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IN THE DISTRICT OF THE UNITED STATES OF AMERICA  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

_____	)	
<b>LIGHTSPEED MEDIA CORPORATION,</b>	)	
	)	
Plaintiff(s),	)	
	)	
vs.	)	Case No. <b>12-00889-GPM</b>
	)	
<b>ANTHONY SMITH, et al.,</b>	)	
	)	
Defendant(s).	)	
_____	)	

**MOTION FOR DISCOVERY**

BE IT REMEMBERED AND CERTIFIED that heretofore on **08/20/2012**, the same being one of the regular judicial days in and for the United States District Court for the Southern District of Illinois, **Honorable G. Patrick Murphy**, United States District Judge, presiding, the following proceedings were recorded by mechanical stenography; transcript produced by computer.

**APPEARANCES:**

**FOR PLAINTIFF:**

**John L. Steele** of Steele Hansmeier PLLC, 161 North Clark Street, Suite 4700, Chicago, IL 60601  
**And Kevin T. Hoerner** of Becker, Paulson et al., 5111 West Main Street, Belleville, IL 62226.  
**And Paul A. Duffy**, Prenda Law, Inc., 161 N. Clark Street, Suite 3200, Chicago, IL 60601  
**And (by phone) Paul Hansmeier** of alpha Law Firm, 80 South 8th Street, Suite 900, Minneapolis, MN 55402

**FOR DEFENDANT:**

**Bart Westcott Huffman** of Locke Lord LLP - Austin, 100 Congress Avenue, Suite 300, Austin, TX 78701  
**And Troy A. Bozarth** of HeplerBroom LLC - Edwardsville, 130 North Main Street, P.O. Box 510, Edwardsville, IL 62025.  
**And Andrew G. Toennies** of Lashly & Baer PC, 714 Locust Street, St. Louis, MO 63101.  
**And John D. Seiver** of Davis Wright Tremaine LLP, 1919 Pennsylvania Avenue, NW, Suite 800, Washington, DC 20006

**REPORTED BY: Molly N. Clayton, RPR, FCRR**, Official Reporter for United States District Court, SDIL, 750 Missouri Ave., East St. Louis, Illinois 62201, (618)482-9226,  
*molly\_clayton@ilsd.uscourts.gov*

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INDEX OF WITNESS EXAMINATION

DX                      CX                      R-DX                      R-CX

No witness testimony.

INDEX OF EXHIBITS

EXHIBIT                      DESCRIPTION                      Id'D                      Rcv'd

No exhibits identified or received.

MISCELLANEOUS INDEX

PAGE

No miscellaneous index entries.

1            *COURTROOM DEPUTY: Lightspeed Media Corporation versus*  
2 *Anthony Smith et al., Case Number 12-889-GPM, is called for*  
3 *hearing on the motion for discovery.*

4            Will the parties identify themselves for the record?

5            *MR. STEELE: John Steele on behalf of Plaintiff*  
6 *Lightspeed.*

7            *THE COURT: Mr. Steele.*

8            *MR. HOERNER: Kevin Hoerner for the plaintiff.*

9            *THE COURT: Mr. Hoerner, good afternoon.*

10          *MR. DUFFY: Paul Duffy for the plaintiff.*

11          *THE COURT: Mr. Duffy.*

12          *MR. JONES: I'm Steve Jones. I'm the owner of*  
13 *Lightspeed.*

14          *THE COURT: All right. Mr. Jones.*

15          *MR. BOZARTH: Troy Bozarth for SPC Internet Services.*

16          *THE COURT: Mr. Bozarth, good afternoon.*

17          *MR. BOZARTH: Good afternoon.*

18          *MR. HUFFMAN: Bart Huffman, also for SPC Internet*  
19 *Services, Inc.*

20          *THE COURT: Is it Huffman?*

21          *MR. HUFFMAN: Huffman, yes, your Honor.*

22          *THE COURT: Okay. Good afternoon.*

23          *MR. TOENNIES: Andy Toennies for ComCast Cable.*

24          *THE COURT: All right. Good afternoon.*

25          *MR. SEIVER: John Seiver, also for ComCast Cable, your*

1 Honor.

2 *THE COURT:* Is it Seivers?

