

APPENDIX

APPENDIX A

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ORACLE USA, INC., a
Colorado corporation; et al.,

Plaintiffs-
Appellees,

v.

RIMINI STREET, INC., a Nevada
corporation,

Defendant-
Appellant.

No. 18-16554

D.C. No.CV 10-
00106LRH

MEMORANDUM*

FILED

AUG 16 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

Appeal from the United States District Court
for the District of Nevada
Larry R. Hicks, District Judge, Presiding
Argued and Submitted July 12, 2019
Portland, Oregon

* This disposition is not appropriate for publication and is not
precedent except as provided by Ninth Circuit Rule 36-3.

Before: TASHIMA, GRABER, and OWENS, Circuit Judges.

Defendant-Appellant Rimini Street, Inc. (“Rimini”) appeals the district court’s order entering a permanent injunction in favor of, and awarding attorney’s fees to, Plaintiffs-Appellees Oracle USA, Inc., Oracle America, Inc., and Oracle International Corp. (collectively “Oracle”). Rimini contends that the district court erred in entering the injunction, that the injunction is moot, and that the injunction is overbroad and impermissibly vague. Rimini also contends that the district court’s fee award violated this court’s prior mandate and that the district court abused its discretion in apportioning the award. We have jurisdiction under 28 U.S.C. § 1291, and we affirm except as to paragraphs nine and thirteen of the injunction, which we instruct the district court to strike, and also except as to the words “or access” in paragraphs eight and twelve of the injunction, which we also instruct the district court to strike.

1. The injunction is not moot. Voluntary cessation of the challenged conduct does not render a case moot unless “it can be said with assurance that there is no reasonable expectation . . . that the alleged violation will recur and interim relief or events have completely and irrevocably eradicated the effects of the alleged violation.” *Fikre v. FBI*, 904 F.3d 1033, 1037 (9th Cir. 2018) (quoting *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979)) (internal quotation marks omitted) (alteration in original). Rimini contends that the injunction is moot only because Rimini has ceased the challenged conduct, namely, unsanctioned copying of Oracle’s software. This assertion is insufficient to meet Rimini’s “heavy burden of persua[ding] the court

that the challenged conduct cannot reasonably be expected to start up again.” *Id.* (quoting *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 222 (2000)) (internal quotation marks omitted) (alteration in original).

2. The district court did not abuse its discretion in granting the injunction. See *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). The district court appropriately weighed the *eBay* factors, including permissibly finding that Rimini’s infringing conduct had a “causal connection” to the irreparable harm suffered by Oracle. *Perfect 10, Inc. v. Google, Inc.*, 653 F.3d 976, 982 (9th Cir. 2011). The court pointed to the fact that Oracle and Rimini were direct competitors, explained that Rimini was able to gain increasing market share by offering lower prices for its service than Oracle offered, and that these lower prices were possible because Rimini’s infringing conduct saved the company time and money. This conclusion was supported by the record, including Rimini’s own internal e-mails. Accordingly, the district court did not abuse its discretion in granting the injunction.

Additionally, we note that, as part of its weighing of the *eBay* factors, the district court stated that Rimini had “conscious disregard” for Oracle’s software copyrights. Rimini argues that this contradicted the jury’s finding that Rimini was an “innocent” infringer. Assuming, without deciding, that the district court violated the Seventh Amendment’s Reexamination Clause, see *Teutscher v. Woodson*, 835 F.3d 936, 944 (9th Cir. 2016) (explaining that trial judges must “follow the jury’s implicit or explicit factual determinations in deciding the equitable claims” in order to

avoid contravening the Reexamination Clause) (quoting *L.A. Police Protective League v. Gates*, 995 F.2d 1469, 1473 (9th Cir. 1993))), any error was harmless. Rimini’s mental state was not necessary to the district court’s determination of irreparable injury, nor to the broader weighing of the *eBay* factors. The district court’s decision would stand precisely the same without this statement. Nor did Oracle waive the issue of harmlessness, as Rimini addressed the issue in its opening brief.

3. Rimini also contends that the injunction is overbroad. We agree in two respects. First, restricting “local hosting” for the J.D. Edwards and Siebel licences was error. The injunction enjoins “local hosting” as to PeopleSoft, J.D. Edwards, and Siebel. But only the PeopleSoft license limits the licensee to using the licensed Software “*at its facilities . . .*” (emphasis added), which is the basis for the local-hosting requirement. The J.D. Edwards and Siebel licenses do not contain such a limitation. *See Oracle USA, Inc. v. Rimini Street, Inc.*, 879 F.3d 948, 959 (9th Cir. 2018) (“The PeopleSoft license is similar to its J.D. Edwards and Siebel counterparts, but it contains an additional limitation about “[the licensee’s] facilities.” (alteration in original)), *rev’d in other part*, 139 S. Ct. 873 (2019). Accordingly, it was error for the district court to enjoin “local hosting” for the J.D. Edwards and Siebel licences, and we instruct the district court to strike paragraphs nine and thirteen of the injunction.

Second, the injunction’s prohibition on “access[ing]” source code is overbroad. “Accessing” a copyrighted work is not an infringing activity under the Copyright Act. *See* 17 U.S.C. § 106 (2002). Even if the prohibition on access is meant to prevent copying, it is unnecessary, as copying is separately prohibited by

the injunction. See *Columbia Pictures Indus., Inc. v. Fung*, 710 F.3d 1020, 1049 (9th Cir. 2013) (“[I]njunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs before the court.” (internal citations omitted)). Consequently, we instruct the district court to strike the words “or access” from paragraphs eight and twelve of the injunction.

In all other respects, the injunction is not overbroad.

4. The injunction is not impermissibly vague. The injunction clearly sets out what conduct is restricted, namely that Rimini shall not reproduce, prepare derivative works from, or distribute software except “to support the specific licensee’s own internal data processing operations.” It is therefore not impermissibly vague.

5. We also affirm the attorneys’ fees award. First, the prior panel’s mandate in *Oracle*, 879 F.3d 948, did not require apportionment: the panel reversed and remanded the fee award for “reconsideration in light of Oracle’s more limited success at litigation,” *id.* at 965, and the district court clearly reconsidered the amount of the award and re-applied the attorneys’ fees factors. Therefore, the district court did as instructed by this court.

Second, the district court did not abuse its discretion by not apportioning the fee award. As the prevailing party, Oracle could recover only attorneys’ fees incurred in litigating its copyright claims or “related claims.” *The Traditional Cat Ass’n, Inc. v. Gilbreath*, 340 F.3d 829, 833 (9th Cir. 2003). The district court permissibly concluded that the claims “involve[d] a

common core of facts’ [and were] based on ‘related legal theories,’” *McCown v. City of Fontana*, 565 F.3d 1097, 1103 (9th Cir. 2009) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 453 (1983)), because the “action was first and foremost a copyright infringement action.” Accordingly, it was within the district court’s discretion to determine that apportionment was not required beyond the twenty percent reduction. See *Creative Computing v. Getloaded.com LLC*, 386 F.3d 930, 937 (9th Cir. 2004) (explaining that, even though the plaintiff lost on its Lanham Act claims, “[a]llocation is not required where there is a ‘common core of facts’ that requires substantially the same expense on prevailing and unsuccessful claims”). Accordingly, the district court did not abuse its discretion in calculating the award.

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The judgment of the district court is affirmed, including its injunction and award of attorneys’ fees, except that paragraphs nine and thirteen of the injunction, and the words “or access” in paragraphs eight and twelve, are vacated and ordered stricken. The parties shall bear their own costs on appeal.

AFFIRMED in part, VACATED in part, and REMANDED.

APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

<p>ORACLE USA, INC. et al.,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>RIMINI STREET, INC., et al.</p> <p style="text-align: right;">Defendants.</p>	<p>JUDGMENT IN A CIVIL CASE</p> <p>Case Number: 2:10-cv-0106- LRH-VCF</p>
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- **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.
- X **Decision by Court.** This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that plaintiff's renewed motion for a permanent injunction (ECF No. 1117) and renewed motion for attorneys' fees (ECF No. 1118) are GRANTED.

IT IS FURTHER ORDERED AND ADJUDGED that an award of attorneys' fees in favor of plaintiffs Oracle USA, Inc.; Oracle America, Inc.; and

8a

Oracle International Corporation and against defendants Rimini Street, Inc. in the amount of \$28,502,246.40 is hereby entered.

Date: August 14, 2018

DEBRA K. KEMPI

Clerk



/s/ K. Walker
Deputy Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ORACLE USA, INC., a
Colorado corporation;
ORACLE AMERICA, INC., a
Delaware corporation; and
ORACLE INTERNATIONAL
CORPORATION, a California
corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a
Nevada corporation; SETH
RAVIN, an individual,

Defendants.

Case No. 2:10-cv-
0106-LRH-(VCF)

PERMANENT
INJUNCTION
AGAINST
DEFENDANT
RIMINI STREET,
INC.

[Entered: August 15,
2018]

This is a permanent injunction order pursuant to
17 U.S.C. § 502(a).

Good cause being shown, the court permanently
enjoins and restrains defendant Rimini Street, Inc.
and its subsidiaries, affiliates, employees, directors,
officers, principals, and agents (collectively “Rimini
Street”) as follows:

1. Rimini Street, Inc. shall provide notice of this
Section 502 order to all subsidiaries, affiliates,
employees, directors, officers, principals, and

agents that may have any involvement whatsoever in reproducing, preparing derivative works from, or distributing PeopleSoft, J.D. Edwards, Siebel, or Oracle Database software or documentation.

2. Rimini Street shall not reproduce, prepare derivative works from, or distribute PeopleSoft, J.D. Edwards, or Siebel software or documentation in any way unless both of the following conditions are met:
 - a. Rimini Street shall not reproduce, prepare derivative works from, or distribute PeopleSoft, J.D. Edwards, or Siebel software or documentation unless solely in connection with work for a specific customer that holds a valid, written license agreement for the particular PeopleSoft, J.D. Edwards, or Siebel software and documentation authorizing Rimini Street's specific conduct; and
 - b. Rimini Street shall not reproduce, prepare derivative works from, or distribute PeopleSoft, J.D. Edwards, or Siebel software or documentation unless such conduct is consistent with the remaining terms of this order.

PeopleSoft

3. Rimini Street shall not distribute PeopleSoft software or documentation or any derivative works created from or with PeopleSoft software or documentation;
4. Rimini Street shall not reproduce, prepare derivative works from, or use a specific licensee's PeopleSoft software or documentation other

than to support the specific licensee's own internal data processing operations;

5. Rimini Street shall not reproduce, prepare derivative works from, or use PeopleSoft software or documentation on, with, or to any computer systems other than a specific licensee's own computer systems;
6. Rimini Street shall not reproduce, prepare derivative works from, or use PeopleSoft software or documentation on one licensee's computer systems to support, troubleshoot, or perform development or testing for any other licensee, including, specifically, that Rimini Street shall not use a specific licensee's PeopleSoft environment to develop or test software updates or modifications for the benefit of any other licensee;

J.D. Edwards

7. Rimini Street shall not distribute J.D. Edwards software or documentation or any derivative works created from or within J.D. Edwards software or documentation;
8. Rimini Street shall not copy or access J.D. Edwards software source code to carry out development and testing of software updates;
9. Rimini Street shall not reproduce, prepare derivative works from, or use J.D. Edwards software or documentation on, with, or to any computer systems other than a specific licensee's own computer systems, except to create an unmodified copy of a specific licensee's software application and documentation for use by that

specific licensee in the event that the production copy of the licensee's software is corrupted or lost;

10. Rimini Street shall not reproduce, prepare derivative works from, or use J.D. Edwards software or documentation on one licensee's computer systems to support, troubleshoot, or perform development or testing for any other licensee, including, specifically, that Rimini Street shall not use a specific licensee's J.D. Edwards environment to develop or test software updates or modifications for the benefit of any other licensee;

Siebel

11. Rimini Street shall not distribute or prepare derivative works from Siebel software or documentation;
12. Rimini Street shall not copy or access Siebel software source code to carry out development and testing of software updates;
13. Rimini Street shall not reproduce, prepare derivative works from, or use Siebel software or documentation on, with, or to any computer systems other than a specific licensee's own computer systems, except solely to: create an unmodified copy of a specific licensee's software application and documentation for use by that specific licensee in the event that the production copy of the licensee's software is corrupted or lost; for emergency back-up purposes; or, for disaster recovery purposes and related testing;
14. Rimini Street shall not reproduce, prepare derivative works from, or use Siebel software or

documentation on one licensee's computer systems to support, troubleshoot, or perform development or testing for any other licensee, including, specifically, that Rimini Street shall not use a specific licensee's Siebel environment to develop or test software updates or modifications for the benefit of any other licensee;

Oracle Database

15. Rimini Street shall not reproduce, prepare derivative works from, or distribute Oracle Database software.

IT IS SO ORDERED.

DATED this 15th day of August, 2018.

/s/ Larry R. Hicks
LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ORACLE USA, INC., a
Colorado corporation;
ORACLE AMERICA, INC., a
Delaware corporation; and
ORACLE INTERNATIONAL
CORPORATION, a California
corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a
Nevada corporation; SETH
RAVIN, an individual,

Defendants.

Case No. 2:10-cv-
0106-LRH-(VCF)

ORDER

[Entered: August
14, 2018]

Before the court are plaintiffs Oracle USA, Inc.; Oracle America, Inc.; and Oracle International Corporation's (collectively "Oracle") renewed motion for a permanent injunction (ECF No. 1117) and renewed motion for attorneys' fees (ECF No. 1118). Defendants Rimini Street, Inc. ("Rimini Street") and Seth Ravin ("Ravin") filed oppositions to the renewed motions (ECF Nos. 1130, 1145) to which Oracle replied (ECF Nos. 1139, 1152). A hearing on Oracle's renewed motions was held by the court on Monday, July 23, 2018.

I. Facts and Procedural History

This action has an extensive eight-year history. In brief, and relevant to the renewed motions, Oracle develops, manufactures, and licenses computer software. Oracle also provides after-license software support services to customers who license its copyrighted software. Defendant Rimini Street is a company that provides similar after-license software support services to customers licensing Oracle's copyrighted software and competes directly with Oracle to provide these services. Defendant Ravin is the owner and CEO of Rimini Street.

On January 25, 2010, Oracle filed a complaint for copyright infringement against defendants alleging that beginning in 2006, Rimini Street copied several of Oracle's copyright-protected software programs – including Oracle's copyrighted PeopleSoft, J.D. Edwards, and Siebel-branded Enterprise Software products – onto its own computer systems in order to provide after-license software support services to customers who licensed the copyrighted software programs. ECF No. 1. In June 2011, Oracle filed a second amended complaint alleging thirteen causes of action against defendants: (1) copyright infringement; (2) violation of the Federal Computer Fraud and Abuse Act ("CFAA"), 18 U.S.C. § 1030(a); (3) violation of the California Computer Data Access and Fraud Act ("CDAFA"), Cal. Penal Code § 502; (4) violation of the Nevada Computer Crimes Law ("NCCL"), NRS § 205.4765; (5) breach of contract; (6) inducement of breach of contract; (7) intentional interference with prospective economic advantage; (8) negligent interference with prospective economic advantage; (9) unfair competition; (10) trespass to chattels; (11) unjust

enrichment; (12) unfair practices; and (13) an accounting. ECF No. 146.

A jury trial was held on Oracle's claims for copyright infringement and violation of the California and Nevada computer access statutes from September 14 through October 13, 2015. On October 13, 2015, the jury returned its verdict and found that defendant Rimini Street engaged in copyright infringement on ninety-three of Oracle's copyrighted PeopleSoft, J.D. Edwards, and Siebel-branded Enterprise Software products. ECF No. 896. The jury also found that both defendants Rimini Street and Ravin violated the California and Nevada computer access statutes. *Id.* Ultimately, the jury awarded Oracle \$35,600,000.00 for Rimini Street's copyright infringement and \$14,427,000.00 for defendants' violation of the state computer access statutes. *Id.* After the jury verdict, Oracle filed a series of post-trial motions including a motion for a permanent injunction (ECF No. 900), a motion for prejudgment interest (ECF No. 910), and a motion for attorneys' fees (ECF No. 917) which were all granted by the court on September 21, 2016, after extensive briefing by the parties and a May 25, 2016 court hearing (ECF No. 1049). Defendants then appealed the jury verdict, along with the court's findings and orders, to the Ninth Circuit Court of Appeals. *See* ECF No. 1078.

On January 8, 2018, the Ninth Circuit issued its decision and opinion on defendants' appeal. *Oracle USA, Inc. v. Rimini Street, Inc.*, 879 F.3d 948 (9th Cir. 2018). In its decision, the Ninth Circuit affirmed in-part, reversed in-part, vacated in-part, and remanded in-part the jury's verdict and the court's various orders in this action. In particular, the Ninth Circuit af-

firmed in full all of the court's and jury's findings related to Oracle's claim of copyright infringement against Rimini Street for all ninety-three copyright registrations at issue in this action. *Id.* at 953 (“[W]e affirm the judgment with respect to the copyright infringement claims. We also affirm the remedies with respect to those claims[.]”). The Ninth Circuit also affirmed the jury's \$35.6 million judgment against Rimini Street for its infringement and the court's award of approximately \$22.5 million in prejudgment interest against Rimini Street. *Id.* at 953, 963-964. However, the Ninth Circuit reversed the jury's verdict against defendants Rimini Street and Ravin on Oracle's state law computer access claims (along with the related California UCL claim) and the jury's \$14.4 million associated judgment on those claims. *Id.* at 953, 963. In light of its reversal on the state law claims, the Ninth Circuit vacated both the court's issuance of a permanent injunction and the court's award of attorneys' fees and remanded both of these issues for the limited purpose of determining whether the court would again issue a permanent injunction and/or an award of attorneys' fees based solely on Rimini Street's copyright infringement and without reference to the now reversed state law computer claims. *Id.* at 964-65.

In response to the Ninth Circuit's opinion, Oracle filed the present renewed motion for a permanent injunction to enjoin and restrain Rimini Street from any further infringement of Oracle's software copyrights (ECF No. 1117)¹ and renewed motion for attorneys'

¹ Along with its motion, Oracle has filed a proposed permanent injunction. See ECF No. 1117, Ex. A.

fees in the amount of \$28,502,246.20 (ECF No. 1118). Both motions are addressed below.

