
**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MALIBU MEDIA, LLC, a California limited
liability company,

Plaintiff,

v.

JOHN DOES 1, 13 and 14,

Defendants.

CASE NUMBER: 5:12-cv-02088-MMB

Honorable Michael M. Baylson

DECLARATION OF COLETTE PELISSIER FIELD

I, COLETTE PELISSIER FIELD, HEREBY DECLARE:

1. I am over the age of 18 and am otherwise competent to make this declaration.
2. This declaration is based on my personal knowledge and, if called upon to do so, I will testify that the facts stated herein are true and accurate.
3. My husband Brigham Field and I began our business from scratch.
4. I was a real estate agent and my husband was a photographer.
5. When the real estate market started heading south I knew we needed to start a business together.
6. Brigham and I both felt that there was a lack of adult content that was beautiful and acceptable for women and couples. We wanted to create this type of content to satisfy what we hoped was an unfulfilled demand.
7. Our goal was to create erotica that is artistic and beautiful.
8. We chose the name 'X-Art' to reflect our artistic aspirations, and began investing all of our available money and resources into the production of content – particularly erotic movies with high production value and a cinematic quality.

9. We created an Internet website called X-Art.com.

10. Like many small businesses, at first, we were an unincorporated partnership. In due course, however, we founded Malibu Media LLC, our media production and distribution company, and contributed the copyrights to it.

11. Brigham authored and produced the videos while we were an unincorporated partnership.

12. Upon founding the company on February 8, 2011, Brigham and I discussed with each other and agreed that the copyrights would be transferred to Malibu Media, LLC. We intended for the transfer of rights to cover every single right associated with a copyright; including the exclusive right to sue for past, present, and future infringement. We also intended for the unincorporated entity to cease to exist and for Malibu Media, LLC to own and possess the copyrights.

13. All copyrighted works created by Brigham were transferred through a written assignment of copyright to Malibu Media, LLC.

14. Brigham's current arrangement with the company is that the movies he creates are works made for hire and owned by the company.

15. After formation, the company's attorney was mistakenly told to register some works as made for hire and authored by Malibu Media, LLC despite the fact that they were authored by Brigham prior to formation of the LLC and subsequently assigned to the company.

16. We have instructed our attorneys to file a request to correct the registration, and our attorneys have filed a Form CA, which is used to correct an error or amplify information in a registration. With that form, we also filed a copy of the assignment.

17. The assignment has been supplemented to clarify that the plenary rights granted to

Malibu Media, LLC were intended to include the right to sue for past, present, and future infringement, which we had always assumed was impliedly included from the start, and to make clear that the Effective Date is February 8, 2011.

18. No other person or entity has or can claim an ownership interest in the copyrights.

19. Brigham and I are currently and always have been the sole owners of Malibu Media, LLC and its predecessor, our partnership.

20. Our customers can pay us a monthly recurring subscription fee of \$19.95, or an annual subscription fee of \$99.95 to access our entire library of HD Video content.

21. Internet subscription sales are and have always been by *far* our primary source of revenue.

22. As our business has grown our production value has also grown. We spend literally millions of dollars a year to produce our content and run our website.

23. Currently we have tens of thousands of members, but we are finding it hard to grow and maintain the memberships as so many people are finding our films for free.

24. We have worked hard and invested millions of dollars in our business in order to produce the best quality product.

25. For the first 3 years (when our site was not as popular) we didn't have as many issues with piracy. Now, that our videos are highly desirable, more people steal our videos than pay for a subscription.

26. We are even getting many complaints from our members (asking why they should pay when they are available for free on the torrents).

27. We feel people are unlawfully using valuable bandwidth (therefore money) from all people who use the Internet for lawful purposes, while making it harder for film producers,

photographers, musicians, writers, designers (the kind of people our business depends on) to make a living.

28. We must protect our copyrights in order to survive and to hope for any growth.

29. Brigham and I have gone over our options many times and we realize that the only way we can protect our business and our ability to sell subscriptions is to go after the people who are stealing from us.

30. Our intention is not to cause financial hardship (this is very important to us); however, we want to deter infringement and be compensated for the intentional theft of our videos.

31. Brigham and I have repeatedly asked our attorneys to listen to exculpatory evidence and be prudent and use caution when pursuing our claims. And, I believe our attorneys are doing their best to enforce our copyrights in a lawful and appropriate manner.

32. We do not pursue our claims against all Doe Defendants. For example, once receiving discovery, we may learn that some Doe Defendants are on active duty in the military, a coffee shop with open wireless, or have some other circumstance that would prevent us from pursuing our claims.

33. We invest significant resources into pursuing all types of anti-piracy enforcement, such as Digital Millennium Copyright Act ("DMCA") takedown notices and direct efforts aimed at infringing websites. See Exhibit 1.

34. Despite sending thousands of DMCA notices per week, the infringement continues. And, if one searches for "X-Art" on a torrent website the site will reveal thousands of unauthorized torrents available for free. See Exhibit 2.

35. We have never authorized anyone to put our works on a torrent website.

36. I firmly believe that we must exercise our rights under the Copyright Act to prevent infringement. Otherwise, we face an immediate and serious risk. It is simply impossible to compete with free.

37. We do not seek to use the Court system to profit from the infringement like some have suggested. As previously stated, revenues from subscriptions to X-Art.com are by far and away the dominant driver of Malibu Media's business. We want the infringement to stop. Accordingly, the purpose of these lawsuits is to motivate people to pay for subscriptions by deterring infringement and seek some reasonable compensation for the massive amount of infringement of our copyrights.

38. Without these suits, I believe infringers would feel free to steal our movies without consequence.

39. In conclusion, we want the courts to know that we are a small business and we need the law to be enforced to ensure our survival. It is getting more difficult for us every day and we hope that in the future there will be a better way to protect our copyrights.

40. We are passionate about our work and our business. For us, this is the American Dream!

41. It is our hope that by upholding the law, the courts will protect our ability to continue with our dream and allow all creative people the ability to make a living by distributing their work in this fast-paced digital age.

42. Thank you in advance for your time and consideration of this matter, please do not hesitate to ask if we can clarify any further questions.

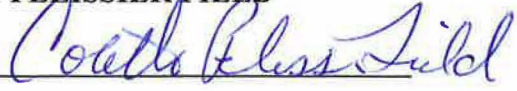
FURTHER DECLARANT SAYETH NAUGHT.

DECLARATION

PURSUANT TO 28 U.S.C. § 1746, I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 5th day of December, 2012.

COLETTE PELISSIER FIELD

By: 

PURSUANT TO 28 U.S.C. § 1746, I hereby declare under penalty of perjury under the laws of the United States of America that I read the foregoing declaration and that the facts stated therein are true and correct.

Executed on this 5th day of December, 2012.

BRIGHAM FIELD

By: 