COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0311
August 20, 2025

Independent-International Pictures Corp.	*v.*	Tubi
CLAIMANT		**RESPONDENT**

FINAL DETERMINATION

This matter has been fully submitted by the parties. For the reasons that follow, the Copyright Claims Board ("Board") finds Respondent Tubi ("Tubi" or "Respondent") liable for copyright infringement and awards Claimant Independent-International Pictures Corp. ("IIP" or "Claimant") $6,700 in statutory damages.

I. Procedural History

IIP brought this copyright infringement claim against Tubi on September 17, 2023, alleging infringement of four horror motion pictures: *The Blood Drinkers* ("*Drinkers*"), *Horror of the Blood Monsters* ("*Monsters*"), *Mad Doctor of Blood Island* ("*Island*"), and *Beast of Blood* ("*Beast*") (together, the "Works"). Claim (Dkt. 1). Tubi filed a response to the Claim on March 7, 2024. Dkt. 21. On August 15, 2024, the Board issued an order directing the parties to file written testimony. Dkt. 32. IIP filed a Claimant Party Statement (Dkt. 33), an evidence list (Dkt. 50), evidence (Dkt. 34-46, 48), and witness statements from David Sehring, principal of Drive-In-Sanity Films, LLC (Dkt. 47; "Sehring Statement") and Elias Savada, founder and owner of a copyright search company. (Dkt. 49). Tubi filed its party statement (Dkt. 52; "Tubi Party Statement"), an evidence list (Dkt. 77), evidence (Dkt. 54-76, 78-79), and a witness statement from Tubi's intellectual property counsel Joseph Dimont (Dkt. 53; "Dimont Statement"). In reply, Claimant filed a Reply Statement (Dkt. 82), a reply to the Dimont Statement (Dkt. 81; "Reply to Dimont"), and a second proof of service of the Claim (Dkt. 80; *see also* Dkt. 5). This case is now ripe for final determination.

II. Factual History

IIP was incorporated in New York in 1969 and re-formed as a Delaware corporation in 1996. Tubi Exhibit A (Dkt. 66); Tubi Exhibit B (Dkt. 62); Reply to Dimont, at 1-2. Delaware deemed the entity void in March 2014 for failure to file annual reports and pay annual taxes, but the state certified that the entity was revived in May 2024.

Tubi Exhibit B; Dimont Statement ¶ 8; IIP Exhibit C at 3 (Dkt. 40). *See* 8 Del. C. § 312(e); *Kostyszn v. Martuscelli*, C.A. N14C-08-010 PRW, 2015 WL 721291, at *2 n. 15 (Del. Super. Ct. Feb. 18, 2015) (revival has retroactive effect).

Samuel Sherman ("Sherman") is IIP's president. Reply Statement, at 2; Sehring Statement, at 2. He has worked in the motion picture industry for more than sixty years, and he worked on each of the Works in various capacities during production and post-production. Claimant Party Statement, at 1; Reply Statement ¶¶ 4-5; IIP Exhibit F (Dkt. 37). Sherman states, as discussed in detail in the sections on copyright ownership below, that IIP owns the copyright in all four works. Claimant Party Statement, at 1. *Monsters* was originally created for TAL Productions ("Tal") which, Sherman states, eventually sold the rights in *Monsters* to IIP. *Id.* The other three movies were created for Hemisphere Pictures—for which Sherman worked at the time—and Hemisphere Pictures and/or its owners also, according to Sherman, eventually sold the rights to IIP. *Id.* *Beast* was published on May 6, 1970, registered in 1971 (Reg. No. LP-38823), and renewed in 1999. IIP Exhibit A at 1-4 (Dkt. 48). *Drinkers* was published on September 18, 1964, registered in 1992 (Reg. No. PA 645-707), and renewed in 1993. *Id.* at 5-8. *Island* was published on February 20, 1969, registered in 1997 (Reg. No. PA 680-876), and also renewed in 1997. *Id.* at 9-12. *Monsters* was published on February 11, 1970, registered in 1996 (Reg. No. PA 787-165), and renewed in 1999. *Id.* at 14-18. A notice of assignment (although not the assignment itself) was filed with the Copyright Office in 1999, stating that *Monsters* had been assigned to IIP. *Id.* at 19. Similarly, a notice of assignment was filed with the Copyright Office in 2011, stating that *Beast, Drinkers,* and *Island* had been assigned to IIP. *Id.* at 20.

