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12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA

15 SKYRIVER TECHNOLOGY
 16 SOLUTIONS, LLC, a California limited
 17 liability company, and INNOVATIVE
 18 INTERFACES, INC, a California
 19 corporation, ,

18 Plaintiffs,

19 vs.

20 OCLC ONLINE COMPUTER LIBRARY
 21 CENTER, Inc., an Ohio non-profit
 22 corporation,,

22 Defendant.

Case No. 3:10-cv-03305-JSW

**DEFENDANT’S NOTICE OF MOTION
 AND MOTION; MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 SUPPORT OF MOTION TO TRANSFER
 VENUE**

Date: October 29, 2010
 Time: 9:00 a.m.
 Judge: Judge: Jeffrey S. White
 Courtroom: 11, 19th Floor

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1 **NOTICE OF MOTION AND MOTION TO TRANSFER VENUE**

2 TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on Friday, October 29, 2010 at 9:00 a.m., or as soon
4 thereafter as counsel can be heard in Courtroom No. 11, 19th Floor of the above-entitled Court,
5 located at 450 Golden Gate Avenue, San Francisco, California, Defendant OCLC Online
6 Computer Library Center, Inc. (hereafter “Defendant” or “OCLC”) will move to transfer this
7 action to the Southern District of Ohio, Eastern Division, pursuant to 28 U.S.C. § 1404(a), on the
8 grounds that the Southern District of Ohio is more convenient for the parties and the witnesses,
9 and such transfer is in the interest of justice.

10 This Motion is based upon this Notice of Motion and Motion, the accompanying
11 Memorandum of Points and Authorities, the Declaration of Bruce Crocco, all pleadings and
12 papers on file in this litigation, and upon such other matters as may be presented to the Court at or
13 before the time of the hearing.

14 **RELIEF REQUESTED**

15 Defendant moves the Court, pursuant to 28 U.S.C. § 1404(a), to transfer this action from
16 this District to the Southern District of Ohio, Eastern Division, located in Columbus, Ohio.

17 **STATEMENT OF ISSUE TO BE DECIDED (LOC. R. 7-4)**

18 Whether transfer is proper, pursuant to 28 U.S.C. § 1404(a), to the Southern District of
19 Ohio, when defendant OCLC is an Ohio entity, a majority of the witnesses and documents are
20 located in or near Ohio, California courts have little interest in this litigation, and Ohio courts
21 have a greater interest in this litigation?

22 **MEMORANDUM OF POINT AND AUTHORITIES**

23 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

24 “Litigation should proceed where the case finds its center of gravity.” Hoefer v. U.S.
25 Dep’t of Commerce, No. C 00-0918, 2000 WL 890862, at *3 (N.D. Cal. June 28, 2000); see also
26 Johns v. Panera Bread Co., No. 08-1071 SC, 2008 WL 2811827, at *5 (N.D. Cal. July 21, 2008).
27 The “center of gravity” is determined by the location of key witnesses and documents. Id. Here,
28 the “center of gravity” is plainly the Southern District of Ohio, for these reasons:

- 1 • OCLC’s headquarters and virtually all of the key witnesses and documentary evidence are
2 located in or near Central Ohio.
- 3 • OCLC has a relatively small presence in California, as compared to its much larger and
4 longer-established presence in Ohio.
- 5 • OCLC made all decisions and actions operative to the allegations of Plaintiffs SkyRiver
6 Technology Solutions, LLC (“SkyRiver”) and Innovative Interfaces, Inc. (“Innovative”)
7 (collectively “Plaintiffs”) in Ohio.
- 8 • The State of California does not have an interest in this lawsuit beyond the fact that
9 Plaintiffs are residents of California, whereas the State of Ohio has a great interest in this
10 lawsuit because Plaintiffs have alleged that one of Ohio’s non-profit entities is abusing its
11 non-profit status, an allegation that can impact other Ohio non-profit entities.

12 For these and other reasons discussed in more detail below, all parties and the Court will be better
13 served by transferring this case to the Southern District of Ohio, Eastern Division. In making this
14 Motion, OCLC reserves any defenses that it may have against Plaintiffs’ claims.

