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

BREAKING GLASS PICTURES,

Plaintiff,

vs.

Case No. 2:13-cv-849
Judge Sargus
Magistrate Judge King

JOHN DOES 1-32,

Defendants.

OPINION AND ORDER

This is a copyright action in which plaintiff alleges that defendants copied and distributed plaintiff's copyrighted work, the motion picture "K-11." *Complaint*, Doc. No. 1, ¶ 5. Defendants are currently identified only by internet protocol ("IP") addresses. *Exhibit B*, attached to *Complaint*. This matter is now before the Court on defendant Doe No. 32's *Motion to Quash or Modify Subpoena* ("*Defendant's Motion*"), Doc. No. 5. For the reasons that follow, *Defendant's Motion* is **DENIED**.

I. BACKGROUND

Plaintiff Breaking Glass Pictures is a developer, producer, and/or distributor of motion pictures that has exclusive ownership rights over a motion picture entitled "K-11." *Complaint*, ¶¶ 5, 8, 9. Plaintiff alleges that defendants Doe 1-32 (collectively, "Doe defendants" or "unidentified defendants") copied and distributed plaintiff's copyrighted work, K-11. *Id.* at ¶ 5. According to plaintiff, Doe defendants used a peer-to-peer ("P2P") network known as

"BitTorrent protocol" or "torrent." *Id.* Plaintiff alleges that individuals, such as the unidentified defendants, joined together as a "swarm" in order to use the BitTorrent protocol to illegally download copyrighted material:

> The BitTorrent protocol makes even small computers with low bandwidth capable of participating in large data transfers across a P2P network. The initial file-provider intentionally elects to share a file with a torrent network. This initial file is called a seed. Other users ("peers") connect to the network and connect to the seed file to download. As yet additional peers request the same file each additional user becomes a part of the network from where the file can be downloaded. However, unlike a traditional peer-to-peer network, each new file downloader is receiving a different piece of the data from users who have already downloaded the file that together comprises the whole. This piecemeal system with multiple pieces of data coming from peer members is usually referred to as a "swarm." The effect of this technology makes every downloader also an uploader of the illegally transferred file(s). This means that every "node" or peer user who has a copy of the infringing copyrighted material on a torrent network can also be a source of download, and thus distributor for that infringing file.

Id.

Plaintiff goes on to allege that the possibility of successfully downloading increases when more peers join the swarm:

> This distributed nature of BitTorrent leads to a rapid viral spreading of a file throughout peer users. As more peers join the swarm, the likelihood of a successful download increases. Because of the nature of a BitTorrent protocol, any seed peer that has downloaded a file prior to the time a subsequent peer downloads the same file can automatically be a source for the subsequent peer so long as that first seed peer's computer is online at the time the subsequent peer downloads a file. Essentially, because of the nature of the swarm downloads as described above, every infringer is stealing copyrighted material from other potential infringers in numerous jurisdictions around the world, and each is also distributing infringing material.

Id. at ¶ 6.

According to plaintiff, Doe defendants' copyright infringements

permit them and others to illegally obtain and distribute plaintiff's copyrighted works at no cost. *Id.* at ¶ 8. Distributing even a portion of an unlawful copy of a copyrighted work, such as K-11, "can result in the nearly instantaneous worldwide distribution of that single copy to an unlimited number of people." *Id.*

Plaintiff filed this action on August 28, 2013, alleging that the Doe defendants' unauthorized copying, distribution, and use of plaintiff's copyrighted work violated plaintiff's exclusive rights in K-11. *Id.* at ¶¶ 12-17. Plaintiff alleges that Doe defendants' willful, intentional, wanton and/or malicious and/or outrageous acts of copyright infringement (made with full knowledge of plaintiff's ownership copyrights of K-11) will cause plaintiff irreparable injury unless they are restrained and enjoined. *Id.* at ¶¶ 18-21. Plaintiff seeks statutory and punitive damages for each act of infringement of its copyright as well as costs and attorneys' fees. *Id.* at ¶ 22-25. Plaintiff also seeks injunctive relief prohibiting each Doe defendant from further infringing plaintiff's copyright and ordering each Doe defendant to destroy all copies of the copyrighted K-11 made in violation of plaintiff's copyrights. *Id.* at ¶ 26.

