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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14 MG PREMIUM LTD, a limited liability
15 company organized under the laws of
16 the Republic of Cyprus,

17 Plaintiff

18 vs.

19 NGUYEN HOI AND DOES 1-20, d/b/a
20 PORNEZ.net

21 Defendants.

Case No. 2:23-cv-00349-CBM-PVC

**PLAINTIFF MG PREMIUM LTD.’S
MOTION FOR DEFAULT
JUDGMENT AGAINST
DEFENDANT NGUYEN HOI**

Date: August 7, 2023

Time: 10AM

Judge: Hon. Consuelo B. Marshall

Courtroom: 8D (350 W. 1st Street)

1 TO THE JUDGES OF THIS COURT AND DEFENDANT NGUYEN HOI:

2 PLEASE TAKE NOTICE THAT on August 7, 2023, at 10 a.m., or as soon
3 thereafter as this matter may be heard by the above-entitled Court, located in
4 Courtroom 8D at 350 West 1st Street, 9th Floor, Los Angeles, California 90012-
5 4565, Plaintiff MG PREMIUM LTD. (“Plaintiff”) will present its motion for a
6 default judgment against Defendant Nguyen Hoi (“Defendant”).

7 1. The accompanying Declaration of Eric Bjorgum establishes the
8 matters identified in Local Rule 55.

9 2. As detailed in the accompanying pleadings, papers on file, and orders
10 of this Court, Plaintiff has a vast library of protected copyrights that have been
11 infringed en masse by Defendant. Defendant has failed to appear in this action.

12 3. By this Motion, Plaintiff seeks damages, including maximum
13 statutory damages for willful infringement, injunctive relief, and attorneys’ fees.

14 This Motion is based on this Notice and Motion, Memorandum of Points
15 and Authorities, the attached Declaration of A. Eric Bjorgum and Exhibits
16 attached thereto, the attached Declaration of Andreas Alkiviades Andreou, the
17 attached Declaration of Jason Tucker, the Proposed Judgment filed herewith, and
18 the pleadings, files, and other matters that may be presented at the hearing.

19
20 Dated: August 7, 2023

KARISH & BJORGUM, PC

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28

MEMORANDUM OF POINTS AND AUTHORITIES

1
2 Plaintiff, MG Premium Ltd. (hereinafter “MG Premium Ltd.” or the
3 “Plaintiff”) hereby moves the Court, in accordance with Fed.R.Civ.P. 55 and
4 Local Rule 55, for Default Judgment against Defendant Nguyen Hoi
5 (“Defendant”), through its counsel, A. Eric Bjorgum of Karish & Bjorgum, PC.
6

7 **I. PROCEDURAL CONSIDERATIONS**

8 **A. This Court has Jurisdiction over the Subject Matter and the**
9 **Defendant.**

10 This Court has subject matter jurisdiction pursuant to 17 U.S.C. §§ 101 et
11 seq., Section 32 of the Lanham Act, 15 U.S.C. § 1114(1), 15 U.S.C. § 1121, 15
12 U.S.C. § 1125, 28 U.S.C. § 1331 and 28 U.S.C. § 1338.

13 This Court has personal jurisdiction over Defendant. The recent *Will Co.*
14 case removes any doubt as to that fact. *Will Co. v. Ka Yeung Lee*, 47 F.4th 917,
15 919 (9th Cir. 2022). The general test for personal jurisdiction in Copyright Act
16 claims requires a showing that “(1) the defendant ‘purposefully direct[s]’ its
17 activities at the forum, (2) the lawsuit ‘arises out of or relates to the defendant’s
18 forum-related activities’, and (3) the exercise of jurisdiction is ‘reasonable.’ *Will*
19 *Co.*, 47 F.4th at 922.

20 *Will Co.* focused on the “purposefully directed” requirement in similar
21 circumstances involving piracy of adult content. The Court applied another three-
22 part test -- the “*Calder* Effects Test,” - inquiring whether the defendant: “(1)
23 committed an intentional act, (2) expressly aimed at the forum state, (3) causing
24 harm that the defendant knows is likely to be suffered in the forum state.” *Id.*

25 **1. The “Intentional Act” Element Is Satisfied.**

26 The “intentional act” element is easily satisfied. An intentional act exists
27 when a person acts with “an intent to perform an actual, physical act in the real
28 world, rather than an intent to accomplish a result or consequence of that act.”

1 *Schwarzenegger*, 374 F.3d at 806. The Ninth Circuit has held that “operating a
2 passive website,” purchasing a domain name, and purchasing domain privacy
3 services are all intentional acts. *AMA Multimedia*, 970 F.3d at 1209 (citation
4 omitted). Defendant operates the domain PornEZ.net. There is no dispute he
5 engaged in an intentional act.

6 **2. Defendant Expressly Aimed His Activities at the United** 7 **States.**

8 To determine if “tortious conduct on a [globally] accessible website is
9 expressly aimed at any, or all, of the forums in which the website can be viewed,”
10 Courts look to the actions of the operators in operating the site. *Mavrix*, 647 F.3d
11 at 1229. Operation of a passive website by itself is insufficient but when combined
12 with “something more” showing the express aiming of the website to the target
13 forum, the operation of the website can suffice *See AMA Multimedia*, 970 F.3d at
14 1209–1210 (citation omitted) (requiring “something more” than simply making
15 the website accessible in the forum). Rather, the operator must have both actively
16 “appeal[ed] to” and “profit[ed] from” an audience in that forum. *Id.* at 1210.

17 *Will Co* clarified the “appealed to” and “profited from” language. It found
18 that the “profited from” standard was satisfied because the “advertising structure
19 Defendants employed demonstrate that they profited from views in the United
20 States market.” This was because hits on its website were correlated to income, so
21 it profited from the United States. 47 F.4th at 924. The Court found that 1.3
22 million hits in the relevant period show “considerable revenue.” The result is the
23 same here. The complaint here alleges Defendant’s site has 27.6 million monthly
24 visitors and that 21.95% are from the United States – considerably more visitors
25 than the amount in *Will Co*. (Dkt. No. 1, ¶¶ 10 – 12.)