3 *MR. SEIVER:* Seiver.

4 *THE COURT:* Thank you. Good afternoon.

5 All right. Who do we have on the line?

6 *MR. HANSMEIER:* On the phone is Paul Hansmeier for  
7 the plaintiff.

8 *THE COURT:* All right, Mr. Hansmeier, good afternoon  
9 to you.

10 Now, what we are doing here today is, I received calls  
11 to my chambers. I did not talk to -- I think it was someone  
12 named Dunn. Mr. Dunn had called and requested an emergency  
13 hearing. Instead, I had my clerk contact everyone that we  
14 could contact and try to set it up. Here we are.

15 Now, the Court understands what's requested here is  
16 what's cast as an emergency motion to engage in out of the  
17 ordinary discovery. In other words, ordinarily we have a  
18 scheduling conference and the parties work out their  
19 limitations and who's to do what and when and we get started  
20 that way. But what I was told in the emergency motion was that  
21 this was a life or death matter for the plaintiff's business.  
22 But then I've read I think it is AT&T's papers today, and they  
23 say it's not life or death at all and that, in fact, the  
24 plaintiff has met with no success at all, including the  
25 Illinois Supreme Court on these kind of cases.

1           Who's going to speak for the plaintiff?

2           *MR. STEELE:* I am, your Honor.

3           *THE COURT:* All right. Identify yourself and tell me  
4 what, exactly what relief you are wanting and why you think you  
5 are entitled to it.

6           *MR. STEELE:* Would the Court like me to approach?

7           *THE COURT:* As long as I can hear you, I don't care,  
8 and the court reporter can get your -- can get your name.

9           *COURTROOM DEPUTY:* He needs to be at a mic so the  
10 person on the phone can hear.

11          *THE COURT:* All right.

12          You need to be at a mic so the court counsel can hear  
13 you.

14          *MR. STEELE:* All right. Can everyone hear me? Okay.

15          Your Honor, I represent Lightspeed. John Steele,  
16 S-T-E-E-L-E. And to get to the crux of the main question, your  
17 Honor, about whether it's an emergency motion, it is. We  
18 actually -- to help illustrate the matter, we've actually  
19 conducted quite a bit of forensic work over the last three  
20 days. That's one of the reasons that my client flew up here.

21          And since Friday, at 11:00 a.m., when we were going to  
22 initially have this hearing, until now, there's been 1495  
23 hackers that have reentered despite my client's best efforts  
24 and hacked into the system, including six hackers that are  
25 actually ComCast and AT&T subscribers. One of them downloaded

1 almost 2 gigabytes worth of data before he was caught and shut  
2 out.

3 My client literally no longer even operates his core  
4 business. His entire waking moment is trying to keep out these  
5 hackers. And they are repetitive hackers, these are the same  
6 people over and over again. It's not like there's new hackers  
7 every day. We need to get -- find out who these people are so  
8 that we may proceed against them.

9 What we are asking for, although it is an emergency  
10 basis and although it may be outside to some extent normal  
11 channels, we are asking for very limited discovery. We are  
12 asking for people's identifying information as to who had a  
13 certain IP address at a certain time, just their contact  
14 information, so that we may proceed against them. We are not  
15 asking for their social security numbers or their financial  
16 records or anything along normal discovery.

17 But quite simply, how can we go after people, we don't  
18 know who they are. They know that. They know that we don't  
19 know who they are. They brag about it on the blogs, and they  
20 send messages to me and my co-counselors and my client and so  
21 on that we will never get them because they are hiding under  
22 AT&T and ComCast. So this has been an emergency since the day  
23 we filed this action.

