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E	June 24, 2024	S
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Janelle Wong		
TOR		1

Court File No.

FEDERAL COURT

B E T W E E N:

GREAT BOWERY INC. d/b/a "Trunk Archive"

Plaintiff

-and-

VALNET INC.

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court.

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the *Federal Courts Rules*.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Issued:

Issued by: _____
(Registry Officer)

Address of Federal Court of Canada
local office: 180 Queen Street West, Suite 200
Toronto, ON M5V 3L6

To: The Administrator
Federal Court of Canada

And VALNET INC.
To: 100-7405 rte Transcanadienne
Montreal, QC H4T 1Z2

CLAIM

Overview

1. This is an action seeking damages for copyright infringement by the defendant, who has used certain photographs (individually a “**Photograph**”, and collectively, the “**Photographs**”) on several of the defendants’ websites without permission, license, or authorization of any kind. The authors (individually, a “**Photographer**”, and collectively, the “**Photographers**”) of the Photographs have authorized the plaintiff (“**Great Bowery**”) in this matter to enforce their worldwide copyrights in the Photographs, and have assigned to Great Bowery the Photographers’ cause of action for infringement by the defendant.

Claim

2. Great Bowery claims against the defendant for:

(a) a declaration that:

(i) the defendant’s unauthorized reproduction, public exhibition, and communication to the public of the Photographs constitute an infringement of the Photographers’ rights contrary to ss. 27(1) and (2) of the *Copyright Act*, RSC 1985, c C42 (the “**Act**”); and,

(ii) the defendant’s wrongful activities have infringed upon the Photographers’ moral rights provided under ss. 14.1 and 28.1 of the Act.

(b) an interim, interlocutory, and permanent injunction restraining the defendant, and any and all persons acting on behalf of, through or in conjunction with it, from any further:

- (i) unauthorized reproduction, public exhibition, and communication to the public of the Photographs in any form; and,
 - (ii) representations attributing or appearing to attribute: (1) any authorship of the Photographs to the defendant; or, (2) any endorsement of the defendant by the Photographers or affiliation between the defendant and the Photographers.
- (c) damages in the amount of \$7,300,000 for infringement of the Photographers' copyright and moral rights;
- (d) disgorgement of any profits that the defendant has made through infringement of the Photographers' copyright not taken into account in calculating the amount of damages, and an accounting of such profits;
- (e) in the alternative to damages and an accounting of the defendant's profits, an award of statutory damages as provided under section 38.1 of the Act in the amount of \$20,000 per work infringed;
- (f) aggravated, exemplary and punitive damages in the amount of \$100,000;
- (g) recovery and delivery up for destruction of all infringing copies of the Photographs in the defendant's possession or otherwise under its control;
- (h) pre-judgment and post-judgment interest pursuant to ss 36 and 37 of the *Federal Court Act*, RSC 1985, c F-7, as amended;
- (i) costs of this action, plus applicable taxes; and,
- (j) such further and other relief as this Honourable Court deems just.

The Parties

3. Great Bowery is a Delaware corporation that carries on business in New York City and elsewhere around the world. Trunk Archive, a business name for Great Bowery, operates as a full service licensing agency representing photographers and their worldwide rights.

4. Annie Leibovitz, David Roemer, Peggy Sirota, Doug English, James White, Eric Ray Davidson, Greg Lotus, Robert Trachtenberg, Ben Watts, Marc Hom, and Cliff Watts are individuals ordinarily resident in the United States of America.

5. Each of the Photographers is a professional photographer who has entered into agreements with Great Bowery to enforce the worldwide copyright in their works, including the photographs which are the subject of this action, and which appear at **Schedule A** to this claim. Each of the Photographers has also assigned to Great Bowery their cause of action for Valnet's infringement of copyright and has authorized Great Bowery to pursue claims for their moral rights in and to the Photographs.

6. The defendant, Valnet Inc. ("**Valnet**"), is a Quebec corporation based in Montreal. Valnet operates as a "media investment company" operating a network of websites that attract and drive traffic to generate "views" for advertisers. In the circumstances of this case, one of Valnet's techniques to generate these views was to use the Photographs without authorization and without paying a license fee.

Background

7. Annie Leibovitz is a renowned American photographer, having photographed some of the most famous personalities in the world, including iconic and timeless images of Queen Elizabeth

II, John Lennon and Yoko Ono, Barack Obama and his family, and many, many more. Her illustrious career spans six decades. She was *Rolling Stone* magazine's chief photographer for 13 years, amassing 142 covers, and becoming the foremost rock music photographer. She worked for many years on the staff of *Vanity Fair* and *Vogue* magazines, photographing celebrities of the screen, fashion industry, politics, and business. She has won innumerable awards for her work, was made a *Commandeur of the Order des Arts et des Lettres* in France in 2006, and has been designated a Living Legend by the Library of Congress. Ms. Leibovitz's works have appeared in galleries and museums around the world.

8. Eric Ray Davidson is a well-known fashion photographer, based in Hollywood, California, who is able to find the perfect angle and method to capture pictures that make the subjects 'pop out' into life. He has photographed many A-list celebrities such as Angelina Jolie, the Jonas Brothers, Jared Leto, Vanessa Hudgens, and Tom Hiddleston. His works have been featured in the *New York Times*, *Harper's Bazaar*, *GQ*, *Vanity Fair*, *Esquire*, and many more.

9. Doug English is an American photographer known for his work as a celebrity and portrait photographer, having photographed celebrities such as Ryan Gosling, Pedro Pascal, Don Cheadle, Jessica Biel, Lady Gaga, and Minnie Driver. His work is known for its boldness and creativity that captures both beauty and emotion in each image he creates. His works have appeared in *Elle*, *Esquire*, *GQ*, *InStyle*, *The Hollywood Reporter*, and *Men's Health*, among others.

10. Known for his unique and creative approach to photography which often involves the use of bold colors and dramatic lighting, David Roemer is an American fashion photographer and has shot for some of the biggest names in fashion, including Karolina Kurkova, Angela Lindvall, and Eva Herzigova. His works have appeared in *Elle*, *Marie Claire*, *Vogue*, *Harper's Bazaar*, *GW*, and

many more. He has won numerous awards for his work including PDN's 30 Under 30 award in 2011.

11. Peggy Sirota is a well-known fashion, celebrity, and lifestyle photographer, having photographed many world-famous personalities. Her works have appeared in the pages and on the covers of *GQ*, *Vanity Fair*, *Rolling Stone*, *Esquire*, and many other publications. Her works have won numerous awards in the United States of America and around the world.

12. James White is a New York based fashion and celebrity photographer. His photographs have appeared in the pages of magazines all around the world including *GQ*, *Glamour*, *Vanity Fair*, *Marie Claire*, *Entertainment Weekly*, *Esquire*, *Flaunt*, *Elle*, and *Rolling Stone*. He has worked with A-list celebrities such as Nicole Kidman, Tom Cruise, Angelina Jolie, George Clooney, Charlize Theron, Jamie Foxx, Keira Knightley, Patrick Dempsey, Reese Witherspoon and many more. In 2005, he was named by American Photo as one of the top 100 influential people in photography.

13. Greg Lotus is a highly accomplished fashion and portrait photographer and has worked with some of the biggest names in the fashion and entertainment industries. Greg's striking, evocative, and memorable work showcases a style which combines an eye for detail and a passion for capturing the essence of his subjects. His works have been featured in *Harper's Bazaar*, *Vogue*, *GQ*, *W Magazine*, and *Vanity Fair*.

14. Robert Trachtenberg is a well-known fashion and celebrity photographer whose works have appeared in *The New York Times*, *Esquire*, *Vanity Fair*, *Entertainment Weekly*, and *InStyle*, among others. His works have been selected for many awards, including the American Photography Annual, Communications Arts, and American Photo Magazine's Images of the Year.

15. Ben Watts is an Australian/ British photographer based in New York City, well known for documenting urban youth culture. His works have appeared in *Elle*, *Vogue*, *Harper's Bazaar*, *Vibe*, and *Rolling Stone*, among other publications, and have been included in several group exhibitions in New York.

