# Davenport Lyons 



13 April 2007

## Dear Sir or Madam

## Topware Interactive Inc- Dream Pinball 3D: File Sharing

We refer to your previous letter requesting details of the evidence against you. A number of people who have been sent letters of claim in the same terms as you have raised issues about the nature of the evidence to which we refer in our letter of claim. Some of those letters raise the issue of evidence in general terms and some are more specific. For the purposes of this reply, we have covered the more specific issues raised in order to help you understand the claim. We may not in each case have dealt with every point raised in your letter, but we reserve the right to do so in the future should this become necessary.

Our original letter of claim sets out the claim against you in sufficient detail and complies with the Code of Practice for pre-action conduct in intellectual property disputes. However, in the spirit of co-operation and acting reasonably in the exchange of documents and information relating to the claim and in an attempt to avoid the need for legal proceedings, we set out further detail below of how our client's evidence has been obtained and enclose appropriate documentation, where necessary. We will, of course, prepare detailed witness statements in support of our client's claim at the appropriate time, should it be necessary to commence proceedings against you.

## 1. Forensic Computer Analyst's Report

We enclose a copy of the report prepared by Richard Schneider dated 24 July 2006, which explains how our IT expert consultants (the "Monitors") use a patented software program (the "Monitoring Program") to locate an individual's IP address in circumstances where Dream Pinball 3D (the "Game") is being made available by the individual (the "User") from his or her personal or office computer and which is connected via the internet to a peer to peer network.

The Monitors are not only able to monitor activity solely relating to the Game, but also, to filter the results of their searches to IP addresses in a given territory (in this case, the UK). In the present case, our client asked the Monitors to monitor UK-based IP addresses offering the Game for download during a period of several weeks in late 2006. As a conclusion to the monitoring process, a 'test download' was then made of the Game in the case of each alleged infringer, including you.

Davenport Lyons
Identified Users' IP addresses, including yours, were provided to our client by the Monitors, together with the details of the ISPs to whom those Users subscribe. The Monitoring Program does not provide the name or contact details of the User. These details are only available from the ISP in question. We wrote to your ISP setting out the basis of our claim and inviting them to provide the details behind your IP address. Because of data protection issues, the ISP will normally require us to apply to the court for a so-called Norwich Pharmacal (or disclosure) order. Full evidence of the nature of our claim against you is provided to the Court, which is then invited to order your ISP to disclose your contact details. This enables us to write to you. On 2 February 2007, such an order was made against your ISP, pursuant to which your ISP provided your name and address some weeks later and we were then able to write to you.

In the event that court action is necessary (if you choose not to accept the offer made in our original letter to you), a representative of the Monitors will provide a witness statement in relation to the evidence against you and will attend court as appropriate.

## 2. Evidence made available by the Monitors

We enclose a copy of the following documentation:
(a) a one page statement report ("Statement Report") showing the date, time, IP address, user ID (if available), time zone and other relevant information, indicating the date and time upon which the IP address was captured when the Game was made available to the Monitors using the Monitoring Program. You should note that the time zone in which the data was captured is referred to implicitly by reference to either the letters 'MESZ' or 'MEZ'. 'MESZ' means 'Mitteleuropaische Sommerzeit' and 'MEZ' means 'Mitteleuropaische Zeit' (German for 'Central European Summer Time' and 'Central European Time' respectively);
(b) the spreadsheet sent to your ISP containing the details set out in the Statement Report, requesting details of all names and addresses relating to the IP addresses listed in it for the relevant dates and times. You will note that the applicable time zone has been converted in the spreadsheet to 'UK Date' and 'UK Time' (see the columns with those headings), in order to avoid any mistakes as to exactly when the data was captured. Please note that this spreadsheet is attached to the court order referred to at paragraph 5 below;
(c) the spreadsheet received back from the ISP containing details of your name, address and telephone number (where available). In order to protect the identity of the other Users to whom we have written and who share the same ISP, we have blanked out their details and accordingly, only yours are visible; and
(d) a copy of the witness statement of your ISP, confirming that the information provided is accurate and complete to the best of the ISP's knowledge and belief.

## 3. Evidence that the Game was Downloaded/Copied to Your Computer

It is irrelevant for the purposes of our client's evidence how the file came to be resident on the computer connected to the IP address in question at the time of upload and/or making available the Game available on a P2P network. The file may have been copied from a CD or DVD ROM (or other medium) or indeed downloaded from either a bona fide website or obtained through filesharing on a P2P website. As our client is not targeting downloaders, we are not seeking to capture any evidence on your hard drive, e.g. by way of the shared files folder for the P2P site in question. Accordingly, we do not offer any evidence in relation to the contents of your or any other computer.

