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Attorneys for Plaintiffs
TWENTIETH CENTURY FOX; COLUMBIA PICTURES; PARAMOUNT PICTURES; WARNER BROS.; COLUMBIA TRISTAR HOME ENTERTAINMENT; and NEW LINE PRODUCTIONS

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

WHA

C 04 4862

TWENTIETH CENTURY FOX FILM CORPORATION, a Delaware corporation; COLUMBIA PICTURES INDUSTRIES, INC., a Delaware corporation; PARAMOUNT PICTURES CORPORATION, a Delaware corporation; WARNER BROS. ENTERTAINMENT INC., a Delaware corporation; COLUMBIA TRISTAR HOME ENTERTAINMENT, INC., a Delaware corporation; and NEW LINE PRODUCTIONS, INC., a Delaware corporation,

Plaintiffs,

vs.

DOES 1 - 12,

Defendants.

CASE NO.

PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFFS' MISCELLANEOUS ADMINISTRATIVE REQUEST PURSUANT TO LOCAL RULE 7-10(b) FOR LEAVE TO TAKE DISCOVERY PRIOR TO RULE 26 CONFERENCE

Pursuant to Fed. R. Evid. 201, Plaintiffs hereby request that the Court take Judicial Notice of the following

documents in support of their Miscellaneous Administrative Request For Leave To Take Discovery Prior to Rule 26 Conference, copies of which are attached hereto as Exhibits:

Exhibit 1: Order, Maverick Recording Co. et al. v. Does 1-4, Case No. C-04-1135 MMC (N.D. Cal.) (Larson, M.J.);

Exhibit 2: Order, UMG Recordings, Inc. v. Does 1-2, Case No. 04-0960(C)-L (W.D. Wa.) (Coughenour, J.);

Exhibit 3: Order, Loud Records, LLC et al. v. Does 1-5, Case No. CV-04-0134-RHW (E.D Wa.) (Whaley, J.);

Exhibit 4: Order, London-Sire Records, Inc. et al. v. Does 1-4, Case No. CV04-1962 (AJWx) (C.D. Cal.) (Wistrich, M.J.);

Exhibit 5: Order, Interscope Records et al. v. Does 1-4, Case No. 04-131 TUC-JM (D. Ariz.) (Marshall, J.);

Exhibit 6: Order, Sony Music Entertainment et al. v. Does 1-40, Case No. 04 CIV 473 (DC) (S.D.N.Y.) (Chin, J.);

Exhibit 7: Order, UMG Records, Inc., et al. v. John Doe 1 and John Doe 2,Case No. SA-04-CA-0357-XR (W.D. Tex.) (Rodriquez, J.);

Exhibit 8: Order, Motown Record Co., L.P. et al. v. Does 1-16, Case No. 04 C 3019 (N.D. Ill.) (Nolan, M.J.);

Exhibit 9: Order, Arista Records, Inc. et al. v. John Doe, Case No. 4:04 CV 0036 AS (N.D. Ind.) (Sharp, J.);

Exhibit 10: Order, Arista Records, Inc. et al. v. Does 1-9, Case No. H 04-1677 (S.D. Tex.) (Harmon, J.);

Exhibit 11: Order, Elektra Entertainment Group, Inc. et al. v. Does 1-5, Case NO. 3: CV-04-940 (M.D. Pa.) (Caputo, J.);

Exhibit 12: Order, Interscope Records et al. v. Does 1-37, Case No. A-04-CA-237 LY (W.D. Tex.) (Pitman, J.);

Exhibit 13: Order, BMG Music et al v. Does 1-9, Case No. 5:04-cv-58 (W.D. Mich.) (Miles, J.);

Exhibit 14: Order, Warner Bros. Records, Inc. et al. v. Does 1-35, Case No. 04-84 (E.D. Ky.) (Bertelsmann, J.);

Exhibit 15: Order, Sony Music Entertainment, Inc. et al. v. Does1-2, Case No. 04-1758 (DSD/JSM) (D. Minn.) (Doty, J.);

Exhibit 16: Order, London-Sire Records, Inc. et al. v. John Doe, Case No. 7:04CV00208 (W.D. Va.) (Conrad, J.);

Exhibit 17: Order, Virgin Records Am., Inc. et al. v. Does 1-3, Case No. 3-04-cv-701 (JCH) (D. Conn.) (Hall, J.);

Exhibit 18: Order, Maverick Recording Co. et al. v. Does 1-2, Case No. CA 04 149 ML (D.R.I.) (Lisi, J.);

Exhibit 19: Order, Loud Records, LLC et al v. Does 1-4, Case No.04-C-289 (E.D. Wis.) (Randa, J.);

Exhibit 20: Order, Sony Music Entertainment, Inc. et al. v. Does 1-200, Case No. 4:04-CV-339 CEJ (E.D. Mo.) (Jackson, J.);

Exhibit 21: Order, Virgin Records Am., Inc. et al. v. John Doe, Case No. PJM 04-964 (D. Md.) (Messitte, J.);

Exhibit 22: Order, Fonovisa, Inc. et al. v. Does 1-67, Case No. 04-WM-458 (PAC) (D. Co.) (Miller, J.);

Exhibit 23: Order, Warner Bros. Records, Inc. et al. v. Does 1-9, Case No. 04-71058 (E.D. Mich.) (Rosen, J.);

Exhibit 24: Order, Atlantic Recordings Co. v. Does 1-13, Case No. 1:04CV316 (E.D. Va.) (Ellis III, J.);;

Exhibit 25: Order, Arista Records, Inc. v. Does 1-143, Case No. 4:04 CV 93 (E.D. Tex.) (Schell, J.);

Exhibit 26: Order, Interscope Records et al. v. Does 1-7, Case No. 3-04-0240 (M.D. Tenn.) (Griffin, J.);

Exhibit 27: Order, Interscope Records et al. v. Does 1-5, Case No. 1:04-cv-0542 DFH-TAB (S.D. Ind.) (Hamilton, J.);

Exhibit 28: Order, UMG Recordings et al. v. Does 1-199, Case No. 04-093 (CKK) (D.D.C.) (Kollar-Kotelly, J.);

Exhibit 29: BMG Music et al. v. Does 1-203, Case No. 04-650 (E.D. Pa.) (Newcomer, J.);

Exhibit 30: Virgin Records Am. et al. v. Does 1-44, Case No. 1:04-CV-0438-CC (N.D. Ga.) (Cooper, J.);

Exhibit 31: Elektra Entertainment Group, Inc. et al. v. Does 1-7, Case No. 04-607 (GEB) (D.N.J.) (Brown, Jr., J.);

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Exhibit 32: Capitol Records, Inc. et al. v. Does 1-250, Case No. 04 CV 472 (LAK)(HPB) (S.D.N.Y.) (Kaplan, J.).

DATED: November 15, 2004

Respectfully submitted,

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By: _____
Christopher T. Holland
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EXHIBIT 1

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Attorneys for Plaintiffs
MAVERICK RECORDING CO.; WARNER BROS. RECORDS INC.; ARISTA RECORDS, INC.; VIRGIN RECORDS AMERICA, INC.; UMG RECORDINGS, INC.; INTERSCOPE RECORDS; BMG MUSIC; SONY MUSIC ENTERTAINMENT INC.; ATLANTIC RECORDING CORP.; MOTOWN RECORD COMPANY, L.P.; and CAPITOL RECORDS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MAVERICK RECORDING COMPANY, a California joint venture; WARNER BROS. RECORDS INC., a Delaware corporation; ARISTA RECORDS, INC., a Delaware corporation; VIRGIN RECORDS AMERICA, INC., a California corporation; UMG RECORDINGS, INC., a Delaware corporation; INTERSCOPE RECORDS, a California general partnership; BMG MUSIC, a New York general partnership; SONY MUSIC ENTERTAINMENT INC., a Delaware corporation; ATLANTIC RECORDING CORPORATION, a Delaware corporation; MOTOWN RECORD COMPANY, L.P., a California limited partnership; and CAPITOL RECORDS, INC., a Delaware corporation,

Plaintiffs,

vs.

DOES 1 - 4,

Defendants.

CASE NO. C-04-1135 MMC

~~[PROPOSED]~~ ORDER GRANTING PLAINTIFFS' MISCELLANEOUS ADMINISTRATIVE REQUEST FOR LEAVE TO TAKE IMMEDIATE DISCOVERY

COBLENTZ, PATCH, DUFFY & BASS, LLP
One Ferry Building, Suite 200, san francisco, ca 94111-4213
(415) 391-4800 • (415) 989-1663

Upon the Miscellaneous Administrative Request of Plaintiffs For Leave To Take Immediate Discovery, the Declaration of Jonathan Whitehead and the exhibit thereto, Plaintiffs' Request for Judicial Notice, and the Declaration of Zuzana J. Svihra, it is hereby:

ORDERED that Plaintiffs may serve immediate discovery on the University of California, Berkeley to obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks information sufficient to identify each Doe Defendant, including the name, address, telephone number, e-mail address, and Media Access Control addresses for each Defendant.

IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in response to the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under the Copyright Act.

Without such discovery, Plaintiffs cannot identify the Doe Defendants, and thus cannot pursue their lawsuit to protect their copyrighted works from infringement.

Dated: April 28, 2004

James Larson U.S. Magistrate Judge

~~United States District Judge~~

COBLENTZ, PATCH, DUFFY & BASS, LLP
One Ferry Building, Suite 200, san francisco, ca 94111-4213
(415) 391-4800 • (415) 989-1663

EXHIBIT 2

04-CV-00960-TFP

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UMG RECORDINGS, INC., a Delaware corporation; ATLANTIC RECORDING CORPORATION, a Delaware corporation; WARNER BROS. RECORDS INC., a Delaware corporation; SONY MUSIC ENTERTAINMENT INC., a Delaware corporation; BMG MUSIC, a New York general partnership; and VIRGIN RECORDS AMERICA, INC., a California corporation,

Plaintiffs,

v.

DOES 1 - 2,

Defendants.

No. C04-0960(c)-L

~~[PROPOSED]~~ ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO TAKE IMMEDIATE DISCOVERY

Upon the Motion of Plaintiffs for Leave to Take Immediate Discovery and the supporting Memorandum of Law, and the declaration of Jonathan Whitehead and the exhibit thereto, it is hereby:

ORDERED that Plaintiffs may serve immediate discovery on Microsoft Corporation to obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks information sufficient to identify each Doe Defendant, including the name, address, telephone number, e-mail address, and Media Access Control addresses for each Defendant.

YARMUTH WILSDON CALFO PLLC
THE IDX TOWER
925 FOURTH AVENUE, SUITE 2500
SEATTLE, WA 98104
T 206 516 3800 F 206 516 3888

IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in response to the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under the Copyright Act.

Dated: May 14, 2004

United States District Judge

YARMUTH WILSDON CALFO PLLC
THE IDX TOWER
925 FOURTH AVENUE, SUITE 2500
SEATTLE, WA 98104
T 206 516 3800 F 206 516 3888

EXHIBIT 3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LOUD RECORDS, LLC, a Delaware corporation; WARNER BROS. RECORDS INC., a Delaware corporation; ATLANTIC RECORDING CORPORATION, a Delaware corporation; VIRGIN RECORDS AMERICA, INC., a California corporation; PRIORITY RECORDS LLC, a California limited liability company; ELEKTRA ENTERTAINMENT GROUP INC., a Delaware corporation; BMG RECORDINGS, INC, a Delaware corporation; ARISTA RECORDS, INC., a Delaware corporation; BMG MUSIC, a New York general partnership; SONY MUSIC ENTERTAINMENT INC., a Delaware corporation; MAVERICK RECORDING COMPANY, a California joint venture; and CAPITOL RECORDS, INC., a Delaware corporation,

Plaintiffs,

v.

DOES 1-5,

Defendants.

NO. CV-04-0134-RHW

ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO TAKE IMMEDIATE DISCOVERY

Before the Court is Plaintiffs' Motion for Leave to Take Immediate Discovery (Ct. Rec. 7). The Plaintiffs, members of the Recording Industry Association of America, Inc. ("RIAA"), have filed a complaint alleging that DOES

1-5 illegally engaged in uploading and downloading copyrighted recordings through www.KaZaA.com, a peer to peer ("P2P") internet service (Ct. Rec. 1). While Plaintiffs are unable to identify the Does, they collected records of Defendants' Internet Protocol ("IP") address, the times the downloads or uploads took place, and information regarding the specific recordings that were downloaded or uploaded. The Plaintiffs were able to ascertain from Defendants' IP addresses that they were utilizing Gonzaga University as their Internet Service Provider ("ISP"). Plaintiffs seek statutory damages under 17 U.S.C. § 504(c), attorneys fees and costs pursuant to 17 U.S.C. § 505, and injunctive relief under 17 U.S.C. §§ 502 and 503.

In their Motion for Leave to Take Immediate Discovery, the Plaintiffs seek leave to serve Gonzaga University, the ISP for Does 1-5, with a Rule 45 Subpoena Duces Tecum, requiring Gonzaga University to reveal the Defendant's names, addresses, email addresses, telephone number, and Media Access Control ("MAC") addresses.

The Ninth Circuit has held that "where the identity of alleged defendants will not be known prior to the filing of a complaint . . . . the plaintiff should be given an opportunity through discovery to identify the unknown defendants, unless it is clear that discovery would not uncover the identities, or that the complaint would be dismissed on other grounds." *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980). Presumably, the discovery device anticipated by this ruling was Rule 45, under which a party may compel a nonparty to produce documents or other materials that could reveal the identities. *See Pennwalt Corp. v. Durand-Wayland, Inc.*, 708 F.2d 492 (9th Cir. 1983). The Court finds that this instance presents the very situation indicated by *Gillespie*. The Plaintiffs' case relies on the disclosure of the Does' identities, and those identities are likely discoverable from a third party.

Under Rule 26(d), Rule 45 subpoenas should not be served prior to a Rule

26(f) conference unless the parties can show good cause. Fed. R. Civ. P. 26(d) ("a party may not seek discovery from any source before the parties have conferred as required by Rule 26(f) . . . . [u]nless the court upon motion . . . . orders otherwise"); *see Semitool, Inc. V. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 275-76 (N.D. Cal. 2002). The Plaintiffs have presented compelling evidence that the records kept by ISP providers of IP addresses are regularly destroyed. Thus, good cause has been shown.

Accordingly, **IT IS ORDERED** that:

1. Plaintiffs' Motion for Leave to Take Immediate Discovery (Ct. Rec. 7) is **GRANTED.**

2. Plaintiffs are **GIVEN LEAVE** to serve immediate discovery on Gonzaga University to obtain the identity of each Doe Defendant by serving a Rule 45 subpoena duces tecum that seeks each Doe Defendants' name, address, telephone number, email address, and Media Access Control address. As agreed by Plaintiffs, this information disclosed will be used solely for the purpose of protecting their rights under the copyright laws.

3. Plaintiffs are **ORDERED** to review Local Rule 7.1(g)(2) regarding the citation of unpublished decisions. All unpublished decisions cited to the Court have been disregarded.

IT IS SO ORDERED. The District Court Executive is hereby directed to enter this order and to furnish copies to counsel of record.

DATED this 10 day of May, 2004.

ROBERT H. WHALEY
United States District Judge

Q:\Civil\2004\Loud Records\Loud.immediatediscovery.order.wpd

EXHIBIT 4

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CIVIL MINUTES - GENERAL

Case No. CV 04-1962 ABC (AJWx) Date: April 2, 2004

Title: LONDON-SIRE RECORDS, INC., et. al., v. DOES 1-4

==========

PRESENT:

HON. ANDREW J. WISTRICH, MAGISTRATE JUDGE

Ysela Benavides
Deputy Clerk

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:
None Present

ATTORNEYS PRESENT FOR DEFENDANTS:
None Present

ORDER REGARDING PLAINTIFFS' EX PARTE APPLICATION FOR LEAVE TO TAKE IMMEDIATE DISCOVERY

Plaintiffs are thirteen record companies who have filed a lawsuit against four unnamed "doe" defendants for alleged copyright infringement. Plaintiffs filed a motion for leave to take immediate discovery on March 23, 2004. [Notice of Ex Parte Application for Leave to Take Immediate Discovery ("Notice") filed March 23, 2004]. Plaintiffs allege that defendants, using an online peer-to-peer ("P2P") media distribution system, made available for distribution, and in fact distributed, copyrighted songs without license or other authority to do so, thereby infringing plaintiffs' copyrights. [See Memorandum of Law in Support of Ex Parte Application For Leave to Take Immediate Discovery ("Memorandum") filed March 23, 2004, at 2]. Plaintiffs have acquired the Internet Protocol ("IP") addresses assigned to each of the four defendants on the dates and times of the infringing activity. [Memorandum 2]. Using a public database, plaintiffs determined that the subject IP addresses belong to the University of Southern California ("USC"). [Memorandum 2-3]. As an Internet Service Provider ("ISP"), USC maintains a subscriber activity log indicating which of its subscribers were assigned the IP addresses in question on the relevant dates and times. [Memorandum 3]. In plaintiffs' experience, most ISPs maintain subscriber activity logs for only a short period of time before destroying the information contained in the logs. [Memorandum 3]. From the subscriber logs, USC can use the IP addresses and temporal information provided by plaintiffs to identify the true names, street addresses, phone numbers, e-mail addresses, and Media Access Control ("MAC") addresses for each defendant. [Memorandum 3]. Plaintiffs ask this Court to allow immediate issuance of a subpoena directing USC to produce defendants' names and the other personal information described above so that plaintiffs may contact defendants in an attempt to negotiate a resolution to plaintiffs' claims, or failing that, to add defendants as named parties to this litigation.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES--GENERAL

Generally, parties must meet and confer prior to seeking expedited discovery. See Fed. R. Civ. P. 26(f). That requirement, however, may be dispensed with if good cause is shown. See Semitool, Inc. v. Tokyo Electron Am., Inc., 208 F.R.D. 273, 275-76 (N.D. Cal. 2002). Plaintiffs have shown good cause. The true identities of defendants are unknown to plaintiffs, and this litigation cannot proceed without discovery of defendants' true identities. [See Memorandum 7-9].

