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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

4: Twenty Media Inc.,

Plaintiffs,

v.

SWARM SHARING HASH FILES

6D59B29B0E51E9B5B4C0F9192CE99ED5EC5457E8,
6FC0F9C7FQ41DC36283D54B1FA29E993EA3EC2A8,
F1F946C2054A0F885AC01FB07A935F4F238DD391;
AND DOES 1-1,341,

Defendants

No. 6:12-CV-00031-RFD-
CMH

Declaration of Gary
Marshall in support of John
Doe with IP address
75.172.93.136 Motion to
Squash Subpoena

I, Gary K. Marshall, declare and state as follows:

1. Except where clearly indicated, I have personal knowledge of the facts and matters stated herein.

2. I am an attorney licensed to practice in Washington state. I am not licensed to practice in Louisiana.

3. I have been an intellectual property attorney for over 27 years. I have carefully followed the music download copyright infringement cases since shortly after they started.

The Music and Movie Download lawsuits

4. I have followed the movie download copyright infringement cases since shortly after they started. I routinely visit several web sites that track the developments in the movie

1 download lawsuits, including the site run by the Electronic Frontier Foundation (EFF) at
2 www.eff.org. I belong to several email lists where attorneys across the country share
3 information, including court filings, and discuss the latest developments in the movie
4 download cases. Since late 2010 I have represented approximately fifty individuals who have
5 been named in these lawsuits.

6 5. I consider myself well qualified to talk about the movie download cases.

7 6. The movie download cases, including this one, are nothing more than a way to shake
8 down individuals and get rich quick. They are designed to identify as many possible victims
9 as possible and intimidate those individuals into paying money to the plaintiff's attorneys.
10 These cases were not brought to right any actual wrong.

11 7. In order to understand these movie download cases, it is necessary to go back to the
12 music download cases. In the early 2,000's the music industry was suffering from declining
13 sales. Meanwhile the unauthorized downloading of music files had increased. The music
14 industry perceived, wrongly in my personal opinion, that unauthorized music downloading
15 was a major cause of the decline in sales.

16 8. The U.S. music industry decided to have their trade association, the Recording Industry
17 Association of America (RIAA) sue a number of individual file downloaders. The intent was
18 to scare people away from downloading music files. It did not work.

19 9. The RIAA first tried to identify individuals through their ISP addresses by contacting
20 ISPs directly under color of the Digital Millennium Copyright Act (DMCA), until a federal
21 court of appeals ruled that they could not sustain their subpoenas under authority of the
22 DMCA. So in 2004 the RIAA began to file John Doe lawsuits, naming hundreds or thousands
23 of individuals in one lawsuit. The RIAA only knew their ISP address and subpoenaed the ISPs

1 the obtain the identities of the individuals. The RIAA then sent letters to the individuals
2 demanding that they stop downloading and that they pay the RIAA a settlement amount. In
3 the majority of these cases, the targets settled their cases for amounts ranging between \$3,000
4 and \$11,000.

5 10. See for example the EFF's history and discussion of the RIAA lawsuits, a printout of
6 which is attached to this Declaration as Exhibit A.

7 11. In 2008 the music associations announced that they would stop filing new lawsuit.
8 Their campaign had not significantly reduced music downloads and had been a public
9 relations disaster for the industry.

10 12. In 2010 a Washington DC law firm Dunlap, Grubb & Weaver decided to use the RIAA
11 model to sue individuals who have downloaded movie files.

12 13. We can not be sure, but it appears that the law firm approached the producers of the
13 movies, rather than the other way around, and offered them a cut of the take, if the producers
14 would let the law firm sue on their behalf.

15 14. The law firm would hire a technology company to go on-line and find the IP addresses
16 of people who were downloading the movie. The law firm would file a lawsuit naming around
17 4,000 people, then subpoena the ISPs for the names of the individuals. Once the law firm had
18 the names of the individuals, it would send them a demand letter offering to settle their case
19 for a number that varies, but has typically been between \$2,000 and \$5,000.

20 15. Assuming conservatively that the law firm was able to indentify half of the people it
21 named, or 2,000 individuals and send each of them a demand letter, if half of them agreed to
22 pay \$2,000 dollars each, then the law firm would take in 2.5 million dollars per lawsuit.

