



Copyright Porno Predators Get Their Comeuppance in Court

by David Roy Ellis

From time to time I get calls, sometimes frantic ones, from people who have been served in a federal lawsuit alleging that they have downloaded copyrighted pornographic films and owe large sums of money to the plaintiff. The case may be titled something like *Malibu Media, DBA Pussycat Films v. John Does 1-150*, and my caller is Doe #99.

Other times the caller has gotten a notice from his Internet service provider (ISP), maybe Brighthouse or Verizon, saying that the ISP has been served with a subpoena to release the caller's true name and address to the plaintiff's attorney, and will do so in 30 days unless the caller obtains an order to quash the subpoena. One of my callers was a 70-year old woman with a government job she feared losing if her name became public. She had no idea why she was targeted but she did live with her 47 year old adult son who had access to her computer account upstairs. What to do?

In recent years, many entities have been organized with the objective largely or exclusively of bringing copyright infringement suits, often in cahoots with sometimes-unscrupulous lawyers. In a recent case in Los Angeles, the plaintiffs and their attorneys got their comeuppance from a federal judge who was not amused by their business model. *Ingenuity 13 LLC v. John Doe* (C.D. Cal. May 6, 2013). In that case, U.S. District Court Judge Otis D. Wright II issued sanctions in excess of \$81,000 against the plaintiffs' attorneys, and referred them to both disciplinary and criminal authorities for further investigation.

In his opinion, the judge first quoted Spock from *Star Trek*: "The needs of the many outweigh the needs of the few." He then stated:

"Plaintiffs have outmaneuvered the legal system. They've discovered the nexus of antiquated copyright laws, paralyzing social stigma, and unaffordable defense costs. And they exploit this anomaly by accusing individuals of illegally downloading a single pornographic video. Then they offer to settle—for a sum calculated to be just below the cost of a bare-bones

defense. For these individuals, resistance is futile; most reluctantly pay rather than have their names associated with illegally downloading porn. So now, copyright laws originally designed to compensate starving artists allow starving attorneys in this electronic-media era to plunder the citizenry."

The judge wrote that he was first alerted to the plaintiffs' attorneys' tactics when he saw that they had filed numerous cases using the same boilerplate complaint against dozens of defendants. The judge characterized this as "porno-trolling," exacerbated by the creation of shell companies formed for the sole purpose of litigating copyright-infringement lawsuits and shielding the plaintiffs from potential liability and to give an appearance of legitimacy.

The plaintiffs had started their copyright-enforcement crusade in about 2010. Their litigation strategy consisted of monitoring Internet download activity of their copyrighted pornographic movies, recording IP addresses of the computers downloading the movies, filing suit

in federal court to subpoena ISPs for the identity of the subscribers to these IP addresses, and sending cease-and-desist letters to the subscribers, offering to settle each copyright infringement claim for about \$4,000.

This nationwide strategy was highly successful because of the potential of statutory damages in copyright cases (\$750 to \$30,000 for each work infringed), the fact that the films were pornographic, and the high cost of litigation. Most defendants settled quickly with the plaintiffs, resulting in proceeds of millions of dollars because of the large number of defendants.

For defendants who refused to settle, the plaintiffs engaged in vexatious litigation designed to coerce settlement. Lawsuits were filed using boilerplate complaints based on a paucity of evidence, calculated to maximize settlement profits by minimizing costs and effort. For those few defendants who were determined to fight, the plaintiffs showed little interest in proceeding with their lawsuits, and often summarily dismissed the cases.

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2013–2014 Officers and Directors Installed

Congratulations to the officers and directors of the Clearwater Bar Association pictured beginning on page one. These individuals will guide the association over the next year. The masthead on page two lists the phone number for each officer and director, and snail mail and email addresses are available at www.clearwaterbar.org/Bod.html. CBA members are encouraged to contact the leadership at any time with suggestions and ideas as well as with questions and concerns.

Andrew B. Sasso, 6th Circuit representative to The Florida Bar Board of Governors; and Scott E. Schiltz and Sarah J. Manthey, Co-editors of *Res Ipsa Loquitur*; serve as ex officio, non-voting members of the board. ⚖️



Andrew B. Sasso
TFB Board of Governors



Scott E. Schiltz
Co-Editor, *Res Ipsa Loquitur*



Sarah Manthey
Co-Editor, *Res Ipsa Loquitur*

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Winters and Susan Demers. Sandi Rooney provided administrative support.

