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10
11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 SONY COMPUTER ENTERTAINMENT
AMERICA LLC,

15 Plaintiff,

16 v.

17 GEORGE HOTZ; HECTOR MARTIN
18 CANTERO; SVEN PETER; and DOES
1 through 100,

19 Defendants.

Case No. 11-cv-000167 SI

**PLAINTIFF SONY COMPUTER
ENTERTAINMENT AMERICA, LLC'S
OPPOSITION TO DEFENDANT
GEORGE HOTZ'S MOTION TO
DISMISS FOR LACK OF PERSONAL
JURISDICTION AND IMPROPER
VENUE**

Date: April 8, 2011

Time: 9:00 a.m.

Courtroom: 10, 19th Floor

Judge: Hon. Susan Illston

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- I. INTRODUCTION 1
- II. HOTZ IS SUBJECT TO PERSONAL JURISDICTION IN CALIFORNIA 3
 - A. Hotz Has Consented to The Jurisdictional Provision of the PSN User Agreement..... 3
 - B. SCEA Has Demonstrated Minimum Contacts Necessary to Establish This Court’s Exercise of Jurisdiction Over Hotz..... 5
 - 1. Hotz Purposefully Directed His Activities At SCEA and Availed Himself of the Privilege of Conducting Activities in California 6
 - a) Hotz Has Enabled and Encouraged Users To Download Circumvention Devices Through His Interactive Website and His PS3 Hacking-Related Posts..... 7
 - b) Hotz’s Website Is Not Passive 8
 - c) Hotz Had Knowledge of SCEA in California 11
 - d) Hotz Caused Harm to SCEA in California..... 13
 - e) Hotz’s Other Contacts With California 14
 - 2. SCEA’s Claims Arise from Forum-Related Activities 15
 - C. The Exercise of Personal Jurisdiction Over Hotz Is Reasonable 16
 - 1. Hotz’s Purposeful Interjection into California’s Affairs Was Extensive..... 17
 - 2. Burden on Defending in This Forum..... 17
 - 3. Extent of Conflict with Sovereignty of Hotz’s State 18
 - 4. Forum State’s Interest in Adjudicating the Dispute 19
 - 5. Effective Resolution of the Controversy..... 19
 - 6. Convenience and Effective Relief for Plaintiff..... 20
 - 7. The Existence of an Alternative Forum..... 20



1 III. VENUE IS PROPER.....21
2 IV. HOTZ'S MOTION SHOULD BE DENIED BECAUSE HOTZ
3 THWARTED JURISDICTIONAL DISCOVERY22
4 V. CONCLUSION.....24
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



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Allstar Mktg. Group, LLC v. Your Store Online,
666 F. Supp. 2d 1109 (C.D. Cal. 2009) 21

Autodesk, Inc. v. RK Mace Engineering, Inc.,
2004 WL 603382 (N.D. Cal. 2004) passim

Bensusan Restaurant Corp. v. King,
937 F. Supp. 295 (S.D.N.Y. 1996), *aff'd* 126 F. 3d 25 (2d Cir 1997) 9

Brayton Purcell LLP v. Recordon & Recordon,
606 F.3d 1124 (9th Cir. 2010) 5

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471 U.S. 462 (1985) 16

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2000 U.S. Dist. LEXIS 16156 , 2000 WL 1678039 (S.D.N.Y. 2000) 6

Calder v. Jones,
465 U.S. 783 (1984) 6

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380 F.3d 1107 (9th Cir. 2004) passim

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11 F.3d 1482 (9th Cir. 1993) 6

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694 F. Supp. 2d 1039 (N.D. Cal. 2010) 4, 13, 15

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130 F.3d 414 (9th Cir. 1997) 10

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303 F.3d 1104 (9th Cir. 2002) 6

Harris Rutsky & Co. Ins. Servs. v. Bell & Clements Ltd.,
328 F.3d 1122 (9th Cir. 2003) 16

Holliday v. Lifestyle Lift, Inc.,
2010 WL 3910143, 2010 U.S. Dist. LEXIS 110296 (N.D. Cal., Oct. 5, 2010) 19, 21

Invisible Stripes, LLC v. Virag,
209 U.S. Dist. LEXIS 57956 (N.D. Cal. July 8, 2009) 21



1	<i>M/S Bremen v. Zapata Off-Shore Co.</i> ,	
2	407 U.S. 1 (1972).....	4
3	<i>Maritz, Inc. v. Cybergold, Inc.</i> ,	
4	947 F. Supp. 1328 (E.D. Mo. 1996).....	10
5	<i>Menken v. Emm</i> ,	
6	503 F.3d 1050 (9th Cir. 2007)	passim
7	<i>Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.</i> ,	
8	243 F. Supp. 2d 1073.....	9
9	<i>O'Reilly v. Valley Entm't, Inc.</i> ,	
10	2011 U.S. Dist. LEXIS 15826 (N.D. Cal. Jan. 4, 2011).....	13, 16, 19
11	<i>Panavision Int'l, L.P. v. Toeppen</i> ,	
12	141 F.3d 1316 (9th Cir. 1998)	passim
13	<i>Pavlovich v. Superior Court</i> ,	
14	29 Cal. 4th 262 (2002).....	9
15	<i>Pebble Beach Co. v. Caddy</i> ,	
16	453 F.3d 1151 (9th Cir. 2006)	11
17	<i>Yahoo! Inc. v. La Ligue Contre Le Racisme</i> ,	
18	433 F.3d 1199 (9th Cir. 2006)	5
19	<i>Zippo Mfg. Co. v. Zippo DOT Com</i> ,	
20	952 F. Supp. 1119 (W.D. Pa. 1997)	10
21	STATUTES	
22	United States Code § 1391(b)(2).....	21

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1 **I. INTRODUCTION**

2 The evidence clearly establishes that this Court has personal jurisdiction over
3 Defendant George Hotz (“Hotz”). Contrary to his prior denials, Hotz *did* consent to
4 personal jurisdiction in California. In March, 2010, Hotz signed up for a PlayStation®
5 Network (“PSN”) Account using a new PlayStation® 3 computer entertainment system
6 (“PS3 System”) that he purchased. Moreover, Hotz has plainly directed his unlawful
7 conduct at Plaintiff Sony Computer Entertainment America LLC (“SCEA”) here in the
8 Northern District of California and has caused harm to SCEA, a resident of this district.
9 Hotz circumvented the technological protection measures (“TPMs”) in the PS3 System
10 and through his website, **Hotz distributed circumvention devices to thousands of**
11 **California residents**. Discovery from the third party webhost for Hotz’s website shows
12 that approximately **5,700** unique IP addresses¹ **in California** downloaded the
13 circumvention devices from Hotz’s website before the commencement of this lawsuit. It
14 is impossible to seriously characterize Hotz’s widespread distribution of his hacking
15 software in this forum as “passive.” Indeed, this is precisely the type of interactive
16 website activity that, time and time again, courts have held is sufficient to establish
17 personal jurisdiction. This harm, together with Hotz’s other contacts with the Northern
18 District of California, unquestionably establish that this Court may exercise personal
19 jurisdiction over Hotz.

20 In a desperate attempt to avoid jurisdiction, Hotz now argues that SCEA has not
21 suffered harm as a result of his conduct because the PS3 System console is developed
22 by SCEA’s affiliate, Sony Computer Entertainment Inc. (“SCEI”) in Japan.² This
23 argument is nonsensical. SCEA is the exclusive distributor of PS3 Systems in the United

24 _____
25 ¹ These IP addresses were used only to determine the locations of the computers or
26 networks used to download Hotz’s circumvention devices. They were not used to identify
27 any specific individuals. Declaration of Andrew Pierce (“Pierce Decl.”), ¶2.