24 We have used the utmost urgency in all of our  
25 pleadings. We have won the five or six hearings that were held

1 at the state court level in Illinois, in this case. It is true  
2 that Justice Karmeier, over -- under the certain aspects of  
3 Judge LaChien's discovery orders. However, I want to make it  
4 clear that Judge Karmeier did not dismiss the case. He did not  
5 do nearly what is alleged in the respondent brief, and I would  
6 encourage your Honor to look at the -- I think it is three  
7 sentences -- the order. It merely stops certain things such as  
8 requiring ISPs to provide a map and certain minor functionary  
9 things. Many of the initial directives of Judge LaChien  
10 remained in force.

11 *THE COURT:* Let me just stop you there, though. You  
12 told me your client is no longer in the business?

13 *MR. STEELE:* No, I didn't say that.

14 *THE COURT:* That's what you said. You said your  
15 client has been spending all his time protecting his equipment  
16 from these assaults that he is out of business.

17 *MR. STEELE:* Well, no. What he has, obviously, people  
18 working with him. But what I'm saying is, he spends a grossly  
19 disproportionate amount of his time. Instead of worrying about  
20 his core business, what he does all the time now is work to  
21 hire people and to bring in people and himself, because he is a  
22 computer engineer, to try to stop the water from breaking over  
23 the dam with these hacking attempts and so on. He has to make  
24 sure that his site is maintained.

25 For instance, one of the hackers, I believe it is a

1 ComCast subscriber, that was a denied services attack on his  
2 network and he was down for almost an entire day. So,  
3 obviously, he can't focus on his business, and besides the  
4 obvious fact that revenues -- and I think we mentioned this in  
5 the preview. Revenues are down over 60 percent since we've  
6 just started this litigation, and he's obviously here to  
7 proffer such statements and such testimony.

8 But the key here is, I'm very familiar with opposing  
9 counsel's pleadings and, obviously, I've been in court with  
10 opposing counsel in many different cases, but I think it is  
11 unfair to characterize our type of litigation as not being  
12 successful. Right now, at the Illinois state level, we have  
13 several cases that are large cases going on without even a  
14 remotest sort of delay or the judge does not disagree with us  
15 in any of our matters.

16 As far as the federal court, which I think is much  
17 more relevant dealing with discovery because, obviously, we are  
18 in federal court now. The important thing to remember is that  
19 we have well over, the last time I checked -- please don't hold  
20 me to the exact number -- but well over 80 cases right now  
21 going on in the Northern District of Illinois, and I don't  
22 believe any currently in the Southern District. But all these  
23 cases are proceeding fine. I think there is some inference in  
24 here about some of the cherry-picking.

25 *THE COURT:* I don't think the problem -- we're not

1 talking about a disposition of the lawsuit here today. What we  
2 are talking about today is whether the Court sets aside the  
3 general, orderly progression of the federal discovery practice.

4 Certainly, as the case goes forward, judges are going  
5 to have to very carefully analyze what is being asked and weigh  
6 that against the interest of some of the parties involved.

7 Now, we're not a complete stranger to these cases.  
8 You can get IP addresses, but what you might find is you might  
9 have some 14-year-old kid that wants to get on mom's computer  
10 and download porn. I mean, that's what your client is selling.  
11 And you know the courts not -- most courts wouldn't be of  
12 any -- at least not any court that has ever had a 14-year-old  
13 boy. I don't know about girls. But it wouldn't be too much of  
14 a mind to fine mom and dad because the 14-year-old kid got on  
15 the computer and got titillated watching some private porn  
16 club. So it is a very, very careful balance that has to be  
17 reached here before we proceed.

18 Mr. Bozarth, are you going to speak for the other  
19 side?

20 *MR. BOZARTH:* Yes, your Honor.

21 *THE COURT:* Tell me what you think about this.

22 *MR. BOZARTH:* Yes, your Honor. I don't want to get  
23 too much into the merits because, frankly, we're working on a  
24 12(b)(6) motion right now. And, if anything, I think that's  
25 the plaintiff's emergency because this case doesn't survive a

1 12(b)(6) motion. There is no emergency here that meets the  
2 requirements that your Honor has to look at to throw out all of  
3 the structure and form of the civil procedure rules in order to  
4 allow this extreme measure of extraordinary discovery.

