

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Strike 3 Holdings, LLC v. John Doe subscriber assigned IP address
98.208.36.125

No. 2:25-cv-00700-TLN-CKD (E.D. Cal. Apr. 3, 2025) · No. No. 2:25-cv-00700-TLN-CKD · Decided April 3,
2025

SUMMARY

The court grants Strike 3 Holdings, LLC’s ex parte application to serve a third-party subpoena on the internet service provider associated with the identified IP address before the Rule 26(f) conference. The order limits discovery to the true name and address of the subscriber, imposes notice and confidentiality protections, and provides an opportunity for the potential defendant to challenge the subpoena. The court also establishes reporting and informal-conference procedures before formal service of process.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Carolyn K. Delaney
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 3, 2025
DOCKET	No. 2:25-cv-00700-TLN-CKD
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff sought ex parte permission to conduct expedited discovery and serve a third-party subpoena on the defendant’s internet service provider before the Rule 26(f) conference to identify an unnamed defendant.
STANDARD OF REVIEW	Good cause standard for expedited discovery under Federal Rule of Civil Procedure 26(d); the court also considered the five-factor framework for subpoenas seeking identification of anonymous defendants.
PRECEDENTIAL VALUE	unpublished district court order

TOPICS

discovery dispute

copyright infringement

service of process

civil procedure

constitutional law

PRACTICE AREAS

civil procedure

copyright litigation

anonymous-defendant discovery

constitutional privacy

QUESTIONS PRESENTED

1. Whether plaintiff established good cause to obtain expedited discovery before the Rule 26(f) conference.
2. Whether the court should authorize a subpoena to the ISP to identify the person or entity associated with the subject IP address.
3. What privacy and procedural safeguards should govern the expedited discovery and disclosure of the potential defendant's identity.

HOLDINGS

1. The court may authorize expedited discovery before the Rule 26(f) conference when good cause exists, meaning the need for expedited discovery, considered in light of the administration of justice, outweighs prejudice to the responding party.
2. The court granted plaintiff's ex parte application and authorized a subpoena to the ISP seeking only the true name and address of the person or entity to whom the subject IP address was assigned.
3. Expedited discovery could proceed only with safeguards addressing the potential defendant's privacy and the risk of mistaken identification, including notice, an opportunity to move to quash, confidentiality restrictions, and limits on formal service.

KEY QUOTATIONS

“Good cause exists ‘where the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party.’” (at 2)

“To simply issue an order for expedited discovery as requested here, raises a serious constitutional question of the IP address owner’s reasonable expectation of privacy.” (at 3)

“Establishing that the person identified by discovery is the person who infringed upon the copyright will likely require additional proofs beyond the fact that the individual is listed as the subscriber on the account from which the infringing activity originated.” (at 4)

FACTUAL BACKGROUND

Strike 3 Holdings alleged that an unidentified person used IP address 98.208.36.125 to download and distribute copyrighted adult films through BitTorrent. Because plaintiff could identify the alleged infringer only through the IP address, it sought a subpoena to the associated internet service provider for the subscriber's true name and address. The court noted that an IP-address subscriber may not be the person who performed the alleged downloading and that mistaken identification could cause embarrassment, reputational harm, or coercive settlement pressure.

PROCEDURAL HISTORY

Plaintiff filed a copyright infringement action on February 27, 2025, identifying the defendant only by an IP address. Plaintiff then filed an ex parte application for leave to serve an ISP subpoena before the Rule 26(f) conference. The court granted the application subject to limited discovery, notice, privacy protections, and restrictions on service and disclosure.

DISPOSITION

other

CASES CITED

- Semitool, Inc. v. Tokyo Electron America, 208 F.R.D. 273, 276 (N.D. Cal. 2002)
- UMG Recordings, Inc. v. Doe, 2008 WL 4104207, at *3 (N.D. Cal. Sept. 4, 2008)
- Arista Records, LLC v. Doe 3, 604 F.3d 110, 119 (2d Cir. 2010)
- Sony Music Entertainment Inc. v. Does 1-40, 326 F. Supp. 2d 556, 564-65 (S.D.N.Y. 2004)
- Griswold v. Connecticut, 381 U.S. 479, 485 (1965)
- Soto v. City of Concord, 162 F.R.D. 603, 618 (N.D. Cal. 1995)
- In re BitTorrent Adult Film Copyright Infringement Cases, 296 F.R.D. 80, 84, 90 (E.D.N.Y. 2012)
- Manny Film LLC v. Doe Subscriber Assigned IP Address 50.166-88-98, 98 F. Supp. 3d 693, 695 (D.N.J. 2015)
- Malibu Media, LLC v. John Does 1-18, No. 12-7643(NLH/AMD), 2013 U.S. Dist. LEXIS 155911, at *8-9 (D.N.J. Mar. 22, 2013)

OPINION

Strike 3 Holdings, LLC v. John Doe subscriber assigned IP address 98.208.36.125

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 STRIKE 3 HOLDINGS, LLC, No. 2:25-cv-00700-TLN-CKD

