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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

LIBERTY MEDIA HOLDINGS, LLC,  
  
Plaintiff,  
  
v.  
  
DOES 1-59,  
  
Defendants.

Case No. 10-1823-DMS (WVG)  
  
ORDER GRANTING SECOND  
MOTION ALLOWING PLAINTIFF  
LEAVE TO TAKE  
IMMEDIATE DISCOVERY  
  
(DOC. # 24)

I

PROCEDURAL BACKGROUND

On September 1, 2010, Plaintiff Liberty Media Holdings, LLC (hereafter "Plaintiff") filed a Complaint against DOES 1-59 (hereafter "Defendants") for Unlawful Access to Stored Communications, in violation of 18 U.S.C. §§ 2701 and 2707 (The Electronic Stored Communications Privacy Act), violation of 18 U.S.C. § 1030 (The Computer Fraud & Abuse Act) and copyright infringement in violation of 17 U.S.C. § 501 (The Copyright Act). Plaintiff does not know the names of the Defendants. However, it has identified the unique Internet Protocol (hereafter "IP") addresses assigned to Defendants and the Internet Service Provider (hereafter "ISP") that provided

1 Defendants with internet access on the dates and times of the  
2 allegedly illegal and infringing activity.

3 On January 21, 2011, Plaintiff filed a Second Motion for Order  
4 Allowing Plaintiff Leave to Take Immediate Discovery (hereafter  
5 "Motion"). The Motion seeks the Court's permission to conduct  
6 immediate discovery regarding the identities of Defendants.  
7 Specifically, Plaintiff seeks to issue subpoenas to ISP providers and  
8 cable operators University of Michigan, Time Warner, RCN Corporation,  
9 Manhattan College, Cablevision, BellSouth, BellSouth.net, SBC, Indiana  
10 University of Pennsylvania, Road Runner, Comcast, Partners Health Care  
11 System and Charter Communications to produce all documents and/or  
12 information sufficient to identify the users of the IP addresses  
13 during the dates and times listed in Exh. 1 to Plaintiff's Motion, and  
14 attached hereto as Exhibit 1.

15 The information requested in the subpoenas is governed by 47  
16 U.S.C. § 551, which states in pertinent part:

17 (c) Disclosure of personally identifiable information  
18 (2) A cable operator may disclose (personally identifiable  
19 information concerning any subscriber) if disclosure is - -  
20 (B)... made pursuant to a *court order* authorizing such  
disclosure, if the subscriber is notified of such order by  
the person to whom the order is directed. (emphasis added).

21 Accordingly, Plaintiff seeks a court order instructing the above-  
22 noted ISPs to produce to Plaintiff all documents and or information  
23 sufficient to identify the users of the IP addresses during the dates  
24 and times listed in Exh. 1.

25 II

26 ANALYSIS

27 In accordance with Fed. R. Civ. P. 26(d), discovery does not  
28 commence until the parties to an action meet and confer as prescribed

1 by Fed. R. Civ. P. 26(f), unless by court order or agreement of the  
2 parties. A court order permitting early discovery may be appropriate  
3 "where the need for the discovery, in consideration of the  
4 administration of justice, outweighs the prejudice to the responding  
5 party." Semitoool, Inc. v. Tokyo Electron America, Inc., 208 F.R.D.  
6 273, 276 (N.D. Cal. 2002).

7 At least one district court in the Ninth Circuit has recognized  
8 that "(s)ervice of process can pose a special dilemma for plaintiffs  
9 in cases... in which the tortious activity occurred entirely on-line.  
10 The dilemma arises because the defendant may have used a fictitious  
11 name and address in the commission of the tortious acts." Columbia  
12 Ins. Co. v. Seescandy.com, 185 F.R.D. 573, 577 (N.D. Cal. 1999). In  
13 Columbia, the court also stated that in light of the conflict between  
14 the need to provide injured parties with a forum in which they may  
15 seek redress for grievances, and the right to use the internet  
16 anonymously or pseudonymously, a few principles should apply to  
17 whether discovery to uncover the identity of a defendant is warranted.

18 The court stated:

19 First, the plaintiff should identify the missing party with  
20 sufficient specificity such that the Court can determine  
21 that (the) defendant is a real person or entity that could  
22 be sued in federal court...

