

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HEADHUNTER, LLC.

Plaintiff

v.

JOHN DOES 1-10,

Defendants

Docket. No. 2:17-cv-02985

**MOTION FOR EXPEDITED
DISCOVERY**

Pursuant to Fed. R. Civ. P. 26(d)(1), and upon the attached: (1) Memorandum of Law in support of this motion; and (2) Declaration of Daniel Arheidt in support of this motion respectfully moves for entry of an order granting it leave to serve a third party subpoena on the Internet Service Provider, prior to a Rule 26(f) conference (the “Motion”). A proposed order is attached for the Court’s convenience.

RESPECTULLY SUBMITTED,

/s/ CHARLES THOMAS, JR
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**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR
EXPEDITED DISCOVERY**

I. **INTRODUCTION**

Plaintiff Headhunter, LLC. (HEADHUNTER) is the producer of *A Family Man*, a major motion picture starring Gerard Butler and Willem DeFoe. HEADHUNTER holds a copyright on the film, which has not even been released in theatres yet. Even now, prior to release, HEADHUNTER confronts the growing scourge of high quality copies available for free, illegally distributed using BitTorrent — a very popular peer-to-peer file sharing network.

Shielded by the inherent anonymity of the Internet, the Defendants remain unknown to HEADHUNTER. However, each computer connected to the internet leaves a bread crumb trail through its Internet Protocol (IP) address. By tracking the IP address of those trafficking in the infringing material, HEADHUNTER can narrow the identity of the infringers to a date and time that the infringement occurred, and a city-level geographic location.

However, the Internet Service Provider (“ISP”) to which Defendants subscribe and from which Defendants obtain Internet access can reveal the true identity of the most likely infringer. The ISP, which in this case is Comcast, keep records of assigned IP

addresses in the regular course of business. Therefore, HEADHUNTER seeks leave of Court to serve limited discovery prior to a Rule 26(f) conference on the non-party ISP to determine the true identities of the John Doe Defendants. HEADHUNTER further requests that the Court enter an order allowing Plaintiff to serve Rule 45 subpoenas on the ISP immediately and that the ISPs shall comply with the subpoenas.

Once subpoenaed, Comcast will notify their subscribers that HEADHUNTER is seeking their identities. Each Defendant will have the opportunity to raise any objections before this Court. Thus, to the extent that any Defendant wishes to object, he or she will be able to do so.

II. TECHNICAL FACTS RELEVANT TO THIS MOTION

As alleged in the Complaint, the Doe Defendants, without authorization, used an online media distribution system to download the copyrighted Motion Picture and distribute it to other users on the P2P network, including by making the copyrighted Motion Picture for which Plaintiff holds the exclusive sale and distribution rights available for distribution to others. In the instant case, Plaintiff has engaged Maverickeye UG (“MEU”), a provider of online anti-piracy services for the motion picture industry, to monitor this infringing activity. See Declaration of Daniel Arheidt (“Arheidt Decl.”), ¶¶ 1-2 [attached to this Motion as Exhibit A].

MEU employs Mr. Arheidt to monitor and track suspected infringing activity across P2P/BitTorrent networks using proprietary software that directly connects to the infringing computer and downloads a portion of the suspected infringing material; the IP address of the infringing user is recorded, as is the date and time the material was transmitted. Arheidt Decl., ¶¶ 3-4. This information is stored on a secure server as an evidence log. Arheidt Decl., ¶ 5.

MEU then compares the downloaded data to a complete version of the copyrighted movie to confirm that the data in fact corresponds to the copyrighted material. Arheidt Decl., ¶ 6.

MEU then uses third party geolocation software to trace the physical location of the infringer. Arheidt Decl., ¶ 7. Publicly available databases reveal the ISP to which the IP address is registered, but do not reveal the precise street location or ultimate identity of the infringer – such information is kept by the ISP. Arheidt Decl., ¶¶ 7-9.

