

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

ANTHONY MARTINO, an Illinois citizen,

Plaintiff,

v.

No. 1:20-CV-02267

THE ORCHARD ENTERPRISES, INC., a Delaware corporation; INDEPENDENT ONLINE DISTRIBUTION ALLIANCE, INC., a California corporation; and MEDIANET, INC., a Delaware corporation,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF
MEDIANET, INC.'S MOTION TO DISMISS
PLAINTIFF'S SECOND AMENDED COMPLAINT
FOR LACK OF PERSONAL JURISDICTION AND IMPROPER VENUE
OR, IN THE ALTERNATIVE, TO TRANSFER FOR IMPROPER VENUE
AND FOR A STAY OF DISCOVERY AND ANSWER**

SHAPIRO ARATO BACH LLP
Cynthia S. Arato
Lauren Capaccio
500 Fifth Avenue, 40th Floor
New York, NY 10110
Tel: (212) 257-4882
Fax: (212) 202-6417
carato@shapiroarato.com
lcapaccio@shapiroarato.com

Attorneys for Defendants

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
FACTUAL BACKGROUND.....	2
A. The Parties	2
B. Plaintiff’s Infringement Allegations	3
C. Jurisdictional Allegations and Facts	4
ARGUMENT	6
I. THIS COURT DOES NOT HAVE PERSONAL JURISDICTION OVER MEDIANET.....	6
A. This Court Lacks General Jurisdiction Over MediaNet	6
B. This Court Lacks Specific Jurisdiction Over MediaNet.....	8
i. MediaNet Did Not Direct Suit-Related Conduct Towards Illinois.....	9
ii. It Would Not Be Fair To Subject MediaNet to Specific Jurisdiction In This Forum	13
II. THE COURT SHOULD DISMISS OR TRANSFER THIS CASE BECAUSE VENUE IN THIS DISTRICT IS IMPROPER.....	14
III. THE COURT SHOULD STAY DISCOVERY AND ANY ANSWER PENDING RESOLUTION OF THE MOTION	14
CONCLUSION.....	14

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Advanced Tactical Ordnance Sys., LLC v. Real Action Paintball, Inc.</i> , 751 F.3d 796 (7th Cir. 2014)	11, 12
<i>Asahi Metal Indus. Co. v. Superior Court of Cal., Solano Cty.</i> , 480 U.S. 102 (1987).....	11, 12
<i>Brown v. Lockheed Martin Corp.</i> , 814 F.3d 619 (2d Cir. 2016).....	7
<i>Burger King Corp. v. Rudzewicz</i> , 471 U.S. 462 (1985).....	11
<i>Clarus Transphase Sci., Inc. v. Q-Ray, Inc.</i> , No. C 06-3450 JF RS, 2006 WL 2374738 (N.D. Cal. Aug. 16, 2006).....	10
<i>Daimler AG v. Bauman</i> , 571 U.S. 117 (2014).....	6, 7
<i>Edberg v. Neogen Corp.</i> , 17 F. Supp. 2d 104 (D. Conn. 1998).....	10
<i>Felland v. Clifton</i> , 682 F.3d 665 (7th Cir. 2012)	12
<i>Goodyear Dunlop Tires Operations, S.A. v. Brown</i> , 564 U.S. 915 (2011).....	6
<i>Int’l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement</i> , 326 U.S. 310 (1945).....	13
<i>J. McIntyre Mach., Ltd. v. Nicastro</i> , 564 U.S. 873 (2011).....	11
<i>Kipp v. Ski Enters. Corp. of Wis., Inc.</i> , 783 F.3d 695 (7th Cir. 2015)	6, 7, 8
<i>Labtest Int’l, Inc. v. Ctr. Testing Int’l Corp.</i> , 766 F. Supp. 2d 854 (N.D. Ill. 2011)	13
<i>Lorusso v. Menard, Inc.</i> , No. 15-CV-7208, 2016 WL 704839 (N.D. Ill. Feb. 29, 2016)	12

