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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

MALIBU MEDIA, LLC, a California corporation,

Plaintiff,

v.

JOHN DOES 1 through 64,

Defendants.

Case No. 12-CV-01262-KJM-JFM

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR LEAVE TO SERVE  
THIRD PARTY SUBPOENAS  
PRIOR TO A RULE 26(f)  
CONFERENCE**

1           **THIS CAUSE** came before the Court upon Plaintiff’s Motion for Leave to  
2 Serve Third Party Subpoenas Prior to a Rule 26(f) Conference (the “Motion”), and  
3 the Court being duly advised in the premises does hereby:

4           **FIND, ORDER AND ADJUDGE:**

5           1. Plaintiff, Malibu Media LLC, is the registered owner of the copyrights  
6 to the motion picture titled “Lunchtime Fantasy.”

7           2. Plaintiff filed a complaint against Doe defendants alleging direct  
8 copyright infringement and contributory copyright infringement. Compl. ¶¶ 45-61.

9           3. The Cable Privacy Act generally prohibits cable operators from  
10 disclosing personally identifiable information regarding subscribers without either  
11 (1) the prior written or electronic consent of the subscriber; or (2) a court order,  
12 provided the cable operator provides the subscriber with notice of the disclosure. 47  
13 U.S.C. § 551(c)(1),(c)(2)(B). A cable operator is defined as “any person or group  
14 of persons (A) who provides cable service over a cable system and directly or  
15 through one or more affiliates owns a significant interest in such cable system, or  
16 (B) who otherwise controls or is responsible for, through any arrangement, the  
17 management and operation of such a cable system.” 47 U.S.C. § 522(5).  
18 Accordingly, Plaintiff seeks a court order instructing Comcast Cable, Road Runner,  
19 SBC Internet Services, SureWest Broadband, Surewest Internet, Wave Broadband,  
20 and XO Communications to produce documents and information sufficient to  
21 identify the users of the IP addresses. A chart of the Internet Protocol Addresses  
22 and corresponding Internet Service Providers is below:

23	1	24.10.61.66	Comcast Cable
24	2	24.10.65.89	Comcast Cable
25	3	24.2.59.141	Comcast Cable
26	4	24.7.158.252	Comcast Cable
27	5	24.7.181.213	Comcast Cable
28	6	67.172.181.57	Comcast Cable
	7	67.181.31.28	Comcast Cable

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8	71.193.21.247	Comcast Cable
9	71.197.89.131	Comcast Cable
10	76.105.19.175	Comcast Cable
11	76.105.6.44	Comcast Cable
12	76.114.10.107	Comcast Cable
13	76.125.49.126	Comcast Cable
14	76.125.63.137	Comcast Cable
15	76.127.113.67	Comcast Cable
16	76.20.62.158	Comcast Cable
17	98.208.106.142	Comcast Cable
18	98.224.25.213	Comcast Cable
19	98.224.28.150	Comcast Cable
20	98.238.153.187	Comcast Cable
21	98.244.1.188	Comcast Cable
22	98.244.31.113	Comcast Cable
23	98.244.46.245	Comcast Cable
24	98.244.49.47	Comcast Cable
25	98.255.206.66	Comcast Cable
26	98.255.69.11	Comcast Cable
27	75.80.25.201	Road Runner
28	75.80.44.71	Road Runner
29	76.175.225.39	Road Runner
30	98.154.156.153	Road Runner
31	108.211.82.165	SBC Internet Services
32	108.213.77.146	SBC Internet Services
33	69.226.74.10	SBC Internet Services
34	69.227.126.50	SBC Internet Services
35	69.227.18.86	SBC Internet Services
36	70.135.114.244	SBC Internet Services
37	71.142.232.97	SBC Internet Services
38	71.142.235.33	SBC Internet Services
39	75.26.188.166	SBC Internet Services
40	75.42.70.222	SBC Internet Services
41	75.45.19.160	SBC Internet Services
42	76.196.79.186	SBC Internet Services
43	76.201.64.40	SBC Internet Services
44	76.201.80.177	SBC Internet Services
45	76.225.57.42	SBC Internet Services
46	76.241.24.21	SBC Internet Services

47	99.108.37.105	SBC Internet Services
48	99.113.69.134	SBC Internet Services
49	99.116.21.108	SBC Internet Services
50	99.18.109.3	SBC Internet Services
51	99.185.5.138	SBC Internet Services
52	99.33.249.186	SBC Internet Services
53	99.38.156.231	SBC Internet Services
54	99.60.72.22	SBC Internet Services
55	64.30.117.146	SureWest Broadband
56	65.78.140.12	SureWest Broadband
57	65.78.141.197	SureWest Broadband
58	66.205.154.114	SureWest Broadband
59	69.62.157.101	SureWest Broadband
60	69.62.171.49	SureWest Broadband
61	69.4.151.190	Surewest Internet
62	76.14.165.49	Wave Broadband
63	76.14.183.224	Wave Broadband
64	66.237.49.146	XO Communications

