

BitTorrent's popularity leads to mass copyright litigation

July 14 2012, By Bill Torpy

Last year, Robin Mason got letters alleging her computer was flagged for downloading a pornographic movie and that she was being sued in federal court. She said she was also informed she could make the embarrassing case go away for a settlement of several thousand dollars.

The accusation stunned the [single mother](#) from Rome, Ga., who is still flustered when recounting the moment.

"It freaked me out," she said. "I never even watched a porno. I'm not that kind of person."

Mason was one of 5,829 John and Jane Does across the nation who were sued by West Coast Productions Inc., the purveyors of "Booty Talk," and many more titles unprintable in a family newspaper. In an interview, Mason was too embarrassed to mention the title, laughing nervously and saying it was "too nasty."

Since 2010, more than 250,000 people have been accused of illegally downloading movies off the Internet using a technology called BitTorrent, which makes transferring large files easier.

"We have a lot of consumers out there who think that getting something for free is OK, that it isn't stealing," said Elizabeth Morgan, an Atlanta attorney who handled the case for the movie makers when it was refiled in federal court in Georgia. "New technology like BitTorrent makes [piracy](#) easier. It facilitates piracy. It's a new way to steal."

Others contend the [lawsuits](#) are a new way for lawyers to make money. The cases are dubbed "trolling lawsuits" for the way they encourage lawyers to dig up thousands of potential defendants and sue them, often in one fell swoop. Many are so-called John Doe suits, filed against people unknown to the movie makers and their attorneys.

In 2010, Voltage Pictures, makers of the Academy Award-winning "The Hurt Locker," filed suit in federal court against "Does 1-24,583." [Law firms](#) hire techies to track down those who have allegedly downloaded movies over the Internet by uncloaking the [anonymity](#) of their [Internet Protocol address](#), or IP address, a unique numeric identifier assigned to their computer modem.

While transmitting or receiving data, each computer leaves a trail through its IP address. The attorneys then go to court to subpoena the user's Internet provider to get the name of the person behind that address. If the court allows that to happen - and there has been mixed success in that - then the computer user generally gets an email or a letter threatening a lawsuit if he or she doesn't pay a settlement.

Settlement figures vary, but are usually in the \$2,000-\$5,000 range. Atlanta attorney Blair Chintella, who defended Mason, said the amounts have been honed over the past couple years to pressure people to settle quickly.

"It's a price point," said Chintella. "It's about or slightly below what it takes to hire an attorney."

The amount, he said, is a figure that people will often pay because they are frightened or embarrassed, even if they did not download the movie. In essence, Chintella said, the method is legal extortion.

"In porn cases, they use that as a bargaining tool," said Chintella, who

has defended about 90 such cases. His clients include: "People worried about security clearance. People who are looking for a job worry that it will come up (during a Google search of their name). A client who is a minister is worried to have his name associated with this." Chintella said people can be wrongfully accused if they have unsecured wireless at their homes or several people using the same computer.

Mason said she was threatened by a negotiator. "They said it'll be in the newspaper. They said the whole community would know."

Her case was later dropped, although the judge did not allow her to recoup the \$2,000 retainer she paid Chintella or the thousands in fees he incurred (but was not paid for) in pursuing her case. Chintella argues the legal system's unwillingness to dock plaintiffs' attorneys allows them to keep pursuing such cases, knowing there is little downside to their actions.

The lawsuits against BitTorrent users represent the latest round of copyright-related legal action media companies are using to stem the onslaught of unauthorized downloads of their products.

The technology facilitates the transfer of large files by breaking down data into smaller pieces and sending it to the computer seeking them, where the data is reassembled as a whole. Each member of the network uploads and downloads, and they are unknown to each other. The California company that created the network claims more than 100 million users worldwide.

BitTorrent technology makes it harder for media companies to track who is stealing their content because there is no central clearinghouse distributing the data, as there was a decade ago with Napster, the site that facilitated illegal downloading of music before it was shut down.

John Steele, a Chicago attorney who has sued 30,000 people (or, more precisely, 30,000 IP addresses), isn't apologetic toward those sued for allegedly downloading movies.

"I don't feel sorry for them," he said. "For many years they got away with it. They are upset because they are completely busted."

Steele represents adult [movie makers](#) and calls those he is suing "thieves" and "bad guys." The lawsuits, he said, are a simply a matter of right or wrong. "We have to make a decision: Do we let people steal whatever they want? Or do we fight them? It's easy as hell to steal. The only thing holding (people from illegally downloading) is their sense of right and wrong."

He laughed off accusations the settlement offers are extortion. "Settling is what attorneys do. It's 'You did something wrong. Now we need to come to a resolution.' "

Several courts have ruled that the John Doe mega-cases are an abuse of the system, holding that attorneys are improperly trying to shoehorn a load of disparate instances into one case, and using one filing fee to pursue a suit, instead of paying 300 - or even 24,528 fees. In the past year, two federal judges in Atlanta have broken up Doe cases, telling the attorneys to file smaller, more specific cases.

So the plaintiffs' attorneys are suing in smaller batches. And they are still using the courts to identify IP users, so they can be named and sued.

Ernesto Van Der Sar, who runs TorrentFreak.com, a blog that discusses how copyright issues affect BitTorrent, said many people are stunned to receive notice of the downloading.

"People think they are anonymous on the Internet," he said. "Most don't

know they have an identifiable IP address. They're surprised to find out."

TyAnna Herrington, a Georgia Institute of Technology professor who teaches intellectual copyright law, acknowledges that getting users to pay for digital content is a vexing problem, but sees the suits "as an opportunity to cast a wide net and see what pops up.

"I don't see this as a way to fight copyright abuse," she said. "It's more a way to make a lot of money real quick."

Still, the criticism hasn't deterred the likes of Steele, who estimates most cases eventually settle. And more are coming. "We just filed a couple hundred more cases," he said.

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