

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

BMG RIGHTS MANAGEMENT (US) LLC, and)
ROUND HILL MUSIC LP,)

Plaintiff,)

Case No. 1:14-cv-1611 (LOG/JFA)

v.)

COX ENTERPRISES, INC., COX)
COMMUNICATIONS, INC., and)
COXCOM, LLC,)

Defendants.)

**DEFENDANTS’ OPPOSITION TO PLAINTIFFS’ MOTION TO COMPEL
DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION
OF COX CUSTOMERS**

INTRODUCTION

Plaintiffs BMG Rights Management (US) LLC and Round Hill Music LP (“Plaintiffs”) claim to seek to compel the Cox Defendants to disclose “the identities of the direct infringers” among Cox’s subscribers. (*See* Corrected Motion (Doc. 71).) In reality, Plaintiffs’ motion is an improper attempt to circumvent the statutory safeguards of the Cable Privacy Act, 47 U.S.C. § 551, which protects personally identifiable information of Cox’s customers. Baldly asserting that there are “approximately 150,000 Cox subscribers that directly infringed the copyrights at issue in this case,” Plaintiffs contend that the Court should immediately order Cox to disclose the PII of 500 Cox customers who Plaintiffs (again) baldly claim are “the most egregious infringers,” and to grant an extraordinary “open order” so that Plaintiffs may obtain all other PII they want without any further showing. (Doc. 72, Corrected Br. at 3.) Plaintiffs’ motion is factually baseless, procedurally improper, and manifestly unfair. The Court should deny the motion.

The motion lays bare one of Plaintiffs’ primary reasons for bringing this lawsuit. Plaintiffs seek to circumvent the Cable Privacy Act process and instead use discovery in this case to force Cox to reveal, *en masse*, PII for possibly tens of thousands of Internet subscribers who Plaintiffs speculate might be violating their copyrights. The Cable Privacy Act expressly prohibits Cox from disclosing its subscribers’ PII, for good reason: Internet subscribers have a compelling privacy interest in the confidentiality of their personal information, which can of course be vulnerable to exploitation for myriad improper purposes. If a copyright holder earnestly believes that an unnamed Internet subscriber is infringing upon its copyrights, the proper course is to bring a “John Doe” lawsuit against the subscriber and then to use third-party subpoena power to obtain identifying information from the user’s Internet Service Provider.

That legitimate procedure allows notice to the subscriber and an opportunity for the subscriber to act to protect his or her rights. It also relieves the ISP of the unfair responsibility of adjudicating which of the two competing interests (the subscriber's or the accuser's) should trump the other.

Plaintiffs claim to have been tracking Cox Internet subscribers since at least early 2012. Plaintiffs worked exclusively through Rightscorp, whose actions are the “elephant in the room” in this case. Rightscorp is in the business of threatening Internet users on behalf of copyright owners. Rightscorp specifically threatens subscribers of ISPs with loss of their Internet service — a punishment that is not within Rightscorp's control — unless the subscribers pay a settlement demand. Rightscorp had a history of interactions with Cox in which Rightscorp offered Cox a share of the settlement revenue stream in return for Cox's cooperation in transmitting extortionate letters to Cox's customers. Cox rebuffed Rightscorp's approach. Cox also refused to transmit to its subscribers letters from Rightscorp with extortionate demands. Rightscorp solicited the Plaintiffs in this case to use its services at a time when Rightscorp had already learned that Cox was refusing to participate in Rightscorp's scheme. This lawsuit is, in effect, a bid both to punish Cox for not participating in Rightscorp's scheme, and to gain leverage over Cox's customers for the settlement shakedown business model that Plaintiffs and Rightscorp jointly employ.

