



1 represent Applicants in connection with anticipated lawsuits in Japan and Vietnam against the  
2 Infringers.

3 **I. BACKGROUND**

4 The Applicants<sup>1</sup> are well-known, Tokyo-based publishers of comics, literature, magazines,  
5 and educational books. Nakajima Decl. ¶ 4. It has recently come to Applicants' attention that the  
6 Infringers have been uploading the works identified in Exhibit A to the Nakajima Declaration  
7 (collectively the "Original Work") onto their Infringing Sites without the Applicants' authorization  
8 and without any other right or privilege -- sometimes soon after publication. *Id.* ¶ 5. The attached  
9 screenshots show the Original Work on the Infringing Sites. *Id.* This activity constitutes copyright  
10 infringement under the laws of both Japan and Vietnam, an opinion informed by affiant Nakajima,  
11 the Applicants' Japanese attorney, and affiant Ngoc, the Applicant's Vietnamese attorney.  
12 Nakajima Decl. ¶ 6; Ngoc Decl. ¶ 5.

13 The problem is that, currently, the Applicants do not know who the Infringers are. This  
14 Application is designed to uncover evidence necessary to establish the Infringers' identity – as well  
15 as their corresponding liability.

16 Previously, Applicant Shueisha attempted to obtain the identifying information about the  
17 Infringers through subpoenas issued under 17 U.S.C. § 512(h) (collectively as the "DMCA  
18 Subpoena") from Cloudflare, Inc. ("Cloudflare"), which provided online and network services to  
19 the Infringers. Nakajima Decl. ¶ 9.

20 A copy of the DMCA subpoena served on Cloudflare and the relevant part of the response  
21 and documents produced (collectively the "Cloudflare Response") are attached to Suzuki Decl. as  
22 Exhibit A and B, respectively. Suzuki Decl. ¶ 2-3. While the production did not contain enough  
23 information definitively identify the Infringers, it did offer clues. Nakajima Decl. ¶ 9.

24 Namely, the Cloudflare Response revealed that GoDaddy and eNom registered the  
25 Infringing Sites, meaning that they have interfaced directly with the Infringers. Nakajima Decl. ¶ 9;  
26 Ngoc Decl. ¶ 4. Since the Infringers had to establish the sites during contact(s) with the Witnesses,  
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<sup>1</sup> <https://www.shueisha.co.jp/en/>; <https://www.shogakukan.co.jp/en/company>;  
<https://group.kadokawa.co.jp/global/company/outline.html>; and <https://www.kodansha.com/>

1 and that process involves the disclosure of identifying data (i.e., names and addresses) as well as the  
2 logging of IP data, the Witnesses have information about who these Infringers are.

3 The Applicants intend to bring a lawsuit in Japan or Vietnam against the Infringers as soon  
4 as their identities have been ascertained through the discovery sought by this application. Nakajima  
5 Decl. ¶ 7; Ngoc Decl. ¶ 5.

## 6 7 **II. ARGUMENT**

### 8 **A. Legal Standard**

9 An applicant seeking discovery for use in a foreign proceeding must demonstrate that (1) the person  
10 from whom the discovery is sought resides or is found in this district, (2) the discovery is for use in  
11 a proceeding before a foreign tribunal, and (3) the application is made by a foreign or internal  
12 tribunal or any interested person. 28 U.S.C. § 1782; *In re Liverpool Ltd. P'ship* (D.Del. Aug. 26,  
13 2021, No. 21-MC-86-CFC) 2021 U.S.Dist.LEXIS 161565, at \*2; *In re Bayer AG*, 146 F.3d 188,  
14 193 (3d Cir. 1998).

15 In exercising its discretion under 28 U.S.C. § 1782, a district court should further consider  
16 the following non-exhaustive factors: "(1) whether the "person from whom discovery is sought is a  
17 participant in the foreign proceeding"; (2) "the nature of the foreign tribunal, the character of the  
18 proceedings underway abroad, and the receptivity of the foreign government or the court or agency  
19 abroad to U.S. federal-court judicial assistance"; (3) whether the discovery request is an "attempt to  
20 circumvent proof-gathering restrictions or other policies of a foreign country or the United States";  
21 and (4) whether the discovery requested is "unduly intrusive or burdensome." *Intel Corp. v.*  
22 *Advanced Micro Devices, Inc.*, 542 U.S. 241, 264- 265 (U.S. 2004).