21 Second, the (plaintiff) should identify all previous steps  
22 taken to locate the elusive defendant...

22 Third, Plaintiff should establish to the Court's  
23 satisfaction that plaintiff's suit against (the ) defendant  
24 could withstand a motion to dismiss... Plaintiff must make  
25 some showing that an act giving rise to civil liability  
26 actually occurred and that the discovery is aimed at  
27 revealing specific identifying features of the person or  
28 entity who committed the act.

Id., at 578-580.

1 The Court agrees with these principles and finds as follows:

2 A. Identification of Defendants With Sufficient Specificity

3 Plaintiff has provided to the Court the unique IP addresses  
4 assigned to each Defendant and the ISP and/or cable operator that  
5 provided each Defendant with internet access. Further, the requested  
6 discovery is necessary for Plaintiff to determine the names and  
7 addresses of each Defendant who performed the allegedly illegal and  
8 infringing acts. Therefore, Plaintiff has sufficiently identified  
9 each Defendant such that the Court can determine if each Defendant is  
10 a person or entity that could be sued in federal court.

11 B. Previous Steps Taken to Locate Defendants

12 The only information Plaintiff has regarding the Defendants is  
13 their IP addresses and their ISPs and/or cable operators. Therefore,  
14 there are no other measures Plaintiff could take to identify the  
15 Defendants other than to obtain their identifying information from  
16 their ISPs and/or cable operators. Consequently, Plaintiff must serve  
17 subpoenas on Defendants' ISPs and/or cable operators to obtain the  
18 information it seeks.

19 C. Whether Plaintiff's Action Could Withstand  
20 a Motion to Dismiss

21 1. Violation of 18 U.S.C. § 2701

22 Plaintiff has demonstrated that its claim for violation of 18  
23 U.S.C. § 2701 could withstand a motion to dismiss. 18 U.S.C. § 2701  
states in pertinent part:

24 ... (W)hoever (1) intentionally accesses without  
25 authorization a facility through which electronic  
26 communication service is provided;... (2) and thereby  
obtains... access to a ... electronic communication while  
it is in electronic storage... shall be punished...

27 18 U.S.C. § 2701 applies to trespasses in which the trespasser  
28 gains access to information which he is not entitled to see.

1 Therapeutic Research Faculty v. NBTY, Inc., 488 F. Supp 2d 991 (E.D.  
2 Cal. 2007).

3 18 U.S.C. § 2707 states in pertinent part:

4 ... Any provider of electronic communication service,  
5 subscriber, or other person aggrieved by any violation of  
6 this chapter in which the conduct constituting the  
7 violation is engaged in with a knowing or intentional state  
of mind may, in a civil action, recover from the person or  
entity... which engaged in that violation such relief as  
may be appropriate.

8 Here, Plaintiff's Complaint alleges that Defendants intentionally  
9 accessed its web servers, which are facilities where electronic  
10 communication services are provided, Defendants had no right to access  
11 the copyrighted materials on Plaintiff's website, and Defendants  
12 obtained access to these electronic communications while these  
13 communications were in electronic storage. Therefore, it appears that  
14 Plaintiff has alleged the *prima facie* elements of a violation of 18  
15 U.S.C. § 2701. Accordingly 18 U.S.C. § 2707 authorizes Plaintiff's  
16 action. As a result, the Court finds that Plaintiff's action in this  
17 regard could withstand a motion to dismiss.

18 2. Violation of 18 U.S.C. § 1030

19 Plaintiff has demonstrated that its claim for violation of 18  
20 U.S.C. § 1030 could withstand a motion to dismiss. 18 U.S.C. § 1030  
21 states in pertinent part:

22 (a)(2)(C) Whoever... intentionally accesses a computer  
23 without authorization... and thereby obtains - - ...  
information from any protected computer if the conduct  
24 involved an interstate or foreign communication...

25 (a)(7)(b) with intent to extort from any... person, any  
26 money or thing of value transmits in interstate...  
commerce... shall be punished as provided in subsection (c)  
of this section...

