PUBLICATION UPDATE

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Nimmer on Copyright

Publication 465 Release 103 November 2017

HIGHLIGHTS

• This release adds further refinements and new cases to the treatise’s comprehensive coverage of Copyright Law.

• Updated authoritative commentary on Copyright Law by David Nimmer, Esquire.

Noteworthy Addition:

• Full and complete revision to Chapters 14 as well important new analysis and updated case law for Chapters: 2A, 4, 6, 7, 8, 8D, 9A, 10, 12, 13 & 20.

Noteworthy Case Analyzed:

Bell v. Lantz, 825 F.3d 849 (7th Cir. 2016): The court improperly awarded an hourly rate of $410 for attorney’s fees under 17 U.S.C.S. § 505 because defendant’s counsel charged defendant only an hourly rate of $250, defendant’s evidence of the $410 rate was minimal, and the evidence in the record therefore provided little support for the $410 figure; the district court never properly analyzed the evidence because the court was unaware of the sealed exhibits produced by plaintiff showing that defendant was entitled to an attorney’s fee award of $250 per hour. The judgment was vacated and remanded. See Chapter 12.

Broadcast Music, Inc. v. Ken V, Inc., 159 F. Supp. 3d 981 (E.D. Mo. 2016): The court held the following on attorney’s fees in this copyright infringement action:

The attorney’s fees in the amount of $9,500 which Plaintiffs seek account only for the flat fee arrangement Plaintiffs have with Attorney Walter’s law firm at the rate of $400 an hour. Considering that additional fees were incurred but not billed, that a fee of $9,500 represents only 23.75 hours of attorney work at $400 an hour, and that BMI’s in-house counsel also spent time on this matter in an attempt to secure a license from Defendants and to collect past due licensing fees and costs, the court finds that Plaintiffs should be awarded $9,500 in attorney’s fees, plus costs of $574.04, for a total of $10,074.04. The court will deny Plaintiffs’ request for interest on these awards. The court has taken into consideration the fact that the infringement was not large-scale piracy, and Defendants did not enter into a licensing agreement during the
pendency of this action.

In conclusion, the court finds that the undisputed facts establish that Defendants violated the Copyright Act, and that, therefore, summary judgment should be granted in Plaintiffs’ favor. The court further finds that Plaintiffs should be granted injunctive relief, and that Plaintiffs should be awarded $30,000 in statutory damages and $10,074.04 for attorney’s fees and costs.

See Chapter 8.

**Broadcast Music, Inc. v. George Moore Enters., Inc., 184 F. Supp. 3d 166 (W.D. Pa. 2016)**: The court held the following on attorney’s fees in this copyright infringement action:

Regarding the amount of fees, Plaintiffs’ counsel, Jonathan S. McAnney, has filed an affidavit detailing the basis for his fees. (See ECF No. 12-2.) Mr. McAnney [*174] states that when this matter was assigned to his law firm in August 2015, he reviewed the investigation file, infringement data sheets, Plaintiffs’ correspondence to Defendants, and Plaintiffs’ telephone logs. (Id. at 1–2.) Mr. McAnney’s hourly rate is $330.00 per hour, and the total amount of attorneys’ fees incurred in this matter is $6,250.00. (Id. at 2.) The Court finds that Mr. McAnney’s hourly rate is reasonable and appropriate. See, e.g., Longhorn Corral, Inc., 2016 U.S. Dist. LEXIS 4733, at *12 (determining that the 18.9 hours that Mr. McAnney spent on the matter was reasonable); Shane’s Flight Deck, Ltd., 2010 U.S. Dist. LEXIS 124501, at *5 n.3 (finding 18.8 hours devoted to the matter was reasonable); It’s Amore Corp., 2009 U.S. Dist. LEXIS 55721, at *28 (awarding attorneys’ fees for 48.4 hours spent on the matter). The Court will also grant Plaintiffs’ request for an award of $507.00 for the costs incurred in this matter. See, e.g., Longhorn Corral, Inc., 2016 U.S. Dist. LEXIS 4733, at *12 (awarding $505.88 in costs); Kujo Long, LLC, 2014 U.S. Dist. LEXIS 113180, at *19 (awarding $619.30 in costs). Defendants will therefore be ordered to pay attorneys’ fees in the amount of $6,250.00 and costs in the amount of $507.00.

For the reasons stated above, the Court will grant Plaintiffs’ motion for default judgment. Defendants will be permanently enjoined from any further infringement of Plaintiffs’ copyrights in any manner. Defendants will be ordered to pay statutory damages in the amount of $18,700.00. Defendants will also be ordered to pay attorneys’ fees in the amount of $6,250.00 and costs in the amount of $507.00.

See Chapter 8.

**Leonard v. Stemtech Int’l Inc., 834 F.3d 376 (3d Cir. 2016), cert. denied, ___ U.S. ___ (2017)**: Sufficient evidence supported a jury’s verdict finding contributory and vicarious infringement of copyright by a company that provided infringing materials to its distributors, exercised control over what materials they used, and financially benefited from their activities. In determining damages under 17 U.S.C.S. § 504(b) by calculating the fair market value of reasonable licensing fees, the use of multipliers for scarcity and exclusivity
was not shown to be punitive, and the amount awarded was not grossly excessive because it was tethered to the record and no alternative calculation was presented to the jury. There was no evidence upon which infringement profits could have been calculated. Denying prejudgment interest on the grounds that the award of damages provided sufficient compensation and the calculation of interest would be difficult was error. Affirmed in part, vacated in part, and remanded. See Chapter 14.

Jane Doe No. 1 v. Backpage.com, LLC, 817 F.3d 12 (1st Cir. 2016), cert. denied, 196 L. Ed. 2d 579 (2017): A provider of online advertising was protected under 47 U.S.C.S. § 230(c) from liability to minor victims of sex trafficking for posting advertisements of the victims as escorts, since the provider performed traditional publisher functions in its website policies and practices and was not the publisher or speaker of the contents of the advertisements. The provider did not engage in unfair trade practices by allegedly making misrepresentations to law enforcement and others concerning its efforts to combat sex trafficking, since the victims’ series of speculative inferences failed to show a causal chain between the misrepresentations and an increased risk of the victims being trafficked. Although the provider profited from the sale of advertising, the traffickers were the entities that benefited from misappropriation of the commercial value of the victims’ images. Judgment affirmed. See Chapter 14.
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Publication 465 Release 103 November 2017

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