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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JENNIFER LONDON)	
)	
Applicant.)	No. C 06-80196 JSW MISC (BZ)
)	
)	ORDER DENYING RESPONDENTS'
)	MOTIONS TO QUASH SUBPOENA TO
)	YAHOO, INC.
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Before me are John Does' and Richard London's motions to quash a subpoena directed to Yahoo, Inc. ("Yahoo").

On July 31, 2006, I granted in part applicant Jennifer London's renewed ex parte application for an order to conduct discovery for use in a foreign legal proceeding pursuant to 28 U.S.C. § 1782.¹ The order authorized applicant to serve a subpoena directed to Yahoo commanding the production of certain information related to the e-mail accounts of wrest36@yahoo.com, wrest39@yahoo.com, readyset44@yahoo.com, tryit360@yahoo.com, and parisfait2000@yahoo.com. On August

¹ Applicant is a party to a pending divorce proceeding with Richard London in the Court of Basse-Terre, Guadeloupe.

Copies Mailed to Parties of Record

1 22, 2006, Does, asserting they are the users of
2 wrest36@yahoo.com, wrest39@yahoo.com, readyset44@yahoo.com,
3 and tryit360@yahoo.com, moved to quash the subpoena to Yahoo.
4 Richard London, the admitted user of parisfait2000@yahoo.com,
5 moved to quash the following day.

6 Does and Richard London ("respondents") make similar
7 arguments in support of their motions. First, respondents
8 argue that applicant did not meet her burden under 28 U.S.C. §
9 1782(a). Whether to grant a discovery request under section
10 1782(a) is within the court's discretion, as guided by the
11 factors described in Intel Corp. v. Advanced Micro Devices,
12 Inc., 542 U.S. 241 (2004).²

13 I am not persuaded that I should decline to resolve a
14 discovery dispute over which this court has jurisdiction
15 simply because the foreign proceeding involves family law
16 matters. The judge in the foreign tribunal will have ultimate
17 say over the admissibility of the evidence submitted under
18 subpoena. Respondents offer inadequate support for their
19 argument that the application was an effort to circumvent
20 legal obstacles in the foreign court. Nor is the subpoena
21 unduly intrusive. Respondents' asserted privacy concerns are
22

23 ² The four factors the court should consider in ruling
24 on a § 1782(a) request are: (1) whether the person from whom
25 evidence is sought is a participant in the foreign proceeding;
26 (2) the nature of the foreign tribunal, the character of the
27 proceeding underway abroad, and the receptivity of the foreign
28 government or the court or agency abroad to U.S. federal court
judicial assistance; (3) whether the application is an effort
to circumvent foreign proof-gathering restrictions or other
policies of a foreign country or the United States; and (4)
whether the request is unduly intrusive or burdensome. Intel
Corp., 542 U.S. at 264-265.

1 lessened by applicant's removal of "item five"¹ from the
2 subpoena and by this court's orders concerning the manner of
3 disclosure. For these reasons, I find that it was within my
4 discretion to grant applicant's discovery request for use in
5 her foreign divorce proceeding.

6 Respondents also argue that the subpoena to Yahoo should
7 be quashed under Federal Rule of Civil Procedure 45(c)(3)(A),
8 on the ground that compliance would disclose matters
9 privileged under the First Amendment. Citing Highfields
10 Capital Mgmt. L.P. v. Doe, 385 F. Supp. 2d 969 (N.D. Cal.
11 2004), respondents argue that the discovery would violate
12 their qualified privilege under the First Amendment to engage
13 in anonymous speech. Highfields denied early discovery to
14 uncover the identity of an anonymous internet poster of
15 sardonic commentary on the performance and policies of
16 plaintiff, a large, publicly traded company which had sued the
17 poster for trademark infringement, commercial disparagement,
18 and defamation. In view of the strong protection the First
19 Amendment affords anonymous speech on matters of public
20 concern, the court refused to allow discovery of the identity
21 of the defendant where plaintiff did not meet its heightened
22 burden of demonstrating that defendant likely engaged in
23 wrongful conduct harmful to plaintiff. Id. at 971, 976-80.

24 Highfields is not controlling. Applicant does not seek

25
26 ¹ "Item five" sought documents reflecting the board
27 postings made by the users subject to the subpoena. The
28 subpoena is now limited to items one through four, which
request information related to identification, and not
information regarding the content of any communications. See
Decl. of Damien P. Lillis, ¶ 3 and Ex. B.

1 to impose liability based on anonymous statements regarding
2 matters of public concern. Rather, applicant seeks discovery
3 to confirm that the user behind specified e-mail accounts is
4 in fact Richard London. Nor are the users of the e-mail
5 accounts truly anonymous. Richard London admits that he is
6 the user of parisfait2000@yahoo.com. See Supp. Decl. of
7 Richard London ¶ 3. The internet postings submitted by
8 applicant strongly suggest that the Does and Richard London
9 are the same person. The fact that neither Richard London nor
10 the Does deny that they are not the same person lends further
11 credence to applicant's belief as to their true identity.

