

# **EXHIBIT B**

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS

MAR 31 2005

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

JAMES W. McJORMACK, CLERK  
By: *[Signature]*  
DEP. CLERK

CAROLINE RECORDS, INC., et al.

Plaintiffs

VS.

DOES 1-5

Defendants

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NO: 4:05CV000513 SWW

**ORDER**

Before the Court is Plaintiffs' *ex parte* motion for leave to conduct immediate discovery (docket entry #3). After careful consideration, the motion will be granted according to the terms stated in this order.

Plaintiffs own copyrights in sound recordings. They bring this action pursuant to the Copyright Act, 17 U.S.C. *et seq.*, against five unidentified Doe Defendants,<sup>1</sup> alleging that Defendants used a peer-to-peer ("P2P") online media distribution network to download Plaintiffs' copyrighted recordings and distribute the recordings or make them available for distribution to others.

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<sup>1</sup>The Eighth Circuit has approved the practice of permitting Plaintiffs to name "Doe" defendants when the identities of the actual defendants are unknown at the time the action is instituted. *Munz v. Parr* 758 F.2d 1254, 1257 (8<sup>th</sup> Cir. 1985) ("Rather than dismissing the claim, the court should have ordered disclosure of Officer Doe's identity by other defendants named and served or permitted the plaintiff to identify the officer through discovery.")

Plaintiffs base their allegations on an investigation of online copyright infringement conducted by the Recording Industry Association of America (“RIAA”), a trade association that helps its membership, which includes Plaintiffs, protect their intellectual property. According to the Jonathan Whitehead, Vice President of the RIAA, the RIAA discovered that Defendants were offering music files for download on various P2P networks. *See* docket entry #3, Ex. A (“Whitehead Dec.”) ¶16. The titles of the files offered by Defendants indicated that they contained copyrighted sound recordings. *Id.* The RIAA downloaded a sample of the files and allegedly confirmed that they included Plaintiffs’ copyrighted recordings. *Id.* The RIAA recorded the time and date of Defendants’ alleged infringements. *Id.* Additionally, the RIAA made note of the Internet Protocol (“IP”) address assigned to each Defendant by the Internet Service Provider (“ISP”) during Defendants’ alleged infringing online activity. Plaintiffs have identified the ISP as Arkansas State University (“ASU”).

Plaintiffs believe that ASU can identify the names and addresses of each Doe Defendant by matching the aforementioned IP addresses with ASU’s internet subscriber activity log files. This is the only means available to Plaintiffs to identify Defendants by name. Plaintiffs state that time is of the essence because internet subscriber activity logs are retained for only a brief period. *See* Whitehead Decl., ¶22. Given the temporary nature of the internet subscriber activity log files, Plaintiffs seek leave to issue subpoenas directing ASU to provide Defendants’ names, addresses, telephone numbers, e-mail addresses, and Media Access Control addresses.<sup>2</sup>

Under Federal Rule of Civil Procedure 26(d) a party may not seek discovery from any

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<sup>2</sup>A Media Access Control address is a hardware address that uniquely identifies each “node” of a network. A “node” is a processing center such as a computer or some other device. <http://www.pcwebopedia.com> (accessed March 28, 2005).

source before the parties have conferred as required by Rule 26(f). However, the court may permit expedited discovery for good cause shown. See Fed. R. Civ. P. 26(d) ("Except in categories of proceedings exempted from initial disclosures . . . or when authorized under these rules or by order or agreement of the parties, a party may not seek discovery from any source before the parties have conferred as required by Rule 26(f)."). Here, Plaintiffs must obtain Defendants' names and addresses before they can proceed with their claims. Given the temporary nature of internet subscriber activity logs, which is the only source available to Plaintiffs for identifying Defendants, good cause exists to permit expedited discovery.


IT IS THEREFORE ORDERED that Plaintiffs' *ex parte* motion for leave to take immediate discovery (docket entry #3) is GRANTED. Plaintiffs may issue a subpoena to Arkansas State University, pursuant to Federal Rule of Civil Procedure 45, seeking information sufficient to identify Defendants' names, addresses, telephone numbers, e-mail addresses, and Media Access Control addresses.