Subject to the following qualifications, plaintiffs' ex parte application for leave to take immediate discovery is granted.

If USC wishes to file a motion to quash the subpoena or to serve objections, it must do so before the return date of the subpoena, which shall be no less than twenty-one (21) days from the date of service of the subpoena. Among other things, USC may use this time to notify the subscribers in question.

USC shall preserve any subpoenaed information or materials pending compliance with the subpoena or resolution of any timely objection or motion to quash.

Plaintiffs must serve a copy of this order on USC when they serve the subpoena.

Any information disclosed to plaintiffs in response to the Rule 45 subpoena must be used by plaintiffs solely for the purpose of protecting plaintiffs' rights under the Copyright Act as set forth in the complaint.

IT IS SO ORDERED.

cc: Parties

EXHIBIT 5

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Interscope Records, et al.,

Plaintiffs,

v.

Does 1 - 4,

Defendants.

No. CV-04-131 TUC - JM

ORDER

Pending before the Court is the Plaintiffs' *ex parte* Motion for Leave to Take Immediate Discovery [Docket No. 2]. Upon consideration of the Motion and the supporting Memorandum of Law, and the declaration of Jonathan Whitehead and the exhibit attached thereto, it is hereby:

ORDERED that Plaintiffs' Motion for Leave to Take Immediate Discovery [Docket No. 2] is GRANTED;

IT IS FURTHER ORDERED that Plaintiffs may serve immediate discovery on the University of Arizona to obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks information sufficient to identify each Doe Defendant, including the name, address, telephone number, e-mail address, and Media Access Control addresses for each Defendant;

IT IS FURTHER ORDERED that any information disclosed to Plaintiffs in response to the Rule 45 subpoena shall be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under the Copyright Act as set forth in the Complaint;

JM

10

IT IS FURTHER ORDERED that, if and when the University of Arizona is served with a subpoena, within five (5) business days thereof it shall give written notice, which can include use of e-mail, to the subscribers whose identities are to be disclosed in response to the subpoena. If the University of Arizona and/or any Defendant wishes to move to quash the subpoena, they shall do so before the return date of the subpoena, which shall be twenty-five (25) business days form the date of service;

IT IS FURTHER ORDERED that, if and when the University of Arizona is served with a subpoena, the University of Arizona shall preserve the data and information sought in the subpoena pending resolution of any timely filed motion to quash;

IT IS FURTHER ORDERED that counsel for Plaintiffs shall provide a copy of this Order to the University of Arizona when the subpoena is served.

Dated this 25th day of March, 2004.

JACQUELINE MARSHALL
UNITED STATES MAGISTRATE JUDGE

EXHIBIT 6

*326 F. Supp. 2d 556, *; 2004 U.S. Dist. LEXIS 14122, **;*
71 U.S.P.Q.2D (BNA) 1661; Copy. L. Rep. (CCH) P28,842

SONY MUSIC ENTERTAINMENT INC. et al., Plaintiffs - against - DOES 1 - 40, Defendants.

04 Civ. 473 (DC)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

326 F. Supp. 2d 556; 2004 U.S. Dist. LEXIS 14122; 71 U.S.P.Q.2D (BNA) 1661; Copy. L. Rep. (CCH) P28,842

July 26, 2004, Decided
July 27, 2004, Filed

DISPOSITION: **[**1]** Defendants' motions to quash subpoena denied. Amici's request that plaintiffs be ordered to return subpoenaed information denied.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff record companies sued unidentified defendants, individual sharers of Internet music files using a peer to peer file copying network, claiming they downloaded and distributed plaintiffs' copyrighted or exclusively licensed songs in violation of copyright. The record companies served a subpoena on a cable service provider to obtain the names of the file sharers, and some moved to quash the subpoena on First Amendment grounds.

OVERVIEW: The motion to quash raised two First Amendment issues: Where an Internet user downloaded or distributed copyrighted music without permission, were they engaging in the exercise of speech, and if so, was that person's identity protected from disclosure by the First Amendment? Although the court recognized that Internet users were entitled to some First Amendment protection, the protection was limited and subject to other considerations. File sharing was not, for the most part, expression, and the protection did not extend to the infringement of copyrights. The users' First Amendment rights to remain anonymous were not so strong as to preclude the copyright holders' right to use the judicial process to pursue meritorious copyright infringement claims. The copyright owners were also entitled to discovery in light of defendants' minimal expectation of privacy. The court found that the discovery request was narrowly drawn and sufficiently specific to establish a reasonable likelihood that it would lead to identifying information that would make possible service upon particular defendants who could be sued in federal court.

OUTCOME: The motions to quash the subpoena were denied and a motion to quash the subpoena for lack of personal jurisdiction was denied as premature.

CORE TERMS: subpoena, subscriber, amici, personal jurisdiction, motion to quash, copyrighted, disclosure, copyright infringement, discovery, motions to quash, anonymous, recording, distribute, download, music, subpoenaed, network, user, permission, joined, identifying information, expedited, copying, improper joinder, ex parte application, disclose, prima facie claim, discovery request, engaging, regulation

LexisNexis(R) Headnotes ◆ Hide Headnotes

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Motions to Dismiss
Civil Procedure > Trials > Subpoenas
HN1 Pursuant to Fed. R. Civ. P. 45(c)(3)(A)(iii), a subpoena shall be quashed if it requires disclosure of privileged or other protected matter and no exception or waiver applies. More Like This Headnote

Constitutional Law > Fundamental Freedoms > Freedom of Speech > Scope of Freedom
HN2 The First Amendment protects anonymous speech. Anonymity is a shield from the tyranny of the majority. Under the Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent. More Like This Headnote

Cyberlaw > Censorship > Electronic Media
Constitutional Law > Fundamental Freedoms > Freedom of Speech > Scope of Freedom
HN3 The First Amendment's protection extends to the Internet. Courts have recognized the Internet as a valuable forum for robust exchange and debate. More Like This Headnote

Copyright Law > Infringement > Defenses Generally
Constitutional Law > Fundamental Freedoms > Freedom of Speech > Scope of Freedom
HN4 The First Amendment does not shield copyright infringement. Parties may not use the First Amendment to encroach upon the intellectual property rights of others. More Like This Headnote

Civil Procedure > Trials > Subpoenas
HN5 Civil subpoenas seeking information regarding anonymous individuals raise First Amendment concerns. More Like This Headnote

Constitutional Law > Fundamental Freedoms > Freedom of Speech > Scope of Freedom
HN6 In contrast to many cases involving First Amendment rights on the Internet, a person who engages in peer to peer file sharing is not engaging in true expression. Such an individual is not seeking to communicate a thought or convey an idea. Instead, the individual's real purpose is to obtain music for free. More Like This Headnote

Civil Procedure > Trials > Subpoenas
Cyberlaw > Censorship > Electronic Media
Constitutional Law > Fundamental Freedoms > Freedom of Speech > Scope of Freedom
HN7 Cases evaluating subpoenas seeking identifying information from Internet service providers regarding subscribers who are parties to litigation have considered a variety of factors to weigh the need for disclosure against First Amendment interests. Those factors include: (1) a concrete showing of a prima facie claim of actionable harm; (2) specificity of the discovery request; (3) the absence of alternative means to obtain the subpoenaed information; (4) a central need for the subpoenaed information to advance the claim; and (5) the party's expectation of privacy. More Like This Headnote

Copyright Law > Infringement
HN8 A prima facie claim of copyright infringement consists of two elements: (1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original. More Like This Headnote

Copyright Law > Infringement > Determinations

HN9 The use of peer to peer systems to download and distribute copyrighted music has been held to constitute copyright infringement. More Like This Headnote

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction
Civil Procedure > Disclosure & Discovery

HN10 A district court has the discretion to allow discovery to determine the basis for personal jurisdiction. More Like This Headnote

COUNSEL: For Plaintiffs: J. Christopher Jensen, Esq., Jason David Sanders, Esq., COWAN, LIEBOWITZ & LATMAN, P.C., New York, NY.

For Plaintiffs: Thomas J. Perrelli, Esq., JENNER & BLOCK LLP, Washington, D.C.

For Doe, Defendant: LOUIS P. PITTOCCO, ESQ., Greenwich, CT.