Please note that it is possible that your IP address may have been used by a third party if you have an unsecured wireless connection or your computer security has been compromised, or if other people or children have access to the computer connected to the internet service provided by your ISP. Accordingly, although your computer may not have been used to carry out the action alleged, your internet connection may have been used. This might explain why there is no copy of the Game on your computer (assuming it has not been subsequently deleted).

The security of your computer and internet connection is your responsibility and you need to ensure that both are protected at all times with the most up to date anti-virus and firewall software, and ensure that any wireless router is properly encrypted, in order to be certain that your computer is not being used for unlawful purposes and without your knowledge or consent.

## 4. Evidence of Uploading/Making the Game Available

As you will be aware from our original letter, making a copyright work available to other users on the internet is an offence under sections 16(1)(d) and 20 of the Copyright, Designs and Patent Acts 1988. The evidence on which we rely is referred to and enclosed (where appropriate) at paragraph 2 above. As far as verification of the title in question being made available, you will note above that the Monitors download a copy of the Game being made available by the User and verify that it is indeed a bona fide working version in each case.

## 5. Court Documents

We are unable to provide with you a copy of our client's application notice to the court or the documents relied upon in support of that application, as these are confidential and only available by your making an application to the Court for permission to have a copy. We are, however, able to provide you with (and enclose) a copy of the court order made on 2 February 2007, ordering your ISPs to release details of your name. This is the order which was sent to your ISP.

## 6. Correspondence with Your ISP

We enclose a copy of our original letter to your ISP dated 15 November 2006, together with the witness statement received back from your ISP when sending your name address and which confirms that your details are accurate to the best of its knowledge and belief. Where available, we also enclose a copy of the invoice received from your ISP, which you will note relates to all IP addresses requested, not just yours. In some cases, we have only been notified of your ISP's costs but have not yet received a formal invoice.

## 7. How the Settlement Figure is calculated

The sum of money claimed in our original letter to you of $£ 300$ is not the amount that would be claimed in the event that our client commences proceedings against you. Damages and costs are likely to be much greater than that sum. It is the sum that our client is prepared to accept (on this occasion only) by way of settlement to help defray its costs if you are prepared to give the undertakings sought and sent to you in our original letter. If you are not prepared to accept that offer, then we suggest that you seek legal advice as a matter of urgency.

The figure of $£ 300$ is broken down as follows:
(a) damages for lost sales of our client's game which has been made available for others to download; and
(b) the costs involved in:
i. obtaining the evidence of infringement;
ii. writing to your ISP to ask for your details and when they refuse (which they normally do), preparing an application to the Court for an order that they must provide the details;
iii. preparing a witness statement and draft order in support of that application. This includes other alleged infringers as well;
iv. serving the application against the ISPs and dealing with their queries or those of their lawyers;
v. attending Court to apply for the order;
vi. drawing up the order and lodging it with the Court;
vii. sending the order to your ISP or their solicitors;
viii. ensuring that the ISP complies with the order; and
ix. corresponding with you about our client's claim.

## 8. The Next Stage

Our original letter to you required payment and the return of the signed undertakings within fourteen days. We have received neither. If we do not now receive the same within the next seven days, our client will have no alternative but to commence proceedings against you without further notice.

In the meantime, we expressly reserve all our client's rights.
Yours faithfully


## Davenport Lyons

Email: ncip@davenportlyons.com
Fax: 07005804431

## enc.

1. statement report
2. Letter to ISP dated 15 November 2007
3. Spreadsheet from ISP with User's address
4. Witness statement of ISP
5. Court order (attaching spreadsheet to ISP)
6. Invoice (if available)

## FILE SHARING MONITOR

The aim of this paper is to present a method for finding computers on the WWW that are downloading and making available program, audio and video data illegally. This method has been developed and is being successfully used by Logistep AG.

The paper first presents the way two P2P networks function, which are used for data exchange on the Internet. First the "File Sharing Monitor" program is described, which forms a basis for these networks, and finds the data concerned. The following sections describe the database structure used and the program that composes and prints out the reports generated using this database. This paper was created in cooperation with engineer Pawel Pelc.

## 1. How P2P networks function

In P2P networks, each participating computer can perform both the function of a client and that of a server. The most popular P2P applications for data exchange on the Internet use each Internet node (in this case the computers of the participants) as servers by establishing a link to other users of this network, and also as client by accepting data from other users of this network. The data exchange between the individual nodes is always performed without using a central server.

