KARIN G. PAGNANELLI (SBN 174763),
kgp@msk.com
MARC E. MAYER (SBN 190969),
mem@msk.com
MITCHELL SILBERBERG & KNUPP LLP
11377 West Olympic Boulevard
Los Angeles, California 90064-1683
Telephone: (310) 312-2000
Facsimile: (310) 312-3100

Attorneys for Plaintiffs,
Nexon America, Inc. and NEXON Korea Corporation

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NEXON AMERICA, INC., a Delaware corporation, and NEXON KOREA CORPORATION, a Korean corporation,

Plaintiffs,

v.

RYAN MICHAEL CORNWALL a/k/a "Riu Kuzaki" and "Alexandria Cornwall"; YANGYU ZHOU a/k/a "Yang Yu," "W8baby," and "Gamersoul"; DOUGLAS CRANE a/k/a "DJ" and "Lonerboy"; WILLIAM "BILLY" KEISTER a/k/a "ThePhoneGuy"; AMARJOT GILL a/k/a "Alphaamar"; DEREK OSGOOD a/k/a "Jayce"; COLIN JOHNSON a/k/a "Colin "; LINDA LIU a/k/a "linnyda942"; JEREMY SIMPSON; V.H. a/k/a "Vince"; DOE 1 a/k/a "Bizarro" and "Andrew," DOE 2 a/k/a "Cam1596," and DOES 3 through 10, inclusive,

Defendants.

CASE NO. 2:12-cv-00160-RSWL-FFM

Honorable Ronald S.W. Lew

PLAINTIFFS' OPPOSITION TO DEFENDANT DOUGLAS CRANE'S MOTIONS TO DISMISS FOR FAILURE TO JOIN PARTY (DOCKET NOS. 32 AND 36)

Date: July 17, 2012
Time: 10:00 a.m.
Ctrm: 21, Spring St. Courthouse

TABLE OF CONTENTS

Page(s)

I. INTRODUCTION 1

II. ARGUMENT 3

A. Legal Standard Under Federal Rule of Civil Procedure 19 3

B. HackShield Is Not a Party Required to Be Joined. 4

C. The Operators of Other Websites That May Also Distribute Hacks and Cheats Are Not Parties Required to Be Joined. 6

III. CONCLUSION 8

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

TABLE OF AUTHORITIES

Page(s)

CASES

321 Studios v. Metro Goldwyn Mayer Studios, Inc.,
307 F. Supp. 2d 1085 (N.D. Cal. 2004) 5

Am. Gen. Life & Acc. Ins. Co. v. Wood,
429 F.3d 83 (4th Cir. 2005) 3

City of New York v. Milhelm Attea & Bros., Inc.,
550 F. Supp. 2d 332 (E.D.N.Y. 2008) 3

Costello Publ'g Co. v. Rotelle,
670 F.2d 1035 (D.C. Cir. 1981) 6

DVD Copy Control Ass'n, Inc. v. Bunner,
31 Cal. 4th 864 (2003) 5

E.E.O.C. v. Peabody W. Coal Co.,
610 F.3d 1070 (9th Cir. 2010) 4

Imperial v. Castruita,
418 F. Supp. 2d 1174 (C.D. Cal. 2006) 3

Lockheed Martin Corp. v. Network Solutions, Inc.,
CV 96-7438 DDP ANX, 1997 WL 381967 (C.D. Cal. Mar. 19, 1997) 6

Realnetworks, Inc. v. DVD Copy Control Ass'n,
641 F. Supp. 2d 913 (N.D. Cal. 2009) 5

Salton, Inc. v. Philips Domestic Appliances & Pers. Care B.V.,
391 F.3d 871 (7th Cir. 2004) 6, 7

Shields v. Barrow,
58 U.S. 130 (1855) 4

Temple v. Synthes Corp.,
498 U.S. 5 (1990) 5, 6

Universal City Studios, Inc. v. Reimerdes,
111 F. Supp. 2d 294 (S.D.N.Y. 2000) 5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATUTES

17 U.S.C.
§ 1201 5
§ 1202 5
§ 1203(a) 5

OTHER AUTHORITIES

7 Charles Alan Wright, Arthur R. Miller and Mary Kay Kane, Federal Practice and Procedure
§ 1609 (3d ed. 2001) 3

Federal Rules of Civil Procedure
Rule 19 ....1, 2, 6
Rule 19(a) 2, 3, 5
Rule 19(a)(1) 3
Rule 19(a)(1)(A) 4
Rule 19(a)(1)(B) 4
Rule 19(a)(2) 3
Rule 19(b) 3, 5

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs Nexon America, Inc. and NEXON Korea Corporation (collectively, "Nexon") hereby submit this Opposition to the Motions to Dismiss for Failure to Join Party filed by Defendant Douglas Crane a/k/a "DJ" and "Lonerboy" ("Crane") on June 7, 2012 and June 11, 2012 (Docket Nos. 32 and 36).

