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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE LETTER ROGATORY – REQUEST  
FOR INTERNATIONAL JUDICIAL  
ASSISTANCE FROM THE HARJU  
COUNTRY COURT IN ESTONIA  
PETITION OF LYONESS EESI OÜ, CIVIL  
MATTER NO. 2-16-599

FOR INFORMATION FROM  
AUTOMATIC INC.

Case No. 17-mc-80044-MEJ

**ORDER GRANTING PETITION**

Re: Dkt. No. 1

**INTRODUCTION**

Petitioner United States of America (“Petitioner”), on behalf of the Harju County Court in Estonia (the “Estonia Court”), filed this *ex parte* Application pursuant to 28 U.S.C. § 1782. Appl., Dkt. No. 1; Mem. in Support of Appl. (“Mem.”), Dkt. No. 1-1. Petitioner requests the issuance of an order authorizing it to obtain discovery from Automatic Inc. (“Automatic”)<sup>1</sup> for the Estonia Court’s use in a foreign proceeding pursuant to 28 U.S.C. section 1782. *See id.* Having considered Petitioner’s papers, the record in this matter, and the relevant legal authority, the Court now issues the following Order.

**BACKGROUND**

The Estonia Court requests that the United States Attorney’s Office for the Northern District of California obtain information and documents from Automatic, a company located in San Francisco, California. Mem. at 1; Molinari Decl. ¶ 2, Dkt. No. 2; *id.*, Ex. A (Request for Int’l Assistance), Dkt. No. 2-1. Automatic describes itself as “the people behind WordPress.com, . . .

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<sup>1</sup> Petitioner’s Motion and the Declaration of Gioconda Molinari spell the respondent’s name as “Automatic” but it is in fact spelled “Automatic.” *See* Molinari Decl., Ex. C (email from Automatic). The Court adopts this spelling throughout the Order.

1 [whose] common goal is to democratize publishing so that anyone with a story can tell it. . . .”<sup>2</sup>  
2 The Estonia Court seeks pre-trial discovery for use in a pending lawsuit brought by Lyoness Eesti  
3 OÜ (“Lyoness”) related to “incorrect factual allegations” published on a WordPress.com web  
4 page. Molinari Decl. ¶ 4 & Request for Int’l Assistance. Specifically, the Estonia Court seeks:

5 (1) Information submitted at the moment of registration of the web  
6 page <https://petuskeem.wordpress.com>, including the IP address  
7 used upon registration, the username, given names and surnames,  
8 dates of birth, e-mail address, and other information submitted  
9 together with any information provided by later amendments; and

10 (2) Information submitted upon adding and changing information on  
11 the web addresses <https://petuskeem.wordpress.com>,  
12 <https://petuskeem.wordpress.com/u/ejaanud>, and  
13 <https://petuskeem.wordpress.com/lyoness-eesti/>, including IP  
14 addresses, usernames with dates, when these IP addresses and  
15 usernames were used for changing the web pages, and the e-mail  
16 address and other known information used by the person who added  
17 the information on the web page.

18 Molinari Decl. ¶ 3 & Request for Int’l Assistance.

19 By letter dated January 9, 2017, Petitioner requested Automatic voluntarily provide the  
20 requested information. Molinari Decl. ¶ 5. On January 17, 2017, Automatic informed Petitioner  
21 that it will not voluntarily provide the requested information, but will respond to a subpoena. *Id.* ¶  
22 6 & Ex. C (email from Wordpress).

23 On March 29, 2017, Petitioner filed the instant application. Petitioner also requests the  
24 Court appoint Assistant United States Attorney (“AUSA”) Gioconda Molinari as Commissioner  
25 and authorize her to obtain the requested information from Automatic.

### 26 LEGAL STANDARDS

27 The purpose of Section 1782 is “to provide federal-court assistance in gathering evidence  
28 for use in foreign tribunals.” *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 247  
(2004). Section 1782(a) provides in pertinent part:

The district court of the district in which a person resides or is found  
may order him to . . . produce a document or other thing for use in a  
proceeding in a foreign or international tribunal . . . . The order may  
be made . . . upon the application of any interested person and may

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<sup>2</sup> Automatic, About Us, <https://automatic.com/about> (last visited April 18, 2017).

