

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HUONG HOANG, an individual,

Plaintiff,

vs.

AMAZON.COM, INC., a Delaware corporation, and IMDB.COM, INC., a Delaware corporation,

Defendants.

No. 2:11-cv-01709-MJP

**FIRST AMENDED COMPLAINT
FOR DAMAGES AND
INJUNCTIVE RELIEF WITH
JURY DEMAND**

Plaintiff Huong Hoang, by and through her undersigned counsel, states as follows upon actual knowledge with respect to herself and her own acts and upon information and belief as to all other matters complained of against defendants Amazon.com, Inc., a Washington corporation (“Amazon”) and IMDb.com, Inc., a Delaware corporation (“IMDb”), (collectively, “Defendants”):

I. NATURE OF THE CASE

1. Amazon is one of the leading Internet companies in the country. Through its wholly-owned subsidiary, IMDb, Amazon provides free access to the world’s largest “Internet Movie Database” at the website www.imdb.com. The Internet Movie Database is a very handy resume tool for employers in the film and television industry as it attempts to list every

1 production upon which a writer, performer or crew member has ever worked. Likewise, up-and-
2 coming entertainment professionals rely on the exposure provided by the Internet Movie
3 Database to seek employment opportunities in the entertainment industry.

4 2. Through IMDb, Amazon also offers a subscription service called “IMDbPro,”
5 which provides “industry insider” information to paying customers. In order to subscribe to
6 IMDbPro, Amazon requires consumers to submit detailed personal and credit card information,
7 purportedly for purposes of processing payment for the subscription. IMDbPro consumers also
8 must accept IMDbPro.com’s Subscriber Agreement and incorporated Privacy Policy (the
9 “Subscriber Agreement”). It is not possible for a consumer to sign up for IMDbPro without
10 providing his or her credit card information and accepting the terms of the Subscriber
11 Agreement.

12 3. The IMDbPro subscription process plainly has great capability to invade the
13 privacy of the subscribers and misappropriate their personal and credit card information, so
14 Defendants go out of their way to make consumers feel safe about providing this highly
15 confidential information. For example, the following information appears on IMDbPro’s
16 subscription page and/or in the Subscriber Agreement:

- 17 • “We guarantee that every transaction you make at IMDbPro.com will be safe.”
- 18 • “Payment processing is powered by Amazon.com.”
- 19 • “Our secure socket layer (SSL) software is the industry standard and among the best
20 software available today for secure commerce transactions. It encrypts all of your
21 personal information including credit card number, name and address so that it cannot
22 be read as the information travels over the Internet.”
- 23 • “IMDb knows that you care how information about you is used and shared, and we
24 appreciate your trust that we will do so carefully and sensibly.”
- 25 • “Further, whenever we deal with user information, we will always comply with
26 applicable laws and regulations in doing so.”

27 Defendants thus attempt to assuage privacy concerns, but their statements are vague,
28 ambiguous, inaccurate and uninformative about Defendants’ actual data collection and

1 information-handling procedures, and mislead consumers into thinking that their personal and
2 credit card information is safe and will be used solely for purposes of processing payment.

3 4. Little do IMDbPro subscribers know, nor are they likely aware, that Defendants
4 intercept, store, record, and use the information provided during the subscription process,
5 including their credit card information, to research and cross-reference public records and other
6 sources to gather as much information as possible about each individual subscriber, including,
7 but not limited to, his or her legal name, age, race, gender, personal shopping and spending
8 habits, and Internet activity, which acts are unknown to and not consented to by the subscribers.

9 5. Subscribers who happen to be one of the millions of people listed in the Internet
10 Movie Database suffer a substantial further risk of harm of their private, personal information
11 becoming available to the public at www.imdb.com and other affiliated and unaffiliated websites
12 that simply copy and republish information posted at www.imdb.com.

13 6. In Plaintiff's case, Defendants were able to and did access Plaintiff's personal and
14 credit card information by intercepting and recording her confidential electronic communications
15 without or beyond her consent, further using that information to cross-reference public records
16 and other sources to obtain, among other things, Plaintiff's legal name, age, date of birth, and
17 other personal, confidential information, and making some of that unlawfully-obtained
18 confidential information available to the public at www.imdb.com and other affiliated and
19 unaffiliated websites.

