

**EXHIBIT A**



Business Services Online > Search For A Business > Business Entity Detail

Login

## Business Entity Detail

Entity details cannot be edited. This detail reflects the current state of the filing in the system.

[Return to the Business Information Search.](#)

### Available Actions for this Entity:

- [File Annual Report](#)
- [Certificate of Good Standing](#)
- [File a Statement of Change](#)
- [Certified Copies Request](#)

### Business Corporation - Domestic

[Printer Friendly Version](#)

**Business ID:** DB056782

**Name:** CRYSTAL BAY CORPORATION

**Status:** Delinquent

**Initial Filing Date:** 03/28/2012

**Formed in:** SOUTH DAKOTA

**Term of Duration:** Perpetual

**Next Annual Report Due Date:** 03/01/2015

**Inactive Date:**

**Principal Office:** 110 E CENTER ST STE 2053  
MADISON, SD 57042-2908 USA

**Shares of Stock:** 1,000,000

### Registered Agent

**Agent Name:** DAKOTA AGENT SERVICES, LLC

**Agent Address:** 110 E CENTER ST SUITE 2053  
MADISON, SD 57042 USA

**Agent Mailing Address:**

**PLEASE NOTE:** Some historical documents prior to 11/12/2016 may NOT be included in the document link.  
Only Certified Copy Requests are guaranteed to show all documents on file.

### History

Type	File Date	View All Document Links (Scroll Down)	Detail
2014 Annual Report	06/23/2014	*Included in Initial Filing*	
2013 Annual Report	01/22/2014	*Included in Initial Filing*	
Initial Filing	03/28/2012	DB056782	

388 2631

Receipt Number: 32212

File Number **DB056782**



\* D B 0 5 6 7 8 2 \*



**ARTICLES\_OF\_INCORPORATION**

For

**CRYSTAL BAY CORPORATION**

Filed at the request of:

CORP 95  
32565B GOLDEN LANTERN STE 140  
DANA POINT CA 92629

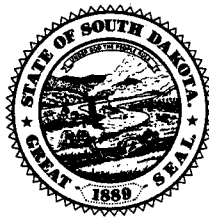
*State of South Dakota  
Office of the Secretary of State*

Filed in the office of the Secretary of State on: **Wednesday, March 28, 2012**

  
Secretary of State

Fee Received: \$150.00

# State of South Dakota



## OFFICE OF THE SECRETARY OF STATE

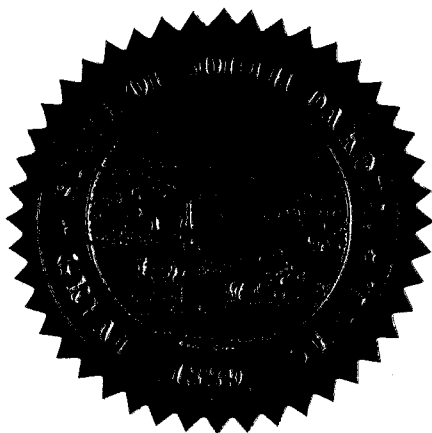
### Certificate of Incorporation Business Corporation

ORGANIZATIONAL ID #: DB056782

I, **Jason M. Gant**, Secretary of State of the State of South Dakota, hereby certify that the Articles of Incorporation of **CRYSTAL BAY CORPORATION** duly signed and verified, pursuant to the provisions of the South Dakota Business Corporation Act, have been received in this office and are found to conform to law.

**ACCORDINGLY**, and by virtue of the authority vested in me by law, I hereby issue this Certificate of Incorporation and attach hereto a duplicate of the Articles of Incorporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of South Dakota, in Pierre, the Capital City, this March 28, 2012.



**Jason M. Gant**  
Secretary of State

388 2632

Litho in U.S.A.

Secretary of State Office  
500 E Capitol Ave  
Pierre, SD 57501  
(605)773-4845

# ARTICLES OF INCORPORATION DOMESTIC BUSINESS CORPORATION

Please Type or Print Clearly in Ink

Please submit one Original and one Photocopy

**FILING FEE: \$150** payable to SECRETARY OF STATE

RECEIVED  
MAR 28 2012  
S.D. SEC. OF STATE

Telephone # (949) 487-2436  
FAX # (949) 218-4176

Filed this 28th day of March, 2012  
*Jason Sand*  
SECRETARY OF STATE

388 2633 0097 000

## Required Articles

### Article I

The name of the corporation is CRYSTAL BAY CORPORATION

Note: The name must include the term corporation, incorporated, company, limited or the applicable abbreviation.

### Article II

The number of shares the corporation is authorized to issue 1,000,000

### Article III

The address of the principal executive office in or out of the State of South Dakota.

<u>110 E. CENTER ST. STE 2053</u>	<u>MADISON</u>	<u>SD</u>	<u>57042</u>
Street Address	City	State	ZIP+4
<u>Mailing Address (Optional)</u>	<u>City</u>	<u>State</u>	<u>ZIP+4</u>

### Article IV

The South Dakota Registered Agent name DAKOTA AGENT SERVICES, LLC

<u>110 E CENTER ST. STE. 2053</u>	<u>MADISON</u>	<u>SD</u>	<u>57042</u>
Street Address or Rural Route Box Number in This State and	City	State	ZIP+4
<u>Mailing Address in This State, if Different from Street Address</u>	<u>City</u>	<u>State</u>	<u>ZIP+4</u>

When listing a Commercial Registered Agent, please state their CRA #.  
This number can be obtained from the Commercial Registered Agent.

