

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

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SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

LBRY, INC.,

Defendant.

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Civil Action No. 21-cv-00260-PB

**COMMISSION’S OPPOSITION TO LBRY’S MOTION  
TO LIMIT THE COMMISSION’S REMEDIES**

Plaintiff Securities and Exchange Commission hereby opposes Defendant LBRY, Inc.’s premature motion to limit the Commission’s remedies in this case. The remedies the Commission seeks, including injunctive relief, disgorgement, and a civil penalty, are all authorized and appropriate. First, the Court should enjoin LBRY, including its wholly-owned subsidiary Odysee, from violating Section 5 of the Securities Act of 1933 (“Securities Act”) and conducting unregistered offerings of crypto asset securities. For more than six years, including while this litigation was on-going, LBRY persistently offered and sold LBC as investment contracts in violation of Section 5(a) and 5(c) of the Securities Act. Based upon LBRY’s past conduct and future intentions to continue operating as before under the new name “Odysee,” there is a reasonable likelihood LBRY will violate Section 5 again. Second, LBRY unjustly enriched itself through its illegal offering, and the Court should order disgorgement, calculated according to the equitable principles identified in *Liu v. SEC*. Currently, the Commission and the Court lack sufficient information to make that calculation. LBRY’s submission lacks sufficient

detail of its gross receipts and relevant expenses. Lastly, the Court should order LBRY to pay a civil penalty equal to LBRY's gross pecuniary gain.

# **I. THE COURT SHOULD ENJOIN LBRY**

The Court should enjoin LBRY, including -- as its agent -- its new wholly-owned subsidiary Odysee, because there is a reasonable likelihood it will violate Section 5 again. Section 20(b) of the Securities Act provides for the imposition of injunctive relief preventing future violations of the securities laws upon a showing that a defendant has violated the securities laws and that there is a reasonable likelihood of future violations. 15 U.S.C. § 77t(b); *SEC v. Sargent*, 329 F.3d 34, 39 (1st Cir. 2003) (“The legal standard for issuing an injunction is “reasonable likelihood of recidivism, not an imminent threat of it.”). To determine the reasonable likelihood of any future violation, courts consider the totality of the circumstances surrounding the defendant and its violation of the securities laws and consider a number of factors, including: (1) the isolated or recurrent nature of the violation; (2) the egregiousness of the conduct; (3) the defendant's recognition of wrongful conduct; (4) whether the defendant will, owing to its business, be in a position to violate again; and (5) the sincerity of the defendant's assurances against future violations. *See, e.g., Sargent*, 329 F.3d at 39; *SEC v. Smith*, No. 14-cv-192-PB, 2015 WL 4067095, at \*9 (D.N.H. July 2, 2015). None of the factors are dispositive. *See SEC v. Muraca*, No. 17-cv-11400, 2019 WL 6619297, at \*8 (D. Mass. December 5, 2019) (enjoining currently incarcerated defendant based on nature of violations). “The existence of past violations may give rise to an inference that there will be future violations.” *SEC v. Enviro Bd. Corp.*, No. CV-16-6427-R, 2017 WL 4586335, \*4 (C.D. Cal. May 9, 2017).

Applying these factors, the Court should enter a permanent injunction restraining LBRY from violating Section 5(a) and 5(c) of the Securities Act and from participating, directly or

indirectly, in any unregistered crypto asset securities offering. *See Ex. 1* (proposed language of injunction). First, as found by the Court, LBRY’s illegal unregistered offering was a continuous effort conducted over more than five years, which took numerous forms. *SEC v. LBRY, Inc.*, -- F. Supp. 3d --, No. 21-cv-260-PB, 2022 WL 16744741, at \*2 (D.N.H. November 7, 2022).

LBRY offered and sold LBC as investment contracts to institutional investors, to investors through LBRY applications, to investors through crypto asset trading platforms, and to compensate and incentivize employees, contractors, users, software developers, and software testers. *Id.* LBRY concedes in its motion that it has sold more than 280 million LBC from its pre-mine. *See* Def.’s Memo, Dkt. No. 89 at 7. LBRY’s violations were not isolated incidents. They occurred regularly, perhaps daily, for the entire history of the company.

Despite its claims, LBRY’s misconduct occurred after this case was started on March 29, 2021. In its motion, LBRY claims that its “last sale of LBC occurred nearly two years ago - in or around February 2021 - and before the Commission filed its Complaint in this litigation.” *See* Def.’s Memo, Dkt. No. 89 at 14. LBRY’s claim contradicts the record in this case. As found by the Court, LBRY “sold more than 9.8 million LBC to the public directly through LBRY applications.” *LBRY*, -- F. Supp. 3d --, 2022 WL 16744741, at \*2 (citing SEC’s Stmt. of Undisputed Facts in Support of its Mot. for Sum. J. (“Stmt. of Fact”) ¶¶86-87). In its opinion, the Court was referring to LBRY’s sales of LBC made with the assistance of MoonPay, Inc. In November 2021, MoonPay produced to the Commission sales records showing that LBRY continued to sell LBC through at least November 2021. *See* Ex. 104 to SEC’s Stmt. of Facts, Dkt. No. 65-13, attached hereto as Ex. 2 (LBC sale summary). Plus, LBRY’s profit and loss statement from March 2021 – October 2021 shows LBRY made \$2.7 million from the sale of

LBC during that time. *See* Ex. 114 to SEC’s Stmt. of Facts, Dkt. No. 65-23, attached hereto as Ex. 3 (LBRY financial statement).

The evidence also shows that LBRY kept selling into 2022. For example, LBRY’s Chief Technology Officer testified in March 2022 that LBRY was then running the “MoonPay” server, which was used to sell LBC. *See* Ex. 4 (Excerpt from the Deposition Transcript of Alex Grintsvayg at 124:18-125:6 and Deposition Ex. 93). He also testified that in March 2022 LBRY was still selling LBC to him through its employee purchase program. *Id.* at 270:20-273:1. Plus, one of LBRY’s websites, Odysee.com, currently offers LBC. *See* Ex. 5 (Odysee.com printout). Despite LBRY’s claims, it does not appear LBRY has stopped selling LBC either through its applications, to its employees, or through its websites.

Second, while not involving fraud, LBRY’s misconduct is more serious than a simple unregistered offering. LBRY’s violation included offers and sales specifically intended to effect or alter the trading markets for LBC. LBRY’s offers and sales went beyond just selling its pre-mine. LBRY directed its agent to use its accounts to trade more than 7.4 billion LBC on multiple crypto asset trading platforms in an effort to influence the price. Using its market maker, LBRY traded more than nine times all the LBC currently in existence. *Compare* Ex. 6 (total LBC supply from coinmarketcap.com).

Third, LBRY has not recognized its conduct was unlawful.

Fourth, LBRY remains in a position to violate Section 5 today. It still operates, still possesses the ability to offer and sell unregistered crypto asset securities, and intends to keep operating and offering LBC. Towards the end of 2021, months after the Commission filed its complaint in this case, LBRY formed a new wholly-owned subsidiary called Odysee to run LBRY’s web application Odysee.com that uses the LBRY Network and LBRY Blockchain. *See*



Ex. 7 (Excerpt from the Deposition Transcript of Jeremy Kauffman testimony at 54:4-56:22). LBRY had developed and launched Odysee.com in 2020 to upgrade and replace its prior web application called LBRY.tv. *See* Ex. 4 at 190:16-17 (Grintsvayg Tr.); Ex. 11 (Odysee.com timeline). After forming Odysee, LBRY transferred the Odysee.com business, the assets associated with the business, and two-thirds of its employees to Odysee, but retained 100% ownership and control. *See* Ex. 5 to SEC's Stmt. of Facts, Dkt. No. 62-5, attached hereto as Ex. 8 ("LBRY in 2022"); Ex. 7 at 54:23-55:16 (Kauffman Tr.). LBRY has also been "loaning" money to Odysee, and has loaned more than \$1.6 million in the past year while this litigation has been on-going. *See* Ex. 1 to Kauffman Decl., Dkt. No. 89-3. At minimum, Odysee is either a part of LBRY or its agent, and, as such, Odysee is in active concert or participation with LBRY. As mentioned above, Odysee continues to offer LBC on its website and likely has a substantial amount of LBC to sell LBC through its rewards programs.

While LBRY professes its willingness to dissolve, its willingness does not extend to the largest part of its operation, Odysee. Recently, LBRY stated publicly that Odysee will continue to operate even after LBRY dissolves. *See* Ex. 9 (LBRY social media post). That means LBRY will continue its efforts to grow, promote, and develop the LBRY Network, just under a new name. LBRY cannot evade an injunction by transferring its operations mid-litigation to a new corporate subsidiary. *See* Fed. R. Civ. P. 65(d)(2) (injunctive relief extends to agents, servants, employees, and all persons in active concert or participation with it); *see also Hillsborough Invest. Corp. v. SEC*, 276 F.2d 665, 667-68 (1st Cir. 1960) (upholding permanent injunction requiring defendant to register securities after defendant used different forms of securities in attempt to evade preliminary injunction).

LBRY's offer to "burn" its pre-mine is also unavailing. LBRY does not need the specific LBC in its pre-mine to commit a future violation of Section 5. It could mine LBC or receive LBC from a third-party and then, in turn, offer and sell them as an investment contract like it did before. It could re-acquire the LBC securities it has sold and offer them again. It previously traded billions of LBC on crypto asset trading platforms and could do so again. It could offer and sell non-LBC crypto asset securities in violation of Section 5. There exists a low barrier to creating new crypto assets. Moreover, LBRY has not made any representations about Odysee's future offers of LBC from the LBC in its possession. LBRY's assurances are neither complete nor sincere, and an injunction is appropriate. *See Smith*, 2015 WL 4067095, at \*10 (finding reasonable likelihood where defendant sought to continue in the same line of work); *see also SEC v. Olins*, 762 F.Supp.2d 1193, 1196 (N.D. Cal. 2011 (finding reasonable likelihood of recidivism due to broad-based nature of Section 5 violations and intent to work in industry)).

The Commission seeks a permanent injunction restraining LBRY from violating Section 5 and from conducting unregistered offerings of crypto asset securities. LBRY flooded the market with hundreds of millions of crypto asset securities from its unregistered offering. That is LBRY's doing. LBRY did not provide those who acquired the securities with the information required by law so they could make informed decisions. In this case, the Commission simply wants LBRY's illegal unregistered offering to stop.<sup>1</sup> It is not seeking in this case an order directing LBRY to destroy securities or discontinue operations. For however long LBRY, including its agent Odysee, remains operating, it should comply with Section 5 and be enjoined from violating it. The Commission should not be required to closely monitor how LBRY is

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<sup>1</sup> To the extent other persons are violating the securities laws, the Commission also wants them to stop. But other misconduct – even that related to LBRY or LBC – is not part of this case. No other facts are developed nor are other parties before the Court.

handling crypto assets. *SEC v. Culpepper*, 270 F.2d 241, 250 (1st Cir. 1959) (affirming injunction where defendants’ sales of securities was difficult to police).

In contrast, the Commission is *not* seeking an order prohibiting all third-parties from buying or selling LBC. The two proposed amicus briefs filed with the Court seek orders from the Court outside the scope of the present case and controversy. They both focus on undefined “secondary market sales” and seek declaratory judgments about indeterminate future transactions involving anyone but LBRY. *Compare* Fed. R. Civ. P. 65(d)(2). With no stake in the present litigation about what LBRY should be enjoined from doing, their arguments quickly devolve into the theoretical. One concedes that any judicial “analyses of future LBC transactions” involving third-parties must “occur *in the future*.” Dkt. No. 92 at 4. The Court found that LBRY offered and sold more than 200 million LBC as investment contracts to others. The facts have not changed in the last month. Moreover, the Court’s analysis hinged on the economic realities of the transactions and the way in which LBRY made its offer and not on the subjective intent of any particular acquirer, like amicus petitioner Ms. Brockwell. In its order, the Court declined to address future offerings by LBRY. *LBRY*, -- F. Supp. 3d --, 2022 WL 16744741, at \*n.4. The Court should likewise decline to entertain the amicus briefs’ arguments about future offerings by third-parties.

## **II. THE COURT SHOULD ORDER DISGORGEMENT OF LBRY’S UNJUST ENRICHMENT**

Disgorgement is an authorized and appropriate remedy in this case to deprive LBRY of any illegally obtained gain. In enforcement actions, disgorgement is equal to a defendant’s unjust enrichment. The Securities Exchange Act of 1934 expressly authorizes the Court to grant disgorgement in enforcement actions “of any unjust enrichment by the person who received such unjust enrichment as a result” of their securities laws violation. 15 U.S.C. § 78u(d)(3), (7).

Disgorgement is a “profit-based measure of unjust enrichment” that is measured by the defendant’s “wrongful gain,” and is ordered to reflect the “foundational principle” of equity that “it would be inequitable that a wrongdoer should make a profit out of his own wrong.” *Liu v. SEC*, 140 S. Ct. 1936, 1943 (2020) (internal quotations omitted); *SEC v. Sargent*, 329 F.3d 34 (1st Cir. 2003) (disgorgement “is intended to deprive wrongdoers of profits they illegally obtained by violating the securities laws”).

As a form of equitable relief, disgorgement is meant to restore the “status quo,” and disgorgement should not exceed a wrongdoer’s net gain. *Liu*, 140 S. Ct. at 1942-43, 1949-50 (internal quotations omitted). As a result, “[c]ourts may not enter disgorgement awards that exceed the gains made upon any business or investment, when both the receipts and payments are taken into the account.” *Id.*, 140 S. Ct. at 1949-50 (quotation and citation omitted) (also citing Restatement (Third) of Restitution and Unjust Enrichment § 51, Comment h, at 216 for general rule that a “defendant is entitled to a deduction for all marginal costs incurred in producing the revenues that are subject to disgorgement.”). Thus, “courts must deduct legitimate expenses before ordering disgorgement....” *Liu*, 140 S. Ct. at 1950.

In calculating disgorgement, the amount of disgorgement “need only be a reasonable approximation of profits causally connected to the violation” and the “risk of uncertainty in calculating disgorgement should fall on the wrongdoer whose illegal conduct created that uncertainty.” *SEC v. Happ*, 392 F.3d 12, 31 (1st Cir. 2004); *SEC v. Navellier & Assocs, Inc.*, No. 17-cv-11633, 2021 WL 5072975, \*1-2 (D. Mass. Sept. 19, 2021) (applying this standard after *Liu*). Once the SEC carries its initial burden, the “burden shifts to the defendant to demonstrate that the disgorgement figure is not a reasonable approximation.” *SEC v. Heartland Group Ventures, LLC*, No. 4:21-cv-01310-O, 2022 WL 1527542, at 2 (N.D. Tex. March 18, 2022)

(citations and quotations omitted); *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1232 (D.C. Cir. 1989) (defendant bears burden to “clearly demonstrate that the disgorgement figure was not a reasonable approximation.”). “All doubts concerning the amount of disgorgement must be resolved against the violator.” *SEC v. Sierra Brokerage Servs. Inc.*, 608 F. Supp. 2d 923, 968 (S.D. Ohio 2009), *aff’d*, 712 F.3d 321 (6th Cir. 2013). Here, LBRY bears the risk on uncertainty and the burden of establishing the inaccuracy of a reasonable approximation.

**A. LBRY’s Gross Receipts Are At Least Approximately \$22 Million**

LBRY’s gross receipts for its Section 5 violation equal the value it received in exchange for its sale of 280 million LBC from its pre-mine and from its market making activity on the multiple crypto asset trading platforms. The Commission currently lacks from LBRY sufficient information to calculate this amount precisely, but approximates it totals more than \$22 million.

LBRY pre-mined 400 million LBC in October 2015 before it launched the LBRY blockchain in June 2016. According to LBRY’s motion, it has over time sold more than 280 million LBC (400 million minus the 119.5 million LBC reportedly still in its custody). In addition to originally selling LBC from its pre-mine, LBRY bought and sold more than 7.4 billion LBC in its accounts on crypto trading platforms when it enlisted a market maker to influence the markets.

According to LBRY’s interrogatory answers, as of September 30, 2021, LBRY had received a total of \$14,668,794 in cash and crypto assets from its sales of LBC. *See* Ex. 15 to SEC’s Stmt. of Facts, Dkt. No. 62-15, attached hereto as Ex. 10 at 15. It is unclear what sales of LBC are represented by LBRY’s interrogatory answer, but it likely understates LBRY’s proceeds. For example, as mentioned above, LBRY was still selling securities to buyers after September 30,

2021 through its applications using MoonPay and was still selling to its own employees. *Supra* page 3, *see* Ex. 2 (LBC sale summary).

As the Court found, LBRY also offered and sold LBC to users, software testers, software developers, and contractors in exchange for their time, labor, and services. *LBRY*, -- F. Supp. 3d --, 2022 WL 16744741, at \*2. From 2015 through the present, LBRY promised and issued more than 142 million LBC through these programs.<sup>2</sup> *Id.* The time, labor, and services, LBRY received in exchange for the securities it sold can be valued at the then current market value of LBC. *See* Restatement (Third) of Restitution and Unjust Enrichment §51(2) (“value for restitution purposes of benefits obtained by the misconduct of the defendant, culpable or otherwise, is not less than their market value.”).

LBRY has not produced information regarding when the sales to users, software testers, software developers, and contractors exactly occurred. Using the limited data from LBRY, the Commission estimates LBRY gained \$7,483,177 in value from these sales. This amount was calculated using the average market price of LBC during the respective quarterly periods during which LBRY sold tranches of LBC for those purposes.<sup>3</sup> The Commission has quarterly data on approximately 91 million LBC for these types of sales for the period July 2016 through September 2020. The Commission lacks data regarding when the remaining 51 million LBC were sold. Consequently, the average market price for the period from October 2020 until November 19, 2021 (the date of LBRY’s interrogatory answers) was applied to the balance.

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<sup>2</sup> Nearly all of the securities were sold within the 5-year statute of limitations for disgorgement in this case. The complaint was filed on March 29, 2021, and it appears LBRY offered and sold a relatively small number of LBC to beta testers, consultants, and others prior to March 29, 2016. The LBC for these early sales remained in LBRY’s possession until at least July 2016 when LBRY began transferring LBC. The maximum number of sales prior to March 29, 2016 would likely be the total number of LBC that LBRY reported transferring in the 3<sup>rd</sup> quarter of 2016, which equaled 267,778 LBC. We did not include any of the 267,778 LBC in the approximation of gross proceeds.

<sup>3</sup> The average market price for LBC for the periods was calculated using price data provided by LBRY’s expert to the Commission during discovery.

In sum, on these limited facts, the gross receipts from LBRY's illegal offering equals at least \$22,151,971.

**B. LBRY's Legitimate Business Expenses Are Unknown**

LBRY does not provide the Court with sufficient information to determine the amount of any legitimate business expenses. In its motion, LBRY does not identify any expenses. One of its exhibits putatively lists all profits and liabilities since May 2016, but LBRY does not explain the significance of that date or why all expenses running from May 2016 should be deducted from LBRY's gross receipts. *See* Ex. 2 to Kauffman Decl., Dkt. No. 89-4. Indeed, the timing of expenses is relevant to the analysis, but LBRY does not identify when expenses occurred. Moreover, LBRY's profit and loss statement includes a category called "Other expenses" and it amounts to nearly \$3 million. *Id.* LBRY provides no explanation what that is, and the affidavit of Jeremy Kauffman submitted along with the motion does not even acknowledge those expenses. *See* Kauffman Decl., Dkt. No. 89-2.

Similarly, LBRY does not identify any costs associated with its illegal offer. It does not identify how much it paid MoonPay, Altonomy, or any other agent to assist with the unregistered offering. It does not identify any promotion or advertising costs associated with its unregistered offering. Courts applying *Liu* have determined that various different types of expenses are not deductible from gross receipts under the law of unjust enrichment. In short, just because expenses are related to a non-fraudulent business does not make them *per se* deductible. The Commission, and, in turn, the Court lack the requisite information to ascertain how much should be deducted. As a result, LBRY has not sustained its burden and any risk of uncertainty rightfully falls on it. *Happ*, 392 F.3d at 31 ("risk of uncertainty in calculating disgorgement should fall on the wrongdoer whose illegal conduct created that uncertainty.").

Lastly, even under LBRY's theory that all expenses are deductible, disgorgement remains available. LBRY currently has cash in its bank accounts which represent ill-gotten gains from sales of LBC that LBRY has not yet spent. Under LBRY's proposed theory, LBRY was unjustly enriched by that money and it should be disgorged. LBRY has not provided a consolidated balance sheet showing its assets combined with those of its wholly-owned subsidiary, Odysee. LBRY has "loaned" Odysee more than \$1.6 million from the proceeds of LBC sales within the last year. Under LBRY's proposed theory, if Odysee has retained any money in its bank accounts, those are likewise subject to disgorgement. Without discovery of Odysee's financials, the Court cannot calculate disgorgement even under LBRY's theory.<sup>4</sup> Given the practical realities here and whether any additional information from LBRY is forthcoming, it should be LBRY that bears the risk of any uncertainty.

### **III. LBRY's PENALTY SHOULD BE SUFFICIENT TO DETER WRONGDOING**

The Court should impose a penalty on LBRY equal to its gross pecuniary gain in order to deter LBRY and others from conducting illegal unregistered offerings. Section 20(d)(1) of the Securities Act authorizes civil penalties in federal court proceedings against any person who violates the Securities Act. These penalties are intended to "punish and deter securities law violations." *SEC v. Smith*, No. 14-cv-192-PB, 2015 WL 5793999, at \*1 (D.N.H. October 1, 2015) (quotation omitted). Imposing a civil monetary penalty may follow a three-step process: "(1) set the appropriate tier based on the defendant's conduct, (2) determine the statutory maximum penalty from the defendant's gross pecuniary gain and number of 'violations,' and (3) exercise discretion to assess an appropriate penalty within that statutory range." *Id.* at \*2.

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<sup>4</sup> A disgorgement award should include prejudgment interest. *See Smith*, 2015 WL 4067095, at \*10 (awarding prejudgment interest to stop defendant "from receiving the benefit of what would otherwise be an interest-free loan.")



Following the process outlined in *Smith*, the first step is to determine the right penalty tier. Section 20(d) of the Securities Act sets forth three penalty tiers. In the first tier, penalties are imposed for “violations” of the statute, without more. *See* 15 U.S.C. § 77t(d)(2)(A). The second tier covers securities violations which involve “fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.” *Id.* at § 77t(d)(2)(B). Finally, third tier violations are second tier securities violations which additionally “directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.” *Id.* at § 77t(d)(2)(C). The statutory penalty amount, adjusted for inflation, for a violation by LBRY of each tier equals: 1<sup>st</sup> tier - \$103,591; 2<sup>nd</sup> tier - \$517,955; and 3<sup>rd</sup> tier - \$1,035,909.

Here, LBRY for years – even in 2021 and 2022 after being sued – recklessly disregarded the regulatory requirement of registering its offering. Thus, a second (or perhaps third) tier penalty is available despite LBRY not being charged with fraud. Regardless which tier is most applicable though, the Court may, under all three tiers, impose a penalty up to the “gross amount of pecuniary gain to such defendant as a result of” the defendant’s violation.

The second step is to determine the maximum penalty. As detailed above, LBRY’s gross pecuniary gain equals approximately \$22,151,971. The Court has broad discretion in determining the number of “violations” under the statute. *Happ*, 392, F.3d at 32; *SEC v. Duncan*, No. 3:19-cv-11735, 2022 WL 952266, at \*4 (D. Mass. March 30, 2022) (noting statute does not define “violation”). It could be the number of buyers or the number of different ways LBRY sold LBC. The simplest approach is to define the maximum penalty as LBRY’s gross pecuniary gain for one violation, taking the years-long illegal unregistered offering as a whole.

The third step is to choose the appropriate penalty within the range set by the first two steps. A court may consider several factors in evaluating whether or not to assess civil penalties,

such as: (1) the egregiousness of the violation; (2) the willingness to admit wrongdoing; (3) the isolated or repeated nature of the violations; (4) the degree of scienter involved; (5) the defendant's willingness to cooperate with the authorities; and (6) the defendant's current financial situation. *SEC v. Knox*, No. 18-12058-RGS, 2022 WL 1912877, at \*3 (D. Mass. June 3, 2022). Courts also consider the extent to which other remedies ordered, such as disgorgement, may indirectly impact the desired deterrent effect of a penalty. *See generally SEC v. Harkins*, No. 19-cv-02418, 2022 WL 3597453, at \*17-18 (D. Colo. August 23, 2022) (noting that, coupled with full disgorgement, a penalty of half defendant's gross pecuniary gain was sufficient deterrence).

Applying these factors, a penalty equal to LBRY's full pecuniary gain of \$22,151,971 is fair and reasonable under the circumstances. Many of these factors were discussed above in Part I about injunctive relief, and we incorporate the discussion herein. Additional considerations warrant penalizing LBRY for its gross pecuniary gain. First, LBRY has not cooperated with the authorities. It ignored an investigation subpoena and failed to respond to information requests.

