

Exhibit A

1 VICTORIA K. HALL (SBN 240702)
LAW OFFICE OF VICTORIA K. HALL
2 3 Bethesda Metro Suite 700
Bethesda MD 20814
3 Victoria@vkhall-law.com
Telephone: 301-280-5925
4 Facsimile: 240-536-9142

5 Attorney for Plaintiff
ROBERT JACOBSEN
6
7
8
9

10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 ROBERT JACOBSEN, an individual,) No. C06-1905-JSW
14)
Plaintiff,)
15) **MOTION FOR RECONSIDERATION OF**
v.) **AUGUST 17, 2007 RULING**
16)
MATTHEW KATZER, an individual, and) Courtroom: 2, 17th Floor
17 KAMIND ASSOCIATES, INC., an Oregon) Judge: Hon. Jeffrey S. White
corporation dba KAM Industries,)
18)
Defendants.)
19)
20)

21 Plaintiff asks the Court to reconsider its August 17, 2007 ruling, denying the motion for
22 preliminary injunction, dismissing § 17200, and dismissing the cybersquatting claim as moot.
23

24 Preliminary injunction

25 In his motion, Plaintiff stated that he had revoked the license that Defendants had, and that
26 therefore, Defendants' use of Plaintiff's software, or distribution of Defendants' software, infringed
27 Plaintiff's copyright. A license unsupported by consideration may be revoked at any time, and if it
28

1 is so revoked, then the cause of action lies in copyright. See David Nimmer, 3 Nimmer on
2 Copyright § 10.02[B][5]. See also I.A.E., Inc. v. Shaver, 74 F.3d 768, 772 (7th Cir. 1996). It is an
3 important argument in the open source software community, because, for instance, the GNU
4 General Public License relies on license revocation to enforce its rights in copyright. However, the
5 Court did not address the revocation argument. Plaintiff respectfully asks the Court to reconsider
6 or address this argument, and issue the injunction.

7 In the alternative, Plaintiff asks the Court to restore the cause of action under § 17200 (see
8 next section) and issue the injunction under § 17200. Toward the end of the Jan. 19, 2007 hearing,
9 the Court asked counsel for Plaintiff if she agreed with the Court that if the Court found that the
10 claim sounded in contract, Plaintiff was not entitled to an injunction. Counsel for Plaintiff
11 responded by asking to issue the injunction under § 17200. If the claim sounds in contract, then
12 Defendants committed an unlawful action by breaching the contract. See Watson Labs., Inc. v.
13 Rhone-Poulenc Rorer, Inc., 178 F. Supp. 2d 1099, 1120 (C.D. Cal. 2001) (unlawful practices
14 prohibited under § 17200 include those prohibited by court-made law). Plaintiff, a competitor, has
15 lost a property right – his rights under contract – through Defendants’ misappropriation of
16 Plaintiff’s software, and Plaintiff seeks an injunction to remedy that loss. Under these facts,
17 Plaintiff would be entitled to an injunction under § 17200.

18 Section 17200

19 The cause of action under § 17200 should be restored. Defendants engaged in unlawful
20 acts in violating the license. Plaintiff lost a property right as a result, and he seeks injunctive relief.
21 A contract adds an extra element, and thus is not preempted under the Copyright Act. Grosso v.
22 Miramax Film Corp., 383 F.3d 965, 968 (9th Cir. 2004). Thus, the cause of action under § 17200
23 should stand.

24 Cybersquatting

25 Plaintiff believes that a material difference in fact exists from the time of the hearing and
26 when the court issued its ruling due to a disconnect between the Court and counsel for plaintiff.
27 The Court dismissed the cybersquatting claim as moot because, as it stated, “counsel for Plaintiff
28 contended that the cybersquatting claim is filed as an in rem action.” Order at 5. Plaintiff has

1 sought the transcript of the hearing for the past few months and has been unable to obtain it, and
2 thus cannot quote the section of transcript where the parties and the Court discussed
3 cybersquatting. However, he and his counsel believe that his counsel did not represent the
4 cybersquatting claim as in rem, but instead offered the Court this alternative to leaving the claim as
5 it was: letting the cybersquatting claim stand if plaintiff did not seek the return of decoderpro.com
6 in Jacobsen v. Katzer, and awarding attorneys fees and costs for a future in rem action, Jacobsen v.
7 decoderpro.com, to be filed in Eastern District Virginia, where Network Solutions, the registrar for
8 decoderpro.com, is located. When the court reporter provides the transcript, Plaintiff believes that
9 the transcript will reflect that this was said. Thus, because of the UDRP decision in Plaintiff's
10 favor, Mr. Britton is not a necessary party, and the cybersquatting claim should remain. Plaintiff
11 asks the Court to reconsider this ruling, and restore the cybersquatting claim.

12 Respectfully submitted,

13
14 DATED: September 4, 2007

By _____ /s/
Victoria K. Hall, Esq. (SBN 240702)
LAW OFFICE OF VICTORIA K. HALL
3 Bethesda Metro Suite 700
Bethesda MD 20814

16
17 Telephone: 301-280-5925
18 Facsimile: 240-536-9142

19
20
21
22
23
24
25
26
27
28
ATTORNEY FOR PLAINTIFF