IT IS FURTHER ORDERED that any information disclosed to Plaintiffs in response to the subpoena may be used solely for the purpose of protecting Plaintiffs' rights under the Copyright Act.

IT IS FURTHER ORDERED that Plaintiffs are directed to serve Arkansas State University a copy of this order along with the subpoena.

IT IS FURTHER ORDERED that Arkansas State University may move to quash the subpoena within eleven days of its service.

IT IS SO ORDERED THIS 31<sup>st</sup> DAY OF MARCH, 2005.

  
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CHIEF JUDGE  
UNITED STATES DISTRICT COURT

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHEASTERN DIVISION

UMG RECORDINGS, INC., a Delaware corporation; VIRGIN RECORDS AMERICA, INC., a California corporation; SONY BMG MUSIC ENTERTAINMENT, a Delaware general partnership; BMG MUSIC, a New York general partnership; WARNER BROS. RECORDS INC., a Delaware corporation; ATLANTIC RECORDING CORPORATION, a Delaware corporation; CAPITOL RECORDS, INC., a Delaware corporation; PRIORITY RECORDS LLC, a California limited liability company; ELEKTRA ENTERTAINMENT GROUP INC., a Delaware corporation; INTERSCOPE RECORDS, a California general partnership; and LAFACE RECORDS LLC, a Delaware limited liability company,

Plaintiffs,

v.

DOES 1 - 6,

Defendants.

**ORDER GRANTING PLAINTIFFS' *EX PARTE* APPLICATION FOR LEAVE TO TAKE IMMEDIATE DISCOVERY**

Case No.: 3:07cv40

Upon the Plaintiffs' *Ex Parte* Application for Leave to Take Immediate Discovery, the Declaration of Carlos Linares, and the accompanying Memorandum of Law, it is hereby:

ORDERED that Plaintiffs may serve immediate discovery on North Dakota State University to obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks documents that identify each Doe Defendant, including the name, current (and permanent) addresses and telephone numbers, e-mail addresses, and Media Access Control addresses for each Defendant. The disclosure of this information is ordered pursuant to 47 U.S.C. § 551(c)(2)(B).

IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in response to the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under the Copyright Act.

DATED: April 16, 2007

By: /s/ Karen K. Klein  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

MOTOWN RECORD COMPANY, L.P., a  
California limited partnership; CAPITOL  
RECORDS, INC., a Delaware corporation;  
WARNER BROS. RECORDS INC., a Delaware  
corporation; ATLANTIC RECORDING  
CORPORATION, a Delaware corporation;  
SONY BMG MUSIC ENTERTAINMENT, a Delaware  
general partnership; BMG MUSIC, a New  
York general partnership; PRIORITY RECORDS  
LLC, a California limited liability company;  
ARISTA RECORDS LLC, a Delaware limited  
liability company; and ELEKTRA  
ENTERTAINMENT GROUP INC., a  
Delaware corporation,

PLAINTIFFS

v. Civil No. 05-5044

DOES 1-2

DEFENDANTS

ORDER

Now on this 14 day of June, 2005, upon the Second  
Motion of Plaintiffs for Leave to Take Immediate Discovery and the  
supporting Memorandum of Law, which incorporates the previously  
submitted memorandum with the declaration of Jonathan Whitehead  
and the exhibits thereto, it is hereby:

ORDERED that Plaintiffs may serve immediate discovery on the  
State of Arkansas, Department of Information Systems to obtain the  
identities of each Doe Defendant by serving a Rule 45 subpoena  
that seeks information sufficient to identify each Doe Defendant,  
including the name, address, telephone number, e-mail address, and  
Media Access Control addresses for each Defendant.

IT IS FURTHER ORDERED THAT any information disclosed to

Plaintiffs in response to the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under the Copyright Act.

IT IS SO ORDERED.