Plaintiffs nominally (Rightscorp in reality) claim to have identified “approximately 150,000” infringers, including several hundred “egregious infringers,” among Cox's subscribers. But Plaintiffs apparently have only IP addresses to go on. (Doc. 72, Corrected Br. at 3.) Plaintiffs have not filed any “John Doe” lawsuits against Cox customers and have not sought information from Cox by subpoena. More importantly, Plaintiffs do not seek, and have not sought, leave to add “John Doe” defendants in this case. The deadline to do so was March 28,

2015. (*See* Joint Discovery Plan (Doc. 41).) On March 13, 2015, Cox timely objected to providing the PII now at issue, and Plaintiffs allowed their amendment deadline to pass without taking any action. Only after that deadline did Plaintiffs demand that Cox disclose highly confidential PII for thousands of its subscribers, without restriction and without notice to those subscribers.

Plaintiffs' proffered justification for why Cox subscribers' PII is relevant — that Cox might be secretly communicating with subscribers for purposes of defending this case — is pretextual, and Cox adamantly denies it. It seems plain that Plaintiffs are seeking this information in order to threaten and harass Cox's subscribers. This information is not only outside the bounds of relevance under Rule 26(b)(1) at this point, but also is being sought for an obviously improper purpose under Rule 26(g)(1)(B)(ii). Cox respectfully submits that the Court should to deny this motion and reject Plaintiffs' scheme to use the routine discovery process to subvert the legitimate privacy expectations of thousands of Internet subscribers under the Cable Privacy Act. The Court should deny the motion in its entirety.

ARGUMENT

Under Rule 26, the scope of discovery is limited to “nonprivileged matter that is relevant to any party’s claim or defense” that a party has pleaded. FED. R. CIV. P. 26(b)(1). “For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action.” *Id.* Generally, the “scope and conduct of discovery ... are within the sound discretion of the district court.” *Erdmann v. Preferred Research, Inc.*, 852 F.2d 788, 792 (4th Cir. 1988). The rules give the district judge “broad discretion to narrowly tailor ... discovery.” *Crawford-El v. Britton*, 523 U.S. 574, 598-99 (1998). As discussed below, Plaintiffs clearly have not

demonstrated “good cause” to violate the privacy rights and expectations of hundreds or thousands of Cox Internet subscribers.

Plaintiffs have not pleaded a claim against any individual Cox subscriber or against any “John Does.” But Plaintiffs acknowledge that claims for secondary copyright liability must rest upon allegations of underlying direct infringements. To bring this lawsuit against Cox in compliance with Rule 11, Plaintiffs presumably had good faith evidence of actual infringements by specific Cox subscribers before alleging that Cox bears liability for those subscribers’ infringements. Plaintiffs’ motion suggests either that they need a last-minute fishing expedition to cure a threshold defect in their case or, more likely, that they want information about the identities of a large number of Cox customers in order to deliver threats of Internet service termination directly to those customers to carry out their settlement shakedown scheme. Public information about Rightscorp suggests that its threat-and-settle business model is failing and that it may be looking desperately for new ways to increase its revenue.¹ This motion may be part of a broader plan to bypass the ISPs as vehicles for communication with alleged infringers, to evade the statutory safeguards for the ISPs’ customers’ privacy under the Cable Privacy Act, and to go directly after the subscribers by unscrupulous means.²

The practical dynamics of this motion are suspect: If there are 150,000 infringers among Cox subscribers, as Plaintiffs claim, why would they limit themselves (at least for now) to just 500 “egregious infringers”? Will Plaintiffs seek to depose or serve Rule 45 subpoenas on those 500? Will Plaintiffs now seek to add those 500 as co-defendants? Why do Plaintiffs want a

¹ See, e.g., <http://arstechnica.com/tech-policy/2015/05/rightscorp-loses-more-cash-than-ever-tells-investors-all-is-well/> (May 8, 2015) (“Sending thousands of alleged pirates a bill for \$20 per song isn't working out. ... [F]inancial data made public yesterday shows that Rightscorp, which has never been profitable, is losing money faster than ever.”) (Exhibit D).

² See Subsection II below for a discussion of Rightscorp’s improper conduct.

blank-check “open order” to continually demand that Cox reveal more identities at later stages in this action? When tested in practical terms, Plaintiffs’ motion makes no sense, and their arguments plainly are an obvious pretext for some other motive.

