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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE ANDRÉ BIROTTE JR., U.S. DISTRICT JUDGE

DISNEY ENTERPRISES, INC., ET)
AL.,)
)
 PLAINTIFFS,)
)
 vs.) No. CV 16-4109-AB
)
 VIDANGEL, INC.,)
)
 DEFENDANT.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, JUNE 17, 2019

9:41 A.M.

LOS ANGELES, CALIFORNIA

Day 5 of Jury Trial, Pages 960 through 1064, inclusive

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1 LOS ANGELES, CALIFORNIA; MONDAY, JUNE 17, 2019

2 9:41 A.M.

3 - - -

4 (The following was heard in open court in the presence
5 of the jury:)

6 THE CLERK: Calling CV 16-4109-AB, Disney
7 Enterprises, Inc., et al., versus VidAngel, Inc., jury trial
8 Day 5.

9 THE COURT: Good morning, ladies and gentlemen.
10 Hope you all had a wonderful weekend. We are ready to
11 resume the trial today. You should all have in front of you
12 a copy of closing jury instructions.

13 And, again, just to remind you what the run of the
14 show, for lack of a better term, will be today is that I
15 will provide you -- we'll go through the jury instructions,
16 you will hear arguments of counsel, and then the matter will
17 be submitted to you to begin your deliberations.

18 With that, I will begin reading the instructions
19 that will be used as a guide to your consideration of the
20 evidence in this case.

21 Members of the jury, now that you have heard all
22 the evidence and the argument and soon to hear the arguments
23 of the attorneys, it's my duty to instruct you on the law
24 that applies to this case.

25 A copy of these instructions will be sent to the

1 jury room for you to consult during your deliberations.

2 It is your duty to find the facts from all the
3 evidence in the case. To those facts, you will apply the
4 law as I give it to you. You must follow the law as I give
5 it to you whether you agree with it or not. And you must
6 not be influenced by any personal likes or dislikes,
7 opinions, prejudices, or sympathy. That means that you must
8 decide the case solely on the evidence before you. You will
9 recall that you took an oath to do so.

10 Please do not read into these instructions or
11 anything that I may say or do or have said or done that I
12 have an opinion regarding the evidence or what your verdict
13 should be.

14 From time to time during the trial, it became
15 necessary for me to talk with the attorneys out of the
16 hearing of the jury, either by having a conference here at
17 the bench when you were all present in the courtroom or by
18 calling a recess. Please understand that, while you were
19 waiting, we were working. The purpose of these conferences
20 is not to keep relevant information from you but to decide
21 how certain evidence is to be treated under the rules of
22 evidence and to avoid confusion and error.

23 Of course, we have done what we could to keep the
24 number and length of these conferences to a minimum. I did
25 not always grant an attorney's request for a conference. Do

1 not consider my granting or denying a request for a
2 conference as any indication of my opinion of the case or of
3 what your verdict should be.

4 Plaintiffs are Disney Enterprises, Inc., Disney;
5 Lucasfilm Limited, LLC, Lucasfilm; Twentieth Century Fox
6 Film Corporation, Fox; Warner Bros. Entertainment, Inc.,
7 Warner Bros; MVL Film Finance, LLC, Marvel; New Line
8 Productions, Inc., New Line; and Turner Entertainment
9 Company, Turner. They own copyrights to popular movies and
10 TV shows.

11 The defendant is VidAngel, Inc., VidAngel.
12 VidAngel operates an online streaming service that allows
13 customers to stream motion pictures and TV shows while
14 filtering them, which means skipping and/or muting limited
15 portions of the video and/or audio content selected by the
16 customer.

17 Plaintiffs sued VidAngel for copyright
18 infringement and for violating a statute called the Digital
19 Millennium Copyright Act, the DMCA. Plaintiffs allege that
20 VidAngel's conduct in providing filtered streams of
21 plaintiffs' movies and TV shows violated their copyrights in
22 the movies and TV shows and violated the DMCA. VidAngel
23 argued that its acts were permitted by the Family Movie Act
24 of 2005 and were protected under a concept known as fair
25 use.

1 Prior to this trial, I considered the legal
2 arguments made by both sides. I found that to provide its
3 streaming service, VidAngel copied and publicly performed
4 plaintiffs' movies and shows and thus committed copyright
5 infringement. I also found that VidAngel bypassed the
6 security measures on DVDs, conduct called "circumvention,"
7 which violates the DMCA.

8 Because I found that VidAngel has violated
9 plaintiffs' rights, the law requires VidAngel to pay
10 plaintiffs money damages. I did not determine the amount of
11 damages. That is your job in this trial. You are not to
12 consider whether VidAngel violated plaintiffs' rights. That
13 has already been established.

14 The law sets a range of damages for these
15 violations. You will determine the amounts within those
16 ranges that VidAngel will have to pay for each copyright it
17 infringed and each DMCA violation. I will soon instruct you
18 on the range of statutory damages and the factors you may
19 consider in reaching your decision.

20 When a party has the burden of proving any claim
21 or affirmative defense by a preponderance of the evidence,
22 it means you must be persuaded by the evidence that the
23 claim or affirmative defense is more probably true than not
24 true.

25 You should base your decision on all of the

1 evidence, regardless of which party presented it.

2 The evidence you are to consider in deciding what
3 the facts are consists of:

4 One, the sworn testimony of any witness; two, the
5 exhibits that are admitted into evidence; three, any facts
6 to which the lawyers have agreed; and, four, any facts that
7 I may instruct you to accept as proved.

8 In reaching your verdict, you may consider only
9 the testimony and exhibits received into evidence. Certain
10 things are not evidence, and you may not consider them in
11 deciding what the facts are. I will list them for you.

12 One, arguments and statements by lawyers are not
13 evidence. The lawyers are not witnesses. What they may say
14 in their opening statements, closing arguments, and at other
15 times is intended to help you interpret the evidence but it
16 is not evidence. If the facts as you remember them differ
17 from the way the lawyers have stated them, your memory of
18 them controls.

19 Two, questions and objections by lawyers are not
20 evidence. Attorneys have a duty to their clients to object
21 when they believe a question is improper under the rules of
22 evidence. You should not be influenced by the objection or
23 by the Court's ruling on it.

24 Three, testimony that is excluded or stricken or
25 that you are instructed to disregard is not evidence and

1 must not be considered. In addition, some evidence may be
2 received only for a limited purpose. When I instruct you to
3 consider certain evidence only for a limited purpose, you
4 must do so, and you may not consider that evidence for any
5 other purpose.

6 Four, anything you may see or hear when the Court
7 is not in session is not evidence. You are to decide the
8 case solely on the evidence received at the trial.

9 Some evidence may be admitted only for a limited
10 purpose.

11 When I instruct you that an item of evidence has
12 been admitted only for a limited purpose, you must consider
13 it only for that limited purpose and not for any other
14 purpose.

15 Evidence may be direct or circumstantial. Direct
16 evidence is direct proof of a fact, such as testimony by a
17 witness about what that witness personally saw or heard or
18 did. Circumstantial evidence is proof of one or more facts
19 from which you could find another fact. You should consider
20 both kinds of evidence. The law makes no distinction
21 between the weight to be given to either direct or
22 circumstantial evidence. It is for you to decide how much
23 weight to give any evidence.

24 By way of example, if you wake up in the morning
25 and see that the sidewalk is wet, you may find from that

1 fact that it rained during the night. However, other
2 evidence such as a turned on garden hose may provide a
3 different explanation for the presence of water on the
4 sidewalk. Therefore, before you decide that a fact has been
5 proved by circumstantial evidence, you must consider all of
6 the evidence in the light of reason, experience, and common
7 sense.

8 There are rules of evidence that control what can
9 be received into evidence. When a lawyer asks a question or
10 offers an exhibit into evidence and a lawyer on the other
11 side thinks that it is not permitted by the rules of
12 evidence, that lawyer may object. If overruled the
13 objection, the question was answered or the exhibit
14 received. If I sustained the objection, the question was
15 not answered and the exhibit cannot be received. Whenever I
16 sustained an objection to a question, you were to ignore the
17 question and must not guess what the answer might have been.

18 Sometimes I ordered that evidence be stricken from
19 the record and that you disregard or ignore the evidence.
20 That means, when you are deciding the case, you must not
21 consider the stricken evidence for any purpose.

22 In deciding the facts in this case, you may have
23 to decide which testimony to believe and which testimony not
24 to believe. You may believe everything a witness says or
25 part of it or none of it.

1 In considering the testimony of any witness, you
2 may take into account, one, the opportunity and ability of
3 the witness to see or hear or know the things testified to;
4 two, the witness's memory; three, the witness's manner while
5 testifying; four, the witness's interest in the outcome of
6 the case, if any; five, the witness's bias or prejudice, if
7 any; six, whether other evidence contradicted the witness's
8 testimony; seven, the reasonableness of the witness's
9 testimony in light of all the evidence; and, eight, any
10 other factors that bear on believability.

11 Sometimes a witness may say something that is not
12 consistent with something else he or she said. Sometimes
13 different witnesses will give different versions of what
14 happened. People often forget things or make mistakes in
15 what they remember. Also, two people may see the same event
16 but remember it differently. You may consider these
17 differences but do not decide the testimony is untrue just
18 because it differs from other testimony.

19 However, if you decide that a witness has
20 deliberately testified untruthfully about something
21 important, you may choose not to believe anything that
22 witness said. On the other hand, if you think the witness
23 testified untruthfully about some things but told the truth
24 about others, you may accept the part that you think is true
25 and ignore the rest.

1 The weight of the evidence as to a fact does not
2 necessarily depend on the number of witnesses who testify.
3 What is important is how believable the witnesses were and
4 how much weight you think their testimony deserves.

5 You have heard testimony from expert witnesses who
6 testified to opinions and the reasons for their opinions.
7 This opinion testimony is allowed because of the education
8 or experience of these witnesses.

9 Such opinion testimony should be judged like any
10 other testimony. You may accept it or reject it and give it
11 as much weight as you think it deserves, considering the
12 witness's education and experience, the reasons given for
13 their opinions, and all the other evidence in the case.

14 You were shown several video clips created by
15 VidAngel and played by VidAngel. You may consider these
16 video clips only for a limited purpose, as evidence of
17 VidAngel's purpose, conduct, and state of mind. You may not
18 consider these video clips for the truth of the statements
19 therein.

20 Certain charts and summaries not admitted into
21 evidence have been shown to you in order to help explain the
22 contents of books, records, documents, or other evidence in
23 the case. Charts and summaries are only as good as the
24 underlying evidence that supports them. You should,
25 therefore, give them only such weight as you think the

1 underlying evidence deserves.

2 Certain charts and summaries have been admitted
3 into evidence to illustrate information brought out in the
4 trial. Charts and summaries are only as good as the
5 testimony or other admitted evidence that supports them.
6 You should, therefore, give them only such weight as you
7 think the underlying evidence deserves.

8 A deposition is the sworn testimony of a witness
9 taken before trial. The witness is placed under oath to
10 tell the truth and lawyers for each party may ask questions.
11 The questions and answers are recorded.

12 Insofar as possible, you should consider
13 deposition testimony presented to you in court in lieu of
14 live testimony in the same way as if the witness had been
15 present to testify.

16 During deliberations, you will have to make your
17 decision based on what you recall of the evidence. You will
18 not have a transcript of the trial.

19 Some of you took notes during the trial. You may
20 take your notes with you into the jury room for
21 deliberations. Whether or not you took notes, you should
22 rely on your own memory of the evidence. Notes are only to
23 assist your memory. You should not be overly influenced by
24 your notes or those of your fellow jurors.

25 When you leave, your notes should be left in the

1 jury room. No one will read your notes. They will be
2 destroyed at the conclusion of the case.

3 You must determine plaintiffs' damages for
4 copyright infringement. The plaintiffs seek a statutory
5 damage award established by Congress for each work
6 infringed. The purpose of the statutory damage award is not
7 only to compensate plaintiffs for their losses, which may be
8 hard to prove, but also to penalize the infringer and deter
9 future violations of the copyright laws.

10 The range of statutory damages depends on the type
11 of infringement.

12 For non-willful infringement of a work, you must
13 award between \$750 and \$30,000 per work infringed.

14 For willful infringement of a work, you must award
15 between \$750 and \$150,000 per work infringed.

16 Plaintiffs contend that VidAngel's infringement
17 was willful. An infringement is considered willful when the
18 plaintiffs prove by a preponderance of the evidence that the
19 defendant knew its acts infringed plaintiffs' copyrights or
20 acted with reckless disregard for or willful blindness to
21 the plaintiffs' rights. An infringement is not considered
22 willful when the defendant shows it had a good faith belief
23 in the innocence of its conduct and it was reasonable to
24 hold such a belief.

25 In deciding whether VidAngel willfully infringed

1 you should consider all of the facts surrounding
2 infringement including whether VidAngel's reliance on advice
3 of counsel was reasonable and in good faith.

4 As stated above, the purpose of statutory damages
5 is not only to compensate the plaintiffs for their losses,
6 which may be hard to prove, but also to penalize the
7 infringer and deter future violations of the copyright laws.

8 You have wide discretion in determining the amount
9 of statutory damages constrained by the statutory minimum
10 and maximum. Because statutory damages serve both
11 compensatory and punitive purposes, a plaintiff can recover
12 statutory damages whether or not there is evidence of the
13 actual damage suffered by the plaintiff or the profits
14 reaped by the defendant. There is no required nexus between
15 the amount of statutory damages awarded and any damages
16 suffered by a plaintiff or any profits reaped by defendant.

17 The following is a nonexclusive list of factors
18 you may consider relevant to the amount of statutory damages
19 award within those ranges:

20 The value of the copyright; VidAngel's
21 continuation of infringement after notice or knowledge of
22 the copyright claims; the need to deter VidAngel and other
23 potential infringers; the nature and circumstances of the
24 infringement; VidAngel's purpose and intent; the profit that
25 VidAngel reaped, if any; and/or the expense that VidAngel

1 saved, if any; the harm to plaintiffs as a result of the
2 infringement, including loss revenue, if any, and
3 unquantifiable harm, if any; the duration of the
4 infringement; the conduct and attitude of the parties; and
5 VidAngel's ability to pay.

6 You must determine whether plaintiffs are entitled
7 to statutory damages for violations of the Digital
8 Millennium Copyright Act, also known as the DMCA, and, if
9 so, the amount of statutory damages.

