

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMAZON CONTENT SERVICES
LLC, et al.,

Plaintiffs,

v.

KISS LIBRARY, RODION
VYNNYCHENKO, ARTEM
BESSHAPOCHNY, JACK BROWN,
DOES 1-10,

Defendants.

CASE NO. C20-1048 MJP

ORDER GRANTING PLAINTIFFS'
MOTION FOR DEFAULT
JUDGMENT

This matter comes before the Court on Plaintiffs' Motion for Default Judgment. (Dkt. No. 39). Having reviewed the Motion, all supporting materials, and the relevant portions of the record, the Court GRANTS the Motion and ENTERS DEFAULT JUDGMENT against Defendants Kiss Library, Rodion Vynnychenko, and Artem Besshapochny ("Defendants") and ENTERS a PERMANENT INJUNCTION against Defendants on the terms set forth in this Order. This Order does not apply to Jack Brown because Plaintiffs voluntarily dismissed their claims against him. (See Dkt. No. 37.)

BACKGROUND

Plaintiffs are a group of publishers and authors who allege that Defendants illegally copied, distributed, and sold Plaintiffs' copyrighted literary works. (Complaint ¶ 1 (Dkt. No. 1).) The authors include Lee Child, Sylvia Day, John Grisham, C.J. Lyons, Doug Preston, Jim Rasenberger, T.J. Stiles, R.L. Stine, Monique Truong, Scott Turow, Nicholas Weinstock, and Stuart Woods ("Authors"). (*Id.*) The publishers are Penguin Random House LLC and Amazon Content Services LLC ("Publishers"). (*Id.*) Plaintiffs sued Defendants to recover damages and put an end to the illegal trade of their literary works.

Defendants Vynnychenko and Besshapochny are both Ukrainian nationals who created and operated Kiss Library through a variety of websites to offer pirated copies of the Authors' works without paying the Authors or Publishers royalties for the sales. (*Id.* ¶¶ 5-7, 23-25.) Defendants used a series of ruses to hide their identities and avoid both detection and accountability. (*Id.* ¶¶ 36, 38, 46-49; Declaration of John Goldmark ¶¶ 5-13 (Dkt. No. 40).) Plaintiffs have identified at least 52 different copyrighted literary works that Defendants illegally distributed and sold through their websites. (*Id.* ¶¶ 41-42; Goldmark Decl. ¶¶ 2-3.) Plaintiffs have suffered economic losses through lost royalties and claim to have suffered non-economic damages in the form of lost customers, damaged goodwill, and disruption of distribution licenses. (Compl. ¶¶ 50-52.)

Defendants have not participated in this lawsuit and have taken efforts to avoid accountability. Despite being given a notice and opportunity to be heard, Defendants did not respond to Plaintiffs' Motion for Temporary Restraining Order. (Dkt. Nos. 10, 13-14.) The Court then converted the TRO into a motion for preliminary injunction, which it granted. (Dkt. No. 15.) Defendant Vynnychenko twice refused to accept service and ultimately failed to appear at a

confirmation of service proceeding required under Ukrainian law. (See Status Report (Dkt. No. 31); Declaration of Artem Krykun-Trush ISO Status Report ¶ 4 (Dkt. No. 32).) Ultimately Defendants were properly served in compliance with the Court's Order on Service, the Hague Convention, and local Ukrainian law. (Dkt. No. 10; Goldmark Decl. ¶¶ 14-16; Dkt. No. 31 at 2.) After the Court issued the Preliminary Injunction, Plaintiffs and their Ukrainian investigator uncovered further efforts Defendants have undertaken to hide their identities and destroy evidence after the lawsuit was filed. (Goldmark Decl. ¶¶ 5-13.) In light of Defendants' failure to appear and defend against Plaintiffs' claims, Plaintiffs moved for and obtained default against Defendants. They now seek default judgment and a permanent injunction.

