COPYRIGHT CLAIMS BOARD

Docket number: 24-CCB-0272
February 18, 2026

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

FINAL DETERMINATION

This matter has been fully submitted by the parties. For the reasons that follow, the Copyright Claims Board ("Board") finds in favor of Respondent Keiry A. Borruel ("Borruel" or "Respondent") and dismisses the claim against Borruel with prejudice.

I. Procedural History

April M. Peck ("Peck" or "Claimant") filed this claim (Dkt. 1) on September 12, 2024. The Board found the Claim compliant and, on September 17, 2024, directed Peck to serve Borruel. (Dkt. 4). After service on Borruel, the Board did not receive an opt-out form from her.

On November 19, 2024, the Board notified the parties that the Claim had entered the "active phase" because Borruel did not opt out, ordered Peck to pay the second filing fee, and ordered Borruel to register for the Board's online docketing system (eCCB). (Dkt. 7). Borruel filed her response on January 17, 2025. Borruel Response (Dkt. 16).

On April 3, 2025, after discovery was completed, the Board ordered the filing of written testimony. (Dkt. 23). For her written testimony, Peck filed evidence (Dkt. 24-61, 63-67 (Exhibits A-QQ)) and an evidence list (Dkt. 62), as well as a Party Statement ("Peck Party Statement") (Dkt. 69), and her own witness statement ("Peck Decl.") (Dkt. 68). Borruel filed evidence (Dkt. 71, 73-79, 82-85 (Exhibits 1-12)) and an evidence list (Dkt. 72), as well as a Party Statement ("Borruel Party Statement") (Dkt. 81), and her own witness statement ("Borruel Decl.") (Dkt. 80). Peck filed a Reply Party Statement (Dkt. 90) and additional evidence (Dkt. 87-89, 91-92, 94 (Exhibits RR-WW)), along with a reply evidence list (Dkt. 93). This case is now ready for final determination.

II. Factual History

The facts relevant to this Final Determination are largely uncontested. Moreover, while the Board appreciates the thoroughness of the exhibits presented, most of them do not affect the core facts upon which the Board bases its opinion.

Peck and Borruel are both professors at Victor Valley College ("VVC"). Peck Decl. ¶ 2; Borruel Decl. ¶ 3. Peck was the only full-time faculty member in the psychology department until Borruel, who was hired in 2021 as a part-time instructor, became full-time in 2022. Peck Decl. ¶ 2; Borruel Decl. ¶¶ 3, 5. As chair of the psychology department, Peck asked Borruel to teach a research methods course for the Spring 2022 semester ("Psyc 217"). Borruel Decl. ¶ 5. Because Borruel had never taught that class before, Peck offered to be of assistance and gave Borruel full access to materials from Peck's teaching of that class in 2020. Peck Decl. ¶ 2; Borruel Decl. ¶¶ 5-6. Those materials included the syllabus and, importantly for this case, full access to Peck's Research Methods "Canvas" Course shell (the "Work"), which was registered effective July 27, 2024, with copyright registration number TX 9-417-242 and a first publication date of January 18, 2016. *Id.*; Claimant Ex. A (Dkt. 57); Claimant Ex. B (Dkt. 33).[1]

Peck, who is seemingly very familiar with how Canvas works, did not give access to Borruel as just an observer, but gave full access, including the ability to download materials to use. Borruel Decl. ¶ 6. Peck also gave Borruel detailed instructions and encouragement, including replying to Borruel's request for materials by saying, in an email, "Absolutely! Psyc-217 can be a bear to prep. I've added you as a teacher to my 217 canvas course. There, you'll be able to see a syllabus, lab activities, and my videos," and by giving instructions on how to use the materials to best run the class. Borruel Decl. ¶ 7; Respondent Ex. 3 (Dkt. 79) at KB000048. Borruel states that they had "multiple conversations about my use of the materials" and that Peck "walked me through how to download and upload a canvas shell." Borruel Decl. ¶ 56. Borruel believed Peck's communications and actions to be permission to use

[1] It is actually unclear what portion of the Work, or whether the entirety of the Work, was provided by Peck to Borruel, and it is not fully clear whether Borruel used parts of or all of what was shared with her. However, the outcome would not change even if Borruel used the entirety of what Peck provided to her to teach the Psyc 217 class.

those materials in her teaching of the Psyc 217 course. *Id.* ¶ 8. During the teaching of the course, using the Work, Borruel would regularly communicate with Peck if she needed help or had questions. *Id.*

In early 2022, Borruel was made a full-time professor, and, again as chair of the department, Peck signed Borruel up (literally) to teach Psyc 217 as well as another course. *Id.* ¶ 9. Peck told Borruel that if Borruel did not teach Psyc 217 again, she would have to hire someone else, and so Borruel agreed to do it again. *Id.* Believing she could continue to use the same materials to teach the same course, and not having heard anything to the contrary from Peck, Borruel did so when teaching the Spring 2023 course, and then again when she agreed to teach the course in Fall 2023. *Id.* ¶ 9.

