[Doc. No. 5]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

VOLTAGE PICTURES,	:	
	:	
Plaintiff,	:	
	:	
v.	:	**Civil No. 12-6885 (RMB/JS)**
	:	
JOHN DOES 1-60,	:	
	:	
Defendants.	:	
	:	

ORDER

This matter is before the Court on the "Motion for Leave to Conduct Expedited Discovery" [Doc. No. 5] filed by plaintiff. As will be discussed, the issue before the Court has been addressed in a number of New Jersey cases. Plaintiff alleges John Doe defendants infringed its copyright by copying and reproducing its film on the Internet. Plaintiff's only identifying information for each Doe defendant is an IP address. Before conducting a Fed. R. Civ. P. 26(f) conference plaintiff seeks leave to subpoena third-party Internet service providers ("ISPs") to determine the name and contact information associated with the IP addresses that allegedly infringed plaintiff's film. The Court recently issued an Order to Show Cause as to why it should not sever and dismiss all claims against all John Does except John Doe #1. [Doc. No. 6]. Plaintiff's counsel filed a response and appeared at the scheduled hearing to argue the issue. [Doc. No. 7]. For the reasons to be discussed, plaintiff's motion is GRANTED in part and DENIED in part.

Plaintiff is a developer, producer and distributer of the "mainstream" copyrighted film "The Good Doctor." Plaintiff alleges the Doe defendants used BitTorrent to unlawfully

reproduce and distribute its film. See Complaint [Doc. No. 1]. BitTorrent is a computer program that enables users to download and distribute files, such as films, from other BitTorrent users. See Opening Brief in Support of Motion for Expedited Discovery at 3-4 ("Brief") [Doc. No. 5-1]. The technology enabling individuals to download and distribute films with BitTorrent has been explained in depth by numerous courts. See, e.g., Century Media, Ltd. v. John Does 1-77, No. 12-3911 (DMC/JAD), 2013 WL 868230, at *1 (D.N.J. Feb. 27, 2013). Plaintiff has a list of IP addresses that allegedly used BitTorrent to reproduce and distribute its film, the ISP that assigned each IP address, and the location of the IP addresses. Plaintiff has no further identifying information for any Doe defendant. Brief at 5-6. Plaintiff seeks leave to serve limited discovery prior to the Fed. R. Civ. P. 26(f) conference.[1] Id. at 1. Specifically, plaintiff wants to serve subpoenas on the ISPs that assigned the IP addresses associated with the John Doe defendants to determine the name, address, email address and phone number attached to each IP address. Plaintiff presumably intends to use this information to identify the "John Does" so it can specifically name them in the complaint.

There are two issues the Court must address in regards to plaintiff's expedited discovery request. The first issue is whether the joinder of multiple Doe defendants in this action is proper. The second issue is whether plaintiff should be granted leave to conduct expedited discovery. As will be discussed, the answer to the first question is no and the answer to the second question is yes.

[1] Pursuant to Fed. R. Civ. P. 26(d), a party may not seek discovery from any source before the parties have conferred, as required by Rule 26(f). Fed. R. Civ. P. 26(f) requires the parties to confer before a Rule 16 conference to "consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26(a)(1); discuss any issues about preserving discoverable information; and develop a proposed discovery plan."

Fed. R. Civ. P. 20(a)(2) sets forth two necessary conditions for multiple defendants to be joined in a matter. First, claims asserted against each defendant must arise from "the same transaction, occurrence, or series of transactions or occurrences." Fed. R. Civ. P. 20(a)(2)(A). Second, there must be a question of fact or law common to all defendants. Fed. R. Civ. P. 20(a)(2)(B). Joinder of defendants pursuant to Rule 20, however, is discretionary. Consequently, even if a court finds the necessary conditions of Rule 20 are satisfied, it need not permit joinder. See Hagan v. Rogers, 570 F.3d 146, 157 (3d Cir. 2009) ("Our decision does not limit the District Court's broad authority with regard to joinder under Rule 20, which is, after all, discretionary.").

