

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION  
CIVIL ACTION NO. 3:21-CV-00655-DJH**

**DISH NETWORK L.L.C., et al.**

**PLAINTIFFS**

**VS.**

**KEVIN HIBDON, et al.**

**DEFENDANTS**

**Report and Recommendation**

Before the Court is Plaintiffs Dish Network L.L.C. and Sling TV L.L.C.’s (collectively, “Plaintiffs”) Motion for Default Judgment as to Defendant James Dustin Meadows (“Meadows”). (DN 38). Meadows has not responded, and the time to do so has passed. Pursuant to 28 U.S.C. 636(b)(1)(B), the District Judge referred this matter to the undersigned United States Magistrate Judge for a report and recommendation on the pending motion. (DN 39).

**I. Findings of Fact**

On October 28, 2021, Plaintiffs filed the instant action against Meadows and Kevin Hibdon (“Hibdon”),<sup>1</sup> both individually and collectively doing business as “Louisville Media Box.” (DN 1). Plaintiffs seek damages for violations of the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. § 1201. (*Id.*, at PageID # 1). The Complaint alleges Hibdon and Meadows illegally rebroadcasted and resold Plaintiffs’ content through their own streaming devices. (*Id.*, at PageID # 4–11). Both Meadows and Hibdon filed answers to the Complaint. (DN 6; DN 7).

However, after filing his Answer to the Complaint and initially responding to discovery requests, Meadows disappeared from this suit. (*See* DN 23). Plaintiffs met with Meadows in

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<sup>1</sup> The instant motion pertains only to Meadows. Hibdon participated in this suit as required under the federal rules, and eventually reached an Agreed Motion for Final Judgment and Permanent Injunction with Plaintiffs (DN 40), which this Court entered (DN 41).

February 2022 to discuss outstanding discovery requests, but he still did not respond. (*Id.*, at PageID # 80). Eventually, Meadows’s counsel requested to withdraw due to Meadows’s “inability to comply with the Federal Rules of Civil Procedure.” (DN 17, at PageID # 68).

His absence continued until the Court held a show cause hearing in relation to Plaintiffs’ Motion to Strike Meadows’s Answer and Enter Default. (DN 30; *see* DN 23). Meadows appeared at the hearing and indicated that he would comply with the demands of discovery. (DN 29). The Court asked him to do so within thirty days. (*Id.*).

However, after thirty days, a Joint Status Report indicated “Meadows ha[d] failed to comply in any regard” with the Court’s order. (DN 32, at PageID # 138). He had neither corrected his previous, flawed discovery responses nor produced additional documents. (*Id.*). In an email to Plaintiffs’ counsel on November 30, 2022, Meadows stated “I’m sorry I couldnt [sic] help dish more with me and my family being threatened with death I would rather lose this case than have my wife or my 5 children murdered I pray for mercy from the judge.” (DN 32-3, at PageID # 148).

Due to Meadows’s absence, the Court struck his answer and entered default against him. (DN 34). Plaintiffs initially asked the Court to enter default judgment against Meadows, award \$7,424,000.00 in statutory damages, and grant injunctive relief. (DN 38). In support of their motion, Plaintiffs provided extensive records of Meadows’s financial transactions which allegedly show 7,424 violations of the DMCA—with some of these transactions taking place after Plaintiffs filed this suit. (DN 38-1).

After reviewing the records, the Court requested Plaintiffs to supplement their request and provide more details on how they calculated 7,424 violations. (DN 42). In their supplemental filing, Plaintiffs amended their violation number to 5,816 and provided a full accounting of each violation. (DN 43, at PageID # 451).

## II. Findings of Law

After the Clerk of Court enters default, the “well-pleaded allegations relating to liability are taken as true.” *Long v. Morgan*, 451 F. Supp.3d 830, (M.D. Tenn. 2020 (citing *In re Family Resorts of America, Inc.*, 972 F.2d 347 (6th Cir. 1992))). Once the opposing party is in default, a party may move for default judgment. Fed. R. Civ. P. 55. While the Clerk of Court may enter default judgment “[i]f the plaintiff’s claim is for a sum certain or a sum that can be made certain by computation, the Court must assess damages in all other cases.” Fed. R. Civ. P. 55(b).

