The Honorable Barbara Jacobs Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DISH NETWORK L.L.C.,

Plaintiff,

v.

VIRTUAL SYSTEMS, LLC, and VYACHESLAV SMYRNOV,

Defendants.

NO. 2:24-cv-01683-BJR

DEFENDANTS VIRTUAL SYSTEMS, LLC, AND VYACHESLAV SMYRNOV'S ANSWER TO PLAINTIFF'S COMPLAINT AND COUNTERCLAIMS

I. INTRODUCTION

Defendants Virtual Systems, LLC, ("Virtual Systems") and Vyacheslav Smyrnov ("Smyrnov") assert that this Court does not have personal jurisdiction over Defendants. When a court lacks personal jurisdiction over a defendant, a default judgment is void, and the district court has a nondiscretionary duty to grant relief from the default judgment. It is the plaintiff's burden to establish the court's personal jurisdiction over a defendant.

As this is a copyright infringement action, the purposeful direction test applies. A copyright infringement action "sounds in tort" and applying the purposeful direction test requiring a showing of either purposeful availment or purposeful direction, the Ninth Circuit

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requires a showing of purposeful direction. The purposeful direction test requires that the defendant has (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state. Plaintiff DISH Network L.L.C. ("DISH") can meet none of these tests in the present case.

Two factors are considered in determining whether an action is expressly aimed at the forum state: (1) First, the relationship must arise out of contacts that each defendant himself creates with the forum State; (2) Second, the 'minimum contacts' analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there. There are no such contacts in this case.

II. ANSWER

1. Defendants lack knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegation that DISH. is "one of the largest pay-tv providers in the United States" and that it has "millions of subscribers nationwide," and therefore deny those allegations. Defendants admit, upon information and belief, that Plaintiff provides subscription-based television services in the United States. Defendants lack knowledge or information sufficient to admit or deny Plaintiff's allegations concerning the scope, validity, or exclusivity of Plaintiff's purported licenses relating to the 23 international channels referenced in Paragraph 1, including the extent to which such rights are exclusive for transmission within the United States, and therefore deny those allegations. Defendants further deny that they infringed any valid and enforceable copyrights owned or exclusively licensed by Plaintiff as alleged.

2. Defendants deny that Plaintiff's copyrights were directly infringed as alleged. Neither Defendant has exercised any copyright owner's exclusive rights under the statute. Defendants lack knowledge or information sufficient to form a belief as to the truth of

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Plaintiff's allegations that unidentified third-parties "Pirate Services" transmitted Plaintiff's Works to users in the United States, and therefore deny those allegations. Defendants further deny any allegation that they authorized, directed, controlled, induced, materially contributed to, or otherwise participated in any alleged transmission of Plaintiff's Works to users in the United States. Defendants deny that any transmission of Plaintiff's Works occurred through servers located in Seattle, Washington, or elsewhere in the United States that were owned, operated, or controlled by Defendants in violation of any applicable law. Defendants admit only that, as a general matter, Internet-based services may utilize hosting providers to lease server and network infrastructure. Defendants deny that such general industry practice establishes any liability on the part of Defendants in this action. To the extent that Paragraph 2 contains legal conclusions, Defendants deny them. Except as expressly admitted herein, Defendants deny each remaining allegation contained in Paragraph 2.

3. Defendants deny that Virtual Systems materially contributed to, induced, encouraged, or otherwise participated in any alleged direct infringement of Plaintiff's Works. Defendants specifically deny that Virtual Systems provided servers or network services for the purpose of transmitting Plaintiff's Works, deny that it had knowledge of any specific infringing activity as alleged, and deny that it exercised control over the content of any third-party customer. Defendants further deny that any servers located in Seattle, Washington, were used to transmit Plaintiff's Works to users in the United States as alleged in the Complaint. Defendants lack knowledge sufficient to admit or deny the identity, operation, or activities of the alleged "Pirate Services," and therefore deny those allegations. Defendants deny that Virtual Systems "openly advertises" non-compliance with United States copyright law in the manner characterized by Plaintiff. Any statement as to compliance with United States copyright law is a statement of the legal status of the Ukraine. Defendants deny that any

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activity in Ukraine is governed by United States copyright law. Defendant Virtual Systems maintains written Terms of Service and Abuse Handling Procedures requiring compliance with applicable law and providing a mechanism for submission and review of infringement notices. Defendants deny that Virtual Systems required or encouraged any customer to violate United States copyright law. Defendants admit only that Virtual Systems provides infrastructure hosting services to customers in multiple jurisdictions. Virtual Systems does not monitor, control, select, or initiate content transmitted by customers and does not have editorial control over customer data stored on its servers. Except as expressly admitted herein, Defendants deny each remaining allegation contained in Paragraph 3.

4. Defendants deny that Virtual Systems knew that any customer was infringing Plaintiff's Works as alleged. To the extent that Plaintiff asserts legal conclusions, Defendants deny such legal conclusions. Defendants further deny that Plaintiff submitted legally sufficient copyright infringement notices in accordance with the mandatory extrajudicial procedure established by Article 56 of the Law of Ukraine "On Copyright and Related Rights" No. 2811-IX (1 December 2022), which governs hosting-provider obligations applicable to Virtual Systems. Under Article 56 of Ukrainian law, a legally valid copyright complaint must: contain full legal identification of the complainant; include documentary proof of ownership or chain of title to the asserted copyrights; precisely identify the allegedly infringing content (including exact URLs or technical identifiers); formulate a clear legal demand; and, where the complainant is a legal entity, be submitted exclusively through a licensed Ukrainian attorney or registered intellectual-property representative. Defendants deny that Plaintiff DISH complied with these statutory requirements. Informal communications, DMCA-style notices, or unverified email complaints that do not satisfy Article 56 do not trigger a legal obligation to disable content under Ukrainian law. Defendants further deny that any communications

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received from Plaintiff established actual knowledge of specific infringing activity occurring through servers physically located in Seattle, Washington. Virtual Systems processes copyright complaints strictly in accordance with Article 56 and Article 57 of the Law of Ukraine "On Copyright and Related Rights"; and its publicly available Terms of Service and Abuse Handling Procedures (https://vsys.host/legal/term-of-service). Pursuant to its Terms of Service:

- Only properly substantiated notices are processed;
- Notices must include documented evidence of rights (e.g., court decision, proof of ownership);
- Notices from legal entities must be submitted by a Ukrainian attorney admitted to the Ukrainian Bar;
- Customers are notified and given the statutory 24-hour response period; and
- If the customer fails to act within 24 hours, Virtual Systems independently restricts access within 48 hours.

Defendants deny that Virtual Systems refused to take action where legally sufficient and properly documented complaints were submitted in compliance with Ukrainian law. Virtual Systems does not monitor, curate, or access customer content, except as necessary to provide infrastructure services. Virtual Systems does not host, initiate, or select customer transmissions and has no technical control over specific streams beyond terminating service in accordance with applicable law and contractual provisions. Defendants deny that Virtual Systems had actual knowledge of specific infringing transmissions occurring through its Seattle infrastructure. Defendants further deny that Virtual Systems had the right and ability to supervise or control the alleged infringing conduct within the meaning of U.S. contributory or vicarious liability doctrine. Defendants deny that Virtual Systems elected to continue any

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customer relationship for the purpose of profiting from infringement. Except as expressly admitted herein, Defendants deny each and every remaining allegation of this Paragraph 4.

5. To the extent that the allegations in Paragraph 5 state legal conclusions, Defendants deny those legal conclusions. Defendants further deny that Virtual Systems is liable for contributory or vicarious copyright infringement. Defendants further deny that Defendant Vyacheslav Smyrnov authorized, directed, participated in, or had actual knowledge of any specific infringing conduct as alleged. Virtual Systems is an infrastructure provider that leases server space and network connectivity to customers. It does not select, initiate, supervise, curate, or control the content transmitted by customers. Virtual Systems does not monitor customer content and does not exercise editorial control over data transmitted through its infrastructure. Defendants deny that specific infringing acts occurred through its Seattle infrastructure. Defendants further deny that Virtual Systems materially contributed to infringement. Defendants deny that Virtual Systems had the right and ability to supervise or control the alleged infringing conduct. With respect to Defendant Smyrnov individually, Defendants deny that Mr. Smyrnov personally authorized, directed, or participated in any infringing conduct. Mr. Smyrnov did not personally manage or control customer content, did not select or transmit any allegedly infringing works, and did not exercise day-to-day operational control over specific customer servers or streams. Defendants deny that Mr. Smyrnov had actual knowledge of specific infringing activity occurring on any United States-based servers. Defendants further deny that Mr. Smyrnov had the legal right or practical ability to directly supervise or control specific customer transmissions beyond enforcing company-wide policies and contractual terms consistent with applicable law. Any actions taken by Virtual Systems with respect to customer accounts were performed pursuant to Ukrainian law, including Article 56 and 57 of the Law of Ukraine "On Copyright and Related Rights," and in

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accordance with Virtual Systems' publicly available Terms of Service and Abuse Handling Procedures. Defendants deny that Mr. Smyrnov derived a direct financial benefit from any specific infringing activity. Except as expressly admitted herein, Defendants deny each remaining allegation of this Paragraph 5.

A. Parties

6. Defendants lack specific knowledge that Plaintiff DISH is a limited liability company organized under the laws of the State of Colorado and that the Complaint states its principal place of business as 9601 South Meridian Blvd., Englewood, Colorado 80112 and, therefore, deny the same.

7. Defendants admit that Defendant Virtual Systems is a limited liability company organized under the laws of Ukraine and that its principal place of business is 33/37 Laboratorna Street, Kyiv, Ukraine.

8. Defendants admit that Defendant Smyrnov is an individual residing in Kyiv, Ukraine, and that the address identified in the Complaint corresponds to his place of residence.

B. Jurisdiction and Venue

9. Defendants deny any legal conclusions set out in Paragraph 9. Defendants deny that either are liable for claims arising under the United States Copyright Act, 17 U.S.C. § 101 et seq. Defendants deny that this Court has subject matter jurisdiction as to the extent claim is predicated upon alleged acts that occurred entirely outside the territorial boundaries of the United States as the same are extraterritorial conduct not cognizable under the Copyright Act. Defendants further deny that the jurisdictional allegations are sufficient insofar as they rely upon conclusory assertions rather than well-pleaded factual allegations establishing actionable domestic infringement. Except as expressly admitted herein, the allegations of Paragraph 9 are denied.

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10. Defendants deny that Virtual Systems committed any infringing acts in the State of Washington. Defendants deny that any servers physically located in the Seattle area were used to transmit, host, stream, or otherwise make available any of the alleged Works in violation of United States copyright law. Defendants deny that Virtual Systems contributed to, induced, or materially participated in any infringement occurring within the State of Washington or within the territorial jurisdiction of the United States. Defendants further deny that Virtual Systems received legally sufficient notice of any actionable infringement occurring on servers physically located in Washington. To the extent Paragraph 10 relies on generalized marketing materials referencing global network connectivity, Defendants state that such marketing descriptions relate to latency optimization and international routing architecture and do not constitute admissions of jurisdictional contacts tied to any alleged infringement. Defendants further deny that DISH was harmed in Washington because of any act or omission by Virtual Systems. Defendants deny that any Works were transmitted from Washington-based infrastructure to Users in Washington in violation of law. Except as expressly admitted herein, all remaining allegations of Paragraph 10 are denied.

11. Defendants deny that personal jurisdiction over Virtual Systems is proper under Federal Rule of Civil Procedure 4(k)(2) as none of the asserted infringing content resided on any server in the United States of which Washington is one such state. Defendants deny that Virtual Systems has engaged in conduct giving rise to claims under the Copyright Act within the United States sufficient to satisfy the constitutional requirements of due process. Defendants deny that either Defendant has sufficient ties with Washington to create personal jurisdiction over either Defendant, and further deny that such contacts, if any, are continuous, systematic, or related to the claims asserted in the Complaint. Defendants further deny that Rule 4(k)(2) applies in this action because Plaintiff has failed to establish that Virtual Systems

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is subject to jurisdiction in any state court of general jurisdiction or that the claims arise out of conduct purposefully directed at the United States as a whole. Defendants deny the remaining allegations of Paragraph 11.

12. To the extent that the allegations of Paragraph 12 contain legal conclusions, Defendants deny such legal conclusions. Defendants deny that Virtual Systems has sufficient minimum contacts with the United States to support personal jurisdiction under Rule 4(k)(2). Defendants deny that any alleged marketing activities were directed toward or intended to promote infringement of Plaintiff's copyrighted works within the United States. Defendants state that any marketing references to streaming services or network performance relate to lawful infrastructure services and do not constitute inducement, encouragement, or facilitation of copyright infringement. Defendants deny that Virtual Systems purposefully targeted the United States market for the purpose of enabling infringement or avoiding United States copyright law. Defendants further deny that Plaintiff suffered harm in the United States because of any actionable conduct by Virtual Systems. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations regarding the scope of Plaintiff's nationwide harm and therefore deny those allegations. Except as expressly admitted herein, all remaining allegations of Paragraph 12 are denied.

