

1 Kerry S. Culpepper, HI Bar No. 9837, *pro hac vice forthcoming*  
2 Culpepper IP, LLLC  
3 75-170 Hualalai Road, Suite B204  
4 Kailua Kona, HI 96740  
5 Tel: 808-464-4047  
6 Fax: 202-204-5181  
7 kculpepper@culpepperip.com

8 Tobi Clinton, (SBN 209554)  
9 5515 Pacific St., #2954  
10 Rocklin, CA 95677  
11 Tel: 650-735-2137  
12 Fax: 202-204-5181  
13 tobi@clintonfirm.com  
14 *Attorneys for Movants*

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

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

In re Subpoena to:

Reddit, Inc.

Case No.:  
Hearing Date: TBD  
Time: TBD

**MOTION TO COMPEL NON-PARTY  
REDDIT TO RESPOND TO SUBPOENA  
AND FOR EXPEDITED BRIEFING  
SCHEDULE**

**MOTION TO COMPEL NON-PARTY REDDIT TO RESPOND TO SUBPOENA AND  
FOR EXPEDITED BRIEFING SCHEDULE**

Voltage Holdings, LLC and Screen Media Ventures, LLC (“Movants”), by and through their counsel, move this Court to grant an order: compelling non-party REDDIT, INC. (“Reddit”) to fully produce documents in response to Movants’ subpoena. This Motion is pursuant to Fed. R. Civ. P. 26(b)(1), 34(c), 45(d)(2)(i) and Civ L.R. 37. Movants’ counsel Kerry Culpepper certifies that he met and conferred with counsel for Reddit in a good faith effort to resolve this dispute pursuant to Civ L.R. 37-1(a).

1 Pursuant to Fed. R. Civ. P. 78(b) and Civ L.R. 6-3(b), Movants request that the Court set a  
2 shortened deadline of seven (7) days for Reddit to respond to this motion and three (3) days from  
3 the date of Reddit's response for Movants to file a reply and decide this Motion on the papers  
4 without a hearing.

5 *(1) Sets forth with particularity the reasons for the requested enlargement or shortening of*  
6 *time;*  
7

8 In the underlying case, Movants have a fact discovery cut-off of June 13, 2024.

9 *(2) Describes the efforts the party has made to obtain a stipulation to the time change;*

10 On Jan. 2, 2024, during the meet and confer, Movants' counsel proposed an expedited  
11 briefing schedule to Reddit's counsel and sent him an email requesting same that same day. As of  
12 the time of filing of this motion, Movants' counsel has not received a reply.

13 *(3) Identifies the substantial harm or prejudice that would occur if the Court did not change*  
14 *the time; and*  
15

16 If the Court does not agree to Movants' request for an expedited briefing schedule and  
17 waiver of a hearing on the motion, there is a substantial risk that a decision would not be made until  
18 after the fact discovery cut-off.

19 *(4) If the motion is to shorten time for the Court to hear a motion:*

20 *(i) Describes the moving party's compliance with Civil L.R. 37-1(a), where applicable,*

21 As stated above, on Jan. 2, 2024, during the meet and confer, Movants' counsel proposed  
22 an expedited briefing schedule to Reddit's counsel.  
23

24 *(ii) Describes the nature of the underlying dispute that would be addressed in the motion*  
25 *and briefly summarizes the position each party had taken.*

26 As set forth in the memorandum below, Movants served a Rule 45 subpoena on Reddit  
27 seeking Internet Protocol address login information for certain Reddit users who boasted of using  
28

1 the service of the Internet service provider Frontier Communications for piracy on Reddit's  
2 platform.

