

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Viral DRM LLC v. Francisco Morante Fuentes

Viral DRM · No. 3:23-cv-05045-JSC · Decided March 14, 2025

SUMMARY

The United States District Court for the Northern District of California denied Viral DRM LLC’s motion for default judgment and dismissed the action for lack of standing. The court held that Viral DRM’s agreements with copyright holders did not grant it an exclusive right under 17 U.S.C. § 106 sufficient to establish standing under § 501(b), and that the record also failed to establish standing for claims under the DMCA and §§ 1201 and 1202. The court denied leave to amend.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Jacqueline Scott Corley
JURISDICTION	United States District Court for the Northern District of California
DECIDED	March 14, 2025
DOCKET	3:23-cv-05045-JSC
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff moved for default judgment after the Clerk entered default. The Court sua sponte questioned Plaintiff's standing, ordered Plaintiff to show cause, denied default judgment, dismissed the action for lack of standing, and denied leave to amend.
STANDARD OF REVIEW	The Court evaluated standing as a threshold issue and exercised discretion under Federal Rule of Civil Procedure 15(a)(2) in denying leave to amend.
PRECEDENTIAL VALUE	unpublished district court order; precedential status unknown
PARTIES	Viral DRM LLC v. Francisco Morante Fuentes

TOPICS

- copyright infringement
- dmca
- standing
- default judgment
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Viral DRM had standing under 17 U.S.C. § 501(b) to assert copyright infringement claims based on the rights granted in its agreements with the copyright holders.
2. Whether Viral DRM had standing under 17 U.S.C. § 512(f) to seek damages for allegedly false DMCA counter notices.
3. Whether Viral DRM had standing under 17 U.S.C. § 1203 to assert claims concerning removal or alteration of copyright-management information under §§ 1201 and 1202.
4. Whether Viral DRM should be granted leave to amend to name the videographers as nominal plaintiffs.

HOLDINGS

1. An entity lacks standing to sue for copyright infringement under Section 501(b) when its agreement grants management, agency, enforcement, and related distribution rights but does not transfer an exclusive Section 106 right, such as the exclusive right to authorize third parties to reproduce, distribute, or display the copyrighted work.
2. A plaintiff seeking damages under Section 512(f) must establish that it is the copyright owner or an authorized licensee for the works and claims at issue; Viral DRM failed to do so on this record.
3. A plaintiff must establish an injury and a sufficient legal relationship to the copyrighted works and the asserted copyright-management-information rights to sue under Section 1203; Viral DRM failed to establish standing for its watermark-removal claims.
4. Leave to amend was properly denied where the plaintiff had already amended, had received multiple opportunities to clarify its claims and supporting evidence, and the proposed amendment remained unclear.

KEY QUOTATIONS

“Statutory standing cannot be willed into existence. In this case, it is a matter of contract and it exists or it does not.”

“Giving Viral DRM the rights necessary to enforce the videographer’s copyright, is not the same as the exclusive right to “authorize third parties to reproduce, distribute, and display the photographs” required to have standing to bring a copyright infringement action.” (Dkt. No. 74 at 4)

FACTUAL BACKGROUND

Viral DRM alleged that Defendant downloaded and copied its copyrighted videographic materials from YouTube and re-uploaded infringing versions to his YouTube channel. The registrations attached to the amended complaint identified John Michael Sibley and Michael Brandon Clement, rather than Viral DRM, as the copyright registrants. The agreements submitted by Viral DRM granted exclusive agency and management rights but reserved copyright ownership to the videographers and did not establish that Viral DRM held an exclusive right under Section 106 to authorize reproduction, distribution, or display. The record also failed to identify

which videographer owned each work involved in the DMCA and copyright-management-information claims or to clarify the relationships among Viral DRM, Live Storms Media, News Media Network, and the videographers.

PROCEDURAL HISTORY

Viral DRM filed an amended complaint asserting copyright infringement and related claims. After Defendant failed to respond, the Clerk entered default and Viral DRM moved for default judgment. At the hearing, the Court questioned Viral DRM's standing and directed it to submit licensing agreements; after reviewing the response, the Court issued an order to show cause. The Court concluded that Viral DRM had not established standing under the Copyright Act, the DMCA, or the provisions concerning copyright management information, denied default judgment, dismissed the action, and denied leave to amend.

