

The Open Sesame Users' Group set out to create a new operating system to serve as a replacement for Closed Corp.'s *Views*TM software. In order to create this software, the group made use of the Internet, and more specifically the Usenet, a distributed "bulletin board" service which exists on servers located all over the world, including California. This software dubbed *Open*, is given away for free as the result of an "open-source" development. Although relatively novel, open-source developments are becoming increasingly common and a number of business models have been proposed revolving around open-source developments.

The *Open* software infringes the patent protection granted to *Views*TM, by the United States government. The makers of *Open* now wish to argue that although the group successfully completed the development of a complex software system in accordance with their goals, the group is not sufficiently organized to stand trial, but is an ephemeral organization and should not be treated as an association. This is not in accord with the holdings of cases such as *Coscarat v. Major League Baseball* and *Associated Students of the University of California at Riverside v. Kleindienst*.

The Open Sesame Users' Group intentionally set about and went to the considerable difficulty of setting up a Usenet newsgroup to enable widely geographically separated software developers to work concurrently on this project. It was foreseeable that these actions would involve the work of developers from California, since Californians, according to some studies, make up 14% of all Internet users and since California is a center of the computer industry. Likewise because of the large number of Internet users and the location of major computer industry activity within California that the software would be distributed in California. Under the rulings of cases like *SuperGuide v. Kegan*, *Maritz v. Cybergold, Inc.*, and *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, these are sufficient contacts to sustain jurisdiction against the defendants in California. Additionally, the brunt of the harm is felt by the plaintiff in California, the home state of Closed Corp., since California is both a disproportionate factor in the software industry and a perceived industry trend setter. Under the principles espoused in *Panavision Int'l L.P. v. Toeppen*, jurisdiction is proper under the "effects doctrine" because the defendants intentional actions resulted in a harm to the plaintiff in California and the defendants knew that brunt of harm to the plaintiff would be felt in California.

Since the Open Sesame Users' Group is an unincorporated association, they reside in any judicial district where jurisdiction would be proper under the holdings of *VE Holdings Corporation v. Johnson Gas Appliance Company* and *Sperry Products v. Association of American Railroads*. Since all of the rationales for jurisdiction discussed above about California, apply to the Northern District of California, venue is proper in Northern California.

Under California Code of Civil Procedure §413.30, a court may order any method of service of process "which is reasonably calculated to give actual notice to the party to be served." Given that these defendants went out of their way to remain anonymous even by Internet standards and that the defendants have relied on the use of Internet and Usenet collaboration to develop their software, notice by posting to the Usenet group, posting to an on-line open-source newsletter, and by email are the methods most likely to effect actual notice on these defendants and the court should order this method of service in light of the ineffectuality of traditional service methods here. If the court does not wish to order service in these methods, the court should allow this action to move on to discovery to allow the determination of more defendants names so that they may be traditionally served.

No one should be allowed to use the Internet to their advantage because it is everywhere, harm another, and then be allowed to hide on the Internet claiming that it is in fact nowhere.