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Attorneys for Plaintiff
SYNOPSYS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SYNOPSYS, INC.,
 	
                    Plaintiff,
 	
          v.
 	
UNIVERSITY OF RHODE ISLAND, and DOES 1-10, inclusive,
 	
                    Defendants.
	Case No. 5:21-cv-00581-BLF
	
	PLAINTIFF SYNOPSYS, INC.'S EX PARTE MOTION FOR (1) TEMPORARY RESTRAINING ORDER; (2) ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION; AND (3) ORDER FOR EXPEDITED DISCOVERY; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF
	
	Date: July 1, 2021
	Time: 9:00 am
	Dept: Courtroom 3 – 5th Floor
	Judge: Hon. Beth Labson Freeman
	
	Date Action Filed: January 25, 2021

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PLAINTIFF'S EX PARTE MOTION FOR
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1   **TO THE CLERK OF THE COURT, ALL PARTIES, AND THEIR ATTORNEYS**

2   **OF RECORD:**

3   **PLEASE TAKE NOTICE**, that on July 1, 2021, at 9:00 a.m., or as soon as the matter

4   may be heard by the Honorable Beth L. Freeman in Courtroom 3 of the United States District

5   Court located at 280 South 1st Street, San Jose, California 94113 Plaintiff Synopsys, Inc.

6   ("Synopsys" or "Plaintiff"), hereby moves ex parte, pursuant to Local Rules 7-10 and 65-1, and

7   Federal Rules of Civil Procedure 26 and 65, for:

8   (1) a temporary restraining order enjoining The University of Rhode Island ("URI"), its

9   officers, agents, directors, affiliates, servants, employees, students, and all persons acting in

10   concert with it, from directly or indirectly accessing, copying, disseminating, or making any use

11   of Synopsys software applications without authorization;

12   (2) an order to show cause why a preliminary injunction should not issue, pursuant to

13   Federal Rule of Civil Procedure 65, enjoining URI, its officers, agents, directors, affiliates,

14   servants, employees, students, and all persons acting in concert with it, from directly or indirectly

15   committing the above-described acts during the pendency of this action; and,

16   (3) an order to allow expedited discovery in the form of forensic imaging and analysis of

17   the URI electronic devices associated with user names and MAC addresses that accessed Synopsys

18   software with counterfeit keys, to ensure all unauthorized use is halted and prevent further usage

19   or dissemination of Synopsys' protected intellectual property.

20   Good cause exists for issuance of a temporary restraining order and order to show cause

21   for entry of a preliminary injunction in this case because URI is accessing Synopsys software

22   without authorization. The requested relief is necessary to stop URI's continuing infringement

23   and to cease further irreparable injury to Synopsys.

24   Good cause exists for immediate electronic discovery to preserve evidence of existing

25   violations and because evidence of URI's unauthorized use of Synopsys software applications

26   exists only in one place – on URI's computers and devices. This evidence is at significant risk of

27   being deleted, altered, or overwritten in the normal course of URI's regular use should discovery

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1   not proceed immediately to preserve and analyze this evidence.

2   Synopsys further notes that the hearing on this motion is noticed for July 1, 2021, at 9:00

3   a.m. in accordance with the Court's requirements but respectfully requests that, due to the nature

4   of the expedited relief and urgency in preventing further ongoing harm to Synopsys as well as the

5   potential for the destruction of evidence, even in the ordinary course of business, this motion be

6   heard at the Court's earliest convenience.

7   Counsel for Synopsys provided URI with notice of the ex parte Motion for a Temporary

8   Restraining Order, Order to Show Cause re Preliminary Injunction, and Order for Expedited

9   Discovery on January 27, 2021 via phone, pursuant to Local Rule 65-1(b). Synopsys is also today

10   serving URI with a copy of the complaint in the above entitled action as well as a copy of this

11   motion and all related papers in support thereof.

12   This motion for relief is based on this motion, the attached Memorandum of Points and

13   Authorities, the concurrently-filed Declaration of Denise M. Mingrone, the concurrently-filed

14   Declaration of Norman F. Kelly, the concurrently-lodged [Proposed] Order Granting Plaintiff's

15   Ex Parte Motion for Temporary Restraining Order; Order to Show Cause re Preliminary

16   Injunction; and Order for Expedited Discovery, all papers on file in this action, and any oral

17   argument of counsel the Court may hear.

18   DATED: January 28, 2021   Respectfully submitted,

19   ORRICK, HERRINGTON & SUTCLIFFE LLP

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21   By: */s/ Denise M. Mingrone*
                                                                                        DENISE M. MINGRONE
22   Attorneys for Plaintiff
                                                                                        SYNOPSYS, INC.
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PLAINTIFF'S EX PARTE MOTION FOR
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1   **I.   INTRODUCTION**

2   Defendant University of Rhode Island ("URI" or "Defendant") is unlawfully pirating

3   Synopsys software.   Although URI is part of Synopsys' Academic Program and receives

4   preferential pricing on a wide range of Synopsys tools, it has nonetheless chosen to pirate Synopsys

5   software by using counterfeit keys to circumvent Synopsys' technological license system, thereby

6   illegally gaining access to Synopsys software without authorization.   Synopsys seeks the Court's

7   assistance in putting an immediate stop to URI's unauthorized access and use of Synopsys'

8   valuable copyrighted works.   Synopsys also seeks an order authorizing expedited discovery needed

9   to preserve and analyze forensic evidence regarding URI's conduct that may otherwise be deleted

10   in the course of normal operation of the subject computers.

