

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

UNITED STATES OF AMERICA

V.

DANIEL DOVE,

Defendant.

Case No. 2:07cr00015

DEFENDANT'S MOTION FOR SUBPOENA DUCES TECUM

COMES NOW Defendant Daniel J. Dove to move this honorable Court to order the issuance of a subpoena duces tecum to the Motion Picture Association of America (“MPAA”) pursuant to Rule 17(c) of the Federal Rules of Criminal Procedure for the pre-trial production of the following documents dating from July 1, 2004 to the present, to wit:

- 1) copies of all documents in the possession of the MPAA relating to Daniel Dove;
- 2) copies of all documents in the possession of the MPAA relating to the investigation by the MPAA into the EliteTorrents web-site, www.elitetorrents.org, as referenced in the referral letter from the MPAA to the Federal Bureau of Investigation (“FBI”). See Exhibit “A;”¹
- 3) copies of all documents in the possession of the MPAA relating to communications between the MPAA and the individuals who claimed to run www.elitetorrents.org, as referenced in the referral letter from the MPAA to the FBI (See Exhibit “A,” at page 2: “individuals claiming to run the Elite Torrents site contacted the MPAA.”);
- 4) copies of all communications relating to Daniel Dove or www.elitetorrents.org between the MPAA and Rudy O. Corella, and any documents and data obtained by the MPAA from Rudy O. Corella relating to Daniel Dove or www.elitetorrents.org;
- 5) copies of all communications relating to Daniel Dove or www.elitetorrents.org between the MPAA and the individual using the username “Krylon” in relation to www.elitetorrents.org, as referenced in Exhibit “A,” pages 5-6 (“each of these members has a unique Login ID and password.”);

¹ The date that Exhibit “A” was sent to the Government by the MPAA is on or about February 24, 2005. The “date printed” of December 20, 2007 is presumably the date the document was re-generated for production to the Defendant by the Government.

- 6) copies of all communications relating to Daniel Dove or www.elitetorrents.org between the MPAA and the individual using the username "Root" in relation to www.elitetorrents.org, as referenced in Exhibit "A," pages 5-6 ("each of these members has a unique Login ID and password.");
- 7) copies of all communications relating to Daniel Dove or www.elitetorrents.org between the MPAA and the individual using the username "Werd" in relation to www.elitetorrents.org, as referenced in Exhibit "A," pages 5-6 ("each of these members has a unique Login ID and password.");
- 8) copies of all communications relating to Daniel Dove or www.elitetorrents.org between the MPAA and the "Systems Operators" for www.elitetorrents.org, as referenced in Exhibit "A."
- 9) a copy of all data copied from data contained on any and all servers used by www.elitetorrents.org of which data the MPAA came into possession on or about February 12, 2005, as referenced in Exhibit "A," page 2, *et seq.*;
- 10) copies of any and all documents prepared by Dr. Kelly Truelove, Ph.D. on behalf of the MPAA relating to Daniel Dove or www.elitetorrents.org, as referenced in Exhibit "A," page 3, *et seq.*;
- 11) copies of any and all communications from the MPAA to the FBI, Department of Justice, or any other federal, state or local law enforcement or judicial agency relating to Daniel Dove or www.elitetorrents.org.²

The Defendant moves that this Honorable Court order production thereof on or before April 11, 2008, to the U.S. District Court for the Western District of Virginia, Abingdon Division. Production of the documents sufficiently in advance of trial will prevent interruptions and delays that would otherwise be required to permit the Defendant to review the documents produced.

Also, by requiring the production of the documents on or before April 11, 2008, the Defendant will have sufficient time to review the materials in preparation of trial and to raise any issues or concerns about the production at the pre-trial conference set for 1:30 p.m. on April 14, 2008.

² Please see Exhibit "A," page 6, which references a separate referral letter for Mr. Dove, a/k/a "duffman," that was sent "under separate cover" from the MPAA to the FBI. With the exception of copies of optical disks seized from his residence, Defendant has been informed that he has received all information from the Government pursuant to Fed. R. Crim. P. 16 and the Discovery Order entered in this matter, but no such separate referral letter has been produced. Thus, it is essential to Mr. Dove's defense that he be allowed to review the contents of any such referral letter, and any other communications from the MPAA regarding the allegations against him that have not been produced to him heretofore.

