

1 JUNJI SUZUKI (SBN 184738)  
junji@marshallsuzuki.com  
2 TOKIKO YASUDA (SBN 257128)  
tokiko@marshallsuzuki.com  
3 MARSHALL SUZUKI LAW GROUP, LLP  
4 230 California Street, Suite 415  
San Francisco, CA 94111  
5 Telephone: (415) 618-0090  
6 Facsimile: (415) 618-0190  
Attorney for Applicant,  
7 Shueisha, Inc.

8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10  
11  
12 In re Ex Parte Application of ) Case No: 3:22-mc-80201  
13 )  
14 SHUEISHA, INC., ) **EX PARTE APPLICATION FOR ORDER**  
Applicant. ) **PURSUANT TO 28 U.S.C. § 1782**  
15 ) **PERMITTING DISCOVERY FOR USE IN**  
16 ) **FOREIGN PROCEEDING AND**  
\_\_\_\_\_ ) **MEMORANDUM IN SUPPORT**  
17 )

18 Applicant, Shueisha Inc., a Japanese corporation (“Applicant”), hereby applies to this  
19 Court ex parte for an order permitting discovery for use in a court proceeding in Japan and  
20 potentially in Vietnam pursuant to 28 U.S.C. § 1782 from Paypal Holdings, Inc. (“Paypal”),  
21 Visa Inc. (“Visa”), MasterCard Incorporated and Mastercard International Incorporated  
22 (collectively as “Mastercard”), Google, LLC (“Google”), PayPal, Inc., doing business as  
23 Braintree (“Braintree”), and Stripe, Inc. (“Stripe”)(collectively as “Witnesses”).

24 The proposed subpoenas attached to this application seek from Witnesses documents  
25 and information relating to certain Paypal, Visa, Mastercard, Google, Braintree and/or Stripe  
26 accounts used by infringers who illegally copied and uploaded an extensive amount of the  
27 Applicant’s copyrighted comic books on their pirate websites located at the following  
28 infringing websites: mangagohan.com (now redirected to mangagohan.me), mangapro.top,

1 gokumanga.com (now redirected to mangagohan.me), doki1001.com, manga1001.in, and  
2 comick.top.

3 This application is supported by the memorandum in support below, the declarations of  
4 of Junji Suzuki (“Suzuki Decl.”), Hiroyuki Nakajima (“Nakajima Decl.”), and Pham Thi Anh  
5 Ngoc (“Ngoc Decl.”). Nakajima and Ngoc are attorneys in Japan and Vietnam, respectively,  
6 who represent Applicant in connection with anticipated lawsuits in Japan and Vietnam against  
7 the Infringers.

### 8 **I. BACKGROUND**

9 Applicant is a well-known publisher in Tokyo, Japan of a wide variety of genres and  
10 mediums, including comic books, literature, magazines, and educational books. Nakajima  
11 Decl. ¶ 4. It has recently come to Applicant’s attention that certain owners and operators of  
12 the pirate websites (each the “Infringer” and collectively the “Infringers”) located at  
13 mangagohan.com (now redirected to mangagohan.me), mangapro.top, gokumanga.com (now  
14 redirected to mangagohan.me), doki1001.com, manga1001.in, and comick.top, respectively  
15 (collectively the “Infringing Websites”), using services provided by Witnesses, had been  
16 uploading an extensive amount of unauthorized copies of the Applicant’s copyrighted comic  
17 books on their Infringing Websites. Such illegal copies mostly contain the entire pages of the  
18 book or volume and some of the illegal copies were uploaded on the Infringing Websites soon  
19 after publication. The Infringers, the infringing copies located at the Infringing Websites  
20 (collectively the “Infringing Work”), and the comic books, the exclusive right of which are  
21 owned by Applicant (collectively the “Original Work”), are identified in Exhibit A attached to  
22 Nakajima Decl., concurrently submitted with this application. *Id.* ¶ 5.

