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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

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12 In re Ex Parte Application of) Case No: 3:22-mc-80139
13)
14 SHUEISHA, INC.; and VIZ MEDIA,) **EX PARTE APPLICATION FOR ORDER**
15 LLC,) **PURSUANT TO 28 U.S.C. § 1782**
16 Applicants.) **PERMITTING DISCOVERY FOR USE IN**
17) **FOREIGN PROCEEDING AND**
18) **MEMORANDUM IN SUPPORT**
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19 Applicant, Shueisha Inc. (“Shueisha”), a Japanese corporation, and VIZ Media, LLC
20 (“VIZ”), a California limited liability company (collectively referred as “Applicants”), hereby
21 apply to this Court ex parte for an order permitting discovery for use in a court proceeding in
22 Japan pursuant to 28 U.S.C. § 1782 from Paypal Holdings, Inc. (“Paypal”), Visa Inc. (“Visa”),
23 Google, LLC (“Google”), PayPal, Inc., doing business as Braintree (“Braintree”), and Stripe,
24 Inc. (“Stripe”)(collectively as “Witnesses”).

25 The proposed subpoenas attached to this application seek from Witnesses documents
26 and information relating to certain Paypal, Visa, Google, Braintree and/or Stripe accounts used
27 by infringers who illegally copied and uploaded an extensive amount of the Applicants’
28

1 copyrighted comic books on their pirate websites located at the following infringing websites:
2 <https://manganelo.com/> and <https://manganato.com/>.

3 This application is supported by the memorandum in support below, the declarations of
4 of Junji Suzuki (“Suzuki Decl.”), Evan Stone (“Stone Decl.”), Hiroyuki Nakajima (“Nakajima
5 Decl.”), and and/or Pham Thi Anh Ngoc (“Ngoc Decl.”). Nakajima and Ngoc are attorneys in
6 Japan and Vietnam, respectively, who represent Applicants in connection with anticipated
7 lawsuits in Japan and Vietnam against the Infringers.

8 **I. BACKGROUND**

9 Shueisha is a well-known publisher in Tokyo, Japan of a wide variety of genres and
10 mediums, including comic books, literature, magazines, and educational books. VIZ is a well-
11 known manga publisher and animation distributor based in San Francisco, California. VIZ is
12 partially owned by Shueisha. Nakajima Decl. ¶ 4. It has recently come to Applicants’
13 attention that certain owners and operators of the pirate websites (each the “Infringer” and
14 collectively the “Infringers”) located at <https://manganelo.com/> and <https://manganato.com/>,
15 respectively (collectively the “Infringing Websites”), using services provided by Witnesses,
16 had been uploading an extensive amount of unauthorized copies of the Applicants’
17 copyrighted comic books on their Infringing Websites. Such illegal copies mostly contain the
18 entire pages of the book or volume and some of the illegal copies were uploaded on the
19 Infringing Websites soon after publication. The Infringers, the infringing copies located at the
20 Infringing Websites (collectively the “Infringing Work”), and the comic books, the exclusive
21 right of which are owned by Applicants (collectively the “Original Work”), are identified in
22 Exhibit A attached to Nakajima Decl., concurrently submitted with this application. *Id.* ¶ 5.

23 According to Nakajima, Applicants’ Japanese attorney, and Ngoc, Applicants’
24 Vietnamese attorney, the Infringing Work constitutes copyright infringement under both
25 Japanese and Vietnamese laws. Nakajima Decl. ¶ 6; Ngoc Decls. ¶ 5.

26 Therefore, Applicants intend to bring a lawsuit in Japan or Vietnam against the
27 Infringers as soon as their identities have been ascertained through the discovery sought by
28 this application. Nakajima Decl. ¶ 7; Ngoc Decls. ¶ 5.