15 **II. STATEMENT OF RELEVANT FACTS**

16 **A. The Parties**

17 **1. OCLC**

18 OCLC is an Ohio-based non-profit corporation that was founded in 1967 as the Ohio
19 College Library Center. It was founded with the goal – a goal that it still maintains today – to
20 pursue the broad public purposes of increasing availability of library resources and reducing the
21 rate of increase of library costs. (Declaration of Bruce Crocco (“Crocco Decl.”), filed herewith,
22 at ¶ 3.) In 1970s dollars, it cost a library somewhere between \$30-\$60 to prepare the card catalog
23 entry for a single title. (*Id.* ¶ 4.) By operating on economies of scale, OCLC significantly
24 reduced that expense by offering custom-printed catalogs, ready for filing in individual libraries.

25 OCLC also pioneered the move away from paper card catalogs to an online-based system
26 through its WorldCat catalog, which has become the world’s most comprehensive bibliographic
27 database. Through what is called “batch-loading,” member libraries are able to quickly upload
28

1 and update their catalog acquisitions, and that information is then uploaded to the WorldCat
2 database, which enables member libraries across the world to view each others' holdings. (Id. ¶
3 5.) In 2005, WorldCat revealed a new technological platform that, in addition to bibliographic
4 information, also contained information about the book jackets, articles, reviews, readers'
5 advisories, and graphics, sound and motion, all of which make it more efficient for libraries to
6 access information. (Id. ¶ 6.)

7 In addition to WorldCat, OCLC provides a variety of other programs designed to further
8 member libraries access to information and reduce costs for libraries. OCLC supports a
9 worldwide interlibrary lending ("ILL") service accessible to its members, which allows members
10 to share their collections with other member libraries. (Id. ¶ 7.) Three years ago, OCLC
11 introduced WorldCat Local, a service that interoperates with existing integrated library systems
12 ("ILS"), including Innovative's Millenium and INNReach products, to allow libraries to conduct
13 searches in order to use existing bibliographic materials in cataloging their collections. (Id.)
14 OCLC also has recently announced the development of an innovative new Web-scale library
15 management service ("WMS"), which has yet to be named and which is currently being made
16 available to a limited number of early adopter libraries. This new Web-based service will enable
17 member libraries to more efficiently and expediently manage their administrative functions
18 including metadata management, resource sharing, discovery services, acquisitions and
19 circulation, which OCLC believes addresses the current needs of libraries better than traditional
20 ILS products developed a decade or more ago. (Id.)

21 OCLC works with libraries to define opportunities, develop consensus and provide
22 research, programs, and prototypes that allow libraries, archives, and museums to solve the
23 challenges of information access and management. OCLC initiatives also include the publishing
24 of in-depth studies and reports that let libraries understand issues and trends that affect
25 librarianship. (Id. ¶ 8.) Over the past decade, OCLC has invested more than \$130 million to
26 develop new solutions for the changing needs of libraries. (Id.)

27
28

1 **2. Innovative Interfaces, Inc.**

2 Innovative Interfaces, Inc., a California for-profit company, is a provider of integrated
3 library system software and, in particular, an ILS called Millennium. Innovative views itself as a
4 competitor to OCLC’s recently developed WMS.

5 **3. SkyRiver Solutions, LLC**

6 SkyRiver Solutions LLC, a California for-profit company, was founded in Autumn 2009
7 by Innovative Interfaces’ owner and co-founder Jerry Kline. It offers a small bibliographic
8 database, primarily populated with information obtained from the Library of Congress, CONSER,
9 the British Library, and SkyRiver’s limited list of customer libraries. SkyRiver views itself as a
10 competitor of OCLC, though, as a very young company, it lacks the subscription base and
11 bibliographic data that has made OCLC the world’s largest library cooperative since the late
12 1960s.

13 **B. The Present Claims**

14 Through a lengthy recitation of inaccurate facts, Plaintiffs allege six claims against
15 OCLC. In short, Plaintiffs allege that OCLC, a forty-year old non-profit entity, is making it
16 difficult for Innovative and its one-year old sister-company, SkyRiver, to compete and gain
17 market share in the ILL, ILS, and the online cataloging library world. Through a variety of
18 uncited references in their Complaint to “prominent library-related internet blogs,” unnamed
19 commentators, and unattributed articles and reports, as well as through creating an anti-OCLC
20 website, Plaintiffs have levied a propaganda war on OCLC simply because Plaintiffs have been
21 unable to compete successfully with OCLC’s membership base and bibliographic data which
22 OCLC earned through forty years of dedicated service to its member libraries.

