

1 Brett L. Gibbs, Esq. (SBN 251000)  
 Steele Hansmeier PLLC.  
 2 38 Miller Avenue, #263  
 Mill Valley, CA 94941  
 3 415-325-5900  
[blgibbs@wefightpiracy.com](mailto:blgibbs@wefightpiracy.com)

4 *Attorney for Plaintiff*

5  
 6 IN THE UNITED STATES DISTRICT COURT FOR THE  
 7  
 8 NORTHERN DISTRICT OF CALIFORNIA  
 9  
 10 OAKLAND DIVISION

11 HARD DRIVE PRODUCTIONS, INC.,	)	<b>No. C-11-01567-LB</b>
	)	
12 Plaintiff,	)	<b>PLAINTIFF’S <i>EX PARTE</i> APPLICATION</b>
	)	<b>FOR LEAVE TO TAKE</b>
13 v.	)	<b>EXPEDITED DISCOVERY</b>
	)	
14 DOES 1-118,	)	
	)	
15 Defendants.	)	
	)	
16	)	

17 **PLAINTIFF’S *EX PARTE* APPLICATION FOR, AND MEMORANDUM OF LAW IN**  
 18 **SUPPORT OF, LEAVE TO TAKE DISCOVERY PRIOR TO RULE 26(f) CONFERENCE**

19 Plaintiff Hard Drive Productions, Inc., by and through its undersigned counsel, and pursuant  
 20 to Federal Rules of Civil Procedure (“FRCP”) 26 and 45, hereby moves this Court *ex parte* for an  
 21 Order permitting Plaintiff to take limited discovery prior to the FRCP 26(f) conference. Plaintiff’s  
 22 application is in accordance with the Court’s Local Rule (“L.R.”) 7-10, as it is authorized under  
 23 FRCP 26(d) and 45. Plaintiff requests a hearing, or decision without hearing, on this application as  
 24 soon as possible.

25  
 26 In the alternative, and in light of the Court’s general resistance to *ex parte* applications (*see*  
 27 L.R. 7-10), Plaintiff’s request may be viewed as a Motion for Administrative Relief for Leave to  
 28 Take Immediate Discovery pursuant to L.R. 7.11. *See UMG Recordings v. Does 1-4*, 64 Fed. R.

1 Serv.3d 305 (Chen) (N.D. Cal. March 6, 2006). Either way, the request is the same: Plaintiff asks for  
2 expedited discovery now in order to later name Doe Defendants in this case.

### 3 I. INTRODUCTION

4 Plaintiff Hard Drive Productions, Inc. filed this action to stop Defendants from reproducing  
5 and distributing to others over the Internet unauthorized copies of its content (hereinafter “the  
6 Works”), and to pursue monetary damages from Defendants. Using so-called “peer-to-peer”  
7 (hereinafter “P2P”) file “swapping” networks, Defendants’ copyright infringements allow them and  
8 untold others to unlawfully obtain and distribute for free and without Plaintiff’s permission the  
9 copyrighted Works that Plaintiff has invested substantial sums of money to create. Plaintiffs are  
10 suing Defendants as Doe Defendants because Defendants committed their infringement under the  
11 cover of Internet Protocol (hereinafter “IP”) addresses, as opposed to using their actual names.  
12 Plaintiff has identified Doe Defendants’ IP addresses (as well as other pertinent information), and  
13 attached this list to the Complaint as Exhibit A.

14 Plaintiff seeks leave of the Court to serve *limited* discovery prior to a Rule 26(f) conference  
15 on several enumerated non-party Internet Service Providers (“ISPs”) *solely* to determine the true  
16 identities of Doe Defendants that Plaintiff will fully identify during the course of this litigation, as  
17 Plaintiff’s infringement prevention efforts are on-going and continuing. The only way that Plaintiff  
18 can determine Defendant’s actual names is from the ISPs to which Defendants subscribe and from  
19 which Defendants obtain Internet access. This information is readily available to the ISPs from  
20 documents they keep in the regular course of business, and getting it is of minimal effort to them.

