

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

)
VOLTAGE PICTURES, LLC)
)
Plaintiffs,)
) CIVIL ACTION NO. 1:10-cv-00873-RMU
v.)
)
DOES 1-5,000)
)
Defendants.)
_____)

MOTION OF NONPARTIES TO QUASH SUBPOENA

Nonparty Margaret Wenzek hereby respectfully request that this Court quash the subpoena purportedly served upon Bresnan Communications, LLC, or in the alternative declare that no valid subpoena has properly been served upon the Margaret Wenzek pursuant to Fed. R. Civ. P. 45.

As grounds therefore, Margaret Wenzek state as follows:

1. Margaret Wenzek lives in the state of Montana. Margaret Wenzek is not located within, or operates any business within, the District of Columbia or within 100 miles of this Court.
2. On or about October 4, 2010, plaintiff Voltage Pictures LLC, through counsel, purported to serve on Bresnan Communications a subpoena by mail, a copy of which is attached hereto as Exhibit A.
3. The purported subpoena does not set forth a place for responding thereto that is within 100 miles of the residence or place of business of Margaret Wenzek as required by Fed. R. Civ. P. 45(c)(3)(B)(iii).
4. Finally, and most importantly, the purported subpoena would require that Bresnan Communications disclose to plaintiffs a list of persons who have downloaded certain content or information of public interest, on a matter of ongoing intense political debate, despite these persons' privacy interest in avoiding such disclosure and despite their legitimate expectation of privacy in anonymously accessing and/or downloading information of interest to them from the Internet. In addition to being unduly burdensome and unfair to Margaret Wenzek, this request raises concerns of tremendous constitutional significance, that should not be resolved lightly or without careful analysis of their implications. The Supreme Court has repeatedly reaffirmed the constitutional right to speak anonymously, *see, e.g., MacIntyre v. Ohio Elections Commission*, 514 U.S. 334, 342 (1995), and at least one court has recognized the importance of protecting

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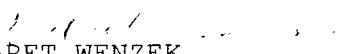
Clerk, U.S. District and
Bankruptcy Courts

anonymous speech in the Internet context. See ACLU v. Miller, 977 F. Supp. 1228, 1231 (N.D. Ga. 1997).

Conclusion

The subpoena must be quashed because it has not been properly served, because it violates the geographic limitations of Rule 45, and because it impose an undue burden on Bresnan Communications and Margaret Wenzek that raises significant constitutional questions. More fundamentally, they must be dismissed because they are in aid of an underlying case that itself must be dismissed for lack of subject matter jurisdiction, lack of personal jurisdiction, and mootness. It is improper to impose on a third party the burden of any subpoena – particularly one that raises a host of thorny privacy issues – in aid of a case that does not belong in this Court in the first place.

Respectfully submitted,



MARGARET WENZEK

3626 5th Ave. So.
Great Falls, MT 59405

Dated: October 27, 2010

Certificate of Service

I hereby certify that on October 27, 2010, I caused true copies of the above document to be sent to counsel for Plaintiffs, by USPS.



Margaret Wenzek

AO 88B (Rev. 05/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the
District of Columbia

Voltage Pictures, LLC)	
<i>Plaintiff</i>)	
v.)	Civil Action No. 1:10-cv-00873-RMU
DOES 1-5,000)	
<i>Defendant</i>)	(If the action is pending in another district, state where:
))

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Bresnan Communications, LLC, Attn: Custodian of Records, One Manhattanville Road, Purchase, NY 10577
Fax: 914-641-3435

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: Pursuant to the attached order, provide the name, current (and permanent) addresses, telephone numbers, e-mail addresses and Media Access Control addresses of all individuals whose IP addresses are listed in the attached spreadsheet.

Place: Nicholas A. Kurtz, Dunlap, Grubb & Weaver, PLLC 1200 G Street, NW Suite 800, Washington, DC 20005	Date and Time: 01/31/2011 10:00 am
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Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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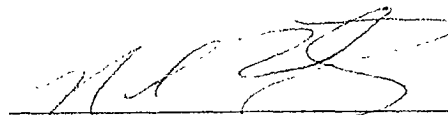
The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 09/21/2010

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk



Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Plaintiff
Voltage Pictures, LLC, who issues or requests this subpoena, are:
Nicholas A. Kurtz, Dunlap, Grubb & Weaver, PLLC, 1200 G Street, NW Suite 800, Washington, DC 20005
Tel. 877-223-7212, Fax: 866-874-5101, email: subpoena@dgwlegal.com