10 The amount you may award as statutory damages is
11 between \$200 and \$2,500 for each act of circumvention.

12 However, if you find that VidAngel has proven by a
13 preponderance of the evidence that it acted innocently, you
14 may reduce the award, including to zero dollars.

15 A violation of the DMCA is considered innocent
16 when the defendant has proved by a preponderance of the
17 evidence that it was not aware and had no reason to believe
18 that its acts constituted a violation.

19 Before you begin your deliberations, elect one
20 member of the jury as your presiding juror. The presiding
21 juror will preside over the deliberations and serve as a
22 spokesperson for the jury in court.

23 You shall diligently strive to reach agreement
24 with all of the other jurors if you can do so. Your verdict
25 must be unanimous.

1 Each of you must decide the case for yourself but
2 should do so only after you have considered all of the
3 evidence, discussed it fully with the other jurors and
4 listened to their views.

5 It is important that you attempt to reach a
6 unanimous verdict but, of course, only if each of you can do
7 so after having made your own conscientious decision. Do
8 not be unwilling to change your opinion if the discussion
9 persuades you that you should. But do not come to a
10 decision simply because other jurors think it is right or
11 change an honest belief about the weight and effect of the
12 evidence simply to reach a verdict.

13 I will now say a few words about your conduct as
14 jurors.

15 Because you must base your verdict only on the
16 evidence received in the case and on these instructions, I
17 remind you that you must not be exposed to any other
18 information about the case or to the issues it involves.
19 Except for discussing the case with your fellow jurors
20 during your deliberations. Do not communicate with anyone
21 in any way and do not let anyone else communicate with you
22 in any way about the merits of the case or anything to do
23 with it. This includes discussing the case in person, in
24 writing, by phone or electronic means, via e-mail, via text
25 messaging or any Internet chatroom, blog, Website or

1 application; including, but not limited to, Facebook,
2 YouTube, Twitter, Instagram, LinkedIn, Snapchat, or any
3 other forms of social media. This applies to communicating
4 with your family members, your employer, the media or press,
5 and the people involved in the trial. If you are asked or
6 approached in any way about your jury service or anything
7 about the case, you must respond that you have been ordered
8 not to discuss the matter and to report that contact to the
9 Court.

10 Do not read, watch, or listen to any news or media
11 accounts or commentary about the case or anything to do with
12 it. Do not do any research, such as consulting
13 dictionaries, searching the Internet, or using other
14 reference materials; and do not make any investigation or in
15 any other way try to learn about this case on your own. Do
16 not visit or view any place discussed in this case and do
17 not use any Internet programs or other devices to search for
18 or view any place discussed during the trial. Also, do not
19 do any research about this case, the law, or the people
20 involved including the parties, the witnesses, or the
21 lawyers until you have been excused as jurors. If you
22 happen to read or hear anything touching on this case in the
23 media, turn away and report it to me as soon as possible.

24 These rules protect each party's right to have
25 this case decided only on evidence that has been presented

1 here in court. Witnesses here in court take an oath to tell
2 the truth, and the accuracy of their testimony is tested
3 through the trial process. If you do any research or
4 investigation outside the courtroom or gain any information
5 through improper communication, then your verdict may be
6 influenced by inaccurate, incomplete, or misleading
7 information that has not been tested by the trial process.
8 Each of the parties is entitled to a fair trial by an
9 impartial jury. And if you decide the case based on
10 information not presented in court, you will have denied the
11 parties a fair trial. Remember, you have taken an oath to
12 follow the rules, and it is very important that you follow
13 these rules.

14 A juror who violates these restrictions
15 jeopardizes the fairness of these proceedings, and a
16 mistrial could result that would require the entire trial
17 process to start over. If any juror is exposed to any
18 outside information, please notify the Court immediately.

19 If it becomes necessary during your deliberations
20 to communicate with me, you may send a note through the
21 bailiff signed by any one or more of you. No member of the
22 jury should ever attempt to communicate with me except by a
23 signed writing. I will not communicate with any member of
24 the jury on anything concerning the case except in writing
25 or here in open court. If you send out a question, I will

1 consult with the lawyers before answering it, which may take
2 some time. You may continue your deliberations while
3 waiting for the answer to any question. Remember that you
4 are not to tell anyone, including the Court, how the jury
5 stands, whether in terms of vote count or otherwise until
6 after you have reached a unanimous verdict or have been
7 discharged.

8 A verdict form has been prepared for you. After
9 you have reached a unanimous agreement on a verdict, your
10 presiding juror should complete the verdict form according
11 to your deliberations, sign and date it, and advise the
12 bailiff that you are ready to return to the courtroom.

13 All right. Plaintiff, are you ready to present
14 your opening statement?

15 MR. EISENHUT: Yes, Your Honor. During the break
16 may we discuss an issue with you?

17 THE COURT: All right.

18 (The following proceedings were held at sidebar.)

19 MR. EISENHUT: We don't want to interrupt the
20 closing argument. We had an objection that we talked about
21 that we think is important for us to preserve to simply --
22 for appellate reasons, and, that is, that the -- many of the
23 works at issue were not at issue before the injunction
24 issued nor were they at issue before the shutdown of all the
25 works. And so to suggest that those works were subject to a

1 willful finding because of a notice to stop or the lawsuit
2 or the injunction order would be improper. That's our
3 objection.

4 THE COURT: Okay. Ms. Young, do you wish to
5 respond?

6 MS. YOUNG: After the Court's order VidAngel
7 continued to stream every single one of the works at issue,
8 and it's been acknowledged even by Mr. Quinto that that
9 might expose VidAngel to claims of intentional infringement.
10 He said that about other studios who were not plaintiffs at
11 the time. We saw that evidence in the trial. So I think
12 it's absolutely fair for us to argue the issue that this
13 goes directly to willfulness.

14 THE COURT: All right. The objection is noted but
15 overruled at this time. All right. And nice tie, by the
16 way --

17 MR. BROOKS: One other --

18 THE COURT: -- Mr. Brooks.

19 MR. BROOKS: So, similarly, there were only three
20 works that would have been added after the injunction
21 issued. So to the extent that they're going to argue that
22 disobedience of the injunction means that the jury can't
23 find innocence, it would be improper to say that that
24 applies to everything. It would only be proper if it
25 applies to -- that argument would only apply to the three

1 that were added after the injunction.

2 THE COURT: Okay.

3 Ms. Young, what's your response as relates to the
4 DMCA argument?

5 MS. YOUNG: It's a similar response.

6 THE COURT: Based on Mr. Quinto's testimony as
7 well or --

8 MS. YOUNG: Yes, correct.

9 THE COURT: All right. The objection is noted but
10 overruled. All right.

11 MR. BROOKS: Thank you, Your Honor.

12 MS. YOUNG: Thank you.

13 (The following was heard in open court in the presence
14 of the jury:)

15 THE COURT: Ms. Young, you may proceed.

16 MS. YOUNG: Thank you, Your Honor.

17 Good morning, ladies and gentlemen. When you came
18 into this courtroom last week, Judge Birotte talked to you
19 about the importance of the jury and our legal system. And
20 so on behalf of my clients and our entire team, I want to
21 say thank you for your service over the last several days.

22 Tracy Myers from Warner Bros. talked about the
23 magic of great movies. She talked about how they touch our
24 lives. Well, during this trial, you learned about the legal
25 system that protects the hard work that goes into making and

1 distributing those movies. There are thousands of people
2 whose livelihoods depend on that process. The foundation of
3 all of that is copyright law.

4 When you create a movie, you have rights. And the
5 legitimate system allows copyright owners, like the
6 plaintiffs, to protect those rights with locks and keys and
7 legal agreements like licenses. The system doesn't work if
8 people violate those rights and get away with it.

9 Judge Birotte found that VidAngel broke the law.
10 That's where you come in. Your job is to make sure that the
11 law has consequences. This is an incredibly important job.

12 Mr. Oldre from Disney has been sitting with us
13 throughout the trial, and, when he testified, he explained
14 why this is so important. Piracy is a major problem for the
15 movie business.

16 In a lawsuit like this, it's really important, not
17 to just get the defendant to stop, but to make sure that
18 other people who might be tempted to do the same thing know
19 that there are consequences.

20 I am showing you Instruction 18 that the judge
21 just instructed you about this. And it's about statutory
22 damages, which is what you are going to be awarding, and it
23 says that the purpose of the statutory damage award is not
24 only to compensate the plaintiffs for their losses, which
25 may be hard to prove, but also to penalize the infringer --

1 that's VidAngel -- and deter future violations of the
2 copyright laws.

3 You have seen the evidence. You have seen what
4 VidAngel was hoping to get from stealing hundreds of the
5 plaintiffs' most valuable movies. They thought they'd get
6 hundreds of millions of dollars in the bank. They thought
7 they'd have a company worth over \$1 billion. That kind of
8 conduct cannot just get a slap on the wrist. Otherwise,
9 there is nothing to prevent others from doing exactly the
10 same thing.

11 So I am going to talk about two things today that
12 are important to how you set the damages award. The first
13 is that VidAngel willfully infringed and the second are the
14 factors that you may consider in setting the award.

15 So for copyright damages, the first thing you will
16 decide is whether VidAngel acted willfully, and how you
17 answer that question matters to the range for the award. If
18 VidAngel willfully infringed, that extends the top of the
19 range from \$30,000 per work infringed up to \$150,000.

20 And I mentioned work. A work is just a single
21 move. So "Harry Potter and the Sorcerer's Stone" was one of
22 the movies that the VidAngel infringed. That's a work.
23 "Finding Dory" is a work. VidAngel infringed 819 movies and
24 TV shows. If you are curious, you can see a list of them in
25 Exhibit 470.

1 So how do you decide if infringement is willful?
2 This is the instruction you just got from the judge. It's
3 Number 19. Infringement is willful if VidAngel knew it was
4 breaking the law or if it acted with reckless disregard or
5 willful blindness to the plaintiffs' rights.

6 Now, we'll walk through the evidence that VidAngel
7 certainly knew it infringed the plaintiffs' copyrights, but
8 I want to talk about these other two things in the
9 instruction. Why is the language about reckless disregard
10 and willful blindness there? It's there because most people
11 who break the law don't admit it. Some of them don't admit
12 it even to themselves.

13 If someone disregards a very high risk that
14 they're breaking the law, that's reckless. That is willful
15 infringement.

16 And what is willful blindness? That's when the
17 defendant sticks his hand and tries to ignore all of the red
18 flags that tell him what he is doing is wrong. That also is
19 willful infringement.

20 Now, Mr. Eisenhut, when this trial first got
21 underway, said to you, "How do you know what's willful?"
22 You know because it's about what's in the hearts and minds
23 of the people who ran VidAngel. How do we know what was in
24 the hearts and minds of Neal Harmon and David Quinto? Well,
25 do you know what? Mr. Harmon said something very telling on

1 Wednesday afternoon. He said, "I often tailor messages to
2 different audiences."

3 You, ladies and gentlemen, are the audience. And
4 while you are thinking about the evidence and after I sit
5 down while you are listening to Mr. Eisenhut, please think
6 about how Mr. Harmon and VidAngel tailored their message for
7 you.

8 You heard VidAngel say over and over again "We
9 thought we were doing nothing wrong." Of course, that's
10 what they said. You are not required to take their word for
11 it.

12 Judge Birotte just instructed you you get to be
13 the judge of credibility. You apply your common sense. You
14 didn't leave that at the door. You bring it with you into
15 this courtroom.

16 So I want you to ask yourself. What do their
17 actions say? What do their documents say? What were they
18 saying in private before anyone else was listening, before
19 you were listening?

20 Let's review the evidence.

21 Did VidAngel act willfully? You bet they did.
22 This is easy. When a federal judge tells you your legal
23 position is wrong, when he tells you to stop copying and
24 streaming the plaintiffs' movies and you don't, you are
25 acting willfully.

1 Mr. Quinto talked about a law professor who he had
2 who said the answer to every question in the law is maybe.
3 But on December 12th, 2016, there was no maybe. There were
4 no ifs, ands, or buts. VidAngel knew how Judge Birotte had
5 answered the legal questions, and he told them to stop.

6 I am holding up Exhibit 203. This is
7 Judge Birotte's order. Write it down. Take a look at it
8 when you go into the jury room and ask yourself, if you got
9 this order from Judge Birotte, would you feel comfortable
10 defying it?

11 VidAngel's will say they relied on the advice of
12 their counsel. This is Instruction Number 19 about
13 willfulness.

14 Your reliance on your advice of counsel has to be
15 reasonable. It has to be reasonable. It's not reasonable
16 to continue relying on that advice when the judge just
17 rejected every single argument that your lawyer has made.

18 These are some of those arguments. This is from
19 the judge's order. VidAngel violates the plaintiffs'
20 exclusive right to reproduce their works by making copies.
21 VidAngel's violates the plaintiffs' exclusive right to
22 publicly perform their copyrighted works. That's what
23 VidAngel was doing when it was streaming the plaintiffs'
24 works.

25 And down below, the FMA, that's a reference to the

1 Family Movie Act. The judge rejected all of VidAngel's
2 arguments. But they continued to stream all 819 of the
3 plaintiffs' movies. Every stream is an infringement. Doing
4 that after the Court's order was knowing infringement. At
5 least it was completely reckless.

6 And you heard Mr. Harmon. He doesn't remember if
7 he ever got around to reading Judge Birotte's reasons. When
8 the order came down, he was focused on the company party.
9 He read the Family Movie Act, but he can't even remember
10 reading this. That is sticking your head in the sand. That
11 is willful blindness.

12 And what about Mr. Quinto? You heard Mr. Quinto
13 on Friday. He still won't admit he is wrong. Even after
14 three other federal judges said so. He still insists he's
15 right. These guys are in denial. That's willful blindness.

16 And VidAngel has absolutely no excuse for thumbing
17 its nose at Judge Birotte's order. Mr. Eisenhut told you at
18 the start they did their best to follow it. That is not
19 what the evidence showed.

20 Remember Mr. Schumann? He was the first witness
21 to testify at trial. He said it took him about 15 minutes
22 to come up with three simple solutions that VidAngel could
23 have put in place immediately to follow the Court's order.
24 Remember these?

25 VidAngel actually tried to suggest to you that

1 Mr. Schumann should have contacted VidAngel and told them
2 about this. Obeying the Court's order wasn't Mr. Schumann's
3 responsibility. It was VidAngel's responsibility. And
4 they're still refusing to accept responsibility.

