

Honorable Richard A. Jones

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CRIMINAL PRODUCTIONS, INC.,

Plaintiff,

v.

SARAH LARSON, an individual;  
ADAM WINTER, an individual;  
DARYL HAM, an individual; and  
LIAM MCDONALD, an individual,

Defendants.

Civil Action No. 16-cv-1351RAJ

OPPOSITION TO MOTION TO DISMISS

Plaintiff respectfully opposes Defendant Adam Winter’s (aka Doe 9) motion to dismiss.

**I. BACKGROUND**

Plaintiff, a film producer and motion picture copyright holder, filed a copyright infringement action against Doe Defendants alleging infringement of its motion picture entitled *Criminal* on August 26, 2016. (Dkt. 1) Using so-called “peer-to-peer” (“P2P”) or BitTorrent file “swapping” networks, Defendants’ infringements allow them and untold others to unlawfully obtain and distribute for free the copyrighted motion picture. Plaintiff sued Defendants as “Doe” Defendants because Defendants committed their infringements using online pseudonyms (“user names” or “network names”), not their true names. At the time of filing, Plaintiff was only able to identify the Doe Defendants by their Internet Protocol (“IP”) address and the date and time of

1 alleged infringement. The only way that Plaintiff can determine Defendants' actual names is from  
2 the non-party Internet Service Providers ("ISPs") to which Defendants subscribe and from which  
3 Defendants obtain Internet access. This information is readily available to the ISPs based on  
4 records kept in the regular course of business.

5 Accordingly, Plaintiff promptly filed a motion for leave to take early discovery from the  
6 identified ISP (Comcast) to determine Defendant's identity. The bases for Plaintiff's infringement  
7 allegations, and justification for expedited discovery, are set forth in detail in its complaint, motion  
8 and supporting technical declaration. (Dkts. 1, 5-6) These provide background describing the  
9 online media distribution system Doe 9 and other Defendants have used without authorization to  
10 download and distribute the copyrighted motion picture to other users on the P2P network. (Dk. 1,  
11 ¶¶ 10-14; Dkt. 6, ¶¶ 3-8) The described forensic software used for BitTorrent enforcement collects,  
12 identifies and records the IP addresses used by those people that employ the BitTorrent protocol  
13 to share, copy, reproduce and distribute copyrighted works. More specifically, as explained in the  
14 Arheidt declaration, the forensic software scans P2P networks for the presence of infringing  
15 transactions and isolates the transactions and the IP addresses of the users responsible for copying  
16 and distributing the motion picture. This information is used along with corresponding hash values  
17 and transaction dates and times to identify the "swarm" of users that were reproducing,  
18 distributing, displaying or performing the copyrighted motion picture. The software uses a  
19 geolocation functionality to confirm that IP addresses of the identified users were located this  
20 judicial district. (Id. ¶¶ 9-21)

21 Plaintiff sufficiently identified Doe 9 via the unique IP address assigned thereto at the time  
22 of the unauthorized distribution of the copyrighted motion picture. *See Columbia Ins. Co.*  
23 *v. Seescandy.com*, 185 F.R.D. 573, 579-580 (N.D. Cal. 1999). Specifically, Plaintiff has Doe 9's  
24 IP address and the date and time of Defendants' infringing activities, tracing the IP address to  
25 specific ISP, in this case Comcast. The ISP subsequently identified Doe 9 as Adam Winter,  
26

1 confirming that he was a real person who can be sued in federal court. Plaintiff thereafter filed its  
 2 first amended complaint (Dkt. 15).

3 **II. DEFAULT AGAINST MR. WINTER IS APPROPRIATE BASED ON FAILURE TO OBEY**  
 4 **COURT ORDERS**

5 At the outset, Plaintiff respectfully submits that Mr. Winters should be found in default for  
 6 failing to obey the Court's March 6, 2017 and April 3, 2017 Orders. (Dkts. 49, 41) In the former,  
 7 the Court stated that "[r]egardless of whether the Court appoints counsel for Mr. Winter,  
 8 Mr. Winter's response to Plaintiff's Amended Complaint shall be filed no later than 10 days after  
 9 the Court's ruling on the Motion to Appoint Counsel." In the latter, the Court stated:

10 As previously ordered by the Court, within ten (10) days from the date of this Order,  
 11 Winter must file an answer containing substantive responses to the allegations in  
 12 Plaintiff's amended complaint. Dkt. # 49. Failure to comply with this requirement  
 will likely result in default judgment against Winter.

