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14 **UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

15 UNITED STATES OF AMERICA,  
 16 Plaintiff,  
 v.  
 17 KRISTOPHER LEE DALLMANN,  
 18 DOUGLAS M. COURSON,  
 19 FELIPE GARCIA,  
 20 JARED EDWARD JAUREQUI,  
 a/k/a Jared Edwards,  
 and  
 21 PETER H. HUBER,  
 22 Defendants.

Case No. 2:22-cr-30-RFB-DJA

**UNITED STATES' OMNIBUS  
 REPSONSE TO DEFENDANTS'  
 MOTIONS FOR ACQUITTAL UNDER  
 FED R. CRIM. P. 29(C) [ECF NOS. 457,  
 458, 468, 459, 460, AND 461]<sup>1</sup>**

23 \_\_\_\_\_  
 24 <sup>1</sup> CERTIFICATION: This response is timely filed in accordance with ECF No. 502.

1 After two days of deliberations and a lengthy jury trial, defendants Dallmann,  
2 Jaurequi, Courson, Huber and Garcia request—for the third time—that the Court acquit  
3 each of them under Rule 29. The Court—as it did the previous two times that the same  
4 arguments were presented—should deny the Motions and let the jury’s sound verdict stand.  
5 As outlined below, the verdict was based on overwhelming evidence that the defendants  
6 engaged in a long-running and extensive conspiracy to commit copyright infringement.

7 **PROCEDURAL HISTORY**

8 Following a three-week jury trial, defendants Dallmann, Jaurequi, Courson, Huber  
9 and Garcia were each found guilty of one count of conspiracy to commit criminal copyright  
10 infringement (Count 1 of the Indictment). The jury also found defendant Dallmann guilty of  
11 two misdemeanor counts of criminal copyright infringement through distribution (Counts 2  
12 and 3) one misdemeanor count of criminal copyright infringement through public  
13 performance (Count 4)<sup>2</sup>, and two counts of money laundering by concealment (Counts 13  
14 and 14)<sup>3</sup>. *See* ECF 485 – Verdict Form.

15 At the close of the government’s case, each defendant moved in writing for  
16 judgement of acquittal pursuant to Federal Rule of Criminal Procedure 29(a)<sup>4</sup>. The Court  
17 reserved ruling on Motions under Rule 29(a) and addressed all arguments for Rule 29(a) and  
18 Rule 29(b) after the conclusion of the defendant’s cases. Following argument, the Court  
19 denied the motions of Dallmann, Jaurequi, Courson and Huber, and reserved ruling on  
20

21 <sup>2</sup> The Jury acquitted Dallmann of Count 5, which alleged a separate instance of  
misdemeanor public performance copyright infringement.

22 <sup>3</sup> At the close of evidence in the case, the government moved to dismiss Count 15, alleging  
23 money laundering by promotion and concealment against Dallmann. At the same time,  
upon the motion of Dallmann, the Court dismissed Count 12, alleging money laundering by  
promotion and concealment against Dallmann.

24 <sup>4</sup> The initial motions pursuant to FRCP 29(a) may be found at ECF 457 (Jaurequi), ECF  
458 and 468 (Dallmann), ECF 459 (Garcia), ECF 460 (Courson), and ECF 461 (Huber).

1 defendant Garcia's motion. [Denied Dallmann's Request: ECF No. 471, Page 65 of 135,  
2 Lines 13 -19 (Transcript, Day 13, PM Session) [Denied Jaurequi's ECF No. 471, Page 75 of  
3 135, Lines 17 -21 (Transcript, Day 13, PM Session [Denied Courson's request: ECF No.  
4 471, Page 69 of 135, Lines 2-3 (Transcript, Day 13, PM Session) [Denied Huber's Request:  
5 ECF No. 471, Page 85 of 135, Lines 11-13 (Transcript, Day 13, PM Session [Reserved  
6 Ruling on Garcia's Motion] ECF No. 471, Page 85 of 135, Lines 15 -16 (Transcript, Day 13,  
7 PM Session); *See also* ECF No. 475 at Page 103 of 107, Lines 20-23 (Transcript, Day 14, PM  
8 Session). After hearing additional argument), the Court denied the renewed Rule 29  
9 motions of Dallmann, Jaurequi, Courson and Huber and denied Garcia's initial motion.  
10 ECF No. 476 at Page 5 of 131, Lines 11 -19 (Transcript, Day 15).<sup>5</sup>

11 The defendants each filed renewed motions for judgement of acquittal pursuant to  
12 Federal Rule of Criminal Procedure 29(c) after the guilty verdicts<sup>6</sup>. The post-trial motions  
13 raise the same issues that the Court considered and denied in the initial motions during trial.

14 There was sufficient evidence for the jury to find—as it did—that each of the  
15 defendants was a member of a conspiracy to commit copyright infringement. Additionally,  
16 the evidence against Mr. Dallmann was sufficient to support guilty verdicts for substantive  
17 violations of copyright law and money laundering. There was no constructive amendment  
18 or variance in the evidence that prejudiced Mr. Dallmann. Therefore—consistent with the  
19 Court's prior rulings—the verdict of the jury should be respected, and the defendants'  
20 motions denied.