CR000037

## Article V

The name and address of each incorporator (one or more persons – person includes an individual or entity)

DAVID DELOACH	32565B GOLDEN LANTERN ST STE 140	DANA POINT	CA	92629
Incorporator	Street Address	City	State	ZIP+4
Incorporator	Street Address	City	State	ZIP+4
Incorporator	Street Address	City	State	ZIP+4
Incorporator	Street Address	City	State	ZIP+4
Incorporator	Street Address	City	State	ZIP+4

This document must be executed by the chair of the board of directors, by its president, or by another of its officers. If directors have not been selected or the corporation has not been formed, an incorporator may execute the document.

Dated [REDACTED]

  
 \_\_\_\_\_  
 (Signature of an authorized officer)

DAVID DELOACH  
 \_\_\_\_\_  
 (Printed Name)

INCORPORATOR  
 \_\_\_\_\_  
 (Title)

## Optional Provisions

**Any of the optional articles may be added by attachment.**

The names and addresses of the individuals who are to serve as the initial directors

- (1) Provisions not inconsistent with law regarding:
  - (a) The purpose or purposes for which the corporation is organized;
  - (b) Managing the business and regulating the affairs of the corporation;
  - (c) Defining, limiting, and regulating the powers of the corporation, its board of directors and shareholders;
  - (d) A par value for authorized shares or classes of shares; and
  - (e) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;
- (2) Any provision that under this chapter is required or permitted to be set forth in the bylaws;
- (3) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for the amount of a financial benefit received by a director to which the director is not entitled; an intentional infliction of harm on the corporation or the shareholders; a violation of SDCL 47-1A-833; or an intentional violation of criminal law;
- (4) A provision permitting or making obligatory indemnification of a director for liability, as defined in subdivision 47-1A-850(5), to any person for any action taken, or any failure to take any action, as a director, except liability for receipt of a financial benefit to which the director is not entitled; an intentional infliction of harm on the corporation or its shareholders; a violation of 47-1A-833.1; or an intentional violation of criminal law; and
- (5) Any provision limited or denying preemptive rights to acquire additional or treasury shares of the corporation.

388 2634

2013

Enter Filing Year

FILE 1/22/2014

Secretary of State Office  
500 E Capitol Ave  
Pierre, SD 57501  
(605)773-4845

**DOMESTIC**

Please Type or Print Clearly In Ink

RECEIPT NO 170941

**FILING FEE: \$50.00** Make check payable to SECRETARY OF STATE

1. Corporate ID and Name:  
DB056782  
CRYSTAL BAY CORPORATION  
110 E CENTER ST STE 2053  
MADISON, SD 57042-2908

2. The jurisdiction under whose law it is formed SOUTH DAKOTA

3. The address of the principal executive office (business address).

110 E CENTER ST STE 2053 MADISON SD 57042-2908  
Street Address City State ZIP+4

Mailing Address City State ZIP+4

4. The name of the South Dakota Registered Agent

Agent Name: DAKOTA AGENT SERVICES, LLC

110 E CENTER ST SUITE 2053 MADISON SD 57042  
Street Address or Rural Route Box Number in This State and City State ZIP+4

Mailing Address in This State, if Different from Street Address City State ZIP+4

5. The names and addresses of its principal officers and directors. Please place a checkmark next to the name if the principal officer serves as a director. South Dakota Law requires at least one director.

<input checked="" type="checkbox"/>	PETER KURTZ	110 E CENTER ST STE 2053	MADISON	SD	57042
	President	Street Address	City	State	ZIP+4
<input type="checkbox"/>					
	Vice President	Street Address	City	State	ZIP+4
<input type="checkbox"/>					
	Secretary	Street Address	City	State	ZIP+4
<input type="checkbox"/>					
	Treasurer	Street Address	City	State	ZIP+4
<input type="checkbox"/>					
	Director	Street Address	City	State	ZIP+4
<input type="checkbox"/>					
	Director	Street Address	City	State	ZIP+4

No person may execute this report knowing it is false in any material aspect. Any violation is subject to a civil penalty. By signing this form you agree to have both the fee and the form processed electronically.

Date 01/22/2014

Signature Accepted Electronically

(Signature of an Authorized Person)

DAVID DELOACH

(Printed Name)

2014

Enter Filing Year

FILE DATE 6/23/2014

RECEIPT NO 211457

Secretary of State Office  
500 E Capitol Ave  
Pierre, SD 57501  
(605)773-4845

**DOMESTIC**

Please Type or Print Clearly In Ink

**FILING FEE: \$50.00** Make check payable to SECRETARY OF STATE

1. Corporate ID and Name:

DB056782  
CRYSTAL BAY CORPORATION  
110 E CENTER ST STE 2053  
MADISON, SD 57042-2908

2. The jurisdiction under whose law it is formed SOUTH DAKOTA

3. The address of the principal executive office (business address).

110 E CENTER ST STE 2053 MADISON SD 57042-2908  
Street Address City State ZIP+4

Mailing Address City State ZIP+4

4. The name of the South Dakota Registered Agent

Agent Name: DAKOTA AGENT SERVICES, LLC

110 E CENTER ST SUITE 2053 MADISON SD 57042  
Street Address or Rural Route Box Number in This State and City State ZIP+4

Mailing Address in This State, if Different from Street Address City State ZIP+4

5. The names and addresses of its principal officers and directors. Please place a checkmark next to the name if the principal officer serves as a director. South Dakota Law requires at least one director.