1 Applicants first attempted to obtain the identifying information about the Infringers
2 through subpoenas issued under 17 U.S.C. § 512(h) (collectively as the “DMCA Subpoena”)
3 from Cloudflare, Inc. (“Cloudflare”), which provided online and network services to the
4 Infringers. However, such efforts did not produce the information sufficient to locate the
5 Infringers. A copy of the two DMCA Subpoena served on Cloudflare and the relevant part of
6 the response and documents produced by Cloudflare (collectively the “Cloudflare Response”)
7 to each subpoena are attached to Suzuki Decl. and Stone Decl. as Exhibit A and B,
8 respectively. Suzuki Decl. ¶ 2-3; Stone Decl. ¶ 2-3. According to Nakajima and Ngoc, since
9 Cloudflare does not verify the identity of a service user, the name, or address produced by
10 Cloudflare in response to the DMCA Subpoena do not necessarily reveal the true identity of
11 the Infringers and IP addresses are the most effective and reliable information to locate the
12 Infringers. The Cloudflare Response revealed that the Infringers used the services provided by
13 Witnesses in connection with their Infringing Websites. Nakajima Decl. ¶ 9; Ngoc Decl. ¶ 4.
14 Based on the Cloudflare Response and Ngoc’s investigation, the IP addresses produced in the
15 Cloudflare Response belong to Vietnam Posts and Telecommunications Group and Vietnam
16 Telecom National. Ngoc Decl. ¶ 4. However, in Vietnam, with certain exceptions, there is no
17 legal remedy available for a third party company to obtain identifying information of the users
18 from telecommunication companies based on copyright infringement¹. *Id.*

19 In order to identify the Infringers who committed unlawful acts against Applicants
20 through their pirate websites, it is crucial for Applicants to obtain the additional and more
21 reliable information relating to the Infringers, i.e. the information relating to the Witnesses’
22 accounts associated with the Infringer and the Infringing Work, including the names,
23 addresses, telephone numbers, email addresses, and IP addresses used and registered by the
24 Infringers with their Witnesses’ accounts on the most recent date and at the time each of their
25 payment was made to Cloudflare for the services provided in connection with the Infringing
26 Website. Nakajima Decl. ¶ 8, 10-12; Ngoc Decl. ¶ 4.

27 _____
28 ¹ Law No. 41/2009/QH12 dated November 23, 2009 of the National Assembly of the Socialist Republic of
Vietnam on Telecommunications.

1 **II. ARGUMENT**

2 **A. Legal Standard**

3 An applicant seeking discovery for use in a foreign proceeding must demonstrate that
4 (1) the person from whom the discovery is sought resides or is found in this district, (2) the
5 discovery is for use in a proceeding before a foreign tribunal, and (3) the application is made
6 by a foreign or internal tribunal or any interested person. 28 U.S.C. § 1782; *In re The Republic*
7 *of Ecuador*, Case No. C-10-80225 MISC CRB (EMC), 2010 U.S. Dist. LEXIS 102158 (N.D.
8 Cal. Sept. 15, 2010) at*1.

9
10 In exercising its discretion under 28 U.S.C. § 1782, a district court should further
11 consider the following non-exhaustive factors: "(1) whether the "person from whom discovery
12 is sought is a participant in the foreign proceeding"; (2) "the nature of the foreign tribunal, the
13 character of the proceedings underway abroad, and the receptivity of the foreign government
14 or the court or agency abroad to U.S. federal-court judicial assistance"; (3) whether the
15 discovery request is an "attempt to circumvent proof-gathering restrictions or other policies of
16 a foreign country or the United States"; and (4) whether the discovery requested is "unduly
17 intrusive or burdensome." *In re Apple Inc.*, 2012 U.S. Dist. LEXIS 66669, 3-4 (N.D. Cal. May
18 2, 2012) (quoting *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 264-265 (U.S.
19 2004)).

20 **B. Applicants' Application Meets All of the Statutory Requirements under 28 U.S.C.**
21 **§ 1782.**

22 **1. Witnesses From Whom Discovery Is Sought Are Located in This District.**

23 Paypal², Visa,³ Google,⁴ Braintree⁵, and Stripe⁶ from whom the discovery requested in
24 this application is sought, are located in San Jose, Foster City, and Mountain View, San
25

26 ² <https://about.pypl.com/who-we-are/history-and-facts/default.aspx>

27 ³ <https://investor.visa.com/investor-resources/faq/default.aspx>; <https://bizfileonline.sos.ca.gov/search/business>
(VISA INC. (3048066))

28 ⁴ https://about.google/intl/en_us/locations/?region=north-america

⁵ <https://www.braintreepayments.com/contact>

1 Francisco, and South San Francisco California, respectively. Therefore, Witnesses are within
2 this Court's district.

3 **2. The Requested Discovery Is for Use in a Court Proceeding in Japan or**
4 **Vietnam.**

5 The discovery requested in this application must be for "use in a proceeding in a foreign
6 or international tribunal, including criminal investigations conducted before formal
7 accusation." 28 U.S.C. § 1782(a). The foreign proceeding needs not actually be under way
8 before 28 USC § 1782 may be invoked. It is sufficient that such proceedings are "likely to
9 occur" or are "within reasonable contemplation." *Intel Corp. v. Advanced Micro Devices, Inc.*,
10 *supra*, at 258-259 (quoting *In re Letter Request From Crown Prosecution Service of United*
11 *Kingdom*, 870 F.2d 686, 691 (DC Cir. 1989)).

