

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

DISCOUNT VIDEO CENTER, INC.

Plaintiff,

v.

DOES 1 - 29,

Defendants.

Case No.: 12-cv-10805

PATRICK COLLINS, INC.

Plaintiff,

v.

DOES 1 - 79,

Defendants.

Case No.: 12-cv-10532

PATRICK COLLINS, INC.

Plaintiff,

v.

DOES 1 - 36,

Defendants.

Case No.: 12-cv-10758

PLAINTIFF'S RESPONSE TO COURT

Plaintiff responds to Court's inquiry about MAC addresses, along with some additional information for Court's consideration of renewed request for early discovery.

INTRODUCTION

On October 12, 2012, the Court held a hearing regarding Plaintiff's renewed request for early discovery. The Court asked for reasons as to why Plaintiff requested MAC addresses of modems relating to each IP address. Plaintiff's response was unclear; accordingly, Court Ordered Plaintiff to respond with more clarity. Also, the Court provided that this response should contain other information regarding topics covered in the hearing that Plaintiff believes Court should be aware of.

RESPONSE

I. THE NEED FOR A MAC ADDRESS.

The MAC address¹ supplied by the ISP will show whether or not an ISP's records are accurate as it relates to the cable modem present at the alleged infringer's location. The Plaintiff believes that it is desirable to have as much information as possible, this includes the MAC address.

II. DEPOSITIONS.

The Court mentioned that it was considering an order that Plaintiff depose subscribers. As stated in hearings, the Plaintiff agrees with this discovery method, and Plaintiff would like to add some information that was not mentioned in the hearings, in favor of this method.

Besides being able to potentially discover the identity of an alleged infringer, Depositions will also help narrow down the amount of potential alleged infringers in this case. Due to the dynamic nature of IP addresses, one infringer may represent multiple IP addresses. Discovery in similar cases has revealed that one infringer will use multiple IP address to download and upload the same file. In these instances, a single infringer appears as multiple

¹ The MAC address is the unique ID for any piece of networking hardware such as a cable modem, wireless router, or the network interface card a computer uses to connect to a network.

“Does.” For instance, an infringer might bring his laptop from his house to his workplace, and infringe at both places. And, both IP addresses of the house and workplace might be identified as Does. Infringers might represent multiple IP addresses, and depositions of subscribers might help to determine this and other significant facts.

III. OTHER ISSUES.

As the style of these suits is not new, a lot of the issues in this suit have already been addressed in prior suits. There is a great deal that can be learned from these suits, for this Court’s determination of how to proceed. Plaintiff suggests examining the docket of civil action number, 1:04-cv-12434-NG. Importantly, that Court held that the interests of judicial efficiency weigh in favor of joining these claims, and doing so may also be beneficial for the Doe Defendants. *See London-Sire Records, Inc. v. Doe 1*, 542 F. Supp. 2d 153, 161 (D. Mass. 2008) (finding that consolidating a group of similar cases “ensures administrative efficiency for the Court, the plaintiffs, and the ISP, and allows the defendants to see the defenses, if any, that other John Does have raised.”).

Also, as seen in *London-Sire Records, Inc.*, contradicting recent holdings of Judges in this District, many different facts and defenses may be raised by multiple defendants under one case. *See Exhibit A* (transcript of a hearing where multiple defendants with different stories are heard and addressed by the court, in only 36 minutes.).

Regarding the issue of filing fees, Counsel did not mention the absolute extent of the potential burden of filing individually against each IP address. Plaintiff will not do so here, but will add some additional information. There are many times where one subscriber is found to have multiple IP addresses. In one case, one subscriber was found to have 15 IP addresses and represented 15 Does. There are also times where the ISP cannot find the requested information, or the information reported from the ISP is of little help to the Plaintiff, as the subscriber may have changed addresses or cannot be located. If the Plaintiff is required to file

individual cases, which ultimately might be a dead-end, the Plaintiff will have wasted money and resources. The Court would also be burdened by these dead-end cases, as the Court would have to wrangle all the initial pleadings and requests for early discovery

CONCLUSION

Plaintiff hopes to have clarified the need for MAC addresses, and to have provided additional information regarding discovery and joinder. The Plaintiff is happy to submit more information about these topics at Court's request.

Dated: October 18, 2012,

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2012, the foregoing document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing, and paper copies will be served via first-class mail to those indicated as non-registered participants.



Marvin Cable, Esq.