

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ACHTE/NEUNTE BOLL KINO)	
BETEILIGUNGS GMBH & CO. KG,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 10-453 (RMC)
)	
ADRIENNE NEAL AND DOES 1 - 139,)	
)	
Defendants.)	

ORDER

Plaintiff Achte/Neunte Boll Kino Beteiligungs GmbH & Co. KG brought this suit against persons who allegedly copied and distributed its motion picture, *Far Cry*, over the Internet. It then issued subpoenas to various Internet Service Providers to identify such persons, known only by their Internet Protocol (“IP”) addresses. On December 6, 2010, Plaintiff filed a Notice of Voluntary Dismissal of Certain Doe Defendants and filed a Second Amended Complaint, naming as defendants Adrienne Neal and 139 Does. *See* Notice [Dkt. # 144]; Second Am. Compl. [Dkt. # 145]. Plaintiff obtained a clerk’s entry of default against Ms. Neal on February 1, 2011, and now seeks entry of default judgment. Ms. Neal opposes, and the motion will be denied.

Ms. Neal, acting pro se, filed a letter denying the allegations set forth in the Second Amended Complaint. She stated:

I have never before heard of the plaintiff’s movie, nor do I participate in the file sharing through P2P¹ or have any knowledge of software that would enable me to do so. The only evidence the plaintiff’s representation has presented is an IP address that my ISP provider has linked to my name and address, allowing this case to be heard before

¹ P2P is peer-to-peer file sharing.

your court. I contend that the plaintiff has made use of flawed technology that has been proven to bring about false accusations.

Neal's Letter [Dkt. # 162] at 1. She goes on to assert that researchers have discovered that the technology used by Plaintiff yields erroneous results:

[R]esearchers were able to generate DMCA notices² for computers that never downloaded or shared any copyrighted content. They were even able to show that copyright infringement takedowns could be placed on such items as printers, proving that a BitTorrent user could maliciously frame arbitrary network endpoints.

It is possible for an innocent person to be falsely accused of infringement because the technology used to identify BitTorrent users makes use of inconclusive techniques. This means that DMCA complaints can be filed against users who have not been maliciously framed or have used P2P software.

Id. at 2.³

Ms. Neal also filed a motion to set aside the Clerk's entry of default, stating that she has not been properly served. *See* Neal's Mot. to Set Aside Clerk's Default [Dkt. # 165]. Plaintiff's proof of service indicates that service was effected by leaving the Summons and Second Amended Complaint with "Jay Harrison, a housemate of Adrienne Neal." *See* Aff. of Service [Dkt. # 156]. Ms. Neal avers that she does not know anyone by the name of Jay Harrison and no such person lives

² "DMCA" is the Digital Millennium Copyright Act of 1998, Pub. L. 105-304, 112 Stat. 2860 (amending and adding to various provisions of Title 17). A "takedown" notice is a notice requesting that a website owner take down allegedly infringing content and links.

³ Plaintiff moves to strike Ms. Neal's letter because: (1) Plaintiff cannot tell if the letter is a responsive pleading or a motion to dismiss or for relief from default; (2) because the letter is not timely; and (3) the Clerk already entered default. Pro se pleadings are held to "less stringent standards than formal pleadings drafted by lawyers . . ." *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Further, courts construe pro se pleadings liberally. *United States v. Byfield*, 391 F.3d 277, 281 (D.C. Cir. 2004). Accordingly, the Court construes Ms. Neal's letter as a motion to set aside the Clerk's entry of default and as a response to Plaintiff's motion for entry of default judgment. Plaintiff's motion to strike the letter is denied.

