

1 Leemore Kushner (SBN 221969)  
KUSHNER LAW GROUP  
2 801 North Citrus Avenue  
Los Angeles, California 90038  
3 Telephone: (323) 515-7894  
Facsimile: (323) 544-8170  
4 Email: lkushner@kushnerlawgroup.com

5 Attorneys for Plaintiff Malibu Media, LLC

6

7

8

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

9

10

11 MALIBU MEDIA, LLC, a California  
limited liability company,

12 Plaintiff,

13

14 v.

15

JOHN DOES 1 through 10,

16

Defendants.

17

18

19

20

21

22

23

24

25

26

27

28

Case Nos. CV 12-1642 RGK (SSx)  
CV 12-1647 RGK (SSx)  
CV 12-3614 RGK (SSx)  
CV 12-3615 RGK (SSx)  
CV 12-3617 RGK (SSx)  
CV 12-3619 RGK (SSx)  
CV 12-3620 RGK (SSx)  
CV 12-3621 RGK (SSx)  
CV 12-3622 RGK (SSx)  
CV 12-3623 RGK (SSx)  
CV 12-4649 RGK (SSx)  
CV 12-4650 RGK (SSx)  
CV 12-4651 RGK (SSx)  
CV 12-4652 RGK (SSx)  
CV 12-4653 RGK (SSx)  
CV 12-4654 RGK (SSx)  
CV 12-4656 RGK (SSx)  
CV 12-4657 RGK (SSx)  
CV 12-4658 RGK (SSx)  
CV 12-4660 RGK (SSx)  
CV 12-4661 RGK (SSx)  
CV 12-4662 RGK (SSx)  
CV 12-647 RGK (SSx)  
CV 12-649 RGK (SSx)  
CV 12-650 RGK (SSx)  
CV 12-651 RGK (SSx)  
CV 12-652 RGK (SSx)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PLAINTIFF’S NOTICE OF  
RENEWES MOTION AND  
RENEWED MOTION FOR LEAVE  
TO SERVE THIRD PARTY  
SUBPOENAS PRIOR TO A RULE  
26(f) CONFERENCE;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

Date: September 17, 2012  
Time: 9:00 a.m.  
Place: Ctrm 850 (Roybal)

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 17, 2012, at 9:00 a.m., in Courtroom 850 of United States District Court, Central District of California, located at 255 E. Temple Street, Los Angeles, California, or as soon thereafter as counsel may be heard, Plaintiff Malibu Media, LLC will and hereby does move the Court for leave to serve third party subpoenas prior to a rule 26(f) conference.

This motion is based upon this notice of motion and motion, the concurrently filed memorandum of points and authorities, the Declarations of Tobias Fieser and Leemore Kushner filed in connection with Plaintiff’s initial Motion for Leave to Serve Third Party Subpoenas Prior to a Rule 26(f) Conference, upon all pleadings and evidence on file in this matter, and upon such additional evidence or argument as may be accepted by the Court at or prior to the hearing.

DATED: August 14, 2012

KUSHNER LAW GROUP

By:           /s/ Leemore L. Kushner            
Leemore L. Kushner  
Attorneys for Plaintiff Malibu Media, LLC

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. INTRODUCTION.....	1
II. GOOD CAUSE EXISTS TO PERMIT EARLY DISCOVERY.....	1
A. Legal Standard.....	1
B. Plaintiff Has Identified the Defendants With Sufficient Specificity.....	2
C. Steps Taken By Plaintiff to Locate Defendants.....	2
D. Plaintiff’s Suit Can Withstand a Motion to Dismiss.....	3
1. Plaintiff Has Properly Alleged a Copyright Infringement Claim....	3
2. Joinder Is Not a Basis for Dismissal.....	4
E. The Subpoena Will Lead to the Identification of the Defendants.....	4
III. JOINDER IS PROPER.....	4
A. Plaintiff Has Met Rule 20’s Requirements for Permissive Joinder.....	5
1. Same Transaction, Occurrence or Series of Transactions.....	6
a. Logical relationship test.....	6
b. Plaintiff properly pled a series of transactions.....	9
c. It is not necessary for the Defendants to know each other...	10
2. There are common issues of fact and law.....	12
B. Joinder Is Proper Because Each Defendant Is Jointly and Severally Liable.....	12
C. Joinder Promotes Judicial Efficiency And Is Not Prejudicial To The Putative Defendants.....	14
D. Policy Reasons for Permitting Joinder.....	15
1. Absent joinder, data retention issues will cause Plaintiff to sue John Does that cannot be identified .....	15
2. Disallowing joinder would be inconsistent with the policy of Rule 1.....	16

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

E. The Overwhelming Majority Of Courts Permit Joinder.....17

1. California Courts rule that joinder is proper .....17

2. The District of Columbia correctly supports joinder in BitTorrent cases.....18

3. The District of Colorado permits joinder.....19

IV. CONCLUSION.....20

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF AUTHORITIES**

**Page(s)**

**Federal Cases**

*Adobe Systems, Inc. v. Canus Productions, Inc.*,  
173 F.Supp.2d 1044, 1055 (C.D. Cal. 2001) ..... 13

*Apple, Inc. v. Samsung Electronics Co.*,  
2011 WL 1938154 at \*1 (N.D.Cal. May 18, 2011)..... 1

*Arista Records, LLC v. Does 1-19*,  
551 F.Supp.2d 1, 11 (D.D.C. 2008)..... 10

*Berlin Media Art E.K. v. Does 1-144*,  
2011 WL 4056167 (E.D. CA. 2011)..... 17

*Bravado Int’l Group Merch. Servs. v. Cha*,  
2010 WL 2650432 at \*4 (C.D.Cal. June 30, 2010) ..... 6

*Call of the Wild Movie v. Does 1-1062*,  
770 F.Supp.2d 332, 343 (D.D.C. 2011).....*passim*

*Call of the Wild Movie v. Smith*,  
274 F.R.D. 334 (D.D.C. 2011) ..... 15

*Camelot Distribution Group v. Does 1-1210*  
2011 WL 4455249 (E.D.Cal. 2011)..... 17

*Columbia Ins. Co. v. Seescandy.com*,  
185 F.R.D. 573, 578-80 (N.D.Cal. 1999) ..... 2

