

No. 18-55615

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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ALS SCAN INC.,

Plaintiff - Appellant,

vs.

STEADFAST NETWORKS, LLC,

Defendant - Appellee.

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Appeal from the United States District Court  
For the Central District of California  
Hon. George Wu  
2:16-cv-05051 GW AFM

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**APPELLANT'S OPPOSITION TO  
MOTION FOR ATTORNEYS' FEES**

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### **SUMMARY OF OPPOSITION**

Steadfast received 1,517 notices of infringement on imagebam.com, a site it hosted, including 185 notices from ALS of infringement on imagebam.com of some 37,000 ALS works. ALS adduced evidence that imagebam.com was a “pirate” site, one dedicated to hosting infringing copyrighted content. While the specific infringing content in ALS’s notifications came down, inevitably another stolen gallery of ALS images appeared on imagebam.com shortly thereafter. While Steadfast published a policy of zero tolerance for infringement, including the right to terminate services, Steadfast refused to terminate service to imagebam.com.

Steadfast’s motion for attorneys’ fees is laden with adjectives and conclusions free of support in the evidence or law. ALS had reasonable cause to believe the copyright law would support a claim against a service provider which ceased to terminate services to a customer that chronically infringed copyright. Contrary to Steadfast’s assertion that ALS ignored “clear legal precedent,” neither side had a case on all fours – what a service provider needed to do if the direct infringer removed infringing content upon demand but engaged in a clear pattern of infringement. The lack of clear precedent is underscored by the District Court’s decision, which agreed with ALS on nearly all issues, and the panel’s 2-1 decision, from which Judge Clifton dissented.

That ALS incurred years of litigation only to learn that it had no recourse against a service provider that refused to terminate a client who engaged in regular infringement is punishment enough. To pile on an award of attorneys’ fees would be unjust.

### **FACTUAL AND PROCEDURAL HISTORY**

ALS produces proprietary adult content. ALS’s content is available on secure webpages, access to which ALS limits to its paying members. ALS registers its works with the Copyright Office. ALS also owns a registered

trademark, “ALS Scan,” that appears on its websites and on all of its proprietary content. (ER 12.)

Steadfast is a “hosting” company providing dedicated servers, data centers and related services. (ER 12-13.) Steadfast’s terms said “[a]ny illegal activity may result in your site being suspended immediately, without notification. . . . Steadfast will be the sole arbiter as to what constitutes a violation of this provision.” (ER 736-37, 847-64.) Steadfast also provides that it “responds to notices of alleged copyright infringement and terminates accounts of repeat infringers.” (ER 838.)

Steadfast contracted with a third party, Flixya, to store a website, [www.imagebam.com](http://www.imagebam.com), on Steadfast’s servers. (ER 12-13.)

Steadfast admitted to receiving a total of 1,517 notifications of infringement on imagebam.com since 2013. (ER 741.) ALS’s agent, Steve Easton, sent Steadfast 185 notices of infringement of infringement of ALS works on imagebam.com. Each notice referred to dozens, if not two hundred or more, infringing ALS works, and included hyperlinks showing the exact location of each infringing work. Easton gave notice of infringement on imagebam.com of some 37,000 ALS works in total. (ER 12, 725, 728-31, 733-34, 877, 888-1308.)

Though the specific images in Easton’s notices came down, inevitably another set of stolen ALS content reappeared on imagebam.com. Steadfast made no effort to contact Flixya about the chronic infringement notices. (ER 810-11.) Steadfast made no effort to discover whether Flixya was terminating its own repeat infringers. (ER 815-17.) Steadfast did not terminate Flixya’s account; indeed, Steadfast has never terminated an account for repeat infringement. (ER 737, 869-70.)

ALS’s problems with imagebam.com were consistent with its battle with “pirate sites,” websites with no apparent function but to serve as free hosts to

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