<i>Millennium Enters., Inc. v. Millennium Music, LP</i> , 33 F. Supp. 2d 907 (D. Or. 1999)	10
<i>N. Grain Mktg., LLC v. Greving</i> , 743 F.3d 487 (7th Cir. 2014)	6, 9
<i>Paldo Sign & Display Co. v. United Vending & Mktg., Inc.</i> , No. 13-CV-1896, 2014 WL 960847 (N.D. Ill. Mar. 11, 2014).....	13
<i>Sullivan v. Sony Music Entm't</i> , No. 14 CV 731, 2014 WL 5473142 (N.D. Ill. Oct. 29, 2014)	8
<i>Sunny Handicraft (H.K.) Ltd. v. Edwards</i> , No. 16 C 4025, 2017 WL 1049842 (N.D. Ill. Mar. 20, 2017)	13
<i>Tower Commc'ns Expert, LLC v. TSC Constr., LLC</i> , No. 18 C 2903, 2018 WL 5624268 (N.D. Ill. Oct. 30, 2018).....	13
<i>Turnock v. Cope</i> , 816 F.2d 332 (7th Cir. 1987)	2
<i>Walden v. Fiore</i> , 571 U.S. 277 (2014).....	8, 11, 12
Statutes	Page(s)
28 U.S.C. § 1400.....	14
28 U.S.C. § 1406.....	1

Defendant MediaNet, Inc. respectfully submits this Memorandum of Law in support of its Motion to Dismiss for lack of personal jurisdiction and improper venue or, in the alternative, to transfer for improper venue, and for a stay of discovery and any Answer pending resolution of the motion.

PRELIMINARY STATEMENT

Pro se Plaintiff Anthony Martino seeks to hale into court three out-of-state defendants to litigate a 60-page, 174 paragraph complaint asserting multiple claims for copyright infringement and conversion and seeking over \$6 million dollars in damages—including for purported emotional distress—regarding at most \$60.00 of record album sales and royalty earnings. Notably, as discussed below, all of the sales were made only to Plaintiff and his father.

Plaintiff filed this action in Illinois against MediaNet, Inc., The Orchard Enterprises, Inc., and Independent Online Distribution Alliance, Inc. even though none of the defendants has any cognizable connection to this State. Indeed, none of the defendants are incorporated or have their principal places of business in this State and none target or purposefully direct any activities into this State. Rather, Plaintiff seeks to invoke this Court's jurisdiction based on illegitimate and outmoded jurisdictional theories and untrue factual allegations. This Court is also an improper venue in which to litigate the copyright claims asserted against MediaNet, Inc. because none of the defendants resides or can be found here. This Court should stay discovery (other than any needed discovery related to personal jurisdiction) and the filing of any Answer while the motion is pending.

As an alternative to dismissal and to cure the defect in venue, this Court may transfer this case to the Southern District of New York under 28 U.S.C. § 1406(a). Transferring this action to New York would allow Plaintiff to proceed with his case in an appropriate court and would moot

the problem with personal jurisdiction and venue, as The Orchard Enterprises, Inc. and Independent Online Distribution Alliance, Inc. are based in New York and MediaNet, Inc. consents to suit in New York.

The below explains more fully why there is no personal jurisdiction over MediaNet, Inc. The Orchard Enterprises, Inc. and Independent Online Distribution Alliance, Inc. have concurrently filed their own motion to dismiss explaining why this Court lacks personal jurisdiction over them; why this is an improper venue for the copyright and conversion claims asserted against them; and why discovery and the filing of any Answer should be stayed. MediaNet, Inc. joins that motion with respect to the venue arguments applicable to the copyright claims that Plaintiff asserts against it and the stay.