20 7. By this practice, Defendants committed fraud, breached the terms of the
21 Subscriber Agreement and Privacy Policy entered into with Plaintiff, and violated Plaintiff's
22 statutory privacy and consumer protection rights as described herein. Plaintiff brings this action
23 seeking declaratory, injunctive and monetary relief to redress Defendants' unlawful conduct.

24 **II. JURISDICTION AND VENUE**

25 8. This Court has original jurisdiction over this dispute pursuant to 28 U.S.C. §
26 1332, because the plaintiff is a citizen of a different state from those of all defendants, and the
27 amount in controversy exceeds \$75,000.

28 9. This Court has personal jurisdiction over defendant Amazon because it is

1 domiciled in the State of Washington.

2 10. This Court has personal jurisdiction over defendant IMDb because it conducts
3 substantial business in the State of Washington and has its principal place of business in the State
4 of Washington.

5 11. The claims alleged in this Complaint arise in the State of Washington and the
6 Western District of Washington and elsewhere.

7 12. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because defendant
8 Amazon has its principal offices in Seattle and therefore “resides” in this district, because the
9 Subscriber Agreement entered into between the parties provides that any dispute relating in any
10 way to the IMDbPro website or services offered by or through the website shall be adjudicated in
11 any state or federal court in King County, Washington, and the events or omissions giving rise to
12 Plaintiff’s claims occurred in this district.

13 **III. PARTIES**

14 13. Plaintiff Huang Hoang, a Texas domiciliary, is an actress and an IMDbPro
15 subscriber who became a victim of Defendants’ unlawful practices by which they obtained
16 access to and recorded her electronic communications and data without or beyond her knowledge
17 or consent, and whose personal and confidential information was made available to the public
18 via Defendants’ public databases and websites without her knowledge or consent.

19 14. Defendant Amazon is a Delaware corporation with its principal place of
20 business located in Seattle, Washington. Amazon is fully aware of the procedures taken with
21 consumer personal and credit card information, has aided and abetted IMDb’s wrongful conduct,
22 and has done nothing to stop that wrongful conduct.

23 15. Defendant IMDb is a Delaware corporation with its principal place of business
24 located in Seattle, Washington. IMDb is a wholly owned subsidiary of defendant Amazon, and
25 operates the world’s largest online entertainment industry database at www.imdb.com.

26 **IV. GENERAL ALLEGATIONS**

27 16. Plaintiff is an actress in the entertainment industry.

28 17. Being of Asian descent, Plaintiff has a given legal name that is extremely difficult

1 for Americans to spell and pronounce, and is generally not conducive to obtaining employment
2 in the United States and particularly the entertainment industry. Because of this cultural
3 disadvantage, Plaintiff adopted an Americanized stage name, Junie Hoang.

4 18. Prior to and throughout her acting career, Plaintiff has only and always presented
5 herself to the public by her American stage name, Junie Hoang, and has exercised extreme care
6 in maintaining the confidentiality of her true legal name and personal information associated
7 with her legal name by concealing this information from the public, and never linking or
8 associating her legal name or personal information with the stage name Junie Hoang.

9 19. As an unknown actress who desired exposure and work in the entertainment
10 industry, Plaintiff began using the Internet Movie Database in 2003 by entering her acting profile
11 information into the Internet Movie Database. Over the next several years, Plaintiff's exposure
12 via the Internet Movie Database directly influenced most, if not all, of her employment
13 opportunities, credits and earnings.

14 20. To increase her exposure in the industry, in 2008, Plaintiff subscribed to IMDbPro
15 via the Internet website www.imdbpro.com. In order to subscribe to IMDbPro, Plaintiff was
16 required to provide, and did provide, detailed personal and credit card information in order to
17 pay for the subscription, including the legal name, address, and zip code associated with her
18 credit card.

19 21. Shortly after subscribing to IMDbPro, Plaintiff noticed that her legal date of birth
20 had been added to her public acting profile in the Internet Movie Database, revealing to the
21 public that Plaintiff is many years older than she looks.