### 21 II. BACKGROUND

22 This request is far from unique. Granting applications such as these is commonplace. Over  
23 the past decade, federal district courts throughout the Ninth Circuit and the United States, including  
24 this Court, have freely granted expedited discovery in Doe Defendant lawsuits with factually

1 interchangeable scenarios.<sup>1</sup> In fact, Your Honor has personally encountered these *ex parte*  
2 applications, and, in all cases known to counsel, granted the plaintiff’s applications, allowing them to  
3 serve the much-needed subpoenas on the ISPs. *See Collins, Inc. v. Does 1-1219*, 97 U.S.P.Q.2D  
4 (BNA) 1667 (N.D. Cal. 2010) (Beeler); *Zoosk Inc. v. Does 1-25*, 2010 U.S. Dist. LEXIS 134292,  
5 (N.D. Cal. 2010) (Beeler) (discussed more fully below).  
6

7 Generally, as Your Honor understands, in these types of cases, copyright holder plaintiffs use  
8 information similar to that gathered by Plaintiff in the instant case as the basis for their proposed  
9 subpoenas to the ISPs. As evidenced by the various court opinions, such information is sufficient for  
10 such expedited subpoenas. Through the information they gather from the ISPs via these subpoenas,  
11 the plaintiffs are able to fully “identify” – i.e. retrieve name, address, telephone number, e-mail  
12 address, and Media Access Control (hereinafter “MAC”) information – each P2P network user  
13 suspected of violating the plaintiff’s copyright. Usually, in the interest of due process, the court will  
14 order the ISP to adequately notify the network user whose contact information has been turned over  
15 to the plaintiff that such action has occurred. Once the plaintiff has a *doe* defendant’s contact  
16 information, the defendant will be formally named in the suit, service of process will be effectuated,  
17 and the case will be allowed to proceed as usual. (*See* Declaration of Brett L. Gibbs (hereinafter  
18 “Gibbs Decl.”) ¶ 4, Exhibit B to this Application). All of the district courts that have been presented  
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22 <sup>1</sup> *See, e.g., UMG Recordings*, 64 Fed. R. Serv.3d 305; *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573 (N.D. Cal.  
23 1999); *Warner Bros. Records, Inc. v. Does 1-6*, 527 F.Supp.2d 1 (D.D.C. 2007); *Columbia Pictures Industries, Inc. v.*  
24 *John Doe* (67.123.19.140), Case No. C-04-5243 (N.D. Cal.) (Hamilton); *Rocker Mgmt. LLC v. John Does*, No. 03-MC-  
25 33 2003 WL 22149380 (N.D. Cal 2003); *UMG Recordings, Inc. v. John Doe*, 2008 U.S. Dist. LEXIS 79087, Case No. 08-  
26 08-1193 (N.D. Cal. 2008) (Armstrong); *UMG Recordings, Inc. v. John Doe*, 2008 U.S. Dist. LEXIS 92788, Case No. 08-  
27 1038 (N.D. Cal. 2008) (Armstrong); *Collins, Inc. v. Does 1-1219*, 97 U.S.P.Q.2D (BNA) 1667 (N.D. Cal. 2010)  
28 (Beeler); *IO Group, Inc. v. Does 1-65*, 2010 U.S. Dist. LEXIS 114039, Case No. 10-4377 (N.D. Cal. 2010) (Conti);  
*Zoosk Inc. v. Does 1-25*, 2010 U.S. Dist. LEXIS 134292, (N.D. Cal. 2010) (Beeler); *Texas Guaranteed Student Loan*  
*Corp. v. Deepinder Dhindsa*, 2010 U.S. Dist. LEXIS 65753, Case No. 10-00335 (E.D. Cal. 2010) (Oberto); *Arista*  
*Records, Inc., et al., v. Does 1-12*, 2008 U.S. Dist. LEXIS 82548, 08-CV-1242 (E.D. Cal.) (GSA); *Metro-Goldwyn-*  
*Mayer Pictures, Inc. v. Does 1-2*, Case No. 05-CV-0761-B (S.D. Cal.) (POR); *Voltage Pictures, LLC v. Does*, Case No.  
1:10-cv-00873-RMU (D.D.C.); *Metro-Goldwyn-Mayer Pictures, Inc. v. Does 1-10*, Case No. 04-2005 (D.D.C.) (JR);  
*Allcare Dental Management, LLC v. Zrinyi*, 2008 U.S. Dist. LEXIS 84015, Case No. 08-407 (Idaho 2008) (Wimmill).

