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9 **IN THE UNITED STATES DISTRICT COURT**

10 **FOR THE DISTRICT OF ARIZONA**

11 PATRICK COLLINS, INC.,

Case No. 2:11-CV-01602-PHX-GMS

12 Plaintiff.

13 v.

14 JOHN DOES 1-54,

15 Defendants.

16 **PLAINTIFF'S MEMORANDUM EXPLAINING THE IMPACT OF PIRACY ON**
17 **U.S. BUSINESSES, ITS BUSINESS, THE SCALE OF BITTORENT PIRACY,**
18 **AND WHY IT SUES DOE DEFENDANTS**
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1 **I. INTRODUCTION**

2 This Court's decisions in this matter will have national significance and will be
3 widely cited. With this in mind, Plaintiff respectfully suggests that it will aid the Court
4 to understand the scope of the BitTorrent piracy problem and its motivations for filing
5 these cases.

6 **II. FACTS**

7 **A. On-Line Piracy Affects Everyone**

8 According to Torrent Portal, a leading torrent index website, it is tracking
9 2,776,262 torrents (almost all of them copyrighted works), and 2,242,565,420 peers
10 (almost all of them stealing copyrighted works). See <http://www.torrentportal.com/>.
11 Any person that goes to torrentportal.com can search for any movie, song or book and
12 discover that almost anything can be downloaded for free. By way of example only,
13 there are 5,612 illegal copies of Harry Potter movies; 2,006 illegal copies of Beatles
14 songs or albums; 3,151 illegal copies of Microsoft software or manuals; 11,211 illegal
15 copies of computer games; and 13,315 illegal copies of books, – all available to be
16 downloaded for free. Even high school and college text books are now being put on
17 BitTorrent.¹ The problem for the publishing industry is expected to rapidly increase as
18 the global population moves quickly toward using e-readers like the Kindle and I-Pad
19
20

21 _____
22 ¹ “For years digital piracy has been a problem most associated with music. Today, however, creative industries
23 including movie, publishing and television, regard ‘monetising’ the online world and addressing digital piracy as
24 their greatest challenges. ‘The music industry was hit first, but now with increased broadband you have a situation
where all the creative industries are at a tipping point.’ * * * ‘You can see it in the collapsing DVD market; you
can see what’s going on in TV, newspapers and magazines. And now we’re seeing the same thing in the book
publishing business and you’re going to start seeing piracy of novels and reference books.’” “Music, how, when
and where you want it,” International Federation for Phonographic Industry (IFPI), at p. 20 (attached).

1 instead of tangible books.²

2 The scale of infringement is staggering:

3 Pre-release copies of Wolverine were downloaded 100,000 times in 24
4 hours after a leak in April 2009. In 2008, seven million copies of Batman:
Dark Knight were downloaded on BitTorrent.³

5 A ten percent reduction in software piracy would yield \$400 billion in economic growth:

6 If the global software piracy rate was lowered just 10 percentage points
7 over the next 4 years, this would contribute a total of 2.4 million new jobs
8 and \$400 billion in economic growth to the global economy.⁴

9 In short, on-line piracy affects every thought and entertainment producer in the
10 country, including: the authors of articles, books, software and computer games;
11 producers and authors of movies; writers and singers of songs; schools and professors;
12 individuals, big and little companies. It also affects the companies that make ancillary
13 products such as DVDs, the graphic designers that make the covers, the laborers that
14 make cellophane wrap that covers DVDs, the retail workers at Wal-Mart, Target and
15 other stores that sell them, and the truck drivers who deliver the products to the retail
16 outlets. The problem for copyright owners is dire:

17 We are in danger of creating a world where nothing appears to have any
18 value at all, and the things that we make...will become scarce or
19 disappearing commodities. Stephen Garrett, Chief Executive, Kudos (a

