

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

MALIBU MEDIA, LLC,	)	12-cv-2078
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
JOHN DOES 1, 13 and BRIAN	)	
WHITE,	)	Philadelphia, PA
	)	June 10, 2013
Defendants.	)	9:28 a.m.

TRANSCRIPT OF BENCH TRIAL  
BEFORE THE HONORABLE MICHAEL M. BAYLSON  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Field - The Court

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1           So I keep all of that on the database, and then I  
2   also keep the compliant database for the U.S. 2257.

3           THE COURT: All right. Thank you.

4           MR. LIPSCOMB: And I know you're involved in that  
5   case --

6           THE COURT: Yes.

7           MR. LIPSCOMB: -- right now which --

8           THE COURT: That's another case.

9           MR. LIPSCOMB: -- fairly amazing that two adult  
10   cases --

11           THE COURT: It's completely coincidental.  
12   Completely coincidental.

13           MR. LIPSCOMB: You're the adult -- adult judge this  
14   week.

15           THE WITNESS: But you -- our movies, I'm sure  
16   then -- you'd probably like them.

17           THE COURT: Okay. All right. Thank you.

18           THE WITNESS: Okay. Thank you.

19           THE COURT: Call your next witness.

20           MR. LIPSCOMB: Your Honor, I'd now like to call  
21   Michael Patzer.

22           MICHAEL PATZER, PLAINTIFF'S WITNESS, SWORN

23           THE CLERK: Would you be seated, state your full  
24   name and spell your last name for the record.

25           THE WITNESS: Michael Patzer, P-A-T-Z-E-R.

Patzer - Direct (Lip)

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DIRECT EXAMINATION

BY MR. LIPSCOMB:

Q Mr. Patzer, where did you go to high school?

A (Inaudible), Germany.

Q When did you graduate?

A In 1999.

Q Have you worked in the IT business since 1999?

A Yes, I do.

Q So you've worked for 14 years in the IT business.

A That's correct.

Q Do you currently work IPP, Limited?

A Yes, I designed, created and implemented and now I'm monitoring the software and service they currently use to trace possible copyright infringements.

Q You don't actually work for IPP, Limited. You said you work for a firm that provides these services to IPP, Limited, correct?

A That's correct.

Q Is Malibu Media a client of IPP, Limited?

A Yes, it is.

Q And Malibu Media relied on IPP, Limited software to detect the infringers in this case, correct?

A Correct.

Q How long did it take to develop the software used by IPP, Limited?

Patzner - Direct (Lip)

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1 A Over one year.

2 Q How does the software work?

3 A It -- it's -- normally starts by customers giving us the  
4 names of the copyright works, and -- yeah, that's --

5 THE COURT: Customers give you the name of a  
6 copyrighted work?

7 THE WITNESS: Of their copyrighted works, yeah.

8 BY MR. LIPSCOMB:

9 Q What happens after a customer gives you the name of their  
10 copyrighted work?

11 A We search the internet from the well known Torrent web  
12 pages for possible matches. It's basically a lexical search  
13 based on the name the -- they gave us.

14 Q What happens if IPP's servers find a possible match?

15 A We download the data files which are correlated to the  
16 Torrent files.

17 THE COURT: You correlate what, the beta file?

18 THE WITNESS: The data.

19 THE COURT: Data file.

20 THE WITNESS: Yeah, sorry, the data file, correlate  
21 to the Torrent file and start the logging process at the  
22 same -- at the same time.

23 BY MR. LIPSCOMB:

24 Q The data that's correlated to the Torrent file, in this  
25 case, that would be a movie, right?

Patzer - Direct (Lip)

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1 A Correct.

2 Q And you said you start the logging process at the same  
3 time.

4 A Yes.

5 Q Does IPP distribute pieces of data back into the  
6 BitTorrent swarm?

7 A No, that's not possible.

8 Q Why is that not possible?

9 A Because we completely writ -- wrote the whole software by  
10 scratch ourself. There's no such feature implemented what's  
11 makes it possible to upload or distribute any data.

12 Q But doesn't BitTorrent work on a tit-for-tat basis?

13 A That's correct.

14 Q What is a tit-for-tat basis?

15 A It means that you have to upload data to be able to  
16 download data.

17 Q But didn't you just tell me you're not uploading data?

18 A That's correct.

19 Q So how are you getting around the tit-for-tat?

20 A Because if you are new in the BitTorrent swarm and you  
21 don't have any data, so the protocol, the BitTorrent protocol  
22 has to support that if somebody new is joining the swarm, that  
23 you still get some kind of data to be able to join.

24 THE COURT: Use the word "swarm?"

25 MS. FIELD: The swarm.

Patzner - Direct (Lip)

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1 THE COURT: Did you use the word "swarm?"