At the time the action was filed, plaintiff did not know the names of the Doe defendants. *Id.* at ¶ 10. Instead, plaintiff knew each defendant only by (1) the IP address assigned to each Doe defendant by his or her internet service provider ("ISP") and (2) the date and time that the alleged infringing activity of each Doe defendant was observed. *Id.* at ¶¶ 10, 16. Plaintiff alleges that each Doe defendant committed violations of the same law, *i.e.*, 17

U.S.C. § 101, *et seq.*, "within the same series of transactions or occurrences (e.g. downloading and distribution of the same copyrighted Motion Picture [K-11] owned by Plaintiff) and by using the same means (BitTorrent network)." *Id.* at ¶ 11. Plaintiff also alleges that "all of the infringements alleged in this lawsuit arise from the exact same unique copy of Plaintiff's movie as evidenced by the cryptographic hash value.[1] The Defendants are all part of the exact same 'swarm.'" *Id.* According to plaintiff, the Doe defendants' illegal acts occurred in the same series of transactions and the Doe defendants conspired together to copy and/or distribute K-11:

> Defendants' acts occurred in the same series of transactions because each Defendant downloaded and/or distributed, or offered to distribute the Motion Picture [K-11] to other infringers on the network, including the Doe Defendants and/or other network users, who in turn downloaded and/or distributed the Motion Picture. Therefore, the Defendants each conspired with other infringers on the BitTorrent network to copy and/or distribute the Motion Picture, either in the same transaction or occurrence or a series of transactions or occurrences.

Id.

On the same day that the *Complaint* was filed, plaintiff also filed an *ex parte* motion seeking to conduct limited, expedited discovery of non-party ISPs 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 addresses of each Doe defendant

[1] "That value acts as a 'unique digital fingerprint' that ensures a piece of data belongs in a particular torrent file." *Malibu Media, LLC v. Pelizzo*, No. 12-22768-CIV-SEITZ/SIMONTON, 2012 U.S. Dist. LEXIS 180980, at *4 (S.D. Fla. Dec. 20, 2012) (citations omitted).

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.

On September 25, 2013, plaintiff issued a subpoena to Comcast Cable, seeking information attached to certain IP addresses ("the subpoenaed information"):

> In accordance with the attached court order, please provide all records and information sufficient to identify the people or entities whose Internet Protocol Address ("IP Address") are listed in Attachment A to this Subpoena including the following: personal and business names, any and all addresses, any and all telephone numbers, any and all e-mail addresses, and Media Access Control addresses ("MAC Addresses").

Subpoena, attached to Doc. No. 11 as ***Exhibit A***. The subpoena identified a response date of November 9, 2013. ***Id.***

Doe No. 32 ("defendant") filed ***Defendant's Motion*** on November 7, 2013, seeking to quash the subpoena and to sever the claims against the various Doe defendants. Specifically, defendant argues that the claims against each Doe Defendant should be severed, and that the subpoena issued to defendant's ISP pursuant to this Court's order should be quashed because (1) the subpoena subjects Comcast Cable Communications to an undue burden, (2) the subpoena subjects Doe Defendant #32 to an undue burden and invades his privacy because it requires that his name be revealed, (3) the subpoena subjects Doe Defendant #32 to an undue burden because he does not reside within 150 miles of this Court, (4) identification of a Doe Defendant does not

necessarily identify the alleged copyright infringer, and (5) the alleged infringement by each Doe Defendant does not arise out of the same transaction, occurrence, or series of transactions or occurrences. *Id.* at pp. 1-5. The moving Doe Defendant also seeks to proceed anonymously in this action to protect his "personally identifying information." *Id.* at p. 1. Plaintiff opposes ***Defendant's Motion, Plaintiff's Memorandum in Opposition to Doe 32's Motion to Quash or Modify Subpoena,*** Doc. No. 11. Defendant has not filed a reply. This matter is now ripe for consideration.