DISPOSITION

dismissed

CASES CITED

- Silvers v. Sony Pictures Entertainment, Inc., 402 F.3d 881, 884, 887 (9th Cir. 2005) (en banc)
- Minden Pictures, Inc. v. John Wiley & Sons, Inc., 795 F.3d 997, 1002-1005 (9th Cir. 2015)
- DRK Photo v. McGraw-Hill Global Education Holdings, LLC, 870 F.3d 978, 983 (9th Cir. 2017)
- Stewart v. Baltimore & Ohio Railroad Co., 168 U.S. 445, 449 (1897)
- United States v. Corinthian Colleges, 655 F.3d 984, 995 (9th Cir. 2011)
- Ecological Rights Foundation v. Pacific Gas & Electric Co., 713 F.3d 502, 520 (9th Cir. 2013)
- Miller v. Yokohama Tire Corp., 358 F.3d 616, 622 (9th Cir. 2004)

OPINION

Viral DRM LLC v. Francisco Morante Fuentes

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 VIRAL DRM LLC, Case No. 3:23-cv-05045-JSC 8 Plaintiff, ORDER DENYING MOTION
FOR

DEFAULT JUDGMENT AND

9 v. DISMISSING ACTION FOR LACK OF
STANDING

10 FRANCISCO MORANTE FUENTES,

Dkt. Nos. 64, 74 Defendant. 11 12 13 Viral DRM LLC brings copyright infringement and related
claims against Francisco 14 Morante Fuentes alleging he downloaded and copied Viral DRM's

copyrighted materials from 15 YouTube, and then re-uploaded infringing versions of its copyrighted media content to his 16 YouTube channel Fulltops. This is one of several related copyright infringement actions. See Case

17 Nos. 23-4300, 23-5594, 23-5977, 23-6261, 23-6598, 24-731, 24-733, 24-739, 24-746, 24-747.

18 After Defendant failed to respond to the Amended Complaint, Viral DRM moved for entry of
19 default, which the Clerk granted, and now moves for entry of default judgment. (Dkt. Nos. 60,
20 64.1) At the hearing on Viral DRM's motion for default judgment, the Court raised an issue 21
regarding Viral DRM's standing to bring the copyright infringement claims and directed Viral 22
DRM to submit a copy of its license with the copyright holders. (Dkt. No. 71.) After reviewing 23
Viral DRM's response, the Court issued an Order to Show Cause (OSC) as to Viral DRM's 24
standing to bring the copyright infringement claims at issue here. (Dkt. No. 74.) 25 Viral DRM has
filed the exact same OSC response in each case—without any citations to 26 the record or even
tailoring the responses to the facts of the particular case. See Case Nos. 23- 27 1 4300, Dkt. No.
112; Case No. 23-5045, Dkt. No. 78; Case No. 23-5594, Dkt. No. 75; Case No. 23- 2 5977, Dkt.
No. 61; Case No. 23-6598, Dkt. No. 56; Case No. 24-731, Dkt. No. 39; Case No. 24- 3 733, Case
No. 24-739, Dkt. No. 42; Case No. 24-746, Dkt. No. 49; Case No. 24-747, Dkt. No. 42. 4 Viral
DRM's response fails to demonstrate it has standing to bring the claims here. Thus, for the 5
reasons set forth below and in its prior OSC, the Court DENIES the motion for default judgment 6
and DISMISSES this action.

7 DISCUSSION

8 Viral DRM is “a syndicator of award-winning videographic content created by talented 9
videographers.” (Dkt. No. 42 at ¶ 14.) According to the Amended Complaint, Viral DRM is 10
“affiliated” with WXChasing LLC, “a video production company that creates some of the 11
videographic Works that Viral DRM syndicates and licenses,” and Live Storms Media LLC, “a 12
licensing broker of video content owned by or exclusively licensed to Viral DRM and 13
WXchasing.” (Id. at ¶ 15.) Viral DRM alleges it “was the exclusive licensee of the Works at 14
issue in this case” and it “registered the Works at issue in this case with the Register of Copyrights
15 pursuant to 17 U.S.C. § 411(a).” (Id. at ¶¶ 38, 39.) The Registration Certificates attached to the
16 Amended Complaint, however, show the works at issue are registered to “John Michael Sibley”
17 and “Michael Brandon Clement.” (Dkt. No. 42-2.) 18 According to Clement's declaration in
support of the motion for default judgment, he is a 19 principal and one of the owners of Viral
DRM. (Dkt. No. 64-2 at ¶ 1.) Clement attests “[a]ll the 20 works are exclusively licensed to Viral
DRM for distribution and syndication pursuant to written 21 agreements that provide Viral DRM
with the necessary rights to sue for the infringements at issue 22 in this case.” (Id. at ¶ 8.)
Following the hearing on the motion for default judgment, Viral DRM 23 filed its “Exclusive
Management Agreement” purportedly with the videographer holding the 24 copyright. (Dkt. No.
72-3.) In what has been a common practice in this action, Viral DRM 25 submitted the wrong
agreements; that is, an agreement with a videographer other than Clement or 26 Sibley. Viral DRM

