

FILED  
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DISTRICT COURT E.D.N.Y.

JUN - 3 2011 ★

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

BROOKLYN OFFICE

**MISC 11 0395**-----X

NEW SENSATIONS, INC.

Civil Action No.  
CV-10-05863-MEJ

**NOTICE OF MOTION**

Plaintiff,

-against-

Action Pending in  
the Northern District  
of California

DOES 1-1745

Defendant.

**MAUSKOPF, J.**

-----X  
SIRS:

PLEASE TAKE NOTICE that upon the attached affirmation of ELIOT L. GREENBERG affirmed on June 2, 2011, plaintiff will move this court, before the Honorable \_\_\_\_\_, U.S.D.J., in Room \_\_\_\_\_ at the United States District Courthouse for the Eastern District of New York, 225 Cadman Plaza, Brooklyn, New York, 11201, on the 14th day of June 2011 at 9:30 a.m. or as soon thereafter as counsel can be heard, for an Order quashing the subpoena of plaintiff New Sensations, Inc. to Optimum Online ("ISP") to produce documentation identifying the name, address and telephone number of John Doe 721 with IP Address 69.116.72.110.

ROSNER NOCERA & RAGONE, LLP

By:

Eliot L. Greenberg (EG 8210)

Attorney for Defendant John Doe 721  
with IP Address 69.116.72.110  
110 Wall Street - 23<sup>rd</sup> Floor  
New York, New York 10005  
(212) 635-2244

TO: Ira M. Siegel, Esq.  
Attorney for plaintiff  
433 North Camden Drive  
Suite 970  
Beverly Hills, California 90210

Custodian of Records  
Optimum Online  
1111 Stewart Avenue  
Bethpage, New York 11714

Cablevision  
1111 Stewart Avenue  
Bethpage, New York 11714

eb:nom.new.sensations  
06/11

**UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF NEW YORK**

-----X  
NEW SENSATIONS, INC.

Civil Action No.  
CV-10-05863-MEJ

Plaintiff,

-against-

Action Pending in  
the Northern District  
of California

DOES 1-1745

Defendant.

-----X

Eliot L Greenberg affirms the following under penalty of perjury:

1. My firm is counsel to a subscriber to Cablevision with IP Address 69.116.72.110, John Doe 721, and I make this application to quash the subpoena annexed hereto as Exhibit "1".

2. My client received the attached letter from Cablevision (client's name and address redacted)<sup>1</sup> forwarding a copy of a subpoena (Ex. 1) directing Cablevision to furnish New Sensations, Inc., a California corporation, with the names, addresses, telephone numbers and e-mail addresses of customers with specified IP Addresses. A copy of the May 13, 2011 letter from Cablevision is annexed hereto as Exhibit "2".

**LACK OF PERSONAL JURISDICTION**

3. First of all, in support of the instant motion to quash the subpoena, this action against John Does 1 to 1745 is pending in the United States District Court for the Northern District of California. However, I have been informed

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<sup>1</sup> This affirmation is being submitted by counsel and not the subscriber to protect the identity of my client that is being sought by the subpoena that is the subject of the matter.

that my client, a New Jersey resident, has no contacts whatsoever with California.

4. Accordingly, since the California Court does not have personal jurisdiction over my client, it is respectfully submitted that the subpoena be quashed.

#### **LACK OF FOUNDATION**

5. Moreover, this action seeks restitution for the alleged unauthorized download of a purported copyrighted x-rated movie known as "The Office A XXX Parody" through Bit Torrent, a peer-to-peer file sharing protocol (the "Movie")

6. I have been informed by my client that he has no knowledge whatsoever of downloading the Movie from Bit Torrent or any other source.

7. Nevertheless, assuming that New Sensations, Inc. is truthfully representing to this Court that IP Address 69.116.72.110 was identified downloading the Movie, it has provided no proof laying any foundation for such claim in support of the instant subpoena or that the Movie was in fact copyrighted and known by the subscriber to be copyrighted material.

