

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

Case No. **2:21-cv-09317-MCS-SK** Date December 9, 2022

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

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

Stephen Montes Kerr

Not Reported

Deputy Clerk

Court Reporter

Attorney(s) Present for Plaintiff(s):

Attorney(s) Present for Defendant(s):

None Present

None Present

**Proceedings: (IN CHAMBERS) ORDER GRANTING RENEWED MOTION FOR
DEFAULT JUDGMENT INCORPORATING DAMAGES (ECF No. 55)**

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 filed its renewed motion to enter default judgment against the Doe Defendants who run the PrimeWire website. (Mot., ECF No. 55.) Even though Defendants have been served, (Proof of Service, 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

The Court set forth a detailed recitation of the facts in its prior order granting partial default judgment as to liability and a permanent injunction. (Prior Order 1–2, ECF No. 43.) In short, Plaintiffs are television and movie production and distribution companies who own the copyrights to many works. (Compl. ¶¶ 9–21, ECF No. 1.) They bring claims of copyright infringement against the unidentified owners and

operators of Primewire, an online streaming website providing access to pirated movies and films, including Plaintiffs’. (*Id.* ¶ 1.)

The Court granted a partial default judgment and gave Plaintiffs “leave to seek third-party discovery on damages for their copyright infringement claims.” (Prior Order 11.) After having conducted such discovery, Plaintiffs now file their renewed motion for default judgment as to damages and attorneys’ fees. (Mot. 2–3.)

II. LEGAL STANDARD

A. Default Judgment

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.

B. Statutory Damages

Under the Copyright Act, a plaintiff may elect to recover actual or statutory damages. 17 U.S.C. § 504(c)(1). A copyright owner may seek “an award of statutory

damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally.” *Id.* “The number of awards available under this provision depends not on the number of separate infringements, but rather on (1) the number of individual works infringed and (2) the number of separate infringers.” *Desire, LLC v. Manna Textiles, Inc.*, 986 F.3d 1253, 1264 (9th Cir. 2021) (internal quotation marks omitted). Statutory damages are recoverable “whether or not there is adequate evidence of the actual damages suffered by the plaintiff or of the profits reaped by defendant.” *Harris v. Emus Records Corp.*, 734 F.2d 1329, 1335 (9th Cir. 1984).

The maximum award is “\$150,000 for willful infringement and \$30,000 for innocent infringement.” *Desire, LLC*, 986 F.3d at 1264 (citing 17 U.S.C. § 504(c)(1)–(2)). The Ninth Circuit has defined “willfully” to mean “with knowledge that the defendant’s conduct constitutes copyright infringement.” *Peer Int’l Corp. v. Pausa Records, Inc.*, 909 F.2d 1332, 1335 n.3 (9th Cir. 1990) (internal quotation marks omitted). Courts enjoy “wide discretion in determining the amount of statutory damages to be awarded, constrained only by the specified maxima and minima.” *Harris*, 734 F.2d at 1335. In applying its discretion, a district court is guided by “what is just in the particular case, considering the nature of the copyright, the circumstances of the infringement and the like.” *Peer Int’l Corp.*, 909 F.2d at 1336 (internal quotation marks omitted).

III. DISCUSSION

A. Partial Default Judgment

Plaintiffs seek default judgment as to damages and attorneys’ fees. Specifically, Plaintiffs request the maximum statutory damages of \$150,000 for the willful infringement of each of the 138 representative works plus post-judgment interest. (Mot. 2–3.) Additionally, Plaintiffs request \$417,600 in attorneys’ fees. (*Id.* at 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 incorporates by reference its prior order, where the Court held that it has subject-matter jurisdiction and personal jurisdiction, and that Plaintiffs properly served Defendants. (Prior Order 3–4.) The Court likewise concludes that it can properly consider the entry of default judgment against Defendants.