Once the clerk enters default, the Court takes the Complaint’s allegations as admitted. Fed. R. Civ. P. 8(b)(6) (“An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied.”). The Federal Rules then task the Court with “‘examin[ing] the sufficiency of plaintiff’s allegations to determine whether the plaintiff is entitled to’ a default judgment.” *Jones v. DeVille Asset Mgmt, L.P.*, No. 3:18-cv-524-RGJ, 2020 WL 13540306, at \*2 (W.D. Ky. Apr. 27, 2020) (quoting *Fifth Third Bank v. Canfield*, No. 3:14-cv-300-CRS, 2014 WL 3853464, at \*2 (W.D. Ky. Aug. 5, 2014)). A complaint’s allegations are sufficient “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

Still, the Court has discretion in whether to grant a default judgment. *See J & J Sports Productions, Inc. v. Camacho*, No. 3:16-cv-141-TBR, 2017 WL 2389409, at \*2 (W.D. Ky. June 1, 2017). Courts consider the following factors in deciding to grant default judgment:

[1] the amount of money potentially involved; [2] whether material issues of fact or issues of substantial public importance are at issue; [3] whether the default is largely technical; [4] whether plaintiff has been substantially prejudiced by the

delay involved; [5] and whether the grounds for default are clearly established or are in doubt.

*Id.* (citing 10A Charles A. Wright et al., *Federal Practice and Procedures* § 2685 (4th ed.)).

After finding the defaulting party liable and then electing to exercise discretion in granting default judgment, the Court must determine the proper damages amount. When the Clerk enters default, “the allegations in the complaint with respect to the amount of the damages are not deemed true.” *Vesligaj v. Peterson*, 331 F. App’x 351, 355 (6th Cir. 2009) (citing *Credit Lyonnais Sec. (USA), Inc. v. Alcantara*, 183 F.3d 151, 155 (2d Cir. 1999)). Thus, the district court must “conduct an inquiry in order to ascertain the amount of damages with reasonable certainty.” *Fifth Third Bank v. Canfield*, No. 3:14-cv-300-CRS, 2014 WL 3853464, at \*2 (W.D. Ky. Aug. 5, 2014). Additionally, the party in default must have “the opportunity to contest the amount of damages.” *Antoine v. Atlas Turner, Inc.*, 66 F.3d 105, 110 (6th Cir. 1995).

The DMCA also allows for permanent injunctive relief. *See* 17 U.S.C. § 1203(b)(1). To receive a permanent injunction, Plaintiffs must demonstrate: “(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” *eBay, Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

*a. Does Plaintiffs’ Complaint Adequately Allege Violations of the DMCA?*

Plaintiffs’ two-count Complaint alleges Meadows violated two provisions of the DMCA: (1) circumventing technological measures, in violation of 17 U.S.C. § 1201(a)(1)(A); and (2) trafficking in circumvention technology and services, in violation of 17 U.S.C. § 1201(a)(2). (DN 1, at PageID # 11–13).

First, to succeed in making a claim under § 1201(a)(1)(A), Plaintiffs must show both that they implemented measures to control access to their work or services and that Meadows worked to get around those protection measures. Plaintiffs' Complaint explains they utilized "digital rights management ('DRM') technologies" to secure their services, which include broadcast entertainment on either a subscription or pay-per-view basis. (DN 1, at PageID # 4). DRM technology uses encryption and decryption processes "to make Sling Programming accessible to only authorized Sling subscribers that purchased access to that Sling Programming and restricts unauthorized access to, copying, and retransmission of Sling Programming." (*Id.*). Despite Plaintiffs' DRM security, the Complaint states that Defendants sold devices, pre-loaded with access codes, that would circumvent these measures and retransmit Sling Programming without Plaintiffs' authorization. (*Id.*, at PageID # 6–8). Plaintiffs include unique identifiers in their broadcasts, and they detected these identifiers when viewing content from Defendants' pirated devices—confirming that Defendants pirated content from Sling Programming and not Sling's competitors. (*Id.*, at PageID # 8). Thus, Plaintiffs' Complaint adequately alleges Meadows circumvented their security measures, in violation of § 1201(a)(1)(A). (*See id.*, at PageID # 3–8)

