

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

PATRICK COLLINS, INC.)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 12-cv-3507-BSJ
)	
DOES 1 – 45)	
)	
Defendants.)	

**MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION OF THE
MOTION TO QUASH SUBPOENA BY JOHN DOE 8 [Document 10]**

Plaintiff filed a Complaint against John Does who traded the identical file of Plaintiff’s copyrighted work without authorization through a file-swapping network (“Peer-to-Peer” or “P2P” network). On or about July 17, 2012, John Doe 8 filed a “Motion to Quash Subpoena Served Upon Verizon Internet Services Custodian of Records. I wish to keep my personal information private and if necessary prove my innocence, anonymously.”

Plaintiff does not object to John Doe 8 proceeding as “John Doe 8.”

Plaintiff therefore only briefly addresses John Doe 8’s arguments.

John Doe 8 Lacks Standing to Challenge the Subpoena

A party to a lawsuit lacks standing to object to a subpoena served on a non-party, unless the party objects to the subpoena on the grounds of privilege, proprietary interest or privacy interest in the subpoenaed matter. See Fed.R.Civ.P. 45(c)(3)(B). *See also Robertson v. Cartinhou*, 2010 U.S. District LEXIS 16058 (D. Md. 2010) (Day, MJ) (unreported).

Internet subscribers do not have a proprietary interest or an expectation of privacy in their subscriber information because they have already conveyed such information to their Internet Service Providers (ISPs). *See Guest v. Leis*, 255 F. 3d 325 (6th Cir. 2001); *United States v.*

Simons, 206 F.3d 392 (4th Cir., 2000). This information has already been shared by the Doe Defendant with his respective ISP.

Further, the Doe defendant exposed the IP addresses to the public by sharing the Motion Picture at issue. The torrent software exposes the IP address of the infringer, as explained in the Complaint and the Declaration of Jon Nicolini.

Therefore, John Doe 8 lacks standing.

John Doe 8's Allegation that Someone Else May Have Committed the Infringement is Irrelevant at this Stage

John Doe 8 seems to allege that someone else may have committed the alleged infringement through his IP address. That is a factual issue to be explored during discovery. Plaintiff notes that more than one copyright infringement was traced to John Doe 8's IP address.

As explained by the court in *Voltage Pictures, LLC v. Does 1-5000*, D.D.C. Case No. CV 10-0873 BAH, WL 1807438 (D.D.C. May 12, 2011), at pages 6-7 (emphasis added),

*"A general denial of engaging in copyright infringement is not a basis for quashing the plaintiff's subpoena. It may be true that the putative defendants who filed motions and letters denying that they engaged in the alleged conduct did not illegally infringe the plaintiff's copyrighted movie, and the plaintiff may, based on its evaluation of their assertions, decide not to name these individuals as parties in this lawsuit. On the other hand, the plaintiff may decide to name them as defendants in order to have an opportunity to contest the merits and veracity of their defenses in this case. In other words, if these putative defendants are named as defendants in this case, they may deny allegations that they used BitTorrent to download and distribute illegally the plaintiff's movie, present evidence to corroborate that defense, and move to dismiss the claims against them. A general denial of liability, however, is not a basis for quashing the plaintiff's subpoenas and preventing the plaintiff from obtaining the putative defendants' identifying information. That would deny the plaintiff access to the information critical to bringing these individuals properly into the lawsuit to address the merits of both the plaintiff's claim and their defenses. See *Achte/Neunte Boll Kino Beteiligungs GMBH & Co, KG v. Does 1-4,577*, 736 F. Supp. 2d 212, 215 (D.D.C. 2010) (denying motions to quash filed by putative defendants in BitTorrent file-sharing case and stating that putative defendants' 'denial of liability may have merit, [but] the merits of this case are not relevant to the issue of whether the subpoena is valid and enforceable. In other words, they may have valid defenses to this suit, but such defenses are not at issue [before the putative defendants are named parties].'); see also *Fonovisa, Inc. v. Does 1-9*, No. 07-1515, 2008 WL 919701, at *8 (W.D. Pa. Apr. 3, 2008) (if a putative defendant 'believes that it has been*

improperly identified by the ISP, [the putative defendant] may raise, at the appropriate time, any and all defenses, and may seek discovery in support of its defenses.')." (emphasis added)

As other federal courts have found, individuals who use the Internet to download or distribute copyrighted works are engaged in only a limited exercise of speech and the First Amendment does not necessarily protect such persons' identities from disclosure. *See Call of the Wild Movie, LLC.*, 770 F. Supp. 2d at 349-54; *see also London-Sire Records, Inc.*, 542 F. Supp. 2d at 179 ("the alleged infringers have only a thin First Amendment protection").

Therefore, the subpoena should not be quashed.

CONCLUSION

Based on the above-stated reasons, Plaintiff respectfully requests this Court to deny the Motion to Quash of John Doe 8. Plaintiff does not object to John Doe 8 proceeding as "John Doe 8."

Respectfully submitted this 29th day of July 2012.

FOR THE PLAINTIFF:

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CERTIFICATE OF SERVICE

I hereby certify that on 29 July 2012, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system.

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