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WHY A MOTION TO QUASH OR A MOTION FOR A PROTECTIVE ORDER MIGHT FAIL IN A COPYRIGHT INFRINGEMENT LAW SUIT.

By Robert Z. Cashman, Owner of the Cashman Law Firm, PLLC

I have been closely monitoring the procedural side of a number of these copyright violation cases where thousands of internet users have been accused of illegally downloading various movies using the bittorrent protocol.

A number of these internet users have hired the [Cashman Law Firm, PLLC](#) to represent them through the “negotiation and settlement phase” of the lawsuit. I put this phase in quotes because in truth what has been happening is that the plaintiff attorneys and the underlying media companies have performed what I consider a “slight of hand” with the legal system by naming each of these defendants in the lawsuit by their IP address or by being one of 1-5000 John Doe Defendants. For the most part, as of today the plaintiffs have not named any defendants in these cases. Instead, they have issued subpoenas to the internet service providers (the ISPs) forcing them to hand over their subscribers’ information. The plaintiffs claim this is so they can do “discovery.”

What is actually happening is that outside of the legal system, regardless of whether it is the Hurt Locker lawsuit, the Far Cry lawsuit, or any of the other smaller lawsuits, the attorneys have been harassing the subscribers and taunting them using scare tactics to persuade them to pay thousands of dollars each to make them go away. In my opinion, this is an abuse of the legal process, and I would like to see an attorney general order this activity stopped. Nevertheless, this is what is happening.

On the motion to quash front, a number of people have asked me why I have not been advising a “march into court” approach. So far, attorneys and individuals filing motions to quash have not been successful. Just two days ago, the attorneys in the Voltage Pictures, LLC v. Does 1-5,000 filed a motion asking the court to sanction an attorney who created forms which internet users purchased and filed with the court.

While I just spent close to an hour e-mailing the attorney against whom sanctions were requested and suggesting ways as to how to properly defend himself against their accusations, the fact that the law firm went after the defense attorney trying to help people out of this situation is notable, but it is not useful to you, the reader.

What is telling is that in their motion (Case 1:10-cv-00873-RMU, Document 19, filed 11/22/2010, pages 4-6), the plaintiffs state that motions to quash, motions to dismiss, and motions for protective orders ARE COMPLETELY INAPPLICABLE BECAUSE DEFENDANTS ARE NOT YET NAMED OR SUED AS DEFENDANTS IN THE LAWSUIT. The plaintiffs continue (on page 5) and say, “The subpoenas are issued to the ISPs, and the Doe Defendants do not have to do anything in responding to the subpoenas [because they have not yet been named in the lawsuit].” (Emphasis added.)

I must point out that I disagree with the plaintiffs here because in my understanding, being named in a lawsuit (regardless of whether the defendant is named as an IP address or as a Doe Defendant) causes undue harm to the defendant even prior to being named as a defendant. The reason I say this is that each Doe Defendant is sent a threatening letter from their ISPs accusing them of illegal activity. Each Doe is put on notice that he or she has been named in a lawsuit and

thus anticipates being sued. Each Doe Defendant is advised to retain an attorney and is told that he or she can be criminally and/or civilly liable for violation of the federal copyright laws. Each Doe Defendant is then ACTIVELY solicited and threatened by the attorney plaintiffs to “pay up or face a real lawsuit” where a judgment can cost a family their home, all their savings, their freedom, and possibly force them into bankruptcy. In my opinion, to say that a plaintiff at this point has no right to file such a motion, and that such a motion is not yet applicable until the defendant is actually named in the lawsuit is simply irresponsible lawyering.

But so far, I have not seen the motions to quash be an effective tool against the media companies looking to enforce their copyrights. I have not seen the judges letting defendants off the hook for simply sending in letters and/or form responses asserting what in my opinion are proper jurisdictional arguments.

Robert Z. Cashman, Esq. is the owner of the Cashman Law Firm, PLLC, which has spent a considerable amount of time helping internet users who have been accused of copyright violation through the downloading of illegal movies using the bittorrent protocol.

Robert is also a patent attorney licensed in Texas and New York. He is also licensed to practice before the US Patent & Trademark Office and before the District Court for the Southern District of Texas.