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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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

Plaintiffs,

v.

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

Defendants.

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

ORDER

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

I. Facts and Procedural History

This action has an extensive eight-year history. In brief, and relevant to the renewed motions, Oracle develops, manufactures, and licenses computer software. Oracle also provides after-license software support services to customers who license its copyrighted software. Defendant Rimini Street is a company that provides similar after-license software support

1 services to customers licensing Oracle’s copyrighted software and competes directly with Oracle
2 to provide these services. Defendant Ravin is the owner and CEO of Rimini Street.

3 On January 25, 2010, Oracle filed a complaint for copyright infringement against
4 defendants alleging that beginning in 2006, Rimini Street copied several of Oracle’s copyright-
5 protected software programs – including Oracle’s copyrighted PeopleSoft, J.D. Edwards, and
6 Siebel-branded Enterprise Software products – onto its own computer systems in order to
7 provide after-license software support services to customers who licensed the copyrighted
8 software programs. ECF No. 1. In June 2011, Oracle filed a second amended complaint alleging
9 thirteen causes of action against defendants: (1) copyright infringement; (2) violation of the
10 Federal Computer Fraud and Abuse Act (“CFAA”), 18 U.S.C. § 1030(a); (3) violation of the
11 California Computer Data Access and Fraud Act (“CDAFA”), Cal. Penal Code § 502;
12 (4) violation of the Nevada Computer Crimes Law (“NCCL”), NRS § 205.4765; (5) breach of
13 contract; (6) inducement of breach of contract; (7) intentional interference with prospective
14 economic advantage; (8) negligent interference with prospective economic advantage; (9) unfair
15 competition; (10) trespass to chattels; (11) unjust enrichment; (12) unfair practices; and (13) an
16 accounting. ECF No. 146.

17 A jury trial was held on Oracle’s claims for copyright infringement and violation of the
18 California and Nevada computer access statutes from September 14 through October 13, 2015.
19 On October 13, 2015, the jury returned its verdict and found that defendant Rimini Street
20 engaged in copyright infringement on ninety-three of Oracle’s copyrighted PeopleSoft,
21 J.D. Edwards, and Siebel-branded Enterprise Software products. ECF No. 896. The jury also
22 found that both defendants Rimini Street and Ravin violated the California and Nevada computer
23 access statutes. *Id.* Ultimately, the jury awarded Oracle \$35,600,000.00 for Rimini Street’s
24 copyright infringement and \$14,427,000.00 for defendants’ violation of the state computer
25 access statutes. *Id.* After the jury verdict, Oracle filed a series of post-trial motions including a
26 motion for a permanent injunction (ECF No. 900), a motion for prejudgment interest
27 (ECF No. 910), and a motion for attorneys’ fees (ECF No. 917) which were all granted by the
28 court on September 21, 2016, after extensive briefing by the parties and a May 25, 2016 court

1 hearing (ECF No. 1049). Defendants then appealed the jury verdict, along with the court's
2 findings and orders, to the Ninth Circuit Court of Appeals. *See* ECF No. 1078.

3 On January 8, 2018, the Ninth Circuit issued its decision and opinion on defendants'
4 appeal. *Oracle USA, Inc. v. Rimini Street, Inc.*, 879 F.3d 948 (9th Cir. 2018). In its decision, the
5 Ninth Circuit affirmed in-part, reversed in-part, vacated in-part, and remanded in-part the jury's
6 verdict and the court's various orders in this action. In particular, the Ninth Circuit affirmed in
7 full all of the court's and jury's findings related to Oracle's claim of copyright infringement
8 against Rimini Street for all ninety-three copyright registrations at issue in this action. *Id.* at 953
9 ("[W]e affirm the judgment with respect to the copyright infringement claims. We also affirm
10 the remedies with respect to those claims[.]"). The Ninth Circuit also affirmed the jury's \$35.6
11 million judgment against Rimini Street for its infringement and the court's award of
12 approximately \$22.5 million in prejudgment interest against Rimini Street. *Id.* at 953, 963-964.
13 However, the Ninth Circuit reversed the jury's verdict against defendants Rimini Street and
14 Ravin on Oracle's state law computer access claims (along with the related California UCL
15 claim) and the jury's \$14.4 million associated judgment on those claims. *Id.* at 953, 963. In light
16 of its reversal on the state law claims, the Ninth Circuit vacated both the court's issuance of a
17 permanent injunction and the court's award of attorneys' fees and remanded both of these issues
18 for the limited purpose of determining whether the court would again issue a permanent
19 injunction and/or an award of attorneys' fees based solely on Rimini Street's copyright
20 infringement and without reference to the now reversed state law computer claims. *Id.* at 964-65.

