UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Neil Leonard Haddley,   Civil No. 16-1960 (DWF/LIB)

        Plaintiff,

v.   **MEMORANDUM**
                                         OPINION AND ORDER

Next Chapter Technology, Inc., a corporation;
Vaughn Mulcrone, an individual;
dataBridge, LLC, a limited liability company;
County of Becker, Minnesota;
County of Clay, Minnesota;
County of Dodge, Minnesota;
County of Isanti, Minnesota;
County of Otter Tail, Minnesota;
County of Mower, Minnesota;
County of Steele, Minnesota; and
County of Waseca, Minnesota;[1]

        Defendants.

Alexander Farrell, Esq., Hellmuth & Johnson PLLC, counsel for Plaintiff Neil Leonard Haddley.

Bruce H. Little, Esq., Sarah Pruett, Esq., Autumn Gear, Esq., and Heidi J.K. Fessler, Esq., Lindquist & Vennum LLP, counsel for Defendants.

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[1]   In an Order dated April 25, 2017, the Court dismissed Count II insofar as it was asserted against County Defendants. (Doc. No. 63 at 14-15.) The Court notes that Counts I and III are not asserted against the following counties: Kittson, Mahnomen, Marshall, Norman, Polk, Red Lake, Roseau, Kandiyohi, Rice, Scott, and Stearns. Therefore, those counties are properly removed from the caption of this case.

INTRODUCTION

This matter is before the Court on Defendants' Motion for Partial Summary

Judgment (Doc. No. 103). For the reasons set forth below, the Court denies the motion.

BACKGROUND

Plaintiff Neil Haddley is the creator and copyright holder of Scanning Enabler, a

software program that allows users to scan paper documents into electronic form. (Doc.

No. 69 (Consolidated Amended Complaint ("CAC")) ¶¶ 33, 35.) Scanning Enabler is

activated by a license key. (*Id.* ¶ 42.) A license key system assigns a unique key number

to each licensee and is intended to limit and control access to licensed software. (*Id.*

¶ 40.) In order to download Scanning Enabler, one must use a valid license key. (*Id.*

¶ 42.) Scanning Enabler resides on and is used at the server; workstations can connect to

the server and access the software via ActiveX controllers. (CAC ¶ 70; Doc. No. 118

("Farrell Decl.") ¶ 3, Ex. B ("Haddley Dep.") at 40.)[2]

Defendant Next Chapter Technology, Inc. ("NCT") developed and licenses its

own product, CaseWorks, to various Minnesota counties. (CAC ¶ 6; Doc. No. 106

("Little Decl.") ¶¶ 11-12, 14-15, Exs. 9-10, 12-13; Doc. No. 108 ("Mulcrone Decl.") ¶ 2,

Ex. 1 ("Mulcrone First Action Decl.") ¶¶ 7-9). CaseWorks is an electronic document

management system ("EDMS") that NCT installs on servers owned by its customer

counties, who in turn use the software for essential government functions. (Mulcrone

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[2]   Thus, downloading the ActiveX control to a workstation is required before using
Scanning Enabler. (Haddley Dep. at 148.)

First Action Decl. ¶ 9.) CaseWorks includes a scanning feature, and in 2012 and 2013, the scanning software component used in CaseWorks was Scanning Enabler.

In 2009, NCT entered into a re-seller arrangement for Scanning Enabler with Dark Blue Duck Solutions, LLC ("DBD"). (CAC ¶¶ 39, 46; Mulcrone First Action Decl. ¶ 14.) DBD is a company formed by Haddley for the purpose of selling licenses to Haddley's software. (*Id.* ¶ 39.) Per this agreement, from 2009 until 2012, Vaughn Mulcrone, the president and CEO of NCT, was authorized to re-sell Haddley's software products, including Scanning Enabler, to third parties. (*Id.* ¶ 46.) In 2011 and 2012, Haddley was working for NCT, first as a consultant and later as the Chief Technical Officer ("CTO") of NCT. (Mulcrone First Action Decl. ¶ 2.)

