Electronically Filed
Docket: 24-CCB-0272
Filing Date: 07/22/2025 11:50:49 PM EDT

COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0272
Filed date: 01/17/2025 06:19 PM EST

United States Copyright Claims Board

April M. Peck		Keiry A Borruel
CLAIMANT	*V.*	RESPONDENT

CLAIM RESPONSE

Docket 24-CCB-0272

Respondent

Name

Keiry A Borruel

Defenses

Disputed facts and claims

Claimant April Peck ("Peck") alleges that Respondent Keiry Borruel ("Borruel") infringed Peck's intellectual property rights in materials Peck used to teach a Research Methods course (the "Prior Course Materials") at Victor Valley Community College ("VVC"), where Peck and Borruel are both employed as educators in the college's psychology department. Borruel generally denies and disputes the allegations of the Claim except where indicated herein and in the Supplemental Statement of Facts submitted herewith. [¶] As set forth more fully in Borruel's Supplemental Statement of Facts, in January 2022, Borruel—a newly-minted instructor about to start her second full semester as an Adjunct Professor—received Peck's explicit consent to copy and use the Prior Course Materials to teach Introduction to Research Methods in Psychology ("Research Methods") at VVC in the Spring 2022 semester. During the Spring 2022 semester, the two discussed the Prior Course Materials and Borruel's desire to continue to use some of the materials—with no objection from Peck. Borruel disputes Claimant's contention that the parties had a written agreement concerning Borruel's use of the Prior Course materials, or any agreement, written or otherwise, limiting Borruel's use of the Prior Course materials. Borruel further disputes Peck's assertion that "[a]t no time did [Peck] give Ms. Borruel permission to copy the course or materials for her use." [¶] It was not

until the Fall 2023 semester that Peck raised any concerns regarding Borruel's use of the Prior Course Materials. In an October 26, 2023 email, Peck objected that students in Borruel's Research Methods class had accessed instructional YouTube videos created by Peck, which Peck considered to be her intellectual property. Borruel immediately agreed to remove all links to the videos from her online course materials. Borruel also informed her students that the videos were not meant to be part of the class, and provided Peck full access to Borruel's course materials so that Peck could verify that Borruel was making no unauthorized use of Peck's intellectual property. Borruel disputes Peck's account of the parties' communications in October 2023 to the extent that Peck contends or implies that she repeatedly asked Borruel to stop using the Prior Course Materials during the Fall 2023 semester. Borruel further disputes the implication that she used all of the Prior Course Materials to teach her Fall 2023 Research Methods class, or that she published on her personal website intellectual property belonging to Peck. [¶] Borruel, who had already started to create her own course materials for the Research Methods class, complied with the directive in Peck's October 26, 2023, email "to create her own materials for this course." [¶] By the Spring 2024 semester, Borruel had ceased all use of the Prior Course Materials and had developed assignments, lab activities, and other teaching tools of her own. Despite Borruel's responsiveness to Peck's concerns, and compliance with her demand to stop using the Prior Course Materials, Peck objected to Borruel's use of materials in which Peck, herself, admits she has no intellectual property rights. Specifically, Peck objected to Borruel's use of scholarly articles, authored by non-parties years prior to this dispute, referred to herein as the "Prior Scales Scholarship." The Prior Scales Scholarship comprises well-known and widely-cited academic writings that are considered to be authoritative in the parties' educational field. Peck had used the Prior Scales Scholarship in conjunction with the Prior Course Materials. [¶] Peck's complaint is based on the false premise that, because Borruel used some of the same reference materials as Peck—and, on information and belief, innumerable other educators teaching research methods courses—then Borruel must also have made unauthorized use of Peck's intellectual property during the Spring 2024 semester. Peck is incorrect. By the Fall 2024 semester, Borruel had done exactly as Peck requested and ceased making any use of the Prior Course Materials. Peck has no evidence of, or grounds for, the claim asserted in this matter. The claim should be dismissed, and a final determination made in Borruel's favor, with no award of damages to Peck.

The portions of the work you used are not protected by copyright

---

Detailed explanation of why this defense applies

On information and belief, Peck's copyright registration is, in whole or in part, invalid and unenforceable because some or all of the Prior Course Materials are not proper subject matter for copyright because they lack the required minimum amount of authorship in the form of original, creative expression. Such materials include but, on information and belief, are not limited to, hyperlinks to Peck's YouTube videos, which Peck contends Borruel wrongfully made available to her students.

