COPYRIGHT CLAIMS BOARD

**Docket number:** 24-CCB-0254
July 15, 2026

| Susan Gervasi | *v.* | Patrick Nagle |
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| **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 Patrick Nagle ("Nagle" or "Respondent") liable for copyright infringement and awards Claimant Susan Gervasi ("Gervasi" or "Claimant") $2,970.00 in statutory damages.

## I. Procedural History

Claimant filed this copyright infringement claim on August 28, 2024 ("Claim"). (Dkt. 1). The Board found the Claim compliant, and on August 29, 2024, directed Claimant to serve Respondent. (Dkt.4). The Board ordered the Claimant to pay the second filing fee on January 2, 2025 (Dkt. 7), which Claimant did on January 3, 2025 (Dkt. 8). On January 17, 2025, the Board issued a Scheduling Order and a Second Notice for Respondent to register for eCCB. (Dkt. 9, 10). On February 17, 2025, Respondent filed his Claim Response ("Response"). (Dkt. 13). For her written testimony, Claimant filed an Opening Direct Party Statement ("Claimant Party Statement") (Dkt. 15), an evidence list (Dkt. 17), evidence (Dkt. 18-63), and a witness statement by Frank Gervasi (Dkt. 16) on June 27, 2025. On September 3, 2025, Respondent filed an evidence list (Dkt. 80) and evidence (Dkt. 66-79, 81-82), and on September 5, 2025, he filed a Final Written Testimony Document ("Respondent Party Statement") (Dkt. 83). Claimant filed a Reply to Respondent's Written Testimony on September 25, 2025. ("Claimant Reply Statement") (Dkt. 85). The case is now ready for final determination.

## II. Factual History

Many of the facts of this case are undisputed. Gervasi created the documentary film "On the Trail of Jack Thorp" (the "Work") in 2008 and registered it with the U.S. Copyright Office with an effective date of registration

of December 3, 2021, and a first publication date of September 20, 2008. (Reg. No. PA 2-346-349). Claimant Ex. A (Dkt. 18).

Gervasi and Nagle met while working on the Sarasota Fringe film festival in 2009, which featured the Work. Respondent Ex. A (Dkt. 68); Claimant Ex. B (Dkt. 74); Claimant Ex. C (Dkt. 77); Respondent Party Statement at 1, ¶ 3-4. The parties stayed in touch, and subsequently, in 2015, Nagle had begun marketing DVDs to universities and remembered the Work from the festival. Respondent Party Statement at 2, ¶ 7. He decided the Work would be appropriate for the college market and offered to license and distribute it to universities and academic institutions. Respondent Party Statement at 2, ¶ 7-8; Claimant Ex. T (Dkt. 38). Nagle sent Gervasi a proposed agreement. Respondent Ex. E (Dkt. 79); Respondent Ex. F (Dkt. 81). The parties had an email exchange between June 3-4, 2015, wherein Gervasi replied in the exchange that "I would be delighted if you could help market the Thorp film." Claimant Ex. T; Respondent Ex. E. However, she left the details open stating "let me know what you need from me to make this happen." Respondent Ex. E. Nagle responded:

> All I would need from you is best quality dvd that we can duplicate. Our work is top notch as you have probably seen on our website. I have attached a contract letter for your review. Just print, sign and return a copy at your convenience and we can get started.

*Id.* Gervasi did not sign the agreement, and it does not appear that the parties had any further communication on a potential license at this point. Claimant's Reply Statement at 1-2. On October 29, 2021, Gervasi discovered that Nagle was distributing the Work on DVD and offering licenses for the performance rights to the Work, as well as offering limited free screenings of the Work on the Planet Group Entertainment website, and Nagle admits to marketing and distributing the Work from approximately January 2016 through March 2022. Claimant Ex. V (Dkt. 40); Claimant Ex. X (Dkt. 42); Claimant Ex. Y (Dkt. 43); Claimant Ex. Z (Dkt. 44); Claimant Ex. AA (Dkt. 45); Claimant Ex. GG (Dkt. 51); Claim; Respondent Party Statement at 3, ¶ 13.