Teen Court Scholarship

Annually the Clearwater Bar Foundation provides a \$500 college scholarship to an outstanding student participant in the Teen Court program sponsored by Pinellas County Court Administration. This year's Clearwater Bar Foundation Scholarship Award recipient is Christopher Griffin, a senior at Pinellas Park High School who will attend University of South Florida this fall. Among many other honors and activities, Christopher logged 150 hours volunteering in the Sixth Circuit's Teen Court Program. The scholarship was presented on Law Day by Foundation Trustee James R. Stearns.

The Trial of State v. Gold E. Locks

Gold E. Locks, once again played by Hon. Kimberly A. Campbell, was unable to prove her innocence in this mock trial organized by Shelly Beach and presented on April 25 to hundreds of grade school students from Curtis Fundamental, St. Cecilia, Palm Harbor Montessori School and Ridgecrest Elementary at the Old Historic Courthouse in downtown Clearwater. The



The cast and crew of the 2013 Gold E. Locks Mock Trial included (l to r) David Robert Ellis, Herb Langford, Hon. Kimberly A. Campbell, Hon. Dorothy Vaccaro, Martha Evans, Dan Parri, Maria Pitelis, Staci Chisholm, Tony Damianakis and Shelly Beach.

parts of the three bears, Gold E. Locks and their attorneys were played by Clearwater Bar members. The children took the part of the jury. The Honorable Dorothy Vaccaro presided. David Robert Ellis was attorney for the Locks, and Stacy Chisholm and Tony Damianakis shared the role of the prosecutor. Herb Langford played Gold E.'s father, Curl E. Locks. The Bear family

was portrayed by Dan Parri, Maria Pitelis and Martha Evans. The Sheriff's Department provided a bailiff, and Shelly Beach narrated the performance. ⚖️

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The judge also found that the plaintiffs had engaged in deceptive and fraudulent conduct toward the court and other courts where they appeared. They made a variety of representations about their operations, relationships, and financial interests that varied from feigned ignorance to misstatements to outright lies.

As a consequence, the judge sanctioned the attorneys by awarding the defendants costs and attorney's fees in excess of \$40,500, which he doubled to over \$81,000 as a punitive measure based on their "brazen misconduct and relentless fraud." The judge characterized the plaintiffs' attorneys as suffering from moral turpitude unbecoming of an officer of the court, and he referred them to their respective state and federal bars for appropriate discipline.

Finally, the judge found the conduct

so egregious that he referred the matter to the U.S. Attorney for possible prosecution as a criminal enterprise, and also to the Criminal Investigation Division of the Internal Revenue Service for tax evasion; he also said he would notify all judges before whom the attorneys had pending cases to take appropriate action. ⚖️

David Ellis is a Largo attorney practicing trademarks, copyrights, patents, trade secrets, and intellectual property law; computer and cyberspace law; business, entertainment and arts law; and franchise, licensing and contract law. A graduate of M.I.T. and Harvard Law School, he is a registered patent attorney and Board Certified in Intellectual Property Law by the Florida Bar. He is the author of the book, A Computer Law Primer, and has taught Intellectual Property and Computer Law as an Adjunct Professor at the law schools of the University of Florida and Stetson University. For more information, see www.davidellislaw.com, or email ellislaw@alum.mit.edu.

Bits & Briefs

- **Linda Suzanne Griffin**, a Clearwater, Florida Bar Board Certified Attorney in Wills, Trusts and Estates and Taxation and a fellow in the American College of Trust and Estate Counsel, recently spoke for The Florida Bar on fiduciary accounting under the Florida Uniform Principal Income Act, Chapter 738, Florida Statutes and was a speaker for the Clearwater Bar Association Probate and Real Property Section and St. Petersburg Bar Association Probate and Guardianship Section on tax law and RPPTL updates and their effect on the probate practice.
- **Myriam Irizarry**, Clearwater Bar President and General Counsel Pinellas County Clerk, was recognized on May 19, 2013, Mt. Carmel Baptist Church's Annual Law Day Celebration for her efforts to give back to the community in support of the Law Day Ministry which honors those who serve and protect. Previous recipients include Retired Judge George Greer and former Pinellas County Commissioner Calvin Harris.
- **Christopher Storke**, formerly Clearwater Bar's Lawyer Referral Service Coordinator, now practices with Elkin & Hognefelt Attorneys at Law in Tampa. ⚖️