11   On January 25, 2021, Synopsys filed a complaint against URI alleging violations of the

12   Digital Millennium Copyright Act, ("DMCA") 17 U.S.C. § 1201. ECF No. 1.   The copyright-

13   protected software at issue is the result of hundreds of millions of dollars and many years of

14   Synopsys' time spent developing ground-breaking tools in chip design automation, and the

15   software is protected by copyright and strict technological licensing controls implemented through

16   Synopsys' proprietary license key system technology.   Synopsys' license key system is designed

17   to prevent Synopsys software from running without required license keys.   This license key

18   technology it a classic example of a technological measure that effectively controls access within

19   the meaning of the DMCA.   *See Synopsys, Inc. v. InnoGrit, Corp*, No. 19-cv-02082-LHK, 2019

20   WL 2617091 at *3 (N.D. Cal. June 26, 2019) (enjoining defendant from continuing to pirate

21   Synopsys' software in violation of the DMCA); *321 Studios v. Metro Goldwyn Mayer Studios,*

22   *Inc.*, 307 F. Supp. 2d 1085, 1105 (N.D. Cal. 2004) ("the court may grant temporary and permanent

23   injunctions on such terms as it deems reasonable to prevent or restrain a violation" under the

24   DMCA).

25   URI is circumventing Synopsys' license key system by creating and/or using counterfeit

26   license keys to obtain unauthorized access to Synopsys software.   This conduct violates the

27   DMCA, *see, e.g., id*., and URI's conduct is willful considering URI is currently participating in

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1   Synopsys' University Program and thus has full knowledge thereby that it is required to have a

2   license to run Synopsys software.   All of the factors thus weigh in favor of an injunction: (1)

3   Synopsys likelihood of success is strong, as there is no possible defense for using counterfeit

4   license keys to steal software; (2) the balance of equities favor Synopsys, as Synopsys seeks only

5   to stop illegal conduct and preserve evidence needed to assess the scope of such conduct; (3) the

6   public interest favors enforcement of the DMCA and protection of copyright; and (4) Synopsys is

7   suffering ongoing irreparable harm in the form of loss of control over its software and attendant

8   harm to goodwill.

9   Synopsys further notes that the hearing on this motion is noticed for July 1, 2021, at 9:00

10   a.m. in accordance with the Court's requirements but respectfully requests that, due to the nature

11   of the expedited relief and urgency in preventing further ongoing harm to Synopsys as well as the

12   potential for the destruction of evidence, even in the ordinary course of business, this motion be

13   heard at the Court's earliest convenience.

14   **II.   STATEMENT OF FACTS**

15   **A.   Synopsys' Business and Cutting-Edge Software Solutions**

16   Synopsys provides industry-leading and cutting-edge Electronic Design Automation

17   ("EDA") solutions and IP Solutions for System-On-Chip (SoC) design for the semiconductor

18   industry. EDA generally refers to using computers to design, verify, and simulate the performance

19   of electronic circuits. Semiconductor manufacturers and electronics companies use Synopsys

20   software to design, test, and manufacture microchips for a wide range of products. Synopsys has

21   developed a comprehensive, integrated portfolio of intellectual property covering semiconductor

22   prototyping, implementation, verification, manufacturing, optical, field-programmable gate array,

23   and software quality and security solutions. Headquartered in Mountain View, California,

24   Synopsys is the fifteenth largest software company in the world and currently employs over 14,000

25   employees worldwide. For more than 30 years, engineers around the world have used Synopsys

26   technology to design and create integrated circuits and systems.

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Synopsys academic programs provide qualified university and research institutions access to the software tools and technology needed to prepare highly skilled graduates who can meet difficult challenges ranging from electronic and optical design to static analysis for software quality and security.

Synopsys EDA software titles are highly innovative, creative, and valuable copyright-protected works. Synopsys does not sell ownership, copyright or other intellectual property rights to its proprietary software, IP, or associated services. Declaration of Norman F. Kelly ¶ 3 ("Kelly Decl."). Instead, Synopsys controls access to its EDA software with a license key system. *Id.* Synopsys' license key system is a built-in security system that requires a user to access a key code provided by Synopsys when such authorized users execute their licensed software. *Id.* This key code monitors the capacity and term of the software in accordance with the license terms. *Id.* at ¶ 4. Each Synopsys customer needs a license key file to execute Synopsys EDA applications. *Id.* at ¶ 3. The license key file contains information that allows Synopsys' license key system to determine whether the customer is authorized to execute specific Synopsys software applications. *Id.*

B.   URI's Unauthorized Access and Use of Synopsys' Software

Unfortunately, in today's high-tech world, sophisticated people have found ways to illegally obtain access to Synopsys software, such as by using counterfeit license keys. Synopsys' software indicates that URI is one such actor improperly accessing Synopsys software by using counterfeit keys to circumvent Synopsys' license-key system.

Synopsys' Common License Server software ("SCL server") can detect potential use of counterfeit keys. Kelly Decl. ¶ 3. A valid license key file contains information that allows Synopsys' license key system to determine whether the customer is authorized to execute Synopsys software, as well as cryptographic license keys that unlock particular software applications and features for particular customers during particular periods of time. *Id.* Synopsys applications will not run unless they are able to successfully "check out" an electronic license key from the SCL server. *Id* at ¶ 4. In some instances, missing or incorrect key file parameters cause

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1   Synopsys SCL server to flag the key as potentially counterfeit.

