

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RIGHTHAVEN, LLC,) Case No.: 2:10-cv-00484-GMN-LRL
Plaintiff,) ORDER
vs.)
MAJORWAGER.COM, INC.,)
Defendant.)

INTRODUCTION

Before the Court is Defendant’s Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1), 12(b)(2), and 12(b)(6) for lack of subject matter jurisdiction, lack of personal jurisdiction, and for failure to state a claim upon which relief can be granted (ECF No. 8). Plaintiff filed a response on June 18, 2010 (ECF No. 9) and Defendant filed a reply on June 28, 2010 (ECF No. 11).

IT IS HEREBY ORDERED THAT Defendant’s Motion is DENIED.

FACTS AND BACKGROUND

This case arises out of an alleged copyright infringement. Righthaven, LLC (“Plaintiff”), a Nevada corporation, claims that Majorwager.com, Inc. (“Defendant”), a Canadian corporation, reproduced and displayed on its website an article owned by Plaintiff. Defendant is the owner and registrant of the Internet domain majorwager.com, a website that primarily facilitates online conversation involving topics related to sports betting.¹ Plaintiff is the owner of the copyright entitled “March to Book Begins” that was published in the Las Vegas Review Journal (LVRJ) on March 18, 2010. (Complaint

¹ See Majorwager.com, http://www.majorwager.com.

1 Ex. 14, ECF No. 1 (“Article”). On that same day that it was published, the Article was
2 posted in the forum section of Defendant’s website. The Article was posted by a person
3 identified only as “CLEVFAN.” A question of fact exists as to whether “CLEVFAN” is
4 a mere user of the site or an employee of *Majorwager.com*. The Article itself was
5 essentially an opinion piece discussing the NCAA Men’s Basketball Tournament and
6 various betting strategies. On March 24, Stephens Media LLC, a Nevada corporation and
7 parent to the LVRJ, assigned ownership of the Article to Plaintiff as well as the “right to
8 seek redress for past, present and future infringements of copyright.” (*See Copyright*
9 *Assignment Ex. 1 pg. 2, ECF No. 9-1*). The copyright was registered with the Library of
10 Congress and received a registration number on March 29. (*See Compl. Ex. 15 pg. 64,*
11 *ECF No. 1-3*). The complaint also alleges that the individual identified as “CLEVFAN”
12 posted at least fourteen Righthaven-owned literary works on the Majorwager website
13 between September 2009 and March 2010. (*See Complaint Ex. 1-13, 16, ECF No.1*). On
14 April 7, Plaintiff filed suit.

15 ANALYSIS

16 **I. Subject Matter Jurisdiction**

17 Defendant claims lack of subject matter jurisdiction and argues that Plaintiff lacks
18 standing to sue because it did not yet own the copyright during the time of the
19 infringement. Federal Rule of Civil Procedure 12(b)(1) allows for dismissal for lack of
20 subject matter jurisdiction. Federal district courts have original jurisdiction in actions
21 “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. §1331.
22 District courts also have original jurisdiction over claims “arising under” federal laws
23 relating to patents, copyrights, trademarks and . . . related claims of unfair completion.”
24 28 U.S.C. §1338 (a), (b); *See Scholastic Entertainment, Inc. v. Fox Entertainment Group,*
25 *Inc.*, 336 F.3d 982, 986 (9th Cir. 2003).

1 “The legal or beneficial owner of an exclusive right under a copyright is entitled...
2 to institute an action for any infringement of that particular right committed while he or
3 she is the owner of it.” 17 U.S.C. § 501(b). “A plaintiff who claims copyright
4 infringement must show: (1) ownership of a valid copyright; and (2) that the defendant
5 violated the copyright owner’s exclusive rights under the Copyright Act.” *Ellison v.*
6 *Robertson*, 357 F.3d 1072, 1077 (9th Cir. 2004), *see Feist Publications, Inc. v. Rural Tel.*
7 *Serv. Co.*, 499 U.S. 340, 361 (1991). “[O]nly the owner of an exclusive right under the
8 copyright act is entitled to sue for infringement.” *Silvers v. Sony Pictures Entm’t Inc.*, 402
9 F.3d 881, 889 (9th Cir. 2005). The Ninth Circuit held in *Silvers* that an assignor can
10 transfer the ownership interest in an accrued past infringement, but the assignee only has
11 standing to sue if the interest in the past infringement is expressly included in the
12 assignment and the assignee also owns the actual copyrights. *Id.* at 890 (aligning the
13 Ninth Circuit with the Second Circuit as expressed in *ABKCO Music, Inc. v. Harrisongs*
14 *Music, Ltd.*, 944 F.2d 971 (2nd Cir. 1991)). The Copyright Act outlines qualifying
15 exclusive rights. These rights include reproduction, preparation of derivative works,
16 distribution, and display of copies. 17 U.S.C. § 106(1)–(6).

