

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES – GENERAL

Case No. **2:21-cv-09317-MCS-SK** Date April 20, 2022

Title ***Paramount Pictures Corporation et al. v. Does***

Present: The Honorable **Mark C. Scarsi, United States District Judge**

Stephen Montes Kerr

Deputy Clerk

Not Reported

Court Reporter

Attorney(s) Present for Plaintiff(s):

None Present

Attorney(s) Present for Defendant(s):

None Present

Proceedings: (IN CHAMBERS) ORDER GRANTING MOTION FOR DEFAULT JUDGMENT (ECF No. 36)

Plaintiffs Paramount Pictures Corporation, Universal City Studios Productions LLLP, Universal Content Productions LLC, Universal Television LLC, Warner Bros. Entertainment Inc., Columbia Pictures Industries, Inc., Disney Enterprises, Inc., Netflix Studios, LLC, Netflix US, LLC, and Netflix Worldwide Entertainment, LLC move to enter default judgment against the Doe Defendants who run the PrimeWire website. Mot., ECF No. 36. Even though Defendants have been served, ECF No. 24, Defendants have not yet appeared. The Court deems the motion appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15.

I. BACKGROUND

Plaintiffs are companies that produce and distribute movies and television programs. *See* Miller Decl. ¶ 4, ECF No. 17. They own several copyrighted works and publicly perform these works, including by streaming performances over the internet. Klaus Decl. ¶¶ 2–139, ECF No. 18; Miller Decl. ¶ 4. Defendants are anonymous entities that own and operate the website PrimeWire. Van Voorn Decl. ¶ 7, ECF No. 16. PrimeWire allows users of the website to access streams of movies

and television shows through embedded streaming or through third-party sites to which PrimeWire provides links. *Id.* ¶ 8. Links are added to PrimeWire in two different ways. First, Defendants, the PrimeWire operators, themselves add links to the PrimeWire database. *Id.* ¶ 23. Second, Defendants also ask users to submit links to a PrimeWire forum. *Id.* ¶ 24. These links are later approved by a PrimeWire moderator. *Id.* ¶ 26. Defendants make money from this third-party streaming by hosting advertisements on the PrimeWire website. *Id.* ¶ 31.

Plaintiffs negotiate with distributors and licensees over the prices and circumstances of reproduction and performance of the copyrighted works. Miller Decl. ¶ 19. A large part of this strategy is windowing, or making the work available exclusively available through certain channels over a specific time period. *Id.* ¶ 20. Plaintiffs allege unauthorized streaming undermines their contractual commitments by weakening Plaintiffs' future negotiating position and making it more difficult for counterparties to achieve a profit. *Id.* ¶¶ 24–25.

Plaintiffs filed suit to enjoin Defendants from performing Plaintiffs' works, to enjoin Defendants from hosting the works on the PrimeWire website, for damages, and for other associated relief. Compl., ECF No. 1. The Court previously entered a preliminary injunction against Defendants. Order, ECF No. 30.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 55(b)(2) permits the Court to enter default judgment. The Court need not make detailed findings of fact in the event of default. *Adriana Int'l Corp. v. Thoeren*, 913 F.2d 1406, 1414 (9th Cir. 1990). On entry of default, well-pleaded allegations in the complaint concerning liability are taken as true. Damages, however, must be proven. *Garamendi v. Henin*, 683 F.3d 1069, 1080 (9th Cir. 2012) (citing *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977)).

Courts consider several factors in determining whether to enter default judgment: “(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action[,] (5) the possibility of a dispute concerning material facts[,] (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.” *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986).

Local Rule 55-1 requires the party seeking default judgment to submit a declaration establishing (1) when and against which party the default was entered; (2) the identification of the pleading to which default was entered; (3) whether the defaulting party is an infant or incompetent person, and if so, whether that person is represented by a general guardian, committee, conservator, or other representative; (4) that the Servicemembers Civil Relief Act does not apply; and (5) that the defaulting party was properly served with notice. C.D. Cal. R. 55-1.

III. DISCUSSION

A. Partial Default Judgment

Plaintiffs only seek default judgment as to liability and a permanent injunction. They request deferral of the issues of damages and costs until they conduct discovery. Mot. 2–3. The Ninth Circuit has implicitly endorsed the practice of entering partial default judgment. *See Dreith v. Nu Image, Inc.*, 648 F.3d 779, 785–86, 790 (9th Cir. 2011) (reviewing with approval district court’s entry of default judgment as to liability before awarding damages).

B. Jurisdiction and Service of Process

The Court must first address whether it may exercise subject-matter jurisdiction and personal jurisdiction over Defendants and whether Plaintiffs properly served Defendants. *In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999).

The Court has subject-matter jurisdiction over Plaintiffs’ copyright infringement claims. 28 U.S.C. § 1338(a). Plaintiffs have properly served Defendants. ECF No. 22.