5 Now, Neal Harmon gave you a couple of excuses for
6 Judge Birotte's order. He gave you two and only two
7 excuses. First, he said there was a lot going on. There
8 was the holidays. We had the company party. There was an
9 audit. That is not a legitimate excuse.

10 And then he said they were trying really hard to
11 find a surgical solution that affected only the plaintiffs'
12 movies and not other movies. What was the evidence of that?

13 You saw the video Jarom McDonald. He was the guy
14 in charge with coming up with a technical solution, not
15 Mr. Harmon.

16 And when I asked him why didn't VidAngel implement
17 any of the surgical solutions that Rob Schumann identified
18 after 15 minutes of thinking about it, he said, "I don't
19 know why that didn't happen." It didn't happen because
20 Neal Harmon and David Quinto were not trying to comply with
21 Judge Birotte's order.

22 The order came down during the most important time
23 of the year for VidAngel, the holiday season. VidAngel was
24 on its way to a million dollar December, and it wasn't going
25 to stop. They didn't stop until the plaintiffs were forced

1 to go back to Judge Birotte and asked him to tell VidAngel
2 that stop means stop.

3 Judge Birotte held that VidAngel violated his
4 order. It turns out, when a judge says stop, it means stop.
5 VidAngel acted willfully. There is no question about it.

6 Now, look. A tiger does not change his stripes.
7 The same people who violated Judge Birotte's order for
8 17 days after it was issued were the same people who started
9 the service and operated it day after day after day up until
10 December 12th. Same hearts, same minds, same guys who are
11 good at tailoring their message to their audience.

12 Once again, let's look at the evidence.

13 There are three facts that tell you that all
14 along -- not just after Judge Birotte issued his order but
15 all along, VidAngel knew what it was doing was wrong.
16 First, VidAngel used a piracy tool -- that's AnyDVD, the
17 Fox; second, VidAngel knew how to offer its service legally
18 but chose not to; and, third, VidAngel had a premeditated
19 narrative.

20 Let's talk about the first fact. You know this.
21 You can't copy a movie and distribute it to thousands of
22 paying customers. That's illegal. That's why every disc
23 has these locks on them that Mr. Schumann talked about to
24 protect the valuable content inside. This is not rocket
25 science. When your business depends on picking this lock

1 and stealing all the valuable stuff that's protected behind
2 it, you know you are doing something wrong.

3 Now, all of the VidAngel witnesses had that easel
4 next to them with the Family Movie Act. Remember that? And
5 they talked about why they thought what they were doing
6 complied with that language.

7 Well, there is some interesting language in the
8 Family Movie Act that they blew right past. And it may not
9 surprise you to learn it's the same language Judge Birotte
10 focused on when he rejected all of their arguments. It's
11 this language: This language requires the stream that is
12 filtered to come from an authorized copy of the motion
13 picture.

14 VidAngel's witnesses tried to say the DVDs they
15 bought were an authorized copy. If you are streaming from
16 an authorized copy, you don't need to use AnyDVD. If you
17 are authorized to do it, you don't need to pick any locks.
18 That's just common sense. And look where they got AnyDVD.

19 VidAngel bought AnyDVD from a company with a
20 Belize Internet address. They paid for it in foreign
21 currency. They did it because it's illegal to sell AnyDVD
22 in the United States. And look at the logo. It's a fox
23 with a burglar's mask. That tells you all you need to know
24 about what this software is for. It's for stealing.

25 And remember VidAngel re-upped. It bought AnyDVD

1 once, it bought it again, and it bought a lifetime license.
2 Why? Because the lock kept changing, and they wanted the
3 latest and greatest picks so they could steal the latest and
4 greatest movies. To do this the legal way, you don't use
5 AnyDVD.

6 That brings us to the second point. VidAngel knew
7 how to do this the right way, but it didn't. One way to do
8 this legally is to sell a filter that people can use with
9 content streamed directly from licensed services. That's
10 what VidAngel did when it first started. That was that
11 plug-in service to Google and YouTube.

12 And you might remember Professor Barnett, the
13 Stanford professor, who talked about their different
14 business models. This is what happened with that business
15 model.

16 He said the dogs weren't eating the dog food. No
17 one wanted to pay for filtering, and VidAngel wasn't going
18 to get rich off of this model. Mr. Quinto said so himself.
19 "VidAngel has determined the editing function by itself does
20 not have a market."

21 Now, another way to offer a legal service is to
22 get a license, but VidAngel didn't do that. Instead it
23 pivoted to what we have been calling the disc-based service
24 where it streamed the plaintiffs' movies without a license
25 and pocketed all the upside for itself.

1 Everyone knows that's wrong. It's common sense.
2 You don't get to take something valuable that someone else
3 created without permission and then sell it for your own
4 profit. That is stealing, plain and simple.

5 VidAngel knew it was wrong. Look at their own
6 private documents. They knew they needed a license to
7 operate legally. They planned to negotiate for one, but
8 they wanted to get bigger first so they would have more
9 leverage to negotiate.

10 Here is another thing: Neal Harmon could have
11 walked away at anytime. He had plenty of opportunities to
12 fold his hand, but he kept on going.

13 Look at all these red flags. Potential investor
14 said, "I am going to pass, this will have legal risk."
15 Matt Jarman at ClearPlay looked at the new model. He said,
16 "Your new model still doesn't get you away from liability."

17 The plaintiffs filed their Complaint. They filed
18 a preliminary injunction motion laying out their legal
19 arguments. The Court told VidAngel to stop. It didn't.
20 One of VidAngel main investors after that said, "I strongly
21 suggest you cease streaming all unlicensed movies per the
22 Court's ruling."

23 But Neal Harmon didn't stop. He doubled down.
24 Why? You know why. Because when VidAngel started stealing
25 the plaintiffs' movies and selling them for a buck, it

1 immediately saw what Professor Barnett called hockey stick
2 growth. Remember hockey stick growth.

3 This is spectacular growth. This kind of growth
4 meant a lot of money for VidAngel and its investors. It
5 meant this kind of money. Look at the column under 2018.
6 Hundreds and hundreds of millions of dollars for VidAngel's
7 founders and the venture capitalists who bankrolled all of
8 this. So rather than walk away from the table, VidAngel
9 kept gambling.

10 You saw in it Mr. Harmon's e-mails. Now,
11 Mr. Harmon said this was for a completely different service,
12 but look at what he is saying about his appetite for risk.

13 One of his investors says, "I doubt the legal
14 ability to do this."

15 And Mr. Harmon says, "I understand if you don't
16 have the stomach for this fight," but Mr. Harmon certainly
17 did. He had a stomach for a high risk but also high-reward
18 play.

19 He was willing to gamble. But now that he has bet
20 the company and lost, he's asking you for a pass. I think
21 that tells you a lot about what was in Neal Harmon's heart
22 and his mind.

23 Third piece of evidence about willfulness is that
24 VidAngel was planning its narrative all along. Mr. Klaus
25 showed this to you at the very beginning of the trial, and

1 he talked about it with Mr. Quinto.

2 This is that e-mail you were never meant to see.
3 It's an attorney-client communication which means that it's
4 confidential. And Mr. Quinto says right there -- this is
5 back in 2014 before they ever launched the disc-based
6 service, before they ever were sued -- "We're taking charge
7 of the narrative even before anyone else is listening." He
8 meant before you were listening. The narrative David Quinto
9 is talking about is the story VidAngel has told you in this
10 courtroom.

11 You heard a lot from VidAngel, and I am sure you
12 will hear it again. About this memo that Mr. Quinto
13 prepared, this memo was never about giving legal advice --
14 or real legal advice at least. It was always intended to be
15 part of the narrative. Mr. Quinto said it.

16 "Our preliminary memo is being crafted with the
17 idea that it will someday become part of the court record."

18 Think about it. Neal Harmon never got a second
19 opinion. He never asked his lawyers to re-evaluate their
20 opinion, not after the lawsuit was filed, not after the
21 plaintiffs filed their preliminary injunction motion, and
22 not after Judge Birotte issued his order.

23 VidAngel never wanted a real legal analysis. It
24 wanted a "Get out of jail free" card. That's what this is.
25 It wanted a piece of paper it could wave in front of you one

1 day and say, "Our lawyer told us this was all okay."

2 Now ask yourself something. If you can start a
3 streaming service with DVDs, why isn't everyone doing it?
4 Why are Netflix, Amazon, Apple, Google paying hundreds of
5 millions of dollars for licenses to stream movies when you
6 can pay \$700,000 for a lot of DVDs that you rip and then add
7 filters on top of?

8 Neal Harmon is a smart guy, but are we supposed to
9 believe he found a way to get around a law that all these
10 other mega companies somehow overlooked?

11 Was David Quinto the only lawyer smart enough to
12 figure this out?

13 Why didn't ClearPlay do this? ClearPlay is
14 another filtering service. It's one of VidAngel's
15 competitors. Why didn't they do this?

16 They didn't because it's illegal, and everyone
17 knows it. This is an e-mail that Matt Jarman, the CEO of
18 ClearPlay, sent to Neal Harmon.

19 He said, "Your new model still doesn't get you
20 away from liability." Remember what Professor Barnett said.
21 He said entrepreneurs should not merely rely on the advice
22 of their lawyer. They must also use judgment.

23 Mr. Quinto's opinion letter was not prepared to
24 help Neal Harmon exercise his judgment. It was prepared to
25 be part of the narrative at trial.

1 Remember all the letters Mr. Quinto sent to all
2 the executives at the major motion picture companies? Also
3 part of the narrative. Mr. Quinto said so in his e-mail.
4 The letters to be sent to stakeholders are also designed to
5 frame the picture of VidAngel that will be presented in
6 court.

7 The letters were a setup. You heard Mr. Quinto.
8 He didn't want to be here in Los Angeles before a
9 Los Angeles jury. He wanted to be in Utah. That's why
10 these letters were sent, to provoke a response that would
11 allow Mr. Quinto to have this case decided in VidAngel's
12 home state of Utah.

13 Now, remember at the very beginning when
14 Mr. Eisenhut told you the plaintiffs did not respond to
15 those letters for almost a year? This was the timeline he
16 showed you. That was wrong. This is what the evidence
17 showed about everything the studios did in response to those
18 letters.

19 And VidAngel wasn't surprised. Let me remind you
20 of what Mr. Harmon said. "I often tailor messages to
21 different audiences." Mr. Harmon told you he was surprised,
22 but let's take a look at what he said when he was talking to
23 a different audience. This is an e-mail he wrote the
24 morning after the lawsuit was filed, and he told everyone in
25 his company we have been planning for this possibility for

1 over a year. He wasn't surprised. He had been planning for
2 it.

3 Now, what about filtering? You heard a lot from
4 VidAngel's witnesses about filtering. Jeff Harmon was here.
5 He testified on the last day of trial about the idea for
6 VidAngel. And no one is disputing that the filters might be
7 good for people. Perhaps they are good for Jeff Harmon and
8 his family. I'm sure there are many other families who may
9 enjoy filtering and do. But that is not an excuse to steal.

10 And let's be honest. VidAngel wasn't just about
11 filtering. Otherwise, why would they have filters like
12 this? And if it was just about filtering, why is VidAngel
13 taking money from customers like this who are saying things
14 like, "I even use VidAngel when I don't need filtering,
15 cheaper than Amazon." "Having a filter is really dumb, but
16 I usually just knock out the ending credits."

17 So once you decide the question of willfulness,
18 you have to decide where within the range you are going to
19 set the award. And the judge just instructed you on a
20 number of different factors you can consider.

21 It's in Instruction 20, and we've listed them all
22 here. There are a lot of different factors. VidAngel is
23 going to focus on a few of these factors. They're going to
24 tell you they didn't profit. They have no ability to pay.
25 Just remember this isn't the first time that VidAngel has

1 claimed poverty, but we'll get back to that in rebuttal.
2 You should consider all these other factors, and I want to
3 focus on a few of them.

4 The value of the copyright. You might be
5 wondering why is there a range, why is there this range?
6 There is a range because the copyright law protects all
7 kinds of things, protects something like a postcard, and it
8 also protects great movies.

9 So there is a range because they are different
10 things, and they have different value. And VidAngel took
11 some of the most valuable, most beloved movies of all time.

12 And this factor is important, not just because of
13 the enormous amount of time and effort and expense that goes
14 into them, it's because movies also impact our lives.

15 Remember Tracy Myers. She talked about the
16 posters lining the walls of Warner Bros.? Just look at what
17 the plaintiffs did -- I'm sorry. Look at what VidAngel did
18 with the plaintiffs' most valuable movies.

19 They made them the centerpiece of its service.
20 This is from their menus. They had a "Star Wars" marathon,
21 "Harry Potter" marathon, "Classic Disney." And VidAngel is
22 saying, "We have to pay at the bottom of the range, only
23 make us pay at the bottom of the range for these extremely
24 valuable works." At the bottom of the range for helping
25 themselves to the unlimited rights to stream movies like

1 "Avatar," "Guardians of the Galaxy," "Casablanca," "Frozen,"
2 and I could go on and on.

3 Remember what Robin Russell said? She's the
4 industry expert. A streaming license for a single valuable
5 title can cost tens, even hundreds of millions of dollars.
6 VidAngel is telling you when they're on trial, those things
7 are worth peanuts.

8 Here is another thing you can consider, the harm
9 to the plaintiffs. Of course the plaintiffs were harmed.
10 VidAngel stole their movies. And look at what they did.

11 This is one of VidAngel's advertisements. Where
12 are customers going to go? They're going to go where it's
13 cheaper and where it's available, and they did. That's why
14 the service grew so quickly. The response is unmistakable.

15 Remember this slide that Professor Barnett showed
16 you? The companies who play by the rules actually pay for
17 the right to stream the plaintiffs' movies. So they can't
18 charge a buck.

19 Now, VidAngel will probably tell you, we can't
20 point to one customer that the plaintiffs lost or their
21 business partners lost.

22 But let me remind you once again of what VidAngel
23 said privately when they didn't think you would be looking.
24 "The whole purpose of the low price was to attract users
25 from other streaming services."

1 Let's talk about another factor you can consider:
2 The expenses that VidAngel saved. VidAngel took a free
3 ride. It took a free ride on a huge expenses that go into
4 making and producing movies. You heard both Ms. Myers and
5 Ms. Russell talk about that. They took a free ride on the
6 marketing for these movies, which sometimes can be as much
7 or more of an expense than making a movie itself.

