

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 MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION FOR PROTECTIVE ORDER [44]**

COMES NOW Defendant, ROBERTO ROLDAN, by and through his undersigned counsel, and, pursuant to 3.01(b) of the Middle District Local Rules, files this response memorandum in opposition to Plaintiff's motion for protective order.

I. Legal Standard

"A Protective Order issued pursuant to Fed.R.Civ.P. 26(c) is based on the standard of 'good cause,' which calls for a 'sound basis or legitimate need' to limit discovery of the subject information." *Sierra Equity Group v. White Oak Equity Partners, LLC*, 672 F. Supp. 2d 1369, 1370-71 (S.D. Fla. 2009) (citing *In re Alexander Grant & Co. Litigation*, 820 F.2d 352, 356 (11th Cir. 1987)); see also *Cerrito v. Liberty Life Assur. Co. of Boston*, 209 F.R.D. 663, 664 (M.D. Fla. 2002). "The party seeking a protective order has the burden to demonstrate

good cause, and must make 'a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements' supporting the need for a protective order." *Auto-Owners Ins. Co. v. Se. Floating Docks, Inc.*, 231 F.R.D. 426, 429-30 (M.D. Fla. 2005) (citing *U.S. v. Garrett*, 571 F.2d 1323, 1326 n. 3 (5th Cir. 1978)).

Furthermore, "the motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action." Fed. R. Civ. P. 26.

II. Analysis

A. Defendant has a right to conduct discovery

Plaintiff does not have good cause to limit discovery because Defendant, just as well as Plaintiff, has the right to conduct discovery before the discovery deadline and prior to the Court's ruling on Defendant's motion for summary judgment. Plaintiff argues that if Defendant's claims, as raised in his motion for summary judgment, are true, "the case will be resolved." (Doc. 44 at 2.) Plaintiff seeks to suppress Defendant's right to conduct discovery while Plaintiff, alone, continues discovery to determine whether Defendant's allegations are true.

The Court has delayed ruling on Defendant's motion for summary judgment to allow completion of discovery by March 2, 2015.¹ Defendant has three reasons to continue discovery through to this date. First, he must be able to defend and continue to collect evidence against any additional memoranda, affidavits, or deposition transcripts Plaintiff may file in opposition to Defendant's motion for summary judgment. Secondly, although Defendant's motion for summary judgment is based primarily on one of Defendant's defenses (his location during the alleged download time), after Defendant deposes Plaintiff's corporate representative, Defendant may have other reasons to move for summary judgment before the dispositive motion deadline. Limiting the scope of discovery by prohibiting Defendant from doing this Rule 30(b)(6) corporate deposition will in this way limit Defendant's ability to seek summary judgment, which would cause prejudice to Defendant and only work to draw out this case even longer, causing the accrual of even more attorney fees.²

¹ See Order (Doc. 45) holding that Defendant's motion for summary judgment (Doc. 36) "will be ruled upon after March 2, 2015," where the discovery deadline is March 1, 2015.

² One extension has already been granted for discovery deadline. (Doc. 30, ² One extension has already been granted for discovery deadline. (Doc. 30, Endorsed Order granting the Motion for Extension of Time to Complete Discovery.)

Thirdly, what if the court finds that an issue of material fact still exists and denies Defendant's motion? As confident as Defendant may be of his motion, any litigator knows that judicial decisions are unpredictable. Essentially, Defendant still has a duty to prepare effectively for trial, including of his other affirmative defenses. In what appears to be a bullying tactic, Plaintiff has filed its motion in an attempt to stifle Defendant's ability to prepare for trial. Defendant has every right to defend the allegations that Plaintiff have raised against him and would be strongly prejudiced, should his summary judgment motion be denied, if he enters trial without being able to collect sufficient evidence to defend Plaintiff's claims.³

B. Plaintiff's claims of being "bombed" with discovery are disingenuous

First, Plaintiff wrongly surmises that deposing Tobias Feiser, a German national, in Germany "would not aid in determining whether Defendant could have possibly accessed the IP address during the time of infringement" (Doc. 44 at 6). On the contrary, Mr. Feiser is a fundamental fact witness –

