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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PEARSON EDUCATION, INC., a	)	Case No. 09-1889 SC
Delaware corporation; JOHN WILEY &	)	
SONS, INC., a New York	)	ORDER GRANTING MOTION FOR
corporation; CENGAGE LEARNING,	)	<u>DEFAULT JUDGMENT</u>
INC., a Delaware corporation; and	)	
THE MCGRAW-HILL COMPANIES, INC., a	)	
New York corporation,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
DICKSON T. WONG, individually;	)	
DICKSON T. WONG, as Trustee of the	)	
SIERRA SKY REVOCABLE LIVING TRUST;	)	
DICKSON T. WONG, as Trustee of the	)	
XELA REVOCABLE LIVING TRUST DATED	)	
DECEMBER 25, 2008, a/k/a the XELA	)	
REVOCABLE LIVING TRUST; and DOES	)	
1-5,	)	
	)	
Defendants.	)	

**I. INTRODUCTION**

Plaintiffs Pearson Education, Inc., John Wiley & Sons, Inc., Cengage Learning, Inc., and the McGraw-Hill Companies (collectively, "Plaintiffs") now seek the entry of a default judgment against Defendant Dickson Wong ("Wong"), both in his individual capacity and as Trustee to two different revocable living trusts. Docket No. 28 ("Motion"). Plaintiffs accuse Wong of infringing upon their copyrights by selling photocopies of

1 instructors' solutions manuals through online marketplaces. See  
2 Compl., Docket No. 1. Plaintiffs have been unable to locate Wong,  
3 in spite of repeated and varied efforts to do so. Having  
4 considered the papers submitted by Plaintiffs, this Court concludes  
5 that an award of default judgment against Wong is appropriate, and  
6 GRANTS Plaintiffs' Motion.

7  
8 **II. BACKGROUND**

9 Plaintiffs are each engaged in the business of publishing  
10 educational textbooks. Id. ¶ 14. Plaintiffs typically require  
11 authors to assign the copyrights for their works to Plaintiffs, or  
12 to grant Plaintiffs exclusive rights to reproduce and distribute  
13 the works in the United States. Id. ¶ 15. Plaintiffs also publish  
14 instructors' solutions manuals ("ISMs"), which are supplementary  
15 materials that aid professors in grading homework. Id. ¶ 19.  
16 Plaintiffs do not sell these ISMs to the general public, "and  
17 tightly control distribution thereof to known faculty." Id.  
18 Plaintiffs do this because students may use these ISMs to cheat on  
19 homework or tests, and professors will be less likely to select  
20 Plaintiffs' textbooks for use in their courses if the ISMs for  
21 those textbooks are widely available to students. Id.

22 The history of this case involves a somewhat convoluted series  
23 of attempts to track down an initially unknown individual who was  
24 selling copies of Plaintiffs' ISMs online, and who, by all  
25 appearances, has gone to great lengths to keep his identity hidden.  
26 Alexandra Ricciardi ("Ricciardi") is employed by Pearson Education,  
27 Inc. ("Pearson"), and part of her job involves searching online for  
28 activity that infringes upon Pearson's copyrights and trademarks.

1 Ricciardi Decl. ¶¶ 1-2.<sup>1</sup> In early- or mid-2008, while looking on  
2 craigslist.org (a site featuring online classified ads), she found  
3 two advertisements for ISMs and test banks for textbooks that  
4 included works published by Pearson. Id. ¶ 2. The craigslist ad  
5 included instructions for contacting the seller. Id. In June of  
6 2008, she contacted the seller via email to ask about the  
7 availability of a certain Pearson ISM. Id. ¶ 3, Ex. A. The seller  
8 responded, under the name of "Kerry Melbourne," that the particular  
9 ISM was available, and requested payment through PayPal, Inc.  
10 ("PayPal"),<sup>2</sup> if Ricciardi wanted to proceed. Id. Ex. B. The  
11 seller's PayPal account was under the name "Red Lionel," with a  
12 different email address from that used by "Kerry Melbourne." Id.  
13 Ricciardi complied with the request, and paid \$89.97 plus shipping  
14 for the ISM. Ricciardi Decl. ¶ 3.