We can distinguish two distinct groups of P2P networks on the basis of how they communicate. First there are networks without a central server that do not administer a central data stock (we include Gnutella in this). Then there are networks with one central server (/several servers) that administer information on the users currently connected, and sometimes on the exchange data. Networks that do have a central server (we included eDonkey in this) are significantly more effective, since when a user logs on he receives a list of all users connected to a server, and often has immediate access to a list of data currently available that he can search through immediately.

### 1.1 Gnutella

The Gnutella network has no central server. To establish a link with the Gnutella network, you must install the program concerned and look for some host belonging to the network. If this host has no vacant slots, it gives addresses of other hosts where you can try to establish a link, until you finally find a host you can link to. The program administers a list with all host addresses it has had contact with, making it simpler to establish a link in future.

Each search inquiry is sent to all connected hosts, which forward the request. The search results are sent straight back to the originator of the inquiry, in the same way that the actual data transfer operates without the intermediary.


Figure 1: Schematic diagram of how Gnutella networks function

## 1.2 eDonkey

From the users' point of view, using the eDonkey network is similar to the Gnutella network. In reality communication is based on central servers. You have to install a client program to use the network. There are several clients for the eDonkey network; the most popular ones are: eDonkey 2000, eMule, Shareaza.

The user of an eDonkey network links to a network server. The servers are responsible for indexing and finding the data of the search inquiries. The servers connect to each other, making it possible to search through the whole network from each server. Each client has to queue up to download a particular file. Your position in the queue depends on each user's ratio of downloads to uploads, and on the priority of the file requested. As soon as you get to the front of the queue, the download can start. The data is received in packages of nine MB in size. You can download several files from several clients simultaneously. An individual hash value is also calculated for each data package, to prevent defective packages being downloaded.

Each user of the eDonkey network receives a unique identification (GUID) comprising a 32digit hexadecimal number. The user receives the identification when the P2P program is installed. The program generates the GUID from user-specific data such as the installation date, the unique network card MAC number, and the IP address. It is thus possible for a user to have several GUID identifications (e.g. he receives a new GUID when a network client is reinstalled), but it is not possible for a GUID to be issued to another user once it has been issued.

One special advantage of eDonkey and Gnutella networks is the error-free data transmission between the users. Each file is subdivided into small packages which each contain a unique identification value based on a complicated mathematical calculating operation. In the eDonkey network, this identification value is derived an MD4 based hash value calculation. In the Gnutella network, an SHA1 algorithm is used. The client that receives the package concerned must verify its content, i.e. it has to generate the key for the data received "locally" on the basis of the MD4 or AKS1 function, and then compare it with the public key for this corresponding package. If the two identifications are identical, the downloaded package is accepted. If the calculated values differ, the package is rejected and downloaded again, from the same source or another one.


## 

Figure 2: Schematic diagram of how eDonkey networks function

## 2. The "File sharing monitor" program

### 2.1 How the "Monitor" program communicates with the P2P networks

When they are looking for the corresponding data package, the client programs do not ask the server for the filenames but for the corresponding MD4 value. The server looks through its own data stocks, and if it finds sources (a host and its IP) for this package, it sends this information back to the client. The "Monitor" program reads the data provided by the server and verifies its content and that it is up-to-date. Each user whose $\mathbb{I P}$ is listed on the list provided by the server receives from the client program an inquiry whether the file with the corresponding identification is on its computer, and whether it is accessible. If the computer contacted has this file and makes it available, it sends back a positive response. The "Monitor" program then sends an inquiry after the download of this package. The target client responds that it can provide the package, but the inquiring client has to queue up in position N , since its resources are currently being accessed by $\mathrm{N}-1$ users.

On receipt of a positive response from the target client that the data package required is being made available to us and that we are in the queue, the host's data is transferred by the "File Sharing Monitor" into the database of its own client. The local time on the client performing the "Monitoring" is compared twice a day (in the morning and in the evening) with the time of the "Atom server", using the atomzeit.exe program.

In summary you can say that searching in P2P networks involves two stages.
The first stage is looking for sources for the particular file. In this stage the "Monitor" program communicates with the servers of the eDonkey network. The following communication protocol applies:

1. The network client ("Monitor" program) links to the server
2. When the link has been established, inquiries are made for sources for the particular file.
3. The server sends a response. If sources are found, it sends information on the hosts (host IP).


