



Court Denies Motion to Compel Reddit to Identify Movie Pirates in Ongoing Copyright Litigation

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On July 29, 2023, the United States District Court for the Northern District of California (the “Court”) denied a motion to compel non-party Reddit, Inc. (“Reddit”), an online social media site, to disclose the identity of six user accounts associated with ongoing out-of-district copyright litigation, holding that the First Amendment protects the right to anonymous online speech and barred the discovery.^[i]

In August 2021, twenty movie producers who own the copyrights to forty-five motion pictures alleged Grande Communications Networks LLC (“Grande”), an internet-service provider, was liable for its subscribers’ infringing on their copyrights because Grande ignored piracy on its network. In the [Complaint](#), the movie producers alleged Grande “knew its subscribers routinely used its network for illegally downloading and uploading copyrighted works” and was aware that its subscribers used its network to “infringe on its exclusive rights of reproduction and distribution.”^[ii] The movie producers alleged Grande was liable for contributory copyright infringement for the infringing acts of its subscribers and was secondarily liable for Digital Millennium Copyright Act violations, ^[iii] and sought injunctive relief in addition to monetary damages.

During discovery, the movie producers served subpoenas for the IP addresses of 125 Grande subscribers, and Grande provided 118 of the 125 addresses.^[iv] The movie producers also served a subpoena on non-party Reddit, seeking the identities of six users who, allegedly, discussed using Grande’s network to pirate movies.^[v] The movie producers cited specific comments posted on Reddit, and sought to authenticate the posts.^[vi] Reddit objected to the subpoena and the movie producers moved to compel Reddit to produce the identities of these users.^[vii]

The Court denied the motion and held that the movie producers failed to demonstrate a compelling need for discovery that outweighed the users’ First Amendment right to anonymous speech. Citing the Ninth Circuit’s decision in *In re Anonymous Online Speakers*, the Court explained that in evaluating the First Amendment rights of anonymous Internet users in the context of a third-party civil subpoena, disclosure of anonymous users’ identities is appropriate only “in the exceptional case where the compelling need for the discovery sought outweighs the First Amendment rights of the anonymous speaker.”^[viii] The Court focused on “four factors: whether (1) the subpoena seeking the information was issued in good faith and not for any improper purpose, (2) the information sought relates to a core claim or defense, (3) the identifying information is 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.”^[ix] Ultimately, the court determined that the movie producers failed to show that the identifying information is directly or materially relevant or unavailable from another source.^[x]

Notably, in April 2023, the same Court denied a similar request to unmask the identity of Reddit users in a separate out-of-district copyright infringement case.^[xi] The Court’s holding that the protection afforded by the First Amendment to anonymous online speech outweighs the need for discovery demonstrates the high burden parties must meet when serving subpoenas on third-party providers, such as Reddit, that may impact the freedom of its users.

Cullen and Dykman’s Intellectual Property team continues to monitor important developments in trademark and copyright law. Should you have any questions about this legal alert, please feel free to contact Karen Levin (klevin@cullenllp.com) at (516) 296-9110 or Ariel Ronneburger (aronneburger@cullenllp.com) at (516) 296-9182 or Ciara Villalona (cvillalona@cullenllp.com) at (516) 296-9103.

This advisory provides a brief overview of the most significant changes in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

Footnotes

^[i] *In re Reddit, Inc.*, No. 3:23-MC-80173-LB, 2023 WL 4849434 (N.D. Cal. July 29, 2023).

^[ii] Complaint at ¶¶40-47, *After II Movie, LLC et. al. v. Grande Communications Networks LLC*, No. 1:21-cv-00709-RP (W.D. Tex.).

^[iii] “A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the provider’s transmitting, routing, or providing connections for, material through a system or network controlled or operated by or for the service provider, or by reason of the intermediate and transient storage of that material in the course of such transmitting, routing, or providing connections, if (1) the transmission of the material was initiated by or at the direction of a person other than the service provider; (2) the transmission, routing, provision of connections, or storage is carried out through an automatic technical process without selection of the material by the service provider; (3) the service provider does not select the recipients of the material except as an automatic response to the request of another person; (4) no copy of the material made by the service provider in the course of such intermediate or transient storage is maintained on the system or network in a manner ordinarily accessible to anyone other than anticipated recipients, and no such copy is maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary for the transmission, routing, or provision of connections; and (5) the material is transmitted through the system or network without modification of its content.” 17 U.S.C.A. § 512(a) (West).

^[iv] *In re Reddit, Inc.*, No. 3:23-MC-80173-LB, 2023 WL 4849434, at 1 (N.D. Cal. July 29, 2023).

^[v] *Id* at 2.

[vi] *Id.*

[vii] *Id.*

[viii] *Id.* at 3 (N.D. Cal. July 29, 2023) (citing *In re Anonymous Online Speakers*, 661 F.3d 1168, 1176 (9th Cir. 2011)(citing *Doe v. 2TheMart.com*, 140 F.Supp.2d 1088 (W.D.Wash.2001)).

[ix] *Id.*

[x] *Id.* at 4.

[xi] *In re Reddit, Inc.*, No. 3:23-MC-80037-LB, 2023 WL 3163455 (N.D. Cal. Apr. 28, 2023).

Practices

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