16. Marc Hom is a Danish photographer based in New York. Marc is one of the most influential portrait photographers in the world, renowned for having photographed iconic celebrities, including Cher, Aretha Franklin, Alexander McQueen, Faye Dunaway, Vanessa Redgrave, Glen Close, Christopher Walkin, Samuel L. Jackson and many more. He is a regular contributor to *Esquire*, *Entertainment Weekly*, and *Town & Country*.

17. Cliff Watts is an American fashion and celebrity portrait photographer, widely known for his ad campaigns for Coty, Hugo Boss, Revlon, and Armani. He has photographed many celebrities including Julia Roberts, Cate Blanchett, Angelina Jolie, Adele, Bradley Cooper, Beyoncé, and Scarlett Johansson.

18. Each of the Photographers is a well-known, award-winning, and sought-after artist and professional. Their works include portraits of some of the most famous personalities in the world, have appeared on the covers and pages of some of the most widely-circulated magazines and other publications, and have been displayed in galleries and museums around the world. These works are accessible on their respective websites, as well as on their personal social media accounts, and in publications (in print and on the Internet) owned by licensees to whom the Photographers have licensed the authority to display their photographs.

19. Because of their prestige and credentials, the works of the Photographers command premium prices in the licensing market, for advertising and editorial purposes.

20. Whenever and wherever their works appear online or elsewhere, notices appear identifying the respective Photographer and indicate that he or she owns the copyright or has reserved all rights associated with the content of the website. Each of the Photographers own copyright and all related and affiliated rights in their respective works, including the Photographs, by virtue of having created them and never having sold or assigned any rights to them, save for any licenses referred to in this Statement of Claim.

21. The Photographers are the sole and exclusive owners of their respective Photographs, together with all associated moral rights, and have made no assignment or waiver of any such rights, save for the right to bring the claims herein.

22. The Photographers have each expended significant time, money and effort to develop their photography practice and promote their respective original works, including the Photographs, as well as to prevent their unauthorized exploitation by others. They are each exclusively entitled to license the use of their respective Photographs.

The Defendant's Infringing Activities

23. Valnet is the owner and operator of several websites (collectively, the “**Websites**”), including CBR (www.cbr.com), Collider (www.collider.com), Screenrant (www.screenrant.com), The Quiz (www.thequiz.com), Movieweb (www.movieweb.com), and Topspeed (www.topspeed.com). On its corporate website, Valnet describes itself as “The World’s Greatest Media Investment Company” and boasts of the number of daily visits to its websites and of the number of video and social media subscribers its various properties have.

24. The primary business purpose of Valnet is to generate advertising revenue, which in this case involves appropriating the Photographs (without a license, permission or authorization and

without compensating the Photographers), to leverage the talent, creativity, and reputations of the Photographers in order to drive traffic to the Websites, thereby generating advertising revenue for Valnet. This practice is commonly known as ‘click-baiting’. The Photographers’ work, in this context, is the ‘bait’.

25. On a date known to Valnet, and not known to the Photographers or to Great Bowery, Valnet reproduced at least 73 of the Photographs on the Websites without permission, license, or authorization of any kind (collectively, the “**Infringing Images**”). The Infringing Images appear in **Schedule B** to this Statement of Claim. The URLs for the Infringing Images, indicating the location where each is stored or displayed by Valnet, are also detailed in **Schedule B**.

26. Valnet was notified of these copyright infringements, but has not responded.

27. Despite repeated notification of infringement and demands that Valnet cease infringing the Photographers’ copyrights, Valnet appears to be increasing the number of Infringing Images used as clickbait on the Websites rather than reducing the number of them. The full nature and extent of Valnet’s infringing activities is known only to Valnet. Great Bowery reserves its rights to amend this pleading to add further acts of infringement by Valnet, including infringements of additional works of the Photographers.

28. The Infringing Images are direct copies of the Photographs. The Infringing Images were deliberately copied from the Photographers’ websites or social media pages or from an authorized licensee’s website, and used by Valnet for commercial gain. In doing so, Valnet has wrongfully misappropriated the Photographs for its own economic gain.

29. The Photographers do not know the full extent of Valnet's misuse of the Photographs, but it has been ongoing since at least September 2022, on the Websites. The full use of the Photographs is within Valnet's knowledge.

30. Neither Great Bowery, nor the Photographers, have provided Valnet with authorization, license, or permission of any kind to reproduce the Photographs.

31. Valnet has been notified in writing of its wrongful misappropriation and misuse of the Photographs but has failed or neglected to stop using them and/or obtain a license to use them.

Copyright Infringement

32. Under section 3(1) of the Act, the Photographers have the sole and exclusive right to produce or reproduce each Photograph, or any substantial part thereof, in any material form whatsoever.

33. Section 3(1) of the Act additionally reserves to the Photographers the sole and exclusive right, as copyright owners, to exhibit or display their respective Photographs publicly, make copies of the Photographs available to the public and communicate the Photographs to the public by way of telecommunication, as well as the sole right to authorize such acts.

34. The Infringing Images posted to the Websites are readily accessible. They are unauthorized reproductions of the Photographs. The Infringing Images infringe on the Photographers' exclusive right to make copies of the Photographs available to the public and the right to communicate the Photographs to the public by way of telecommunication.

35. Valnet's blatant misappropriation of the Photographs to promote its business without the Photographers' permission has denied them the ability to control how their work is licensed and

displayed to the public. This greatly diminishes the value of the Photographers' respective work and names, and adversely impacts their reputations as photographers.

36. Valnet's unauthorized activities in relation to the Photographs has caused the Photographers to suffer damage. Valnet has unjustly profited and will continue to profit to the Photographers' detriment unless restrained.

Moral Rights

37. Section 14.1 of the Act confers on the Photographers moral rights to the Photographs' integrity and the right to be associated (or not to be associated) with the Photographs by name. Any actions taken in contravention of these moral rights, and/ or without the Photographers' permission, constitutes an infringement.

38. The Photographers have never waived any of their moral rights in the Photographs, either wholly or in part, from when they were created.

39. The Infringing Images all lack proper, or any, attribution. The Photographers are not recognized as the original authors of the Photographs. These acts deprive the Photographers of their moral rights under section 14.1 of the Act to be associated with the Photographs by name as the author, which causes damage to their reputation as a photographers.

40. Further, section 28.2(1) of the Act specifies that an author's moral rights are infringed by:
(a) any distortion, mutilation or other modification of a work; or (b) any use of a work in association with a product, service, cause or institution. In both cases the results are prejudice to the author's honour and/or reputation.

41. Valnet's exploitation of the Photographs to promote the content on the Websites and to draw audiences for their advertisers is to associate the Photographs with a product, service, cause or institution without the Photographers' permission. As the Photographers at no point agreed to commercially license their work to Valnet, this wrongful exploitation of the Photographs to advance Valnet's own commercial interests deprives the Photographers of control over their own work and threatens to damage their reputation as a photographers.

42. Valnet has, in the process, also distorted and mutilated the Photographs through their various modifications including, but not limited to, cropping, resizing, mixing images, and/or overlaying of text such as in the following examples:



Only A Real Mother Can Pass This Breastfeeding Quiz

by Danielle Lasher – on Sep 29th in Lifestyle

1.1K
SHARES



43. Valnet’s modifications fundamentally alter the aesthetic qualities of the Photographs and impugn the Photographers’ integrity and reputations as photographers.

44. Not only has Valnet failed to provide the Photographers with proper attribution of their Photographs, but it is actively infringing on their moral rights to the integrity of their Photographs. Valnet has caused considerable and ongoing damage to the Photographers’ reputations as photographers.

