UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT INDIANA

MALIBU MEDIA, LLC,   )
)
         Plaintiff,   )   Civil Action Case No. 1:12-cv-01117-WTL-DML
)
v.   )
)
MICHAEL HARRISON,   )
)
         Defendant.   )
)
_____   )

FOURTH AMENDED COMPLAINT

Plaintiff, Malibu Media, LLC ("Plaintiff"), sues Michael Harrison ("Defendant") and alleges:

Introduction

1.   This matter arises under the United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 et seq. (the "Copyright Act").

2.   Through this suit, Plaintiff alleges Defendant is liable for direct copyright infringement in violation of 17 U.S.C. §§ 106 and 501.

Jurisdiction

3.   This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338 (patents, copyrights, trademarks and unfair competition).

4.   Plaintiff obtained Defendant's identity in response to a subpoena served on his internet service provider ("ISP") in this litigation.

Parties

5.   Plaintiff is a limited liability company organized and existing under the laws of

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the State of California and has its principal place of business located at 409 W. Olympic Boulevard, Suite 501, Los Angeles, CA, 90015.

6.   Michael Harrison is an individual who resides at 1044 Ventura CT, Apt A, Greenwood, IN, 46143.

Factual Background

7.   Defendant is a persistent online infringer of Plaintiff's copyrights.   Indeed, Defendant's IP address as set forth on Exhibit A was used to illegally distribute each of the copyrighted movies set forth on Exhibit B.

8.   Plaintiff is the registered owner of the copyrights set forth on Exhibit B (the "Copyrights-in-Suit").

9.   Plaintiff's investigator's software also logged Defendant's IP address being used to distribute third party files through BitTorrent. This evidence indicates that Defendant engaged in BitTorrent transactions associated with 113 files between July 17, 2012 and March 29, 2013. Collectively, this evidence is referred to as the "Additional Evidence."

10.   Plaintiff has the Additional Evidence on a document and can produce it.

11.   The Additional Evidence demonstrates that Defendant is a persistent BitTorrent user.

12.   Many of the titles to the third party works may also be relevant to proving Defendant is the infringer because they correlate to the Defendant's hobbies, profession, or other interests.

II.   *Defendants Used BitTorrent To Infringe Plaintiff's Copyright*

13.   BitTorrent is one of the most common peer-to-peer file sharing protocols (in other words, set of computer rules) used for distributing large amounts of data; indeed, it has

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been estimated that users using the BitTorrent protocol on the internet account for over a quarter

of all internet traffic. The creators and users of BitTorrent developed their own lexicon for use

when talking about BitTorrent; a copy of the BitTorrent vocabulary list posted on

www.Wikipedia.com is attached as Exhibit C.

14.   BitTorrent's popularity stems from its ability to distribute a large file without

creating a heavy load on the source computer and network. In short, to reduce the load on the

source computer, rather than downloading a file from a single source computer (one computer

directly connected to another), the BitTorrent protocol allows users to join a "swarm" of host

computers to download and upload from each other simultaneously (one computer connected to

numerous computers).

A.   *Defendant Installed a BitTorrent Client onto his Computer*

15.   Defendant installed a BitTorrent Client onto his computer.

16.   A BitTorrent "Client" is a software program that implements the BitTorrent

protocol. There are numerous such software programs including µTorrent and Vuze, both of

which can be directly downloaded from the internet. See www.utorrent.com and

http://new.vuze-downloads.com/.

17.   Once installed on a computer, the BitTorrent "Client" serves as the user's

interface during the process of uploading and downloading data using the BitTorrent protocol.

B.   *The Initial Seed, Torrent, Hash and Tracker*

18.   A BitTorrent user that wants to upload a new file, known as an "initial seeder,"

starts by creating a "torrent" descriptor file using the Client he or she installed onto his or her

computer.

19.   The Client takes the target computer file, here the copyrighted Work, and divides

it into identically sized groups of bits known as "pieces."

20.   The Client then gives each one of the computer file's pieces, in this case, pieces of the copyrighted Work, a random and unique alphanumeric identifier known as a "hash" and records these hash identifiers in the torrent file.

