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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 JAN E. KRUSKA,

) No. CV 08-0054-PHX-SMM

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Plaintiff,

) **ORDER**

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v.

12

PERVERTED JUSTICE
13 FOUNDATION INCORPORATED, et.
14 al.,

14

Defendant.

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16 Before the Court is Plaintiff Jan Kruska’s Motion for Summary Judgment, filed
17 August 7, 2009 (Doc. 187). On August 4, 2009, the Court granted Defendants’ motion to
18 dismiss for failure to state a claim as to all claims with the exception of copyright
19 infringement (Doc. 184). Plaintiff now seeks summary judgment as to Count VII, copyright
20 infringement, against Defendants Perverted Justice Foundation, Inc. and Xavier Von Erck.
21 Defendants filed their response on September 11, 2009 (Doc. 199), and Plaintiff replied on
22 September 15, 2009 (Doc. 200).

23 This motion will be denied for two reasons. First, Plaintiff has failed to comply with
24 the Court’s Local Rules. Under Local Rule 56.1, “[a]ny party filing a motion for summary
25 judgment shall file a statement separate from the motion and memorandum of law, setting
26 forth each material fact on which the party relies in support of the motion . . . A failure to
27 submit a separate statement of facts in this form may constitute grounds for the denial of the
28 motion.” LRCiv 56.1(a). In the present case, Plaintiff has failed to file such a separate

1 statement of facts outlining each material fact that supports her case. Second, since no
2 discovery has been undertaken by either side, the Court finds that it is in the best interest of
3 the parties, as well as in the interest of judicial economy to deny with leave to refile in the
4 future the pending motion for summary judgment. The Court anticipates that discovery will
5 be conducted and that matters related to issues in the pending motion for summary judgment
6 may be raised as a result thereof.

7 Finally, Plaintiff contends that Defendants' response was untimely filed. Plaintiff
8 asserts that the response was due on September 5, 2009, but that Defendants did not file one
9 until September 11, 2009. Pursuant to Local Rule 56.1, "[n]otwithstanding the provisions of
10 Rule 7.2(c),(d), and (f) Local Rules of Civil Procedure, the opposing party shall, unless
11 otherwise ordered by the Court, have thirty (30) days after service within which to serve and
12 file a responsive memorandum in opposition." LRCiv 56.1(d). The date that the motion was
13 served is excluded from this period. See Fed. R. Civ. P. 6(a)(1). When a period is less than
14 eleven (11) days, intermediate Saturdays, Sundays, and legal holidays are excluded from this
15 period. Fed. R. Civ. P. 6(a)(2). The last day of the period is included unless it is a Saturday,
16 Sunday, or legal holiday. When the last day is excluded, the period runs until the end of the
17 next day that is not a Saturday, Sunday or legal holiday. Fed. R. Civ. P. 6(a)(3).
18 Furthermore, an additional three (3) days are added after the period would otherwise expire.
19 Fed. R. Civ. P. 6(d). Plaintiff's motion was served on August 6, 2009. Therefore,
20 Defendants' response was not due until September 11, 2009, the date on which it was filed.

21 Accordingly,

22 **IT IS HEREBY ORDERED DENYING** Plaintiff's Motion for Summary Judgment
23 (Doc. 187) without prejudice with leave to refile.

24 DATED this 13th day of October, 2009.

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28 Stephen M. McNamee
United States District Judge