has since filed the correct Agreements and a response to the Court’s Order to 27 Show Cause as to its standing to bring the claims here. (Dkt. Nos. 75-1, 78.) A. Copyright Infringement under Section 501(b) Section 501(b) of the Copyright Act specifies who has standing to sue for infringement: 2 “The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the 3 [registration] requirements of section 411, to institute an action for any infringement of that 4 particular right committed while he or she is the owner of it.” 17 U.S.C. § 501(b). Section 106 sets 5 forth an “exhaustive list” of those exclusive rights. *Si/vers v. Sony Pictures Entm’t., Inc.*, 402 F.3d 6 881, 887 (9th Cir. 2005) (en banc) (citing 17 U.S.C. § 106). These include: 4 the rights “to do and to authorize” others to do six things with the 8 copyrighted work: to reproduce the work, to prepare derivative works based upon the work, to distribute copies of the work, to perform the 9 work publicly, to display the work publicly, and to record and perform 10 the work by means of an audio transmission. *Minden Pictures, Inc. v. John Wiley & Sons, Inc.*, 795 F.3d 997, 1002 (9th Cir. 2015) (quoting 17 11 U.S.C. § 106). In *Minden*, the Ninth Circuit held “either an assignment (which transfers legal title 12 to the transferee) or an exclusive license (which transfers an exclusive permission to use to the 13 transferee) qualifies as a ‘transfer’ of a right in a copyright for the purposes of the Act.” *Minden*, 14 795 F.3d at 1003 (emphasis in original). In contrast, a “‘nonexclusive license’ does not constitute 15 a ‘transfer of copyright ownership’ and therefore cannot confer standing to assert an infringement 16 claim.” *DRK Photo v. McGraw-Hill Glob. Educ. Holdings, LLC*, 870 F.3d 978, 983 (9th Cir. 17 ws 5 ig 2017) (citing 17 U.S.C. § 101). According to the Agreement between Viral DRM and Clement/Sibley, the copyright 19 holder—referred to as a “Content Creator”—grants Viral DRM: 20

1. Grant of Exclusive Agency Rights. Content Creator hereby grants to 21 VDEM the exclusive agency rights to manage and administer any content submitted by Content Creator to VDORM (the “Works”), including but not limited to the right to search 22 for copyright infringements of the Works, to register copyrights for the Works with the United States Copyright Office; to authorize VDORM’s attorneys to negotiate settlements, 23 issuc takedown notices pursuant to the Digital Millennium Copyright Act or otherwise file claims on behalf of the Content Creator in an effort to enforce the copyrights in and to the Works; Content Creator grants VORM exclusive agency rights to display, store, transmit, and distribute Works as needed to fulfill obligations set forth in this 25 agreement (Dkt. No. 75-1 at p. 3 § 1; Dkt. No. 75-1 at p. 10 | 1.) The Content Creator otherwise retains all 26 copyright and ownership rights in the work. (/d. at 3.) Sibley has submitted a declaration 27 indicating he has also an agreement with Live Storms Media to act as his licensing agent. (Dkt. 28

1 No. 78-6 at ¶ 6.)

2 In response to the Court’s OSC, Viral DRM circularly argues “[t]he grant of ‘exclusive 3 agency rights’ in the agreements between videographers and Viral DRM are sufficient to appoint 4 Viral as exclusive owner of at least one of the § 106 rights and provide Viral with standing to sue” 5