<input checked="" type="checkbox"/>	PETER KURTZ	110 E CENTER ST STE 2053	MADISON	SD	57042
	President	Street Address	City	State	ZIP+4
<input type="checkbox"/>					
	Vice President	Street Address	City	State	ZIP+4
<input type="checkbox"/>					
	Secretary	Street Address	City	State	ZIP+4
<input type="checkbox"/>					
	Treasurer	Street Address	City	State	ZIP+4
<input type="checkbox"/>					
	Director	Street Address	City	State	ZIP+4
<input type="checkbox"/>					
	Director	Street Address	City	State	ZIP+4

No person may execute this report knowing it is false in any material aspect. Any violation is subject to a civil penalty. By signing this form you agree to have both the fee and the form processed electronically.

Dated 06/23/2014

Signature Accepted Electronically

(Signature of an Authorized Person)

DAVID DELOACH

(Printed Name)



**EXHIBIT B**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
MALIBU MEDIA, LLC, :  
Plaintiff, : CV-15-3504  
-against- : US Courthouse  
: Central Islip, NY  
: JOHN DOE, subscriber assigned IP  
address 98.116.160.61, :  
Defendant. : April 20, 2016  
: 9:30 a.m.  
-----X

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE STEVEN I. LOCKE  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: THE JAMES LAW FIRM  
445 Hamilton Avenue, Suite 1102  
White Plains, New York 10601  
BY: JACQUELINE M. JAMES, ESQ.

For the Defendant: LAW OFFICES OF CHEJIN PARK, PC  
3520 147th Street, 2C  
Flushing, New York 11354  
BY: CHEJIN PARK, ESQ.

Official Court Reporter: Ellen S. Combs, CSR  
Paul Lombardi, CR  
100 Federal Plaza - Suite 1180  
Central Islip, New York 11722  
(631) 712-6107

Proceedings recorded by mechanical stenography  
Transcript produced by CAT

**Patzer - Direct/James**

30

1 Q And you don't provide it to Malibu Media?

2 A No.

3 Q And you would not provide it to the customer?

4 A No, just drop off or discard it

5 Q Disregard it.

6 Sir, in preparation for today's hearing, did you  
7 have a chance to read a University of Washington report by  
8 a number of different authors?

9 A Yes.

10 MS. JAMES: And your Honor, this is the report  
11 that was brought up in Mr. Park's motion and also  
12 discussed at the last hearing. And I would like to hand  
13 up a copy or it and ask him a couple of questions.

14 THE COURT: Sure. Show it to Mr. Park first.

15 MS. JAMES: Sure. I have extra copies if the  
16 Court would like one.

17 THE COURT: I would like one, and give Mr. Park  
18 one of whatever it is.

19 What is the number?

20 MS. JAMES: Plaintiff's Exhibit Number 1.

21 THE COURT: Okay.

22 BY MS. JAMES:

23 Q Do you have in front of you what has been marked as  
24 Plaintiff's Exhibit Number 1?

25 A Yes.

Patzer - Direct/James

1 Q And can you please read the title of this article?

2 A It's called Challenges and Directions for Monitoring  
3 peer-to-peer File Sharing Networks. Or, Why My Printer  
4 Received a DMCA Takedown Notice.

5 Q And sir, from reading the article, is it accurate  
6 that the article is reporting all the experiments that  
7 were done in May of 2008?

8 A Yes.

9 Q But the article itself is not dated.

10 Is that correct?

11 A Sorry?

12 Q The article itself is not individually dated,  
13 correct?

14 A No.

15 Q And can you explain for us the concept of indirect  
16 detection?

17 A Yes.

18 Indirect detection means you can compare it to  
19 the yellow pages. You just go out there, get the yellow  
20 pages, and have all of the phone numbers.

21 Indirect detection is similar they use for  
22 torrent. They get the yellow pages for a specific torrent  
23 and get all the IP addresses for that specific torrent.

24 Q Okay. So let me ask you this question.

25 Is this article discussing the use of indirect

Patzer - Direct/James

1 monitoring systems?

2 A Yes.

3 Q And is it your understanding that the University of  
4 Washington used an indirect monitoring system?

5 A Yes.

6 Q And as a result did they receive the, did they  
7 receive DMCA notices?

8 A They said that, yes.

9 Q And can you tell us what the acronym DMCA is?

10 A I don't know what the D stands for.

11 THE COURT: Do you know what it means though?  
12 What does it refer to?

13 THE WITNESS: It's a copyright infringement  
14 takedown code. So you get a note that you have infringed  
15 copyrighted material and you need to stop doing it.

16 THE COURT: Okay. Indirect monitoring is akin  
17 to a yellow pages search. Would you explain that a little  
18 more? I didn't understand what you said.

19 THE WITNESS: Indirect means they go out  
20 trackers --

21 THE COURT: -- the data that goes out.

22 THE WITNESS: It investigates on that case, goes  
23 out to a so-called trackers. And they are surfing the  
24 Internet. And they ask them to give a list of IP address.  
25 So possible persons who infringed the copyrighted material

**Patzer - Direct/James**

1 for specific torrent.