21 \_\_\_\_\_  
22 <sup>5</sup> Dallmann also filed a Supplemental motion under Rule 29(a) (ECF 468) raising claims  
23 about best evidence of copyrighted works (these claims were again raised in Dallman's Rule  
24 29(c) motion and are discussed below). Although the Court denied the original motion, the  
Minutes (ECF 472) do not specifically mention the denial of the Supplemental motion.

<sup>6</sup> The post-trial motions pursuant to FRCP 29(c) may be found at ECF 486 (Dallmann),  
ECF 487 (Huber), ECF 489 (Garcia), ECF 491 (Courson) and ECF 497 (Jaurequi).

**FACTUAL BACKGROUND**

1  
2 The government’s evidence showed that the Jetflicks conspirators worked together to  
3 operate a large-scale, profitable enterprise that sold subscription access to unauthorized  
4 copies of television shows. Jetflicks obtained the content online, formatted shows for  
5 viewing through the website Jetflicks.mobi, and then placed the content on servers for  
6 streaming and download by its customers.

7 The process of obtaining content was described in detail by government witness  
8 Supervisory Special Agent (SSA) Michael Poston, who was qualified as an expert in online  
9 intellectual property investigations<sup>7</sup> ECF No. 433, Pages 42, Lines 6-8 (Transcript, Day 9,  
10 AM Session). SSA Poston reviewed forensic images of computers seized pursuant to a  
11 search warrant served on November 16, 2017. By reviewing applications and file structures  
12 on those Jetflicks-controlled devices, Poston was able to explain that conspirators had  
13 configured computer programs, including “Sickbeard” and “Sickrage”, to search the  
14 internet for television shows. ECF No. 433, Page 49, Lines 23-25, Page 50, Lines 1  
15 (Transcript, Day 9, AM Session). After the programs located copies from torrent sites and  
16 NZB sites, the programs, as configured by the ‘Jetflicks’ user, downloaded copies of those  
17 shows. ECF No. 433, Page 58, Lines 11-15 (Transcript, Day 9, AM Session). Poston further  
18 explained how the Jetflicks processes located metadata about individual episodes, including  
19 titles, cast, artwork and other identifying information, and combined it with the episode file.  
20 ECF No. 433, Page 50, Lines 7-24, (Transcript, Day 9, AM Session). As part of this process,  
21 thousands of video files and metadata were copied to Jetflicks servers and then made

22 \_\_\_\_\_  
23 <sup>7</sup> Poston was offered as an expert in the field of investigating online infringement cases and  
24 the use and operation of torrent, NZB sites, and automated computer processes. After a  
colloquy with the Court, the Court certified him as an expert in online intellectual property  
investigations. *See* ECF No. 433, Pages 33-42 (Transcript, Day 9, AM Session).

1 available for viewing in different formats—such as high definition or standard definition  
2 ECF No. 433, Page 79, Lines 22-24 (Transcript, Day 9, AM Session); ECF No. 433, Page  
3 82, Lines 17-19 (Transcript, Day 9, AM Session); ECF No. 433, Page 89, Lines 17-21  
4 (Transcript, Day 9, AM Session).

5 The evidence showed that Jetflicks generated millions of dollars in subscription  
6 income during its operation from 2007-2017, and that the site boasted the availability of  
7 more than 180,000 individual television episodes and more than 37,000 subscribers paying  
8 between \$9.99 and \$16.97 on a monthly basis to access the Jetflicks collection of infringing  
9 television shows.<sup>8</sup>

10 The evidence further showed that the conspiracy successfully reproduced  
11 copyrighted television show episodes in numbers that dwarf the statutory requirements for  
12 proof of criminal copyright infringement in both numbers and value. The success in  
13 achieving the criminal goals of the conspiracy were presented in multiple ways, each of  
14 which would allow a rational trier of fact to find beyond a reasonable doubt that the  
15 conspiracy existed. While not an exhaustive list, the government's proof included:

- 16 • The testimony of FBI SSA Clay Chase, who detailed his review of the Jetflicks  
17 website, including purchasing a subscription, streaming and downloading multiple  
18 television episodes, and extensively documenting the range of content that was  
19 available to Jetflicks subscribers.
- 20 • The interactions of the defendants that illuminated the day-to-day operations of the  
21 business.

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22  
23 <sup>8</sup> See Government Exhibit 501 (screenshot of [www.jetflicks.mobi](http://www.jetflicks.mobi)); see also Government  
24 Exhibit 21 (email explaining Jetflicks Subscription levels); see also Government Exhibit 163  
(discussing profits).

