

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT HUNTINGTON

ARISTA RECORDS, LLC, a Delaware  
limited liability company; et al.,

Plaintiffs,

V.

CIVIL ACTION NO. 3:07-0649

DOES 1 - 7,

Defendants.

**ORDER**

This matter comes before the court on motion of Marshall University, filed February 28, 2008, asking the Court to quash a subpoena served on it by plaintiffs following entry of the Court's order granting plaintiffs' ex parte application for leave to take immediate discovery. By that order, plaintiffs were given leave to serve a Rule 45 subpoena on Marshall University seeking documents which would identify the Doe defendants, individuals who have been sued by plaintiffs for copyright infringement. It is alleged in the complaint that the Doe defendants, without permission, used "an on-line media distribution system to download and/or distribute to the public" sound recordings for which plaintiffs have copyrights or exclusive licensing agreements. Marshall University is the Internet service provider ("ISP"), providing Internet access to the Doe defendants, and, while plaintiffs do not know the identity of the Doe defendants, they do have the Internet Protocol ("IP") address, the date and the time of the allegedly infringing activity. Furnishing

Marshall University with the IP addresses and the dates and times of the alleged infringing activities, plaintiffs, by their subpoena, seek names and other identifying information of the persons associated with the IP addresses at the particular dates and times.

In asking the Court to quash the subpoena, Marshall University argues initially that compliance with the subpoena would impose an undue burden on its limited resources. A significant part of this burden, however, stems from a mistaken belief that the University was required to determine who was “using a given computer at a given time.” By requiring plaintiffs to serve an amended subpoena making it clear that they seek only identifying information with respect to the person associated with the IP address at the date and time of the alleged infringing use, the perceived burden should be considerably reduced. This together with the fact that, absent the identifying information from the university, plaintiffs simply cannot proceed with their lawsuit, establishes to the Court’s satisfaction that Marshall University’s obligation under the subpoena is not unduly burdensome. At the same time, limiting the request to identifying information with respect to individuals associated with the IP addresses on the dates and times indicated removes any basis for contending that plaintiffs’ subpoena is “over broad.” Finally, in light of the exception for “directory information” and for information provided “pursuant to any lawfully issued subpoena,”<sup>1</sup> 20 U.S.C. §1232g(b)(2)(B), the Family Educational Rights and Privacy Act (“FERPA”), imposes no impediment to providing the information plaintiffs seek. On the basis of the preceding, the motion to quash will be denied, and it is so **ORDERED**. Plaintiffs shall, however, serve an amended subpoena utilizing the language in the proposed subpoena attached to their surreply and give the university thirty (30) days to comply. The university shall make a reasonable effort to inform

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<sup>1</sup> Appropriate notice to those identified will also be required.

individuals whose identities are disclosed, advising such individuals that they may move to quash or modify the subpoena at any time before the return date of the subpoena. Notice to such individuals shall be provided within five days of the date of service of the subpoena.

The Clerk is directed to transmit a copy of this Order to all counsel of record and to Jendonnae L. Houdyschell, counsel for Marshall University..

ENTER: April 14, 2008

  
MAURICE G. TAYLOR, JR.  
UNITED STATES MAGISTRATE JUDGE