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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CORBIS CORPORATION, a Nevada Corporation,

Plaintiff,

v.

INTEGRITY WEALTH MANAGEMENT, INC., a Wisconsin corporation,

Defendant.

Case No. C09-708 MJP

ORDER ON DEFENDANT’S MOTION TO DISMISS OR ALTERNATIVELY FOR CHANGE OF VENUE

The above-entitled Court, having received and reviewed:

1. Defendant’s Motion To Dismiss or Alternatively For Change of Venue (Dkt. No. 11)
2. Plaintiffs’ Response to Defendant’s Motion to Dismiss or Alternatively For Change of Venue (Dkt. No. 15)
3. Defendant’s Reply in Response to Motion Dismiss or Alternatively For Change of Venue (Dkt. No. 19)

and all exhibits and declarations attached thereto, makes the following ruling:

IT IS ORDERED that Defendant’s motion to dismiss or alternatively for change of venue is DENIED.

The reasons for the Court’s decision are discussed below.

1 **Background**

2 The following facts are uncontroverted and drawn from Defendant’s Motion to  
3 Dismiss or Alternatively For Change of Venue. Dkt. No. 11. Plaintiff is a Nevada  
4 corporation which licenses photographs and art images on behalf of itself and the  
5 photographers it represents. Plaintiff owns and operates a website located at www.corbis.com  
6 where users can search images from Plaintiff’s collection and then pay to license the images  
7 for personal or commercial use. The servers which support this website are located in Seattle,  
8 Washington, as is Plaintiff’s headquarters. The images in Plaintiff’s collection are the subject  
9 of copyright protection.

10 Defendant is a financial services organization based in Wisconsin. In April and  
11 September 2007, Defendant entered into contracts with a web developer, Ganitham Computer  
12 Services, LLC, to produce, host, and manage its corporate websites, www.integritywm.com  
13 and www.integrityps.com.

14 On May 20, 2009, Plaintiff brought this action alleging direct copyright infringement,  
15 vicarious copyright infringement, and breach of contract based on Defendant’s use of images  
16 on Defendant’s corporate websites. Plaintiff alleges that Defendant or Defendant’s agent  
17 unlawfully downloaded or copied at least nine of Plaintiff’s copyrighted images which were  
18 stored on Plaintiff’s servers in Seattle and then uploaded and displayed these images on  
19 Defendant’s websites. Id. Defendant has yet to answer in this matter. Defendant brings this  
20 motion pursuant to Rule 12(b)(2) and (3) arguing lack of personal jurisdiction and *forum non*  
21 *conveniens* and Rule 12(b)(7) requesting joinder of Ganitham as a party defendant in this  
22 action. In the alternative, Defendant seeks transfer of this action to the Eastern District of  
23 Wisconsin.

24 **Discussion**

25 **A. Rule 12(b)(2) Motion**

This Court has the authority to dismiss an action for lack of personal jurisdiction under

1 FRCP 12(b)(2). While it is Plaintiff's burden to establish the Court's personal jurisdiction  
2 over Defendant, Plaintiff is only required to make a prima facie showing of jurisdictional facts  
3 to withstand a motion to dismiss. See Doe v. Unocal Corp., 248 F.3d 915, 922 (9th Cir. 2001)  
4 (holding that "the plaintiff need only demonstrate facts that if true would support jurisdiction  
5 over the defendant"). In considering this motion, the Court will take as true Plaintiff's  
6 allegations and resolve all factual disputes in Plaintiff's favor. Id.

7 Defendant states that it is a Wisconsin corporation which is headquartered in and  
8 organized in Wisconsin and that it negotiated and executed its contract with its webpage  
9 designer in Wisconsin. Defendant further states that has no registered agent in Washington,  
10 no office in Washington, and no minimum contacts with the state that would justify this  
11 Court's jurisdiction over it. Nevertheless, the Court finds that Defendant is subject to  
12 Washington's long-arm statute.

13 Washington's long-arm statute establishes personal jurisdiction over a foreign party to  
14 the full extent permitted by due process. Byron Nelson Co. v. Orchard Management Corp.,  
15 95 Wash.App. 462, 465 (1999). Due process is satisfied when: (1) the nonresident defendant  
16 purposefully does some act or consummates some transaction in the forum state; (2) the cause  
17 of action arises from, or is connected with, such act or transaction; and (3) the assumption of  
18 jurisdiction does not offend traditional notions of fair play and substantial justice. Noel v.  
19 Hall, 341 F.3d 1148, 1169 (9th Cir. 2003).