II. Renewed Motion for Permanent Injunction (ECF No. 1117)

A. Effect of the Ninth Circuit Opinion

The parties dispute the breadth and effect of the Ninth Circuit’s opinion and remand upon the court’s analysis on the renewed motion for a permanent injunction. *See* ECF Nos. 1117, 1130. In its renewed motion, Oracle argues that the Ninth Circuit’s remand on the issue of whether to grant a permanent injunction is limited and in no way undercut the basis for, or the court’s prior analysis on, issuing a permanent injunction against Rimini Street to enjoin and restrain future copyright infringement. *See* ECF No. 1117. Rather, Oracle argues that the Ninth Circuit remand only requires the court to reevaluate the relevant injunction factors solely under the Copyright Act and without reference to the now reversed state law computer claims. *Id.* In opposition, Rimini Street argues that the Ninth Circuit’s remand constitutes a true reversal and effective disapproval of the permanent injunction that was previously entered by the court and thus, the opinion precludes the court from entering any injunction in this case. *See* ECF No. 1130.

The court has reviewed the parties’ documents, along with the Ninth Circuit’s opinion, and agrees with Oracle’s reading of the opinion and the limited nature of the remand. In its order, the Ninth Circuit recognized that the court entered a permanent injunction against Rimini Street “based on copyright infringement and . . . based on alleged violations of the [state computer access statutes].” *Id.* The Ninth Circuit further recognized that in the court’s order, “the

district court assessed the [relevant] factors by reference to both the copyright and the [state computer access] claims, without considering separately the propriety of issuing an injunction as to the copyright claims alone.” *Id.* The Ninth Circuit then concluded that “[b]ased on the record before us, we do not know how the district court would weigh the [relevant] factors with respect to the copyright claims alone. We express no view on the propriety or scope of any injunctive relief, which are matters committed to the district court’s discretion in the first instance.” *Id.* The court reads this express direction from the Ninth Circuit to mean that the court must examine the relevant permanent injunction factors based solely on Rimini Street’s copyright infringement without including any findings related to the reversed state law computer access claims. The court does not read any further limitation into its direction from the Ninth Circuit’s opinion, nor does the court find that the remand precludes the issuance of an injunction in this action. With this understanding of the Ninth Circuit’s remand, the court shall evaluate and analyze Oracle’s renewed motion for a permanent injunction.

B. Legal Standard for a Permanent Injunction

The Copyright Act provides that a district court may enter a permanent injunction “on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.” 17 U.S.C. § 502(a). “[T]he decision whether to grant or deny injunctive relief rests within the equitable discretion” of the district court. *eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388, 394 (2006). Such discretion should be “exercised consistent with traditional principles of equity.” *Id.* In determining whether to issue a permanent injunction in

a copyright infringement action, a district court evaluates four factors: (1) irreparable harm; (2) the inadequacy of monetary damages for the infringement; (3) whether the balance of hardships weighs in the copyright holder's favor; and (4) whether the public interest would be served by a permanent injunction. *Id.* at 391; *see also Flexible Lifeline Sys., Inc. v. Precision Lift, Inc.*, 654 F.3d 989, 999 (9th Cir. 2011) (applying the four-factor test outlined in *eBay*). Further, a permanent injunction should issue when the intervention of the court in equity is essential to protect a party's rights against injuries that could not otherwise be remedied. *See Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982). The court shall address each *eBay* factor below.

1. Irreparable Injury

The first factor in a permanent injunction analysis is whether a plaintiff has suffered an irreparable injury as a result of a defendant's conduct, or will suffer an irreparable injury absent an injunction. *See American Trucking Ass'ns v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009). As part of a court's irreparable injury analysis in a copyright action, courts regularly examine three main considerations: (1) direct competition between the parties; (2) loss of market share due to the infringement; and (3) loss of customer and business goodwill. *See, e.g., Presidio Components Inc. v. Am. Tech. Ceramics Corp.*, 702 F.3d 1351, 1362 (Fed. Cir. 2012) (stating that direct competition in the same market strongly supports the potential for irreparable harm absent an injunction); *i4i Ltd. P'ship v. Microsoft Corp.*, 598 F.3d 831, 861 (Fed. Cir. 2010) (finding that harm to a party's market share, revenues, and brand recognition is relevant for

determining whether the party has suffered an irreparable injury); *Celsis In Vitro, Inc. v. CellzDirect, Inc.*, 664 F.3d 922, 930 (Fed. Cir. 2012) (holding that loss of goodwill, damage to reputation, and loss of business opportunities are all valid grounds for finding irreparable harm).

Here, the court once again finds that Rimini Street's infringement of ninety-three separate copyright registrations over four of Oracle software product lines (Oracle Database, PeopleSoft, J.D. Edwards, and Siebel-branded Enterprise Software) irreparably injured Oracle's business reputation and goodwill. First, it is undisputed (and has been repeatedly acknowledged by the parties) that Oracle and Rimini Street directly compete with each other to provide after-license software support services to customers that license Oracle's copyrighted software. Direct competition between a copyright holder and a proven copyright infringer has consistently supported the issuance of a permanent injunction. *See Presidio Components, Inc.*, 702 F.3d at 1362.

Second, the evidence in this action established that Rimini Street's conscious disregard for Oracle's software copyrights enabled Rimini Street to rapidly build its business from a new and unknown company in the after-license software support market to a major competitor of Oracle. By offering cut-rate prices on its own services, generally at a discount of 50% of Oracle's prices for similar service contracts, Rimini Street gained increasing market share and growth, including through the length of this litigation. The evidence further establishes that Rimini Street's business model from 2006, and up until at least the court's summary judgment orders in February 2014, was

built entirely on its infringement of Oracle's copyrighted software. Rimini Street would not have achieved its current market share and exceptional revenue growth without its infringing conduct. In fact, the evidence in this action establishes that Rimini Street landed clients for its services by telling customers that Oracle's services were overpriced and could be offered at the same cut-rate, 50% discount that Rimini Street offered. Rimini Street was able to offer its after-license software support services at such low prices because its copyright infringement allowed it to offer support services without licensing the ninety-three different copyrighted software products from Oracle or having to expend significant resources in time and money in developing its own competing software. Further, by purporting to offer vendor-level support at half the price of Oracle support, Rimini Street created the impression that Oracle was overcharging for support and eroded the bonds and trust that Oracle has with its customers. Such injuries to a business' reputation and goodwill have consistently been held to constitute irreparable harm. *See Apple Inc. v. Psystar Corp. (Apple II)*, 658 F.3d 1150, 1154 (9th Cir. 2011).

Finally, Rimini Street's claim that it no longer engages in the conduct adjudged by the court and jury to infringe Oracle's software copyrights is not a basis to deny issuance of an injunction. *See Metro-Goldwyn-Mayer Studios v. Grokster, Ltd.*, 518 F. Supp. 2d 1197, 1222 (C.D. Cal. 2007) (stating that "[a] private party's discontinuation of unlawful conduct does not make the dispute moot, however. An injunction remains appropriate to ensure that the misconduct does not recur as soon as the case ends."). Therefore, based solely on Rimini Street's copyright infringement, the court

finds that this factor again weighs in favor of a permanent injunction.

2. Inadequacy of Monetary Damages

In order to establish that an injunction is warranted, a plaintiff must show that monetary damages alone are inadequate to fully compensate it for the defendant's conduct. *See eBay*, 547 U.S. at 391. Here, the court finds that monetary damages alone are inadequate to compensate Oracle for the losses suffered as a result of Rimini Street's copyright infringement. First, the court notes that certain harms suffered by Oracle as a result of Rimini Street's conduct like lost market share and erosion of company goodwill are intangible injuries difficult to quantify and compensate which supports the issuance of a permanent injunction. *See Apple II*, 658 F.3d at 1154 (stating that injuries to a business' reputation and company goodwill are intangible injuries difficult to quantify and compensate).

Second, the copyright infringement damages in this action were uniquely complex and difficult to determine. Unlike a patent case where a specific number of infringing products are sold at a specific price, in this copyright infringement action there was no mathematically efficient way for the jury to measure Oracle's damages. At trial, the jury was provided with two separate damage theories, both of which required the jury to evaluate a substantial amount of evidence and expert testimony before the jury reached the \$35.6 million in copyright infringement damages awarded in this action. In particular, Oracle's lost profits theory required the jury to determine the lost profits, if any, of a multi-billion-dollar company that has a continuously growing business. In contrast, Oracle's hypothetical license damages theory required the jury to

determine the amount Oracle would have charged and received from Rimini Street, its competitor in the after-license software support service market, to license the ninety-three different software products in this action after being presented with ample evidence that Oracle does not, and would not, license its software to competitors in the after-license support market. The difficulty for the jury in quantifying Oracle's damages in this action supports the court's finding that monetary damages alone are insufficient to fairly and fully compensate Oracle for Rimini Street's copyright infringement.

Finally, one of the most fundamental rights a copyright holder has is the right to exclude others from taking and distributing the copyrighted work and this right has routinely been held difficult to compensate solely through monetary compensation. *See eBay*, 547 U.S. at 395 (Roberts, C.J. concurring) (identifying and explaining the difficulty of protecting a right to exclude through monetary remedies alone). Based on all the above, the court finds that this factor once again weighs in favor of an injunction.

3. The Balance of Hardships

A court must weigh and balance the competing effect that granting or withholding an injunction would have on each party. *See Williams v. Bridgeport Music, Inc.*, 2015 WL 4479500, at *41 (C.D. Cal. 2015). The court has reviewed the documents and pleadings on file in this matter and finds that the balance of hardships weighs in favor of Oracle (as the copyright holder) and the issuance of a permanent injunction against Rimini Street for Rimini Street's infringement of ninety-three of Oracle's software copyrights. Generally, the balance of hardships tips in favor of a holder of a copyright seeking to protect its copyrighted works,

especially when the party to be enjoined does not have a separate legitimate business purpose for continuing the conduct or acts deemed to be infringement. *Grokster*, 518 F. Supp. 2d at 1220. This action is no different. Here, Rimini Street does not have a separate legitimate business purpose for continuation of the infringing acts. Further, there is no evidence that Rimini Street would be harmed by an injunction that enjoins and restrains future copyright infringement or using the materials gained from its infringement because Rimini Street has repeatedly represented to the court (including at the July 23, 2018 hearing on the present motions) that it has changed its business model and support services away from the conduct ultimately held to constitute copyright infringement. Finally, because Oracle seeks to enjoin only acts that have already been determined to be unlawful, and which have been affirmed on appeal, the balance of hardships weighs in favor of issuing a permanent injunction.

4. The Public Interest

“[T]he touchstone of the public interest factor is whether an injunction, both in scope and effect, strikes a workable balance between protecting the [copyright holder’s] rights and protecting the public from the injunction’s adverse effects.” *i4i*, 598 F.3d at 863. Here, the court finds that a permanent injunction against Rimini Street for the possibility of future copyright infringement is in the public interest. *See Apple Computer, Inc. v. Franklin Computer Corp.*, 714 F.2d 1240, 1255 (3d Cir. 1983) (“[I]t is virtually axiomatic that the public interest can only be served by upholding copyright protections and, correspondingly, preventing the misappropriation of the skills, creative en-

ergies, and resources which are invested in the protected work.”). Further, an injunction against future copyright infringement would not harm the public’s access to competitive after-license software support services because Rimini Street has repeatedly represented to the court that its current business model is not based on its prior infringing conduct. Taking Rimini Street’s statements as true, the public’s access to competition in the after-license software support service market would not be lost or diminished. Finally, issuing an injunction in this action “ultimately serves the purpose of enriching the general public through access to creative works” by giving Oracle an incentive to continue to develop software for public use. *Kirtsaeng v. John Wiley & Sons, Inc.*, 136 S. Ct. 1979, 1986 (2016). Therefore, the court finds that all of the relevant *eBay* factors favor issuing a permanent injunction against Rimini Street and the court shall grant Oracle’s renewed motion accordingly.

III. Renewed Motion for Attorneys’ Fees (ECF No. 1118)

In the same prior order granting Oracle’s motion for a permanent injunction against Rimini Street, the court also granted Oracle’s motion for attorneys’ fees and awarded Oracle \$28,502,246.40 in attorneys’ fees against defendants Rimini Street and Ravin after a careful analysis of all relevant factors and a general reduction of Oracle’s requested fees amount by 20%. *See* ECF No. 1049. The Ninth Circuit, “[i]n view of [their] conclusion that there was no violation of the state computer laws . . . vacate[d] the fee award and remand[ed] for reconsideration in light of Oracle’s more limited success at litigation.” *Oracle USA, Inc.*, 879 F.3d at 965. Oracle then filed the present renewed

motion for attorneys' fees requesting the court re-issue its prior fee award of \$28,502,246.40 against defendant Rimini Street. ECF No. 1118.

The first issue before the court is whether to re-award attorneys' fees in this action in light of the Ninth Circuit's reversal of the state law claims. Then, if the court finds that such a fee award is still appropriate under the Copyright Act, the court must determine what amount of fees is reasonable.

A. Determination of Whether to Award Fees

Under Section 505 of the Copyright Act, the court has discretion to award a prevailing party its reasonable attorneys' fees. *See* 17 U.S.C. § 505 ("In any civil action under this title, the court in its discretion may . . . award a reasonable attorney's fee to the prevailing part[y.]"). The ability to award attorneys' fees is "[a]n important remedy under the Copyright Act[.]" *Glacier Films USA, Inc. v. Turchin*, ___ F.3d ___, 2018 WL 3542839, at *1 (9th Cir. July 24, 2018).

In order to determine whether an award of attorneys' fees is warranted under the Copyright Act, a district court examines the nonexclusive factors laid out by the Supreme Court in *Fogerty v. Fantasy, Inc.*, 510 U.S. 517 (1994), including: "frivolousness, motivation, objective unreasonableness (both in factual and in the legal components of the case) and the need in particular circumstances to advance considerations of compensation and deterrence." 510 U.S. at 534, n. 19; *see also Kirtsaeng*, 136 S. Ct. at 1985 (reaffirming the application of the *Fogerty* factors under the Copyright Act). The Ninth Circuit also recognizes additional relevant factors that may be considered by a district court including the overall degree of success obtained

by the prevailing party in the litigation and the purposes of the Copyright Act. *Perfect 10, Inc. v. Giganews, Inc.*, 847 F.3d 657, 675 (9th Cir. 2017); see also *Glacier Films*, 2018 WL 3542839, at *3 (reaffirming the Ninth Circuit’s commitment to these additional factors in determining an award of fees under the Copyright Act).

In applying these factors, a district court is not bound by any “precise rule,” strict formulation, or weighing of the relevant factors. *Kirtsaeng*, 136 S. Ct. at 1985. Nor must all of the factors be met or addressed in a particular case. *Perfect 10, Inc.*, 847 F.3d at 675. Rather, a district court enjoys “wide latitude to award attorney’s fees based on the totality of circumstances in a case” and the court should examine the relevant factors on “a more particularized, case-by-case assessment.” *Kirtsaeng*, 136 S. Ct. at 1985. Further, the Copyright Act does not condition an award of fees on any particular finding of bad faith or willfulness by the non-prevailing party. *Casella v. Morris*, 820 F.2d 362, 366 (11th Cir. 1987) (“[A] showing of bad faith or frivolity is not a requirement of a grant of fees.”). The court shall address the most relevant factors in determining whether to re-issue an award of attorneys’ fee in this particular action below.

1. Degree of Success/Frivolousness

Oracle argues that despite the Ninth Circuit’s reversal on the state law claims, the degree of success it achieved on its copyright infringement claim establishes that this action was not frivolous and that the claim warrants reissuing an award of attorneys’ fees in this case. See ECF No. 1118. The court agrees.

Throughout the history of this litigation, which was substantially and significantly focused on Rimini

Street's alleged copyright infringement, Oracle successfully defeated all three of defendants' counterclaims, including defendants' counterclaim for copyright misuse. Further, Oracle successfully defeated all of defendants' eleven affirmative defenses which were heavily focused on Oracle's claim of copyright infringement including affirmative defenses for invalid copyright registrations, express license, consent of use, copyright misuse, improper copyright registration, implied license, statute of limitations, and fair use. Then, at trial, Oracle successfully prevailed on its claim for copyright infringement as the jury found that Rimini Street infringed every one of the ninety-three separate copyright registrations at issue in this action. As a result of Oracle's success in establishing Rimini Street's liability on its copyright infringement claim, the jury awarded Oracle a \$35.6 million judgment against Rimini Street for the infringement. Then, on appeal, the Ninth Circuit affirmed the court's orders and the jury's verdict on Oracle's copyright infringement claim in its entirety. *Oracle USA, Inc.*, 879 F.3d at 953.

The court recognizes that several of Oracle's claims were either dismissed or voluntarily withdrawn before trial, and, on appeal, the Ninth Circuit reversed the jury's verdict on the state law computer access claims. However, despite these dismissed, withdrawn, and reversed claims, the court finds that Oracle's overall success in this litigation supports an award of attorneys' fees. Most important to the court in its analysis and decision is that this litigation, at its heart and core, was a copyright infringement action against Rimini Street regardless of any other claims pled. First and foremost, Oracle alleged a claim of ninety-three separate incidents of copyright infringement against Rimini Street. The other pled

claims were secondary to this central issue, and in some cases, were derivative claims for which Oracle could not receive any additional monetary relief. Several of these claims were voluntarily withdrawn by Oracle before trial as to bring central focus to Rimini Street's copyright infringement before the jury.

Second, the vast majority of the parties' pretrial motions and the court's related orders were significantly related to the issue of copyright infringement. For example, several rounds of motions, briefing, and court orders were devoted to defendants' counterclaims and affirmative defenses related to Oracle's claim of copyright infringement, particularly the counterclaim and affirmative defense of copyright misuse, and these were issues absolutely central to Oracle's copyright infringement claim. *See* ECF Nos. 67, 72, 74, 111, 405, 436, 450, 476. Further, an entire round of summary judgment briefing was solely devoted to the copyright infringement claim. *See* ECF Nos. 237, 259, 281, 474. All of this combined briefing, including submitted evidence, resulted in over two thousand pages of documents relating to Oracle's copyright infringement claim. Comparing the parties' briefing, the copyright infringement issues completely dwarfed the parties' briefing on all the other claims and issues in this action. Further, over two-thirds of the Ninth Circuit's opinion is dedicated to the issue of Oracle's copyright infringement claim. *See Oracle USA, Inc.*, 879 F.3d 948.

