United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE SUBPOENA TO:

REDDIT, INC.

Case No. 24-mc-80005-TSH

ORDER DENYING MOTION TO COMPEL

Re: Dkt. No. 1

I. INTRODUCTION

Voltage Holdings, LLC and Screen Media Ventures, LLC move this Court to grant an order compelling Reddit, Inc. to produce documents in response to a subpoena issued in the bankruptcy matter *In re: Frontier Commc'ns Corp.*, Case No. 20-22476-MG, in the Bankruptcy Court for the Southern District of New York. ECF No. 1.[1] Reddit has filed an opposition (ECF No. 20) and Movants filed a reply (ECF No. 21). The undersigned finds this matter suitable for disposition without oral argument and **VACATES** the February 15, 2024 hearing. *See* Civ. L.R. 7-1(b). Having considered the parties' positions, relevant legal authority, and the record in this case, the Court **DENYING** the motion for the following reasons.

II. BACKGROUND

On April 14, 2020, Frontier Communications Corporation filed a voluntary petition for Chapter 11 bankruptcy. Bankr. Case No. 20-22476-rdd, Bankr. Case ECF No. 1. Movants are movie companies that filed proofs of claim against Frontier for copyright infringement of their

[1] Laundry Films, Inc., Killing Link Distribution, LLC, Family of the Year Productions, LLC, who are claimants in the underlying bankruptcy action, have filed a notice of joinder to movants' motion. ECF No. 17.

movies. On November 6, 2023, counsel for Frontier and Movants submitted a joint report addressing whether the bankruptcy court should authorize the issuance of subpoenas that require Frontier to disclose subscribers who allegedly infringed Movants' copyrights. Bank. Case ECF No. 2227. On December 1 the bankruptcy court ruled that Movants had established good cause to require Frontier to disclose the alleged infringing subscribers' information. Bank. Case ECF No. 2233.

Reddit is a community of online communities. Schottlaender Decl. ¶ 2, ECF No. 20-2. Within those communities, called "subreddits," users gather to discuss shared interests. *Id.* Users generally participate on the platform pseudonymously, and Reddit does not require that they use or provide Reddit with their legal names or addresses. *Id.*

On Dec. 17, 2023, Movants served a subpoena to Reddit requesting "IP address log information from 1/1/2017 to present for users: 'Gibson125T'; 'Sankerin'; 'Old_Package540', 'Arceist_Justin'; 'ZeroHart'; 'Cyb3rR3b0rn'". Mot., Ex. 1. The subpoena seeks login information for certain Reddit users "who boasted of using the service of the Internet service provider Frontier Communications for piracy on Reddit's platform." Mot. at 2-3. After Reddit served objections, *id.*, Ex. 2, Movants filed the present motion on January 9, 2024,

III. LEGAL STANDARD

Federal Rule of Civil Procedure 45 governs discovery of non-parties. A party serving a subpoena may, "on notice to the commanded person, . . . move the court for the district where compliance is required for an order compelling production." Fed. R. Civ. P. 45(d)(2)(B)(i). The scope of allowable discovery under Rule 45 is the same as the scope of discovery permitted under Rule 26(b). *Beaver Cty. Employers Ret. Fund v. Tile Shop Holdings, Inc.*, 2016 WL 3162218, at *2 (N.D. Cal. June 7, 2016) (citing Fed. R. Civ. P. 45 advisory comm's note (1970); Fed. R. Civ. P. 34(a)). Rule 26 permits discovery "regarding any non-privileged matter that is relevant to any party's claim or defense and proportional to the needs of the case considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R.

Civ. P. 26(b)(1).

The Court must limit the frequency or extent of discovery if it determines that: "(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or (iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1)." Fed. R. Civ. P. 26(b)(2)(C). Rule 45 further provides that "the court for the district where compliance is required must quash or modify a subpoena that: (i) fails to allow a reasonable time to comply; (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c); (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or (iv) subjects a person to undue burden." Fed. R. Civ. P. 45(d)(3)(A).