26 The Court then went on to consider “appealed to” and found “at least two
27 key choices” demonstrated “an intent to cultivate an audience in the United
28 States.” First, the site was hosted in Utah, and content delivery services ensured

1 faster more efficient delivery to United States viewers. Second, the legal
2 compliance pages were written to comply with United States law. *Will Co.*, 47
3 F.4th at 925.

4 These factors exist here. First, PornEZ.net uses Cloudflare for a content
5 delivery network in the United States; Cloudflare’s United States servers control
6 certain site operations including content delivery. (Dkt. No. 1, ¶ 42.) This use
7 provides for faster and more efficient delivery of videos to United States viewers.

8 Second, the Ninth Circuit noted that the *Will Co.* defendant touted
9 compliance with United States regulatory provisions such as the Digital
10 Millennium Copyright Act and 18 U.S.C § 2257. PornEZ.net also has tabs that
11 lead to pages that cite Notice and Takedown requirements of 17 U.S.C. § 512 of
12 the Digital Millennium Copyright Act (DMCA) and compliance with 18 USC
13 § 2257. No other country’s laws are contemplated or cited. In fact, Defendant here
14 ignored compliant DMCA Takedown notices against its own policy¹. (Dkt. No. 1,
15 ¶ 43.)

16 Further, the following facts show an appeal to the United States market.

17 (i) The site is in English.

18 (ii) The PornEZ.net website is governed by VeriSign, a US-based
19 company that manages all .net domains.

20 (iii) The PornEZ.net website registrar is NameCheap, Inc. Namecheap is
21 an ICANN-accredited registrar and web hosting company based in Phoenix,
22 Arizona.

23 (iv) According to Similar Web, a publicly traded trusted website analytics
24 company, The United States is the by far the number one market representing over
25
26

27
28
1 Link: <https://pornez.net/dmca/>

1 21.95% of all traffic to the PornEZ.net website. The second largest country is the
2 United Kingdom at 8.32%²

3 (v) The PornEZ.net website uses Google Analytics, a service provided
4 by California-based Google, LLC to track behavior, and location, and better
5 optimize the user experience to enhance marketing.³

6 **3. Defendant Caused Foreseeable Harm.**

7 Finally, the harm caused by Defendant is foreseeable. Defendant actively
8 appealed to the United States market, knew a significant number of people in the
9 United States were actually viewing the website, and were put on notice they were
10 hosting infringing content when provided takedown notices. *See Will Co.* Such is
11 sufficient to establish foreseeable harm in the forum.

12 **4. The Conduct Arises Out Of The Forum-related Activities.**

13 Turning to the second due process factor, the conduct also arises out of
14 forum-related activities. *Schwarzenegger*, 374 F.3d at 802. A claim arises from
15 forum-related activities if the plaintiff “would not have been injured ‘but for’”
16 defendant’s conduct directed toward the forum. *Panavision Int’l, L.P. v. Toepfen*,
17 141 F.3d 1316, 1322 (9th Cir. 1998). The “‘arising out of’ requirement” should not
18 be read restrictively; rather, the “but for” test merely “preserves the requirement
19 that there be some nexus between the cause of action and the defendant’s
20 activities in the forum” and “preserves the essential distinction between general
21 and specific jurisdiction.” *Shute v. Carnival Cruise Lines*, 897 F.2d 377, 385 (9th
22 Cir. 1990), *overruled on other grounds by* 499 U.S. 585.

23 Plaintiff sells viewing of its copyrighted videos to United States viewers in
24 the United States. Declaration of Andreas Andreou (“Andreou Decl.”) at ¶ 5.

25
26
27 2 Exhibit B to Dkt. No. 1 shows the traffic rates relevant to this Motion.

28 3 Link: <https://marketingplatform.google.com/about/analytics/features/>

1 Defendant is the owner/operator of PornEZ.net, utilizing a United States-based
2 domain registrar and service providers to distribute the infringed videos to United
3 States viewers.

4 Plaintiff has been harmed in the United States because Defendant targeted
5 the United States and caused Plaintiff's copyrighted works to be displayed and
6 viewed on Defendant's website in the United States. Plaintiff's injury in the
7 United States stems from the substantial amount of United States traffic to
8 Defendant's website. Thus, Plaintiff's claims arise out of Defendant's United
9 States-related activities through PornEZ.net. *See Mavrix*, 647 F.3d at 1228; *Rio*,
10 284 F.3d at 1021.

11 Venue is proper in this Court pursuant to 28 U.S.C. §§1391(b), (c) and (d);
12 and 28 U.S.C. §1400(a).

13
14 **II. DEFAULT JUDGMENT IS WARRANTED BASED UPON THE**
15 **FACTS AND RECORDS HEREIN**

16 Plaintiff MG Premium Ltd. initiated this action on January 18, 2023,
17 seeking damages and injunctive relief for claims of copyright infringement. *See*
18 Dkt. No. 1. After being served with the Complaint, Defendant failed to appear in
19 this action, failed to answer the complaint filed in this action, and failed to
20 otherwise defend this action. As a result, a default was entered against Defendant
21 Nguyen Hoi on April 11, 2023. *See* Dkt. No. 18. A Court Order entering a default
22 judgment against Defendant Nguyen Hoi is now proper pursuant to Fed. R. Civ. P.
23 55(b)(2).

24
25 **III. DISCUSSION OF EITEL FACTORS**

26 The Court, in considering whether to grant a Motion for Default Judgment,
27 may consider the following factors: (1) the possibility of prejudice to the Plaintiff;
28 (2) the merits of Plaintiff's substantive claim; (3) the sufficiency of the Complaint;

1 (4) the sum of money at stake in the action; (5) the possibility of a dispute
2 concerning material facts; (6) whether default was due to excusable neglect; and
3 (7) the strong policy underlying the Federal Rules of Civil Procedure favoring
4 decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986). All
5 seven factors favor the entry of a default judgment.

6 **A. Possibility of Prejudice to Plaintiff.**

7 MG Premium Ltd. will be prejudiced if default judgment is not entered.
8 MG Premium Ltd. served process on Defendant pursuant to Fed. R. Civ. P. 4.
9 Although service was made upon Defendant, Defendant has chosen to ignore the
10 authority of this Court. If MG Premium Ltd.’s Application for Default Judgment
11 is not granted, it “will likely be without recourse for recovery.” *PepsiCo, Inc. v.*
12 *Cal. Sec. Cans*, 238 F. Supp.2d 1172, 1177 (C.D. Cal. 2002). Moreover, due to the
13 fact that MG Premium Ltd. has stated a valid copyright claim, MG Premium Ltd.
14 “undeniably would be prejudiced absent an entry of permanent injunctive relief
15 [by] default judgment.” *PepsiCo, Inc. v. Distribuidora La Matagalpa, Inc.*, 510 F.
16 Supp.2d 1110, 1116 (S.D. Fla. 2007). As such, MG Premium Ltd. will be
17 sufficiently prejudiced to warrant the entry of default judgment.

