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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

*In re Subpoena to:
Reddit, Inc.,*

Case No. 3:24-mc-80005-TSH

**REDDIT, INC.'S OPPOSITION TO
MOTION TO COMPEL**

Date: February 15, 2024

Time: 10:00 a.m.

Judge: Hon. Thomas S. Hixson

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1 Reddit, Inc. hereby files this Opposition to the Motion to Compel (“Motion”)
2 filed by Voltage Holdings, LLC et al.¹ (“Movants”), seeking to unmask six
3 anonymous Reddit users.²

4 **I. INTRODUCTION**

5 Movants here seek to compel Reddit to unmask six of its users who discussed
6 torrenting on networks provided by Frontier Communications, an internet service
7 provider (ISP) whom Movants are suing for secondary copyright infringement.
8 Movants believe that the Reddit users could have evidence relevant to that
9 underlying infringement litigation because they made posts on Reddit discussing
10 torrenting on Frontier’s networks.

11 But this Court has already denied two substantively identical motions. *See In*
12 *re Reddit, Inc.*, – F. Supp. 3d –, No. 3:23-mc-80037, 2023 WL 3163455 (N.D. Cal.
13 Apr. 28, 2023) (Beeler, M.J.) (“*Reddit I*”); *see also In re Reddit, Inc.*, No. 3:23-mc-
14 80173, 2023 WL 4849434 (N.D. Cal. July 29, 2023) (Beeler, M.J.) (“*Reddit II*”). As
15 recognized in both cases, whether the targeted Reddit users should be unmasked
16 under these circumstances is subject to the governing *2TheMart* standard, which
17 requires Plaintiffs to show that identifying the users supplies “directly and
18 materially relevant” evidence for Plaintiffs’ claim that is “unavailable from any other
19

20
21 ¹ The complete list of Movants includes: Voltage Holdings, LLC and Screen Media
22 Ventures, LLC, Killing Link Distribution, LLC, Family of the Year Productions,
23 LLC, and Laundry Films, Inc.

24 ² Reddit separately notes a discrepancy with Movants’ interested party certification.
25 ECF No. 8. On January 10, 2024, Voltage Holdings and Screen Media Ventures,
26 LLC filed a certification that no other “persons, associations of persons, firms,
27 partnerships, corporations (including parent corporations) or other entities” have
28 any interest, financial or nonfinancial, in the subject matter of this dispute. *Id.* But,
nine days later, and in response to Reddit’s motion to relate this case to *Reddit II*,
infra, based on an identity of parties, counsel for Movants filed a motion to join
three parties from the underlying bankruptcy litigation as movants here,
demonstrating that these additional parties had an existing interest in the subject
matter of this dispute. ECF No. 17.

1 source.” *Reddit I*, 2023 WL 3163455, at *3 (quoting *Doe v. 2TheMart.com*, 140 F.
2 Supp. 2d 1088, 1095 (W.D. Wash. 2001)). And as previously determined in this
3 particular factual scenario, these copyright owners *cannot* meet that standard
4 because the evidence that Movants seek can be obtained from: (a) the defendant ISP
5 itself; and (b) a number of ISP subscribers that Movants *know* to have engaged in
6 copyright infringement, already in Movants’ possession.

7 Undeterred, Movants pursue this Motion, which presents no new facts and no
8 new arguments.³ Just as in *Reddit I and Reddit II*, the Court should deny the
9 Motion.

10 **II. BACKGROUND**

11 Reddit is a community of online communities. Declaration of Hayden M.
12 Schottlaender (“Schottlaender Decl.”) ¶ 2. Within those communities, called
13 “subreddits,” users gather to discuss shared interests. *Id.* Users generally
14 participate on the platform pseudonymously, and Reddit does not require that they
15 use or provide Reddit with their legal names or addresses. *Id.*

16 The parties have already been here twice before on substantively identical
17 facts.

18 **A. The copyright holders lost *Reddit I*.**

19 In February 2023, a number of copyright holders, including Voltage Holdings,
20 LLC, filed *Reddit I*. In *Reddit I*, the copyright holders sought to unmask seven
21 Reddit users who had generally posted about internet service providers and about
22 copyright infringement notices they received from those providers. *See Reddit I*,
23 2023 WL 3163455, at *2. Those copyright holders suggested that unmasking the
24 Reddit users would help the copyright holders establish that a defendant internet
25 service provider (ISP) in the underlying litigation did not adequately implement a

26
27 ³ As described below, Movants even raise the same arguments that this Court has
28 already previously rejected.

