

1 Richard S. Busch (SBN 319881)
E-Mail: *rbusch@kingballow.com*
2 **KING & BALLOW**
3 1999 Avenue of the Stars, Suite 1100
Los Angeles, CA 90067
4 Telephone: (424) 253-1255
5 Facsimile: (888) 688-0482
Attorney for Plaintiff
6

7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**

9 LEWIS BLACK, *an individual,*
10 *and on behalf of Stark Raving Black*
11 *Productions, Inc., a New York*
Corporation,

12 Plaintiff,

13 vs.

14 PANDORA MEDIA, LLC,
a Delaware Limited Liability Company

15 Defendant.
16
17

Case Number:

**COMPLAINT FOR
COPYRIGHT INFRINGEMENT**

DEMAND FOR JURY TRIAL

18 Plaintiff LEWIS BLACK, individually and on behalf of STARK RAVING
19 BLACK PRODUCTIONS, INC., by and through his attorneys of record, alleges as
20 follows:

21 **JURISDICTION**

22 1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
23 1331 as the action arises under the original and exclusive jurisdiction of the federal
24 court and 28 U.S.C. § 1338(a) as the controversy arises under the Copyright Act of
25 1976 (17 U.S.C. § 101 *et seq.*).

26 2. This Court has personal jurisdiction over Defendant as discussed fully
27 below.
28

1 3. This Court has general personal jurisdiction over Pandora Media,
2 LLC (“Pandora”) because Pandora’s principal place of business is in Oakland,
3 California, while also having a substantial office in Santa Monica, California,
4 meaning that Pandora is at home in the State of California. Furthermore:

5 a. Upon information and belief, through January 28, 2022, Pandora was
6 qualified to do business in California and was registered as a foreign
7 corporation with the California Secretary of State.

8 b. Pandora is also registered as a foreign limited liability company with
9 the California Secretary of State.

10 c. Pandora’s designated DMCA Copyright Agent identified in its
11 “Intellectual Property Policy” on its website is located in California at
12 2100 Franklin Street, 7th Floor, Oakland, California 94612.

13 d. Pandora has previously admitted in other federal court filings that
14 California has jurisdiction over it. *See* , Wixen Music Publishing, Inc.
15 v. Pandora Media, Inc., Case No. 2:19-cv-5278-SVW (C.D. Cal.), Dkt.
16 15 (Pandora Media, Inc.’s Answer) at ¶¶ 16-17 (“Pandora admits that
17 [it] has availed itself of California law . . . and venue is proper in the
18 [Central District of California]”).

19 4. This Court has specific personal jurisdiction over Pandora because its
20 suit-related conduct creates a substantial connection with the State of California
21 and this Judicial District. LEWIS BLACK, individually and on behalf of STARK
22 RAVING BLACK PRODUCTIONS, INC., (hereinafter, collectively, “Black”) is
23 a copyright owner of properly registered literary works (the “Works”) (*see* Exhibit
24
25
26
27
28

1 A).¹ Upon information and belief, Pandora has generated substantial revenue from
2 exploitation of the Works in California, as further discussed below:

3 a. Pandora actively and purposely does business in California, as
4 evidenced by its (i) subscribers and users in California, which Pandora
5 actively reaches out to through, at a minimum, its website
6 (www.pandora.com) and mobile app; (ii) contracts and other
7 transactions that it has entered into in California; (iii) revenue
8 generated from California residents and businesses in connection with
9 its service; and (iv) advertisements that target California residents.

