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5 UNITED STATES DISTRICT COURT  
6 CENTRAL DISTRICT OF CALIFORNIA  
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10 CHINA CENTRAL TELEVISION, a China  
11 company; CHINA INTERNATIONAL  
12 COMMUNICATIONS CO., LTD., a China  
13 company; TVB HOLDINGS (USA), INC., a  
14 California corporation; and DISH NETWORK  
15 L.L.C., a Colorado corporation,

16 Plaintiffs,

17 vs.

18 CREATE NEW TECHNOLOGY (HK)  
19 LIMITED, a Hong Kong company; HUA YANG  
20 INTERNATIONAL TECHNOLOGY LIMITED,  
21 a Hong Kong company; SHENZHEN  
22 GREATVISION NETWORK TECHNOLOGY  
23 CO. LTD., a China company; CLUB TVPAD,  
24 INC., a California corporation; BENNETT  
25 WONG, an individual, ASHA MEDIA GROUP  
26 INC. d/b/a TVPAD.COM, a Florida corporation;  
27 AMIT BHALLA, an individual; NEWTVPAD  
28 LTD. COMPANY d/b/a NEWTVPAD.COM  
a/k/a TVPAD USA, a Texas corporation;  
LIANGZHONG ZHOU, an individual;  
HONGHUI CHEN d/b/a E-DIGITAL, an  
individual; JOHN DOE 1 d/b/a BETV; JOHN  
DOE 2 d/b/a YUE HAI; JOHN DOE 3 d/b/a 516;  
JOHN DOE 4 d/b/a HITV; JOHN DOE 5 d/b/a  
GANG YUE; JOHN DOE 6 d/b/a SPORT  
ONLINE; JOHN DOE 7 d/b/a GANG TAI WU  
XIA; and JOHN DOES 8-10,

Defendants.

CASE NO. CV 15-01869 MMM (MRW<sub>x</sub>)

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW SUPPORTING  
ENTRY OF PRELIMINARY  
INJUNCTION

On March 13, 2015, plaintiffs China Central Television (“CCTV”), China International Communications Co., Ltd. (“CICC”), TVB Holdings (USA), Inc. (“TVB USA”), and DISH Network L.L.C. (“DISH”) (collectively, “plaintiffs”) filed this copyright infringement action against Create New Technology HK Limited (“CNT”), Hua Yang International Technology Limited (“Hua Yang”), Shenzhen GreatVision Network Technology Co., Ltd. (“GreatVision”), Club TVpad, Inc. (“Club TVpad”), Bennett Wong, Asha Media Group (“AMG”), Amit Bhalla, newTVpad Ltd. Company (“newTVpad”), Liangzhong Zhou, Honghui Chen, and various fictitious defendants.<sup>1</sup> Three days later, plaintiffs filed a motion for preliminary injunction against CNT, Club TVpad, and AMG (collectively, “defendants”).<sup>2</sup> None of these defendants has opposed the motion.<sup>3</sup>

## **I. FINDINGS OF FACT**

### **A. The Parties**

1. CCTV and Television Broadcasts Limited (“TVB”) are television broadcasters in mainland China and Hong Kong, respectively. Through affiliates, CCTV and TVB license

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<sup>1</sup> Complaint, Docket No. 1 (Mar. 13, 2015).

<sup>2</sup> Notice of Motion and Motion for Preliminary Injunction (“Motion”), Docket No. 23 (Mar. 16, 2015).

<sup>3</sup> CNT was served with the summons and complaint on March 18, 2015. AMG was served on March 19, and Club TVpad was served on March 20. (See Proof of Service on Create New Technology, Docket No. 38 (March 24, 2015); Proof of Service on Asha Media Group, Docket No. 42 (Mar. 27, 2015); Proof of Service on Club TVpad, Docket No. 44 (Mar. 27, 2015).) Plaintiffs served a copy of their motion for preliminary injunction on CNT, Club TVpad, and AMG on March 18, 2015. (See Proof of Service Re: Motion for Preliminary Injunction, Docket No. 33 (Mar. 18, 2015).) CNT has not appeared and has had its default entered. (See Minutes (In Chambers) Order Granting Plaintiffs’ Requests for Entry of the Default, Docket No. 87 (May 28, 2015); Default by Clerk Entered As To Hua Yang and Create New Technology, Docket No. 88 (May 28, 2015).) AMG and Club TVpad have each answered the complaint. (See Answer to Complaint by Asha Media Group, Docket No. 58 (Apr. 23, 2015); Answer to Complaint by Club TVpad, Inc., Docket No. 72 (May 11, 2015).)

1 copyrighted television programming for retransmission in the U.S. via authorized satellite,  
2 cable, and other television service providers (“Authorized U.S. Providers”).<sup>4</sup>

3 2. CICC is a CCTV affiliate that licenses Authorized U.S. Providers to broadcast  
4 CCTV’s “Great Wall” package of channels to paying U.S. subscribers. Although CICC  
5 licenses certain satellite and cable retransmission rights, CCTV retains and owns the exclusive  
6 right to transmit CCTV programming in the United States over the internet.<sup>5</sup>

7 3. TVB USA is a wholly owned indirect subsidiary of TVB and distributes and  
8 licenses TVB programming in the United States. TVB owns and maintains the exclusive right  
9 to transmit TVB programming in the United States via Internet Protocol Television (“IPTV”)  
10 and Over-the-Top (“OTT”) in video-on-demand format.<sup>6</sup>

11 4. “IPTV” is the electronic delivery of video programming via internet protocol  
12 over a service provider’s infrastructure – such as AT&T’s “U-verse.” “OTT” is the delivery of  
13 video programming using an internet connection that is not owned, managed, or operated by  
14 the party delivering the programming – i.e., Netflix.<sup>7</sup>

15 5. DISH is a television service provider that delivers television services to  
16 subscribers through satellite and internet platforms. DISH is a licensee of both CCTV and  
17 TVB; pursuant to the licensing agreements, DISH owns the exclusive right to transmit certain  
18 CCTV and TVB programming in the United States via satellite, and certain TVB programming  
19 via OTT, except in video-on-demand format.<sup>8</sup>

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22 <sup>4</sup> Compendium of Evidence In Support of Motion for Preliminary Injunction – Volume I  
23 (“Comp. Vol. I”), Docket No. 23-1 (Mar. 16, 2015), Declaration of Samuel P. Tsang (“Tsang  
24 Decl.”), ¶¶ 3-4, 11; Comp. Vol. I, Declaration of Chunguang Lu (“Lu Decl.”), ¶¶ 3-5, 9.

25 <sup>5</sup> Lu Decl., ¶¶ 5, 10-11.

26 <sup>6</sup> Tsang Decl., ¶¶ 3-4, 9, 11.

27 <sup>7</sup> *Id.*, ¶ 9.

28 <sup>8</sup> Comp. Vol. I, Declaration of Christopher Kuelling (“Kuelling Decl.”), ¶¶ 5-6, 9; Lu  
Decl., ¶¶ 12-13; Tsang Decl., ¶ 12.

