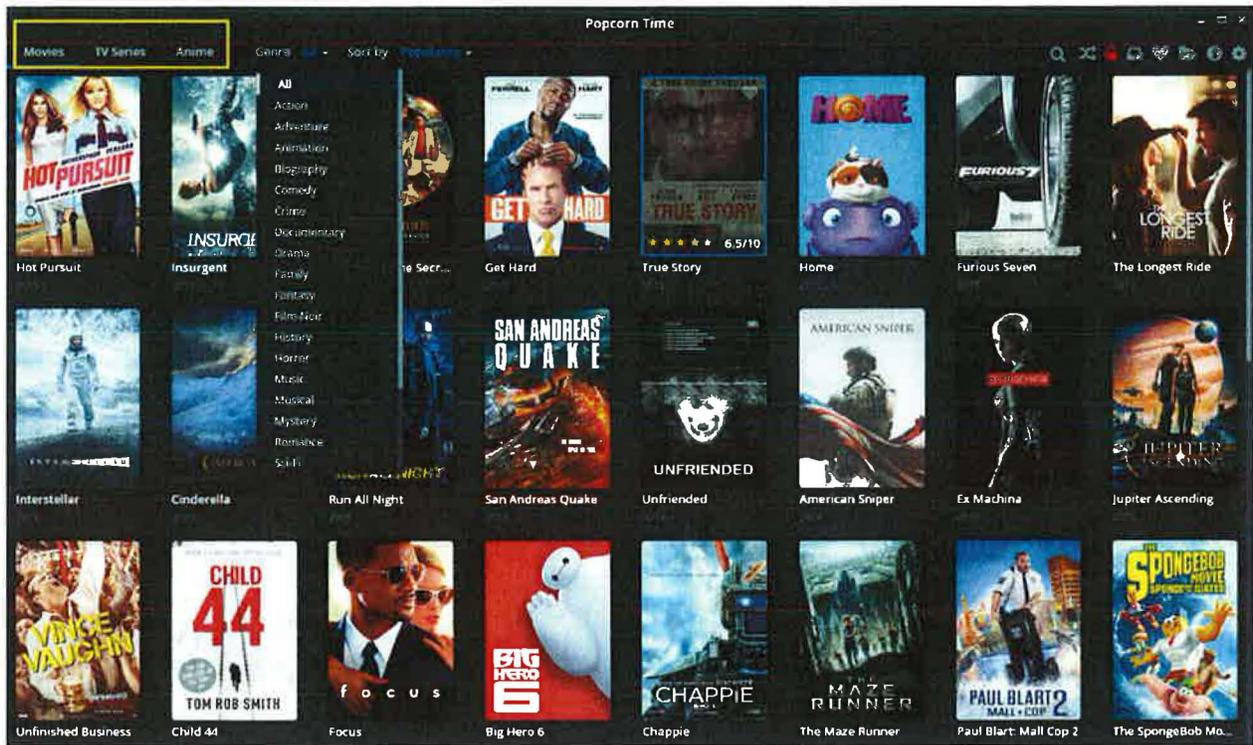
21. Pursuant to Section 53(2) of the *Copyright Act*, the Certificates of Registration of Copyright are evidence that copyright subsists in the Plaintiff Works and that said copyright is owned by the Plaintiff specified thereon.
22. Pursuant to Section 3 of the *Copyright Act*, the Plaintiffs have the sole right to, *inter alia*,:
 - (a) reproduce the Plaintiff Works or any substantial part thereof in any material form whatever;
 - (b) communicate the Plaintiff Works to the public by telecommunication, including the right to
 - (c) make the Plaintiff Works available to the public by telecommunication in a way that allows a member of the public to have access to them from a place and at a time individually chosen by that member of the public; and
 - (d) authorize such acts.

