

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

MUSICQUBED INNOVATIONS, LLC,

Plaintiff,

v.

NEXSTAR MEDIA INC., and THE CW  
NETWORK, LLC,

Defendants.

Civil Action No. 2:23-cv-00514-JRG-RSP

**JURY TRIAL DEMANDED**

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff MusicQubed Innovations, LLC (hereinafter, “MusicQubed” or “Plaintiff”) files this First Amended Complaint against Nexstar Media Inc., and The CW Network, LLC, (collectively hereinafter, “Defendants”) alleging, based on its own knowledge as to itself and its own actions, and based on information and belief as to all other matters, as follows:

**NATURE OF THE ACTION**

1. This is a patent infringement action to stop Defendants’ infringement of the following United States Patent (the “Asserted Patent”), a copy of which is attached hereto as **Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E, Exhibit F, and Exhibit G:**

	<b>U.S. Patent No.</b>	<b>Title</b>
A.	RE 42,685	Upgrading Digital Media Servers
B.	7,130,616	System And Method For Providing Content, Management, And Interactivity For Client Devices
C.	9,491,215	Electronic Media Distribution System
D.	7,461,077	Representation Of Data Records
E.	7,975,060	Adaptive Video Delivery
F.	7,281,274	Electronic Media Distribution System
G.	10,469,601	Content Management Apparatus

2. MusicQubed seeks injunctive relief and monetary damages.

**PARTIES**

3. MusicQubed is a limited liability company organized under the laws of the State of

Texas, with its principal place of business at 17350 State Highway 249, STE 220, Houston, TX 77064-1132 (Harris County).

4. Nexstar Media Inc. is a corporation organized under the laws of Delaware with its corporate headquarters located at 545 E John Carpenter Fwy, STE 700, Irving, TX 75062-3932. Nexstar Media Inc. may be served through its registered agent for service, Corporation Service Company d/b/a CSC- Lawyers INCO, located at 211 E. 7th Street, STE 620, Austin, TX 78701.

5. The CW Network, LLC is a corporation organized under the laws of Delaware. The CW Network, LLC may be served through its registered agent for service, Corporation Trust Center, located at 1209 Orange St., Wilmington, DE 19801 (New Castle).

#### **JURISDICTION AND VENUE**

6. MusicQubed repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

7. This is an action for infringement of a United States patent arising under 35 U.S.C. §§ 271, 281, and 284–85, among others. This Court has subject matter jurisdiction of the action under 28 U.S.C. § 1331 and § 1338(a).

8. Venue is proper against Defendants in this District pursuant to 28 U.S.C. § 1400(b) because it has maintained an established and regular places of business in this District and has committed acts of patent infringement in this District. *See In re: Cray Inc.*, 871 F.3d 1355, 1362-1363 (Fed. Cir. 2017).

9. Defendants are subject to this Court's specific and general personal jurisdiction under due process and/or the Texas Long Arm Statute due at least to Defendants' substantial business in this judicial district, including: (i) at least a portion of the infringement alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, or deriving

substantial revenue from goods and services provided to individuals in Texas and in this District.

10. Specifically, Defendants intend to do and do business in, have committed acts of infringement in, and continue to commit acts of infringement in this District directly, through intermediaries, by contributing to and through their inducement of third parties, and offer their products or services, including those accused of infringement here, to customers and potential customers located in Texas, including in this District.

11. Defendants maintain regular and established places of business in this District.

12. Upon information and belief and based upon public information, Defendants own, operate, manage, conduct business, and direct and control the operations of, and have employees that work from and out of, facilities at locations in this District, including, but not limited to, facilities at the following address: 4300 Richmond Rd, Tyler, TX 75703 (Smith County).

13. Defendants own, operate, manage, conduct business, direct and control the operations of, and have employees that work from and out of, facilities at locations in this District.

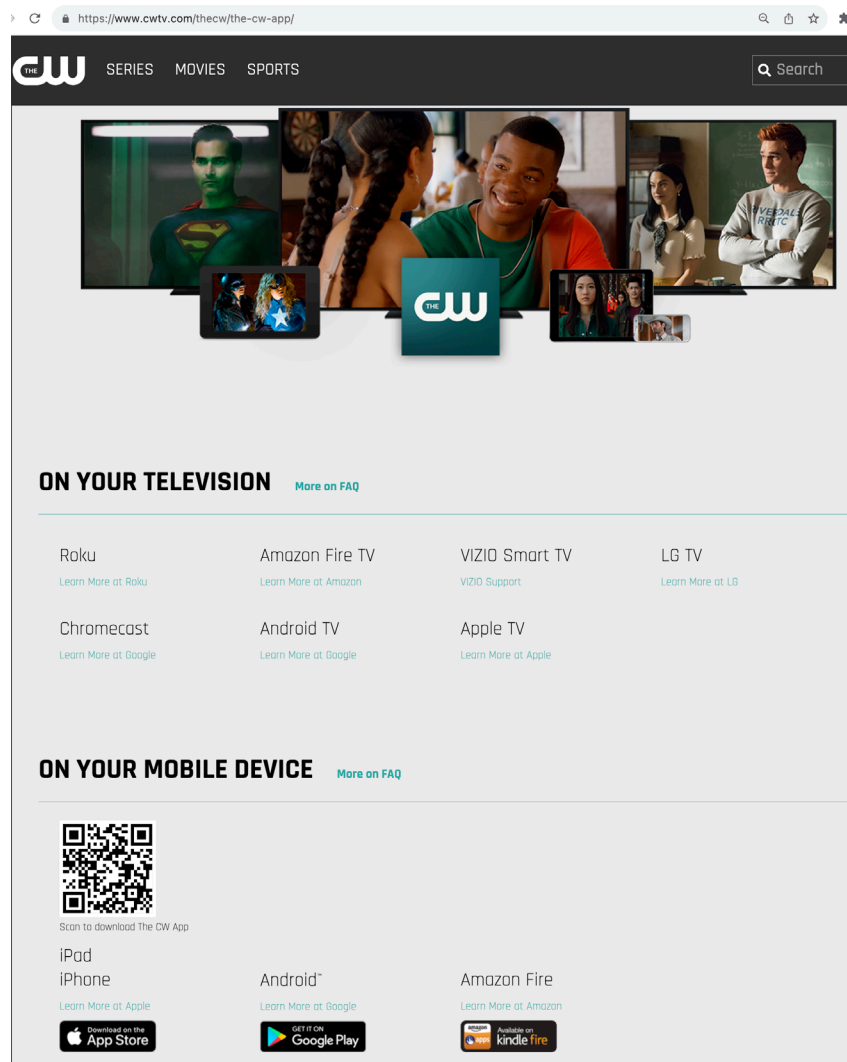
14. Defendants commit acts of infringement from this District, including, but not limited to, use of the Accused Instrumentalities and inducement of third parties to use the Accused Instrumentalities.

