

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UMG RECORDINGS, INC., *et al.*, )  
 )  
 Plaintiffs, )  
 )  
 v. ) No. 04-00093 (CKK)  
 )  
 DOES 1-199, )  
 )  
 Defendants. )

**MOTION OF AMICI CURIAE  
PUBLIC CITIZEN, AMERICAN CIVIL LIBERTIES UNION, AND  
ELECTRONIC FRONTIER FOUNDATION,  
AND ACLU OF THE NATIONAL CAPITOL AREA  
FOR LEAVE TO FILE MEMORANDUM AS AMICI CURIAE  
ADDRESSING MOTION FOR EXPEDITED DISCOVERY**

Public Citizen, the American Civil Liberties Union, and the Electronic Frontier Foundation move the Court to grant them leave to file the accompanying memorandum as amici curiae addressing the pending ex parte motion for expedited discovery:

1. This is an action for copyright infringement in which sixteen music companies seek injunctive relief, damages, and fees and costs against 199 anonymous and completely unrelated individuals. Plaintiffs allege that defendants have displayed certain data files on their personal computers, containing copyrighted musical performances, to the general public over the Internet, in a manner that enables the public to download those files to their own computers. Plaintiffs have moved the Court, ex parte, for leave to take discovery to identify the anonymous defendants so that they can be served with summonses.

2. Public Citizen is a public interest organization based in Washington, D.C., which has approximately 165,000 members. Since its founding by Ralph Nader in 1971, Public Citizen has urged citizens to speak out against abuses by a variety of large institutions, including corporations,

government agencies, and unions, and it has advocated a variety of protections for the rights of consumers, citizens and employees to encourage them to do so. Along with its efforts to encourage public participation, Public Citizen has brought and defended numerous cases involving the First Amendment rights of citizens who participate in public debates. Public Citizen has been in the forefront of the development of the law to protect the right to speak anonymously on the Internet and to develop standards for determining when the right to speak anonymously should yield to a plaintiff's claimed right to identify a potential defendant in litigation. Public Citizen has represented Doe defendants or appeared as amicus curiae in numerous cases in which subpoenas have been sought to identify anonymous Internet users. *Northwest Airlines v. Teamsters Local 2000*, No. 00-08DWF/AJB (D. Minn.); *Hollis-Eden Pharmaceutical Corp. v. Doe*, Case No. GIC 759462 (Cal. Super. San Diego Cy.); *iXL Enterprises v. Doe*, No. 2000CV30567 (Ga. Super. Fulton Cy.); *Thomas & Betts v. John Does 1 to 50*, Case No. GIC 748128 (Cal. Super. San Diego Cy.); *Hritz v. Doe*, C-1-00-835 (S.D. Ohio); *WRNN TV Associates v. Doe*, CV-00-0181990S (Conn. Super. Stamford); *Dendrite v. Doe*, 342 N.J. Super. 134, 775 A.2d 756 (N.J.App. 2001); *Donato v. Moldow*, No. BER-L-6214-01 (N.J. Super. Bergen Cy.); *Equidyne Corp. v. John Doe No. 9*, No. 03-1671 (3d Cir.); *Melvin v. Doe*, 836 A.2d 42 (Pa. 2003); *RIAA v. Verizon Internet Services*, 351 F.3d 1229 (D.C. Cir. 2003).

Electronic Frontier Foundation ("EFF") is a nonprofit public interest organization dedicated to protecting civil liberties and free expression in the digital world. Founded in 1990, EFF has over 11,000 paying members and represents the interests of Internet users in court cases and in the broader policy debates surrounding the application of law in the digital age. EFF publishes a comprehensive archive of digital civil liberties information at one of the most linked-to websites in the world,

<<http://www.eff.org>>. EFF has handled cases involving the protection of anonymity speech online in a wide variety of contexts.

The American Civil Liberties Union (“ACLU”) is a nationwide, nonprofit, nonpartisan organization with approximately 400,000 members dedicated to the principles of liberty and equality embodied in the U.S. Constitution. The protection of principles of freedom of expression as guaranteed by the First Amendment is an area of special concern to the ACLU. In this connection, the ACLU has been at the forefront in numerous state and federal cases involving freedom of expression on the Internet. The ACLU has also been involved in numerous cases raising issues of due process and the right to anonymous speech.

The ACLU of the National Capitol Area is the local affiliate of the ACLU. Like the national ACLU, the ACLU of the National Capitol Area is frequently involved in cases raising issues of freedom of expression and due process.

3. Because the Doe defendants have not yet been served, no person has had the opportunity to argue for their interests in this proceeding. Amici do not represent any of the Does in this case; nor do they aspire to do so. However, amici seek leave to file this brief to argue that, notwithstanding the serious violations of law alleged in the complaint, plaintiffs have not made a sufficient factual showing to warrant discovery into the identities of persons who have communicated anonymously over the Internet, including a showing that there is personal jurisdiction of each of the 199 defendants. Moreover, there are serious concerns about whether all 199 defendants are properly joined in one action, particularly in light of the fact that, in justifying discovery, plaintiffs have made a factual showing with respect to three defendants but present no evidence to support identification of the other 196 individuals. Finally, we argue that, in the event

some discovery is allowed, certain additional conditions should be imposed.

4. Undersigned counsel Mr. Levy has asked the consent of plaintiffs' counsel Thomas Perrelli to this motion, who stated that plaintiffs do not consent.

### **CONCLUSION**

The motion for leave to file as amici curiae should be granted.

Respectfully submitted,

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February 2, 2004

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**ORDER**

The motion of Public Citizen, American Civil Liberties Union, Electronic Frontier Foundation, and ACLU of the National Capitol Area for leave to file a memorandum as amici curiae is granted.

Dated: February \_\_, 2004

\_\_\_\_\_  
United States District Judge

## CERTIFICATE OF SERVICE

I hereby certify that, on this 2<sup>nd</sup> day of February, 2004, I caused copies of the foregoing Motion for Leave To File as Amici Curiae, Proposed Order, and Proposed Memorandum of Amici Curiae to be served by first-class mail, postage prepaid, on counsel for plaintiffs as follows:

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February 2, 2004