*Costar Group, Inc. v. Loopnet, Inc.*,  
164 F. Supp.2d 688, 696 (M.D. 2001)..... 12

*DigitProtect USA Corp. v. Does*,  
2011 WL 4444666 (S.D.N.Y. 2011)..... 19

*Disparte v. Corp. Exec. Bd.*,  
223 F.R.D. 7, 10 (D.D.C. 2004) ..... 9

1 *Donkeyball Movie, LLC v. Does,*  
 2 2011 WL 1807452 (D.D.C. May 12, 2011)..... 18

3 *First Time Videos, LLC v. Does 1-76,*  
 4 2011 WL 3586245 (N.D. Ill. 2011) ..... 5

5  
 6 *Hard Drive Productions, Inc. v. Does 1-46,*  
 2011 U.S. Dist. LEXIS 67314 (N.D. Cal. 2011) ..... 17

7  
 8 *League to Save Lake Tahoe v. Tahoe Reg’l Planning Agency,*  
 558 F.2d 914, 917 (9<sup>th</sup> Cir. 1997) ..... 5

9  
 10 *Liberty Media Holdings, LLC v. Does 1-62,*  
 2012 WL 628309 (S.D.Cal. Feb. 24, 2012)..... 5, 6, 7, 17

11  
 12 *Malibu Media, LLC v. Does 1-10,*  
 Case No. CV12-1647, Docket No. 22 (C.D.Cal. June 4, 2012) ..... 5, 16

13  
 14 *Malibu Media, LLC v. Does 1-13,*  
 2012 WL 2325588 (E.D.N.Y. June 19, 2012) ..... 19

15  
 16 *Malibu Media, LLC v. Does 1-25,*  
 2012 WL 2367555 at \*3 (S.D.Cal. June 21, 2012)..... 17

17  
 18 *Marobie-FL, Inc. v. National Ass’n of Fire Equipment Distributors,*  
 983 F. Supp. 1167 (N.D. IL 1997)..... 13

19  
 20 *Maverick Entertainment Group, Inc. v. Does 1-2115,*  
 2011 WL 1807428 (D.D.C. 2011) ..... 18

21  
 22 *MGCIP v. Does 1-149,*  
 2011 WL 3607666 at \*2 (N.D.Cal. 2011) ..... 2

23  
 24 *Mosley v. Gen. Motors Corp.*  
 497 F.2d 1330, 1332 (8<sup>th</sup> Cir. 1974) ..... 5, 6

25  
 26 *New Sensations, Inc. v. Does 1745,*  
 2011 WL 2837610 (N.D.Cal. 2011) ..... 17

27  
 28 *NuImage, Inc. v. Does 1-22,322,*  
 2011 WL 3240562 (D.D.C. 2011) ..... 18

1  
 2 *OpenMind Solutions, Inc. v. Does 1-39*,  
 2011 WL 4715200 (N.D. Cal. 2011) .....*passim*  
 3  
 4 *Patrick Collins, Inc. v. John Does 1-9*  
 11-cv-01269 (S.D.N.Y. 2011) ..... 19  
 5  
 6 *Patrick Collins, Inc. v. John Does 1-21*,  
 2012 WL 1190840 (E.D. Mich. Apr. 5, 2012) ..... 7, 8  
 7  
 8 *Patrick Collins, Inc. v. John Does 1-33*,  
 2012 WL 415424 (D.Colo. 2012)..... 19  
 9  
 10 *Patrick Collins, Inc. v. John Does 34-51*,  
 2012 WL 871269 (S.D.Cal. March 14, 2012) ..... 5  
 11  
 12 *Patrick Collins, Inc. v. John Does 1-2590*,  
 2011 WL 4407172 (N.D.Cal. 2011) ..... 7, 17  
 13  
 14 *Raw Films, Ltd. v. John Does 1-15*,  
 2012 WL 1019067 (E.D. Pa. Mar. 26, 2012) ..... 11  
 15  
 16 *Semitoool, Inc. v. Tokyo Electron America, Inc.*,  
 208 F.R.D. 273, 276 (N.D.Cal. 2002) ..... 1  
 17  
 18 *United Mine Workers of Am. v. Gibbs*,  
 383 U.S. 715, 724 (1966)..... 5  
 19  
 20 *United States v. Mississippi*  
 380 U.S. 128 (1965)..... 10, 11  
 21  
 22 *Voltage Pictures, LLC v. Does 1-5000*,  
 818 F.Supp.2d 28, 35 (D.D.C. 2011)..... 18  
 23  
 24 *Voltage Pictures, LLC v. Vazquez*  
 2011 WL 5006942 (D.D.C. 2011) ..... 18  
 25  
 26 *West Coast Prods. v. Does*,  
 275 F.R.D. 9, 14-15 (D.D.C. 2011) ..... 18  
 27

28 **Statutes**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

17 USC § 106.....3

**Rules**

Fed. R. Civ. P. 1..... 15, 16

Fed. R. Civ. P. 20..... 5, 6, 15

Fed. R. Civ. P. 21..... 4

Fed. R. Civ. P. 26..... 1



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**MEMORANDUM OF POINTS AND AUTHORITIES**

Pursuant to Fed. R. Civ. P. 26(d)(1), Plaintiff Malibu Media, LLC (“Plaintiff”), moves the Court for entry of an order granting it leave to serve third party subpoenas prior to a Rule 26(f) conference (the “Application”), and submits the following memorandum in support.

**I. INTRODUCTION**

In each and every one of these related cases, Plaintiff was previously granted leave to serve third party subpoenas on the Defendants’ Internet Service Providers (“ISP”). Indeed, as set forth below, good cause exists for the expedited discovery. This motion reiterates the basis for Plaintiff’s request for expedited discovery below, and, pursuant to the Court’s directive in its July 31, 2012 Order Discharging the Court’s Order to Show Cause re Personal Jurisdiction, Plaintiff has also addressed whether these cases can survive a motion to dismiss for improper joinder.

