

Honorable Judge Robert S. Lasnik

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

Riding Films, Inc.  
Plaintiff,

vs.

Does 1- 64,  
Defendants

No. 2:13-cv-00288 RAJ-RSL

Declaration of Gary Marshall

I declare and state as follows:

1. I, Gary K., Marshall, am the attorney of record for Doe 45 with IP address 174.61.182.92 the above captioned case.

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

**The Music and Movie Download lawsuits**

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.

1 4. I have followed the movie download copyright infringement cases since shortly after they  
2 started. I routinely visit several web sites that track the developments in the movie download  
3 lawsuits, including the site run by the Electronic Frontier Foundation (EFF) at [www.eff.org](http://www.eff.org). I  
4 belong to several email lists where attorneys across the country share information, including  
5 court filings, and discuss the latest developments in the movie download cases. Since late 2010 I  
6 have represented approximately seventy individuals who have been named in these lawsuits.

7 5. I consider myself well qualified to testify about the movie download cases.

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

12 7. In order to understand these movie download cases, it is necessary to go back to the music  
13 download cases. In the early 2000's the music industry was suffering from declining sales  
14 Meanwhile the unauthorized downloading of music files had increased. The music industry  
15 perceived, wrongly in my personal opinion, that unauthorized music downloading was a major  
16 cause of the decline in sales.

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

20 9. The RIAA first tried to identify individuals through their unique Internet Protocol (IP)  
21 addresses by contacting their Internet Service Providers (ISPs) directly under color of the Digital  
22 Millennium Copyright Act (DMCA), until a federal court of appeals ruled that they could not  
23 sustain their subpoenas under authority of the DMCA. So in 2004 the RIAA began to file John

1 Doe lawsuits, naming hundreds or thousands of individuals in one lawsuit. The RIAA only knew  
2 their ISP address and subpoenaed the ISPs to obtain the identities of the individuals. The RIAA  
3 then sent letters to the individuals demanding that they stop downloading and that they pay the  
4 RIAA a settlement amount. In the majority of these cases, the targets settled their cases for  
5 amounts ranging between \$3,000 and \$11,000.

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

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

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

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

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

21 15. Assuming conservatively that the law firm was able to identify half of the people it  
22 named, or 2,000 individuals and send each of them a demand letter, if half of them agreed to pay  
23 \$2,000 dollars each, then the law firm would take in 2.5 million dollars per lawsuit.

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 to  
4 settle.

5 17. Many of these cases named thousands of defendants residing throughout the country.  
6 These cases are often dismissed due to lack of jurisdiction. We can not be sure, but it appears that  
7 the law firms behind these lawsuits are now soliciting local counsel to file lawsuits within that  
8 counsel's state, naming only defendants who reside in that state. The national counsel provides  
9 the IP addresses and the form pleadings and demand letter. The local counsel pursues the  
10 business model of scaring defendants into settling. The local counsel retains a percentage of the  
11 settlement money and passes the rest back to the national counsel.

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

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

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

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

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

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

12 20. See also PC World's summary of these cases, a printout of which is also included in  
13 Exhibit C.

14 [http://www.pcworld.com/article/230515/so\\_youre\\_being\\_sued\\_for\\_piracy.html](http://www.pcworld.com/article/230515/so_youre_being_sued_for_piracy.html)

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

19 .....

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

25 21. See also Safety Point Products, LLC et al., *Plaintiffs v. DOES 1-14, DOES 15-96, DOES*  
26 *97-177, & DOES 178-197, Defendants, Case Nos 1:12-CV-2812, 1:12-CV-2820;1:12-CV-2831;*  
27 *1:12-CV-2894, OPINION & ORDER date April 4, 2013 (attached to the Judicial Notice that*  
28 *accompanies the Defendants Motion to Quash as Exhibit B)*

29 Because IP addresses are the only identifiers of peers within a  
30 BitTorrent system, it is difficult, if not impossible, to learn the true  
31 identities of the peers in a swarm. To pursue litigation, plaintiffs in  
32 BitTorrent suits must attempt to get early discovery to learn of the  
33 actual identities of the unnamed defendants. The requests have  
34 been the subject of much criticism, for the lawsuits are rarely

1 litigated. Rather, plaintiffs seek to take advantage of the resources  
2 of federal courts to force small, individual settlements.

3 22. By doing an Internet Search, I was able to find a redacted copy of a typical demand letter  
4 used by the Plaintiffs. See Exhibit D. The Plaintiff is demanding \$3,500 from this particular  
5 defendant.

6 23. It is hard to know for sure, but it seems that over half of the named individuals are paying  
7 the settlement amount. I have represented in the neighborhood of 70 individuals who have been  
8 named in these lawsuits. I usually recommend that the individual not settle. But I have found that  
9 slightly over half of my clients have paid the settlement amount. This is the same percentage that  
10 has been reported many times on-line for both the music and movie download cases.