13. Defendants deny the legal conclusions contained in Paragraph 13. Defendants deny that this Court has personal jurisdiction over Mr. Smyrnov pursuant to Federal Rule of Civil Procedure 4(k)(1)(A) or Rule 4(k)(2). Defendants deny that Mr. Smyrnov is a "primary participant" in any alleged infringing conduct. Defendants admit that Mr. Smyrnov is the owner and Chief Executive Officer of Virtual Systems. Defendants deny that his corporate role, without more, subjects him to personal jurisdiction in the United States. Defendants deny that Mr. Smyrnov personally committed, directed, authorized, induced, or materially

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contributed to any act of copyright infringement within the United States. Defendants deny that managerial responsibilities relating to network infrastructure constitute direct participation in, authorization of, or control over alleged copyright infringement by independent third-party customers. Defendants further deny that Mr. Smyrnov had actual knowledge of any legally sufficient copyright infringement notice under applicable Ukrainian law that would have triggered a statutory obligation to act. Defendants deny that Mr. Smyrnov personally failed to stop any infringement within the meaning of United States copyright law. Defendants deny that Mr. Smyrnov received any direct personal financial benefit from specific alleged infringing conduct separate and apart from his general ownership interest in Virtual Systems. Except as expressly admitted herein, all remaining allegations of this Paragraph 13 are denied.

14. Defendants deny that the Court's exercise of personal jurisdiction over Virtual Systems or Mr. Smyrnov pursuant to Rule 4(k)(1)(A) or Rule 4(k)(2) is reasonable, constitutionally permissible, or consistent with due process. Defendants deny that they purposefully interjected themselves into Washington or into the United States in a manner sufficient to support specific or general jurisdiction. Defendants admit that certain server equipment used in the provision of hosting services may be physically located in a data center facility in Seattle, Washington. Defendants deny, however, that such physical location establishes purposeful availment or purposeful direction toward the forum. Virtual Systems:

- is organized under the laws of Ukraine;
- is not incorporated in any U.S. state;
- is not registered as a foreign entity in any U.S. jurisdiction;
- maintains no U.S. office, branch, or place of business;
- employs no U.S.-based personnel;
- maintains no U.S. bank accounts;

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- has no registered agent for service of process in the U.S.;
- owns no U.S.-based infrastructure reflected on its balance sheet; and
- exercises no management, operational control, or decision-making from the U.S.

Importantly, Virtual Systems does not contract directly with any U.S.-based data center. To the extent that it uses the identified Seattle data center, it does so as a sublessee of a Polish entity which, in turn, provides facility services only (space, power, connectivity). It does not act as an agent, representative, or operator of Virtual Systems or Mr. Smyrnov. To the extent that it uses globally accessible Internet platforms (including social media accounts or domain registration services), none of the use constitutes targeted conduct toward Washington or establishes minimum contacts sufficient for personal jurisdiction. Defendants further deny that general marketing statements describing global connectivity, low latency, or North American routing constitute purposeful targeting of Washington or intentional facilitation of copyright infringement in the United States. Defendants deny that any alleged infringing acts were managed, directed, controlled, or supervised from the United States. Neither Defendant has a business presence in the United States much less in Washington. Defendants deny that the burden on a Ukrainian legal entity and a Ukrainian resident individual to defend litigation in Washington is minimal. The burden is substantial, including geographic distance, international service requirements, language barriers, evidentiary complexity, and the need to litigate across multiple legal systems. Defendants admit that the United States has an interest in enforcing its copyright laws but that such laws are inherently limited and do not include the Ukraine. Defendants deny, however, that any such interest the United States might have can alone substitute for constitutionally-required minimum contacts. Defendants deny that this Court is the only appropriate forum to adjudicate disputes involving entities organized and operating

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exclusively outside the United States, particularly where the core operational management and decision-making occur abroad. Indeed, to the extent that any actions occurred in the Ukraine, the same has adequate laws and courts to appropriately enforce such rights as DISH might have. Except as expressly admitted, all remaining allegations of Paragraph 14 are denied.

15. Defendants deny that venue is proper in this District under 28 U.S.C. § 1391(b)(2). Defendants specifically deny that any substantial part of the alleged events or omissions Plaintiff seeks to assert, if they happened at all, occurred in the Western District of Washington. Defendants further deny that any alleged decision-making, management, operational control, or supervision of servers or customers occurred in this District. Defendants deny that venue is proper under 28 U.S.C. § 1391(b)(3), as that subsection applies only if there is no district in which the action may otherwise be brought under § 1391(b)(1) or (2). Defendants further deny that they are subject to personal jurisdiction in this District and incorporate herein their responses to Paragraphs 10-14. Defendants admit that they are nonresidents of the United States. Defendants deny, however, that § 1391(c)(3) independently establishes venue where constitutional requirements of personal jurisdiction and due process are not satisfied. Defendants deny that § 1391(c)(3) eliminates the requirement that the venue be reasonable and consistent with constitutional limitations. Defendants admit that Plaintiff asserts claims under the Copyright Act. Defendants deny that 28 U.S.C. § 1400(a), standing alone, establishes proper venue in this District absent a showing that Defendants may be found or are subject to personal jurisdiction here. Defendants deny that they "may be found" in this District within the meaning of § 1400(a), as they are foreign defendants with no offices, personnel, corporate registration, registered agent, or operational control in this District. All the legal conclusions of Paragraph 15 are denied; except as expressly admitted, all remaining allegations of Paragraph 15 are denied.

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C. DISH Copyrights

16. Defendants lack knowledge or information sufficient to form a belief as to the truth of the specific contractual arrangements alleged between Plaintiff and the various entities identified as "Networks," including the existence, scope, validity, territorial reach, duration, or exclusivity of any such agreements, and therefore deny those allegations. Defendants admit that Plaintiff represents itself as a distributor of certain international television channels in the United States but have no specific knowledge of the underlying facts and therefore deny them. Defendants lack knowledge sufficient to admit or deny whether Plaintiff holds exclusive rights in the United States with respect to the specific Channels identified in Paragraph 16, including but not limited to *B4U Movies*, *Times Now*, *Zoom, Sahara One*, *Sahara Samay*, *Al Hayah 1*, *ART Aflam 1*, *ART Aflam 2*, *ART Cima, Hekayat*, *LBC*, *LBCI*, *Rotana America*, *SET*, *SET MAX*, *SAB*, *ATN Bangla*, *ATN News*, *NTV Bangla*, *CBC*, *CBC Drama*, *Melody Aflam*, and *Melody Classic*, and therefore deny those allegations. Except as expressly admitted herein, all remaining allegations of Paragraph 16 are denied.

17. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning the way the identified "Networks" allegedly acquire copyrights in the Works, including by production or assignment, and therefore deny those allegations. Defendants further lack knowledge sufficient to admit or deny whether the Works identified by Plaintiff are validly registered with the United States Copyright Office, whether such registrations were properly issued, whether they are timely, or whether Plaintiff is the legal or beneficial owner of the exclusive rights allegedly asserted in this action, and therefore deny those allegations. Defendants further lack knowledge sufficient to admit or deny whether any specific Works identified in Exhibit 1 or Exhibit 2 constitute separate copyrighted works, including whether individual episodes of any series qualify as distinct works under applicable

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law, and therefore deny those allegations. Except as expressly admitted herein, all remaining allegations of Paragraph 17 are denied.

18. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations that Plaintiff entered signed, written licensing agreements with the identified Networks granting Plaintiff exclusive rights to distribute and publicly perform the Works in the United States, and therefore deny those allegations. Defendants further deny that Plaintiff has demonstrated that any alleged exclusive rights extend to the precise modes of transmission referenced in Paragraph 18, including satellite, OTT, IPTV, or Internet transmission, in the manner alleged. Except as expressly admitted herein, all remaining allegations of Paragraph 18 are denied.

19. Defendants deny the allegation that Plaintiff's alleged exclusive rights were in effect at the time of the alleged transmissions referenced in the Complaint. Defendants further deny that Plaintiff has established that any alleged exclusive rights remained in effect with respect to the Works aired on the identified Channels at all relevant times. Defendants lack knowledge sufficient to admit or deny the remaining allegations of Paragraph 19 and therefore deny them.

D. The Pirate Services' Infringement

20. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning the alleged economic impact of digital video piracy on the United States economy and therefore deny those allegations. Defendants further deny that any generalized economic study or industry estimate is relevant to the specific claims asserted against Defendants in this action. Defendants lack knowledge sufficient to admit or deny the specific business practices, pricing structures, or licensing arrangements of the alleged "Pirate Services," including whether such services failed to pay licensing fees, and therefore deny

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those allegations. Defendants deny that any alleged pricing differences between legal providers and the alleged Pirate Services establish liability or wrongdoing on the part of Defendants. Except as expressly admitted herein, all remaining allegations of Paragraph 20 are denied.

21. Defendants deny the allegation that any Pirate Services transmitted the Works using Defendants' servers and network in violation of applicable law. Defendants lack knowledge sufficient to admit or deny the specific technical means by which any unidentified third-party services allegedly transmitted content to end users, including whether such transmission occurred through set-top boxes, websites, playlists, or otherwise, and therefore deny those allegations. Defendants lack knowledge sufficient to admit or deny whether users were required to purchase subscriptions or hardware from the alleged Pirate Services and therefore deny those allegations. Defendants admit that they did not authorize any third party to infringe Plaintiff's copyrights, and deny that Defendants authorized, directed, induced, or knowingly facilitated any infringement. Defendants lack knowledge sufficient to admit or deny whether Plaintiff received compensation from the alleged Pirate Services and therefore deny those allegations. Except as expressly admitted herein, all remaining allegations of Paragraph 21 are denied.

22. Defendants lack knowledge sufficient to admit or deny the alleged business structure, geographic location, or identity of the operators of the alleged Pirate Services and therefore deny those allegations. Defendants deny that any alleged efforts by unidentified third parties to disguise their identities establish liability on the part of Defendants. Defendants further deny that the mere association of an IP address with infrastructure provided by a hosting intermediary establishes that Defendants directly engaged in, knew of, or materially contributed to infringement. Defendants deny that Exhibit 3 accurately or sufficiently identifies any specific infringing conduct attributable to Defendants. Defendants further deny that the

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presence of an IP address within a hosting provider's allocated range constitutes proof that Defendants exercised control over, monitored, or participated in any alleged infringement. Except as expressly admitted herein, all remaining allegations of Paragraph 22 are denied.

23. Defendants lack knowledge sufficient to admit or deny the alleged duration, frequency, or scope of any transmissions by the unidentified "Pirate Services," including whether such services operated 24 hours per day, 7 days per week, or for any specific period, and therefore deny those allegations. Defendants deny that Plaintiff has sufficiently alleged or established that any specific Works were transmitted through infrastructure owned, controlled, or operated by Defendants in violation of law. Defendants further deny that the alleged availability of content on a linear or video-on-demand basis establishes that Defendants engaged in, materially contributed to, induced, supervised, or controlled any infringement. Defendants deny that Plaintiff has alleged facts sufficient to show that Defendants had actual knowledge of specific infringements, the ability to control such alleged infringements, or direct financial benefit derived specifically from infringing activity as opposed to lawful infrastructure services provided at arm's length. Except as expressly admitted herein, all remaining allegations of Paragraph 23 are denied.

24. Defendants lack knowledge sufficient to admit or deny the alleged notifications provided directly to the Pirate Services, the contents of such notifications, or the responses of such third parties, and therefore deny those allegations. Defendants lack knowledge sufficient to admit or deny the procedural history, scope, or enforcement effectiveness of the cases identified in footnotes 6 and 7, and therefore deny those allegations. Defendants deny the allegation that any Pirate Service "moved" its transmissions to Defendants' servers because of any injunction or that Defendants knowingly accepted infringing services after being made aware of any enforceable and legally sufficient infringement notice under applicable law.

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Defendants specifically deny the allegation that infringement was "tolerated" or "encouraged" by Defendants. Defendants further deny that Defendants promoted non-compliance with United States copyright law or encouraged customers to violate any law. Defendants deny that Plaintiff has alleged facts sufficient to demonstrate that Defendants had actual knowledge of specific infringing conduct, the right and ability to supervise such conduct, or that Defendants derived a direct financial benefit specifically attributable to infringement. Defendants further deny that the mere fact that certain third parties allegedly reside outside the United States or lack U.S. assets establishes liability on the part of Defendants. Except as expressly admitted herein, all remaining allegations of Paragraph 24 are denied.

E. Virtual Systems' End-to-End Streaming Solutions

25. Defendants admit that Virtual Systems advertises and provides infrastructure services, including dedicated server solutions, in multiple geographic locations, including the United States, Ukraine, the Netherlands, and Singapore. Defendants admit that Virtual Systems represents that it utilizes its own hardware and network equipment in connection with certain service offerings, including those referenced in the cited website materials. Defendants deny that the use or ownership of hardware and network equipment establishes control over customer content, customer transmissions, or customer conduct. Defendants further deny that operating or advertising infrastructure services in the United States constitutes participation in, inducement of, or material contribution to any alleged copyright infringement. Defendants specifically deny any implication that providing physical hardware or network connectivity equates to control over, monitoring of, or editorial involvement in customer data streams. Except as expressly admitted herein, the remaining allegations of Paragraph 25 are denied.