20 ² See Copyright Trolling for Dummies; Publisher John Wiley Sues 27 for Sharing 'For Dummies' Books"
21 , <http://www.techdirt.com/articles/20111101/01172416576/copyright-trolling-dummies-publisher-john-wiley-sues-27-sharing-dummies-books.shtml> describing how publisher John Wiley is frustrated that 74,000 copies of his For
22 Dummies books have been illegally downloaded from one website alone and has sued for BitTorrent copyright
infringement. The article concludes by urging people not to buy For Dummies books because "[t]here is just no
good reason to support companies that sue people like this, instead of learning to adapt." The author fails to
appreciate it is impossible to compete against free. Further, his tag-line "from the getting desperate dept" is an
admission that content providers of all stripes are desperate to save their businesses.

23 ³ See Music, how, when and where you want it." International Federation for Phonographic Industry (IFPI), at p.
20 (attached).

24 ⁴ <http://www.microsoft.com/piracy/knowthefacts/HowPiracyImpactsYou.aspx>

1 popular UK television and film production company.)⁵

2 Mainstream media producers and adult entertainment producers are suing for
3 BitTorrent copyright infringement. Given the enormous magnitude of the problem,
4 Courts should establish precedents that make it easier – not harder – for all copyright
5 owners to combat on-line infringement.

6 **B. Competing In a Rigged Market Place – The Lure of Free**

7 The International Federation for Phonographic Industry (IFPI), issued a thought
8 provoking report last year entitled “Music, how, when and where you want it,” attached
9 as Exhibit A. On page 18, the IFPI provides statistics establishing that file sharers’
10 primary motivation for their theft is the “lure of free:”
11

12 A separate body of research helps explain why illegal file-sharing is
13 having this impact on consumer behavior, confirming the main driver of
14 piracy to be not better choice or quality, but the “lure of free”. Researchers
15 GFK found that “because it’s free” was the main answer given among over
16 400 illegal filesharers in research unveiled in Sweden in July 2009. A
17 study by Entertainment Media Research in the UK found that 71 per cent
18 of those who admitted they increased their file-sharing activity in 2008 did
19 so “because it’s free”. In Norway, research by Norstat in 2009 also found
20 the most cited reason for illegal downloading from P2P services was
21 “because it’s free”. Further studies came to broadly the same conclusion in
22 Japan and Belgium in 2009. (Emphasis added.)

23 Lawyers and judges write for a living. Therefore, we understand that creating
24 intellectual products costs money. Imagine what would happen to our industry if our
clients could download and use for free the work products that we labor to create for
them. “Make no mistake, in a world with no copyright protection, freedom of

⁵ “Music, how, when and where you want it.” International Federation for Phonographic Industry (IFPI),
at p. 20 (attached).

1 information will become freedom from information because no one will do a damn thing
 2 creatively.”⁶ Authors and producers across all industries simply cannot compete with
 3 free:

4 It is the “free-to-user” appeal of illegal file-sharing that creates its unfair
 5 advantage over legitimate music services, whose cost base, including
 6 payments to artists and copyright holders, cannot compete with the free
 illegal alternative.⁷

7 Copyright owners, including Plaintiff, are desperately searching for a cost effective
 8 solution to combat the destruction of their businesses. Toward that end, they have been
 9 and will continue to exercise their First Amendment right to petition the courts and
 10 lawmakers. The response to copyright owners’ efforts has been enormously positive
 11 from all branches of government, including the overwhelming majority of courts across
 12 the country supporting copyright owners’ attempts to combat the problem of BitTorrent
 13 infringement.⁸

16 ⁶ Id. at p. 23 quoting singer-song writer Teemu Brunila.

17 ⁷ Id.