FACTUAL BACKGROUND

The following facts and allegations are contained in Plaintiff's Second Amended Complaint ("SAC") and in the Declaration of Seth M. Goldstein, General Counsel & Vice-President, Legal and Business Affairs at MediaNet, filed concurrently herewith.¹

A. The Parties

Plaintiff Anthony Martino is an Illinois citizen. SAC ¶ 23. He is an investigator and "professional sing/songwriter and self-funded recording artist" who allegedly has released recordings under the names "Tony Martino" and "the Martino Conspiracy." SAC ¶¶ 2, 15.

Defendant MediaNet, Inc. is a Delaware corporation with a principal place of business in Seattle, Washington. SAC ¶ 27. As Plaintiff concedes, MediaNet is a "business to business licensor of certain rights [to a] music catalogue." *Id.*

¹ The Court (1) may consider on this motion the facts set forth in Mr. Goldstein's declaration; and (2) should reject Plaintiff's allegations where they are rebutted by those facts, given that it is Plaintiff's burden to establish that personal jurisdiction exists. *See Turnock v. Cope*, 816 F.2d 332, 333 (7th Cir. 1987), *superseded on other grounds*.

Plaintiff also has named The Orchard Enterprises, Inc. and Independent Online Distribution Alliance, Inc. (“The Orchard Defendants”) as defendants. The Orchard Defendants have filed their own motion to dismiss for lack of personal jurisdiction and improper venue or, alternatively, to transfer for improper venue.

B. Plaintiff’s Infringement Allegations

Plaintiff alleges that he is the copyright owner of the sound recordings and musical compositions embodied on two record albums titled “Hope in Isolation” and “Slightly Defined.” SAC ¶¶ 2, 15; Exs. A, C. Plaintiff alleges that MediaNet infringed his copyrights by distributing both albums (and their combined 21 individual tracks) to retail outlets, for further distribution to end users, without obtaining needed licenses from him. *Id.* ¶¶ 132, 134, 137. (Plaintiff’s claims against The Orchard are similar but are limited to The Orchard’s distribution of Hope in Isolation, as The Orchard did not distribute Slightly Defined.).

Plaintiff alleges that MediaNet implemented its supposed infringement by (1) obtaining Hope in Isolation from The Orchard and Slightly Defined from an unknown source; (2) uploading the albums onto its computer servers; and (3) distributing those albums to “at least 53 . . . separate third-party brick and mortar music retail stores located across the United States,” including two located in Illinois. *Id.* ¶¶ 12, 16, 132, 134, 165 & Ex. B. Plaintiff alleges that the 53 stores that received the albums are either now “selling” or “have already sold” downloads of the albums (and their combined 21 individual tracks) to the general public, including to residents of Illinois, “through their respective interactive online websites.” *Id.* ¶ 134.²

² Outlets associated directly or indirectly with MediaNet sold only six full albums and 11 individual tracks of Plaintiffs’ recordings, for a total of \$56.34 in revenue reported to MediaNet. Goldstein Decl. ¶¶ 22, 24. Plaintiff nevertheless seeks damages against MediaNet of between \$1,260,000 and \$6,300,000. SAC ¶¶ 127-146, 160-74; Prayer for Relief, Section D.

C. Jurisdictional Allegations and Facts

MediaNet is a music, licensing, and royalty technology company that provides other companies throughout the United States and around the world with the support those companies need to operate a music service business. Goldstein Decl. ¶ 3.

Among other things, MediaNet obtains rights to exploit recordings from record labels and other content owners, and MediaNet then provides access to these recordings to MediaNet's various music service and music distribution customers. *Id.* ¶ 5. MediaNet also provides its customers with various rights management services and foundational back office administration capabilities. *Id.* ¶ 6. Certain of MediaNet's customers sell recordings obtained from MediaNet directly to end users. *Id.* ¶ 7. Others enter their own distribution deals with various retail establishments who, in turn, sell the recordings to end-user customers. *Id.* MediaNet is thus part of the stream of commerce by which sound recordings are distributed from such labels and artists to their fans around the world.