Second, LBRY's total liability needs to deter it and others from conducting illegal unregistered offers. The Court should impose a penalty on LBRY that makes violating the securities law unprofitable. LBRY and all other violators receive a windfall if they are able to raise tens of millions of dollars illegally and only pay a \$50,000 penalty as LBRY proposes. Such a small penalty relative to the size of the wrongdoing does not deter, it incentivizes misconduct. Wrongdoers will view their potential liability as just another expense to be priced into the cost of doing business. Especially if disgorgement is low, to deter LBRY and others, the Court should impose a penalty of LBRY's gross pecuniary gain of \$22,151,971. *Compare SEC v. Mahabub*, 411 F.Supp.3d 1163, 1175-76 (D. Colo. 2019) (imposing penalty equal to defendants' gross pecuniary gain from offerings due to violations of anti-fraud provisions and

Section 5 after Court awarded disgorgement in same amount), *affirmed by SEC v. GenAudio Inc.*, 32 F.4th 902, 954-55 (10th Cir. April 26, 2022).

A mitigating factor here is LBRY's current financial situation. Even though LBRY has yet to detail its full financial situation, including Odysee, LBRY likely does not have \$22 million in liquid assets. The Court may factor that into account. LBRY's ability to pay, however, is one factor among many, and is not dispositive. There is nothing in the securities laws barring the Court from imposing a penalty on LBRY greater than its current ability to pay. *GenAudio*, 32 F.4th at 955 (*citing SEC v. Warren*, 534 F.3d 1368, 1370 (11th Cir. 2008)). Moreover, reducing LBRY's penalty to an amount it can pay today would result in unfair and potentially absurd results. It would reward wrongdoers for dissipating their assets. Those who violated Section 5 in the same manner and raised the same amount of money illegally could face significantly different penalties based upon how quickly they spent the proceeds. Such a reduction would also ignore LBRY's stated intent to continue operating as Odysee and its ability to pay a penalty from future revenue generated by advertising and fees. Lastly, when balancing LBRY's current ability to pay against the need to deter, the Court should weigh deterrence more heavily. Reducing LBRY's penalty to an amount still in excess of its ability to pay likely does LBRY no practical benefit. Reducing LBRY's penalty to the potentially small amount it can readily pay now will not deter others from deciding in the future to conduct an illegal unregistered offering.

In conclusion, the Court should impose a penalty equal to LBRY's gross pecuniary gain; enjoin LBRY from violating Section 5 and from unregistered offerings of crypto asset securities; and order disgorgement and prejudgment interest in an amount appropriate under the law.

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Dated: December 19, 2022

Respectfully submitted,

**SECURITIES AND EXCHANGE  
COMMISSION**

By its Attorneys,

/s/ Peter Bryan Moores

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**CERTIFICATE OF SERVICE**

I hereby certify that, on December 19, 2022, I caused true and correct copies of the foregoing to be served on counsel of record for all parties that have appeared to date through the Court's CM/ECF system.

/s/ Peter Bryan Moores

Peter Bryan Moores

**Proposed Language for Permanent Injunction**

**I.**

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that LBRY and LBRY's agents, servants, employees, attorneys, and all persons in active concert or participation with it who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 5 of the Securities Act [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or
- (c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

**II.**

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that LBRY and LBRY's agents, servants, employees, attorneys, and all persons in active concert or participation with it who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from participating, directly or indirectly, in any unregistered crypto asset securities offering.

**SUMMARY OF DOCUMENT BATES NUMBERED MOONPAY000001 (pursuant to Fed. R. Evid. 1006)**

The data table below represents a summary (pursuant to Fed. R. Evid. 1006) of the document Bates numbered MoonPay000001 (2 pages of which have been excerpted and are attached here).

MoonPay000001 is an Excel spreadsheet of thousands of rows of daily transactions MoonPay executed for LBRY. The data below is a true and accurate total of the daily transactions of LBC in that document, compiled using the summation function of Excel.

LBRY sold more than 9.8 million LBC with MoonPay's assistance from May 2020 through November 2021. The totals are as follows:

DATE	AMOUNT LBC SOLD
2020	3,602,787.32
2021	6,278,434.83
TOTAL	9,881,222.15

Transaction	Transaction Created Date	Filtered Transaction - Crypto Amount LE	Filtered Transaction - Fiat amount US
	2021-01-01	208.863	\$24.27
	2021-01-01	191.47	\$24.27
	2021-01-01	200.036	\$24.26
	2021-01-01	1977.488	\$273.42
	2021-01-01	261.079	\$30.33
	2021-01-01	1030.165	\$136.72
	2021-01-01	197.871	\$22.84
	2021-01-01	14969.883	\$1,700.00
	2021-01-01	1176.284	\$121.32
	2021-01-01	1718.049	\$243.43
	2021-01-01	208.863	\$24.27
	2021-01-01	1000.18	\$121.34
	2021-01-01	6036.544	\$683.80
	2021-01-01	458.197	\$53.37
	2021-01-01	1890.751	\$243.08
	2021-01-01	144.286	\$20.00
	2021-01-01	206.49	\$24.62
	2021-01-01	2023.07	\$235.67
	2021-01-01	1397.996	\$122.15
	2021-01-01	207.667	\$24.35
	2021-01-01	5354.802	\$606.58
	2021-01-01	1718.049	\$243.43
	2021-01-02	371.134	\$37.83
	2021-01-02	250.172	\$24.27
	2021-01-02	251.909	\$24.27
	2021-01-02	1019.429	\$106.89
	2021-01-02	228.939	\$24.27
	2021-01-02	177.523	\$23.17
	2021-01-02	3651.261	\$364.05
	2021-01-02	391.439	\$50.30
	2021-01-02	357.583	\$34.18
	2021-01-02	1012.323	\$105.85
	2021-01-02	2567.404	\$242.70
	2021-01-02	235.561	\$24.27
	2021-01-02	2448.365	\$242.70
	2021-01-02	2395.186	\$242.70
	2021-01-02	2554.274	\$243.11
	2021-01-02	239.519	\$24.27
	2021-01-02	596.442	\$60.78
	2021-01-02	246.438	\$24.23
	2021-01-02	232.823	\$24.27
	2021-01-03	11709.005	\$1,213.50
	2021-01-03	553.544	\$61.20
	2021-01-03	2835.5	\$304.40
	2021-01-03	591.653	\$60.68
	2021-01-03	200.479	\$23.57
	2021-01-03	229.342	\$24.27



2021-01-03	1859.032	\$200.00
2021-01-03	1526.105	\$157.76
2021-01-03	979.904	\$112.35
2021-01-03	1595.571	\$178.15
2021-01-03	414.727	\$57.01
2021-01-03	1065.475	\$114.02
2021-01-03	215.907	\$24.47
2021-01-03	365.78	\$41.26
2021-01-03	2886.519	\$303.38
2021-01-03	189.545	\$20.00
2021-01-03	176.259	\$24.23
2021-01-03	3145.7	\$373.51
2021-01-03	1077.645	\$121.35
2021-01-03	3180.033	\$356.30
2021-01-03	2282.527	\$242.70
2021-01-03	1942.413	\$242.70
2021-01-04	691.781	\$61.31
2021-01-04	1464.809	\$122.97
2021-01-04	1308.106	\$122.85
2021-01-04	246.921	\$22.70
2021-01-04	601.772	\$65.92
2021-01-04	1162.584	\$122.44
2021-01-04	648.496	\$61.22
2021-01-04	252.104	\$22.71
2021-01-04	2760.45	\$245.34
2021-01-04	264.799	\$24.21
2021-01-04	7023.796	\$614.96
2021-01-04	701.644	\$61.46
2021-01-04	243.491	\$24.54
2021-01-05	231.353	\$22.77
2021-01-05	1845.454	\$184.16
2021-01-05	237.952	\$23.22
2021-01-05	244.592	\$24.30
2021-01-05	231.03	\$22.76
2021-01-05	646.931	\$61.38
2021-01-05	300.001	\$31.28
2021-01-05	406.105	\$40.00
2021-01-05	257.105	\$24.55
2021-01-05	231.324	\$22.75
2021-01-05	238.76	\$24.59
2021-01-05	251.525	\$24.30
2021-01-05	1308.542	\$122.83
2021-01-05	642.612	\$61.35
2021-01-05	2496.057	\$245.26
2021-01-06	5216.605	\$493.40
2021-01-06	2571.715	\$241.67
2021-01-06	1349.37	\$142.96
2021-01-06	633.895	\$61.50

## EXHIBIT

3

21-cv-00260-PB

## LBRY Inc

## Profit and Loss

March - October, 2021

EXHIBIT

114

21-cv-00260-PB

	TOTAL
Income	
Sale of LBC	2,702,560.80
Sales of Product Income	3,005.07
Service/Fee Income	9,099.98
Services	7,610.26
<b>Total Income</b>	<b>\$2,722,276.11</b>
GROSS PROFIT	<b>\$2,722,276.11</b>
Expenses	
Advertising	26,605.10
Bank Charges	5.95
Charitable Contributions	2,181.09
Commissions & fees	46,000.00
Computer & Internet	31,817.38
Creator LBC Buyback	40,185.00
Insurance	2,732.40
International Employee & Freelance	510,512.55
<b>Privileged</b>	
Meals and Entertainment	203.12
Office Expenses	8,780.96
Payroll Expenses	
Taxes	91,663.89
Wages	1,146,725.19
<b>Total Payroll Expenses</b>	<b>1,238,389.08</b>
PR Firm Fees	110,000.00
Promotional	346.42
Reimbursements	20,837.17
Rent or Lease	25,388.97
Servers	592,386.96
Taxes & Licenses	8,111.14
Travel	10,410.08
Travel Meals	122.81
Utilities & SaaS	111,519.99
<b>Total Expenses</b>	<b>\$4,162,379.27</b>
NET OPERATING INCOME	<b>\$ -1,440,103.16</b>
Other Income	
Interest Earned	24.23
Other Ordinary Income	651.44
<b>Total Other Income</b>	<b>\$675.67</b>
Other Expenses	
Unrealized Gain or Loss	0.00
<b>Total Other Expenses</b>	<b>\$0.00</b>
NET OTHER INCOME	<b>\$675.67</b>
NET INCOME	<b>\$ -1,439,427.49</b>

EXHIBIT

4

21-cv-00260-PB

CONFIDENTIAL

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEW HAMPSHIRE

3  
4 SECURITIES AND EXCHANGE ) Civil Action No.  
COMMISSION, ) 1:21-cv-00260-PB  
5 )  
Plaintiff, )  
6 ) VOLUME 1  
vs. ) (Pages 1 to 283)  
7 )  
LBRY, INC., )  
8 )  
Defendant. )  
9 )  
10  
11

12 CONFIDENTIAL VIDEOTAPED DEPOSITION OF

13 ALEX GRINTSVAYG

14 1155 AVENUE OF THE AMERICAS

15 NEW YORK, NEW YORK

16 THURSDAY, MARCH 17, 2022

17  
18  
19  
20  
21  
22  
23 REPORTED BY:

24 ELBIA BAIRE

25 JOB NO. 220317LHR

1

GRADILLAS COURT REPORTERS  
(424) 239-2800

**CONFIDENTIAL**

01:05 1 A. I'm guessing.

2 Q. Is it somewhere recorded on the  
3 blockchain, the number of videos that LBRY is  
4 hosting on its servers?

01:05 5 MR. DIXON: Objection as to form.

6 A. No.

7 Q. In terms of the -- not the number of  
8 files, but the memory, is that something that --  
9 total memory space of content that LBRY is

01:06 10 hosting on its servers, is that recorded  
11 anywhere on the blockchain?

12 MR. DIXON: Objection as to form.

13 A. No.

14 MR. DIXON: Are we at a breaking  
01:06 15 point for lunch? We're past 1:00.

16 MR. MOORES: Yeah. I just want to  
17 finish up this document.

18 Q. So looking back at Exhibit number 93,  
19 what is LBRY net hyphen EU?

01:06 20 A. It's the SDK. It's running in  
21 Europe.

22 Q. Is that the same for LBRY net U.S.  
23 east and U.S. west, it refers to the SDK that  
24 LBRY is running in those locations?

01:06 25 A. Yes.

**CONFIDENTIAL**

01:06 1 Q. What is MoonPay?

2 A. MoonPay is a service that lets --

3 that -- it sends people LBC.

4 Q. And why is MoonPay listed here under

01:07 5 LBRY services?

6 A. It's a server that we run.

7 Q. Is the reflector here on Exhibit

8 number 93 referring to the reflector cylinder in

9 your diagram on Exhibit 91?

01:07 10 A. I think so.

11 Q. What is SPV 1?

12 A. It's a -- it's a wallet server --

13 Q. It's a wallet server as we talked

14 about on Exhibit number 92?

01:08 15 A. Yes.

16 Q. And are there six different wallet

17 servers that are all listed here on UptimeRobot?

18 A. Are there six different wallet

19 servers?

01:08 20 Q. Right.

