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11 BROS.; COLUMBIA TRISTAR HOME
ENTERTAINMENT; and NEW LINE PRODUCTIONS

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 TWENTIETH CENTURY FOX FILM
16 CORPORATION, a Delaware
corporation; COLUMBIA PICTURES
17 INDUSTRIES, INC., a Delaware
corporation; PARAMOUNT PICTURES
18 CORPORATION, a Delaware
corporation; WARNER BROS.
19 ENTERTAINMENT INC., a Delaware
corporation; COLUMBIA TRISTAR
20 HOME ENTERTAINMENT, INC., a
Delaware corporation; and NEW
21 LINE PRODUCTIONS, INC., a
Delaware corporation,

22 Plaintiffs,

23 vs.

24 DOES 1 - 12,

25 Defendants.

CASE NO. 04-4862

**PLAINTIFFS' MISCELLANEOUS
ADMINISTRATIVE REQUEST PURSUANT
TO LOCAL RULE 7-10(b) FOR LEAVE
TO TAKE DISCOVERY PRIOR TO RULE
26 CONFERENCE**

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U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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1 Pursuant to Local Rule 7-10(b), Plaintiffs seek leave to
2 take discovery prior to a Rule 26 conference for the reasons set
3 forth herein, and in the Declarations filed concurrently
4 herewith.

5 **I. INTRODUCTION AND FACTUAL BACKGROUND**

6 Plaintiffs, who are motion picture studios, filed this
7 action to stop Defendants from distributing to others over the
8 Internet unauthorized copies of copyrighted motion pictures.
9 Plaintiffs sued Defendants as Doe Defendants because Defendants
10 committed their infringements behind fictitious "screen names."
11 See Complaint and Declaration of Chad Tilbury ("Tilbury Decl."),
12 ¶ 6. By gaining access to the Internet via an Internet Service
13 Provider ("ISP") and then using "peer-to-peer" ("P2P") file
14 swapping networks, Defendants made Plaintiffs' copyrighted works
15 available for distribution to the public. Plaintiffs have
16 identified each Defendant by a unique Internet Protocol ("IP")
17 address assigned to that Defendant by his/her ISP. See
18 Declaration of Thomas Mizzone ("Mizzone Decl."), ¶¶ 8-13.
19 Plaintiffs also made copies of substantial portions of at least
20 one copyrighted motion picture that each Defendant unlawfully
21 made available for distribution, and confirmed that such file
22 contained a motion picture whose pertinent rights under copyright
23 law are held by one of the Plaintiffs. Complaint, ¶13;
24 Declaration of R. Christopher Harshman ("Harshman Decl."), ¶ 4.

25 Plaintiffs have identified the ISP that provided Internet
26 access to each Defendant by using a publicly available database.
27 Mizzone Decl., ¶¶ 9-12. Here, the ISP is Pacific Bell Internet
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1 ("Pacific Bell"). Id., ¶¶ 12-13. When given a Defendant's IP
2 address and the date and time of the infringing activity, an ISP
3 can identify the name and address of the Doe Defendant (*i.e.*, the
4 ISP's subscriber) because that information is contained in the
5 ISP's subscriber activity log files. Id., ¶¶ 9, 13. ISPs
6 typically keep log files of subscriber activities for only
7 limited periods of time -- sometimes for as little as weeks or
8 even days -- before erasing the data. Tilbury Decl., ¶ 11;
9 Mizzone Decl., ¶ 9.

10 Plaintiffs now seek leave of Court to serve limited
11 discovery on Pacific Bell prior to the Rule 26 conference to
12 identify each Defendant. Plaintiffs intend to serve a Rule 45
13 subpoena on the ISP seeking each Defendant's true name, address,
14 telephone number, e-mail address, and Media Access Control
15 ("MAC") address (data available only to the ISP that identifies
16 the specific computer used for the infringing activity). If the
17 Court grants this request, Plaintiffs will serve the subpoena on
18 Pacific Bell requesting the identifying information within
19 fifteen (15) business days. Pacific Bell will be able to notify
20 its subscribers that this information is being sought, and each
21 Defendant will have the opportunity to raise any objections
22 before this Court prior to the return date of the subpoena. For
23 the past year, federal district courts throughout the country,
24 including this Court, have granted expedited discovery in Doe

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1 Defendant lawsuits factually identical to the instant lawsuit.¹
2 Plaintiffs respectfully request that this Court
3 follow well-established precedent and grant this motion. See,
4 e.g., Maverick Recording Co. et al. v. Does 1-4, Case No. C-04-
5 1135 MMC (N.D. Cal.) (Larson, M.J.) (Plaintiffs' Request for
6 Judicial Notice, Ex. 1.)

7 **II. ARGUMENT**

8 Courts routinely allow discovery to identify "Doe"
9 defendants. See, e.g., Wakefield v. Thompson, 177 F.3d 1160,
10 1163 (9th Cir. 1999). As discussed above, many district courts
11 have granted leave to record companies to serve subpoenas on ISPs
12 to obtain the identities of Doe Defendants prior to a Rule 26
13 conference in copyright infringement lawsuits similar to the
14 instant action. See Plaintiffs' Request for Judicial Notice.

