

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division



UNITED STATES OF AMERICA)
)
 v.) Criminal No. 1:11-cr-447-001
)
 HANA AMAL BESHARA,)
 (a/k/a "Phara" and "Phara0hess"),)
 Defendant.)

STATEMENT OF FACTS

Were the United States to proceed to trial in this case, it would provide testimonial and documentary evidence to prove beyond a reasonable doubt that, from at least February of 2008 through June 30, 2010, defendant HANA AMAL BESHARA (the "Defendant"), also known by the screen nicknames "PHARA" and "PHARA0HESS," did conspire and agree with others to commit, and in fact committed, offenses against the United States.

Specifically, the Defendant knowingly conspired and agreed with others, for purposes of private financial gain, to willfully infringe copyrighted works both by the distribution of a work being prepared for commercial distribution and also by the reproduction and distribution of ten or more copies of one or more copyrighted works with a total retail value of more than \$2,500 within a 180-day period. The purpose of the conspiracy was to violate the federal criminal copyright laws, particularly Title 17, United States Code, Sections 506(a)(1)(A) & 506(a)(1)(C) and Title 18, United States Code, Sections 2319(b)(1) & 2319(d)(2).

In addition, the Defendant did willfully, and for purposes of private financial gain, infringe a copyright by the distribution of the motion picture "Avatar," by making it available on

a computer network accessible to members of the public, at the time it was being prepared for commercial distribution, and when she knew that the work was intended for commercial distribution.

At trial, the testimonial and documentary evidence would have established, at a minimum, the following facts beyond a reasonable doubt:

1. Beginning in or about February 2008 and continuing to June 30, 2010, the Internet website NinjaVideo.net was operated by a group of individuals from around the world.
2. The Defendant was one of the founders of the NinjaVideo.net website.
3. The NinjaVideo.net website had millions of visitors, and provided users with the ability illegally to download copyrighted motion pictures (many of which were still playing in motion picture theaters, and some of which had not yet been released in motion picture theaters), as well as television programs, in high-quality formats.
4. The NinjaVideo conspiracy acquired infringing copies of copyrighted content from uploaders, or “link hunters,” who would locate infringing content on the Internet, generally through “release groups”¹, as directed by NinjaVideo administrators. The uploaders would provide downloaded files to administrators who would in turn upload the infringing content to servers utilized by the NinjaVideo.net website and provide access to NinjaVideo users.
5. The NinjaVideo.net website, forum board, and infringing content were hosted on servers in the Netherlands; France; Chicago, Illinois; and Ashburn, Virginia, which is located in

¹ “Release groups” or “Warez groups” are terms used to describe the complex web of informal and formal Internet communication, distribution, and trading channels used by individuals who engage in this form of motion picture piracy. These groups are responsible for capturing and obtaining infringing copies of content – often through the use of a camcorder for the earliest illegal release, which is eventually replaced with higher-quality versions.

the Eastern District of Virginia. The Defendant made payments on behalf of the conspiracy for Internet hosting services associated with NinjaVideo.net.

6. The Defendant admits that computer servers located in Ashburn, Virginia, within the Eastern District of Virginia, that were utilized as part of the NinjaVideo conspiracy contained infringing content.

7. The Defendant, who has referred to herself as “Queen Phara” and “the face and the name behind Ninja,” served as the primary day-to-day administrator of the NinjaVideo.net website. At various times during the course of the conspiracy, the Defendant supervised the NinjaVideo.net forum board, supervised the moderators who policed the NinjaVideo.net website, publicized the NinjaVideo.net website, and assisted NinjaVideo.net visitors and users.

8. Members of the NinjaVideo conspiracy used the Skype software application instant messaging service to communicate with one another in furtherance of the conspiracy. Most of the Skype communications was limited to the top administrators and uploaders, and was used to discuss everyday business from daily uploads of copyrighted content to server problems to receipt of Digital Millenium Copyright Act (“DMCA”) takedown notices. The Defendant also communicated to NinjaVideo.net site users through Internet podcasts.

9. On multiple occasions, the Defendant used Skype to direct uploaders to locate specific motion pictures or television shows for the NinjaVideo.net website.

10. The Defendant made the following admissions during her communications with co-conspirators and NinjaVideo.net website users:

- a. During a May 11, 2008, Internet chat, the Defendant stated “we are extremely illegal.”

