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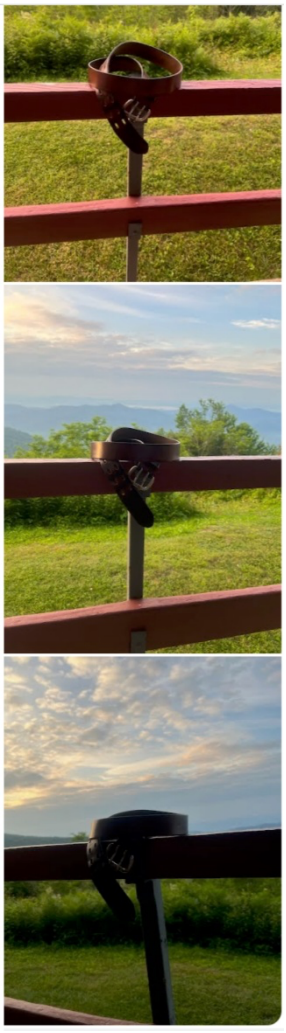
COPYRIGHT CLAIMS BOARD

ALEXANDRA FISHMAN, Claimant, v. BELLA LUMIÈRE PHOTOGRAPHY, et al. Respondents.	Case No. 25-CCB-0006 RESPONDENTS' PARTY STATEMENT

This case involves a disgruntled ex-client who sent a self-taken iPhone photo to a professional wedding photographer for inclusion in her wedding photo gallery. After Claimant became unhappy with Respondent's services in other respects, she now claims that the inclusion of the self-taken photo in the gallery constitutes copyright infringement. The claim is without merit, because Claimant's own text message created an implied license. Even if no implied license existed, any infringement would be both innocent and *de minimis*, warranting no damages. The Respondents request a trial before the Copyright Claims Board.

Statement of Facts

This case arises from a text message that Claimant Alexandra Fishman ("Fishman") sent to Respondent Riley-Payton Priddle ("Priddle") on July 17, 2024, reproduced below:



Also if you can put it in your notes so we don't forget to tell you this time...one important picture we forgot was of Daniel's belt. It was his brother's belt and we made his leather shoes for both weddings match it to honor his brother and we forgot to ask you to capture it so we took pics of it the next day at the hotel. But we'd much prefer them included in the detail pics in December with everything else!

(Respondent Exhibit C)

At the time of this text message, Priddle was Fishman's wedding photographer. The parties had entered into a written contract on March 24, 2024, wherein the Priddle agreed to provide photography services for Fishman and her fiancé at two separate wedding ceremonies. Respondent Exhibit A. In addition to photographing the two ceremonies, the contract also required Priddle to create an "Online Image Gallery with Professional Print Lab Access." *Id.* Another contracted-for service was "Advanced Editing and Post Processing." *Id.* With respect to

these services, the contract explicitly provides that "All images/video clips are edited at his/her discretion . . . . Photographer reserves the creative right to edit and release only those deemed professional in quality and within his/her artistic and creative standards." *Id.* The contract also stipulates that the client is informed and understands that "Photographer will use his/her artistic judgment when providing Services for Client, which may not include strict adherence to Client's suggestions." *Id.*

Pursuant to the contract, Priddle took photographs of Fishman's first wedding ceremony (the "elopement" ceremony) on June 12, 2024. Fishman was initially happy with Priddle's services. On July 17, 2024, Priddle received a text message from Fishman with three photographs (shown above) of a belt. The body of the text message read:

> Also if you can put it in your notes so we don't forget to tell you this time…one important picture we forgot was of Daniel's belt. It was his brother's belt and we made his leather shoes for both weddings match it to honor his brother and we forgot to ask you to capture it so we took pics of it the next day at the hotel. But we'd much prefer them included in the detail pics in December with everything else! Respondent Exhibit C.

Priddle had no prior knowledge of these iPhone photos and no access to them until Fishman voluntarily transmitted the files directly to Priddle. Respondent Exhibit F— Claimant's Response to Interrogatory No. 8. A second ceremony and photoshoot had been scheduled to occur on December 12, 2024, but relations between Fishman and Priddle had broken down by this point and this shoot did not proceed.

