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8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11

12 MINDGEEK S.À.R.L., MG PREMIUM
LTD, MG CYPRUS LTD, MG
13 CONTENT RK LIMITED, MG
CONTENT DP LIMITED, and SBO
14 PICTURES, INC.,

15 Plaintiffs,

16 v.

17 WGCZ S.R.O., NKL ASSOCIATES
S.R.O., STEPHANE MICHAEL
18 PACAUD, DEBORAH MALORIE
PACAUD, and Does 1-10 d/b/a
19 XVIDEOS.COM and XNXX.COM,

20 Defendants.
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CASE NO. 2:15-cv-8023

COMPLAINT FOR

**(1) COPYRIGHT
INFRINGEMENT
(2) CONTRIBUTORY
COPYRIGHT INFRINGEMENT,
(3) VICARIOUS COPYRIGHT
INFRINGEMENT**

Demand For Jury Trial

1 Plaintiffs MindGeek S.à.r.l., MG Premium Ltd, MG Cyprus Ltd, MG
 2 Content RK Limited, MG Content DP Limited, and SBO Pictures, Inc.
 3 (collectively, “Plaintiffs”), by their attorneys Mitchell Silberberg & Knupp LLP,
 4 for their Complaint against Defendants WGCZ S.R.O., NKL Associates S.R.O.,
 5 Stephane Michael Pacaud, Deborah Malorie Pacaud, and Does 1-10 d/b/a
 6 XVideos.com and XNXX.com (collectively, “Defendants”), allege as follows:

7 8 **PRELIMINARY STATEMENT**

9 1. This is an action for copyright infringement arising under 17 U.S.C.
 10 § 501 *et seq.* By this action, Plaintiffs, who are among the world’s leading
 11 producers and distributors of adult-oriented content, seek to put an immediate stop
 12 to, and to obtain redress for, Defendants’ massive and ongoing infringement and
 13 misappropriation of their valuable copyrighted audiovisual works via Defendants’
 14 network of affiliated websites, including but not limited to XVideos.com and
 15 XNXX.com (collectively, the “XVideos Websites”).

16 2. The XVideos Websites are sites that purport to provide to members of
 17 the public adult-oriented audiovisual works uploaded by users. (Websites such as
 18 the XVideos Websites often are referred to as “tube” sites.) Defendants, via the
 19 XVideos Websites, have copied to their servers millions of audiovisual works
 20 ostensibly uploaded by their users, including tens or hundreds of thousands of
 21 works owned by Plaintiffs. Defendants then publicly performed, reproduced, and
 22 distributed Plaintiffs’ works to millions of people throughout the world, without
 23 any license, justification, or defense. Moreover, while Defendants have purported
 24 to defend their conduct by invoking the “safe harbors” of Section 512(c) of the
 25 Digital Millennium Copyright Act (“DMCA”), in fact, Defendants do not fully
 26 comply with the core requirements of the safe harbors, including the requirements
 27 that they take down infringing content after formal notice and terminate so-called
 28 “repeat infringers.”

3. This case is not about whether the DMCA applies to “tube” sites that store, publicly perform, and transmit to the public works uploaded by users. Instead, what this case seeks to address is the unlawful and unfair conduct of one particular group of websites that brazenly flouts the requirements of the DMCA by engaging in a pattern and practice of ignoring valid DMCA copyright notices and by failing to implement any serious “repeat infringer” policy, thereby enabling hundreds of individuals to continually infringe without any consequence. By doing so, Defendants have lost the ability to invoke the DMCA safe harbor and are liable for all of the infringements on their system. Accordingly, the Court should enjoin Defendants’ conduct and award damages to Plaintiffs for Defendants’ willful and deliberate infringement of thousands of their copyrights.

JURISDICTION AND VENUE

4. This is a civil action seeking damages and injunctive relief for copyright infringement under the Copyright Act, 17 U.S.C. § 101 *et seq.*

5. This Court has subject matter jurisdiction over Plaintiffs’ claims for copyright infringement pursuant to 28 U.S.C. §§ 1331 and 1338.

6. This Court has personal jurisdiction over Defendants in that, among other things: (a) Defendants are engaged in tortious conduct within the State of California and in this District, including by copying, displaying, and distributing Plaintiffs’ copyrighted works, and (b) Defendants’ conduct causes injury to Plaintiffs and their intellectual property within the State of California.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the acts, omissions and events giving rise to the claims asserted in this Complaint occurred in this judicial district.