You had permission to use the work alleged to be infringed, or your agreement with the claimant limits damages

---

Detailed explanation of why this defense applies

Peck granted Borruel permission to copy the Prior Course Materials and to use them to teach her Research Methods class. Moreover, Peck's claim is barred, in whole or in part, because Peck's conduct created an implied license for Borruel to use the Prior Course Materials. In January 2022, Peck voluntarily, and of her own volition, provided Borruel with access to the Prior Course Materials. Peck further granted Borruel permission to copy the Prior Course Materials so that Borruel could provide her students with access to the materials via VVC's online teaching tool, the Canvas Learning Management System ("Canvas"). Peck's authorization of such copying and use was manifested by, among other things, Peck's provision to Borruel of instructions on how to copy the Prior Course Materials using Canvas. Moreover, during the 2022 Spring semester, Peck and Borruel repeatedly discussed Borruel's use of the Prior Course Materials and Borruel's desire to continue using some of the materials. In the course of these discussions, Peck raised no objection to Borruel's continued use of the materials and placed no limits on Borruel's use. That Peck authorized Borruel to use the Prior Course Materials is further reflected in Peck's October 26, 2023, email explaining that, when she shared the Prior Course Materials with Borruel in January 2022, Peck did not expect that Borruel "would use the materials in perpetuity." The foregoing language raises the strong inference that Peck did expect Borruel to use the material for some period of time.

Your use of the work alleged to be infringed was a fair use

Detailed explanation of why this defense applies

Borruel's use of the Prior Course Materials was a fair use pursuant to 17 U.S.C. § 107 because, among other things: (1) Borruel is an

educator who used the Prior Course Materials for educational, and not commercial, purposes; (2) Borruel used the materials for their informational and instructional content and not for any creative or imaginative attributes the materials might have; (3) on information and belief most, if not all, of the Prior Course Materials used by Borruel incorporated, adapted, and/or referenced, in whole or in part, Prior Works, including, but not limited to, a 2013 article by Miggie Pickton entitled “Writing your research plan” and Discovering the Scientist Within: Research methods in psychology, the textbook used by Peck and other VVC faculty to teach the Research Methods course; and (4) Borruel’s use had no actual or potential effect on the market for or value of the Prior Course Materials.

The claimant does not own the material you used or the copyright in the work at issue

---

Detailed explanation of why this defense applies

On information and belief most, if not all, of the Prior Course Materials used by Borruel comprised, incorporated, adapted, and/or referenced, in whole or in part, Prior Works, including, but not limited to, a 2013 article by Miggie Pickton entitled “Writing your research plan;” Discovering the Scientist Within: Research methods in psychology, the textbook used by Peck and other VVC faculty to teach the Research Methods course; and the following works defined in the attached Supplemental Statement of Facts as the "Prior Scales Scholarship:" Cohen, S., Kamarck, T. & Mermelstein, R. (1983) A global measure of perceived stress, Journal of Health and Social Behavior, 24(4), 385–396; Lay, C. H. (1986), At last, my research article on procrastination, Journal of Research in Personality, 20(4), 474–495; Russell, D. W. (1996), UCLA loneliness scale (version 3): Reliability, validity, and factor structure, Journal of Personality Assessment, 66(1), 20–40; Thompson, L., Snyder, C. R., Hoffman, L., Michael, S. T., Rasmussen, H. N., Billings, L. S., Heinze, L., Neufeld, J. E., Shorey, H. S., Roberts, J. C., & Roberts, D. E. (2005), Dispositional forgiveness of self, others, and situations, Journal of Personality, 73(2), 313–360; Wagnild, G. M., & Young, H. M. (1993), Development and psychometric evaluation of the resilience scale, Journal of Nursing Measurement, 1(2), 165–178.

