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UNITED STATES DISTRICT COURT
Northern District of California

NEW SENSATIONS, INC.,

No. C 11-2770 MEJ

Plaintiff,

v.

ORDER RE JURISDICTION

DOES 1-1,474,

Defendants.

INTRODUCTION

On June 7, 2011, Plaintiff New Sensations, Inc. (“Plaintiff”) filed this lawsuit against 1,474 Doe Defendants, alleging that Defendants illegally reproduced and distributed a work subject to Plaintiff’s exclusive license, (“*Big Bang Theory: A XXX Parody*”), using an internet peer-to-peer file sharing network known as BitTorrent, thereby violating the Copyright Act, 17 U.S.C. § 101-1322. Compl. ¶¶ 6-15, Dkt. No. 1. This case is one of several “mass copyright” cases filed in this District on behalf of various plaintiffs against thousands of doe defendants accused of using BitTorrent technology to illegally download copyrighted files from the internet. *See, e.g., Berlin Media Art v. Does 1-654*, Case No. 11-3770-JSC; *Boy Racer v. Does 2-52*, Case No. 11-2834-LHK; *Boy Racer v. Does 1-52*, Case No. 11-2329-PSG; *Pacific Century Intel, Ltd. v. Does 1-101*, Case No. 11.2533-DMR; *Pacific Century Intel, Ltd. v. Does 1-129*, Case No. 11-3681-HRL; *MCGIP, LLC v. Does 1-149*, Case No. 11-2331-LB; *Hard Drive Productions, Inc. v. Does 1-188*, Case No. 11-1566-JCS; *Hard Drive Productions, Inc. v. Does 1-118*, Case No. 11-01567-LB.

On September 22, 2011, the Court granted Plaintiff’s Application for Leave to Take Limited Expedited Discovery. Dkt. No. 13. The Court permitted Plaintiff to serve subpoenas on Does 1-1,474’s Internet Service Providers (“ISPs”) by serving a Federal Rule of Civil Procedure 45

1 subpoena that seeks information sufficient to identify the Doe Defendants, including the name,
2 address, telephone number, and email address of Does 1-1,474. *Id.* at 11. Once the ISPs provided
3 Does 1-1,474 with a copy of the subpoena, the Court permitted Does 1-1,474 30 days from the date
4 of service to file any motions contesting the subpoena (including a motion to quash or modify the
5 subpoena). *Id.*

6 DISCUSSION

7 Since granting Plaintiff's request, it has become clear that jurisdiction is likely lacking over
8 many of the Doe Defendants, and that venue is also improper. Several Doe Defendants have filed
9 motions to dismiss and/or quash the subpoena, arguing that they have no connection with California.
10 Although the Court has denied these motions as premature because the defendants have not
11 identified themselves, the Court has subsequently utilized one of many free and publicly available
12 services to look up the locations affiliated with the IP addresses for which Plaintiff seeks discovery.
13 *See Berlin Media Art e.k. v. Does 1-654*, 2011 WL 36383080, at *2 (N.D. Cal. Oct. 18, 2011) (citing
14 *DigiProtect USA Corp. v. Does*, 2011 WL 4444666, at *1 (S.D.N.Y. Sep. 26, 2011) (“[p]ublicly
15 available software provides basic, or at least presumptive, geographic information about IP
16 addresses”). Selecting random IP addresses provided in Exhibit A of the Amended Complaint, the
17 Court gathered the following presumptive geographic data:

