

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

ARISTA RECORDS, INC., et al.,)

Plaintiffs,)

v.)

Case No. 04-CV-2495-BBM

DOES 1-100,)

Defendants.)

_____)

**NON-PARTY COX COMMUNICATIONS INC.'S
MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO QUASH NON-PARTY SUBPOENA**

EXHIBIT B

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

ARISTA RECORDS, INC., et al.,)

Plaintiffs,)

v.)

Case No. 04-CV-2495-BBM

DOES 1-100,)

Defendants.)

DECLARATION OF RANDALL J. CADENHEAD

STATE OF GEORGIA

COUNTY OF DEKALB

I, RANDALL J. CADENHEAD, declare as follows:

1. I am Corporate Counsel with Cox Communications, Inc. (“Cox”).
2. I have personal knowledge of the following facts and if requested would and could competently testify to the following:
3. Cox provides Internet, Cable Television and Telephone services to customers in local markets within 20 states. Cox does not provide any such services within the area covered by the Northern District of Georgia and has no customers within this area.
4. Cox records establish that none of the Defendants in this action reside in the Northern District of Georgia.

5. As is detailed in the Memorandum to which this is appended, the Internet Protocol (“IP”) Address information relied on by Plaintiffs to identify the Defendants also permits the Plaintiffs to determine that none of the Defendants are located in the Northern District of Georgia. Indeed, the markets that most, if not all, of the Defendants reside in can be determined by Plaintiffs through the IP Addresses assigned to the Defendants. I have previously confirmed this fact to counsel for Plaintiffs and also offered to provide supporting information to assist in any situations where uncertainty may exist.
6. I have been contacted by Defendants in Plaintiffs’ previous Doe action against Cox customers who have not filed objections to Plaintiffs’ subpoena because of the difficulty and cost of retaining local counsel in the Northern District of Georgia.
7. Because of the increasing volume of subpoenas from Plaintiffs and others that Cox must respond to, Cox now exercises its right to seek payment for its costs of compliance with third party subpoenas. The rate of \$40 per IP Address, as set out in Attachment A, was established by calculating the average cost of researching and confirming basic customer information associated with an IP Address, along with the cost of reporting the same. Our experience with subpoenas from these Plaintiffs has shown that greater

time and expense is incurred in their handling than on average, because of the costs of individual written notice given to each customer and in responding to concerns voiced by some over the remoteness of the litigation from their locales.

8. Plaintiffs have not yet provided any payment to Cox for previous subpoenas and have stated an unwillingness to pay the rate quoted in this instance, which would total \$4000.

Signature on following page.

Executed this 15 day of November, 2004 at Atlanta, Georgia.


RANDALL J. CADENHEAD

Attachment A



Memo

Legal Department
Cox Communications, Inc
1400 Lake Hearn Drive
Atlanta, GA 30319
(404) 269-6646
(404) 843-5845 fax

NOTICE

To: Parties Issuing Subpoenas
From: Cox Communications, Subpoena Compliance
Re: Subpoena Compliance Procedure Changes

Due to increased demand for customer and employee information from governmental entities and litigants, effective July 1, 2004 Cox Communications has established the following procedures and requirements concerning requests pursuant to most subpoenas, court orders, warrants and civil discovery.

Telephone toll record and listings requests that are not voluminous in nature are excepted from this requirement. All other requests on or after July 1, 2004 must now comply with the requirements below.

No exceptions can be authorized by this office. Failure to comply may result in delay in provision of responsive data and motions for costs and attorneys fees. We ask that you advise us immediately if you have any questions concerning these requirements, so we may take appropriate steps to seek enforcement.

Service of Process

We reserve the right at any time to require service of process by a party upon the company's local agent for service of process as established with the Secretary of State in the states where Cox Communications does business. Please note that designated agents may change from time to time.

Service by facsimile to (404) 843-5845 will be accepted, but the serving party must bear the risk of any delay, error or loss that may result from this method. Incomplete, unsigned, illegible or otherwise improper facsimile service will not be accepted.