20 The first of these factors is met if Defendant "either purposefully availed itself of the  
21 privilege of conducting activities in [the forum state], or purposefully directed its activities  
22 toward [the forum state]." Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th  
23 Cir. 2004). In copyright cases, a "purposeful direction" analysis is appropriate because "a  
24 copyright infringement sounds in tort." Brayton Purcell LLP v. Recordon & Recordon, 361  
25 F.Supp.2d 1135, 1140 (N.D. Cal. 2005). Courts evaluate purposeful direction under the three-  
part "effects-test," whereby Defendant must have "(1) committed an intentional act, (2)

1 expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be  
2 suffered in the forum state.” Schwarzenegger, 374 F.3d at 803 (citing Calder v. Jones, 465  
3 U.S. 783 (1984)). Defendant argues that it did not “purposefully avail” itself of Washington  
4 law, and at no time did it come to Washington, have a registered agent in Washington, or  
5 commit any transaction within Washington.

6 In the context of copyright infringement claims, courts have found that the Calder  
7 “effects-purposeful direction” test is met when “plaintiff brings the suit in the forum where  
8 the plaintiff resides, and the defendant knows that the plaintiff resides there.” Brayton, 361  
9 F.Supp. 2d at 1140. If this effects test is met, “[i]t is not required that defendant be physically  
10 present within, or have physical contact with the forum, provided that his efforts are  
11 physically present within, or have physical contact with, the forum.” Washington Department  
12 of Revenue v. www.dirtcheapcig.com., Inc., 260 F. Supp. 2d 1048 (W.D. Wash. 2003).

13 Plaintiff has alleged willful infringement that involved Defendant using images from  
14 Plaintiff’s Seattle servers maintained by Plaintiff in its Seattle headquarters. Plaintiff claims  
15 that the images on Defendant’s website contain Plaintiff’s identifying digital watermarks  
16 which only appear on images taken from Plaintiff’s website. Plaintiff’s website states that  
17 Seattle, Washington is Plaintiff’s headquarters. Therefore, Plaintiff has satisfied the effects-  
18 purposeful direction test by making a prima facie showing that Defendant willfully infringed  
19 copyrights owned by Plaintiff and alleging that Defendant knew Plaintiff’s headquarters was  
20 in Washington. Columbia Pictures Television v. Krypton Broadcasting of Birmingham, Inc.,  
21 106 F.3d 284, 288 (9th Cir. 1997) (holding the effects-purposeful direction test satisfied when  
22 the defendant is being sued for copyright infringement, and the plaintiff brings suit in the  
23 forum where the plaintiff resides, and the defendant knows that the plaintiff resides there);  
24 Expert Pages v. Buckalew, No. C-97-2109-VRW, U.S. Dist. LEXIS 11105, at \*6 (N.D. Cal.  
25 Aug. 6, 1997 (holding that defendant directed his activities at the plaintiff in the forum state

1 even though defendant “did not enter [the forum state] or conduct business with [plaintiff]”  
2 when defendant allegedly copied material from plaintiff’s website).

3 The second factor of the test for specific jurisdiction requires that the claim against  
4 Defendant arises out of or relates to Defendant’s forum-related activity which “is measured in  
5 terms of “but for” causation.” Panavision International v. Toeppen, 141 F.3d 1316, 1322 (9th  
6 Cir. 1998) (the court “must determine if the plaintiff would not have been injured but for the  
7 defendant’s conduct directed toward [plaintiff] in [the forum]”). In this case, assuming  
8 Plaintiff’s allegations to be true, the second factor is met: but for Defendant’s copyright  
9 infringement, which reached into this district and affected Plaintiff in this district, Plaintiff’s  
10 claim would not have arisen.

11 The third element of the test for specific jurisdiction requires that the exercise of  
12 jurisdiction comports with fair play and substantial justice. Generally, “[t]here is a  
13 presumption that jurisdiction is reasonable so long as the first two prongs of the specific  
14 jurisdiction test have been met.” Brayton, 361 F.Supp2d at 1135 (citing Schwarzenegger, 374  
15 F.3d at 802). Defendant argues that it has not injected itself into this forum and thus it would  
16 be unfair to litigate the case in Washington. It is true that the degree of injection is minimal in  
17 this case, and that Defendant injected itself into this forum only by virtue of publishing  
18 copyrighted material on its passive website. However, the other factors weigh against  
19 Defendant and support the reasonableness of jurisdiction in this Court. The place and course  
20 of discovery will not be affected by venue, and documents and witness will presumably be  
21 found in both districts.

