

Exhibit A

1 factors include: frivolousness, motivation, objective unreasonableness (both in factual and in the
2 legal components of the case) and the need in particular circumstances to advance considerations
3 of compensation and deterrence. *Id.*

4 In this case, defendants believe that the factors weigh towards granting an award of
5 attorney fees to defendants. Jacobsen's copyright infringement claim is patently unreasonable
6 given the fact that Jacobsen retains no exclusive rights to the decoder definition files under the
7 broad open source license. A cursory review of case law from the Ninth Circuit would have led
8 Jacobsen's counsel to the conclusion that this type of claim is barred in the Ninth Circuit. The
9 copyright infringement claim is patently frivolous and has been brought in bad faith in an effort
10 to dream up a viable claim against defendants for monetary damages. This is evidenced by the
11 fact that the decoder definition files were not even registered with the Copyright Office until
12 months *after* this litigation had commenced. *See* Plaintiff's Exhibit B to Amended Complaint.

13 The copyright claim should be dismissed without leave to amend and defendants should
14 be awarded their reasonable costs and attorney fees in preparing this motion.

15 **D. Count 6 of the Amended Complaint should be dismissed for failure to join Jerry Britton**
16 **as an indispensable party**

17 Count 6 of the amended complaint (cybersquatting) alleges that Katzer transferred the
18 decoderpro.com domain name to Jerry Britton and "held on to rights in the domain name by
19 threatening to force Britton to pay \$20,000 if Britton transferred the domain name to any other
20 person...". Amended Complaint, ¶ 90. Jacobsen requests an order, pursuant to the
21 cybersquatting statute, "requiring Katzer to release any rights he has in said domain name and
22 *return said domain name to Jacobsen.*" Amended Complaint, Prayer at J (emphasis added). To
23 the extent that Count 6 requests declaratory relief requiring a transfer of a domain name that the
24 amended complaint itself avers is no longer owned or controlled by the defendants, Britton is a
25 necessary and indispensable party under Rule 19. It is submitted that because the Court lacks
26 personal jurisdiction over Britton and he cannot be joined, count 6 should be dismissed.

1 The Court must first determine if Jerry Britton is a “necessary party” as to Count 6. If so,
2 the Court must determine whether, if Britton cannot be joined, the claim should be dismissed
3 because Jerry Britton is “indispensable.” *Disabled Rights Action Committee v. Las Vegas*
4 *Events, Inc.*, 375 F.3d 861, 879 (9th Cir. 2004).

5 Britton is a necessary party and must be joined if: (1) in his absence complete relief
6 cannot be accorded among those already parties, or (2) Britton claims an interest relating to the
7 subject of the action and is so situated that the disposition of this action may as a practical matter
8 impair or impede Britton’s ability to protect that interest. Fed. R. Civ. P. 19(a). When a plaintiff
9 seeks to nullify a negotiated agreement between two parties, the plaintiff must join both parties.
10 *Clinton v. Babbitt*, 180 F.3d 1081, 1087 (9th Cir. 1999) (“[A] district court cannot adjudicate an
11 attack on the terms of a negotiated agreement without jurisdiction over the parties to that
12 agreement”), *citing Lomayaktwa v. Hathaway*, 520 F.2d 1324, 1326 (9th Cir. 1975). Here,
13 Jacobsen requests declaratory relief that is precisely an attack on the negotiated settlement
14 agreement between Britton and Katzer that transferred the rights in the domain name to Britton.
15 Clearly, complete relief of the type Jacobsen seeks cannot be afforded between Jacobsen and
16 Katzer unless Britton, the alleged current owner of the domain name, is joined.

17 Additionally, Britton has a legally protected interest in the domain name. Should this
18 court make an adjudication regarding that interest or its transfer, Britton will be exposed to
19 potential liability under the settlement agreement. Without Britton’s participation, he is unable
20 to protect and defend the validity of his interests. He is a “necessary” party under Rule 19(a).

21 Because Britton is a "necessary party" for the relief Jacobsen seeks, the Court should
22 determine whether Britton is an "indispensable party." If a court lacks personal jurisdiction over
23 an indispensable party, the court should dismiss that claim. *Hendricks v. Bank of Am., N.A.*, 408
24 F.3d 1127, 1135 (9th Cir. 2005). As a Pennsylvania resident with no apparent ties to California,
25 Britton is not subject to this court’s personal jurisdiction, so this Court should dismiss Count 6 if
26 Britton is indispensable to Count 6. Decl. of R. Scott Jerger, Exhibits A, page 2, Exhibit B.

1 An unjoined party's indispensability is an "equitable determination to be decided based
2 on a variety of factors." *Hendricks* at 1136. These factors include:

- 3 (1) to what extent a judgment rendered in Britton's absence might be prejudicial
4 to him or those already parties,
- 5 (2) the extent to which, by protective provisions in the judgment, by the shaping
6 of relief, or other measures, the prejudice can be lessened or avoided;
- 7 (3) whether a judgment rendered in the person's absence will be adequate; and
- 8 (4) whether the plaintiff will have an adequate remedy if the action is dismissed
9 for nonjoinder.

10 Here, the factors strongly weigh in favor of finding Britton to be indispensable. Granting
11 the declaratory relief that Jacobsen seeks would force Britton to breach his settlement agreement
12 with Katzer and transfer the domain name to Jacobsen. Likewise, a declaratory ruling in
13 Britton's absence regarding the rights in the domain name will not be adequate because of
14 Britton's current ownership of the domain name. Finally, Jacobsen retains an adequate remedy
15 because he can pursue Britton independently of this lawsuit for the rights in the domain name in
16 a court with personal jurisdiction over Britton.

17 Because Britton is a necessary and indispensable party to Jacobson's claim and the court
18 lacks personal jurisdiction over him, Count 6 of Jacobsen's amended complaint should be
19 dismissed without leave to amend.

20 **E. Motion to Strike**

21 Under Fed. R. Civ. P. 12(f), this Court "may order stricken from any pleading ... any
22 redundant, immaterial, impertinent, or scandalous matter." Jacobsen's amended complaint
23 resembles a public relations document for the open source software movement rather than a legal
24 pleading. The essential function of rule 12(f) is to "avoid the expenditure of time and money that
25 must arise from litigating spurious issues by dispensing with those issues prior to trial." *Fantasy,*
26 *Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993). A rule 12(f) motion to strike may be used
to strike the prayer for relief where the damages sought are not recoverable as a matter of law.