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'John Doe' copyright suits' No. 1 target

As Northern Illinois' federal venue sees a record year for copyright suits, some attorneys cash in

BY ROY STROM

Law Bulletin staff writer

John Doe has been bad, and he's getting worse.

The fictitious moniker was listed as the defendant in about 85 percent of copyright cases filed in Chicago's federal court in 2015 — a year that set an all-time record for copyright lawsuits filed in the city and nationally.

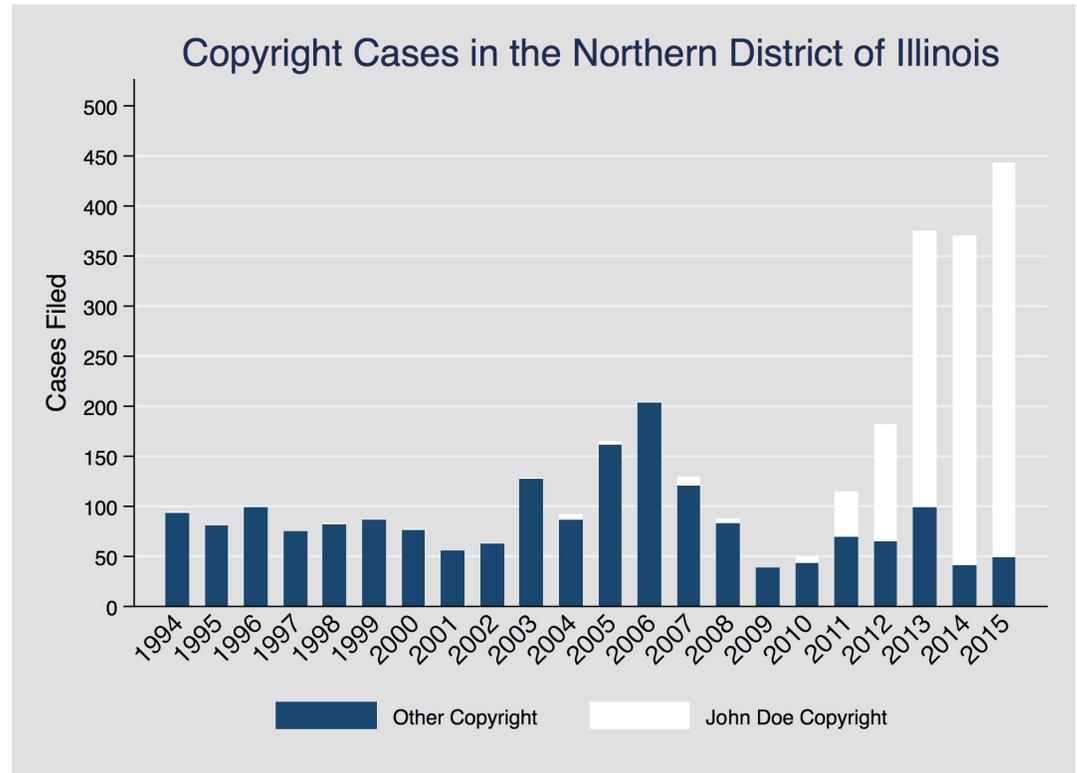
Doe was accused, most often, of stealing pornography over the Internet. But he also has an alleged taste for downloading movies that others might consider box-office flops.

There were 439 copyright lawsuits filed in the U.S. District Court for the Northern District of Illinois last year, according to research firm Lex Machina. At least 373 of those cases were filed by law firms who accuse unknown defendants — through their IP addresses — of stealing copyrighted movies over the Internet.

While Internet piracy is widely understood to be illegal and a threat to creative industries, the lawyers who attempt to hold John Does accountable are not without controversy either.

Often decried as abusive and referred to as "copyright trolls," these law firms and plaintiffs use litigation to obtain the names and street addresses associated with IP addresses they believe were used to steal content. The lawyers then send that person a letter threatening a lawsuit if they don't pay a settlement — often up to \$4,000.

"These lawsuits are problematic when defendants are coerced into settlement regardless of their guilt or innocence. In many cases, the value of the settlement extracted also seems disproportionately high," said Matthew J. Sag, a professor at Loyola



Data compiled by Matthew J. Sag, a professor at Loyola University Chicago School of Law, shows the recent surge in the number of copyright lawsuits is almost exclusively attributable to litigation accusing "John Doe" of stealing content over the Internet. *Matthew Sag*

University Chicago School of Law who has written about the phenomenon.