2   Synopsys monitors use of its EDA tools using software including security software

3   embedded within the Synopsys software. *Id*. at ¶ 5. The security software sends information to

4   Synopsys whenever it detects potential unauthorized use of Synopsys tools. Synopsys refers to the

5   information it receives as "call-home" data. *Id*. Synopsys investigates this call-home data to

6   determine whether a user is circumventing license key protections. Here, Synopsys review of the

7   call-home data has confirmed over 135,000 total instances of unauthorized access and use by URI,

8   including as recently as January 27, 2021. *Id*. at ¶ 8-9.

9   Starting in or around November 2020, Synopsys began receiving call-home data indicating

10   that URI has been using counterfeit keys to circumvent the Synopsys License Key system and

11   access and use Synopsys' EDA software, including at least its HSPICE tool without a valid license.

12   *Id*. at ¶ 8-9. Synopsys began its investigation and discovered that the counterfeit license keys used

13   by URI support unlimited licenses for virtually all Synopsys tools. *Id*. While its investigation

14   remains on-going, at the time of this filing it appears that URI has used counterfeit keys to

15   circumvent the Synopsys License Key access-control system over 135,000 times via at least two

16   (2) users with the usernames of jingyang and yubi. *Id.* at ¶ 9-11.

17   These users have accessed Synopsys software without authorization from URI

18   workstations named jingyang-Workstation0 and yubi-Workstation1. *Id.* These usernames

19   correspond to URI employees, in particular, Assistant Professor Yu Bi, through an associated

20   email recovered in the call-home data listing yu_bi@uri.edu. *Id.* at ¶ 10-11. Further, the Egress

21   IP addresses associated with each user are registered to the Telecommunications department of the

22   University of Rhode Island. *Id.* The following charts depict the usernames, IP Addresses, MAC

23   addresses, and hostnames identified by Synopsys' call-home data:

Hostname	Egress IP Address	MAC addresses
yubi-Workstation1	131.128.54.68	04:D4:C4:5D:40:A2, 04:D4:C4:5D:40:A3
jingyang-Workstation0	131.128.54.41	A4:BB:6D:44:79:74

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Usernames
yubi
jingyang

Id. at ¶ 10. Synopsys' University Program provides URI with valid Synopsys license keys to access and use Synopsys Software. Instead of utilizing these authorized keys, however, it appears that URI, began using counterfeit keys to gain unauthorized access to and use Synopsys software as part of his work for URI.

III.   LEGAL STANDARDS

A.   Expedited Discovery

Federal Rule of Civil Procedure 26(d) contemplates that court-ordered discovery prior to a Rule 26(f) conference is "appropriate" in urgent cases. Fed. R. Civ. P. 26(d) advisory committee's note to 1993 amendment; Fed. R. Civ. P. 26(d). "In the Ninth Circuit, courts use the 'good cause' standard to determine whether discovery should be allowed to proceed prior to a Rule 26(f) conference." *Rovio Entm't Ltd. v. Royal Plush Toys, Inc.*, 907 F. Supp. 2d 1086, 1099 (N.D. Cal. 2012). "Good cause may be found where the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party." *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002).

"In determining whether good cause justifies expedited discovery, courts commonly consider factors including: '(1) whether a preliminary injunction is pending; (2) the breadth of the discovery requests; (3) the purpose for requesting the expedited discovery; (4) the burden on the [party opposing expedited discovery] to comply with the requests; and (5) how far in advance of the typical discovery process the request was made.'" *Apple Inc. v. Samsung Elecs. Co.*, No. 11-CV-01846-LHK, 2011 U.S. Dist. LEXIS 53233, at *4 (N.D. Cal. May 18, 2011) (citation omitted) (awarding expedited discovery); *see also Washington v. Lumber Liquidators, Inc.*, No. 15-CV-01475-JST, 2015 WL 2089992, at *2 (N.D. Cal. May 5, 2015) ("the Court notes that the pendency of Plaintiffs' motion for a preliminary injunction supports their request for expedited discovery");

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1   *Apple Inc. v. Mobile Star LLC*, No. 16-CV-06001-WHO, 2017 WL 4005468, at *4 (N.D. Cal.

2   Sept. 12, 2017) (allowing a second Rule 30(b)(6) deposition after granting expedited discovery:

3   "my purpose in allowing expedited discovery was so that Apple could secure enough discovery to

4   support its motion for a Preliminary Injunction, not to be ready for trial").

5   **B.**   **Injunctive Relief**

6   To obtain an *ex parte* temporary restraining order, a plaintiff must meet both the general

7   standard for temporary restraining orders and the requirements for *ex parte* orders set forth in

8   Federal Rule of Civil Procedure 65(b). The standard for obtaining a temporary restraining order

9   is identical to the standard for obtaining a preliminary injunction, but a TRO's requirements are

10   less rigid since a TRO's duration is much shorter than a preliminary injunction. *L.A. Unified Sch.*

11   *Dist. v. U.S. Dist. Ct.*, 650 F.2d 1004, 1008 (9th Cir. 1981). A district court has broad discretion

12   to issue a TRO. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 841 n.8 (9th Cir.

13   2001).

14   In both instances, Plaintiff must demonstrate: (1) a likelihood of success on the merits; (2)

15   a likelihood of irreparable harm absent a preliminary injunction; (3) that the balance of equities

16   tips in favor of issuing an injunction; and (4) that an injunction is in the public's interest. *Winter*

17   *v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Moreover, the DMCA specifically

18   authorizes the granting of "temporary and permanent injunctions" to restrain violations of the

19   DMCA, including circumvention of technological protection measures. 17 U.S.C. § 1203(b)(1);

20   *InnoGrit, Corp.*, 2019 WL 2617091 at *5 (enjoining defendant from continuing to pirate Synopsys

21   software in violation of the DMCA); *321 Studios* 307 F. Supp. 2d at 1105 ("the court may grant

22   temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain

23   a violation" under the DMCA).