THE PARTIES

8. Plaintiff MindGeek S.à.r.l. is, and at all relevant times was, a business entity organized as a “Société à responsabilité limitée” under the laws of Luxembourg, and has its principal place of business at 32 Boulevard Royal, L-2249 Luxembourg City, Luxembourg.

9. Plaintiff MG Premium Ltd is, and at all relevant times was, a private company organized under the laws of the Republic of Cyprus, and has its principal place of business at 195-197 Old Nicosia-Limassol Road, Block 1 Dali Industrial Zone, Cyprus 2540. Plaintiff MG Premium Ltd is the holder of the copyrights associated with “Brazzers.com,” “MOFOS.com,” “Babes.com,” and “Twistys.com.”

10. Plaintiff MG Cyprus Ltd is, and at all relevant times was, a private company organized under the laws of the Republic of Cyprus, and has its principal place of business at 195-197 Old Nicosia-Limassol Road, Block 1 Dali Industrial Zone, Cyprus 2540. Plaintiff MG Cyprus Ltd is the holder of the copyrights associated with “Men.com.”

11. Plaintiff MG Content RK Limited is, and at all relevant times was, a private company organized under the laws of the Republic of Ireland, and has its principal place of business at Fitzwilliam Business Centre, 77 Sir John Rogerson Quay, Dublin, Ireland. Plaintiff MG Content RK Limited is the holder of the copyrights associated with “RealityKings.com.”

12. Plaintiff MG Content DP Limited is, and at all relevant times was, a private company organized under the laws of the Republic of Ireland, and has its principal place of business at Fitzwilliam Business Centre, 77 Sir John Rogerson Quay, Dublin, Ireland. Plaintiff MG Content DP Limited is the holder of the copyrights associated with “DigitalPlayground.com.”

13. Plaintiffs MG Premium Ltd, MG Cyprus Ltd, MG Content RK Limited, and MG Content DP Limited are, and at all relevant times were, indirectly

1 wholly owned subsidiaries of MindGeek S.à.r.l. For purposes of this Complaint,
 2 MindGeek S.à.r.l. and its subsidiaries are collectively referred to as “MindGeek.”

3 14. Plaintiff SBO Pictures, Inc. is, and at all relevant times was, a
 4 corporation existing under the laws of the State of California, and having its
 5 principal place of business at 9040 Eton Ave, Canoga Park, CA, 91304.

6 15. Defendant WGCZ S.R.O. is, and at all relevant times was, a limited
 7 liability company existing under the laws of the Czech Republic, and having a
 8 place of business at Praha 1 - Nové Město, Krakovská 1366/25, PSČ 110 00 Czech
 9 Republic.

10 16. Defendant NKL Associates S.R.O. is, and at all relevant times was, a
 11 limited liability company existing under the laws of the Czech Republic, and
 12 having a place of business at Praha 1 - Nové Město, Krakovská 1366/25, PSČ 110
 13 00 Czech Republic.

14 17. Upon information and belief, Defendant Stephane Michael Pacaud is,
 15 and at all relevant times was, a shareholder and an executive of Defendant WGCZ
 16 S.R.O. and of Defendant NKL Associates S.R.O. Plaintiffs are informed and
 17 believe, and on that basis aver, that Mr. Pacaud has a residence and a place of
 18 business at Praha 1 - Nové Město, Krakovská 1366/25, PSČ 110 00 Czech
 19 Republic.

20 18. Upon information and belief, Defendant Deborah Malorie Pacaud is,
 21 and at all relevant times was, a shareholder and an executive of Defendant WGCZ
 22 S.R.O. and of Defendant NKL Associates S.R.O. Plaintiffs are informed and
 23 believe, and on that basis aver, that Ms. Pacaud has a residence at Villefranche sur
 24 Saone, 37B avenue de la plage, Peniche Perle Noire, French Republic.

25 19. Defendants Does 1 through 10 are the owners, operators, shareholders
 26 executives, and affiliates of the XVideos Websites. Plaintiffs are unaware of the
 27 true names or capacities of Does 1 through 10. Plaintiffs are informed and believe,
 28 and on that basis aver, that Does 1 through 10 either (a) directly performed the acts

alleged herein, (b) were acting as the agents, principals, alter egos, employees, or representatives of the other Defendants, and/or (c) otherwise participated in the acts alleged herein with the other Defendants. Accordingly, Defendants Does 1 through 10 each are liable for all of the acts alleged herein because they were the cause in fact and proximate cause of all injuries suffered by Plaintiffs as alleged herein. Plaintiffs will amend the Complaint to state the true names of Defendants Does 1 through 10 when their identities are discovered.