21 In response to the Ninth Circuit's opinion, Oracle filed the present renewed motion for a
22 permanent injunction to enjoin and restrain Rimini Street from any further infringement of
23 Oracle's software copyrights (ECF No. 1117)¹ and renewed motion for attorneys' fees in the
24 amount of \$28,502,246.20 (ECF No. 1118). Both motions are addressed below.

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

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

2 **A. Effect of the Ninth Circuit Opinion**

3 The parties dispute the breadth and effect of the Ninth Circuit’s opinion and remand upon
4 the court’s analysis on the renewed motion for a permanent injunction. *See* ECF Nos. 1117,
5 1130. In its renewed motion, Oracle argues that the Ninth Circuit’s remand on the issue of
6 whether to grant a permanent injunction is limited and in no way undercut the basis for, or the
7 court’s prior analysis on, issuing a permanent injunction against Rimini Street to enjoin and
8 restrain future copyright infringement. *See* ECF No. 1117. Rather, Oracle argues that the
9 Ninth Circuit remand only requires the court to reevaluate the relevant injunction factors solely
10 under the Copyright Act and without reference to the now reversed state law computer claims.
11 *Id.* In opposition, Rimini Street argues that the Ninth Circuit’s remand constitutes a true reversal
12 and effective disapproval of the permanent injunction that was previously entered by the court
13 and thus, the opinion precludes the court from entering any injunction in this case. *See*
14 ECF No. 1130.

15 The court has reviewed the parties’ documents, along with the Ninth Circuit’s opinion,
16 and agrees with Oracle’s reading of the opinion and the limited nature of the remand. In its order,
17 the Ninth Circuit recognized that the court entered a permanent injunction against Rimini Street
18 “based on copyright infringement and . . . based on alleged violations of the [state computer
19 access statutes].” *Id.* The Ninth Circuit further recognized that in the court’s order, “the district
20 court assessed the [relevant] factors by reference to both the copyright and the [state computer
21 access] claims, without considering separately the propriety of issuing an injunction as to the
22 copyright claims alone.” *Id.* The Ninth Circuit then concluded that “[b]ased on the record before
23 us, we do not know how the district court would weigh the [relevant] factors with respect to the
24 copyright claims alone. We express no view on the propriety or scope of any injunctive relief,
25 which are matters committed to the district court’s discretion in the first instance.” *Id.* The court
26 reads this express direction from the Ninth Circuit to mean that the court must examine the
27 relevant permanent injunction factors based solely on Rimini Street’s copyright infringement
28 without including any findings related to the reversed state law computer access claims. The

1 court does not read any further limitation into its direction from the Ninth Circuit’s opinion, nor
2 does the court find that the remand precludes the issuance of an injunction in this action. With
3 this understanding of the Ninth Circuit’s remand, the court shall evaluate and analyze Oracle’s
4 renewed motion for a permanent injunction.

5 **B. Legal Standard for a Permanent Injunction**

6 The Copyright Act provides that a district court may enter a permanent injunction “on
7 such terms as it may deem reasonable to prevent or restrain infringement of a copyright.”
8 17 U.S.C. § 502(a). “[T]he decision whether to grant or deny injunctive relief rests within the
9 equitable discretion” of the district court. *eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388, 394
10 (2006). Such discretion should be “exercised consistent with traditional principles of equity.” *Id.*
11 In determining whether to issue a permanent injunction in a copyright infringement action, a
12 district court evaluates four factors: (1) irreparable harm; (2) the inadequacy of monetary
13 damages for the infringement; (3) whether the balance of hardships weighs in the copyright
14 holder’s favor; and (4) whether the public interest would be served by a permanent injunction.
15 *Id.* at 391; *see also Flexible Lifeline Sys., Inc. v. Precision Lift, Inc.*, 654 F.3d 989, 999 (9th Cir.
16 2011) (applying the four-factor test outlined in *eBay*). Further, a permanent injunction should
17 issue when the intervention of the court in equity is essential to protect a party’s rights against
18 injuries that could not otherwise be remedied. *See Weinberger v. Romero-Barcelo*, 456 U.S. 305,
19 312 (1982). The court shall address each *eBay* factor below.

