

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Robinson v. Binello

Robinson v. Binello · No. 5:24-cv-06501-PCP · Decided March 24, 2025

SUMMARY

The United States District Court for the Northern District of California partially granted and partially denied Roblox’s Rule 12(b)(6) motion in a copyright infringement action concerning the alleged unauthorized upload and distribution of a recording on the Roblox platform. The court dismissed the contributory infringement claim for lack of allegations showing Roblox’s actual knowledge of specific infringement, but allowed the direct and vicarious infringement claims to proceed. The court also granted in part Roblox’s requests for judicial notice and incorporation by reference and rejected dismissal based on the DMCA safe harbor at this stage.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	P. Casey Pitts
JURISDICTION	United States District Court for the Northern District of California
DECIDED	March 24, 2025
DOCKET	5:24-cv-06501-PCP
DISPOSITION	other
PROCEDURAL POSTURE	Roblox moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss Robinson's copyright infringement claims and sought judicial notice or incorporation by reference of Roblox webpages.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true and construes the pleadings in the light most favorable to the nonmoving party. Dismissal is proper when the complaint lacks a cognizable legal theory or sufficient facts to support one; the complaint must allege enough facts to state a facially plausible claim. An affirmative defense may support dismissal only when the complaint or judicially noticeable materials establish the defense beyond dispute.
PRECEDENTIAL VALUE	Unpublished district court order; precedential status not identified in the source.

PARTIES

Aaron Robinson v. Alex Binello, et al.

TOPICS

copyright infringement

motions to dismiss

dmca

civil procedure

commercial litigation

PRACTICE AREAS

copyright

civil procedure

commercial litigation

QUESTIONS PRESENTED

1. Whether Robinson plausibly alleged direct copyright infringement based on Roblox's alleged volitional conduct in reviewing, approving, copying, and storing the uploaded recording.
2. Whether the direct copyright infringement claim was plainly barred by the Copyright Act's three-year statute of limitations.
3. Whether Robinson plausibly alleged contributory copyright infringement by pleading that Roblox had actual knowledge of specific infringement.
4. Whether Robinson plausibly alleged vicarious copyright infringement by alleging Roblox had the right and ability to control infringing activity and received a direct financial benefit from specific infringing transactions.
5. Whether Roblox established on the face of the complaint or through judicially noticeable materials that it was entitled to the DMCA safe harbor.
6. Whether Roblox's webpages should be judicially noticed or incorporated by reference into the complaint.

HOLDINGS

1. The complaint plausibly stated a direct copyright infringement claim because it alleged that Roblox moderators reviewed and approved the upload, created a copy of Robinson's work, and stored that copy on Roblox's servers.
2. The direct copyright infringement claim could not be dismissed as time-barred at the pleading stage because the complaint did not establish beyond dispute that Robinson discovered or reasonably should have discovered the alleged infringement more than three years before filing.
3. The complaint failed to state a contributory copyright infringement claim because it alleged only generalized knowledge of copyright risks and did not allege that Roblox had actual knowledge that the uploaded recording was Robinson's specific copyrighted work.
4. The complaint plausibly stated a vicarious copyright infringement claim because it alleged that Roblox had the right and ability to control users' infringing activity and received fees directly tied to uploads and downloads of the specific infringing recording.
5. Roblox was not entitled to dismissal based on the DMCA safe harbor because the complaint alleged a direct financial benefit attributable to the infringement and the submitted webpages did not establish

beyond dispute that Roblox satisfied the safe harbor's other requirements.

6. The court incorporated the Roblox Moderation webpage by reference, declined to incorporate the Roblox terms of use, and took judicial notice of the existence and contents of the submitted webpages but not the truth of representations made on them.

KEY QUOTATIONS

“To survive a Rule 12(b)(6) motion, a plaintiff need only plead “enough facts to state a claim to relief that is plausible on its face.””

“The essential aspect of the ‘direct financial benefit’ inquiry is whether there is a causal relationship between the infringing activity and any financial benefit a defendant reaps, regardless of how substantial the benefit is in proportion to a defendant’s overall profits.”

“Only when the plaintiff pleads itself out of court—that is, admits all the ingredients of an impenetrable defense—may a complaint that otherwise states a claim be dismissed under Rule 12(b)(6).”

