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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

XPAYS, INC., ) Case No. CV 06-05688 DDP (FFMx)  
)  
Plaintiff, ) **ORDER DENYING DEFENDANT'S MOTION**  
) **TO COMPEL JOINDER**  
v. ) [Motion filed on March 10, 2008]  
) [Amended Motion filed on April 7,  
INTERNET COMMERCE GROUP, ) 2008]  
INC., an Arizona )  
corporation; SK )  
INTERENTAINMENT, INC., an )  
Illinois corporation; ~~ADULT~~ )  
~~PROFIT, a Danish business~~ )  
~~entity of unknown form;~~ )  
LUCINA S.L., a Spanish )  
business entity of unknown )  
form; ~~WEB TRAFFIC, INC., an~~ )  
~~Australian corporation;~~ )  
TARASANT, a Singaporean )  
business entity of unknown )  
form; and ~~VEROTEL-MERCHANT~~ )  
~~SERVICES B.V., a Dutch~~ )  
~~business entity of unknown~~ )  
form, )  
Defendants. )  
\_\_\_\_\_ )

This matter comes before the Court on Defendant SK  
Intertainment, Inc.'s ("SK") motion to compel joinder of

1 necessary parties, or in the alternative, for limited relief from  
2 the discovery cut-off. After reviewing the papers submitted by the  
3 parties and considering the arguments therein, the Court is  
4 prepared to rule without oral argument. The Court denies the  
5 motion.

6  
7 **I. BACKGROUND**

8 In this case, Plaintiff Xpays, Inc. ("Xpays") has brought  
9 copyright infringement, Lanham Act, and state law unfair  
10 competition claims for Defendant SK's alleged unlawful use of the  
11 Paris Hilton sex video ("Video") on SK's website MrSkin.com. On  
12 October 1, 2007, SK filed motions to dismiss and for summary  
13 judgment. In its January 10, 2008 Order, the Court denied SK's  
14 motion to dismiss, and granted in part and denied in part SK's  
15 motion for summary judgment. SK's motion to dismiss challenged  
16 Xpays' standing to bring this lawsuit on grounds that Xpays was  
17 neither a copyright owner nor an exclusive licensee.<sup>1</sup> In denying  
18 SK's motion, the Court found genuine issues of fact whether Xpays  
19 was an exclusive licensee of rights in the Video. (Order, 12-13.)

20 In the instant motion, SK requests that the Court compel  
21 joinder of Rick Salomon and Jim Salomon as plaintiffs in this  
22 action pursuant to Federal Rule of Civil Procedure 19. Rick  
23 Salomon is the registered owner of the copyright in the Video.  
24 Rick Salomon transferred an exclusive license to Jim Salomon, his

25  
26 \_\_\_\_\_  
27 <sup>1</sup>Section 501(b) of the Copyright Act authorizes copyright  
28 infringement actions by "[t]he legal or beneficial owner of an  
exclusive right under a copyright . . . for any infringement of  
that particular right committed while he or she is the owner of  
it." 17 U.S.C. § 501(b).

1 brother, for the internet reproduction and distribution of the  
2 Video. The disputed factual issues in this case relate to  
3 subsequent assignments of rights in the Video by Jim Salomon to  
4 Merlin Designs ("Merlin"), and then Merlin to Xpays. SK argues  
5 that joinder of Rick and Jim Salomon is necessary because a  
6 determination of rights in this case may impact the Salomons'  
7 interests in the Video and could possibly subject SK to further  
8 litigation. Xpays counters that SK's motion is untimely, and  
9 alternatively, that Rick and Jim Salomon are not necessary parties.

## 11 **II. DISCUSSION**

12 A court is required to enter a scheduling order that "must  
13 limit the time to join other parties, amend the pleadings, complete  
14 discovery, and file motions." Fed. R. Civ. Pro. 16(b)(3)(A). In  
15 this case, the Court's scheduling order established the following  
16 deadlines:

17 April 23, 2007 - Last Day to Join Other Parties and To Amend  
18 the Pleadings

19 November 15, 2007 - Discovery Cut-Off

20 December 11, 2007 - Last Day to File Motions

21 (Scheduling Order, February 16, 2007.) SK initially filed its  
22 motion to compel joinder on March 10, 2008, and later filed an  
23 amended motion on April 7, 2008. This means the deadlines for  
24 joining parties and for filing motions passed - ten and four months  
25 ago respectively - before SK filed this motion.

26 Rule 16(b) provides that a district court's scheduling order  
27 may only be modified upon a showing of "good cause," an inquiry  
28 that focuses on the reasonable diligence of the moving party.

1 Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir.  
2 1992). Here, the Court finds that SK has not shown "good cause"  
3 sufficient to warrant relief from the scheduling order. In a  
4 November 21, 2006 production of documents, SK received the various  
5 copyright licensing and assignment agreements regarding rights in  
6 the Video. (See Declaration of Hajir Ardebili ¶¶ 3-8.) In other  
7 words, SK had notice of those agreements seventeen months ago and  
8 almost a year before it filed the motions to dismiss and for  
9 summary judgment. SK had ample time to review the documents,  
10 consider their implications, and decide whether joinder of the  
11 Salomons would be an appropriate course of action.

12 If SK had any doubts regarding the ownership and license  
13 history, or whether to join the Salomons, it should have moved to  
14 compel joinder within the scheduling deadlines or sought  
15 modification of the scheduling order within a reasonable time.<sup>2</sup>  
16 The Court does not consider SK's late attempt to join the Salomons  
17 to be supported by previous efforts of reasonable diligence. The  
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19 <sup>2</sup> SK has not moved to modify the scheduling order.  
20 Nevertheless, SK argues that there is good cause to consider and  
21 grant its motion to compel joinder in its reply brief, only after  
22 Xpays raised the scheduling order's deadlines in opposition to the  
23 motion. SK points to a statement during the deposition of Jim  
24 Salomon, which occurred after this Court's January 10 Order. (See  
25 Ardebili Decl., Exh. T, at 10.) SK reads the statement to mean  
26 that Jim Salomon believes he has enforceable rights in the Video  
27 against infringers like SK. Even so, in that statement, Jim  
28 Salomon qualifies that his rights are "subject to what I assigned  
to Merlin, and then what Merlin assigned to Xpays." (Id.)  
Additionally, SK also can be read to have implicitly argued good  
cause in its motion when it asserted that "Xpays contended for the  
first time [in connection with the motions to dismiss and for  
summary judgment] that it shared ownership of the copyright with  
the Salomons." (SK's Mot. 6.) To the extent SK implies that it was  
surprised by the argument, SK had the relevant documents and an  
opportunity to conduct due diligence long before the scheduling  
order's deadlines passed.

1 Court, therefore, finds SK's motion to be untimely. For similar  
2 reasons, where the discovery cut-off has passed, the Court finds  
3 that SK has not shown "good cause" for reopening discovery to  
4 depose Rick Salomon.

5  
6 **III. CONCLUSION**

7 For the foregoing reasons, the Court DENIES SK's motion to  
8 compel joinder and request to reopen discovery.

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11 IT IS SO ORDERED.

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16 Dated: May 14, 2008



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DEAN D. PREGERSON  
United States District Judge