21 So there's SPV 1, SPV 13, SPV 14, SPV

22 15, SPV 17 and SPV 18 all listed on UptimeRobot

23 on Exhibit number 93.

24 So are those all referring to wallet

01:08 25 servers?

**CONFIDENTIAL**

03:43 1 leadership team?

2 MR. DIXON: Objection as to form.

3 A. Maybe.

4 Q. Are you authorized to shut down an  
03:43 5 application?

6 A. Yes.

7 Q. But it wasn't you who made the  
8 decision to shut down LBRY TV?

9 A. I don't remember making that  
03:43 10 decision.

11 Q. Who else is authorized at LBRY to  
12 shut down any application?

13 A. It could be the leadership team. It  
14 could be Jeremy. It could be Julian. Could be  
03:44 15 someone else.

16 Q. Why was LBRY TV shut down?

17 A. It was replaced by Odysee.

18 Q. What is different between -- or what  
19 was different at the time Odysee replaced it  
03:44 20 between LBRY TV and Odysee?

21 A. The branding, the marketing.

22 Q. In terms of functionality, what was  
23 different between LBRY TV and Odysee at the time  
24 that Odysee replaced LBRY TV?

03:44 25 MR. DIXON: Objection as to form.

**CONFIDENTIAL**

06:10 1 Q. Who is Liam Cardenas?

2 A. He used to work for LBRY.

3 MR. MOORES: For the record,

4 C-A-R-D-E-N-A-S.

06:10 5 Q. Who is Travis Eden?

6 A. He used to work for LBRY.

7 Q. Who's Xander Luciano?

8 A. He used to work for Odysee.

9 Q. Who is Paul Webb?

06:10 10 A. He used to work for LBRY.

11 Q. Who is Anthony Mayfield?

12 A. I believe he works for LBRY -- for

13 Odysee.

14 Q. Who is Igor Gassmann?

06:10 15 A. He used to work for LBRY.

16 Q. Who is Zhu Dung Li (phonetic)?

17 A. I think that's Roy.

18 Q. And who is Johnny Nelson?

19 A. He works for Odysee.

06:11 20 Q. Have you ever participated in a LBRY

21 program by which you purchased LBC?

22 A. Yes.

23 Q. When did you first participate?

24 A. Sometime last year, I believe.

06:11 25 Q. In 2021?

## CONFIDENTIAL

06:11 1 A. I believe so.

2 Q. Are you still participating in a

3 employee LBC purchase program?

4 A. Yes.

06:11 5 Q. And can you describe for me how that

6 program works?

7 A. Every month, LBRY takes \$50 out of my

8 paycheck and sends me \$50 worth of LBC.

9 Q. How was the price set?

06:12 10 A. I believe it's the market price.

11 Q. Do you know?

12 A. Um -- yes. I think that's it. Or

13 maybe there's some kind of discount or

14 something. I'm not sure.

06:12 15 Q. Did you sign any agreement when you

16 began the -- when you purchased -- first

17 purchased to get into the program?

18 A. I don't remember doing that.

19 Q. Sign off on anything --

06:12 20 A. I don't think so.

21 Q. -- to have them take money out of

22 your paycheck?

23 A. No, I don't think so. Like I can't

24 remember doing that.

06:12 25 Q. Did you at least orally agree to it?



CONFIDENTIAL

06:13 1 A. Yes.

2 Q. I mean, so have you ever heard of an

3 opt-in versus opt-out program?

4 A. Yes.

06:13 5 Q. Is the LBC employee purchase program

6 an opt-out program or opt-in program?

7 A. Opt-in.

8 Q. So you opted in?

9 A. Yes.

06:13 10 Q. Is there restriction on your usage of

11 the LBC?

12 A. Not that I know of.

13 Q. Are there requirements for how you

14 are to use the LBC?

06:13 15 A. Not that I know of.

16 Q. Why did you decide to participate in

17 the program?

18 A. I'm not sure.

19 Q. The program's been around for a few

06:13 20 years at least, right?

21 A. Yes.

22 Q. And why did you not participate

23 earlier?

24 A. I don't remember.

06:14 25 Q. How -- what have you done with the

**CONFIDENTIAL**

06:14 1 LBC that you have purchased in the LBC employee  
2 purchase program?

3 A. Nothing.

4 Q. It sits in your digital wallet?

06:14 5 A. Yes.

6 Q. Why have you done nothing with it?

7 A. I don't know.

8 Q. Do you own LBC that you otherwise  
9 acquired?

06:14 10 A. Yes.

11 Q. How did you acquire that LBC?

12 A. From LBRY.

13 Q. When did you acquire the LBC from  
14 LBRY?

06:15 15 A. I don't remember.

16 Q. Did you pay for it?

17 A. No.

18 Q. LBRY just gave it to you?

19 A. Yes.

06:15 20 Q. Was it for all the hard work you've  
21 been doing or like a bonus?

22 A. No.

23 Q. Was it a clerical error? You somehow  
24 got it and they don't even know about it or --

06:15 25 A. No.

2/14/22, 3:43 PM

LBRY Services

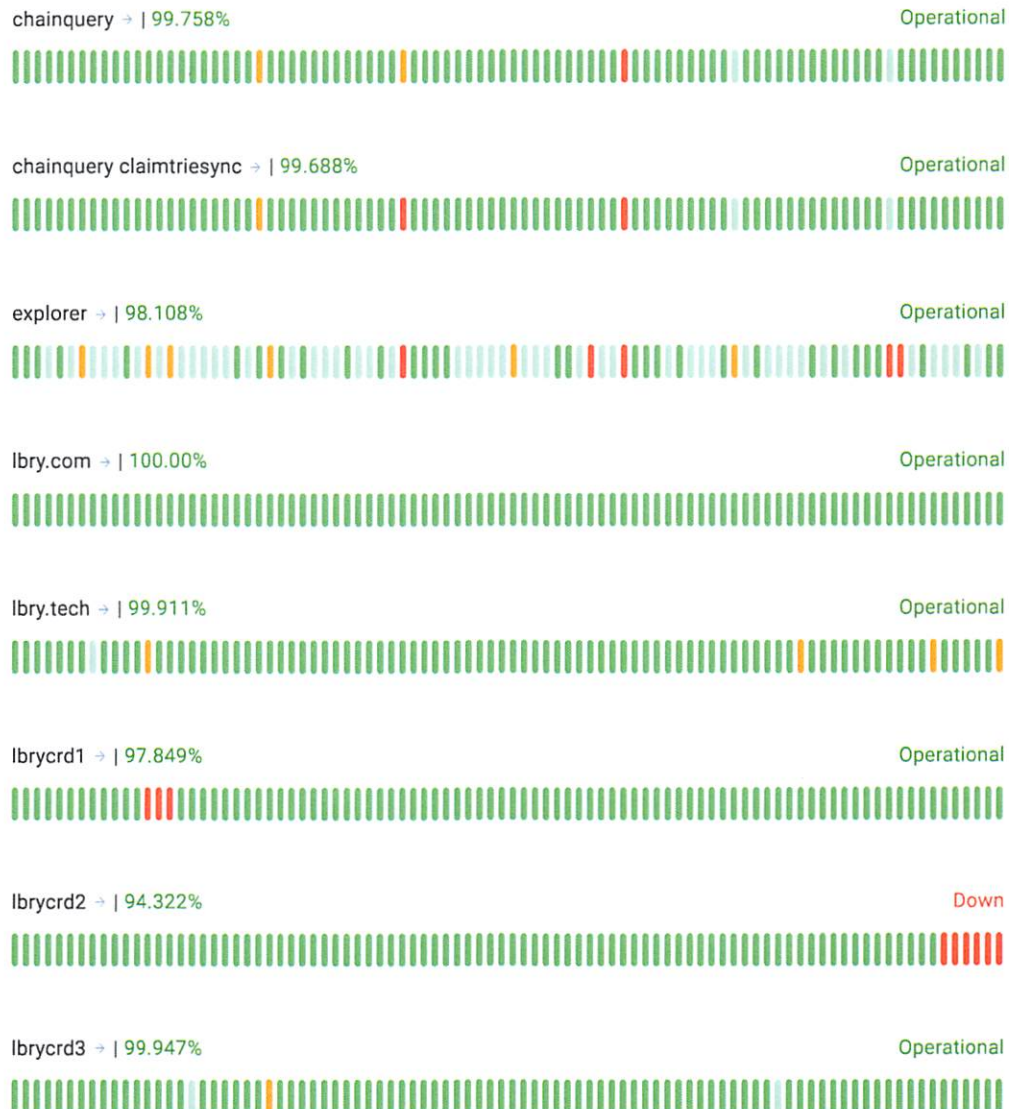
## LBRY Services

Service status

Some systems down



## Services





2/14/22, 3:43 PM

LBRY Services

[Privacy policy](#) | [Terms of Service](#) Powered by • **UptimeRobot**



Monetization &amp; Rewards

Rewards

Types of Rewards

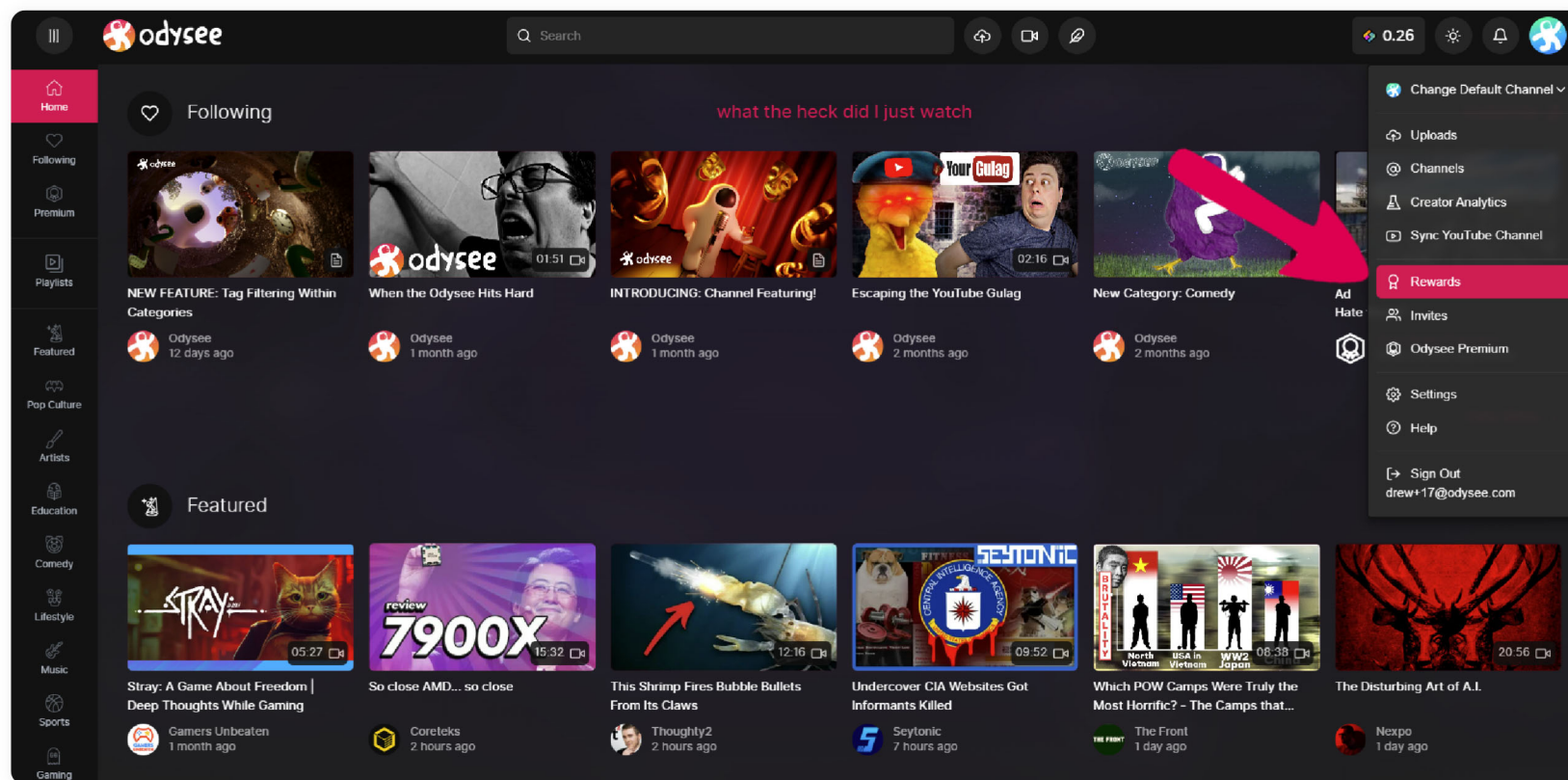
EXHIBIT

5

21-cv-00260-PB

# Types of Rewards

To view the rewards page, click the avatar icon at the top right corner of the screen and select **Rewards** in the drop down menu.