18 ⁸An analysis of the opinions that can be found on Westlaw discussing BitTorrent and joinder leads to the
 19 inescapable conclusion that the overwhelming majority of courts support. While not a complete list of
 20 the cases on Westlaw holding joinder is proper the following cases do so hold. DigitProtect USA Corp. v.
 21 Does, 2011 WL 4444666 (S.D.N.Y. 2011); Patrick Collins v. John Does 1-9, 11-cv-01269 (S.D.N.Y. 2011); First
 22 Time Videos, LLC v. Does 1-76, 2011 WL 3586245 (N.D. IL 2011); Patrick Collins, Inc. v. John Does 1-2590,
 23 2011WL 4407172, * 6 (N.D. Cal. 2011);) NuImage, Inc. v. Does 1-22,322, 2011 WL 3240562 (D.D.C. 2011);
 24 West Coast Productions, Inc. v. Does 1-5829, 275 F.R.D. 9 (D.D.C. 2011); Call of the Wild v. Does 1-331, 274
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Does 1-171, 2011 WL 1807452 (D.D.C. 2011); Camelot Distribution Group v. Does 1-1210, 2011 WL 4455249,
 *3 (E.D.Cal. 2011); Berlin Media Art E.K. v. Does 1-144, 2011 WL 4056167 (E.D. CA. 2011); Liberty Media
Holdings, LLC v. Does 1-62, 2011 WL 1869923 (S.D.Cal.2011); MCGIP, LLC v. Does 1-149, 2011 WL 3607666,
 at 3 (N.D.Cal. 2011); New Sensations, Inc. v. Does 1-1,474, 2011 WL 4407222, (N.D.Cal. 2011); Hard Drive
Productions, Inc. v. Does 1-46, 2011 U.S. Dist. LEXIS 67314 (N.D. Cal. 2011); New Sensations, Inc. v. Does
1745, 2011 WL 2837610 (N.D. Cal. 2011); Hard Drive v. Does 1-55, 2011 WL 4889094, (N.D.Ill 2011); First
Time Videos, LLC v. Does 1-76 --- F.R.D. ----, 2011 WL 3586245 (N.D.Ill.,2011); First Time Videos, LLC v.
Does 1-500, --- F.Supp.2d ----, 2011 WL 3498227 (N.D.Ill.,2011); MGCIP v. Does 1-316, 2011 WL 2292958
 (N.D. Ill. 2011).

1 **C. The Executive Branch and Congress Are All Very Concerned With The Jobs**
2 **And Money Lost From Online Piracy**

3 On June 22, 2010, Vice President Biden, speaking for the Executive Branch, said
4 of on-line piracy “[t]his is theft, clear and simple.”⁹ “It’s smash and grab, no different
5 than a guy walking down Fifth Avenue and smashing the window at Tiffany’s and
6 reaching in and grabbing what’s in the window.” Id. “[O]n February 16, 2011, the
7 Senate Judiciary Committee, led by Chairman Patrick Leahy (D-Vt.), held a hearing . . .
8 about the growing problem of online infringement. . . .”¹⁰ Leahy said “[t]he problem of
9 online infringement is real; it is substantial; and it is a drain on our economy, which
10 costs American jobs.” Id. He continued “[c]opyright piracy and the sale of counterfeit
11 goods are reported to cost the American economy billions of dollars annually and
12 hundreds of thousands of lost jobs.” Id.

13 While the problem has grown exponentially over the last five years, in 2007 the
14 Institute for Policy Innovation found “[u]sing a well-established U.S. government model
15 and the latest copyright piracy figures . . . copyright piracy from motion pictures, sound
16 recordings, business and entertainment software and video games costs the U.S.
17 economy \$58.0 billion in total output, costs American workers 373,375 jobs and \$16.3
18 billion in earnings, and costs federal, state, and local governments \$2.6 billion in tax
19 revenue.”

21 **D. Core Copyright Businesses Comprise a Huge Part of The U.S.’s Economy**

22 According to the International Intellectual Property Alliance’s 2011 report
23

24 ⁹ See <http://www.reuters.com/article/2010/06/22/us-usa-trade-web-idUSTRE65L3YN20100622>

¹⁰ See <http://www.techzone360.com/news/2011/02/16/5318701.htm>.