1 repeat infringer policy for purposes of seeking a Digital Millennium Copyright Act
2 (DMCA) safe harbor. *Id.* The Court analyzed the copyright owners’ motion under a
3 specific and highly contextual First Amendment standard previously articulated in
4 *2TheMart.com*, 140 F. Supp. 2d 1088. *Id.* at *3. Applying that standard, the Court
5 denied the copyright holders’ motion to compel Reddit to produce identifying
6 information, recognizing that under the circumstances, it was implausible to believe
7 that the Reddit users served as an “irreplaceable source” of evidence in the copyright
8 holders’ underlying litigation. *Id.* at *4.

9 **B. The copyright holders lost *Reddit II*.**

10 In June 2023, many of the same copyright holders (with a few added) filed
11 *Reddit II*. Both Voltage Holdings, LLC and Screen Media Ventures, LLC were
12 movants in *Reddit II*. *See Reddit II*, ECF No. 1, at 1–2. *Reddit II* presented nearly
13 identical facts to *Reddit I* but involved different Reddit users and a different
14 defendant internet service provider. *Reddit II*, 2023 WL 4849434, at *1. Notably, in
15 *Reddit II*, the copyright holders had requested and received from the defendant ISP
16 a list of that ISP’s top infringing IP addresses. *Id.* The Court again applied
17 *2TheMart* and closely analyzed *why* the copyright holders were seeking to unmask
18 Reddit users, recognizing that those users would hold “at best weak evidence about
19 [the ISP’s] insufficient policy regarding repeat infringers or its appeal to pirating
20 subscribers.” *Id.* at *4. As the Court pointed out, the copyright owners’ ability to
21 subpoena “even a subset of” the individuals identified by the defendant ISP “would []
22 yield information at least equivalent to, if not better than, information from the six
23 Reddit subscribers.” *Id.* On those bases, the Court again denied the copyright
24 holders’ motion to compel Reddit to produce identifying information. *Id.*

25 **C. *Reddit III* is factually indistinguishable from *Reddit I* and**
26 ***Reddit II*.**

27 The Movants have now filed *Reddit III*. *Reddit III* is a third iteration of
28 *Reddit I* and *Reddit II*, involving precisely the same factual background and legal

1 issues. This time, the Movants are suing Frontier Communications for secondary
2 copyright infringement. Mot. ¶ 1. Movants seek to unmask six Reddit users who
3 discussed receiving DMCA notices from Frontier on the theory that these Reddit
4 users have made comments that “support Movants’ assertion that the ability to
5 pirate content efficiently without any consequences is a draw for becoming a
6 Frontier subscriber [] and that Frontier does not have an effective policy for
7 terminating repeat infringers (rebutting Frontier’s purported DMCA safe harbor).”
8 *Id.* ¶ 27. The underlying bankruptcy court adjudicating the copyright litigation has
9 already ruled that the Movants can obtain identifying information from Frontier for
10 IP addresses known to have pirated using Frontier’s network. *Id.* ¶¶ 8–9. Movants
11 have sought that information from Frontier (*id.* ¶ 8) and Frontier has stated in that
12 litigation that it will produce that identifying information upon the Movants’
13 issuance of subpoenas to Frontier. *See In re: Frontier Comms. Corp.*, No. 20-22476,
14 ECF No. 2255 (S.D.N.Y. Bankr. Jan. 17, 2024).

15 III. ARGUMENT

16 A. Movants’ subpoena should be quashed under 2TheMart where 17 the information sought is available from another source.

18 *Reddit I* and *Reddit II* confirmed that this type of unmasking subpoena,
19 targeting a potential witness rather than a potential defendant, is subjected to First
20 Amendment scrutiny under the *2TheMart* standard. *Reddit II*, ECF No. 21, at 5–6;
21 *Reddit I*, ECF No. 23, at 4–5. As the Court held:

22 [D]isclosure of anonymous users’ identities is appropriate only “in the
23 exceptional case where the compelling need for the discovery sought
24 outweighs the First Amendment rights of the anonymous speaker.” Courts
25 consider four factors: whether “(1) the subpoena seeking the information was
26 issued in good faith and not for any improper purpose, (2) the information
27 sought relates to a core claim or defense, (3) the identifying information is
28 directly and materially relevant to that claim or defense, and (4) information
sufficient to establish or to disprove that claim or defense is unavailable from
any other source.”

Reddit II, 2023 WL 4849434, at *3 (internal citations omitted).