FACTUAL BACKGROUND

Aaron Robinson alleged that he owned a copyright in his 1993 recording of Maple Leaf Rag and that Alex Binello uploaded the recording to Roblox for use in MeepCity without permission. Robinson alleged that Roblox moderators reviewed and approved the upload, copied and stored the recording, assigned it an asset ID, and made it available for users to download and play through Roblox features. He further alleged that Roblox charged fees for uploads and downloads and shared in profits from related transactions.

PROCEDURAL HISTORY

Robinson filed an action alleging direct, contributory, and vicarious copyright infringement based on Roblox's alleged handling and distribution of his recording. Roblox moved to dismiss. The court granted the motion as to contributory infringement, denied it as to direct and vicarious infringement, granted in part the request for judicial notice and incorporation by reference, and allowed Robinson 21 days to amend.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand. Robinson may file an amended complaint within 21 days of the order.

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Mendiando v. Centinela Hospital Medical Center, 521 F.3d 1097, 1104 (9th Cir. 2008)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Rowe v. Educ. Credit Management Corp., 559 F.3d 1028, 1029-30 (9th Cir. 2009)

- In re Gilead Sciences Securities Litigation, 536 F.3d 1049, 1055 (9th Cir. 2008)
- Khoja v. Orexigen Therapeutics, Inc., 899 F.3d 988, 999, 1002 (9th Cir. 2018)
- Toyo Tire Holdings of Ams. Inc. v. Ameri & Partners, Inc., No. 23-CV-01300, 2024 U.S. Dist. LEXIS 75204, n. 1 (C.D. Cal. Mar. 13, 2024)
- Libman v. Apple, Inc., No. 22-CV-07069-EJD, 2024 WL 4314791 (N.D. Cal. Sept. 26, 2024)
- In re Meta Pixel Tax Filing Cases, 724 F. Supp. 3d 987, 1001 (N.D. Cal. 2024)
- Spy Optic, Inc. v. Alibaba.Com, Inc., 163 F. Supp. 3d 755, 762 (C.D. Cal. 2015)
- Perfect 10, Inc. v. Giganews, Inc., 847 F.3d 657, 666, 670-73 (9th Cir. 2017)
- VHT, Inc. v. Zillow Group, Inc., 918 F.3d 723, 731, 733 (9th Cir. 2019)
- Fox Broadcasting Co. v. Dish Network L.L.C., 747 F.3d 1060, 1067 (9th Cir. 2014)
- A.B. by & Through Turner v. Google LLC, 737 F. Supp. 3d 869, 877-88 (N.D. Cal. 2024)
- Jablon v. Dean Witter & Co., 614 F.2d 677, 682 (9th Cir. 1980)
- Rabin v. Google LLC, 725 F. Supp. 3d 1028, 1031 (N.D. Cal. Mar. 26, 2024)
- Starz Entertainment, LLC v. MGM Domestic Television Distribution, LLC, 39 F.4th 1236 (9th Cir. 2022)
- Starz Entertainment, LLC v. MGM Domestic Television Distribution, LLC, 510 F. Supp. 3d 878, 888 (C.D. Cal. 2021)
- Warren Freedensfeld Associates, Inc. v. McTigue, 531 F.3d 38, 45 (1st Cir. 2008)
- Long v. Dorset, 854 F. App'x 861, 864 (9th Cir. 2021)
- A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004, 1021 (9th Cir. 2001)
- MDY Industries, L.L.C. v. Blizzard Entertainment, Inc., 629 F.3d 928, 938 (9th Cir. 2010)
- MGM Studios Inc. v. Grokster, Ltd., 545 U.S. 913, 914 (2005)
- Ellison v. Robertson, 357 F.3d 1072, 1078-79 (9th Cir. 2004)
- Stross v. Meta Platforms, Inc., No. 2:21-CV-08023, 2022 WL 1843129, at *3 (C.D. Cal. Apr. 6, 2022)
- UMG Recordings, Inc. v. Shelter Capital Partners LLC, 718 F.3d 1006, 1014, 1028 (9th Cir. 2013)
- Mavrix Photographs, LLC v. LiveJournal, Inc., 873 F.3d 1045, 1052 (9th Cir. 2017)
- Durnford v. MusclePharm Corp., 907 F.3d 595, 603 n.8 (9th Cir. 2018)

OPINION

Robinson v. Binello

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 AARON ROBINSON, Case No. 5:24-cv-06501-PCP 8 Plaintiff,

