

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

DISH NETWORK L.L.C. and	§	
SLING TV L.L.C.,	§	Civil Action No. 4:21-cv-2384
	§	
Plaintiffs,	§	
	§	
vs.	§	
	§	
DOES 1-4, individually and collectively	§	
d/b/a Live-nba.stream, Freefeds.com,	§	
Sportsbay.org, and Sportsbay.tv,	§	
	§	
Defendants.	§	

**PLAINTIFFS’ MOTION FOR LEAVE  
TO CONDUCT EXPEDITED DISCOVERY**

Plaintiffs DISH Network L.L.C. (“DISH”) and Sling TV L.L.C. (“Sling”) file this motion for leave to conduct limited expedited discovery prior to the Federal Rule of Civil Procedure 26(f) conference for the purpose of identifying Defendant DOES 1-4 (“Defendants”).

**I. Introduction**

DISH is a pay-television provider in the United States that delivers television programming to millions of subscribers nationwide via a direct broadcast satellite system. Sling is a subsidiary of DISH and a pay-television provider in the United States that delivers television programming to millions of subscribers nationwide using the public internet. Sling’s internet transmissions of television programming are secured using digital rights management (“DRM”) technologies that have a key-based encryption and decryption process used to make the television programming accessible to only authorized

Sling subscribers. DISH contracts for and purchases distribution rights for copyrighted television programming that is broadcast on the DISH and Sling platforms.

Defendants operate an illicit streaming service through the Live-nba.stream, Freefeds.com, Sportsbay.org, and Sportsbay.tv (collectively, the “Sportsbay Websites”), so that Defendants circumvent and provide technologies and services that circumvent the security measures employed by Sling, and thereby provide DISH’s copyrighted television programming to users of the Sportsbay Websites (“Sportsbay users”) without authorization. Defendants’ actions violate the Digital Millennium Copyright Act, 17 U.S.C. § 1201 (“DMCA”).

Defendants use many third party service providers to promote, manage, and operate the Sportsbay Websites, including Namecheap, Inc. (also doing business as WhoisGuard); Tucows Inc.; CloudFlare, Inc.; DigitalOcean, LLC; Google LLC; Facebook, Inc.; and Twitter, Inc. As shown below, Defendants’ true names and street addresses are unknown and thus subpoenas to these third parties are necessary to uncover Defendants’ true identities.

## **II. Legal Standard**

Discovery may be conducted before the Rule 26(f) conference when authorized by court order. Fed. R. Civ. P. 26(d)(1). District courts in the Fifth Circuit apply a “good cause” standard to determine whether to allow expedited discovery. *See, e.g., St. Louis Grp., Inc. v. Metals & Additives Corp.*, 275 F.R.D. 236, 239-40 (S.D. Tex. 2011) (citing cases); *Turner Indus. Grp., Inc. v. Int’l Union of Operating Eng’rs, Local 450*, No. H-13-0456, 2013 WL 2147515, at \*3 (S.D. Tex. May 10, 2013). “Good cause exists ‘where the

need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party.” *Turner*, 2013 WL 2147515, at \*3 (quoting *St. Louis Group*).

When evaluating requests for expedited discovery to identify anonymous internet users, courts consider the following: “(1) whether the plaintiff makes a prima facie showing of harm; (2) the specificity of the discovery request; (3) the absence of alternative means to obtain the subpoenaed information; (4) the necessity of the subpoenaed information to advance the claim; and (5) the user’s expectation of privacy.” *Id.*; *Well Go USA, Inc. v. Unknown Participants in Filesharing Swarm Identified By Hash: B7FEC872874DoCC9B1372ECE5ED07AD7420A3BBB*, No. 4:12-cv-00963, 2012 WL 4387420, at \*1 (S.D. Tex. Sept. 25, 2012); *Indigital Sols, LLC v. Mohammad*, No. H-12-2428, 2012 WL 5825824, at \*2 (S.D. Tex. Nov. 15, 2012); *Combat Zone Corp. v. Does 1-13*, No. 3:12-CV-3927-B, 2013 WL 230382, at \*4 (N.D. Tex. Jan. 22, 2013). Consideration of these factors shows that there is good cause to grant Plaintiffs’ request for expedited discovery.

