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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 367/2019**

WARNERS BROS ENTERTAINMENT INC. Plaintiff

Through: Mr. Sai Krishna Rajagopal,
Ms. Suhasini Raina, Ms. Disha
Sharma and Ms. Snehima Jauhari,
Advocates.

versus

HTTPS://OTORRENTS.COM & ORS. Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% 24.07.2019

I.A. 9855/2019 (Exemption)

1. Exemptions allowed, subject to all just exceptions.

I.A. 9856/2019 (under Section 80 CPC) in CS(COMM) 367/2019

2. Issue notice to the non applicants/Defendant Nos. 11 and 12 by all modes including email, returnable on 24th October 2019.

CS(COMM) 367/2019

3. Let the plaint be registered as a suit.

4. Issue summons to the Defendant No.1 through email and to Defendant Nos. 2 to 12 through all modes, upon filing of Process Fee.

5. The summons to the Defendants shall indicate that a written statement to the plaintiff shall be filed positively within 30 days from date of receipt of summons. Along with the written statement, the Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.

6. Liberty is given to the Plaintiff to file a replication within 15 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

7. List before the Joint Registrar for marking of exhibits on 27th September 2019. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

8. List before Court on 24th October 2019.

I.A. 9854/2019 (U/O 39 Rule 1 & 2 CPC)

9. Issue notice to the Defendants by all modes including email, returnable on 24th October 2019.

10. The present suit has been filed for permanent injunction, rendition of accounts and damages etc. Plaintiff-Warner Bros. Entertainment Inc., is a

Company incorporated at the state of Delaware, having its office at 4000 Warner Boulevard, Burbank, California 91522, United States of America.

11. Defendant No. 1, Otorrents.com (hereinafter referred to as "Defendant Website"), is an online location which enables users of the Defendant Website services to: (a) view (by a process known as "downloading") cinematograph films, being motion pictures, television programs or other audio-visual content, on devices connected to the Internet; (b) cause copies of those cinematograph films to be downloaded onto the memory of their devices for watching later or enabling others to watch or further copy those cinematograph films; and/or (c) identify other online locations including (by a process known as "linking") which enables those users to engage in the activities set out in (a) or (b).

12. It is stated in the plaint that Defendant Website is primarily and substantially engaged in communicating to the public, hosting, streaming and/or making available to the public Plaintiff's original content without authorization, and/or facilitating the same. Defendant No. 1 is making available, illegally and unauthorizedly, content of various third parties like UTV Software Communications Ltd., STAR India Pvt. Ltd., Disney Enterprises, Inc., Paramount Pictures Corporation, Columbia Pictures Industries, Inc., Universal City Studios LLC., and Netflix Entertainment Services India LLP, etc. (hereinafter referred to as 'studios').

13. It is further submitted that Plaintiff's films are works of visual recording and include sound recordings accompanying such visual recordings, which

qualify as a "cinematograph film" under Section 2(f) of the Copyright Act, 1957 (hereinafter 'the Act'). Further, by virtue of Section 13(1) read with Section 13(2), Section 5 and Section 40 of the Act, the Plaintiff's cinematograph films whether released or not released in India would be entitled to all rights and protections granted under the Act for cinematograph films. The cinematograph films produced by the Plaintiff are "works" as defined under Section 2(y) of the Act, Plaintiff has all the rights in such cinematograph films granted under Section 14(d) of the Act, and Plaintiff is author and/or first owner and/or owners (under Section 17 of the Act) of the following illustrative list of cinematograph films that are entitled to protection under the Act:

S.No.	Film	Year
1.	Aquaman	2018
2.	A Star Is Born	2018
3.	Wonder Woman	2017
4.	Arrow, Season 7, Episode 22	2019

14. In order to protect and enforce their exclusive rights, the Plaintiff investigated and monitored the Defendant Website and gathered evidence of their infringing activity. During the period of investigation the Defendant Website infringed the Plaintiff's Original Content or facilitated the same, using or facilitating the use of the Defendant Website, inter alia, by downloading and streaming the Plaintiff's Original Content. The illustrative list of illegal content made available by Defendant No. 1, that are entitled to

protection under the Act are mentioned hereinbelow:

