UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| VIRGIN RECORDS AMERICA, INC., et al., | : | |
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| Plaintiffs, | : | CIVIL ACTION |
| | : | |
| v. | : | NO. 04-CV-01239 PBT |
| | : | |
| DOES 1-9, | : | |
| | : | |
| Defendants. | : | |

ORDER

AND NOW, this day of April, 2004, upon consideration of Plaintiffs' Opposition to Motion of Public Citizen, et al., For Leave to File Memorandum as Amici Curiae Addressing Motion for Expedited Discovery, and the briefs and arguments thereon, it is hereby

ORDERED that said Motion is DENIED.

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J.

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| Defendants. | : | |

**PLAINTIFFS' OPPOSITION TO MOTION OF PUBLIC CITIZEN, ET AL. FOR LEAVE TO FILE MEMORANDUM AS AMICI CURIAE ADDRESSING MOTION FOR EXPEDITED DISCOVERY**

Plaintiffs respectfully file this memorandum in response to the motion of Public Citizen, American Civil Liberties Union, Electronic Frontier Foundation, and the ACLU of Pennsylvania (hereinafter "*amici*")[1] for leave to file a memorandum as *amici curiae* addressing Plaintiffs' motion for expedited discovery.

The motion of *amici* should be denied. *Amici*'s attempt to raise issues in advance of notice to the Defendants violates a cardinal rule: *amici* cannot inject issues "not advanced . . . by the party on whose behalf the argument is being raised." *See McCleskey v. Zant*, 499 U.S. 467, 523 n.10 (1991). No Defendant has raised the arguments *amici* set forth in their brief. If a Defendant does raise such issues, they can be fully litigated in a concrete setting at the appropriate time. At this time, *amici*'s effort to inject themselves into this case is premature.

Indeed, federal courts in 25 cases have recently addressed identical motions for expedited discovery filed by these same Plaintiffs (and other record companies) in similar cases

[1] Plaintiffs shall refer to the public interest groups as "*amici*" for ease of reference, recognizing that Plaintiffs believe it is premature to grant such status to any group in this litigation.

across the country and have granted them, recognizing that issues such as joinder should be resolved only after all Defendants have been identified. See *infra* pp. 9-10 (citing *25 courts* that have granted identical motions). As the District Court for the District of Columbia recently explained, "[i]t is clear to the Court that Defendants must be identified before this suit can progress further"; thus, consideration of issues such as joinder is "premature" until after the defendants have been identified. Memorandum Opinion, *UMG Recordings v. Does 1-199*, at 2 (D.D.C. Mar. 10, 2004) (attached at Ex. 4). In several of these cases, courts have rejected efforts by these same *amici* to litigate issues in advance of notice to the Defendants and prior to issuance of discovery to identify the Defendants. *See, e .g., id.*; *Motown Record Co., L.P. v. Does 1-252* at 3 (N.D. Ga. Mar. 1, 2004) (attached as Exhibit 5); Order, *Sony Music Entm't, Inc. v. John Does 1-40* (S.D.N.Y. Feb. 3, 2004) (Chin, J.) (attached as Exhibit 1); Order, *Warner Bros. v. John Does 1-43* (S.D.N.Y. Feb. 10, 2004) (Sprizzo, J.) (ruling from the bench). This Court should follow the same course.

As set forth in Section II of this brief, the issues raised by *amici* can be resolved in the ordinary course of this litigation – if any Defendant wants to raise them – in a way that balances Plaintiffs' need to vindicate their rights under federal law and to stop the ongoing irreparable harm caused by Defendants' copyright infringement with Defendants' interest in having a full and fair opportunity to litigate relevant issues at the appropriate time. The first step in that process, however, is issuance of a subpoena to Villanova University (the Internet Service Provider ("ISP") serving all of the Defendants), which cannot occur until the Court grants Plaintiffs' motion for expedited discovery. Plaintiffs therefore request that the Court grant that motion as quickly as possible and deny *amici*'s motion.

## BACKGROUND

Plaintiffs in this case are major recording companies who own copyrights in sound recordings. Collectively, they face a massive problem of digital piracy over the Internet. Every month, copyright infringers unlawfully disseminate billions of perfect digital copies of Plaintiffs' copyrighted sound recordings over peer-to-peer ("P2P") networks. *See* Lev Grossman, *It's All Free*, Time, May 5, 2003. A P2P network is an online media distribution system that allows users to transform their computers into an interactive Internet site, disseminating files for other users to copy. The most infamous P2P network was the Napster system, which was shut down by a federal court injunction. *See A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (9th Cir. 2001). Other P2P networks have, however, arisen in Napster's wake. As a result of the rise of P2P networks, Plaintiffs have sustained and continue to sustain devastating financial losses. *See* http://www.riaa.com/pdf/2002yrendshipments.pdf (detailing retail sales declines of 7% in 2000, 10% in 2001, and 11% in 2002).

There is no dispute that P2P users who disseminate (upload) copyrighted material and who copy (download) such material violate the copyright laws. *See A&M Records, Inc.*, 239 F.3d at 1013-14; *In re Aimster Copyright Litigation*, 334 F.3d 643 (7th Cir. 2003), *cert. denied*, 124 S. Ct. 1069 (2004). Copyright infringement over P2P networks is widespread in great part, however, because – like so many activities on the Internet – it can be done using an alias that conceals one's true identity. Copyright owners, like the Plaintiffs in this case, can observe copyright infringement occurring on P2P networks, but cannot (without assistance) identify the true names and locations of the infringers.

Each of the nine Defendants in this case is an active participant in the Fast Track network, the largest current P2P network. As such, each Defendant offers copyrighted sound recordings stored on his or her computer for others to download and downloads copyrighted

sound recordings from other users of the Fast Track network. As explained in Plaintiffs' Motion for Expedited Discovery, Plaintiffs caught each of the Defendants in this case openly disseminating sound recordings whose copyrights are owned by Plaintiffs. Plaintiffs did this as anyone else could – by logging onto the P2P network and viewing the files that each Defendant was offering to other users of the network. *See generally* Declaration of Jonathan Whitehead (filed with Plaintiffs' Motion for Expedited Discovery) (hereinafter "Whitehead Declaration").

Upon finding each Defendant disseminating large numbers of copyrighted works, Plaintiffs gathered further evidence of the infringement. As explained in more detail in the Whitehead Declaration, Plaintiffs downloaded a list of the files disseminated by each Defendant. *See* Whitehead Decl. ¶¶ 16, 17. Plaintiffs have provided to the Court, as an example, detailed lists of the hundreds of files being distributed by two of the Defendants. *See* Exhibit 1 to Whitehead Decl. Based on an analysis of file types and file names, the vast majority of these files appear to be sound recordings whose copyrights are owned by the Plaintiffs. Whitehead Decl. ¶ 17 & Ex. 1. Plaintiffs have gathered virtually identical evidence for all of the Defendants, showing that each Defendant is unlawfully disseminating hundreds of sound recordings. *See* Whitehead Decl. ¶ 17.[2] Plaintiffs also downloaded several files being disseminated by each Defendant to confirm that Plaintiffs owned the copyrights of the sound recordings. *See* Whitehead Decl. ¶¶ 16, 17.

Despite having voluminous evidence of infringement being committed by each Defendant, Plaintiffs could not ascertain the name, address, or any other contact information for any of the Defendants. Whitehead Decl. ¶¶ 16, 21. Plaintiffs could, however, identify the

2 Plaintiffs attached to the Complaint a list of a small subset of the copyrighted sound recordings being disseminated by each Defendant without authorization. *See* Exhibit A to the Complaint. That list shows, among other things, that each Defendant is infringing the copyrights of many of the Plaintiffs. Plaintiffs did not, however, list all of the infringing works each Defendant was disseminating.

Internet Protocol ("IP") address from which each Defendant was unlawfully disseminating Plaintiffs' copyrighted works. An IP address is a 10-digit number, such as 12.34.255.255, that specifically identifies a particular computer using the Internet. IP addresses are essential to the operation of the Internet because they are used by Internet Service Providers ("ISPs") to route information to the proper location.[3]

IP addresses are allotted in blocks to ISPs. When a person logs on the Internet through its ISP, the ISP assigns the person's computer an IP address. *Id.* ¶ 14 & n.5. Only the ISP knows which subscriber was using a particular IP address allotted to the ISP at a given date and time. Publicly available databases, however, allow copyright owners to determine, in general terms, the ISP that controls a particular IP address. *Id.* ¶ 12. Using the IP address, Plaintiffs determined that Villanova University serves as each Defendant's ISP. *Id.* ¶ 16. Thus, each Defendant is a student, employee, or other user of the Villanova University computer network.

ISPs generally maintain logs that match IP addresses with particular computers using their network. By looking at its IP address logs, Villanova can match the IP address, date, and time with the computer (and therefore, in most cases, the individual committing the infringement) that was using that IP address when Plaintiffs observed the infringement. *Id.* ¶ 14. Thus, Villanova – and only Villanova – can identify the Defendants in this case. Unless and until Villanova discloses the identities of the infringers, Plaintiffs have no remedy for the past and ongoing infringement committed by the Defendants.

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3 ISPs include entities such as AOL and Comcast, but also encompass universities when they are providing Internet access to students, faculty, and employees.

## ARGUMENT

## I. AMICI HAVE NO RIGHT TO PARTICIPATE IN THIS CASE NOW

The decision whether to allow *amici* to participate rests solely with the discretion of this Court. *See Newark Branch, NAACP v. Town of Harrison*, 940 F.2d 792, 808 (3d Cir. 1991) (the court has discretion "to determine the fact, extent, and manner of participation" by an *amicus*) (internal quotation marks and citation omitted). *Amici*'s motion and brief are simply premature.

Plaintiffs' motion for leave to take immediate discovery seeks only the right to serve discovery on Villanova to identify the Internet users who are unlawfully infringing Plaintiffs' copyrights. Plaintiffs have satisfied the "good cause" standard required to take such expedited discovery. *See* Memorandum in Support of Plaintiffs' Motion for Expedited Discovery at 5-8 (discussing the "good cause" standard).[4] Plaintiffs' motion expressly contemplates that Villanova will notify the Defendants so that each Defendant may be heard if he or she wishes, prior to the disclosure. If and when Defendants object to the subpoena through a motion to quash, the Court will be able to resolve any issues raised.

*Amici* suggest that Plaintiffs litigate a number of issues in the abstract – prior to issuance of a subpoena and notification to the Defendants, and without any Defendant's seeking to raise those issues. That suggestion is flawed for three reasons. First, *amici* cannot inject into this case any issues not raised by a party. *See McCleskey*, 499 U.S. at 523 n.10 ("It is well established . . . that this Court will not consider an argument advanced by *amicus* when that argument was not raised or passed on below and was not advanced in this Court by the party on whose behalf the argument is being raised.").

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4 *See Parker v. Doe #1*, No. Civ. A. 02-CV-7215, 2003 WL 21294962 (E.D. Pa. Jan. 21, 2003) (authorizing discovery from ISPs to identify Doe defendants).

Second, because no party has raised any of the issues mentioned by *amici*, the issues are not ripe for judicial review. It is axiomatic that legal issues should be resolved in the context of a concrete dispute between parties, not in the abstract. Any resolution of legal arguments raised by *amici* at this point would amount to nothing more than an advisory opinion based on arguments that a party to the litigation may never raise. In the absence of a concrete controversy raised by a party, this Court should not rule on the merits of the issues raised by *amici*. If and when a party raises any of the arguments now advanced by *amici*, the parties will have a full and fair opportunity to present their positions, and this Court will be able to resolve the issues then, in the context of a live, concrete dispute.

Third, if some Defendants do raise arguments similar to those in the brief *amici* seek to file, this Court will, in all likelihood, have to entertain those arguments twice – once when presented by *amici* in the abstract, and a second time when presented by individual Defendants in opposition to the requested discovery. Such duplicative litigation is a waste of judicial resources.