ORDER GRANTING IN PART AND

9 v. DENYING IN PART MOTION TO

DISMISS

10 ALEX BINELLO, et al., Re: Dkt. No. 19 Defendants. 11 12 Plaintiff Aaron Robinson brings

this copyright infringement action against defendant 13 Roblox for allegedly allowing game designer Alex Binello to upload Robinson’s work without his 14 knowledge or permission to the Roblox platform, where users listened to and downloaded it. 15 Roblox moves to dismiss for failure to state a claim pursuant to Rule 12(b)(6). Roblox also 16 requests judicial notice or incorporation by reference of several pages on the Roblox website. For 17 the following reasons, the Court grants the motion to dismiss as to the contributory copyright 18 infringement claim, denies it as to the direct and vicarious copyright infringement claims, and 19 grants in part the request for judicial notice and incorporation by reference.

20 BACKGROUND

21 Robinson is a composer, conductor, and musicologist.¹ In 1993, he performed and recorded 22 Maple Leaf Rag, a song originally composed by Scott Joplin, on piano. He first published the 23 recording on an album in 1993, and then re-published it on another album in 2011. The first album 24 was registered with the United States Copyright Office on June 27, 2024, registration number 25 SR1-002-128. 26 27 1 For purposes of Roblox’s Rule 12(b)(6) motion, the Court assumes the truth of the allegations in 1 Roblox operates an online gaming platform. Users can access the Roblox platform to play 2 games created and uploaded by developers using Roblox software. Roblox Studio provides a 3 toolkit for developers to use to create content for the Roblox platform and the Roblox cloud 4 contains the underlying infrastructure to host content delivered through the Roblox platform. 5 To create games for the Roblox platform, developers can use assets—images, models, 6 videos, fonts, and audio files—that are stored within the Roblox cloud, or they can import their 7 own assets directly into Roblox Studio. Robinson alleges that when a developer imports their own 8 asset, that asset is reviewed by the Roblox moderation team to determine whether it adheres to 9 Roblox’s Marketplace Policy. If the asset passes review, it is assigned a unique ID, which allows it 10 to be shared and downloaded on the platform by other users. When a file is imported to the Roblox 11 platform, the file is copied and distributed to Roblox, which then hosts it on its servers. 12 According to Robinson, Roblox users can download songs from the Roblox platform to 13 their own “boombox,” a feature within the platform, for a fee. When a user plays a song on their 14 boombox, other users in their vicinity can hear it. Users can also sell their boomboxes, including 15 their downloaded songs, and Roblox shares in the profit. Additionally, Roblox users can download 16 assets from the platform to their personal hard drives in order to access them outside of the Roblox 17 platform. 18 Robinson alleges that, in 2016, defendant Alex Binello, a game designer, created an 19 interactive role-playing game called MeepCity for the Roblox platform. MeepCity became 20 Roblox’s most popular game, played by millions of users and visited more than a billion times. 21 The game included a feature that allowed users to gather and talk with each other in a pizzeria, 22 which included a piano that users could play to earn points within the game. Robinson alleges that 23 from 2016 to 2022, Robinson’s recording of the song Maple Leaf Rag played on a two-minute 24 loop every time a user sat down at the piano. 25 Robinson alleges that Binello uploaded Robinson’s recording of Maple Leaf Rag for use in 26

MeepCity without Robinson's knowledge or permission and that Roblox employees reviewed and approved the uploaded audio file, created a copy, assigned it a unique asset ID, and stored the copy 1 work to their boomboxes for use on the Roblox platform, each paying a fee to Roblox for doing 2 so, and that "thousands, if not millions," of users downloaded his work from the Roblox server to 3 their own personal hard drives. 4 Robinson asserts three claims against Roblox: (1) direct copyright infringement; (2) 5 contributory copyright infringement; and (3) vicarious copyright infringement. 6 Roblox now moves to dismiss pursuant to Rule 12(b)(6) and requests incorporation by 7 reference and judicial notice of several Roblox webpages.

