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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

13 In re: Third Party Subpoena Issued to
14 RIGHTSCORP, INC.

Case No. 2:23-mc-00163

15 BMG RIGHTS MANAGEMENT (US)
16 LLC; UMG RECORDINGS, INC.;
CAPITOL RECORDS, LLC; CONCORD
17 MUSIC GROUP, INC.; and CONCORD
BICYCLE ASSETS, LLC,

**Related to No. 2:22-cv-00471-JRG in
the United States District Court
Eastern District of Texas Marshall
Division**

18 Plaintiffs,

**NOTICE OF MOTION TO
COMPEL COMPLIANCE WITH
THE SUBPOENA ISSUED TO
RIGHTSCORP, INC.;**
**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

19 v.

20 ALTICE USA, INC. and CSC
21 HOLDINGS, LLC,

22 Defendants.
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1 PLEASE TAKE NOTICE THAT, pursuant to Federal Rule of Civil Procedure
2 45, on a date and at a time to be determined by this Court, located in the First Street
3 U.S. Courthouse at 350 W. 1st Street, Suite 4311 Los Angeles, CA 90012-4565,
4 Movants Altice USA, Inc. and CSC Holdings, LLC (collectively, “Altice”), shall and
5 hereby do move the Court for an order compelling third party Rightscorp, Inc.
6 (“Rightscorp”) to produce documents responsive to Altice’s subpoena in *BMG Rights*
7 *Management (US) LLC, et al. v. Altice USA, Inc., et al.*, No. 2:22-cv-00471-JRG (E.D.
8 Tex.). The motion is based on this Notice of Motion; the accompanying
9 Memorandum of Points and Authorities; the Declaration of Diana Hughes Leiden
10 (“Leiden Decl.”) filed concurrently with this motion and the exhibits thereto; all other
11 pleadings and papers on file in this action; all further argument or authorities as the
12 Court may request or permit; and all matters presented at the hearing on this motion.

13 Pursuant to Local Rule 7-3, Altice certifies that it has conferred in good faith
14 with counsel for Rightscorp on multiple occasions, beginning on August 17, 2023 and
15 thereafter, but the parties were unable to reach a resolution.

16
17 Dated: November 14, 2023

Respectfully submitted,

18 WINSTON & STRAWN LLP

19
20 By: /s/ Diana Hughes Leiden

Jennifer A. Golinveaux
Diana Hughes Leiden

21
22 *Attorneys for Movants*
23 ALTICE USA, INC. and
24 CSC HOLDINGS, LLC
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Altice USA, Inc. and CSC Holdings, LLC (collectively, “Altice”), internet
4 service providers (“ISP”), have been sued for copyright infringement by BMG Rights
5 Management (US) LLC (“BMG”); UMG Recordings, Inc.; Capitol Records, LLC;
6 Concord Music Group, Inc; and Concord Bicycle Assets, LLC’s (collectively,
7 “Plaintiffs”) in the Eastern District of Texas¹ (the “Underlying Litigation”). The basis
8 of the suit is the Plaintiffs’ allegation that Altice’s internet subscribers infringed on
9 copyrightable works by downloading them without authorization between 2018 and
10 2022. The Plaintiffs seek to hold Altice liable for vicarious and contributory
11 copyright infringement in connection with its provision of internet service to these
12 subscribers and seek damages from Altice of over a billion dollars.

13 Years before the filing of this suit against Altice, Plaintiff BMG engaged
14 Rightscorp, Inc. (“Rightscorp”), a third-party software company that provides a range
15 of services including detecting and monitoring online piracy, to track the activities of
16 Altice subscribers on peer-to-peer file sharing sites. BMG then authorized Rightscorp
17 to prepare copyright infringement notices to send to Altice for instances it allegedly
18 observed of infringement of BMG’s copyrighted works. Thereafter, the other named
19 Plaintiffs each hired Rightscorp for the purpose of compiling evidence of
20 infringement. As such, Rightscorp’s system was used to detect alleged downloads by
21 Altice’s internet subscribers that serve as the basis for the secondary copyright
22 infringement case against Altice by all Plaintiffs. To establish that each and every
23 alleged direct copyright infringement occurred—a prerequisite to hold Altice
24 secondarily liable for the alleged infringement—the Plaintiffs will rely on both
25 Rightscorp’s data associated with detecting musical works on Altice’s system and