Aggravated, Punitive and/or Exemplary Damages, and Injunctive Relief

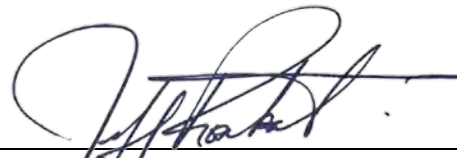
45. Valnet’s blatant and calculated disregard for the Photographers’ copyright and moral rights in the Photographs is high-handed and outrageous conduct, in bad faith. Valnet is aware that it is infringing the Photographers’ copyright and moral rights, and cannot use the Infringing Images without a license, but it continues to infringe the Photographers’ rights. Valnet deserves this Court’s censure by an award of aggravated, punitive and/or exemplary damages.

46. By reason of Valnet's wrongful activities, as pleaded above, Valnet has made and will continue to make a profit, while the Photographers have suffered and will continue to suffer damages. Valnet will continue the activities complained of unless restrained.

47. The Plaintiff pleads and relies upon at least sections 3(1), 5(1), 14.1, 27(1), 28.1, 28.2, 34, 35(1), 38(1) and 38.1 of the Act.

48. The Plaintiff proposes that this action be tried at Toronto, Ontario.

June 24, 2024



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Email: pbain@dickinsonwright.com
Tel: (416) 646-8364

Lawyers for the Plaintiff

Schedule A – The Photographs

Annie Leibovitz - Original Works

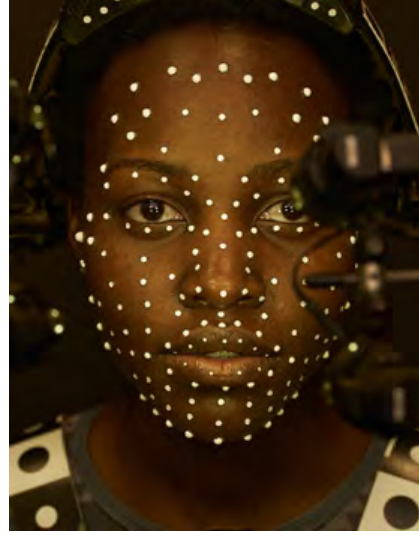
1.1



1.2



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Annie Leibovitz - Original Works

1.8



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1.10



1.11



1.12



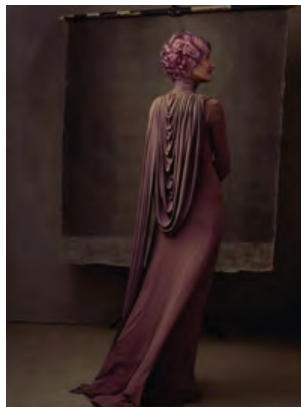
1.13



1.14



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Annie Leibovitz - Original Works

1.18



1.19



1.20



1.21



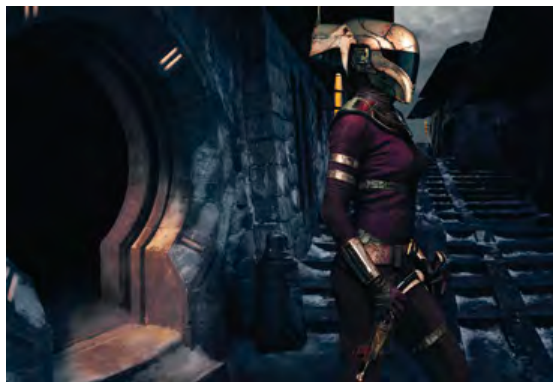
1.22



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Annie Leibovitz - Original Works

