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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Trial Film LLC, *et al.*,
10 Plaintiffs,

11 v.

12 Wu Daoai, *et al.*,
13 Defendants.
14

No. CV-21-00984-PHX-JJT

ORDER

15 The Court previously entered a Temporary Restraining Order (TRO) in this matter
16 locking the websites Defendants had used to offer and display by streaming Plaintiffs'
17 copyrighted Work, and temporarily freezing the PayPal and AliPay US accounts
18 Defendants used to collect payments in conjunction with their websites showing the
19 protected Work. (Doc. 16.) In issuing the TRO, the Court set a hearing as required by Rule
20 65(b)(3), Fed. R. Civ. P., requiring Defendants to appear by telephone on this day to show
21 cause, if any, why the Court should not enter a Preliminary Injunction (PI) continuing the
22 locking of the websites and freezing of the associated payment accounts, pending final
23 ruling on the Complaint. (Doc. 16 at 10.) The Court required Plaintiffs to serve Defendants
24 by July 3, 2021, with the Complaint, Summonses, Second Application for TRO and PI, and
25 Notice of today's PI hearing by email "or any other means authorized under the Federal
26 Rules of Civil Procedure," owing to Defendants' apparent residences overseas and
27 deliberate efforts to avoid identification or contact other than through email accounts
28 associated with the locked websites (Doc. 16 at 10), and required Plaintiffs to file proof of

1 service on the docket. Plaintiffs complied with the Order, and the Court called the PI
2 hearing to order at 9:30 a.m., Arizona Time, today, July 13, 2021. No Defendant appeared
3 at the hearing, either themselves or through counsel, nor did any Defendant evince any
4 intent to participate. The Court therefore concludes for purposes of evaluating whether a
5 PI should issue mirroring the terms of the TRO in this matter, that Plaintiffs’ proffered
6 evidence is unrefuted. The Court repeats that evidence and analysis from the TRO here.

7 To obtain a temporary restraining order or preliminary injunction, a plaintiff must
8 show that “(1) [it] is likely to succeed on the merits, (2) [it] is likely to suffer irreparable
9 harm in the absence of preliminary relief, (3) the balance of equities tips in [its] favor, and
10 (4) an injunction is in the public interest.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th
11 Cir. 2015) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). The Ninth
12 Circuit Court of Appeals, employing a sliding scale analysis, has also stated that “serious
13 questions going to the merits’ and a hardship balance that tips sharply toward the plaintiff
14 can support issuance of an injunction, assuming the other two elements of the Winter test
15 are also met.” *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1078 (9th Cir. 2013) *cert.*
16 *denied*, 134 S. Ct. 2877 (2014) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d
17 1127, 1132 (9th Cir. 2011)).

18 **1. Likelihood of Success on the Merits**

19 Plaintiffs have demonstrated they are likely to succeed on the merits of their
20 copyright claim. They have shown that Plaintiff Trial Film, LLC, is the owner of the
21 copyrights in the Work—the film “Infidel”—and that Plaintiff American Cinema Inspires,
22 Inc. (ACI) is the beneficial owner and sales agent for the licensing and exploitation of Trial
23 Film’s exclusive rights in the Work. No Plaintiff has given permission for any of the
24 Defendants to reproduce, display, perform or make derivative use of the Work. Yet the
25 exhibits to the Complaint and second Motion for TRO demonstrate that each of the four
26 Defendants operates at least one website¹ on which the Work is available to stream for free

27 ¹ Defendant Wu Daoai aka Bo Ye owns and operates the websites 17ys.net, mmov.cc,
28 52ys.tv and tvju.tv; Defendant Cheng Hsien Yang owns and operates 17drama.org, 92-
tv.com, 92-tv.xyz and 94-tv.xyz; Defendant Yuan Niu owns and operates awsltv.com; and
Defendant Doe, aka “Win Double,” owns and operates the website msyy.cc. Screenshots

1 by anyone accessing their websites. Moreover, the Work shown on all four Defendants’
2 websites has been altered to include a Chinese language caption across the bottom of the
3 screen. The original Work is in English with no Chinese subtitles.