### **III. Argument**

#### **A. Plaintiffs State a Prima Facie Claim of Actionable Harm Against Defendants.**

Plaintiffs claim that Defendants violated the DMCA, 17 U.S.C. §§ 1201(a)(1)(A) and 1201(a)(2) by circumventing and providing technologies and services that circumvent the security measures employed by Sling, and thereby provided DISH’s copyrighted television programming to Sportsbay users without authorization from Sling or DISH.

(Dkt. 1, Compl. ¶¶ 1-2, 5, 12, 14-38; Ex. A, Teplinsky Decl. at 4-5, ¶¶ 3-4; Ex. B, Ross Decl. at 8-10, 12-417, ¶¶ 3-9, Exs. 1-10.)

Section 1201(a)(1)(A) of the DMCA provides that “[n]o person shall circumvent a technological measure that effectively controls access to a work protected under this title.” 17 U.S.C. § 1201(a)(1)(A). To “circumvent” an access control measure “means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner. 17 U.S.C. § 1201(a)(3)(A). Pursuant to § 1203, Sling and DISH are authorized to institute the instant civil action for injunctive relief and damages against the Defendants.<sup>1</sup> See 17 U.S.C. § 1203(a). Encryption-based security systems are an effective access control measure for purposes of the DMCA. See *DISH Network L.L.C. v. Sonicview USA, Inc.*, No. 09-cv-1553-L(WVG), 2012 WL 1965279, at \*8 (S.D. Cal. May 31, 2012); *Universal City Studios, Inc. v. Reimerdes*, 111 F. Supp. 2d 294, 318 (S.D.N.Y. 2000) (holding that security measures based on “encryption or scrambling” are considered effective for purposes of the DMCA).

Plaintiffs plead a prima facie claim under Section 1201(a)(1)(A) of the DMCA by alleging that Sling employs technological protection measures, including its DRM technologies, to effectively control access to its pay-television service and to restrict unauthorized access to, copying, and retransmission of DISH’s copyrighted television programming. (Compl. ¶¶ 12-14.) Defendants are violating § 1201(a)(1)(A) of the DMCA

---

<sup>1</sup> The DMCA affords standing to any person injured by a violation of the statute. See 17 U.S.C. § 1203(a).

by operating the Sportsbay Websites that circumvent the protections provided by Sling's DRM technologies, and thereby provided DISH's copyrighted television programming to Sportsbay users without authorization from Sling or DISH. (Compl. ¶¶ 1-2, 5, 14-30.)

Section 1201(a)(2) of the DMCA makes it unlawful to offer to the public, provide, or otherwise traffic in any technology, service, or part thereof that satisfies any one of three criteria: (1) it is designed or produced for circumventing a measure that effectively controls access to a copyrighted work; (2) it has only limited commercial purpose or use other than circumventing an access control measure; or (3) it is marketed by the defendant or someone acting in concert for use in circumventing an access control measure. *See* 17 U.S.C. § 1201(a)(2).

Plaintiffs plead a prima facie claim under Section 1201(a)(2) of the DMCA by alleging that Defendants are operating the Sportsbay Websites that circumvent the security measures employed by Sling's DRM technologies, and thereby provided DISH's copyrighted television programming to Sportsbay users without authorization from Sling or DISH. (*See* Compl. ¶¶ 1-2, 5, 12, 14-24, 31-38.) Defendants' technologies and services provided through the Sportsbay Websites are primarily designed and produced to circumvent DRM security measures employed by Sling; have no commercially significant purpose or use other than circumventing those security measures; and are marketed by Defendants and others known to be acting in concert with them for use in circumventing those security measures. (*See id.*) Sportsbay users are provided DISH's copyrighted television programming without paying the required subscription fee. (*See id.*) Defendants' technologies and services provided through the Sportsbay Websites are

designed and produced to circumvent the security measures employed by Sling and have no legitimate commercial purpose or application. (*See id.* ¶¶ 31-38.) By offering and providing these technologies and services to Sportsbay users, Defendants are violating section 1201(a)(2) of the DMCA. (*See id.*)