MediaNet operates its "business to business" music service on a nationwide basis, and it does not specifically direct its services towards any business or end-user located in any one state in the United States, including in Illinois. *Id.* ¶ 8. Plaintiff's own allegations bear this out. Plaintiff, for example, alleges that MediaNet "enters into licensing/sub-licensing agreements with various third-part[ies] *located across the United States.*" SAC ¶ 27 (emphasis added).

Plaintiff erroneously alleges that MediaNet does business directly with between 53 and 60 retail music stores, all of whom sell music to end users through their own respective online websites and two of which are based in Illinois. *Id.* ¶¶ 132, 134. That is not true, as explained below, but even those erroneous allegations highlight that MediaNet's (alleged) operations are nationwide and not directed to Illinois. *See, e.g., id.* ¶ 134 ("[e]ach of the 53 third-party music retailers . . . are selling or have already sold [Plaintiff's albums . . .] directly *to the general*

public in the United States without any geographic restriction . . . through their respective interactive online websites” (emphasis added)); *id.* ¶ 137 (MediaNet’s purported agreements with these retailers allow them to offer music “*to the general public (without any geographic restrictions in the United States*” (emphasis added)); *id.* ¶ 154 (each retailer can “sell/transmit permanent downloads of the album to buyers *located in any U.S. state*” (emphasis added)); *id.* ¶ 132 & Ex. B (identifying just two of the 53/60 stores as located in Illinois).

MediaNet does not have any direct business relationship with any of the retail music stores identified by Plaintiff in his pleading, including the two Illinois-based stores that Plaintiff identifies as having offered his albums for sale. Goldstein Decl. ¶ 15. Rather, MediaNet has only an indirect relationship with all these music stores, including the two in Illinois through one of MediaNet’s customers Broadtime Marketing Solutions. *Id.* Broadtime is a Virginia company that provides website and e-commerce support services to independent music stores through its “TunePortals” content management system, and each of the record stores that Plaintiff identifies obtained access to MediaNet’s content through its own business relationship with Broadtime and not directly from MediaNet. *Id.* ¶¶ 16, 18. MediaNet has no control over (1) which retail music stores Broadtime elects to do business with; (2) where those retail stores are located; or (3) to whom those stores sell their music. *Id.* ¶ 17.³

³ Plaintiff also alleges that MediaNet makes its catalog of recordings available for streaming on its own website “to virtually anyone in the general public. *Id.* ¶ 139. That is not correct. Goldstein Decl. ¶ 20. In any event, even in this allegation, Plaintiff contends that MediaNet allows this access “*without geographic restriction.*” *Id.* ¶ 139 (emphasis added).

ARGUMENT

I. THIS COURT DOES NOT HAVE PERSONAL JURISDICTION OVER MEDIANET

MediaNet is not subject to this Court’s general jurisdiction because MediaNet is not “at home” in Illinois. *Daimler AG v. Bauman*, 571 U.S. 117, 138–39 (2014); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011); *Kipp v. Ski Enters. Corp. of Wis., Inc.*, 783 F.3d 695, 697-98 (7th Cir. 2015). MediaNet is not subject to this Court’s specific jurisdiction because MediaNet has not purposefully directed any case-related conduct towards Illinois and a finding of jurisdiction would offend “traditional notions of fair play and substantial justice,” *N. Grain Mktg., LLC v. Greving*, 743 F.3d 487, 492 (7th Cir. 2014).

A. This Court Lacks General Jurisdiction Over MediaNet

MediaNet is not subject to the Court’s general jurisdiction because MediaNet is not “at home” in this State given that (1) MediaNet is neither incorporated nor based in Illinois; and (2) this is not an “exceptional case” where general jurisdiction otherwise could be found. *Daimler*, 571 U.S.at 137, 139 n.19.; *Kipp*, 783 F.3d at 697-98.