**II. GOOD CAUSE EXISTS TO PERMIT EARLY DISCOVERY**

**A. Legal Standard**

Pursuant to Rule 26(d)(1), a court may authorize early discovery before the Rule 26(f) conference for the parties’ convenience and in the interest of justice. Courts within the Ninth Circuit generally use a “good cause” standard to determine whether to permit such discovery. *See, e.g., Apple, Inc. v. Samsung Electronics Co., Ltd.*, 2011 WL 1938154 at \*1 (N.D.Cal. May 18, 2011); *Semitool, Inc. v. Tokyo Electron America, Inc.*, 208 F.R.D. 273, 276 (N.D.Cal. 2002). “Good cause may be found where the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party.” *Semitool*, 208 F.R.D. at 276. The court must perform this evaluation in light of “the entirety of the record...and [examine] the reasonableness of the request in light of all the surrounding circumstances.” *Id.* at 275 (citation and quotation marks omitted). In determining whether there is good cause to allow expedited discovery to identify

1 anonymous internet users named as doe defendants, courts consider whether: (1) the  
2 plaintiff can identify the missing party with sufficient specificity such that the Court  
3 can determine that defendant is a real person or entity who could be sued in federal  
4 court, (2) the plaintiff has identified all previous steps taken to locate the elusive  
5 defendant, (3) the plaintiff's suit against defendant could withstand a motion to  
6 dismiss, and (4) the plaintiff has demonstrated that there is a reasonable likelihood  
7 of being able to identify the defendant through discovery such that service of  
8 process would be possible. *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573,  
9 578-80 (N.D.Cal. 1999).

10 **B. Plaintiff Has Identified the Defendants With Sufficient Specificity**

11 Plaintiff attached as Exhibit A to each Complaint a list of IP addresses, the  
12 date and time of the infringing act, and corresponding ISPs. Plaintiff has thereby  
13 demonstrated that the Defendants can be corresponded to their allegedly infringing  
14 acts. Thus, the first factor is satisfied. *See, e.g., MCGIP v. Does 1-149*, 2011 WL  
15 3607666 at \*2 (N.D.Cal. 2011).

16 **C. Steps Taken by Plaintiff to Locate Defendants**

17 Plaintiff retained IPP, Limited, to identify the IP addresses that are being used  
18 by those people that are using the BitTorrent protocol and the internet to reproduce  
19 and distribute Plaintiff's copyrighted works. Declaration of Tobias Fieser submitted  
20 with Plaintiff's initial Motion for Leave to Serve Third Party Subpoenas Prior to a  
21 Rule 26(f) Conference ("Fieser Decl."), ¶ 11. Mr. Fieser used proprietary software  
22 to perform real-time monitoring of the BitTorrent-based swarm involved in  
23 distributing the copyrighted files relevant to these actions. *Id.* at ¶ 13. Mr. Fieser  
24 scanned the peer-to-peer networks for infringing transactions, and isolated the  
25 transactions and the IP addresses being used on the BitTorrent peer-to-peer network  
26 to reproduce, distribute, display or perform Plaintiff's copyrighted works. *Id.* at ¶¶  
27 15-16. Mr. Fieser then analyzed each BitTorrent piece distributed by each IP

28

1 address and verified that reassembling the pieces using a specialized BitTorrent  
2 client results in fully playable digital motion pictures. *Id.* at ¶ 20. At this stage,  
3 Plaintiff can only identify the Defendants through their IP addresses, and service of  
4 subpoenas on the ISPs associated with the IP addresses will allow Plaintiff to further  
5 identify the names and addresses of Defendants so as to effect service.

6 **D. Plaintiff's Suit Can Withstand a Motion to Dismiss**

7 1. Plaintiff Has Properly Alleged a Copyright Infringement Claim

8 To state a claim for copyright infringement, Plaintiff must establish: (1)  
9 ownership of a valid copyright, and (2) that the alleged infringers violated an  
10 exclusive right granted to copyright holders under 17 U.S.C. § 106. *See* 17 U.S.C. §  
11 501(a); *Rice v. Fox Broad. Corp.*, 330 F.3d 1170, 1174 (9<sup>th</sup> Cir. 2003) (citing *Feist*  
12 *Publ'n, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361, 111 S.Ct. 1282 (1991)).

13 The ownership element is satisfied because Plaintiff alleged in the Complaint  
14 that it is the owner and exclusive rights holder of the movies referenced in Exhibit B  
15 to each of the Complaints, which Defendants partially or fully downloaded and  
16 distributed. *See* Complaint, ¶¶ 13, 14, 48 and Ex. B.

17 As to the infringement requirement, 17 U.S.C. § 106 enumerates a list of  
18 exclusive rights granted to copyright holders. These include the right to  
19 “reproduce” and “distribute copies...of the copyrighted work.” 17 U.S.C. § 106.  
20 Plaintiff alleged that the Defendants reproduced and distributed the movies  
21 referenced in Exhibit B to numerous third parties via the same swarm. Complaint, ¶¶  
22 15, 36-44. Additionally, Plaintiff has alleged that Defendants actively engaged in or  
23 directly caused the copying by completing each of the steps in the BitTorrent file-  
24 sharing protocol, including intentionally downloading the torrent files associated  
25 with Plaintiff's copyrighted works, loading that torrent file into the BitTorrent  
26 client, entering a BitTorrent swarm particular to those torrent files, and ultimately,  
27 downloading and uploading pieces of those torrent files to eventually obtain a whole

28



1 (c) all of the defendants were part of the same exact swarm of peer infringers as  
2 evidenced by a unique cryptographic hash value, and (d) Plaintiff pled that the  
3 Defendants are contributorily liable for each other's infringement. *See First Time*  
4 *Videos, LLC v. Does 1-76*, 2011 WL 3586245 (N.D. Ill. 2011) (stating that "the  
5 overwhelming majority of courts have denied as premature motions to sever prior to  
6 discovery"). Numerous other courts in California have held that joinder is proper in  
7 similar BitTorrent copyright infringement cases. *See, e.g., Malibu Media, LLC v.*  
8 *Does 1-10*, Case No. CV12-1647, Docket No. 22 (C.D.Cal. June 4, 2012); *Patrick*  
9 *Collins, Inc. v. John Does 34-51*, 2012 WL 871269 at \* 1 (S.D.Cal. March 14, 2012)  
10 (rejecting the argument that joinder is improper on the grounds that "[b]y its terms,  
11 Rule 45(c)(3) does not provide authority for a court to modify or quash a subpoena  
12 on the grounds of misjoinder."); *Liberty Media Holdings, LLC v. Does 1-62*, 2012  
13 WL 628309 (S.D.Cal. Feb. 24, 2012); *OpenMind Solutions, Inc. v. Does 1-39*, 2011  
14 WL 4715200 (N.D.Cal. Oct. 7, 2011) (finding that Plaintiff met the permissive  
15 joinder requirements and under Rule 20(a)(2)).