ANALYSIS

A. Legal Standard

After entry of default, the Court may enter a default judgment. Fed. R. Civ. P. 55(b). This determination is discretionary. See Alan Neuman Prods., Inc. v. Albright, 862 F.2d 1388, 1392 (9th Cir. 1988). "Factors which may be considered by courts in exercising discretion as to the entry of a default judgment include: (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). In performing this analysis, "the general rule is that well-pled allegations in the complaint regarding liability are deemed true." Fair Hous. of Marin v. Combs, 285 F.3d 899, 906 (9th Cir. 2002) (quotation and citation omitted). And "[t]he district court is not required to make detailed findings of fact." Id.

1 **B. Jurisdiction**

2 Before entering default judgment, the Court must assure itself that it has subject matter
3 jurisdiction.

4 There is little doubt that the Court has subject matter jurisdiction over Plaintiffs' claims.
5 Plaintiffs brings claims under the Copyright Act, 17 U.S.C. § 501, which fall within the Court's
6 original jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).

7 The Court further considers personal jurisdiction. Personal jurisdiction over a nonresident
8 defendant is "tested by a two-part analysis." Chan v. Soc'y Expeditions, Inc., 39 F.3d 1398, 1404
9 (9th Cir. 1994). First, the Court inquires whether the "exercise of jurisdiction . . . satisf[ies] the
10 requirements of the applicable state long-arm statute," and, second, the Court determines
11 whether asserting personal jurisdiction "comport[s] with due process." Id. Where there is no
12 applicable federal statute regarding personal jurisdiction, court looks instead to the law of the
13 forum state. See Daimler AG v. Bauman, 571 U.S. 117, 125 (2014); Fed. R. Civ. P. 4(k)(1)(A).
14 Here, the Court considers Washington law, whose "long-arm statute extends jurisdiction to the
15 limit of federal due process." Chan, 39 F.3d at 1405. This collapses the two-part inquiry into one
16 question—does personal jurisdiction comply with federal due process. See id. Federal due
17 process requires that defendants "'have certain minimum contacts' with the forum state 'such
18 that the maintenance of the suit does not offend traditional notions of fair play and substantial
19 justice.'" Picot v. Weston, 780 F.3d 1206, 1211 (9th Cir. 2015) (quoting Int'l Shoe Co. v.
20 Washington, 326 U.S. 310, 316 (1945)). A nonresident defendant has sufficient minimum
21 contacts when: (1) the defendant "purposefully direct[s] his activities" at the forum; (2) the claim
22 "arises out of or relates to the defendant's forum-related activities"; and (3) the exercise of
23
24

jurisdiction is “reasonable.” CollegeSource, Inc. v. AcademyOne, Inc., 653 F.3d 1066, 1076 (9th Cir. 2011) (citation & internal quotation marks omitted).

The Court finds that all three elements of due process are satisfied. First, Defendants purposefully directed their piracy scheme at Washington and its residents by targeting works they knew or should have known were published by Plaintiff Amazon, which is headquartered in Seattle, Washington. Defendants advertised and distributed the copyrighted works at issue to Washington consumers in violation of the Copyright Act, duping consumers and interfering with the Author Plaintiffs’ licensing relationship with Plaintiff Amazon who suffered a loss of sales in Washington. (See Compl. ¶¶ 29, 50, 52.) This satisfies the purposeful direction prong. See CollegeSource, 653 F.3d at 1077. Second, Plaintiffs’ copyright infringement arise from and relate to Defendants’ forum-related activities, given that Defendants knowingly and intentionally infringed on a Washington-based company’s copyrighted works and compete with the company in Washington. Third, Defendants have not met their burden to show that the exercise of personal jurisdiction is unreasonable. See Bancroft & Masters, Inc. v. Augusta Nat’l Inc., 223 F.3d 1082, 1088 (9th Cir. 2000) (noting that defendants bear the burden on this issue). The Court therefore finds that it has personal jurisdiction over the Defendants.

C. Eitel Factors Favor Default Judgment

The seven Eitel factors weigh in favor of entry of default judgment in Plaintiffs’ favor.

1. Factor One: Prejudice to Plaintiffs

Without entry of default judgment Plaintiffs will be prejudiced. Plaintiffs have attempted to litigate this case and vindicate their rights under the Copyright Act against Defendants. But Defendants have failed to appear or participate in this litigation. Plaintiffs face prejudice by not



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