- 1 • Evidence of the successful, ongoing subscription model generating millions of dollars  
2 in PayPal payments for a decade.
- 3 • The claims on the Jetflix website that subscribers could access more than 187,000  
4 television episodes, each available in 3 formats.
- 5 • The extensive documentary and digital evidence showing the process of building and  
6 maintaining the Jetflix library, including printouts of episodes being retrieved,  
7 complete copies of episodes in digital storage at the time the warrant was served,  
8 coupled with the detailed explanation by SSA Michael Poston about the function of  
9 the system to acquire content from piracy sites.
- 10 • The testimony of the rights holders who identified and compared samples of  
11 copyrighted episodes and confirmed that the copies possessed and shared by Jetflix  
12 were not authorized.
- 13 • Cease and Desist Notices from copyright owners identifying the infringing nature of  
14 the Jetflix business model.
- 15 • The testimony of Jan van Voorn explaining the landscape of online infringement, the  
16 MPA/ACE investigation into Jetflix, and the valuation of digital copies of  
17 television shows during the course of the conspiracy.

18 The defendants were able to cross-examine, present evidence and argue to support  
19 defense theories, and the jury was correctly instructed on the law. The jury's verdict was  
20 supported by the evidence and the product of rational factfinding.  
21  
22  
23  
24

**ARGUMENT**

**I. LEGAL STANDARD FOR RULE 29 MOTIONS**

Review of the sufficiency of the evidence is done with deference to the evidence presented by the prosecution and the inferences that a jury could draw from that evidence. “The standard of review for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *United States v. Inzunza*, 638 F.3d 1006, 1013 (9th Cir. 2009) (citing *Jackson v. Virginia*, 443 U.S. 307, 318 (1979) (explaining that “the critical inquiry” is “whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt”)). “The district court must bear in mind that it is the exclusive function of the jury to determine the credibility of witnesses, resolve evidentiary conflicts, and draw reasonable inferences from proven facts.” *United States v. Alarcon-Simi*, 300 F.3d 1172, 1176 (9th Cir. 2002).

The jury may consider circumstantial evidence and the reasonable inferences that may be drawn from that evidence to make a determination of guilt. *See United States v. Reyes-Alvarado*, 963 F.2d 1184, 1188 (9th Cir. 1992). Under the beyond a reasonable doubt standard in criminal cases, the evidence and inferences drawn from the evidence must be sufficiently compelling that a hypothetical reasonable factfinder could have reached “a subjective state of near certitude of the guilt of the accused.” *Jackson*, 443 U.S. at 315.

In determining whether evidence is sufficient to support a conviction, the jury and reviewing court are free to consider the entire record, and not required to credit selected pieces of evidence that support a particular defense theory. While a defendant is free to argue that there are innocent explanations for evidence presented at trial, the jury is not required to credit a defendant’s explanation of events over the testimony of other credible



1 witnesses that support a finding of guilt. *See United States v. Shayota*, 784 F. App'x 986, 991  
2 (9th Cir. 2019).

3 **II. THE EVIDENCE WAS SUFFICIENT TO PROVE A CONSPIRACY TO**  
4 **COMMIT CRIMINAL COPYRIGHT INFRINGEMENT**

5 At trial, in order to support a conviction on Count One of the indictment, it was the  
6 government's burden to prove beyond a reasonable doubt that each of the defendants  
7 knowingly and intentionally conspired to willfully, and for purposes of commercial  
8 advantage or private financial gain, infringe copyrights by reproduction of at least ten copies  
9 of one or more copyrighted works during a 180-day period with a total retail value of more  
10 than \$2,500.00. *See* 18 U.S.C. § 371; 18 U.S.C. § 2319(b)(1); and 17 U.S.C. §506(a)(1)(A).

11 “To prove a conspiracy under 18 U.S.C. § 371, the government must first establish:  
12 (1) an agreement to engage in criminal activity, (2) one or more overt acts taken to  
13 implement the agreement, and (3) the requisite intent to commit the substantive crime.”  
14 *United States v. Grasso*, 724 F.3d 1077, 1086 (9th Cir. 2013). Conspiracy exists at the time  
15 that the criminal plan is agreed upon and an overt act is taken to carry out the goal of the  
16 conspiracy. Where proof of the criminal plan is present, the government is not required to  
17 prove that the plan was carried out. “The agreement itself is the offense, and it is not  
18 necessary for the government to prove that the defendant or other participants committed  
19 the unlawful object of the conspiracy.” *United States v. Collazo*, 984 F.3d 1308, 1319 (9th Cir.  
20 2021) (discussing parallel conspiracy provision 21 U.S.C. § 846). In this case there was  
21 substantial evidence that each defendant knowingly joined the Jetflixs conspiracy and  
22 undertook substantial steps to further the success of the business. Likewise, there was ample  
23 evidence that each of the defendants was aware that the use of television episodes without  
24 the authorization of the copyright owner was a violation of a legal duty.



1 The government is not required to show that each defendant completed an overt act  
2 or was directly involved in the underlying substantive offense. The indictment set out the  
3 roles that various defendants played to further the goal of the conspiracy, and the proof at  
4 trial supported a finding that each of the defendants took on roles and completed acts that  
5 furthered the aim of the conspiracy—to profit by reproducing copyrighted works and  
6 providing access to those works to paying subscribers.