24   **IV.**   **ARGUMENT**

25   URI should not be permitted to continue to steal Synopsys' valuable intellectual property.

26   This illegal activity is particularly egregious here, where Synopsys has already provided lawful

27   and valid license keys to URI at heavily discounted pricing. Rather than utilize the valid keys, URI

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1   is accessing Synopsys software via counterfeit keys, thereby improperly circumventing Synopsys'

2   license systems to pirate software. The magnitude of URI's circumventions and clear disregard

3   for the proper licensing of Synopsys software demonstrates that a preliminary injunction is

4   necessary to stop URI from continuing to pirate Synopsys software. This is particularly true where,

5   as here, URI, as a University Program member, recognizes the importance of obtaining a license

6   to lawfully access Synopsys software.

A.   Synopsys Is Likely to Succeed on its Claim Against URI for Violation of the Digital Millennium Copyright Act ("DMCA")

To prevail on its claim for relief under the DMCA, Synopsys must prove that (1) its

software included a technological measure that effectively controls access to the software, (2) URI

circumvented that technological measure, and (3) the Synopsys software is a work protected under

the Copyright Act. 17 U.S.C. § 1201(a)(1)(A); *see also MDY Indus., LLC v. Blizzard Entm't, Inc.*,

629 F.3d 928, 952 (9th Cir. 2010), *as amended on denial of reh'g* (Feb. 17, 2011), *opinion amended*

and superseded on denial of reh'g, No. 09-15932, 2011 WL 538748 (9th Cir. Feb. 17, 2011).

1.   Synopsys' License Key System Is a Technological Measure That Effectively Controls Access to Synopsys Software

Synopsys' HSPICE software contains license key technology that controls access to the

software by permitting only authorized users with valid license keys to access the tools. Because

the software will not run without checking out a license key and the license server software verifies

that it is authorized to operate with the specified license key file, this license check-out technology

"effectively controls access" to Synopsys' copyrighted works within the meaning of the DMCA.

Synopsys, Inc. v. Ubiquiti Networks, Inc., No. 17-cv-00561-WHO, 2017 U.S. Dist. LEXIS 130070,

at *23-24 (N.D. Cal. Aug. 15, 2017) (approving DMCA claims predicated on Synopsys' SCL

license key system); *Synopsys, Inc. v. InnoGrit, Corp.*, No. 19-CV-02082-LHK, 2019 WL

4848387, at *7 (N.D. Cal. Oct. 1, 2019) ("the Court concludes that the license key system

comprises a 'technological measure that effectively controls access to a' copyrighted work for the

purposes of the DMCA"); *see also MDY Indus.*, 629 F.3d at 954 n.17 ("'effectively control access

to a work' . . . requires an access control measure to provide some degree of control over access

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1 to a copyrighted work"); *Nintendo of Am., Inc. v. Bung Enters.*, No. 97-8511-GAF, 1999 U.S. Dist.

2 LEXIS 23588, at *33 (C.D. Cal. Dec. 14, 1999) ("'key' which unlocks the hardware systems,

3 thereby preventing the play of any game that does not contain the 'key' . . . meet[s] the definition

4 of technological measures"); *Sony Computer Entm't Am., Inc. v. Divineo, Inc.*, 457 F. Supp. 2d

5 957, 958-59, 965-66 (N.D. Cal. 2006) (similar); *Apple, Inc. v. Psystar Corp.*, 673 F. Supp. 2d 931,

6 934, 942 (N.D. Cal. 2009), *aff'd,* 658 F.3d 1150 (9th Cir. 2011) (discussing "lock-and-key

7 technological measures" as control measures under the DMCA);

2. URI Circumvented Synopsys' License Key System and Gained Unauthorized Access to Synopsys Software

10 URI is using counterfeit license keys to gain unauthorized access and use Synopsys EDA

11 tools. The call-home data received by Synopsys shows that URI has accessed and used Synopsys

12 software without authorization in excess of 135,000 times, including as recently as January 27,

13 2021. The data shows that URI has accessed and used Synopsys EDA software by circumventing

14 the access controls described above. Synopsys is informed and believes that URI has been able to

15 access and use Synopsys EDA software without authorization by using counterfeit license keys.

16 By using counterfeit keys, URI is able to trick Synopsys' license key servers into thinking that the

17 user should be permitted to access the Synopsys software. Therefore, by using counterfeit keys,

18 URI is taking affirmative steps to "avoid," "bypass," and "impair" Synopsys' license key checking

19 access control software.   17 U.S.C. § 1201(a)(3)(A) (defining "circumvent a technological

20 measure"); *see Ubiquiti Networks, Inc.,* 2017 WL 3485881, at *9 (holding that Synopsys

21 adequately plead its license key system recognizing and preventing use of counterfeit keys meets

22 the allegations of DMCA circumventions); *MDY Indus.*, 629 F.3d at 954 (holding that defendants

23 unauthorized circumvention of the control measures meets the "circumvention" element under the

24 DMCA); *see also Pystar*, 673 F. Supp. 2d at 942 (finding violation of the DMCA where defendant

25 circumvented encrypted key technology measures to gain access to Apple's copyrighted works)

26 *Dish Network, L.L.C., v. Vicxon Corp.*, No. 12-cv-9-L WVG, 2013 WL 3894905, at *6-7 (S.D.

