

1 SCOTT A. EDELMAN, SBN 116927  
sedelman@gibsondunn.com  
2 GIBSON, DUNN & CRUTCHER LLP  
2029 Century Park East  
3 Suite 4000  
Los Angeles, CA 90067-3026  
4 Telephone: 310.552.8500  
Facsimile: 310.551.8741

5 PERLETTE MICHÈLE JURA, SBN 242332  
pjura@gibsondunn.com  
6 ILISSA SAMPLIN, SBN 314018  
isamplin@gibsondunn.com  
7 SHAUN A. MATHUR, SBN 311029  
smathur@gibsondunn.com  
8 GIBSON, DUNN & CRUTCHER LLP  
333 South Grand Avenue  
9 Los Angeles, CA 90071-3197  
10 Telephone: 213.229.7000  
Facsimile: 213.229.7520

11 Attorneys for Defendant VERIZON MEDIA  
12 INC., YAHOO! INC., and OATH INC.

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15 WESTERN DISTRICT

16 EVOX PRODUCTIONS LLC, a  
Delaware limited liability company,

17 Plaintiff,

18 v.

19 VERIZON MEDIA INC., a Delaware  
20 corporation, YAHOO! INC., a Delaware  
21 corporation, OATH, INC., a Delaware  
22 corporation, and DOES 1 through 10,  
inclusive,

23 Defendants.

CASE NO. 2:20-cv-2852-CBM-JEM

**DEFENDANTS' REPLY IN SUPPORT  
OF MOTION FOR JUDGMENT ON  
THE PLEADINGS**

**HEARING:**

Date: April 20, 2021  
Time: 10:00 a.m.  
Judge: Consuelo B. Marshall

**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

Page

I. INTRODUCTION ..... 1

II. ARGUMENT ..... 2

    A. Evox’s “Making Available” Theory Fails As A Matter Of Law ..... 2

        1. The Copyright Act And Ninth Circuit Precedent Foreclose  
           The Theory ..... 2

        2. The “Deemed Distributed” Rule Is Inapplicable In Any  
           Event ..... 5

    B. Evox Has Failed To Plausibly Allege Actual Display Or  
       Distribution..... 6

    C. The Court Should Dismiss With Prejudice Without Leave To  
       Amend ..... 10

III. CONCLUSION..... 10

## TABLE OF AUTHORITIES

Page(s)

## CASES

1		
2		
3	<b>CASES</b>	
4	<i>A&amp;M Records, Inc. v. Napster, Inc.</i> ,	
5	239 F.3d 1004 (9th Cir. 2001) .....	3
6	<i>Am. Broad. Cos. v. Aereo, Inc.</i> ,	
7	573 U.S. 431 (2014).....	7
8	<i>Annabooks, LLC v. Issuu</i> ,	
9	2020 WL 6873646 (N.D. Cal. Sept. 24, 2020).....	6
10	<i>Arista Records, Inc. v. Mp3Board, Inc.</i> ,	
11	2002 WL 1997918 (S.D.N.Y. Aug. 29, 2002) .....	5
12	<i>Ashcroft v. Iqbal</i> ,	
13	556 U.S. 662 (2009).....	2, 6, 8
14	<i>Atl. Recording Corp. v. Howell</i> ,	
15	554 F. Supp. 2d 976 (D. Ariz. 2008).....	3, 4, 5, 6
16	<i>Bell Atl. Corp. v. Twombly</i> ,	
17	550 U.S. 544 (2007).....	6, 8, 10
18	<i>BMG Rights Mgmt. (US) LLC v. Cox Commc'ns, Inc.</i> ,	
19	149 F. Supp. 3d 634 (E.D. Va. 2015).....	3, 4, 5
20	<i>Budway Enters., Inc. v. Fed. Ins. Co.</i> ,	
21	2009 WL 1014899 (C.D. Cal. Apr. 14, 2009).....	6
22	<i>Capitol Records, Inc. v. Thomas</i> ,	
23	579 F. Supp. 2d 1210 (D. Minn. 2008) .....	3, 4
24	<i>Chavez v. United States</i> ,	
25	683 F.3d 1102 (9th Cir. 2012) .....	7
26	<i>De La Vega v. USAA Real Estate Co.</i> ,	
27	2019 WL 5847853 (W.D. Tex. Nov. 7, 2019) .....	9
28	<i>Dietz Int'l Pub. Adjusters of Cal., Inc. v. Evanston Ins. Co.</i> ,	
	2009 WL 10673937 (C.D. Cal. Dec. 14, 2009).....	8

**TABLE OF AUTHORITIES**  
(continued)

Page(s)

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

*Elektra Entm’t Grp., Inc. v. Baker*,  
551 F. Supp. 2d 234 (S.D.N.Y. 2008) ..... 3, 4

*Free Speech Sys., LLC v. Menzel*,  
390 F. Supp. 3d 1162 (N.D. Cal. 2019)..... 7

*Holloway v. Best Buy Co.*,  
2009 WL 1533668 (N.D. Cal. May 28, 2009)..... 7

*Hotaling v. Church of Jesus Christ of Latter-Day Saints*,  
118 F.3d 199 (4th Cir. 1997) ..... 1, 2, 3

*Klamath-Lake Pharm. Ass’n v. Klamath Med. Serv. Bureau*,  
701 F.2d 1276 (9th Cir. 1983) ..... 10

*Menzel v. Scholastic, Inc.*,  
2018 WL 1400386 (N.D. Cal. Mar. 19, 2018) ..... 9

*In re Napster, Inc. Copyright Litig.*,  
377 F. Supp. 2d 796 (N.D. Cal. 2005)..... 1

*In re Outlaw Lab., LLP*,  
2020 WL 3840559 (S.D. Cal. July 8, 2020)..... 7

*Perfect 10, Inc. v. Amazon.com, Inc.*,  
508 F.3d 1146 (9th Cir. 2007) ..... 4, 5, 7

*Perfect 10, Inc. v. Cybernet Ventures, Inc.*,  
167 F. Supp. 2d 1114 (C.D. Cal. 2001)..... 8

*Rassamni v. Fresno Auto Spa, Inc.*,  
2018 WL 4616388 (E.D. Cal. Sept. 25, 2018) ..... 9, 10

*SA Music, LLC v. Amazon.com, Inc.*,  
2020 WL 3128534 (W.D. Wash. June 12, 2020) ..... 3, 4, 7

*Sony Corp. of Am. v. Universal City Studios, Inc.*,  
464 U.S. 417 (1984)..... 1

*VHT, Inc. v Zillow Grp., Inc.*,  
918 F.3d 723 (9th Cir. 2019) ..... 1, 2, 5, 6, 7, 10

**TABLE OF AUTHORITIES**  
(continued)

Page(s)

*In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods Liab. Litig.*,  
467 F. Supp. 3d 849 (N.D. Cal. 2020)..... 9

**STATUTES**

17 U.S.C. § 106..... 2

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

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.