- b. During an October 26, 2008, Internet chat, the Defendant stated “my best work...is my illegal website moderation and uploading.”
- c. During a February 16, 2009, Internet chat, the Defendant stated “now that i’m the face and the name behind ninja, i’d just like to say that it was nice knowing you all... i’ll be going to prison soon.”
- d. During a May 27, 2010, Internet chat, the Defendant stated “but you’re so helpless when you’re limited to so few ad companies to choose from being a piracy site.”
- e. In one podcast entitled “The NinjaVideo Manifesto,” the Defendant boasted about NinjaVideo’s “zero hour releases on TV and movies” – meaning that the NinjaVideo.net website made infringing content available as soon as the legitimate product was released.

11. The Defendant and her co-conspirators received several DMCA takedown notices from owners of copyrighted works. In response to these DMCA notices, the Defendant and her co-conspirators discussed how to proceed. Notwithstanding the DMCA notices, the Defendant and her co-conspirators decided to leave some content specifically listed in the DMCA takedown notices on the NinjaVideo.net website, based primarily on the volume of user hits/requests and the amount of revenue. In some cases, the Defendant and her co-conspirators attempted to “hide” the content listed in the DMCA notices in an attempt to evade further detection.

12. While visitors to the NinjaVideo.net website were permitted to download infringing copies of much copyrighted material for free, they were also invited to make donations. For a minimum donation of \$25.00, visitors obtained access to private forum boards,

which contained infringing copies of additional copyrighted material, including a wider range of motion pictures, comic books and computer software. These “premium” members also obtained the right to request specific content, such as motion pictures or other programs, on the private boards; NinjaVideo administrators would then oversee fulfillment of such requests.

13. When the NinjaVideo.net website began in early 2008, co-conspirator MATTHEW DAVID HOWARD SMITH, also known by the screen nickname “Dead1ne,” contacted Internet advertising entities such as Google AdSense, Adbrite, and Mpire and entered into agreements wherein those entities would place advertisements on the NinjaVideo.net website. The Defendant contacted Internet advertising company OpenX and entered into an agreement wherein that entity would place advertisements on the NinjaVideo.net website; she also established an account with Adbrite to receive advertising income related to the NinjaVideo.net website. Later, the Defendant and co-conspirator JUSTIN DEDEMKO, also known by the screen nickname “Afr1ka”, contracted with PartyGaming.com to place additional advertisements on the NinjaVideo.net website.

14. Between February of 2008 and June 30, 2010, NinjaVideo received approximately \$505,000 in income from advertising and donations.

15. The Defendant received NinjaVideo.net advertising revenue and user donations in accounts she maintained, as well as from payments she received from co-conspirator SMITH. Between February 2008 and June 30, 2010, the Defendant received \$260,246.95. In furtherance of the conspiracy and for their private financial benefit, the Defendant distributed \$50,420.00 of that revenue to co-conspirators DEDEMKO, JOSHUA EVANS, JEREMY ANDREWS and ZOI

MERTZANIS. The Defendant therefore acknowledges that \$209,826.95 was the amount she personally received from the conspiracy.

16. On or about October 6, 2008, the Defendant received a payment from co-conspirator SMITH.

17. On or about December 4, 2008, the Defendant made a payment to co-conspirator DEDEMKO.

18. On or about February 17, 2009, the Defendant made a payment to LeaseWeb in the Netherlands for Internet hosting services associated with NinjaVideo.net.

19. On or about April 23, 2009, the Defendant made payments to co-conspirators EVANS, ANDREW and MERTZANIS.

20. From December 2009 until June 2010, agents from Homeland Security Investigations ("HSI"), operating from the National Intellectual Property Rights Coordination Center within the Eastern District of Virginia, utilized NinjaVideo.net in an undercover capacity. During that time, the NinjaVideo conspiracy made infringing copies of copyrighted motion pictures available to an undercover agent. The HSI agent subsequently downloaded forty-four (44) motion pictures to a computer located in Arlington, Virginia; all of the motion pictures were confirmed to be infringing copies of copyrighted motion pictures. At the time they were distributed by the NinjaVideo conspiracy, one (1) of the motion pictures downloaded by the undercover agent had not yet been released in theaters in the United States; forty (40) of the motion pictures had been released in United States theaters but had not yet been released on DVD; and three (3) of the motion pictures had already been released on DVD. The Defendant admits that NinjaVideo's distributions of these motion pictures were not authorized by the

copyright holders and that the infringing copies of the motion pictures were clearly marked as products from known Internet piracy release groups.²

21. On or about June 30, 2010, federal agents executed a search and seizure warrant at the Defendant's residence in North Brunswick, New Jersey. Agents seized a Motorola Droid phone, one desktop computer, three laptop computers, several external media devices, and various documents that contained evidence linking the Defendant to the NinjaVideo conspiracy.