18 Additionally, absent a default judgment awarding damages, enjoining
19 Defendant from engaging in similar behavior, and transferring the portal URL that
20 has stolen Plaintiff’s customers, there would be little stopping the Defendant (and
21 many other persons with similar inclinations around the world) from merely
22 engaging in this behavior again.

23 **B. The Merits of Plaintiff’s Substantive Claim and the Sufficiency of**
24 **the Complaint.**

25 Factors two and three of the *Eitel* test require an analysis of MG Premium
26 Ltd.’s claims and the sufficiency of the Complaint. MG Premium Ltd. has asserted
27 a prima facie claim for copyright infringement. This Motion for Default Judgment
28 is based on the allegations of the Complaint. *See* Dkt. No. 1. Defendant has

1 admitted all of the facts therein by failing to respond. *Geddes v. United Financial*
2 *Group*, 559 F.2d 557, 560 (9th Cir 1977).

3 Specifically, as shown in greater detail below, MG Premium Ltd. has
4 alleged that a) it owns and has registered the copyright in the Works and b) the
5 Defendant made unauthorized reproductions of those works and distributed them
6 without MG Premium Ltd.'s authorization. These allegations state a valid claim
7 for copyright infringement.

8 The First Cause of Action levied against the Defendant is for Direct
9 Copyright Infringement. It is well settled that, "to prevail on a claim of copyright
10 infringement, the Plaintiff must demonstrate both (1) the ownership of a valid
11 copyright and (2) infringement of the copyright by the defendant." *Funky Films,*
12 *Inc. v. Time Warner Entertainment Company, L.P.*, 462 F.3d 1072, 1076 (9th Cir.
13 2006). The facts of this case are clear.

14 Defendant Nguyen Hoi owns and operates the website PornEZ.net. *See*
15 *Complaint*, p 3, ¶ 6; p 7, ¶¶ 34-45. Plaintiff discovered that as of December 2022,
16 Defendant displayed 7,818 of Plaintiff's registered copyrighted works on 51,375
17 separate and distinct URL's, without license or authority, on PornEZ.net.
18 *Complaint*, p. 9, ¶ 41. Dkt. No. 1. Defendant Nguyen Hoi utilizes Cloudflare to
19 deliver video content from PornEZ.net to viewers in the United States. *Complaint*
20 ¶ 15. PornEZ.net fails to fulfill the requisite conditions precedent to qualify for the
21 safe harbor provisions of the DMCA: it was not registered as an Internet Service
22 Provider with the United States Copyright Office, did not list a designated DMCA
23 agent for the web sites, and did not honor takedown notices. *Complaint*, p 8, ¶ 39.

24 Defendant actively displayed 7,818 of MG Premium Ltd.'s copyright-
25 protected works on 51,375 separate and distinct webpages. *Tucker Decl.*, ¶ 19. In
26 fact, Defendant uploaded MG Premium Ltd.'s works to be viewed on PornEz.
27 *Complaint*, p 9, ¶ 41. These were cataloged in Exhibit A to the *Complaint*, and
28 over 90% of them remain active.

1 Defendant's business model depends on advertising-generated income and
2 profits. The more traffic Defendant's websites generate, the more revenue is
3 generated for Defendant. Complaint, p. 8, ¶ 35. Attempting to play a video on
4 PornEz.net results in pop-up ads (geo-targeted to United States viewers).
5 Complaint, p. 8, ¶ 36.

6 Videos on Defendant's sites may be shared on other sites, in addition to the
7 user being provided with direct links for posting on or to any social media site
8 including, but not limited to Twitter, Google, Email, or direct messaging to
9 anyone regardless of age or location. Such functionality makes it impossible to
10 know how many times and where an unlicensed copyrighted video has been
11 posted and displayed illegally as a direct result of Defendant's unlawful display.
12 Complaint, p. 8, ¶ 38.

13 As of the date of this filing, Defendant continues to utilize the domain
14 PornEZ.net *and* continues to display MG Premium Ltd.'s copyrighted materials.
15 Tucker Decl., ¶ 20.

16 Fully aware that their actions were illegal, fully informed of this lawsuit,
17 served with the Complaint and warned about the consequences of default,
18 Defendant merely ignored the lawsuit. Defendant cannot complain when a default
19 judgment is entered against him.

20 **C. The Amount of Money At Stake.**

21 As shown below in section III., actual damages could be calculated at over
22 \$1,172,700,000, thus statutory damages of \$117,270,000 are appropriate (at a
23 statutory assessment of \$15,000 per infringement) for Defendants' willful
24 infringement. Only a large award will serve to deter these arrogant Defendants
25 from future illegal action. Accordingly, because this amount is so large, factor
26 four also favors the entry of a default judgment.

1 **D. The Remaining Factors.**

2 Factors five, six, and seven have also been satisfied. There can be little
3 dispute as to the material facts. MG Premium Ltd. documented 7,818
4 infringements of its copyrighted works on the Defendant’s website. MG Premium
5 Ltd. has demonstrated that it owns the copyrights for these works, that registration
6 occurred before the infringing activity, that Defendant had no authority to display
7 MG Premium Ltd.’s copyrighted works. Andreou Decl., ¶ 4.

8 There is no evidence that there is a dispute concerning material facts or that
9 default was due to excusable neglect. With regard to factor seven, although
10 “[c]ases should be decided upon their merits whenever reasonably possible,” *Eitel*,
11 782 F.2d at 1472, the mere existence of Rule 55(b) “indicates that this preference,
12 standing alone, is not dispositive.” *Cal. Security Cans*, 238 F.Supp. at 1777.
13 Moreover, Defendant’s failure to answer or otherwise respond to the Complaint
14 “makes a decision on the merits impractical, if not impossible.” *Id.*

15
16 **IV. THE SPECIFIC RELIEF SOUGHT IS FACTUALLY SUPPORTED**
17 **AND AUTHORIZED BY LAW**

18 **A. Statutory Damages Are Authorized.**

19 The Copyright Act provides for a plaintiff to recover, at its election, either
20 (1) its actual damages and (to the extent not redundant) defendant’s profits
21 attributable to infringement, or (2) statutory damages.