C. Procedural Requirements

The motion meets the procedural requirements of Local Rules 55-1 and 55-2. The Clerk entered default against Defendants on February 1, 2022. (Entry of Default, ECF No. 34.) Defendants are not infants or incompetent, and the Servicemembers Civil Relief Act does not apply. Defendants have been served with notice, including of the damages requested. (Klaus Decl. ¶¶ 3–6, 9–10, ECF No. 55-16; Dec. 6, 2022 Aminirad Decl. Ex. B, ECF No. 55-19; Dec. 6, 2022 Aminirad Decl. Ex. C, ECF No. 55-20.)

D. Eitel Factors

In its prior order, the Court found that the *Eitel* factors weighed in favor of granting default judgment, but it noted that Plaintiff sought “only an injunction preventing Defendants from displaying and reproducing Plaintiffs’ works.” (Prior Order 7.) The Court’s *Eitel* analysis remains unchanged except for the fourth factor: the sum of money at stake.

When considering the fourth *Eitel* factor, courts balance “the amount of money at stake in relation to the seriousness of Defendant’s conduct.” *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1176 (C.D. Cal. 2002). Here, Plaintiffs seek the maximum statutory damages for each instance of willful copyright infringement, which is \$150,000 per work, plus post-judgment interest. (Mot. 2–3); 17 U.S.C. § 504(c)(2). With 138 works allegedly infringed, (Compl. Ex. A, ECF No. 1-1), the total damages at stake are \$20,700,000. While the requested damages are substantial, they are “within the boundaries set by the Copyright Act” and thus “would not bar the entry of default judgment.” *Gem v. Groupon, Inc.*, No. LA CV20-01431 JAK (SKx), 2021 WL 4691151, at *7 (C.D. Cal. Aug. 25, 2021). As discussed in greater detail below, Plaintiff is entitled to maximum statutory damages and post-judgment

interest. Accordingly, the fourth *Eitel* factor favors granting default judgment. Balanced with the other factors, (*see* Prior Order 5–8), the Court concludes that default judgment is appropriate.

E. Remedies

1. Statutory Damages

a. Defendants' Conduct is Willful

Assuming the facts in their complaint as true, *Warner Bros. Ent. Inc. v. Caridi*, 346 F. Supp. 2d 1068, 1074 (C.D. Cal. 2004) (“Because of the entry of default, the allegations in Warner Bros.’s Complaint must be taken as true.”), Plaintiffs have established willfulness. Pointing to the great lengths Defendants took to remain anonymous, Plaintiffs allege that the anonymous defendants knew that their conduct is unlawful. (Compl. ¶¶ 6, 58–59.) The Court finds that Defendants committed willful infringement, meriting an award of enhanced damages. “The only question is how much the Court should award.” *Warner Bros.*, 346 F. Supp. 2d at 1074.

b. Plaintiffs Are Entitled to Maximum Statutory Damages per Work

Defendants’ conduct is particularly egregious. Despite Plaintiffs’ repeated attempts to hale Defendants into court, Defendants have either ignored Plaintiffs’ emails or anonymously denied any wrongdoing. (Mar. 22, 2022 Aminirad Decl. ¶¶ 2–6, ECF No. 42-1; Mar. 22, 2022 Aminirad Decl. Ex. B, ECF No. 42-3; Aug. 8, 2022 Aminirad Decl. ¶¶ 2–5, ECF No. 47-2; Aug. 8, 2022 Aminirad Decl. Ex. C, ECF No. 47-5.) Further, Defendants have evaded the Court’s injunctions by transferring operations to different domain names, (Notice of Changes 2–4, ECF No. 39; *id.* Ex. B, ECF No. 39-4; July 19, 2022 van Voorn Decl. ¶¶ 2–4, 7–9, ECF No. 44-1; July 19, 2022 van Voorn Decl. Ex. A, ECF No. 44-2; July 19, 2022 van Voorn Decl. Ex. B, ECF No. 44-3), citing “recent legal action” on their now-defunct webpage, (Notice of Changes Ex. A, ECF No. 39-3). Additionally, the substantial web traffic Defendants gained from illegally streaming Plaintiffs’ copyrighted works has likely created a heavy windfall in advertising revenue at Plaintiffs’ expense. (Dec. 6, 2022 van Voorn Decl. ¶¶ 19–27, ECF No. 55-1.) Defendants’ conduct leaves little doubt that maximum statutory damages are warranted.