1 with this issue have understood the importance of allowing the plaintiffs to identify the alleged  
2 violators in these actions. *See id.*

3 Plaintiff respectfully requests that this Court follow the well-established precedent, and grant  
4 this application for leave to take expedited discovery against those ISPs listed in Exhibit A to the  
5 Complaint filed in this action together with various other ISPs operating both within and outside the  
6 State of California that Plaintiff later discovers, during the course of this litigation, where the actual  
7 entities providing Doe Defendants with online services and/or network access, and all of their  
8 respective subsidiaries, parent companies, and affiliates who may possess identifying data for the  
9 Doe Defendants.  
10

### 11 III. FACTS

12 Doe Defendants, without authorization, used an online P2P media distribution system to  
13 download Plaintiff's copyrighted works and distribute Plaintiff's copyrighted works to the public,  
14 including making Plaintiff's copyrighted works available for distribution to others (*See Compl.*).  
15 Defendants operated under the cover of network addresses when they swarmed and distributed  
16 Plaintiff's copyrighted works. As such, Plaintiff is unaware of Doe Defendants actual names. (*See*  
17 *Declaration of Peter Hansmeier* (hereinafter "Hansmeier Decl.") ¶¶ 21-22, Exhibit A to this  
18 Application). As referenced above, Plaintiff has identified each Doe Defendant by a unique IP  
19 address, assigned to him/her by his/her ISP on the date and at the time of the Doe Defendant's  
20 infringing activity. (*See Id.* ¶ 15). Plaintiff, by and through its investigators, also made a copy of  
21 substantial portions of the copyrighted work that each Defendant unlawfully distributed or made  
22 available for distribution through the file sharing networks, and confirmed that such files contained  
23 the work that was copyrighted by Plaintiff. (*See Id.* ¶ 19). A technician collected this data through  
24 specific systems and procedures designed to ensure that the information gathered on each Doe  
25 Defendant was accurate. (*See Id.* ¶ 12).  
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1 By using Media Copyright Group, LLC’s (“MCG”) proprietary file sharing forensic software  
2 to capture the unique IP address of each Doe Defendant, Plaintiffs have been able to identify certain  
3 ISPs that provided Internet access and unique IP addresses to each Doe Defendant. (*See Id.* ¶¶ 15-  
4 17). When provided with a Doe Defendant’s IP address and the date and time of the infringing  
5 activity, an ISP can accurately identify the Doe Defendant (i.e. provide Plaintiff with the Doe  
6 Defendant’s necessary contact information) because such information is contained in the ISP’s  
7 subscriber activity log files. (*See Id.* ¶¶ 21-22). In light of the fact that infringement of Plaintiff’s  
8 Works is ongoing, Plaintiff will continue to monitor torrent-based infringement of the Works, and,  
9 by this application, seeks the ability to pursue claims for copyright infringement against later-  
10 identified infringers. (*See Id.* ¶ 24; *see also* Gibbs Decl. ¶ 3).

11  
12 In Plaintiff’s case, time for discovery is of the essence. (*See* Gibbs Del. ¶ 6). Typically, ISPs  
13 keep log files of subscriber activities for only limited periods of time before erasing the data.  
14 Sometimes this storage may only last for only weeks or even days. (*See Id.* ¶ 21-22). Some ISPs  
15 lease or otherwise allocate certain of their IP addresses to other unrelated, intermediary ISPs. (*See Id.*  
16 ¶ 23). These lessor ISPs, therefore, have no direct contractual or business relationship with the end-  
17 user. Because of this detachment, they are unable to identify the Doe Defendants through their logs  
18 on their own without the assistance of their intermediary ISPs that should be able to identify the Doe  
19 Defendants by reference to their own user logs and records working in conjunction with the lessor  
20 ISPs. (*See Id.* ¶ 23).