26. Defendants admit that Virtual Systems provides infrastructure services, including dedicated servers and virtual private servers (VPS), to customers who independently

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configure and use such services for lawful business purposes. Defendants further admit that Virtual Systems' publicly available marketing materials describe the technical capabilities of its infrastructure, including bandwidth capacity, memory, storage resources, and network latency characteristics, and that pricing varies based on customer-selected technical specifications and data center location. Defendants deny that such marketing statements constitute inducement, encouragement, or facilitation of copyright infringement. Defendants deny that the provision of dedicated servers, VPS services, bandwidth, memory, storage, or low-latency connectivity establishes knowledge of any specific infringing activity, intent to promote infringement, material contribution to infringement, or the right and ability to supervise or control customer conduct. Defendants further deny that the technical capacity of infrastructure to support "media-intensive services" implies awareness of unlawful use or renders Defendants liable for independent acts of third-party customers. Defendants affirmatively state that:

- Virtual Systems does not select, create, upload, curate, modify, transmit, or monitor customer content;
- customers independently control all content hosted on their servers;
- Virtual Systems acts only upon legally sufficient notices submitted in compliance with applicable law, including the Law of Ukraine "On Copyright and Related Rights" (No. 2811-IX, Article 56); and
- Virtual Systems' Terms of Service prohibit unlawful conduct, including infringement of intellectual property rights, and provide for suspension or restriction of services upon receipt of legally valid complaints.

To the extent Paragraph 26 contains any allegation inconsistent with the foregoing, such allegations are denied.

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27. Defendants admit that Virtual Systems offers various categories of infrastructure services, including storage servers, GPU servers, and certain licensed third-party software tools, which may be used by customers for a wide range of lawful technical purposes, including data storage, encoding, transcoding, content delivery optimization, and database management. Defendants admit that publicly available marketing materials describe certain technical functionalities of such infrastructure, including performance characteristics relevant to data processing and transmission efficiency. Defendants deny that the provision of storage servers, GPU servers, or middleware software constitutes inducement, encouragement, or promotion of copyright infringement. Defendants further deny that the description of such services as "solutions" for video storage, encoding, IPTV management, or database administration establishes knowledge of any specific infringing activity, intent to facilitate infringement, or material contribution to infringement. Defendants deny that offering multiple infrastructure components within the same network environment establishes unlawful coordination, control, or participation in any alleged infringement by third parties. Defendants affirmatively state that:

- the referenced services are neutral, commercially standard infrastructure tools widely used in lawful industries including media distribution, enterprise data management, software development, research computing, artificial intelligence processing, lawful streaming platforms, and private content delivery;
- Virtual Systems does not configure customer applications, select customer content, manage customer databases, operate IPTV services, or administer any customer streaming platform;

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- all customer content and software configurations are independently deployed and controlled by customers without supervision or active participation by Virtual Systems;
- Virtual Systems' Terms of Service expressly prohibit unlawful conduct, including infringement of intellectual property rights, and authorize service suspension upon receipt of legally valid and properly substantiated complaints; and
- under Ukrainian law, including Article 56 of the Law of Ukraine "On Copyright and Related Rights," hosting providers are obligated to act upon legally compliant notices, and Virtual Systems maintains a structured abuse handling mechanism consistent with such statutory requirements.

Defendants deny that the mere technical compatibility of infrastructure components for streaming applications constitutes inducement, substantial assistance, or willful blindness. To the extent Paragraph 27 alleges that Virtual Systems promoted, encouraged, or intended infringement of DISH's copyrighted works, such allegations are expressly denied.

28. Defendants admit that Virtual Systems publicly represents that its technical teams are responsible for developing, installing, monitoring, and maintaining server hardware and network infrastructure, including health monitoring, environmental control, and hardware-level administration. Defendants further admit that Virtual Systems engages qualified technical specialists to manage physical server equipment and network stability, and that customer support is available for infrastructure-related inquiries. Defendants deny that such statements establish control over, access to, or supervision of customer content, customer applications, or customer streaming activities. Defendants specifically deny that:

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- Virtual Systems manages, reviews, monitors, selects, edits, or transmits customer content;
- Virtual Systems has access to customer databases, IPTV panels, streaming playlists, or media files except where strictly necessary for infrastructure-level troubleshooting;
- infrastructure monitoring equates to knowledge of specific copyrighted works allegedly transmitted by customers; and
- technical maintenance of hardware and network availability constitutes participation in, authorization of, or material contribution to infringement.

Defendants affirmatively state that:

- the referenced "hands-on approach" relates solely to infrastructure reliability, uptime, hardware integrity, power systems, cooling systems, and network routing;
- Virtual Systems does not exercise editorial control over customer transmissions;
- customers independently deploy and configure their own software, middleware, and streaming systems;
- Virtual Systems is contractually and technically restricted from accessing or intervening in customer content except pursuant to legally sufficient notices under applicable law; and
- under Ukrainian law, including Article 56 of the Law of Ukraine "On Copyright and Related Rights," hosting providers are not subject to a general monitoring obligation and may act only upon properly substantiated complaints.

Defendants deny that infrastructure management and hardware oversight constitute "hands-on" control over alleged infringing content within the meaning of contributory or vicarious

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copyright infringement doctrine. To the extent Paragraph 28 alleges that Virtual Systems exercised supervisory authority over the Pirate Services' content or had the right and ability to control specific infringing acts, such allegations are expressly denied. All legal conclusions of Paragraph 28, Defendants deny such allegations.

29. Defendants admit that Virtual Systems' website contains marketing language describing technical connectivity features of its data centers, including references to network routes, latency, and suitability for customers serving North American audiences. Defendants further admit that certain promotional materials reference streaming-related use cases in a general commercial context.

Defendants deny that:

- such marketing statements constitute targeting of infringing activity;
- references to connectivity to the United States establish purposeful availment to exploit U.S. copyright law;
- references to "streaming services" imply encouragement of unlawful conduct; and
- any marketing language constitutes inducement of copyright infringement.

Defendants affirmatively state that:

- references to connectivity, latency, and bandwidth describe neutral technical infrastructure characteristics;
- hosting providers worldwide advertise latency optimization and regional connectivity as standard industry practice;
- the phrase "streaming services" refers to lawful streaming, including licensed OTT, IPTV, corporate video distribution, and other legitimate applications;

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- marketing statements do not create knowledge of specific infringing conduct by any customer;
- no advertisement authorizes, promotes, or instructs customers to violate intellectual property law; and
- Virtual Systems' Terms of Service and Acceptable Use Policy expressly prohibit unlawful activity, including infringement of intellectual property rights.

Defendants deny that Paragraph 29 establishes intent, inducement, or purposeful interjection into the United States sufficient to support personal jurisdiction or secondary liability.

30. Defendants deny that Virtual Systems provided servers or network services with knowledge that such services would be used to infringe Plaintiff's copyrights. Defendants lack knowledge sufficient to admit or deny the specific identity of all alleged "Pirate Services" referenced and therefore deny the allegations to the extent they assert that particular customers engaged in infringing transmissions through Defendants' infrastructure.

Defendants deny that:

- any servers located in Seattle were used to transmit Plaintiff's copyrighted Works;
- Virtual Systems had actual knowledge that specific copyrighted Works were transmitted;
- Virtual Systems materially contributed to or induced infringement; and
- Virtual Systems provided infrastructure with the intent to facilitate infringement.

Defendants admit only that:

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- Virtual Systems provides infrastructure services (including dedicated servers, VPS, storage servers, and related tools) on a neutral, commercially standardized basis to customers; and
- customers independently configure and control their own applications and content.

Defendants affirmatively state that:

- infrastructure services are content-neutral and automated;
- Virtual Systems does not select, upload, encode, curate, or transmit customer content;
- any use of servers by customers occurs under customer control;
- Virtual Systems acts as a passive hosting intermediary within the meaning of internationally recognized intermediary-liability principles;
- under Ukrainian law, including Article 56 of the Law of Ukraine "On Copyright and Related Rights," a hosting provider may act only upon receipt of a legally sufficient and properly substantiated notice;
- no legally compliant notice under Ukrainian law was received that would have triggered a statutory obligation to disable specific content; and
- the absence of a general monitoring obligation precludes liability based solely on provision of infrastructure.

To the extent Paragraph 30 alleges that additional services such as storage servers, encoding servers, or middleware were knowingly provided to facilitate infringement, such allegations are expressly denied. Defendants further deny that providing general-purpose server products constitutes "material contribution" under applicable copyright law. Defendants deny the legal conclusions Paragraph 30 contains.

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F. Virtual Systems' "DMCA-Ignored" Policy

31. Defendants deny that Virtual Systems had any DMCA-Ignored Policy and only that the statement reflects the treaty status between the Ukraine and the United States relative to the DMCA. Defendants admit that certain marketing materials historically used the phrase "DMCA-Ignored" in connection with servers physically located in Ukraine.

Defendants deny that such language constitutes:

- a policy of encouraging copyright infringement;
- a refusal to comply with applicable law;
- an inducement to infringe United States copyrights;
- evidence of willful blindness; and
- evidence of knowledge of specific infringing acts.

Defendants affirmatively state as follows:

The reference to "DMCA Ignored" concerns the non-applicability of United States statutory procedure, the DMCA (Digital Millennium Copyright Act) sets out a process for copyright holders to send an official notice requesting the service provider remove the infringing material. (17 U.S.C. § 512) to infrastructure physically located in Ukraine. Indeed, there are countries in Europe and Asia which are commonly referred to as DMCA-ignored and these European countries include: Bulgaria, Lithuania, Luxembourg, the Netherlands, Romania, Russia, and Ukraine; the Asian countries include Hong Kong, Malaysia, and Singapore. The DMCA is a United States statute that has no extraterritorial application to servers physically located outside the United States. Any of these countries are referred to as DMCA-Ignored Countries as they have not entered into treaties requiring adherence to the DMCA. Servers located in Ukraine are governed by Ukrainian law, including Law of Ukraine "On Copyright and Related Rights" No. 2811-IX (2022) article 56 (mandatory extrajudicial procedure) and

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article 57 (intermediary obligations). Under Ukrainian law, a copyright complaint must: be legally substantiated, include documentary proof of ownership, precisely identify infringing material, and, if submitted by a legal entity, be filed exclusively through a licensed Ukrainian attorney or registered IP representative. Informal DMCA-style notices submitted without compliance with Article 56 do not create a legal obligation under Ukrainian law. The phrase "DMCA-Ignored" reflects the jurisdictional principle that U.S. statutory procedure does not automatically govern offshore servers. Virtual Systems' Terms of Service and Abuse Handling Policy expressly: prohibit unlawful activity, prohibit infringement of intellectual property, provide a structured notice-handling mechanism, require substantiated complaints, and provide for content restriction within statutory timeframes. Marketing language cannot be interpreted to admit a policy that overrides its binding contractual prohibitions contained in the Terms of Service. Defendants deny that Virtual Systems publicly represented that it would knowingly allow infringing conduct to continue after receiving legally sufficient notice. Defendants further deny that the Netherlands or Ukraine's data centers were marketed as "copyright-safe havens." Still further, to the extent that content was stored on servers located in metropolitan Seattle, such content could not be stored in a DMCA-ignored jurisdiction. To the extent Paragraph 31 characterizes marketing language as inducement of infringement, such characterization is expressly denied.

32. Defendants admit that marketing materials referenced DMCA-related handling practices in connection with storage servers and middleware services. Defendants deny that such statements establish: refusal to act upon legally sufficient notices, intentional facilitation of infringement, knowledge of specific copyrighted works being transmitted, and material contribution to infringing acts. Defendants affirmatively state storage servers and middleware are general-purpose infrastructure tools. Virtual Systems does not control or monitor the

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content processed by such tools. Under Ukrainian law, hosting providers are prohibited from engaging in proactive content monitoring absent a lawful basis. Ukrainian law does not impose a general monitoring obligation. Upon receipt of legally compliant notices under Ukrainian law, Virtual Systems: forwards the notice to the customer, requires response within statutory timeframes, and restricts access if required. Defendants deny that any statement regarding "redirecting notices to the client" constitutes a refusal to comply with law. Under Ukrainian statutory procedure, the hosting provider is required to notify the client and provide an opportunity to respond. Defendants further deny that Paragraph 32 establishes inducement, knowledge, willfulness, or substantial assistance.

