

Hon. James L. Robart

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VHT, INC., a Delaware corporation,

Plaintiff,

v.

ZILLOW GROUP, INC., a Washington  
corporation; and ZILLOW, INC., a Washington  
corporation,

Defendants.

Case No. 2:15-cv-01096-JLR

**ZILLOW'S MOTION FOR  
PARTIAL JUDGMENT  
ON THE PLEADINGS**

NOTE ON MOTION CALENDAR:  
May 13, 2016

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## I. INTRODUCTION

1  
2 Zillow moves for judgment on the pleadings as to VHT's requests for statutory damages  
3 and attorney fees because, in light of the facts alleged in VHT's complaint, those remedies are  
4 legal impossibilities in this case. 17 U.S.C. §§ 504 and 505 authorize statutory damages and  
5 attorney fees in copyright cases, but with a key prerequisite: 17 U.S.C. § 412 of the same statute  
6 provides that neither of these remedies "shall be made for" the infringement of unregistered  
7 copyrights. VHT's copyrights are not registered.

8 Although artful pleading in VHT's complaint somewhat obfuscates the facts, they are  
9 these: at the time of its initial complaint VHT had filed applications for copyright registration;  
10 since that time, all of those applications have been rejected. In a series of letters dated three  
11 months after VHT's initial complaint, the United States Copyright Office announced its  
12 affirmative decision to refuse VHT's applications, because VHT's works do not meet the criteria  
13 for registration. This formal notice of rejection – the fact of which is not subject to reasonable  
14 dispute and which is public record – is judicially noticeable, and therefore fatal to any attempt by  
15 VHT to recover remedies under §§ 504 or 505.

16 This state of affairs is a textbook case warranting a judgment on the pleadings pursuant to  
17 Rule 12(c) of the Federal Rules of Civil Procedure. Without registration, VHT simply cannot  
18 clear the statutory hurdle to statutory damages or attorney fees. Or, put another way, the  
19 allegations in VHT's complaint cannot possibly support the award of statutory remedies, because  
20 VHT will never be entitled to such remedies unless the facts about its registration status change.  
21 A ruling on this legal issue now, before discovery begins in earnest, will narrow the parties' focus  
22 to what is actually on the table at trial. In addition to clarifying the scope of discovery, a ruling  
23 now will also provide guidance as to its depth; recent amendments to the Federal Rules of Civil  
24 Procedure re-emphasized that a court must give the amount in controversy considerable weight  
25 when it considers whether a discovery undertaking is unduly burdensome. Clarifying what  
26 remedies are, and are not, available will do exactly that. For these reasons, and for the reasons  
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