22 22. In the entertainment industry, youth is king. If one is perceived to be "over-the-
23 hill," i.e., approaching 40, it is nearly impossible for an up-and-coming actress, such as the
24 Plaintiff, to get work as she is thought to have less of an "upside," therefore, casting directors,
25 producers, directors, agents/managers, etc. do not give her the same opportunities, regardless of
26 her appearance or talent.

27 23. After discovering the public exposure of her legal date of birth in the Internet
28 Movie Database, Plaintiff contacted IMDb and requested that it remove the date of birth

1 associated with her public acting profile from the Internet Movie Database.

2 24. IMDb refused, and still refuses to remove the date of birth associated with
3 Plaintiff's public acting profile from the Internet Movie Database.

4 25. The date of birth currently associated with Plaintiff's acting profile in the Internet
5 Movie Database is the date of birth associated with Plaintiff's legal name, which Defendants
6 obtained from the credit card that Plaintiff used to purchase the IMDbPro subscription.

7 26. Prior to subscribing to IMDbPro, there were absolutely no means by which
8 Defendants could have obtained Plaintiff's legal name or date of birth.

9 27. Upon information and belief, IMDb obtained Plaintiff's date of birth by
10 performing records searches using the credit card information obtained from Plaintiff during the
11 IMDbPro subscription process, including, but not limited to, the cardholder name, address and
12 zip code.

13 28. Upon information and belief, it is Defendants' standard business practice to
14 routinely intercept, store, record, and further use consumer credit card information obtained
15 during the subscription process for the purposes of gathering information about subscribers and
16 enhancing Defendants' business databases, which practice is unknown to and not consented to by
17 consumers, and is completely beyond the scope of Defendants' Subscriber Agreement, thereby
18 breaching Plaintiff's statutory and common law rights set forth below.

19 29. Both Defendants are fully aware of the information-gathering, storing, and usage
20 processes and have done nothing to stop the unlawful and wrongful practices.

21 30. Defendants' actions have had a double-whammy effect on Plaintiff's livelihood.
22 First, because lesser-known forty-year-old actresses are not in demand in the entertainment
23 business, Plaintiff has suffered a substantial decrease in acting credits, employment opportunities
24 and earnings since Defendants' addition of Plaintiff's legal date of birth to the Internet Movie
25 Database. Second, because Plaintiff looks so much younger than her actual age indicates,
26 Plaintiff has experienced rejection in the industry for each "forty-year-old" role for which she
27 has interviewed because she does not and cannot physically portray the role of a forty-year old
28 woman.

1 31. Unless and until Defendants remove Plaintiff's personal birthday information
2 from the Internet Movie Database, Plaintiff will continue to suffer ongoing damages.

3 32. The conduct of the Defendants described herein is unfair, immoral, and
4 unscrupulous, offends public policy, and has no countervailing benefit to consumers or
5 competition when weighed against the harm caused by such practices.

6 33. Plaintiff has been seriously damaged as a proximate result of, and by, such
7 misconduct as alleged herein in the form of a substantial decrease in annual credits and earnings
8 and an overall diminution in value of Plaintiff's acting services.

9 34. Defendants' actions were malicious, intentional, oppressive, outrageous, and
10 evidence a complete callous disregard for the rights of Plaintiff.

11
12 **FIRST CAUSE OF ACTION**
(Breach of Contract)

13 35. Plaintiff repleads and restates as if herein set forth in full all of the allegations of
14 this Complaint.

15 36. Upon subscribing to IMDbPro, Plaintiff and Defendants entered into a contractual
16 relationship governed by IMDbPro's Subscriber Agreement and incorporated Privacy Policy.

17 37. Plaintiff performed her part of the agreement by paying for the IMDbPro
18 subscription.

19 38. Upon information and belief, Defendants used the personal and credit card
20 information provided by Plaintiff during the subscription process to build a consumer profile
21 about Plaintiff for purposes of enhancing the value of Defendants' business databases and other
22 unlawful purposes not known by and not consented to by Plaintiff, thereby breaching the
23 Subscriber Agreement and Privacy Policy.

