

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WHYTE MONKEE PRODUCTIONS LLC,
et al.,

Plaintiffs,

v.

NETFLIX, INC.,

Defendant.

Case No. 23-cv-03438-PCP

**ORDER DENYING MOTION TO
REMAND**

Re: Dkt. No. 25

This a copyright dispute involving the Netflix series *Tiger King*. Plaintiffs Timothy Sepi and Whyte Monkee Productions LLC allege that Netflix, Inc. displayed unauthorized derivatives of several of their copyrighted videos in violation of the copyright laws of several foreign nations. Netflix removed the action from state court and plaintiffs now move to remand, contending that this Court lacks federal question jurisdiction and that Netflix, a forum defendant, is ineligible to remove this case on the basis of diversity jurisdiction. Because at least one of plaintiffs' claims raises a substantial and disputed question of federal copyright law, the motion to remand is denied.

I. Background

Mr. Sepi is a creative professional who controls a film production company called Whyte Monkey Productions, LLC. Mr. Sepi claims that over the last ten years, he personally created several cinematographic works, either on his own or under the auspices of Whyte Monkee. According to the complaint, several of these works included authorship designations indicating that Whyte Monkee LLC was the author. The complaint alleges that Netflix worked with another company to produce "cuts" of these works that were used in its reality series *Tiger King*, and that Netflix thereafter posted on its streaming platform unauthorized works that were derived from

1 In late 2020, Mr. Sepi and Whyte Monkee filed an action against Netflix in the United
2 States District Court for the Western District of Oklahoma asserting claims involving the same
3 cinematographic works. The claims in that litigation all arose directly under the federal Copyright
4 Act. In April 2022, the Oklahoma district court granted summary judgment in favor of Netflix,
5 concluding that plaintiffs did not own seven of the eight videos at issue and that the use of the
6 eighth video constituted a fair use. *Whyte Monkee Prods., LLC v. Netflix, Inc.*, 601 F. Supp. 3d
7 1117, 1123 (W.D. Okla. 2022). On appeal, the Tenth Circuit affirmed the district court's grant of
8 summary judgment with respect to the seven unowned videos but reversed with respect to the
9 eighth video and remanded for further consideration of Netflix's fair use defense. *Whyte Monkee*
10 *Prods., LLC v. Netflix, Inc.*, — F.4th —, 2024 WL 1291909, at *1 (10th Cir. Mar. 27, 2024).¹

11 In March 2023, nearly a year after summary judgment was granted to Netflix in the
12 Oklahoma litigation, plaintiffs filed this action in California state court alleging that Netflix
13 publicly performed, displayed, and distributed unauthorized derivatives of their copyrighted works
14 in Australia, Great Britain, Canada, France, Germany, Italy, Japan, South Korea, New Zealand,
15 and Spain. Plaintiffs asserted copyright claims under the laws of these countries but did not assert
16 U.S. copyright claims.

17 In July 2023, before Netflix had been served in the California state court action, Netflix
18 removed the case to federal court, asserting that this Court has both federal question and diversity
19 jurisdiction over plaintiffs' lawsuit. Plaintiffs timely moved to remand this matter to state court.

20 **II. Legal Standards**

21 Federal district courts are courts of limited jurisdiction. 28 U.S.C. § 1331 provides for
22 federal question jurisdiction, authorizing "jurisdiction of all civil actions arising under the
23 Constitution, laws, or treaties of the United States." 28 U.S.C. § 1332 provides for diversity
24 jurisdiction, authorizing "jurisdiction of all civil actions where the matter in controversy exceeds
25 ... \$75,000 ... and is between ... citizens of different States."

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27
28 ¹ The Court takes judicial notice of these proceedings for their relevance to this case, but does not

Cases filed in state court over which a federal court would have had original jurisdiction can be removed to federal court under 28 U.S.C. § 1441(a). But Section 1441(b) provides an exception, known as the “forum defendant” rule, which specifies that an “action otherwise removable solely on the basis of [diversity] jurisdiction ... may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.”

28 U.S.C. § 1447 sets out certain procedures that federal district courts must follow after removal. In particular, it directs that if “it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” “The removal statute is strictly construed, and any doubt about the right of removal requires resolution in favor of remand. The presumption against removal means that the defendant always has the burden of establishing that removal is proper.” *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009) (cleaned up).

III. Analysis

To establish that removal to this Court was proper, Netflix must show that this Court has either federal question or diversity jurisdiction over this action.

