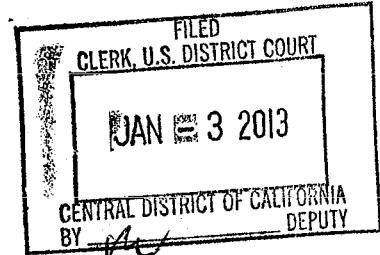
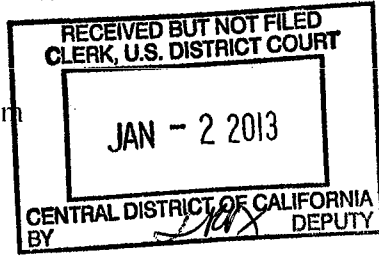


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7 *Attorney for Plaintiff*



8 IN THE UNITED STATES DISTRICT COURT FOR THE  
9  
10 CENTRAL DISTRICT OF CALIFORNIA

11 AF HOLDINGS LLC,

12 Plaintiff,

13 v.

14 JUSTIN GUO,

15 Defendant.

No. 2:12-cv-05709-ODW-JC

AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

16 Plaintiff AF Holdings LLC ("Plaintiff"), through its undersigned counsel, hereby files this  
17 Amended Complaint requesting damages and injunctive relief, and alleges as follows:

18 **NATURE OF THE CASE**

19 1. Plaintiff files this action for copyright infringement under the United States Copyright  
20 Act and related contributory infringement claim under the common law to combat the willful and  
21 intentional infringement of its creative works. Defendant Justin Guo ("Defendant") knowingly and  
22 illegally reproduced and distributed Plaintiff's copyrighted Video by acting in concert with others  
23 via the BitTorrent file sharing protocol and, upon information and belief, continues to do the same.  
24 In using BitTorrent, Defendant's infringement actions furthered the efforts of numerous others in  
25 infringing on Plaintiff's copyrighted works. The result: exponential viral infringement. Plaintiff seeks  
26 a permanent injunction, statutory or actual damages, award of costs and attorney's fees, and other  
27 relief to curb this behavior.  
28

**THE PARTIES**

1  
2           2.     Plaintiff AF Holdings LLC is a limited liability company organized and existing  
3 under the laws of the Federation of Saint Kitts and Nevis. Plaintiff is a holder of rights to various  
4 copyrighted works, and is the exclusive holder of the relevant rights with respect to the copyrighted  
5 creative work at issue in this Amended Complaint.

6  
7           3.     The copyrighted work at issue in this Amended Complaint is one of Plaintiff’s adult  
8 entertainment videos, “Popular Demand” (the “Video”).

9           4.     Defendant is an individual who, upon information and belief, is over the age of  
10 eighteen and resides in this District. Defendant was assigned the Internet Protocol (“IP”) address of  
11 66.27.196.248 on 2012-03-31 at 02:21:19 (UTC).

**JURISDICTION AND VENUE**

12  
13           5.     This Court has subject matter jurisdiction over Plaintiff’s copyright infringement  
14 claim under 17 U.S.C. §§ 101, *et seq.*, (the Copyright Act), 28 U.S.C. § 1331 (actions arising under  
15 the laws of the United States), and 28 U.S.C. § 1338(a) (actions arising under an Act of Congress  
16 relating to copyrights). This Court has supplemental jurisdiction over Plaintiff’s contributory  
17 infringement claim under 28 U.S.C. § 1367(a) because it is so related to Plaintiff’s copyright  
18 infringement claim, which is within this Court’s original jurisdiction, that the claims form part of the  
19 same case and controversy under Article III of the United States Constitution.  
20

21           6.     This Court has personal jurisdiction because, upon information and belief, Defendant  
22 either resides in or committed copyright infringement in the State of California.  
23

24           7.     Venue is properly founded in this judicial district pursuant to 28 U.S.C. §§ 1391(b)  
25 and 1400(a) because Defendant resides in this District, may be found in this District, or a substantial  
26 part of the events giving rise to the claims in this action occurred within this District.  
27

**BACKGROUND**

1  
2 8. BitTorrent is a modern file sharing method (“protocol”) used for distributing data via  
3 the Internet.

4  
5 9. Traditional file transfer protocols involve a central server, which distributes data  
6 directly to individual users. This method is prone to collapse when large numbers of users request  
7 data from the central server, in which case the server can become overburdened and the rate of data  
8 transmission can slow considerably or cease altogether. In addition, the reliability of access to the  
9 data stored on a server is largely dependent on the server’s ability to continue functioning for  
10 prolonged periods of time under high resource demands.