Interpreting the delivery of the iPhone photos and the accompanying statement that Fishman would "prefer them included in the details pics" as a request to add the images to the online photo gallery, Priddle then uploaded one of the photos into the SmugMug gallery in a manner consistent with her standard workflow as a professional photographer. As she does with every wedding contract—and particularly necessary in this instance because the original photos

were amateur photos taken by Fishman on her iPhone—Priddle edited the second of the three images (the "Belt Photo") to conform to the standards of a professional wedding photo. This editing included applying an Adobe Lightroom preset, document conversions, and color adjustments to the original photograph, which created black/white and color versions, as well as PNG and JPEG files, to match the existing gallery. Respondent Exhibit G. Priddle then uploaded the edited versions of the Belt Photo to the password-protected gallery hosted on SmugMug.

Access to this gallery was strictly limited. The URL and password were provided exclusively to Fishman and her husband. Priddle did not distribute the images to the public, nor did she license them to third parties. According to SmugMug customer service, they estimate that only 3 or 4 people downloaded images, around 10 people viewed the images, and no images were purchased. Respondent's Exhibit D. These figures are not exact as SmugMug customer service noted that web privacy settings could make it appear that the same individual could appear as a different visitor every time they started a session. *Id.* Nobody except SmugMug employees, Priddle, Fishman, her husband, and anyone the latter two provided the URL and password could access the Image Gallery and the edited Belt Photo. Priddle received no revenue from the Belt Photo.

After Fishman thanked Priddle regarding the "sneak peek" gallery photos on July 26, 2024, Priddle sent a private URL link and password to Fishman and her husband a week later with four versions of the 581 elopement photos, including the Belt Photo. Just two days later, Fishman began emailing various complaints to Priddle. Finally, in her letter of demand to Priddle dated July 31, 2024, Fishman's litany of complaints expanded. Respondent Exhibit E. The complaints largely focused on photo-editing preferences, communicating dissatisfaction with the results. *Id.* The letter ends by mentioning a copyright infringement claim for the Belt Photo,

notes that the maximum statutory damages amount is $150,000, and demands as 581 raw photos that Priddle took of their elopement ceremony, (2) sign a copyright release for the photos that Priddle took, and (3) refund the 50% deposit that Fishman had previously paid Priddle under the contract. *Id.* In other words, to avoid a copyright infringement claim over a single Belt Photo taken by Fishman on her iPhone, Priddle would be required to give Fishman and her husband 581free wedding photos that they (supposedly) believed were terrible. Interestingly, the letter of demand sought no action regarding the Belt Photo itself, such as the removal of the image from SmugMug. *Id.*

Although Fishman made no demand to cease the supposed infringement of the Belt Photo, Priddle removed the edited Belt Photo images from the gallery on her own accord on August 3, 2024. Confirmation from SmugMug in Respondent's Exhibit D. Priddle did not provide Fishman and her husband with free wedding photos as demanded. Unsatisfied with Priddle's response, Fishman filed the present claim of infringement with the Copyright Claims Board on January 5, 2025.

Argument

Claimant's objective conduct created an implied non-exclusive license authorizing inclusion of the Belt Photo in the wedding gallery. Respondents' handling of the image fell within the scope of that license and, even if it did not, consisted only of *de minimis* use warranting no damages.

A. Claimant's Objective Conduct Created an Implied License.

There is an implied license to use a copyrighted work if "'the totality of the parties' conduct indicates an intent to grant such permission.'" *Estate of Hevia v. Portrio Corp.*, 602 F.3d 34, 41 (1st Cir. 2010) (quoting 3 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright*

§ 10.03[A][7], at 10–42 (2000)). Importantly, the intent benchmark is not a "subjective inquiry into the mind of the putative licensor." *John G. Danielson, Inc. v. Winchester–Conant Props., Inc.*, 322 F.3d 26, 42 (1st Cir. 2003). "Rather, it is an *objective* inquiry into facts that manifest such contractual intent." *Id.* (emphasis added).

