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15 **UNITED STATES DISTRICT COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 **Originating Case:** *In re: Frontier Commc'ns Corp.*, Case No. 20-22476-MG (Bankr.  
18 S.D.N.Y.)

19 In re Subpoena to:

20 Reddit, Inc.

21 Case No.: 3:24-mc-80005-TSH  
22 Hearing Date: Feb. 15, 2024  
23 Time: 10:00 AM

24 **MOVANTS' REPLY IN SUPPORT OF**  
25 **MOTION TO COMPEL NON-PARTY**  
26 **REDDIT TO RESPOND TO SUBPOENA**

27 **MOVANTS' REPLY IN SUPPORT OF MOTION TO COMPEL NON-PARTY**  
28 **REDDIT TO RESPOND TO SUBPOENA**

Movants Voltage Holdings, LLC; Screen Media Ventures, LLC; Killing Link Distribution, LLC; Family of the Year Productions, LLC; and Laundry Films, Inc., by and through their counsel, pursuant to Civ L.R. 7.3(c), file their Reply in support of their Motion for an order compelling non-party REDDIT, INC. ("Reddit") to fully produce documents in response to their Rule 45 subpoena.

**I. INTRODUCTION**

1. Movants are not "unmasking" Reddit's subscribers. Movants' subpoena merely requests Internet Protocol ("IP") address logs. An IP address is not a person. *See Malibu Media, LLC v.*

1 *Doe*, No. 1:14-cv-20213-UU, 2014 U.S. Dist. LEXIS 185324, at \*5 (S.D. Fla. Mar. 4, 2014)  
2 (“...IP addresses...especially are not representative of individual people.”). Nor is an IP address,  
3 by itself, identification information of a person. *See United States v. Monroe*, 350 F. Supp. 3d 43,  
4 48-49 (D.R.I. 2018) (“It does not, in and of itself, reveal a particular user's identity...”).  
5 Accordingly, Reddit’s pages of arguments based upon the First Amendment standards for  
6 “unmasking” anonymous speakers are not applicable. Reddit does not dispute that the  
7 information Movants seek is relevant to their claims and rebuts Frontier’s safe harbor defense.  
8 Reddit does not assert any burden for disclosing the IP address log information requested. The  
9 Court should grant Movants’ motion.

## 11 **II. ARGUMENT**

### 12 ***A. An IP address is not an identification.***

13 2. Reddit argues that Movants seek to compel it to “unmask” its subscribers. *Opp.*, p.5<sup>1</sup>. But  
14 Reddit concedes that should the Court grant Movants’ motion, Movants would still have to serve  
15 a further subpoena on Frontier to obtain subscriber information associated with IP addresses  
16 received from Reddit. *See id.*, p.6 (“After learning an IP address, the Movants need only subpoena  
17 the ISP for the subscriber information associated with that IP address...”). As discussed below,  
18 this is not the case. But in view of this concession, there is no need for this Court to conduct First  
19 Amendment analysis on non-identification information Reddit’s subscribers voluntarily turn over  
20 to third parties or consider the applicability of earlier Reddit subpoena decisions which Judge  
21 Beeler already ruled are not related to this case. *See Doc. #19*. As Movants pointed out in their  
22 opening brief, Courts have repeatedly concluded in the Fourth Amendment context that there is  
23 no privacy right to IP addresses that are voluntarily turned over to third parties. *Smith v.*  
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28 <sup>1</sup> Movants are using the ECF numbering of Reddit’s Opposition Brief.

1 *Maryland*, 442 U.S. 735, 743-744, 99 S. Ct. 2577, 2581-82, 61 L. Ed. 2d 220 (1979).