3 (5) Discloses all previous time modifications in the case, whether by stipulation or Court  
4 order;

5 Not applicable

6 (6) Describes the effect the requested time modification would have on the schedule for the  
7 case.  
8

9 With respect to the underlying case in the S.D.N.Y Bankr. Court, the requested time  
10 modification would (should the motion be granted) provide Movants time to analyze and use the  
11 evidence requested in support of their proof of claims should their motion be granted.  
12

13 **MEMORANDUM**

14 **I. BRIEF RELEVANT FACTUAL AND PROCEDURAL HISTORY**

15 1. Movants are Claimants against Debtor Frontier Communications, Corp. ("Frontier") in the  
16 bankruptcy matter *In re: Frontier Commc'ns Corp.*, Case No. 20-22476-MG (Bankr. S.D.N.Y.)  
17 in the Bankruptcy Court for the Southern District of New York.

18 2. Between June 8, 2020 and Sept. 28, 2020, Movants filed pre-petition proofs of claims  
19 based upon secondary liability for copyright infringement of their movies and violations of the  
20 integrity of the copyright management information conveyed with file titles of their movies per  
21 17 U.S.C. §1202 ("DMCA violations") in Frontier's bankruptcy proceeding.  
22

23 3. On May 17, 2021, Frontier filed an omnibus objection to pre-petition claims of different  
24 (record company) claimants that also made claims based upon secondary liability for copyright  
25 infringement and a proposed order. Particularly, Frontier argued: (a) record company claimants  
26 could not establish any direct or actual copyright infringement of Frontier customers; (b) any  
27 direct infringement was *de minimus*; (c) Frontier had no obligation to act on notices or terminate  
28

1 customers; (d) 17 U.S.C. §512(a) provides it a safe harbor; (e) Frontier acted in good faith; and  
2 (f) the record company claimants suffered no damages.

3 4. On May 25, 2021, Frontier filed a notice of revised order that included Movants' claims.

4 5. Between May 28 and June 1, 2021, Movants filed administrative claims based upon  
5 secondary liability for copyright infringement and DMCA violations.

6 6. On June 7, 2021, Movants filed a Response to Frontier's objection disputing Frontier's  
7 assertions and particularly asserting that Frontier failed to qualify for the §512(a) safe harbor from  
8 copyright infringement monetary damages and that the §512 safe harbors do not apply to DMCA  
9 violations provided by §1202.

10 7. On Nov. 21, 2023<sup>1</sup>, the Court held a case management conference and declared the matter  
11 a contested proceeding for which all part VII rules would apply. *See In re Frontier Commc'ns*  
12 *Corp.*, No. 20-22476 (MG), 2023 Bankr. LEXIS 2858, at \*4 (Bankr. S.D.N.Y. Dec. 1, 2023).

13 8. On Nov. 22, 2023, Movants served a First Request for Production of Documents  
14 ("1RPOD") on Frontier requesting customer identification information for a limited number of  
15 the pirating Internet Protocol ("IP") addresses.

16 9. On Dec. 1, 2023, the Court issued an opinion stating, "The Court finds that Movie  
17 Company Claimants are entitled to the information sought by the CCPA Subpoenas. The Court  
18 will authorize Frontier, through an order substantially in the form of the Proposed Cable Act  
19 Order, to release such information." *Id.* The Court stated that "it would permit the issuance of  
20 subpoenas for Subscriber [personal identification information] that reach back six months before  
21 the limitations periods expired: October 14, 2016." *Id.*

22 10. Notably, the Court stated, "Movie Company Claimants' interest in obtaining Subscriber  
23  
24  
25  
26

---

27  
28 1. The matter was effectively stayed for more than two years while the District Court considered a motion to withdraw the reference.

1 [personal identification information] relevant to their infringement claims outweighs the  
2 Subscribers' privacy interest.” *Id.*

3 11. On Dec. 17, 2023, Movants served a subpoena to Reddit requesting “IP address log  
4 information from 1/1/2017 to present for users: "Gibson125T"; "Sankerin"; "Old\_Package540",  
5 "Arceist\_Justin"; "ZeroHart"; "Cyb3rR3b0m"". *See* Ex. “1”.

6 12. On Jan. 2, 2024, Reddit’s counsel served objections to the subpoena. *See* Ex. “2”.

7 13. On Jan. 3, 2024, Frontier served a response to 1RPOD stating that it would not produce  
8 customer identification information.