1 A higher standard for unmasking a non-party witness exists than for
 2 unmasking a potential defendant because—unlike the need to identify a potential
 3 defendant—litigation can often continue without trampling a non-party witness’s
 4 First Amendment right to anonymity. *2TheMart*, 140 F. Supp. 2d at 1095.
 5 Consequently, this Court in *Reddit I* recognized that a dispositive “question here is
 6 whether the information is available from ‘any’ other source,” (*Reddit I*, 2023 WL
 7 3163455, at *4) and in *Reddit II* reiterated that bar and labeled it “a high standard.”
 8 *Reddit II*, 2023 WL 4849434, at *4; *see also Rich v. Butowsky*, No. 20-mc-80081, 2020
 9 WL 5910069, at *5 (N.D. Cal. Oct. 6, 2020) (subpoena only enforced because the
 10 anonymous account was a singularly “essential witness” for the litigants).

11 **1. Compelled disclosure of IP addresses is subject to the**
 12 **same *2theMart* standard.**

13 Movants attempt to avoid those core holdings from *Reddit I* and *Reddit II* by
 14 bizarrely suggesting that the Motion does not seek to compel “anonymous users’
 15 identities” but is instead “limited to requesting the Reddit users’ IP address logs.”
 16 Mot. ¶ 28. That is not a cognizable distinction and Reddit is unaware of a single case
 17 where a court has declined to apply a First Amendment unmasking standard on the
 18 theory that “only” IP addresses were being sought.⁴

19 First, and most obviously, Movants’ subpoena exclusively seeks the IP
 20 addresses of the targeted Reddit users. Were IP addresses not identifying

21
 22 ⁴ Movants’ references to Fourth Amendment jurisprudence and consumer privacy
 23 class actions are irrelevant. Mot. ¶ 29 (citing *United States v. Forrester*, 512 F.3d
 24 500, 510 (9th Cir. 2008) (an evidentiary suppression case holding that government
 25 surveillance of a criminal defendant’s internet activity did not constitute a search
 26 under the Fourth Amendment) and *In re Zynga Privacy Litigation*, 750 F.3d 1098,
 27 1108–09 (9th Cir. 2014) (holding that internet referrer headers do not constitute
 28 “content” under the Electronic Communications Privacy Act such that disclosure of
 referrer headers could sustain a civil claim under that law)). At issue here are the
 Reddit users’ oft-recognized First Amendment rights to anonymity, and neither
Forrester nor *Zynga* suggest that IP addresses are excluded from First Amendment
 review. Indeed, neither addresses the First Amendment at all.

1 information, they would hold no evidentiary value to Movants whatsoever and the
2 subpoena would be pointless.

3 Second, as Movants know, the process of unmasking a Reddit user turns on
4 Reddit’s disclosure of an IP address because Reddit does not require its users to
5 provide their real names or addresses. Schottlaender Decl. ¶ 2. For that reason,
6 provision of an IP address *is* unmasking subject to First Amendment scrutiny. *See,*
7 *e.g., Castro v. Doe*, No. 23-mc-80198-TSH, 2023 WL 9232964, at *2–3 (N.D. Cal. Oct.
8 12, 2023) (Hixson, M.J.) (applying First Amendment unmasking standards to
9 subpoena seeking “A list of all internet protocol addresses used by Wikipedia
10 Administrator...to access his Wikipedia account over the past 12 months.”); *Wirt v.*
11 *Twitter, Inc.*, No. 21-mc-801660, 2021 WL 5919846, at *1 (N.D. Cal. Dec. 15, 2021)
12 (engaging in First Amendment analysis where IP addresses associated with Tweets
13 were being requested from Twitter); *see also Obi Pharma, Inc. v. Does 1-20*, No.
14 16CV2218, 2017 WL 1520085, at *5 (S.D. Cal. Apr. 27, 2017) (after application of
15 First Amendment standards, recognizing IP addresses to be essential to unmasking
16 because an “IP address cannot be made up in the same way that a poster may
17 provide a false name and address”). After learning an IP address, the Movants need
18 only subpoena the ISP for the subscriber information associated with that IP
19 address, and the ISP does not share Reddit’s interest in protecting the anonymity of
20 that user. *See, e.g., In re Grand Jury Subpoena*, No. 16-03-217, 875 F.3d 1179, 1183
21 n.2 (9th Cir. 2017) (recognizing a platform’s unique third-party standing to assert
22 the First Amendment rights of its users because the platform has a “sufficiently
23 close relationship” to those users and because the platform would suffer its *own*
24 injury to its business if forced to identify its users).

