

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Laszlo PUSZTAI, an individual, and DIRE
STUDIO SZOLGÁLTATÓ
KORLÁTOLT FELELŐSSÉG
TÁRSASÁG, a Hungarian limited
liability company (d/b/a “DIRE Studio
Kft.”),

Plaintiffs,

v.

APPLE, INC., a California corporation,

Defendant.

Index No. _____

COMPLAINT AND JURY DEMAND

Plaintiffs Laszlo Pusztai (“Pusztai”) and DIRE Studio Szolgáltató Korlátolt Felelősség Társaság (“DIRE Studio”), by and through undersigned counsel, bring this Complaint and Jury Demand against defendant Apple, Inc. (“Apple”), for damages and injunctive relief, and in support thereof states as follows:

THE PARTIES

1. Pusztai is a photographer and programmer. He is a citizen and resident of Hungary. He created an application called “ShutterCount,” (the “Pusztai App”) designed to interface with users’ digital cameras and display to users the total “shutter counts” for each camera. This is especially useful in the active market for pre-owned digital cameras. Pusztai remains the copyright holder of the Pusztai App.

2. DIRE Studio is a Hungarian limited liability company, maintaining its offices in Budapest, Hungary. It is the exclusive licensee of the Pusztai App.

3. Defendant Apple is a California corporation maintaining its principal office in Cupertino, California. It is authorized to do business in New York as a foreign corporation. Its registered

agent for service of process is located in this District. Apple's flagship retail store is located in this District. On information and belief, Apple maintains corporate offices in more than one location in this District.

JURISDICTION AND VENUE

4. This is an action arising under the Copyright Act, 17 U.S.C. §§ 501, et seq. and §§ 1201, *et seq.*
5. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1332 and 1338(a).
6. Apple is subject to personal jurisdiction in New York, and venue in this district is proper under 28 U.S.C. § 1400(a), because Apple maintains both major retail outlets and substantial corporate offices in this District, has appointed an agent in this District to receive service of process, and therefore Apple or its agent resides or may be found in this District.

PLAINTIFF'S COPYRIGHTS AND DEFENDANT'S INFRINGEMENT

7. Plaintiffs bring this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to reproduce and distribute Plaintiffs' original copyrighted works of authorship, and also for violations of the copyright laws of several foreign jurisdictions.
8. In 2013, DIRE Studio authorized Apple to sell copies of the Pusztai App through Apple's online store, known as the "App Store." DIRE Studio has periodically released via the App Store updated versions of the Pusztai App. In 2017, DIRE Studio released – successively – versions 3.0, 3.1 and 3.2 of the Pusztai App.
9. Each of versions 3.0, 3.1, and 3.2 of the Pusztai App are registered with the U.S. Copyright Office as, respectively, TX 8-963-783, TX 8-963-778 and TX 8-963-782. True and correct copies of the registration certificates are attached hereto as Exhibit 1.

10. The Puztai App consists of a body of software code which allows the device on which it resides – either an Apple “Macintosh” brand computer running Apple’s “MacOS” operating system or an Apple mobile device running Apple’s “iOS” operating system – to communicate with the “firmware” built into certain digital cameras. It does this by formulating particular instructions – the “communication code” – specific to each camera, which the Puztai App sends to a camera’s firmware, instructing the camera’s firmware to report to the Puztai App certain data from which the Puztai App is able to calculate the number of times the camera shutter has been actuated.

11. Certain digital cameras operate in two modes, called “viewfinder” (employed with the camera close to the photographer’s eye to judge the frame of the image) and “live view” (which shows the composition on a larger LCD screen, so the image can be framed while the camera is held away from the photographer’s eye). The data reported by camera firmware allows the Puztai app to calculate separately the number of “viewfinder” actuations and the number of “live view” actuations.

