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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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RIMINI STREET, INC., a Nevada  
corporation;

Plaintiff,

v.

ORACLE INTERNATIONAL  
CORPORATION, a California corporation,

Defendant

2:14-CV-01699-LRH-PAL

ORDER

ORACLE AMERICA, INC., a Delaware  
corporation; and ORACLE  
INTERNATIONAL CORPORATION,

Plaintiffs,

v.

RIMINI STREET, INC.; and SETH RAVIN,  
an individual,

Defendants.

Before the court is counter-claimants Oracle America, Inc. and Oracle International Corporation’s (collectively “Oracle”) motion to strike affirmative defenses. Doc. #49. Counter-defendants Rimini Street, Inc. (“Rimini Street”) and Seth Ravin (“Ravin”) (collectively “counter-defendants”) filed an opposition (Doc. #53) to which Oracle replied (Doc. #67).

1     **I.     Facts and Procedural History**

2             Defendant/counter-claimant Oracle develops and licenses intellectual property related to  
3 computer software and provides related services. Plaintiff/counter-defendant Rimini Street is a  
4 company that provides third-party maintenance and support services to companies that license  
5 Oracle’s software applications. Counter-defendant Ravin is the owner and CEO of Rimini Street.

6             This is the second action between these parties in this district. In the first action, *Oracle*  
7 *USA., Inc.; et al. v. Rimini Street, Inc.; et al.*, case no. 2:10-cv-0106-LRH-PAL (“*Oracle*”), Oracle  
8 brought several claims against Rimini Street and Ravin for copyright infringement and other  
9 business related torts based on a software support service process used by Rimini Street to provide  
10 support services to customers who had licensed Oracle software. That action is still pending before  
11 this court and is currently scheduled for trial in the fall.

12             While *Oracle* was proceeding, Rimini Street allegedly changed the process by which it  
13 serviced customers who had licensed Oracle software. Subsequently, on October 15, 2014, Rimini  
14 Street initiated the present action for declaratory relief that its new process, enacted after July 31,  
15 2014, does not infringe Oracle’s software copyrights. *See* Doc. #1.<sup>1</sup> In response, Oracle filed an  
16 answer in which it alleged various counterclaims against both counter-defendants, including a  
17 claim for copyright infringement for Rimini Street’s new support service model. Doc. #21.  
18 Counter-defendants then filed an answer to Oracle’s counterclaims in which counter-defendants  
19 raised twelve affirmative defenses, including affirmative defenses for copyright misuse and  
20 limitations on exclusive use of computer programs under 17 U.S.C. § 117. Doc. #46. Thereafter,  
21 Oracle filed the present motion to strike affirmative defenses. Doc. #49.

22     **II.     Legal Standard**

23             A motion to strike an affirmative defense is brought pursuant to Federal Rule of Civil  
24 Procedure 12(f), under which a court may strike “from any pleading any insufficient defense or any

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25             <sup>1</sup> Refers to the court’s docket number.  
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1 redundant, immaterial, impertinent or scandalous material.” FED. R. CIV. P. 12(f). Affirmative  
2 defenses are governed by the same pleading standard as complaints. *Wyshak v. City Nat’l Bank*,  
3 607 F.2d 824, 827 (9<sup>th</sup> Cir. 1979) (“The key to determining the sufficiency of pleading an  
4 affirmative defense is whether it gives plaintiff fair notice of the defense.”).

5 A complaint must satisfy the Federal Rule of Civil Procedure 8(a)(2) notice pleading  
6 standard. *See Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1103 (9th Cir. 2008). That  
7 is, a complaint must contain “a short and plain statement of the claim showing that the pleader is  
8 entitled to relief.” FED. R. CIV. P. 8(a)(2). The Rule 8(a)(2) pleading standard does not require  
9 detailed factual allegations; however, a pleading that offers only “labels and conclusions” or “a  
10 formulaic recitation of the elements of a cause of action” will not suffice. *Ashcroft v. Iqbal*, 129 S.  
11 Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

12 Furthermore, Rule 8(a)(2) requires a complaint to “contain sufficient factual matter,  
13 accepted as true, to state a claim to relief that is plausible on its face.” *Id.* at 1949. A claim has  
14 facial plausibility when the pleaded factual content allows the court to draw the reasonable  
15 inference, based on the court’s judicial experience and common sense, that the defendant is liable  
16 for the misconduct alleged. *See id.* at 1949-50.