Notably, *amici*'s approach does not provide additional protection for Defendants. Rather, *amici*'s approach maximizes the burden on copyright owners so that they will be less likely to enforce their rights. Imposing cumbersome, yet pointless burdens on Plaintiffs cannot be squared with the Copyright Act or the policies underlying it. Plaintiffs are the injured parties here; as a result of the conduct of Defendants, Plaintiffs suffer enormous losses, and that harm increases with every passing day. *See Apple Computer, Inc. v. Franklin Computer Corp.*, 714 F.2d 1240, 1254 (3d Cir. 1983) (holding that a prima facie case of copyright infringement is sufficient to prove irreparable harm); *Educational Testing Servs. v. Katzman*, 793 F.2d 533, 543-44 (3d Cir. 1986) (holding that irreparable harm is presumed with a prima facie showing of

infringement). Plaintiffs need to identify Defendants expeditiously so that Plaintiffs can vindicate their rights.

Until each Defendant has been notified and given the opportunity to determine what arguments (if any) he or she wishes to raise, the arguments noted by *amici* – the First Amendment/Due Process and joinder – are not ripe for review. Accordingly, Plaintiffs discuss each argument only briefly below.[5] Only the First Amendment argument, however, is in any way tied to the interest in anonymity that *amici* claim to advance. That interest is fully satisfied if Defendants have the opportunity to raise and litigate that issue prior to disclosure of their identities. In this case, Defendants will have such an opportunity because they will receive notice so that they may file a motion to quash.

*Amici* provide no rationale for litigating joinder prior to the identification of the Defendants. Indeed, severing the case into nine cases now would be harmful to Plaintiffs, Defendants, and the Court. Plaintiffs would be required to file nine virtually identical lawsuits, followed by nine virtually identical motions for immediate discovery, followed by nine virtually identical subpoenas to Villanova. Defendants would have no opportunity to explain their position as to whether they believe it is most appropriate to litigate the case together or separately. Defendants may prefer to litigate together, rather than separately, given the commonality of issues among them and given the potential economic benefits to them of litigating the claims against them together. Severance at this stage would deny them that choice. Finally, the Court would face the additional burden of nine virtually identical lawsuits, which involve many similar factual and legal issues, as well as the exact same threshold issue – discovery to identify the alleged infringers.

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5 In the event the Court grants *amici's* motion, Plaintiffs intend to file a full response on the merits.

In contrast, there is no prejudice to anyone by reserving judgment on joinder until after the Defendants are identified. Defendants would be free to raise the issue if they desired, and the Court could revisit it. Moreover, if the issue is raised, the Court could resolve it with the benefit of knowing the identities of the Defendants, the views of the Defendants concerning whether the claims should proceed separately or in a single lawsuit, and information provided by both sides about common factual and legal issues, as well as likely overlap of witness testimony.

Given the advantages of reserving judgment on the question of joinder until a later stage of this litigation, the overwhelming majority of courts to have ruled on Plaintiffs' identical motions for expedited discovery in similar cases have granted Plaintiffs' motions and deferred litigation of other issues, including joinder. This case is one of many similar copyright infringement cases recently brought by the Plaintiffs (and other record companies) against Doe defendants infringing Plaintiffs' copyrights over P2P networks. In each case, Plaintiffs sought immediate discovery and explained that, after Defendants are identified, the parties and the court can determine whether Plaintiffs should pursue some Defendants in another forum and whether the court should sever some claims. *See* Order, *Sony Music Entm't, Inc. v. John Does 1-40* (S.D.N.Y. Feb. 3, 2004) (attached as Ex. 1); Order, *Warner Bros. v. John Does 1-43* (S.D.N.Y. Feb. 10, 2004) (ruling from the bench); *Capitol Records, Inc. v. John Does 1-250* (S.D.N.Y. Jan. 26, 2004) (attached as Ex. 2); *Elektra Entertainment Group, Inc. v. Does 1-7*, No. 3:04-CV-00607 (D.N.J. Feb. 17, 2004) (attached as Ex. 3); Memorandum Opinion, *UMG Recordings v. Does 1-199* (D.D.C. Mar. 10, 2004) (attached at Ex. 4); *Motown Record Co., L.P. v. Does 1-252* (N.D. Ga. Mar. 1, 2004) (attached as Ex. 5); *Virgin Records America, Inc. v. Does 1-44* (N.D. Ga. Mar. 3, 2004) (attached as Ex. 6); Order, *Fonovisa, Inc. v. Does 1-67* (D. Col. Apr. 8, 2004) (attached as Ex. 7); Order, *Maverick Recording Co. v. Does 1-12* (D. Col. Apr. 8, 2004)

(attached as Ex. 8); Order, *Motown Record Co. v. Does 1-5* (D. Col. Apr. 8, 2004) (attached as Ex. 9); Order, *Motown Record Co. v. Does 1-3* (D. Col. Apr. 8, 2004) (attached as Ex. 10); Order, *Warner Bros. Records Inc. v. Does 1-9* (E.D. Mich. Apr. 5, 2004) (attached as Ex. 11); Order, *Artista Records, Inc. v. Doe* (N.D. Cal. Apr. 5, 2004) (attached as Ex. 12); Order, *Atlantic Recording Corp. v. Does 1-13* (E.D. Va. Apr. 2, 2004) (attached as Ex. 13); Order, *Fonovisa, Inc. v. Does 1-2* (E.D. Va. Apr. 2, 2004) (attached as Ex. 14); Order, *London-Sire Records, Inc. v. Does 1-4* (C.D. Cal. Apr. 2, 2004) (attached as Ex. 15); Order, *Priority Records LLC v. Doe* (S.D. Ind. Apr. 2, 2004) (attached as Ex. 16); Order, *Atlantic Recording Corp. v. Does 1-3* (D.D.C. Mar. 31, 2004) (attached as Ex. 17); Order, *BMG Music v. Does 1-3* (D.D.C. Mar. 31, 2004) (attached as Ex. 18); Order, *Artista Records, Inc. v. Does 1-143* (E.D. Tex. Mar. 30, 2004) (attached as Ex. 19); Order, *Capitol Records, Inc. v. Does 1-2* (C.D. Cal. Mar. 30, 2004) (attached as Ex. 20); Order, *Warner Bros. Records Inc. v. Does 1-4* (C.D. Cal. Mar. 30, 2004) (attached as Ex. 21); Order, *Interscope Records v. Does 1-4* (D. Ariz. Mar. 30, 2004) (attached as Ex. 22); Order, *Interscope Records v. Does 1-7* (M.D. Tenn. Mar. 29, 2004) (attached as Ex. 23); Order, *Interscope Records v. Does 1-5* (S.D. Ind. Mar. 25, 2004) (attached as Ex. 24).

As the District Court for the District of Columbia explained, "[i]t is clear to the Court that Defendants must be identified before this suit can progress further." Memorandum Opinion, *UMG Recordings v. Does 1-199* at 2 (D.D.C. Mar. 10, 2004) (attached as Ex. 4). Accordingly, that court concluded that it was "premature[]" to consider joinder and other issues, and instead granted Plaintiffs' motion to take immediate discovery. *Id.* Similarly, a judge in the Northern District of Georgia concluded that joinder and other issues should be deferred so that they "can be resolved in the ordinary course of this litigation at the appropriate time." *See Motown Record Co., L.P. v. Does 1-252* at 3 (N.D. Ga. Mar. 1, 2004) (attached as Ex. 5).

*Amici* rely on an order by Judge Newcomer of this Court severing Plaintiffs' claim against 203 individual defendants in a parallel case. *See* Order, *BMG Music, Inc. v. Does 1-203*, Civ. Act. No. 04-650 (March 5, 2004). As one of only two courts to have reached out to decide the issue of joinder before the identification of Defendants,[6] Judge Newcomer's order is directly contrary to the 25 courts that have gone the other way and granted Plaintiffs' motions. Moreover, as discussed below, we believe Judge Newcomer's analysis of joinder is incorrect and inconsistent with the Supreme Court's direction that joinder be liberally permitted in order to promote convenience and efficiency. *See United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 724 (1966); *see infra* pp. 16-19.

This Court should follow the approach of these 25 courts. By granting Plaintiffs' motion for immediate discovery, the Court will ensure that Plaintiffs can vindicate their rights and that each Defendant has the opportunity to raise joinder at an appropriate time.

**First Amendment/Due Process.** *Amici*'s suggestion that Defendants have a First Amendment interest when disseminating copyrighted works over a P2P network is both dubious and impossible to litigate absent participation by the Defendants.

Defendants have no right to engage in copyright infringement, anonymously or otherwise. *See Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 555-60 (1985); *Zacchini v. Scripps-Howard Broad. Co.*, 433 U .S. 562, 574-78 (1977). Plaintiffs have alleged a prima facie case of copyright infringement against Defendants and have gathered evidence specific to each Defendant. If a Defendant desires to raise a First Amendment "anonymity"

6 Only one other court has recommended severance prior to granting Plaintiffs' motion for immediate discovery. A Florida magistrate has recommended severance; that recommendation is currently being reviewed by a district judge, de novo. *See* Report and Recommendation, *Interscopre Records v. Does 1-25*, (M.D. Fl. April 1, 2004).

claim (or a due process challenge based on an interest in anonymity),[7] it is incumbent on him or her to identify the constitutionally protected conduct in which he or she was engaged. Experience has taught Plaintiffs that few individuals disseminating copyrighted files on a P2P network even attempt to make this showing because they know they have been caught red-handed. In any case, the Court cannot address a First Amendment argument until a Defendant comes forward and claims a First Amendment interest. As discussed below in Section II, each Defendant will have the opportunity to raise such an argument (in the form of a motion to quash) prior to disclosure.

*Amici* preview the First Amendment arguments that Defendants might make. *See Amici* Br. at 4-10. In so doing, they demonstrate how weak those claims are. *Amici* attempt to create a "qualified privilege" in anonymity on the Internet, *see Amici* Br. at 4, but there is no such principle of law. Individuals have no expectation of privacy (under the First, Fourth, or Fifth Amendments) that prevents disclosure of the business records of third parties, such as telephone companies or ISPs. "[A] person has no legitimate expectation of privacy in information he voluntarily turns over to third parties." *Smith v. Maryland*, 442 U.S. 735, 743-44 (1979); *United States v. Miller*, 425 U.S. 435, 442-45 (1976). Just as telephone users forfeit the expectation that the telephone company will conceal records of their calls, *see Smith*, 442 U.S. at 742, ISP subscribers have no legitimate expectation that ISPs will conceal their identities in response to legal process. *See Guest v. Leis*, 255 F.3d 325, 335-36 (6th Cir. 2001) ("[C]omputer users do not have a legitimate expectation of privacy in their subscriber information because they

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7 Plaintiffs refer here to *amici*'s argument (which Plaintiffs vigorously dispute) that there is a First Amendment right to anonymity on the Internet. To the extent that a Defendant seeks to litigate the merits of Plaintiffs' claims of copyright infringement, such as through a fair use defense, such litigation should occur only after the Defendant has been identified.

have conveyed it to another person – the system operator."); *United States v. Hambrick*, 55 F. Supp. 2d 504, 507-09 (D. W. Va. 1999), *aff'd*, 225 F.3d 656 (4th Cir. 2000) (table).

This is especially true here. Each of the Defendants in this case chose to log onto a P2P network and to make available the contents of his or her computer to millions of other people. As one court explained in considering precisely the arguments made by *amici* here, given that an ISP subscriber "opens his computer to permit others, through peer-to-peer filesharing, 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." *In re Verizon Internet Servs., Inc.*, 257 F. Supp. 2d 244, 257, 267 (D.D.C. 2003), *rev'd on other grounds*, 351 F.3d 1229 (D.C. Cir. 2003); *see also United States v. Kennedy*, 81 F. Supp. 2d 1103, 1110 (D. Kan. 2000).[8]

*Amici* try to distinguish away this entire body of well-established case law as "irrelevant," by arguing that the cases consider privacy interests under the Fourth Amendment, not the First Amendment. *Amici* Br. at 7. That analysis is fundamentally flawed for several reasons. First, it presupposes that the Defendants have a First Amendment interest in maintaining the privacy of their illegal copyright infringement. As discussed above, they do not. Second, even when First Amendment interests have been at stake, the Supreme Court has repeatedly rejected claims that such interests require a heightened level of scrutiny prior to issuance of a subpoena or other judicial process. *See University of Pa. v. EEOC*, 493 U.S. 182,

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8 *Amici* counter by claiming that a pamphleteer does not give up his right to anonymity if he is recognized on the street by a passer-by. *Amici* Br. at 8. But that claim has no relevance here. While the government may be limited in its ability to require pamphleteers to disclose their identities prior to and as a condition on speaking, the First Amendment imposes no limit on the authority of a subpoena or other legal process to command the passer-by to provide information in his or her possession – the identity of the pamphleteer. It is the latter situation we have here. *See also Buckley v. American Constitutional Law Found., Inc.*, 525 U.S. 182, 197-200 (1999) (contrasting invalid requirement that petitioners wear an identification badge while petitioning with valid requirement that petitioners sign an affidavit attesting to signatures obtained after petitioning).

