

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION**

MALIBU MEDIA, LLC,	)	
	)	
Plaintiff,	)	Civil Action Case No. <u>0:14-cv-61957-JIC</u>
	)	
v.	)	
	)	
ROBERT DARE,	)	
	)	
Defendant.	)	
	)	

**PLAINTIFF'S RESPONSE TO DEFENDANT'S  
REQUEST FOR PRODUCTION OF DOCUMENTS**

Plaintiff, MALIBU MEDIA, LLC, pursuant to Fed. R. Civ. P. 34, by and through undersigned counsel, hereby serves its response to Defendant's Request for Production served June 9, 2015.

**STATEMENT OF WILLINGNESS TO COOPERATE**

Counsel for Plaintiff, is prepared to discuss with Counsel for Defendant the objections set forth below for the purpose of resolving any disputes that may arise over the production of documents without the need for intervention by the Court.

**PLAINTIFF'S RESPONSES TO DEFENDANT'S  
FIRST REQUEST FOR PRODUCTION**

1. Any and all documents referenced in response to Defendant's First Interrogatories to Plaintiff.

**Response to Request No. 1:** Subject to any objections set forth in Plaintiff's Responses to Defendant's First Set of Interrogatories, Plaintiff will produce any documents which it agreed to produce in response to Defendant's First Set of Interrogatories.

2. True and correct copies of the entire applications filed on your behalf with the U.S. Copyright Office for the purpose of registering the copyright to the Works, including all amendments and a copy of each of the works as they were submitted to the Copyright Office.

**Response to Request No. 2:** Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible information. Notwithstanding the foregoing objections, Plaintiff will produce the copyright and the paper copyright applications for each work at issue in this case. Plaintiff will also produce the control copies of each work at issue in this case as they were submitted to the Copyright Office.

3. A list of any and all members who accessed any or all of the works on x-art.com or xart.com, from the “Date of First Publication” through the “Most Recent Hit” date of each work, as such dates are listed in Exhibit B to the Amended Complaint (Doc. 8).

**Response to Request No. 3:** No such documents exist. Regardless, Plaintiff objects to this request on the basis that it is harassing and seeks the disclosure of highly confidential trade secret information.

4. For each of the works, the complete record of streaming views and downloads from the xart/x-art website, including date and time, user identification, and film title.

**Response to Request No. 4:** No such documents exist. No such documents exist. Regardless, Plaintiff objects to this request on the basis that it is harassing and seeks the disclosure of highly confidential trade secret information.

5. The complete server access logs (including IP, date/time, login name, and what is any and files were downloaded during that session) for the xart.com/x-art.com file server for the period from the “Date of First Publication” through the “Most Recent Hit” date of each work, as such dates are listed in Exhibit B to the Amended Complaint.

**Response to Request No. 5:** Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible information. Plaintiff further objects on the basis that this request is unduly burdensome. Plaintiff objects on the basis that this request is intended to harass Plaintiff. Plaintiff objects on the basis that this request seeks confidential business information.

6. Any and all letters, communications, and/or notices you (or your agent) sent to your website’s customers, members, or users who breached, or whom you suspected of breaching, your terms of use agreement as it pertains to the use of the works (such as by uploading the works to other websites or to torrent sites).

**Response to Request No. 6:** No such documents exist. Plaintiff does not know of any of its members who uploaded its works onto BitTorrent.

7. Any and all internal memo(s), correspondence, communications, or notes related to deterring the piracy of any of your films, including but not limited to the works.

**Response to Request No. 7:** Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible information.

8. Any and all notices posted on your website geared to deter piracy.

**Response to Request No. 8:** Paying subscribers of X-Art.com are granted a username and password to the X-Art.com website which provides access to Plaintiff's copyrighted works. As part of the Terms of Use, subscribers agree not to share, publish, post to another website or otherwise allow access to their username and/or password to any other individual or party. If Plaintiff detects shared passwords, they are immediately disabled. Password abusers are also reported to credit card processing companies.

Plaintiff's website also states that "[t]he content, materials, images, designs and other media (collectively, the "Content") which appear on x-art.com are protected by United States and worldwide copyright laws and may not be reproduced, transmitted, copied, edited, or published in any way whatsoever without the written permission of x-art.com. Unauthorized reproduction, distribution or use of the Content is strictly prohibited. Without exception, copyright violators will be pursued and prosecuted to the fullest extent of the law." For more information, please see the X-Art website [<http://www.x-art.com/legal/>].

9. Notes or minutes taken during any company meetings, or meetings you had with independent contractors, where the subject matter was the deterrence of piracy.