11 10. Standard P2P protocols involve a one-to-one transfer of whole files between a single  
12 uploader and single downloader. Although standard P2P protocols solve some of the issues  
13 associated with traditional file transfer protocols, these protocols still suffer from such issues as  
14 scalability. For example, when a popular file is released (e.g. an illegal copy of the latest blockbuster  
15 movie) the initial source of the file performs a one-to-one whole file transfer to a third party, who  
16 then performs similar transfers. The one-to-one whole file transfer method can significantly delay  
17 the spread of a file across the world because the initial spread is so limited.

18  
19 11. In contrast, the BitTorrent protocol is a decentralized method of distributing data.  
20 Instead of relying on a central server to distribute data directly to individual users, the BitTorrent  
21 protocol allows individual users to distribute data among themselves. Further, the BitTorrent  
22 protocol involves breaking a single large file into many small pieces, which can be transferred much  
23 more quickly than a single large file and, in turn, redistributed much more quickly than a single large  
24 file. Moreover, each peer can download missing pieces of the file from multiple sources—often  
25 simultaneously—which causes transfers to be fast and reliable. After downloading a piece, a peer  
26  
27  
28

1 automatically becomes a source for the piece. This distribution method contrasts sharply with a one-  
2 to-one whole file transfer method.

3 12. In BitTorrent vernacular, individual downloaders/distributors of a particular file are  
4 called peers. The group of peers involved in downloading/distributing a particular file is called a  
5 swarm. A server which stores a list of peers in a swarm is called a tracker. A computer program that  
6 implements the BitTorrent protocol is called a BitTorrent client. Each swarm is unique to a particular  
7 file.  
8

9 13. The BitTorrent protocol operates as follows. First, a user locates a small "torrent" file.  
10 This file contains information about the files to be shared and about the tracker, the computer that  
11 coordinates the file distribution. Second, the user loads the torrent file into a BitTorrent client, which  
12 automatically attempts to connect to the tracker listed in the torrent file. Third, the tracker responds  
13 with a list of peers and the BitTorrent client connects to those peers to begin downloading data from  
14 and distributing data to the other peers in the swarm. When the download is complete, the BitTorrent  
15 client continues distributing data to other peers in the swarm until the user manually disconnects  
16 from the swarm or the BitTorrent client otherwise does the same.  
17

18 14. The degree of anonymity provided by the BitTorrent protocol is extremely low.  
19 Because the protocol is based on peers connecting to one another, a peer must broadcast identifying  
20 information (i.e. an IP address) before it can receive data. Nevertheless, the actual names of peers in  
21 a swarm are unknown, as the users are allowed to download and distribute under the cover of their  
22 IP addresses.  
23

24 15. The BitTorrent protocol is an extremely popular method for transferring data. The  
25 size of swarms for popular files can reach into the tens of thousands of unique peers. A swarm will  
26 commonly have peers from many, if not every, state in the United States and several countries  
27  
28

1 around the world. And every peer in the swarm participates in distributing the file to dozens,  
2 hundreds, or even thousands of other peers.

3 16. The BitTorrent protocol is also an extremely popular method for unlawfully copying,  
4 reproducing, and distributing files in violation of the copyright laws of the United States. A broad  
5 range of copyrighted albums, audiovisual files, photographs, software, and other forms of media are  
6 available for illegal reproduction and distribution via the BitTorrent protocol.  
7

8 17. Efforts at combating BitTorrent-based copyright infringement have been stymied by  
9 BitTorrent's decentralized nature. Because there are no central servers to enjoin from unlawfully  
10 distributing copyrighted content, there is no primary target on which to focus anti-piracy efforts.  
11 Indeed, the same decentralization that makes the BitTorrent protocol an extremely robust and  
12 efficient means of transferring enormous quantities of data also acts to insulate it from anti-piracy  
13 measures. This lawsuit is Plaintiff's only practical means of combating BitTorrent-based  
14 infringement of the Video.  
15

16 **ALLEGATIONS COMMON TO ALL COUNTS**

17 18. Plaintiff is the exclusive rights holder with respect to BitTorrent-based reproduction  
18 and distribution of the Video.

19 19. The Video is currently registered in the United States Copyright Office (Copyright  
20 No. PA0001754383). (See Exhibit A to Amended Complaint.) On December 20, 2011, Plaintiff  
21 received the rights to this Video pursuant to an assignment agreement, a true and correct copy of that  
22 agreement is attached hereto as Exhibit B. (See Exhibit B to Amended Complaint.)  
23

24 20. The torrent file used to access the copyrighted material was named in a manner that  
25 would have provided an ordinary individual with notice that the Video was protected by the  
26 copyright laws of the United States.  
27  
28

1           21. Plaintiff employs proprietary peer-to-peer network forensic software to perform  
2 exhaustive real time monitoring of the BitTorrent-based swarm involved in distributing the Video.  
3 This software is effective in capturing data about the activity of peers in a swarm and their infringing  
4 conduct.