2 THE WITNESS: Swarm, yeah.

3 MS. FIELD: A swarm is computer --

4 BY MR. LIPSCOMB:

5 Q What is a BitTorrent swarm?

6 A BitTorrent swarm is actually a huge amount of people  
7 sharing the same content.

8 THE COURT: When you say "huge amount" -- well, go  
9 ahead. You can ask the question.

10 THE WITNESS: But I can still --

11 BY MR. LIPSCOMB:

12 Q A BitTorrent swarm is all of the peers who are sharing  
13 the same Torrent file, correct?

14 A That's correct.

15 Q And then one of Malibu Media's movies, when people are  
16 sharing it, there's usually five, 10,000 people at a time,  
17 correct?

18 A That's correct.

19 Q Going back to the tit-for-tat questions, is IPP  
20 constantly joining swarms as new peers?

21 A That's correct.

22 Q And that's how you get around the tit-for-tat.

23 A Right.

24 Q You said after a possible match is found through  
25 electrical search, you immediately start downloading the

Patzner - Direct (Lip)

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1 computer file, and you start login communications, correct?

2 A Correct.

3 Q What do you mean by "start logging communications?"

4 A We start connecting to possible infringers and store that  
5 information in our database service.

6 Q Do you also save the -- the communications?

7 A Yes.

8 Q Where do you save them?

9 A We just -- we write them to WORM tape drives after they  
10 have written to the hard disk before.

11 Q That's WORM, W-O-R-M, tape drive, correct?

12 A What does "WORM" stand for?

13 Q It stands for write once, read many. This -- actually,  
14 we use -- because it's impossible to modify data after it's  
15 get written to the tape drive, it's impossible to delete any  
16 data. The only way is to destroy the tape drive.

17 MR. LIPSCOMB: Your Honor, we pre-marked as P-5 a  
18 WORM tape drive, and this is, for the record, a three terabyte  
19 LTO-5 Ultrium WORM, and I'd just like to -- I only have one  
20 copy of this because it is a tape drive --

21 THE COURT: Right.

22 MR. LIPSCOMB: -- so I'd just like to show it to the  
23 witness and then --

24 THE COURT: Sure. Well, can I just ask a question?

25 MR. LIPSCOMB: Of course.



Patzer - Direct (Lip)

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1 THE COURT: When you say that you find five -- five  
2 to 10,000 people in a swarm, is that -- is that your  
3 testimony?

4 THE WITNESS: Yeah, it's -- it depends on the --

5 THE COURT: Now, are they in one location, or they  
6 could be all over the world or --

7 THE WITNESS: It's worldwide.

8 THE COURT: What?

9 THE WITNESS: The -- the number's a worldwide  
10 number.

11 THE COURT: All right. Now, let's -- let's say  
12 there's a movie -- I just want to understand this.

13 Let's say there's a movie, and I'll -- I'll pick a  
14 plain vanilla topic like "Miss Jones," okay?

15 THE WITNESS: Yeah.

16 THE COURT: All right. Now, if -- are you saying  
17 that if "Miss Jones" is being viewed on BitTorrent -- let's  
18 say in this -- the way Ms. Field said, that movie may just be  
19 10 minutes long, right?

20 THE WITNESS: Yeah.

21 THE COURT: But this could be played all day long on  
22 BitTorrent because people in different countries would be  
23 watching it at different times, is that right?

24 THE WITNESS: Yeah.

25 THE COURT: So for how long do you monitor how long

Patzer - Direct (Lip)

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1 "Miss Jones" is being played on BitTorrent?

2 Do you understand my question? Do you just monitor  
3 it like once a day, or do you monitor it 24 --

4 THE WITNESS: We have --

5 THE COURT: -- hours a day?

6 THE WITNESS: Twenty-four hours a day.

7 THE COURT: Twenty-four hours. For how long? For  
8 how many days?

9 THE WITNESS: Forever.

10 THE COURT: Forever?

11 THE WITNESS: Yeah.

12 THE COURT: Your equipment can do that?

13 THE WITNESS: Yeah.

14 THE COURT: Well, you -- your start date is when --  
15 does Malibu media contact you and ask you to survey one of  
16 their movies --

17 MR. LIPSCOMB: Through coun- --

18 THE COURT: -- that is, to determine whether one of  
19 their movies is being shown on BitTorrent?

20 MS. FIELD: Can I answer that?

21 THE COURT: Being downloaded on BitTorrent?

22 MR. LIPSCOMB: It goes through counsel, through me  
23 to them.

24 THE COURT: All right. Well --

25 THE WITNESS: I'm just technic guy, so --

Patzner - Direct (Lip)

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1 THE COURT: Well, Mr. Lipscomb then call you?

