Federal Judge Rules Copyright Owner Cannot Pursue Discovery of ISP's to Learn the Identity of Owners of IP Addresses Accused of Illegally Downloading Pornographic Movies

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Copyright owners in pursuit of file-sharers and illegal downloaders often rely on John Doe lawsuits to learn the identities of the accused infringers. These owners file suit, then send demand letters to the defendants, and reach quick settlements. In *VPR Internationale v. Does 1-1017*, No. 2:11-cv-2068 (C.D. Ill. Apr. 29, 2011), VPR, an adult film producer filed suit and sought class certification against unknown owners of internet protocol (IP) addresses associated with the unauthorized sharing of VPR's films through the BitTorrent peer-to-peer file sharing protocol. After filing suit, VPR sought discovery of the Internet Service Providers (ISP's) that hosted the IP addresses for the defendant file-sharers.

VPR relied heavily on discovery rulings in prior music downloading suits to support its request for discovery from the ISP's. Moreover, VPR argued that it needed this discovery because physical evidence of the infringement (*i.e.*, the identifying information) would be destroyed quickly by the ISP's as part of their routine destruction processes and "because this suit cannot proceed without this information."

The Court initially rejected VPR's request on March 9, 2011, with a short order noting the Court's concern that VPR was seeking discovery as "a fishing expedition by means of a perversion of the purpose and intent of Fed. R. Civ. P. 23." The Court then denied VPR's request for reconsideration on March 22, 2011, in a text order. Finally, the Court denied VPR's request for certification for an interlocutory appeal on April 29, 2011.

In denying VPR's request for certification, the Court noted that "IP subscribers are not necessarily copyright infringers," citing to a recent instance where a family was accused of downloading child pornography because their home IP address had been identified by an ISP as the address

associated with the downloading. After a seizure of their computers, it was revealed that they had not downloaded the illegal material, but that a neighbor had used their Internet connection. Here, the Court stated that the IP addresses identified by VPR in its complaint suggested:

> in at least some instances, a similar disconnect between IP subscriber and copyright infringer. The ISPs include a number of universities, such as Carnegie Mellon, Columbia, and the University of Minnesota, as well as corporations and utility companies. Where an IP address might actually identify an individual subscriber and address the correlation is still far from perfect. . . . The infringer might be the subscriber, someone in the subscriber's household, a visitor with her laptop, a neighbor, or someone parked on the street at any given moment.

Unlike some other suits against file-sharers, VPR sought class certification. In both of the Court's two orders, this tactic appeared to trouble it and certainly colored its skepticism of the underlying reasons for the suit. Moreover, as here, where the copyrighted works were adult films, the Court may have questioned the potential use of information obtained by VPR pursuant to discovery of the individuals tied to the IP addresses. Nevertheless, the language quoted above may be used in any future Doe illegal file-sharing suit by a skeptical judge, ISP, or as yet unidentified Doe fighting a subpoena to restrict a copyright owner from learning the identity of an infringer. Future decisions will show whether other courts rely on the same reasoning.

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