1           6.       CNT is a Hong Kong company that manufactures the “TVpad” device – a set-top  
2 box that delivers streaming television programming from Asia to customers in the United States  
3 over the internet without requiring customers to pay subscription fees to an authorized  
4 provider.<sup>9</sup>

5           7.       CNT offers TVpads for sale to consumers throughout the United States –  
6 including within the Central District – through its website, www.itvpad.com, and through U.S.  
7 distributors. CNT’s latest model of the TVpad, the TVpad4, is sold at retail for \$299.00.<sup>10</sup>

8           8.       Club TVpad is a California corporation based in Hayward, California. Club  
9 TVpad operates an interactive website on which it offers TVpads for sale to California  
10 consumers. Corporate records identify Wong as Club TVpad’s officer and agent for service of  
11 process.<sup>11</sup>

12           9.       AMG is a California corporation that operates an interactive website on which it  
13 offers TVpads for sale to California consumers. Corporate records identify Amit Bhalla as  
14 president of AMG.<sup>12</sup>

15           **B.       Uncontested Facts Regarding Defendants’ Infringement**

16               **1.       CNT and the TVpad Infringing Apps**

17           10.      Before a TVpad user can access television programming, he or she must  
18 download applications from the “TVpad Store” – the store is a primary feature of every TVpad  
19 device. Thus, before TVpad users in the United States can access unauthorized CCTV and  
20 TVB programming, they must download free apps from the TVpad Store for their devices.<sup>13</sup>

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23           <sup>9</sup> Comp. Vol. I, Declaration of Christopher Weil (“Weil Decl.”), ¶¶ 9, 16.

24           <sup>10</sup> *Id.*, ¶¶ 10-13, 64-71; see also *id.*, Exh. 4.

25           <sup>11</sup> Comp. Vol. I, Declaration of Shuk Kuen “Lily” Lau (“Lau Decl.”), ¶¶ 4-5, 9. See also  
26 *id.*, Exhs. 57-78, 62.

27           <sup>12</sup> *Id.*, ¶¶ 21-24. See also *id.*, Exh. 74.

28           <sup>13</sup> Weil Decl., ¶ 26; Comp. Vol. I, Declaration of Nicholas Braak (“Braak Decl.”), ¶¶ 8,  
14-16.

11. Plaintiffs' investigators have identified 15 TVpad apps available in the TVpad Store that permit TVpad users in the United States to access unauthorized CCTV and TVB programming ("Infringing TVpad Apps"). The Infringing TVpad Apps are identified in the chart attached hereto as Exhibit A. These Infringing TVpad Apps provide CCTV and TVB programming in four modes: "live" streaming, "time-shifted" streaming, and two forms of video-on-demand streaming.<sup>14</sup>

12. In late 2014, plaintiffs' investigator observed and recorded 30 CCTV television episodes and 23 TVB television episodes streamed through Infringing TVpad Apps on the TVpad device. A TVB USA executive observed and recorded portions of an additional 406 TVB episodes streamed through Infringing TVpad Apps in video-on-demand mode. Each episode recorded by plaintiffs' investigator and the TVB USA executive ("Registered Programs") are registered with the United States Copyright Office. Plaintiffs have not granted anyone a license to stream the Registered Programs over the internet into the United States through the Infringing TVpad Apps.<sup>15</sup>

13. Before accessing the TVpad Store, users must accept CNT's mandatory terms of service. These terms state, *inter alia*, that CNT reserves the right to "filter, modify, refuse or delete any or all software applications in the TVpad Store," and to "suspend, remove, or disable access to any Products, content, or other materials accessible through the TVpad Store."<sup>16</sup>

14. CNT solicits new applications for the TVpad Store, announces the release of new applications, and sells different "editions" of its TVpad4 device with unique application collections. CNT has stated that it "has strictly controlled and managed the way to upload apps on TVpad Store[.]"<sup>17</sup>

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<sup>14</sup> Braak Decl., ¶¶ 16-17, 52; Tsang Decl., ¶ 22.

<sup>15</sup> Braak Decl., ¶¶ 74-76; Tsang Decl., ¶¶ 23, 25-27; *id.*, Exh. 92; Lu Decl., ¶¶ 23-25; *id.*, Exh. 94; Kuelling Decl., ¶ 14.

<sup>16</sup> Braak Decl., ¶¶ 29-30; *id.*, Exh. 47 at ¶¶ 3.8 and 3.10.

<sup>17</sup> Weil Decl., ¶¶ 18, 25, 36; *id.*, Exhs. 7, 9-12, 18; Comp. Vol. I, Declaration of George P. Wukoson ("Wukoson Decl."), ¶ 2; *id.*, Exh. 104 at 4.

1           15. Plaintiffs' investigator performed forensic analysis of the TVpad device and  
2 determined that Infringing TVpad Apps in "live" mode stream CCTV and TVB programming  
3 through a peer-to-peer network, in which each TVpad user streams video content to large  
4 numbers of other users worldwide. Stated differently, each TVpad user not only receives live  
5 CCTV and TVB broadcasts, but also simultaneously retransmits those broadcasts to other  
6 TVpad users throughout the United States and around the world. CNT is aware of the peer-to-  
7 peer streaming feature of the TVpad and has publicly praised the feature.<sup>18</sup>

8           16. According to plaintiffs' investigator, peer-to-peer streaming can only function if  
9 an individual initially captures CCTV and TVB broadcast signals in Asia. After the signal is  
10 captured, the individual converts the signal into digital data and then streams the data to TVpad  
11 users through the peer-to-peer network.<sup>19</sup>

12           17. Plaintiffs' investigator has also determined that Infringing TVpad Apps in  
13 "video-on-demand" mode stream CCTV and TVB programs to TVpad users directly from  
14 servers in the United States, including servers in Los Angeles.<sup>20</sup>

15           18. Data packets received from these servers indicate that recorded video files reside  
16 on the servers. Thus, individuals or entities that pirate CCTV and TVB programs from Asia  
17 make copies of the programs and stream those copies from servers located in the United  
18 States.<sup>21</sup>

19           19. Forensic analysis has demonstrated that Infringing TVpad Apps in time-shift  
20 mode stream CCTV and TVB programming both through the peer-to-peer network and directly  
21 from servers in China.<sup>22</sup>

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23           <sup>18</sup> Braak Decl., ¶¶ 10(a), 53-56; *id.*, Exh. 45; Weil Decl., ¶ 19; *id.*, Exh. 9 at 1.

24           <sup>19</sup> Braak Decl., ¶¶ 17, 56. Plaintiffs refer to individuals responsible for capturing  
25 broadcast signals and converting them into data streamed through peer-to-peer networks as  
"App Infringers."

26           <sup>20</sup> *Id.*, ¶¶ 10(b), (d), 60-62; *id.*, Exh. 45

27           <sup>21</sup> *Id.*, ¶ 62; *id.*, Exh. 45.

28           <sup>22</sup> Braak Decl., ¶¶ 10(c), 63.

1           20. CNT promotes its television service, the Infringing TVpad Apps, and the  
2 availability of CCTV and TVB programming on the TVpad devices. In some cases, it has  
3 falsely represented that the content it delivers has been authorized by CCTV and TVB. CNT  
4 solicits new distributors by stating that it provides “[e]xclusive & authorized live content from  
5 mainland China/HK/Taiwan”; this statements is displayed next CCTV and TVB logos. CNT  
6 has also advertised on its website that the TVpad delivers “massive content from China,  
7 Taiwan, and HK.”<sup>23</sup>

8           21. CNT places banner advertisements for Infringing TVpad Apps that stream CCTV  
9 and TVB programs on the user interface of the TVpad device. It also utilizes categories such as  
10 “Live TV,” “VOD,” and “TV Dramas” in the TVpad Store to make it easy for users to locate  
11 and download Infringing TVpad Apps.<sup>24</sup>

12           22. CNT’s blog actively promotes Infringing TVpad Apps. For example, on January  
13 8, 2014, CNT stated that the Gang Yue Wang Luo Dian Shi app provides live channels in high  
14 definition, and noted that it is “definitely the favorite of those who love to watch TVB.” CNT’s  
15 blog post included a screenshot of a TVB program.<sup>25</sup>

16           23. CNT’s Facebook page regularly promotes the availability of CCTV and TVB  
17 television programs through the Infringing TVpad Apps. One post by the TVpad administrator  
18 on CNT’s Facebook page encourages users to watch a CCTV documentary and places the CNT  
19 logo directly next to programming information for CCTV channels.<sup>26</sup>

20           24. CNT’s Facebook page includes a promotional video that features icons of  
21 Infringing TVpad Apps and a CCTV broadcast.<sup>27</sup>

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24           <sup>23</sup> Weil Decl., ¶¶ 28-50; *id.*, Exhs. 8, 13-29, 33.