17 In the instant suit, the parties do not dispute that an unauthorized copy of the
18 Article was posted and displayed on Defendant’s website. Rather, Defendant argues that
19 Plaintiff lacks standing to sue because it did not yet own the copyright during the time of
20 the infringement. *See Giddings v. Vision House Production, Inc.*, 584 F.Supp.2d 1222,
21 1229 (D. Ariz. 2008). However, the copyright assignment between Righthaven and
22 Stephens Media LLC assigns to Righthaven all exclusive ownership rights in and to the
23 Article posted on Defendant’s website, and is expressly inclusive of all previously
24 accrued causes of action related to that article. Specifically, the assignment provides:

25 ///

1 Assignor hereby transfers, vests and assigns [the Article]...to
2 Righthaven...all copyrights requisite to have Righthaven
3 recognized as the copyright owner of the [Article] for purposes
4 of Righthaven being able to claim ownership as well as the right
to seek redress for *past, present and future infringements* of the
copyright in and to the [Article].

5 (Copyright Assignment Ex. 1 pg. 2, ECF No. 9-1) (emphasis added). The Plaintiff's
6 complaint identifies this Article and therefore provides enough evidence for the Court to
7 reach a plausible inference that rights to the Article as well as past infringements were
8 transferred to Plaintiff. Absent any other evidence to the contrary², the assignor
9 (Stephens Media) appears to have successfully transferred the ownership interest in the
10 accrued past infringement by expressly stating it in the assignment. As set forth in
11 *Silvers*, the assignment was sufficient to provide Plaintiff standing to sue for the past
12 infringement.

13 **II. Personal Jurisdiction**

14 Defendant claims lack of personal jurisdiction and argues that it would be unduly
15 burdensome to litigate in Nevada and that the Plaintiff can obtain complete and effective
16 relief from the Canadian courts. A defendant may move to dismiss for lack of personal
17 jurisdiction. Fed. R. Civ. P. 12(b)(2). Personal jurisdiction over a nonresident defendant
18 is established when a two-part test is satisfied. First, there must be personal jurisdiction
19 under the laws of the state where it is asserted. *Chan v. Society Expeditions, Inc.*, 39 F.3d
20 1398, 1404 (9th Cir. 1994). Second, the exercise of jurisdiction must satisfy due process.
21 U.S. Const. amend XIV, 1; *Chan*, 39 F.3d at 1404–05.

22
23 ² Defendants do not question, nor do the parties address the true nature of the transfer or any
24 other possible defects related to Plaintiff's standing. Regardless of the assignment's assertions,
25 if only a right to sue was transferred; Plaintiff may lack standing. *ABKCO Music*, 944 at 980
(Copyright Act does not permit copyright holders to choose third parties to bring suits on their
behalf.); citing, *Eden Toys, Inc. v. Florelee Undergarment Co.*, 697 F.2d 27 (2nd Cir. 1982).

1 For a non-resident defendant, the assertion of jurisdiction is constitutionally proper
2 under the Due Process Clause of the Fourteenth Amendment only where there are
3 continuous and systematic contacts with the forum state (general jurisdiction), *Bauman v.*
4 *DaimlerChrysler Corp.*, 579 F.3d 1088, 1094 (9th Cir. 2009), or when there are sufficient
5 minimal contacts with the forum state such that the assertion of personal jurisdiction does
6 not offend traditional notions of fair play and substantial justice (specific jurisdiction),
7 *Int'l Shoe Co. v. State of Wash., Office of Unemployment Compensation & Placement*,
8 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

9 The Ninth Circuit employ's a three-part test to determine whether the exercise of
10 specific jurisdiction satisfies the requirements of due process: (1) the defendant must
11 have purposely availed itself of the privilege of conducting activities in the forum; (2) the
12 plaintiff's claim must arise out of that activity; and (3) the exercise of jurisdiction must
13 be reasonable. *Shute v. Carnival Cruise Lines*, 897 F.2d 377, 381 (9th Cir. 1990).

14 To determine the first part of the Ninth Circuit's test, the "effects" test of *Calder v.*
15 *Jones*, 465 U.S. 783, 789-90 (1983), is used to determine if the defendant purposefully
16 availed itself of the privilege of conducting activities in the forum. "Under *Calder* the
17 'effects' test requires that the defendant allegedly have (1) committed an intentional act,
18 (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is
19 likely to be suffered in the forum state." *Schwarzenegger v. Fred Martin Motor*
20 *Company*, 374 F.3d 797, 803 (9th Cir. 2004). The Ninth Circuit found that where a
21 defendant "willfully infringed copyrights owned by [the plaintiff], which, as [the
22 defendant] knew, had its principal place of business in the Central District [of California],
23 "[t]his fact alone is sufficient to satisfy the 'purposeful availment' requirement."
24 *Columbia Pictures Television v. Krypton Broadcasting of Birmingham, Inc.*, 106 F.3d
25 284, 289 (9th Cir. 1994). Adopting this reasoning, another court in this district recently

1 found that it “is common knowledge that the Las Vegas Review Journal newspaper is
2 published and distributed in Las Vegas, Nevada by the party which assigned the
3 copyrights together with the right to seek redress for past, present and future
4 infringements.” *Righthaven LLC, v. Dr. Shezad Malik Law Firm P.C.*, No. 2:10-cv-0636-
5 RLH-RJJ, 2010 WL 3522372, at *1 (9th Cir. Sept. 2, 2010). Likewise, in this case,
6 Defendant is imputed the common knowledge that the Las Vegas Review Journal
7 newspaper is published and distributed in Las Vegas, which is in the forum state of
8 Nevada. Thus, the first prong of the Ninth Circuit’s three part test is satisfied.

9 The second prong of the Ninth Circuit’s test to determine whether the exercise of
10 specific jurisdiction satisfies due process is that the plaintiff’s claim must arise out of that
11 activity conducted in the forum state. This is easily satisfied as Plaintiff’s claim, that
12 Defendant allegedly infringed the copyrighted material, arose from the local publication
13 of the article in the state of Nevada by the Las Vegas Review Journal and its subsequent
14 posting on the local publisher’s LVRJ website.

15 Finally, under the third prong of the Ninth Circuit test, Plaintiff must demonstrate
16 that the exercise of jurisdiction is reasonable. “[T]here is a presumption of
17 reasonableness upon a showing that the defendant purposefully directed his action at
18 forum residents which the defendant bears the burden of overcoming by presenting a
19 compelling case that jurisdiction would be unreasonable.” *Columbia*, 106 F.3d at 289
20 (quoting *Haisten v. Grass Valley Medical Reimbursement*, 784 F.2d 1392, 1397 (9th Cir.
21 1986) (citing *Burger King*, 471 U.S. at 477, 105 S.Ct. at 2184-85). The five factors to
22 consider when determining if the exercise of personal jurisdiction would be unreasonable
23 are: (1) the burden on the defendant; (2) the forum State’s interest in adjudicating the
24 dispute; (3) the plaintiff’s interest in obtaining convenient and effective relief; (4) the
25 interstate judicial system’s interest in obtaining the most efficient resolution of

1 controversies; and (5) the shared interest of the several States in furthering fundamental
2 substantive social policies. *World-Wide Volkswagen Corporation v. Woodson*, 444 U.S.
3 286, 292 (1980).

4 Defendant argues that it would be unduly burdensome to litigate in Nevada,
5 namely because: (1) a main witness, “Clevfan” is outside the Court’s subpoena power,
6 (2) Nevada only has a neutral interest in this case, (3) there is an adequate alternative
7 forum in Canada, (4) Canada is closer to the witnesses and to the physical evidence than
8 Nevada, and (5) there are no substantive social policies of Nevada that would be
9 burdened by the resolution of this case in a Canadian court. While Defendant has made a
10 strong case regarding factor number one (burden on the defendant), that is not sufficient
11 to overcome factors two thru five. Arguably, the forum state has an interest in
12 adjudicating an infringement upon a news article originated by the forum state’s largest
13 local newspaper publisher written about the Las Vegas, Nevada-based sports books. The
14 Las Vegas Review Journal’s subscribers are purportedly primarily residents of the forum
15 state of Nevada and the LVRJ advertisers consist mainly of local Nevada businesses.
16 Any infringement could reasonably be expected to affect them as well. Finally, Plaintiff
17 has named numerous Defendants in other identical suits each from numerous other states.
18 The interstate judicial system would benefit from the efficient resolution of this case in
19 the same forum as the others. This would serve fundamental substantive common social
20 policies.

21 Defendant argues that the Plaintiff can obtain complete and effective relief from
22 the Canadian courts. However, this case concerns United States copyright laws. While
23 Canada may have a similar cause of action for copyright infringement, a United States
24 court is better situated to apply and rule on the law in this case. As the court finds that
25 the infringement happened in the United States (*see infra* Section III) and the copyright is

1 registered in the United States this factor weighs heavily in Plaintiff's favor to litigate this
2 claim in Nevada. Accordingly, the Defendant has not overcome the presumption of
3 reasonableness and this Court has personal jurisdiction over Defendant.