### 23 **B. Applicants' Application Meets All of the Statutory Requirements under 28 U.S.C. §** 24 **1782.**

#### 25 **1. Witnesses From Whom Discovery Is Sought Are Located in This District.**

26 The Witnesses are both Delaware entities, and are correspondingly located here. *See In re*  
27 *Gilead Pharmasset LLC*, No. 14-mc-243 (GMS), 2015 U.S.Dist.LEXIS 48720, at \*4 (D.Del. Apr.  
28 14, 2015) ("AbbVie is incorporated under the laws of Delaware, and is therefore within the  
jurisdictional reach of this court.").

1           **2. The Requested Discovery Is for Use in a Court Proceeding in Japan or Vietnam.**

2           The discovery requested in this application must be for “use in a proceeding in a foreign or  
3 international tribunal, including criminal investigations conducted before formal accusation.” 28  
4 U.S.C. § 1782(a).

5           That the foreign proceeding are not actually under way does not prevent 28 USC § 1782  
6 from being invoked. It is sufficient that such proceedings are “likely to occur” or are “within  
7 reasonable contemplation.” *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. at 258-259  
8 (quoting *In re Letter Request From Crown Prosecution Service of United Kingdom*, 870 F.2d 686,  
9 691 (DC Cir. 1989)).

10           In this case, the proceedings are likely – if not imminent. Applicants are going to bring a  
11 lawsuit in Japan and/or Vietnam against Infringers as soon as their identities are known, something  
12 that the discovery afforded by this application is likely to establish. Nakajima Decl. ¶ 7, 10; Ngoc  
13 Decl. ¶ 1. Thus, the requirement that the discovery be for use in a foreign proceeding is met.

14           **3. Applicants Are Interested Parties under 28 U.S.C. § 1782, Who May Make This**  
15           **Application.**

16           The application to seek discovery pursuant to 28 U.S.C. § 1782 may be made by “any  
17 interested person.” As plaintiffs in the anticipated litigation in Japan or Vietnam, the Applicants are  
18 clearly interested persons under 28 U.S.C. § 1782.

19           **C. Applicants’ Application Further Meets All of the Discretionary Factors under *Intel*.**

20           **1. Any of Witnesses Is Not Participant in the Foreign Proceeding.**

21           The first *Intel* factor asks whether the “person from whom discovery sought is a participant  
22 in the foreign proceeding.” *Intel*, 542 U.S. at 264. If the person is a participant, “the need for §  
23 1782(a) aid generally is not as apparent as it ordinarily is when evidence is sought from a  
24 nonparticipant in the matter arising abroad” because “[a] foreign tribunal has jurisdiction over those  
25 appearing before it, and can itself order them to produce evidence.” *Id.* “In contrast, nonparticipants  
26 in the foreign proceeding may be outside the foreign tribunal’s jurisdictional reach; hence, their  
27 evidence, available in the United States, may be unobtainable absent § 1782(a) aid.” *Id.*

28           The Witnesses are not likely targets of any prospective lawsuits in Japan or Vietnam.  
Nakajima Decl. at ¶ 15; Ngoc Decl. ¶ 6. Moreover, it is unclear whether there would even be

1 jurisdiction to assert a claim against either Witness in the Japanese or Vietnamese forums. This  
2 latter concern gives rise to another consideration supporting the application: the discovery sought is  
3 located in the United States, and is out of the Japanese and/or Vietnamese court’s likely reach.

4 In short, neither Witness is likely to participate in any foreign proceeding on this matter, nor  
5 is either foreign tribunal likely to be able to secure the discovery without U.S. aid.

6 **2. The Requested Information Is Crucial to Applicants’ Bringing Lawsuit in**  
7 **Japan or Vietnam and the Japanese and Vietnamese Courts Would Be**  
8 **Receptive to this Court’s Assistance.**

9 “A court presented with a § 1782(a) request may take into account the nature of the foreign  
10 tribunal, the character of the proceedings underway abroad, and the receptivity of the foreign  
11 government or the court or agency abroad to U.S. federal-court judicial assistance.” *Intel*, 542 U.S.  
12 at 264.