³ If Plaintiff truly wants to avoid litigation, it should not have filed the lawsuit, or, on the other hand, if as it suggests it truly believes that Defendant did not commit the infringements, it can file a motion to dismiss or ask Defendant if he will stipulate to a dismissal, pursuant to Rule 41(a)(1)(A)(ii), Florida Rules of Civil Procedure.

and Plaintiff's *only fact witness* to the alleged infringements. His findings form the entire basis for Plaintiff's case.⁴ Furthermore, when Defendant propounded interrogatories that inquire into the workings of the software used to collect or create Plaintiff's evidence, and the way Plaintiff collected such evidence, Plaintiff consistently responded that it lacked "sufficient information in its possession, custody or control to answer this interrogatory."⁵ Therefore, Mr. Feiser is crucial to determine whether Plaintiff's evidence is even reliable or admissible in the first place. Finally, although Plaintiff complains that it was willing to accept service on behalf of Mr. Fieser upon the condition that the deposition be done via video (Doc. 44 at 3, 5), skirting the mandates of The Hague Convention as Plaintiff has suggested could result in criminal penalties against

⁴ See Doc. 21-2 and Doc. 3-1 at 6 ("Plaintiff's allegations of infringement are attested to by Plaintiff's investigator . . . Tobias Feiser.")

⁵ Doc. 36-1, Plaintiff's Responses to Defendant's First Set of Interrogatories, at 4-5 (Nos. 9, 10, 11, 12, 13).

Defendant,⁶ and Defendant and his counsel are disinclined to be placed in a German jail cell. For these reasons, Justice begs that Defendant be given the right to uncover the factual basis upon which Mr. Feiser bases his allegations.

Next, Plaintiff complains that Defendant noticed a 30(B)(6) deposition of Plaintiff within the Middle District of Florida (specifically, at the office of Defendant's counsel, in Orlando) (Doc. 44 at 3). Plaintiff seems to forget that it is the party who brought this case to the Middle District of Florida. Local Rule 3.04(b) explains in relevant part that it is "the general policy of the Court that a non-resident plaintiff [such as Malibu Media, which is based in California] may reasonably be deposed at least once in this District during the discovery stages of the case." Therefore,

⁶ See "Depositions at the U.S. Consulate General Frankfurt Am Main, Germany," at <http://germany.usembassy.gov/uploads/42/55/42551212acea229a26dd70dfc952b1f1/2011depositioninformation.pdf> (last visited 02/11/2015), which reads in relevant part:

Bilateral agreements between Germany and the United States require that the German Ministry of Justice pre-approve all requests for depositions. Depositions taken without the prior approval of the German Ministry of Justice and/or without the involvement of the United States Mission to Germany are unauthorized and may lead to criminal penalties against the participants. In addition, the German Ministry of Justice requires that all depositions take place on U.S. Consulate grounds and that the oaths be administered by a U.S. Consul.

Plaintiff's grievance has no merit or legal basis. Furthermore, deposing Plaintiff's representative is necessary to uncover the particular methods used to gather the alleged evidence against Defendant. Additionally, as is the nature of a 30(b)(6) deposition, Defendant did not name any specific individual but rather noticed the individual(s) who is or are most competent to testify with respect to certain listed matters. Based on Plaintiff's motion,⁷ Plaintiff seems to indicate that Defendant noticed for deposition Ms. Collette Pelissier Field, Malibu Media's co-owner.⁸ However, in Defendant's 30(B)(6) notice (copy at Exhibit "1" hereto), Defendant listed 37 areas on which examination is requested, and many such matters (specifically numbers 20 through 32) include particulars that Ms. Field, as indicated above, has shown to be without "sufficient information in its possession, custody or control to answer this interrogatory."⁹ "If it becomes obvious that one corporate designee is deficient, the corporation is obligated to provide a substitute or additional designee to comply with the corporation's obligations under

⁷ Doc. 44 at 3, speaking of the 30(B)(6) representative: "despite that she resides in California . . ."

⁸ See Doc. 36-1 at 1 (answer to Interrogatory No. 1, naming Ms. Field), and at 10 (Ms. Field's sworn declaration).

⁹ Doc. 36-1, Plaintiff's Responses to Defendant's First Set of Interrogatories, at 4-5 (Nos. 9, 10, 11, 12, 13).