12 Plaintiff, 13 v. ORDER 14 JOHN DOE subscriber assigned IP address 98.208.36.125, 15
Defendant. 16 17

18 I. INTRODUCTION

19 Plaintiff filed this matter on February 27, 2025, alleging it holds the copyright on various 20
adult films, and that defendant is infringing on those copyrights by anonymously downloading 21
and distributing Strike 3’s films to others, using the BitTorrent protocol. (ECF No. 1.) Plaintiff 22
can only identify defendant by his or her IP address, through which defendant downloads and 23
distributes the films. (Id.) To acquire the true name and address of defendant, plaintiff brings an 24

ex parte application to engage in expedited discovery and serve a third-party subpoena, prior to a
25 Rule 26(f) conference, on defendant's internet service provider ("ISP"). (ECF No. 3-1.)
Plaintiff

26 asserts that without the subpoena it will be unable to serve the complaint on defendant and will,
27 therefore, be prevented from vindicating its copyright. (Id.) 28 ///

1 II. DISCUSSION

2 A. Federal Rules of Civil Procedure 26(d) and (f)

3 Rule 26(d) states "[a] party may not seek discovery from any source before the parties
4 have conferred as required by Rule 26(f), except in a proceeding excepted from initial disclosure
5 under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order."

6 Rule 26(f) contemplates a pre-discovery conference between the parties to facilitate the
7 development of a discovery plan that will control throughout the litigation. Obviously, in the 8
absence of knowledge of the actual party being sued, no discovery conference can be held. Thus, 9
plaintiff seeks relief from that requirement from the court. 10 Courts in the Ninth Circuit apply the
"good cause" standard in deciding whether to permit 11 early discovery. See *Semitool, Inc. v.*
Tokyo Electron America, Inc., 208 F.R.D. 273, 276 (N.D.

12 Cal. 2002). "Good cause exists 'where the need for expedited discovery, in consideration of the
13 administration of justice, outweighs the prejudice to the responding party.'" *Id.* Good cause for
14 expedited discovery has been found in cases involving claims of infringement and unfair 15
competition. *Id.* In infringement cases, expedited discovery is frequently limited to allowing 16
plaintiffs to identify Doe defendants. See *UMG Recordings, Inc. v. Doe*, 2008 WL 4104207, at 17
*3 (N.D. Cal. Sept. 4, 2008). 18 B. Standard for Determining Whether to Issue the Requested
Subpoena 19 In *Arista Records, LLC v. Doe 3*, the Second Circuit articulated five principal factors
to 20 consider when a defendant seeks to quash a subpoena in a situation like this: (1) the
concreteness 21 of plaintiff's showing of a prima facie claim of actionable harm; (2) the specificity
of the 22 discovery requests; (3) the absence of alternative means to obtain the subpoenaed
information; (4) 23 the need for subpoenaed information to advance the claim; and (5) defendant's
expectation of 24 privacy. 604 F.3d 110, 119 (2nd Cir. 2010) (citing *Sony Music Entm't Inc. v.*
Does 1-40, 326 25 F.Supp.2d 556, 564-65 (S.D.N.Y. 2004)). While no defendant has appeared in
this matter and 26 there is no pending motion to quash, the factors enunciated by the Second
Circuit in *Arista* are 27 useful in determining whether to grant plaintiff's ex parte application. 28

//// 1 Here, the first four factors weigh in plaintiff's favor: (1) plaintiff has stated a prima facie 2
claim by providing a list of downloads of its copyrighted films that had been downloaded to the 3
subject IP address; (2) plaintiff specifically seeks to discover only the name and contact 4
information for the individual using that IP address; (3) plaintiff is unable to identify this 5
individual other than by subpoenaing the ISP; and (4) without identifying defendant, plaintiff will
6 be unable to proceed with the instant copyright action. 7 At the same time, the last factor weighs
against granting plaintiff's request, without 8 additional safeguards. To simply issue an order for