I. INTRODUCTION

This is an action for copyright infringement, violation of the Digital Millennium Copyright Act, and related claims arising from Defendants' distribution of software products (sometimes referred to as "hacks" or "cheats") designed to alter or manipulate Nexon's online computer game, "MapleStory." These hacks and cheats were sold on the Internet websites www.riukuzaki.com, now known as www.unallied.com (the "Riu Kuzaki Website") and www.gamersoul.com, formerly known as www.w8baby.com (the "GamerSoul Website"). Crane was one of the chief administrators of the GamerSoul Website and was responsible for overseeing the sale of the hacks at issue. Nexon has alleged that the hacks at issue infringe Nexon's copyrights, circumvent Nexon's technical security measures (a third-party software product known as "HackShield"), and otherwise violate Nexon's rights.

Although he answered Nexon's Amended Complaint months ago, Crane now moves to dismiss this action, arguing that the following non-parties are somehow necessary or indispensable to this suit: (1) the owners and operators of "HackShield" technology because the HackShield technical security measure is "part of the complaint" (Mot. at 2); (2) the "many other web site communities, forums, developers and coders" that Crane contends "have posted and engaged in identical activity, posting identical links, identical software, identical threads as the plaintiff claims in their complaint" (id.).

Crane offers only conclusory assertions and has completely failed to carry his burden of showing the nature of the interests possessed by any of the above persons or that the protection of such interests would be impaired by their absence. In any event, it is clear that none of these other entities or persons is a party required to be joined in this lawsuit under Rule 19.

First, Nexon, not HackShield, is the exclusive copyright owner of MapleStory. In this action, Nexon seeks relief against, *inter alia*, Defendants' unlawful circumvention of, and trafficking of devices designed to circumvent, the technical security measures that Nexon employs to effectively control access to MapleStory. While those security measures include Nexon's use of HackShield technology, Crane cites no authority—and there is none—that a copyright owner cannot bring a DMCA claim without joining the developers or manufacturers of the anti-circumvention measures that the copyright owner has employed to protect access to its copyrighted work. Rather, the DMCA clearly provides standing to Nexon to bring such claims, irrespective of whether the technology used to protect its content was created by Nexon or a third party.

Second, this lawsuit does not assert any claims arising out of the distribution of hacks on other websites by other operators. Rule 19 does not require Nexon to bring suit against all websites that distribute hacks in order to seek relief against Defendants' websites. To the contrary, the law is clear that copyright owners are entitled to elect which claims to bring, and are never required to sue all possible infringers of their copyrights. Were it otherwise, copyright owners would be unable to assert any infringement claims without wading into a procedural and logistical morass.

The joinder of HackShield or the operators of websites not at issue in this litigation is not required for this Court to accord complete relief amongst the existing parties, and none of these persons has claimed any interest relating to the

subject of this action. Crane's motions to dismiss the action for the alleged failure to join parties should be denied.

II. ARGUMENT

A. Legal Standard Under Federal Rule of Civil Procedure 19.

Under Federal Rule of Civil Procedure 19(a), a person is a "required party" who must be joined if feasible, only if:

> (A) in that person's absence, the court cannot accord complete relief among existing parties; or
>
> (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
>
> > (i) as a practical matter impair or impede the person's ability to protect the interest; or
> >
> > (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Fed. R. Civ. P. 19(a)(1).