21.   When another peer later receives a particular piece, the hash identifier for that piece is compared to the hash identifier recorded in the torrent file for that piece to test that the piece is error-free. In this way, the hash identifier works like an electronic fingerprint to identify the source and origin of the piece and that the piece is authentic and uncorrupted.

22.   Torrent files also have an "announce" section, which specifies the URL (Uniform Resource Locator) of a "tracker," and an "info" section, containing (suggested) names for the files, their lengths, the piece length used, and the hash identifier for each piece, all of which are used by Clients on peer computers to verify the integrity of the data they receive.

23.   The "tracker" is a computer or set of computers that a torrent file specifies and to which the torrent file provides peers with the URL address(es).

24.   The tracker directs a peer user's computer to other peer user's computers that have particular pieces of the file, here the copyrighted Work, on them and facilitates the exchange of data among the computers.

25.   Depending on the BitTorrent Client, a tracker can either be a dedicated computer (centralized tracking) or each peer can act as a tracker (decentralized tracking).

C.   *Torrent Sites*

26.   "Torrent sites" are websites that index torrent files that are currently being made available for copying and distribution by people using the BitTorrent protocol. There are numerous torrent websites, including www.TorrentZap.com, www.Btscene.com, and

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www.ExtraTorrent.com.

27.   Defendant went to a torrent site to upload and download Plaintiff's copyrighted Work.

D.   *Uploading and Downloading a Work Through a BitTorrent Swarm*

28.   Once the initial seeder has created a torrent and uploaded it onto one or more torrent sites then other peers begin to download and upload the computer file to which the torrent is linked (here the copyrighted Work) using the BitTorrent protocol and BitTorrent Client that the peers installed on their computers.

29.   The BitTorrent protocol causes the initial seed's computer to send different pieces of the computer file, here the copyrighted Works, to the peers seeking to download the computer file.

30.   Once a peer receives a piece of the computer file, here a piece of the Copyrighted Works, it starts transmitting that piece to the other peers.

31.   In this way, all of the peers and seeders work together in what is called a "swarm."

32.   Here, Defendant participated in the same swarm and directly interacted and communicated with other members of that swarm through digital handshakes, the passing along of computer instructions, uploading and downloading, and by other types of transmissions.

33.   In this way, and by way of example only, one initial seeder can create a torrent that breaks a movie up into hundreds or thousands of pieces saved in the form of a computer file, like the Works here, upload the torrent onto a torrent site, and deliver a different piece of the copyrighted Works to each of the peers. The recipient peers then automatically begin delivering the piece they just received to the other peers in the same swarm.

34.   Once a peer, here Defendant, has downloaded the full file, the BitTorrent Client reassembles the pieces and the peer is able to view the movie. Also, once a peer has downloaded the full file, that peer becomes known as "an additional seed" because it continues to distribute the torrent file, here the copyrighted Work.

     E.   *Plaintiff's Computer Investigators Identified Defendant's IP Address as Participant in a Swarm That Was Distributing Plaintiff's Copyrighted Work*

35.   Plaintiff retained IPP, Limited ("IPP") to identify the IP addresses that are being used by those people that are using the BitTorrent protocol and the internet to reproduce, distribute, display or perform Plaintiff's copyrighted works.

36.   IPP used forensic software named INTERNATIONAL IPTRACKER v1.2.1 and related technology enabling the scanning of peer-to-peer networks for the presence of infringing transactions.

37.   IPP extracted the resulting data emanating from the investigation, reviewed the evidence logs, and isolated the transactions and the IP addresses associated therewith for the files identified by the hash values listed on Exhibit A.

38.   The IP address, hash values and hit dates contained on Exhibit A accurately reflect what is contained in the evidence logs, and show that Defendant had copied a piece of Plaintiff's copyrighted Work identified by the unique hash values.

39.   Through each of the transactions, Defendant's computers used their identified IP address to connect to the investigative server in order to transmit a full copy, or a portion thereof, of a digital media file identified by the unique hash values.

