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# *Defending Against Copyright Trolls*

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This presentation will provide attorneys with the knowledge and tools that they need to defend cases against copyright trolls. Thousands of fraudulent cases are filed every year with the hope that defendants will fear the expense of litigation and pay settlement demands that amount to protection money. The presenter has used a variety of motions and negotiation strategies to defeat the plaintiffs. Until legislation stops this form of extortion by plaintiffs and their attorneys, a defense must be offered for the targeted victims.





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# About the Presenter

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## ***Education***

Loyola University of Chicago School of Law  
J.D., 1991

University of Michigan – Ann Arbor  
A.B., 1986

## ***Work Experience***

**Political Campaigns for Illinois State Representative and Lake County Board** 2017 to 2018

Advocated for redistricting reform, gun safety measures, term-limits on legislative leadership in the General Assembly, better water safety legislation, and transparency in the Illinois budget process during campaigns for Illinois state representative and Lake County Board.

## **Attorney**

2014 to 2017

Private advocacy for persons suffering due to systemic or corporate unfairness, poor judgment, or inequality. Insurance contracts, family law (custody matters), corporate winding-down of businesses, 403(b) plan termination, debt collection defense, and abuse of process.

*Pro bono* advocacy in administrative review, family law, guardian ad litem for adults, intellectual property, contracts, social security matters, and evictions (representing both landlords and tenants).



**Stay-at-home Mom and Volunteer**

2001-2014

**Founder and Executive Director**

1994 to 2001

Profamily Social Service Connections, Inc.

Developed a service-providing system for low-income families with schoolchildren.

Filmmaker and Art Instructor

1993 to 1994

Taught reading through filmmaking to third-grade students at CPS Anthony Overton School.

**Assistant State's Attorney**

1992

Criminal Appeals

***Other Nonprofit Experience***

Bluestem Communications, board chair

Shalva, former board member

SOS Children's Villages, former board member

McCall Family Foundation, former board member for *Here and Now*

Chicago Community Trust, Young Leadership Group and Young Leadership Fund

Theater Building, former board member

Gateway Green-Green Tie Ball, former host committee

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## Course Description

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### *Course Presentation*

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This presentation will provide attorneys with the knowledge and tools that they need to defend cases against copyright trolls. Thousands of fraudulent cases are filed every year with the hope that defendants will fear the expense of litigation and pay settlement demands that amount to protection money. The presenter has used a variety of motions and negotiation strategies to defeat the plaintiffs. Until legislation stops this form of extortion by plaintiffs and their attorneys, a defense must be offered for the targeted victims.

This course provides an intellectual foundation and introduce a set of learning skills essential for success in the legal profession and for life beyond. The course will provide opportunities for careful reading, for creative and critical thinking, for oral and written communication, and for engaging with others in a shared conversation about stimulating material.

### *Course Material*

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This material is intended to be a guide in general and is not legal advice. If you have any specific question regarding the state of the law in any particular jurisdiction, we recommend that you seek legal guidance relating to your particular fact situation.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations.





## Course Material

### Defending Against Copyright Trolls

**Copyright Act of 1976 requires the ownership of a copyright, the copying and distribution of part of the original work that is copyrighted.**

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#### Proliferation in Federal Courts of these Cases

- a. Utah, Nevada, Colorado.
- b. Hawaii, Pennsylvania, Texas
- c. New York, New Jersey, Virginia
- d. Northern District of Illinois

#### Academic Articles

a. *Copyright Trolling, an Empirical Study* by Matthew Sag (3/21/2014)  
Identifying "trolling" by conduct. When the use of litigation is to create an independent revenue stream. Data sets available.

b. *Defending Against the Dark Arts of Copyright Trolling* by Professor Matthew Sag and Jake Haskell

Discusses the Plaintiff's case, the Black Box, the weakness of the cases, and why they persist.

Complaint, Subpoena, Threat Letter, Response

Amended Complaint, Motion to  
Dismiss, Answer  
Discovery  
Summary Judgment  
Trial

Issues to Identify in the Complaint

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- a. Caption identifies number of defendants.
  - i. If multiple defendants, early discovery request may be useful for Defendant.
  - ii. If one defendant is identified, note the subscriber identifier in original caption.
- b. Facts must sufficiently allege infringement.
  - i. IP addresses have been found insufficient to identify a defendant.
    1. PTG case in Northern District of Illinois
    2. Cited Cases
  - ii. Look at the language used in the complaint for particular gaps.
    1. An IP address does not identify a single computer user.