In 2012, NCT requested a license from DBD for the Scanning Enabler software to be installed at and used by Clay County.[3] (CAC ¶¶ 65, 66, 80, 81; Mulcrone Decl. ¶¶ 4, 5, Exs. 3, 4; Mulcrone First Action Decl. ¶¶ 3, 16.) Clay County shared a server environment with Becker, Otter Tail, and later Isanti Counties. (Mulcrone First Action Decl. ¶ 3; CAC ¶¶ 72, 83, 90.) In 2013, NCT requested a license for the Scanning Enabler software to be installed at and used by Steele County. (CAC ¶¶ 91, 92; Mulcrone Decl. ¶¶ 6, 7, Exs. 5, 6.) Steele County shared a server environment with Waseca, Mower, and Dodge Counties. (Mulcrone First Action Decl. ¶ 4.) Defendants assert that these licenses were unrestricted single server licenses designated for

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[3]   The parties dispute whether NCT purchased the license for itself or acquired the license for its county customers as a re-seller of Haddley's software.

installation on production servers hosted at both Clay and Steele Counties. (Mulcrone

Decl. ¶¶ 4-9, Exs. 3-8 (License Keys for Clay and Steele County; invoices for the License

Keys noting the purchase of "Scanning Enabler Server" and "Unrestricted License for

one front-end server").) Defendants assert that, when working as a consultant for or an

employee of NCT, Haddley authorized and personally participated in the sharing and use

of Scanning Enabler by County Defendants in the above server environments. (Mulcrone

First Action Decl. ¶¶ 2-4.)

Haddley disputes that he knew of and acquiesced to Defendants' unrestricted use

of Scanning Enabler in the shared server communities. For example, Haddley claims that

he protested the Isanti County Defendant's use of his software without a license.

Specifically, Haddley testified that when he was on-site in Fergus Falls in December

2012 (when the Otter Tail workstations were connected to the Clay server), he confronted

John Dinsmore of Otter Tail County and expressed that he was unhappy with the

configuration and indicated that they needed to purchase additional licenses. (Haddley

Dep. at 165-66, 169.) In addition, Haddley asserts that after he refused to agree to a

proposal put forward by NCT that affected Haddley's licensing of Scanning Enabler,

Haddley's employment was terminated by NCT. (CAC ¶¶ 97-102.) Haddley alleges that

NCT then retained Defendant dataBridge, LLC to help create a replacement software

product called NCT Scan. (*Id.* ¶¶ 129-30.) Also, in October 2014, Haddley sent Notice

of Claim letters to the County Defendants indicating his belief that they were using

copyrighted works without his permission. (*Id.* ¶¶ 137-38, Ex. C.)

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In this action, Plaintiff brings three claims: (1) copyright infringement against NCT, Mulcrone, and County Defendants for exceeding the licenses Hadley sold by permitting the eight County Defendants, instead of just Steele and Clay Counties, to use the Scanning Enabler at the Clay and Steele County servers; (2) copyright infringement against NCT, Mulcrone, and dataBridge LLC for creating an infringing derivative work based on the Scanning Enabler[4]; and (3) a claim under the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. § 1201(a)(1)(A) and § 1202(b)(1) against NCT, Mulcrone, and the County Defendants. Defendants now move for partial summary judgment seeking judgment in their favor on Counts I and III.

DISCUSSION

I.   Legal Standard

Summary judgment is appropriate if the "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Courts must view the evidence, and the inferences that may be reasonably drawn from the evidence, in the light most favorable to the nonmoving party. *Weitz Co., LLC v. Lloyd's of London*, 574 F.3d 885, 892 (8th Cir. 2009). However, "[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed

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[4]   Defendants do not move for summary judgment on Count II, which is brought against Defendants NCT, Mulcrone, and dataBridge, for copyright infringement based on the alleged creation of a derivative of Scanning Enabler. (CAC ¶¶ 151-64.)

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