Third, almost all of the evidence submitted at trial – documentary exhibits, witness testimony, and expert testimony and reports – was directed at or related to Oracle's copyright infringement claim. Disregarding the now reversed state law computer access claims which were submitted to the jury, the court finds that

almost all of the evidence that was submitted at trial would have been submitted had these two claims not been at issue. Then, at trial, the jury awarded Oracle \$35.6 million in copyright infringement damages based on this evidence after Oracle established Rimini Street's liability.

There is no question to the court that a \$35.6 million verdict is a substantial success regardless of what could have been awarded in this case had the jury agreed with Oracle's larger damages figure. The Ninth Circuit recognizes that one of the most important aspects of a party's degree of success in a copyright infringement action is establishing the defendant's liability, regardless of the amount of damages awarded. *See Glacier*, 2018 WL 3542839, at *4 (citing *Wall Data Inc. v. Los Angeles Cty. Sheriff's Dep't*, 447 F.3d 769, 787 (9th Cir. 2006)). All of these factors support the court's finding that this was a copyright infringement action at its core. Thus, the court finds that this factor weighs in favor of awarding attorneys' fees.

2. Objective Reasonableness

Another relevant factor in whether to award fees under the Copyright Act is the objective reasonableness (or unreasonableness) of the losing party's position during the litigation. *Kirtsaeng*, 136 S. Ct. at 1983. In particular, the Ninth Circuit accords substantial weight to this factor in reviewing a district court's analysis of whether or not to award fees under the Copyright Act. *Glacier*, 2018 WL 3542839, at *3 (citing *Shame On You Prods., Inc. v. Banks*, 893 F.3d 661, 666 (9th Cir. 2018)).

Here, the court finds that -- from the earliest part of litigation -- defendants' position that it did not engage in copyright infringement of Oracle's software copyrights was not an objectively reasonable position to take in this litigation. First, as reflected in the court's summary judgment orders, Rimini Street's position was based on a clear misreading of Oracle's software licensing agreements and a conscious disregard for the manner that Rimini Street used and housed the copyrighted software programs on its own servers.

Second, throughout over five and one half years of this litigation, literally until trial, Rimini Street contended that it had not engaged in any conduct which could be considered copyright infringement, and, in particular, did not engage in cross-use of the copyrighted software and only used certain versions of the copyrighted software for archival purposes and disaster-related testing. In fact, it was on Rimini Street's assertions through various affidavits and deposition testimony submitted at summary judgment that the court denied portions of Oracle's motion for summary judgment on its copyright infringement claim and let these issues go to trial. However, at trial, defendant Ravin testified for the first time that Rimini Street did in fact engage in cross-use and other conduct which constitutes copyright infringement, but did so innocently and without knowledge that Rimini Street was acting improperly. This was a direct and major alteration, effectively a sea change, in Rimini Street's copyright defense throughout the litigation to that time and needlessly caused extensive investigation, discovery and expense to Oracle. As a result, Oracle was forced to spend substantially more time and resources to establish copyright infringement than should have been necessary.

Finally, the court finds that attorneys' fees are warranted because of Rimini Street's significant litigation misconduct in this action. *See Kirtsaeng*, 136 S. Ct. at 1988-89 (recognizing that a court may order attorneys' fees "because of a party's litigation misconduct."). It is undisputed that defendants ignored their preservation obligations and destroyed evidence prior to trial, including a key computer directory containing Oracle software that Rimini Street used for multiple customers in violation of customer licenses. In fact, Magistrate Judge Leen found that defendants intentionally deleted the software library well after they were on notice of potential litigation and were well aware that the software library was potentially relevant evidence. As a result of their litigation misconduct, defendants were forced to acknowledge the spoliation and destruction of evidence at trial, and the court even gave an adverse inference jury instruction on that issue. Further, the Ninth Circuit recognized Rimini Street's litigation conduct including the "many years of complex and contentious litigation" between the parties and the court's "understandable frustration with [Rimini Street's] litigation conduct[.]" *Oracle USA, Inc.*, 879 F.3d at 964. Moreover, Rimini Street's unreasonable litigation tactics in this action were minimally related to the state law claims reversed by the Ninth Circuit. Taking all of the above into consideration, the court finds that this factor weighs in favor of sustaining the attorneys' fees previously awarded by the court.

3. The Need to Make Oracle Whole

In its renewed motion, Oracle argues that re-issuing an award of attorneys' fees is necessary to compensate it for its huge outlay of fees and costs necessarily incurred in enforcing its copyrights. *See ECF*

No. 1118. The court agrees. In order to prosecute this action, Oracle expended over \$58 million in legal fees and costs to prove Rimini Street's unlawful conduct and obtain a copyright infringement judgment. Without a fee award, the court finds that Oracle's investment in its intellectual property and its incentive to create future software would not be appropriately protected or compensated. *See McCulloch*, 823 F.2d at 323 ("[S]ection 505 is intended in part to encourage the assertion of colorable copyright claims . . . and to make the plaintiffs whole.").

4. Deterrence

Oracle further argues that an award of attorneys' fees is necessary to deter Rimini Street as a copyright infringer, as well as other third parties, from engaging in future infringement. The court agrees. Here, the court finds that an award of attorneys' fees is an appropriate remedy to deter defendant Rimini Street from its pattern of infringing Oracle's copyrights, which started when the business began and continued up until, at the earliest, the court's orders on summary judgment in 2014. Further, an award of fees is necessary to deter other third party service providers from engaging in similar infringing conduct in order to compete with Oracle for after-license software support services. *See McCulloch*, 823 F.2d at 323.

5. Purpose of the Copyright Act

The last relevant factor in the court's analysis of whether to award attorneys' fees in this action is whether an award of attorneys' fees will further the purposes of the Copyright Act. *See Mattel, Inc. v. MGA Entm't, Inc.*, 705 F.3d 1108, 1111 (9th Cir. 2012) ("The most important factor in determining whether to award fees under the Copyright Act, is whether an

award will further the purposes of the Act.”). “The goal of the Copyright Act is ‘to promote creativity for the public good.’” *Glacier*, 2018 WL 3542839, at *6 (quoting *Jackson v. Axton*, 25 F.3d 884, 890 (9th Cir. 1994)); see also *Fogerty*, 510 U.S. at 524 (“The primary objective of the Copyright Act is to encourage the production of original literary, artistic, and musical expression for the good of the public.”). The court finds that awarding attorneys’ fees in this action furthers the purposes of the Copyright Act as it rewards owners of intellectual property, like Oracle, for pursuing their rights under the act and protecting, “encouraging and rewarding authors’ creations.” *Kirtsaeng*, 136 S. Ct. at 1986 (“[F]ee awards under § 505 should encourage the type of lawsuits that promote [the purposes of the Copyright Act].”). Further, an award of fees is still warranted despite Rimini Street’s claim that Oracle was overly aggressive in pursuing this litigation. See *Glacier*, 2018 WL 3542839, at *7 (“Indeed, it is difficult to see how pursuing a meritorious infringement claim ‘less aggressively’ furthers ‘the Copyright Act’s essential goals.’”). Accordingly, the court shall grant Oracle’s renewed motion and re-issue an award of attorneys’ fees under the Copyright Act for Rimini Street’s copyright infringement.

B. Amount of Fees

If, as here, a district court determines that an award of attorneys’ fees is warranted under the Copyright Act, the court must then determine the amount of reasonable fees to award the prevailing party. In determining the reasonableness of an award of attorneys’ fees, a district court considers several non-exclusive factors including: (1) the reputation and skill of counsel; (2) the financial terms of the client fee ar-

rangement; (3) the nature and extent of work performed and results obtained; and (4) awards in similar cases. *See, e.g.*, LR 54-16(b)(3); *Resurrection Bay Conservation Alliance v. City of Seward Alaska*, 640 F.3d 1087, 1095 (9th Cir. 2011). The court previously analyzed these four factors in its prior order and determined that, after a careful analysis of each factor, Oracle was entitled to a fees award of \$28,502,246.40. *See* ECF No. 1049. The court sees no basis to further reduce this award in light of the Ninth Circuit opinion and the court shall re-issue the award of attorneys' fees against Rimini Street.

First, the fees requested by Oracle in its renewed motion and previously awarded by the court are reasonable because they are the product of reasonable rates and a reasonable expenditure of time for the complexity of the litigation and because this action was first and foremost a copyright infringement action. *See* ECF No. 1049. The Ninth Circuit reversal on the state law claims does not change the court's analysis on the reasonableness of the rates charged by Oracle's counsel or the reasonableness of the time spent on this action. Nor does the reversal on the state law claims warrant a reduction of the court's previous award of \$28,502,246.40. As addressed above, this action was first and foremost a copyright infringement action and the time spent on establishing Rimini Street's liability for copyright infringement, especially in light of Rimini Street's litigation conduct, is compensable. The court recognizes that Oracle's attorneys' fees request includes time billed not only on the successful copyright infringement claim, but also on Oracle's unsuccessful claims. However, the court finds that these claims involved a "common core of facts" or "related legal theories" to Oracle's copyright claims, and thus, may be included in an award of fees. *See*

Webb v. Sloan, 330 F.3d 1158, 1168 (9th Cir. 2003) (holding that the court may award attorneys' fees on all claims related to successful copyright claims). Moreover, even though the Ninth Circuit reversed on Oracle's state law computer claims, the time spent on those claims and the related attorneys' fees in the litigation are recoverable. *See, e.g., The Traditional Cat Ass'n, Inc. v. Gilbreath*, 3450 F.3d 829, 833 (9th Cir. 2003) (holding that where the prevailing party was not successful on all claims, it may still recover fees for claims "related" to the successful claims). Therefore, the court finds that, with the previous 20% reduction, Oracle is entitled to the same award of fees previously issued by the court. Accordingly, the court shall grant Oracle \$28,502,246.40 in attorneys' fees against Rimini Street.

IT IS THEREFORE ORDERED that plaintiff's renewed motion for a permanent injunction (ECF No. 1117) and renewed motion for attorneys' fees (ECF No. 1118) are GRANTED.

IT IS FURTHER ORDERED that the clerk of court shall enter an award of attorneys' fees in favor of plaintiffs Oracle USA, Inc.; Oracle America, Inc.; and Oracle International Corporation and against defendants Rimini Street, Inc. in the amount of \$28,502,246.40.

IT IS SO ORDERED.

DATED this 14th day of August, 2018.

/s/ Larry R. Hicks

LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

I. Facts and Procedural History

This action has an extensive factual and procedural history. In brief, Oracle develops, manufactures, and licenses computer software. Oracle also provides software support services to customers who license its software. Defendant Rimini is a company that provides similar software support services to customers licensing Oracle's software and competes directly with Oracle to provide these services. Defendant Ravin is the owner and CEO of Rimini.

On January 25, 2010, Oracle filed a complaint for copyright infringement against defendants alleging that Rimini copied several of Oracle's copyright-protected software programs onto Rimini's own computer systems in order to provide software support services to its customers. ECF No. 1. In June 2011, Oracle filed a second amended complaint alleging thirteen causes of action against defendants: (1) copyright infringement; (2) violation of the Federal Computer Fraud and Abuse Act ("CFAA"), 18 U.S.C. § 1030(a); (3) violation of the California Computer Data Access and Fraud Act, Cal. Penal Code § 502; (4) violation of the Nevada Computer Crimes Law, NRS § 205.4765; (5) breach of contract; (6) inducement of breach of contract; (7) intentional interference with prospective economic advantage; (8) negligent interference with prospective economic advantage; (9) unfair competition; (10) trespass to chattels; (11) unjust enrichment; (12) unfair practices; and (13) accounting. ECF No. 146.

A jury trial was held on Oracle's claims from September 14 through October 13, 2015. On October 13, 2015, the jury returned its verdict and found that defendant Rimini engaged in copyright infringement of Oracle's copyrighted PeopleSoft, J.D. Edwards, and

Siebel-branded Enterprise Software products. ECF No. 896. The jury also found that both defendants Rimini and Ravin violated the California Computer Data Access and Fraud Act and the Nevada Computer Crimes Law. *Id.* Ultimately, the jury awarded Oracle \$35,600,00.00 against Rimini for copyright infringement and awarded Oracle \$14,427,000.00 against both Rimini and Ravin for violation of the state computer access statutes. *Id.* After the jury verdict, Oracle filed the present motions for a permanent injunction, prejudgment interest, and attorneys' fees. ECF Nos. 900, 910, 917. The court shall address each post-trial motion below.

II. Motion for Permanent Injunction (ECF No. 900)

As part of its motion for a permanent injunction, Oracle seeks three separate forms of relief. First, Oracle seeks judgment against defendants on its claim for violation of California's Unfair Competition Law. Second, Oracle seeks a permanent injunction to enjoin and restrain defendants from continued infringement of Oracle's copyrighted Enterprise Software products and from improperly accessing and taking data from Oracle's websites and computer systems. Finally, Oracle seeks disposition of all copies of the infringing software on defendants' systems.

A. California's Unfair Competition Law

Oracle seeks judgment against both defendants Rimini and Ravin on its claim for violation of California's Unfair Competition Law ("UCL"), Cal. Bus & Prof. Code § 17200 *et seq.* California's UCL prohibits unlawful, fraudulent, and unfair business practices. *Cel-Tech Comm's, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (Cal. 1992). There is no right to a jury

trial under the UCL. Rather, a violation of the UCL occurs as a matter of law when there has been a violation of a predicate act. CAL. BUS & PROF. CODE § 17200. A violation of the California Computer Data Access and Fraud Act is an identified predicate act under the UCL. *See Cal-Tech Comm's, Inc.*, 20 Cal. 4th at 180; CAL. BUS & PROF. CODE § 17500 *et seq.* Because the jury found that defendants violated the CDAFA, Oracle is also entitled to judgment against defendants on its UCL claim. Accordingly, the court shall grant Oracle's motion and issue judgment in favor of plaintiffs Oracle America, Inc. and Oracle International Corporation on this claim.

B. Permanent Injunction

"[T]he decision whether to grant or deny injunctive relief rests within the equitable discretion" of the district court. *eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388, 394 (2006). Such discretion should be "exercised consistent with traditional principles of equity." *Id.* In determining whether to issue a permanent injunction in copyright infringement actions, courts evaluate four factors: (1) irreparable harm; (2) inadequacy of monetary damages; (3) the balance of hardships; and (4) whether the public interest would be served by a permanent injunction. *Id.* at 391; *see also Flexible Lifeline Sys., Inc. v. Precision Lift, Inc.*, 654 F.3d 989, 999 (9th Cir. 2011) (applying the four-factor test outlined in *eBay*). Further, an injunction should issue when the intervention of the court in equity is essential to protect a party's rights against injuries that could not otherwise be remedied. *See Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982).

1. Availability of a Permanent Injunction

Before addressing whether to award Oracle an injunction in this action, the court must first determine whether Oracle is entitled to seek a permanent injunction against defendants and under what statute(s), if any.

Initially, Oracle contends that it may seek a permanent injunction under the Nevada Computer Crimes Law (“NCCL”). *See* NRS § 205.513(2) (“An injunction . . . [m]ay be issued without proof of actual damage sustained by any person.”). However, under the NCCL, only the Nevada Attorney General or the appropriate district attorney may seek a permanent injunction against a party who has violated the act. NRS § 205.513(1) (stating that only the “Attorney General or the appropriate district attorney may file an action in any court of competent jurisdiction to prevent the occurrence or continuance of that act or practice.”). Thus, the plain language of the statute does not authorize Oracle, a private party, to seek a permanent injunction for a violation of the NCCL.

Next, Oracle seeks a permanent injunction under the California Computer Data Access and Fraud Act (“CDAFA”). The CDAFA provides that the owner of a computer network, like Oracle, may seek injunctive relief for violations of the statute. CAL. PENAL CODE § 502(e)(1) (“In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, or data who suffers damage or loss by reason of a violation of any of the provisions of subdivision (c) may bring a civil action against the violator for compensatory damages and injunctive relief or other equitable

relief.”). Accordingly, Oracle is entitled to seek a permanent injunction against defendants under the CDAFA.

Finally, Oracle contends that it is entitled to seek a permanent injunction under the Copyright Act. The Copyright Act provides that a district court may enter an injunction “on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.” 17 U.S.C. § 502(a). Therefore, the court finds that Oracle is entitled to separately seek a permanent injunction against defendant Rimini under the Copyright Act.¹

2. Irreparable Injury

The first factor in a permanent injunction analysis is whether a plaintiff has suffered an irreparable injury as a result of a defendant’s conduct, or will suffer an irreparable injury absent an injunction. *See American Trucking Ass’ns v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009). As part of a court’s irreparable injury analysis in a copyright action, courts regularly examine three factors: (1) direct competition between the parties; (2) loss of market share due to the infringement; and (3) loss of customer and business goodwill. *See, e.g., Presidio Components Inc. v. Am. Tech. Ceramics Corp.*, 702 F.3d 1351, 1362 (Fed. Cir. 2012) (stating that direct competition in the same market strongly supports the potential for irreparable harm absent an injunction); *i4i Ltd. P’ship v. Microsoft Corp.*, 598 F.3d 831, 861 (Fed. Cir. 2010) (finding that harm to a party’s market share, reve-

¹ As the jury did not find that defendant Ravin engaged in any copyright infringement, Oracle may not separately seek a permanent injunction against Ravin pursuant to the Copyright Act.

nues, and brand recognition is relevant for determining whether the party has suffered an irreparable injury); *Celsis in Vitro, Inc. v. CellzDirect, Inc.*, 664 F.3d 922, 930 (Fed. Cir. 2012) (holding that loss of goodwill, damage to reputation, and loss of business opportunities are all valid grounds for finding irreparable harm).

Here, the court finds that defendants' unlawful actions, to wit copyright infringement and violations of the state computer access statutes, irreparably injured Oracle's business reputation and goodwill. First, it is undisputed that Oracle and Rimini directly compete with each other to provide software support services and that Rimini infringed Oracle's copyrighted works, which supports issuance of a permanent injunction. See *Presidio Components, Inc.*, 702 F.3d at 1362.