12 Respondents' papers, however, may also be construed as
13 asserting privacy interests. See Notice of Motion and Motion
14 [of Richard London] to Quash Subpoenas to Yahoo Inc., p. 5
15 (noting that compliance with the subpoenas "would violate
16 Respondent's right of privacy in his personal
17 communications"); Notice of Motion and Motion of Nonparty Does
18 to Quash Subpoenas to Yahoo! Inc., p. 8-9 (describing the
19 interests at stake as involving the right of anonymous
20 communication). Taken this way, the issue is whether Yahoo's
21 compliance with the subpoena violates respondents' right to
22 keep private their personal communications and memberships to
23 Yahoo user groups.

24 Federal Rule of Civil Procedure 26 "allows a court to
25 limit discovery where 'the burden . . . outweighs its likely
26 benefit.'" Humphreys v. Regents of the Univ. of Cal., 2006 WL
27 335275, at *1 (N.D. Cal. Feb. 13, 2006) (quoting Fed. R. Civ.
28 P. 26(b)(2)). "Although the Rule contains no specific

1 reference to privacy or to other rights or interests that may
2 be implicated, such matters are implicit in the broad purpose
3 and language of the Rule.'" Id. (quoting Seattle Times Co. v.
4 Rhinehart, 467 U.S. 20, 35 n.21 (1984); see also Soto v. City
5 of Concord, 162 F.R.D. 603, 616 (N.D. Cal. 1995) (discussing
6 the recognition by federal courts of a right of privacy that
7 can be raised in the context of discovery requests).

8 Assuming without deciding, that Richard London, a
9 resident of Guadalupe, and the Does, whose residency has not
10 been established, have a cognizable privacy interest - an
11 issue neither party has fully briefed - their motions still
12 must fail. Respondents essentially assert an interest in not
13 having their names, contact information, IP addresses, and
14 Yahoo user group memberships disclosed. For the reasons
15 already discussed, this interest is not overly strong in the
16 context of this case. In contrast, the information bears
17 directly on applicant's ability to obtain a divorce in Basse-
18 Terre. Under French law, adultery is grounds for a fault-
19 based divorce.⁴ See Supplemental Decl. of Anne-Isabelle
20 Gregori ¶ 4. The subject e-mail accounts are clearly linked
21 to internet postings in which the users solicit adult sex.

22 Of course, the foreign court will decide the
23 admissibility and weight that should be given to the evidence
24 submitted under subpoena. Applicant, however, has clearly

25
26 ⁴ Respondents additionally argue that the French to
27 English Non Conciliation [sic] order entered by the Tribunal De
28 Grande Instance De Basse-Terre and attached to applicant's
subpoena request was not a properly authenticated translation
and, therefore, is inadmissible. Because I reach my decision
without reliance on that document, I find the argument moot.

1 demonstrated the relevance of this information, and it is
2 unclear how she would otherwise obtain it. I find that the
3 burdens on respondents do not outweigh applicant's need for
4 discovery.

5 To the extent respondents have privacy concerns, I find
6 they can be accommodated by placing some limits on production.

7 "A district court has broad discretion in controlling
8 discovery." Jackson v. Montgomery Ward & Co., Inc., 173

9 F.R.D. 524, 526 (D. Nev. 1997) (citing Little v. City of

10 Seattle, 863 F.2d 681, 685 (9th Cir. 1988). The adversarial

11 character of the underlying divorce proceeding cautions

12 restraint. In addition, insofar as the information may enable

13 unwanted contact with the addressee, limiting disclosure is

14 proper. See, e.g., Painting Industry of Hawaii Market

15 Recovery Fund v. U.S. Dept. of Air Force, 26 F.3d 1479, 1484-

16 85 (9th Cir. 1994) (recognizing in the context of a FOIA

17 request that persons have a privacy interest in their home

18 addresses). Accordingly, I conclude that Yahoo will furnish

19 the information pursuant to the conditions set forth below.

20 See, e.g., ICG Communications, Inc. v. Allegiance Telecom, 211

21 F.R.D. 610, 614 (N.D. Cal. 2002) (compelling production but

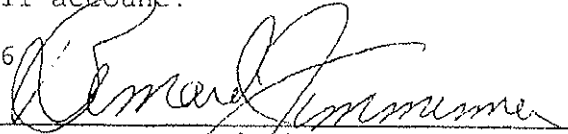
22 finding good cause to limit discovery via a protective order

23 issued under Fed. R. Civ. P. 26^(c))).

24 For the reasons stated above, respondents' motions to
25 quash are DENIED. IT IS HEREBY ORDERED that Yahoo provide
26 subpoenaed items one through four to applicant pursuant to the
27 Model Stipulated Protective Order found on this court's
28 website or such other protective order to which all interested

1 parties stipulate. Specifically, Yahoo shall furnish the
2 requested documents to applicant's San Francisco counsel by
3 November 1, 2006. Yahoo shall simultaneously furnish a copy
4 of the documents relating to Richard London's account to
5 Richard London and those relating to the Does' accounts to
6 Does' counsel. If it appears from the documents that Richard
7 London is the user behind one or more of the e-mail accounts,
8 applicant's local counsel may forward the pertinent documents
9 to applicant's foreign counsel. Applicant's local counsel
10 shall immediately return to Yahoo all documents not related to
11 a Richard London's e-mail account.

12 Dated: October 19, 2006



Bernard Zimmerman
United States Magistrate Judge

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