10 b. Pandora has purposefully availed itself of California law and could
11 and did reasonably anticipate being brought into this Court because,
12 among other reasons, Pandora (i) has been engaged and is engaged in
13 infringing conduct within the State of California and this District,
14 including by knowingly, intentionally, and repeatedly streaming
15 sound recordings and the Works over the Internet to California
16 residents via its services; (ii) knew or should have known that the harm
17 caused by its repeated unlicensed public performance of the Works
18 over the Internet was aimed at comedy writers and comedy publishers,
19 including Plaintiff, who control the Works and are managed and
20 administered in or near Los Angeles County, California, a global hub
21 of the entertainment industry; and (iii) knew or should have known
22 that Plaintiff, an industry leading comedian, actor and comedy writer
23 for nearly 30 years, would suffer, and in fact did suffer, the brunt of
24 _____

25 ¹ Exhibit A is limited solely to those works which already on file with the Copyright
26 Office. Plaintiff will be working in the coming days to register the rest of his
27 prodigious catalog and reserves the right to seek leave to Amend Exhibit A to include
28 these later-registered works.

1 the harm caused by Pandora’s unauthorized acts in California and
2 around the world.

3 **VENUE**

4 5. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b),
5 and § 1400(a), as a substantial part of the events or omissions giving rise to the
6 claim occurred in this district, including for example, by the maintenance of
7 Pandora’s corporate office in Santa Monica, California. Plaintiff has its principal
8 place of business in this District and has been injured in this District as a result of
9 Pandora’s infringing conduct.

10 **PARTIES**

11 6. Plaintiff, LEWIS BLACK, individually and on behalf of STARK
12 RAVING BLACK PRODUCTIONS, INC., owns the intellectual property rights of
13 Lewis Black, who is an actor and comedian and resides in New York, New York.
14 Mr. Black owns one hundred percent (100%) of Stark Raving Black Productions,
15 Inc. which is a New York Corporation and has a principal place of business at
16 11812 San Vicente Blvd., Ste. 400, Los Angeles, CA 90049.

17 7. Defendant, Pandora, is a limited liability company with a principal
18 place of business at 2100 Franklin Street, Suite 700, Oakland, California 94612.
19 According to its website, Pandora maintains another corporate office in California,
20 located at 3000 Ocean Park Boulevard, Suite 3050, Santa Monica, California 90405.

21 **PRELIMINARY STATEMENT**

22 8. Just like with music, there are two copyrights involved in the recorded
23 performance of a literary copyrighted work: a copyright in the sound recording,
24 and a separate copyright in the underlying spoken word composition (Black’s
25 compositions, as noted, are referred to herein as “the Works”). Pursuant to 17 U.S.C.
26 §§ 106 and 204 of the Copyright Act of 1976, copyright owners have the exclusive
27 right to, among other things, reproduce, distribute, license, and publicly perform
28

1 their works. Anyone wishing to obtain the right to do so, must get a license from
2 the respective copyright owner in both of these copyrights, and pay agreed-to
3 royalties. The failure to do so constitutes copyright infringement. As discussed
4 below, Pandora not only did not obtain any copyright in the Works but admitted
5 that it did not do so in SEC filings, and admitted that it would very likely face
6 copyright infringement liability as a result. But Pandora did what most goliaths do:
7 it decided it would infringe now to ensure it had this very valuable intellectual
8 property on its platform to remain competitive, and deal with the consequences
9 later. Later is now.

10 **STATEMENT OF FACTS**

11 9. Everyone gets angry sometimes, yet few, if any, have managed to turn
12 angry rants into a career like Mr. Black.

13 10. Born in Washington, D.C. in 1948 and colicky as a baby, Mr. Black
14 was destined to be angry and easily irritated. Mr. Black got the theatre bug at the
15 age of twelve, and from that young age has pursued a career in drama. Mr. Black
16 secured degrees from the University of North Carolina and Yale Drama School.
17 During his time in Chapel Hill, he formally tried his hand at stand up at Cat's Cradle
18 and maintained a steady presence in comedy clubs while he pursued his career in
19 theatre.

20 11. After his education, he settled in New York City and became the
21 playwright-in-residence at the West Bank Café's Downstairs Theatre Bar
22 overseeing the development of over 1,000 plays, including works by Aaron Sorkin
23 (of "West Wing" fame) and Alan Ball (the writer of "American Beauty"). Mr.
24 Black emceed every show and honed his stand-up skills during his tenure at the
25 West Bank.