Courts within this district have addressed whether joinder is appropriate in factually similar cases in which a copyright holder filed suit against multiple Doe defendants alleging copyright infringement. At the Order to Show Cause hearing plaintiff stated the Doe defendants here used the same technology as Doe defendants in other similar cases filed in this district. The recent weight of authority within the district is that joinder of multiple Doe defendants is improper because the defendants are not part of the same transaction. These courts determined that although multiple individuals may have distributed the same file, "it is probable that different people within the swarm never distribute a piece of the work to the same person, or at the same moment in time." See Malibu Media, LLC v. John Does 1-22, No. 12-5091 (SRC)(CLW), 2013 WL 1704291, at *3-4 (D.N.J. Apr. 19, 2013). As a result, for joinder to be appropriate a plaintiff must show a more definite connection between the defendants. Id.; see also Malibu Media, LLC v. Surgent, No. 12-3905 (SRC)(CLW), 2013 WL 1704289, at *3-4 (D.N.J. Apr. 19, 2013); Century Media, Ltd., 2013 WL 868230, at *2-3; Modern Woman, LLC v. Does 1-X, No. 12-4858 (CCC)(JAD), 2013 WL 888603, at *3 (D.N.J. Feb. 27, 2013); Modern

Woman, LLC v. Does 1-X, No. 12-4859 (CCC), 2013 WL 707908, at *3-4 (D.N.J. Feb. 26, 2013); Malibu Media, LLC v. John Does 1-19, No. 12-6945-MAS-DEA, dkt. no. 23 (D.N.J. March 28, 2013) (Arpert, J.); Amselfilm Prods. GMBH & Co. KG v. John Does 1-187, No. 12-3865-FSH-PS, dkt. no. 12 (D.N.J. Oct. 10, 2012) (Hochberg, J.). Courts have also found joinder improper due to the increased likelihood of case management burdens resulting from multiple defendants. See Patrick Collins, Inc. v. John Does 1-43, No. 12-3908-KSH-PS, dkt. no. 32 at 4-6 (D.N.J. Feb. 15, 2013) (Hayden, J.); Malibu Media, LLC v. John Does 1-19, No. 12-6945-MAS-DEA, dkt. no. 23; Amselfilm Prods. GMBH & Co. KG, No. 12-3865-FSH-PS, dkt. no. 12. The Court adopts the reasoning of these recent cases in toto. These cases discuss the issue in depth and the Court sees no need to repeat their cogent reasoning. See generally Malibu Media, LLC, 2013 WL 1704291, at *3-4; Amselfilm Prods. GMBH & Co. KG, No. 12-3865-FSH-PS, dkt. no. 12. As a result, the Court concludes that joinder of the multiple Doe defendants is inappropriate. Pursuant to Fed. R. Civ. P. 21, the Court will sua sponte sever and dismiss John Does #2-60 from this action. Consequently, the remainder of this Order addresses expedited discovery only as to John Doe #1.[2]

[2] The Court recognizes other courts within the district have determined that the joinder of multiple Doe defendants may be appropriate. The Honorable Judge Arpert determined joinder was permissible in Malibu Media, LLC v. John Does 1-30, No. 12-3896-MAS, 2012 WL 6203697, at *8-9 (D.N.J. Dec. 12, 2012). However, in Malibu Media, LLC v. John Does 1-19, No. 12-6945-MAS-DEA, dkt. no. 23, recognizing that the arguments and defenses raised by the parties were substantially the same as in Malibu Media, LLC v. John Does 1-30, 2012 WL 6203697 (D.N.J. Dec. 12, 2012), Judge Arpert determined the recent authority that the Doe defendants were not part of the same transaction was persuasive. Consequently, Judge Arpert entered an Order severing all the Doe defendants except John Doe #1. Malibu Media, LLC, No. 12-6945-MAS-DEA, dkt. no. 23, at *3. In Malibu Media, LLC v. John Does 1-11, No. 12-7726 (KM), 2013 WL 1504927, at *3-4 (D.N.J. April 11, 2013), the Court determined the joinder of eleven Doe defendants was permissible. The Court found that the record was not sufficiently developed to determine the Doe defendants were not part of the same transaction. The Court, however, left open its right to address misjoinder at a later stage of the proceeding if the parties

Plaintiff seeks leave to serve a subpoena on the ISP that assigned the IP address associated with John Doe #1. Through the subpoena plaintiff seeks to determine the name and contact information attached to the IP address at the time BitTorrent was used to reproduce and distribute its film. Plaintiff argues there is no other means to obtain this information and its discovery request is narrowly tailored to obtain only enough information for the case to proceed. Further, plaintiff argues expedited discovery is necessary because ISPs routinely delete IP data. Plaintiff argues John Doe's contact information may be lost forever if the Court does not permit expedited discovery. Brief at 9-10. Last, plaintiff argues expedited discovery is necessary to prevent further damage from continued infringement of its motion picture. Id.