15 Shortly thereafter, Ricciardi received in the mail a copy of  
16 an ISM that was different from the one she had ordered from the  
17 seller. Id. ¶ 4. The copy was a photocopy that was not  
18 professionally bound. Id. ¶ 6. She informed the seller, via  
19 email, that she had received the wrong ISM, and the seller  
20 instructed her to return the incorrect copy to an address in  
21 Claremont, California. Id. ¶ 4, Ex. C ("Ricciardi Email Chain").  
22 The address provided was that of William McVittie, and after  
23 investigating the address, Plaintiffs discovered that it belonged  
24 to a retired California state court judge who "emphatically denied  
25 being the Internet seller who had violated Plaintiffs' rights."

26 \_\_\_\_\_  
27 <sup>1</sup> Ricciardi submitted a declaration in support of the Motion.  
Docket No. 30.

28 <sup>2</sup> PayPal is an internet service that is often used to transfer  
funds for online transactions.

1 Dunnegan Decl. ¶ 5.<sup>3</sup> After sending the incorrect ISM to the  
2 provided address, Ricciardi received a photocopy of the ISM that  
3 she had initially requested from the seller. Id. ¶¶ 6-7. While  
4 Ricciardi was conducting this investigation, other individuals who  
5 were working for Plaintiffs were ordering similar material from  
6 similar craigslist postings, which later turned out to be sold by  
7 the same seller. Id. ¶ 7. For example, Jennifer Siewert  
8 ("Siewert"), paralegal for Plaintiffs' law firm, responded to  
9 similar craigslist ads, and a seller using the name "Kerry Limar"  
10 directed her to submit payment to PayPal accounts under the names  
11 of "Betty Cash" and "Jeff Howks." Siewert Decl. ¶¶ 3-4.<sup>4</sup> She  
12 received photocopies of four ISMs, for which she paid \$89.97  
13 apiece. Id. ¶¶ 3-5.

14 Plaintiffs' next step was to file a lawsuit for copyright  
15 infringement in the Southern District of New York against the  
16 various fictitious names used by the still-unknown sellers ("New  
17 York Litigation"). Compl. ¶ 25. Plaintiffs notified the sellers  
18 by sending emails to the various email addresses that they had  
19 collected during their investigation. Id. ¶ 26. Plaintiffs then  
20 sought and received permission to subpoena PayPal to determine the  
21 sellers' identities. Dunnegan Decl. ¶ 8, Ex. A. PayPal responded  
22 with voluminous business records. These records revealed a total  
23 of \$20,563.27 worth of transactions involving thirty-five different  
24 works to which Plaintiffs held copyrights. Dunnegan Decl. ¶¶ 11-  
25 18, Exs. C, D. These records also revealed that the various PayPal

26 \_\_\_\_\_  
27 <sup>3</sup> William Dunnegan ("Dunnegan"), counsel for Plaintiffs, has filed  
a declaration in support of the Motion. Docket No. 29.

28 <sup>4</sup> Siewert submitted a declaration in support of the Motion. Docket  
No. 31.

1 accounts each sent some of the proceeds to a single Wachovia Bank  
2 account. Id. Ex. B.

3 As Plaintiffs still were not aware of the sellers' identities,  
4 they next sought and received permission to subpoena Wachovia Bank.  
5 Id. Ex. E. Wachovia Bank responded by turning over documents that  
6 indicate that the owner of the bank account is "Sierra Sky  
7 Revocable Living Trust," and that the signatory is Dickson Wong.  
8 Id. Ex. F. Wachovia Bank also disclosed a letter that it had  
9 received from "Trustee for Sierra Sky Revocable Trust," which  
10 requested that that Bank "Please notify the trust and the attorney  
11 by mail immediately if you receive a subpoena request from a  
12 plaintiff's attorney requesting for [sic] the trust's name and the  
13 physical address related to" the New York Litigation. Id. Ex. G  
14 ("Letter to Wachovia"). The address provided in the letter was  
15 located in Hong Kong. Id. Plaintiffs were unsuccessful in serving  
16 Wong in connection with the New York Litigation, and dismissed that  
17 suit without prejudice. Id. ¶ 22. They learned that Wong had  
18 recently owned a condominium unit in the Brittan Heights  
19 Condominiums, located in San Carlos, California, and Plaintiffs  
20 therefore filed this suit in the Northern District of California.  
21 See id. ¶ 23.