8 LEGAL STANDARD

9 Federal Rule of Civil Procedure 8(a)(2) requires a complaint to include a "short and plain 10 statement of the claim showing that the pleader is entitled to relief." If the complaint fails to state a 11 claim, the defendant may move for dismissal under Federal Rule of Civil Procedure 12(b)(6). 12 Dismissal is required if the plaintiff fails to allege facts allowing the Court to "draw the reasonable 13 inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 14 678 (2009). "Dismissal under Rule 12(b)(6) is appropriate only where the complaint lacks a 15 cognizable legal theory or sufficient facts to support a cognizable legal theory." *Mendiondo v. 16 Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). To survive a Rule 17 12(b)(6) motion, a plaintiff need only plead "enough facts to state a claim to relief that is plausible 18 on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). 19 In considering a Rule 12(b)(6) motion, the Court must "accept all factual allegations in the 20 complaint as true and construe the pleadings in the light most favorable" to the non-moving 21 party. *Rowe v. Educ. Credit Mgmt. Corp.*, 559 F.3d 1028, 1029–30 (9th Cir. 2009). While legal 22 conclusions "can provide the [complaint's] framework," the Court will not assume they are correct 23 unless adequately "supported by factual allegations." *Iqbal*, 556 U.S. at 679. Courts do not "accept 24 as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable 25 inferences." *In re Gilead Scis. Secs. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (quoting *Sporewell 26 v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)). 27 The Court may take judicial notice of "a fact that is not subject to reasonable dispute" 1 accuracy cannot reasonably be questioned." *Fed. R. Evid.* 201. The doctrine of incorporation by 2 reference permits the Court to treat an extrinsic document as if it were part of the complaint if the 3 pleading "refers extensively to the document" or if "the document forms the basis" of a claim. 4 *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th Cir. 2018). But "if the document 5 merely creates a defense to the well-pled allegations in the complaint, then that document did not 6 necessarily form the basis of the complaint. Otherwise, defendants could use the doctrine to insert 7 their own version of events into the complaint to defeat otherwise cognizable claims." *Khoja*, 899 8 F.3d at 1002.

9 ANALYSIS

10 I. Judicial notice 11 In support of its motion to dismiss, Roblox submitted several webpages

that it contends are 12 incorporated by reference into the complaint or subject to judicial notice such that they should be 13 considered on this motion. Those webpages are the 2024 Roblox Terms of Use, the 2021 Roblox 14 Terms of Use archived on the WayBack Machine, the Roblox webpage entitled “Moderation,” the 15 Roblox webpage entitled “DMCA Guidelines,” and the Roblox Community Standards. 16 Roblox asserts that the Court should incorporate by reference Roblox’s terms of use 17 because “the use and misuse of the Roblox platform is the crux of Plaintiff’s claims.” Although 18 Robinson’s claims generally relate to the use of the Roblox platform, Roblox has not shown that 19 the existence or contents of the terms of use are in any way material to those claims. See *Toyo Tire 20 Holdings of Ams. Inc. v. Ameri & Partners, Inc.*, No. 23-CV-01300, 2024 U.S. Dist. LEXIS 21 75204, n. 1 (C.D. Cal. March 13, 2024) (“The court need not consider [the attached exhibits] 22 under the incorporation by reference doctrine because they do not materially bear on the court’s 23 analysis.”). This case is readily distinguishable from *Libman v. Apple, Inc.*, No. 22-CV-07069- 24 EJD, 2024 WL 4314791 (N.D. Cal. Sept. 26, 2024), in which the court found that Apple’s 25 welcome screens were incorporated by reference because the plaintiff’s “claims each relate[d] to 26 whether Apple disclosed its [data] collection practices” and the welcome screens “reflect[ed] 27 Apple’s representations about its privacy practices and privacy settings.” *Libman*, 2024 WL 1 use. Roblox also proposes that the terms of use should be incorporated by reference because every 2 Roblox webpage that the complaint references contains a link to those terms. But the webpages 3 that the complaint references do not contain the terms of use themselves, only their web addresses, 4 and the links have no relevance to Robinson’s claims. The inadvertent and irrelevant reference to 5 the terms is not sufficient to render them incorporated by reference into the complaint. 6 Roblox requests incorporation by reference of its “Moderation” webpage because 7 Robinson’s claims reference it extensively. Indeed, Roblox’s moderation practices are central to 8 Robinson’s claims and Robinson relies on the “Moderation” webpage for those allegations. 9 The Court therefore grants Roblox’s request for the “Moderation” webpage’s incorporation by 10 reference. 11 With respect to the various webpages Roblox has submitted, the Court will take judicial 12 notice of their existence because they are publicly available from a source whose accuracy cannot 13 reasonably be questioned and whose contents can be accurately determined. See *In re Meta Pixel 14 Tax Filing Cases*, 724 F. Supp. 3d 987, 1001 (N.D. Cal. 2024) (holding that publicly available 15 websites are proper subjects of judicial notice). This notice is limited, however, to the existence 16 and contents of the webpages, and does not include notice of the truth of any representations made 17 therein. See *Spy Optic, Inc. v. Alibaba.Com, Inc.*, 163 F. Supp. 3d 755, 762 (C.D. Cal. 2015); 18 *Khoja*, 899 F.3d at 999. 19 II. Direct copyright infringement 20 To state a claim for direct copyright infringement, a plaintiff must plead ownership of the 21 copyrighted material, violation of a right granted to copyright holders under 17 U.S.C. § 106, and 22 causation (also referred to as “volitional conduct”). *Perfect 10, Inc. v. Giganews, Inc.*, 847 F.3d 23 657, 666 (9th Cir. 2017). 24 Roblox contends that Robinson fails to state a claim for direct copyright infringement 25 because he has not alleged facts showing that

