

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

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UMG RECORDINGS, INC., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:18-cv-957 (CMH/TCB)
)	
TOFIG KURBANOV, <i>et al.</i> ,)	
)	
Defendants.)	
)	

REPORT AND RECOMMENDATION

THIS MATTER is before the undersigned on UMG Recordings, Inc., Capitol Records, LLC, Warner Records Inc., Atlantic Recording Corporation, Elektra Entertainment Group Inc., Fueled by Ramen LLC, Nonesuch Records Inc., Sony Music Entertainment, Sony Music Entertainment US Latin LLC, Artista Records LLC, Laface Records LLC, and Zomba Recording LLC’s (“Plaintiffs”) Memorandum in Support of their Request for Damages, a Permanent Injunction, and Attorneys’ Fees and Costs (Dkt 131), Defendant Tofig Kurbanov’s (“Defendant”) Opposition to Plaintiffs’ Request for Damages, a Permanent Injunction, and Attorneys’ Fees and Costs (Dkt. 136), and Plaintiffs’ Reply Memorandum in Further Support of Their Request for Damages, a Permanent Injunction, and Attorneys’ Fees and Costs (Dkt. 137).¹

¹ The relevant filings before the undersigned include Plaintiffs’ Complaint (“Compl.”) (Dkt. 1); Judge Claude M. Hilton’s Order denying Defendant’s Motion to Dismiss (Dkt. 74); Plaintiffs’ first Motion to Compel (Dkt. 91) and the Court’s Order granting that motion (Dkt. 97); Plaintiffs’ second Motion to Compel (Dkt. 98) and the Court’s Order granting that motion (Dkt. 105); Plaintiffs’ Motion for Default Judgment Pursuant to Federal Rule of Civil Procedure 37 (Dkt. 119) and accompanying memorandum (Dkt. 120); Defendant’s Opposition to Plaintiffs’ Motion for Default Judgment Pursuant to Rule 37 (Dkt. 123); and Plaintiffs’ Reply Memorandum in Support of Plaintiffs’ Motion for Default Judgment Pursuant to Federal Rule of Civil Procedure 37 (Dkt. 124).

For the reasons stated below, the undersigned U.S. Magistrate Judge recommends that the Court grant Plaintiffs' request for damages, a permanent injunction, and attorneys' fees and costs.

I. BACKGROUND

A. **Procedural Posture**

Plaintiffs filed their Complaint on August 3, 2018 under the Copyright Act of 1976 ("Copyright Act") and Digital Millennium Copyright Act ("DMCA") bringing specific claims for direct copyright infringement, contributory copyright infringement, vicarious copyright infringement, inducement of copyright infringement, and circumvention of technological measures against Defendant. (*See* Dkt. 1.) Plaintiffs sought a declaration that Defendants willfully infringed Plaintiffs' copyrights, equitable relief preventing further infringement, statutory or, alternatively, actual damages, Plaintiffs' costs and attorneys' fees, pre-judgment and post-judgment interest, and other relief deemed proper.² (*See* Dkt. 1.)

After the Court granted Defendant an extension to respond, Defendant filed a Rule 12(b)(2) motion to dismiss on October 1, 2018, requesting dismissal or transfer of venue. (*See* dkts. 17, 24.) The Honorable District Court Judge Claude M. Hilton granted the motion to dismiss for lack of personal jurisdiction on January 22, 2019. (Dkts. 30, 31.) Plaintiffs subsequently appealed Judge Hilton's Memorandum Opinion and Order to the United States Court of Appeals for the Fourth Circuit on January 29, 2019. (Dkt. 35.) The Fourth Circuit reversed Judge Hilton's decision on June 26, 2020 and remanded for further proceedings. (Dkt. 39, 40.)

² Plaintiffs' Complaint names both Defendant Kurbanov and "Does 1-10;" however default judgment has only been entered against Defendant Kurbanov.

The Court issued its first Scheduling Order on September 4, 2020. (Dkt. 48.) Defendant filed a motion to stay, pending the ruling on personal jurisdiction in this Court and petition for certiorari in the Supreme Court. (Dkt. 50.) This Court granted the motion to stay on September 18, 2020 (Dkt. 57), and Plaintiffs subsequently filed a motion for reconsideration of the stay, which the Court denied. (Dkts. 61, 67.) The Supreme Court denied Defendant's petition for certiorari on January 11, 2021. (Dkt. 68.)

On remand, Judge Hilton denied Defendant's Motion to Dismiss, finding, in accordance with the Fourth Circuit's decision, that Defendant is subject to the Court's jurisdiction. (Dkt. 74 at 8.) On April 1, 2021, the Court entered its second Scheduling Order, setting the initial pretrial conference for April 28, 2021, the final pretrial for August 19, 2021, and the close of discovery on August 13, 2021. (Dkt. 77.) Defendant filed his Answer on April 21, 2021, and the parties submitted their Proposed Joint Discovery Plan Pursuant to Rule 26(f), which the Court approved. (Dkts. 81-82, 87.)