27 (g) Any person who suffers damage or loss by reason of a  
28 violation of this section may maintain a civil action  
against the violator to obtain compensatory damages and  
injunctive relief or any other equitable relief.

1 Here, Plaintiff's Complaint alleges that Defendants unlawfully  
2 and without authorization entered into its computer server, which was  
3 used in interstate commerce, where Plaintiff's copyrighted materials  
4 were contained, stole Plaintiff's copyrighted materials, valued in  
5 excess of \$15,000, and as a result of such conduct, caused Plaintiff  
6 to suffer damage. Based on these facts, §1030(g) authorizes  
7 Plaintiff's civil action. Therefore, it appears that Plaintiff has  
8 alleged the *prima facie* elements of a violation of 18 U.S.C. § 1030.  
9 As a result, the Court finds that Plaintiff's action in this regard  
10 could withstand a motion to dismiss.

11 3. Copyright Infringement

12 Plaintiff has demonstrated that its claim for copyright  
13 infringement could withstand a motion to dismiss. A plaintiff who  
14 claims copyright infringement must allege (1) ownership of a valid  
15 copyright, and (2) that the defendant violated the copyright owner's  
16 exclusive rights under the Copyright Act, 17 U.S.C. §501(a).<sup>17</sup> Ellison  
17 v. Robertson, 357 F.3d 1072, 1076 (9<sup>th</sup> Cir. 2004).

18 Here, Plaintiff has alleged that it is the owner of the  
19 copyrights for certain motion pictures, which were accessed,  
20 reproduced, distributed and publicly displayed by Defendants. Also,  
21 Plaintiff alleges that Defendants, without authorization,  
22 intentionally accessed, reproduced and distributed Plaintiff's  
23 copyrighted works onto their local hard drives or other storage  
24 devices. Therefore, it appears that Plaintiff has alleged the *prima*  
25 *facie* elements of copyright infringement. As a result, the Court

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28 <sup>17</sup>U.S.C. §501(a) states in pertinent part:  
Anyone who violates any of the exclusive rights of the copyright owner...  
is an infringer of the copyright of the author...

1 finds that Plaintiff's action in this regard could withstand a motion  
2 to dismiss.

3 III

4 CONCLUSION

5 The Court, having reviewed Plaintiff's Motion for Leave To Take  
6 Immediate Discovery, the authorities cited therein, as well as other  
7 applicable statutes and law, finds that Plaintiff has satisfied the  
8 principles discussed in 47 U.S.C. §551 and Columbia, supra.  
9 Therefore, Plaintiff's Motion is GRANTED.

10 Accordingly, it is HEREBY ORDERED:

11 1. Plaintiff may serve subpoenas, pursuant to Fed. R. Civ. P. 45,  
12 on University of Michigan, Time Warner, RCN Corporation, Manhattan  
13 College, Cablevision, BellSouth, BellSouth.net, SBC, Indiana  
14 University of Pennsylvania, Road Runner, Comcast, Partners Health Care  
15 System and Charter Communications that seek information sufficient to  
16 identify the Defendants, including their names, current addresses,  
17 telephone numbers and e-mail addresses, as listed on Exh. 1 to this  
18 Order.

19 2. Within seven (7) calendar days after service of the subpoenas,  
20 University of Michigan, Time Warner, RCN Corporation, Manhattan  
21 College, Cablevision, BellSouth, BellSouth.net, SBC, Indiana  
22 University of Pennsylvania, Road Runner, Comcast, Partners Health Care  
23 System and Charter Communications shall notify the subscribers that  
24 their identities are sought by Plaintiff. Each subscriber whose  
25 identity is sought may, within 21 calendar days from the date of such  
26 notice, file documents with the Court that contest the subpoena(s).

27 3. Any information disclosed to Plaintiff in response to the  
28 subpoenas may be used by Plaintiff solely for the purposes of

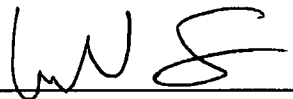
1 protecting Plaintiff's rights in pursuing this litigation.