expedited discovery as requested here, raises a serious constitutional question of the IP address owner's reasonable expectation of privacy. C. The Need for Privacy Protection As the United States Supreme Court made clear in *Griswold v. Connecticut*, "specific guarantees in the Bill of Rights have penumbras formed by emanations from those guarantees that give them life and substance." 381 U.S. 479, 485 (1965). The Supreme Court found a right to privacy emanating from several Amendments, notably the First, Third, Fourth, Fifth, and Fourteenth. *Id.* Privacy can encompass fundamental and traditional activities such as marriage, medical records, or more recently found rights such as commercial privacy. Still, the right to privacy is not absolute, and is balanced against other societal interests, especially in the litigation context. See *Soto v. City of Concord*, 162 F.R.D. 603, 618 (N.D. Cal. 1995). Here, the limited privacy protection afforded under the Constitution must be considered for the person who will be identified by the procedure of serving a subpoena on an ISP. Indeed, the assumption that the person who pays for Internet access at a given location is the same individual who allegedly downloaded a single sexually explicit film is tenuous, and one that has grown more so over time. An IP address provides only the location at which one of any number of computer devices may be deployed, much like a telephone number can be used for any number of telephones. As one introductory guide states: If you only connect one computer to the Internet, that computer can use the address from your ISP. Many homes today, though, use routers to share a single Internet connection between multiple computers. Wireless routers have become especially popular in recent years, avoiding the need to run network cables between rooms. If you use a router to share an Internet connection, the router gets the IP address issued directly from the ISP. Then, it creates and manages a subnet for all the computers connected to that router. Thus, it is no more likely that the subscriber to an IP address carried out a particular computer function—here the purported illegal downloading of a single pornographic film—than to say an individual who pays the telephone bill made a specific telephone call. In *re BitTorrent Adult Film Copyright Infringement Cases*, 296 F.R.D. 80, 84 (E.D.N.Y. 2012). As such, "[e]stablishing that the person identified by discovery is the person who infringed upon the copyright will likely require additional proofs beyond the fact that the individual is listed as the subscriber on the account from which the infringing activity originated." *Manny Film LLC v. Doe Subscriber Assigned IP Address 50.166-88-98*, 98 F.Supp.3d 693, 695 (D.N.J. 2015) (citing *Malibu Media, LLC v. John Does 1-18*, No. 12-7643(NLH/AMD), 2013 U.S. Dist. LEXIS 155911, at *8-9 (D.N.J. Mar. 22, 2013). Finally, consideration must be given to the fact that this particular case—focused on the alleged theft of pornographic films—would have a different effect on an individual wrongly identified as a defendant than would a run-of-the-mill copyright infringement case. Such a wrongly named defendant would likely feel exposed to embarrassment and reputational damage, even before he or she could engage counsel and litigate the issue of mistaken identity through a motion to quash. Moreover, the possibility exists of being forced into a settlement to avoid the effects of such "exposure." See *In re*

BitTorrent, *supra*, 296 F.R.D. at 90.

21 III. CONCLUSION

22 Accordingly, IT IS HEREBY ORDERED: 23 1. Plaintiff's Ex Parte Application for Leave to
Serve a Third-Party Subpoena Prior 24 to a Rule 26(f) Conference (ECF No. 3) is GRANTED on
the terms of this order. 25 2. Plaintiff may engage in limited expedited discovery to establish the
identity of the 26 owner of the IP address identified in the complaint by serving a subpoena on the
ISP provider of 27 the subject IP address. 28 //// 1 3. The ISP shall be served with a subpoena
seeking only the true name and address of 2 the person or entity to whom the subject IP address is
assigned. 3 4. Within ten (10) days after plaintiff has obtained the actual identity of the person or 4
entity associated with the subject IP address, plaintiff shall serve a copy of this order on that 5
person or entity. Plaintiff need not mail such a copy if the action is dismissed prior to the 6
expiration of that ten-day period. 7 5. No formal service of process shall be permitted absent
further order of this court. 8 6. The parties—both plaintiff and the potential defendant—are hereby
invited to 9 attend an informal conference before the undersigned for the following purposes: 10 a.
To set a schedule that will allow the defendant an opportunity to file a 11 motion to quash the
subpoena, if there are true and adequate grounds 12 therefor; and 13 b. To establish procedures for
service of process or waiver thereof. 14 7. This informal conference may take place via telephone
or Zoom. The parties 15 should contact the courtroom deputy, Lisa Kennison, at
lkennison@caed.uscourts.gov to arrange 16 an informal conference if they wish to schedule one.
17 8. The parties are advised that attendance at such a conference is voluntary and will 18 not
itself constitute a waiver of service of the complaint, or result in a finding of "appearance" in 19
the litigation, unless the potential defendant agrees to waive service, or the case is resolved and a
20 settlement is placed on the record. 21 9. Not later than 60 days from the date of this order,
plaintiff shall file a status report 22 including the following: 23 a. Whether service of this order has
been effectuated as directed; 24 b. Whether defendant has agreed to attend an informal conference;
and 25 c. If applicable, whether the parties seek a telephonic or in person conference. 26 d. The
status report shall continue to identify the defendant by John or Jane 27 Doe at the subject IP
address. 28 //// 1 10. —'XIf plaintiff makes any routine requests in the status report, including but
not 2 || limited to a request for the court to order that a further status report be filed, then plaintiff
shall 3 || electronically submit a pdf version of a proposed order and shall email a separate
proposed order 4 || in Word format to the Magistrate Judge's email box listed on the court's
website. See Local Rule 5 | 137. 6 11. = After receipt of the status report, the court will schedule
an informal conference, if 7 || necessary. 8 12. A decision by the person identified as the owner of
the subject IP address not to 9 || attend an informal conference will lead to an order substituting the
identified defendant by name, 10 || permitting ordinary service of process, and commencement of
the litigation. 11 13. ——— Plaintiff is cautioned that, until permission is given by the court, it is
not to reveal 12 || the identity of the defendant in or out of court. 13 14. — Nothing in this order
precludes plaintiff and defendant from reaching a settlement 14 | without court participation before

any informal conference is held or formal service of process is 15 | effectuated. 16 | Dated: April 3,
2025 / ae ☐☐ / a Ly a
"7 CAROLYNK.DELANEY
18 UNITED STATES MAGISTRATE JUDGE
19 20 || 5, stri0700.25 21 22 23 24 25 26 27 28