The party advocating joinder has the initial burden of demonstrating, through the production of evidence, that "the person who was not joined is needed for a just adjudication." 7 Charles Alan Wright, Arthur R. Miller and Mary Kay Kane, Federal Practice and Procedure § 1609 (3d ed. 2001); Am. Gen. Life & Acc. Ins. Co. v. Wood, 429 F.3d 83, 92 (4th Cir. 2005) (same); *see* City of New York v. Milhelm Attea & Bros., Inc., 550 F. Supp. 2d 332, 353 (E.D.N.Y. 2008) (party seeking dismissal "'has the burden of producing evidence showing the nature of the interest possessed by an absent party and that the protection of that interest will be impaired by the absence'"). "[C]onclusory statements, without any evidence showing that [the persons] are, in fact, indispensable parties as defined in Rule 19(a)" are insufficient. Imperial v. Castruita, 418 F. Supp. 2d 1174, 1178 (C.D. Cal. 2006).

If the Court determines that a party was required to be joined, it "must order that the person be made a party." Fed. R. Civ. P. 19(a)(2). An action may only be dismissed if a person who is required to be joined cannot be joined, *and* the Court determines, "in equity and good conscience, [that] the action . . . should be dismissed," rather than proceed among the existing parties. Fed. R. Civ. P. 19(b).[1] "A nonparty in whose absence an action must be dismissed is one who 'not only [has] an interest in the controversy, but [has] an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience.'" E.E.O.C. v. Peabody W. Coal Co., 610 F.3d 1070, 1078 (9th Cir. 2010) (quoting Shields v. Barrow, 58 U.S. 130, 139 (1855)).

B. HackShield Is Not a Party Required to Be Joined.

The owners and operators of HackShield are not necessary or dispensable to this lawsuit. Indeed, Crane does not contend otherwise. Rather, Crane merely argues that the owners and operators of HackShield "should be joined as the complaint alleges this Technical Security Measure . . . is part of the complaint." Mot. at 2.

The anti-circumvention provisions of the DMCA, 17 U.S.C. §1201, provide certain remedies for copyright owners against individuals or entities that traffic in technologies that circumvent technical security measures intended to limit access to or prevent copying of the copyrighted work. HackShield technology (developed by a third party, AhnLabs, and licensed to Nexon), is one of the technical security

[1] In making this determination, the Court should consider: "(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties; (2) the extent to which any prejudice could be lessened or avoided by: (A) protective provisions in the judgment; (B) shaping the relief; or (C) other measures; (3) whether a judgment rendered in the person's absence would be adequate; and (4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder." Fed. R. Civ. P. 19(b).

measures that Nexon has incorporated into MapleStory to effectively control access to MapleStory and to protect Nexon's exclusive copyright. Am. Compl., ¶ 34 (Dkt. 14); see also id., ¶ 101. HackShield is "an anti-hacking and anti-cheating technology that prevents users of MapleStory from engaging in a variety of prohibited hacking activities or from running software programs or cheats." Id., ¶ 34. In this action, Nexon claims, *inter alia*, that Defendants produced, marketed, and distributed hacks designed for the purpose of circumventing, and that have no commercially significant purpose or use other than to circumvent, Nexon's technological measures, including HackShield. Id., ¶¶ 102- 104.

The owners and operators of HackShield are not parties required to be joined in this lawsuit. As an initial matter, the owners and operators of HackShield have not claimed any interest in the subject of this lawsuit. For that reason alone, they are not required parties under Rule 19(a)(1)(B).

Moreover, Crane provides no reason why the absence of the owners and operators of HackShield would prevent this Court from according complete relief in this action to render them necessary parties under Rule 19(a)(1)(A). There is no question that Nexon, as the owner of the copyright in MapleStory and the person injured by Defendants' trafficking of circumvention devices, is the proper plaintiff and has standing to sue for circumvention of technology that it uses to protect its content. See 17 U.S.C. § 1203(a) (a person "injured by a violation of section 1201 or 1202 may bring a civil action in an appropriate United States district court for such violation"). This is logical, because in such cases it normally is the *content owner*, not the maker of the access-control technology, that has suffered the greatest injury from the conduct (i.e. unauthorized access to or copying of their product). As a result, claims routinely are brought by copyright owners against those who traffic in devices that circumvent third-party software products used to protect those copyrights. In such cases, courts have never required that the third party that created the access control technology be joined as a plaintiff. For