8 And look at this. This is what I mean by a free
9 ride. These are all VidAngel's advertisements for the
10 plaintiffs' movies. And that artwork, VidAngel didn't
11 create it. They just used it to attract customers to their
12 own service.

13 They didn't create any of the buzz around these
14 films. They were there for a free ride. And then VidAngel
15 saved itself the very, very significant expense of paying
16 for a license.

17 Now, remember VidAngel's accounting expert,
18 Mr. Kinrich? He had those slides with the tiny little
19 numbers and the spreadsheets. And he actually told you that
20 the plaintiffs were better off because of VidAngel.

21 Well, Ms. Russell explained he was all wrong.
22 Mr. Kinrich was talking about hypothetical. That means
23 imaginary world.

24 In the real world when someone wants to stream
25 copyrighted content, they pay for a license. They pay tens,

1 even hundreds of millions of dollars for those licenses.
2 But again, VidAngel was asking you to award a tiny, tiny
3 fraction of that.

4 Here is another factor, continuation of
5 infringement after notice. We've talked about this already.
6 There were so many red flags and VidAngel just kept right on
7 going.

8 VidAngel's purpose and intent, you know what it
9 was. You heard Mr. Harmon talk about his projections that
10 the company's valuation would be one in a quarter billion
11 dollars or more by 2018.

12 The conduct and attitude of the parties -- this is
13 another factor you can consider. And throughout the trial
14 you have had the opportunity to observe VidAngel's conduct
15 and attitude, and I say they treated this lawsuit as a bit
16 of theater. And what did they say when they were caught
17 violating Judge Birotte's order? "Our bad," Your Honor.
18 They are not sorry about any of this.

19 You heard a lot of VidAngel witnesses come into
20 court and testify. One thing none of them said is we're
21 sorry. We shouldn't have done it.

22 Here is the last factor I want to talk about, and
23 I saved this for last because it's the most important. The
24 need to deter VidAngel and other potential infringers.

25 Now, VidAngel is going to say, the number should

1 be small because they're all out of money. But this is not
2 just about VidAngel. It's about the next VidAngel.

3 Mr. Oldre described how piracy works. It's like
4 the airplanes lined up at LAX. Your damage award is about
5 that next person in line.

6 So let's make this concrete. Let's put some
7 numbers on this. Two million -- that's the number of times
8 that VidAngel streamed the plaintiffs' movies without their
9 permission.

10 Ninety-six million, this is the number of movie
11 sales that VidAngel predicted it would make by 2018.

12 \$105 million, \$105 million. This is what the
13 venture capitalists who bet on the company said it was worth
14 in 2016 right as VidAngel was experiencing that hockey stick
15 growth.

16 \$124 million, that's the amount that VidAngel
17 projected it would be making in annual revenues by 2018. In
18 a year, they were projecting they would make close to
19 \$125 million. \$400 million, almost half a billion dollars.
20 That is the cash balance, the money in its bank account that
21 VidAngel projected it would have by 2018.

22 \$1.25 billion, that is what Neal Harmon thought
23 his company would be worth by April of 2018. And priceless.
24 This is the value of the plaintiffs' movies that VidAngel
25 stole.

1 Robin Russell, the last day of trial said, "No one
2 has a license to do what VidAngel was doing." It's too
3 disruptive. They come in and intrude on all these
4 exclusivities and everything else that makes the system
5 work. No one has a license to do what they did. They
6 helped themselves to this value that was priceless.

7 What is VidAngel asking you to do? Give them a
8 slap on the wrist. The cost of breaking the law has to be
9 higher than that. It's got to be high enough so that, when
10 someone starts putting these numbers on paper, they say it's
11 not worth it. The risk has to be higher than the reward.
12 This is the reward.

13 I want you to think about something. When the
14 next high-risk, high-reward venture capitalist is thinking
15 about his or her next investment, when the next start-up is
16 thinking about how they're going to pivot, they will look at
17 your damages award. And that award needs to send a message
18 that the risk of stealing copyrighted movies is higher than
19 the payoff they might get by gambling with the law.

20 My clients are depending on you to send a message
21 with this damages award.

22 So now I am going to walk you through the verdict
23 form. You are going to have a form that you have to fill
24 out when you go back in the jury room, and I want to show
25 you what it looks like and how we would like you to fill it

1 out.

2 So the first question you are going to answer is:
3 Did plaintiffs prove by a preponderance of the evidence that
4 VidAngel willfully infringed the plaintiffs' copyrights?

5 The answer is yes.

6 Now, I want to pause here and say something
7 important. You don't have to find that VidAngel was willful
8 the whole time. And you don't have to all agree about when
9 VidAngel first started acting willfully.

10 If you find they acted willfully at any time, you
11 should answer yes.

12 And there is lots of evidence that they were
13 acting willfully from day one; but by the time Judge Birotte
14 issued his order, rejecting all of their legal arguments and
15 telling them to stop, of course, they were acting willfully
16 at that time.

17 So next, if you answered yes, proceed to
18 Question 2. We hope you will answer yes and proceed to
19 Question 2. And then you answer what amount of statutory
20 damages do you award for willful copyright infringement?
21 Your award must be not less than \$750 or more than \$150,000
22 per work.

23 And that's what we're asking you to write down
24 there. I just gave you some numbers that I think explain
25 why we think that's an appropriate award.

1 And let me give you a couple of other ways to
2 think about it. So look at the first bracket there, from
3 750 to 30,000. That's what you award if VidAngel -- if
4 infringement is not willful.

5 VidAngel didn't steal a postcard. Remember why
6 that range is there. They didn't steal a postcard. They
7 stole the most valuable kinds of things the copyright law
8 protects, and then they did it willfully. So this range has
9 to at least be above \$30,000.

10 Here is another way to think about it. Think
11 about "Star Wars." If all you had to pay for the right to
12 stream "Star Wars" an unlimited number of times was \$30,000,
13 that is a sweet deal. That is a lot less than you would
14 ever pay for a legitimate license.

15 This award has to be more than the cost of doing
16 business; otherwise, it will not be deterrent. It will be
17 an invitation for more piracy.

18 So you write your number down here. If you
19 answered Question 2, skip Question 3, which we did, proceed
20 to Question 4.

21 And Question 4 is math. So I'm not good at math.
22 Let me do some math for you here. You wrote down 150,000.
23 Multiply by 819, that's the number of works that VidAngel
24 infringed, and here is what you get. Notice that adds up to
25 a lot. But you know what? So did VidAngel's projections,

1 and that's precisely the point. This is what is needed to
2 send a message.

3 So we've been talking about copyright damages.
4 The judge also instructed you you have to decide damages
5 under a law called the DMCA, and that's because the judge
6 found that VidAngel violated not just one but two laws.

7 So what is the DMCA? This is the range of damages
8 for DMCA, and you will notice this range is a lot lower. It
9 only goes up to \$2,500 per violation. That's because the
10 DMCA deals with the locks that are on these discs. It deals
11 with picking of locks, and copyright damages deals with what
12 happens after you pick the lock when you loot the store.
13 Okay? That's why this damages range is so much smaller.

14 VidAngel did both, which is why you are answering
15 these two questions. So here is what the instruction looks
16 like for the DMCA.

17 Did VidAngel prove by a preponderance of the
18 evidence that its violations of the DMCA were innocent?
19 Obviously, not. You will look at Instruction Number 22. It
20 tells you innocence means that VidAngel was not aware and
21 had no reason to believe it was violating the DMCA.

22 They were using AnyDVD from RedFox to pick this
23 lock. Of course, they had reason to know they were
24 violating the DMCA.

25 If you answered no to Question 5, which we believe

1 you should, you will skip to Question 6. You will skip
2 Question 6 and go to Question 7.

3 And Question 7 asks what amount of statutory
4 damages do you award for the violation of the DMCA? The
5 range is between 200 and \$2,500 per act of circumvention,
6 and, again, we think it should be at the top of that range,
7 and there is the math.

8 So I want to end, again, by reminding you about
9 why you are here. You are here because breaking the law
10 must have consequences. The message you sent is incredibly
11 important in the ongoing battle against piracy.

12 My clients are asking you to send a message that
13 the law matters and that there are consequences for breaking
14 it. Thank you.

15 THE COURT: All right. Thank you, Counsel.

16 Counsel for Disney, do you wish to make closing at
17 this time? I meant Counsel for VidAngel. My apologies.

18 MR. EISENHUT: Thank you, Your Honor.

19 Ladies and gentlemen of the jury, we very much
20 appreciate you taking your time and on behalf of my clients,
21 Mr. Neal Harmon, Mr. Jeffrey Harmon, and all that work with
22 them at VidAngel. We thank you, and we thank you for taking
23 this seriously because this is very serious to VidAngel. It
24 is very serious to all of the people who very much
25 appreciate what VidAngel stands for.

1 It's serious to its employees, and it's serious to
2 the tens of millions of families and individuals who relied
3 on VidAngel and very much appreciated what VidAngel did to
4 bring choice to their homes, for them to be able to
5 participate in a very important aspect of our culture as you
6 have heard -- movies, so that they might have the ability to
7 watch movies that they otherwise couldn't or wouldn't watch
8 with profanity removed, with trigger events removed, with
9 nudity removed, with things removed that were inappropriate
10 for their homes.

11 And VidAngel did everything they could to be in
12 compliance with the law. We'll talk about that. We'll talk
13 about absolutely VidAngel is asking you to award the minimum
14 damages, and, indeed, we will show you why the minimum
15 damages is more than it should be, but it's what the law
16 requires.

17 I want to talk to you about one thing to start off
18 here. You just saw it again, but during the trial with
19 Ms. Ellis, Disney and the other studios brought out a couple
20 of comments to suggest that people interested in watching
21 VidAngel only because of the cheap price and that somehow
22 that was what was motivating them, and you heard in closing
23 just now that somehow that is what was motivating them. I
24 want to show you where that came from.

25 Those couple of comments came from this,

1 Exhibit 418. This is the full context of the exhibit. This
2 is over 25,000 customer comments -- 25,000.

3 And you heard the vast majority, vast majority of
4 customers were very interested in filtering. That's what
5 they wanted to be able to do is watch clean movies, watch
6 movies that were presented in their homes in the way that
7 they wanted, their choice, the choice that Congress gave
8 them.

9 And the vast majority of the comments -- you are
10 welcome to look at this exhibit anytime you want. It's in
11 evidence. It said, "We absolutely love the filters." They
12 said, "It's very inspiring for families without the bad
13 language, how much we love to have that." Those are just a
14 couple of examples.

15 So this is an important case, and I did tell you
16 during opening statement that we felt that these movies were
17 an important aspect of our culture and that VidAngel wanted
18 to be able to bring these movies to a larger audience, to
19 expand the audience for the studios, to bring more money to
20 the creators of these movies.

21 And you will remember that Ms. Myers, who was
22 referred to in closing several times certainly said that.
23 She said that movies do indeed define our culture. We all
24 agree on that. There is a lot, frankly, that we agree on.

25 But let's first start out with what is it

1 really -- let's put this in perspective. What is it really
2 that the studios are trying to accomplish by this case right
3 now? What is it really that they're trying to get? Let's
4 take a look at what they're doing with damages.

5 So they made -- and remember VidAngel existed with
6 its disc-based method for a very short period of time. But
7 over that period of time the studios profited -- Mr. Kinrich
8 told you this -- by \$467,000. That's not their revenues.
9 That's their total profit.

10 During the same time you learned that VidAngel
11 lost money. Was it selling its discs at a loss?
12 Absolutely. It was trying to build its following. It was
13 trying to build a following that would benefit not only them
14 but the studios as well. That's what it believed. And it
15 lost over \$2 million in that effort.

16 Now, let's look at what the studios are actually
17 asking for here in this case. They want to be totaled up
18 both of their sections of damages -- \$125 million. In
19 perspective, that's how astronomically out of line the
20 number is that they're looking for.

21 It makes absolutely no sense. We're talking about
22 two million views, \$3 million of revenue ever, \$2,300,000 of
23 losses. That's what VidAngel experienced, but the studios
24 experienced a profit.

25 And you saw that nobody came in here on behalf of

1 the studios and said that they suffered a loss as far as
2 financially. Nobody in here came in with calculations and
3 said, "Do you know what? Here are the numbers we lost."
4 They had \$1,000-an-hour experts come in here. Nobody said,
5 "We lost any money."

6 So you are going to be asked to determine in your
7 verdict form what you just saw -- several things.

8 The most important one of which is going to be how
9 much do you award. If you award \$750 per work for
10 copyright -- and you can do that -- even though we'll tell
11 you very strongly that this is not a willful case.

12 They're focused so heavily on this two-week
13 period, which is unfair. But if you award \$750, it will
14 come out to \$614,000 total.

15 And for the DMCA, because it was innocent, because
16 VidAngel absolutely believed what they are doing was lawful,
17 that you can award as low as zero, and the total award would
18 be \$614,250. That would be far more than VidAngel can even
19 currently pay, as we'll talk about.

20 And I want to talk about a couple of other things.
21 You saw them pull up a quote from Mr. Barnett. Let's look
22 at that full quote, if we could for just a minute.

23 So they tried to suggest that Mr. Barnett said
24 that just relying on a lawyer isn't responsible, but this is
25 what he really said.

1 Mr. Brooks asked him, it's not irresponsible to
2 get advice from a lawyer regarding a new business plan, is
3 it?

4 You, of course, should get advice from a lawyer.

5 In your experience should entrepreneurs
6 second-guess the advice of their lawyers?

7 Entrepreneurs should not merely rely on the advice
8 of their lawyer. They must also use judgment.

9 Okay. That's what he said. But what did he say
10 in follow-up?

11 And if in their judgment, the advice of their
12 lawyer appeared to be legitimate, they would be justified in
13 following that advice; right?

14 Answer, I think so.

15 And that's what's happening in this case. We're
16 getting a lot of things out of context. We're getting a lot
17 of attacks on VidAngel. And you get to decide what was
18 VidAngel's true intent, as you heard, what was in their
19 hearts and in their minds, and were they truly trying to
20 provide filtering -- provide these options for these
21 families, or were they just trying to steal content?

22 We think you will conclude, based on the evidence
23 you have seen and based on the summary you have seen, that,
24 absolutely, they were trying to provide filtering.

25 Here you see the statistics that were provided by

1 Dr. Duckworth. Dr. Duckworth was able to do actual
2 analytical study of the data to determine how many people
3 actually only want to watch movies through VidAngel because
4 of the filtering options.