25           <sup>24</sup> Braak Decl., ¶¶ 31-36, 38-41, 46-50; *id.*, Exhs. 46, 48.

26           <sup>25</sup> Weil Decl., ¶ 36; *id.*, Exh. 18.

27           <sup>26</sup> *Id.*, ¶¶ 39-42; *id.*, Exh. 20 at 3-6; *id.*, Exh. 21.

28           <sup>27</sup> *Id.*, ¶¶ 42, 50; *id.*, Exh. 21; *id.*, Exh. 29 at 1-53, 61-71.

1 25. CNT also actively collaborates with purported third-party App Infringers to  
2 develop and improve infringing content by providing customer support and technical assistance  
3 to help TVpad users access and share infringing streams of CCTV and TVB programming, and  
4 by conveying messages between TVpad users and App Infringers. For example, a CNT blog  
5 post instructs users how to install the infringing BETV app from the TVpad Store, providing  
6 step-by-step screenshots.<sup>28</sup>

7 26. Administrators on CNT's Facebook page instruct users how to download and use  
8 Infringing TVpad Apps to access CCTV and TVB programming. On June 12, 2014, in  
9 response to the question – “Anyone knows which app or channel on tvpad is showing the  
10 World Cup???” – a CNT administrator advised the user to try BETV and Sport Online, two  
11 Infringing TVpad Apps that stream CCTV channels.<sup>29</sup>

12 27. When a user asked on CNT's Facebook page, “[w]hich tvpad is can see [sic] tvb  
13 day and night and 12 hour back and tvb drama,” an administrator wrote “Could download three  
14 party applications from TVpad store for this case[.]”<sup>30</sup>

15 28. Administrators provide similar assistance to help TVpad users locate CCTV and  
16 TVB programming on CNT's official fan forum at tvpadfans.com.<sup>31</sup>

17 29. Administrators on CNT's Facebook page and fan forum also provide technical  
18 assistance and updates to customers regarding server problems impacting their ability to stream  
19 infringing television content.<sup>32</sup>

20 30. As recently as January 9, 2015, CNT responded to user complaints about  
21 problems downloading the new Gang Yue Wang Luo Dian Shi app – an Infringing TVpad App,  
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24 <sup>28</sup> *Id.*, ¶¶ 37, 54-56; *id.*, Exhs. 19, 30-32

25 <sup>29</sup> *Id.*, ¶¶ 43-45; *id.*, Exhs. 22-24.

26 <sup>30</sup> *Id.*, ¶ 45; *id.*, Exh. 24.

27 <sup>31</sup> *Id.*, ¶ 50; *id.*, Exh. 29 at 81-87.

28 <sup>32</sup> *Id.*, ¶¶ 37, 39; *id.*, Exhs. 34, 36; Braak Decl., ¶ 59; *id.*, Exh. 51.



1 They apologized for any inconvenience, and asked customers to send a private message to CNT  
2 so that CNT and the “app provider” could address the problem.<sup>33</sup>

3 31. CNT’s statements demonstrate that it collaborates with third party app  
4 developers to develop and improve infringing content. By way of example, on August 18,  
5 2013, CNT published a post on its Facebook page soliciting suggestions as to how it could  
6 help CNT “better serve [its] overseas customers and allow overseas TVpad users to enjoy better  
7 Chinese TV services.” In response, one user suggested adding a TVB football channel; the  
8 administrator said he would “communicate with third-party application developers” regarding  
9 the suggestion.<sup>34</sup>

10 32. In response to another user’s suggestion that CNT “improve all streaming sound  
11 bit rates and enable stereo,” the administrator reported that “the application providers are  
12 working on this issue.”<sup>35</sup>

13 33. In addition to responding to user suggestions and questions, CNT also  
14 communicates information regarding the Infringing TVpad Apps to users. In October 2013, for  
15 example, a CNT administrator posted a notification on CNT’s official Facebook page advising  
16 TVpad users that maintenance required on the infringing 516 app might cause service  
17 disruptions.<sup>36</sup>

18 34. Despite its internet-based streaming business model, CNT has not (a) posted a  
19 policy instructing users how to report infringing activity, (b) appointed an agent to receive  
20 notifications of claimed infringement under the Digital Millennium Copyright Act, 17 U.S.C. §  
21 512 (c)(2), or (c) adopted any notice-and-takedown procedures in the TVpad Store.<sup>37</sup>

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24 <sup>33</sup> Weil Decl., ¶ 60; *id.*, Exh. 37.

25 <sup>34</sup> *Id.*

26 <sup>35</sup> *Id.*, ¶¶ 54-55; *id.*, Exhs. 30-31.

27 <sup>36</sup> *Id.*, ¶ 56; *id.*, Exh. 32.

28 <sup>37</sup> Braak Decl., ¶ 51.

1 35. CNT employs a business model that requires TVpad users to pay an up-front,  
2 one-time fee for unlimited access to unauthorized, infringing programming. Consumers who  
3 wish to access the content must pay regular subscription fees to receive programming from an  
4 Authorized U.S. Provider.<sup>38</sup>

## 5 **2. Club TVpad**

6 36. Club TVpad operates an interactive website on which it sells TVpads. On its  
7 website and Facebook page, Club TVpad also markets the Infringing TVpad Apps, the  
8 infringing capabilities of the TVpad, and the availability of CCTV and TVB programming.<sup>39</sup>

9 37. For example, in November 2012, Club TVpad posted the following on its  
10 Facebook page: “Are you a Direct TV subscriber? Then you might be aware that they are  
11 removing TVB from their line up at the end of the month. . . . This is the best time to get a  
12 TVpad to replace Direct TV.”<sup>40</sup>

13 38. Club TVpad also operates an online forum through which it regularly promotes  
14 Infringing TVpad Apps; it also assists customers who wish to download Infringing TVpad  
15 Apps and access unauthorized CCTV and TVB content and programming.<sup>41</sup>

16 39. On October 26, 2014, plaintiffs’ investigator contacted Club TVpad and spoke  
17 with Bennett Wong about purchasing a TVpad device. Wong told the investigator that TVB’s  
18 TVBS and Jade channels were available through the TVpad device and that the one-time  
19 purchase price of the TVpad was the only cost to access television programming.<sup>42</sup>

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23 <sup>38</sup> Weil Decl., ¶¶ 4, 28, 35, 38, 62; *id.*, Exhs. 6, 13, 17, 38; Lau Decl., ¶¶ 26, 30, 34; *id.*,  
24 Exh. 80; Tsang Decl., ¶ 14; Lu Decl., ¶ 15; Kuelling Decl., ¶¶ 7-8, 11.

25 <sup>39</sup> Lau Decl., ¶¶ 10-11; *id.*, Exhs. 63-67.

26 <sup>40</sup> *Id.*, ¶ 10(d); *id.*, Exh. 66.