40.   IPP's agent analyzed each BitTorrent "piece" distributed by the IP address listed on Exhibit A and verified that re-assemblage of the pieces using a BitTorrent Client results in a fully playable digital motion picture of the Works.

41.   IPP's agent viewed the Works side-by-side with the digital media files that correlate to the unique hash values and determined that they were identical, strikingly similar or substantially similar.

Miscellaneous

42.   All conditions precedent to bringing this action have occurred or been waived.

43.   Plaintiff retained counsel to represent it in this matter and is obligated to pay said counsel a reasonable fee for its services.

COUNT I
Direct Infringement Against Michael Harrison

44.   The allegations contained in paragraphs 1-43 are hereby re-alleged as if fully set forth herein.

45.   Plaintiff is the owner of the Registrations for the Works which contain original works of authorship.

46.   By using the BitTorrent protocol and a BitTorrent Client and the processes described above, Defendant copied the constituent elements of the registered Works that are original.

47.   Plaintiff did not authorize, permit or consent to Defendant's copying of its Works.

48.   As a result of the foregoing, Defendant violated Plaintiff's exclusive right to:

(A)   Reproduce the Works in copies, in violation of 17 U.S.C. §§ 106(1) and 501;

(B)   Redistribute copies of the Works to the public by sale or other transfer of ownership, or by rental, lease or lending, in violation of 17 U.S.C. §§ 106(3) and 501;

(C)   Perform the copyrighted Works, in violation of 17 U.S.C. §§ 106(4) and 501, by showing the Works' images in any sequence and/or by making the sounds accompanying the Works audible and transmitting said performance of the Works, by means of a device or process,

to members of the public capable of receiving the display (as set forth in 17 U.S.C. § 101's definitions of "perform" and "publically" perform); and

(D)   Display the copyrighted Works, in violation of 17 U.S.C. §§ 106(5) and 501, by showing individual images of the Works nonsequentially and transmitting said display of the Works by means of a device or process to members of the public capable of receiving the display (as set forth in 17 U.S.C. § 101's definition of "publically" display).

49.   Defendant's infringements were committed "willfully" within the meaning of 17 U.S.C. § 504(c)(2).

WHEREFORE, Plaintiff respectfully requests that the Court:

(A)   Permanently enjoin Defendant and all other persons who are in active concert or participation with Defendant from continuing to infringe Plaintiff's copyrighted Works;

(B)   Order that Defendant delete and permanently remove the torrent file relating to Plaintiff's copyrighted Works from each of the computers under Defendant's possession, custody or control;

(C)   Order that Defendant delete and permanently remove the copy of the Works Defendant has on the computers under Defendant's possession, custody or control;

(D)   Award Plaintiff statutory damages in the amount of $150,000 per Work, pursuant to 17 U.S.C. § 504-(a) and (c);

(E)   Award Plaintiff its reasonable attorneys' fees and costs pursuant to 17 U.S.C. § 505; and

(F)   Grant Plaintiff any other and further relief this Court deems just and proper.

DEMAND FOR A JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

NICOLETTI & ASSOCIATES, PLLC

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Defendant: : Michael Harrison

IP: 98.220.43.119
ISP: Comcast Cable
Location: Greenwood, IN

Hit Date UTC	File Hash	Title
09/30/2012 12:14:06	59448198C43090645093E37289900D8EBB4D4D04	Veronica Wet Orgasm
09/30/2012 10:59:31	77A45D676CEF28F3EA2E9ACB4C602CADC6BBAA69	Introducing Diana
09/09/2012 20:33:43	B17E6CBB71FF9E931ED034CFC5EC7A3B8F29BB1E	Pretty Back Door Baby
09/09/2012 20:10:23	EA1E6AE4D6A32559A46D2005846FD8C3120A6A21	LA Love
09/09/2012 17:35:21	9CA481711F4532C0AC8CBFD3BA22A74D1EF205E2	Romantic Memories
09/01/2012 00:55:13	21629FC4676869D8336961DB2AE8F2EC14770F19	Sneak N Peek