On June 10, 2022, Nagle again reached out to Gervasi, this time requesting permission to provide a digital version of the work to the library streaming service Kanopy. Claimant Ex. MM (Dkt. 58); Respondent Party Statement at 4, ¶ 14; Respondent Ex. G (Dkt. 76). On June 16, 2022, Gervasi sent Nagle a cease-and-desist letter instructing him to stop licensing and distributing the film and to notify the library institutions that had licensed it to discontinue any use of the film. Claimant Ex. LL (Dkt. 57); Respondent Ex. H (Dkt. 75). On July 21, 2022, Nagle provided Gervasi with what he referred to as "ALL Jack Thorpe Sales made," purportedly an accounting of the

sales he claimed to have made of the Work. Claimant Ex. D (Dkt. 21); Claimant Ex. EE (Dkt. 49); Respondent Ex. I (Dkt. 73). Nagle sold a copy of the Work to five university libraries: Washington State University ($250.00), New York University ($250.00), Cornell University ($250.00), University of New Mexico ($295.00), and Princeton University ($295.00). Claimant Ex. D; Respondent Ex. I; Claimant Ex. I; Claimant Ex. EE; Claimant Ex. E (Dkt. 22); Claimant Ex. F (Dkt. 23); Claimant Ex. G (Dkt. 24); Claimant Ex. H (Dkt. 25).

## III. Legal Analysis

### a. Copyright Infringement

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). Gervasi claims that Nagle infringed the Work "by reproducing copies of the film onto digital video discs (DVDs); by distributing reproduced copies of the film; by performing a digital version of the film; by preparing derivative works based on the film; and by displaying a still image from film footage on his website homepage." Claimant Party Statement at 1. Nagle neither contests Gervasi's ownership of the Work, as documented in the certificate of registration, nor that he made copies of the Work, marketed them on his website and elsewhere, and distributed those copies to five university libraries. Without permission, or a valid other defense, Nagle's actions constitute copyright infringement.

### b. License

Nagle claims to have had a license to distribute the Work. 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); 4 Melville B. Nimmer & David Nimmer, Nimmer on Copyright § 13D.28 (2026). A copyright owner's transfer of any of their exclusive rights in copyright to another person must be in writing. 17 U.S.C. §§ 101, 204(a). *See also Effects Assocs. v. Cohen,* 908 F.2d 555, 557-58 (9th Cir. 1990), *cert. denied,* 498 U.S. 1103 (1991). However, 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 Copyright § 10.03[A] (1995)).

In determining whether there is an implied license, courts have held that "[w]hen an owner's conduct 'clearly' manifests 'a consent to . . . use' of copyrighted material, the owner impliedly grants a nonexclusive license." *Midlevelu, Inc. v. ACI Info. Grp.,* 989 F.3d 1205, 1216 (11th Cir. 2021) (citing *De Forest Radio Tel. Co. v. United States,* 273 U.S. 236, 241 (1927). The burden of proof is on the respondent to prove the existence and validity of such license, whether it is exclusive or non-exclusive. *See Baisden v. I'm Ready Prods.,* 693 F.3d 491, 499 (5th Cir. 2012). "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).

Here, Nagle argues that his email exchange with Gervasi between June 3-4, 2015, created a license for him to distribute the Work. Respondent Party Statement at 2-3, ¶¶ 8-13, Respondent Ex. E. The parties' conduct, however, does not rise to the level of an actual agreement to license the Work. Nagle's response suggested that even he did not intend the parties to enter an enforceable agreement without their signatures on the written contract attached to the June 4, 2015, email, and without conduct suggesting that she wanted to enter into a license for her Work, Gervasi's failure to sign and return the written contract suggests she did not intend for the parties to have a license. Respondent Ex. E; Claimant Party Statement at 1, Respondent Party Statement at 1, ¶ 1.