II. **THE OPERATION OF POPCORN TIME AND VPN.HT LIMITED**

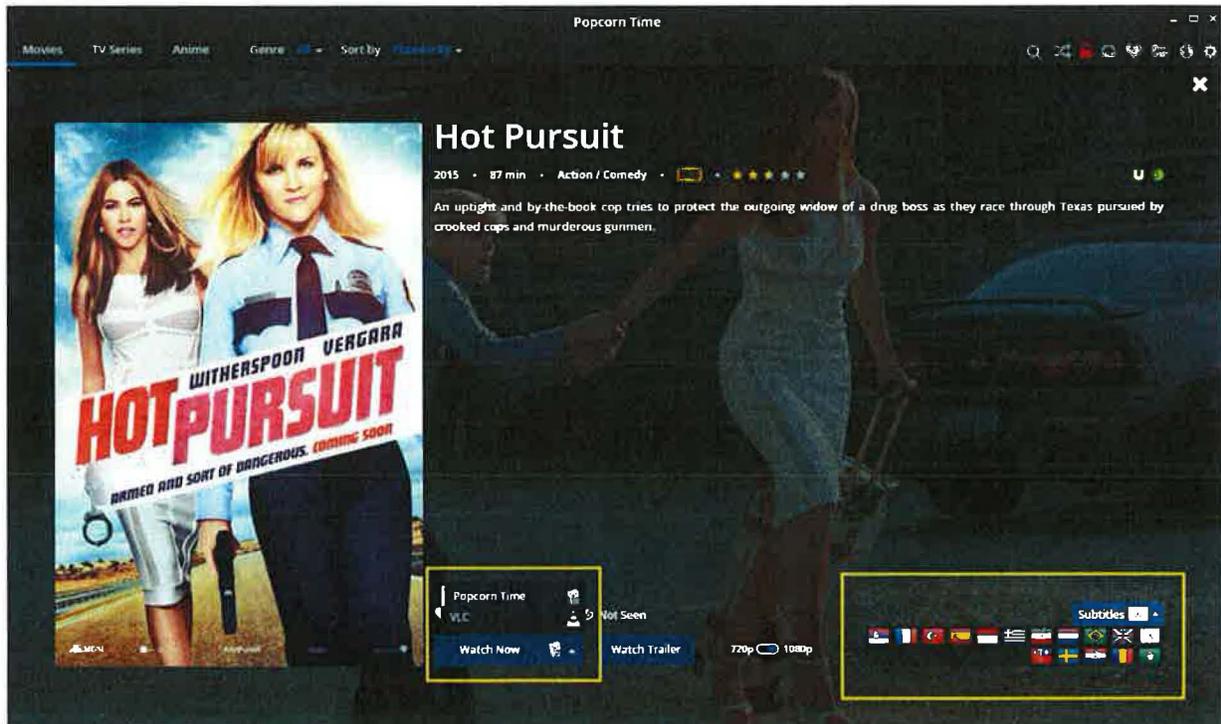
23. Since April 2014, the individual Defendants David Lemarier, Robert English and Louie Poole have been developing, operating, distributing and promoting the computer application "Popcorn Time".
24. Popcorn Time is a free, user-friendly computer application having an interface comparable to the popular service "Netflix", with the exception that the copies of motion pictures and television programs made available by the service are unauthorized by the copyright owner and that by using the service, its users are engaging in acts of copyright infringement.

25. Popcorn Time is an “open source” software and its development has changed hands a number of times since its launch in March 2014. While there are other lesser known Popcorn Time versions available on the Internet, each developed by different individuals, the official and most popular version has been hosted and developed on the website www.popcorntime.io (and its precursor www.get-popcorn.com) since April 2014. All further reference to “Popcorn Time” is a reference to that version of Popcorn Time.
26. Popcorn Time can be downloaded for free at the website www.popcorntime.io and can be installed and used on virtually any modern digital device, including PC, Mac and Linux personal computers, Android smartphones and tablet computers. Once installed on such computer or other device, Popcorn Time allows its users to watch content on said device and includes the option to watch that content directly on a television.
27. As shown below, once users have downloaded and installed Popcorn Time, they can easily navigate through a polished and user-friendly interface to simply search for the motion picture they want to watch, after which they can click on the image of a poster corresponding to that motion picture and click the “Watch Now” button. The motion picture will then start playing almost instantly, on an on-demand basis, and in a manner akin to broadcasting, the whole without payment by the user.