Amici Curiae: Wendy Seltzer, Esq., Cindy A. Cohn, Esq., ELECTRONIC FRONTIER FOUNDATION, San Francisco, CA.

Amici Curiae: Paul Alan Levy, Esq., Charlotte Garden, Esq., PUBLIC CITIZEN, Washington, D.C.

Amici Curiae: Christopher A. Hansen, Esq., Aden J. Fine, Esq., AMERICAN CIVIL LIBERTIES UNION, New York, NY.

JUDGES: DENNY CHIN, United States District Judge.

OPINIONBY: DENNY CHIN

OPINION:

[*558] CHIN, D.J.

In this case, plaintiffs -- seventeen record companies -- sued forty unidentified "Doe" defendants for copyright infringement, alleging that defendants illegally downloaded and distributed plaintiffs' copyrighted or exclusively licensed songs from the Internet, using a "peer to peer" file copying **[**2]** network. Plaintiffs served a subpoena on non-party Internet service provider Cablevision Systems Corporation ("Cablevision"), seeking to obtain defendants' identities. Four defendants move to quash the subpoena.

The motions present two First Amendment issues. First, is a person who uses the Internet to download or distribute copyrighted music without permission engaging in the exercise of speech? Second, if so, is such a person's identity protected from disclosure by the First Amendment? I conclude that a person who uses the Internet to download or distribute copyrighted music without permission is engaging in the exercise of speech, albeit to a limited extent only. I conclude further that such a person's identity is not protected from disclosure by the First Amendment. Accordingly, the motions to quash are denied.

STATEMENT OF THE CASE

I. Facts

Plaintiffs own the copyrights and exclusive licenses to the various sound recordings at issue in this case. (Compl. P 23). Plaintiffs allege that each of the forty Doe defendants, without

plaintiffs' permission, used "Fast Track," an online media distribution system -- or "peer to peer" ("P2P") file copying network -- **[**3]** to download, distribute to the public, or make available for distribution "hundreds or thousands" of copyrighted sound recordings. (Id. P 25, Exh. A; Whitehead Decl. I P 6; Whitehead Decl. II P 4). n1 In their most popular form, P2P networks are computer systems or processes that enable Internet users to "(1) make files (including audio recordings) stored on a computer available for copying by other users; (2) search for files stored on other users' computers; and (3) transfer exact copies of files from one computer to another via the Internet." (Whitehead Decl. I P 7).

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - -

n1 "Whitehead Decl. I" refers to the Declaration of Jonathan Whitehead in Support of Plaintiffs' Ex Parte Application to Take Immediate Discovery, dated January 21, 2004. Whitehead is the vice president and counsel for Online Copyright Protection for the Recording Industry Association of America, Inc. (Whitehead Decl. I. P 1).

"Whitehead Decl. II" refers to the Second Declaration of Jonathan Whitehead, dated April 21, 2004 and submitted in support of Plaintiffs' Opposition to Jane Doe's Motion to Quash and Response to the Memorandum of Amici Curiae Public Citizen et al.

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Plaintiffs were able to identify Cablevision as the Internet service provider ("ISP") to which defendants subscribed, using a publicly available database to trace the Internet Protocol ("IP") address for **[*559]** each defendant. (Id. PP 12, 16). ISPs own or are assigned certain blocks or ranges of IP addresses. (Id. P 14 n.1). An ISP assigns a particular IP address in its block or range to a subscriber when that subscriber goes "online." (Id.). An ISP can identify the computer from which the alleged infringement occurred and the name and address of the subscriber controlling the computer when it is provided with a user's IP address and the date and time of the allegedly infringing activity. (Id. P 14).

As a condition of providing its Internet service, Cablevision requires its subscribers to agree to its "Terms of Service" under which "transmission or distribution of any material in violation of any applicable law or regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorization." (Cablevision Mem. 2 (citing http://www.optimumonline.com/index.jhtml? **[**5]** pageType=aup)). The Terms of Service also state that "Cablevision has the right ... to disclose any information as necessary to satisfy any law, regulation or other governmental request." (Id. (citing http://www.optimumonline.com/index.jhtml;jsessionid=IJGQQMJ2FS4OSCQLASDSFEQKBMCIMI5 pageType=terms)).

II. Prior Proceedings

On January 26, 2004, this Court issued an order granting plaintiffs' ex parte application to serve a subpoena upon non-party Cablevision to obtain the identity of each Doe defendant by requesting the name, address, telephone number, email address, and Media Access Control address for each defendant. In support of their application for expedited discovery, plaintiffs argued, inter alia, that good cause existed because ISPs typically retain user activity logs for only a limited period of time before erasing data. (Pl. Mem. 6; Whitehead Decl. I P 22).

On February 2, 2004, amici curiae Electronic Frontier Foundation, Public Citizen, and the American Civil Liberties Union ("amici") submitted a letter to the Court objecting to plaintiffs' ex parte application for expedited discovery. The objection came after the Court had already

issued its January 26, 2004 Order. **[**6]** In their letter, amici argued that the requested discovery violated the First Amendment, the case improperly joined all defendants, and personal jurisdiction was lacking.

On February 3, 2004, the Court ordered that its January 26, 2004 Order remain in effect. The February 3, 2004 Order further provided that, if Cablevision were served with a subpoena from plaintiffs, Cablevision was to give its subscribers notice within five business days, and Cablevision or the Doe defendants could move to quash the subpoena before the subpoena's return date. (2/3/04 Order). Cablevision was instructed to preserve the subpoenaed information in question pending resolution of any timely filed motions to quash. (Id.). The Court further ordered that issues raised by amici would be considered by the Court if and when any subscriber, defendant, or Cablevision moved to quash and the parties and non-party witnesses had been given an opportunity to be heard. (Id.).

On February 3, 2004, Cablevision received by fax a subpoena issued by plaintiffs' attorneys. (Kiefer Decl. P 2). The subpoena identified forty IP addresses and demanded that Cablevision produce, by February 23, 2004, information identifying **[**7]** the Cablevision subscribers who had used the indicated IP addresses at the times specified in the subpoena. (Id.).

[*560] Cablevision sent notice to all affected subscribers. (Id. P 4). Cablevision's letter stated,

> Unless we hear from you, or your attorney, in writing by February 20, 2004 that you have filed the appropriate papers with the U.S. District Court for the Southern District of New York to have the subpoena set aside, we will disclose your subscriber information to the plaintiffs, as required by the enclosed subpoena.

(2/12/04 Notice Letter from Cablevision to Subscriber; see also Kiefer Decl. P 4).

By letter dated February 19, 2004, attorney Kenneth J. Hanko advised the Court that he represented one of the Doe defendants. (2/19/04 Hanko Letter to Court). Hanko stated that his client joined the arguments set forth in the February 2, 2004 letter to the Court from the Electronic Frontier Foundation, Public Citizen, and the American Civil Liberties Union. (Id.). Hanko's letter also argued that plaintiffs "have not made a sufficient factual showing to warrant discovery concerning the unnamed defendants." (Id.).

On February 20, 2004, Cablevision **[**8]** received from Hanko a letter stating that he represented one of Cablevision's subscribers and that he "would expect that Cablevision will make every effort to quash the subpoena or otherwise limit the scope of the requested discovery so ... as not to infringe on [his] client's privacy rights." (Kiefer Decl. P 5). According to Cablevision attorney Alfred G. Kiefer, Jr., he called Hanko on February 20, 2004 and informed Hanko that because he had not filed a motion to quash the subpoena, Cablevision would have to comply with the subpoena. (Id. P 6).

On February 23, 2004, Cablevision complied with plaintiffs' subpoena and provided relevant identifying information about thirty-six defendants to plaintiffs. (Id. P 7; see also 3/2/04 Plaintiffs' Letter to Court; 3/12/04 Plaintiffs' Letter to Court). n2 According to Kiefer, Cablevision did so because Hanko did not indicate to Cablevision that he had filed or intended to file a motion to quash the subpoena and because Cablevision did not construe Hanko's letter to the Court as a motion to quash. (Kiefer Decl. P 7). According to Hanko, his transmittal of the copy of his February 19, 2004 letter to the Court, by which Hanko's client **[**9]** joined the arguments set forth by amici in their February 2, 2004 letter to the

Court, communicated to Cablevision his client's objection to the subpoena. (3/12/04 Letter from Hanko to the Court).

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n2 According to a March 12, 2004 letter from plaintiffs' counsel to the Court, Cablevision could not identify four of the Doe defendants. (3/12/04 Plaintiffs' Letter to Court).

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This Court issued an Order on February 27, 2004, in which it ruled that Hanko's February 19, 2004 letter to the Court would be construed as a motion to quash the subpoena. The Court set a briefing schedule, with a March 19, 2004 deadline for motions to quash from other Doe defendants and amici curiae papers.