The top portion of the screen will show the list of rewards offered. These are:

- **View Master:** This reward is given based on the total number of videos watched since joining Odysee. To prevent abuse, only 10 videos per day will be counted.
- **Coveted Creator:** This reward is given based on the total number of verified followers (followers with verified accounts) your channel has.
- **The Journey:** This reward is given for following creators.

- **Weekly Watch Reward:** This reward is given for watching videos for at least 3 days in a given week.
- **Favorite Five:** This reward is given for reposting content from 5 different creators.
- **Custom Code:** If you've received a custom rewards code from a creator, this is where you can enter it for LBC.
- **Invites:** You can earn LBC simply for inviting others onto Odysee. For more information, click ahead to the next section.

 [Suggest a change](#)

[Monetization & Rewards](#)[Earnings Per View](#)[Overview](#)

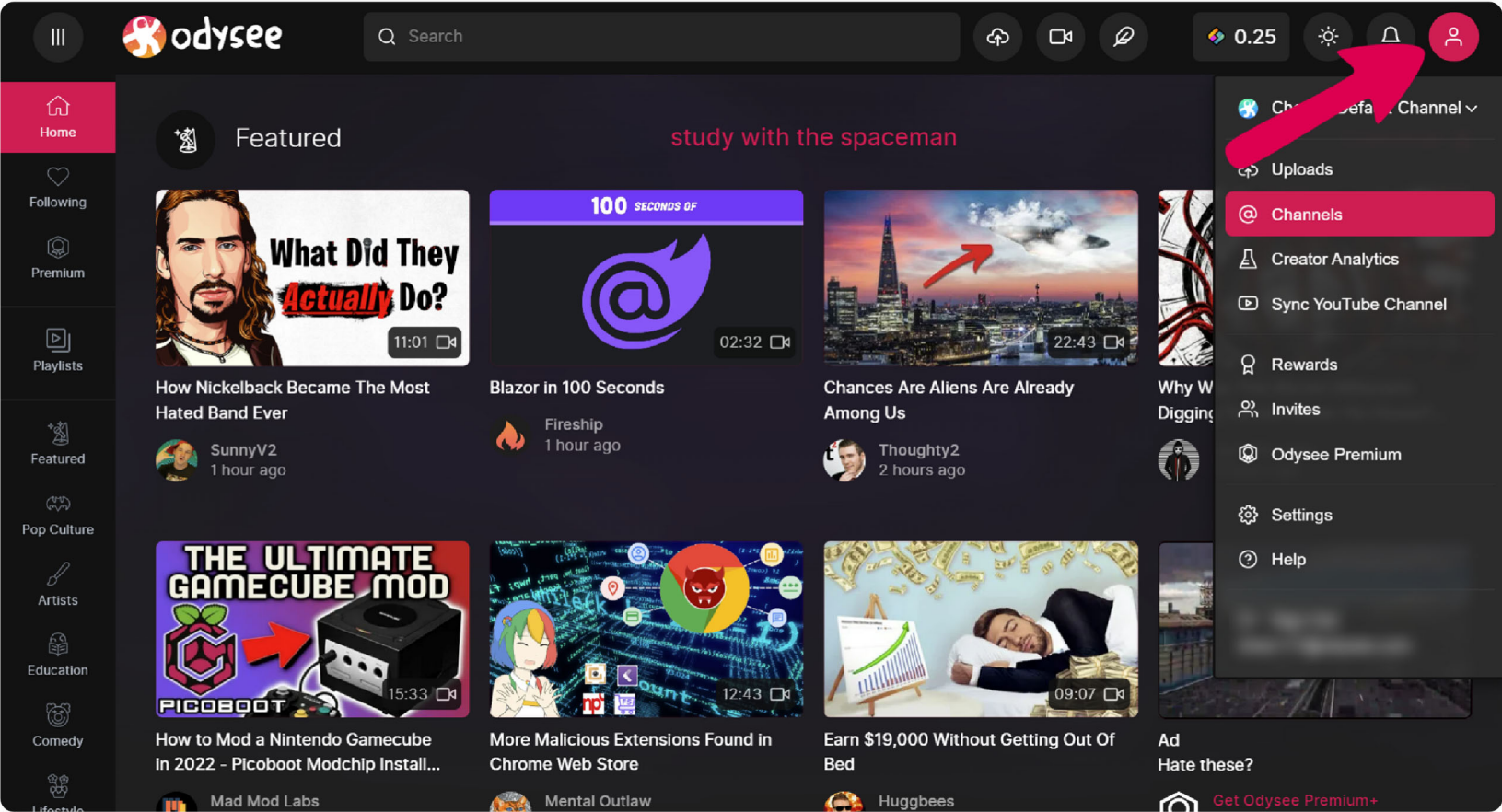
# Overview

View rewards on Odysee give creators LBC earnings per each verified view. A verified view is a view from a verified user. This means that we've verified they're a real person, in order to prevent rewards abuse. As well for preventing abuse, only the first 7 views from a verified user each day will be monetized for creators.

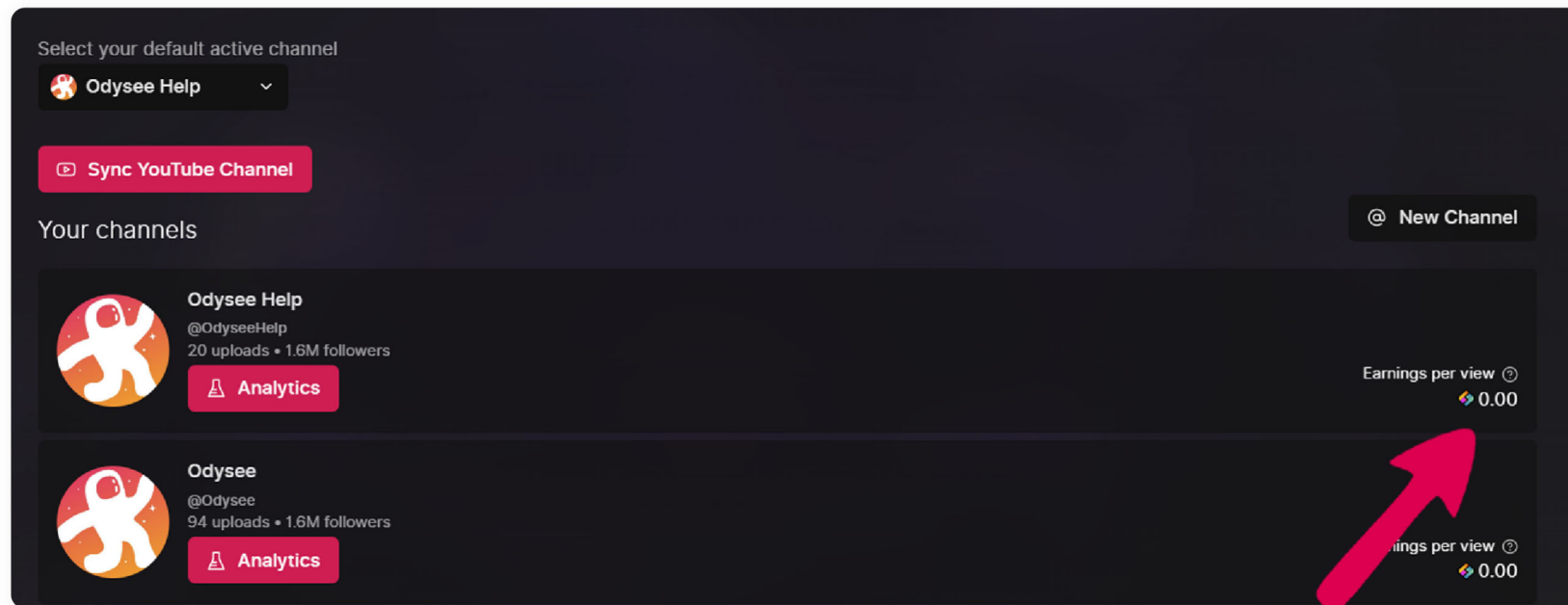
## How Much Do I Earn Per View?

To check your earnings per view, navigate to the channels page by clicking the profile picture icon and selecting **Channels** in the drop down menu.





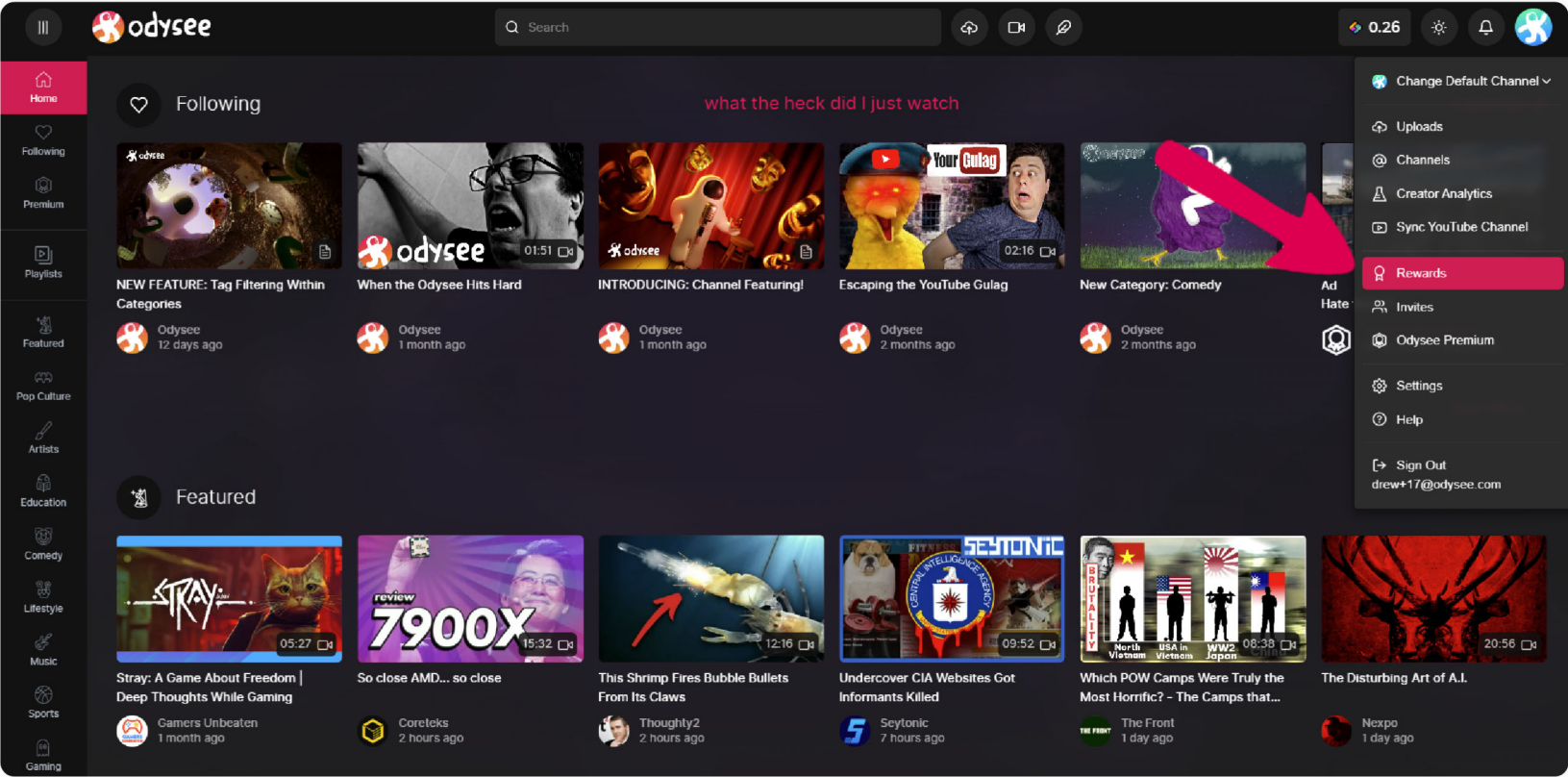
Your earnings per view will show to the right of your channel.



Note: Your rate is subject to change and is based on a number of variables including average watch time, average view count, type of content, engagement, creator location, and price of EBC.


## Tracking Earnings

Click the profile picture icon at the top right corner and select **Rewards**



From this page, earned view rewards will show under **Claimed Rewards** as *Content View Tips*.


### Invites

Earn  1 for inviting a friend, an enemy, a frenemy, or an enefriend. Everyone needs content freedom.