I. COX PROVIDED A COMPLETE AND TRUTHFUL ANSWER TO PLAINTIFFS’ INTERROGATORY NO. 13.

At the outset, Cox points out that this motion is procedurally improper and the Court can deny it on that basis alone. Plaintiffs have received a *complete and forthright answer* to the interrogatory as asked.

Plaintiffs’ motion seeks to compel Cox to “answer Interrogatory No. 13 which asks for the names and other related information of approximately 150,000 Cox subscribers that directly infringe the copyrighted works at issue in this case.” (Doc. 72, Corrected Br. at 1.) But Plaintiffs mischaracterize the interrogatory. Interrogatory No. 13 actually states (emphasis added):

Identify with particularity each of Your Customers, including but not limited to by name, address, account number, the bandwidth speed associated with each account, and associated IP address(es) of each such Customer, *for which You have received a DMCA Notice from Rightscorp, Inc.* that such Customer has infringed one or more of Plaintiffs’ copyrights listed in Attachment A.

Cox provided a timely and substantive response to that interrogatory, as follows:

Cox Communications did not receive any “DMCA Notices” or other purported copyright-infringement notices from Rightscorp, Inc. regarding Plaintiffs’ alleged copyrights listed in Attachment A, because Rightscorp’s communications were improper. As Cox explained to Rightscorp in 2011, apparently before Rightscorp recruited BMG and Round Hill as clients and plaintiffs, Cox did not accept improper communications; Rightscorp’s communications were therefore not accepted into Cox’s notice intake system. Cox believes that Rightscorp was aware, from 2011, that Cox was rejecting Rightscorp’s improper communications. Consequently, Cox Communications has no information responsive to this Interrogatory

(Doc. 72, Corrected Br. at 2-3.) Cox’s response to the interrogatory as asked was, and remains, completely accurate.

Because Rightscorp's purported DMCA notices were, in fact, improper threats against consumers to scare them into paying settlements to Rightscorp, Cox refused to accept or forward those notices, or otherwise to participate in Rightscorp's extortionate scheme. Cox expressly and repeatedly informed Rightscorp that it would not accept Rightscorp's improper extortion threat communications, unless and until Rightscorp revised them to be proper notices (which Rightscorp refused to do). Cox stopped accepting Rightscorp notices in March 2011, nine months before Rightscorp recruited Plaintiffs to be its customers and principals in a principal-agent relationship. Thus, Rightscorp has known all along that Cox was receiving none of its grossly defective "notices." Whether Rightscorp advised any of its principals, and in particular Plaintiffs, of this fact is uncertain. In any event, to repeat, no "notices" from Rightscorp on behalf of Plaintiffs were received by Cox. Therefore, there was nothing for Cox to report with respect to subscriber identities in response to Interrogatory No. 13.

Despite Cox's objections and forthright response, Plaintiffs misleadingly claim that "[i]nitially, Cox dodged the [subscriber] identity issue," and they imply that Cox later changed its stance to rely instead on the Cable Privacy Act. (Doc. 72, Corrected Br. at 2-3.) That is not correct. Interrogatory No. 13 sought PII for a subset of Cox subscribers "for which You have received a DMCA Notice from Rightscorp, Inc. that such Customer has infringed one or more of Plaintiffs' copyrights." (Doc. 72, Corrected Br. at 3.) Because Cox never received any such notices, Cox has no information responsive to this request.

In later meet-and-confer discussions between counsel, in response to Plaintiffs' repeated demands that Cox disclose PII for Cox subscribers, Cox's counsel stated that Cox is precluded from disclosing PII by the Cable Privacy Act.³ Cox never stated, as Plaintiffs claim in their

³ In fact, in counsels' meet-and-confer discussions regarding PII for alleged infringers, the issue

introduction, that the PII dispute was merely “ministerial.” (Doc. 72, Corrected Br. at 1.) Nor is it “undisputed that this information is relevant and likely to lead to the discovery of admissible evidence.” (*Id.*) As discussed further below, Cox vigorously disputes that its subscribers’ PII is properly the subject of discovery.

