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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

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11 MALIBU MEDIA, LLC, a California  
corporation,

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Plaintiff,

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v.

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JOHN DOES 1 through 12,

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Defendants.

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Case No.

**COMPLAINT**

1 Plaintiff, Malibu Media, LLC, sues John Does 1-12, and alleges:

2 **Introduction**

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

5 2. Each of the Defendants copied and distributed most of a website  
6 containing 51 movies. This is known as a “siterip.” The file containing the subject  
7 website is so large that the Defendants’ computers must have worked  
8 collaboratively with each other through the process described below for numerous  
9 weeks or months to effectuate a complete download and redistribution of the subject  
10 website.<sup>1</sup>

11 3. Throughout this Complaint the word “Works” refers to 51 movies  
12 contained on the subject website.

13 4. Through this suit, Plaintiff alleges each Defendant is liable for:

- 14 • Direct copyright infringement in violation of 17 U.S.C. §§ 106 and 501;  
15 and  
16 • Contributory copyright infringement.

17 **Jurisdiction And Venue**

18 5. This Court has subject matter jurisdiction over this action pursuant to  
19 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338 (patents, copyrights,  
20 trademarks and unfair competition).

21 6. As set forth on Exhibit A, each of the Defendants’ acts of copyright  
22 infringement occurred using an Internet Protocol address (“IP address”) traced to a  
23 physical address located within this District, and therefore pursuant to Cal. Civ.  
24

25 \_\_\_\_\_  
26 <sup>1</sup> The hit dates listed in the exhibits are not evidence of when a particular Defendant started the  
27 download but are merely evidence of when the investigator’s server recorded an IP address  
28 sending a particular piece of data.

1 Proc. Code § 410.10, this Court has personal jurisdiction over each Defendant  
2 because each Defendant committed the tortious conduct alleged in this Complaint in  
3 the State of California, and (a) each Defendant resides in the State of California,  
4 and/or (b) each Defendant has engaged in continuous and systematic business  
5 activity in the State of California.

6 7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c),  
7 because: (i) a substantial part of the events or omissions giving rise to the claims  
8 occurred in this District; and, (ii) a Defendant resides (and therefore can be found)  
9 in this District and all of the Defendants reside in this State; additionally, venue is  
10 proper in this District pursuant 28 U.S.C. § 1400(a) (venue for copyright cases)  
11 because each Defendant or each Defendant's agent resides or may be found in this  
12 District.

13 **Parties**

14 8. Plaintiff is a corporation organized and existing under the laws of the  
15 State of California and has its principal place of business located at 31356 Broad  
16 Beach Road, Malibu, CA 90265.

17 9. Each Defendant is known to Plaintiff only by an IP address.

18 10. An IP address is a number that is assigned by an Internet Service  
19 Provider (an "ISP") to devices, such as computers, that are connected to the Internet.

20 11. The ISP to which each Defendant subscribes can correlate the  
21 Defendant's IP address to the Defendant's true identity.

22 **Joinder**

23 12. Pursuant to Fed. R. Civ. P. 20(a)(2), each of the Defendants was  
24 properly joined because, as set forth in more detail below, Plaintiff asserts that: (a)  
25 each of the Defendants is jointly and severally liable for the infringing activities of  
26 each of the other Defendants, and (b) the infringement complained of herein by each  
27 of the Defendants was part of a series of transactions, involving the exact same

1 torrent file containing of Plaintiff's copyrighted Works, and was accomplished by  
2 the Defendants acting in concert with each other, and (c) there are common  
3 questions of law and fact; indeed, the claims against each of the Defendants are  
4 identical and each of the Defendants used the BitTorrent protocol to infringe  
5 Plaintiff's copyrighted Works.

## 6 **Factual Background**

### 7 **I. Plaintiff Owns The Copyright To The Motion Pictures**

8 13. Plaintiff has obtained the registration for, or has applied to obtain the  
9 registration for, 26 of the 51 movies contained in the siterip with the United States  
10 Copyright Office.

11 14. An internet screen shot from [www.copyright.gov](http://www.copyright.gov) of each Registration  
12 is attached as Exhibit B.

13 15. The date on which the United States Copyright Office Registered the  
14 works and the date IPP Limited recorded each Defendant's infringement is set forth  
15 on Exhibit C. Exhibit C demonstrates that each infringement occurred after the  
16 registration date.

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

18 16. BitTorrent is one of the most common peer-to-peer file sharing  
19 protocols (in other words, set of computer rules) used for distributing large amounts  
20 of data; indeed, it has been estimated that users using the BitTorrent protocol on the  
21 internet account for over a quarter of all internet traffic. The creators and user's of  
22 BitTorrent developed their own lexicon for use when talking about BitTorrent; a  
23 copy of the BitTorrent vocabulary list posted on [www.Wikipedia.org](http://www.Wikipedia.org) is attached as  
24 Exhibit D.

