

MALIBU MEDIA, LLC,

VS.

JOHN DOE subscriber assigned IP address 162.231.61.76,

Defendant.

Case Number: 3:16-CV-00781-JAH-BGS

**DECLARATION OF ATTORNEY
BRENN A. ERLBAUM, ESQ.**

I, BRENNER ERLBAUM, DO HEREBY DECLARE:

1. I am over the age of eighteen (18) and otherwise competent to make this declaration. The facts stated in this declaration are based upon my personal knowledge.

2. I am an attorney licensed in the State of California and I currently represent Malibu Media, LLC in the Northern, Southern, and Eastern Districts of California.

DECLARATION OF ATTORNEY BRENN A E. ERLBAUM, ESQ.

1 3. I am submitting this declaration in response to the Court's Order for Supplemental
2 Briefing. *See* CM/ECF 5.

3 4. IP Addresses are numbers assigned to computer network interfaces that allow
4 computers to communicate with one another. *See* Beginner's Guide to Internet Protocol (IP)
5 Addresses, at p. 4.¹

6 5. To connect on the global Internet, each user must be assigned a unique IP
7 Address. *Id.* To coordinate this, the distribution of unique addresses is "managed by a set of
8 registries." *Id.* "Because the registries manage the distribution of the [unique] addresses, it is
9 possible to know who an address is assigned to and how to get in contact with them." *Id.* Thus,
10 because each user on the Internet must have a unique IP Address, the process of distributing
11 these unique addresses is highly regimented. *Id.* at p. 6. To explain, The Internet Corporation
12 for Assigned Names and Numbers ("ICANN"), through the Internet Assigned Numbers
13 Authority ("IANA"), allocates unique IP address blocks to five Regional Internet Registries
14 ("RIRs") around the world. *Id.* These RIRs then allocate smaller IP blocks to Internet Service
15 Providers and other Internet operators. *Id.* In the United States, the RIR is the American
16 Registry for Internet Numbers ("ARIN"). *See* ARIN Policy Manual.² "ARIN allocates blocks
17 of IP addresses to ISPs for the purpose of reassigning that space to their customers." *See id.* at
18 section 4.2.1.1. As such, an ISP who has been allocated a block of unique IP addresses from
19 ARIN is the only entity who can then reassign that block of unique IP Addresses to its
20 customers. *See* generally, *id.*

21 6. Plaintiff brought suit against Defendant because Defendant infringed Plaintiff's
22 copyrighted work. Plaintiff's investigator, Excipio, utilizes technology which ensures that
23 Defendant's IP address is correctly recorded at the exact time of infringement and is always
24 accurate.

25
26 ¹ ICANN, available at <https://www.icann.org/en/system/files/files/ip-addresses-beginners-guide-04mar11-en.pdf>, at
p. 4.

27 ² <https://www.arin.net/policy/nrpm.html#four2>.
28

1 7. After receiving the forensic infringement data from Excipio, Plaintiff isolated the
2 IP addresses that are repeat infringers. Plaintiff then referenced Defendant's IP Address against
3 Maxmind® Premium's IP geolocation database. See <http://www.maxmind.com>. Maxmind is
4 "an industry-leading provider of IP intelligence and online fraud detection tools." See
5 <https://www.maxmind.com/en/about-maxmind>. "Over 5,000 companies use GeoIP data to locate
6 their Internet visitors and show them relevant content and ads, perform analytics, enforce digital
7 rights, and efficiently route Internet traffic." *Id.*

8 8. Maxmind is not "software" or technology per se, rather, it is a database/list.
9 Maxmind determines through information directly from the ISPs or via other means which City
10 and State and to which ISP a given IP traces. Maxmind maintains and updates this list and sells
11 access to it. It is used by local and federal law enforcement agencies as best practice for IP
12 Address Geolocation in order to determine which locality/agency has proper jurisdiction. See
13 *e.g. United States v. Tillotson*, 2:08-CR-33, 2008 WL 5140773 (E.D. Tenn. Dec. 2, 2008) (noting
14 that Maxmind's database correctly identified the Defendant and is sufficient to establish probable
15 cause); *United States v. Richardson*, 4:11CR3116, 2012 WL 10382 (D. Neb. Jan. 3, 2012) (used
16 by Homeland Security to identify the defendant's location).

17 9. Plaintiff uses Maxmind to determine both the ISP of the Defendant and that each
18 Doe Defendant was using an IP Address assigned to a location city inside this District. Plaintiff
19 only forms its suits against defendants that have reputable Internet Service Providers ("ISPs")
20 which, from Plaintiff's experience, have consistently traced to the city location provided by
21 Maxmind.

22 10. Maxmind's ISP tracing service is "about 95% accurate in the US." See
23 <https://www.maxmind.com/en/geoip2-isp-database>.

24 11. Maxmind's geolocation tracing service is "99.8% accurate on a country level,
25 90% accurate on a state level, 81% accurate on a city level for the US within a 50 kilometer
26 radius." See <https://www.maxmind.com/en/geoip2-city>.

1 12. Plaintiff traces the Doe Defendant's IP address a second time immediately before
2 preparing a lawsuit to avoid any issues with dynamic IP addresses. Maxmind updates its
3 database every Tuesday. See [https://support.maxmind.com/geoip-faq/geoip2-and-geoip-legacy-](https://support.maxmind.com/geoip-faq/geoip2-and-geoip-legacy-databases/how-often-are-the-geoip2-and-geoip-legacy-databases-updated/)
4 [databases/how-often-are-the-geoip2-and-geoip-legacy-databases-updated/](https://support.maxmind.com/geoip-faq/geoip2-and-geoip-legacy-databases/how-often-are-the-geoip2-and-geoip-legacy-databases-updated/)

5 13. From undersigned's experience filing lawsuits in California, Maxmind has always
6 been 100% accurate to the state level, 100% accurate at identifying the ISP and has predicted the
7 correct district 98 out of 99 times.

8 14. Attached as Exhibit A is a report that accurately reflects every city trace
9 compared to ISP response from the cases undersigned has filed on behalf of Plaintiff and
10 received the John Doe Defendant's identifying information. Only once has a city trace been
11 inaccurate to the extent that the John Doe Defendant resides in a district other than where
12 Plaintiff filed suit.

13
14 **FURTHER DECLARANT SAYETH NAUGHT.**

15 **DECLARATION**

16 **PURSUANT TO 28 U.S.C. § 1746**, I hereby declare under penalty of perjury that the
17 foregoing is true and correct.

18 Executed on this 14th day of June, 2016.

19
20 *Brenna E. Erlbaum*
21 By: _____

22 **BRENNA E. ERLBAUM, ESQ.**