1 prepared in connection with the U.S. government, attached as an Exhibit, the copyright
2 industry has a total value added to the U.S. economy of 1.6 trillion dollars. The
3 copyright industry employs nearly 10 million people, and these people have an average
4 salary of 78,000 compared to the 61,000 for the rest of the country. As these statistics
5 demonstrate, businesses that depend on copyrights for their survival comprise a huge
6 component of the United States' economy.

7
8 **E. Piracy of Adult Content Impedes Parents Ability to Prohibit Children from
Watching It**

9 As Congress and parents know – the power of the purse is a tremendous tool for
10 controlling behavior. The ability to download adult content for free is enabling minors
11 to watch movies that are not age appropriate – all while secreting this behavior from
12 parents. Significantly, minors would need a credit card or PayPal account to buy adult
13 content on-line. Many parents would surely notice these charges if they showed up on
14 billing statements. Since piracy makes these movies available for free, parents are
15 denied their right to use the power of the purse to control their children's behavior.

16
17 **F. Why is Plaintiff Bringing these Suits?**

18 According to Bitsnoop.com, K-Beech, Inc. has the two most illegally downloaded
19 adult movies in the world.¹¹ After months of watching its movies be infringed on a
20 massive scale, K-Beech decided to seek redress for its injuries. From reports received
21 by Plaintiff's investigator, IPP Limited, K-Beech knows that its movies are being
22 illegally downloaded through the BitTorrent peer-to-peer file sharing protocol by people
23

1 residing in the U.S. well over 100,000 times a month. Indeed, the adult entertainment
2 industry has been particularly hard hit by the online infringement of its copyrights.
3 According to a Miami New Times survey, thirty two percent (32%) of respondents
4 admit to illegally downloading their adult movies.¹²

5 **1. Professional Digital Pirates Situate Themselves Overseas; And, Thumb**
6 **Their Noses at Copyright Owners**

7 Plaintiff sues the only people it can – end users. To explain, there are three types
8 of entities which can be sued for BitTorrent infringement: (a) BitTorrent Clients (the
9 software companies), (b) torrent websites, and (c) end users. As to BitTorrent Clients,
10 context is needed to understand the difficulties. Specifically, to avoid a claim for
11 contributory infringement, in 2001, contemporaneously with Napster’s demise,
12 Grokster, a company that studied the A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004
13 (2001) decision, introduced software and a system intentionally designed so that
14 Grokster could not tell what was being shared among and between its users. Grokster
15 promoted itself as Napster’s replacement; its efforts led to MGM Studios, Inc. v.
16 Grokster, Ltd. [545 U.S. 913 \(2005\)](#) wherein the [United States Supreme Court](#)
17 unanimously held that Grokster could be sued for “inducing” [copyright infringement](#) for
18 marketing file sharing software. Since BitTorrent has legitimate non-infringing uses,
19 unless a particular BitTorrent Client expressly advertises itself as a means to accomplish
20 copyright infringement, like Grokster did in another context, then a case against said
21 BitTorrent Client would be tough. Moreover, there are countless BitTorrent Clients,
22
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24 ¹² See <http://business.avn.com/articles/video/Miami-New-Times-Releases-Sex-Survey-Results-447237.html>

1 they are available for download for free, and many of these companies are located
2 outside the reach of U.S. courts on purpose.

3 A suit against the digital thieves running torrent websites, where infringers go to
4 download and distribute songs and movies, would and has been successful.¹³
5 Unfortunately, litigating against torrent sites is virtually impossible because torrent sites
6 intentionally situate themselves overseas in jurisdictions that do not enforce U.S.
7 copyright laws. For example, one of the most popular torrent sites, obnoxiously thumbs
8 its nose at U.S. copyright owners by posting its responses to demand letters on its
9 website. See its response to Dreamworks, Inc.'s demand letter stating: "Sweden is a
10 country in northern Europe . . . no Swedish law is being violated . . . you are morons,
11 and you should please go sodomize yourself with retractable batons."¹⁴ The self
12 proclaimed "Biggest Torrent System", [Extratorrent.com](http://extratorrent.com), which illegally distributes
13 Plaintiff's movies, not only hides itself in Somalia but changed the top level of its
14 domain from .com to .ws in anticipation of a U.S. Bill entitled Combating Online
15 Infringement and Counterfeits Act ("COICA") becoming law.¹⁵ COICA which failed to
16 pass in 2010 would have given the U.S. Department of Justice the power to take down
17 ".com" sites because the ".com" registrar resides in the U.S.
18