33. Defendants deny that they knowingly ignored valid infringement notices or refused to act upon legally sufficient complaints. Defendants admit that they received communications from Plaintiff or its agents alleging copyright infringement. Defendants deny the characterization of such communications as legally operative "Infringement Notices" within the meaning of applicable law governing the relevant servers. Defendants affirmatively state as follows: alleged notices concerned servers physically located outside the United States (in Ukraine). Servers located in Ukraine are governed by Ukrainian law, including the Law of Ukraine "On Copyright and Related Rights" No. 2811-IX (2022), Article 56, which establishes a mandatory extrajudicial procedure for termination of online copyright infringement. Under Ukrainian law, a complaint submitted by a legal entity must: 1) be filed through a licensed Ukrainian attorney or registered intellectual property representative; 2) include documentary proof of ownership or chain of title; 3) precisely identify the allegedly infringing material; 4) contain a legally formulated demand; and (5) satisfy formal statutory requirements. Communications received from Plaintiff, or its representatives, were styled as DMCA notices under 17 U.S.C. § 512, did not comply with Article 56 requirements, were not submitted

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through Ukrainian legal representation, did not include documentary proof of copyright ownership, did not establish chain of title, did not identify specific hosted files in a manner sufficient under Ukrainian law. Under Ukrainian law, a hosting provider is not obligated to restrict access based upon non-compliant or procedurally defective notices. Defendants processed abuse reports pursuant to their Terms of Service and internal Abuse Handling Procedures, which require substantiated and legally compliant notices. Defendants deny that receipt of communications automatically established: actual knowledge of specific infringing files, knowledge of ownership of the alleged Works, knowledge of U.S. exclusive license scope, and knowledge that any specific transmission violated U.S. copyright law. Defendants deny that the alleged number of notices (512) establishes willfulness or knowledge, as volume does not cure procedural defects, repeated defective notices do not create legal obligation, and hosting providers are not required to assume validity of unverified claims. Defendants further deny that they "received additional notices concerning infringements" in a manner that created secondary liability. To the extent Paragraph 33 contains legal conclusions, such conclusions are denied.

34. Defendants deny that the alleged notices "complied with the Digital Millennium Copyright Act" in a manner that imposed legal obligations with respect to servers physically located outside the United States. Defendants affirmatively state: the Digital Millennium Copyright Act (17 U.S.C. § 512) is a United States statute. The DMCA does not have extraterritorial application to infrastructure located outside the United States. Ukrainian law does not incorporate the DMCA notice-and-takedown regime. Compliance with 17 U.S.C. § 512 is not determinative of compliance under Ukrainian law. Even if notices satisfied the formal elements of §512(c)(3), such compliance does not automatically create: actual knowledge under U.S. contributory infringement standards, legal obligation to act under

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foreign law, or proof of infringement. IP address identification alone does not establish: that infringing files were hosted on Defendants' infrastructure, that Defendants controlled the content, that Defendants had technical ability to remove specific streams, and that Defendants had contractual right to access customer data. Under Defendants' Terms of Service: content moderation occurs only upon legally sufficient notice, customers are notified and given opportunity to respond, and access may be restricted if statutory requirements are met. Defendants deny that they were sent notices "prior to the Pirate Services transmitting the Works" in a manner that created advance knowledge of specific infringements. Defendants deny that Plaintiff has established: volitional conduct, material contribution, right and ability to supervise, and direct financial benefit tied specifically to alleged infringement. Defendants further deny that Paragraph 34 establishes the elements required for contributory or vicarious copyright infringement.

35. Defendants deny the allegations of Paragraph 35 in their entirety. Defendants specifically deny that: they failed to respond to legally sufficient infringement notices; they intentionally disregarded valid complaints; they "turned a blind eye" to infringement; and they acted pursuant to any unlawful policy. Defendants affirmatively state: Defendants maintained and publicly published Terms of Service and Abuse Handling Procedures requiring substantiated and legally compliant complaints. Complaints received were evaluated in accordance with applicable law governing the relevant server location, contractual obligations, customer due-process rights. With respect to servers physically located in Ukraine, Ukrainian copyright law (Law No. 2811-IX, Article 56) governs the notice-and-takedown mechanism. Such notices that Virtual Systems did receive did not comply with mandatory Ukrainian statutory requirements and did not trigger an obligation to restrict access. Defendants deny: that they had actual knowledge of specific infringing files remaining accessible after receipt of any

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notice; IP address similarity alone establishes that the same infringing material remained hosted; that Defendants had technical access to customer-managed streams; and that Defendants controlled customer content. Defendants deny that any internal or published marketing language constituted authorization or inducement of copyright infringement. The phrase "DMCA-Ignored," as used in marketing materials, referred to jurisdictional limitations of U.S. law with respect to offshore infrastructure and did not constitute a statement of intent to violate copyright law. Defendants deny that they acted willfully or in bad faith.

36. Defendants deny that they knowingly violated any valid and binding United States court order. Defendants state that they are Ukrainian nationals and entities located outside the United States. Defendants were not properly served in, nor did they appear in, the referenced lawsuits at the time the injunctions were entered. Defendants deny that they had actual knowledge of the specific scope and applicability of any injunction prior to entry of default in the present action. Defendants deny that any injunction lawfully bound servers physically located outside the territorial jurisdiction of the issuing courts. Defendants further deny that they were named parties in each referenced proceeding in a manner sufficient to impose direct obligations. To the extent Plaintiff alleges that Defendants were enjoined "by virtue of role," Defendants deny that such language establishes: personal jurisdiction, service, or binding injunctive obligations. Defendants deny that any continued service constituted intentional violation of a court order. Defendants further state that foreign hosting providers are not automatically subject to extraterritorial enforcement of U.S. injunctions absent proper jurisdiction and service. To the extent Paragraph 36 contains legal conclusions, those conclusions are denied.

37. Defendants deny that they are liable for contributory or vicarious infringement and deny that the Digital Millennium Copyright Act governs all relevant conduct. Defendants

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affirmatively state: the DMCA safe harbor provisions (17 U.S.C. § 512) are affirmative defenses under U.S. law and are not exclusive standards governing intermediary liability. Defendants' infrastructure includes servers located outside the United States, where U.S. statutory safe harbor provisions are not the governing legal framework. Defendants maintain an abuse handling and repeat infringer policy consistent with: Ukrainian law, contractual obligations, and international intermediary-liability principles. Defendants' Terms of Service: prohibit illegal content, provide for suspension or termination, and establish procedures for abuse reports. Defendants deny that they lack a repeat infringer policy. Defendants deny that designation of a U.S. DMCA agent is legally required for infrastructure located outside the United States. Defendants deny that they received a direct financial benefit specifically attributable to the alleged infringement. Defendants deny that they had: the right and ability to supervise specific streams, access to modify customer-managed content, and operational control over end-user streaming activities. Defendants deny that Plaintiff has established the elements required for vicarious liability, including direct financial benefit, and right and ability to supervise. Defendants deny that Plaintiff has established contributory infringement, including actual knowledge, material contribution, and inducement.

G. Virtual Systems' "Under the Radar" Policy

38. Defendants deny the allegations of Paragraph 38 to the extent they characterize Defendants' privacy-related marketing language as encouragement of copyright infringement. Defendants admit that certain marketing materials referenced privacy-oriented features of their services, including limited customer personal data collection and privacy-focused communication practices. Virtual Systems is specifically statutorily required to enforce privacy of customer personal data. Defendants specifically deny that: they encouraged copyright infringement; they promoted infringement of DISH's works; and their privacy policies were

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designed to facilitate illegal conduct. Defendants affirmatively state privacy-oriented service features are lawful and common in the hosting industry. Limiting collection of personal data is consistent with EU GDPR principles of data minimization, Ukrainian data protection law, and general privacy-by-design standards. The absence of broad KYC requirements for infrastructure services does not equate to authorization of unlawful activity. At all relevant times, Defendants' Terms of Service expressly prohibited unlawful activity, including intellectual property violations. Any statements regarding privacy or limited data retention were unrelated to copyright law and were not directed toward facilitating infringement. Defendants deny that any Pirate Service selected hosting based on alleged anonymity representations. Defendants deny any legal conclusions Paragraph 38 contains.

39. Defendants admit that they accept cryptocurrency as a payment method. Defendants deny that acceptance of cryptocurrency constitutes encouragement of copyright infringement. Defendants affirmatively state: cryptocurrency payments are lawful and widely used in international commerce. Acceptance of cryptocurrency reduces cross-border payment friction, mitigates chargeback risk, and facilitates global transactions. Cryptocurrency acceptance does not eliminate contractual obligations under Defendants' Terms of Service. Defendants maintain transaction records necessary for accounting and regulatory compliance. The allegation that Defendants "do not save any records" is inaccurate and taken out of context. Defendants deny that cryptocurrency payments were used to conceal infringing conduct with Defendants' knowledge. Defendants deny that Plaintiff has identified any specific causal connection between payment method and alleged infringement. Defendants further deny that any statements regarding customer privacy constitute evidence of intent to induce copyright infringement.

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H. Virtual Systems Control Over the Infringement

40. Defendants deny the allegations of Paragraph 40 that they refused to take simple measures to stop infringement. Defendants affirmatively state that they operate as infrastructure providers and do not monitor customer content absent legally sufficient notice. Under Ukrainian law, including Article 56 of the Law of Ukraine "On Copyright and Related Rights," hosting providers are not required to proactively verify customers' licensing rights. Ukrainian law does not impose a general monitoring obligation on hosting providers. Defendants deny that they had actual knowledge of specific infringing streams occurring on specific servers in the United States. Defendants further deny that Plaintiff has identified: specific servers, specific timestamps, specific customer accounts, and specific technical evidence tying transmissions to Defendants' Seattle infrastructure. Defendants deny that receipt of generalized notices automatically imposed an obligation to suspend services absent compliance with applicable statutory requirements. Defendants deny that implementation of a "multi-strike" system was legally required under Ukrainian law or contractually mandated. Defendants further deny that they possessed independent technical ability to selectively disable alleged streams without full server interruption and without risking unlawful interference with other customers' lawful data. Defendants deny that Plaintiff has alleged facts sufficient to establish feasible technical control over specific content-level transmissions. Defendants therefore deny that they "could have taken simple measures" as alleged. Defendants deny the legal conclusions asserted in Paragraph 40.

41. Defendants admit that their Terms of Service reserve the right to suspend or terminate services in cases of unlawful conduct, however, the legality of conduct in the Ukraine is defined by Ukrainian law. Defendants deny that: such contractual discretion constitutes a legal obligation to monitor customer activity; such contractual language

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establishes knowledge of specific infringement; and such discretion establishes vicarious liability. Defendants affirmatively state contractual rights to suspend service are protective provisions common in hosting agreements worldwide. The existence of a contractual right does not establish actual knowledge or material contribution. Ukrainian law provides a structured notice-and-takedown mechanism that governs when suspension must occur. Under Article 56, action is required only upon receipt of a legally compliant complaint submitted through proper professional representation. Plaintiff has not alleged that it complied with Ukrainian statutory takedown procedures. Defendants deny that any court order validly imposed an obligation on Defendants under Ukrainian law prior to recognition or enforcement in Ukraine. Defendants deny that they "turned a blind eye." Defendants maintain that they acted consistently with their Terms of Service, Ukrainian law, and applicable intermediary liability principles. Defendants deny that their infrastructure constituted a "safe haven" for infringement.

I. Virtual Systems' Direct Financial Interest in Infringement

42. Defendants deny the allegations of Paragraph 42. Defendants specifically deny that: the Pirate Services were "drawn" to Virtual Systems because infringement was tolerated; Virtual Systems advertised its services as a venue for copyright infringement; and that Virtual Systems' alleged inaction was intended to attract infringing customers. The availability of content alleged to infringe DISH's copyrights served as a commercial "draw." Defendants affirmatively state that Virtual Systems operates as an infrastructure provider offering neutral hosting services to customers across multiple jurisdictions. The pricing and marketing of infrastructure services based on performance, bandwidth, and latency are industry-standard practices unrelated to infringement. Plaintiff has not alleged specific facts establishing:

- that any particular customer selected Virtual Systems because of infringement tolerance;

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- that Virtual Systems tracked, promoted, or monetized infringement activity; and
- that Virtual Systems received revenue specifically tied to infringement rather than lawful hosting services.

The mere provision of servers capable of high-bandwidth transmission does not establish inducement or encouragement of infringement. Defendants deny that they cultivated infringement as a business strategy. Defendants deny the remaining allegations of Paragraph 42.

43. Defendants admit that Virtual Systems offers servers with varying bandwidth capacities. Pricing varies depending on technical specifications, including bandwidth. High-bandwidth servers may be suitable for streaming or media-intensive applications. Defendants deny that: bandwidth-based pricing establishes knowledge of infringement; offering higher-bandwidth servers constitutes encouragement of unlawful activity; Virtual Systems received a direct financial benefit specifically attributable to infringement of DISH's works; and that Plaintiff has alleged facts showing a direct causal relationship between alleged infringement and Virtual Systems' revenues. Defendants affirmatively state bandwidth pricing is a neutral, performance-based commercial model widely used in the hosting industry. High-bandwidth infrastructure is used for numerous lawful purposes, including content delivery networks, enterprise data services, software distribution, lawful streaming platforms, cloud applications, gaming infrastructure. Plaintiff's allegations are speculative and based "on information and belief," without identifying specific customers, invoices, revenue streams, or financial records tying alleged infringement to Defendants' profits.

44. Defendants deny the allegations of Paragraph 44. Defendants specifically deny that they refused to stop alleged infringement in order to preserve bandwidth revenue. Virtual Systems made business decisions based on requirements of the law and motivated by a desire

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to profit from providing Internet services to customers engaged in legal network activities. Virtual Systems would not have monitored customer content nor could Virtual Systems have calculated or tracked customer purchases in relation to infringing activity. Virtual Systems possessed no actual knowledge that specific bandwidth purchases corresponded to infringing transmissions of DISH's works. Virtual Systems does not monitor customer content absent legally sufficient notice under applicable law. Bandwidth allocation and pricing are automated, technical parameters independent of content. Plaintiff has not alleged specific facts establishing:

- actual knowledge of infringing streams;
- ability to selectively disable specific content without disrupting lawful customer data; and
- that Defendants exercised control over content-level transmission decisions.

