

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

4:Twenty Media, Inc.)	CASE NO.: 6:12-cv-00031
)	
Plaintiff,)	JUDGE: Rebecca F. Doherty
)	
vs.)	MAGISTRATE: C. Michael Hill
)	
Swarm Sharing Hash Files)	JOHN DOE #1159 REPLY TO PLAINTIFF’S
6D59B29B0E51E9B5B4C0F9192CE99ED5E)	OPPOSITION
C5457E8,6FC0F9C7F041DC36283D54B1FA)	
29399EAEC2A8,F1F946C2054A0F885AC01)	
FB07A935F4F238DD391 and Does 1-1,341)	
)	
Defendant)	

JOHN DOE #1159’S REPLY TO PLAINTIFF’S OPPOSITION

I. Introduction

Justice delayed is justice denied. Plaintiff herein included 1341 unrelated individuals from all over the United States in this suit and admitted that approximately *seven* of them are Louisiana residents subject to the personal jurisdiction of this court. Plaintiff makes no attempt to show that this court’s exercise of personal jurisdiction over out of state defendants is proper and likewise makes very little attempt to show that the joinder of 1341 unrelated individuals is proper. Instead, Plaintiff asks this court to close its eyes to obvious (admitted) facts, and instead postpone dismissing individuals that are improperly joined or are not subject to this court’s jurisdiction until Plaintiff has achieved the end of this mass suit – obtaining the identities of individual ISP subscribers. As Judge Beeler in the Northern District of California has noted in the context of mass BitTorrent suits,

“[Plaintiff’s] litigation strategy also effectively precludes consideration of joinder issues at a later point in the proceedings. By not naming or serving a single defendant, [Plaintiff] ensures that this case will not progress beyond its infant stages and therefore, the court will never have the opportunity to evaluate joinder...Consequently, the court’s decision to address joinder at this point is critical to ensuring compliance with the Federal Rules of Civil Procedure.”

1 *MCGIP, LLC v. Does 1-149*, No. C 11-02331-LB (N.D. Cal. Sept. 16,
2011)(Order Denying Plaintiff’s Motion to File Amended Complaint).

2 John Doe #1159 respectfully requests that this court address the problems of misjoinder
3 and lack of personal jurisdiction at the outset, as this is indeed critical to ensuring compliance
4 with the Federal Rules.

5 **II. Argument**

6 1. Plaintiff Has Not Established That Personal Jurisdiction is Appropriate

7 “When a nonresident defendant challenges personal jurisdiction, the plaintiff bears the
8 burden of establishing the district court’s jurisdiction over the defendant.” *Mink v. AAAA*
9 *Development, LLC*, 190 F.3d 333, 335 (5th Cir. 1999); See also *Stuart v. Spademan*, 772 F.2d
10 1185, 1192 (5th Cir. 1995). Moreover, “a court is not required to blind itself to the purpose for
11 which a party seeks information.” *Oppenheimer Fund, Inc. v. Sanders* 437 U.S. 340, 353 (1978).
12 “When the purpose of a discovery request is to gather information for use in proceedings other
13 than the pending suit, discovery properly is denied.” *Id.* In accordance with the foregoing
14 authorities, if Plaintiff cannot establish that personal jurisdiction over the Doe defendants is
15 appropriate then the discovery sought herein is clearly for “use in proceedings other than the
16 pending suit,” and the requested discovery rejected. The ‘good cause’ standard for early
17 discovery likewise requires that Plaintiff’s allegations be sufficient to survive a motion to
18 dismiss.