19 On May 12, 2011, a rewritten version of COICA was reintroduced by Senator
20 Leahy as the Protect IP Act. The Protect IP Act allows the U.S. government to seize the
21

22 ¹³ See Columbia Pictures Ind., Inc. v. Bunnell, 2:06-cv-01093-FMC-JCx (C.D. Cal. 2006) (Awarding
23 111,000 to Plaintiffs against the then popular Torrentspy website.)

¹⁴ See http://static.thepiratebay.org/dreamworks_response.txt

¹⁵ See <http://extratorrent.com/> the red lettering on the home page which states please pay attention "[w]e are in the process of migrating the site to our new domain extratorrent.ws."

1 domain name of sites used in foreign jurisdictions. However, the Protect IP Act does
2 nothing to prohibit an internet user from simply typing in the IP Address of the site.
3 Therefore, Plaintiff fully expects the torrent sites will start advertising themselves as
4 123.4.567.89 and the like soon.¹⁶ Moreover, the power to seize domain names has
5 repetitively used by the U.S. Immigrations and Customs Enforcement (ICE) for quite
6 some time now and has little effect on the business of piracy because the pirates merely
7 buy another domain name and barely miss a beat.¹⁷

8
9 Other efforts to curb copyright infringement, such as throttling down the internet
10 speeds of users of BitTorrent have been met with substantial opposition. Indeed,
11 Comcast settled a class action for 16 million dollars for throttling¹⁸ and Clearwire¹⁹ and
12 Time Warner²⁰ were sued earlier this year in class action suits as well. Additionally,
13 Google now has software that enables consumers to detect ISP throttling efforts so that
14 consumers can migrate toward companies that do not employ this tactic.²¹ And, there
15 are how-to manuals which teach pirates how to avoid detection as a high band width
16

17
18 ¹⁶ While Plaintiff very much supports the Protect IP Act, Plaintiff recognizes that many of the Bill's
19 provisions are controversial. For example, there are substantial First Amendment free speech issues
20 which will likely make enforcing the law difficult for years until the Supreme Court adjudicates the
21 Bill's Constitutionality. Further, the Bill pits the interests of internet service providers, tube sites such as
www.youtube.com and social media sites such as Twitter and Facebook against copyright content
producers. Despite the tug of war between interest groups, the Bill does have popular Congressional
support and would likely pass. Unfortunately, Senator Wyden (OR-D) has pocket vetoed it and will
likely continue doing so.

¹⁷ See <https://www.eff.org/deeplinks/2011/02/what-congress-can-learn-recent-ice-seizures>; and
<http://www.zeropaid.com/news/91400/ice-domain-seizures-a-pointless-exercise/>

¹⁸ See <http://www.xtemu.com/forum/topic/2878-comcast-settles-p2p-throttling-lawsuit-customers-to-get-refunds/>

¹⁹ See <http://classactionlawsuitsinthenews.com/class-action-lawsuit-complaints/clearwire-class-action-lawsuit-complaint-filed-over-alleged-internet-data-throttling/>

²⁰ *Fink v. Time Warner*, 2011 WL 3962607

²¹ <http://torrentfreak.com/google-joins-fight-against-bittorrent-throttling-isps-090128/>

