

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA**

MALIBU MEDIA, LLC  Plaintiff,  v.  KELLEY TASHIRO and N. CHARLES TASHIRO  Defendants	Case No. 1:13-cv-00205-WTL-MJD  Hon. Mark J. Dinsmore
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**DEFENDANTS FIFTH MOTION IN LIMINE  
TO EXCLUDE PCAP EVIDENCE**

The Defendants, KELLEY TASHIRO and N. CHARLES TASHIRO, come to this Honorable Court and move it to exclude PCAP evidence from the evidentiary hearing scheduled for January 29, 2015. In support of the same, the Defendants state as follows:

1. The Plaintiff asserts that it may introduce, as evidence, "PCAP evidence proving that the infringement took place from the Defendant's (sic) IP address." (ECF Doc. 169, at 2).
2. PCAP evidence proving a connection to the purported infringement process is irrelevant to the matter at hand – purported deletion of files on a single hard drive or lying about receipt of DMCA notices.
3. It is improper to admit irrelevant evidence. Fed. R. Evid. 402.
4. Further, such evidence can only confound the issues and waste time. See, Fed. R. Evid. 403.
5. Accordingly, any PCAP evidence should be excluded as evidence at the evidentiary hearing of January 29, 2015. This is not the time to pre-try the entirety of the case.

WHEREFORE, KELLEY TASHIRO and N. CHARLES TASHIRO respectfully request that this Honorable Court bar the PCAP evidence.

Respectfully submitted,

/s/ Jonathan LA Phillips  
One of their attorneys  
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<b>CERTIFICATE OF SERVICE</b>
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I certify that on January 2, 2015, a copy of the foregoing has been filed with the Clerk of the Court via the Court's ECF filing system, thereby serving it upon all counsel of record.

/s/ Jonathan LA Phillips