Second, to succeed under § 1201(a)(2), Plaintiffs must show Meadows trafficked items that helped others circumvent Plaintiffs' technological protection measures. Plaintiffs' Complaint goes beyond simply detailing that Defendants circumvented the DRM measures for their own viewing; Plaintiffs additionally allege Defendants sold devices capable of pirating Plaintiffs' broadcasting to the public. (*Id.*, at PageID # 8–11). Plaintiffs' Complaint includes screenshots of social media postings showing both Defendants selling and promoting their pirating devices and details how they employed a private investigator to purchase a device from the Defendants. (*Id.*). As a result,

the Complaint sufficiently alleges that Meadows trafficked devices that circumvented the DRM measures, in violation of § 1201(a)(2). (*Id.*).

*b. Should the Court Award Default Judgment?*

Turning to the factors courts consider when deciding whether to award a default judgment, it is clear that such a remedy is appropriate here. The first factor, the amount of money involved, cuts against an award of default judgment, as Plaintiffs request an award exceeding five million dollars. (DN 43, at PageID # 452). This substantial amount gives the Court pause in issuing the judgment; however, Meadows has made it impossible to address this in any other way, and the remaining factors all favor awarding default judgment. *See Hutton v. Fisher*, 359 F.2d 913 (3d Cir. 1966) (“Matters involving large sums should not be determined by default judgments if it can reasonably be avoided.”). The second factor favors Plaintiffs’ motion. Plaintiffs strongly support their alleged facts with evidence; they offer screengrabs of Meadows selling these devices on social media and offer a report from a private investigator who purchased this device from Meadows. (*See* DN 38-4, at PageID # 195–96; DN 43-1, at PageID # 468). The third element also favors awarding default judgment. Meadows falling into default is not technical; he had numerous chances to appear and defend against these allegations, but he chose to ignore this suit. (*See* DN 33, at PageID # 153 (outlining Meadows’s multiple chances to participate in the lawsuit)). The next factor furthers supports Plaintiffs’ motion. Plaintiffs offered Meadows’s transaction records to support their damages, and these records show that—despite this suit and numerous cease and desist letters—Meadows has continued to sell the devices in violation of the DMCA. (*See* DN 38, at PageID # 173, 175). Lastly, because the grounds for default are clear, the final element also favors default judgment. Although Meadows initially engaged in this suit, he willingly stopped

participating in the suit while knowing the potential consequences for doing so. Thus, the Court recommends awarding Plaintiffs default judgment.

*c. How Much in Damages is Appropriate?*

Still, the Court must determine the appropriate amount of damages. *See Antoine v. Atlas Turner, Inc.*, 66 F.3d 105, 110 (6th Cir. 1995). Under the DMCA, parties may seek up to \$2,500.00 in damages for each violation, and Plaintiffs request only \$1,000.00 per violation. In their initial motion, Plaintiffs requested \$7,424,000 in statutory damages and supported this claim with several exhibits alleged to show 7,424 financial transactions violating the DMCA. (DN 38; *see* DN 38-6; DN 38-7; DN 38-8; DN 38-9; DN 38-10). Upon the Court's initial review, the motion lacked clarity as to why Plaintiffs considered certain transactions violative, and the Court asked for supplemental briefing. (DN 42).

In their supplemental filing, Plaintiffs lowered their violation calculation to 5,816 and thus lowered their damages request to \$5,816,000. (DN 43, at PageID # 451). From the initial list presented to the Court, Plaintiffs state that their amended list strikes "transactions from their calculations which present as either declined, reversed, cancelled, lacked a counter-party, were made by Defendant Meadows to a third-party, or were for the amount advertised by Defendant Meadows on his social media, but included ambiguous reference comments." (DN 43, at PageID # 445). Plaintiffs also state they attribute multiple violations to a single transaction where that transaction specifically references multiple people buying the codes. (*Id.*, at PageID # 446). They additionally attribute numerous violations to a single transaction where resellers made multiple purchases for the same amount and one of those transactions includes a reference for the number of codes purchased. (*Id.*, at PageID # 446–47). And where the dollar amount differed, "Plaintiffs applied the most expensive ratio for credit purchases by the same reseller." (*Id.*).