28 ² Hotz also claims that SCEA was trying to “hide the ball with respect to ‘who does
what.’” See Motion at 5. This statement is both untrue and unwarranted. SCEA clearly
set forth the relationship between SCEA and SCEI both in its Complaint (¶¶ 18-20) and
the Declaration of Riley R. Russell in Support of the *Ex Parte* Motion for Temporary
Restraining Order (Docket No. 3, ¶¶ 2-3.)



1 States. SCEA also develops, markets and distributes video game software for the PS3
2 System and licenses third party developers (from whom it receives royalties) to do the
3 same using proprietary PS3 technology. SCEA's existence is not news to Hotz. When
4 Hotz purchased a new PS3 System – one of the four in his possession – Hotz received
5 PS3 documentation which repeatedly mentions SCEA through-out. For example, the
6 PS3 System Instruction Manual on page 3 states:

7 **If you have questions about this product, contact SCEA Consumer
8 Services ... or write to:**

9 **Sony Computer Entertainment America
10 Consumer Service/Technical Support
11 PO Box 5888, San Mateo, CA 94402-0888**

12 Through his unlawful conduct, Hotz has directly targeted and harmed SCEA by
13 providing to users the ability to: (a) circumvent multiple TPMs on the PS3 Systems that
14 SCEA distributes and (b) run pirated versions of the software that SCEA and its licensees
15 have developed for the PS3 System. The fact that SCEI has also been harmed by Hotz's
16 conduct does not in any way undermine the clear evidence of harm to SCEA in California
17 that was the inevitable effect of Hotz's actions.

18 Though the evidence establishing personal jurisdiction is already overwhelming,
19 SCEA has little doubt that there is much more. However, over the last several weeks
20 Hotz has engaged in a campaign to thwart jurisdictional discovery at every turn –
21 regardless of whether the Court has ordered such discovery or not. Most seriously, after
22 Magistrate Judge Spero ordered an inspection of Hotz's devices and ordered Hotz to
23 appear at a deposition in California, SCEA learned that Hotz had deliberately removed
24 integral components of his impounded hard drives prior to delivering them to a third party
25 neutral and that Hotz is now in South America, an excuse for why he will not immediately
26 provide the components of his hard drives as requested by the neutral. Hotz's attempts
27 to dodge this Court's authority raise very serious questions.

28 For the reasons set forth below, this Court has personal jurisdiction over Hotz.
Accordingly, SCEA respectfully requests that the Court deny Hotz's Motion to Dismiss for



1 Lack of Personal Jurisdiction and Improper Venue (“Motion”).

2 **II. HOTZ IS SUBJECT TO PERSONAL JURISDICTION IN CALIFORNIA**

3 **A. Hotz Has Consented to The Jurisdictional Provision of the PSN User**
4 **Agreement**

5 The PlayStation Network (“PSN”) is an entertainment network that supports online
6 gameplay and PS3 System connectivity. Declaration of Kenneth Law (“Law Decl.”), ¶2.
7 SCEA provides consumer service and support for the PSN in the United States out of its
8 office in Foster City, California. Declaration of Jennifer Y. Liu (“Liu Decl.”), ¶4. A PSN
9 account can be created either using the PS3 System or a personal computer. Law Decl.,
10 ¶3. In either case, a user creating a PSN account is asked to provide the following
11 information: a valid email address, date of birth, a unique username and password, the
12 user’s first and last name, a physical address, and the country in which the user lives. *Id.*
13 During the account creation process (through either a PS3 System or personal
14 computer), the user is presented with the PSN Terms of Service and User Agreement
15 (“PSN User Agreement”) and required to either “accept” or “deny” the PSN User
16 Agreement by clicking a corresponding button. *Id.* The PSN User Agreement specifies
17 that the user has entered a binding agreement with SCEA if he or she chooses to accept
18 it. *Id.* The PSN User Agreement also requires that users “submit to personal jurisdiction
19 in California and further agree that any dispute arising from or relating to this Agreement
20 shall be brought in a court within San Mateo County, California.” *Id.* The user cannot
21 complete registration using a personal computer or a PS3 System unless he or she
22 accepts the PSN User Agreement. *Id.*

23 Contrary to Hotz’s declaration under oath,³ jurisdictional discovery has revealed
24 that Hotz did register for a PSN account. In response to SCEA’s inspection demand,

25 _____
26 ³ On January 12, 2011, Hotz submitted a declaration to the Court (Docket No. 19-1) in
27 to discussing the PSN account, Hotz equivocated, stating: “To the best of my knowledge
28 and belief, I do not have a PlayStation Network account.” Hotz also provided
interrogatory responses that he has refused to verify, stating that he has not accessed
the PSN. Bricker Decl. ¶4.



1 Hotz identified four PS3 Systems in his possession. Bricker Decl., ¶4, Exh. C. He
2 explained that he had purchased one of these consoles new in February 2010 and
3 provided the serial number for that console. *Id.* SCEA used that serial number to
4 determine that on February 25, 2010, Hotz purchased the PS3 System at a Gamestop
5 store just miles from his home. Law Decl., ¶6; Bricker Decl., ¶6, Exh. E. SCEA's records
6 show that the same PS3 System was used on March 10, 2010 to create a PSN account
7 under the user name "blickmanic." Law Decl., ¶6, Exh. A. The IP address associated
8 with the registration is located in Glen Rock, New Jersey, where Hotz lives. Law Decl.
9 ¶6. Hotz's ownership of the "blickmanic" account is further supported by the fact that an
10 Internet search of the user name "blickmanic" reveals a posting discussing the
11 jailbreaking of cellular phones – Hotz's original "claim to fame." Bricker Decl., ¶7, Exh. F
12 ("Just curious what people would pay for exclusive rights to this solution. [Motorola]
13 Tracfone W175g unlocked and debranded. PM me.") As discussed above, to create his
14 PSN account, Hotz was required to first agree to the terms of the PSN User Agreement
15 and thus he is clearly subject to personal jurisdiction in California.

16 It is well established that a valid and enforceable forum selection clause operates
17 as consent to personal jurisdiction in a designated forum. *See, e.g., M/S Bremen v.*
18 *Zapata Off-Shore Co.*, 407 U.S. 1, 10 (1972); *Craigslist, Inc. v. Naturemarket, Inc.*, 694 F.
19 Supp. 2d 1039, 1052-53 (N.D. Cal. 2010). As the Northern District made clear in
20 *Craigslist*, a defendant who, in order to use a website, agrees to the terms and conditions
21 is subject to jurisdiction "based on their consent to the forum selection clause in the
22 [Terms of Use]." *Craigslist, Inc.*, 694 F. Supp. 2d at 1052-53. Forum selection clauses in
23 terms of use agreements, such as the PSN User Agreement, are presumptively valid.
24 *M/S Bremen*, 407 U.S. at 17; *see also Craigslist*, 694 F. Supp. 2d at 1052-53.

25 Moreover, SCEA has alleged that Hotz breached the PSN User Agreement by
26 engaging in unauthorized circumvention activities. (Docket No. 1, ¶¶ 91-95.) And the
27 record is now clear that Hotz did in fact accept the terms of the PSN User Agreement,
28 and thereby agreed to its forum selection clause. Accordingly, Hotz has consented to



1 personal jurisdiction in this Court through the forum selection clause in the PSN User
2 Agreement. This fact alone merits denial of Hotz's motion to dismiss.