20 **1. Irreparable Injury**

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

1 absent an injunction); *i4i Ltd. P'ship v. Microsoft Corp.*, 598 F.3d 831, 861 (Fed. Cir. 2010)
2 (finding that harm to a party's market share, revenues, and brand recognition is relevant for
3 determining whether the party has suffered an irreparable injury); *Celsis In Vitro, Inc. v.*
4 *CellzDirect, Inc.*, 664 F.3d 922, 930 (Fed. Cir. 2012) (holding that loss of goodwill, damage to
5 reputation, and loss of business opportunities are all valid grounds for finding irreparable harm).

6 Here, the court once again finds that Rimini Street's infringement of ninety-three separate
7 copyright registrations over four of Oracle software product lines (Oracle Database, PeopleSoft,
8 J.D. Edwards, and Siebel-branded Enterprise Software) irreparably injured Oracle's business
9 reputation and goodwill. First, it is undisputed (and has been repeatedly acknowledged by the
10 parties) that Oracle and Rimini Street directly compete with each other to provide after-license
11 software support services to customers that license Oracle's copyrighted software. Direct
12 competition between a copyright holder and a proven copyright infringer has consistently
13 supported the issuance of a permanent injunction. *See Presidio Components, Inc.*, 702 F.3d at
14 1362.

15 Second, the evidence in this action established that Rimini Street's conscious disregard
16 for Oracle's software copyrights enabled Rimini Street to rapidly build its business from a new
17 and unknown company in the after-license software support market to a major competitor of
18 Oracle. By offering cut-rate prices on its own services, generally at a discount of 50% of
19 Oracle's prices for similar service contracts, Rimini Street gained increasing market share and
20 growth, including through the length of this litigation. The evidence further establishes that
21 Rimini Street's business model from 2006, and up until at least the court's summary judgment
22 orders in February 2014, was built entirely on its infringement of Oracle's copyrighted software.
23 Rimini Street would not have achieved its current market share and exceptional revenue growth
24 without its infringing conduct. In fact, the evidence in this action establishes that Rimini Street
25 landed clients for its services by telling customers that Oracle's services were overpriced and
26 could be offered at the same cut-rate, 50% discount that Rimini Street offered. Rimini Street was
27 able to offer its after-license software support services at such low prices because its copyright
28 infringement allowed it to offer support services without licensing the ninety-three different

1 copyrighted software products from Oracle or having to expend significant resources in time and
2 money in developing its own competing software. Further, by purporting to offer vendor-level
3 support at half the price of Oracle support, Rimini Street created the impression that Oracle was
4 overcharging for support and eroded the bonds and trust that Oracle has with its customers. Such
5 injuries to a business' reputation and goodwill have consistently been held to constitute
6 irreparable harm. *See Apple Inc. v. Psystar Corp. (Apple II)*, 658 F.3d 1150, 1154 (9th Cir.
7 2011).

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

16 **2. Inadequacy of Monetary Damages**

17 In order to establish that an injunction is warranted, a plaintiff must show that monetary
18 damages alone are inadequate to fully compensate it for the defendant's conduct. *See eBay*, 547
19 U.S. at 391. Here, the court finds that monetary damages alone are inadequate to compensate
20 Oracle for the losses suffered as a result of Rimini Street's copyright infringement. First, the
21 court notes that certain harms suffered by Oracle as a result of Rimini Street's conduct like lost
22 market share and erosion of company goodwill are intangible injuries difficult to quantify and
23 compensate which supports the issuance of a permanent injunction. *See Apple II*, 658 F.3d at
24 1154 (stating that injuries to a business' reputation and company goodwill are intangible injuries
25 difficult to quantify and compensate).