#### **THE ACCUSED INSTRUMENTALITIES**

15. MusicQubed repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

16. Based upon public information, Defendants make, use, cause to be used, sell and/or offer for sale streaming products and services, including The CW mobile application (“The CW App”) and products and services available at <https://www.cwtv.com/>, and associated hardware and software and applications, including, at least, functions and operations for screen mirroring from

The CW App; for content protection and encryption, for the user interface within programs on The CW website; for use of MPEG-Dash (adaptive video encoding); and for downloading video from The CW in a web browser on a mobile phone (the “Accused Instrumentalities”). See, e.g., **Exhibit H** (The CW App on Google Play); **Exhibit I** (How to Cast The CW App); **Exhibit J** (Stream on The CW); **Exhibit K** (The CW Website | How do I turn on/off Chromecast | Support); **Exhibit L** (The CW Website | Homepage); **Exhibit M** (Privacy Policy); **Exhibit N** (The CW | User Interface Example); and **Exhibit O** (The CW | User Interface and Adaptive Video Encoding Example).



**FIG 1:** *Where to Stream, THE CW, <https://www.cwtv.com/>.*

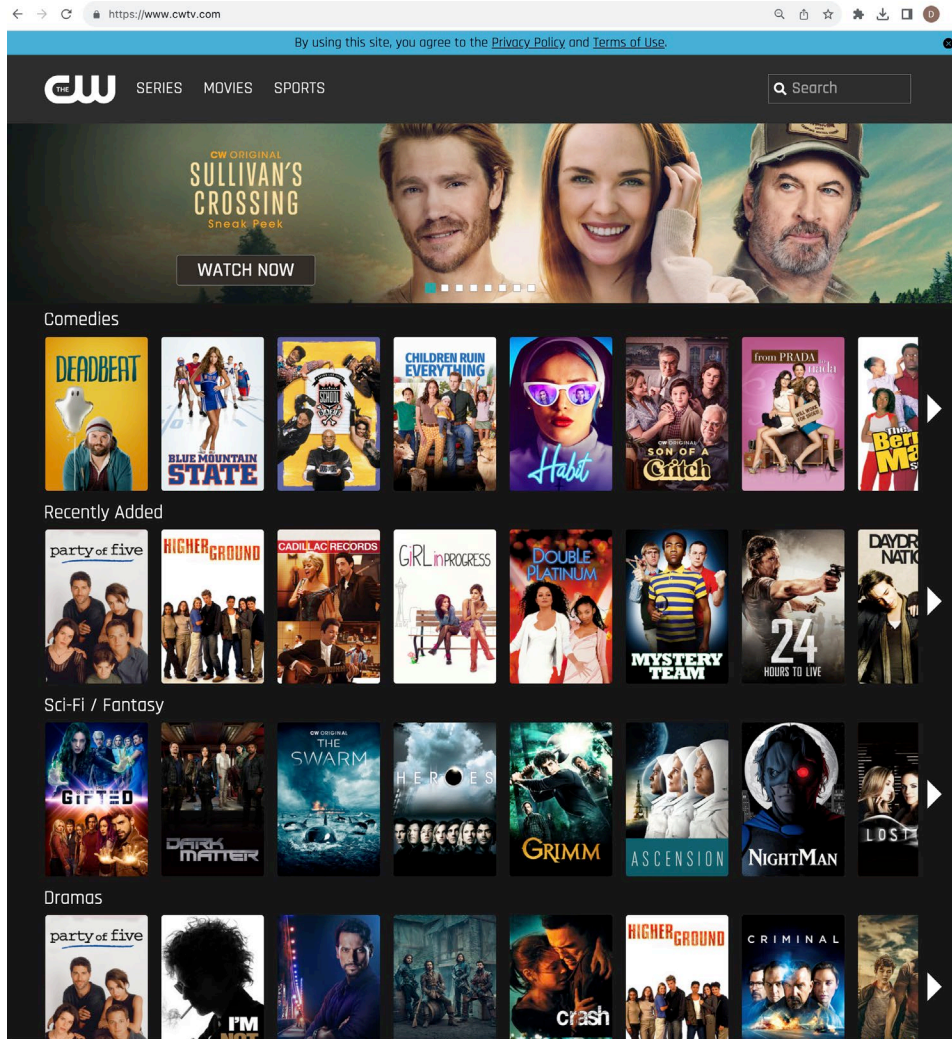


FIG 2: THE CW, <https://www.cwtv.com/>.

17. Based upon public information, Defendants own, operate, advertise, and/or control the website <https://www.cwtv.com>, through which Defendants advertise, sell, offer to sell, provide and/or educate customers about Defendants’ products and services, including the Accused Instrumentalities. *See, e.g., Ex. M* (Privacy Policy) (“This Privacy Policy explains our online information practices and the choices you can make about information collected through our websites, applications (‘apps’), services, connected devices (e.g., connected TVs), and other offerings (each a ‘Site’ or collectively, the ‘Sites’).”).

18. Based upon public information, Defendants, directly and/or through their agents and

intermediaries, also operates, advertises, and/or controls the locations throughout this State and this District, including at least Tyler and Dallas through which Defendants and their agents and employees use, advertise, provide, and/or educate third parties, including but not limited to customers, about the Accused Instrumentalities.

**COUNT I: INFRINGEMENT OF U.S. PATENT NO. RE42,685**

19. MusicQubed repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

20. The USPTO duly issued U.S. Patent No. RE42,685 (the “’685 patent”) on September 6, 2011, after full and fair examination of Application No. 11/961,991, which was filed on December 20, 2007. *See Ex. A*, at A-1. A Certificate of Correction was duly issued on February 7, 2012. *See id.* at A-20.

21. The ’685 patent is entitled “Upgrading Digital Media Servers.” *See id.*

22. MusicQubed owns all substantial rights, interest, and title in and to the ’685 patent, including the sole and exclusive right to prosecute this action and enforce the ’685 patent against infringers, and to collect damages for all relevant times.

23. The claims of the ’685 patent are not directed to an abstract idea and are not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include inventive components that improve upon the function and operation of upgrading both hardware and software components of a digital media server without disrupting media delivery services.

24. The written description of the ’685 patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the priority date. The ’685 patent also identifies and circumscribes all information necessary for a skilled

artisan to perform each limitation in the claims in light of that which was known in the art at the priority date.

25. Defendants have infringed and continue to infringe the '685 patent by making, using, providing, supplying, selling, offering for sale, or distributing the Accused Instrumentalities.

26. Defendants have directly infringed and continue to directly infringe, either literally or under the doctrine of equivalents, at least claims 1, 4, and 7 of the '685 patent, as detailed in Attachment A to the Preliminary Infringement Contentions served on Defendants on January 18, 2024 which are incorporated by reference.

27. For example, the Accused Instrumentalities, when used by Defendants or a customer, perform a method of upgrading a digital media server comprising an object oriented runtime environment implemented in a memory, the method comprising: checking for the existence of an upgrade package comprising new objects; identifying the new objects in the upgrade package; identifying functions and properties of the new objects; evaluating compatibility of the new objects; instantiating new objects as applications objects or services objects in the memory; determining whether a new object replaces an old object in the object oriented runtime environment; and if the new object replaces the old object, replacing the old object by: locking the old object and the new object; copying fields from the old object to the new object; establishing links from the new object to objects dependent on the old object; rerouting links to the old object from other objects to the new object; in response to rerouting the links, unlocking the new object; and removing the old object.