Popcorn Time motion picture page



Popcorn Time page for the motion picture *Hot Pursuit* after a user has clicked on the corresponding poster



User watching *Hot Pursuit* on Popcorn Time after having clicked “Watch Now”



28. The user experience for selecting and playing television programs through Popcorn Time is substantially the same as the experience for selecting and playing motion pictures, with the exception that users are shown a selection of television series cover art. Once users click on a particular television series, they can select which season and which specific episode to watch.
29. Thousands of motion pictures and television programs are available on Popcorn Time, including a large number of Plaintiff Works, a sample of which is listed in Appendix 2 hereto.
30. Plaintiff Works available on Popcorn Time are typically sourced from unauthorized reproductions of pre-retail or retail Blu-rays or DVDs, unauthorized reproductions of high definition transmissions, or reproductions from other unauthorized digital sources.

31. It is estimated that millions of individuals use Popcorn Time around the world, a number of which are located in Canada. This wide, unauthorized availability of Plaintiff Works to millions of individuals directly leads to acts of copyright infringement on a massive scale. In fact, the amount of unique visitors to the Popcorn Time website is constantly increasing and reached over 1.5 million unique visitors in July 2015.
32. Normally, users who engage in illegal activities on the Internet can be identifiable through their IP address (i.e. the unique numerical identifier of a user's computer on a network, for example on the Internet), which makes it possible for copyright owners and law enforcement to notify these users of their acts of copyright infringement and/or to take action against them.
33. However, Internet users can use a "Virtual Private Network" (hereinafter "VPN") to mask their IP address, making them completely anonymous and unidentifiable by third parties.
34. In December, 2014, a paid VPN service provided by the Defendant VPN.ht Limited was integrated in Popcorn Time (this Popcorn Time add-on is hereinafter referred to as the "PT Add-On"). The integration of the PT Add-On acts as an important enticement for users of Popcorn Time to engage in acts of copyright infringement, and is explicitly marketed as such on its website. The PT Add-On thus increases the amount of users of Popcorn Time ultimately engaging in acts of copyright infringement. David Lemarier and VPN.ht Limited derive significant income from the provision of the PT Add-On.

III. POPCORN TIME USERS INFRINGE THE PLAINTIFFS' COPYRIGHT

35. Popcorn Time makes available to its users motion pictures and television programs on the Internet by using the "BitTorrent" network. The BitTorrent network is a peer-to-peer network that allows Internet users to download copies of files from other users (i.e. make a reproduction of another user's copy) and upload copies of files to other users (i.e. transmit a copy to other users) over the Internet.

36. As they are watching a Plaintiff Work using Popcorn Time, users are downloading the file containing that Plaintiff Work on their computer from one or more other user(s), thus making a complete and unauthorized reproduction of that Plaintiff Work on their computer. By default, this reproduction is stored temporarily on the users' computer. Alternatively, users have the option of easily keeping a permanent reproduction of the Plaintiff Work on their computer by simply unticking a box in the Popcorn Time settings.
37. Because of the file-sharing nature of the BitTorrent network, users of Popcorn Time who are still watching a Plaintiff Work or who already possess an unauthorized reproduction of a Plaintiff Work (e.g. after having watched the Plaintiff Work on Popcorn Time) also transmit that Plaintiff Work to other Popcorn Time users through the Internet. These users are therefore communicating unauthorized copies of Plaintiff Works to other Popcorn Time users on an on-demand basis.
38. By these activities, Canadian Popcorn Time users:
- a. reproduce Plaintiff Works without the authorization of the Plaintiffs, consequently infringing the Plaintiffs' copyright in these Plaintiff Works pursuant to sections 3(1) and 27(1) of the *Copyright Act*;
 - b. communicate Plaintiff Works to the public by telecommunication without the authorization of the Plaintiffs, consequently infringing the Plaintiffs' copyright in these Plaintiff Works pursuant to sections 3(1)(f) and 27(1) of the *Copyright Act*; and
 - c. make Plaintiff Works available to the public by telecommunication in a way that allows members of the public to have access to them from a place and at a time individually chosen by these members of the public, consequently infringing the Plaintiffs' copyright in these Plaintiff Works pursuant to sections 2.4(1.1), 3(1)(f) and 27(1) of the *Copyright Act*;