FACTS GIVING RISE TO THIS ACTION

Plaintiffs And Their Copyrights

20. Plaintiffs are industry-leading producers and distributors of high-quality adult-oriented audiovisual content, which they produce and distribute under various registered marks via their enormously popular Internet websites.

21. MindGeek is the owner of one of the largest portfolios of premium adult-oriented audiovisual content in the world. MindGeek offers its content under a number of different brands, including Brazzers.com, RealityKings.com, MOFOS.com, DigitalPlayground.com, Twistys.com, Babes.com, and Men.com, and all content produced and sold under those brands.

22. MindGeek sells and distributes its content via its network of subscription-based websites, via pay-per-view or on-demand video outlets, and on physical media such as DVDs and Blu-Ray discs. A representative list of registered copyrights owned by MindGeek is attached hereto as Schedule A (collectively, the “MindGeek Works”).

23. Plaintiff SBO Pictures, Inc. d/b/a Wicked Pictures (“Wicked”) is the owner of a portfolio of content offered under the “Wicked Pictures” brand. Wicked sells and distributes its content via its website Wicked.com, via pay-per-view or on-demand video outlets, and on physical media such as DVDs and Blu-Ray discs. A representative list of registered copyrights owned by Wicked is

1 attached hereto as Schedule B (collectively, the “Wicked Works”) (the “MindGeek
2 Works” and the “Wicked Works” collectively are referred to herein as the “Subject
3 Works”).

4 5 **Defendants And Their Unlawful Conduct**

6 24. Defendants own and operate the XVideos Websites. The XVideos
7 Websites are dozens of websites that purport to be video-sharing platforms
8 (sometimes referred to as “tube” sites) that collect and aggregate adult-oriented
9 content uploaded by their members. Defendants, via the XVideos Websites, then
10 distribute and publicly perform that content to members of the public on an on-
11 demand basis.

12 25. XVideos.com, just one of the XVideos Websites, purports to be the
13 “Best Free Porn Site,” featuring in excess of 10,000 new videos each day. In the
14 normal course of operating the XVideos Websites, Defendants copy, adapt,
15 publicly perform, display, distribute, and otherwise disseminate to the public tens
16 or hundreds of thousands of audiovisual works each day. Among the audiovisual
17 works copied, adapted, publicly performed, displayed, and distributed by
18 Defendants are numerous copies of Plaintiffs’ Subject Works. Indeed, during the
19 past 18 months alone, Defendants transmitted (i.e. publicly performed) copies of
20 the Subject Works in excess of **100 million** times, including via the videos
21 identified in Schedules A and B. Plaintiffs have never authorized Defendants to
22 reproduce, distribute, publicly perform, or otherwise exploit the Subject Works via
23 the XVideos Websites. To the contrary, the Subject Works that are reproduced,
24 distributed, publicly performed, and otherwise exploited by Defendants via the
25 XVideos Websites are the very same works that Plaintiffs sell to their customers
26 and on which their business depends.

27 26. Defendants have claimed on their website that although “we are not a
28 United States company, and thus not subject to U.S. or Canadian law, we have

1 adopted policies in an effort to voluntarily comply with anti-infringement laws
2 such as the Digital Millennium Copyright Act ('DMCA').... Pursuant to such
3 policies, we assert safe harbor for liability related to the alleged copyright
4 infringement committed by third parties.” However, in fact, Defendants have
5 systematically and consistently failed to comply with critical requirements of the
6 DMCA. By way of example, and without limitation:

7 (a) Defendants have failed to expeditiously remove infringing material
8 after receiving actual and/or constructive notice of such infringement. Defendants
9 frequently have waited weeks or months to take down infringing content after
10 receiving a formal written notice of infringement from Plaintiffs. In some
11 instances, Plaintiffs have been required to send multiple notices of infringement
12 before their content is removed from the XVideos Websites.

13 (b) Defendants have made no serious effort to terminate members of the
14 XVideos Websites who consistently infringe Plaintiffs' copyrights (i.e. “repeat
15 infringers”) or to implement a repeat infringer policy. Many users retain active
16 accounts with the XVideos Websites even after having been the subject of dozens
17 of claims of infringement.

18 For these and other reasons, Defendants are unable to avail themselves of
19 any of the protections accorded to service providers under the safe harbors of the
20 DMCA and will be strictly liable for their reproduction, public performance, and
21 distribution of Plaintiffs' content without authorization.