23 According to Nakajima, Applicant’s Japanese attorney, and Ngoc, Applicant’s  
24 Vietnamese attorney, the Infringing Work constitutes copyright infringement under both  
25 Japanese and Vietnamese laws. Nakajima Decl. ¶ 6; Ngoc Decls. ¶ 5.

26 Therefore, Applicant intends to bring a lawsuit in Japan or Vietnam against the  
27 Infringers as soon as their identities have been ascertained through the discovery sought by  
28 this application. Nakajima Decl. ¶ 7; Ngoc Decls. ¶ 5.

1 Applicant first attempted to obtain the identifying information about the Infringers  
2 through subpoenas issued under 17 U.S.C. § 512(h) (collectively as the “DMCA Subpoena”)  
3 from Cloudflare, Inc. (“Cloudflare”), which provided online and network services to the  
4 Infringers. However, such efforts did not produce the information sufficient to locate the  
5 Infringers. A copy of the two DMCA Subpoenas served on Cloudflare and the relevant part of  
6 the response and documents produced by Cloudflare (collectively the “Cloudflare Response”)  
7 to each subpoena are attached to Suzuki Decl. as Exhibit A and B, respectively. Suzuki Decl.  
8 ¶ 2-3. According to Nakajima and Ngoc, since Cloudflare does not verify the identity of a  
9 service user, the name, or address produced by Cloudflare in response to the DMCA Subpoena  
10 do not necessarily reveal the true identity of the Infringers and IP addresses are the most  
11 effective and reliable information to locate the Infringers. The Cloudflare Response revealed  
12 that the Infringers used the services provided by Witnesses in connection with their Infringing  
13 Websites. Nakajima Decl. ¶ 9; Ngoc Decl. ¶ 4. Based on the Cloudflare Response and  
14 Ngoc’s investigation, the IP addresses produced in the Cloudflare Response belong to Vietnam  
15 Posts and Telecommunications Group and Vietnam Telecom National. Ngoc Decl. ¶ 4.  
16 However, in Vietnam, with certain exceptions, there is no legal remedy available for a third  
17 party company to obtain identifying information of the users from telecommunication  
18 companies based on copyright infringement<sup>1</sup>. *Id.*

19 In order to identify the Infringers who committed unlawful acts against Applicant  
20 through their pirate websites, it is crucial for Applicant to obtain the additional and more  
21 reliable information relating to the Infringers, i.e. the information relating to the Witnesses’  
22 accounts associated with the Infringer and the Infringing Work, including the names,  
23 addresses, telephone numbers, email addresses, and IP addresses used and registered by the  
24 Infringers with their Witnesses’ accounts on the most recent date and at the time each of their  
25 payment was made to Cloudflare for the services provided in connection with the Infringing  
26 Websites. Nakajima Decl. ¶ 8, 10-12; Ngoc Decl. ¶ 4.

27 \_\_\_\_\_  
28 <sup>1</sup> Law No. 41/2009/QH12 dated November 23, 2009 of the National Assembly of the Socialist Republic of  
Vietnam on Telecommunications.

1 **II. ARGUMENT**

2 **A. Legal Standard**

3 An applicant seeking discovery for use in a foreign proceeding must demonstrate that  
 4 (1) the person from whom the discovery is sought resides or is found in this district, (2) the  
 5 discovery is for use in a proceeding before a foreign tribunal, and (3) the application is made  
 6 by a foreign or internal tribunal or any interested person. 28 U.S.C. § 1782; *In re The Republic*  
 7 *of Ecuador*, Case No. C-10-80225 MISC CRB (EMC), 2010 U.S. Dist. LEXIS 102158 (N.D.  
 8 Cal. Sept. 15, 2010) at\*1.