22 Each time Plaintiffs proceeded with the third-party subpoenas  
23 outlined above, they sent notices to the email addresses that they  
24 had collected during their investigations. Id. ¶¶ 9, 20. They  
25 also sent notices to these email addresses after they received a  
26 response from PayPal, on December 28, 2008. Id. ¶ 11. The  
27 following day, on December 29, 2008, Wong transferred ownership of  
28 the Brittan Heights Condominium unit from himself to himself as

1 Trustee of the Xela Recoverable Living Trust Dated December 25,  
2 2008, by quitclaim deed filed in the Office of the County Clerk-  
3 Recorder of San Mateo County. Id. ¶ 24, Ex. H ("First Quitclaim  
4 Deed"). Plaintiffs allege that this transfer was without  
5 consideration. Id. ¶ 24. On January 9, 2009, Wong then recorded  
6 another quitclaim deed transferring the same property to "Xela  
7 Revocable Living Trust" ("Xela") to "confirm[] a name change." Id.  
8 Ex. I ("Second Quitclaim Deed").

9 After filing suit in this Court, and after several varied  
10 attempts to serve Wong, Plaintiffs have moved for default judgment,  
11 and request that this Court award statutory damages against Wong  
12 for copyright infringement, award attorneys' fees, issue a  
13 permanent injunction enjoining future copyright violation and  
14 requiring the destruction of all copyrighted works in his  
15 possession. Compl. at 9-10. They also seek to set aside the  
16 transfer of the condominium, and claim that this was a fraudulent  
17 transfer that was intended to frustrate Plaintiffs' attempt to  
18 recover in this lawsuit and the New York Litigation. Id.

19

20 **III. LEGAL STANDARD**

21 After entry of a default, the Court may enter a default  
22 judgment. Fed. R. Civ. P. 55(b)(2). Its decision whether to do  
23 so, while "discretionary," Aldabe v. Aldabe, 616 F.2d 1089, 1092  
24 (9th Cir. 1980), is guided by several factors.

25 As a preliminary matter, the Court must "assess the adequacy  
26 of the service of process on the party against whom default is  
27 requested." Bd. of Trs. of the N. Cal. Sheet Metal Workers v.

28

1 Peters, No. 00-0395, 2000 U.S. Dist. LEXIS 19065, at \*2 (N.D. Cal.  
2 Jan. 2, 2001).

3 If the Court determines that service was sufficient, it may  
4 consider the following factors in its decision on the merits of a  
5 motion for default judgment:

6 (1) the possibility of prejudice to the  
7 plaintiff, (2) the merits of plaintiff's  
8 substantive claim, (3) the sufficiency of the  
9 complaint, (4) the sum of money at stake in the  
10 action; (5) the possibility of a dispute  
concerning material facts; (6) whether the  
default was due to excusable neglect, and (7) the  
strong policy underlying the Federal Rules of  
Civil Procedure favoring decisions on the merits.

11 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). "The  
12 general rule of law is that upon default the factual allegations of  
13 the complaint, except those relating to the amount of damages, will  
14 be taken as true." Geddes v. United Fin. Group, 559 F.2d 557, 560  
15 (9th Cir. 1977). Therefore, for the purposes of this Motion, the  
16 Court accepts as true the facts as presented in the Complaint.

17

18 **IV. DISCUSSION**

19 **A. Service of Process**

20 Plaintiffs have been unable to locate Wong despite diligent  
21 efforts. Plaintiffs' attempts to personally serve Wong were  
22 previously outlined to this Court by Julie E. Hofer ("Hofer"),  
23 counsel for Plaintiffs. Hofer Decl. ¶¶ 4-14.<sup>5</sup> This included  
24 employing a private investigator, who was able to discover two  
25 potential addresses for Wong. Id. Ex. D. One was the Brittan  
26 Heights Condominium unit that Wong transferred to Xela in late

27 \_\_\_\_\_  
28 <sup>5</sup> Hofer submitted a declaration in support of Plaintiffs' previous  
Ex Parte Application for Order for Service by Publication. Docket  
Nos. 14, 16.