16 **A. Plaintiff Has Met Rule 20's Requirements for Permissive Joinder.**

17 Under Rule 20, defendants may be joined in one action when claims arise from  
18 the same transaction or occurrence or series of transactions or occurrences, and any  
19 question of law or fact in the action is common to all defendants. Fed. R. Civ. P.  
20 20(a)(2). The permissive joinder rule "is to be construed liberally in order to promote  
21 trial convenience and to expedite the final determination of disputes, thereby  
22 preventing multiple lawsuits." *League to Save Lake Tahoe v. Tahoe Reg'l Planning*  
23 *Agency*, 558 F.2d 914, 917 (9<sup>th</sup> Cir. 1997). Indeed, the purpose of Rule 20(a) is to  
24 address the "broadest possible scope of action consistent with fairness to the parties;  
25 joinder of claims, parties and remedies is strongly encouraged." *United Mine*  
26 *Workers of Am. v. Gibbs*, 383 U.S. 715, 724, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966);  
27 *Mosley v. Gen. Motors Corp.*, 497 F.2d 1330, 1332 (8<sup>th</sup> Cir. 1974); *Liberty Media*

28

1 *Holdings*, 2012 WL 628309 at \*7 (“Rule 20(a) is designed to promote judicial  
2 economy and trial convenience.”).

3 Rule 20(a) imposes two specific requisites to the joinder of parties: (1) a right  
4 to relief must be asserted by, or against, each plaintiff or defendant relating to or  
5 arising out of the same transaction or occurrence, and (2) some question of law or  
6 fact common to all the parties must arise in the action. Fed. R. Civ. P. 20(a)(2). As  
7 discussed below, this case meets both requirements.

8 **1. Same Transaction, Occurrence or Series of Transactions.**

9 a. Logical relationship test.

10 “The Ninth Circuit has interpreted the phrase ‘same transaction, occurrence, or  
11 series of transactions or occurrences’ to require a degree of factual commonality  
12 underlying the claims.” *Bravado Int’l Group Merch. Servs. v. Cha*, 2010 WL  
13 2650432 at \*4 (C.D.Cal. June 30, 2010) (citing *Coughlin v. Rogers*, 130 F.3d 1348,  
14 1350 (9<sup>th</sup> Cir. 1997)). Typically, this means that a party “must assert rights...that  
15 arise from related activities – a transaction or an occurrence or a series thereof.” *Id.*  
16 (citation omitted). Courts across the country use the “logical relationship” test to  
17 ascertain whether the right to relief arises out of the same transaction or series of  
18 transactions:

19 “‘Transaction’ is a word of flexible meaning. *It may comprehend a*  
20 *series of many occurrences, depending not so much upon the*  
21 *immediateness of their connection as upon their logical relationship.’”*  
22 *Moore v. New York Cotton Exchange*, 270 U.S. 593, 610, 46 S.Ct.  
23 367, 371 (1926). Accordingly, all ‘logically related’ events entitling a  
24 person to institute a legal action against another generally are regarded  
25 as comprising a transaction or occurrence. [Citation.] The analogous  
26 interpretation of the terms as used in Rule 20 would permit all  
reasonably related claims for relief by or against different parties to be  
27 tried in a single proceeding. *Absolute identity of all events is*  
*unnecessary.*

28 *Mosley*, 497 F.2d 1330. The logical relationship test has been consistently used in



1 decisions concerning BitTorrent copyright infringement in suits across the country,  
2 and courts have routinely held that joinder is proper in BitTorrent actions because  
3 of the unique nature of BitTorrent technology. *See, e.g., Patrick Collins, Inc. v.*  
4 *John Does 1-2590*, 2011 WL 4407172 at \*6 (N.D.Cal. 2011); *OpenMind Solutions,*  
5 *Inc.*, 2011 WL 4715200 at \*6; *Call of the Wild Movie v. Does 1-1062*, 770  
6 F.Supp.2d 332, 343 (D.D.C. 2011).

7 As the Southern District of California recently held:

8 Cases involving BitTorrent technology raise a new and distinct method  
9 of alleged copyright infringement that was not possible with the earlier  
10 P2P technology, mainly that BitTorrent users collectively share the  
11 same exact file by each contributing a small piece of the file to the user  
12 downloading the file. Furthermore, unlike the earlier P2P technology,  
13 the BitTorrent file-sharing protocol makes every downloader also an  
14 uploader of the illegally transferred file. This distinguishes BitTorrent  
15 cases from the earlier P2P cases. Given this unique theory of  
16 copyright infringement, it is possible that BitTorrent users identified  
17 with the alleged illegal sharing of the same file are ‘logically related’  
18 and are ‘acting in concert.’

19 *Liberty Media Holdings*, 2012 WL 628309 at \*7.

20 Recently, Judge Randon in the Eastern District of Michigan properly analyzed  
21 the facts in a near-identical case, expanding substantial effort to understand the  
22 allegations in the complaint and the applicable law:

23 Plaintiff alleges that its investigator (“IPP”) was able to download at  
24 least one piece of the copyrighted Movie from each Defendant  
25 [Citation]. It is important to understand the implications of this  
26 allegation before determining whether joinder is proper. If IPP  
27 downloaded a piece of Plaintiff’s copyrighted Movie from each  
28 Defendant (and, conversely, each Defendant uploaded at least one piece  
of the Movie to IPP) then each Defendant had at least one piece of the  
Movie—traceable via Hash Identifier to the same Initial Seeder—on his  
or her computer and allowed other peers to download pieces of the  
Movie.