Rule 30(b)(6).” *McPherson v. Wells Fargo Bank, N.A.*, 292 F.R.D. 695, 698 (S.D. Fla. 2013 (citations omitted)). “The corporation has the burden to locate one or more people who can knowledgably testify on the noticed topics.” *Id.* (citation omitted). Therefore, if Ms. Field is unable to respond to the questions, Malibu Media may want to consider bringing in Mr. Feiser as its corporate agent.

Next, Plaintiff alleges that a dispute surrounding a protective order regarding confidential documents underscores the need to limit discovery. This dispute is actually a non-issue that Plaintiff has blown out of proportion. Plaintiff creates a façade that it has numerous groups of documents which it has asked to be made confidential, and that Defendant’s counsel is unreasonably demanding a separate order for each such group. However, Plaintiff has only made a single, solitary confidential-business-information objection. In its response to Defendant’s Request for Production No. 1, Plaintiff objected but said it would “produce its agreement with IPP International UG after entry of a suitable protective order.” Subsequently, after conferring, both counsel agreed to the language of a subject protective order. Before reaching said agreement, however, Plaintiff presented a vague, overbroad proposed order which, if entered, would give

Plaintiff unbridled discretion to mark any information as "confidential" whenever it suited Plaintiff's whim; such overbreadth grossly exceeded the scope of Plaintiff's objection to Defendant's Request for Production No. 1, which was, again, the only single such objection and the purpose for the protective order in the first place, and was therefore unacceptable. Regardless, after the parties conferred and agreed – and before Plaintiff filed the instant, very unexpected motion – counsel for the parties conferred agreed on the language of a specific protective order pertaining only to Request No. 1, and the issue was resolved. Despite this resolution, Plaintiff raises the issue in the instant motion for no reason other than a misleading attempt to vilify Defendant's counsel for having once "threatened" to move to compel. As issue has been resolved,¹⁰ it bears no consideration. Plaintiff is merely trying to avoid producing documents it is required to, and agreed to, produce.

Lastly, Plaintiff complains that Defendant's Interrogatory No. 24¹¹ is only relevant as to damages, seeks confidential information, and would be too laborious to

¹⁰ With one exception, which is that Defendant still has not received the documents responsive to its Request No. 1.

¹¹ Which originally says, "Please identify each peer in the same swarm and any and all settlement(s) or recovery received from, and all judgments entered against, each and every such peer listed."

answer. (Doc. 44 at 7-8.) However, Plaintiff has conveniently omitted the fact that *Defendant has already agreed* that Plaintiff need not produce the identity of the other alleged infringers but may sufficiently respond by identifying only their IP Addresses. Additionally, Plaintiff's "burdensome" argument is disingenuous. For example, counsel for Defendant emailed counsel for Plaintiff at 10:49 a.m. on February 3, 2015, asking if Plaintiff would provide the IP addresses of other peers allegedly in the same swarm. In less than an hour, at 11:36 a.m., counsel for Defendant responded with a spreadsheet listing all individual cases where a doe defendant had participated in the same swarm as Defendant. Apparently, such information gathering is not as time-consuming as Plaintiff would have the court believe.

C. Plaintiff misrepresents its intentions

Next, Plaintiff claims that if Defendant had submitted an affidavit and filed its motion for summary judgment four months earlier it may have "led to the early resolution of the case." (Doc. 44 at 4.) Such statement is disingenuous. If Plaintiff truly wanted to resolve the case now, it could file a motion to dismiss. Plaintiff's act of continuing to litigate this case is telling, particularly given that, in the wake of Defendant's motion for summary judgment, *Plaintiff*

appears to be escalating its litigation efforts. Plaintiff went from requesting discovery be limited to "whether Defendant's defense is true"¹² to the expanded scope of whether "another person in [Defendant's] parents' home committed the infringement."¹³ Plaintiff has made its intentions clear: Plaintiff intends to exploit Defendant's captive position by proceeding on a fishing expedition, with the sole purpose – not of finding evidence to prove *Defendant's* infringement – but to incriminate someone else. Interestingly, rather than depose the people on whose testimony Defendant based his motion (such as Defendant's roommate, at Doc. 36-4, and friend, at Doc. 36-5), on whose testimony Defendant is relying to prove where Defendant himself was at the time of the infringement, Plaintiff seeks to depose Defendant's parents: Angel and Gladys Roldan. The injustice in this approach is that this ancillary discovery is being conducted on Defendant's dime under the guise of a lawsuit against Defendant, most likely so Plaintiff can, after losing this lawsuit against Defendant, file a second lawsuit against

