

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

MALIBU MEDIA, LLC,

*Plaintiff,*

v.

CARSON EINKAUF,

*Defendant.*

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CIVIL ACTION H-18-3450

**MEMORANDUM OPINION AND ORDER**

Pending before the court is plaintiff Malibu Media, LLC's (d/b/a "X-Art.com") ("Malibu Media") motion for default judgment. Dkt. 22. Having considered the amended complaint, motion, record evidence, and applicable law, the court is of the opinion that the motion should be GRANTED.

**I. BACKGROUND**

This case arises under the United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 *et seq.* (the "Copyright Act"). Dkt. 13 at 1. Malibu Media is a California corporation engaged in the production and distribution of adult erotic films through its website "X-Art.com." *See id.* at 2; Dkts. 13-1, 13-2. Malibu Media brings this copyright infringement action against defendant Carson Einkauf. Malibu Media alleges that it owns copyrights to nineteen films (the "Copyrighted Works") and that Einkauf used computer software known as BitTorrent to illegally download, copy, and distribute the films. *Id.* at 4.

**A. BitTorrent**

Malibu Media alleges that the copyright infringement occurred through the use of BitTorrent. According to Malibu Media, BitTorrent is one of the most common computer programs that allows people to share files over the Internet. *Id.* at 3. BitTorrent, a peer-to-peer file sharing system, is primarily used for distributing large amounts of data, including digital movie files. *Id.* Malibu Media claims that BitTorrent’s defining feature is that it allows files to be transferred among multiple computers simultaneously without creating a heavy load on any individual source computer. *Id.*

Malibu Media explains that, in order to distribute a large file, the BitTorrent protocol breaks a file into smaller pieces and assigns each piece a “hash,” a unique alphanumeric identifier, similar to an electronic fingerprint. *Id.* Every digital file has one hash value correlating to it. *Id.* The BitTorrent protocol uses the hash values to ensure each piece is properly routed among BitTorrent users as they engage in file sharing. *Id.* The entire digital media file also has a hash value that acts as a digital fingerprint to identify the media file or movie. *Id.* at 3–4. When a software user completes downloading all the pieces of a digital media file, the BitTorrent software uses the file hash to determine that the file is complete and accurate. *Id.* Once a BitTorrent file has been created, other BitTorrent users may access and download the file. *Id.*

**B. Alleged Copyright Infringement**

Malibu Media hired the investigator, IPP International UG (“IPP”), to identify individuals who use BitTorrent to illegally download and distribute content. *Id.* at 4. Malibu Media claims IPP established a direct Transmission Control Protocol/Internet Protocol (“TCP/IP”) connection with the assigned IP address of 98.198.77.193, belonging to Einkauf. *Id.* at 4–5. IPP states that it

downloaded a full copy of each file hash from the BitTorrent File Distribution Network and confirmed that the file hash matched files containing Malibu Media's Copyrighted Works. *Id.* at 4. IPP claims its investigation revealed that a user at the IP address 98.198.77.193 had used BitTorrent to download, copy, and distribute the Copyrighted Works without authorization. *Id.*

### **C. Procedural History**

On September 26, 2018, Malibu Media filed a complaint against an unnamed individual who allegedly used BitTorrent to copy and distribute the Copyrighted Works without Malibu Media's consent, thereby infringing on its copyright. Dkt. 1. The original complaint alleged that defendant John Doe, a subscriber with an IP address of 98.198.77.193, infringed on Malibu Media's registered copyrights using BitTorrent. *Id.* After filing the complaint, Malibu Media moved for leave to serve a third-party subpoena on John Doe's Internet Service Provider, commanding it to provide the subscriber's name and contact information. Dkt. 6. The court granted the motion, after which Malibu Media filed an amended complaint naming Einkauf as the infringer. Dkt. 13. Malibu Media properly served Einkauf by means of posting at his last known address after this court gave Malibu Media leave to serve Einkauf by alternative service. Dkts. 19, 21. On May 28, 2018, Malibu Media filed a motion for default judgment against Einkauf, which it served by certified mail, return receipt requested. Dkt. 22. Malibu Media's attorney provides a sworn declaration stating that Einkauf is not a minor, incompetent, or in active military service. Dkt. 22-3 (Beik Dec.).

## **II. LEGAL STANDARD**

Under Federal Rule of Civil Procedure 55(a), "[w]hen a party against whom judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a). Under Rule

55(b)(2), a party may apply for the court to enter a default judgment, and the “court may conduct hearings or make referrals—preserving any federal statutory right to a jury trial—when, to enter or effectuate judgment, it needs to: (A) conduct an accounting; (B) determine the amount of damages; (C) establish the truth of any allegation by evidence; or (D) investigate any other matter.” Fed. R. Civ. P. 55(b)(2). Rule 4 of the Federal Rules of Civil Procedure requires the plaintiff to serve a copy of the summons and complaint on the defendant. Fed. R. Civ. P. 4(c)(1). Under Local Rule 5.5, a motion for default judgment must be served upon the defendant via certified mail, return receipt requested. S.D. Tex. L.R. 5.5.

A default judgment is a “drastic remedy, not favored by the Federal Rules[,] and resorted to by courts only in extreme situations.” *Sun Bank of Ocala v. Pelican Homestead & Sav. Ass’n*, 874 F.2d 274, 276 (5th Cir. 1989). “The Federal Rules of Civil Procedure are designed for the just, speedy, and inexpensive disposition of cases on their merits, not for the termination of litigation by procedural maneuver.” *Id.*

Einkauf has failed to plead or otherwise defend against this lawsuit. Malibu Media properly served Einkauf with this lawsuit under the Federal Rules and with the motion for default judgment under the Local Rules. Dkts. 21, 22; *see* Tex. L.R. 5.5. Given Einkauf’s failure to answer the complaint in a timely manner, the court: (1) has the authority to enter default against Einkauf, (2) accept all well-pleaded facts in Malibu Media’s complaint as true, and (3) award the relief sought by Malibu Media in this action. *See Nishimatsu Constr. Co. v. Hous. Nat’l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975).

### III. ANALYSIS

To receive a default judgment, a plaintiff must state a plausible claim for relief. *Id.* Malibu Media argues that Einkauf committed direct copyright infringement. Copyright infringement requires two elements to be proven: (1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original. *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361, 111 S. Ct. 1282 (1991).

#### A. Ownership of a Valid Copyright

First, Malibu Media alleges that it is the registered owner of the nineteen Copyrighted Works listed in Exhibit B to its amended complaint. Dkt. 13-2. Exhibit B provides an overview of the Copyrighted Works, including a hit date, date of first publication, registration date, and registration number issued by the United States Copyright Office. Dkt. 13 at 4; Dkt. 13-2. Because Malibu Media provides registration numbers for its nineteen Copyrighted Works, the court finds that Malibu Media has demonstrated ownership of a valid copyright of the nineteen Copyrighted Works.

#### B. Direct Copyright Infringement

The second element of a copyright infringement claim requires proof of unauthorized copying of the original work. *Peel & Co. v. The Rug Market*, 238 F.3d 391, 395 (5th Cir. 2001). “Copyright infringement actions . . . ordinarily require no showing of intent to infringe. Instead, knowledge and intent are relevant in regard to damages.” *Chavez v. Arte Publico Press*, 204 F.3d 601, 607 (5th Cir. 2000).

Malibu Media claims that Einkauf used “the BitTorrent protocol to illegally download, reproduce, distribute, perform[,] and display” Malibu Media’s copyrighted audiovisual works. Dkt. 22-1 at 8. Malibu Media alleges that its investigators established a direct TCP/IP connection

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