

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

TCYK, LLC,

Plaintiff,

vs.

Case No. 2:13-cv-688
Judge Marbley
Magistrate Judge King

JOHN DOES 1-37,

Defendants.

ORDER

This is a copyright action in which plaintiff alleges that defendants copied and distributed plaintiff's copyrighted work, the motion picture "The Company You Keep." *Complaint*, Doc. No. 1, ¶ 5. Defendants are currently identified only by IP addresses. *Exhibit B*, attached to *Complaint*. On the same day that the *Complaint*, Doc. No. 1, was filed, plaintiff also filed an *ex parte* motion seeking to conduct limited, expedited discovery of non-party internet service providers in order to determine the identities of defendants. Doc. No. 3. Specifically, plaintiff sought leave to serve a subpoena pursuant to Fed. R. Civ. P. 45 on certain ISPs in order to discover the name, address(es), telephone number(s), e-mail address(es), and Media Access Control ("MAC") addresses of each Doe defendant whom plaintiff has identified to date (as well as those whom plaintiff may identify in the future). *Id.* at pp. 20-21. This Court granted plaintiff's *ex parte* motion, concluding that plaintiff had established good cause because it could not meet its service obligation under Fed.

R. Civ. P. 4 without the requested discovery. *Order*, Doc. No. 4, pp. 1-2.

This matter is now before the Court for consideration of a motion to quash and to sever filed by "John Doe." *Motion to Quash*, Doc. No. 6. This movant argues that the claims against each Doe defendant should be severed, and that the subpoena issued to the movant's ISP pursuant to this Court's order should be quashed because (1) the movant's internet was not password protected and an unauthorized user may have committed the alleged copyright infringement, (2) revealing the movant's name will cause an "undue burden" and "result[] in the invasion of the [movant's] privacy," and (3) the subpoena seeks irrelevant information because identification of the Doe defendants by IP address does not identify the identity of the alleged copyright infringers. *Id.* at pp. 1-4. This order is being issued to address problems presented by the *Motion to Quash*.

First, Fed. R. Civ. P. 11 provides the requirements for a party's filings with the Court:

Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. . . . The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

Fed. R. Civ. P. 11(a). The signing requirement is important for, among other reasons, the representations that accompany it concerning the basis for the claims, defenses, or statements made in the paper being filed, see Fed. R. Civ. P. 11(b), which, if untrue, can lead to the imposition of sanctions against the filer under Rule 11(c).

In the case presently before the Court, the *Motion to Quash*, Doc. No. 6, has been filed bearing only the typed "signature" of an unidentified Doe defendant:

John Doe

John Doe
Pro se

Id. at p. 5. It appears that the movant has intentionally withheld his or her real name. Consequently, the signature requirement of Rule 11(a) has not been satisfied. The Court also notes that the movant has not identified his or her email address, telephone number or IP address.

The movant argues that revealing his or her name will result in an "undue burden" and "invasion of the [movant's] privacy." *Motion to Quash*, pp. 1-2. The Court does not, however, construe the argument as a sufficient request to proceed anonymously in this action.¹ Allowing a party to proceed pseudonymously is the exception and not the rule. *Citizens for a Strong Ohio v. Marsh*, 123 F. App'x 630, 636 (6th Cir. 2005). In order to proceed anonymously, a party must show that the need for doing so substantially outweighs the general presumption that a party's identity is public information; the party must also show that the need for privacy substantially outweighs the risk of unfairness to the opposing party. *E.E.O.C. v. Care Centers Mgmt. Consulting, Inc.*, No. 2:12-cv-207, 2012 WL 4215748, at *3 n.2 (E.D.

¹ The Court also notes that similar arguments made in related cases have been determined by this Court to be insufficient to justify a motion to quash a subpoena. See *TCYK, LLC v. John Does 1-47*, No. 2:13-cv-539, 2013 WL 4805022 (S.D. Ohio Sept. 9, 2013) (denying a motion to quash a subpoena for expedited discovery); *TCYK, LLC v. John Does 1-9*, No. 2:13-cv-536, 2013 WL 4719048 (S.D. Ohio Sept. 3, 2013) (denying a motion to quash a subpoena for expedited discovery and to sever the claims against each Doe defendant).

Tenn. Sept. 18, 2012). Even a desire to avoid persistent contact by a plaintiff has been found to be an inadequate basis for allowing a party to proceed anonymously. See, e.g., *Malibu Media, LLC v. John Does 1-13*, No. CV 12-1156(JFB)(ETB), 2012 WL 2325588, at *2 (E.D.N.Y. June 19, 2012).

Accordingly, within fourteen (14) days of this order, the movant shall submit for filing a signed copy of the *Motion to Quash* which contains the information required by Rule 11(a). Alternatively, the movant may file, within fourteen (14) days, a motion to proceed anonymously. To the extent that the movant has reasons for seeking protection of his or her identity from disclosure, he or she may submit the motion under seal and request leave to proceed with the motion *ex parte*. The movant's failure to respond to this order as directed may result in an order striking the *Motion to Quash*.

September 18, 2013

s/Norah McCann King
Norah M^cCann King
United States Magistrate Judge