

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION

MALIBU MEDIA, LLC,)	
)	
Plaintiff,)	
)	Civil Action No.
v.)	0:14-cv-61957-JIC
)	
ROBERT DARE,)	
)	
Defendant.)	
_____)	

DEFENDANTS' FIRST REQUEST FOR ADMISSIONS ON PLAINTIFF

COMES NOW Defendant, ROBERT DARE, by and through his undersigned attorney, pursuant to Rule 36, Federal Rules of Civil Procedure, and hereby propounds the following requests for admissions to Plaintiff, MALIBU MEDIA, LLC.

PROPOUNDING PARTY: Defendant, ROBERT DARE

RESPONDING PARTY: Plaintiff, MALIBU MEDIA, LLC

SET NUMBER: FIRST

NUMBERED: ONE (1) THROUGH THIRTY-THREE (33)

Instructions and Rules of Construction

Plaintiff's admissions and denials are to be served at the law offices of Cynthia Conlin, P.A. at the address in the certificate of service below within thirty (30) days from **August 3, 2015**, the date of service of this document.

Plaintiff's responses must ADMIT the matter, specifically DENY the matter, or set forth in detail the reasons why it cannot truthfully admit or deny the matter. Any denial by

Plaintiff must fairly meet the substance of the requested admission, and when good faith requires that it qualify an answer or deny only a part of the matter of which an admission is requested, Plaintiff must specify so much of it as is true and qualify or deny the remainder.

Plaintiff may not give "lack of information" or "lack of knowledge" as a reason for not admitting or denying a request, unless he state that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny a request.

If it is Plaintiff's position that a matter of which an admission has been requested presents a genuine issue for trial, he may not, on that ground alone, object to the request. Rather, Plaintiff must set forth reasons why it cannot admit or deny the request.

"And" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. "Any" means "each and every" as well as "anyone." The singular includes the plural, and vice versa; the word "any" includes and encompasses the word "all," and vice versa; the use of the disjunctive shall include the conjunctive, and vice versa.

As used herein, the word "person" includes not only natural persons, but also firms, partnerships, associations,

corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or any other legal, business, or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other unites thereof.

Definitions

As used herein:

A. The **"alleged downloads"** refers to the alleged downloads of the movies described in Plaintiff's amended complaint (Doc. 8), including but not limited to Doc. 8-1;

B. **"Bit(s)"** refers to the pieces a BitTorrent protocol breaks a file into, discussed in paragraph 12 of the Amended Complaint (Doc. 8);

C. **"Defendant"** refers to, ROBERT DARE, Defendant herein, who has been identified as a user of IP address 98.249.146.169. Said term does not refer to other individuals who may have accessed this I.P. address, but only ROBERT DARE himself, individually;

D. **"IPP International UG"** refers to "IPP International UG" as referenced in the amended complaint (Doc. 8), including its owners, agents, employees, and representatives;

E. **"Excipio"** refers to the owner of the geolocation technology described in paragraph 5 of the amended complaint;

F. **"User"** refers to a person who utilizes BitTorrent

protocol, as described in the Plaintiff's amended complaint (Doc. 8), to download files;

G. The **"users interacting"** refers to those BitTorrent users directly interacting to distribute the same torrent(s), as referenced in exhibit A and B of Plaintiff's amended complaint, as IP address 98.249.146.169, and as referenced in paragraphs 11 and 12 of Plaintiff's amended complaint (Doc. 8);

H. **"You"** means, and **"Your"** refers to, MALIBU MEDIA, LLC, Plaintiff herein, as well as its officers, agents, employees, representatives, and, unless privileged, its attorneys;

I. The **"work"** or **"works"** refers to the movies listed in Exhibit B of Plaintiff's amended complaint (Doc. 8);

J. The **"initial seeder"** refers to the original person who creates the torrent.

K. The **"additional evidence"** refers to the additional evidence you reference in paragraph 24 of your Amended Complaint (Doc. 08);

L. **"Members"** refers to those persons or entities that pay for access to xart.com and/or x-art.com.

Relevant Time Period

M. Unless otherwise specifically indicated, each request is limited to within the period from August 17, 2012, to the date of your response (the "Relevant Time Period").

REQUESTS FOR ADMISSIONS

Do you **Admit** or **Deny**:

Request No. 1. You have no evidence to connect Defendant directly to the **alleged downloads**.

Request No. 2. IPP International UG only downloaded a portion of the **works** from Defendant.

Request No. 3. You have no evidence that Defendant downloaded a complete copy of the **works**.

Request No. 4. You cannot prove that Defendant downloaded a complete copy of the **works**.