4 **III. Failure to State a Claim**

5 Defendant argues that Plaintiff's Complaint does not allege any infringing activity
6 occurring in the United States. Federal Rule of Civil Procedure 8(a)(2) requires only "a
7 short and plain statement of the claim showing that the pleader is entitled to relief" in
8 order to "give the defendant fair notice of what the . . . claim is and the grounds upon
9 which it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957). Federal Rule of Civil
10 Procedure 12(b)(6) mandates that a court dismiss a cause of action that fails to state a
11 claim upon which relief can be granted. A motion to dismiss under Rule 12(b)(6) tests
12 the complaint's sufficiency. *See North Star Int'l. v. Arizona Corp. Comm'n.*, 720 F.2d
13 578, 581 (9th Cir. 1983). When considering a motion to dismiss under Rule 12(b)(6) for
14 failure to state a claim, dismissal is appropriate only when the complaint does not give
15 the defendant fair notice of a legally cognizable claim and the grounds on which it rests.
16 *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554, 127 S.Ct. 1955, 1964 (2007).
17 However, facts must be sufficient to edge a complaint from the conceivable to the
18 plausible in order to state a claim. *Id.* In considering whether the complaint is sufficient
19 to state a claim, the court will take all material allegations as true and construe them in
20 the light most favorable to the plaintiff. *See NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898
21 (9th Cir. 1986). The court, however, is not required to accept as true allegations that are
22 merely conclusory, unwarranted deductions of fact, or unreasonable inferences. *See*
23 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

24 The Supreme Court recently clarified that, in order to avoid a motion to dismiss,
25 the complaint must contain "factual content that allows the court to draw the reasonable

1 inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, ----
2 U.S. ----, 129 S.Ct. 1937, 1949 (2009). The Court in *Ashcroft* further stated “[w]here a
3 complaint pleads facts that are “merely consistent with” a defendant’s liability, it “stops
4 short of the line between possibility and plausibility of entitlement to relief.”” *Id.*
5 Therefore, merely making an allegation is not enough to survive a motion to dismiss;
6 facts that a particular defendant may plausibly be liable for the alleged conduct must be
7 pled.

8 In addition “the United States copyright laws do not reach acts of infringement
9 that take place entirely abroad.” *Subafilms, Ltd. v. MGM-Pathe Commc’ns Co.*, 24 F.3d
10 1088, 1098 (9th Cir. 1994). “[P]laintiff can only state a claim fully cognizable under the
11 copyright laws by alleging an act of infringement within the United States.” *Kolbe v.*
12 *Trudel*, 945 F. Supp. 1268, 1270 (D. Ariz. 1996).


13 While Plaintiff’s Complaint in this case does not specifically allege that the
14 alleged infringement occurred within the United States, when adjudicating the
15 defendant’s motion to dismiss under Fed.R.Civ.P. 12(b)(6), all reasonable inferences
16 from the complaint’s factual allegations must be drawn in favor of the plaintiff. *Usher v.*
17 *Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). The complaint does allege that the
18 articles copied were “from a source emanating from Nevada.” Furthermore, it is not
19 difficult to infer that since Righthaven discovered the infringing material on
20 Majorwager’s website, it likely did so in its Nevada office and therefore any infringement
21 on the part of Defendant took place within the United States. *See United Feature*
22 *Syndicate, Inc. v. Miller Features Syndicate, Inc.*, 216 F.Supp.2d 198, 225 (S.D.N.Y.
23 2002) (holding that a New York based newspaper stated a claim of copyright
24 infringement based upon Canadian agent’s display on its Internet website because the
25 website could be accessed from the United States). Moreover, the Complaint sufficiently

1 pleads factual allegations to sustain a claim. Plaintiff has sufficiently demonstrated that
2 (1) the Plaintiff owns the copyrights; and (2) defendant infringed the copyright by
3 duplicating Plaintiff's article and placing the article on defendant's website. *See, Miracle*
4 *Blade, LLC. v. Ebrands Commerce Group, LLC*, 207 F.Supp.2d 1136 (D. Nev. 2002).
5 Therefore, this Court finds that Plaintiff has pled facts sufficient to sustain a cause of
6 action.

7 **CONCLUSION**

8 IT IS HEREBY ORDERED THAT Defendant's Motion to Dismiss (ECF No. 8) is
9 DENIED.

10 DATED this 28th day of October, 2010.

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14 Gloria M. Navarro
15 United States District Judge
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