2 4. If University of Michigan, Time Warner, RCN Corporation,  
3 Manhattan College, Cablevision, BellSouth, BellSouth.net, SBC, Indiana  
4 University of Pennsylvania, Road Runner, Comcast, Partners Health Care  
5 System and Charter Communications wish to move to quash the subpoena  
6 issued to them, they shall do so before the return date of the  
7 subpoena. If such a motion is brought, University of Michigan, Time  
8 Warner, RCN Corporation, Manhattan College, Cablevision, BellSouth,  
9 BellSouth.net, SBC, Indiana University of Pennsylvania, Road Runner,  
10 Comcast, Partners Health Care System and Charter Communications shall  
11 preserve the information sought by Plaintiff in the subpoena pending  
12 resolution of such motion.

13 5. Plaintiff shall provide a copy of this Order to University of  
14 Michigan, Time Warner, RCN Corporation, Manhattan College,  
15 Cablevision, BellSouth, BellSouth.net, SBC, Indiana University of  
16 Pennsylvania, Road Runner, Comcast, Partners Health Care System and  
17 Charter Communications when the subpoenas are served on each of them.

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19 DATED: January 25, 2011

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Hon. William V. Gallo  
U.S. Magistrate Judge



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Exhibit 1

Doe No.	IP Address	ISP	Date of Access	Time of Access (GMT)
1	141.213.170.160	University of Michigan	4/15/10	9:57:17, 9:57:21, 9:57:24, 9:57:23, 9:58:17, 9:57:21, 10:00:01, 10:00:00, 10:00:03, 9:59:55, 9:59:42, 10:00:06, 10:00:05, 10:00:06, 10:00:15, 10:00:18, 10:01:15, 10:02:18, 10:02:25, 10:02:29, 10:02:27, 10:02:38, 10:02:22, 10:02:17, 10:02:39, 10:02:41, 10:02:40, 10:02:35, 10:02:37, 10:01:59, 10:02:41, 10:03:11, 10:04:16, 10:05:16, 10:05:18, 10:03:11, 10:05:58, 10:05:54, 10:05:35, 10:06:10, 10:05:56, 10:06:12, 10:05:43, 10:05:57, 10:05:16, 10:06:11, 10:06:09, 10:06:15, 10:06:16, 10:06:17, 10:06:34, 10:06:37, 10:06:37, 10:07:16, 10:06:39, 10:08:18, 10:07:16, 10:08:16, 10:08:51, 10:09:25, 10:09:24, 10:09:13, 10:07:16, 10:09:32, 10:06:37, 10:09:33, 10:09:35, 10:09:16, 10:07:16, 10:09:30
2	24.24.95.170	Time Warner	4/15/10	4:37:47, 4:37:56, 4:38:14, 4:38:25, 4:39:31, 4:39:35, 4:40:34, 4:40:42, 4:40:49, 4:40:55, 4:41:08, 4:41:14, 4:41:23, 4:41:30, 4:41:35, 4:41:41, 4:42:02, 4:42:10, 4:42:19, 4:42:37, 4:42:50, 4:43:07, 4:37:47, 4:37:56, 4:38:14, 4:38:25, 4:39:31, 4:39:35, 4:40:34, 4:40:42, 4:40:49, 4:40:55, 4:41:08, 4:41:14, 4:41:23, 4:41:30, 4:41:35, 4:41:41, 4:42:02, 4:42:10, 4:42:19, 4:37:47, 4:37:56, 4:38:14, 4:38:25, 4:39:31, 4:39:35, 4:40:34, 4:40:42, 4:40:49, 4:40:55, 4:41:08, 4:41:14, 4:41:23, 4:41:30, 4:41:35, 4:41:41, 4:42:02, 4:42:10, 4:42:19,