22 If the works were registered with the U.S. Copyright Office prior to the
23 commencement of the infringing activity (they were), the copyright holder may
24 elect statutory damages in the amount of \$750.00 to \$30,000.00 per work,
25 increased to \$150,000.00 in cases (such as this one) of willful infringement. 17
26 U.S.C. § 504(C).

27 Here, 7,818 of MG Premium Ltd.’s United States copyrighted works are
28 displayed by Defendant on Defendant’s website PornEZ.net. The value of

1 Plaintiff's content, the damage caused by Defendant's unauthorized reproduction
2 and distribution to hundreds of thousands of potential consumers, and the
3 willfulness of Defendant's infringing actions, warrant a sizeable award.

4 Because actual damages are often difficult to prove, statutory damages have
5 been authorized to make such proof unnecessary. *Chi-Boy Music v. Charlie Club,*
6 *Inc.*, 930 F.2d 1224, 1229 (7th Cir. 1991). Where timely registered works are
7 infringed, the Copyright Act authorizes statutory damages. 17 U.S.C. §504(c).
8 Where, as here, infringement is "willful," the amount may be as high as \$150,000
9 for each infringed work. *Id.* Congress increased the maximum from \$100,000 to
10 \$150,000 because it found large awards to be necessary and desirable to deter the
11 great temptation to infringement posed by modern computer technology. H.R.
12 Rep. No. 106-216 (1999), pp. 6-7. The critical purpose of deterring similar
13 misconduct permits a maximum per work award for willful infringement, even
14 where the infringement caused little to no damage. *Superior Form Builders, Inc. v.*
15 *Dan Chase Taxidermy Supply Co.*, 74 F.3d 488, 496-97 (4th Cir. 1996) (collecting
16 authority and sustaining maximum awards despite no proof of actual damages);
17 *F.W. Woolworth Co. v. Contemporary Arts, Inc.*, 344 U.S. 228, 234 (1952) (for
18 willful infringement a maximum award is permissible "even for uninjurious and
19 unprofitable invasions").

20 Plaintiff has been damaged by Defendant's conduct, continues to be
21 damaged by such conduct, and has no adequate remedy at law to compensate for
22 all of the possible damages stemming from Defendant's conduct. Pursuant to 17
23 U.S.C § 504(c), Plaintiff elects the right to recover statutory damages but submits
24 this application with actual damages discussed to support the requested damages
25 amount and is prepared to offer additional in-court testimony with respect to
26 actual damages.

1 **B. Defendant Has Damaged Plaintiff.**

2 MG Premium Ltd. owns one of the largest portfolios of premium adult-
3 oriented audiovisual content in the world. In its library of works, MG Premium
4 Ltd. is the copyright holder of “Reality Kings,” “Brazzers,” “MOFOS,”
5 “Babes.com,” and “Twistys.” These are the most well-known and popular brands
6 in the legal adult entertainment industry.

7 The sale of memberships to MG Premium Ltd.’s paid membership websites
8 where MG Premium Ltd. offers its copyrighted works is directly damaged by
9 Defendant’s display of its works for free. Simply stated, potential MG Premium
10 Ltd. customers will not pay monthly rates for the right to access and view content
11 that is available for free.

12 Internet traffic on PornEZ.net is *extensive*. For the three-month period
13 ending December 2022, the PornEZ.net website averaged approximately 27.6
14 million visitors monthly. Complaint ¶ 10. The least expensive MG Premium Ltd.
15 paid membership is Brazzers at \$9.99 per month. Tucker Decl., ¶ 19. Lost revenue
16 to MG Premium Ltd., for the PornEZ.net users that had access to MG Premium
17 Ltd.’s works for free in one month alone had a potential value of
18 \$275,724,000,000 during that time (27.6M x \$9.99).

19 It is not possible to calculate an exact loss from a pirate service such as
20 PornEZ.net. While it may be that not all 27.6M monthly visitors would have been
21 MG Premium Ltd. members but for PornEZ.net, there is no doubt that MG
22 Premium Ltd. suffered substantial revenue losses. Additionally, the calculation
23 does not take into account the fact that Plaintiff’s works on PornEZ.net could be
24 embedded and thus shared throughout the internet, resulting in an immeasurable
25 loss of potential customers.

26 In *Perfect 10, Inc. v. Talisman Communs., Inc.*, 2000 U.S. Dist. LEXIS
27 4564 (C. D. Cal. Mar. 27, 2000), the plaintiff magazine publisher sued a website
28 for publishing its photographs on the Internet. Evaluating damages the Court

1 wrote, “While it would be difficult to quantify Perfect’10’s damages resulting
2 from the infringement, it is clear that Perfect 10 has been severely damaged. The
3 photographs have been distributed worldwide, in a form that is easy to download
4 and easy to copy. A virtually unlimited number of copies can be made of the
5 copyrighted photographs, as a result of [defendant’s] infringement.” *Perfect 10,*
6 *Inc.*, 2000 U.S. Dist. LEXIS 4564 at 11. The Court went on to award the
7 maximum statutory award for willful infringement (\$100,000 per work at the
8 time) for each infringed photograph. This \$100,000 per photograph certainly
9 demonstrates a basis for Plaintiff claiming that much per video, if not more.

10 Defendant’s infringement was for a commercial purpose. Defendant earned
11 and is earning money from advertising, and the value of advertising on
12 PornEZ.net was and is directly related to the number of visitors to the site. Thus,
13 the value of advertising is directly related to the quality and desirability of content.
14 MG Premium Ltd.’s paid membership websites and videos are among the most
15 popular in the world. Tucker Decl., ¶ 18. Defendant’s website reached and
16 continues to reach millions of potential consumers.⁴

17 Each PornEZ.net user that is able to obtain MG Premium Ltd.’s content for
18 free damages MG Premium Ltd. by both the specific lost sale in that instance and
19 the lost potential business from a viewer being accustomed to accessing the
20 content for free. Defendant’s actions have caused immeasurable future damage by
21 conditioning potential consumers to expect MG Premium Ltd.’s valuable quality
22 products for nothing, thereby making it difficult for MG Premium Ltd. to earn
23 money from the works.

