

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

|                           |   |                     |
|---------------------------|---|---------------------|
| <b>MALIBU MEDIA, LLC,</b> | : |                     |
| <b>Plaintiff,</b>         | : |                     |
|                           | : | <b>CIVIL ACTION</b> |
| <b>v.</b>                 | : |                     |
|                           | : | <b>NO. 12-4820</b>  |
| <b>JOHN DOES 1-6,</b>     | : |                     |
| <b>Defendants.</b>        | : |                     |

**ORDER**

**AND NOW**, this 20th day of December 2012, upon consideration of the Motions to Quash of Defendant John Does 2, 3, and 4 (Doc. Nos. 7, 8, 9),<sup>1</sup> it is hereby **ORDERED** that the Motions are **GRANTED in part and DENIED in part** as follows:

1. To the extent Doe Defendants request leave to proceed anonymously for the purpose of litigating these Motions, the Court **GRANTS** this request as unopposed.<sup>2</sup>
2. Defendants’ Motions to Quash the Third Party Subpoenas are **DENIED**.<sup>3</sup>

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<sup>1</sup> In this copyright infringement action, Malibu Media, LLC, holder of U.S. Copyright Registration Number PA0001797944 for the pornographic motion picture titled “Pink Orgasm” (“the Work”), alleges that Defendants directly and/or indirectly infringed its copyrighted material when they reproduced and distributed the Work without Plaintiff’s consent. Plaintiff sued 6 “John Doe” Defendants identified only by internet protocol (“IP”) addresses, which correspond to the internet connections Plaintiff alleges were involved in the reproduction and distribution of the Work. After the Complaint was filed, the Court granted Plaintiff’s motion for leave to file third-party subpoenas on the Internet Service Providers (“ISP”) that provide the internet connection for the IP addresses at issue in this litigation. The subpoenas sought to identify the name and address of the individuals to whom the IP addresses correspond.

Before the Court are Motions to Quash these subpoenas filed by Defendant John Does 2, 3, and 4 (Doe Defendants). In the Motions, Defendants request: (1) that the Court grant Defendants leave to proceed anonymously for the purpose of this motion; (2) that the Court quash the subpoenas issued to Doe Defendants’ ISPs; and (3) that the Court make a finding that Plaintiff has improperly joined Defendants in this case and sever remaining Defendants.

<sup>2</sup> Proceeding anonymously is the only method of not rendering moot the motions by disclosing the very same information Doe Defendant seek to prevent from being disclosed. Plaintiff does not object to Defendants proceeding anonymously for the limited purpose of litigating these Motions. See Doc. No. 11 at 3. For these reasons, the Court permits Defendants to proceed anonymously.

<sup>3</sup> Federal Rule of Civil Procedure 45(c) provides that a court may quash or modify a subpoena where it “subjects a person to undue burden.” Fed. R. Civ. P. 45(c)(3)(iv). While Defendants appear to argue that the subpoenas on their ISPs subject them to undue burden, the Court disagrees. The subpoenas are directed to third-parties, who have not objected to the subpoenas. The subpoenas request identifying information for individuals with specific IP addressed registered with the ISPs upon whom the subpoenas have been served. See Malibu Media, LLC

3. Defendants' Motions to Sever are **DENIED without prejudice**.<sup>4</sup>

It is so **ORDERED**.

**BY THE COURT:**

**/s/ Cynthia M. Rufe**

**CYNTHIA M. RUFÉ, J.**

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v. John Does 1-16, Nos. 12-2078, 12-2084, 12-2088, 2012 WL 4717893, at \*5-6 (E.D. Pa. Oct. 3, 2012). Disclosure of the requested information does not impose an undue burden on the ISPs or Doe Defendants in the sense of difficulty or expense of complying.

To the extent the "burden" on Defendants is the embarrassment that will result from the disclosure of their identifying information, such embarrassment is not sufficient to constitute an "undue burden" justifying an order quashing the subpoenas. "[T]he only consequence of serving the subpoenas is that Plaintiff will receive information identifying the ISP subscribers associated with the allegedly infringing IP addresses as set forth in Exhibit A to the Complaint[]." Id. at \*6. Doe Defendants' interest in maintaining anonymity must be balanced against Plaintiff's right to pursue its claims. Disclosure of Doe Defendants' identities to Plaintiff is necessary to enable Plaintiff to pursue its claims, and Plaintiff's interest in pursuing his claims in this case outweighs Doe Defendants' desire to save themselves from possible embarrassment. See generally Raw Films, Ltd. v. John Does 1-15, No. 11-7248, 2012 WL 1019067 (E.D. Pa. Mar. 26, 2012); Malibu Media, LLC v. John Does 1-16, 2012 WL 4717893. To the extent Doe Defendants are concerned about disclosure of their identifying information to individuals and entities other than Plaintiff, Doe Defendants may file motions, requesting the right to proceed anonymously in further proceedings.

<sup>4</sup> Federal Rule of Civil Procedure 20(a)(2) permits joinder of multiple defendants in a single action "if: (A) 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 (B) any question of law or fact common to all defendants will arise in the action." While the Third Circuit has not directly interpreted Rule 20(a) and has not before ruled on its application in cases such as this one where the propriety of joining defendants based on peer-to-peer file sharing protocols is at issue, numerous district courts in this district and across the country have considered the issue, reaching varying conclusions. Malibu Media, LLC, 2012 WL 4717893, at \*7 (citing Raw Films, Ltd. v. John Does 1-15, No. 11-7248, 2012 WL 1019067, at \*4-5 (E.D. Pa. Mar. 26, 2012) (collecting cases and finding joinder proper); Malibu Media, LLC v. John Does 1-15, No. 12-2077, 2012 WL 3089383 (E.D. Pa. July 30, 2012) (finding joinder proper); Patrick Collins, Inc. v. John Does 1-35, 11-5172, Doc. No. 36 (E.D. Pa. Dec. 29, 2011) (finding joinder improper); and K-Beech, Inc. v. John Does 1-78, No. 11-5060, Doc. No. 13 (E.D. Pa. Oct. 3, 2011) (finding joinder improper).

Courts that have exercised their discretion to sever Doe defendants have cited practical reasons for their decisions; courts that have denied motions to sever have relied on "the impulse [] toward entertaining the broadest possible scope of action consistent with fairness to the parties," Malibu Media, LLC, 2012 WL 4717893, at \*8 (citing Hagan v. Rogers, 570 F.3d 146, 153 (3d Cir. 2009)), and the Third Circuit's direction that "events comprising the same transaction or occurrence bear a 'logical relationship to one another' and feature 'the same factual issues [or] the same factual and legal issues.'" Raw Films, Ltd., 2012 WL 1019067, at \*3 (quoting Transamerica Occidental Life Ins. Co. v. Aviation Office of Am., Inc., 292 F.3d 384, 390 (3d Cir. 2002)) (alteration in original). Some courts have dismissed motions to sever at the preliminary stage of the proceedings reasoning that while practical considerations may warrant severance at a later date, such considerations are speculative when a case is in its early stages.

This Court follows the latter approach. The Complaint alleges facts arising out of a logically-related series of occurrences and raises common questions of law and fact. To the extent practical considerations support severance, these considerations may support severance at a later date, but do not do so at this time. The Motions to Sever will be denied without prejudice to Doe Defendants' right to request severance at a later stage in the proceedings. Malibu Media, LLC, 2012 WL 4717893, at \*8-9.