

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

MALIBU MEDIA, LLC, )  
 )  
 Plaintiff, )  
 ) Civil Action No.  
 v. ) 8:13-cv-03007-JSM-TBM  
 )  
 ROBERTO ROLDAN, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

**DEFENDANT'S MOTION FOR LETTERS ROGATORY TO DEPOSE**  
**NON-PARTIES TOBIAS FIESER AND MICHAEL PATZER IN GERMANY**  
**(DEUTSCH ÜBERSETZUNG BEIGEFÜGT)**

COMES NOW Defendant, ROBERTO ROLDAN, by and through his undersigned counsel, pursuant to Rule 28(b), Federal Rules of Civil Procedure, under the authority of the United States of America granted through the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, and hereby submits this application to the German authority for a Letter of Request to depose willing non-parties TOBIAS FIESER and MICHAEL PATZER in Germany. In support of this application, Defendant states:

1. This case involves the following parties:

Plaintiff, *MALIBU MEDIA, LLC*

Defendant, *ROBERTO ROLDAN*

c/o Keith Lipscomb, Esq.  
Lipscomb, Eisenberg & Baker, PL  
2 S Biscayne Blvd, PH 3800  
Miami, Florida 33131

c/o Cynthia Conlin, Esq.  
Cynthia Conlin, PA  
1643 Hillcrest St  
Orlando, Florida 32812

2. This case arises under the United States Copyright Act of 1976, as amended, and involves allegations that Defendant infringed Plaintiff's copyrights. Plaintiff's allegations have been raised based on statements made by the deponents listed herein.

3. The deponents are:

TOBIAS FIESER	MICHAEL PATZER
IPP International, UG	Karlstrasse 49
Hermannstraße 9	76133 Karlsruhe
20095 Hamurg, Deutschland	Germany

4. The depositions are planned to be held during the last week of February 2015, before the close of discovery, at the U.S. Consulate General Frankfurt, Gießener Str. 30, 60435 Frankfurt am Main, Federal Republic of Germany, or other agreed location as allowed by law.

5. A letter of request is necessary to obtain the deposition of Messrs. Fieser and Patzer, citizens of Germany, pursuant to the Hauge Convention.

6. The deposition of Messrs. Fieser and Patzer will produce significant evidence to be used in the above-captioned action because all of Plaintiff's allegations raised against Defendant are based on Fieser and Patzer's statements.

7. The Deponents will be examined regarding the following subject-matter:

- a. All bases, factual and otherwise, for Plaintiff's claims against Defendant.
- b. All information, data, and statements Plaintiff relied upon to determine that Defendant infringed Plaintiff's copyright.
- c. Plaintiff's answers to Defendant's interrogatories.
- d. All evidence that Defendant allegedly downloaded the entirety of the subject work(s).
- e. The relationships between Malibu Media, LLC and IPP International UG, its agents, and related entities.
- f. Any and all methods of compensation Malibu Media, LLC made to IPP International UG.
- g. The details surrounding IPP International UG's monitoring of IP addresses and correlating them to allegedly infringing activity.
- h. All details surrounding the actual monitoring of the BitTorrent file distribution network in which IP Address 96.58.134.12 was found.
- i. All details regarding effectuating, analyzing, reviewing and attesting to the results of the investigation into IP Address 96.58.134.12.
- j. All details regarding the actual extraction of data from International IPTracker v 1.5, which uncovered IP Address 96.58.134.12.
- k. All details of how the BitTorrent tracking system used to detect Defendant's alleged infringement works.
- l. The capabilities and shortcomings of IPP International UG's software used to detect IP Address 96.58.134.12.