9  
 10 In exercising its discretion under 28 U.S.C. § 1782, a district court should further  
 11 consider the following non-exhaustive factors: “(1) whether the "person from whom discovery  
 12 is sought is a participant in the foreign proceeding"; (2) "the nature of the foreign tribunal, the  
 13 character of the proceedings underway abroad, and the receptivity of the foreign government  
 14 or the court or agency abroad to U.S. federal-court judicial assistance"; (3) whether the  
 15 discovery request is an "attempt to circumvent proof-gathering restrictions or other policies of  
 16 a foreign country or the United States"; and (4) whether the discovery requested is "unduly  
 17 intrusive or burdensome." *In re Apple Inc.*, 2012 U.S. Dist. LEXIS 66669, 3-4 (N.D. Cal. May  
 18 2, 2012) (quoting *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 264-265 (U.S.  
 19 2004)).

20 **B. Applicant’s Application Meets All of the Statutory Requirements under 28 U.S.C.**  
 21 **§ 1782.**

22 **1. Witnesses From Whom Discovery Is Sought Are Located in This District.**

23 Paypal<sup>2</sup>, Visa,<sup>3</sup> Mastercard<sup>4</sup>, Google<sup>5</sup>, Braintree<sup>6</sup>, and Stripe<sup>7</sup> from whom the discovery  
 24 requested in this application is sought, are located in San Jose, Foster City, San Carlos,  
 25

26 <sup>2</sup> <https://about.pypl.com/who-we-are/history-and-facts/default.aspx>

27 <sup>3</sup> <https://investor.visa.com/investor-resources/faq/default.aspx>; <https://bizfileonline.sos.ca.gov/search/business>  
 (VISA INC. (3048066))

28 <sup>4</sup> <https://www.mastercard.us/en-us/vision/who-we-are/global-locations.html>

<sup>5</sup> [https://about.google/intl/en\\_us/locations/?region=north-america](https://about.google/intl/en_us/locations/?region=north-america)

<sup>6</sup> <https://www.braintreepayments.com/contact>

1 Mountain View, San Francisco, and South San Francisco, California, respectively. Therefore,  
2 Witnesses are within this Court's district.

3 **2. The Requested Discovery Is for Use in a Court Proceeding in Japan or**  
4 **Vietnam.**

5 The discovery requested in this application must be for "use in a proceeding in a foreign  
6 or international tribunal, including criminal investigations conducted before formal  
7 accusation." 28 U.S.C. § 1782(a). The foreign proceeding needs not actually be under way  
8 before 28 USC § 1782 may be invoked. It is sufficient that such proceedings are "likely to  
9 occur" or are "within reasonable contemplation." *Intel Corp. v. Advanced Micro Devices, Inc.*,  
10 *supra*, at 258-259 (quoting *In re Letter Request From Crown Prosecution Service of United*  
11 *Kingdom*, 870 F.2d 686, 691 (DC Cir. 1989)).

12 Applicant intends to bring a lawsuit in Japan or potentially in Vietnam against the  
13 person associated with the Witnesses' accounts in question as soon as the person's identity has  
14 been ascertained through the discovery sought by this application. Nakajima Decl. ¶ 7, 10.  
15 Ngoc Decl. ¶ 1. Thus, the requirement that the discovery be for use in a foreign proceeding is  
16 met.  
17

18 **3. Applicant is an Interested Party under 28 U.S.C. § 1782, Who May Make This**  
19 **Application.**

20 The application to seek discovery pursuant to 28 U.S.C. § 1782 may be made by "any  
21 interested person." As a plaintiff in the anticipated litigation in Japan or Vietnam, Applicant is  
22 clearly an interested person under 28 U.S.C. § 1782.  
23

24 **C. Applicant's Application Further Meets All of the Discretionary Factors under**  
25 ***Intel*.**

26 **1. Any of Witnesses Is Not Participant in the Foreign Proceeding.**

---

27 <sup>7</sup> <https://stripe.com/privacy-center/legal#which-stripe-entities-are-involved>;  
28 <https://bizfileonline.sos.ca.gov/search/business> (STRIPE, INC. (3635817))