II. REQUEST TO QUASH SUBPOENAS

A. Standard

The Federal Rules of Civil Procedure grant parties the right to "obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense." Fed. R. Civ. P. 26(b)(1). Relevance for discovery purposes is extremely broad. ***Lewis v. ACB Bus. Servs., Inc.,*** 135 F.3d 389, 402 (6th Cir. 1998). However, "district courts have discretion to limit the scope of discovery where the information sought is overly broad or would prove unduly burdensome to produce." ***Surles ex rel. Johnson v. Greyhound Lines, Inc.,*** 474 F.3d 288, 305 (6th Cir. 2007) (citing Fed. R. Civ. P. 26(b)(2)). In determining the proper scope of discovery, a district court balances a party's "right to discovery with the need to prevent 'fishing expeditions.'" ***Conti v. Am. Axle & Mfg., Inc.,*** 326 F. App'x 900, 907 (6th Cir. 2009) (quoting ***Bush v. Dictaphone Corp.,*** 161 F.3d 363, 367 (6th Cir. 1998)).

Under Rule 45 of the Federal Rules of Civil Procedure, parties

may command a nonparty to, ***inter alia***, produce documents. Fed. R. Civ. P. 45(a)(1). Rule 45 further provides that "the issuing court must quash or modify a subpoena that . . . requires disclosure of privileged or other protected matter, if no exception or waiver applies; or subjects a person to undue burden." Fed. R. Civ. P. 45(c)(3)(A)(iii), (iv). Although irrelevance or overbreadth are not specifically listed under Rule 45 as a basis for quashing a subpoena, courts "have held that the scope of discovery under a subpoena is the same as the scope of discovery under Rule 26." ***Hendricks v. Total Quality Logistics, LLC***, 275 F.R.D. 251, 253 (S.D. Ohio 2011) (citations and quotations omitted). The movant bears the burden of persuading the court that a subpoena should be quashed. ***See, e.g., Baumgardner v. La. Binding Serv., Inc.***, No. 1:11-cv-794, 2013 U.S. Dist. LEXIS 27494, at *4 (S.D. Ohio Feb. 28, 2013); ***Williams v. Wellston City Sch. Dist.***, No. 2:09-cv-566, 2010 U.S. Dist. LEXIS 122796, at *21 (S.D. Ohio Nov. 2, 2010).

B. Discussion

Defendant argues, first, that the subpoena should be quashed because the subpoenaed information is not relevant to this action. ***See Defendant's Motion***, pp. 2-3. Specifically, defendant argues that the identity of the subscriber through an IP address does not necessarily provide the identity of the alleged infringer. ***Id***. This argument is not well taken.

As noted ***supra***, the Court previously concluded that plaintiff's request for expedited discovery was supported by good cause. ***Order***, Doc. No. 4 (citing ***Arista Records, LLC v. Does 1-15***, No. 2:07-cv-450,

2007 WL 5254326, at *2 (S.D. Ohio May 17, 2007)). *See also Breaking Glass Pictures v. Does 1-99*, No. 2:13-cv-389, 2013 U.S. Dist. LEXIS 88090 (S.D. Ohio June 24, 2013) (finding good cause and permitting expedited discovery in a copyright infringement case in order to obtain the identity of each Doe defendant). To the extent that defendant asks the Court to revisit this conclusion, defendant has offered nothing to suggest that the prior decision was erroneous. For example, defendant argues that the mere identification of the subscriber does not necessarily establish that the subscriber illegally downloaded the copyrighted work. *Defendant's Motion*, pp. 2-3. However, nothing in Rule 45 permits a court to quash a subpoena based on "a general denial of liability." *See, e.g., First Time Videos, LLC v. Does 1-500*, 276 F.R.D. 241, 250 (N.D. Ill. 2011). *See also* Fed. R. Civ. P. 45. Instead, arguments related to the merits of the allegations are appropriately addressed in the context of a motion to dismiss a claim or a motion for summary judgment on a claim, rather than on a motion to quash a subpoena. *See, e.g., First Time Videos, LLC*, 276 F.R.D. at 250. Moreover, Rule 26 authorizes broad discovery, including discovery that "appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). Therefore, even if discovery later reveals that it was someone other than the subscriber who violated plaintiff's copyright, the subpoenaed information (*i.e.*, the subscriber's contact information) is likely to lead to the discovery of admissible information, *i.e.*, the identity of the actual alleged infringer.