- m. All specific details with IPP's obtaining the TCP/IP connection between IPP International UG and IP address 96.58.134.12, as stated in Paragraphs 22 and 24 of the amended complaint (Doc. 8), including, without limitation, any and all usernames, client names, pseudonyms, and/or network names associated with IP address 96.58.134.12 that IPP's software logged.
- n. All details pertaining to the swarms monitored, including, without limitation, the initial file providers, the number of peers in each swarm, and the identity of the other peers in the swarms.
- o. The moment when Plaintiff first became aware of IP Address 96.58.134.12, the circumstances under which Plaintiff first learned about said IP address, and the nature of the knowledge first gained.
- p. The details of the content, and the method of collection of such content, of files provided by Plaintiff in discovery and named 747502.pdf and 747503.pdf.
- q. All dates and times in which IPP International UG "connected" with Defendant's IP address, as is alleged in Paragraph 22 of the Amended Complaint (Doc. 8).
- r. The exact date and times when, and the method how, each "Title," as listed in Paragraphs 32, 34, 36, and 38 of the Amended Complaint (Doc. 8) was downloaded by IP address 96.58.134.12.
- s. All details pertaining to the Torrent Files mentioned in the complaint, including without limitation, (a) the size of the files; (b) the number of "pieces" each file was broken into; (c) the size of each piece, (c) the cryptographic "hash."

- t. All persons Plaintiff intends to rely upon as witnesses in this matter and the facts or subject matter about which each such witness is expected to testify.
  - u. Other related lawsuits against other Defendants in this or other jurisdictions that allege the same infringement methods and are for the same or similar works.
  - v. Each and every other past and pending action, in this or other jurisdictions, brought by Malibu Media involving the Allegedly Infringed Works and the hashtags in Exhibit A; the status of those actions, and any and all recovery made thereunder, whether through settlement, judgment, or other.
  - w. All individuals employed by Plaintiff and the company structure of Plaintiff.
  - x. The identity of all individuals, persons, or entities that have an interest, financially or otherwise, in this litigation, and the substance of said interest.
8. The Deponents are requested to bring to the deposition the below-listed documents that are in their possession, custody and control, and which will be used in this matter.
- a. User manual and/or any document(s) that describe(s) the functionality of the software used by IPP International UG to detect IP Address 96.58.134.12 allegedly uploading Plaintiff's works.
  - b. Internal memos, including emails and correspondence, related to operation of said software as it is used to detect infringement of Plaintiff's works.

- c. Advertising material, brochures, promotional material, and/or sales literature promoting IPP International UG's services since 2011.
- d. Any and all agreements entered into between Malibu Media and the deponent or IPP International UG or Excipio GmbH.
- e. All documents demonstrating the number of, and the identity of, other peers in the same swarm(s) as IP address 96.58.134.12.
- f. Any and all letters, emails, and other correspondence between Malibu Media and the deponent, IPP International UG, or Excipio GmbH that pertain to the instant lawsuit or the swarm in which Defendant was alleged to be in.
- g. All invoices sent to Malibu Media for work related to IP address 96.58.134.12 or the other peers in the same swarm(s) as IP address 96.58.134.12.
- h. Documents evidencing money received from settlements, judgments, or other recovery received from or against any and all peers in the same swarm as IP Address 96.58.134.12.

WHEREFORE, Defendant, ROBERTO ROLDAN, respectfully requests from this court Letters Rogatory to Defendant for the purpose of taking the deposition of non-parties TOBIAS FIESER and MICHAEL PATZER.

**RULE 26(c) (1) CERTIFICATE OF GOOD FAITH CONFERENCE**

Prior to filing this motion, the undersigned conferred with the attorney for Plaintiff, who said she had no opposition to the relief requested herein.

/s/ Cynthia Conlin, Esq.  
Cynthia CONLIN, ESQ.  
Florida Bar No. 47012  
cynthia@cynthiaconlin.com

**ATTORNEY'S CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on **January 26, 2015**, a true and correct copy of the foregoing, along with the attached schedules and corresponding German copy, was filed via CM/ECF, therefore serving all parties with access to electronic filing.