So far, the U.S. Supreme Court and the Seventh Circuit have identified only two places where the “at home” condition for general jurisdiction can be met—a corporation’s state of incorporation and its principal place of business. *Daimler*, 571 U.S.at 137; *Kipp*, 783 F.3d at 698. MediaNet satisfies neither of these conditions because, as Plaintiff concedes, MediaNet is a Delaware corporation with its principal place of business in the state of Washington. SAC ¶ 27.

This case also comes nowhere close to being an “exceptional case” that could support the exercise of general jurisdiction over the company. The notion of an “exceptional” case has its genesis in a footnote in *Daimler* keeping open “the possibility” that an “exceptional case” may exist where a corporation’s operations are “so substantial and of such a nature as to render the

corporation at home in that State.” 571 U.S.at 139 n.19. Since *Daimler* was decided, neither the Supreme Court nor the Seventh Circuit has found this exceptional case to exist and, accordingly, the bar for an “exceptional case” has not yet been set. The Seventh Circuit has nevertheless made clear that the criteria for such a case “require more than the ‘substantial, continuous, and systematic course of business’” that was once thought sufficient to establish general jurisdiction and upon which Plaintiff appears to rely. *Kipp*, 783 F.3d at 698 (internal quotation omitted).

Rather, an exceptional case must involve “continuous corporate operations” that “are so substantial and of such a nature as to justify suit . . . on causes of action arising from dealings entirely distinct from [the challenged] activities.” *Id.*; see also *Daimler*, 571 U.S. at 139 n.20 (“at home” standard requires more than “doing business” test because “corporation that operates in many places can scarcely be deemed at home in all of them”); *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 629 (2d Cir. 2016) (when “a corporation is neither incorporated nor maintains its principal place of business in a state, mere contacts, no matter how ‘systematic and continuous,’ are extraordinarily unlikely to add up to an ‘exceptional case’”).

To support general jurisdiction, Plaintiff alleges only that MediaNet does business in the State, including by allegedly distributing the recordings at issue to the identified brick and mortar stores and operating a website from which end users could access Plaintiff’s recordings on a nationwide basis. See SAC ¶ 32 (alleging that MediaNet has continuously conducted or transacted business in the State, including by distributing Plaintiff’s sound recordings), ¶¶ 27, 139 (website allegations). Even if Plaintiff’s retail store allegations were true (and they are not), Plaintiff still would miss the bar given that MediaNet is not registered to do business in Illinois, has no customers in Illinois, does not own or rent office space or other property in Illinois, does not direct any marketing or advertising to Illinois entities or residents, has no Illinois employees,

and does not store its music catalog on computer servers located in the State. *See* Goldstein Decl. ¶¶ 9-14; *see also Daimler*, 571 U.S. at 123 (even if imputed to defendant, no general jurisdiction even where subsidiary of defendant had multiple California based facilities, including a regional office, and California sales amounted to 10% of company’s nationwide sales); *Kipp*, 783 F.3d at 698 (no general jurisdiction where defendant had “a few contacts” with Illinois, including Illinois customers, but did not maintain an Illinois office, was not registered to do business in the state, and did not advertise or have employees there).

Plaintiff’s jurisdictional allegations are, moreover, not true, as MediaNet does not have a direct business relationship with the identified brick and mortar stores. *See* Goldstein Decl. ¶ 15.

In addition, “maintaining a public website is not sufficient, by itself, to establish general jurisdiction.” *Kipp*, 783 F.3d at 699; *see also Sullivan v. Sony Music Entm’t*, No. 14 CV 731, 2014 WL 5473142, at *4 (N.D. Ill. Oct. 29, 2014) (defendant’s maintenance of public website through which Illinois consumers could download songs was insufficient to establish necessary *prima facie* jurisdictional showing).

MediaNet is not subject to general jurisdiction in Illinois.

B. This Court Lacks Specific Jurisdiction Over MediaNet

Plaintiff also cannot show that MediaNet is subject to specific jurisdiction in Illinois because (1) MediaNet has not purposefully directed its activities into this State and (2) it would be unfair and unjust to subject MediaNet to the jurisdiction of an Illinois court.