Any suggestion that Defendants intentionally preserved infringement to protect revenue is speculative and unsupported by specific factual allegations.

III. CLAIMS FOR RELIEF

A. Count I

45. Defendants reallege the denials and admissions as set out in Paragraphs 1-44 above.

46. Defendants lack sufficient knowledge to admit or deny the full scope, validity, and enforceability of Plaintiff's alleged exclusive rights and therefore deny the same.

47. Defendants lack sufficient knowledge to admit or deny the specific facts concerning the authorship, fixation, first publication, and national origin of each of the allegedly infringed Works and therefore deny the same. Defendants specifically deny that Plaintiff has established: that each allegedly infringed Work constitutes valid copyrightable

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subject matter under applicable law; that each Work was properly authored and first published in the jurisdictions identified; that Plaintiff holds enforceable rights arising under international treaties applicable to each Work; and that such foreign-origin rights extend to or were infringed within the territorial scope of United States copyright law. Defendants further deny any implication that alleged foreign publication automatically establishes infringement within the United States absent proof of actionable domestic conduct. Plaintiff has failed to establish the exclusive rights necessary to establish standing to assert such copyrights in United States Federal District Courts. Except as expressly admitted, the allegations of Paragraph 47 are denied. The Copyright act grants the owner of copyright "the 'exclusive rights' to 'reproduce,' 'distribute,' 'perform,' 'display,' or 'prepare derivative works based upon' their copyrighted works." 17 U.S.C. § 106. "Anyone who violates any of the[se] exclusive rights ... is an infringer," 17 U.S.C. § 501(a), and the copyright owner may "institute an action" against an infringer, *Id.* § 501(b). A direct infringement claim requires proof that (1) plaintiff had a valid copyright and (2) defendant infringed upon that copyright by violating one of the exclusive rights under § 106. Plaintiff has failed to demonstrate actual ownership of the copyrights of the works.

48. Defendants admit that, under certain circumstances, non-United States works are not subject to the registration prerequisite of 17 U.S.C. § 411. Defendants deny that Plaintiff has adequately established that each allegedly infringed Work qualifies as a "non-United States work" within the meaning of 17 U.S.C. § 101. Plaintiff has failed to allege facts sufficient to establish its standing to assert copyright in a United States Federal District Court for any of these Works. Defendants further deny that Plaintiff has established: valid subsisting rights in each allegedly infringed Work; the scope and duration of such rights; that the Works

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were infringed within the United States; and that statutory damages are available for any unregistered Works. Except as expressly admitted, Paragraph 48 is denied.

49. Defendants deny that any Pirate Services directly infringed Plaintiff's exclusive public performance rights within the territorial jurisdiction of the United States. Defendants further deny: that Plaintiff has established direct infringement as a predicate act; that any alleged transmission originated from servers owned or controlled by Defendants in a manner constituting domestic infringement; and that any alleged conduct is actionable under United States copyright law. Defendants lack knowledge sufficient to admit or deny the operational structure of alleged Pirate Services and therefore deny the same. Except as expressly admitted, Paragraph 49 is denied.

50. Defendants admit that Virtual Systems provided dedicated servers, VPS infrastructure, storage solutions, and optional middleware services as neutral hosting infrastructure products available to a broad range of customers. Defendants deny that such services were provided with knowledge of infringement; that such services were marketed for unlawful purposes; that Virtual Systems materially contributed to any alleged infringement; that Virtual Systems exercised control over content transmitted by customers; and that Virtual Systems induced infringement. Defendants affirmatively state Virtual Systems functions as a passive infrastructure provider. It does not create, select, modify, transmit, curate, or control customer content. Infrastructure services capable of lawful use cannot constitute material contribution absent specific knowledge and substantial participation in the infringing activity, which is denied. The allegation "on information and belief" is insufficient and denied. Except as expressly admitted, Paragraph 50 is denied.

51. Defendants categorically deny that Virtual Systems had actual knowledge of specific infringement of Plaintiff's works. Defendants further deny that any notices allegedly

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received complied with the mandatory procedural requirements of Article 56 of the Law of Ukraine "On Copyright and Related Rights" No. 2811-IX, in that 1) no notices were submitted through a licensed Ukrainian attorney as required; 2) included documentary proof of rights as required by Ukrainian law; and 3) any such notice triggered a legally enforceable obligation to remove content under Ukrainian law. Defendants affirmatively state that, under Ukrainian law, a hosting provider is required to act only upon receipt of a legally sufficient and formally compliant notice. Informal or DMCA-style notices lacking statutory elements do not create actual knowledge or legal duty to act. Defendants deny any allegation of "massive scale" infringement known to them. Except as expressly admitted, the remaining allegations of Paragraph 51 are denied.

52. Defendants deny that they failed to take legally required measures. Defendants affirmatively state that Virtual Systems maintains abuse handling procedures consistent with Articles 56 and 57 of Ukrainian copyright law and its publicly available Terms of Service. Under Ukrainian law a hosting provider is not subject to a general monitoring obligation; action with regard to any customer's content is required only upon receipt of a legally compliant notice; and under Articles 56 and 57, customers are afforded due process rights. Defendants deny that they were legally required to implement a U.S.-style multi-strike policy; that they were obligated to enforce U.S. DMCA procedures extraterritorially; and that any failure to act was wrongful. Except as expressly admitted, the remaining allegations of Paragraph 52 are denied.

53. Defendant Smyrnov denies each and every allegation of personal liability. Smyrnov admits he serves as the Director of Virtual Systems. Smyrnov denies that he: 1) authorized infringement; 2) directed infringement; participated in infringement; 3) had actual knowledge of infringement; 4) exercised day-to-day control over specific customer

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content; and that he 5) derived direct financial benefit from specific alleged infringement. Defendants affirmatively state that, under established law, corporate officers are not personally liable absent direct participation in specific infringing acts. Mere corporate title, general oversight of operations, or receipt of corporate compensation does not establish personal liability. The conclusory allegation that Smyrnov was a "guiding spirit" is denied. Except as expressly admitted, the allegations of Paragraph 53 are denied.

54. Defendants deny that any conduct was willful, malicious, intentional, or in disregard of Plaintiff's rights. Defendants affirmatively state that Virtual Systems operates under a statutory compliance framework governed by Ukrainian law and maintains written abuse handling procedures. At no time did Defendants knowingly facilitate infringement. The allegation of continuing willful infringement is denied. Except as expressly admitted, the remainder of the allegations of Paragraph 54 are denied.

55. Defendants deny that Plaintiff has suffered irreparable harm attributable to Defendants. Defendants affirmatively state: any alleged harm arises, if at all, from independent third-party conduct outside Defendants' control. Except as expressly admitted, the remaining allegations of Paragraph 55 are denied.

B. Count II

56. Defendants incorporate by reference their responses to Paragraphs 1-55 of the Complaint as if fully set forth herein. To the extent Paragraph 56 purports to restate allegations previously denied, such allegations remain denied.

57. Defendants admit that Virtual Systems provides server infrastructure and network connectivity services to customers in the ordinary course of its hosting business. Defendants deny that Virtual Systems provided servers or network services for the purpose of infringing Plaintiff's copyrights; that Virtual Systems promoted infringement; that Virtual

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Systems induced any alleged infringement; and that Virtual Systems informed customers that it would not comply with applicable law. With respect to references to a so-called "DMCA-Ignored" policy, Defendants affirmatively state that Virtual Systems operates under Ukrainian law. Ukrainian copyright law establishes a formal statutory notice-and-takedown procedure under Article 56 of the Law of Ukraine "On Copyright and Related Rights" (No. 2811-IX). Under that framework, a hosting provider is obligated to act only upon receipt of a legally sufficient, properly documented, and professionally submitted complaint. Statements on marketing materials referencing DMCA procedures relate to the non-applicability of U.S. DMCA procedural mechanisms to servers physically located in Ukraine and do not constitute encouragement of unlawful activity. Defendants specifically deny any intent to induce infringement. Except as expressly admitted, that allegations of Paragraph 57 are denied.

58. Defendants deny that Virtual Systems maintained or implemented any policy designed to promote infringement or conceal unlawful activity. Defendants admit that Virtual Systems does not collect unnecessary personal data beyond what is required under applicable Ukrainian and EU data-protection law and industry practice. Defendants further affirmatively state: statements regarding privacy protections reflect compliance with data-minimization principles and do not constitute inducement of copyright infringement. Virtual Systems does not disclose customer data absent lawful basis, including valid court orders or properly submitted statutory complaints under Ukrainian law. Defendants deny that any privacy-related language constitutes inducement of infringement. Except as expressly admitted, the allegations of Paragraph 58 are denied.

59. Defendants deny that Virtual Systems was required to develop filtering tools or to monitor customer content proactively. Defendants affirmatively state that under Ukrainian law and internationally recognized intermediary liability principles, hosting providers are not

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subject to a general monitoring obligation. Defendants deny that they had actual knowledge of specific infringement triggering a legal duty to act; that simple removal measures were legally required absent a valid statutory complaint; that Virtual Systems failed to act where legally required; and that financial success depended upon infringement. Defendants further deny that any alleged infringement contributed to their financial success in a manner constituting inducement. Except as expressly admitted, the allegations of Paragraph 59 are denied.

60. Defendant Smyrnov denies each allegation of personal liability. Smyrnov admits serving as an officer (e.g., Director) of Virtual Systems but denies that he authorized and infringement; directed any infringement; participated in any infringement; had any actual knowledge of specific infringing acts; nor that he intended to induce any infringement. Corporate governance functions and general operational oversight do not constitute inducement. Except as expressly admitted, the allegations of Paragraph 60 are denied.

61. Defendants deny that any conduct was willful, malicious, intentional, nor purposeful. Defendants further deny that any of the alleged conduct is ongoing. Defendants affirmatively state that Virtual Systems operates under a formal statutory compliance regime governed by Ukrainian law and its Terms of Service and that such regime prohibits unlawful conduct under Ukrainian law. At no time did either Defendant entertain any specific intent to encourage infringement. Except as expressly admitted, the allegations of Paragraph 61 are denied.

62. Defendants deny that Plaintiff is entitled to injunctive relief. Defendants further deny that Plaintiff has demonstrated irreparable harm attributable to Defendants; that any monetary damages would be inadequate; nor that Defendants are likely to continue alleged unlawful conduct; and that any equitable factors weigh in Plaintiff's favor. Defendants affirmatively state if any alleged harm arises, if at all, it does so by actions of independent

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third-party actors outside Defendants' control. Except as expressly admitted, the allegations of Paragraph 62 are denied.

C. Count III

63. Defendants incorporate by reference their responses to Paragraphs 1–62 of the Complaint as if fully set forth herein. To the extent Paragraph 63 restates allegations previously denied, such allegations remain denied.

64. Defendants deny that Virtual Systems had the legal right and practical ability to stop or limit the alleged infringement in the manner alleged. Defendants affirmatively state that Virtual Systems operates as a hosting infrastructure provider and does not monitor, pre-approve, or control customer content. Under Ukrainian law, specifically Article 56 of the Law of Ukraine "On Copyright and Related Rights" (No. 2811-IX), a hosting provider is obligated to restrict access to allegedly infringing material only upon receipt of a legally sufficient, formally compliant, and professionally submitted complaint. Absent such compliant statutory notice, Virtual Systems has neither an automatic legal duty nor an unrestricted authority to interfere with customer content. Ukrainian law does afford the owner of content rights including such to due process. Defendants deny that they had actual knowledge of any specific infringing files located on Seattle-based servers; that they had unilateral authority to remove specific content absent legal basis; and that failure to act outside the statutory Ukrainian framework constitutes unlawful control subjecting Virtual Systems to liability. Virtual Systems' Terms of Service provide discretionary rights to suspend services where violations are established. However, the existence of a contractual clause allowing action in defined circumstances does not equate to continuous supervisory control over customer conduct sufficient to establish vicarious liability under U.S. law. Except as expressly admitted, the allegations of Paragraph 64 are denied.

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65. Defendants deny that Virtual Systems had a direct financial interest in alleged infringement. Defendants affirmatively state: Virtual Systems charges customers for server capacity, bandwidth, and infrastructure services at standardized commercial rates unrelated to specific content hosted by customers. Revenue is derived from infrastructure utilization, not from the nature of transmitted material. Defendants deny that infringement served as a "draw" for customers; that customers selected Virtual Systems for the purpose of infringing works; that any alleged infringement increased Virtual Systems' profits; and that Virtual Systems received illicit revenue. Except as expressly admitted, the allegations of Paragraph 65 are denied.