3 **B. SCEA Has Demonstrated Minimum Contacts Necessary to Establish**
4 **This Court's Exercise of Jurisdiction Over Hotz**

5 Although Hotz's PSN account registration clearly establishes jurisdiction, even
6 without it, SCEA has shown the necessary minimum contacts between Hotz and
7 California. The Ninth Circuit has held that a district court can exercise specific personal
8 jurisdiction over a non-resident defendant if: (1) the defendant purposely directs his
9 activities or consummates some transaction with the forum or resident thereof, or
10 performs some act by which he purposefully avails himself of the privilege of conducting
11 activities in the forum;⁴ (2) the plaintiff's claim arises out of or results from the defendant's
12 forum-related activities; and (3) such exercise of jurisdiction is reasonable. *Menken v.*
13 *Emm*, 503 F.3d 1050, 1056-57 (9th Cir. 2007); *Yahoo! Inc. v. La Ligue Contre Le*
14 *Racisme*, 433 F.3d 1199, 1205-06 (9th Cir. 2006); *Panavision Int'l, L.P. v. Toepfen*, 141
15 F.3d 1316, 1320 (9th Cir. 1998).

16 To defeat Hotz's motion to dismiss, SCEA need only make a prima facie showing
17 of jurisdictional facts. *Menken*, 503 F.3d at 1056; *Brayton Purcell LLP v. Recordon &*
18 *Recordon*, 606 F.3d 1124, 1127 (9th Cir. 2010). Additionally, "uncontroverted allegations
19 in the complaint must be taken as true," and "[t]he court resolves all disputed facts in
20 favor of the plaintiff." *Menken*, 503 F.3d at 1056 (citations omitted); *Brayton Purcell*, 606
21 F.3d at 1127. Once SCEA shows Hotz's purposeful availment or direction and forum-
22 related activity, "the burden then shifts to [Hotz] to 'present a compelling case' that the
23 exercise of jurisdiction would not be reasonable." *Menken*, 503 F.3d at 1057 (citations
24 omitted). This Hotz cannot do.

25
26 _____
27 ⁴ Purposeful availment and purposeful direction are not mutually exclusive concepts.
28 Rather, the first prong of the specific jurisdiction analysis "may be satisfied by purposeful
availment of the privilege of doing business in the forum; by purposeful direction of
activities at the forum; or by some combination thereof." *Menken*, 503 F.3d at 1057
(quoting *Yahoo! Inc.*, 433 F.3d at 1206).



1 **1. Hotz Purposefully Directed His Activities At SCEA and Availed**
2 **Himself of the Privilege of Conducting Activities in California**

3 The “purposeful availment” requirement is satisfied when an intentional act is both
4 aimed at and has an effect in the forum state and causes harm, “the brunt of which is
5 suffered – and which the defendant knows is likely to be suffered – in the forum state.”
6 *Core-Vent Corp. v. Nobel Industries AB*, 11 F.3d 1482, 1486 (9th Cir. 1993) (citing *Calder*
7 *v. Jones*, 465 U.S. 783, 783-784 (1984)). Under this well-established “effects test,”
8 personal jurisdiction over Hotz is proper.

9 In an analogous case, the Ninth Circuit in *Panavision Int’l, L.P. v. Toeppen*, 141
10 F.3d 1316, 1320 (9th Cir. 1998) found personal jurisdiction over a nonresident defendant
11 based on defendant’s cybersquatting of domain names containing Panavision’s
12 registered trademarks. The Ninth Circuit held that defendant’s activities satisfied the
13 “effects test,” and thus personal jurisdiction was proper:

14 [Defendant] engaged in a scheme to register Panavision’s
15 trademarks as his domain names for the purpose of extorting
16 money from Panavision. His conduct, as he knew it likely
17 would, had the effect of injuring Panavision in California where
18 Panavision has its principal place of business and where the
19 movie and television industry is centered. Under the “effects
20 test,” the purposeful availment requirement necessary for
21 specific, personal jurisdiction is satisfied.

22 *Id.* at 1322. See also *Dole Food Co. v. Watts*, 303 F.3d 1104, 1107 (9th Cir. 2002)
23 (finding personal jurisdiction over European defendants based on their fraudulent activity
24 directed at plaintiff in California); *Cable News Network, L.P. v. GoSMS.com, Inc.*, 2000
25 U.S. Dist. LEXIS 16156, *15, 2000 WL 1678039 (S.D.N.Y. 2000) (transmission of
26 infringing material constitutes purposeful availment); *3DO Co. v. Poptop Software, Inc.*,
27 1998 U.S. Dist. LEXIS 21281, 49 U.S.P.Q.2d 1469 (N.D. Cal. 1998) (finding jurisdiction
28 over nonresident defendant for copyright infringement of video game software under the
 “effects test”); *Autodesk, Inc. v. RK Mace Engineering, Inc.*, 2004 WL 603382, *5 (N.D.
 Cal. 2004) (willful copyright infringement sufficient to meet the requirements of the



1 “effects test”).⁵

2 a) **Hotz Has Enabled and Encouraged Users To Download**
3 **Circumvention Devices Through His Interactive Website**
4 **and His PS3 Hacking-Related Posts**

5 In his latest exploit, Hotz, a well-known hacker who has gained notoriety for
6 circumventing the technological protection measures in a number of sophisticated
7 software and hardware systems, purposefully directed his activities at SCEA in California.
8 He committed an intentional act expressly aimed at California, causing harm in California
9 that Hotz knew was likely to be suffered in California. See *Menken*, 503 F.3d at 1050.

10 In January of 2011, without authorization, Hotz accessed and circumvented the
11 technological protection measures in the PS3 System. Not only did Hotz publish the
12 “Metldr Keys” on his website, **he also provided links on his website to his other**
13 **circumvention devices, including the 3.55 Firmware JailBreak and the Signing**
14 **Tools, encouraging and enabling individuals to download these circumvention**
15 **devices, and thus facilitating video game piracy.** Bricker Decl., ¶9, Exh. H.

16 Indeed, discovery from the web host for Hotz’s website shows that individuals from
17 approximately **5,700** unique IP addresses in California downloaded Hotz’s circumvention
18 devices prior to SCEA’s filing of this lawsuit. Bricker Decl., ¶10; Pierce Decl., ¶6, Exh. A.
19 By the time this Court’s injunction issued, the number of downloads in California had
20 increased to approximately **13,300**. Even after the TRO required that the devices be
21 removed, approximately 3,200 unique IP addresses in California still tried to download
22 the circumvention devices. Bricker Decl., ¶10.

23 The large volume of downloads from Hotz’s website was not a fluke. Hotz
24 promoted his circumvention device by publishing a link to geohot.com at [www.psx-](http://www.psx-scene.com)
25 [scene.com](http://www.psx-scene.com), an online forum for PlayStation hackers and gamers. Bricker Decl., ¶22,

26 ⁵ Hotz attempts to distinguish the *Autodesk* case on the grounds that he has not
27 admitted willful infringement. Motion at 15. However as the court in *Autodesk* explains,
28 several district courts “have found plaintiff’s allegations of willful infringement alone to be
sufficient” to establish personal jurisdiction through the effects test. *Autodesk*, 2004 WL
603382, *5. Here, not only has SCEA alleged that Hotz knowingly circumvented the
TPMs in the PS3 System and trafficked in the circumvention devices, but the Court has
already found that SCEA will likely prevail on that claim. (Docket No. 51.)



1 Exh. T. Along with the link, Hotz announced that others could access the circumvention
2 devices on his website. He also advertised his PS3 System hacking efforts through IRC
3 channels. *Id.* Moreover, he encouraged others to link to his site, rather than mirror it:
4 “Do not mirror file, link to geohot.com.” Bricker Decl., ¶9, Exh. H. With this conduct, Hotz
5 encouraged and enabled users to download the illegal circumvention devices from his
6 website. *3DO Co. v. Poptop Software, Inc.*, 1998 U.S. Dist. LEXIS 21281, *9, 49
7 U.S.P.Q.2d 1469 (finding of jurisdiction based on defendant’s interactive websites which
8 “encourage and facilitate users in California to download infringing [video game
9 software]”).