24 39. Upon information and belief, Defendants used Plaintiff's personal and credit card
25 information to perform unlawful records searches and then added personal and confidential
26 information about Plaintiff obtained from those unlawful searches to IMDb.com, making
27 Plaintiff's personal and confidential information immediately available to the public at large in
28 violation of Plaintiff's statutory privacy and consumer protection rights as described herein,

1 constituting a breach of the Subscriber Agreement and Privacy Policy.

2 40. Defendants refuse to remove the unlawfully obtained personal and confidential
3 information from www.imdb.com.

4 41. Since Defendants added Plaintiff's legal date of birth to the Internet Movie
5 Database in 2008, Plaintiff has experienced a significant decrease in credits, earnings, and
6 employment opportunities.

7 42. The conduct of the Defendants described herein is unfair, immoral, and
8 unscrupulous, offends public policy, and has no countervailing benefit to consumers or
9 competition when weighed against the harm caused by such practices.

10 43. Plaintiff has been seriously damaged as a proximate result of, and by, such
11 misconduct as alleged herein in the form of a substantial decrease in annual credits and earnings
12 and an overall diminution in value of Plaintiff's acting services.

13 44. Plaintiff is entitled to all appropriate relief.

14
15 **SECOND CAUSE OF ACTION**
(Fraud)

16 45. Plaintiff repleads and restates as if herein set forth in full all of the allegations of
17 this Complaint.

18 46. Defendants materially misrepresent the safety, security and purpose for which
19 they gather and use the personal and credit card information of consumers who subscribe to
20 IMDbPro.

21 47. The following representations of IMDb's intention to protect subscribers'
22 personal information appears on IMDbPro's subscription page and/or Subscriber Agreement:

- 23
- 24 • "We guarantee that every transaction you make at IMDbPro.com will be safe."
 - 25 • "IMDb knows that you care how information about you is used and shared, and we
26 appreciate your trust that we will do so carefully and sensibly."
 - 27 • "Further, whenever we deal with user information, we will always comply with
28 applicable laws and regulations in doing so."
 - "Payment processing is powered by Amazon.com."

- 1 • “Our secure socket layer (SSL) software is the industry standard and among the best
2 software available today for secure commerce transactions. It encrypts all of your
3 personal information including credit card number, name and address so that it cannot
4 be read as the information travels over the Internet.”

5 48. Defendants’ representations listed above were a material and substantial factor in
6 Plaintiff’s decision to subscribe to IMDbPro.

7 49. Despite these representations, in or about November 2008, Plaintiff discovered
8 that without Plaintiff’s knowledge or consent, Defendants unlawfully accessed Plaintiff’s stored
9 personal and credit card information and then further used that information to scour public
10 records databases and other sources for purposes of discovering Plaintiff’s date of birth.

11 50. Defendants knowingly made the above representations with no intention to honor
12 them or, in the alternative, without care or concern as to whether Defendants would honor them.

13 51. Defendants made these representations with the intent to induce Plaintiff to
14 subscribe to IMDbPro and to share her personal information. Defendants knew or should have
15 known that these representations would induce Plaintiff to subscribe to IMDbPro.

16 52. Plaintiff had no knowledge that Defendants did not intend to honor the above
17 representations or did not have concern for whether they would be honored.

18 53. Plaintiff reasonably relied on Defendants’ representations concerning the safe and
19 proper handling of her personal information when she subscribed to IMDbPro. In subscribing to
20 IMDbPro, Plaintiff shared her personal information with the belief and expectation that such
21 information would be used only for the purposes of processing payment.

22 54. Plaintiff has been seriously damaged as a proximate result of, and by, such
23 misconduct as alleged herein in the form of a substantial decrease in annual credits and earnings
24 and an overall diminution in value of Plaintiff’s acting services.

25 55. The conduct of the Defendants described herein is unfair, immoral, and
26 unscrupulous, offends public policy, and has no countervailing benefit to consumers or
27 competition when weighed against the harm caused by such practices.

28 56. Defendants’ actions were malicious, intentional, oppressive, outrageous, and

1 evidence a complete callous disregard for the rights of Plaintiff.

2 57. Plaintiff is entitled to all appropriate relief.