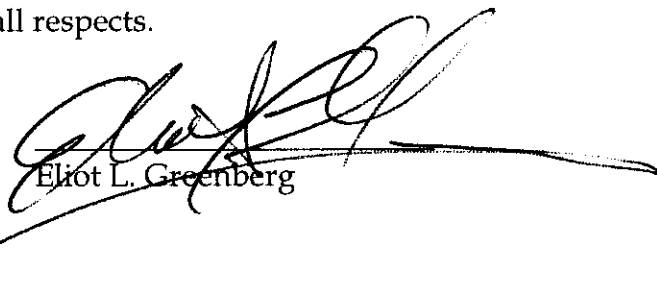
8. Even if New Sensation Inc. does lay a proper foundation which establishes that John Doe 721's IP address participated in the download of the Movie, I have been informed by my client that his Netgear wireless router is not secured and that anyone in close proximity to his wireless router, including

persons directly outside of his house or the nearby neighbors, could have downloaded the Movie.

9. The anonymity of persons accessing Internet web sites should not be breached in aid of a case not properly filed in this Court. Indeed, in a similar situation, Columbia Insurance Co., v. SEESCANDY, Inc., 185 F.R.D. 573, 578-80 (N.D. Cal 1999), the court held that it would not breach the anonymity of an Internet poster without first requiring plaintiff to show the adequacy of the Complaint. See id. (“[P]laintiff should establish to the court’s satisfaction that plaintiff’s suit against defendant could withstand a motion to dismiss. A conclusory pleading will never be sufficient to establish this element.”)

#### CONCLUSION

10. Based upon the California Court's lack of personal jurisdiction over my client, a New Jersey resident, and my client's complete defense to this action, it is respectfully submitted that the subpoena (Ex. 1) which seeks to seriously invade my client's privacy without plaintiff having first laid a proper foundation, or any foundation whatsoever, be denied in all respects.



Eliot L. Greenberg



AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

**UNITED STATES DISTRICT COURT**

for the

Eastern District of New York

New Sensations, Inc.

Plaintiff

v.

DOES 1-1745

Defendant

Civil Action No. CV-10-05863-MEJ

(If the action is pending in another district, state where:  
Northern District of California )

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: Custodian of Records, Optimum Online (hereinafter "ISP")  
1111 Stewart Avenue, Bathpage, NY 11714

**Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material):

Documents sufficient to identify the names, addresses, telephone numbers, and email addresses of ISP's subscribers assigned the IP addresses identified on Attachment A on the corresponding dates at the corresponding times. You are to comply with this subpoena pursuant to the terms set forth in the Order attached hereto as Attachment B.

Place: Law Offices of Ira M. Siegel

433 N. Camden Drive, Suite 970  
Beverly Hills, CA 90210

Date and Time:

July 6, 2011 at 9:00 a.m. \*

**Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

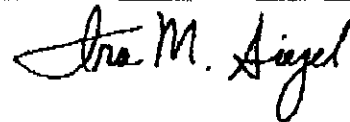
The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

\* Compliance with this subpoena may be a multi-step process pursuant to the Order attached (Attachment B). At least the first step should be completed by May 27, 2011, with all steps completed by the date set forth under "Date and Time" above: July 6, 2011. (See paragraphs 4 and 5 of the Order.)

Date: April 22, 2011

CLERK OF COURT

OR



Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party)

New Sensations, Inc.

, who issues or requests this subpoena, are:

Ira M. Siegel, Law Offices of Ira M. Siegel, 433 N. Camden Drive, Suite 970, Beverly Hills, CA 90210. Email: subpoena@irasiegel.com, Telephone: 888-406-1004

## ATTACHMENT A

Table of Last-Observed Infringements by Defendants of Copyrights in Listed Motion Pictures that Are the Subject of New Sensations, Inc.'s Listed Copyright Registrations