26 Second, the copyright infringement damages in this action were uniquely complex and
27 difficult to determine. Unlike a patent case where a specific number of infringing products are
28 sold at a specific price, in this copyright infringement action there was no mathematically

1 efficient way for the jury to measure Oracle's damages. At trial, the jury was provided with two
2 separate damage theories, both of which required the jury to evaluate a substantial amount of
3 evidence and expert testimony before the jury reached the \$35.6 million in copyright
4 infringement damages awarded in this action. In particular, Oracle's lost profits theory required
5 the jury to determine the lost profits, if any, of a multi-billion-dollar company that has a
6 continuously growing business. In contrast, Oracle's hypothetical license damages theory
7 required the jury to determine the amount Oracle would have charged and received from Rimini
8 Street, its competitor in the after-license software support service market, to license the ninety-
9 three different software products in this action after being presented with ample evidence that
10 Oracle does not, and would not, license its software to competitors in the after-license support
11 market. The difficulty for the jury in quantifying Oracle's damages in this action supports the
12 court's finding that monetary damages alone are insufficient to fairly and fully compensate
13 Oracle for Rimini Street's copyright infringement.

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

20 **3. The Balance of Hardships**

21 A court must weigh and balance the competing effect that granting or withholding an
22 injunction would have on each party. *See Williams v. Bridgeport Music, Inc.*, 2015 WL 4479500,
23 at *41 (C.D. Cal. 2015). The court has reviewed the documents and pleadings on file in this
24 matter and finds that the balance of hardships weighs in favor of Oracle (as the copyright holder)
25 and the issuance of a permanent injunction against Rimini Street for Rimini Street's infringement
26 of ninety-three of Oracle's software copyrights. Generally, the balance of hardships tips in favor
27 of a holder of a copyright seeking to protect its copyrighted works, especially when the party to
28 be enjoined does not have a separate legitimate business purpose for continuing the conduct or

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

11 **4. The Public Interest**

12 “[T]he touchstone of the public interest factor is whether an injunction, both in scope and
13 effect, strikes a workable balance between protecting the [copyright holder’s] rights and
14 protecting the public from the injunction’s adverse effects.” *i4i*, 598 F.3d at 863. Here, the court
15 finds that a permanent injunction against Rimini Street for the possibility of future copyright
16 infringement is in the public interest. *See Apple Computer, Inc. v. Franklin Computer Corp.*, 714
17 F.2d 1240, 1255 (3d Cir. 1983) (“[I]t is virtually axiomatic that the public interest can only be
18 served by upholding copyright protections and, correspondingly, preventing the misappropriation
19 of the skills, creative energies, and resources which are invested in the protected work.”).
20 Further, an injunction against future copyright infringement would not harm the public’s access
21 to competitive after-license software support services because Rimini Street has repeatedly
22 represented to the court that its current business model is not based on its prior infringing
23 conduct. Taking Rimini Street’s statements as true, the public’s access to competition in the
24 after-license software support service market would not be lost or diminished. Finally, issuing an
25 injunction in this action “ultimately serves the purpose of enriching the general public through
26 access to creative works” by giving Oracle an incentive to continue to develop software for
27 public use. *Kirtsaeng v. John Wiley & Sons, Inc.*, 136 S. Ct. 1079, 1086 (2016). Therefore, the
28

1 court finds that all of the relevant *eBay* factors favor issuing a permanent injunction against
2 Rimini Street and the court shall grant Oracle’s renewed motion accordingly.

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

4 In the same prior order granting Oracle’s motion for a permanent injunction against
5 Rimini Street, the court also granted Oracle’s motion for attorneys’ fees and awarded Oracle
6 \$28,502,246.40 in attorneys’ fees against defendants Rimini Street and Ravin after a careful
7 analysis of all relevant factors and a general reduction of Oracle’s requested fees amount by
8 20%. *See* ECF No. 1049. The Ninth Circuit, “[i]n view of [their] conclusion that there was no
9 violation of the state computer laws . . . vacate[d] the fee award and remand[ed] for
10 reconsideration in light of Oracle’s more limited success at litigation.” *Oracle USA, Inc.*, 879
11 F.3d at 965. Oracle then filed the present renewed motion for attorneys’ fees requesting the court
12 re-issue its prior fee award of \$28,502,246.40 against defendant Rimini Street. ECF No. 1118.