III. ARGUMENT

This Court should follow the example of other courts, both in this District and around the country and grant the motion. Where the identity of the defendants is unknown, the plaintiff should have an opportunity to ascertain the identity through discovery. *See, e.g. Murphy v. Goord*, 445 F.Supp.2d 261, 266 (W.D.N.Y. 2006). As peer-to-peer filesharing has proliferated anonymous copyright infringement on a massive scale, courts around the country have routinely granted similar motions seeking leave to serve Rule 45 subpoenas on ISPs.¹

In fact, judges of this Court have recently granted identical motions. *See UN4 Productions, Inc. v. Does 1-9*, 2:17-cv-02481 (E.D. Pa.) (Goldberg, J.) (motion granted June 16, 2017).

Courts consider the following factors when granting motions for expedited discovery to identify anonymous Internet users: (1) whether the plaintiff can identify the missing party with sufficient specificity such that the court can determine that

¹ *See, e.g. Criminal Productions, Inc. v. Does 1 -18*, 1:16-cv-05500 (N.D. Ill.) (motion for leave to issue subpoenas granted June 14, 2016; *Criminal Productions, Inc. v. Doe 1 et al*, 2:16-cv-00860 (W.D. Wash.) (motion granted July 28, 2016; *Millennium Films, Inc. v. Doe- 76.170.195.248*, 2:16-cv-04716 (C.D. Ca.) (motion granted July 14, 2016).

defendant is a real person or entity who could be sued in federal court; (2) all previous steps taken by the plaintiff to identify the Doe Defendant; and (3) whether the plaintiff's suit could withstand a motion to dismiss. *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573, 578-80 (N.D. Cal. 1999); *but see Rocker Mgmt. LLC v. John Does*, No. 03-MC-33 2003 WL 22149380, *1-2, (N.D. Cal. 2003) (applying *Seescandy* standards, but denying request for expedited discovery where allegedly libelous anonymous statements were not as a matter of law libelous). Plaintiff here is able to demonstrate each one of these factors.

Overall, courts have wide discretion in discovery matters and have also allowed expedited discovery when "good cause" is shown. See *Warner Bros. Records, Inc. v. Does 1-6*, 527 F.Supp.2d 1, 2 (D.D.C. 2007); *see also Entm't Tech. Corp. v. Walt Disney Imagineering*, 2:03-cv-03546, 2003 WL 22519440, at *4 (E.D. Pa. Oct. 2, 2003) (applying a reasonableness standard: "a district court should decide a motion for expedited discovery on the entirety of the record to date and the reasonableness of the request in light of all of the surrounding circumstances") (Hutton, J.).

First, Plaintiff has sufficiently identified the Doe Defendants through the unique IP address each Doe Defendant was assigned at the time of the unauthorized distribution of the copyrighted Motion Picture. *Seescandy*, 185 F.R.D. at 578-80.

These Defendants gained access to the Internet through their respective ISPs (under cover of an IP address) only by setting up an account with the various ISPs. The ISPs can identify each Defendant by name through the IP address by reviewing its subscriber activity logs. Thus, HEADHUNTER can show that all Defendants are "real persons" whose names are known to the ISP and who can be sued in federal court.

Second, HEADHUNTER has specifically identified the steps taken to identify Defendants' true identities. HEADHUNTER has obtained each Defendant's IP address and the date and time of the Defendant's infringing activities, have traced each IP address to specific ISPs, and have made copies of the Motion Picture each Defendant unlawfully distributed or made available for distribution. Therefore, Plaintiff has obtained all the information it possibly can about the Defendants without discovery from the ISPs.