¹² (Doc. 43-3 at 2-3)

¹³ There is a discrepancy in Plaintiff's motion for protective order as demonstrated by comparing Plaintiff's request in its introduction to limit discovery "to the threshold issue of whether Defendant had access to the instrumentality of infringement," (Doc. 44 at 1) to its later claim that it also seeks to discover "whether... another person in his parents' home committed the infringement." (Doc. 44 at 2).

another individual for the same allegations it raised against Defendant. Such depositions do not help disprove Defendant's case so much as they help Plaintiff prove a potential other case against another yet unnamed party. Meanwhile, Plaintiff is forcing Defendant to foot the bill for its attorney to sit through these depositions, when Plaintiff knows very well that Defendant could not have possibly committed the infringements.

D. Plaintiff makes several inaccurate and irrelevant statements

Finally, for the record, Plaintiff has made some misrepresentations in its motion that serve to prejudice Defendant or are irrelevant to this case, and Defendant asks that the court strike same. They are:

Statement	. . . is misleading because:
From Page 3: "Defendant admits in his interrogatories that he is a BitTorrent user " and " uses the BitTorrent client uTorrent to obtain files through the BitTorrent protocol"	Defendant admitted only that he has at least once used BitTorrent; he did not admit to be a <i>current</i> user, as indeed he is not. ¹⁴
From Page 5: "Noteworthy, Defendant's counsel represents	Each case has its own timetable and discovery

¹⁴ Plaintiff made a similar misrepresentation in its memorandum in opposition to Defendant's motion for summary judgment when it said Defendant was a "*consistent* BitTorrent user" (Doc. 42 at 3, emphasis added). Plaintiff's propensity for making unsupported assumptions may be the same reason why Plaintiff filed this lawsuit in the first place without having no sufficient facts to indicate that Defendant was an infringer of its copyrights.

<p>similar defendants in near identical cases, but has only moved to serve Plaintiff's witnesses in Germany via the Hague Convention in this case. See e.g. <i>Malibu Media v. John Doe</i>, 1:14-cv-20393-CMA (S.D. Fla.)."</p>	<p>deadlines. Therefore, the procedure implemented in one case will not be relevant to that implemented in another; moreover, the cited case has since been resolved.</p>
<p>From Page 9: "Further, Defendant has notified Plaintiff that he needs to move the trial date scheduled for this summer to the fall, because he will be out of the state of Florida for the entire summer."</p>	<p>Defendant previously contemplated asking the court to move the trial date because of a summer job; however, he was able to make himself available for the August trial and this is no longer an issue.</p>
<p>From Page 9: "Defendant's opposition to staying discovery to the threshold issue, only supports his true motivation, which is to drive up the costs. It is patently apparent that Defendant's counsel is trying to increase attorneys' fees under the belief she will be able to recover them."</p>	<p>Plaintiff's suggestion of Defendant's "true motive" is improper, not to mention discussions made for the purpose of settlement, and should be stricken. Defendant's real "true motive" is to defend against the frivolous lawsuit Plaintiff has filed against him.</p>

E. Plaintiff's argument is based on mere speculation

Plaintiff seeks to limit discovery during the pendency of the delayed summary judgment ruling and has provided nothing but general speculation that limiting discovery will reduce attorney's fees incurred on both sides. Should Plaintiff's protective order be granted, and if this case is not disposed

of on summary judgment, the amount of attorney's fees may actually increase as duplicate discovery may have to be conducted on the same sources that were previously limited in the scope of examination by said protective order. In fact, limiting discovery now, when a summary judgment motion is pending and could be a "just, speedy and *inexpensive* determination of [this] action" would be contrary to the very purpose of the summary judgment. *See, e.g., Lamar Adver. of Mobile, Inc. v. City of Lakeland, Fla.*, 189 F.R.D. 480, 493 (M.D. Fla. 1999) ("the prime purpose of the summary judgment procedure is to secure the just, speedy and *inexpensive* determination of any action") (citation omitted). Contrary to Plaintiff's conclusory statement, the best way to limit expenses in this case is to resolve the dispute by summary judgment, whether in the issues now raised or related to discovery yet to be conducted.