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

15 25. In the last few weeks I have spoken to a number of people who have received subpoena's  
16 in one of Mr. Symmes' cases.

17 26. One couple that came to see me recently has been named as a John Doe in one of these  
18 movie download cases. They gave me permission to repeat what they told me. They are both  
19 fairly recent immigrants from Russia. They could not possibly have downloaded the movie they  
20 are accused of downloading. They only watch films that are in Russian. They do not watch films  
21 that are in English. The only other members of their household are very young children who are  
22 not capable of using a computer,

1 27.I spoke to another john doe who runs a small hotel. He offers wifi access to his guests. He  
2 told me that he and his staff did not download the movie in question. He added that he had no  
3 way of knowing and no way of controlling what his guests do on the Internet.

4 28.I do not offer these statements to prove whether or not these people actually downloaded  
5 the movie in question. Their statements would be hearsay if used for that purpose.

6 29.I offer these statements to support my state of mind. They are not hearsay when used for  
7 that purpose.

8 30.My experience in the present movie download case filed in federal Western District Court  
9 in Seattle has been consistent with my earlier experiences. I continue to believe that about 20  
10 percent of the clients I have spoken to appear to have had nothing to do with downloading the  
11 movie, and neither has anyone else in their household.

12 31. No one can know for sure if the 20% are truly innocent. But their IP addresses may have  
13 been incorrectly identified by the Plaintiff or by their ISP. Or someone may have used their wi-fi  
14 IP access without their authority, which is very easy to do by the way and does not require  
15 physical access to their computer or even their home.

16 32.The method used by the Plaintiffs to prove downloading is also inherently flawed. Even if  
17 an individual joined a bit-torrent swarm at some point during the swarm's existence, that by itself  
18 is not proof that the defendants downloaded a movie file. The defendant could joint a swarm and  
19 not download at all, or could have downloaded only a minuscule amount of the movie file.  
20 Members of a swarm are not aware of the other members of the swarm and they do not  
21 communicate with other members.

22 **Related Cases**

1 33. Including the present case, I am aware of a total of forty-nine lawsuits filed by the same  
2 plaintiff's attorney, Richard Symmes, alleging essentially the same activities against multiple  
3 John Does. They are:

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5	2:13-cv-00050 R & D Film 1, LLC v. Does 1-46	filed 01/08/13
6	2:13-cv-00051 R & D Film 1, LLC v. Does 1-45	filed 01/08/13
7	2:13-cv-00052 R & D Film 1, LLC v. Does 1-41	filed 01/08/13
8	2:13-cv-00053 R & D Film 1 LLC v. Does 1-22	filed 01/08/13
9	2:13-cv-00054 R & D Film 1 LLC v. Does 1-51	filed 01/08/13
10	2:13-cv-00055 R & D Film 1 LLC v. Does 1-50	filed 01/08/13
11	2:13-cv-00056 R & D Film 1 LLC v. Does 1-44	filed 01/08/13
12	2:13-cv-00057 R & D Film 1 LLC v. Does 1-16	filed 01/08/13
13	2:13-cv-00063 Flypaper Distribution, LLC v. Does 1-19	filed 01/09/13
14	2:13-cv-00194 Private Lenders Group, Inc. v. Does 1-59	filed 01/31/13
15	2:13-cv-00228 D3 Productions, LLC v. Does	filed 02/08/13
16	2:13-cv-00255 Riding Films, Inc. v. Does 1-35	filed 02/12/13
17	2:13-cv-00256 Riding Films, Inc. v. Does 1-12	filed 02/12/13
18	2:13-cv-00277 Riding Films Inc v. Does 1-44	filed 02/13/13
19	2:13-cv-00278 Riding Films Inc v. Does 1-44	filed 02/13/13
20	2:13-cv-00287 Riding Films Inc v. Does 1-65	filed 02/14/13
21	2:13-cv-00288 Riding Films Inc v. Does 1-65	filed 02/14/13
22		
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1 2:13-cv-00289 Riding Films Inc v. Does 1-64 filed 02/14/13  
2 2:13-cv-00307 Zembezia Film (Pty.) Ltd. v. Does 1-47 filed 02/18/13  
3 2:13-cv-00308 Zembezia Film (Pty.) Ltd. v. Does 1-66 filed 02/18/13  
4 2:13-cv-00309 Zembezia Film (Pty) Ltd v. Does 1-66 filed 02/18/13  
5 2:13-cv-00310 Zembezia Film (Pty.) Ltd. v. Does 1-66 filed 02/18/13  
6 2:13-cv-00311 Zembezia Film (Pty.) Ltd. v. Does 1-66 filed 02/18/13  
7 2:13-cv-00312 Zembezia Film (Pty.) Ltd. v. Does 1-70 filed 02/18/13  
8 2:13-cv-00313 Zembezia Film (Pty) Ltd v. Does 1-48 filed 02/18/13  
9 2:13-cv-00314 Zembezia Film (Pty.) Ltd. v. Does 1-58 filed 02/18/13  
10 2:13-cv-00315 Zembezia Film (Pty) Ltd v. Does 1-51 filed 02/18/13  
11 2:13-cv-00316 Zembezia Film (Pty) Ltd v. Does 1-51 filed 02/18/13  
12 2:13-cv-00317 Zembezia Film (Pty) Ltd v. Does 1-18 filed 02/18/13  
13 2:13-cv-00318 Zembezia Film (Pty) Ltd v. Does 1-57 filed 02/18/13  
14 2:13-cv-00319 Zembezia Film (Pty) Ltd v. Does 1-47 filed 02/18/13  
15 2:13-cv-00328 The Ledge Distribution, LLC v. Does 1-43 filed 02/20/13  
16 2:13-cv-00329 The Ledge Distribution, LLC v. Does 1-44 filed 02/20/13  
17 2:13-cv-00330 The Ledge Distribution, LLC v. Does 1-71 filed 02/20/13  
18 2:13-cv-00455 Voltage Pictures, LLC v. Does 1-18 filed 03/13/13  
19 2:13-cv-00456 Voltage Pictures, LLC v. Does 1-78 filed 03/13/13  
20 2:13-cv-00457 Voltage Pictures, LLC v. Does 1-78 filed 03/13/13  
21 2:13-cv-00458 Voltage Pictures, LLC v. Does 1-22 filed 03/13/13  
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1 2:13-cv-00459 Voltage Pictures, LLC v. Does 1-40 filed 03/13/13  
2 2:13-cv-00460 Voltage Pictures, LLC v. Does 1-52 filed 03/13/13  
3 2:13-cv-00461 Voltage Pictures, LLC v. Does 1-78 filed 03/13/13  
4 2:13-cv-00462 Voltage Pictures, LLC v. Does 1-18 filed 03/13/13  
5 2:13-cv-00507 Elf-Man, LLC v. Does 1-152 filed 03/20/13