#### 23 IV. DISCUSSION

##### 24 1. *Legal Standard for Expedited Discovery*

25 Courts have wide discretion in organizing discovery. *See Semitool v. Tokyo Electron*  
26 *America, Inc., et al.*, 208 F.R.D. 273 (N.D. Cal. 2002). Courts typically allow for expedited  
27 discovery “in the interests of justice” under Rule 26(d). *See, e.g., Id.; Texas Guaranteed*, 2010 U.S.  
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1 Dist. LEXIS 65753. Courts commonly find it “in the interests of justice” to allow accelerated  
2 discovery to identify doe defendants. *See Wakefield v. Thompson*, 177 F.3d 1160, 1163 (9th Cir.  
3 1999) (“...district court erred in dismissing [Plaintiff’s] complaint against Doe simply because  
4 [Plaintiff] was not aware of Doe’s identity at the time he filed the complaint.”); *Equidyne Corp. v.*  
5 *Does 1-21*, 279 F.Supp. 2d 481, 483 (D. Del. 2003) (district court granted expedited discovery  
6 motion to allow the plaintiff to identify unknown defendants). In similarly situated copyright  
7 infringement actions brought by other motion picture studios, record companies, and producers  
8 against doe defendants, courts have consistently granted plaintiffs’ motions for leave to take  
9 expedited discovery to serve subpoenas on ISPs to immediately obtain the identities of doe  
10 defendants prior to a Rule 26(f) conference. *See Warner Bros. Records, Inc. v. Does 1-6*, 527  
11 F.Supp. 2d 1 (D.D.C. 2007) (plaintiff requests, and court allows, expedited Rule 45 subpoena service  
12 on Georgetown University to obtain identifying information – including name, current and  
13 permanent addresses, telephone numbers, email addresses, and MACs – of doe defendants). This  
14 Court’s rulings have steadfastly followed this established rule. *See, e.g., UMG Recordings*, 64 Fed.  
15 R. Serv.3d 305; *IO Group, Inc.*, 2010 U.S. Dist. LEXIS 114039; *Zoosk Inc.*, 2010 U.S. Dist. LEXIS  
16 134292.

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18  
19 When the identity of a doe defendant is indeterminable at the time the complaint is filed, the  
20 plaintiff “should be given an opportunity through discovery to identify the unknown defendants,  
21 unless it is clear that discovery would not uncover the identities, or that the complaint would be  
22 dismissed on other grounds. *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980). Based in part  
23 on *Gillespie*, a three-prong expedited-discovery-qualifying test was outlined by this Court in  
24 *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573 (N.D. Cal. 1999). In order for a plaintiff to  
25 qualify for expedited discovery to identify nameless Internet users, the plaintiff must: (1) show  
26 whether the plaintiff can identify the missing party with sufficient specificity such that the Court can  
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1 determine that the defendant is a real person or entity capable of being sued in federal court; (2)  
2 identify all previous steps taken to locate elusive defendant; and (3) establish that the suit could  
3 withstand a motion to dismiss. *Seescandy.com*, 185 F.R.D. at 578-578; *see also Rocker Mgmt. LLC*  
4 *v. John Does*, WL 22149380, Case No. 03-MC-33 (N.D. Cal. 2003) (court interprets and applies  
5 *Seescandy.com* standard in allowing limited discovery).  
6

7 In determining whether a plaintiff is entitled to expedited discovery in identifying a doe  
8 defendant, the district courts in the 9th Circuit implement an overarching “good cause” standard. *See*  
9 *Semitool*, 208 F.R.D. at 273, 276 (N.D. Cal. 2002). “Good cause may be found where the need for  
10 expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the  
11 responding party.” *Id*; *see also UMG Recordings*, 64 Fed. R. Serv.3d 305 (the Honorable Magistrate  
12 Judge Chen perfectly lays out all of the issues, analyzes the application of rules to facts, and  
13 concludes that the plaintiff is entitled to leave to take immediate discovery).  
14

15 **2. Plaintiff Satisfies the Three-Pronged *Seescandy.com* Test**

16 **(a) Identifying Doe Defendants with Sufficient Specificity**

17 As required, Plaintiff has sufficiently identified the Doe Defendants through locating the  
18 unique IP address each Doe Defendant was assigned at the time of the unauthorized distribution of  
19 the copyrighted Works. Hansmeier Decl. ¶¶ 15-17; *See also, e.g., Seescandy.com*, 185 F.R.D. at 578-  
20 580 (such information satisfies “sufficient specificity” prong). These Doe Defendants gained access  
21 to the Internet through their respective ISPs (undercover of an IP address) only by setting up an  
22 account with the various ISPs. Hansmeier Decl. ¶¶ 15-17. The ISPs can identify each Defendant by  
23 name through the IP address by reviewing its subscriber activity logs. *See Id.* ¶¶ 21-23. Thus,  
24 Plaintiff can show that all Defendants are “real persons” whose are known to the ISP and who can be  
25 sued in federal court. Plaintiff simply requests that this *ex parte* application be granted so that  
26 Plaintiff can match the IP address with its “real person” counterpart.  
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1                    (b) Previous Steps Taken by Plaintiff

