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UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

SONY COMPUTER ENTERTAINMENT
 AMERICA LLC, a Delaware limited
 liability company,

Plaintiff,

v.

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

Defendants.

CASE NO. 11-cv-000167 SI

**PLAINTIFF'S SUPPLEMENTAL BRIEF
 IN SUPPORT OF PLAINTIFF'S EX
 PARTE MOTION FOR TEMPORARY
 RESTRAINING ORDER**

Date:
 Time:
 Courtroom: 10, 19th Floor
 Judge: Hon. Susan Illston



1 **I. INTRODUCTION**

2 Plaintiff Sony Computer Entertainment America LLC (“SCEA”) submits this
 3 supplemental brief in support of its argument that this Court has personal jurisdiction over
 4 Defendant George Hotz (“Hotz”). Hotz’s unlawful conduct – his unauthorized accessing of
 5 the PlayStation®3 computer entertainment system (“PS3 System”), circumvention of its
 6 technological protection measures and trafficking in circumvention devices – is directed at
 7 SCEA here in the Northern District of California and has caused harm to SCEA, a resident
 8 of this district. This harm to SCEA together with Hotz’s other contacts with the Northern
 9 District of California imparts this Court with specific personal jurisdiction over Hotz.

10 **II. DEFENDANT HOTZ IS SUBJECT TO SPECIFIC PERSONAL JURISDICTION IN**
 11 **THE NORTHERN DISTRICT OF CALIFORNIA**

12 A district court can exercise specific personal jurisdiction over a non-resident
 13 defendant if: (1) the defendant did some act or consummated some transaction with the
 14 district or performed some act by which it purposefully availed itself of the privilege of
 15 conducting activities in the district, (2) the plaintiff’s claim arises out of or results from the
 16 defendant’s forum-related activities, and (3) such exercise of jurisdiction is reasonable.
 17 *See Panavision Int’l, L.P. v. Toepfen*, 141 F.3d 1316, 1320 (9th Cir. 1998). As
 18 explained below, Hotz is subject to specific personal jurisdiction in this Court.

19 **A. Hotz’s Unlawful Conduct Is Directed Toward SCEA in the Northern**
 20 **District of California And The Brunt Of The Harm Resulting From**
 21 **Hotz’s Conduct Is Suffered Here**

22 The “purposeful availment” requirement is satisfied when an intentional act is both
 23 aimed at and has an effect in the forum state and causes harm, “the brunt of which is
 24 suffered – and which the defendant knows is likely to be suffered – in the forum state.”
 25 *Calder v. Jones*, 465 U.S. 783 (1984) (quoting *Core-Vent Corp. v. Nobel Industries AB*,
 26 11 F. 3d 14821, 1486 (9th Cir. 1993)). Under this well-established “effects test,” personal
 27 jurisdiction over Hotz is proper.

28 In a case with very similar facts, the Ninth Circuit in *Panavision Int’l, L.P. v.*
Toepfen, 141 F.3d 1316, 1320 (9th Cir. 1998) found personal jurisdiction over a



1 nonresident defendant based on defendant's cybersquatting of domain names containing
2 Panavision's registered trademarks. The Ninth Circuit held that defendant's activities
3 satisfied the "effects test," and thus personal jurisdiction was proper:

4 [Defendant] engaged in a scheme to register Panavision's
5 trademarks as his domain names for the purpose of extorting
6 money from Panavision. His conduct, as he knew it likely
7 would, had the effect of injuring Panavision in California where
8 Panavision has its principal place of business and where the
movie and television industry is centered. Under the "effects
test," the purposeful availment requirement necessary for
specific, personal jurisdiction is satisfied.

9 *Id.* at 1322. See also *Dole Foods v. Watts*, 303 F.3d 1104, 1107 (9th Cir. 2002) (finding
10 personal jurisdiction over European defendants based on their fraudulent activity directed
11 at plaintiff in California); *3DO Co. v. Poptop Software, Inc.*, 1998 U.S. Dist. LEXIS 21281
12 (N.D. Cal. 1998) (finding jurisdiction over nonresident defendant for copyright
13 infringement of video game software under the "effects test"); *Autodesk, Inc. v. RK Mace*
14 *Engineering, Inc.*, 2004 WL 603382 at *5 (willful copyright infringement sufficient to meet
15 the requirements of the "effects test").

16 The facts here establish that this Court has personal jurisdiction over Hotz. SCEA,
17 whose principal place of business is in Foster City, California, markets and sells the PS3
18 System. Russell Decl., ¶ 3.¹ Without authorization, Hotz accessed and circumvented the
19 PS3 System. He then posted on his website circumvention devices that allow users to
20 bypass the technological protection measures found in the PS3 System and run pirated
21 video games. Bricker Decl., Exhs. T, B, CC. As detailed in the Russell Declaration and
22 outlined in a BBC article (Bricker Decl., Exh. Z), SCEA has and will continue to be
23 harmed significantly as a result of Hotz's conduct. Russell Decl., ¶¶ 9-12. Hotz is and
24 was well aware of the harmful impact of his unlawful conduct on SCEA. Bricker Decl.,
25 Exhs. U, Z. Moreover, just like the defendant in *Panavision*, Hotz attempted extortion.
26 When posting the "Metldr Keys" on his website, in an attempt to obtain employment from

27 ¹ Except for the Declaration of James G. Gilliland, Jr. which is being submitted with this
28 supplemental briefing, all other declarations referenced herein are to declarations
previously filed in connection with SCEA's TRO briefing.