27 <sup>41</sup> *Id.*, ¶¶ 12-15; *id.*, Exhs. 68-71.

28 <sup>42</sup> *Id.*, ¶ 17.

1           40. Plaintiffs' investigator purchased a TVpad device from Club TVpad's website.  
2 After receiving the TVpad device, the investigator determined that Club TVpad had pre-  
3 installed several Infringing TVpad Apps that stream CCTV and TVB programming.<sup>43</sup>

### 4                           **3. AMG**

5           41. AMG, like Club TVpad, operates an interactive website that offers TVpads for  
6 sale to consumers in California. Promotional blog posts on the website advertise the  
7 availability of free CCTV and TVB programming through the Infringing TVpad Apps. For  
8 example, a December 2014 blog post promoting the new TVpad4 model stated: "Not wanting  
9 to pay for streaming television? TVpad4 still streams live news, sports, and television  
10 programming from stations like SoLive, CCTV, and many, many more."<sup>44</sup>

11           42. Similarly, a June 2014 blog post stated: "There are over 100 different Asian  
12 channels and apps to choose from, but lovers of television shows will certainly want to install  
13 the HITV app [an Infringing TVpad App that streams TVB programs]. Viewers can watch  
14 hundreds of live shows from Hong Kong, including all of their favorite dramas."<sup>45</sup>

15           43. On May 30, 2014, plaintiffs' investigator called AMG and spoke to an individual  
16 identifying himself as Amit. Amit confirmed that CCTV channels were available on the TVpad  
17 device. In response to a question about CCTV channels, AMG sent the investigator a  
18 spreadsheet listing CCTV and TVB channels and the Infringing TVpad Apps that could access  
19 those channels.<sup>46</sup>

20           44. Plaintiffs' investigator purchased two TVpad devices from AMG's website.  
21 Both devices came with USB flash drives that contained several Infringing TVpad Apps.<sup>47</sup>

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24           <sup>43</sup> *Id.*, ¶ 18; Braak Decl., ¶¶ 65-67.

25           <sup>44</sup> Lau Decl., ¶ 28; *id.*, Exhs. 82-87.

26           <sup>45</sup> *Id.*, ¶ 28(d); *id.*, Exh. 86.

27           <sup>46</sup> *Id.*, ¶¶ 30, 32; *id.*, Exh. 89.

28           <sup>47</sup> *Id.*, ¶¶ 31, 35; Braak Decl., ¶¶ 68-73.

1           45. Prior to filing suit, DISH sent cease-and-desist letters to CNT, Club TVpad, and  
2 AMG, demanding that each stop infringing and/or inducing infringement of plaintiffs'  
3 copyrights. The letters identified the Infringing TVpad Apps on the TVpad3 and listed specific  
4 CCTV and TVB channels and programs streamed without authorization on the Infringing  
5 TVpad Apps.<sup>48</sup>

6           46. Despite notice, CNT, Club TVpad, and AMG have continued to market,  
7 advertise, and promote the Infringing TVpad Apps and the availability of unauthorized CCTV  
8 and TVB television programming via the TVpad device.<sup>49</sup>

9           47. Defendants' conduct has materially reduced the number of individuals who  
10 subscribe to authorized platforms for CCTV and TVB programming in the United States. It has  
11 also reduced the number of individuals willing to pay for access to such programming. This  
12 has led to reductions in plaintiffs' revenues that are difficult to quantify.<sup>50</sup>

13           48. Defendants' ongoing infringement impairs the ability of CCTV, CICC and TVB  
14 (USA) to negotiate favorable license agreements with Authorized U.S. Providers and others.<sup>51</sup>

15           49. Defendants' ongoing infringement has also damaged plaintiffs' goodwill.  
16 Plaintiffs' investigators have observed numerous problems with the TVpad viewing experience,  
17 e.g., video failing to stream or terminating prematurely, low video quality, pixilation, and sound  
18 issues.<sup>52</sup>

19           50. Defendants' infringing conduct adversely affects plaintiffs' strategic choices  
20 about where, when, and how to distribute their programs, harming their goodwill with U.S.

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22           <sup>48</sup> Kuelling Decl., ¶¶ 15-25; *id.*, Exhs. 95-103.

23           <sup>49</sup> *Id.*, ¶¶ 22, 25; Declaration of Carla A. McCauley in Support of Plaintiffs' Motion for  
24 Preliminary Injunction ("McCauley Decl."), Docket No. 85 (May 22, 2015), ¶¶ 4-7; *id.*, Exhs.  
25 B-E.

26           <sup>50</sup> Tsang Decl., ¶¶ 29-32; Lu Decl., ¶¶ 27-28; Kuelling Decl., ¶¶ 26-32.

27           <sup>51</sup> Tsang Decl., ¶ 39; Lu Decl., ¶ 29.

28           <sup>52</sup> Tsang Decl., ¶ 40; Lu Decl., ¶ 30; Kuelling Decl., ¶ 33; Braak Decl., ¶ 59; *id.*, Exh.  
51; Weil Decl., ¶¶ 57-60; *id.*, Exhs. 33-37.

audiences and Authorized U.S. Providers. Defendants’ retransmission service not only streams CCTV and TVB programming in the United States without a license, but does so several hours before the programming is available through authorized channels.<sup>53</sup>

51. Defendants’ unlawful activities deprive plaintiffs of their right not to disseminate many of their programs in the United States.<sup>54</sup>

52. Defendants’ unlawful activities also pose a risk of confusion – defendants’ unauthorized streaming of plaintiffs’ programming has confused consumers about video on demand products and created an mistaken perception about what constitutes lawful video on demand programming.<sup>55</sup>

## II. CONCLUSIONS OF LAW

1. The court has authority to “grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.” 17 U.S.C. § 502(a).

2. To determine whether to issue a preliminary injunction, the court must balance four factors: (1) whether plaintiff is likely to succeed on the merits; (2) whether plaintiff will suffer irreparable harm in the absence of preliminary relief; (3) whether the equities favor plaintiff; and (4) whether issuance of a preliminary injunction is in the public interest. *Sierra Forest Legacy v. Rey*, 577 F.3d 1015, 1021 (9th Cir. 2009); see also *Winter v. Natural Defense Counsel, Inc.*, 555 U.S. 7, 20 (2008); *Fox Television Stations, Inc. v. BarryDriller Content Sys., PLC*, 915 F.Supp.2d 1138, 1141 (C.D. Cal. 2012) ( stating that to “obtain preliminary injunctive relief, a plaintiff must establish: “(1) that it is likely to succeed on the merits, (2) that it is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in its favor, and (4) that an injunction is in the public interest” (citation omitted)).

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<sup>53</sup> Tsang Decl., ¶¶ 33-35, 37; Lu Decl., ¶¶ 31-33.

<sup>54</sup> Tsang Decl., ¶ 36; Lu Decl., ¶ 34.

<sup>55</sup> Tsang Decl., ¶ 38; Lu Decl., ¶ 35; Kuelling Decl., ¶ 28.

1           3.       The Ninth Circuit employs a “sliding scale” under which “the elements of the  
2 preliminary injunction test are balanced, so that a stronger showing of one element may offset a  
3 weaker showing of another. For example, a stronger showing of irreparable harm to plaintiff  
4 might offset a lesser showing of likelihood of success on the merits.” *Alliance for the Wild  
5 Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (holding that the sliding scale  
6 approach survives *Winter* so long as there is a showing of likely irreparable harm).