1 user and thus not have their internet speeds throttled.²²

2 **G. Plaintiff Has Brought The Suit For A Proper Purpose**

3 Patrick Collins, Inc. has been in business for almost twenty years. See Marc
4 Michael Dec. ¶ 3. Approximately five years ago Patrick Collins, Inc. began a process to
5 strategically improve its brand and products. Id. at ¶ 4 At that time, a team of top
6 directors, sales people, and administrative employees worked together to bring about
7 sustained improvement. Id. at ¶ 5. Since then Patrick Collins, Inc. has become one of
8 the most prominent, popular and critically acclaimed adult movie studios in the world.
9 Id. at ¶ 6. Every year it produces approximately 50 movies. Id. at ¶7. These movies
10 require extensive and time consuming pre-production and creative planning, customer
11 interaction, an intense production schedule, and editing. Id. at ¶8 We put a significant
12 amount of work into the branding and marketing of our movies, building strong
13 anticipation within the marketplace. Id. at ¶9. Through hard work these movies have
14 cultivated a significant fan base. Id. at ¶ 10. It is incredibly frustrated by the volume of
15 theft of our movies over the internet. Id. at ¶ 11. Within days of the release the search
16 engine results for its titles predominantly point to illegal BitTorrent downloads. Id. at ¶
17 12. Nearly every day its manager reads many blog comments, forum comments, or
18 tweets from people anticipating the availability of our movies by BitTorrent, or
19 distributing BitTorrent links to our movies. Id. at ¶ 13. The scale of theft of our movies
20 is enormous. Id. at ¶ 14. From reports received by our investigator, IPP Limited, its
21 managers know that its movies are being illegally downloaded through BitTorrent peer-
22
23

24 ²² <http://lifehacker.com/295995/stop-your-isp-from-throttling-bittorrent-speeds?tag=softwarebittorrent>

1 to-peer file sharing protocol by people residing in the U.S. well over 100,000 times a
2 month. It believes that this number is actually much, much higher. Id. This also does
3 not include illegal streaming of its movies on tube-sites which it can document is in the
4 millions, or the illegal viewing of our movies by download or streaming throughout the
5 rest of the world. Id. This theft of our property greatly damages our business, products,
6 and reputation. Id. at ¶ 15. The phenomenon is pervasive in the adult movie industry.
7 According to a Miami New Times survey, thirty two percent (32%) of respondents
8 admit to illegally downloading their adult movies.²³
9

10 Accordingly, Patrick Collins' motivation for bringing these suits is quite simply
11 to hold the infringers liable for their theft and by so doing hopefully deter the future theft
12 of its movies. If there was any easier way to stop the infringement, Patrick Collins
13 would immediately pursue it. However, for reasons too lengthy to explain in great
14 detail here, end user litigation is the only means available to U.S. copyright owners who
15 want to stop BitTorrent infringement. Moreover, there are countless BitTorrent Clients,
16 they are available for download for free, and many of these companies are located
17 outside the reach of U.S. courts on purpose.

18 **III. CONCLUSION**

19 Copyright infringement is a huge problem for Plaintiff and the entire thinking
20 world. Thus, while Plaintiff supports the Protect IP Act and throttling efforts by the
21 ISPs, Plaintiff recognizes none of the tactics proposed in the Protect IP Act or by
22 throttling truly address the core issue in piracy – the moral hazard associated with the
23

24 ²³ See <http://business.avn.com/articles/video/Miami-New-Times-Releases-Sex-Survey-Results-447237.html>

1 anonymous ability to steal – by providing real repercussions. If a camera is at a red
2 light, motorists are not likely to run it. It is no different on the information
3 superhighway, and only end user litigation can provide the necessary deterrent.
4 Accordingly, faced with a very serious problem of infringement and no easy solution for
5 solving it, Plaintiff made the difficult choice to enter into a complicated, extraordinarily
6 labor intensive and expensive copyright enforcement campaign against individual file
7 sharers.

8
9 DATED this 4th day of November, 2011.

10 Respectfully submitted,

11 /s/ Ryan J. Stevens
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CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2011 I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that service was perfected on all counsel of record and interested parties through this system.

By: /s/ Ryan J. Stevens