2. An IP address can be the same for several computers in a single household.
3. In copyright law, the defendant must be the infringer—not the payer of bills for the infringer.
4. An IP address can indicate a neighbor or a stranger using the Internet connection of the defendant.

Specific facts must be alleged not conclusions.

1. Distribution is not proven with the data presented or alleged.
2. Exhibit A (consistently used by plaintiffs is “Exhibit A” a spreadsheet that offers no actual evidence) demonstrates that one particular second was alleged to have involved a link to the system, but not a full download or upload. Under cross-examinations in the only cases that have reached the discovery phase, no infringement has been fully alleged or shown.
3. Hash Numbers have been

determined not to be NSA secure. A written has number is not the same as processed number.

4. Jurisdiction and Venue are based on tautologies and not facts alleged.

5. Defendant's IP address and street address are insufficient to allege copyright infringement.

#### Client-Defendant Facts to Gather

- a. Ask Client to protect hard drive of computer(s) that were in use at the time of the alleged sharing of data. (It can become evidence.)
- b. Have Client affirm (where true) that Client has not shared the property at issue.
- c. Have Client affirm that Client did not personally download the property.
- d. Have Client affirm that Client did not upload the property.
- e. Have Client affirm that Client does not benefit from or derive money from the movie industry.
- f. Have Client affirm that BitTorrent is not something that is used by Client.

- g. Have Client affirm that BitTorrent has never been used by Client personally.
- h. Have Client affirm that BitTorrent has not been used with Client's knowledge on his Internet account.
- i. Have Client affirm that Client has taken steps to protect his password and account since Comcast notice.
- j. Have Client identify steps taken to secure his system.
- k. Have Client affirm, if Client would, a willingness to share hard drive to demonstrate that nothing of BitTorrent has been erased or ever present on his computer.
- l. Have Client describe the stress or any ill effects of this lawsuit, including time spent conducting research on how to fight.

### Federal Rules of Civil Procedure

- a. Motion for Judicial Notice (of basic known facts)
- b. Motion to Compel Discovery (that Pltf. Share its early discovery)
- c. Motion to Dismiss (12b6)



d. Plaintiff's Motion to Strike (threatening letter)

Merits Never Reached

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- a. Default sought
- b. Dismissals routine

Cottage Industry

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- a. Plaintiff Bar
- b. Defense Bar

ARDC

Attorney General

U.S. Attorney

Congress

State of Illinois

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## Resources

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### Resources Specific to this Course

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Bibliography

Defense Against the Dark Arts of Copyright Trolling by Matt Sag:

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2933200](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2933200)

Copyright Trolling: An Empirical Study by Matt Sag and Jake Haskell:

<https://lawcommons.luc.edu/facpubs/522/>

Is Content Publishing In BitTorrent Altruistic or Profit-Driven? by Ruben Cuevas:

[https://conferences.sigcomm.org/co-next/2010/CoNEXT\\_papers/11-Cuevas.pdf](https://conferences.sigcomm.org/co-next/2010/CoNEXT_papers/11-Cuevas.pdf)

bittorrent copyright trolling a pragmatic proposal for a systemic problem by Gregory S. Mortenson:

<https://scholarship.shu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1479&context=shlr>

fightcopyrighttrolls.com

torrentfreak.com

### Resources for the Legal Professional

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ABA Center for Professional Responsibility - [www.abanet.org/cpr](http://www.abanet.org/cpr)

Chicago Bar Association - [www.chicagobar.org](http://www.chicagobar.org)

Commission on Professionalism - [www.2civility.org](http://www.2civility.org)

Judicial Inquiry Board - <http://www.illinois.gov/jib>

Illinois Board of Admissions to the Bar - [www.ilbaradmissions.org](http://www.ilbaradmissions.org)



Illinois Department of Financial and Professional Regulation - [www.idfpr.com/default.asp](http://www.idfpr.com/default.asp)

Illinois Lawyers' Assistance Program, Inc - [www.illinoislap.org](http://www.illinoislap.org)

Illinois State Bar Association - [www.isba.org](http://www.isba.org)

Illinois Supreme Court - [www.state.il.us/court](http://www.state.il.us/court)

Lawyers Trust Fund of Illinois - [www.ltf.org](http://www.ltf.org)

MCLE Program - [www.mcleboard.org](http://www.mcleboard.org)