19 Plaintiff herein has not alleged any facts to support personal jurisdiction over Movant, or
20 the vast majority of Does in this suit. In fact, they do the opposite. Plaintiff admits that only
21 seven of the Does in this suit reside in Louisiana, and offers no support for the proposition that
22 personal jurisdiction over the remainder is appropriate. Instead, Plaintiff requests that this court
23 ignore the obvious, because it is “premature” to consider whether personal jurisdiction over the
24 defendants is proper. However, as noted above, Plaintiff bears the burden of establishing that
25 jurisdiction over the defendants is proper at the outset. Indeed, it makes little sense to postpone
26 consideration of an issue that will lead to the dismissal of 99.5% of the defendants in this matter.
27 Neither the interests of justice nor the interests of judicial efficiency support willful blindness in
28 this situation. The only interest that might be served is Plaintiff’s interest in obtaining the largest

1 number of subscriber names at the lowest cost to Plaintiff and the highest inconvenience to
2 defendants. The number of PHV applications already on file in this suit highlight this
3 inconvenience, as in each case a defendant is forced to retain additional attorneys and incur
4 additional costs to protect its rights in this distant forum. Lack of personal jurisdiction is a fatal
5 flaw, and one that cannot be cured. Despite Plaintiff's wishes, there is simply no reason to
6 postpone decision on this fundamental issue.

7 2. Plaintiff Has Not Established That Joinder Is Appropriate

8 John Doe #1159 addressed the issue of joinder at length in his original motion, and will
9 not re-hash the same arguments, correct though they may be. Plaintiff has done nothing to
10 undermine the original arguments and again urges this court to forego consideration of an issue
11 that will kill its case until after it has already gotten what it wants. The instant reply will thus be
12 limited to addressing a few key points from Plaintiff's consolidated Opposition and highlighting
13 several recent case where various district court's have rejected joinder in the BitTorrent context.

14 First, Plaintiff cites to a number of unpersuasive or inapplicable authorities in support of
15 its joinder argument. For example, Plaintiff cites to a host of decisions from 2011 in the District
16 of Maryland supporting joinder (Doc. 147, pg. 14 at FN7). Plaintiff fails to inform the court,
17 however, that one of these decisions, *Third Degree Films, Inc. v. Does 1-118*, was recently
18 severed due to misjoinder. Indeed, Chief Judge Chasanow disavowed her prior position, stating
19 that

20
21 "the practical reality of these types of cases —which, as noted, have
22 proliferated across the country — is that almost all end in settlement and few, if
23 any, are resolved on their merits. *See SBO Pictures, Inc.*, 2011 WL 6002620, at
24 *4. Against this backdrop, the risk of extortionate settlements is too great to
25 ignore, especially when joinder is being used to that end... In sum, the purpose of
26 Rule 20 is not fulfilled by joining all Doe Defendants in a single proceeding.
Instead, the experience of this court has proven that the countervailing concerns
of "prejudice, expense, or delay," *see Aleman*, 485 F.3d at 218 n.5, substantially
outweigh any convenience that was originally anticipated. Joinder is thus
improper."

27 *Third Degree Films, Inc. v. Does 1-108*, 8:11-cv-03007-DKC (D. Md. Apr. 27, 2012). In light of
28 this well-advised reconsideration, it seems that the instant court should place very little weight

1 on Plaintiff's string of cites to 2011 cases in the District of Maryland purporting to support a
2 joinder theory that the district no longer seems to embrace.

3 Second, Plaintiff's opposition consistently conflates the interests of judicial efficiency
4 and its own interest in efficiently harvesting the largest number of subscriber IDs as possible.
5 Plaintiff argues that it is somehow efficient for this court to consider motions by dozens of
6 individuals that have no relationship to this forum or each other, in order to eventually parse
7 through claims related to seven individuals from Louisiana. Plaintiff is essentially arguing that
8 the interests of efficiency are promoted by allowing them to join the largest number of unrelated
9 individuals as possible, without regard for personal jurisdiction, because this allows the court to
10 efficiently consider the motions of all misjoined individuals over whom the court lacks
11 jurisdiction.