Go To Invites

### Claimed Rewards

Reward history is tied to your email. In case of lost or multiple wallets, your balance may differ from the amounts claimed

Title		Transaction	Date
The Journey L1: The Adventure Begins	0.01	f6e3d5e	September 13, 2022 2:06 PM
Welcome to Odyssey!	0.1	d94857f	August 5, 2022 3:15 PM
Email Verified	0.1	869ecce	August 5, 2022 3:15 PM
Go for a Stream	0.05	46457cb	August 5, 2022 3:05 PM

 [Suggest a change](#)



Q  



[Website](#)
[Explorers](#)
[Community](#)
[Chat](#)
[Source code](#)
[Whitepaper](#)

Mineable Marketplace Content Creation

High:\$0.0109 24h ▾

## Earn Crypto

▼ 2.43%

▼ 2.43%

▲ 255.25%

DEX Vol  --

60%

767,800,721

### More Info



Price: \$0.01063 ▼ 2.43%

EXHIBIT

7

21-cv-00260-PB

exhibitsticker.com

CONFIDENTIAL

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE  
  
SECURITIES AND EXCHANGE ) Civil Action No.  
COMMISSION, ) 1:21-cv-00260-PB  
)  
Plaintiff, )  
) VOLUME 1  
vs. ) (Pages 1 to 376)  
)  
LBRY, INC., )  
)  
Defendant. )  
\_\_\_\_\_ )

CONFIDENTIAL VIDEOTAPED DEPOSITION OF  
JEREMY KAUFFMAN  
New York, New York  
Monday, March 21, 2022

REPORTED BY:  
ELBIA BAIREZ  
JOB NO. 220321LHR

CONFIDENTIAL

10:26 1 A. Yes.

2 Q. Where?

3 A. I'm not sure specifically.

4 Q. When was the loan given from LBRY to

10:26 5 Odysee?

6 A. The -- the -- I'm not -- I don't recall

7 the specific dates.

8 Q. Do you have an approximate time period?

9 A. Around the formation of the company.

10:27 10 Q. And that date was what?

11 A. Odysee was formed towards the send of

12 2021.

13 Q. Who is the CEO of Odysee?

14 A. Julian Chandra.

10:27 15 Q. Does Mr. Chandra report to you?

16 MR. MILLER: Objection.

17 A. He does not -- he does not report to me

18 in the sense that I'm not managing his day-to-day

19 operations.

10:27 20 Q. Right.

21 Are you the CEO of LBRY currently?

22 A. Yes.

23 Q. Is Odysee a wholly-owned subsidiary of

24 LBRY?

10:27 25 A. Yes.

## CONFIDENTIAL

10:27 1 Q. As part of that relationship, does  
2 Mr. Chandra report to you?

3 A. I -- I do not directly manage Julian.  
4 We talk about how he's doing running the company.

10:27 5 Q. Who has the power to hire and fire --  
6 or to fire, essentially, Mr. Chandra if he were  
7 not to perform to satisfaction?

8 MR. MILLER: Objection.

9 A. I don't know if it's -- if I can do it  
10:28 10 unilaterally or if it requires a vote from the  
11 board.

12 Q. Okay. And you're currently on the  
13 board of LBRY?

14 A. Yes.

10:28 15 Q. Does Odysee have a board?

16 A. Does it -- I'm not certain.

17 Q. All right. What was the source of  
18 funds that LBRY used to loan one million  
19 dollars -- ish -- approximately one million  
10:28 20 dollars to Odysee?

21 MR. MILLER: Objection.

22 A. LBRY has a -- has made money in a  
23 variety of ways.

24 Q. So LBRY took money from its bank  
10:28 25 account to make that loan?



CONFIDENTIAL

10:28 1 A. Yes.

2 Q. Okay. Was it necessary for LBRY to  
3 sell LBC in some way to fund the loan that it gave  
4 to Odysee?

10:28 5 MR. MILLER: Objection.

6 A. LBRY did not sell LBCs specifically to  
7 give money to Odysee.

8 Q. Okay. Were the funds taken from the  
9 proceeds of some larger sale of LBC by LBRY?

10:29 10 MR. MILLER: Objection.

11 A. That's -- that's possibly true.  
12 There's -- you don't directly account where each  
13 dollar in your bank account comes from.

14 Q. Okay. So the loan came directly from  
10:29 15 LBRY's bank accounts?

16 MR. MILLER: Objection.

17 A. I believe so.

18 Q. Okay. And did any outside party -- and  
19 by "outside," I mean outside of LBRY, Inc.

10:29 20 Did any outside party provide the funds  
21 for the purpose of making a loan to Odysee?

22 A. No.

23 Q. Who were the -- was the person or  
24 persons who decided to make the loan from LBRY to  
10:29 25 Odysee?

2/11/22, 6:08 PM

LBRY in 2022

EXHIBIT

8

21-cv-00260-PB

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EXHIBIT

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21-cv-00260-PB

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Log In Sign Up

# LBRY in 2022

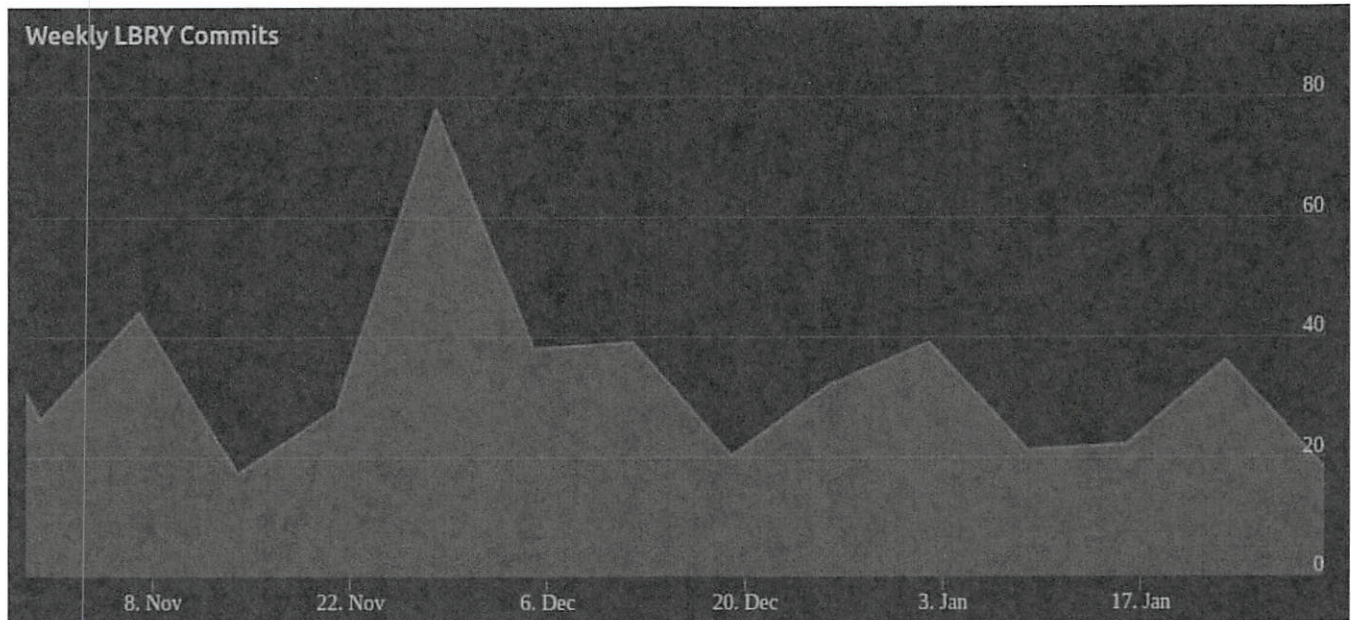
February 11th, 2022 • 2,203 views

LBRY  
@lbry

1.59K

Follow

After splitting off about 2/3rds of staff to work on Odysee, LBRY is staffed almost exclusively by engineers. As a result, we haven't been talking much, but we're still building.



With the SEC alleging that even talking about feature development is against United States law, there's been a chilling effect on communication. But don't take that to mean we're slowing down in any way.

Here's a look at the future.

## The future of LBRY social video is Odysee

LBRY is *not* the future of web3 social video. LBRY is a decentralized web3 publishing protocol.

Odysee is by far the easiest way to use the LBRY network for publishing or watching video. LBRY will not be engaging in marketing campaigns or community building around web3 social video.

Make sure you're following [@Odysee](#) ([/@Odysee:8](#)) on LBRY, as well as [Twitter](#) (<http://twitter.com/odyseeteam>) and [Reddit](#) (<http://reddit.com/r/odyseeforever>).

Odysee is going full-speed ahead and continues to see record usage and growth.

## The future of LBRY is application diversity

2022 and 2023 will be about bringing LBRY into more apps and ecosystems. Some of the things we're working with partners on include:

- A text-first news aggregator and publishing platform
- Two different music and podcasting apps (may the best team win)
- A file sharing app optimized for CAD files

We've started a new developer only chat, where people actively working on apps can hangout with core LBRY engineers. If you're interested in that, email [jeremy@lbry.com](mailto:jeremy@lbry.com)

(<mailto:jeremy@lbry.com>).

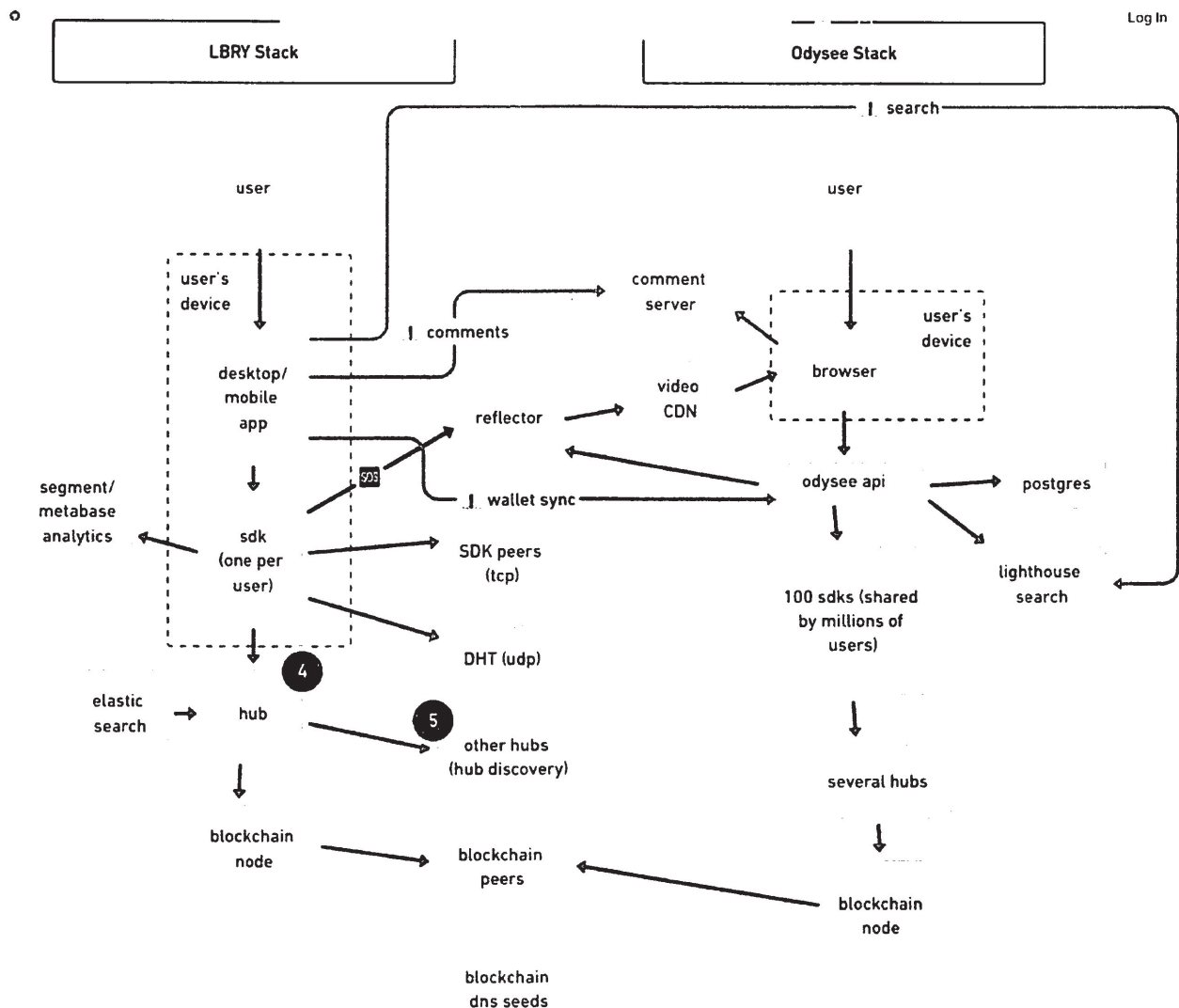
## The future of LBRY is even more decentralized

While LBRY is decentralized, Odysee has continued to push ahead with centralized feature development, such as livestreaming. Other features, like searching and commenting, are only semi-decentralized.