2 MS. FIELD: I have something --

3 THE WITNESS: Not me in person.

4 THE COURT: What?

5 THE WITNESS: Because I -- I'm just the technic guy,

6 so --

7 THE COURT: You don't know how it's set up.

8 THE WITNESS: Yeah.

9 MR. LIPSCOMB: Mr. Fiezer will testify about how --

10 THE COURT: Okay. Fine. All right. Well, then  
11 we'll wait. All right. Go ahead.

12 MR. LIPSCOMB: From your questions I -- I think that  
13 you -- you have some misunderstandings about the way  
14 BitTorrent works. Can -- can I try and clear it up?

15 THE COURT: Yes, sure. Please.

16 BY MR. LIPSCOMB:

17 Q Let's just -- in fact, we're going to talk -- we'll just  
18 start with this.

19 BitTorrent -- BitTorrent has what's called a dot Torrent  
20 file, correct?

21 A That's correct.

22 Q The dot Torrent file has what in it?

23 A Basically, contains two main things. The first thing is  
24 the name, the creator of the Torrent file gave to the file to  
25 describe the content it has, and the second thing is that it

Patzer - Direct (Lip)

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1 has a index of every data file which is correlated to that  
2 Torrent file.

3 Q And the data is, in this case, a movie, correct?

4 A Correct.

5 Q And somebody goes and puts up the dot Torrent file onto a  
6 Torrent website, correct?

7 A Correct.

8 Q And then peers click on that dot Torrent file, right?

9 A Right. And the peers -- the initials here --.

10 MR. LIPSCOMB: And, Your Honor, if you look at a  
11 demonstrative -- this -- this is a really good time to -- to  
12 flip to the demonstratives, and it would be on page -- they'll  
13 look like this, BitTorrent file flow.

14 BY MR. LIPSCOMB:

15 Q Mr. Patzer, the initials here --

16 THE COURT: The one says BitTorrent file flow?

17 MR. LIPSCOMB: BitTorrent file flow.

18 THE COURT: Yes. Okay.

19 BY MR. LIPSCOMB:

20 Q Mr. Patzer, the initial seeder has the -- the whole  
21 movie, correct?

22 A That's correct. That's actually the person who created  
23 the Torrent file and uploaded the Torrent file to the pages.

24 Q Okay. And the initial seeder will -- the -- the people  
25 on the top row of the -- the demonstrative are peers, correct?

Patzer - Direct (Lip)

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1 A That's correct.

2 Q And you -- a small swarm, this would be called the swarm,  
3 right? These three peers would be the swarm.

4 A Yeah, that's correct.

5 Q The initial seeder breaks up the Torrent file or the data  
6 file, the movie file, into pieces --

7 A Yeah.

8 Q -- of data, right?

9 A A lot of small pieces, yeah.

10 Q Lot of small pieces. And the initial sender will send  
11 piece number one to infringer number one, right?

12 A Right.

13 Q Piece number two to infringer number two.

14 A Right.

15 Q Piece number three to infringer number three.

16 A Correct.

17 Q Then three will send his piece to one and to two. Two  
18 will send his piece to one and to three and so on.

19 A Yeah, correct.

20 Q That's the way BitTorrent works.

21 THE COURT: Well, does that -- does that happen  
22 automatically, or does --

23 THE WITNESS: Yeah, that's --

24 THE COURT: -- each infringer have to do something?

25 THE WITNESS: That's the BitTorrent protocol, how it

Patzner - Direct (Lip)

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1 works. You just have to install and start the software.

2 THE COURT: So -- but the software itself sends the  
3 image to the three infringers so that they all get --

4 THE WITNESS: Yeah.

5 THE COURT: -- each other's downloads, is that  
6 correct?

7 THE WITNESS: That's correct.

8 THE COURT: They don't have to know each other.

9 THE WITNESS: No.

10 MR. LIPSCOMB: Not personally.

11 THE COURT: All right. Go ahead.

12 BY MR. LIPSCOMB:

13 Q But their computers have to connect to each other and  
14 transmit data back and forth and -- between each other and  
15 among each other.

16 THE COURT: Is that correct?

17 THE WITNESS: Yeah, that's correct.

18 BY MR. LIPSCOMB:

19 Q BitTorrent's popular because it's a disaggregated system  
20 for file sharing, correct?

21 A That's correct.

22 Q And one person can distribute a movie file to a bunch of  
23 different people without having to send the whole file to each  
24 person, right?

25 A That's right.

Patzner - Direct (Lip)

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1 Q And that reduces the bandwidth load on the person who  
2 wants to distribute it by using that disaggregated system,  
3 right?