23 Plaintiffs’ first claim alleges a violation of Section 2 of the Sherman Act. (Dock. No. 1
24 ¶¶ 79-87.) Plaintiffs allege that OCLC “is using its monopoly power over its WorldCat database
25 and its ILL service as well as its non-profit status as leverage to destroy competition in the
26 cataloging service market.” (*Id.* ¶ 82.) Plaintiffs’ second claim alleges a violation of Section 2 of
27 the Sherman Act for “Attempted Monopolization” and is substantially similar to its first claim.
28 (*Id.* ¶¶ 88-95.) Plaintiffs’ third claim alleges a violation of Section 1 of the Sherman Act for

1 “Unlawful Exclusionary Agreements.” (Id. ¶¶ 96-101.) Claim three essentially alleges that
2 OCLC prevented Plaintiffs, OCLC’s competitors, from competing with OCLC by not modifying
3 OCLC’s policy of only transacting with libraries, archives, and museums and by refusing to
4 permit Plaintiffs access to its proprietary information. Plaintiffs’ fourth claim alleges a violation
5 of Section 1 of the Sherman Act for “Unlawful Tying Arrangements.” (Id. ¶¶ 102-13.) Plaintiffs
6 allege that OCLC requires its members to purchase its cataloging services to access its WorldCat
7 database and ILL service (which is untrue). (Id. ¶¶ 107-108.) Plaintiffs’ fifth claim alleges a
8 violation of California Business & Professional Code Section 16720 and Section 16726 (the
9 “Cartwright Act,” modeled on the Sherman Act) for “Unlawful Restraints of Trade and Unlawful
10 Tying Arrangements,” which is essentially a recitation of claims three and four. (Id. ¶¶ 114-27.)
11 Plaintiffs’ sixth claim alleges a violation of the Cartwright Act for “Unfair Competition,” which
12 essentially reiterates claims one through five. (Id. ¶¶ 128-32.)

13 **III. LEGAL ARGUMENT**

14 **A. Relevant Standard**

15 A court may “transfer any civil action to any other district or division where it might have
16 been brought . . . [f]or the convenience of parties and witnesses, in the interest of justice.” 28
17 U.S.C. § 1404(a); see also Goodyear Tire & Rubber Co. v. McDonnell Douglas Corp., 820 F.
18 Supp. 503, 506 (C.D. Cal. 1992). This statute was “designed as a federal housekeeping measure,
19 allowing easy change of venue within a unified federal system.” Piper Aircraft Co. v. Reyno, 454
20 U.S. 235, 254 (1981). The purpose of Section 1404(a) is to “prevent the waste of time, energy
21 and money, and to protect litigants, witnesses and the public against unnecessary inconvenience
22 and expense.” Anschutz Co. v. Deutsche Bank Sec., Inc., No. C 09-03780 SI, 2010 WL 1464375,
23 at *2 (N.D. Cal. Apr. 13, 2010) (quoting Van Dusen v. Barrack, 376 U.S. 612, 616 (1964))
24 (internal quotations omitted).

25 For a district court to transfer an action under Section 1404, a court must make the
26 following two findings: “(1) that the transferee court is ‘one where the action might have been
27 brought,’ and (2) ‘that the convenience of the parties and witnesses in the interest of justice favor
28

1 transfer.” Glaxo Group Ltd. v. Genetech, Inc., No. C 10-00675 JSW, 2010 WL 1445666, at *2
2 (N.D. Cal. Apr. 12, 2010) (citing Hatch v. Reliance Ins. Co., 758 F.2d 409, 414 (9th Cir. 1985)).

3 **B. Transfer to the Southern District of Ohio is Appropriate and Warranted**

4 **1. Venue is Proper in the Southern District of Ohio**

5 The present action could have been filed in the Southern District of Ohio, fulfilling the
6 first requirement of Section 1404(a). An action may be filed in any District in which a defendant
7 resides. 28 U.S.C. § 1391. A corporate defendant resides in any District in which it is subject to
8 personal jurisdiction. Id. § 1391(c). Because OCLC maintains its headquarters in the Southern
9 District of Ohio, personal jurisdiction and venue are proper in that District.