Second, the evidence in this action established Rimini's callous disregard for Oracle's copyrights and computer systems when it engaged in the infringing conduct. For example, the evidence established that Rimini's egregious and continued infringement enabled it to rapidly build its business and gain market share against Oracle in the software support service market by offering cut-rate prices on its support services for Oracle software, generally at a discount of 50% of Oracle's prices for similar service contracts. In fact, Rimini's business model was built entirely on its infringement of Oracle's copyrighted software and its improper access and downloading of data from Oracle's website and computer systems, and Rimini would not have achieved its current market share and business growth without these infringing and illegal actions. Moreover, Rimini landed clients for its services

by telling customers that Oracle’s services were overpriced and could be provided at the same rate Rimini was offering while still providing Oracle significant profits, thereby harming Oracle’s business reputation. Through this misconduct, Rimini gained an improper advantage that it used to harm Oracle’s business reputation and goodwill in the software service industry. Such injuries to a business’ reputation and goodwill have consistently been held to constitute irreparable harm. *See Apple Inc. v. Psystar Corp. (Apple II)*, 658 F.3d 1150, 1154 (9th Cir. 2011).

Finally, Rimini’s claim that it no longer engages in the conduct adjudged by the court and jury to infringe Oracle’s copyrights is not a basis to deny issuance of an injunction. *See Metro-Goldwyn-Mayer Studios v. Grokster, Ltd.*, 518 F. Supp. 2d 1197, 1222 (C.D. Cal. 2007) (stating that “[a] private party’s discontinuation of unlawful conduct does not make the dispute moot, however. An injunction remains appropriate to ensure that the misconduct does not recur as soon as the case ends.”). Therefore, the court finds that this factor weighs in favor of a permanent injunction.

3. Inadequacy of Monetary Damages

In order to establish that an injunction is warranted, a plaintiff must show that monetary damages are inadequate to fully compensate it for the defendant’s conduct. *eBay*, 547 U.S. at 391. Here, the court finds that Oracle has established that monetary damages alone are inadequate to compensate it for the losses suffered because of defendants. First, the court notes that certain harms suffered by Oracle like lost market share and company goodwill are intangible injuries difficult to quantify and compensate. *See Apple*

II, 658 F.3d at 1154 (stating that injuries to a business' reputation and company goodwill are intangible injuries difficult to quantify and compensate). Second, the infringement damages in this action were complex and difficult to determine. Unlike a patent case where a specific number of infringing products are sold at a specific price, in this copyright infringement action there was no efficient way to measure the damages Oracle suffered. In particular, the jury was provided with two separate damage theories, both of which required the jury to evaluate a substantial amount of evidence and expert testimony to reach the damages awarded in this action. Oracle's lost profits theory required the jury to determine the lost profits, if any, of a multi-billion dollar company that has a continuously growing business. Similarly, Oracle's hypothetical license damages theory required the jury to determine the amount Oracle would have charged for Rimini, its competitor in the software service market, to license its copyrighted software when presented with evidence that Oracle does not license its software to such competitors. The difficulty for the jury in determining damages in this action supports Oracle's claim that monetary damages alone are insufficient to fairly and fully compensate it for defendants' conduct. Finally, one of the most fundamental rights the holder of a copyright has is the right to exclude others, and this right has routinely been held difficult to compensate solely through monetary compensation. *See eBay*, 547 U.S. at 395 (Roberts, C.J. concurring) (identifying and explaining the difficulty of protecting a right to exclude through monetary remedies alone). Based on all the above, the court finds that this factor weighs in favor of an injunction.

4. Balance of Hardships

A court must weigh and balance the competing effect that granting or withholding an injunction would have on each party. *See Williams v. Bridgeport Music, Inc.*, 2015 U.S. Dist. LEXIS 97262, at *128 (C.D. Cal. 2015). The court has reviewed the documents and pleadings on file in this matter and finds that the balance of hardships weighs in favor of an injunction. Generally, the balance of hardships tips in favor of a holder of a copyright seeking to protect its copyrighted works, especially when the party to be enjoined does not have a separate legitimate business purpose for continuation of the infringing acts. *Grokster*, 518 F. Supp. 2d at 1220. This case is no different. First, Rimini does not have a separate legitimate business purpose for continuation of the infringing acts. Second, there is no evidence that Rimini would be harmed by an injunction that enjoins and restrains future copyright infringement or using the materials gained from its infringement because Rimini has already represented to the court that it has changed its business model and support services away from the infringing model in response to the court's orders on summary judgment. Finally, because Oracle seeks to enjoin only acts that have already been determined to be unlawful, the balance of hardships weighs in Oracle's favor.

5. Public Interest

"[T]he touchstone of the public interest factor is whether an injunction, both in scope and effect, strikes a workable balance between protecting the [copyright holder's] rights and protecting the public from the injunction's adverse effects." *i4i*, 598 F.3d at 863.

Here, having reviewed all the documents and pleadings on file in this matter, the court finds that an injunction against future copyright infringement and violations of the computer access statutes are in the public interest. See *Apple Comput. v. Franklin Comput. Corp.*, 714 F.2d 1240, 1255 (3d Cir. 1983) (“[I]t is virtually axiomatic that the public interest can only be served by upholding copyright protections and, correspondingly, preventing the misappropriation of the skills, creative energies, and resources which are invested in the protected work.”). Further, an injunction against future infringement would not harm the public interest of access to competitive services because Rimini has repeatedly represented to the court that its current business model is not based on its prior infringing conduct. Taking defendants’ statements as true, then Rimini’s ability to compete against Oracle in the software support service market would not be lost with an injunction, and thus, the public would still have access to competition in that market. Finally, issuing an injunction in this action “ultimately serves the purpose of enriching the general public through access to creative works” by giving Oracle an incentive to continue to develop software for public use. *Kirtsaeng v. John Wiley & Sons, Inc.*, 136 S. Ct. 1979, 1986 (2016). Therefore, the court finds that the relevant *eBay* factors favor issuance of a permanent injunction in this action, and the court shall grant Oracle’s motion accordingly.

C. Disposition of Infringing Articles

In addition to a permanent injunction, Oracle seeks an order pursuant to the impoundment provisions of the Copyright Act either requiring defendants to turn over all infringing copies of Oracle’s copyrighted works to a neutral third party to be approved

by the court or destroying all infringing copies outright, thereby preventing defendants from continuing to leverage the benefits of its infringing actions in its current business model. *See* ECF No. 900.

The Copyright Act provides that, “[a]s part of a final judgment or decree, the court may order the destruction or other reasonable disposition of all copies or phonorecords found to have been made or used in violation of the copyright owner’s exclusive rights.” 17 U.S.C. § 503(b). A disposition order is “an equitable remedy issued under the broad powers vested in a trial judge under 17 U.S.C. § 503(b).” *Rogers v. Koons*, 960 F.2d 301, 313 (2d Cir. 1992). However, such seizure and impoundment orders are “extraordinary relief” solely within the discretion of the district court. *See Williams*, 2015 U.S. Dist. LEXIS 97262, at *131. Although the Ninth Circuit has not identified appropriate factors to consider in determining whether to issue impoundment, several courts have applied the same factors related to issuance of a permanent injunction. *See, e.g., Hounddog Prods., L.L.C. v. Empire Film Grp., Inc.*, 826 F. Supp. 2d 619, 633 (S.D.N.Y. 2011); *Bridgeport Music, Inc. v. Justin Combs Pub.*, 507 F.3d 470, 492 (6th Cir. 2007) (affirming a district court’s order of impoundment upon consideration of the traditional injunction factors).

With respect to Oracle’s proposed disposition order, the court finds that Oracle is not entitled to a separate order impounding Rimini’s computers and media. Generally, disposition orders should be granted only where other legal remedies and compensatory damages do not provide adequate relief. Here, however, Oracle has received monetary compensation for Rimini’s infringement, and the court has found that a

permanent injunction should be issued against defendants against future conduct. These remedies are sufficient to protect and compensate Oracle. Further, the requested outcome of Oracle's disposition remedy - preclusion of Rimini from using the infringing works - is achieved the same with a permanent injunction as it would be with a disposition order. Thus, having already found that Oracle is entitled to a permanent injunction, the court shall deny Oracle's request for a separate disposition order under Section 503(b).

III. Motion for Prejudgment Interest (ECF No. 910)

Oracle also seeks an award of prejudgment interest on the jury verdict. Prejudgment interest is "statutorily prescribed interest accrued either from the date of the loss or from the date when the complaint was filed up to the date the final judgment is entered. . . . Depending on the statute, it may or may not be an element of damages." *Prejudgment interest*, *Black's Law Dictionary* (10th ed. 2014). The purpose behind prejudgment interest is "to compensate for the loss of use of money due as damages from the time the claim accrues until judgment is entered." *Barnard v. Theobald*, 721 F.3d 1069, 1078 (9th Cir. 2013). Whether to award prejudgment interest under an applicable statute is in "the district court's sound discretion." *Id.*

Initially, Oracle seeks prejudgment interest under the Copyright Act on the jury's award of \$35.6 million in damages against defendant Rimini for copyright infringement. *See* ECF No. 910. An award of prejudgment interest is an available statutory remedy under the Copyright Act. *Polar Bear Prods., Inc. v. Timex Corp.*, 384 F.3d 700, 716 (9th Cir. 2004). In the Ninth Circuit, the starting point for federal prejudgment interest is the post-judgment rate established by 28

U.S.C. § 1961, which is the weekly average of the one-year constant maturity Treasury yield. *See Price v. Stevedoring Servs. of Am., Inc.*, 697 F.3d 820, 836-37 (9th Cir. 2012) (en banc), *see also Williams*, 2015 U.S. Dist. LEXIS 97262, at *144.

In its motion, Oracle seeks prejudgment interest at the higher Prime rate rather than the Treasury rate, contending that the Prime rate is sufficient to cover inflation over the lengthy infringement and litigation period. *See* ECF No. 910. Further, Oracle argues that the hypothetical license measure of damages and the equities considered in a copyright case - compensation to the plaintiff, deterring infringers, and preventing unjust enrichment of the defendant - weigh strongly in favor of a market-based rate higher than the Section 1961 Treasury rate. The court disagrees.

“[U]nless the district court concludes that the equities demand a different rate,” an award of prejudgment interest in a copyright infringement case “should be based on the fifty-two week Treasury bill rate.” *Frank Music Corp. v. Metro-Goldwyn-Mayer, Inc.*, 886 F.2d 1545, 1552-53 (9th Cir. 1989). Further, the Ninth Circuit has repeatedly held that the Section 1961 rate is the appropriate rate of prejudgment interest in an action for copyright infringement. *Price*, 697 F.3d at 836; *Williams*, 2015 U.S. Dist. LEXIS 97262, at *144. Here, the court finds that there is no basis to deviate from the standard Treasury rate to the Prime rate in this action. That being said, however, the court finds that there is good cause to set the prejudgment interest rate at the Treasury rate on the date infringement began, rather than at the time of judgment. The court makes this finding because of the nature of the jury’s award of hypothetical license

damages. As the jury awarded damages to Oracle in an amount it would have received from Rimini for licensing Oracle's software at the time it began infringing Oracle's copyrights in late 2006, the court finds that this is the relevant time period for prejudgment interest. After this date, when Rimini began infringing Oracle's copyrights, Oracle lost out on the licensing fees it would have received, absent infringement. It is not equitable in the court's view to allow defendants to reap a windfall by the lower interest rates that are now available simply because they engaged in discovery delays and other litigation tactics (addressed more thoroughly in Oracle's motion for attorneys' fees) that kept this action in litigation for several years. Therefore, the court shall grant Oracle's motion and set the appropriate rate for prejudgment interest under the Copyright Act as the weekly average one-year constant maturity Treasury yield at the start of the infringement.

Second, Oracle also seeks prejudgment interest under the CDAFA and the NCCL on the jury's award of \$14.4 million in damages for violation of the state computer access statutes. Under California law, "a person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in the person upon a particular day, is entitled to also recover interest from that day." CAL. CIV. CODE § 3287(a). However, under California law, only damages that are "certain, or capable of being made certain by calculation" prior to litigation may accrue prejudgment interest. *Duale v. Mercedes-Benz USA, LLC*, 148 Cal. App. 4th 718, 728-29 (2007). The "test for recovery of prejudgment interest under § 3287(a) is whether [the] defendant actually knows the amount owed or from reasonably

available information could the defendant have computed that amount.” *Id.* Further, “where the amount of damage, as opposed to the determination of liability, depends upon a judicial determination based upon conflicting evidence” Section 3287 “does not authorize prejudgment interest.” *Id.* Here, the amount of damages for defendants’ conduct under the CDAFA was not known or easily calculable prior to trial and required the jury to evaluate and weigh conflicting evidence. Therefore, the court finds that Oracle is not entitled to prejudgment interest under the CDAFA.

In contrast, in Nevada, prejudgment interest is a matter of statutory right. *Torres v. Goodyear Tire & Rubber Co.*, 317 P.3d 828, 830 (Nev. 2014) (“NRS 17.130 . . . provides a statutory right for interest on judgments.”). Nevada law establishes a prejudgment interest rate of 2% plus “the prime rate at the largest bank in Nevada ascertained by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding the date of judgment.” NRS §17.130. Such interest is assessed as simple interest on an annual basis. *Torres*, 317 P.3d at 830-31. Further, under Nevada law, interest is drawn “from the time of service of the summons.” *Sobel v. Hertz*, 291 F.R.D. 525, 544 (D. Nev. 2013). Here, the summons in this action was served on January 27, 2010. Thus, the court finds that Oracle is entitled to prejudgment interest at the Nevada statutory rate for the \$14.4 million in damages for violation of the NCCL starting January 27, 2010, through the date of judgment.

IV. Motion for Attorneys' Fees (ECF No. 917)

Oracle's last motion is its present motion for attorneys' fees and costs.² ECF No. 917. In its request, Oracle is seeking a total of \$35,627,807.99 in attorneys' fees; \$4,950,560.70 in taxable costs; and \$17,636,755.68 in non-taxable costs for a total attorneys' fees and costs award of \$58,215,124.37. The first issue before the court is whether to award attorneys' fees in this action. Then, if the court finds that such a fee award is appropriate, the court must determine the appropriate fees award.

A. Determination of Whether to Award Fees

Under Section 505 of the Copyright Act, the court has discretion to award a prevailing party costs and attorneys' fees. *See* 17 U.S.C. § 505 ("In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party [T]he court may also award a reasonable attorney's fee to the prevailing part as part of the costs."). In order to determine whether an award of attorneys' fees and non-taxable costs are warranted under the

² Oracle's motion is accompanied by a breakdown of time spent by each contracted law firm, including the individuals who provided the work, what was being worked on, and the amount of time spent on that item as outlined in four separate declarations from Attorney Thomas S. Hixson, partner with the law firm Morgan, Lewis and Bockius LLP (ECF No. 918, Hixson Decl.); Attorney Kieran P. Ringgenberg, partner with Boies, Schiller & Flexner LLP (ECF No. 919, Ringgenberg Decl.); James C. Maroulis, Managing Counsel at Oracle (ECF No. 920, Maroulis Decl.); and Richard J. Pocker, also a partner with Boies, Schiller & Flexner LLP (ECF No. 921, Pocker Decl.). Oracle also filed a supplement to its motion for attorneys' fees and costs updating its request for fees to include time spent at trial and on post-trial motions. ECF No. 996.

Copyright Act, courts examine five factors: (1) the degree of success of the prevailing party; (2) the objective reasonableness of the losing party's arguments during litigation; (3) the need to make the prevailing party whole; (4) deterrence; and (5) the purposes of the Copyright Act. *See Kirtsaeng*, 136 S. Ct. at 1986; *McCulloch v. Albert E. Price, Inc.*, 823 F.2d 316, 323 (9th Cir. 1987); *Jackson v. Axton*, 25 F.3d 884, 890 (9th Cir. 1994) (stating the five factor test for attorneys' fees under the Copyright Act). Further, the Copyright Act does not condition an award of fees on a finding of willful infringement. *Casella v. Morris*, 820 F.2d 362, 366 (11th Cir. 1987) ("[A] showing of bad faith or frivolity is not a requirement of a grant of fees."). Rather, a court must evaluate each of the relevant factors and make a decision on "a more particularized, case-by-case assessment." *Kirtsaeng*, 136 S. Ct. at 1986. Each factor to determine whether an award of attorneys' fees is warranted is addressed below.

1. Degree of Success

Oracle argues that the degree of success it achieved on its claims warrants an award of attorneys' fees in this case. The court agrees. Oracle successfully defeated all of defendants' counterclaims, including counterclaims for copyright misuses, early in this litigation. Then, at trial, Oracle successfully prevailed on its claim for copyright infringement as the jury found that Rimini infringed every one of the 93 separate copyright registrations at issue. And important to the court is the fact that the trial was a copyright infringement case first and foremost, regardless of all other claims pled. Oracle also prevailed on its two separate state computer access claims against both defendants. As a result of its overall success, Or-

acle won a \$50 million verdict against defendants - including \$35,600,000 for copyright infringement and \$14,427,000 for the state computer access claims - which was five times the damages number presented at trial by defendants' damages expert. There is no question to the court that a \$50 million verdict is a substantial success regardless of what could have been issued in this case. Therefore, this factor weighs in favor of awarding attorneys' fees.

2. Objective Reasonableness

The second factor is the objective reasonableness of the losing party's position during the litigation. *Kirtsaeng*, 136 S. Ct. at 1983. "No matter which side wins a case, the court must assess whether the other side's position was (un)reasonable." *Id.* at 1988. However, the objective reasonableness of a losing party's position "can be only an important factor in assessing fee applications - not the controlling one." *Id.* at 1988. "That means in any given case a court may award fees even though the losing party offered reasonable arguments (or, conversely, deny fees even though the losing party made unreasonable ones)." *Id.* "For example, a court may order fee-shifting because of a party's litigation misconduct, whatever the reasonableness of his claims or defenses." *Id.* at 1988-89 (citing *Viva Video, Inc. v. Cabrera*, 9 Fed. Appx. 77, 80 (2nd Cir. 2001)). "Or a court may do so to deter repeated instances of copyright infringement or over aggressive assertions of copyright claims, again even if the losing position was reasonable in a particular case." *Id.* at 1989 (citing *Bridgeport Music, Inc. v. WB Music Corp.*, 520 F.3d 588, 593-95 (6th Cir. 2008) (awarding fees against a copyright holder who filed hundreds of suits on an overbroad legal theory, including in a subset of cases in which it was objectively reasonable)).

Here, the court finds that defendants' litigation position that it did not engage in copyright infringement was not an objectively reasonable position. Rather, it was based on a clear misreading of Oracle's software licensing agreements and a conscious disregard for the manner that Rimini used and housed Oracle's copyrighted software programs on its own servers. In fact, Rimini's position was so unreasonable that the court was able, at summary judgment, to determine that Rimini engaged in massive copyright infringement of Oracle's copyrighted works, thereby leaving only a few issues for trial. However, throughout this litigation, including right up until trial, Rimini contended that no copyright infringement ever occurred because it did not use the copyrighted software in a proscribed manner. Based on defendants' conduct, the court finds that their position was not reasonable.