26 12. In the 1980s, Mr. Black decided to pursue stand up full-time. In 1996,
27 through his friend Lizz Winstead, Mr. Black was tapped to create the now-world
28

1 famous “Back in Black” recurring segment for Comedy Central’s “The Daily
2 Show”. “Back in Black” is one of the most popular and longest-running recurring
3 segments on the show, both in the Jon Stewart era and now with Trevor Noah at
4 the helm.

5 13. Black’s success on The Daily Show led to numerous other stand-up specials,
6 acting opportunities, and accolades. For example, Mr. Black recorded four stand
7 up specials for Comedy Central Presents. He was named Best Male Stand-Up at
8 the American Comedy Awards in 2001. He released several comedy albums,
9 including those at issue here such as, “The White Album,” “This Should Have Been
10 a Special,” “Thanks For Risking Your Life,” “Black to the Future,” and “Old
11 Yeller.” He also was involved in the creation of two of his own shows on Comedy
12 Central: “Last Laugh with Lewis Black” and “Lewis Black’s The Root of All Evil.”
13 He also filmed two specials for HBO including “Black on Broadway” and “Red,
14 White, and Screwed,” the latter of which was nominated for an Emmy.

15 14. In 2009, Mr. Black filed his first feature length concert, “Stark Raving
16 Black” and the accompanying documentary, “Basic Black”. Starting in 2006, Mr.
17 Black’s film career really took off with him co-starring with Robin Williams in
18 “Man of the Year” and as the “fake dean of a fake college” in “Accepted”. Most
19 famously, in 2015, Mr. Black lent his voice talents in the Academy Award Winning,
20 “Inside Out” from Disney-Pixar, playing, who else, but the personification of the
21 emotion, “Anger”.

22 15. Yet, industry giants, such as the Defendant, took and exploited his
23 works solely to make themselves money while knowing it had no license and had
24 not paid, and would not be paying, royalties to Lewis Black.

25 16. According to www.pandora.com, Pandora is the largest digital
26 broadcast and streaming music provider in the U.S. “providing a highly-
27 personalized listening experience to approximately 70 million listeners and users
28

1 each month” through “its mobile app, the web, and integrations with more than
2 2,000 connected products.”

3 17. One would think that entertainment giants like Pandora would honor
4 the legacy of such an amazing talent, but instead it chose to illegally profit from
5 the creative mind and literary/comedic works of Lewis Black.

6 18. In fact, Defendant has made sixty-eight (68) of his works (the
7 “Works”) available for dissemination to the public via their digital broadcast radio
8 service knowing full well that it did not possess a valid license to publicly perform
9 the Works. (*See* Exhibit A). In addition to no license, it also made no royalty
10 payments for the Works. The Works are contained on the albums, “The White
11 Album”, “This Should Have Been a Special”, “Thanks for Risking Your Life”,
12 “Black to the Future”, and “Old Yeller”. Plaintiff has duly complied with all
13 required provisions of the copyright laws of the United States applicable to the
14 Works, including but not limited to, registering copyrights in and to said Works
15 with the United States Copyright Office (*see* Exhibit A for applicable copyright
16 registration numbers).

17 19. Further, it is required by law, and fully understood, that digital service
18 providers, like Pandora, must also get a mechanical digital reproduction license
19 from the owner of the underlying composition in order to make the underlying
20 composition of a recording available for reproduction and distribution through
21 interactive streaming. This is true even where the digital service provider has a
22 license to interactively stream a sound recording. Pandora made thirty-one (31) of
23 these Works available via its Pandora Premium interactive streaming service, also
24 knowing full well that it did not possess a valid license to not only publicly perform
25 his works but also no license to distribute and reproduce the Works. Pandora made
26 no royalty payments for the public performance and no royalty payments for the
27 reproduction of the Works. The end result is Pandora took the Works, gained
28

1 listeners, subscribers and market share with full knowledge it did not have licenses
2 and made no royalty payments for the Works, to increase its stock price helping
3 them to reorganize the company with Sirius XM (although the two companies
4 remain to this day completely separate corporations) for billions all while depriving
5 Black from his hard-earned royalties.