28. More specifically, as one example, upon information and belief, the Accused Instrumentalities, when used by Defendants or a customer, perform a method of upgrading a digital media server (for one example, at least, the CW App operating with screen cast or mirroring)



comprising an object oriented runtime environment implemented in a memory. *See, e.g., Ex. H; Ex. I.*

29. MusicQubed or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '685 patent.

30. Plaintiff has been damaged and continues to be damaged as a result of the infringing conduct by Defendants alleged above. Thus, Defendants are liable to MusicQubed in an amount that compensates it for such infringement, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

#### **COUNT II: INFRINGEMENT OF U.S. PATENT NO. 7,130,616**

31. MusicQubed repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

32. The USPTO duly issued U.S. Patent No. 7,130,616 (the "'616 patent") on October 31, 2006, after full and fair examination of Application No. 09/924,646, which was filed on August 7, 2001. *See Ex. B*, at B-1.

33. The '685 patent is entitled "System And Method For Providing Content, Management, And Interactivity For Client Devices." *See id.*

34. MusicQubed owns all substantial rights, interest, and title in and to the '616 patent, including the sole and exclusive right to prosecute this action and enforce the '616 patent against infringers, and to collect damages for all relevant times.

35. The claims of the '616 patent are not directed to an abstract idea and are not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include inventive components that improve upon the function and operation of providing content, management and interactivity for client devices, in which digital data based on user specified



preferences is obtained and transferred from a wide area network to a computer and the digital data is sent from the computer to a client device using a wireless data transceiver.

36. The written description of the '616 patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the priority date. The '616 patent also identifies and circumscribes all information necessary for a skilled artisan to perform each limitation in the claims in light of that which was known in the art at the priority date.

37. Defendants have infringed and continue to infringe the '616 patent by making, using, providing, supplying, selling, offering for sale, or distributing the Accused Instrumentalities.

38. Defendants have directly infringed and continue to directly infringe, either literally or under the doctrine of equivalents, at least claims 1,3, and 5 of the '616 patent, as detailed in Attachment B to the Preliminary Infringement Contentions served on Defendants on January 18, 2024 which are incorporated by reference.

39. For example, the Accused Instrumentalities, when used by Defendants or a customer, perform a method comprising using previously provided user specified preferences to automatically obtain and transfer digitally encoded audiovisual content from a wide area network to a computer; causing a television in communication with the computer via a wireless data transceiver to play a representation of the digitally encoded audiovisual content; and manipulating the play of the representation of digitally encoded audiovisual content on the television from a portable electronic device.

40. More specifically, as one example, upon information and belief, the screen mirroring

functions and operations of the CW App and/or www.cwtv.com, when used by Defendants or a customer, perform a method comprising using previously provided user specified preferences to automatically obtain and transfer digitally encoded audiovisual content from a wide area network to a computer; causing a television in communication with the computer via a wireless data transceiver to play a representation of the digitally encoded audiovisual content; and manipulating the play of the representation of digitally encoded audiovisual content on the television from a portable electronic device. *See, e.g., Ex. I; Ex. J.*

#### Cast The CW app to smart TV with Chromecast

If your Smart TV supports Chromecast, follow the steps below to cast CW to your TV. Before that, please also make sure your Android or iOS phone supports the Chromecast function. (Don't worry, Chromecast is available on most smartphones.)



1. Go to **Settings** and turn on the Chromecast on your Smart TV. The path may differ in various TV brands, but you can usually find it on Setting sessions.
2. Turn on **Cast Screen** settings on your smartphone.
3. Connect your phone and your Smart TV to the same network.
4. Launch CW on your phone. If you don't have it yet, go to the AppStore and download it.
5. Play the content you like on THE CW APP.
6. Click the **Cast** icon in the up-right corner.
7. Then you have cast the CW app content to your smart TV.

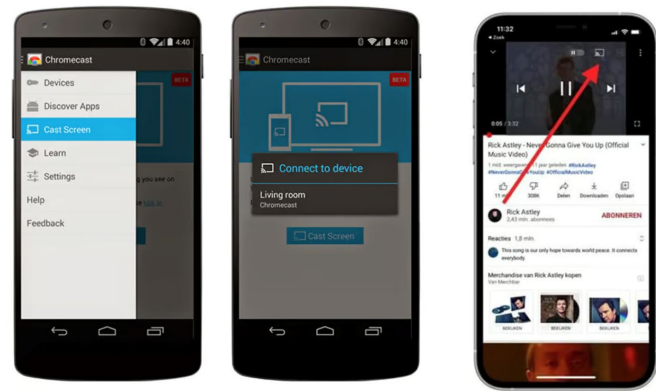


FIG. 4: Screenshot of TVSBOOK, <https://www.tvsbook.com/threads/how-to-cast-the-cw-app-to-smart-tv.7645/>, explaining how to case The CW app to a smart TV.

41. MusicQubed or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '616 patent.

42. Plaintiff has been damaged and continues to be damaged as a result of the infringing conduct by Defendants alleged above. Thus, Defendants are liable to MusicQubed in an amount that compensates it for such infringement, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

### **COUNT III: INFRINGEMENT OF U.S. PATENT NO. 9,491,215**

43. MusicQubed repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

44. The USPTO duly issued U.S. Patent No. 9,491,215 (the "'215 patent") on November 8, 2016, after full and fair examination of Application No. 14/700,778, which was filed on April 30, 2015. *See Ex. C*, at C-1.

45. The '215 patent is entitled "Electronic Media Distribution System." *See id.*

46. MusicQubed owns all substantial rights, interest, and title in and to the '215 patent, including the sole and exclusive right to prosecute this action and enforce the '215 patent against infringers, and to collect damages for all relevant times.

47. The claims of the '215 patent are not directed to an abstract idea and are not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include inventive components that improve upon the function and operation of the distribution of electronic content and information, and in particular in the distribution of electronic information stored on a device.

48. The written description of the '215 patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the priority date. The '215 patent also identifies and circumscribes all information necessary for a skilled artisan to perform each limitation in the claims in light of that which was known in the art at the priority date.

49. Defendants have infringed and continue to infringe the '215 patent by making, using, providing, supplying, selling, offering for sale, or distributing the Accused Instrumentalities.

50. Defendants have directly infringed and continue to directly infringe, either literally or under the doctrine of equivalents, at least claims 1, 5, 7, 8, 12, and 14 of the '215 patent, as detailed in Attachment C to the Preliminary Infringement Contentions served on Defendants on January 18, 2024 which are incorporated by reference.

51. For example, the Accused Instrumentalities, when used by Defendants or a customer, perform a method, comprising a receiving device: sending, to an intermediate server device, a request to deliver content identified by a notification received from the intermediate server device; sending, to the intermediate server device, one or more messages that are indicative of installed software of the recipient device that the recipient device uses to protect the content; and receiving the content, from the intermediate server device, if the one or more messages are indicative of software trusted to enforce a content policy associated with the content.