12 Applicants intend to bring a lawsuit in Japan or potentially in Vietnam against the
13 person associated with the Witnesses' accounts in question as soon as the person's identity has
14 been ascertained through the discovery sought by this application. Nakajima Decl. ¶ 7, 10.
15 Ngoc Decl. ¶ 1. Thus, the requirement that the discovery be for use in a foreign proceeding is
16 met.
17

18 **3. Applicants are Interested Parties under 28 U.S.C. § 1782, Who May Make**
19 **This Application.**

20 The application to seek discovery pursuant to 28 U.S.C. § 1782 may be made by "any
21 interested person." As plaintiffs in the anticipated litigation in Japan or Vietnam, Applicants
22 are clearly interested persons under 28 U.S.C. § 1782.
23

24 **C. Applicants' Application Further Meets All of the Discretionary Factors under**
25 ***Intel*.**

26 **1. Any of Witnesses Is Not Participant in the Foreign Proceeding.**

27 ⁶ <https://stripe.com/privacy-center/legal#which-stripe-entities-are-involved>;
28 <https://bizfileonline.sos.ca.gov/search/business> (STRIPE, INC. (3635817))

1 The first *Intel* factor asks whether the "person from whom discovery sought is a
2 participant in the foreign proceeding." *Intel*, 542 U.S. at 264. If the person is a participant,
3 "the need for § 1782(a) aid generally is not as apparent as it ordinarily is when evidence is
4 sought from a nonparticipant in the matter arising abroad" because "[a] foreign tribunal has
5 jurisdiction over those appearing before it, and can itself order them to produce evidence." *Id.*
6 "In contrast, nonparticipants in the foreign proceeding may be outside the foreign tribunal's
7 jurisdictional reach; hence, their evidence, available in the United States, may be unobtainable
8 absent § 1782(a) aid." *Id.*

9 Any of Witnesses is not a participant in the prospective lawsuit in Japan or Vietnam.
10 Nakajima Decl. at ¶ 18. Ngoc Decl. ¶ 6. Additionally, the documents that Applicants seeks
11 are located in the United States and not in Japan or Vietnam. Thus, they are out of reach of
12 the Japanese or Vietnamese court's jurisdiction.

13 **2. The Requested Information Is Crucial to Applicants' Bringing Lawsuit in**
14 **Japan or Vietnam and the Japanese and Vietnamese Courts Would Be**
15 **Receptive to this Court's Assistance.**

16 "A court presented with a § 1782(a) request may take into account the nature of the
17 foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the
18 foreign government or the court or agency abroad to U.S. federal-court judicial assistance."
19 *Intel*. at 264.

20 In order to identify the person who committed unlawful acts against Applicants through
21 the Witnesses' accounts in question for purposes of bringing a lawsuit against such person in
22 Japan or Vietnam, it is crucial for Applicant to obtain the sufficient information relevant to the
23 Paypal accounts used by the Infringer. Nakajima Decl. ¶ 8-11. Ngoc Decl. ¶ 4.

24 In addition, the Japanese courts would be receptive to this court's assistance. In fact, the
25 Japanese courts have been receptive to the discovery assistance made by the U.S. courts.
26 *Marubeni Am. Corp. v. LBA Y.K.*, 335 Fed. Appx. 95, 97-98, 2009 U.S. App. LEXIS 12953,
27 *7-8 (2d Cir. N.Y. 2009); *In re Application of LG Elecs. Deutschland GMBH*, 2012 U.S. Dist.
28 LEXIS 70570, *5, 2012 WL 1836283 (S.D. Cal. May 21, 2012). Vietnamese courts would be

1 also receptive to this court’s assistance. *In re Request for Judicial Assistance from the*
2 *People’s Court of Da Nang City, Vietnam in the Matter of Van Thang Huynh, et al.*, Case No.
3 1:19-cv-02750, N.D. Ill. May 2, 2019.

4 **3. Applicants’ Discovery Request Is Not an Attempt to Circumvent Foreign**
5 **Proof Restrictions or Policies.**

6 “A district court could consider whether the § 1782(a) request conceals an attempt to
7 circumvent foreign proof-gathering restrictions or other policies of a foreign country or the
8 United States.” *Intel.* at 265.