1 By way of illustration: IPP's computer connected with a tracker, got the  
 2 IP address of each of Defendants' computers, connected with each  
 3 Defendants' computer, and downloaded at least one piece of the Movie  
 4 from each Defendants' computer. During this transaction, IPP's  
 5 computer verified that each Defendants' piece of the Movie had the  
 6 expected Hash; otherwise, the download would not have occurred.

7 *Patrick Collins, Inc. v. John Does 1-21*, 2012 WL 1190840, at \*4-5 (E.D. Mich.  
 8 Apr. 5, 2012). Judge Randon then explained through the force of clear deductive  
 9 logic that each Defendant obtained the piece of Plaintiff's movie in one of four  
 10 ways, all of which relate directly back to one individual seed.

11 If Plaintiffs allegations are true, each Defendant must have downloaded  
 12 the piece(s) each had on his or her computer in one, or more, of the  
 13 following four ways:

14 1) the Defendant connected to and transferred a piece of the  
 15 Movie **from the initial seeder**; or

16 2) the Defendant connected to and transferred a piece of the  
 17 Movie **from a seeder** who downloaded the completed file from the  
 18 initial seeder or from other peers; or

19 3) the Defendant connected to and transferred a piece of the  
 20 Movie **from other Defendants** who downloaded from the initial  
 21 seeder or from other peers; or

22 4) the Defendant connected to and transferred a piece of the  
 23 Movie **from other peers** who downloaded from other Defendants,  
 24 other peers, other Seeders, or the Initial Seeder.

25 In other words, in the universe of possible transactions, at some point,  
 26 each Defendant downloaded a piece of the Movie, which had been  
 27 transferred through a series of uploads and downloads from the Initial  
 28 Seeder, through other users or directly, to each Defendant, and finally  
 to IPP.

*Id.* Having limited the universe to four possibilities the court correctly  
 concluded the transaction was logically related:

Therefore, each Defendant is logically related to every other Defendant  
 because they were all part of a series of transactions linked to a unique  
 Initial Seeder and to each other. This relatedness arises not merely



1 because of their common use of the BitTorrent protocol, but because  
2 each Defendant affirmatively chose to download the same Torrent file  
3 that was created by the same initial seeder, intending to: 1) utilize other  
4 users' computers to download pieces of the same Movie, and 2) allow  
his or her own computer to be used in the infringement by other peers  
and Defendants in the same swarm.

5 *Id.* In other words, by causing *all* users to distribute the file, BitTorrent ensures that  
6 all peers in a swarm materially aid every other peer. This critical fact makes  
7 BitTorrent different than every other peer-to-peer network, and is one important  
8 distinguishing factor that renders joinder proper herein.

9 b. Plaintiff properly pled a series of transactions.

10 With respect to the particular swarm at issue here, the hash (an alphanumeric  
11 representation of a digital file) associated with the copied file's torrent file remained  
12 the same within the swarm. Complaint, ¶¶ 40-44. Further, the alleged infringers all  
13 participated in the same exact swarm and downloaded the same exact copyrighted  
14 file. Fieser Decl., ¶¶ 19-20. Even after a Doe defendant disconnects from the  
15 swarm, the parts of the file that he or she downloaded and uploaded will continue to  
16 be transferred to the other Doe defendants remaining in the swarm. *See OpenMind*  
17 *Solutions*, 2011 WL 4715200 at\*6 (finding that Plaintiff provided enough  
18 specificity to make a preliminary determination that the doe defendants were part of  
19 the same swarm and holding that “Plaintiff’s claims against Defendants appear  
20 logically related”).

21 Simply, here, each putative Defendant is a possible source for Plaintiff’s  
22 copyrighted work, and is responsible for distributing the work to the other putative  
23 defendants, who are also using the same BitTorrent technology to copy the identical  
24 copyrighted material. *See Disparte v. Corp. Exec. Bd.*, 223 F.R.D. 7, 10 (D.D.C.  
25 2004) (to satisfy Rule 20(a)(2)(A) claims must be “logically related” and this test is  
26 “flexible.”). While Defendants may be able to rebut these allegations later, Plaintiff  
27 has sufficiently alleged that its claims against Defendants stem from the same

1 transaction or occurrence, and are logically related. *See Arista Records, LLC v.*  
2 *Does 1-19*. 551 F.Supp.2d 1, 11 (D.D.C. 2008) (“While the Court notes that the  
3 remedy for improper joinder is severance and not dismissal, ... the Court also finds  
4 that this inquiry is premature without first knowing Defendants’ identities and the  
5 actual facts and circumstances associated with Defendants’ conduct.”). Indeed,  
6 Exhibit A to each Complaint reflects that each of the Doe defendants were present in  
7 the same swarm on BitTorrent and shared pieces of the same seed files.

8 Moreover, while the logical relationship test does not require it, should this  
9 matter go trial, Plaintiff will prove that the Defendants’ infringement was committed  
10 through the same transaction or through a series of transactions with mathematical  
11 certainty by demonstrating, *inter alia*, that the algorithm used by BitTorrent trackers  
12 would have caused the entire series of transactions to be different *but for* each of the  
13 Defendants’ infringements.

14 c. It is not necessary for the Defendants to know each other.

15 In *United States v. Mississippi*, 380 U.S. 128 (1965), the Supreme Court  
16 found that the joinder of six defendants, election registrars of six different counties,  
17 was proper because the allegations were all based on the same state-wide system  
18 designed to enforce the voter registration laws in a way that would deprive African  
19 Americans of the right to vote. Although the complaint did not allege that the  
20 registrars acted in concert with each other, or even that they knew of each other’s  
21 actions, or that each other’s actions directly affected each other in any way, the  
22 Supreme Court interpreted Rule 20 to hold a right to relief severally because the  
23 series of transactions were related and contained a common issue of law and fact.  
24 *Id.* at 142-143.

25  
26 [T]he complaint charged that the registrars had acted and were  
27 continuing to act as part of a state-wide system designed to enforce the  
28 registration laws in a way that would inevitably deprive colored people

1 of the right to vote solely because of their color. On such an allegation  
2 the joinder of all the registrars as defendants in a single suit is  
authorized by Rule 20(a) of the Federal Rules of Civil Procedure.