1 2008; the other was located at 403 Main Street in San Francisco,  
2 California. Id. Process servers repeatedly attempted personal  
3 service at these locations. Id. Exs. F ("Mazzocco Decl."), G  
4 ("Galdamez Decl.").<sup>6</sup> One process server was told that Wong owns  
5 but rents out the Brittan Heights Condominium. Mazzocco Decl. at  
6 1. Plaintiffs attempted to mail Wong copies of the Complaint,  
7 summons, notices and acknowledgments of receipt at the two  
8 addresses they had located, pursuant to California Code of Civil  
9 Procedure section 415.30(c), however receipt was never acknowledged  
10 (the Brittan Heights Condominium was sent back with the message:  
11 "Return to sender -- No longer @ this address"). Hofer Decl. ¶ 14.

12 Plaintiffs next sought permission from this Court to serve  
13 Wong by publication, and this Court granted Plaintiffs' request.  
14 Docket No. 18. A notice was thereafter published in the San  
15 Francisco Chronicle and the San Mateo County Times on a weekly  
16 basis, from July 23, 2009, to August 15, 2009. Docket Nos. 23, 24.  
17 Such service was appropriate in light of Plaintiffs' well-  
18 documented efforts to serve Wong and the trusts, and was authorized  
19 by Rule 4(e)(1) of the Federal Rules of Civil Procedure and section  
20 415.50(a)(1) of the California Code of Civil Procedure. Wong has  
21 still declined to appear before this Court, and the clerk entered  
22 default against Wong. Docket No. 27. The Court is mindful of  
23 Wong's deliberate attempt to evade service in the New York  
24 Litigation, and his various attempts to hide his identity through  
25 the use of false names and email addresses. The prior contact  
26 between the parties makes it clear that Wong was apprised of

27 \_\_\_\_\_  
28 <sup>6</sup> Both Bret Mazzocco and William Galdamez attempted to serve  
process upon Wong, and submitted declarations to that effect.  
Mazzocco Decl.; Galdamez Decl.



1 Plaintiffs' accusations and went to great lengths to avoid  
2 confronting them. Having failed to respond to proper service by  
3 publication, Wong has subjected himself to the possibility of  
4 default judgment.

5 **B. Merits of the Motion**

6 Accepting the allegations in the Complaint as true, as it  
7 must, the Court finds that the Eitel factors favor default  
8 judgment.

9 1. Prejudice

10 Plaintiffs would be prejudiced absent entry of default  
11 judgment. If Wong is allowed to continue selling counterfeit goods  
12 that infringe on Plaintiffs' copyrights, Plaintiffs will suffer  
13 irreparable harm in a number of ways. Although it is not clear  
14 that Plaintiffs risk losing money from direct sales every time Wong  
15 sells an unauthorized copy of an ISM, professors will be less  
16 likely to select Plaintiffs' textbooks for use in their classes if  
17 the ISMs become widely available to students. Without the entry of  
18 a default judgment, Plaintiffs would not have another remedy for  
19 these harms. Such a situation qualifies as prejudice.

20 2. Merits of Plaintiffs' Substantive Claims

21 To prevail on their claims of copyright infringement,  
22 Plaintiffs must establish (1) they own valid and protectable  
23 copyrights, and (2) copying of the constituent elements of their  
24 works which are original. See Feist Pub'lns, Inc. v. Rural Tel.  
25 Serv. Co., 499 U.S. 340, 361 (1991). Plaintiffs have claimed that  
26 they hold valid copyrights to thirty-five original works that are  
27 in dispute in this litigation. Compl. Exs. A, B, C, D. By  
28 defaulting, Wong is deemed to have admitted this. They have

1 alleged that Wong has reproduced and offered each of these for  
2 sale, and have submitted evidence that Wong has received payment  
3 for the sale of each of these works. See Dunnegan Ex. C ("Summary  
4 of PayPal Sales").<sup>7</sup> The Court concludes that Plaintiffs' claims  
5 for copyright infringement under 17 U.S.C. § 501 et seq. are  
6 meritorious.