52. More specifically (as one example), upon information and belief, the content protection and encryption functions and operations of the CW App and/or [www.cwtv.com](http://www.cwtv.com), when used by Defendants or a customer, perform a method, comprising a receiving device: sending, to an

intermediate server device, a request to deliver content identified by a notification received from the intermediate server device; sending, to the intermediate server device, one or more messages that are indicative of installed software of the recipient device that the recipient device uses to protect the content; and receiving the content, from the intermediate server device, if the one or more messages are indicative of software trusted to enforce a content policy associated with the content. *See, e.g., Ex. J; Ex. M; Ex. N; Ex. O.*

53. Since at least the time of receiving this Complaint, Defendants have also indirectly infringed and continues to indirectly infringe the '215 patent by inducing others to directly infringe the '215 patent. Defendants have induced and continue to induce their subsidiaries, partners, affiliates, and end-users, including Defendants' customers and potential customers, to directly infringe, either literally or under the doctrine of equivalents, the '215 patent by using the Accused Instrumentalities. Defendants took active steps, directly or through contractual relationships with others, with the specific intent to cause them to use the Accused Instrumentalities in a manner that infringes one or more claims of the '215 patent, including, for example, claim 1 of the '215 patent. Such steps by Defendants included, among other things, advising or directing personnel, contractors, or end-users to make or use the Accused Instrumentalities in an infringing manner; advertising and promoting the use of the Accused Instrumentalities in an infringing manner; or distributing instructions that guide users to use the Accused Instrumentalities in an infringing manner. Defendants are performing these steps, which constitutes induced infringement with the knowledge of the '215 patent and with the knowledge that the induced acts constitute infringement. Defendants are aware that the normal and customary use of the Accused Instrumentalities by others would infringe the '215 patent. Defendants' inducement is ongoing.

54. Since at least the time of receiving this Complaint, Defendants have also indirectly

infringed and continues to indirectly infringe by contributing to the infringement of the '215 patent. Defendants have contributed and continues to contribute to the direct infringement of the '215 patent by personnel, contractors, customers, and other end users by encouraging them to use the Accused Instrumentalities to perform the steps of the patented process as described in one or more claims of the '215 patent. The Accused Instrumentalities have special features that are specially designed to be used in an infringing way and that have no substantial uses other than ones that infringe one or more claims of the '215 patent, including, for example, claim 1 of the '215 patent. The special features constitute a material part of the invention of one or more of the claims of the '215 patent and are not staple articles of commerce suitable for substantial non-infringing use. Defendants' contributory infringement is ongoing.

55. Defendants have had knowledge of the '215 patent at least as of the date when it was notified of the filing of this action.

56. Furthermore, on information and belief, Defendants have a policy or practice of not reviewing the patents of others (including instructing their employees to not review the patents of others), and thus has been willfully blind of Plaintiff's patent rights.

57. Defendants' actions are at least objectively reckless as to the risk of infringing a valid patent and this objective risk was either known or should have been known by Defendants.

58. Since at least the time of receiving this Complaint, Defendants' direct and indirect infringement of the '215 patent is, has been, and continues to be willful, intentional, deliberate, or in conscious disregard of Plaintiff's rights under the patent.

59. MusicQubed or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '215 patent.

60. Plaintiff has been damaged and continues to be damaged as a result of the infringing conduct by Defendants alleged above. Thus, Defendants are liable to MusicQubed in an amount that compensates it for such infringement, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

61. MusicQubed has suffered and continues to suffer irreparable harm, through its loss of market share and goodwill, for which there is no adequate remedy at law. MusicQubed has and will continue to suffer this harm by virtue of Defendants' infringement of the '215 patent. Defendants' actions have interfered with and will interfere with MusicQubed's ability to license technology. The balance of hardships favors MusicQubed's ability to commercialize its own ideas and technology. The public interest in allowing MusicQubed to enforce its right to exclude outweighs other public interests, which supports injunctive relief in this case.

**COUNT IV: INFRINGEMENT OF U.S. PATENT NO. 7,461,077**

62. MusicQubed repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

63. The USPTO duly issued U.S. Patent No. 7,461,077 (the "'077 patent") on December 2, 2008, after full and fair examination of Application No. 10/208,635, which was filed on July 29, 2002. *See Ex. D*, at D-1.

64. The '077 patent is entitled "Representation Of Data Records." *See id.*

65. MusicQubed owns all substantial rights, interest, and title in and to the '077 patent, including the sole and exclusive right to prosecute this action and enforce the '077 patent against infringers, and to collect damages for all relevant times.

66. The claims of the '077 patent are not directed to an abstract idea and are not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include inventive components that improve upon the function and operation of representing and managing



data on a display.

67. The written description of the '077 patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the priority date. The '077 patent also identifies and circumscribes all information necessary for a skilled artisan to perform each limitation in the claims in light of that which was known in the art at the priority date.

68. Defendants have infringed and continue to infringe the '077 patent by making, using, providing, supplying, selling, offering for sale, or distributing the Accused Instrumentalities.

69. Defendants have directly infringed and continue to directly infringe, either literally or under the doctrine of equivalents, at least claims 1 and 2 of the '077 patent, as detailed in Attachment D to the Preliminary Infringement Contentions served on Defendants on January 18, 2024 which are incorporated by reference.

70. For example, the Accused Instrumentalities, when used by Defendants or a customer, perform a computerized method for representing data on a display, the method comprising: querying a data source to obtain data comprising a first data record; presenting the first data record on the display as a data field; and presenting on the display a record handle for manipulation of the first data record; wherein the data field has any data field type in the group consisting of a single data element, a list of data elements, and a reference to a second data record; wherein the record handle is a visual element that represents the first data record and that is operative to control and continuously track the state of the first data record on the display and in the data source; and wherein the record handle is operative to visually indicate to a user a current default action that

will be activated when the user clicks on the record handle.

71. More specifically (as one example), upon information and belief, the user interface within the programs on The CW website, when used by Defendants or a customer, performs a computerized method for representing data on a display, the method comprising: querying a data source to obtain data comprising a first data record; presenting the first data record on the display as a data field; and presenting on the display a record handle for manipulation of the first data record; wherein the data field has any data field type in the group consisting of a single data element, a list of data elements, and a reference to a second data record; wherein the record handle is a visual element that represents the first data record and that is operative to control and continuously track the state of the first data record on the display and in the data source; and wherein the record handle is operative to visually indicate to a user a current default action that will be activated when the user clicks on the record handle. *See, e.g., Ex. N.*

72. Since at least the time of receiving this Complaint, Defendants have also indirectly infringed and continues to indirectly infringe the '077 patent by inducing others to directly infringe the '077 patent. Defendants have induced and continue to induce their subsidiaries, partners, affiliates, and end-users, including Defendants' customers and potential customers, to directly infringe, either literally or under the doctrine of equivalents, the '077 patent by using the Accused Instrumentalities. Defendants took active steps, directly or through contractual relationships with others, with the specific intent to cause them to use the Accused Instrumentalities in a manner that infringes one or more claims of the '077 patent, including, for example, claim 1 of the '077 patent. Such steps by Defendants included, among other things, advising or directing personnel, contractors, or end-users to make or use the Accused Instrumentalities in an infringing manner; advertising and promoting the use of the Accused Instrumentalities in an infringing manner; or

distributing instructions that guide users to use the Accused Instrumentalities in an infringing manner. Defendants are performing these steps, which constitutes induced infringement with the knowledge of the '077 patent and with the knowledge that the induced acts constitute infringement. Defendants are aware that the normal and customary use of the Accused Instrumentalities by others would infringe the '077 patent. Defendants' inducement is ongoing.