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JIMM LARRY HENDREN  
UNITED STATES DISTRICT COURT

U. S. DISTRICT COURT  
WESTERN DISTRICT ARKANSAS  
FILED

JUN 14 2005

CHRIS A. JOHNSON, CLERK

BY

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>BMG MUSIC, a New York general</b>	)	
<b>partnership; WARNER BROS. RECORDS</b>	)	
<b>INC., a Delaware corporation; and</b>	)	
<b>UMG RECORDINGS, INC., a Delaware</b>	)	<b>8:05CV244</b>
<b>corporation,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	<b>ORDER</b>
<b>v.</b>	)	
	)	
<b>JOHN DOE,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

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Plaintiffs have filed a COMPLAINT FOR COPYRIGHT INFRINGEMENT naming a "John Doe" defendant. The matter is now before the court on plaintiffs' MOTION FOR LEAVE TO TAKE IMMEDIATE DISCOVERY for the purpose of determining the actual identity of the defendant (#1).

**BACKGROUND**

The complaint alleges that the plaintiffs are copyright owners or licensees of exclusive rights with respect to certain copyrighted sound recordings. Plaintiffs were informed that "John Doe" has used an online media distribution system to download, distribute to the public, and/or make available for distribution to others, certain of the copyrighted recordings, thus violating the plaintiffs' exclusive rights of reproduction and distribution. Plaintiffs seek injunctive relief, statutory damages under § 17 U.S.C. 504(c), and attorneys' fees and costs pursuant to § 17 U.S.C. 505.

Based on information provided to them by the Recording Industry Association of America, Inc. (RIAA), the plaintiffs learned that the John Doe defendant in this case was offering files for download on peer-to-peer (P2P) file copying networks or media distribution systems. The networks in question are associated with the "Internet2," a consortium led by over 200 universities to develop advanced network applications, technologies, and an ultra-high speed network. A user connected to the Internet2 is able to transfer files at a significantly higher rate than that of a typical broadband Internet user.

As to the infringement alleged in this case,

In the ordinary course of investigating online copyright infringement, the RIAA became aware that Defendant was offering files for download on various P2P networks. The user-defined author and title of the files offered for download by Defendant suggested that many were copyrighted sound recordings being disseminated without the authorization of the copyright owners. The RIAA downloaded and listened to a representative sample of the music files being offered for download by Defendant and was able to confirm that the files Defendant was offering for distribution were illegal copies of sound recordings whose copyrights are owned by RIAA members. The RIAA also recorded the time and date at which the infringing activity was observed and the IP address assigned to Defendant at the time. See Complaint Exhibit A. The RIAA could not, however, determine the physical location of the user or their identity. The RIAA could determine that the Defendant was using University of Nebraska-Lincoln's service to distribute and make available for distribution the copyrighted files.

Filing #3-2, Exhibit A, ¶ 16. For these reasons, plaintiffs now seek leave to serve limited, immediate discovery on the University of Nebraska-Lincoln to identify each defendant's true name, address, telephone number, e-mail address, and Media Access Control (MAC) addresses.

### LEGAL ANALYSIS

As the court observed in *Columbia Ins. Co. v. seescandy.com*, 185 F.R.D. 573, 577 (N.D. Cal. 1999), service of process poses a special dilemma for plaintiffs in cases where the alleged wrongdoing occurred entirely on-line.

The dilemma arises because the defendant may have used a fictitious name and address in the commission of the tortious acts. Traditionally, the default requirement in federal court is that the plaintiff must be able to identify the defendant sufficiently that a summons can be served on the defendant. See Fed. R. Civ. P. 4. This requires that the plaintiff be able to ascertain the defendant's name and address.

As a general rule, discovery proceedings take place only after the defendant has been served; however, in rare cases, courts have made exceptions, permitting limited discovery to ensue after filing of the complaint to permit the plaintiff to learn the identifying facts necessary to permit service on the defendant....