2 THE COURT: Okay. So the investigator, you're  
3 saying has a torrent file that they're interested in  
4 protecting?

5 THE WITNESS: Yes.

6 THE COURT: And they also have a yellow pages of  
7 some kind.

8 What is the yellow pages? What, in your own  
9 words? You said a server. You get a list of who used the  
10 server. Where that server or the BitTorrent file was  
11 located, or --

12 THE WITNESS: No. Inside the BitTorrent file  
13 there is an address. They go there. There are multiple  
14 addresses where you can go and ask them for a list of IP  
15 addresses you can establish the connection to.

16 THE COURT: So a BitTorrent file you said, let's  
17 just say is one IP address for ease of understanding.

18 THE WITNESS: Yes.

19 THE COURT: Would that IP address the  
20 investigator goes to what?

21 THE WITNESS: The investigator decides this IP  
22 address is sharing the content. He never talks to the IP  
23 address.

24 THE COURT: And the investigator knows that  
25 because of the BitTorrent file itself. Is that right?

**Patzer - Direct/James**

34

1 THE WITNESS: The torrent file refers to some  
2 kind of index where he can get a list of IP addresses.

3 THE COURT: Okay, so the BitTorrent file is not  
4 a specific IP address?

5 THE WITNESS: It refers to a server on the  
6 Internet.

7 THE COURT: A server, it refers to a server?

8 THE WITNESS: Server, or a list of servers. And  
9 they ask any of that servers if it's still available and  
10 can contact them and they will provide you a list of the  
11 IP addresses sharing the content --

12 THE COURT: Through that server.

13 THE WITNESS: Through that server, yes.

14 THE COURT: So the BitTorrent file is by a  
15 server or multiple servers that has been located, and each  
16 of those servers will have IP addresses contained in that.  
17 And then the investigator can go from that list to the  
18 server.

19 Is that right?

20 THE WITNESS: Yes, that is.

21 THE COURT: And that is what is called indirect  
22 investigation?

23 THE WITNESS: Yes.

24 THE COURT: Okay.

25

**Patzer - Direct/James**

35

1 BY MS. JAMES:

2 Q And it's accurate from this article that we're  
3 discussing here, University of Washington, that those,  
4 that in this particular experiment that list of IP  
5 addresses, that list in and of itself would result in a  
6 DMCA takedown notification?

7 A Yes. In this scenario it resulted in a DMCA  
8 takedown.

9 Q And I believe if I'm answering your Honor's question,  
10 you said there was no exchange in the monitoring, the  
11 indirect monitoring discussed in this article, other than  
12 asking the server to provide the IP addresses. Is there  
13 any other exchange or verification process?

14 A No.

15 Q So somebody in the indirect monitoring system, those  
16 would takedown, once the servers provided them with the IP  
17 address?

18 A They just get a list of possible sharing clients.  
19 But it's not verified that any of the clients are sharing  
20 the content. The tracker software is supposed to generate  
21 random numbers just for the reason that you can't use the  
22 list of IP addresses in court, because they use random  
23 generated list to fake some result, and make a list of IP  
24 addresses not reliable.

25 Q So in your opinion indirect monitoring physically



**Patzer - Direct/James**

36

1 that is being, as being used in the experiment discussed  
2 in this article would not be reliable?

3 A No.

4 Q And that is because of the fact that the IP addresses  
5 are not verified?

6 A That's correct.

7 Q And when you say not verified, you mean there is no  
8 verification that those IP addresses engaged in  
9 downloading of the copyrighted material in question.

10 Is that correct?

11 A That's correct.

12 Q And is there existing in software monitoring a system  
13 that you use?

14 A No. This is basically where our software starts.

15 Q What do you mean by that?

16 A When we have collected IP addresses we will connect  
17 to every single IP address in the list. And we don't even  
18 use this old tracker technology.

19 Q Did you say old tracker technology?

20 A Old tracker technology.

21 Q And if you don't mind, can you tell us what the old  
22 tracking technology is? Are you referring to technology  
23 they're discussing in this article?

24 A Yes.

25 It's described technology where fixed mentioned

**Patzer - Direct/James**

37

1 server in the torrent files, and they have to connect to  
2 single servers out there and get the list -- of IP  
3 addresses. That is what I would refer to as tracker  
4 technology.

5 Q And you're saying this is old. And when you say old,  
6 do you mean obsolete?

7 A It's still used, but we don't rely on that  
8 technology. We don't use that.

9 Q And why don't you rely on that technology?

10 A Because it's containing a lot of false positive IP  
11 addresses. And it's also quite slow because it's single  
12 servers on the Internet, and they often just get taken  
13 down by copyright holders to prevent copyright infringing.

14 Q So it's not accurate, and it's not an, it's also not  
15 economical. In other words it doesn't work efficiently?

16 A Yes. It has to be replaced with newer technologies.  
17 This article is eight years old.

18 Q And I'm going ask you to describe the difference  
19 between your detection in a minute.

20 But in the article, when they talk about false  
21 positives with indirect detection, can you describe what  
22 they're referring to?

23 A They're referring to IP addresses appearing on the  
24 lists which are not sharing content.

25 Q So although they somehow got on the list, they have

**Patzer - Direct/James**

38

1 not engaged in peer-to-peer BitTorrent sharing?

2 A That's correct.

3 Q And there is a discussion in the article about  
4 reporting mis-reporting by trackers on behalf of malicious  
5 users to frame an innocent IP address, correct?

