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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

10 WARNER BROS. ENTERTAINMENT
11 INC.,

12 Plaintiff,

13 vs.

14 INNOVATIVE ARTISTS TALENT
AND LITERARY AGENCY, INC.;
15 INNOVATIVE ARTISTS;
16 INNOVATIVE ARTISTS, LLC; and
17 INNOVATIVE ARTISTS TALENT
AND LITERARY AGENCY N.Y.,
INC.,

18 Defendants.

Case No. 2:16-cv-7902

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT AND
VIOLATION OF DIGITAL
MILLENNIUM COPYRIGHT ACT**

DEMAND FOR JURY TRIAL

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1 Plaintiff Warner Bros. Entertainment Inc. (“Warner Bros.” or “Plaintiff”),
2 through its undersigned counsel, bring this Complaint against Defendants Innovative
3 Artists Talent and Literary Agency, Inc.; Innovative Artists; Innovative Artists,
4 LLC; and Innovative Artists Talent and Literary Agency N.Y., Inc. (collectively,
5 “Innovative Artists”) for infringing Plaintiff’s exclusive rights under the Copyright
6 Act (17 U.S.C. § 101 *et seq.*) and for violating the Digital Millennium Copyright
7 Act (§ 1201 *et seq.*) (“DMCA”). This Court has subject matter jurisdiction pursuant
8 to 28 U.S.C. §§ 1331, 1338(a), and 17 U.S.C. §§ 501(b), 1203(a). Plaintiff alleges,
9 on personal knowledge as to itself and information and belief as to others, as
10 follows:

11 INTRODUCTION

12 1. Beginning in late 2015, Innovative Artists set up and operated an illegal
13 digital distribution platform that copied movies and then distributed copies and
14 streamed public performances of those movies to numerous people inside and
15 outside of the agency. Innovative Artists stocked its platform with copies of
16 Plaintiff’s works, including copies that Innovative Artists made by ripping awards
17 consideration “screener” DVDs that Plaintiff sent to the agency to deliver to one of
18 its clients. In some cases, Innovative Artists’ infringing copies of Plaintiff’s works
19 quickly made their way from Innovative Artists’ platform to online piracy sites
20 while those movies were still being made available to the general public exclusively
21 in theaters. The actions Plaintiff complains of are blatantly illegal. That illegality
22 would be obvious to anyone, but especially to Innovative Artists, a talent agency
23 that claims to promote the interests of actors, writers, directors and others whose
24 livelihoods depend critically on respect for copyright.

25 2. Plaintiff discovered Innovative Artists’ unlawful conduct after
26 unauthorized copies of two of its movies, *Creed* and *In the Heart of the Sea*,
27 appeared online in December 2015, shortly after Plaintiff distributed screeners of
28 those movies to members of the Academy of Motion Picture Arts & Sciences.

1 Because the screeners were “watermarked”—embedded with markers that identified
2 their intended recipients—Plaintiff traced the copies to screeners that Plaintiff had
3 sent to an Innovative Artists client, in care of the agency. Instead of forwarding the
4 screeners directly to its client, Innovative Artists used illegal ripping software to
5 bypass the technical measures that prevent access to and copying of the content on
6 DVDs. Innovative Artists then copied the movies to its digital distribution platform,
7 where those copies became available for immediate downloading and streaming
8 along with infringing copies of many other copyrighted movies.

9 3. Plaintiff brings this action to remedy Innovative Artists’ violation of its
10 rights and for an injunction barring Innovative Artists from violating those rights in
11 the future.

12 **THE PARTIES**

13 4. Plaintiff Warner Bros. Entertainment Inc. is a corporation duly
14 incorporated under the laws of the State of Delaware with its principal place of
15 business in Burbank, California. Warner Bros. and its affiliates produce, distribute
16 and license popular motion picture and television content. Warner Bros. owns or
17 controls the copyrights and exclusive rights in the content that it or its affiliates
18 produce or distribute (the “Copyrighted Works”).

19 5. Warner Bros. has obtained Certificates of Copyright Registration for
20 the Copyrighted Works. Exhibit A includes several of the Copyrighted Works,
21 along with their registration numbers, that are at issue here.

22 6. Defendant Innovative Artists Talent And Literary Agency, Inc. is a
23 corporation duly incorporated under the laws of the State of California with its
24 principal place of business in Santa Monica, California.