IV. DISCUSSION

Movants divide the Reddit user comments into two categories: "(i) Comments that establish that Frontier has not reasonably implemented a policy for terminating repeat infringers sufficient for a safe harbor affirmative defense as required by 17 U.S.C. § 512; and (ii) Comments that establish that the ability to freely pirate without consequence was a draw to becoming a subscriber of Frontier and/or subscribers are motivated to use Frontier's service for pirating content without consequence." Mot. at 6. In support of their request, Movants provide the following Reddit posts:

> In the Reddit discussion forum dedicated explicitly to "Piracy", Reddit user "Gibson125T" admitted that "From may 7th up until about a week ago, I got a total of 44 emails from frontier about downloading torrents and that it could terminate service. They haven't yet. And I kinda feel like if they didn't do it after 44 emails. That they won't…"
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> ***
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> In a Reddit discussion forum "Frontierfios", Reddit user "Old_Package540" admitted, "I torrent every once in a while, been getting dmca notices quite often. Has anyone been shut off because of them or is it all just threats?"
>
> ***
>
> In the Reddit "Piracy" forum, Reddit user "Arceist_Justin" admitted, "Been using Frontier DSL for years. Despite the sh*tty internet, they

> didn't give a sh*t what I downloaded. But I download ONE game just for screenshots and Comcast throws me into a legal battle."
>
> ***
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> In the Reddit "Frontierfios" forum, Reddit user "ZeroHart" states that Frontier was terminating his account but failed to send him/her any copy of at least 10 notices that were sent to Frontier concerning piracy at her/his account.
>
> ***
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> In the Reddit "Piracy" forum, Reddit user"Cyb3rR3b0rn" admits to using Frontier's service to pirate from the notorious piracy websites 1337x and PirateBay and that "I've been torrenting unprotected for like a decade and never gotten [a DMCA notice]".

Id. at 6-8. Movants argue the information they seek is relevant and proportional to the needs of the case because "they support Movants' assertion that the ability to pirate content efficiently without any consequences is a draw for becoming a Frontier subscriber (an element of vicarious liability) and that Frontier does not have an effective policy for terminating repeat infringers (rebutting Frontier's purported DMCA safe harbor)." *Id.* at 9.

Reddit argues the Court should deny the motion because it is an unmasking subpoena, targeting a potential witness rather than a potential defendant, and is therefore subjected to First Amendment scrutiny. Opp'n at 4. Reddit argues the evidence Movants seek can instead be obtained from both the defendant internet service provider ("ISP") itself and from a number of ISP subscribers that Movants know to have engaged in copyright infringement, already in Movants' possession. *Id.* at 2.

A. Legal Standard

The First Amendment protects the rights of individuals to speak anonymously. *Watchtower Bible & Tract Soc'y of New York, Inc. v. Vill. of Stratton*, 536 U.S. 150, 166–67 (2002); *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 341–42 (1995). "An author's decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment." *McIntyre*, 514 U.S. at 352. The Ninth Circuit recognizes that the decision to remain anonymous extends to anonymous speech made on the internet. *In re Anonymous Online Speakers*, 661 F.3d 1168, 1173 (9th Cir. 2011) ("[O]nline speech stands on the same footing as other speech – there is 'no basis

for qualifying the level of First Amendment scrutiny that should be applied' to online speech.") (quoting *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 870 (1997)). "When adjudicating discovery requests that would unmask an anonymous speaker, then, courts must consider the First Amendment implications of disclosure—just as they would when adjudicating any other discovery request that risks infringing First Amendment rights." *In re DMCA § 512(h) Subpoena to Twitter, Inc.*, 608 F. Supp. 3d 868, 876 (N.D. Cal. 2022).