The Court subsequently received three letter requests to quash the subpoena from or on behalf of other Doe defendants. (Letters from Doe defendants to Court dated 3/12/04, 3/15/04, and 3/18/04). Two Doe defendants also sought extensions of time to submit motions to quash. (Letters from Doe defendants to Court dated 3/16/04 and 3/18/04). **[**10]**

On March 25, 2004, the Court issued an Order extending the deadline for filing and service of motions to quash to April 8, 2004.

[*561] By letters dated April 7, 2004 and April 30, 2004, defendant Jane Doe ("Jane Doe") stated that she was using her former counsel Kenneth J. Hanko's February 19, 2004 letter to the Court as her formal motion to quash, based on lack of a sufficient factual showing permitting discovery, her First Amendment right to anonymity, and lack of personal jurisdiction. (Letters from Jane Doe, c/o Cindy Cohn, Esq., Electronic Frontier Foundation, to Court, dated 4/7/04 and 4/30/04).

In the meantime, from March 11, 2004 to April 13, 2004, plaintiffs voluntarily dismissed this action as to Does 5, 9, 10, 12, 20, 34, and 40, pursuant to Fed. R. Civ. P. 41(a). Thirty-three of the original forty Doe defendants remain.

DISCUSSION

I. Mootness

Plaintiffs contend that the motions to quash the subpoena are moot in light of Cablevision's compliance with the subpoena on February 23, 2004. (Pl. Opp. 6-7; see also Plaintiffs' Letters to Court dated 3/2/04 and 3/12/04). By the time this Court issued its February 27, 2004 Order **[**11]** setting a March 19, 2004 deadline for additional motions to quash the subpoena and amici curiae papers, Cablevision had already provided the subpoenaed information to plaintiffs.

Amici argue that the motions to quash are not moot because the Court is empowered to compel the suppression or return of evidence improperly obtained. (Am. Cur. Mem. 3). Amici contend that the disclosure of the Doe defendants' identities violated the Court's February 3, 2004 Order directing Cablevision to preserve subpoenaed information pending resolution of any motions to quash filed prior to the subpoena's return date. (Id. at 16). Accordingly, amici seek an order from the Court directing that the Doe defendants' identities not be used for any purpose. (Id.).

Plaintiffs' mootness argument is rejected. First, at least one "motion" to quash was timely lodged, as Hanko's letter of February 19, 2004 was the equivalent of a motion to quash, and it was submitted prior to the return date of the subpoena. Second, even though Cablevision has already produced the information, plaintiffs can be ordered to return the information and prohibited from using it. Accordingly, the issues are not moot, and I consider **[**12]** the issues on the merits.

II. The Merits

HN1 Pursuant to Fed. R. Civ. P. 45(c)(3)(A)(iii), a subpoena shall be quashed if it "requires disclosure of privileged or other protected matter and no exception or waiver applies."

Jane Doe moves to quash the subpoena based on (1) the subpoena's violation of her First Amendment right to engage in anonymous speech; (2) lack of personal jurisdiction; (3) improper joinder of the Doe defendants; and (4) lack of a sufficient factual showing to permit discovery. Jane Doe and amici argue, accordingly, that the Court should order plaintiffs to return the disclosed information to Cablevision. n3

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N3 Of the four moving defendants, only Jane Doe states substantive grounds for her motion to quash. Accordingly, I address only the grounds she and amici raise. In her February 19, 2004 letter, Jane Doe joined the arguments set forth in amici's February 2, 2004 letter, which included its arguments that the First Amendment bars disclosure of the Doe defendants' identities, lack of personal jurisdiction, improper joinder, and lack of a sufficient factual showing permitting discovery. Amici make the same arguments in their Memorandum in Support of Motions to Quash. By letters dated April 7, 2004 and April 30, 2004, Jane Doe reiterated her objections to disclosure of her identity based on the First Amendment, lack of a sufficient factual showing permitting discovery, and lack of personal jurisdiction. (Letters from Jane Doe, c/o Cindy Cohn, Esq., Electronic Frontier Foundation, to Court, dated 4/7/04 and 4/30/04).

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[*562] Plaintiffs contest these arguments and maintain that they have "good cause" for expedited discovery.

A. The First Amendment

Defendants' motions to quash raise two First Amendment issues: (1) whether a person who uses the Internet to download or distribute copyrighted music without permission is engaging in the exercise of speech; and (2) if so, whether such a person's identity is protected from disclosure by the First Amendment.

1. Applicable Law

a. First Protection for Anonymous Internet Speech

HN2 The Supreme Court has recognized that the First Amendment protects anonymous speech. Buckley v. American Constitutional Law Found., 525 U.S. 182, 200, 142 L. Ed. 2d 599, 119 S. Ct. 636 (1999) (invalidating, on First Amendment grounds, state statute requiring initiative petitioners to wear identification badges). As the Court has held, "anonymity is a shield from the tyranny of the majority." McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 357, 131 L. Ed. 2d 426, 115 S. Ct. 1511 (1995). In McIntyre, the Court

overturned an Ohio law that prohibited the dissemination of campaign literature that did not list the name and address of the person issuing the literature, holding that "under **[**14]** our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent." Id.; see also Talley v. California, 362 U.S. 60, 65, 4 L. Ed. 2d 559, 80 S. Ct. 536 (1960) (invalidating California statute prohibiting distribution of handbills without name and address of preparer).

HN3 It is well-settled that the First Amendment's protection extends to the Internet. Reno v. ACLU, 521 U.S. 844, 870, 138 L. Ed. 2d 874, 117 S. Ct. 2329 (1997); In re Verizon Internet Servs., Inc., 257 F. Supp. 2d 244, 259 (D. D.C. 2003), rev'd on other grounds, Recording Indus. Ass'n of America, Inc. v. Verizon Internet Servs., Inc., 359 U.S. App. D.C. 85, 351 F.3d 1229 (D.C. Cir. 2003); Columbia Ins. Co. v. Seescandy.Com, 185 F.R.D. 573, 578 (N.D. Cal. 1999); ACLU v. Johnson, 4 F. Supp. 2d 1029, 1033 (D. N.M. 1998), aff'd, 194 F.3d 1149 (10th Cir. 1999). Courts have recognized the Internet as a valuable forum for robust exchange and debate. See Reno v. ACLU, 521 U.S. at 870 ("Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it **[**15]** could from any soapbox."); Doe v. 2TheMart.Com, Inc., 140 F. Supp. 2d 1088, 1092 (W.D. Wash. 2001); Seescandy.Com, 185 F.R.D. at 578. The Internet is a particularly effective forum for the dissemination of anonymous speech. See, e.g., 2TheMart.Com, 140 F. Supp. 2d at 1092, 1097 ("Internet anonymity facilitates the rich, diverse, and far ranging exchange of ideas ... [;] the constitutional rights of Internet users, including the First Amendment right to speak anonymously, must be carefully safeguarded."); United States v. Perez, 247 F. Supp. 2d 459, 461 (S.D.N.Y. 2003) (noting the Internet's "vast and largely anonymous distribution and communications network").

Anonymous speech, like speech from identifiable sources, does not have absolute protection. The First Amendment, **[*563]** for example, does not protect copyright infringement, and the Supreme Court, accordingly, has rejected First Amendment challenges to copyright infringement actions. See, e.g., Harper & Row Publishers, Inc. v. Nation Enters., 471 U.S. 539, 555-56, 569, 85 L. Ed. 2d 588, 105 S. Ct. 2218 (1985); Universal City Studios, Inc. v. Reimerdes, 82 F. Supp. 2d 211, 220 (S.D.N.Y. 2000) **[**16]** (the HN4 "Supreme Court ... has made it unmistakably clear that the First Amendment does not shield copyright infringement"). Parties may not use the First Amendment to encroach upon the intellectual property rights of others. See In re Capital Cities/ABC, Inc., 918 F.2d 140, 143 (11th Cir. 1990).

b. First Amendment Implications of Civil Subpoena Power

HN5 Against the backdrop of First Amendment protection for anonymous speech, courts have held that civil subpoenas seeking information regarding anonymous individuals raise First Amendment concerns. For example, in NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 462, 2 L. Ed. 2d 1488, 78 S. Ct. 1163 (1958), the Supreme Court held that a discovery order requiring the NAACP to disclose its membership list interfered with the First Amendment's freedom of assembly. Similarly, in NLRB v. Midland Daily News, 151 F.3d 472, 475 (6th Cir. 1998), the Sixth Circuit declined on First Amendment grounds to enforce a subpoena duces tecum issued by the National Labor Relations Board seeking to require a newspaper publisher to disclose the identity of an anonymous advertiser. See also Los Angeles Memorial Coliseum Comm'n v. Nat'l Football League, 89 F.R.D. 489, 494-95 (C.D. Cal. 1981) **[**17]** (granting motion to quash civil subpoena seeking disclosure of confidential journalistic sources); but see Lee v. U.S. Dep't of Justice, 287 F. Supp. 2d 15, 24-25 (D. D.C. 2003) (denying motion to quash subpoena duces tecum seeking journalists' confidential news sources in light of plaintiff's need to obtain information to pursue Privacy Act action against government).