3 *Id.* at 142. Indeed, the Supreme Court held all of the defendants were properly  
4 joined because they were all acting on the basis of the same system which created a  
5 transactional relatedness.

6 Likewise, here, it is not necessary for each of the defendants to have directly  
7 interacted with each other defendant, or have shared a piece of the file with each and  
8 every defendant when downloading the movie. The Defendants are properly joined  
9 because their actions directly relate back to the same initial seed of the swarm, and  
10 their alleged infringement further advances the series of infringements that began  
11 with that initial seed and continued through other infringers. In doing so, the  
12 Defendants all acted under the same exact system.

13 The Eastern District of Pennsylvania recently addressed this exact issue in a  
14 similar BitTorrent copyright infringement action, and the court held that joinder was  
15 proper even if the Doe defendants did not transmit the pieces directly to each other  
16 because the claims arise out of the same series of transactions:

17 [E]ven if no Doe defendant directly transmitted a piece of the Work to  
18 another Doe defendant, the Court is satisfied at this stage of the  
19 litigation the claims against each Doe defendant appear to arise out of  
20 the same series of transactions or occurrences, namely, the transmission  
of pieces of the same copy of the Work to the same investigative  
server.

21 *Raw Films v. John Does 1-15*, 2012 WL 1019067, at \*4 (E.D. Pa March 26,  
22 2012).

## 23 2. There Are Common Issues of Fact and Law.

24 “Rule 20(a)(2)(B) requires the plaintiffs' claims against the putative defendants  
25 to contain a common question of law or fact.” *Call of the Wild*, 770 F.Supp.2d at  
26 343. Here, Plaintiff will have to establish the same legal claims concerning the  
27 validity of its copyrights and the infringement of the exclusive rights reserved to  
28

1 Plaintiff as copyright holder. Furthermore, Plaintiff alleges that the Defendants  
2 utilized the same BitTorrent file-sharing protocol to illegally distribute and download  
3 its copyrights and, consequently, factual issues related to how BitTorrent works and  
4 the methods used by Plaintiff to investigate, uncover, and collect evidence about the  
5 infringing activity will be essentially identical for each Defendant. *See id.* at 343 (“In  
6 each case, the plaintiff will have to establish against each putative defendant the same  
7 legal claims concerning the validity of the copyrights in the movies at issue and the  
8 infringement of the exclusive rights reserved to the plaintiffs as copyright holders.”).  
9 The Court recognizes that each putative defendant may later present different factual  
10 and substantive legal defenses, “but that does not defeat, at this stage of the  
11 proceedings, the commonality in facts and legal claims that support joinder under  
12 Rule 20(a)(2)(B).” *Id.*

13 **B. Joinder Is Proper Because Each Defendant Is Jointly and Severally**  
14 **Liable.**

15 Joinder is also proper because Plaintiff pled that each defendant is jointly and  
16 severally liable for each of the other defendant’s infringement. “It is, today, a given  
17 that ‘one who, with knowledge of the infringing activity, induces, causes or  
18 materially contributes to the infringing conduct of another, may be held liable as a  
19 ‘contributory infringer.’” *Costar Group, Inc. v. Loopnet, Inc.*, 164 F. Supp.2d 688,  
20 696 (M.D. 2001). Here, Plaintiff properly pled contributory infringement  
21 (Complaint, ¶¶ 54-63), and will prove that there was one initial seeder that uploaded  
22 the subject torrent file identified by the unique hash value, and that when a  
23 Defendant receives a piece from a downstream infringer (*i.e.*, an infringer who  
24 already had that piece), then that Defendant will automatically begin distributing the  
25 piece it received from the downstream infringer to others. Plaintiff will thereby  
26 prove that said Defendant materially assists the downstream infringer’s direct  
27 infringement of Plaintiff’s exclusive right to “redistribute . . . the Work. . . .” in

28

1 violation of 17 U.S.C. § 106(3) and 17 U.S.C. §501. Similarly, Plaintiff will prove  
2 that when a Defendant provides a piece of Plaintiff’s copyrighted work to an  
3 upstream infringer, the upstream infringer both sends that piece to other infringers  
4 and will also assemble the entire Work. Accordingly, by delivering a piece to an  
5 upstream infringer, the Defendant is contributorily liable for materially assisting the  
6 upstream infringer to redistribute, perform and display the Work in violation of 17  
7 U.S.C. § 106(3)-(5) and 17 U.S.C. § 501.

8         Since one of the grounds for permissive joinder is joint and several liability,  
9 should the Court hold that joinder is not permitted, then any such holding would  
10 effectively summarily adjudicate Plaintiff’s claim for contributory infringement.  
11 Such a holding would be erroneous because contributory infringement is “a question  
12 of fact for trial.” *Adobe Systems, Inc. v. Canus Productions, Inc.*, 173 F.Supp.2d  
13 1044, 1055 (C.D. Cal. 2001); *Marobie-FL, Inc. v. National Ass’n of Fire Equipment*  
14 *Distributors*, 983 F. Supp. 1167 (N.D. IL 1997) (“fact questions precluded summary  
15 judgment with respect to providers’ liability for contributory infringement”).  
16 Moreover, since BitTorrent works through the cooperative exchange among peers in  
17 a swarm, claims for contributory infringement must be permitted or the law would  
18 be inconsistent with the very nature of BitTorrent.

19         **C. Joinder Promotes Judicial Efficiency And Is Not Prejudicial To**  
20         **The Putative Defendants.**

21         The Northern District of California opined that “[j]oinder in a single case of  
22 putative defendants who allegedly infringed the same copyrighted material promotes  
23 judicial efficiency and, in fact, is beneficial to the putative defendants.” *Open Mind*  
24 *Solutions*, 2011 WL 4715200 at \*7 *see also*, *Call of the Wild*, at 344 (same).

