

1 Marc J. Randazza, Esq., SBN 269535  
2 Randazza Legal Group  
3 302 Washington Street, Suite 321  
4 San Diego, CA 92103  
5 619-866-5975  
6 619-866-5976 (fax)  
7 [MJR@randazza.com](mailto:MJR@randazza.com)

8 Attorney for Plaintiff,  
9 LIBERTY MEDIA HOLDINGS, LLC

10 UNITED STATES DISTRICT COURT

11 SOUTHERN DISTRICT OF CALIFORNIA, SAN DIEGO DIVISION

12 LIBERTY MEDIA HOLDINGS, LLC )

Case No. 10-CV-1823-DMS-WVG

13 Plaintiff, )

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF MOTION  
FOR ORDER ALLOWING PLAINTIFF  
LEAVE TO TAKE IMMEDIATE  
DISCOVERY**

14 vs. )

15 DOES 1-59 )

16 Defendants )

17 Plaintiff Liberty Media Holdings (Liberty) seeks the identities of certain Doe defendants  
18 from the following Internet Service Providers (“ISPs”) concerning the identities for the following  
19 IP addresses on specific dates and times, and seeks a Court order directing the ISPs to disclose the  
20 subscriber’s personally identifiable information. The specific information is found on Exhibit 1.

21 **INTRODUCTION AND FACTUAL BACKGROUND**

22 1) Plaintiff Liberty is a California LLC doing business as Corbin Fisher ®. Liberty produces,  
23 markets, and distributes adult entertainment products, including Internet website content, videos,  
24 DVDs, photographs, etc. Plaintiff operates and maintains a website by and through which  
25 individuals who pay a monthly subscription fee can view its photographic and audiovisual works.

26 2) On or about September 1, 2010, attorney for Plaintiff issued subpoenas directed at the  
27 above-listed ISPs requesting the personally identifiable information for the corresponding  
28 subscribers for the above-listed IP addresses.

1 3) Defendant DOES 1-59 are individuals whose true names and addresses are unknown to  
2 Plaintiff. Does 1 through 59 accessed the Plaintiff's computer servers without authorization, and  
3 downloaded and distributed unauthorized and infringing copies of Plaintiff's audiovisual works.  
4 Plaintiff was able to record the IP addresses for the individuals, however, Plaintiff can only identify  
5 the infringers by way of further investigation. As such, Plaintiff has issued subpoenas to the  
6 appropriate ISPs requesting this information.

7 4) The information requested in the subpoenas issued to cable operators is governed by 47  
8 U.S.C. § 551, which prohibits cable operators from disclosing personally identifiable information  
9 pertaining to subscribers without the subscriber's express consent unless there is "a court order  
10 authorizing such disclosure, if the subscriber is notified of such order by the person to whom the  
11 order is directed." 47 U.S.C. § 551(c)(2)(B).

12 5) Accordingly, the Plaintiff requests that the Court issue the requisite Order instructing  
13 Comcast, Cablevision, and Charter Communications to produce any and all documents and/or  
14 information sufficient to identify the user or users of the above IP addresses during the  
15 corresponding dates and times.

### 16 ARGUMENT

#### 17 Federal Rules Allow for Early Discovery

18 6) Federal Rules allow for discovery prior to a Rule 26 conference upon a showing of good  
19 cause. See *Semitoool, Inc. v. Tokyo Electronic America, Inc.*, 208 F.R.D. 273, 275-76 (N.D. Cal.  
20 2002).

21 7) More specifically, courts have recognized that, "[s]ervice of process can pose a special  
22 dilemma for plaintiffs in cases like this in which the tortious activity occurred entirely on-line."  
23 *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573, 577 (N.D. Cal. 1999). Accordingly, courts  
24 have developed the following factors to consider when granting motions for expedited discovery to  
25 identify anonymous Internet users: (1) whether the plaintiff can identify the missing party with  
26 sufficient specificity such that the court can determine that defendant is a real person or entity who  
27 could be sued in federal court; (2) all previous steps taken by the plaintiff to identify the Doe  
28 defendant; and (3) whether the plaintiff's suit could withstand a motion to dismiss. *Id.* at 578-80.  
Each of these factors resolves in favor of granting Plaintiff's requested relief.

1 8) First, Plaintiff has sufficiently identified individuals who are real persons Plaintiff could sue  
2 in Federal Court. Plaintiff observed and documented infringement of its registered works by the  
3 individuals identified as DOES in the Complaint. The requested discovery is necessary for  
4 Plaintiff to determine the true name and address of the individuals who performed the infringing  
5 acts.

6 9) Second, there are no other practical measures Plaintiff could take to identify the DOE  
7 Defendants. Plaintiff is aware of no available information that would identify the infringing users,  
8 other than information maintained by their Internet Service Providers. Due to the nature of on-line  
9 transactions, Plaintiff has no way of determining Defendants' identities except through a third-  
10 party subpoena.