13 Per the Court's Orders, Mr. Winter's answer containing substantive responses to Plaintiff's  
 14 amended complaint was to be filed no later than April 13, 2017. As is clear from the record, no  
 15 such substantive answer has been filed or served.

16 **III. LEGAL AUTHORITY AND ARGUMENT CONFIRMS THAT MR. WINTER'S MOTION TO**  
 17 **DISMISS SHOULD BE DENIED**

18 A complaint fails to state a claim upon which relief may be granted if the plaintiff fails to  
 19 allege the "grounds" of his "entitlement to relief." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,  
 20 555 (2007). A plaintiff must plead "factual content that allows the court to draw the reasonable  
 21 inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662,  
 22 678 (2009). A court should only dismiss a complaint for failure to state a claim if, taking all factual  
 23 allegations as true, it does not contain "enough facts to state a claim to relief that is plausible on  
 24 its face." *Id.* at 662; *see also Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1034 (9th Cir. 2010).  
 25 "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to  
 26 draw the reasonable inference that the defendant is liable for the misconduct alleged." *Caviness*  
*v. Horizon Cmty. Learning Ctr., Inc.*, 590 F.3d 806, 812 (9th Cir. 2010). This standard is not,

however, akin to a “probability requirement.” Rather, it only asks for “more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678.

The bases for Mr. Winter’s motion appear to be that (1) Plaintiff lacks evidence to bring the claim; (2) joinder of the Doe Defendants is improper, apparently considering defense counsel involvement in this or other cases, and (c) Plaintiff’s claim is not brought in good faith. This motion appears to be a form taken from outdated BitTorrent pleadings from other cases and inspired by a letter ostensibly from a Spokane law firm.<sup>1</sup> Virtually all of the arguments are without legal or factual basis and most more than a decade old and pertaining to very different technology and analyses.<sup>2</sup> In point of fact, in this jurisdiction, and many others in the country, each of these bases has been thoroughly refuted and Courts have ruled against similar motions to dismiss.

Noteworthy, *Mr. Winter does not even deny the infringement of Plaintiff’s motion picture*; rather, he cutely states that as of the time of the filing, “no such copy of Plaintiff’s motion picture exists on any medium.” Who can when it may have been deleted or by whom. It certainly does not constitute a denial that Mr. Winter was the infringer, or is aware of the responsible party to whom he provided access to his IP address. But even were Mr. Winter to deny infringement at

---

<sup>1</sup> Plaintiff submits that such letter is wholly irrelevant to the present claim, consists almost entirely of speculation and hyperbole and utterly lacks any evidentiary value, and should be disregarded or stricken.

<sup>2</sup> For example, antiquated arguments that Plaintiff’s use of investigators such as Daniel Arheidt, a consultant for Maverickeye UG that provides forensic investigation services to copyright owners, somehow violates Washington law given that they are not licensed as private investigators in Washington under RCW 18.165, are wholly baseless, and have been debunked by various courts for nearly a decade. *See, e.g., Media, LLC v. Doe*, 16-cv-01733-JAM-KJN (E.D. Cal. March 3, 2017) (“Defendant further suggests that Mr. Fieser is not licensed as a private investigator in California, and that the court therefore should not accept his testimony. That argument borders on the frivolous. Individuals provide evidence in court every day without necessarily being licensed as private investigators. Significantly, defendant cites no legal authority for the proposition that Mr. Fieser, a German resident, required a California private investigator license to perform the type of work he did for plaintiff, or to provide evidence regarding such work in court.”); *Capitol Records Inc. v. Thomas-Rasset*, 680 F. Supp. 2d 1045, 1057-1058 (D. Minn. 2010); (“Defendant asserted that MediaSentry violated the Minnesota Private Detectives Act (“MPDA”) by acting as a detective although it held no Minnesota private detective license. The Court held that MediaSentry was not subject to the MPDA because it did not operate within the state of Minnesota.”); *Capitol Records, Inc. v. Thomas*, 579 F. Supp. 2d 1210, 1216 (D. Minn. 2008) (“The Court holds that distribution to MediaSentry can form the basis of an infringement claim. Eighth Circuit precedent clearly approves of the use of investigators by copyright owners.”).

