

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BMG MUSIC, et al.,	)	Case No. 04-CV-01240
	)	
Plaintiffs,	)	<b>MOTION OF PUBLIC CITIZEN,</b>
	)	<b>ELECTRONIC FRONTIER</b>
v.	)	<b>FOUNDATION, AMERICAN</b>
	)	<b>CIVIL LIBERTIES UNION AND</b>
DOES 1-3,	)	<b>ACLU OF PENNSYLVANIA FOR</b>
	)	<b>LEAVE TO FILE AMICUS</b>
Defendants.	)	<b>CURIAE BRIEF IN</b>
	)	<b>CONNECTION WITH</b>
	)	<b>PLAINTIFFS' REQUEST</b>
	)	<b>FOR EXPEDITED PROCESSING</b>

Public Citizen, the American Civil Liberties Union, the Electronic Frontier Foundation, and the ACLU of Pennsylvania move the Court for leave to file the accompanying *amici curiae* brief in connection with plaintiffs' pending *ex parte* motion for expedited discovery.

1. This is an action for copyright infringement in which nine independent and unrelated music companies seek injunctive relief, damages and fees and costs against three anonymous and completely unrelated individuals accused of committing separate and distinct wrongs. Plaintiffs allege that defendants have each displayed certain data files on their personal computers, containing different 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.

2. Public Citizen is a public interest organization based in Washington, D.C., which has approximately 165,000 members. Since its founding 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).

3. 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 anonymous speech online in a wide variety of contexts.

4. 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.

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

6. 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. *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. Moreover, there are serious concerns about whether the separate and unrelated 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 only one defendant, and present no evidence to support identification of the other defendants.



Attorneys for Public Citizen

Cindy A. Cohn  
Wendy Seltzer  
454 Shotwell Street  
San Francisco, CA 94110  
Telephone: (415) 436-9333  
Facsimile: (415) 436-9993

Attorneys for Electronic Frontier Foundation

Christopher A. Hansen  
Aden J. Fine  
18<sup>th</sup> Floor  
125 Broad Street  
New York, New York 10004  
(212) 549-2500

Attorneys for American Civil Liberties Union