



CHRISTENSEN | O'CONNOR  
JOHNSON | KINDNESS

June 22, 2022

**VIA EMAIL ONLY**

Email: cmckelvey03@gmail.com; chevc21003@gmail.com

Mr. Connor McKelvey  
Summit Cinema

Re: COJK Reference: 4234-G001

Dear Mr. McKelvey:

We represent Swamp Servers LLC (“Swamp Servers”) in its intellectual property matters, including enforcement. As you are aware, Swamp Servers is the owner of Swamp Cinema, a hosted Garry’s Mod game server. Swamp Cinema has been a very successful “Cinema” server due at least in part to a large amount of unique, engaging content custom designed for it.

Under United States law, copyright protection for the content of Swamp Cinema has existed from the date of the creation of the content. Moreover, to further protect its investment in Swamp Cinema, Swamp Servers has obtained U.S. Copyright Registration Number PA0002260263, issued August 28, 2020, for the Swamp Cinema content. Of course, content of Swamp Cinema developed since this date is also protected by U.S. copyright law.

We are aware of your competitive server Summit Cinema. In this regard, we have viewed on Summit Cinema at least thirty separate segments of Swamp Cinema that you have willfully and purposefully copied, and which are protected by U.S. Copyright registration Number PA0002260263, in an effort to attract users away from Swamp Cinema and to your competing server. Although you are well aware of the segments that you have copied, these segments are identified in a DMCA takedown notice that is being filed against Summit Cinema.

Your willful and purposeful actions are in violation of U.S. Copyright Law, including Title 17 of the United State Code, Sections 102(a) and Sections 106-122, that protects the content of Swamp Cinema from being copied and then displayed on your server, as well as from derivative works being created from our client’s content. Since you have not sought or requested permission to display or otherwise use the content you have copied from Swamp Cinema, you are hereby notified to CEASE AND DESIST from any and all further unlawful acts of copyright infringement, including using on your server any content copied from or derived from Swamp Cinema.

Your failure to comply with this notice will confirm your complicity and subject you to monetary damages as well as court costs and attorney fees pursuant to Title 17 of the United States Code,

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[Your Innovation Partners]

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Sections 504, 505, and 1203. This liability applies to you, your company, as well as third parties performing work for you.

Since our client timely registered the copyright to the content of Swamp Cinema with the U.S. Copyright Office, our client may elect either to receive the actual damages caused by your infringing action and all profits earned from your infringement, or it may instead elect statutory damages of between \$750 and \$30,000 per each of your more than thirty separate infringements. At the discretion of the court, our client may be entitled to up to \$150,000 for each of your more than thirty willful infringements. See Title 17 of the United States Code, Section 504.

Copyright infringement is a strict liability offense: you are responsible for any infringing act regardless of your intent. While you may stop using content from Swamp Cinema, you still remain liable for your past infringements. As you may be aware, the statute of limitations on copyright infringement claims is three years from the date of infringement. This gives our client ample time to seek recovery for your infringing actions.

### **NOTICE TO PRESERVE DOCUMENTS AND DATA**

You are on notice that litigation is likely regarding your actions concerning the unauthorized use of content from Swamp Cinema. You are now obligated and have a duty to preserve all evidence that may be relevant to the dispute discussed above and that may be the subject of pending litigation. This duty of preservation extends to, but is not limited to, data files, e-mails, calendars, telephone logs, access lists, and logs that are located on your computer networks, video servers, e-mail servers, mainframes, individual computer workstations, smart phones, and external drives, or are located on any of those devices within your control but not owned by you, such as your web host(s).

Specifically, but not exclusively, you are on notice that you must preserve all evidence of all of your uses of the content copied from or derived from Swamp Cinema. This duty extends to your employees and agents. We request that you notify your employees and agents of this retention request immediately. Legal sanctions for violating any of the foregoing duties can be severe and include substantial monetary sanctions, adverse inferences in evidentiary rulings, and the entry of judgments against you by default. We are hopeful that this dispute can be resolved short of litigation. The above duties, however, must be satisfied during any settlement or other discussions that we may have.

### **Interference With Business Relations**

Our client is aware of your attempts to persuade individuals that have contracts with our client to create content to stop working for Swamp Servers, including by making assertions about our client that you knew were misleading. Our client considers these attempts to be an interference with its business relationships with these individuals. Your actions are illegal under Washington State law and California State law, and entitle our client to damages caused by your illegal acts, as well as an injunction against your continued illegal acts. You are liable under both Washington State law,

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since that is where our client is located, as well as under California State law, since that is where you are located.

### **Unfair Competition**

We are also aware that you instructed your associates to spam our client's forum, Discord, and profile with personal information for the purpose of harassment and intimidation. These actions constitute unfair competition under state and federal law, and our client is entitled to recover damages caused by these acts.

### **Defamation and Unfair Competition**

We have verification that you have made defamatory statements about our client. One example that we have documented is your allegation on Discord that you "100% guarantee" that our client is "doxing random middle schoolers...." Please provide your verification that this is the case. Absent your ability to provide such verification, you are guilty of not only libel, but also unfair competition.

### **Offer to Settle for Past Illegal Acts**

Our client is willing to provide you an opportunity to settle claims against you for past infringement if you send certified funds in the amount of \$20,000 payable to the following:

Christensen O'Connor Johnson Kindness, PLLC, Trust Account  
1201 Third Avenue  
Suite 3600  
Seattle, WA 98901

within fifteen (15) days. This offer does not allow you to continue to use content from Swamp Cinema or to continue interfering with the business relationship between our client and its content creators.

Please note that the above amount represents an offer of settlement, but does not reflect the damages that our client can and will seek in a court proceeding, including attorneys' fees pursuant to 17 U.S.C. §§ 505 and 1203. Rather, this settlement offer reflects what our client will accept if no further actions against you are necessary. If you do not accept this offer, our client reserves the right to file a copyright infringement action against you and to seek the maximum available damages under the law, which far exceed this amount.

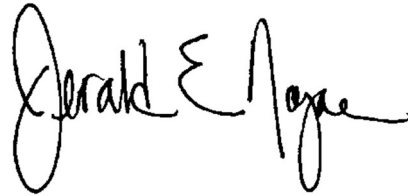
If you are unwilling to resolve this matter as noted above, our client may initiate formal litigation at any time without further notice to you. If you carry business insurance, now may be an appropriate time to contact your carrier to determine whether our client's claims are covered under your policy. This letter is without prejudice to our client's rights and claims, which are expressly reserved.

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Please let us know if you have any questions. We look forward to hearing from you.

Sincerely,

CHRISTENSEN O'CONNOR  
JOHNSON KINDNESS<sup>PLLC</sup>

A handwritten signature in black ink that reads "Jerald E. Nagae". The signature is written in a cursive style with a large, looped initial "J" and a long, sweeping tail.

Jerald E. Nagae

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