2                    Plaintiff has exhausted all possible means to attempt to find the Doe Defendants’ names,  
3 addresses, phone numbers, email addresses, and MAC addresses. Plaintiff lacks any other means to  
4 obtain the subpoenaed information expect from discovery through the ISPs themselves. Plaintiff has  
5 specifically identified the steps taken to identify Doe Defendants’ identities. *See Id.* ¶¶ 12-20.  
6 Plaintiff has obtained each Doe Defendant’s IP addresses and the date and time of the Defendant’s  
7 infringing activities, have traced each IP address to specific ISPs, and has made copies of the Works  
8 each Defendant unlawfully distributed or made available for distribution. *Id.* ¶¶ 15-18. At this point,  
9 Plaintiff has obtained all of the necessary information it possibly can on each Doe Defendant without  
10 discovery from the ISPs. Plaintiff needs this limited information from the ISPs to simply connect  
11 the dots.  
12

13                    (c) Whether Suit Would Survive a Motion to Dismiss

14                    If the Court denies this *ex parte* application, the Court would strike a fatal blow in Plaintiff’s  
15 otherwise meritorious case. (*See Gibbs Del.* ¶ 2). Ascertaining the true identities of these copyright  
16 infringers is the only thing holding this case back from proceeding forward. (*See Id.* ¶ 4).  
17

18                    Plaintiff has asserted a *prima facie* claim for direct copyright infringement in its Complaint  
19 that can withstand a motion to dismiss. Specifically, Plaintiff has alleged that: (a) it owns the  
20 exclusive reproduction and distribution rights, and exclusive rights under the copyright for the  
21 Works for which a valid application for registration has been filed, and (b) the Doe Defendants  
22 copied or distributed the copyrighted Works without Plaintiff’s authorization. *See Complaint.*  
23 These allegations adequately state a claim for copyright infringement. *See* 17 U.S.C. § 106(1)(3);  
24 *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1014-15 (9th Cir. 2001) (“Napster users who  
25 upload file names to the search index for others to copy violate plaintiffs’ distribution rights.  
26  
27  
28



1 Napster users who download files containing copyrighted music violate plaintiffs’ reproduction  
2 rights.”); *In re Aimster Copyright Litig.*, 334 F.3d 643, 645 (7th Cir. 2003).

3 There is little question that the Doe Defendants violated Plaintiff’s rights. Now Plaintiff  
4 simply must be allowed to identify who they are.

5  
6 **2. Plaintiff Satisfies the *Semitool* “Good Cause” Standard for Expedited Discovery**

7 As stated in *Semitool*, “Good cause may be found where the need for expedited discovery, in  
8 consideration of the administration of justice, outweighs the prejudice to the responding party.” 208  
9 F.R.D. at 276. Courts have wide discretion in discovery matters and in interpreting “good cause.”  
10 *See Id.*; *Qwest Comm. Int’l, Inc. v. WorldQuest Networks, Inc.*, 213 F.R.D. 418, 419 (D. Colo.  
11 2003); *Yokohama Tire Corp. v. Dealers Tire Supply, Inc.*, 202 F.R.D. 612, 613-14 (D. Ariz. 2001);  
12 *Warner Bros.*, 527 F.Supp.2d at 2.

13 In this case, good cause exists because knowing the true identities of the copyright violators,  
14 and thus allowing Plaintiff to carry forward with its case, outweighs negligible prejudice to the  
15 copyright violating Doe Defendants and the ISPs.