In 2015, IIP engaged David Sehring, through his consultancy Drive-In-Sanity Films, LLC, to be its agent regarding licensing and other activities. Claimant Party Statement, at 2; Sehring Statement, at 3. At some point thereafter—although it is unclear when—Sehring noticed that Tubi was streaming the Works on its platform. Claimant Party Statement, at 2; Sehring Statement, at 3.[1] Tubi's presentations of the Works contained watermarks, which were originally released in 2002 and 2018, respectively, by Claimant's exclusive home video licensees Image Entertainment

[1] Tubi provides the dates that it streamed the Works and the earliest was *Drinkers*, which started streaming on May 6, 2021, less than three years before IIP filed this action, so there is no issue regarding the statute of limitations. Dimont Statement ¶¶ 39-44.

and Severin Films. Claimant Party Statement, at 1-2; Sehring Statement, at 3-4. The watermarked presentations included Claimant's distribution logo, Claimant's copyright renewal information on a separate title card, as well as a new title card produced for the officially licensed DVD presentation of *Beast*, all at least showing that Claimant asserted copyright ownership when the movies were streamed by Tubi. Sehring Statement, at 3-4; IIP Exhibits J (Dkt. 43) & K (Dkt. 39). IIP had not licensed Tubi to show the Works and started sending cease-and-desist communications to Tubi; and when those communications were unsuccessful, this proceeding was started. Claimant Party Statement, at 2; Sehring Statement, at 5-6.

Tubi, for its part, does not deny the showing of the Works. It specifically states: "Tubi does not dispute that the Subject Works were available and watched on its platform." Tubi Party Statement, at 1.[2] And IIP's exclusive agent Sehring attests that the Works distributed on Tubi were copied from IIP's transfers and scans of the Works, and "were clearly made from previous home video releases that featured materials solely owned and controlled by [IIP]." Sehring Statement, at 3.

Tubi states that it received licenses from third parties who represented that they had the right to license the Works. Dimont Statement ¶¶ 32-36. Tubi provides portions of those licenses, which include representations and warranties that the third parties owned the Works. Tubi Exhibits V (Dkt. 72), W (Dkt. 70), X (Dkt. 58), and Y (Dkt. 65). IIP appears to have no knowledge of those third parties; Sehring states that it never gave rights to those third parties, and notes that Tubi has not suggested that the licensors supplied any chain-of-title or copyright registration information. Sehring Statement, at 5-8. IIP's conclusion is that the Works used by Tubi were "pirated" copies. *Id.*; Claimant Party Statement, at 2.

IIP claims that various deals were jeopardized because of the alleged infringements, including one deal IIP values at $81,000. Sehring Statement, at 9. Tubi earned revenues on the showing of the Works, splitting advertisement revenue with the third-party licensor. Dimont Statement ¶¶ 38-46. After Tubi took out very nominal expenses, the amount of earnings Tubi received in total was $2,271.86. *Id.*

[2] The Tubi Party Statement starts labeling page numbers after the cover page and the Board adopts Tubi's numbering here.

III. Analysis

To succeed on a claim for copyright infringement, a claimant must establish "(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original." *Feist Publications, Inc. v. Rural Telephone Serv. Co., Inc.*, 499 U.S. 340, 361 (1991). As related in the facts above, there is no dispute that Tubi distributed the Works without IIP's authorization. The only real question concerns Tubi's claim that IIP has not established that IIP is the actual owner of the Works such that IIP can bring this claim.

Only "[t]he legal or beneficial owner of an exclusive right under a copyright" is entitled to sue for infringement. 17 U.S.C. § 501(b). *See also* 17 U.S.C. § 1504(c)(1). Copyright ownership "vests initially in the author or authors of the work." 17 U.S.C. § 201(a). "As a general rule, the author is the party who actually creates the work, that is, the person who translates an idea into a fixed, tangible expression entitled to copyright protection." *Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 737 (1989) (citing 17 U.S.C. § 102). "If a plaintiff is not the author of the copyrighted work then he or she must establish a proprietary right through the chain of title in order to support a valid claim to the copyright." *Motta v. Samuel Weiser, Inc.*, 768 F.2d 481, 484 (1st Cir. 1985). *See also Religious Tech. Center v. Netcom On-Line Communication Services, Inc.*, 923 F. Supp. 1231, 1241 (N.D. Cal. 1995).