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

17 **A. Determination of Whether to Award Fees**

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

23 In order to determine whether an award of attorneys’ fees is warranted under the
24 Copyright Act, a district court examines the nonexclusive factors laid out by the Supreme Court
25 in *Fogerty v. Fantasy, Inc.*, 510 U.S. 517 (1994), including: “frivolousness, motivation, objective
26 unreasonableness (both in factual and in the legal components of the case) and the need in
27 particular circumstances to advance considerations of compensation and deterrence.” 510 U.S. at
28 534, n. 19; *see also Kirtsaeng*, 136 S. Ct. at 1985 (reaffirming the application of the *Fogerty*

1 factors under the Copyright Act). The Ninth Circuit also recognizes additional relevant factors
2 that may be considered by a district court including the overall degree of success obtained by the
3 prevailing party in the litigation and the purposes of the Copyright Act. *Perfect 10, Inc. v.*
4 *Giganeews, Inc.*, 847 F.3d 657, 675 (9th Cir. 2017); *see also* *Glacier Films*, 2018 WL 3542839, at
5 *3 (reaffirming the Ninth Circuit’s commitment to these additional factors in determining an
6 award of fees under the Copyright Act).

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

17 **1. Degree of Success/Frivolousness**

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

22 Throughout the history of this litigation, which was substantially and significantly
23 focused on Rimini Street’s alleged copyright infringement, Oracle successfully defeated all three
24 of defendants’ counterclaims, including defendants’ counterclaim for copyright misuse. Further,
25 Oracle successfully defeated all of defendants’ eleven affirmative defenses which were heavily
26 focused on Oracle’s claim of copyright infringement including affirmative defenses for invalid
27 copyright registrations, express license, consent of use, copyright misuse, improper copyright
28 registration, implied license, statute of limitations, and fair use. Then, at trial, Oracle successfully

1 prevailed on its claim for copyright infringement as the jury found that Rimini Street infringed
2 every one of the ninety-three separate copyright registrations at issue in this action. As a result of
3 Oracle's success in establishing Rimini Street's liability on its copyright infringement claim, the
4 jury awarded Oracle a \$35.6 million judgment against Rimini Street for the infringement. Then,
5 on appeal, the Ninth Circuit affirmed the court's orders and the jury's verdict on Oracle's
6 copyright infringement claim in its entirety. *Oracle USA, Inc.*, 879 F.3d at 953.

7 The court recognizes that several of Oracle's claims were either dismissed or voluntarily
8 withdrawn before trial, and, on appeal, the Ninth Circuit reversed the jury's verdict on the state
9 law computer access claims. However, despite these dismissed, withdrawn, and reversed claims,
10 the court finds that Oracle's overall success in this litigation supports an award of attorneys' fees.
11 Most important to the court in its analysis and decision is that this litigation, at its heart and core,
12 was a copyright infringement action against Rimini Street regardless of any other claims pled.
13 First and foremost, Oracle alleged a claim of ninety-three separate incidents of copyright
14 infringement against Rimini Street. The other pled claims were secondary to this central issue,
15 and in some cases, were derivative claims for which Oracle could not receive any additional
16 monetary relief. Several of these claims were voluntarily withdrawn by Oracle before trial as to
17 bring central focus to Rimini Street's copyright infringement before the jury.

18 Second, the vast majority of the parties' pretrial motions and the court's related orders
19 were significantly related to the issue of copyright infringement. For example, several rounds of
20 motions, briefing, and court orders were devoted to defendants' counterclaims and affirmative
21 defenses related to Oracle's claim of copyright infringement, particularly the counterclaim and
22 affirmative defense of copyright misuse, and these were issues absolutely central to Oracle's
23 copyright infringement claim. *See* ECF Nos. 67, 72, 74, 111, 405, 436, 450, 476. Further, an
24 entire round of summary judgment briefing was solely devoted to the copyright infringement
25 claim. *See* ECF Nos. 237, 259, 281, 474. All of this combined briefing, including submitted
26 evidence, resulted in over two thousand pages of documents relating to Oracle's copyright
27 infringement claim. Comparing the parties' briefing, the copyright infringement issues
28 completely dwarfed the parties' briefing on all the other claims and issues in this action. Further,

1 over two-thirds of the Ninth Circuit’s opinion is dedicated to the issue of Oracle’s copyright
2 infringement claim. *See Oracle USA, Inc.*, 879 F.3d 948.