Defendant also invokes a notion of privacy of identity.

Defendant's Motion, p. 2. Specifically, defendant argues that the subpoena should be quashed and that he should be permitted to proceed anonymously in this matter because the subpoena subjects defendant "to undue burden, in that his name will be revealed to Plaintiff, resulting in the invasion of Defendant's privacy[.]" ***Id***. Defendant's conclusory argument does not, however, explain how disclosure of his name, address, telephone number, e-mail address, and MAC address would harm him or otherwise invade his privacy. Indeed, another district court within this circuit recently rejected similar motions to quash a subpoena seeking the same information. ***See, e.g., Breaking Glass Pictures v. Does 1-283***, No. 3:13-cv-75, 2013 U.S. Dist. LEXIS 83225, at *4-6 (E.D. Tenn. June 13, 2013); ***Sojo Prods., Inc. v. Does 1-67***, Nos. 3:12-cv-599, 3:12-cv-600; 3:12-cv-601, 3:12-cv-602, 3:12-cv-603, 2013 U.S. Dist. LEXIS 58602, at *4-7 (E.D. Tenn. Apr. 24, 2013); ***Safety Point Prods., LLC, v. Does 1-57***, No. 3:12-cv-601, 2013 U.S. Dist. LEXIS 49521, at *3-5 (E.D. Tenn. Apr. 5, 2013). In permitting expedited discovery to enable the plaintiffs in those cases to identify the otherwise unidentified defendants, the District Court for the Eastern District of Tennessee noted that the defendants had not identified any privilege (such as attorney-client or doctor-patient privilege) "that protects a person's name, address or phone from disclosure." ***Breaking Glass Pictures***, 2013 U.S. Dist. LEXIS 83225 at *5. ***See also Sojo Prods., Inc.***, 2013 U.S. Dist. LEXIS 58602 at *5-6. That court concluded that the unidentified defendants had no reasonable expectation of privacy in the subpoenaed information because the defendants had already shared that information with the

ISP in order to obtain internet service. ***Safety Point Prods.***, 2013 U.S. Dist. LEXIS 49521 at *4-5; ***Sojo Prods., Inc.***, 2013 U.S. Dist. LEXIS 58602 at *5-6. ***Cf. Breaking Glass Pictures***, 2013 U.S. Dist. LEXIS 83225 at *5 (concluding that requested information is neither privileged nor protected because defendants already shared the information with the ISP). This Court finds this reasoning persuasive and directly applicable to the case presently before the Court.

The Court also finds without merit defendant's related request to proceed anonymously on the basis of privacy. Allowing a party to proceed anonymously is the exception and not the rule. ***Citizens for a Strong Ohio v. Marsh***, 123 F. App'x 630, 636 (6th Cir. 2005). As noted ***supra***, defendant does not explain how disclosure of his name, address, telephone number, e-mail address, and MAC address would harm the moving defendant. Defendant also has not shown that the need for remaining anonymous substantially outweighs the risk of unfairness to plaintiff or the general presumption that a party's identity is public information. ***See E.E.O.C. v. Care Centers Mgmt. Consulting, Inc.***, No. 2:12-cv-207, 2012 WL 4215748, at *3 n.2 (E.D. Tenn. Sept. 18, 2012). Defendant's request to proceed anonymously is therefore without merit.

Finally, defendant argues that the subpoena should be quashed because it subjects defendant and Comcast Cable Communications to an undue burden. ***Defendant's Motion***, p. 2. This argument is also without merit.