The Ninth Circuit has recognized that internet platforms can assert the First Amendment rights of their users, based on the close relationship between the platform and its users and the "genuine obstacles" users face in asserting their rights to anonymity. *In re Grand Jury Subpoena*, 875 F.3d 1179, 1183 n.2 (9th Cir. 2017). When third-party providers such as Reddit receive subpoenas to produce identifying information of posters of anonymous speech, courts apply the appropriate First Amendment standard to ensure that a person's right to anonymous speech is protected. *Music Grp. Macao Com. Offshore Ltd. v. Does*, 82 F. Supp. 3d 979, 983 (N.D. Cal. 2015); *In re Anonymous Online Speakers*, 661 F.3d at 1172–77. In *Anonymous Online Speakers*, the Ninth Circuit reviewed the developing tests in the area of anonymous online speech and left it to the discretion of district courts to choose the proper standard in a given case, based on the nature of the speech at issue. *Id.* at 1174–77; *see, e.g., Art of Living Found. v. Does 1-10*, 2011 WL 5444622, at *5 (N.D. Cal. Nov. 9, 2011) ("[I]n choosing the proper standard to apply, the district court should focus on the nature of the [defendant's] speech[.]") (cleaned up); *SI03, Inc. v. Bodybuilding.com, LLC*, 441 F. App'x 431, 431–32 (9th Cir. 2011) (same). "For example, . . . commercial speech should be afforded less protection than political, religious, or literary speech[.]" *In re Anonymous Online Speakers*, 661 F.3d at 1177.

In "evaluating the First Amendment rights of anonymous Internet users in the context of a third-party civil subpoena," district courts have followed the approach taken in *Doe v. 2TheMart.com*, 140 F. Supp. 2d 1088 (W.D. Wash. 2001). *Rich v. Butowsky*, 2020 WL 5910069, at *3–4 (N.D. Cal. Oct. 6, 2020); *In re Anonymous Online Speakers*, 661 F.3d at 1176 (describing the *2TheMart.com* test). Under that approach, 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." *2TheMart.com*, 140 F. Supp. 2d at 1095. Courts consider 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." *Id.*; *Rich*, 2020 WL 5910069, at *3–4. This is a "high[ ] standard," *In re Anonymous Online Speakers*, 661 F.3d at 1176, and the factors are weighed "based on the circumstances of a given case," *Rich*, 2020 WL 5910069, at *4; *Sines v. Kessler*, 2018 WL 3730434, at *13 n.16 (N.D. Cal. Aug. 6, 2018).

B. Analysis

A higher standard for unmasking a non-party witness exists than for unmasking a potential defendant because–unlike the need to identify a potential defendant–litigation can often continue without interfering with a non-party witness's First Amendment right to anonymity. *2TheMart*, 140 F. Supp. 2d at 1095. Consequently, other courts in this District have recognized that a dispositive "question here is whether the information is available from 'any' other source," which is "a high standard." *See In re Reddit, Inc.*, __ F. Supp. 3d __, 2023 WL 3163455 (N.D. Cal. Apr. 28, 2023) ("*Reddit I*"); *In re Reddit, Inc.*, 023 WL 4849434 (N.D. Cal. July 29, 2023) ("*Reddit II*"); *compare Rich*, 2020 WL 5910069, at *5 (subpoena enforced because the anonymous account was a singularly "essential witness" for the litigants).

In *Reddit I*, the copyright holders, including Voltage Holdings, sought to unmask seven Reddit users who had generally posted about internet service providers and about copyright infringement notices they received from those providers. 2023 WL 3163455, at *2. Those copyright holders suggested that unmasking the Reddit users would help the copyright holders establish that a defendant ISP in the underlying litigation did not adequately implement a repeat infringer policy for purposes of seeking a Digital Millennium Copyright Act ("DMCA") safe harbor. *Id.* The court analyzed the copyright owners' motion under the First Amendment standard articulated in *2TheMart.com* and, applying that standard, denied the copyright holders' motion to compel Reddit to produce identifying information, recognizing that under the

circumstances, it was implausible to believe that the Reddit users served as an "irreplaceable source" of evidence in the copyright holders' underlying litigation. *Id.* at *4. The court held the copyright holders could not meet the *2theMart* standard because:

> there is information available from another source to establish or disprove the plaintiffs' three alleged categories of relevance. Specifically, [the ISP] is the party that (according to the plaintiffs) "has not reasonably implemented a policy for terminating repeat infringers," "controls the conduct of its subscribers," and allows its customers "to freely pirate without consequence." The high likelihood that this information is available from [the ISP] defeats the plaintiffs' subpoena.

Id.