because in order to “fulfill its responsibility to ‘manage and administer any content’” Viral DRM 6 “must be empowered to ‘display, store, transmit, and distribute Works as needed to fulfill 7 obligations set forth in this agreement.’” (Dkt. No. 78 at 4-5.) That Viral DRM believed its 8 licensing agreements would allow it to bring the copyright infringement claims before the Court 9 does not confer standing under Section 501. Statutory standing cannot be willed into existence. 10 In this case, it is a matter of contract and it exists or it does not. As the Court previously noted: 11 Giving Viral DRM the rights necessary to enforce the videographer’s copyright, is not the same as the exclusive right to “authorize third 12 parties to reproduce, distribute, and display the photographs” required to have standing to bring a copyright infringement action. *Minden 13 [Pictures, Inc. v. John Wiley & Sons, Inc., 795 F.3d 997, 1005 (9th Cir. 2015)]*; see also *Silvers [v. Sony Pictures Ent., Inc., 402 F.3d 881, 14 884 (9th Cir. 2005)]* (“The right to sue for an accrued claim for infringement is not an exclusive right under § 106.”). Unlike the 15 agreement in *Minden*, the Agreement does not give Viral DRM the exclusive right to authorize third parties to reproduce, distribute, and 16 display the copyrighted video. 17 (Dkt. No. 74 at 4.) Accordingly, under binding Ninth Circuit precedent, Viral DRM lacks 18 standing to bring a copyright infringement claim under Section 501(b). 19 B. DMCA False Counternotices under Section 512(f) 20 Viral DRM’s second claim for relief alleges Defendant violated the Digital Millennium 21 Copyright Act (“DMCA”), 17 U.S.C. § 512(f), by submitting false counternotices in response to 22 Viral DRM’s takedown notice. 23 In its motion for default judgment, Viral DRM seeks damages for six violations of this 24 statute. (Dkt. No. 64-1 at 20.) According to a chart attached the motion, the “author”— 25 presumably videographers—for these works are: Chris Tangey, Reed Timmer, Brandon Clement, 26 John Sibley, and Daniel Shaw. (Dkt. No. 64-3 at 2.) The takedown notices, however, list the 27 copyright owner for five of these videos as: * Copyright Owner Name (Company Name if applicable): Viral DRM * Your Full Legal Name (Aliases, usernames or initials not accepted): 1 Michael Clement * Your Title or Job Position (What ☐ your authority to make this complaint?): 2 Digital Rights Manager 3 (Dkt. No. 42-3 at 3-13.) And for the sixth it says: ® Copyright Owner Name (Company Name if applicable): Daniel Shaw / News 4 Media Network / Viral DRM ® Your Full Legal Name (Aliases, usernames or initials not accepted): Daniel 5 Shaw * Your Title or Job Position (What is your authority to make this complaint?): 6 Rights Manager 7 (Dkt. No. 42-3 at 14.) Viral DRM has not submitted licensing agreements for Tangey, Timmer, or 8 Shaw. (Dkt. No. 75-1.) Each attest they have agreements with Viral DRM. (Dkt. No. 78-3, 9 Tangey Decl. at {} 3-4 (reciting language identical to that quoted above in Paragraph 1 of 10 || Clement’s Agreement with Viral DRM); Dkt. No. 78-4, Timmer Decl. at 3-4 (same); Dkt. No. 11 78-9 at {} 3-4 (same).) Shaw’s declaration makes no reference to the “News Media Network” 12 || listed in the above takedown notice and there is no other indication of his relationship to Viral 13 || DRM. (Dkt. No. 78-9.) Sibley’s declaration indicates he has licensing agreements with both Viral v 14 || DRM and Live Storms Media although the agreement with Live Storms Media is not attached. © 15 || (kt. No. 78-6 at fff 3-4.)

oO 16 Section 512(f) authorizes the “copyright owner or copyright owner’s authorized licensee” 2
17 to obtain damages for material misrepresentations by the alleged infringer to the online
provider. 3 18 17 U.S.C. § 512(f). Because the record is confusing and does not establish who the
copyright 19 owner or any authorized licensee is for the Works at issue, Viral DRM has not
demonstrated it has 20 || standing under Section 512(f). As a threshold matter, the Amended
Complaint does not actually 21 identify the Works at issue for each claim, including the Section
512(f) claim. While Viral DRM 22 submitted a chart with the motion for default judgment listing
the works and author, neither the 23 license agreements, the videographer declarations, nor the
OSC response specifically identify the 24 || Works at issue and or the videographer associated with
any particular Work; instead, they refer to 25 || the “Works” and the “videographer,” generally. The
videographers have each submitted generic 26 || declarations attesting “I am an extreme weather
videographer and cinematographer. The 27 copyrighted work at issue in this case is an extreme
weather video I filmed and created.” (Dkt.