As discussed further below, IIP asserts that it purchased the rights to *Monsters* directly from Tal and its owners. IIP Exhibit E (Dkt. 46); Claimant Party Statement, at 1. The claimed chain of title for the other three Works has more links, passing from Hemisphere Pictures, Inc. ("HPI") to its creditor Harris Associates Inc. ("Harris") to Hemisphere Entertainment Inc. ("HEI") before reaching IIP. IIP Exhibits B (Dkt. 45) & D (Dkt. 41); Claimant Party Statement, at 1. Tubi contends, and attempts to explain, that IIP "has failed to satisfy its burden of establishing ownership of the copyrights to the Subject Works," and that the chain of title for each Work "is incomplete and conflicting." Tubi Party Statement, at 1-5. It argues that IIP has not shown that "entities in Claimant's proffered chain of title actually were active or in a position to receive or assign rights in the Subject Content at the time of the alleged transfer," and has not shown "that it has obtained title from the authors of the works" directly. *Id.* at 6.

The Board addresses Tubi's general claims relevant to lack of ownership first and then goes through the chain of title for each movie individually to conclude that IIP has established ownership of the Works in this proceeding. Tubi

tangentially offers a second defense—that it received licenses from third parties to show the Works. However, that defense is not based on the idea that Claimant authorized the third parties to sublicense the Works, but, like Tubi's first defense, is dependent on a finding that IIP is unable to show its ownership and control of the Works (so it is conceivable these third parties had the rights). *See* Tubi Party Statement, at 7. Tubi may claim that it "justifiably" thought that the third parties, who even provided warranty provisions, could give Tubi rights, *id.* at 9, but copyright infringement is a strict liability tort. *Bell v. Wilmott Storage Services, LLC*, 12 F.4th 1065, 1081 (9th Cir. 2021) (citing 4 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 13.08[B][1] (2019)). The preponderance of the evidence is that IIP owns the Works and did not give the third parties the right to license the Works to Tubi.

a. Authorship

Tubi claims that "the purported author" of each Work is an individual who did not transfer rights to the corporate entity from which IIP obtained ownership. Tubi Party Statement, at 2-5. However, in each case, Tubi conflates the person who IIP says conceived the movie with the company that would be considered the "author" under the law. Tubi's assertion that IIP identified the authors as Al Adamson ("Adamson") for *Monsters*, Gerardo De Leon for *Drinkers*, and Eddie Romero for *Island* and *Beast*, *id.*, is not accurate. Rather, in response to interrogatories asking who "conceived of" and who "created" the Works, IIP listed those individuals as the "films' main producer-directors." Tubi Exhibit C (Dkt. 74). The Board does not view IIP's listing of individuals in response to interrogatories separately asking who conceived or created the Works as an assertion that they were the films' "authors," as the term is understood in copyright law.

b. Copyright Registrations

A registration certificate issued no more than five years after first publication of the work creates a presumption that the copyright is valid and is prima facie evidence of the facts stated in the certificate, including the name of the copyright claimant and of the author. 17 U.S.C. §§ 410(c) & 1505(c). *See also Academy of Motion Picture Arts and Sciences v. Creative House Promotions, Inc.*, 944 F.2d 1446, 1451 (9th Cir. 1991). IIP submits certificates of registration and renewal for each Work. IIP Exhibit A at 1-19 (Dkt. 48). *Beast* was first published in 1970 and its registration

certificate issued in 1971, so the presumption of validity applies. *Id.* at 1-2; IIP Exhibit B at 1 (Dkt. 45).