15 Courts consider the following factors when granting motions
16 for expedited discovery to identify anonymous Internet users: (1)
17 whether the plaintiff can identify the missing party with
18

19
20 ¹ In these cited cases and others like them, record company
21 plaintiffs have obtained the identities of P2P network users from
22 ISPs through expedited discovery using information similar to
23 that gathered by Plaintiffs in the instant case, and have used
24 that information as the basis for their proposed subpoenas to
25 these ISPs. Such cases within the 9th Circuit include Maverick
Recording Co. et al. v. Does 1-4, Case No. C-04-1135 MMC (N.D.
Cal.) (Larson, M.J.); UMG Recordings, Inc. v. Does 1-2, Case No.
04-0960(C)-L (W.D. Wa.) (Coughenour, J.); Loud Records, LLC et
al. v. Does 1-5, Case No. CV-04-0134-RHW (E.D Wa.) (Whaley, J.);
London-Sire Records, Inc. et al. v. Does 1-4, Case No. CV04-1962
(AJWx) (C.D. Cal.) (Wistrich, M.J.); Interscope Records et al. v.
Does 1-4, Case No. 04-131 TUC-JM (D. Ariz.) (Marshall, J.).
26 (True and correct copies of these five Orders, along with 27
27 similar Orders from district courts in other circuits, are
28 attached as exhibits to Plaintiffs' Request for Judicial Notice
filed concurrently herewith.)

1 sufficient specificity such that the Court can determine that
2 defendant is a real person or entity who could be sued in federal
3 court; (2) all previous steps taken by the plaintiff to identify
4 the Doe Defendant; and (3) whether the plaintiff's suit could
5 withstand a motion to dismiss. Columbia Ins. Co. v. Seescandy.com,
6 185 F.R.D. 573, 578-80 (N.D. Cal. 1999). Plaintiffs here are able
7 to demonstrate each of these factors.

8 First, Plaintiffs have sufficiently identified the Doe
9 Defendants through the unique IP address each Doe Defendant was
10 assigned at the time of the infringement. See Seescandy.com, 185
11 F.R.D. at 578-80. See Complaint, Ex. A; Mizzone Decl., ¶¶ 7-13.
12 These Defendants gained access to the Internet through their ISP
13 (under cover of an IP address) only by setting up an account with
14 the ISP. Mizzone Decl., ¶ 11. The ISP can identify each
15 Defendant by name through the IP address by reviewing its
16 subscriber activity logs. Id., ¶¶ 9, 13. Thus, Plaintiffs can
17 show that all Defendants are "real persons" whose names are known
18 to the ISP and who can be sued in federal court.

19 Second, Plaintiffs have specifically identified the steps
20 taken to identify Defendants' true identities. Id., ¶¶ 7-13.
21 Plaintiffs have obtained each Defendant's IP address and the date
22 and time of the Defendant's infringing activities, have traced
23 each IP address to a specific ISP, and have downloaded the motion
24 picture files each Defendant unlawfully made available for
25 distribution. See Complaint, Ex. A; Mizzone Decl., ¶¶ 7-13.
26 Plaintiffs have obtained all the information they possibly can
27 about Defendants without discovery from the ISP.

28 Third, Plaintiffs have asserted a *prima facie* claim for

1 direct copyright infringement in their Complaint that can
2 withstand a motion to dismiss. Specifically, Plaintiffs have
3 alleged that: (a) they own and have registered the copyrights in
4 the works at issue and/or hold the relevant exclusive
5 distribution rights, and (b) the Doe Defendants copied or
6 distributed those copyrighted works without Plaintiffs'
7 authorization. See Complaint. These allegations state a claim
8 for copyright infringement. See 17 U.S.C. § 106(1)(3); A & M
9 Records, Inc. v. Napster, Inc., 239 F.3d 1004, 1014-15 (9th Cir.
10 2001).

11 Courts have also allowed expedited discovery to identify Doe
12 Defendants when "good cause" is shown. See Semitool, Inc. v.
13 Tokyo Electron America, Inc., 208 F.R.D. 273, 275-76 (N.D. Cal.
14 2002). Good cause exists here because ISPs typically retain user
15 activity logs containing the information sought for only a
16 limited period of time before erasing the data. Tilbury Decl.,
17 ¶ 11; Mizzone Decl., ¶ 9. If that information is erased,
18 Plaintiffs will have no ability to identify the Defendants, and
19 thus will be unable to pursue their lawsuit to protect their
20 copyrighted works. Tilbury Decl., ¶¶ 10, 11.

21 **III. CONCLUSION**

22 For the foregoing reasons, Plaintiffs respectfully
23 submit that the Court should grant Plaintiff's Request and enter
24 an Order substantially in the form of the attached Proposed
25 Order.

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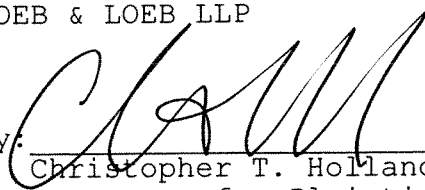
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Respectfully submitted,

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