26 _____
27 ¹ The underlying case was filed on December 14, 2022 and is titled *BMG Rights*
28 *Management (US) LLC, et al. v. Altice USA, Inc., et al.*, No. 2:22-cv-00471-JRG (E.D.
Tex.)

1 matching them to Plaintiffs' copyrighted works, and the resulting notices that
2 Rightscorp sent to Altice. Thus, the *reliability* and *accuracy* of Rightscorp's system
3 in detecting alleged infringement and generating these notices is central to Plaintiffs'
4 claims, and critically, at the heart of Altice's defenses.

5 Accordingly, on June 16, 2023, Altice served a third-party subpoena on
6 Rightscorp seeking documents related to (1) information relating to the notices of
7 alleged infringement and the technical systems and operations utilized to generate
8 notices of alleged infringement and (2) its services and relationships with the
9 Plaintiffs. Rightscorp (who is represented by the Plaintiffs' counsel) responded to the
10 subpoena with a variety of objections and has failed to either provide such documents
11 or provide any information about the burden of the scope of production.

12 As detailed below, there is no basis for Rightscorp to resist the production of
13 documents critically relevant to the claims and defenses in the Underlying Litigation.
14 Sustaining Rightscorp's objections would allow the Plaintiffs in the Underlying
15 Litigation to use Rightscorp evidence to prop up its direct infringement case while
16 preventing Altice from obtaining critical information to rebut that evidence. Altice's
17 instant Motion should be granted.

18 **II. BACKGROUND**

19 **A. The Texas Action for Copyright Infringement**

20 On December 14, 2022, the Plaintiffs filed an action in the Eastern District of
21 Texas for copyright infringement against Altice. *See BMG Rights Management (US)*
22 *LLC, et al. v. Altice USA, Inc., et al.*, No. 2:22-cv-00471-JRG (E.D. Tex.). The
23 Plaintiffs in that action are record companies that produce, manufacture, distribute,
24 sell, and license commercial sound recordings, and music publishers that develop
25 songwriters and acquire, license, and otherwise exploit musical compositions, both in
26 the United States and internationally. Compl., ¶ 7.

27 In that action, the Plaintiffs seek to hold Altice, an ISP, liable for alleged
28 copyright infringement occurring over Altice's network. The Plaintiffs allege that

1 Altice’s subscribers infringed their copyrighted works by downloading them without
2 authorization through BitTorrent or other publicly available peer-to-peer file sharing
3 tools between 2018 and 2022. *Id.* ¶ 8. The Plaintiffs’ theory of liability is that Altice
4 tolerated and effectively contributed to and benefited from infringement by Altice’s
5 subscribers. *Id.* The Plaintiffs’ claims for vicarious and contributory copyright
6 liability boil down to the contention that Altice should have, but did not, swiftly
7 terminate any household or business whose IP address was identified in more than a
8 couple of notices of infringement. Each of these claims requires that Plaintiffs first
9 prove instances of direct copyright infringement by Altice’s subscribers. This case is
10 the latest attempt by the music industry to engineer a copyright-liability regime that
11 makes ISPs responsible for all infringement that takes place on the internet—and
12 thereby turn ISPs into their *de facto* enforcers.