The second stage is based on verification of the data provided by the server. In this level the client program communicates directly with the hosts:
"Monitor"
Client

1. Each host on the list sent by the server receives an inquiry whether it has the file requested and can make it available (on the basis of the MD4 identification).
2. The host confirms possession of the file requested.
3. The "Monitor" program sends an inquiry as to download availability.
4. The host permits the download and puts the client in a queue.
5. The "Monitor" program inserts in its database information on the host providing the file.
6. In some cases the "Monitor" program sends an email about the resultant situation to the holder of the IP requested.


### 2.2 Description of the main program functions

The "File Sharing Monitor" program version 1.3 is a modified version of the client of the eDonkey and Gnutella networks of the program "Shareaza" version 2.1.0. All program functions responsible for communication with the servers and the clients are identical with those in the original version. The main changes relate to functions that make the data available to the network. These have been completely blocked, since the "Monitor" program is not intended for data exchange, but for monitoring and searching for hosts that provide the files requested.

A module has also been added that stores in a special-purpose database all the important information data on the host located when it finds a source. The following data is also added
to the database: IP address, precise time of finding host, name of the client program of the user, port ID, name of the communication protocol used, client identification GUID (on the basis of which the main IP addresses can be deduced), username (nickname) and the file size already determined from the network. Before a further entry is made in the database, a check is performed as to which provider the IP concerned is allocated to. The system then looks up this address in the local database of the "Monitor" program (more precisely, in the ProvRanges table - further details on the database are given in the following section). If no entry is found for this address, this inquiry is directed to the Whols server, a publicly accessible IP addresses database. In response, the Whols server sends information on the [Internet service] provider this address was registered with. This information contains: the name of the provider, the precise postal address, the telephone number and the e-mail address, to which one can send notification of illegal activities of certain persons.

When it has received the data from the Whols server, the "Monitor" program checks whether it should send a warning e-mail to the provider concerned. If this is the case, an e-mail (based on the address from the IP database) is sent to the provider indicating that one of its customers with the following IP made illegal data available on the Internet for exchange at the following times.

## 3. IP address database

The database that derives the data from the "File Sharing Monitor" program was constructed on the MS Access 2003 application, and is stored in the directory "database.mdb". Communication with the database is based on the Microsoft standard solution ODBC. The database communication uses the query language SQL.

The main information is stored in the following tables:

1. Users table - contains standard data on all users checked by the "Monitor" program.
2. Files table - describes all data packages that have been searched for in the P2P networks.
3. Provider table - contains data on the providers whose customers use P2P networks.
4. Files_Users table - describes when and which data which host provided.
5. ProvRanges table - allocates the IP addresses found to the corresponding provider. This data is added by the "Monitor" program after the publicly accessible Whols server query.

The precise database structure and its relations are described in greater detail in Appendix 1.
All the data recorded in the IP database is then transferred as a statement transfer to the data sheets to assert the infringed rights.

## 4. Statement creation

The "Data Manager" program Version 1.2 is responsible for creating the statement reports and for printing. This summarises from the database for the Internet provider the composition of all relevant data using SQL parameter transfer. This listing includes information on when a particular file was downloaded, and using which IP. If there is more than one data set on a particular host, the last entry for each file is adopted. Then this statement report can be printed out as a data sheet for registering assertion of the infringed rights with the corresponding reference.

The most frequent questions relating to the IP database that is responsible for statement transfer is set out in Appendix 2.

All programs in the above paper were written in the programming language $\mathrm{C}++$, using the MFC library and the Windows-based compiler MS Visual C++ 2003.

Author: Richard M. Schneider<br>Administrative Director<br>Logistep AG, 6300 Zug, Switzerland

24 July 2006

Appendix 1: Description of the IP database relations


## Appendix 2: The main IP database queries for statement creation

1. Database query for providers whose service has been used by users to whom enquiries have been addressed, in descending order by query results according to associated host number.

SELECT Providers.Name, Projects_Files.IDProject, Providers.Country<br>FROM Files_Users, Users_Providers, Providers, Projects_Files<br>WHERE (((Files_Users.IDfile)=[Projects_Files].[IDfile]) AND<br>((Files_Users.IDuser)=[Users_Providers].[IDUser]) AND<br>((Providers.IDProvider)=[Users_Providers].[IDProvider]))<br>GROUP BY Providers.Name, Projects_Files.IDProject, Providers.Country ORDER BY Count(Files_Users.IDuser) DESC;

2. Database query for all users logged by the "Monitor" program to whom enquiries have been addressed, using the service of a particular provider in a particular time window.