25         Here, Plaintiff seeks to obtain identifying information from ISPs so that it can  
26 properly name and serve Defendants. If the Court were to consider severance at this  
27 juncture, Plaintiff would face significant obstacles in its efforts to protect its

1 copyright from illegal file-sharers, and this would only needlessly delay the case.  
2 Plaintiff would be forced to file 10 separate lawsuits, in which it would then move to  
3 issue separate subpoenas to ISPs for each defendant's identifying information.  
4 Plaintiff would additionally be forced to pay the Court separate filing fees in each of  
5 these cases, which would further limit its ability to protect its legal rights. "This  
6 would certainly not be in the 'interests of convenience and judicial economy,' or  
7 'secure a just, speedy, and inexpensive determination of the action.'" *Call of the*  
8 *Wild*, 770 F.Supp.2d at 334 (citation omitted) (declining to sever defendants where  
9 parties joined promotes more efficient case management and discovery and no party  
10 prejudiced by joinder).

11 Further, Defendants are currently identified only by their IP addresses and are  
12 not named parties. Consequently, they are not required to respond to Plaintiff's  
13 allegations or assert a defense. Defendants may be able to demonstrate prejudice  
14 once Plaintiff proceeds with its case against them, but they cannot demonstrate any  
15 harm that is occurring to them before that time. *Id.*

16 The putative defendants are not prejudiced but likely benefitted by joinder,  
17 and severance would debilitate Plaintiff's efforts to protect its copyrighted material  
18 and seek redress from Defendants, who have allegedly engaged in infringing  
19 activity.

20 **D. Policy Reasons for Permitting Joinder.**

21 **1. Absent joinder, data retention issues will cause Plaintiff to**  
22 **sue John Does that cannot be identified.**

23 Plaintiff has learned through suits across the country that there are major  
24 deficiencies associated with the ability of internet service providers ("ISP") to  
25  
26  
27  
28

1 correlate a subscriber to an individual.<sup>1</sup> Many ISPs delete the data connecting an  
2 internet protocol (“IP”) address to an individual after only a few weeks. According  
3 to the FBI, 19% of its ISP lookup requests in one child pornography investigation  
4 failed to yield a positive identity. *See* fn. 6. Plaintiff’s statistics are similar: 10-15%  
5 of the identities subpoenaed by Plaintiff in cases nationally fail to identify a person  
6 or legal entity.

7       This is not mere argument – this is a very real problem. The Doe Defendants  
8 are not real defendants until a name has been assigned to them. Indeed, almost  
9 without exception, every subpoena that Plaintiff issues comes back from the ISP  
10 stating we were able to identify X number of people but deleted the data for Y  
11 number. Any decision regarding joinder in a BitTorrent peer-to-peer copyright case  
12 must take data retention and data failure issues into consideration. Significantly, a  
13 rule requiring Plaintiff to sue John Doe defendants on an individual basis creates the  
14 substantial risk that the target cannot be ascertained. Unless the Court system allows  
15 Plaintiff to dilute the problem through joined cases, this phenomenon will needlessly  
16 increase the cost associated with pursuing infringement cases.

17                   **2. Disallowing joinder would be inconsistent with the policy of**  
18                   **Rule 1.**

19       Rule 1 of the Federal Rules of Civil Procedure requires that Courts construe  
20 the rules to secure the inexpensive determination of every action. The joinder rule,  
21 Federal Rule of Civil Procedure 20, has the same purpose. Indeed, since jurisdiction  
22 and venue is proper in this District, if Plaintiff is forced to proceed individually, all  
23 of these cases would be filed in this District, would be related to this case, and  
24

---

25 <sup>1</sup> See Statement Of Jason Weinstein Deputy Assistant Attorney General Criminal Division Before  
26 The Committee On Judiciary Subcommittee On Crime, Terrorism, And Homeland Security United  
27 States House Of Representatives, (January 2011) at  
[http://judiciary.house.gov/hearings/pdf/Weinstein\\_01252011.pdf](http://judiciary.house.gov/hearings/pdf/Weinstein_01252011.pdf).



1 would be pending before this Court. Thereafter, at every stage of the process, the  
 2 litigants and the Court would be faced with additional work. For example, instead  
 3 of one motion for leave to serve subpoenas in advance of a 26(f) conference, there  
 4 would be many such identical motions. Instead of one Rule 26(f) conference and  
 5 report, there would be many such identical Rule 26(f) conferences and reports.  
 6 Identical pleadings and papers would be repetitively filed. Not only would this  
 7 needlessly increase the costs for the parties and Court but also for the third party  
 8 ISPs. The court in *Call of the Wild, supra*, went so far as to say that disallowing  
 9 joinder would effectively prevent Plaintiff from being able to enforce its copyrights:

10           The plaintiffs would be forced to file 5,583 separate lawsuits \*  
 11           \* \* Plaintiffs would additionally be forced to pay the Court  
 12           separate filing fees in each of these cases, \* \* \* This would  
 13           certainly not be in the “interests of convenience and judicial  
 14           economy,” or “secure a just, speedy, and inexpensive  
 15           determination of the action. *Given the administrative burden of  
 simply obtaining sufficient identifying information to properly  
 name and serve alleged infringers, it is highly unlikely that the  
 plaintiffs could protect their copyrights in a cost-effective  
 manner.*

16 *Call of the Wild*, 770 F.Supp.2d at 344-45 (emphasis added). Rule 1’s requirement  
 17 that the rules be construed *and administered* in such a way as to promote the  
 18 inexpensive determination of every action, coupled with a Court’s flexibility to  
 19 sever a suit at any time, compels a finding that severance is premature during the  
 20 discovery phase of a BitTorrent litigation. Indeed, at this stage of the proceeding,  
 21 joinder is without question the most efficient method of proceeding with the case.

22           **E. The Overwhelming Majority Of Courts Permit Joinder.**

23           **1. California Courts rule that joinder is proper.**

24           All four districts in California that have adjudicated joinder in BitTorrent  
 25 copyright infringement cases have held that joinder is proper. In the above-  
 26 captioned Case No. CV12-1647, Judge Kronstadt denied a Doe defendant’s motion  
 27 to quash, finding that joinder is proper at this stage of the litigation. *Malibu Media*



1 *v. Does 1-10*, Case No. CV12-1647, Docket no. 22 (C.D.Cal. June 4, 2012).

