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INDIANAPOLIS DIVISION
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SOUTHERN DISTRICT
INDIANA
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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA**

Malibu Media, LLC,)
Plaintiff,)
vs.) Civil Action No. 1:12-cv-00845-TWP-MJD
)
Siwei Li,)
Defendant.)

ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES

Defendant, SIWEI LI, hereby responds to plaintiff's complaint with the answers as follows:

Introduction¹

- 1. Answering, Paragraph 1, Defendant denies that Plaintiff has any cause(s) of action against Defendant under the United States Copyright Act of 1976 or under any other legislation or at common law.
- 2. Answering, Paragraph 2, Defendant denies the liability for: direct, or contributory copyright infringement, or any other claim under the Copyright Act.

Jurisdiction

- 3. Answering, Paragraph 3, Defendant denies that Plaintiff has any cause of action against her; however, she admits that this court has subject matter jurisdiction over matters involving federal questions and copyrights.
- 4. Answering, Paragraph 4, Defendant denies the allegations of this paragraph. Even if the IP address in question was associated with the high-speed Internet router located in the

¹ The headings of the Complaint are used in this Answer solely for the convenience of the Court. Defendant does not admit any of Plaintiff's allegations by such use.

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Defendant's home, that fact does not give rise to jurisdiction over the Defendant's person. An IP address is not a person but a designation assigned to a piece of technology, which can be accessed by multiple individuals; in addition, in a process commonly known as "spoofing" an IP address can be stolen or misused as follows: other devices can be configured with the same IP address or an individual can utilize technology to make his or her own IP address to appear to be another IP address.

5. Answering, Paragraph 5, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

Parties

6. Answering, Paragraph 6, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

7. Answering, Paragraph 7, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

8. Answering, Paragraph 8, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

9. Answering, Paragraph 9, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

10. Answering, Paragraph 10, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

11. Answering, Paragraph 11, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

12. Answering, Paragraph 12, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

13. Answering, Paragraph 13, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

14. Answering, Paragraph 14, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

15. Answering, Paragraph 15, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

16. Answering, Paragraph 16, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

17. Answering, Paragraph 17, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

18. Answering, Paragraph 18, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

19. Answering, Paragraph 19, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

20. Answering, Paragraph 20, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

21. Answering, Paragraph 21, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

22. Answering, Paragraph 22, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

23. Answering, Paragraph 23, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

24. Answering, Paragraph 24, Defendant admits she is a resident at this address.

25. Answering, Paragraph 25, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

26. Answering, Paragraph 26, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

27. Answering, Paragraph 27, Defendant denies the allegations of this paragraph. The ISP to which each alleged Defendant subscribes can correlate the flagged IP address to a subscriber that may or may not be the actual Defendant responsible for the alleged infringing activity.

Joinder

28. Answering, Paragraph 28, Defendant denies the allegations of this paragraph. Plaintiff's Exhibit A demonstrates that infringement by the individual Defendants occurred on different dates or in different months, which shows that the individual Defendants could not have, in fact, been involved in "the exact same torrent file" or having "acted in concert with each other" as alleged by the Plaintiff. The factual situations behind each defendant are individual, separate, distinct and unique. Finally, Defendant denies ever using the BitTorrent protocol to download/infringe on any (including Plaintiff's) copyrighted material.

Factual Background

29. Answering, Paragraph 29, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

30. Answering, Paragraph 30, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

31. Answering, Paragraph 31, Defendant admits she has received a copy of Plaintiff's alleged copyright registration as Exhibit B.

32. Answering, Paragraph 32, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

33. Answering, Paragraph 33, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

34. Answering, Paragraph 34, Defendant denies Plaintiff's allegations in this paragraph. Plaintiff has failed to show any factual evidence that proves the Defendant installed any BitTorrent client.

35. Answering, Paragraph 35, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

36. Answering, Paragraph 36, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

37. Answering, Paragraph 37, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

38. Answering, Paragraph 38, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

39. Answering, Paragraph 39, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

40. Answering, Paragraph 40, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

41. Answering, Paragraph 41, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

42. Answering, Paragraph 42, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

43. Answering, Paragraph 43, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

44. Answering, Paragraph 44, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

45. Answering, Paragraph 45, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

46. Answering, Paragraph 46, Defendant denies Plaintiff's allegations in this paragraph. Plaintiff has failed to provide any factual evidence that proves the Defendant visited a torrent site.

47. Answering, Paragraph 47, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

48. Answering, Paragraph 48, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

49. Answering, Paragraph 49, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

50. Answering, Paragraph 50, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

51. Answering, Paragraph 51, Defendant denies Plaintiff's allegations in this paragraph. In addition, Plaintiff's Exhibit A and Exhibit C demonstrates that the individual Defendants could not have been part of the same "swarm" as described by the Plaintiff.

52. Answering, Paragraph 52, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs

53. Answering, Paragraph 53, Defendant denies Plaintiff's allegations in this paragraph with regard to any alleged activity by the Defendant. As to the general process of participating in a BitTorrent, Defendant leaves Plaintiff to its proofs.

54. Answering, Paragraph 54, Defendant denies Plaintiff's allegations in this paragraph. The Plaintiff has failed to provide evidence to prove the legitimacy of IPP Limited.

55. Answering, Paragraph 55, Defendant denies Plaintiff's allegations in this paragraph. The Plaintiff has failed to provide evidence to prove the legitimacy of "INTERNATIONAL IPTRACKER v1.2.1". The Plaintiff has not provided the evidence to prove the validity and accuracy of the software for "tracking" IP address.

56. Answering, Paragraph 56, Defendant denies Plaintiff's allegations in this paragraph. The Plaintiff has failed to provide any factual evidence to prove the links between "hash" number and the alleged copyright work listed in Plaintiff's complaint.

