

FILED IN FD-147
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

Issued by the
UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

Motion Picture Association of America

SUBPOENA IN A CIVIL CASE

V.

SAGO Networks

Case Number: *8:04-mc-137-T-17MAP*

TO: Cooper Miller, President and CEO
SAGO Networks
4465 W. Gandy Boulevard, Suite 800
Tampa, FL 33611

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):
Information, including name, address, telephone number and e-mail address sufficient to identify the alleged infringers of copyrighted television shows and motion pictures, operating a server at IP address 63.246.128.110:3306 on December 7, 2004 at 1:35 p.m. CST

PLACE Attn: Karen L. Stetson, Broad and Cassel 100 North Tampa Street, Suite 3500, Tampa, FL 33602	DATE AND TIME December 28, 2004, 10:00 a.m.
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR <i>Dennis D. Wright, Deputy CLERK</i>	DATE 12/28/04
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ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Clerk's Office, U.S. District Court for the Middle District of Florida
801 North Florida Avenue, Tampa, FL 33602

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

If action is pending in district other than district of issuance, state district under case number.

*\$39.00
TP 30406*

PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend

trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.



MIAMI CENTER
201 SOUTH BISCAYNE BOULEVARD
SUITE 3000
MIAMI, FLORIDA 33131
TELEPHONE: 305.373.9400
FACSIMILE: 305.373.9443
www.broadandcassel.com

KAREN L. STETSON
DIRECT LINE: 305-373-9423
DIRECT FACSIMILE: 305-995-6381
EMAIL: kstetson@broadandcassel.com

RECEIVED
DEC 14 PM 4:45
U.S. DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

December 14, 2004

Clerk of Court
U.S. District Court for the
Middle District of Florida
801 North Florida Avenue
Tampa, FL 33602

Dear Clerk of Court;

We are writing on behalf of the Motion Picture Association of America ("MPAA") and its member studios ("MPAA member studios"). We are writing to obtain a subpoena issued by the Clerk of this Court pursuant to 17 U.S.C. § 512(h).

The MPAA member studios are the owners and exclusive licensees of copyrights in and to a significant number of motion pictures and television shows. The MPAA member studios actively seek to protect their rights against individuals using the Internet to infringe their copyrights. We have uncovered a large-scale copyright infringer operating a centralized indexing server providing access to tens of thousands of infringing works at an IP address 63.246.128.110:3306 ("the infringing server"). Operation of such a server violates the copyright laws. *See A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (9th Cir. 2001); *In re Aimster Copyright Litigation*, 334 F.3d 643 (7th Cir. 2003), *cert. denied*, 124 S. Ct. 1069 (2004). Publicly available information indicates that this server is being hosted on the facilities of SAGO Networks, a Tampa-based Internet service provider (ISP).

The MPAA member studios can learn the identities of those behind this infringing server only by obtaining such information from the infringers' ISP. The Digital Millennium Copyright Act of 1998 ("DMCA") provides a method for expeditiously obtaining such information from an ISP.

Pursuant to 17 U.S.C. § 512(h), a copyright owner or its agent may obtain a subpoena ("DMCA subpoena") from the Clerk of any United States District Court for the purpose of seeking the identity of an alleged copyright infringer. Section 512(h)(4) provides that "the clerk shall expeditiously issue and sign the proposed subpoena" upon presentation of three documents in proper form: 1) a DMCA notice of copyright infringement, § 512(h)(2)(A); 2) a proposed subpoena, § 512(h)(2)(B); and 3) a sworn declaration meeting the requirements of § 512(h)(2)(C).

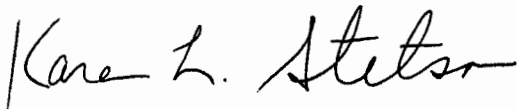
On behalf of the MPAA member studios, we are seeking to obtain a DMCA subpoena, issued by the Clerk of this Court, to serve on SAGO Networks to learn the identity of the

individuals behind the infringing server. With this letter, we are providing a DMCA notification, a proposed subpoena, and a declaration satisfying the requirements of the DMCA.

As required by the DMCA, the notification specifies a representative list of the copyrighted works that are the subject of infringing activity on the ISP's network, identifies the allegedly infringing material to be removed, and provides the ISP with information sufficient to locate the material. The declaration attests, on penalty of perjury, that the purpose of the subpoena is to obtain the identity of an alleged copyright infringer and that information obtained in response to the subpoena will be used only to protect rights under the Copyright Act.

Because of the irreparable harm to the MPAA member studios by ongoing copyright infringement and the DMCA's command that DMCA subpoenas be issued and complied with "expeditiously," we request that the Clerk's office issue this subpoena as soon as possible. If you have any questions, please do not hesitate to call me at (305) 373-9400.

Sincerely,

A handwritten signature in black ink that reads "Karen L. Stetson". The signature is written in a cursive, flowing style.

Karen L. Stetson

Attachment