18 Doe 10, IP Address 108.12.181.37, is in New York, New York;

19 Doe 100, IP Address 173.31.97.123, is in Davenport, Iowa;

20 Doe 200, IP Address 173.71.138.44, is in Newport News, Virginia;

21 Doe 400, IP Address 24.186.195.217, is in Seldan, New York;

22 Doe 600, IP Address 68.103.234.4, is in Hutchinson, Kansas;

23 Doe 800, IP Address 71.124.215.10, is in Boston, Massachusetts;

24 Doe 1000, IP Address 72.90.76.157, is in Syracuse, New York;

25 Doe 1300, IP Address 75.118.226.217, is in Louisville, Kentucky; and

26 Doe 1400, IP Address 98.16.181.1, is in Lincoln, Nebraska.

27 These results suggest that this Court lacks personal jurisdiction over the Doe Defendants;

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1 indeed, even without investigating the IP addresses, a cursory look at the carriers identified in the
2 complaint suggests personal jurisdiction problems. For example, Exhibit A includes regional ISPs
3 whose very names suggest they are located outside this District, such as Guadalupe Valley Telephone
4 Cooperative, Alaska Communications Systems Group, and Iowa Telecom. Dkt. No. 1, Ex. A. For
5 this reason alone, the Court in its discretion could have denied the motion for expedited discovery.
6 *Berlin Media Art*, 2011 WL 36383080, at *3; *DigiProtect USA Corp.*, 2011 WL 4444666 at *2 (a
7 court may deny a request for early discovery if the plaintiff cannot make a prima facie showing of
8 personal jurisdiction).

9 Further, even if one or more of the unidentified defendants allegedly downloaded the file at
10 some point during the time period in question from a computer located in this District, the Court is
11 not aware of any caselaw that suggests that it has personal jurisdiction over all 1,474 Defendants
12 based on this connection. As one court in this District noted, the logical extension of such an
13 unprecedented holding “would be that everybody who used . . . BitTorrent would subject themselves
14 to jurisdiction in every state.” *On The Cheap. LLC v. Does 1–5011*, 2011 WL 4018258 at *4 (N.D.
15 Cal. Sep. 6, 2011). “[T]his is a far cry from the requirement that ‘there be some act by which the
16 defendant purposefully avails itself of the privilege of conducting activities with the forum State,’
17 which is the hallmark of specific jurisdiction.” *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471
18 U.S. 462, 475 (1985)).

19 In its Complaint, Plaintiff states that, “Although the true identity of each Defendant is
20 unknown to the Plaintiff at this time, on information and belief, each Defendant may be found in this
21 District, and/or the acts complained of herein occurred and/or have a significant effect within this
22 District. Therefore, venue in this Court is proper in accordance with 28 U.S.C. §§ 1391(b) and
23 1400(a).” Compl. at 1-2. This conclusory assertion is also insufficient to support venue. First,
24 under the copyright venue provision, venue is proper “in the district in which the defendant or his
25 agent resides or may be found.” 28 U.S.C. § 1400(a). Here, Plaintiff does not and likely cannot
26 allege that each of the 1,474 defendants are found in this District. Thus, venue is not proper under
27 section 1400. Second, in a federal question case venue is proper in a judicial district “in which a
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1 substantial part of the events or omissions giving rise to the claim occurred.” 28 U.S.C. §
2 1391(b)(2). There is nothing in the Complaint, however, that suggests Plaintiff has a good faith
3 basis for alleging that a substantial part of the events or omissions related to all 1,474 Doe
4 Defendants occurred in this District.

5 In short, all of the available information suggests that this Court does not have personal
6 jurisdiction over at least a large number of Doe Defendants named in this action. Plaintiff might
7 argue that this determination is premature because the individual defendants might own property in
8 California or do a sufficient amount of business here to confer jurisdiction. However, any such
9 argument is unpersuasive. *Berlin Media Art v. Does 1-654*, Case No. 11-3770-JSC, Dkt. No. 15 at
10 2. Moreover, given the ease by which the Court located presumptive geographic data for a random
11 selection of IP Addresses in this case, the Court is troubled that Plaintiff has made no attempt to
12 identify those Doe Defendants for whom it has a good faith belief reside in California. Thus, the
13 Court declines to continue to allow Plaintiff to have various ISPs disclose the sought-after subscriber
14 information when Plaintiff has no good faith basis whatsoever to assert that this Court would have
15 personal jurisdiction over the Doe Defendants. As another court has noted, “there is no justification
16 for dragging into a[] [California] federal court, on a wholesale basis, a host of unnamed defendants
17 over whom person jurisdiction clearly does not exist and-more importantly-as to whom [Plaintiff’s]
18 counsel could readily have ascertained that fact.” *CP Productions, Inc. v. Does 1-300*, 2011 WL
19 737761, at *1 (N.D. Ill. Feb. 24, 2011). To accept Plaintiff’s argument means that a Plaintiff
20 alleging internet copyright infringement may sue hundreds of doe defendants in *any* district in the
21 United States, regardless of where the defendants are likely to reside.