In this case, Claimant's objective conduct manifests an intent to grant a non-exclusive license to the Belt Photo. Claimant voluntarily sent three self-taken iPhone photos—including the Belt Photo that is the subject of this case—to Priddle with the request that "we'd much prefer them included in the detail pics in December with everything else!" Respondent's Exhibit C. Claimant had hired Mrs. Priddle to photograph her wedding, perform advanced editing, and deliver an online gallery of high-resolution images. Respondent's Exhibit A. A request to include three photos of a belt "in the detail pics in December with everything else" is objectively understood as asking—and authorizing—the recipient to upload the attached images into the online gallery of wedding photographs.

Fishman argues that her text was a request to have the *belt* included in a future photo to be taken by Priddle, and did not pertain to the *photos* Fishman had already taken. Opening Party Statement of Alexandra Fishman, at 2-3 (arguing that "them" refers to the belt). This hindsight reconstruction of her text message is simply inconsistent with its plain English meaning. The text message requests inclusion of "them" in the December gallery. Ms. Fishman's brother-in-law's belt is a singular object; the three photographs of the belt are plural objects. The objective English meaning of the text message requests the inclusion of the plural photographs and not the singular belt. Ms. Fishman is perfectly capable of using the singular "it" when referring to the belt; she does so twice in the immediately prior sentence in the same text message. Respondent's Exhibit 3.

Fishman also appears to argue that, if there was a license, the scope of the license was exceeded because Priddle edited the image before uploading it. To the extent that Fishman makes this argument, it is unavailing. The parties' contract explicitly provides that "Photographer will use reasonable efforts to ensure Client's desired Services are produced in a style and manner consistent with Photographer's current portfolio," that "[a]ll images/video clips are edited at his/her discretion," and "Photographer will use his/her artistic judgment when providing Services for Client, which may not include strict adherence to Client's suggestions." Respondent's Exhibit A. Contrary to Fishman's assertion, the "Services" covered by the contract are not limited to photography services on June 12 only, but cover a range of services provided over a range of timepoints, including "an online gallery of all of your images that will remain live for 1 year." Respondent's Exhibit A. Uploading images to the online gallery, as requested by Fishman's text message, was accordingly one of the services covered by the contract. Priddle reasonably used her artistic judgment in editing in the Belt Photo to conform to the artistic standards of other images in the gallery before uploading the Belt Photo. The choice to edit the image and include it in the June instead of December gallery fell within the artistic discretion that Fishman gave Priddle under the contract she signed. Even without the explicit contract, a client who sends amateur iPhone photos to a professional wedding photographer should reasonably expect the photos to be edited to professional standards, making the edits within the scope of the implied license. *See Graham v. James*, 144 F.3d 229, 236 (2d Cir. 1998) ("when the contested issue is the *scope* of a license, rather than the *existence* of one, the copyright owner bears the burden of proving that the defendant's copying was unauthorized under the license").

B. Respondent's use of the photo was de minimis and warrants no damages.

Alternatively, if the Board finds that there was no implied license or Respondent's use exceeded the scope of any license, the use was done in good faith and *de minimis*, warranting no damages.

Relief should be denied when infringing conduct is of no material consequence because "the law does not concern itself with trifles." *Ringgold v. Black Entertainment TV, Inc.*, 126 F.3d 70, 74 (2d Cir. 1997). As the Second Circuit has explained, "Trivial copying is a significant part of modern life. . . . We do not hesitate to make a photocopy of a letter from a friend to show to another friend, or of a favorite cartoon to post on the refrigerator. . . . When we do such things, it is not that we are breaking the law but unlikely to be sued given the high cost of litigation. Because of the de minimis doctrine, in trivial instances of copying, we are in fact not breaking the law." *Davis v. The Gap, Inc.*, 246 F.3d 152, 173 (2d Cir. 2001).

In this case, Respondent uploaded the Belt Photo sent to her by Claimant into a private gallery accessible only by Claimant and her husband. Respondent promptly removed the photo when Claimant complained. Respondent did not publicly distribute or display the photo and generated no revenue from it. The use in this case was even more trivial than the examples given by the *Davis* court of trivial copying that is *de minimis*.