9 14. On Jan. 3, 2024, Reddit’s and Movants’ counsels conferred on Reddit’s objections by  
10 telephone but were unable to resolve Reddit’s objections or otherwise come to a resolution of this  
11 dispute.  
12

13 **II. LEGAL STANDARD**

14 15. Fed. R. Civ. P. 26(b)(1) states “Parties may obtain discovery regarding any nonprivileged  
15 matter that is relevant to any party’s claim or defense and proportional to the needs of the  
16 case...Information within this scope of discovery need not be admissible in evidence to be  
17 discoverable.”  
18

19 16. Fed. R. Civ. P. 34(c) states “As provided in Rule 45, a nonparty may be compelled to  
20 produce documents...”  
21

22 17. Fed. R. Civ. P. 45(a)(1)(D) provides for a party to serve subpoenas to produce documents  
23 on nonparties. Fed. R. Civ. P. 45(d)(2)(i) provides that “At any time, on notice to the commanded  
24 person, the serving party may move the court for the district where compliance is required for an  
25 order compelling production or inspection.”

26 18. On a motion to compel compliance with a Rule 45 subpoena, the Local Rules require a  
27 party to “detail the basis for the party’s contention that it is entitled to the requested discovery and  
28

1 show how the proportionality and other requirements of Fed. R. Civ. P. 26(b)(2) are satisfied.”  
2 N.D. Cal. Civ. L.R. 37-2. The court has discretion to determine whether to grant a motion to  
3 compel. *See Garrett v. City & Cnty. of San Francisco*, 818 F.2d 1515, 1519 (9th Cir. 1987).

4 19. In “evaluating the First Amendment rights of anonymous Internet users in the context of  
5 a third-party civil subpoena,” district courts have followed the approach taken in *Doe v.*  
6 *2TheMart.com*, 140 F. Supp. 2d 1088 (W.D. Wash. 2001). *In re Reddit, Inc.*, No. 3:23-mc-80037-  
7 LB, 2023 U.S. Dist. LEXIS 74338 (N.D. Cal. Apr. 28, 2023) (“*Reddit I*”).

8 20. “[T]o the extent that anonymity is used to mask copyright infringement or to facilitate  
9 such infringement by other persons, it is unprotected by the First Amendment.” *Arista Records*  
10 *Ltd. Liab. Co. v. Doe*, 604 F.3d 110, 118 (2d Cir. 2010)).

### 11 **III. ARGUMENT**

#### 12 ***A. The discovery requested is relevant and proportional to the needs of the case.***

13 21. The evidence Movants request from Reddit in the Rule 45 subpoena is clearly relevant  
14 and proportional to the needs of the case. The Reddit user comments can be placed within two  
15 categories of relevant evidence: (i) Comments that establish that Frontier has not reasonably  
16 implemented a policy for terminating repeat infringers sufficient for a safe harbor affirmative  
17 defense as required by 17 U.S.C. §512; and (ii) Comments that establish that the ability to freely  
18 pirate without consequence was a draw to becoming a subscriber of Frontier and/or subscribers  
19 are motivated to use Frontier’s service for pirating content without consequence.  
20  
21

22 22. In the Reddit discussion forum explicitly dedicated to “Piracy”, Reddit user “Gibson125T”  
23 admitted that “...From may 7th up until about a week ago, I got a total of 44 emails from frontier  
24 about downloading torrents and that it could terminate service. They haven't yet. And I kinda feel  
25 like if they didn't do it after 44 emails. That they won't...”  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

 r/Piracy • 6 mo. ago  
Gibson125T




## 44 dmca complaints from frontier fios

Question

Had a roommate that just moved out recently and wasn't using a VPN (or at least I have to assume) because I just checked my email that I don't check very often. From may 7th up until about a week ago, I got a total of 44 emails from frontier about downloading torrents and that it could terminate service. They haven't yet. And I kinda feel like if they didn't do it after 44 emails. That they won't but in googling it to be sure I see there was a lawsuit with them in 2021, etc etc. So short question. Given that the downloads stopped as of a few days ago. Should I still be concerned about a delayed termination? Anyone actually had them terminate an account for it? Or just a threat for them to cover their butts.