5 And he told you 65 percent would only watch
6 through VidAngel. And so this would represent the people
7 who watched through VidAngel.

8 This number of people approximately would never
9 have been available to the studios. This number of people
10 would ever have watched the movies if VidAngel didn't exist.
11 This number of people would not have provided all of that
12 extra revenue for people who put work in to creating the
13 movies, and that's important to remember.

14 It's important to remember that VidAngel brought
15 extra value to the table. VidAngel brought extra viewers to
16 the table doing a great service for those viewers, but
17 potentially, if only there would be some cooperation, some
18 great value to the studios themselves.

19 Dr. Duckworth also told you that 83.5 percent
20 would have preferred to watch their materials with filters
21 with VidAngel. So a very few percentage of people would
22 have been willing to watch these movies or at least wanted
23 to watch these movies outside of the VidAngel platform.
24 That's important to keep in mind.

25 So what your job is, as you have learned, is to

1 apply these various factors to come up with a number that is
2 reasonable, that is just, that is appropriate under the
3 circumstances. And that's what you are going to be asked to
4 do.

5 We agree on a lot of things; and 95 percent of
6 what you heard the studios just say, we actually agree with.
7 It's just couched in ways that it makes it sound as if we
8 don't agree.

9 The first important one is we agree that their
10 movies are extremely valuable. We agree that those movies
11 are worth what they claim they're worth. But we didn't harm
12 their movies. We didn't do anything to remove their ability
13 to show their movies in theaters, to show their movies on
14 Netflix, to show their movies on HBO, Amazon, iTunes.

15 The Harmons are very tuned into that because, as
16 you heard, they have their own original content, that they
17 have large staffs that prepare -- they have "Dry Bar Comedy"
18 through VidAngel. This is actually a part of the VidAngel
19 company. They have "The Chosen," which is some original
20 content available through VidAngel. And then of course,
21 separately, there is the Harmon Brothers who have been
22 awarded and received lots of accolades for their great work.

23 But when you talk about awarding based on their
24 value, the value of these copyrights -- the studios didn't
25 lose their copyrights, and they lost no ability to use their

1 copyrighted work.

2 It would be like saying you have a \$500,000
3 Ferrari and somebody comes over and leans against it and
4 puts some microscopic scratch on it. And the Ferrari owner
5 steps back and says, "I now want \$500,000 for my car."

6 That's, essentially, what the studios are saying
7 here. You may have put a microscopic scratch, but none of
8 our \$1,000-per-hour experts can identify scratch or identify
9 any number associated with that scratch, but we want you to
10 pay us \$125 million, the value of our car.

11 Simply not fair, simply astronomically out of line
12 with the confines of this case.

13 And, yes, the statutory range that you will see
14 ranging from 750 up to 30,000 for non-willful -- it stays at
15 750 and goes up to 150,000 for willful. It always starts at
16 750. And absolutely, if that's enough to satisfy all of the
17 factors that you are to consider, that should indeed be your
18 number.

19 And there is no reason in this case why it
20 shouldn't be. You saw the astronomical disproportionate
21 number they're looking for compared to what the facts of the
22 case actually justify.

23 We also agree that the people behind the movies
24 need to make money, and that's the frustrating thing here.
25 The people who are behind the movies, making the movies for

1 the studios would make more money if they would but
2 cooperate and allow for filtering to be provided.

3 Certainly, they could provide licensing. VidAngel
4 has said ago all along, "We would be more than happy to have
5 licensing," but you can only do that if the studios agree.
6 And if you don't agree, you have to get permission somewhere
7 else, which we'll talk about in a minute but not quite yet.

8 We also agree absolutely that copyrights deserve
9 protection and need to be protected. As you heard, VidAngel
10 has its own copyrights, and it believes strongly; and the
11 attorney they hired, Mr. Quinto, believes strongly. He has
12 protected copyright owners all of his career. No one wants
13 copyright owners or copyrights to be infringed at all. So
14 we agree on all those things.

15 We also agree, ironically, something that you
16 heard in opening and heard some references to suggesting
17 that VidAngel is no angel.

18 You know, the people behind VidAngel don't propose
19 that they're angels. Of course, they have their own
20 weaknesses. They have their own fallacies.

21 They're not perfect, but they are real people.
22 And they do stand for a real cause, and they do stand for
23 real people who want to be able to have the freedom to
24 choose how to watch movies in the privacy of their own
25 homes.

1 But these are real people with flaws, yes, but
2 with real and true desires to deliver options for filtering
3 in the privacy of homes. These are not people who are out
4 trying to steal content or steal copyrights.

5 So we agree on a lot. And really if you narrow it
6 down to what we disagree on, it's not much, but it's
7 important.

8 We disagree on the interpretation of the
9 Family Movie Act. And as you heard from Mr. Quinto, this
10 was a case of first impression. No Court had ever decided
11 whether or not what VidAngel was proposing initially to do
12 and then when it received no objection was actually doing --
13 no Court had ever decided.

14 So they had to rely on their own interpretation
15 and, of course, the interpretation that they got from their
16 attorney.

17 Just like Mr. Barnett said, if they have
18 reasonable attorney opinion, of course, it's reasonable for
19 them to rely on it, and that's what they did, and that's
20 what they had to do.

21 And it's not unusual for judges to disagree with
22 lawyers or for two lawyers to be on different sides of the
23 case and the judge has to choose between one set of
24 arguments and another.

25 It's also not unusual for a higher court to

1 disagree with a lower court or even a higher court to
2 disagree with that court, all the way up to the Supreme
3 Court.

4 As Mr. Quinto told you, Supreme Court Justices
5 disagree with each other five to four, six to three all the
6 time. The law is a maybe.

7 But as an attorney, Mr. Quinto did his very best
8 to give a very strong -- what he believed a strong backed-up
9 opinion that made absolute sense under all of the laws that
10 he had known himself for many, many years.

11 So let's talk about this permission. Permission
12 has been an ongoing theme that somehow VidAngel must be
13 willful infringers and must be punished heavily because they
14 never got permission from the studios and because they never
15 had a license and because they stole content without
16 permission. You heard that repeatedly, didn't you?

17 Well, permission actually comes from more than
18 just one source. One option, of course, is if the studios
19 would be willing, they could certainly enter into a license.
20 They could certainly grant a license to VidAngel, who as I
21 indicated, would have loved one.

22 But when that is not available, then Congress gets
23 to step in, and that's what they did with the
24 Family Movie Act.

25 So VidAngel did believe strongly that it had

1 permission through the Family Movie Act to do what it was
2 doing. And it didn't just believe that on its own. It
3 believed that through Mr. Quinto.

4 And you heard Mr. Quinto explain his understanding
5 of the Family Movie Act and why it came about that all of
6 the 14 filtering companies that existed at the time had been
7 sued by the studios because they didn't want any form of
8 filtering whether it was legal or not legal. They just
9 didn't want it.

10 And you heard him say that Congress had to step in
11 after giving the studios multiple options, giving the
12 studios the option to potentially negotiate, potentially
13 make airline versions available for people to watch, but
14 they didn't choose any of those. They just said, "We
15 outright refuse." So Mr. Quinto told you that that was his
16 understanding as he went into his analysis of this law.

17 And he understood that Congress had to step in and
18 say, "Listen, we're going to give permission for families to
19 be able to watch these movies the way they want to in the
20 privacy of their own homes."

21 We feel this is important even though the studios
22 did not agree. And we feel it is important to allow
23 companies like VidAngel to step in and do that.

24 And Mr. Quinto told you that the whole purpose as
25 he understood it, based on his review of the law, was so

1 that lawsuits like this wouldn't happen so that VidAngel
2 could do what it wanted to do -- providing a valuable
3 service without being sued.

4 And you saw a video during the course of the case
5 that outlined why it was that VidAngel believed, not only
6 itself but also through its attorney, that what it was doing
7 was absolutely lawful. Can we take a look at that.

8 (Exhibit played.)

9 MR. EISENHUT: That shows VidAngel's honest
10 opinion supported by their very experienced attorney, which
11 they believed at all points in time.

12 They never believed they were willfully
13 infringing. We have a judge who -- very good judge,
14 obviously, who made a good decision. But VidAngel
15 respectfully disagrees. That's okay. That happens all the
16 time. But that doesn't mean they know or ever knew that
17 they were breaking the law.

18 And their lawyers that they hired -- well,
19 actually, let's talk about one thing first. The other part
20 of that that was in the video that we didn't talk about yet
21 is this DMCA. That's really AnyDVD.

22 You have heard multiple references to AnyDVD being
23 this somehow, obviously, illegal software, somehow that the
24 sellers of it were noted on this notorious list you heard
25 about from Mr. Schumann, which by the way he said it was a

1 2013 list which was before VidAngel started doing this, and
2 then he admitted, "Actually I don't know if they're on the
3 '14 or '15 or the '16." He didn't know because he admitted
4 nobody really even looks at that list, and he wasn't too
5 familiar with it himself.

6 But he was doing it to try and make VidAngel out
7 to sound like bad guys, like they're intentionally using
8 this somehow dark and not an appropriate piece of software.

9 But then I asked him, do you recall -- and we can
10 see. I asked him, "Isn't it true that you, yourself, even
11 before this case, up from this case, you bought AnyDVD,
12 didn't you?"

13 He said, "Yeah, I did."

14 And you used it? Yeah, I did."

15 Here is the question. So you believe that there
16 was occasion where you could both lawfully buy and use
17 AnyDVD?

18 And he said "Yes."

19 "Do you have any idea whether or not VidAngel
20 believed that it was authorized to both buy and use AnyDVD?"

21 And he said, "Yeah, I know it from reviewing the
22 documents." And let's see what he says next.

23 And I said, "And you know from those documents
24 that they believed AnyDVD was authorized through the
25 Family Movie Act; correct?"

1 And he says, "Yes."

2 So even Mr. Schumann knew that VidAngel honestly
3 believed that, when they were using AnyDVD, they had
4 permission.

5 The permission didn't come from the studios
6 because they, of course, wouldn't give it. Same story
7 that's been more than 14 years. The permission came from
8 Congress. Permission came through the Family Movie Act.

9 And we know that this judge decided that that
10 understanding that both VidAngel and its attorney,
11 Mr. Quinto, had was wrong, and that's okay, but that was
12 their honest belief.

13 The opinion -- do you have the opinion?

14 The opinion of Mr. Quinto you saw was about
15 12 pages long, and it went through everything thoroughly.
16 It didn't leave anything undone.

17 He concluded, of course, "We believe that
18 VidAngel's current service is lawful" but he went through in
19 great detail all the different aspects, including that it be
20 transmitted to a household for private viewing, including
21 buying authorized copies of the DVDs.

22 He looked at that issue closely and believed that
23 that would satisfy for streaming to families. He looked at
24 the Family Movie Act and believed that it was exempted
25 through the -- from copyright infringement.

1 He looked at the DMCA, and he determined that the
2 DMCA was not implicated here and that using AnyDVD would be
3 perfectly legal under these circumstances.

4 So he looked thoroughly at every issue. He had
5 been a 30-year attorney. He had represented Warner Bros.
6 He had represented the Academy Awards. He represented
7 copyright owners, and you heard that he had aggressively
8 represented them in protecting their rights, protecting
9 their copyrights. And he believed strongly that what
10 VidAngel was doing was absolutely lawful, and so did
11 VidAngel.

12 So they did send out a letter to the studios. And
13 you will remember this timeline, which we introduced through
14 opening and which the studios have now commented on.

15 And the studios have a bunch of little data points
16 inside the blue, suggesting that they made contact somehow
17 with VidAngel. But if you look closely at those data
18 points, those are primarily data points where they were
19 internally themselves talking to each other. They weren't
20 communicating with VidAngel. They weren't communicating
21 with VidAngel's counsel.

22 Yes, you heard some testimony that for a short
23 time one of them reached out and said -- that was Fox, said,
24 "We will set up a meeting," and then they didn't show up to
25 the meeting; and Time Warner sent a letter and then wouldn't

1 respond or follow up. So there was never any substantive
2 communication with VidAngel at all, and yet VidAngel truly
3 wanted to be able to get communication going.

4 Let's take a look at that letter. It was about as
5 open and honest and forthright as it could have been,
6 introducing themselves to the Disney Company in this one and
7 all of the other studios.

8 And they introduced themselves and said very
9 clearly they're planning on streaming, they're planning on
10 lawfully purchasing DVD or Blu-ray movies or television
11 shows and it plans to stream them. It plans to tag the
12 content. It plans to apply certain tags to multiple
13 different categories of profanity, vulgarity, blasphemy, sex
14 acts, et cetera.

15 It plans to store those discs in a physical vault,
16 and the purchase of the disc is going to be a one-to-one,
17 disc-to-customer basis. They'll make sure that there is one
18 disc for every customer that views the movie.

19 They said that -- 70 percent of viewers, we
20 believe are going to bring a large, new audience to you.
21 And if for some reason the studios actually didn't
22 understand in great detail what they were proposing to do
23 before they did it, they were invited to call and ask
24 questions. And if it had any objection, if they didn't feel
25 it was fully lawful and fully compliant with the law, they

1 could have said so. This was not a setup.

2 Mr. Quinto told you there is no way I would have
3 wanted my client to be going into a small rowboat into
4 battle against battle ship. There is no way you go against
5 this ginormous industry and take them on especially if you
6 don't think you're right. It makes no sense. Just think
7 common sense.

8 Would anybody, whether you are out to make a
9 profit or out to do something good or a combination of both,
10 if you didn't think you were right under the law, would you
11 take this task on? Would you take on the task of facing the
12 largest industry, as Mr. Schumann told you, the only
13 industry with a positive net balance against the rest of the
14 world? Would you take them on if you didn't think you were
15 absolutely right under the law and be protected under the
16 law? Of course you wouldn't.

17 Just doesn't make any sense that they thought they
18 were intentionally breaking the law. And the letters show
19 absolute good faith.

20 They were hoping that they could get any concerns
21 resolved because they launched publicly, and yet the studios
22 took, of course, nearly a year before they spoke -- before
23 they filed their lawsuit. That's how long it took them.

24 And then it took them another little while before
25 they filed their motion to try to shut down VidAngel. And

1 then it took even longer for the papers to get filed and for
2 them to be finally presented to the Court, and then there
3 was a hearing. And you will see the red area there. There
4 was 28 days before there was a ruling.