F. Plaintiff failed to "confer"

Lastly, before a party files a motion pertaining to discovery, Rule 26(c)(1), Federal Rules of Civil Procedure, requires a good-faith conference, or at least an attempt to make a good-faith conference. Additionally, within the Middle District of Florida, Local Rule 3.01(g) requires the moving party to "confer" with the opposing party in a good-faith

effort to resolve the issues raised by the motion. This rule is "strictly enforced." Middle District Discovery (2001) at 20. "The purpose of Local Rule 3.01(g) 'is to require the parties to communicate and resolve certain types of disputes without court intervention.'" *Lippy v. Metropolitan Cas. Ins. Co.*, 2010 WL 4007035, *1 (M.D. Fla. Oct. 13, 2010) (citation omitted)). "The term 'communicate' has been further clarified to mean, 'to speak to each other in person or by telephone, in a good faith attempt to resolve disputed issues.'" *Lippy*, 2010 WL 4007035 (citing *Davis v. Apfel*, 2000 WL 1658575 (M.D. Fla. 2000)); cited by *Greenwood v. Point Meadows Place Condo. Ass'n, Inc.*, 3:10-CV-1183-J-34TEM, 2011 WL 5358682 (M.D. Fla. 2011) ("Many potential discovery disputes are resolved (or the differences narrowed or clarified) when counsel confer in good faith"). "The term 'confer' in Rule 3.01(g) requires a substantive conversation in person or by telephone in a good faith effort to resolve the motion without court action and does not envision an email, fax or letter. Counsel who merely 'attempt' to confer have not 'conferred.'" *Esteves v. SunTrust Banks, Inc.*, 2014 WL 1328401 *2 (M.D. Fla. Apr. 2, 2014).

In the Middle District of Florida, emails between counsel do not count as a conference to satisfy the good-faith requirement. See, e.g., *Espinal v. Professional Recovery*

Services, Inc., 2010 WL 4392912, *1 (M.D. Fla. Oct. 29, 2010) (“It appears Plaintiff's counsel would have this Court accept three emails that were evidently sent to Defendant's counsel as satisfactory consultation under Local Rule 3.01(g). The Court declines to do so.”); *contra*, S.D. Fla. Local Rule 7.1(a)(3) (specifying that “confer” means “orally or in writing”).¹⁵

Although Plaintiff included a Local Rule 3.01(g) Certification in its motion, there was no conference about the subject of limiting discovery in the way Plaintiff has requested in the motion. The only conferences that were had were about obtaining, not limiting, discovery, and creating a protocol to keep confidential the documents responsive to Defendant's request for production No. 1. Therefore, because Rule 3.01(g) is “strictly enforced” and Plaintiff failed to “confer,” the motion should be denied.

G. Conclusion

In summary, because Plaintiff cannot show good cause to limit discovery at such an important time in this case and has only made general conclusory statements as to why a protective

¹⁵ Although Malibu Media's counsel are located in Miami, where the Southern District of Florida is located, they have filed many dozens of cases in the Middle District of Florida, including this judicial division, and have litigated such since 2012.

order is necessary, Plaintiff's motion for protective order should be denied. In what appears to be an attempt to strengthen its motion, Plaintiff has included several misrepresentations, such as implying that Defendant is a current BitTorrent user, implying that there are numerous discovery requests to which Plaintiff seeks confidentiality, and claiming that producing the IP addresses of other peers allegedly in the same swarm as Defendant would be burdensome while implying that Defendant is insisting on revealing the true identity of those Defendants. After stripping away these claims from Plaintiff's motion, and all that remains is Plaintiff's conclusory allegation that a protective order would limit both parties attorney's fees, and it becomes clear that Plaintiff is attempting to prevent Defendant from moving forward with the 30(B)(6) deposition and deposing Plaintiff's only fact witness, and seeing essential documents that would illustrate the true agreement between Malibu Media and Tobias Feiser and IPP International. Prohibiting discovery in the way Plaintiff seeks would preclude Defendant from scrutinizing factual elements to the case, including whether Plaintiff's method for uncovering the IP address was even reliable. Such a limit on discovery would be unjust and strongly prejudicial to Defendant, especially at this stage in the proceedings when

a dismissal by Plaintiff could easily resolve this dispute quickly and efficiently. As discovery during this period is essential in order to seek the "just, speedy and *inexpensive* determination of [this] action" on summary judgment, Plaintiff's motion for protective order should be denied.