73. Since at least the time of receiving this Complaint, Defendants have also indirectly infringed and continues to indirectly infringe by contributing to the infringement of the '077 patent. Defendants have contributed and continues to contribute to the direct infringement of the '077 patent by personnel, contractors, customers, and other end users by encouraging them to use the Accused Instrumentalities to perform the steps of the patented process as described in one or more claims of the '077 patent. The Accused Instrumentalities have special features that are specially designed to be used in an infringing way and that have no substantial uses other than ones that infringe one or more claims of the '077 patent, including, for example, claim 1 of the '077 patent. The special features constitute a material part of the invention of one or more of the claims of the '077 patent and are not staple articles of commerce suitable for substantial non-infringing use. Defendants' contributory infringement is ongoing.

74. Defendants have had knowledge of the '077 patent at least as of the date when it was notified of the filing of this action.

75. Furthermore, on information and belief, Defendants have a policy or practice of not reviewing the patents of others (including instructing their employees to not review the patents of others), and thus has been willfully blind of Plaintiff's patent rights.

76. Defendants' actions are at least objectively reckless as to the risk of infringing a valid patent and this objective risk was either known or should have been known by Defendants.

77. Since at least the time of receiving this Complaint, Defendants' direct and indirect infringement of the '077 patent is, has been, and continues to be willful, intentional, deliberate, or in conscious disregard of Plaintiff's rights under the patent.

78. MusicQubed or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '077 patent.

79. Plaintiff has been damaged and continues to be damaged as a result of the infringing conduct by Defendants alleged above. Thus, Defendants are liable to MusicQubed in an amount that compensates it for such infringement, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

80. MusicQubed has suffered and continues to suffer irreparable harm, through its loss of market share and goodwill, for which there is no adequate remedy at law. MusicQubed has and will continue to suffer this harm by virtue of Defendants' infringement of the '077 patent. Defendants' actions have interfered with and will interfere with MusicQubed's ability to license technology. The balance of hardships favors MusicQubed's ability to commercialize its own ideas and technology. The public interest in allowing MusicQubed to enforce its right to exclude outweighs other public interests, which supports injunctive relief in this case.

**COUNT V: INFRINGEMENT OF U.S. PATENT NO. 7,975,060**

81. MusicQubed repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

82. The USPTO duly issued U.S. Patent No. 7,975,060 (the "'060 patent") on July 5, 2011, after full and fair examination of Application No. 10/363,448, which was filed on September 8, 2003. *See Ex. E*, at E-1. A Certificate of Correction was duly issued on January 3, 2012. *See id.* at E-11.

83. The '060 patent is entitled "Adaptive Video Delivery." *See id.*

84. MusicQubed owns all substantial rights, interest, and title in and to the '060 patent, including the sole and exclusive right to prosecute this action and enforce the '060 patent against infringers, and to collect damages for all relevant times.

85. The claims of the '060 patent are not directed to an abstract idea and are not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include inventive components that improve upon the function and operation of the delivery of video to multiple users across a network.

86. The written description of the '060 patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the priority date. The '060 patent also identifies and circumscribes all information necessary for a skilled artisan to perform each limitation in the claims in light of that which was known in the art at the priority date.

87. Defendants have infringed and continue to infringe the '060 patent by making, using, providing, supplying, selling, offering for sale, or distributing the Accused Instrumentalities.

88. Defendants have directly infringed and continue to directly infringe, either literally or under the doctrine of equivalents, at least claim 24 of the '060 patent, as detailed in Attachment E to the Preliminary Infringement Contentions served on Defendants on January 18, 2024 which are incorporated by reference.

89. For example, the Accused Instrumentalities, when used by Defendants or a customer, perform a method of transmitting data across a network from a video server device comprising:

maintaining in a memory of the video server device a status record for each of one or more respective recipients, each status record being indicative of one or more previous frames sent to each of the one or more respective recipients, and each status record including information on a most recently transmitted intra-frame and residual frame for the one or more respective recipients; identifying similar status records in the memory; and a video coder of the video server device encoding and transmitting one or more frames, residual frame data, and intra-frame data to the one or more respective recipients utilizing information in the status record for each of the one or more respective recipients, encoding once only the one or more frames for transmission to each of the one or more respective recipients corresponding to the identified similar status records. *See, e.g., Ex. O.*

90. More specifically (as one example), upon information and belief, the adaptive video encoding, when used by Defendants or a customer, perform a method of transmitting data across a network from a video server device comprising: maintaining in a memory of the video server device a status record for each of one or more respective recipients, each status record being indicative of one or more previous frames sent to each of the one or more respective recipients, and each status record including information on a most recently transmitted intra-frame and residual frame for the one or more respective recipients; identifying similar status records in the memory; and a video coder of the video server device encoding and transmitting one or more frames, residual frame data, and intra-frame data to the one or more respective recipients utilizing information in the status record for each of the one or more respective recipients, encoding once only the one or more frames for transmission to each of the one or more respective recipients corresponding to the identified similar status records.

91. Since at least the time of receiving this Complaint, Defendants have also indirectly

infringed and continues to indirectly infringe the '060 patent by inducing others to directly infringe the '060 patent. Defendants have induced and continue to induce their subsidiaries, partners, affiliates, and end-users, including Defendants' customers and potential customers, to directly infringe, either literally or under the doctrine of equivalents, the '060 patent by using the Accused Instrumentalities. Defendants took active steps, directly or through contractual relationships with others, with the specific intent to cause them to use the Accused Instrumentalities in a manner that infringes one or more claims of the '060 patent, including, for example, claim 24 of the '060 patent. Such steps by Defendants included, among other things, advising or directing personnel, contractors, or end-users to make or use the Accused Instrumentalities in an infringing manner; advertising and promoting the use of the Accused Instrumentalities in an infringing manner; or distributing instructions that guide users to use the Accused Instrumentalities in an infringing manner. Defendants are performing these steps, which constitutes induced infringement with the knowledge of the '060 patent and with the knowledge that the induced acts constitute infringement. Defendants are aware that the normal and customary use of the Accused Instrumentalities by others would infringe the '060 patent. Defendants' inducement is ongoing.

92. Since at least the time of receiving this Complaint, Defendants have also indirectly infringed and continues to indirectly infringe by contributing to the infringement of the '060 patent. Defendants have contributed and continues to contribute to the direct infringement of the '060 patent by personnel, contractors, customers, and other end users by encouraging them to use the Accused Instrumentalities to perform the steps of the patented process as described in one or more claims of the '060 patent. The Accused Instrumentalities have special features that are specially designed to be used in an infringing way and that have no substantial uses other than ones that infringe one or more claims of the '060 patent, including, for example, claim 24 of the '060 patent.



The special features include, for example, claim 24 of the '060 patent. The special features constitute a material part of the invention of one or more of the claims of the '060 patent and are not staple articles of commerce suitable for substantial non-infringing use. Defendants' contributory infringement is ongoing.

93. Defendants have had knowledge of the '060 patent at least as of the date when it was notified of the filing of this action.

94. Furthermore, on information and belief, Defendants have a policy or practice of not reviewing the patents of others (including instructing their employees to not review the patents of others), and thus has been willfully blind of Plaintiff's patent rights.

95. Defendants' actions are at least objectively reckless as to the risk of infringing a valid patent and this objective risk was either known or should have been known by Defendants.