Likewise, references to a “Darrin Griffin” or “Crystal Bay Corporation” are irrelevant to this case. To the best of Plaintiff’s knowledge, the former is a former investigator for the latter, but which has never been before this Court or been relied on by any party in this District.

1 this stage, a bald denial does not justify dismissal. Ultimately, Plaintiff is entitled to conduct  
2 discovery and learn the identity of those responsible for the copyright infringement. That must  
3 start with the subscriber. If the responsibility lies with others in the household or with access to  
4 the IP address at the relevant time, verified discovery will confirm that fact, as may be necessary  
5 to obtain the statutory relief to which it is entitled.

6 **A. MR. WINTER FAILS TO MEET THE HIGH STANDARD FOR DISMISSAL**

7 Plaintiff readily surpasses this modest threshold for notice pleading of its copyright  
8 infringement claim against Defendant. To state a claim for copyright infringement, a plaintiff must  
9 show “(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that  
10 are original.” *Feist Publ’ns, Inc. v. Rural Tel. Servs. Co.*, 499 U.S. 340, 361 (1991). Plaintiff  
11 unequivocally alleged both in its original and amended complaint, which allegations must be taken  
12 as true. For example, Plaintiff alleged:

- 13 • Comcast identified Defendant as the subscriber to whom a specific IP address was  
14 assigned during the relevant time period (Dkt. 15 at ¶ 10)
- 15 • The “IP address was observed infringing Plaintiff’s motion picture at that time” (Id. at  
16 ¶ 25)
- 17 • The download of the motion picture was not an isolated infringement, but rather one  
18 instance of significant BitTorrent activity in which Defendant’s IP address participated  
during the relevant period (Id. at ¶ 12)
- 19 • The materials shared and downloaded would not be of interest to a child (Id.)
- 20 • The physical location and layout of defendant Winter’s residence makes it unlikely that  
21 his IP address was hijacked by a neighbor or passerby (Id. at ¶ 14)

22 In so doing, Plaintiff pled “facts tending to exclude the possibility that [an] alternative explanation  
23 is true,” as has been required by this Court. These factual assertions are more than “formulaic  
24 recitation of the elements” or “bare legal conclusion,” and specifically allege that Defendant  
25 copied Plaintiff’s work. They provide fair notice of the infringed copyright and how the  
26 unauthorized copying occurred. Plaintiff’s infringement claim is “plausible on its face,” and

1 readily pass the *Twombly/Iqbal* standard for notice pleading. Such pleadings have been found  
2 adequate to defeat similar motions for dismissal in other cases in this jurisdiction. *See, e.g.,*  
3 *Cobbler Nevada v. Hamilton*, 16-cv-1616TSZ Dkt. 84 (July 28, 2016); *QOTD Film v. Does*, 16-  
4 cv-371RSL Dkt. 70 (October 11, 2016).

5 Noteworthy in the *QOTD* case—which is recent and based on due diligence and pleadings  
6 comparable to those in the present case. In *QOTD*, the Court specifically addressed the same  
7 *Twombly/Iqbal* standard and distinguished the earlier line cases in this jurisdiction in denying a  
8 similar motion for dismissal. (*QOTD Film*, Dkt. 70, pp. 3-4) Plaintiff respectfully submits that as  
9 in the *QOTD* and earlier cases, it has in this case pled sufficient facts—which much be taken as  
10 true—to support its allegations and meet the threshold requirement to defeat dismissal.  
11 Accordingly, Plaintiff respectfully submits that its amended complaint “contain[s] sufficient  
12 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face[.]’” *Ashcroft*,  
13 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570).