7           **A.       Likelihood of Success on the Merits**

8               **1.       Secondary Liability for Copyright Infringement**

9                   **a.       Direct Liability**

10           4.       For all theories of secondary liability, a plaintiff “must establish that there has  
11 been a direct infringement by third parties.” *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d  
12 1146, 1169 (9th Cir. 2007). This requires a showing of: “(1) ownership of the infringed  
13 material, and (2) violation of at least one exclusive right granted to copyright holders under 17  
14 U.S.C. § 106 by the infringer.” *A&M Records, Inc. v. Napster*, 239 F.3d 1004, 1013 (9th Cir.  
15 2001) (citing 17 U.S.C. § 501(a); *Baxter v. MCA, Inc.*, 812 F.2d 421, 423 (9th Cir. 1987);  
16 *S.O.S., Inc. v. Payday, Inc.*, 886 F.2d 1081, 1085 n. 3 (9th Cir. 1989)).

17           5.       Plaintiffs are likely to succeed in showing its “ownership of the infringed  
18 material,” *A&M Records, Inc.*, 239 F.3d at 1013, because it holds copyright registrations for the  
19 Registered Programs; this gives rise to a presumption of ownership and validity. 17 U.S.C. §  
20 410(c) (noting that a certificate of registration is “*prima facie* evidence of the validity of the  
21 copyright and the facts stated in the certificate”). Defendants, who did not oppose the motion,  
22 have made no attempt to rebut the presumption that flows from a valid copyright registration.  
23 Plaintiffs are also likely to succeed in showing that they own the exclusive rights to transmit the  
24 Registered Programs and other CCTV and TVB programming in the U.S. over the internet in  
25 various formats, and therefore have standing to sue for infringement of those rights. 17 U.S.C.  
26 § 501(b).

27           6.       Next, plaintiffs are likely to succeed in showing that the unauthorized streaming  
28 of their programs over the internet, as evidenced by the observations and recordings of

1 plaintiffs' investigator and a TVB USA executive, infringes an "exclusive right granted to  
2 copyright holders under 17 U.S.C. § 106." *A&M Records, Inc.*, 239 F.3d at 1013.

3 7. The Copyright Act grants plaintiffs the exclusive right to "perform the  
4 copyrighted work publicly." 17 U.S.C. § 106(4). A party publicly performs a copyrighted  
5 work when it "transmit[s] or otherwise communicate[s] a performance or display of the work . .  
6 . to the public, by means of any device or process, whether the members of the public capable  
7 of receiving the performance or display receive it in the same place or in separate places and at  
8 the same time or at different times." 17 U.S.C. § 101.

9 8. In *ABC, Inc. v. Aereo, Inc.*, 134 S. Ct. 2498 (2014), the Supreme Court held that  
10 Aereo publicly performed plaintiffs' television programs by streaming those programs over the  
11 internet to "large numbers of paying subscribers who lack[ed] any prior relationship to the  
12 works." *Id.* at 2510. The Court reasoned that Aereo performed the works "publicly" because it  
13 streamed programs to "a large number of people who [were] unrelated and unknown to each  
14 other," and who did not "receive [the] performances in their capacities as owners or possessors  
15 of the underlying works." *Id.* at 2509-10; see also *Warner Bros. Entertainment v. WTV*  
16 *Systems, Inc.*, 824 F.Supp.2d 1003, 1009-11 (C.D. Cal. 2011) (entering a preliminary injunction  
17 against a service that streamed motion pictures without authorization over the internet to  
18 customers); *DISH Network L.L.C. v. TV Net Solutions, LLC*, 12-cv-1629, 2014 U.S. Dist.  
19 LEXIS 165120, \*13-14 (M.D. Fla. Nov. 25, 2014) (holding that the retransmission of Arabic  
20 television channels over the internet and into the United States infringed DISH's public-  
21 performance rights).

22 9. The App Infringers stream live and time-shifted CCTV and TVB channels  
23 through a peer-to-peer network and/or through servers in the United States to large numbers of  
24 TVpad users who have no right to access the content. Thus, plaintiffs are likely to succeed in  
25 showing that the App Infringers publicly perform plaintiffs' television programming in the  
26 United States without authorization under *Aereo*.

27 10. Because TVpad users operate as peers in a peer-to-peer network through which  
28 each user retransmits live and time-shifted CCTV and TVB programs to large numbers of other

1 TVpad users, plaintiffs are likely to succeed in showing that the TVpad users publicly perform  
2 plaintiffs' television programming in the United States without authorization. "[T]he concep[t]  
3 of public performance . . . cover[s] not only the initial rendition or showing, but also any further  
4 act by which that rendition or showing is transmitted or communicated to the public." *Aereo*,  
5 134 S.Ct. at 2506 (quoting H.R. Rep. No. 94-1976, at 63 (1976)). TVpad user retransmissions  
6 are "to the public" because TVpad users who receive them are "a large number of people who  
7 are unrelated and unknown to each other," and TVpad users are not "owners or possessors of  
8 the underlying works." *Id.* at 2510.

9 11. Plaintiffs are thus likely to prevail in showing direct copyright infringement by  
10 third party users – a necessary predicate to their claims for contributory copyright infringement.

## 11 2. Contributory Copyright Infringement

12 12. To prove contributory copyright infringement, plaintiffs must show that  
13 defendants: (1) had knowledge of the infringing activity; and (2) induced, caused, or materially  
14 contributed to direct infringement by others. *Perfect10, Inc.*, 508 F.3d at 1170 ("In order for  
15 Perfect 10 to show it will likely succeed in its contributory liability claim against Google, it  
16 must establish that Google's activities meet the definition of contributory liability enunciated in  
17 *Grokster*. Within the general rule that '[o]ne infringes contributorily by intentionally inducing  
18 or encouraging direct infringement," the Court has defined two categories of contributory  
19 liability[, including]: 'Liability under our jurisprudence may be predicated on actively  
20 encouraging (or inducing) infringement through specific acts (as the Court's opinion develops).  
21 . . .,' citing *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 930 (2005));  
22 *Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc.*, 591 F.Supp.2d 1098, 1106 (N.D. Cal.  
23 2008) ("Contributory copyright infringement requires (1) knowledge of another's infringement  
24 and (2) either (a) material contribution to the infringement or (b) inducement of the  
25 infringement" (citation omitted)).

26 13. Defendants had actual knowledge of the infringing activity because plaintiffs  
27 sent them cease and desist letters. *A&M Records, Inc.*, 239 F.3d at 1022 n.6 (defendant had  
28 actual notice of the infringement because the RIAA informed it of the infringing files); see also



1 *Louis Vuitton*, 591 F.Supp.2d at 1106 (“Actual knowledge exists where it can be shown by a  
2 defendant’s conduct or statements that it actually knew of specific instances of direct  
3 infringement. . . . “[I]f a computer system operator learns of specific infringing material  
4 available on his system and fails to purge such material from the system, the operator knows of  
5 and contributes to direct infringement,” citing *A&M Records, Inc.*, 239 F.3d at 1021 (in turn  
6 citing *Religious Technology Center v. Netcom On-Line Comm. Serv. Inc.*, 907 F.Supp. 1361,  
7 1374 (N.D. Cal. 1995)).