In sum, the relief Plaintiffs are seeking in this motion is moot because Cox has already completely answered Interrogatory No. 13. Plaintiffs may not like the answer, but they cannot change the fact that Cox did not receive any Rightscorp notices on behalf of Plaintiffs and, as such, Cox has no information responsive to Interrogatory No. 13. In fact, Rightscorp (the agent) and by attribution, Plaintiffs (the principals), *knew* all along that no “notices” from Rightscorp on Plaintiffs’ behalf had been received by Cox.

II. THIS MOTION IS AN IMPROPER EVASION OF THE SUBPOENA PROCEDURE.

The Cable Privacy Act is clear: 47 U.S.C. § 551, entitled “*Protection of subscriber privacy*,” imposes strict limitations on an ISP’s ability to disclose its subscribers’ PII. With few exceptions that do not apply here, an ISP can disclose a subscriber’s PII *only if* a court orders it to do so after following appropriate procedures. 47 U.S.C. § 551(c)(2)(B). Honoring its obligations under the Cable Privacy Act, and Congress’s codification of the privacy rights of Internet subscribers, Cox has gone to extensive lengths and incurred significant expenses in this case to redact PII in the tens of thousands of documents that Cox has produced.

Plaintiffs rely on a vague proclamation that PII related to alleged infringers “*is discoverable*.” (Doc. 72, Corrected Br. at 5 (emphasis in original).) Notably, however, *every case* that Plaintiffs cite is a “John Doe” action against the alleged direct infringers themselves,

of Interrogatory No. 13 never came up. Plaintiffs’ counsel simply expressed their belief that the PII was relevant and discoverable, and Cox’s counsel made clear that the Cable Privacy Act precluded disclosure of that information.

and Plaintiffs sought PII for those defendants from a relevant ISP using a Rule 45 subpoena. (*See id.* (citing cases).)⁴ That is important because those procedures allows the ISP to provide notice of the subpoena to the accused subscriber, who can decide whether to act to protect his or her rights. *See Pacific Century*, 282 F.R.D. at 193-94. And it relieves the ISP of the unfair and unreasonable burden of arbitrating which of the two competing interests — the subscribers’ right to privacy or the plaintiffs’ copyrights — should prevail. Plaintiffs claim to have identified approximately 150,000 Cox IP addresses allegedly associated with infringements of Plaintiffs’ copyrights since at least January 2012, including some IP addresses of unknown subscribers whom Plaintiffs label “egregious infringers.” Yet Plaintiffs never filed “John Doe” lawsuits against those alleged infringers or sought PII information from Cox by subpoena, as many other copyright holders legitimately do.

Nor did Plaintiffs seek to add Cox subscribers as “John Doe” defendants in this case. Plaintiffs acknowledge that a prerequisite to a contributory infringement claim is a direct infringement, and that the accused Cox subscribers “are the [alleged] direct infringers.” (Doc. 72, Corrected Br. at 4.) The parties jointly negotiated, and this Court approved, a deadline of March 28, 2015 to join additional parties in this action. (*See Joint Discovery Plan* (Doc. 41).) That deadline came and went without Plaintiffs’ taking any action to join, even on a “John Doe” basis, any of the Cox subscribers whose IP addresses Plaintiffs and Rightscorp have supposedly been tracking for years. Instead, roughly a month after the March 28 deadline passed, Plaintiffs began demanding that Cox simply disclose all PII for subscribers associated with those IP

⁴ *See, e.g., Pacific Century Int’l Ltd. v. John Does 1-37*, 282 F.R.D. 189, 193-94 (N.D. Ill. 2012) (“The Doe defendants, of course, are not without recourse, as the ISPs often must notify them and give them a chance to object to the subpoenas before the ISPs divulge their identity. *See* 47 U.S.C. § 551(c)(2)(B) (providing that ISPs who qualify as “cable providers” may not divulge personally identifiable information of a subscriber in response to a court order unless “the subscriber is notified of such order by the person to whom the order is directed”)).

addresses, whom Plaintiffs have self-servingly branded “infringers.” It is clear that Plaintiffs hope to shortcut the subpoena process, even if it violates Cox’s obligations and subscribers’ privacy rights under the Cable Privacy Act. (Doc. 72, Corrected Br. at 4 (“Copyright Holders have a right—*that supersedes any privacy concerns*—to know the names and contact information for those direct infringers.”) (emphasis added).)