5 VidAngel didn't choose the timing when all of this
6 happened. The studios chose the timing. VidAngel didn't
7 choose that, after all this time in the middle of the
8 holidays, a decision would come down telling them to shut
9 down.

10 And VidAngel didn't choose that they would have to
11 figure out how to shut down surgically; right? Because the
12 order applied -- at first they thought maybe it was 50 --
13 56 percent of their materials you heard, and then they
14 finally figured out it was difficult to identify exactly
15 which materials were involved. They figured out it was
16 actually only about 35 percent. But either way, it
17 certainly wasn't 100 percent.

18 So what did they do during this brief two-week or
19 so period where they were attempting to comply?

20 Does what they were doing really show that all of
21 a sudden they were willfully disobeying a Court order? Of
22 course, it doesn't.

23 Mr. Quinto told you one thing he did was he was
24 sending letters out to the studios who didn't sue, and he
25 was saying to them, "Hey, we've got this order. We're

1 working towards compliance with it. Would you like us to
2 treat your materials the same as the plaintiffs? Would you
3 like us remove your materials as well?"

4 He told you that we tried. We reached out. We
5 only heard from one studio who wanted to do that. All the
6 others didn't object. They didn't mind if their
7 materials -- at least they didn't say they minded if their
8 materials would remain on VidAngel's site. So he was doing
9 that during this two-week period.

10 He told you he filed the motion to stay during
11 this two-week period, asking the judge to consider maybe not
12 making it be effective right away.

13 He told you he did a lot of things during that
14 period. Mr. Harmon told you that they were trying to do
15 some coding to figure out to do this surgical approach.

16 And the surgical approach is interesting. If you
17 think about this claw machine here, it will give you a sense
18 of how frustrating and challenging and how difficult it was
19 them.

20 In the claw machine, let's imagine that the judge
21 issued an order saying you have to take out all the white
22 toys in this claw machine, and you can do one of two things.
23 You can pull the plug on the claw machine. You can take the
24 whole entire machine out and throw it away.

25 So that was one option that VidAngel said they

1 had. "We could disconnect our whole entire system." Or you
2 can do the frustrating process of trying to get that claw
3 machine -- I don't know if you've ever tried one of those
4 before -- try to get that claw machine to grab each of those
5 white dolls and pull them out surgically; and then, when you
6 are done, you will have fully complied with the order.

7 They were trying to do it through coding. They
8 told you that that's what they thought they had to do to be
9 able to comply. They thought they had to figure out some
10 sort of coding to make their system work.

11 And they hadn't planned on this in advance because
12 Mr. Quinto, you remember, told them they had an 80-percent
13 chance of victory, that they weren't going to get this kind
14 of injunction, but they eventually did.

15 What did they do when they couldn't get the coding
16 to work quickly enough, when they couldn't find a way to get
17 the surgical method to work quickly enough? They
18 disconnected entirely all the way across the board as to
19 everything.

20 So they shut down hundred percent, all materials,
21 and ever since then, it's been shut down. There has been no
22 intent to ever start it again. That is a dire, dire
23 consequence.

24 Every single movie has been shut down until they
25 came up with a new system, which they are now doing, and

1 they're not using any of the plaintiffs' materials, as you
2 heard.

3 So let's take a look on the next slide, if we
4 could. At the end of the process, this is what you heard
5 Mr. Quinto said. He said "our bad." He did say that,
6 Your Honor. That wasn't an attitude suggesting that they
7 didn't care about the order.

8 He said, "I will take responsibility for this."
9 But we didn't anticipate that any injunction would be as
10 broad as the injunction that issued. We took a little while
11 to figure out all that was required to implement the
12 changes. So that was the explanation.

13 And do we hold VidAngel as willful violaters of
14 the law because of this two-week period? Of course not.
15 That's not fair. Come on. We got to be fair.

16 Your job is to be fair, reasonable, analyze the
17 evidence, and come up with a just verdict.

18 The next thing I want to talk about is throughout
19 this trial -- and you heard something about tailoring a
20 message, which, by the way, was unfair. Mr. Harmon
21 certainly told you that he tailors messages.

22 Yes, they got this lawsuit out of the blue. They
23 were is supervised by it, and they delivered a message to
24 their employees trying to provide some calm and some reduced
25 fear. So, yeah, the message was a little bit different than

1 what he might have gone home and told his wife. That's not
2 doing anything deceptive.

3 But here is what's happening on the studio side.
4 You heard Mr. Oldre testify.

5 He was asked, "You have used the word 'piracy' and
6 'pirate' a lot in your testimony; correct?"

7 He says, "Correct."

8 "You were coached by counsel to repeat that word
9 as many times as possible?"

10 He says, "No."

11 "Was that your own strategy?"

12 "Yes."

13 See, that was their strategy, was to call VidAngel
14 pirates the whole trial, say they didn't have permission,
15 they didn't have a license, and to confuse those issues.
16 That wasn't fair.

17 VidAngel is not a pirate. They're not stealing
18 discs. They're not taking discs and making thousands of
19 copies and going and selling them overseas.

20 They're not hiding. They are operating in the
21 open. They're telling everybody what they're doing, the
22 studios what they're doing. They invited studio
23 cooperation.

24 They bought over 72,000 DVDs and Blu-rays, and
25 they provided extreme value to their customers through the

1 filtering options that they had for over 10,000 titles.
2 They have had absolute good faith at all times. They did
3 not operate as traditional pirates.

4 We want to talk about the numbers here a little
5 bit. The studios profited by \$467,000. You saw that. And
6 they would have profited more had they wanted to give a
7 license, of course, to VidAngel.

8 They would have lost money had VidAngel not
9 existed. And you saw that the economics of this deal --
10 next slide -- make absolute sense. There were 2 million
11 views, as you heard -- 72,491 discs. That's about 27 views
12 per disc.

13 That would be what you would expect with any
14 business of this nature. Redbox, probably about the same.
15 They rent out for \$1.00 a night. If they buy their discs,
16 they're going to have to rent them out 20, 25, 30 times
17 before it can possibly become profitable.

18 So VidAngel is right in that same ballpark,
19 providing about the same value to studios and creators as
20 Redbox would. And you saw this with Liz where she told you
21 that they buy thousands and thousands of discs of a single
22 title to make sure that everybody who watches one has a
23 disc.

24 And Mr. Barnett, of course, had his explanation,
25 but he left something really important out that we wanted to

1 fill in for you.

2 He said VidAngel doesn't fit into a normal legal
3 business transaction. That's just not true because the
4 studios choose to make DVDs and Blu-rays.

5 They sell them to the Walmarts and Best Buys of
6 the world, and VidAngel purchases them at retail value, just
7 like you and I would have to do, and that money goes to the
8 Walmarts and the Best Buys, and that money goes to the
9 studios and the creators. Mr. Barnett left this off
10 intentionally to unfairly take a jab at VidAngel.

11 But Ms. Russell told you this is how it works.
12 You can buy the disc and own it, and it's yours. And on the
13 electronic side, she said you can buy a digital copy and own
14 it. You can download it on your computer or you keep it on
15 your cloud, but it's yours. She confirmed the same.

16 The economics here, as we talked about a little
17 bit earlier, \$2,300,000 of losses for VidAngel. They were
18 trying to build their business. They were putting a lot of
19 money into buying discs and marketing and trying to find
20 these extra people who would only provide a benefit to the
21 studios and who did provide a benefit to the studios.

22 So there was much discussion about punishing
23 VidAngel and trying to deter anybody else. VidAngel's
24 already been punished in a sense that they've been
25 completely shut down. The disc-based method is dead and

1 gone, 100-percent shut down.

2 If that's not enough to deter somebody else, I
3 don't know what is. Nobody wants to come and have to sit
4 through this and face the scary potential outcome of
5 something like this.

6 And, of course, there is a Court order now, that
7 specifically tells us for the first time -- this is a case
8 of first impression. Next time it won't be. There is now a
9 Court order telling us how we can interpret the law.

10 There is three years of litigation that we have
11 been through now. There has been major layoffs, of course,
12 at VidAngel, and you heard that they're in Chapter 11
13 bankruptcy, doing their best to find a way to recover and
14 survive the bankruptcy.

15 So there is no additional need with some
16 extraordinarily high disproportionate number to punish
17 VidAngel or to deter them or any other party.

18 In fact, you have not heard of any other filtering
19 company that's attempted anything like this ever, and
20 certainly, based on what's happened here, you wouldn't
21 expect there to be any.

22 Go to the next slide if we can.

23 In the closing jury instructions, you will see
24 that an infringement is not considered willful when the
25 defendant shows it had a good faith belief in the innocence

1 of its conduct and it was reasonable to hold such a belief.
2 That's what applies to VidAngel at all times.

3 And we think it's important for you to remember
4 that, of all of these views, of all of the people who ever
5 used VidAngel, 65 percent would never have watched the
6 studios' movies, and these 65 percent represent extra value,
7 added value.

8 That's why when you saw Mr. Kinrich go through his
9 calculations, and the studios brought nobody else with any
10 different calculations. That's how you saw -- he said,
11 "Look, we brought \$467,000 of profit to the studios in the
12 short time they existed based on only two million views
13 versus the many, many multiples of views that would be
14 happening through a Netflix or some other forum, and we went
15 through the \$2 million of losses."

16 They now want you to award and extraordinarily,
17 disproportionate, ridiculously out-of-line number that has
18 no connection, no connection whatsoever to any of the
19 numbers in this case or to any of the issues in this case.

20 So there is no need for deterrence. There is no
21 need for additional punishment, and, of course, the factors
22 are 100 percent available to you for you to decide how to
23 apply them, whether to apply them, and, if so, how to apply
24 them.

25 If you look at actual harm, there was none. And

1 in a normal case, your job is to assess actual harm. And
2 you can certainly say that that would be an important
3 factor. And if you look at the fact that VidAngel, not only
4 made no money but lost money, that's an important factor.

5 And if you also look at one other very important
6 factor that's on the list, and that is VidAngel's ability to
7 pay.

8 This slide -- it's Exhibit 2652 -- shows you that
9 VidAngel has about \$2 million in the bank. But, if you go
10 to the bottom of that, they've got so many debts that
11 they're \$702,000 in debt. They don't have the ability to
12 pay much at all.

13 And that's really, really important for you to
14 consider. They caused no harm. They had no -- there were
15 no experts in here for the studios coming in here and
16 telling you that they suffered any bit of harm.

17 They did nothing intentionally. Everything they
18 did they believed was fully compliant with the law. They
19 thought they had found a way, an innovative way, to provide
20 licensing -- to provide content that the studios would not
21 provide licensing for.

22 They thought they did everything perfectly in
23 accordance with the law. And they believed, truly believed
24 that what they were offering was a valuable service and what
25 they were offering was something that the studios should

1 welcome and what they were offering was something that would
2 bring more money and more viewers to the table and would be
3 an extreme benefit for our culture, to invite others who
4 cannot participate to participate.

5 And so we do indeed ask that you award the minimum
6 amount because the minimum amount is more than they can
7 afford currently, and if they can just simply have a number
8 that would allow them to work themselves out of bankruptcy
9 and to be able to survive to continue with their "Dry Bar,"
10 to continue with their current streaming service, to
11 continue with their unique content such as "The Chosen," to
12 be able to provide what thousands and tens of thousands of
13 families and individuals want.

14 We appreciate your time, and we appreciate your
15 consideration. Thank you.

16 THE COURT: Thank you, Counsel.

17 Disney, you have the opportunity to do a rebuttal
18 argument at this time.

19 MS. YOUNG: Thank you, Your Honor.

20 Mr. Eisenhut just asked you for a \$600,000 award.
21 VidAngel wasn't stealing postcards. That is a slap on the
22 wrist.

23 One thing he told you is AnyDVD was all about the
24 DMCA. It's obvious why he is doing that.

25 Can we see the damages ranges for the DMCA and

1 copyright?

2 The DMCA has a much lower range. He wants you to
3 put it all in that low, low bucket. And remember why are
4 there these different ranges? The DMCA is for picking the
5 lock, and copyright damages are for looting the store and
6 selling all the stuff.

7 What Mr. Eisenhut is saying is punish VidAngel for
8 picking the lock but just ignore the fact that it stole all
9 the stuff in the store.

10 You wouldn't do that for a car thief. If he
11 picked the lock and then sold the car, you would punish
12 both.

13 And AnyDVD is not just relevant to the DMCA. It's
14 what tells you that VidAngel knew what they were doing.
15 They had to pick that lock to get to all the valuable
16 content inside. That's willfulness. Those are copyright
17 damages.

18 And what about Mr. Schumann saying that he bought
19 AnyDVD and used it? He did that with authorization from
20 copyright owners. It's nothing like what VidAngel did.

21 You know, Mr. Eisenhut also said it would be
22 terribly unfair to punish VidAngel for 17 days of disobeying
23 the judge's order after the judge found every single one of
24 their legal arguments were wrong.

25 But let me remind you what happened after

1 Judge Birotte told them to stop. They streamed every single
2 one of the plaintiffs' 819 movies. That is copyright
3 infringement. And like I said earlier, a tiger doesn't
4 change his stripes.

5 And you heard all these excuses. VidAngel wanted
6 to provide a filtering service. It earnestly wanted to do
7 that. Well, do you know what? You can want to provide
8 filtering and also steal, and they did both. We are here
9 because they stole.

10 You also heard that VidAngel would have loved a
11 license, they would have loved a license. They never asked
12 for one. And even if you believe that, it's not an excuse
13 to steal. If you think someone won't let you borrow their
14 car, you don't go and steal their car.

15 Now, what about this opinion for Mr. Quinto? Like
16 I said, it's their "get out of jail free" card, and your
17 reliance on your advice of counsel must be reasonable. It
18 was not reasonable.

19 They also showed you that video. That was a
20 propaganda video. I also want to just make sure nobody is
21 confused.

22 Can we see Jury Instruction Number 3.
23 Judge Birotte has already considered the legal arguments.
24 He's decided everything that was discussed in that video.
25 And you are not to consider whether VidAngel violated the

1 plaintiffs' rights. That has already been established.

2 Mr. Eisenhut also said this was a matter of first
3 impression. Yeah, it was because no one had the hutzpah to
4 do this before.

5 And there was an 80 percent chance of success,
6 Mr. Quinto told them. Well, on December 12th, the chances
7 went from 80 percent to zero, if they ever believed that to
8 begin with. That's willful infringement.