			4/14/10	<p>4:43:25, 4:43:41, 4:43:53,  4:44:07, 4:45:13, 4:45:30,  4:43:25, 4:43:41, 4:43:53,  4:44:07, 4:45:13, 4:45:30,  4:43:25, 4:43:41, 4:43:53,  4:44:07, 4:45:13, 4:45:30,  4:43:25, 4:43:41, 4:43:53,  4:44:07, 4:45:13, 4:45:30,  4:42:37, 4:42:50, 4:43:07,  4:42:37, 4:42:50, 4:43:07,  4:37:47, 4:37:56, 4:38:14,  4:38:25, 4:39:31, 4:39:35,  4:40:34, 4:40:42, 4:40:49,  4:40:55, 4:41:08, 4:41:14,  4:41:23, 4:41:30, 4:41:35,  4:41:41, 4:42:02, 4:42:10,  4:42:19, 4:42:37, 4:42:50,  4:43:07,</p> <p>4:50:03, 4:50:10, 5:01:45,  5:01:55, 5:04:00, 5:04:05,  5:04:16, 5:04:20, 5:04:25,  5:04:49, 5:04:56, 5:05:01,  5:05:05, 5:05:10, 5:05:16,  5:09:26, 5:10:11, 5:10:23,  5:11:15, 5:11:27, 5:11:34,  5:12:07, 5:12:14, 5:13:04,  5:13:10, 5:13:48, 5:14:40,  5:14:46, 5:14:53, 5:15:14,  5:15:22, 5:15:26, 5:15:45,  5:15:52, 5:15:59, 5:16:03,  5:16:09, 4:45:45, 4:48:44,  4:48:49, 4:45:45,</p>
3	207.237.56.190	RCN Corp.	4/8/10	<p>14:12:23, 14:12:24, 14:16:13  14:17:20, 14:16:57, 14:16:17,  14:16:13, 14:17:06, 14:17:33,  14:17:31, 14:17:34, 14:17:30,  14:12:23, 14:12:24, 14:17:31</p>
			4/12/10	<p>18:24:19, 18:26:12, 18:27:12,  18:27:59, 18:28:13, 18:24:16,  18:28:22, 18:28:18, 18:28:27,  18:28:28, 18:28:26</p>
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			4/15/10	<p>5:23:13, 5:22:13, 5:21:22,  5:24:29, 5:25:05, 5:24:14,  5:25:13, 5:24:38, 5:25:19,  5:25:18, 5:25:14, 5:25:09,  5:25:18, 5:25:20, 21:57:07,  21:57:11, 21:57:10, 21:58:12,  21:57:14, 22:00:13, 21:57:11,  22:01:19, 22:01:28, 22:01:32,  22:01:35, 22:01:33, 22:01:37,  22:00:13, 22:01:36, 22:01:12,  5:21:19, 5:21:22, 5:21:21,  5:22:13, 5:23:13, 5:24:29,  5:25:05, 5:24:14, 5:25:13,  5:24:38, 5:25:19, 5:25:18,  5:25:09, 5:25:18, 5:25:20,  21:57:07, 21:57:11, 21:57:10,  21:58:12, 21:57:14, 22:00:13,</p>

				21:57:11, 22:01:19, 22:01:28, 22:01:32, 22:01:35, 22:01:33, 22:01:37, 22:00:13, 22:01:36, 22:01:12
5	149.61.136.214	Manhattan College	4/12/10	12:46:07, 12:46:09, 12:46:19, 12:46:21, 12:46:54
			4/13/10	4:47:50, 4:48:20, 4:48:27, 4:48:49, 4:48:57, 4:49:46, 4:50:14, 4:51:12, 4:51:41, 4:51:53, 4:52:01, 4:52:07, 4:52:58, 4:52:59, 4:53:06, 4:53:10, 4:53:14, 4:53:18, 4:53:22, 4:54:20, 4:55:55
			4/14/10	1:40:42, 1:40:56, 1:42:22, 1:42:47, 1:42:56, 1:46:36, 1:47:05, 1:47:13, 1:47:37, 1:47:55, 2:12:28, 2:12:31, 2:12:36, 2:12:40, 2:13:21, 3:55:46, 3:55:56, 3:56:01, 3:56:07, 3:56:16, 3:56:23, 3:56:28, 3:56:48, 3:56:53, 3:56:59
			4/15/10	12:35:05, 12:35:18, 12:35:34, 12:36:33, 12:36:47, 12:37:05, 12:37:11, 12:37:19, 12:34:41
7	24.184.108.61	Cablevision	4/14/10	16:05:57, 16:06:10
			4/7/10	15:50:22, 15:50:36
			4/8/10	18:35:54
			4/12/10	15:00:57, 15:01:12, 15:02:17, 15:03:30, 15:02:29
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