6 A That's correct.

7 Q And you're free to look at it. I'm not expecting you  
8 to memorize it, and free to reference at least my note ON  
9 4.2 of the article. There's not a page number there?

10 Can you explain to me how a tracker using this  
11 indirect monitoring system might be able to maliciously  
12 frame an arbitrary IP address.

13 A Yes.

14 It's possible to register an IP addresses there  
15 and pretend that this IP address is sharing content. To  
16 compare it with yellow pages, I can call yellow pages and  
17 tell them that some specific numbers, for example --  
18 services.

19 Q And just to be clear, sir, when you're referring to  
20 the yellow pages you're using that as an analogy.

21 Is that correct?

22 A Yes, that's correct.

23 Q You are not actually looking at a yellow book in this  
24 particular instance?

25 A No.

**Patzer - Direct/James**

39

1 Q So explain to me why the technology that you used  
2 could never result in such a falsified registration of  
3 another person's IP address?

4 A Because we do a real connection. We do a handshake,  
5 and we actually exchange data. We download data from  
6 them. And so we can be sure that person or that IP  
7 address has really shared that content we were looking  
8 for.

9 Q And do you consider that method a direct monitoring  
10 method?

11 A That's correct.

12 Q And sir, in the same subparagraph, 1.2, before it  
13 talked about mistimed reports.

14 And can you explain to me why your software and  
15 the storing of the information does not compose mistimed  
16 reports?

17 A I mentioned before if you use the GPS time and verify  
18 that the time is one hundred percent accurate with the GPS  
19 time, and if the GPS time would be not accurate there  
20 would be no indication.

21 Q So in a hypothetical, on that last page, the next  
22 page about one individual going into the university coffee  
23 shop and starting a BitTorn download, leaving and a  
24 subsequent customer coming in, and having the date stamp  
25 being erroneous because of a delay in the second IP

**Patzer - Direct/James**

40

1 address.

2           Could that hypothetical happen with the  
3 technology that you use?

4 A    No. Because it's accurate to a hundredth of a  
5 second. So in this particular scenario you're talking  
6 about 30 minutes.

7 Q    So it would not be?

8 A    It would not, cannot be happening with our software,  
9 our technology.

10 Q   And this concept discussed in the article, and is  
11 that also the result of known connections between  
12 monitoring servers and the alleged infringement?

13 A    Yes.

14           That just talks about the use of IP addresses.  
15 The list of IP addresses they get can be fake or spoof.  
16 And since we don't rely on the list of IP address, we do a  
17 connection, it's not possible to do a man-in-the-middle  
18 there.

19 Q    And when you use the word fake and spoofed in this  
20 content, could you elaborate what those terms mean?

21 A    It means just a fake IP address, somebody sends an IP  
22 address which are not actually shared content.

23 Q    And they would send it into the servers?

24 A    Yes.

25 Q    And are there mandates that peer-to-peer infringers

**Patzer - Direct/James**

41

1 and steps they take to try to avoid detection of the  
2 infringement, of their infringement?

3 A Regarding this article they talk about blacklists.  
4 So there are lists of potential copyright infringing  
5 detection companies like Excipio. And they try to put  
6 them on blacklists so that there is no direct connection  
7 possible. So that we cannot do the direct connection and  
8 get the data we need to prove it.

9 Q So in those cases the infringers, peer-to-peer  
10 infringers are aware of the monitoring?

11 A That's correct, yes.

12 Q From your company?

13 A Yes.

14 Q And they try to evade detection.

15 Is that correct?

16 A Yes, correct.

17 Q And sir, under the section 6 of the article, Lessons  
18 and Challenges, they talk about a more accurate approach,  
19 correct?

20 A Correct.

21 Q And they talk about it as an industry standard  
22 practice for monitoring suspected infringement by  
23 downloading data directly from the suspected user and  
24 verifying its content.

25 This is under paragraph 6.1, enforcement

**Patzer - Direct/James**

42

1 agencies?

2 A Yes.

3 Q Can you explain to me how you understand their  
4 recommended procedure?

5 A That is actually what we are doing. We establish a  
6 connection to the infringer and download some of the data  
7 and verify that the data is actually the content of our  
8 client.

9 Q So is it your understanding, or is it accurate that  
10 this article eight years ago was recommending direct  
11 monitoring and verification, correct?

12 A Correct.

13 Q And it's true that you have actually adopted this  
14 exact procedure --

15 A That's correct.

16 Q Just let me finish, I'm sorry -- for direct  
17 monitoring and directly verifying?

18 A Yes.

19 Q So is it fair to say or accurate to say that the ills  
20 that were discussed, and the problems of false positives  
21 that were discussed in the article, are related to the  
22 indirect monitoring?

23 A That's correct.

24 Q And these issues are not something that present  
25 themselves in the method that you use to directly monitor

**Patzer - Direct/James**

43

1 and verify?

2 A Correct.

3 Q Can you talk about, as the article does, again under  
4 the 6.1 subtitle, the cost of direct identification. And  
5 they also talk about the increased costs associated with  
6 adopting a direct monitoring system.

7 Can you elaborate on some of those thoughts?

8 A That's correct.

9 It's very high costs compared to the indirect  
10 monitoring. We run about 150 servers just to do the  
11 log-in process for our client.