8 14. The second element can be satisfied by showing either “inducement” and  
9 “material contribution.” *Perfect 10 v. Visa Int’l Serv. Ass’n*, 494 F.3d 788, 795 (9th Cir. 2007).  
10 Inducement is shown when a defendant has undertaken purposeful acts aimed at assisting and  
11 encouraging others to infringe. *Grokster, Ltd.*, 545 U.S. at 936-37. Thus, “one who distributes  
12 a device with the object of promoting its use to infringe copyright, as shown by clear  
13 expression or other affirmative steps taken to foster infringement, is liable for the resulting acts  
14 of infringement by third parties.” *Id.*

15 15. “[A] defendant may be liable for ‘activity undertaken abroad that knowingly  
16 induces infringement within the United States.’” *Columbia Pictures Indus., Inc. v. Fung*, No.  
17 CV 06-5578 SVW (JCx), 2009 WL 6355911, \*8 (C.D. Cal. Dec. 21, 2009), *aff’d*, 710 F.3d  
18 1020 (9th Cir. 2013).

19 16. In the Ninth Circuit, proof of inducement has four elements: (1) distribution of a  
20 device, product, or service; (2) acts of infringement; (3) an object of promoting use of the  
21 device, product, or service to infringe a copyright; and (4) causation. *Columbia Pictures*  
22 *Indus., Inc. v. Fung*, 710 F.3d 1020, 1032 (9th Cir. 2013).

23 17. The first element is satisfied by showing the distribution of either a device or a  
24 service that is “used in accomplishing the infringement.” *Id.* at 1033. Plaintiffs are likely to  
25 succeed in showing this element because CNT, Club TVpad, and AMG distribute the TVpad  
26 device, which enables users to view and transmit infringing streams of plaintiffs’ programming,  
27 and operate the TVpad Store, a service through which users can download the Infringing  
28 TVpad Apps.

18. Plaintiffs are also likely to show the second element, i.e., acts of infringement, based on forensic analysis that establishes both the App Infringers and the TVpad users directly infringe plaintiffs' public-performance rights. *Munhwa Broadcasting Co v. Create New Technology (HK) Inc.*, Case No. CV 14-4213 RGK (RZx), Order, \*4-5 (C.D. Cal. May 12, 2015) (Docket No. 217). See also *Aereo*, 134 S.Ct. at 2509-10; *WTV Systems*, 824 F.Supp.2d at 1009-11.

19. A defendant's intent to foster or promote infringement can be established by a "clear expression" of such intent and "affirmative steps taken to foster infringement." *Grokster, Ltd.*, 545 U.S. at 936-37. "The classic instance of inducement is by advertisement or solicitation that broadcasts a message designed to stimulate others to commit violations." *Id.* at 938.

20. Other evidence of intent to foster or promote infringement can include providing customer support and technical assistance to customers engaged in infringing uses; failing to "develop filtering tools or other mechanisms to diminish the infringing activity using their software[;]" or relying on infringing activity for the success of the defendant's business model. *Id.* at 938-40; see also *Fung*, 710 F.3d at 1027-28, 1036-37 (holding that a website that encouraged users to upload torrent files with copyrighted content, offered links to copyrighted films and urged users to download them, responded to requests for help in locating and playing copyrighted materials, and failed to develop filters substantiated infringement through inducement); *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 454 F.Supp.2d 966, 987-88 (C.D. Cal. 2006) (noting that defendant's interface had a "Top 40" song category that "made it easier for users to share copyrighted content").

21. Plaintiffs are likely to prove the third element by showing that defendant CNT intends to foster, promote and profit from App Infringers' and TVpad users' direct infringement of plaintiffs' copyrighted works, since it advertises the Infringing TVpad Apps, and provides customer support and technical assistance to users attempting to locate, install and use the Infringing TVpad Apps to share Plaintiffs' copyrighted programming. The evidence also demonstrates that CNT collaborates with App Infringers to develop and improve the Apps

1 and their content. It has not developed filtering tools, and the success of its business model  
2 depends on customers paying a one-time fee for unlimited access to infringing programming.

3 22. Plaintiffs are likely to prove that defendants Club TVpad and AMG likewise  
4 intend to foster, promote and profit from direct infringement because they advertise and  
5 promote the Infringing TVpad Apps and the availability of copyrighted programming on those  
6 apps; provide customer support and technical assistance to users; inform customers of the  
7 availability of CCTV and TVB content on the Apps; and have taken affirmative steps to  
8 facilitate user infringement by, *inter alia*, pre-loading Infringing TVapps on the devices.

9 23. Plaintiffs are likely to show the fourth element necessary to prove inducement  
10 because once intent to promote infringement is found, “the only causation requirement is that  
11 the product or service at issue [have been] used to infringe the plaintiff’s copyrights.” *Fung*,  
12 710 F.3d at 1037. In *Fung*, the Ninth Circuit rejected Fung’s argument that “the acts of  
13 infringement must be caused by the manifestations of the distributor’s improper object – that is,  
14 by the inducing messages themselves.” *Fung*, 710 F.3d at 1037; see also *Grokster*, 454  
15 F.Supp.2d at 985-86 (rejecting an argument that plaintiffs had to prove the inducing statements  
16 “caused specific acts of infringement”). Plaintiffs will likely be able to meet this standard  
17 because the TVpad device and TVpad Store are being used to infringe plaintiffs’ copyrighted  
18 works, and defendants are the but-for cause of that infringement, i.e., their distribution and  
19 promotion of the Infringing TVpad Apps is the mechanism that makes that infringement by a  
20 large number of users possible.

21 24. Plaintiffs are also likely to succeed on their alternate theory of contributory  
22 infringement through material contribution against defendant CNT. In the Ninth Circuit,  
23 “material contribution” can be established by proof that “a computer system operator has actual  
24 knowledge that specific infringing material is available using its system and can take simple  
25 measures to prevent further damage to copyrighted works, yet continues to provide access to  
26 infringing works.” *Perfect10, Inc.*, 508 F.3d at 1172.

27 25. A defendant has actual notice of infringement when it receives a cease and desist  
28 letter. *A&M Recordings, Inc.*, 239 F.3d at 1022 n. 6 (defendant had actual notice of

1 infringement because the RIAA informed it of the infringing files). A defendant materially  
2 contributes to infringement when it fails to take steps to protect the copyrighted works. See  
3 *Perfect10, Inc.*, 508 F.3d at 1172 (“assist[ing] a worldwide audience of users to access  
4 infringing materials” constitutes material contribution); *Gershwin Publ’g v. Columbia Artists*  
5 *Mgmt.*, 443 F.2d 1159, 1163 (2d Cir. 1971) (creating an audience for an infringing performance  
6 supports a finding of contributory liability). A defendant also materially contributes to  
7 infringement by providing software that makes it an infringing peer in a peer-to-peer network.  
8 See *A&M Recordings, Inc.*, 239 F.3d at 1022 (peer-to-peer software provides “the site and  
9 facilities” for direct infringers and constitutes contributory infringement). Plaintiffs are likely  
10 to success in establishing that CNT has materially contributed to infringement under all of these  
11 tests.

12 26. For these reasons, the court concludes that plaintiffs are likely to succeed on the  
13 merits of their contributory infringement claims against defendants.

### 14 3. Vicarious Liability for Copyright Infringement

15 27. To show likelihood of success on their vicarious infringement claim against  
16 CNT, plaintiffs must show that CNT “profit[s] from direct infringement while declining to  
17 exercise a right to stop or limit it.” *Grokster, Ltd.*, 545 U.S. at 930 (citing *Shapiro, Bernstein &*  
18 *Co. v. H.L. Green Co.*, 316 F.2d 304, 307 (2d Cir. 1963)). Plaintiffs are likely to succeed on  
19 their vicarious infringement claim, because they will likely be able to establish that CNT (1)  
20 has the right and ability to control the infringing conduct, and (2) derives a direct financial  
21 benefit from it. *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259, 261 (9th Cir. 1996).