Total Malibu Media, LLC Copyrights Infringed: 6

EXHIBIT A

Defendant: : Michael Harrison

IP: 98.220.43.119
ISP: Comcast Cable
Location: Greenwood, IN

Title	Registration Number	Date of First Publication	Registration Date	Most Recent Hit UTC
Veronica Wet Orgasm	PA0001762412	10/05/2011	11/23/2011	09/30/2012
Introducing Diana	PA0001789511	05/11/2012	05/11/2012	09/30/2012
Pretty Back Door Baby	PA0001789427	05/08/2012	05/10/2012	09/09/2012
LA Love	PA0001790458	03/22/2010	05/23/2012	09/09/2012
Romantic Memories	PA0001790375	05/16/2012	05/16/2012	09/09/2012
Sneak N Peek	PA0001791522	06/01/2012	06/01/2012	09/01/2012

Total Malibu Media, LLC Copyrights Infringed: 6

EXHIBIT B

BitTorrent vocabulary

From Wikipedia, the free encyclopedia
(Redirected from Terminology of BitTorrent)

This list explains terms used when discussing **BitTorrent clients**, and in particular the BitTorrent protocol used by these clients.

Common BitTorrent terms

Announce

Same as "scrape" (see below), but a client also announces that it wants to join the swarm and that the server should add it to the list of peers in that swarm.

Availability

(Also known as distributed copies.) The number of full copies of the file available to the client. Each seed adds 1.0 to this number, as they have one complete copy of the file. A connected peer with a fraction of the file available adds that fraction to the availability, if no other peer has this part of the file.
Example: a peer with 65.3% of the file downloaded increases the availability by 0.653. However, if two peers both have the same portion of the file downloaded - say 50% - and there is only one seeder, the availability is 1.5.

Choked

Describes a peer to whom the client refuses to send file pieces. A client *chokes* another client in several situations:

- The second client is a *seed,* in which case it does not want any pieces (i.e., it is completely *uninterested*)
- The client is already uploading at its full capacity (it has reached the value of `max_uploads`)
- The second client has been blacklisted for being abusive or is using a blacklisted BitTorrent client.

Client

The program that enables p2p file sharing via the BitTorrent protocol. Examples of clients include µTorrent and Vuze.

Downloader

A *downloader* is any peer that does not have the entire file and is downloading the file. This term, used in Bram Cohen's Python implementation, lacks the negative connotation attributed to *leech.* Bram prefers *downloader* to *leech* because BitTorrent's tit-for-tat ensures downloaders also upload and thus do not unfairly qualify as *leeches.*

EXHIBIT C

End Game

Bittorrent has a couple of download strategies for initializing a download, downloading normally among the middle of the torrent, and downloading the last few **pieces** (see below) of a torrent. Typically, the last download pieces arrive more slowly than the others since the faster and more easily accessible pieces should have already been obtained, so to prevent this, the BitTorrent client attempts to get the last missing pieces from all of its peers. Upon receiving a piece, a cancel request command is sent to other peers.

Fake

A fake torrent is a torrent that does not contain what is specified in its name or description(i.e. a torrent is said to contain a video, but it contains only a snapshot of a moment in the video, or in some cases a virus).

Hash

The hash is a string of alphanumeric characters in the .torrent file that the client uses to verify the data that is being transferred. It contains information like the file list, sizes, pieces, etc. Every piece received is first checked against the hash. If it fails verification, the data is discarded and requested again. The 'Hash Fails' field in the torrent's General tab shows the number of these hash fails.

Hash checks greatly reduce the chance that invalid data is incorrectly identified as valid by the BitTorrent client, but it is still possible for invalid data to have the same hash value as the valid data and be treated as such. This is known as a hash collision.

Health

Health is shown in a bar or in % usually next to the torrents name and size, on the site where the .torrent file is hosted. It shows if all pieces of the torrent are available to download (i.e. 50% means that only half of the torrent is available).

Index

An *index* is a list of .torrent files (usually including descriptions and other information) managed by a website and available for searches. An *index* website can also be a *tracker*.

Interested

Describes a downloader who wishes to obtain pieces of a file the client has. For example, the uploading client would flag a downloading client as 'interested' if that client did not possess a piece that it did, and wished to obtain it.