10 **b) Hotz’s Website Is Not Passive**

11 Despite the evidence, Hotz continues to insist that his website is passive. His
12 argument is not convincing. In *3DO Co. v. Poptop Software, Inc.*, like here, the
13 defendant posted a website, accessible by California residents, which permitted users to
14 download an infringing work. *3DO*, 1998 LEXIS 21281, *6, 49 U.S.P.Q.2d 1469.
15 Although the defendant characterized its website as passive, the court held otherwise,
16 stating that defendant facilitated the downloads. *Id.* at *8. Together, the facts that
17 defendant was likely to know that the video game industry is primarily located in
18 California and that its conduct was likely to have an effect in California were sufficient to
19 establish personal jurisdiction. *Id.* at *9-10. The same reasoning applies here. Hotz
20 provided downloads of the circumvention devices to California residents through his
21 website. Pierce Decl., ¶6; Bricker Decl., ¶10. Moreover, he was likely to know that his
22 conduct could impact SCEA and the video game industry located in California.⁶

23 Hotz tries to analogize his conduct to a mere operator of a passive website. Yet,
24 as demonstrated by the number of circumvention devices downloaded from Hotz’s

25 ⁶ Hotz’s attempt to distinguish *3DO* fails. The fact that *3DO* involves “cut and dry
26 copyright infringement” rather than violations of the Digital Millennium Copyright Act
27 makes no difference. Moreover, the *3DO* court did not hold that the server’s location in
28 the forum state was a necessary prerequisite to establish personal jurisdiction. Indeed,
the court focused on the fact that the infringing material could be downloaded from
defendant’s website and that defendant was likely to know that its infringing conduct
would harm California. *3DO*, 1998 LEXIS 21281, *8-10, 49 U.S.P.Q.2d 1469.



1 website, there is nothing passive about Hotz’s conduct aimed at California. Indeed, the
2 cases Hotz relies upon actually strongly **support** the exercise of personal jurisdiction
3 here.

4 In *Pavlovich v. Superior Court*, 29 Cal. 4th 262 (2002), a trade secret
5 misappropriation case, the defendant’s “sole contact with California” was his posting of
6 plaintiff’s source code on a website with **no interactive features**. *Pavlovich*, 29 Cal. 4th
7 at 273. There was also “no evidence that any California resident ever visited, much less
8 downloaded the DeCSS source code from, [defendant’s] website.” *Id.* at 274. The
9 situation here is quite different. California residents not only visited Hotz’s website, but
10 actually obtained approximately 13,300 downloads of Hotz’s circumvention devices from
11 the website prior to the injunction. Thus, Hotz’s website is anything but “passive.”⁷

12 *Bensusan Restaurant Corp. v. King*, 937 F. Supp. 295, 297 (S.D.N.Y. 1996), *aff’d*
13 126 F. 3d 25 (2d Cir 1997), is also easily distinguishable. See Motion at 10-11. In
14 *Bensusan*, the Missouri defendant’s website did nothing more than provide information
15 about its local jazz club, including a calendar and ticket prices. *Bensusan*, 937 F. Supp.
16 at 27. Moreover, the defendant did not target his jazz club website at New York
17 residents, nor could he have expected them to seek out a site for a Missouri jazz club.
18 *Id.* In contrast, Hotz, an experienced hacker and computer user, former Google
19 employee and California resident, knew that his circumvention devices would be widely

20
21 ⁷ Additionally, the plaintiff in *Pavlovich* did not assert a copyright infringement claim;
22 hence, the court questioned the relevancy of defendant’s knowledge that the
23 misappropriated code could be used for piracy and that such piracy would harm the
24 motion picture industry in California. *Id.* at 276. In contrast, here – where the Court has
25 already enjoined Hotz for violating the DMCA and SCEA has alleged contributory
26 copyright infringement – there is no question that such knowledge is relevant. Posting
27 his circumvention devices on the internet while at the same time (falsely) declaring he
28 does not condone piracy and issuing warnings about the security of gaming systems
makes clear that Hotz was keenly aware of the consequences of his actions. See Bricker
Decl., ¶¶17, Exh. O; ¶¶9, Exh. H. Further distinguishing *Pavlovich*, the Central District in
Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd., 243 F. Supp. 2d 1073, 1090, fn 9
(C.D. Cal. 2003) declared: “Even if this Court were governed by *Pavlovich* (which it is
not), it is apparent that the potential injury to California-based industries would be an
important ‘effects test’ factor, whether or not it is dispositive.” Moreover, unlike the
defendant in *Pavlovich*, Hotz had other contacts with the forum state. See Section
II(B)(1)(e) below.



1 downloaded and installed in California, a center of the video game and computing
2 industries. See Section II(B)(1)(c) below.

3 In *Zippo Mfg. Co. v. Zippo DOT Com*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997),
4 another case relied upon by Hotz, the court held that the 3,000 internet users within the
5 forum state who subscribed to the defendant's website services satisfied the test for
6 personal jurisdiction. *Zippo*, 952 F. Supp. at 1125-1126. Here, Hotz's website, with its
7 more than 5,700 California downloads prior to the commencement of this lawsuit, was
8 even more interactive than the website discussed by the court in *Zippo*.

9 Moreover, the website-related "promotional activities" recognized by the *Zippo*
10 court to establish personal jurisdiction over a defendant also exist here. *Zippo*, 952
11 F.Supp. at 1124-1125 (citing *Maritz, Inc. v. Cybergold, Inc.*, 947 F. Supp. 1328 (E.D. Mo.
12 1996)). Hotz promoted his circumvention activities in the <psx-scene.com> forum. He
13 also solicited individuals to link to his website and download his circumvention devices.
14 Bricker Decl., ¶9, Exh. H; ¶22, Exh. T. On his website, Hotz offered multiple usable files
15 for downloading, linked to an instructional video with a comments section, requested that
16 visitors "link to geohot.com", and stated that he was "excited to see what [users] will
17 create" using his 3.55 Firmware Jailbreak. Bricker Decl., ¶9, Exh. H. Under *Zippo*,
18 Hotz's website is clearly not "passive."

19 Hotz also relies on *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418 (9th Cir.
20 1997), to argue that his website lacks the "something more" needed to establish personal
21 jurisdiction because he "neither encourages nor facilitates illegal circumvention devices to
22 be downloaded on his website." Motion at 11. In *Cybersell*, the Ninth Circuit held that
23 there was no personal jurisdiction because (1) the defendant had not directed any activity
24 whatsoever at the forum state, (2) no citizen of the forum state accessed the defendant's
25 website, (3) the defendant did not transmit any data to the forum state, and (4) the
26 defendant did not complete any transactions with citizens of the forum state. In contrast,
27 here Hotz's website and related circumvention activities plainly satisfy the Ninth Circuit's
28 test for "something more." Thousands of California residents accessed Hotz's website to



1 obtain his circumvention devices, Hotz repeatedly transmitted those devices into
2 California, and he used multiple internet service providers located in California in
3 connection with his circumvention activities. See Section II(B)(1)(c) below. Accordingly,
4 personal jurisdiction is proper.⁸

5 **c) Hotz Had Knowledge of SCEA in California**

6 Hotz admits that he purchased a new PS3 in February, 2010. Bricker Decl., Exh.
7 ¶4, Exh. C. This purchase, by itself, necessarily demonstrates that Hotz’s professed
8 ignorance of SCEA is false. In *Autodesk*, this Court found that documentation
9 accompanying a product referencing a plaintiff’s location established that defendant’s
10 “infringing act was expressly aimed at California.” *Autodesk*, 20024 WL 603382 at *6.
11 The Court explained that the software, although purchased in a different state:

12 was accompanied by several documents that show that
13 plaintiff’s primary place of business is located in San Rafael,
14 California. Based on these notices defendant should have
15 known that plaintiff is headquartered in northern California.
16 Furthermore, a large portion of the software industry is
17 centered in northern California, a fact of which defendant
18 reasonably should have been aware. Taken together, these
19 two facts demonstrate that defendant’s allegedly infringing
20 activities are directed at California in ‘more than a random,
21 fortuitous or attenuated way’ (citations omitted). Thus, those
22 facts are enough to conclude, at least for jurisdiction purposes,
23 that defendant expressly aimed its copying activity toward
24 California.

