

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT INDIANA

FILED

FEB 05 2013

U.S. CLERK'S OFFICE
INDIANAPOLIS, INDIANA

MALIBU MEDIA, LLC,
409 W. Olympic Blvd., Suite 501,
Los Angeles, CA 90051,

Plaintiff,

v.

JOHN DOE subscriber assigned IP address
98.222.184.69,

Defendant.

Civil Action Case No.

1:13-cv-0205 WTL-DML

**COMPLAINT-ACTION FOR DAMAGES FOR
PROPERTY RIGHTS INFRINGEMENT**

Plaintiff, Malibu Media, LLC, sues Defendant John Doe subscriber assigned IP address
98.222.184.69, and alleges:

Introduction

1. This matter arises under the United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 et seq. (the "Copyright Act").
2. Defendant is a persistent online infringer of Plaintiff's copyrights. Indeed, Defendant's IP address as set forth on Exhibit A was used to illegally distribute each of the copyrighted movies set forth on Exhibit B.
3. Plaintiff is the registered owner of the copyrights set forth on Exhibit B (the "Copyrights-in-Suit.")

Jurisdiction And Venue

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338 (patents, copyrights, trademarks and unfair competition).

5. The Defendant's acts of copyright infringement occurred using an Internet Protocol address ("IP address") traced to a physical address located within this District, and therefore this Court has personal jurisdiction over the Defendant because (a) Defendant committed the tortious conduct alleged in this Complaint in this State, and (i) Defendant resides in this State and/or (ii) Defendant has engaged in substantial and not isolated business activity in this State.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c), because: (i) a substantial part of the events or omissions giving rise to the claims occurred in this District; and, (ii) the Defendant resides (and therefore can be found) in this District and resides in this State; additionally, venue is proper in this District pursuant 28 U.S.C. § 1400(a) (venue for copyright cases) because each Defendant or Defendant's agent resides or may be found in this District.

Parties

7. Plaintiff, Malibu Media, LLC, is a limited liability company organized and existing under the laws of the State of California and has its principal place of business located at 409 W. Olympic Blvd., Suite 501, Los Angeles, CA, 90015.

8. Plaintiff only knows Defendant by his, her or its IP Address. Defendant's IP address is set forth on Exhibit A.

9. Defendant's Internet Service Provider can identify the Defendant.

Factual Background

I. *Defendant Used the BitTorrent File Distribution Network To Infringe Plaintiff's Copyrights*

10. The BitTorrent file distribution network ("BitTorrent") is one of the most common peer-to-peer file sharing venues used for distributing large amounts of data, including, but not limited to, digital movie files.

11. BitTorrent's popularity stems from the ability of users to directly interact with each other in order to distribute a large file without creating a heavy load on any individual source computer and/or network. The methodology of BitTorrent allows users to interact directly with each other, thus avoiding the need for intermediary host websites which are subject to DMCA take down notices and potential regulatory enforcement actions.

12. In order to distribute a large file, the BitTorrent protocol breaks a file into many small pieces called bits. Users then exchange these small bits amongst each other instead of attempting to distribute a much larger digital file.

13. After the infringer receives all of the bits of a digital media file, the infringer's BitTorrent client software reassembles the bits so that the file may be opened and utilized.

14. Each bit of a BitTorrent file is assigned a unique cryptographic hash value.

15. The cryptographic hash value of the bit ("bit hash") acts as that bit's unique digital fingerprint. Every digital file has one single possible cryptographic hash value correlating to it. The BitTorrent protocol utilizes cryptographic hash values to ensure each bit is properly routed amongst BitTorrent users as they engage in file sharing.

16. The entirety of the digital media file also has a unique cryptographic hash value ("file hash"), which acts as a digital fingerprint identifying the digital media file (e.g. a

movie). Once infringers complete downloading all bits which comprise a digital media file, the BitTorrent software uses the file hash to determine that the file is complete and accurate.