Doe #	ID	Internet Protocol Address (IP)	Internet Service Provider (ISP)	Motion Picture Title / Copyright Registration Number	Timestamp (U.S. Eastern Time)	Protocol
Doe 63	339177	173.2.10.171	Optimum Online	The Office A XXX Parody / PA0001659574	2010-09-11 07:25:57 PM -0400	BitTorrent
Doe 70	319491	173.3.198.119	Optimum Online	The Office A XXX Parody / PA0001659574	2010-08-07 12:56:22 AM -0400	BitTorrent
Doe 71	473733	173.3.199.247	Optimum Online	The Office A XXX Parody / PA0001659574	2010-09-21 12:53:03 AM -0400	BitTorrent
Doe 72	838313	173.3.248.253	Optimum Online	The Office A XXX Parody / PA0001659574	2010-10-15 11:51:33 PM -0400	BitTorrent
Doe 308	770223	24.184.170.146	Optimum Online	The Office A XXX Parody / PA0001659574	2010-10-11 05:09:32 AM -0400	BitTorrent
Doe 309	511641	24.184.187.238	Optimum Online	The Office A XXX Parody / PA0001659574	2010-09-23 12:59:54 AM -0400	BitTorrent
Doe 311	281018	24.187.174.137	Optimum Online	The Office A XXX Parody / PA0001659574	2010-08-20 09:39:03 AM -0400	BitTorrent
Doe 313	333545	24.188.163.8	Optimum Online	The Office A XXX Parody / PA0001659574	2010-09-11 08:33:28 PM -0400	BitTorrent
Doe 314	369561	24.188.164.129	Optimum Online	The Office A XXX Parody / PA0001659574	2010-09-13 06:51:58 PM -0400	BitTorrent
Doe 315	439701	24.188.211.149	Optimum Online	The Office A XXX Parody / PA0001659574	2010-09-19 12:59:28 AM -0400	BitTorrent
Doe 365	424440	24.44.128.92	Optimum Online	The Office A XXX Parody / PA0001659574	2010-09-17 01:58:49 AM -0400	BitTorrent
Doe 366	394079	24.44.37.141	Optimum Online	The Office A XXX Parody / PA0001659574	2010-09-15 10:11:54 PM -0400	BitTorrent
Doe 368	270708	24.47.16.95	Optimum Online	The Office A XXX Parody / PA0001659574	2010-08-14 01:50:11 PM -0400	BitTorrent



Doe 369	352046	24.47.23.10	Optimum Online	The Office A XXX Parody / PA0001659574	2010-09-12 04:48:23 PM -0400	BitTorrent
Doe 564	896990	67.80.24.246	Optimum Online	The Office A XXX Parody / PA0001659574	2010-10-18 09:08:02 PM -0400	BitTorrent
Doe 565	272723	67.80.79.150	Optimum Online	The Office A XXX Parody / PA0001659574	2010-08-15 12:58:47 AM -0400	BitTorrent
Doe 567	266719	67.81.156.191	Optimum Online	The Office A XXX Parody / PA0001659574	2010-08-13 12:56:01 AM -0400	BitTorrent
Doe 568	268720	67.82.177.22	Optimum Online	The Office A XXX Parody / PA0001659574	2010-08-12 09:16:26 PM -0400	BitTorrent
Doe 573	1072283	67.87.18.57	Optimum Online	The Office A XXX Parody / PA0001659574	2010-10-26 09:48:18 PM -0400	BitTorrent
Doe 621	350650	68.192.225.121	Optimum Online	The Office A XXX Parody / PA0001659574	2010-09-13 03:59:39 AM -0400	BitTorrent
Doe 716	669061	69.112.178.69	Optimum Online	The Office A XXX Parody / PA0001659574	2010-10-04 07:59:52 PM -0400	BitTorrent
Doe 717	371182	69.112.222.141	Optimum Online	The Office A XXX Parody / PA0001659574	2010-09-13 08:24:02 PM -0400	BitTorrent
Doe 718	862368	69.114.209.197	Optimum Online	The Office A XXX Parody / PA0001659574	2010-10-16 01:15:26 PM -0400	BitTorrent
Doe 719	253928	69.114.74.159	Optimum Online	The Office A XXX Parody / PA0001659574	2010-08-06 01:51:55 AM -0400	BitTorrent
Doe 720	253930	69.115.156.235	Optimum Online	The Office A XXX Parody / PA0001659574	2010-08-06 04:21:08 PM -0400	BitTorrent
Doe 721	271178	69.116.72.110	Optimum Online	The Office A XXX Parody / PA0001659574	2010-08-15 12:58:35 AM -0400	BitTorrent
Doe 723	828233	69.118.183.161	Optimum Online	The Office A XXX Parody / PA0001659574	2010-10-14 08:14:37 AM -0400	BitTorrent
Doe 724	322727	69.119.77.185	Optimum Online	The Office A XXX Parody / PA0001659574	2010-08-16 05:00:25 AM -0400	BitTorrent
Doe 726	517012	69.120.203.125	Optimum Online	The Office A XXX Parody / PA0001659574	2010-09-22 08:58:52 PM -0400	BitTorrent