23. In a Reddit discussion forum "Frontierfios", Reddit user "Old\_Package540" admitted, "I torrent every once in a while, been getting dmca notices quite often. Has anyone been shut off because of them or is it all just threats?"

 r/frontierfios • 3 yr. ago  
Old\_Package540



## DMCA

I torrent every once in a while, been getting dmca notices quite often. Has anyone been shut off because of them or is it all just threats?

24. In the Reddit "Piracy" forum, Reddit user "Arceist\_Justin" admitted, "Been using Frontier DSL for years. Despite the sh\*tty internet, they didn't give a sh\*t what I downloaded. But I download ONE game just for screenshots and Comcast throws me into a legal battle."

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



r/Piracy • 2 yr. ago  
Arceist\_Justin



## Warning: DO NOT attempt piracy if Comcast Xfinity is your provider. It can get you in BIG trouble. They monitor you

### Discussion

My brother-in-law took some screenshots on his xBox of Lady Dimitrescu's mutated monster form for me in his legal owned copy of Resident Evil 8.

However, by the time (2 weeks later) I had a flash drive ready to go to put the pictures on, his xBox automatically deleted every screenshot of this monster that he took. My brother-in-law refuses to play through the game again just to retake those screenshots.

**long story short**, I downloaded a copy of Resident Evil 8 on 1337 torrent site JUST so I could take the screenshots myself. Was not even planning on keeping it or even playing through the game. Just to the Lady Dimitrescu boss fight and that's it.

However, Comcast Xfinity sent a lengthy email today (two days after I downloaded the game) with a copyright infringement notice and all the legal charges that I am going to face as a result. I was also told that my services could be terminated

Been using Frontier DSL for years. Despite the shitty internet, they didn't give a shit what I downloaded. But I download ONE game just for screenshots and Comcast throws me into a legal battle

So I am putting this warning out there for the rest of you. **IF YOU HAVE COMCAST OR XFINITY, They monitor you and if you are caught downloading pirated material, they WILL send you a notice**

25. In the Reddit “Frontierfios” forum, Reddit user "ZeroHart" states that Frontier was terminating his account but failed to send him/her any copy of at least 10 notices that were sent to Frontier concerning piracy at her/his account.

26. In the Reddit “Piracy” forum, Reddit user "Cyb3rR3b0rn" admits to using Frontier’s service to pirate from the notorious piracy websites 1337x and PirateBay and that “I've been torrenting unprotected for like a decade and never gotten [a DMCA notice]”.





r/Piracy • 2 yr. ago  
Cyb3rR3b0rn



## Has anyone noticed an uptick in DMCA notices? I've gotten two within a week, after 10+ years of not getting any on Frontier

Discussion

Has anyone using Frontier suddenly seen an uptick in DMCA notices?

I've gotten two this last week. One for a movie, which I thought was just because I used 1337x to find the torrent which I normally don't use. But I just got one for a game as well which I got from ThePirateBay. I hope I don't get a 3rd one for the DLC which is downloading now because I'm at work and can't pause it for 12 hours and by then it will be completed. I've been torrenting unprotected for like a decade and never gotten one.

I have a Seedbox but I only use it for hitting ratios on private trackers and for long term stuff that has low or sporadic seeds. I guess it's time for everything to go through the Seedbox

27. All these comments fit into categories (i) and (ii) because they support Movants' assertion that the ability to pirate content efficiently without any consequences is a draw for becoming a Frontier subscriber (an element of vicarious liability) and that Frontier does not have an effective policy for terminating repeat infringers (rebutting Frontier's purported DMCA safe harbor).