IV. THE DEFENDANTS ENABLE, INDUCE, AND AUTHORIZE THE POPCORN TIME USERS' ACTS OF COPYRIGHT INFRINGEMENT AND MAKE THE PLAINTIFF WORKS AVAILABLE TO THE PUBLIC

39. Given that David Lemarier, Robert English and Louie Poole conceal their identity with anonymous usernames (notwithstanding Robert English's appearances in the media under his personal name), the full extent of their participation in the development, operation and distribution of Popcorn Time is not fully known to the Plaintiffs.
40. However, the Plaintiffs have uncovered that, in the context of the development of Popcorn Time, David Lemarier, Robert English and Louie Poole have been responsible for numerous significant contributions and improvements to various features which make Popcorn Time a more advanced and polished application. These contributions further facilitate mass copyright infringement and include the ability to watch television programs, improvements to the user interface, the implementation of the PT Add-On within Popcorn Time, the testing of Popcorn Time, and the compilation of the Popcorn Time source code into an executable computer application for its users.
41. While all three individual Defendants have materially participated in the development of Popcorn Time, Louie Poole has been the most prolific of all Popcorn Time developers since April 2014, having made the most contributions to the Popcorn Time source code than any other developer during that period.
42. Beyond their participation in the development of Popcorn Time, David Lemarier, Robert English and Louie Poole are also involved in the operation, distribution and/or promotion of Popcorn Time and of the PT Add-On.

43. In the context of these additional activities,
- a. David Lemarier,
 - i. owns and operates the website www.popcorn.time.io, which, *inter alia*, makes Popcorn Time available to be downloaded by users and serves as a development platform for its developers;
 - ii. has applied to register the trademark POPCORN TIME in the United States under U.S. Trademark Application No. 86/301,860, which was filed on June 5, 2014 for use in association with the goods “[d]ownloadable computer software used for streaming multimedia content images, videos and audio from peer to peer”;
 - iii. is an active contributor to the Popcorn Time social media;
 - iv. is the Chief Executive Officer and one of the two directors of the Defendant VPN.ht Limited, which provides the PT Add-On integrated in Popcorn Time; and
 - v. receives monetary donations made to Popcorn Time through his business name Wasabi Technologie;
 - b. Robert English,
 - i. promotes Popcorn Time by having authored a large number of blog entries posted on the Popcorn Time website (www.popcorn.time.io), containing announcements to the attention of Popcorn Time users on various topics;
 - ii. has authored the contact page for Popcorn Time, which includes details as to how to donate funds to the Popcorn Time development team;
 - iii. is an active contributor to the Popcorn Time social media; and

- iv. is the public voice for promoting Popcorn Time, having been quoted multiple times by media outlets as being a part of the Popcorn Time development team and, on multiple occasions, having acknowledged Popcorn Time's illegal character and declared that the Popcorn Time team would attempt to circumvent court orders.

c. Louie Poole

- i. is an active contributor to the Popcorn Time social media; and
- ii. has been employed as a software engineer by VPN.ht Limited since at least as early as September, 2015.

44. The individual Defendants David Lemarier, Robert English and Louie Poole therefore develop, operate, distribute and promote a service which they know is provided for the sole purpose of enabling acts of copyright infringement, including the infringement of copyright in the Plaintiff Works. In fact, Popcorn Time has no legitimate use other than enabling these acts of copyright infringement.

