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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA

6 DALLAS BUYERS CLUB LLC,

7 Plaintiff,

8 v.

9 DOE-73.189.187.56,

10 Defendant.

Case No. [16-cv-01166-DMR](#)

**ORDER GRANTING PLAINTIFF'S  
MOTIONS TO TAKE EARLY  
DISCOVERY AND FOR ADDITIONAL  
TIME FOR SERVICE**

Re: Dkt. Nos. 13, 19

11  
12 Plaintiff Dallas Buyers Club LLC moves the court ex parte pursuant to Federal Rule of  
13 Civil Procedure 26(d) for leave to take discovery prior to the Rule 26 conference so that it may  
14 ascertain the identity of the unnamed Doe Defendant in this action. [Docket No. 13.] Specifically,  
15 Plaintiff requests permission to issue an early subpoena to Comcast Cable for subscriber and  
16 account information related to the IP address associated with the Doe Defendant. On May 17,  
17 2016, Plaintiff submitted its proposed subpoena to Comcast for the court's review. [Docket No.  
18 17 (Proposed Subpoena).] Plaintiff also moves for additional time to complete service of the  
19 Complaint. [Docket No. 19.] The court finds these matters appropriate for determination without  
20 oral argument. Civil L.R. 7-1(b). For the following reasons, the court grants Plaintiff's motions.

21 **I. DISCUSSION**

22 Plaintiff filed this action alleging a single claim of copyright infringement pursuant to 17  
23 U.S.C. §§ 101 et seq. against a Doe Defendant identified by its IP address, 73.189.187.56.  
24 Plaintiff alleges that it owns the registered copyright for the motion picture Dallas Buyers Club.  
25 Compl. ¶ 4. Plaintiff alleges that Defendant distributed, without Plaintiff's permission, a copy of  
26 Dallas Buyers Club on 23 occasions between February 28, 2016 and March 1, 2016. Id. at ¶¶ 12-  
27 15, Ex. 1. According to Plaintiff, Defendant used the software µTorrent 3.4.5 on a peer-to-peer  
28 sharing network to distribute the motion picture. Id. at ¶¶ 16, 27, 30.

1 Plaintiff alleges that at the time of the observed infringement, Defendant’s IP address was  
2 managed by Comcast Cable, which generally assigns an IP address to a single party for extended  
3 periods of time. *Id.* at ¶ 21. Based on its use of geolocation technology, Plaintiff alleges that  
4 Defendant’s IP address is located within the Northern District of California. *Id.* at ¶ 14; Davis  
5 Decl., March 29, 2016, ¶¶ 5-10. Further, Plaintiff alleges that the consistency, volume, and titles  
6 of the activity associated with Defendant’s IP address indicate that Defendant is “an identifiable  
7 and singular” adult who is likely the primary subscriber of the IP address or is known to the  
8 subscriber. Defendant’s activity suggests that Defendant is “an authorized user of the IP address  
9 with consistent and permissive access.” Compl. ¶¶ 18-20.

10 Plaintiff filed an *ex parte* motion seeking leave to issue a subpoena to Comcast Cable,  
11 which the court denied without prejudice for failure to comply with local rules. [Docket Nos. 5,  
12 12.] Plaintiff then filed the present motion. It seeks leave to serve a Rule 45 subpoena to Comcast  
13 Cable seeking the name and address of the individual or individuals associated with the IP address  
14 that the Doe Defendant uses so that it can identify and serve the Defendant. Plaintiff’s proposed  
15 subpoena seeks “[s]ubscriber information for IP Address 73.189.187.56, Port number 56236, with  
16 a Hit Date of 03/01/2016 at 00:45:45 (UST).” Proposed Subpoena.

17 Although in the Ninth Circuit courts disfavor exceptions to the general rules of discovery,  
18 *Columbia Ins. Co. v. seescandy.com*, 185 F.R.D. 573, 577 (N.D. Cal. 1999) (citing *Gillespie v.*  
19 *Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980)), a court will grant a motion for expedited discovery  
20 “upon a showing of good cause,” *Am. Legalnet, Inc. v. Davis*, 673 F. Supp. 2d 1063, 1066 (C.D.  
21 Cal. 2009) (quoting *In re Countrywide Fin. Corp. Derivative Litig.*, 542 F. Supp. 2d 1160, 1179  
22 (C.D. Cal. 2008)) (quotation marks omitted); accord *Semitoool, Inc. v. Tokyo Electron Am., Inc.*,  
23 208 F.R.D. 273, 275 (N.D. Cal. 2002), unless the court finds that discovery “would not uncover  
24 [the defendants’] identities, or that the complaint would be dismissed on other grounds.”  
25 *Gillespie*, 629 F.2d at 642 (citations omitted). Good cause exists where “the need for expedited  
26 discovery, in consideration of the administration of justice, outweighs the prejudice to the  
27 responding party.” *Am. Legalnet, Inc.*, 673 F. Supp. 2d at 1066 (quoting *In re Countrywide Fin.*  
28 *Corp. Derivative Litig.*, 542 F. Supp. 2d at 1179) (quotation marks omitted); accord *Semitoool*,