27 Cal. July 26, 2013) (finding violation of the DMCA where defendant circumvented "plaintiff's use

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of complex security measures to prevent unauthorized access to the copyrighted material").

3.   Synopsys Software Is Protected Under the Copyright Act

Synopsys EDA software, including HSPICE, are creative works of software entitled to copyright protection. 17 U.S.C. § 101; *Ubiquiti Networks, Inc.*, 2017 WL 3485881, at *14 (holding that Synopsys adequately plead that its Software is copyrighted); *Apple Computer, Inc. v. Formula Int'l Inc.*, 725 F.2d 521, 525 (9th Cir. 1984) (holding that computer programs can be afforded protection under the Copyright Act); *Sega Enters. Ltd. v. Accolade, Inc.*, 977 F.2d 1510, 1519 (9th Cir. 1992), *as amended*, 977 F.2d 1510 (9th Cir. 1993) (the "Copyright Act unambiguously extended copyright protection to computer programs"); *Bernstein v. U.S. Dep't of State*, 922 F. Supp. 1426, 1436 (N.D. Cal. 1996) ("Computer software is subject to copyright protection as a 'literary work.'"); *see also Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991) ("the requisite level of creativity [necessary to satisfy the 'originality' requirement for copyrightability] is extremely low"; "[t]he vast majority of works make the grade quite easily"). Indeed, HSPICE is one of Synopsys' registered copyrighted source code, which is *prima facie* evidence of Plaintiff's lawful ownership of this code. 17 U.S.C. § 410(c). The Court may rely on this registration to establish ownership and originality. *Johnson Controls, Inc. v. Phoenix Control Sys., Inc.*, 886 F.2d 1173, 1175 (9th Cir. 1989).

B.   Synopsys Will Suffer Irreparable Harm if an Injunction is Not Issued

An injunction may issue only upon a showing that irreparable injury is likely in the absence of an injunction. *Winter*, 555 U.S. at 22. In the context of the DMCA, irreparable harm may be established by evidence that circumvention is damaging goodwill with licensees, undermining the copyright owner's negotiating position, threatening the copyright owner's business model, risking the copyright owner's market share, causing reputational harm to the copyright owner or its works, and/or enabling third parties to infringe the owner's copyrights. *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 865 (9th Cir. 2017) (examples 1-3); *Psystar Corp.*, 673 F. Supp. 2d at 948 *aff'd,* 658 F.3d 1150 (9th Cir. 2011) (examples 4-6).

Harm to Goodwill. Injury to goodwill is a well-recognized form of irreparable harm. *See,*

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1 *e.g.*, *Rent-A-Ctr., Inc. v. Canyon Telev. & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991)

2 (holding that "intangible injuries, such as damage to . . . goodwill, qualify as irreparable harm");

3 *Psystar Corp.*, 673 F. Supp. 2d at 948 (irreparable harm in a copyright infringement action may

4 be established through reputational harm); *Ticketmaster LLC v. RMG Techs., Inc.*, 507 F. Supp.

5 2d 1096, 1115 (C.D. Cal. 2007) (irreparable harm includes "damage to goodwill"). Here, URI's

6 piracy and use of counterfeit license keys causes harm to Synopsys' goodwill and the reputation

7 of Synopsys products in several ways. First, piracy like URI's causes customers to question

8 Synopsys' security, the authenticity of its goods, and whether its pricing structure is justified.

9 Kelly Decl. ¶ 14. Many courts have recognized such reputational injury is irreparable. *See, e.g.*,

10 *Microsoft Corp. v. Does 1-18*, No. 1:13CV139 LMB/TCB, 2014 WL 1338677, at *8 (E.D. Va.

11 Apr. 2, 2014) (granting injunction due to malware risks where users were being exposed to

12 inauthentic software).

13   Additionally, piracy harms Synopsys' goodwill and relationships with customers who feel

14 it is unfair for them to have to pay for Synopsys software while others use it for free. Kelly Decl.

15 ¶ 16; *see Stuhlbarg*, 240 F.3d at 841 ("Evidence of threatened loss of prospective customers or

16 goodwill certainly supports a finding of the possibility of irreparable harm."). Even with the

17 special pricing for academic programs, the use of counterfeit keys and piracy impacts Synopsys'

18 relationships with other universities as well as paying clients. *Id.* For this reason, one of the key

19 objectives of Synopsys' license compliance program is to attempt to level the playing field for

20 honest customers by obtaining and enforcing injunctions against those who pirate. *Id.* at ¶ 14, 17.

21   **Negotiating Leverage.**   Software piracy impacts the market's willingness to pay

22 Synopsys' requested licensing fees and creates downward pressure on Synopsys' prices. Kelly

23 Decl. ¶ 15. This pressure presents an existential threat to Synopsys' software licensing business

24 model. As a matter of law, Synopsys' witness testimony that piracy "undermines the value of the

25 [] copyrighted works, [Synopsys'] business model, and [Synopsys'] goodwill and negotiating

26 leverage with licensees" constitutes "substantial evidence" of irreparable harm and warrants an

27 injunction. *Disney Enters., Inc.*, 869 F.3d at 866; *see also Am. Broad. Cos., Inc. v. AEREO, Inc.*,

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1   874 F. Supp. 2d 373, 398 (S.D.N.Y. 2012), *aff'd sub nom. WNET, Thirteen v. Aereo, Inc.*, 712

2   F.3d 676 (2d Cir. 2013), *rev'd and remanded sub nom. Am. Broad. Cos., Inc. v. Aereo, Inc.*, 573

3   U.S. 431 (2014) ("Harm of this sort has been accepted as irreparable based, at least in part, on the

4   difficulty of proving or quantifying such damages—even if Plaintiffs can generally track declines

5   in advertising revenue . . . this does not necessarily allow them to determine the extent to which

6   such declines are attributable to Aereo") (subsequently overruled on other grounds); *Fox Telev.*

7   *Stations, Inc. v. BarryDriller Content Sys., PLC*, 915 F. Supp. 2d 1138, 1147 (C.D. Cal. 2012)

8   (holding that harm to a plaintiff's negotiating position was irreparable because it was "neither

9   easily calculable, nor easily compensable"); *Advanced Transit Dynamics, Inc. v. Ridge Corp.*, No.