SELECT Users.IDuser, Files_Users.IPAdress, Files_Users.IDfile, Files_Users.Date, Users.Name, Users.GUID, Users.appClient, Users.Protocol, Users_Providers.IDProvider, Projects_Files.IDProject, Files_Users.Lp, Files_Users.Aktenzeichen<br>FROM Users_Providers, Users, (Files INNER JOIN Files_Users ON<br>Files.IDfile=Files_Users.IDfile) INNER JOIN Projects_Files ON<br>Files.IDfile=Projects_Files.IDfile<br>WHERE (((Files_Users.IDuser)=Users.IDuser And<br>(Files_Users.IDuser)=Users_Providers.IDUser) And<br>((Files_Users.IPAdress)=Users_Providers.IPAdress))<br>GROUP BY Users.IDuser, Files_Users.IPAdress, Files_Users.IDfile, Files_Users.Date, Users.Name, Users.GUID, Users.appClient, Users.Protocol, Users_Providers.IDProvider, Projects_Files.IDProject, Files_Users.Lp, Files_Users.Aktenzeichen<br>ORDER BY Users.IDuser, Files_Users.IDfile, Files_Users.Date DESC;

INVOICE

Number.......... : 20003834

Date/Tax Point..: 26-Mar-2007

Page............: 1 of 1

Invoice To:
Topware Interactive Inc
c/O Non-Contentious IP Dept
Davenport Lyons
30 old Eurlington Street
London W1S 3NL

Shared Financial Service Centre PO Box 1001
The Quaestors
Mayfair Business Park Bradford BO4 8YD

Helpline Telephone 01274828100 Fax 01274828339 sfscinfo@telewestco.uk uww.telewestco.uk

Account No..: 47211


## BEFORE MASTER BEHRENS ON 1 FEBRUARY 2007

## BETWEEN:

## TOPWARE INTERACTIVE INC.

-and- Applicant
and-
(1) JERSEY TELECOM GROUP LIMITED
(2) KINGSTON COMMUNICATIONS (HULL) PLC
(3) MISTRAL INTERNET GROUP LIMITED
(4) WIGHTCABLE NORTH LTD

(5) PIPEX COMMUNICATIONS PLC
(6) ECLIPSE NETWORKING LTD
(7) ZEN INTERNET LIMITED
(8) PLUSNET PLC
(9) BE UNLIMITED LTD
(10) BRITISH TELECOMMUNICATIONS PLC
(11) NTL GROUP LIMITED
(12) ONETEL LTD
(13) THUS PLC
(14) TELEWEST LIMITED
(15) EASYNET LIMITED
(16) TISCALI UK LIMITED
(17) VIDEO NETWORKS LIMITED
(18) CABLE \& WIRELESS PLC
(both in its own capacity and trading as Energis UK)

## Respondents

## ORDER

ON THE HEARING of the application dated $9^{\text {th }}$ January 2007;
AND UPON hearing solicitors for the Applicant and Respondents (8) and (10) and a representative for Respondent (9);

AND UPON reading letters from Respondents (1)-(7) and (11)-(18) confirming these Respondents do not oppose the making of this Order;

AND UPON the Court reading the documents marked in the Court file as having been read and it appearing that there is a prima facie case that each of the subscribers
associated with the IP addresses listed in Schedule 1 to this Order have copied the Applicant's computer game on to his or her personal or office computer without the Applicant's permission for the purpose of making it available via file sharing websites for third parties to download, which may give rise to a claim for copyright infringement;

AND UPON the Applicant undertaking not to disclose to the general public, by making or issuing a statement to the media, the names or addresses of any person or persons whose identity is made known to the Applicant as a result of the grant of the relief ordered below until after the Applicant has began the process of enforcing its copyright and related rights against such person or persons as contemplated by paragraph one of this Order;

IT IS ORDERED THAT, as regards all Respondents others than Respondent (9) (Be Unlimited Limited):

