

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:11-cv-00222-MSK-CBS

RIGHTHAVEN, LLC,

Plaintiff,

v.

WILLIAM SUMNER, and
DAILYKIX.COM,

Defendants.

DECLARATION OF WILLIAM SUMNER

I, William Sumner, declare as follows:

1.

My name is William Sumner. I am a resident of the State of Georgia. I voluntarily and freely make this Declaration on my own personal knowledge for use as evidence in relation to the above-captioned matter, in support of my Motion to Dismiss for Lack of Personal Jurisdiction and for any and all other uses and purposes authorized by law. I am over the age of eighteen years, am suffering from no legal disability, and am competent and authorized to make this Declaration and to testify to the statements contained herein. By submitting this Declaration I am not intending to submit to or consent to the jurisdiction of this Court.

2.

I own and operate the website DailyKix.com. I am the only owner and operator of this website. I operate the website as a personal hobby. I do not operate the website for any business purposes or for profit.

3.

The website is housed on a computer server in Kansas. It has never been housed anywhere other than in Kansas, and it has thus never been housed in Colorado.

4.

I maintain the website from my residence in Georgia. I have never maintained the website from within Colorado.

5.

The DailyKix.com website is a social media aggregating website. It is designed to help visitors find stories that are popular at other social media news sites.

6.

I do not generate the content or material which visitors view on DailyKix.com. Rather, the DailyKix.com website displays titles, brief excerpts, and vote counts for popular stories at other social media news sites. If a visitor wishes to read a particular story, the visitor may click on a link to the source website for the story. That link will take the user to the website of the original source.

7.

The website works as follows: via automated code, the website queries other online media sources, such as the websites digg.com and mixx.com. Digg.com and mixx.com are social media websites where news stories and other materials are also aggregated. These websites allow users to “share”, “rate” or “like” content posted on these sites. When material or content at these other sites reaches a certain rating or popularity level, the DailyKix.com website will display the title, a brief excerpt and the vote count for the material. It will also provide a link to the source website. If there is a thumbnail image associated with the content, the DailyKix.com

website sends code for an in-line link to the thumbnail image to the user's browser. This code is an instruction to the user's browser to access and link to the source website to obtain the thumbnail image so it can be displayed to the user. Thus, the thumbnail images associated with any material aggregated at DailyKix.com never actually reside on the server for the DailyKix.com website.

8.

The DailyKix.com website is thus a two-part automated aggregating site: 1) the website first queries the server of source websites to find materials and content which are popular; 2) it then sends code to the browser of an Internet user viewing the DailyKix.com website, which instructs the user's browser to display the title, excerpt, vote count and a link to the source of the story. If there is a thumbnail image associated with the content, an in-line link to the thumbnail image on the source server is also sent to the user's browser, which instructs the user's browser to access the source website to obtain the thumbnail image so that it can be displayed to the user. Users of the DailyKix.com website do not interact with or exchange information with the site in this process.

9.

As a result, by its very nature, DailyKix.com could never and does not ever intentionally infringe on any alleged copyright material. If an Internet user viewed alleged copyright material while browsing the DailyKix.com website because that material had been aggregated from another website, that material would have been viewable at the DailyKix.com website entirely unwittingly.

10.

If a thumbnail image of the photograph at issue in this lawsuit was viewable to Internet users browsing the DailyKix.com website, it was viewable entirely unwittingly and unbeknownst to me. I did not access the Denver Post's website and secure the allegedly infringing photograph. I also did not program the DailyKix.com website to access the Denver Post's website and secure the allegedly infringing photograph. I also had no knowledge that the photograph was originally published in the Denver Post or that it came from Colorado.

11.

The thumbnail image of the photograph became viewable to users browsing the DailyKix website as a result of the following chain of events: The website Dead Serious News (www.deadseriousnews.com) published the photograph with an article parodying the topic of TSA pat-downs. Dead Serious News allows users to "share" articles on its site through other sites. One such site is Mixx.com. Using the Mixx sharing button on Dead Serious News, a visitor submitted the story to Mixx.com. Once the story received enough votes that it reached the "travel" page of Mixx.com, the story's title, an excerpt of the story, a link to the story at the source website (Mixx.com), a link to the story on Dead Serious News, the story's vote count and a link to the thumbnail image on the Mixx.com server were automatically imported to the DailyKix.com website. As with all thumbnail images associated with stories which are viewable on DailyKix.com, the actual image file was never hosted, modified on or copied to the DailyKix.com server.

12.

In short, the DailyKix.com website auto-populated a link to the thumbnail image of the photograph at issue based on the popularity of the article at Mixx.com. Neither myself nor the DailyKix.com website reproduced or published the photograph. I do not believe that the fact that a photograph allegedly emanating from Colorado may have been viewable to visitors to my automated website only after that same photograph appeared on several other websites from which the DailyKix.com website directly and indirectly automatically aggregates material should render me subject to the jurisdiction of a Colorado court.

13.

I have never resided in Colorado and do not own and have never owned property in Colorado. Neither myself nor the DailyKix.com website maintains any offices, statutory agents, telephone listings, mailing addresses, bank accounts, or licenses in Colorado. The website is not aimed at or directed to Colorado residents. Neither myself nor the DailyKix.com website has ever provided any goods or services to any person or entity in Colorado. Neither myself nor the DailyKix.com website has ever transacted, advertised or solicited any business in Colorado. Neither myself nor the DailyKix.com website has ever derived any revenue from Colorado. In fact, the DailyKix.com website has not generated any revenue other than approximately \$20 in advertising revenues, which has been used to partially offset the costs associated with hosting the website. In sum, neither myself nor the DailyKix.com website purposefully availed ourselves of the benefits and privileges of Colorado, and neither myself nor the DailyKix.com website expressly aimed or purposefully directed any activities into Colorado.

Pursuant to U.S.C. section 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 5 day of April, 2011.


William Sumner