

XFINITY Connect

hermannlawoffices@comcast.net

± Font Size ±

Re: John Doe Subpoena re: Thomas Cooley Law School

From : hermannlawoffices@comcast.net

Wed, Aug 10, 2011 10:12 PM

Subject : Re: John Doe Subpoena re: Thomas Cooley Law School**To :** Richard Huffaker <richard@weebly.com>

Richard:

Although I am not your lawyer and cannot give you legal advice. A Michigan subpoena is not valid outside of the territorial Jurisdiction. Moreover, the Motion to Quash stops any enforcement action on the subpoena. Cooley's lawyers can; however, seek to enforce the Michigan subpoena by filing a separate action in California attaching the Michigan subpoena and seeking to issue a new subpoena out of California based on the newly filed California Case. The problem for them however is that if they file an action in California, they would subject themselves to California's Anti-Slapp statute as set forth in California Code of Civil Procedure - Section 1987.2. The act was recently amended to apply to situations where the original subpoenas were issued out of state but where a subsequent filing in California was used to try and obtain jurisdiction over the web host provider. The California anti-SLAPP statute gives the target or host provider the ability to file a motion to strike (i.e., to dismiss) a complaint brought for engaging in protected speech. Furthermore, there are prohibitions on the ability to obtain discovery where there is a motion to strike the suit under the Anti-SLAPP statute and Section 425.18 allows the target or web host the ability to bring a subsequent against the party bringing the suit if the SLAPP action is dismissed. If efforts too successfully quash a California identity-seeking subpoena that relates to a lawsuit filed in another state, the court "shall" award all reasonable expenses incurred in making your motion - including attorneys' fees. There is an excellent advocacy group in San Francisco that has worked extensively with SLAPP actions and they have an informative link at:

<http://www.casp.net/california-anti-slapp-first-amendment-law-resources/statutes/c-c-p-sections-1987-1-and-1987-2/>

Also, I have spoken with

Corynne McSherry
Intellectual Property Director
Electronic Frontier Foundation
415-436-9333 x122
www.eff.org/join

who may be willing to assist you in finding a lawyer or lawyers that may be interested in taking on the SLAPP action (possibly pro bono) if Cooley proceeds that far. I hope this is of assistance

John T. Hermann
Attorney at Law
2684 West Eleven Mile Road
Berkley, MI 48072
248-591-9291
248-591-2304 fax
Hermannlawoffices@Comcast.Net

From: "Richard Huffaker" <richard@weebly.com>
To: hermannlawoffices@comcast.net
Sent: Wednesday, August 10, 2011 4:48:59 PM
Subject: Re: John Doe Subpoena re: Thomas Cooley Law School

Hi John,

We have now received the subpoena on our side. How much time do you need for the court to rule on the validity of this

subpoena?

I can give you until August 22nd to get this actually quashed. Can you make that happen?

Richard

On Aug 3, 2011, at 5:40 PM, hermannlawoffices@comcast.net wrote:

Richard:

I am an attorney representing an individual defendant (i.e. John Doe Number 1) who hosted an internet forum under the user name "Rockstar05." It is my understanding that the plaintiffs in that suit have filed a subpoena seeking to force Weebly (a third-party over whom Michigan Court has no jurisdiction even under its subpoena powers) to disclose the name and address of the person associated with username "Rockstar05." The Case name is entitled Thomas M. Cooley Law School v. John Doe 1-4 in the Circuit Court for the County of Ingham Case No. 11-781-CZ. It is my clients intent to oppose the subpoena (which has not yet been provided to either myself or my client). Accordingly, I would ask that your organization allow us the opportunity to proceed with a formal Motion to Quash and not release any information until the court has had a chance to rule on the validity of the Doe subpoena. If you could provide me with any information that you have received relative to the above captioned subpoena, I would greatly appreciate it. Also, please let me know what the time deadlines for responding to the subpoena and/or whether your organization would afford my client a reasonable opportunity to challenge the subpoena. Thank you for your anticipated cooperation.

John T. Hermann
Attorney at Law
2684 West Eleven Mile Road
Berkley, MI 48072
248-591-9291
248-591-2304
Hermannlawoffices@Comcast.Net