12 Q And so you don't actually have that many servers.

13 Is that correct?

14 A More than that. But just for that proposed we run  
15 about 150.

16 Q And then there is the individual PTAPS that are  
17 captured, correct?

18 A That's correct.

19 Q And then there is the two individual employees that  
20 are assigned to the task of individually verifying each,  
21 all of the titles and the cross-reference to the content,  
22 correct?

23 A Correct.

24 Q And then there is also the collection and  
25 preservation of all of the 16 kilobyte downloads, correct?



Patzer - Direct/James

44

1 A Correct.

2 Q And these numbers are preserved for each time they're  
3 downloaded?

4 A Yes.

5 Q And it is indicated, the article is saying that while  
6 monitors might not want to spend these extra expenses to  
7 do it properly, that that is the safest way to move  
8 forward?

9 A Yes.

10 Q Then is it true that -- then to cut off those safety  
11 protocols?

12 A Yes.

13 Q And also to eliminate the false positives, the  
14 spoofs, and you know, fake identities that were discussed  
15 in the article relating to indirect monitoring?

16 A That's correct. We never have or had a false  
17 positive.

18 Q Can you elaborate on that?

19 A We have been in many cases worldwide and with  
20 customers worldwide, and there was never been proof of  
21 false positives.

22 Also by individual software programs verifying  
23 the actions each other software programs does. And thus  
24 all of the PTAP recordings would depend on any from our  
25 software programs, and always proof of our software is

**Patzer - Direct/James**

45

1 safe. And there was never an IP address in our list that  
2 had not shared the content.

3 Q So you're saying at no time worldwide has it ever  
4 been proven that any of the IP addresses that you have  
5 indicated shared the content that the client asked you to  
6 verify as being inaccurate?

7 A Yes.

8 Q Zero times?

9 A Correct.

10 Q And out of roughly how many?

11 A Hundreds.

12 Q Hundreds, must be more than hundreds?

13 A Cases at court.

14 Q Cases, okay hundreds of case at court?

15 A Yes.

16 Q And what is your estimate of how many IP addresses  
17 have been collected and verified as downloading protected  
18 material?

19 A Random numbers. I know we store about 200 million IP  
20 addresses a day. So I don't know how many verified for  
21 multimedia content.

22 Q But it is true that not in Malibu Media's case or in  
23 other cases has it ever been proven or shown that your IP  
24 addresses are incorrect?

25 A Correct.

**Patzer - Direct/James**

46

1 Q And when you say correct, you mean did not download  
2 the relevant content being discussed in those proceedings?

3 A Yes.

4 Q Is that correct?

5 A That's correct, yes.

6 Q Can I ask you, why is it -- is it true that your  
7 direct monitoring system would not misidentify somebody  
8 using a hot spot or communal WiFi space?

9 A Sorry, the question?

10 Q Yes. Assume that somebody is in a WiFi hot spot.

11 A Yes.

12 Q And using a publicly available access to the  
13 Internet.

14 A Yes.

15 Q How do we know that in the IP address that is  
16 captured for your work on behalf of Malibu Media, that  
17 those individual downloads are not happening in those  
18 common spaces?

19 A It can happen in such spaces. But if you have a lot  
20 of information, for example if we have a lot of loss of a  
21 long time of peer talking about three or four months, it's  
22 very unlikely that it's a person going to the same WiFi  
23 spot and doing it there.

24 Q So what you're saying is, in an individual case, and  
25 maybe I'll give you the case in a minute -- but that there

**Patzer - Direct/James**

47

1 is, it is not just one individual downloading that is  
2 captured. It's over a certain duration of time and  
3 multiple times.

4 Is that correct?

5 A That's correct.

6 Q And is there any other indication that the same IP  
7 address or the same user, in other words that there is a  
8 port or any other identifying factors that you could use?

9 A Yes. Various details like TCP ports and software  
10 using or the software version of the software, or the  
11 computer is using.

12 Q So when you talk about software users, do you mean  
13 BitTorn software that they're using?

14 A Yes, there are various BitTorrent software out there.

15 Q So when you're tracking, downloading, you're able to  
16 monitor and preserve a record of what BitTorrent software  
17 is being used to do that download.

18 Is that correct?

19 A That's correct.

20 Q And can I ask you, do you understand that BitTorrent  
21 software must be downloaded to an individual computer?

22 A Yes.

23 Q And it must be used in other words you have use the  
24 BitTorrent software to get the contents, correct?

25 A Yes. You need to go to a web page, find a specific

**Patzer - Direct/James**

48

1 content you want to, click on it and start it in the  
2 BitTorrent software to initiate the downloads and uploads  
3 process.

4 Q And once you initiate that process, the download and  
5 upload process, and I don't know if this is the proper  
6 words -- is it fair to say that you opened your computer  
7 to the monitoring?

8 A Yes, you joined the swarm.

9 Q Is that correct? I don't want to -- did you say,  
10 yes, you joined the swarm?

11 A Yes.

12 Q And sir, when you join the swarm, is it accurate to  
13 say that at that point you are, it is true that monitors  
14 can see what information you're sharing?

15 A Yes.

16 MS. JAMES: And your Honor, may I show him a  
17 second exhibit?

18 THE COURT: Sure.

19 MS. JAMES: And I'll show everybody else the  
20 transcript.

21 THE COURT: Do you want first the exhibit in  
22 evidence?

23 Mr. Park, any objection to placing in Exhibit 1?

24 MR. PARK: No.

25 THE COURT: All right, Exhibit 1 is in evidence.

Patzer - Redirect/James

91

1 address did not change?