Defendant is not burdened by the subpoena because it is not he who is required to respond to the subpoena; defendant lacks standing to challenge the subpoena on the basis that it burdens - not him –

but his ISP. *See Levitin v. Nationwide Mut. Ins. Co.*, 2:12-cv-34, 2012 U.S. Dist. LEXIS 177738, at *14-15 (S.D. Ohio Dec. 14, 2012) ("Here, the subpoenas are directed to Plaintiff's prior employers. Thus, only Plaintiff's prior employers have standing to challenge the subpoenas on the ground that production of the subpoenaed documents would pose an undue burden expense."); *McNaughton-McKay, Elec. Co. v. Linamar Corp.*, No. 09-cv-11165, 2010 U.S. Dist. LEXIS 59275, at *9-10 (E.D. Mich. June 15, 2010) ("Defendant [which was not the recipient of the subpoena] does not have standing to argue that Chrysler's compliance with the subpoena will cause undue burden where Chrysler has not objected to the subpoena on this ground."). In this regard, the Court notes that the movant's ISP, the entity that actually received the subpoena, has not objected to compliance with the subpoena.

In short, defendant's request to quash the subpoena is without merit.

III. REQUESTS TO SEVER THE DOE DEFENDANTS

Defendant also asks the Court to sever the claims against each of the Doe defendants, contending that joinder is improper under Fed. R. Civ. P. 20. *Defendant's Motion*, pp. 2-3. Rule 20 permits persons to be joined as defendants in one action if (1) "any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences" and (2) the claims against the various defendants share a common question of law or fact. Fed. R. Civ. P. 20(a)(2). "Under the Rules, the impulse is toward

entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged." *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 724 (1966). *See also Brown v. Worthington Steel, Inc.*, 211 F.R.D. 320, 324 (S.D. Ohio 2002) ("Courts liberally permit joinder under Rule 20(a)."") (citations omitted). To that end, courts in this circuit give the terms "transaction" and "occurrence" a broad and liberal interpretation. *Lasa Per L'Industria Del Marmo Societa Per Azioni v. Alexander*, 414 F.2d 143, 147 (6th Cir. 1969). "'The purpose of Rule 20(a) is to promote judicial economy and trial convenience.'" *Evans v. Midland Funding LLC*, 574 F. Supp. 2d 808, 811 (S.D. Ohio 2008) (quoting *Lee v. Dell Prods., L.P.*, No. 3:06cv0001, 2006 WL 2981301, at *7 (M.D. Tenn. Oct. 16, 2006)). "However, even if the requirements of Rule 20 are met, a district court nevertheless retains considerable discretion to sever defendants if it finds that the objectives of the rule are not fostered, or that joinder would result in prejudice, expense, or delay." *Voltage Pictures, LLC v. Does 1-43*, No. 1:13cv465, 2013 U.S. Dist. LEXIS 63764, at *5 (N.D. Ohio May 3, 2013). The Court will address each of the requirements under Rule 20(a)(2).

A. Same Transaction or Series of Transactions

Defendant argues that the alleged infringement "was committed by unrelated defendants, at different times and locations, sometimes using different services, and perhaps subject to different defenses." *Defendant's Motion*, p. 4. Defendant also argues that the allegations that the Doe defendants acted in concert by participating in

BitTorrent technology, ***i.e.***, a "swarm," are insufficient to establish that they engaged in a single transaction or in a series of closely related transactions under Rule 20. ***Id.*** at pp. 3-5. According to defendant, "the individual Defendants still have no knowledge of each other, nor do they control how the protocol works, and Plaintiff has made no allegation that any copy of the work they downloaded came jointly from any of the Doe defendants." ***Id.*** at pp. 4-5.