25 17. The BitTorrent protocol's popularity stems from its ability to distribute  
26 a large file without creating a heavy load on the source computer and network. In  
27 short, to reduce the load on the source computer, rather than downloading a file

1 from a single source computer (one computer directly connected to another), the  
2 BitTorrent protocol allows users to join a "swarm" of host computers to download  
3 and upload from each other simultaneously (one computer connected to numerous  
4 computers).

5 **A. Each Defendant Installed a BitTorrent Client onto his or her**  
6 **Computer**

7 18. Each Defendant installed a BitTorrent Client onto his or her computer.

8 19. A BitTorrent "Client" is a software program that implements the  
9 BitTorrent protocol. There are numerous such software programs including  $\mu$ Torrent  
10 and Vuze, both of which can be directly downloaded from the internet. See  
11 [www.utorrent.com](http://www.utorrent.com) and <http://new.vuze-downloads.com/>.

12 20. Once installed on a computer, the BitTorrent "Client" serves as the  
13 user's interface during the process of uploading and downloading data using the  
14 BitTorrent protocol.

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

16 21. A BitTorrent user that wants to upload a new file, known as an "initial  
17 seeder," starts by creating a "torrent" descriptor file using the Client he or she  
18 installed onto his or her computer.

19 22. The Client takes the target computer file, the "initial seed," here the  
20 subject website containing the copyrighted Works, and divides it into groups of bits  
21 known as "pieces."

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

25 24. When another peer later receives a particular piece, the hash identifier  
26 for that piece is compared to the hash identifier recorded in the torrent file for that  
27 piece to test that the piece is error-free. In this way, the hash identifier works like an

1 electronic fingerprint to identify the source and origin of the piece and that the piece  
2 is authentic and uncorrupted.

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

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

10 27. The tracker computer or computers direct a peer user's computer to  
11 other peer user's computers that have particular pieces of the file, here the  
12 copyrighted Works, on them and facilitates the exchange of data among the  
13 computers.

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

17 **C. Torrent Sites**

18 29. "Torrent sites" are websites that index torrent files that are currently  
19 being made available for copying and distribution by people using the BitTorrent  
20 protocol. There are numerous torrent websites, including www.TorrentZap.com,  
21 www.Btscene.com, www.ExtraTorrent.com, and www.piratebay.org.

22 30. Upon information and belief, each Defendant went to a torrent site to  
23 upload and download Plaintiff's copyrighted Works.

24 **D. Uploading and Downloading Works Through a BitTorrent Swarm**

25 31. Once the initial seeder has created a torrent and uploaded it onto a  
26 torrent site then other peers begin to download and upload the computer file to  
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1 which the torrent is linked (here the copyrighted Works) using the BitTorrent  
2 protocol and BitTorrent Client that the peers installed on their computers.

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

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

8 34. In this way, all of the peers and seeders are working together in what is  
9 called a "swarm."

10 35. Here, each Defendant peer member participated in the same swarm and  
11 directly interacted and communicated with other members of that swarm through  
12 digital handshakes, the passing along of computer instructions, uploading and  
13 downloading, and by other types of transmissions.

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

20 37. Once a peer, here a Defendant, has downloaded the full file, the  
21 BitTorrent Client reassembles the pieces and the peer is able to view the movie.

22 **E. Plaintiff's Computer Investigators Identified Each of the**  
23 **Defendants' IP Addresses as Participants in a Swarm That Was**  
24 **Distributing Plaintiff's Copyrighted Works**

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

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

4 40. IPP extracted the resulting data emanating from the investigation,  
5 reviewed the evidence logs, and isolated the transactions and the IP addresses  
6 associated therewith for the file identified by the SHA-1 hash value of  
7 BE309EAAEA62390FF5E35F4B018E7D1C89C51A30 (the “Unique Hash  
8 Number”).

9 41. The IP addresses, Unique Hash Number and hit dates contained on  
10 Exhibit A accurately reflect what is contained in the evidence logs, and show:

11 (A) Each Defendant had copied a piece of Plaintiff’s copyrighted Works  
12 identified by the Unique Hash Number; and

13 (B) Therefore, each Defendant was part of the same series of transactions.

14 42. Through each of the transactions, each of the Defendant’s computers  
15 used their identified IP addresses to connect to the investigative server from a  
16 computer in this District in order to transmit a full copy, or a portion thereof, of a  
17 digital media file identified by the Unique Hash Number.

18 43. IPP’s agent analyzed each BitTorrent “piece” distributed by each IP  
19 address listed on Exhibit A and verified that re-assembly of the pieces using a  
20 BitTorrent Client results in a fully playable digital motion picture of the Works.