6 20. As of February 17, 2022, www.pandora.com advertised that Black had
7 103,000 monthly listeners.² If each listener listened to only one (1) available work
8 per month, that's 1,236,000 broadcasts or/interactive streams per year at a
9 minimum. Unfortunately, Black has not received a fraction of a penny for any of
10 these broadcasts or streams of the Works from Pandora.

11 21. For years, therefore, Pandora has illegally made reproductions and
12 digital broadcasts on its servers and provided streaming access to its users without
13 a proper public performance license and, when applicable, a reproduction right
14 license. This infringement continues on a daily basis as the Works are broadcast on
15 Pandora radio and/or remain available for interactive streaming on Pandora
16 Premium. All of the Works involved in this action have streamed either on Pandora
17 radio or Pandora Premium within the last three years.

18 22. While it is commonplace in the music industry for companies like
19 Pandora to enter into public performance licensing agreements with performance
20 rights organizations like BMI and ASCAP for musical compositions, these entities
21 do not license literary works. Therefore, it was the responsibility of Pandora to seek
22 out the copyright owners and obtain valid public performance licenses.

23 23. Pandora only needed to contact one entity, Black, to obtain the
24 required licenses. Or Pandora could have chosen not to use the Works, particularly
25 since it knew it did not have the required licenses. Instead, it chose to infringe.

26 _____
27 ² <https://www.pandora.com/artist/full-bio/lewis-black/ARr5w29blZwcP4q>
28

1 24. Black, over the course of his career entered into numerous agreements
2 for the creation/distribution of sound recordings and television specials.

3 25. Black, however, retained all of his exclusive rights in the Works.
4 Digital Service Providers, like Pandora, had to come to Black to secure the
5 necessary licenses for exploitation of the Works, and they knew it—but they did
6 not.

7 26. Pandora’s failure to obtain the necessary licenses for the Works or pay
8 royalties, but to nonetheless infringe by exploiting the Works, has been willful. In
9 Pandora’s own SEC 10K public filing with the Security and Exchange Commission
10 from 2011 to 2017, three quarters of a decade, Pandora admitted in its Risk Factors
11 ever year that it performs spoken-word comedy content “absent a specific license
12 from any [] performing rights organization” and it has never obtained a license for
13 the underlying literary works for the sound recordings of spoken-word comedy
14 content that it streams. Pandora further admitted that it “could be subject to
15 significant liability for copyright infringement and may no longer be able to operate
16 under [their] existing licensing regime.” This admission was only removed, not so
17 coincidentally, after Pandora’s transaction with Sirius XM Radio.

18 27. Not only did Pandora admit to the federal government that it willfully
19 broadcast and streamed spoken-word comedy content without a specific license,
20 Pandora also shamelessly advertised its “newfound” comedy stations to the public
21 and generated revenue from advertising sales. In 2011, major news outlets such as
22 *CNN* and *The New York Times* reported that “[Pandora has] taken the same
23 approach to comedy as [they] have to music: carefully and deliberately analyzing
24 comedic 'bits' across a very large number of attributes to capture the style, delivery
25
26
27
28

1 and content of each performance.”³—there is just one glaring omission, they failed
2 to obtain a public performance license.

3 28. Pandora nonetheless did not even take the simplest of steps to ask
4 Black or his representatives for licenses for the Works.

5 29. However, what is notable is that in February 2011, *CNNMoney*
6 reported that Pandora wasn’t “yet profitable,”⁴ posting “a net loss of \$328,000 on
7 revenue of \$90.1 million in the first nine months of its most recent fiscal year.” Its
8 biggest expense— “royalties it pays for the music it streams. As Pandora’s
9 audience grows, so do those costs, which reached \$45.4 million in the first nine
10 months of 2010.”