19 *Id.* Likewise, here, the specific model of PS3 System that Hotz purchased came
20 packaged together with various PS3 System materials including an Instruction Manual
21 replete with references to SCEA in California. Miller Decl., ¶3, Exh. A. For example, the
22 Instruction Manual directs users to contact SCEA for their support needs and contains a
23 warranty agreement between SCEA and its customers. *Id.*, Exh. A at pp. 3, 4, 7-8, 10,
24 33, 40, 53-54. The warranty agreement continually refers to SCEA. For example:

25 Sony Computer Entertainment America (“SCEA”) warrants to
26 the original purchaser that the PS3™ hardware shall be free
27 from material defects in material and workmanship for a period

27 ⁸ For these same reasons, Hotz’s reliance on *Pebble Beach Co. v. Caddy*, 453 F.3d
28 1151 (9th Cir. 2006) is unavailing. The website at issue there was not interactive. *Pebble
Beach Co.*, 453 F. 3d at 1157. Hotz’s website here is.



1 of one (1) year from the original date of purchase (the
2 “Warranty Period”)

3 The warranty offered by Sony Computer Entertainment
4 America on your PS3™ hardware is the same whether or not
5 you registered your product.

6 Miller Decl., Ex. A, p. 53. Additionally, the Instruction Manual repeatedly directs
7 customers to SCEA’s website, which itself prominently describes SCEA’s headquarters in
8 Foster City, California. Bricker Decl., ¶20, Ex. R. Also included in the PS3 System
9 packaging that Hotz received was a standalone Notice of SCEA’s Return Policy. *Id.* at
10 ¶2, Ex. C. And the packaging itself provided Hotz with additional notice that his
11 circumvention would harm SCEA in California. *Id.* at ¶4.

12 Hotz’s knowledge of SCEA was not limited to his purchase of PS3 Systems. Hotz
13 had notice of both SCEA and the PSN User Agreement through his own blog in April
14 2010. Bricker Decl., ¶18, Ex. P. In response to Hotz’s blog post regarding his earlier
15 attempts to hack the PS3 System, commenters posted the PSN User Agreements on at
16 least five occasions. *Id.*

17 Indeed, Hotz was well aware of the harmful impact of his unlawful conduct on
18 SCEA. Bricker Decl., ¶9, Ex. H; ¶17, Ex. O. Contrary to his after-the fact denials, Hotz
19 deliberately aimed his conduct at SCEA in this District when he published the “Metldr
20 Keys” on his website and – on the same day – wrote to SCEA: **“if you want your next
21 console to be secure, get in touch with me. Any of you 3.”** Bricker Decl., ¶9, Ex. H.⁹

22 Hotz now summarily denies that he sought employment from SCEA and his
23 counsel argues that his conduct was targeted to SCEI in Japan. (Docket No. 44, ¶15.)
24 How Hotz retroactively characterizes his conduct does not matter. Hotz had ample notice
25 that his actions were targeted at SCEA, not just SCEI. Further, Hotz had actual
26 knowledge that his actions were targeting SCEA in California. Hotz – who is

27 ⁹ Furthermore, in a January 6, 2011, interview with the BBC, Hotz acknowledged that
28 his conduct will catalyze the piracy of video games. Bricker Decl., ¶17, Ex. O. Despite
feigning disturbance resulting from the proliferation of piracy, Hotz went on to release his
3.55 Firmware Jailbreak and Signing Tool circumvention devices. Bricker Decl., ¶9, Ex.
H.



1 unquestionably familiar with the video game and computing industries in California from
2 his prior hacking activities, his prior employment at Google in California, and his prior
3 residence in California – deliberately induced thousands of individuals in California to
4 download his circumvention devices.

5 On this factual record, there can be no question that Hotz’s actions were
6 “expressly aimed” at SCEA in California. See *Craigslist, Inc.*, 694 F. Supp. 2d at 1053
7 (“Because Plaintiff is headquartered in California and maintains its website in California,
8 Defendants’ actions directly targeted California, and Defendants knew that Plaintiff would
9 suffer the brunt of its harm in California.”); see also *Menken*, 503 F.3d at 1059 (“Menken
10 sufficiently alleges that Tomerlin engaged in wrongful conduct targeted at Menken, whom
11 Tomerlin knew to be a resident of Arizona.”); *O’Reilly v. Valley Entm’t, Inc.*, 2011 U.S.
12 Dist. LEXIS 15826, at *10 (N.D. Cal. Jan. 4, 2011) (finding express aiming where plaintiff
13 alleged that “Defendant willfully and unlawfully reproduced and distributed musical works
14 that Defendant knew were owned by Plaintiff; and Defendant was aware that such
15 infringement was likely to cause harm in California.”).

16 **d) Hotz Caused Harm to SCEA in California**

17 Indeed, the effect of Hotz’s unlawful activities has been felt in California by SCEA,
18 its licensed developers and consumers. SCEA is the exclusive distributor of the PS3
19 System within the United States. Liu Decl., ¶3. SCEA’s marketing, sales, legal,
20 engineering, financial, and consumer service departments are all located at SCEA’s
21 headquarters in Foster City, California. *Id.*, ¶2. Although SCEA’s affiliate SCEI develops
22 and manufactures the PS3 System, SCEA, not SCEI, is responsible for the PS3 System
23 in the United States. *Id.*, ¶3. For example, SCEA is responsible for fielding PS3 System-
24 related consumer complaints, providing technical support, and warranty services for U.S.
25 customers. Indeed, the warranty agreement for the PS3 System is a contract between
26 the end user and SCEA in California. Miller Decl., ¶2, Exh. A.

27 Furthermore, SCEA develops and publishes its own copyrighted video games for
28 the PS3 System in California. Liu Decl., ¶6. SCEA has invested and continues to invest



1 substantial time, effort and expense in the design, development, testing, manufacturing
2 and marketing of its video games. (Docket No. 3, ¶4.) SCEA in California also offers
3 licenses to third parties to develop video games for PS3 System and receives royalties
4 on any such PS3 System video games. *Id.* at ¶6.¹⁰

5 Hotz's conduct has unquestionably harmed SCEA. Hotz's circumvention devices
6 allow users to bypass the technological protection measures found in the PS3 System
7 and run pirated video games. Bricker Decl., ¶16, Exhs. L-N. Equally serious is the
8 damage to SCEA's reputation and goodwill with third party game developers, whose own
9 copyrighted video games are pirated for use with the PS3 System as well.¹¹ *Id.* All of
10 this piracy ultimately adds up to lost sales for SCEA and other video game developers.
11 As explained in the Russell Declaration (Docket No. 3) and has been publicly recognized,
12 SCEA has and will continue to be harmed significantly as a result of Hotz's conduct.
13 Bricker Decl., ¶17, Exh. O.

