



Malibu Media, LLC v. Doe

2018 | Cited 0 times | D. Connecticut | July 16, 2018

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

MALIBU MEDIA, LLC, Plaintiff, v. JOHN DOE subscriber assigned IP address 68.189.246.135 Defendant.

No. 3:18-cv-1047-VLB

ORDER GRANTING MOTION FOR LEAVE TO SERVE THIRD PARTY SUBPOENA PRIOR TO A RULE 26(f) CONFERENCE Plaintiff Malibu Media LLC alleges that defendant John Doe, identified only by his IP address, committed copyright infringement by distributing adult films using BitTorrent, a peer-to-peer file distribution network. Dkt. No. 1.

Plaintiff moves pursuant to Fed R. Civ. P. 26(d)(1) for leave to serve a third-party for the limited purpose plaintiff be able to serve defendant with process and proceed with the case. Dkt. No. 9-2 at 13 documents, I will GRANT the motion, having concluded that plaintiff has

established good cause for entry of this order.

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

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.). I share these concerns. This order is therefore subject to the following conditions and limitations:

1. s

s e-mail or telephone number. ss, if obtained by plaintiff may subsequently learn. Plaintiff shall not threaten to

be permitted to litigate this case anonymously unless and until this Court orders otherwise and only after defendant has had an opportunity to challenge the disclosure. Therefore, plaintiff is



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information under seal.

2. I Plaintiff is expressly not permitted to subpoena the ISP for

-mail addresses or telephone numbers. Plaintiff shall and the subpoena. 3. After having been served with the subpoena, the ISP will delay

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

a. Notice that this suit has been filed naming 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 1 Plaintiff consents to conditions in this order prohibiting it from initiating a settlement with defendant prior to serving him with the complaint, as well as an order allowing defendant to proceed anonymously. Dkt. No. 9-2 at 5.

to plaintiff the information sought in the subpoena unless, within 60 days of service of the subpoena on defendant by the ISP, 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. Rule 45 subpoena upon it to serve defendant John Doe with a copy

of the complaint, this Order, and the subpoena. The ISP may serve 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. 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 defendant to plaintiff before the expiration of this 60- day period. Additionally, if 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 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 resolution of any timely filed motion to quash.

7. onfer with plaintiff and shall not assess any



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charge in advance of providing the information requested in the charge for the costs of production, it shall provide a billing summary and cost report to plaintiff. 8. Any information ultimately disclosed to plaintiff in response to a

Rule 45 subpoena may be used by plaintiff solely for the purpose of protecting plaintiff's rights as set forth in its complaint.

IT IS SO ORDERED _____/s/_____ Hon. Vanessa L. Bryant United States District Judge

Dated at Hartford, Connecticut: July 16, 2018