13 Plaintiffs’ infringement notices and related data—their underlying evidence of
14 alleged direct infringement—were generated by third parties, including Rightscorp,
15 the party who is the respondent to the subpoena that is subject of this Motion. Altice
16 has asserted a number of defenses to the Plaintiffs’ claims, including that it is
17 protected by the “safe harbor” set forth in the Digital Millennium Copyright Act
18 (“DMCA”) because it took reasonable steps to respond to notices of alleged copyright
19 infringement—including from Rightscorp, a company whose business practice is to
20 “spam” ISPs like Altice with thousands of notices a day to manufacture the
21 appearance of repeat infringement by its subscribers. Indeed, Rightscorp intentionally
22 sends out millions of notices a year, and includes threatening settlement demands
23 therein, as it stands to gain a portion of each settlement received as a result of each
24 notice. In reality, the volume of these notices is so high that it risks crippling Altice’s
25 systems.

26 The Underlying Litigation is proceeding on a swift schedule, with fact
27 discovery closing on January 30, 2024 and trial set for September 2024.
28

1 **B. Rightscorp’s Business of Enforcement**

2 Since at least 2011, Plaintiff BMG contracted with Rightscorp, a software
3 company that manages and enforces large portfolios of copyrights on behalf of
4 copyright owners. Specifically, Rightscorp monitors the internet, locates alleged
5 copyright violators by identifying their IP addresses, and then prepares notices of
6 copyright infringement.

7 In anticipation of this litigation, the other Plaintiffs also each hired Rightscorp
8 as a consultant for the purpose of compiling evidence of infringement for this lawsuit.
9 The scope of Rightscorp’s relationship with the other Plaintiffs is based exclusively
10 on the same agreement with BMG. Therefore, under the agreements with all the
11 Plaintiffs, Rightscorp prepares copyright infringement notices to send to ISPs, such as
12 Altice, for instances of alleged infringement. While Rightscorp is an agent of the
13 parties for purposes of compiling evidence in this lawsuit, it simultaneously, under the
14 plain terms of these collective agreements, also gets (i) a portion of any settlement
15 demand obtained as a result of each notice that it sends to ISPs on behalf of the
16 Plaintiffs and (ii) a portion of any recovery obtained by the Plaintiffs in this lawsuit.
17 Rightscorp is undoubtedly a financially interested party in the Underlying Litigation.

18 In practice, the Plaintiffs provide Rightscorp a list of works for it to monitor.
19 Rightscorp then utilizes methods and processes for identifying potential or actual
20 instances of alleged infringement, compares the metadata of an allegedly infringing
21 file with metadata from Rightscorp’s own database(s), and then generates a notice of
22 infringement. Finally, Rightscorp should then request that the ISP for that IP address
23 forward that notice to the user.

24 However, the complaint in the Underlying Litigation does not specify how the
25 alleged infringement was identified, how the notices were created, or how, if at all, the
26 information they purported to contain was verified. Instead, Plaintiffs have repeatedly
27 stated that they outsource this process to Rightscorp and that Rightscorp is the entity
28 that maintains this information. Given that the Plaintiffs’ case for infringement relies

1 substantially if not entirely on Rightscorp’s notices, the accuracy and reliability of
2 Rightscorp’s systems, Rightscorp’s investigation of and supposed “matching” of files
3 located on Altice’s network to the Plaintiffs’ works, and subsequent notices it sent to
4 Altice, as well as its relationship with the Plaintiffs, are the directly relevant to the
5 case, and subject of the subpoena in question.

6 **C. Altice’s Subpoena To Rightscorp and Rightscorp’s Objections and**
7 **Refusals to Produce Key Documents**

8 On June 16, 2023, Altice served Rightscorp with a Subpoena *Duces Tecum*
9 issued by the Eastern District of Texas demanding the production of documents
10 related primarily to (1) information relating to the notices of alleged infringement and
11 the technical systems and operations utilized to generate notices of alleged
12 infringement and (2) its services and relationships with the Plaintiffs. *See* Declaration
13 of Diana Hughes Leiden (“Leiden Decl.”), Ex. A. Rightscorp, who is being
14 represented by the same counsel who is also representing the Plaintiffs, responded to
15 the document requests on June 30, 2023, asserting various boilerplate objections to
16 relevance and scope and agreeing to produce only limited categories of documents and
17 information. *Id.*, Ex. B.