2 3. Reddit argues in a footnote that Movants' citation of cases such as *United States v.*  
3 *Forrester*, 512 F.3d 500 (9th Cir. 2008) that explicitly state that individuals do not have a privacy  
4 interest in IP addresses are not applicable because they do not include First Amendment analysis.  
5 *See Opp.*, FN4. But Courts have cited these Fourth Amendment decisions when rejecting the  
6 same arguments made by Reddit that the First Amendment protects anonymous speech using IP  
7 addresses in the context of copyright infringement. *See, e.g., Strike 3 Holdings v. Doe*, Civil  
8 Action No. 3:18-CV- 2120(CSH), 2019 U.S. Dist. LEXIS 30148, at \*14 (D. Conn. Feb. 26, 2019)  
9 (quoting *Forrester*, *United States v. Ulbricht*, 858 F.3d 71, 96 (2d Cir. 2017) and *United States v.*  
10 *Christie*, 624 F.3d 558, 573 (3d Cir. 2010) in rejecting argument that the First Amendment  
11 protected anonymous speech using IP addresses in the context of copyright infringement.). And  
12 Courts have noted that First Amendment anonymity cannot be used to mask copyright  
13 infringement or to facilitate infringement by other persons. *See, e.g., Arista Records Ltd. Liab.*  
14 *Co. v. Doe*, 604 F.3d 110, 118 (2d Cir. 2010). Indeed, a Court has stated that the Fourth  
15 Amendment provides stronger protection from the government's authority than the First  
16 Amendment. *See Presbyterian Church v. United States*, 752 F. Supp. 1505, 1511 (D. Ariz. 1990)  
17 ("When the focus of a discussion becomes whether to limit the government's authority to conduct  
18 criminal investigations, the fourth amendment is triggered more directly than the first amendment  
19 simply because the fourth amendment offers greater and more profound protection.").  
20 Accordingly, it would be contradictory to conclude that the First Amendment provides a right to  
21 privacy for IP addresses of comments boasting of copyright infringement as argued by Reddit  
22 when the Ninth Circuit already concluded in *Forrester* that there is no such right.

23 4. Reddit cites three cases as support for its proposition that disclosure of IP address logs  
24 constitutes unmasking. *See Opp.* p.10. However, in two of the cases *Wirt v. Twitter, Inc.*, No.  
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1 21-mc-801660, 2021 WL 5919846, at \*1 (N.D. Cal. Dec. 15, 2021) and *Obi Pharma, Inc. v. Does*  
2 *I-20*, No.16CV2218, 2017 WL 1520085, at \*5 (S.D. Cal. Apr. 27, 2017), the subpoenas at issue  
3 requested more than just IP address logs. *See Obi Pharma*, 2017 U.S. Dist. LEXIS 64273, at \*11  
4 at \*11 (“all identifying information, including name(s), address(es), telephone number(s), email  
5 address(es), and IP address(es) for the identified inspire.com users.”) and *Wirt*, 2021 U.S. Dist.  
6 LEXIS 239834, at \*2 (N.D. Cal. Dec. 15, 2021)(“Dr. Wirt’s subpoena seeks only basic subscriber  
7 information for the account in question, along with the IP addresses associated with the tweets”).  
8 Although the subpoena in the third case: *Castro v. Doe*, No. 23-mc-80198-TSH, 2023 WL  
9 9232964, at \*2–3 (N.D. Cal. Oct. 12, 2023) was limited to a list of IP addresses, the *Castro* opinion  
10 is not a final decision. Moreover, it does not appear that the *pro se* Movant in *Castro* even argued  
11 that the IP addresses requested were not identification data. Accordingly, these three cases cited  
12 by Reddit are not applicable.  
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15 5. Movants disagree with Reddit’s assertions that “it only has IP addresses” for its users or  
16 that “the process of unmasking a Reddit user turns on Reddit’s disclosure of an IP address...”.  
17 *Opp.*, pp.8 and 10. In other cases, Movants’ counsel has obtained information from Reddit besides  
18 IP addresses such as email addresses. *See In re Reddit, Inc.*, No. 3:23-mc-80037-LB, 2023 U.S.  
19 Dist. LEXIS 74338, at \*4 (N.D. Cal. Apr. 28, 2023) (“Reddit later provided the identifying  
20 information for one user ("ben125125") after giving that user notice.”) and Decl. of Culpepper,  
21 ¶4. Indeed, Reddit itself states that it has telephone and name information for users, information  
22 which Movants did not request. *See id.*, ¶5. Accordingly, the unmasking process turns on more  
23 than just IP addresses.  
24

25 ***B. Reddit’s draws an incorrect conclusion that Movants have alternative sources from glancing***  
26 ***at the Frontier docket.***