Courts have addressed, on a number of recent occasions, motions to quash subpoenas seeking identifying subscriber information from ISPs. Some courts have required disclosure.

For example, in a case closely resembling this one, the district court in Verizon, 257 F. Supp. 2d at 267-68, 275, rev'd on other grounds, Recording Indus. Ass'n of America, Inc. v. Verizon Internet Servs., Inc., 359 U.S. App. D.C. 85, 351 F.3d 1229 (D.C. Cir. 2003), denied an ISP's motion to quash a subpoena served pursuant to the Digital Millennium Copyright Act ("DMCA") seeking subscriber information about P2P users who had allegedly engaged in copyright infringement. n4 Similarly, in In re Subpoena Duces Tecum to America Online, Inc., 52 Va. Cir. 26, 2000 Va. Cir. LEXIS 220, No. 40570, 2000 WL 1210372, at *1 (Va. Cir. Ct. Jan. 31, 2000), **[**18]** rev'd on other grounds, America Online, Inc. v. Anonymous Publicly Traded Co., 261 Va. 350, 542 S.E.2d 377 (Va. 2001), the court denied a motion to quash a subpoena seeking the identity of certain Doe defendants who had allegedly made defamatory statements and disclosed confidential insider information online. Other courts, in different circumstances, have quashed subpoenas seeking information identifying ISP subscribers. See, e.g., 2TheMart.Com, 140 F. Supp. 2d at 1090, 1097-98 (granting motion to quash subpoena seeking identities of anonymous non-party ISP subscribers in shareholder derivative suit); Anderson v. Hale, 202 F.R.D. 548, No. 00 Civ. 2021, 2001 **[*564]** WL 503045, at *9 (N.D. Ill. 2001) (granting motion to quash subpoena seeking identifying information from ISP about subscribers affiliated with organization); Dendrite Int'l. Inc. v. Doe, 342 N.J. Super. 134, 775 A.2d 756, 760, 772 (N.J. Super. Ct. App. Div. 2001) (denying motion for expedited discovery to obtain identity of ISP subscriber due to failure to establish prima facie defamation claim).

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n4 The District of Columbia Circuit reversed, holding that § 512(h) of the DMCA authorized service of a subpoena only on "an ISP engaged in storing on its servers material that is infringing or the subject of infringing activity." 351 F.3d at 1233.

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2. Application

a. Is Defendants' Alleged Conduct "Speech?"

As a threshold matter, I address whether the use of P2P file copying networks to download, distribute, or make available for distribution copyrighted sound recordings, without permission, is an exercise of speech. I conclude that this conduct qualifies as speech, but only to a degree.

*HN6*In contrast to many cases involving First Amendment rights on the Internet, a person who engages in P2P file sharing is not engaging in true expression. See, e.g., Reno v. ACLU, 521 U.S. at 870 (participation in Internet chat rooms); America Online, 261 Va. 350, 2000 WL 1210372, at *1 (same); 2TheMart.Com, 140 F. Supp. 2d at 1092 (Internet bulletin board); Dendrite, 775 A.2d at 759-60 (same); La Societe Metro Cash & Carry France v. Time Warner Cable, 2003 Conn. Super. LEXIS 3302, No. CV0301974OOS, 2003 WL 22962857, at *1 (Conn. Super. Ct. Dec. 2, 2003) (email communications through Internet). Such an individual is not seeking to communicate a thought or convey an idea. Instead, the individual's real purpose is to obtain music for free.

Arguably, however, a file sharer is making a statement **[**20]** by downloading and making available to others copyrighted music without charge and without license to do so. Alternatively, the file sharer may be expressing himself or herself through the music selected and made available to others. Although this is not "political expression" entitled to the "broadest protection" of the First Amendment, McIntyre, 514 U.S. at 346 (quoting Buckley v. Valeo, 424 U.S. 1, 14, 46 L. Ed. 2d 659, 96 S. Ct. 612 (1976), n5 the file sharer's speech is

still entitled to "some level of First Amendment protection." Verizon, 257 F. Supp. 2d at 260, rev'd on other grounds, Recording Indus. Ass'n of America, Inc. v. Verizon Internet Servs., Inc., 359 U.S. App. D.C. 85, 351 F.3d 1229 (D.C. Cir. 2003).

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n5 See McIntyre, 514 U.S. at 347 ("When a law burdens core political speech, we apply 'exacting scrutiny,' and we uphold the restriction only if it is narrowly tailored to serve an overriding state interest.").

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I conclude, accordingly, that the use of P2P file copying **[**21]** networks to download, distribute, or make sound recordings available qualifies as speech entitled to First Amendment protection. That protection, however, is limited, and is subject to other considerations.

b. Are Defendants' Identities Protected from Disclosure by the First Amendment?

I consider next whether the Doe defendants' identities are protected from disclosure by the First Amendment. For the reasons set forth below, I conclude that the First Amendment does not bar disclosure of the Doe defendants' identities.

HN7 Cases evaluating subpoenas seeking identifying information from ISPs regarding subscribers who are parties to litigation have considered a variety of factors to weigh the need for disclosure against First Amendment interests. These factors include: (1) a concrete showing of a prima facie claim of actionable harm, see Seescandy.Com, 185 F.R.D. at 577, 579-81 **[*565]** (permitting plaintiff to request discovery, based on particular factors, to determine identities of defendants known only by Internet pseudonyms and domain name registration identities); America Online, 261 Va. 350, 2000 WL 1210372, at *8, rev'd on other grounds, America Online, Inc. v. Anonymous Publicly Traded Co., 261 Va. 350, 542 S.E.2d 377 (Va. 2001); **[**22]** Dendrite, 775 A.2d at 760; (2) specificity of the discovery request, Seescandy.Com, 185 F.R.D. at 578, 580; Dendrite, 775 A.2d at 760; (3) the absence of alternative means to obtain the subpoenaed information, see Seescandy.Com, 185 F.R.D. at 579; (4) a central need for the subpoenaed information to advance the claim, America Online, 261 Va. 350, 2000 WL 1210372, at *8; Dendrite, 775 A.2d at 760-61; and (5) the party's expectation of privacy, Verizon, 257 F. Supp. 2d at 260-61, 267-68, rev'd on other grounds, Recording Indus. Ass'n of America, Inc. v. Verizon Internet Servs., Inc., 359 U.S. App. D.C. 85, 351 F.3d 1229 (D.C. Cir. 2003). As set forth below, each of these factors supports disclosure of defendants' identities.

i. **Prima Facie Claim of Copyright Infringement**

Plaintiffs have made a concrete showing of a prima facie claim of copyright infringement. HN8 A prima facie claim of copyright infringement consists of two elements: "(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original." Arden v. Columbia Pictures Indus., Inc., 908 F. Supp. 1248, 1257 (S.D.N.Y. 1995) **[**23]** (quoting Feist Publications v. Rural Tel. Serv. Co., 499 U.S. 340, 361, 113 L. Ed. 2d 358, 111 S. Ct. 1282 (1991)).

Plaintiffs have alleged ownership of the copyrights or exclusive rights of copyrighted sound recordings at issue in this case sufficiently to satisfy the first element of copyright infringement. (Compl. PP 23, 24) . n6 Plaintiffs have attached to the complaint a partial list of the sound recordings the rights to which defendants have allegedly infringed. (Id., Exh. A).

Each of the copyrighted recordings on the list is the subject of a valid Certificate of Copyright Registration issued by the Register of Copyrights to one of the record company plaintiffs. (Id. P 23). Plaintiffs also allege that among the exclusive rights granted to each plaintiff under the Copyright Act are the exclusive rights to reproduce and distribute to the public the copyrighted recordings. (Id. P 24). Defendants have failed to refute in any way plaintiffs' allegations of ownership.

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n6 Exclusive licensees can sue for copyright infringement. See Random House, Inc. v. Rosetta Books LLC, 283 F.3d 490, 491 (2d Cir. 2002).

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Plaintiffs have also adequately pled the Doe defendants' infringement of plaintiffs' licenses and copyrights, thus satisfying the second element in a copyright infringement claim. Plaintiffs allege that each defendant, without plaintiffs' consent, "used, and continues to use an online media distribution system to download, distribute to the public, and/or make available for distribution to others" certain of the copyrighted recordings in Exhibit A to the complaint. (Id. P 25).

Plaintiffs have submitted supporting evidence listing the copyrighted songs downloaded or distributed by defendants using P2P systems. (Id., Exh. A; Whitehead Decl. I, Exhs. 1-3). The lists also specify the date and time at which defendants' allegedly infringing activity occurred and the IP address assigned to each defendant at the time. (Compl., Exh. A).

