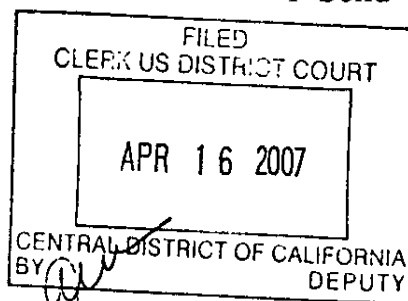


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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

COLUMBIA PICTURES, ET AL.,

CV 06-01093 FMC (JCx)

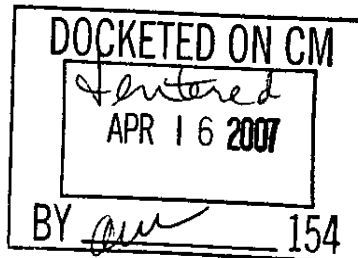
Plaintiffs,

vs.

**ORDER DENYING DEFENDANTS'
MOTION FOR REVIEW AND
RECONSIDERATION**

JUSTIN BUNNELL, ET AL.,

Defendants.



This matter is before the Court on Defendants' Motion for Review and Reconsideration of Certain Rulings of the Magistrate Judge on Defendants' Motion to Compel Further Responses to Requests for Production, Set 2, and on Plaintiffs' Related Motion for a Protective Order (docket no. 93), filed March 1, 2007. The Court has read and considered the moving, opposition, and reply documents submitted in connection with this motion. The Court deems this matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for April 16, 2007, is removed from the Court's calendar. For the reasons and in the manner set forth below, the Court hereby **DENIES** Defendants' Motion. # 118

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1 **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

2 Plaintiffs are motion picture studios that own copyrights or exclusive
3 reproduction and distribution rights to numerous movies and television programs.
4 Defendants operate a website as part of an online computer network known as
5 “BitTorrent,” which is a peer-to-peer network that facilitates the copying and
6 distribution of large files. Plaintiffs allege that Defendants’ website enables and
7 encourages Internet users to locate and download unauthorized copies of Plaintiffs’
8 copyrighted motion pictures and television shows for free.

9 On February 23, 2006, Plaintiffs filed a Complaint for copyright
10 infringement. Defendants served their First Request for Documents on August 8,
11 2006, and their Second Request for Documents on November 6, 2006. A discovery
12 dispute arose between the parties, leading Plaintiffs to file a Motion for Protective
13 Order on January 18, 2007, and Defendants to file a Motion to Compel, on January
14 23, 2007, before Magistrate Judge Chooljian. On February 13, 2007, Judge
15 Chooljian granted in part and denied in part the parties’ respective motions. On
16 March 1, 2007, Defendants filed the instant Motion for Review and
17 Reconsideration.

18 **STANDARD OF LAW**

19 A district court will not modify or set aside a magistrate judge’s order unless
20 it is “found to be clearly erroneous or contrary to law.” Fed. R. Civ. P. 72(a).¹ The
21 clearly erroneous standard applies to the magistrate judge's factual findings while
22 the contrary to law standard applies to the magistrate judge's legal conclusions,
23 which are reviewed de novo. *See Wolpin v. Philip Morris, Inc.*, 189 F.R.D. 418, 422

24 _____
25 ¹ In addition, the Local Rules require that a party objecting to a Magistrate
26 Judge’s ruling on a nondispositive matter must “designat[e] the specific portions
27 of the ruling objected to and stat[e] the grounds for the objection.” Local Rule 72-
28 2.1.

1 (C.D. Cal. 1999); *see also* *Center for Biological Diversity v. Federal Highway*
 2 *Admin.*, 290 F. Supp. 2d 1175, 1199-1200 (S.D. Cal. 2003) (quoting *Weeks v.*
 3 *Samsung Heavy Indus. Co., Ltd.*, 126 F.3d 926, 943 (7th Cir. 1997), for the
 4 proposition that “discretionary orders and will be overturned ‘only if the district
 5 court is left with the definite and firm conviction that a mistake has been made’”).

6 When reviewing discovery disputes, however, “the Magistrate is afforded
 7 broad discretion, which will be overruled only if abused.” *Wright v. FBI*, 385 F.
 8 Supp. 2d 1038, 1041 (C.D. Cal. 2005); *Geophysical Sys. Corp. v. Raytheon Co.,*
 9 *Inc.*, 117 F.R.D. 646, 647 (C.D. Cal. 1987) (Tashima, J.) (questions of relevance in
 10 discovery context are reviewed under “the clearly implicit standard of abuse of
 11 discretion.”).

12 DISCUSSION

13 Defendants contend that the Magistrate Judge’s Order is clearly erroneous or
 14 contrary to law in two principal respects: (1) it excludes certain items and entities
 15 from the scope of discovery and (2) it limits the time period for production of
 16 documents.

17 I. Scope of Discovery

18 A. Defendants’ Discovery Requests 24 and 26

19 In her Order Re: Discovery Motions of February 13, 2007 (Discovery
 20 Order), Judge Chooljian concluded that Defendants’ Discovery Requests 24²
 21 and 26³ were overbroad. The Magistrate Judge therefore narrowed Discovery

22
 23 ² Defendants’ Discovery Request 24, as originally propounded, sought “[a]ll documents
 24 related to or referencing Internet based web sites, servers, services, and entities across the world
 25 that have authorization to host or, make available via the Internet all or part of [Plaintiffs’]
 26 copyrighted works alleged in the Complaint or listed in the attachment to the Complaint (and any
 such others for which [Plaintiffs] are claiming defendants infringed) since the inception of such
 copyrighted work(s).” (Mot. 4:21-26.)

27 ³ Defendants’ Discovery Request 26, as originally propounded, sought “[a]ll documents
 28 related to or referencing agreements involving BitTorrent, Inc.” (*Id.* at 4:27-28.)

1 Request 24 to “non-privileged documents reflecting whether plaintiffs have
2 authorized general or unrestricted distribution or availability over the Internet of
3 those of plaintiff’s copyrighted works or parts thereof alleged in the Complaint
4 . . .” (Discovery Order 3:2.) The Magistrate Judge similarly narrowed Discovery
5 Request 26 to “documents reflecting whether plaintiffs have authorized
6 BitTorrent, Inc. to distribute or to make available on a general or unrestricted
7 basis those of plaintiffs’ copyrighted works or parts thereof alleged in the
8 Complaint” (*Id.* at 4:4.) Furthermore, in a hearing on the parties’ Motions,
9 the Magistrate Judge clarified that for both discovery requests, “copyrighted
10 works” or “parts thereof” did not include any “spoof” or fake files created and
11 distributed by Plaintiffs as anti-piracy tools. (Pozza Decl. Ex. 3, 81:5-7.)

12 Defendants challenge the Magistrate Judge’s decision to exclude “spoof”
13 files from discovery as an “abuse of discretion,” arguing that the ruling
14 forecloses discovery of materials on the Internet that may be relevant to their
15 defense. (*See* Mot. 11:10-25.) Defendants ask the Court to modify the Magistrate
16 Judge’s Order so that any discovery regarding Plaintiff’s “copyrighted works” or
17 “parts thereof” may include details about “spoof” files available on the Internet.
18 (Reply 12:21-26.) Specifically, Defendants contend that because Plaintiffs
19 created these “spoof” files and because they may appear in Defendants’ website
20 search results, that these files are “highly relevant to a lack of knowledge in any
21 secondary liability analysis and a lack of inducement.” (*Id.* at 11:9-10.)

22 The record demonstrates that the Magistrate Judge considered Defendants’
23 contentions. She confirmed with Plaintiffs at various points throughout the
24 hearing that their infringement claims did not include “spoof” files and on that
25 basis excluded “spoof” files from discovery. (*See* Pozza Decl. Ex. 3, 53:17-
26 55:13, 81:5-82:3.) Although Defendants do not agree with the Magistrate
27 Judge’s decision, they have failed to establish that the Magistrate Judge’s factual
28 findings were clearly erroneous or that her legal conclusions were contrary to

1 law. Accordingly, the Court finds that Defendants have failed to demonstrate that
2 Judge Chooljian erred in her decision to exclude “spooft” files from discovery.

