

UNITED STATES DISTRICT COURT

for the

Northern District of California

In re DMCA Subpoena to Apple Inc.

Plaintiff

v.

Defendant

Civil Action No. 5:23-mc-80200

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Apple Inc.

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See Attachment 1.

Place: MARSHALL SUZUKI LAW GROUP, LLP 230 California Street, Suite 415 San Francisco, CA 94111	Date and Time: 08/23/2023 10:00 am
--	---

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) _____

KADOKAWA CORPORATION, who issues or requests this subpoena, are: Junji Suzuki, Esq.; MARSHALL SUZUKI LAW GROUP, LLP, 230 California Street, Suite 415, San Francisco, CA 94111; junji@marshallsuzuki.com; (415) 618-0090

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 5:23-mc-80200

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

ATTACHMENT 1

I. Definitions:

1. The word “DOCUMENT”, or any variant thereof, is defined to be synonymous in meaning and equal in scope to the usage of the term “documents or electronically stored information” in Fed Rules Civ Proc R 34(a)(1)(A), including the terms defined in Fed Rules Evid R 1001. Where a DOCUMENT has been prepared in several copies, or where additional copies have been made that are not identical or are no longer identical by reason of subsequent notation, highlighting or other modification of any kind whatsoever including, but not limited to, notations on the back of pages thereto, each nonidentical copy shall be considered a separate DOCUMENT. Electronically-stored information shall be produced in PDF format with Bates numbering and appropriate confidentiality designations, along with searchable metadata databases.
2. “ACCOUNT 1” means any and all types of accounts registered with Apple Inc. (“Apple”) relating to, and/or associated with “<https://apps.apple.com/us/app/mangareader-comic-webtoons/id1627059139>”
3. “ACCOUNT 2” means any and all types of accounts registered with Apple relating to, and/or associated with “<https://apps.apple.com/us/app/mangareader-top-manga-here/id1635298030>”.
4. “ACCOUNT 3” means any and all types of accounts registered with Apple relating to, and/or associated with “<https://apps.apple.com/jp/app/mangareader-comics-novels/id1584539135>”.
5. “ALL ACCOUNTS” means ACCOUNT 1 through ACCOUNT 3 as provided above.

II. Documents to Be Produced:

All information sufficient to identify the operator, owner, or developer of each of ALL ACCOUNTS (collectively as the “Infringers”) who uploaded, hosted, and/or contracted with other provider to host the infringing content identified under the columns entitled as “Infringing Work”, as specified in Exhibit A to each of the notices dated June 16, 2023 by KADOKAWA CORPORATION, attached to this subpoena, from any and all sources, including but not limited to billing or administrative records that prove the following information used by each of the Infringers relating to, or in connection with the Infringer’s account(s) with Apple Inc. (“Apple”), including but not limited to <https://apps.apple.com>, or any other service account(s) registered by or linked to the Infringers (collectively as the “Infringer’s Accounts”), from the time of user registration and to the date of production in response to this subpoena, and at the time the Infringing Work was uploaded on the URLs listed in the Infringing Work:

1. Any and all information showing all names, addresses (including postal codes and addresses used for address (PIN) verification, e-mail addresses (including email addresses used for recovery or other purposes), and telephone numbers (including, but not limited to, those required for Apple account registration);
2. Any and all information showing access log (including dates, times, IP addresses, and access type) of each of the Infringer's Accounts, including access log along with time-stamp for each login (namely, login history) and at the time the Infringing Work was uploaded on blogspot.com; and
3. Any and all information showing (a) all names, telephone numbers, and addresses (including postal codes), any payment method, including but not limited to credit card holders, bank accounts, registered with; and (b) the type of the payment method and the name of the company or financial institution associated with such payment method registered with any and all of the Infringer's Accounts.

3rd Floor, Tamagawa Building, 1-20,
Yotsuya, Shinjuku-ku
Tokyo, Japan 160-0004
TOKYO FLEX LAW OFFICE
Nakajima Hiroyuki, Attorney-at-Law
TEL + 8 1 - 3 - 3 3 5 3 - 3 5 2 1
MAIL abuse.flex.law.group@gmail.com
Attorney for KADOKAWA CORPORATION

June 16, 2023

Via Email

Copyright Agent
Apple Inc.
One Apple Park Way
MS 39-1IPL
Cupertino, CA 95014
Phone: 408 996 1010
Email: copyrightagent@apple.com
Email: copyrightnotices@apple.com

RE: NOTIFICATION OF COPYRIGHT INFRINGEMENT
(Pursuant to 17 U.S.C. § 512)

To whom it may concern:

I represent KADOKAWA CORPORATION , a Japanese corporation (hereinafter called “KADOKAWA ”), the owner of the copyrighted works identified under the column entitled “Original Work” in Exhibit A attached to this notice (“Exhibit A”).

It has recently come to KADOKAWA ’s attention that certain users of your services have unlawfully published and posted certain contents on your website located at <https://apps.apple.com> , more specifically identified under the column entitled “Infringing Work” in Exhibit A (referred to as the “Infringing Work”), corresponding to each of the Original Work identified in Exhibit A.

KADOKAWA has a good faith belief that the Infringing Work is not authorized by the copyright owner, its agent, or the law.

We demand that you immediately disable access to the Infringing Work and cease any use, reproduction, and distribution of the Original Work. Specifically, we request that you remove or disable the Infringing Work from <https://apps.apple.com> and/or any of your system or services.

We also request a written assurance that you have fully complied with our request.

I declare that the information in this notice is accurate, and under penalty of perjury, that I am authorized to act on behalf of the owner of the exclusive right of the Original Work that is infringed.

Your immediate response will be appreciated.

Very truly yours,

Hiroyuki Nakajima
Attorney at Law

A handwritten signature in black ink that reads "Hiroyuki Nakajima". The signature is written in a cursive, flowing style.

Exhibit A.

	Title of Original Work	Author of Original Work	Original Work	Infringing Work	Title of Infringing Work
1	異世界迷宮でハーレムを (Harem in the Labyrinth of Another World)	Shachi Sogano	https://bookwalker.jp/decebb449c-d5da-4e67-9b9e-7860a0f78306/	https://apps.apple.com/us/app/manga-reader-comic-webtoons/id1627059139	Manga Reader: Comic & Webtoons
2	異世界はスマートフォンと ともに。(n Another World With My Smartphone)	Patora Fuyuhara	https://bookwalker.jp/de84117cf8-a2a6-423f-94b4-a90315b6554f/	https://apps.apple.com/us/app/manga-reader-top-manga-here/id1635298030	Manga Reader : Top Manga Here
3	異世界迷宮でハーレムを (Harem in the Labyrinth of Another World)	Shachi Sogano	https://bookwalker.jp/decebb449c-d5da-4e67-9b9e-7860a0f78306/	https://apps.apple.com/jp/app/manga-reader-comics-novels/id1584539135	MANGA READER – COMICS & NOVELS