2 A Correct.

3 Q So, is it accurate that even if it's dynamic, in  
4 other words Verizon reserves the right to change it, in  
5 this case, for all of the infringements indicated, in  
6 fact, the IP address did not change?

7 A Correct.

8 Q Please tell me how you are sure of that.

9 A I see it on the documents that IP address didn't  
10 change.

11 THE COURT: You say the documents, which exhibit  
12 are you referring to?

13 THE WITNESS: Exhibit 3.

14 THE COURT: Okay.

15 BY MS. JAMES:

16 Q And the other documents that we looked at, Exhibit --  
17 the complaint and Exhibit 4 also indicate that, correct?

18 A Yes, correct.

19 Q So the questions that you were asked, hypothetically,  
20 about dynamic IP addresses in this particular case, the IP  
21 address did not change?

22 A Correct.

23 Q Sir, you were also asked about the 16 -- I  
24 apologize -- about the 16 kilobits that were downloaded?

25 A Kilobytes.

**Patzer - Redirect/James**

92

1 Q I believe there might have been some inconsistency in  
2 the question and answer.

3 I believe that you said earlier that in the  
4 documents that we looked through, that you can show in  
5 this particular case, from your additional data files that  
6 for each one of these titles, multiple times you  
7 downloaded with your software 16 kilobytes per copyrighted  
8 title.

9 Is that correct?

10 A Correct.

11 Q Can you please take a minute and identify the  
12 document that depicts that?

13 A Exhibit 3.

14 Q Exhibit 3.

15 So it is not correct that in any one -- for any  
16 one of the titles in which we allege infringement here,  
17 the download sample is limited to one 16 kilobyte,  
18 correct?

19 A I think few titles were just one 16 kilobytes  
20 package, I think the title -- it was four times --

21 I think Blondes Love Brunettes title was only  
22 one time, and I think few others. So not all of them has  
23 more than one 16 kilobytes.

24 Q And in your opinion is the 16 kilobyte, is it  
25 accurate -- is that enough information for you to be

Patzer - Redirect/James

93

1 confident in your verification process?

2 A Yes.

3 Q Why?

4 A Because it's still a lot of data, even -- it's not  
5 playable by movie player, it's still 131,000 ones and  
6 zeros in unique order.

7 So it proves that it's a part belongs to the  
8 original part, even if it's just a small part.

9 Q I know you were kind of pushed into saying if it was  
10 played it would be a certain duration, but tell me why  
11 that's not a proper comparison.

12 A Because the time of how long it plays doesn't prove  
13 if the piece doesn't belong to the original movie.

14 It's like the piece is already a fingerprint  
15 shows it belongs to the original movie and there is no way  
16 that you get the 16 kilobytes, which are identical to the  
17 original movie, without being from it.

18 It's big enough to prove that it belongs to  
19 original movie.

20 Q And you take these 16 kilobytes and you compare them  
21 to both the actual title, the content you get from  
22 Malibu Media, your client or our client, and also the full  
23 title that you download from the swarm, correct?

24 A We compare it to the full title and the full title  
25 was already compared before to original work.



Patzer - Recross/Park

1 Q So you believe the 16 kilobyte is an accurate  
2 measurement to use?

3 A Yes.

4 Q And you don't think it's a fair analogy to refer to  
5 play times for this particular data?

6 A Correct.

7 Q Is it a compressed file or it's just not a video  
8 file, correct?

9 A Correct.

10 Q Okay.

11 MS. JAMES: Thank you.

12 I have no further questions.

13 THE COURT: Mr. Park, do you have any recross?

14 MR. PARK: Yes, your Honor.

15 RECCROSS-EXAMINATION

16 BY MR. PARK:

17 Q The same question, I mean, you said that only 16  
18 kilobytes is enough to identify the movie, is it correct?

19 A That's correct.

20 Q By having the 16 kilobytes, is there any way that you  
21 can see that the infringer downloaded whole movie?

22 A Not by the 16 kilobytes.

23 But there is an additional field on Exhibit 3  
24 that's called bit field, and this information is exchanged  
25 while doing the handshake with the infringer and it's a

**Patzer - Recross/Park**

1 percentage value how much the infringer shared at time of  
2 our handshake.

3 THE COURT: So 95 would be 95 percent of the  
4 video, is that what you are saying?

5 THE WITNESS: Correct.

6 THE COURT: Okay.

7 BY MR. PARK:

8 Q Where is the number?

9 A It's on Exhibit 3, the column No. 3, it's called  
10 BitTorrent bit field.

11 Q You mean this number means percentage of download?

12 A It's the percentage of the content, when we did the  
13 handshake.

14 When we connect, for example, to the first one  
15 it told us it's 95 percent of the torrent content he has  
16 to offer and we can choose which piece of the data we want  
17 to have.

18 Sometimes it shows zero, but this just means  
19 it's at the beginning, so they just joined a swarm and  
20 when we did the handshake he didn't have something, but  
21 while we were connected he had something and we downloaded  
22 some data from him.

23 So that proves our data exchange proves that he  
24 actually had data and if you follow the column you can see  
25 it increases by time. So it starts at a low value and

Patzer - Recross/Park

1 goes up because the infringer downloading more and more  
2 from the IP and the swarm.

3 THE COURT: Does that mean if you are looking at  
4 the BitTorrent bit field column that it's the largest  
5 number for each video that would be relevant, that would  
6 show you what percentage of the video was available  
7 through the handshake?