9 And then what's the excuse? The claw machine?
10 They were trying to do this surgically? Mr. Schumann in
11 15 minutes of thinking about it came up with a solution.
12 That testimony was not contradicted by anybody. He said
13 there are really easy ways to do it. No one contradicted
14 him.

15 You also heard Mr. Eisenhut say that VidAngel
16 fairly compensated the studios because they bought all of
17 those DVDs. He said, "Look at Redbox." VidAngel wasn't
18 Redbox. Redbox rents physical discs. VidAngel was
19 streaming. Mr. Oldre told you those are apples and oranges.

20 Buying all those discs, that was nothing compared
21 to the tens or even hundreds of millions of dollars that you
22 need to pay for a streaming license. I think it was
23 something like \$700,000 they paid for discs. That is
24 peanuts, compared to a streaming license. That doesn't show
25 you VidAngel's good faith. It shows you their motive.

1 Mr. Eisenhut also said, "We didn't calculate any
2 damages." Let's look again at the jury instructions.

3 Can we please see Instruction Number 20, Mr. Jay.

4 A plaintiff can recover statutory damages whether
5 or not there is evidence of the actual damage suffered by
6 plaintiffs or the profits reaped by the defendant.

7 There is no required nexus between the amount of
8 statutory damages awarded and any damages suffered by
9 plaintiff or any profits reaped by defendant.

10 The reason for that is statutory damages are
11 intended not just to address the infringer but the other
12 potential infringers that are out there, the next VidAngels.

13 And it also says you are to consider the harm to
14 the plaintiffs as a result, including unquantifiable harm.
15 That means harm that it's hard to put a number on.

16 Can we see the slide from Ms. Russell.

17 And Ms. Russell talked about this. This is what
18 happened with VidAngel. This is the legal system. This is
19 everyone who played by the rules, and this is VidAngel.

20 That is real harm, ladies and gentlemen. It can't
21 be quantified. It's hard to put a number on it. It is hard
22 to put a number on what happened when someone cheats and
23 undermines the whole premise on which all of these lawful
24 businesses are operating.

25 Mr. Eisenhut said the plaintiffs actually

1 benefited because VidAngel brought their movies to a whole
2 new audience who never would have watched them before.

3 What was the evidence of that? It was
4 Dr. Duckworth and his survey. Remember him? He has never
5 done a survey before he did one for VidAngel. You can't
6 trust that survey. Dr. Duckworth didn't even follow his own
7 textbook.

8 And then they brought in Mr. Kinrich with his
9 imaginary world. Robin Russell debunked that whole
10 analysis. She said those imaginary worlds don't exist.

11 You can't do what Mr. Kinrich is saying you would
12 do. And who is in a better position to know if the
13 plaintiffs were harmed? VidAngel's hired experts or the
14 plaintiffs? Why would we be here if the plaintiffs were
15 actually benefiting from what VidAngel did? Why would we be
16 suing VidAngel?

17 Another thing Mr. Eisenhut talked about was
18 VidAngel's ability to pay. They have no money. But how
19 poor is VidAngel really? You saw what Mr. Harmon said when
20 he was talking to a different audience about VidAngel's
21 financial situation.

22 Can we see the bankruptcy video, please.

23 (Exhibit played.)

24 MS. YOUNG: He said VidAngel wanted to have enough
25 revenue to pay Disney for damages in this case. Where is

1 that money now? There is a bankruptcy process in place.
2 The bankruptcy court will decide whether and how VidAngel
3 will pay the award. Your job is to think about the message
4 that you are sending.

5 I want you to keep in mind a very important fact.
6 The plaintiff sued VidAngel, the company. They didn't sue
7 Mr. Harmon. They didn't sue his family. The verdict in
8 this case is not going to be about the Harmons or their
9 families. And Neal Harmon said he doesn't even own stock in
10 VidAngel. He made sure that his stock was held by Harmon
11 Ventures Limited Liability Company.

12 So if the verdict isn't going to be against
13 Neal Harmon or his family members, why did they spend so
14 much time talking about their family? Why did they show you
15 pictures of their wives and kids? They have beautiful
16 families. I'm sure they love them very much. I love my
17 family and my kids too. That is all completely irrelevant
18 to the factors you are supposed to consider. It is trying
19 to distract you from your job.

20 And you heard Mr. Eisenhut say a large damages
21 award isn't necessary because VidAngel has already stopped.
22 Like I said, this isn't just about VidAngel. This is about
23 the next VidAngel.

24 Mr. Eisenhut said the award that we're asking you
25 to make is completely out of line, it has no connection to

1 any of the numbers in this case. That's not right.
2 Remember that slide I showed you with all those big numbers
3 on it -- \$105 million, \$400 million, \$1.25 billion? Those
4 aren't my numbers. Those were VidAngel's numbers.

5 So I started off by saying that your job is to
6 make sure there are consequences for breaking the law.
7 VidAngel wants a pass.

8 Do not let them avoid responsibility. Just think
9 of the message that would send to the next VidAngel. A
10 damages award that is not at the high end of this range is
11 just an invitation for more piracy. Thank you.

12 THE COURT: All right. Thank you. Do we have a
13 bailiff to be sworn?

14 THE CLERK: State your full name for the record.

15 THE BAILIFF: Doug Butsko.

16 THE CLERK: Please raise your right hand.

17 You solemnly swear to keep this jury together in
18 some private and convenient place, that you will not permit
19 any person to speak or communicate with them nor do so
20 yourself unless by order of the Court or to ask them whether
21 they have agreed upon a verdict, and that you will return
22 them into court when they have so agreed or when ordered by
23 the Court, so help you God?

24 THE BAILIFF: I do.

25 THE CLERK: All rise for the jury.

1 (Jury out at 11:44 A.M.)

2 THE COURT: Counsel, generally the rule I try to
3 employ is to have the lawyers within a five- or ten-minute
4 phone call from the court clerk. I know you guys are some
5 distance away.

6 You are closer, but I would not recommend going
7 back to the office. So we'll await the jury's return. I
8 have got another meeting that I need to attend right now; so
9 I am going to ask you all, unless there is some event that
10 precedes that, to come back at 1:15 so we can deal with the
11 Rule 50 motion before my criminal calendar.

12 All right. So any questions, issues that either
13 side wishes to raise at this time?

14 Mr. Klaus?

15 MR. KLAUS: No, Your Honor.

16 THE COURT: Mr. Eisenhut?

17 MR. EISENHUT: No, Your Honor.

18 THE COURT: All right. So we'll see you back at
19 1:15. Thank you.

20 THE CLERK: All rise. This Court is in recess.

21 (Recess taken 11:45 A.M. to 3:07 P.M.)

22 (The Court heard unrelated matters.)

23 THE CLERK: Recalling CV 16-4109-AB, Disney
24 Enterprises, Inc., et al., versus VidAngel, Inc.

25

1 (The following was heard in open court outside the
2 presence of the jury:)

3 THE COURT: I seem to recall we did not deal with
4 the Rule 50 motion. Does either side wish to be heard as
5 relates to the Rule 50 motion?

6 Mr. Klaus?

7 I did have a chance to read the pleadings filed by
8 the trio of starving associates over the weekend, and I
9 guess I will take this time to inquire from the defense.

10 Mr. Eisenhut, is there a similar group of grinding
11 associates that are cranking out these motions at all hours
12 of the day or night? Or should I just assume that it is
13 just the esteemed group of counsel that is in front of us?

14 MR. EISENHUT: We have some support, not quite the
15 same.

16 THE COURT: Okay.

17 MR. EISENHUT: We have some.

18 THE COURT: If they need a copy of the transcript
19 as well when it comes bonus time, I will be happy to provide
20 it to them.

21 Okay. So let's discuss -- so I have read both
22 papers, and so, Mr. Klaus, I will allow you an opportunity
23 to be heard.

24 MR. KLAUS: Yes, Your Honor.

25 The two points for our motion -- one is on

1 willfulness, and the position is, Your Honor, that, at the
2 point in time where VidAngel received Your Honor's order --
3 it was not simply the fact that VidAngel was in defiance of
4 the order that makes its conduct willful, it's that at that
5 point in time it has been told by the -- in the opinion that
6 all of its defenses are without merit as a matter of law.

7 And at that point in time, I understand VidAngel's
8 position being, "We still think we're right," but the test
9 is whether you are proceeding in reckless disregard of our
10 rights or willfully blinding yourself to our rights.

11 And so if they think -- "if a federal judge in
12 your case has told you that every defense of yours is
13 meritless and fails and you continue to infringe, that you
14 are proceeding at a minimum in reckless disregard."

15 THE COURT: Is it in reckless disregard? Look.
16 Our process is such, a judge makes a ruling, you take it up
17 to reconsideration, you take it up to the Ninth Circuit,
18 en banc hearing, you can go all the way to the Supreme
19 Court.

20 If you exercise your rights, is that reckless
21 disregard? Defense is saying "Look, it wasn't reckless
22 disregard. We just were exercising our rights. We think
23 we're right. We still think we're right, but it wasn't a
24 thumbing their nose at the Court."

25 MR. KLAUS: Again, it's not the question of

1 thumbing your nose at the Court.

2 THE COURT: It's a question of reckless disregard.

3 MR. KLAUS: It's a question of being reckless.

4 And under that view of the law, Your Honor, no one would
5 ever be proceeding in a reckless manner or a willful manner
6 until they had exhausted the completion of the petition for
7 writ of certiorari in the Supreme Court.

8 THE COURT: Would your analysis be different if
9 the day after the ruling or two days after the ruling, a
10 request was made to the Court "Hey, we want to abide by your
11 ruling, but we're having difficulty doing so. Can you give
12 us some more time," and the Court rejected that. Let's just
13 play that out for a second.

14 MR. KLAUS: If there had been a request within
15 several hours -- in a very short period of time that said,
16 "We are having difficulty but we are continuing to
17 infringe," I think they would be on thin ice, but it would
18 be a very different case nevertheless.

19 THE COURT: Okay. Go ahead.

20 MR. KLAUS: Yes. The only other thing I would
21 point out, Your Honor, is at page 794 of the transcript --
22 and this was from Mr. Quinto's testimony last week -- he
23 admitted, as he had said in a declaration to the Court, that
24 the reason that he contacted immediately after your order
25 all of the other studios and said "Please give me a covenant

1 not to sue us," he said in his declaration and admitted on
2 the stand -- this is at page 794, lines 11 through 15 --
3 "VidAngel does not want to risk exposure to intentional
4 infringement claims in light of the rationale behind this
5 Court's ruling," which is I think an admission, Your Honor,
6 that VidAngel realized that there was a serious risk, that,
7 in light of the rationale of your order, not the order
8 itself saying stop, but the rationale, that you are
9 violating all of these rights, that you have no defense
10 under the Family Movie Act, that your conduct runs afoul of
11 the DMCA, that they were risking serious claims of
12 intentional infringement by the other studios whose works
13 were on their service.

14 If they were running a risk of infringement by
15 virtue of their claims, it just follows as a matter of pure
16 logic that, by continuing to infringe our works, they were
17 intentionally infringing them.

18 THE COURT: All right.

19 MR. KLAUS: The second part of our motion, Your
20 Honor, deals with the so-called innocent infringer defense
21 under the DMCA.

22 And the legal standard is that the violator,
23 VidAngel, must sustain its burden of proving that it was not
24 aware and had -- and these are the keywords, Your Honor --
25 no reason to believe that its acts constituted a violation.

1 It is affirmative defense. It is their affirmative defense.

2 I don't think they presented any evidence that
3 they had no reason to believe -- in fact, they had a lot of
4 reasons to believe.

5 VidAngel's position, Your Honor, is we got an
6 opinion from our lawyer that told us that it was okay. If
7 that's right, if their reading of the statute is right, that
8 we thought we had the better of the argument, then it's hard
9 to imagine somebody violating the DMCA who would not be an
10 innocent infringer.

11 They will always say "I thought I had a good
12 argument. The judge disagreed with me, but I thought I had
13 a good argument. I'm innocent. Reduce or remit me down to
14 zero."

15 And that's not what the innocent infringement
16 statutes are for. They are for the people who don't realize
17 and don't have any reason to believe.

18 On top of that, Your Honor, we cited three pieces
19 of evidence, all of which postdate -- and, by the way,
20 again, as with the copyright infringement, the sole ground
21 for the claim that we had a defense to the circumvention
22 violation was Mr. Quinto's opinion, and that's February of
23 2015.

24 There is zero evidence they put into the trial
25 record that they have any other basis for saying that they

1 have any grounds for believing that they were not in
2 violation of the DMCA other than the Quinto opinion.

3 But, Your Honor, Trial Exhibits 118, which is a
4 January 4th, 2016, e-mail from Mr. Quinto to the
5 Baker Marquart lawyers, Trial Exhibit 129, which is
6 Mr. Quinto's very long e-mail, memorandum about multiple
7 subjects but in which he says to the board members of
8 VidAngel "We are preparing our opposition to the plaintiffs'
9 preliminary injunction motion and I am still at 80 percent
10 on copyright infringement but on the DMCA, I think we're in
11 real trouble by virtue of Senator Hatch's statements and the
12 legislative history, and we've a real problem" and then
13 Exhibit 296, again, Mr. Quinto in November of 2016, while
14 waiting for Your Honor's decision to the Delgado firm with a
15 copy to Mr. Harmon and Mr. Marquart and, again, saying
16 multiple times here, they are saying multiple times, "We've
17 got a problem on the DMCA. We have a real problem on the
18 DMCA," it can't be that someone who is in that position
19 where they are saying, "We have concerns, we have problems,"
20 has no reason to believe that there is a violation.

21 Again, given that it's an affirmative defense and
22 that there is zero evidence in the record other than the
23 Quinto opinion from February of 2015 that would support that
24 defense and that we think even the fact that they consulted
25 a lawyer and were concerned enough to consult a lawyer

1 showed they had reason to believe that they were violating
2 the law means that that issue should not go to the jury
3 because no reasonable jury could find that they are eligible
4 for that defense.

5 THE COURT: Thank you, Mr. Klaus.

6 Let me -- Mr. Brooks.

7 If you wouldn't mind, why don't we start
8 backwards. You heard Mr. Klaus talk about e-mail that
9 counsel -- communication with counsel and the board about
10 "we've got some issues here," what's your response to that?

11 MR. BROOKS: Your Honor, I don't think any of
12 those e-mails said -- reversed the opinion that the DMCA was
13 not being violated. I don't think any of it rejected the
14 analysis that Mr. Quinto had done previously.