3 **B. Defendants’ Discovery Request 39**

4 The Magistrate Judge’s Discovery Order sustained Plaintiffs’ relevance
5 and overbreadth objections and denied Defendants’ Discovery Request 39,
6 which sought all documents relating to Google and hyperlinks to unauthorized
7 files containing Plaintiffs’ copyrighted works. (See Mot. 5:1-2.) Citing Federal
8 Rule of Evidence 401, the Magistrate Judge concluded that the documents
9 sought by Defendants were not relevant because they did not “have any tendency
10 to make the existence of any fact that is of consequence to the determination of
11 the action more probable or less probable than it would be without the evidence,
12 or that such documents are reasonably calculated to lead to the discovery of
13 admissible evidence.” See Fed. R. Evid. 401.

14 Arguing that the Magistrate Judge’s ruling “improperly restrict[s]
15 discovery of contextual materials,” Defendants ask the Court to set aside the
16 Magistrate Judge’s denial of Discovery Request 39 and allow discovery of all
17 “documents related to or referencing Google and hyperlinks thereon to
18 unauthorized files.” (Mot. 10:26-27, 11:5.) Defendants argue that such
19 documents are relevant because “the services [Defendants] provide and for
20 which liability is alleged are duplicated by other Internet service providers, e.g.,
21 Google” (*Id.* at 1:24-25.)

22 Despite their contentions, Defendants fail to establish that the documents
23 sought by Discovery Request 39 are at all relevant to the claims and defenses
24 alleged in this case. Under Federal Rule of Civil Procedure 26(b)(1), “discovery
25 is not unlimited, [and a] discovery request must be ‘relevant to the subject matter
26 involved in the pending action’ or ‘reasonably calculated to lead to the discovery
27 of admissible evidence.’ ” *Epstein v. MCA, Inc.*, 54 F.3d 1422, 1423 (9th Cir.
28 1995) (citing *Shoen v. Shoen*, 5 F.3d 1289, 1292 (9th Cir.1993)). Here, whether

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1 the online services Defendants provide are similar to other Internet entities, such
2 as Google, is not relevant to whether Defendants are liable for copyright
3 infringement as Plaintiffs allege in this case. Accordingly, the Court finds that
4 the Magistrate Judge's decision to deny Discovery Request 39 in its entirety was
5 not clearly erroneous or contrary to law.

6 **II. Time Period of Discovery**

7 Defendants separately object to the Magistrate Judge's decision to limit
8 document production for the revised Discovery Requests 24 and 26 to a time
9 beginning with the commencement of the litigation. Defendants argue that the
10 Magistrate Judge's time restriction is "illogical" and an "abuse of discretion" and
11 ask the Court to modify the Magistrate Judge's Order to require production of
12 documents created by Plaintiffs at any time. (*See Mot. 10:13-25.*) Plaintiffs
13 respond that without a reasonable date restriction on discovery, they would be
14 subject to a "senseless and significant burden of preparing a massive privilege
15 log for nearly every document created by counsel" since filing the Complaint.
16 (*Opp'n 14:1-4.*)

17 The record demonstrates that the Magistrate Judge heard and considered
18 both parties' arguments regarding the date restriction. The Court is satisfied that
19 the Magistrate Judge weighed the burden and expense of an unlimited discovery
20 period against any likely benefit, and that her decision to restrict the time period
21 was well within her discretion under Federal Rule of Civil Procedure 26(b)(2)
22 and not clearly erroneous or contrary to law.

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CONCLUSION

For the foregoing reasons, the Court hereby **DENIES** Defendants' Motion
For Review and Reconsideration (docket no. 93).

IT IS SO ORDERED.

Dated: April 16, 2007



FLORENCE-MARIE COOPER, JUDGE
UNITED STATES DISTRICT COURT

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