14 Download links for derivative circumvention devices have sprung up throughout
15 the internet. Bricker Decl., ¶¶11-12. Numerous individuals, many of whom are located in
16 California, have begun advertising services to install jailbreak software and other related
17 circumvention devices on a PS3 System. Bricker Decl., ¶11. SCEA has had to invest
18 substantial resources in sending takedown notices to online service providers hosting the
19 files and advertisements. Bricker Decl. ¶12. Moreover, Hotz's conduct has also
20 impacted the gaming experience of PS3 System users on the PSN, who have
21 complained about individuals using "hacked" PS3 Systems to cheat during online
22 gameplay. Bricker Decl., ¶14, Exh. J.

23 **e) Hotz's Other Contacts With California**

24 Prior to distributing the Metldr Keys, Hotz had extensive contacts with California

25 _____
26 ¹⁰ Additionally, SCEA provides service and support for the PSN. Liu Decl., ¶¶4-5. The
27 PSN User Agreement is a contract between the end user and SCEA, and requires both
28 parties to submit to personal jurisdiction in California. Law Decl., ¶3. SCEA's most
senior consumer service personnel that handle escalated customers calls are located in
SCEA's Foster City offices. Liu Decl., ¶¶4, 7.

¹¹ Many of the game developers for the PS3 System are based or located in California.



1 relating to his efforts to hack the PS3 System. Specifically, Hotz used Google's Blogspot
2 service based in California to generate interest in his circumvention of the PS3 System.
3 Hotz touted his hacking exploits on his interactive "On the PlayStation 3" blog. Bricker
4 Decl., ¶18, Exh. P. On that California-hosted blog, Hotz openly interacted with others
5 regarding his hacking of the PS3 System. *Id.*

6 Now, in an attempt to avoid jurisdiction, Hotz disingenuously argues that since
7 Google maintains the site, Google is responsible for its interactivity and not Hotz. Yet it is
8 Hotz who chose to blog about his unlawful conduct and to have discussions with third
9 parties regarding that same conduct over the Internet.¹² Additionally, Hotz has used
10 other interactive tools based in this District, such as Twitter and YouTube, to report on his
11 hacking of the PS3 System. Bricker Decl., ¶15, Exh. K; Docket No. 28, (Bricker Decl.,
12 ¶24, Exh. W). Hotz also utilized an account with PayPal, a California company, through
13 which SCEA believes that Hotz received financial benefit relating to his circumvention
14 activities. Bricker Decl., ¶23, Exh. U.¹³ Hotz has also given an interview regarding his
15 hacking of the PS3 System to The Register, an online technology publication whose U.S.
16 operation is based in San Francisco, California. Bricker Decl., ¶13, Exh. I. These
17 contacts together with the harm Hotz aimed at SCEA in California are easily sufficient to
18 establish personal jurisdiction.

19 2. SCEA's Claims Arise from Forum-Related Activities

20 The second requirement for specific personal jurisdiction is that plaintiff's claim
21 arises out of defendant's forum-related activities. *Panavision Int'l, L.P.*, 141 F.3d at 1322;
22 *Craigslist Inc.*, 694 F.Supp 2d at 1053. Although Hotz maintains that this inquiry focuses
23 on his "activity pertaining to his Playstation computer in New Jersey," Hotz's analysis is

24 _____
25 ¹² In doing so, Hotz consented to jurisdiction in California by agreeing to the forum
26 selection clause in the terms of use agreement he signed with Google. Hotz agreed to
27 similar jurisdictional provision in order to use Twitter to disseminate information regarding
28 his efforts to hack the PS3 System. Bricker Decl., ¶8, Exh. G.

¹³ On March 15, 2011, Judge Spero authorized the issuance of a subpoena to PayPal
to determine whether any funds from California have been deposited in Hotz's PayPal
account from January 1, 2009 to February 1, 2011. (Docket No. 96.) SCEA served this
subpoena on March 17, 2011.



1 flawed. (Docket No. 57, at 17.)

2 A defendant need not accomplish any physical act within California to engage in “forum-
3 related activities.” Instead, where a defendant’s activities are likely to cause injury to a
4 plaintiff in California, such activities constitute “forum-related activities.” See *CE Distrib.,
5 LLC v. New Sensor Corp.*, 380 F.3d 1107, 1111–12 (9th Cir. 2004) (holding activities
6 were forum-related where “the effect of the transactions would resonate in [the forum
7 state]” even though all of defendant’s actual conduct took place outside of the forum
8 state); *Harris Rutsky & Co. Ins. Servs. v. Bell & Clements Ltd.*, 328 F.3d 1122 (9th Cir.
9 2003) (holding that where tortious conduct that occurred entirely in London had the effect
10 of injuring plaintiff in California, activities were sufficiently “related” to California).

11 By enabling California residents to circumvent the TPMs in the PS3 System, Hotz
12 engaged in “forum-related activities” with respect to California. And but for Hotz’s
13 unlawful conduct, SCEA would not have suffered harm resulting from widespread
14 distribution and use of Hotz’s circumvention devices. As Hotz himself even predicted, his
15 activities directed into this forum have led to videogame piracy. Bricker Decl. ¶16, Exhs.
16 L-N. Accordingly, this prong of the test for specific jurisdiction is met. See *Menken*, 503
17 F.3d at 1059; *O’Reilly*, 2011 U.S. Dist. LEXIS 15826, at *13 (finding “arise out of” prong
18 satisfied where defendant’s copyright infringement was directed at plaintiff in California).

19 **C. The Exercise of Personal Jurisdiction Over Hotz Is Reasonable**

20 Once the Court finds purposeful availment, it is defendant’s burden to “present a
21 compelling case that the presence of some other considerations would render jurisdiction
22 unreasonable” *Burger King Corp. v. Rudzewich*, 471 U.S. 462, 477 (1985). Hotz cannot
23 do so.

24 In determining whether personal jurisdiction is reasonable, courts consider the
25 following factors: (1) the extent of the defendants’ purposeful injection into the forum
26 state’s affairs; (2) the burden on the defendant of defending in the forum; (3) the extent of
27 conflict with the sovereignty of the defendant’s state; (4) the forum state’s interest in
28 adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6)



1 the importance of the forum to the plaintiff's interest in convenient and effective relief; and
2 (7) the existence of an alternative forum. *Panavision Int'l, L.P.*, 141 F.3d at 1323. These
3 factors weigh in favor of personal jurisdiction over Hotz in this district.

4 **1. Hotz's Purposeful Interjection into California's Affairs Was**
5 **Extensive**

6 "The court's determination that defendant has purposefully directed its activities
7 toward California is sufficient to resolve this factor in favor of jurisdiction." *Autodesk*,
8 2004 WL 603382 at *7 (N.D. Cal. 2004). As established above, Hotz engaged in unlawful
9 acts directed at SCEA in California. This factor weighs in favor of finding personal
10 jurisdiction.

11 **2. Burden on Defending in This Forum**

12 The mere fact that Hotz resides in New Jersey does not make his burden of
13 litigating in California unfairly high. While Hotz's preference to litigate in New Jersey,
14 does not make the exercise of jurisdiction here unreasonable. As the Ninth Circuit has
15 noted, "with the advances in transportation and telecommunications and the increasing
16 interstate practice of law, any burden is substantially less than in days past." *Menken*,
17 503 F.3d at 1060 (*quoting CE Distrib., LLC*, 308 F.3d at 1112). This statement is
18 particularly applicable to Hotz, who formerly lived and worked in California, and has
19 traveled to California at least four times in the past two years. Bricker Decl., ¶4, Exh. C.
20 Recently, in fact, Hotz conveniently traveled to South America in the midst of
21 jurisdictional discovery, including his court-ordered deposition. Accordingly, the burden
22 on Hotz of litigating in California will be minimal at most, and hardly dispositive.¹⁴ *Cf.*
23 *Menken*, 503 F.3d at 1060 (holding burden factor weighed only "slightly in favor" of
24 defendant who traveled to forum state only once every three years); *CE Distrib., LLC*,
25 308 F.3d at 1112 (holding burden was only "slightly in favor" of defendant who had to
26 litigate in Arizona rather than in its principal place of business, New York). Moreover, any

27 ¹⁴ Indeed, when Hotz entered a Terms of Service Agreement with Twitter, Inc., he
28 agreed to waive any objection as to a San Francisco court being an inconvenient forum.
Bricker Decl., ¶8, Exh. G.