On the other side, Claimant has no evidence of any market harm. The work in question is a self-taken amateur photo with no market value. The copyright value of a photograph lies in the artistic choices of the author such as the selection of lighting or angle. *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 60 (1884). Fishman exercised only minimal—if any—creativity in taking an iPhone photo of her brother-in-law's belt. Fishman cannot demonstrate any market for this amateur photo and has no lost business or lost licensing fees. Although she claims to be "a content creator and professional" and that the use of the Belt Photo "disregarded

my professional rights," Opening Party Statement of Alexandria Fishman, at 9-10, Fishman's profession is being a lawyer who writes briefs, not a photographer who sells iPhone photos. Rhetorical word tricks are no substitute for actual evidence of market harm.

Despite the lack of any actual harm, Claimant seeks $15,000 in statutory damages, based on alleged willful infringement. Not only is this request totally unsupported by evidence, it reveals fundamental ignorance about the Board's powers and procedures, unbefitting the Claimant's status as an attorney. Under its authorizing statute, the Board "may not make any finding that, or consider whether, the infringement was committed willfully in making an award of statutory damages." 17 U.S.C. § 1504(e)(1)(A)(iii). Moreover, the maximum statutory damages amount in this case is $7,500, not $15,000, because Fishman did not timely register her copyright before the alleged infringement. 17 U.S.C. § 1504(e)(1)(A)(ii)(II) ("With respect to works not timely registered under section 412, but eligible for an award of statutory damages under this section, statutory damages may not exceed $7,500 per work infringed . . . .").

At most, the Respondents' use of the Belt Photo was innocent infringement that caused zero harm. Priddle "was not aware and had no reason to believe that his or her acts constituted an infringement." 17 U.S.C. § 504(c)(2). The Belt Photo had no copyright notice and was not registered. *D.C. Comics Inc. v. Mini Gift Shop*, 912 F.2d 29, 35 (2d Cir. 1990). Priddle had no reason to believe that a self-taken amateur iPhone photo with no discernible artistic creativity has any copyright protection at all. *See Oriental Art Printing, Inc. v. Goldstar Printing Corp*., 175 F.Supp.2d 542, 546–49 (S.D.N.Y. 2001) (generic photos of Chinese food lacked creativity and were not copyrightable). Moreover, her belief that she was being asked and authorized to include the photo in the wedding gallery was reasonable—Respondents continue to submit that it was correct, but it was at least reasonable and done in good faith.

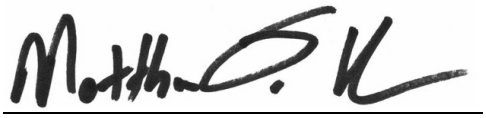
For innocent infringement that caused zero actual harm, a minimal statutory damages award, if any, is warranted. *See MCA, Inc. v. Wilson*, 677 F.2d 180, 187 (2d Cir. 1981) (reversing statutory damages award when the court "fail[ed] to see how plaintiff could conceivably have been damaged by the sale of defendants' program"). "[N]umerous courts have held that assessed statutory damages should bear some relation to the actual damages suffered." *Bly v. Banbury Books, Inc.*, 638 F. Supp. 983, 987 (E.D. Pa. 1986) (collecting cases). When the plaintiff has sustained "minimal, if any, damages," then a "minimum statutory damages should be assessed." *Id.*

Conclusion

For the foregoing reasons, the Board should find in favor of Respondents because Respondents' use of Complainant's photograph was licensed. Alternatively, this Board should find that Respondents' use was *de minimis* and award no damages. If any damages are to be awarded, the Board should award the statutory minimum for innocent infringement of $200.

Dated: March 16, 2026

Respectfully submitted,



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Proof of Delivery

I hereby certify that on Monday, March 16, 2026, I provided a true and correct copy of the Bella Lumiere Response Brief to the following:

Alexandra Fishman, represented by Alexandra Fishman, served via ESERVICE at afishman@alumni.unc.edu

Signed: /s/ Matthew J Keeley