1 Inc., 208 F.R.D. at 276. The court must perform this evaluation in light of “the entirety of the  
2 record . . . and [examine] the reasonableness of the request in light of all the surrounding  
3 circumstances.” *Semitoool, Inc.*, 208 F.R.D. at 275 (citation & quotation marks omitted) (emphasis  
4 removed); see *Am. Legalnet, Inc.*, 673 F. Supp. 2d at 1067. Courts examine whether the plaintiff  
5 (1) identifies the Doe defendant with sufficient specificity so that the court can determine that the  
6 defendant is a real person or entity who can be sued in federal court; (2) describes all previous  
7 steps taken to identify and locate the defendant; (3) establishes that the suit could withstand a  
8 motion to dismiss; and (4) establishes that the discovery requested is likely to lead to identifying  
9 information about the defendant that will permit service of process. *Columbia Ins. Co.*, 185  
10 F.R.D. at 578-80.

11 Here, Plaintiff has shown good cause for its request. Plaintiff has identified Defendant’s  
12 IP address and submitted a list of the dates and times of the alleged infringing activity. Compl.  
13 Ex. 1. Using geolocation technology, Plaintiff has determined that Defendant’s physical IP  
14 address is in or around San Jose. Davis Decl. ¶ 9. Plaintiff’s identification of Defendant is  
15 sufficiently specific to enable the court to determine that Defendant is a real person or entity  
16 subject to this court’s jurisdiction. Plaintiff’s efforts to locate Defendant including identifying  
17 Defendant’s internet service provider, tracing Defendant’s IP address to a particular location, and  
18 identifying the software Defendant allegedly used to distribute the motion picture. However,  
19 Plaintiff cannot identify Defendant through the IP address alone, and needs the requested  
20 information from Comcast Cable to identify Defendant. Plaintiff has also shown that the  
21 requested discovery is likely to lead to identifying information about Defendant. Comcast Cable  
22 generally assigns an IP address to a single party for extended periods of time, and Plaintiff alleges  
23 that Comcast Cable’s records should be able to identify Defendant or the subscriber who knows  
24 Defendant.

25 Finally, Plaintiff must establish that the complaint can withstand a motion to dismiss. In  
26 order to state a claim for copyright infringement, Plaintiff must allege ownership of a valid  
27 copyright and that the defendant violated the copyright owner’s exclusive rights under the  
28 Copyright Act. See *Ellison v. Robertson*, 357 F.3d 1072, 1076 (9th Cir. 2004) (citing 17 U.S.C. §

1 501(a)). Plaintiff satisfies this requirement by alleging that it holds a valid copyright to Dallas  
2 Buyers Club and that Defendant distributed the motion picture without its permission.  
3 Accordingly, the court finds that Plaintiff has shown good cause to take early discovery.

4 **II. CONCLUSION**

5 For the reasons above, Plaintiff's ex parte motion to take early discovery is granted.  
6 Plaintiff is granted leave to serve its proposed subpoena on Comcast Cable. The subpoena shall  
7 include a copy of this order.

8 It is further ordered that Comcast Cable shall have 14 days from the date of service upon it  
9 to serve Defendant with copies of the subpoena and this order. Comcast Cable and Defendant  
10 each shall have 30 days from the date of service to file any motions in this court contesting the  
11 subpoena. If that 30-day period lapses without Defendant or Comcast Cable contesting the  
12 subpoena, Comcast Cable shall have 10 days to produce to Plaintiff the responsive information.  
13 Comcast Cable shall preserve all subpoenaed information pending its delivery of such information  
14 to Plaintiff or the final resolution of a timely filed and granted motion to quash the subpoena with  
15 respect to such information. No other discovery is authorized at this time.

16 Plaintiff's motion for a 90-day extension of the deadline to complete service of the  
17 Complaint is granted. The June 15, 2016 Case Management Conference is CONTINUED to  
18 August 31, 2016. The joint case management statement is due by August 24, 2016.

19  
20 **IT IS SO ORDERED.**

21 Dated: June 3, 2016