Third, HEADHUNTER has asserted a prima facie claim for direct copyright infringement in its Complaint that can withstand a motion to dismiss. Specifically, Plaintiff have alleged that: (a) it owns the exclusive rights under the registered copyright for the Motion Picture; and (b) the Doe Defendants copied or distributed the copyrighted Motion Picture without Plaintiff's authorization. See Complaint. These allegations state a claim for copyright infringement. See 17 U.S.C. §106(1)(3); *In re Aimster Copyright Litig.*, 334 F.3d 643, 645 (7th Cir. 2003), *cert. denied*, 124 S. Ct. 1069 (2004) ("Teenagers and young adults who have access to the Internet like to swap computer files containing popular music. If the music is copyrighted, such swapping, which involves making and transmitting a digital copy of the music, infringes copyright."); *A & M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1014-15 (9th Cir. 2001) ("Napster users who upload file names to the search index for others to copy violate Plaintiff's distribution rights. Napster users who download files containing copyrighted music violate Plaintiff's reproduction rights").

Here, good cause exists because ISPs typically retain user activity logs containing the information sought for only a limited period of time before erasing the data. If that information is erased, Plaintiff will have no ability to identify the Defendants, and thus

will be unable to pursue its lawsuit to protect its copyrighted work. Where “physical evidence may be consumed or destroyed with the passage of time, thereby disadvantaging one or more parties to the litigation,” good cause for discovery before the Rule 26 conference exists. *Qwest Comm. Int’l, Inc. v. WorldQuest Networks, Inc.*, 213 F.R.D. 418, 419 (D. Colo. 2003).

Good cause exists here for the additional reason that a claim for copyright infringement presumes irreparable harm to the copyright owner. *See UMG Recordings, Inc. v. Doe*, 2008 WL 4104214 (N.D. Cal. 2008) (finding good cause for expedited discovery exists in Internet infringement cases, where a plaintiff makes a prima facie showing of infringement, there is no other way to identify the Doe defendant, and there is a risk an ISP will destroy its logs prior to the conference).

The first and necessary step that Plaintiff must take to stop the infringement of its valuable copyrights and exclusive licensing and distribution rights is to identify the Doe Defendants who are copying and distributing the Motion Picture. This lawsuit cannot proceed without the limited discovery Plaintiff seeks because the ISPs are the only entities that can identify the otherwise anonymous Defendants. Courts regularly permit early discovery where such discovery will “substantially contribute to moving th[e] case forward.” *Semitoal, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 275-76 (N.D. Cal. 2002)

Finally, Defendants have no legitimate expectation of privacy in the subscriber information they provided to the ISPs much less in downloading and distributing the copyrighted Motion Picture without permission. *See Interscope Records v. Does 1-14*, 558 F. Supp. 2d 1176, 1178 (D. Kan. 2008) (a person using the Internet to distribute or download copyrighted music without authorization is not entitled to have their identity

protected from disclosure under the First Amendment); *see also Guest v. Leis*, 255 F.3d 325, 336 (6th Cir. 2001) (“computer users do not have a legitimate expectation of privacy in their subscriber information because they have conveyed it to another person—the system operator”). This is because a person can have no legitimate expectation of privacy in information he or she voluntarily communicates to third parties. *See, e.g., Smith v. Maryland*, 442 U.S. 735, 743-44 (1979); *U.S. v. Miller*, 425 U.S. 435, 442-43 (1976); *Couch v. U.S.*, 409 U.S. 322, 335-36 (1973).

Although Defendants copied and distributed the Motion Picture without authorization using fictitious user names, their conduct was not thus anonymous. Using publicly available technology, the unique IP address assigned to each Defendant at the time of infringement can be readily identified. When Defendants entered into a service agreement with the ISPs, they knowingly and voluntarily disclosed personal identification information to it. As set forth above, this identification information is linked to each Defendant’s IP address at the time of infringement, and recorded in the ISP’s respective subscriber activity logs. Because Defendants can, as a consequence, have no legitimate expectation of privacy in this information, this Court should grant Plaintiff leave to seek expedited discovery of it. Absent such leave, Plaintiff will be unable to protect its copyrighted Motion Picture from continued infringement.

Where federal privacy statutes authorize disclosure pursuant to a court order, courts have held that a plaintiff must make no more than a showing of relevance under the traditional standards of Rule 26. *See Laxalt v. McClatchy*, 809 F.2d 885, 888 (D.C. Cir 1987). Plaintiff clearly has met that standard, as the identity of Defendants is essential to Plaintiff’s continued prosecution of this action.