1 geographical burden that Hotz may feel is reduced significantly by the fact that he has
2 already retained two attorneys in San Francisco to represent him.¹⁵ Notably, he was able
3 to retain one of those attorneys within 24 hours of being served with SCEA’s Complaint,
4 demonstrating that he has had no trouble whatsoever communicating with persons in
5 California, and participating in this litigation from his current location. Finally, Hotz’s
6 posture as a “21 year old New Jersey resident with limited means to defend a suit on the
7 other side of the country” is undercut by his repeated reports of his successful legal
8 defense fundraising drive. After the two day “fundraiser,” he announced via his blog that
9 “things are on looking up money wise. Expect to see a few more lawyers on my
10 responses! I have enough to cover my legal fees for the time being....” Bricker Decl.,
11 ¶19, Exh. Q. In another post, Hotz explained “now I’m confident [SCEA] won’t win this
12 war via attrition.” *Id.* Later, in an interview on “RT television” conducted on February 24,
13 2011, he elaborated: “In 2 days I covered my legal costs and more I am very
14 confident monetarily.” For the foregoing reasons, Hotz faces no burden litigating in
15 California.

16 3. Extent of Conflict with Sovereignty of Hotz’s State

17 Where “nothing in the record indicates that litigation of this matter in [California]
18 would create a conflict with the sovereignty of [New Jersey],” this factor favors the
19 exercise of personal jurisdiction over Hotz in California. *CE Distrib., LLC*, 308 F.3d at
20 1112. Hotz has not and cannot put forth any evidence of a conflict with sovereignty.
21 Moreover, any protestation would be based merely on his residence in another state.
22 There is no concern that this district’s exercise of jurisdiction would conflict with the
23 sovereignty of New Jersey, where Hotz resides. *See Autodesk*, 2004 WL 603382 at *8
24 (“the sovereignty barrier is not particularly high when defendant is merely from another
25 state”); *Panavision, Int’l., L.P.*, 141 F.3d at 1323.

26
27 ¹⁵ Hotz has also retained counsel in Atlanta, Georgia, who has been admitted in this
28 District *pro hac vice*. This further shows that Hotz is not limited by geographic
constraints, as even his non-California counsel is located nearly 1,000 miles from his
home.



1 **4. Forum State’s Interest in Adjudicating the Dispute**

2 As discussed above, SCEA is a California resident which has been injured by
3 Hotz’s tortious conduct. California has a strong interest in protecting SCEA and this
4 factor weighs in favor of exercising personal jurisdiction. See *CE Distrib., LLC*, 308 F.3d
5 at 1112 (“[A] forum state has a substantial interest in adjudicating the dispute of one of its
6 residents who alleges injury due to the tortious conduct of another.”); *Menken*, 503 F.3d
7 at 1060; *O’Reilly*, 2011 U.S. Dist. LEXIS 15826, at *15 (“[B]ecause Plaintiff is a California
8 resident, California has a strong interest in adjudicating this dispute.”) (citations omitted).
9 As noted above, SCEA’s customers have complained that individuals are using hacked
10 PS3 Systems to cheat during online gameplay, thereby damaging SCEA’s goodwill and
11 reputation, and inflicting harm on SCEA in this district. See Bricker Decl., ¶14, Exh. J.

12 **5. Effective Resolution of the Controversy**

13 Contrary to Hotz’s assertions, the bulk of the evidence relevant to this case is
14 located in California. Much of the relevant evidence regarding the PS3 System and the
15 PSN is physically located in California in SCEA’s possession. Further, although some of
16 the evidence in this case may reside on the internet, such online content is nevertheless
17 hosted at a physical location. Much of that relevant online content is in the possession of
18 third parties located within California, including YouTube, Google, and Twitter. These
19 third parties will be conducting their data collection efforts in California. (Docket No. 90.)
20 Accordingly, the bulk of the evidence in this case is located in California.

21 Although some evidence is located in New Jersey, it is by no means a
22 burdensome amount. A third party neutral in New Jersey has impounded Hotz’s storage
23 devices containing information related to his circumvention of the TPMs in the PS3
24 System. This impounded material – which could be shipped to California in a banker’s
25 box or two – comprises the extent of the evidence located in New Jersey currently known
26 to SCEA. As the impounded materials will be imaged in electronic form, it is not any
27 more burdensome or inefficient to transmit and review the materials in California as it
28 would be to do so in New Jersey. See *Holliday v. Lifestyle Lift, Inc.*, 2010 WL 3910143 at



1 *5, 2010 U.S. Dist. LEXIS 110296 at *16 (N.D. Cal., Oct. 5, 2010) (noting that where
2 much of the evidence “is currently stored in electronic format, [t]ransmission to the
3 Northern District of California would not . . . seem to pose any great burden or
4 inefficiency”).

5 Thus, because the vast majority of evidence is located in California – and what
6 little evidence is not in California is easily transported – this factor favors the exercise of
7 personal jurisdiction over Hotz.

8 **6. Convenience and Effective Relief for Plaintiff**

9 Hotz misstates the legal standard and the burden of proof for this inquiry. This
10 factor does not require SCEA to show “that the claim cannot be effectively remedied” in
11 another forum, nor does it shift the burden of proof for this factor to SCEA, as Hotz
12 implies. (See Docket No. 57, at 21.) The analysis is much simpler.

13 As the Ninth Circuit has noted, “[I]tigitating in one’s home forum is obviously most
14 convenient.” *CE Distrib., LLC*, 308 F.3d at 1112. Indeed, the Northern District is
15 particularly convenient to SCEA as its principal place of business is located here and
16 SCEA’s witnesses are located in this District. See *Autodesk, Inc.*, 2004 WL 603382, at *8
17 (noting that this factor strongly favored jurisdiction where the plaintiff’s “principal place of
18 business is located [in California]”). Furthermore, as noted above, many of the third
19 parties possessing evidence that will be relevant in this case are located in California,
20 and many third party game developers who have also been harmed by Hotz’s illegal
21 conduct are located in this District. Finally, as the Northern District noted in *Autodesk*,
22 “given the frequency with which California courts are faced with intellectual property
23 claims involving software, California is certainly well-suited to providing plaintiff with
24 appropriate relief for its injuries.” 2004 WL 603382, at *8.

25 Accordingly, this factor favors the exercise of personal jurisdiction over Hotz.

26 **7. The Existence of an Alternative Forum**

27 While an alternative forum may exist, the Northern District is convenient to SCEA
28 and a large number of the witnesses and custodians of evidence, including SCEA and



1 many third parties, some of whom have already been subpoenaed. Moreover, this forum
2 is appropriate because it is uniquely situated to resolve the highly technical factual
3 inquiries underlying SCEA's federal and state law claims. Hotz has not and cannot aver
4 any persuasive reason why this action should be moved to an alternative forum since
5 none exists. Accordingly, this factor favors the exercise of personal jurisdiction over
6 Hotz. See *Holliday*, 2010 WL 3910143, at *5-8, 2010 U.S. Dist. LEXIS 110296 at *16-17.

7 On balance, these factors overwhelmingly weigh in favor of litigating SCEA's
8 claims in this District. Hotz cannot present a compelling case that this Court's exercise of
9 jurisdiction would be unreasonable and deprive him of due process.