10 **2. Interest of Justice**

11 “Considerations of the interest of justice include ‘whether efficient and expeditious
12 administration of justice would be furthered.’ ” Glaxo, 2010 WL 1445666, at *2 (quoting Sherar
13 v. Harless, 561 F.2d 791, 794 (9th Cir. 1977)). In this instance, it would be more efficient for this
14 suit to proceed before the Southern District of Ohio. Because the majority of the witnesses reside
15 in Ohio and surrounding states, most depositions will occur in Ohio. Additionally, all documents
16 will be produced from Ohio. This means that the Southern District will be readily available to
17 handle possible discovery disputes in realtime, instead of contending with a three-hour time
18 difference.

19 Furthermore, Plaintiffs have requested injunctive relief. The interests of justice would be
20 best served if this case were transferred to Ohio, because if injunctive relief were granted (which
21 OCLC obviously denies would be appropriate), the Southern District would be in a better position
22 to handle the oversight of that injunction. See, e.g., Law Bulletin Pub. Co. v. LRP Publ’n, Inc.,
23 992 F. Supp. 1014, 1020-21 (N.D. Ill. 1998) (the court “closer to the action” is better able to
24 monitor compliance with injunctive relief). Because justice will be more efficiently and
25 expeditiously served if this case proceeds in Ohio, this factor weighs in favor of transfer.

26 **3. Convenience Factors**

27 To determine whether the moving party has met its burden on the second prong of the
28 Section § 1404 test, the court considers the following factors: the plaintiff’s choice of forum;

1 convenience of the parties and witnesses; ease of access to sources of proof; local interest in
2 controversy; familiarity of each forum with applicable law; and relative congestion in each forum.
3 See Children’s Hosp. & Research Ctr. at Oakland v. Clark County Self-Funded, No. C 09-01503
4 JSW, 2010 WL 890011, at *7 (N.D. Cal. Mar. 8, 2010) (citing Gulf Oil Co. v. Gilbert, 330 U.S.
5 501, 508-509 (1947)). Because these factors weigh in OCLC’s favor, as explained in detail
6 below, transfer to the Southern District of Ohio is warranted.

7 **a. Plaintiffs’ choice of forum is entitled to little weight.**

8 “While the plaintiff’s choice of forum is normally entitled to great deference, minimal
9 consideration should be given to that choice where the operative facts do not occur within the
10 selected forum.” Tropos Networks, Inc. v. IPCO LLC, No. C 05-04281 JSW, 2006 WL 1883316
11 (N.D. Cal. July 7, 2006) (citing Pacific Car & Foundry Co. v. Pence, 403 F.2d 949, 954 (9th Cir.
12 1968)). In this lawsuit, the “operative facts,” that is, Plaintiffs’ allegations about OCLC’s anti-
13 competitive behavior, all occurred in Ohio. OCLC’s operations are all based in Ohio, and Ohio is
14 where OCLC made all of the decisions and created all of the policies that Plaintiffs claim
15 constitute anti-competitive behavior. (Crocco Decl. ¶¶ 9-14.) Therefore, on that fact alone, less
16 weight should be given to Plaintiffs’ choice of forum; no “operative facts” occurred in California.

17 Further, Plaintiffs elected to file this lawsuit in this Court only because it is the
18 jurisdiction where SkyRiver and Innovative, and their co-owner Jerry Kline, reside. Essentially
19 the only connection to California that Plaintiffs have alleged is that the California State
20 University at Long Beach (“CSU Long Beach”), was economically disadvantaged when it
21 switched to SkyRiver’s cataloging services. However, CSU Long Beach – located in the Central
22 District of California, not the Northern District – is not a plaintiff in this lawsuit. Plaintiffs have
23 also alleged that Michigan State University (“MSU”) – also not a plaintiff, and also not located in
24 California – was similarly disadvantaged by OCLC’s pricing system. Despite relying heavily on
25 the factual postures of CSU Long Beach and MSU, Plaintiffs declined to file suit in either of
26 those jurisdictions, creating the obvious inference that this lawsuit is not really about OCLC’s
27 transactions with either of those non-parties, rather it is an attempt for SkyRiver and Innovative to
28 generate propaganda for their respective services in a forum convenient only to them.