### ***B. The information Movants request from Reddit does not implicate the First Amendment Right to Anonymous Speech.***

28. Reddit asserts that the information Movants request is not permissible under the First Amendment. See Ex. "2", p.2. Particularly, Reddit cites this Court's decisions of *In re Reddit, Inc.*, No. 3:23-mc-80037-LB, 2023 WL 3163455, at \*3 (N.D. Cal. Apr. 28, 2023) ("*Reddit I*") and *In re Reddit, Inc.*, No. 3:23-mc-80173-LB, 2023 WL 4849434, at \*4 (N.D. Cal. July 29, 2023) ("*Reddit II*"). However, Movants' subpoena does not request anonymous users' identities. Rather, the subpoena is limited to requesting the Reddit users' IP address logs. Accordingly, the analysis of *Reddit I* and *Reddit II* is not applicable. Further, Reddit has not identified any potential harm to these users by disclosing the requested information. Movants are not seeking to retaliate

1 economically or officially against these Reddit users. Rather, Movants wish to use their  
2 comments as evidence that Frontier has no meaningful policy for terminating repeat infringers  
3 and this lax or no policy was a draw for using Frontier’s service.

4 29. Moreover, the Reddit users do not have a recognized privacy interest in their IP addresses.  
5 The Ninth Circuit has consistently held that a person has no legitimate expectation of privacy in  
6 information they voluntarily turn over to third parties. For example, in the Fourth Amendment  
7 context, in *United States v. Forrester*, the Ninth Circuit allowed the warrantless collection of  
8 email and IP address because email and IP addresses “constitute addressing information and do  
9 not necessarily reveal any more about the underlying contents of communication than do phone  
10 numbers.” *See United States v. Forrester*, 512 F.3d 500, 510 (9th Cir. 2008). Similarly, in *In re*  
11 *Zynga Privacy Litigation*, the Ninth Circuit held that a user does not even have a reasonable  
12 expectation of privacy in URLs that revealed basic identification and address information –  
13 information significantly more detailed and intrusive than the IP addresses Movants request here.  
14 *See Graf v. Zynga Game Network, Inc. (In re Zynga Privacy Litig.)*, 750 F.3d 1098, 1108-09 (9th  
15 Cir. 2014).

16 ***C. The Reddit I and Reddit II six part test does not apply to the comments at issue.***

17 30. Assuming *arguendo* that the IP address logs requested are identification information,  
18 Movants do not agree with Reddit’s assertion that the six part test of *Reddit I* and *Reddit II* the  
19 Court applied for First Amendment rights of the anonymous speaker is applicable to the comments  
20 boasting of copyright infringement as in the present case. Courts apply a “rigorous or most  
21 exacting” standard when the speech is political, religious, or literary. In contrast, commercial  
22 speech is afforded less protection. *See In re Anonymous Online Speakers*, 661 F.3d 1168, 1177  
23 (9th Cir. 2011). The speech here should receive even less protection than commercial speech  
24 since it is arguably speech boasting of criminal conduct violating 17 U.S.C. § 506(a)(1)(C). Three  
25  
26  
27  
28

1 of the posts at issue here are explicitly in a forum dedicated to and named “Piracy”.

2 31. Courts routinely apply an even lower standard to speech pertaining to copyright  
3 infringement because copyright law includes built-in First Amendment accommodations such as  
4 the fair use defense that ease the apparent tension between free expression and U.S. copyright  
5 law. *See Eldred v. Ashcroft*, 537 U.S. 186, 219, 123 S. Ct. 769, 154 L. Ed. 2d 683 (2003). For  
6 example, in *In re DMCA Subpoena to Reddit, Inc.*, this Court noted that applying the anonymous  
7 speech approach in the context of a copyright dispute would be “problematic” because “[t]he  
8 doctrine of fair use provides everything needed to balance the competing interests of  
9 the First Amendment and the copyright laws”. *In re DMCA Subpoena to Reddit, Inc.*, 441 F.  
10 Supp. 3d 875, 882 (N.D. Cal. 2020). Such is the case here with respect to Reddit users who boast  
11 of using the service for piracy. Applying the *Twitter* standard, the Court should compel Reddit to  
12 provide the IP address logs. It should be noted, that in the underlying case the Court has already  
13 concluded that, “Movie Company Claimants' interest in obtaining Subscriber [personal  
14 identification information] relevant to their infringement claims outweighs the Subscribers'  
15 privacy interest.” *In re Frontier Commc'ns Corp.*, No. 20-22476 (MG), 2023 Bankr. LEXIS 2858,  
16 at \*4 (Bankr. S.D.N.Y. Dec. 1, 2023).