96. Since at least the time of receiving this Complaint, Defendants' direct and indirect infringement of the '060 patent is, has been, and continues to be willful, intentional, deliberate, or in conscious disregard of Plaintiff's rights under the patent.

97. MusicQubed or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '060 patent.

98. Plaintiff has been damaged and continues to be damaged as a result of the infringing conduct by Defendants alleged above. Thus, Defendants are liable to MusicQubed in an amount that compensates it for such infringement, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

99. MusicQubed has suffered and continues to suffer irreparable harm, through its loss of market share and goodwill, for which there is no adequate remedy at law. MusicQubed has and

will continue to suffer this harm by virtue of Defendants' infringement of the '060 patent. Defendants' actions have interfered with and will interfere with MusicQubed's ability to license technology. The balance of hardships favors MusicQubed's ability to commercialize its own ideas and technology. The public interest in allowing MusicQubed to enforce its right to exclude outweighs other public interests, which supports injunctive relief in this case.

**COUNT VI: INFRINGEMENT OF U.S. PATENT NO. 7,281,274**

100. MusicQubed repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

101. The USPTO duly issued U.S. Patent No. 7,281,274 (the "'274 patent") on October 9, 2007, after full and fair examination of Application No. 10/685,536, which was filed on October 16, 2003. *See Ex. F*, at F-1.

102. The '274 patent is entitled "Electronic Media Distribution System." *See id.*

103. MusicQubed owns all substantial rights, interest, and title in and to the '274 patent, including the sole and exclusive right to prosecute this action and enforce the '274 patent against infringers, and to collect damages for all relevant times.

104. The claims of the '274 patent are not directed to an abstract idea and are not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include inventive components that improve upon the function and operation of the distribution of electronic content and information, and in particular in the distribution of electronic information stored on a device.

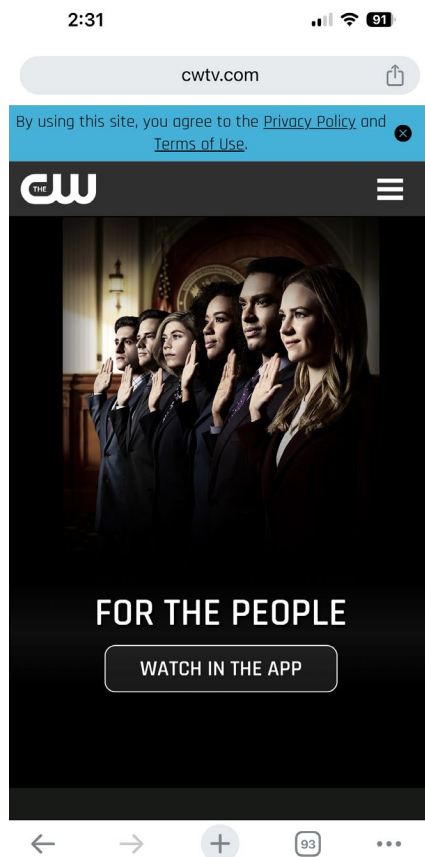
105. The written description of the '274 patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the priority

date. The '274 patent also identifies and circumscribes all information necessary for a skilled artisan to perform each limitation in the claims in light of that which was known in the art at the priority date.

106. Defendants have infringed and continue to infringe the '274 patent by making, using, providing, supplying, selling, offering for sale, or distributing the Accused Instrumentalities.

107. Defendants have directly infringed and continue to directly infringe, either literally or under the doctrine of equivalents, at least claims 1, 20, and 39 of the '274 patent, as detailed in Attachment F to the Preliminary Infringement Contentions served on Defendants on January 18, 2024 which are incorporated by reference.

108. For example, the Accused Instrumentalities, when used by Defendants or a customer, perform a method for sharing information, including: receiving sending instructions to transfer to a recipient a file, said sending instructions identifying a specific type of memory device on which the file is permitted to be stored at the recipient; receiving the file; sending a notice to the recipient indicating that the recipient may download the file; receiving a request for the file from the recipient; determining if transfer software to transfer the file only to the specific type of memory device is installed at the recipient; if transfer software is not installed at the recipient, then sending the transfer software to the recipient; and sending the file to the recipient to be stored on the specific type of memory device only if the transfer software to install only to the specific type of memory device is installed. *See, e.g.*, THE CW, <https://www.cwtv.com/>; FIG. 4 (below).



**FIG. 4:** Screenshot of THE CW, <https://www.cwtv.com/>, on a mobile phone where content is only available via The CW App.

109. Since at least the time of receiving this Complaint, Defendants have also indirectly infringed and continues to indirectly infringe the '274 patent by inducing others to directly infringe the '274 patent. Defendants have induced and continue to induce their subsidiaries, partners, affiliates, and end-users, including Defendants' customers and potential customers, to directly infringe, either literally or under the doctrine of equivalents, the '274 patent by using the Accused Instrumentalities. Defendants took active steps, directly or through contractual relationships with others, with the specific intent to cause them to use the Accused Instrumentalities in a manner that infringes one or more claims of the '274 patent, including, for example, claim 1 of the '274 patent. Such steps by Defendants included, among other things, advising or directing personnel, contractors, or end-users to make or use the Accused Instrumentalities in an infringing manner;

advertising and promoting the use of the Accused Instrumentalities in an infringing manner; or distributing instructions that guide users to use the Accused Instrumentalities in an infringing manner. Defendants are performing these steps, which constitutes induced infringement with the knowledge of the '274 patent and with the knowledge that the induced acts constitute infringement. Defendants are aware that the normal and customary use of the Accused Instrumentalities by others would infringe the '274 patent. Defendants' inducement is ongoing.

110. Since at least the time of receiving this Complaint, Defendants have also indirectly infringed and continues to indirectly infringe by contributing to the infringement of the '274 patent. Defendants have contributed and continues to contribute to the direct infringement of the '274 patent by personnel, contractors, customers, and other end users by encouraging them to use the Accused Instrumentalities to perform the steps of the patented process as described in one or more claims of the '274 patent. The Accused Instrumentalities have special features that are specially designed to be used in an infringing way and that have no substantial uses other than ones that infringe one or more claims of the '274 patent, including, for example, claim 1 of the '274 patent. The special features constitute a material part of the invention of one or more of the claims of the '274 patent and are not staple articles of commerce suitable for substantial non-infringing use. Defendants' contributory infringement is ongoing.

111. Defendants have had knowledge of the '274 patent at least as of the date when it was notified of the filing of this action.

112. Furthermore, on information and belief, Defendants have a policy or practice of not reviewing the patents of others (including instructing their employees to not review the patents of others), and thus has been willfully blind of Plaintiff's patent rights.

113. Defendants' actions are at least objectively reckless as to the risk of infringing a valid

patent and this objective risk was either known or should have been known by Defendants.

114. Since at least the time of receiving this Complaint, Defendants' direct and indirect infringement of the '274 patent is, has been, and continues to be willful, intentional, deliberate, or in conscious disregard of Plaintiff's rights under the patent.