*Attorneys for Defendant:*

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**US-BEZIRKSGERICHT  
MITTE BEZIRK VON FLORIDA  
TAMPA ABTEILUNG**

MALIBU MEDIA, LLC, )  
 )  
Klaegerin, )  
 ) Rechtsfall Nummer.  
v. ) 8:13-cv-03007-JSM-TBM  
 )  
ROBERTO ROLDAN, )  
 )  
Beklagte. )  
\_\_\_\_\_ )

**BEWEGUNG DES BEKLAGTEN FÜR RECHTSHILFEERSUCHEN AN  
NICHTVERTRAGSPARTEIEN TOBIAS FIESER UND MICHAEL PATZER IN  
DEUTSCHLAND ABZUSETZEN**

KOMMT JETZT Beklagte, ROBERTO ROLDAN, durch und durch seine Unterzeichner Rat, gemäß 28 (b) zu regieren, United States Federal Rules of Civil Procedure, unter der Autorität der Vereinigten Staaten von Amerika durch das Haager Übereinkommen über die Beweisaufnahme im Ausland in Zivil- oder Handelssachen gewährtund Zweck legt diese Anwendung auf die deutsche Behörde für einen Rechtshilfeersuchen um bereit Nicht-Parteien abzusetzen TOBIAS FIESER und MICHAEL PATZER in Deutschland. Zur Unterstützung dieser Anwendung, Angeklagter erklärt:

1. Im vorliegenden Fall umfasst die folgenden Parteien:

Klaegerin, <i>MALIBU MEDIA, LLC</i>	Beklagte, <i>ROBERTO ROLDAN</i>
c/o Keith Lipscomb, Esq. Lipscomb, Eisenberg & Baker, PL 2 S Biscayne Blvd, PH 3800 Miami, Florida 33131	c/o Cynthia Conlin, Esq. Cynthia Conlin, PA 1643 Hillcrest St Orlando, Florida 32812

2. Dieser Fall ergibt sich aus der United States Copyright Act von 1976, in der geänderten Fassung und bezieht Behauptungen, dass Beklagte verletzt Urheberrechte Klägers. Vorwürfe Klägers erhoben wurden, basierend auf Aussagen von den hier aufgeführten Deponenten gemacht.

3. Die deponenten sind:

TOBIAS FIESER  
IPP International, UG  
Hermannstraße 9  
20095 Hamurg, Deutschland

MICHAEL PATZER  
Karlstrasse 49  
76133 Karlsruhe  
Germany

4. Die Ablagerungen sind geplant, um während der letzten Woche im Februar 2015 stattfinden wird, vor dem Ende des Entdeckungs, im US-Generalkonsulat Frankfurt, Gießener Str. 30, 60435 Frankfurt am Main, Bundesrepublik Deutschland, oder anderen vereinbarten Ort Rahmen der gesetzlichen Möglichkeiten.

5. Ein Brief der Anfrage notwendig ist, um die Abscheidung der Hr. Fieser und Hr. Patzer, Bürgerinnen und Bürger in Deutschland, nach dem Hauge Konvention zu erhalten.

6. Die Abscheidung der Hr. Fieser und Hr. Patzer erhebliche Beweise in der obigen Ziel Aktion verwendet werden, da alle Klägers Vorwürfe gegen Beklagte erhoben auf Fieser und Patzer von Aussagen, die auf.

7. Die Deponenten wird über die folgenden Gegenstand untersucht werden:

- a. All bases, factual and otherwise, for Plaintiff's claims against Defendant.
- b. All information, data, and statements Plaintiff relied upon to determine that Defendant infringed Plaintiff's copyright.
- c. Plaintiff's answers to Defendant's interrogatories.
- d. All evidence that Defendant allegedly downloaded the entirety of the subject work(s).
- e. The relationships between Malibu Media, LLC and IPP International UG, its agents, and related entities.
- f. Any and all methods of compensation Malibu Media, LLC made to IPP International UG.
- g. The details surrounding IPP International UG's monitoring of IP addresses and correlating them to allegedly infringing activity.
- h. All details surrounding the actual monitoring of the BitTorrent file distribution network in which IP Address 96.58.134.12 was found.
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- j. All details regarding the actual extraction of data from International IPTracker v 1.5, which uncovered IP Address 96.58.134.12.
- k. All details of how the BitTorrent tracking system used to detect Defendant's alleged infringement works.