16  
17 Good cause exists here because ISPs typically retain user activity logs containing the  
18 information sought for only a limited period of time before erasing the data. (Hansmeier Decl. ¶¶ 21-  
19 23: *see* Gibbs Del. ¶ 6). If that information is erased, Plaintiff will have no ability to fully identify  
20 the Doe Defendants, and thus will be unable to pursue a lawsuit protecting itself against their  
21 devious copyrighting tactics. *Id.* Where “physical evidence may be consumed or destroyed with the  
22 passage of time, thereby disadvantaging one or more parties to the litigation,” good cause exists for  
23 expedited discovery under FRCP 26(d). *Qwest Comm.*, 213 F.R.D. at 419; *see also Pod-Ners, LLC v.*  
24 *Northern Feed & Bean of Lucerne, LLC*, 204 F.R.D. 675, 676 (D. Colo. 2002) (court allowed for  
25 expedited discovery where evidence would not be available to the plaintiff in the normal course).  
26  
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1 Put simply, Plaintiff may lose the ability to bring this suit without being able to timely serve the ISPs  
2 with subpoenas.

3 Good cause also exists because Plaintiff’s claim for copyright infringement presumes  
4 irreparable harm to copyright owner. *See UMG Recordings, Inc. v. Doe*, 2008 2008 U.S. Dist.  
5 LEXIS 79087 (N.D. Cal. 2008) (the Honorable Judge Armstrong noted that, “In Internet  
6 infringement cases, courts routinely find good cause exists to issue a Rule 45 subpoena to discover a  
7 Doe defendant’s identity, prior to a Rule 26(f) conference, where a plaintiff makes a prima facie  
8 showing of infringement, there is no other way to identify the Doe defendant, and *there is a risk an*  
9 *ISP will destroy its logs prior to the conference...* This is because, in considering ‘the administration  
10 of justice,’ early discovery avoids ongoing, continuous harm to the infringed party and there is no  
11 other way to advance the litigation.”); *also see Semitool*, 208 F.R.D. at 277; *Elvis Presley Enter.,*  
12 *Inc. v. Passport Video*, 349 F.3d 622, 631 (9th Circuit 2003). Not only will Plaintiff’s suit will be  
13 fatally damaged if it is not allowed to be permitted to conduct expedited discovery, but Plaintiff’s  
14 Works, Plaintiff’s own unique copyrighted creations, will be devalued if the Court denies this  
15 motion.

16  
17  
18 **3. Doe Defendants Have No Legitimate Expectation of First Amendment Privacy**

19 As the Honorable Magistrate Judge Chen pointed out in *UMG Recordings*, Doe Defendants  
20 who “open[ed] their computers to others through peer-to-peer sharing” and signed service  
21 agreements with ISPs that did not have privacy stipulations, “had little expectation of privacy.” 64  
22 Fed. R. Serv.3d at 305. The Doe Defendants here fall under this purview for the same reasons. The  
23 Doe Defendants are, at best, involved in quasi-speech, and Plaintiff’s overriding interests in  
24 protecting its copyright overshadow any limited speech implications on the part of the Defendants.  
25 They have no legitimate expectation of privacy in the subscriber information they voluntarily  
26 provided to third-parties, i.e. the ISPs, much less in downloading and distributing copyrighted Works  
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1 without Plaintiff's permission. *See Id.*; see also *Sony Music Entertainment, Inc. v. Does 1-40*, 326  
2 F.Supp.2d 556 (S.D.N.Y. 2004) (court finds that "defendants have little expectations of privacy in  
3 downloading and distributing copyrighted songs without permission"); *Interscope Records v. Does*  
4 *1-14*, 558 F.Supp.2d 1176, 1178 (D. Kan 2008); *Guest v. Leis*, 255 F.3d 325, 336 (6th Cir. 2001);  
5 *U.S. v. Hambrick*, 55 F.Supp.2d 504, 508 (W.D. Va. 1999), *aff'd*, 225 F.3d 656 (4th Cir. 2000).

7 Doe Defendants copied and distributed the Works without authorization under the cover of  
8 their IP addresses, and, therefore, their conduct was not entirely anonymous. They still are  
9 identifiable by the ISPs. Using publicly available technology, the unique IP address assigned to each  
10 Defendant at the time of infringement can be readily identified. *See* Hansmeier Decl. ¶¶ 12-20.  
11 When Doe Defendants entered into a service agreement with the ISPs, they knowingly and  
12 voluntarily disclosed personal identification to it. As set forth above, this identification information  
13 is linked to the Doe Defendants' IP addresses at the time of infringement, and recorded in the ISPs'  
14 respective subscriber activity logs. Since Doe Defendants can, as a consequence, have no legitimate  
15 expectation of privacy in this information, this Court should grant Plaintiff leave to seek expedited  
16 discovery of their indentifying information. Absent such leave, Plaintiff will be unable to protect its  
17 copyright its copyrighted Works from continued infringement.