22 28. A defendant “exercises control over a direct infringer when he has both a legal  
23 right to stop or limit the directly infringing conduct, as well as the practical ability to do so.”  
24 *Perfect10, Inc.*, 508 F.3d at 1173. “The ability to block infringers’ access to a particular  
25 environment for any reason whatsoever is evidence of the right and ability to supervise.” *A&M*  
26 *Records, Inc.*, 239 F.3d at 1023; see also *Fonovisa*, 76 F.3d at 261-63 (holding that a  
27 contractual right to terminate or exclude swap meet vendors constituted control over pirated  
28 goods). Plaintiffs have adduced evidence that CNT has practical, operational control over the

1 apps in its store, and the servers necessary to stream content. They have also adduced evidence  
2 that it has the right to exclude Infringing Apps from its device and service.

3 29. “Financial benefit exists where the availability of infringing material ‘acts as a  
4 “draw” for customers.’” *A&M Records, Inc.*, 239 F.3d at 1023. In *Fonavisa*, the swap meet  
5 operator reaped “substantial financial benefits from admission fees, concession stand sales and  
6 parking fees, all of which flow[ed] directly from customers who want[ed] to buy the counterfeit  
7 recordings at bargain basement prices.” *Fonavisa*, 76 F.3d at 263. In *A&M Records, Inc.*,  
8 Napster’s revenue was dependent on “increases in [its] user-base” that were stimulated by “the  
9 quality and quantity of available [infringing] music.” *A&M Records, Inc.*, 239 F.3d at 1023.  
10 Plaintiffs are likely to succeed on their vicarious infringement claim because they have shown  
11 that CNT has financially benefited by offering free and unauthorized programming on the  
12 TVpad device.

### 13 **B. Irreparable Harm**

14 30. A plaintiff moving for a preliminary injunction must demonstrate not only that  
15 harm is irreparable, but also imminent. *Caribbean Marine Servs. Co., Inc. v. Baldridge*, 844  
16 F.2d 668, 674 (9th Cir. 1988); see also *A&M Records, Inc.*, 239 F.3d at 1013.

17 31. Following issuance of the Supreme Court’s decision in *eBay Inc. v.*  
18 *MercExchange, L.L.C.*, 574 U.S. 388, 391 (2006), a court may no longer presume irreparable  
19 injury from the bare fact of liability in a copyright case. Nonetheless, the injury caused by the  
20 presence of infringing products in the market – such as lost profits and customers, as well as  
21 damage to goodwill and business reputation – will often constitute irreparable injury. See, e.g.,  
22 *Microsoft Corp. v. Atek 3000 Computer Inc.*, No. 06 CV 6403 (SLT) (SMG), 2008 WL  
23 2884761, \*5 (E.D.N.Y. July 23, 2008) (concluding that plaintiff had shown irreparable injury  
24 where it had “established that defendant committed copyright and trademark infringement, and  
25 . . . there [was] no reason to conclude that defendant ha[d] or [would] cease its infringing acts  
26 because it continued infringing plaintiff’s copyrights and trademarks despite being notified of  
27 its infringement”). See also *Stuhlbarg International Sales Co., Inc. v. John D. Brush and Co,*  
28 *Inc.*, 240 F.3d 832, 841 (9th Cir. 2001) (“Evidence of threatened loss of prospective customers

1 or goodwill certainly supports a finding of the possibility of irreparable harm”). Such harms  
2 are difficult to quantify and compensate over time. See *Herb Reed Enterprises, LLC v. Florida*  
3 *Entertainment Management, Inc.*, 736 F.3d 1239, 1250 (9th Cir. 2013). Plaintiffs have amply  
4 demonstrated that they have suffered and will continue to suffer these types of harm.

5 32. Unauthorized and uncompensated internet streaming that competes directly with  
6 the television programming of a copyright owner and its authorized licensees causes harm that  
7 is “neither easily calculable, nor easily compensable.” *BarryDriller*, 915 F.Supp.2d at 1147  
8 (granting preliminary injunction); see also *WTV Systems*, 824 F.Supp.2d at 1012-13 (granting  
9 preliminary injunction); *Fox Television Stations, Inc. v. Filmon X LLC*, 966 F.Supp.2d 30, 49-  
10 51 (D.D.C. 2013) (granting preliminary injunction); *Twentieth Century Fox Film Corp. v.*  
11 *iCraveTV*, No. Civ.A. 00-121, Civ.A. 00-120, 2000 WL 255989, \*8 (W.D. Pa. Feb. 8, 2000)  
12 (granting preliminary injunction).

13 33. Defendants’ conduct has caused irreparable harm because it has materially  
14 reduced the number of individuals who subscribe to authorized U.S. platforms for CCTV and  
15 TVB programming, causing lost market share. See, e.g., *Robert Bosch LLC v. Pylon Mfg.*  
16 *Corp.*, 659 F.3d 1142, 1153 (Fed. Cir. 2011); *i4i Ltd. P’ship v. Microsoft Corp.*, 598 F.3d 831,  
17 861-62 (Fed. Cir. 2010); *WTV Systems*, 824 F.Supp.2d at 1013 (“[T]he loss of revenue to  
18 Plaintiffs and their licensees, which is already significant, will continue to increase, and  
19 constitutes irreparable injury to Plaintiffs”).

20 34. Defendants’ conduct further harms plaintiffs because it impairs plaintiffs’ ability  
21 to negotiate favorable licenses. “[I]f Defendants can transmit Plaintiffs’ content without paying  
22 a fee, Plaintiffs’ existing or prospective licensees will demand concessions to make up the loss  
23 of viewership to non-paying alternatives.” *BarryDriller*, 915 F.Supp.2d at 1147; *WTV Systems*,  
24 824 F.Supp.2d at 1012-13. Stated differently, “[t]he availability of [p]laintiffs’ content from  
25 sources other than [p]laintiffs also damages [p]laintiffs’ goodwill with their licensees.”  
26 *BarryDriller*, 915 F.Supp.2d at 1147.

27 35. Plaintiffs have also been irreparably harmed by defendants’ conduct because  
28 defendants’ unauthorized retransmission service not only streams CCTV and TVB

1 programming in the U.S. without a license, but does so several hours before that programming  
2 is available in the U.S. through authorized channels. This prevents plaintiffs from exercising  
3 exclusive control over the retransmission of their programming and is likely to damage  
4 plaintiffs' goodwill with their licensees. *See WTV Systems*, 824 F.Supp.2d at 1012-13.

5 36. Defendants have also interfered with plaintiffs' ability to develop a lawful  
6 market for internet distribution. *See BarryDriller*, 915 F.Supp.2d at 1147 (finding irreparable  
7 harm when defendants' streaming service "compete[d] with Plaintiffs' ability to develop their  
8 own internet distribution channels"); *WTV Systems*, 824 F.Supp.2d at 1013 (holding that an  
9 unauthorized streaming service "threaten[ed] to confuse consumers about video on demand  
10 products, and to create incorrect but lasting impressions with consumers about what constitutes  
11 lawful [internet-based] video on demand exploitation of Plaintiff's Copyrighted Works,  
12 including confusion or doubt regarding whether payment is required for access to Copyrighted  
13 Works").

14 37. Finally, defendants' infringing conduct has caused irreparable harm because it  
15 impairs plaintiffs' brand, reputation, and goodwill by associating their programming with poor  
16 quality transmissions and viewing experiences on the TVpad device. *See WTV Systems*, 824  
17 F.Supp.2d at 1014.

18 38. Absent preliminary injunctive relief, plaintiffs will continue to suffer these types  
19 of irreparable harm as a result of defendants' activities.