Further, even if defendants' litigation position was reasonable, the court finds that attorneys' fees are still warranted in this action because of Rimini's repeated instances of copyright infringement and its significant litigation misconduct in this action. *See Id.* It is undisputed that defendants ignored their preservation obligations and destroyed evidence prior to trial, including a key computer directory containing Oracle software that Rimini used for multiple customers in violation of customer licenses. In fact, Magistrate Judge Leen found that defendants intentionally deleted the software library well after they were on notice of potential litigation and were well aware that the software library was potentially relevant evidence. As a result of their litigation misconduct, defendants were forced to acknowledge the spoliation and destruction of evidence at trial, and the court even gave an adverse inference jury instruction about the

issue. Therefore, taking all of the above into consideration, the court finds that this factor weighs in Oracle's favor.

3. The Need to make Oracle Whole

The third factor in determining whether to award attorneys' fees under the Copyright Act is the need to make the prevailing party whole. *See McCulloch*, 823 F.2d at 323 ("[S]ection 505 is intended in part to encourage the assertion of colorable copyright claims . . . and to make the plaintiffs whole.").

In its motion, Oracle argues that an award of attorneys' fees is necessary to compensate it for its huge outlay of fees and costs necessarily incurred in enforcing its copyrights. The court agrees. Oracle has spent decades developing its copyrighted software only to have the defendants take that hard work and use it to their benefit at Oracle's expense. In order to prosecute this action, Oracle was compelled to spend a significant amount of resources in legal fees and costs over what was eventually awarded in damages just to stop defendants' unlawful conduct. Without a fee award, the court finds that Oracle's investment in its intellectual property and its incentive to create future software would not be appropriately protected or compensated.

4. Deterrence

The fourth factor in a court's attorneys' fee analysis is the need to deter defendants and others from engaging in future infringement. *McCulloch*, 823 F.2d at 323. Here, the court finds that an award of attorneys' fees is appropriate to deter defendant Rimini from its pattern of infringing Oracle's copyrights, which started when the business began and continued until the middle of this litigation. Further, an award of fees

is necessary to deter other third party service providers from engaging in similar infringing conduct in order to compete with Oracle for software support services.

5. Purpose of the Copyright Act

The last factor in a court’s analysis of whether to award attorneys’ fees is whether an award will further the purposes of the Copyright Act. *See Mattel, Inc. v. MGA Entm’t, Inc.*, 705 F.3d 1108, 1111 (9th Cir. 2012) (“The most important factor in determining whether to award fees under the Copyright Act, is whether an award will further the purposes of the Act.”).

The court finds that awarding attorneys’ fees in this action furthers the purposes of the Copyright Act as it rewards owners of intellectual property, like Oracle, for pursuing their rights under the act and “encouraging and rewarding authors’ creations.” *Kirtsaeng*, 136 S. Ct. at 1986. Further, as discussed above, an award of attorneys’ fees would deter future infringement. As such, the court finds that a fee award is appropriate in this action. *See id.* (“[F]ee awards under § 505 should encourage the type of lawsuits that promote [the purposes of the Copyright Act].”). Accordingly, the court shall grant Oracle’s motion and issue an award of attorneys’ fees under the Copyright Act.³

³ An award of attorneys’ fees is also available under both the CDAFA and the NCCL. *See* CAL. PENAL CODE § 502(e)(2) (“In any action brought pursuant to this subdivision the court may award reasonable attorney’s fees.”); NEV. REV. STAT. § 205.4765 (“Any victim of a crime described in NRS 205.473 to 205.513, inclusive, may bring a civil action to recover . . . [c]osts and reasonable attorney’s fees incurred in bringing the civil action.”). Insofar as

B. Amount of Fees

If a district court determines that an award of attorneys' fees is warranted under the Copyright Act (or other statutory provision), the court must determine the amount of reasonable fees to award the prevailing party. In its motion, Oracle argues that the court should award \$35,627,807.99 in attorneys' fees to compensate it for the fees it incurred to prosecute this litigation. In determining the reasonableness of an award of attorneys' fees, a district court considers several non-exclusive factors, including: (1) the reputation and skill of counsel; (2) the financial terms of the client fee arrangement;⁴ (3) the nature and extent of work performed and results obtained; and (4) awards in similar cases. *See* LR 54-16(b)(3); *Resurrection Bay Conservation All. v. City of Seward Alaska*, 640 F. 3d 1087, 1095 (9th Cir. 2011).

Initially, in determining the amount of fees to award in an action, the court must look to the reasonableness of the rates charged by counsel. *Id.* Generally, courts determine a reasonable rate for attorneys' fees based upon "the rates prevailing in that district for similar services by lawyers of reasonably comparable skill, experience and reputation," irrespective of

the court has found that Oracle is entitled to attorneys' fees under the Copyright Act, the court also finds that attorneys' fees are warranted under the CDAFA and the NCCL, both of which allow attorneys' fees under factors less stringent than the Copyright Act. Further, in contrast to an award of fees under the Copyright Act, for which defendant Ravin was not found liable, the court finds that an award of fees under both the CDAFA and the NCCL may be levied against both defendants severally and equally.

⁴ Here it is undisputed that Oracle's fee arrangements with counsel were hourly rate contracts for work performed in this action and were not contingency fee agreements.

practice area. *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 445 (9th Cir. 2010). However, “the district court may, if circumstances warrant, adjust the lodestar to account for other factors which are not subsumed within it.” *Ferland v. Conrad Credit Corp.*, 224 F.3d 1145, 1149 n.4 (9th Cir. 2001). Those additional non-exclusive factors include: “(1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the ‘undesirability’ of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases.” *Ballen v. City of Redmond*, 466 F.3d 736, 746 (9th Cir. 2006).

Here, the court finds that the appropriate rates for counsel in this copyright infringement action are the actual rates charged by counsel. “Unless counsel is working outside his or her normal area of practice, evidence that a billing rate was the usual rate the attorney charges for his or her services is evidence that the rate is comparable to the market rate.” *Perfect 10, Inc. v. Giganews, Inc.*, No. 11-07098, 2015 WL 1746484, at *5 (C.D. Cal. Mar. 25, 2015). Further, in an action under the Copyright Act, an award based on the actual rates charged by counsel has consistently been held to be reasonable under 17 U.S.C. § 505. *See, e.g., Kourtis v. Cameron*, 358 Fed. App’x. 863, 868 (9th Cir. 2009). This is because in such complex litigation “the parties can reasonably be expected to retain nation-

ally respected law firms and nationally respected attorneys to pursue their interest in the litigation,” which will result in “higher lodestars than normally seen in this district.” *Pacquiao v. Mayweather*, 2012 WL 4092684, at *2 (D. Nev. 2012) (finding actual rates paid to California attorneys were “reasonable” and awarding them). As such, the court finds that the actual rates Oracle paid its attorneys - as established in the several declarations attached in support of Oracle’s motion - are reasonable rates for this action.

Additionally, the reasonableness of the rates charged in this action is confirmed by both parties’ decisions to hire national law firms. Their decisions to hire national firms reflects that the market for legal services for copyright infringement is a national market and that both parties believed only nationally-renowned firms that charged above market rates for this district could handle their cases. Therefore, the court finds that the actual rates charged by counsel in this action are reasonable rates.

Now, the issue turns to whether the amount of time billed in this case was reasonable. “[T]o determine whether attorneys for the prevailing party could have reasonably billed the hours they claim to their private clients, the district court should begin with the billing records the prevailing party has submitted.” *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202 (9th Cir. 2013). In its motion, Oracle argues that its billing records reflect a reasonable amount of time spent on this complex litigation, and that it has made conservative adjustments to the hours actually spent by counsel prior to submitting the records.

The court has reviewed Oracle’s billing records and finds that Oracle has proffered sufficient evidence for the court to find that most of the time billed by

counsel was reasonable for such complex litigation. However, as identified in detail by defendants' objections to evidence submitted in support of Oracle's motion,⁵ Oracle's billing records do include some inconsistencies that violate regular billing practices and guidelines, such as improper block billing entries, though the court does not find Oracle's billing records nearly as "replete" with errors as defendants contend. *See, e.g., Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007) ("[B]lock billing makes it more difficult to determine how much time was spent on particular activities."). Rather than identify every instance of a mathematical error, block billing, or missing invoice, the court finds that a blanket reduction of the requested fees in the amount of 20% is appropriate and consistent with other attorneys' fee awards under similar situations. *See, e.g., Huhmann v. FedEx Corp.*, 2015 WL 6127198, at *8 (S.D. Cal. Oct. 16, 2015) (30% reduction for improper billing entries); *eMove, Inc. v. SMD Software, Inc.*, 2012 WL 4856276, at *7 (D. Ariz. Oct. 11, 2012) (20% reduction for improper billing entries); *Gunderson v. Mauna Kea Prop., Inc.*, 2011 WL 9754085, at *10 (D. Haw. May 9, 2011) (20% reduction for improper billing entries). Therefore, reducing Oracle's request for fees by 20%, Oracle is entitled to recover \$28,502,246.40 in attorneys' fees incurred in this action.⁶

⁵ Along with its opposition, defendants filed two separate objections to evidence submitted in support of Oracle's motion for attorneys' fees. ECF Nos. 1005, 1031. Unless and except as specified in the court's order, the court finds that the evidentiary objections are without merit or go to the weight the court should give the evidence in determining an award of attorneys' fees, rather than the admissibility of the evidence before the court.

⁶ Defendants argue that any fee award must be further reduced because Oracle did not achieve a result greater than their

C. Costs

As part of its motion for attorneys' fees, Oracle seeks recovery of both taxable and nontaxable costs. *See* ECF No. 917. First, Oracle seeks to recover \$4,950,566.70 in taxable costs, which includes deposition costs, document recovery and storage, and electronic discovery costs. Under Rule 54(d) of the Federal Rules of Civil Procedure, unless a federal statute or court order provides otherwise, costs should be awarded to the prevailing party. FED. R. CIV. P. 54(d)(1); *see also Ass'n of Mexican-Am. Educators v. State of California*, 231 F.3d 572, 591 (9th Cir. 2000). The court has reviewed Oracle's request for taxable costs and finds that they are recoverable and reasonable. *See* 28 U.S.C. § 1920. Therefore, the court shall award Oracle \$4,950,566.70 in taxable costs.

Oracle also seeks to recover \$17,636,755.68 in non-taxable costs. Section 505 of the Copyright Act permits a successful plaintiff to recover all costs incurred in litigation, not just taxable costs authorized by Rule 54(d) and 28 U.S.C. § 1920. *See Twentieth Century Fox Film Corp. v. Entm't Distrib.*, 429 F.3d 869, 885 (9th Cir. 2005). Here, Oracle's request for

pre-trial Rule 68 offers. *See Lantz v. Kreider*, 2010 WL 2609080, at *5 (D. Nev. 2010) ("The proper course of action with respect to the unaccepted Rule 68 offer of judgment is to preclude plaintiff's recovery of that portion of fees and costs related to work on the . . . claim after the date of the offer."). The court disagrees. During the course of this action, Rimini offered Oracle three separate Rule 68 Offers of Judgment. Defendants contend that the second Rule 68 offer for \$60 million and the third offer for \$100 million are both more favorable than the roughly \$52 million obtained at trial. However, the court finds that these offers, which did not include any injunctive relief and proposed payment over several years without interest, were not "more favorable" than the ultimate judgment Oracle obtained in this action.

non-taxable costs includes litigation costs for expert witness fees, additional e-discovery fees not included under 28 U.S.C. § 1920, contract attorney services, jury consulting, and other non-taxable costs. As with Oracle's request for attorneys' fees, defendants object to several of the billing records and invoices submitted in support of Oracle's request.

The court has reviewed the documents and pleadings on file in this matter and finds that Oracle is entitled to an award of non-taxable costs in this action for the same reasons the court is awarding attorneys' fees. However, similar to the award of fees, the court finds that Oracle is entitled to only a reduced amount of fees for various billing issues, including lost or non-validated invoices, vague billing descriptions and vague work entries. Because of these limited errors, the court finds that an overall reduction of 25% for almost all non-taxable costs is warranted.

As to defendants' specific challenge regarding the expert witness fees of Oracle's damages expert Elizabeth Dean, the court finds that a reduction of 50% of her expert fees and costs is appropriate. The court makes this additional reduction because, prior to trial, Oracle withdrew Dean's testimony as to one of its two damages theories in response to a motion to exclude by defendants. Thus, at trial, Oracle only presented half of Dean's prepared testimony. The court finds that it would not be fair or equitable to require defendants to pay for expert witness testimony that was withdrawn in response to their challenge, especially in light of the fact that by that time in the litigation, defendants had already deposed Dean, rebutted her report with an expert of their own, and filed a motion to exclude her report. Defendants should not bear the

costs of creating the withdrawn portions of Dean's expert report. Therefore, reducing Oracle's request for costs by 50% for the expert witness costs of Elizabeth Dean (\$1,812,066.02 to \$906,033.01) and 25% for the rest of Oracle's requested non-taxable costs (\$15,824,689.66 to \$11,868,517.25), the court finds that Oracle is entitled to recover \$12,774,550.26 in additional non-taxable costs for this action. Accordingly, the court shall grant Oracle's motion for attorneys' fees and costs and award Oracle fees and costs in the amount of \$46,227,363.36.

IT IS THEREFORE ORDERED that plaintiffs' motion for a preliminary injunction (ECF No. 900) is GRANTED in-part and DENIED in-part in accordance with this order. Plaintiffs shall have ten (10) days after entry of this order to prepare an appropriate permanent injunction that complies with the court's order and submit the same for signature.

IT IS FURTHER ORDERED that the clerk of court shall enter judgment in favor of plaintiffs Oracle America, Inc. and Oracle International Corporation and against defendants Rimini Street, Inc. and Seth Ravin on plaintiffs' ninth cause of action for unfair competition in violation of California's Unfair Competition Law.

IT IS FURTHER ORDERED that plaintiffs' motion for prejudgment interest (ECF No. 910) is GRANTED in-part and DENIED in-part in accordance with this order. Plaintiffs shall have ten (10) days after entry of this order to prepare an appropriate order setting prejudgment interest that complies with the court's order and submit the same for signature.

IT IS FURTHER ORDERED that plaintiffs' motion for attorneys' fees and costs (ECF No. 917) is GRANTED in accordance with this order. The clerk of court shall enter an award of attorneys' fees and costs in favor of plaintiffs Oracle USA, Inc.; Oracle America, Inc.; and Oracle International Corporation and against defendants Rimini Street, Inc. and Seth Ravin in the amount of \$46,227,363.36.

IT IS SO ORDERED.

DATED this 21st day of September, 2016.

/s/ Larry R. Hick
LARRY R. HICKS
UNITED STATES DISTRICT
JUDGE

APPENDIX F

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UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

ORACLE USA, INC., a
 Colorado corporation;
 ORACLE AMERICA,
 INC., a Delaware
 corporation; and ORACLE
 INTERNATIONAL
 CORPORATION, a
 California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a
 Nevada corporation; and
 SETH RAVIN, an
 individual,

Defendants.

Case No. 2:10-cv-0106-
 LRH-PAL

**REPLY IN SUPPORT
 OF MOTION FOR
 PERMANENT
 INJUNCTION
 AGAINST
 DEFENDANTS RIMINI
 STREET, INC. AND
 SETH RAVIN, FOR
 DISPOSITION OF
 INFRINGING COPIES,
 AND FOR JUDGMENT
 ON ORACLE'S UNFAIR
 COMPETITION
 CLAIM**

* * *

copyright infringement. Dkt. 896. Based upon the jury instructions and the evidence presented, the finding of no infringer's *profits* only related to whether Rimini earned a profit in so infringing. Tr. 2654:15-17 (Zorn) (Rimini "had a net loss of 63 million" in the relevant time period); Tr. 2758:15-2760:1 (Hampton) ("they [Rimini] didn't have any profit. They were negative on net profit, so they weren't profitable."); Jury Instr. 32, Dkt. 880. The jury still found the conduct to be *unlawful*, and copyright law and Oracle's requested injunction seek to protect against such infringement. Compare *Eldred v. Ashcroft*, 537 U.S. 186, 225-26 (2003), with Tr. 443:4-445:6 (Ravin) (planning to get the high-multiples valuation of a software company without investment).

Rimini also argues that the jury's finding of innocent copyright infringement should thwart Oracle's request for an injunction. But courts can and do enter injunctions against innocent infringers, consistent with the plain language of the Copyright Act. See 17 U.S.C. § 405(b) (allowing a court to "enjoin the continuation of the infringing undertaking" even where an innocent infringer was misled by the absence of a copyright notice on an authorized copy of the copyrighted work); *Jackson v. MPI Home Video*, 694 F. Supp. 483, 492, 493 (N.D. Ill. 1988) (issuing a preliminary injunction against a likely innocent infringer who "evinced an attitude of callous disregard toward Jackson's copyright"). The volume of infringing copies and derivative works in this case, PF 21-28, 62, the scale of cross-use of those copies, PF 45-46, 51, 53-61, 64-65, and Rimini's efforts to conceal its infringement, PF 52, 90-95, amply demonstrate Rimini's "callous disregard" for Oracle's copyright rights.

The cases that Rimini cites in its Opposition do not counsel a different result. Because Rimini continues to infringe, its current infringement is undisputedly willful rather than innocent. Rimini also cites almost entirely to discussions under the Lanham Act of innocent trademark infringement where no harm had been established. See *In re Cir. Breaker Litig.*, 860 F. Supp. 1453, 1455 (C.D. Cal. 1994) (“The Lanham Act empowers courts to issue injunctions ‘to prevent the violation’ of the registrant’s rights, 15 U.S.C. § 1116(a), not to punish innocent infringers.”), *aff’d sub nom. Westinghouse Elec. Corp. v. Gen. Cir. Breaker & Elec. Supply Inc.*, 106 F.3d 894 (9th Cir. 1997); *Contessa Food Prods., Inc. v. Lockpur Fish Processing Co.*, Nos. CV 98–8218 NM (SHx), 99–4783 NM (SHx), 2003 WL 25778704, at *7 (C.D. Cal. Jan. 29, 2003) (quoting *In re Cir. Breaker Litig.*).⁶ These cases have no relevance to the statutory notion of innocent infringement under the Copyright Act. When quoting from *Dolori Fabrics, Inc. v. Limited, Inc.*, 662 F. Supp. 1347 (S.D.N.Y. 1987), Rimini omits that the court denied injunctive relief where “an innocent infringer ... ceased its infringement *immediately upon receiving notice*” that the work was copyrighted. *Dolori Fabrics*, 662 F. Supp. at 1358 (emphasis added). Rimini always had notice that Oracle’s software and support materials were copyrighted, Tr. 1546:5-20 (Screven).⁷ Rimini’s authorities do not counsel denial of Oracle’s proposed injunction

⁶ While *Contessa Food* included copyright claims, Rimini quotes only trademark-law discussions.