1 direct that the testimony or statement may be given, or the document  
or other thing be produced, before a person appointed by the court.

2 Before granting a Section 1782 application, courts first must confirm three statutory requirements  
3 are present: “(1) the discovery sought is from a person residing in the district court to which the  
4 application is made; (2) the discovery is for use in a proceeding before a foreign tribunal; and (3)  
5 the application is a foreign or international tribunal or an interested person.” *In re Ex Parte Apple*  
6 *Inc.* (“*Apple*”), 2012 WL 1570043, at \*1 (N.D. Cal. May 2, 2012) (citation and internal quotation  
7 marks omitted). If the three requirements are present, and if discovery would not violate any  
8 legally-applicable privilege, “a district court is free to grant discovery in its discretion.” *Schmitz v.*  
9 *Bernstein Liebhard & Lifshitz, LLP*, 376 F.3d 79, 83-84 (2d Cir. 2004) (quotation omitted); 28  
10 U.S.C. § 1782(a).

11 If these statutory requirements are present, district courts consider four factors (the “*Intel*  
12 factors”) in deciding whether to exercise their discretion:

13 (1) whether the “person from whom discovery is sought is a  
14 participant in the foreign proceeding”; (2) “the nature of the foreign  
15 tribunal, the character of the proceedings underway abroad, and the  
16 receptivity of the foreign government, or the court or agency abroad  
17 to U.S. federal-court judicial assistance”; (3) whether the discovery  
request is an “attempt to circumvent proof-gathering restrictions or  
other policies of a foreign country or the United States”; and (4)  
whether the discovery is “unduly intrusive or burdensome.”

18 *Apple*, 2012 WL 1570043, at \*1 (quoting *Intel*, 542 U.S. at 264-65). Additionally, district courts  
19 must exercise their discretion with the “twin aims” of Section 1782 in mind: (1) “providing  
20 efficient assistance to participants in international litigation” and (2) “encouraging foreign  
21 countries by example to provide similar assistance to our courts.” *Intel*, 542 U.S. at 252 (internal  
22 quotation marks omitted).

23 Although *ex parte* requests are generally disfavored because they disrupt the adversarial  
24 system, an *ex parte* application pursuant to Section 1782 is an acceptable method for requesting  
25 discovery because it provides procedural safeguards. See *In re Letters Rogatory from Tokyo Dist.,*  
26 *Tokyo, Japan*, 539 F.2d 1216, 1219 (9th Cir. 1976) (*ex parte* application acceptable because  
27 subpoenaed parties may raise objections and exercise their due process rights by motioning the  
28 court to quash the subpoenas); *IPCom GMBH & Co. KG v. Apple Inc.*, 61 F. Supp. 3d 919, 922

1 (N.D. Cal. 2014) (“It is common for parties to file *ex parte* applications, as parties will be given  
2 adequate notice of any discovery taken pursuant to the request and will then have the opportunity  
3 to move to quash the discovery or to participate in it.” (footnote and internal quotation marks  
4 omitted)); see *In re Judicial Assistance Pursuant to U.S.C. Sec. 1782 ex rel. Macquarie Bank Ltd.*  
5 (*“Macquarie Bank”*), 2014 WL 7706908 at \*1 (D. Nev. June 4, 2014) (section “1782 petitions are  
6 frequently reviewed on an *ex parte* basis.”).

## 7 DISCUSSION

### 8 A. Statutory Requirements

9 Petitioner has established the Application meets the minimum statutory requirements of  
10 Section 1782. First, Automattic is headquartered in San Francisco, California (Molinari Decl., Ex.  
11 C), which is in this District. Second, the requested discovery is for use in a proceeding before a  
12 foreign tribunal, i.e., a lawsuit brought in the Estonia Court by Lyoness. Third, Lyoness is an  
13 “interested person” under Section 1782. See *Intel*, 542 U.S. at 256 (litigant in a foreign action  
14 qualifies as an interested person under Section 1782). This Court has the authority to compel  
15 discovery under Section 1782.

