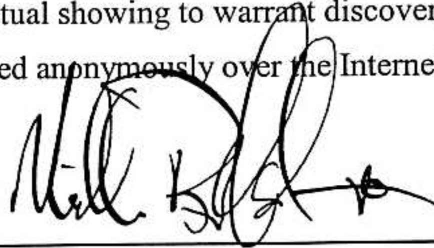
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

MOTOWN RECORD COMPANY, L.P., *et al.*,		)	
	Plaintiffs,	)	
v.		)	No. 04-CV-0439
DOES 1-252,		)	
	Defendants.	)	

MOTION OF DOE #106

Doe #106 moves the court to quash the subpoena served on Cox Communications by Motown Record Company, L.P., et al., seeking disclosure of documents relating to subscriber identity for the following reasons:

1. Plaintiffs lack personal jurisdiction over Doe number 106.
2. Improper Venue 12(b)(3)
2. Plaintiffs have improperly joined Doe number 106 to this suit.
3. Plaintiffs have not made a sufficient factual showing to warrant discovery of Doe number 106 personal identity whom has communicated anonymously over the Internet.



Neville J. Bedford
Attorney for Doe #106
RI Bar # 6817

Dated : April 12, 2004

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

MOTOWN RECORD COMPANY, L.P., *et al.*, Plaintiffs,	))	
v.	)	No. 04-CV-0439
DOES 1-252, Defendants.	))	

MEMORANDUM OF LAW IN SUPPORT OF DOE #106
MOTION TO QUASH SUBPOENA SERVED ON COX COMMUNICATIONS

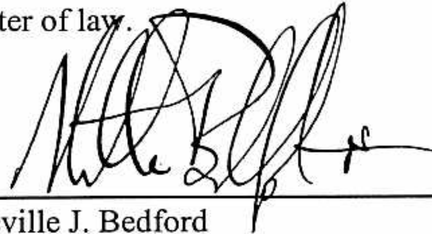
Plaintiffs lack personal jurisdiction over Doe #106 (106). 106 resides beyond the jurisdiction of this court. The Due Process clause of the Fourteenth Amendment of the United States Constitution constitutes a limit to the 'long-arm' statutes that States may use to authorize their courts to exercise personal jurisdiction over extraterritorial defendants. As established in International Shoe Co. v. Washington, 326 US 310 (1945) the Supreme Court defined necessary criteria to comply with the Due Process Clause, namely, "sufficient contacts" must have been established with the state in which non-residents are to defend a law suit. It must also be considered reasonably foreseeable that one could be hauled into court in a jurisdiction, World-Wide Volkswagen v. Woodson, 444 US 286 (1980). In the instant case 106 has absolutely no contacts with the state of Georgia and hence it could not be reasonably foreseeable that he could be subject to a law suit in the state of Georgia. Moreover, under Rule 12(b)(2) it would be unduly burdensome for 106 to defend a law suit in Georgia, since 106 has not "purposefully availed" 106 to a law suit in Georgia. Moreover, the claim is in violation of Rule12(b)(3) because the venue is improper where the court lacks in personam jurisdiction.

Plaintiffs have improperly joined the 252 Doe defendants because the claims do not arise out of the same transaction, occurrences, or series of transactions or occurrences as set forth in Rule 20 of the Federal Rules of Civil Procedure. Accordingly, this court should order separate trials for each of the Doe defendants. Rule 20(b) and Rule 42(b) vest in the district court the

discretion to order separate trials. The determination of whether the situation constitutes the same transaction or occurrence for purposes of Rule 20 is determined on a case by case basis, Mosley v. General Motors Corp., 497 F.2d. 1330, 1333 (8 th Cir. 1974). In the instant case, it is 106's position that the parties and claims are not reasonably related or properly joined. The 252 Defendants interactions with the sixteen different plaintiffs fail to conform to the standards established by Federal Rule of Civil Procedure 20 because they do not arise out of the same transaction, occurrence, or series of transactions or occurrences. Specifically, Plaintiffs fail to show which of the Defendants have allegedly downloaded Plaintiffs alleged copyrighted material from other Defendants as opposed to any other users of the systems. The only facts that connect the Defendants are that they all use the same Internet Service Provider (ISP), namely, Cox Communications. None of the Defendants disseminated the same copyrighted material or songs belonging to the same set of Plaintiffs. In the instant case, sixteen unrelated Plaintiffs have joined two hundred and fifty-two Defendants who independently copied different songs owned by different Plaintiffs. Plaintiffs have failed to show the infringing activity arises from the same transaction or occurrence or series of transactions or occurrences. The only commonality is that Defendants used the same ISP. As set forth in Bridgeport Music, Inc. v. 11C Music 202 F.R.D. 229, 231 (MD Tenn. 2001), if all 252 Defendants are allowed to be joined in this one action there would be an overwhelming onslaught of materials and information unrelated to the specific claims against each Defendant- all of which each Defendant attorney would have to review. Accordingly, failure to sever the claims against the Defendants would unduly hinder and burden the Defendants. Severance is also necessary to avoid a great inconvenience on the court as each order would need to be prepared and mailed to every Defendant. The claims against the different Defendants will require separate trials because they involve separate witnesses, different evidence, differing temporality, and different legal theories and defenses. The undue burden to persons referenced in rule 45(c)(3)(A)(iv) also necessitates that these actions be properly joined, if at all. Moreover, there will almost certainly be separate issues of fact with respect to each Defendant.

Plaintiffs have not made a sufficient factual showing to warrant discovery of 106's personal identity who has communicated anonymously over the Internet. Plaintiffs have made a factual showing with respect to only three of the Defendants and present no evidence to support the identification or alleged infringement of copyrighted materials of or by 106. Subpoena for

names and addresses is subject to a qualified privilege as set forth in Dendrite International, Inc. v. John Doe No. 3 (NJ 2001). This privilege is further protected under Rule 45(c)(3)(A)(iv) and no exception exists where a prima facia case of copyright infringement has not been established against 106, and where the court lacks jurisdiction, and the claim is procedurally flawed to a degree that merits the subpoena be quashed as a matter of law.



Neville J. Bedford
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Dated : April 12, 2004

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Plaintiffs,	)	
v.	)	No. 04-CV-0439
DOES 1-252,	)	
Defendants.	)	

ORDER

The motion of Doe # 106 to have the subpoena served on Cox Communications quashed is hereby granted.

Dated: ______________________ ______________________________
Willis B. Hunt, Jr.
United States District Judge

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of April, 2004, I caused copies of the foregoing Motion of Doe #106 and proposed Order to be served by first-class mail, postage prepaid, on counsel for plaintiffs as follows:

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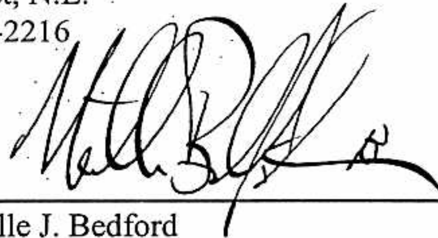

Neville J. Bedford
Attorney for Doe #106