



1 using Bit Torrent technology in order to download illegally and share a copyrighted  
2 work. In requesting expedited discovery from this Court, Plaintiff alleged that it had  
3 obtained the Internet Protocol (“IP”) addresses of the John Doe defendants allegedly  
4 involved in the infringing activity and, using publicly available search tools, traced the  
5 IP addresses to physical addresses within this District and identified the ISPs which  
6 leased the involved IP addresses to subscribers. *Id.*

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8 This Court’s Order required that a subpoenaed ISP notify its subscriber and  
9 provided a time limit within which challenges were to be made and brought before the  
10 Court. Defendant Doe 40 has moved to quash the subpoena issued to Defendant’s ISP  
11 for subscriber information on the grounds that Defendant is improperly joined in this  
12 case. In the alternative, Defendant Doe 40 has moved for severance.

#### 13 Analysis

14 The subpoena served was issued pursuant to Federal Rule of Civil Procedure 45.  
15 Rule 45(c)(3) governs motions to quash or modify a subpoena. It provides that a court  
16 must modify or quash a subpoena that fails to allow a reasonable time to comply;  
17 requires a non-party to travel more than 100 miles (except for trial within the state);  
18 requires disclosure of privileged materials; or, subjects a person to undue burden. *See*  
19 *Fed.R.Civ.P. 45(c)(3)(A)(i-iv)*. The Rule also provides for the circumstances in which a  
20 court may modify or quash a subpoena. Those circumstances are when the subpoena  
21 requires disclosure of trade secrets; disclosure certain expert opinions; or, requires a non-  
22 party to incur substantial expense to travel more than 100 miles to attend a trial. *See*  
23 *Rule 45(c)(3)(B)(i-iii)*.


24 By its terms, Rule 45(c)(3) does not provide authority for a court to modify or  
25 quash a subpoena on the grounds of misjoinder. Defendant Doe 40 has not alleged that  
26 allowing the third party to comply with the subpoena will result in any adverse  
27 consequence as provided in Rule 45(c)(3). Accordingly, Defendant’s motion to quash is  
28 **DENIED.**

1 Defendant Doe 40 also has moved, in the alternative, for severance. In *Liberty*  
2 *Media Holdings v. Does 1-62*, 2012 WL 628309 \*4-7 (S.D. Cal. February 24, 2012),  
3 District Judge Anello of this Court denied a motion to dismiss or sever in a Bit Torrent  
4 case which, procedurally, appears indistinguishable from the instant case. Following  
5 Judge Anello's reasoning, this Court finds that at this juncture joinder is appropriate.  
6 Nothing herein prevents Defendant Doe 40 from re-asserting this motion when and if  
7 he or she is identified and served in this case.

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9 Conclusion

10 For the foregoing reasons, Defendant Doe 40's motion to quash or, in the  
11 alternative, to sever is **DENIED**. The ISP served with the subpoena seeking Defendant  
12 Doe 40's subscriber information is **ORDERED** to comply in due course.

13 DATED: March 14, 2012

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