

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

Case  
No.

**2:21-cv-05456-VAP-ASx**

Date August 16, 2021

Title

***Warner Bros. Entertainment Inc., et al. v. Jason Tusa et al.***

Present: The Honorable

**VIRGINIA A. PHILLIPS, UNITED STATES DISTRICT JUDGE**

CHRISTINE CHUNG

Deputy Clerk

Not Reported

Court Reporter

Attorney(s) Present for Plaintiff(s):

None Present

Attorney(s) Present for Defendant(s):

None Present

**Proceedings: MINUTE ORDER GRANTING PLAINTIFFS’ MOTION FOR PRELIMINARY  
INJUNCTION [DKT. 13] (IN CHAMBERS)**

Before the Court is Plaintiffs Amazon Content Services, LLC, Columbia Pictures Industries, Inc., Disney Enterprises, Inc., Netflix Studios, LLC, Open 4 Business Productions, LLC, Paramount Pictures Corporation, Screen Gems, Inc., Sony Pictures Animation, Inc., Universal City Studios, LLC, Universal City Studios Productions, LLLP, Universal Content Productions, LLC, Universal Television, LLC, and Warner Bros. Entertainment, Inc.’s (“Plaintiffs”) Motion for Preliminary Injunction. (Dkt. 13, “Motion”). Defendant Jason Tusa (“Tusa” or “Defendant”) has not opposed the Motion. (Dkt. 23).

After considering all the papers filed in support of the Motion, the Court GRANTS the Motion.

**I. Background**

Plaintiffs and their affiliates produce and distribute “a significant portion of the world’s most sought-after” movies and television programs. (Dkt. 1). Plaintiffs bring this action to enjoin Defendant’s operation of a digital streaming service, Altered.Carbon TV (“Altered Carbon”), that Plaintiffs claim infringes upon

their Copyrighted Works<sup>1</sup>. (Dkt. 13). Specifically, Plaintiffs allege that Altered Carbon provides user's unauthorized access to their Copyrighted works. (*Id.*)

According to Plaintiffs, Altered Carbon is not Tusa's first "offering that infringes Plaintiffs' rights." (Dkt. 13, at 4) ("Within the last year, Tusa has operated at least three other unauthorized streaming services—Area 51, Singularity Media, and Digital UniCorn Media."). Plaintiffs confronted Tusa about his first infringing service in June 2020 by serving him with a cease-and-desist letter. (Dkt. 15, ¶ 32 "Van Voorn Declaration"). As a result, Tusa shut Area 51 down and negotiated a settlement agreement with Plaintiffs. (*Id.*) Nevertheless, the following month, Tusa launched another allegedly infringing program, Singularity Media. (*Id.*, ¶ 33). Plaintiffs, again, confronted Tusa who thereafter shut Singularity Media down on or around July 11, 2020. (*Id.*, ¶ 35). On October 12, 2020, Plaintiffs and Tusa entered into a Settlement Agreement where Tusa agreed to halt and not resume his infringing services. (*Id.*, ¶ 36).

On October 20, 2020, approximately a week after the Settlement Agreement was executed, Plaintiffs discovered that Tusa launched a third infringing service, Digital UniCorn Media. (*Id.*, ¶ 37). Plaintiffs sent Tusa another letter on November 18, 2020 regarding his infringing activities and breach of the parties' Settlement Agreement. (*Id.*, ¶ 39). Tusa denied any involvement with Digital UniCorn Media. (*Id.*, ¶¶ 39-40).

On February 26, 2021, Plaintiffs' investigative team identified Tusa's latest infringing service, Altered Carbon. (*Id.*, ¶ 41-48). Plaintiffs' investigation revealed that Tusa had taken several steps to conceal his role in Altered Carbon, including using only privacy-protected web domains, accepting cryptocurrency, and warning customers it would be "too risky" to post channel listings online. (*Id.*, ¶ 42). According to Plaintiffs, "Tusa is a recidivist mass infringer [who] has made clear that he will not stop his unlawful conduct unless and until the Court issues an injunction ordering him to do so." (Dkt. 1, at 3).

## **II. Procedural Background**

On June 23, 2021, Plaintiffs filed this lawsuit against Defendant alleging claims for: (1) Direct Copyright Infringement; (2) Contributory Copyright Infringement by Knowingly and Materially Contributing to the Infringement of the Copyrighted Works; (3) Intentionally Inducing the Infringement of the Copyrighted Works; and (4) Breach of Contract. (Dkt. 1).

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<sup>1</sup> The Copyrighted Works include, but are not limited to, movies and television programs such as "The Accountant," "Friends," and "The Hangover Part II."

On June 24, 2021, Plaintiffs filed the instant Motion asking the Court to enjoin Defendant's operation of Altered Carbon. (Dkt. 13). Tusa failed to oppose the Motion<sup>2</sup>.