4. Consistent with the vast majority of district courts in this Circuit to consider the issue, the undersigned finds that good cause supports permitting plaintiff to conduct limited early discovery in order to discover the identities of the Doe defendants. First, Plaintiff has only named Doe Defendants in this action, has declared through its counsel that the identities of the Doe Defendants are unknown to Plaintiff at this time, and has credibly declared through its counsel that Plaintiff cannot serve the Complaint until it conducts discovery into the identities of the persons associated with the IP addresses in Exhibit A to Plaintiff's counsel's declaration. See Declaration of Leomore Kushner (“Kushner Decl.”) at ¶¶ 3-4. Second, Plaintiff plainly cannot conduct a Rule 26(f) conference without knowing the names and contact information of the Doe defendants. Kushner Decl. at ¶ 3. Third, Plaintiff's representations presently support that each IP address is associated with a particular individual and that the discovery sought will facilitate identification of the defendants and service of process. Kushner Decl. at ¶ 4. The

1 Court also finds that the ISPs will not suffer any material prejudice by being served  
2 with Rule 45 subpoenas that require the ISPs to provide the names and contact  
3 information of some of its customers. Plaintiff's discovery is limited in terms of the  
4 type of information sought.

5 5. Courts in the Ninth Circuit have considered four factors derived from  
6 Columbia Ins. Co. v. Seescandy.com, 185 F.R.D. 573 (N.D.Cal. 1999), in evaluating  
7 motions for permission to conduct early discovery in cases such as this one,  
8 “whether the plaintiff: (1) identifies the Doe Defendant with sufficient specificity  
9 that the court can determine that the defendant is a real person who can be sued in  
10 federal court, (2) recounts the steps taken to locate and identify the defendant, (3)  
11 demonstrates that the action can withstand a motion to dismiss, and (4) proves that  
12 the discovery is likely to lead to identifying information that will permit service of  
13 process.” See MCGIP, LLC v. Does 1-49, 2011 WL 3607666 at \*2 (citing  
14 Columbia Ins. Co., 185 F.R.D. at 578-80).

15 A. Identification of Defendants: Plaintiff provides the Court with the  
16 unique IP addresses and names of the ISPs that provided internet access for the users  
17 of the identified IP addresses. IPP Limited, Plaintiff’s investigator, allegedly  
18 recorded each IP address assigned to the defendants by the ISP, sending it a piece of  
19 plaintiff’s copyrighted work in violation of plaintiff’s exclusive distribution right  
20 under 17 U.S.C. §106. The requested discovery will provide the true names and  
21 addresses of the individuals Plaintiff alleged performed the infringing acts. Plaintiff  
22 has alleged and Plaintiff’s counsel has declared that, the ISP has the ability to  
23 correlate the IP Address used to commit the infringement to the subscriber of  
24 internet service, who Plaintiff alleged committed the infringement. See Dec.  
25 Leemore Kushner at ¶ 5. The court finds that plaintiff has sufficiently identified  
26 each John Doe defendant such that the court can determine that the defendants are  
27 real persons or entities who may be sued in federal court.

1           B.    Previous Steps Taken to Locate Defendants: Plaintiff has identified the  
2 Doe defendants' IP addresses and ISPs. Because the transactions at issue occurred  
3 entirely online, the IP addresses and ISPs are the defendants' only available  
4 identifying information. Without discovery, there are no other measures Plaintiff  
5 can take to identify the Doe defendants or obtain their personal information. The  
6 Court therefore finds that Plaintiff has made a good faith effort to comply with the  
7 requirements of service of process and specifically identify defendants. See  
8 Columbia Ins. Co., 185 F.R.D. at 579.