Pursuant to Fed. R. Civ. P. 26(b), "a party may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense." Further, "relevant information need not be admissible at trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b). Unless exempted from initial disclosures a party may not seek discovery from any source before the parties to the litigation have conferred, as required by Fed. R. Civ. P. 26(f). Fed. R. Civ. P. 26(d)(1). A court, however, may grant leave for a party to conduct discovery prior to a Rule 26(f) conference. Fed. R. Civ. P. 26(d)(1). To determine if expedited discovery is appropriate a court should apply a "good cause" test. Century Media, Ltd., 2013 WL 868230, at *2. "Good cause exists where the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party." Id. (internal citations omitted). Further, a court should consider (1) the timing of the request in light of the formal start to discovery; (2) whether the request is narrowly tailored; (3) the purpose of the requested discovery; (4) whether discovery burdens the

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had more information regarding this issue. Further, because there were only eleven John Does the Court was not faced with the same case management concerns as are present here. Id.

defendants; (4) whether defendants can respond to the requests in an expedited manner. Better Packages, Inc. v. Zheng, No. 05-4477 (SRC), 2006 WL 1373055, at *3 (D.N.J. May 17, 2006).

Courts within this district have also addressed whether plaintiffs in factually similar copyright infringement cases should be granted leave to conduct expedited discovery. The recent weight of authority is that a plaintiff may serve a subpoena on an ISP to obtain contact information for a John Doe. Courts, however, impose safeguards to protect the privacy rights of potentially innocent third parties. See Century Media, Ltd., 2013 WL 868230, at *3-4; Modern Woman, LLC v. Does 1-X, 2013 WL 888603, at *4-5; Modern Woman, LLC v. Does 1-X, 2013 WL 707908, at *4-5; Malibu Media, LLC v. John Does 1-18, No. 12-7643-NLH-AMD, dkt. no. 13 (D.N.J. March 22, 2013) (Donio, J.). The Court adopts the reasoning of these cases in toto. Again, the Court sees no need to repeat their cogent reasoning. Consequently, the Court finds good cause to allow plaintiff to conduct expedited discovery as to John Doe #1. Like other courts within the district, however, the Court will limit plaintiff's discovery request to ensure an innocent party is not unduly burdened. Accordingly and for the foregoing reasons,

IT IS HEREBY ORDERED this 31st day of May, 2013 that plaintiff's "Motion for Leave to Conduct Expedited Discovery" [Doc. No. 5] is GRANTED in part and DENIED in part; and it is further

ORDERED that plaintiff's request to conduct expedited discovery as to John Does #2-60 is DENIED; and it is further

ORDERED that John Does #2-60 are severed from this action and plaintiff's claims against them shall be dismissed without prejudice; and it is further

ORDERED that plaintiff's request to conduct expedited discovery as to John Doe #1 is GRANTED to the extent consistent with this Order; and it is further

ORDERED that plaintiff may serve a subpoena on the Internet Service Provider ("ISP") that assigned the IP address associated with John Doe #1. In the subpoena plaintiff may only request information regarding the name, address, and media access control ("MAC") address associated with the IP address, as set forth in plaintiff's complaint, with respect to John Doe #1. This Order shall be attached to the subpoena; and it is further

ORDERED that upon receipt of plaintiff's subpoena the ISP shall have sixty (60) days to provide the IP subscriber with a copy of this Order and plaintiff's subpoena. Upon receipt of the subpoena and this Order the IP subscriber has sixty (60) days in which to file a motion to quash, move for a protective order or seek other applicable relief. If the IP subscriber chooses to contest the subpoena he must notify the ISP of his intent so the ISP is on notice not to release personal information to plaintiff; and it is further

ORDERED that if the IP subscriber does not contest the subpoena within sixty (60) days of receipt of the subpoena and this Order the ISP shall provide plaintiff with the requested information within ten (10) days. Any information plaintiff receives from the ISP may only be used for the purpose of protecting its rights as set forth in the Complaint.

s/ Joel Schneider
JOEL SCHNEIDER
United States Magistrate Judge