1.27



1.28



1.29



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1.31



1.32



1.33



1.34



Annie Leibovitz - Original Works

1.35



1.36



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1.38



David Roemer - Original Works

2.1



2.2



2.3



2.4



2.5



2.6



2.7



3.1



4.1



5.1



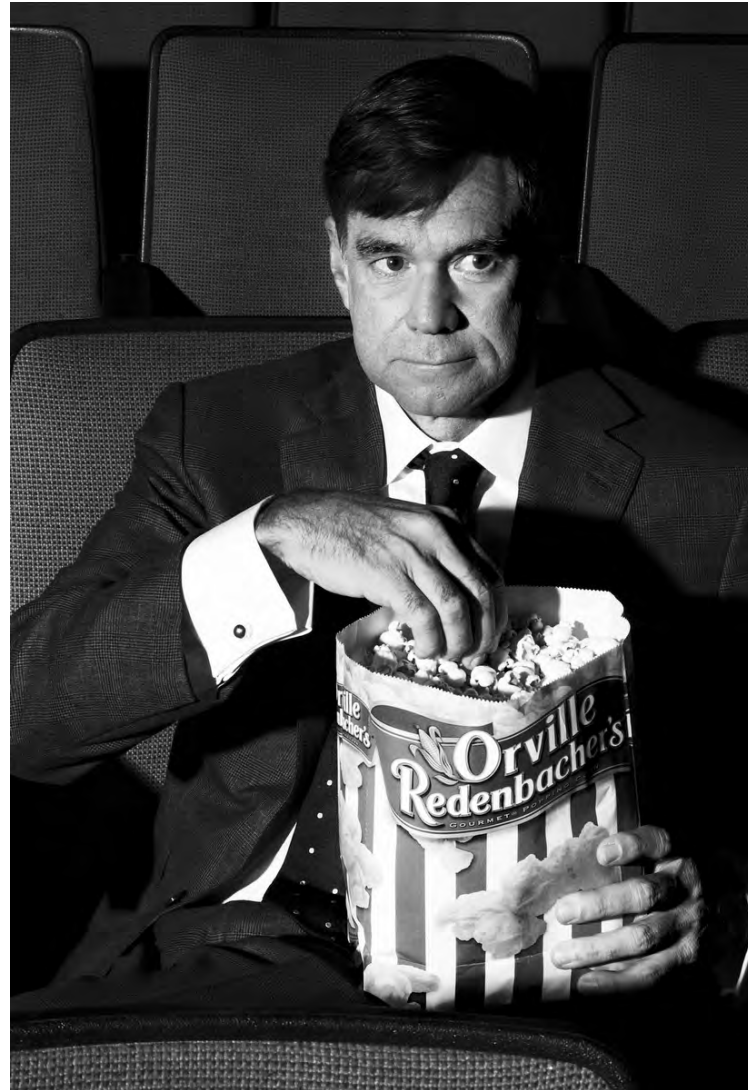
5.2



6.1



7.1



8.1



8.2



8.3



8.4



9.1



Mark Hom - Original Works

10.1



10.2



10.3



10.4



10.5



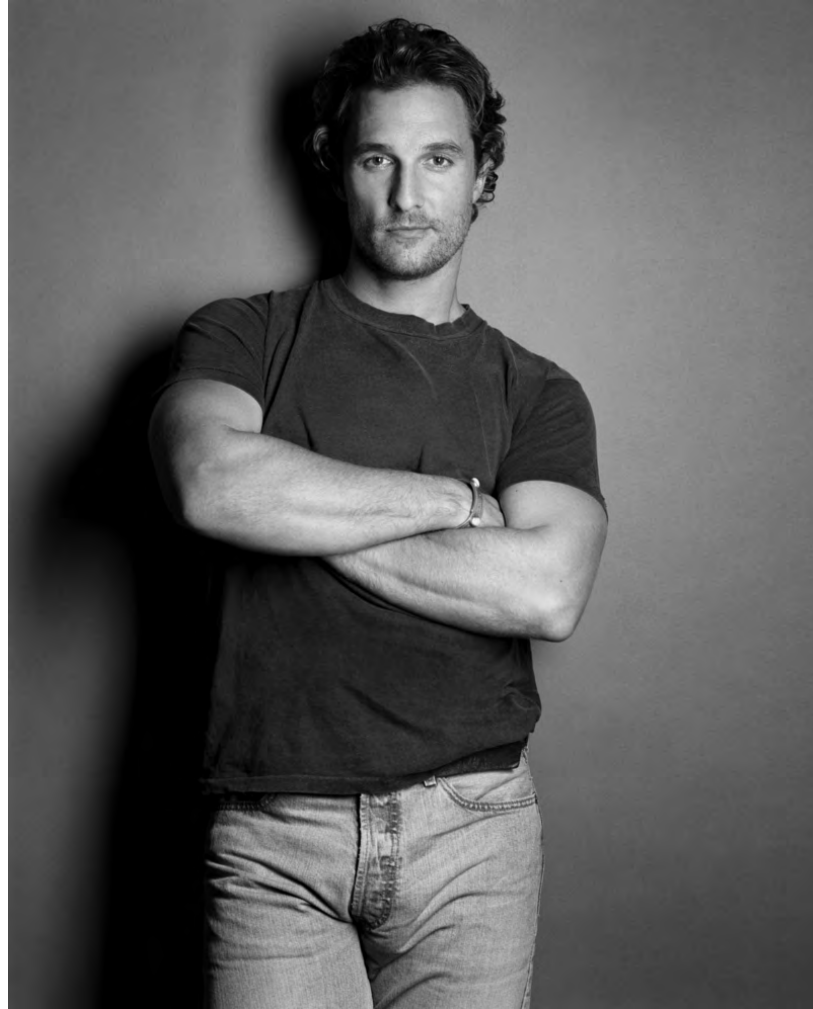
10.6



10.7



11.1



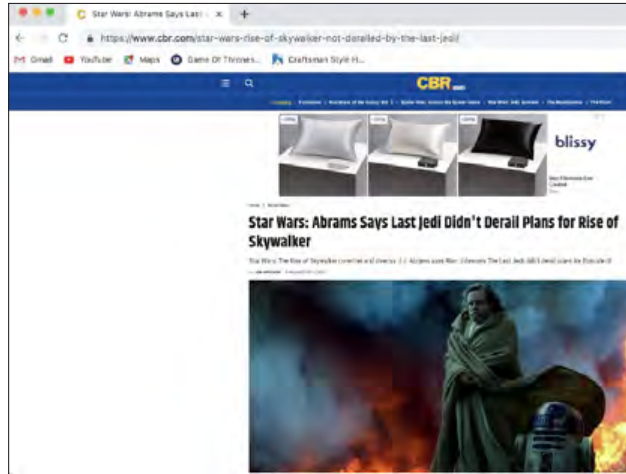
Schedule B – The Infringing Images

Schedule B - CBR
Artist: Annie Leibovitz

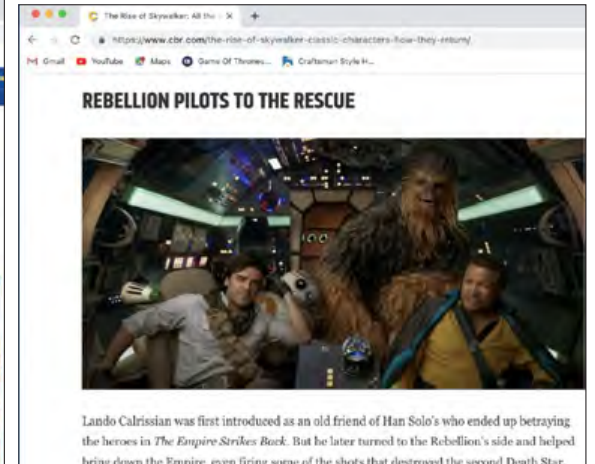
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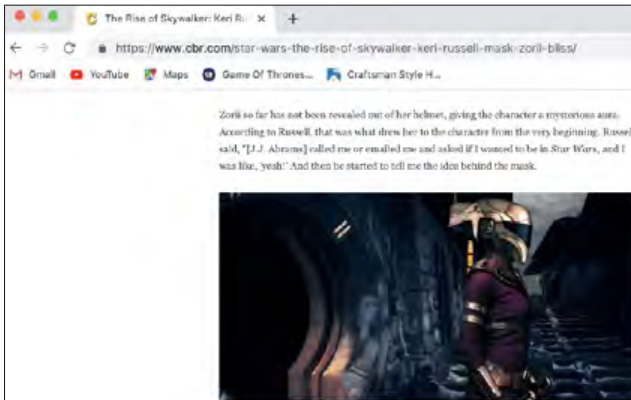
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1.26



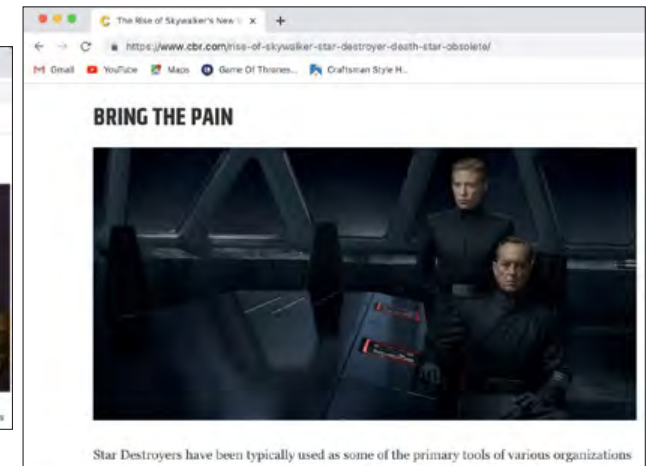
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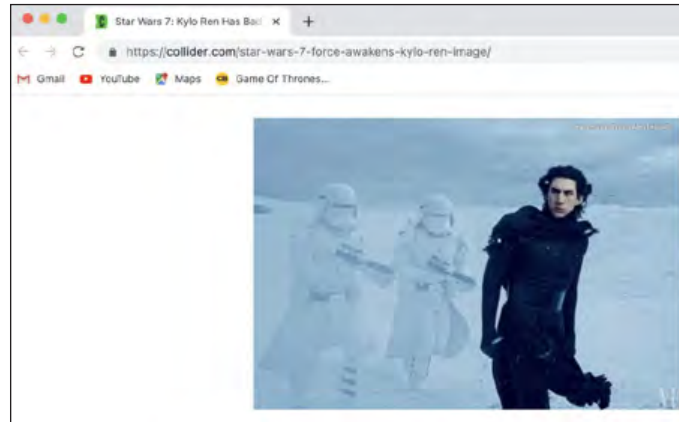


Schedule B - Collider Artist: Annie Leibovitz

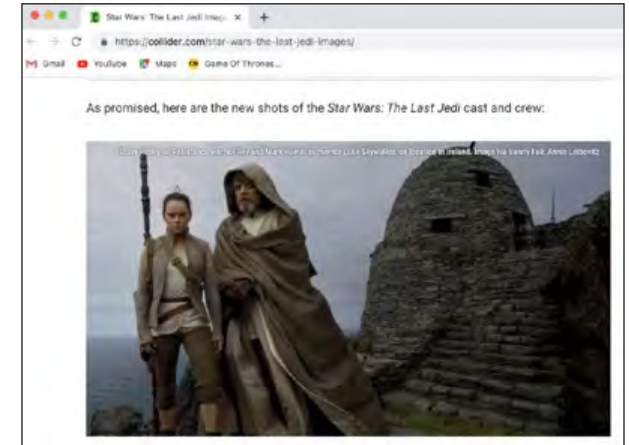
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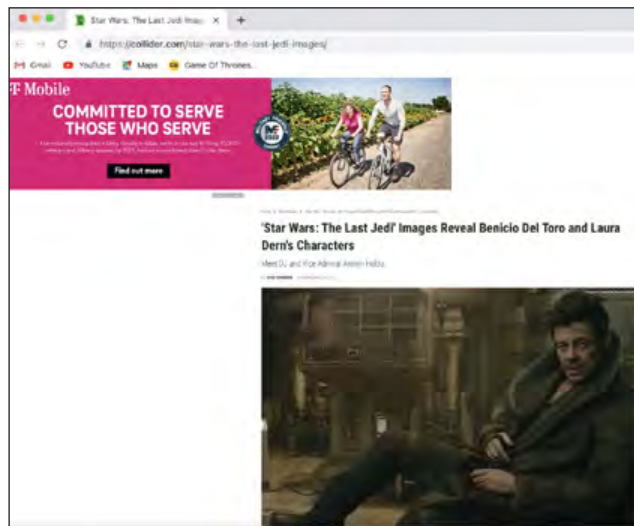
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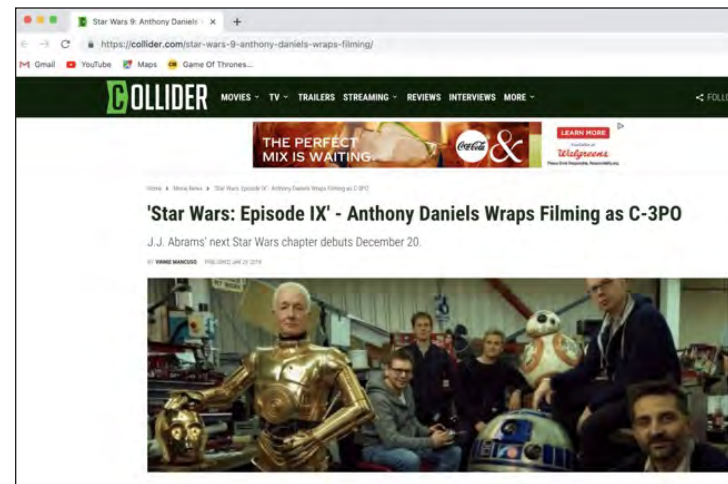
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1.16