The court's opinion includes a thoughtful discussion of the need to protect the victims of tortious acts, such as defamation, copyright infringement, and trademark infringement, which may be committed anonymously and entirely on-line, with the "legitimate and valuable right to participate in online forums anonymously or pseudonymously." *Id.* at 578. "People who have committed no wrong should be able to participate online without fear that someone who wishes to harass or embarrass them can file a frivolous lawsuit and thereby gain the power of the court's order to discover their identity," *id.* at 578, and "[p]re-service discovery is akin to the process used during criminal investigations to obtain warrants." *Id.* at 579. Thus, the court developed the following criteria to determine whether pre-service discovery should be allowed:

1. The plaintiff should identify the missing party with sufficient specificity such that the Court can determine that defendant is a real person or entity who could be sued in federal court.
2. The plaintiff should identify all previous steps taken to locate the elusive defendant.
3. Plaintiff should establish to the court's satisfaction that plaintiff's suit against defendant could withstand a motion to dismiss, i.e., the plaintiff must make some showing that an act giving rise to civil liability actually occurred and that the discovery is aimed at revealing specific identifying features of the person or entity who committed that act.
4. Plaintiff should file a request for discovery, along with a statement of reasons justifying the specific discovery requested as well as identification of a limited number of persons or entities on whom discovery process might be served and for which there is a reasonable likelihood that the discovery process will lead to identifying information about defendant that would make service of process possible.

*Columbia Ins. Co. v. seescandy.com*, 185 F.R.D. at 579-81.

I also note that the relief requested in this motion is not strictly prohibited within the Eighth Circuit:

The defendants suggest, citing *Phelps v. United States*, 15 F.3d 735 (8th Cir.), *cert. denied*, 511 U.S. 1114 (1994), that it is impermissible to name fictitious parties as defendants. In general, this is true, but, as we held in *Munz v. Parr*, 758 F.2d 1254 (8th Cir.1985), an action may proceed against a party whose name is unknown if the complaint makes allegations specific enough to permit the identity of the party to be ascertained after reasonable discovery.

*Estate of Rosenberg by Rosenberg v. Crandell*, 56 F.3d 35, 37 (8th Cir. 1995) (permitting a *Bivens* action naming fictitious parties as defendants to go forward because the allegations in the complaint were "specific enough to permit the identity of the party to be ascertained after reasonable discovery").

Case: 8:05-cv-00244-LSC-FG3 Document #: 8 Date Filed: 06/09/2005 Page 5 of 5

Having carefully considered the allegations of the complaint, together with the Evidence Index (#3) submitted by the plaintiffs in support of their request for discovery, I find that plaintiffs have shown good cause for allowing the discovery sought in this instance and have satisfied all four factors identified in *Columbia Ins. Co. v. seescandy.com*.

**IT THEREFORE IS ORDERED:**

1. Plaintiffs' Motion for Leave to Take Immediate Discovery (#1) is granted.
2. Plaintiffs may serve a Rule 45 subpoena on the relevant Internet Service Provider, i.e., the University of Nebraska-Lincoln, to identify each defendant's true name, address, telephone number, e-mail address, and Media Access Control (MAC) addresses.

**DATED June 8, 2005.**

**BY THE COURT:**

**s/ F.A. Gossett  
United States Magistrate Judge**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

BMG MUSIC, a New York General Partnership; ATLANTIC RECORDING CORPORATION, a Delaware Corporation; SONY BMG MUSIC ENTERTAINMENT, a Delaware General Partnership; ARISTA RECORDS LLC, a Delaware Limited Liability Company; CAPITOL RECORDS, INC., a Delaware Corporation; UMG RECORDINGS, INC., a Delaware Corporation; and WARNER BROS. RECORDS INC., a Delaware Corporation,

Plaintiffs,

vs.

JOHN DOE,

Defendant.

No. 4:04-cv-00637-JEG

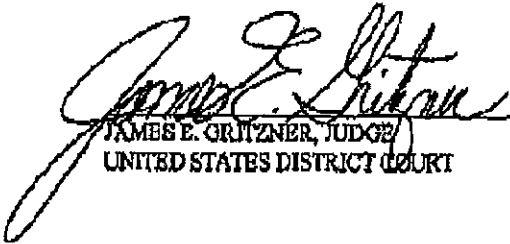
**ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
LEAVE TO TAKE  
IMMEDIATE DISCOVERY**

Upon the Motion of Plaintiffs for Leave to Take Immediate Discovery and the supporting Memorandum of Law, and the declaration of Jonathan Whitehead and the exhibit thereto,

**IT IS HEREBY ORDERED** that Plaintiffs may serve immediate discovery on Iowa State University to obtain the identity of the Doe Defendant by serving a Rule 45 subpoena that seeks information sufficient to identify him or her, including the name, address, telephone number, e-mail address, and Media Access Control addresses for the Defendant.