4 A That's correct. A big swarm can have up to one million  
5 in one swarm.

6 Q And the reason BitTorrent's popular is because one person  
7 can distribute it to thousands of people because all those  
8 thousands of people work together.

9 A That's correct.

10 THE COURT: Well -- well, they -- they work -- those  
11 thousands of people are connected by the software because  
12 they've logged on to the software, is that correct?

13 THE WITNESS: That's correct.

14 THE COURT: They're not independently working -- I  
15 think the word "working together" is a misnomer because  
16 they -- all they've done is to log onto BitTorrent, is that  
17 correct, and downloaded the same movie.

18 THE WITNESS: That's correct, but if you download,  
19 you all have to upload, so everybody who's downloading that  
20 movie is uploading at the same time.

21 THE COURT: But that's because the software does  
22 that automatically.

23 THE WITNESS: Yeah, but it's not possible to use  
24 BitTorrent without uploading.

25 THE COURT: Okay. All right.

Patzner - Direct (Lip)

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1 MR. LIPSCOMB: So the very, very beginning, if you  
2 have no data.

3 THE COURT: Right.

4 THE WITNESS: Yeah.

5 MR. LIPSCOMB: And --

6 THE COURT: But -- but let me ask --

7 MR. LIPSCOMB:

8 Q But they are working together in the sense that they are  
9 all sending each other pieces of --

10 THE COURT: Right.

11 BY MR. LIPSCOMB:

12 Q -- the file, correct?

13 THE COURT: Now, some -- one -- let me -- one person  
14 who is using BitTorrent may get the beginning of the movie,  
15 another person may get the middle of the movie, and another  
16 person may get the end of the movie, is that correct?

17 THE WITNESS: That's correct.

18 THE COURT: How does the -- does the BitTorrent  
19 software put the movie together in order?

20 THE WITNESS: By checksums. The BitTorrent software  
21 knows what's the beginning, what's the middle and what's the  
22 end of it.

23 THE COURT: It does?

24 THE WITNESS: So it just glues it together when he  
25 gets all the puzzle pieces. Like a normal puzzle, there's



Patzner - Direct (Lip)

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1     only one way to put it together.

2                 THE COURT: But the software knows that  
3     automatically.

4                 THE WITNESS: Yeah.

5                 THE COURT: The members of the swarm don't put it  
6     together themselves.

7                 THE WITNESS: That's correct.

8                 THE COURT: Go ahead.

9     BY MR. LIPSCOMB:

10    Q     Their computers put it together via the use of their  
11    BitTorrent client, correct?

12    A     Correct.

13    Q     And the BitTorrent client is the software program on  
14    their individual computers.

15    A     That's correct.

16    Q     Let's go back to that WORM tape drive. Okay?

17    A     Okay.

18    Q     You said that the WORM tape drive stands for read once --  
19    write once, read many.

20    A     Correct.

21    Q     And that IPP was putting the logging communications both  
22    on its server and then onto that WORM tape drive, correct?

23    A     That's correct.

24    Q     Have you ever seen the WORM tape drive in front of you  
25    before?

Patzer - Direct (Lip)

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1 A Yes, I did.

2 Q What's on it?

3 A It has a huge amount of BitTorrent communications stored  
4 on it.

5 Q Are any of the communications relevant to this case?

6 A That's correct.

7 MR. LIPSCOMB: Your Honor, I'd now like to move P-5  
8 into evidence.

9 THE COURT: Admitted.

10 BY MR. LIPSCOMB:

11 Q What type of computer file is the transaction that's  
12 recorded on P-5?

13 A It's a PCAP file.

14 THE COURT: What did you -- what is it?

15 THE WITNESS: P-C-A-P.

16 THE COURT: PCAP. All right. ,

17 BY MR. LIPSCOMB:

18 Q What does "PCAP" stand for?

19 A It stands for packet capture.

20 Q What type of packet are you capturing?

21 A Data packets.

22 Q What program does IPP use to create PCAPs?

23 A Tcpdump.

24 Q What does tcpdump do?

25 A It's monitoring the whole network traffic of server so

Patzner - Direct (Lip)

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1 all incoming and outgoing communications are written to a  
2 file.

3 Q So let -- the way I conceptualize is -- if this is fair.

4 Is this like a video camera, kind of staring at your  
5 server, recording all of the ingoing and outgoing  
6 transactions? Is that right?

7 A That's right, yeah.

8 Q That's -- that's what tcpdumps and -- dump does, right?

9 A Right, yeah.

10 Q And the -- the recording, that's called a PCAP.

11 A Right.

12 Q And the PCAPs are on that WORM tape drive.

13 A Yeah, lot of them.

14 Q For some of the infringement hits in this case.

15 A Correct.

16 Q And if you needed to, could you produce the same WORM  
17 tape drives for all the infringement hits in this case?

18 A Correct.

19 Q What else is on that WORM tape drive?

20 A Actual, the movie which we are downloaded through the  
21 BitTorrent network which is correlated to the Torrent files.