22. The Defendant acknowledges that she voluntarily and intentionally joined the NinjaVideo conspiracy, knowing that the purpose of NinjaVideo was the illegal infringement of copyrighted works for purposes of private financial gain. The Defendant also acknowledges that she acted in furtherance of such agreement in an effort to carry out or accomplish the objects of the conspiracy.

23. The Defendant acknowledges that on or about January 4, 2010, she did willfully infringe or aid and abet willful infringement of a copyright by making the motion picture "Avatar" available on a computer network accessible to members of the public. The Defendant acknowledges that "Avatar" was released in United States theaters on or about December 18, 2009, and, at the time of her distribution, "Avatar" was being prepared for commercial distribution; the Defendant further acknowledges that she knew that "Avatar" was intended for commercial distribution. The Defendant acknowledges that the purpose of this distribution was private financial gain.

² The release group responsible for the initial reproduction and distribution of infringing content generally marks its work. For example, the IMAGiNE release group would mark an infringing copy of the "A-Team" motion picture file as "The A Team (2010) TS V2 XVID – IMAGiNE Release."

24. An analysis of logs provided by Ecatel LTD, a company that hosted NinjaVideo servers, revealed that, during the one-week period from June 23 through June 30, 2010, NinjaVideo users made at least 564,901 requests for infringing copies of copyrighted motion pictures, and at least 1,154, 553 requests for infringing copies of copyrighted television episodes.

25. The Defendant admits that her actions involved the display, performance, publication, reproduction, or distribution of a work being prepared for commercial distribution, within the meaning of §2B5.3(b)(2) of the applicable Federal Sentencing Guidelines (“Guidelines”).

26. The Defendant admits that her actions included uploading infringing works, within the meaning of §2B5.3(b)(3)(A) of the applicable Guidelines.

27. The Defendant acknowledges that she received and expected to receive “personal financial gain” within the meaning of the criminal copyright statute, see 17 U.S.C. §§101 & 506(a)(1) and Guidelines §2B5.3, Application note 1.

28. The Defendant admits that the conspiracy in which she participated resulted in an infringement amount more than \$400,000 but less than \$1,000,000, within the meaning of Sections 2B5.3(b)(1)(B) and 2B1.1(b)(1)(H) of the applicable Guidelines.

29. The Defendant will not cooperate with the investigation of any co-defendant or other unindicted individuals involved in NinjaVideo.


30. This statement of facts includes those facts necessary to support the plea agreement between the Defendant and the United States. It does not include each and every fact known to the Defendant or the United States, and it is not intended to be a full enumeration of all of the facts surrounding the Defendant’s case. The actions of the Defendant as recounted above

were in all respects knowing, deliberate and willful, and were not committed by mistake, accident or other innocent reason.

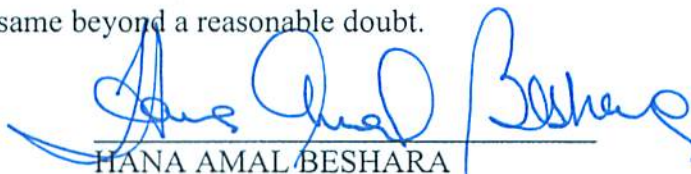
31. The Statement of Facts shall be admissible as a knowing and voluntary confession in any proceeding against the Defendant regardless of whether the plea agreement is presented to or accepted by a court. Moreover, the Defendant waives any rights that the defendant may have under Fed. R. Crim. P. 11(f), Fed. R. Evid. 410, the United States Constitution, and any federal statute in objecting to the admissibility of the Statement of Facts in any such proceeding.

Respectfully submitted,

Neil H. MacBride
United States Attorney

By: 
Jay V. Prabhu
Lindsay A. Kelly
Assistant United States Attorneys

After consulting with my attorney and pursuant to the plea agreement entered into this day between the Defendant Hana Amal Beshara and the United States, I hereby stipulate that the above Statement of Facts is true and accurate, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.



HANA AMAL BESHARA
Defendant

I am the defendant Hana Amal Beshara's attorney. I have carefully reviewed the above Statement of Facts with her. To my knowledge, her decision to stipulate to these facts is an informed and voluntary one.



David Smith, Esquire
Attorney for Defendant HANA AMAL BESHARA

Date: 9/29/11