17. Plaintiff's investigator, IPP Limited, established a direct TCP/IP connection with the Defendant's IP address as set forth on Exhibit A.

18. IPP Limited downloaded from Defendant one or more bits of each of the digital movie files identified by the file hashes on Exhibit A.

19. Each of the cryptographic file hashes as set forth on Exhibit A correlates to copyrighted movies owned by Plaintiff as identified on Exhibit B.

20. IPP Limited downloaded from Defendant one of more bits of each file has listed in Exhibit A. IPP Limited further downloaded a full copy of each file hash from the BitTorrent file distribution network and confirmed through independent calculation that the file hash matched what is listed on Exhibit A. IPP Limited then verified that the digital media file correlating to each file hash listed on Exhibit A contained a copy of a movie which is identical (or alternatively, strikingly similar or substantially similar) to the movie associated with that file hash on Exhibit A. At no time did IPP Limited upload Plaintiff's copyrighted content to any other BitTorrent user.

21. IPP Limited downloaded from Defendant one or more bits of each digital media file as identified by its hash value on Exhibit A. The most recent TCP/IP connection between IPP and the Defendant's IP address for each file hash listed on Exhibit A is included within the column labeled Hit Date UTC. UTC refers to Universal Time which is utilized for air traffic control as well as computer forensic purposes.

22. An overview of the Copyrights-in-Suit, including each hit date, date of first publication, registration date, and registration number issued by the United States Copyright Office is set forth on Exhibit B.

23. IPP Limited has also engaged in enhanced surveillance of other digital media files being distributed by Defendant. The results of this more intensive surveillance are outlined in Exhibit C. The Copyrights-in-Suit are solely limited to content owned by Plaintiff as outlined in Exhibit B. Exhibit C is provided for evidentiary purposes only.

24. As the subscriber in control of the IP address being used to distribute Plaintiff's copyrighted movies, Defendant is the most likely infringer. Consequently, Plaintiff hereby alleges Defendant is the infringer. Plaintiff has included as Exhibit D a solicitation of exculpatory evidence in the event that Defendant chooses to deny the allegations.

25. Defendant is the only person who can be identified as the infringer at this time.

Miscellaneous

26. All conditions precedent to bringing this action have occurred or been waived.

27. Plaintiff has retained counsel and is obligated to pay said counsel a reasonable fee for its services.

COUNT I
Direct Infringement Against Defendant

28. The allegations contained in paragraphs 1-27 are hereby re-alleged as if fully set forth herein.

29. Plaintiff is the owner of the Copyrights-in-Suit, as outlined in Exhibit B, each of which covers an original work of authorship.

30. By using BitTorrent, Defendant copied and distributed the constituent elements of each of the original works covered by the Copyrights-in-Suit.

31. Plaintiff did not authorize, permit or consent to Defendant's distribution of its works.

32. As a result of the foregoing, Defendant violated Plaintiff's exclusive right to:

(A) Reproduce the works in copies, in violation of 17 U.S.C. §§ 106(1) and 501;

(B) Redistribute copies of the works to the public by sale or other transfer of ownership, or by rental, lease or lending, in violation of 17 U.S.C. §§ 106(3) and 501;

(C) Perform the copyrighted works, in violation of 17 U.S.C. §§ 106(4) and 501, by showing the works' images in any sequence and/or by making the sounds accompanying the works audible and transmitting said performance of the works, by means of a device or process, to members of the public capable of receiving the display (as set forth in 17 U.S.C. § 101's definitions of "perform" and "publically" perform); and

(D) Display the copyrighted works, in violation of 17 U.S.C. §§ 106(5) and 501, by showing individual images of the works nonsequentially and transmitting said display of the works by means of a device or process to members of the public capable of receiving the display (as set forth in 17 U.S.C. § 101's definition of "publically" display).