7 Knowing participation in the conspiracy may be inferred from the circumstances as  
8 well as direct evidence of a defendant’s participation. “Once the existence of the conspiracy  
9 is shown, evidence establishing beyond a reasonable doubt a knowing connection of the  
10 defendant with the conspiracy, even though the connection is slight, is sufficient to convict  
11 him of knowing participation in the conspiracy.” *United States v. Meyers*, 847 F.2d 1408, 1413  
12 (9th Cir. 1988). Here, each of the defendants played a meaningful role in advancing the  
13 Jetflicks business, while working in close proximity and in contact with contemporary  
14 members of the Jetflicks conspiracy, all with a direct view of the entire scope of the  
15 operation.

16 *i. Criminal Copyright Infringement as Object of Conspiracy*

17 While the government was not required to prove that the underlying substantive  
18 offense was completed to prove the conspiracy to violate copyright, there was substantial  
19 evidence that Jetflicks and the individual members of the conspiracy took steps that met the  
20 statutory elements, and upon which a rational jury could find the defendants guilty of  
21 conspiracy.

22 *ii. Substantial Similarity Test for Reproduction of Copyrighted Works*

23 Evidence at trial showed that the defendants obtained a database of copyrighted  
24 works that numbered well over 100,000 individual titles. The episodes listed on the Jetflicks

1 site also included artwork, credits and other “metadata” related to the specific work. At  
2 trial, representatives of the copyright holders and Acting SSA Chase testified about  
3 comparing the content on Jetflixs with the authorized broadcast versions, finding that the  
4 episodes on Jetflixs matched the versions available through legitimate services.

5 For purposes of criminal copyright infringement through reproduction, the  
6 appropriate test in comparing infringing material with the copyrighted work is whether the  
7 reproduced copy bears substantial similarities to the original. Although the substantial  
8 similarity test to determine copyright infringement is most typically undertaken in the civil  
9 context where a dispute exists about similar works, the legal framework is applicable in  
10 criminal matters.

11 In the Ninth circuit, the analysis consists of two steps, an “extrinsic test” and an  
12 “intrinsic test” to determine whether two works are substantially similar. The “extrinsic  
13 test” is an objective comparison of specific expressive elements, focusing on “articulable  
14 similarities between the plot, themes, dialogue, mood, setting, pace, characters, and  
15 sequence of events in two works.” *Kouf v. Walt Disney Pictures & Television*, 16 F.3d 1042,  
16 1045 (9th Cir.1994). While the extrinsic test catalogues similarities between works in an  
17 objective manner, the intrinsic test measures “whether there is substantial similarity in the  
18 expressions of the ideas so as to constitute infringement.” *Sid & Marty Krofft Television Prods.,*  
19 *Inc. v. McDonald's Corp.*, 562 F.2d 1157, 1164 (9th Cir.1977)

20 The “intrinsic test” is a subjective comparison that focuses on “whether the ordinary,  
21 reasonable audience” would find the works substantially similar in the “total concept and  
22 feel of the works.” *Kouf*, 16 F.3d at 1045 (quotation marks and citation omitted); *Cavalier v.*  
23 *Random House, Inc.*, 297 F.3d 815, 822 (9th Cir. 2002).

24

1 In a colloquy with counsel for Dallmann, the Court summarized the correct basis for  
2 comparison of the digital works reproduced by Jetflixs and the copyrighted versions owned  
3 by the rights holders:

4 THE COURT: And so I think you can ask questions about do they know  
5 what the copyrighted work is and did they compare it to the copyrighted work. The  
6 word "original" I think is a problem because there's not a, quote/unquote, original  
7 version. There's the copyrighted version, which can be reproduced in its copyrighted  
8 form in multiple ways. And so there's no need for them to view the original version.  
9 They just have to -- reviewing what they understand to be the copyrighted version.

10 And so I don't want there to be any questions about a, quote/unquote,  
11 original version kept with the copyright office. You can ask about questions related  
12 to whether or not they know or don't know if this is the actual copyrighted work and  
13 what that looks like, but I don't want to have reference to a quote/unquote, original.

14 ECF NO. 426, Page 12 of 136, Lines 4-18 (Transcript, Day 8, PM Session).

15 Based on the evidence at trial, there is no meaningful argument that the digital  
16 reproductions of copyrighted works possessed by Jetflixs are not substantially similar to the  
17 original, protected works.<sup>9</sup> At trial, the government showed that reproductions of television  
18

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19 <sup>9</sup> Defendant Dallmann repeats the argument presented in his Rule 29(a) motion that only an  
20 original copy filed with the United States Copyright Office is sufficient to show  
21 reproduction, and further argues that Federal Rule of Evidence 1002 requires comparison  
22 with an original copy obtained from the Copyright Office. As noted above, this is incorrect  
23 as a test for establishing whether a work infringes copyright, which requires a showing of  
24 substantial similarity rather than an exact match in every regard. Additionally, F.R.E. 1002  
is designed to address situations where a party seeks to introduce a writing, recording, or  
photograph to “prove its content.” While the government did introduce evidence of  
Certificates of Copyright for certain titles as evidence of the copyright owners’ legitimate  
claims (*See* Government Exhibit 801, Copyright Certificate for “Blood Washed Away” in  
the series *Twelve Monkeys*), there was no evidence in the government’s case to “prove” the  
content of fictional, scripted television shows.