1 Even if this Court determines that Plaintiffs' choice of forum is entitled to more than
2 minimal deference, as this Court has explained, "[t]his conclusion does not end the Court's
3 inquiry," and the Court will consider six other factors for transfer. Flexible Fund., LLC v. Iron
4 Mountain Info. Mgt., No. C 05-02082 JSW, 2005 WL 2431241, at *3 (N.D. Cal. Sept. 30, 2005).

5 **b. Ohio is more convenient for OCLC**

6 OCLC's corporate headquarters are located near Columbus, as are most of the employees
7 who may testify. See In re Yahoo! Inc., No. CV 07-3125 CAS (FMOx), 2008 WL 707405, at *3
8 (C.D. Cal. Mar. 10, 2008), at *2 (transfer granted because it is more convenient to litigate case in
9 state where the defendant's corporate headquarters are located and the majority of witnesses work
10 and reside). OCLC's headquarters are located in Dublin, Ohio and are located on a campus that
11 houses its Executive Group, Product Management, Human Resources, Information Technology,
12 Legal, Sales, Marketing, Business Development, Software Development, Database Management,
13 Finance, Member Services, Order Entry, Customer Support, and Research and Development
14 departments. (Crocco Decl. ¶ 13.) The individuals in charge of most of these departments live in
15 Ohio; none live in California. (Id.)

16 Because this lawsuit challenges OCLC's motives, including its user policies and decision
17 making processes, OCLC witnesses will be required to present testimony on these topics. (Id.
18 ¶ 16.) Many of these testifying employees are high-level executives who play crucial roles in
19 OCLC's operations and whose day-to-day presence at OCLC headquarters is essential. (Id. ¶ 18.)
20 Beyond any inconvenience to the witnesses themselves, the absence of these employees would
21 significantly impair OCLC's ability to run effectively. (Id.) Asking these employees to take off
22 substantial periods of time from their jobs to travel to California for this litigation, including trial,
23 would cause material harm, real inconvenience, and undue exposure to OCLC.

24 Although Plaintiffs levy unsubstantiated allegations in their Complaint that OCLC is a
25 financial giant and is improperly taking advantage of its non-profit status, the fact remains that
26 OCLC is a non-profit entity. While Plaintiffs are for-profit companies, OCLC is not. Requiring
27 OCLC employees to travel repeatedly to California will create a significant financial burden on
28

1 OCLC and require it to spend money that could be better spent in pursuit of its non-profit
2 mission. Accordingly, Ohio would be a much more convenient forum for OCLC in this lawsuit.

3 **c. Travel to California will inconvenience the majority of witnesses**

4 “The convenience of the witnesses is usually the most important factor to consider in
5 deciding whether to transfer an action” under Section 1404(a). Ironworkers Loc. Union No. 68 v.
6 Amgen, Inc., No. CV 07-5157 PSG (AGRx), 2008 WL 312309, at *14 (C.D. Cal. Jan. 22, 2008).
7 Litigating this case in San Francisco would be unduly inconvenient for the majority of the
8 witnesses, as most live and work in the Columbus, Ohio area – over 2,400 miles away from this
9 Courthouse. As the Federal Circuit noted, “[a]dditional distance [from home] means additional
10 travel time; additional travel time increases the probability for food and lodging expenses; and
11 additional travel time with overnight stays increases the time which these fact witnesses must be
12 away from their regular employment.” See In re TS Tech USA Corp., 551 F.3d 1315, 1320 (Fed.
13 Cir. 2008) (internal quotation and citation omitted; alterations in original).

14 OCLC has provided a list of seven key employees who are likely to testify at deposition,
15 at trial or both. (Decl. ¶ 16.) All of them reside in Ohio. (Id.) Should this case remain in
16 California, the participation of these key employees in the case will require each to leave behind
17 their families and work for substantial periods of time. (Id. ¶ 17.)