1 example, in Universal City Studios, Inc. v. Reimerdes, 111 F. Supp. 2d 294
2 (S.D.N.Y. 2000), the major motion picture studios brought an action against
3 individuals engaged in the distribution of computer software that circumvented a
4 content protection system (known as CSS) that restricted access to and copying of
5 commercial DVDs. The court specifically did ***not*** require the developers of CSS
6 (Toshiba and Matsushita Electric Industrial Co., see DVD Copy Control Ass'n,
7 Inc. v. Bunner, 31 Cal. 4th 864, 871 (2003)) or the entity that licenses CSS (the
8 DVD Copy Control Association, see id.) to be joined as parties to the lawsuit. The
9 same was true in several other cases involving the same or similar technology. See
10 also Realnetworks, Inc. v. DVD Copy Control Ass'n, 641 F. Supp. 2d 913, 927-30
11 (N.D. Cal. 2009) (developers and marketers of copy-protection systems that
12 RealNetworks' product was alleged to have circumvented were not joined as
13 indispensable parties); 321 Studios v. Metro Goldwyn Mayer Studios, Inc., 307 F.
14 Supp. 2d 1085 (N.D. Cal. 2004) (motion picture studios filed claims against
15 distributor of DVD copy software).

16 As Crane has failed to show that the owners and operators of HackShield are
17 parties required to be joined under Rule 19(a), they are not indispensable under
18 Rule 19(b), and their absence provides no basis to dismiss this action. See Temple
19 v. Synthes Corp., 498 U.S. 5, 8 (1990) ("No inquiry under Rule 19(b) is necessary,
20 because the threshold requirements of Rule 19(b) has not been satisfied.").

21 **C. The Operators of Other Websites That May Also Distribute**
22 **Hacks and Cheats Are Not Parties Required to Be Joined.**

23 Crane next complains that there are other websites that have posted identical
24 software, which Nexon has not sued here. Mot. at 2. That other websites and their
25 operators may have also infringed Nexon's copyrights does not mean, however,
26 that Nexon was required to sue them as part of this same lawsuit.

27 To the contrary, the case law is clear that these other persons, who operated
28 other websites not at issue here, are not necessary or indispensable parties under

Rule 19. Indeed, as the Supreme Court has held, even *joint tortfeasors* are not necessary or indispensable parties. Temple, 498 U.S. at 7 ("It has long been the rule that it is not necessary for all joint tortfeasors to be named as defendants in a single lawsuit."); see also Lockheed Martin Corp. v. Network Solutions, Inc., No. CV 96-7438 DDP ANX, 1997 WL 381967, at *3 (C.D. Cal. Mar. 19, 1997); Fed. R. Civ. P. 19, advisory comm. notes (1966 amendment) ("a tortfeasor with the usual 'joint-and-several' liability is merely a permissive party to an action against another with like liability"). Consistent with this principle, courts have held that a copyright plaintiff need not sue every person involved in the *same infringing activity*. See, e.g., Salton, Inc. v. Philips Domestic Appliances & Pers. Care B.V., 391 F.3d 871, 877 (7th Cir. 2004) ("Under the principle of joint and several liability, which governs . . . the federal statutory tort of copyright infringement, the victim of a tort is entitled to sue any of the joint tortfeasors and recover his entire damages from that tortfeasor. The defendant may have a right to contribution (i.e., to a sharing of the pain) from the other tortfeasors, but the victim is not required to sue more than one of his oppressors. A rule automatically deeming joint tortfeasors indispensable parties to suits against each of them would be inconsistent with this common law principle and is therefore rejected." (internal citations omitted)); Costello Publ'g Co. v. Rotelle, 670 F.2d 1035, 1043 (D.C. Cir. 1981) ("Courts have long held [that] in . . . copyright infringement cases, any member of the distribution chain can be sued as an alleged joint tortfeasor. . . . Since joint tortfeasors are jointly and severally liable, the victim . . . may sue . . . as few of the alleged wrongdoers as he chooses; those left out of the lawsuit . . . are not indispensable parties.") (citations omitted).

In his motions, Crane lists 14 other websites that he says distributes the same software as the Riu Kuzaki and GamerSoul Websites, with the caveat that this is just a "basic list of known identical site communities." Mot. at 2. He argues that "[t]his is such an incredibly large and systematic ongoing worldwide issue that it is

truly impossible to calculate damages to the plaintiff from one small segment of current defendants." Id. at 3.