66. Defendants admit that bandwidth is offered at varying commercial tiers based on customer needs. Defendants deny that bandwidth offerings were structured to facilitate infringement; that Virtual Systems encouraged infringement; that bandwidth purchases were tied to any specific copyrighted works; and that Virtual Systems' profits depended on infringement. Defendants affirmatively state that bandwidth-based pricing is standard in the hosting industry and reflects technical resource allocation, not content endorsement. There is no factual basis to conclude that Virtual Systems refrained from action to preserve profits. Except as expressly admitted, the allegations of Paragraph 66 are denied.

67. Except as specifically admitted herein, Defendant Smyrnov denies each allegation of personal participation in vicarious infringement. Smyrnov admits serving as an officer of Virtual Systems but denies that he had the right and ability to supervise specific customer content; exercised control over alleged infringing transmissions; and received direct financial benefit tied to infringement. Corporate status alone is insufficient to establish vicarious liability absent proof of direct supervisory control and financial benefit tied to specific infringement. Except as expressly admitted, the allegations of Paragraph 67 are denied.

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68. Defendants deny that any conduct was willful, malicious, intentional, or purposeful. Defendants further deny that any alleged conduct is ongoing. Defendants affirmatively state that Virtual Systems operates pursuant to a formal abuse handling mechanism consistent with Ukrainian statutory requirements and international intermediary liability principles. Neither Defendant entertained any intent to disregard Plaintiff's rights. Except as expressly admitted, the allegations of Paragraph 68 are denied.

69. Defendants deny that Plaintiff is entitled to injunctive relief. Defendants deny that irreparable harm attributable to Defendants can be established; that legal remedies are inadequate; that any equitable factors favor Plaintiff. Defendants further deny that any continuing conduct justifies injunctive relief. Except as expressly admitted, the allegations of Paragraph 69 are denied.

IV. AFFIRMATIVE AND OTHER DEFENSES

70. Defendants identify the following affirmative defenses and reserve the right to raise additional defenses as discovery proceeds. Defendants do not assume the burden of proof on any issue, however characterized, on which it does not bear that burden. Defendants reserve all affirmative defenses not stated herein under Rule 8(c) of the Federal Rules of Civil Procedure and any other defense at law or in equity that may now exist or in the future be available based upon discovery and further investigation in this case.

71. The Complaint, and each cause of action within it, fails to state facts sufficient to constitute a cause of action.

72. The statute of limitations bars Plaintiff's claims to the extent Plaintiff alleges infringements that accrued outside the territorial reach of the United States, including any actions to respond to DMCA takedown notices received in Ukraine.

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73. To the extent that any action for infringement of such copyrights as Plaintiff may possess, the appropriate forum for any such case should be before the court having jurisdiction over each of the Defendants and the servers located in Ukraine consistent with Constitutional concepts of appropriate jurisdiction as well as for the convenience of the parties and witnesses, and in the interests of justice.

74. Plaintiff's claims are barred by their failure to join indispensable parties.

75. Plaintiff's claims are barred or its damages are limited because any infringement was innocent and was not willful.

76. Plaintiff's claims based upon secondary liability are barred because Plaintiff cannot establish primary liability.

77. Plaintiff's claims based on contributory liability are barred because Defendants did not have the requisite knowledge of the alleged primary infringement and did not cause, encourage, or induce the alleged primary infringement.

78. Plaintiff's claims based on contributory liability are barred because Defendants did not materially contribute to the alleged primary infringement.

79. Plaintiff's claims are barred because Defendants' ISP service has substantial non-infringing uses.

80. Plaintiff's claims based on vicarious liability are barred because Defendants did not obtain a direct financial benefit from the alleged primary infringement.

81. Plaintiff's claims based upon vicarious liability are barred because Defendants did not have the right or ability to control the alleged primary infringement.

82. Plaintiff's claims are barred by the doctrine of copyright misuse.

83. Plaintiff's failure to mitigate damages bars their claims or limits their recovery.

84. The doctrine of unclean hands bars Plaintiff's claims.

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85. The doctrines of waiver and estoppel bar Plaintiff's claims.

86. Plaintiff's claims are barred to the extent Plaintiff does not own copyrights in the works underlying their claims.

87. The Court lacks subject matter jurisdiction over claims that depend upon works for which Plaintiff has not obtained copyright registrations.

88. To the extent that Plaintiff or its predecessors did not register copyrights before alleged infringements or within three months of first publication of published works, the failure to register timely bars Plaintiff's claims for statutory damages and attorneys' fees.

89. To the extent that Plaintiff relies upon copyright registrations that rest upon misstatements or fraud, those misstatements or fraud bar Plaintiff's claims.

90. To the extent that Plaintiff failed to comply with renewal, notice, and registration requirements and/or other formalities, Plaintiff's claims are barred.

91. Plaintiff's claims are barred because the statutory damages sought are unconstitutionally excessive and disproportionate to any actual damages that may be sustained, in violation of the Due Process clause of the U.S. Constitution.

92. Application of the Copyright Act and its remedies to the conduct of Defendants and their customers as Plaintiff requests would violate due process.

93. Laches bars Plaintiff's claims to the extent Plaintiff alleges infringements earlier than three years before Plaintiff began this lawsuit.

94. Plaintiff's claims are barred by the First Amendment to the United States Constitution.

V. PLAINTIFF'S PRAYER FOR RELIEF

95. Defendants deny that Plaintiff is entitled to any relief and respectfully request that this Court issue its Order granting judgment in their favor, for costs and fees, incurred

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herein, and for all such further relief as this Court deems just and proper.

96. Defendants deny all allegations not expressly admitted herein.

COUNTERCLAIMS

Defendants Virtual Systems, LLC, ("Virtual Systems") and Vyacheslav Smyrnov ("Smyrnov") (collectively, "Defendants"), by and through their counsel, hereby assert counterclaims to Plaintiff's Complaint as follows:

I. INTRODUCTION

1. Virtual Systems is an Internet service provider ("ISP") that provides its customers access to the Internet. Virtual Systems does not store infringing content on its servers, does not host websites that index infringing files, does not encourage infringement, and does not create or distribute peer-to-peer file-sharing software or other file-sharing software. Nevertheless, Plaintiff seeks to impose secondary liability on Defendants for alleged copyright infringement by its subscribers, to create a substantial new set of liabilities and burdens for ISPs.

II. PARTIES

A. Virtual Systems' Business

2. Virtual Systems is a limited liability company organized under Ukraine law, with its principal place of business at 33/37 Laboratorna St., Kyiv, Ukraine. It is a privately owned communications company which offers a variety of communications services, including Internet access services.

3. DISH is a limited liability company organized under Colorado law, with its principal place of business at 9601 South Meridian Blvd., Englewood, Colorado 80112.

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III. JURISDICTION

4. Only to the extent that the Plaintiff's case set out in the Complaint (ECF 1) is found to be such as to impart jurisdiction under federal law, the counterclaims herein under Washington State law are related to Plaintiff's claims in the Complaint, as each arises under a "common nucleus of operative facts." Under 28 U.S.C. § 1367, jurisdiction to hear these counterclaims arises only as "supplemental jurisdiction;" Virtual System's reliance on such doctrine to promotes judicial efficiency, convenience, and fairness, allowing related counterclaims to be heard in one proceeding. Nothing herein is to be construed as a waiver of both Defendants' assertion that no jurisdiction lies for the Copyright claims Plaintiff asserts herein.

IV. FACTUAL BASIS FOR CLAIMS

5. Virtual Systems provides Internet service to both residential subscribers and businesses: its service provides such subscribers with Internet connections.

6. As an Internet service provider ("ISP"), Virtual Systems provides its customers with a gateway to the Internet, which has become virtually indispensable to functioning in the modern world.

7. The Internet provides access to a host of services, some of them critical. Individuals rely on Internet access to obtain services in the areas of healthcare, employment, education, banking, commerce, social interaction, news and entertainment, and many others.

8. As the Supreme Court emphasized in the case of *Packingham v. North Carolina*, for many people the Internet provides "the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge." 137 S. Ct. 1730, 1737 (2017). And there is no question that today "social media in particular" is one of "the most

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important places ... for the exchange of views." *Computer & Commc'ns Indus. Ass'n v. Uthmeier*, No. 25-11881, 2025 WL 3458571, at *3 (11th Cir. Nov. 25, 2025).

9. The Russo-Ukrainian war began in February 2014 and is ongoing. Following Ukraine's Revolution of Dignity, Russia occupied Crimea and annexed it from Ukraine. Russia then supported Russian separatist armed groups who started a war in the eastern Donbas region against Ukraine's military. In 2018, Ukraine declared the region to be occupied by Russia. The first eight years of conflict also involved naval incidents and cyberwarfare. In February 2022, Russia launched a full-scale invasion of Ukraine and began occupying more of the country, starting the current phase of the war, the biggest conflict in Europe since World War II. The war has resulted in a refugee crisis and hundreds of thousands of deaths. To the extent it has been available, access to the Internet has been one of the few stabilizing influences in the region allowing refugees to maintain contacts with others in Ukraine.

10. For a subscriber to lose Internet access can have devastating consequences.

11. As an ISP, Virtual Systems provides connections and enables connected computers to access the Internet. Virtual Systems provides Internet access service to each of residential and commercial users.

12. Setting up a website involves registering a unique domain name (e.g., .com), purchasing web hosting storage capacity to store site files, and, having such storage, designing content using a website builder (like Wix or Squarespace) or a content management system (like WordPress). Thus, as an ISP, Virtual Systems only allows the content to have a place to reside, it does not place the content in that rented space. In an analogy to renting an apartment, Virtual Systems will rent the space, the tenant furnishes and arranges the furniture within the space.

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13. Virtual Systems itself does not store infringing content on its servers. Virtual Systems does not host websites that index infringing files. And Virtual Systems does not create or distribute peer-to-peer file-sharing software or other file-sharing software.

14. Virtual Systems does not filter what is placed in the storage space each individual customer pays for as "hosting services." Virtual Systems cannot remove third-party material from the Internet unless that material is stored on Virtual Systems' servers. Virtual Systems cannot control what its customers store on their own or others' computers. Importantly, a customer can place links within the rented storage such that the links will refer the visitor to the customer's website to a server the customer might, itself, own, maintain, and populate such that the visitor might believe itself to be accessing content the visitor believes to be residing on a Virtual Systems' server but, in fact, is on this customer's own server.

15. Virtual Systems has no ability to remove or take down infringing content from its customers' computer servers if the same does not reside on a Virtual Systems' server. And Virtual Systems cannot restrict, or even detect, the specific content that its customers place thereon, access or share.

16. Virtual Systems cannot supervise the online activities of its customers. Nor can Virtual Systems control its customers' conduct online. While Virtual Systems could disable its customers' ability to access Virtual Systems' ISP system, or terminate customers' accounts, that does not give Virtual Systems control over its customers' conduct online. Under Ukrainian law, specifically Article 56 of the Law of Ukraine "On Copyright and Related Rights" (No. 2811-IX), the law specifically protects customer's control over customer's conduct online.

17. Virtual Systems cannot determine whether a particular individual is accessing the Internet using Virtual Systems' services. Nor can Virtual Systems detect which user is using a particular device to access the Internet. The privacy afforded to Virtual Systems'

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customers is of paramount concern to Virtual Systems. Internet users frequently transmit private and sensitive information and trust their ISP to safeguard their privacy and security.

18. Virtual Systems does not spy on its customers or monitor their Internet traffic. Even if it could do so—and it cannot—it wouldn't. Engaging in surveillance in such a fashion would violate Virtual Systems' policies, ethics, and corporate culture. The General Data Protection Regulation (GDPR), in effect since May 25, 2018, is the European Union's strict, comprehensive data privacy law. The GDPR grants individuals control over their personal data, requiring organizations to obtain clear consent, ensure transparency, and protect data privacy. It applies to any entity handling the data of EEA/UK residents.

18. Operating an ISP service—and safeguarding customers and other Internet users—entails policing against several potential abuses: security threats, invasion of privacy threats, identity theft, denial of service attacks, botnets or other malware (such as viruses, spyware, and worms), spam, fraud, phishing scams, copyright infringement, and a host of others.

19. Virtual Systems' Customer Safety group deals with issues like these that threaten Virtual Systems' network or customers, as well as other abuses of Virtual Systems' system in a manner consistent with Ukrainian law. Among other things, Virtual Systems' Customer Safety group assists law enforcement and cooperates with other ISPs to combat security and privacy threats; addresses internal security issues; assists customers; and handles copyright infringement notices that Virtual Systems receives from copyright owners and their agents to the extent that the same are consistent with Ukrainian law, specifically Article 56 of the Law of Ukraine "On Copyright and Related Rights" (No. 2811-IX).

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A. Virtual Systems' Receipt of Copyright Infringement Notices

20. When Virtual Systems receives a copyright infringement notice from a third-party, it reviews the notice to ensure that it complies with Ukrainian law, specifically Article 56 of the Law of Ukraine "On Copyright and Related Rights" (No. 2811-IX). Because Ukraine and the United States have not entered into a treaty, in Ukraine, the United States statutory procedure, the DMCA (Digital Millennium Copyright Act) which sets out a process for United States copyright holders to send an official notice within the United States and treaty partners requesting the service provider remove the infringing material, does not apply. (17 U.S.C. § 512). Because of statutory differences, DMCA takedown notices sent to infrastructure physically located in Ukraine generally do not comply with GDPR and Ukraine law. Virtual Systems maintains policies consistent with the law of Ukraine and such regulations that protect the rights of the customers to their content.