Drinkers was published in 1964 and its registration issued in 1992; *Island* was published in 1969 and registered in 1997; *Monsters* was published in 1970 and registered in 1996. IIP Exhibit A at 5, 9, 14. Under 17 U.S.C. § 410(c), as Tubi notes, no presumption of validity arises from those certificates because they issued more than five years after the Works were first published. Tubi Party Statement at 2, 4-5. However, the application for renewal registration of the copyright in *Island* was made within one year before the expiration of its initial copyright term. IIP Exhibit A at 7, 11. Under 17 U.S.C. § 304(a)(4)(B), the certificate of renewal registration for *Island* constitutes prima facie evidence as to the validity of the copyright during its renewed and extended terms and of the facts stated in the certificate. For *Drinkers* and *Monsters*, under Section 410(c), the evidentiary weight accorded to their registration certificates and to the facts stated therein is in the Board's discretion. As discussed below, in this case, the evidence supports, or at the very least gives no doubt to, the registration certificates. Moreover, "courts may exercise their discretion to afford late filings presumptive validity, should the circumstances warrant. . . . The proof typically consists in plaintiff's involvement in purveying the subject item over the course of many years." 3 Nimmer on Copyright § 12.11[A][1][e] (2025). *See Stern v. Lavender*, 319 F. Supp. 3d 650, 670-71 (S.D.N.Y. 2018) (2013 registration of photographs published in 1992 was accorded the same weight as a timely registration, in part because the photographer's "claim to ownership of copyright was unchallenged" over the intervening years). Buttressing this, IIP states that for decades, "IIP has had peaceful enjoyment of all rights with no challenges, until these recurring infringements by Tubi." Claimant Party Statement, at 1; Reply to Dimont, at 1. *See also* IIP Exhibit H (Dkt. 42) and IIP Exhibit I (Dkt. 38) (licenses from 2001 and 2018, respectively, where IIP licensed some of the Works to others).

c. Specific Movies

i. *Beast of Blood*

The registration certificate for *Beast* (the Work for which the presumption of the facts in the registration certificate applies) names Beast of Blood Company as its copyright claimant and author. IIP Exhibit A at 1-2; IIP Exhibit B at 1. Tubi suggests that no such company existed: "There are no corporate records that Beast of Blood Company ever existed as a valid legal entity." Tubi Party Statement, at 2. IIP could not own any rights derived from a company that

was "not a legal entity capable of owning property." *Motta v. Samuel Weiser, Inc.*, 598 F. Supp. 941, 948 (D. Me. 1984), *affirmed*, 768 F.2d 481 (1st Cir. 1985). But Tubi presents no evidence that the company did not exist. Unsupported argument in a party statement is not evidence. 37 C.F.R. § 222.15(b). Meanwhile, some evidence of its existence appears in title cards within *Beast* that bear this copyright notice: "© copyright MCMLXX Beast of Blood Company." IIP Exhibit K at 5, 10; IIP Exhibit J at 4, 11 (same). *See also* 17 U.S.C. §§ 19, 5(m) (1970). In any case, Tubi fails to rebut the presumption arising from the initial registration certificate that Beast of Blood Company was the author and copyright owner of *Beast*.

Tubi asserts that there is no record evidence "of a sale or assignment of the title from Beast of Blood Company to Claimant." Tubi Party Statement, at 2. That is not correct. In 2011, the Copyright Office recorded a notice in which Sherman, on behalf of IIP, declared that all rights and copyrights for *Beast*, *Drinkers*, and *Island*, among other works, had been assigned to IIP. IIP Exhibit A at 21. Tubi erroneously describes that notice as reflecting an assignment *from* IIP. Tubi Party Statement, at 4; Tubi Exhibit N (Dkt. 61). Sherman was able to renew the *Beast* copyright on Beast of Blood Company's behalf in 1999 (IIP Exhibit A at 3-4), and—keeping in mind that the standard for factual findings is "the preponderance of the evidence," 17 U.S.C. § 1506(s), including the Board's weighing of witness credibility—Tubi does not provide a basis to doubt that Sherman could assign the copyright on the company's behalf to IIP in 2011. Tubi notes that, at some point, non-party John Carr purported to own the rights to 518 films, including *Beast*, and he attempted to quitclaim and assign those rights to non-party AIM Group in 2005. Tubi Party Statement, at 4; Tubi Exhibits M (Dkt. 57) & P (Dkt. 59). That conjecture is not supported by adequate evidence as Tubi does not identify a chain of title that would show that John Carr or AIM Group owned the rights to *Beast* at any time, and IIP vigorously and persuasively denies it. *See* Reply to Dimont, at 1-2; Sehring Statement, at 5-9.