10 CV 15-1877 BRO, 2015 WL 12516692, at *24 (C.D. Cal. Aug. 24, 2015), *modified on*

11 *clarification,* No. CV 15-1877-BRO, 2015 WL 12765141 (C.D. Cal. Oct. 23, 2015), *modified on*

12 *clarification,* No. CV 15-1877 BRO, 2016 WL 6921238 (C.D. Cal. Feb. 1, 2016) ("Price erosion

13 . . . and loss of business opportunities" are irreparable harm).

14   **Cost of Piracy.** In addition to competing against other legitimate providers in the EDA

15 industry, as a result of piracy like URI's, Synopsys must also compete against software pirates,

16 who can offer or obtain Synopsys tools for little or no cost. Kelly Decl. ¶¶ 14-17. Continued

17 piracy creates a market for counterfeit keys. Having to compete with piracy creates downward

18 pricing pressure as Synopsys requires customers to pay for a license yet they can pay nothing to

19 use pirated software. *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1017 (9th Cir. 2001)

20 ("Having digital downloads available for free on the Napster system necessarily harms the

21 copyright holders' attempts to charge for the same downloads."); *Disney Enters., Inc.*, 869 F.3d at

22 865-66 (evidence that it was "difficult to compete with unlicensed services" was evidence of

23 irreparable harm). This "[h]arm resulting from lost profits" is "irreparable because it is neither

24 easily calculable, nor easily compensable and is therefore an appropriate basis for injunctive

25 relief." *eBay, Inc. v. Bidder's Edge, Inc.*, 100 F. Supp. 2d 1058, 1066 (N.D. Cal. 2000); *see also*

26 *Pearson Educ., Inc. v. Vergara*, No. 09 CIV 6832 JGK KNF, 2010 WL 3744033 (S.D.N.Y. Sept.

27 27, 2010) (holding that decline in sales of textbooks as a result of greater access to infringing works

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1   is an injury difficult to quantify and which plaintiffs should not be expected to suffer). Likewise,

2   the non-recoupable anti-piracy expenses is a competitive injury that likewise qualifies as

3   irreparable harm. *eBay, Inc.*, 100 F. Supp. 2d at 1066 (lost profits are irreparable harm).

4   **Interference with Exclusive Rights**. URI's piracy interferes with Synopsys' basic right

5   to control how, when, and under what circumstances people can distribute, copy and use Synopsys'

6   copyright-protected software. *See Warner Bros. Entm't Inc. v. WTV Sys., Inc.*, 824 F. Supp. 2d

7   1003, 1012 (C.D. Cal. 2011) (diminished "ability to control the use and transmission of their

8   Copyrighted Works" amounted to irreparable harm). This loss of exclusivity over a copyrighted

9   work is irreparable harm. *Id.* Permitting entities, especially educational institutions like URI, to

10   pirate now and pay money damages later encourages "efficient infringement," i.e., situations

11   where the value of the infringement exceeds the licensing fee, thereby creating a perverse incentive

12   to pirate because doing so and getting caught (assuming they even get caught) costs less than

13   playing by the rules. *See Walker v. Forbes, Inc.*, 28 F.3d 409, 412 (4th Cir. 1994).

14   **C.**   **The Balance of Equities Favor an Injunction**

15   The balance of equities favors Synopsys. On the one hand, Synopsys will suffer irreparable

16   harm if an injunction is not issued. *See Rent-A-Ctr., Inc.*, 944 F.2d at 603 (holding that

17   "[i]ntangible injuries such as damage to . . . goodwill, qualify as irreparable harm); *Psystar Corp.*,

18   673 F. Supp. 2d at 948 (irreparable harm in a copyright infringement action may be established

19   through reputational harm). On the other hand, URI suffers no undue prejudice from an injunction,

20   as it will only have to refrain from illegal activity. It will not suffer any monetary or other damage

21   since any benefits it receives from accessing and using Synopsys software with counterfeit license

22   keys are ill-gotten benefits to which URI has no entitlement. *See DISH Network LLC v. Rios*, No.

23   2:14-CV-2549-WBS-KJN, 2015 WL 632242, at *7 (E.D. Cal. Feb. 13, 2015) (finding defendants

24   would "suffer no cognizable hardship" from an injunction because they were "merely being

25   prevented from engaging in unlawful activity").