5 What we have is clearly improper discovery that  
6 they're seeking, and I can address that in a little bit. But  
7 when you look at the standards that your Honor has to look at,  
8 there has to be a need for the expedited discovery; not a need  
9 for the discovery, but for it to be expedited. And that has to  
10 be shown through good cause, and it has to be balanced against  
11 the detriment to the other litigants involved, namely, the  
12 defendants who would be providing it here.

13 The rules are put in place for a reason so that the  
14 orderly process can take effect. And if the case has no merit,  
15 which we want to challenge, then we aren't spending the money  
16 to go ahead and divulge this information.

17 We believe that the discovery sought of these 6600 or  
18 so IP addresses that are not named in this complaint, that we  
19 believe there is no intention to bring them in the complaint,  
20 that this is to harvest information so that they can then go  
21 and try to obtain settlements from that mother or father of the  
22 14-year-old boy that your Honor spoke of earlier.

23 The problem is that these are IP addresses from all  
24 over the country. So when they receive a letter that says pay  
25 us \$3,000 to make this case go away, you have to decide whether

1 you are going to hire yourself a lawyer and fly to the Southern  
2 District of Illinois and sit in front of Judge Murphy and  
3 defend yourself and which one is more economically feasible.

4 So we want to get to that, your Honor, but the  
5 important thing is, it wasn't Justice Karmeier who threw this  
6 case out. It was the Illinois Supreme Court. It was -- the  
7 order is clear. It was the entire Illinois Supreme Court. It  
8 was not a one-judge order, and there was no dissent to that.  
9 So they may not like it, but to turn around and serve the exact  
10 same discovery or request from this Court the exact same  
11 discovery, we believe is improper.

12 *THE COURT:* Well, in short, what you are saying to me  
13 is that there's no emergency here.

14 *MR. BOZARTH:* There is no emergency.

15 *THE COURT:* That's -- we argue about -- so what is the  
16 emergency?

17 *MR. STEELE:* Well, the emergency is that my client is  
18 literally under attack on a minute-by-minute basis. As we sit  
19 here today, this very minute, hundreds or thousands of hackers  
20 are literally targeting our client, including many, as we are  
21 prepared to prove today, that are clients or subscribers of  
22 AT&T and ComCast.

23 Now, unlike almost all of the other ISPs, these two  
24 large ISPs have decided for their own reasons not to comply and  
25 to raise these roadblocks, and never-ending in every case. And

1 I understand we are not getting to the cases yet. But what's  
2 important to understand is, while the ISP are making lots of  
3 monies from the subscriber payments and while the subscribers  
4 are doing what they want to do, my client is -- literally, it's  
5 like he is hiding behind a wall. There's strangers throwing  
6 bombs at him, and says, I want to know who those people are. I  
7 want to identify them so I can go after them.

8 And to be able to say, No, no, you don't get their  
9 identity. You can just survive for another month or two,  
10 hopefully. The problem is, is that my client spends more money  
11 on a net basis each month now fighting these people than he is  
12 making, at least for the last month or two, so there is --  
13 there is an emergency. And what we are asking for is not some  
14 injunctive relief ordering AT&T to change its business  
15 practices. This is no -- as Judge Howell made very clear  
16 several times, there is no undue burden here whatsoever on the  
17 ISPs, and they have admitted to Judge LaChien in the early  
18 state court action that they have all this information sitting  
19 on someone's desk. I believe his name is Mr. Cadenhead, but  
20 don't hold me to that. Sitting on a desk. And they're  
21 prepared, quote/unquote, to mail it tomorrow if ordered to do  
22 so.

23 *THE COURT:* Now, do you think that if the Court were  
24 to order this discovery today that these attacks would stop?