199-200 (1990); *Oklahoma Press Publ'g Co. v. Walling*, 327 U.S. 186, 192-93 (1946); *Reporters Comm. for Freedom of the Press v. American Tel. & Tel. Co.*, 593 F.2d 1030, 1050 n.67 (D.C. Cir. 1978) (rejecting requirement that journalists receive notification prior to issuance of subpoenas to phone companies for toll calling records).[9] *Amici* suggest that these cases are distinguishable because they involve different factual circumstances. *Amici* Br. at 8. But that makes no difference. These cases make plain that the kind of elevated scrutiny that *amici* seek is not required by the First Amendment.

*Amici* further discuss several cases in which courts have engaged in a balancing test before ordering the disclosure of an anonymous speaker's identity. *Amici* Br. at 5-7. *Amici* ask the court to "draw[] by analogy" from cases involving subpoenas to identify journalistic sources. *Amici* Br. at 5-6. Those cases, however, rest on far more significant First Amendment interests than *amici* can muster here. *Cf. Eldred v. Ashcroft*, 537 U.S. 186, 220 (2003) (the First Amendment "bears less heavily when speakers assert the right to make other people's speeches"). Even if, however, the Court were to apply the same standard here, Plaintiffs would easily satisfy it. To obtain the identity of a journalistic source, a plaintiff need only show that the information is relevant, the information cannot be obtained by another means, and there is a compelling interest for providing the information. *See Carey v. Hume*, 492 F.2d 631, 632 (D.C. Cir. 1974); *Riley v. City of Chester*, 612 F.2d 708, 716 (3d Cir. 1979) (articulating similar test). Notably, *Carey* does not require any inquiry into the merits of Plaintiffs' claims. Rather, a plaintiff need only show that the information is sought in good faith, is unavailable from any other source, and is central to the plaintiff's claim. *See Carey*, 492 F.2d at 632. Plaintiffs here have alleged a prima facie case of copyright infringement against each Defendant, *see Feist*

9 The subpoena Plaintiffs propose to serve would seek only information to identify the Defendants, not information concerning the content of any communication they may have made over the Internet.

*Publ'ns Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991) (requiring allegations of ownership of a copyright and violation of one of the exclusive rights), and there can be no dispute that the limited information sought is central to Plaintiffs' case.

*Amici*, citing other "balancing" cases, then argue that the Court should look at the merits of Plaintiffs' claims to determine whether Plaintiffs have evidence to support their cause of action. *Amici* Br. at 6-7. The merits of Plaintiffs' claims, however, are not germane at this stage of the proceedings. Even if they were Plaintiffs have exceeded the standards in any of the cases cited by *amici*.[10] Plaintiffs have already provided significant evidence supporting their claims. With respect to each Defendant, Plaintiffs have specified the IP address, date, and time of the infringement; that information uniquely specifies a user of the Villanova computer network as the source of the infringement. For each Defendant, Plaintiffs have provided a list of several copyrighted sound recordings that the Defendant disseminated without authorization. *See* Exhibit A to the Complaint. As explained in more detail in the Whitehead Declaration, Plaintiffs downloaded a list of the files disseminated by each Defendant and downloaded several files being disseminated by each Defendant to confirm that Plaintiffs owned the copyrights of the sound recordings. *See* Whitehead Decl. ¶¶ 16, 17. Plaintiffs have provided sworn testimony that each of the named Defendants offered the copyrighted works listed in the Complaint and (based on evaluation of the names and file types) appeared to be offering hundreds of additional copyrighted sound recordings without authorization. *See* Whitehead Decl. ¶ 17. Finally,

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10 *Amici*'s primary complaint appears to be that Plaintiffs have provided the Court with a sample, rather than the entirety, of their evidence of infringement by each Defendant. *See Amici* Br. at 9 (asserting that Plaintiffs have failed to present sufficiently "individualized" evidence), Plaintiffs provided only a sample because there is no sound reason for requiring submission of volumes of documents to support good cause for a subpoena. Plaintiffs have provided sworn testimony that they have evidence with respect to all of the Defendants that mirrors the samples provided. *See* Whitehead Decl. ¶ 17. Moreover, as discussed in Section II of this brief, Plaintiffs can provide the detailed evidence with respect to any Defendant who claims a First Amendment interest and moves to quash.

Plaintiffs have provided to the Court, as an example, detailed lists of the hundreds of files being distributed by two of the Defendants. *See* Exhibit 1 to Whitehead Decl. Plaintiffs have also provided testimony under oath that they possess virtually identical evidence for each of the other Defendants. *See* Whitehead Decl. ¶ 17.

This evidence demonstrates that all of the Defendants in this case are active participants on a P2P network and serious copyright infringers.[11] As the District Court for the District of Columbia held in examining virtually identical facts in the *Verizon* case, such evidence more than satisfies the balancing standards in any of the cases cited by *amici*. *See Verizon*, 257 F. Supp. 2d at 263 n.22.[12]

**Joinder.** Litigation of joinder is also premature. In most cases, joinder is an issue raised by defendants, based on their assessment of whether litigation without co-defendants is preferable. Indeed, a court considering a challenge to joinder must determine whether severance will prejudice any party or result in undue delay of the litigation. *See Mosley v. General Motors Corp.*, 497 F.2d 1330, 1333 (8th Cir. 1974) (noting that joinder is a fact-intensive inquiry that requires case-by-case adjudication). Until the Defendants are identified, the Court cannot make that assessment. Moreover, because the sole remedy for misjoinder is severance, not dismissal, *see* Fed. R. Civ. P. 21, litigation of joinder at this point serves no purpose, other than to delay proceedings. The result of a finding of misjoinder would be the division of this case into nine lawsuits, followed by nine subpoenas to Villanova, followed by

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11 Because U.S. law does not support their arguments, *amici* resort to the decision of a Canadian court interpreting Canadian law. *See Amici* Br. Ex. 3. That opinion has no relevance here and cannot be squared with the decisions of a host of U.S. courts allowing discovery of Doe defendants, including defendants using the Internet to cloak their illegal conduct. *See* Plaintiffs' Motion for Immediate Discovery at 5-7; *see* supra pp. 9-10.

12 Indeed, Public Citizen conceded in the D.C. Circuit that evidence identical to that which Plaintiffs have put forward meets the test *amici* propose in their brief. *See* Brief Amicus Curiae of Public Citizen in *RIAA v. Verizon*, Nos. 03-7015 & 03-7053, at 14-15 (filed May 16, 2003).

litigation in the identical manner as here, except with far more paper. Such a result would not provide additional fairness to Defendants, nor would it promote judicial economy.

In any event, *amici*'s arguments ultimately fail. The Federal Rules direct "the broadest possible scope of action consistent with fairness to the parties [because] joinder of claims, parties and remedies is strongly encouraged." *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 724 (1966). The Court thus has wide discretion in determining whether joinder is appropriate and, if it is not, at what stage of the proceedings severance should be compelled. *See, e.g., Miller v. Hygrade Food Prods. Corp.*, 202 F.R.D. 142, 144 (E.D. Pa. 2001).

*Amici*'s sole argument is that Plaintiffs do not meet the second of two prerequisites for joinder: that the Complaint alleges a right to relief relating to or arising out of the same transaction or occurrence or series of transactions or occurrences.[13] But the terms "transaction" and "occurrence" must be interpreted broadly in accord with Rule 20's central purposes of promoting trial convenience, expediting the resolution of disputes, and preventing unnecessary lawsuits. *See id.* (holding that "transaction" or "occurrence" must be understood flexibly in accordance with the Supreme Court's instruction that joinder of claims is encouraged); *Alexander v. Fulton County*, 207 F. 3d 1303, 1323-24 (11th Cir. 2000) (allowing joinder of all claims logically related out of a series of transactions or occurrences). Indeed, a complaint satisfies the transaction or occurrence requirement when it alleges that the defendants engaged in a common scheme or pattern of behavior or when it alleges any "logical relationship" between the transactions and occurrences. *Miller*, 202 F.R.D. at 144. Rule 20 thus ensures that "all reasonably related claims for relief by or against different parties" may be tried in the same

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13 *Amici*'s attempt to create a third requisite for joinder, *see Amici* Br. at 10 & n.5, conflicts with this Court's holdings. *See, e.g., Becker v. Chicago Title Ins. Co.*, No. Civ. A. 03-2292, 2004 WL 228672, at *2 (E.D. Pa. Feb. 4, 2004); *Miller*, 202 F.R.D. at 144; *King v. Pepsi Cola Metro. Bottling Co.*, 86 F.R.D. 4, 5 (E.D. Pa. 1979).

proceeding. 7 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure* 3d § 1653, at 410 (2003).

That is precisely what Plaintiffs' Complaint alleges here. All of Plaintiffs' claims against the Defendants involve common questions of copyright law and common factual questions concerning the operation of Villanova's network and the Fast Track P2P network. Each Defendant in this case was using the same instrumentalities to commit the exact same violation of law. Moreover, the crux of Plaintiffs' Complaint is that Defendants and others have participated in a common scheme or pattern of behavior, without which no individual Defendant would have been able to commit much (if any) of the infringing activity that underlies Plaintiffs' Complaint. Plaintiffs' Complaint alleges explicitly that each Defendant uses an online media distribution system (the Fast Track P2P network) *to distribute to and to download from* other users of the same system – including the other Defendants – computer files that contain copyrighted sound recordings. Compl. ¶ 24. *See also* Whitehead Decl. ¶¶ 7, 16. Each Defendant thus participates in the same online swap meet, exchanging pirated digital copies of Plaintiffs' copyrighted works. Thus, *amici* are wrong to assert that Defendants are connected only by their common use of the Internet. Defendants' concerted actions as users of the Fast Track network and common use of the Villanova computer network provide the "logical relationship" that clearly distinguishes this case from the hypotheticals and the misjoinder cases upon which *amici* rely.[14]

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14 Indeed, even if there was no such concerted action, severance would not be required. *Amici* fail to note that the courts have split on whether joinder was appropriate in satellite TV theft cases, even though the complaints in those cases have not alleged concerted action and interaction presented here. *See, e.g., DIRECTV, Inc. v. Hosey*, 289 F. Supp. 2d 1259, 1262 (D. Kan. 2003) (allowing joinder); *DIRECTV, Inc. v. Adkins*, No. 1:03CV00064, 2003 WL 23096482, at *1-*2 (W.D. Va. Dec. 29, 2003) (same); *In re Monon Tel. Co.*, 218 F.R.D. 614 (N.D. Ind. 2003) (same).

*Amici* rely heavily on Judge Newcomer's decision in a parallel case, but Judge Newcomer's analysis applies an overly constricted view of Rule 20.[15] Judge Newcomer found that an almost identical complaint did not allege that all of the injuries arose from the "same transaction or occurrence." Order, *BMG Music, Inc. v. Does 1-203*, Civ. Act. No. 04-650, at 2 (March 5, 2004). Judge Newcomer was concerned that there might be "separate issues of fact with respect to each defendant" and thus that trial could involve "separate witnesses" and "different evidence." *Id.* at 1. Joinder is proper, however, any time the claims arise out of a any "logically related" *series* of transactions or occurrences. *Miller*, 202 F.R.D. at 144 (""'Transaction' is a word of flexible meaning. It may comprehend a series of many occurrences, depending not so much upon the immediateness of their connection as upon their *logical relationship.*'") (*quoting Mosley*, 497 F. 2d at 1333 (emphasis added)). Moreover, the fact that some separate evidence may be required *at trial* does not justify severance of claims; in the event that the Court were to conclude that separate trials would be preferable, the Court has the authority to order such trials in the interests of justice. *See* Fed. R. Civ. P. 42. In this case, however, much of the evidence will be identical and there are many legal and factual issues in common among all Defendants: each Defendant was disseminating the copyrighted works of many (if not all) of the Plaintiffs over the same university computer network and the same P2P network and thus unlawfully making available copyrighted works to each other, as well as other users of that network. Joinder thus is proper.