6 34. I am aware of 2,479 John Does in forty-nine lawsuits. That translates to \$865,900 in  
7 filing fees that should have been and have not been paid to the court.

8 35. I normally do not comment on the actions of opposing counsel. However, in this case the  
9 plaintiff's attorney's actions are directly relevant to my clients' motions to quash.

10 36. According to his law firm website, plaintiff's counsel Richard Symmes is the managing  
11 partner of a small law firm in Seattle. He is the only attorney who lists experience outside of  
12 bankruptcy and finance, the main focus of his law firm's practice.

13 37. Mr. Symmes has filed lawsuits against at least 2,583 john doe defendants in a short time  
14 span. It is only logical to assume that he has no intention of pursuing most of these claims  
15 through to trial. That would be logistically impossible.

16 38. I once made the mistake of filing two lawsuits on the same day. I will never make that  
17 mistake again. The deadlines for various matters in each case occurred at the same time. Both  
18 cases were scheduled for trial at the same time. I got through it but it was very difficult.

19 39. There is no way that Mr. Symmes can pursue lawsuits against more than a very small  
20 number of the John Doe defendants. It is only logical, to assume that he is counting on most of  
21 the defendants to settle quickly.

22 40. Since I filed my pleadings in the three cases captioned above, I have had to speak to  
23 Judge Lasnik's case administrator many times by phone and email about the logistics of these

1 cases. The court's ECF system is apparently not designed to handle these types of cases  
2 automatically. The case administrator and other staff have had to go into each case file and make  
3 an adjustment each time an attorney appears for any of the John Doe defendants. This added  
4 burden on the court adds weight to my clients' claim that the Plaintiff should be filing each John  
5 Doe case separately and paying a separate filing fee for each case.

6 41. Attached to this Declaration as Exhibit E. is a blog article that appears to have been  
7 posted by the plaintiff's attorney. It is located at

8 <http://frontierlawgroup.wordpress.com/2013/04/02/frequently-asked-questions/>

9 42. In an article on KOMI 4 news' website at  
10 [http://www.komonews.com/news/local/Illegally-downloading-movies-Studios-may-be-coming-](http://www.komonews.com/news/local/Illegally-downloading-movies-Studios-may-be-coming-after-you-194124661.html)  
11 [after-you-194124661.html](http://www.komonews.com/news/local/Illegally-downloading-movies-Studios-may-be-coming-after-you-194124661.html), Mr. Symmes states:

12 "It would probably be more expensive to go ahead and fight this rather than take a nominal  
13 settlement and just make this go away,"

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

May 6, 2013	Seattle, King County, WA	/Gary K. Marshall/
_____	_____	_____

Date	Place (City, County, State)	Signature
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