

Retired Police Officer Prevails Against Adult Film Studio Strike 3 Holdings in Proving His Innocence in Copyright Infringement Suit

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Recently, the Ninth Circuit Court of Appeals affirmed the decision of Judge Thomas S. Zilly of the District Court of the Western District of Washington in favor of defendant John Doe, a retired police officer accused of illegally downloading and distributing adult content produced by Strike 3 Holdings LLC. [1] Agreeing with the district court's finding that Strike 3 failed to prove its claim that the defendant pirated its adult films, the Court of Appeals upheld the lower court's order requiring Strike 3 to pay defendant John Doe \$47,777 in costs and fees.

Strike 3 has notoriously filed thousands of infringement cases against John Does accused of downloading Strike 3's videos using the BitTorrent platform. The initial complaints are filed against an IP address without any details about who actually did the downloading. Strike 3 then seeks permission to serve a subpoena on the relevant internet service provider ("ISP") to uncover the name and address of the subscriber or account holder of the IP address. Once the ISP receives the subpoena it immediately forwards a copy to the account holder, quickly prompting panic and confusion. At this point, many subscribers hire a lawyer and quickly settle the case to avoid public embarrassment and costly litigation. But this John Doe refused to do so. Instead, he fought back in district court stating that Strike 3 abused the legal process and was attempting to extort money from him through "sham" litigation.

Faced with this assertion, Strike 3 dismissed its copyright infringement claim without prejudice, which meant that it could still pursue an action against the defendant at a later date. Not satisfied with the dismissal, the retired cop filed a counterclaim for declaratory judgment seeking a declaration of non-infringement. John Doe also hired a computer forensic expert to examine his hard drives and opine on whether any movies alleged to have been downloaded were found on the device. Strike 3 hired its own computer expert to search Doe's computers for "hash" files identified in its Exhibit A to its original Complaint. Strike 3, however, abandoned and never performed the forensic investigation when it realized the "hash" files, even if found, would not evidence the existence of a downloaded movie – since the files merely provide directions to BitTorrent on where to find the necessary components to construct the entire movie. Therefore, Strike 3 had no evidence that John Doe had actually downloaded any of Strike 3's movies. Additionally, Doe's expert declared that he did not find any of the allegedly downloaded movies on Doe's computer. Thereafter, John Doe sought summary judgment arguing there was no evidence he was an infringer, and moreover requested

reimbursement of the legal fees and costs he incurred in defending the action. The Court granted Doe's summary judgment motion finding there was no evidence of infringement and also awarded defendant his reasonable attorneys' fees and costs.

According to the district court, "A core element of copyright infringement is a 'copying' of the protected components of the work. Strike 3 has provided no evidence that John Doe copied any of Strike 3's copyrighted motion pictures."^[2]

In affirming the district court's order, the Ninth Circuit cleared the retired police officer's name and ordered Strike 3 to pay his legal fees and costs.

In awarding fees, the district court specifically mentioned the "shakedown" practices of Strike 3, who has become notorious for filing lawsuits in order to pressure alleged infringers into quick settlements and dismissing those cases that do not settle. By awarding costs and fees, the court sent a clear warning to Strike 3. Undeterred, Strike 3 has continued filing lawsuits against Internet Protocol (IP) addresses and collecting settlement monies from individuals associated with those specific IP addresses.

[1] Strike 3 Holdings, LLC v. Doe, No. C17-1731 TSZ, 2020 U.S. Dist. LEXIS 18528, at *14 (W.D. Wash. Jan. 31, 2020) (internal citations omitted).

[2] Strike 3 Holdings LLC v. Doe, No. 20-35196, 2021 U.S. App. LEXIS 7918 (9th Cir. Mar. 18, 2021)

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National Law Review, Volume XI, Number 95

Source URL: <https://natlawreview.com/article/retired-police-officer-prevails-against-adult-film-studio-strike-3-holdings-proving>