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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO**

11 MALIBU MEDIA, LLC,
12 Plaintiff,

13 vs.

14 [REDACTED],

15 Defendant.
16

Case Number: 3:15-cv-04243-WHA

**AMENDED COMPLAINT - DEMAND
FOR JURY TRIAL**

17 Plaintiff, Malibu Media, LLC, sues Defendant [REDACTED], and alleges:

18 **Introduction**

19 1. This matter arises under the United States Copyright Act of 1976, as amended,
20 17 U.S.C. §§ 101 et seq. (the “Copyright Act”).

21 2. Defendant is a persistent online infringer of Plaintiff’s copyrights who copied
22 and distributed at least one large zip file containing multiple separate movies owned by
23 Plaintiff. This zip file is known as a “siterip,” and it contains a significant percentage of movies
24 available on Plaintiff’s website.

25 3. Indeed, Defendant’s IP address as set forth on Exhibit A was used to illegally
26 distribute each of the copyrighted movies set forth on Exhibit B.

1 4. Plaintiff is the registered owner of the copyrights set forth on Exhibit B (the
2 “Copyrights-in-Suit”).

3 **Jurisdiction And Venue**

4 5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
5 § 1331 (federal question); and 28 U.S.C. § 1338 (patents, copyrights, trademarks and unfair
6 competition).

7 6. Plaintiff used proven IP address geolocation technology which has consistently
8 worked in similar cases to ensure that the Defendant’s acts of copyright infringement occurred
9 using an Internet Protocol address (“IP address”) traced to a physical address located within this
10 District, and therefore this Court has personal jurisdiction over the Defendant because (i)
11 Defendant committed the tortious conduct alleged in this Amended Complaint in this State, and
12 (ii) Defendant resides in this State and/or (iii) Defendant has engaged in substantial and not
13 isolated business activity in this State.

14 7. Based upon experience filing over 1,000 cases the geolocation technology used
15 by Plaintiff has proven to be accurate to the District level in over 99% of the cases.

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

22 **Intradistrict Assignment**

23 9. Pursuant to Civil L-R 3-5, intradistrict assignment is proper because the unlawful
24 conduct that gives rise to the claims occurred in the county of Santa Clara.

Parties

10. Plaintiff, Malibu Media, LLC, (d/b/a “X-Art.com”) 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.

11. Defendant, [REDACTED], is an individual residing at [REDACTED].

Factual Background

I. Defendant Infringed Plaintiff’s Copyrights by Using the BitTorrent File Distribution Network

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

13. 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.

14. 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 among each other instead of attempting to distribute a much larger digital file.

15. 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.

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

17. 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

1 correlating to it. The BitTorrent protocol utilizes cryptographic hash values to ensure each bit is
2 properly routed amongst BitTorrent users as they engage in file sharing.

3 18. The entirety of the digital media file also has a unique cryptographic hash value
4 (“file hash”), which acts as a digital fingerprint identifying the digital media file (which
5 contains a video or series of videos). Once infringers complete downloading all bits which
6 comprise a digital media file, the BitTorrent software uses the file hash to determine that the file
7 is complete and accurate.

8 19. Plaintiff’s investigator, IPP International UG, established a direct TCP/IP
9 connection with the Defendant’s IP address as set forth on Exhibit A.

10 20. IPP International UG downloaded from Defendant one or more bits of each of
11 the digital media files identified by the file hashes on Exhibit A.

12 21. Defendant downloaded, copied, and distributed a complete copy of Plaintiff’s
13 works without authorization as enumerated on Exhibits A and B.

14 22. Each of the cryptographic file hashes as set forth on Exhibit A correlates to a
15 digital media file containing a copyrighted movie or several copyrighted movies owned by
16 Plaintiff as identified on Exhibit B.

17 23. The siterip(s) downloaded, copied and distributed by Defendant are enumerated
18 in Exhibit C. Each siterip is a digital media file containing a zip folder with several of Malibu
19 Media’s audiovisual works, each of which is identical (or alternatively, strikingly similar or
20 substantially) to the original works listed on Exhibit B.

21 24. IPP International UG downloaded from Defendant one or more bits of each file
22 hash listed on Exhibit A. IPP International UG further downloaded a full copy of each file hash
23 from the BitTorrent file distribution network and confirmed through independent calculation
24 that the file hash matched what is listed on Exhibit A. IPP International UG then verified that
25 each digital media file, as identified by its file hash value set forth on Exhibit A, contained a
26 digital copy of a movie that is identical (or alternatively, strikingly similar or substantially

1 similar) to the original copyrighted work listed on Exhibit B. At no time did IPP International
2 UG upload Plaintiff's copyrighted content to any other BitTorrent user.

3 25. IPP International UG connected, over a course of time, with Defendant's IP
4 address for each hash value as listed on Exhibit A. The most recent TCP/IP connection between
5 IPP and the Defendant's IP address for each file hash value listed on Exhibit A is included
6 within the column labeled Hit Date UTC. UTC refers to Universal Time which is utilized for
7 air traffic control as well as for computer forensic purposes.

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

11 27. Plaintiff's evidence establishes that Defendant is a habitual and persistent
12 BitTorrent user and copyright infringer.

13 **Miscellaneous**

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

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

17 **COUNT I**

18 **Direct Infringement Against Defendant**

19 30. The allegations contained in paragraphs 1-29 are hereby re-alleged as if fully set
20 forth herein.

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

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

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

1 34. As a result of the foregoing, Defendant violated Plaintiff’s exclusive right to:

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

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

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

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

14 35. Defendant’s infringements were committed “willfully” within the meaning of 17
15 U.S.C. § 504(c)(2).

16 WHEREFORE, Plaintiff respectfully requests that the Court:

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

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

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

24 (D) Award Plaintiff statutory damages per infringed work pursuant to 17 U.S.C. §
25 504-(a) and (c);

1 (E) Award Plaintiff its reasonable attorneys' fees and costs pursuant to 17 U.S.C. §
2 505; and

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

4 **DEMAND FOR A JURY TRIAL**

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

6 HEIT ERLBAUM, LLP

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