Plaintiffs state prima facie claims of actionable harm under the DMCA in Counts I and II of the complaint. Thus, the first factor considered when ruling on a request for expedited discovery supports granting Plaintiffs' motion. *See, e.g., Well Go USA*, 2012 WL 4387420, at \*2 (first factor satisfied based on allegations in complaint for copyright infringement and having IP address of the alleged infringer); *Indigital Sols.*, 2012 WL 5825824, at \*2 (S.D. Tex. Nov. 15, 2012) (first factor met where complaint stated a claim for relief based on anonymous defendants' violation of the Computer Fraud and Abuse Act).

**B. Plaintiffs' Subpoenas are Narrowly Tailored to Identify Defendants.**

Plaintiffs request permission to serve subpoenas on the third-party service providers in the United States that Defendants use to promote, manage, and operate the Sportsbay Websites. Plaintiffs' subpoenas have been filed with the Court and are reasonably calculated and narrowly tailored to reveal Defendants' identities. (Ex. C, Ferguson Decl. at 452, 454-495, ¶¶ 2-3, Exs. 1-7.)

Defendants' service providers include Namecheap, Inc. as the registrar for the Live-nba.stream and Freefed.com domains and as a former registrar, web host, and privacy protection service for the Sportsbay.org domain; Tucows Inc. as the registrar for the Sportsbay.org domain; CloudFlare, Inc. as the reverse proxy, pass-through security service

for each of the Sportsbay Websites; DigitalOcean, LLC as a former web host for the Sportsbay.org domain; and Google LLC as a marketing service for the Sportsbay.org, Sportsbay.tv, and Live-nba.stream websites. (Ex. B at 10-11, 418-450, ¶¶ 10-15, Exs. 11-16.) Defendants promote the Sportsbay Websites through social media services provided by Facebook, Inc. and Twitter, Inc. (*Id.* at 11, ¶¶ 16-17.)

These service providers are expected to have information that identifies the Defendants—those responsible for operating the Sportsbay Websites, circumventing and providing technologies and services that circumvent the security measures employed by Sling and provide DISH’s copyrighted television programming to Sportsbay users without authorization—and are thus the intended recipients of Plaintiffs’ subpoenas. (Ex. B at 8-10, 12-417, ¶¶ 3-9, Exs. 1-10; Ex. A at 4-5, ¶¶ 3-4; Ex. C at 452, 454-495, ¶¶ 2-3, Exs. 1-7.)

Plaintiffs’ subpoenas generally seek information to identify the name and contact information for all account holders of record and persons paying for and managing the accounts with the third-party service providers associated with the Sportsbay Websites. The discovery of similar information for the sole purpose of identifying anonymous defendants has been authorized many times. *See Combat Zone*, 2012 WL 230382, at \*5 (finding proposed subpoenas for “ISPs to produce any and all documents and/or information sufficient to identify the user or users’ of the IP addresses” was sufficiently specific to satisfy the second factor); *DISH Network L.L.C. v. DOES*, No. 4:21-cv-581, Dkt. 7 (S.D. Tex. Apr. 6, 2021) (authorizing DISH to serve at least ten subpoenas on third-party service providers, resulting in the identification of the DOE defendant and adding

him by name); *DISH Network L.L.C. v. DOES*, No. 4:19-cv-4563, Dkt. 6 (S.D. Tex. Dec. 2, 2019) (authorizing DISH to serve at least seven subpoenas on third-party service providers, resulting in the identification of the DOE defendant and adding him by name); *DISH Network L.L.C. v. DOES*, No. 4:19-cv-2994, Dkt. 6 (S.D. Tex. Sept. 19, 2019) (authorizing DISH to serve ten subpoenas on third-party service providers and retailers, resulting in the identification of the DOE defendants and adding them by name); *DISH Network L.L.C. v. DOES*, No. 4:17-cv-1618, Dkt. 6 (S.D. Tex. June 19, 2017) (authorizing DISH to serve at least thirteen subpoenas and letters of request on third-party service providers, resulting in the identification of the DOE defendants and adding them by name); *Nagravision SA v. Does*, No. 4:14-mc-02883, Dkt. 5 (S.D. Tex. Dec. 12, 2014) (authorizing plaintiff to serve at least six subpoenas on third-party service providers, resulting in the identification of the DOE defendants and adding them by name).