**IT IS FURTHER ORDERED** that any information disclosed to Plaintiffs in response to the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under the Copyright Act.

Dated this 18th day of November, 2004.



JAMES E. GRIZNER, JUDGE  
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Civil No. 04-1758 (DSD/JSM)

Sony Music Entertainment,  
Inc., a Delaware corporation;  
Elektra Entertainment Group,  
Inc., a Delaware corporation;  
BMG Music, a New York general  
partnership; Warner Bros.  
Records, Inc., a Delaware  
corporation, UMG Recordings,  
Inc., a Delaware corporation;  
Atlantic Recording Corporation,  
a Delaware corporation; and  
Virgin Records America, Inc.,  
a California corporation,

Plaintiffs,

v.

ORDER

Does 1-2,

Defendants.

Felicia J. Boyd, Esq., Kara L. Benson, Esq. and Faegre &  
Benson, 2200 Wells Fargo Center, 90 South Seventh Street,  
Minneapolis, MN 55402, counsel for plaintiffs.

This matter is before the court upon plaintiffs' ex parte motion for leave to take immediate discovery. Plaintiffs own numerous copyrights in sound recordings. They allege that defendants have infringed some of those copyrights. In the present motion, plaintiffs seek leave to obtain limited discovery from a third-party internet service provider ("ISP") to determine the defendants' true identities. Plaintiffs assert that without this limited discovery, they will be unable to identify the defendants,

vindicate their rights under the Copyright Act or protect their works from further infringement. For the following reasons, plaintiffs' motion is granted.

#### BACKGROUND

Defendants are alleged to have used an online media distribution system to download, copy, distribute and make available for distribution by others many of plaintiffs' copyrighted works. (Whitehead Decl. ¶ 16 & Ex. 1.) Plaintiffs have identified the Doe defendants by the unique Internet Protocol ("IP") addresses assigned to them at the time the alleged infringement occurred. (Id. ¶¶ 12, 16.) Plaintiffs have obtained lists of the sound files which they allege defendants made available to the public for copying and redistribution. (Id. Ex. 1.)

Plaintiffs identify the University of Minnesota as the ISP that provided internet access to the Doe defendants. (Id. ¶¶ 12, 16.) ISPs are capable of matching an IP address to its assigned user through subscriber activity logs. However, such logs are generally kept for a limited period of time. Therefore, plaintiffs seek leave to immediately serve limited discovery requests upon the University of Minnesota via Rule 45 subpoena. See Fed. R. Civ. P.

45. Plaintiffs agree to request only the name, address, telephone number, e-mail address and Media Access Control address of each defendant.

#### DISCUSSION

It is well settled in this circuit that plaintiffs may use discovery to identify Doe defendants. See Munz v. Parr, 758 F.2d 1254, 1257 (8<sup>th</sup> Cir. 1985). Plaintiffs may seek expedited discovery where good cause is shown. See, e.g., Intermedia Partners SE, Gen. P'ship v. OB Distrib's. L.L.C., 999 F. Supp. 1274, 1278 (D. Minn. 1998) (granting TRO and expedited discovery where plaintiff alleged piracy of cable broadcast programming in violation of the Communications Act of 1934); Tonka Corp. v. Tsaisun, Inc., 1989 WL 29980, at \*1 (D. Minn. Nov. 6, 1986) (allowing expedited discovery in copyright action).

In this case, plaintiffs have shown good cause for limited discovery, because they stand to suffer irreparable harm, the information they seek is necessary to further the litigation, it is unavailable by any other means and it may be short lived. Further, the court finds no prejudice to defendants, because plaintiffs may use the information discovered solely for the purpose of protecting their rights under the Copyright Act.