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15 The other recent case from this district cited by *amici* appears to have require Plaintiffs to separate out their claims against various defendants, but nonetheless file a single complaint and litigate common issues in "a single case." *See Becker v. Chicago Title Insur. Co.*, 2004 WL 228672, at *3 (E.D. Pa. Feb. 4, 2004). Moreover, the Court entered an order commencing discovery among all parties to the lawsuit. *Id.* at *16.

## II. GRANTING PLAINTIFFS' MOTION WILL ENSURE AN OPPORTUNITY FOR ALL PARTIES TO BE HEARD IN AN ORDERLY FASHION

There is no need for the burdensome approach *amici* advocate. Instead, by granting Plaintiffs' Motion for Immediate Discovery, this Court can achieve orderly resolution of any arguments raised by the Defendants.

1. If this Court grants Plaintiffs' motion, Plaintiffs will issue a subpoena to Villanova with a return date 15 business days from the date of service. A return date of 15 business days – effectively 21 calendar days – is equal to the time that *amici* proposed. *See Amici* Br. at 13-14.

2. Plaintiffs believe Villanova intends to notify the Defendants once it receives a subpoena from Plaintiffs. Plaintiffs have no objection with the Court directing Villanova to provide notice within 7 days of service of the subpoena. *Amici* concede that 15 business days from the date of service on Villanova is a reasonable time for a Defendant to file a motion to quash. Past experience indicates that some number of Defendants, once notified of the allegations, will contact Plaintiffs and seek a speedy resolution of Plaintiffs' claims.

3. For Defendants who do not move to quash (assuming Villanova raises no objections or its objections are resolved), Villanova can produce the information requested at the close of business on the return date of the subpoena. The filing of a motion to quash by one Defendant will not prevent the disclosure of the identities of those Defendants who do not move to quash.

4. For Defendants who do move to quash prior to the return date, the Court can resolve their objections. In a motion to quash, Defendants can raise the types of First Amendment and Due Process "anonymity" arguments suggested by *amici* in their papers (with Plaintiffs reserving their rights to raise any and all arguments in response). In response to such a

motion to quash, Plaintiffs can provide the same kind of detailed evidence that they have provided for the two infringers whose conduct has already been documented for the Court. *See* Whitehead Decl. ¶ 17 and Exhibit 1.

5. For Defendants whose identities are revealed to Plaintiffs, Plaintiffs believe that, because of the strength of Plaintiffs' evidence, substantial numbers of the Defendants may elect to settle matters without further litigation.

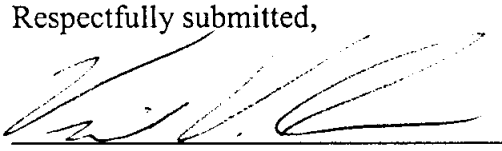
6. For Defendants whose litigation proceeds without settlement, Plaintiffs can determine whether it is proper to continue in this jurisdiction, or whether to transfer to another forum. Any Defendants who wish to raise joinder issues can make such arguments at that time.

Plaintiffs' need to vindicate their rights quickly will be balanced with Defendants' interest in having a full opportunity to raise arguments and defenses. Moreover, the Court will avoid duplicative litigation over issues that can and should be resolved once in a concrete setting.

**CONCLUSION**

For the foregoing reasons, *amici*'s motion should be denied, and Plaintiffs' Motion for Immediate Discovery should be granted.

Respectfully submitted,



Vincent V. Carissimi
Barbara L. Delaney
PEPPER HAMILTON LLP
3000 Two Logan Square
Eighteenth & Arch Streets
Philadelphia, PA 19103-2799
(215) 981-4000

Of counsel:

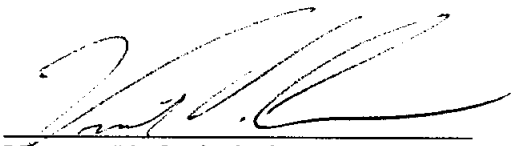
Thomas J. Perrelli
Jared O. Freedman
JENNER & BLOCK LLP
601 Thirteenth Street, NW
Washington, DC 20005-3823
(202) 639-6000

Dated: April 19, 2004

## CERTIFICATE OF SERVICE

I, Vincent V. Carissimi, hereby certify that on April 19, 2004, I caused a true and correct copy of the foregoing Plaintiffs' Opposition to Motion of Public Citizen, et al. for Leave to File Memorandum as Amici Curiae Addressing Motion for Expedited Discovery to be served by depositing the same in the United States Mail, First Class, postage prepaid, addressed to:

Malia N. Brink, Esquire
ACLU of Pennsylvania
125 So. 9th Street, Suite 701
Philadelphia, PA 19107



Vincent V. Carissimi

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| SONY MUSIC ENTERTAINMENT INC. et al., | |
| Plaintiffs | ORDER |
| - against - | 04 Civ. 473 (DC) |
| DOES 1 - 40, | |
| Defendants. | |

CHIN, D.J.

On January 26, 2004, this Court issued an order granting plaintiffs' ex parte application for permission to immediately serve discovery requests on a non-party witness, Cablevision.

Yesterday, the Court received a letter from the Electronic Frontier Foundation ("EFF"), on behalf of EFF, the American Civil Liberties Union, and Public Citizen, as amici curiae, objecting to discovery by plaintiffs "into the identities of persons who have communicated anonymously over the Internet."

In their memorandum, plaintiffs represented that if their ex parte application were granted, they would serve a subpoena on Cablevision giving it fifteen business days in which to respond. Plaintiffs recognized that Cablevision would then be able to notify its subscribers that this information was being sought, and each defendant would then be able to object to the subpoena or to move to quash prior to the return date of the

subpoena. Of course, Cablevision also has the right to move itself to quash the subpoena.

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Court's January 26, 2004 order remains in effect;

2. If and when Cablevision is served with a subpoena, within five business days thereof it shall give notice to the subscribers in question of the subpoena, and if Cablevision and/or any subscribers and/or any defendants wish to move to quash the subpoena, they shall do so before the return date of the subpoena;

3. If and when it is served with a subpoena, Cablevision shall preserve the subpoenaed information in question pending resolution of any timely filed motion to quash;

4. The issues raised by amici will be considered by the Court if and when any subscriber or defendant or Cablevision moves to quash and the parties and non-party witnesses have had an opportunity to be heard; and

5. Counsel for plaintiffs shall provide a copy of this order to Cablevision when the subpoena is served, or, if the subpoena already has been served, then forthwith. Plaintiffs' counsel shall also fax a copy to ECF.

SO ORDERED.

Dated: New York, New York
February 3, 2004

DENNY CHIN
United States District Judge

RECYCLED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|---|---|---|
| CAPITOL RECORDS, INC., a Delaware corporation; ARISTA RECORDS, INC., a Delaware corporation; INTERSCOPE RECORDS, a California general partnership; LOUD RECORDS, LLC, a Delaware corporation; UMG RECORDINGS, INC., a Delaware corporation; WARNER BROS. RECORDS INC., a Delaware corporation; ATLANTIC RECORDING CORPORATION, a Delaware corporation; FONOVISA, INC., a California corporation; SONY MUSIC ENTERTAINMENT INC., a Delaware corporation; BMG MUSIC, a New York general partnership; LONDON-SIRE RECORDS INC., a Delaware corporation; MOTOWN RECORD COMPANY, L.P., a California limited partnership; PRIORITY RECORDS LLC, a California limited liability company; MAVERICK RECORDING COMPANY, a California joint venture; ELEKTRA ENTERTAINMENT GROUP INC., a Delaware corporation; and VIRGIN RECORDS AMERICA, INC., a California corporation,<br><br>Plaintiffs,<br><br>-against-<br><br>DOES 1 - 250,<br><br>Defendants. | : | Civil Action No.: 04 CV 472 (LAK)(HBP) |

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 2/27/04

**~~[PROPOSED]~~ ORDER GRANTING PLAINTIFFS' *EX PARTE* APPLICATION TO TAKE IMMEDIATE DISCOVERY**

Upon the *ex parte* application of Plaintiffs to take immediate discovery, the annexed declaration of Jonathan Whitehead and the exhibit thereto, the annexed declaration of J.

Christopher Jensen, Esq., and the accompanying Memorandum of Law, it is hereby:

ORDERED that Plaintiffs may serve immediate discovery on Time Warner Cable to obtain the identity each Doe Defendant by requesting 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 discovery requests may be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under the Copyright Act.

Dated: 1/26/04

United States District Judge

STERNS & WEINROTH, P.C.
50 West State Street, Suite 1400
Trenton, N.J. 08607-1298
KAREN A. CONFOY (KC-0848)
Telephone: (609) 392-2100
Facsimile: (609) 392-7956
*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT**
**DISTRICT OF NEW JERSEY**

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

Plaintiffs,

v.

DOES 1 - 7,

Defendants.

CIVIL ACTION
Case No.: ~~04-6~~ 04-6107(GEB)

**~~[PROPOSED]~~ ORDER GRANTING EX PARTE RELIEF PERMITTING PLAINTIFFS TO CONDUCT LIMITED EXPEDITED DISCOVERY UPON RCN CORPORATION**

RECEIVED
FEB 16 2004
AT 8:30 ____ M
WILLIAM T. WALSH
CLERK

Upon Plaintiffs' application for an Order to Show Cause granting Plaintiffs *ex parte* relief permitting them to conduct limited expedited discovery, the supporting memorandum of law, the declaration of Jonathan Whitehead and exhibit thereto, and the declaration of Karen A. Confoy, it is hereby:

ORDERED that Plaintiffs may serve immediate discovery on RCN 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: 2/17/04

United States District Judge

RECYCLED

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

| | |
|---|---|
| UMG RECORDINGS, *et al.*,<br><br>Plaintiffs,<br><br>v.<br><br>JOHN DOES 1-199,<br><br>Defendants. | Civil Action No. 04-093 (CKK) |

**ORDER**
(March 10, 2004)

In keeping with the accompanying Memorandum Opinion, it is this 10th day of March, 2004, hereby

ORDERED that Plaintiffs' Motion for Leave to Take Immediate Discovery [5] is GRANTED. Plaintiffs will be allowed to serve immediate discovery on Verizon to obtain the identity of each John Doe Defendant by serving a Rule 45 subpoena that seeks information sufficient to identify each Defendant, including name, address, telephone number, email address, and Media Access Control address. 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 as set forth in the Complaint. If and when Verizon is served with a subpoena, Verizon shall give written notice, which can include use of email, to the subscribers in question within five business days. If Verizon and/or any Defendant want 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. Verizon shall preserve any subpoenaed information pending the resolution of any timely filed motion to quash. It is further

ORDERED that Plaintiffs shall provide Verizon a copy of this Memorandum Opinion and Order along with its subpoena; it is further

ORDERED that the Motion of Public Citizen, the American Civil Liberties Union, the Electronic Frontier Foundation and the ACLU of the National Capitol Area to file as *amici curiae* [6] is GRANTED.

March 10, 2004

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

| | |
|---|---|
| UMG RECORDINGS, *et al.*,<br><br>Plaintiffs,<br><br>v.<br><br>JOHN DOES 1-199,<br><br>Defendants. | Civil Action No. 04-093 (CKK) |

**MEMORANDUM OPINION**
(March 10, 2004)

Before the Court is Plaintiffs' motion for leave to take expedited discovery. Plaintiffs are record companies suing a series of John Doe Defendants for copyright infringement. Plaintiffs request permission to serve limited, immediate discovery on Verizon, a third party internet service provider ("ISP"), in the form of a Rule 45 subpoena. Plaintiffs seek the true identities of Defendants, including each Defendant's true name, address, telephone number, email address, and Media Access Control address.

According to Plaintiffs' complaint, each Defendant uses an online media distribution system to download Plaintiffs' copyrighted works, distribute these works to the public, and/or make copyrighted works available for distribution to others. Pls' Mot. at 2. Although Plaintiffs do not know Defendants names, Plaintiffs have identified each Defendant by a unique internet protocol ("IP") address assigned to that Defendant on the date and at the time of the allegedly infringing activity. *Id.* Through the use of a publicly available database, Plaintiffs have traced the IP address for each Defendant and determined that it belongs to Verizon. *Id.*

Public Citizen, the American Civil Liberties Union ("ACLU"), the Electronic Frontier Foundation, and the ACLU of the National Capitol Area have collectively requested leave to file a memorandum as *amici curiae* addressing Plaintiffs' motion. *See Amici* Mot. Plaintiffs oppose this motion, stating that the issues raised by *amici* are premature. Plaintiffs point out that no party has raised the issues *amici* raises in its memorandum, and that it is well established that *amici* cannot inject issues into a case which have yet to be raised by a party. Pls' Opp. to *Amici* Mot. at 1, 5; *see McCleskey v. Zant*, 499 U.S. 467, 523 n.10 (1991). While Plaintiffs are correct that *amici* raise issues prematurely, the constitutional and procedural issues identified by *amici* can be resolved in the ordinary course of this litigation at the appropriate time. Accordingly, the Court shall Grant *amici*'s motion for leave to file.