Federal courts within this circuit and across the country are divided on whether or not membership in the same "swarm" satisfies the joinder requirements of Rule 20. ***See, e.g., Voltage Pictures, LLC***, 2013 U.S. Dist. LEXIS 63764 at *5-6 (collecting cases); ***Patrick Collins, Inc. v. John Does 1-33***, No. 4:12-cv-13309, 2013 U.S. Dist. LEXIS 50674, at *12-14 (E.D. Mich. Feb. 27, 2013) (same); ***Third Degree Films, Inc. v. John Does 1-72***, No. 12-cv-14106, 2013 U.S. Dist. LEXIS 44131, at *17 (E.D. Mich. Mar. 18, 2013). Some courts severing claims in "swarm" cases conclude that simply participating in a "swarm" does not necessarily establish that defendants participated in the same transaction or occurrence. ***See, e.g., Night of the Templar, LLC v. Does 1-25***, 1:13-cv-396, 2013 U.S. Dist. LEXIS 51625, at *9-10 (N.D. Ohio Apr. 10, 2013) (quoting ***Hard Drive Prods., Inc. v. Does 1-188***, 809 F. Supp. 2d 1150, 1151 (N.D. Cal. 2011)); ***Patrick Collins, Inc. v. John Does 1-23***, No. 11-cv-15231, 2012 U.S. Dist. LEXIS 40536, at *9-13 (E.D. Mich. Mar. 26, 2012) ("[T]he court concludes that simply alleging the use of BitTorrent technology, like earlier P2P file sharing protocols, does not comport with the requirements under Rule 20(a) for permissive joinder."). For example, unknown defendants may

access the swarm at different times, *see Night of the Templar, LLC*, 2013 U.S. Dist. LEXIS 51625 at *10; *Patrick Collins, Inc.*, 2012 U.S. Dist. LEXIS 40536 at *10, thereby suggesting that computer users were not acting simultaneously or in concert. *See, e.g., Patrick Collins, Inc.*, 2012 U.S. Dist. LEXIS 40536 at *12; *Patrick Collins, Inc. v. John Does 1-21*, No. 12-12596, 2012 U.S. Dist. LEXIS 187556, at *3-4 (E.D. Mich. Aug. 28, 2012).

Conversely, other courts have concluded that joinder under Rule 20 does not necessarily require simultaneous or concerted action. *See, e.g., Patrick Collins Inc. v. John Does 1-28*, No. 12-13670, 2013 U.S. Dist. LEXIS 11349, at *21 (E.D. Mich. Jan. 29, 2013) (quoting *Patrick Collins, Inc. v. John Does 1-21*, 282 F.R.D. 161, 168 (E.D. Mich. 2012)); *Nucorp, Inc. v. John Does 1-24*, No. 2:11-cv-15222, 2012 U.S. Dist. LEXIS 187547, at *14 (E.D. Mich. Oct. 18, 2012); *Patrick Collins, Inc.*, 282 F.R.D. at 167. Such courts "have permitted joinder, based on the theory that the claims are 'logically related,' and that the collaborative activity of the members of the swarm demonstrates that they engaged in the same transaction or series of transactions." *Voltage Pictures, LLC*, 2013 U.S. Dist. LEXIS 63764 at *6 (collecting cases). *See also Patrick Collins Inc.*, 2013 U.S. Dist. LEXIS 11349 at *14-15 (quoting *In re EMC Corp.*, 677 F.3d 1351, 1358 (Fed. Cir. 2012)). In addition, at least one district court in this circuit has concluded that allegations that defendants, *inter alia*, used the same digital file satisfied Rule 20(a)(2)'s "same transaction, occurrence, or series of transactions or occurrences" requirement. *Third Degree Films v. John Does 1-36*, No. 11-cv-15200,

2012 U.S. Dist. LEXIS 87891, at *28-32 (E.D. Mich. May 29, 2012).

In ***Third Degree Films***, the district court noted that, by virtue of uploading in a "swarm," the unidentified defendants helped pass on pieces of the copyrighted work:

> [E]ach defendant allegedly participated in the same swarm for the same digital encoding of the Work and thereby jointly contributed to the illegal distribution of the Work to others. By undoubtedly uploading to other peers in the swarm, which enabled those peers to upload to still other peers, all 36 Doe Defendants jointly contributed to either growing the swarm or maintaining its existence.