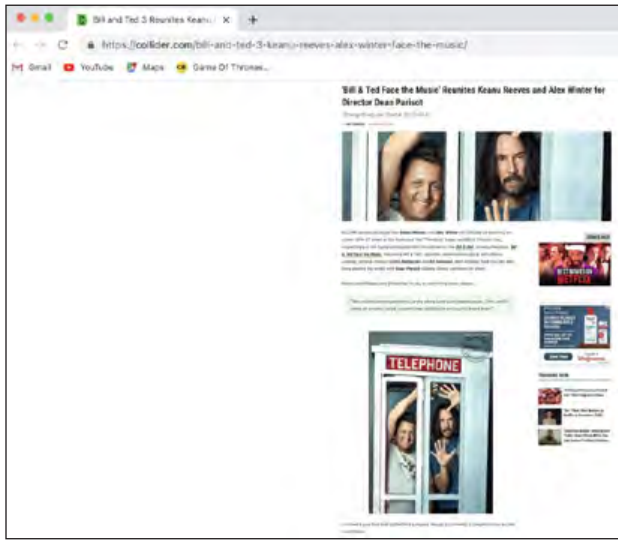


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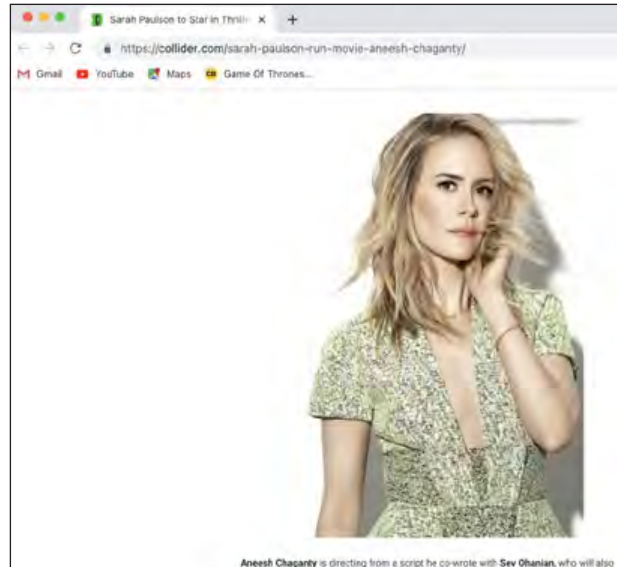