14 **B. MR. WINTER’S JOINDER ARGUMENT IS UNAVAILING**

15 Mr. Winter’s joinder argument is confusing. He appears to argue that joinder is not  
16 appropriate because certain defense counsel either do not inform defendants of defense joinder  
17 opportunities or in fact fail to join common defendants in cases. It is unclear what if anything this  
18 has to do with the Plaintiff. What is clear is that joinder is proper in this case.

19 ***I. Joinder is Proper and Routine in this Jurisdiction and Most others***

20 Federal Rule of Civil Procedure 20(a)(2) imposes two specific requirements for the  
21 permissive joinder of defendants. First, the right to relief against defendants must arise out of “the  
22 same transaction, occurrence, or series of transactions or occurrences.” Fed. R. Civ. P. 20(a)(2)(A).  
23 Second, there must be some question of law or fact common to all defendants. Fed. R. Civ.  
24 P. 20(a)(2)(B).

25 Under well-established decisional law, this rule has been broadly construed in favor of  
26 joinder. *See, e.g., United Mine Workers v. Gibbs*, 383 US 715, 724 (1966) (noting with respect to

1 the Federal Rules of Civil Procedure that “[u]nder the Rules, the impulse is toward entertaining  
2 the broadest possible scope of action consistent with fairness to the parties; joinder of claims,  
3 parties and remedies is strongly encouraged.”); *League to Save Lake Tahoe v. Tahoe Regional*  
4 *Planning Agency*, 558 F.2d 914, 917 (9th Cir. 1977) (“We start with the premise that Rule 20, Fed.  
5 Rules Civ. Proc., regarding permissive joinder is to be construed liberally in order to promote trial  
6 convenience and to expedite the final determination of disputes, thereby preventing multiple

7 In point of fact, the present controversy easily meets Rule 20(a)(2)’s two pronged  
8 requirement for permissive joinder. First, Plaintiff’s complaint alleges that all of the Doe  
9 Defendants participated in the unlawful downloading of its motion picture in either the same  
10 transaction or occurrence or through a series of related transactions or occurrences. (See Dkt.  
11 No. 15, ¶¶ 10-24) These allegations, taken together, demonstrate that Plaintiff has not merely  
12 alleged that all Defendants unlawfully downloaded its motion picture. Rather, it has alleged that  
13 the use of BitTorrent to download the motion picture was necessarily a collective enterprise in  
14 which Defendants participated in order to engage in each Defendants’ separate infringing activity.

15 Second, Rule 20(a)(2)’s requirement of questions of law or fact common to all Defendants  
16 is likewise met. Again, Plaintiff’s complaint alleges that all Doe Defendants used the same  
17 technology to download its copyrighted motion picture. As such, the governing law will be largely  
18 identical with respect to all claims, as will many of the facts concerning how this work was  
19 downloaded by Defendants. While some Defendants at a later stage in this proceeding may raise  
20 defenses that turn on specific factual circumstances, the existence of some individual factual issues  
21 does not defeat joinder. Rule 20(a)(2) requires only *one or more* common factual or legal issues—  
22 not complete identity of issues. *See* 7 Wright, Miller & Kane, *Federal Practice and Procedure*  
23 *Civil* 3d § 1653 (“The second requisite that must be satisfied to sustain permissive joinder of parties  
24 is that a question of law or fact common to all the parties will arise in the action. Rule 20(a) does  
25 not require that every question of law or fact in the action be common among the parties; rather,  
26



1 the rule permits party joinder whenever there will be at least one common question of law or  
2 fact.”).