### 17 **III. Discussion**

18 In its motion, Oracle moves the court to strike counter-defendants’ eighth affirmative  
19 defense for limitations on exclusive use of computer programs under 17 U.S.C. § 117 and tenth  
20 affirmative defense for copyright misuse. Doc. #49. The court shall address both affirmative  
21 defenses below.

#### 22 **A. 17 U.S.C. § 117**

23 Section 117 of the Copyright Act includes two independent defenses to copyright  
24 infringement, Sections 117(a) and 117(c), and one dependent defense, Section 117(b). The court  
25 has reviewed the relevant statutory provisions and finds that none of the defenses are applicable in  
26 this action.

1           Section 117(a) of the Copyright Act provides that it is not copyright infringement for “the  
2 owner of a copy of a computer program to make or authorize the making of another copy or  
3 adaptation of that computer program provided: (1) that such a new copy or adaptation is created as  
4 an essential step in the utilization of the computer program in conjunction with a machine and that  
5 it is used in no other manner, or (2) that such new copy or adaptation is for archival purposes only  
6 and that all archival copies are destroyed in the event that continued possession of the computer  
7 program should cease to be rightful.” 17 U.S.C. § 177(a). Here, Section 177(a) does not apply to  
8 the present action because Oracle’s customers only license, rather than buy, Oracle’s copyrighted  
9 software. Thus, they are not “owners” of the software within the meaning of Section 177(a) as a  
10 matter of law. *See Vernor v. Autodesk, Inc.*, 621 F.3d 1102, 1111 (9th Cir. 2010) (holding that only  
11 an “owner of a copy” may assert a Section 117(a) defense).

12           Section 177(c) is also inapplicable to the present action. Section 177(c) states that it is not  
13 copyright infringement “for the owner or lessee of a machine to make or authorize the making of a  
14 copy of a computer program if such copy is made solely by virtue of the activation of a machine  
15 that lawfully contains an authorized copy of the computer program, for purposes only of  
16 maintenance or repair of that machine, if - (1) such new copy is used in no other manner and is  
17 destroyed immediately after the maintenance or repair is completed; and (2) with respect to any  
18 computer program or part thereof that is not necessary for that machine to be activated, such  
19 program or part thereof is not accessed or used other than to make such new copy by virtue of the  
20 activation of the machine.” 17 U.S.C. § 177(c). However, it is undisputed that Rimini Street does  
21 not maintain or repair its customers’ computer systems or computer hardware. Rather, they provide  
22 support service for software licensed by its customers. Thus, any copies allegedly made by Rimini  
23 are not protected incidental copies made during routine computer hardware maintenance. *See*  
24 *Vernor*, 621 F.3d at 1111. Thus, because Rimini Street provides support services for computer  
25 software and not maintenance or repair services for computer hardware, counter-defendants may  
26 not assert a Section 177(c) defense.

1 Finally, the court finds that Section 177(b) is likewise unavailable to counter-defendants.  
2 Section 177(b) is a dependent defense and only applies to the lease, sale, or transfer of copies made  
3 pursuant to either Section 177(a) or (c). As neither Section 177(a) or (c) applies in this action,  
4 Section 177(b) likewise does not apply. Therefore, the court shall dismiss counter-defendants'  
5 eighth affirmative defense for limitations on exclusive use of computer programs under 17 U.S.C.  
6 § 117.

### 7 **B. Copyright Misuse**

8 “Copyright misuse is a judicially created affirmative defense to copyright infringement.”  
9 *Apple Inc. v. Psystar Corp.*, 658 F.3d 1150, 1157 (9th Cir. 2011). The equitable defense of  
10 copyright misuse “forbids a copyright holder from securing an exclusive right or limited monopoly  
11 not granted by the Copyright Office” by preventing “copyright holders from leveraging their  
12 limited monopoly to allow them control of areas outside the monopoly.” *A&M Records, Inc. v.*  
13 *Napster, Inc.*, 239 F.3d 1004, 1026 (9th Cir. 2001) (internal quotations omitted). The copyright  
14 misuse defense precludes a copyright owner from enforcing the copyright<sup>2</sup> during periods of  
15 misuse. *See Practice Mgmt. Info. Corp. v. Am. Med. Ass’n*, 121 F.3d 516, 520 (9th Cir. 1997).