11 10) Third, Plaintiff has asserted a prima facie claim for copyright infringement in its Complaint  
12 that can withstand a motion to dismiss. Specifically, Plaintiff has alleged that a) it owns and has  
13 registered the copyrights in the works at issue and b) the Defendants made unauthorized  
14 reproductions of those works and distributed them without Plaintiff's authorization. These  
15 allegations state a claim for copyright infringement and computer hacking. 17 U.S.C. § 106(1)(3),  
16 18 U.S.C. § 2701, and 18 U.S.C. § 1030.

17 11) When outlining the above factors, the court in *Columbia* noted that in cases where injured  
18 parties are likely to find themselves chasing unidentified tortfeasors from ISP to ISP, the traditional  
19 enforcement of strict compliance with service requirements should be tempered by the need to  
20 provide injured parties with a forum in which they may seek redress for grievances. *Columbia*, 185  
21 F.R.D. at 579. An analysis of the factors clearly demonstrates Plaintiff's legitimate interest in  
22 identifying the name and address of the individuals who infringed upon its copyrighted works.

#### 23 Explanation of Specific Requests

24 12) In addition to the three factors discussed above, courts have indicated that a plaintiff  
25 requesting early discovery to identify defendants should justify specific requests and explain how  
26 such requests "will lead to identifying information about defendant that would make service of  
27 process possible. See *Columbia* 185 F.R.D. at 580; *Gillespie v. Civiletti*, 629 F. 2d 637, 642 (9th  
28 Cir.1980).

1 13) The infringement and other wrongful acts at issue in this action occurred through online  
2 hacking, downloading, and other unlawful access to Plaintiff's computers. In order to these illegal  
3 acts, a user must connect to the Internet.

4 14) Individuals gain access to the Internet through an Internet service provider (ISP). When an  
5 ISP provides Internet access to a subscriber, it does so through a modem located at the subscriber's  
6 home or office. Each time the subscriber accesses the Internet, the ISP provides a unique number  
7 to the subscriber called an Internet protocol (IP) address. This is somewhat akin to a telephone  
8 number. The IP address for a subscriber may stay the same (a static ip address) or it may change  
9 from time to time (a dynamic ip address). ISPs generally record the times and dates it assigns each  
10 IP address to a subscriber.

11 15) Online technology used to engage in unlawful online theft relies on the ability to identify  
12 the computers to and from which users search and exchange files. The technology identifies those  
13 computers through the IP address from which the computer connects to the Internet. In this  
14 manner, Plaintiff identified the IP addresses from which individuals connected to the Internet for  
15 the purpose of unlawfully accessing Plaintiff's works and making electronic copies thereof.  
16 Plaintiff recorded the exact date and time individuals used various IP addresses to access the  
17 Internet to make illegally download these files from Plaintiff's servers.

18 16) Anyone can perform a simple search on public databases to determine which Internet access  
19 provider controls a specific ip address. Plaintiff now seeks to subpoena the above listed Internet  
20 Service Providers to determine the name and address of the subscribers to whom they assigned the  
21 various IP addresses recorded.

22 17) Plaintiff requests that the Court issue an order allowing Plaintiff to serve a subpoena on the  
23 relevant Internet Service providers requesting specific subscriber information necessary to identify  
24 the Doe defendants.

25 18) Since 47 U.S.C. §551 (The Cable Privacy Act) prohibits cable operators from disclosing  
26 personally identifiable information concerning subscribers without the prior written or electronic  
27 consent of the subscriber or a court order, and since some Internet service providers, including  
28 those listed above in this motion, are also cable operators, Plaintiff requests that the Court order

1 state clearly that the Court contemplated the Cable Privacy Act and that the order specifically  
2 complies with the Act's requirements. See, 47 U.S.C. §551.

3 **CONCLUSION**

4 19) The Plaintiff requests that the Court issue the requisite Order instructing Comcast,  
5 Cablevision, Charter Communications, and any other relevant service providers it identifies to  
6 produce any and all documents and/or information sufficient to identify the user or users of the  
7 above IP addresses during the corresponding dates and times.

8 20) Plaintiff will only use this information to prosecute the claims made in its Complaint.  
9 Without this information Plaintiff cannot pursue its lawsuit to protect its copyrighted works.

10 21) Such discovery should be conditioned on a) the ISPs having 7 calendar days after service of  
11 the subpoenas to notify the subscriber that their identity is sought by Plaintiff, and b) each  
12 subscriber whose identity is sought having 21 calendar days from the date of such notice to file any  
13 papers contesting the subpoena.

14 Dated: October 22, 2010

15 s/ Marc Randazza  
16 Marc J. Randazza, SBN 269535  
17 Randazza Legal Group  
18 302 Washington Street, Suite 321  
19 San Diego, CA 92103  
20 619-866-5975  
21 619-866-5976 (fax)  
22 [MJR@randazza.com](mailto:MJR@randazza.com)