

District of New Jersey Recognizes Good Cause for ISP to Provide Identity of Alleged Infringer Through Expedited Discovery, But Won't Let Public Peek Behind Curtain

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In a recent opinion, Strike 3 Holdings, LLC v. John Doe Subscriber (D.N.J. Oct. 6, 2021), the United States District Court for the District of New Jersey considered when a plaintiff may be granted leave to serve pre-Rule 26(f) conference discovery to obtain the identity of an anonymous defendant accused of infringement from its Internet Service Provider, or ISP.

Strike 3 Holdings owns copyrights to adult films and content, and while monitoring the Internet for potentially infringing conduct using an electronic detection system, identified an allegedly infringing transaction linked to the defendant's IP address where a copy of its copyrighted content was shared on the file distribution network BitTorrent. Because the identity of the owner of the IP address was hidden, Strike 3 sued defendant as a John Doe.

Parties are generally barred from seeking discovery before the Rule 26(f) conference occurs, Fed. R. Civ. P. 26(d)(1), but leave to provide expedited discovery before that conference can still be provided by the Court upon a showing of "good cause." "Good cause," in turn, exists when the need for expedited discovery, when considering the administration of justice, outweighs the prejudice to the responding party. In making this determination, courts also consider (1) the timing of the request in light of the formal start of discovery; (2) whether the request is narrowly tailored; (3) the purpose of the requested discovery; (4) whether the discovery burdens defendant; and (5) whether defendant can respond to the request in an expedited manner.

Magistrate Judge Sharon A. King determined that "good cause" existed and granted leave for the limited discovery sought. In doing so, Judge King agreed with Strike 3's arguments that (i) it had made a *prima facie* claim for direct copyright infringement; (ii) the timing of its request in light of the formal start of discovery favored granting the relief; (iii) it had narrowly tailored and identified the limited and specific information sought – specifically, just the name and address of the IP address owner; (iv) the purpose of the requested discovery and need for the information sought in order to advance its claim favored granting the relief; (v) the discovery would not burden the defendant or require it to respond in an expedited manner; (vi) there were no alternative means to obtain the defendant's true identity; and (vii) the defendant's privacy interest was outweighed by Strike 3's interest in protecting its copyrights.

In granting the relief, Judge King also emphasized the safeguards and protective order put in place to protect the privacy rights of potentially innocent third parties. In this case, the IP provider, Comcast, was required to first serve a copy of the Order and Subpoena on the IP address owner, which then had 30 days to file a motion to quash, move for a protective order, or

seek other relief. Only after that time has passed (without such a motion) would Comcast be permitted to provide the identity of the IP address owner to Strike 3. Moreover, the defendant will be permitted to elect to be identified publicly only as a John Doe defendant and not with their actual name, even if the case moves forward. The Court also outlined the procedures to be used to potentially seal filings in order to protect the privacy rights of the alleged infringer. Finally, attached to the Order was a detailed Notice to the IP address owner notifying them of their rights and deadlines under the Court's Order in plain language.

A copy of the opinion can be found at the following link.