1. The Respondents shall by 4 pm on 28 February 2007 disclose to the Applicant's solicitors (if or to the extent known or otherwise available to the Respondents after carrying out a reasonable search) the name, postal address and telephone number of the registered owner or owners of the internet account or accounts that were assigned to the internet protocol address listed in Schedule 1 hereto on the dates and times shown therein and which relate to the Respondent in question. Such disclosure shall be in electronic documentary form so far as reasonably practicable and convenient to the Respondents;
2. The Applicant be permitted to use documents and information disclosed pursuant to this Order for the purposes of enforcing its copyright and related rights against all and any persons identified pursuant to this Order;
3. Each of the Respondents shall by 4pm on Wednesday $7^{\text {th }}$ March 2007 file and serve on the Applicant's solicitors a witness statement verified by a statement of truth confirming that it has fully complied with the applicable provisions of this Order;
4. The reasonable costs of complying with this Order shall be paid by the Applicant to the Respondents in any event;
5. The Applicant shall bear its own costs of the application and pay to Respondents (8) and (10) their reasonable costs (if any) of attending the hearing on $1^{\text {st }}$ February 2007;

## As regards Respondent (9):

6. Respondent (9) do obtain by 28 February 2007 and preserve for the purposes of disclosure to the Applicant's solicitors (if or to the extent known or otherwise available to the Respondent (9) after carrying out a reasonable search and in electronic documentary form so far as reasonably practicable and convenient to the Respondent) the name, postal address and telephone number of the registered owner or owners of the internet account or accounts that were assigned to the internet protocol address listed in Schedule 1 hereto on the dates and times shown therein;
7. Respondent (9) shall have liberty to serve evidence in opposition to this application by 15 February 2007. If no such evidence be filed, the Applicant shall have liberty to file a certificate that no evidence has been filed by Respondent (9) and to apply without notice for a further order in the terms annexed at Schedule 2 to this Order:
8. If evidence in opposition is filed, this application shall be restored as against Respondent (9) for the first available hearing date after $1^{\text {st }}$ March for a one hour hearing;
9. The Applicant shall bear its own costs of the application and pay to Respondent (9) its reasonable costs (if any) of attending the hearing on $1^{\text {st }}$ February 2007.

As regards all Respondents
10. The Applicant and Respondents have liberty to apply.

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BETWEEN:

TOPWARE INTERACTIVE INC.
Applicant
-and-
(1) JERSEY TELECOM GROUP LIMITED
(2) KINGSTON COMMUNICATIONS (HULL) PLC
(3) MISTRAL INTERNET GROUP LIMITED
(4) WIGHTCABLE NORTH LTD
(5) PIPEX COMMUNICATIONS PLC
(6) ECLIPSE NETWORKING LTD
(7) ZEN INTERNET LIMITED
(8) PLUSNET PLC
(9) BE UNLIMITED LTD
(10) BRITISH TELECOMMUNICATIONS PLC
(11) NTL GROUP LIMITED
(12) ONETEL LTD
(13) THUS PLC
(14) TELEWEST LIMITED
(15) EASYNET LIMITED
(16) TISCALI UK LIMITED
(17) VIDEO NETWORKS LIMITED
(18) CABLE \& WIRELESS PLC
(both in its own capacity and trading as Energis UK)
Respondents

ORDER

Davenport Lyons 30 Old Burlington Street LONDON W1S 3NL
Ref: DJG/NG
Solicitors for the Applicant

## IN THE HIGH COURT OF JUSTICE

TOPWARE INTERACTIVE INC.
Applicant
-and-
(1) JERSEY TELECOM GROUP LIMITED
(2) KINGSTON COMMUNICATIONS (HULL) PLC
(3) MISTRAL INTERNET GROUP LIMITED
(4) WIGHTCABLE NORTH LTD
(5) PIPEX COMMUNICATIONS PLC
(6) ECLIPSE NETWORKING LTD (7) ZEN INTERNET LIMITED
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(15) EASYNET LIMITED
(16) TISCALI UK LIMITED
(17) VIDEO NETWORKS LIMITED
(18) CABLE \& WIRELESS PLC
(both in its own capacity and trading as Energis UK)
Respondents




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## IN THE HIGH COURT OF JUSTICE

IIA no: 1 of 2007 CHANCERY DIVISION

## before deputy master behrens on

BETWEEN:
TOPWARE INTERACTIVE INC.