19 Where federal privacy statutes authorize disclosure pursuant to a court order, courts have  
20 held that a plaintiff must make no more than a showing of relevance under the traditional standards  
21 of Rule 26. *See Laxalt v. McClatchy*, 809 F.2d 885, 888 (D.C. Cir. 1987); *see also In re Gren*, 633  
22 F.2d 825 n.3 (9th Cir. 1980) ("court order . . . [only requires] good faith showing that the consumer  
23 records sought are relevant.") Clearly, Plaintiff meets the relevance standard as fully described in  
24 this Memorandum, the attached Declaration, and the Complaint.

26 //

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1           **4.       Your Honor’s Recent Opinions Have Supported Granting Plaintiff’s Application**

2           In the past year, two cases came before Your Honor presenting the exact same dilemma that  
3 faces Plaintiff in this case. The plaintiffs in these two cases sued the doe defendants, but, like  
4 Plaintiff here, could not fully identify the doe defendants for purposes of naming them for the suit.  
5 Just like Plaintiff here, the plaintiffs in those cases could only identify the doe defendants through  
6 their IP addresses used in their alleged wrongful activities. All plaintiffs had the IP addresses when  
7 filing suit, but not the personal identifying information of the doe defendants. They needed the ISPs  
8 to supply that information.  
9

10           The cases appear indistinguishable. In each case, Your Honor granted the plaintiffs’ *ex parte*  
11 applications for expedited discovery.

12           In *Zoosk Inc. v. Does 1-25*, 2010 U.S. Dist. LEXIS 134292, (N.D. Cal. 2010) (Beeler), Your  
13 Honor found that in a situation where the plaintiff alleged, among other things, *per se* libel, “[w]hen  
14 the identity of defendants is not known before a complaint is filed, a plaintiff should be given an  
15 opportunity through discovery to identify the unknown defendants, unless it is clear that discovery  
16 would not uncover the identities, or that the complaint would be dismissed on other grounds.”  
17 (*internal quotations and citations omitted*). The Court also used the good cause standard described  
18 above. (*Id.* at \*5-6)  
19

20           All in all, Plaintiff, as demonstrated in the previous analysis, should be given a chance to  
21 identify the Doe Defendants because it is clear that Plaintiff’s requested subpoenas to the ISPs would  
22 uncover the Doe Defendants’ identities as discussed, the complaint lays out a *per se* case for  
23 copyright infringement, and Plaintiff fully demonstrates good cause. (*See id.*)  
24

25           *Collins, Inc. v. Does 1-1219*, 97 U.S.P.Q.2D (BNA) 1667 (N.D. Cal. 2010) (Beeler)  
26 presented an extremely similar situation to Plaintiff’s. The only difference was that there were more  
27 Doe Defendants, and the Doe Defendants were not isolated to California in *Collins*. In *Collins*, the  
28

1 plaintiff names 1,219 Does that have unlawfully reproduced and distributed via P2P Internet sharing  
2 an adult film to which the plaintiff owned the exclusive copyrights. Just like in this case, because of  
3 the method of the Doe Defendants' illicit Internet reproduction and distribution, the plaintiff in  
4 *Collins* could only identify the Doe Defendants by their IP addresses when committing the infringing  
5 activities. As in this case, the plaintiff in *Collins* requested that the Court grant it leave to serve a  
6 Rule 45 third-party subpoena on each ISP concerning each IP address listed in the Exhibit A to the  
7 plaintiff's complaint. The plaintiff in *Collins* requested leave to subpoena the same identifying  
8 information of the Doe Defendants that Plaintiff requests here.

10 In *Collins*, Your Honor runs down the same analysis as in *Zoosk*. Your Honor determines  
11 that the plaintiff "identified the Doe Defendants with sufficient specificity by submitting a chart  
12 listing each of Defendants by the IP address assigned to them on the day Plaintiff alleges the  
13 Defendant engaged in the infringing conduct." *Collins*, 97 U.S.P.Q.2D (BNA) 1667, \*5-6. Plaintiff  
14 in this case has provided this such a chart listing IP addresses, dates, and ISPs.