⁷ In *Polygram Int’l Pub., Inc. v. Nevada / TIG, Inc.*, 855 F. Supp. 1314 (D. Mass 1994), the “good faith” Rimini cites related to indirect liability absent direct infringement. *Id.* at 1323-24, 1334-35.

Last, innocent infringement has no bearing on Oracle's request for entry of an injunction as to Rimini's computer access violations, where the jury found that Rimini's and Ravin's violations were knowing, willful, and without authorization. Jury Instrs. 47, 48, 53, 54, Dkt. 880.

5. Rimini's Now Unbelievable Claim That It Has Ceased Its Improper Behavior Should Not Be Credited and Does Not Bar Injunctive Relief.

Rimini asserts that Oracle's request for an injunction is based entirely on past infringement and there is no risk of future harm. Opp'n at 11, 13-14. As noted above, Rimini's objections that the proposed injunction would impact Rimini's *current* processes belie that assertion.

Regardless, Rimini does not address either the case law Oracle cited that voluntarily cessation is unpersuasive evidence when considering a permanent injunction or the facts showing that Rimini has a history of lying to the Court. "A private party's discontinuation of unlawful conduct does not make the dispute moot, however. An injunction remains appropriate to ensure that the misconduct does not recur as soon as the case ends." *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 518 F. Supp. 2d 1197, 1222 (C.D. Cal. 2007) (quoting *BMG Music v. Gonzalez*, 430 F.3d 888, 893 (7th Cir. 2005)); see also *Broadcast Music, Inc. v. McDade & Sons, Inc.*, 928 F. Supp. 2d 1120, 1136 (D. Ariz. 2013).

Further, Rimini's supposed change in practice only after a finding of infringement supports the inference that Rimini will continue to infringe in the absence of an injunction. Rimini makes no attempt to

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deny this. *Grokster*, 518 F. Supp. 2d at 1221 (“[S]uch an inference is warranted

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DISTRICT OF NEVADA

ORACLE USA, INC., a
Colorado corporation;
ORACLE AMERICA, INC., a
Delaware corporation; and
ORACLE INTERNATIONAL
CORPORATION, a
California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a
Nevada corporation; and
SETH RAVIN, an individual,

Defendants.

**HEARING
REQUESTED**

Case No. 2:10-cv-
0106-LRH-PAL

**DEFENDANTS
RIMINI STREET,
INC.'S AND SETH
RAVIN'S
OPPOSITION TO
ORACLE'S
MOTION FOR A
PERMANENT
INJUNCTION**

* * *

But the jury completely rejected these arguments. The jury unanimously concluded that Oracle suffered **zero** lost profits as a result of the infringement. Oracle ignores the jury's verdict in arguing that "Courts find irreparable harm even where lost profits ... **may be difficult** to prove." Dkt. 900 at 17. Here, there is no ambiguity about what Oracle "may" prove. The jury

rejected Oracle’s arguments in refusing to award any lost profits, finding that none of Rimini’s profits were attributable to the infringement, and concluding that Rimini ***did not*** interfere with Oracle’s existing or prospective business relationships. Dkt. 896 at 4, 8-9.

Those factual findings “bind this Court in its consideration of equitable remedies.” *Active Sports Lifestyle USA LLC v. Old Navy, LLC*, 2014 WL 1246497, at *1 (C.D. Cal. Mar. 21, 2014); *GTE Sylvania Inc. v. Cont’l T.V., Inc.*, 537 F.2d 980, 986 n.7 (9th Cir. 1976), *aff’d*, 433 U.S. 36 (“When issues common to both legal and equitable claims are to be tried together . . . the findings of the jury are binding on the trier of the equitable claims”). Indeed, “the Seventh Amendment requires the trial judge to follow the jury’s implicit or explicit factual determinations.” *Los Angeles Police Protective League v. Gates*, 995 F.2d 1469, 1473 (9th Cir. 1993) (internal quotation omitted); *Bartee v. Michelin N. Am., Inc.*, 374 F.3d 906, 912-13 (10th Cir. 2004) (“in fashioning equitable relief, a district court is bound by both a jury’s explicit findings of fact and those findings that are necessarily implicit in the jury’s verdict”). The jury’s rejection of Oracle’s theory—that Rimini’s infringement caused Oracle to lose profits and customers and interfered with customer relationships causing a loss of goodwill—dooms Oracle’s instant argument that, absent an injunction, it will lose sales, customers, and goodwill due to Rimini’s (speculative) future conduct. *See, e.g., Apple, Inc. v. Samsung Elecs. Co.*, 678 F.3d 1314, 1324 (Fed. Cir. 2012) (no irreparable harm “if sales would be lost regardless of the infringing conduct”).

Oracle’s cited “evidence” also is insufficient as a matter of law to establish harm to goodwill and

amounts to little more than an argument that copyright infringement always causes irreparable harm. *See, e.g.*, Dkt. 900 ¶¶ 85-89. The conclusory assertion based on hearsay by Oracle CEO Safra Catz that Rimini's lower prices will cause customers to wonder "whether [Oracle is] overcharging them" (*id.* at 17), is rank speculation that is entirely unrelated to the types of harms redressable under copyright law. *Goldie's Bookstore, Inc. v. Superior Court of State of Cal.*, 739 F.2d 466, 471-72

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DISTRICT OF NEVADA

ORACLE USA, INC., a
Colorado corporation;
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**HEARING
REQUESTED**

Case No. 2:10-cv-
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**DEFENDANTS'
OPPOSITION
TO ORACLE'S
RENEWED
MOTION FOR A
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* * *

2010).

The jury *rejected* Oracle's claims that Rimini and Mr. Ravin intentionally interfered with Oracle's current and prospective customer relationships and willfully infringed its copyrights. The jury instead found that Rimini's past infringement was *innocent*—Rimini "was not aware that its acts constituted infringement" nor did Rimini have any "reason to believe that its acts constituted an infringement." Ex. E at 43; Ex. D at 6. As Rimini has contended throughout these proceedings, it would be "a major departure" from equity

practice to enjoin Rimini (*eBay*, 547 U.S. at 391–92), because Rimini is an adjudicated innocent infringer (see *Westinghouse Elec. Corp. v. Gen. Circuit Breaker & Elec. Supply Inc.*, 106 F.3d 894, 903 (9th Cir. 1997) (affirming denial of injunction where “defendants were innocent infringers”). The jury’s finding of innocent infringement constitutionally binds this Court under the Seventh Amendment. *Floyd v. Laws*, 929 F.2d 1390, 1397 (9th Cir. 1991); see also *Teutscher v. Woodson*, 835 F.3d 936, 944 (9th Cir. 2016).

Oracle has now had a half-dozen chances to cite even a single case in which an adjudicated innocent infringer was enjoined under the Copyright Act. It has failed to do so. Oracle has cited cases involving consent injunctions (*D.C. Comics Inc. v. Mini Gift Shop*, 912 F.2d 29, 36 (2d Cir. 1990)), preliminary injunctions with no jury findings (*Wales Indus. Inc. v. Hasbro Bradley, Inc.*, 612 F. Supp. 510, 520 (S.D.N.Y. 1985); *Jackson v. MPI Home Video*, 694 F. Supp. 483, 492–93 (N.D. Ill. 1988)), and cases involving the inapposite proposition that a finding of *willfulness* is not required to issue an injunction (*Williams Elecs., Inc. v. Artic Int’l, Inc.*, 685 F.2d 870, 878 (3d Cir. 1982)) or to award attorneys’ fees (*Casella v. Morris*, 820 F.2d 362, 366 (11th Cir. 1987)).¹ Oracle resorts, once again, to completely inapposite cases involving willful infringers. Mot. 20–21; see *Walt Disney Co.*, 897 F.2d at 567 (noting that the “infringements were willful”); *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545

¹ Oracle fails to appreciate that there is *willful* infringement, and infringement, and *innocent* infringement. See *Fitzgerald Pub. Co. v. Baylor Pub. Co.*, 807 F.2d 1110, 1115 (2d Cir. 1986) (“It is plain that ‘willfully’ infringing and ‘innocent intent’ are not the converse of one another.”).

U.S. 913, 938–39 (2005) (noting “unmistakable” evidence of “*intentional* facilitation of ... users’ infringement”) (emphasis added).

The “purpose of an injunction is to prevent future violations” of the law, as those violations have been adjudicated. *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953). But when the infringer’s acts are innocent, it “will not need to be deterred from future infringements.” U.S. Dep’t of Commerce, *White Paper on Remixes, First Sale, and Statutory Damages*, U.S. Patent & Trademark Office, 91 (Jan. 2016). That is because an innocent infringer will conform its conduct once informed of the boundary inadvertently transgressed, just as Rimini did here.

Oracle’s reliance on supposed “post-injunction misconduct” fares no better. Mot. 22. Oracle recycles its argument that Rimini “admi[tted] that Rimini’s” new processes “violated the terms of the [prior] injunction” by pointing out that the injunction was overbroad. Mot. 22. Oracle omits that Rimini obtained a stay of *the exact injunction Oracle now proposes* in the face of Oracle’s identical arguments. Rimini’s stay motion to the Ninth Circuit was not based on its appeal of the hacking claims; rather, Rimini argued that (1) an adjudicated innocent infringer never has been and could not be enjoined consistent with *eBay*, (2) Oracle had an adequate remedy at law, (3) Oracle failed to establish a causal nexus, and (4) the injunction was vague and overbroad. Ninth Cir. Dkt. 3-1 at 11–16. Rimini further argued that because it had ceased its prior infringing conduct, the injunction should be stayed. *Id.* at 19. The Ninth Circuit accepted those arguments, and stayed the same injunction Oracle asks this Court to re-enter.

Oracle’s argument that “nothing” has changed simply ignores the appeal, the Ninth Circuit’s stay order, and the Ninth Circuit ruling. The court of appeals has clearly signaled that the injunction was defective, and this Court should resist Oracle’s attempts to ignore the posture of this remand.

2. Oracle Has, Once Again, Failed to Show a Causal Nexus.

Oracle refuses even to acknowledge the causal nexus requirement, let alone attempt to satisfy it on this record. That is because Oracle could not possibly do so. Even assuming Oracle *had* suffered harm to its goodwill and business reputation as it claims, to obtain an injunction Oracle must “present[] ... evidence that *directly ties consumer demand* for [Rimini’s support services] to [Rimini’s] allegedly infringing feature,” *i.e.*, local-hosting for PeopleSoft and future-client cross-use for JD Edwards and Siebel. *Apple Inc. v. Samsung Elecs. Co.*, 695 F.3d 1370, 1375 (Fed. Cir. 2012) (emphasis added). It “is not enough” for Oracle to assert “some insubstantial connection between the alleged harm and the infringement” to “check the causal nexus requirement off the list.” *Id.* at 1375; see also *Perfect 10*,

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APPENDIX G

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Plaintiffs,

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RIMINI STREET,
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Defendants.

Case No. 2:10-cv-0106-
LRH-PAL

**DECLARATION OF
JIM BENGE IN OPPO-
SITION TO ORACLE'S
MOTION FOR A PER-
MANENT INJUNC-
TION**

I, Jim Benge, have personal knowledge of the facts stated below and under penalty of perjury hereby declare:

1. I am the Vice President of PeopleSoft Development at Rimini Street, Inc. ("Rimini"). I have been in that position since February 1, 2009. I have worked at Rimini since June 23, 2008.

2. As Vice President of PeopleSoft Development, I oversee the delivery of enterprise software updates to keep Rimini's PeopleSoft clients in compliance with evolving tax, legal, and regulatory requirements and am familiar with Rimini's processes for providing support services related to Oracle's PeopleSoft software product.

3. Rimini's current support processes for PeopleSoft do not rely on the use of any "local" PeopleSoft environments or documentation on Rimini's computer systems.

4. Rimini's current support process does not download or transmit onto Rimini's computer systems any PeopleSoft software or documentation from password-protected Oracle websites, or upload such software or documentation from any Oracle installation media.

5. Instead of using local or cloned copies of PeopleSoft, Rimini's current process involves remotely accessing a Rimini client's PeopleSoft environments that Rimini uses to service that client.

6. Certain of Rimini's clients have elected to store copies of PeopleSoft software or documentation on cloud computing platforms, such as Amazon or

Windstream. For those clients, Rimini's current process involves remotely accessing the clients' PeopleSoft software or documentation that is stored in the cloud.

7. Rimini's current process does not use automated tools to access or download PeopleSoft software or documentation from password-protected Oracle websites.

8. When Rimini downloads PeopleSoft software or documentation from password-protected Oracle websites for a Rimini client, the current process involves using only that client's valid login credentials.

9. Rimini's current process does not use one client's PeopleSoft software or documentation to reproduce or "clone" a new environment for any other Rimini client.

10. Rimini's current process does not reproduce PeopleSoft software or documentation licensed to one client from that client to any other client.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Jim Benge
Jim Benge

Executed on: November 2, 2015
Pleasanton, California

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UNITED STATES DISTRICT COURT
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ORACLE USA, INC.;
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RIMINI STREET,
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RAVIN,

Defendants.

Case No. 2:10-cv-0106-
LRH-PAL

**DECLARATION OF
RON TEEGARDEN IN
OPPOSITION TO OR-
ACLE'S MOTION
FOR A PERMANENT
INJUNCTION**

I, Ron Teegarden, have personal knowledge of the facts stated below and under penalty of perjury hereby declare:

1. I am the Practice Manager of Global JD Edwards Service Delivery at Rimini Street, Inc. ("Rimini"). I have been in that position since June 1, 2013. I have worked at Rimini since February 21, 2012.

2. As Practice Manager of Global JD Edwards Service Delivery, I oversee delivery of, and am familiar with, Rimini's processes for providing support services related to Oracle's JD Edwards software product.

3. Rimini's current support processes for JD Edwards do not rely on the use of any "local" JD Edwards environments or documentation on Rimini's computer systems.

4. Rimini's current support process does not download or transmit onto Rimini's computer systems any JD Edwards software or documentation from password-protected Oracle websites, or upload such software or documentation from any Oracle installation media.

5. Instead of using local or cloned copies of JD Edwards, Rimini's current process involves remotely accessing a Rimini client's JD Edwards environments that Rimini uses to service that client.

6. Certain of Rimini's clients have elected to store copies of JD Edwards software or documentation on cloud computing platforms, such as Amazon or Windstream. For those clients, Rimini's process involves remotely accessing the clients' JD Edwards software or documentation that is stored in the cloud.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Ron Teegarden
Ron Teegarden

Executed on: November 2, 2015
Virginia Beach, Virginia

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ORACLE USA, INC.;
and ORACLE INTER-
NATIONAL CORPO-
RATION,

Plaintiffs,

v.

RIMINI STREET,
INC.; and SETH
RAVIN,

Defendants.

Case No. 2:10-cv-0106-
LRH-PAL

**DECLARATION OF
KIEN PHUNG IN OP-
POSITION TO ORA-
CLE'S MOTION FOR A
PERMANENT IN-
JUNCTION**

I, Kien Phung, have personal knowledge of the facts stated below and under penalty of perjury hereby declare:

1. I am the Vice President of Global Siebel Service Delivery at Rimini Street, Inc. ("Rimini"). I have been in that position since March 2013. I have worked at Rimini since March 2008.

2. As Vice President of Global Siebel Service Delivery, I oversee delivery of, and am familiar with, Rimini's processes for providing support services related to Oracle's Siebel software product.

3. Rimini's current support processes for Siebel do not rely on the use of any "local" Siebel environments or documentation on Rimini's computer systems.

4. Rimini's current support process does not download or transmit onto Rimini's computer systems any Siebel software or documentation from password-protected Oracle websites, or upload such software or documentation from any Oracle installation media.

5. Instead of using local or cloned copies of Siebel, Rimini's current process involves remotely accessing a Rimini client's Siebel environments that Rimini uses to service that client.

6. Certain of Rimini's clients have elected to store copies of Siebel software or documentation on cloud computing platforms, such as Amazon or Windstream. For those clients, Rimini's current process involves remotely accessing the clients' Siebel software or documentation that is stored in the cloud.

7. Rimini's current process does not use automated tools to access or download Siebel software or

documentation from password-protected Oracle websites.

8. When Rimini downloads Siebel software or documentation from password-protected Oracle websites for a Rimini client, Rimini's current process involves using only that client's valid login credentials.

9. Rimini's current process does not use one client's Siebel software or documentation to reproduce or "clone" a new environment for any other Rimini client.

10. Rimini's current process does not reproduce Siebel software or documentation licensed to one client from that client to any other client.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Kien Phung
Kien Phung

Executed on: November 2, 2015
Las Vegas, Nevada

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ORACLE USA, INC.;
and ORACLE INTER-
NATIONAL CORPO-
RATION,

Plaintiffs,

v.

RIMINI STREET,
INC.; and SETH
RAVIN,

Defendants.

Case No. 2:10-cv-0106-
LRH-PAL

**DECLARATION OF
CRAIG MACKERETH
IN OPPOSITION TO
ORACLE'S MOTION
FOR A PERMANENT
INJUNCTION**

I, Craig Mackereth, have personal knowledge of the facts stated below and under penalty of perjury hereby declare:

1. I am the Group Vice President of Global Application Support at Rimini Street, Inc. ("Rimini"). I have been in that position since January 1, 2014. I have worked at Rimini since May 14, 2012.

2. As Group Vice President of Global Application Support, I oversee the world-wide delivery of Rimini support services for SAP and Oracle software products and am familiar with Rimini's processes for providing support services related to Oracle's Oracle Database software product.

3. Certain Rimini clients may, but are not required to, use Oracle Database to support their other Oracle software products, such as PeopleSoft, JD Edwards, and Siebel.

4. Rimini's current support processes for Oracle Database do not rely on the use of any "local" Oracle Database environments on Rimini's computer systems.