18 To date, Rightscorp only has produced (i) notices of alleged copyright
19 infringement it purportedly sent to Altice, (ii) spreadsheets that appear to contain
20 metadata extracts from those notices, (iii) a handful of screenshots identifying
21 databases or dashboards that appear to summarize notices sent to ISPs, like Altice, (iv)
22 monthly reports generated by non-parties tracking albums and songs across the music
23 charts; and (v) internal Rightscorp emails requesting an update to its system to
24 account for updates in Plaintiffs’ music catalogs. *Id.*, ¶ 8. Rightscorp *has not*
25 *produced* any technical information explaining how this information was generated –
26 such as documents regarding the systems it utilized to assess alleged infringement,
27 including the initial identification and verification stages, and the systems used to send
28 notices of alleged infringement. *Id.* Rightscorp similarly *has not produced* any

1 documents relating to its services, including its relationship with any of the Plaintiffs,
2 and any emails whatsoever. *Id.* This is woefully deficient as a substantial portion of
3 the relevant discovery relating to the evidence of direct infringement in this case must
4 come from Rightscorp.

5 Altice has raised its concerns by written correspondence on August 4, 2023 and
6 Rightscorp responded on August 15, 2023. *Id.*, Exs. C & D. Thereafter, the parties
7 met and conferred on August 17, 2023. *Id.*, ¶ 7. Counsel for Rightscorp agreed to
8 take Altice’s positions back to its client, but has failed to provide any response for
9 over three months. *Id.* Further, Rightscorp’s most recent document production on
10 September 26, 2023 still failed to produce the documents requested by Altice’s
11 subpoena and critical to Altice’s defense. *Id.*, ¶ 8.

12 **III. LEGAL STANDARD**

13 Rule 45 of the Federal Rules of Civil Procedure expressly authorizes a party to
14 issue a subpoena commanding the person to whom it is directed to produce and permit
15 inspection of designated records. Fed. R. Civ. P. 45(a)(1)(C). If the third party timely
16 serves objections to the subpoena, “[a]t any time, on notice to the commanded person,
17 the serving party may move the court for the district where compliance is required for
18 an order compelling production or inspection.” Fed. R. Civ. P. 45(d)(2)(B)(i). “The
19 scope of discovery allowed under a Rule 45 subpoena is the same as the scope of
20 discovery allowed under Rule 26.” *Scott v. Carson Sheriff Dep’t*, 2020 WL 4108691,
21 at *3 (C.D. Cal. Jan. 15, 2020). Under Rule 26(b), parties “may obtain discovery
22 regarding any nonprivileged matter that is relevant to any party’s claim or defense—
23 including the existence, description, nature, custody, condition, and location of any
24 documents or other tangible things and the identity and location of persons who know
25 of any discoverable matter.” Fed. R. Civ. P. 26(b)(1).

26 **IV. ARGUMENT**

27 **A. This Court Should Transfer This Motion to Texas**

28 Federal Rule of Civil Procedure 45 provides that any motion to compel

1 compliance with a subpoena must be brought in the “court for the district where
2 compliance is required[.]” Fed. R. Civ. P. 45(d)(2)(B)(i). Thus, Altice filed this
3 Motion in the Central District of California, where Rightscorp is located. However,
4 “[t]he court for the district where compliance is required—and also, after a motion is
5 transferred, the issuing court”—can hold in contempt a non-compliant party. Fed. R.
6 Civ. P. 45(g). “When the court where compliance is required did not issue the
7 subpoena, it may transfer a motion under this rule to the issuing court if the person
8 subject to the subpoena consents or if the court finds exceptional circumstances.” *See*
9 Fed. R. Civ. P. 45(f); *Moon Mountain Farms, LLC v. Rural Cmty. Ins. Co.*, 301
10 F.R.D. 426, 428 (N.D. Cal. 2014). Here, exceptional circumstances justify transfer to
11 the Eastern District of Texas.

