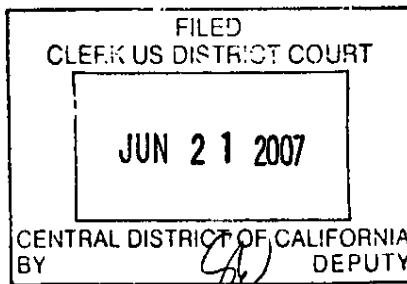


Columbia Pictures Industries Inc v. Bunnell

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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**

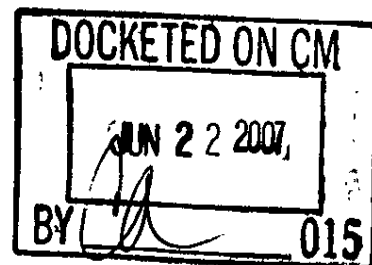
JUSTIN BUNNELL, ET AL.,

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 Production of Documents Pursuant to Subpoena to the Motion Picture Association of America (MPAA), filed on April 10, 2007 (docket no. 132). The Court has read and considered the moving and opposition 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 June 25, 2007, is hereby removed from the Court's calendar. For the reasons and in the manner set forth below, the Court hereby **DENIES** Defendants' Motion.

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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 network that facilitates the copying and distribution of  
6 large files between users. Plaintiffs filed a Complaint for copyright infringement on  
7 February 23, 2006, alleging that through Defendants’ website, Torrentspy.com,  
8 Defendants enable and encourage Internet users to locate and download  
9 unauthorized copies of Plaintiffs’ copyrighted motion pictures and television shows  
10 for free.

11           Magistrate Judge Chooljian has issued orders on two separate motions to  
12 compel brought by Defendants. Judge Chooljian issued the first order on February  
13 13, 2007 (February 13 Order), granting in part and denying in part Plaintiffs Motion  
14 for Protective Order, filed on January 18, 2007, and Defendants’ Motion to Compel  
15 Further Responses to Requests for Production, Set 2, filed on January 23, 2007. On  
16 March 1, 2007, Defendants’ filed a motion for review and reconsideration of the  
17 February 13 Order. The Court denied Defendants’ motion on April 16, 2007.

18           Judge Chooljian’s May 15, 2007, order (May 15 Order) granted in part and  
19 denied in part Defendants’ Motion to Compel Production of Documents Pursuant  
20 to Subpoena to the Motion Picture Association of America (MPAA). The MPAA  
21 subpoena, which Defendants issued on February 2, 2007, contains many requests  
22 that are the same as or similar to the requests propounded on Plaintiffs, which were  
23 at issue in Judge Chooljian’s February 13 Order. On May 30, 2007, Defendants filed  
24 the instant Motion for Review and Reconsideration.

25                   **STANDARD OF LAW**

26           A district court will not modify or set aside a magistrate judge’s order unless  
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28

1 it is “found to be clearly erroneous or contrary to law.” Fed. R. Civ. P. 72(a).<sup>1</sup> The  
 2 clearly erroneous standard applies to the magistrate judge's factual findings while  
 3 the contrary to law standard applies to the magistrate judge's legal conclusions,  
 4 which are reviewed de novo. See *Wolpin v. Philip Morris, Inc.*, 189 F.R.D. 418, 422  
 5 (C.D. Cal. 1999); see also *Center for Biological Diversity v. Federal Highway*  
 6 *Admin.*, 290 F. Supp. 2d 1175, 1199-1200 (S.D. Cal. 2003) (quoting *Weeks v.*  
 7 *Samsung Heavy Indus. Co., Ltd.*, 126 F.3d 926, 943 (7th Cir. 1997), for the  
 8 proposition that “discretionary orders and will be overturned ‘only if the district  
 9 court is left with the definite and firm conviction that a mistake has been made’”).

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

## 16 DISCUSSION

17 Defendants contend that the Magistrate Judge’s May 15 Order is clearly  
 18 erroneous or contrary to law in two principal respects: (1) it limits discovery to a  
 19 time period ending with the commencement of the litigation, and (2) it excludes  
 20 certain requests from the scope of discovery.

### 21 I. Time Period of Discovery

22 Defendants contend that the Magistrate Judge erred in sustaining the  
 23 MPAA’s objection that the requests at issue are overbroad and unduly

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

1 burdensome to the extent that they seek production of documents created after  
2 the commencement of litigation.<sup>2</sup> The MPAA argued to Judge Chooljian that,  
3 while the MPAA is not a party to the suit, its in-house counsel are serving as  
4 Plaintiffs' outside counsel of record in this case, and the only post-litigation  
5 documents that are likely to be responsive to the requests at issue would be  
6 subject to either the attorney-client privilege or the attorney work product  
7 doctrines. *See* Fed. R. Civ. P. 26(b)(3). Judge Chooljian found that the burden of  
8 preparing a privilege log for the proposed discovery outweighed the likely  
9 benefit, and denied Defendants' Motion to Compel with respect to documents  
10 created after litigation commenced.

11 In the Court's order denying Defendants' motion for review and  
12 reconsideration of the February 13 order, the Court upheld the Magistrate  
13 Judge's decision to limit discovery on certain of Defendants' discovery requests  
14 to this same time period. That the MPAA is not a party to this action is not a  
15 material distinction in light of the fact that the MPAA and Plaintiffs use the same  
16 counsel.