- l. The capabilities and shortcomings of IPP International UG's software used to detect IP Address 96.58.134.12.
- m. All specific details with IPP's obtaining the TCP/IP connection between IPP International UG and IP address 96.58.134.12, as stated in Paragraphs 22 and 24 of the amended complaint (Doc. 8), including, without limitation, any and all usernames, client names, pseudonyms, and/or network names associated with IP address 96.58.134.12 that IPP's software logged.
- n. All details pertaining to the swarms monitored, including, without limitation, the initial file providers, the number of peers in each swarm, and the identity of the other peers in the swarms.
- o. The moment when Plaintiff first became aware of IP Address 96.58.134.12, the circumstances under which Plaintiff first learned about said IP address, and the nature of the knowledge first gained.
- p. The details of the content, and the method of collection of such content, of files provided by Plaintiff in discovery and named 747502.pdf and 747503.pdf.
- q. All dates and times in which IPP International UG "connected" with Defendant's IP address, as is alleged in Paragraph 22 of the Amended Complaint (Doc. 8).
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number of "pieces" each file was broken into; (c) the size of each piece, (c) the cryptographic "hash."

- t. All persons Plaintiff intends to rely upon as witnesses in this matter and the facts or subject matter about which each such witness is expected to testify.
- u. Other related lawsuits against other Defendants in this or other jurisdictions that allege the same infringement methods and are for the same or similar works.
- v. Each and every other past and pending action, in this or other jurisdictions, brought by Malibu Media involving the Allegedly Infringed Works and the hashtags in Exhibit A; the status of those actions, and any and all recovery made thereunder, whether through settlement, judgment, or other.
- w. All individuals employed by Plaintiff and the company structure of Plaintiff.
- x. The identity of all individuals, persons, or entities that have an interest, financially or otherwise, in this litigation, and the substance of said interest.

8. Die Deponenten werden gebeten, auf die Abscheidung der unten aufgeführten Dokumente, die sich in ihrem Besitz, Verwahrung und Kontrolle zu bringen, und das in dieser Angelegenheit verwendet werden soll.

- a. User manual and/or any document(s) that describe(s) the functionality of the software used by IPP International UG to detect IP Address 96.58.134.12 allegedly uploading Plaintiff's works.

- b. Internal memos, including emails and correspondence, related to operation of said software as it is used to detect infringement of Plaintiff's works.
- c. Advertising material, brochures, promotional material, and/or sales literature promoting IPP International UG's services since 2011.
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- h. Documents evidencing money received from settlements, judgments, or other recovery received from or against any and all peers in the same swarm as IP Address 96.58.134.12.

DARUM, Beklagte, ROBERTO ROLDAN, fordert daher von diesem Gericht Rechtshilfeersuchen an die Beklagte für die Zwecke der die Abscheidung von Nichtvertragsparteien TOBIAS FIESER und MICHAEL PATZER.

**REGEL 26 (c) (1) ZERTIFIKAT NACH TREU UND GLAUBEN CONFERENCE**

Vor der Einreichung dieser Bewegung, die Unterzeichner mit dem Anwalt der Kläger, die sagte, sie keinen Widerstand gegen die hier Erleichterung gebeten hatte verliehen.

/s/ Cynthia Conlin, Esq.  
Cynthia CONLIN, ESQ.  
Florida Bar Nummer. 47012  
Cynthia@cynthiaconlin.com

**BESCHEINIGUNG ÜBER DIE ZUSTELLUNG**

Hiermit bestätige ich, dass am **26. Januar 2015** eine echte und richtige Kopie des Vorstehenden zusammen mit den beigefügten Pläne und entsprechende deutsche Kopie wurde über CM / ECF eingereicht, damit das für alle Parteien den Zugang zu elektronischen Einreichung.

*Anwälte für Beklagte:*

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