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LIBERTY MEDIA HOLDINGS, LLC  
6

7  
8 **UNITED STATES DISTRICT COURT**

9 **SOUTHERN DISTRICT OF CALIFORNIA, SAN DIEGO DIVISION**

10 LIBERTY MEDIA HOLDINGS, LLC  
A California Corporation

11 Plaintiff,

12 vs.

13 DOES 1-62,

14 Defendants  
15

) Case No. 11-CV-575-MMA-NLS  
)

) DECLARATION OF MALTE DINKELA IN  
) SUPPORT OF CONSOLIDATED  
) RESPONSE TO DOE DEFENDANT  
) MOTIONS TO QUASH/MOTION TO  
) DISMISS

16 I, Malte Dinkela, declare:

17 1. I am the Vice President of Excubitor USA, Inc., a company incorporated in  
18 Nevada with its principal address at 4550 West Oakey Blvd. #111H, Las Vegas, NV 89102.  
19 Excubitor is a provider of online antipiracy services for the motion picture industry. Before my  
20 employment with Excubitor, I held various positions at companies that developed software  
21 technologies. I have approximately ten years of experience related to digital media and computer  
22 technology.  
23

24 2. I submit this declaration in support of Liberty Media Holdings, LLC's Complaint  
25 for Copyright Infringement and Plaintiffs Motion for Leave to Take Early Discovery. This  
26 declaration is based on my personal knowledge, and if called upon to do so, I would be prepared  
27 to testify as to its truth and accuracy.  
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1           3.       At Excubitor, I am the head of the department that carries out evidence collection  
2 and provides litigation support services. I work closely with our research team to create credible  
3 processes to scan for, detect, and document copyright infringement conducted over the internet.

4           4.       The Internet is a vast collection of interconnected computers and computer  
5 networks that communicate with each other. It allows hundreds of millions of people around the  
6 world to freely and easily exchange ideas and information. Unfortunately, the Internet also has  
7 *afforded opportunities for wide scale infringement of copyrighted motion pictures. Once a*  
8 *motion picture has been transformed into an unsecured digital format, it can be further copied*  
9 *and distributed an unlimited number of times over the Internet, without significant degradation in*  
10 *picture or sound quality.*

11           5.       To copy and distribute copyrighted motion pictures over the Internet, many  
12 individuals use online media distribution systems or so-called "peer-to-peer" ("P2P") networks.  
13 P2P networks, at least in their most common form, are computer systems that enable Internet  
14 users to (1) make files (including motion pictures) stored on each user's computer available for  
15 copying by other users or peers; (2) search for files stored on other users' computers; and (3)  
16 transfer exact copies of files from one computer to another via the Internet.

17           6.       The plaintiff in this action, Liberty Media Holdings, LLC ("Plaintiff") is a  
18 producer and distributor of motion pictures. On behalf of Plaintiff, we engaged in a specific  
19 process utilizing Excubitor's specially designed software technology to identify direct infringers  
20 of Plaintiff's copyrighted materials over P2P networks. Plaintiff owns the copyright and the  
21 exclusive distribution and licensing rights for the motion picture, "Down on the Farm" (the  
22 "Motion Picture"). Excubitor has documented evidence of the unauthorized reproduction and  
23 distribution of the Motion Picture within the United States of America, including California.  
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1 file. This client program, after reading the roadmap, connects “uploaders” of the file (i.e.,  
2 individuals that are distributing the content) with “downloaders” of the file (i.e., individuals that  
3 are copying the content). During this process, the BitTorrent client reaches out to one or more  
4 “trackers” that are identified on the roadmap. A tracker is an Internet server application that  
5 records the IP addresses associated with users who are currently sharing any number of media  
6 files identified by their unique hash values and then directs a BitTorrent user’s computer to other  
7 users who have the particular file each user is seeking to download.  
8

9       12. Each IP address identified by the tracker is an uploading user who is currently  
10 running a BitTorrent client on his or her computer and who is currently offering the desired  
11 motion picture file for download. The downloading user’s BitTorrent software then begins  
12 downloading the motion picture file without any further effort from the user, by communicating  
13 with the BitTorrent client programs running on the uploading users’ computers.  
14

15       13. The life cycle of a file shared using BitTorrent begins with just one individual —  
16 the initial propagator, sometimes called a “seed” user or “seeder.” The initial propagator  
17 intentionally elects to share a file with a torrent swarm. The original file, in this case, contains  
18 Plaintiff’s entire copyrighted Motion Picture.  
19

20       14. Other members of the swarm connect to the seed to download the file, wherein  
21 the download creates an exact digital copy of Plaintiff’s copyrighted Motion Picture on the  
22 downloaders’ computers. As additional thieves request the same file, each additional thief joins  
23 the collective swarm, and each new thief receives pieces of the file from each other thief in the  
24 swarm who has already downloaded any part of the file. Eventually, once the initial propagator  
25 has distributed each piece of the file to at least one other thief, so that together the pieces  
26 downloaded by members of the swarm comprises the whole Motion Picture when reassembled,  
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1 the initial propagator may leave the swarm, and the remaining thieves can still obtain a full copy  
2 of the Motion Picture by exchanging the pieces of the Motion Picture that each one has.