7 The Court further finds that Wong's use of the protected works  
8 was willful. It would be absurd to suggest that the photocopied  
9 material that Plaintiffs' agents received through their  
10 investigations could have been reproduced by accident. Wong was  
11 clearly cognizant of the wrongful nature of his conduct, as he was  
12 apparently selling the ISMs under a variety of false names. Wong  
13 deliberately attempted to hide his identity when he requested that  
14 Wachovia Bank not comply with Plaintiffs' subpoena in the New York  
15 litigation. See Letter to Wachovia. Wong's inexplicable attempt  
16 to implicate a retired state court judge in his wrongful conduct,  
17 by instructing his customers to return merchandise to the judge's  
18 address, see Ricciardi Email Chain, can be interpreted as further  
19 evidence that Wong was willful or even malicious in his misconduct.  
20 Plaintiffs have established that Wong engaged in a deliberate  
21 scheme to reproduce and profit from Plaintiffs' protected works.

22 Wong is also deemed to have admitted Plaintiffs' fraudulent  
23 conveyance claim, brought under California's Fraudulent Transfer  
24 Act, Cal. Civ. Code §§ 3439-3439.12. "A transfer made . . . by a  
25

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26 <sup>7</sup> Plaintiffs submitted a cd-rom that contains the documents that  
27 PayPal turned over in response to Plaintiffs' subpoena. Although  
28 these documents are too voluminous to post on this Court's  
electronic docket, Plaintiffs have also submitted a summary report  
pursuant to Rule 1006 of the Federal Rules of Evidence. See  
Summary of PayPal Sales.

1 debtor is fraudulent as to a creditor, whether the creditor's claim  
2 arose before or after the transfer was made . . . if the debtor  
3 made the transfer . . . [w]ith actual intent to hinder, delay, or  
4 defraud any creditor of the debtor" or "[w]ithout receiving a  
5 reasonably equivalent value in exchange for the transfer . . . ."  
6 Id. § 3439.04(a). In determining whether a transfer was  
7 fraudulent, the court may consider "[w]hether before the transfer  
8 was made . . . the debtor had been sued or threatened with suit."  
9 Id. § 3439.04(b)(4). Plaintiffs allege that Wong transferred  
10 ownership of the Brittan Heights Condominium from himself to  
11 himself as Trustee of Xela the day after Plaintiffs notified him  
12 that Paypal had complied with their subpoena. See Compl. ¶ 29;  
13 Dunnegan Decl. ¶¶ 11, 24. The transfer apparently allowed Wong to  
14 maintain control over the property, and it seems that Wong  
15 absconded after the transfer, as Plaintiffs have been completely  
16 unable to locate him in spite of their repeated efforts. All of  
17 these factors suggest a fraudulent transfer. See Cal. Civ. Code §§  
18 3439.04(b). The Court finds that Plaintiffs' fraudulent transfer  
19 claim is meritorious.

20 3. Sufficiency of the Complaint

21 Plaintiffs properly allege the necessary elements for their  
22 causes of action. The Complaint identifies the protected works in  
23 dispute, identifies Plaintiffs as the owner of the rights  
24 thereunder, details Plaintiffs' investigations of the alleged  
25 infringement, and describes how Wong was violating their rights.  
26 Plaintiffs also allege enough facts to support a claim of  
27 fraudulent transfer. Accordingly, Plaintiffs' Complaint is  
28 sufficient.

1                   4.     Amount of Money at Stake

2             Plaintiffs are seeking statutory damages, Mot. at 10, and the  
3 amount at issue therefore consists of discretionary awards bounded  
4 by statutory minimums and maximums. These damages are authorized  
5 by statute. 17 U.S.C. § 504(c). The discretionary nature of the  
6 amount at issue favors default judgment. See Elektra Entm't Group,  
7 Inc. v. Crawford, 226 F.R.D. 388, 393 (C.D. Cal. 2005).

8                   5.     Possibility of a Dispute Concerning Material Facts

9             There may be a potential for a dispute concerning material  
10 facts. However, Plaintiffs have provided evidence of a thorough  
11 investigation into a series of apparently related online sales of  
12 infringing ISMs. In particular, the evidence received in response  
13 to the Paypal subpoena details specific transactions in which  
14 customers identify by name the particular protected ISMs that they  
15 seek to purchase. Plaintiffs have provided evidence that Wong was  
16 involved in and profited from these sales, as the proceeds were  
17 transferred directly to a bank account for which he was the  
18 signatory. This factor also favors default judgment.

