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UNITED STATES DISTRICT COURT
IN AND FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

HYDENTRA HLP INT. LIMITED, a foreign
corporation, d/b/a METART

Plaintiff,

vs.

SPANKBANG.COM; and John Does 1-20,

Defendants.

Case No.: 2:15-cv-00199

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S *EX PARTE* MOTION
FOR EARLY DISCOVERY**

**[PROPOSED] ORDER GRANTING PLAINTIFF'S *EX PARTE* MOTION FOR EARLY
DISCOVERY**

The Court, having read all papers filed in connection with the Plaintiff's *Ex Parte* Motion for Early Discovery, having considered the issues raised therein, including the requirements of the Cable Privacy Act, 47 U.S.C. § 551, and being otherwise fully advised, it is hereby **ORDERED** that the Motion is **GRANTED** as set forth below.

On February 10, 2015 Plaintiff filed a Complaint alleging violations for copyright infringement against Spankbang.com, and Does 1-20 (Doc. # 1). Thereafter, Plaintiff

1 submitted a motion seeking permission to take early discovery for the limited purpose of
2 identifying these Doe Defendants. Specifically, Plaintiff seeks to subpoena Whoisguard, Inc.,
3 Enom, Inc., Rightside Operating Co., Cloudflare, Inc., and the relevant Internet Service
4 Providers (“ISPs”), to determine the names and addresses of certain subscribers connected to
5 certain IP addresses that have been used to operate the Spankbang.com website and domain
6 name to infringe upon Plaintiff’s copyrighted works. Additionally, Plaintiff seeks
7 permission to then issue interrogatories to and depose the subscribers identified by these
8 ISPs in order to determine whether the subscriber is a proper defendant in this action.

9 “As a general rule, discovery proceedings take place only after the defendant has been
10 served; however, in rare cases, courts have made exceptions, permitting limited discovery to
11 ensue after filing of the complaint to permit the plaintiff to learn the identifying facts necessary
12 to permit service on the defendant.” *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573, 577
13 (N.D. Cal. 1999) (citing *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980)). These
14 requests are allowed upon a showing of good cause. See *Dell Inc. v. BelgiumDomains, LLC*,
15 2007 U.S. Dist. LEXIS 98676, *18 (S.D. Fla. 2007); see also *Ayyash v. BankAl-Madina*, 233
16 F.R.D. 325, 327 (S.D.N.Y. 2005) (granting ex parte expedited discovery from third parties
17 where plaintiff showed good cause); *Semitool, Inc. v. Tokyo Electronic America, Inc.*, 208
18 F.R.D. 273, 275-76 (N.D. Cal. 2002) (applying a good cause standard to plaintiff’s request for
19 expedited discovery); and *Pod-Ners, LLC v. N. Feed & Bean of Lucerne Ltd. Liab. Co.*, 204
20 F.R.D. 675, 676 (D. Colo. 2002) (applying a good cause standard to plaintiff’s request for
21 expedited discovery).

22 Within the internet context, Courts have recognized “[s]ervice of process can pose a
23 special dilemma for plaintiffs in cases . . . [where] the tortious activity occurred entirely online.”
24 *Columbia Ins.*, 185 F.R.D. at 577. A three-factor test has been developed for instances where
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1 courts are considering motions requesting early discovery to assist in the identification of certain
2 defendants. *Id.* at 578-80.

3 First, the moving party should be able to identify “the missing party with sufficient
4 specificity such that the Court can determine that defendant is a real person or entity who could
5 be sued in federal court.” *Id.* at 578 (citing *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556
6 F.2d 406, 430 n. 24 (9th Cir. 1977)). Here, given the facts shown, Plaintiff has identified the
7 missing party(s) with as much clarity as possible. Plaintiff has stated that these missing parties
8 are persons or entities, and that these person/entities have been observed and documented as
9 infringing on its copyrights. Thus, as real persons/entities, these Does can be sued in federal
10 court.

11 Second, the moving party should be able to identify “all previous steps taken to locate the
12 elusive defendant.” *Columbia Ins.*, 185 F.R.D. at 578 (citing *Plant v. Doe*, 19 F. Supp. 2d 1316,
13 1320 (S.D. Fla. 1998)). The only information Plaintiff has regarding the Defendants are their
14 Moniker account information and user names. Therefore, there are no other measures Plaintiff
15 could take to identify the Defendants other than to obtain his/her identifying information from
16 Moniker and then from his/her ISP. Consequently, Plaintiff must serve subpoenas on Moniker
17 and Defendants’ ISPs to obtain the information it seeks.

18 Third, the moving party should be able to “establish to the Court’s satisfaction that [its]
19 suit against defendant could withstand a motion to dismiss.” *Columbia Ins.*, 185 F.R.D. at 578
20 (citing *Gillespie*, 629 F.2d at 642). Here, Plaintiff, has alleged a *prima facie* claim of copyright
21 infringement. 17 U.S.C. § 106(1)(3). Specifically, Plaintiff claimed: (1) it owns and has
22 registered the copyrighted work at issue in this case; (2) the Defendants reproduced and
23 distributed those works without authorization; and (3) Plaintiff was damaged by Defendants’
24 actions. Accordingly, since Plaintiff has alleged all the elements of copyright infringement in the
25 Complaint (Doc. # 1), its suit against Defendant could withstand a motion to dismiss.
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1 Plaintiff has also alleged a *prima facie* case of contributory copyright infringement.
2 Plaintiff claimed (1) it owns and has registered the copyrighted work at issue in this case;
3 (2) Defendants knew of the infringing activity and were conscious of their infringement; and (3)
4 Defendants actively participated in this infringement by inducing, causing and contributing to the
5 infringement of Plaintiff's copyright work. As each element has properly been alleged by the
6 Plaintiff in its Complaint (Doc. # 1), this cause of action could withstand a motion to dismiss.

7 Therefore, Plaintiff has adequately satisfied the three-factor test for the claims raised in
8 the Complaint. Furthermore, the scope of this order has been sufficiently tailored to achieve the
9 reasonable and necessary purpose of identifying already known alleged offenders. In sum, the
10 Court finds good cause to grant Plaintiff the relief it seeks. Whoisguard, Inc., Enom, Inc.,
11 Rightside Operating Co., Cloudflare, Inc. shall immediately respond to the Plaintiff's
12 subpoenas. Any Internet Service Provider shall have seven (7) days after service of any
13 subpoenas to notify the subscriber(s) that their identit(y/ies) have been subpoenaed by
14 Plaintiff. Each subscriber whose identity has been subpoenaed shall have twenty- one (21)
15 calendar days from the date of such notice to file a responsive pleading or motion to quash.
16 Thereafter, upon receipt of the subscriber's information from the ISP, the Plaintiff may send
17 written discovery requests to the relevant subscriber and may take the subscriber's
18 deposition, if necessary.

19 Accordingly, it is hereby ORDERED that Plaintiff's *Ex Parte* Motion for Early
20 Discovery is GRANTED.

21 DATED: _____

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23 United States District Court Judge
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