18 Likewise, the majority of OCLC’s representatives, who possess the most comprehensive
19 knowledge of OCLC’s practices reside in Ohio, not California. The majority of these witnesses
20 are located only minutes from the Southern District courthouse. (Crocco Decl. ¶ 16.) These
21 witnesses could participate in this case, including at trial, with far less disruption to their work
22 and personal lives. The convenience to these testifying witnesses strongly favors transfer. See
23 Foster v. Nationwide Mut. Ins. Co., No. C 07-04928 SI, 2007 WL 4410408, at *3 (N.D. Cal. Dec.
24 14, 2007) (finding transferee court in Ohio more convenient because the defendant’s witnesses
25 and corporate headquarters are located in Columbus); Panera Bread Co., 2008 WL 2811827, at
26 **3-4 (convenience of the witnesses “substantially favors transfer” where four of nine witnesses
27 identified by defendant as likely to testify at trial reside in transferee state); Yahoo! Inc., 2008
28 WL 707405, at **2-4 (transferring case to district where the defendant’s headquarters are located

1 and majority of potential witnesses work and reside); Ezieme v. Ward Intern. Trading, Inc., No.
2 CV 08-6748 PSG (JWJx), 2009 WL 2818394, at *9 (C.D. Cal. Aug. 31, 2009) (granting transfer
3 because majority of witnesses reside in transferee district).

4 OCLC also intends to call third-party witnesses who reside in Michigan and Illinois; the
5 Southern District of Ohio would be a much more convenient forum for them, too. (Crocco Decl.
6 at ¶ 19.) While travel to California would require a full day of travel, an expensive airplane
7 ticket, and several days of hotel accommodations, travel to Ohio would require only a four hour
8 drive from Michigan and a three hour flight from Illinois. (Id. ¶ 20.) See SPD Swiss Precision
9 Diagnostics v. Church & Dwight Co., Inc., No. CV 09-0291 JSW, 2009 WL 981233, at *3
10 (explaining that despite the relative inconvenience of both forums, witnesses from Europe would
11 be less inconvenienced by a New Jersey forum, rather than a California forum, because travel to
12 California would be twice as long).

13 Further, because the allegations in this lawsuit center on OCLC's actions, and not
14 necessarily SkyRiver or Innovative's, Plaintiffs will likely not produce many witnesses. And
15 because OCLC is being forced to defend itself, and because all of the allegations focus on
16 OCLC's actions without reference to how Plaintiffs are affected, OCLC will likely have the lion's
17 share of witnesses. It is simply not logical to force the majority of witnesses to travel to
18 California to enable OCLC to defend against this lawsuit, when Plaintiffs will likely only produce
19 a few witnesses who would need to travel to Ohio.

20 For these reasons, the "convenience of the parties and witnesses substantially favors
21 transfer" to the Southern District of Ohio. Panera Bread Co., 2008 WL 2811827, at **3-4.

22 **d. Sources of proof are more easily accessed in Ohio.**

23 The location of the relevant sources of proof also tips the balance in favor of transferring
24 to Ohio. "[T]he cost of litigation will be substantially lessened if the action is venued in the same
25 district where most of the documentary evidence is found." Foster, 2007 WL 4410408, at *6.

26 The allegations in the Complaint address OCLC's internal strategy, motivation, decision-
27 making process, historical practices, pricing structures, and all of the other relevant issues related
28

1 to how OCLC has developed and how it chooses to proceed in furthering its mission. To assess
2 Plaintiffs' claims, the discovery will potentially involve review of a wide range of these records
3 on subject relevant to the claims in this case, some potentially stretching back to the time that
4 OCLC was founded. The following categories of documents relate to the claims in this case or to
5 OCLC's defenses: (a) documents related to Michigan State University (and other libraries) and
6 its relationship with OCLC, including historic subscriptions, agreements and pricing, and the
7 development of a price quotation to Michigan State to register their collection holdings in
8 WorldCat separately from a WorldCat Cataloging Subscription; (b) documents related to OCLC's
9 batchloading of records and the pricing for those services; (c) documents related to current and
10 future pricing for subscription services by OCLC, including the WorldCat Network; (d)
11 documents related to the development, amendment or enforcement of the WorldCat Rights and
12 Responsibilities for the OCLC Cooperative and the Guidelines for the Use and Transfer of
13 OCLC-Derived Records; the recruitment or solicitation of employees by OCLC or OCLC's
14 vendors from for-profit competitors; (e) documents related OCLC's Web-scale management
15 service; (f) documents related to OCLC's mergers with other entities; (g) documents related to
16 guidelines/requirements for OCLC membership; (h) documents related to WorldCat Local,
17 including WorldCat Local "quick start"; and (i) records related to OCLC's tax-exempt status. (Id.
18 ¶ 21.) When accounting for electronically stored documents and e-mails, the documentary
19 evidence here could reach hundreds of thousands of pages. (Id. ¶ 22.)

