UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CRAIGSLIST, INC,

     Plaintiff,

v.

3TAPS, INC, et al.,

     Defendants.

Case No. 12-cv-03816-CRB (JSC)

ORDER FOLLOWING DISCOVERY HEARING

Re: Dkt. Nos. 218, 219

This case has been referred to the undersigned magistrate judge for the purposes of discovery. (Dkt. No. 108.) Presently before the Court is a joint discovery letter regarding Defendants' request for documents pertaining to server harm. (Dkt. Nos. 218, 219.)[1] Specifically, Defendants request an order compelling Plaintiff craigslist to produce several categories of documents relevant to its allegations that Defendants' conduct impaired or harmed craigslist's website or servers. (*See* Dkt. No. 218 at 1-5.) At bottom, the dispute turns on craigslist's theory of harm to support its trespass claim.

At a discovery hearing on February 26, 2015, craigslist stipulated that there was no actual, physical harm to its servers or hardware as a result of Defendants' scraping. As a result, craigslist will not and may not argue that Defendants' conduct physically harmed its servers. Instead, at a hearing on this discovery dispute on April 2, 2015, craigslist represented that it seeks to establish harm in two other ways. First, craigslist plans to rely on the time spent and expenses incurred in purchasing, setting up, and maintaining a separate set of servers it obtained to monitor and block

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[1] Defendants 3taps, Inc., Hard Yaka, Inc., Discover Home Network, Inc., and Robert G. Kidd made the initial request in the joint discovery letter. (Dkt. No. 218.) Defendant Padmapper filed a separate letter joining its co-defendants' letter brief. (Dkt. No. 219.)

United States District Court
Northern District of California

1   Defendants' scraping. Second, craigslist intends to prove that Defendants' conduct has a "pile-on

2   effect" —*i.e.*, the idea that Defendants' conduct encourages further scraping, which threatens to

3   interfere with the intended function of its computer system. In other words, even if, as conceded

4   at the April 2, 2015 hearing, Defendants' conduct has not thus far interfered with the efficient

5   functioning of craigslist's computer system, allowing the conduct to continue will encourage

6   others to engage in similar conduct which will eventually have a detrimental effect on the system.

7   *See Intel Corp. v. Hamidi*, 30 Cal. 4th 1342, 1353-54 (2003). At the hearing the Court and the

8   parties discussed discovery relevant to these theories of harm, as well as a schedule for production

9   thereof. In addition, the parties raised another dispute regarding discovery of craigslist's financial

10 data.

11   In light of the parties' representations, and as stated on the record in open court, the Court

12 ORDERS as follows:

13   1.   craigslist shall produce, by close of business on **Wednesday, April 8, 2015**, all

14 documents on which it may rely to support its theories of harm upon which its trespass claim is

15 based and shall identify any witness who might testify in support of these facts. On summary

16 judgment or at trial craigslist may not rely on any witness not identified in the April 8 disclosure

17 nor any document not produced.

18   2.   craigslist shall produce, by close of business on **Wednesday, April 8, 2015**, server

19 logs for the 48-hour period that it analyzed; if it is unable to do so by that date, it must have a good

20 faith reason for not doing. In addition, Defendants shall identify by **Monday, April 6, 2015**, a

21 historical 48-hour time period for which it seeks server logs. craigslist shall produce server logs

22 for that time period **within one week** after Defendants communicate their selection to craigslist.

23   3.   craigslist shall produce, by close of business on **Wednesday, April 8, 2015**, all site

24 metrics—including records of the total number of posts per day and total size of those posts, and

25 total available bandwidth—kept in the normal course of business for the same 48-hour time

26 periods identified in item 2, above.

27   4.   craigslist shall produce, by close of business on **Monday, April 6, 2015**, a copy of

28 a complete profit and loss statement in its native format with numbers redacted. Upon request,

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Pages 1 - 50

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JACQUELINE SCOTT CORLEY, MAGISTRATE JUDGE

CRAIGSLIST, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	NO. 12-cv-03816-CRB
	)	
3TAPS, INC., et al.,	)	
	)	
Defendants.	)	
----------------------------	)	
and related cross-action.	)	San Francisco, California
	)	Thursday, April 2, 2015

TRANSCRIPT OF OFFICIAL ELECTRONIC SOUND RECORDING OF PROCEEDINGS

FTR 9:03 a.m. - 9:57 a.m. = 54 minutes

APPEARANCES:

For Plaintiff: Latham & Watkins
                      12670 High Bluff Drive
                      San Diego, California 92130
            BY: **JENNIFER L. BARRY, ESQ.**
                 ANDREW GASS, ESQ.

                      LATHAM & WATKINS
                      505 Montgomery Street, Suite 2000
                      San Francisco, California 94111
            BY: **ANDREW MICHAEL GASS ESQ.**

       (Appearances continued on following page.)