Roblox directly caused any infringement of 26 Robinson’s copyright. The central question in the causation or volitional conduct inquiry is “who 27 is close enough to the [infringing] event to be considered the most important cause.” *Id.* (cleaned 1 proximate causation historically underlines copyright infringement liability no less than other 2 torts.” *Id.* (cleaned up). “[D]irect liability must be premised on conduct that can reasonably be 3 described as the direct cause of the infringement.” *VHT, Inc. v. Zillow Grp., Inc.*, 918 F.3d 723, 4 731 (9th Cir. 2019) (cleaned up). Direct infringement “requires copying by the defendant, which 5 comprises a requirement that the defendant cause the copying.” *Fox Broad. Co. v. Dish Network 6 L.L.C.*, 747 F.3d 1060, 1067 (9th Cir. 2014) (cleaned up). 7 Roblox contends that Robinson alleges facts showing only that it operated an “automated, 8 user-controlled system,” an act that is too indirectly related to the cause of any infringement to 9 constitute volitional conduct. But Robinson alleges that Roblox took a more active role in the 10 upload of his work. Robinson alleges that when a user or developer imports a file containing 11 music, that file is reviewed by the Roblox moderation team to determine whether it adheres to 12 Roblox’s Marketplace Policy. The file is only transmitted after the moderation team’s approval. 13 Robinson thus alleges that Roblox employees reviewed and approved Binello’s upload of 14 Robinson’s copyrighted work, created a copy of that work, and stored that copy on the Roblox 15 server. Accordingly, Robinson has pleaded that Roblox caused the copying of Robinson’s work. 16 Roblox’s alleged involvement in the infringement of Robinson’s copyright is 17 distinguishable from the conduct at issue in *VHT, Inc. v. Zillow Group, Inc.*, 918 F.3d 723 (9th

18 Cir. 2019). In that case, the Ninth Circuit affirmed a district court’s determination that Zillow did

19 not engage in the volitional conduct necessary to support a finding of direct liability where it 20 merely operated a website displaying photos that other parties had provided. Zillow did not select 21 the photos, did not “exercise control over [the] photos beyond the general operation of its 22 website,” and promptly removed allegedly infringing photos when it was notified about them. *Id.* 23 at 733 (cleaned up). Here, by contrast, Robinson alleges that, through the actions of the 24 moderation team, Roblox in fact selected and exercised control over the content that a third party 25 provided. 26 Roblox maintains that “if Roblox did not have any moderators, then the upload would still 27 have occurred.” Perhaps. But the question before the Court is not whether the alleged copyright 1 whether, given that Roblox allegedly had a moderation team that reviewed and approved all 2 uploads, the moderation team’s approval of Binello’s upload was a but-for cause of the alleged 3 infringement of Robinson’s copyright. Robinson alleges that it was. He asserts that, given 4 Roblox’s moderation policies, his copyrighted work would not have been uploaded to the platform 5 but for the actions of Roblox’s moderators. 6 Roblox also contends that the allegations regarding the moderation team are conclusory 7 and involve “nothing but speculation.” Although Robinson has not alleged facts detailing every 8 step in the moderation process, the facts that he has alleged—that after Binello uploaded 9 Robinson’s recording, Roblox’s moderation team