23

1 16. Not surprisingly, many other attorneys across the country have copied this business
2 model. One refinement on the model is to choose a pornographic movie under the assumption
3 that people would be embarrassed about downloading such a movie and would be more likely
4 to settle. This is the tactic in use in the current case.

5 17. Copyright trolls do not want to go to court. Doing so is costly and risky. They will
6 pursue a few cases in court as part of their intimidation tactic, to prove that people could at
7 least in theory actually be sued. But there is no profit for them in the lawsuits themselves.
8 Their focus is on quick settlements.

9 18. The EFF has commented on these lawsuits. A printout of their comments is attached to
10 this Declaration as Exhibit B. Here are a few sample quotes from those files.

11 <https://www.eff.org/deeplinks/2010/03/50-000-i-new-i-lawsuits-against-movie-downloaders>

12 This time, the lawyers involved are being explicit about their
13 motivations: it's all about the money. "We're creating a revenue
14 stream and monetizing the equivalent of an alternative
15 distribution channel," said one of the attorneys involved. The
16 cases are taken on a contingency basis, designed so that quick
17 settlements will prove lucrative for both the firm and the
18 copyright owners involved.

19 <https://www.eff.org/deeplinks/2012/05/hollywoods-trolls>

20 The current crop of copyright trolls sue anywhere from 20 to
21 5,000 "John Doe" defendants in a single lawsuit, pinned to a list
22 of Internet Protocol addresses that they claim to have seen
23 downloading copyrighted movies using BitTorrent. Then, with
the courts' permission, they send subpoenas to Internet service
providers for the names and addresses of subscribers. The trolls
then send threatening letters, demanding settlement payments to
"make this go away" or face being dragged into court - often in
a faraway state. Over 200,000 U.S. residents have been caught
up in these suits, with many undoubtedly settling simply to end
the harassment.

1 19. See also PC World's summary of these cases, a printout of which is also included in
2 Exhibit C.

3 [http://www.pcworld.com/article/230515/so_youre_being_sued
4 for_piracy.html](http://www.pcworld.com/article/230515/so_youre_being_sued_for_piracy.html)

5 Copyright trolls work in a few different ways, but the end goal
6 is the same: Threaten, scare, and embarrass people into paying a
7 neat sum (usually between \$1000 and \$3000) without ever
8 actually going to court.

9

10 Copyright trolls don't want to go to court. Doing so is costly and
11 risky--neither of those things is good from the standpoint of a
12 copyright troll. It's much cheaper and easier for them if people
13 who receive letters simply pay up, instead of forcing an actual
14 court case.

15 20. By doing an Internet Search, I was able to find a redacted copy of a demand letter
16 used by the Plaintiff in this case. See Exhibit D. The Plaintiff is demanding \$3,500 from this
17 particular defendant.

18 21. It is hard to know for sure, but it seems that over half of the named individuals are
19 paying the settlement amount. I have represented in the neighborhood of 50 individuals who
20 have been named in these lawsuits. I usually recommend that the individual not settle. But I
21 have found that slightly over half of my clients have paid the settlement amount. This is the
22 same percentage that has been reported many times on-line for both the music and movie
23 download cases.

24 22. I believe that the method used to identify the individuals is flawed. Being an attorney,
25 I am skeptical of anyone who professes innocence. Most of my client who have downloaded
26 the movie file will admit it to me. About 20 percent of the people I have spoken to have
27 professed their innocence in a believable way to me, even after I questioned them

1 aggressively. No one can know for sure if they are truly innocent. But their IP addresses may
2 have been incorrectly identified by the Plaintiff or by their ISP. Or someone may have used
3 their WiFi IP access without their authority, which is very easy to do by the way and does not
4 require physical access to their computer or even their home.

5 **Determining Location is Easy**

6 23. It is very easy to determine from the ISP address to within about 20 miles where
7 someone resides. The Plaintiffs admit this in their lawsuit. There are many lawsuits on-line
8 that will decipher the ISP address code to tell you where the person is located.

9 24. I used two of them, see Exhibit E. I found these sites with a simple Google search.
10 They identify the ISP as Qwest and the location as Seattle. Plaintiff served its subpoena on
11 CenturyLink. Qwest was bought out by CenturyLink a few years ago.

12 I declare under the penalty of perjury under the law of the state of Washington that the
13 foregoing is true and correct.

May 4, 2012	Seattle, King County, WA	/Gary K. Marshall/
_____	_____	_____
Date	Place (City, County, State)	Signature

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