WHEREFORE, Defendant, ROBERTO ROLDAN, respectfully requests that this Honorable Court DENY the motion for protective order filed by Plaintiff, MALIBU MEDIA LLC.

CERTIFICATE OF SERVICE

I hereby certify that I filed electronically the foregoing with the Clerk of the Court via CM/ECF system which will notify electronically all parties.

Attorney for Defendant:

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/s/ Cynthia Conlin, Esq.
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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 NOTICE OF 30 (b) (6) CORPORATE DEPOSITION
OF PLAINTIFF, MALIBU MEDIA, LLC**

TO: Plaintiff, MALIBU MEDIA, LLC
c/o LIPSCOMB, EISENBERG & BAKER, PL
2 South Biscayne Blvd.
Penthouse 3800
Miami, FL 33131
Via email to: klipscomb@lebfirm.com,
copyright@lebfirm.com, ekennedy@lebfirm.com,
csebastian@lebfirm.com, and DShatz@lebfirm.com

FROM: Defendant, ROBERTO ROLDAN
By and through his attorney,
Cynthia Conlin, Esq.
Fla. Bar 47012
1643 Hillcrest Street
Orlando FL 32803
Tel. 407-965-5519 or 1-888-323-5993
Cynthia@cynthiaconlin.com, jeff@cynthiaconlin.com

PLEASE TAKE NOTICE THAT, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Defendant, ROBERTO ROLDAN, by and through his undersigned counsel, will take the deposition upon oral examination of Plaintiff, MALIBU MEDIA, LLC, by and through the officers, directors, managing agents, or other persons designated as being competent to testify on behalf of Plaintiff with respect to the matters listed below for the purpose of discovery or as evidence in this action or use at trial.

Pursuant to Fed. R. Civ. P. 30(b)(6), MALIBU MEDIA, LLC shall designate an individual or individuals with personal knowledge to appear and attend for the purpose of testifying to the below-listed areas of inquiry.

Plaintiff shall identify the individual(s) who will speak on its behalf on each topic below ("Matters on Which Examination is Requested") at least seven days before the deposition(s). The taking of this deposition may be adjourned from day to day until completed, and may occur over several days if more than one person is necessary to provide the information requested.

The designated individual(s) is/are instructed to bring to the deposition the documents listed in the "Documents" section below.

The deposition shall commence before a notary public in and for the State of Florida or before some other officer authorized by law to administer oaths at the date, time, and location specified below.

Date of Deposition: Friday, February 20, 2015

Time of Deposition: 9:30 A.M.

Location: Law Offices of Cynthia Conlin, P.A.
1643 Hillcrest Street
Orlando FL 32803

Court Reporter: All Good Reporters, Inc.
390 N Orange Ave, Suite 2300
Orlando, FL 32801
800-208-6291

Plaintiff may record this deposition via video and reserves the right to amend this notice with videographer information.

Matters on Which Examination Is Requested

1. All bases, factual and otherwise, for Plaintiff's claims against Defendant.

2. All information, data, and statements Plaintiff relied upon to determine that Defendant infringed Plaintiff's copyright.

3. Plaintiff's answers to Defendant's interrogatories.

4. Information regarding the allegedly downloaded films, including, but not limited to:

- a. Their complete content;
- b. The dates of filming and creation;
- c. The editing and production process of same;
- d. Any devices, software, or mechanisms included in the editing or production process used to diminish infringing activity;
- e. The date, time, place, and method of first publication;
- f. Their target audience; and customers to whom the they were offered, viewed, or sold.

5. The development, design, set-up, modification, update, redesign, metatags or other content related activity for Plaintiff's website, xart.com or x-art.com.

6. Complete details pertaining to traffic to Plaintiff's website, including Google Analytics reports, AWStats Reports, and all other monitoring reports, for the time frames starting at the moment of first publication of each allegedly downloaded film and continuing through to the first "hit" date/time for each allegedly downloaded film, including the number of visitors to the site, IP addresses, reports showing the visitor's geographic locations, and the frequency at which the site's pages and files were viewed, accessed, or downloaded, especially those pages and files that pertain to the allegedly downloaded works.

