

parte, for leave to take discovery from, Cox, the non-party Internet Service Provider, to identify the anonymous defendants, which the Court granted. Cox moves to quash the subpoena for its customers' identities, and we seek leave to participate as *amici* in support of Cox.

2. Public Citizen is a public interest organization based in Washington, D.C., which has approximately 165,000 members. Since its founding in 1971, Public Citizen has urged citizens to speak out against abuses by a variety of large institutions, including corporations, government agencies, and unions, and it has advocated a variety of protections for the rights of consumers, citizens and employees to encourage them to do so. Along with its efforts to encourage public participation, Public Citizen has brought and defended numerous cases involving the First Amendment rights of citizens who participate in public debates. Public Citizen has been in the forefront of the development of the law to protect the right to speak anonymously on the Internet and to develop standards for determining when the right to speak anonymously should yield to a plaintiff's claimed right to identify a potential defendant in litigation. Public Citizen has represented Doe defendants or appeared as *amicus curiae* in numerous cases in which subpoenas have been sought to identify anonymous Internet users. *Northwest Airlines v. Teamsters Local 2000*, No. 00-08DWF/AJB (D. Minn.); *Hollis-*

Eden Pharmaceutical Corp. v. Doe, Case No. GIC 759462 (Cal. Super. San Diego Cy.); *iXL Enterprises v. Doe*, No. 2000CV30567 (Ga. Super. Fulton Cy.); *Thomas & Betts v. John Does 1 to 50*, Case No. GIC 748128 (Cal. Super. San Diego Cy.); *Hritz v. Doe*, C-1-00-835 (S.D. Ohio); *WRNN TV Associates v. Doe*, CV-00-0181990S (Conn. Super. Stamford); *Dendrite v. Doe*, 342 N.J. Super. 134, 775 A.2d 756 (N.J.App. 2001); *Donato v. Moldow*, No. BER-L-6214-01 (N.J. Super. Bergen Cy.); *Equidyne Corp. v. John Doe No. 9*, No. 03-1671 (3d Cir.); *Melvin v. Doe*, 836 A.2d 42 (Pa. 2003); *RIAA v. Verizon Internet Services*, 351 F.3d 1229 (D.C. Cir. 2003).

3. Electronic Frontier Foundation (“EFF”) is a nonprofit public interest organization dedicated to protecting civil liberties and free expression in the digital world. Founded in 1990, EFF has over 13,000 dues-paying members and represents the interests of Internet users in court cases and in the broader policy debates surrounding the application of law in the digital age. EFF publishes a comprehensive archive of digital civil liberties information at one of the most linked-to websites in the world, <<http://www.eff.org>>. EFF has handled cases involving the protection of anonymity speech online in a wide variety of contexts.

4. The American Civil Liberties Union (“ACLU”) is a nationwide, nonprofit, nonpartisan organization with approximately 400,000 members dedicated to

the principles of liberty and equality embodied in the U.S. Constitution. The protection of principles of freedom of expression as guaranteed by the First Amendment is an area of special concern to the ACLU. In this connection, the ACLU has been at the forefront in numerous state and federal cases involving freedom of expression on the Internet. The ACLU has also been involved in numerous cases raising issues of due process and the right to anonymous speech.

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

6. Because the Doe defendants have not yet been served, no person has had the opportunity to argue for their interests in this proceeding. *Amici* do not represent any of the Does in this case; nor do they aspire to do so. However, *amici* seek leave to file this brief to argue that, notwithstanding the serious violations of law alleged in the complaint, plaintiffs have not made a sufficient factual showing to warrant discovery into the identities of persons who have communicated anonymously over the Internet, including a showing that there is personal jurisdiction of each of the 100 defendants. Moreover, there are serious concerns about whether all 100 defendants are properly joined in one action, particularly in light of the fact that, in justifying discovery,

plaintiffs have made a factual showing with respect to three defendants but present no evidence to support identification of the other 97 individuals. Finally, we argue that, in the event some discovery is allowed, certain additional conditions should be imposed.

7. *Amici* have made similar arguments in several other cases filed by record labels in recent months, including one in this District, *Motown Record Company L.P. v. Does 1-252* No. 1:04-CV-439-WBH.

8. *Amici's* counsel, Wendy Seltzer, has asked the consent of plaintiffs' counsel, James Lamberth. Mr. Lamberth denied consent.

9. Counsel for Cox has stated that Cox has no objection to the filing of this *amicus* brief.

CONCLUSION

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

Respectfully submitted,

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November 15, 2004

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

ARISTA RECORDS, INC. et al.,)
)
 Plaintiffs,)
)
 v.)
)
DOES 1 – 100,)
)
 Defendants.)
)
_____)

No. 04-CV-2495-BBM

ORDER

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

Dated: November __, 2004

United States District Judge

CERTIFICATE OF SERVICE

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

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