Cases cited by Dallmann involve claims of prior copyright and allegations that a subsequent  
work infringed on that copyright. *See Skidmore v. Led Zeppelin*, 952 F.3d 1051 (9th Cir. 2020)  
(holding claim that elements of song “Taurus” were infringed by later song “Stairway to  
Heaven” were not supported by Copyright Office filing required for musical works under  
earlier Copyright Act); *Seiler v. Lucasfilm*, 808 F.2d 1316, 1319–22 (9th Cir. 1986) (holding  
that a “reconstruction” of plaintiff’s claimed original work filed with U.S. Copyright Office

1 episodes marketed by Jetflicks were complete copies of digital works, and therefore match  
2 the legitimate, copyrighted version in all meaningful respects. Arguments by defendants  
3 that Jetflicks reproduced works that did not meet the substantial similarity test are not  
4 legally supported, and the jury was reasonable in determining that the conspirators intended  
5 to reproduce copyrighted episodes for streaming and downloading by Jetflicks subscribers.

6 *iii. Elements of Criminal Copyright Infringement*

7 The government presented evidence that Jetflicks, through the individual defendants,  
8 conspired to reproduce 10 or more copies of one or more copyrighted works, with a retail  
9 value of more than \$2,500 during a 180-day period as alleged in count 1 of the indictment.  
10 Government witness Jan van Voorn explained how Jetflicks reproduced the copyrighted  
11 television episodes was to search online for unauthorized copies in NZB or torrent formats  
12 posted by “release groups.” ECF No. 423, Page 60 of 149, Lines 13-15 (Transcript, Day 8,  
13 AM Session). As described above, SSA Poston detailed the actual processes and  
14 applications on Jetflicks’ computer systems to locate, reproduce, format and copy again to  
15 remote servers for access by subscribers.

16 The extensive scope of the copying by Jetflicks was shown in multiple ways, any of  
17 which would support the jury’s verdict on this element:

- 18 • Jetflicks website claiming 183,285 total episodes (Government Exhibit 501)

19  
20 \_\_\_\_\_  
21 was insufficient to support finding of infringement; plaintiff did not produce the original  
work in a manner sufficient to conduct substantial similarity analysis).

22 Because there was testimony from representatives of the copyright holders who identified  
23 copyrighted titles and conducted direct comparisons between Jetflicks’ reproductions and  
the legitimate broadcast works, the jury was able to reasonably determine that Jetflicks  
24 possessed reproductions of copyrighted works which subscribers could view.

- 1 • Web scrape of Jetflix website by MPAA/ACE showing member 55,000 titles (ECF  
2 NO. 423, Page 73 of 149, Line 1-10 (Transcript, Day 8, AM Session))
- 3 • File listing of more than 89,000 Sickrage and Sickbeard processed files on 1B76, the  
4 Mac server seized during execution of the search warrant (Government Exhibit 310)
- 5 • File listing of more than 30,000 complete video files contained on 1B76 RAID, the  
6 Mac storage seized during execution of the search warrant (Government Exhibit  
7 429)
- 8 • Review of file processing lists by rights holder representatives (e.g. Testimony of  
9 Daniel Cooper ECF NO. 426, Page 77 of 149, Line 1-10 (Transcript, Day 8, PM  
10 Session))

11 Each of these snapshots show the sheer size of the Jetflix library of infringing  
12 works at a single moment, spanning across all times each co-conspirator was involved, thus  
13 satisfying the 180-day time window for each defendant.

14 Value of the infringed works is established by the very conservative estimate of Jan  
15 van Voorn, who explained that between 2007 and 2017 the average price of a television  
16 episode ranged from \$1.99 for a regular definition download to \$2.99 for a high-definition  
17 copy.<sup>10</sup> As testified to by Mr. van Voorn, this estimate is particularly conservative because  
18 legitimately acquired copies include copyright protections that limit further distribution,  
19 while the reproductions possessed by Jetflix had the technological protections stripped  
20 away, allowing for unlimited further copying.<sup>11</sup>

21 *iv. The Conspirators Willfully Violated Copyright*

22 Each defendant revisits the argument that there was insufficient evidence of the  
23 intention to violate copyright based on their respective roles within Jetflix. As set out in  
24 more detail below, however, the trial witnesses provided ample evidence for the jury to

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<sup>10</sup> ECF NO. 423, Page 77 of 149, Line 1-10 (Transcript, Day 8, AM Session)

<sup>11</sup> ECF NO. 423, Page 77-78 of 149 (Transcript, Day 8, AM Session)

1 consider about each defendant acting in violation of a known legal duty regarding  
2 copyright. *United States v. Liu*, 731 F.3d 982, 990 (9<sup>th</sup> Cir. 2013) (“We now explicitly hold  
3 that ‘willfully’ as used in 17 U.S.C. § 506(a) connotes a ‘voluntary, intentional violation of a  
4 known legal duty.’”) See *United States v. Anderson*, 741 F.3d 938, 946 (9<sup>th</sup> Cir. 2013) (“[I]n  
5 order to satisfy the willfulness requirement, a defendant must have known that the copying  
6 was illegal.”)