IV. CONCLUSION

For the foregoing reasons, HEADHUNTER respectfully submits that the Court should grant the Motion for Leave to Take Discovery Prior to Rule 26 Conference. HEADHUNTER further requests permission to serve a Rule 45 subpoena on the ISPs it has identified as of this date, and those it identifies in the future, so that the ISPs can divulge the true name, address, telephone number, e-mail address, and MAC address of each Doe Defendant that Plaintiff have identified to date, and those it identifies in the future during the course of this litigation and an order that the ISPs shall comply with the subpoenas. To the extent that any ISP, in turn, identifies a different entity as the ISP providing network access and online services to the Doe Defendants, Plaintiff also seeks leave to serve, on any such later identified ISP, limited discovery sufficient to identify the Doe Defendant prior to the Rule 26 conference.

Plaintiff will only use this information to prosecute its claims. Without this information, Plaintiff cannot pursue its lawsuit to protect its Motion Picture from past and ongoing, repeated infringement.

RESPECTULLY SUBMITTED,

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/s/ LEE M. HERMAN
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DECLARATION OF DANIEL ARHEIDT
IN SUPPORT OF MOTION FOR LEAVE TO TAKE DISCOVERY
PRIOR TO RULE 26 CONFERENCE

I, Daniel Arheidt, hereby declare and state as follows:

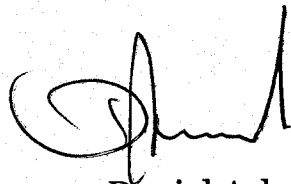
1. My name is Daniel Arheidt. I am over the age of 18 and am otherwise competent to make this declaration. This declaration is based on my personal knowledge.
2. I have been retained as a consultant by Maverickeye UG (“MEU”), a company incorporated in Stuttgart and organized and existing under the laws of Germany, in its technical department. MEU is in the business of providing forensic investigation services to copyright owners. As a part of my regular duties I oversee the database and records maintained by MEU.
3. MEU monitors peer-to-peer/BitTorrent networks for acts of distribution of Plaintiff’s motion picture through the use of proprietary MaverikMonitor™ software.

4. When MaverikMonitor finds an IP address distributing Plaintiff's motion picture (hereinafter "an infringing IP address"), a direct connection is made to that computer and a portion of the infringing file is downloaded. MaverikMonitor also records the exact time of the connection and other available information broadcast by the infringing IP address.
5. This evidence is then saved on a secure server in indexed evidence logs.
6. To confirm the infringing activity, the data downloaded from each infringing IP address is matched to the complete file and a full copy of the motion picture being distributed is compared with a DVD of the original motion picture confirming the infringing IP address is in fact distributing Plaintiff's motion picture.
7. The software uses geolocation functionality to determine the location of each infringing IP address under investigation. The geolocation data for the infringing IP addresses in this lawsuit are set forth on Exhibit A to the Complaint.
8. The software reviews publicly available and searchable data to identify the Internet Service Provider ("ISP") responsible for each infringing IP address.

9. I have reviewed the MaverikMonitor evidence logs, and can confirm the records of infringing activity set forth on Exhibit B to the Complaint, including IP addresses, times, and hash values, accurately reflect instances of actual observed distribution of Plaintiff's motion picture by the infringing IP addresses.
10. Publicly available databases do not permit MEU to identify a specific subscriber as such records are maintained by the ISP.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 27 day of June, 2017.