We're continuing to work on bringing Odysee features into the LBRY protocol themselves, or otherwise improving the state of affairs with decentralization. Here's a look at how the current LBRY network and Odysee backend interact.

2/11/22, 6:08 PM

LBRY in 2022



Only a decentralized network can truly protect against the abuses we've regularly and repeatedly seen by big tech. So-called "alternative" tech is typically a subpar knock-off. Web3 tech is successor tech.

### The future of LBRY is Go

We've also been working on porting some core codebases from C++ and Python into Go. While this won't immediately impact users, it will substantially improve development velocity over time.

The most substantial piece – the blockchain code – is already mostly ported and is now being tested. If you're interested in trying running the new Go code, you can find the latest releases [here](https://github.com/lbryio/lbry/releases) (<https://github.com/lbryio/lbry/releases>).

### The future of LBRY is as one of the few legal cryptocurrencies

LBRY's lawsuit with the SEC is poised to establish it as one of the few known-to-be legal cryptocurrencies in the United States. While there's little news on this front yet, a lot will be happening over the next 6 months. We'll post updates on this channel as well as on Twitter.

Thank you to the almost 50,000 people who have signed the [petition](https://www.change.org/p/cryptocurrency-is-not-a-crime) (<https://www.change.org/p/cryptocurrency-is-not-a-crime>)!

# Cryptocurrency is NOT a crime

48,701 have signed. Let's get to 50,000!



UnZung Lee-Tynon signed 30 minutes ago



James McShea signed 2 hours ago

## The future of LBRY is technical community

One of the lessons we learned from launching lbry.tv, which was later rebranded to Odysee, is that the LBRY name should be reserved for the tech, not consumer apps. This doesn't mean programmers only, but it does mean that LBRY is primarily for technically minded users. If you want to hang out with other LBRY users, join one of these chats:

- **LBRY Foundation Chat** [🔗](#) (largest, open to the public, run by [lbry.org](#) [🔗](#))
- **LBRY Developer Chat** (mostly engineers, private, run by [lbry.com](#) [🔗](#), email [jeremy@lbry.com](mailto:jeremy@lbry.com) [🔗](#) for access)

Additionally, with the shift away from consumer-oriented software being released from LBRY, lbry.com and lbry.tech will likely be merged sometime in 2022.

## The best is yet to come 🌟🌟🌟

There's not really any other way to end one of these, is there?

37. LBRY continues to post updates about its efforts to create new features like live-streaming video and playlists for content. LBRY also publicly represents in posts on its website, on social media, and during interviews, what it is currently developing, what it will soon release, and that it is directing the Network in a way to attract the greatest number of users and grow the Network exponentially. In a website post in February 2021, LBRY updated readers about changes it recently made and promised future evolutions in its applications. LBRY concluded the update with its prediction that the **"best is yet to come."** LBRY punctuated the sentence with

172

2

Support

9 Reposts

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199 comments

Best

Controversial

New





2/11/22, 6:08 PM

LBRY in 2022

Post

Log In



@lbry · 6 hours ago

We'll be around taking questions on and off for at least 5 hours.

Edit: please post questions to the top-level thread, not in reply to this.

Log in to reply 45 0

Show 9 replies



@Dan · 7 hours ago

Only Fucking leftists and other Nazis don't like you guys so keep up the good work

Log in to reply 28 15

Show 5 replies



@Pipeliner · 6 hours ago

What I don't like about Odysee is that it seems they are not only moving more and more into centralization (no problem with that) but more into close source their tech. IMO the future is open source

Log in to reply 20 0

Show 2 replies



@michaelmitnick · 7 hours ago

This is amazing and exciting. Thank you for sharing this news and upcoming experiences with the community.

Log in to reply 11 1



@Cahlen · 7 hours ago

Would a cloud file service be feasible on LBRY?

Log in to reply 7 0

Show 2 replies



@DoniArts · 7 hours ago

nice to hear from you guys and heres to the future and beyond

Log in to reply 9 0



@LePigeon · 7 hours ago

Log in to reply 9 0



@CGLBRY · 6 hours ago

Why is talking about feature development is against United States law?

Log in to reply 8 0

Show 2 replies



@Aleph\_Null · 6 hours ago

Will LBRY be focusing on some sort of incentive system to get more people to seed files?

Log in to reply 7 0

Show reply



@SampleDragon · 6 hours ago


I'm not tech saavy enough to understand any of this but LET'S GOOOOOOOO

Keep up the great work!

Log in to reply 7 0

Show reply





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**EXHIBIT****10**

21-cv-00260-PB

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE****EXHIBIT****15**

21-cv-00260-PB

----- X  
 SECURITIES AND EXCHANGE :  
 COMMISSION, :  
 :  
 Plaintiff, :  
 :  
 -against- : Civil Action No. 1:21-cv-00260-PB  
 :  
 LBRY, INC., :  
 :  
 Defendant. :  
 ----- X

**DEFENDANT LBRY, INC.'S RESPONSES AND OBJECTIONS  
 TO PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S  
 FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure ("Federal Rules") and the Local Rules for the United States District Court for the District of New Hampshire ("Local Rules"), Defendant LBRY, Inc. ("LBRY"), by its attorneys, hereby responds and objects as follows to Plaintiff Securities and Exchange Commission's ("SEC's") First Set of Interrogatories, including the Definitions and Instructions thereto, dated October 20, 2021 (the "Interrogatories," and each, an "Interrogatory"). These responses are based on LBRY's current knowledge, and LBRY reserves the right to supplement or amend each of these responses and objections as discovery progresses.

**GENERAL OBJECTIONS**

Unless otherwise indicated, the following general objections apply to each numbered Interrogatory as if each was specifically set forth therein, in addition to any specific objection included therein. The assertion of the same, similar or additional objections or the provision of partial answers in the specific responses does not waive any of the general objections.



**RESPONSE TO INTERROGATORY NUMBER 6:** LBRY incorporates its general objections as if restated herein. LBRY further objects to this Interrogatory as cumulative and duplicative to the extent it seeks substantially the same information as the Requests for Production or one or more of the Requests in the Subpoena issued in the Investigation. Subject to and without waiving the foregoing objections, LBRY responds as follows:

LBRY's LBC is held at the following addresses:

<https://explorer.lbry.com/address/rEqocTgdPdoD8NEbrECTUPfpquJ4zPVCJ8>

<https://explorer.lbry.com/address/rKaAUDxr24hHNNTQuNtRvNt8SGYJMdLXo3>

<https://explorer.lbry.com/address/r7hj61jdbGXcscxw8UmEFCReZoCWLRr7t>

<https://explorer.lbry.com/address/bMvUBo1h5WS46ThHtmfmXftz3z33VHL7wc>

<https://explorer.lbry.com/address/bEVmzvoQAVgHUz7pmJdzfnVeGWw6kPqsNX>

<https://explorer.lbry.com/address/bRo4FEeqqxY7nWFANsZsuKEWByEgkvz8Qt>

**INTERROGATORY NUMBER 7:** Please identify the owner or custodian of each LBRY Address to which LBRY has transferred more than 100,000 LBC in total since January 1, 2016.

**RESPONSE TO INTERROGATORY NUMBER 7:** LBRY incorporates its general objections as if restated herein. LBRY further objects to this Interrogatory as overly broad, unduly burdensome, not relevant to any claim or defense in this Action and not proportional to the needs of the case. Subject to and without waiving the foregoing objections, LBRY responds as follows:

LBRY includes below a list of all owners or custodians of each LBRY Address identified to date to which LBRY has transferred more than 100,000 LBC in total from January 1, 2016 through March 29, 2021, the date on which this Action was commenced. LBRY notes, moreover, that in some instances it may be difficult to reconcile multiple payments as going to the same person if different receipt addresses were used. Therefore, it is possible that additional persons

who have received more than 100,000 LBC might exist.

LBRY Foundation Inc.
Altonomy Inc.
Sean Yesmunt
Lex Brezhny
Jack Robison
John Elder Robison
Jeremy Kauffman
Akinwale Ariwodola
Niko Storni
Tom Zareczban
John Nelson
Bittrex Inc
Oscilloscope Labs
CoinEx
Reilly Smith
Clement Amponsah
Neill Miller
Antimedia
Julian Chandra
Lucas Abduch
Neohumaneve
Swann Man
LBRY.lat
Naomi Brockwell
Julie Sigwart
Dave Balter
Shapeshift

In addition, LBRY users may receive LBC in connection with syncing their YouTube accounts with LBRY. The usernames for such LBRY accounts which LBRY has identified to date

as having earned more than 100,000 LBC are listed below.

@SilvanoTrotta
@SaltyCracker
@artiintel
@TheQuartering
@DollarVigilante
@davidpakman
@Styxhexenhammer666
@FunOntheRide
@decodeurs
@lbry
@trevon
@NextNewsNetwork
@valdeandemagico
@Vivresainement
@AI
@DistroTube
@timcast
@BrodieRobertson
@Lunduke
@TheLinuxGamer
@davidbattaglia
@ScottCBusiness
@OYENEWS
@CryptoHustler101
@AlexJonesChannel
@NaomiBrockwell

@TheAudiopedia
@eevblog
@RichardHarrisCoaching

**INTERROGATORY NUMBER 8:** Please identify every account, location, wallet, or address within LBRY's possession, custody, or control that holds or has held any digital asset other than LBC, including, but not limited to, BitCoin or BTC.

**RESPONSE TO INTERROGATORY NUMBER 8:** LBRY incorporates its general objections as if restated herein. LBRY further objects to this Interrogatory as overly broad, unduly burdensome, not relevant to any claim or defense in this Action and not proportional to the needs of the case. LBRY further objects to this Interrogatory as cumulative and duplicative to the extent it seeks substantially the same information as the Requests for Production or one or more of the Requests in the Subpoena issued in the Investigation. Subject to and without waiving the foregoing objections, LBRY responds as follows:

LBRY includes below a list of the wallets within LBRY's possession, custody or control that currently hold digital assets other than LBC.

<https://blockstream.info/address/bc1q4yav387ec3fat46zha537x466g29dutr3vunvn>

<https://etherscan.io/address/0x23fea61e33ea01be24674d6d7b8ed308660529bb#tokentxns>

In addition, LBRY has a Coinbase account registered under the username josh@lbry.io.

**INTERROGATORY NUMBER 9:** Please state the amount of money in U.S. dollars that LBRY has raised, directly or indirectly, from the sale of LBC. Indirectly includes, but is not limited to, circumstances in which LBRY exchanged LBC for another digital asset and later exchanged digital assets for money.

**RESPONSE TO INTERROGATORY NUMBER 9:** LBRY incorporates its general objections as if restated herein. LBRY further objects to this Interrogatory as vague and ambiguous. LBRY also objects to this Interrogatory as overly broad, unduly burdensome, not relevant to any claim or defense in this Action and not proportional to the needs of the case. LBRY

further objects to this Interrogatory as cumulative and duplicative to the extent it seeks substantially the same information as the Requests for Production or one or more of the Requests in the Subpoena issued in the Investigation. LBRY further objects to the term “raised” insofar as it implies that LBRY sold LBC as a “fundraising” mechanism. Subject to and without waiving the foregoing objections, LBRY responds as follows:

As of September 30, 2021, LBRY had deposited into its bank accounts approximately \$12,168,794.46 in proceeds derived from sales of LBC (including circumstances in which LBRY sold LBC for another digital asset and later sold such digital assets for U.S. dollars). In addition, as of the date of this response, LBRY holds digital assets that are currently worth approximately \$2.5 million that it received from sales of LBC.

**INTERROGATORY NUMBER 10:** Has LBRY used the proceeds from its sales of LBC for any purpose other than to pay expenses or costs Concerning the development and promotion of the LBRY Network?

**RESPONSE TO INTERROGATORY NUMBER 10:** LBRY incorporates its general objections as if restated herein. LBRY further objects to this Interrogatory as overly broad, unduly burdensome, not relevant to any claim or defense in this Action and not proportional to the needs of the case. LBRY further objects to this Interrogatory as cumulative and duplicative to the extent it seeks substantially the same information as the Requests for Production or one or more of the Requests in the Subpoena issued in the Investigation. LBRY also objects to this Request as vague and ambiguous, including in its use of the terms “development” and “promotion,” which are undefined and call for an interpretation on the part of LBRY in the context of this Interrogatory. In responding to this Interrogatory, LBRY construes these terms to have their ordinary meaning. Subject to and without waiving the foregoing objections, LBRY responds as follows:

LBRY has used proceeds from its sales of LBC solely for the purpose of funding activities in support of the development, promotion, and growth of LBRY, the LBRY Network, and the LBRY community.