5           22. Defendant, using IP address 66.27.196.248, without Plaintiff's authorization or  
6 license, intentionally downloaded a torrent file particular to Plaintiff's Video, purposefully loaded  
7 that torrent file into his BitTorrent client—in this case, BitTorrent 7.6—entered a BitTorrent swarm  
8 particular to Plaintiff's Video, and reproduced and distributed the Video to numerous third parties.

9           23. Plaintiff's investigators detected Defendant's illegal download on  
10 2012-03-31 at 02:21:19 (UTC). However, this is a simply a snapshot observation of when the IP  
11 address was *observed* in the BitTorrent swarm; the conduct took itself place before and after this  
12 date and time.

13           24. Defendant was part of a group of BitTorrent users or peers in a single swarm—a  
14 process generally described above—whose computers were collectively interconnected for the  
15 sharing of a particular unique file. The particular file a BitTorrent swarm is associated with has a  
16 unique file "hash"—i.e. a unique file identifier generated by an algorithm. The unique hash value in  
17 this case is identified as 6C10F2DCFF52961B876AA592183103BAC958E989 (hereinafter "Hash  
18 Tag."), and common to all of the participants in the swarm.

19  
20  
21  
22           **COUNT I – COPYRIGHT INFRINGEMENT**

23           25. Plaintiff hereby incorporates by reference each and every allegation contained in the  
24 preceding paragraphs as if fully set forth fully herein.

25           26. Defendant's conduct infringes upon Plaintiff's exclusive rights of reproduction and  
26 distribution that are protected under the Copyright Act.

1 27. Defendant knew or had constructive knowledge that his acts constituted copyright  
2 infringement of Plaintiff's Video.

3 28. Defendant's conduct was willful within the meaning of the Copyright Act:  
4 intentional, and with indifference to the Plaintiff's rights.

5 29. Plaintiff has been damaged by Defendant's conduct, including but not limited to  
6 economic and reputation losses. Plaintiff continues to be damaged by such conduct, and has no  
7 adequate remedy at law to compensate the Plaintiff for all of the possible damages stemming from  
8 the Defendant's conduct.

9 30. Plaintiff hereby reserves the right, pursuant to 17 U.S.C. § 504(c), to elect to recover  
10 statutory damages for each infringement, in lieu of seeking recovery of actual damages.

11 31. As Defendant's infringement was intentional and willful, Plaintiff is entitled to an  
12 award of statutory damages, exemplary damages, attorneys' fees, and the costs of the suit.

13  
14  
15 **COUNT II – CONTRIBUTORY INFRINGEMENT**

16 32. Plaintiff hereby incorporates by reference each and every allegation contained in the  
17 preceding paragraphs as if fully set forth fully herein.

18 33. When users in this unique swarm all possess the same infringing work with the same  
19 exact hash value, it is because each infringer possesses an exact digital copy, containing the exact  
20 bits and pieces unique to that specific file of Plaintiff's original copyrighted work. They only way  
21 this happens in a BitTorrent swarm is through the sharing of these bits and pieces of each same  
22 unique file, with the same unique hash value, between the users in the swarm. In essence, although  
23 hundreds of users may be uploading the copyrighted work, a single user will receive only the exact  
24 parts of a singular upload through that exact swarm, not a compilation of available pieces from  
25 various uploads.

26  
27 34. Defendant published the Hash Tag to the BitTorrent network.  
28

1 35. Defendant downloaded, uploaded and distributed the Video to other BitTorrent users  
2 through use of the hash-specified protocol in the unique swarm.

3 36. As each of the thousands of people who illegally downloaded the movie accessed this  
4 illegal publication, they derived portions of their illegal replication of the file from multiple persons,  
5 including, but not limited to, Defendant.

6 37. Defendant knew of the infringement, was conscious of his own infringement, and  
7 Defendant was fully conscious that his actions resulted in multiple other persons derivatively  
8 downloaded the file containing Plaintiff's Video.

9 38. The infringement by the other BitTorrent users could not have occurred without  
10 Defendant's participation in uploading Plaintiff's copyrighted works. As such, Defendant's  
11 participation in the infringing activities of others is substantial and contributed, for profit, to the  
12 infringing activity of thousands of other peers over the Internet across the world.

13 39. Defendant profited from this contributory infringement by way of being granted  
14 access to a greater library of other infringing works, some of which belonged to Plaintiff and some  
15 of which belonged to other copyright owners.

16  
17  
18 **JURY DEMAND**

19 40. Plaintiff hereby demands a jury trial in this case.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiff respectfully requests Judgment and relief as follows:

- 22  
23 1) Judgment against Defendant that he has: a) willfully infringed Plaintiff's rights in  
24 federally registered copyrights pursuant to 17 U.S.C. § 501; and b) otherwise injured the business  
25 reputation and business of Plaintiff by Defendant's acts and conduct set forth in this Amended  
26 Complaint;





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**DEMAND FOR A JURY TRIAL**

Plaintiff hereby demands a jury trial as provided by FRCP 38(a).

