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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CRIMINAL PRODUCTIONS, INC.,  
Plaintiff,  
v.  
DOE-72.192.163.220,  
Defendant.

Case No. 16-cv-2589 WQH (JLB)

**ORDER GRANTING PLAINTIFF’S  
EX PARTE MOTION TO EXPEDITE  
DISCOVERY**

[ECF No. 4]

Presently before the Court is Plaintiff’s *Ex Parte* Motion to Expedite Discovery. (ECF No. 4.) No opposition was filed, as no defendant has been named or served. For the reasons set forth below, Plaintiff’s Motion is **GRANTED**.

**I. BACKGROUND**

Plaintiff is the registered copyright owner of the motion picture *Criminal*. (ECF No. 4-1 at 1.) Plaintiff asserts the person or entity assigned Internet Protocol (“IP”) address 72.192.163.220 has illegally copied and distributed *Criminal* through his, her, or its use of the online BitTorrent file distribution network. (*Id.* at 1–2.)

Plaintiff commenced the instant action by filing a Complaint against Defendant “Doe–72.192.163.220” on October 17, 2016. (ECF No. 1.) The Complaint alleges a single claim of copyright infringement against Defendant. (*Id.* at 8–9.)



1 party with sufficient specificity such that the Court can determine that defendant is a real  
2 person or entity who could be sued in federal court.” *Id.* at 578. Second, the plaintiff  
3 “should identify all previous steps taken to locate the elusive defendant” to ensure that the  
4 plaintiff has made a good faith effort to identify and serve process on the defendant. *Id.* at  
5 579. Third, the plaintiff “should establish to the Court’s satisfaction that plaintiff’s suit  
6 against defendant could withstand a motion to dismiss.” *Id.* (citing *Gillespie*, 629 F.2d at  
7 642). Further, the plaintiff “should file a request for discovery with the Court, along with  
8 a statement of reasons justifying the specific discovery requested as well as identification  
9 of a limited number of persons or entities on whom discovery process might be served and  
10 for which there is a reasonable likelihood that the discovery process will lead to identifying  
11 information about defendant that would make service of process possible.” *Id.* at 580  
12 (citing *Gillespie*, 629 F.2d at 642).

### 13 **B. The Cable Privacy Act**

14 The Cable Privacy Act generally prohibits cable operators from disclosing  
15 personally identifiable information about subscribers without the prior written or electronic  
16 consent of the subscriber. 47 U.S.C. § 551(c)(1). However, a cable operator may disclose  
17 a subscriber’s personally identifiable information if the disclosure is made pursuant to a  
18 court order and the cable operator provides the subscriber with notice of the order.  
19 47 U.S.C. § 551(c)(2)(B). A cable operator is defined as “any person or group of persons  
20 (A) who provides cable service over a cable system and directly or through one or more  
21 affiliates owns a significant interest in such cable system, or (B) who otherwise controls or  
22 is responsible for, through any arrangement, the management and operation of such a cable  
23 system.” 47 U.S.C. § 522(5).

## 24 **III. DISCUSSION**

### 25 **A. Early Discovery**

26 Plaintiff seeks an order allowing it to serve a Rule 45 subpoena on Cox  
27 Communications before the parties conduct a Rule 26(f) Conference in this case so that  
28 Plaintiff may obtain the true name and address of Defendant. (ECF No. 4-1 at 2.) For the

1 reasons set forth below, Plaintiff’s Motion is **GRANTED**.

2 **1. Identification of Missing Party with Sufficient Specificity**

3 For the Court to grant Plaintiff’s Motion, Plaintiff must first identify Defendant with  
4 enough specificity to enable the Court to determine Defendant is a real person or entity  
5 who would be subject to the jurisdiction of this Court. *See Columbia Ins. Co.*, 185 F.R.D.  
6 at 578. This Court has previously determined that “a plaintiff identifies Doe defendants  
7 with sufficient specificity by providing the unique IP addresses assigned to an individual  
8 defendant on the day of the allegedly infringing conduct, and by using ‘geolocation  
9 technology’ to trace the IP addresses to a physical point of origin.” *808 Holdings, LLC v.*  
10 *Collective of December 29, 2011 Sharing Hash*, No. 12cv00186 MMA (RBB), 2012 WL  
11 12884688, at \*4 (S.D. Cal. May 8, 2012) (citing *Openmind Solutions, Inc. v. Does 1–39*,  
12 No. C-11-3311 MEJ, 2011 WL 4715200, at \*5–6 (N.D. Cal. Oct. 7, 2011); *Pink Lotus*  
13 *Entm’t, LLC v. Does 1–46*, No. C-11-02263 HRL, 2011 WL 2470986, at \*6–7 (N.D. Cal.  
14 June 21, 2011)).