57. Answering, Paragraph 57, Defendant denies the allegations of this paragraph including subparagraph (A) and (B). The Plaintiff failed to explicitly identify the link between the defendant and IP address in EXHIBIT A. In addition, Defendant would like to bring to the court's attention that the Plaintiff incorrectly, and without supporting evidence, implies that an IP address necessarily equals a Defendant in this paragraph.

58. Answering, Paragraph 58, Defendant denies the allegations of this paragraph. Defendant would like to bring to the court's attention that the Plaintiff incorrectly, and without supporting evidence, implies that an IP address necessarily equals a Defendant in this paragraph.

59. Answering, Paragraph 59, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

60. Answering, Paragraph 60, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

Miscellaneous

61. Answering, Paragraph 61, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

62. Answering, Paragraph 62, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

COUNT I

63. Answering, Paragraph 63, Defendant's denials and statements in response to paragraph 1-62 are hereby incorporated as through fully set forth herein.

64. Answering, Paragraph 64, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

65. Answering, Paragraph 65, Defendant denies the allegations of this paragraph.

66. Answering, Paragraph 66, Defendant denies having participated in any activity by which Plaintiff's alleged copyrights were infringed. Defendant has no knowledge as to the Plaintiff's explicit authorization or permission as to any downloads of its Work.

67. Answering, Paragraph 67, Defendant denies the allegations of this paragraph, including subparagraphs (A) through (D).

68. Answering, Paragraph 68, Defendant denies the allegations of this paragraph.

69. Answering, Paragraph 69, Defendant denies the allegations of this paragraph. Defendant has not engaged in any activity that would harm the Plaintiff or in any way give rise to a cause of action as claimed herein or in any other manner.

WHEREFORE, Defendant respectfully requests that the Court:

(A) Find that the Plaintiff's Complaint is entirely without merit; and

(B) Immediately dismiss Plaintiff's Complaint, with prejudice; and

(C) Award Defendant his reasonable fees and costs of suit; and

(D) Grant Defendant such other and further relief as the Court may deem equitable and just.

COUNT II

70. Answering, Paragraph 70, Defendant's denials and statements in response to paragraph 1-62 are hereby incorporated as through fully set forth herein.

71. Answering, Paragraph 71, Defendant has no personal knowledge of these facts and can neither confirm nor deny and leaves Plaintiff to its proofs.

72. Answering, Paragraph 72, Defendant denies the allegations of this paragraph.

73. Answering, Paragraph 73, Defendant denies the allegations of this paragraph.

74. Answering, Paragraph 74, Defendant denies having participated in any activity by which Plaintiff's alleged copyrights were infringed. Defendant has no knowledge as to the Plaintiff's explicit authorization or permission as to any downloads of its Work.

75. Answering, Paragraph 75, Defendant denies the allegations of this paragraph.

76. Answering, Paragraph 76, Defendant denies the allegations of this paragraph.

77. Answering, Paragraph 77, Defendant denies the allegations of this paragraph.

78. Answering, Paragraph 78, Defendant denies the allegations of this paragraph.

79. Answering, Paragraph 79, Defendant denies the allegations of this paragraph. Defendant has not engaged in any activity that would harm the Plaintiff or in any way give rise to a cause of action as claimed herein or in any other manner.

WHEREFORE, Defendant respectfully requests that the Court:

- (A) Find that the Plaintiff's Complaint is entirely without merit; and
- (B) Immediately dismiss Plaintiff's Complaint, with prejudice; and
- (C) Award Defendant his reasonable fees and costs of suit; and
- (D) Grant Defendant such other and further relief as the Court may deem equitable and just.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

80. Plaintiff has failed to state a claim upon which relief may be granted.

SECOND DEFENSE

81. Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

THIRD DEFENSE

82. Plaintiff's complaint for statutory and/or equitable relief is barred in that works of obscenity are not copyrightable or protected.

FOURTH DEFENSE

83. Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

FIFTH DEFENSE

84. Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

SIXTH DEFENSE

85. While defendant denies the allegations of fact and conclusions of law alleged in Plaintiff's complaint, Defendant asserts, in the alternative, that Plaintiff authorized, impliedly or explicitly, the allegedly infringing sharing of its works via BitTorrent, and the claims are therefore barred by the doctrine of implied license.

SEVENTH DEFENSE

86. Plaintiff's claims are barred by Plaintiff's license, consent, and acquiescence to Defendant.

EIGHTH DEFENSE

87. To the extent Plaintiff has suffered any damages; which defendant expressly denies, Plaintiff has failed to take reasonable steps to mitigate the damages sustained.

NINTH DEFENSE

88. Plaintiff's claims are barred, in whole or in part based on the Unconstitutionally Excessive Damages it attempts to seek as a recovery in connection with the alleged acts of infringement.

ADDITIONAL DEFENSE

89. Defendant reserves the right to supplement or amend the answer, including through the addition of further affirmative defenses, based on the course of discovery and proceedings in this action.

Respectfully submitted,



Siwei Li

Defendant

2427 Neil Armstrong Drive, 1A

West Lafayette, IN, 47906

765-586-3731

Date: December 05, 2012


CERTIFICATE OF SERVICE

I, Siwei Li, hereby certify that on December 05, 2012, I filed this Answer with the Southern District of Indiana courts by certified USPS, at the following address:

Laura A. Briggs,
46 E. Ohio Street, Room 105,
Indianapolis, IN 46204

On the same date, I sent a copy of the Answer via certified USPS to:

NICOLETTI & ASSOCIATES, PLLC
Paul J. Nicoletti, Esq.
36880 Woodward Avenue, Suite 100
Bloomfield Hills, MI 48304



Siwei Li

Defendant

Date: December 5, 2012