

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CRIMINAL PRODUCTIONS, INC.,

Plaintiff,

v.

OLENA WILSON and SHARON KLINE,

Defendants.

CASE NO. C17-102 RAJ

ORDER

**I. INTRODUCTION**

This matter comes before the Court on Defendant Olena Wilson's Motion to Dismiss. Dkt. # 18. Plaintiff opposes the Motion. Dkt. # 20. For the reasons set forth below, the Court **DENIES** Defendant's Motion to Dismiss. Dkt. # 18.

**II. BACKGROUND**

Plaintiff Criminal Productions, Inc. filed this case against Defendants alleging that they infringed on its copyright to the motion picture, *Criminal*, by illegally downloading the movie using a "peer-to-peer" ("P2P") or BitTorrent file network. Users of BitTorrent file networks use online pseudonyms ("user names" or "network names"). At the time of filing, Plaintiff identified Defendants by their Internet Protocol ("IP") address and the

1 date and time of the alleged infringement. Plaintiff then used information from a non-  
2 party Internet Service Provider (“ISP”) to determine Defendant’s names. Dkt. # 20.

3 Defendant Olena Wilson, proceeding *pro se*, now moves to dismiss Plaintiff’s  
4 complaint. As Defendant does not cite to any legal authority in her Motion, the Court  
5 construes it as a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6).  
6

### 7 **III. LEGAL STANDARD**

#### 8 **A. FRCP 12(b)(6)**

9 Fed. R. Civ. P. 12(b)(6) permits a court to dismiss a complaint for failure to state a  
10 claim. The rule requires the court to assume the truth of the complaint’s factual  
11 allegations and credit all reasonable inferences arising from those allegations. *Sanders v.*  
12 *Brown*, 504 F.3d 903, 910 (9th Cir. 2007). A court “need not accept as true conclusory  
13 allegations that are contradicted by documents referred to in the complaint.” *Manzarek v.*  
14 *St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). The plaintiff must  
15 point to factual allegations that “state a claim to relief that is plausible on its face.” *Bell*  
16 *Atl. Corp. v. Twombly*, 550 U.S. 544, 568 (2007). If the plaintiff succeeds, the complaint  
17 avoids dismissal if there is “any set of facts consistent with the allegations in the  
18 complaint” that would entitle the plaintiff to relief. *Id.* at 563; *Ashcroft v. Iqbal*, 556 U.S.  
19 662, 679 (2009).  
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23 A court typically cannot consider evidence beyond the four corners of the  
24 complaint, although it may rely on a document to which the complaint refers if the  
25 document is central to the party’s claims and its authenticity is not in question. *Marder v.*  
26 *Lopez*, 450 F.3d 445, 448 (9th Cir. 2006). A court may also consider evidence subject to  
27

1 judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

2 **IV. DISCUSSION**

3 Ms. Wilson argues that she was not properly named as Defendant in this case  
4 because she did not download the movie at issue, that she is located in a housing  
5 development with access to at least eleven (11) Wi-Fi networks from her home, that her  
6 personal Wi-Fi network was password-protected with a default password, and that she  
7 believes that the evidence naming her as Defendant in this case is insufficient because of  
8 the existence of Malware and other methods used by hackers to route data through other  
9 IP addresses.  
10

11  
12 To state a claim for copyright infringement, Plaintiff must establish: (1) ownership  
13 of a valid copyright; and (2) copying of constituent elements of the work that are  
14 original.” *Feist Publ’ns, Inc. v. Rural Tel. Servs. Co.*, 499 U.S. 340, 361 (1991). Plaintiff  
15 has alleged that it owns a valid and registered copyright in the *Criminal* film. Dkt. # 14  
16 ¶¶ 6-7; Dkt. # 14 Ex. A. This “is considered prima facie evidence of the validity of the  
17 copyright.” *Syntek Semiconductor Co., Ltd. v. Microchip Tech. Inc.*, 307 F.3d 775, 781  
18 (9th Cir. 2002); *see also* 17 U.S.C. § 410(c). Having alleged ownership and filed a  
19 certificate of registration, Plaintiff has established the first element.  
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22 Plaintiff alleges that Comcast assigned a distinct IP address to Wilson. Dkt. # 14  
23 ¶ 10. Plaintiff alleges that this IP address “was observed infringing Plaintiff’s motion  
24 picture” on a specific date and at a specific time. *Id.* ¶ 18. Plaintiff further alleges that  
25 the “physical makeup and layout” of Defendant’s residence and neighborhood and the  
26 “standard security measures imposed by the ISP” prevent unauthorized use of an IP  
27

1 address and make it unlikely that a wireless signal was “high jacked by someone outside  
2 of the residence”. *Id.* ¶ 14. Plaintiff also alleges that the infringing activity was not an  
3 isolated incident and would have diminished the bandwidth of Wilson’s Internet  
4 connections such that she would likely have been aware that it was occurring. *Id.* ¶ 12.

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6 To overcome a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), Plaintiff  
7 need only allege facts that “state a claim to relief that is plausible on its face.” *Twombly*,  
8 550 U.S. at 568. Assuming that the allegations in the Amended Complaint are true, the  
9 fact that Ms. Wilson’s IP address was observed engaging in “persistent” activity, that this  
10 particular IP address was observed copying *Criminal*, and that the “physical makeup and  
11 layout” of Ms. Wilson’s residence allegedly makes it unlikely that her wireless signal was  
12 used by someone outside of the residence, all sufficiently support Plaintiff’s claim that  
13 Ms. Wilson copied elements of the copyrighted work. Therefore, Defendant’s Motion to  
14 Dismiss is **DENIED**.

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16  
17 **V. CONCLUSION**

18 For the reasons stated above, the Court **DENIES** Defendant’s Motion to Dismiss.  
19 Dkt. # 18.

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21 DATED this 8th day of January, 2018.

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25 The Honorable Richard A. Jones  
26 United States District Judge