25 7. Defendant Innovative Artists is a corporation duly incorporated under
26 the laws of the State of California with its principal place of business in Santa
27 Monica, California.

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1 16. Plaintiff provides screeners on the understanding and agreement of the
2 recipient that the underlying content is owned by Plaintiff; that Plaintiff is providing
3 the screener to the recipient solely for their personal viewing in connection with
4 awards consideration; and that the recipient may not copy, sell or otherwise
5 disseminate the screener's contents.

6 17. Screeners present significant content security risks for Plaintiff. The
7 underlying copyrighted content on the DVDs is in digital format; if unprotected, that
8 content can be copied repeatedly without any degradation in quality. Once a version
9 of Plaintiff's content is available "in the clear"—i.e., without any technological
10 protection—the content can be copied, distributed and streamed without numerical
11 or geographic limitation. In addition, screener DVDs often contain very popular and
12 critically acclaimed content, including in some cases movies that have yet to be
13 theatrically released. Plaintiff therefore generally takes additional steps to protect its
14 content when it sends out certain screener DVDs.

15 18. First, as with content it commercially distributes on DVDs and Blu-ray
16 discs, Plaintiff sends screeners on DVDs that utilize technological protection
17 measures (or "TPMs"). In the case of screener DVDs, Plaintiff utilizes Discs
18 protected with CSS or Patronus. In the ordinary course of their operation, the TPMs
19 that Plaintiff uses protect against unauthorized access to and copying of the
20 copyrighted content on the DVDs.

21 19. CSS protects the audiovisual content on Plaintiff's DVDs through the
22 use of encryption and keys embedded in the content recorded on the physical discs.

23 20. Patronus provides additional protection for DVD content by
24 encapsulating the underlying files and further preventing access to the embedded
25 content.

26 21. In the ordinary course of their operation, CSS, Patronus and other
27 TPMs ensure that the content embedded on the DVD will be accessible only for
28 contemporaneous playback through an authorized device. These licensing and

1 technology systems allow copyright owners to distribute their content on DVDs
2 while limiting unauthorized copying or redistribution of that content.

3 22. Second, Plaintiff marks screeners with individual digital watermarks,
4 traceable to the recipient. Invisible to the viewer, the watermark allows Plaintiff to
5 determine the origin of illegal copies that have been uploaded to the internet.

6 **Innovative Artists' Unlawful Digital Distribution Platform and Infringement of**
7 **Plaintiff's Copyrights**

8 23. Innovative Artists is a talent and literary agency.

9 24. In early 2015, Innovative Artists began using a Google cloud-based
10 platform ("Google Drive") for email and file services.

11 25. In or around November 2015, Innovative Artists decided that it would
12 distribute movies using its Google Drive account. Innovative Artists' technology
13 department set up the digital distribution platform as a file-sharing folder on the
14 agency's Google Drive account. Innovative Artists then used the platform to upload
15 and distribute digital copies of films.

16 26. Innovative Artists' digital distribution platform included copies of the
17 Copyrighted Works.

18 27. Innovative Artists did not have Plaintiff's authorization, permission or
19 consent to upload copies of the Copyrighted Works to the digital distribution
20 platform.

21 28. Innovative Artists did not have Plaintiff's authorization, permission or
22 consent to exercise any of Plaintiff's other exclusive rights under copyright with
23 respect to the Copyrighted Works.

24 29. Those without an Innovative Artists email address could not
25 automatically access the digital distribution platform. However, Innovative Artists
26 executives directed staff to provide access credentials to numerous managers, family
27 members, friends and others outside of the agency.

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1 30. People inside and outside the agency with access to the digital
2 distribution platform could and did download copies of the Copyrighted Works to
3 other computer media. Those with access could choose instead to request that
4 Innovative Artists' digital distribution platform stream performances of the content
5 to them.

6 31. Innovative Artists knew copies obtained from its digital distribution
7 platform would be further disseminated. For example, in one case, Innovative
8 Artists granted access to all files within the platform to an individual at another
9 company, knowing that the other individual intended to distribute copies of the
10 movies in the file to others.

11 32. Innovative Artists traded access to some of its unauthorized digital
12 copies of movies in exchange for unauthorized copies of content possessed by third
13 parties. For example, in one case, Innovative Artists granted an assistant at another
14 company access to the digital distribution platform because the assistant had
15 provided a screener to Innovative Artists for a title that was not already on the
16 platform.