The Board finds that IIP owns the *Beast* copyright. As further discussed below, even if there were no Beast of Blood Company, sufficient evidence is presented to find that the copyright was ultimately transferred to IIP. To be clear, the Board is not simply finding for IIP because Sherman filed an assignment notice. The standard is the preponderance of the evidence, and Sherman, who has been around for the entirety of IIP and the history of these movies, has not only filed documents with the Copyright Office—in addition to the assignment notice—but testifies

to the transfers of *Beast* and the other movies without any evidence tending to counter his statements and the evidence before the Board.

ii. *The Blood Drinkers* and *Mad Doctor of Blood Island*

The 1992 registration certificate for *Drinkers* and the 1997 registration certificate for *Island* both list HPI as the author and HPI (c/o Sherman) as the copyright claimant. IIP Exhibit A at 5, 9. Even if the *Island* certificate gets minimal weight because it does not get a presumption of validity, the *Island* renewal certificate is prima facie evidence that HPI is the author and renewal claimant. Tubi does not dispute, and the Board finds, that HPI was the owner of the copyright in *Island* at the beginning of the renewal term in 1988.

However, the *Drinkers* certificate, which was issued in 1992 (28 years after the film was first published) bears certain irregularities. When filling out the application for registration for *Drinkers*, Sherman initially typed in HEI, not HPI, as the copyright claimant, based on a claimed "[a]ssignment of all rights" to HEI. *Id.* at 5. Those entries were stricken; a note on the form indicates that it was "Amended by Copyright Office." *Id.* at 6. When Sherman signed the form, he indicated that he was certifying it as the "duly authorized agent" of HEI (the renewal claimant), not of HPI (the original copyright claimant). *Id.* A certificate of renewal registration for *Drinkers* was issued with an effective date of January 25, 1993, after the expiration of the original term of copyright for *Drinkers*. IIP Exhibit A at 7-8. That certificate, which carries no prima facie weight, named HPI as the author and HEI as the renewal claimant.

The *Drinkers* registrations identified HPI as the author of the "entire work," *id.* at 5, 7, which might be an overstatement as contrary evidence suggests that copyright in the film was instead acquired by HPI (which then dubbed it into English). That being said, the minor flaws in the certificate do not lead the Board to doubt HPI's ownership. A Sceptre Industries, Inc. ("Sceptre") memorandum indicates that HPI bought the rights to *Drinkers*, just as Sceptre proposed to "purchase a 'companion feature'" for *Beast*. *See* IIP Exhibit G at 5-6; *id.* at 15 (production budget including costs of purchasing, translating, and dubbing "companion feature"). That would make HPI a valid copyright owner of *Drinkers*.

IIP asserts that HPI securitized the rights to its film library, including *Island*, *Drinkers*, and *Beast*, as collateral for a loan, and that Harris foreclosed on the loan in 1986. IIP Exhibit B at 2; IIP Exhibit D at 1-2 (Dkt. 41). IIP claims

that Harris then transferred the rights for thirteen films (including *Island*, *Drinkers*, and *Beast*) to HEI in 1993, and that in 2005, IIP purchased two-thirds of HEI's assets and Sherman transferred the other third to IIP. IIP Exhibit B at 2; IIP Exhibit D at 9-13, 16-17; Claimant Party Statement, at 1 ("the owners of Hemisphere sold and assigned all rights worldwide in perpetuity to [*Island*, *Drinkers*, and *Beast*] to IIP"). Finally, IIP also states that HEI's "library assets" (again including *Island*, *Drinkers*, and *Beast*) were assigned to IIP in 2011, leaving IIP as the sole owner of the motion pictures. IIP Exhibit B at 3.

The evidence supports IIP's timeline about its acquisition of rights. Tubi's main criticism of the HPI-Harris-HEI-IIP chain of title is its contention that HEI was dissolved years before the 2005 rights transfers to HEI that IIP describes. Tubi Party Statement, at 2, 4. Tubi shows that HEI was a New York corporation formed in 1992, dissolved in 1996, re-incorporated in 1997, and dissolved in 2001. Tubi Exhibits D (Dkt. 55) & E (Dkt. 75). Those facts are not inconsistent with IIP's chain of title. IIP does not contend that the defunct HEI disposed of its assets itself. Instead, the evidence shows that in 2005, HEI's three owners (including Sherman), each holding equal shares of HEI, assigned to IIP their shares in HEI and all of their interests in any HEI assets. Tubi Exhibits F (Dkt. 71) & Q (Dkt. 68). IIP notes, "[t]he owners of Hemisphere Entertainment Inc. owned the rights and properties to such company and could later convey them." Reply to Dimont, at 2. IIP is correct. A dissolved New York corporation has the power to "wind up its own affairs," which includes the "power to fulfill or discharge its contracts, collect its assets, sell its assets for cash at public or private sale, discharge or pay its liabilities, and do all other acts appropriate to liquidate its business." N.Y. Business Corp. Laws §§ 1005(a)(1)-(2). After its liabilities are paid or adequately provided for, the corporation "may distribute any remaining assets, in cash or in kind or partly each, among its shareholders according to their respective rights." *Id.* § 1005(a)(3)(B). IIP's assertions regarding its chain of title do not mention Beast of Blood Company which, as discussed above, was named as the copyright owner of *Beast* in the 1970 registration certificate. No transfer from that company to HPI is shown in evidence or described by IIP. However, even if no Beast of Blood Company formally existed as Tubi suggests, then the rights to the film evidently would have first belonged to HPI or its Sceptre division. *See* IIP Exhibit G at 1 (1970 HPI letter describing *Beast* as "our new production"), 2-4 (marketing materials describing *Beast* as a "Sceptre Industries, Inc. Production" "released by