3 Faced with this identical issue, the Court has consistently found joinder proper in other  
4 cases involving BitTorrent litigation: *E.g.*, *Dallas Buyers Club, LLC v. Does 1-10*, Case  
5 No. C14-1153RAJ (Dkt. No. 17) and *Dallas Buyers Club, LLC v. Does 1-10*, Case  
6 No. C14-1336RAJ (Dkt. No. 16). In two largely parallel orders filed the same day, the Court  
7 denied motions to quash the ISP subpoenas and held that joinder was appropriate. On the issue of  
8 joinder, the Court has previously resolved the issue in a similar fashion, further explaining in detail  
9 why joinder in such BitTorrent cases is appropriate:

10 Taking the well-pled factual allegations of the complaint as true and considering  
11 the declarations of plaintiff’s investigator, the Court finds that these requirements  
12 are easily met. Plaintiff’s investigator found that a user of the IP addresses  
13 identified in this action possessed a pirated copy of “The Thompsons,” that each  
14 copy was a reproduction of the same original, and that plaintiff’s investigator  
15 downloaded a portion of the pirated copy from each defendant. The Court finds that  
16 defendants’ knowing participation in an on-line media distribution swarm, the  
17 purpose of which was to distribute copies of a single original and which actually  
18 resulted in such distribution, is a series of transactions or occurrences that justifies  
19 joinder under Rule 20(a)(2)(A). The Court declines to require allegations or  
20 evidence that each defendant directly exchanged data with every other defendant.  
21 Such a requirement would ignore the realities of how the BitTorrent system works,  
22 including its planned anonymity and universal donor aspects. Neither the language  
23 of the Rule nor the policies behind it suggest that direct contact between participants  
24 in a group is necessary to justify joinder.

25 The Court further finds that litigating this case will involve common questions of  
26 fact and/or law regarding the existence of a swarm, the alleged downloads,  
plaintiff’s ownership of the copyright, and the elements of infringement. The fact  
that persons associated with the IP addresses may have individual defenses to  
plaintiff’s claims does not change the fact that there will be some common  
questions of law or fact: not all of the legal and factual issues must be identical as  
to all defendants. *Patrick Collins, Inc. v. Does 1-21*, 282 F.R.D. 161, 168 (E.D.  
Mich. 2012).

*The Thompsons Film, LLC v. Does 1-194*, Case No. C13-560RSL; *Elf-Man, LLC v. Does 1-152*,  
Case No. C13-507RSL (See noted cases, Dkt. 33, pp. 2-3 and No. 30, p. 2, respectively); *see, e.g.*

1 *Thompsons Film, LLC v. John Does 1-35*, 2013 U.S. Dist. LEXIS 97862 (E.D. Wash. July 12,  
2 2013); *Elf-Man, LLC v. Doe*, 2013 U.S. Dist. LEXIS 97857 (E.D. Wash. July 12, 2013).

3 **2. Joinder Comports with the Principles of Fundamental Fairness**

4 Although the specific requirements of Rule 20 are met, courts must also determine whether  
5 permissive joinder will “comport with the principles of fundamental fairness.” *Coleman v. Quaker*  
6 *Oats Co.*, 232 F.3d 1271, 1296 (9th Cir. 2000). Factors relevant to this determination include the  
7 possible prejudice to any party, delay caused by joinder, the motives for joinder, the closeness of  
8 the relationship between the joined parties, notice to the parties, and the effect of joinder on  
9 jurisdictional issues. *Desert Empire Bank v. Ins. Co. of N. Am.*, 623 F.2d 1371, 1375  
10 (9th Cir. 1980). Again, in the Ninth Circuit, “[w]e start with the premise that Rule 20 . . . is to be  
11 construed liberally in order to promote trial convenience and to expedite the final determination of  
12 disputes, thereby preventing multiple lawsuits.” *League*, 558 F.2d at 916-17.

13 Here, jointly litigating the facts related to the swarm Plaintiff has identified and the legal  
14 issues related to infringement is more efficient for Plaintiff and the Court than litigating multiple  
15 different suits, each involving only one IP address. In addition, the nature of the swarm and the  
16 BitTorrent protocol, with its many pieces and multiple sources, makes it necessary for Plaintiff to  
17 substantiate its theory that Defendants acted in concert to download copyrighted material, even if  
18 the segment downloaded from a particular Defendant, considered alone, might not constitute  
19 copyright infringement.