15 In cases where it is unclear whether the subject IP address is “dynamic” or “static,”  
16 such as here, it matters when Plaintiff’s geolocation efforts were performed.<sup>1</sup> In the context  
17 of dynamic IP addresses, “a person using [a particular IP] address one month may not have  
18 been the same person using it the next.” *State v. Shields*, No. CR06352303, 2007 WL  
19 1828875, at \*6 (Conn. Sup. Ct. June 7, 2007). It is most likely that the user of IP address  
20 72.192.163.220 is a residential user and that the IP address assigned by Cox  
21 Communications is dynamic.<sup>2</sup> Thus, if Plaintiff’s geolocation efforts were performed in  
22 the temporal proximity to the offending downloads, they may be probative of the physical  
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25 <sup>1</sup> “Static IP addresses are addresses which remain set for a specific user. Dynamic IP addresses  
26 are randomly assigned to internet users and change frequently. Consequently, for dynamic IP addresses,  
27 a single IP address may be re-assigned to many different computers in a short period of time.” *Call of the*  
28 *Wild Movie, LLC v. Does*, 770 F. Supp. 2d 332, 356 (D.D.C. 2011) (citing *London-Sire Records, Inc. v.*  
*Doe 1*, 542 F. Supp. 2d 153, 160 (D. Mass. 2008)).

<sup>2</sup> “Most consumer IP addresses are ‘dynamic’ as opposed to ‘static.’” *Call of the Wild Movie*,  
770 F. Supp. 2d at 356.

1 location of the subject IP subscriber. If not, the geolocation of the subject IP address may  
2 potentially be irrelevant.

3 Here, the Court concludes that the instant Motion sufficiently demonstrates that  
4 Defendant is likely subject to the Court’s jurisdiction. Plaintiff attaches to its Motion a  
5 table reflecting that the user of IP address 72.192.163.220 engaged in allegedly infringing  
6 activity from September 24, 2016, through September 25, 2016. (ECF No. 4-3 at 1–2.) In  
7 addition, Plaintiff attaches to its Motion the declaration of its counsel, James Davis,  
8 asserting that IP address 72.192.163.220 belongs to Cox Communications and that Plaintiff  
9 employed certain geolocation technology to locate that IP address within the Southern  
10 District of California. (ECF No. 4-2 at ¶¶ 11–24.) Specifically, Mr. Davis declares that  
11 Plaintiff’s investigators, MaverikEye UG, checks the location of infringing IP addresses  
12 against the Maxmind geolocation database at “the specific time of the observed instance”  
13 of the infringing activity. (*Id.* at ¶ 15.) Plaintiff’s counsel declares further that the  
14 Maxmind geolocation service “is about 95% accurate in the U.S.” and “is used by local  
15 and federal law enforcement agencies as best practice for IP Address Geolocation in order  
16 to determine which locality/agency has proper jurisdiction.” (*Id.* at ¶¶ 18–19.) In addition,  
17 Plaintiff’s counsel asserts that after he receives geolocation information from MaverikEye  
18 UG, he verifies the location of an IP address by entering the address into three websites  
19 that contain a function for locating IP addresses. (*Id.* at ¶ 22.) Plaintiff’s geolocation  
20 efforts traced IP address 72.192.163.220 to San Diego County. (*Id.* at ¶ 23.)

21 The Court concludes that based on the timing of the IP address tracing efforts  
22 employed by Plaintiff’s investigator, the documented success of the Maxmind geolocation  
23 service, and Plaintiff’s counsel’s efforts to independently verify the location information  
24 provided by Plaintiff’s investigator, Plaintiff has met its evidentiary burden of showing that  
25 IP address 72.192.163.220 likely resolves to a physical address located in this District.