Given the Court's obligation to review subpoena duces tecum requests, Defendant submits to the Court that in this case "the witness' independence from the government would suggest a more relaxed test"³ than the requirements set forth by United States v. Nixon for the issuance of a subpoena duces tecum.⁴ See United States v. Vinodchandra Modi, Etc., et al., 2002 U.S. Dist. LEXIS 1965, *5-*9 (W.D.Va. 2002), *referring to* United States v. Nixon, 418 U.S. at 699, n. 12.⁵ Thus, the Defendant would suggest that pursuant to Fed. R. Crim. P. 17(c) his subpoena request should only be limited in whole or in part in the event that this Court finds that compliance with the requested subpoena or a portion thereof is "unreasonable or oppressive." *Id.* Defendant submits that his request is not unreasonable or oppressive, particularly given the contents of Exhibit "A."

Even in the event, however, that the Nixon standards apply to his request, Defendant submits that his application meets the test elucidated in Nixon. First, the materials requested are evidentiary and relevant, as clearly indicated by the referral letter from the MPAA to the FBI attached to this Motion as Exhibit "A." Second, the materials are not otherwise reasonably procurable in advance of trial, as Defendant has no other practicable means of obtaining the requested information. Third, these materials are essential for the Defendant to properly prepare for trial as they are directly related to the foundation of the allegations against him, see Exhibit "A," and pre-trial inspection will assist to prevent any potential for unreasonable delays at trial. And finally, the Defendant makes this Motion in good faith to obtain information not otherwise

³ United States v. Vinodchandra Modi, Etc., et al., 2002 U.S. Dist. LEXIS 1965, *7 (W.D.Va. 2002)

⁴ 418 U.S. 683, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974).

⁵ The District Court noted in Vinodchandra Modi that "[i]n the *Nixon* case, the special prosecutor suggested that the evidentiary requirement 'does not apply in its full vigor when the subpoena duces tecum is issued to third parties rather than to government prosecutors.'" Vinodchandra Modi, at *7, n. 10. The District Court also cited to United States v. Nachamie, 91 F. Supp. 2d 552, 563 (S.D.N.Y. 2000)(*noting* that "[b]ecause [Rule 17(c)] states only that a court may quash a subpoena 'if compliance would be unreasonable or oppressive,' the judicial gloss that the materials sought must be evidentiary...may be inappropriate in the context of a defense subpoena of documents from third parties.") Vinodchandra Modi, at *7, n. 10.

available to him, and his application is not intended as a fishing expedition, as evidenced by the contents of Exhibit "A" and supported by the substance of this Motion.

Said subpoena may be served upon:

Motion Picture Association of America
1600 I Street, N.W.
Washington, DC 20006

WHEREFORE, the Defendant prays that this Honorable Court shall direct the Clerk to issue the subpoena as requested.

A proposed order is attached as Exhibit "B."

Respectfully submitted,
Daniel J. Dove

By: s/Michael B. Gunlicks
Counsel

Michael B. Gunlicks
Virginia Bar No. 39375
GUNLICKS LAW, L.C.
604 N. Boulevard
Richmond, Virginia 23220
Telephone: (804) 355-9700
Facsimile: (804) 355-4933

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on March 25th, 2008, I caused to be electronically filed the above and foregoing **DEFENDANT'S MOTION FOR SUBPOENA DUCES TECUM** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following attorneys of record:

Tyler G. Newby, Esq.
Computer Crime & Intellectual Property
Section, Criminal Division
US Department of Justice
Suite 600
1301 New York Avenue, N.W.
Washington, DC 20530

Steven R. Ramseyer, Esq.
US Attorney's Office
180 W. Main Street
Abingdon, VA 24210

Jay Prabhu, Esq.
U.S. Attorney's Office
Eastern District of Virginia
2100 Jamieson Ave.
Alexandria, VA 22314

s/ Michael B. Gunlicks
Attorney for Defendant