4 Defendants each use domain registrar and hosting services located in Arizona for
5 their websites to host and store the Work.² And because the Work bears an embedded notice
6 of copyright protection, for purposes of determining the TRO application, Plaintiffs are
7 likely to be able to show that Defendants knew of such copyrights and intentionally
8 engaged in infringement, or at a minimum, acted with willful blindness to Plaintiffs’
9 registered copyright and exclusive rights or in reckless disregard thereof. Defendants’
10 websites generate revenue for Defendants from marketers and data sellers including Baidu
11 and Google Analytics. Defendants’ websites generate cookies on the browsers of all
12 visitors who come to their websites to view movies. This results in the marketers tailoring
13 advertisements to the visitors based on, among other factors, their geographic location, and
14 then compensating Defendants for access to the visitors Defendants have drawn. The
15 compensation flows, Plaintiffs have demonstrated in their attached declarations, from the
16 marketers to Defendants’ respective Paypal (Defendants Daoai, Yang and Niu) and AliPay
17 US (Defendant Doe aka “Win Double”) accounts, which are linked to the websites.

18 Additionally, Plaintiffs have demonstrated they are likely to succeed on the merits
19 of their DMCA claim against Defendant Niu under 17 U.S.C. § 1202. Plaintiffs allege in
20 the Complaint, and demonstrate in the exhibits thereto, that Defendant Niu intentionally
21 altered the copyright management information (“CMI”) on the Work by removing the
22 listing of Plaintiff CMI as the copyright holder to whom interested parties would direct
23 their inquiries about the Work and the copyright, and replacing it with the website
24 www.458028.com. As this URL has no connection to Plaintiffs, the Court can conclude
25 from each of these websites show the Work streaming. (Complaint, Ex. 2.)

26 ² Defendant Daoai/Ye uses NameSilo, LLC as host and registrar for his websites;
27 Defendants Yang and Niu use NameCheap, Inc. for their websites; and Defendant Doe aka
28 “Win Double” uses GoDaddy.com, LLC, as host and registrar for his or her website.
GoDaddy, NameCheap and NameSilo all maintain their principal places of business in
Arizona.

1 for purposes of the TRO application that Defendant Nui so altered the CMI with the intent
2 to conceal infringement of the Work by directing inquiries—and therefore knowledge that
3 Defendant Niu was showing the Work—away from the Plaintiffs.

4 **2. Irreparable Harm**

5 Plaintiffs also have demonstrated that Defendants’ reproduction, alteration, display,
6 and distribution of their Work has resulted in injury to their ability to financially exploit
7 that Work and will continue to result in such immediate and irreparable harm. The Plaintiffs
8 indicate in the attached declarations that distributors and other potential business partners
9 have expressed reluctance to take on the Work, as they are aware it is being shared and
10 displayed for free on Defendants’ websites, thus diminishing Plaintiffs’ ability to earn a
11 return on their investment.

12 **3. Whether Injunction is in the Public Interest**

13 Next, Plaintiffs have demonstrated that the public interest in the protection of
14 copyrighted works is served by an injunction ceasing the infringement of that Work. The
15 Court has no trouble so finding, where the evidence demonstrates the existence of a
16 copyrighted work and Plaintiffs’ ownership thereof.

17 **4. Balance of Hardships or Equities**

18 Finally, the Court is satisfied that the balance of hardships or equities falls in favor
19 of Plaintiffs as regards the issuance of an injunction locking the websites owned by
20 Defendants that display the copyrighted Work, as well as other named servers that would
21 allow Defendants to simply redirect traffic to alternate websites they might set up to
22 continue to show the copyrighted Work. The Court is aware from the Complaint, Motion
23 and supporting filings that the websites make available many other recorded films for
24 streaming that are neither owned by Plaintiffs nor the subject of this action, and that
25 Defendants’ websites’ offering for display of some or many of those other recordings may
26 not violate an owner’s or licensee’s copyright. But counsel’s avowal at the *ex parte* hearing
27 in this matter that at least one of his other clients’ works were present on several of the
28 websites, in violation of his other client’s copyrights, would confirm that the Defendants’

1 infringement of Plaintiffs' copyrights in the Work here is not isolated or accidental in a
2 collection of otherwise properly displayed works. Moreover, the Court concludes that there
3 is no more narrowly tailored way to halt the irreparable harm to Plaintiffs than to
4 temporarily restrain the websites.