25 *MR. STEELE:* I think it would greatly, greatly

1 decrease and here's why. Two things. One is, first of all,  
2 some of these hackers aren't aware of this litigation. There  
3 is no reason to presume that all these people are magically  
4 connected to ECF and know everything that's going on. When  
5 they receive a letter from our firm saying, hey, we just caught  
6 you. We believe we caught the subscriber of the account  
7 associated with this person downloading this exact movie. My  
8 experience has been there is a rapid, very rapid decrease in  
9 the amount of hacking because it is almost, oh, shoot, I got  
10 caught. So, yes, I do believe there is going to be a huge  
11 decrease, and I can bear that out as an officer of the court  
12 with several other clients I have that had the exact same thing  
13 happening.

14 In fact, I can tell you that I have a client,  
15 Millennium TGA, who when we started this process and we got  
16 discovery on a large case, all the sites that you get these  
17 passwords from and all put up a warning, do not take this guy's  
18 passwords, he is getting sued. He is just suing everyone  
19 that's involved in this case. So, yeah, the word gets out real  
20 quick amongst the hardcore hacking community, and it also puts  
21 them on notice. I mean, they could be actually destroying  
22 information, spoliation of evidence, because they didn't even  
23 know about the case. And there are some that do know about the  
24 case. And the minute they realize that their gig is up and  
25 they can't hide anymore, you know, they are going to make

1 certain changes.

2 But, also, we need to get this information as part of  
3 our discovery process. I know it's not -- that doesn't make it  
4 an emergency, the nature of it, but to some extent it does.  
5 Because if we know who's doing it, we can reach out and say,  
6 one, stop. You are --

7 *THE COURT:* Well, you are never going to know who is  
8 doing it. You are going to know which computer it comes from.

9 *MR. STEELE:* Right.

10 *THE COURT:* That's a different issue.

11 *MR. STEELE:* I agree.

12 *THE COURT:* Wouldn't the better solution to this be,  
13 and I'm looking down the road here. Mr. Bozarth is telling me  
14 I'm not going to have to fool with this case too long. He will  
15 hit it with a big left hook, and it will go. Maybe. But isn't  
16 a better solution is that you give -- you would -- some judge  
17 would say, well, maybe you should give the Internet providers  
18 the IP addresses you have and pay them to notify these people  
19 to quit hacking your system.

20 *MR. STEELE:* Well, that's part of our discovery  
21 request, and that is to -- I'm sorry. One of the items in our  
22 emergency motion is that they be ordered to notify all of their  
23 subscribers with --

24 *THE COURT:* I'm just talking on as a solution on this  
25 thing. So you would say give them this information, and then

1 they would notify those computers, say, hey, somebody here has  
2 been doing this.

3 *MR. STEELE:* Right. And we do believe that's  
4 important, but we also have been down this road before. And  
5 Judge LaChien ordered AT&T specifically, four different  
6 hearings, four different orders, to do it, and they didn't do  
7 it.

8 *THE COURT:* I'm just asking.

9 *MR. STEELE:* Well, I think -- and I understand, Judge.  
10 And just for a moment, to the idea of IP addresses and the  
11 hacker's right. It is like we see the license plate of the  
12 getaway car. Now, it may not have been the car owner, but my  
13 experience is and my office's experience is, that it may not be  
14 the owner but it is -- certainly almost every time it is, oh,  
15 let me guess, you have an 18-year-old son in the basement kind  
16 of thing. And granted, sometimes, as Judge Howell said,  
17 sometimes it won't lead to the evidence of a hacker -- we are  
18 not saying that every single IP address is a hacker.

19 In fact, in a similar case in Cook County in federal  
20 -- I'm sorry -- Northern District of Illinois, every single IP  
21 address was the same hacker. He was so prolific he had 27  
22 different IP addresses. There could -- obviously, there are  
23 not the exact number of hackers for the IPs. In fact, we  
24 expect there to be much fewer hackers than the number of IPs.  
25 But they lead us there, and they begin our discovery process.