12 First, transfer will “advance[] judicial economy, avoid[] the potential for
13 inconsistent rulings, and prevent[] disruption of the management of the underlying
14 litigation.” *Argento v. Sylvania Lighting Servs. Corp.*, 2015 WL 4918065, at *7 (D.
15 Nev. Aug. 18, 2015). This case involves multiple third parties, who perform similar
16 services to Rightscorp and have been retained by the Plaintiffs, who have relevant
17 information and are based in different jurisdictions. The Eastern District of Texas has
18 issued subpoenas to these other third-parties and should therefore be the forum that
19 oversees and manages third-party discovery due to the overlapping issues of fact and
20 law. Exceptional circumstances also justify transfer where, as here, “a similar motion
21 to compel” could be pending that “dealt with [a] subpoena directed at a different party
22 but sought similar items. *See Moon Mountain*, 301 F.R.D. at 429; *see also, e.g.,*
23 *Cont’l. Auto. Sys., U.S., Inc. v. Omron Auto. Elec., Inc.*, 2014 WL 2808984, at *2
24 (N.D. Ill. June 20, 2014) (transferring motion due to risk of inconsistent rulings);
25 *Wultz v. Bank of China, Ltd*, 304 F.R.D 38, 46 (D.D.C. 2014) (transferring motion
26 because “potential for inconsistent rulings should be avoided and weighs in favor of a
27 single judicial officer deciding all of these disputes”). Here, Judge Gilstrap, who
28 presides over the Underlying Litigation, is familiar with the issues involved in this

1 action, and is well equipped to resolve this dispute efficiently, thus promoting
2 judicial economy. Indeed, Judge Gilstrap is actively presiding over a number of
3 discovery disputes between the parties that relate to similar issues, including a
4 motion to compel jointly filed by all parties. As such, there is no reason to disrupt
5 the issuing court's management of the Underlying Litigation.

6 Next, this Court should transfer this Motion to the E.D. Texas because
7 Rightscorp is essentially a party to the Texas action. While the advisory committee's
8 notes to Rule 45(f) state that the "prime concern" for a court considering whether to
9 transfer a motion to compel "should be avoiding burdens on local nonparties," that
10 concern carries less weight when the third-party has identified no burden and its
11 interests are more akin to party interests. *See In re Subpoena to Kia Motors Am., Inc.*,
12 2014 WL 2118897, at *1 (C.D. Cal. Mar. 6, 2014) (granting motion to transfer where
13 counsel for the party opposing transfer represents a party in the underlying action).
14 As mentioned above, the Plaintiffs' theory of liability in the Underlying Litigation is
15 based on the notices sent by Rightscorp to Altice. Further, Rightscorp is being
16 represented by the same attorneys who are also representing the Plaintiffs. Tellingly,
17 Rightscorp and the Plaintiffs are engaged in a litigation consulting agreement, for
18 which the Plaintiffs have agreed to give Rightscorp a portion of any monetary
19 recovery that it is awarded in this litigation. As such, it is apparent that Plaintiffs and
20 Rightscorp have a common interest in the resolution of the action. *See 3B Medical,*
21 *Inc. v. Resmed Corp.*, 2016 WL 6818953 (S.D. Cal. Oct. 11, 2016), at *4 (finding that
22 transfer did not turn the nonparty subject to the subpoena because the nonparty was
23 represented by the same law firm that represented the defendant in the underlying
24 matter).

25 Finally, "courts are less inclined to find a significant burden on the
26 subpoenaed nonparty when it is a large corporation," *Argento*, 2015 WL 4918065, *7;
27 *see also, e.g., Agincourt Gaming, LLC v. Zynga, Inc.*, 2014 WL 4079555, at *8 (D.
28 Nev. Aug. 15, 2014) ("[C]ourts have indicated that concerns regarding the burdens of

1 transfer are lessened when the disputed subpoena is directed to a large corporation,
2 rather than an individual person.”); *Kia Motors*, 2014 WL 2118897, *1 (same). Here,
3 Rightscorp manages copyright infringement for and is the agent of the Plaintiffs,
4 record labels and music publishers that represent a large swath of the music industry.
5 Therefore, any burden is significantly outweighed by the benefits of transfer.