17 33. No person who downloaded or requested a stream of the Copyrighted
18 Works from Innovative Artists' digital distribution platform had Plaintiff's
19 authorization, permission or consent to do so.

20 **Innovative Artists' Illegal Circumvention of the TPMs on Plaintiff's Screener**
21 **DVDs**

22 34. In its capacity as a talent agency, Innovative Artists receives screeners
23 from Plaintiff on behalf of clients who are members of one or more awards groups.
24 As with other similar materials Innovative Artists receives on behalf of its
25 principals, the senders and recipients understand that Innovative Artists will forward
26 the materials to those principals.

27 35. In some cases, however, Innovative Artists did not simply give the
28 DVDs to the intended recipient. Innovative Artists instead would "rip" the DVDs—

1 i.e., it would use illegal circumvention software to bypass or remove the TPMs on
2 the DVDs—and then make digital copies of the embedded content to a “folder” on a
3 third-party server.

4 36. Innovative Artists obtained digital copies of *Creed* and *In the Heart of*
5 *the Sea* by circumventing the TPMs on the DVDs that Plaintiff sent to Innovative
6 Artists’ client.

7 **Plaintiff Discovers Innovative Artists’ Unlawful Conduct**

8 37. On December 20, 2015, Plaintiff received two alerts from Deluxe
9 Entertainment Services Group (“Deluxe”), a company with which Plaintiff contracts
10 to provide content security for its screeners. Deluxe informed Plaintiff that *Creed*
11 and *In the Heart of the Sea* had been pirated and were available online via an illegal
12 peer-to-peer (“P2P”) site. Deluxe informed Plaintiff that, based on its watermark
13 analysis, the copies of *Creed* and *In the Heart of the Sea* were ripped from screeners
14 sent to an individual who Plaintiff later determined was an Innovative Artists’ client.
15 That client had designated Innovative Artists as the party to receive the screeners on
16 the client’s behalf.

17 38. Plaintiff contacted Innovative Artists, which thereafter terminated the
18 digital distribution platform. Innovative Artists sent Plaintiff logs identifying the
19 names or user names of persons who had downloaded movies from the distribution
20 platform. A log titled “All m4v downloaded files from dec 11 thru dec 22-
21 AuditReport-20151223-1656” (but which appears to contain downloads only from
22 December 18, 2015 through December 22, 2015) showed that the Copyrighted
23 Works had been downloaded from Innovative Artists’ distribution platform by more
24 than twenty users just during the short period covered by the log. The log did not
25 provide data for the number or identification of individuals who had streamed the
26 Copyrighted Works or who had further distributed downloaded copies.

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1 **Innovative Artists' Digital Distribution Platform Causes Plaintiff Irreparable**
2 **Harm**

3 39. Plaintiff will continue sending screeners to awards group members. In
4 addition, Plaintiff continues to release Copyrighted Works on DVDs.

5 40. In connection with Plaintiff's investigation, Innovative Artists
6 represented that the agency terminated the digital distribution platform. Innovative
7 Artists has not, however, entered into a formal agreement, enforceable by injunctive
8 relief, preventing it from using Plaintiff's works to populate a similar digital
9 distribution platform now or in the future.

10 41. Circumvention and infringement such as committed by Innovative
11 Artists causes immediate and irreparable harm to Plaintiff. The digital distribution
12 platform included some of Plaintiff's most valuable and critically acclaimed
13 Copyrighted Works. Because Innovative Artists stored digital copies of the
14 Copyrighted Works in the clear—i.e., without TPMs limiting access or copying—
15 the Copyrighted Works were, and if reposted will be, at risk of limitless copying and
16 distribution. As noted, at least two of the Copyrighted Works were made available
17 via a P2P BitTorrent site from copies obtained through Innovative Artists'
18 distribution platform.

19 **FIRST CAUSE OF ACTION**

20 **(Copyright Infringement, 17 U.S.C. § 106)**

21 42. Plaintiff incorporates herein by reference each and every averment
22 contained in paragraphs 1 through 41 inclusive.

23 43. Plaintiff is the owner of exclusive rights of copyright, as set forth in
24 § 106 of the Copyright Act, in each of its Copyrighted Works.

25 44. Innovative Artists has infringed Plaintiff's exclusive rights, including
26 the rights to reproduce, distribute, or publicly perform the Copyrighted Works, in
27 violation of 17 U.S.C. § 106(1), (3), (4).
28

1 45. Innovative Artists has never had Plaintiff's authorization to exercise
2 any of the rights of copyright with respect to any Copyrighted Work.