1 The first *Intel* factor asks whether the "person from whom discovery sought is a  
2 participant in the foreign proceeding." *Intel*, 542 U.S. at 264. If the person is a participant,  
3 "the need for § 1782(a) aid generally is not as apparent as it ordinarily is when evidence is  
4 sought from a nonparticipant in the matter arising abroad" because "[a] foreign tribunal has  
5 jurisdiction over those appearing before it, and can itself order them to produce evidence." *Id.*  
6 "In contrast, nonparticipants in the foreign proceeding may be outside the foreign tribunal's  
7 jurisdictional reach; hence, their evidence, available in the United States, may be unobtainable  
8 absent § 1782(a) aid." *Id.*

9 Any of Witnesses is not a participant in the prospective lawsuit in Japan or Vietnam.  
10 Nakajima Decl. at ¶ 18. Ngoc Decl. ¶ 6. Additionally, the documents that Applicant seeks are  
11 located in the United States and not in Japan or Vietnam. Thus, they are out of reach of the  
12 Japanese or Vietnamese court's jurisdiction.

13 **2. The Requested Information Is Crucial to Applicant's Bringing Lawsuit in**  
14 **Japan or Vietnam and the Japanese and Vietnamese Courts Would Be**  
15 **Receptive to this Court's Assistance.**

16 "A court presented with a § 1782(a) request may take into account the nature of the  
17 foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the  
18 foreign government or the court or agency abroad to U.S. federal-court judicial assistance."  
19 *Intel*. at 264.

20 In order to identify the person who committed unlawful acts against Applicant through  
21 the Witnesses' accounts in question for purposes of bringing a lawsuit against such person in  
22 Japan or Vietnam, it is crucial for Applicant to obtain the sufficient information relevant to the  
23 Paypal accounts used by the Infringer. Nakajima Decl. ¶ 8-11. Ngoc Decl. ¶ 4.

24 In addition, the Japanese courts would be receptive to this court's assistance. In fact, the  
25 Japanese courts have been receptive to the discovery assistance made by the U.S. courts.  
26 *Marubeni Am. Corp. v. LBA Y.K.*, 335 Fed. Appx. 95, 97-98, 2009 U.S. App. LEXIS 12953,  
27 \*7-8 (2d Cir. N.Y. 2009); *In re Application of LG Elecs. Deutschland GMBH*, 2012 U.S. Dist.  
28 LEXIS 70570, \*5, 2012 WL 1836283 (S.D. Cal. May 21, 2012). Vietnamese courts would be

1 also receptive to this court’s assistance. *In re Request for Judicial Assistance from the*  
2 *People’s Court of Da Nang City, Vietnam in the Matter of Van Thang Huynh, et al.*, Case No.  
3 1:19-cv-02750, N.D. Ill. May 2, 2019.

4 **3. Applicant’s Discovery Request Is Not an Attempt to Circumvent Foreign**  
5 **Proof Restrictions or Policies.**

6 “A district court could consider whether the § 1782(a) request conceals an attempt to  
7 circumvent foreign proof-gathering restrictions or other policies of a foreign country or the  
8 United States.” *Intel.* at 265.

9 Applicant is not aware of any restrictions imposed by or any policies under Japanese or  
10 Vietnamese law limiting the proof-gathering proceeding in the manner proposed and for the  
11 purposes stated herein. Nakajima Decl. ¶ 19. Ngoc Decl. ¶ 6. In the past, courts have granted  
12 28 U.S.C. § 1782 applications for the use in the proceedings in Japan, both civil and criminal,  
13 as well. *Marubeni Am. Corp.* at 98; *LG Elecs. Deutschland GMBH*, \*5; *Okubo v. Reynolds (In*  
14 *re Letters Rogatory from the Tokyo Dist. Prosecutor’s Office)*, 16 F.3d 1016, 1018-1019, 1994  
15 U.S. App. LEXIS 2440, \*3-6, 94 Cal. Daily Op. Service 1108, 94 Daily Journal DAR 1918, 28  
16 Fed. R. Serv. 3d (Callaghan) 200 (9th Cir. Cal. 1994). Courts have also granted 28 U.S.C. §  
17 1782 applications for the use in the proceedings in Vietnam. *In re the People’s Court of Da*  
18 *Nang City, Vietnam. In re Shogakukan, Inc., et al.*, Case No. 5:21-mc-80071-SVK, N.D. Cal.  
19 May 10, 2021.