5 The Court also is satisfied that freezing the Defendants' Paypal and AliPay US
6 accounts linked to their subject websites is justified upon a balancing of the hardships or
7 equities. As the Court previously found in denying Plaintiffs' first TRO request, it lacks
8 the authority to grant an injunction solely to preserve assets for satisfaction of a possible
9 money judgment on a claim that is one at law only, and not in equity. In *Grupo Mexicano*
10 *de Desarrollo v. Alliance Bond Fund*, 527 U.S. 308, 333 (1999), the Supreme Court held
11 that a district court has no authority to issue a preliminary injunction to freeze assets
12 pending adjudication of a pure money damages claim because such a remedy was
13 historically unavailable from a court of equity. Put another way, an injunction to freeze
14 assets was authorized only when it was necessary to preserve the possibility of equitable
15 relief. The Ninth Circuit made this limitation clear in *Republic of the Philippines v. Marcos*,
16 862 F.2d 1355, 1364 (9th Cir. 1988).

17 Upon Plaintiffs' submission of additional authority at the Court's invitation, as well
18 as the Court's own research, the Court recognizes the proscription against asset freezes is
19 not as broad as it previously concluded. First, in *Hilao v Estate of Marcos*, 25 F.3d 1467,
20 1479 (9th Cir. 1994), the Ninth Circuit considered, in the circumstance of a claim purely
21 at law seeking money damages, whether a preliminary injunction to freeze assets still could
22 be appropriate where the plaintiff showed the defendant intended to frustrate any judgment
23 on the merits by transferring its assets out of the jurisdiction, making the judgment
24 uncollectible. The court in *Hilao* held that a district court does have the authority to issue
25 a preliminary injunction to freeze assets where a plaintiff can establish that money damages
26 will be an inadequate remedy due to impending insolvency of the defendant or because a
27 defendant has engaged in a pattern of secreting or dissipating assets to avoid judgment. *Id.*
28 at 1480.

1 Second, Plaintiffs cited in their Second Motion for TRO *Amazon Content Servs.*
2 *LLC v. Kiss Library*, No. 2:20-cv-01048-MJP, 2020 U.S. Dist. LEXIS 155676 (W.D. Wash
3 Aug. 27, 2020), which presents factual circumstances very similar to the instant case and
4 the identical question of law. In *Kiss Library*, the plaintiffs presented a sister district court
5 of this circuit with copyright infringement claims against the operators of substantively
6 identical mirror websites that were reproducing, distributing, and displaying copyrighted
7 works without the permission of the copyright holders, for profit. The plaintiffs sought and
8 received temporary injunctive relief disabling the websites and freezing the defendants'
9 assets. In concluding that an asset freeze was an appropriate component of temporary
10 injunctive relief in a copyright case, the court found in relevant part as follows:

11
12 6. With regard to the need for injunctive relief to
13 secure assets without notice and expedited discovery to
14 discover Defendants' identities and assets, the Court finds
15 Plaintiffs have provided evidence showing:

16 a. Defendants have gone to great lengths to
17 conceal their identities, locations, and proceeds from
18 Plaintiffs' and this Court's detection, including using
19 multiple false identities and addresses associated with
20 their operations and purposely deceptive contact
21 information;

22 b. at least some of the Defendants are likely
23 overseas and Defendant Kiss Library appears to
24 communicate solely through email; and

25 c. Defendants would likely destroy, move,
26 hide, or otherwise make inaccessible the proceeds of
27 their infringement, copies of infringed Works, and the
28 Websites used to display and distribute those Works,
to the Court and Plaintiffs if they received advance
notice, thus frustrating the ultimate relief Plaintiffs
seek in this action.

