

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

INTERSCOPE RECORDS, *et al.*,)
)
 Plaintiffs,)
)
 v.) No. 6:04-CV-197-Orl-22DAB
)
 DOES 1-25,)
)
 Defendants.)

**MOTION OF AMICI CURIAE
PUBLIC CITIZEN, AMERICAN CIVIL LIBERTIES UNION,
ELECTRONIC FRONTIER FOUNDATION,
AND ACLU OF FLORIDA
FOR LEAVE TO FILE MEMORANDUM AS AMICI CURIAE
ADDRESSING MOTION FOR EXPEDITED DISCOVERY**

Public Citizen, the American Civil Liberties Union, the Electronic Frontier Foundation and the ACLU of Florida move the Court to grant them leave to file the accompanying memorandum as amici curiae addressing the pending ex parte motion for expedited discovery:

1. In this action for copyright infringement, sixteen music companies seek injunctive relief, damages, and fees and costs against 25 anonymous and unrelated individuals. Plaintiffs allege that defendants have displayed on their personal computers certain data files containing copyrighted musical performances in a manner that enables the public to download those files to their own computers. Plaintiffs have moved the Court, ex parte, for leave to take discovery to identify the anonymous defendants so that they can be served with summonses.

2. Public Citizen is a non-profit public interest organization based in Washington, D.C.,

which has approximately 165,000 members. Since its founding in 1971, Public Citizen has urged citizens to speak out against abuses by a variety of large institutions, including corporations, government agencies, and unions, and it has advocated a variety of protections for the rights of consumers, citizens and employees to encourage them to do so. Along with its efforts to encourage public participation, Public Citizen has brought and defended numerous cases involving the First Amendment rights of citizens who participate in public debates. Public Citizen has been in the forefront of the development of the law to protect the right to speak anonymously on the Internet and to develop standards for determining when the right to speak anonymously should yield to a plaintiff's claimed right to identify a potential defendant in litigation. Public Citizen has represented Doe defendants or appeared as amicus curiae in numerous cases in which subpoenas have been sought to identify anonymous Internet users. *Northwest Airlines v. Teamsters Local 2000*, No. 00-08DWF/AJB (D. Minn.); *Hollis-Eden Pharmaceutical Corp. v. Doe*, Case No. GIC 759462 (Cal. Super. San Diego Cy.); *iXL Enterprises v. Doe*, No. 2000CV30567 (Ga. Super. Fulton Cy.); *Thomas & Betts v. John Does 1 to 50*, Case No. GIC 748128 (Cal. Super. San Diego Cy.); *Hritz v. Doe*, C-1-00-835 (S.D. Ohio); *WRNN TV Associates v. Doe*, CV-00-0181990S (Conn. Super. Stamford); *Dendrite v. Doe*, 342 N.J. Super. 134, 775 A.2d 756 (N.J.App. 2001); *Donato v. Moldow*, No. BER-L-6214-01 (N.J. Super. Bergen Cy.); *Equidyne Corp. v. John Doe No. 9*, No. 03-1671 (3d Cir.); *Melvin v. Doe*, 836 A.2d 42 (Pa. 2003); *RIAA v. Verizon Internet Services*, 351 F.3d 1229 (D.C. Cir. 2003).

3. Electronic Frontier Foundation ("EFF") is a nonprofit public interest organization dedicated to protecting civil liberties and free expression in the digital world. Founded in 1990, EFF

has over 11,000 paying members and represents the interests of Internet users in court cases and in the broader policy debates surrounding the application of law in the digital age. EFF publishes a comprehensive archive of digital civil liberties information at one of the most linked-to websites in the world, www.eff.org. EFF has handled cases involving the protection of anonymity speech online in a wide variety of contexts.

4. The American Civil Liberties Union (“ACLU”) is a nationwide nonprofit, nonpartisan organization with approximately 400,000 members dedicated to the principles of liberty and equality embodied in the U.S. Constitution. The protection of principles of freedom of expression as guaranteed by the First Amendment is an area of special concern to the ACLU. In this connection, the ACLU has been at the forefront in numerous state and federal cases involving freedom of expression on the Internet. The ACLU has also been involved in numerous cases raising issues of due process and the right to anonymous speech.

5. The ACLU of Florida is the local affiliate of the ACLU. Like the national ACLU, the ACLU of Florida is frequently involved in cases raising issues of freedom of expression and due process.

6. Because the Doe defendants have not yet been served, no person has had the opportunity to argue for their interests in this proceeding. Amici do not represent any of the Does in this case; nor do they aspire to do so. However, amici seek leave to file this brief to argue that, notwithstanding the serious violations of law alleged in the complaint, plaintiffs have not made a sufficient factual showing to warrant discovery into the identities of persons who have communicated anonymously over the Internet, including a showing that there is personal jurisdiction

over each of the 25 defendants. Moreover, there are serious concerns about whether all 25 defendants are properly joined in one action, particularly given that, in justifying discovery, plaintiffs made a factual showing with respect to three defendants but presented no evidence to support identification of the other 22 individuals. Finally, we argue that, in the event some discovery is allowed, certain additional conditions should be imposed. Amici have made similar arguments in three other cases that music companies have filed in the past month.

7. Because the Court has not yet authorized discovery, the Court is urged to grant leave to file this memorandum and give plaintiffs an opportunity to respond before deciding whether to authorize discovery.

8. Amici's counsel, Charlotte Garden, has asked the consent of plaintiffs' counsel, Karen Stetson. Ms. Stetson has not yet responded to this request.

CONCLUSION

The motion for leave to file as amici curiae should be granted.

Respectfully submitted,

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March 30, 2004

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 Defendants.)

ORDER

The motion of Public Citizen, American Civil Liberties Union, Electronic Frontier Foundation, and ACLU of Florida for leave to file a memorandum as amici curiae is granted.

Dated: April __, 2004

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that, on this 30th day of March, 2004, I caused copies of the foregoing Motion for Leave To File as Amici Curiae, Proposed Order, and Proposed Memorandum of Amici Curiae to be served by first-class mail, postage prepaid, on counsel for plaintiffs as follows:

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March 30, 2004