Schedule B - Collider

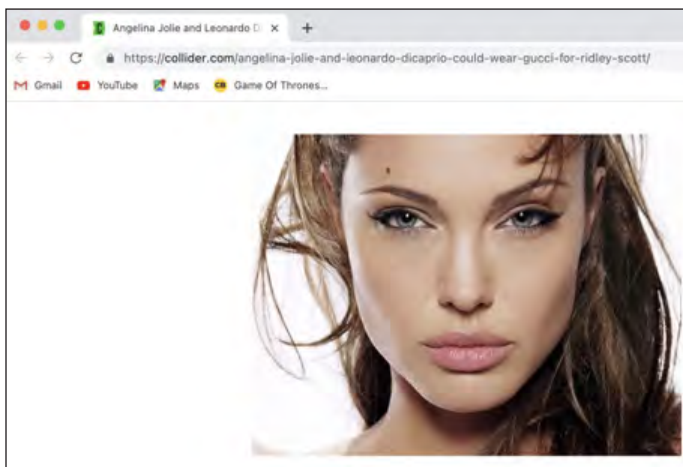
Peggy Sirota 3.1



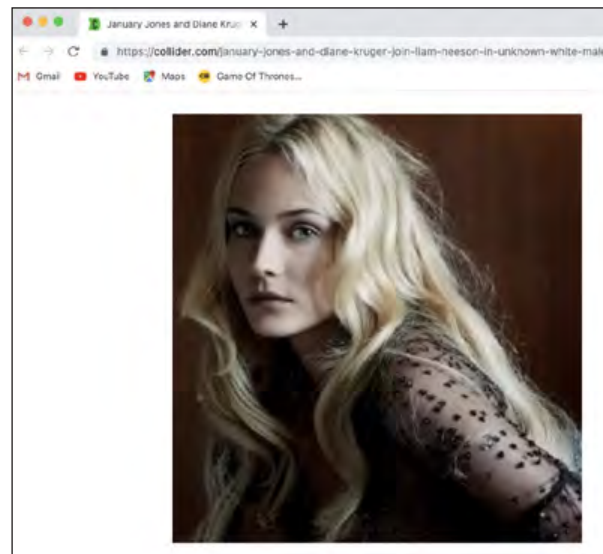
Doug English 4.1



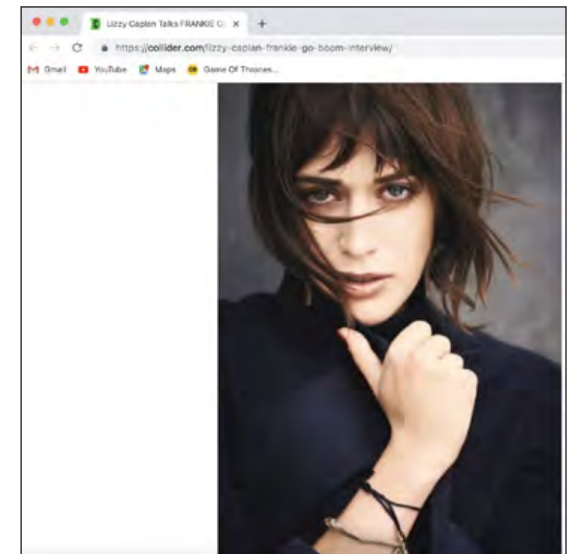
James White 5.1



James White 5.2

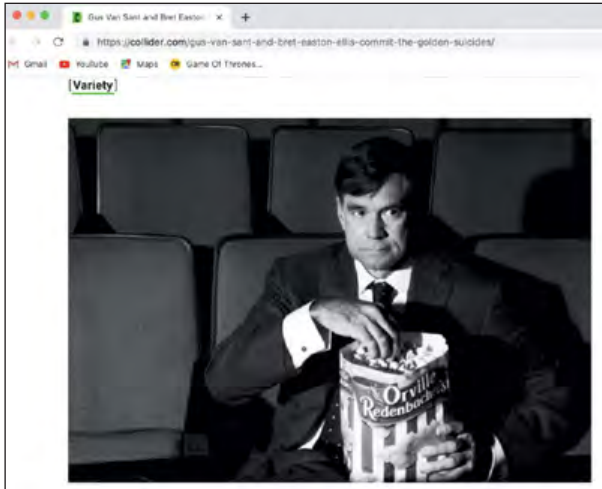


Eric Ray Davidson 6.1

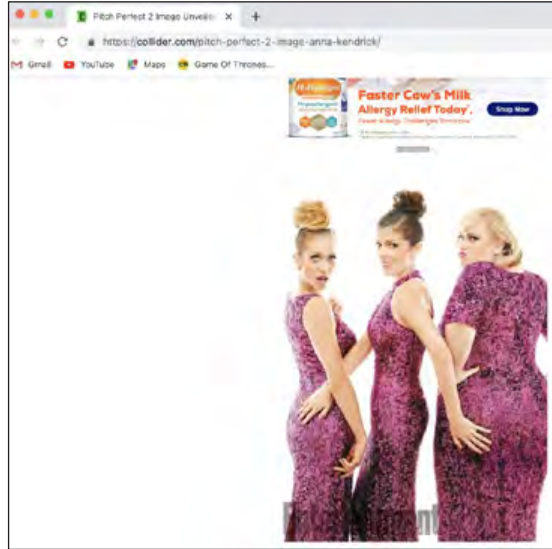


Schedule B - Collider

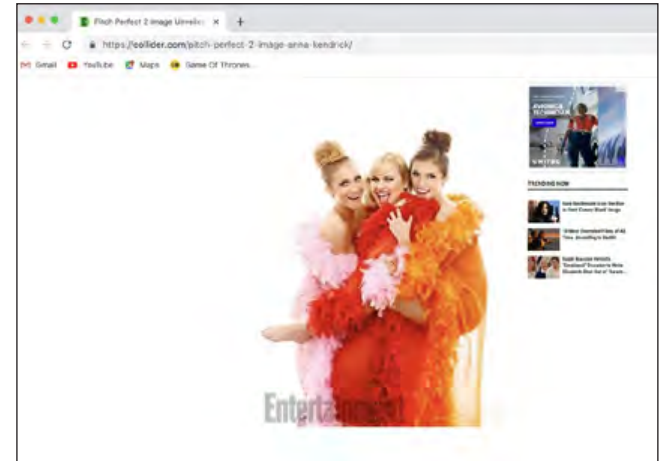
Greg Lotus 7.1



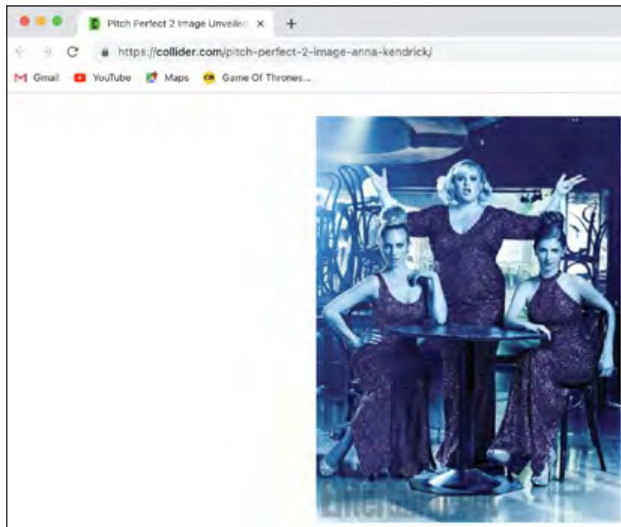
Robert Trachtenberg 8.1



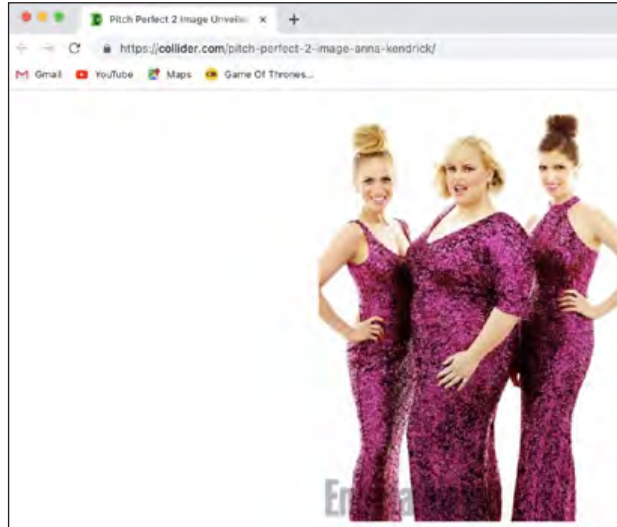
Robert Trachtenberg 8.2



Robert Trachtenberg 8.4



Robert Trachtenberg 8.3



Ben Watts 9.1



Schedule B - Screenrant Annie Leibovitz

1.9



1.16



1.5



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Schedule B - Screenrant Annie Leibovitz

1.18



1.18



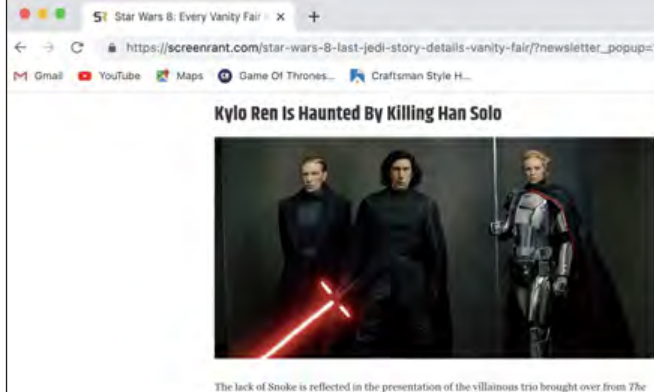
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1.8



1.8



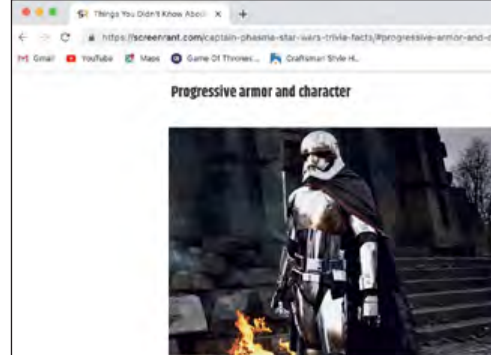
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Schedule B - Screenrant Annie Leibovitz

1.10



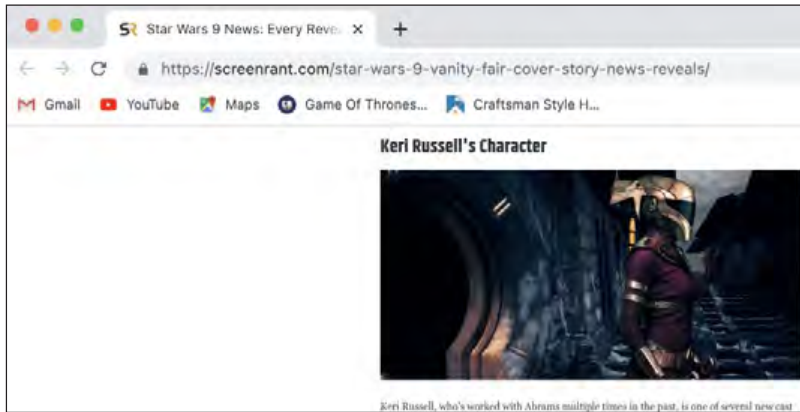
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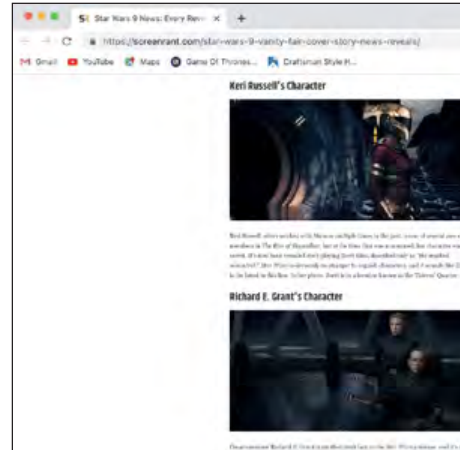
1.21