Assert affirmative defense not listed here

Detailed explanation of why this defense applies

DEFENSE: FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED Peck has not alleged facts sufficient to allege a claim of copyright infringement of some or all of the Prior Course Materials. Peck does not appear to have submitted with her Claim the entirety of the allegedly infringed Prior Course Materials, and her Claim fails to identify with specificity which materials she alleges were infringed. Nor does Peck appear to have submitted with her Claim all of the allegedly-infringing materials that are the subject matter of her Claim. Rather, Peck has offered only a few examples of the allegedly-infringed, and allegedly-infringing, works. Moreover, Peck's Claim does not allege facts that, if true, would establish that Borruel, with or without authorization, created derivative works from, or copied or distributed some or all of the allegedly-infringed materials, including, but not limited to, Peck's YouTube videos. ***DEFENSE: GOOD-FAITH USE*** Peck's claim is barred, in whole or in part, because Borruel did not knowingly infringe any intellectual property or other rights owned by Peck. Borruel has acted without any intention of injuring Peck, and with the good faith belief that any use she made of the Prior Course Materials was with Peck's authorization and consent. ***DEFENSE: WAIVER*** Peck has waived any claims she might have had related to Borruel's allegedly unauthorized use of the Prior Course Materials. Borruel repeatedly offered Peck access to Borruel's class materials to allow Peck to raise any objections she might have to Borruel's use of materials that Peck might consider to be her intellectual property. With a single exception, Peck declined Borruel's offers, thereby waiving any claim Peck might have had regarding Borruel's use of the materials. ***DEFENSE: FAILURE TO MITIGATE*** Peck is not entitled to an award of actual or statutory damages because she failed to mitigate any damages she might have suffered arising from Borruel's allegedly unauthorized use of the Prior Course Materials. Borruel repeatedly offered Peck access to Borruel's class materials to allow Peck to raise any objections she might have to Borruel's use of materials that Peck might consider to be her intellectual property. With a single exception, Peck declined Borruel's offers. If Peck had accepted Borruel's offers, Peck could have avoided the alleged unauthorized use of the Prior Course Materials of which she now complains. ***DEFENSE: LACK OF STANDING*** On information and belief, Peck's copyright registration does not cover some or all of the Prior Course Materials and, as a consequence, Peck lacks standing to assert copyright infringement claims as to those materials. It is not possible for Borruel to identify at this time which allegedly-infringed materials are covered by Peck's registration because Peck failed to include a deposit copy of the allegedly-registered materials with her Claim or to identify with specificity each work she apparently claims were infringed. ***DEFENSE: NO ACTUAL DAMAGES*** Peck has sustained no injury or damage as the result of any act or conduct of Borruel. Even if Borruel did make unauthorized, infringing use of some or all of the Prior Course Materials, such use resulted in no economic benefit to Borruel, and no

economic harm to Peck. Peck, therefore, is not entitled to an award of her actual damages or of Peck's alleged profits. To the extent Peck uses Borruel's teaching salary as evidence of her "profits" from the alleged infringement, such revenues are not attributable to Borruel's use of the Prior Course Materials. ***DEFENSE: PECK IS NOT ENTITLED TO STATUTORY DAMAGES*** Peck seeks an award of statutory damages in the amount of $15,000; the maximum statutory damages award allowed by the rules of this forum where, as here, the Claimant's copyright was registered more than three months after publication and after the alleged infringement started. Peck is not entitled to any statutory damages, let alone the maximum amount of statutory damages, because Borruel's use of the Prior Course Materials, resulted in no economic benefit to Borruel, and no economic harm to Peck. To the extent Peck uses Borruel's teaching salary as evidence of her "profits" from the alleged infringement, such revenues such revenues are not attributable to Borruel's use of the Prior Course Materials. To the extent the Board determines that Borruel's use of the Prior Course Materials infringed Peck's copyright, Borruel was not aware and had no reason to believe her acts were an infringement of Peck's copyright. Rather, until Peck objected, Borruel acted with a good-faith belief that any use she made of the Prior Course Materials was with Peck's authorization and consent. Moreover, Borruel made numerous good-faith attempts to engage with Peck, including by repeatedly offering Peck access to Borruel's class materials to ensure that Peck had no objection to Borruel's use of materials that Peck might consider to be her intellectual property. Significantly, Borruel agreed to stop—and did stop—using the Prior Course Materials after Peck objected to such use and before Peck filed her Claim. Pursuant to the rules of this forum, the foregoing factors may be considered as mitigating factors to reduce an award, if any, of statutory damages.

Documentation

- Borruel Supplemental Statement of Facts.pdf

Proof of Delivery

I hereby certify that on Tuesday, July 22, 2025, I provided a true and correct copy of the DOC RR - KB Claim Response - Jan 17 to the following:

Keiry A Borruel, represented by Keiry A Borruel, served via MANUALEEMAIL

Signed: /s/ April M. Peck