reviewed the file to ensure that it adhered to its 10 Marketplace Policy, approved the upload, created a copy, assigned the file a unique asset ID, and 11 stored the copy on the Roblox server—are sufficient to state a claim at the motion to dismiss 12 stage. The Supreme Court underscored in *Iqbal* that “determining whether a complaint states a 13 plausible claim for relief will ... be a context-specific task that requires the reviewing court to 14 draw on its judicial experience and common sense.” 556 U.S. at 679. In the context of allegations 15 concerning a process generally concealed from the public and largely inscrutable absent discovery, 16 demanding even greater specificity would effectively foreclose liability, far exceeding the 17 demands of Rule 8. Fed. R. Civ. P. 8. 18 Even if its moderation team did engage in volitional conduct, Roblox maintains, any direct 19 copyright infringement claim is time-barred because the latest time that its volitional conduct 20 could have occurred was the end of 2016. The statute of limitations for federal copyright claims is 21 three years, 17 U.S.C. § 507, and Robinson did not bring this action until 2024—five years after 22 the limitations period had expired, according to Roblox. 23 In the Ninth Circuit, the statute of limitations is an affirmative defense that can provide the 24 basis for dismissing a claim at the 12(b)(6) stage only if the allegations in the complaint or 25 judicially noticeable materials establish beyond dispute that the statute ran prior to the filing of the 26 case. *A.B. by & Through Turner v. Google LLC*, 737 F. Supp. 3d 869, 877–88 (N.D. Cal. 2024); 27 *Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th Cir. 1980) (“When a motion to dismiss is 1 complaint, read with the required liberality, would not permit the plaintiff to prove that the statute 2 was tolled.”). Thus, to survive a motion to dismiss, plaintiffs “simply need to plead facts 3 demonstrating a potential factual dispute that could affect whether the defense applies.” *Rabin v. 4 Google LLC*, 725 F.Supp.3d 1028, 1031 (N.D. Cal. Mar. 26, 2024). 5 Here, the parties dispute when Robinson’s statute of limitations began to run. Under the 6 discovery rule, a copyright infringement claim accrues when the copyright owner reasonably 7 should have discovered the alleged infringement. See *Starz Entertainment, LLC v. MGM Domestic 8 Television Distribution, LLC*, 39 F.4th 1236 (9th Cir. 2022). Roblox asserts that the popularity of 9 Roblox and MeepCity put Robinson on notice of the infringement of his work before 2021. But 10 the inferential chain from the general popularity of a gaming platform and one of the games on it, 11 on the one hand, to a musician’s awareness that his decades-old recording might be being used in 12 an infringing matter, on the other, is too attenuated. Although copyright owners have a duty of 13 diligence to investigate potential infringement when some action calls their attention to it, they are 14 not required to actively prowl the internet to ensure no one is using their music in video games. 15 See *id.*; *Starz Ent., LLC v. MGM Domestic Television Distribution, LLC*, 510 F. Supp. 3d 878, 888 16 (C.D. Cal. 2021) (cleaned up) (“Although a copyright holder has a duty of diligence to investigate 17 potential infringements, inquiry notice must be triggered by some event or series of events that 18 comes to the attention of the aggrieved party.”); *Starz*, 510 F. Supp. 3d at 888 (quoting *Warren 19 Freedendfeld Assocs., Inc. v. McTigue*, 531 F.3d 38, 45 (1st Cir. 2008)) (“The familiar aphorism 20 teaches that where there is smoke there is fire; but smoke, or something tantamount to it, is 21

necessary to put a person on inquiry notice that a fire has started.”). Roblox has not identified any specific allegation in the complaint establishing that Robinson was on inquiry notice of the alleged copyright infringement prior to 2021. Roblox has thus failed to establish beyond dispute that Robinson’s claim for direct copyright infringement is time-barred.