1 And the persons -- every day that goes by, more and more people  
2 move. More and more people go, I don't want to -- you know,  
3 I'll just jettison this computer because I'm nervous what the  
4 information

5 *THE COURT:* What happens in the case like this, just a  
6 nonpayment of the use?

7 *MR. STEELE:* Well, no, no. What happens with these  
8 people when they get this data is that they do many -- I'll  
9 give you an example because, obviously, I don't want to take up  
10 the Court's whole afternoon. But for instance, one person that  
11 we caught in this exact case basically site-ripped the entire  
12 Web site of my client, set up a competing commercial site with  
13 a similar name, and collected money so that these people could  
14 come to his site. And most of them didn't even realize that  
15 they were going to a fake site.

16 Now, someone like that, you know, it's important,  
17 because this is a direct hit to my client, who literally, as I  
18 mentioned, is ready to testify he didn't make any money the  
19 last two months and he blames the approximately 60 percent  
20 decrease in gross revenue from November on this group of  
21 hackers that are literally targeting him. I think that if down  
22 the road we are not asking to put our case on now, we are not  
23 trying to make an emergency motion into a quick trial on the  
24 merits.

25 All we're saying is -- well, a couple of things we

1 want. One is, we want to get that notice out to the people  
2 because that puts them on constructive notice also so that  
3 after that notice they throw away their computer or try to  
4 hide, which a lot of them do, then we have that basis.

5 Secondly, we need to know who it is so that we can  
6 begin our discovery because we can't properly argue the merits  
7 of this case without at least some initial discovery. Knowing  
8 who it is that's in a conspiracy when one defendant knows who  
9 it is doesn't seem to be that much to ask for. I'm sure most  
10 bank robbers who were caught wouldn't want to have to give up  
11 their conspirators, but that's not how the system works. You  
12 have got to give up that information. And then if it is  
13 urgent, if it is something that we can stop right away.

14 And then the third thing we are asking for, to find  
15 out who it is exactly that these counsels are representing.  
16 They've said they represent an unknown corporate counsel. We  
17 don't know who they represent. We are asking that they  
18 identify the corporate counsel in the emergency or corporate.

19 *THE COURT:* What are you talking about?

20 *MR. STEELE:* We are asking that counsel identify the  
21 corporate representative in AT&T and ComCast that has made the  
22 decision --

23 *THE COURT:* Oh, okay. I see.

24 Here's the way I see this case. The -- if there is a  
25 case here at the bottom of all this, it's a case for damages.

1 You have an adequate remedy at law. Properly understood, what  
2 you are asking me to do here today is grant what is at the  
3 bottom injunctive relief, to make somebody do something that  
4 they would otherwise not have to do to protect this business.  
5 Well, that's the same problem that every business in the world  
6 has. And for as long as we've had a common law, we say, if you  
7 have got an adequate remedy at law, you have got one.

8 Now, there's no evidence that's going to be destroyed.  
9 I'll be honest about this. I'm skeptical about how this case  
10 could ever be put on, but my feet are not set in stone on it.  
11 I've seen some cases that didn't look too hot at the start that  
12 got better with time. This may be one of those cases. But you  
13 are going to have to go through the regular discovery route  
14 just like everyone else, and then some judge or some magistrate  
15 will have to sit down and very carefully tailor this thing.

16 I don't foresee a situation where the Southern  
17 District of Illinois is going to be pulling in cases from all  
18 over the United States. I'm in St. Clair County, and in the  
19 Southern District of Illinois, we've got 38 counties. And  
20 that's -- that provides us with about all we can take care of  
21 as it is. Motion denied. Have a good day.

22 Court's in recess.

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REPORTER'S CERTIFICATE

I, Molly N. Clayton, RPR, FCRR, Official Court Reporter for the U.S. District Court, Southern District of Illinois, do hereby certify that I reported with mechanical stenography the proceedings contained in pages 1 - 18; and that the same is a full, true, correct and complete transcript from the record of proceedings in the above-entitled matter.

DATED this 30th day of August, 2012.

*Molly Clayton, RPR, FCRR*

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