

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

MALIBU MEDIA, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Case No.: 1:15-cv-10707
	)	Honorable Rebecca Pallmeyer
NEILL JACOBSON	)	
	)	
Defendant.	)	

**DEFENDANT’S FIRST SET OF INTERROGATORIES**

Defendant Neill Jacobson, by and through his attorney, JAMES KELLY LAW FIRM, respectfully submit the following interrogatories to Malibu Media LLC to be answered under oath within thirty days pursuant to Fed. R. Civ. P. 33.

**INSTRUCTIONS**

A. Each interrogatory is to be responded to in accordance with and to the full extent of the applicable Federal Rules of Civil Procedure.

B. If you object to any of the Definitions or Instructions herein, you must do so by written response hereto. If a written response to a Definition or an Instruction is not made prior to your answering of these interrogatories, it will be presumed that you do not object to any Definition of Instruction.

C. These interrogatories seek all information that is known to you, your representatives, agents, employees, investigators, consultants, and unless otherwise privileged, their counsel.

D. All interrogatories must be answered in full and in writing in accordance with Rule 33, signed by each party’s attorney, and verified by each party, unless otherwise required.

If any interrogatory cannot be answered fully after exercising reasonable diligence, please so state and answer each such interrogatory to the fullest extent you deem possible, specify the portion of each interrogatory that you claim to be unable to answer fully and completely, state the facts upon which you rely to support your contention that you are unable to answer the interrogatory fully and completely, and state what knowledge, information, or belief you have concerning the unanswered portion of each such interrogatory.

E. If you believe that any of the following interrogatories call for assertion of a claim of privilege, answer as much of the interrogatory as is not objected to, state that part of each interrogatory to which you object, and set forth, with respect to each such interrogatory as to which claim of privilege is asserted, the nature of the privilege claimed (e.g. attorney-client, work product, etc.).

F. If an interrogatory is answered by citing to documents, specify the responsive document or group of documents by Bates number.

G. If any interrogatory seeks information from more than one individual or entity, the response should be broken down for each individual or related entity (e.g. affiliates, joint ventures, divisions, etc.).

H. If information requested is not readily available from your records in exactly the form requested, furnish carefully prepared estimates, designated as such, and attach explanations of any estimate used.

I. Technical terms shall have their normal technical meaning. If you find the meaning of any terms in these interrogatories to be unclear, you must assume a reasonable meaning, state what the assumed meaning is, and answer on the basis of that assumed meaning.

If you wish to clarify your interpretation of any particular term that is relied upon in answering an interrogatory, you should do so in its answer.

J. Each interrogatory shall be deemed continuing, so as to require supplemental or mandatory responses should you obtain additional responsive information subsequent to your initial responses.

K. The answers to these interrogatories shall be produced within thirty (30) days of the service hereof at the law offices of James M. Kelly, 4801 N. Prospect Road, Peoria Heights, IL 61616.

### **DEFINITIONS**

The term “defendant,” as used herein, refers to the defendant referenced above.

The term “Plaintiff,” as used herein, refers specifically to the plaintiff named above.

The term “Malibu Media,” as used herein, refers to Malibu Media LLC, its agents acting on its behalf, subsidiaries partially or wholly owned by Malibu Media LLC, and entities that became Malibu Media LLC through name change, mergers, acquisitions, etc.

The terms “include,” “includes” or “including” are used in their broadest sense and encompass “including but not limited to” and “including without limitation.”

The terms “identify,” “identification,” “describe,” “description” and “show,” in relation to people means to give the full name, address, date of birth, telephone number, name and address of present or last known employer, and the person’s prior positions, occupations, titles and employers. With regard to documents, they mean to give the date, author, addressee(s), subject and its substance, and the type of documents, including but not limited to letters, memoranda, telegrams, chart reproductions, microfilm, microfiche, etc. With regard to verbal

communication, they mean to give the date of that communication, the persons who were parties to that communication, whether the communication was face-to-face, in writing and/or over the telephone, and if face-to-face describe and state the location of that communication, the prior positions, occupations, telephone numbers, and addresses of the persons involved in the communication, the identity of all persons who were witnesses, and a brief statement concerning the substance of the communication. With regard to a business or entity, they mean to give its full name, its present or last known address, and its present or last known telephone number.

