

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SONY MUSIC ENTERTAINMENT, INC. et al.,

Plaintiffs,

v.

DOES 1-40,

Defendants.

Case No. 04-cv-00473 (DC)

SECOND DECLARATION OF JONATHAN WHITEHEAD

I, Jonathan Whitehead, have personal knowledge of the facts stated below and, under penalty of perjury, hereby declare:

1. I am Vice President and Counsel for Online Copyright Protection for the Recording Industry Association of America, Inc. ("RIAA"), where I have been employed for over 6 years. My office is located at 1330 Connecticut Avenue, N.W., Washington, DC 20036.
2. I previously submitted a declaration in support of Plaintiffs' Motion for Leave to Take Immediate Discovery in this case. I submit this declaration in support of Plaintiffs' Opposition to Jane Doe's Motion to Quash and Response to the Memorandum of *Amici Curiae* Public Citizen, et al.
3. This declaration is based on my personal knowledge, and if called upon to do so, I would be prepared to testify to its truth and accuracy.

The Defendants Use the Same FastTrack Network

4. RIAA members have filed numerous so-called "John Doe" lawsuits in United States District Courts, including the instant case. These lawsuits include a total of more than 1000 Doe Defendants, the vast majority of whom are using the so-called "FastTrack" network to

trade copyrighted works, including all but one of the 40 Defendants in this case. FastTrack is the largest current peer-to-peer network.

5. Based on the steps described in paragraph 16 of the declaration I previously submitted in this case, RIAA was able to determine that each Defendant in this case has offered hundreds or thousands of copyrighted sound recordings unlawfully on P2P networks. As described in paragraphs 16 and 17 of that declaration, RIAA has collected a list of the files that each Doe Defendant in this case has made available to the public. Exhibit 1 to that declaration contains such lists for three of the Defendants. The same detailed information of the lists of files that the other Defendants made available to the public can be provided to this Court, if necessary.

Geographic Issues Relating to P2P Users

6. As I explained in my previous declaration in this case, much of the unlawful distribution of copyrighted sound recordings over the Internet occurs via "peer-to-peer" ("P2P") file copying networks. Examples of P2P networks include KaZaA, iMesh, Grokster and Gnutella. When a user downloads a file on a P2P network, the user may download the same file from multiple computers at one time. For example, when a user in New Jersey downloads a file using a P2P network, he or she may receive parts of the same file, at the same time, from computers in multiple geographical locations, e.g., from a computer in the Georgia, a computer in California, and a computer in Florida.

7. As discussed in my declaration in support of Plaintiffs' Motion for Leave to Take Immediate Discovery in this case, copyright owners cannot know the exact location of users disseminating copyrighted works over P2P networks. They can, however, identify the Internet Protocol ("IP") addresses of infringers. An IP address is a 10-digit number, such as 12.34.255.255. IP addresses are allotted to Internet Service Providers ("ISPs") in blocks or

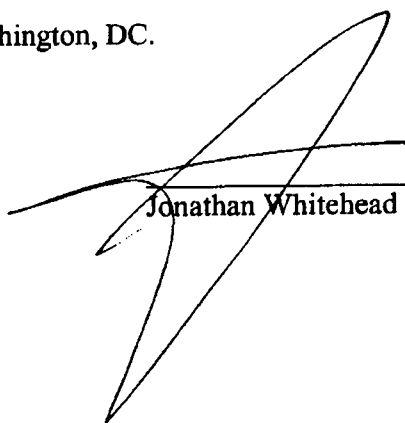
ranges (such 12.34.1.1 to 12.34.255.255). Only the ISP, however, can determine which subscriber was using a particular IP address at a given date and time. ISPs have complete control over the assignment of IP addresses to subscribers, and generally maintain logs that enable them to match IP addresses with subscribers. In addition, there is no requirement that ISPs assign IP addresses according to where a subscriber resides.

8. I have reviewed the Declaration of Seth Schoen submitted in this case. That declaration states that certain web-based tools enable people to access data to identify the geographic location of Internet users who are engaged in copyright infringement. This data, however, is nowhere near as accurate as Mr. Schoen implies.

9. Mr. Schoen's declaration overstates the precision of this data in several ways. First, the process described in the Schoen Declaration requires that an ISP use geographic information, such as geographic abbreviations or airport codes, to identify routers that transmit messages to users. ISPs have complete control over how to name their routers. Many ISPs do not use geographic codes at all. For these ISPs, a copyright owner can glean no information about the location of a subscriber disseminating copyrighted works from a particular IP address based on IP search results described in the Schoen Declaration. Second, even when an ISP does use geographic codes, my experience at RIAA is that the codes fall far short of being 100% accurate in even identifying the region in which the infringer is located. When the codes are inaccurate, they are often extremely inaccurate. Third, even if the process described in the Schoen Declaration leads to a particular metropolitan area, such as New York, this information does not necessarily identify the judicial district in which the infringer resides. As Mr. Schoen concedes in paragraph 10 of the Schoen Declaration, *amici* can only determine that the Defendants "appear" to be located "in or near major cities in these two states."

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on April 21, 2004 in Washington, DC.



Jonathan Whitehead

CERTIFICATE OF SERVICE

I hereby certify that, on this 22nd day of April, 2004, I caused copies of the foregoing Plaintiffs' Opposition To Jane Doe's Motion To Quash And Response To The Memorandum Of *Amici Curiae* Public Citizen, *Et Al.* and Second Declaration of Jonathan Whitehead to be served by first-class mail, postage prepaid, on counsel for plaintiffs as follows:

Donald J. Russell, Esq.
Robbins, Russell, Engler, Orseck & Untereinter LLP
1808 K Street, NW
Washington, DC 20006
Fax: 202-775-4510

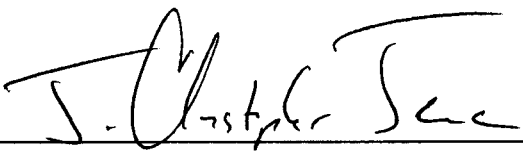
Kenneth J. Hanko, Esq.
18 Kadel Drive
P.O. Box 18
Mt. Arlington, NJ 07856
Fax: 973-398-5078

Wendy Seltzer, Esq.
Cindy A. Cohn, Esq.
454 Shotwell Street
San Francisco, CA 94110
Attorneys for Electronic Frontier Foundation
Fax: 415-436-9993

Paul Alan Levy, Esq.
Charlotte Garden, Esq.
Public Citizen Litigation Group
1600 20th Street, NW
Washington, DC 20009
Attorneys for Public Citizen

Christopher A. Hansen, Esq.
Aden J. Fine, Esq.
125 Broadway
18th Floor
New York, NY 10004
Attorneys for American Civil Liberties Union

Jane Doe, Esq.
c/o Cindy Cohn, Esq.
Attorneys for Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110



J. CHRISTOPHER JENSEN