## 26 **2. Previous Attempts To Locate Defendant**

27 For the Court to grant Plaintiff’s Motion, Plaintiff must next identify all of the steps  
28 it took to locate Defendant to ensure the Court it made a good faith effort to identify and

1 serve process on Defendant. *See Columbia Ins. Co.*, 185 F.R.D. at 579. The Court  
2 concludes that Plaintiff has met this burden. Plaintiff retained a private Internet forensic  
3 investigator, MaverikEye UG, to monitor the BitTorrent file distribution network for the  
4 presence of Plaintiff’s copyrighted works and to identify the IP addresses of devices that  
5 are found distributing Plaintiff’s copyrighted works. (ECF No. 4-2 at ¶ 12.) Through  
6 MaverikEye UG, Plaintiff has been able to identify much about the subscriber of IP address  
7 72.192.163.220, such as his, her, or its ISP, general location, and software used to commit  
8 the allegedly infringing acts. (*Id.* at ¶¶ 12–15.) Based on the above, the Court is satisfied  
9 that Plaintiff has made a good faith effort to locate Defendant and that Plaintiff cannot, on  
10 its own, locate Defendant with any greater specificity than it already has. Accordingly, the  
11 Court finds Plaintiff has sufficiently satisfied the second prong of the Ninth Circuit’s “good  
12 cause” test.

### 13 **3. Whether Plaintiff’s Suit Can Withstand a Motion to Dismiss**

14 For the Court to grant Plaintiff’s Motion, Plaintiff must next show that its suit against  
15 Defendant could withstand a motion to dismiss. *Columbia Ins. Co.*, 185 F.R.D. at 579  
16 (citing *Gillespie*, 629 F.2d at 642). The Court finds Plaintiff has met this burden.

17 Plaintiff’s Complaint alleges a single cause of action against Defendant: copyright  
18 infringement. (ECF No. 1 at 8–9.) To prove a claim of direct copyright infringement, a  
19 plaintiff “must show: (1) ownership of a valid copyright; and (2) that the defendant violated  
20 the copyright owner’s exclusive rights under the Copyright Act.” *Ellison v. Robertson*,  
21 357 F.3d 1072, 1076 (9th Cir. 2004) (citing 17 U.S.C. § 501(a) (2003)). Here, Plaintiff  
22 purports to be the exclusive owner of the copyrighted work at issue. (*Id.* at ¶¶ 7–8; ECF  
23 No. 1-4.) In addition, Plaintiff alleges that “Defendant, without the permission or consent  
24 of [Plaintiff], copied and distributed plaintiff’s motion picture through a public BitTorrent  
25 network.” (ECF No. 1 at ¶ 36.) Accordingly, the Court finds Plaintiff has alleged the  
26 *prima facie* elements of direct copyright infringement and its suit against Defendant would  
27 likely withstand a motion to dismiss.  
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1           3.     At the time Plaintiff serves its subpoena on Cox Communications, Plaintiff  
2 shall also serve on Cox Communications a copy of this Order;

3           4.     Within 14 calendar days after service of the subpoena, Cox Communications  
4 shall notify the subscriber assigned IP address 72.192.163.220 that his, her, or its identity  
5 has been subpoenaed by Plaintiff **and** shall provide the subscriber a copy of this Order with  
6 the required notice;

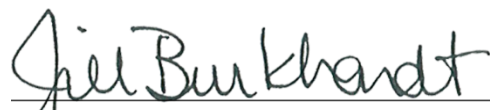
7           5.     The subscriber whose identity has been subpoenaed shall have 30 calendar  
8 days from the date of such notice to challenge Cox Communications' disclosure of his, her,  
9 or its name and address by filing an appropriate pleading with this Court contesting the  
10 subpoena;

11          6.     If Cox Communications seeks to modify or quash the subpoena, it shall do so  
12 as provided by Federal Rule of Civil Procedure 45(d)(3); and

13          7.     In the event a motion to quash, modify, or otherwise challenge the subpoena  
14 is brought properly before the Court, Cox Communications shall preserve the information  
15 sought by the subpoena pending the resolution of any such motion.

16           **IT IS SO ORDERED.**

17 Dated: November 18, 2016

18   
19 Hon. Jill L. Burkhardt  
20 United States Magistrate Judge