33. Defendant's infringements were committed "willfully" within the meaning of 17 U.S.C. § 504(c)(2).

WHEREFORE, Plaintiff respectfully requests that the Court:

(A) Permanently enjoin Defendant and all other persons who are in active concert or participation with Defendant from continuing to infringe Plaintiff's copyrighted works;

(B) Order that Defendant delete and permanently remove the digital media files relating to Plaintiff's works from each of the computers under Defendant's possession, custody or control;

(C) Order that Defendant delete and permanently remove the infringing copies of the works Defendant has on computers under Defendant's possession, custody or control;

(D) Award Plaintiff statutory damages in the amount of \$150,000 per infringed Work pursuant to 17 U.S.C. § 504-(a) and (c);

(E) Award Plaintiff its reasonable attorneys' fees and costs pursuant to 17 U.S.C. § 505; and

(F) Grant Plaintiff any other and further relief this Court deems just and proper.

DEMAND FOR A JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

NICOLETTI & ASSOCIATES, PLLC

By: /s/ Paul J. Nicoletti
Paul J. Nicoletti, Esq. (P44419)
36880 Woodward Ave, Suite 100
Bloomfield Hills, MI 48304
Tel: (248) 203-7800
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Email: paul@nicoletti-associates.com
Attorneys for Plaintiff

File Hashes for IP Address 98.222.184.69

ISP: Comcast Cable

Physical Location: Greenwood, IN

Hit Date UTC	File Hash	Title
01/16/2013 03:04:14	0CE92EF780541EB7BFFD89D9ED528733B3D83B16	Want You
01/13/2013 17:47:53	A3D2E44E922CAF5F39268A88B58B47905B81AD19	Warm Inside
01/13/2013 00:38:12	BA23078533CCBE4BCF265D99A9E6DE3420120683	One Night Stand
01/13/2013 00:36:10	F7F3D256F23771D0AF985F28EB99B14553ED4960	Farewell
01/13/2013 00:21:13	1A7FE45AE2A0134A89C86BF3217DD14416BAB13A	Yoga in the Sky
12/29/2012 04:42:50	F36AC8C992E233BF0F5FE5860CB8757BC91074B8	Together Again
12/24/2012 03:36:06	227835892F01B19339F1599D5EEC92D2CA969779	A Girls Fantasy
12/09/2012 21:30:29	41EC762EA3071C2E54E80F7FA4B4B4412E50E1BD	Then They Were Three
11/01/2012 02:36:34	780DF38C30647D65D3723D782F02A9BD70ADE51B	Starting Over
10/23/2012 23:35:51	FD81A065799EBC23DAF22C8D3E3CD35DFA2E2268	A Day to Remember
10/17/2012 23:00:23	BCACC3C596F61D418DCFD40F511DF324A5C658C5	Daydream
09/24/2012 23:33:42	D4910A575283A5F7686A90F4DEF9B48E85D33E71	Three for the Show
09/21/2012 02:23:22	34AA020D4C78AD23E1A741888887DBB6061C87DB	Underwater Lover
09/07/2012 21:47:45	00E5D4B576D02733BB1E8233FD9F67F3A2B48583	House of the Rising Sun
09/01/2012 19:43:55	1814B177454C751B49FA72FB1B790D4F638B84D8	Side by Side
08/15/2012 01:37:57	1C04978A2E1C92AF54502D9CB1C7A9287C0E8CFD	Coucher Avec une Autre Fille
07/30/2012 19:06:18	D598B4179311BC3A783D70C85158FD044D96D003	Transcendence
06/26/2012 00:22:41	DE41AABB792C7386CC050F45B3A8575EAC514155	Foot Fetish
06/24/2012 16:14:05	C3043E805840C8E4064912551FA173BA6E58C3F5	Stay With Me
06/08/2012 14:02:57	7376B16D5E78C06B5C6A1C06B7953E57081BEBDE	Lovers in Paradise
06/08/2012 13:28:04	BDA2C6D3A377FDBAEB81B7E663DD8D0D6A0E10AC	Constance Aaron X-Art on TV
06/05/2012 05:46:13	EA1E6AE4D6A32559A46D2005846FD8C3120A6A21	LA Love