25 **B. Plaintiffs can obtain this evidence through other, less**
26 **constitutionally invasive means.**

27 Movants cannot show that the information they seek here is unavailable from
28 other sources. As in *Reddit I* and *II*, Movants justify their First Amendment

1 encroachments here by arguing that they seek evidence: (i) that “the ability to freely
2 pirate” drew customers to Frontier; and (ii) that Frontier failed to implement a
3 repeat infringer policy. Mot. ¶ 21. But evidence on those issues is available and
4 obtainable outside of these six targeted Reddit users such that it is not “essential”
5 and fails *2TheMart. Rich*, 2020 WL 5910069, at *5.

6 **1. Movants are already seeking this evidence directly from**
7 **known copyright infringers on Frontier’s network.**

8 As in *Reddit II*, Movants here are already actively pursuing alternative
9 evidence far better than what they could obtain from Reddit. In *Reddit II*, Movants
10 admitted that they were in possession of a list of IP addresses that had most
11 frequently infringed copyrights using that defendant ISP’s networks. This Court
12 recognized that admission to be fatal under *2TheMart*; where the Movants already
13 have the “top pirating IP addresses...it is not obvious why subpoenaing even a
14 subset of those addresses would not yield information at least equivalent to, if not
15 better than, information from the six Reddit subscribers.” *Reddit II*, 2023 WL
16 4849434, at *4. Here, Movants again admit that they already have “pirating [IP]
17 addresses.” Mot. ¶ 8; *see also In re Frontier*, ECF No. 2233, at 2 (Dec. 1, 2023)
18 (“Movie Company Claimants have identified the IP addresses of the alleged
19 infringers.”). And, as described above, Frontier has already indicated that it will
20 provide Movants with identifying information for those IP addresses upon receipt of
21 a subpoena. *In re Frontier*, ECF No. 2255.

22 Movants offer two nonsensical responses. First, they complain that Fronter
23 has objected to disclosing subscriber information. Mot. ¶ 33. But that is belied by
24 Frontier’s latest filing, which postdates the Motion. *In re Frontier*, ECF No. 2255
25 (suggesting that Movants need only issue a subpoena for this information). Movants’
26 argument also misleads the Court about the information in Reddit’s possession. As
27 described above, the only identifying information in Reddit’s possession *is* IP
28 addresses. Where Movants *already have* IP addresses for alleged copyright

1 infringers on Frontier’s network, Reddit’s disclosure of the Reddit users’ IP
2 addresses offers Movants nothing new—only significantly less relevant IP addresses.

3 Second, Movants argue that even if they obtain subscriber information for
4 those infringer IP addresses, “this information would not provide Movants with
5 documented evidence that the ability to pirate freely was a draw to using Frontier’s
6 service or that Frontier failed to reasonably implement a policy for terminating
7 repeat infringers.” Mot. ¶ 33. But Reddit does not have any such “documented
8 evidence” in its possession either—it only has IP addresses. And to the extent
9 Movants are suggesting that the Reddit posts themselves are “documented
10 evidence,” Movants need not unmask the Reddit users to admit that documented
11 evidence; Movants could lay the evidentiary foundation for, and authenticate, those
12 posts themselves. *See, e.g.*, Mot. ¶ 32 (conceding that the Reddit posts themselves
13 “refer to Defendant’s lack of a policy for terminating repeat infringers and/or failure
14 to reasonably implement such a policy.”); *see also 2TheMart*, 140 F. Supp. 2d at 1097
15 (“The messages are available for use at trial, and TMRT can factually support its
16 defense without encroaching on the First Amendment rights of the Internet users.”);
17 *La Force v. GoSmith, Inc.*, No. 17-cv-05101, 2017 WL 9938681, at *3 (N.D. Cal. Dec.
18 12, 2017) (describing how a litigant can authenticate and admit printouts of
19 webpages as evidence).

20 **2. Evidence about Frontier’s repeat infringer policies can**
21 **come from Frontier.**

22 In *Reddit I*, this Court recognized that the copyright holders could not meet
23 the *2theMart* standard because:

24 there is information available from another source to establish or
25 disprove the plaintiffs’ three alleged categories of relevance.
26 Specifically, [the ISP] is the party that (according to the plaintiffs) “has
27 not reasonably implemented a policy for terminating repeat
28 infringers,” “controls the conduct of its subscribers,” and allows its
customers “to freely pirate without consequence.” The high likelihood
that this information is available from [the ISP] defeats the plaintiffs’

1 subpoena[.]