Plaintiffs do not provide the Court with an exhaustive list of the remaining alleged violating transactions. Instead, Plaintiffs' supplement lists transactions that they removed from their calculations as well as a count of violations they now attribute for each page of exhibits in their initial motion. (*Id.*, at PageID # 448–51). In reviewing Plaintiffs supplemental list, the Court relied on the per-page total Plaintiffs listed and then used Plaintiffs own criteria for counting violations to confirm the accuracy of the per-page count.

After reviewing the amended estimation, the Court finds that Plaintiffs sufficiently alleged some but not all the 5,816 violations. The Court will address each of the five exhibits in turn. Plaintiffs assert the Exhibit 5, showing PayPal transactions, evidences 1,127 violations, but the Court finds 3 additional transactions should be excluded. (*See* DN 38-6). Entry 401 contains an ambiguous reference and should have been removed by Plaintiffs. (*See* DN 38-6, at PageID # 213 (“Kitchen aid”)). Similarly, entry 1260’s note includes only an emoji of a slice of pizza and should have been excluded. (*Id.*, at PageID # 217). Additionally, Plaintiffs assert that page 18 of this list still contains 11 violations, but their supplemental filing fails to specify which of the transactions should be discarded. (*See id.*, at PageID # 216; DN 43, at PageID # 451). Of the 15 transactions on this page, the Court finds entries 1012, 1021, 1035, 1038, and 1155 should be disregarded for irrelevant transaction notes. (*See, e.g.*, DN 38-6, at PageID # 216 (“Work”) (“Hi”)). Put more simply, the Court will attribute one less violation to this page than Plaintiffs’ supplement alleges. Thus rather than the 1,127 violations alleged by Plaintiffs’ Supplement (DN 43), the Court finds that Exhibit 5 evidences 1,124 violations.

Similar issues persist with Exhibit 6, which shows PayPal transactions involving a different account. (*See* DN 38-7). Entries 1640 and 1730 contains no notes and are not payments for ten or twenty dollars. (*Id.*, at PageID # 245–46). The Court will also discount entry 6455 because it shows



a reversed payment as well as entry 7760 because it shows an incomplete payment. (*Id.*, at PageID # 259, 262). In total, the Court determines that Exhibit 6 contains 1,870 violations, 4 less than Plaintiffs alleged.

Plaintiffs also assert Exhibit 7, which shows additional PayPal transactions from a third account, shows 188 violations. (DN 43, at PageID # 451; *see* DN 38-8). However, Plaintiffs' violation-by-page breakdown only totals 118 violations.<sup>2</sup> (DN 43, at PageID # 451). However, this apparent clerical error carried into calculating Plaintiffs' overall sum. (*Id.*). The Court finds DN 38-8 has only 118 violations—not 188.

Exhibit 8 contains transactions through three different Square accounts, and Plaintiffs' Supplement alleges this Exhibit shows 1,263 violations (DN 43, at PageID # 451; *see* DN 38-9). However, both entry 175 and entry 407 should have been discounted because they show payments Meadows made to another person. (DN 38-9, at PageID # 309, 311). Thus, the Court determines that Exhibit 8 evidences 1,261 violations.<sup>3</sup>

Lastly, Exhibit 9 shows transactions Meadows received through Zelle, and Plaintiffs allege it shows 1,364 violations of the DMCA. (DN 43, at PageID # 451; *see* DN 38-10). Unlike the previous exhibits, this one does not enumerate entries, and, in addition to listing some specific payments, Plaintiffs' supplement states to generally discount all entries involving either (1) Meadows sending money to himself or (2) third-parties with amounts other than \$10.00 or \$20.00 that do not reference alleged conduct. (*See* DN 38-10; DN 43, at PageID # 450). Plaintiffs then assert that page 353 contains 3 violations, but the Court determines that it only contains a single

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<sup>2</sup> Notably, Plaintiff's per-page breakdown excludes several pages of this exhibit entirely.