5. Rimini's current support process does not download or transmit onto Rimini's computer systems any Oracle software from password-protected Oracle websites, or upload such materials from any Oracle installation media.

6. Instead of using local or cloned copies of Oracle Database software, Rimini's current process involves remotely accessing a Rimini client's Oracle Database environments that Rimini uses to service that client.

7. Certain of Rimini's clients have elected to store copies of Oracle Database software on cloud computing platforms, such as Amazon or Windstream. For those clients, Rimini's current process involves remotely accessing the Oracle Database software stored in the clients' cloud environments.

8. Rimini's current process does not use automated tools to access or download Oracle Database software from password-protected Oracle websites.

9. When Rimini downloads Oracle Database software from password-protected Oracle websites for a Rimini client, the current process involves using only that client's valid login credentials.

10. Rimini's current process does not use one client's Oracle Database software to reproduce or "clone" a new environment for any other Rimini client.

11. Rimini's current process does not reproduce Oracle Database software licensed to one client from that client to any other clients.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Craig Mackereth
Craig Mackereth

Executed on: November 2, 2015
Hayward, California

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Ravin

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ORACLE USA, INC.;
and ORACLE INTER-
NATIONAL CORPO-
RATION,

Plaintiffs,

v.

RIMINI STREET,
INC.; and SETH
RAVIN,

Defendants.

Case No. 2:10-cv-0106-
LRH-PAL

**DECLARATION OF
DAVID MILLER IN
OPPOSITION TO ORA-
CLE'S MOTION FOR A
PERMANENT IN-
JUNCTION**

I, David Miller, have personal knowledge of the facts stated below and under penalty of perjury hereby declare:

1. I am the Vice President of Global Client Onboarding at Rimini Street, Inc. ("Rimini"). I have been in that position since January 1, 2015. I have worked at Rimini since April 18, 2012.

2. As Vice President of Global Client Onboarding, I oversee the transition of clients from vendor to Rimini support and am familiar with Rimini's processes for providing support services related to Oracle's JD Edwards software product.

3. Rimini's current support process does not use automated tools to access or download JD Edwards software or documentation from password-protected Oracle websites.

4. When Rimini downloads JD Edwards software or documentation from password-protected Oracle websites for a Rimini client, Rimini's current process involves using only that client's valid login credentials.

5. Rimini's current process does not use one client's JD Edwards software or documentation to reproduce or "clone" a new environment for any other Rimini client.

6. Rimini's current process does not reproduce JD Edwards software or documentation licensed to one client from that client to any other client.

102a

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ David Miller
David Miller

Executed on: November 2, 2015
Gig Harbor, Washington

APPENDIX H

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

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ORACLE USA, INC., a	:	DATE FILED: OCT 13 2015
Colorado corporation;	:	
ORACLE AMERICA, INC., a	:	2:10-CV-0106- LRH-PAL
Delaware corporation; and	:	
ORACLE INTERNATIONAL	:	
CORPORATION, a	:	
California corporation;	:	<u>VERDICT</u>
Plaintiffs,	:	
v.	:	
RIMINI STREET, INC., a	:	
Nevada corporation; and	:	
SETH RAVIN, an individual;	:	
Defendants.	X	

Instructions: When answering the following questions and filling out this Verdict Form, please refer to the Jury Instructions for guidance on the law applicable to the subject matter covered by each question.

WE THE JURY, in the above-entitled case, unanimously find as follows:

INFRINGEMENT**Question 1: PeopleSoft Documentation**

Has Oracle International Corporation proven by a preponderance of the evidence that Rimini Street engaged in copyright infringement by copying copyrighted PeopleSoft documentation in a manner not authorized by the terms of the PeopleSoft software license agreements that the Court has explained to you?

☒ Yes ☐ No

Question 2: J.D. Edwards Software and Documentation

Has Oracle International Corporation proven by a preponderance of the evidence that Rimini Street engaged in copyright infringement by copying copyrighted J.D. Edwards software and documentation in a manner not authorized by the terms of the J.D. Edwards software license agreements that the Court has explained to you?

☒ Yes ☐ No

Question 3: Siebel Software and Documentation

Has Oracle International Corporation proven by a preponderance of the evidence that Rimini Street engaged in copyright infringement by copying copyrighted Siebel software and documentation in a manner not authorized by the terms of the Siebel software license agreements that the Court has explained to you?

☒ Yes ☐ No

Question 4: Contributory Infringement

Has Oracle International Corporation proven by a preponderance of the evidence that defendant Seth Ravin engaged in contributory copyright infringement of the following Oracle International Corporation copyrighted works?

PeopleSoft Software ☐ Yes ☒ No

PeopleSoft Documentation ☐ Yes ☒ No

J.D. Edwards Software and Documentation
 ☐ Yes ☒ No

Siebel Software and Documentation
 ☐ Yes ☒ No

Oracle Database ☐ Yes ☒ No

Question 5: Vicarious Infringement

Has Oracle International Corporation proven by a preponderance of the evidence that defendant Seth Ravin engaged in vicarious copyright infringement of the following Oracle International Corporation copyrighted works?

PeopleSoft Software ☐ Yes ☒ No

PeopleSoft Documentation ☐ Yes ☒ No

J.D. Edwards Software and Documentation
 ☐ Yes ☒ No

Siebel Software and Documentation
 ☐ Yes ☒ No

Oracle Database ☐ Yes ☒ No

COPYRIGHT INFRINGEMENT DAMAGES

Question 6: Actual Damages

What do you find is the best measure of Oracle International Corporation's actual damages for all acts of copyright infringement engaged in by defendant Rimini Street?

Lost Profits _____

Fair Market Value License ✓

Regardless of whether you find that Lost Profits or a Fair Market Value License is the best measure of actual damages in this action, please answer all three of the following questions concerning damages: Questions 6a, 6b, and 6c. Your answer to the damages question that you find is not the best measure of actual damages (either Lost Profits or a Fair Market Value License) is advisory to the court only.

Question 6a: Lost Profits

What amount of Lost Profits, if any, has Oracle International Corporation proven by a preponderance of the evidence for all acts of copyright infringement engaged in by defendant Rimini Street? If you found in Questions 1 through 3 that defendant Rimini Street did not engage in copyright infringement as to a particular copyrighted work, please do not consider that copyrighted work in your damages amount.

Total Lost Profits: \$ 0

Question 6b: Defendant's Profits

What amount of Rimini Street's Profits, if any, has Oracle International Corporation proven by a preponderance of the evidence for all acts of copyright infringement engaged in by defendant Rimini Street? If

you found in Questions 1 through 3 that defendant Rimini Street did not engage in copyright infringement as to a particular copyrighted work, please do not consider that copyrighted work in your damages amount.

Total Amount of Defendant's Profits: \$ 0

Question 6c: Fair Market Value License

What amount do you find that Oracle International Corporation has proven by a preponderance of the evidence is the Fair Market Value License for all of the infringed copyrighted works? If you found in Questions 1 through 3 that defendant Rimini Street did not engage in copyright infringement as to a particular copyrighted work, please do not consider that copyrighted work in your damages amount.

Total value of a Fair Market Value License: \$ 35,600,000

Question 7: Contributory Infringement Damages

If you found that defendant Seth Ravin engaged in contributory copyright infringement, which portion of the actual damages award that you awarded against Rimini Street do you find that defendant Seth Ravin is contributorily liable for? The actual damages award that you should use for this question is whichever damages theory - either Lost Profits or a Fair Market Value License - that you determined is the best measure of actual damages.

Contributory Damages Amount: \$ 0

Question 8: Vicarious Infringement Damages

If you found that defendant Seth Ravin engaged in vicarious copyright infringement, which portion of the actual damages award that you awarded against Rimini Street do you find that defendant Seth Ravin is vicariously liable for? The actual damages award that you should use for this question is whichever damages theory - either Lost Profits or a Fair Market Value License - that you determined is the best measure of actual damages.

Vicarious Damages Amount: \$ 0

STATUTORY DAMAGES

Regardless of your verdict under the section Copyright Infringement Damages above, you must determine the amount of statutory damages under the Copyright Act. To determine the amount of statutory damages under the Copyright Act, please answer the following questions. Please note that in response to Questions 9 and 10, copyright infringement need not be innocent or willful, but can simply be infringement. Questions 9 and 10 reflect your finding as to special considerations for determining statutory damages under the Copyright Act. After deliberating, it may be that your answers to both Questions 9 and 10 are No. Such an answer is acceptable and contemplated under the Copyright Act.

Question 9: Innocent Infringement

Do you find that defendant Rimini Street has proven by a preponderance of the evidence that its infringement, if any, of the following copyrighted works

was innocent as explained in the jury instruction titled Copyright Infringement - Damages - Innocent Infringement?

PeopleSoft Software ☒ Yes ☐ No

PeopleSoft Documentation ☒ Yes ☐ No

J.D. Edwards Software and Documentation
 ☒ Yes ☐ No

Siebel Software and Documentation
 ☒ Yes ☐ No

Oracle Database ☒ Yes ☐ No

If you found that defendant Rimini Street engaged in innocent infringement as to all of the copyright infringement that it engaged in, skip Question 10. However, if you found that defendant Rimini Street did not engage in innocent infringement as to all of the copyright infringement that it engaged in, or that it engaged in innocent infringement as to only some of the copyright infringement that it engaged in, answer Question 10.

Question 10: Willful Infringement

Do you find that plaintiff Oracle International Corporation has proven by a preponderance of the evidence that defendant Rimini Street's infringement, if any, of the following copyrighted works was willful as explained in the jury instruction titled Copyright Infringement - Damages - Willful Infringement?

PeopleSoft Software ☐ Yes ☒ No

PeopleSoft Documentation ☐ Yes ☒ No

J.D. Edwards Software and Documentation
 ☐ Yes ☒ No

Siebel Software and Documentation

___ Yes ☒ No

Oracle Database

___ Yes ☒ No

Question 11: Statutory Damages

You must now determine the amount of statutory damages to award Oracle International Corporation under the Copyright Act. There are 100 copyright registrations listed in your juror book. The parties have agreed that no more than 93 copyrighted works are eligible for statutory damages.

You may award any amount between \$200 and \$150,000 for each copyrighted work infringed depending upon your findings regarding intent in the above questions. If you found that the infringement as to a particular copyrighted work was innocent in Question 9, then you may award between \$200 and \$30,000 for each such copyrighted work. However, if you found that the infringement as to a particular copyrighted work was willful in Question 10, then you may award between \$750 and \$150,000 for each such copyrighted work.

The total number of copyrighted works for which statutory damages is awarded is: 93

The total amount to be awarded for statutory damages is: 2,790,000

Question 12: Contributory Infringement

If you found that defendant Seth Ravin engaged in contributory copyright infringement, what portion of the statutory damages award that you awarded against Rimini Street do you find that defendant Seth Ravin is contributorily liable for?

Contributory Statutory Damages Amount: \$ 0

Question 13: Vicarious Infringement

If you found that defendant Seth Ravin engaged in vicarious copyright infringement, what portion of the statutory damages award that you awarded against Rimini Street do you find that defendant Seth Ravia is vicariously liable for?

Vicarious Statutory Damages Amount: \$ 0

INDUCING BREACH OF CONTRACT/ INTENTIONAL INTERFERENCE

Question 14: Inducing Breach of Contract

Do you find that plaintiff Oracle America, Inc. has proven by a preponderance of the evidence that defendant Rimini Street and/or Seth Ravin induced customers of Oracle America, Inc. to breach their contracts with Oracle America, Inc.?

Rimini Street Yes ✓ No

Seth Ravin Yes ☒ No

If you answered yes to either defendant, what amount of damages did that breach of contract cause to Oracle America, Inc.? If you did not answer yes to the above question as to a particular defendant please write N/A in the appropriate space provided.

Rimini Street	\$ 0
---------------	------

Seth Ravin \$ 0

Question 15: Intentional Interference - Oracle America, Inc.

Do you find that plaintiff Oracle America, Inc. has proven by a preponderance of the evidence that defendant Rimini Street and/or Seth Ravin intentionally

interfered with economic relationships between Oracle America, Inc. and customers that probably would have resulted in an economic benefit to Oracle America, Inc.?

Rimini Street ☐ Yes ☒ No

Seth Ravin ☐ Yes ☒ No

If you answered yes to either defendant what amount of damages did that intentional interference cause to Oracle America, Inc.? If you did not answer yes to the above question as to a particular defendant please write N/A in the appropriate space provided.

Rimini Street \$ 0

Seth Ravin \$ 0

Question 16: Intentional Interference - Oracle International Corporation

Do you find that plaintiff Oracle International Corporation has proven by a preponderance of the evidence that defendant Rimini Street and/or Seth Ravin intentionally interfered with economic relationships between Oracle International Corporation and customers that probably would have resulted in an economic benefit to Oracle International Corporation?

Rimini Street ☐ Yes ☒ No

Seth Ravin ☐ Yes ☒ No

If you answered yes to either defendant what amount of damages did that intentional interference cause to Oracle International Corporation? If you did not answer yes to the above question as to a particular defendant please write N/A in the appropriate space provided.

Rimini Street	\$ <u>0</u>
---------------	-------------

Seth Ravin	\$ <u>0</u>
------------	-------------

COMPUTER ACCESS CLAIMS

Question 17: California Computer Data Access and Fraud Act - Oracle America, Inc.

Do you find that Oracle America, Inc. has proven by a preponderance of the evidence that defendant Rimini Street and/or Seth Ravin violated the California Computer Data Access and Fraud Act as explained in the jury instructions?

Rimini Street	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
---------------	---	-----------------------------

Seth Ravin	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
------------	---	-----------------------------

If you answered yes to either defendant what amount of damages did that violation of the California Computer Data Access and Fraud Act cause to Oracle America, Inc.? If you did not answer yes to the above question as to a particular defendant please write N/A in the appropriate space provided.

Rimini Street	\$ <u>8,827,000</u>
---------------	---------------------

Seth Ravin	\$ <u>8,827,000</u>
------------	---------------------

Question 18: California Computer Data Access and Fraud Act - Oracle International Corporation

Do you find that plaintiff Oracle International Corporation has proven by a preponderance of the evidence that defendant Rimini Street and/or Seth Ravin violated the California Computer Data Access and Fraud Act as explained in the jury instructions?

Rimini Street	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
---------------	---	-----------------------------

Seth Ravin	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
------------	---	-----------------------------

If you answered yes to either defendant what amount of damages did that violation of the California Computer Data Access and Fraud Act cause to Oracle International Corporation? If you did not answer yes to the above question as to a particular defendant please write N/A in the appropriate space provided.

Rimini Street	\$ <u>5,600,000</u>
---------------	---------------------

Seth Ravin \$ 5,600,000

Question 19: Nevada Computer Crimes Law - Oracle America, Inc.

Do you find that Oracle America, Inc. has proven by a preponderance of the evidence that defendant Rimini Street and/or Seth Ravin violated the Nevada Computer Crimes Law as explained in the jury instructions?

Rimini Street ✓ Yes ___ No

Seth Ravin ✓ Yes ___ No

If you answered yes to either defendant what amount of damages did that violation of the Nevada Computer Crimes Law cause to Oracle America, Inc.? If you did not answer yes to the above question as to a particular defendant please write N/A in the appropriate space provided.

Rimini Street	\$ <u>8,827,000</u>
---------------	---------------------

Seth Ravin \$ 8,827,000

Question 20: Nevada Computer Crimes Law - Oracle International Corporation

Do you find that plaintiff Oracle International Corporation has proven by a preponderance of the evidence that defendant Rimini Street and/or Seth

Ravin violated the Nevada Computer Crimes Law as explained in the jury instructions?

Rimini Street ☒ Yes ☐ No

Seth Ravin ☒ Yes ☐ No

If you answered yes to either defendant what amount of damages did that violation of the Nevada Computer Crimes Law cause to Oracle International Corporation? If you did not answer yes to the above question as to a particular defendant please write N/A in the appropriate space provided.

Rimini Street \$ 5,600,000

Seth Ravin \$ 5,600,000

NON-DUPLICATIVE DAMAGES

Question 21: Non-Duplicative Damages - Oracle America, Inc.

If you found that Oracle America, Inc. suffered damages as a result of defendant Rimini Street and/or Seth Ravin's conduct you must now determine the total amount of damages that is not duplicative of any other damages award in your verdict as explained in the jury instruction titled Verdict Form - Duplicative Damages. In determining this amount, you should exclude the amount awarded for Statutory Damages as well as the amount awarded, if any, for whichever damages theory you determined was not the best measure of actual damages for copyright infringement (either Lost Profits or a Fair Market Value License). The total amount of non-duplicative damages to be awarded to Oracle America, Inc. against each defendant is as follows:

Rimini Street	\$ <u>8,827,000</u>
Seth Ravin	\$ <u>8,827,000</u>

Question 22: Non-Duplicative Damages - Oracle International Corporation

If you found that Oracle International Corporation suffered damages as a result of defendant Rimini Street and/or Seth Ravin's conduct you must now determine the total amount of damages that is not duplicative of any other damages award in your verdict as explained in the jury instruction titled Verdict Form - Duplicative Damages. In determining this amount, you should exclude the amount awarded for Statutory Damages as well as the amount awarded, if any, for whichever damages theory you determined was not the best measure of actual damages for copyright infringement (either Lost Profits or a Fair Market Value License). The total amount of non-duplicative damages to be awarded to Oracle International Corporation against each defendant is as follows:

Rimini Street	\$ <u>41,200,000</u>
Seth Ravin	\$ <u>5,600,000</u>

PUNITIVE DAMAGES

If you found that Oracle America, Inc. and/or Oracle International Corporation has proven by a preponderance of the evidence that defendant Rimini Street is liable for intentional interference with prospective economic advantage (Questions 15 and 16), violating the California Computer Data Access and Fraud Act (Questions 17 and 18), or violating the Nevada Computer Crimes Law (Questions 19 and 20) please answer the following question.

Question 25: Punitive Damages - Rimini Street

Has Oracle America, Inc. and/or Oracle International Corporation proven by clear and convincing evidence that defendant Rimini Street engaged in malice, oppression, or fraud such that punitive damages against this defendant is warranted?

___ Yes ☒ No

If you found that Oracle America, Inc. and/or Oracle International Corporation has proven by a preponderance of the evidence that defendant Seth Ravin is liable for intentional interference with prospective economic advantage (Questions 15 and 16), violating the California Computer Data Access and Fraud Act (Questions 17 and 18), or violating the Nevada Computer Crimes Law (Questions 19 and 20) please answer the following question.