2 *Reddit I*, 2023 WL 3163455, at *4. The circumstances here are no different at all;
 3 Movants can obtain evidence on these issues in the normal course of discovery from
 4 Frontier. While Movants complain that the discovery period in their underlying
 5 litigation ends in June 2024 (Mot. ¶ 33), Reddit fails to see the problem. There is
 6 more than sufficient time for Movants to issue a subpoena to Frontier for basic
 7 subscriber information for the infringing addresses, and there is even sufficient time
 8 to seek redress from the court should Frontier fail to respond. Importantly, while
 9 Movants note that they have propounded nearly a hundred RFPs, they have not
 10 provided any other information regarding their efforts to obtain this information
 11 from the ISP. *Id.* Movants are not shy to prematurely move to compel discovery
 12 (*see, e.g., Reddit I; Reddit II; Reddit III*) and fact discovery periods can always be
 13 extended to provide a litigant with ample opportunity to obtain necessary evidence.

14 **C. The Court should, for the third time, reject Movants’ argument**
 15 **that their unfounded allegations of copyright infringement**
 16 **make *2theMart* inapplicable.**

17 Without mentioning that this Court has already twice rejected the very same
 18 argument,⁵ Movants argue that because the Reddit users were “boasting of criminal
 19 conduct violating [copyright law],”⁶ the *2theMart* standard should not apply because

20 ⁵ Worse, it appears that Movants copied and pasted some of their briefing on this
 21 point from *Reddit II*, where the argument was expressly rejected. *Compare* Mot. ¶ 31
 22 (asking the Court to apply “the *Twitter* standard” despite not citing a single case
 23 relating to Twitter) *with Reddit II*, ECF No. 1 ¶ 30 (making the exact same
 24 argument but citing to *In re DMCA § 512(h) Subpoena to Twitter, Inc.*, 608 F. Supp.
 3d 868, 876 (N.D. Cal. 2022), and asking that court to apply “the *Twitter* standard”).

25 ⁶ Movants’ rush to label the users’ conduct “criminal” underscores the need to quash
 26 the subpoena. “As with other forms of expression the ability to speak anonymously
 27 on the Internet promotes the robust exchange of ideas and allows individuals to
 28 express themselves freely without fear of economic retaliation or concern about
 social ostracism.” *Smythe v. Does*, No. 15-mc-80292, 2016 WL 54125, at *2 (N.D. Cal.
 Jan 5, 2016) (Beeler, M.J.) (cleaned up) (quoting *In re Anonymous Online Speakers*,
 661 F. 3d 1168, 1173 (9th Cir. 2011)). Calling these anonymous users “criminal” and

1 “copyright law includes built-in First Amendment accommodations such as the fair
2 use defense.” Mot. ¶ 31. Movants then cite *In re DMCA Subpoena to Reddit, Inc.*, 441
3 F. Supp. 3d 875, 882–83 (N.D. Cal. 2020), a case in which the court held that it need
4 not conduct a First Amendment analysis at the unmasking stage because the to-be
5 defendant in a copyright infringement action would have an opportunity to present
6 their First Amendment defense by asserting fair use. *Id.*

7 This argument has been rejected twice by the Court when deciding *Reddit I*
8 and *Reddit II* because of the obvious distinction that the anonymous users here are
9 not going to be defendants in any infringement actions. *See* Mot. ¶ 28 (“Movants are
10 not seeking to retaliate economically or officially against these Reddit users. Rather,
11 Movants wish to use their comments as evidence....”). “The fair use defense is
12 available only to those accused of copyright infringement, and the Reddit users at
13 issue here are uninvolved third parties.” *Reddit I*, 2023 WL 3163455, at *3 (citing
14 and expressly distinguishing the case on which Movants now rely, *In re DMCA*
15 *Subpoena to Reddit*, 441 F. Supp. 3d at 882–83); *see also* *Reddit II*, 2023 WL
16 4849434, at *3 (declining to apply the lesser “fair use” standard to a Reddit user
17 because that user “is a witness, not a defendant. He thus does [not] have available to
18 him the built-in First Amendment accommodations of copyright law, such as the fair
19 use defense.”) (cleaned up).

20 **IV. CONCLUSION**

21 For the foregoing reasons, the Court should deny the Motion and quash the
22 subpoena issued to Reddit.

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27 _____
28 then seeking to expose their identities is a thinly-veiled effort to suppress similar
speech and activity.

1 Dated: January 23, 2024

PERKINS COIE LLP

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