<sup>3</sup> Plaintiffs' supplement discounts entry "52" on page 312 of the Exhibit. (DN 43, at PageID # 449). Although there is not an entry 52 on that page, their ultimate calculation of that page—24 violations—is correct. (*Id.*, at PageID # 451). The page contains 25 entries, but entry 521 should be discounted for an ambiguous reference. (DN 38-9, at PageID # 312 ("Apk payment)).

violation, as only one transaction does not fall under Plaintiffs' offered rules. (DN 43, at PageID # 451; *see* DN 38-10, at PageID # 353). Plaintiffs' remaining calculations for this exhibit prove accurate, so the Court concludes that Exhibit 9 evidences 1,362 violations.

In their supplement, Plaintiffs assert the exhibits now evidence 5,816 violations. After review, the Court has determined it instead shows 5,735 violations. In line with Plaintiffs' per-violation damages request, the Court will recommend an award of \$1,000.00 per violation, with a total award of \$5,735,000.00.

*c. Should Plaintiffs be Awarded Injunctive Relief?*

Plaintiffs have further adequately shown injunctive relief is warranted. First, they have been irreparably harmed by loss of profits as well as lost business reputation. Though the Court recommends a monetary award to remedy past lost profits, without equitable relief Meadows could continue selling the pirated content—taking future business from Plaintiffs. And Plaintiffs have shown Meadows has brazenly continued to sell these codes after this suit commenced. Further, the Sixth Circuit has recognized the damage to business reputation constitutes irreparable harm. *See Langley v. Prudential Morg. Capital Co., LLC* 554 F.3d 647, 649 (6th Cir. 2009) (“[A] loss of business goodwill may constitute irreparable harm because of the difficulty in calculating damages.”). Without preventing circumvention of Sling's protections, its business goodwill with existing customers may deteriorate since as they see others receiving the same services—though pirated—at a much lower cost.

As to the balance of hardships, an injunction will only prevent Meadows from profiting off illicit behavior, and the Court will not give such a hardship any weight. *Cadence Design Sys., Inc. v. Avant! Corp.*, 125 F.3d 824, 829 (9th Cir. 1997) (finding profits from illegal sales do not constitute a recognizable harm). Lastly, an injunction would serve the public interest, as “the public

has an interest in the enforcement of federal statutes,” and an injunction here would prevent further violations of federal law. *See Coxcom, Inc. v. Chaffee*, 536 F.3d 101, 112 (1st Cir. 2008). Thus, the Court will recommend entry of a permanent injunction.

### **III. Recommendation**

**IT IS THEREFORE RECOMMENDED** that Plaintiffs’ Motion for Default Judgment (DN 38) be **GRANTED**.

**IT IS FURTHER RECOMMENDED** that the Court enter relief and damages to the extent identified in this Report and Recommendation, with **\$5,735,000.00** in total monetary damages.

**IT IS FURTHER RECOMMENDED** that the Court issue a permanent injunction barring Defendant Meadows, and any officer, agent, servant, employee or other person acting in active concert or participation with any of them that receives actual notice of the order, from:

- circumventing a DRM or any other technological protection measure that controls access to Sling Programming through any internet streaming device;
- manufacturing importing, offering to the public, providing or otherwise trafficking in any technologies, products or services that:
  - o is primarily designed or produced for circumventing a technological measure employed by Plaintiffs that controls access to, copying, or the distribution of copyrighted works;
  - o has only limited commercially significant purpose or use other than circumventing a technological measure employed by Plaintiffs that control access to, copying, or the distribution of copyrighted works;

- is marketed for purposes of circumventing a technological measure employed by Plaintiffs that controls access to, copying, or the distribution of copyrighted works;
- receiving or assisting others in receiving Sling’s internet transmissions; and
- selling, leasing, licensing, assigning, conveying, distributing, loaning, encumbering, pledging, or otherwise transferring, whether or not for consideration or compensation, any part of Meadows’ infringing operations



Regina S. Edwards, Magistrate Judge  
United States District Court

July 21, 2023

NOTICE

Therefore, under the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Fed.R.Civ.P. 72(b), the Magistrate Judge files these findings and recommendations with the Court and a copy shall forthwith be electronically transmitted or mailed to all parties. Within fourteen (14) days after being served with a copy, any party may serve and file written objections to such findings and recommendations as provided by the Court. If a party has objections, such objections must be timely filed or further appeal is waived. *Thomas v. Arn*, 728 F.2d 813 (6th Cir.), *aff'd*, 474 U.S. 140 (1984).

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