6 **B. Altice Seeks Highly Relevant Discovery**

7 As explained below, even if the Court were to retain jurisdiction over the
8 subpoena, Altice’s motion should be nonetheless granted as Rightscorp is failing to
9 turn over evidence that is critically relevant to the claims and defenses in the
10 Underlying Litigation.

11 **1. Data Underlying the Verification and Notice-Sending Process**
12 **(RFP No. 1, 2, 8-9, 11, 12, 16-18, 27-30, 36, 38-39, and 41)**

13 Altice seeks information relating to the notices of alleged infringement and the
14 technical systems and operations utilized to generate notices of alleged infringement.
15 These requests include (i) the underlying data associated with the notices of alleged
16 infringement sent to Altice, including evidence packages (RFP No. 1); (ii) copies of
17 databases and/or dashboards containing data (RFP Nos. 2, 16); (iii) documents
18 relating to Rightscorp’s methods or processes for identifying potential or actual
19 instances of infringement (RFP Nos. 8-9); (iv) documents relating to Rightscorp’s
20 process of comparing metadata from an allegedly infringing file with metadata from
21 Rightscorp’s own databases (RFP No. 11); (v) data relating to all potentially
22 infringing copies of the Copyrighted Works at issue (RFP No. 12); (vi) documents
23 concerning Rightscorp’s retention, destruction, or loss of data, including transaction
24 logs (RFP No. 17); (vii) documents related to how infringement was detected on
25 Altice’s network (RFP No. 18); (viii) documents concerning the reliability and/or
26 efficacy of the Rightscorp System, including false positive test results, operational
27 audits, technical assessments, the bugs, flaws, weaknesses or improvements to its
28 system, and modifications or changes to its system (RFP Nos. 27, 28); (iv) documents

1 concerning the “Independent Expert Assessment of MarkMonitor Anti-Piracy
2 Methodologies,” and “Evaluation of the MarkMonitor AntiPiracy System” reports
3 conducted by third parties Stroz Friedberg and Harbor Labs (RFP Nos. 29, 30) about
4 OpSec’s systems²; (v) Rightscorp’s communications with Altice subscribers about the
5 infringement notices (RFP Nos. 36, 39); (vi) documents relating to complaints
6 regarding Rightscorp or Rightscorp’s services (RFP No. 38); and (vii) documents
7 sufficient to identify each individual that contributed to the development of the
8 Rightscorp system and the nature of that contribution (RFP No. 41). *See* Leiden
9 Decl., Ex. A.

10 Here, there is no question that the requested information is relevant. As set
11 forth above, the evidence relating to Rightscorp will be critical to the Plaintiffs’
12 affirmative case and Altice’s defenses. Simply put, the determination of every alleged
13 direct copyright infringement relies on the integrity of Rightscorp’s system. *See A&M*
14 *Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1020 (9th Cir. 2001) (“Contributory
15 liability requires that the secondary infringer ‘know or have reason to know’ of direct
16 infringement.”); *see also Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1169
17 (9th Cir. 2007) (citing *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S.
18 913, 930 (2005) (“One infringes contributorily by intentionally inducing or
19 encouraging direct infringement, and infringes vicariously by profiting from direct
20 infringement while declining to exercise a right to stop or limit it.”)). Despite this,

21 _____
22 ² OpSec (f/k/a “MarkMonitor”) is another third-party vendor utilized by the Plaintiffs
23 and their agent the Recording Industry Association of America (“RIAA”) to send
24 notices to Altice. The reliability and accuracy of OpSec’s system was assessed by
25 neutral third parties Stroz Friedberg and Harbor Labs when OpSec (as opposed to
26 Rightscorp) was chosen by a group of ISPs and rightsholders to act as the
27 infringement detection vendor for the Copyright Alert System. To the extent that
28 Rightscorp has documents relating to these reports—such as documents or comments
about the accuracy and reliability of OpSec’s system—those would be highly relevant
given that the Plaintiffs have stated that they also plan to rely on OpSec notices to
prove direct infringement in the Underlying Litigation.