3 15. Files downloaded in this method are received in hundreds or even thousands of  
4 individual pieces. Each piece may be contributed from a different member of the swarm.  
5 Moreover, each piece that is downloaded is immediately thereafter made available for  
6 distribution to other users seeking the same complete file. Thus, the effect of this technology  
7 effectively makes every downloader of the content also an uploader. This means that every user  
8 who has a copy of the infringing material in a swarm may also be a source for later downloaders  
9 of that material.  
10

11 16. In the BitTorrent world, there is honor among thieves. Those who merely  
12 download files, without publishing and sharing files, are derisively called “leechers.” Being a  
13 leecher is not only a negative due to the pejorative terminology, but leechers are also punished  
14 by the torrent swarm. The BitTorrent protocol stalls the downloads of leechers in an effort to  
15 preserve network speed for the more prolific copyright infringers. Thus, the sharing of files as  
16 users receive them is inherent in BitTorrent’s use.  
17

18 17. This distributed nature of BitTorrent leads to a rapid viral sharing of a file  
19 throughout the collective peer users. As more peers join the collective swarm, the frequency of  
20 successful downloads also increases. Because of the nature of the BitTorrent protocol, any seed  
21 peer that has downloaded a file prior to the time that a subsequent peer downloads the same file  
22 is automatically a source for the subsequent peer, so long as that first peer is online at the time  
23 the subsequent peer requests the file from the swarm. Because of the nature of the collective  
24 swarm, every infringer is — and by necessity all infringers together are — simultaneously both  
25 stealing the Plaintiff’s copyrighted material and redistributing it.  
26  
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1 and date at which the file or a part of the file was distributed by the user; (b) the IP address  
2 assigned to each user at the time of infringement; and, in some cases, (c) the video file's  
3 metadata (digital data about the file), such as title and file size. We then created evidence logs for  
4 each user and stored all this information in a database.

5  
6 24. As part of my responsibilities at Excubitor, I have also been designated to confirm  
7 that the digital audiovisual files downloaded by Excubitor are actual copies of Plaintiff's Motion  
8 Picture. Excubitor (and accordingly, Plaintiff) does not rely solely on the labels and metadata  
9 attached to the files themselves, but also confirms the copying through a visual comparison  
10 between the downloaded file and the Motion Picture.

11  
12 25. I have watched the Motion Picture. The downloaded files have been carefully  
13 reviewed and compared by a visual comparison with the original Motion Picture. I confirmed  
14 that they contain a substantial portion of the Motion Picture identified in the Complaint.

15  
16 26. As of January 31, 2011, Excubitor identified at least 62 unique IP addresses  
17 traceable that were engaged in the unauthorized downloading and distribution of the A3E Hash  
18 on November 15, 2010.

19  
20 27. Plaintiff's Motion Picture continues to be made available for unlawful transfer  
21 and distribution using the BitTorrent network. Liberty Media and Excubitor continue to monitor  
22 such unlawful distribution and transfer of Plaintiff's motion pictures.

23  
24 **EXPEDITED DISCOVERY IS NEEDED**

25  
26 28. Obtaining the identity of copyright infringers on an expedited basis is critical to  
27 prosecution of this action and stopping the continued infringement of the Motion Picture.  
28 Plaintiff does not have Defendants' names, addresses, e-mail addresses, or any other way to  
identify or locate Defendants, other than the unique IP address assigned to each Defendant by

1 his/her internet Service Provider on the date and at the time of the Defendant's infringing  
2 activity.

3 29. An IP address is a unique numerical identifier that is automatically assigned to a  
4 user by its Internet Service Provider ("ISP") each time a user logs onto the network. Each time a  
5 subscriber logs on, he or she may be assigned a different IP address unless the user obtains from  
6 his/her ISP a static IP address. ISPs are assigned certain blocks or ranges of IP addresses.  
7

8 30. *An infringer's IP address is significant because it is a unique identifier that, along*  
9 *with the date and time of infringement, specifically identifies a particular computer using the*  
10 *Internet. However, the IP address does not enable us to ascertain with certainty the exact*  
11 *physical location of the computer or to determine the infringer's identity. It only enables us to*  
12 *trace the infringer's access to the Internet to a particular Internet Service Provider ("ISP") and, in*  
13 *most instances, to a general geographic area.*  
14

15 31. Here, the IP addresses Excubitor identified enable us to determine which ISP was  
16 used by each infringer to gain access to the Internet. Publicly available databases located on the  
17 Internet list the IP address ranges assigned to various ISPs. We determined that the Doe  
18 Defendants here were using those ISPs listed in Exhibit A to gain access to the Internet and  
19 distribute and make available for distribution and copying the Motion Picture.  
20

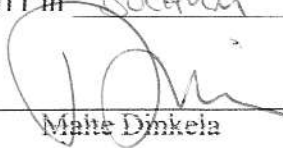
21 32. ISPs keep track of the IP addresses assigned to its subscribers at any given  
22 moment and retain such "user logs" for a limited amount of time. These user logs provide the  
23 most accurate means to connect an infringer's identity to its infringing activity. Further, ISPs  
24 have different policies pertaining to the length of time they preserve their user logs. Despite  
25 requests to preserve the information, some ISPs keep the session data of their subscribers'  
26 activities for only limited periods of time — sometimes as little as weeks or even days — before  
27 erasing the data they contain.  
28



1           33.     Once ISP's are provided with the IP address, plus the date and time of the  
2 infringing activity, the ISPs can quickly and easily use their respective subscriber logs to identify  
3 the name and address of the ISP subscriber who was assigned that IP address at that date and  
4 time.  
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6  
7 I declare under penalty of perjury that the foregoing is true and correct.

8 Executed on 7/7/11, 2011 in Boethus.

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Malte Dinkela

1 Certificate of Service

2 I hereby certify that Plaintiff Liberty Media Holdings' the foregoing document was filed  
3 electronically using this Court's CM/ECF system on July 7, 2011. A copy was sent via email to  
4 Counsel for Doe 51. As the identities of the remaining Defendants are unknown at this time,  
5 Plaintiff is unable to serve them.

6  
7 Dated: July 7, 2011

Respectfully submitted,

8 s/ Marc Randazza

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