Daniel Arheidt

| No | IP | Port | Client | Hit Date UTC | File Name | File Hash | City | Province |
|----|----------------|-------|------------------|---------------------|---|--|----------------------|----------|
| 1 | 73.188.179.118 | 6881 | libtorrent 1.1.0 | 2017-06-17 21:25:48 | A.Family.Man.2017.720p.WEB-DL.999MB.ShAaNiG.mkv | SHA1: B0A26C6F9B646539D06D0763787FF56737FA3948 | Feasterville-Trevese | Bucks |
| 2 | 71.230.116.16 | 6881 | libtorrent 1.1.0 | 2017-06-15 19:45:41 | A.Family.Man.2017.720p.WEB-DL.999MB.ShAaNiG.mkv | SHA1: B0A26C6F9B646539D06D0763787FF56737FA3948 | Philadelphia | Delaware |
| 3 | 76.98.229.243 | 6881 | libtorrent 1.1.0 | 2017-06-14 06:41:41 | A.Family.Man.2017.720p.WEB-DL.999MB.ShAaNiG.mkv | SHA1: B0A26C6F9B646539D06D0763787FF56737FA3948 | Philadelphia | Delaware |
| 4 | 68.82.156.8 | 37493 | libtorrent 1.1.0 | 2017-06-14 02:48:27 | A.Family.Man.2017.720p.WEB-DL.999MB.ShAaNiG.mkv | SHA1: B0A26C6F9B646539D06D0763787FF56737FA3948 | Philadelphia | Delaware |
| 5 | 69.242.55.241 | 50321 | [unknown Client] | 2017-06-13 20:48:21 | A.Family.Man.2017.720p.WEB-DL.999MB.ShAaNiG.mkv | SHA1: B0A26C6F9B646539D06D0763787FF56737FA3948 | Pottstown | Chester |
| 6 | 73.233.111.120 | 6881 | libtorrent 1.1.0 | 2017-06-13 03:51:29 | A.Family.Man.2017.720p.WEB-DL.999MB.ShAaNiG.mkv | SHA1: B0A26C6F9B646539D06D0763787FF56737FA3948 | Philadelphia | Delaware |
| 7 | 73.233.24.136 | 50322 | [unknown Client] | 2017-06-13 00:26:43 | A.Family.Man.2017.720p.WEB-DL.999MB.ShAaNiG.mkv | SHA1: B0A26C6F9B646539D06D0763787FF56737FA3948 | Havertown | Delaware |
| 8 | 73.130.155.31 | 6882 | libtorrent 1.1.0 | 2017-06-11 01:44:04 | A.Family.Man.2017.720p.WEB-DL.999MB.ShAaNiG.mkv | SHA1: B0A26C6F9B646539D06D0763787FF56737FA3948 | Reading | Berks |
| 9 | 68.82.178.151 | 6881 | libtorrent 1.1.0 | 2017-06-06 20:49:49 | A.Family.Man.2017.720p.WEB-DL.999MB.ShAaNiG.mkv | SHA1: B0A26C6F9B646539D06D0763787FF56737FA3948 | Philadelphia | Delaware |
| 10 | 69.249.19.210 | 44662 | [unknown Client] | 2017-06-06 15:14:08 | A.Family.Man.2017.720p.WEB-DL.999MB.ShAaNiG.mkv | SHA1: B0A26C6F9B646539D06D0763787FF56737FA3948 | Philadelphia | Delaware |

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PROPOSED ORDER

AND NOW, this _____ day of July 2017, in consideration of the Plaintiff's Motion for Expedited Discovery and for good cause shown, it is hereby **ORDERED** that the Motion is hereby **GRANTED** as follows:

1. Plaintiff may serve the Internet Service Provider ("ISP") for the Defendants with a Rule 45 subpoena commanding the ISP to provide Plaintiff with the true name and address of each Defendant John Doe to whom the ISP assigned the IP address at issue. Plaintiff shall attach to any such subpoena a copy of this Order.
2. With respect to any ISP that qualifies as a "cable operator" as defined by 47 U.S.C. § 522(5), this ruling further authorizes disclosure of information pursuant to 47 U.S.C. §551(c)(2)(B).
3. Plaintiff may use the information disclosed in response to a Rule 45 subpoena solely for the purpose of protecting Plaintiff's rights as set forth in its Complaint.

It is so ORDERED.

Petrese B. Tucker, C.J.