Hemisphere Pictures, Inc.") & 5 (information memorandum identifying Sceptre as *Beast*'s "Producer-Distributor" and HPI as its "Sole Selling Agent"). Absent any other conveyance (and Tubi identifies none), the rights would have passed to IIP along with all other HPI assets, via Harris and HEI, in the manner IIP described. Thus, the evidence also additionally supports the finding above that IIP owns *Beast* as well as *Drinkers* and *Island*.

iii. *Horror of the Blood Monsters*

The 1996 registration certificate for *Monsters* lists Tal as the author and Tal (c/o IIP) as the copyright claimant. IIP Exhibit A at 14. That is not presumptively true, but there is no reason to doubt it. The Board finds sufficient evidence that Tal owned the copyright to *Monsters* in 1970 and licensed IIP to distribute it. Title cards in the opening credits of *Monsters* (as it appeared on Tubi) included: "Independent-International presents Horror of the Blood Monsters"; "An Al Adamson Production"; and "© Copyright MCMLXX Tal Productions." IIP Exhibit K at 22, 24. Adamson and Sherman founded IIP together, and Sherman declares that his work on *Monsters* was "for my business partner Al Adamson (TAL productions). When Al and I started our own company, IIP, it was the original and sole Distributor of HORROR OF THE BLOOD MONSTERS." Claimant Party Statement, at 1. *See also* IIP Exhibit B at 2. IIP states: "Before IIP purchased HORROR OF THE BLOOD MONSTERS outright they had the film from Tal Productions on an exclusive distribution license marketing the film to domestic theatres, on Television as VAMPIRE MEN OF THE LOST PLANET through Allied Artists Television Corp. and in the international theatrical and video markets as SPACE MISSION TO THE LOST PLANET…" Reply Statement ¶ 6. Those two alternate titles are listed in the *Monsters* registration certificate. IIP Exhibit A at 14.

IIP asserts that it obtained rights to *Monsters* from Tal by virtue of a 1974 purchase-and-sale agreement ("1974 Agreement"). Claimant Party Statement, at 1 ("The owners of TAL . . . sold all rights to the film to IIP."). There is sufficient evidence to find that Tal had an ownership interest in *Monsters* that was transferred to IIP. That 1974 Agreement purported to transfer, from both Tal and Tal's owners Charles and Zoe McMullen (together referred to therein as "Sellers") to IIP (referred to therein as "Purchaser") all right, title, and interest in *Monsters* and a second film (not at issue here), including their copyrights. IIP Exhibit E. The Sellers warranted that they were the sole and exclusive owners of the copyrights, that the McMullens owned 100% of Tal, and that "Mr. Al Adamson has no

interest of any kind or nature in Tal Productions or the Films, and that Mr. Adamson has assigned to Sellers his right, title and interest in and to the Films." *Id.* ¶¶ 3(a) and (f).

Tubi asserts that Adamson is the author of *Monsters* and that there has been no showing that Adamson transferred his copyright to Tal. Tubi Party Statement, at 5. If that were the case, Adamson would own the copyright. *See* 17 U.S.C. § 201(a). But if Adamson owned the copyright, then IIP (in which he was a partner) would have seen no need for "an exclusive distribution license" for the film from Tal, or for an outright purchase of the rights from Tal and Tal's owners, and IIP would not have signed an agreement in which Adamson's rights to *Monsters* were disavowed. The Board therefore finds it unlikely that Adamson had any personal ownership interest in *Monsters* when IIP distributed it upon its release in 1970, or in 1974 when IIP entered the purchase-and-sale agreement.