CONCLUSION

For the reasons stated, IT IS HEREBY ORDERED that:

1. Plaintiffs' motion for leave to take immediate discovery [Docket No. 3] is granted.
2. Plaintiffs may immediately serve a Rule 45 subpoena on the University of Minnesota to obtain the identity of each defendant.
3. Plaintiffs may use any information so discovered solely for the purpose of protecting their rights under the Copyright Act.

Dated: May 4, 2004

s/David S. Doty  
David S. Doty, Judge  
United States District Court

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

SONY MUSIC ENTERTAINMENT INC.,	)	
et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 4:04-CV-339 CEJ
	)	
DOES 1 - 200,	)	
	)	
Defendants.	)	

**ORDER**

This matter is before the Court on plaintiffs' motion for leave to take immediate discovery. Plaintiffs are record companies who own copyrights in several sound recordings. They seek leave to serve limited discovery upon a third party Internet Service Provider ("ISP") to determine the true identities of the 200 Doe defendants who are being sued for direct copyright infringement. Plaintiffs argue that without this discovery they cannot identify the defendants, and they would be unable to pursue their lawsuit to protect their copyrighted works from infringement.

Defendants are alleged to have used an online media distribution system to download plaintiffs' copyrighted works, to distribute copyrighted works, and/or to make copyrighted works available for distribution to others. Plaintiffs have identified each defendant by a unique Internet Protocol ("IP") address assigned to that defendant on the date and time of the alleged infringing activity. Plaintiffs have made copies of sound recordings each defendant made available for distribution, and have

obtained copies of a more complete list of files that each defendant has made available to the public for distribution. The ISP that provided Internet access to these defendants is Charter Communications, Inc. ("Charter"). Charter is able to match an IP address to a particular subscriber by reviewing its subscriber activity logs. These activity logs are typically retained by the ISP for a limited period of time; therefore, plaintiffs seek immediate discovery before the information is permanently destroyed.

Courts allow discovery to identify Doe defendants. See Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999); Valentin v. Dinkins, 121 F.3d 72, 75 (2nd Cir. 1997); Munz v. Parr, 758 F.2d 1254, 1257 (8th Cir. 1985). Courts will also allow expedited discovery where the party establishes good cause, *i.e.* the need for expedited discovery, in consideration of administration of justice, outweighs prejudice to responding party. Semitool, Inc. v. Tokyo Electron Am., Inc., 208 F.R.D. 273, 276 (N.D. Cal. 2002); Owest Comm. Int'l, Inc. v. WorldQuest Networks, Inc., 213 F.R.D. 418, 419 (D. Colo. 2003); Yokohama Tire Corp. v. Dealers Tire Supply, Inc., 202 F.R.D. 612, 613-14 (D. Ariz. 2001). Plaintiffs demonstrate good cause here because they show irreparable harm from infringement, no prejudice to defendants, limited availability of the information sought and the movement forward of the case.

Plaintiffs have shown that they will suffer ongoing irreparable harm by the repeated unauthorized copying of their

copyrighted material. In addition, the defendants will not be prejudiced because plaintiffs seek contact information only and will use the information for the limited purpose of enforcing their rights under the Copyright Act. Because the information regarding the identity of the IP subscribers is available only for a limited time, the plaintiffs may lose the opportunity to assert their rights if they are not allowed immediate discovery. Plaintiffs are unable to obtain the subscriber names by any other means, and without this information the case cannot proceed.

Accordingly,

**IT IS HEREBY ORDERED** that the plaintiff's motion for leave to take immediate discovery [#3] is **granted**.

**IT IS FURTHER ORDERED** that the plaintiffs may immediately serve a Rule 45 subpoena on Charter Communications, Inc. to obtain the identity of each defendant solely for the purpose of protecting plaintiffs' rights under the Copyright Act.

  
\_\_\_\_\_  
CAROL E. JACKSON  
UNITED STATES DISTRICT JUDGE

Dated this 22nd day of April, 2004.