### 16 B. Intel Discretionary Factors

17 While the Court has the authority to grant discovery under Section 1782, it retains  
18 discretion to decide what discovery, if any, should be permitted. See *Intel*, 542 U.S. at 264-65.  
19 The Court uses the four *Intel* factors to assist in this determination. “Although the Court  
20 individually analyzes each discretionary factor, they are not stand-alone categorical imperatives  
21 but rather involve overlapping considerations, which are considered collectively by the [C]ourt.”  
22 *In re Appl. of Joint Stock Co. Raiffeisenbank*, 2016 WL 6474224, at \*4 (N.D. Cal. Nov. 2, 2016)  
23 (internal quotation marks and citation omitted).

#### 24 1. Participant in the Foreign Proceeding

25 The first *Intel* factor is whether “the person from whom discovery is sought is a participant  
26 in the foreign proceeding.” *Intel*, 542 U.S. at 264. “[W]hen the person from whom discovery is  
27 sought is a participant in the foreign proceeding . . . the need for § 1782(a) aid generally is not as  
28 apparent as it ordinarily is when evidence is sought from a nonparticipant in the matter arising

1 abroad.” *Id.* Foreign tribunals can compel discovery from parties appearing before them,  
2 obviating the need for U.S. judicial assistance; however, entities or persons outside a foreign  
3 tribunal’s jurisdiction may possess evidence that is unobtainable absent Section 1782 aid. *Id.*

4 The Court’s main concern is whether the evidence sought is within reach of the Estonia  
5 Court. *Macquarie Bank*, 2015 WL 3439103, at \*6 (“[T]he key issue is whether the material is  
6 obtainable through the foreign proceeding.” (citation omitted)). This factor weighs in Petitioner’s  
7 favor: the record does not indicate Automatic is or will be a participant in the foreign  
8 proceedings, thus the evidence requested appears to be beyond the Estonia Court’s jurisdiction.

9 2. Receptivity of Foreign Tribunal to Judicial Assistance

10 The second *Intel* factor contemplates “the nature of the foreign tribunal, the character of  
11 the proceedings underway abroad, and the receptivity of the foreign government, or the court or  
12 agency abroad to U.S. federal-court judicial assistance.” *Intel*, 542 U.S. at 264. Specifically, the  
13 issue is whether the foreign tribunal “is willing to consider the information sought.” *Siemens AG*  
14 *v. W. Digital Corp.*, 2013 WL 5947973, at \*3 (C.D. Cal. Nov. 4, 2013).

15 This factor weighs in favor of Petitioner. On February 17, 2016, the Estonia Court  
16 requested information from Automatic to establish the identity of the individual(s) publishing  
17 information on specific web pages. Molinari Decl. ¶¶ 3-4. It is reasonable to believe the Estonia  
18 Court will consider the evidence sought given the Estonia Court requested it. *See Request for Int’l*  
19 *Assistance.*

20 3. Attempt to Circumvent Foreign Proof-Gathering Restrictions

21 The third *Intel* factor is whether the Section 1782 request is “an attempt to circumvent  
22 foreign proof-gathering limits or other policies of a foreign country or the United States.” *Intel*,  
23 542 U.S. at 264-65. Courts are not required to determine whether an applicant has exhausted its  
24 discovery attempts abroad; however, “a perception that an applicant has ‘side-stepped’ less-than-  
25 favorable discovery rules by resorting immediately to § 1782 can be a factor in a court’s analysis.”  
26 *In re Cathode Ray Tube Antitrust Litig.*, 2013 WL 183944, at \*3 (N.D. Cal. Jan. 17, 2013) (citing  
27 *In re Appl. of Caratube Int’l Oil Co.*, 730 F. Supp. 2d 101, 107-08 (D.D.C. 2010)). Where a  
28 foreign court has requested the information there is a presumption that the application is not an

1 attempt to circumvent foreign proof-gathering procedure. *See In re Request for Int’l Judicial*  
 2 *Assistance from the Nat’l Ct. Admin. of the Republic of Korea*, 2015 WL 1064790, at \*2 (N.D.  
 3 Cal. Mar. 11, 2015) (“[T]he [foreign] court requested the information, so it is clear that it is  
 4 receptive to this court’s assistance and that the request is not an attempt to circumvent foreign  
 5 proof-gathering restrictions or other policies of a foreign country or the United States.”); *see also*  
 6 *Digital Shape Techs., Inc. v. Glassdoor, Inc.* (“*Digital Shape*”), 2016 WL 6995881, at \*3 (N.D.  
 7 Cal. Nov. 30, 2016) (“[T]he [foreign] court’s order authorizing issuance of the subpoena  
 8 demonstrates that the request is not an attempt to circumvent proof-gathering restrictions in either  
 9 [the foreign jurisdiction] or the United States.”).

10 There is no indication Lyoness seeks to bypass proper proof-gathering policy or procedure  
 11 in either Estonia or the United States; on the contrary, the Estonia Court issued a ruling on behalf  
 12 of Lyoness requesting the assistance of the U.S. Department of Justice to obtain the information.  
 13 Molinari Decl. ¶ 4; Request for Int’l Assistance. The Court finds that the third *Intel* factor weighs  
 14 in favor of Petitioner.

15 4. Undue Intrusion or Burden

16 The final *Intel* factor asks whether the discovery requested is “unduly intrusive or  
 17 burdensome.” *Intel*, 542 U.S. at 265. Discovery requests must be “proportional” considering “the  
 18 issues at stake in the action . . . the importance of the discovery in resolving the issues, and  
 19 whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R.  
 20 Civ. P. 26(b)(1). “Requests are unduly intrusive and burdensome where they are not narrowly  
 21 tailored, request confidential information and appear to be a broad ‘fishing expedition’ for  
 22 irrelevant information.” *Qualcomm*, 162 F. Supp. 3d at 1043 (citation omitted). “[U]duly  
 23 intrusive or burdensome requests may be rejected or trimmed.” *Intel*, 542 U.S. at 265.

24 The Court finds the fourth *Intel* factor also weighs in favor of granting the Application.  
 25 Petitioner requests specific private user information from Automatic in order to establish the  
 26 proper parties to name as defendants in the Estonia Court proceeding. *See* Molinari Decl. ¶¶ 3-4.  
 27 This information is necessary for resolving the issues at stake in the Estonia Court action.  
 28 Petitioner has sufficiently confined its request to specific web addresses and user information for

1 the user(s) who created and edited the web pages at issue in that lawsuit. *Id.* Although Petitioner  
2 seeks private user information, the Court cannot conclude at this time that the request is unduly  
3 intrusive or burdensome. *See Digital Shape*, 2016 WL 6995881, at \*1 (granting discovery of  
4 online information removed from a website, along with the email and internet protocol (“IP”)  
5 addresses of the individuals who had submitted the removed information); *see Assef v. Does 1-10*,  
6 2015 WL 3430241, at \*2 (N.D. Cal. May 28, 2015) (allowing discovery of documents sufficient to  
7 identify the names, addresses, telephone numbers, and IP and email addresses of individuals or  
8 entities who created, owned, and operated a blog); *see also In re Roebbers*, 2012 WL 2862122, at  
9 \*3 (N.D. Cal. July 11, 2012) (“Internet service providers and operators of communications  
10 systems are generally familiar with this type of discovery request. [Petitioner’s] request does not  
11 appear to be unduly intrusive or burdensome. Should any of the subpoenaed entities believe that it  
12 is, they may raise the issue at that time.”). If Automattic seeks to challenge Petitioner’s subpoena,  
13 the Court’s ruling does not preclude it from bringing a motion to quash or modify.

14 **CONCLUSION**

15 In light of the foregoing analysis, the Court finds Petitioner establishes the statutory  
16 requirements of Section 1782 and that the discretionary *Intel* factors weigh in favor of granting the  
17 Application. Accordingly, the Court GRANTS Petitioner’s Application, appoints AUSA Molinari  
18 as Commissioner, and authorizes Molinari to obtain the requested information from Automattic.  
19 Petitioner shall serve the subpoena along with a copy of this Order and must include a return date  
20 at least 21 days after service.

21 **IT IS SO ORDERED.**

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Dated: April 24, 2017

  
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MARIA-ELENA JAMES  
United States Magistrate Judge