It is clear to the Court that Defendants must be identified before this suit can progress further. The Court shall grant Plaintiffs' request for expedited discovery, with certain limitations outlined herein. Plaintiffs will be allowed to serve immediate discovery on Verizon to obtain the identity of each John Doe Defendant by serving a Rule 45 subpoena that seeks information sufficient to identify each Defendant, including name, address, telephone number, email address, and Media Access Control address. The disclosure of this information is ordered pursuant to 47 U.S.C. § 551(c)(2)(B), which authorizes cable operators to disclose personally identifiable information when the cable operators are ordered to do so by a court. 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 as set forth in the Complaint.

If and when Verizon is served with a subpoena, Verizon shall give written notice, which may include email notice, to the subscribers in question within five business days. If Verizon

and/or any Defendant wants 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. Verizon shall preserve any subpoenaed information pending the resolution of any timely filed motion to quash. Plaintiffs shall provide Verizon a copy of this Memorandum Opinion and Order along with its subpoena.

An appropriate Order accompanies this Opinion.

March 10, 2004

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

MAR 01 2004

LUTHER D. THOMAS, Clerk
By: Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MOTOWN RECORD COMPANY, L.P., a California limited partnership, et al.,

Plaintiffs,

v.

DOES 1-252,

Defendants.

CIVIL ACTION FILE

NO. 1:04-CV-439-WBH

**ORDER**

Before the Court is Plaintiffs' motion for leave to take expedited discovery [3] in which Plaintiffs request Court permission to serve limited, immediate discovery on third party Internet Service Provider ("ISP") Cox Communications ("Cox") to determine the true identities of the Defendants. According to the Complaint, each Defendant used an online media distribution system to download Plaintiffs' copyrighted works, distribute copyrighted works to the public, and/or make copyrighted works available for distribution to others. Although Plaintiffs do not know the true names of the Defendants, Plaintiffs have identified each Defendant by a unique Internet Protocol ("IP") address assigned to that Defendant on the date and at the time of the allegedly infringing activity. Through the use of a publicly available database, Plaintiffs have traced the IP address for each Defendant and determined that it is Cox.[1]

[1] On the same day that they filed this action, Plaintiffs filed a nearly identical complaint in this district against unidentified defendants who allegedly used Earthlink as their ISP. See Virgin Records America, Inc., et al. v. Does 1-44, 1:04-CV-0438-CC (N.D. Ga.). Plaintiffs have recently filed similar cases in other parts of the country as well.

In their motion, Plaintiffs ask the Court for permission to serve a Rule 45 subpoena on Cox seeking each Defendant's true name, address, telephone number, e-mail address, and Media Access Control address. Plaintiffs state that if the Court grants their motion, they will serve a subpoena on Cox and give Cox 15 business days to either comply with it or file a motion to quash. Plaintiffs believe that upon receiving the subpoena, Cox will notify its subscribers that this information is being sought, thus providing the individual Defendants with a narrow window of time during which they may move to quash the subpoena.

Public Citizen, the ACLU, and the Electronic Frontier Foundation (collectively "amici") have filed a memorandum as amici curiae addressing this motion.[2] In their memorandum, amici claim that Plaintiffs have failed to make a showing sufficient to warrant discovery into the identities of persons who have communicated anonymously over the Internet, arguing that the First Amendment right to anonymous speech must be protected. Amici also argue that this case presents significant issues related to personal jurisdiction and joinder. Finally, amici argue that if the Court allows the discovery, the Court should enlarge the period of time during which Cox must respond to the subpoena so that the individual defendants will have a meaningful opportunity to voice their objections, if any, to the subpoena.

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[2] Plaintiffs take the position that the Court should deny amici's motion to file their memorandum. While the Court is not inclined to follow all the recommendations raised by amici – at least at this point – the Court nevertheless found amici's memorandum helpful and insightful. For that reason, amici's motion for leave to file their memorandum is granted. See DeJulio v. Georgia, 127 F. Supp. 2d 1274, 1284 (N.D. Ga. 2001) (noting that there is no rule governing the filing of an amicus brief in district court and stating that the decision whether to allow a non-party to participate as an amicus curiae is solely within the broad discretion of the Court).



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Plaintiffs respond, and the Court agrees, that the issues raised by amici are premature. As Plaintiffs point out, no party to this action has raised any of the issues addressed in amici's memorandum, and it is well established that amici cannot inject issues into a case which have not been raised by a party. See McCleskey v. Zant, 499 U.S. 467, 523 n.10 (1991). The constitutional as well as the procedural issues identified by amici can be resolved in the ordinary course of this litigation at the appropriate time.

In order to get this case moving, Defendants must be identified, and Plaintiffs' request for expedited discovery is reasonably tailored to achieve this goal. The Court agrees with amici, however, that Cox should be given a slightly longer period during which it may respond to the subpoenas.

Accordingly, IT IS HEREBY ORDERED THAT:

> Plaintiffs may serve immediate discovery on Cox 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 address for each Defendant.
>
> The disclosure of this information is ordered pursuant to 47 U.S.C. § 551(c)(2)(B), which authorizes cable operators to disclose personally identifiable information when the cable operators are ordered to do so by a court;
>
> 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 as set forth in the Complaint;
>
> If and when Cox is served with a subpoena, within five business days thereof, it shall give notice to the subscribers in question of the subpoena. If Cox and/or any Defendant wishes to move to quash the subpoena, the party must do so before the return date of the subpoena, which will be 25 business days from the date of service;



\O 72A

If and when Cox is served with a subpoena, Cox shall preserve the subpoenaed information in question pending resolution of any timely filed motion to quash; and

Counsel for Plaintiffs shall provide a copy of this Order to Cox along with the subpoena.

## CONCLUSION

For the reasons set forth above, Plaintiffs' motion for leave to take expedited discovery [3] is GRANTED. Amici's motion for leave to file memorandum [5] is GRANTED.

It is so ORDERED this 1 day of March, 2004.

Willis B. Hunt, Jr.
Judge, United States District Court



AO 72A

FILED IN CLERK'S OFFICE
U.S.D.C. - Atlanta

MAR 3 2004

LUTHER D. THOMAS, Clerk
By: Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

VIRGIN RECORDS AMERICA, INC., et al.,

Plaintiffs,

v.

DOES 1 - 44,

Defendants.

CIVIL ACTION NO.

1:04-CV-0438-CC

**ORDER**

Currently pending before the Court is Plaintiffs' Motion for Leave to Take Expedited Discovery. Plaintiffs, record companies who own copyrights in various sound recordings, seek leave of Court to serve limited, immediate discovery on Earthlink, Inc. ("Earthlink"), a third party Internet Service Provider ("ISP"), in order to determine the true identities of the Doe Defendants.

According to Plaintiffs' Complaint, the Doe Defendants used an online media distribution system to download Plaintiffs' copyrighted works to the public, and/or make copyrighted works available for distribution to others. Although Plaintiffs do not know the true names of the Defendants, Plaintiffs have identified each Defendant by a unique Internet Protocol ("IP") address assigned to that Defendant on the date and at the time of the Defendants' allegedly infringing activity. Through the use of a publicly available database, Plaintiffs have traced the IP address for each Defendant, and have determined that the ISP is Earthlink.[1] In their motion for expedited discovery, Plaintiffs ask the Court for permission to serve a Rule 45

[1] Plaintiffs have submitted the declaration of Jonathan Whitehead, Vice President and Counsel for Online Copyright Protection for the Recording Industry Association of America, Inc., in support of their motion for expedited discovery.

subpoena on Earthlink 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.

Public Citizen, the American Civil Liberties Union, The Electronic Frontier Foundation, and the ACLU of Georgia (collectively referred to as "*amici*") have moved the Court for leave to file a memorandum as *amici curiae* addressing Plaintiffs' motion for expedited discovery. In their memorandum, *amici* argue that Plaintiffs have not made a sufficient factual showing to warrant discovery into the identities of persons who have communicated anonymously over the Internet, or made a sufficient showing that this Court has personal jurisdiction over each Defendant. In addition, *amici* argue that there are also serious concerns whether all 44 Doe Defendants are properly joined in one action. Lastly, *amici* argue that if the Court does allow some discovery, the Court should enlarge the period of time which Earthlink has to respond so that the individual defendants will have a meaningful opportunity to object to the subpoena if they so choose. Plaintiffs' oppose *amici's* motion, arguing that *amici's* effort to inject themselves into this case is premature.

As an initial matter, *amici's* motion for leave to file their memorandum is GRANTED.[2] However, after consideration of *amici's* brief, the Court agrees with Plaintiffs that the issues raised by *amici* are premature. In this regard, no party to this action has raised any of the issues addressed in *amici's* memorandum, and *amici* may not inject issues into the case which have not been raised by a party. *See* McCleskey v. Zant, 499 U.S. 467, 523 n.10, 111 S.Ct. 1454, 1485 n.10, 113 L.Ed.2d 517 (1991) ("It is well established . . . that this Court will not consider an argument

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[2] *See* DeJulio v. Georgia, 127 F.Supp.2d 1274, 1284 (N.D. Ga. 2001) (decision to allow a non-party to participate as amicus curiae is solely within the broad discretion of the Court).

advanced by *amicus* when that argument was not raised or passed on below and was not advanced in this Court by the party on whose behalf the argument is being raised."). The issues addressed by *amici* may be resolved in the ordinary course of this litigation if and when such issues are raised by any Defendant.

Turning to Plaintiffs' request for expedited discovery, upon consideration of Plaintiffs' motion and supporting brief, as well as the declaration of Mr. Whitehead, the Court finds that Plaintiffs have established good cause for the expedited discovery they request. Where the Complaint alleges a prima facie case of copyright infringement, and where the lawsuit cannot proceed until Defendants are properly identified, Plaintiffs' motion for limited, immediate discovery in order to identify the Doe Defendants is due to be GRANTED.

ACCORDINGLY, IT IS HEREBY ORDERED:

Plaintiffs may serve immediate discovery upon Earthlink 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 address for each Defendant.

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.

If and when Earthlink is served with a subpoena, within five (5) business days thereof it shall give notice to the subscribers in question of the subpoena. If Earthlink 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) days from the date of service.

If and when Earthlink is served with a subpoena, Earthlink shall preserve the

subpoenaed information in question pending resolution of any timely filed motion to quash.

Counsel for Plaintiffs shall provide a copy of this Order to Earthlink when the subpoena is served.

## CONCLUSION

For the reasons set forth above, Plaintiffs' Motion for Leave to Take Expedited Discovery [2-1] is GRANTED. *Amici's* Motion for Leave to File Memorandum as Amici Curiae [5-1] is also GRANTED.

SO ORDERED this 3rd day of March, 2004.

CLARENCE COOPER
UNITED STATES DISTRICT JUDGE

7

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Walker D. Miller

Civil Action No. 04-WM-548 (PAC)

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

APR - 8 2004

GREGORY C. LANGHAM
CLERK

FONOVISA, INC.,
CAPITOL RECORDS, INC.,
MAVERICK RECORDING CO.,
LONDON-SIRE RECORDS INC.,
ARISTA RECORDS, INC.,
BMG MUSIC,
INTERSCOPE RECORDS,
PRIORITY RECORDS LLC,
SONY MUSIC ENTERTAINMENT INC.,
VIRGIN RECORDS AMERICA, INC.,
UMG RECORDINGS, INC.,
WARNER BROS. RECORDS INC.,
MOTOWN RECORD COMPANY, L.P.,
ELEKTRA ENTERTAINMENT GROUP INC., and
ATLANTIC RECORDING CORPORATION,

Plaintiffs,

v.

DOES 1-67,

Defendants.

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**ORDER**

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Miller, J.