Conspicuously absent from Plaintiffs’ motion is a citation to any case like this one, against an ISP alone, where a court has compelled disclosure of subscriber PII through routine Rule 26 discovery. Moreover, even in “John Doe” cases, courts prohibit plaintiffs from using subpoenas to obtain huge swaths of subscriber PII when that information is not narrowly tailored and relevant to the claims at issue. For example, in *Pacific Century*, the copyright holders subpoenaed various ISPs and sought to compel production of PII for various “John Doe” defendants, who were identified only through IP addresses. 282 F.R.D. 189, 192-93. The court rebuffed that strategy, noting that “the identity of individuals connected with nonparty IP addresses is not relevant to the pending claims.” *Id.* at 194. The court stated further:

The court notes that denying discovery about non-party IP addresses will not leave the plaintiffs without a remedy to uncover the identity of these and other purported copyright infringers. The plaintiffs need merely sue each IP address in the district in which the address is located, and then subpoena the ISPs for identifying information pertaining to that IP address. ***What the plaintiffs may not do, however, is improperly use court processes by attempting to gain information about hundreds of IP addresses located all over the country in a single action, especially when many of those addresses fall outside of the court’s jurisdiction.***

Id. at 196 (emphasis added); *accord AF Holdings, LLC v. Does 1-1058*, 752 F.3d 990, 997 (D.C. Cir. 2014) (copyright holders used subpoenas to seek PII for hundreds of non-party IP addresses: “In seeking such information, AF Holdings clearly abused the discovery process”). Similarly, Plaintiffs here have not articulated “good cause” to obtain PII for hundreds of IP addresses that

have no established connection to this case, particularly where Plaintiffs have not even named “John Doe” defendants or issued subpoenas.

Plaintiffs’ stated justifications for their extraordinary request do not help Plaintiffs’ cause. Plaintiffs acknowledge that they “must establish direct infringement of the copyrighted works asserted in this case,” and imply that their motion serves that end. (Doc. 72, Corrected Br. at 4.) But that implication is illogical because Plaintiffs seek PII for 500 subscribers of the 150,000 supposedly implicated here. Surely Plaintiffs are not prepared to concede that their claims fail for the works that the other 149,500 subscribers allegedly infringed. Notably, of the 500 allegedly “egregious infringers” the Plaintiffs hand-picked, 250 allegedly infringed *after this lawsuit was filed*. (Doc. 72, Corrected Br. at 4.) Those subscribers’ alleged infringements, therefore, cannot have formed a basis for Plaintiffs’ claims in this suit. *And nowhere do Plaintiffs even assert that Rightscorp sent purported DMCA notices to Cox with respect to those particular subscribers.*

Plaintiffs also speculatively suggest that PII for the 500 hand-picked subscribers “is likely to lead to the discovery of admissible evidence” because Plaintiffs “intend to question Cox regarding any communications it may have had with specific infringers that were the subject of infringement notice letters.” (Doc. 72, Corrected Br. at 4.) But, as noted above, Cox never received infringement notice letters for Plaintiffs’ copyrights and, consequently, has not communicated with those subscribers about those notices. Plaintiffs also argue that Cox might now “confer with their subscribers in an effort to support one or more of its defenses.” (*See id.* at 4-5.) Cox states unequivocally that it has not conferred with subscribers as part of the defense of this case, and it has no intention of doing so. But if Cox *did* decide to rely on a subscriber as a witness in this case, Cox would obviously disclose and identify that person.

