

January 10, 2025

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**VIA EMAIL**

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**Re: Subpoena to Reddit, Inc.  
Case No. MC-24-00052-PHX-MTL  
United States District Court for the District of Arizona**

Dear David:

We represent Reddit, Inc. (Reddit) and write in response to the subpoena issued in the above-referenced matter.<sup>1</sup> Reddit objects to the subpoena for the reasons below. Please contact me to meet and confer if you disagree with any of our objections.

First, Reddit objects on the basis that the Subpoena seeks the identity of Reddit users who made specific posts, thereby implicating the First Amendment rights of Reddit users to engage in anonymous speech. *See Smythe v. Does 1-10*, No. 15-mc-80292-LB, 2016 WL 54125 (N.D. Cal. Jan. 5, 2016) (denying the motion to enforce a subpoena against service provider where movant failed to overcome user's First Amendment right to anonymous speech). Before a subpoena can issue to a service provider like Reddit for information regarding the identity of an anonymous internet user, the party seeking the information must first "persuade[] the court that there is a real evidentiary basis for believing that the defendant has engaged in wrongful conduct that has caused real harm to the interests of the plaintiff." *Music Grp. Macao Commercial Offshore Ltd. v. Does*, 82 F. Supp. 3d 979, 983 (N.D. Cal. 2015) (citing *Highfields Capital Mgmt., L.P. v. Doe*, 385 F. Supp. 2d 969, 975-76 (N.D. Cal. 2005)); *see also Krinsky v. Doe 6*, 159 Cal. App. 4th 1154 (2008) (explaining that a plaintiff seeking to unmask an anonymous speaker must (1) make a reasonable effort to notify the defendant that they are the subject of a subpoena; (2) make a prima facie showing of the elements of defamation; and (3) make clear to the court that the discovery of defendants' identity is necessary to pursue plaintiff's claim). These First Amendment safeguards

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<sup>1</sup> Based on your letter dated December 27, 2024, we understand that the Court issued a subpoena on December 27 with a December 27 compliance date. We understand that you revised the subpoena's compliance date to January 17, 2025, to provide Reddit a reasonable amount of time to respond. To the extent the subpoena you served on Reddit differs in any way from the subpoena the Court issued, with the exception of the revised compliance date, Reddit objects to your subpoena as invalid.

apply equally to subpoenas issued under the Digital Millennium Copyright Act (“DMCA”). *See In Re DMCA § 512(H) Subpoena to Twitter, Inc.*, No. 20-mc-80214-VC, 2022 WL 2205476 (N.D. Cal. Jun. 21, 2022) (quashing subpoena issued under the DMCA where movant failed to make a *prima facie* case of copyright infringement against the account holder and failed to overcome user’s First Amendment interest in preserving their anonymity). In this case, the Court has not issued an order with the requisite First Amendment findings.

Although you assert that the Reddit user at issue is posting content that constitutes a “violation of 17 U.S.C. § 106(2),” which Reddit does not concede, there is no indication that a Court has considered and found that you have provided “a real evidentiary basis for believing that the [speaker] has engaged in wrongful conduct.” *Music Grp. Macao*, 82 F. Supp. 3d at 983 (citing *Highfields*, 385 F. Supp. 2d at 976). Moreover, a Court must “assess and compare the magnitude of harms that would be caused” to the parties’ competing interests if the court ordered disclosure of the speaker’s identity. *Id.* Accordingly, Reddit objects on the basis that, to our knowledge, the Court has not issued an order with these requisite First Amendment findings.