The terms “person” or “entity” refer to all natural persons, corporations, and any other form of business entity including sole proprietorships, partnerships, joint ventures and associations, and includes its directors, agents, employees, subordinates, attorneys, subsidiaries, affiliates, merged, consolidated, or acquired predecessors, divisions and holding parent companies, including present and former officers, directors, shareholders, agents, employees, accountants, and attorneys.

The terms “document,” “documents,” or “documentation” means every original and all non-identical copies of any handwritten, printed, typed, recorded or other graphic or photographic material of any kind and nature, including all drafts thereof and all mechanical or electronic sound recordings or transcripts thereof, however produced or reproduced, including on computer tapes, disks, ROM, CD-ROM or any other data storage media (whether or not it is in machine-readable form), and including but not limited to: accounting materials, accounts, advertisements, agreements, analyses, appointment blueprints, archived electronic mail messages, archived voice mail messages, books, books of account, brochures, calendars, catalogs, CD-ROMs, charts, checks, computer data, computer disks, computer generated or stored information, computer processing cards or tapes, computer programming materials,

contracts, correspondence customer lists, DATs, date books, diaries discs, diskettes, drawings, DVDs, electronic-mail (“e-mail”) messages, faxes, films, flash memory chips, graphs, guidelines, information that can be retrieved by any process or test analysis, instructions, inter-office communications, invoices, laboratory notebooks, ledgers, letters, licenses, logs, manuals, memoranda, memory media or banks (including but not limited to hard disks, floppy disks, diskettes, high capacity removable storage disks, CD-ROMs, DVDs, DATs and flash memory chips or their functional equivalents), microfilm, minutes, notes, opinions, packaging, pamphlets, payments, photographs, phonorecords, photoboard, plans, proposals, price lists, raw data tests or test results, receipts, recorded recollections, records, regulations, reports, sound recordings, specifications, spreadsheets, statements, studies, surveys, tapes, telegrams, telexes, timesheets, vouchers, word processing materials (however stored or maintained) and working papers, writings and all other means by which information is stored for retrieval in fixed form in your possession, custody or control of your counsel, independent public accountants, evaluation consultants, agents, employees or entities acting on your behalf.

The terms “contact” and “communication” refer to any transmission, transfer or exchange between two or more persons of any information, whether by document, electronic or other verbal mean, including but not limited to documents, conversations, correspondence, telephone calls, e-mails, facsimiles and telegrams, and includes any transmission or exchange of information between two or more persons, whether orally or in writing.

The term “control” means actual possession, constructive possession, beneficially owning, power to obtain or ability to obtain any document.

The term “relating to” means consisting of, comprising, containing, setting forth, showing disclosing, describing, explaining, summarizing, concerning, pertaining to, reflecting or touching upon indirectly or directly any matter logically or factually.

The conjunctions “and,” “or,” and “and/or” shall be interpreted conjunctively and shall not be interpreted disjunctively to exclude any information otherwise within the scope of any interrogatory. Similarly, the singular shall include the plural and the plural shall include the singular. A masculine, feminine, or neutral pronoun or description shall not exclude and shall include all other genders.

### **INTERROGATORIES**

1. State the legal name and aliases, date of birth, driver’s license number and State of Issue, Social Security Number, address, phone number, and relationship with Plaintiff of the person(s) answering the Interrogatories and indicate which person answered which Interrogatories.

#### **Response to Interrogatory 1:**

2. Has person(s) identified in Interrogatory 1 ever been convicted of a felony or of a misdemeanor involving dishonesty or false statement? If so, state the nature thereof, date(s) of conviction, and the court and caption in which the conviction(s) occurred. For purposes of this interrogatory, a guilty plea shall be considered a conviction.

#### **Response to Interrogatory 2:**

3. Identify all persons with an interest, financially or otherwise, in this litigation, which includes the owner(s) or member(s) of Malibu Media, legal counsel for Malibu Media, forensic consultant(s), witness(es), recipient(s) of any proceeds from this litigation, and describe the nature of each person’s interest.

**Response to Interrogatory 3:**

4. List and describe the circumstances surrounding each unauthorized uploading of any of the sixteen named Malibu Media works in this lawsuit that were uploaded to a non-Malibu Media-related website before Malibu Media uploaded the same work to its own website.