20 39. Moreover, given the extensive nature of the infringement alleged, and for which  
21 defendants are likely secondarily liable, it is unclear that defendants would be able to satisfy  
22 any damages award entered. This further supports the conclusion that injunctive relief is  
23 appropriate in this case. *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 518 F.Supp.2d  
24 1197, 1217 (C.D. Cal. 2007) (finding irreparable harm where defendant "induce[d] far more  
25 infringement than it could ever possibly redress with damages").

### 26 **C. Public Interest**

27 40. "Enjoining violation of federal statutes is in the public interest." *American*  
28 *Trucking Associations, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1060 (9th Cir. 2009).

1           41. The injunction plaintiffs seek is in the public interest. “[I]t is virtually axiomatic  
2 that the public interest can only be served by upholding copyright protections and  
3 correspondingly, preventing the misappropriation of skills, creative energies, and resources  
4 which are invested in the protected work.” *WTV Systems*, 824 F.Supp.2d at 1015 (citing *Apple*  
5 *Computer, Inc. v. Franklin Computer Corp.*, 714 F.2d 1240, 1255 (3d Cir. 1983));  
6 *BarryDriller*, 915 F.Supp.2d at 1148. Any public interest the public may have “in receiving  
7 copyrighted content for free is outweighed by the need to incentivize the creation of original  
8 works.” *Grokster*, 518 F.Supp.2d at 1222.

9           **D. Balance of Equities**

10           42. Courts must “balance the competing claims of injury and must consider the effect  
11 on each party of the granting or withholding of the requested relief.” *Amoco Prod. Co. v.*  
12 *Village of Gambell, Alaska*, 480 U.S. 531, 542 (1987); *Cybermedia, Inc. v. Symantec Corp.*, 19  
13 F.Supp.2d 1070, 1073 (N.D. Cal. 1998).

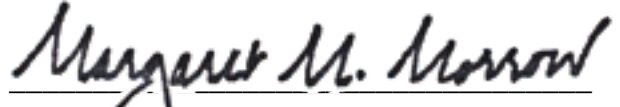
14           43. Here, the balance of equities weighs in plaintiffs’ favor and supports entry of a  
15 preliminary injunction. The only harm defendants will suffer if an injunction is entered is that  
16 they will be unable to continue to profit from infringing plaintiffs’ copyrights. Defendants  
17 “‘cannot complain of the harm that will befall [them] when being forced to desist from [their]  
18 infringing activities.’” *BarryDriller*, 915 F.Supp.2d at 1147 (quoting *Triad Sys. Corp. v.*  
19 *Southeastern Express Co.*, 64 F.3d 1330, 1338 (9th Cir. 1995)). See also *WTV Systems*, 824  
20 F.Supp.2d at 1014-15.

21           44. It is appropriate to dispense with the filing of a bond in this case. It is well  
22 established in the Ninth Circuit that “Rule 65(c) [ ]vests the district court ‘with discretion as to  
23 the amount of security required, if any.’” *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir.  
24 2003) (quoting *Barahone-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999)). In particular,  
25 “[t]he district court may dispense with the filing of a bond when it concludes there is no  
26 realistic likelihood of harm to the defendant from enjoining his or her conduct.” *Jorsenson*,  
27 320 F.3d at 919. Here, the court finds no realistic likelihood that a preliminary injunction will  
28 harm defendants and thus will not require plaintiffs to post an injunction bond.



1  
2 Based on these findings of fact and conclusions of law, the court grants Plaintiffs'  
3 motion for preliminary injunction.  
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5 DATE: June 11, 2015  
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MARGARET M. MORROW  
UNITED STATES DISTRICT JUDGE





## EXHIBIT A

## Exhibit [REDACTED] – Infringing TVpad Apps

	TVpad3	TVpad4
Infringing TVpad App and icon	Plaintiffs' Programming and Mode	Plaintiffs' Programming and Mode
<p>BETV PLUS</p> 		<p>CCTV 1 (live &amp; replay live), CCTV 2 (live), CCTV 3 (live &amp; replay live), CCTV 4 (live &amp; replay live), CCTV6 (live &amp; replay live), CCTV 10 (live), CCTV 11 (live), CCTV12 (live), CCTV13 (live &amp; replay live), CCTV14 (live &amp; replay live)</p>
<p>BETV_HD</p> 	<p>CCTV 1 HD (live), CCTV 5 HD (live)</p>	
<p>BETV II</p> 	<p>CCTV 1 (live &amp; replay live), CCTV 2 (live), CCTV 3 (live &amp; replay live), CCTV 4 (live &amp; replay live), CCTV 5 (live &amp; replay live), CCTV 5+ (live), CCTV6 (live &amp; replay live), CCTV 10 (live), CCTV 11 (live), CCTV12 (live), CCTV13 (live &amp; replay live), CCTV14 (live &amp; replay live), CCTV风云足球 (CCTV fengyun soccer) (live)</p>	

	TVpad3	TVpad4
Infringing TVpad App and icon	Plaintiffs' Programming and Mode	Plaintiffs' Programming and Mode
BETV 	CCTV 1, CCTV 2, CCTV 3, CCTV 4, CCTV 5+, CCTV6, CCTV 10, CCTV 11, CCTV12, CCTV13, CCTV14, CCTV风云足球 (CCTV fengyun soccer) (all live)	
粵海時移 (Yue Hai Shi Yi) 	JADE HD, JADE (both time-shifted by 12 hours)	JADE HD, JADE (both time-shifted by 12 hours)
粵海寬頻 (Yue Hai Kuan Pin) 	JADE HD, JADE HD, J2, JADE, PEARL, iNews (all live)	
粵海寬頻2 (Yue Hai Kuan Pin 2) 	JADE HD, JADE, J2 (Live and replay live) PEARL, iNews (live)	

	TVpad3	TVpad4
Infringing TVpad App and icon	Plaintiffs' Programming and Mode	Plaintiffs' Programming and Mode
<p>港粵網絡電視 (Gang Yue Wang Luo Dian Shi)</p> 	<p>JADE HD, JADE, J2 (live and replay live); PEARL, iNews (live)</p> <p>TVB programs on demand</p>	<p>JADE HD, JADE, J2, PEARL (live and replay live); iNews (live)</p> <p>TVB programs on demand</p>
<p>粵海直播 (Yue Hai Zhi Bo)</p> 	<p>iNews, J2, PEARL, JADE, JADE HD (live)</p>	
<p>516TV</p> 	<p>TVBS (live)</p>	
<p>516網路電視 (516 Online TV)</p> 	<p>CCTV4 (live)</p> <p>TVBS (live)</p>	<p>CCTV4 (live)</p> <p>TVBS (live)</p> <p>TVBS News (live)</p>

	TVpad3	TVpad4
Infringing TVpad App and icon	Plaintiffs' Programming and Mode	Plaintiffs' Programming and Mode
<p>HITV</p> 	JADE HD, J2, JADE, PEARL, iNews (live)	
<p>体育online (Sport Online)</p> 	CCTV 1, CCTV 5, CCTV 5+, CCTV风云足球 (CCTV fengyun soccer) (all live)	CCTV 5, CCTV 5+, CCTV风云足球 (CCTV fengyun soccer), CCTV 高尔夫. 网球 (CCTV Golf/ Tennis) (all live)
<p>港粤快看 (Gang Yue Kuai Kan)</p> 	TVB programs on demand	
<p>港台武侠(Gang Tai Wu Xia)</p> 	TVB programs on demand	TVB programs on demand