10 **III. VENUE IS PROPER**

11 Hotz's argument regarding venue disregards the facts. Venue is proper here for
12 several reasons. First, Hotz agreed to this venue when he consented to the terms of the
13 PSN User Agreement. *Invisible Stripes, LLC v. Virag*, 209 U.S. Dist. LEXIS 57956, at *5
14 (N.D. Cal. July 8, 2009) ("Parties to a contract may consent to litigate their disputes in a
15 particular forum by inserting a forum selection clause in the contract."). Second, even
16 without the effect of the PSN User Agreement, SCEA's choice of venue is proper here.
17 SCEA has clearly established that this Court has personal jurisdiction over Hotz in this
18 District. And where a defendant is subject to personal jurisdiction, venue is proper. See
19 *Allstar Mktg. Group, LLC v. Your Store Online*, 666 F. Supp. 2d 1109, 1127 (C.D. Cal.
20 2009) ("As the court has concluded that defendants are subject to personal jurisdiction in
21 this district, venue lies here as to plaintiffs' copyright claim."). Third, U.S.C. § 1391(b)(2)
22 provides for venue in a judicial district "in which a substantial part of the events or
23 omissions giving rise to the claim occurred, or a substantial part of the property that is the
24 subject of the action is situated." Although Hotz attempts to characterize his actions as
25 occurring entirely in New Jersey, this is far from the truth. Hotz's actions were directed to
26 this venue where SCEA is located and California residents have downloaded over **13,000**
27 copies of Hotz's circumvention devices. Bricker Decl., ¶10. Moreover, Hotz used
28 companies located in Northern California to promote his efforts to hack the PS3 System



1 and SCEA suffered harm in this venue.

2 Accordingly, venue in the Northern District of California is proper.

3 **IV. HOTZ'S MOTION SHOULD BE DENIED BECAUSE HOTZ THWARTED**
4 **JURISDICTIONAL DISCOVERY**

5 On February 2, 2011, Hotz filed his Motion. Shortly thereafter, SCEA filed a
6 motion for expedited jurisdictional discovery of Hotz and third parties for purposes of
7 responding to the Motion to Dismiss. (Docket No. 62.) At the TRO hearing, the Court
8 referred the parties to Judge Spero for issues related to discovery and impoundment.

9 The parties met and conferred regarding the scope of jurisdictional discovery on
10 February 14, 2011. Bricker Decl., ¶2, Exh. A. At that meeting, Hotz agreed to provide
11 responses to narrowed SCEA document requests and interrogatories. He also agreed to
12 the inspection of his PS3 Systems and to appear for a deposition on jurisdictional
13 issues.¹⁶ SCEA followed up with Hotz to arrange the inspection, but heard nothing back.
14 Bricker Decl., ¶3, Exh. B. On March 7, 2011, Hotz provided SCEA with deficient
15 discovery responses, a production consisting mostly of pleadings filed to date and post-
16 lawsuit communications. *Id.* at ¶4. He did not produce his blog or Twitter posts related to
17 his circumvention of the PS3 System.¹⁷ Nor did he produce pre-lawsuit communications
18 relating to his unlawful conduct. *Id.* Moreover, Hotz did not verify his interrogatory
19 responses and objected to the inspection of the PS3 Systems. *Id.* at ¶4. On March 9,
20 2011, SCEA wrote Hotz requesting that he correct the deficiencies in his production,
21 provide a verification of his discovery responses and provide the relevant jurisdictional

22 ¹⁶ During the meet and confer, Hotz further agreed to SCEA's service of third party
23 subpoenas on BlueHost, Google, YouTube, Twitter and SoftLayer. Through these
24 subpoenas, SCEA seeks information regarding downloads of the circumvention devices
25 from Hotz's website, posts and comments from Hotz's PS3 hacking blogspot, psx-
26 scene.com and Twitter. From YouTube, SCEA is seeking information regarding the
27 location of computers with access to Hotz's instructional January 7, 2011 video (Docket
28 No. 28, Bricker Decl., ¶24, Exh. W) that has been made "private" since the Court issued
the injunction. On March 3, 2011, the Court issued an order allowing SCEA to serve the
agreed upon third party subpoenas. (Docket No. 90.) SCEA has received responsive
information from Bluehost, is meeting and conferring with SoftLayer regarding a motion to
quash and is still awaiting responses from Google, YouTube and PayPal.

¹⁷ Despite having been ordered by Judge Spero to do so, Hotz has failed to provide
consent to Twitter for its production of his "Tweets." (Docket No. 96.)



1 discovery. *Id.* To date, Hotz has not done so.

2 Additionally, Hotz would not agree to appear for his deposition, refused to consent
3 to a PayPal subpoena and has impeded jurisdictional discovery of the impounded
4 devices. *Id.* During a March 10, 2011, hearing on the discovery and impoundment
5 related disputes, Judge Spero ordered Hotz to appear for deposition in California,
6 allowed for SCEA to serve a narrowed subpoena on PayPal and conduct limited
7 jurisdictional discovery of the impounded devices, and required Hotz to comply with the
8 impoundment procedure recommended by The Intelligence Group (“TIG”), a third party
9 neutral. (Docket No. 96.)

10 In light of Hotz’s failure to comply with his discovery obligations and the still
11 outstanding third party jurisdictional discovery, SCEA proposed a two-week extension of
12 all briefing and hearing deadlines relating to Hotz’s Motion to Dismiss. Bricker Decl., ¶5,
13 Exh. D. Hotz refused, stating that SCEA would have its discovery by the time of the
14 hearing. *Id.* He completely ignored the fact that SCEA’s opposition deadline was
15 approaching. Hotz also rejected outright SCEA’s second attempt to arrange for an
16 inspection of his PS3 Systems and tried to evade his court-ordered deposition, stating
17 that it was unnecessary. *Id.*

18 Despite Judge Spero’s orders, Hotz continues to frustrate all attempts to complete
19 jurisdictional discovery. In yet another attempt to avoid his deposition and a limited
20 inspection of his impounded hard drives, on March 17, 2011, Hotz filed a motion for
21 protective order on issues already decided by Judge Spero. (Docket No. 100.) On the
22 same day, TIG discovered that prior to delivery, Hotz had removed integral components
23 from his impounded hard drives, rendering them completely non-functional. Bricker
24 Decl., ¶21, Exh. S. When SCEA echoed TIG’s request that the components of the hard
25 drives be delivered immediately, Hotz’s counsel responded that Hotz was in South
26 America. *Id.* Today, Judge Spero denied Hotz’s motion for protective order on the
27 grounds that the Court had already ruled on these issues three days ago. (Docket No.
28 102.) Hotz’s discovery misconduct and his violation of the Court’s impoundment order



1 raise serious concerns.

2 **V. CONCLUSION**

3 The evidence that Hotz is subject to personal jurisdiction in this Court is
4 overwhelming. Not only has Hotz consented to the terms of the PSN User Agreement
5 which confers jurisdiction to this Court, he also has purposely availed himself of the
6 benefits of this jurisdiction. Additionally, Hotz has promoted his activities through
7 interactive blogs and encouraged others to circumvent the TPMs in the PS3 System, all
8 the while knowing the harm he was causing SCEA in California. His attempts to evade
9 personal jurisdiction by claiming that he did not aim his unlawful conduct at SCEA are
10 transparent. Hotz has made his unlawful circumvention devices available for download
11 on his website and many thousands of California residents have downloaded them.
12 Through this conduct, Hotz has established the minimum contacts necessary for this
13 Court to exercise personal jurisdiction over him. Accordingly, Hotz's motion to dismiss
14 should be denied.

15 DATED: March 18, 2011

Respectfully submitted,

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KILPATRICK TOWNSEND & STOCKTON LLP

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By: /s/ James G. Gilliland, Jr.

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JAMES G. GILLILAND, JR.

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