16 Second, Your Honor described the "adequate[...] steps taken to locate and identify the Doe  
17 Defendants." *Id.* at \*6. Those "steps" included hiring a copyright firm to investigate and collect  
18 data from the targeted P2P websites helping to locate potential infringers. *Id.* Plaintiff has actually  
19 gone beyond the plaintiff in *Collins* by using a copyright firm with patented technology that can not  
20 only investigate these alleged acts of piracy, but also accurately trace these active infringers through  
21 a method that virtually eliminates the chances for false positives. *See* Hansmeier Decl.

23 Ultimately, Your Honor grants the plaintiff's *ex parte* application for leave to take limited  
24 discovery in *Collins*. In the spirit of consistency and fairness, Plaintiff merely requests the same  
25 court order that was given to the plaintiffs in the above cases.

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27 //

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1 **V. CONCLUSION**

2 Plaintiff seeks leave to propound subpoenas on the variety of ISPs it has identified, and  
3 continues to identify as it continue to monitor torrent-based infringement of Plaintiff’s Works,  
4 limited, immediate discovery sufficient to determine the Doe Defendants’ true identities. To the  
5 extent that any ISP, in turn, identifies a different entity as the ISP providing network access and  
6 online services to the Doe Defendants, Plaintiff also seeks leave to serve, on any such later identified  
7 ISP, limited discovery sufficient to identify the Doe Defendant prior to the Rule 26 conference.

9 Specifically, PLAINTIFF MOVES TO, UPON COURT AUTHORIZATION, SERVE  
10 WITHIN FIFTEEN (15) DAYS RULE 45 SUBPOENAS TO COMPEL LISTED ISPs, OR A  
11 FURTHER DISCOVERED RELEVANT SUBSIDIARY, TO IMMEDIATELY TURNOVER  
12 PERSONAL IDENTIFICATION INFORMATION IT CURRENTLY POSSESSES, AND MAY  
13 IDENTIFY IN THE FUTURE DURING THE COURSE OF THIS LITIGATION, FOR EACH IP  
14 ADDRESS LINKED TO EACH INDIVIDUAL DOE DEFENDANT SPECIFICALLY  
15 DESCRIBED IN THE ATTACHEMENT TO THE COMPLAINT, INCLUDING EVERY DOE  
16 DEFENDANT’S:  
17

- 18 • TRUE NAME;
- 19 • ADDRESS;
- 20 • TELEPHONE NUMBER;
- 21 • E-MAIL ADDRESS; AND
- 22 • MEDIA ACCESS CONTROL ADDRESS.

24 Plaintiff will only use this information to prosecute the claims made in its Complaint. Further,  
25 Plaintiff understands that the subpoenaed ISPs will be able to notify their subscribers that this  
26 information is being sought, and each Doe Defendant will have the opportunity to raise any  
27

1 objections before this Court prior to the return date of the subpoena. Thus, to the extent that any  
2 Defendant wishes to object, he or she may do so.

3 Put plainly, the factors weigh heavily in favor of compelling disclosure of the Doe  
4 Defendants' identifying information. Without disclosure of the Doe Defendants' identities,  
5 Plaintiff's litigation cannot proceed. To deny this motion would be to give those committing this  
6 online, peer-to-peer piracy *carte blanche* to repeat their infringing conduct. Permitting these acts  
7 would essentially render the federal copyright laws inapplicable to illegal Internet "sharing."  
8

9 Plaintiff prays that the Court recognize this, and Grant this Motion by entering the attached Proposed  
10 Order.

11  
12  
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15  
16 Respectfully Submitted,

HARD DRIVE PRODUCTIONS, INC.,

17  
18 **DATED: April 1, 2011**

19 By:           /s/ Brett L. Gibbs, Esq.          

20  
21 Brett L. Gibbs, Esq. (SBN 251000)  
22 Steele Hansmeier PLLC.  
23 38 Miller Avenue, #263  
24 Mill Valley, CA 94941  
25 [blgibbs@wefightpiracy.com](mailto:blgibbs@wefightpiracy.com)  
26 *Attorney for Plaintiff*  
27  
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