Tubi asserts that the 1974 Agreement was "only executed by Tal Productions and not the other Sellers [i.e., the McMullens] and is therefore invalid." Tubi Party Statement, at 5. The Board disagrees. A copyright co-owner may transfer its copyright interest to a third party, even if other co-owners do not join in or approve of the transfer. *Howard v. Weston*, 354 Fed. App'x 75, 77 (5th Cir. 2009); *Brownstein v. Lindsay*, 742 F.3d 55, 68-69 (3d Cir. 2014). At minimum, the agreement conveyed Tal's ownership interest in *Monsters* to IIP. Moreover, the Board finds that the agreement was signed by Charles McMullen on behalf of the Sellers, so it would also have conveyed any separate interest he may have held. *See* IIP Exhibit E, at 6. Nothing in the agreement suggests that any Seller had an independent interest in *Monsters* that he could not transfer.

Tubi contends that Tal was not incorporated until 1979, so it "was not a valid legal entity at the time of the assignment, making the assignment invalid." Tubi Party Statement, at 5. This appears to be a case of mistaken identity. For support, Tubi points to documents on the California Secretary of State's website about a corporation called TAL Productions, Inc., including a live link to its 1987 Certificate of Dissolution. Tubi Exhibit U (Dkt. 54); Dimont Statement ¶ 31. Despite the similar name, that corporation was not Adamson's production company. The Certificate of Dissolution was signed by the corporation's director Anthony Cacciotti, an actor and television producer

who was married to actress Valerie Harper.[3] There is no reason to imagine that Cacciotti and Harper's production company, which incorporated in 1979, had any relation to Adamson's Tal, which produced *Monsters* in 1970 and assigned its copyright ownership to IIP in 1974. IIP has standing to bring this claim to enforce that copyright whether the 1974 assignment made IIP a co-owner or the sole owner of the copyright.

The Board finds that IIP has an ownership interest in the *Monsters* copyright.

IIP presents sufficient evidence of its chain of title to support its claim that it has acquired exclusive rights in all four of the Works from the copyright owners, and Tubi does not present evidence that places the issue in doubt.[4]

IV. Damages

IIP requests the maximum statutory damages available in this case. Damages for 23-CCB-0311 (Dkt. 84). The maximum amount that the Board can award in this proceeding is $15,000 per work infringed with an overall maximum of $30,000 for the entirety of the proceeding. 17 U.S.C. §§ 1504(e)(1)(A)(ii)(I), 1504(e)(1)(D).

Courts have wide discretion to award statutory damages as long as they fall in the statutory range. *See F.W. Woolworth Co. v. Contemporary Arts, Inc.*, 344 U.S. 228, 231-32 (1952); *Peer Int'l Corp. v. Pausa Records, Inc.,* 909 F.2d 1332, 1336 (9th Cir. 1990). "[T]he court's conception of what is just in the particular case, considering the nature of the copyright, the circumstances of the infringement and the like, is made the measure of the damages to be paid. . . . Within [the statutory] limitations the court's discretion and sense of justice are controlling[.]" *L.A. Westermann Co. v. Dispatch Printing Co.*, 249 U.S. 100, 106 (1919).

In deciding the appropriate amount of statutory damages to award, courts generally seek to establish a relationship between statutory damages and actual damages. *See, e.g.*, *Seoul Broad. Sys. Int'l v. Young Min Ro*, No. 9-cv-433, 2011 WL 3207024, at *8 (E.D. Va. July 27, 2011). Here, IIP presents evidence of licenses for both the manufacturing of DVDs (IIP Exhibit H) (Dkt. 42) and for video-on-demand streaming services (IIP Exhibit I)

---

[3] *See, e.g.*, C. Gerald Fraser, *Television Week*, New York Times (Oct. 17, 1982), available at https://www.nytimes.com/1982/10/17/arts/television-week-229181.html (Harper's "own company, TAL Productions, which she formed with Tony Cacciotti, her partner in life and business, was involved in the production of 'Farrell [for the People].'").

[4] A majority of the Board agrees with this conclusion. One member of the Board concludes that due to gaps in the chain of title, IIP has not met its burden of proof at least with respect to *Beast* and *Monsters*.