3 Third, almost all of the evidence submitted at trial – documentary exhibits, witness
4 testimony, and expert testimony and reports – was directed at or related to Oracle’s copyright
5 infringement claim. Disregarding the now reversed state law computer access claims which were
6 submitted to the jury, the court finds that almost all of the evidence that was submitted at trial
7 would have been submitted had these two claims not been at issue. Then, at trial, the jury
8 awarded Oracle \$35.6 million in copyright infringement damages based on this evidence after
9 Oracle established Rimini Street’s liability.

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

18 **2. Objective Reasonableness**

19 Another relevant factor in whether to award fees under the Copyright Act is the objective
20 reasonableness (or unreasonableness) of the losing party’s position during the litigation.
21 *Kirtsaeng*, 136 S. Ct. at 1983. In particular, the Ninth Circuit accords substantial weight to this
22 factor in reviewing a district court’s analysis of whether or not to award fees under the Copyright
23 Act. *Glacier*, 2018 WL 3542839, at *3 (citing *Shame On You Prods., Inc. v. Banks*, 893 F.3d
24 661, 666 (9th Cir. 2018)).

25 Here, the court finds that -- from the earliest part of litigation -- defendants’ position that
26 it did not engage in copyright infringement of Oracle’s software copyrights was not an
27 objectively reasonable position to take in this litigation. First, as reflected in the court’s summary
28 judgment orders, Rimini Street’s position was based on a clear misreading of Oracle’s software

1 licensing agreements and a conscious disregard for the manner that Rimini Street used and
2 housed the copyrighted software programs on its own servers.

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

17 Finally, the court finds that attorneys' fees are warranted because of Rimini Street's
18 significant litigation misconduct in this action. *See Kirtsaeng*, 136 S. Ct. at 1988-89 (recognizing
19 that a court may order attorneys' fees "because of a party's litigation misconduct."). It is
20 undisputed that defendants ignored their preservation obligations and destroyed evidence prior to
21 trial, including a key computer directory containing Oracle software that Rimini Street used for
22 multiple customers in violation of customer licenses. In fact, Magistrate Judge Leen found that
23 defendants intentionally deleted the software library well after they were on notice of potential
24 litigation and were well aware that the software library was potentially relevant evidence. As a
25 result of their litigation misconduct, defendants were forced to acknowledge the spoliation and
26 destruction of evidence at trial, and the court even gave an adverse inference jury instruction on
27 that issue. Further, the Ninth Circuit recognized Rimini Street's litigation conduct including the
28 "many years of complex and contentious litigation" between the parties and the court's

1 “understandable frustration with [Rimini Street’s] litigation conduct[.]” *Oracle USA, Inc.*, 879
2 F.3d at 964. Moreover, Rimini Street’s unreasonable litigation tactics in this action were
3 minimally related to the state law claims reversed by the Ninth Circuit. Taking all of the above
4 into consideration, the court finds that this factor weighs in favor of sustaining the attorneys’ fees
5 previously awarded by the court.

6 **3. The Need to Make Oracle Whole**

7 In its renewed motion, Oracle argues that re-issuing an award of attorneys’ fees is
8 necessary to compensate it for its huge outlay of fees and costs necessarily incurred in enforcing
9 its copyrights. *See* ECF No. 1118. The court agrees. In order to prosecute this action, Oracle
10 expended over \$58 million in legal fees and costs to prove Rimini Street’s unlawful conduct and
11 obtain a copyright infringement judgment. Without a fee award, the court finds that Oracle’s
12 investment in its intellectual property and its incentive to create future software would not be
13 appropriately protected or compensated. *See McCulloch*, 823 F.2d at 323 (“[S]ection 505 is
14 intended in part to encourage the assertion of colorable copyright claims . . . and to make the
15 plaintiffs whole.”).