12. Once the Puztai App receives the raw “shutter count” data from the camera’s firmware, it calculates the shutter actuation counts in each mode – “viewfinder” and “live view” modes – and presents that information graphically to the user. When operated under certain conditions, the Puztai App contains an inadvertent error which misinterprets shutter actuation data when that actuation occurs in “live view” mode: the Puztai App mistakenly double-counts each incremental “live view” actuation and simultaneously reduces by one the count of “viewfinder” actuations.”

13. By way of illustration, consider a camera which reported to the Puztai App data indicating that there had been 18632 viewfinder actuations and 4713 live view actuations.

Thereafter, that camera is subsequently placed in “live view” mode and the photographer takes a single test shot. If the Pusztai App were to query that camera’s firmware a second time, the Pusztai App display would show 18631 “viewfinder” actuations (one less than previously) and 4715 “live view” actuations (two more than previously).

14. On information and belief, in or about April 2014, a Russian citizen named Konstantin Pavlikhin (“Pavlikhin”) authored an application called “EOS Inspector,” designed to run on Macintosh computers running Apple’s MacOS. “EOS Inspector – similarly to the Pusztai App – allowed users to obtain from certain models of the Canon “EOS” brand of digital camera “shutter counts” documenting how heavily each camera has been used.

15. On information and belief, in or about 2017, Pavlikhin purchased one or more copies of versions 3.0, 3.1 and/or 3.2 of the Pusztai App from the App Store. On information and belief, Pavlikhin copied substantial sections of the source code embodied in the Pusztai App, and created an unauthorized derivative work – a new version of the “EOS Inspector” application, later renamed “ShutterCheck” (the “Infringing Pavlikhin App”) – which Pavlikhin licensed for sale on the App Store in or about June 2018.

16. Testing the Infringing Pavlikhin App shows that it incorporates the same calculation error with respect to miscounting actuations occurring in “live view” mode. This and other findings indicate that Pavlikhin – without license from the Plaintiffs – reproduced Pusztai’s original software code as embodied in the Pusztai App, made unauthorized derivative works therefrom, and/or distributed those unauthorized derivative works – the several sequential versions of the Infringing Pavlikhin App – in violation of 17 U.S.C. § 106, and the laws of several foreign jurisdictions.

17. In or about June 2018, Apple began distributing copies of the Infringing Pavlikhin App to the public through its App Store. On information and belief, Apple retained thirty percent (30%) of revenue derived from sales of the Infringing Pavlikhin App.

18. On or about June 11, 2018, Plaintiffs gave written notice to Apple, including all the information necessary under 17 U.S.C. 512(c)(3), that the Infringing Pavlikhin App infringed the Pusztai App.

19. Thereafter, until approximately December of 2020 – almost thirty (30) months after Plaintiffs notified Apple that the Infringing Pavlikhin App infringed the Pusztai App – Apple declined to remove the Infringing Pavlikhin App from the App Store, resulting in substantial damage to Plaintiffs. Instead, Apple continued to distribute, and to collude in the distribution of, the Infringing Pavlikhin App, to its profit and to Plaintiff’s injury.

20. Indeed, on information and belief, Apple continues to permit the download of newer versions of the Infringing Pavlikhin App from the App Store to customers who had purchased prior versions of the Infringing Pavlikhin App. Further, though Apple has disabled new purchases of the Infringing Pavlikhin App via the App Store, on information and belief, Apple continues to assist Pavlikhin to distribute the Infringing Pavlikhin App through other channels by certifying that the Infringing Pavlikhin App does not contain malware, and by issuing a “code signing certificate” for the Infringing Pavlikhin App, permitting it to run on Apple’s MacOS operating system.

COUNT 1

DIRECT COPYRIGHT INFRINGEMENT: 17 U.S.C. §§ 501 *et seq.*

21. Plaintiffs incorporate the allegations of paragraphs 1-20 above as if fully set forth herein.

22. Plaintiff Pusztai holds a valid copyright in the Pusztai App, all relevant versions of which are registered with the U.S. Copyright Office.

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