26   **D.**   **A Preliminary Injunction Serves the Public Interest**

27   The public interest strongly favors granting Synopsys the requested relief. In cases relating

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1   to copyright or the DMCA, it is ordinarily presumed that an injunction will serve the public interest

2   if the copyright holder shows a likelihood of success on the merits. *Lilith Games (Shanghai) Co.*

3   *v. UCool, Inc.*, No. 15-CV-01267-SC, 2015 WL 5591612, at *13 (N.D. Cal. Sept. 23, 2015) (noting

4   that "if evidence of infringement is strong, then the public interest favors its abatement given that

5   the public has an interest in seeing the copyright laws enforced"); *see also Flextronics Int'l, Ltd.*

6   *v. Parametric Tech., Corp.*, No. C 13-0034 PSG, 2013 WL 5200175, at *8 (N.D. Cal. Sept. 16,

7   2013) (noting that there is a general public policy interest in preventing copyright infringement);

8   *Concrete Mach. Co. v. Classic Lawn Ornaments, Inc.*, 843 F.2d 600, 612 (1st Cir. 1988) (noting

9   it is "virtually axiomatic that the public interest can only be served by upholding copyright

10   protections and, correspondingly, preventing the misappropriation of the skills, creative energies,

11   and resources which are invested in the protected work").

12   Public interest will be served through a preliminary injunction against URI's violations of

13   the DMCA. Allowing any ongoing unauthorized use of Synopsys software will reward piracy.

14   This will harm the public as innovators will be deterred from investing the effort and resources

15   needed to create new products and technologies if others are allowed to siphon away with impunity

16   these new products and technologies. *See Psystar Corp.*, 673 F. Supp. 2d at 950 (finding an

17   injunction preventing defendant from continuing to commit illegal acts under DMCA "would

18   ensure that the public will continue to benefit from the creative fruits of [plaintiff's] labor").

19   Issuance of a preliminary injunction here serves the public interest.

20   **E.**   **Synopsys has Complied with the Requirements of Rule 65 of the Federal**
              Rules of Civil Procedure and Local Rule 65-1
21

22   Synopsys has fully complied with Rule 65 of the Federal Rules of Civil Procedure and

23   Local Rule 65-1 for issuance of an *ex parte* TRO and an Order to Show Cause why a preliminary

24   injunction should not issue. Synopsys has submitted declarations and other evidence showing that

25   it will be irreparably harmed without an order granting its Motion and restraining URI from

26   continuing further violations of the Copyright Act and the DMCA. *See generally* Kelly Decl.

27   Synopsys has also fully complied with the notice requirements of Local Rule 65-1.

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1   Counsel for Synopsys provided URI with notice of the ex parte Motion for a Temporary

2   Restraining Order, Order to Show Cause regarding Preliminary Injunction, and Order for

3   Expedited Discovery as set forth above and in the Mingrone Declaration.

4   **V.   GOOD CAUSE EXISTS AND WARRANTS EXPEDITED DISCOVERY**

5   The Federal Rules of Civil Procedure provide this Court with broad discretion to permit

6   expedited discovery. Federal Rule of Civil Procedure 26(d) provides that court-ordered discovery

7   prior to a conference between the parties is "appropriate" in urgent cases. Fed. R. Civ. P. 26(d)

8   advisory committee's note to 1993 amendment; Fed. R. Civ. P. 26(d). Generally, "[a] party may

9   not seek discovery . . . before the parties have conferred as required by Rule 26(f), except . . . when

10   authorized by . . . court order." Fed. R. Civ. P. 26(d)(1). "In the Ninth Circuit, courts use the

11   'good cause' standard to determine whether discovery should be allowed to proceed prior to a Rule

12   26(f) conference." *Rovio Entm't*, 907 F. Supp. 2d at 1099. "Good cause may be found where the

13   need for expedited discovery, in consideration of the administration of justice, outweighs the

14   prejudice to the responding party." *Semitool, Inc.*, 208 F.R.D. at 276.

15   "In determining whether good cause justifies expedited discovery, courts commonly

16   consider factors including: (1) whether a preliminary injunction is pending; (2) the breadth of the

17   discovery requests; (3) the purpose for requesting the expedited discovery; (4) the burden on the

18   [party opposing expedited discovery] to comply with the requests; and (5) how far in advance of

19   the typical discovery process the request was made." *Samsung Elecs. Co.*, 2011 U.S. Dist. LEXIS

20   53233, at *4 (awarding expedited discovery); *see also Washington*, 2015 WL 2089992, at *2 ("the

21   Court notes that the pendency of Plaintiffs' motion for a preliminary injunction supports their

22   request for expedited discovery"); *Mobile Star LLC*, 2017 WL 4005468, at *4 (noting that the

23   court had previously permitted expedited discovery to support a motion for Preliminary

24   Injunction); *Synopsys, Inc. v. Gyrfalcon Tech. Inc*., No. 3:18-CV-06361-JD, Minute Order, ECF

25   No. 28 (Dec. 26, 2018) & Hr'g Tr. 9:12, 10:12-13, ECF No. 31 (N.D. Cal. Jan. 14, 2019) (Donato,

26   J.) (granting expedited discovery for imaging of devices and stating on the record at the hearing

27   on the motion for expedited discovery that "this should be very straightforward" and "[i]t's going

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1 to be done . . . this is basic, you know, software discovery").

2   Good cause exists in this case for the Court to allow limited discovery. First, Synopsys

3 seeks entry of a preliminary injunction. The requested discovery is expected to provide additional

4 support for entry of that injunction. Second, the breadth of discovery is extremely limited:

5 Synopsys seeks to image only the electronic devices associated with the hostnames, usernames,

6 and MAC addresses that used counterfeit license keys to access Synopsys software without

7 authorization and to copy configuration information and volatile data from these servers. Third,

8 the offending devices can be easily imaged by a forensic expert to preserve all evidence thereon at

9 no significant burden to URI as imaging takes only a matter of hours for a typical laptop. Fourth,

10 without the requested discovery, Synopsys will be unable to determine the full extent of such

11 unauthorized use.