III. Contributory copyright infringement

To state a claim for contributory copyright infringement, a plaintiff must allege that the defendant “(1) knew of the direct infringement; and (2) [] either induced, caused, or materially 1072 (9th Cir. 2013). The first element “requires more than a generalized knowledge by the 2 [defendant] of the possibility of infringement.” *Id.* The plaintiff must allege “actual knowledge of 3 specific acts of infringement.” *Id.* (citation omitted); see also *Long v. Dorset*, 854 F. App’x 861, 4 864 (9th Cir. 2021); *A&M Recs., Inc. v. Napster, Inc.*, 239 F.3d 1004, 1021 (9th Cir. 2001) 5 (cleaned up) (“[I]f a computer system operator learns of specific infringing material available on 6 his system and fails to purge such material from the system, the operator knows of and contributes 7 to direct infringement. Conversely, absent any specific information which identifies infringing 8 activity, a computer system operator cannot be liable for contributory infringement merely 9 because the structure of the system allows for the exchange of copyrighted material.”).

Robinson contends that Roblox’s conduct meets the knowledge requirement because 11 Roblox was generally aware of the copyright-related risks of its business activities. He alleges that 12 Roblox has a history of litigation involving copyright claims and that Roblox had ample 13 opportunity to ensure the works uploaded to its server did not infringe anyone’s copyrights. He 14 also argues that Roblox was obligated to undertake a reasonable inquiry to determine whether a 15 work was licensed for Roblox’s use or in the public domain. 16 These allegations are not sufficient to allege the knowledge necessary for contributory 17 copyright infringement liability. Robinson must show actual knowledge of specific acts of 18 infringement, not generalized knowledge of the possibility of infringement. Roblox has not pleaded 19 facts to show that Roblox was aware that the recording of Maple Leaf Rag that Binello uploaded 20 was Robinson’s copyright-protected audio recording.² Accordingly, Robinson fails to state a claim 21 against Roblox for contributory copyright infringement.

IV. Vicarious copyright infringement

A defendant “is liable for vicarious infringement if it (1) has the right and ability to control 24 ... users’ putatively infringing activity and (2) derives a direct financial benefit from their 25 activity.” *MDY Indus., L.L.C. v. Blizzard Ent., Inc.*, 629 F.3d 928, 938 (9th Cir. 2010). A 26 defendant “infringes vicariously by profiting from direct infringement while declining to exercise 27 1 a right to stop or limit it.” *MGM Studios Inc v. Grokster, Ltd.*, 545 U.S. 913, 914 (2005). 2 Roblox does not challenge Robinson’s allegation that it had the right and ability to permit 3 or prevent users’ copyright infringing activity on its platform. It does, however, contend that it did 4 not derive a direct financial benefit either from Binello’s alleged infringement of Robinson’s 5 copyright when he uploaded his work to the Roblox server or from other users’ infringement of 6 that copyright when they downloaded the work to their boomboxes. 7 A direct financial benefit exists where there is a causal relationship between the specific 8 infringing

conduct and a financial benefit to the defendant. Perfect 10, 847 F.3d at 673 (quoting 9 *Ellison v. Robertson*, 357 F.3d 1072, 1079 (9th Cir. 2004)) (“The essential aspect of the ‘direct financial benefit’ inquiry is whether there is a causal relationship between the infringing activity and any financial benefit a defendant reaps, regardless of how substantial the benefit is in proportion to a defendant’s overall profits.”). 13 Roblox asserts that it did not derive a direct financial benefit from any infringement of 14 Robinson’s copyright because users did not seek out Roblox or MeepCity specifically because of 15 Robinson’s recording of *Maple Leaf Rag*. But Roblox misconstrues the direct financial benefit 16 requirement. When the financial benefit to a defendant is alleged to come from the use of the 17 defendant’s goods or services generally, rather than directly from the copyright infringement, 18 courts have held that plaintiffs must show that individuals sought out the defendant’s goods or 19 services specifically because of the availability of infringing material. See, e.g., Perfect 10, 847 F.3d at 673; *Stross v. Meta Platforms, Inc.*, No. 2:21-CV-08023, 2022 WL 1843129, at *3 (C.D. 21 Cal. Apr. 6, 2022); *Ellison*, 357 F.3d at 1078–79. Absent such a showing, there would be no 22 causal link between the infringement and the financial benefit. But where, as here, the financial 23 benefit is alleged to come directly from specific acts of infringement—specifically, from fees that 24 were paid for each upload or download of the specific infringing work—there is a clear causal link 25 between the infringement and the financial benefit. Because the financial benefit to Roblox is not 26 alleged to derive from individuals’ use of Roblox or MeepCity generally, Robinson need not 27 allege a causal connection between individuals’ use of the platform or game and the alleged 1 Robinson alleges that Roblox makes money by charging developers and users to import 2 assets and that Binello uploaded Robinson’s recording of *Maple Leaf Rag* as an asset to be used in 3 MeepCity. It can plausibly be inferred from Robinson’s allegations that Roblox charged Binello a 4 fee to upload Robinson’s work, deriving a direct financial benefit from Binello’s alleged act of 5 copyright infringement. Additionally, Robinson alleges that “thousands, if not millions,” of users 6 each paid Roblox a fee to download Robinson’s work for use within the Roblox platform. Those 7 fees constitute a direct financial benefit that Roblox derived from those users’ acts of infringing 8 Robinson’s copyright. 9 Finally, Roblox contends that downloading the work to Roblox boomboxes cannot be 10 copyright infringement because songs downloaded to boomboxes can be played solely within the 11 platform. But copying is copying even if the use of the copy is restricted. 12 Accordingly, Robinson’s complaint states a claim for vicarious copyright infringement. 13 V. DMCA safe harbor 14 Finally, Roblox asserts that even if Robinson adequately states a claim against it, his 15 complaint should be dismissed because Roblox is entitled to the protections of the “safe harbor” 16 provided by the Digital Millenium Copyright Act (DMCA). This safe harbor applies to online 17 service providers who are unaware of infringing material on their sites or who, upon notice, 18 expeditiously remove such material. See *UMG Recordings, Inc. v. Shelter Cap. Partners LLC*, 718 F.3d 1006, 1014, 1028 (9th Cir. 2013); 17 U.S.C. § 512(c)(1)(A). To be eligible for the protections 20 of 17 U.S.C. § 512(c), a defendant