EXHIBIT A

SIN20

Hit Date UTC	File Hash	Title
06/03/2012 12:59:43	21629FC4676869D8336961DB2AE8F2EC14770F19	Sneak N Peek
05/14/2012 22:10:33	305261E178F1D06CC77BB429C957E8355939307D	Silver Bullets
05/09/2012 23:46:20	ECC49510C0B61C4F92EFCB62AD1A48994B8A88CF	Pretty Back Door Baby
03/06/2012 00:25:02	199359CF876F2084E348C466D85746AEEF4E2CB6	Blonde Ambition
02/04/2012 01:02:19	A2B241910AF054A2952F534471357539F786F52A	Leila Last Night
01/14/2012 13:02:06	912C4BAEC89411BF65A968562AC8B7E7B3F1E9CB	Anneli Leila Menage A Trois

Total Statutory Claims Against Defendant: 28

EXHIBIT A

SIN20

Copyrights-In-Suit for IP Address 98.222.184.69

ISP: Comcast Cable
 Location: Greenwood, IN

Title	Registration Number	Date of First Publication	Registration Date	Most Recent Hit UTC
A Day to Remember	PA0001811850	10/22/2012	10/26/2012	10/23/2012
A Girls Fantasy	PA0001819294	12/23/2012	01/01/2013	12/24/2012
Anneli Leila Menage A Trois	PA0001771662	01/13/2012	01/17/2012	01/14/2012
Blonde Ambition	PA0001779796	03/05/2012	03/06/2012	03/06/2012
Constance Aaron X-Art on TV	PA0001771707	12/02/2011	01/17/2012	06/08/2012
Coucher Avec une Autre Fille	PA0001801715	08/13/2012	08/14/2012	08/15/2012
Daydream	PA0001810455	10/15/2012	10/15/2012	10/17/2012
Farewell	PA0001800473	08/03/2012	08/07/2012	01/13/2013
Foot Fetish	PA0001793970	06/20/2012	06/21/2012	06/26/2012
House of the Rising Sun	PA0001806475	09/07/2012	09/19/2012	09/07/2012
LA Love	PA0001790458	03/22/2010	05/23/2012	06/05/2012
Leila Last Night	PA0001775906	02/01/2012	02/17/2012	02/04/2012
Lovers in Paradise	PA0001780463	12/30/2011	03/10/2012	06/08/2012
One Night Stand	PA0001794973	05/02/2012	05/02/2012	01/13/2013
Pretty Back Door Baby	PA0001789427	05/08/2012	05/10/2012	05/09/2012
Side by Side	PA0001805261	09/03/2012	09/19/2012	09/01/2012
Silver Bullets	PA0001790373	05/13/2012	05/16/2012	05/14/2012
Sneak N Peek	PA0001791522	06/01/2012	06/01/2012	06/03/2012
Starting Over	PA0001803663	08/27/2012	09/10/2012	11/01/2012
Stay With Me	PA0001780465	10/28/2011	03/10/2012	06/24/2012
Then They Were Three	PA0001817761	12/09/2012	12/16/2012	12/09/2012

EXHIBIT B

SIN20

Title	Registration Number	Date of First Publication	Registration Date	Most Recent Hit UTC
Three for the Show	PA0001808630	09/24/2012	09/28/2012	09/24/2012
Together Again	PA0001819288	12/28/2012	01/01/2013	12/29/2012
Transcendence	PA0001799577	07/30/2012	07/31/2012	07/30/2012
Underwater Lover	PA0001806474	09/17/2012	09/20/2012	09/21/2012
Want You	PENDING	01/15/2013	01/27/2013	01/16/2013
Warm Inside	PA0001820856	01/11/2013	01/20/2013	01/13/2013
Yoga in the Sky	PA0001794715	06/27/2012	06/29/2012	01/13/2013

