

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

UMG RECORDINGS, INC., *et al.*,

*Plaintiffs,*

v.

KURBANOV, *et al.*,

*Defendants.*

Case No. 1:18-cv-00957-CMH-TCB

**PLAINTIFFS' RESPONSE TO DEFENDANT'S OBJECTIONS TO MAGISTRATE  
JUDGE'S DECEMBER 16, 2021 REPORT AND RECOMMENDATION AS TO  
DAMAGES AND PERMANENT INJUNCTIVE RELIEF**

In his objections to the Magistrate Judge's Report and Recommendation on remedies, Defendant raises the same arguments that he made in opposing Plaintiffs' motion for remedies. In a carefully reasoned decision based on well-settled law and the evidence in the record, Magistrate Judge Buchanan soundly rejected those arguments. Defendant's arguments fare no better the second time around. For all the reasons set forth in the Magistrate Judge's Report and Recommendation, and as discussed below, Defendant's objections should be rejected.

**INTRODUCTION**

Defendant Tofig Kurbanov ("Defendant") engages in and facilitates massive copyright infringement through a pair of illegal websites that he owns and operates, located at [www.flvto.biz](http://www.flvto.biz) and [www.2conv.com](http://www.2conv.com) (collectively, the "Websites"). The Websites are tools to convert authorized streams of music videos on third-party streaming sites, including YouTube, into unauthorized permanent downloadable audio files. This type of online music piracy, called "stream-ripping," causes substantial and irreparable harm to Plaintiffs, who own or control the

copyright to many of the sound recordings pirated on Defendant's Websites. As already determined, and as the record establishes, Defendant's conduct amounts to copyright infringement in violation of the Copyright Act, 17 U.S.C. § 106, and unlawful circumvention of a technological measure in violation of the Digital Millennium Copyright Act (the "DMCA"), 17 U.S.C. § 1201.

Using Plaintiffs' copyrighted music as a lure, Defendant has caused and profited from piracy on a tremendous scale. As the Fourth Circuit observed, Defendant's Websites are "two of the most popular stream-ripping websites in the world and are among the most popular websites of any kind on the Internet." *UMG Recordings, Inc. v. Kurbanov*, 963 F.3d 344, 349 (4th Cir. 2020). In 2018 alone, the Websites had almost 32 million United States users, who collectively conducted over 96 million stream-ripping sessions. Defendant has achieved this success by touting the free availability of Plaintiffs' sound recordings on his Websites. At times, the Websites prominently displayed a list of the "Top 100 most converted and downloaded MP3s" or videos that were "Most Watched Today," virtually all of which showcased Plaintiffs' popular recordings. The Websites also included step-by-step tutorials, featuring well-known recordings owned by Plaintiffs, that showed users how to download "music for free."

Defendant not only violated the Copyright Act and Section 1201 of the DMCA, but he willfully disobeyed this Court's orders. Attempting to hide the full scope of his unlawful conduct, as well as his ill-gotten gains, Defendant refused to comply with the Court's orders to produce web server data and a variety of financial information. Defendant's repeated noncompliance with this Court's orders ultimately led to entry of default judgment sanctions against him under Federal Rule of Civil Procedure 37.

With liability already determined, Defendant now objects to the Magistrate Judge's recommendation concerning the relief this Court should award.

### **FACTUAL BACKGROUND**

Plaintiffs' Memorandum in Support of Their Request for Damages, a Permanent Injunction, and Attorneys' Fees and Costs (the "Memorandum") laid out in detail the facts relevant to Plaintiffs' request for remedies. ECF 131. Magistrate Judge Buchanan's Report and Recommendation on Plaintiffs' request for remedies ("R&R") further discussed the relevant facts. ECF 139. Instead of repeating the facts in full, Plaintiffs respectfully incorporate the Memorandum, pleadings, and R&R herein by reference and address key facts below.

### **PROCEDURAL BACKGROUND**

In August 2021, Plaintiffs filed a motion for default judgment pursuant to Federal Rule of Civil Procedure 37 based on Defendant's willful disobedience of two Court orders and his refusal to appear for his deposition. ECF 119; ECF 120. The Magistrate Judge granted Plaintiffs' motion for default judgment, ECF 125, and ordered the parties to submit briefing on remedies, ECF 127. The Magistrate Judge's Report and Recommendation found that "Defendant acted in bad faith in failing to comply with the Court's two orders requiring him to respond to Plaintiffs' discovery requests fully and completely and by refusing to attend his scheduled deposition" and that Defendant's misconduct "substantially prejudice[d] Plaintiffs' ability to litigate this case." ECF 128 at 4. The Magistrate Judge also found that "there is a clear need to deter Defendant's behavior in this case." *Id.* at 5. The Court adopted the Magistrate Judge's Report and Recommendation on liability, granted Plaintiffs' motion for default judgment, and ordered the entry of default judgment in favor of Plaintiffs. ECF 129.

