

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ARISTA RECORDS LLC,
ATLANTIC RECORDING CORPORATION,
BMG MUSIC, CAPITOL RECORDS, INC.,
CAROLINE RECORDS, INC.,
ELEKTRA ENTERTAINMENT GROUP INC.,
INTERSCOPE RECORDS,
LAFACE RECORDS LLC, LAVA RECORDS LLC,
LOUD RECORDS LLC, MAVERICK
RECORDING COMPANY,
MOTOWN RECORD COMPANY, L.P.,
PRIORITY RECORDS LLC, SONY BMG
MUSIC ENTERTAINMENT,
UMG RECORDINGS, INC.,
VIRGIN RECORDS AMERICA, INC.,
WARNER BROS. RECORDS INC.,
and ZOMBA RECORDING LLC,

ORDER

07-cv-641-bbc

Plaintiffs,

v.

DOE 9,

Defendant.

Defendant Doe #9 has filed a motion to quash the subpoena served on the University of Wisconsin-Milwaukee by plaintiff record companies that own copyrights in sound

recordings. (Originally, this case involved 56 Does; plaintiffs have dismissed all but Doe #9 voluntarily and without prejudice.)

Defendant asks the court to stop all acts of discovery because he is no longer a student at the university, does not own any illegal software or items and is not involved in the acts alleged in the subpoena. Moreover, he contends, the Federal Education Privacy Act allows access to educational records only by court order, subpoena or for legitimate educational interests. Also, defendant denies that the damages plaintiffs may have suffered from the alleged illegal acts are substantial enough to warrant the pursuit of further discovery and litigation against him and he asks the court to dismiss the complaint against him on the ground that it does not state a claim on which relief may be granted.

Beginning with the motion to quash the subpoena, I note that defendant's asserted reasons for quashing the subpoena are irrelevant so far as they relate to his student status, his ownership of allegedly illegal software or other items and his lack of involvement in the acts alleged in the subpoena. He may be correct, but his assertions go to the merits of the case against him and not to the validity of the subpoena. Whether he did or did not do any of the things he is alleged to have done is a matter to be thrashed out in the lawsuit, not in the preliminary stages of the suit.

Defendant's argument based on the "Federal Education Privacy Act" fares no better. (I assume that defendant meant to refer to the Family Educational Rights and Privacy Act,

20 U.S.C. § 1232g.) Under § 1232g, a university may release so-called “directory information,” which consists of name, address, telephone listing, date and place of birth, § 1232q(5)(B), and other items of information not at issue in this case. It may also release fuller details in response to a judicial order or lawfully issued subpoena, so long as the student and parents (if the student is a dependent) are notified of all such orders or subpoenas in advance of the university’s compliance. § 1232q(2)(B). Plaintiffs’ subpoena to the University of Wisconsin-Milwaukee is proper under either exception to the general rule prohibiting the release of student information. The subpoena seeks only defendant’s true name, current and permanent addresses and telephone numbers, email addresses and medical access control addresses, all of which are items an educational institution may disclose if it has given general notice that it will do so. Defendant has not suggested that the university did not give such notice.

Therefore, I conclude that defendant has shown no reason to quash the subpoena. The university must comply with it.

As for defendant’s request that the court dismiss plaintiffs’ complaint for failure to state a claim, that request will be denied as well. The complaint alleges that plaintiffs are copyright owners or licensees with respect to certain copyrighted sound recordings, that defendant Doe #9 downloaded or distributed to the public or both certain recordings to which plaintiffs own copyrights or licenses, without obtaining plaintiffs’ permission, thus

violating plaintiffs' exclusive rights of reproduction and distribution and entitling them to monetary damages and injunctive relief. This is sufficient to state a claim. Finally, although defendant believes that any damages he caused plaintiffs are too minimal to warrant relief, that too is a matter for a later stage of the proceedings.

ORDER

IT IS ORDERED that defendant Doe #9's motion to quash the subpoena issued to the University of Wisconsin-Milwaukee is DENIED, as is his motion to dismiss plaintiff's complaint against him.

Entered this 19th day of March, 2008.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge