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**\*E-FILED 11-19-2009\***

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

NETBULA, LLC and DONGXIAO YUE,

No. C08-00019 JW (HRL)

Plaintiffs,

v.

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFFS'  
MOTION TO COMPEL  
INTERROGATORY ANSWERS**

CHORDIANT SOFTWARE, INC., STEVEN R.  
SPRINGSTEEL, and DEREK P. WITTE,

Defendants.

**[Re: Docket No. 167]**

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Plaintiffs Netbula LLC (“Netbula”) and Dongxiao Yue sue for alleged copyright infringement of Netbula’s software products. They claim that defendants’ use of Netbula’s products is either unlicensed or exceeds the licensed use.

Plaintiffs now move to compel defendant Chordiant Software, Inc. (“Chordiant”) to answer Interrogatories 5, 6, 9, 10 and 17-19. Interrogatories 5, 6, 9, 10 and 17-18 essentially ask Chordiant to identify the number of copies of Netbula’s software that (a) Chordiant has made and (b) Chordiant has authorized others to make. Interrogatory 19 seeks the identity of all Chordiant employees or independent contractors who used Netbula’s JRPC software in developing Chordiant’s products. Although all discovery has now closed, plaintiffs also seek an order permitting them to depose any individuals or entities identified in response to Interrogatory 19. Defendants oppose the motion. Upon consideration of the moving and responding papers, as well as the arguments of counsel, this court grants the motion in part and

1 denies it in part.

2 To the extent defendants have answered by referencing general categories of documents  
3 pursuant to Fed. R. Civ. P. 33(d) (e.g., Interrogatory 6), the court finds that they should  
4 supplement their response to identify those documents with more particularity (i.e., by  
5 document production numbers). Insofar as defendants have answered by incorporating by  
6 reference other interrogatory responses (e.g., Interrogatory 18), they shall serve a supplemental  
7 response which is complete in and of itself. The supplemental responses shall be served **no**  
8 **later than November 30, 2009.**

9 Plaintiffs' motion is otherwise denied for the following reasons:

10 In essence, plaintiffs say that they want to know how many copies of Netbula's software  
11 have been made by Chordiant's customers. However, none of the interrogatories at issue  
12 actually ask for that information. In any event, Chordiant represents to the court that it licenses  
13 its products on a use-based model and does not expressly limit or track the number of copies  
14 that its customers make. Defendant says that it has nonetheless has provided (a) all available  
15 shipping records; (b) the number of copies of products that were actually shipped to customers  
16 based on those records; (c) all license agreements for Chordiant's Marketing Director product;  
17 (d) a spreadsheet showing all customers from whom any Marketing Director revenue has been  
18 recognized; and (e) Fed. R. Civ. P. 30(b)(6) deposition testimony and an expert report with  
19 estimates of the numbers of copies made by customers.


20 This court declines to order Chordiant to disclose the number of copies of Netbula's  
21 software that have been made for purposes of preparing a defense in this litigation  
22 (Interrogatory 9). Plaintiffs have not demonstrated that this information is relevant or  
23 reasonably calculated to lead to the discovery of admissible evidence. FED. R. CIV. P. 26(b)(1).  
24 They cite no authority for their request. And, defendants correctly note that copies made for  
25 litigation purposes have been held to constitute fair use. See, e.g., Religious Technology Ctr. v.  
26 Wollersheim, 971 F.2d 364, 367 (9th Cir. 1992) (concluding that defense counsel's copying of  
27 documents for the purpose of preparing the defense experts in litigation was fair use) (citations  
28 omitted).

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Plaintiffs have not managed to persuade this court that defendants have failed to satisfy their reasonably construed discovery obligations.

SO ORDERED.

Dated: November 19, 2009



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HOWARD R. LLOYD  
UNITED STATES MAGISTRATE JUDGE

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