

Paul Levy

From: Paul Levy
Sent: Wednesday, February 21, 2024 11:48 AM
To: Lauren Hausman; Nick Sansone; [REDACTED]@kirbylawoffice.com
Cc: Daniel DeSouza; Max Archer
Subject: Request to meet and confer -- beyond the stay issue
Attachments: Waiver of Confidentiality.pdf; Subpoena to Getty Images.pdf

We will respond later today about the stay

But apart from that, we need to confer about several issues. One of them should not wait for a possible stay of the litigation.

First, and most immediate: we do not agree that the third document requests seek documents that are beyond the scope of permissible discovery. We served those requests because, after you provided the subscription agreements on which plaintiff's damages theory is predicated, we read the agreements very carefully, and began speaking with the companies shown as subscribers. It became apparent from that process that a number of those agreements were not entered for the purpose of gaining future access to your client's database of images, but rather to settle claims for past infringements. Moreover, when we sought to combine the monthly income predicted by the various subscription agreements for the periods specified in the contracts, the total monthly payments did not correspond with the annual income amounts disclosed in plaintiff's responses to interrogatories. And it also became apparent that the claim that all subscriptions were in the amount of \$999 per month is not accurate. So we need to know, to assess plaintiff's damages claims, for which periods of time the sub-\$999 contracts continued in effect.

Rather than inconvenience dozens of third parties with Rule 45 subpoenas, not to speak of avoiding the expense of such discovery, we had hoped to secure documents from plaintiff that would establish these facts, or at least limit the number of third-party subpoenas.

We think it is quite possible that the entire theory of your client's copyright enforcement scheme -- that PFP only allows access to its complete database of photos to companies that are willing to pay \$999 per month for future access to that database -- is a sham, created for the purpose of forming the basis for demand letters seeking outlandish damages, and lawsuits such as this one seeking such damages. I find it utterly mystifying that you suggest that this is beyond the bounds of permissible discovery.

Therefore, we need to meet and confer with you about a possible motion to compel discovery under Rule 37(a), as well as a motion for sanctions under Rule 37(d) based on the argument that your answer is an evasive failure to provide discovery.

Although we can explain to a possible mediator what we suspect based on our investigation of the case, we think a successful mediation requires getting the facts out on the table.

Less immediately, we need to meet and confer about a possible motion to compel complete answers to the responses to our second round of discovery, and the other matters discussed in my February 9 email to you.

Finally, we have received a response from Getty Images to our Rule 45 subpoena which indicates that it cannot supply certain financial information contained in the documents we subpoenaed -- its payments to AdLife --