15 Sure, they were looking for -- they were looking
16 at arguments that had been raised. They were trying to
17 think strategically about ways to respond to them, but I
18 don't think in any of those communications, there is
19 anything saying, you know, "the opinion I gave you
20 previously, I have to retract that, I don't think it was
21 right."

22 On the contrary. And everything -- all the
23 evidence that was presented was that VidAngel continued to
24 believe that that advice was proper, and I think Mr. Quinto
25 testified that he continued to believe that it was correct.

1 THE COURT: What about Mr. Klaus's point, if
2 that's the case, how can anybody ever be found liable under
3 the DMCA? All anyone has to do is say "I thought I was
4 right. I thought I was right."

5 MR. BROOKS: Well, it's not enough just to think
6 that you're right. But if you -- not everyone is going to
7 come in having consulted with an attorney and being told
8 that it was right.

9 And if you have an affirmative belief that you are
10 not violating the law and that's reasonable, then you can't
11 at the same time have in your mind a belief that you are not
12 complying with the law and that you have reason to believe
13 that you are in violation.

14 They're not consistent states of mind. If you
15 have a reasonable good faith belief that you are following
16 the law, then it's not consistent to say that you have
17 reason to believe that you are not following the law.

18 Of course, being aware of the law is not the same
19 thing as having reason to believe that you are violating it.

20 So with respect to the DMCA issue, I think there
21 certainly is sufficient evidence that the jury could find
22 that.

23 At this point, it wouldn't make any sense to go
24 back to the jury and instruct them that that's not something
25 for them to resolve anymore.

1 If a reasonable jury could only go one way, then
2 supposedly -- I imagine they'll go that way. And, if you
3 disagree and they don't go that way, all you have to do
4 is --

5 THE COURT: Judgment notwithstanding the verdict.

6 MR. BROOKS: Yeah. Same thing with the
7 willfulness issue. It would be incredibly inappropriate at
8 this point, while the jury is deliberating, to go back and
9 tell them you have to find certain facts because --

10 THE COURT: But now look. Mr. Klaus is going to
11 get up here and say that's not the standard about the
12 timing. What about the evidence that suggests no reasonable
13 juror could find that there was willfulness --

14 MR. BROOKS: Right.

15 THE COURT: -- or that it wasn't willful?

16 MR. BROOKS: We had a full trial here. The
17 evidence that they're offering has been available the entire
18 time. They could have moved for summary judgment on that,
19 and they, I think, kind of did in a motion in limine, if I
20 recall; and we ended up having a trial.

21 The evidence that was presented was sufficient for
22 the jury to conclude that VidAngel believed in good faith
23 that what they were doing was not in violation of the
24 copyright.

25 And, you know, I think you put it very well

1 yourself. The preliminary ruling on the preliminary
2 injunction was not a final ruling. They were free to
3 disagree with that. They were free to continue to believe
4 that they would ultimately prevail, and it's not --
5 arguments were made.

6 Whether the jury thinks it was reasonable for them
7 to continue to believe that is something that they can
8 decide, and we think that they will decide it in our favor.
9 Plaintiffs think they will decide it in their favor.

10 But it could go either way and, if anything can go
11 either way, then you can't have judgment as a matter of law.

12 THE COURT: All right. Thank you, Counsel. I
13 have considered the evidence. Both sides have presented
14 robust cases in outlining their respective positions. I am
15 going to deny the motion, the Rule 50 motion, on these two
16 issues.

17 All right. We have received a note indicating --
18 let me just pull it -- indicating there is a verdict. So
19 what I will do is that we will bring the jury in, we'll
20 receive the verdict, and then what I generally try to do is
21 give them information, thank them. I go back and talk to
22 the jurors afterwards, and then I will allow you all to talk
23 to them if you want, and then I will bring you back here to
24 deal with any post-verdict issues.

25 So all right. Let's bring in the jury then.

1 (The following was heard in open court in the presence
2 of the jury:)

3 THE COURT: All right. Well, good afternoon
4 ladies and gentlemen of the jury. I understand -- we've
5 received a note from you all indicating that you have
6 reached a verdict; is that correct?

7 JUROR: Yes.

8 THE COURT: And our foreperson is Mr. Andrade, if
9 you would hand the verdict to our courtroom deputy, please.

10 THE CLERK: United States District Court,
11 Central District of California, Disney Enterprises, Inc., et
12 al., plaintiffs, versus VidAngel, Inc., defendant, Case
13 Number CV 16-4109, Special Verdict Form.

14 We, the jury, in the above-entitled action
15 unanimously find as follows on the questions submitted to
16 us:

17 One, did plaintiffs prove by a preponderance of
18 the evidence that VidAngel willfully infringed plaintiffs'
19 copyrights?

20 Yes.

21 Two, what amount of statutory damages do you award
22 for willful copyright infringement? Your award must not be
23 less than \$750 or more than \$150,000 per work.

24 \$75,000.

25 Four, multiply the amount you awarded in

1 Question 2 or 3 by 819. The total verdict for all copyright
2 infringement is \$61,425,000.

3 Five, did VidAngel prove by a preponderance of the
4 evidence that its violations of the DMCA were innocent?

5 No.

6 Seven, what amount of statutory damages do you
7 award for VidAngel's violation of the DMCA? Your award must
8 not be less than \$200 or more than \$2,500 per act of
9 circumvention.

10 \$1,250.

11 Eight, multiply the amount you awarded in
12 Question 6 or 7 by 819. The total verdict for all
13 violations of the DMCA is \$1,023,750.

14 Dated June 17, 2019, signed by the presiding
15 juror.

16 Ladies and gentlemen of the jury, is this verdict
17 as presented and read the verdict of each of you, so say you
18 all?

19 JURORS: Yes.

20 THE COURT: Does either side wish the jury to be
21 polled?

22 Plaintiff?

23 MR. KLAUS: No, Your Honor.

24 THE COURT: Defense?

25 MR. EISENHUT: Yes, Your Honor.

1 THE COURT: Can we poll the jury, please.

2 THE CLERK: Ladies and gentlemen of the jury, if I
3 call your number, if this is your verdict as presented and
4 read, please answer yes. If it is not your verdict, please
5 answer no.

6 Juror Number 1?

7 JUROR: Yes.

8 THE CLERK: Juror Number 2?

9 JUROR: Yes.

10 THE CLERK: Juror Number 3?

11 JUROR: Yes.

12 THE CLERK: Juror Number 4?

13 JUROR: Yes.

14 THE CLERK: Juror Number 5?

15 JUROR: Yes.

16 THE CLERK: Juror Number 6?

17 JUROR: Yes.

18 THE CLERK: Juror Number 7?

19 JUROR: Yes.

20 THE CLERK: Juror Number 8?

21 JUROR: Yes.

22 THE COURT: All right. Thank you.

23 Members of the jury, thank you all for your
24 service in this case. You have now completed your service
25 as jurors.

1 On behalf of this Court and the Central District
2 of California, I want to thank you for the time and
3 attention that you have given to this very important matter.

4 I have said this to you earlier, what you do,
5 getting good people like you to come and deliberate on
6 matters like this is vitally important to our justice
7 system. I know it's taken a lot of time and -- away from
8 your family and work, et cetera; so we greatly, greatly
9 appreciate it.

10 You heard me say over and over again do not
11 discuss the case, et cetera, et cetera. You are now no
12 longer under any such orders not to speak about the case.

13 You have the right to speak about the case if you
14 want or not. It's entirely up to you. If you choose to
15 speak with anyone about the case, just a little piece of
16 unsolicited advice.

17 This matter is very important to the litigants in
18 this case, and I would ask you to employ the rule I was
19 given when I was a young prosecutor at the U.S. Attorney's
20 office. They said, you now live under the "L.A. Times"
21 rule. Don't do or say anything you wouldn't feel
22 comfortable appearing on the cover of the "L.A. Times".

23 I would leave that up to you all but just
24 something to think about because this process is important
25 to everyone involved here. I would suggest you not say

1 anything that you would not be willing to say under oath.

2 Attorneys often do appreciate getting any comments
3 and feedback about their presentation that might assist them
4 in the future. They may be waiting for you outside when you
5 are discharged as jurors.

6 Again, it is your absolute right if you want to
7 speak with them, great; and if you don't you are under no
8 obligation to do so.

9 I want to thank you, again, for the time and
10 effort you have taken with respect to this case. The
11 bailiff will take you back to the jury room. I am going to
12 come back and briefly meet you all and bid you farewell.

13 But on behalf of the Court, I thank you all for
14 the time and attention you have given to this matter. You
15 are now excused.

16 THE CLERK: All rise for the jury.

17 (The following was heard in open court outside the
18 presence of the jury:)

19 THE COURT: Why don't I have the parties come back
20 at, let's say, 4:00 o'clock. I am just going to say
21 good-bye to the jurors, and we'll come back at 4:00 o'clock
22 to deal with any post-trial issues. We'll be in brief
23 recess.

24 THE CLERK: All rise. This Court is in recess.

25 (Recess taken 3:32 P.M. to 4:13 P.M.)

1 THE COURT: All right. Did you all have an
2 opportunity to speak to the jurors at all or no?

3 MR. KLAUS: We did, Your Honor.

4 THE COURT: The defense as well? All right.
5 Fine. Hopefully that was useful.

6 So I guess the only thing that we need to really
7 discuss is a Proposed Judgment being submitted.

8 Ms. Ehler, you have something?

9 MS. EHLER: One point on the jurors, Your Honor,
10 we had asked -- I think defense counsel took notes of some
11 contact information for them, and we would just ask that --
12 and we asked defense counsel. They wouldn't tell us one way
13 or the other -- but that we be copied or given copies of
14 communications with jurors if it's going to be relevant to
15 an appeal, which I assume is the only reason they would
16 contact them.

17 THE COURT: Yes. I know that -- yes, I assume,
18 that that would be the case. And so I guess you are making
19 a request of the Court for --

20 MS. EHLER: Just noting the request we made. We
21 didn't get a response.

22 THE COURT: You made the request. I am assuming
23 they will do with it what they will. I can't order them to
24 provide that information to you. It's a decision they have
25 to make themselves. So with respect to Proposed Judgment,

1 when do you think you will be able to submit something?

2 MR. KLAUS: Your Honor, the big issue on the
3 Proposed Judgment is that we first need to deal with our
4 motion for a permanent injunction because we do not want the
5 preliminary injunction to expire with the entry of a
6 judgment. And so what I would propose is that we try to
7 work out with VidAngel's counsel a schedule for briefing our
8 motion for a permanent injunction. Obviously, we'll see if
9 they will stipulate to one but assuming --

10 THE COURT: Unlikely.

11 MR. KLAUS: You know, the triumph of hope over
12 experience, Your Honor. But we will see if we can -- if
13 they won't stipulate, then we'll try to work out a briefing
14 schedule that is respectful of one another's -- what I
15 assume are issues with schedules over the course of the
16 early months of the summer. We'll try to do that.

17 And once we've got that, we would be pleased to
18 submit a Proposed Judgment, and we'll follow with motion for
19 attorneys fees 14 days after.

20 THE COURT: I'll let you both work -- I will let
21 you work all of those issues out with respect to the
22 injunction, judgment. I assume, there will be motions
23 post-trial motions as well.

24 So you may want to decide if you want to have
25 discussions about that as well. I'm not going anywhere. So

1 I am here, able to deal with those issues as they come up.

2 Anything else that we need to discuss with respect
3 to the trial at all?

4 MR. KLAUS: There was -- I think Ms. Ehler is
5 going to remind me about corrections to the transcript.

6 THE COURT: Okay.

7 MR. KLAUS: We did notice there were at least one
8 place where we saw there was a material difference in the
9 transcript and what both sides remembered one of the
10 witnesses saying. I think our plan was to file a proposed
11 stipulation to correct the transcript.

12 THE COURT: That's fine. The parties agree. That
13 makes it a lot easier.

14 MR. KLAUS: Okay. Is there anything else? I
15 think nothing else from our end. We did want to extend on
16 behalf of all of us and I am sure on the defense side as
17 well the appreciation to the Court and the court staff. I
18 know we've kept you extremely busy over the last week and
19 several months and probably longer.

20 THE COURT: Years. I'm sorry.

21 MR. KLAUS: Yes. So we did want to say thank you
22 very much, Your Honor.

23 THE COURT: Anything from the defense at all,
24 Mr. Eisenhut or --

25 MR. EISENHUT: No. I think Your Honor noted we'll

1 have some post-trial motions as well, but we'll certainly
2 cooperate on a briefing schedule, and we appreciate the
3 Court's time.

4 THE COURT: All right. I will say, look. Thank
5 you all for the experience of this trial. It was a
6 fascinating trial, well litigated on both sides. Kudos in
7 particular to all those that are both here and not here who
8 spent a lot of time and effort briefing, submitting papers
9 to the Court, all of which was appreciated.

10 Both sides did an excellent job. Both parties
11 were exceptionally well represented. Obviously, in these
12 trials one side usually prevails, one side doesn't.

13 To the Harmon family, look. Obviously, the
14 verdict didn't come out the way you would have liked, but at
15 least it's been my observation that you all are fighters,
16 that you all are fighters and are reflective, thoughtful,
17 and you will persevere through this.

18 And you will take this matter, whether it's
19 appealing this trial or appealing to the Supreme Court or
20 appealing to your legislature, I have no doubt that you have
21 perseverance and intellect that will get you far in your
22 respective careers. So I wish you all the best.

23 To the lawyers, again, it was an incredible
24 experience from my perspective. Lawyers were exceptional.
25 There are always ups and downs in these trials, but I don't

1 regret the experience at all.

2 And I end every trial by saying the following line
3 from a relatively well-known play.

4 Though, in reviewing the incidents of this trial,
5 I am unconscious of any intentional error. I am
6 nevertheless too sensible of my defects not to think it's
7 probable that I may have committed many errors. And I shall
8 hope that the Ninth Circuit will view those errors with
9 indulgence and that the faults of my incompetence will be
10 consigned to oblivion.

11 And for those of you who care where that came
12 from, it's from the play "Hamilton." With that, I wish you
13 all the best, and I am sure I will see you all in the coming
14 weeks and months as we deal with the post-trial motions.
15 All right. All the best.

16 THE CLERK: All rise. This Court is adjourned.

17 (Proceedings concluded at 4:19 P.M.)

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CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: June 17, 2019.

/S/ CHIA MEI JUI _____

Chia Mei Jui, CSR No. 3287

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