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United States District Court, W.D. Washington.

Joshua SUPNICK, individually and on behalf of all  
others similarly situated,  
Plaintiff,

v.

AMAZON.COM, INC. and ALEXA INTERNET,  
Defendants.

**No. C00-0221P.**

May 18, 2000.

ORDER GRANTING PLAINTIFF'S MOTION FOR  
CLASS CERTIFICATION

PECHMAN, District J.

\*1 This matter came before the Court on Plaintiff Joshua Supnick's motion for certification of this case as a class action pursuant to [Rule 23 of the Federal Rules of Civil Procedure](#). Defendants Amazon.com and Alexa Internet (together, "Amazon") oppose certification. Having examined plaintiff's moving papers, defendants' response, and plaintiff's reply, and having heard oral arguments by the parties, plaintiff's motion is hereby GRANTED. This Court finds that Supnick has satisfied the requirements for class certification set forth in [Rule 23](#).

This cause of action arises out of software created by Alexa and distributed by Amazon.com. Apparently the Alexa software is designed to allow more efficient navigation of the world wide web. The software provides statistics on the websites visited by its users, and provides a continuous stream of related links as the user surfs the web. Plaintiffs claim that the Alexa software enables Alexa and Amazon to intercept and access users' personal information in violation of their rights to privacy. Supnick seeks injunctive relief, declaratory judgment, and damages for defendants' alleged violations of the Electronic Communications Privacy Act ([18 U.S.C. § 2510](#) et seq.), violations of the Stored Wire and Electronic Communications and Transactional Records Access Act ([18 U.S.C. § 2701](#)), and violations of the common law rights against trespass to property and invasion of privacy.

The proposed class is defined as follows:

All persons who installed or used the Alexa Internet navigation service. Excluded are defendants' employees, counsel, and their immediate families.

This class would encompass persons who downloaded and used the Alexa web browser, as well as persons who used the zBubbles toolbar.

Rule 23 Requirements:

The plaintiff bears the burden of showing that each requirement of [Rule 23](#) is satisfied. [Amchen Prod., Inc. v. Windsor, 521 U.S. 591, 117 S.Ct. 2231, 138 L.Ed.2d 689 \(1997\)](#). This Court finds that plaintiffs have satisfied their burden under [Rule 23](#).

Numerosity:

Plaintiffs estimate that the nationwide class of users of Alexa software could number in the tens of thousands, and assert that joinder of all members would be impracticable. Defendants do not dispute numerosity. Opp. Br. at 5.

Commonality:

This Court finds that there are questions of law or fact common to all class members within the meaning of [Rule 23\(a\)\(2\)](#). As Supnick points out, the complaint delineates a common course of conduct that was the same for every member of the proposed class: each member had full URL strings, including private information that they never consented to being disclosed, transmitted back to the defendants. Plaintiffs allege that each class member was adversely affected by the same allegedly wrongful acts of the defendants.

Amazon argues that the federal claims require proof of each individual plaintiff's consent or authorization. According to Amazon, in order to prevail on the federal claims, each plaintiff must prove his or her understanding of the relevant privacy policy. Without such evidence, defendants contend that plaintiffs cannot establish the user's lack of authorization, an element of both federal statutes at issue here. [See 18 U.S.C. § 2511\(2\)\(d\); 18 U.S.C. § 2701\(c\)](#). Defendants suggest that the court will have to resolve individual questions of fact on the issue of liability under these statutes, and that these individual questions defeat Supnick's claim of commonality.

\*2 This Court finds Amazon's arguments to be unconvincing. On the issue of consent, plaintiffs allege that the members of the proposed class could not give informed consent because defendants

concealed material information about the Alexa software. Because Amazon did not disclose the scope of the electronic interception, plaintiffs assert that no one could have consented to the disclosure. This Court finds that the interpretation of the relevant privacy policies presents a common question of law or fact that can be resolved by this Court.