7 *Liu* is instructive about the distinction between willful copyright violations and mere  
8 infringement in the criminal context. In *Liu*, the defendant ran a commercial DVD copying  
9 service, which in the course of doing business produced large quantities of copies of movies  
10 and software that the customer did not have authorization to reproduce. *Liu*, 731 F.3d at  
11 990. Following his trial for reproducing copies of copyrighted software and movies, Liu  
12 challenged the willfulness instruction.

13 The court in *Liu* held that “the district court did not include in the final version the  
14 instruction regarding proof of willful copyright infringement requested by Liu and  
15 acquiesced to by the government. Instead, it added its own explanation of willful  
16 infringement that incorporated the government’s requested instruction defining infringement  
17 generally, without a *mens rea* element. The court instructed the jury that Liu “willfully  
18 infringed” if he “without authorization duplicated, reproduced or sold the copyright  
19 belonging to the owners of the works.” The court further adopted the government’s  
20 requested definition of willfully—that “[a]n act is done ‘willfully’ if the act is done  
21 knowingly and intentionally, not through ignorance, mistake or accident.”” *Id.* at 988

22 Unlike *Liu* and *Anderson*, the jury in this case was properly instructed that the  
23 defendants had to have the specific knowledge that their actions were not merely the  
24 copying of digital works for the use of Jetflix, but that the reproduction and use by

1 Jetflicks was done without authorization and in violation of the rights of the copyright  
2 holder.<sup>12</sup>

3         Additionally, evidence at trial provided a sufficient basis for the jury to find that each  
4 defendant was aware of the protections afforded by copyright law and the violation of those  
5 protections that Jetflicks engaged in. As an initial matter, it was not contested that each  
6 defendant played a role in the day-to-day operations in some regard, whether through  
7 programming, customer support, content acquisition, or managing the enterprise.

8  
9  
10 <sup>12</sup> The Court's instruction on copyright infringement as the object of the conspiracy charged  
11 in count 1, including the willfulness requirement, consistent with the guidance of *Liu*, was  
12 as follows:

13 The object of the conspiracy alleged in Count 1 is criminal copyright infringement in  
14 violation of Section 506(a)(1)(A) of Title 17 and Section 2319(b)(1) of Title 18 of the United  
15 States Code.

16 The elements of criminal copyright infringement are:

17         First, the work involved was copyrighted;  
18         Second, the defendant infringed on the copyright of that work;  
19         Third, the defendant did so willfully; and  
20         Fourth, the defendant did so for purposes of commercial advantage or private  
21 financial gain.

22 Evidence of reproduction or distribution of a copyrighted work, by itself, is not enough to  
23 establish willful infringement of a copyright. The Government must prove that a defendant  
24 knowingly and willfully engaged or conspired to engage in such infringement.

25 If you find a defendant guilty of the charge in Count 1 of the indictment, you must then  
26 determine whether the Government proved beyond a reasonable doubt the following three  
27 additional elements:

28         First, the conspiracy involved ten or more copies of one or more of the copyrighted  
29 works;  
30         Second, the copies were reproduced during a 180-day period;  
31         Third, the retail value of the copies was more than \$2,500.

32 ECF No. 475 at 113-14.



1 While not exhaustive, the below examples from the record each indicate that the  
2 defendants had knowledge of the activities of Jetflicks in their various roles, and that the  
3 jury could rationally determine that each conspirator was aware of the legal duty regarding  
4 copyright infringement during their time with the company:

- 5 • Jared Jaurequi: Government Exhibit 66 (“I’m in charge of all the customer support,  
6 managing of the Jetflicks content as well as programming, billing and general”)
- 7 • Kristopher Dallmann: there was extensive evidence throughout the trial about  
8 Dallmann’s involvement throughout the duration of the Jetflicks conspiracy in every  
9 part of the business. In addition to the Cease and Desist notices recovered from  
10 Dallmann’s filing cabinet (Government Exhibits 1 and 2), and his involvement in  
11 disguising financial transactions and the unlawful source of Jetflicks income  
12 (discussed below), Dallmann had a detailed knowledge of the step-by-step process of  
13 reproducing the copyrighted television shows that Jetflicks shared with paying  
14 subscribers. *See* Government Exhibit 66 (“first...sick rage...that finds and snatches  
15 the info for the episode”; “then... sab and/or utorrent... which download the  
16 episodes”; “Then they place the episodes in their respective folder 1, 2, 3 or 4”;  
17 “Then the conversion script takes over... and converts and uploads”).
- 18 • Felipe Garcia: extensive discussions with Doug Courson about uploading shows,  
19 including in Government Exhibit 42 (“We eat, breath and shit Jetflicks understand?”  
20 and Government 64A (Kristopher Dallmann regarding Garcia: “He has threatened  
21 to call the MPAA, which would be a major pain for me...”).
- 22 • Douglass Courson: he played a long-term role with Jetflicks, and the evidence  
23 showed that he was familiar with the source of content and the scope of the Jetflicks  
24 operation. *See* Government Exhibit 49 (Explaining to Garcia that “As soon as I see a