**INTERROGATORY NUMBER 11:** If the answer to Interrogatory No. 10 is yes, please state the amount LBRY used on each purpose other than to pay expenses or costs Concerning the development and promotion of the LBRY Network.

**RESPONSE TO INTERROGATORY NUMBER 11:** LBRY incorporates its general objections as if restated herein. LBRY further objects to this Request as overly broad, unduly burdensome, not relevant to any claim or defense in this Action and not proportional to the needs of the case. LBRY further objects to this Request as cumulative and duplicative to the extent it seeks substantially the same information as the Requests for Production or one or more of the Requests in the Subpoena issued in the Investigation. Subject to and without waiving the foregoing objections, LBRY responds that this Interrogatory is not applicable given LBRY's answer to Interrogatory No. 10.

**INTERROGATORY NUMBER 12:** Identify the Persons who are and have been authorized to edit or change the code for the software components of the LBRY Network, including, but not limited to the protocol, daemon, and applications, and include the periods of time for which they possessed such authority. If Persons possessed editorial control over only certain components, identify which code they were authorized to edit or change and for which periods.

**RESPONSE TO INTERROGATORY NUMBER 12:** LBRY incorporates its general objections as if restated herein. LBRY further objects to this Interrogatory as overly broad, unduly burdensome, not relevant to any claim or defense in this Action and not proportional to the needs of the case. LBRY also objects to this Interrogatory as vague and ambiguous in its use of the phrase "edit or change the code." Subject to and without waiving the foregoing objections, LBRY responds as follows:

LBRY includes below a list of persons who are or have been granted contributor rights, meaning that the person has or had the ability to push a code change to the master branch of the LBRY Protocol.

Jimmy Kiselak
Alex Grintsvayg
Jeremy Kauffman
Jack Robison
Lex Berezhny
Victor Shyba
Job Evers-Meltzer
Kay Kurokawa
Amit Tulshyan
Oleg Siskin
Tom Zarebczan
Alex Liebowitz
Jessop Berth
Brannon King
Akinwale Ariwodola
Jeffrey Picard
Mark Beamer
Neill Miller
Niko Storni
Kok-Pin Yeoh
Liam Cardenas
Travis Eden
Xander Luciano
Paul Webb
Anthony Mayfield
Igor Gassmann
Tzu-Jung Lee

Johnny Nelson
Michael Zargham

**INTERROGATORY NUMBER 13:** Has LBRY restricted recipients of any LBC from its Pre-mine to using the LBC on LBRY's Network?

**RESPONSE TO INTERROGATORY NUMBER 13:** LBRY incorporates its general objections as if restated herein. LBRY further objects to this Interrogatory as overly broad, unduly burdensome, not relevant to any claim or defense in this Action and not proportional to the needs of the case. Subject to and without waiving the foregoing objections, LBRY responds as follows:

LBRY has not placed any restrictions upon the use of LBC on LBRY's Network by recipients of LBC from LBRY's Pre-mine.

**INTERROGATORY NUMBER 14:** If the answer to Interrogatory 13 is yes, please describe in detail what restrictions it has imposed, including, but not limited to, for which recipients, when, for how many LBC, how technologically it has imposed those restrictions, and how it has enforced those restrictions.

**RESPONSE TO INTERROGATORY NUMBER 14:** LBRY incorporates its general objections as if restated herein. LBRY further objects to this Interrogatory as overly broad, unduly burdensome, not relevant to any claim or defense in this Action and not proportional to the needs of the case. Subject to and without waiving the foregoing objections, LBRY responds that this Interrogatory is not applicable given LBRY's answer to Interrogatory No. 13.



EXHIBIT

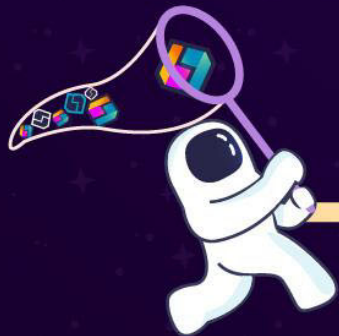
11

21-cv-00260-PB

exhibitsticker.com

# ODYSEE

*The growth of an Indie Creative Platform*

**2020**

*Odysee, a publishing platform for video, photos, and written word, is born.*



*Odysee utilizes blockchain technology for creator security.*

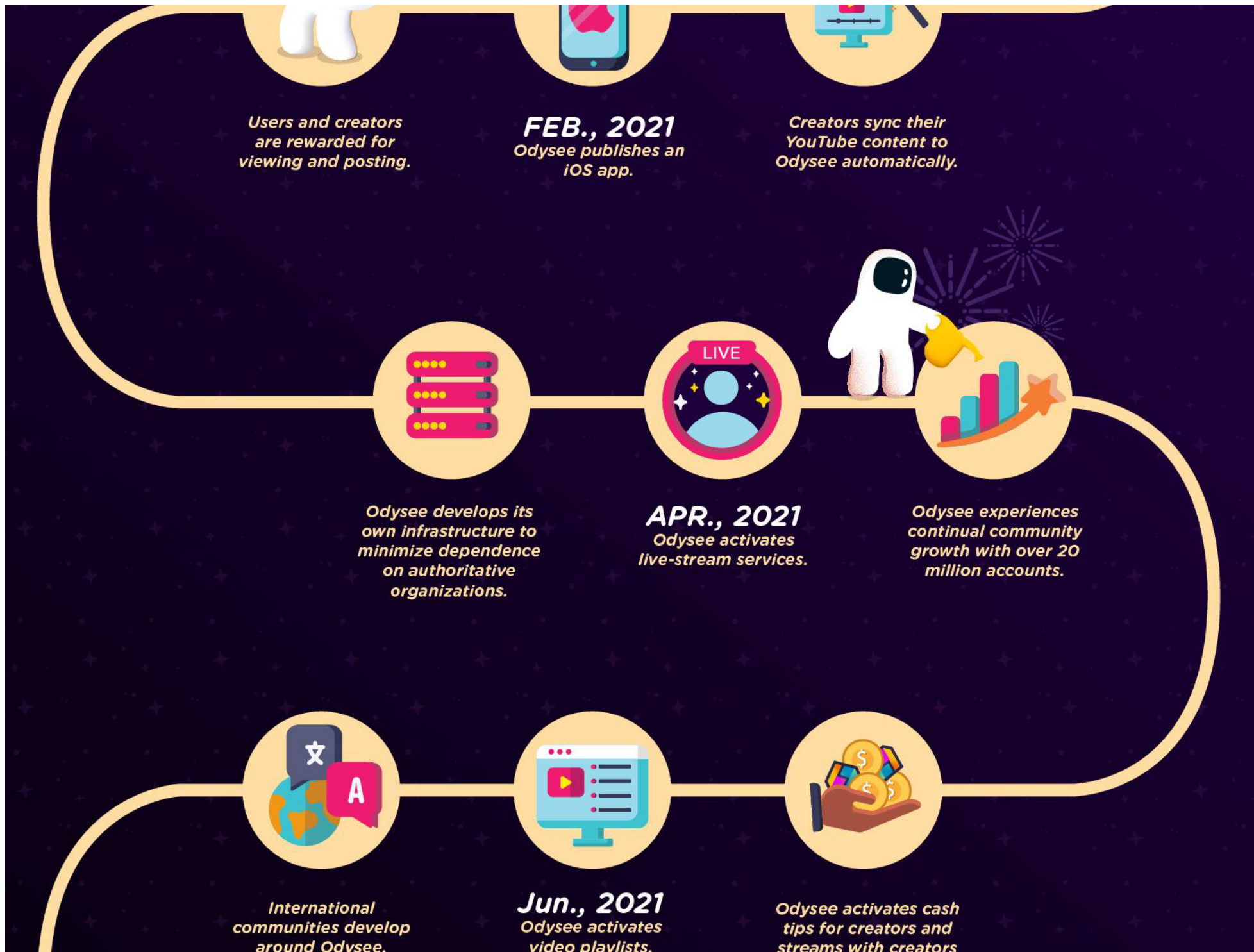


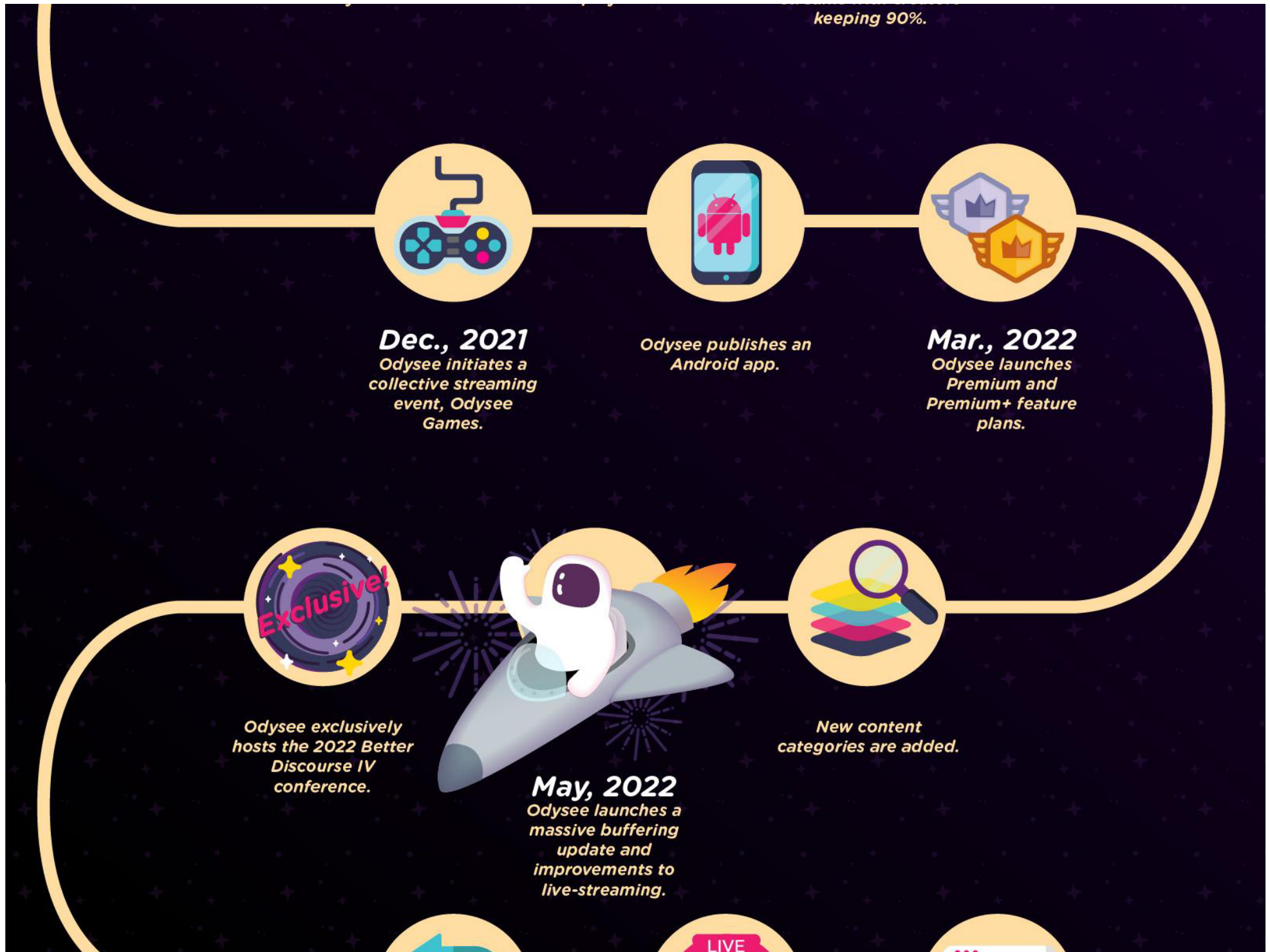
*Odysee welcomes millions of independent creators and users.*



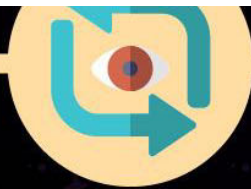
*"On Fire" and "Slime" reactions are available for all content.*



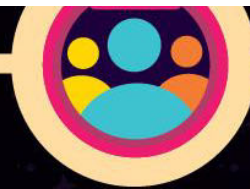








*Odysee activates  
view history.*



*Odysee removes LBC  
requirements for  
live-streaming.*



*Odysee activates  
video chapters.*



*Creators can receive  
tips in Euros and  
international users  
can search in a  
selected language by  
default.*



*Odysee lowers the  
minimum YouTube  
threshold channel  
sync requirement.*



*Odysee activates  
Alpha phase content  
recommendation.*



*Creator  
Memberships  
are on the  
horizon!*



***Join the  
ODYSEE  
Adventure!***

