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Attorney for Owner/Requestor
SPLINTERED LLC

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

In re Subpoena to) **Case No.: 1:20-mc-347**
) (Copyright)
Tonics Domain Corporation, and)
Cloudflare, Inc.) APPLICATION FOR 512(h)
) SUBPOENA
)
)
)
_____)

APPLICATION FOR 512(h) SUBPOENA

TO: CLERK OF THE ABOVE-ENTITLED COURT:

Pursuant to 17 USC 512(h) (hereafter: "512(h)"), SPLINTERED LLC ("Owner") hereby applies for issuance of a subpoena to Tonic Domain Corporation and Cloudflare, Inc. (the "service provider") to identify alleged infringers of Owner's Copyright protected motion picture. The following websites stream and distribute torrent files for infringing the Owner's motion picture.

<https://1337x.to/torrent/978613/Playing-It-Cool-2014-720p-HC-R6-WEBRiP-X264-AC3-Blackjesus/> hosted at Internet Protocol address 104.31.88.65

<https://iwatch-now.com/5/?a=2&q=Playing.It.Cool.2014.720p.HC.R6.WEBRiP.X264.AC3-Blackjesus&clickid=5f3ef62d0a5df40001d0ccc6&pubid=422817309923> hosted at Internet Protocol address 104.24.116.152

512(h) provides the copyright owner with a mechanism to request a subpoena from this Court. Particularly, 512(h)(1) provides:

(1) Request.—

A copyright owner or a person authorized to act on the owner's behalf may request the clerk of any United States district court to issue a subpoena to a service provider for identification of an alleged infringer in accordance with this subsection.

As stated in the Declaration of Counsel, the undersigned represents the Owner of the Copyright protected subject matter.

512(h)(2) provides:

(2) Contents of request.—The request may be made by filing with the clerk—

(A) a copy of a notification described in subsection (c)(3)(A);

(B) a proposed subpoena; and

(C) a sworn declaration to the effect that the purpose for which the subpoena is sought is to obtain the identity of an alleged infringer and that such information will only be used for the purpose of protecting rights under this title.

The undersigned provided a copy of the notification described in subsection (c)(3)(A) [*See Exhibit 1*], a proposed subpoena and the sworn declaration.

512(h)(3) provides:

(3) Contents of subpoena.—

The subpoena shall authorize and order the service provider receiving the notification and the subpoena to expeditiously disclose to the copyright owner or person authorized by the copyright owner information sufficient to

identify the alleged infringer of the material described in the notification to the extent such information is available to the service provider.

The proposed subpoena is in accordance with 512(h)(3).

512(h)(4) provides:

(4) Basis for granting subpoena.—

If the notification filed satisfies the provisions of subsection (c)(3)(A), the proposed subpoena is in proper form, and the accompanying declaration is properly executed, the clerk shall expeditiously issue and sign the proposed subpoena and return it to the requester for delivery to the service provider.

As the undersigned has provided the notification, the proposed subpoena in proper form, and the properly executed declaration, the clerk must issue and sign the proposed subpoena. 512(h)(4) provides that *the Clerk*, not a Judge should issue and sign the proposed subpoena.

512(h)(6) provides that “...the procedure for issuance and delivery of the subpoena...shall be governed to the greatest extent practicable by those provisions of the Federal Rules of Civil Procedure governing the issuance, service, and enforcement of a subpoena duces tecum”. That is, 512(h)(6) provides that the procedures for the Rule 45 subpoena shall govern. The proposed subpoena is a Rule 45 subpoena.

For these reasons, the undersigned request that the Clerk of the Court expeditiously issue and sign the proposed subpoena and return it to the undersigned via ECF to be served on the service provider.

DATED: Kailua-Kona, Hawaii, August 20, 2020.

CULPEPPER IP, LLC

/s/ Kerry S. Culpepper
Kerry S. Culpepper

Attorney for Owner/Requestor