24 Statutory damages serve both compensatory and punitive purposes,
25 therefore appropriate whether there is adequate evidence of actual damages
26

27
28

4 Link: <https://www.similarweb.com/website/pornez.net/#overview>

1 suffered by the plaintiff or profits realized by defendants to effectuate the statutory
 2 policy of discouraging infringement. *Los Angeles News Serv. v. Reuters Television*
 3 *Int'l, Ltd.*, 149 F.3d 987, 996 (9th Cir 1998). Prior federal court decisions have
 4 recognized the high economic value of erotic material. *See Playboy v. Webbworld*,
 5 968 F.Supp. 1171 (E.D. Tex 1997) (awarding \$5,000 per erotic photo); *and*
 6 *Perfect 10, Inc.*, 2000 U.S. Dist. LEXIS 4564 at 11 (awarding \$100,000, the then
 7 maximum, per adult photograph).

8 **C. The Facts and Law Support a Maximum Statutory Award.**

9 Infringements here were and are willful and malicious. Defendant knew that
 10 his conduct was unlawful and acted without the slightest pretense of a
 11 justification. Defendant uploaded MG Premium, Ltd.'s copyrighted works onto
 12 PornEZ.net. At a minimum, Defendant was made aware of the infringements upon
 13 takedown notices sent by MG Premium Ltd. Complaint, ¶ 2. Defendant's
 14 objective was to unlawfully display Plaintiff's property for financial gain. There is
 15 no other plausible objective. Defendants' illegal actions were not a momentary
 16 lapse, but part of a sustained commercial enterprise. To deter others from the same
 17 temptation, a large award is appropriate. *Yurman*, 262 F.3d at 113-114.

18 Defendants willfully infringed 7,818 of Plaintiff's works on 51,375 separate
 19 and distinct webpages resulting in millions of views.⁵ The sheer volume of
 20

21
 22 ⁵ Example of an active link to adult content owned by MG Premium Ltd. displayed on Pornez.net
 with **10,791 views**.

23 Search URL showing view count: <https://pornez.net/?s=brazzers>

24 Title on Pornez.net: pornstarslikeitbig 21 10 01 phoenix marie brazzers plus queen

25 Direct URL on Exhibit A of Dkt. 1: <https://pornez.net/video948154/pornstarslikeitbig-21-10-01-phoenix-marie-brazzers-plus-queen/> Last Viewed May 9, 2023.

26 Example of an active link to adult content owned by MG Premium Ltd. on Pornez.net with
 27 **17,856 views**.

28 Search URL showing view count:

<https://pornez.net/?s=brazzersexxtra+22+09+13+angela+white+angelas+airtight+dp>

Title on Pornez.net: brazzersexxtra 22 09 13 angela white angelas airtight dp

1 infringements indicates the willfulness of Defendant’s actions and the value of
2 using Plaintiffs content.

3 On a motion for default judgment, a district court awarded a maximum
4 statutory award of \$150,000 each for infringements of *The Last Samurai* and
5 *Mystic River*, when a member of the Academy of Motion Picture Arts and
6 Sciences who had been provided with a screener copy of the movies allowed the
7 movies to be duplicated and distributed via the Internet. *Warner Bros. Entm't, Inc.*
8 *v. Caridi*, 346 F. Supp. 2d 1068 (C.D. Cal. 2004). Similarly, in *Columbia Pictures*
9 *Indus. v. Krypton Broad. of Birmingham, Inc.*, 259 F.3d 1186 (9th Cir. 2001), cert
10 denied, 534 U.S. 1127 (2002), the Ninth Circuit affirmed an award of
11 approximately \$72,000 per infringement of several half-hour television shows.

12 The popularity and economic value of adult content cannot be denied. Prior
13 federal court decisions have recognized the high economic value of erotic
14 material. Where infringement was found to be willful a court awarded \$100,000
15 (the then maximum award) per adult photograph. *Perfect 10, Inc.*, 2000 U.S. Dist.
16 LEXIS 4564 at 11.

17 Statutory damages serve both compensatory and punitive purposes, and
18 thus may be appropriate "whether or not there is adequate evidence of the actual
19 damages suffered by plaintiff or of the profits reaped by defendant" in order to
20

21
22 Direct URL on Exhibit A of Dkt. 1: <https://pornez.net/video910095/brazzersexextra-22-09-13-angela-white-angelas-airtight-dp/> Last Viewed May 9, 2023.

24 Example of an active link to adult content owned by MG Premium Ltd. displayed on Pornez.net
25 with **8,590 views**.

26 Search URL showing view count:

27 <https://pornez.net/?s=Brazzers+Abigail+Mac+Nicolette+Shea+BrazziBots+Part+2+2019+1080p+HEVC>

28 Title on Pornez.net: Brazzers Abigail Mac Nicolette Shea BrazziBots Part 2 2019 1080p HEVC

Direct URL on Exhibit A of Dkt. 1: <https://pornez.net/video703889/brazzers-abigail-mac-nicolette-shea-brazzibots-part-2-2019-1080p-hevc/> Last Viewed May 9, 2023.

1 effectuate the statutory policy of discouraging infringement. *Los Angeles News*
2 *Serv. v. Reuters Television Int'l, Ltd.*, 149 F.3d 987, 996 (9th Cir. 1998).

3 **D. Increased Damages for Willfulness.**

4 “In a case where the copyright owner sustains the burden of proving, and
5 the court finds, that infringement was committed willfully, the court in its
6 discretion may increase the award of statutory damages to a sum of not more than
7 \$150,000.” 17 U.S.C. § 504(c)(2). Defendant here knew or should have known
8 that his acts constituted copyright infringement. Defendant knew that he did not
9 have Plaintiff’s permission to reproduce and distribute the Works for his own
10 commercial gain and could only remain unaware of the infringing nature of his
11 actions by engaging in willful blindness. In fact, MG Premium Ltd. has sent
12 465,944 compliant DMCA takedown notices informing Defendant of the
13 infringements. Declaration of Tucker, ¶ 25.