Doe 727	696891	69.121.16.2	Optimum Online	The Office A XXX Parody / PA0001659574	2010-10-06 09:04:58 PM -0400	BitTorrent
Doe 729	574213	69.125.81.87	Optimum Online	The Office A XXX Parody / PA0001659574	2010-09-27 10:20:18 PM -0400	BitTorrent
Doe 730	322738	69.126.173.25	Optimum Online	The Office A XXX Parody / PA0001659574	2010-08-14 11:18:45 PM -0400	BitTorrent
Doe 732	696969	69.127.64.203	Optimum Online	The Office A XXX Parody / PA0001659574	2010-10-06 06:25:28 AM -0400	BitTorrent
Doe 1143	795740	74.89.56.76	Optimum Online	The Office A XXX Parody / PA0001659574	2010-10-12 07:30:03 PM -0400	BitTorrent

1 Ira M. Siegel, Cal. State Bar No. 78442  
2 email address: irasiegel@earthlink.net  
3 LAW OFFICES OF IRA M. SIEGEL  
4 433 N. Camden Drive, Suite 970  
5 Beverly Hills, California 90210-4426  
6 Tel: 310-435-7656  
7 Fax: 310-657-2187

8 Attorney for Plaintiff New Sensations, Inc.

9 UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 San Francisco Division

12 New Sensations, Inc., a California corporation,  
13 Plaintiff,  
14 v.  
15 DOES 1-1745,  
16 Defendants.

CASE NO. CV 10-05863 MEJ

**{Proposed} ORDER GRANTING  
PLAINTIFF LEAVE TO TAKE  
EARLY DISCOVERY**

17  
18 The Court, having reviewed Plaintiff's Ex Parte Application for Leave to Take Limited  
19 Discovery Prior to a Rule 26 Conference and the supporting documents submitted therewith, and  
20 good cause appearing therefore, hereby grants Plaintiff's Ex Parte Application and orders as  
21 follows:

22  
23 1. **IT IS HEREBY ORDERED** that Plaintiff is allowed to serve immediate  
24 discovery on the internet service providers (ISPs) listed in Exhibit A to the First Amended  
25 Complaint filed in this matter to obtain the identity of the Doe Defendants listed in that Exhibit  
26 by serving a Rule 45 subpoena that seeks information sufficient to identify each such Defendant,  
27 including the name, addresses, telephone numbers, and email addresses of such Defendant.

28

{Proposed} Order Granting Plaintiff's Ex Parte Application for Leave to Take Limited Discovery Prior to a Rule 26 Conference - CV 10-05863 MEJ

1           2.     **IT IS FURTHER ORDERED** that Plaintiff's counsel shall issue subpoenas in  
2 substantially the same form as the example attached as Exhibit 1 to Plaintiff's Ex Parte  
3 Application for Leave to Take Limited Discovery Prior to a Rule 26 Conference with each  
4 subpoena including a copy of this Order.

5           3.     **IT IS FURTHER ORDERED** that subpoenas authorized by this Order and  
6 issued pursuant thereto shall be deemed appropriate court orders under 47 U.S.C. §551. In  
7 particular, 47 U.S.C. § 551(c)(2)(B) provides as follows:

8                   "(c) Disclosure of personally identifiable information

9                           \*\*\*

10                           "(2) A cable operator may disclose such information if the disclosure is—

11                                   \*\*\*

12                                   "(B) subject to subsection (h) [relating to disclosures to governmental  
13 agencies] of this section, made pursuant to a court order authorizing  
14 such disclosure, if the subscriber is notified of such order by the person  
15 to whom the order is directed . . . ."

16 This Order is an order authorizing such disclosure.

17           4.     **IT IS FURTHER ORDERED** that each ISP will have 30 days from the date of  
18 service upon it to serve each of its subscriber(s) whose identity information is sought with a copy  
19 of the subpoena and a copy of this Order. The ISPs may serve the subscribers using any  
20 reasonable means, including written notice sent to the subscriber's last known address,  
21 transmitted either by first-class mail or via overnight service.

22           5.     **IT IS FURTHER ORDERED** that each subscriber shall have 30 days from the  
23 date of service upon him, her or it to file any motions in this court contesting the subpoena  
24 (including a motion to quash or modify the subpoena). If that 30-day period lapses without the  
25 subscriber contesting the subpoena, the ISP shall have 10 days to produce to Plaintiff the  
26 information responsive to the subpoena with respect to that subscriber.