22 Q That's the BitTorrent copy of the movie, right?

23 A That's correct.

24 Q Not the original, the copy.

25 A The copy.

Patzner - Direct (Lip)

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1 Q What else is on that WORM tape drive?

2 A German government-issued time stamp.

3 Q That time stamp's issued by the government of Germany?

4 A By the government of Germany, correct.

5 Q How soon after a PCAP file is placed on that WORM tape  
6 drive do you put the government-issued time stamp on it?

7 A Within 24 hours.

8 Q What does this time stamp prove?

9 A It proves that the data was actually written to that at  
10 that time.

11 Q What happens to your WORM tape drives after they're  
12 filled up?

13 A We throw them in a data security safe.

14 Q About how many tapes do you currently have?

15 A About 300.

16 Q How many servers does IPP use?

17 A About 150 servers and two tape robots.

18 Q Does IPP have any security certifications?

19 A Yes, we fulfill the security certification of credit card  
20 processing companies.

21 Q And that's so that you can be sure that nobody's hacking  
22 into your system, right?

23 A That's correct.

24 Q Is it important that IPP servers have the correct time?

25 A Yes, it's very important.

Patzer - Direct (Lip)

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1 Q Why?

2 A Because the ISPs are using that data to correlate it to  
3 the -- to correlate to possible infringements of their  
4 subscribers.

5 Q How are IPP's servers' clocks set?

6 A They are set by two dedicated GPS hardware service and  
7 atomic clock.

8 Q And what happens if your servers' time is different from  
9 either the GPS time or the atomic time?

10 A If the time differs more than 100<sup>th</sup> of a second, we just  
11 skip the lot.

12 Q Is there a specific length of time that your system is  
13 set to maintain a connection with a possible infringer during  
14 a transaction?

15 A Yes, there's a minimum delay of two seconds before actual  
16 transfer data and two seconds before -- after it.

17 Q And since your time is never inaccurate by more than 100<sup>th</sup>  
18 of a second on a log that you don't skip and you maintain  
19 connections for than four seconds, are you confident that the  
20 information you give to the ISPs can be used to accurately  
21 correlate that the alleged -- correlate the IP address to the  
22 subscriber?

23 A Very confident.

24 Q Okay. Let's talk for a moment about hash values. Okay?

25 A Okay.

Patzer - Direct (Lip)

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1 Q What is a hash value?

2 A A hash value is actual fingerprint of a piece of data.

3 Q Does every unique piece of data have a different hash  
4 value?

5 A That's correct.

6 Q And now let's go back and talk -- we did this a little  
7 bit just before, but let's go back and talk about BitTorrent  
8 in general for a moment. Okay?

9 A Okay.

10 Q The Torrent file contains what information?

11 A The name the initial creator or initial seeder of the  
12 Torrent file gauged to the Torrent file to describe the  
13 content and index of all data pieces which are correlated to  
14 the Torrent file.

15 Q So a movie file might have, just using sample, 100  
16 different pieces of data, right?

17 A That's correct.

18 Q And does the dot Torrent file, the whole dot Torrent  
19 file, have a hash value?

20 A That's correct.

21 Q We'll call that hash value the master hash value?

22 A Yeah, that's correct.

23 Q And does each little piece in the dot Torrent file have  
24 its own hash value?

25 A That's correct.

Patzer - Direct (Lip)

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1 Q Now, let's talk for a moment about a BitTorrent  
2 transaction. Okay?

3 A Okay.

4 MR. LIPSCOMB: Your Honor, I've pre-marked P-6.

5 May I approach?

6 THE COURT: Yes. ,

7 BY MR. LIPSCOMB:

8 Q Mr. Patzer, have you ever seen the document that's been  
9 pre-marked as Plaintiff's 6?

10 A Yes.

11 Q What is it?

12 A It's a technical report which is produced by IPP  
13 software.

14 Q And you personally maintain the servers which run that  
15 software, correct?

16 THE COURT: Early in the case you filed a  
17 declaration or an affidavit by someone from IPP was it this --

18 MR. LIPSCOMB: He comes next.

19 THE COURT: That's the next witness. Okay.

20 MR. LIPSCOMB: He -- he's the expert on how it  
21 works. He runs it -- or he actually uses it.

22 THE COURT: Okay. Thank you.

23 MR. LIPSCOMB: Okay.

24 BY MR. LIPSCOMB:

25 Q And just going back to P-6, you personally maintain the

Patzer - Direct (Lip)

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1 servers that run the software that created P-6, right?