12   Synopsys seeks the following expedited discovery: expedited forensic discovery of certain

13 electronic devices identified through the information below:

Hostname	Egress IP Address	MAC addresses
yubi-Workstation1	131.128.54.68	04:D4:C4:5D:40:A2, 04:D4:C4:5D:40:A3
jingyang-Workstation0	131.128.54.41	A4:BB:6D:44:79:74

Usernames
yubi
jingyang

22   Synopsys seeks to image the devices associated with these users and hostnames that these

23 users accessed to use Synopsys software in order to preserve and analyze URI's access

24 information, user logs, and capture the scope of URI's use. As described above, Synopsys has

25 evidence that URI is accessing and using Synopsys software without authorization. *See generally*,

26 Kelly Decl. However, without the requested discovery, Synopsys is unable to determine the full

27 extent of such unauthorized use. *Id.* at ¶ 12. The expedited discovery requested herein would

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1   provide Synopsys with the information it requires to halt the piracy and identify the scope and

2   extent of URI's unauthorized use of Synopsys EDA software. *Id*. at ¶ 13. Most importantly, the

3   requested discovery will enable critical evidence to be preserved. *Id.*

4   Pursuant to *Samsung Elecs. Co., supra*, courts also consider the breadth of the expedited

5   discovery request, as well as the burden on the defendant if they are required to respond to that

6   request. Both of these factors weigh in favor of granting Synopsys leave to conduct expedited

7   discovery. The discovery Synopsys requests herein on an expedited basis is narrow in scope:

8   Synopsys seeks solely to forensically image the devices associated with the usernames, host

9   names, and MAC addresses above used to access Synopsys tools for the sole purpose of

10 preservation and determination of the extent of the unauthorized use of Synopsys software in order

11 to protect its valuable intellectual property from continued and further dissemination. The

12 information requested is resident solely on URI's devices and gathering it will take virtually no

13 effort. Kelly Decl. ¶ 12-13. It is information that is relevant and which URI will be required to

14 produce in the normal course of discovery. Yet delay in discovery could cause this evidence to be

15 altered or destroyed, even inadvertently. *Id.*

16   In *Nobelbiz, Inc. v. Wesson*, No. 14cv0832, 2014 U.S. Dist. LEXIS 54432, at *4 (S.D. Cal.

17 Apr. 18, 2014), the court granted plaintiff leave to conduct the requested expedited discovery,

18 finding (1) that the requested discovery was directly relevant to plaintiff's claim; (2) that expedited

19 discovery "would allow the Court to address any request for preliminary injunctive relief at the

20 outset of the case, thereby providing a measure of clarity to the parties early in the proceeding and

21 facilitating effective case management;" (3) that the discovery requests were "appropriately

22 restrained in breadth and scope;" and (4) that compliance by the defendant would not be unduly

23 burdensome. Synopsys' expedited discovery request meets all of these factors by (1) only

24 requesting evidence directly relevant to Synopsys' claims (2) only requesting evidence that will

25 be relevant to the Court's granting of the preliminary injunction Synopsys seeks in this litigation,

26 and by (3) requesting very targeted and limited information that (4) it will not place any significant

27 burden on URI to provide.

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1   Most importantly, Synopsys' purpose in requesting the expedited discovery – another

2 factor courts consider – is to ensure that electronic evidence that is material to this litigation is not

3 altered, deleted, destroyed or otherwise lost in the ordinary course of URI's use. The information

4 Synopsys seeks resides exclusively on URI's devices, and is information that is highly vulnerable

5 to transfer, loss or deletion. Kelly Decl. ¶¶ 12-13. The best way to ensure against possible loss is

6 to examine and preserve the electronic evidence as soon as possible. *Id.* An order granting leave

7 to conduct expedited discovery is the best way to ensure that no evidence is lost or otherwise

8 tampered with during the course of this litigation.

9   Finally, the proposed discovery will not prejudice URI. *Semitool*, *supra*, 208 F.R.D. at 276

10 ("Good cause may be found where the need for expedited discovery, in consideration of the

11 administration of justice, outweighs the prejudice to the responding party."). URI will not be

12 burdened by this straightforward request to image just a couple of its devices. This discovery is

13 material to Synopsys' claims and is information URI will otherwise be required to provide in the

14 normal course of discovery. However, should the information sought be deleted, altered or

15 otherwise overwritten in the ordinary course, the prejudice to Synopsys via the loss of its ability

16 to prove its claims will outweigh any prejudice to defendant URI caused by providing immediate

17 access to its computers and devices.[1]

18 ///

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20 ///

21 ///

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24 [1] Synopsys reserves its right to move for impoundment of the infringing devices under the
DMCA. 17 U.S.C. § 1203(b)(2) (stating that, in connection with an action under the DMCA, a
25 court "at any time while an action is pending, may order the impounding, on such terms as it
deems reasonable, of any device or product that is in the custody or control of the alleged violator
26 and that the court has reasonable cause to believe was involved in a violation"); *Sony Computer
Entm't Am. LLC v. Hotz*, 2011 WL 347137, at *3 (N.D. Cal. Jan. 11, 2011) (ordering
27 impoundment of computers used by defendants to design tools for circumventing PlayStation 3
game console's software protection).

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VI.   **CONCLUSION**

For all the reasons stated above, Synopsys respectfully requests that the Court issue a temporary restraining order and order to show cause to stop URI from accessing/using Synopsys software without authorization and permit expedited forensic discovery.

DATED: January 28, 2021   ORRICK, HERRINGTON & SUTCLIFFE LLP

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