20 This voluminous amount of documents is either stored as paper copies at OCLC's Dublin,
21 Ohio headquarters, or electronically maintained on servers there. (Id. ¶ 15, 22.) See Yahoo! Inc.,
22 2008 WL 707405, at *9 (location of relevant documents retains relevance to the venue inquiry in
23 spite of "modern copying and reproduction technologies") (internal quotation omitted); Foster,
24 2007 WL 4410408, at *6 (while "developments in electronic conveyance have reduced the cost of
25 document transfer somewhat," the presence of a considerable number of documents in the
26 transferee venue still weighed in favor of transfer); Little v. Bank One, Del., N.A., No. C 05-
27 01727 JSW, 2005 WL 3481468, at *2 (N.D. Cal. Dec. 19, 2005) (stating that plaintiff's
28 contention that sources of proof are computerized failed to tip the balance away from transfer).

1 Transporting these documents from Dublin, Ohio to San Francisco, California would impose a
2 substantial burden on OCLC. (Id. ¶ 15, 24.)

3 Further, the respective custodians of these records work and live in Ohio. (Id. ¶ 23.) See
4 Yahoo! Inc., 2008 WL 707405, at *9 (granting defendant’s motion to transfer where defendant’s
5 “headquarters is the factual center of this case, and the locus of all relevant decision making”)
6 (internal quotation omitted). For their part, Plaintiffs will likely have few, if any, documents of
7 their own in this District.

8 Since most of the documents to be used in this case are located at OCLC headquarters in
9 the Southern District of Ohio, a transfer there is warranted. See id. (the fact that relevant
10 documents are kept at the defendant’s headquarters is an additional consideration that warranted
11 transfer); Ezieme, 2009 WL 2818394, at *9 (transferring action because documentary evidence
12 located in the transferee forum).

13 **e. Ohio has a greater interest in litigating this action than California.**

14 The state of Ohio’s interest in adjudicating this matter within its borders also militates
15 towards transferring this case. OCLC’s relevant policies and practices were developed and
16 implemented in Ohio and the most important witnesses and evidence are located there. (Decl. ¶
17 14-16). See Yahoo! Inc., 2008 WL 707405, at *9 (granting defendant’s motion to transfer
18 because defendant’s “headquarters is the factual center of this case, and the locus of all relevant
19 decision making”) (internal quotation omitted); Ezieme, 2009 WL 2818394, at *9 (granting
20 transfer because vast majority of known witnesses reside in transferee state and relevant
21 documents located there).

22 Further, Plaintiffs have stated serious, albeit unfounded, allegations regarding OCLC’s
23 non-profit status. (See Compl., Dock. No. 1 ¶¶ 4, 66-74.) Plaintiffs have stated that OCLC is
24 “abusing its status as a tax exempt, non-profit entity and unfairly competes with for-profit
25 companies, such as Innovative and SkyRiver, by using its non-profit status as leverage to
26 monopolize the library services industry” (Id. ¶ 73.) These baseless allegations could
27 create serious implications for other Ohio non-profit entities, and Ohio courts have a greater
28 interest in litigating these issues. While Ohio courts also have more experience applying Ohio’s

1 laws, more importantly, they also have more experience with the routine customs and practices of
2 non-profit entities in Ohio.¹ In addition, the Ohio Attorney General has oversight over Ohio non-
3 profit entities and would likewise have an interest in this lawsuit.

4 In contrast, California does not have an interest in litigating this action because none of
5 the operative actions occurred in California. Though Plaintiffs asserted California state law
6 claims, as explained below, Ohio courts will be equally skilled at applying and interpreting those
7 laws.

8 **f. An Ohio court is equally familiar with the applicable law**

9 Plaintiffs may argue against transfer because the Complaint asserts several counts under
10 California law. However, because this case asserts claims under and based on federal law, the
11 judges in the Southern District of Ohio are equally well equipped to resolve all pertinent legal
12 issues.