22 27. Defendants' failure to comply with the take-down and repeat infringer
23 requirements of the DMCA is a deliberate business decision. Defendants have
24 derived significant revenue (including advertising revenue) in connection with
25 their exploitation of the Subject Works via the XVideos Websites. Plaintiffs are
26 informed and believe, and on that basis allege, that Defendants have attempted to
27 differentiate themselves from other “tube” sites by offering more infringing
28 content than their competitors who do comply with infringement notices and

1 terminate repeat infringers, and by being seen as a “safe haven” for those who seek
2 to infringe copyrights.

3 28. Plaintiffs are informed and believe, and on that basis aver, that each
4 and every Defendant, individually, corporately, jointly, and/or severally, acted
5 intentionally, knowingly, negligently, or through willful blindness, as an agent or
6 representative of each and every other Defendant, and acted to further the ends of
7 the illegal and improper purposes alleged herein in a common course or scheme to
8 infringe on the Plaintiffs’ copyrighted intellectual property for profit and monetary
9 gain.

10
11 **COUNT ONE**

12 **Copyright Infringement**

13 29. Plaintiffs reallege and incorporate by reference the allegations in
14 paragraphs 1 through 28, as if set forth fully herein.

15 30. MindGeek is the owner of valid and registered copyrights in each of
16 the MindGeek Works.

17 31. Wicked is the owner of valid and registered copyrights in each of the
18 Wicked Works.

19 32. Defendants have infringed, and are continuing to infringe, Plaintiffs’
20 copyrights by reproducing, adapting, distributing, publicly performing, and
21 publicly displaying, and authorizing others to reproduce, adapt, distribute, publicly
22 perform, and publicly display copyrighted portions and elements of the Subject
23 Works, and/or the Subject Works in their entirety, without authorization, in
24 violation of the Copyright Act, 17 U.S.C. § 101 *et seq.*

25 33. Plaintiffs have never authorized or given consent to Defendants to use
26 their copyrighted works in the manner complained of herein.

27 34. Defendants’ acts of infringement are willful, in disregard of, and with
28 indifference to the rights of Plaintiffs.

35. As a direct and proximate result of the infringements alleged herein, Plaintiffs are entitled to damages and to Defendants' profits in amounts to be proven at trial, which are not currently ascertainable. Alternatively, Plaintiffs are entitled to maximum statutory damages of \$150,000 for each copyright infringed, or in such other amount as may be proper under 17 U.S.C. § 504(c).

36. Plaintiffs further are entitled to their attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

37. As a result of Defendants' acts and conduct, Plaintiffs have sustained and will continue to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy at law. Plaintiffs are informed and believe, and on that basis allege, that, unless enjoined and restrained by this Court, Defendants will continue to infringe Plaintiffs' rights in the Subject Works. Plaintiffs are entitled to temporary, preliminary, and permanent injunctive relief to restrain and enjoin Defendants' continuing infringing conduct.

COUNT TWO

Contributory Copyright Infringement

38. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1 through 28, as if set forth fully herein.

39. Defendants' users have infringed, and are continuing to infringe, Plaintiffs' copyrights by reproducing, adapting, distributing, publicly performing, and publicly displaying copyrighted portions and elements of the Subject Works, and/or the Subject Works in their entirety, without authorization, in violation of the Copyright Act, 17 U.S.C. § 101 *et seq.*

40. Plaintiffs have never authorized or given consent to Defendants' users to use their copyrighted works in the manner complained of herein.

41. Defendants have, with knowledge, materially contributed to or induced unauthorized reproductions, adaptations, distributions, public

1 performances, and public displays of the Subject Works by Defendants' users, and
2 thus Defendants have contributed to or caused the infringement of Plaintiffs'
3 copyrights.

4 42. Defendants' acts of contributory infringement are willful, in disregard
5 of, and with indifference to the rights of Plaintiffs.

6 43. As a direct and proximate result of the infringements alleged herein,
7 Plaintiffs are entitled to damages and to Defendants' profits in amounts to be
8 proven at trial, which are not currently ascertainable. Alternatively, Plaintiffs are
9 entitled to maximum statutory damages of \$150,000 for each copyright infringed,
10 or in such other amount as may be proper under 17 U.S.C. § 504(c).

11 44. Plaintiffs further are entitled to their attorneys' fees and full costs
12 pursuant to 17 U.S.C. § 505.