20 **4. Applicant’s Request Is Narrowly Tailored to Highly Relevant Information and**  
21 **Not Unduly Intrusive or Burdensome.**

22 “Unduly intrusive or burdensome requests may be rejected or trimmed.” *Intel.* at 265.

23 As shown in the proposed subpoenas to Witnesses attached to the proposed order  
24 submitted with this application, the discovery requested by Applicant is narrowly tailored and  
25 limited to the discovery materials related to the Witnesses’ accounts relating to the Infringer  
26 and Infringing Work through which the identity of the defendant(s) to the anticipated Japanese  
27 or Vietnamese lawsuit could be ascertained and nothing further.

1 First, the proposed subpoena does not seek disclosure of the content of any  
2 communications associated with the Witnesses' accounts subject to the proposed subpoenas.  
3 *Optiver Australia Pty. Ltd. v. Tibra Trading Pty. Ltd.*, Case No. C 12-80242 EJD (PSG), 2013  
4 WL 256771 (discussing prohibitions of Stored Communications Act, 18 U.S.C. § 2701 et  
5 seq).

6 Second, the proposed subpoena only seeks disclosure of names, telephone numbers and  
7 addresses of the person(s) whose payment method is associated with each of the Witnesses'  
8 accounts subject to the said subpoena. It does not seek disclosure of credit card numbers,  
9 bank account numbers, or any other sensitive information. *In re Medical Corporation H&S*,  
10 Case No. 5:19-mc-80058-VKD, N.D. Cal. May 15, 2019 (granted application seeking  
11 disclosure of name and address of credit card holder registered on Google Account).

12 However, it is highly unlikely that the perpetrators have provided their true name and  
13 address to Witnesses when they created an account with Witnesses to use their services.  
14 Thus, the names and addresses Witnesses may have on file in connection with the Witnesses  
15 accounts subject to the proposed subpoena, even if they are disclosed in response to the  
16 proposed subpoena, would highly likely to be fictitious and would not help Applicant's  
17 identify the Infringers. In such case, an access log is the only available information that  
18 could identify the perpetrators. The access logs recorded only when users make a payment  
19 through Witnesses to Cloudflare or used Witnesses' services relating to the Infringing  
20 Website are not sufficient to identify the Infringer. Nakajima Decl. ¶ 13-17. Furthermore,  
21 access logs contain no private information of the Witnesses' accounts subject to the proposed  
22 subpoenas. Access logs only disclose time stamps (showing when the Witnesses' accounts  
23 holders accessed) and IP addresses. Any other private information (e.g. information about  
24 what websites the holders may have accessed, what action they took, etc.) is not disclosed.  
25 To sufficiently identify the Infringer, it is crucial to obtain the information highly likely to be  
26 true, which is name, address, email addresses, and/or telephone numbers for verification  
27 purposes and the payment methods registered with the Infringers' Witnesses' accounts. The  
28

1     Infringers are highly likely to use and provide the true information for such purposes as  
2     required to use the Witnesses' services. *Id.* ¶ 11.

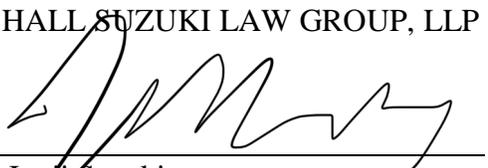
3     **III. CONCLUSION**

4             For the reasons stated above, Applicant respectfully requests that this Court grant this  
5     application and permit that it issues the subpoenas to Witnesses attached to the proposed order  
6     submitted with this application.

7  
8     Dated: August 8, 2022

Respectfully submitted,

MARSHALL SUZUKI LAW GROUP, LLP

9  
10  
11     By: 

Junji Suzuki  
Attorney for Applicant,  
Shueisha Inc.