Plaintiffs assert the Court has personal jurisdiction over Defendants under Federal Rule of Civil Procedure 4(k)(2). Rule 4(k)(2) permits a court to exercise personal jurisdiction where “a claim . . . arises under federal law” if “the defendant is not subject to jurisdiction in any state’s courts of general jurisdiction” and if “exercising jurisdiction is consistent with the United States Constitution and laws.” A copyright infringement action arises under federal law. 28 U.S.C. § 1338(a). Whenever a plaintiff contends that no state court can exercise general jurisdiction over a defendant, the defendant must contest that assertion. *Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 461–62 (9th Cir. 2007). Defendants have not

appeared to argue they are subject to jurisdiction in any state court, so Plaintiffs have met this element.

Finally, exercising personal jurisdiction comports with United States law and due process if a defendant purposefully directs its activities toward the forum, if the claim arises out of or relates to the defendant's forum-related activities, and if the exercise of jurisdiction is reasonable. *AMA Multimedia, LLC v. Wanat*, 970 F.3d 1201, 1208 (9th Cir. 2020). A defendant purposefully aims an act at a forum if it commits an intentional act expressly aimed at a forum that causes a harm the defendant knows is likely to be suffered in the forum. *Marvix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1228 (9th Cir. 2011). Here, Defendants committed an intentional act of operating a website to stream Plaintiffs' copyrightable works. Compl. ¶¶ 2, 36–44; *see Wanat*, 970 F.3d at 1209. Defendants also expressly aimed their acts at the United States. Over half of PrimeWire traffic comes from the United States. *Id.* ¶ 4. Defendants also claim they are beneficiaries of the protections in the Digital Millennium Copyright Act. *Id.* ¶ 29. They have instructed website visitors how to use virtual private networks ("VPNs") to avoid United States law enforcement and the National Security Agency, *id.* ¶¶ 2, 29, and they have a contract with Cloudflare to ensure that PrimeWire has reliable services in the United States, *id.* ¶ 28. While the Ninth Circuit has held that a court does not have personal jurisdiction over a website operator whose United States users upload infringing content and over a website operator who uses geolocated advertisements to attract new users, *Wanat*, 970 F.3d at 1210–11, here, Defendants have targeted the United States specifically rather than global internet users generally. The references to United States laws, the large portion of United States–based website traffic, and the contract with Cloudflare demonstrate Defendants' intent to have PrimeWire target the United States specifically with their activities. Thus, Defendants have purposefully directed their activities at the United States.

The claims arise out of or relate to Defendants' contacts with the United States because the claims arise out of the operation of a website intentionally targeted at the United States. Lastly, "where a defendant who purposefully has directed [its] activities at forum residents seeks to defeat jurisdiction, [it] must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985). Because Defendants have not appeared to contest the exercise of jurisdiction, Defendants have not shown the exercise of jurisdiction is unreasonable.

The Court thus concludes that it can properly consider the entry of default judgment against Defendants.

C. Procedural Requirements

The motion meets the procedural requirements of Local Rule 55-1. The Clerk entered default against Defendants on February 1, 2022. ECF No. 34. Defendants are not infants or incompetent, and the Servicemembers Civil Relief Act does not apply. Defendants have been served with notice. Klaus Decl. ¶¶ 3–7, ECF No. 36-16.

D. *Eitel* Factors

1. Prejudice to Plaintiffs

The first *Eitel* factor examines whether the plaintiff will be prejudiced if default judgment is not granted. *Eitel*, 782 F.2d at 1471. A plaintiff suffers prejudice if there is no recourse for recovery absent default judgment. *Philip Morris USA Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 499 (C.D. Cal. 2003). Plaintiffs allege they have suffered significant harm to their businesses due to infringement. Defendants also remain unidentified, Van Voorn Decl. ¶¶ 37–47, so it will be difficult for Plaintiffs to get recovery without default judgment. This supports entering default judgment. *Panda Rest. Grp., Inc. v. Enymedia, Inc.*, No. 2:21-cv-3560-AB-AS, 2021 WL 4927416, at *4 (C.D. Cal. Aug. 12, 2021) (finding prejudice where a defendant does not appear in a copyright infringement case).

2. Merits of Plaintiffs' Claims and Sufficiency of Complaint

The second and third *Eitel* factors require that the plaintiff “state a claim on which the [plaintiff] may recover.” *Castworld*, 219 F.R.D. at 499 (alteration in original) (quoting *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F.Supp.2d 1172, 1175 (C.D. Cal. 2002)). Plaintiffs seek default judgment on its copyright claims for induced and contributory infringement.

To state a claim for induced copyright infringement, a plaintiff must demonstrate four elements: “(1) the distribution of a device or product, (2) acts of infringement, (3) an object of promoting its use to infringe copyright, and (4) causation.” *Columbia Pictures Indus., Inc. v. Fung*, 710 F.3d 1020, 1032 (9th Cir.

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