7. Any and all methods, including without limitations, devices, software, and information, employed in Plaintiff's website for the purpose of diminishing infringing activity by customers or users of the website.

8. All methods of detecting customers of your website who breached your terms of use.

9. Any and all methods, actions, and attempts of detecting how your videos have been pirated and downloaded from your website and uploaded onto Torrent sites.

10. Any and all studies conducted on the piracy of your films.

11. Complete details pertaining to Plaintiff's customers, meaning the people who pay to access Plaintiff's website, including comprehensive revenue reports and customer activity/usage.

12. Complete details pertaining to all individuals who, for the time frames starting at the moment of first publication of each allegedly downloaded film and continuing through to the first "hit" date/time for each allegedly downloaded film, had free, credited, or comped accounts to access Plaintiff's website, including their identities and the reasons the accounts are credited.

13. All publications, advertisements, brochures, newsletters, communications (via Internet or otherwise), and any other documents which contain or bear the Allegedly Infringed Work.

14. Plaintiff's marketing, advertising, promotion, bookkeeping and accounting with respect to any goods and/or services offered for sale or sold in connection with the Allegedly Infringed Work.

15. Each and every item of expense, loss, or damage incurred as a result of the alleged infringement.

16. All evidence that Defendant downloaded the entirety of each work.

17. Plaintiff's revenue generated through Plaintiff's website, by month, for the last five years or since the company's existence (whichever period is lesser); how much of that revenue was attributed to the Allegedly Infringed Work, and how much to other sources; and Plaintiff's generated revenue through other sources, including litigation and settlements.

18. The relationships between Malibu Media, LLC and IPP International UG.

19. Any and all methods of compensation Malibu Media, LLC made to IPP International UG.

20. The details surrounding IPP International UG's monitoring of IP addresses and correlating them to allegedly infringing activity.

21. All details surrounding the actual monitoring of the BitTorrent file distribution network in which IP Address 96.58.134.12 was found.

22. All details regarding effectuating, analyzing, reviewing and attesting to the results of the investigation into IP Address 96.58.134.12.

23. All details regarding the actual extraction of data from International IPTracker v 1.5, which uncovered IP Address 96.58.134.12.

24. All details of how the BitTorrent tracking system used to detect Defendant's alleged infringement works.

25. The capabilities and shortcomings of IPP International UG's software used to detect IP Address 96.58.134.12.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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).

31. 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.

32. 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."

33. 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.

34. 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.

35. 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.

36. All individuals employed by Plaintiff and the company structure of Plaintiff.

37. The identity of all individuals, persons, or entities that have an interest, financially or otherwise, in this litigation, and the substance of said interest.

Documents

The designated individual(s) is instructed to bring to the deposition the following:

A. Plaintiff's detailed profit and loss statements and balance statements for the last 5 years.

B. 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.

C. Advertising material, brochures, promotional material, and/or sales literature promoting IPP International UG's services.

D. Any and all agreements entered into between Malibu Media and IPP International UG.

E. Any and all agreements entered into between Malibu Media and Excipio GmbH.

F. Invoices sent to you from IPP International UG from January 1, 2012 to the present.

G. Invoices sent to you from Excipio GmbH from January 1, 2012 to the present.

H. Documents demonstrating any and all peers in the same swarm as IP address 96.58.134.12.

I. Letters, notices, and/or communications sent to other peers in the same swarm as IP Address 96.58.134.12.

J. Complaints Malibu Media filed against peers in the same swarm as IP Address 96.58.134.12.

K. Documents evidencing settlements, judgments, or recovery received from or against any and all peers in the same swarm as IP Address 96.58.134.12.

L. Internal memos related to deterring piracy of your works.

M. Letters, notices, and/or communications sent to customers of your website who breach your terms of use as it pertains to use of the works.

Respectfully submitted,

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ATTORNEY'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on **January 26, 2015**, a true and correct copy of the foregoing has been furnished to Plaintiff's attorney via E-Service to klipscomb@lebfirm.com, copyright@lebfirm.com, ekennedy@lebfirm.com, and csebastian@lebfirm.com.

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