“For a State to exercise [specific] jurisdiction consistent with due process, the defendant’s suit-related conduct must create a substantial connection with the forum State.” *Walden v. Fiore*, 571 U.S. 277, 284 (2014). Under this “substantial connection” test, the exercise of specific jurisdiction is appropriate only where “(1) the defendant has purposefully directed his

activities at the forum state or purposefully availed himself of the privilege of conducting business in that state, and (2) the alleged injury arises out of the defendant's forum related activities." *N. Grain Mktg.*, 743 F.3d at 492. The exercise "must also comport with traditional notions of fair play and substantial justice." *Id.*

i. MediaNet Did Not Direct Suit-Related Conduct Towards Illinois

MediaNet never purposefully directed any case-linked activity to this forum sufficient to establish specific jurisdiction. To contend otherwise, Plaintiff wrongly alleges that MediaNet allegedly did business with two brick-and-mortar music stores (Purple Dog Records and Siren Records McHenry) located in Illinois that sold electronic versions of Plaintiff's albums. *See* SAC ¶ 32 & Ex. B. As set forth above, MediaNet has no relationship with Purple Dog or Siren Records or with any other "brick and mortar retailers" in Illinois, and MediaNet, accordingly, never engaged in business with these stores. Goldstein Decl. ¶ 15. Rather, MediaNet has a relationship with Broadtime, and it is Broadtime that elected to do business with these Illinois entities. *Id.* ¶¶ 15, 17-18. MediaNet, moreover, has no control over the retail stores with whom Broadtime does business, where those stores are located, or to whom those record stores sell their music. Accordingly, any distribution of Plaintiff's recordings, either by Broadtime to Purple Dog or Siren Records or by those stores to end users, was therefore made at the direction of Broadtime or those stores, and not at MediaNet's direction.

In any event, neither MediaNet nor Broadtime nor these stores made *any sales* of Plaintiff's recordings except for a handful of sales *to Plaintiff and Plaintiff's father* in March 2020. Indeed, as set forth in the Goldstein Declaration, outlets associated directly or indirectly with MediaNet sold only six full albums and 11 individual tracks of Plaintiff's recordings, and

all these sales were made to end user consumers using email addresses that are or almost certainly are associated with Plaintiff or Plaintiff's father. Goldstein Decl. ¶¶ 21-23.⁴

In connection with providing certain back-end operations to Broadtime, and as directed by Broadtime's own retail store customers, MediaNet transmitted links to the above email addresses to the purchased music files from MediaNet's computer servers and the customers then accessed the links to download the files they purchased (to the extent not cancelled or returned). Goldstein Decl. ¶ 26. These back-end operations, directed by others, cannot support a finding of specific jurisdiction, even if the transmissions were made into Illinois.

As an initial matter, Plaintiff may not rely on sales that he or his father initiated to support the exercise of personal jurisdiction. *See Clarus Transphase Sci., Inc. v. Q-Ray, Inc.*, No. C 06-3450 JF RS, 2006 WL 2374738, at *3 n.3 (N.D. Cal. Aug. 16, 2006) (“[a] plaintiff cannot manufacture personal jurisdiction in a trademark case by purchasing the accused product in the forum state”); *Millennium Enters., Inc. v. Millennium Music, LP*, 33 F. Supp. 2d 907, 911 (D. Or. 1999) (defendants could not be said to have “purposefully availed themselves of the protections of the forum” when “it was the act of someone associated with plaintiff, rather than defendant’s Web site advertising, that brought defendants’ product” into the forum); *Edberg v. Neogen Corp.*, 17 F. Supp. 2d 104, 112 (D. Conn. 1998) (sale of infringing product initiated by plaintiff could not sustain specific jurisdiction since contact stemmed from plaintiff’s acts, not defendant’s “promotion, advertising, or sales activities”).