21. Among other things, Virtual Systems, as does Ukrainian law, requires the sender of a copyright infringement notice be an admitted attorney and requiring that attorney to identify the copyrighted work claimed to have been infringed, and identify the material that is claimed to be infringed. Copyright infringement notices must also comply with Virtual Systems' other policies, including the GDPR and Virtual Systems' privacy policy. Unfortunately, within Ukraine, it has not been unusual for rival commercial, and even residential Internet users to engage in complaints of copyright infringement that do not originate from admitted attorneys to attack the websites of rivals. The requirement that complaints originate with an attorney assure that ISPs must only act on valid copyright complaints. The duty of candor, then, becomes the regulating mechanism to prevent abuse.

22. Virtual Systems reserves the right to terminate subscribers who repeatedly infringe copyrights, and terminates repeat infringers when Virtual Systems deems it

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appropriate to do so. Virtual Systems has a history of acting upon takedown notices sent in accord with Ukrainian law, specifically Article 56 of the Law of Ukraine "On Copyright and Related Rights" (No. 2811-IX).

23. Virtual Systems cannot verify infringement notices that it receives. As such, the duty of candor placed upon the submitting attorney is the check that assures that the takedown notice is appropriate under Ukrainian law, specifically Article 56 of the Law of Ukraine "On Copyright and Related Rights" (No. 2811-IX) In particular, Virtual Systems cannot verify whether the information in a notice is accurate and Ukrainian law places the burden of verifying the information on the party most clearly impacted by any infringement of copyright.

24. Virtual Systems cannot detect infringement and cannot determine whether infringing content is crossing its network. Virtual Systems cannot control or examine material that is on its subscribers' computers. Even if it could, doing so would violate Virtual Systems' policies, Ukrainian law, the GDPR, and violate its users' privacy.

25. Copyright infringement notices that Virtual Systems receives for its ISP service always refer to acts of alleged infringement that were identified in the past. Virtual Systems cannot examine the content a customer allegedly made available in the past, detect what the customer did with that content, or know whether a subscriber was authorized to possess that content. Virtual Systems cannot confirm whether the sender actually owns the copyright, or is authorized to send notices on behalf of the true owner. The Ukrainian law, specifically Article 56 of the Law of Ukraine "On Copyright and Related Rights" (No. 2811-IX), includes a quasi-hearing process to assure ownership of the copyrights being asserted.

26. Nor can Virtual Systems remedy alleged infringement short of terminating an accused infringer. Virtual Systems does not control what its customers store on their

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computers, and cannot look at, locate, or remove any content that its customers may be uploading, downloading, or accessing through its ISP service.

B. Virtual Systems' WHMCS System (Virtual Systems' Copyright Abuse Tracking System)

27. In this case, Plaintiff seeks relief for claims of infringement that accrued from the beginning of time until October 15, 2024, the date of the Complaint (the "Relevant Time Period").

28. Virtual Systems receives different types of notifications concerning its ISP system. This includes security notices, notices about system issues, copyright infringement notices, and others.

29. In due recognition of the law, Ukrainian law, specifically Article 56 of the Law of Ukraine "On Copyright and Related Rights" (No. 2811-IX), Virtual Systems relies upon a time-tested software solution once the provenance of the complaint is established, a system called WHMCS—the Web Host Manager Complete Solution—to partially automate the handling of notifications that Virtual Systems receives and verifies. Among other things, Virtual Systems' Customer Safety team uses WHMCS as a tool for processing and addressing copyright infringement notices. This allows Virtual Systems to efficiently process, respond to, and address such notices.

30. WHMCS rights management allows administrators to control staff access through customizable roles, restricting permissions for viewing, creating, editing, or deleting data within the system. Located under System Settings > Administrator Roles, this feature enables granular control over staff actions, ensuring security and operational efficiency by limiting access to sensitive functions.

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31. WHMCS converts copyright infringement notices that meet Virtual Systems' basic requirements into "tickets." If a single account is targeted with multiple notices in one day, the notices are combined, or "rolled up," into one ticket. WHMCS tracks the number of copyright notices received (if any) per subscriber. Virtual Systems uses WHMCS to implement, and partially automate, Virtual Systems' Graduated Response procedure. The Graduated Response is what is dictated under Ukrainian law. Depending on the number of notices and tickets a subscriber has, Virtual Systems responds to copyright infringement notices with steps that escalate from warnings to suspensions, and ultimately to the possibility of termination.

32. While the WHMCS system enables Virtual Systems to partially automate its Graduated Response procedure, the most serious consequences are not automated. For example, customers whose accounts have been suspended must call and speak to a Customer Safety representative in person before their accounts can be reinstated. And Virtual Systems takes account termination extremely seriously: a Customer Safety representative must affirmatively order this ultimate consequence.

C. DISH has Asserted Infringement of United States Copyrights Extraterritorially

33. In the instant case, DISH has asserted a number of allegations that are not true, including:

> 3. Defendant Virtual Systems, LLC ("Virtual Systems") materially contributed to and induced the Pirate Services' direct infringement of the Works by providing the servers and network that the Pirate Services used to transmit the Works, including servers in Virtual Systems' Seattle data center. Virtual Systems openly advertises that it does not comply with United States copyright law and does not require its customers, such as the Pirate Services, to abide by such law.
>
> 4. Virtual Systems knew that the Pirate Services were infringing the Works because, on hundreds of occasions, DISH asked Virtual Systems to stop this specific infringement that was taking place on its servers and network. Virtual Systems could have taken simple measures to stop the infringement – such as

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removing or disabling the infringing streams or terminating the Pirate Services' accounts because of their repeated infringement – but Virtual Systems refused to take such measures and elected to continue profiting from the Pirate Services' direct infringement.

5. Virtual Systems is liable for contributory and vicarious copyright infringement. Its owner and CEO, Defendant Vyacheslav Smyrnov ("Smyrnov"), is also personally liable because he authorized, directed, and participated in Virtual Systems' infringement, including by managing the servers and network the Pirate Services used to infringe the Works and, despite DISH notifying him of this infringement, failing to exercise his ability to stop it.

* * * *

10. The Court has personal jurisdiction over Virtual Systems pursuant to Federal Rule of Civil Procedure 4(k)(1)(A) because Virtual Systems committed infringing acts in Washington, including through its operation of a data center and servers in the Seattle area with which it contributes or contributed to the Pirate Services' infringement of the Works. Virtual Systems did not stop the infringement taking place from its Seattle data center and servers when notified of that infringement. DISH was harmed in Washington because at least part of Virtual Systems' infringing conduct occurred there, damaging the value of DISH's exclusive copyrights, and because, on information and belief, the Works were transmitted to Users in Washington that avoided paying subscription fees to DISH.

* * * *

12. Virtual Systems has sufficient contacts with the United States to support personal jurisdiction under Rule 4(k)(2) that include, in addition to its data center and servers in Seattle, a marketing campaign directed towards streaming services seeking to provide infringing content to a United States audience while avoiding the implications of United States copyright law, such as the Pirate Services. DISH was harmed in the United States for the reasons identified above, and that harm is amplified because, on information and belief, the Works were infringed throughout the United States and Users nationwide avoided paying subscription fees to DISH. DISH was also harmed in the United States because it is a United States company and holds the copyrights at issue only for the United States.

13. The Court has personal jurisdiction over Smyrnov pursuant to Rule 4(k)(1)(A), or alternatively Rule 4(k)(2), because Smyrnov is a primary participant in Virtual Systems' infringing conduct or had control of and at least direct participation in such activities. Smyrnov is the owner, director, and CEO of Virtual Systems. Smyrnov identifies his primary responsibilities at Virtual Systems to include "[m]anaging network and server equipment" and a "department of 10 people." Smyrnov was personally notified of the

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infringement of the Works taking place on the network and servers that he managed, but he failed to stop the infringement. Smyrnov financially benefitted from that infringement as owner, director, and CEO of Virtual Systems.

14. The Court's exercise of personal jurisdiction over Virtual Systems and Smyrnov, whether pursuant to Rule 4(k)(1)(A) or 4(k)(2), is reasonable and consistent with the United States Constitution and United States law because their purposeful interjection into Washington and the United States is substantial, the burden of them having to defend in this Court is minimal, and this Court is the most appropriate forum to decide this case. Virtual Systems, in addition to its Seattle data center and advertising that targets the United States, uses United States companies to support its business and promote its services, including Facebook, Twitter/X, LinkedIn, Reddit, YouTube, GitHub, and Public Domain Registry through which its website is registered. Virtual Systems is an established company that generates tens of millions of dollars in revenues annually. The United States has an interest in having its copyright laws enforced in its federal courts, while DISH has an interest in protecting itself in a United States federal court, perhaps the only forum where DISH can enforce its United States copyrights for infringement that occurred in the United States.

* * * *

31. Virtual Systems appeals to streaming services that violate United States copyright law, such as the Pirates Services, with its "DMCA Ignored" policy, under which Virtual Systems states that "we ignore DMCA takedown notices" concerning servers in its Ukraine data center and therefore customers "[e]njoy full protection against DMCA takedown notices." 22 Virtual Systems promotes its servers in Seattle and the Netherlands similarly, stating "all DMCA notices we receive are processed by our legal team, but we do act courteously towards our valued clients, who might be having occasional issues with copyrights.

* * * *

36. Virtual Systems also did not comply with orders from United States courts, entered in lawsuits involving three of the Pirate Services, that permanently enjoined Virtual Systems from providing its servers and network to those Pirate Services because they were using them to infringe DISH's copyrights. Two court orders specifically identified Virtual Systems as being enjoined, while a third court order enjoined Virtual Systems by virtue of its role in providing the servers and network used in the infringement. Virtual Systems was notified of the permanent injunctions but did not cease providing its servers and network to the Pirate Services, which continued infringing DISH's copyrights, including its copyrights in the Works.

* * * *

40. Virtual Systems could have taken simple measures to stop the Pirate Services from infringing the Works but refused to take them. Virtual Systems

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> could have determined whether the Pirate Services were legally authorized to transmit the Works by first requiring them to verify their rights in the Channels. Virtual Systems also could have removed or disabled access to the particular material identified in the Infringement Notices that was transmitted from its servers and network. Virtual Systems could have implemented a multi-strike policy, such as by temporarily suspending a Pirate Services' account on receipt of one notice advising of infringement against that account and then permanently terminating the account on receipt of additional notices.
>
> 41. Virtual Systems also had the legal right to stop the Pirate Services from infringing the Works. Virtual Systems' service agreement with its customers gives it the "right to disable any materials" and the "right to block or suspend" its service or "take any other action . . . necessary" where a customer "violates the intellectual property rights of any third party or is otherwise the subject of a dispute." Virtual Systems is entitled to exercise these rights "in [its] sole discretion, immediately and without notice" to the customer. Rather than exercise this right and ability to stop the Pirate Services' infringement, Virtual Systems turned a blind eye, making its servers and network a safe haven for the Pirate Services' infringement.

34. Based upon the information supplied in the Complaint to the Court, the Court was induced to find it and the United States had jurisdiction over Virtual Systems and Smyrnov. Copyright law is fundamentally territorial and does not have extraterritorial effect, meaning U.S. copyright law generally does not apply to acts of infringement occurring entirely outside the United States. Protection is national in scope, necessitating enforcement through local laws in each country, though U.S. law can apply if a "predicate act" occurs domestically. In legal terms, copyright is considered territorial, meaning that a country's copyright laws typically only apply to acts of infringement that occur within its own borders. There is no single "international copyright" that automatically protects a work worldwide; instead, protection in any given country depends on that specific nation's laws.

35. Fundamental to intellectual property (IP) rights globally is that they are national rights. Even though international treaties have governed IP rights for well over a century, the bedrock principle of those treaties is that national governments provide such rights, consistent with the obligations found in these various treaties. *See,* e.g., Berne Convention for the

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Protection of Literary and Artistic Works art. 2, Sept. 9, 1886, S. TREATY DOC. NO. 99-27, 1161 U.N.T.S. 3; and Paris Convention for the Protection of Industrial Property, Mar. 20, 1883, 21 U.S.T. 1583, 828 U.N.T.S. 305.

36. The allegations of infringement in the Western District of Washington are known to be false. After service with the instant case, Virtual Systems directed Oleksandr Karpenko to review the Seattle server to determine if those domain names set out in the Exhibit 3 to the Complaint (the identified "Pirate Services" of the Complaint). Mr. Karpenko holds a master's degree in Electrical and Computer Engineering from the National Technical University of Ukraine "Igor Sikorsky Kyiv Polytechnic Institute," and has over 12 years of experience in advanced engineering applications, including signal processing, image analysis, and computer system development.

37. Mr. Karpenko used a tool that is well-regarded in the industry: RIPEstat. RIPEstat is a large-scale information service and the RIPE NCC's open data platform. In use, I can get essential information on IP address space and Autonomous System Numbers (ASNs) along with related statistics on specific hostnames and countries. The tool is a means to provide useful data to RIPE NCC members and the Internet community at large, with a focus on data related to routing and the RIPE Database. RIPEstat presents registration and routing data, DNS data, geographical information, abuse contacts and more from the RIPE NCC's internal data sets as well as from external sources, such as other Regional Internet Registries and IANA.