**Response to Request No. 9:** Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible information. Plaintiff further objects on the basis that this request is overly broad and therefore contains confidential business information. Further, Defendant already knows that Plaintiff files suit against serial infringers of its works, sends DMCA notices when applicable, and otherwise takes active measures to enforce its copyrights. And, notes or minutes of business meetings do

nothing to further any affirmative defense or disprove Defendant's liability. This request is merely a fishing expedition.

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

**Response to Request No. 10:** None exist.

11. Any and all demand letters or DMCA take-down notices that demanded cessation of infringement of the works and that you sent to third-parties within the one-year period preceding the filing of the instant lawsuit.

**Response to Request No. 11:** Plaintiff objects on the basis that this request is overly broad and unduly burdensome. To explain, Plaintiff sends hundreds, if not thousands, of DMCA notifications each month. Therefore, production of every single notice sent is unduly burdensome. Notwithstanding the foregoing request, weekly summaries evidencing the volume of DMCA notices Plaintiff has sent are located on Google's transparency report [<http://www.google.com/transparencyreport/>].

12. Your company organizational documents (articles of organization, etc.).

**Response to Request No. 12:** Plaintiff will produce its articles of organization after entry of a stipulated protective order.

13. Organizational charts for your company.

**Response to Request No. 13:** None exist.

14. Your detailed profit and loss statements and balance statements for the last 5 years.

**Response to Request No. 14:** Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible information. Indeed, Plaintiff's profit and loss for the last five years has nothing to do with copyright enforcement and has no bearing on any relevant fact in this case. Plaintiff further objects on the basis that this request is overly broad. Plaintiff objects to this request on the basis that it seeks information that is confidential business information pursuant to Fed. R. Civ. P. 26(c). Plaintiff additionally objects on the basis that this request is intended to harass Plaintiff.

15. Any and all agreements entered into between you and IPP International UG, and you and Excipio GmbH. This response should include all documents constituting, journalizing, or evidencing any and all agreements or arrangements that authorized, requested, hired, or retained IPP International UG, as "IPP International UG" is defined above, to perform services including without limitation collecting data for use in identifying Defendant's IP address or obtaining other evidence for use in the instant or related litigation.

**Response to Request No. 15:** Plaintiff will produce its agreements with IPP International UG and Excipio after entry of a suitable protective order.

16. Any and all invoices, statements, or requests for payment sent to you from IPP International UG and from Excipio GmbH during the relevant time period.

**Response to Request No. 16:** Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible information.

Plaintiff objects on the basis that this request is overly broad; indeed, IPP's detection of Defendant's IP address constitutes less than one-millionth of the work it has performed for Malibu. Further, over 80,000 people infringe Malibu's work each month in the United States alone and approximately 300,000 globally. IPP's invoices to Malibu reflect its services for collecting and recording all of that data.

Notwithstanding the foregoing objections and without waiving same, after entry of a suitable protective order Plaintiff will produce its agreements with IPP International UG and Excipio which contain the amount Plaintiff pays for their anti-piracy services per month. Considering the less than 1-1,000,000 relationship of the invoices being relevant to this case, it is unduly burdensome to require Malibu to cull years of invoices and cancelled checks.

17. Any and all payments, checks, or receipts for payments you made to IPP International UG during the relevant time period.

**Response to Request No. 17:** See Response to Request No. 14.

18. Any and all documents evidencing correspondence and communication between you and IPP International UG within the relevant time period that pertain to the authority of IPP International UG's to monitor BitTorrent sites for the infringement of the works.

**Response to Request No. 18:** See the applicable agreements which Plaintiff will produce after entry of a protective order. No other documents exist.

19. All communications and correspondence between Plaintiff's counsel and IPP International UG and between Plaintiff's counsel and Excipio GmbH that are related to or mention IP Address 96.252.235.19.

**Response to Request No. 19:** Plaintiff objects on the basis that this request seeks information that is protected by the privilege against disclosure of work product and the attorney-client privilege.

20. A true and correct copy of any and all emails, promotional materials, brochures, advertisements, sales materials, or pricing schedules or lists that IPP International UG sent you regarding IPP International UG's IP address geolocation technology as described in the Amended Complaint.

**Response to Request No. 20:** None exist because IPP International UG does not own the geolocation technology.

21. A true and correct copy of any and all documents showing any and all of IPP International UG's qualifications to perform investigations pursuant to this case, including but not limited to curriculum vitae, awards, licenses, degrees, certifications.

**Response to Request No. 21:** Plaintiff is not in possession, custody, or control of any documents responsive to this request.

