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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DISNEY ENTERPRISES, INC., et al., Case No. CV 16-04109 AB (PLAx)

Plaintiffs,

**ORDER GRANTING PLAINTIFFS’  
MOTION FOR SUMMARY  
JUDGMENT ON LIABILITY**

v.

VIDANGEL, INC.,

Defendant.

Before the Court is a Motion for Summary Judgment on Liability (“Motion,” Dkt. No. 248) filed by Plaintiffs Disney Enterprises, Inc., Lucasfilm Ltd. LLC, Twentieth Century Fox Film Corporation, and Warner Bros. Entertainment Inc. (“Plaintiffs”). Defendant VidAngel, Inc. (“VidAngel”) filed an opposition and Plaintiffs filed a reply. The Court heard oral argument on January 18, 2019. For the following reasons, the Motion is **GRANTED**.

**I. BACKGROUND**

This Order assumes familiarity with the Court’s Order Granting Plaintiffs’ Motion for a Preliminary Injunction and the Ninth Circuit’s Opinion affirming it. *See Disney Enterprises, Inc. v. VidAngel, Inc.*, 224 F. Supp. 3d 957, 964 (C.D. Cal. 2016) (“*Disney I*” or “PI Order”), *aff’d*, 869 F.3d 848 (9th Cir. 2017) (“*Disney II*”).

1 Plaintiffs produce and distribute copyrighted motion pictures and television  
2 shows. VidAngel offers a number of Plaintiffs' movies and television shows for  
3 video-on-demand streaming to its customers. VidAngel's service allows customers to  
4 apply filters to the works so that objectionable content—such as nudity or violence—  
5 is omitted, resulting a filtered stream. At issue in this action is VidAngel's streaming  
6 service based on DVDs and Blu-ray discs (“discs”). This service is described in detail  
7 in the PI Order, and, in relevant part, as follows by the Ninth Circuit<sup>1</sup>:

8 [VidAngel] purchases multiple authorized [discs] for each title it  
9 offers . . . VidAngel uses AnyDVD HD, a software program, to decrypt  
10 one disc for each title, removing the CSS, AACs, and BD+ TPMs on the  
11 disc, and then uploads the digital copy to a computer.[] Or, to use  
12 VidAngel's terminology, the “[m]ovie is ripped from Blu-Ray to the  
13 gold master file.” After decryption, VidAngel creates “intermediate”  
14 files, converting them to HTTP Live Streaming format and breaking  
15 them into segments that can be tagged for over 80 categories of  
16 inappropriate content. Once tagged, the segments are encrypted and  
17 stored in cloud servers.

18 Customers “purchase” a specific physical disc from VidAngel's  
19 inventory for \$20. The selected disc is removed from VidAngel's  
20 inventory and “ownership” is transferred to the customer's unique user  
21 ID. However, VidAngel retains possession of the physical disc “on behalf  
22 of the purchasers,” with the exception of the isolated cases in which the  
23 consumer asks for the disc. To date, VidAngel has shipped only four

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24  
25 <sup>1</sup> VidAngel does not materially or genuinely dispute this description of its service.  
26 VidAngel's submitted a declaration from its VP of research and innovation  
27 elaborating on its process, *see* McDonald Decl. (Dkt. Nol 256), but this additional  
28 information does not materially challenge the Ninth Circuit's description. To the  
extent McDonald's declaration purports to dispute whether VidAngel copies the  
Works, that dispute is not genuine for the reasons discussed herein. As such, the Court  
will treat the facts stated in the Ninth Circuit's description as undisputed.

1 discs to purchasers.

2 After purchasing a disc, a customer selects at least one type of  
3 objectionable content to be filtered out of the work. VidAngel then  
4 streams the filtered work to that customer on “any VidAngel-supported  
5 device, including Roku, Apple TV, Smart TV, Amazon Fire TV,  
6 Android, Chromecast, iPad/iPhone and desktop or laptop computers.”  
7 The work is streamed from the filtered segments stored in cloud servers,  
8 not from the original discs. Filtered visual segments are “skipped and  
9 never streamed to the user.” If the customer desires that only audio  
10 content be filtered, VidAngel creates and streams an altered segment that  
11 mutes the audio content while leaving the visual content unchanged.  
12 VidAngel discards the filtered segments after the customer views them.

13 After viewing the work, a customer can sell the disc “back to  
14 VidAngel for a partial credit of the \$20 purchase price,” less \$1 per night  
15 for standard definition purchases or \$2 per night for high-definition  
16 purchases. VidAngel accordingly markets itself as a \$1 streaming  
17 service. After a disc is sold back to VidAngel, the customer's access to  
18 that title is terminated.[] Virtually all (99.6%) of VidAngel’s customers  
19 sell back their titles, on average within five hours, and VidAngel’s discs  
20 are “re-sold and streamed to a new customer an average of 16 times each  
21 in the first four weeks” of a title’s release.