38. Using the RIPEstat tool, Mr. Karpenko generated RIPE NCC (stat.ripe.net) routing histories for each relevant IP prefix. Using the tool, Mr. Karpenko concluded that:

- historical Autonomous Systems announcing each prefix;
- the relevant time intervals; and

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- that none of the prefixes corresponding to the Exhibit 3 IP addresses were ever announced via AS43641 (the U.S.-based autonomous system associated with the Sabey infrastructure).

39. With this information, Mr. Karpenko analyzed the U.S.-based infrastructure associated with the Sabey Data Center in Tukwila operated under Autonomous System AS43641. Having reviewed the routing history for each relevant prefix (consistent with the timeframe referenced in the Complaint), Mr. Karpenko concluded that none of the IP prefixes corresponding to those the Exhibit 3 addresses were ever announced via AS43641. Because an IP prefix must be announced through the autonomous system associated with the physical infrastructure on which it operates, the absence of any routing via AS43641 strongly supports that none of those IPs were operating on Sabey infrastructure.

40. Having reviewed these results, Mr. Karpenko affirms that none of the domains of Exhibit 3 reside or have resided at the Tukwila Sabey Data Center or in the United States at all.

41. DISH, having asserted the infringing acts occurred in the Western District of Washington, falsely established jurisdiction in the Western District of Washington. Still further, DISH has asserted that matter that is stored on servers located outside of the territorial limits of the United States are subject to United States Copyright Act, specifically, the Digital Millennium Copyright Act, 17 U.S.C. § 512 ("DCMA"). In light of the mispleaded Complaint, DISH secured a Default and a Default Judgment against each of the Defendants, Virtual Systems and Smyrnov, though neither Defendant did, in fact, violate the DCMA. Likewise, none of the orders referred to in the Complaint's paragraph 36 have been violated within the scope of United States jurisdiction.

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42. On information and belief, Plaintiff has not sued any Pirate Service sites directly for the infringements they allege here.

43. On information and belief, Plaintiff has not sued any individual direct infringers for the infringements they allege here.

44. Virtual Systems brings these counterclaims for declaratory relief based upon explicit threats and actual litigation by Plaintiff DISH against Virtual Systems. An actual case or controversy exists within the meaning of 28 U.S.C. § 2201 as to whether Virtual Systems bears liability pursuant to the claims threatened by Plaintiff in and out of court. A judicial determination is necessary and appropriate at this time so that the parties may ascertain their respective rights and obligations, if any.

V. COUNT ONE

FOR A DECLARATORY JUDGMENT THAT VIRTUAL SYSTEMS IS NOT LIABLE FOR CONTRIBUTORY INFRINGEMENT OF PLAINTIFF'S WORKS AT ISSUE

45. Smyrnov and Virtual Systems repeat the allegations in Paragraphs 1 through 44 and incorporate them here.

46. Virtual Systems provides an ISP system that enables its subscribers to access the Internet, and the host of services that Internet access enables and provides. Virtual Systems itself does not store infringing content on its servers as infringement is defined where each server is located, does not host websites that index infringing files, does not and did not intend to encourage infringement, and does not create or distribute peer-to-peer file-sharing software or other file-sharing software.

47. Virtual Systems' ISP system is capable of substantial non-infringing uses.

48. Virtual Systems cannot, itself, detect infringement occurring on its system or the Internet.

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49. Virtual Systems lacked the ability to verify Plaintiff's allegations of infringement.

50. The systems Plaintiff used to detect infringement and send copyright infringement notices were unreliable and were known to be unreliable.

51. Virtual Systems lacked knowledge of any acts of copyright infringement by others particularly claimed by Plaintiff in this action.

52. Virtual Systems lacked knowledge of any acts of copyright infringement by others generally claimed by Plaintiff in this action.

53. Virtual Systems has not materially contributed to any third-party's violation of Plaintiff's exclusive right to reproduce works in copies under 17 U.S.C. § 106(1).

54. Virtual Systems has not materially contributed to any third-party's violation of Plaintiff's exclusive right to prepare derivative works based upon Plaintiff's copyrighted works under 17 U.S.C. § 106(2).

55. Virtual Systems has not materially contributed to any third-party's violation of Plaintiff's exclusive right to distribute copies of Plaintiff's copyrighted works to the public by sale or other transfer of ownership, or by rental, lease, or lending under 17 U.S.C. § 106(3).

56. Virtual Systems has not materially contributed to any third-party's violation of Plaintiff's exclusive right to perform Plaintiff's copyrighted works publicly in copies under 17 U.S.C. § 106(4).

57. Virtual Systems has not materially contributed to any third-party's or any Pirate Services identified in Exhibit 3 to the Complaint in their violation of Plaintiff's exclusive right to display Plaintiff's copyrighted works publicly works in copies under 17 U.S.C. § 106(5).

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58. Virtual Systems has not materially contributed to any third-party's violation of Plaintiff's exclusive right to perform Plaintiff's copyrighted sound recordings publicly by means of a digital audio transmission under 17 U.S.C. § 106(6).

59. Each of Smyrnov and Virtual Systems is entitled to a declaration that it is not liable to Plaintiff on account of copyright infringement by others.

VI. COUNT TWO

FOR A DECLARATORY JUDGMENT THAT VIRTUAL SYSTEMS IS NOT VICARIOUSLY LIABLE FOR INFRINGEMENT BY THIRD-PARTIES OF PLAINTIFF'S WORKS AT ISSUE

60. Smyrnov and Virtual Systems repeat the allegations in Paragraphs 1 through 59 and incorporate them here.

61. At all relevant times, Virtual Systems lacked the ability, including the practical ability, to supervise its subscribers.

62. At all relevant times, Virtual Systems lacked the ability, including the practical ability, to control its subscribers.

63. At all relevant times, the sole means of control Virtual Systems had over a subscriber's use of the Internet was Virtual Systems' ability to disable Internet service or terminate the subscriber's account, thereby removing the customer's ability to access the Internet for any purpose.

64. Virtual Systems did not, and does not, have a direct financial interest in infringement of Plaintiff's works, if any, that occurred on Virtual Systems' system or network.

65. Neither Smyrnov nor Virtual Systems received a direct financial benefit because of any copyright infringement that may occur over its network.

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66. Copyright infringement occurring over Virtual Systems' ISP system can slow traffic and adversely impact the transmission of data for all users of the system. These effects harm both Virtual Systems and its users.

67. At all relevant times, Virtual Systems provided Internet access service to its residential subscribers for a flat monthly fee. Virtual Systems' fees are not based on the particular uses customers make of its ISP system.

68. Each of Smyrnov and Virtual Systems is entitled to a declaration that it is not vicariously liable to Plaintiff on account of copyright infringement by others.

VII. COUNT THREE

FOR JUDGMENT ENJOINING DISH FROM INTERFERING WITH CONTRACTUAL RELATIONS WITH DEFENDANTS' VENDORS

69. Virtual Systems and Smyrnov repeat the allegations in Paragraphs 1 through 68 and incorporate them here.

70. DISH gave no notice to either of the Defendants of its intent to move for Default herein. Because of the incorrect allegations as to the location of allegedly infringing matter as residing on servers controlled by one or the other of the Defendants and located within the territorial boundaries of the United States and located within the Western District of Washington.

71. Attorney Dementiev on behalf of each of the Defendants did file a Response on behalf of each of the Defendants on February 13, 2025, as an appropriate procedure in the Hague service of process as conducted by the Court in Kyiv on behalf of DISH. DISH represented to the Court that neither Defendant did file any response to the Complaint on file herein despite DISH's receipt of responses for each of the Defendants prior to the filing of the motion for entry of a Default and later a Default Judgment. Nonetheless, as is on file herein as

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parts of ECF 13, the Response makes clear that there are both jurisdiction and defenses on the merits set out that were appropriately to be heard by this Court.

72. Copyright territoriality principle asserts that intellectual property rights are confined within national borders, meaning copyright protection is granted and enforced only within the specific country where it was obtained. A copyright holder must often seek protection in each jurisdiction separately, as local laws govern infringement procedures. Given that none of the allegedly infringing material was ever stored in the United States, this action under the Digital Millenium Copyright Act was never appropriately brought within the Western District of Washington. Thus, the Default and Default judgment herein is not valid.

73. DISH did know of various vendors who supply services, server capabilities, and rental of the same to Virtual Systems under various contracts, such vendors to include, at least, each of Sabey Data Center in Tukwila and Sollutium EU sp. z o.o., a Polish entity subletting the same services to Virtual Systems.

74. In Washington, intentional interference with contractual relations (or tortious interference) requires proving a valid contract existed. DISH knew of it, and DISH intentionally and improperly induced a breach or disrupted performance, causing damages. The interference must be wrongful, such as using improper means or having an improper purpose.

75. In causing the Court in the Western District of Washington to issue a default judgment and with it an injunction against all who do supply any services or goods which assist Virtual Systems in conducting its business within Washington (incorrectly identified as infringing business), DISH has knowingly and intentionally interfered with Virtual Systems contracts with its various vendors including but not limited to each of Sabey Data Center in Tukwila and Sollutium EU sp. z o.o.

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76. As a result, DISH's intentional interference with such contracts has caused each of Virtual Systems and Smyrnov to be damaged in an amount to be proven at trial.

VIII. COUNT FOUR

FOR JUDGMENT FOR ABUSE OF THE PROCESSES OF THE WESTERN DISTRICT OF WASHINGTON

77. Virtual Systems and Smyrnov repeat the allegations in Paragraphs 1 through 76 and incorporate them here.

78. In filing the Complaint, including DISH's incorrect allegation that either Smyrnov or Virtual Systems committed infringing acts within the territorial boundaries of the United States and within the Western District of Washington, DISH did induce the Court in the Western District of Washington to issue a Default and on the Default, a Default Judgment and Injunction to all vendors to either Smyrnov of Virtual Systems. Because the Default and on the Default, the Default Judgment is premised on false allegations, these are invalid.

79. DISH was motivated to procure the invalid Default and, on the Default, the invalid Default Judgment, and such was procured to coerce the Defendants to improperly terminate various contracts Virtual Systems has with several of its customers. Such is an improper misuse of court procedures.

80. In Washington, abuse of process is a common law tort requiring proof of (1) an ulterior motive or improper purpose, and (2) a willful act in the use of legal process not proper in the regular conduct of a proceeding. It involves misuse of court procedures—such as subpoenas or summons—to coerce or harass.

81. Each of Smyrnov and Virtual Systems was damaged in an amount to be proven at trial.

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82. Each of Smyrnov and Virtual Systems is entitled to an injunction against DISH for any further use of the Default or Default Judgment and further to a judgment in the amount of damages proven at trial

IX. COUNT FIVE

DISH HAS DEFAMED EACH OF SMYRNOV AND VIRTUAL SYSTEMS

83. Virtual Systems and Smyrnov repeat the allegations in Paragraphs 1 through 82 and incorporate them here.

84. By procuring Default Judgments against each of Smyrnov and Virtual Systems based upon false allegations of actions that were alleged to occur within the territorial jurisdiction of the United States, these allegations suggest each of the Defendants are either incompetent at conducting each of their various business activities or having committed criminal actions within the District of Western Washington.

85. These false allegations were then adopted by the Court of the Western District of Washington. Once the false allegations were incorporated into the Default Judgment issued by this Court, DISH did publish these false allegations to persons outside of the Court and not parties hereto. In publishing a knowingly false Judgement and Injunction to third parties such as vendors to Virtual Systems, DISH did utter false and defamatory statements causing damage to the reputation of each of the Defendants.

86. In Washington state, defamation requires proving a false statement of fact was published to a third party, causing damage to reputation, with fault (negligence or malice) and no legal privilege.

87. Because of DISH's publication of these false allegations of infringement of United States copyrights, DISH has caused each of the Defendants to suffer damages in an amount to be proven at trial.

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X. DEMAND FOR JURY TRIAL

Defendants hereby request a trial by jury on all issues so triable.

XI. PRAYER FOR RELIEF

WHEREFORE, Defendants Smyrnov and Virtual Systems respectfully request that this Court enter judgment as follows:

a. Judgment against Plaintiff and in favor of Defendants on Plaintiff's claims set forth in the Complaint and dismissal of such claims with prejudice;

b. A declaratory judgment, holding that Defendants are not liable for contributory infringement of Plaintiff's works at issue;

c. A declaratory judgment, holding that Defendants are not vicariously liable for their subscribers' alleged infringements of Plaintiff's works at issue;

d. Ordering Plaintiff to pay Defendants' reasonable attorneys' fees and costs incurred in connection with this action pursuant to 17 U.S.C. § 505; and

e. Such other and further relief in Defendants' favor as the Court shall deem just and proper.

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DATED this 26th day of February, 2026.

s/Mark Lawrence Lorbiecki
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send electronic notification of such filing all CM/ECF participants.

DATED this 26th day of February, 2026.

s/Maria Tokatjian
Maria Tokatjian
Legal Assistant

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