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ISP Required to Identify P2P User, Despite Jurisdictional Confusion

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In *Virgin Records America Inc v Does 1-35*, the District Court of the District of Columbia has ruled that an internet service provider (ISP) is required to disclose the identity of a peer-to-peer (P2P) user to record companies in a copyright infringement lawsuit, despite the subscriber's purportedly insufficient contacts with the forum.

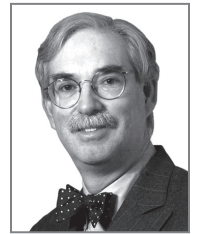
Sixteen record companies brought suit against 35 John Doe defendants for allegedly exchanging copyrighted sound recording files on the Internet through a P2P network. The plaintiffs observed the alleged uploading and downloading of the copyrighted sound recordings on the network, but were unable to identify the names, addresses or other contact information of the defendants. The plaintiffs, however, could ascertain the defendants' internet protocol (IP) addresses, and served subpoenas on ISPs to match the defendants' identities with their IP addresses.

One of the defendants, Doe No 18, filed a motion with the court to quash the subpoena directed at his or her ISP Verizon, arguing that personal jurisdiction was absent. Specifically, Doe No 18 asserted that his or her contacts with the District of Columbia were insufficient because he or she:

- lives in Fredericksburg, Virginia and owns no real or other property in the district;
- has never sold any products or services to any individual within the district;
- has never acted as the director, manager, trustee, or other officer of any corporation incorporated under the laws of, or having its principal place of business within, the district;
- has rarely visited the district, except for personal purposes; and
- has never been sued within the district or held subject to its jurisdiction.

Despite these allegations the court denied the motion on two grounds.

First, the court ruled that it was premature to fully consider whether there was personal jurisdiction in the context of a subpoena directed at determining the *identity* of a defendant. This was because the parties cannot formally litigate any aspect of personal jurisdiction until the defendant has actually been identified. In a motion to determine jurisdiction, the plaintiffs are entitled to reasonable discovery, but here it would be illogical to deny the plaintiffs the opportunity to



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obtain the most basic identifying information that they seek in their subpoena.

Second, the plaintiffs made a *prima facie* showing of personal jurisdiction over Doe No 18.

As a subscriber, Doe No 18 contracted with the District of Columbia-based Verizon and allegedly used Verizon's facilities to commit copyright infringement. This gave rise to jurisdiction there, as the district's long-arm statute confers jurisdiction over any person or business "transacting any business in the District of Columbia" or "causing tortious injury in the District of Columbia by an act or omission in the District of Columbia".

Moreover, Doe No 18 directed tortious activity into the District of Columbia, regardless of his or her place of residence. The alleged activities on the P2P network involved the offer to and downloading from the public—including persons within the district—of plaintiffs' copyrighted sound recordings. This was sufficient to constitute a transaction of business in the district.

Finally, Doe No 18 had transformed his or her computer into an interactive internet site by installing P2P software and logging onto a P2P network. Doe No 18 allegedly disseminated copyrighted works

to anyone who wanted them and downloaded copyrighted works from others who offered them—including residents of the district. Such "interactive" electronic transactions constituted "continuous" and "systematic" contacts with the District of Columbia sufficient to establish jurisdiction.

As a consequence, the court denied without prejudice Doe No 18's motion and allowed Verizon to comply with plaintiffs' subpoena.

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