2 A That's correct.

3 Q And the servers were in good working order at the time  
4 that P-6 was created?

5 A Yes.

6 Q And the -- you monitor the software, as well, right?

7 A Yes, correct.

8 Q The software was functioning correctly?

9 A Correct.

10 Q And this -- P-6 is the type of report that's kept in the  
11 ordinary course of business for IPP?

12 A That's correct.

13 MR. LIPSCOMB: Your Honor, I'd like to move P-6 into  
14 evidence.

15 THE COURT: Admitted.

16 BY MR. LIPSCOMB:

17 Q What's the -- P-6, what's the report called?

18 A It's a technical report.

19 Q What does the technical report show?

20 A It shows the extraction of one of the communications of a  
21 PCAP file.

22 Q Is this a report of one of the transactions that occurred  
23 in this case?

24 A That's correct.

25 Q And if you needed to, could you produce this same exact



Patzner - Direct (Lip)

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1 type of report for every one of the infringements that  
2 occurred in this case?

3 A Yes.

4 Q Can you turn to -- I think it's page two.  
5 Which movie is this talking about?

6 A That's actual in this case a -- or a strip -- it's "Strip  
7 Poker."

8 Q Let's look at the -- page six, if you will -- if you  
9 will, please.

10 A Yes.

11 Q What's the first entry on page six show?

12 A Just the beginning of a TCP\IP connection.

13 Q And what is a TCP, backslash, IP connection?

14 A It's the commonest protocol in the internet.

15 Q What does line two of page six show?

16 A Shows a BitTorrent handshake.

17 Q What's in a BitTorrent handshake?

18 A Beside other things, it contains the master hash of a  
19 BitTorrent file so that both parties know about which content  
20 they talking about.

21 Q Can we go to page seven of the report now, please?

22 A Yes.

23 Q Is the highlighted section on page seven, is that the  
24 same BitTorrent handshake that's on page six, line two?

25 A That's correct.

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1 Q What's the -- what's shown next to the star that -- that  
2 we wrote in blue ink at the bottom?

3 A It shows us the master hash value of that Torrent file.

4 Q And that correlates the -- the Torrent to -- I'm sorry.  
5 Strike that.

6 The hash value at the bottom of page seven, that's for a  
7 movie in this case, right?

8 A That's correct.

9 MR. LIPSCOMB: Your Honor, I'd now like to show the  
10 witness P-7. This is a -- for the record, it's a 500 gigabyte  
11 hard drive, and I only have one copy of it.

12 We're just going to -- after he talks about it,  
13 we'll introduce it.

14 THE COURT: All right.

15 BY MR. LIPSCOMB:

16 Q Go ahead and pull that out of -- Mr. Patzer, have you  
17 ever seen that 500 gigabyte hard drive before?

18 A Yes, I wrote data on it.

19 Q You're the only person who's written data onto it?

20 A That's correct.

21 MR. LIPSCOMB: Your Honor, I'd like to move P-7 into  
22 evidence.

23 THE COURT: Admitted.

24 BY MR. LIPSCOMB:

25 Q What's on the 500 gigabyte hard drive that's P-7

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1 A It contains the Torrent files for the X-art movies, and  
2 it contains the -- the copies of their movies which we got  
3 through the Torrent network and also contains a protocol that  
4 proves that the Torrent files matches perfectly to the movie  
5 files on the -- on the drive.

6 Q Just to clarify. The WORM drive only has a couple of  
7 transactions on it. That 500 gigabyte hard drive has every  
8 Torrent file at issue in this case?

9 A That's correct.

10 Q And every movie that was transmitted through BitTorrent  
11 in this case.

12 A That's correct.

13 Q So those are the copies of the movies.

14 A Yes.

15 Q Let's change topics and now talk briefly about the  
16 quantum of infringements that Malibu Media suffers each month.  
17 Okay?

18 A Okay.

19 Q IPP monitors that, right?

20 A That's correct.

21 Q In the U.S. and in 15 other countries around the world.

22 A For Malibu Media, correct.

23 Q More countries for some other people.

24 A Correct.

25 Q Based on your personal observations and your software,

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1 what -- what it's recording, how many people in the U.S.  
2 infringed Malibu Media's movies last month?

3 A About --

4 THE COURT: Last month?

5 MR. LIPSCOMB: Last month.

6 THE COURT: Well, short -- the month of May?

7 MR. LIPSCOMB: We're in June?

8 THE DEFENDANT: May 2013.

9 MR. LIPSCOMB: May 2013.

10 THE WITNESS: About 80,000.

11 BY MR. LIPSCOMB:

12 Q How many people --

13 THE COURT: That's just in the U.S.?

14 THE WITNESS: Just in the U.S.

15 BY MR. LIPSCOMB:

16 Q How many people infringed Malibu Media's movies in all  
17 the countries that you monitor for Malibu Media in May of  
18 2013?