## Applicant

-and-
(1) JERSEY TELECOM GROUP LIMITED
(2) KINGSTON COMMUNICATIONS (HULL) PLC
(3) MISTRAL INTERNET GROUP LIMITED
(4) WIGHTCABLE NORTH LTD
(5) PIPEX COMMUNICATIONS PLC
(6) ECLIPSE NETWORKING LTD
(7) ZEN INTERNET LIMITED
(8) PLUSNET PLC
(9) BE UNLIMITED LTD
(10) BRITISH TELECOMMUNICATIONS PLC
(11) NTL GROUP LIMITED
(12) ONETEL LTD
(13) THUS PLC
(14) TELEWEST LIMITED
(15) EASYNET LIMITED
(16) TISCALI UK LIMITED
(17) VIDEO NETWORKS LIMITED
(18) CABLE \& WIRELESS PLC
(both in its own capacity and trading as Energis UK)

## Respondents

## ORDER

UPON reading the Order of Deputy Master Behrens dated 1 February 2006 (the " 1 February Order");

AND UPON reading the certificate referred to at paragraph 7 of the 1 February Order that no evidence has been filed in opposition to this application by Respondent (9), Be Unlimited Limited;

AND UPON the Court reading the documents marked in the Court file as having been read and it appearing that there is a prima facie case that each of the subscribers associated with the IP addresses listed in Schedule 1 to this Order have copied the Applicant's computer game onto his or her personal or office computer without the Applicant's permission for the purpose of making it available via file sharing websites for third parties to downioad, which may give rise to a claim for copyright infringement

AND UPON the Applicant undertaking not to disclose to the general public, by making or issuing a statement to the media, the names or addresses of any person or persons whose identity is made known to the Applicant as a result of the grant of the relief ordered below until after the Applicant has began the process of enforcing its copyright and related rights against such person or persons as contemplated by paragraph one of this Order.

## IT IS ORDERED THAT Respondent (9):

1. Shall by 28 February 2007 disclose (by electronic media) to the Applicant's solicitors the information preserved pursuant to paragraph 6 of the 1 February Order, namely the name, postal address and telephone number of the registered owner or owners of the internet account or accounts that were assigned to the internet protocol addresses relating to Respondent (9) and listed in Schedule 1 hereto on the dates and times shown therein;
2. The Applicant be permitted to use documents and information disclosed pursuant to this Order for the purposes of enforcing its copyright and related rights against all and any persons identified pursuant to this Order;
3. Respondent (9) shall by 4 pm on $7^{\text {th }}$ March 2007 file and serve on the Applicant's solicitors a witness statement verified by a statement of truth confirming that it has fully complied with the applicable provisions of this Order;
4. The reasonable costs of complying with this Order shall be paid by the Applicant to Respondent (9) in any event;
5. The Applicant shall bear its own costs of this application;
6. The Applicant and Respondent (9) have liberty to apply.

IN THE HIGH COURT OF JUSTICE
I/A no: 1 of 2007 CHANCERY DIVISION
BETWEEN:

TOPWARE INTERACTIVE INC.
Applicant
-and-
(1) JERSEY TELECOM GROUP LIMITED
(2) KINGSTON COMMUNICATIONS (HULL) PLC
(3) MISTRAL INTERNET GROUP LIMITED
(4) WIGHTCABLE NORTH LTD
(5) PIPEX COMMUNICATIONS PLC
(6) ECLIPSE NETWORKING LTD
(7) ZEN INTERNET LIMITED
(8) PLUSNET PLC
(9) BE UNLIMITED LTD
(10) BRITISH TELECOMMUNICATIONS PLC
(11) NTL GROUP LIMITED
(12) ONETEL LTD
(13) THUS PLC
(14) TELEWEST LIMITED
(15) EASYNET LIMITED
(16) TISCALI UK LIMITED
(17) VIDEO NETWORKS LIMITED
(18) CABLE \& WIRELESS PLC
(both in its own capacity and trading as Energis UK)

## Respondents

WITNESS STATEMENT OF
JACQUELINE MELLOR
FOR AND ON THE BEHALF OF TELEWEST LIMITED

I, JACQUELINE MELLOR, of Telewest Limited, Communications House, Bartley Wood Business Park, Hook, Hampshire, RG27 8RL will say as follows:

1. I am Company Solicitor in the Legal department of internet service provider, Telewest Limited, and am authorised to make this witness statement on behalf of Telewest Limited.
2. I make this statement pursuant to paragraph 3 of the order of Deputy Master Behrens made on $1^{\text {st }}$ February 2007 ("the Order"), in which it was ordered that each Respondent to this matter (with the exception of Respondent 9) shall file and serve on the Applicant's solicitors by 4 pm on Wednesday $7^{\text {th }}$ March 2007 (later amended to $21^{\text {st }}$ March 2007) a witness statement (verified by a statement of truth) confirming that it has fully complied with the applicable provisions of the Order.
3. I have reviewed the schedule annexed to the Order (referred to as "Schedule 1 " therein) which lists the internet protocol (or " IP ") addresses of the registered owner or owners of the internet account or accounts for which the claimant requires to know the name, postal address and telephone number relating to those IP addresses. I have also reviewed the column in Schedule 1 headed 'UK Date and Time' to which the names, address and telephone numbers relate, noting that the time zone in which the data was originally captured was either Central European Time ('MEZ' or 'Mittel Europaische Zeit') or Central European Summer Time ('MESZ' or 'Mittel Europaische Sommerzeit'), as indicated in the column headed 'Time Zone'.
4. I confirm that the requisite names, addresses and telephone numbers provided by the staff who carried out the investigation of the IP addresses, subject to my supervision are accurate and correct, to the best of my knowledge and belief and that my company has complied fully with the provisions of paragraphs 1 and 3 of the Order.