must show it is a “service provider” and “that the infringing 21 material was stored at the direction of the user.” *Mavrix Photographs, LLC v. Livejournal, Inc.*, 22 873 F.3d 1045, 1052 (9th Cir. 2017). “If it meets that threshold requirement, the service provider 23 must then show that (1) it lacked actual or red flag knowledge of the infringing material; and (2) it 24 did not receive a financial benefit directly attributable to the infringing activity, in a case in which 25 the service provider has the right and ability to control such activity.” *Id.* (cleaned up). 26 The safe harbor under 17 U.S.C. §512(c) is an affirmative defense. As explained above, 27 affirmative defenses generally “may not be raised on a motion to dismiss except when the defense 1 2018). The defendant must show there is an obvious bar to securing relief evident on the face of 2 || the complaint or from judicially noticeable materials. “Only when the plaintiff pleads itself out of 3 || court—that is, admits all the ingredients of an impenetrable defense—may a complaint that 4 otherwise states a claim be dismissed under Rule 12(b)(6). *Durnford v. MusclePharm Corp.*, 907 5 F.3d 595, 603 n.8 (9th Cir. 2018) (citation omitted). 6 Robinson’s allegation that Roblox derived a financial benefit directly attributable to the 7 || infringement of his copyright is sufficient on its own to preclude Roblox from establishing beyond 8 || dispute that it is entitled to the protections of the DMCA safe harbor. See 17 U.S.C. 9 § 512(c)(1)(B). In addition, its DMCA safe harbor defense fails because the webpages that Roblox 10 || relies upon to establish that defense do not establish beyond dispute that Roblox satisfies the safe 11 harbor’s other requirements. Roblox maintains that its Terms of Use, DMCA Guidelines, and 12 || Community Standards establish that it has policies in place to prohibit copyright infringement and 5 13 comply with the DMCA, including a procedure for users to notify it about infringing material and 14 a policy of taking down that material upon receiving a valid request. Although the Court can take 3 15 || judicial notice of the webpages’ existence and content, it cannot take judicial notice of the truth of 16 any representations therein. While the Court can conclude from those materials that Roblox 3 17 represented to the public that it had a policy of complying with the DMCA, the Court cannot 18 conclude that Roblox actually had such a policy or complied with the terms stated therein.

19 CONCLUSION

20 For the foregoing reasons, the Court grants Roblox’s motion to dismiss the contributory 21 copyright infringement claim but denies its motion to dismiss the direct and vicarious copyright 22 || infringement claims. Robinson may file an amended complaint within 21 days of this order. 23 IT IS SO ORDERED. 24 Dated: March 24, 2025 25 7 P. Casey Fitts United States District Judge 28