Leech

A *leech* is a term with two meanings. Usually it is used to refer a *peer* who has a negative effect on the swarm by having a very poor share ratio (downloading much more than they upload). Most leeches are users on asymmetric internet connections and do not leave their BitTorrent client open

to seed the file after their download has completed. However, some leeches intentionally avoid uploading by using modified clients or excessively limiting their upload speed.

The often used second meaning of *leech* is synonymous with *downloader* (see above): used simply to describe a *peer* or any client that does not have 100% of the data. This alternative meaning was mainly introduced by most BitTorrent tracker sites.

Lurker

A *lurker* is a user that only downloads files from the group but does not add new content. It does not necessarily mean that the lurker will not seed. Not to be confused with a *leecher*.

p2p

Stands for "peer to peer", which is the technology used for file sharing among computer users over the internet. In a p2p network, each node (or computer on the network) acts as both a client and a server. In other words, each computer is capable of both sending and receiving data.

Peer

A *peer* is one instance of a BitTorrent client running on a computer on the Internet to which other clients connect and transfer data. Usually a *peer* does not have the complete file, but only parts of it. However, in the colloquial definition, "peer" can be used to refer to any participant in the swarm (in this case, it's synonymous with "client").

Piece

This refers to the torrented files being divided up into equal specific sized pieces (*e.g.* 512Kb, 1Mb). The pieces are distributed in a random fashion among peers in order to optimize trading efficiency.

Ratio credit

A *ratio credit*, also known as *upload credit* or *ratio economy*, is a currency system used on a number of private trackers to provide an incentive for higher upload/download ratios among member file-sharers. In such a system, those users who have greater amounts of bandwidth, hard drive space (particularly seedboxes) or idle computer uptime are at a greater advantage to accumulate ratio credits versus those who are lacking in any one or more of the same resources.

Scrape

This is when a client sends a request to the tracking server for information about the statistics of the torrent, such as with whom to share the file and how well those other users are sharing.

Seeder

A *seeder* is a *peer* that has an entire copy of the torrent and offers it for upload. The more *seeders* there are, the better the chances of getting a higher download speed. If the seeder seeds the whole copy of the download, they should get faster downloads.

Share ratio

A user's share ratio for any individual torrent is a number determined by dividing the amount of data that user has uploaded by the amount of data they have downloaded. Final share ratios over 1 carry a positive connotation in the BitTorrent community, because they indicate that the user has sent more data to other users than they received. Likewise, share ratios under 1 have negative connotation.

Snubbed

An uploading client is flagged as *snubbed* if the downloading client has not received any data from it in over 60 seconds.

Super-seeding

When a file is new, much time can be wasted because the seeding client might send the same file piece to many different peers, while other pieces have not yet been downloaded at all. Some clients, like ABC, Vuze, BitTornado, TorrentStorm, and µTorrent have a "super-seed" mode, where they try to only send out pieces that have never been sent out before, theoretically making the initial propagation of the file much faster. However the super-seeding becomes substantially less effective and may even reduce performance compared to the normal "rarest first" model in cases where some peers have poor or limited connectivity. This mode is generally used only for a new torrent, or one which must be re-seeded because no other seeds are available.

Swarm

Main article: segmented downloading

Together, all *peers* (including *seeders*) sharing a *torrent* are called a *swarm*. For example, six ordinary *peers* and two *seeders* make a *swarm* of eight.

Torrent

A *torrent* can mean either a `.torrent` metadata file or all files described by it, depending on context. The *torrent file* contains metadata about all the files it makes downloadable, including their names and sizes and checksums of all pieces in the *torrent*. It also contains the address of a *tracker* that coordinates communication between the peers in the swarm.

Tracker

A *tracker* is a server that keeps track of which seeds and peers are in the swarm. Clients report information to the tracker periodically and in exchange, receive information about other clients to which they can connect. The tracker is not directly involved in the data transfer and does not have a copy of the file.

See also

Retrieved from "http://en.wikipedia.org/wiki/BitTorrent_vocabulary"
Categories: BitTorrent | Lexis

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