

EXHIBIT 4

March 12, 2011

EMAIL ONLY

Holly Gaudreau, Esq. [hgaudreau@kilpatricktownsend.com]
Mehrnaz Boroumand Smith, Esq. [mboroumand@kilpatricktownsend.com]
Kilpatrick Townsend & Stockton LLP
Two Embarcadero Center, 8th Floor
San Francisco, California 94111

Re: *Sony Computer Entertainment America LLC v. Hotz, et al.*

Dear Holly and Mehrnaz:

Transmitted herewith is our redline of your draft of the Proposed Order. This letter is our attempt to meet and confer with you relating to the Proposed Order.

Paragraph 1 of SCEA's proposed order.

The paragraph does not reflect Judge Spero's Order at the hearing.

1. The parties must enter a Stipulated Protective Order.

We received your redline of the stipulated protective order today. We have not had a chance to review your proposed changes.

2. All Subpoenas currently issued are not to be returned

As ordered by Magistrate Judge Spero, all subpoenas, not just the Paypal subpoena, are to be modified to inform subpoenaed parties, and any third party with standing, of their right to file a Motion to Quash and all subpoenas, not just the Paypal subpoena are to be designated as "Attorneys' Eyes Only." March 10, 2011 Transcript 3-4:18-5. The currently issued subpoenas were sent out March 4 and are due to be returned Wednesday, March 16, two days after this proposed order is to be filed. That is insufficient time to inform the subpoenaed parties of their right to file a Motion to Quash the subpoenas. Therefore, new subpoenas must be issued providing adequate time for the subpoenaed parties to comply or file a Motion to Quash and must be instructed to inform parties affected by the subpoenas of their right to file a Motion to Quash as well.

3. All newly issued subpoenas to be labeled Attorneys' Eyes Only and all parties with standing must be informed of right to file Motion to Quash

As ordered by Magistrate Judge Spero, all subpoenas, not just the Paypal subpoena, are to be modified to inform subpoenaed parties, and any third party with standing, of their right to file a Motion to Quash and all subpoenas, not just the Paypal subpoena are to be designated as "Attorneys' Eyes Only." March 10, 2011 Transcript 3-4:18-5. The Order must be modified to state explicitly that all subpoenas are to be modified such that they inform sub-

Holly Gaudreau, Esq.

March 12, 2011

Page 2

poenaed parties and any third parties with standing, of their right to file Motions to Quash the subpoenas, and that all subpoenaed information is to be designated as "Attorneys' Eyes Only."

4. Paypal subpoena to only identify Payers having an address of record in California.

The language of the proposed order must be modified to clearly state that the subpoenaed documents are only those sufficient to identify funds of Payers, having an address of record in California, to accounts associated with geohot@gmail.com. As written, the document defines the source by the funds, not the address of the Payer, this must be modified.

Paragraph 2 of SCEA's proposed order.

Regarding the Twitter subpoena, the paragraph must only state the Order. The preliminary statement is removed.

Paragraph 3 of SCEA's proposed order.

Hailing Mr. Hotz to California for purposes of jurisdictional discovery is unduly burdensome and disruptive. Regardless of SCEA's willingness to pay to fly Mr. Hotz to California, a cross-country flight and removal of Mr. Hotz from his area of residence for several days is burdensome and disruptive.

Accordingly, SCEA is asked to reconsider its position that deposing Mr. Hotz is necessary for jurisdictional discovery, and to take a less-invasive approach to discovery, such as by conducting a written deposition. As you know, Mr. Hotz has been very accommodating as it pertains to allowing SCEA to conduct jurisdictional discovery, despite the fact that it appears that SCEA is merely conducting a fishing expedition. By initiating this action, your client has represented that this Court is the proper forum to resolve this dispute, and there are limits to the scope of discovery. *See Bell Atlantic Co. v. Twombly*, 550 U.S. 544 (2007); *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009).

At this time, we are asking for SCEA's cooperation in obtaining whatever information it seeks through a more convenient and less burdensome manner under FRCP 26(b)(2)(c). Otherwise, we are going to ask the judge to reexamine this issue.

Paragraph 4(c) of SCEA's proposed order.

The paragraph must state explicitly what TIG shall do without abstractly referring to Mr. Grennier's Certification letter. Thus, the proposed language is rejected as incomplete. This was ordered by Judge Spero to abate concerns regarding neutrality in the event costs exceed \$7,000 and SCEA becomes TIG's sole source of funds. *See Proposed Order ¶4(a); See also March 10, 2011 Transcript 12:1-13.* If those items within Mr. Grennier's Certification letter are to be authorized by the Court, they must be explicitly implemented into the Order so

Holly Gaudreau, Esq.

March 12, 2011

Page 3

there is no question as to what The Intelligence Group ("TIG") is and is not authorized to do. Please submit a rewritten proposal of those items.

Paragraph 4(d) of SCEA's proposed order.