19                   6.     Whether Default Was Due to Excusable Neglect

20             This Court is satisfied that Wong's failure to act is not a  
21 case of excusable neglect. Wong clearly had actual notice of the  
22 New York Litigation, and sought to interfere with a third-party  
23 subpoena that was served upon his bank. See Letter to Wachovia.  
24 Wong used false names in selling the infringing works at issue in  
25 this litigation, and it is clear that any difficulty that  
26 Plaintiffs have had in locating him and providing in-person service  
27 has been the direct result of Wong's own obfuscation. Because  
28 Wong's failure to participate in this litigation cannot be

1 considered excusable neglect, this factor favors entry of default  
2 judgment.

3 7. Strong Policy Favoring Decision on the Merits

4 While it is preferable to decide cases on the merits whenever  
5 possible, this preference is not dispositive. Where a party fails  
6 to defend against a complaint, as Salem has failed here, Rule 55  
7 authorizes the Court to enter default judgment. Kloepping v.  
8 Fireman's Fund, No. 94-2684, 1996 U.S. Dist. LEXIS 1786, at \*10  
9 (N.D. Cal. Feb. 14, 1996).

10 C. Remedy

11 Plaintiffs request monetary damages, fees and costs, and  
12 equitable relief in the form of a permanent injunction. Plaintiffs  
13 are also seeking to set aside Wong's fraudulent transfer of the  
14 Brittan Heights Condominium.

15 1. Damages

16 "A plaintiff may elect statutory damages 'regardless of the  
17 adequacy of the evidence offered as to his actual damages and the  
18 amount of the defendant's profits.'" Columbia Pictures Television,  
19 Inc. v. Krypton Broad. of Birmingham, Inc., 259 F.3d 1186, 1194  
20 (9th Cir. 2001) (citations omitted). Where, as here, plaintiffs  
21 establish that infringement of a copyrighted work was willful, a  
22 court may award statutory damages of up to \$150,000. 17 U.S.C.  
23 § 504(c)(2). This Court is guided by "what is just in the  
24 particular case, considering the nature of the copyright, the  
25 circumstances of the infringement and the like." Peer Int'l Corp.  
26 v. Pausa Records, Inc., 909 F.2d 1332, 1336 (9th Cir. 1990). Given  
27 Plaintiffs' legitimate need to restrict the circulation of their  
28 ISMs, and to keep them away from students who may use the material

1 for cheating, the Court believes that it would be extremely  
2 difficult to establish actual damages in this case, and statutory  
3 damages are therefore particularly appropriate. Furthermore,  
4 Plaintiffs have satisfied this Court that Wong's infringement was  
5 willful and flagrant. Under these conditions, the Court finds  
6 Plaintiffs' request for an award of statutory damages of \$15,000  
7 per protected work, for a total judgment of \$535,000, to be quite  
8 reasonable. Mot. at 10.

9           2.    Fees & Costs

10           Under 17 U.S.C. § 505, this Court has discretion to "allow the  
11 recovery of full costs by or against any party," and "the court may  
12 also award a reasonable attorney's fee to the prevailing party as  
13 part of the costs." Although Plaintiffs have requested fees and  
14 costs as a part of default judgment, they have not yet attempted to  
15 establish their total costs and fees by proof sufficient to support  
16 a motion for attorney fees. Pursuant to Civil Local Rule 54-5,  
17 Plaintiffs may request fees for up to fourteen days after judgment  
18 is entered. Accordingly, Plaintiffs' request for fees is DENIED  
19 WITHOUT PREJUDICE.

20           3.    Request to Set Aside Conveyance of Brittan Heights  
21                    Condominium

22           Plaintiffs have established that the transfer of the Brittan  
23 Heights Condominium unit from Wong to Xela, and the subsequent  
24 transfer from Xela to itself under a slightly different name, was  
25 likely fraudulent. Pursuant to section 3439.07(a)(1) of the  
26 California Civil Code, this Court may set these transfers aside.  
27 The Court concludes that it would be proper to set aside these  
28 transfers as to Plaintiffs, so that Plaintiffs may enforce this

1 default judgment against Wong through a lien on his property.