11 30. The timing is significant, following Pandora’s reported net losses, the
12 astronomical amount of costs incurred for music streams, and its intention to raise
13 \$100 million in an initial public offering, Pandora announced in May of 2011 that
14 it was adding comedy to its list of offerings and that those stations would include
15 audio advertisements, touting Unilever as their first major advertiser—promoting
16 its Axe body spray and Klondike bars.⁵ Thereby generating additional advertising
17 revenue for the company while excluding comedians like Black and many others
18 from their hard earned royalties and licensing fees. Pandora found a cash cow in a
19 new revenue stream, and in a brazen business decision determined that the risk was
20 worth the gain—that is until now.

21
22 ³ Ben Parr, Pandora adds 10,000 comedy clips to its archives CNN (2011),
23 <http://www.cnn.com/2011/TECH/web/05/04/pandora.comedy.mashable/index.html>
(last visited Feb 25, 2022).

24 ⁴ Stacy Cowley, Pandora files for \$100 million IPO CNNMoney (2011),
25 https://money.cnn.com/2011/02/11/technology/pandora_ipo/index.htm (last visited
Feb 25, 2022).

26 ⁵ Ben Parr, Pandora adds 10,000 comedy clips to its archives CNN (2011),
27 <http://www.cnn.com/2011/TECH/web/05/04/pandora.comedy.mashable/index.html>
(last visited Feb 25, 2022).

1 31. Mr. Black once famously quipped in the wake of the Enron Scandal:
2 “You don't want another Enron? Here's your law: If a company can't explain in one
3 sentence what it does, it's illegal.” The exact same thing is true here: If a Company
4 can't explain in one sentence how it has a license to use copyrighted works, it's
5 copyright infringement.

6 **CAUSE OF ACTION**

7 **(Copyright Infringement – 17 U.S.C. § 501)**

8 32. Plaintiff repeats and re-alleges the foregoing paragraphs as if fully set
9 forth herein.

10 33. Plaintiff is the legal and beneficial owner of the United States
11 copyrights in the Works, duly registered with the United States Copyright Office,
12 (*See* Exhibit A), as discussed above.

13 34. Defendant has directly, vicariously, and/or contributorily infringed
14 and/or induced infringement of Plaintiff's copyright in violation of 17 U.S.C. § 501.

15 35. Defendant has publicly performed, broadcasted, and provided its
16 listeners/users of the Works, as discussed hereinabove.

17 36. Defendant's acts were performed without authorization, license, or
18 consent. Defendant's unauthorized and unlicensed reproduction, distribution,
19 public performance and display of the Works infringes Plaintiff's exclusive rights
20 in violation of the Copyright Act, 17 U.S.C. § 106 *et. seq.*

21 37. Defendant's infringement has been and continues to be, willful,
22 intentional, purposeful, and with complete disregard to Plaintiff's rights.

23 38. As a direct and proximate result of Defendant's infringement, Plaintiff
24 has been irreparably harmed.

25 39. Defendant has infringed Plaintiff's copyright interest in the Works by
26 making reproductions and digital broadcasts on its servers and provided streaming
27
28

1 access to its users without a proper public performance and, when applicable,
2 reproduction rights license.

3 40. Plaintiff has received no royalties or payments for the Works
4 embodied in the sound recording of the underlying literary compositions.

5 41. Defendant has continued to market, exploit, reproduce, distribute, and
6 publicly perform the Works through this day, which violates Plaintiff's copyrights
7 and are at issue in this lawsuit.

8 42. Defendants had knowledge and have admitted that it did not and does
9 not possess a valid public performance license for the Works at issue, and with that
10 knowledge of infringement, continued to infringe upon Plaintiff's copyrights.