21 44. IPP’s agent viewed the Works side-by-side with the digital media file  
22 that correlates to the Unique Hash Number and determined that they were identical,  
23 strikingly similar or substantially similar.

24 **Miscellaneous**

25 45. All conditions precedent to bringing this action have occurred or been  
26 waived.

27 46. Plaintiff retained counsel to represent it in this matter and is obligated



1 to pay said counsel a reasonable fee for its services.

2 **COUNT I**

3 **Contributory Infringement Against Does 1-12**

4 47. The allegations contained in paragraphs 1-46 are hereby re-alleged as if  
5 fully set forth herein.

6 48. Plaintiff is the owner of the copyrights for the Works, each of which  
7 contains an original work of authorship.

8 49. By using the BitTorrent protocol and a BitTorrent Client and the  
9 processes described above, each Defendant copied the constituent elements of the  
10 Works that are original.

11 50. Plaintiff did not authorize, permit or consent to Defendants' copying of  
12 its Works.

13 51. As a result of the foregoing, each Defendant violated Plaintiff's  
14 exclusive right to:

15 (A) Reproduce the Works in copies, in violation of 17 U.S.C. §§ 106(1) and  
16 501;

17 (B) Redistribute copies of the Works to the public by sale or other transfer  
18 of ownership, or by rental, lease or lending, in violation of 17 U.S.C. §§ 106(3) and  
19 501;

20 (C) Perform the copyrighted Works, in violation of 17 U.S.C. §§ 106(4)  
21 and 501, by showing the Works' images in any sequence and/or by making the  
22 sounds accompanying the Works audible and transmitting said performance of the  
23 Works, by means of a device or process, to members of the public capable of  
24 receiving the display (as set forth in 17 U.S.C. § 101's definitions of "perform" and  
25 "publically" perform); and

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

4 52. Each of the Defendants' infringements was committed "willfully"  
5 within the meaning of 17 U.S.C. § 504(c)(2).

6 53. Plaintiff has suffered actual damages that were proximately caused by  
7 each of the Defendants including lost sales, price erosion and a diminution of the  
8 value of its copyrights.

9 **COUNT II**

10 **Contributory Infringement Against Does 1-12**

11 54. The allegations contained in paragraphs 1-46 are hereby re-alleged as if  
12 fully set forth herein.

13 55. Plaintiff is the owner of the copyrights for the Works, each of which  
14 contains an original work of authorship.

15 56. By using the BitTorrent protocol and a BitTorrent Client and the  
16 processes described above, each Defendant copied the constituent elements of each  
17 of the Works that are original.

18 57. By participating in the BitTorrent swarm with the other Defendants,  
19 each Defendant induced, caused or materially contributed to the infringing conduct  
20 of each other Defendant.

21 58. Plaintiff did not authorize, permit or consent to Defendants' inducing,  
22 causing or materially contributing to the infringing conduct of each other Defendant.

23 59. Each Defendant knew or should have known that other BitTorrent  
24 users, here the other Defendants, would become members of a swarm with  
25 Defendant.

26 60. Each Defendant knew or should have known that other BitTorrent users  
27 in a swarm with it, here the other Defendants, were directly infringing Plaintiff's  
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1 copyrighted Works by copying constituent elements of the Works that are original.

2 61. Indeed, each Defendant directly participated in and therefore materially  
3 contributed to each other Defendant's infringing activities.

4 62. Each of the Defendants' contributory infringements were committed  
5 "willfully" within the meaning of 17 U.S.C. § 504(c)(2).

6 63. Plaintiff has suffered actual damages that were proximately caused by  
7 each of the Defendants including lost sales, price erosion, and a diminution of the  
8 value of its copyright.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff respectfully requests that the Court:

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

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

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

20 (D) Find that each Defendant is jointly and severally liable for the direct  
21 infringement of each other Defendant;

22 (E) Award Plaintiff the greater of: (i) statutory damages in the amount of  
23 \$150,000 per Defendant, per registered Work infringed, pursuant to 17 U.S.C. §  
24 504-(a) and (c), or (ii) Plaintiff's actual damages and any additional profits of the  
25 Defendant pursuant to 17 U.S.C. § 504-(a)-(b);

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

28

1 (G) Grant Plaintiff any other and further relief this Court deems just and  
2 proper.

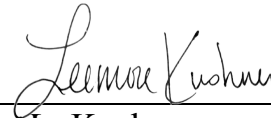
3 **DEMAND FOR A JURY TRIAL**

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

5  
6 DATED: May 10, 2012

KUSHNER LAW GROUP

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9 By:



Leemore L. Kushner

Attorneys for Plaintiff Malibu Media, LLC

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