Despite such criticism, the practice has exploded in the past decade. Nationally, John Doe is named as a defendant more often than all other defendants combined.

The rise has been perhaps most dramatic in Chicago, where all copyright lawsuit filings have risen 760 percent since 2009, compared to 134 percent nationally, according to Lex Machina data. Sag said the rise is almost exclusively attributable to John Doe lawsuits.

The lawsuits have been filed in two ways.

Some name a single John Doe, asking a judge to force an Internet service provider to hand over his or her name and address. Typically, this is the end of the litigation. It is rare that defendants

eventually get named in these lawsuits, suggesting most John Does likely pay the settlement demand.

Malibu Media, the parent company of pornography site x-art.com, is the most common plaintiff using the single-defendant model.

Sag's research says Malibu Media accounted for 41.5 percent of all copyright suits in the U.S. in 2014 and just more than 39 percent in 2015. Locally, it filed 273 lawsuits this year, accounting for 62 percent of all filings. In 2014, its 214 lawsuits in Chicago's federal court were 57 percent of the total.

The second type of filing is known as a "mass-joinder," in which a plaintiff names a series of unknown defendants and asks a judge to compel an Internet service provider to hand over all

of their names and addresses.

While Sag's research shows this type of litigation is dwindling, there is one lawyer in Chicago who has been ramping it up: Michael A. Hierl, a partner at Hughes, Socol, Piers, Resnick & Dym Ltd.

Last year, he filed 101 lawsuits that together named nearly 1,800 John Doe defendants, according to research from Lex Machina.

Hierl represents a number of corporate entities that own the copyrights to movies that have often performed poorly at the box office.

For instance, he filed 39 lawsuits accusing more than 850 defendants of illegally downloading the Adam Sandler film "The Cobbler." The movie about a shoemaker who finds a magical sewing machine reportedly earned \$24,000 in its first

weekend in U.S. theaters. It has an 8 percent rating on Rotten Tomatoes.

Another 12 lawsuits accused 274 individuals of stealing “Good Kill,” starring Ethan Hawke. Pierce Brosnan-led “Survivor” was allegedly stolen by 259 unknown defendants sued by Hierl. Suing on behalf of owners of a film called “Rise of the Krays,” Hierl named 124 John Doe defendants.

Another 111 defendants sued by Hierl allegedly downloaded “She’s Funny That Way,” which features Owen Wilson and Jennifer Aniston — enough star power to earn nearly \$112,000 in domestic box office receipts, according to Box Office Mojo.

He also represents Dallas Buyers Club LLC, which owns the copyright to the award-winning

film “Dallas Buyers Club” starring Matthew McConaughey, Jennifer Garner and Jared Leto. On that client’s behalf, he filed nine lawsuits naming 175 John Doe defendants in 2015.

Hierl said the movie studios his firm represents are concerned with the ongoing online theft of movies, which he said impacts the livelihoods of everyone involved in making movies — down to electricians, carpenters and caterers.

“Just like everything on the Internet isn’t true, everything on the Internet isn’t free,” Hierl said in an e-mailed statement. “If the consuming public expects movies to be available for free, eventually no one will produce movies or less movies will be produced.”

Such copyright lawsuits also generate work for local defense

lawyers, including Jeffrey J. Antonelli.

Lex Machina says Antonelli is tied with three other attorneys as the most named defense lawyer appearing in copyright cases in the Northern District of Illinois last year. He had four official appearances, which belies how many calls he receives from people who have received settlement letters.

“People who create ought to be protected and paid, and piracy is a legitimate issue,” he said. “But there is a large (question) of fairness when it comes to these innocent parties where a parent has a subpoena sitting on their laps and are asking ‘What am I going to do with it?’”

Meanwhile, the practice is a moneymaker for the federal court

system.

Sag estimates that attorneys who file lawsuits on behalf of Malibu Media paid \$936,800 in filing fees over the last year.

A court in New York recently denied Malibu Media’s request to obtain alleged infringers’ names and addresses. But unless that becomes a national trend, Sag said he does not expect the number of lawsuits to decrease significantly.

“I don’t see anything changing unless judges start refusing early discovery altogether,” he said. “I know that many judges are sick of these suits and they don’t think this is the right way to be attacking piracy.”

Unless John Doe cleans up his act, it seems he is set for another bad year in the courts.