

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
Alexandria, Virginia**

UNITED STATES)	
)	12cr03 (LO)
v.)	
)	
KIM DOTCOM, et al.,)	
)	
Defendants.)	
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**STATEMENT OF INTEREST OF NON-PARTIES MICROHITS, INC. AND
VALCOM, INC. CONCERNING PROPOSED EMERGENCY MOTION FOR
PROTECTIVE ORDER OF NON-PARTY CARPATHIA HOSTING, INC.**

Non-parties Microhits, Inc. (“Microhits”) and Valcom, Inc. (“Valcom”) hereby file the instant Statement of Interest concerning the Motion for Protective Order filed by non-party Carpathia Hosting, Inc. (“Carpathia”), dated March 20, 2012 (Dkt. No. 38).

Microhits and Valcom state as follows:

1. Microhits and Valcom are plaintiffs to a civil action separately pending in the District Court for the Eastern District of Virginia, *Microhits, et al. v. MegaUpload Ltd., et al.*, 12cv327 (E.D. Va.).
2. Several of the Defendants to that action are the same persons or entities as the Defendants to this action, specifically, Defendants Dotcom (aka Schmitz), MegaUpload, Ltd., Vestor, Ltd., and Mathias Ortmann.
3. Microhits and Valcom are still in the process of effecting service on the Defendants to the 12cv327 action.
4. The interests of Microhits and Valcom can reasonably be expected to be affected by the Court’s ruling on Carpathia’s pending Motion in the instant matter. Specifically, Carpathia seeks from the Court via its Motion permission for “Carpathia to delete the data” from its servers, the storage of which data was previously paid for by certain of the Defendants to the instant matter. Dkt. No. 38 at 3. Substantial portions of this data may constitute evidence with respect to Microhits and Valcom’s 12cv327 action, which such action alleges Inducement of Copyright Infringement, Contributory Copyright Infringement, and Unfair Competition.

5. While the United States has requested that the Court “deny Carpathia’s motion for a protective order,” Dkt. No. 56 at 8, the United States has also stated that it has, to date, already “copied selected Carpathia Servers and copied selected data from other Carpathia Servers,” Dkt. No. 56 at 2. For this among other reasons, there remains the possibility that the Court could elect to grant that portion of Carpathia’s Motion requesting that it be given permission to “delete the data” from the so-called “Mega Servers” at issue in Carpathia’s Motion.
6. Over the next several business days, Microhits and Valcom intend to confer with counsel for the United States concerning whether the United States will grant the parties to the 12cv327 action access to such data pursuant to discovery requests in the 12cv327 action.
7. Pending the result of such conference, Microhits and Valcom respectfully request that the Court stay implementation of any ruling on Carpathia’s Motion.
8. Microhits and Valcom propose submitting a status report to the Court on or before April 19, 2012, concerning the outcome of its conference with the United States.
9. Separate and apart from the foregoing, Microhits and Valcom respectfully submit that regardless of the nature of the Court’s decision on Carpathia’s Motion, the Court consider requiring, as a corollary to any Order that the Court may issue, that Carpathia retain copies of all the server logs for each of the so-called “Mega Servers.”
10. This request is appropriate in that, *inter alia*, the costs to Carpathia of maintaining such logs are *de minimis*. Ex. A (Decl. of Stevens Miller of Data Forensics Labs of Northern Virginia, Inc. dated April 12, 2012), ¶ 5. Further, preservation of the server log information is important because such log information can reflect usage patterns that may reflect acts of copyright infringement. *Id.* ¶ 4.
11. Pending the outcome of Microhits and Valcom’s conference with the United States regarding the ability of the parties to the 12cv327 action to access Carpathia data previously copied by the United States, Microhits and Valcom reserve their right to move to stay implementation of any Order by the Court authorizing deletion of data by Carpathia from the Mega Servers. Microhits and Valcom note that it is not clear what degree of knowledge Carpathia may have had that the services provided by Defendant were (as alleged in both the civil and criminal matters) “pirate” services; Microhits and Valcom respectfully submit that the claims of hardship by Carpathia regarding the costs of retaining MegaUpload’s data

require careful scrutiny in light of any prior knowledge on the part of Carpathia concerning the infringing nature of the services offered by Defendants.

Counsel for Microhits and Valcom respectfully requests the opportunity to be heard at hearing (previously scheduled for Carpathia's Motion on April 13, 2012) on the foregoing points.

Respectfully submitted,

/s/

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April 12, 2012

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2012 the foregoing was filed and served electronically by the Court's CM/ECF system upon the following, and, further, via the means separately indicated:

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