Transcribed by: Leo T. Mankiewicz, Transcriber
                       leomank@gmail.com
                       (415) 722-7045

1   **MS. BARRY:** Well, there are several problems with

2 that. The first is, what they're suggesting is that if we give

3 them historical server logs, then they can go in and look and

4 see whether they were there, right, whether they show up in the

5 server logs, because they're arguing we didn't actually go in

6 and touch your servers.

7   So the problem that we have is that -- and you've

8 heard this before, because we talked about it in the past --

9 they don't know what IP addresses they used in the past. We've

10 asked them to tell us, and they said, well, we don't have that

11 because we used this mysterious Mr. Niessen who lives on a boat

12 in the Caribbean, and he did all of this and he has all of

13 them, and we can't get them from him.

14   And so for all the time period up until just a few

15 weeks ago, they say, we don't have these IP addresses. So we

16 give them these terabytes and terabytes of data for past logs.

17 What are they going to do with those? Because they can't say,

18 well, of these, your Honor, bazillion IP addresses, here are

19 our IP addresses, and look, we're not there, because they don't

20 have those IP addresses.

21   **MR. TABAIE:** Your Honor, we are going to look at those

22 servers to see if there was any harm or impairment whatsoever

23 in them.

24   **THE COURT:** No, no, they're not claiming harm or

25 impairment to the servers. They're not claiming it. They're

not claiming it. They're saying that they had to -- they're

not. Now, you may think that then they can't win. Fine, but

they're not claiming it, they're not allowed to claim it, it's

out. It's on the record. No harm to the servers. I said, is

there a bandwidth issue? No, we're not claiming it.

      MR. TABAIE: Then what were they mitigating, your

Honor? What -- they're saying we had to buy something in

response.

      THE COURT: Yes.

      MR. TABAIE: But they're not mitigating anything.

      THE COURT: Well, it may be -- that's a legal

argument. I understand that. That's your legal argument.

Your argument is that -- and I understand that -- it can't --

the harm can't be -- and this is why it's before Judge Breyer.

The harm can't be that you had to hire employees and buy this

stuff to stop that if what you're stopping wasn't doing any

harm to your servers. I understand that argument. That's an

argument you make before Judge Breyer. Maybe they'll win,

maybe you'll win on that, okay? But that's not an evidentiary

issue. That's a legal issue.

      They are -- right? You're conceding -- you're

conceding that all their hits to your servers, whatever, that

you were using employee time and hiring the software and such

to block, was not affecting the servers.

      MS. BARRY: We are not going to claim that as a part

1   of our damages.

2   MR. SCHAFER: Your Honor, I don't agree that it's a

3   legal issue, it's a factual issue. When we go in front of a

4   jury, we want to -- and we're being accused of having done

5   something that required the purchasing of IP blocking servers.

6   THE COURT: Yes, and what it is is that you were --

7   they will call it spam -- you were scraping. You were

8   scraping. That's it. That's what you were doing.

9   MR. SCHAFER: And I would like to be able to

10   demonstrate to a jury, between the server logs that existed

11   before they purchased those IP blocking servers, that there was

12   no actual impairment of their servers. There was no actual --

13   THE COURT: Okay, just stop for a second.

14   Do you stipulate to that?

15   MS. BARRY: Stipulate to what?

16   THE COURT: That there was no actual impairment to

17   your servers.

18   MS. BARRY: Historically, based on -- based on their

19   activities, that there was no actual impairment, yes.

20   THE COURT: Look at all the money everyone just saved.

21   MR. TABAIE: Well, then we've got to get into the

22   other half, because that was the IP blocking half, right?

23   UNIDENTIFIED SPEAKER: Just take them all.

24   MR. TABAIE: And --

25   MS. BARRY: James has to sit down for a bit, okay?

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3 **CERTIFICATE OF TRANSCRIBER**

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5   I, Leo Mankiewicz, certify that the foregoing is a

6 true and correct transcript, to the best of my ability, of the

7 above pages of the official electronic sound recording provided

8 to me by the U.S. District Court, Northern District of

9 California, of the proceedings taken on the date and time

10 previously stated in the above matter.

11   I further certify that I am neither counsel for,

12 related to, nor employed by any of the parties to the action in

13 which this hearing was taken; and, further, that I am not

14 financially nor otherwise interested in the outcome of the

15 action.

16

17 _____ 04/04/2015

18   Signature of Transcriber   Date

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1   craigslist shall provide Defendants with more detail regarding categories reasonably requiring

2   more information than the statement itself provides.

3   5.   By noon on **Friday, April 3, 2015**, the parties shall submit a letter identifying the

4   magistrate judges (at least two) whom they are open to conducting a settlement conference.

5   This Order terminates Docket Nos. 218 and 219.

6   **IT IS SO ORDERED.**

7   Dated: April 2, 2015

8   JACQUELINE SCOTT CORLEY
9   United States Magistrate Judge

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United States District Court
Northern District of California

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