3 46. Innovative Artists' acts of infringement are willful, in disregard of and
4 with indifference to Plaintiff's rights.

5 47. As a direct and proximate result of the infringements by Innovative
6 Artists, Plaintiff is entitled to actual damages and Innovative Artists' profits from its
7 infringing activity with respect to each Copyrighted Work, under 17 U.S.C. § 504,
8 in amounts to be proven at trial.

9 48. Alternatively, at its election, Plaintiff is entitled to statutory damages,
10 up to the maximum amount of \$150,000 per statutory award by virtue of Innovative
11 Artists' willful infringement, or for such other amounts as may be proper under 17
12 U.S.C. § 504(c).

13 49. Plaintiff further is entitled to recover its attorneys' fees and full costs
14 pursuant to 17 U.S.C. § 505.

15 50. As a direct and proximate result of the foregoing acts and conduct,
16 Plaintiff has sustained and will continue to sustain substantial, immediate and
17 irreparable injury, for which there is no adequate remedy at law. Unless enjoined
18 and restrained by this Court, Innovative Artists will continue to infringe Plaintiff's
19 rights in its Copyrighted Works. Plaintiff is entitled to injunctive relief under 17
20 U.S.C. § 502.

21 **SECOND CAUSE OF ACTION**

22 **(Violation of the Digital Millennium Copyright Act, 17 U.S.C. §§ 1201, *et seq.*)**

23 51. Plaintiff incorporates herein by reference each and every averment
24 contained in paragraphs 1 through 50 inclusive.

25 52. Section 1201(a)(1)(A) of the DMCA provides in pertinent part that
26 "[n]o person shall circumvent a technological measure that effectively controls
27 access to a work protected under [the Copyright Act]." 17 U.S.C. § 1201(a)(1)(A).
28

1 53. Plaintiff uses TPMs to effectively control access to, and to protect the
2 exclusive rights of copyright in, motion pictures, television shows and other works
3 protected by the Copyright Act.

4 54. Innovative Artists circumvented the TPMs on DVDs containing
5 Copyrighted Works, and thereby violated 17 U.S.C. § 1201(a)(1)(A).

6 55. Plaintiff has sustained and will sustain actual damage as the result of
7 Innovative Artists' DMCA violations, including, among other things, damages to
8 the value of the Copyrighted Works and the reduction in Plaintiff's goodwill in the
9 Copyrighted Works. 17 U.S.C. § 1203(c)(2).

10 56. Alternatively, and at its election, Plaintiff is entitled to an award of the
11 maximum statutory damages as permitted by the DMCA. 17 U.S.C. § 1203(c)(3).

12 57. Innovative Artists' conduct, unless enjoined and restrained by this
13 Court, will cause immediate and irreparable injury to Plaintiff, who has no adequate
14 remedy at law. Pursuant to 17 U.S.C. § 1203(b)(2), Plaintiff is entitled to
15 preliminary and permanent injunctions prohibiting Innovative Artists' further
16 violations of § 1201.

17 58. Plaintiff is further entitled to its attorneys' fees and full costs pursuant
18 to 17 U.S.C. § 1203.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays for judgment against Innovative Artists and its
21 affiliates, agents, servants, employees, partners and all persons in active concert or
22 participation with it, for the following relief:

23 1. For Plaintiff's damages and Innovative Artists' profits from its
24 infringing activity, in such amount as may be found; alternatively, at Plaintiff's
25 election, for maximum statutory damages.

26 2. For permanent injunctions enjoining Innovative Artists, and all persons
27 acting in concert or participation with it, from reproducing, distributing, publicly
28 performing, or otherwise infringing in any manner any copyrighted work owned or

1 controlled by Plaintiff (including without limitation any Copyrighted Work) and
2 from circumventing TPMs safeguarding access to any copyrighted work owned or
3 controlled by Plaintiff (including without limitation any Copyrighted Work).

4 3. For prejudgment interest according to law.

5 4. For Plaintiff's attorneys' fees and full costs incurred in this action
6 pursuant to 17 U.S.C. §§ 505 and 1203.

7 5. For all such further and additional relief, in law or in equity, to which
8 Plaintiff may be entitled or which the Court deems just and proper.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff demands a trial by jury on all issues triable by jury.

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MUNGER, TOLLES & OLSON LLP

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