

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

MALIBU MEDIA, LLC, :
 plaintiff, :
 : :
v. : CASE NO. 3:17-cv-00277-AVC
 : :
JOHN DOE, :
 defendant. :

**ORDER GRANTING MOTION FOR LEAVE TO SERVE THIRD PARTY
SUBPOENA PRIOR TO A RULE 26(f) CONFERENCE**

The plaintiff, Malibu Media LLC, alleges that the defendant, John Doe, identified only by his IP address, committed copyright infringement by distributing the plaintiff's adult films using BitTorrent, a peer-to-peer file distribution network. The plaintiff moves pursuant to Fed R. Civ. P. 26(d)(1) for leave to serve a third-party subpoena on Doe's internet service provider ("ISP") for the limited purpose of discovering Doe's identity; only with Doe's identity will the plaintiff be able to serve Doe with process and proceed with the case. For substantially the reasons set forth in the plaintiff's motion and supporting documents, the court GRANTS the motion, having concluded that the plaintiff has established good cause for entry of this order.

The plaintiff acknowledges the concerns raised by many courts around the nation that, given the nature of the films allegedly distributed by the defendants, they may feel coerced to settle these suits merely to prevent public disclosure of the

defendants' identifying information.¹ See, e.g., Malibu Media, LLC v. Doe, 2015 WL 4092417 (S.D.N.Y.); Malibu Media, LLC v. Doe, 2015 WL 1780965 (S.D.N.Y.); Malibu Media, LLC v. Doe, 2015 WL 4923114 (S.D.N.Y.). This court shares these concerns. This order is therefore subject to the following conditions and limitations:

1. The plaintiff may subpoena the defendant's ISP only to obtain the defendant's name and address, **but not the defendant's e-mail or telephone number**. The plaintiff may only use the defendant's name and address, if obtained by the defendant's ISP, for the purposes of this litigation; the plaintiff is ordered not to disclose the defendant's name or address, or any other identifying information other than the defendant's ISP number, that the plaintiff may subsequently learn. The plaintiff shall not threaten to disclose any of the defendant's identifying information. The defendant will be permitted to litigate this case anonymously unless and until this court orders otherwise and only after the defendant has had an opportunity to challenge the disclosure. Therefore, the plaintiff is ordered not to publicly file any of the defendant's identifying information and to file all documents containing the defendant's identifying information under seal.
2. The plaintiff may immediately serve a Rule 45 subpoena on the defendant's ISP to obtain the defendant's name and current and permanent address. The plaintiff is expressly not permitted to subpoena the ISP for the defendant's e-mail addresses or telephone numbers. The plaintiff shall serve the defendant's ISP with a copy of the complaint, this order, and the subpoena.
3. After having been served with the subpoena, the ISP will delay producing to the plaintiff the

¹ The plaintiff consents to conditions in this order prohibiting it from initiating a settlement with the defendant prior to serving him with the complaint, as well as an order allowing the defendant to proceed anonymously.

subpoenaed information until after it has provided the defendant John Doe with:

- a. Notice that this suit has been filed naming the defendant as the one that allegedly downloaded copyright protected work;
- b. A copy of the subpoena, the complaint filed in this lawsuit, and this order;

and

- c. Notice that the ISP will comply with the subpoena and produce to the plaintiff the information sought in the subpoena unless, within 60 days of service of the subpoena on the defendant by the ISP, the defendant files a motion to quash the subpoena or for other appropriate relief in this court. If a timely motion to quash is filed, the ISP shall not produce the subpoenaed information until the court acts on the motion.
4. The defendant's ISP will have 60 days from the date of service of the Rule 45 subpoena upon it to serve the defendant John Doe with a copy of the complaint, this order, and the subpoena. The ISP may serve the defendant John Doe using any reasonable means, including written notice sent to his or her last known address, transmitted either by first class mail or via overnight service.
 5. The defendant John Doe shall have 60 days from the date of service of the Rule 45 subpoena and this order upon him to file any motions with this court contesting the subpoena (including a motion to quash or modify the subpoena), as well as any request to litigate the subpoena anonymously. The ISP may not turn over the identifying information of the defendant to the plaintiff before the expiration of this 60-day period. Additionally, if the defendant or the ISP files a motion to quash or modify the subpoena, or a request to litigate the subpoena anonymously, the ISP may not turn over any information to the plaintiff until the issues have been addressed and the court issues an order instructing the ISP to resume turning over the requested discovery.

6. The defendant's ISP shall preserve any subpoenaed information pending the resolution of any timely filed motion to quash.
7. The defendant's ISP shall confer with the plaintiff and shall not assess any charge in advance of providing the information requested in the subpoena. If the defendant's ISP receives a subpoena and elects to charge for the costs of production, it shall provide a billing summary and cost report to the plaintiff.
8. Any information ultimately disclosed to the plaintiff in response to a Rule 45 subpoena may be used by the plaintiff solely for the purpose of protecting the plaintiff's rights as set forth in its complaint.

It is so ordered this 22nd day of March 2017, at
Hartford, Connecticut.

_____/s/_____
Alfred V. Covello,
United States District Judge