Moreover, HN9 the use of P2P systems to download and distribute copyrighted music has been held to constitute copyright infringement. See A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004, 1013-14 (9th **[*566]** Cir. 2001) (holding that downloading and distribution of copyrighted music via P2P network Napster constituted copyright infringement); **[**25]** In re Aimster Copyright Litigation, 334 F.3d 643, 653 (7th Cir. 2003) (affirming grant of preliminary injunction against P2P network Aimster in absence of evidence that system was used to transfer non-copyrighted files), cert. denied, Deep v. Recording Indus. Ass'n of America, Inc., 157 L. Ed. 2d 893, 124 S. Ct. 1069 (2004). Accordingly, plaintiffs have sufficiently pled copyright infringement to establish a prima facie claim.

ii. Specificity of the Discovery Request

Plaintiffs' discovery request is also sufficiently specific to establish a reasonable likelihood that the discovery request would lead to identifying information that would make possible service upon particular defendants who could be sued in federal court. See Seescandy.Com, 185 F.R.D. at 578, 580; Dendrite, 775 A.2d at 760. Plaintiffs seek identifying information about particular Cablevision subscribers, based on the specific times and dates when they downloaded specific copyrighted and licensed songs. (Compl., Exh. A.; Whitehead Decl. I, Exhs. 1-3). Such information will enable plaintiffs to serve process on defendants.

iii. Absence of Alternative Means [26] to Obtain Subpoenaed Information**

Plaintiffs have also established that they lack other means to obtain the subpoenaed information by specifying in their ex parte application for expedited discovery and papers in opposition to Jane Doe's motion to quash the steps they have taken to locate the Doe defendants. See Seescandy.Com, 185 F.R.D. at 579. These include using a publicly available database to trace the IP address for each defendant, based on the times of infringement. (Pl. Mem. 1-2; Pl. Opp. 2-4; Whitehead Decl. I PP 12, 16).

iv. Central Need for Subpoenaed Information

Plaintiff have also demonstrated that the subpoenaed information is centrally needed for plaintiffs to advance their copyright infringement claims. See America Online, 261 Va. 350, 2000 WL 1210372, at *8; Dendrite, 775 A.2d at 760-61. Ascertaining the identities and residences of the Doe defendants is critical to plaintiffs' ability to pursue litigation, for without this information, plaintiffs will be unable to serve process.

v. Defendants' Expectation of Privacy

Plaintiffs are also entitled to discovery in light of defendants' minimal expectation **[**27]** of privacy. See Verizon, 257 F. Supp. 2d at 260-61, 267-68, rev'd on other grounds, Recording Indus. Ass'n of America, Inc. v. Verizon Internet Servs., Inc., 359 U.S. App. D.C. 85, 351 F.3d 1229 (D.C. Cir. 2003). Cablevision's Terms of Service, to which its subscribers -- including the Doe defendants -- must commit, specifically prohibit the "transmission or distribution of any material in violation of any applicable law or regulation ... This includes, without limitation, material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorization." (Cablevision Mem. 2 (citing http://www.optimumonline.com/index.jhtml?pageType=aup)). Moreover, the Terms of Service state that "Cablevision has the right ... to disclose any information as necessary to satisfy any law, regulation or other governmental request." (Cablevision Mem. 2 (citing http://www.optimumonline.com/index.jhtml;jsessionid=IJGQQMJ2FS4OSCQLASDSFEQKBMCIMI5G?pageType=terms)). Accordingly, defendants have little expectation of privacy in downloading and distributing copyrighted songs without permission. See Verizon, 257 F. Supp. 2d at 260-61, 267-68, **[**28]** rev'd on other grounds, Recording Indus. Ass'n of America, Inc. v. Verizon Internet Servs., Inc., 359 U.S. App. D.C. 85, 351 F.3d 1229 (D.C. Cir. 2003). n7

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n7 I note that the court in Verizon also based its decision to allow disclosure of ISP subscriber identities on the nature of P2P file sharing: "If an individual subscriber opens his computer to permit others, through peer-to-peer file-sharing, to download materials from that computer, it is hard to understand just what privacy expectation he or she has after essentially opening the computer to the world." 257 F. Supp. 2d at 267.

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[*567] In sum, defendants' First Amendment right to remain anonymous must give way to plaintiffs' right to use the judicial process to pursue what appear to be meritorious copyright infringement claims.

B. Personal Jurisdiction

Jane Doe and amici ask the Court to quash the subpoena based on the absence of personal jurisdiction. n8 This argument is rejected as premature.

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n8 Plaintiffs contend that no defendant has argued lack of personal jurisdiction. (Pl. Opp. 14). In fact, the February 19, 2004 letter to the Court from attorney Kenneth J. Hanko states that Jane Doe joined the arguments set forth in amici's February 2, 2004 letter to the Court,

including an objection to the subpoena based on lack of personal jurisdiction. Moreover, by letter dated April 30, 2004, Jane Doe explicitly contested personal jurisdiction.

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HN10 First, this Court has the discretion to allow discovery to determine the basis for personal jurisdiction. See Volkart Bros., Inc. v. M/V Palm Trader, 130 F.R.D. 285, 290 (S.D.N.Y. 1990) (citing cases).

Second, without the identifying information sought by plaintiffs in the Cablevision subpoena, it would be difficult to assess properly the existence of personal jurisdiction over the Doe defendants. This analysis requires an evaluation of the contacts between the various defendants and the forum state. See LiButti v. United States, 178 F.3d 114, 122 (2d Cir. 1999) (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 85 L. Ed. 2d 528, 105 S. Ct. 2174 (1985)); Retail Software Servs., Inc. v. Lashlee, 854 F.2d 18, 23 (2d Cir. 1988) (same). A holding at this stage that personal jurisdiction is lacking would be premature.

Amici argue, however, that personal jurisdiction is lacking because research techniques available to plaintiffs prior to this litigation show the likelihood that the majority of the Doe defendants are not New York residents. (Am. Cur. Mem. 11). A supporting declaration by Seth Schoen, staff technologist with amicus curiae Electronic Frontier **[**30]** Foundation, explains the process by which defendants' IP addresses can be matched up with specific geographic designations, using a publicly available database operated by the American Registry for Internet Numbers. (See Schoen Decl.). These geographic designations indicate the "likely" locations of the residences or other venues where defendants used their Internet-connected computers. (Id. PP 5-9). Amici maintain that as many as thirty-six of the forty Doe defendants are "likely" to be found outside of New York. (Id. P 16).

Plaintiffs, however, dispute the accuracy of the methods described in the Schoen Declaration. (Pl. Opp. 18 n.11; Whitehead Decl. II P 9). According to plaintiffs, the geographical designations fail "far short" of 100 percent accuracy and are "often extremely inaccurate." (Whitehead Decl. II P 9).

Assuming personal jurisdiction were proper to consider at this juncture, the techniques suggested by amici, at best, suggest the mere "likelihood" that a number of defendants are located outside of New York. This, however, does not resolve **[*568]** whether personal jurisdiction would be proper.

Accordingly, I decline to rule on personal jurisdiction at this time **[**31]** and deny Jane Doe's motion to quash based on lack of personal jurisdiction.

C. Joinder

Jane Doe and amici further urge the Court to quash the subpoena based on improper joinder. Although they raise a fair issue as to whether all these claims against forty apparently unrelated individuals should be joined in one lawsuit, discussion of joinder is not germane to the motions to quash before the Court, as the remedy for improper joinder is severance, see Fed. R. Civ. P. 21, and not the quashing of the subpoena at issue here. Accordingly, as consideration of joinder is premature, I deny Jane Doe's motion to quash based on improper joinder.

D. Factual Showing for Expedited Discovery

Jane Doe and amici also argue that plaintiffs have not made a "sufficient factual showing" to justify disclosure of defendants' personal information. (2/19/04 Letter from Hanko to Court;

4/7/04 Letter from Jane Doe to Court; Am. Cur. Mem. 1). Plaintiffs argue, however, that "good cause" justified the expedited discovery permitted by the Court upon plaintiffs' ex parte application. (Pl. Opp. 7-10).

Parties are essentially urging the Court to revisit **[**32]** its January 26, 2004 Order, by which I permitted plaintiffs to serve immediate discovery. I decline to do so and confine my inquiry, as set forth above, to the motions to quash the subpoena.

CONCLUSION

For the reasons set forth above, defendants' motions to quash the subpoena are denied and the arguments raised by amici are rejected. Amici's request that plaintiffs be ordered to return the subpoenaed information to Cablevision and to refrain from using it is denied. Plaintiffs may file and serve an amended complaint by August 16, 2004.

SO ORDERED.