3
4 **THIRD CAUSE OF ACTION**
(Violation of Washington’s Privacy Act)

5 58. Plaintiff repleads and restates as if herein set forth in full all of the allegations of
6 this Complaint.

7 59. The communication transmitting personal and credit card information by Plaintiff
8 between her computer and Defendants over the Internet is a “private communication transmitted
9 by a device” which was intercepted and recorded by Defendants’ servers and databases without
10 or beyond the consent of Plaintiff.

11 60. Defendants intentionally intercepted and recorded Plaintiff’s electronic
12 communication in violation of RCW 9.73.030 by intending to store, record, and further use
13 Plaintiff’s personal and credit card information for unlawful purposes without Plaintiff’s consent
14 or authorization.

15 61. The conduct of the Defendants described herein is unfair, immoral, and
16 unscrupulous, offends public policy, and has no countervailing benefit to consumers or
17 competition when weighed against the harm caused by such practices.

18 62. Plaintiff has been seriously damaged as a proximate result of, and by, such
19 misconduct as alleged herein in the form of a substantial decrease in annual credits and earnings
20 and an overall diminution in value of Plaintiff’s acting services.

21 63. Plaintiff is entitled to all appropriate relief.

22
23 **FOURTH CAUSE OF ACTION**
(Violation of Washington’s Consumer Protection Act)

24 64. Plaintiff repleads and restates as if herein set forth in full all of the allegations of
25 this Complaint.

26 65. Defendants materially misrepresent the safety, security and purpose for which
27 they gather and use the personal and credit card information of consumers who subscribe to
28 IMDbPro.

1 information submitted to Defendants by third parties;

2 d. Awarding Plaintiff compensatory damages in an amount to exceed \$75,000;

3 e. Awarding punitive damages against Defendants in an amount to exceed
4 \$1,000,000;

5 f. Awarding Plaintiff treble damages and the expenses of this litigation, including
6 the fees and costs of experts and reasonable attorneys' fees and costs in accordance with the
7 claims described herein; and

8 g. Granting other legal and equitable relief that the Court deems appropriate.

9 **VI. JURY DEMAND**

10 Plaintiff hereby demands a trial by jury of all issues so triable.

11
12 Dated this 6th day of January, 2012.

13
14 **DOZIER INTERNET LAW, P.C.**

15 By: /s/ John W. Dozier, Jr.
16 John W. Dozier, Jr., Esq., VSB No. 20559
17 *Admitted pro hac vice*
18 11520 Nuckols Rd., Suite 101
19 Glen Allen, Virginia 23059
20 Tel: (804) 346-9770
21 Fax: (804) 346-0800
22 Email: jwd@cybertriallawyer.com

23 **NEWMAN DU WORS LLP**

24 Derek A. Newman, WSBA No. 26967
25 Randall Moeller, WSBA No. 21094
26 1201 Third Avenue, Suite 1600
27 Seattle, Washington 98101

28 Attorneys for Plaintiff Huong Hoang, an individual

CERTIFICATE OF SERVICE

I certify that on January 6, 2012, I electronically filed the foregoing FIRST AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF WITH JURY DEMAND with the Clerk of the Court using the CM/ECF system, thereby sending notification of such filing to the following attorneys of record.

Ashley A. Locke, Esq.
Breena Michelle Roos, Esq.
Elizabeth L. McDougall-Tural, Esq.
Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101

I certify under penalty of perjury that the foregoing is true and correct.

Dated this 6th day of January, 2012.

DOZIER INTERNET LAW, P.C.

By: /s/ John W. Dozier, Jr.
John W. Dozier, Jr., Esq., VSB No. 20559
Admitted pro hac vice
11520 Nuckols Rd., Suite 101
Glen Allen, Virginia 23059
Tel: (804) 346-9770
Fax: (804) 346-0800
Email: jwd@cybertriallawyer.com

NEWMAN DU WORS LLP

Derek A. Newman, Esq., WSBA 26967
Randall Moeller, Esq., WSBA No. 21094
1201 Third Avenue, Suite 1600
Seattle, Washington 98101

Attorneys for Plaintiff Huong Hoang, an individual