22. A true, correct, and usable copy of the IP address geolocation technology.

**Response to Request No. 22:** Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible information.



Indeed, Defense counsel already knows that this technology works because the ISP's response to Plaintiff's subpoena revealed that Defendant resides within the jurisdiction of the United States District Court for the Middle District of Florida.

23. True and correct copies of any and all user manuals, user guides, or any other documents to the IP address geolocation technology that describes the functionality or provide instructions for the software.

**Response to Request No. 23:** Plaintiff is not in possession, custody, or control of any documents responsive to this request.

24. Any and all information IPP International UG obtained on IP Address 98.249.146.169.

**Response to Request No. 24:** Plaintiff objects on the basis that this request seeks disclosure of information protected by the work-product privilege. Notwithstanding the foregoing objection and without waiving same, Plaintiff will produce: (a) one PCAP for each work at issue in this case; (b) the .torrent files downloaded by Defendant; (c) the Additional Evidence list demonstrating that Defendant's IP address participated in the distribution of third-party works; (d) any technical reports which describe the PCAPs; (e) the .tar files for each work at issue in this case; and (f) the MySQL log file to which the PCAPs correlate.

25. Reports, memos, emails, work papers, notes, messages, or other writings sent to any person including Plaintiff, its owners or agents, or any other person, where the writings in any way relate to IP address 98.249.146.169.

**Response to Request No. 25:** Plaintiff objects on the basis that this request seeks information that is protected by the privilege against disclosure of work product and the attorney-client privilege.

26. For each of the works, all records, documents, and information pertaining and relating to the very first instance in which Plaintiff or its agents found the film to be downloaded illegally.

**Response to Request No. 26:** Plaintiff objects on the basis that this request is overly broad. Notwithstanding the foregoing objections and without waiving same, Plaintiff will produce documents sufficient to identify the first date of recorded infringement for each work at issue in this case.

27. For each of the works, all information that identifies an upload or seeding of that film on any torrent site, including the date, corresponding IP address, user IDs, and hash information.

**Response to Request No. 27:** None exist.

28. Any and all documents, including activity logs, notes, and screenshots, used to create any spreadsheet or other report produced in this case.

**Response to Request No. 28:** Plaintiff does not have the actual log file. Defendant can request the actual computer file from Excipio. The only spreadsheet is the MySQL log file and printed in excel format. This print out is considered an “original” under FRE 1002.

29. The WORM drive file used to identify the ISP and specific films for each film that you claim Defendant allegedly downloaded.

**Response to Request No. 29:** Plaintiff objects on the basis that this request is unintelligible. The WORM tape drive is a drive, not a file. Further a WORM tape drive does not identify the ISP. Further, Plaintiff is not in possession, custody, or control of the WORM tape drive.

30. In its Native format, all Computer Data evidencing the TCP/IP connection and the piece of the subject movies that were sent through BitTorrent as references in Plaintiff's Rule 26(a)(1)(A)(ii) disclosures.

**Response to Request No. 30:** Plaintiff will produce one PCAP for each work at issue in this case. Plaintiff will also produce the .torrent files and the .tar files downloaded by Defendant and the MySQL log file to which the PCAPs correlate.

31. Any and all documents demonstrating or evidencing any and all user interacting with IP address 98.249.146.169. This response should include without limitations electronic data, screenshots, notes, and records, and any and all related results collected by or obtained from the IP address geolocation technology.

**Response to Request No. 31:** Plaintiff is not in possession, custody, or control of any documents responsive to this request.

32. All logs of hash collisions that occurred during your investigator's monitoring of the swarms associated with the uploads/downloads from/to IP address 98.249.146.169.

**Response to Request No. 32:** Plaintiff is not in possession, custody, or control of any documents responsive to this request.

33. All documents or records showing the links, trackers, and torrent sites allegedly accessed by or through a user of IP address 98.249.146.169 to perform the alleged infringements.

**Response to Request No. 33:** Plaintiff is not in possession, custody, or control of any documents responsive to this request.

34. All original copies of the movie and copies as reassembled from the pieces sent by the peer infringers, as referenced in Plaintiff's Rule 26(a)(1)(A)(ii) disclosures.

**Response to Request No. 34:** Plaintiff will produce documents responsive to this request.

35. A true and correct copy of each and every file listed on any "expanded surveillance" or "additional evidence" list that your investigator downloaded as part of its surveillance.

**Response to Request No. 35:** Plaintiff is not in possession, custody, or control of any documents responsive to this request because neither IPP nor Excipio "downloaded" the third-party works listed on the additional evidence.