14 The “statutory rule, formulated after long experience, not merely compels
15 restitution of profit and reparation for injury but also is designed to discourage
16 wrongful conduct.” *F.W. Woolworth Co. v. Contemporary Arts, Inc.*, 344 U.S.
17 228, 233, 97 L. Ed. 276, 73 S.Ct. 222 (1952).

18 It is appropriate that the Court use opportunities such as this to send a
19 message of deterrence to would-be infringers that, “it costs less to obey the
20 copyright laws than to disobey them.” *International Korwin Corp. v. Kowalczyk*,
21 665 F. Supp. 652, 659 (D.N. Ill. 1987), affirmed 855 F. 2d 375 (N.D. Ill. 1987).
22 The District Court in *Korwin* held that, “[t]o determine the amount of statutory
23 damages the court should primarily focus upon two factors: the willfulness of the
24 defendant’s conduct, and the deterrent value of the sanction imposed,” pointing
25 out that “courts have repeatedly emphasized that defendants must not be able to
26 sneer in the face of copyright owners and copyright laws.” *Id.* See also, *Hickory*
27 *Grove Music v. Andrews*, 749 F. Supp. 1001, 1003 (D. Mont. 1990); *Van Halen*
28 *Music v. Foos*, 728 F. Supp. 1495 (D. Mont. 1989).

1 Plaintiff alleged in its Complaint that Defendants acted willfully. *See*
2 Complaint, ¶¶ 61, 68, 69, 72, 80, and 92. A Defendant's default with respect to a
3 complaint that pleads willfulness, as here, establishes willful copyright
4 infringement. *See, Derek Andrew, Inc. v. Poof Apparel Corp.*, 528 F.3d 696, 702
5 (9th Cir. 2008) (after default, "all factual allegations in the complaint are deemed
6 true, including the allegation of (defendant's) willful infringement of (plaintiff's)
7 trademarks").

8 Willfulness can also be inferred from a Defendant's failure to defend. *See,*
9 *Tiffany Inc. v. Luban*, 282 F.Supp. 2d 123, 124 (S.D.N.Y. 2003) ("By virtue of the
10 default, the (defaulting party's) infringement is deemed willful."); *Fallaci v. New*
11 *Gazette Literary Corp.*, 568 F.Supp. 1172, 1173 (S.D.N.Y. 1983).

12 At the maximum of \$150,000 per work when the Court finds infringement
13 willful, statutory damages for the offense of Copyright Infringement the award
14 would be \$1,172,700,000 (\$150,000 x 7,818 infringements). In a recent decision,
15 *MG Premium v. Thomas Zang, et al.*, Cause No. 3:20-cv-05134-BHS, the Western
16 District of Washington reviewed a nearly identical set of facts with 2,433
17 infringements. There, the Court determined that \$15,000 was appropriate for each
18 infringement. MG Premium, Ltd. asks the Court to apply the same analysis here
19 and award \$15,000 per infringement for a total of \$117,270,000.

20 **E. Plaintiff is Entitled to Injunctive Relief.**

21 The Copyright Act provides that a district court may enter a permanent
22 injunction "on such terms as it may deem reasonable to prevent or restrain
23 infringement of a copyright." 17 U.S.C. § 502(a). The decision to grant injunctive
24 relief rests within the equitable discretion" of the district court. *eBay, Inc. v.*
25 *MercExchange, LLC*, 547 U.S. 388, 394, 126 S. Ct. 1837, 164 L. Ed. 2d 641
26 (2006). Such discretion should be "exercised consistent with traditional principles
27 of equity." *Id.*

28

1 In determining whether to issue a permanent injunction in a copyright
2 infringement action, a district court evaluates four factors: (1) irreparable harm;
3 (2) the inadequacy of monetary damages for the infringement; (3) whether the
4 balance of hardships weighs in the copyright holder's favor; and (4) whether the
5 public interest would be served by a permanent injunction. *Id.* at 391; *see also*
6 *Flexible Lifeline Sys., Inc. v. Precision Lift, Inc.*, 654 F.3d 989, 999 (9th Cir.
7 2011) (applying the four-factor test outlined in *eBay*). Further, a permanent
8 injunction should issue when the intervention of the court in equity is essential to
9 protect a party's rights against injuries that could not otherwise be remedied. *See*
10 *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312, 102 S. Ct. 1798, 72 L. Ed. 2d
11 91 (1982).

12 Here, all factors weigh in favor of injunctive relief against the Defendant.

13 **1. Irreparable Harm.**

14 The first factor in a permanent injunction analysis is whether a plaintiff has
15 suffered an irreparable injury as a result of a defendant's conduct *or* will suffer an
16 irreparable injury absent an injunction. *See American Trucking Ass'ns v. City of*
17 *Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009). As part of a court's irreparable
18 injury analysis in a copyright action, courts regularly examine three main
19 considerations: (1) direct competition between the parties; (2) loss of market
20 share due to the infringement; and (3) loss of customer and business goodwill.
21 *See, e.g., Presidio Components Inc. v. Am. Tech. Ceramics Corp.*, 702 F.3d 1351,
22 1362 (Fed. Cir. 2012) (stating that direct competition in the same market strongly
23 supports the potential for irreparable harm absent an injunction); *i4i Ltd. P'ship v.*
24 *Microsoft Corp.*, 598 F.3d 831, 861 (Fed. Cir. 2010) (finding that harm to a party's
25 market share, revenues, and brand recognition is relevant for determining whether
26 the party has suffered an irreparable injury); *Celsis In Vitro, Inc. v. CellzDirect,*
27 *Inc.*, 664 F.3d 922, 930 (Fed. Cir. 2012) (holding that loss of goodwill, damage to

1 reputation, and loss of business opportunities are all valid grounds for finding
2 irreparable harm).

3 Here, Defendant is in direct competition with MG Premium Ltd. MG
4 Premium Ltd. makes its full-length content available through subscription-based
5 websites to view content, while Defendant displays full-length videos on
6 PornEZ.net for free to the viewer (monetizing through advertising revenue).
7 Direct competition between a copyright holder and a proven copyright infringer
8 has consistently supported the issuance of a permanent injunction. *See Presidio*
9 *Components, Inc.*, 702 F.3d at 1362.