1 SCEA, Hotz wrote: “if you want your next console to be secure, get in touch with me.” *Id.*

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B. Defendant’s Conduct Arises From His Contacts With The Northern District of California

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The second requirement for specific personal jurisdiction is that plaintiff’s claim arises out of defendant’s forum-related activities. *Panavision Int’l, L.P.*, 141 F. 3d at 1322. *Craigslist, Inc. v. Naturemarket, Inc.*, 694 F. Supp. 2d 1039, 1053 (N.D. Cal 2010). This requirement is met because Hotz has utilized his many connections with this forum to publicize (and perhaps profit from) his hacking of the PS3 System.

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Hotz distributes his circumvention devices through his website. Through that website, Hotz publishes the “Metldr Keys” and also provides users links to his other circumvention devices, including the 3.55 Firmware JailBreak and the Signing Tools. Bricker Decl., Exhs. U, T. With this conduct, Hotz encourages and enables users to download the illegal circumvention devices from his website. *3DO Co. v. Poptop Software, Inc.*, 1998 U.S. Dist. LEXIS 21281, *9 (N.D. Cal. 1998) (finding of jurisdiction based on defendant’s interactive websites which “encourage and facilitate users in California to download infringing video game software”).

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Hotz is also subject to the jurisdictional provision in Paragraph 14 of the PlayStation Network Terms of Service and User Agreement. (“PSN User Agreement”). Complaint, Exh. A. As the Northern District made clear in *Craigslist*, a defendant who, in order to use a website, agrees to terms and conditions is subject to jurisdiction “based on their consent to the forum selection clause in the [Terms of Use].” *Craigslist, Inc.*, 694 F. Supp. at 1052-53. Likewise, to play games online and to obtain updates of the Firmware for the PS3 System, users often connect to the PSN Network. When doing so they must agree of the terms of the PSN User Agreement. In his January 7, 2011 YouTube video, Hotz clearly states that he is running his PS3 System with the latest version of the PS3 System firmware, version 3.55, presumably obtained from SCEA. Bricker Decl., Exh. W.

Additionally, SCEA has records of a user account registered to Geo1Hotz, which



1 show that this account is related to at least seven other accounts. Declaration of James
2 G. Gilliland, Jr. In Support of Plaintiff's *Ex Parte* Motion for Temporary Restraining Order
3 ("Gilliland Decl."), ¶ 2, Exh. A. Hotz refers to himself online as GeoHot, among other
4 names. Even if Hotz is not the user registered as Geo1Hotz, he could be registered to
5 use the network under another alias. As Hotz's counsel noted today, to utilize the PS3
6 System, Hotz has to have accessed the PlayStation Network, and consequently agreed
7 to the terms of the PSN User Agreement. Hrg. Transcript 19:18-21. Hotz has never
8 denied accessing the PlayStation Network. Moreover, his declaration in opposition to the
9 TRO is very carefully worded to say that he "do[es] not believe" that he has a PSN user
10 account and makes no mention of whether or not he has accessed the network. If he has
11 never accessed the PlayStation Network, Hotz would have said so unequivocally.²

12 Hotz also publishes an interactive blog named "On the PlayStation 3." Bricker
13 Second Supplemental Decl., Exh. C. This interactive blog, hosted by Google's blogspot
14 service, specifically discusses Hotz's circumvention of the PS3 System and is a forum for
15 his discussions with others. *See id.* Recently, Hotz limited public access to the blog.
16 However, it is still up and running and most likely available to members of the hacking
17 community. It is on this blog that Hotz's followers stated that they were donating to
18 support his efforts to hack the PS3 System. *Id.*, Exh. C at pp. 29, 31 and 36.

19 In the past, Hotz has also used other interactive tools such as Twitter to report on
20 his hacking of the PS3 System. Second Supplemental Bricker Decl., Exhs. A-B. Hotz
21 also lived in California from April until October of 2008. Gilliland Decl., Exh. B. During
22 that time, he worked at an internship at Google in Mountain View, California, here in this
23 District, and thus had significant contact with California at that time.³

24 As shown above, Hotz's unlawful conduct was intentionally aimed at SCEA in the
25

26 ² Additionally even if Hotz downloaded the firmware from Sony online and not the PSN
27 Network, he would still be subject to jurisdiction in California because the same
28 agreement, Exh. A to the Complaint, applies.