On October 26, 2023, Peck emailed Borruel; while admitting that she shared the Canvas materials with Borruel so that she could use them for Psyc 217, she stated that "it was never the expectation that you would use the materials in perpetuity with or without attribution." Respondent Ex. 3 at KB000047. Even though Borruel was using the materials to teach the course Peck asked her to teach, Peck's email stated that she was taking the action of making videos linked to in the materials "private, so that is probably going to cause a disruption for your students." *Id.* Peck warned Borruel that "I do not give permission for my intellectual property to be used in the development of any course," and "[y]ou need to create your own materials for this course." *Id.*

That same day, Borruel replied, apologizing and saying that she actually had created her own materials, and all that was still being used were links to some videos, but that she was deleting them immediately. *Id.* at KB000046. Peck replied, also the same day, stating that she accepted the apology, and that Borruel's explanation "sounds reasonable to me. If you are removing my material, that's all I want." *Id.* Later that day, Borruel apologized again and also offered Peck, her superior, the ability to view her course if she wished in order to make sure Peck was satisfied. *Id.* at KB000045.

Four months later, on February 12, 2024, Peck emailed Borruel to take her up on that offer and "view your canvas shell." *Id.* Borruel asked if Peck would like to see the current semester or the last one, and Peck said she wanted to see "both for good measure." *Id.* at KB000044. Peck also asked to be added as a "teacher" for fuller access. *Id.* Borruel agreed and even stated that she could leave Peck on as a teacher all semester long so that Peck

could see updates as the semester progressed. *Id.* at KB000043.

On February 15, 2024, Peck emailed Borruel to state that she had reviewed Borruel's course materials for Spring 2024 and that the materials all looked fresh such that she had no issues; furthermore, Peck was so relieved that she said she did not need access to the old Fall 2023 course shell anymore.[2] *Id.* at KB000041. The next day, Borruel stated that she appreciated Peck reaching out and communicating, and not "letting those feelings fester," and that she did not want to do anything to hurt their relationship. *Id.*

At this point, Borruel did not feel comfortable teaching Psyc 217 for the Fall 2024 semester and told the colleague responsible for scheduling her courses to schedule her for other courses instead. Borruel Decl. ¶¶ 18, 22-23. Peck, however, intervened, stating that Borruel needed to continue teaching it, and that teaching such an in-demand course needed to be a priority. *Id.* ¶¶ 23-28. As Peck was chair of both the department and the committee to decide Borruel's potential tenure, Borruel felt as if she had no choice and relented. *Id.* ¶¶ 25-29.

Peck states that by March 2024, she discovered that Borruel "continued to rely on my materials" but that Borruel denied this and accused Peck of creating a "hostile environment." Peck Decl. ¶ 7. In her Party Statement, Peck admits that the "materials" to which she is referring are five public articles not created by Peck, which presumably Peck had her students read when she had taught Psyc 217 in the past, and Borruel also had her students read. Peck Party Statement, at 4-5. Borruel notes, credibly, that these articles were popular and frequently-cited articles in the field and even referred to in instructor manuals provided with the course's textbook. Borruel Decl. ¶¶ 33-35. Even so, in response to Peck's accusations, Borruel changed the articles she assigned for her students to newer articles. *Id.* ¶ 34. Peck escalated her concerns to the instructional dean at the college, expecting support, but instead, the college removed Peck from Borruel's tenure committee. Peck Decl. ¶ 8. Borruel also filed a harassment complaint against Peck at the college, and her request to move her office away from Peck's was granted. Borruel Decl. ¶ 42.

[2] Peck states in her papers that—although she told Borruel that there were no issues and that she did not need access to Fall 2023 anymore—she did look at the Fall 2023 course in February 2024 and saw some of what she says were her materials in that old shell, but chose not to escalate the matter at that time because she had confirmed that Borruel was not using them for the Spring 2024 course. Peck Decl. ¶ 6; Peck Party Statement, at 4.