Two months later, many of the same copyright holders (with a few added) filed *Reddit II*. Both Voltage Holdings and Screen Media Ventures were movants in *Reddit II*. The second case presented nearly identical facts to *Reddit I* but involved different Reddit users and a different defendant ISP. *Reddit II*, 2023 WL 4849434, at *1. Notably, in *Reddit II*, the copyright holders had requested and received from the defendant ISP a list of that ISP's top infringing IP addresses. *Id.* The court again applied *2TheMart* and analyzed why the copyright holders were seeking to unmask Reddit users, recognizing that those users would hold "at best weak evidence about [the ISP's] insufficient policy regarding repeat infringers or its appeal to pirating subscribers." *Id.* at *4. As the court pointed out, the copyright owners' ability to subpoena "even a subset of" the individuals identified by the defendant ISP "would [] yield information at least equivalent to, if not better than, information from the six Reddit subscribers." *Id.* On those bases, the Court again denied the copyright holders' motion to compel Reddit to produce identifying information. *Id.*

The present case is similar, in that Movants seek to unmask the IP addresses of six Reddit users who discussed receiving DMCA notices from Frontier, based on the theory that these Reddit users have made comments that "support Movants' assertion that the ability to pirate content efficiently without any consequences is a draw for becoming a Frontier subscriber [] and that Frontier does not have an effective policy for terminating repeat infringers (rebutting Frontier's purported DMCA safe harbor)." Mot. at 9. However, this case is also similar in that there is information available from another source, as Movants themselves note the underlying bankruptcy

court adjudicating the copyright litigation has already ruled they can obtain identifying information from Frontier for IP addresses known to have pirated using Frontier's network. *Id.* at 4.

Movants suggest this case is distinguishable from *Reddit I* and *Reddit II* because the present motion does not seek to compel "anonymous users' identities" but is instead "limited to requesting the Reddit users' IP address logs." Mot. at 9. While the Court is unaware of any cases in the Ninth Circuit in which a court has declined to apply a First Amendment unmasking standard for IP addresses, other courts have recognized that IP addresses are essential to unmasking because an "IP address cannot be made up in the same way that a poster may provide a false name and address." *Obi Pharma, Inc. v. Does 1-20*, 2017 WL 1520085, at *5 (S.D. Cal. Apr. 27, 2017). For this reason, the Court finds no reason to believe provision of an IP address is not unmasking subject to First Amendment scrutiny.

Movants also cannot show that the information they seek here is unavailable from other sources. As in *Reddit I* and *II*, Movants justify their request by arguing that they seek evidence: (i) that "the ability to freely pirate" drew customers to Frontier; and (ii) that Frontier failed to implement a repeat infringer policy. Mot. at 6. But evidence on those issues is available and obtainable outside of these six targeted Reddit users such that it is not "essential" and fails *2TheMart*. For example, in *Reddit II*, the movants admitted they were in possession of a list of IP addresses that had most frequently infringed copyrights using that defendant ISP's networks. The court recognized that admission to be fatal under *2TheMart*; where the movants already have the "top pirating IP addresses . . . it is not obvious why subpoenaing even a subset of those addresses would not yield information at least equivalent to, if not better than, information from the six Reddit subscribers." *Reddit II*, 2023 WL 4849434, at *4. Here, Movants again admit that they already have "pirating [IP] addresses." Mot. at 4; *see also* Bank. Case ECF No. 2233 at 2 (Dec. 1, 2023) ("Movie Company Claimants have identified the IP addresses of the alleged infringers."). And Frontier has indicated it will provide Movants with identifying information for those IP addresses upon receipt of a subpoena. Bank. Case ECF No. 2255 ("[W]e advised Mr. Culpepper that in the absence of issuance of subpoenas (which require a further order of the Court as set forth

in your opinion concerning this issue) Frontier cannot provide the identification information of its subscribers without violating the Cable Act."). If Movants sought further information, they need only subpoena the ISP for the subscriber information associated with that IP address, as the ISP does not share Reddit's interest in protecting the anonymity of that user. *See, e.g., In re Grand Jury Subpoena*, 875 F.3d at 1183 n.2 (recognizing a platform's third-party standing to assert the First Amendment rights of its users because the platform has a "sufficiently close relationship to its users") (citing *McCollum v. Cal. Dep't. of Corr. & Rehab.*, 647 F.3d 870, 879 (9th Cir. 2011)).[2]