**Response to Interrogatory 4:**

5. List Malibu Media's initial upload times to Malibu-Media-owned websites in CST for each of the sixteen works relevant to this lawsuit, i.e. the earliest time someone could have legally viewed a video purposefully uploaded by Malibu Media online.

**Response to Interrogatory 5:**

6. List the earliest date for each of the sixteen works relevant to this lawsuit that Malibu Media provided the work online without requiring a paid subscription, including allowing the work to be downloaded or streamed on X-Art.com (and other Malibu Media owned sites) or non-Malibu Media-owned websites without an X-Art membership.

**Response to Interrogatory 6:**

7. Explain how and when Malibu Media first came into contact with IPP International U.G., a German company, including whether IPP International U.G. first contacted Malibu Media, and what type of IPP International's computer records allegedly evidence the infringement allegations against Defendant.

**Response to Interrogatory 7:**

8. Describe how Malibu Media and its hired investigators or independent contractors determine the actual contents of files on BitTorrent, including whether a file is downloaded, opened, and compared with the original work.

**Response to Interrogatory 8:**

9. Provide a detailed list of all Malibu Media's actual damages for Defendant's alleged infringements, regardless of whether Malibu Media seeks statutory damages or actual damages.

**Response to Interrogatory 9:**

10. How many individual defendants have been included in Malibu Media's copyright lawsuits?

**Response to Interrogatory 10:**

11. How many individual defendants have been bound by a settlement with Malibu Media in a copyright lawsuit, including only cases where the defendant agreed to pay Malibu Media any amount?

**Response to Interrogatory 11:**

12. How many defendants have lost a Malibu Media copyright infringement case and had or have to pay damages to Malibu Media?

**Response to Interrogatory 12:**

13. How much money has Malibu Media received from copyright infringement lawsuits?

**Response to Interrogatory 13:**

14. How much has Malibu Media spent on copyright infringement lawsuits?

**Response to Interrogatory 14:**

15. What percent of money received by Malibu Media comes from subscription services and licensing agreements and what percent of money received by Malibu Media comes from copyright litigation settlements and damages?

**Response to Interrogatory 15:**



16. Which fiscal years has Malibu Media profited more from copyright litigation, including settlements, than from website subscriptions and licensing agreements?

**Response to Interrogatory 16:**

17. Which fiscal years has Malibu Media earned more money from copyright litigation, including settlements, than from website subscriptions and licensing agreements?

**Response to Interrogatory 17:**

NEILL JACOBSON

By: /s/ Patrick J. Rollings  
Patrick J. Rollings

Patrick J. Rollings  
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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

MALIBU MEDIA, LLC,

Plaintiff,

v.

NEILL JACOBSON

Defendant.

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Civil Case No.: 1:15-cv-10707  
Honorable Rebecca Pallmeyer

**CERTIFICATION/JURAT PAGE**

By: \_\_\_\_\_

Name: \_\_\_\_\_, on behalf of Malibu Media, LLC

STATE OF \_\_\_\_\_ )  
 ) SS.

COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being first duly sworn on oath, deposes and states that at all times relevant to the subject suit, he/she was an officer of MALIBU MEDIA, LLC, Plaintiff in the above-captioned matter, and that he/she has read the foregoing Answers to Defendant NEILL JACOBSON's First Set of Interrogatories, and the answers made herein are true, correct, and complete to the best of his/her knowledge and belief.

\_\_\_\_\_(signature)  
\_\_\_\_\_(name)  
\_\_\_\_\_(job title)  
MALIBU MEDIA, LLC

SUBSCRIBED and SWORN to before me on \_\_\_\_\_, 2016.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I, Patrick J. Rollings, attorney at James Kelly Law Firm, on behalf of Defendant Neill Jacobson, certify that I served the foregoing document by U.S. Mail and email to:

Mary K. Schulz  
1144 E. State Street, Suite A260  
Geneva, IL 60134  
P: (312) 213-7196  
medialitigationfirm@gmail.com

Sincerely,

By: /s/ Patrick J. Rollings  
JAMES KELLY LAW FIRM  
4801 N. Prospect Rd.  
Peoria Heights, IL 61616  
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