10 There is a clear loss of market share to Plaintiff. If MG Premium Ltd.'s
11 content is available for free on PornEZ.net users will not pay membership fees to
12 view the content. Here, the infringement was on a broad scale, with 7,818 of MG
13 Premium Ltd.'s full-length videos. PornEZ.net displayed and is still displaying a
14 *significant* number of infringements for free to potential customers who would
15 otherwise pay to view them.

16 There is also the loss of customer and business goodwill. Customers must
17 pay a fee to view MG Premium Ltd.'s full-length videos. For these videos (7,818
18 of them) to be on PornEZ.net damages MG Premium Ltd.'s relationship with
19 subscribers that pay to view MG Premium Ltd. content.

20 Subscribers will terminate paid subscriptions to view the content and MG
21 Premium Ltd. will get a reputation for its full-length content being available for
22 free. Moreover, there is no evidence that Defendant will ultimately stop infringing
23 Plaintiffs' recordings or that, absent an injunction, Defendant would stop. Over
24 90% of the content at issue in this case is still live and available for viewing, for
25 free on the PornEZ.net website. Defendant's failure to respond to the Complaint
26 offers no assurance that Defendant's infringing activity will cease, and only
27 highlights that Defendant does not take seriously the illegality of his conduct. *See*
28 *Jackson v. Sturkie*, 255 F. Supp. 2d at 1103 (granting permanent injunction in a

1 copyright infringement action as part of a default judgment because “defendant's
2 lack of participation in this litigation has given the court no assurance that
3 defendant's infringing activity will cease.”); *Cal. Sec. Cans*, 238 F. Supp. 2d at
4 1178 (granting permanent injunction as part of a default judgment because, among
5 other things, “in the absence of opposition by the non-appearing defendant, it
6 cannot be said that it is 'absolutely clear' that Defendant's allegedly wrongful
7 behavior has ceased and will not begin again.”). Thus, without an injunction,
8 Plaintiff's copyrighted recordings would remain vulnerable to continued and
9 repeated infringement.

10 Here, there is evidence of irreparable harm and no evidence that absent an
11 injunction Defendant will cease future exploitation of MG Premium Ltd.'s
12 copyrights.

13 **2. Monetary Damages are Inadequate.**

14 To justify an injunction, it must be established that monetary damages alone
15 are inadequate to fully compensate it for the Defendants' conduct. *See eBay*, 547
16 U.S. at 391. Lost market share and erosion of company goodwill are intangible
17 injuries difficult to quantify and compensate which supports the issuance of a
18 permanent injunction. *See Apple II*, 658 F.3d at 1154 (stating that injuries to a
19 business' reputation and company goodwill are intangible injuries difficult to
20 quantify and compensate).

21 Difficulty for the jury in quantifying damages supports a finding that
22 monetary damages alone are insufficient to fairly and fully compensate for
23 copyright infringement. *See Oracle USA, Inc. v. Rimini St., Inc.*, 324 F. Supp. 3d
24 1157, 1165 (D. Nev. 2018). Here, not only are there 7,818 infringements over
25 51,375 URL's, but each of those were able to be shared via multiple various
26 Internet mediums, including virtually all other pirate websites and through direct
27 messaging. Thousands are still live on PornEZ.net. Thus, there is absolutely no
28 way to determine the actual number of instances the PornEZ.net infringements

1 result in infringing display throughout the Internet. The actual damage is
2 incalculable.

3 One of the most fundamental rights a copyright holder has is the right to
4 exclude others from taking and distributing the copyrighted work and this right
5 has routinely been held difficult to compensate solely through monetary
6 compensation. *See eBay*, 547 U.S. at 395 (Roberts, C.J. concurring) (identifying
7 and explaining the difficulty of protecting a right to exclude through monetary
8 remedies alone). *See Oracle*, 324 F. Supp. At 1166.

9 Further, there is no reason to believe that Defendant herein will actually
10 honor a monetary judgment assessed against him. He has ignored all aspects of
11 this case. While PornEZ.net is expressly aimed at the United States, Defendant
12 resides outside the United States and collection of any monies will be incredibly
13 difficult. Based upon investigations into Defendant, it does not appear that there
14 are assets sufficient to satisfy a monetary judgment, even should collection occur.
15 Thus, it is probable that MG Premium Ltd. will be unable to collect any monetary
16 judgment against Defendant. The inability to collect on a monetary judgment is
17 sufficient for a finding of irreparable harm. *Aspen Tech., Inc. v. M3 Tech, Inc.*,
18 569 F. App'x 259, 273 n.56 (5th Cir. 2014).

19 **3. Balance of Equities and Public Interest Favor an Injunction.**

20 A court must weigh and balance the competing effect that granting or
21 withholding an injunction would have on each party. *See Oracle USA, Inc. v.*
22 *Rimini St., Inc.*, 324 F. Supp. 3d 1157, 1166 (D. Nev. 2018) *citing Williams v.*
23 *Bridgeport Music, Inc.*, 2015 U.S. Dist. LEXIS 97262, 2015 WL 4479500, at *41
24 (C.D. Cal. 2015). The balance of hardships tips in favor of a holder of a copyright
25 seeking to protect its copyrighted works when the party to be enjoined does not
26 have a separate legitimate business purpose for continuing the conduct or acts
27 deemed to be infringement. *Grokster*, 518 F. Supp. 2d at 1220. "[T]he touchstone
28 of the public interest factor is whether an injunction, both in scope and effect,

1 strikes a workable balance between protecting the [copyright holder's] rights and
2 protecting the public from the injunction's adverse effects." *i4i*, 598 F.3d at 863.

3 Here, a permanent injunction against Defendants for the possibility of
4 future copyright infringement is in the public interest. *See Apple Computer, Inc. v.*
5 *Franklin Computer Corp.*, 714 F.2d 1240, 1255 (3d Cir. 1983) ("[I]t is virtually
6 axiomatic that the public interest can only be served by upholding copyright
7 protections and, correspondingly, preventing the misappropriation of the skills,
8 creative energies, and resources which are invested in the protected work.").