(Dkt. 38). The most comparable license is the 2018 streaming license, IIP Exhibit I), but that license, which does require a $4,000 advance each for use of *Beast* and *Doctor,* has recoupable provisions, and the true amount that IIP was paid—based on a royalty percentage of proceeds—is unknown. IIP also presents the Sehring Statement as evidence of losses, but the Sehring Statement is somewhat speculative. Sehring states that he is the exclusive agent for IIP, including licensing of its films. His main attempt to quantify the possible harm to IIP comes on the last page of the nine-page statement, where he says: "Unfortunately, TUBI's recurring infringements . . . jeopardized various deals that were being negotiated for exclusive rights to these titles, including one valued at $81,000." Sehring Statement, at 9. Sehring gives no further detail, does not say which of the Works were in the deal affected, if any, or if the supposed deal was for many additional works as well. Sehring neither describes in any way how he came to an $81,000 value nor attaches any evidence to support that amount. As such, his statement carries little weight.

However, harm such as lost license fees is not the only types of damages relevant to copyright infringement. The statute also provides that one element of non-statutory damages is "profits of the infringer that are attributable to the infringement. . . . In establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work." 17 U.S.C. § 504(b).

Tubi receives revenues through advertisements placed before or during the display of the Works. Dimont Statement ¶ 37. Tubi has provided its revenues related to each work and has subtracted only extremely nominal expenses, which the Board accepts. *Id.* ¶¶ 38-46. Tubi splits its net revenue equally with the company from which it (invalidly) licensed the works to arrive at its profits. *Id.* Here, the amount of profits Tubi received for showing the four Works was $2,271.86 combined. *Id.* Claimant does not offer any contrary evidence. Tubi argues that no more than 50% of the profits should be deemed attributable to the infringement because most of Tubi's earnings come from its efforts "in creating a viable ad-supported content platform." *Id.* ¶ 46. That is, Tubi makes money by being Tubi, and presumably viewers will turn on Tubi regardless of what it is showing. However, Tubi provides no evidence of that. It is conceivable that Tubi has such a presence that it can show anything and make similar revenues. But it is

at least as conceivable that (a) viewers turned on their streaming device, searched for one of the Works, and were taken to Tubi, or (b) the reason viewers go to Tubi is that it has a good stock of old horror movies, including the Works, meaning Tubi cannot argue the equivalent of "we could infringe every movie we show and not pay profits on any *single* movie." Given the evidence—and that IIP's typical advances for these movies well exceeds $2,771.86 for four movies—the Board finds that all of the $2,271.86 of profits is attributable to the infringement.

Across the country, courts typically award statutory damages in a range from approximately two to six times established damages, with around three times being most prevalent. *See, e.g.*, *Broadcast Music, Inc. v. Eatnout, LLC*, No. 2:15cv254, 2015 WL 12803458, at *3 (E.D. Va. Dec. 29, 2015). Such awards are justified because an award "should put infringers on notice that it costs less to obey the copyright laws than to violate them." *Broadcast Music, Inc. v. DFK Entertainment, LLC,* No. 1:10-CV-1393 GLS/DRH, 2012 WL 893470, at *4 (N.D.N.Y. Mar. 15, 2012); *Philpot v. L.M. Commc'ns II of S.C., Inc.,* 343 F. Supp. 3d 694, 702–03 (E.D. Ky. 2018). *See also Woolworth*, 344 U.S. at 233 ("[A] rule of liability which merely takes away the profits from an infringement would offer little discouragement to infringers."); *Schiffer Publishing, Ltd. v. Chronicle Books, LLC*, No. Civ. A. 03-4962, 2005 WL 67077, *8 (E.D. Pa. Jan. 11, 2005) (awarding an amount "between four and five times" greater than the sum of defendant's profits and an estimate of licensing fees).

Given that the Board has wide discretion to "consider what is just in the particular case," the Board concludes that it is appropriate to take the $2,271.86 it believes was attributable to the infringement based on the evidence and arguments supplied by the parties, and multiply it by approximately three, resulting in a statutory damages award of $6,700.

V. Conclusion

The Copyright Claims Board finds Respondent Tubi liable for infringement and awards Claimant Independent-International Pictures Corp. $6,700 in statutory damages.

Copyright Claims Board