In any event, even if these transmissions had gone to an Illinois resident other than Plaintiff or his father, none of MediaNet’s transmissions was the result of any purposeful

⁴ MediaNet’s business records also document that copies of some these recordings were obtained by one streaming service located in India and one in Great Britain. This activity also has no connection to Illinois.

conduct by MediaNet or fairly could be attributed to MediaNet for purposes of specific jurisdiction, given that any such delivery of Plaintiff's recordings into this State would have been both directed by others and entirely random and fortuitous to boot. Indeed, MediaNet (1) has no direct relationship with Purple Dog or Siren Records; (2) made no effort to ensure that Broadtime did business with these or any other retail stores located in Illinois, or encouraged Broadtime to do the same; and (3) does not control to whom these stores sell their recordings. Goldstein Decl. ¶¶ 17-19; *see Walden*, 571 U.S. at 277 (predicate for specific jurisdiction must be "contacts that the defendant *himself* creates with the forum" (emphasis original)); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) ("purposeful availment" requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts or of the unilateral activity of another party or a third person").

Thus, even if other Illinois residents had purchased Plaintiff's recordings, Plaintiff could at best contend only that MediaNet placed music into a "stream of commerce" that flowed into Illinois, but that, "without more," cannot demonstrate purposeful availment of the forum. *Asahi Metal Indus. Co. v. Superior Court of Cal., Solano Cty.*, 480 U.S. 102, 112 (1987) (plurality op.); *see J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 882 (2011) (plurality op.) ("The defendant's transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum; as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum State."); *Advanced Tactical Ordnance Sys., LLC v. Real Action Paintball, Inc.*, 751 F.3d 796, 802 (7th Cir. 2014) (no specific jurisdiction based on sending of misleading emails into the state absent evidence that defendant "in some way targeted residents of a specific state"); *Lorusso v. Menard, Inc.*, No. 15-CV-7208, 2016 WL

704839 (N.D. Ill. Feb. 29, 2016) (no specific jurisdiction where defendant knew its products would be offered in Plaintiff's Illinois stores, unless defendant affirmatively sought that result). Plaintiff has not alleged, and cannot allege, the necessary "more." He has not alleged, and cannot allege, that MediaNet targeted Illinois through marketing or other means or have otherwise expressed a specific intention to serve Illinois markets, *see Asahi*, 480 U.S. at 112, much less shown that those actions are directly connected to his claims.⁵

It is irrelevant to the specific jurisdiction analysis that Plaintiff resides, and claims to have suffered damages in this State. SAC ¶ 32. "[M]ere injury to a forum resident" cannot subject a defendant to personal jurisdiction in that forum. *Walden*, 571 U.S. at 290; *see Advanced Tactical*, 751 F.3d at 802 ("[A]fter *Walden*, there can be no doubt that the plaintiff cannot be the only link between the defendant and the forum."). For this same reason, Plaintiff cannot establish personal jurisdiction by alleging that MediaNet knew that Plaintiff resided in this State and could be "injured" here. SAC ¶ 32. A defendant's knowledge that a plaintiff will be injured in forum state is a necessary *but insufficient* condition for the exercise of specific personal jurisdiction; the plaintiff still must show that the defendant expressly aimed its conduct at the forum state, which Plaintiff cannot do here, as set forth above. *See Felland v. Clifton*, 682 F.3d 665, 674-75 (7th Cir. 2012) (delineating "three showings" necessary to prove purposefully directing activity).

In any event, Plaintiff has failed to allege any facts demonstrating MediaNet's knowledge of him or his residence, and MediaNet had no such knowledge. Goldstein Decl. ¶ 27; *see also Sunny Handicraft (H.K.) Ltd. v. Edwards*, No. 16 C 4025, 2017 WL 1049842, at *6 (N.D. Ill.

