

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

MICROSOFT CORPORATION, a)	
Washington corporation,)	
)	
Plaintiff,)	Civil Action No: 1:20-cv-730
v.)	
)	
JOHN DOES 1-2 CONTROLLING A)	
COMPUTER NETWORK)	
THEREBY INJURING PLAINTIFF)	
AND ITS CUSTOMERS,)	
)	
Defendants.)	
)	
)	
)	

**BRIEF IN SUPPORT OF MICROSOFT’S MOTION FOR LIMITED DISCOVERY
NECESSARY TO IDENTIFY AND SERVE DOE DEFENDANTS**

Plaintiff Microsoft Corporation respectfully requests an order authorizing it to conduct limited discovery necessary to identify and serve Doe Defendants.

On July 1, 2020, the Court granted an Emergency *Ex Parte* Temporary Restraining Order (“TRO”) tailored to stop Defendants who are part of an online criminal network whose tactics evolved to take advantage of global current events by deploying a COVID-19 themed phishing campaign targeting Microsoft customers around the world. Defendants’ sophisticated phishing campaign is designed to compromise thousands of Microsoft customer accounts and gain access to customer email, contact lists, sensitive documents, and other personal information. All in an attempt to exfiltrate information, re-direct wire transfers, and launch further cybercrime from compromised accounts. To disable this infrastructure, this Court ordered that these Internet domains controlled by Defendants listed in **Appendix A** filed on July 1, 2020 be transferred to secure Microsoft servers.

At present, Microsoft is in possession of preliminary information regarding Defendants

obtained from *inter alia* public sources of information provided by ISPs, registries, and other service providers whose services Defendants used. While much of the information provided in such records appears to be fictitious, Microsoft possesses information regarding email addresses, domain names, and IP addresses that Microsoft has gathered through its own investigation and from third parties that provide leads to be pursued through discovery tailored to identify Defendants.

In order to identify Defendants from information such as email addresses, domain names, and IP addresses, it will be necessary to send subpoenas, and potentially international requests pursuant to the Hague Convention, to third party Internet service providers (ISPs) and hosting companies to obtain account and user information provided by Defendants in association with such email addresses, domain names, and IP addresses. For example, such service providers often maintain billing and account information identifying the purchasers and account holders of such services, and maintain IP address logs reflecting the computers from which Defendants logged into their accounts. Given that the account and user information kept by these third party internet service providers regarding Defendants is generally non-public, the service providers are not likely to provide it to Microsoft absent a subpoena or formal international request pursuant to treaty.

Microsoft, accordingly, requests an order granting authority to serve limited subpoenas and/or international discovery requests to third party email service providers, domain name registrars, and hosting companies, to pursue the identities of the Defendants. By the instant motion, Microsoft requests authority to conduct discovery into these sources to identify Defendants. Given the state of the information currently in Microsoft's possession, Microsoft believes that limited discovery will assist Microsoft in its endeavor to identify, name, and serve

Defendants.

I. ARGUMENT

Under Federal Rule of Civil Procedure 26(d), discovery may not normally begin “before the parties have conferred as required by Rule 26(f).” Because John Doe Defendants in this case are unknown to Microsoft, the conference Rule 26(f) contemplates cannot occur. This limitation on the initiation of discovery, however, can be waived under Rule 26(d) by court order.

Courts recognize that, in certain situations, the identity of the defendant may not be known prior to the filing of a complaint. In such circumstances, courts authorize a plaintiff to undertake discovery to identify the unknown defendants. In *Gordon v. Leeke*, 574 F.2d 1147, 1152 (4th Cir. 1978), the Fourth Circuit explained that, if a plaintiff states a meritorious claim against an unknown defendant, the Court should allow plaintiff to ascertain the identity of the unknown defendant through discovery. Courts in this Circuit have also authorized parties to conduct discovery based on computer IP addresses in order to assist in the identification of John Doe defendants. See *Arista Records LLC v. Does 1-14*, 2008 U.S. Dist. LEXIS 102974 (W.D. Va. 2008) (granting discovery to identify John Does based on IP addresses); *Virgin Records America, Inc. v. John Doe*, 2009 U.S. Dist. LEXIS 21701 (E.D.N.C. 2009) (same).

This Court has granted John Doe discovery used to identify registrants of Internet domains in prior cases. See *Microsoft v. John Does 1-8*, Case No. 1:14-cv-00811 (E.D. Va. 2014) (recognizing the benefit of such discovery and ordered similar discovery so that Microsoft could investigate the identities of registrants of a number of Internet domains) (Davis, Mag. J.), Dkt. 39; *Microsoft v. John Does 1-2*, Case No. 19-cv-1582 (E.D. Va. 2020) (O’Grady, J.), Dkt. 33; *Sophos v. John Does*, 1:20-cv-502 (E.D. Va. 2020) (same) (O’Grady, J.), Dkt. 28. Likewise, in the instant matter, it is appropriate to grant Microsoft authority to conduct limited discovery to

identify Defendants. Microsoft seeks only a limited discovery period of 180 days, during which it will move forward diligently with subpoenas to third-party ISPs and web hosting companies in an attempt to further identify Defendants and/or to obtain additional contact information through which to effect service of process.

II. CONCLUSION

For the reasons set forth herein, Microsoft respectfully requests permission under Rule 26(d) to conduct such discovery for a period of 180 days, as may be necessary, to further identify and serve Defendants.

Dated: July 9, 2020

Respectfully submitted,



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