36. All documents, including without limitation, emails, notes, screenshots, printouts, notes of telephone conferences, web archives, that relate to the initial discovery and subsequent

knowledge that the videos identified in Plaintiff's complaint were available or posted on the torrent websites from which they were allegedly downloaded.

**Response to Request No. 36:** Plaintiff objects on the basis that this request is unduly burdensome. Plaintiff objects on the basis that this request is overly broad. Plaintiff objects on the basis that this request is ambiguous.

37. A true and correct copy of documents to constitute a license or permission for you or your investigator to make a copy of or download the files listed your "Expanded surveillance" or "Additional evidence" list.

**Response to Request No. 37:** None exist. Neither IPP nor Excipio downloaded or uploaded any content with respect to the third-party works listed on the additional evidence.

38. All documents correlating the Defendant, himself, to the IP address, including without limitation copies of the subpoena to the internet service provider and all responses to it, as well as all such documents referenced in Plaintiff's Rule 26(a)(1)(A)(ii) disclosures, and any other documents you relied on to identify Defendant as the individual who may have committed the downloads.

**Response to Request No. 38:** Plaintiff will produce the subpoena served on the ISP, the ISP's subpoena response, one PCAP for each work infringed, and the MySQL Log file in excel or PDF form.

39. True and correct copies of any and all documents, including investigation reports, you relied upon to conclude Defendant was the individual who infringed your works.

**Response to Request No. 39:** Plaintiff objects on the basis that this request seeks the disclosure of attorney work-product. Notwithstanding the foregoing objection, Plaintiff will produce all documents it intends to use at trial which it will rely upon to conclude Defendant was the individual who infringed Plaintiff's works.

40. All documents and information obtained from Defendant's computer or IP address 98.249.146.169, including, without limitation, materials related to Defendant's internet use.

**Response to Request No. 40:** Defendant has yet to produce his computer hard drive. Further, because Defendant's computer is in his own possession, he has access to the documents within the hard drives. Regarding IP address 98.249.146.169, Plaintiff will produce: (a) one PCAP for each work at issue in this case; (b) the .torrent files downloaded by Defendant; (c) the Additional Evidence list demonstrating that Defendant's IP address participated in the distribution of third-party works; (d) any technical reports which describe the PCAPs; (e) the .tar files for each work at issue in this case; and (f) the MySQL log file to which the PCAPs correlate.

41. For each and every file hash listed in Doc. 8-1, a copy of the initial complaint, including all exhibits, of each and every lawsuit that you have filed, in any jurisdiction, that also includes the same file hash in one of its exhibits.

**Response to Request No. 41:** Plaintiff objects on the basis that this request seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. Plaintiff further objects on the basis that this request is overly broad and unduly burdensome. To

explain, Plaintiff does not organize its lawsuits by hash values or swarms. Further, few if any infringer steal the same set of Plaintiff's copyrighted works. In that sense, every suit is truly different. Doe defendants infringe Plaintiff's work at such a high volume, that it would be extremely labor intensive and burdensome to review the exhibits to every Complaint that Plaintiff has ever filed to ascertain whether any of the seventeen swarms at issue in this case were also at issue in that case. Further, Defendant can access all of Plaintiff's past and present cases nationwide on RFC Express [<http://www.rfcexpress.com/search.asp>] by clicking on the 'Basic Search' tab under 'Search' and typing in 'Malibu Media' on the Party Name field.

42. Any and all complaints filed against any and all users interacting with IP address 98.249.146.169.

**Response to Request No. 42:** Plaintiff does not possess a list of "each user interacting" and therefore cannot respond to this request. See also Response to Request No. 41.

43. Any and all documents evidencing settlements, judgments, or recovery received from any users interacting with IP address 98.249.146.169.

**Response to Request No. 32:** Plaintiff does not possess a list of "each user interacting" and therefore cannot respond to this request. See also Response to Request No. 41. In addition, in many cases, courts granted protective orders prohibiting Plaintiff from disclosing Defendant's true identity. Further, where Plaintiff settled with other defendants, each settlement agreement contained a confidentiality clause prohibiting Plaintiff from disclosing the doe defendant's identity and the terms of the Agreement. All of the agreements require Plaintiff to inform the doe defendant if the settlement agreement or any communication related to it must be disclosed;

and, the defendants have the opportunity to object to this disclosure. Engaging in a process where doe defendants' identities must be disclosed would spawn an avalanche of irrelevant litigation and ancillary proceedings.

Dated: July 13, 2015

Respectfully submitted,

By: /s/ M. Keith Lipscomb  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 13, 2015, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that service was perfected on all counsel of record and interested parties through this system.

By: /s/ M. Keith Lipscomb