A. Federal Question Jurisdiction

“The general rule, referred to as the ‘well-pleaded complaint rule,’ is that a civil action arises under federal law ... when a federal question appears on the face of the complaint.” *City of Oakland v. BP PLC*, 969 F.3d 895, 903 (9th Cir. 2020). Because “a case may not be removed to federal court on the basis of a federal defense,” a “plaintiff can generally avoid federal jurisdiction by exclusive reliance on state law.” *Id.* at 904 (cleaned up). But there are exceptions. One is where “a federal issue is (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress.” *Id.* Another “allows removal where federal law completely preempts a plaintiff’s state-law claim.” *Id.* (cleaned up). For federal Copyright Act claims, the Ninth Circuit has concluded that federal question jurisdiction exists if “(1) the complaint asks for a remedy expressly granted by the Copyright Act; (2) the complaint requires an interpretation of the Copyright Act; or (3) federal

principles should control the claim.” *See Med. L. Ass’n, Inc. v. Med. L. Ass’n, Inc.*, 600 F.3d 1118, 1124 (9th Cir. 2010).

Plaintiffs' complaint does not directly state a federal claim, nor does it seek a Copyright Act remedy. To establish federal question jurisdiction, then, plaintiffs' foreign law claims must necessarily raise a substantial and disputed federal issue appropriate for resolution in this Court. *City of Oakland*, 969 F.3d at 904. Such a federal issue is present here if plaintiffs' claims will require an interpretation and application of the Copyright Act. *See JustMed*, 600 F.3d at 1124.

1. This Court's Choice of Law Analysis Will Require Consideration of Federal Law and May Result in the Application of Federal Law to Plaintiffs' Claims.

In this lawsuit, plaintiffs assert claims under foreign law, rather than under federal law or the law of the state where this Court sits. As a result, before considering the merits of plaintiffs' claims, the Court will be required to undertake a choice of law analysis to determine what law applies.

Absent a federal law claim, this Court applies California's choice of law rules. *See Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941) (holding that a federal district court must apply the choice of law rules of the state where it sits). California determines the rule of decision through a "governmental interest analysis":

First, the court determines whether the relevant law of each of the potentially affected jurisdictions with regard to the particular issue in question is the same or different. Second, if there is a difference, the court examines each jurisdiction's interest in the application of its own law under the circumstances of the particular case to determine whether a true conflict exists. Third, if the court finds that there is a true conflict, it carefully evaluates and compares the nature and strength of the interest of each jurisdiction in the application of its own law to determine which state's interest would be more impaired if its policy were subordinated to the policy of the other state, and then ultimately applies the law of the state whose interest would be the more impaired if its law were not applied.

Kearney v. Salomon Smith Barney, Inc., 39 Cal. 4th 95, 107–08 (2006) (cleaned up).

The governmental interest analysis in this case will require comparing each foreign law plaintiffs invoke against California law, which "includes federal law." *Kashani v. Tsann Kuen China Enter. Co.*, 118 Cal. App. 4th 531, 543 (2004). Here, the relevant California law is *only* federal law because the Copyright Act explicitly preempts state copyright law. 17 U.S.C. § 201

Thus, to determine whether to apply the asserted foreign copyright laws or the federal Copyright Act (which is also California's law), the Court will have to (1) evaluate whether there are differences between the Copyright Act and the asserted foreign copyright laws, (2) examine each jurisdiction's interests in the application of its laws, and (3) weigh these competing interests.

This governmental interest analysis alone may raise a federal question, although it is not clear whether any federal issue stemming from the Copyright Act would be substantial and actually disputed. If this analysis were to result in a determination that the Copyright Act governs plaintiffs' claims, that would undoubtedly provide a substantial and disputed federal question sufficient to establish jurisdiction under 28 U.S.C. § 1331.

2. Plaintiffs' Foreign Law Claims Raise a Substantial Federal Question.

Even if this Court's choice of law analysis would not itself create a substantial and disputed federal issue, and even if that analysis would result in application of foreign law rather than the Copyright Act to plaintiffs' claims, federal question jurisdiction would still exist here if a substantial and disputed federal issue were embedded in plaintiffs' foreign law claims. The Court concludes that such an issue is present here because one or more of plaintiffs' claims will require applying Copyright Act ownership principles to determine whether each of the works at issue is owned by Mr. Sepi or by Whyte Monkee—a conflict necessarily raised by plaintiffs' complaint.

Under each of the foreign laws at issue, an essential element of a copyright claim is copyright ownership. But a simple assertion of ownership does not on its own establish federal question jurisdiction, even if that ownership was established pursuant to federal law. *See Topolos v. Caldewey*, 698 F.2d 991, 994 (9th Cir. 1983); *Cordero v. McGonigle*, No. 13-cv-0198 2013 U.S. Dist. LEXIS 182243, at *9-10 (C.D. Cal. Jan. 3, 2014) (“The instant case is distinguishable from *JustMed*, as the work-for-hire doctrine does not need to be applied. This is not a case where the plaintiff has pled that he is the owner of a copyright because of the work-for-hire doctrine. Rather, Cordero's complaint only states that he was the author....”). Where ownership depends on an application of the Copyright Act's work-for-hire doctrine, however, that federal issue is sufficient to establish federal question jurisdiction under binding Ninth Circuit precedent.

See *Med. 600 F.2d at 1124-25* (“Because ownership normally vests in the author of a work

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