I. A conclusory interpretation of Judge Illston's Order is Unacceptable.

The paragraph must be modified to only state the Order, not a conclusory statement regarding Judge Illston's Order. The paragraph must be modified, and must only state that "the parties are ordered to meet confer regarding what exactly is 'information related to circumvention devices.'" *See March 10, 2011 Transcript 18:2-4.*

2. The Highlighted Proposal is Rejected

The proposed portion, regarding determination of "the most forensically sound manner to address this issue" requires first that an agreement can first be reached regarding "what exactly is 'information related to circumvention devices.'" A hard deadline to not only determine 1) what exactly is "information related to circumvention devices" but also 2) how to identify, isolate and extract that information from Mr. Hotz hard drives, presumes the first step can and will be agreed to by the parties.

Paragraph 5 of SCEA's Proposed Order

SCEA has previously waived inspection of Mr. Hotz's drives in Docket No. 85 Pg.9 but now seeks it here without showing any reason to believe the SDK or access to the PSN are on the impounded devices.

Paragraph 5(b) of SCEA's proposed order.

The paragraph is woefully inadequate.

I. Impounded Calculator

As a preliminary matter, the Proposed Order refers to the "impounded devices." The Court clearly ordered that the jurisdictional discovery would relate to the impounded hard drives, not the impounded calculator. SCEA did not suggest that the impounded calculator could (1) contain the SDK or (2) have possibly connected to the Playstation Network ("PSN"). The order must be clarified to limit the jurisdictional search to only the impounded hard drives and not the calculator.

2. Protocol for Search for the SDK

TIG's protocol for locating the circumvention device on the impounded hard drives involves using "portions of data from the Circumvention Device . . . to search for these devices

Holly Gaudreau, Esq.

March 12, 2011

Page 4

and/or additional references of circumvention devices across the entire hard drive space." In English, TIG uses portions of the Circumvention Devices as a source file to compare to other files on the impounded hard drives as a the manner for searching for copies of the Circumvention Devices on the impounded hard drives. Certification of February 26, 2011, ¶ 10(g).

Those same steps apply to searching for the SDK. Further, those steps must be specifically laid out in the Proposed Order as required by paragraph 4(a) of the Proposed Order. SCEA must specifically identify the portions of source files to be used by TIG. Those portions of source files identified by SCEA must contain jurisdictionally relevant content. In other words, the portions of source files selected from the SDK by SCEA must state that SCEA is located in California. March 10, 2011 Transcript, 22:19-23. Anything else is beyond the scope of the Court's order and contrary to the manner in which TIG has stated that it searches hard drives.

Moreover, once SCEA identifies the specific files, which are contained in its SDK and which state that SCEA owns the SDK that SCEA proposes to send to TIG as source files, SCEA must provide those specific files to us. Further, SCEA must provide us a copy of the SDK that the source files are alleged to have been extracted from. SCEA must provide a declaration that SCEA has provided true and correct copies of the SDK as distributed by SCEA for verification by Mr. Hotz's counsel that those files (1) are contained in the SDK and (2) explicitly state that SCEA is located in California and that SCEA owns the SDK. We will require 4 business days to perform this verification.

As drafted the Proposed Order is clearly under descriptive and overbroad.

3. Evidence the Hard Drives to Connected to PSN

SCEA represented to the Court that the impounded hard drives could have been connected to the PSN. March 10, 2011 Transcript, 23:8-17. Further SCEA represented that it would "confirm" the accuracy of its representation to the Court. *Id.* We have received no declaration from SCEA stating that standalone hard drives can connect to the PSN, or that if a hard drive were to connect to the PSN that the user would have to "click through" the PSN agreement. Without a declaration from SCEA on this issue, this item of jurisdictional discovery is improper and potentially a fraud on the Court.

Further, SCEA's proposed order fails to specifically describe what TIG is instructed to look for. The Court made clear that TIG can only do what the Court orders it to do. Therefore, SCEA must specifically describe (1) how a hard drive not part of or connected to a PS3 console can connect to the PSN; and (2) what evidence TIG is instructed to look for relating to whether the impounded hard drives connected to the PSN. If SCEA cannot provide this in-

Holly Gaudreau, Esq.
March 12, 2011
Page 5

formation with reasonable certainty and clarity, then SCEA's instructions to TIG amount to a baseless fishing expedition concocted by counsel, and not based on the fact of how the PSN and hard drives allegedly interact. Clearly, such a request is beyond the narrow and tailored discovery authorized by the Court.

Assuming for now, that a standalone hard drive can connect to the PSN, we will move to the procedures for search. The same procedures that apply to searching for/verifying the accuracy of the representations relating to files searched for as described above for the SDK, shall also apply to searching for evidence relating to the impounded hard drives' stand alone connection to the PSN.

Again, before we can even begin to discuss how TIG is to search for evidence of connection to the PSN, SCEA must first identify what, if any evidence would be created in the event of any such connection.

As a final note, SCEA's description of how a hard drive connects to the PSN cannot encompass the issue of whether the impounded hard drives were ever connected to a PS3. Connecting impounded hard drives to a PS3 is completely different than, and has no bearing on, whether the impounded hard drives ever connected to the PSN.

We had hoped to resolve these issues in the in person meet and confer that we suggested in anticipation of receipt of your draft of the proposed order. We look forward to your response.

Very truly yours,

/s/

Stewart Kellar

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Enclosure