Cost Reimbursement (18 U.S.C. § 2706)

Beginning July 1, 2004 payment upon service of process of the following minimum fees for compliance will be required for all subpoena, court order and warrant requests for records (excluding telephone toll and listing requests):

- \$40.00 Minimum for basic information concerning one customer or employee
- \$80.00 For expedited handling, if available

- \$25.00 For basic information concerning each additional person
- \$50.00 For expedited handling, if available

- \$0.25/Page For photocopies and facsimiles exceeding five pages
- \$0.50/Page For expedited handling, if available
- \$25.00 Minimum for overnight delivery service

- \$40.00 plus \$75.00/Hr./Staff For requests requiring greater than 0.5 hours
- 480.00 plus \$150.00Hr./Staff For expedited handling, if available

The subpoenaing party will be notified if hourly charges apply and can receive a non-binding estimate of time required for completion.

Requests for preservation of records will result in expedited handling charges upon service of process.

Time for Completion

We reserve the right to require payment for expenses before subpoena responses are provided.

Requests not subject to hourly charges will normally be responded to in the order received and generally within approximately 14 days from service of process. Cox will endeavor to provide notice if additional time will be required due to subpoena volume, the quantity of records sought or other circumstances.

A response to an expedited request will normally be sent within three business days of receipt.

In event of any motion or other proceeding concerning a request, no response will be provided until an order is provided resolving the issue.

Contact Information

Kenya Nelson - *Subpoenas concerning Internet, Video and Cox Employment information*

Legal Department
Cox Communications
1400 Lake Hearn Drive
Atlanta, GA 30319-1464
(404) 269-6646
Fax – (404) 843-5845

Wanda Moore - *Subpoenas concerning Customer Telephone records*

Legal Department
Cox Communications
1400 Lake Hearn Drive
Atlanta, GA 30319-1464
(404) 269-8732
Fax – (404) 843-5845

Paezle Harris – *Video, Civil Litigation and other subpoenas*

Legal Department
Cox Communications
1400 Lake Hearn Drive
Atlanta, GA 30319-1464
(404) 269-7898
Fax – (404) 843-5845

Bob Brand – *National Security Classified Subpoenas*

Cox Enterprises
6205 Peachtree Dunwoody Rd
Atlanta, GA 30328
Fax - 678-645-1679

Randy Cadenhead, Esq. – *Emergency after business hours (Eastern Time Zone) and escalations*

Legal Department
Cox Communications
1400 Lake Hearn Drive
Atlanta, GA 30319-1464
(404) 269-6761
Fax – (404) 843-5845

DATE

Subpoenaing Party
Address
City, State ZIP

Re: Subpoena or Case Number

In response to the referenced subpoena (court order...), I have enclosed those materials in our possession deemed responsive.

In order to defer the cost for compliance to these requests, Cox requires reimbursement for its expense in responding and has established the schedule below of fees for the same.

Please forward payment within the next 10 days in the sum of \$____.00.

If you have any questions regarding this response, please contact me at (phone number).

Sincerely,
(sender)

Fees:

Make checks payable to: **Cox Communications, Inc.**

- \$40.00 Minimum for basic information concerning one customer or employee
- \$80.00 For expedited handling, if available

- \$25.00 For basic information concerning each additional person
- \$50.00 For expedited handling, if available

- \$0.25/Page For photocopies and facsimiles exceeding five pages
- \$0.50/Page For expedited handling, if available
- \$25.00 Minimum for overnight delivery service

- \$75.00/Hr./Staff For requests requiring greater than 0.5 hours
- \$150.00Hr./Staff For expedited handling, if available

- \$25.00/IP Address For RIAA subpoenas

You will be notified if hourly charges apply and can request a non-binding estimate of the time and charges required for completion. Requests for preservation of records will result in expedited handling charges upon service of process.

(18 U.S.C. § 2706)