1 show hasn't uploaded on Sickbeard (first thing every morning) I update if the files  
2 are available"). Courson was also familiar with the legal risks involved in copyright  
3 infringement, warning Dallmann on multiple occasions about the risks of copyright  
4 owners becoming aware of Jetflicks activities. See Government Exhibit 1104  
5 ("Jetflicks is questionable with respect to it being a legal enterprise (because no  
6 royalties are paid for the use of the material)...").

- 7 • Peter Huber: he developed and maintained the software that allowed customers to  
8 view content from Jetflicks.mobi on mobile devices. He also took the stand and  
9 testified to his role in reproducing and uploading content to the Canadian servers  
10 that supplied the content:

11 Q. Were you aware that jetflicks.mobi had libraries of TV  
12 shows?

13 A. Yes, I knew it.

14 Q. And where were those libraries stored, if you know?

15 [Interpreter asks to repeat question]

16 THE WITNESS: While I was there, they were on the Canadian  
17 server.

18 BY MS. BLISS:

19 Q. And were -- did you have any involvement in creating the  
20 libraries?

21 A. So the library was based on Linux, so -- so I did not need to  
22 do anything, but simply I needed to copy the video files.

23 Q. Copy the video files to what?

24 A. So simply needed to be copied from Mac servers to the  
Canadian servers.

ECF No. 470, Pages 32 of 72, Lines 5-21 (Transcript, Day 9, AM Session)

### 21 III. THERE WAS NO CONSTRUCTIVE AMENDMENT OR VARIANCE IN 22 THE CHARGES AGAINST DALLMANN

23 Dallmann again raises the argument that the government's proof at trial, specifically  
24 related to the titles of copyrighted works related to count 1 (conspiracy) rather than the

1 substantive distribution (counts 2 and 3) and public performance (counts 4 and 5), resulted  
2 in a constructive amendment or variance from the charged offenses.<sup>13</sup> Neither the law nor  
3 the record in this case supports this contention.

4       When conduct necessary to satisfy an element of the offense is charged in the  
5 indictment and the government's proof at trial includes proof of other conduct that would  
6 satisfy the same element, it is important to assure that the defendant is found guilty based on  
7 the conduct charged by the grand jury. That protection for the defendant is typically  
8 “provided by jury instructions requiring the jury to find the conduct charged in the  
9 indictment before it may convict.” *United States v. Ward*, 747 F.3d 1184, 1191 (9th Cir.  
10 2014). In this case, to assure that the jury convicted Dallmann based solely on the conduct  
11 actually charged in the indictment, the jury was given a verdict form specifically identifying  
12 the television episodes that were the subject of the related count in the indictment (ECF No.  
13 485).

14       Additionally, the jury was able to consider and decide upon the facts presented as  
15 evidenced by the decision to enter a not guilty finding as to count 5.

16       Dallmann makes similar claims of constructive amendment and variance relating to  
17 count 1 based on the lack of government proof at trial about Darryl Polo, a co-defendant  
18 who pleaded guilty in the Eastern District of Virginia. Though Polo was included on the  
19 government’s witness list (ECF No. 178), the government did not call Polo or refer to him  
20 in opening or closing arguments. The same is true of Luis Villarino, who also entered a  
21 guilty plea in the Eastern District of Virginia. The government did not seek to introduce  
22

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23 <sup>13</sup> This argument does not clearly fall within Rule 29, which is focused on challenges to  
24 sufficiency of the government’s proof. Nevertheless, the government will respond as part of  
the general Rule 29(c) response.

1 substantial evidence of the involvement of Polo, Villarino, and others who were involved in  
2 the Jetflixs conspiracy, but were not in trial. Nor did the government seek to introduce  
3 evidence about Polo’s separate online copyright infringement site, iStreamItAll.com, which  
4 had only minimal relevance to the charges.

5         Dallman does not identify how minimizing the evidence about defendants who  
6 previously pleaded guilty affected the factual or legal allegations against him. While the  
7 generally irrelevant evidence of a distinct infringing online service was not presented, this  
8 had no impact on the evidence against Dallmann. The minimization of Polo evidence  
9 neither resulted in “facts distinctly different from those set forth in the charging document”  
10 nor was “the crime charged in the indictment [ ] substantially altered at trial so that it was  
11 impossible to know whether the grand jury would have indicted for the crime actually  
12 proved.” *United States v Mickey*, 897 F.3d 1173, 1181 (9<sup>th</sup> Cir. 2018). Because the evidence  
13 against Dallmann tracked the allegations against him set out in the indictment, there was no  
14 constructive amendment.