13 First, Plaintiffs' claims 1 through 4 allege violations of the federal Sherman Act, which
14 the Southern District is equally able to analyze and apply. See Fontaine v. Wash. Mut. Bank,
15 Inc., No. CV 08-5659 PSG (Ex), 2009 WL 1202886, at *4 (C.D. Cal. Apr. 30, 2009) (“[w]here,
16 as here, Plaintiff’s claims for relief are based on federal law, both courts are presumably equally
17 familiar with the governing law.”).

18 Second, Plaintiffs' claims 5 and 6 allege violations of the Cartwright Act, California state
19 law that mirrors the federal Sherman Act. There is no reason to believe that a federal judge in
20 Ohio is unable to apply California law to the facts here. See Colonial Med. Group, Inc. v.
21 Catholic Healthcare West, No. C-09-2192 MMC, 2010 WL 2108123, at *7 (N.D. Cal. May 25,
22 2010) (“The analysis under California’s antitrust law mirrors the analysis under federal law
23 because the Cartwright Act . . . was modeled after the Sherman Act.”) (quoting County of
24 Tuolumne v. Sonora Cmty. Hosp., 236 F.3d 1148, 1160 (9th Cir. 2001)) (internal citations

25 _____
26 ¹ In fact, OCLC as a non-profit corporation whose mission extends beyond Plaintiffs’ profit
27 maximizing objectives is entitled, as this case proceeds, to have the Court “fully investigate the
28 procompetitive and noneconomic justifications proffered” by OCLC for the design of its products
and the manner in which they are sold. United States v. Brown Univ., 5 F.3d 658, 678 (1st Cir.
1993). Ohio courts are better equipped to assess OCLC’s mission under Ohio non-profit law and
its corporate governance documents than courts in other districts.

1 omitted). See also Strigliabotti v. Franklin Res., Inc., No. C 04-0883 SI, 2004 WL 2254556, at *5
2 (N.D. Cal. Oct 5, 2004) (“The Court finds that [the transferee] court is fully capable of applying
3 California law.”). Thus, many of the issues presented by these claims will already be familiar to a
4 judge in the Southern District of Ohio or will overlap with Plaintiffs’ primary Sherman Act
5 claims. Because a judge in the Southern District of Ohio is fully capable of resolving the
6 California state law issues, the existence of California law should not weigh in the Court’s
7 consideration of this motion, and certainly should not prevent the transfer of this case to a more
8 convenient venue. See Ezieme, 2009 WL 2818394, at *11 (finding that governing law slightly
9 weighed in favor of plaintiff, but nonetheless transferring case).

10 **g. The Southern District of Ohio’s court docket is less congested**

11 The relative congestion of the transferee and transferor venues is a relevant consideration
12 for a Section 1404(a) motion. See Ezieme, 2009 WL 2818394, at *2. In general, the Southern
13 District of Ohio’s docket is less crowded than in this District, which is unsurprising given that
14 this Court receives more than twice as many new cases per year as the Ohio Southern District
15 receives. The Southern District has approximately 66% fewer cases, and only 7% of all cases
16 have been pending more than three years. (<http://www.uscourts.gov/cgi-bin/cmsd2009.pl>) (data
17 from 2009). Further, the average number of cases per judge in the Southern District is lower than
18 in this District. (Id.) Finally, this District has only a slightly shorter time from filing to
19 disposition, 9.4 months, versus 10.6 months in the Southern District. (Id.) Transferring this case
20 would help to ease the caseload of this Court, and result in a more efficient resolution of the
21 dispute for all the parties.

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IV. CONCLUSION

Based on the foregoing facts and law, the scales clearly tip in favor of transferring this matter. The Court should therefore grant Defendant’s Motion and transfer this action to the Southern District of Ohio, Eastern Division.

Dated: September 9, 2010

Respectfully submitted

By: /s/ James A. Wilson
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I, C. Brandon Wisoff, am the ECT user whose ID and password are being used to filed this Notice of Motion and Motion; Memorandum of Points and Authorities in Support of Motion to Transfer Venue Pursuant to 28 U.S. C. Section 1404(a).

Dated: September 9, 2010.

/s/ C. Brandon Wisoff
C. Brandon Wisoff (SBN 121930)