45. Instead of limiting acts of copyright infringement through Popcorn Time, David Lemarier, Robert English and Louie Poole are active in further developing, operating, distributing and promoting Popcorn Time, thus making it more attractive to a wider range of users and consequently increasing the amount of copyright infringement taking place through Popcorn Time.

46. David Lemarier and Robert English have both been responsible for seeking and receiving monetary donations made to Popcorn Time, while Louie Poole is employed by the Defendant VPN.ht Limited. Moreover, payments made through PayPal for the PT Add-On are sent to Wasabi Technologie, a sole proprietorship registered in the name of David Lemarier. The sale of the PT Add-On service generates important monthly revenues which directly profit the Defendants David Lemarier and VPN.ht Limited, and the Defendant Louie Poole as an employee of VPN.ht Limited. All the individual Defendants

as well as VPN.ht Limited derive financial benefits from their participation in Popcorn Time.

47. Given the close relationship between Popcorn Time and VPN.ht Limited, including the fact that David Lemarier and Louie Poole both act as developers of Popcorn Time and as officer or employee of VPN.ht Limited, the above allegations pertaining to Popcorn Time are equally applicable to VPN.ht Limited.

48. By these activities, the Defendants:

- (a) infringe the Plaintiffs' copyright pursuant to section 27(2.3) of the *Copyright Act* by providing services on the Internet primarily for the purpose of enabling acts of copyright infringement, including of the Plaintiff Works, leading to the services' users actually engaging in acts of direct copyright infringement of the Plaintiff Works;
- (b) induce Canadian Popcorn Time users to infringe the Plaintiffs' copyright in the Plaintiff Works;
- (c) authorize Canadian Popcorn Time users to infringe the Plaintiffs' copyright, consequently infringing the Plaintiffs' copyright pursuant to the last paragraph of section 3(1) and section 27(1) of the *Copyright Act*; and
- (d) make the Plaintiff Works available to the public by telecommunication in a way that allows a member of the public to have access to them from a place and at a time individually chosen by that member of the public, consequently infringing the Plaintiffs' copyright in the Plaintiff Works pursuant to sections 2.4(1.1), 3(1)(f) and 27(1) of the *Copyright Act*;

49. Acts of copyright infringement by Popcorn Time users cause damages to the Plaintiffs at every stage of the legitimate distribution process for the Plaintiff Works.

50. These damages take the form of, *inter alia*, undermining the Plaintiffs' right to control the time, place and circumstances in which their works are displayed, reproduced, made available and performed; irreparable damage to the Plaintiffs' relationship with authorized distributors of their works; and incalculable losses in box office revenues and in revenues from home entertainment physical media (e.g. DVD, Blu-ray), digital transmission (e.g. Netflix, Hulu, iTunes and other online content delivery systems) and traditional transmissions (free and paid cable television, etc.).
51. Unless restrained by this Honourable Court, the Defendants will continue their aforesaid illegal activities, the Plaintiffs will continue to suffer damages, and the Defendants will continue to illegally derive profits.
52. The Plaintiffs propose that this action be tried in Montreal, Quebec.

DATED AT Montreal, Quebec, on October 9th, 2015.

Smart & Biggar

SMART & BIGGAR
 1000 de la Gauchetière Street West
 Suite 3300
 Montreal (Quebec) H3B 4W5
 Mr. François Guay
 Mr. Guillaume Lavoie Ste-Marie
 Tel. 514-954-1500
 Fax. 514-954-1396
 (Reference : 88076-1)
 Solicitors for the Plaintiffs

I HEREBY CERTIFY that the above document is a true copy of the original issued out of the Court in the Cause on the _____ day of _____ 2015.
 Dated this _____ day of _____ 2015.

Emmanuelle Belice

**EMMANUELLE BELICE
 AGENT DU GREFFE
 REGISTRY OFFICER**