

1 activity and, using publicly available search tools, has traced the IP addresses to
2 physical addresses within this District and has identified the Internet Service Providers
3 (“ISPs”) which leased the involved IP addresses to subscribers. (Doc. No. 4-3).

4 Legal Standard

5 Federal Rule of Civil Procedure 26(d) states:

6 “A party may not seek discovery from any source before the
7 parties have conferred as required by Rule 26(f), except in a
8 proceeding exempted from initial disclosure under Rule
9 26(a)(1)(B), or when authorized by these rules, by stipulation,
10 or by court order.”

11 In the instant case, Plaintiff may only use expedited discovery by court order. In this
12 Circuit, courts must find “good cause” to determine whether to permit discovery prior to
13 the Rule 26(f) conference. Good cause exists where the need for expedited discovery, in
14 consideration of the administration of justice, outweighs the prejudice to the responding
15 party. *See, e.g., Arista Records, LLC v. Does 1-43*, 2007 WL 4538697 *1 (S.D. Cal. 2007).

16 In infringement cases involving the Internet, good cause is often found by the
17 courts where the party seeking expedited discovery of a Doe defendant’s identity
18 establishes the following:

- 19
- 20 1. A prima facie case of infringement;
 - 21 2. That there is no other way to identify the Doe defendant; and,
 - 22 3. That there is a risk that the ISP will destroy its logs prior to the Rule 26(f)
23 conference.

24 *See UMG Recordings, Inc. v. Doe*, 2008 WL 4104214 *4 (N.D. Cal. 2008). In *UMG* the
25 court said:

26 “[I]n considering ‘the administration of justice,’ early
27 discovery avoids ongoing continuous harm to the infringed
28 party and there is no other way to advance the litigation. As

1 for the defendant, there is no prejudice where the discovery
2 request is narrowly tailored to only seek their identity.”
3 (citations omitted).
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5 This Court has reviewed the allegations of the complaint and finds that the
6 Plaintiff has alleged a prima facie case of direct and contributory copyright infringement
7 against the Doe defendants. Plaintiff also has alleged that it cannot identify these
8 defendants without early discovery from the ISPs and that early discovery is necessary
9 because the ISPs are not required to maintain their logs for any set period of time and
10 may destroy them in the ordinary course of business.

11 Finally, this Court must consider the requirements of the The Cable Privacy Act,
12 47 U.S.C. §551. The Act generally prohibits cable operators from disclosing personally
13 identifiable information regarding subscribers without the prior written or electronic
14 consent of the subscriber. 47 U.S.C. § 551(c)(1). A cable operator, however, may disclose
15 such information if the disclosure is made pursuant to a court order and the cable
16 operator provides the subscriber with notice of the order. 47 U.S.C. § 551(c)(2)(B). The
17 ISPs that Plaintiff intends to subpoena in this case are cable operators within the
18 meaning of the Act.

19 **IT IS HEREBY ORDERED** that:

20 1. Plaintiff may obtain and serve subpoenas under Fed.R.Civ.P. 45 to Cox
21 Communications and Roadrunner in order solely to obtain the names and addresses of
22 subscribers using the seven IP addresses identified in Exhibit B attached to Plaintiff's
23 motion at the precise dates and times identified therein. (Doc. No. 4-3). The identified
24 ISPs shall have fourteen (14) calendar days after service of the subpoena upon it to
25 notify its subscriber that his/her identity has been subpoenaed by Plaintiff. The
26 subscriber whose identity has been subpoenaed shall have thirty (30) calendar days from
27 the date of such notice to challenge the disclosure to the Plaintiff by filing an appropriate
28 pleading with this court contesting the subpoena. The ISP, if it intends to move to quash


1 the subpoena, must do so prior to the return date of the subpoena. The return date of the
2 subpoena must allow for at least forty-five (45) days from service to production. If a
3 motion to quash or other customer challenge is brought, the ISP must preserve the
4 information sought by Plaintiff pending resolution of the motion or challenge.

5 2. Plaintiff may only use the information disclosed pursuant to these
6 subpoenas exclusively in pursuing this litigation.

7 3. Plaintiff shall serve a copy of this Order with any subpoena obtained and
8 served pursuant to this Order to the named ISPs. The ISPs, in turn, must provide a copy
9 of this Order along with the required notice to any subscriber whose identity is sought
10 pursuant to this Order.

11 **IT IS SO ORDERED:**

12 DATED: June 8, 2012

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16 Hon. Mitchell D. Dembin
17 U.S. Magistrate Judge
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