As noted, Plaintiffs' arguments for why they need subscribers' PII are pretextual, and the most practical explanation for Plaintiffs' request is to use that information to threaten and harass Cox subscribers. In fact, Plaintiffs obliquely refer to those motives: "Copyright Holders would like the ability to seek third party discovery of certain direct infringers *concerning their distribution of Copyright Holders' works*, their communications, if any, with Cox concerning the same, or other issues relevant to the case." (Doc. 72, Corrected Br. at 4 (emphasis added).) That conclusion draws support from the fact that Plaintiffs seek PII of Cox subscribers who allegedly committed acts of infringement after this lawsuit was filed, which could not have been the basis for the suit. It is axiomatic that it is improper to seek discovery in a lawsuit purely as a means to secure the facts necessary to sue a different party. As the Supreme Court has stated, "when the purpose of a discovery request is to gather information for use in proceedings other than the pending suit, discovery properly is denied." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 352-53 n.17 (1978). Because there is no credible, reasonable, practical, or timely use for the PII in this suit, Plaintiffs plainly seek it for other uses, which is improper. *See also Pacific Century*, 282 F.R.D. at 195 ("It is thus plain that the plaintiffs are not seeking information about the non-party IP addresses for the purpose of litigating their current claims. Instead, the plaintiffs intend to either sue the individuals whose identity they uncover or, more likely, to negotiate a settlement with those individuals. When evaluating relevancy, 'a court is not required to blind itself to the purpose for which a party seeks information.'") (quoting *Oppenheimer*). Those concerns ring true here, as well.

Cox's concerns about Plaintiffs' true intentions are grounded in the relationship between Plaintiffs and Rightscorp, and on Rightscorp's track record as an agent and bully for copyright holders against consumers in several contexts. Rightscorp has attracted widespread criticism for

its aggressive and misleading tactics with consumers, coercing and scaring those consumers into paying settlement demands (which is, of course, precisely why Cox refused to accept Rightscorp's notices). *See, e.g.,* Tim Cushing, *Complaints To FTC About Rightscorp Detail Robocalls, Harassment And Baseless Threats To Sever Internet Connections*, Techdirt (Apr. 16, 2015, 3:04 PM), <https://www.techdirt.com/articles/20150415/18160330671/complaints-to-ftc-about-rightscorp-detail-robocalls-harassment-baseless-threats-to-sever-internet-connections.shtml> (publishing FTC report, obtained through FOIA request, of consumer complaints about Rightscorp) (Exhibit A to this brief); Michael Geist, *Rightscorp and BMG Exploiting Copyright Notice-and-Notice System: Citing False Legal Information in Payment Demands* (Jan. 8, 2015), <http://www.michaelgeist.ca/2015/01/rightscorp-bmg-exploiting-copyright-notice-notice-system-citing-false-legal-information-payment-demands/> (documenting Rightscorp's abusive and misleading tactics in Canada) (Exhibit B to this brief). Rightscorp has also been exposed for violating the privacy rights of alleged infringers who choose to settle in the face of Rightscorp's heavy-handed tactics. *See* Tim Cushing, *Rightscorp's 'Secure' Payment System Exposes Names And Addresses Of Alleged Infringers*, Techdirt (Oct. 8, 2014, 12:10 PM), <https://www.techdirt.com/articles/20141008/05264328760/rightscorps-secure-payment-system-exposes-names-addresses-alleged-infringers.shtml> (documenting Rightscorp's improper publication of PII for individuals who settled with Rightscorp) (Exhibit C to this brief).

In sum, the Court is not obliged to "blind itself" to why Plaintiffs are likely seeking PII for hundreds of so-called "egregious infringers." *Oppenheimer*, 437 U.S. 353 n.17. Nor is the Court obliged to provide Plaintiffs a procedural short-cut to their true goal, particularly where it violates the privacy rights of hundreds (and eventually perhaps tens of thousands) of unnamed, non-party consumers.

III. AN IP ADDRESS IS NOT A RELIABLE BASIS TO ACCUSE A SUBSCRIBER OF COPYRIGHT INFRINGEMENT.

Even if Plaintiffs had presented a compelling reason to sacrifice Cox subscribers' legitimate privacy interests, simply attaching a subscriber's PII to a particular IP address (as Plaintiffs are seeking through this motion) may be uninformative or worse. Cox has a dynamic IP address process that reassigns individual IP addresses over time. The fact that a particular subscriber is currently associated with an IP address does not mean that same subscriber had that same address at the time of any particular act of alleged infringement.