1.24



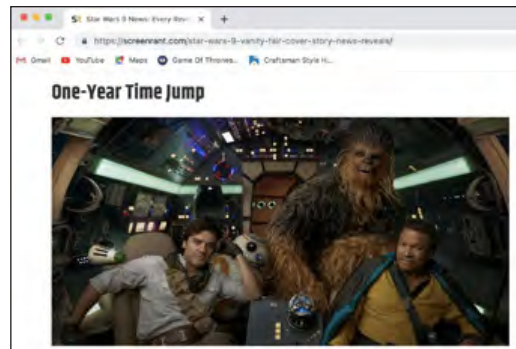
1.24, 1.25



1.21, 1.22



1.26

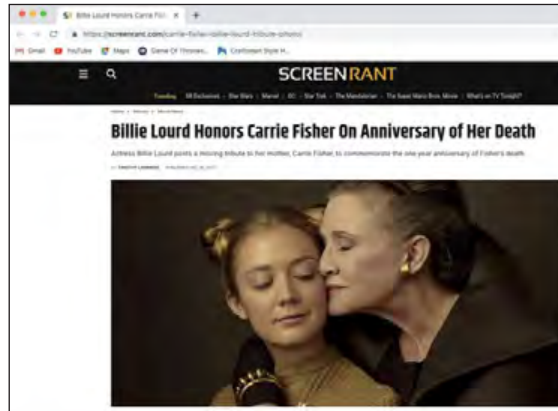


Schedule B - Screenrant Annie Leibovitz

1.27



1.14



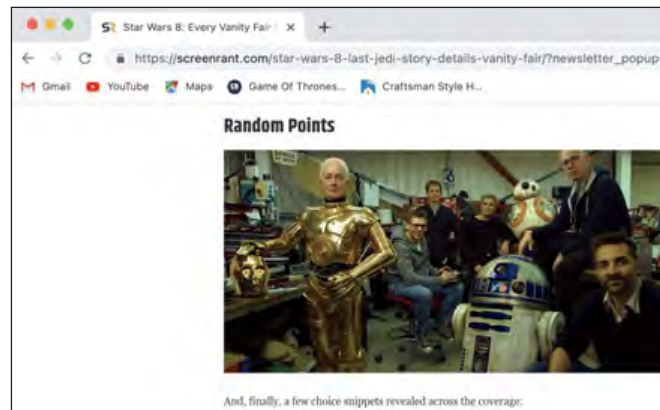
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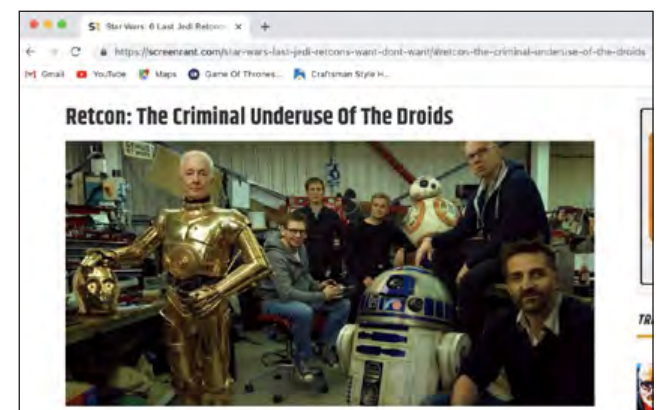
1.11