Total Malibu Media, LLC Copyrights Infringed: 28

EXHIBIT B

SIN20

EXCULPATORY EVIDENCE REQUEST

Subscriber Name:

Subscriber Address:

Attorney Name/Contact:

1. List all authorized users (including household members) of any IP Address assigned to the Defendant.

Authorized User Name/Relationship

A. _____

- Adult Child
- Domestic Partner
- Minor Child
- Roommate
- Spouse
- Tenant
- Unrelated adult

B. _____

- Adult Child
- Domestic Partner
- Minor Child
- Roommate
- Spouse
- Tenant
- Unrelated adult

C. _____

- Adult Child
- Domestic Partner
- Minor Child
- Roommate
- Spouse
- Tenant
- Unrelated adult

EXHIBIT D

SIN20

D. _____

- Adult Child
- Domestic Partner
- Minor Child
- Roommate
- Spouse
- Tenant
- Unrelated adult

2. Has a WI-FI enabled device been used to effectuate a connection to an IP Address assigned to the Defendant?

YES NO

3. If #2 is yes, please provide make, model and serial number of all such WI-FI modems and/or routers:

4. Has a Bittorrent Client been installed on any electronic device used by the Defendant and/or other Authorized Users used to access the Internet via an IP Address assigned to the Defendant?

YES NO

5. What is the distance from the Defendant's residence to the closest neighbor?

_____ Yards.

EXHIBIT D

SIN20

6. Has the Defendant and/or Authorized Users as listed in #1 above ever legally purchased Plaintiff's material or visited their website?

YES NO

7. Has the Defendant and/or Authorized Users as listed in #1 above ever visited any website containing Torrent Magnet Links?

YES NO

8. Has the Defendant and/or Authorized Users as listed in #1 above ever used Google, Bing, Yahoo or any other Internet Search Engine to search for information on Torrent files and/or websites?

YES NO

9. Has the Defendant and/or Authorized Users as listed in #1 above ever visited a streaming media site containing unauthorized copies of Plaintiff's works?

YES NO

10. Has the Defendant and/or any Authorized User as listed in #1 received a notice of copyright infringement from their Internet Service Provider, from the Center for Copyright Information, or from any other private intellectual property owner?

YES NO

Signed

Date

EXHIBIT D

SIN20

CIVIL COVER SHEET 1:13-cv-00205 WTL-DML

JS 44 (Rev. 09/11)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
MALIBU MEDIA, LLC

DEFENDANTS
JOHN DOE subscriber assigned IP address 98.222.184.69

(b) County of Residence of First Listed Plaintiff Los Angeles County
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Johnson County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) Attorneys (Firm Name, Address, and Telephone Number)
Nicoletti & Associates, PLLC, 36860 Woodward Avenue, Suite 100, Bloomfield Hills, MI 48304, (248) 203-7800

Attorneys (If Known)

FEB 05 2013

U.S. CLERK'S OFFICE

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation
PTF DEF
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, PERSONAL PROPERTY, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
17 U.S.C § 101

Brief description of cause:
Copyright Infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$ 150,000.00
CHECK YES only if demanded in complaint:
JURY DEMAND: X Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 2/2/13

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature of attorney

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Court Name: Southern District of Indiana
Division: 1
Receipt Number: IP034057
Cashier ID: mdagon
Transaction Date: 02/05/2013
Payer Name: NICOLETTI AND ASSOCIATES

CIVIL FILING FEE
For: NICOLETTI AND ASSOCIATES
Case/Party: D-1NS-1-13-CV-000205-001
Amount: \$350.00

PAPER CHECK CONVERSION
Check/Money Order Num: 10242
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

1:13-CV-205-WTL-DWL

"Only when bank clears the check,
money order, or verifies credit of
funds is the fee or debt officially
paid or discharged. A \$53.00 fee
will be charged for a returned
check."