

## ISP SUBPOENA UPDATE

### *IN RE SUBPOENA TO UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL*

*367 F. Supp. 2d 945 (M.D.N.C. 2005)*

### *IN RE CHARTER COMMUNICATIONS, INC. SUBPOENA ENFORCEMENT MATTER*

*393 F.3d 771 (8th Cir. 2005)*

### *SONY MUSIC ENTERTAINMENT INC. v. DOES 1-40*

*326 F. Supp. 2d 556 (S.D.N.Y. 2004)*

### *ELEKTRA ENTERTAINMENT GROUP, INC. v. DOES 1-9*

*2004 U.S. Dist. LEXIS 23560 (S.D.N.Y. 2004)*

Several district courts and the Eighth Circuit ruled on the enforceability of subpoenas demanding that Internet Service Providers (ISPs) reveal the identity of anonymous internet users and alleged copyright infringers.

In a peer-to-peer (P2P) networking system, files are transferred between computer users without the need for a central server to store shared files. When a user logs onto a P2P network, he is able to search the shared files of all other users and download directly from other users' computers. Because a user is typically only identified on a P2P network by IP address or screen name, there is no simple way to determine the user's true identity. In various actions, plaintiff copyright holders alleged that P2P network users infringed their copyrights. Alleging that they could only obtain the individual and true identities of users they want to sue from records maintained by the users' ISPs, plaintiffs issued subpoenas to the users' respective ISPs demanding user identities. The ISPs—and, in some cases, the individual users acting anonymously—moved to quash.

In *Elektra* and *Sony Music*, the Doe defendants argued that the subpoenas violated their First Amendment rights to anonymous speech on the internet. The District Court for the Southern District of New York demanded compliance with the subpoenas, holding that the First Amendment did not bar compelled disclosure of defendants' identities. The court reasoned that while the individual users' activities on the P2P networks qualified as speech, plaintiffs' prima facie claim of copyright infringement and

the inability of obtaining the information by other means outweighed defendants' interests under the First Amendment.

In a second line of cases, the subpoenas were challenged on procedural grounds, and in all three cases the defendants' motions to quash were granted. In *Charter Communications* and *University of North Carolina*, the motions to quash were granted because the courts found that the ISPs, as providers of internet connections that did not store any allegedly infringing material, and thus could not remove that material, were not properly subpoenaed under the Digital Millennium Copyright Act.