This matter is before me on the Plaintiffs' *Ex Parte* Application for Leave to Take Immediate Discovery ("Application"), filed March 23, 2004. Having considered the Application, Plaintiffs' memorandum of law in support of the Application, and the Declaration of Jonathan Whitehead, I conclude that the Application should be granted, as modified below.

On March 23, 2004, Plaintiffs filed a complaint for copyright infringement against

sixty-seven John Doe defendants ("Defendants"). The complaint alleges that Defendants distributed and/or duplicated copyrighted sound recordings owned or controlled by the Plaintiffs without Plaintiffs' authorization via an online media distribution system in violation of 17 U.S.C. § 501. However, Plaintiffs are only able to identify Defendants with an unique Internet Protocol ("IP") address; they do not know Defendants' names or any other identifying information.

Consequently, Plaintiffs seek permission to obtain immediate discovery from Defendants' Internet Service Provider ("ISP"), Level 3 Communications, LLC ("Level 3"), whose subscriber activity log files would allow Plaintiffs to discover Defendants' identities. Specifically, they wish to serve a subpoena on Level 3 pursuant to Fed. R. Civ. P. 45, seeking each Defendant's true name, address, telephone number, e-mail address, and Media Access Control ("MAC") address.[1]

Under 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)," unless authorized by a court order or agreement of the parties or when otherwise allowed under the Rules of Civil Procedure. A court order allowing expedited discovery will issue only upon a showing of good cause. *Qwest Communications Int'l, Inc. v. Worldquest Networks, Inc.*, 213 F.R.D. 418, 419 (D. Colo. 2003); *Pod-ners, LLC v. Northern Feed & Bean of Lucerne LLC*, 204 F.R.D. 675, 676 (D. Colo. 2002).

Here, Plaintiffs argue that their immediate need of the data in the subscriber

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[1]A MAC address is the hardware address that uniquely identifies each node, or processing location (such as a computer), of a network. *See* Webopedia, *at* http;//www.webopedia.com/TERM/M/MAC_address.html (accessed Apr. 5, 2004).

activity logs establishes good cause. They indicate that ISPs such as Level 3 typically keep these logs for brief periods of time before erasing the data they contain. Plaintiffs might never identify the Defendants without obtaining access to the data contained in the logs. *See* Decl. Johnathan Whitehead Supp. *Ex Parte* App., at ¶ 22.

Under these circumstances, Plaintiffs have established good cause. Good cause exists where the evidence sought "may be consumed or destroyed with the passage of time, thereby disadvantaging one or more parties to the litigation." *Qwest*, 213 F.R.D. at 419. *See also Semitool, Inc. v. Tokyo Electron America, Inc.*, 208 F.R.D. 273, 276 (N.D.Cal. 2002) (Good cause exists where "the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party").

However, given the fact that Plaintiffs' Application was *ex parte*, Plaintiffs should serve a copy of this Order along with the subpoena. Further, Level 3 may move to quash the subpoena within ten days of being served with the subpoena.

Accordingly, it is ORDERED:

1. Plaintiffs' *Ex parte* Application for Leave to Take Immediate Discovery, filed March 23, 2004, is granted. Plaintiffs may serve a Rule 45 subpoena upon Level 3 Communications, LLC that seeks information sufficient to identify each Defendant's true name, address, telephone number, e-mail address, and Media Access Control address.
2. Any information disclosed to Plaintiffs in response to the subpoena may be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights

under the Copyright Act as set forth in the Complaint.

3. Plaintiffs' shall serve Level 3 Communications, LLC with a copy of this Order along with the subpoena.

4. If Level 3 Communications, LLC wishes to move to quash the subpoena, it must do so within ten days of being served with it.

DATED at Denver, Colorado, this 7th day of April, 2004.

BY THE COURT:

Walker D. Miller
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Walker D. Miller

CERTIFICATE OF MAILING

Case No.04-WM-548

Copies of this Order were served by delivery; or depositing the same in the United States mail, postage prepaid, addressed to the persons listed below:

Richard L. Gabriel
Timothy M. Reynolds
Holme Roberts & Owen LLP
DC Box 7

Magistrate Judge Patricia Coan

Dated: April 8, 2004

7

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Walker D. Miller

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

APR - 8 2004

GREGORY C. LANGHAM
CLERK

Civil Action No. 04-WM-546 (PAC)

MAVERICK RECORDING CO.,
CAPITOL RECORDS, INC.,
INTERSCOPE RECORDS,
ELEKTRA ENTERTAINMENT GROUP INC.,
BMG MUSIC,
WARNER BROS. RECORDS INC.,
MOTOWN RECORD COMPANY, L.P.,
ARISTA RECORDS, INC.,
SONY MUSIC ENTERTAINMENT INC.,
ATLANTIC RECORDING CORPORATION,
UMG RECORDINGS, INC.,
VIRGIN RECORDS AMERICA, INC., and
PRIORITY RECORDS LLC,

Plaintiffs,

v.

DOES 1-12,

Defendants.

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**ORDER**

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Miller, J.

This matter is before me on the Plaintiffs' *Ex Parte* Application for Leave to Take Immediate Discovery ("Application"), filed March 23, 2004. Having considered the Application, Plaintiffs' memorandum of law in support of the Application, and the Declaration of Jonathan Whitehead, I conclude that the Application should be granted, as modified below.

On March 23, 2004, Plaintiffs filed a complaint for copyright infringement against twelve John Doe defendants ("Defendants"). The complaint alleges that Defendants

distributed and/or duplicated copyrighted sound recordings owned or controlled by the Plaintiffs without Plaintiffs' authorization via an online media distribution system in violation of 17 U.S.C. § 501. However, Plaintiffs are only able to identify Defendants with an unique Internet Protocol ("IP") address; they do not know Defendants' names or any other identifying information.

Consequently, Plaintiffs seek permission to obtain immediate discovery from Defendants' Internet Service Provider ("ISP"), Qwest Communications Corporation ("Qwest"), whose subscriber activity log files would allow Plaintiffs to discover Defendants' identities. Specifically, they wish to serve a subpoena on Qwest pursuant to Fed. R. Civ. P. 45, seeking each Defendant's true name, address, telephone number, e-mail address, and Media Access Control ("MAC") address.[1]

Under 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)," unless authorized by a court order or agreement of the parties or when otherwise allowed under the Rules of Civil Procedure. A court order allowing expedited discovery will issue only upon a showing of good cause. *Qwest Communications Int'l, Inc. v. Worldquest Networks, Inc.*, 213 F.R.D. 418, 419 (D. Colo. 2003); *Pod-ners, LLC v. Northern Feed & Bean of Lucerne LLC*, 204 F.R.D. 675, 676 (D. Colo. 2002).

Here, Plaintiffs argue that their immediate need of the data in the subscriber activity logs establishes good cause. They indicate that ISPs such as Qwest typically

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[1]A MAC address is the hardware address that uniquely identifies each node, or processing location (such as a computer), of a network. *See* Webopedia, *at* http;//www.webopedia.com/TERM/M/MAC_address.html (accessed Apr. 5, 2004).

keep these logs for brief periods of time before erasing the data they contain. Plaintiffs might never identify the Defendants without obtaining access to the data contained in the logs. See Decl. Johnathan Whitehead Supp. *Ex Parte* App., at ¶ 22.

Under these circumstances, Plaintiffs have established good cause. Good cause exists where the evidence sought "may be consumed or destroyed with the passage of time, thereby disadvantaging one or more parties to the litigation." *Qwest*, 213 F.R.D. at 419. *See also Semitool, Inc. v. Tokyo Electron America, Inc.*, 208 F.R.D. 273, 276 (N.D.Cal. 2002) (Good cause exists where "the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party").

However, given the fact that Plaintiffs' Application was *ex parte*, Plaintiffs should serve a copy of this Order along with the subpoena. Further, Qwest may move to quash the subpoena within ten days of being served with the subpoena.

Accordingly, it is ORDERED:

1. Plaintiffs' *Ex parte* Application for Leave to Take Immediate Discovery, filed March 23, 2004, is granted. Plaintiffs may serve a Rule 45 subpoena upon Qwest Communications Corporation that seeks information sufficient to identify each Defendant's true name, address, telephone number, e-mail address, and Media Access Control address.
2. Any information disclosed to Plaintiffs in response to the subpoena may be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under the Copyright Act as set forth in the Complaint.

3. Plaintiffs' shall serve Qwest Communications Corporation with a copy of this Order along with the subpoena.

4. If Qwest Communications Corporation wishes to move to quash the subpoena, it must do so within ten days of being served with it.

DATED at Denver, Colorado, this 12 day of April, 2004.

BY THE COURT:

Walker D. Miller
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Walker D. Miller

CERTIFICATE OF MAILING

Case No.04-WM-546

Copies of this Order were served by delivery; or depositing the same in the United States mail, postage prepaid, addressed to the persons listed below:

Richard L. Gabriel
Timothy M. Reynolds
Holme Roberts & Owen LLP
DC Box 7

Magistrate Judge Patricia Coan

Dated: April 8, 2004

Timothy Reynolds Parks

7

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Walker D. Miller

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

APR - 8 2004

GREGORY C. LANGHAM
CLERK

Civil Action No. 04-WM-547 (PAC)

MOTOWN RECORD COMPANY, L.P.,
SONY MUSIC ENTERTAINMENT INC.,
PRIORITY RECORDS LLC,
VIRGIN RECORDS AMERICA, INC.,
ARISTA RECORDS, INC.,
BMG MUSIC,
ELEKTRA ENTERTAINMENT GROUP INC.,
CAPITOL RECORDS, INC.,
WARNER BROS. RECORDS INC.,
UMG RECORDINGS, INC.,
INTERSCOPE RECORDS, and
MAVERICK RECORDING CO.,

Plaintiffs,

v.

DOES 1-5,

Defendants.

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**ORDER**

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Miller, J.

This matter is before me on the Plaintiffs' *Ex Parte* Application for Leave to Take Immediate Discovery ("Application"), filed March 23, 2004. Having considered the Application, Plaintiffs' memorandum of law in support of the Application, and the Declaration of Jonathan Whitehead, I conclude that the Application should be granted, as modified below.

On March 23, 2004, Plaintiffs filed a complaint for copyright infringement against five John Doe defendants ("Defendants"). The complaint alleges that Defendants

distributed and/or duplicated copyrighted sound recordings owned or controlled by the Plaintiffs without Plaintiffs' authorization via an online media distribution system in violation of 17 U.S.C. § 501. However, Plaintiffs are only able to identify Defendants with an unique Internet Protocol ("IP") address; they do not know Defendants' names or any other identifying information.

Consequently, Plaintiffs seek permission to obtain immediate discovery from Defendants' Internet Service Provider ("ISP"), the University of Northern Colorado ("UNC"), whose subscriber activity log files would allow Plaintiffs to discover Defendants' identities. Specifically, they wish to serve a subpoena on UNC pursuant to Fed. R. Civ. P. 45, seeking each Defendant's true name, address, telephone number, e-mail address, and Media Access Control ("MAC") address.[1]

Under 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)," unless authorized by a court order or agreement of the parties or when otherwise allowed under the Rules of Civil Procedure. A court order allowing expedited discovery will issue only upon a showing of good cause. *Qwest Communications Int'l, Inc. v. Worldquest Networks, Inc.*, 213 F.R.D. 418, 419 (D. Colo. 2003); *Pod-ners, LLC v. Northern Feed & Bean of Lucerne LLC*, 204 F.R.D. 675, 676 (D. Colo. 2002).

Here, Plaintiffs argue that their immediate need of the data in the subscriber activity logs establishes good cause. They indicate that ISPs such as UNC typically

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[1]A MAC address is the hardware address that uniquely identifies each node, or processing location (such as a computer), of a network. *See* Webopedia, *at* http;//www.webopedia.com/TERM/M/MAC_address.html (accessed Apr. 5, 2004).

keep these logs for brief periods of time before erasing the data they contain. Plaintiffs might never identify the Defendants without obtaining access to the data contained in the logs. *See* Decl. Johnathan Whitehead Supp. *Ex Parte* App., at ¶ 22.

Under these circumstances, Plaintiffs have established good cause. Good cause exists where the evidence sought "may be consumed or destroyed with the passage of time, thereby disadvantaging one or more parties to the litigation." *Qwest*, 213 F.R.D. at 419. *See also Semitool, Inc. v. Tokyo Electron America, Inc.*, 208 F.R.D. 273, 276 (N.D.Cal. 2002) (Good cause exists where "the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party").