Additionally, factors independent of Defendants' culpability—the value of the copyrights, Plaintiffs' lost revenue, and the deterrent effect on others—militate an award of maximum statutory damages. *See Fitzgerald Publ'g Co., Inc. v. Baylor Publ'g Co., Inc.*, 807 F.2d 1110, 1117 (2d Cir. 1986) (collecting cases). First, the copyrights at issue in this case are highly valuable. The 138 copyrighted works include television series and films that cost tens of millions of dollars to produce and command millions of dollars—some individually—for streaming rights. (*See* Mot. 17–18 (citing, inter alia, Miller Decl. ¶ 6, ECF No. 17).) Defendants' unauthorized and uncompensated use of the copyrighted works causes significant revenue loss because illegitimate streaming sources, like Defendants', divert potentially millions of dollars of paid viewership away from licensed sources contributing to Plaintiffs' revenue streams. (*See* Dec. 6, 2022 van Voorn Decl. ¶ 17; Mot. 16–19.) The high value of Plaintiffs' copyrights also supports a finding that Defendants' infringement causes significant revenue losses. And finally, maximum statutory damages would serve the purpose of deterring Defendants and others from infringing Plaintiffs' valuable works.

Based on Defendants' conduct and the *Fitzgerald* factors, the Court awards \$150,000 per work, the maximum statutory damages available for Defendants' willful infringement. For 138 works, pre-interest damages total \$20,700,000.

2. Post-Judgment Interest

“Under 28 U.S.C. § 1961, the award of post-judgment interest on a district court judgment is mandatory.” *Barnard v. Theobald*, 721 F.3d 1069, 1078 (9th Cir. 2013). The Court will award post-judgment interest at the rate specified in § 1961(a).

3. Attorneys' Fees

Attorneys' fees are recoverable under the Copyright Act. 17 U.S.C. § 505. Before awarding attorneys' fees under the Copyright Act, courts consider the following factors: “the degree of success obtained; frivolousness; motivation; objective unreasonableness . . . and the need in particular circumstances to advance considerations of compensation and deterrence.” *Magnuson v. Video Yesteryear*, 85 F.3d 1424, 1432 (9th Cir. 1996) (ellipsis in original) (internal quotation marks omitted). Plaintiffs' “success is complete and unquestioned: a default judgment . . . and an award of statutory damages.” *Jackson v. Sturkie*, 255 F. Supp. 2d 1096, 1104 (N.D. Cal. 2003). Plaintiffs' claims were neither frivolous nor unreasonable nor improperly motivated. Additionally, Defendants' conduct has been

patently unreasonable. And as noted in the Court's damages analysis, a substantial monetary award serves the purposes of deterrence and compensation. Weighing these factors together, Plaintiffs' counsel are entitled to attorneys' fees.

Where, as here, the judgment for damages exceeds \$100,000, attorneys' fees are calculated as \$5,600 plus 2% of the amount over \$100,000. C.D. Cal. R. 55-3. For a statutory damages award of \$20,700,000, Local Rule 55-3 allows up to \$417,600 in attorneys' fees, the amount Plaintiffs request. (Mot. 22–23.) The Court finds that the requested sum is reasonable and appropriate.

IV. CONCLUSION

The Court grants the motion as to damages and attorneys' fees against Defendants for Plaintiffs' claims of copyright infringement. The Court will enter a final judgment consistent with Plaintiffs' proposed judgment.

IT IS SO ORDERED.