In this action, Nexon seeks injunctive and monetary relief against *Defendants'* infringement of Nexon's copyright, violations of the DMCA, and other misconduct causing injury to Nexon. The joinder of the operators of other websites is not necessary for the Court to enjoin these Defendants' future distribution of hacks or to determine the amount of statutory or actual damages that these Defendants have caused. Further, no one associated with the other websites listed by Crane has claimed any interest in this action, nor has Crane shown or even explained how he or any other Defendant would be subjected to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the absence of such persons from this lawsuit.

According to Crane, Nexon should be not allowed to seek relief against these Defendants' unlawful conduct until Nexon sues every single operator associated with every single infringing website that is part of this "incredibly large and systematic ongoing worldwide issue." Mot. at 3. That is not the law, nor would it be equitable. As courts have recognized, to require a plaintiff to join even joint tortfeasors in a single action "would have the perverse effect of making it more difficult for plaintiffs to obtain relief the greater the number of their tormentors by increasing the plaintiffs' litigation expense . . . ." Salton, 391 F.3d at 877. Thus, even if all of the persons associated with all infringing websites, known and unknown, could somehow be deemed necessary parties (which they are not), it would be against equity and good conscience to require Nexon to join all such persons in this lawsuit.

III. CONCLUSION

Neither the makers of HackShield nor the operators of the other websites listed in Crane's motion are necessary or indispensable parties for the resolution of this lawsuit. Defendant Crane's Motions to Dismiss for Failure to Join Party

1 should therefore denied. In the alternative, should the Court decide that certain
2 persons adequately identified by Crane are required to be joined, Nexon seeks
3 leave to amend to add such persons as parties in this action.
4
5 MITCHELL SILBERBERG & KNUPP LLP
6 DATED: June 26, 2012
7 By: /s/Marc E. Mayer
8 Marc E. Mayer
Attornevs for Plaintiffs
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF Los Angeles

I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years and am not a party to this action; my business address is Mitchell Silberberg & Knupp LLP, 11377 West Olympic Boulevard, Los Angeles, CA 90064-1683.

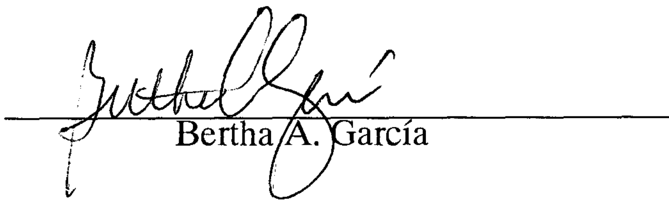
On June 26, 2012, I served a copy of the foregoing document(s) described as **PLAINTIFFS' OPPOSITION TO DEFENDANT DOUGLAS CRANE'S MOTIONS TO DISMISS FOR FAILURE TO JOIN PARTY (DOCKET NOS. 32 AND 36)** on the interested parties in this action at their last known address as set forth below by taking the action described below:

Mr. Ryan Cornwall
1818 S 2nd Street
Apt. 55
Waco, TX 76706

☑ **BY MAIL**: I placed the above-mentioned document(s) in sealed envelope(s) addressed as set forth above, and deposited each envelope in the mail at Los Angeles, California. Each envelope was mailed with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on June 26, 2012, at Los Angeles, California.



Bertha A. García

Mitchell Silberberg & Knupp LLP
4659349.2

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF Los Angeles

I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years and am not a party to this action; my business address is Mitchell Silberberg & Knupp LLP, 11377 West Olympic Boulevard, Los Angeles, CA 90064-1683, and my business email address is bag@msk.com.

On June 26, 2012, I served a copy of the foregoing document(s) described as **PLAINTIFFS' OPPOSITION TO DEFENDANT DOUGLAS CRANE'S MOTIONS TO DISMISS FOR FAILURE TO JOIN PARTY (DOCKET NOS. 32 AND 36)** on the interested parties in this action at their last known address as set forth below by taking the action described below:

Douglas Crane

EMAIL: dcranelonerboy@yahoo.com

☑ **BY ELECTRONIC MAIL**: I served the above-mentioned document electronically on the parties listed at the email addresses above and, to the best of my knowledge, the transmission was complete and without error in that I did not receive an electronic notification to the contrary

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on June 26, 2012, at Los Angeles, California.

Bertha A. García

Mitchell Silberberg & Knupp LLP

4659349.2