22 Finally, good cause for granting a motion for early discovery may exist “where the need for
23 the expedited discovery, in consideration of the administration of justice, outweighs the prejudice to
24 the responding party.” *OpenMind Solutions, Inc. v. Does 1-39*, 2011 WL 4715200, at *2 (N.D. Cal.
25 Oct. 7, 2011 (internal quotations and citation omitted). Where Plaintiff has made no effort to
26 determine jurisdiction, the administration of justice is not served by requiring out-of-state recipients
27 of subpoenas to bring challenges to the subpoenas in far-flung jurisdictions. Further, “[f]rom a
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1 judicial economy perspective, it makes more sense for Plaintiff to bring its case against these [doe
2 defendants] in the court where they have a good faith belief that venue and personal jurisdiction are
3 attainable and the case can actually be prosecuted.” *Nu Image, Inc. v. Does 1-23,322*, 2011 WL
4 3240562, at *5 (D.D.C. Jul. 29, 2011).

5 Plaintiff will not suffer any prejudice by merely being required to bring suit in the
6 jurisdiction where it has a good faith belief, based on publicly available information, that the doe
7 defendant resides. Indeed, many plaintiffs with similar cases have done just that. *See, e.g., MCGIP,*
8 *LLC v. Does 1-149*, 2011 WL 4352110, at *3 n. 3 (N.D. Cal. Sep. 16, 2011). Thus, this is not a case
9 where dismissing defendants outside this District deprives Plaintiff of the opportunity to discover the
10 identities of those it contends infringed its copyright.

11 CONCLUSION

12 Based on this analysis, the Court hereby ORDERS as follows:


- 13 1) Plaintiff shall conduct a search to obtain geographic information about the IP
14 Addresses listed in its Complaint; and
- 15 2) Plaintiff shall thereafter provide, as part of the declaration the Court previously
16 ordered Plaintiff to produce (Dkt. No. 80), the location for each IP Address in its
17 Complaint; and
- 18 3) For all IP Addresses outside this District, Plaintiff shall either: (a) file a voluntary
19 dismissal without prejudice as to those Doe Defendants; or (b) show good cause as to
20 why it has a good faith belief that jurisdiction exists and venue is proper as to each
21 individual Doe Defendant. General arguments such as those discussed above will not
22 suffice. Plaintiff must make a specific showing as to each Doe Defendant as to why it
23 has a good faith belief that jurisdiction and venue are proper.

24 The deadline for filing the declaration is hereby extended to December 14, 2011. Upon receipt of
25 Plaintiff’s declaration, the Court shall issue an order detailing how this case shall proceed. Until the
26 Court issues its further order, Plaintiff is hereby ORDERED not to send any further settlement
27 demand letters. As to any Doe Defendants to whom Plaintiff has already sent a settlement demand
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1 letter, the Court ORDERS Plaintiff to provide a copy of this Order to said Doe Defendants by
2 December 14, 2011, and inform them in a cover letter that they need not comply with the demand
3 letter, pending resolution of the jurisdiction and venue issues addressed herein. Any settlement
4 reached on or after the date of this Order will not be effective.

5 **IT IS SO ORDERED.**

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7 Dated: December 7, 2011

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10 Maria-Elena James
11 Chief United States Magistrate Judge
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