1.7

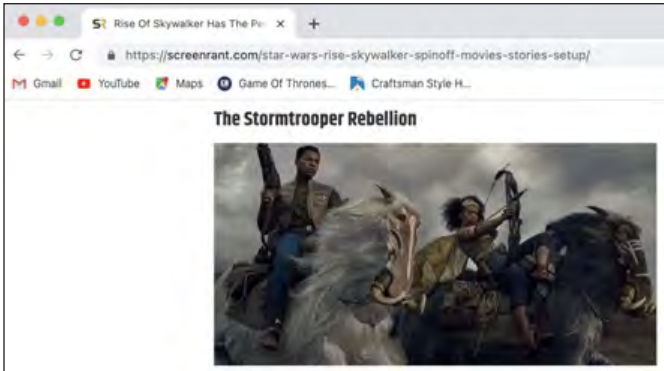


1.7



Schedule B - Screenrant Annie Leibovitz

1.23



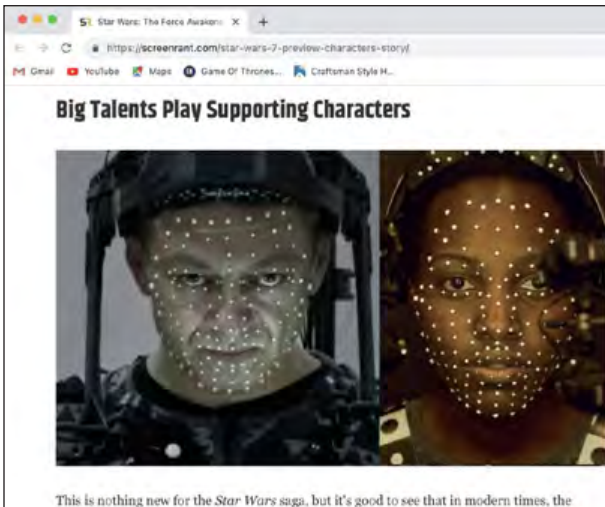
1.23



1.13



1.3



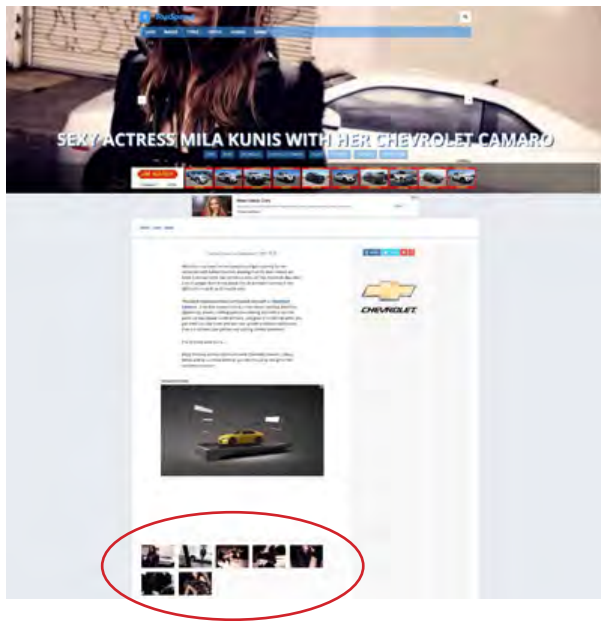
1.17



1.35



Schedule B - TopSpeed
David Roemer



2.2



2.3



2.4



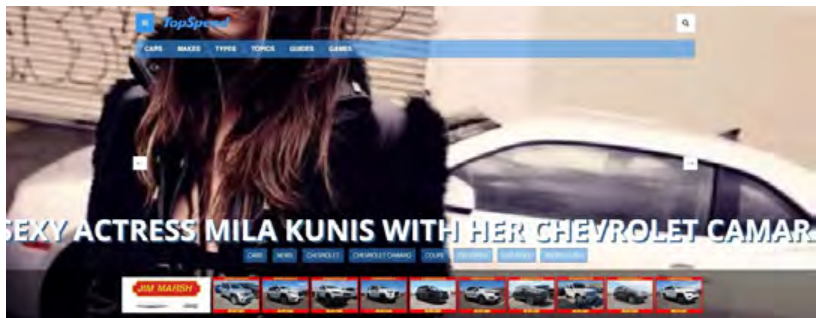
2.5



2.6



2.1



2.1

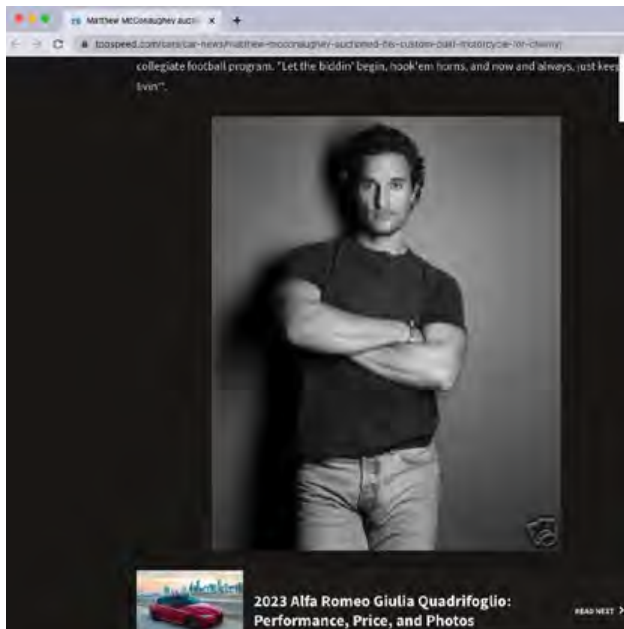


2.7

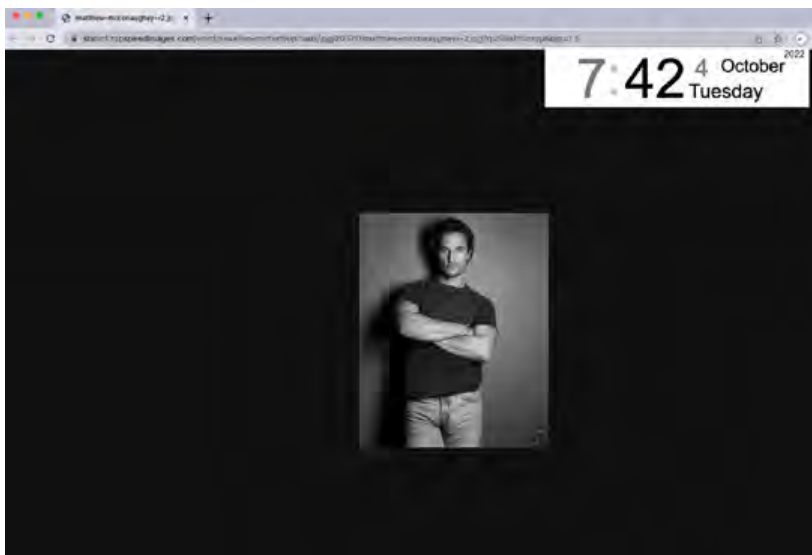


Schedule B - TopSpeed Cliff Watts

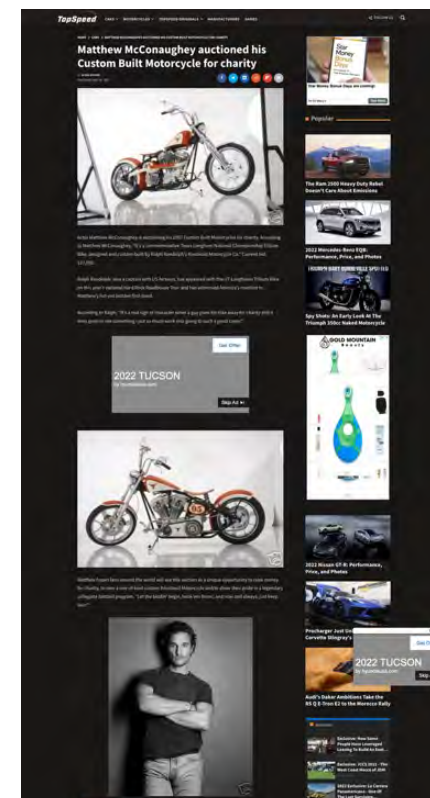
11.1



11.1



11.1



Schedule B - Screenrant Marc Hom

10.1



10.2



10.3



10.6



10.7



10.5



10.4



Schedule B - Screenrant
Annie Leibovitz

1.36



1.36



1.36 1.37



1.36



1.36 1.37



1.36



1.36



1.36



1.36



Schedule B - Screenrant Annie Leibovitz

1.36



1.36



1.36



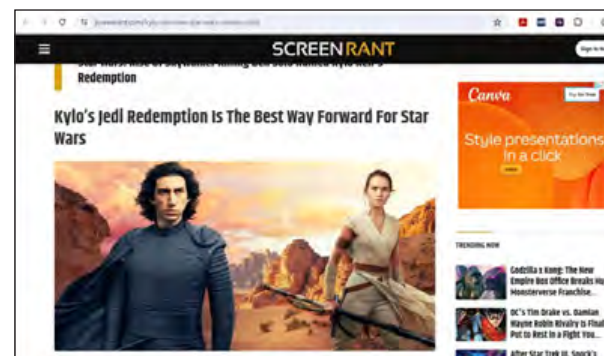
1.36 1.37



1.36 1.37



1.36 1.37



1.36 1.37



1.37



1.37



Schedule B - Screenrant Annie Leibovitz

1.37 1.31



1.37



1.36 1.37



1.30



1.30



1.32



1.32



1.32



1.38



Schedule B - Screenrant Annie Leibovitz

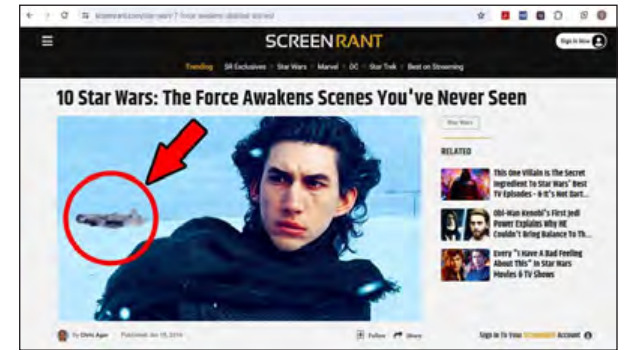
1.38



1.8



1.29



1.31



1.31



1.9



1.9



1.9



1.9



1.9, 1.36, 1.37



1.29



1.5



1.11



1.13



1.29



1.36



1.29



1.8



1.36, 1.37



1.29



1.8



1.36, 1.37



1.29



1.37



1.16



1.4



1.15



1.27



1.30



1.36, 1.37



1.27



1.26



1.36, 1.37



1.27



1.24



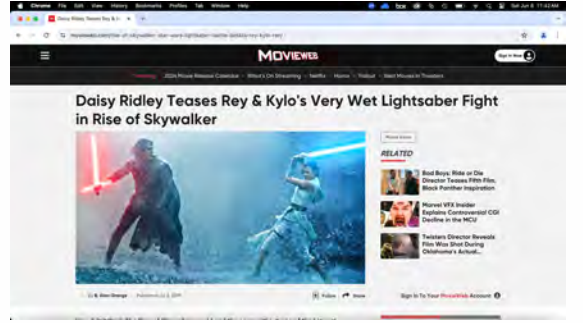
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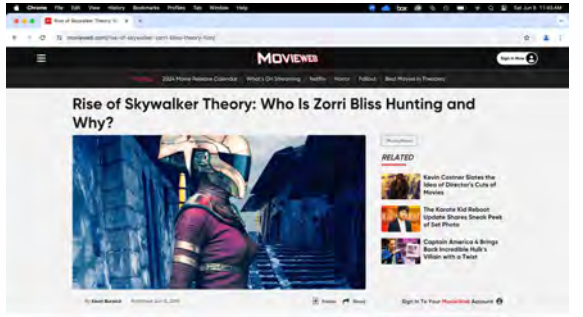
1.37



1.31



1.24



1.8



1.21



1.26



1.24, 1.62, 1.31, 1.23, 1.20, 1.25



1.11



1.32



1.31



1.6



1.13



1.29



1.11



1.13



1.33



Court File No.

FEDERAL COURT

GREAT BOWERY INC. d/b/a “Trunk
Archive”, as Assignee

Plaintiffs

-and-

VALNET INC.

Defendant

STATEMENT OF CLAIM

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