Question 26: Punitive Damages - Seth Ravin

Has Oracle America, Inc. and/or Oracle International Corporation proven by clear and convincing evidence that defendant Seth Ravin engaged in malice, oppression, or fraud such that punitive damages against this defendant is warranted?

___ Yes ☒ No

You have now completed the Verdict Form. Have your foreperson date and sign the form below. Then, inform the court security officer that you have reached a unanimous verdict. Do not give the envelope to the bailiff. Your foreperson should retain possession of the Verdict Form until it is requested by the judge when the court reconvenes.

118a

Dated this 13 day of October, 2015

JURY FOREPERSON

APPENDIX I

Copyright Infringement - Damages - Innocent Infringement

An infringement is considered innocent when the Defendant has proved both of the following elements by a preponderance of the evidence:

1. the Defendant was not aware that its acts constituted infringement of the copyright; and
2. the Defendant had no reason to believe that its acts constituted an infringement of the copyright.

JURY INSTRUCTION NO. 35

Copyright Infringement - Damages - Willful Infringement

An infringement is considered willful when the plaintiff has proved both of the following elements by a preponderance of the evidence:

1. the Defendant engaged in acts that infringed the copyright; and
2. the Defendant knew that those acts infringed the copyright.

JURY INSTRUCTION NO. 36

APPENDIX J

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
BEFORE THE HONORABLE LARRY R. HICKS,
DISTRICT JUDGE

ORACLE USA, INC., a
Colorado corporation;
ORACLE AMERICA, INC., a
Delaware corporation; and
ORACLE INTERNATIONAL
CORPORATION, a California
corporation,

Plaintiffs,

vs.

RIMINI STREET, INC., A
NEVADA CORPORATION; AND
SETH RAVIN, AN INDIVIDUAL,

Defendants.

No. 2:10-cv-0106-
LRH-PAL

TRANSCRIPT OF JURY TRIAL - DAY 4
(Pages 492 through 740)

September 17, 2015

Las Vegas, Nevada

Court Reporter: Donna Davidson, RDR, CRR, CCR
318
Certified Realtime Reporter
400 South Virginia Street
Reno, Nevada 89501
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* * *

well.

Q. Mr. Ravin, you have -- you know, of course, that Oracle alleges that Rimini Street has willfully infringed their copyrights?

A. Yes.

Q. Are they correct in that regard?

A. No.

MR. ISAACSON: Objection, Your Honor, calls for a legal conclusion.

THE COURT: It is such a broad question, I'm going to strike the question. The objection's sustained. BY MR. WEBB:

Q. All right. Mr. Ravin, did you personally intentionally try to violate any of Oracle's rights?

A. No.

Q. What makes you say that?

A. Well, I think that if you look at all the steps we took to respect intellectual property, the number of discussions we had trying to figure out what the right thing to do was, what we felt was the right thing, we took a great amount of steps to do things in a -- I would call it the -- not necessarily the most efficient way but the way that we felt was the legal, right way to do it.

Q. What role, if any, in your belief, did the contracts between Oracle and its customers come into play?

A. A great deal.

Q. And explain what you mean by that?

A. Well, that the contracts have in them the right for a third party to help with a customer who asks for assistance from a third party.

These are very large systems, and they hire many people to work on them, and we were just one of them.

Q. And, again, what is the basis, in your belief, for Rimini Street to operate in its capacity as a third-party maintenance provider?

A. Well, three things. I mean, one, the customer's right to choose who does their maintenance work. They could, again, choose to do it themselves, continue to pay Oracle, use Rimini Street, switch to another software product. So that was fundamental number one.

Number two, the fact that third parties have the right to work on these systems when asked for by the customer.

You know, and, three, you know, believing that we stand in the customer's shoes, that when a customer has license rights and they hire an independent, someone to work on their behalf, that we have the right to carry out those tasks on behalf of the customer.

MR. ISAACSON: Is the PT or DT? No objection, Your Honor.

MR. WEBB: Your Honor, at this time I would admit PTX 3726.

THE COURT: It's admitted.

(Plaintiffs' Exhibit 3726 received into evidence.)

BY MR. WEBB:

Q. Mr. Ravin, I'm going to pull up on the screen PTX 3726.

THE COURT: Actually, I'm thinking, Counsel, we're due probably for a morning break, ladies and gentlemen.

So what we'll do is take a short morning break at this time. It will probably be anywhere from 10 to 15 minutes or thereabout, depending on when the jury is ready to come back into the courtroom.

And, ladies and gentlemen, of course, the admonishments continue. And we'll take a break and reconvene in a little bit. Thank you.

COURTROOM ADMINISTRATOR: Please rise.

THE COURT: You may step down.

(Recess from 10:04 a.m. until 10:25 a.m.)

(Jurors enter courtroom at 10:25 a.m.)

COURTROOM ADMINISTRATOR: Court is again in session.

THE COURT: All right. Have a seat, please.

The record will show we're in open court. The parties and counsel are present. The jury is all present.

And, Mr. Webb, you may resume your cross-examination of Mr. Ravin.

MR. WEBB: Thank you, Your Honor.

BY MR. WEBB:

Q. Mr. Ravin, did there come a time that you ever worked at PeopleSoft?

A. Yes.

Q. When was that?

A. I started in 1996 and ended in 2001.

Q. When you were at PeopleSoft, did you have occasion to see contracts between PeopleSoft and its customers?

A. Yes.

Q. Describe for the jury how frequently you would actually see those contracts.

A. I would interact with those contracts pretty much every day.

Q. And as a result of your interaction and knowledge of these contracts, did you have a good feel as to what some of the standards terms would be?

A. Yes.

Q. In front of you, you have a contract entered into in 19 -- I'm sorry -- 98 between PeopleSoft and Brazoria County. Do you see that?

A. Yes, but I can't read the screen.

MR. WEBB: That makes two of us. All right. That's better. Marie, can we go to 14.2?

COURTROOM ADMINISTRATOR: Is this that exhibit?

MR. WEBB: This is the one we just entered, I'm sorry, 3726.

THE COURT: Do you have it listed as admitted, Dionna?

COURTROOM ADMINISTRATOR: Yes, I do, Your Honor.

THE COURT: Yes. All right. Fine.

MR. WEBB: I apologize.

BY MR. WEBB:

Q. All right. Mr. Ravin, I want you to focus in at 14.2 of this agreement between PeopleSoft and Brazoria County, Texas.

Look in 14.2 about five lines down where it says licensee may. Do you see that?

A. Yes.

Q. Let's just go down -- read starting with "licensee may."

A. "Licensee may provide access to and use of the software only to those third parties that: (i) provide services to licensee concerning licensee's use of the software; (ii) have a need to use and access the software; and (iii) have agreed to substantially similar nondisclosure obligations imposed by licensee as those contained herein."

Q. All right. Now, how often did you see this term in the agreements that you saw at PeopleSoft while you were there?

A. I think this is a pretty standard term.

Q. Did you see agreements where it wasn't a part of the agreement?

A. Not that I remember.

Q. All right. Now, in connection with Rimini Street's business, do you provide services to your clients regarding their use of the software?

A. Yes.

Q. And do they have a need -- I'm sorry, do you have a need to use and access that same software?

A. Yes, to provide services, yes.

Q. And in connection with your contract with your client, does Rimini Street agree to conditions of confidentiality when working on that software?

A. Yes, in every contract.

Q. Okay. Do you remember yesterday when Mr. Isaacson was asking you questions about a Brazoria County District Attorney and e-mails you were exchanging?

A. Yes.

MR. WEBB: Can we please pull up PTX 498. It's been previously admitted.

THE WITNESS: That's not in my notebook.

MR. WEBB: I will pull it up on the screen for you.

COURTROOM ADMINISTRATOR: 498?

MR. WEBB: 498. PTX. P as in Paul TX.

COURTROOM ADMINISTRATOR: I don't have 498 previously admitted. Was it in the stipulation?

MR. WEBB: I believe so. Mr. Isaacson used it yesterday, maybe a different number. We have two numbers in the same exhibit.

In any event, at this time I'd offer into evidence PTX 498.

MR. ISAACSON: Yeah, I used a different version of this, but no objection.

THE COURT: It's admitted.

(Plaintiffs' Exhibit 498 received into evidence.)

BY MR. WEBB:

Q. Okay. Now, Mr. Ravin, I want to focus on this e-mail for a minute. Do you recall sending this to Rich Hughes? I'm sorry. Do you recall sending this to Mr. Hughes?

A. Yes.

Q. And he, in turn, was going to forward this on to the Brazoria County attorney.

A. That's my understanding, yes.

MR. WEBB: Okay. I want to focus down a little bit farther to the bottom of the first page, "starting today."

The very last line, Marie.

Yeah, let's look at this paragraph. The last sentence, if you could, Marie. And then let's go on to the next paragraph.

BY MR. WEBB:

Q. In this e-mail you state,

"Today, licensees can choose from amongst a near limitless number of outsourcers such as AT&T, IBM, EDS, Accenture, and a host of offshore providers and smaller players as well."

Do you see that?

A. Yes.

Q. What were you referring to at that time?

A. Well, we, again, were just one of many, many companies that needed to have access to the software to do the work that we did.

And we're talking about all these folks need to build environments, they need to use the software. Many of them have -- any outsourcer has copies of the software, hosting providers have copies of the software, and we just were requiring to work with the software the same as all these other companies.

Q. And how did that inform your belief as to whether or not Rimini Street could operate its business?

A. Well, this, plus what we just looked at in terms of the rights of third parties to be able to work with software at the customer's request, we saw that we had no different rights or needs than any of these other providers that do this every day.

Q. Okay. Let's go to the next paragraph.

Now, you're referring to the contract between Brazoria County and Oracle, the one we just looked at, and it looks to me like you're discussing it with the client.

It says, "Given the above operating facts, the interpretation of sections 2.1 and 4.2 of the agreement can be consistently interpreted over the years to define usage of the software outside the scope of personal usage of the client in a way that deprives the software vendor from license fees for new clients due to software piracy or using one copy of the software to serve multiple other clients."

Do you see that?

A. Yes.

Q. What were you trying to get across with that statement?

A. That the license terms are designed to make sure that third parties can work on behalf of a customer, but they can't take the software and use it to run their own operations.

We couldn't take a customer's license of the payroll product and use it to process Rimini Street payroll.

Q. Mr. Ravin, do you know who -- which software providers Rimini Street actually uses in its own business?

A. Yeah, we use Microsoft.

Q. You use Microsoft instead of Oracle?

A. Correct.

Q. So you don't use Oracle products for your own business operations?

A. No. We only used one that was acquired by Oracle at some point, and we switched off that to another vendor.

Q. So when you obtain software from clients, you aren't actually using it for your own business?

A. Not at all.

Q. And was this -- did this concern get raised occasionally by clients as to whether or not this provision would prevent you from doing your job?

A. Yes, several times.

Q. And how would you explain the resolution of that?

A. Just as I did here to the district attorney in Texas, yes.

Q. Okay. Let's go down to the next paragraph.

It says, "Likewise, section 14.2 merely seeks to assure that the licensed software is protected by assuring that it is not provided to parties without proper authorization and the same level of guaranteed confidentiality to protect the" access.

All right. I'm sorry, "asset."

Is that relating to the confidentiality provision that we just discussed, Mr. Ravin?

A. Yeah, this is just saying that we're looking to make sure in the rights of the third party to do work on behalf of the customer that they're not taking the software and giving it away to other people who could then get it without actually paying Oracle for a license.

Q. And did you ever provide software -- has Rimini Street ever provided software to someone who had not already paid Oracle for the license?

A. No.

Q. And let's take a step back here. We're using the word "always" and "never" a lot. Is Rimini Street perfect?

A. No. Clearly, we've made mistakes as we've already seen here in the Court.

Q. Can you rule out the possibility that sometime someone received a file they weren't legally entitled to?

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
BEFORE THE HONORABLE LARRY R. HICKS,
DISTRICT JUDGE

ORACLE USA, INC., a
Colorado corporation;
ORACLE AMERICA, INC., a
Delaware corporation; and
ORACLE INTERNATIONAL
CORPORATION, a California
corporation,

Plaintiffs,

vs.

RIMINI STREET, INC., A
NEVADA CORPORATION; AND
SETH RAVIN, AN INDIVIDUAL,
Defendants.

No. 2:10-cv-0106-
LRH-PAL

TRANSCRIPT OF JURY TRIAL - DAY 17
(Pages 3338 through 3641)

October 6, 2015

Las Vegas, Nevada

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and Rimini Street convince you of things that you know is not true based on the evidence that you have seen with your own eyes.

I expect that during counsel's closing, after I sit down and Bill sit down, you are going to hear new things you have never heard before, that there will be no evidence for in this entire case. And when you hear these things, you ask yourself, have I ever heard anything like this before? Is there any evidence to back this up? Or are they just trying to put another one over on me?

All right. So the last thing that I'll talk to you about, ladies and gentlemen, is what Rimini and Seth Ravin knew. And this has to do with willfulness and with punitive damages.

So here's the instruction for willfulness. And all that this means is that the defendant engaged in acts that infringed the copyright and that they knew that those acts engaged the copyright.

Punitive damages. The judge walked you through this a little bit. And basically this means that the defendant engaged with fraud, oppression, or malice.

Fraud includes intentional misrepresentation, deception, or concealment of a material fact.

And also relevant to punitive damages is something called conscious disregard. That means that knowledge of -- if you have knowledge of a probable harmful consequence of a wrongful act but you deliberately fail to avoid the consequences.

So the questions are did they know; and was it intentional?

Ladies and gentlemen, of course, they did, and, of course, it was.

First of all, customers warned Rimini Street that what they were doing was illegal. Here's a list of customers saying that what Rimini would do would violate Oracle's copyright agreements.

This one person says that this is pretty much boilerplate verbiage in the Oracle contract.

So many customers told them that what they were doing was illegal. So what did Seth Ravin say?

So he first said, "Well, I would interact with those contracts pretty much every day."

But he also said, "Well, the customers signed the contracts, and we didn't have access to that information."

Then he said, "It was the customer's responsibility to make sure their license wasn't violated. It was the customer's liability."

But then he also said, "We would influence the customers. We would give them our opinion."

* * *

APPENDIX K

**CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED****U.S. Const. Amend. VII**

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

* * *

17 U.S.C. § 405. Remedies for infringement: Injunctions

(a) EFFECT OF OMISSION ON COPYRIGHT.—With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, the omission of the copyright notice described in sections 401 through 403 from copies or phonorecords publicly distributed by authority of the copyright owner does not invalidate the copyright in a work if—

(1) the notice has been omitted from no more than a relatively small number of copies or phonorecords distributed to the public; or

(2) registration for the work has been made before or is made within five years after the publication without notice, and a reasonable effort is made to add notice to all copies or phonorecords

that are distributed to the public in the United States after the omission has been discovered; or

(3) the notice has been omitted in violation of an express requirement in writing that, as a condition of the copyright owner's authorization of the public distribution of copies or phonorecords, they bear the prescribed notice.

(b) EFFECT OF OMISSION ON INNOCENT INFRINGERS.—Any person who innocently infringes a copyright, in reliance upon an authorized copy or phonorecord from which the copyright notice has been omitted and which was publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, incurs no liability for actual or statutory damages under section 504 for any infringing acts committed before receiving actual notice that registration for the work has been made under section 408, if such person proves that he or she was misled by the omission of notice. In a suit for infringement in such a case the court may allow or disallow recovery of any of the infringer's profits attributable to the infringement, and may enjoin the continuation of the infringing undertaking or may require, as a condition for permitting the continuation of the infringing undertaking, that the infringer pay the copyright owner a reasonable license fee in an amount and on terms fixed by the court.

(c) REMOVAL OF NOTICE.—Protection under this title is not affected by the removal, destruction, or obliteration of the notice, without the authorization of the copyright owner, from any publicly distributed copies or phonorecords.

* * *

17 U.S.C. § 502. Remedies for infringement: Injunctions

(a) Any court having jurisdiction of a civil action arising under this title may, subject to the provisions of section 1498 of title 28, grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.

(b) Any such injunction may be served anywhere in the United States on the person enjoined; it shall be operative throughout the United States and shall be enforceable, by proceedings in contempt or otherwise, by any United States court having jurisdiction of that person. The clerk of the court granting the injunction shall, when requested by any other court in which enforcement of the injunction is sought, transmit promptly to the other court a certified copy of all the papers in the case on file in such clerk's office.

* * *

17 U.S.C. § 504. Remedies for infringement: Injunctions

(a) IN GENERAL.—Except as otherwise provided by this title, an infringer of copyright is liable for either—

(1) the copyright owner's actual damages and any additional profits of the infringer, as provided by subsection (b); or

(2) statutory damages, as provided by subsection (c).

(b) ACTUAL DAMAGES AND PROFITS.—The copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement, and any profits of the infringer that are attributable to the infringement and are not taken into account in

computing the actual damages. In establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work.

(c) STATUTORY DAMAGES.—

(1) Except as provided by clause (2) of this subsection, the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than \$750 or more than \$30,000 as the court considers just. For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.

(2) In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than \$150,000. In a case where the infringer sustains the burden of proving, and the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than \$200. The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a

fair use under section 107, if the infringer was: (i) an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords; or (ii) a public broadcasting entity which or a person who, as a regular part of the nonprofit activities of a public broadcasting entity (as defined in section 118(f)) infringed by performing a published nondramatic literary work or by reproducing a transmission program embodying a performance of such a work.

(3)(A) In a case of infringement, it shall be a rebuttable presumption that the infringement was committed willfully for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the infringement.

(B) Nothing in this paragraph limits what may be considered willful infringement under this subsection.

(C) For purposes of this paragraph, the term “domain name” has the meaning given that term in section 45 of the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other

purposes” approved July 5, 1946 (commonly referred to as the “Trademark Act of 1946”; 15 U.S.C. 1127).

(d) ADDITIONAL DAMAGES IN CERTAIN CASES.—In any case in which the court finds that a defendant proprietor of an establishment who claims as a defense that its activities were exempt under section 110(5) did not have reasonable grounds to believe that its use of a copyrighted work was exempt under such section, the plaintiff shall be entitled to, in addition to any award of damages under this section, an additional award of two times the amount of the license fee that the proprietor of the establishment concerned should have paid the plaintiff for such use during the preceding period of up to 3 years.

* * *