Movants argue that even if they obtain subscriber information for those infringer IP addresses, "this information would not provide them with documented evidence that the ability to pirate freely was a draw to using Frontier's service or that Frontier failed to reasonably implement a policy for terminating repeat infringers." Mot. at 12. But Reddit has stated it does not have any such "documented evidence" in its possession either —it only has IP addresses. Opp'n at 8. And to the extent Movants are suggesting that the Reddit posts themselves are "documented evidence," Movants need not unmask the Reddit users to admit that evidence. *See, e.g.*, Mot. at 11-12 (conceding that the Reddit posts themselves "refer to Defendant's lack of a policy for terminating repeat infringers and/or failure to reasonably implement such a policy"); *see also 2TheMart*, 140 F. Supp. 2d at 1097 ("The messages are available for use at trial, and TMRT can factually support its defense without encroaching on the First Amendment rights of the Internet users."); *La Force v. GoSmith, Inc.*, 2017 WL 9938681, at *3 (N.D. Cal. Dec. 12, 2017) (describing how a litigant can authenticate and admit printouts of webpages as evidence).

Finally, Movants argue that because the Reddit users were "boasting of criminal conduct

[2] Movants also cite Fourth Amendment jurisprudence and consumer privacy class action caselaw, arguing "[t]he Ninth Circuit has consistently held that a person has no legitimate expectation of privacy in information they voluntarily turn over to third parties." Mot. at 10 (citing *United States v. Forrester*, 512 F.3d 500, 510 (9th Cir. 2008) (an evidentiary suppression case holding that government surveillance of a criminal defendant's internet activity did not constitute a search under the Fourth Amendment) and *In re Zynga Privacy Litigation*, 750 F.3d 1098, 1108–09 (9th Cir. 2014) (holding that internet referrer headers do not constitute "content" under the Electronic Communications Privacy Act such that disclosure of referrer headers could sustain a civil claim under that law)). These cases are not relevant here, where the Reddit users' First Amendment rights to anonymity are at issue, and neither *Forrester* nor *Zynga* suggest that IP addresses are excluded from First Amendment review. Indeed, neither addresses the First Amendment at all.

violating [copyright law],” the *2TheMart* standard should not apply because “copyright law includes built-in First Amendment accommodations such as the fair use defense.” Mot. at. 11. Movants cite *In re DMCA Subpoena to Reddit, Inc.*, 441 F. Supp. 3d 875, 882–83 (N.D. Cal. 2020), a case in which the court held that it need not conduct a First Amendment analysis at the unmasking stage because the to-be defendant in a copyright infringement action would have an opportunity to present their First Amendment defense by asserting fair use. However, this argument has been rejected twice, both in *Reddit I* and *Reddit II*, because of the distinction that the anonymous users here are not going to be defendants in any infringement actions. *See* Mot. at 9-10 (“Movants are not seeking to retaliate economically or officially against these Reddit users. Rather, Movants wish to use their comments as evidence . . . .”). “The fair use defense is available only to those accused of copyright infringement, and the Reddit users at issue here are uninvolved third parties.” *Reddit I*, 2023 WL 3163455, at *3 (citing *In re DMCA Subpoena to Reddit*, 441 F. Supp. 3d at 882–83); *see also Reddit II*, 2023 WL 4849434, at *3 (declining to apply the lesser “fair use” standard to a Reddit user because that user “is a witness, not a defendant. He thus does [not] have available to him the built-in First Amendment accommodations of copyright law, such as the fair use defense.”) (cleaned up).

In sum, the Court finds Movants cannot meet the *2TheMart* standard because the evidence they seek can be obtained from other sources, including from Frontier in the normal course of discovery. While Movants note the discovery period in their underlying litigation ends in June 2024 (Mot. at 12), this still allows sufficient time for Movants to issue a subpoena to Frontier for subscriber information and, if necessary, to seek redress from the court should Frontier fail to respond.

V. CONCLUSION

For the reasons stated above, the Court **DENIES** Movants’ motion to compel.

IT IS SO ORDERED.

Dated: February 7, 2024

THOMAS S. HIXSON
United States Magistrate Judge