I believe that the facts stated in this witness statement are true.

Signed $\qquad$
For and on the behalf of Telewest Limited
Dated.. $15 / 36007$

U/a no: 1 of 2007
IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BETWEEN:
TOPWARE INTERACTIVE INC.

## Applicant

-and-
(1) JERSEY TELECOM GROUP LIMITED
(2) KINGSTON COMMUNICATIONS (HULL) PLC
(3) MISTRAL INTERNET GROUP LIMITED
(4) WIGHTCABLE NORTH LTD
(5) PIPEX COMMUNICATIONS PLC
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(15) EASYNET LIMITED
(16) TISCALI UK LIMITED
(17) VIDEO NETWORKS LIMITED
(18) CABLE \& WIRELESS PLC
(both in its own capacity and in its trading as Energis UK)

## Respondents

WITNESS STATEMENT OF JACQUELINE MELLOR

Davenport Lyons
30 Old Burlington Street
LONDON
WTS 3NL Ref: DJG/BM

Solicitors for the Applicant

## NCLC

Telewest Broadband
P.O Box 333

Matrix Court
Swansea
SA7 9BB

## By Post

$15^{\text {th }}$ November 2006
Dear Sirs

## "Dream Pinball 3D" - Copyright Infringement

We act for Topware Interactive Inc, a company incorporated in the state of Nevada, United States and the publisher and owner of the rights, including (without limitation) the copyrights, in the computer game entitled "Dream Pinball 3D" ("the Game").

It has recently come to our client's attention that a number of your subscribers (the IP addresses of whom are set out in the Schedule to this letter) have, without our client's knowledge or permission, been uploading (ie. copying) versions of the Game to various websites for the purpose of making it available for third parties to download (ie. copy on to their computer). These unauthorised uses are causing substantial damage to our client's business and clearly constitute an infringement of our client's copyright in the Game pursuant to sections 16(1) (a) and (d) of the Copyright, Designs and Patents Act 1988, entitling our client to a range of remedies. Please treat this letter as formal notice of the infringements of your subscribers.

To enable our client to commence legal proceedings against the subscribers in question, we require you to disclose the following information within the next fourteen days:

1. all subscriber information relating to the IP addresses listed in the Schedule attached to this letter ("Schedule"), including the full name(s) and address(es) of the subscriber(s) of each IP address; and
2. all other documents, including electronically recorded data, which are or have been in your possession or control relating to the identity of the subscribers of the IP addresses listed, or tending to lead to the identification of those persons.

In providing the information requested above, we would be grateful if you could complete columns L-Q of the Schedule with the relevant names and addresses and return it to email address award@davenportlyons.com. In the event that you have only received a copy of this letter and the Schedule by post, please contact Amy Ward on the above email address or telephone 02074681502 and we will email you the Schedule for completion. Should you require any further time to comply with this request then please advise us accordingly. Our

Davenport Lyons
client agrees to pay your reasonable costs in complying with the request for disclosure contained in this letter.

If you do not disclose the information requested to us within the next 14 days, our client will make an application to Court pursuant to CPR 31.18 and/or the inherent jurisdiction of the Court for an order that you forthwith disclose this information to us.

If you are not able to provide the information requested voluntarily without a Court Order due to the provisions of the Data Protection Act 1998, we would be grateful if you could sign and return the enclosed copy of this letter where indicated below to confirm that you do not oppose an application being made so that we can present your letter to the Court and avoid the need for a hearing.

Pending the disposal of our client's application, please ensure that you retain all data relating to the IP addresses set out in the Schedule. As you will no doubt be aware, you may face liability if you delete or otherwise dispose of any data.

Yours faithfully


## Davenport Lyons

We confirm that we do not oppose an application being made in the terms set out above.

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For: Telewest Broadband

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