22 The main burden on Defendant would be the time and cost of travel for its counsel to  
23 attend hearings; however, Defendant can retain local counsel. Defendant has not adequately  
24 demonstrated that the exercise of jurisdiction would not be reasonable and has thus failed to  
25 overcome the presumption of reasonableness. Dole Food Co. v. Watts, 303 F.3d 1104, 1115  
(9th Cir. 2002) (regarding whether the exercise of personal jurisdiction over a foreign

1 defendant would be reasonable, the fact that it would be expensive and inconvenient for the  
2 defendant to defend itself in the forum is not dispositive.) Because the three prongs of  
3 specific jurisdiction appear to have at least preliminarily been met, Defendant’s motion to  
4 dismiss under 12(b)(2) will be denied.

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6 **B. Forum Non Conveniens**

7 Defendant also argues for dismissal based upon the doctrine of *forum non conveniens*.  
8 “The standard to be applied is whether . . . defendants have made a clear showing of facts  
9 which . . . establish such oppression and vexation of a defendant as to be out of proportion to  
10 plaintiff’s convenience, which may be shown to be slight or nonexistent.” Cheng v. Boeing  
11 Co., 708 F.2d 1406, 1410 (9th cir. 1983) The moving party “bears the burden of showing (1)  
12 that there is an adequate alternative forum, and (2) that the balance of private and public  
13 interest factors favors dismissal.” Dole Food Co., 303 F.3d at 1118.

14 Generally an alternative forum exists when defendants are amenable to service of  
15 process in the foreign forum and the foreign forum will adequately provide the plaintiff with a  
16 sufficient remedy. Lueck v. Sundstrand Corp., 236 F.3d 1137, 1143 (9th Cir. 2001).  
17 Defendant is amenable to service of process in the Eastern District of Wisconsin, and there is  
18 no indication that such district would not provide Plaintiff sufficient remedy. Thus an  
19 adequate alternative forum exists in this case.

20 However, “the plaintiff’s choice of forum will not be disturbed unless the private  
21 interest and public interest factors strongly favor trial in the foreign country.” Dole Food Co.,  
22 303 F.3d at 1119. Private interests of the litigants “include ease of access to sources of proof,  
23 availability of compulsory process for attendance of unwilling witnesses, and cost of  
24 obtaining attendance of willing witnesses, and the likelihood of a fair trial.” See id. at 1118.  
25 Defendant argues that the location of the sources of proof and witnesses in Wisconsin means  
that the private interests weigh in favor of litigating the case in Wisconsin. However,

1 Defendant fails to acknowledge that witnesses and evidence will also be found in  
2 Washington.

3         Additionally, other *forum non conveniens* considerations such as enforceability of the  
4 judgment, availability of a fair trial, and the availability of a compulsory process for witnesses  
5 have more significance relative to matters in which either one of the parties, the trial, or both  
6 are outside of the U.S.. The Court assumes these concerns to be less relevant in matters  
7 proceeding within in the U.S. federal court system with parties who are U.S. citizens. Public  
8 interest factors include court congestion, local interest in resolving the controversy, and  
9 preference for having a forum apply law with which it is familiar. *Id.* at 1119. Defendant  
10 makes no allegations that any specific public interest favors litigating the case in Wisconsin.  
11 Defendant has done little more than argue that it would be inconvenient for it to litigate the  
12 case in Washington, which is inadequate to show that private and public interests strongly  
13 favor dismissal. *Id.* at 1118 (citing Monegro v. Rosa, 211 F.3d 509, 512 (9th Cir. 2000),  
14 holding *forum non conveniens* is “an exceptional tool to be employed sparingly, [not a] . . .  
15 doctrine that compels plaintiffs to choose the optimal forum for their claim.”). Defendant has  
16 not shown that it is entitled to dismissal for *forum non conveniens*.

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18         **C. Rule 12(b)(7) Motion**

19         Defendant also argues for dismissal under FRCP 12(b)(7) for failure to join a required  
20 party pursuant to Rule 19(a). Dismissal is appropriate when the unjoined entity is necessary  
21 and joinder is not feasible, and Defendant has the burden of showing that the unjoined entity  
22 is necessary. See Am. Greyhound Racing, Inc. v. Hull, 305 F.3d 1015, 1022 (9th Cir. 2002).  
23 In applying Rule 19, the Court must first determine if an absent party is “necessary.”  
24 Quileute Indian Tribe v. Babbitt, 18 F.3d 1456, 1458 (9th Cir. 1999). While there is no  
25 precise formula for determining whether a party is necessary to an action, the Ninth Circuit

1 uses a two-part analysis: 1) whether complete relief is possible among the parties already in  
2 the action; and 2) whether the absent party has a claim to a legally protected interest in the  
3 outcome of the action. Confederated Tribes of Chehalis Indian Reservation v. Lujan, 928  
4 F.2d 1496, 1498 (9th Cir. 1991). When analyzing these two factors, the ultimate  
5 determination should be “heavily influenced by the facts and circumstances of each case.”  
6 Bakia v. County of Los Angeles, 687 F.2d 299, 301 (9th Cir. 1982).