12 Plaintiff argues that if they are forced to litigate their claims individually, as the Federal
13 Rules require in these situation, they would be effectively foreclosed from protecting their
14 intellectual property. This argument is amazing, and yields substantial insight into the weakness
15 of Plaintiff's claims. The Copyright Act authorizes statutory damages under many
16 circumstances of between \$750 and \$150,000, plus costs of suit and attorney fees. If Plaintiff
17 had any faith in the substance of its claims or their ability to ultimately prove *anything*, a \$350
18 recoverable filing fee would not be "cost prohibitive to Plaintiff, or indeed to any copyright
19 holder." (Doc. 147 at 1). Moreover, Plaintiff appears unconcerned by the fact that the filing fees
20 that it complains of rightly belong to this court, and again conflates its own interests in litigation
21 economics with this court's interest in judicial efficiency.

22 As Judge McMahon in the Southern District of New York recently stated in this context,
23 "The only economy that litigating these cases as a single action would achieve is an economy to
24 plaintiff- the economy of not having to pay a separate filing fee for each action brought.
25 However, the desire to avoid paying statutorily mandated filing fees affords no basis for joinder."
26 *Digital Sin, Inc. v. Does 1-245*, 1:11-cv-08170-CM Memorandum Decision and Order Severing
27 Does 2-245...(Doc. 18, pg. 4) (S.D.N.Y. May 15, 2012).

1 Finally, Movant wishes to draw this court's attention to a few additional decisions
2 rejecting mass joinder in the BitTorrent context, all of which were released in the days since
3 John Doe #1159's original motion on May 3rd.

- 4 • *Malibu Media v. Does 1-10*, 2:12-cv-03623 (C.D. Cal. June 27, 2012)(Doc. 7)(Does 2-10
5 severed due to misjoinder);
- 6 • *Smash Pictures v. Does 1-265*, 2:12-cv-00301 (E.D. Cal. June 14, 2012)(Doc.
7 18.)(Recommending Does 2-265 severed due to misjoinder);
- 8 • *Smash Pictures v. Does 1-590*, 2:12-cv-00302 (E.D. Cal. June 14, 2012)(Doc.
9 18.)(Recommending Does 2-590 severed due to misjoinder);
- 10 • *Digital Sins, Inc. v. John Does 1-245*, 1:11-cv-08170 (S.D.N.Y. May 15, 2012)(Doc.
11 18)(Memorandum Decision and Order Severing John Does 2-245 and Dismissing the
12 Cases Against John Does 2-245 Pending The Payment of the Requisite Filing Fee);
- 13 • *Metro Media Entertainment, LLC v. Does 1-47*, 8:12-cv-00347 (D. Md. May 7,
14 2012)(Doc. 17)(Severing Does 2-47).

15 III. Conclusion

16 Plaintiff herein included 1341 from all over the country in this suit, without regard to the
17 Federal Rules governing joinder or its obligation to establish personal jurisdiction over the
18 defendants. Plaintiff does not even attempt to support this court's exercise of personal
19 jurisdiction over the Movant, or the vast majority of putative Does. Instead, Plaintiff urges this
20 court to forego consideration of this issue, at least until Plaintiff has accomplished the sole end of
21 this suit – harvesting massive numbers of ISP subscriber IDs. Movant urges this court to address
22 the issue head-on, and dismiss all Does over whom this court cannot exercise jurisdiction.

23 In addition, Plaintiff's joinder of thousands of unrelated individuals, based solely on the
24 allegation that they downloaded the same work in the same manner, does not comport with the
25 federal rules governing joinder. Plaintiff again urges this court to forego consideration of the
26 issue until it has achieved its ends, in the interest of "judicial efficiency."

1 For the reasons outlined above, Movant respectfully request that this Court quash the
2 instant subpoena, dismiss Movant due to lack of personal jurisdiction, and sever Does 2-1341 as
3 misjoined.

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5 Respectfully Submitted,

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16 *Local Counsel for John Doe #1159*

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18 **CERTIFICATE OF SERVICE**

19 THE UNDERSIGNED HEREBY CERTIFIES that on this 6th day of July a true and
20 correct copy of the foregoing was filed with the Clerk of the Court using the CM/ECF system
21 and served on all of those parties receiving notification through the CM/ECF system.

22 /s/ Nicholas R. Ranallo
23 Nicholas Ranallo, Attorney at Law
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