

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

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| MALIBU MEDIA, LLC, |) | |
| |) | |
| Plaintiff, |) | Civil Case No.: <u>1:13-cv-06312</u> |
| |) | |
| v. |) | Assigned to: |
| |) | Honorable Geraldine Soat Brown |
| JOHN DOE subscriber assigned IP address |) | U.S. District Judge |
| 24.14.81.195, |) | |
| |) | |
| Defendant. |) | |
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PLAINTIFF’S RESPONSE TO DEFENDANT’S STATEMENT OF MATERIAL FACTS

Pursuant to Local Rule 56.1(b)(3)(B), Malibu Media, LLC (“Plaintiff”) hereby responds to John Doe’s (“Defendant”) Statement of Undisputed Material Facts:

| DEFENDANT’S STATEMENTS | PLAINTIFF’S RESPONSES |
|---|------------------------------|
| 1. The Plaintiff is Malibu Media, LLC, a company located in California. In its Complaint, Malibu agrees that it has evidence that the defendant infringed on its rights by utilizing the BitTorrent protocol to download 24 of its Works. | 1. Undisputed. |
| 2. The Defendant, John Doe, is an individual residing in his district. | 2. Undisputed. |
| 3. Subject matter jurisdiction is appropriate as the claim for copyright infringement raises a federal question Venue in the Northern District of Illinois is proper because Defendant | 3. Undisputed. |

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| resides here. | |
| 4. John Doe did not download the complained of Malibu Works. | 4. Disputed. |
| 5. There are no copies of any of Malibu Media works on any of Doe's devices. | 5. Disputed. |
| 6. There were no Malibu Works on Doe's devices. | 6. Disputed. |
| 7. There were no torrent files relating to the download of Malibu Works on Doe's devices. | 7. Disputed. |
| 8. Patrick Paige's (Malibu's expert) report makes no reference to any of Malibu's complained of Works being on any Doe's device. | 8. Disputed. |
| 9. In his expert report Patrick Paige contends that two devices were not produced. | 9. Disputed in part. This statement is misleading in that it follows the title "all relevant devices were provided." <u>All</u> Mr. Paige's original report can be fairly read to say is that there is computer evidence proving that two devices were not produced. <i>See</i> CM/ECF 146-3, at ¶¶ 43-45. To be clear, Mr. Paige's report does not support the contention that all relevant devices were produced. Indeed, Mr. Paige's Declaration states the exact opposite: |

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| | <p>“Plaintiff’s Works were either on a computer Defendant failed to produce or on a drive that he did produce, which was modified in such a way to cause Plaintiff’s Works to be undetectable.” <i>See</i> Declaration of Patrick Paige Dated April 20, 2015 at ¶ 73.</p> |
| <p>10. These two devices were last used on June 14, 2012.</p> | <p>10. Disputed.</p> |
| <p>11. This predates the existence of the Works complained of.</p> | <p>11. Disputed in part. Plaintiff admits only that June 14, 2012 predates the publication date for the Works covered by the Copyrights-in-suit.</p> |
| <p>12. Defendant produced a hard drive that had virtual machines on it.</p> | <p>12. Undisputed.</p> |
| <p>13. Those virtual machines had not been used since before Malibu existed, September 30, 2010.</p> | <p>13. Disputed.</p> |
| <p>14. Mr. Paige states that the software needed to be run on virtual machines is not on any device produced.</p> | <p>14. Undisputed.</p> |
| <p>15. The lack of the software to run virtual machines is consistent with Doe’s license for the software having expired.</p> | <p>15. Disputed.</p> |

DATED: April 20, 2015

Respectfully submitted,

By: /s/ M. Keith Lipscomb
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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 20, 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