#### Typicality:

The typicality requirement of [Rule 23\(a\)\(3\)](#) is closely related to the commonality requirement of [Rule 23\(a\)\(2\)](#). See H. Newberg & A. Conte, *Newberg on Class Actions* § 3.13 (3rd ed.1992). "[R]epresentative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir.1998). This Court finds that plaintiff Supnick has adequately demonstrated that his claims are typical of the claims of the proposed class. Any differences in the amount or significance of personal information allegedly intercepted by the defendants goes to the issue of damages, and does not preclude a finding of typicality. Similarly, defendants have failed to show why the manner in which Supnick obtained the software is relevant, and why this issue should have any bearing on the question of typicality.

#### Fair and Adequate Protection of Class Interests:

The final prerequisite for class certification is a finding that the representative party will "fairly and adequately protect the interests of the class." [Fed.R.Civ.P. 23\(a\)\(4\)](#). Under this subsection, "the named representatives must appear able to prosecute the action vigorously through qualified counsel, and second, the representatives must not have antagonistic or conflicting interests with the unnamed members of the class." *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir.1978). This Court is persuaded that Mr. Supnick, through his most qualified counsel, will fairly and adequately protect the interests of the class as required under [Rule 23\(a\)\(4\)](#).

#### [Rule 23\(b\)](#) Class Actions Maintainable:

Having concluded that the proposed class has met all of the prerequisites for a class action under [Rule 23\(a\)](#), this Court next considers the types of class actions set forth in [Rule 23\(b\)](#). This Court finds that this class action is maintainable under both subsection (b)(2) and subsection (b)(3) of [Rule 23\(b\)](#).

This Court agrees that the party opposing the class

acted or refused to act on grounds generally applicable to the entire class within the meaning of [Rule 23\(b\)\(2\)](#). Additionally, as Supnick points out, plaintiffs here seek both declaratory and injunctive relief, in addition to their claim for damages. This action is therefore maintainable as a class action under [Rule 23\(b\)\(2\)](#).

Plaintiffs have also satisfied their burden under subsection (b)(3) of showing that common questions predominate and a class action is superior to other methods for resolving this controversy. "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." *Hanlon*, 150 F.3d at 1022 (quoting 7A Charles Alan Wright et al., *Federal Practice and Procedure* § 1778 (2nd ed.1986)). This Court agrees that the common question of defendants' liability predominates this case.

\*3 Defendants contend that common questions do not predominate, because plaintiffs' common law claims will have to be resolved using the laws of the various states in which class members reside. According to Amazon, requiring the Court to apply the laws of 50 states swamps any common issues, and defeats predominance.

This Court is not convinced that it will be required to apply the laws of 50 states to the common law claims of the plaintiff class. As Supnick points out, the license and usage agreement for the zBubbles service provides that usage is governed by Washington law. For those class members not subject to the zBubbles agreement, Washington law may govern under a conflict of law analysis. This Court need not resolve this question at this time, because it concludes that the common question of defendants' liability on the federal claims predominates the other issues presented here.

This Court also agrees that a class action is the superior method for resolving this controversy. Defendants' arguments regarding the feasibility of managing this class action are not well taken, especially in light of the fact that Amazon has chosen this forum in which to litigate all disputes relating to the use of the zBubbles software. See Decl. of Clifford A. Cantor, Ex.5 ¶ 12 ("You agree that any action brought by you at law or in equity arising out of or relating to this Agreement or the Service or Software shall be filed only in a state or federal court located in King County Washington.").

*Conclusion:*

Plaintiff's motion for class certification is hereby GRANTED. The class of all persons who installed or used the Alexa Internet navigation service, excluding defendants' employees, counsel, and their immediate families, is hereby certified under both [Rule 23\(b\)\(2\)](#) and [Rule 23\(b\)\(3\) of the Federal Rules of Civil Procedure](#). The class representative shall be plaintiff Joshua Supnick.

2000 WL 1603820, 2000 WL 1603820 (W.D.Wash.)

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