On October 5, 2021, Plaintiffs filed a memorandum in support of their request for damages, permanent injunctive relief, and attorneys' fees and costs. ECF 131. Defendant filed his opposition to Plaintiffs' request on October 19, 2021. ECF 136. On December 16, 2021, Magistrate Judge Buchanan issued her R&R recommending that this Court grant Plaintiffs' request for damages and other relief. ECF 139. With liability already determined by the grant of default judgment, Magistrate Judge Buchanan evaluated Plaintiffs' Complaint against the standards of Federal Rule of Civil Procedure 12(b)(6) and concluded once again that Plaintiffs properly stated claims against Defendant for direct copyright infringement and contributory copyright infringement under the Copyright Act, and for circumvention of technological measures under the DMCA. R&R at 12–16. Magistrate Judge Buchanan next conducted an independent determination of the relief to be granted, concluding that the Court should (1) award Plaintiffs statutory damages for Defendant's Copyright Act and DMCA violations in the amount of \$82,922,500 (R&R at 16–21); (2) enter a permanent injunction against Defendant's further Copyright Act and DMCA violations (R&R at 21–23); and (3) award reasonable attorneys' fees and costs to Plaintiffs (R&R at 23–24).

On December 30, 2021, Defendant filed his Objections to the Magistrate Judge's R&R, ECF 140 ("Obj." or the "Objections"), objecting to four aspects of Magistrate Judge Buchanan's recommendations.

### **LEGAL STANDARD**

Pursuant to 28 U.S.C. § 636 and Federal Rule of Civil Procedure 72(b), the district court reviews *de novo* a magistrate judge's decision on dispositive matters to which a party has specifically objected. Fed. R. Civ. P. 72(b)(3). "The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate

judge with instructions.” Fed. R. Civ. P. 72(b)(3). Because the Rule 72 process is “designed to allow the district court to ‘focus on specific issues, not the report as a whole,’” objections must be “specific and particularized.” *Nichols v. Colvin*, 100 F. Supp. 3d 487, 497 (E.D. Va. 2015) (quoting *United States v. Midgette*, 478 F.3d 616, 621 (4th Cir. 2007)). A mere restatement of the arguments raised in the relevant filings “does not constitute an ‘objection’ for purposes of district court review.” *Id.* (citing *Abou-Hussein v. Mabus*, 2010 WL 4340935, at \*1 (D.S.C. Oct. 28, 2010), *aff’d* 414 F. App’x 518 (4th Cir. 2011)).

## ARGUMENT

### **I. Magistrate Judge Buchanan Correctly Held That Plaintiffs Are Entitled to Statutory Damages.**

Defendant argues that Plaintiffs have failed to establish that anyone used his Websites to infringe any of the 1,618 works in suit, or to circumvent any technological measures. Obj. at 2–8. This argument fundamentally mischaracterizes the procedural posture of this case, the law, and does not withstand even the slightest scrutiny.

In the default judgment context, all well-pleaded factual allegations in the Complaint are deemed admitted. *See McDonald v. Robinson*, No. 1:18-cv-697 (LMB/TCB), 2020 WL 10456846, at \*11 (E.D. Va. Sept. 4, 2020) (citing *JTH Tax, Inc. v. Grabert*, 8 F. Supp. 3d 731, 736 (E.D. Va. 2014)); *see also Derek Andrew, Inc. v. Poof Apparel Corp.*, 528 F.3d 696, 702 (9th Cir. 2008); *Tiffany (NJ) Inc. v. Luban*, 282 F. Supp. 2d 123, 124 (S.D.N.Y. 2003). The law does not require a party to provide evidence to “prove” or “show” that a defaulting party is liable for the claims asserted in the case. *Anderson v. Found. for Advancement, Educ. & Emp. of Am. Indians*, 1999 WL 598860, at \*1 (4th Cir. Aug. 10, 1999) (per curiam) (affirming district court’s award of damages after finding the pleadings supported entry of default judgment).

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.