2 In *Camelot Distribution Group v. Does 1-1210*, 2011 WL 4455249, \*3  
3 (E.D.Cal. 2011), the Eastern District “conclude[d] that a decision regarding joinder  
4 would be more appropriately made after further development of the record.” *See*  
5 *also, Berlin Media Art E.K. v. Does 1-144*, 2011 WL 4056167 (E.D. CA. 2011)  
6 (permitting discovery in joined case.) In *Liberty Media Holdings, LLC v. Does 1-*  
7 *62*, 2011 WL 1869923 at \*5 (S.D.Cal. May 12, 2011), the Southern District held  
8 “[a]fter careful consideration of the issue, . . . [i]n this case, the complaint  
9 sufficiently *alleges* that defendants are properly joined due to the use of BitTorrent,  
10 which necessarily requires each user to be an uploader as well as a downloader.”  
11 (emphasis in original); *see also, Malibu Media, LLC v. Does 1-25*, 2012 WL  
12 2367555 at \*3 (S.D.Cal. June 21, 2012).

13 Chief Magistrate Judge Maria Elena-James sums up the decisions of the six or  
14 so judges in the Northern District of California who have repeatedly held that  
15 joinder is proper. *See e.g. Patrick Collins v. Does 1-2590*, 2011 WL 4407172. She  
16 noted that “[r]ecently, courts in this District . . . have come to varying decisions  
17 about the propriety of joining multiple defendants in BitTorrent infringement  
18 cases,” and found:

19 This Court has carefully reviewed such decisions and notes that they are  
20 highly dependent on the information the plaintiff presented regarding  
21 the nature of the BitTorrent file-sharing protocol and the specificity of  
22 the allegations regarding the Doe defendants' alleged infringement of  
the protected work. Both of these factors guide the Court's joinder  
analysis . . . [in concluding joinder is proper].

23 *Id.*; *see also, New Sensations, Inc. v. Does 1-1,474*, 2011 WL 4407222, (N.D.Cal.  
24 2011) (same); *accord Hard Drive Productions, Inc. v. Does 1-46*, 2011 U.S. Dist.  
25 LEXIS 67314 (N.D. Cal. 2011) (same); *New Sensations, Inc. v. Does 1745*, 2011  
26 WL 2837610 (N.D. Cal. 2011) (same, and opining “Judge Howell of the D.C.  
27 Circuit has repeatedly held that in infringement actions” joinder is proper “[h]is

28

1 analysis makes sense.”).

2                   **2. The District of Columbia correctly supports joinder in**  
3                   **BitTorrent cases.**

4                   The District of Columbia has issued the longest, most comprehensive  
5 decisions concerning the issues, including joinder, raised in BitTorrent litigation.  
6 *See, e.g., Voltage Pictures, LLC v. Vazquez*, 2011 WL 5006942 (D.D.C. 2011)  
7 (opining joinder is proper and that Doe Defendants do not have standing to  
8 intervene in the discovery process prior to being named as a defendant); *NuImage,*  
9 *Inc. v. Does 1-22,322*, 2011 WL 3240562 (D.D.C. 2011) (10 page opinion,  
10 permitting joinder but raising concerns about long-arm); *West Coast Productions,*  
11 *Inc. v. Does*, 275 F.R.D. 9 (D.D.C. 2011) (11 page opinion, permitting joinder,  
12 holding long arm could be used, denying all motions to quash); *Call of the Wild*, 274  
13 F.R.D. 334 (permitting joinder, holding long arm could be used, denying all motions  
14 to quash); *Maverick Entertainment Group, Inc. v. Does 1-2115*, 2011 WL 1807428  
15 (D.D.C. 2011) (18 page opinion, permitting joinder, holding long arm could be used,  
16 denying all motions to quash); *Voltage Pictures, LLC v. Does 1-5000*, 818  
17 F.Supp.2d 28 (D.D.C. 2011) (D.D.C. 2011) (18 page opinion permitting joinder,  
18 holding long arm could be used, denying all motions to quash); *Donkeyball Movie,*  
19 *LLC v. Does*, 2011 WL 1807452 (D.D.C. May 12, 2011) (15 page opinion  
20 permitting joinder, holding long arm could be used, denying all motions to quash);  
21 *Call of the Wild*, 770 F.Supp.2d 332 (36 page opinion addressing all of the issues  
22 raised in pre-Doe identification BitTorrent litigation.) Significantly, the *Call of the*  
23 *Wild* court denied all of the motions to quash, ruled in favor of copyright owners on  
24 the joinder issue, the free speech issue, the right to remain anonymous issue [Doe’s  
25 who file motions do not have that right], allowed Plaintiff to use the long arm  
26 statute, and held that internet service providers cannot refuse to comply with  
27 subpoenas on the basis that it is unduly burdensome.

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**3. The District of Colorado permits joinder.**

In every BitTorrent copyright infringement case before the District of Colorado, that court has ruled that joinder is proper and promotes judicial efficiency: “rather than result in needless delay, joinder of the Doe Defendants ‘facilitates jurisdictional discovery and expedites the process of obtaining identifying information, which is prerequisite to reaching the merits of [Plaintiff’s] claims.’” *See Patrick Collins, Inc. v. John Does 1-33*, 2012 WL 415424 (D.Colo. 2012) (internal citations omitted).<sup>2</sup>

**IV. CONCLUSION**

For all of the foregoing reasons, Plaintiff respectfully requests that the Court grant leave to Plaintiff to issue Rule 45 subpoenas to the Defendants’ ISPs, and further hold that joinder is proper at this stage in the litigation.

DATED: August 14, 2012

KUSHNER LAW GROUP

By:           /s/ Leemore L. Kushner            
Leemore L. Kushner  
Attorneys for Plaintiff Malibu Media, LLC

<sup>2</sup> *See also, Malibu Media v. Does 1-13*, 2012 WL 2325588 (E.D.N.Y. June 19, 2012); *DigitProtect USA Corp. v. Does*, 2011 WL 4444666 (S.D.N.Y. 2011); *Patrick Collins v. John Does 1-9, 11-cv-01269 (S.D.N.Y. 2011)*; *First Time Videos*, 2011 WL 3586245; *Hard Drive v. Does 1-55*, 2011 WL 4889094, (N.D. Ill 2011); *First Time Videos, LLC v. Does 1-500*, 2011 WL 3498227 (N.D. Ill. 2011); *MGCIP v. Does 1-316*, 2011 WL 2292958 (N.D. Ill. 2011).