However, given the fact that Plaintiffs' Application was *ex parte*, Plaintiffs should serve a copy of this Order along with the subpoena. Further, UNC may move to quash the subpoena within ten days of being served with the subpoena.

Accordingly, it is ORDERED:

1. Plaintiffs' *Ex parte* Application for Leave to Take Immediate Discovery, filed March 23, 2004, is granted. Plaintiffs may serve a Rule 45 subpoena upon the University of Northern Colorado that seeks information sufficient to identify each Defendant's true name, address, telephone number, e-mail address, and Media Access Control address.
2. Any information disclosed to Plaintiffs in response to the subpoena may be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under the Copyright Act as set forth in the Complaint.

3. Plaintiffs' shall serve the University of Northern Colorado with a copy of this Order along with the subpoena.

4. If the University of Northern Colorado wishes to move to quash the subpoena, it must do so within ten days of being served with it.

DATED at Denver, Colorado, this 7th day of April, 2004.

BY THE COURT:

Walker D. Miller
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Walker D. Miller

CERTIFICATE OF MAILING

Case No.04-WM-547

Copies of this Order were served by delivery; or depositing the same in the United States mail, postage prepaid, addressed to the persons listed below:

Richard L. Gabriel
Timothy M. Reynolds
Holme Roberts & Owen LLP
DC Box 7

Magistrate Judge Patricia Coan

Dated: April 8, 2004

7

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Walker D. Miller

Civil Action No. 04-WM-545 (PAC)

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
APR - 8 2004
GREGORY C. LANGHAM
CLERK

MOTOWN RECORD COMPANY, L.P.,
CAPITOL RECORDS, INC.
WARNER BROS. RECORDS INC.,
UMG RECORDINGS, INC.,
ARISTA RECORDS, INC.,
SONY MUSIC ENTERTAINMENT INC.,
INTERSCOPE RECORDS,
PRIORITY RECORDS LLC and
ELEKTRA ENTERTAINMENT GROUP INC.,

Plaintiffs,

v.

DOES 1-3,

Defendants.

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**ORDER**

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Miller, J.

This matter is before me on the Plaintiffs' *Ex Parte* Application for Leave to Take Immediate Discovery ("Application"), filed March 23, 2004. Having considered the Application, Plaintiffs' memorandum of law in support of the Application, and the Declaration of Jonathan Whitehead, I conclude that the Application should be granted, as modified below.

On March 23, 2004, Plaintiffs filed a complaint for copyright infringement against three John Doe defendants ("Defendants"). The complaint alleges that Defendants distributed and/or duplicated copyrighted sound recordings owned or controlled by the Plaintiffs without Plaintiffs' authorization via an online media distribution system in

violation of 17 U.S.C. § 501. However, Plaintiffs are only able to identify Defendants with an unique Internet Protocol ("IP") address; they do not know Defendants' names or any other identifying information.

Consequently, Plaintiffs seek permission to obtain immediate discovery from Defendants' Internet Service Provider ("ISP"), the University of Colorado at Colorado Springs ("UCCS"), whose subscriber activity log files would allow Plaintiffs to discover Defendants' identities. Specifically, they wish to serve a subpoena on UCCS pursuant to Fed. R. Civ. P. 45, seeking each Defendant's true name, address, telephone number, e-mail address, and Media Access Control ("MAC") address.[1]

Under 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)," unless authorized by a court order or agreement of the parties or when otherwise allowed under the Rules of Civil Procedure. A court order allowing expedited discovery will issue only upon a showing of good cause. *Qwest Communications Int'l, Inc. v. Worldquest Networks, Inc.*, 213 F.R.D. 418, 419 (D. Colo. 2003); *Pod-ners, LLC v. Northern Feed & Bean of Lucerne LLC*, 204 F.R.D. 675, 676 (D. Colo. 2002).

Here, Plaintiffs argue that their immediate need of the data in the subscriber activity logs establishes good cause. They indicate that ISPs such as UCCS typically keep these logs for brief periods of time before erasing the data they contain. Plaintiffs might never identify the Defendants without obtaining access to the data contained in

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[1]A MAC address is the hardware address that uniquely identifies each node, or processing location (such as a computer), of a network. *See* Webopedia, *at* http://www.webopedia.com/TERM/M/MAC_address.html (accessed Apr. 5, 2004).

the logs. *See* Decl. Johnathan Whitehead Supp. *Ex Parte* App., at ¶ 22.

Under these circumstances, Plaintiffs have established good cause. Good cause exists where the evidence sought "may be consumed or destroyed with the passage of time, thereby disadvantaging one or more parties to the litigation." *Qwest*, 213 F.R.D. at 419. *See also Semitool, Inc. v. Tokyo Electron America, Inc.*, 208 F.R.D. 273, 276 (N.D.Cal. 2002) (Good cause exists where "the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party").

However, given the fact that Plaintiffs' Application was *ex parte*, Plaintiffs should serve a copy of this Order along with the subpoena. Further, UCCS may move to quash the subpoena within ten days of being served with the subpoena.

Accordingly, it is ORDERED:

1. Plaintiffs' *Ex parte* Application for Leave to Take Immediate Discovery, filed March 23, 2004, is granted. Plaintiffs may serve a Rule 45 subpoena upon the University of Colorado at Colorado Springs that seeks information sufficient to identify each Defendant's true name, address, telephone number, e-mail address, and Media Access Control Address.
2. Any information disclosed to Plaintiffs in response to the subpoena may be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under the Copyright Act as set forth in the Complaint.
3. Plaintiffs' shall serve the University of Colorado at Colorado Springs with a copy of this Order along with the subpoena.

4. If the University of Colorado at Colorado Springs wishes to move to quash the subpoena, it must do so within ten days of being served with it.

DATED at Denver, Colorado, this 7th day of April, 2004.

BY THE COURT:

Walker D. Miller
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Walker D. Miller

CERTIFICATE OF MAILING

Case No. 04-WM-545(PAC)

Copies of this Order were served by delivery; or depositing the same in the United States mail, postage prepaid, addressed to the persons listed below:

Timothy M. Reynolds
Holme Roberts & Owen
D.C. Box 07

Dated: April 8, 2004

Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

WARNER BROS. 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; UMG RECORDINGS, INC., a Delaware corporation; ELEKTRA ENTERTAINMENT GROUP INC., a Delaware corporation; INTERSCOPE RECORDS, a California general partnership; VIRGIN RECORDS AMERICA, INC., a California corporation; ATLANTIC RECORDING CORPORATION, a Delaware corporation; CAPITOL RECORDS, INC., a Delaware corporation; and CAPITOL RECORDS, INC., a Delaware corporation,

Plaintiffs,

v.

DOES 1 - 9,

Defendants.

Hon. : Gerald E. Rosen
Case : 04-71058

FILED
APR 05 2004
CLERK'S OFFICE
U. S. DISTRICT COURT
EASTERN MICHIGAN

JONATHAN D. ROWE (P35384)
MATTHEW E. KRICHBAUM (P52491)
SOBLE & ROWE, LLP
Attorneys for Plaintiff
221 North Main Street, Suite 200
Ann Arbor, Michigan 48104
(734) 996 5600

**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, 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 the University of Michigan 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: 4-5-04

GERALD E. ROSEN

United States District Judge

JEFFREY G. KNOWLES (State Bar # 129754)
JULIA D. GREER (State Bar # 200479)
ZUZANA J. SVIHRA (State Bar # 208671)
COBLENTZ, PATCH, DUFFY & BASS, LLP
One Ferry Building, Suite 200
San Francisco, California 94111
Telephone: (415) 391-4800
Facsimile: (415) 989-1663

Attorneys for Plaintiffs
ARISTA RECORDS, INC.; WARNER BROS. RECORDS INC.; UMG RECORDINGS, INC.; CAPITOL RECORDS, INC.; VIRGIN RECORDS AMERICA, INC.; SONY MUSIC ENTERTAINMENT INC.; INTERSCOPE RECORDS; and ELEKTRA ENTERTAINMENT GROUP INC.

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

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ARISTA RECORDS, INC., a Delaware corporation; WARNER BROS. RECORDS INC., a Delaware corporation; UMG RECORDINGS, INC., a Delaware corporation; CAPITOL RECORDS, INC., a Delaware corporation; VIRGIN RECORDS AMERICA, INC., a California corporation; SONY MUSIC ENTERTAINMENT INC., a Delaware corporation; INTERSCOPE RECORDS, a California general partnership; and ELEKTRA ENTERTAINMENT GROUP INC., a Delaware corporation,

Plaintiffs,

vs.

JOHN DOE,

Defendant.

CASE NO. C-04-1134 JL

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

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 Stanford University to obtain the identity of Doe Defendant by serving a Rule 45 subpoena that seeks information

sufficient to identify Doe Defendant, including the name, address, telephone number, e-mail address, and Media Access Control addresses for Defendant. Stanford may move to quash.

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.

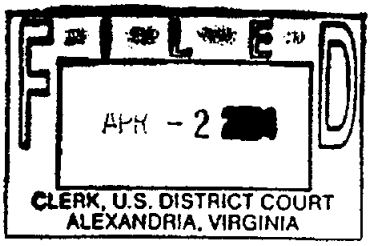
Without such discovery, Plaintiffs cannot identify the Doe Defendant, and thus cannot pursue their lawsuit to protect their copyrighted works from infringement.

Dated: April 5, 2004

James Larson, U.S. Magistrate
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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION




| | | |
|---|---|---|
| ATLANTIC RECORDING CORPORATION, a Delaware corporation; PRIORITY RECORDS LLC, a California limited liability company; WARNER BROS. RECORDS INC., a Delaware corporation; VIRGIN RECORDS AMERICA, INC., a California corporation; ARISTA RECORDS, INC., a Delaware corporation; BMG MUSIC, a New York general partnership; CAPITOL RECORDS, INC., a Delaware corporation; FONOVISA, INC., a California corporation; INTERSCOPE RECORDS, a California general partnership; ELEKTRA ENTERTAINMENT GROUP INC., a Delaware corporation; MOTOWN RECORD COMPANY, L.P., a California limited partnership; MAVERICK RECORDING COMPANY, a California joint venture; UMG RECORDINGS, INC., a Delaware corporation; and SONY MUSIC ENTERTAINMENT INC., a Delaware corporation,<br><br>Plaintiffs,<br><br>v.<br><br>Does 1 - 13,<br><br>Defendants. | ) | Case No. 1:04CV316 |

**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:

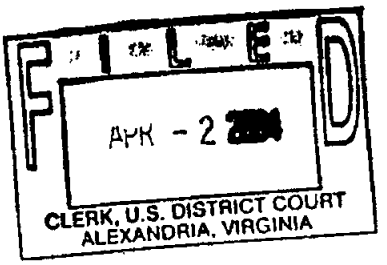
ORDERED that Plaintiffs may serve immediate discovery on America Online, Inc. to obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks information sufficient to identify each Doe Defendant, including the name, address, telephone number, e-mail address, and Media Access Control 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: April 2, 2004

United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION




| | | |
|---|---|---|
| FONOVISA, INC., a California corporation; UMG RECORDINGS, INC., a Delaware corporation; ARISTA RECORDS, INC., a Delaware corporation; PRIORITY RECORDS LLC, a California limited liability company; SONY MUSIC ENTERTAINMENT INC., a Delaware corporation; INTERSCOPE RECORDS, a California general partnership; BMG MUSIC, a New York general partnership; and ELEKTRA ENTERTAINMENT GROUP INC., a Delaware corporation, | ) | Case No. 1:04CV317 |
| Plaintiffs, | ) | |
| v. | ) | |
| Does 1 - 2, | ) | |
| Defendants. | ) | |

**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 George Mason 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: April 2, 2014

United States Magistrate Judge

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

**IN THE UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF INDIANA**
**INDIANAPOLIS DIVISION**

| | | |
|---|---|---|
| PRIORITY RECORDS LLC, a California limited liability company; UMG RECORDINGS, INC., a Delaware corporation; ARISTA RECORDS, INC., 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 CAPITOL RECORDS, INC., a Delaware corporation, | ) | Cause No.: |
| Plaintiffs, | ) | 1:04-CV-0541 JDT - TAB |
| 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 the University of Indianapolis 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 Defendant.