9 Applicants are not aware of any restrictions imposed by or any policies under Japanese
10 or Vietnamese law limiting the proof-gathering proceeding in the manner proposed and for the
11 purposes stated herein. Nakajima Decl. ¶ 19. Ngoc Decl. ¶ 6. In the past, courts have granted
12 28 U.S.C. § 1782 applications for the use in the proceedings in Japan, both civil and criminal,
13 as well. *Marubeni Am. Corp.* at 98; *LG Elecs. Deutschland GMBH*, *5; *Okubo v. Reynolds (In*
14 *re Letters Rogatory from the Tokyo Dist. Prosecutor’s Office)*, 16 F.3d 1016, 1018-1019, 1994
15 U.S. App. LEXIS 2440, *3-6, 94 Cal. Daily Op. Service 1108, 94 Daily Journal DAR 1918, 28
16 Fed. R. Serv. 3d (Callaghan) 200 (9th Cir. Cal. 1994). Courts have also granted 28 U.S.C. §
17 1782 applications for the use in the proceedings in Vietnam. *In re the People’s Court of Da*
18 *Nang City, Vietnam. In re Shogakukan, Inc., et al.*, Case No. 5:21-mc-80071-SVK, N.D. Cal.
19 May 10, 2021.

20 **4. Applicants’ Request Is Narrowly Tailored to Highly Relevant Information and**
21 **Not Unduly Intrusive or Burdensome.**

22 “Unduly intrusive or burdensome requests may be rejected or trimmed.” *Intel.* at 265.

23 As shown in the proposed subpoenas to Witnesses attached to the proposed order
24 submitted with this application, the discovery requested by Applicants is narrowly tailored and
25 limited to the discovery materials related to the Witnesses’ accounts relating to the Infringer
26 and Infringing Work through which the identity of the defendant(s) to the anticipated Japanese
27 or Vietnamese lawsuit could be ascertained and nothing further.

1 First, the proposed subpoena does not seek disclosure of the content of any
2 communications associated with the Witnesses' accounts subject to the proposed subpoenas.
3 *Optiver Australia Pty. Ltd. v. Tibra Trading Pty. Ltd.*, Case No. C 12-80242 EJD (PSG), 2013
4 WL 256771 (discussing prohibitions of Stored Communications Act, 18 U.S.C. § 2701 et
5 seq).

6 Second, the proposed subpoena only seeks disclosure of names, telephone numbers and
7 addresses of the person(s) whose payment method is associated with each of the Witnesses'
8 accounts subject to the said subpoena. It does not seek disclosure of credit card numbers,
9 bank account numbers, or any other sensitive information. *In re Medical Corporation H&S*,
10 Case No. 5:19-mc-80058-VKD, N.D. Cal. May 15, 2019 (granted application seeking
11 disclosure of name and address of credit card holder registered on Google Account).

12 However, it is highly unlikely that the perpetrators have provided their true name and
13 address to Witnesses when they created an account with Witnesses to use their services.
14 Thus, the names and addresses Witnesses may have on file in connection with the Witnesses
15 accounts subject to the proposed subpoena, even if they are disclosed in response to the
16 proposed subpoena, would highly likely to be fictitious and would not help Applicants'
17 identify the Infringers. In such case, an access log is the only available information that
18 could identify the perpetrators. The access logs recorded only when users make a payment
19 through Witnesses to Cloudflare or used Witnesses' services relating to the Infringing
20 Website are not sufficient to identify the Infringer. Nakajima Decl. ¶ 13-17. Furthermore,
21 access logs contain no private information of the Witnesses' accounts subject to the proposed
22 subpoenas. Access logs only disclose time stamps (showing when the Witnesses' accounts
23 holders accessed) and IP addresses. Any other private information (e.g. information about
24 what websites the holders may have accessed, what action they took, etc.) is not disclosed.
25 To sufficiently identify the Infringer, it is crucial to obtain the information highly likely to be
26 true, which is name, address, email addresses, and/or telephone numbers for verification
27 purposes and the payment methods registered with the Infringers' Witnesses' accounts. The
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1 Infringers are highly likely to use and provide the true information for such purposes as
2 required to use the Witnesses' services. *Id.* ¶ 11.

3 **III. CONCLUSION**

4 For the reasons stated above, Applicants respectfully requests that this Court grant this
5 application and permit that it issues the subpoenas to Witnesses attached to the proposed order
6 submitted with this application.

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8 Dated: May 26, 2022

Respectfully submitted,

9 MARSHALL SUZUKI LAW GROUP, LLP

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11 By: 

12 Junji Suzuki
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14 Shueisha Inc. and VIZ Media, LLC
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