19 A About 300,000.

20 THE COURT: Those in the other 15 countries.

21 THE WITNESS: Yeah.

22 BY MR. LIPSCOMB:

23 Q That 300,000 includes the U.S.

24 A Yeah.

25 THE COURT: Does that include the U.S.?

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1 THE WITNESS: Yes.

2 THE COURT: Okay.

3 BY MR. LIPSCOMB:

4 Q How many Torrent files are you -- you tracking worldwide  
5 right now?

6 A About 10 million.

7 Q That's obviously not just for Malibu Media, right?

8 That's --

9 A That's correct.

10 Q Each one --

11 THE COURT: Do you have -- do you have other clients  
12 similar to Malibu Media that are --

13 THE WITNESS: Yeah.

14 THE COURT: How many others?

15 THE WITNESS: Don't know, about -- about 100.

16 THE COURT: Do -- can commercial movies be loaded  
17 onto BitTorrent, like "Gone with the Wind" or --

18 MR. LIPSCOMB: We're going to get there, Your Honor.

19 THE COURT: Oh, okay. Excuse me. All right. Go  
20 ahead.

21 MR. LIPSCOMB: We're definitely going to get there.

22 BY MR. LIPSCOMB:

23 Q How many -- you're tracking 10 million Torrent files in  
24 total right now, correct?

25 A Yes, and the 10 -- the Torrent files are not only for

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1 actual customers, actual number of Torrent files that exist  
2 out there.

3 Q What type of content can you find on BitTorrent?

4 A You can find software, cinema movies, adult movies,  
5 musics. You can find games, whole compilations of, for  
6 example, the Beatles, so just everything.

7 You can also find e-books. It's just everything there.

8 Q Just about every major motion picture that comes out is  
9 on BitTorrent, isn't it?

10 A That's correct.

11 Q And all popular software is on BitTorrent.

12 A Correct.

13 Q Most popular music is on BitTorrent.

14 A Right.

15 Q Textbooks for college are on BitTorrent.

16 A Correct.

17 Q Computer games.

18 A Right.

19 Q Ten million different file -- that's a big library,  
20 right?

21 A Right.

22 Q How many people are using BitTorrent on an average day?

23 A About 100 million worldwide.

24 Q Have you ever heard of the movie, "Batman, the Dark  
25 Knight Rises?"

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1 A Yes.

2 Q How many people used BitTorrent to download "Batman, the  
3 Dark Knight Rises" the day before it was released in theaters?

4 A About six -- over six million.

5 Q Six million people.

6 THE COURT: How were they able to get it before it  
7 was released?

8 THE WITNESS: Somebody stole it somewhere and put it  
9 to BitTorrent. Because it's -- only one person has to put --  
10 put it to BitTorrent, and everybody else can steal it.

11 BY MR. LIPSCOMB:

12 Q Just the same way they did to Malibu Media with --

13 A Yeah.

14 Q -- Malibu Media's two movies.

15 THE COURT: Just -- who -- is BitTorrent owned by  
16 some --

17 THE WITNESS: No.

18 MR. LIPSCOMB: Yes, there is a BitTorrent, Inc.

19 THE WITNESS: Oh, so --

20 MR. LIPSCOMB: BitTorrent, Inc. owns the protocol.  
21 It's based out in either Washington or California. It  
22 licenses its code to BitTorrent clients. BitTorrent clients  
23 is a -- are the software programs that enable BitTorrent to  
24 work.

25 And BitTorrent, Inc. is about \$100 million a year in

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1 sales business.

2 Oh, I think I moved -- he just told me I didn't move  
3 P-6 into evidence, Your Honor. I'd like to move P-6 in --

4 THE COURT: I think you did. But it's admitted,  
5 anyway.

6 MR. LIPSCOMB: Okay.

7 THE COURT: And now he has P-7.

8 MR. LIPSCOMB: I -- oh, that's the one that -- so P-  
9 7, I'd like to move P-7 into evidence.

10 THE COURT: Already admitted.

11 BY MR. LIPSCOMB:

12 Q The six million people that downloaded "Batman, the Dark  
13 Knight Rises," they could have put that -- that copy on a DVD,  
14 right?

15 A Right.

16 Q And that would enable them to avoid having to go to a  
17 store and actually buy a DVD.

18 A Right.

19 Q Does BitTorrent cost a lot of copyright owners a lot of  
20 money?

21 A Pretty sure. I'm really, really sure.

22 Q Are you certain?

23 A I'm certain.

24 Q There's really no doubt about it, right?

25 A Right.



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1 THE COURT: Can anybody -- can a producer encrypt --  
2 you know what I mean by "encrypt," the movies so it can't be  
3 downloaded on BitTorrent? That is, can they put like a -- a  
4 high security file?

