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UNITED STATES DISTRICT COURT
For the Northern District of California

UNITED STATES DISTRICT COURT
Northern District of California
San Francisco Division

INTEGRAL DEVELOPMENT CORP.,
Plaintiff,
v.
VIRAL TOLAT,
Defendant.

No. C 12-06575 JSW (LB)
**ORDER REGARDING DISCOVERY
DISPUTE IN 5/15/2013 JOINT
LETTER BRIEF**
[Re: ECF No. 80]

INTRODUCTION

The court previously issued an order about electronic copies of Integral’s information that Mr. Tolat uploaded from Integral to his Dropbox account. See 4/22/13 Order, ECF No. 65 at 3-4. That order directed Mr. Tolat to return all confidential information to Integral, confirmed that he could not keep the information, and established procedures to verify that he no longer had the information (as he represented). *Id.* The procedures also included a forensic analysis of his hard drive to confirm whether and when he transferred any information.

The issue now is Integral’s April 9, 2013 Rule 45 Subpoena to Dropbox for broad information beyond that contemplated in the previous joint letter brief and beyond that ordered by the court. 5/15/13 Joint Letter Brief, ECF No. 80. For example, it asks for all documents uploaded to, downloaded from, or accessed and viewed from Mr. Tolat’s Dropbox from January 19, 2012 to the present, even though the court devised procedures to segregate out personal information. See

1 4/22/13 Order, ECF No. 65, at 3-4. The court held a hearing on May 30, 2013 and orders the
2 following new procedures.

3 **ANALYSIS**

4 The court's last discovery order was about forensic analysis of computer hardware to show what
5 Mr. Tolat did or did not do with Integral's private information, and it also was about confirming that
6 Mr. Tolat did not retain any sensitive information (while still protecting his private information and
7 any information attributable to his new employer). The second point was all that was addressed in
8 the court's order about the Dropbox account.

9 Integral's subpoena to Dropbox now is broader, and its relevance apparently is about showing
10 what Mr. Tolat did and did not do with Integral information. The content it sought is broader than
11 what is relevant (in that its "all documents" approach is not limited to Integral information). It also
12 violates the court's approach to protecting private information. Integral also should have fronted the
13 issue. Dropbox apparently is resisting providing content under the Electronic Communications
14 Privacy Act, 18 U.S.C. § 2703, although it will produce non-content information such as subscriber
15 information. *See* Joint Letter Brief, ECF No. 80 at 6, and Ex. 7, ECF No. 8-7 at 5-6 (for subscriber
16 viral.tolat@gmail.com). Integral's view is that this non-content information is all that is at issue
17 now, and it reserves its option of moving to compel the content information from Dropbox. Joint
18 Letter Brief, ECF No. 80 at 6.

19 At the hearing, the court asked defense counsel whether he objected to the production of the non-
20 content information such as subscriber information, and he said that he did not object.

21 The court also discussed with the parties what Integral apparently wants to do, which is
22 reconstruct a forensic evaluation of what Mr. Tolat did with Integral's private information and his
23 Dropbox account. Possible things that could be revealed are what he uploaded (which is
24 information that duplicates and confirms what Integral can see from its analysis of its own servers),
25 what he downloaded to his personal computer (which is information that may be confirmed through
26 the forensic analysis of the computer hard drive contemplated in the court's last order), and what
27 was transferred to other computers (such as possibly a computer or storage media device affiliated
28 with his new company). Intermingled with all of this are the privacy concerns (both Mr. Tolat's

1 and his new employer's) that the court tried to address in its previous order. There also is a burden
2 articulated by Dropbox, the overbroad content of what Integral seeks, and the interplay with Mr.
3 Tolat's own discovery obligations to provide documents relevant to any party's claim or defense.
4 Fed. R. Civ. P. 26(b)(1). That obligation does not change just because the information is with
5 Dropbox.

6 The other issue is that Mr. Tolat has agreed to give the independent expert full access to his
7 Dropbox account to accomplish the forensic investigation consistent with maintaining the privacy
8 interests. Integral countered that not all information will be accessible from end user access and
9 instead, the subpoenaed information is necessary for the forensic analysis it wants to do.

10 The solution is that the content information will be produced not to Integral but to Mr. Tolat and
11 the independent expert. This addresses Dropbox's concerns about disclosing content because it is
12 disclosure to Mr. Tolat (through his attorney). It addresses Integral's "don't trust him" issues
13 because Mr. Tolat's attorney will disclose it to the independent expert. It addresses privacy issues
14 by the use of the independent expert.

15 If there are additional burden issues on Dropbox, they should be narrowed by the parties by
16 having their technical people discuss with Dropbox what can be ascertained by the independent
17 expert's end user access and what needs to be provided by Dropbox. Also, Integral can tell when
18 the uploads happened (presumably after January 19, 2012). At some point, it may become clear
19 what happened to the uploaded information (thus obviating the need for production of all
20 information from 2012 "to the present"). The court also ordered that Mr. Tolat does not need to give
21 his passwords to Integral.

22 The process here mimics the process already devised by the court to analyze Mr. Tolat's hard
23 drive and is designed to show what happened to Integral's information and make sure that Mr. Tolat
24 does not have it any more.

25 In a different case, the court would stage this by conducting the hard drive analysis, having the
26 expert evaluate what he can from end user access (particularly with an eye toward clarifying that Mr.
27 Tolat has no information that he is not entitled to), and then seeing what else should be done. But
28 here, Integral cannot meaningfully engage in settlement conversations until it clarifies what

1 happened with its sensitive information. The court thus orders this process now. At the same time,
2 the parties should consider the costs of this process and how it bears on the dollar values at stake in
3 the litigation and should include the court in the process if the costs exceed the value to Integral.
4 The parties also should be mindful that at some point, the forensic analysis will provide enough
5 clarity that the expert can stop.

6 **IT IS SO ORDERED.**

7 Dated: May 30, 2013



LAUREL BEELER
United States Magistrate Judge

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