20 Defendants, on the other hand, gain no appreciable advantage through individual litigation.  
21 In either case, Defendants will be able to offer individual defenses to the allegations. There is no  
22 significant risk of liability by association. In addition, jointly litigating these claims also allows  
23 Defendants to pool resources, rely on arguments raised by other Defendants, or benefit from the  
24 participation of retained counsel—precisely the issue Mr. Winter complains of in this case. Finally,  
25 there is no indication that joinder will impact the Court’s subject matter jurisdiction because  
26 Defendants’ participation in a knowing and intentional file sharing scheme constitutes interrelated

1 acts justifying joint litigation even if Defendants remained unaware of the identity of their fellow  
2 BitTorrent users. *Accord The Thompsons Film, LLC v. Does 1-194*, Case No. C13-560RSL,  
3 Dkt. 33, pp. 3-4.

4 **C. PLAINTIFF IS PURSUING ITS COPYRIGHT INFRINGEMENT CLAIMS IN GOOD FAITH**

5 Mr. Winter baldly accuses Plaintiff of “unethical” and “irresponsibl[e]” conduct in its  
6 pursuit of this federal copyright infringement case. (Dkt. 50, pp. 1, 3). *Mr. Winters offers not a*  
7 *shred of support for these wild, baseless accusations*. Frankly, such accusations should be utterly  
8 disregarded as lacking any evidentiary basis.

9 To the contrary, as well-documented in Plaintiff’s complaint, motion and supporting  
10 declaration, Plaintiff has more than met its burden of asserting a *prima facie* claim for copyright  
11 infringement in its complaint that can withstand a motion to dismiss. Specifically, Plaintiff has  
12 alleged that: (a) it owns the exclusive rights under the registered copyright for the motion picture,  
13 and (b) the Doe Defendants copied or distributed the copyrighted motion picture without Plaintiff’s  
14 authorization. (Dkt. 1, ¶¶ 5-14) These allegations state a claim for copyright infringement. *See*  
15 *17 U.S.C. §106(1)(3); A & M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1014-15  
16 (9<sup>th</sup> Cir. 2001) (Napster users who upload file names to the search index for others to copy violate  
17 distribution rights and users who download files containing copyrighted music violate  
18 reproduction rights); *In re Aimster Copyright Litig.*, 334 F.3d 643, 645 (7<sup>th</sup> Cir. 2003), *cert.*  
19 *denied*, 124 S. Ct. 1069 (2004) (“Teenagers and young adults who have access to the Internet like  
20 to swap computer files containing popular music. If the music is copyrighted, such swapping,  
21 which involves making and transmitting a digital copy of the music, infringes copyright.”).

22 Mr. Winter again baldly asserts that Plaintiff failed to perform adequate investigation prior  
23 to bringing suit. Mr. Winter has no basis for this allegation, which itself is patently incorrect. To  
24 the contrary, Plaintiff performed significant investigation prior to bringing its claim, as set forth in  
25 its amended complaint. (Dkt. 15 ¶¶ 10-16). In fact, Plaintiff has taken more than reasonable steps  
26 in its efforts to identify the proper responsible party. The simple truth is that with these types of



1 claims, barring voluntary participation by the subscriber and absent naming the subscriber and  
2 conducting formal discovery, Plaintiff is unable to do more. Indeed, the courts in this jurisdiction  
3 have specifically denied multiple requests to conduct early third party discovery of subscribers to  
4 confirm the identity of the infringing party. Instead, courts have instructed plaintiff's such as  
5 Plaintiff, when in possession of the names of the holders of each IP address that allegedly infringed  
6 its film, to:

7  
8 proceed by naming those parties as defendants and conducting discovery in the  
9 normal course prescribed by the Federal Rules. *See, e.g., Hard Drive Prods., Inc.*  
10 *v. Doe*, 2012 WL 90412, \*2-3 (E.D. Cal. Jan. 11, 2012) (denying request to depose  
11 identified IP address holders). To the extent subsequent case developments show  
12 that the IP holders are not the infringing parties, plaintiff may seek to amend the  
13 Complaint as necessary.