15         Similarly, Dallmann’s claims of variance are not supported. As noted above, the jury  
16 was guided in its deliberations by the verdict form, which specifically identified the  
17 television episodes referenced in counts 2 through 5. Dallmann also suggests that “the  
18 absence of Darryl Polo from the evidence inappropriately suggests that Mr. Dallmann—not  
19 Darryl Polo—was the mastermind of the alleged conspiracy.” ECF No. 486 at 13, 7-9.  
20 There is nothing in the indictment that suggests that Darryl Polo was the mastermind of the  
21 Jetflixs conspiracy, so there can be no variance.  
22  
23  
24

1       **IV.    THERE WAS SUFFICIENT EVIDENCE OF CONCEALMENT TO**  
2               **SUPPORT DALLMANN’S CONVICTION FOR MONEY LAUNDERING**

3  
4               Dallmann also renews his argument that he could not be convicted of violating  
5 copyright through public performance and distribution because the contents of the server  
6 providing the streams and downloads was not introduced at trial. This argument turns the  
7 evidence on its head.

8               At trial, the jury heard the testimony of SSA Chase about his undercover review of  
9 the Jetflicks website, including generating a trial account and then a paid subscription.  
10 During his investigation, SSA Chase streamed multiple complete episodes that were on  
11 offer, and was able to record his online activity while streaming the episode of the television  
12 show “The OA” entitled “Paradise”.

13               Because SSA Chase was able to receive streams and download content from  
14 Jetflicks, an online service controlled by Dallmann, the exact source of the files is irrelevant  
15 to the conduct charged; the files were publicly performed and distributed by Jetflicks in  
16 violation of copyright law at the time that the files were reviewed by SSA Chase.

17               It is important to note that the jury carefully considered the evidence related to the  
18 public performance and reproduction counts, and in fact acquitted Dallmann of the  
19 streaming allegation charged in count 5, relating to an episode of the television series “Ray  
20 Donovan” entitled “Norman Saves the World” which was not recorded by SSA Chase.

21               Finally, Dallmann renews his sufficiency claim regarding Counts 13 and 14 of the  
22 indictment, which charged Dallmann with Money Laundering. The statute provides:  
23 §1956(B) knowing that the transaction is designed in whole or in part—  
24

1 (i) to conceal or disguise the nature, the location, the source, the ownership, or  
2 the control of the proceeds of specified unlawful activity.

3 Dallmann made multiple misrepresentations related to the financial transactions in  
4 Counts 13 and 14. Initially, when applying for a new payment processor account with  
5 Stripe, he affirmatively disguised the source of Jetflicks income derived from copyright  
6 infringement, going so far as to create the fake website Jetflicks.com. *See* Government  
7 Exhibit 407A (Account Application referencing “Aviation Services”); *see also* Government  
8 Exhibit 409 (Wells Fargo Account Application referencing “Aviation Services”),  
9 Government Exhibit 136 (design elements for fake Jetflicks.com Aviation Services website  
10 to support Stripe account application).

11 Dallmann repeated these misrepresentations in applying for a business account  
12 through Wells Fargo bank, further compounding the concealment.

13 As SA Schurott testified, the Jetflicks subscriber payments, derived from copyright  
14 infringement, were processed by Stripe, and then funneled into Wells Fargo.<sup>14</sup>

15 The representative from Stripe, Jake Phillips, testified that this is referred to as  
16 “transaction laundering.” ECF 409, Page 110 of 152, lines 5-15 (Transcript, Day 5, AM  
17 Session)

18  
19  
20  
21 <sup>14</sup> Q: Did you follow the money from Stripe and find out where it  
went to?

22 A. I did. The Stripe funds were transferred into an account  
held at Wells Fargo.

23 ECF No. 410 Page 169 of 283, lines 9-12 (Transcript, Day 5, PM Session)

1 Providing accurate address information and doing business in a manner designed to  
2 maximize customer access is not relevant to the money laundering offense, which relates to  
3 disguising the source of money to regulated financial institutions. Contrary to his actions  
4 involving customers and vendors, Dallmann took active steps to disguise the illegal nature  
5 of Jetflicks from financial institutions.

6 The jury was able to consider Mr. Dallmann's actions in running Jetflicks and acted  
7 reasonably in finding Dallmann guilty of money laundering as alleged in counts 13 and 14  
8 of the indictment.

9 **V. Conclusion**

10 The substantial evidence of guilt presented at trial confirms that there was sufficient  
11 evidence for the jury to find, as it did, that each of the defendants was a member of a  
12 conspiracy to commit copyright infringement. Additionally, the evidence against Mr.  
13 Dallmann was sufficient to support guilty verdicts for substantive violations of copyright law  
14 and money laundering. For the reasons stated above, the government respectfully requests  
15 the Court to enter an Order denying the defendants' Motions for acquittal.

16 Respectfully submitted this 23<sup>rd</sup> day of July 2024.

17  
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