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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

The Thompsons Film, LLC,

Plaintiff,

v.

DOES 1 – 155,

Defendants.

Case No.: 6:13-cv-00469-TC

PLAINTIFF'S MEMORANDUM OF LAW
IN SUPPORT OF PLAINTIFF'S *EX PARTE*
MOTION FOR CONTINUED DISCOVERY

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Plaintiff has already obtained leave for discovery to subpoena Internet Service Providers (“ISP”) for the identity subscribers to Internet Protocol (“IP”) addresses used to copy plaintiff’s movie. However, due to the narrowing of the scope of plaintiff’s claims, plaintiff in good faith presents a further motion for continued discovery should the court deem one necessary.

Plaintiff submits it is entitled to seek information “reasonably calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1). This rule is “construed broadly to

encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case.” *Oppenheimer Fund, Inc., v. Sanders*, 437 U.S. 340, 351 (1978).

An IP address is well recognized and utilized to assist in identifying a party as a matter of course in all manner of proceedings.

When a criminal uses a computer to commit crimes, law enforcement may be able, through lawful legal process, to identify the computer or subscriber account based on its IP address. This information is essential to identifying offenders, locating fugitives, thwarting cyber intrusions, protecting children from sexual exploitation and neutralizing terrorist threats.¹

The 9th Circuit has consistently held an IP address and the related subscriber information is useful and relevant. See *United States v. Craighead*, 539 F.3d 1073, 1080–81 (9th Cir. 2008) (probable cause existed where the IP address from which content was shared was traced to the defendant); *United States v. Hay*, 231 F.3d 630, 634–35 (9th Cir. 2000). See also *United States v. Forrester*, 495 F.3d 1041, 1049 (9th Cir. 2007) (comparing an IP address to a telephone number). See also *AF Holdings LLC v Does 1-1,058*, 2012 WL 3204917 (D.D.C. 2012); *Malibu Media v. Does 1-14*, No. 12-263 (N.D. Ind., 2012).

Two circuit courts have opined that Rule 45 subpoenas are properly used to identify online copyright infringers. *In re Charter Communications, Inc. Subpoena Enforcement Matter*, 393 F.3d 771, 774 (8th Cir. 2005); *Arista Records, LLC v. Doe 3*, 604 F.3d 110 (2d Cir. 2010).

The identity of a subscriber who is the ISP’s designated contact for an IP address used to illegally copy plaintiff’s movie is clearly relevant and properly discoverable. Should the subscriber not be the infringing party, then the subscriber is clearly a necessary and critical link in the chain of relevance to permit plaintiff to ascertain the identity of the actual infringer.

¹ Statement of Deputy Assistant Attorney General Jason Weinstein Before the Senate Judiciary Subcommittee on Privacy, Technology and the Law, May 10, 2011 available at <http://www.justice.gov/criminal/pr/testimony/2011/crm-testimony-110510.html>

In the instant case, plaintiff believes a notable number of subscribers will be actual defendants, thus mooting the issue. But to clarify, plaintiff intends to pursue actual infringers which may require further discovery, “until a specific party is identified” as not all subscribers will necessarily be defendants.

It is on this point that plaintiff submits the instant motion and requests of the court any clarification deemed necessary.

DATED: April 24, 2013.

/s/Carl D. Crowell

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