27           6.     **IT IS FURTHER ORDERED** that, because no appearance by a person at a  
28 deposition is required by the subpoena, instead only production of documents, records and the  
like is required, the witness and mileage fees required by Rule 45(b)(1) of the Federal Rules of  
Civil Procedure do not apply and no such fees need be tendered.

1 7. IT IS FURTHER ORDERED that any ISP that receives a subpoena pursuant to  
2 this Order shall not assess any charge to the Plaintiff in advance of providing the information  
3 requested in the subpoena, and that any ISP that receives a subpoena and elects to charge for the  
4 costs of production shall provide a billing summary and cost reports that serve as a basis for such  
5 billing summary and any costs claimed by such ISP.

6 8. IT IS FURTHER ORDERED that any ISP that receives a subpoena shall  
7 preserve all subpoenaed information pending the ISP's delivering such information to Plaintiff or  
8 the final resolution of a timely filed and granted motion to quash the subpoena with respect to  
9 such information.

10 9. IT IS FURTHER ORDERED that any information disclosed to Plaintiff in  
11 response to a subpoena may be used by Plaintiff solely for the purpose of protecting its rights  
12 under the Copyright Act, 17 U.S.C. § 101 et seq.

13 10. IT IS FURTHER ORDERED that joinder of all defendants at this stage of the  
14 litigation is proper. This decision is without prejudice to any motion for severance by a current  
15 Doc defendant who is later included in this action by his or her true name.

16 IT IS SO ORDERED.

17  
18 Date: April 18, 2011

  
\_\_\_\_\_  
Maria-Elena James  
United States Magistrate Judge

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*Via Federal Express*

**REDACTED**

Re: IP Address: 69.116.72.110

Dear Valued Customer:

CSC Holdings, LLC ("Cablevision") has been served with a court order ("Order") in the above-referenced matter. I have enclosed a copy of this Order for your convenience. This Order directs Cablevision to produce certain records in its possession relating to the services you receive from Cablevision.

Please be advised that Cablevision is obligated to release such records unless you provide us with documents indicating that the court has rescinded its Order, or a file-stamped copy of a Motion to Quash or similar motion. Cablevision will withhold production pending the court's ruling on a Motion to Quash, but must produce in the event the Motion is denied. If Cablevision does not receive notice as described herein from you by Monday, June 13, 2011, Cablevision will produce the records as required by law.

You may want to discuss this matter with your attorney. Please note that Cablevision cannot represent your interests in this matter.

Please contact me at 516-803-3917 if you have any questions regarding this matter.

Very truly yours,

/s/  
John Ma  
Paralegal

Enclosure  
121607 - 113156 - 24

CABLEVISION SYSTEMS CORPORATION  
1111 Stewart Avenue, Bethpage NY 11714-3581  
516 803-2300

AFFIDAVIT OF SERVICE

STATE OF NEW YORK )  
  ss:  
COUNTY OF NEW YORK )

I, Elena Berger, being duly sworn, depose and say:  
deponent is not a party to the action, is over the age of 18 years and resides in Brooklyn,  
New York.


That on June 2, 2011 deponent served the within Notice of Motion to Quash  
Subpoena and Affirmation in Support

upon: Ira M. Siegel, Esq.  
433 North Camden Drive  
Suite 970  
Beverly Hills, California 90210

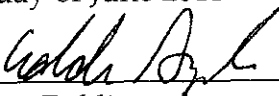
Custodian of Records  
Optimum Online  
1111 Stewart Avenue  
Bethpage, New York 11714

Cablevision  
1111 Stewart Avenue  
Bethpage, New York 11714

the address designated by said attorney(s) for that purpose by depositing a true copy of  
same enclosed in a post-paid properly addressed wrapper, in an official depository  
under the exclusive care and custody of the United States Postal Service within the State  
of New York.

  
Elena Berger

Sworn to before me this  
2nd day of June 2011

  
\_\_\_\_\_  
Notary Public

eb:aos.2  
06/11

**EDDIE AGUILAR**  
Notary Public, State of New York  
No. 01AG6198494  
Qualified in New York County  
Commission Expires December 22, 2012