### III. Legal Standard

"A preliminary injunction is an extraordinary and drastic remedy ...; it is never awarded as of right." *Munaf v. Green*, 553 U.S. 674, 689-90 (2007) (citations omitted). "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of the equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). In this Circuit, a plaintiff may obtain a preliminary injunction upon a lesser showing of the merits if the balance of hardships tips "sharply" in his favor, and he has satisfied the other two *Winter* requirements. See *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

### IV. Discussion

As discussed below, Plaintiffs satisfy the requirements set forth in *Winter* for injunctive relief.

#### 1. Likelihood of Success on the Merits

The Court finds that Plaintiffs have shown a likelihood of success on the merits. "Likelihood of success on the merits is 'the most important factor' in determining whether interim, injunctive relief is warranted." *Environmental Protection Information Ctr. v. Carlson*, 968 F.3d 985, 989 (9th Cir. 2020). "Because it is a threshold inquiry, when a plaintiff has failed to show the likelihood of success on the merits, we need not consider the remaining three *Winter* elements." *Al-Nasser v. Serdy*, No. 2:20CV03582 ODW (Ex), 2020 WL 3129206, at \*2 (C.D. Cal. June 12, 2020) (citing *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015)).

Plaintiffs allege four claims against Defendant, arguing that his streaming services infringe upon their Copyrighted Works and that Tusa is in breach of the parties' Settlement Agreement. (Dkt. 1). Plaintiffs have satisfied their burden of showing they are likely to succeed on each claim.

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<sup>2</sup> After the deadline to respond to the Motion for Preliminary Injunction passed, Tusa nevertheless signed a joint stipulation to extend the time to answer the Complaint. (Dkt. 25).

To establish a claim for direct copyright infringement, a plaintiff must demonstrate: (1) it owns a valid copyright in a work, and (2) defendant's violation of plaintiff's exclusive rights under the Copyright Act. 17 U.S.C. §§ 106, 501; see also *Funky Films, Inc. v. Time Warner Entertainment Co., L.P.*, 462 F.3d 1072, 1076 (9th Cir. 2006). "In addition, direct infringement requires the plaintiff to show causation (also referred to as 'volitional conduct') by the defendant." *Perfect 10, Inc. v. Giganews, Inc.*, 847 F.3d 657, 666 (9th Cir. 2017).

Plaintiffs have provided certificates of registration from the United States Copyright Office, which presumptively establish the validity of the Copyrights in question. (See Dkt. 13, at 11; Dkt. 16 "Ehler Declaration"); *Ent. Research Group, Inc. v. Genesis Creative Group, Inc.*, 122 F.3d 1211, 1217 (9th Cir. 1997) (a certificate of registration bearing the plaintiff's name "creates a presumption of ownership of a valid copyright."). Without contest, the Court accepts these certificates as proof of ownership.

As copyright holders, Plaintiffs have the exclusive rights to reproduce, prepare, distribute, publicly perform, and import their exclusive rights. 17 U.S.C. §§ 106. Plaintiffs allege Tusa infringes their exclusive right to perform the Copyrighted Works publicly. (Dkt. 13, at 12); 17 U.S.C. §§ 106(4). By streaming the Copyrighted Works on Altered Carbon without authorization, Defendant likely violates this exclusive right. Accordingly, Plaintiffs are likely to be successful on their copyright claims<sup>3</sup>. "Because Plaintiffs have successfully established a likelihood of success on their direct infringement claims, the Court does not reach Plaintiffs' secondary infringement claims." See *Columbia Pictures Indus., Inc. v. Galindo*, No. 220CV03129 SVW (GJSx), 2020 WL 3124347, at \*2 (C.D. Cal. May 11, 2020). Plaintiffs have thus shown a likelihood of success on the merits.

## **2. Irreparable Harm**

Plaintiffs have also shown a need for emergency injunctive relief to prevent immediate and irreparable harm. *Al-Nasser v. Serdy*, 2020 WL 3129206, at \*2. "An essential prerequisite to the granting of a preliminary injunction is a showing of irreparable injury to the moving party in its absence." *Dollar Rent A Car of Washington, Inc. v. Travelers Indem. Co.*, 774 F.2d 1371, 1375 (9th Cir. 1985).

In addition to interfering with Plaintiffs' control over the transmission of their Copyrighted Works, Defendant's unauthorized streaming services creates

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<sup>3</sup> Plaintiffs are also likely to succeed on their Breach of Contract claim given that Tusa will have breached of the parties' Settlement Agreement if he has infringed Plaintiffs' Copyrighted Works.

financial losses to Plaintiffs and undermines the value of Plaintiffs' legitimate licenses. See e.g., *Warner Bros. Entm't Inc. v. WTV Sys., Inc.*, 824 F. Supp. 2d 1003, 1012 (C.D. Cal. Aug. 1, 2011). As Plaintiffs point out, Defendant's activities also expand the market for infringing services, which causes further harm to Plaintiffs. This could lead to unquantifiable customer confusion and an overall diminution of value of the Copyrighted Works. Plaintiffs thus have demonstrated a likelihood of irreparable injury.

