

## UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

## Circuit Mediation Office

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<http://www.ca9.uscourts.gov/mediation>**MEDIATION QUESTIONNAIRE**

The purpose of this questionnaire is to help the court's mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are **not** confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

9th Circuit Case Number(s):	13-55880	
District Court/Agency Case Number(s):	2-12-cv-08333-odw-jc	
District Court/Agency Location:	Central District of California	
Case Name:	Ingenuity 13, LLC	v. John Doe
If District Court, docket entry number(s) of order(s) appealed from:	ECF Nos. 48, 66, 86 and 130	
Name of party/parties submitting this form:	Ingenuity13, LLC	

Please briefly describe the dispute that gave rise to this lawsuit.

The District Court has accused Ingenuity13 among others of perpetrating a fraud upon the court by approving the filing of several copyright infringement lawsuits against putative John Doe Defendants, whom its counsel and consultants observed to be illegally downloading via Bit Torrent copyrighted adult-oriented content owned or assigned it. The court accused Ingenuity13 of being a shell company for purposes of its litigation and having no reasonable basis by which to file their lawsuits against the defendants alleged to have pirated copyrighted content.

Briefly describe the result below and the main issues on appeal.

The Court sanctioned Ingenuity13 and others by awarding the putative John Doe's counsel attorneys' fees for his assistance in providing "evidence" and legal argument critical of Ingenuity13 and the other sanctioned individuals and entities. The court doubled this fee award as a punitive measure. The entire OSC procedure supervised by the Court was a criminal prosecution clothed in the "civil" nomenclature. Having threatened the various appellants with incarceration, the court incorrectly took negative inferences from the invocation of the Fifth Amendment, considered inadmissible evidence, and failed to provide basic due process protections to the accused.

Describe any proceedings remaining below or any related proceedings in other tribunals.

Ingenuity13 is a plaintiff in several cases across the country against illegal downloaders, and the District Court's May 6, 2013 Order Issuing Sanctions, inclusive of its conclusions of fact, is being used to prejudice Ingenuity13 in those matters. In addition, Ingenuity13 faces potential criminal investigation based on the Court's order. Ingenuity13 believes its due process rights were violated by the District Court's OSC proceedings, causing professional and financial injury to Ingenuity13

Provide any other thoughts you would like to bring to the attention of the mediator.

Appellee is likely to be the putative John Doe's counsel, Morgan Pietz, who was awarded attorneys' fees and a punitive windfall from the District Court's May 6, 2013 order. Appellant will be challenging not only the due process violations that engendered the award, but the amount itself, as Mr. Pietz spent a majority of his billed time in this case in the OSC proceedings, which were instituted post-dismissal. Thus, the putative John Doe to whom the attorneys' fee award should inure incurred no expenses after the January 28, 2013 dismissal of the case.

Any party may provide additional information *in confidence* directly to the Circuit Mediation Office at [ca09\\_mediation@ca9.uscourts.gov](mailto:ca09_mediation@ca9.uscourts.gov). Please provide the case name and Ninth Circuit case number in your message. Additional information might include interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.

### CERTIFICATION OF COUNSEL

I certify that:

a current service list with telephone and fax numbers and email addresses is attached  
☒ (see 9th Circuit Rule 3-2).

I understand that failure to provide the Court with a completed form and service list  
☒ may result in sanctions, including dismissal of the appeal.

Signature

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for

**Note:** Use of the Appellate ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system. **To file this form electronically** in Appellate ECF, complete the form, and then print the filled-in form to PDF (File > Print > PDF Printer/Creator). Then log into Appellate ECF and choose Forms/Notices/Disclosure > File a Mediation Questionnaire.