9 **4. The Court Should Order Registries and Registrars to**
10 **Transfer to MG Premium Ltd. the Domains Used by the**
11 **Defendants for Infringement.**

12 Defendants used PornEZ.net to display 7,818 of MG Premium Ltd.'s
13 copyrighted full-length videos. Verisign, Inc. is the registry for .com and .net
14 domains. Tucker Decl. ¶ 21. Transferring PornEZ.net to MG Premium Ltd. would
15 stop Defendant from being able to distribute infringing content to the public in
16 violation of MG Premium Ltd.'s rights. The Court should instruct Verisign, Inc. to
17 disable and transfer PornEZ.net to MG Premium Ltd.

18 Such relief has been granted in other copyright infringement cases. *See*
19 *China Central Television v. Create New Tech. (HK) Ltd.*, No. 15-01869 MMM,
20 D.I. 192 at ¶ 18 (C.D. Cal. May 31, 2016); *DISH Network L.L.C. v. Dima*
21 *Furniture, Inc.*, 2019 WL 2498224 at *8-9 (D. Md. June 17, 2019); *DISH Network*
22 *L.L.C. v. Mo' Ayad Al Zayed Trading Est.*, No. 4:17-cv-03909, D.I. 24 (S.D. Tex.
23 Aug 24, 2018); *DISH Network L.L.C. v. Shava IPTV Network LLC*, No. 1:15-cv-
24 00706 (TSE/IDD), D.I. 136 *E.D. Va. Feb 2, 2018); *Warner Bros. Entm't, Inc. v.*
25 *Doe*, No. 14-cv-3492, D.I. 27 at 7 (S.D.N.Y. Oct 3, 2014).

1 **5. United States Based Vendors Should Be Enjoined From Doing**
2 **Business with PornEZ.net.**

3 Fed.R.Civ.P. 65 provides the Court discretion to enjoin third parties who act
4 in concert with or participates with the parties or the parties' agents. See
5 Fed.R.Civ.P. 65(d)(2)(C). The Supreme Court has concluded that Rule 65(d) is
6 "derived from the common-law doctrine that a decree of injunction not only binds
7 the parties defendant, but also those identified with them in interest, in 'privity'
8 with them, represented by them or subject to their control." *Regal Knitwear Co. v.*
9 *NLRB*, 324 U.S. 9, 14, 65 S. Ct. 478, 89 L. Ed. 661 (1945). The intent of Rule
10 65(d) is to extend the reach of injunctions to nonparties who nonetheless share
11 common interests with a party, are in privity with a party, are represented by a
12 party, or are subject to a party's control. *TD Ameritrade, Inc. v. Nev. Agency & Tr.*
13 *Co.*, No. 3:08-CV-00245-LRH-RAM, 2008 U.S. Dist. LEXIS 105677, at *17 (D.
14 Nev. Oct. 30, 2008).

15 Here, there are several United States service providers that share common
16 interests with Defendant, is in privity with Defendant, and is subject to the control
17 of Defendant. Specifically:

- 18 **a.** Cloudflare, Inc. delivers video content from PornEZ.net to
19 viewers in the United States. Complaint, ¶ 15.
20 **b.** Namecheap, Inc. is the domain registrar for PornEZ.net.
21 Complaint, ¶ 14.

22 Accordingly, Cloudflare, Inc. and Namecheap, Inc.; should be enjoined
23 from any continued assistance or participation with the video streaming actions of
24 Defendant Nguyen Hoi.

25 Such relief and application of Fed.R.Civ.P. 65(d)(2)(C) has been granted in
26 other Courts. *Triangl Grp. Ltd. v. Jiangmen City Xinhui Dist. Lingzhi Garment*
27 *Co.*, No. 16-CV-1498 (PGG), 2017 U.S. Dist. LEXIS 102256, 2017 WL 2829752,
28 at *8 (S.D.N.Y. June 22, 2017) (enjoining "any third parties, including social

1 media platforms,...online marketplaces, online payment providers, including
 2 credit card companies,... and other online service providers ... to cease providing
 3 such services to the Defaulting Defendants” and to transfer domain names to
 4 plaintiff); *Warner Bros. Entm't, Inc. v. Doe*, No. 14- CV-3492 (KPF) (S.D.N.Y.
 5 Oct. 3, 2014) (enjoining ISPs and registrars); *Tory Burch LLC v. Yong Sheng Int'l*
 6 *Trade Co.*, No. 10-CV-9336 (DAB), 2011 U.S. Dist. LEXIS 158882, 2011 WL
 7 13042618, at *2 (S.D.N.Y. May 13, 2011)(enjoining ISPs and other service
 8 providers, and directing, *inter alia*, transfer of domain names).

9 **F. Plaintiff Is Entitled To Attorneys Fees.**

10 MG Premium Ltd. also requests attorney’s fees in the amount of \$4,002.60,
 11 and \$667.87 in costs. Bjorgum Decl., ¶ 3. 17 U.S.C. § 505 provides that the Court
 12 may “award a reasonable attorney’s fee to the prevailing party as part of the
 13 costs.” *See also, Warner Bros. Ent, Inc. v. Duhy*, 2009 U.S. Dist. LEXIS 123332,
 14 8-9 (C.D. Cal. Nov. 30, 2009), citing *Kepner-Tregoe, Inc. v. Vroom*, 186 F.3d 283,
 15 289 (2d Cir. 1999). The sum of \$4,670.47 is reasonable.

16
 17 **V. CONCLUSION**

18 For the reasons demonstrated above, and based on the supporting evidence,
 19 Plaintiff requests that a default judgment be entered against Defendants as
 20 follows:

- 21 a. The sum of \$117,270,000 in statutory damages on the cause of
 22 action for Copyright Infringement, and
 23 b. Awarding Plaintiff its attorney’s fees of \$4,002.67 and costs of
 24 suit of \$667.87 for a total of \$4,670.47
 25 c. Permanent injunctive relief enjoining Defendant and their
 26 respective agents, servants, and employees, and any other persons
 27 or entities acting on their behalf from infringing upon any of
 28 Plaintiff’s copyrighted works.

- d. Permanent injunctive relief enjoining Cloudflare, Inc.; and Namecheap.com; from continuing any service contracts or services to Defendant operating PornEZ.net.
- e. Instruct Verisign, Inc. to disable and transfer PornEZ.net to MG Premium Ltd.
- f. Such other relief as the Court deems just and proper.

Respectfully Submitted,

Dated: July 9, 2023

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiff MG Premium Ltd. certifies that this brief contains 6,702 words, which complies with the word limit of L.R. 11-6.1.

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