5 We sometimes use the word "encrypted." You know  
6 what I mean by "encrypted?"

7 THE WITNESS: Yeah.

8 THE COURT: Can a movie be encrypted so it can only  
9 be downloaded by someone who has the encryption code?

10 THE WITNESS: That's possible.

11 THE COURT: But then you couldn't download it on  
12 BitTorrent.

13 THE WITNESS: Yeah, but it depends where they steal  
14 it. If they steal it in the cinema with a small camera, they  
15 can put it to BitTorrent, and everybody can steal it there.

16 THE COURT: All right.

17 THE WITNESS: Because if it's encrypted, nobody can  
18 see it. Somebody has to decrypt -- decrypt it, and up in the  
19 time it's decrypted it could be stolen.

20 THE COURT: Well, do any movie producers, like the  
21 big producers, like Sony, do they encrypt any of their movies?

22 THE WITNESS: I think so --

23 THE COURT: If you know.

24 THE WITNESS: I -- I've hear about it that they're  
25 now encrypted before they give it out to the cinemas, and then

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1 on the date they play it they -- they gave them the keys to  
2 put it to the cinemas.

3 THE COURT: So that can be done.

4 THE WITNESS: It can be done.

5 BY MR. LIPSCOMB:

6 Q That's -- but as soon -- and I want you to understand the  
7 point here.

8 As soon as somebody takes the key and unencrypts [sic] it,  
9 regardless of whether it was encrypted before, as soon as they  
10 unencrypt [sic] it and it's then viewable by that person, that  
11 person can then put it up on BitTorrent, right?

12 A That's correct.

13 Q And so all the --

14 THE COURT: But that person has to get it on a  
15 computer, correct, like a DVD? Has to get it --

16 THE WITNESS: No --

17 THE COURT: -- on -- has to get it in digital media.

18 THE WITNESS: It's even possible to sit in the  
19 cinema with a small hidden camera and taking a copy of it.

20 THE COURT: Okay.

21 MR. LIPSCOMB: And --

22 THE WITNESS: What's actually been made.

23 BY MR. LIPSCOMB:

24 Q For purposes of Malibu Media, 'cause I want the Judge to  
25 understand this point, if somebody -- if Malibu Media was

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1 encrypting its movies and somebody downloaded it and then had  
2 it viewable on their computer, the encryption wouldn't at all  
3 stop them from then putting it up onto BitTorrent after it was  
4 viewable.

5 A That's correct.

6 Q So the encryption only really helps you be able to stop  
7 the pre-leak, the pre-release leak, right?

8 A That's correct.

9 Q The -- the --

10 A After it's released, it can be shared wherever you want.

11 MR. LIPSCOMB: Your Honor, I have no further  
12 questions for Patzer.

13 THE COURT: All right. Thank you.

14 Any questions for -- by counsel?

15 (No audible response)

16 THE COURT: All right. Thank you very much.

17 MR. LIPSCOMB: Your Honor, if I could, a five-minute  
18 recess?

19 THE COURT: Yes, sure.

20 MR. LIPSCOMB: 'Cause I need to use the restroom.

21 THE COURT: All right. We'll take a recess.

22 MS. FIELD: That's what we had to to -- three weeks.  
23 We had to -- encrypted everything.

24 MR. LIPSCOMB: Your Honor, just a proffer for the  
25 record? That's what Malibu Media did.

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1 MS. FIELD: We did that.

2 MR. LIPSCOMB: They encrypted their --

3 THE COURT: They -- they what?

4 MR. LIPSCOMB: They encrypted their media --

5 MS: Yeah, we did that.

6 THE COURT: Okay. All right. Well, if Ms. Field  
7 wants to come back and testify about it, she'll -- she can do  
8 that.

9 MR. LIPSCOMB: Okay. I'll -- then I'll call her  
10 real quickly afterwards if that's --

11 THE COURT: It's up to you. Sure.

12 (Recess taken, 10:59 a.m. to 11:12 a.m.)

13 THE COURT: Okay.

14 MR. LIPSCOMB: Your Honor --

15 THE COURT: Everyone ready?

16 MR. LIPSCOMB: With permission I'd like to recall --

17 THE COURT: Ms. Field?

18 MR. LIPSCOMB: -- Ms. Field for just --

19 THE COURT: Sure.

20 MR. LIPSCOMB: -- a minute or two.

21 THE COURT: Okay. Please state your name.

22 THE WITNESS: COLLETTE FIELD.

23 THE COURT: All right. You're still under oath.

24 THE WITNESS: Yes.

25 THE COURT: Have a -- sit down. Thank you.