13 45. As a result of Defendants' acts and conduct, Plaintiffs have sustained
14 and will continue to sustain substantial, immediate, and irreparable injury, for
15 which there is no adequate remedy at law. Plaintiffs are informed and believe, and
16 on that basis allege, that, unless enjoined and restrained by this Court, Defendants
17 will continue to infringe Plaintiffs' rights in the Subject Works. Plaintiffs are
18 entitled to temporary, preliminary, and permanent injunctive relief to restrain and
19 enjoin Defendants' continuing infringing conduct.

20 21 **COUNT THREE**

22 **Vicarious Copyright Infringement**

23 46. Plaintiffs reallege and incorporate by reference the allegations in
24 paragraphs 1 through 28, as if set forth fully herein.

25 47. Defendants' users have infringed, and are continuing to infringe,
26 Plaintiffs' copyrights by reproducing, adapting, distributing, publicly performing,
27 and publicly displaying copyrighted portions and elements of the Subject Works,

1 and/or the Subject Works in their entirety, without authorization, in violation of
2 the Copyright Act, 17 U.S.C. § 101 *et seq.*

3 48. Plaintiffs have never authorized or given consent to Defendants' users
4 to use their copyrighted works in the manner complained of herein.

5 49. Defendants have the right and ability to supervise and control the
6 infringing conduct of their users. Defendants have failed and refused to exercise
7 such supervision and control to limit infringement to the extent required by law.
8 As a direct and proximate result of such refusal, Defendants' users have infringed
9 Plaintiffs' copyrights in the Subject Works, including by reproducing, adapting,
10 distributing, publicly performing, and publicly displaying the Subject Works.

11 50. Defendants derive a direct financial benefit from this infringement.

12 51. Defendants' acts of vicarious infringement are willful, in disregard of,
13 and with indifference to the rights of Plaintiffs.

14 52. As a direct and proximate result of the infringements alleged herein,
15 Plaintiffs are entitled to damages and to Defendants' profits in amounts to be
16 proven at trial, which are not currently ascertainable. Alternatively, Plaintiffs are
17 entitled to maximum statutory damages of \$150,000 for each copyright infringed,
18 or in such other amount as may be proper under 17 U.S.C. § 504(c).

19 53. Plaintiffs further are entitled to their attorneys' fees and full costs
20 pursuant to 17 U.S.C. § 505.

21 54. As a result of Defendants' acts and conduct, Plaintiffs have sustained
22 and will continue to sustain substantial, immediate, and irreparable injury, for
23 which there is no adequate remedy at law. Plaintiffs are informed and believe, and
24 on that basis allege, that, unless enjoined and restrained by this Court, Defendants
25 will continue to infringe Plaintiffs' rights in the Subject Works. Plaintiffs are
26 entitled to temporary, preliminary, and permanent injunctive relief to restrain and
27 enjoin Defendants' continuing infringing conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor on each and every claim for relief set forth above and award them relief including, but not limited to, an Order:

1. Preliminarily and permanently enjoining Defendants, their officers, employees, agents, subsidiaries, representatives, distributors, dealers, members, affiliates, licensees, internet service providers, and all persons acting in concert or participation with them from infringing Plaintiffs' copyrighted works, including the Subject Works.

2. Requiring Defendants to deliver to Plaintiffs all copies of materials that infringe or violate any of Plaintiffs' rights described herein.

3. Requiring Defendants to provide Plaintiffs with an accounting of any and all revenue and profits derived from the exploitation or violation of any of Plaintiffs' copyrights.

4. Awarding Plaintiffs monetary relief including damages sustained by Plaintiffs in an amount not yet determined, including actual damages and/or Defendants' profits, or statutory damages for copyright infringement and willful copyright infringement, in an amount up to \$150,000 per infringed work, under 17 U.S.C. § 504, as appropriate.

5. Awarding Plaintiffs their costs and attorneys' fees in this action pursuant to 17 U.S.C. § 505 and other applicable laws.

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1 6. Awarding such other and further relief as this Court may deem just
2 and appropriate.

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4 DATED: October 13, 2015

DAVID A. STEINBERG
MARC E. MAYER
EMILY F. EVITT
MITCHELL SILBERBERG & KNUPP LLP

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8 By: _____
9 Marc E. Mayer
10 Attorneys for Plaintiffs
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JURY DEMAND

Plaintiffs hereby demand a trial by jury on all matters and issues so triable.

DATED: October 13, 2015

DAVID A. STEINBERG
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