

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

IN RE: BITTORRENT ADULT FILM
COPYRIGHT INFRINGEMENT CASES

ORDER

Civil Action Nos.
12-1147(JS)(GRB); and
12-1154(ADS)(GRB)

-----X

DECLARATION OF JASON AARON KOTZKER

I, JASON AARON KOTZKER, HEREBY DECLARE:

1. My name is Jason Aaron Kotzker.
2. I am over the age of 18 and am otherwise competent to make this declaration.
3. This declaration is based on my personal knowledge and, if called upon to do so,

I will testify that the facts stated herein are true and accurate.

4. I have been an attorney in good standing in the states of Colorado for two (2) years and in New York for seven (7) years.

5. I have never had a bar grievance filed against me nor have I been sanctioned by any court.

6. On May 1, 2012 I reviewed the Report and Recommendation issued by this Court requiring specific procedural safeguards when allowing discovery in order to protect the rights on the anonymous Doe Defendants.

7. The subpoenas directing the ISPs to reveal the identities of the John Doe defendants directly to my office instead of to the Court were a result of human error and oversight which I take full responsibility.

8. I never had any intention, in any way, to deceive the Court and ignore, or

circumvent the safeguards implemented by the Court on behalf of the John Doe defendants.

9. The individuals involved in the preparation of the subpoenas were myself and the paralegal with whom I work, Ms. Alejandra Albuerne.

10. Ms. Albuerne was instructed to prepare the subpoenas in compliance with the Court's Order.

11. Ms. Albuerne prepared the subpoenas so that the information requested was only for John Doe 1 in each case, requesting only the name and address, and attaching the Court's Order. Ms. Albuerne inadvertently neglected to change the address for the place of production from the previous subpoena she had prepared.

12. This is the first instance where Ms. Albuerne has ever failed to follow the instructions given to her.

13. I personally signed the subpoena but failed to observe that the location for production had not been changed.

14. After signing the subpoena I emailed the subpoena to Bobby Thomas, from Thomas Court Services, to serve the subpoena on Cablevision in their Texas office. I spoke with Cablevision on the phone on July 3, 2012 and they informed me they provided the information to the Court. I have not had any other correspondence with Cablevision regarding this matter.

15. I am an active participant in my church and lead a youth group. At the time the subpoena was issued, I was balancing the demands of a busy caseload, organizing a church mission trip and managing increased responsibilities at home caring for my two small children while my wife was eight months pregnant.

16. I have tremendous and utmost respect for this Court and our system of justice.

17. I am cognizant of the rights of the Doe Defendants and have diligently complied with court orders provided by other judges in the Eastern and Southern Districts of New York since this Court issued its May 1, 2012 Order. See Exhibit A.

18. The Honorable Judge Boyle issued a stay on subpoenas in a near identical case, Malibu Media, LLC v. John Does 1- 13, 2:12-cv-01156-JFB-ETB (E.D.N.Y. May 10, 2012), after a Doe Defendant filed a Motion to Quash. Undersigned informed the court that Verizon had complied with the subpoena and then, in compliance with the court's order, submitted the information under seal and destroyed the information received.

19. The Honorable Judge Stanton in the Southern District of New York issued a near identical order to your Honor's in Malibu Media, LLC v. John Does 1-14, 1:12-cv-04136-LLS (S.D.N.Y. June 13, 2012). On the same day undersigned issued the subpoena to Road Runner in full compliance with the Court's order, indicating that the documents should be produced directly to Judge Stanton.

20. Ultimately, no harm resulted from the error on the subpoena. Had the ISPs actually complied with the incorrect subpoenas I would have turned all information over to the Court immediately with no delay.

21. Since this Court notified undersigned of the error, undersigned has implicated a procedural safe guard where each Court order is reviewed by two attorneys and one paralegal to ensure compliance.

FURTHER DECLARANT SAYETH NAUGHT.

DECLARATION

PURSUANT TO 28 U.S.C. § 1746, I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 15th day of August, 2012.

JASON AARON KOTZKER

By: JA [Signature]