14  
15 *See, e.g., Cobbler v. Does*, Case No. 15-cv-1408TSZ (Dkt. 23, January 26, 2016); *Dallas Buyers*  
16 *Club v. Does*, Case Nos. 14-cv-1819RAJ (and others) (Dkt. 57, February 11, 2016, p. 5). That is  
17 precisely what Plaintiff has done. Unless courts are prepared to foreclose to owners the right to  
18 enforce their federal copyright registrations in district court, plaintiffs such as Plaintiff must be  
19 allowed to prosecute their claims in just such as manner. *See, for example, Cook Prod. v. Sithisak*,  
20 16-cv-1884TSZ (Dkt. 22, April 4, 2017), stating in the context of denying a motion to quash:

21  
22 The Federal Rules of Civil Procedure permit a party to “obtain discovery regarding  
23 any nonprivileged matter that is relevant to any party’s claim or defense,” Fed. R.  
24 Civ. P. 26(b)(1), and discovery regarding the subscriber’s identity is plainly  
25 relevant to plaintiff’s claims. Although there is no guarantee that the owner of the  
26 IP address which downloaded plaintiff’s film was, in fact, the person who  
ultimately downloaded it, the owner is likely to, at a minimum, have information  
relevant to the discovery of the actual infringer. Precluding discovery of identifying  
information altogether would prevent copyright holders from enforcing their rights  
in the BitTorrent context no matter how meritorious the claim or how blatant or  
widespread the infringement. Identifying the owner of the IP address connected to  
the alleged infringement is the sole method of advancing plaintiff’s claim, and thus,  
there is no “other source” that would satisfy Fed. R. Civ. P. 26(b)(2)(C)(i).

27  
28 Plaintiff is defending its federal copyrights in an effort to stem the tide of such infringement  
29 that Congress has called “a raging epidemic.” These rights are no less important than those of any



1 other rights holders, whether it be of physical or intellectual property. As explained by Senator  
2 Levin in Congressional hearings on peer-to-peer Internet piracy:

3 In the world of copyright law, taking someone’s intellectual property is a serious offense,  
4 punishable by large fines. In the real world, violations of copyright law over the Internet  
5 are so widespread and easy to accomplish that many participants seem to consider it  
6 equivalent to jaywalking—illegal but no big deal. But it is a big deal. Under U.S. law,  
7 stealing intellectual property is just that—stealing. It hurts artists, the music industry, the  
8 movie industry, and others involved in creative work. And it is unfortunate that the  
software being used—called ‘file sharing’ as if it were simply enabling friends to share  
9 recipes, is helping create a generation of Americans who don’t see the harm. (Sen. Levin,  
Senate Hrg. 108-275, Sept. 30, 2003)

10 **IV. CONCLUSION**

11 Plaintiff is entitled to use all reasonable and legal means at its disposal in an effort to stop  
12 all infringement, and in particular the apparently knowing and willful infringement of Defendant  
against its federal copyright. Accordingly, Plaintiff urges the Court to DENY Defendant’s motion.

13 RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of April, 2017.

14 s/David A. Lowe, WSBA No. 24,453  
15 [Lowe@LoweGrahamJones.com](mailto:Lowe@LoweGrahamJones.com)  
16 LOWE GRAHAM JONES<sup>PLLC</sup>  
17 701 Fifth Avenue, Suite 4800  
Seattle, WA 98104  
18 T: 206.381.3300

19 Attorneys for Plaintiff

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served to all counsel or parties of record who are deemed to have consented to electronic service via the Court’s CM/ECF system, and for those who have not appeared and are not subject to default, via U.S. Mail:

Adam Winter  
19727 76<sup>th</sup> Ave W. #A9  
Lynnwood, WA 98036

s/ David A. Lowe