Dated: New York, New York
July 26, 2004

DENNY CHIN

United States District Judge

EXHIBIT 7

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED
APR 30 2004
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____ DEPUTY CLERK

UMG RECORDS, INC., et al.,	)	
	)	
Plaintiffs,	)	
	)	
VS.	)	Civil Action No: SA-04-CA-0357-XR
	)	
JOHN DOE 1 and JOHN DOE 2,	)	
	)	
Defendants.	)	

ORDER

On this date, the Court considered Plaintiffs' Expedited *Ex Parte* Motion for Order Permitting Third-Party Discovery. The Court finds good cause exists to allow limited discovery in light of the tenuous existence of electronic evidence. *See Physicians Interactive v. Lathian Systems, Inc.*, 2003 WL 23018270 (E.D. Va. 2003) (holding in part that expedited discovery should be allowed because electronic evidence can be easily erased and manipulated). The Court GRANTS the Motion with the following conditions (docket no. 3):

1. Plaintiffs will be allowed to serve immediate discovery on Trinity University to obtain the identity of both John Doe Defendants by serving a Rule 45 subpoena that seeks information sufficient to identify the Defendants, including their names, addresses, telephone numbers, e-mail addresses, and Media Access Control address;
2. If and when Trinity University is served with a subpoena, it shall give written notice, which can include use of e-mail, to the subscriber in question within five business days. If Trinity University and/or the Defendants wish to move to quash the subpoena, the party must do so before the return date of the subpoena, which shall be 25 days from the date of service;

4

3. If and when Trinity University is served with a subpoena, it shall preserve the subpoenaed information pending resolution of any timely filed motions to quash;

4. Any information disclosed to Plaintiffs in response to the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under the Copyright Act as set forth in the Complaint; and

5. Plaintiffs shall provide a copy of their Expedited *Ex Parte* Motion for Order Permitting Third-Party Discovery and a copy of this Order to Trinity University along with the subpoena.

SIGNED this 30th day of April, 2004.

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE

EXHIBIT 8

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MOTOWN RECORD COMPANY, L.P., a California limited partnership; INTERSCOPE RECORDS, a California general partnership; VIRGIN RECORDS AMERICA, INC., a California corporation; ATLANTIC RECORDING CORPORATION, a Delaware corporation; BMG MUSIC, a New York general partnership; ELEKTRA ENTERTAINMENT GROUP INC., a Delaware corporation; WARNER BROS. RECORDS INC., a Delaware corporation; PRIORITY RECORDS LLC, a California limited liability company; CAPITOL RECORDS, INC., a Delaware corporation; ARISTA RECORDS, INC., a Delaware corporation; MAVERICK RECORDING COMPANY, a California joint venture; SONY MUSIC ENTERTAINMENT INC., a Delaware corporation; LOUD RECORDS, LLC, a Delaware corporation; and UMG RECORDINGS, INC., a Delaware corporation,	)	
Plaintiffs,	)	
vs.	)	
DOES 1 - 16,	)	
Defendants.	)	

ORDER GRANTING PLAINTIFFS' *EX PARTE* MOTION FOR LEAVE TO TAKE IMMEDIATE DISCOVERY

Upon the *Ex Parte* Motion of Plaintiffs for Leave to Take Immediate Discovery and the supporting Memorandum of Law, and the declaration of Jonathan Whitehead and the exhibit thereto, it is hereby:

ORDERED that Plaintiffs may serve immediate discovery on WideOpenWest Holdings LLC to obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks information sufficient to identify each Doe Defendant, including the name, address, telephone number, e-mail address, and Media Access Control addresses for each Defendant. The disclosure of this information is ordered pursuant to 47 U.S.C. § 551(c)(2)(B).

IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in response to the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under the Copyright Act.

IT IS FURTHER ORDERED THAT WideOpenWest shall preserve the data, records and information responsive to the subpoena that will be served by the Plaintiffs.

IT IS FURTHER ORDERED THAT if and when WideOpenWest is served with a subpoena, within five (5) business days thereof it shall notify each Doe Defendant (WideOpenWest subscribers) of the existence of this lawsuit and of receipt of Plaintiffs' subpoena whereby Plaintiffs are seeking to learn the subscribers' identities. After WideOpenWest gives such notice to the Doe Defendants, any Doe Defendant may raise an objection in the form of a motion to quash at the status conference which the Court has scheduled for June 15, 2004, 9:30 a.m. in Courtroom 1858, Dirksen Federal Building, 219 S. Dearborn, Chicago, Illinois 60604. WideOpenWest shall include in its notice to the Doe Defendants notice of this status conference.

IT IS FURTHER ORDERED THAT counsel for the Plaintiffs shall provide a copy of this Order to WideOpenWest when the subpoena is served.

Dated: 5/24/04

Nan R. Nolan
United States Magistrate Judge Nan R. Nolan

EXHIBIT 9

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
LAFAYETTE DIVISION

ARISTA RECORDS, INC., a Delaware corporation; ELEKTRA ENTERTAINMENT GROUP INC., a Delaware corporation; MOTOWN RECORD COMPANY, L.P., a California limited partnership; SONY MUSIC ENTERTAINMENT INC., a Delaware corporation; UMG RECORDINGS, INC., a Delaware corporation; and WARNER BROS. RECORDS INC., a Delaware corporation,	)	Cause No.: 4:04CV0036AS
Plaintiffs,	)	
v.	)	
JOHN DOE,	)	
Defendant.	)	

ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO TAKE IMMEDIATE DISCOVERY

This matter coming before the Court upon Plaintiffs' Motion for Leave to Take Immediate Discovery, and the Court being duly advised, hereby

ORDERS that Plaintiffs may serve immediate discovery on Northwest Indiana Internet Services, Inc. to obtain the identity of the Doe Defendant by serving a Rule 45 subpoena that seeks information sufficient to identify the Doe Defendant, including the name, address, telephone number, e-mail address, and Media Access Control addresses for the Defendant. The disclosure of this information is ordered pursuant to 47 U.S.C. § 551(c)(2)(B).

IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in response to the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under the Copyright Act.

Dated: 5/24/2004

s/Allen Sharp
United States District Judge

Copies to:

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EXHIBIT 10

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ARISTA RECORDS, INC., a Delaware corporation; MAVERICK RECORDING COMPANY, a California joint venture; SONY MUSIC ENTERTAINMENT INC., a Delaware corporation; PRIORITY RECORDS LLC, a California limited liability company; UMG RECORDINGS, INC., a Delaware corporation; ATLANTIC RECORDING CORPORATION, a Delaware corporation; WARNER BROS. RECORDS INC., a Delaware corporation; MOTOWN RECORD COMPANY, L.P., a California limited partnership; ELEKTRA ENTERTAINMENT GROUP INC., a Delaware corporation; CAPITOL RECORDS, INC., a Delaware corporation; VIRGIN RECORDS AMERICA, INC., a California corporation; BMG MUSIC, a New York general partnership; and INTERSCOPE RECORDS, a California general partnership,	§	Case No.: H 04-1677
Plaintiffs,	§	
vs.	§	
DOES 1 - 9,	§	
Defendants.	§	

ORDER GRANTING PLAINTIFFS' EXPEDITED *EX PARTE* MOTION FOR ORDER PERMITTING THIRD-PARTY DISCOVERY PRIOR TO FED. R. CIV. P. 26(f) CONFERENCE

Upon the Expedited *Ex Parte* Motion of Plaintiffs for Order Permitting Third-Party Discovery Prior to Fed. R. Civ. P. 26(f) Conference and Memorandum of Law in Support, and the declaration of Jonathan Whitehead and the exhibit thereto, it is hereby:

1

ORDERED that Plaintiffs may serve immediate discovery on Texas A&M University to obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks information sufficient to identify each Doe Defendant, including the name, address, telephone number, e-mail address, and Media Access Control addresses for each Defendant.

IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in response to the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under the Copyright Act.

Dated: May 20, 2004

United States District Judge

EXHIBIT 11

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ELEKTRA ENTERTAINMENT GROUP INC., a Delaware corporation; MOTOWN RECORD COMPANY, L.P., a California limited partnership; ATLANTIC RECORDING CORPORATION, a Delaware corporation; UMG RECORDINGS, INC., a Delaware corporation; CAPITOL RECORDS, INC., a Delaware corporation; SONY MUSIC ENTERTAINMENT INC., a Delaware corporation; WARNER BROS. RECORDS INC., a Delaware corporation; BMG MUSIC, a New York general partnership; VIRGIN RECORDS AMERICA, INC., a California corporation; and ARISTA RECORDS, INC., a Delaware corporation, Plaintiffs, v. DOES 1 - 5, Defendants.	CIVIL ACTION NO. FILED SCRANTON MAY 11 2004 Per DEPUTY CLERK 3 : CV - 04 - 940

ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO TAKE IMMEDIATE DISCOVERY

Upon the Motion of Plaintiffs for Leave to Take Immediate Discovery and the supporting Memorandum of Law, and the declaration of Jonathan Whitehead and the exhibit thereto, it is hereby:

ORDERED that Plaintiffs may serve immediate discovery on Mansfield University to obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks information sufficient to identify each Doe Defendant,

including the name, address, telephone number, e-mail address, and Media Access Control addresses for each Defendant.

IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in response to the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under the Copyright Act.

Dated: May 11, 2004

United States District Judge