

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-00312-REB-KLM

MALIBU MEDIA, LLC,

Plaintiff,

v.

JOHN DOE, subscriber assigned IP address 24.9.11.70,

Defendant.

ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Plaintiff's **Motion for Leave to Serve a Third Party Subpoena Prior to a Rule 26(f) Conference** [Docket No. 9; Filed February 12, 2013] (the "Motion").

In the Complaint [#1], Plaintiff alleges that John Doe , who is only identified by his Internet Protocol ("IP") address, infringed on Plaintiff's copyrighted work by downloading it from the Internet without Plaintiff's permission using the "BitTorrent" protocol. In the Motion [#9], Plaintiff seeks leave to serve a third party subpoena pursuant to Fed. R. Civ. P. 45 on John Doe's internet service provider ("ISP") for the sole purpose of obtaining personally identifiable information.

Pursuant to Fed. R. Civ. P. 26(d), discovery may not take place prior to a Fed. R. Civ. P. 26(f) conferral. Regardless, upon a showing of good cause, the Court may authorize expedited, limited discovery "narrowly tailored to seek information necessary to support expedited or preliminary relief." *Avaya, Inc. v. Acumen Telecom Corp.*, No. 10-cv-

03075-CMA-BNB, 2011 WL 9293, at *2 (D. Colo. Jan. 3, 2011).

A review of the Motion indicates that there is no other feasible method for Plaintiff to obtain the identity of John Doe other than through service of a third party subpoena prior to the commencement of discovery in this matter. Accordingly,

IT IS HEREBY **ORDERED** that the Motion [#9] is **GRANTED in part** as follows:

1. Plaintiff may serve a third party subpoena pursuant to Fed. R. Civ. P. 45 on John Doe's ISP for the limited purpose of ascertaining the personally identifiable information of John Doe as identified by the IP address 24.9.11.70.
2. The subpoena shall be limited to providing Plaintiff with the name, address, telephone number, and e-mail address of the subscriber to whom the ISP has assigned the applicable IP address.
3. Plaintiff shall also serve a copy of this Order with the subpoena. The ISP shall notify the subscriber that his or her identity has been subpoenaed by Plaintiff.
4. Plaintiff may only use the information disclosed in response to the subpoena for the purpose of protecting and enforcing its rights as set forth in the Complaint [#1]. The Court warns Plaintiff that improper use of the information obtained by the subpoena may result in sanctions.

Dated: February 14, 2013

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kristen L. Mix".

Kristen L. Mix
United States Magistrate Judge