7. Entry of an order other than the requested Order
would not adequately achieve the purposes of the Copyright
Act to preserve Plaintiffs' equitable remedies for copyright
infringement, including among other things: the restraint of

1 Defendants' unauthorized sale and distribution of Plaintiffs'
2 Works, including through Defendants' Websites, the
3 acquisition of business records relating to Defendants'
4 operations, and the preservation of Plaintiffs' right to an
5 equitable accounting of proceeds from Defendants' sale of
6 Plaintiffs' Works

6 *Kiss Library*, 2020 U.S. Dist. LEXIS 155676 at 6-7. While a decision of a sister district
7 court within this circuit does not constitute binding precedent, the Court concludes Judge
8 Pechman's reasoning has great persuasive value. Like the defendants in *Kiss Library*,
9 Defendants here distributed copyrighted material via remote websites for profit. And like
10 the defendants in *Kiss Library*, Defendants here have gone to great lengths to conceal their
11 identities and locations from Plaintiffs, and are overseas,³ communicating only via email.
12 Finally, like the circumstances in *Kiss Library*, there is a high likelihood here that
13 Defendants will destroy, hide, move and/or make unavailable the proceeds of their
14 infringement if alerted to this action. These facts drove the court in *Kiss Library* to conclude
15 that an account freeze was appropriately part of the temporary injunctive relief necessary
16 to stop irreparable harm to the plaintiffs. In so finding, Judge Pechman concluded that the
17 assets in the accounts to be frozen were not only proceeds of the copyright violation, but
18 also instrumentalities of it, and without a freeze, the preliminary injunction "would not
19 adequately achieve" its purpose, including "the restraint of Defendants' unauthorized sale
20 and distribution of Plaintiffs' Works" *Id.*

21 The Court adopts Judge Pechman's reasoning in its analysis of the present case. If
22 the Court's injunctive relief here is limited to the disabling of the present websites on which
23 Defendants offer the Work, all hallmarks of the structure of Defendants' current operations
24 indicate they simply will deploy those assets to quickly reestablish the infringing
25 distribution schemes on new websites under different names, rendering the injunctive relief
26 a nullity and continuing the irreparable harm to Plaintiffs. In other words, the freezing of

27 ³ Plaintiffs allege upon information and belief, and the contact and website domain name
28 information they submit supports, that Defendants Daoai and Yang reside in Taiwan,
Defendant Niu resides in Canada, and Defendant Doe aka "Win Double" resides in the
People's Republic of China.

1 the accounts is necessary to deliver the temporary injunctive relief. The Court therefore
2 finds all factors have been met for granting the temporary injunctive relief Plaintiffs seek.
3 For the same reasons, the Court finds the requirements for a Preliminary Injunction, as set
4 forth in Rule 65(a), Fed. R. Civ. P., and *Garcia* and *Winter* are met.

5 **IT IS ORDERED** granting Plaintiffs' Request (Doc. 12) converting the Temporary
6 Restraining Order previously entered in this matter to a Preliminary Injunction.

7 **IT IS FURTHER ORDERED** that domain name registries NameSilo, LLC,
8 NameCheap, Inc., GoDaddy, LLC, and or the individual registrars holding or listing one
9 or more of the domain names used in conjunction with Defendants' websites as listed in
10 Footnote 1 of this Order shall continue to disable these domain names, or any subset of
11 these domain names specified by Plaintiffs, through a registry hold or otherwise, and
12 maintain them as inactive and nontransferable pending further Order of this Court.

13 **IT IS FURTHER ORDERED** that CloudFlare, Inc. shall continue to refrain from
14 providing any services, including but not limited to content delivery network and Domain
15 Name System service, to Defendants' websites as listed in Footnote 1 of this Order, and
16 maintain its lock on Defendants' CloudFlare accounts to prevent Defendants from
17 frustrating the above domain lock provision by redirecting traffic intended for the disabled
18 website(s) to different websites pending further Order of this Court.

19 **IT IS FURTHER ORDERED** that PayPal, Inc. shall continue its freeze on all
20 funds associated with the following accounts and continue to restrain and enjoin the
21 transfer of any funds held in such accounts until further ordered by the Court:

- 22 • As to Defendant Wu Daoai: 903757528@qq.com, paypal@61bk.com,
23 wudaoai.com@gmail.com, cfbk@61bk.com.
- 24 • As to Defendant Cheng Hsien Yang: jm@house108.com.tw,
25 ppt616543@gmail.com, yang1673@gmail.com.
- 26 • As to Defendant Yuan Niu: javettejpy@gmail.com,
27 awsltvcom@gmail.com.

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