Request No. 5. You have no evidence that Defendant uploaded any **bits** of any of the **works** to any other BitTorrent **user** other than IPP International UG.

Request No. 6. You cannot prove that Defendant uploaded any **bits** of any of the **works** to any other BitTorrent **user** other than IPP International UG.

Request No. 7. You pay, or did pay, IPP International UG at least in part on a contingency-fee basis.

Request No. 8. A single **bit** of a movie file by itself is unusable, as a **user** cannot view the part of the movie included in one **bit** but can only view the entire movie after receiving all the **bits** that make up the entirety of the file.

Request No. 9. You have made copies of one or more of your **works** available on BitTorrent sites.

Request No. 10. **IPP International UG** uncovered other **users interacting** with IP Address 98.249.146.169.

Request No. 11. You initiated lawsuits against other **users interacting** with IP Address 98.249.146.169.

Request No. 12. You received settlement payments or other recovery from other **users interacting** with IP Address 98.249.146.169.

Request No. 13. You received settlement(s) from other **users** who allegedly infringed any or all of the same **works** as listed in Exhibit A and B of **your** amended complaint (Doc. 8).

Request No. 14. You have no idea who the **initial seeder** is.

Request No. 15. All the subject works are published on the same website.

Request No. 16. All the subject works are accessible through one single subscription to the x-art.com website.

Request No. 17. At the time of the **alleged downloads**, all the **works** did not each individually contain notices of 18 U.S.C. § 2257 compliance, although the website on which they were published did have such a notice (at <http://www.x-art.com/legal/>).

Request No. 18. The statutory damages that you seek in this action are more than what would make you whole, meaning to compensate you for any actual damages incurred.

Request No. 19. You have uncovered **members** uploading your copyrighted works on peer-to-peer file sharing sites in the past.

Request No. 20. **IPP International UG** only gets paid for its services in uncovering alleged infringement if you get money from the alleged infringer.

Request No. 21. **IPP International UG** has uncovered IP address(es) on peer-to-peer file sharing sites that were uploading or downloading your copyrighted works which IP address(es) were discovered to be members of xart.com or x-art.com

Request No. 22. The alleged downloads and/or the "additional evidence" could have been downloaded from more than one computer connected to IP address 98.249.146.169.

Request No. 23. You have no evidence of Defendant's hobbies as referenced in paragraph 27 of the Amended Complaint (Doc 08).

Request No. 24. You have no evidence of Defendant's other interests as referenced in paragraph 27 of the Amended Complaint (Doc 08).

Request No. 25. **IPP International UG** has previously uncovered the **initial seeder** to a torrent involving your copyrighted works.

Request No. 26. You have produced one or more **works** in a residential home.

Request No. 27. You have produced one or more **works** wherein the performers did not wear condoms.

Request No. 28. Your **members** have the ability to download the **works**.

Request No. 29. You could remove the ability of **members** to download your films.

Request No. 30. The **additional evidence** is not specific to one computer on IP address 98.249.146.169.

Request No. 31. The **additional evidence** was downloaded from more than one computer connected to IP address 98.249.146.169.

Request No. 32. **IPP International UG** and/or **Excipio** participated in the swarm creation of one or more of the torrents from which the alleged downloads occurred.

Request No. 33. The only evidence you have to connect Defendant to the alleged infringements are the IP address 98.249.146.169 and the **additional evidence**.

Request No. 34. You have received promotional material(s), brochure(s), advertisement(s), sales material(s), and/or pricing schedule(s) from **IPP International UG**.

Request No. 35. You have received promotional material(s), brochure(s), advertisement(s), sales material(s), and/or pricing schedule(s) from **Excipio**.

Request No. 36. You have the ability to see which movies your **members** have viewed and/or downloaded on xart.com and/or x-art.com.

Request No. 37. As indicated in the Amended Complaint, paragraph 13, a bit torrent user can only open and utilize a file once all of the bits of a digital media file are received by the bit torrent user.

Request No. 38. IPP International UG did not download all bits for each **work** from IP Address 98.249.146.169.

Request No. 39. The **digital movie files**, as allegedly downloaded by IP address 98.249.146.169, do not contain a copyright notice.

ATTORNEY'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on **August 3, 2015**, a true and correct copy of the foregoing has been served to Plaintiff's attorney via e-mail to klipscomb@lebfirm.com, copyright@lebfirm.com, ekennedy@lebfirm.com, Jfernandez@lebfirm.com, dshatz@lebfirm.com, Jvera@lebfirm.com, and csebastian@lebfirm.com.

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