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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 BENNETT HASELTON, *et al.*,

10 Plaintiffs,

11 v.

12 QUICKEN LOANS, INC., *et al.*,

13 Defendants.

Case No. C07-1777RSL

ORDER CONTINUING  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT AND  
GRANTING IN PART MOTION  
FOR PROTECTIVE ORDER

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16 This matter comes before the Court on "Plaintiffs' Motion for Protective Order  
17 and for Partial Summary Judgment Re: Plaintiff Peacefire, Inc.'s Standing." Dkt. #11. In  
18 their motion, plaintiffs ask the Court to find that Peacefire, Inc. meets the definition of an  
19 "Internet access service" under the CAN-SPAM Act and therefore has standing to bring  
20 this action against defendants. Plaintiffs have also asked the Court to issue a protective  
21 order that would prevent disclosure of the identities of Peacefire's e-mail subscribers.  
22 Pursuant to Federal Rule of Civil Procedure 56(f), defendants have requested a  
23 continuance of plaintiffs' motion for partial summary judgment on the issue of standing  
24 to receive the list of the subscribers and to depose declarant and Peacefire president  
25 Bennett Haselton.

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1 For the reasons set forth below, the Court continues plaintiffs’ motion for partial  
2 summary judgment and grants in part and denies in part plaintiffs’ motion for a protective  
3 order.

#### 4 **I. Factual Background**

5 Plaintiff Peacefire, Inc. provides programs that allow Internet users to circumvent  
6 Internet blocking software and access blocked Internet content. In 2002, Voice of  
7 America, a government-funded broadcasting organization that combats anti-American  
8 propaganda abroad, contracted with Peacefire to develop software systems that would  
9 allow international citizens to circumvent government Internet censorship. See  
10 Declaration of Bennett Haselton, (Dkt. #13) (“Haselton Decl.”) at ¶¶5-7. Peacefire’s  
11 services include proprietary software called “the Circumnavigator” program, as well as 22  
12 leased proxy servers that carry Peacefire’s Internet traffic. Id. at ¶¶8, 11, 15. Internet  
13 users can access Peacefire’s programs by visiting its web site, or by subscribing to  
14 Peacefire’s e-mail list. Peacefire alleges that it has 90,000 subscribers who receive e-mail  
15 updates about Internet locations that will allow them to circumvent blocking software.  
16 See id. at ¶13, 16. Peacefire asserts that a “significant portion” of its e-mail subscribers  
17 reside in countries that censor Internet use, and disclosure of the identities of these  
18 subscribers could place “their lives and liberty . . . at serious risk.” Id. at ¶14.

19 In November 2007, plaintiffs filed suit against defendants, alleging violations of  
20 the federal Controlling the Assault of Non-Solicited Pornography and Marketing Act of  
21 2003 (“CAN-SPAM Act”), 15 U.S.C. § 7701 et. seq., as well as Washington state  
22 consumer protection and commercial e-mail laws. See Complaint at ¶¶4.1-4.3. Plaintiffs  
23 further allege that they have experienced “significant adverse affects [sic]” as a  
24 consequence of defendants’ spam, including the slow-down of server traffic and the  
25 inadvertent loss of important e-mail. Motion at 7.

1 During discovery, defendant Quicken Loans, Inc. (“Quicken”) has challenged  
2 plaintiffs’ standing, arguing that Peacefire is not a “provider of Internet access service”  
3 within the meaning of the CAN-SPAM Act. Attempting to bolster its argument against  
4 Peacefire’s standing, defendant requested discovery of the names, addresses and  
5 telephone numbers of Peacefire’s 90,000 e-mail subscribers. The relevant discovery  
6 request states,

7 Please identify any service you provide that enables users to access content,  
8 information, electronic mail, or other services offered over the internet, and for  
9 each such service, please identify the users to whom you provide that service  
(including their address, e-mail and phone number), the nature of the service, and  
the consideration paid for service from 2005 through present.

10 Declaration of Stephanie Strike, (Dkt. #18), Ex. B.

## 11 II. Protective Order

12 The CAN-SPAM Act protects the interests of plaintiffs that are (1) “provider[s] of  
13 Internet access service”; and (2) “adversely affected” by a violation of specific provisions  
14 of the Act. See 15 U.S.C. § 7706(g)(1). In their complaint, plaintiffs alleged that  
15 Peacefire “provides or enables computer access by multiple users to a computer server  
16 that hosts the “peacefire.org” domain name and further provides electronic mail accounts  
17 to individuals utilizing the ‘peacefire.org’ domain name for electronic messaging.” Dkt.  
18 #1 (Complaint), ¶3.3. Having pled these allegations, plaintiffs cannot avoid defendants’  
19 attempts to test them through discovery.

20 Quicken argues that it is entitled to review a list of Peacefire’s subscribers to  
21 determine if the subscribers actually exist. Plaintiffs argue that Peacefire meets the  
22 definition of an IAS regardless of whether it has any subscribers to its e-mail list because  
23 it allows users to access content on its web site. While that may be true, Peacefire cannot  
24 meet the definition of an IAS if it does not provide e-mail accounts or have any users of  
25 its services. The definition of the Act contemplates the provision of services to users. In

1 addition, plaintiffs cannot show that Quicken's actions have adversely affected them as  
2 contemplated by the Act unless they have at least some subscribers.

3 Accordingly, the existence and number of plaintiffs' subscribers are relevant to the  
4 issue of plaintiffs' standing to bring a claim under the CAN-SPAM Act. The Court grants  
5 defendants' request for a Rule 56(f) continuance and will allow defendants to depose  
6 Haselton regarding the existence and number of the subscribers, as well as general  
7 information about the subscribers, such as from which countries they hale. At the present  
8 time, there is insufficient evidence to challenge Haselton's credibility to warrant requiring  
9 plaintiffs to disclose their subscribers' identities and contact information. The actual  
10 identity and contact information for each subscriber is not relevant. In addition, those  
11 individuals are not parties to this action, and they have a privacy interest in remaining  
12 anonymous. If defendants obtain additional information that challenges Haselton's  
13 credibility, they can move to compel disclosure of the subscriber list. Otherwise,  
14 deposing Haselton should allow them to obtain the information they seek while protecting  
15 the privacy information of the third party subscribers.

### 16 **III. Conclusion**

17 For all the foregoing reasons, plaintiffs' motion for a protective order (Dkt. #11) is  
18 GRANTED IN PART AND DENIED IN PART. Plaintiffs are directed to provide the  
19 Court with a copy of its subscriber list, as set forth above, no later than July 11, 2008.  
20 The list should be delivered to chambers plainly marked "for *in camera* review" and must  
21 not be filed electronically or delivered to the Clerk's office.

22 The Clerk of the Court is directed to renote plaintiffs' motion for partial summary  
23 judgment (Dkt. #11) for September 12, 2008. Defendants must file a response to the  
24 motion no later than September 8, 2008. Plaintiffs' reply, if any, shall be due on  
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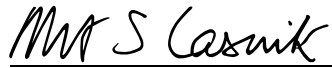
1 September 12, 2008.

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3 DATED this 26th day of June, 2008.

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Robert S. Lasnik  
United States District Judge

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