Id. at *27-28. ***See also Voltage Pictures, LLC***, 2013 U.S. Dist. LEXIS 63764 at *11 n.2 ("[E]ach [defendant] participated in the BitTorrent swarm as an uploader (distributor) and downloader (copier) of the illegally transferred file."); ***Patrick Collins Inc.***, 2013 U.S. Dist. LEXIS 11349 at *18-19 (quoting ***Digital Sin, Inc. v. John Does 1-176***, 279 F.R.D. 239, 244 (S.D.N.Y.2012)). Although the court in ***Third Degree Films*** acknowledged that future discovery might reveal that the plaintiff could not satisfy the requirements for joinder under Rule 20(a)(2) or that severance would be appropriate, that court nevertheless concluded that joinder was proper at the initial stages of the litigation. ***Third Degree Films***, 2012 U.S. Dist. LEXIS 87891 at *29-33.

Here, the ***Complaint*** alleges that the Doe defendants used the BitTorrent protocol to join together in a "swarm" in order to illegally download copyrighted material. ***Complaint***, ¶ 5. More specifically, the ***Complaint*** alleges that the unidentified defendants all violated the same law, ***i.e.***, 17 U.S.C. § 101, ***et seq.***, in the same series of transactions, ***i.e.***, downloading and distributing the same

file, K-11, by using the same means, ***i.e.,*** the BitTorrent protocol. ***Id.*** at ¶ 11. According to plaintiff, "[t]he infringed work was included in one file related to the torrent file; in other words, all of the infringements alleged in this lawsuit arise from the exact same unique copy of Plaintiff's movie as evidenced by the cryptographic hash value." ***Id.*** The Doe defendants' alleged wrongful acts occurred in the same series of transactions or occurrences because each defendant downloaded and/or distributed, or offered to distribute, K-11 to other infringers on the network who in turn downloaded and/or further distributed this movie. ***Id.*** Plaintiff therefore believes that the unidentified defendants "each conspired with other infringers on the BitTorrent network to copy and/or distribute the Motion Picture, either in the same transaction or occurrence or in a series of transactions or occurrences." ***Id.***

Construing the terms "transaction" and "occurrence" broadly, ***see Lasa Per L'Industria Del Marmo Societa Per Azioni***, 414 F.2d at 147, and keeping in mind that joinder is strongly encouraged, ***see United Mine Workers of Am.***, 383 U.S. at 724, this Court concludes that plaintiff has alleged facts sufficient to satisfy Rule 20's "same transaction, occurrence, or series of transactions or occurrences" requirement at this preliminary stage of the proceedings. ***See, e.g., Third Degree Films***, 2012 U.S. Dist. LEXIS 87891 at *29-33; ***Patrick Collins, Inc. v. John Does 1-21***, 286 F.R.D. 319, 321-22 (E.D. Mich. 2012).

B. Common Question of Law or Fact

Rule 20 also requires that a plaintiff establish that claims

against all defendants share a common question of fact or law. Fed. R. Civ. P. 20(a)(2)(B). Here, as discussed ***supra***, plaintiff has alleged that the Doe defendants (1) violated the same law, ***i.e.***, 17 U.S.C. § 101, ***et seq.,*** (2) infringed plaintiff's rights in K-11 by using the same digital file, and (3) used the same BitTorrent protocol. The Court concludes that these allegations, at this preliminary stage, satisfy Rule 20(a)(2)(B). ***See, e.g., Third Degree Films***, 2012 U.S. Dist. LEXIS 87891 at *13-14 (finding that the plaintiff had adequately pled facts satisfying Rule 20(a)(2)(B) where plaintiff alleged the same causes of action involving the same digital file and the same investigation led to discovery of defendants' IP addresses); ***Patrick Collins, Inc.***, 2013 U.S. Dist. LEXIS 50674 at *11; ***Patrick Collins, Inc.***, 286 F.R.D. at 322.

This Court therefore concludes that its discretion is better exercised in permitting joinder at this stage of the proceedings. ***Cf. Sojo Prod. Inc.***, 2013 U.S. Dist. LEXIS 58602 at *8 (denying a motion to sever without prejudice to renewal at a later stage of the litigation).

Defendant's Motion, Doc. No. 5, is therefore **DENIED**.

February 5, 2014

s/Norah McCann King
Norah M^{c}Cann King
United States Magistrate Judge