**C. Plaintiffs' Subpoenas are Necessary to Identify Defendants.**

The third and fourth factors examine whether there is an alternate means for obtaining information requested in the subpoenas and whether that information is necessary to advance the claims. *Turner*, 2013 WL 2147515, at \*3. Plaintiffs conducted a thorough investigation and thus far can only identify Defendants' accounts with various third-party service providers. (Ex. B at 10-11, ¶¶ 10-19.) Plaintiffs do not have a means for identifying Defendants other than their proposed subpoenas. (*Id.* at 11, ¶ 19.) Without this information, Plaintiffs will be unable to advance this case and stop the unauthorized access to DISH's television programming. The third and fourth factors weigh in Plaintiffs' favor. *See, e.g., Combat Zone*, 2013 WL 230382, at \*5 (finding third and fourth factors satisfied



because subpoena to ISP was necessary to identify unknown infringer and case could not proceed until defendant was identified and served); *Well Go USA*, 2012 WL 4387420, at \*2 (reaching same conclusion).

**D. Plaintiffs' Subpoenas Will Not Violate Defendants' Expectation of Privacy.**

The final factor considers the effect the discovery might have on Defendants' expectation of privacy. *Turner*, 2013 WL 2147515, at \*3. Defendants through the Sportsbay Websites are circumventing and providing technologies and services that circumvent the security measures employed by Sling and provide DISH's copyrighted television programming to Sportsbay users without authorization. *See supra* Part III.A. Defendants cannot rely on a First Amendment right of privacy to prevent Plaintiffs from discovering their participation in this infringing operation. *See W. Coast Prods., Inc. v. Does 1-351*, No. 4:12-cv-00504, 2012 WL 2577551, at \*4 (S.D. Tex. July 3, 2012) (denying DOE defendant's attempt to prevent ISP from disclosing his identity on privacy grounds and free speech rights, reasoning that if "anonymity is used to mask copyright infringement or to facilitate such infringement by others, the First Amendment is no protection"); *see also Dallas Cowboys Cheerleaders, Inc. v. Scoreboard Posters, Inc.*, 600 F.2d 1184, 1188 (5th Cir. 1979) ("The first amendment is not a license to trammel on legally recognized rights in intellectual property.").

**IV. Conclusion**

For these reasons, Plaintiffs respectfully request that the Court grant this Motion and authorize Plaintiffs to conduct limited expedited discovery, including the issuance of the subpoenas attached to the Ferguson declaration as Exhibits 1-7. (Ex. C at 454-495.)

Dated: July 27, 2021.

Respectfully submitted,

**HAGAN NOLL & BOYLE LLC**

By: /s/ Stephen M. Ferguson  
Stephen M. Ferguson (attorney-in-charge)  
Texas Bar No. 24035248  
Southern District of Texas Bar No. 614706  
Two Memorial City Plaza  
820 Gessner, Suite 940  
Houston, Texas 77024  
Telephone: (713) 343-0478  
Facsimile: (713) 758-0146

Joseph H. Boyle (of counsel)  
Texas Bar No. 24031757  
Southern District of Texas Bar No. 30740

**Counsel for Plaintiffs DISH Network L.L.C.  
and Sling TV L.L.C.**

**CERTIFICATE OF WORD COUNT**

I hereby certify that, according to Microsoft Word's word count feature, the foregoing PLAINTIFFS' MOTION FOR LEAVE TO CONDUCT EXPEDITED DISCOVERY consists of a total of 2,187 words, not including the case caption, signature block, and certificate.

/s/ Stephen M. Ferguson  
Stephen M. Ferguson