17 ***D. The comments are directly and materially relevant to the core claims or defenses.***

18 32. Reddit argues that “It is unclear how the subpoena’s requests satisfy the second or third  
19 prongs of this test given that none of the posts...appear to relate to movies that we understand are  
20 the subject of your clients’ copyright infringement claims.” Ex. “2”, p.2. Reddit is incorrect. A  
21 core issue is Frontier’s safe harbor defense – whether Frontier has reasonably implemented a  
22 policy for terminating the account of repeat infringers. The issue of whether or not Frontier has  
23 a safe harbor is not limited to Movants’ Works but is evaluated in view of Frontier’s response to  
24 all copyright holders. *See Perfect 10, Inc. v. CCBill LLC*, 488 F.3d 1102, 1113 (9th Cir. 2007)  
25  
26  
27  
28

1 (“...actions towards copyright holders who are not a party to the litigation are relevant in  
2 determining whether CCBill and CWIE reasonably implemented their repeat infringer policy.  
3 Section 512(i)(1)(A) requires an assessment of the service provider's "policy," not how the service  
4 provider treated a particular copyright holder.”). The comments from Reddit’s users refer to  
5 Defendant’s lack of a policy for terminating repeat infringers and/or failure to reasonably  
6 implement such a policy. *See* Ex. “1”, pp. 6-7.

7  
8 ***E. The information Movants seek is not available from another source before the discovery cut-***  
9 ***off.***

10 33. Reddit also argues that Movants cannot show that they can obtain information sufficient  
11 to establish or to disprove a claim or defense from another source since the “in light of the  
12 Bankruptcy Court’s order allowing your clients to obtain discovery from Frontier  
13 Communications Corporation regarding “specific, identified instances of infringement.”” Ex.  
14 “1”, p.1. Reddit is incorrect. Firstly, Frontier has objected to disclosing subscriber information  
15 and, at the time of this motion, has refused to even start the notification process. *See* Decl. of  
16 Culpepper, ¶19. The discovery cut-off in the underlying case is June of 2024. Movants have  
17 already propounded nearly a hundred RFPs and have not received information from Frontier  
18 concerning their subscribers choosing its service for the ability to pirate without consequence.  
19 *See id.* at ¶¶19. Secondly, assuming *arguendo* that Movants’ obtained subscriber information  
20 from Frontier, this information would not provide Movants with documented evidence that the  
21 ability to pirate freely was a draw to using Frontier’s service or that Frontier failed to reasonably  
22 implement a policy for terminating repeat infringers.  
23

24  
25 ***F. There is no burden to Reddit to disclose the requested information.***

26 34. Reddit does not argue that there is a burden to it to disclose the requested information.

27  
28 ***G. Movants Waive Oral Argument/Hearing***

1 35. Pursuant to Fed. R. Civ. P. 78(b), Movants waive a hearing and request that their Motion  
2 be determined based upon the papers filed.

3 **IV. CONCLUSION**

4 36. Accordingly, Movants pray that this Court grant their motion to compel Reddit to fully  
5 respond to the subpoena and for such other and further relief to which they may be justly entitled  
6 to receive.

7  
8 DATED: Jan. 9, 2024.

9  
10 /s/ Tobi Clinton

11 Tobi Clinton

12 And

13 CULPEPPER IP, LLLC

14   
Kerry S. Culpepper

15 Virginia Bar No. 45292

16 Hawaii Bar No. 9837

17 CULPEPPER IP, LLLC

18 75-170 Hualalai Road, Suite B204

19 Kailua-Kona, Hawai'i 96740

20  
21 *pro hac vice forthcoming*  
22  
23  
24  
25  
26  
27  
28