7  
8 Defendant claims that the existence of a contract between Defendant and Ganitham  
9 which established Ganitham’s obligations to produce, host, and manage the website  
10 containing the allegedly infringing images is sufficient to render Ganitham a required party.  
11 However, Defendant does not dispute that it owns and at all times had the right and ability to  
12 control its websites. While Defendant may have a separate third-party claim against  
13 Ganitham, this does not require Ganitham to be joined in this lawsuit as a necessary party.  
14 See Temple v. Synthes Corp., 111 S.Ct. 315, 316 (1990) (holding that a potential joint  
15 tortfeasor is not an indispensable party); Bank of America Nat. Trust & Savings Ass’n v.  
16 Hotel Rittenhouse Assocs, 844 F.2d 1050, 1054 (3rd Cir. 1988) (holding that defendants’  
17 rights to contribution or indemnity from absent party does not render that absentee  
18 indispensable). Ganitham’s absence will not impede the court from granting Plaintiff  
19 complete relief. Additionally, deciding this case in Ganitham’s absence will neither impede  
20 or impair Ganitham’s interests nor leave Defendant subject to a “substantial risk of incurring  
21 double, multiple, or otherwise inconsistent obligations.” Since Ganitham is not a necessary  
22 party, Defendant’s motion to dismiss for failure to join it will be denied.

23 **D. Transfer Pursuant to 28 U.S.C. § 1404(a)**

24 Defendant alternatively moves that this case be transferred to Wisconsin pursuant to  
25 28 USC § 1404. The purpose of § 1404 is to prevent the waste of time, energy, and money



1 and to protect litigants, witnesses, and the public against unnecessary inconvenience and  
2 expense. Van Dusen v. Barrack, 376 U.S. 612, 616 (1964). Plaintiff's preference for this  
3 forum should not be disturbed unless removal will eliminate substantial inconvenience, and  
4 the movant has the burden of establishing that the transferee forum is clearly more  
5 convenient. Kendall USA Inc. v. Central Printing Co., 666 F.Supp. 1264, 1267 (N.D. Ind.  
6 1987).

7 The Ninth Circuit weighs a number of non-exclusive factors when determining a  
8 motion to transfer venue: (1) the location where the relevant agreement was negotiated; (2)  
9 the state most familiar with the governing law; (3) the plaintiff's choice of forum; (4) the  
10 parties' contacts with the forums; (5) the contacts relating to the cause of action in the chosen  
11 forum; (6) the difference in the cost of litigation in the two forums; (7) the court's ability to  
12 compel the attendance of unwilling witnesses; (8) and the ease of access to sources of proof.  
13 Jones v. GNC Franchising, Inc., 211 F.3d 495, 498-99 (9th Cir. 2000). Defendant argues that  
14 the convenience of the witnesses is the most important factor and that as a key third-party  
15 witness, Ganitham's location in Wisconsin requires a transfer of this action.

16 Defendant's assertion is incorrect. While Defendant and Defendant's witness reside in  
17 Wisconsin and it would be cheaper and more convenient for them to testify in a Wisconsin  
18 court, Plaintiff resides in Washington and also has witnesses who live in Washington who will  
19 participate and testify in this action. The convenience of witnesses does not, therefore, weigh  
20 in favor of a transfer to Wisconsin. Decker Coal v. Commonwealth Edison Co., 805 F.2d  
21 834, 843 (9th Cir. 1986) (refusing to transfer when a transfer would merely shift rather than  
22 eliminate the inconvenience). Defendant's assertion regarding ease of access to sources of  
23 proof is similarly unconvincing. Defendant does not address the other factors and fails to  
24 show any overall advantage that would be gained or any reason to believe that the interests of  
25 justice would be better served by a change of venue. Defendant's motion to transfer will be  
denied.

1 **Conclusion**

2 Plaintiff has adequately alleged facts which render Defendant subject to the long-arm  
3 jurisdiction of this forum. Defendant has failed to demonstrate that it is entitled to dismissal  
4 or change of venue based on *forum non conveniens*. Finally, the Court finds that third-party  
5 Ganitham Computer Services is not an indispensable party to this litigation, and Defendant is  
6 not entitled to dismissal for Plaintiff's failure to join Ganitham in this action.

7 Defendants' motion to dismiss or change venue is hereby DENIED.

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9 The Clerk is directed to send a copy of this order to all counsel of record.

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DATED this \_12th\_ day of August, 2009.

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Marsha J. Pechman  
United States District Judge

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