Other than Peck's complaint that Borruel had her students read certain third-party articles Peck's prior students had read, there is no evidence in the record that Borruel used any of Peck's materials or any of the Work in Borruel's materials after Peck's October 26, 2023 email that Peck did not wish Borruel to use the Work "in perpetuity." Respondent Ex. 3 at KB000047. Borruel has not taught the Psyc 217 class since the Spring 2024 semester. Borruel Decl. ¶¶ 40, 44-45.

III. Defenses

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). Borruel contests neither Peck's ownership of the Work, as documented in the certificate of registration, nor that she used certain portions of the Work in teaching the Spring 2022, Spring 2023, and (at least through the use of links in the Work to videos) Fall 2023 Psyc 217 classes. Without permission, or a valid other defense, such as fair use, this would be considered infringement. However, Borruel has an obvious and iron-clad defense: Borruel clearly had Peck's permission to use the Work, and after Peck arguably removed that permission in October 2023, Borruel removed any portion of her teaching materials that could remotely be considered infringing.[3]

A license is a defense to a claim of infringement. *See Oddo v. Ries*, 743 F.2d 630, 634 n. 6 (9th Cir. 1984); *Keane Dealer Services, Inc. v. Harts*, 968 F. Supp. 944, 947 (S.D.N.Y. 1997); Melville B. Nimmer & David Nimmer, 4 *Nimmer on Copyright* § 13D.28 (2026). A "'nonexclusive license may be granted orally, or may even be implied from conduct.' . . . In fact, consent given in the form of mere permission or lack of objection is also equivalent to a nonexclusive license and is not required to be in writing." *I.A.E., Inc. v. Shaver*, 74 F.3d 768, 775 (7th Cir. 1996) (quoting 3 *Nimmer on*

[3] Whether any revocation was valid is "arguable" because it is unclear that Peck's email and actions were a clear revocation of the permission and it is possible that, especially given Peck's continued pressure upon Borruel to teach the same course, the permission was irrevocable for that use. "An implied license is revocable where no consideration has been given for the license. However, it is settled that a nonexclusive license may be irrevocable if supported by consideration because then the implied license is an implied contract." *Unclaimed Prop. Recovery Service, Inc. v. Kaplan*, No. 11-cv-1799, 2012 WL 4195241, at *4 (E.D.N.Y. Sept. 20, 2012) (citations and internal quotations omitted), *aff'd*, 734 F.3d 142 (2d Cir. 2013); *accord Asset Marketing Systems, Inc. v. Gagnon*, 542 F.3d 748, 757 (9th Cir. 2008). *See also* 3 *Nimmer on Copyright* § 10.02[B][5] (2026) (citing cases). Here, Borruel's agreement to teach the course (and continue to teach it) at Peck's insistence may constitute "consideration," which California law—where the parties reside—defines as "any benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled." Cal. Civ. Code § 1650. However, whether the permission could be or was revoked or not does not change the outcome of this determination.

Copyright § 10.03 (1995)). "When the totality of the parties' conduct indicates an intent to grant such permission, the result is a nonexclusive license." 3 *Nimmer on Copyright* § 10.03[A][7] (2026).

There is no question that the "totality of the parties' conduct" indicates that Borruel was granted a license to use the Work. In fact, it is unclear how this dispute rose to the level of a lawsuit, especially after the parties' general conflict was brought before VVC's administrators. Peck essentially demanded that a brand-new professor teach a course that she had never taught before. To put Borruel at ease, Peck provided Borruel with access to the materials Peck used when teaching the course previously (that is, the Work)—which seems to be the type of thing that any department head would do for a new professor doing the department head a favor by taking on a course with which the new professor was unfamiliar. It makes no sense why Peck would think that Borruel did not assume permission to use those same materials, and, in fact, to use them "in perpetuity" for as long as Borruel was teaching Psyc 217, with Borruel developing the materials as she taught new iterations of the class. Borruel's apologies to Peck for continuing to use her material beyond that first semester, and her stopping use of that material, when Peck complained, say nothing more than an attempt by a new professor not to get on the bad side of a difficult boss who controlled her future and her possibility for tenure. They are certainly not admissions that Borruel was doing something wrong by using the Work beyond the first teaching of the class, and they do not undercut the fact that the parties' conduct shows that, in exchange for Borruel teaching Psyc 217, Peck allowed Borruel to use the Work to teach that class; and, Borruel did nothing more than that. Accordingly, the Board dismisses the claim against Borruel with prejudice.[4]

IV. Conclusion

The Board dismisses the claim against Keiry A. Borruel with prejudice.

Copyright Claims Board

[4] Based on Borruel's clear defense to any claim of infringement due to the permission given, the Board has no need to delve into Borruel's fair use defense, even if that defense may have been meritorious as well.