16 In their affirmative defense for copyright misuse, counter-defendants allege that Oracle is  
17 using its software licenses to unlawfully leverage a monopoly in the support services market by  
18 drafting its licenses in such a way as to preclude licensees from seeking out third-party support  
19 service companies like Rimini Street.

20 The court has reviewed the documents and pleadings on file in this matter and finds that the  
21 licensing restrictions alleged by Rimini Street are well within Oracle’s statutory rights as a  
22 copyright holder and therefore do not constitute copyright misuse. It is not misuse to exercise the  
23 “exclusive rights of copyright holders,” including “refusing to license a copyrighted work or by

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25 <sup>2</sup> The essence of the grant of a copyright is the exclusive right to exploit the work, including the rights  
26 to reproduce the work, distribute copies of the work, and prepare derivative works based upon the copyrighted  
material. 17 U.S.C. § 106.

1 doing so only on terms the copyright owner finds acceptable.” *A&M Records, Inc. v. Napster, Inc.*,  
2 239 F.3d 1004, 1027 (9th Cir. 2001). The alleged limitations on who may have access to the  
3 software and the manner in which it may be accessed fall squarely within the scope of Oracle’s  
4 right to control reproduction and distribution of copyrighted works. *See UMG Recordings*, 92 F.  
5 Supp. 2d at 351 (“A [copyright holder’s] exclusive rights . . . include the right, within broad limits,  
6 to curb the development of such a derivative market by refusing to license a copyrighted work or  
7 by doing so only on terms the copyright owner finds acceptable.”)


8 Rimini Street fails to allege any conduct that could constitute copyright misuse. Rimini  
9 Street contends that Oracle drafts its license agreements in such a manner that no other company  
10 can offer customers the support of a vendor without committing copyright infringement. But no  
11 where does Rimini Street allege that Oracle’s licenses prohibit its licensees from seeking such  
12 vendors. Courts have consistently and summarily rejected the affirmative defense of copyright  
13 misuse where the copyright owner did not prohibit its licensees from either using or independently  
14 developing a competing product. *See Microsoft Corp.*, 123 F. Supp. 2d at 955-56. Here, Oracle’s  
15 licensing agreements do not specifically preclude a customer from using a competing company or  
16 promising that it will not use competing services. The fact that there may not be any manner by  
17 which a competing company like Rimini can engage in its services without engaging in copyright  
18 infringement does not constitute copyright misuse. So long as the license does not require the  
19 customer to promise not to use a competitor’s products or prohibit development of competing  
20 products, there is no misuse even if the license restrictions give the copyright holder an advantage  
21 over a competitor on non-copyrighted products or services. *See e.g., Practice Management*  
22 *Information Co. v. The American Medical Assoc.*, 121 F.3d 516, 521 (9th Cir. 1997) (finding that a  
23 licensing agreement that required its customers to not use a competitor’s product was copyright  
24 misuse); *Apple, Inc. v. Psystar Corp.*, 673 F. Supp. 2d 931, 939 (9th Cir. 2009) (finding that a  
25 license agreement that prohibited customers from using plaintiff’s product on a competitor’s  
26 product, but did not prohibit customers from using a competitor’s product, was not copyright

1 misuse). Therefore, the court finds that counter-defendants have failed to allege a claim for  
2 copyright misuse and the court shall strike their eighth affirmative defense for copyright misuse  
3 accordingly.

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5 IT IS THEREFORE ORDERED that counter-claimants' motion to strike affirmative  
6 defenses (Doc. #49) is GRANTED. Counter-defendants' eighth affirmative defense for limitations  
7 on exclusive use of computer programs under 17 U.S.C. § 117 and tenth affirmative defense for  
8 copyright misuse are DISMISSED.

9 IT IS SO ORDERED.

10 DATED this 9th day of July, 2015.

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13 LARRY R. HICKS  
14 UNITED STATES DISTRICT JUDGE  
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