27 6. Reddit asserts that “The underlying bankruptcy court adjudicating the copyright litigation  
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1 has already ruled that the Movants can obtain identifying information from Frontier for IP  
2 addresses known to have pirated using Frontier’s network.” Opp., p.8. Reddit draws this  
3 incomplete picture from its brief glance of the over two thousand docket entry Frontier case. The  
4 complete picture is that the Bankruptcy Court issued a Cable Act Order on Jan. 25, 2024 limiting  
5 authorization to disclose identifications of only subscribers that infringed one or more of the  
6 movies at issue. See Decl. of Culpepper, ¶6; Ex. “1”. Accordingly, even if Movants sought to  
7 use IP addresses obtained from Reddit to obtain identification information in another discovery  
8 request to Frontier in the Bankruptcy Court, Movants would at best only be able to obtain such  
9 identification information if those Reddit subscribers infringed at least one of the movies at issue  
10 from one of the IP addresses turned over by Reddit. Reddit’s inaccurate argument makes the  
11 point this Court made in the Order [Doc. #5] of Jan. 10, 2024. If the decision on enforcement of  
12 this subpoena turns on minute factual details of the underlying case, Movants respectfully assert  
13 that the Bankruptcy Court that is familiar with the details of this case is best fit for making that  
14 decision. But most importantly, whether the Bankruptcy Court would turn over identification  
15 information is beside the point because that is not what Movants are requesting here. Rather, the  
16 high evidentiary value in the IP address logs requested is to: (1) show that the Reddit users that  
17 made comments boasting of piracy used Frontier IP addresses just as boasted; and (2) identify the  
18 number of notices sent to Frontier concerning piracy at these IP addresses where Reddit users  
19 boasted of being able to pirate freely with consequence. This evidence will rebut Frontier’s  
20 assertion that it has implemented a policy for terminating repeat infringers sufficient for the 17  
21 U.S.C. §512(a) safe harbor and prove the second requisite element of Movants’ claim for vicarious  
22 infringement by establishing that the ability to pirate freely is a draw to users of Frontier’s service.  
23 See *Rams v. Def Jam Recordings, Inc.*, 202 F. Supp. 3d 376, 385 (S.D.N.Y. 2016) (quoting *A&M*  
24 *Records, Inc. v. Napster Inc.*, 239 F.3d 1004, 1023 (9th Cir. 2001).  
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1 7. Reddit argues that Movants could somehow, “lay the evidentiary foundation for, and  
2 authenticate, those posts themselves.” Opp., p.12. However, the Court in *BMG Rights Mgmt.*  
3 *(US) LLC v. Cox Communs.* rejected an attempt by the Plaintiff to introduce similar types of  
4 Reddit posts as evidence in a motion for summary judgment. *See BMG Rights Mgmt. (US) LLC*  
5 *v. Cox Communs., Inc.*, 149 F. Supp. 3d 634, 676 n.30 (E.D. Va. 2015). Movants intend to show  
6 that these posts were made from same Frontier IP addresses where multiple notices of  
7 infringement were sent to Frontier. At the very least, Movants need to show that these posts were  
8 made from Frontier IP addresses for the Court to consider them as evidence.  
9

10 8. Movants cannot obtain evidence of the IP addresses used for these posts from Frontier.  
11 Movant cannot plausibly obtain this evidence from the Frontier subscriber identifications since  
12 they are only requesting less than 1.2 percent of the infringing IP addresses. *See Decl. of*  
13 *Culpepper*, ¶6. But since Reddit does not object based upon any burden to it for producing this  
14 information, Movants respectfully assert that whether they could find these needles in a haystack  
15 is not at issue.  
16

17 ***C. The underlying case has a protective order.***

18 9. Assuming *arguendo* that the Court considers IP address logs “unmasking” and the specific  
19 comments at issue protected speech, Movants urge the Court to consider that the underlying case  
20 has a protective order in place that includes Confidential and Highly Confidential – Attorneys’  
21 Eyes’ Only designations. Since boasting of piracy is, at best, commercial speech rather than  
22 speech on political, religious, or literary issues, it is afforded the least protection. *See In re*  
23 *Anonymous Online Speakers*, 661 F.3d 1168, 1177 (9th Cir. 2011). Movants can designate the IP  
24 address logs under one of these confidential categories to provide sufficient protection in view of  
25 the low value of any speech at issue subject to the approval of the Bankruptcy Court.  
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1 **III. CONCLUSION**

2 10. Accordingly, Plaintiffs pray that this Court grant its motion to compel Reddit to fully  
3 respond to the subpoena and such other relief they are justly due.

4 DATED: Kailua Kona, Hawaii, Jan. 26, 2024.

5 Respectfully submitted,

6 **CULPEPPER IP, LLLC**

7  
8 /s/ Kerry S. Culpepper

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was filed via ECF and therefore served to parties on the NEF list.

DATED: Kailua Kona, Hawaii, Jan. 26, 2024

Respectfully submitted,

**CULPEPPER IP, LLLC**

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