

UNITED STATES DISTRICT COURT

for the Eastern District of Texas

Intellectual Ventures I LLC
Plaintiff
v.
BITCO Gen. Ins. Corp., et al.
Defendant
Civil Action No. 6:15-cv-00059-JRG (lead case)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: The Internet Engineering Task Force, c/o The Internet Society, 1775 Wiehle Ave, Suite 201, Reston, VA 20190

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Exhibit A

Place: Sidley Austin LLP, 555 California St., Suite 2000, San Francisco, CA, 94114
Date and Time: 02/05/2016 9:00 am

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:
Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 01/08/2016

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk /s/ Alexander D. Baxter
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) BITCO General Ins. Corp., BITCO Nat'l Ins. Co., and Great West Casualty Co., who issues or requests this subpoena, are: Alexander D. Baxter., 555 California St., Suite 2000, San Francisco, CA, 94114; (415)772-7432; abaxter@sidley.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

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PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where production is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A

To a Subpoena in a Civil Case

DEFINITIONS

The following definitions apply for purposes of this subpoena. These definitions may not apply in other contexts, including in other contexts in this litigation. Some of the definitions below begin with a capitalized letter because the definition starts the sentence. In the Requests set forth below, sometimes the definition doesn't start the sentence; where that's true, the definition doesn't necessarily begin with a capitalized letter.

1. "Any" or "each" each mean "all." "Or" includes and encompasses "and." "And" includes and encompasses "or." The plural of any word includes the singular, and vice versa, as necessary to bring within the scope of these Requests any document that might otherwise be construed to be outside their scope.

2. "Document" means any media in which information is stored, or that itself reflects or embodies information, e.g., a physical thing. As used herein, a Request for a document does not require you to produce information protected by the attorney-client privilege or the attorney-work product doctrine, except that such withheld information must be reflected in an appropriate privilege log, subject to Instruction 7, below.

3. "You," "your" and "yours" each means the Internet Engineering Task Force.

INSTRUCTIONS¹

1. To fully respond to these requests, search all hard and electronic documents within your possession, custody or control, wherever those are located.

2. Produce each responsive document together information to show its source—that is, where you located it and from whose files you obtained it.

3. If you don't produce each document requested herein as it's kept in the usual course of business, organize and label the documents or things produced to correspond with the particular request to which the document is responsive.

¹ The definitions set forth above apply to these instructions.

4. Produce an exact copy, plus all copies with notes or markings not found on the originals; also produce drafts of such documents. Produce all versions of the foregoing documents.
5. Produce all responsive documents in full. If you redact any portion, explain in your written response what and why you're redacting.
6. Produce any purportedly privileged document containing non-privileged matter, with the purportedly privileged portion excised.
7. If you withhold information on grounds of privilege or otherwise, explain in your response why you're not producing it, in a manner sufficient to carry your burden of doing so. That explain must include the reason why you're withholding the information.
8. If you had possession, custody, or control over a responsive document but now can't produce it because it's been lost or destroyed, or otherwise transferred, provide: (a) a summary of its contents or general subject matter; (b) the date and manner of disposal; and (c) the reason for disposal.
9. In lieu of producing documents to the address provided on the subpoena form, you may transmit your production via FedEx to: Vernon M. Winters, Sidley Austin LLP, 555 California Street, 20th Floor, San Francisco, CA 94104, 415.772.1200, vwinters@sidley.com.

DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 1:

A true and correct copy of D. Eastlake, et al., "Randomness Recommendations for Security," (Dec. 1994), RFC 1750, located at <https://www.ietf.org/rfc/rfc1750.txt>.

DOCUMENT REQUEST NO. 2:

A true and correct copy of T. Dierks, et al., "The TLS Protocol, Version 1.0," (Jan. 1999), RFC 2246, located at <https://www.ietf.org/rfc/rfc2246.txt>.

DOCUMENT REQUEST NO. 3:

A true and correct copy of D. Eastlake, et al., "Randomness Recommendations for Security," (Jun. 2005), RFC 4086, located at <https://tools.ietf.org/html/rfc4086>.

DOCUMENT REQUEST NO. 4:

A true and correct copy of T. Dierks, et al., "The Transport Layer Security (TLS) Protocol, Version 1.1," (Apr. 2006), RFC 4346, located at <https://tools.ietf.org/html/rfc4346>.

DOCUMENT REQUEST NO. 5:

A true and correct copy of S. Blake-Wilson, et al., "Elliptic Curve Cryptography (ECC) Cipher Suites for Transport Layer Security (TLS)," (May 2006), RFC 4492, located at <https://tools.ietf.org/html/rfc4492>.

DOCUMENT REQUEST NO. 6:

A true and correct copy of T. Dierks, et al., "The Transport Layer Security (TLS) Protocol, Version 1.2," (Aug. 2008), RFC 5246, located at <https://tools.ietf.org/html/rfc5246>.

DOCUMENT REQUEST NO. 7:

A true and correct copy of T. Dierks, et al., "The Transport Layer Security (TLS) Protocol, Version 1.1," (Jun. 2003), Internet Draft BIS-05, located at <https://tools.ietf.org/html/draft-ietf-tls-rfc2246-bis-05>.

DOCUMENT REQUEST NO. 8:

A true and correct copy of Donald E. Eastlake, et al., "Randomness Recommendations for Security," (Jan. 2003), Internet Draft BIS-04, located at <https://tools.ietf.org/html/draft-eastlake-randomness2-04>.

DOCUMENT REQUEST NO. 9:

Documents sufficient to show the authenticity and public availability of the documents requested above and produced by you in response to this subpoena, including the date such documents were first made publicly available and the manner in which they were made publicly available.