

1 Christopher T. Holland (SB # 164053)
Anne E. Kearns (SB #183336)
2 Kathy M. Sarria (SB #181322)
KRIEG, KELLER, SLOAN, REILLEY & ROMAN LLP
3 114 Sansome Street, Suite 400
San Francisco, California 94104
4 Telephone: (415) 249-8330
Facsimile: (415) 249-4333

5 Douglas E. Mirell (SB #094169)
6 Karen R. Thorland (SB #172092)
LOEB & LOEB LLP
7 10100 Santa Monica Boulevard, Suite 2200
Los Angeles, California 90067
8 Telephone: (310) 282-2000
Facsimile: (310) 282-2200

9 Attorneys for Plaintiffs
10 TWENTIETH CENTURY FOX; COLUMBIA
PICTURES; PARAMOUNT PICTURES; WARNER
11 BROS.; COLUMBIA TRISTAR HOME
ENTERTAINMENT; and NEW LINE PRODUCTIONS

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 TWENTIETH CENTURY FOX FILM
16 CORPORATION, a Delaware
corporation; COLUMBIA PICTURES
17 INDUSTRIES, INC., a Delaware
corporation; PARAMOUNT PICTURES
18 CORPORATION, a Delaware
corporation; WARNER BROS.
19 ENTERTAINMENT INC., a Delaware
corporation; COLUMBIA TRISTAR
20 HOME ENTERTAINMENT, INC., a
Delaware corporation; and NEW
21 LINE PRODUCTIONS, INC., a
Delaware corporation,

22 Plaintiffs,

23 vs.

24 DOES 1 - 12,

25 Defendants.

26
27 I, Chad Tilbury, have personal knowledge of the facts
28 stated below and, under penalty of perjury, hereby declare:

ORIGINAL
FILED
04 NOV 16 AM 9:15
EDWARD W. WIERING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

WHA

CASE NO. 04 4862

**DECLARATION OF CHAD TILBURY IN
SUPPORT OF MISCELLANEOUS
ADMINISTRATIVE REQUEST FOR
LEAVE TO TAKE DISCOVERY PRIOR
TO RULE 26 CONFERENCE**

1 1. I am Director of Worldwide Internet Enforcement for the
2 Motion Picture Association of America, Inc. ("MPAA"), where I
3 have been employed since July 2004. Prior to the MPAA, I spent
4 seven years as a Special Agent in the Air Force Office of Special
5 Investigations where I was responsible for computer
6 investigations and operations. I have an M.S. and a B.S. in
7 Computer Science and have also worked as an Artificial
8 Intelligence researcher and a computer security engineer in the
9 defense industry. I submit this declaration in support of
10 Plaintiffs' Miscellaneous Administrative Request for Leave to
11 Take Discovery Prior to Rule 26 Conference.

12 2. All of the Plaintiffs in this action are motion picture
13 studios and/or distributors, among whom are members, or
14 affiliates or subsidiaries of members, of the MPAA. The MPAA is
15 a trade association whose members include the largest motion
16 picture studios in the United States. Among other things the
17 MPAA investigates the unauthorized reproduction and distribution
18 of copyrighted motion pictures on behalf of its member companies.
19 As Director of Worldwide Internet Enforcement, I am responsible
20 for coordinating the MPAA's worldwide enforcement effort against
21 internet piracy. This includes supervision of our online
22 copyright infringement campaign, identification and development
23 of Internet anti-piracy technologies, investigations of major
24 online infringers and coordination of Internet anti-piracy
25 efforts around the globe.

26 3. This declaration is based on my personal knowledge, and
27 if called upon to do so, I would be prepared to testify as to its
28 truth and accuracy.

1 Background

2 4. The Internet is a vast collection of interconnected
3 computers and computer networks that communicate with each other.
4 It allows hundreds of millions of people around the world to
5 freely and easily exchange ideas and information, including
6 academic research, literary works, financial data, music,
7 audiovisual works, graphics, and an unending and ever-changing
8 array of other data. Unfortunately, the Internet also has
9 afforded opportunities for the wide-scale infringement of
10 copyrighted motion pictures. Once a motion picture has been
11 transformed into an unsecured digital format, it can be copied
12 further and distributed an unlimited number of times over the
13 Internet, without significant degradation in picture or sound
14 quality.

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

24 6. At any given moment, millions of people around the
25 world unlawfully use these P2P networks to upload (distribute) or
26 download (copy) copyrighted material. The P2P systems represent
27 a "viral" distribution of digital files: each user of the system
28 who copies a digital file from another user can then distribute

1 the file to still other users and so on, so that almost-perfect
2 copies of an infringing file can be distributed to millions of
3 people worldwide with breathtaking speed. Significantly, a
4 person who uses a P2P network is free to use any alias (or
5 "screen name") whatsoever, without revealing his or her true
6 identity to other users. Thus, while Plaintiffs can observe the
7 infringement occurring on the Internet, they do not know the true
8 names or addresses of those individuals who are committing the
9 infringement

10 7. Because the Plaintiffs have not authorized their
11 copyrighted motion pictures to be copied or distributed in
12 unsecured formats by means of P2P networks, the copying and
13 distribution of these motion pictures on P2P networks violates
14 the copyright laws.

15 **Plaintiffs' Identification of the Doe Defendants**

16 8. In order to assist Plaintiffs in combating copyright
17 infringement on P2P networks, the MPAA and counsel for Plaintiffs
18 retained MediaSentry, a company that provides online anti-piracy
19 and copyright protection services and investigations through
20 sophisticated technology and especially developed software
21 programs. (See Decl. of Thomas Mizzone.) Under the direct
22 supervision of counsel, MediaSentry caused searches of several
23 P2P networks to be conducted for infringing copies of motion
24 pictures whose rights are owned by Plaintiffs. The search
25 function of the P2P network was used to look for network users
26 who were offering for distribution audiovisual files that were
27 labeled with the names of certain of Plaintiffs' copyrighted
28 motion pictures. When a network user was located that was making

1 such files available for distribution, MediaSentry downloaded and
2 retained both the files that were being offered for distribution
3 and other specific information in order to confirm that
4 infringement was occurring and to identify the infringer. (See
5 Decl. of Thomas Mizzone.) In addition, the downloaded
6 audiovisual files were reviewed in order to confirm that the
7 files were in fact copies of substantial portions of motion
8 pictures whose rights are owned by Plaintiffs. (See Decl. of R.
9 Christopher Harshman.)

10 **The Need For Expedited Discovery**

11 9. Obtaining the identity of copyright infringers on an
12 expedited basis is critical to prosecution of this action and
13 stopping the continued infringement of Plaintiffs' copyrighted
14 motion pictures.

15 10. Without expedited discovery, Plaintiffs have no way of
16 serving Defendants with the complaint and summons in this case.
17 Plaintiffs do not have Defendants' names, addresses, e-mail
18 addresses, or any other way to identify or locate Defendants.

19 11. Further, service providers have different policies
20 pertaining to the length of time they preserve "logs" which
21 identify their subscribers. Despite requests to preserve the
22 information, some ISPs keep log files of their subscribers'
23 activities for only limited periods of time -- sometimes as
24 little as weeks or even days -- before erasing the data they
25 contain. If an ISP does not have to respond expeditiously to a
26 discovery request, the identification information in that ISP's

27 \\\

28 \\\

1 logs may be erased.

2 I declare under penalty of perjury that the foregoing is
3 true and correct.

4

5 Executed on Nov 12, 2004, at Los Angeles, CA.

6

7


Chad Tilbury

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28