⁵ Notably, Plaintiff alleges that the Illinois stores he identifies offered the recordings through their own nationwide websites and not physically in their Illinois based stores. SAC ¶¶ 13, 134, 137, 154. These stores thus can make sales to end users located outside of the State as easily as they can to end users inside the State. This further demonstrates that any connection between MediaNet and Illinois is merely fortuitous and an insufficient basis for the finding of specific jurisdiction.

Mar. 20, 2017) (no specific jurisdiction where plaintiffs failed to establish defendant's knowledge that Plaintiffs would be injured in Illinois).

ii. It Would Not Be Fair To Subject MediaNet to Specific Jurisdiction In This Forum

The exercise of specific jurisdiction against MediaNet also would offend traditional notions of fair play and substantial justice and should be rejected because MediaNet has never purposefully directed commercial activities towards the state of Illinois and has no meaningful contacts with this State, such that MediaNet could not have reasonably anticipated being haled into this Court based on Illinois contacts created, indirectly, by one of its Virginia customers and specifically by Plaintiff himself. *See Tower Commc'ns Expert, LLC v. TSC Constr., LLC*, No. 18 C 2903, 2018 WL 5624268, at *9 (N.D. Ill. Oct. 30, 2018) (dismissal appropriate on fairness grounds where defendants had “no ties to Illinois”); *Paldo Sign & Display Co. v. United Vending & Mktg., Inc.*, No. 13-CV-1896, 2014 WL 960847, at *3 (N.D. Ill. Mar. 11, 2014) (exercise of specific jurisdiction over foreign defendant based on conduct committed by defendant's customers would offend fair play and substantial justice); *Labtest Int'l, Inc. v. Ctr. Testing Int'l Corp.*, 766 F. Supp. 2d 854, 864 (N.D. Ill. 2011) (dismissal appropriate on fairness grounds because defendant had “no employees or facilities in Illinois, and none of its records, files or witness or information regarding the infringement . . . [were] located in Illinois”).

Indeed, to hold MediaNet susceptible to personal jurisdiction here would, in essence, make it amenable to suit in any jurisdiction where one of its customers' customers independently operates—an outcome that would be plainly inconsistent with the mandates of due process. *See Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310, 316 (1945) (due process requires that defendant himself have “minimum contacts” with forum state).

* * *

In sum, MediaNet is not subject to specific jurisdiction in this district.

II. THE COURT SHOULD DISMISS OR TRANSFER THIS CASE BECAUSE VENUE IN THIS DISTRICT IS IMPROPER

This case also should be dismissed based on improper venue for the reasons set forth in the motion to dismiss or to transfer filed by The Orchard Enterprises, Inc., and Independent Online Distribution Alliance, Inc. demonstrating why venue is improper under 28 U.S.C. § 1400(a), the copyright venue statute.

III. THE COURT SHOULD STAY DISCOVERY AND ANY ANSWER PENDING RESOLUTION OF THE MOTION

Discovery other than any needed personal jurisdiction related discovery and the filing of any Answer should be stayed in this case pending this Court's ruling on Defendants' motions to dismiss and, in the alternative, for transfer for the reasons set forth in the motion to dismiss or to transfer filed by The Orchard Enterprises, Inc., and Independent Online Distribution Alliance, Inc.

//

//

//

//

CONCLUSION

For the foregoing reasons, MediaNet respectfully requests that the Court dismiss this case for lack of personal jurisdiction and/or for improper venue. Alternatively, the Court may transfer this action to the Southern District of New York, a proper venue where The Orchard Defendants may be found and to which MediaNet consents. This Court also should stay all non-personal jurisdiction related discovery and the filing of any Answer pending resolution of the motion.

Dated: July 15, 2020
New York, New York

SHAPIRO ARATO BACH LLP

By: /s/ Cynthia S. Arato

Cynthia S. Arato
Lauren Capaccio
500 Fifth Avenue, 40th Floor
New York, NY 10110
Tel: (212) 257-4882
Fax: (212) 202-6417
carato@shapiroarato.com
lcapaccio@shapiroarato.com

Attorneys for Defendants