SCANNED

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: 4/11/04

United States ~~District~~ Magistrate Judge

Copies to:

James Dimos #11178-49
Joel E. Tragesser #21414-29
LOCKE REYNOLDS LLP
201 North Illinois Street
Suite 1000
P.O. Box 44961
Indianapolis, IN 46244-0961
jdimos@locke.com
jtragesser@locke.com

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

| | |
|---|---|
| ATLANTIC RECORDING CORPORATION, a Delaware corporation; VIRGIN RECORDS AMERICA, INC., a California corporation; SONY MUSIC ENTERTAINMENT INC., a Delaware corporation; BMG MUSIC, a New York general partnership; INTERSCOPE RECORDS, a California general partnership; UMG RECORDINGS, INC., a Delaware corporation; ELEKTRA ENTERTAINMENT GROUP INC., a Delaware corporation; MAVERICK RECORDING COMPANY, a California joint venture; CAPITOL RECORDS, INC., a Delaware corporation; ARISTA RECORDS, INC., a Delaware corporation; and WARNER BROS. RECORDS INC., a Delaware corporation,<br><br>Plaintiffs,<br><br>v.<br><br>DOES 1 - 3,<br><br>Defendants. | Civil Action No.:<br><br>04 0475 |

~~[PROPOSED]~~ **ORDER GRANTING 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 George Washington 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: 3-31-04

Roger C. Fowlkes
United States District Judge

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

| | | |
|---|---|---|
| **BMG MUSIC, *et al.*** | ) | |
| | ) | |
| **Plaintiffs,** | ) | |
| | ) | |
| **v.** | ) | **Civil Action No. 04-0476 (ESH)** |
| | ) | |
| **DOES 1-3** | ) | |
| | ) | |
| **Defendants.** | ) | |
| | ) | |

**ORDER**

Plaintiffs' Motion for Leave to Take Immediate Discovery is before the Court. Based upon the record and the relevant law, it is hereby

**ORDERED** that plaintiffs' motion is **GRANTED**; it is

**FURTHER ORDERED** that plaintiffs will be allowed to serve immediate discovery on Georgetown to obtain the identity of each John Doe defendant by serving a Rule 45 subpoena that seeks information sufficient to identify each defendant, including name, address, telephone number, email address, and Media Access Control address. 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 as set forth in the Complaint; it is

**FURTHER ORDERED** that if and when Georgetown is served with a subpoena, it shall give written notice, which can include use of email, to the subscribers in question within five business days. If Georgetown and/or any defendant wishes 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, and Georgetown shall preserve any subpoenaed information pending the resolution of any timely filed motion to quash; and it is

**FURTHER ORDERED** that plaintiffs shall provide Georgetown a copy of this Order along with its subpoena.

**SO ORDERED.**

s/
ELLEN SEGAL HUVELLE
United States District Judge

Date: March 31, 2004

FILED
U.S. DISTRICT COURT
04 MAR 31 AM 9:32
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BY

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**SHERMAN DIVISION**

| | | |
|---|---|---|
| ARISTA RECORDS, INC., a Delaware corporation; SONY MUSIC ENTERTAINMENT INC., a Delaware corporation; MAVERICK RECORDING COMPANY, a California joint venture; FONOVISA, INC., a California corporation; WARNER BROS. RECORDS INC., a Delaware corporation; UMG RECORDINGS, INC., a Delaware corporation; VIRGIN RECORDS AMERICA, INC., a California corporation; INTERSCOPE RECORDS, a California general partnership; PRIORITY RECORDS LLC, a California limited liability company; LOUD RECORDS, LLC, a Delaware corporation; MOTOWN RECORD COMPANY, L.P., a California limited partnership; CAPITOL RECORDS, INC., a Delaware corporation; BMG MUSIC, a New York general partnership; ATLANTIC RECORDING CORPORATION, a Delaware corporation; CAROLINE RECORDS, INC., a New York corporation; ELEKTRA ENTERTAINMENT GROUP INC., a Delaware corporation; and LONDON-SIRE RECORDS INC., a Delaware corporation, | § | Case No.: 4:04cv93 |
| Plaintiffs, | § | |
| vs. | § | |
| DOES 1 - 143, | § | |
| 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 *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:

ORDERED that Plaintiffs may serve immediate discovery on Southwestern Bell Internet Services 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: 3-30-04

Richard J. Sikell
United States District Judge

KARIN G. PAGNANELLI (State Bar No. 174763)
ROHIT U. SHENDRIKAR (State Bar No. 200401)
MITCHELL SILBERBERG & KNUPP LLP
11377 West Olympic Boulevard
Los Angeles, CA 90064-1683
Telephone: (310) 312-2000
Facsimile: (310) 312-3100

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

FILED
CLERK, U.S. DISTRICT COURT
MAR 30 2004
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

CAPITOL RECORDS, INC., a Delaware corporation; INTERSCOPE RECORDS, a California general partnership; ELEKTRA ENTERTAINMENT GROUP INC., a Delaware corporation; ATLANTIC RECORDING CORPORATION, a Delaware corporation; MAVERICK RECORDING COMPANY, a California joint venture; ARISTA RECORDS, INC., a Delaware corporation; PRIORITY RECORDS LLC, a California limited liability company; VIRGIN RECORDS AMERICA, INC., a California corporation; MOTOWN RECORD COMPANY, L.P., a California limited partnership; UMG RECORDINGS, INC., a Delaware corporation; and SONY MUSIC ENTERTAINMENT INC., a Delaware corporation,

Plaintiffs,

v.

Does 1 - 2,

Defendants.

CASE NO. CV04-1961 RGK

**~~[PROPOSED]~~ ORDER GRANTING PLAINTIFFS' *EX PARTE* APPLICATION FOR LEAVE TO TAKE IMMEDIATE DISCOVERY**

ORIGINAL STAMPED IN RED

Upon the *Ex Parte* Application of Plaintiffs to take immediate discovery, the declaration of Jonathan Whitehead and the exhibit thereto, the declaration of Karin G. Pagnanelli, and the accompanying Memorandum of Law, it is hereby:

ORDERED that Plaintiffs may serve immediate discovery on California State University, Northridge 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: 3/30/04

Stephen Kellman
United States District Judge
MAGISTRATE

Mitchell Silberberg & Knupp LLP

FILED
CLERK, U.S. DISTRICT COURT
MAR 30 2004
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

KARIN G. PAGNANELLI (State Bar No. 174763)
ROHIT U. SHENDRIKAR (State Bar No. 200401)
MITCHELL SILBERBERG & KNUPP LLP
11377 West Olympic Boulevard
Los Angeles, CA 90064-1683
Telephone: (310) 312-2000
Facsimile: (310) 312-3100

Attorneys for Plaintiffs
WARNER BROS. RECORDS INC.; ARISTA RECORDS, INC.; UMG RECORDINGS, INC.; SONY MUSIC ENTERTAINMENT INC.; BMG MUSIC; PRIORITY RECORDS LLC; CAPITOL RECORDS, INC.; and ATLANTIC RECORDING CORP.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

WARNER BROS. RECORDS INC., a Delaware corporation; ARISTA RECORDS, INC., a Delaware corporation; UMG RECORDINGS, INC., a Delaware corporation; SONY MUSIC ENTERTAINMENT INC., a Delaware corporation; BMG MUSIC, a New York general partnership; PRIORITY RECORDS LLC, a California limited liability company; CAPITOL RECORDS, INC., a Delaware corporation; and ATLANTIC RECORDING CORPORATION, a Delaware corporation,

Plaintiffs,

v.

Does 1 - 4,

Defendants.

CASE NO. CV04-1960

**[PROPOSED] ORDER GRANTING PLAINTIFFS' *EX PARTE* APPLICATION FOR LEAVE TO TAKE IMMEDIATE DISCOVERY**

ORIGINAL STAMPED IN RED

Upon the *Ex Parte* Application of Plaintiffs to take immediate discovery, the declaration of Jonathan Whitehead and the exhibit thereto, the

declaration of Karin G. Pagnanelli, and the accompanying Memorandum of Law, it is hereby:

ORDERED that Plaintiffs may serve immediate discovery on Loyola Marymount 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: 3/30/04

Patrick J. Walsh
United States ~~District~~ Judge

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DISTRICT OF ARIZONA
BY DEPUTY

**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;

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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

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

| | | |
|---|---|---|
| INTERSCOPE RECORDS; VIRGIN RECORDS OF AMERICA, INC; ATLANTIC RECORDING CORP; SONY MUSIC ENTERTAINMENT, INC.; ELEKTRA ENTERTAINMENT GROUP, INC; UMG RECORDINGS, INC.; ARISTA RECORDS, INC.; WARNER BROS. RECORDS INC.; CAPITOL RECORD, INC.; MAVERICK RECORDING COMPANY; and BMG MUSIC | ) | No 3-04-0240 |
| v. | ) | |
| DOES 1-7 | ) | |

ORDER

The plaintiffs' motion for expedited discovery (Docket Entry No. 3) is GRANTED. The stay of discovery, pursuant to Rule 26(d) of the Federal Rules of Civil Procedure, is hereby LIFTED.

If the defendants cannot be served with summons and the complaint prior to May 10, 2004, plaintiffs' counsel shall notify the office of the undersigned to reschedule the May 10, 2004, initial case management conference.

It is so ORDERED.

JULIET GRIFFIN
United States Magistrate Judge

This document was entered on the docket in compliance with Rule 58 and/or Rule 79 (a), FRCP, on 3/29/04 By

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MAR 2 5 2004

U.S. CLERK'S OFFICE
INDIANAPOLIS, INDIANA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

| | | |
|---|---|---|
| INTERSCOPE RECORDS, et al., | ) | |
| | ) | |
| Plaintiffs, | ) | |
| | ) | |
| v. | ) | CAUSE NO. 1:04-cv-0542 DFH-TAB |
| | ) | |
| JOHN DOES 1 – 5, | ) | |
| | ) | |
| Defendants. | ) | |

ORDER AUTHORIZING IMMEDIATE DISCOVERY

In this action for copyright infringement, plaintiffs Interscope Records and several recording companies have moved for court permission to serve Rule 45 subpoenas to discover the identity of five defendants. Plaintiffs have alleged claims of direct copyright infringement by five defendants through use of "Peer to Peer" or "P2P" software over the internet. The defendants are identified by Internet Protocol ("IP") addresses and the dates and times of the alleged infringements. To learn the identities of the defendants, plaintiffs need information from the Internet Service Provider ("ISP") for the defendants. The ISP in this case is Indiana University. Plaintiffs assert that the ISP should be able to identify the five defendants easily using the available information.

SCANNED

Plaintiffs seek an order authorizing immediate discovery because ISPs typically erase or overwrite data in a relatively short time period. In such circumstances, expedited discovery is needed to avoid the loss of information about the identities of the alleged infringers. The court finds that plaintiffs have shown good cause for launching discovery at this time, and there is no identified defendant with whom plaintiffs could conduct a discovery conference. Because it appears that the information plaintiffs seek may be subject to 47 U.S.C. § 551(c)(2), the court will order the subpoenaed ISP to notify its subscribers of the fact that the subpoena has been received so that the subscribers may have an opportunity to assert any rights they might have related to the discovery.

Accordingly, it is hereby ORDERED that plaintiffs may immediately serve discovery requests on Indiana University to obtain the identities of the John Doe defendants by serving a Rule 45 subpoena for information identifying each defendant, including name, address, telephone number, e-mail address, and Media Access Control addresses for each defendant. Within **seven calendar days** after receiving the subpoena, Indiana University shall notify the persons in question of the receipt of the subpoena pursuant to 47 U.S.C. § 551(c)(2), and Indiana University shall not respond to the subpoena **until at least fourteen calendar days** after it has notified the persons in question. Indiana University shall **immediately** take steps to preserve all subpoenaed information.

Plaintiffs may use any information disclosed to them in response to the Rule 45 subpoena solely for the purpose of asserting and protecting plaintiffs' rights under the Copyright Act.

So ordered.

Date: March 25, 2004

DAVID F. HAMILTON, JUDGE
United States District Court
Southern District of Indiana

Copies to:

James Dimos
Joel E. Tragesser
Locke Reynolds LLP
201 North Illinois Street
Suite 1000
P.O. Box 44961
Indianapolis, Indiana 46244-0961

jdimos@locke.com
jtragesser@locke.com