

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HARD DRIVE PRODUCTIONS,

No. C-11-01956 EDL

Plaintiff,

**ORDER GRANTING PLAINTIFF LEAVE
TO TAKE EARLY DISCOVERY**

v.

DOES 1-42,

Defendant.

On April 25, 2011, Plaintiff filed an Application for Leave to Take Expedited Discovery, seeking a court order for leave to serve immediate discovery on various Internet Service Providers (ISPs) to identify each defendant through service of a Federal Rule of Civil Procedure 45 subpoena seeking the true names, addresses, telephone numbers, e-mail addresses and Media Access Control information of subscribers assigned to each of the Internet Protocol (“IP”) addresses that Plaintiff has identified. Plaintiff alleges that the Doe Defendants as identified by the IP addresses, have reproduced, distributed and publicly displayed Plaintiff’s copyrighted materials through a peer-to-peer sharing network. This Court denied the application without prejudice due to an inadequate showing that the Defendants were properly joined. Plaintiff subsequently filed a Revised Application on June 16, 2011 with an extended discussion on joinder.

On July 14, 2011, this Court again denied the application without prejudice because Plaintiff did not make a sufficient showing that the Doe Defendants were participating in a common BitTorrent swarm and a leave was granted for Plaintiff to submit a declaration to remedy the deficiency. Plaintiff then filed its Supplemental Declaration of Peter Hansmeier, confirming that all the Doe Defendants participated in a common swarm because the torrent file shared among the swarm was identified by a unique file hash. Hansmeier Supp. Decl., ¶ 5.

1 Having considered Plaintiff’s Supplemental Declaration of Peter Hansmeier as well as
2 Plaintiff’s prior submissions, the Court hereby GRANTS Plaintiff’s Revised *Ex Parte* Application
3 on the grounds that Plaintiff has demonstrated good cause to take early discovery. Plaintiff has met
4 the burden of showing that the information requested by the discovery was necessary to effect
5 service on the Doe Defendants, as well as demonstrating a basis for joining the Doe Defendants in
6 this action.

7 Accordingly, IT IS HERE BY ORDERED, that:

- 8 1. Plaintiff may immediately serve Rule 45 subpoenas on the ISPs listed in Exhibit A to the
9 Complaint: Verizon Online, Cox Communications, Comcast Cable Communications, AT & T
10 Internet Services, Charter Communications, Clearwire, and Road Runner HoldCo. to obtain the
11 following information about the subscribers corresponding to the IP addresses: the names,
12 addresses, telephone numbers, email addresses, and Media Access Control information. Each
13 subpoena shall have a copy of this Order attached.
- 14 2. Each ISP will have thirty (30) days from the date a copy of this Order and a copy of the
15 subpoena are served to respond, so that it may have sufficient time to provide notice to the
16 subscribers whose information Plaintiff seeks to obtain.
- 17 3. Subscribers will have thirty (30) days from the date of notice of the subpoena upon them to
18 file any motions in this Court to contest the subpoena. If the thirty-day period lapses without a
19 contest, the ISPs will have ten (10) days thereafter to produce the information responsive to the
20 subpoena to Plaintiff.
- 21 4. The subpoenaed entity shall preserve any subpoenaed information pending the resolution of
22 any timely-filed motion to quash.
- 23 5. Any ISP that receives a subpoena pursuant to this Order shall confer with Plaintiff before
24 assessing any charge in advance of providing the information requested in the subpoena. Any
25 ISP that elects to charge for the costs of production shall provide Plaintiff with a billing
26 summary and cost reports.
- 27 6. Plaintiff shall serve a copy of this Order along with any subpoenas issued pursuant to this
28 Order to the necessary entities.

1 7. Any information disclosed to Plaintiff in response to a Rule 45 subpoena may not be used for
2 any improper purpose and may only be used for protecting its rights as set forth in the
3 Complaint.

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5 **IT IS SO ORDERED.**

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8 Dated: August 1, 2011

Elizabeth D. Laporte

ELIZABETH D. LAPORTE
United States Magistrate Judge

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