Moreover, the fact that an infringement may have occurred at a particular IP address does not mean the assignee of that IP address is culpable, or even aware of the infringing activity. As Cox will show in this lawsuit, there are many innocent explanations for apparent infringement, including the hacking of open wi-fi connections, or the use of public wi-fi connections (for example, at a university or a coffee shop) by many people for a mix of proper and improper purposes. Bottom line, it is not accurate, fair, or appropriate to label any Cox subscriber an "egregious infringer," as Plaintiffs have done, merely because that subscriber was assigned a particular IP address.⁵ And that label may be particularly dangerous if Plaintiffs (or Rightscorp

⁵ See, e.g., *Elf-Man, LLC v. Cariveau*, No. C13-0507RSL, 2014 WL 202096, at *2 (W.D. Wash. Jan. 17, 2014) ("While it is possible that the subscriber is the one who participated in the BitTorrent swarm, it is also possible that a family member, guest, or freeloader engaged in the infringing conduct."); *AF Holdings LLC v. Rogers*, No. 12-cv-1519 BTM(BLM), 2013 WL 358292, at *3 (S.D. Cal. Jan. 29, 2013) ("Due to the risk of 'false positives,' an allegation that an IP address is registered to an individual is not sufficient in and of itself to support a claim that the individual is guilty of infringement."); *In re BitTorrent Adult Film Copyright Infringement Cases*, 296 F.R.D. 80, 84 (E.D.N.Y. 2012) ("[I]t is no more likely that the subscriber to an IP address carried out a particular computer function—here the purported illegal downloading of a single pornographic film—than to say an individual who pays the telephone bill made a specific telephone call."); *Patrick Collins, Inc. v. John Does 1-4*, No. 12 Civ. 2962(JB), 2012 WL 2130557, at *1 (S.D.N.Y. June 12, 2012) ("The fact that a copyrighted work was illegally downloaded from a certain IP address does not necessarily mean that the owner of that IP address was the infringer.").

on their behalf) then target a subscriber who has been mislabeled and wrongfully accused. *See, e.g., SBO Pictures, Inc. v. Does 1–3036*, No. 11–4220 SC, 2011 WL 6002620, at *3 (N.D. Cal. Nov. 30, 2011) (“[T]he ISP subscriber to whom a certain IP address was assigned may not be the same person who used the Internet connection for illicit purposes ... By defining Doe Defendants as ISP subscribers who were assigned certain IP addresses, instead of the actual Internet users who allegedly engaged in infringing activity, Plaintiff’s sought-after discovery has the potential to draw numerous innocent internet users into the litigation, placing a burden upon them that weighs against allowing the discovery as designed.”) (citations omitted). These perils weigh against Plaintiffs’ request to obtain consumer PII *en masse*, without notice to subscribers and without following the proper procedures.

Finally, Plaintiffs’ requests are more unreasonable yet because Plaintiffs ask the Court for a “blank check” to discover whatever PII they may choose as this case proceeds. Plaintiffs request a so-called “open order” requiring Cox to disclose PII for additional subscribers “as needed during discovery.” (Doc. 72, Corrected Br. at 6.) It would be particularly inappropriate and unfair to undermine subscribers’ privacy expectations, as the Cable Privacy Act codifies those expectations, without requiring Plaintiffs to make *any* specific showing. Plaintiffs’ motion applies only to the 500 IP addresses Plaintiffs have identified, and they have not articulated, let alone established, any legitimate basis to reveal PII for those specific addresses, much less for up to 150,000 additional addresses they have often mentioned.

CONCLUSION

Because Cox fully and forthrightly responded to the interrogatory at issue, and because Plaintiffs wrongfully seek personally identifiable information of Cox's subscribers in violation of the Cable Privacy Act, the Cox Defendants respectfully ask the Court to deny Plaintiffs' motion in its entirety.

Dated: May 13, 2015

/s/ Craig C. Reilly

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CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2015, the foregoing was filed and served electronically by the Court's CM/ECF system upon all registered users:

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