2 4. Permanent Injunction

3 Plaintiffs have demonstrated that Wong willfully has violated  
4 their rights to the copyrighted works. Plaintiffs have failed to  
5 locate Wong, and there is no indication that his ability or intent  
6 to continue infringement has been encumbered by this lawsuit. His  
7 willful infringement and his continued attempts to elude Plaintiffs  
8 make the threat of ongoing or future infringement credible. In  
9 such circumstances, the Court is authorized by the Copyright Act to  
10 issue a permanent injunction to prevent or restrain further  
11 infringement. See 17 U.S.C. § 502(a); Sega Enters. Ltd. v. MAPHIA,  
12 948 F. Supp. 923, 940 (N.D. Cal. 1996) ("Generally, a showing of  
13 copyright infringement liability and the threat of future  
14 violations is sufficient to warrant a permanent injunction."). The  
15 Court finds that a permanent injunction is warranted. The  
16 injunction shall prohibit Wong from infringing any copyrights that  
17 Plaintiffs now have or may acquire in the future. See Sony Music  
18 Entm't, Inc. v. Elias, No. CV 03-6387, 2004 U.S. Dist. LEXIS 30385,  
19 at \*13-14 (C.D. Cal. Jan. 20, 2004) (enjoining infringement of  
20 existing and future works).

21  
22 **V. CONCLUSION**

23 Default judgment is hereby entered against Dickson T. Wong,  
24 individually, as Trustee of the Sierra Sky Revocable Living Trust,  
25 and as Trustee of the Xela Revocable Living Trust Dated December  
26 25, 2008, aka the Xela Revocable Living Trust ("Xela")  
27 (collectively, "Wong"), and in favor of Plaintiffs. Judgment is  
28 entered in favor of Pearson Education, Inc., in the amount of

1 \$135,000. Judgment is entered in favor of John Wiley & Sons, Inc.,  
2 in the amount of \$90,000. Judgment is entered in favor of Cengage  
3 Learning, Inc., in the amount of \$105,000. Judgment is entered in  
4 favor of the McGraw-Hill Companies in the amount of \$195,000.  
5 Judgment against Wong in his multiple capacities is joint and  
6 several. Interest shall accrue from the date of this judgment  
7 pursuant to 28 U.S.C. § 1961(a).

8 The Court DENIES WITHOUT PREJUDICE Plaintiffs' request for  
9 attorney fees.

10 The Court hereby sets aside two transfers of the real property  
11 known as Condominium Unit 042-05, Brittan Heights Condominium, Lot  
12 No. 5, RSM 80/18-37, City of San Carlos, County of San Mateo, State  
13 of California, with the address 3358 Brittan Avenue, Unit #5, San  
14 Carlos, California, 94070-3416, having Assessor's Parcel No. 110-  
15 600-050, (the "Brittan Heights Condominium") -- the first occurring  
16 on or about December 29, 2008 from Wong in his individual capacity  
17 to Wong as Trustee of Xela, and the second occurring on or about  
18 January 9, 2009 from Xela to Xela. These transfers are set aside  
19 and declared void as to Plaintiffs to the extent necessary to  
20 satisfy this Default Judgment, plus post-judgment interest.  
21 Pursuant to California Civil Code § 3439.07(c), the judgment  
22 entered above is hereby declared a lien on the Brittan Heights  
23 Condominium and Plaintiffs may levy execution on the Brittan  
24 Heights Condominium or its proceeds in order to satisfy their  
25 judgment.

26 Wong is permanently enjoined and restrained from each of the  
27 following, either directly or acting through his agents, servants,  
28 employees, successors, and assigns, and all other persons acting in



1 concert or conspiracy with Wong or affiliated with Wong:

- 2 a) Copying, reproducing, distributing, or using any  
3 unauthorized copies of Plaintiffs' copyrighted works; or  
4 b) Otherwise infringing any of Plaintiffs' copyrights.

5 In addition, Wong is hereby ordered to immediately destroy any  
6 and all infringing copies of Plaintiffs' copyrighted works that are  
7 in his possession, custody, or control.

8 Plaintiffs must send an electronic copy of this Default  
9 Judgment to Wong via each email address that they believe Wong uses  
10 or has used in connection with his sale of the protected works. In  
11 addition, Plaintiffs must send a copy of this Default Judgment, via  
12 international certified mail, to the Sierra Sky Revocable Living  
13 Trust, 15th Floor, 21-23 Des Voeux Rd. C., Hong Kong. Plaintiffs  
14 must do so no later than five (5) days from the date of this Order.

15

16 IT IS SO ORDERED.

17

18 Dated: February 2, 2010

19

  
UNITED STATES DISTRICT JUDGE

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