1 Rightscorp is withholding critical information. Rightscorp’s responses to these
2 requests are insufficient because it is either improperly standing on its objections to
3 avoid producing documents at all other than the infringement notices themselves, or it
4 limits its production to documents to those “sufficient to show” how infringement was
5 “detected through use of Altice’s services” and limits the time period to the “relevant
6 claims period” – January 1, 2017 to December 31, 2022. At present, it is unclear what
7 Rightscorp intends to produce beyond the notices themselves and the small number of
8 categories summarized above. Even after meeting and conferring, Rightscorp has not
9 amended any of its responses, provided any response to Altice’s proposals to limit the
10 scope of the requests, or provided its own proposals to limit the scope of these
11 requests. Leiden Decl., ¶ 7.

12 Given that the notices are at the center of the lawsuit between the Plaintiffs and
13 Altice, Altice is seeking evidence concerning the accuracy and reliability of
14 Rightscorp’s systems for detecting infringement and sending notices, as well as the
15 data, evidence, records, or information on how Rightscorp verified the files before
16 sending such notices. For example, Rightscorp must produce any data or documents
17 that support, or contradict, the accuracy of the notices on which Plaintiffs are relying
18 in this case. This includes evidence supporting the purported verifications of allegedly
19 infringing files for which Rightscorp monitored, including any documents relating to
20 the audio verification Step, among the other discrete categories of documents set forth
21 in these requests. Rightscorp is also obligated to turn over documents relating to the
22 efficacy of its system, including internal documents relating to the assessments,
23 improvements, and modifications that it made to its systems over the years, as well as
24 external documents and reports from third parties about its system.

25 Further, given the longstanding relationship between Rightscorp and BMG and
26 the current consulting relationship between Rightscorp and the other Plaintiffs (*see*
27 Leiden Decl., Ex. E (Deposition Transcript of Keith Hauprich, BMG’s General
28 Counsel at 70:2-22; 90:2-17), it is unreasonable for Rightscorp to impose arbitrary

1 time limitations to its responses, as it has done. For example, Rightscorp states that it
2 will only produce documents from “the relevant claims period.” However, based on
3 the length of the relationship between the Plaintiffs and Rightscorp, Altice does not
4 suspect that there is a meaningful corpus of documents within the January 1, 2017 to
5 December 31, 2022 claims period because it is more likely that the majority of
6 documents and communications about the functionality, reliability, and accuracy of
7 the Rightscorp system took place at or near the inception of the relationship with the
8 Plaintiffs (well before 2017), or shortly thereafter. In other words, it is unlikely that
9 Rightscorp and the Plaintiffs were exchanging communications about the functionality
10 of this system, that is responsible for generating thousands of infringement notices
11 over the course of many years, only during the claims period of the instant suit. These
12 unilateral limitations should not stand because, for one, they will clearly exclude
13 relevant evidence, and second, because Rightscorp has never provided any evidence
14 of burden to provide documents outside of the date limitation that it proposed.

15 Finally, Rightscorp has also not explained how the production of this
16 information poses any undue time, burden, or monetary expense. Rightscorp is an
17 established company whose clients, these massive record labels, utilized Rightscorp
18 for years to orchestrate and ultimately prosecute a suit against Altice. Rightscorp has
19 never articulated that its historical systems are not maintained and accessible, nor any
20 burden in producing the data underlying the verification and notice-sending process.
21 In fact, Rightscorp’s entire reason for existence is to prepare and maintain evidence of
22 alleged infringement – if Rightscorp cannot fully provide any information regarding
23 the systems that generated that data, the only possible answer is that the data was
24 purposefully destroyed or not properly maintained, despite Rightscorp’s full
25 knowledge that it would be necessary to the defense of any alleged infringer.

26 As such, Rightscorp’s objections ring hollow and this Court should allow
27 discovery into these issues.
28

1 **2. Documents Relating to Rightscorp’s Services and Relationship**
2 **with Plaintiffs (RFP Nos. 3, 4, 23, 24, 35, 40, and 44)**

3 The next category of documents Altice seeks relate to Rightscorp’s relationship
4 with the Plaintiffs. These requests include (i) documents concerning any query, offer,
5 pitch promotion, or proposal by Rightscorp to Plaintiffs (RFP No. 3); (ii) agreements
6 between Rightscorp and Plaintiffs relating to peer-to-peer copyright infringement
7 (RFP No. 4); (iii) documents concerning any financial interest Rightscorp may have,
8 including but not limited to Plaintiffs’ business, copyrights, outcome of other
9 litigations, and settlements relating to its notices (RFP Nos. 23, 24, 44); (iv)
10 communications with Plaintiffs or other third parties regarding the Copyright Alert
11 System or other inter-industry agreements (RFP No. 35); and (v) documents relating
12 to the inclusion of an offer of settlement in Altice’s notices of alleged infringement
13 (RFP No. 40). *See* Leiden Decl., Ex. A.

14 Again, these requests are plainly relevant because they bear on the operation
15 and accuracy of the Rightscorp system, which are squarely relevant to the Plaintiffs’
16 direct infringement case. For example, Altice should be entitled to any agreements
17 between Rightscorp and the Plaintiffs to understand the scope of the services that it
18 was providing, as well as the systems in place to execute such services. Moreover,
19 understanding whether Rightscorp made multiple pitches or proposals to the Plaintiffs
20 overtime can shed light into how and why the system has been upgraded and
21 improved over the course of the parties’ relationship. Next, insight into Rightscorp’s
22 financial interest or receipt of portions of settlement payments that it sought to extract
23 from Altice’s subscribers will also reveal information about its bias and motivations to
24 send huge numbers of notices to Altice (whether or not they were valid). Finally,
25 standards or agreements through which the broader industry sent notices are relevant
26 to determining the reasonableness of both the notice sender’s actions and the ISP’s
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1 response.³ This same information bears on the applicability of the DMCA safe harbor
2 and Altice's reasonableness in responding to Rightscorp's notices.

3 Rightscorp is a key third party in this case, serving as the primary source of
4 purported evidence of alleged direct infringement and operating as Plaintiffs' agent.
5 Documents relating to Rightscorp's actions, bear on its business purposes and
6 motivations, which is directly relevant to its credibility. As such, Rightscorp should
7 produce a comprehensive set of such materials, as well as its communications with
8 Plaintiffs in response to these requests. Moreover, as stated above, the time period
9 must extend back to the point when Rightscorp first approached any of the Plaintiffs.
10 Again, given the length of the relationships, it is unlikely that there will be any
11 meaningful documents created five to ten years after the relationship between the
12 parties started.

13 **V. CONCLUSION**

14 For the foregoing reasons, Altice respectfully requests that the Court (1)
15 transfer enforcement of this motion to the Eastern District of Texas, or (2) in the
16 alternative, overrule Rightscorp's improper objections and order Rightscorp to
17 produce documents responsive to the third-party subpoena.

18
19 ³ As noted above, the Copyright Alert System was an agreement between major ISPs
20 (including Altice's predecessor entity, Cablevision), content owners (including
21 Plaintiff Universal Music Group), the RIAA, and the Motion Picture Association of
22 America ("MPAA") to address and deter online copyright infringement. CAS
23 established "[a] reasonable, alert-based approach [to] help to protect legal rights
24 granted by copyright and stem the unlawful distribution of copyrighted works, while
25 providing education, privacy protection, fair warning, and an opportunity for review
26 that protects the lawful interests of consumers." The CAS MOU required participating
27 ISPs to develop, implement, and enforce copyright alert programs under which
28 copyright owners would send infringement notices to participating ISPs (to be
forwarded to subscribers) and set out steps that ISPs would take in response to
multiple notices of infringement relating to a single subscriber, and established limits
to the number of notices an ISP was required to process.

1 Dated: November 14, 2023

2 Respectfully submitted,
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