22 *Disney II*, 869 F.3d at 853–54.

23 Plaintiffs sued VidAngel for copyright infringement, contending that  
24 VidAngel’s streaming service copies and publicly performs their copyrighted works  
25 without authorization. *See* First Am. Compl (“FAC,” Dkt. No. 64-72.)<sup>2</sup> Plaintiffs also

26 \_\_\_\_\_  
27 <sup>2</sup> When the Court entered its preliminary injunction order, the original Complaint was  
28 operative. However, the FAC simply added additional plaintiffs. The conduct alleged  
in both complaints is the same.

1 assert that VidAngel violates the Digital Millennium Copyright Act, 17 U.S.C. §§  
2 1201, *et seq.*, by circumventing technological protection measures (“TPM”) on discs  
3 that contain Plaintiffs’ works. FAC ¶¶ 73-81.

4 In the PI Order, the Court found that Plaintiffs showed a likelihood of success  
5 on the merits of their claims. First, the Court found that VidAngel circumvented  
6 Plaintiffs’ TPMs by using software to allow read-access to the discs and upload files  
7 onto a computer, an unlawful practice referred to as “space-shifting.” The Court also  
8 rejected VidAngel’s defense under the Family Movie Act of 2005 (“FMA”), 17  
9 U.S.C. § 110(11), finding that the FMA does not establish an exemption to the  
10 DMCA’s anti-circumvention provision. Second, the Court found that VidAngel  
11 violated Plaintiffs’ exclusive rights to copy and publicly perform their works, and  
12 rejected VidAngel’s defenses, holding that the FMA did not apply because  
13 VidAngel’s filtered transmissions were not from a “authorized copies” of the works as  
14 required for protection under the FMA, and that VidAngel was not likely to succeed  
15 on the merits of its fair use defense. The Ninth Circuit affirmed.

16 Plaintiffs now move for summary judgment on the issue of liability as to four  
17 works that they say are representative of all works in issue. They argue that this Court  
18 and the Ninth Circuit already determined that Plaintiffs established at least a *prima*  
19 *facie* case of liability and that VidAngel’s defenses were without merit, and they  
20 contend that VidAngel simply cannot raise triable issues to overcome those rulings.  
21 VidAngel responds that new facts developed since the preliminary injunction  
22 litigation give rise to triable issues and preclude summary judgment.

23 Upon review of the record, the Court finds that there are no triable issues of  
24 material fact because VidAngel either admitted all of the material facts, or its  
25 purported factual disputes are not genuine. In addition, VidAngel cannot avoid the  
26 questions of law that this Court and the Ninth Circuit resolved against it. Thus,  
27 Plaintiffs are entitled to summary adjudication that VidAngel is liable for copyright  
28 infringement and for violating the DMCA.

1     **II.   UNDISPUTED FACTS**

2           The undisputed material facts, taken from Plaintiffs’ Separate Statement and  
3 VidAngel’s Response thereto (“SUF,” Dkt. No. 254), are as follows.<sup>3</sup>

4           Plaintiffs have valid copyright registrations, registered within five years of first  
5 publication, for each of the four representative works (*Frozen*, *Star Wars: The Force*  
6 *Awakens*, *Ice Age*, and *Harry Potter and the Sorcerer’s Stone*) (“Works”). SUF 1.

7           Plaintiffs have not authorized VidAngel to copy or stream (or otherwise exploit)  
8 their Works or to bypass or remove (or otherwise circumvent) the technological  
9 protection measures (“TPMs”) that control access to their copyrighted works on  
10 DVDs or Blu-ray discs (“Discs”). SUF 2.

11          VidAngel has offered each of the Works on its service. SUF 3.

12          Plaintiffs use CSS, AACS and BD+ to control access to their copyrighted works  
13 on Discs. SUF 4.

14          CSS, AACS and BD+ are TPMs that control access to copyrighted works on  
15 Discs. SUF 5.

16          VidAngel circumvents Plaintiffs’ TPMs by using “a commercially available  
17 software program to automatically allow read-access for the purpose of mounting the  
18 DVD [and Blu-ray] files for uploading onto a computer, in the process removing  
19 restrictions on DVD [and Blu-ray] encryption.” SUF 6.

20          VidAngel copies the underlying digital files onto its computers. SUF 7; *see also*  
21 McDonald Decl. ¶¶ 13, 18, 19, 21, 22, 23, 25.

22          VidAngel stores “master” ripped digital copies of Plaintiffs’ works to servers,  
23 from which it streams filtered content to its customers. SUF 8.

24          VidAngel’s purpose is to bring “popular movies and shows” to viewers who  
25 may want to watch that work without certain “objectionable” content. SUF 9.

26 \_\_\_\_\_  
27 <sup>3</sup> VidAngel offered 30 additional facts but they are immaterial, argumentative,  
28 conclusory, or not supported by the evidence, and thus do not preclude summary  
judgment in Plaintiffs’ favor.

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