Second, Reddit objects to the Subpoena, issued under the DMCA, to the extent it seeks information regarding an account holder whose conduct is protected by the fair use doctrine. *See* 17 U.S.C. § 512(c)(3)(A)(v) (DMCA notice must be supported by a good faith belief that use of the material in the manner complained of is not authorized by law); *In Re DMCA § 512(H) Subpoena to Twitter, Inc.*, No. 20-mc-80214-VC, WL 2205476, at \*5 (N.D. Cal. Jun. 21, 2022) (“To make a *prima facie* case of copyright infringement for the purposes of obtaining a subpoena, then, a party must make a *prima facie* case that the infringing use did not constitute fair use.”); *Hosseinzadeh v. Klein*, 276 F. Supp. 3d 34, 43 (S.D.N.Y. 2017) (defendant’s use of plaintiff’s video on YouTube to engage in criticism was protected as fair use); *Art of Living Foundation v. Does*, 1-10, No. 10-cv-05022, 2011 WL 5444622, at \*8 n.6 (N.D. Cal. Nov. 9, 2011) (“As the fair use doctrine enshrines an important First Amendment protection, a court determining whether to unmask an anonymous defendant might consider fair use arguments raised in a motion to quash even where the applicable standard requires only a *prima facie* showing of the plaintiff’s claim.”) (citing *Arista Records LLC v. Doe*, 604 F.3d 110 (2d Cir. 2010)). As mentioned above, although you assert that the content posted by the Reddit user at issue is not protected by the fair use doctrine, which Reddit does not concede, the Court has not issued an order with such a finding.

Third, Reddit objects to the subpoena to the extent that your client lacks standing to bring an action for copyright infringement, much less the statutory authority to request a subpoena under § 512(h) of the DMCA. *See* 17 U.S.C. § 512(h) (limiting the scope of the ability to request a subpoena to identify an alleged infringer to owners of copyright.). In particular, it is not evident whether your client is the copyright owner of the allegedly infringing content identified in Exhibit A.

Fourth, Reddit objects to the subpoena because the DMCA notification contained within Exhibit A is unsatisfactory. A subpoena to identify alleged infringers of copyrighted material pursuant to the DMCA may only be issued if a satisfactory notification has been filed with the service provider. *See* 17 U.S.C. § 512(h)(4) (requiring a DMCA notification that complies with the elements set forth in § 512(c)(3)(A)); *see also In re DMCA Subpoena to eBay, Inc.*, No. 15CV922-BEN-MDD, 2015 WL 3555270, at \*4 (S.D. Cal. June 5, 2015) (finding that a subpoena to identify an alleged

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infringer is only enforceable if served with or subsequent to a “satisfactory DMCA notification,” which requires that the allegedly infringing material was available for removal at the time the notification was given); *Maximized Living, Inc. v. Google, Inc.*, No. C11-80061 MISC CRB, 2011 WL 6749017, at \*6 (N.D. Cal. Dec. 22, 2011) (quashing a DMCA subpoena because the DMCA notification was only given to the service provider after the allegedly infringing content was no longer available for removal). It is unclear here whether the DMCA notification in this case satisfies these requirements, as at least one of the allegedly infringing posts is unavailable because it has already been removed for other reasons.

Fifth, Reddit objects to the subpoena to the extent it seeks information protected by any privilege, including the attorney-client privilege, work product immunity doctrine, or any other applicable privilege, immunity, or restriction on discovery.

Sixth, Reddit objects to the subpoena to the extent it seeks information that Reddit is legally or contractually prohibited from disclosing, and to the extent the subpoena requires the disclosure of documents containing proprietary or confidential information, trade secrets, or information that may implicate third-party privacy rights. This includes information that may be protected from disclosure by federal and state privacy laws, including but not limited to any Reddit user.

Seventh, Reddit objects to the subpoena to the extent it imposes any obligations, including with respect to the production of electronically stored information, that are different from or in addition to those imposed by the Federal Rules of Civil Procedure. Reddit further objects to the extent that your requests include electronically stored information that is (1) not reasonably accessible by Reddit because of undue burden or expense; (2) obtainable from another source that is less burdensome, expensive or more convenient; and/or (3) unreasonably cumulative or duplicative, or where the likely burden or expense of producing the electronically stored information outweighs the likely benefit.

In light of Reddit’s objections, Reddit will not produce documents responsive to this request as drafted. Please contact me if you would like to further discuss. If you decide to file a motion to compel after we meet and confer, please note that any such motion must be brought in the Northern District of California. Reddit otherwise preserves and does not waive any other available objections or rights, whether substantively or procedurally.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan Garza". The signature is fluid and cursive, with a long horizontal stroke at the end.

Alan Garza