115. MusicQubed or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '274 patent.

116. Plaintiff has been damaged and continues to be damaged as a result of the infringing conduct by Defendants alleged above. Thus, Defendants are liable to MusicQubed in an amount that compensates it for such infringement, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

117. MusicQubed has suffered and continues to suffer irreparable harm, through its loss of market share and goodwill, for which there is no adequate remedy at law. MusicQubed has and will continue to suffer this harm by virtue of Defendants' infringement of the '274 patent. Defendants' actions have interfered with and will interfere with MusicQubed's ability to license technology. The balance of hardships favors MusicQubed's ability to commercialize its own ideas and technology. The public interest in allowing MusicQubed to enforce its right to exclude outweighs other public interests, which supports injunctive relief in this case.

**COUNT VII: INFRINGEMENT OF U.S. PATENT NO. 10,469,601**

118. MusicQubed repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

119. The USPTO duly issued U.S. Patent No. 10,469,601 (the "'601 patent") on November 5, 2019, after full and fair examination of Application No. 13/695,413, which was filed on May 13, 2013. *See Ex. G*, at G-1.

120. The '601 patent is entitled "Content Management Apparatus." *See id.*

121. MusicQubed owns all substantial rights, interest, and title in and to the '601 patent, including the sole and exclusive right to prosecute this action and enforce the '601 patent against infringers, and to collect damages for all relevant times.

122. The claims of the '601 patent are not directed to an abstract idea and are not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include inventive components that improve upon the function and operation of providing a chart of content to a user device and controlling at least temporary access of the user device to content items listed in the chart.

123. The written description of the '601 patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the priority date. The '601 patent also identifies and circumscribes all information necessary for a skilled artisan to perform each limitation in the claims in light of that which was known in the art at the priority date.

124. Defendants have infringed and continue to infringe the '601 patent by making, using, providing, supplying, selling, offering for sale, or distributing the Accused Instrumentalities.

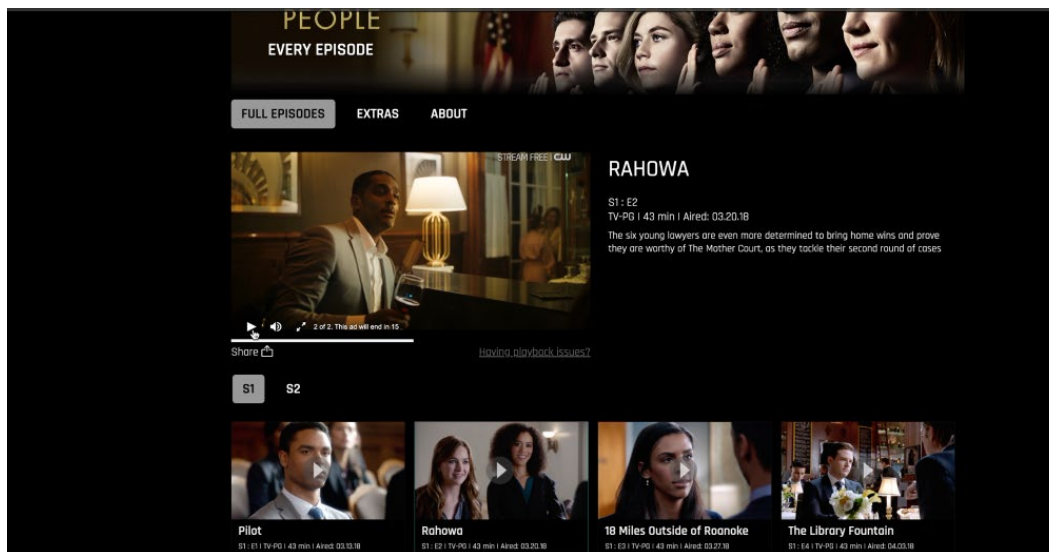
125. Defendants have directly infringed and continue to directly infringe, either literally or under the doctrine of equivalents, at least claim 35 of the '601 patent, as detailed in Attachment G to the Preliminary Infringement Contentions served on Defendants on January 18, 2024 which are incorporated by reference.

126. For example, the Accused Instrumentalities, when used by Defendants or a customer,



perform a method for providing a chart having one or more content items to a plurality of user devices, comprising: defining, at a server, user access permissions, including temporary user access permissions, relating to individual ones of the one or more content items; distributing, based on the defined user access permissions, to user devices by making available at the server for transmission to one or more user devices, the one or more content items listed in the chart to provide temporary access to the one or more content items listed in the chart; determining a first consumption event of the one or more content items; associating a second value with the second consumption event, wherein the second value is different from the first value; determining one or more scores indicative of consumer response to the one or more content items based on the first value and the second value; and automatically generating a report based on the one or more scores, denoting the popularity of the one or more content items.

127. More specifically (as one example), upon information and belief, an example of the first consumption event is selecting and playing the video.



**FIG. 5:** Screenshot of a selection of a video on THE CW, <https://www.cwtv.com/>.

128. In addition, (as one example), upon information and belief, an example of the second consumption event is clicking on the video when an advertisement is playing, which lands on the

advertiser's page.

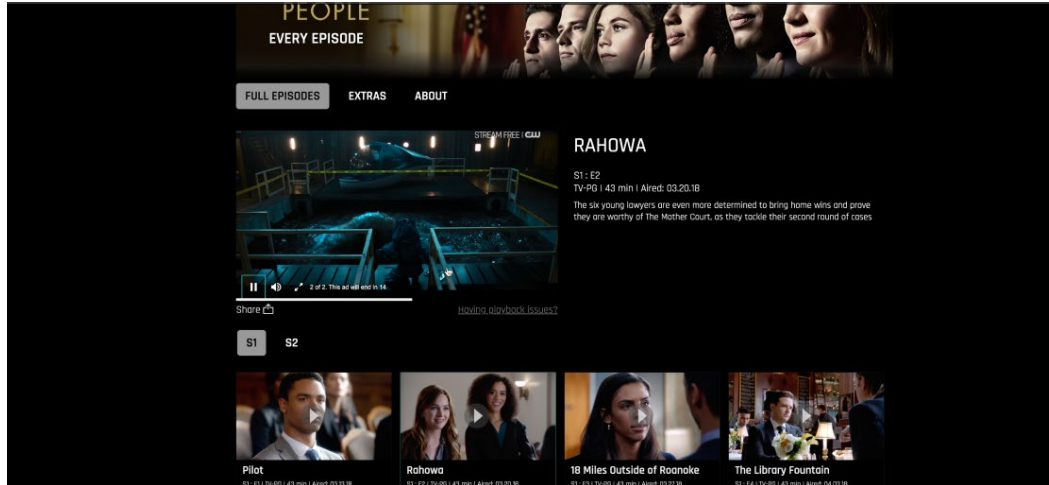


FIG. 6: Screenshot of a video advertisement on THE CW, <https://www.cwtv.com/>.