8 THE WITNESS: Yeah.

9 THE COURT: Okay.

10 THE WITNESS: Yes.

11 And we always see it ends at 99 percent because  
12 most of the infringers just stop sharing the content when  
13 they finish downloading. It's configurable in the  
14 software to do it.

15 MR. PARK: No more questions.

16 THE COURT: Ms. James, anything else?

17 MS. JAMES: No, thank you.

18 THE COURT: You may step down.

19 Thank you for your testimony.

20 (Witness steps down.)

21

22 THE COURT: Ms. James, do you have another  
23 witness?

24 MS. JAMES: Yes, your Honor, we do.

25 THE COURT: Let's do it.

**EXHIBIT C**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

MALIBU MEDIA, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	No. 1:13-cv-00205-WTL-MJD
KELLEY TASHIRO,	)	
	)	
Defendant.	)	

**ENTRY ON DEFENDANT’S MOTION FOR AN ORDER TO SHOW CAUSE**

This matter is before the Court on Defendant Kelley Tashiro’s Motion for an Order to Show Cause as to why Plaintiff Malibu Media, LLC and attorney Paul Nicoletti should not be sanctioned pursuant to 28 U.S.C. § 1927 and the Court’s Inherent Authority (“Motion”) [Dkt. 61]. For the reasons set forth below, the Motion is **DENIED**.

This motion was filed in conjunction with Defendant’s Motion to Bar Testimony of IPP International UG (“Motion to Bar Testimony”) [Dkt. 58] and support for the allegations in the present Motion are found in the Defendant’s brief in support of the Motion to Bar Testimony [Dkt. 60]. However, Defendant withdrew her Motion to Bar Testimony and no reply brief was submitted in support of either the present Motion or the Motion to Bar Testimony.

In both motions, Defendant asserts that Plaintiff’s attorney, Paul Nicoletti, is 1) either paying a fact witness or allowing a fact witness to be paid or; 2) paying an expert witness a contingency fee, allowing an expert witness to be paid a contingency fee, or sharing in his fee by way of an oral contingency fee agreement; and 3) has violated Indiana Rule of Professional Conduct 3.3(b) by failing to disclose to this Court that IPP International U.G. (“IPP”) was unlawfully operating as a private investigator in the State of Indiana. [Dkt. 58, 61.] The Court

will consider Defendant's brief in support of her Motion to Bar Testimony [Dkt. 60] for support of the allegations in the present Motion.

In short, Defendant argues that Plaintiff should be sanctioned for allegedly paying IPP to be a witness.<sup>1</sup> Plaintiff argues that it has never paid anyone to be a witness and the fee arrangement with IPP is for its data collection services, which is neither unethical nor illegal. Further, Plaintiff argues that IPP will not be testifying, but its employee Tobias Fieser will be. However, neither Plaintiff nor Nicoletti will be paying Fieser to testify.

Defendant has not offered any evidence that Plaintiff is paying IPP for anything but data collection services used to gather information on Defendant to demonstrate infringement. Defendant's argument relies upon Plaintiff's response to an interrogatory in which Plaintiff stated

IPP, Ltd. is a fact witness who will testify that its technology detected that a person using Defendant's IP address was downloading and distributing Plaintiff's copyrighted works. IPP Ltd.'s technology is not capable of being manipulated by a human. With that as background, IPP, Ltd. is entitled to an oral contingency fee agreement to a small portion of the proceeds from the resolution of this case.


[Dkt. 60-1 at 1-2.] Based upon this response to an interrogatory, Defendant has made the inference that the contingent fee arrangement is for the testimony IPP will give and not for any other purpose. The Court is not convinced that such an inference is justified. As Plaintiff explained in its response brief, the fee paid to IPP is for the collection of data and not for IPP to testify as a witness. Defendant did not challenge this assertion as she did not file a reply brief to either the present Motion or the Motion to Bar Testimony [Dkt. 58]. The fact that Defendant withdrew her Motion to Bar Testimony, which was the basis for her motion for sanctions, calls into question Defendant's continued belief in the viability of her motion for sanctions.

---

<sup>1</sup> The Court will not address whether IPP is a fact or expert witness at this juncture.

With regard to the allegation that Mr. Nicoletti should have disclosed to the Court that IPP's investigation was conducted in violation of Indiana's Private Investigator laws, Defendant has not shown that IPP has committed any crime. The mere fact that IPP is not licensed in Indiana does not by itself prove that the information gathered related to Defendant was done in violation of Indiana law. Because there is no evidence before the Court to demonstrate the existence of any criminal or fraudulent conduct related to this proceeding, it is axiomatic that there is no evidence of Mr. Nicoletti's "knowledge" of such conduct, as would be required to invoke the ethical rule in question. Ind. R. Prof. Cond. 3.3(b). As such, the Court does not find a basis to issue an order to show cause. Accordingly, Defendant's Motion for an Order to Show Cause [Dkt. 61] is **DENIED**.

Date: 05/09/2014



Mark J. Dinsmore  
United States Magistrate Judge  
Southern District of Indiana

Distribution:

Paul J. Nicoletti  
NICOLETTI & ASSOCIATES, P.C.  
pauljnicoletti@gmail.com

Jonathan LA Phillips  
SHAY KEPPLER PHILLIPS, LTD  
jphillips@skplawyers.com