³ SCEA does not contend that merely using Twitter or Paypal grants jurisdiction in this
District. But using them to harm a resident can.



1 Northern District of California and injured SCEA in this district.

2 **C. Exercise of Personal Jurisdiction Over Defendant Is Reasonable**

3 Once the Court finds purposeful avilment, it is defendant's burden to "present a
4 compelling case that the presence of some other considerations would render jurisdiction
5 unreasonable" *Burger King Corp. v. Rudzewich*, 471 U.S. 462 (1985). Hotz cannot do
6 so.

7 In determining whether personal jurisdiction is reasonable, courts consider the
8 following factors: (1) the extent of the defendants' purposeful injection into the forum
9 state's affairs; (2) the burden on the defendant of defending in the forum; (3) the extent of
10 conflict with the sovereignty of the defendant's state; (4) the forum state's interest in
11 adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6)
12 the importance of the forum to the plaintiff's interest in convenient and effective relief; and
13 (7) the existence of an alternative forum. *Panavision Int'l, L.P.*, 141 F. 3d at 1323. These
14 factors weigh in favor of personal jurisdiction over Hotz in this district.

15 **1. Purposeful Injection**

16 "The court's determination that defendant has purposefully directed its activities
17 toward California is sufficient to resolve this factor in favor of jurisdiction." *AutoDesk*,
18 2004 WL 603382 at *7 (N.D. Cal. 2004). As established above, Hotz engaged in unlawful
19 acts directed at SCEA in California. This factor weighs in favor of finding personal
20 jurisdiction.

21 **2. Burden on Defending In This Forum**

22 Unless "inconvenience is so great as to constitute a deprivation of due process, it
23 will not overcome clear justifications for the exercise of jurisdiction." *Panavision Int'l LLP*,
24 141 F. 3d at 1323; *Caruth v. International Psychoanalytical Ass'n*, 59 F.3d 126, 128-29
25 (9th Cir.1995) (emphasis added). Although Hotz resides in New Jersey, any
26 inconvenience in litigating in California certainly does not rise to the level of "any
27 deprivation of due process." Also, Hotz has already secured counsel in the Northern
28 District of California.



1 **3. Extent of Conflict with Sovereignty of Hotz's State**

2 There is no concern that this district's exercise of jurisdiction would conflict with
3 the sovereignty of New Jersey, where Hotz purportedly resides. *See Autodesk*, 2004 WL
4 603382 at *8 ("the sovereignty barrier is not particularly high when defendant is merely
5 from another state"); *Panavision, Int'l., L.P.*, 141 F.3d at 1323.

6 **4. Forum State's Interest**

7 California has a strong interest in protecting residents who have been tortuously
8 injured. *Panavision Int'l., L.P.*, 141 F. 3d at 1324. SCEA is based in California.
9 Therefore, this factor weighs in favor of personal jurisdiction.

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

11 Because SCEA is based in California, Hotz's unlawful conduct and the resulting
12 harm impacts SCEA here in California. And one of the other defendants, "Bushing,"
13 resides in this district. Gilliland Decl., ¶¶ 4-5, Exhs. C, D. Moreover, much of the
14 evidence and witnesses will likely be in California, not any other forum. Therefore, this
15 factor weighs in favor of personal jurisdiction.

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

17 The Northern District is a convenient forum for SCEA's as its principal place
18 of business is located here. Most of the evidence and SCEA's witnesses are also located
19 in this district. This factor weighs in favor of personal jurisdiction.

20 **7. Alternative Forum**

21 This factor favors personal jurisdiction in California because both SCEA and
22 Hotz's co-defendant Bushing are located here in the Northern District of California.
23 Although an alternative forum would be convenient for Hotz, litigating this case in
24 California is more practical because of the facts and parties involved. Moreover, all the
25 other factors listed above weigh in favor of jurisdiction in this District.

26 On balance, these factors weigh in favor of litigating SCEA's claims in this district.
27 Hotz cannot present a "compelling case" that this Court's exercise of jurisdiction would be
28 unreasonable and deprive him of due process.



1 **III. CONCLUSION**

2 As set forth above, this Court has personal jurisdiction over Hotz. He has
3 purposefully availed himself of this jurisdiction by engaging in harmful conduct that injures
4 SCEA, a resident of this jurisdiction. Moreover, he has subjected himself to the terms of
5 the PSN User Agreement which confers jurisdiction to this Court. Additionally, Hotz has
6 advertised his activities through interactive blogs and makes his unlawful circumvention
7 devices available for download on his website. Through this conduct, Hotz has
8 established the minimum contacts necessary for this Court to exercise personal
9 jurisdiction over him. SCEA respectfully requests that the Court grant its *Ex Parte* Motion
10 for a Temporary Restraining Order.

11 DATED: January 14, 2011

Respectfully submitted,

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KILPATRICK TOWNSEND & STOCKTON LLP

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By: /s/James G. Gilliland, Jr.
JAMES G. GILLILAND, JR.

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