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

## 21 **II. Scope of Discovery**

### 22 **A. Defendants' Document Requests 28 and 40**

23 Defendant objects to the Magistrate Judge's conclusion that a portion of  
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27 <sup>2</sup> The requests at issue are: 1-5, 7, 9, 11, 12, 14, 20, 22, 26, 28, 32, 36, 40-42, 46, 56, 59,  
28 60, 62-64, 66. (Mot. 2)

1 Defendants' Document Request 28,<sup>3</sup> and Defendants' Document Request 40<sup>4</sup> in  
2 its entirety, were not relevant or reasonably calculated to lead to the discovery of  
3 admissible evidence. SCANNED

4 The Magistrate Judge's conclusion is consistent with her February 13  
5 Order, which the Court affirmed in its denial of Defendants' motion for review  
6 and reconsideration, and in which the Magistrate Judge rejected the argument  
7 that the practices of other internet service providers that function similarly to the  
8 Defendants' web site are relevant. Accordingly, the Court finds that the  
9 Magistrate Judge's decision to deny a portion of Document Request 28 and  
10 Document Request 40 in its entirety was not clearly erroneous or contrary to law.

11 **B. Defendants' Document Request 46**

12 Defendant also objects to the Magistrate Judge's conclusion that  
13 Defendants' Document Request 46<sup>5</sup> sought evidence that was not relevant or  
14 reasonably calculated to lead to admissible evidence, making essentially the  
15 same argument they made in arguing their motion for review and reconsideration  
16 of the February 13 Order. Defendants intended to get information on "spoofs"  
17 (fake files created and distributed by Plaintiffs as anti-piracy tools) and on any  
18 copyrighted materials that Plaintiffs have authorized people to access or copy.  
19

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20 <sup>3</sup> Defendants' Document Request 28 sought "[a]ll documents related to or referencing  
21 BitTorrent or the web site accessible at www.bittorrent.com." The Magistrate Judge granted  
22 Defendants' Motion to Compel with respect to the portion of the request that sought documents  
23 related to or referencing the web site. Defendants ask the Court to review the Magistrate Judge's  
24 determination with respect to the portion that seeks documents related to or referencing  
25 BitTorrent. (Decl. of Ira Rothken (Rothken Decl.), Ex. C 8.)

26 <sup>4</sup> Defendants' Document Request 40 sought "[a]ll documents related to or referencing  
27 Google and torrent files." (Rothken Decl., Ex. C 9.)

28 <sup>5</sup> Defendants' Document Request 46 sought "[a]ll documents related to digital files that  
contain in the file name or meta data all or part of the name of plaintiffs' copyrighted works that  
were made available or distributed via the internet by any of the Plaintiffs or those acting on their  
behalf." (Rothken Decl., Ex. C 10.)

1 (Mot. 9.)

2 The information Defendants seek regarding Plaintiffs' authorization for  
3 the use of copyrighted materials is adequately covered in Defendants' Document  
4 Request 26,<sup>6</sup> which the Magistrate Judge did not deny. RECEIVED

5 To the extent that Defendants seek information on spoofs, the Magistrate  
6 Judge made it clear in her February 13 Order that discovery requests would not  
7 include spoofs, and the Court affirmed that ruling when it denied Defendants'  
8 motion for review and reconsideration of that order. The Magistrate Judge  
9 rejected Defendants' arguments on the relevance of spoofs again in the her May  
10 15 Order. This Court continues to find that the Magistrate Judge's decision to  
11 reject these arguments and deny the request is neither clearly erroneous nor  
12 contrary to law.

13 **C. Defendants' Document Request 66**

14 Defendants contend that the Magistrate Judge erred in concluding that  
15 Defendants' Document Request 66, which sought "[a]ll documents related to use  
16 of Digital Rights Management technology in files made available via Torrent  
17 files or the BitTorrent Network," was not relevant. Defendants argue that  
18 Plaintiffs' Digital Rights Management technology constitutes "standard technical  
19 measures" under the Digital Millennium Copyright Act (DMCA), 17 U.S.C.  
20 §512(i)(2), and that standard technical measures must be made "available to any  
21 person on reasonable and non-discriminatory terms." (Mot. 10.)

22 Because the section of the DMCA that Defendants cite is a definition  
23 section meant to explain the conditions a service provider must meet in order to  
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25 <sup>6</sup> Defendants' Document Request 26 seeks "[a]ll documents related to or  
26 referencing agreements involving the distribution of copyrighted works of any  
27 plaintiff over the Internet through the use of any torrent file." (Rothken Decl., Ex  
28 C 8.)

1 be eligible for the limitations on liability established by the DMCA, and is not  
2 meant as a justification for discovery, the Court finds that the Magistrate Judge's  
3 ruling on this request is neither clearly erroneous nor contrary to law.

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4 **CONCLUSION**

5 For the foregoing reasons, the Court hereby **DENIES** Defendants' Motion  
6 For Review and Reconsideration (docket no. 132).

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8 **IT IS SO ORDERED.**

9 Dated: June 11, 2007

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FLORENCE-MARIE COOPER, JUDGE  
UNITED STATES DISTRICT COURT