Studio	Film	Year
Columbia	Miracles from Heaven	2016
Columbia	This is the End	2013
DEI	Finding Dory	2016
DEI	The Jungle Book	2016
Paramount	Transformers: The Last Knight	2017
Paramount	Transformers: Age of Extinction	2014
Paramount	xXx: Return of Xander Cage	2017
Universal	Straight Outta Compton	2015
Universal	The Purge: Election Year	2016
Universal	The Secret Life of Pets	2016
Netflix	Stranger Things	2017- 2019
Netflix	Santa Clarita Diet	2018- 2019

15. Learned counsel for the Plaintiff submits that legal notice was served upon the Defendant Website calling upon them to cease from engaging in their infringing activities. Despite such legal notice, the Defendant Website continued to infringe the rights in Plaintiff's Original Content. The Defendant Website is therefore willfully infringing Copyright material and ignoring or failing to respond to notice to cease all infringement. He further submits that, access of the Defendant Website has been disabled in other jurisdictions such as in Indonesia, Malaysia and Italy.

16 Learned Counsel for the Plaintiff submits that Defendant Website provides illegal content directly for free without any requirement of registration by users and such availability of content is supported by the advertisements featured on the website. The primary purpose of the Defendant Website is to commit or facilitate copyright infringement. Thus, Defendant No. 1 is liable for infringement under Section 51(a)(ii), Section 51(b), and Section 51(a)(i) for making a copy of the Original Content including the storing of it in any medium by electronic or other means and communicating the Original Content to the public. Further the hosting, streaming, reproducing, distributing, making available to the public, and/or communicating to the public of the Original Content, or facilitating the same, without authorization of the Plaintiff amounts to violation of the Plaintiff's copyright work, protected under the Act. In support of his contentions reliance has also been placed on the decision of this court in *CS(COMM) 724/2017* dated 11th April, 2019, *UTV Software Communication Ltd. vs. 1337X.TO and Ors*

17. Plaintiff has arrayed various internet and telecom services providers (ISPs) as Defendant Nos. 2-10 (hereinafter "the said ISPs") in the present suit to ensure the effective implementation of any relief that this Hon'ble Court may grant in favour of the Plaintiff. The limited relief being claimed against the said ISPs is to ensure the effective implementation of any order that this Hon'ble Court may be pleased to grant in favour of the Plaintiff by disabling access of the Defendant Website in India.

18. Plaintiff has also arrayed Defendant No. 11, the Department of

Telecommunications (DoT), and Defendant No. 12, the Ministry of Electronics and Information Technology (MEITY), for a similar reason. The limited relief being claimed against the DoT and the MEITY is the issuance of a notification to the internet and telecom service providers registered with it to disable access into India of the Defendant Website.

19. In view of the averments noted hereinabove and in view of the judgment passed in *UTV Software Communication Ltd.* (supra), this Court is of the opinion that a prima facie case is made out in favour of the Plaintiff and balance of convenience is also in its favour. Further, irreparable harm or injury would be caused to the plaintiff if an interim injunction order is not passed.

20. Consequently, Defendant No. 1 (and such other domains/domain owners/website operators/entities which are discovered during the course of the proceedings to have been engaging in infringing the Plaintiff's exclusive rights), their owners, partners, proprietors, officers, servants, employees, and all others in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under it, are restrained from, hosting, streaming, reproducing, distributing, making available to the public and/or communicating to the public, or facilitating the same, in any manner, on their websites, through the internet any cinematograph work/content/programme/ show in relation to which Plaintiff has copyright;

21. Further, as held by this court in *UTV Software Communication Ltd.* (supra), in order for this court to be freed from constant monitoring and

adjudicating the issues of mirror/redirect/alphanumeric websites it is directed that as and when Plaintiff files an application under Order I Rule 10 for impleadment of such websites, Plaintiff shall file an affidavit confirming that the newly impleaded website is mirror/redirect/alphanumeric website with sufficient supporting evidence. Such application shall be listed before the Joint Registrar, who on being satisfied with the material placed on record, shall issue directions to the ISPs to disable access in India to such mirror/redirect/alphanumeric websites.

22. Defendant Nos. 2-10, shall ensure compliance of this order by blocking, Otorrents.com, its URL <https://otorrents.com> with IP address, 185.112.157.243. Defendant Nos. 11 and 12 are directed to suspend the aforementioned domain name registration of Defendant No. 1 and issue requisite notifications calling upon various internet and telecom service providers registered under them to block the aforementioned website identified by Plaintiff.

23. Let provisions of Order XXXIX Rule 3 CPC be complied by way of email within a period of one week.

SANJEEV NARULA, J

JULY 24, 2019

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