11 43. The infringement is continuing as the Works continue to be exploited,
12 performed, broadcast, and streamed across Defendant's applicable platforms,
13 and/or their agents.

14 44. As a direct and proximate result of Defendant's infringement,
15 pursuant to 17 U.S.C. § 504(a)(1) and (b), Plaintiff is entitled to actual damages in
16 addition to Defendant's profits both domestically and relating to foreign sales of
17 other exploitation of the Works that were distributed, performed, broadcast, or
18 otherwise infringed domestically. Further, Plaintiff is entitled to a running royalty
19 on all future exploitations of the Works following judgement in an amount to be
20 determined.

21 45. In the alternative to profits and actual damages, pursuant to 17 U.S.C.
22 § 504(c), Plaintiff is entitled to the maximum amount of statutory damages,
23 \$150,000 per copyrighted work for each act of copyright infringement, for a total
24 of \$10,200,000 (\$150,000 times 68 registered Works).

25 46. As a direct and proximate result of Defendant's infringement, Plaintiff
26 has incurred attorneys' fees and costs which are recoverable pursuant to 17 U.S.C.
27 § 505.

1 47. Defendant's conduct has caused, is continuing to cause, and will
2 further cause great damage to Plaintiff, which damages cannot be accurately
3 measured in monetary terms, and therefore, unless enjoined by the Court, Plaintiff
4 will suffer irreparable injury, for which Plaintiff is without adequate remedy at all.
5 Accordingly, Plaintiff is entitled to a permanent injunction pursuant to 17 U.S.C. §
6 502 following judgment, prohibiting further infringement, reproduction,
7 distribution, sale public performance, other use, or exploitation of Plaintiff's
8 copyright without a proper license.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for judgment and relief, as follows:

11 48. For Judgment in favor of Plaintiff and against Defendant.

12 49. For a declaration and finding that Defendant has willfully infringed
13 Plaintiff's copyrighted work in violation of the Copyright Act;

14 50. For declaration and finding that Defendant is directly, vicariously,
15 and/or contributorily liable for copyright infringement pursuant to 17 U.S.C. §
16 504(a)(1) and (b), including a finding that Defendant is liable for actual damages,
17 as well as for Defendant's profits;

18 51. For an accounting of all profits, income, receipts, or other benefits
19 derived by Defendant from the production, copying, display, promotion,
20 distribution, broadcast, public performance, or sale of products and services or
21 other media, either now known or hereafter devised, that improperly or unlawfully
22 infringe Plaintiff's copyright pursuant to 17 U.S.C. § 504(a)(1) and (b);

23 52. For statutory damages, upon election prior to final judgment in the
24 alternative to actual damages and profits, for willful copyright infringement
25 pursuant to 17 U.S.C. § 504(c);

26 53. For costs of suit herein, including an award of attorneys' fees pursuant
27 to 17 U.S.C. § 505;

1 54. For pre-judgment and post-judgment interest;

2 55. For a running royalty and/or ownership share in the Infringing Work
3 following judgment in an amount to be proven at trial, or in the alternative, for the
4 entry of an injunction requiring Defendants, their officers, agents, servants,
5 employees, representatives, successors, licensees, partners, attorneys, and assigns,
6 and all persons acting in concert or participation with each or any one of them to
7 be permanently enjoined from directly or indirectly infringing, reproducing,
8 displaying, promoting, advertising, distributing, or selling any work that infringes,
9 contributorily infringes, or vicariously infringes Plaintiff's rights in the work
10 protected by the Copyright Act;

11 56. For such other and further relief as the Court may deem just and proper.

12
13 **DEMAND FOR JURY TRIAL**

14 Pursuant to Federal Rule of Civil Procedure 38(b), and otherwise, Plaintiff
15 respectfully demands a jury trial on all issues raised in this complaint.

16
17
18 Dated: July 7, 2022

Respectfully submitted,
By: /s/ Richard S. Busch
Richard S. Busch
Attorney for Plaintiff