9           C.    The Action can Withstand a Motion to Dismiss: “[A] plaintiff who  
10 claims copyright infringement must show: (1) ownership of a valid copyright; and  
11 (2) that the defendant violated the copyright owner's exclusive rights under the  
12 Copyright Act.” Ellison v. Robertson, 357 F.3d 1072, 1076 (9th  
13 Cir.2004) (citing 17 U.S.C. § 501(a) (2003); Ets-Hokin v. Skyy Spirits, Inc., 225  
14 F.3d 1068, 1073 (9th Cir.2000)). To prove a claim of direct copyright infringement,  
15 “a plaintiff must show that he owns the copyright and that the defendant himself  
16 violated one or more of the plaintiff's exclusive rights under the Copyright Act,”  
17 whereas “[o]ne who, with knowledge of the infringing activity, induces, causes or  
18 materially contributes to the infringing conduct of *another* may be liable as a  
19 ‘contributory’ [copyright] infringer. Id. (alteration in original) (citation omitted).  
20 The Ninth Circuit has “interpreted the knowledge requirement for contributory  
21 copyright infringement to include both those with *actual knowledge* and those  
22 who *have reason to know* of direct infringement.” Id. (alteration in original)  
23 (citation omitted). Plaintiff alleges that it is the owner, and holds the copyright  
24 registration certificate, of a motion picture that Defendants copied and publicly  
25 distributed without authorization. Plaintiff alleges that the Defendants knew or  
26 should have known that other BitTorrent users in a swarm with it, here the other  
27 Defendants, were directly infringing Plaintiff’s copyrighted Work by copying  
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1 constituent elements of the registered Work that are original and each Defendant  
2 directly participated in and therefore materially contributed to each other  
3 Defendant's infringing activities. Compl. ¶¶ 57-59. Accordingly, Plaintiff has  
4 alleged the prima facie elements of both direct and contributory copyright  
5 infringement and could withstand a motion to dismiss these claims. See Columbia  
6 Ins. Co., 185 F.R.D. at 579–80. In this case, Malibu Media, LLC, has alleged  
7 sufficient facts to withstand a motion to dismiss on its claim asserted in this lawsuit.

8 i. Joinder: Consistent with the overwhelming majority of Courts to  
9 consider the issue, prior to the identification of the Doe Defendants, this Court finds  
10 joinder is proper. This finding is made without prejudice to the Defendant's ability  
11 to raise the issue after the disclosure of the Doe Defendants' identities. (See Liberty  
12 Media Holdings, LLC v. Does 1-62, 2011 WL 1869923 (S.D. Cal. 2011);  
13 OpenMind Solutions, Inc. v. Does 1-39, 2011 WL 4715200 (N.D. Cal. 2011)).

14 D. Reasonable Likelihood that Discovery will lead to Identification: The  
15 fourth factor examines whether Plaintiff has demonstrated that there is a reasonable  
16 likelihood that the discovery it requests will lead to the identification of Defendants  
17 such that it may effect service of process. Columbia Ins. Co., 185 F.R.D. at 580. As  
18 indicated above, Plaintiff contends that the key to locating Defendants is through the  
19 IP addresses associated with the alleged activity on BitTorrent. Specifically,  
20 Plaintiff contends that because ISPs assign a unique IP address to each subscriber  
21 and retain subscriber activity records regarding the IP addresses assigned, the  
22 information sought in the subpoena will enable Plaintiff to serve Defendants and  
23 proceed with this case. Taking this into account, the Court finds that Plaintiff has  
24 made a sufficient showing as to this factor.

25 6. For Good Cause shown, It Is Hereby Ordered that:

26 (A) Plaintiff, Malibu Media, LLC, may serve a subpoena, pursuant  
27 to Fed.R.Civ.P. 45, on Comcast Cable, Road Runner, SBC Internet Services,  
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1 SureWest Broadband, Surewest Internet, Wave Broadband, and XO  
2 Communications that seeks information sufficient to identify the Defendants,  
3 including their names, current addresses, telephone numbers and e-mail addresses;

4 (B) Plaintiff, Malibu Media, LLC, may only use the information disclosed  
5 for the sole purpose of protecting its rights in pursuing this litigation;

6 (C) Within thirty (30) calendar days after service of the subpoenas,  
7 Comcast Cable, Road Runner, SBC Internet Services, SureWest Broadband,  
8 Surewest Internet, Wave Broadband, and XO Communications shall notify the  
9 subscribers that their identities are sought by Malibu Media, LLC and shall deliver a  
10 copy of this order to them;

11 Comcast Cable, Road Runner, SBC Internet Services, SureWest Broadband,  
12 Surewest Internet, Wave Broadband, and XO Communications shall not require  
13 plaintiff to pay a fee in advance of providing the subpoenaed information; nor shall  
14 Comcast Cable, Road Runner, SBC Internet Services, SureWest Broadband,  
15 Surewest Internet, Wave Broadband, and XO Communications require plaintiff to  
16 pay a fee for an IP address that is not controlled by it, or for duplicate IP addresses  
17 that resolve to the same individual, or for an IP address that does not provide the  
18 name of a unique individual, or for their internal costs to notify its customers. If  
19 necessary, the Court shall resolve any disputes between Comcast Cable, Road  
20 Runner, SBC Internet Services, SureWest Broadband, Surewest Internet, Wave  
21 Broadband, and XO Communications and Plaintiff regarding the reasonableness of  
22 the amount proposed to be charged by Comcast Cable, Road Runner, SBC Internet

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1 Services, SureWest Broadband, Surewest Internet, Wave Broadband, and XO  
2 Communications after the subpoenaed information is provided to plaintiff.

3 IT IS SO ORDERED.

4 Date: 6/27/2012

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UNITED STATES MAGISTRATE JUDGE