By:           /s/ Brett L. Gibbs          

Brett L. Gibbs, Esq. (SBN 251000)

*Attorney for Plaintiff*

# EXHIBIT A

**Copyright**  
United States Copyright Office

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## Public Catalog

Copyright Catalog (1978 to present)  
 Search Request: Left Anchored Copyright Number = PA0001754383  
 Search Results: Displaying 1 of 1 entries

◀ previous    next ▶

Labelled View

### *Popular Demand.*

**Type of Work:** Motion Picture  
**Registration Number / Date:** PA0001754383 / 2011-08-09  
**Application Title:** Popular Demand.  
**Title:** Popular Demand.  
**Description:** Videodisc (DVD)  
**Copyright Claimant:** Heartbreaker Digital LLC. Address: 512 Windmill Lane #311, Las Vegas, NV, 89123.  
**Date of Creation:** 2011  
**Date of Publication:** 2011-07-27  
**Nation of First Publication:** United States  
**Authorship on Application:** Heartbreaker Digital LLC, employer for hire; Domicile: United States; Citizenship: United States. Authorship: entire motion picture.  
**Names:** Heartbreaker Digital LLC

◀ previous    next ▶

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# EXHIBIT B

## COPYRIGHT ASSIGNMENT AGREEMENT

This Copyright Assignment Agreement is dated effective as of December 20, 2011, by and among Heartbreaker Digital LLC ("Assignor") and AF Holdings, LLC, a Nevis limited liability company ("Assignee").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment. Assignor hereby irrevocably assigns, conveys and otherwise transfers to Assignee, and its respective successors, licensees, and assigns, all rights, title and interest worldwide in and to that certain work titled "Popular Demand" and associated with copyright registration number PA0001754383 (collectively the "Work") and all proprietary rights therein, including, without limitation, all copyrights, trademarks, design patents, trade secret rights, moral rights, and all contract and licensing rights, and all claims and causes of action of respect to any of the foregoing, whether now known or hereafter to become known. In the event Assignor has any right in the Work which cannot be assigned, Assignor agrees to waive enforcement worldwide of such right against Assignee, its distributors, and customers or, if necessary, exclusively license such right worldwide to Assignee. These rights may be assigned by Assignee.

2. Representations and Warranties. Assignor represents and warrants that: (a) the Work was created solely by Assignor, Assignor's full-time employees during the course of their employment, or independent contractors who assigned all right, title and interest in their work to Assignor; (b) Assignor is the owner of all rights, title and interest in the tangible forms of the Work and all intellectual property rights protecting them; (c) the Work and the intellectual property rights protecting them are free and clear of all encumbrances, including, without limitation, security interests, licenses, liens, charges or other restrictions; (d) the use, reproduction, distribution, or modification of the Work does not and will not violate the rights of any third parties in the Work including, but not limited to, trade secrets, publicity, privacy, copyrights, and patents; (e) the Work is not in the public domain; and (f) Assignor has full power and authority to make and enter into this Agreement. Assignor agrees to defend, indemnify, and hold harmless Assignee, its officers, directors and employees for any claims, suits or proceedings alleging breach of these warranties.

3. Entire Agreement. This Agreement constitutes the entire agreement between Assignor and Assignee with respect to the subject matter herein and supersedes any prior or contemporaneous agreements, written or oral.

4. Modifications. This Agreement may be modified only by a written agreement signed by both Assignor and Assignee.

5. Governing Law. This Agreement shall be governed by and enforced in accordance with the State of California and the Ninth Circuit, without giving effect to any conflicts of laws principles.

6. Severability. If one or more provisions of this Agreement are held to be illegal or unenforceable under applicable law, such illegal or unenforceable portion(s) shall be limited or excluded from this Agreement to the minimum extent required so that this Agreement shall otherwise remain in full force and effect and enforceable in accordance with its terms.

7. Assignment. Assignee may assign or otherwise transfer this Agreement without consent or notice.

8. Perfection. Assignors agree at the request and expense of Assignee to execute any documents or perform any actions which Assignee may request to perfect this assignment or otherwise implement this Agreement. Assignor agrees that this assignment may be submitted by Assignee to the United States Copyright Office to reflect the assignment.

9. Confidentiality. Neither party shall reveal the terms of this Agreement to any third party unless ordered to do so by a court of competent jurisdiction.

10. Jurisdiction. Each party agrees to submit to the exclusive personal jurisdiction and venue of the courts of the Island of Nevis with respect to any disputes arising hereunder.

Agreed and Accepted as of the first date written above.



Raymond Rogers, on behalf of:

Assignor  
Heartbreaker Digital LLC



Alan Cooper, on behalf of:

Assignee  
AF Holdings, LLC