16 **4. Deterrence**

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

25 **5. Purpose of the Copyright Act**

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

1 factor in determining whether to award fees under the Copyright Act, is whether an award will
2 further the purposes of the Act.”). “The goal of the Copyright Act is ‘to promote creativity for
3 the public good.’” *Glacier*, 2018 WL 3542839, at *6 (quoting *Jackson v. Axton*, 25 F.3d 884,
4 890 (9th Cir. 1994)); *see also Fogerty*, 510 U.S. at 524 (“The primary objective of the Copyright
5 Act is to encourage the production of original literary, artistic, and musical expression for the
6 good of the public.”). The court finds that awarding attorneys’ fees in this action furthers the
7 purposes of the Copyright Act as it rewards owners of intellectual property, like Oracle, for
8 pursuing their rights under the act and protecting, “encouraging and rewarding authors’
9 creations.” *Kirtsaeng*, 136 S. Ct. at 1986 (“[F]ee awards under § 505 should encourage the type
10 of lawsuits that promote [the purposes of the Copyright Act].”). Further, an award of fees is still
11 warranted despite Rimini Street’s claim that Oracle was overly aggressive in pursuing this
12 litigation. *See Glacier*, 2018 WL 3542839, at *7 (“Indeed, it is difficult to see how pursuing a
13 meritorious infringement claim ‘less aggressively’ furthers ‘the Copyright Act’s essential
14 goals.’”). Accordingly, the court shall grant Oracle’s renewed motion and re-issue an award of
15 attorneys’ fees under the Copyright Act for Rimini Street’s copyright infringement.

16 **B. Amount of Fees**

17 If, as here, a district court determines that an award of attorneys’ fees is warranted under
18 the Copyright Act, the court must then determine the amount of reasonable fees to award the
19 prevailing party. In determining the reasonableness of an award of attorneys’ fees, a district court
20 considers several non-exclusive factors including: (1) the reputation and skill of counsel; (2) the
21 financial terms of the client fee arrangement; (3) the nature and extent of work performed and
22 results obtained; and (4) awards in similar cases. *See, e.g., LR 54-16(b)(3); Resurrection Bay
23 Conservation Alliance v. City of Seward Alaska*, 640 F.3d 1087, 1095 (9th Cir. 2011). The court
24 previously analyzed these four factors in its prior order and determined that, after a careful
25 analysis of each factor, Oracle was entitled to a fees award of \$28,502,246.40. *See ECF
26 No. 1049*. The court sees no basis to further reduce this award in light of the Ninth Circuit
27 opinion and the court shall re-issue the award of attorneys’ fees against Rimini Street.

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1 First, the fees requested by Oracle in its renewed motion and previously awarded by the
2 court are reasonable because they are the product of reasonable rates and a reasonable
3 expenditure of time for the complexity of the litigation and because this action was first and
4 foremost a copyright infringement action. *See* ECF No. 1049. The Ninth Circuit reversal on the
5 state law claims does not change the court’s analysis on the reasonableness of the rates charged
6 by Oracle’s counsel or the reasonableness of the time spent on this action. Nor does the reversal
7 on the state law claims warrant a reduction of the court’s previous award of \$28,502,246.40. As
8 addressed above, this action was first and foremost a copyright infringement action and the time
9 spent on establishing Rimini Street’s liability for copyright infringement, especially in light of
10 Rimini Street’s litigation conduct, is compensable. The court recognizes that Oracle’s attorneys’
11 fees request includes time billed not only on the successful copyright infringement claim, but
12 also on Oracle’s unsuccessful claims. However, the court finds that these claims involved a
13 “common core of facts” or “related legal theories” to Oracle’s copyright claims, and thus, may
14 be included in an award of fees. *See Webb v. Sloan*, 330 F.3d 1158, 1168 (9th Cir. 2003)
15 (holding that the court may award attorneys’ fees on all claims related to successful copyright
16 claims). Moreover, even though the Ninth Circuit reversed on Oracle’s state law computer
17 claims, the time spent on those claims and the related attorneys’ fees in the litigation are
18 recoverable. *See, e.g., The Traditional Cat Ass’n, Inc. v. Gilbreath*, 3450 F.3d 829, 833 (9th Cir.
19 2003) (holding that where the prevailing party was not successful on all claims, it may still
20 recover fees for claims “related” to the successful claims). Therefore, the court finds that, with
21 the previous 20% reduction, Oracle is entitled to the same award of fees previously issued by the
22 court. Accordingly, the court shall grant Oracle \$28,502,246.40 in attorneys’ fees against
23 Rimini Street.

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

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

IT IS SO ORDERED.

DATED this 14th day of August, 2018.



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE