

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>MALIBU MEDIA, LLC,</b>	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 12 C 7578
	)	
<b>JOHN DOES 1-25,</b>	)	
	)	
Defendants.	)	

**MEMORANDUM**

At yesterday's motion call counsel for plaintiff Malibu Media, LLC ("Malibu") presented its Motion for Leave To Serve Third Party Subpoenas Prior to a Rule 26(f) Conference. This Court advised Malibu's counsel that the just-published issue of the Michigan Law Review had included a comprehensive and well-informed student note ("The Case Against Combating BitTorrent Piracy Through Mass John Doe Copyright Infringement Lawsuits," 111 Mich. L. Rev. 283 (2012)) that dealt directly with the problems posed by this and similar lawsuits targeting multiple "John Doe" defendants. In particular, this Court read for the record this excerpt from pages 292-93 of Volume 111, with footnotes omitted and emphasis in original:

When considering whether John Does have been properly joined, judges should require plaintiffs to plead facts sufficient to show that the defendants were not only part of the same swarm, but that they were part of the same swarm at the same time as one another. If plaintiffs fail to satisfy this standard, expedited discovery should be denied and the improperly joined defendants should be severed from the action. Generally, this means that a plaintiff would be unable to join every member of a swarm that exists for a protracted period of time. Rather, the plaintiff would have to show that all the defendants downloaded the copyrighted work over a short enough period of time to support a probable inference that all the defendants were present in the swarm at the same time. Such a time period would usually span hours rather than days or months.

Although this Court was scarcely certain (or even well-informed) on the subject, it

surmised that either the ISP or BitTorrent or both must have information not only as to the identity of each Doe defendant but also as to the time when each came onto the scene. As this Court viewed the matter, if that were the case the interests of all parties could best be served by a two-stage subpoena process, with the first step inquiring solely as to the times of the asserted infringements (which would provide information as to those Doe defendants who could properly be joined under Fed. R. Civ. P. 20(a)(2)), after which a followup subpoena could obtain the information as to the identity of those properly joined Doe defendants.

Counsel then responded that she would have to go back to her client to find out whether this Court's assumption about information available as to the timing of the individual infringements was correct. But following the hearing this Court looked in depth at the materials that Malibu's counsel had provided to supplement the motion, comprising (1) a declaration by an employee of the ISP (German company IPP, Limited) from whom the information as to Illinois-based infringers was obtained, together with (2) a packet of materials from that company. Importantly that packet included the two-page attachment to this memorandum -- a document that confirms that the ISP's information indeed included the date and time of each claimed infringement (see the third column of the printout). Accordingly there is no need for Malibu's counsel to confer with her client on the subject, and this Court will await an appropriate request that (1) deals with any joinder that qualifies under the earlier-quoted standard and (2) dismisses without prejudice all John Does who are not properly subject to such joinder.



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Milton I. Shadur  
Senior United States District Judge

Date: November 16, 2012

**SHA-1 Hash:** 9160EC016F56278F0A90E3EA1E881A52D43DF933 **Title** Coucher Avec une Autre Fille  
**Rights Owner:** Malibu Media

DOE#	IP	Hit date (UTC)	City	State	ISP	Network
1	130.202.96.99	08/20/2012 21:07	Oswego	IL	Argonne National Laboratory	BitTorrent
2	216.172.18.214	08/14/2012 23:55	Rolling Meadows	IL	Business Only Broadband	BitTorrent
3	24.12.163.150	08/26/2012 01:35	Rolling Meadows	IL	Comcast Cable	BitTorrent
4	24.12.168.71	08/26/2012 14:53	Orland Park	IL	Comcast Cable	BitTorrent
5	24.14.149.14	08/13/2012 23:09	Naperville	IL	Comcast Cable	BitTorrent
6	24.15.18.245	08/16/2012 08:44	Hinsdale	IL	Comcast Cable	BitTorrent
7	67.163.70.99	08/21/2012 00:13	Darien	IL	Comcast Cable	BitTorrent
8	67.174.17.90	08/30/2012 05:17	Schaumburg	IL	Comcast Cable	BitTorrent
9	67.184.156.104	08/26/2012 15:38	Algonquin	IL	Comcast Cable	BitTorrent
10	68.60.241.104	08/17/2012 02:10	Darien	IL	Comcast Cable	BitTorrent
11	71.194.33.83	08/18/2012 18:12	Forest Park	IL	Comcast Cable	BitTorrent
12	71.201.111.44	09/01/2012 23:21	Woodstock	IL	Comcast Cable	BitTorrent
13	71.57.44.59	08/14/2012 10:31	Elmwood Park	IL	Comcast Cable	BitTorrent
14	98.193.61.252	08/29/2012 15:38	Skokie	IL	Comcast Cable	BitTorrent
15	98.226.248.164	08/16/2012 03:22	Lombard	IL	Comcast Cable	BitTorrent
16	98.226.28.79	08/30/2012 00:09	Streamwood	IL	Comcast Cable	BitTorrent
17	98.227.145.30	08/14/2012 16:09	Carpentersville	IL	Comcast Cable	BitTorrent
18	98.227.180.90	08/26/2012 19:32	Evanston	IL	Comcast Cable	BitTorrent
19	98.228.100.228	09/04/2012 21:51	Wheaton	IL	Comcast Cable	BitTorrent
20	98.228.215.158	08/24/2012 02:45	Arlington Heights	IL	Comcast Cable	BitTorrent
21	98.228.250.109	08/27/2012 15:52	Schaumburg	IL	Comcast Cable	BitTorrent
22	207.181.234.187	08/27/2012 19:55	Chicago	IL	RCN Corporation	BitTorrent

EXHIBIT B

NIL18

DOE#	IP	Hit date (UTC)	City	State	ISP	Network
23	216.80.114.192	08/15/2012 15:36	Chicago	IL	RCN Corporation	BitTorrent
24	216.80.118.168	08/16/2012 01:53	Chicago	IL	RCN Corporation	BitTorrent
25	24.136.3.234	08/28/2012 12:14	Chicago	IL	RCN Corporation	BitTorrent

EXHIBIT B

NIL18