Plaintiffs filed their first Motion to Compel on May 26, 2021, seeking documents that Defendant "initially agreed to produce but is now withholding" or claimed do not exist and properly unredacted documents. (Dkt. 91, 92.) The Court granted this motion, ordered Defendant to produce the requested discovery by June 11, 2021 and warned that failure to comply with the order could result in sanctions, including default judgment. (Dkt. 97.)

Plaintiffs filed their second Motion to Compel on June 16, seeking to compel Defendant to preserve and produce web service data. (Dkt. 98, 99.) Defendant failed to meet the deadline and Plaintiffs filed a status update on June 18 notifying the Court of this failure. (Dkt. 101.) After a hearing, the undersigned granted the Plaintiffs' second Motion to Compel, reiterating that Defendant's continued failure to comply could result in default judgment sanctions. (Dkts. 105,

106.) Judge Hilton affirmed this ruling on the second Motion to Compel. (Dkts. 107, 113.)

Defendant's counsel moved to withdraw as attorney on July 23, 2021 and stated that his uncooperative client maintained a "firm conviction that he is not subject to personal jurisdiction in this Court." (Dkts. 114, 115 at 2.) Counsel also stated that Defendant would not attend his deposition on July 28 and 29, 2021. (Dkt. 115 at 2.) The Court denied counsel's motion to withdraw and suspended the final pretrial conference pending Plaintiffs' forthcoming motion for sanctions. (Dkt. 118.)

Plaintiffs filed their Motion for Default Judgment as to Defendant Tofig Kurbanov Pursuant to Federal Rule of Civil Procedure 37 on August 4, 2021 for failure to comply with the discovery orders and to attend his deposition. (Dkt. 119.) Because Defendant refused to meaningfully participate in discovery, the undersigned granted the motion at the August 27, 2021 hearing. (Dkt. 125.) The undersigned thereafter issued a Report and Recommendation, recommending that the Court grant default judgment against Kurbanov pursuant to Federal Rule 37. (Dkt. 128.) On October 1, 2021, the Honorable District Judge Claude M. Hilton adopted the Report & Recommendation and entered default judgment for Plaintiffs. (Dkt. 129.)

As directed by the undersigned, Plaintiffs filed the instant memorandum detailing their requested remedies. (Dkts. 127, 131.) Defendant filed an Opposition to Plaintiffs' Request for Damages, a Permanent Injunction, and Attorneys' Fees and Costs on October 19, 2021. (Dkt. 136.) Finding oral argument unnecessary, the undersigned cancelled the Friday, November 12, 2021 hearing.³ The undersigned issues this second Report and Recommendation to independently determine Plaintiffs' requested remedies.

³ An evidentiary hearing is unnecessary when the record presents an adequate basis for the relief requested. *Mut. Fed. Sav. & Loan Ass'n v. Richards & Assoc., Inc.*, 872 F.2d 88, 91 (4th Cir. 1989).

B. Jurisdiction and Venue

Before the Court can render default judgment, it must have subject matter and personal jurisdiction over the defaulting parties, and venue must be proper.

First, the Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1). A federal district court has subject matter jurisdiction when a dispute arises under federal law as shown on the face of the complaint. 28 U.S.C. § 1331. The federal district courts also have subject matter jurisdiction over federal copyright cases. 28 U.S.C. § 1338(a). Here, Plaintiffs' Complaint alleges (1) direct copyright infringement, (2) contributory copyright infringement, (3) vicarious copyright infringement, (4) inducement of copyright infringement, and (5) circumvention of technological measures. (Compl. at 18-25.) Counts (1)–(4) arise under the Copyright Act, 17 U.S.C. §§ 106 (1) and (3), and Count (5) arises under the Digital Millennium Copyright Act, 17 U.S.C. §§ 1201(a) and (b)(1)(A). Because these claims arise under federal law, the Court has subject matter jurisdiction over Plaintiffs' claims.

Second, the Court has personal jurisdiction over Defendant. The Fourth Circuit found that Defendant's actions sufficiently demonstrated that he purposefully availed himself of Virginia and that the Plaintiffs' copyright claims arose from these actions. (Dkt. 39 at 14.) The court remanded to this Court to decide whether specific personal jurisdiction is constitutionally reasonable. On remand, this Court weighed the *Burger King* constitutional factors and found that the Court's exercise of personal jurisdiction over Defendant did not offend "substantial notions of fair play and substantial justice." (Dkt. 74 at 4-8 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985))). Therefore, personal jurisdiction over Defendant Kurbanov in this case is well established.

Lastly, Plaintiffs filed this lawsuit in the proper venue. Under 28 U.S.C. § 1391(b), venue

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