28 No. 78-3, Tangey Decl. at || 1-2; Dkt. No. 78-4, Timmer Decl. at 1-2; Dkt. No. 78-5, Clement
1 Decl. at ¶¶ 1-2; Dkt. No. 78-6, Sibley Decl. at ¶¶ 1-2; Dkt. No. 78-7, Olbinski Decl. at ¶¶ 1-2;
Dkt.

2 No. 78-8, Hank Decl. at ¶¶ 1-2; Dkt. No. 78-9, Shaw Decl. at ¶¶ 1-2.) And as discussed above,
3 they have only provided license agreements for Sibley and Clement. Nor is there any clarity as
to 4 the relationship between Viral DRM and Live Storms Media or News Media Network—to
whom 5 the videographers might have licensed their work. To further complicate things, Viral
DRM’s 6 response to the OSC indicates “[s]ince this case was filed, Viral DRM’s status as a
partner with 7 L[ive Storms Media] in the syndication and distribution business underwent a
change” and 8 because of “disagreements” between Clement and Brett Adair, the manager of [Live
Storms 9 Media]” Mr. Adair has assigned his interest in Viral DRM to Clement. (Dkt. No. 78 at 2-
3.) 10 On this record, it is impossible to unravel the web of connections between all the entities 11
and individuals here and determine the relationship between the entities and individuals involved
12 with the copyrighted works at issue. Viral DRM has thus not demonstrated its standing to bring
a 13 claim under Section 512(f). 14 C. Removal and Misrepresentation of CMI under Sections
1202(a), (b) 15 Viral DRM’s 17 U.S.C. §§ 1201, 1202 claims allege the CMI watermarks identify
the 16 Works as the property of Live Storms Media. (Dkt. No. 42 at ¶ 67.) Under 17 U.S.C. §
1203, 17 [a]ny person injured by a violation of section 1201 or 1202 may bring a civil action in an
18 appropriate United States district court for such violation.” For the reasons discussed above and
19 the lack of clarity regarding Live Storms Media’s relationship with Viral DRM, the
videographers, 20 or the Works at issue, Viral DRM has not demonstrated it has standing to bring a
claim regarding 21 the removal of Live Storms Media’s watermark from the Works. 22 *** 23
Accordingly, Viral DRM’s motion for default judgment is denied and this action is 24 dismissed
for lack of standing. To the extent Viral DRM now seeks leave to name the 25 videographers as
“nominal Plaintiffs,” it is unclear what this even means. (Dkt. No. 78 at 6.) In 26 support, Viral

DRM cites a Supreme Court case from 1897 discussing in whose name a wrongful death action should be brought. See *Stewart v. Baltimore & O.R. Co.*, 168 U.S. 445, 449 (1897) 1 When considering whether to grant leave to amend, the Court considers five factors: “bad faith, 2 || undue delay, prejudice to the opposing party, futility of amendment, and whether the plaintiff has 3 || previously amended the complaint.” *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th 4 || Cir. 2011). “Although a district court ‘should freely give leave [to amend] when justice so 5 || requires,’ the court’s discretion to deny such leave is ‘particularly broad’ where the plaintiff has 6 || previously amended its complaint.” *Ecological Rts. Found. v. Pac. Gas & Elec. Co.*, 713 F.3d 7 || 502, 520 (9th Cir. 2013) (quoting Fed. R. Civ. P. 15(a)(2); *Miller v. Yokohama Tire Corp.*, 358 8 F.3d 616, 622 (9th Cir. 2004)). Viral DRM has previously been granted leave to amend and has 9 || been afforded several opportunities to clarify its claims and the evidence in support of its claims. 10 || Each successive filing raises more questions than it answers. It is impossible to tell whether this is 11 sloppiness or something nefarious, but the Court has expended tremendous resources trying to 12 || figure it out and has given Viral DRM chance after chance to clarify the record, but each response 13 only muddies the record. Accordingly, the Court in its discretion denies leave to amend.

CONCLUSION

3 15 For the reasons stated above, the Court DENIES the motion for default judgment and a 16 || DISMISSES this action given Viral DRM’s failure to demonstrate standing to bring the copyright 17 infringement and related claims at issue here. 18 This Order disposes of Docket Nos. 64, 74. 19 20 IT IS SO ORDERED. 21 Dated: March 13, 2025 22 J 5 | □ 23 ne

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24 United States District Judge 25 26 27 28