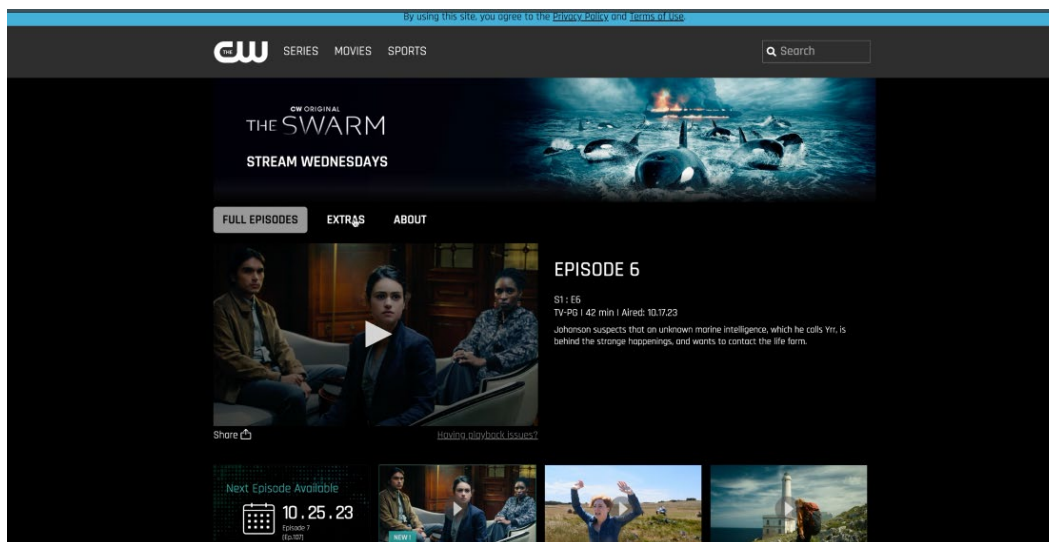


FIG. 7: Screenshot of a selection of a video advertisement on THE CW, <https://www.cwtv.com/>.

129. Since at least the time of receiving this Complaint, Defendants have also indirectly infringed and continues to indirectly infringe the '601 patent by inducing others to directly infringe the '601 patent. Defendants have induced and continue to induce their subsidiaries, partners, affiliates, and end-users, including Defendants' customers and potential customers, to directly infringe, either literally or under the doctrine of equivalents, the '601 patent by using the Accused Instrumentalities. Defendants took active steps, directly or through contractual relationships with

others, with the specific intent to cause them to use the Accused Instrumentalities in a manner that infringes one or more claims of the '601 patent, including, for example, claim 35 of the '601 patent. Such steps by Defendants included, among other things, advising or directing personnel, contractors, or end-users to make or use the Accused Instrumentalities in an infringing manner; advertising and promoting the use of the Accused Instrumentalities in an infringing manner; or distributing instructions that guide users to use the Accused Instrumentalities in an infringing manner. Defendants are performing these steps, which constitutes induced infringement with the knowledge of the '601 patent and with the knowledge that the induced acts constitute infringement. Defendants are aware that the normal and customary use of the Accused Instrumentalities by others would infringe the '601 patent. Defendants' inducement is ongoing.

130. Since at least the time of receiving this Complaint, Defendants have also indirectly infringed and continues to indirectly infringe by contributing to the infringement of the '601 patent. Defendants have contributed and continues to contribute to the direct infringement of the '601 patent by personnel, contractors, customers, and other end users by encouraging them to use the Accused Instrumentalities to perform the steps of the patented process as described in one or more claims of the '601 patent. The Accused Instrumentalities have special features that are specially designed to be used in an infringing way and that have no substantial uses other than ones that infringe one or more claims of the '601 patent, including, for example, claim 35 of the '601 patent. The special features constitute a material part of the invention of one or more of the claims of the '601 patent and are not staple articles of commerce suitable for substantial non-infringing use. Defendants' contributory infringement is ongoing.

131. Defendants have had knowledge of the '601 patent at least as of the date when it was notified of the filing of this action.

132. Furthermore, on information and belief, Defendants have a policy or practice of not reviewing the patents of others (including instructing their employees to not review the patents of others), and thus has been willfully blind of Plaintiff's patent rights.

133. Defendants' actions are at least objectively reckless as to the risk of infringing a valid patent and this objective risk was either known or should have been known by Defendants.

134. Since at least the time of receiving this Complaint, Defendants' direct and indirect infringement of the '601 patent is, has been, and continues to be willful, intentional, deliberate, or in conscious disregard of Plaintiff's rights under the patent.

135. MusicQubed or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '601 patent.

136. Plaintiff has been damaged and continues to be damaged as a result of the infringing conduct by Defendants alleged above. Thus, Defendants are liable to MusicQubed in an amount that compensates it for such infringement, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

137. MusicQubed has suffered and continues to suffer irreparable harm, through its loss of market share and goodwill, for which there is no adequate remedy at law. MusicQubed has and will continue to suffer this harm by virtue of Defendants' infringement of the '601 patent. Defendants' actions have interfered with and will interfere with MusicQubed's ability to license technology. The balance of hardships favors MusicQubed's ability to commercialize its own ideas and technology. The public interest in allowing MusicQubed to enforce its right to exclude outweighs other public interests, which supports injunctive relief in this case.

**JURY DEMAND**

138. Plaintiff hereby requests a trial by jury on all issues so triable by right.

**PRAYER FOR RELIEF**

139. WHEREFORE, MusicQubed requests that the Court find in its favor and against Defendants, and that the Court grant MusicQubed the following relief:

- a. Judgment that one or more claims of the Asserted Patent has been infringed, either literally or under the doctrine of equivalents, by Defendants or all others acting in concert therewith;
- b. A permanent injunction enjoining Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert therewith from infringement of the '215 patent, '077 patent, '060 patent, and the '274 patent; or, in the alternative, an award of a reasonable ongoing royalty for future infringement of the '215 patent, '077 patent, '060 patent, and the '274 patent by such entities;
- c. Judgment that Defendants account for and pay to MusicQubed all damages to and costs incurred by MusicQubed because of Defendants' infringing activities and other conduct complained of herein;
- d. Judgment that Defendants' infringement of the '215 patent, '077 patent, '060 patent, and the '274 patent be found willful, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;
- e. Pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein;
- f. That this Court declare this an exceptional case and award MusicQubed its reasonable

attorneys' fees and costs in accordance with 35 U.S.C. § 285; and

- g. All other and further relief as the Court may deem just and proper under the circumstances.

Dated: January 31, 2024

Respectfully submitted,

By: /s/ C. Matthew Rozier

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*Attorneys for Plaintiff MUSICQUBED INNOVATIONS, LLC*

\*Admitted to the Eastern District of Texas

**List Of Exhibits**

- A. U.S. Patent No. RE 42,685
- B. U.S. Patent No. 7,130,616
- C. U.S. Patent No. 9,491,215
- D. U.S. Patent No. 7,461,077
- E. U.S. Patent No. 7,975,060
- F. U.S. Patent No. 7,281,274
- G. U.S. Patent No. 10,469,601
- H. The CW App on Google Play
- I. How to Cast The CW
- J. Stream on The CW
- K. The CW Website | How do I turn on/off Chromecast | Support
- L. The CW Website | Homepage
- M. The CW Website | Privacy Policy
- N. The CW | User Interface Example
- O. The CW | User Interface and Adaptive Video Encoding Example



**CERTIFICATE OF SERVICE**

I hereby certify that on this day I caused a true and correct copy of the foregoing document to be filed electronically in compliance with Local Rule CV-5(a) using this Court's ECF system. As such, this document was served on all counsel who are deemed to have consented to electronic service.

Dated: January 31, 2024

By: /s/ C. Matthew Rozier

C. Matthew Rozier