### **3. The Balance of Equities**

Before issuing a preliminary injunction, "courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Disney Enterprises, Inc. v. VidAngel, Inc.*, 869 F.3d 848, 866 (9th Cir. 2017) (citing *Winter*, 555 U.S. at 24 (citation omitted)).

In this case, Plaintiffs have demonstrated that the balance of hardships tips sharply in their favor. As noted above, Plaintiffs have shown substantial harm may flow from the continued infringement of their Copyrighted Works. Defendant has failed to demonstrate he will be harmed by an injunction of Altered Carbon. Defendant does not contest that he is infringing Plaintiffs' copyrights, and "harm caused by illegal conduct does not merit significant equitable protection." *VidAngel*, 869 F.3d at 867.

The Court therefore finds the Defendant will suffer no injury by this injunction. The balance of the equities tips strongly in Plaintiffs' favor.

### **4. Public Interest**

"Finally, the court must 'pay particular regard for the public consequences in employing the extraordinary remedy of injunction.'" *VidAngel, Inc.*, 869 F.3d at 867 (citing *Winter*, 555 U.S. at 24).

The Court concludes that the public interest is served by the issuance of a preliminary injunction, as "it is virtually axiomatic that the public interest can only be served by upholding copyright protections and correspondingly, preventing the misappropriation of skills, creative energies, and resources which are invested in the protected work." See *Warner Bros. Ent. Inc.*, 824 F. Supp. 2d at 1015 (citing *Apple Computer, Inc. v. Franklin Computer Corp.*, 714 F.2d 1240, 1255 (3rd Cir. 1983)). Defendant has offered no lawful interest for the Court to consider. Thus, the public interest is best served by an injunction of Altered Carbon.

## 5. Bond

Under Federal Rule of Civil Procedure 65(c), a district court may grant a preliminary injunction “only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” District courts retain discretion “as to the amount of security required, if any.” *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (internal quotation marks and citations omitted) (emphasis in the original). Rule 65(c) requires “the party affected by the injunction” to “present[] evidence that a bond is needed, so that the district court is afforded an opportunity to exercise its discretion in setting the amount of the bond.” *Connecticut Gen. Life Ins. Co. v. New Images of Beverly Hills*, 321 F.3d 878, 883 (9th Cir. 2003).

Here, the Court finds there is not sufficient evidence that Defendant will incur any injury because of the injunction. The Court therefore does not require Plaintiffs to post a bond. See *Zeetogroup, LLC v. Fiorentino*, No. 19-CV-458 JLS (NLS), 2019 WL 2090007, at \*7 (S.D. Cal. May 13, 2019) (citing *Diaz v. Brewer*, 656 F.3d 1008, 1015 (9th Cir. 2011) (finding no clear error where district court properly invoked discretion not to have plaintiffs post bond)); see also *Youth Just. Coal. v. City of Los Angeles*, No. CV1607932 VAP (RAOx), 2018 WL 11302063, at \*8 (C.D. Cal. Mar. 15, 2018).

## V. Conclusion

For the foregoing reasons, the Court finds that Plaintiffs have satisfied their heavy burden of establishing they are entitled to the extraordinary remedy of a preliminary injunction. The Court therefore GRANTS Plaintiffs’ Motion.

Accordingly, Defendant—and all individuals acting in concert or participation or in privity with Defendant in connection with his infringing activities—ARE HEREBY PRELIMINARILY RESTRAINED AND ENJOINED from, directly or secondarily, infringing any of Plaintiffs’ Copyrighted Works through any means including publicly performing, reproducing, or otherwise infringing in any manner (including without limitation by materially contributing to or intentionally inducing the infringement of) any right under 17 U.S.C § 106 in any of Plaintiffs’ Copyrighted Works.

IT IS FURTHER ORDERED that Internet Domain Service BS Corp., Hostinger International, Ltd., and Hosting Concepts B.V. d/b/a Openprovider Registrar, the respective domain name registrars for the alteredcarbon.online, 2pmtforever.com, catchingbutterflies.host, stealingkisses.me, dum.world, and twoavocados.us (together “Infringing Domains”), as well as all others who receive

notice of the Court's Preliminary Injunction, are enjoined from allowing the Infringing Domains to be modified, sold, transferred to another owner, or deleted. All such individuals or entities are further ordered to disable public access to the Infringing Domains. To accomplish this, these entities shall do the following:

1. Maintain unchanged the WHOIS or similar contact and identifying information as of the time of receipt of this Order and maintain the Infringing Domain Names with the current registrar;
2. Prevent transfer of the Infringing Domains and any further modification of any aspect of the domain registration records of the Infringing Domains by Defendant or third parties at the registrar or by other means;
3. Except as requested by the Plaintiffs, disable and prevent public access to and the ability for individuals to access or utilize aspects of the Infringing Domains; and
4. Preserve all evidence that may be used to identify the persons using the Infringing Domains.

**IT IS SO ORDERED.**