13 In order to sue the Infringers, they have to be unmasked. It is correspondingly crucial for  
14 Applicants to obtain the information that GoDaddy and eNom, who register the Infringers’ accounts  
15 (*i.e.*, give the Infringers their web address), have about who the Infringers really are. Nakajima  
16 Decl. ¶ 8-11. Ngoc Decl. ¶ 4.

17 Aid in this regard is something the foreign tribunals would be receptive to. In fact, the  
18 Japanese courts have been receptive to the discovery assistance made by the U.S. courts. *Marubeni*  
19 *Am. Corp. v. LBA Y.K.*, 335 Fed. Appx. 95, 97-98, 2009 U.S. App. LEXIS 12953, \*7-8 (2d Cir.  
20 N.Y. 2009); *In re Application of LG Elecs. Deutschland GMBH*, 2012 U.S. Dist. LEXIS 70570, \*5,  
21 2012 WL 1836283 (S.D. Cal. May 21, 2012); *In re Liverpool Ltd. P’ship* (D.Del. Aug. 26, 2021,  
22 No. 21-MC-86-CFC) 2021 U.S. Dist. LEXIS 161565, at \*4.. Vietnamese courts would be also  
23 receptive to this court’s assistance. *In re Request for Judicial Assistance from the People’s Court of*  
24 *Da Nang City, Vietnam in the Matter of Van Thang Huynh, et al.*, Case No. 1:19-cv-02750, N.D. Ill.  
25 May 2, 2019.

26 **3. Applicant’s Discovery Request Is Not an Attempt to Circumvent Foreign Proof**  
27 **Restrictions or Policies.**

1 “A district court could consider whether the § 1782(a) request conceals an attempt to  
2 circumvent foreign proof-gathering restrictions or other policies of a foreign country or the United  
3 States.” *Intel*, 542 U.S. at 265.

4 Applicants are not aware of any restrictions under Japanese or Vietnamese law that would  
5 conflict with the relief sought herein. Nakajima Decl. ¶ 15. Ngoc Decl. ¶ 6. And, as mentioned  
6 previously, courts have granted 28 U.S.C. § 1782 applications for both Japanese and Vietnamese  
7 matters.

8 **4. Applicants’ Request Is Narrowly Tailored to Highly Relevant Information and**  
9 **Not Unduly Intrusive or Burdensome.**

10 “Unduly intrusive or burdensome requests may be rejected or trimmed.” *Intel*, 542 U.S. at  
11 265.

12 The proposed subpoena only seeks disclosure of I.P. logs related to the Infringers’ accounts,  
13 names, telephone numbers and addresses of the person(s) paying on the relevant accounts. It does  
14 not seek disclosure of credit card numbers, bank account numbers, or any other sensitive  
15 information. *In re Medical Corporation H&S*, Case No. 5:19-mc-80058-VKD, N.D. Cal. May 15,  
16 2019 (granted application seeking disclosure of name and address of credit card holder registered on  
17 Google Account). It does not seek the content of any communications associated with the  
18 Infringers’ accounts. *Optiver Australia Pty. Ltd. v. Tibra Trading Pty. Ltd.*, Case No. C 12-80242  
19 EJD (PSG), 2013 WL 256771 (discussing prohibitions of Stored Communications Act, 18 U.S.C. §  
20 2701 et seq).

21 When it comes to log data, it merits noting that the Infringers may have used false names  
22 and addresses when they created their Godaddy and Enom accounts, and the veracity of their stated  
23 contact details needs to be verified. Access log data is primarily composed of I.P. addresses, which  
24 are something of a digital fingerprint that allows the Applicants to locate the Infringers’ internet  
25 access points (and quite possibly to confirm their identities) – allow the Applicants to better identify  
26 the perpetrators.

27 At the same time, these access logs contain no personal information. Any other private  
28 information (*e.g.*, information about what websites the Infringers may have accessed, what action  
they took, etc.) remains undisclosed.

1 In short, the Applicants have taken substantial steps to narrowly focus their demands and  
2 alleviate the corresponding burden of their requests.

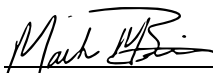
3 **III. CONCLUSION**

4 For the reasons stated above, Applicants respectfully request that this Court grant this  
5 application and permit that it issues the subpoenas to Witnesses attached to the proposed order  
6 submitted with this application.

7  
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Respectfully submitted,

BILLION LAW

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