Moreover, there are other circumstances that support the conclusion that the parties did not create a license for use of the Work. For instance, *if there were a license*, the lack of payment of royalties would create a contract claim and not a copyright claim. However, the fact that the record also contains no evidence that Nagle paid Gervasi any percentage of the royalties earned from the sale of DVDs to the university libraries until Gervasi discovered the sales and sent Nagle a cease-and-desist letter, years after the initial sale, supports the conclusion that the totality of the parties' conduct did not create a license. Claimant Reply Statement at 6-7; Claimant Ex. LL; Respondent Ex. H; Claimant Ex. D; Respondent Ex. I. Nor did Nagle ever send Gervasi an accounting prior to receiving the cease-and-desist letter, as was required under the contract sent by Nagle. Respondent Ex. F, ¶ 4.[1] In fact, Nagle made no attempt to contact Gervasi for six years after sending the contract to her, not even to inquire why she had not returned the signed agreement. Claimant Reply Statement at 5.

[1] It also appears that Nagle exceeded the term of the license on which he bases his defense – the contract provides for a three-year term (Respondent Ex. F ¶ 2 (Dkt. 79)) and Nagle continued to offer the Work for distribution or sale long after that. *See, e.g.,* Claimant Ex. D; Claimant Ex. R (Dkt. 36); Claimant Ex. S (Dkt. 37).

Without a valid defense, Nagle's actions in copying and distributing copies of the Work constitute copyright infringement.

## IV. Damages

Gervasi elects statutory damages in this case and asks for $23,000. Claim; Claimant Party Statement at 8. However, that would be beyond the $15,000 statutory maximum for infringement of one Work in claims before the Board, and that maximum is decreased because Gervasi did not timely register the Work.[2] Therefore, statutory damages in this case are limited to $7,500. 17 U.S.C. § 1504(e)(1)(A)(ii)(II).

Courts have wide discretion to award statutory damages if 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, 1336-37 (9th Cir. 1990); *Top Tobacco, L.P. v. Star Importers & Wholesalers, Inc.,* 135 F.4th 1344, 1350 (11th Cir. 2025). "[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., Atari Interactive, Inc. v. Redbubble, Inc.,* 546 F. Supp. 3d 883, 888 (N.D. Cal. 2021) ("A statutory damages award 'must bear a plausible relationship to Plaintiff's actual damages.'") (citation omitted); *Clever Covers, Inc. v. Southwest Florida Storm Defense, LLC,* 554 F. Supp. 2d 1303, 1313 (M.D. Fla. 2008) (statutory damages "'are not intended to provide a plaintiff with a windfall recovery'; they should bear some relationship to the actual damages suffered") (citation omitted); *Fitzgerald Publishing Co. v. Baylor Publishing Co.,* 670 F. Supp. 1133, 1140 (E.D.N.Y. 1987) ("Undoubtedly these [statutory] damages should bear some relation to the actual damages suffered[.]"); *Seoul Broad. Sys. Int'l v. Young Min Ro,* No. 9-cv-433, 2011 WL 3207024, at *8 (E.D. Va. July 27, 2011) ("After all, 'when awarded, statutory damages should bear some relation to the actual damages suffered.'") (citation omitted); *Aberle v. GP Clubs, LLC,* No. 19-cv-1066-RP, 2020 WL 4035074, at *4

[2] Gervasi published the Work at least by 2017 when she began selling the Work on her website. Claimant Party Statement at 5-6. She registered the Work on December 3, 2021, which is both after the infringement and more than three months from publication. Claimant Ex. A.

(W.D. Tex. July 17, 2020) ("while there 'need not be a direct correlation between statutory damages and actual damages,' it has generally been held that 'the statutory award should bear some relation to actual damages suffered'") (citation omitted); *Bly v. Banbury Books, Inc.,* 638 F. Supp. 983, 987 (E.D. Pa. 1986) ("numerous courts have held that assessed statutory damages should bear some relation to the actual damages suffered"). Actual damages are primarily measured by "the extent to which the market value of the copyrighted work at the time of the infringement has been injured or destroyed by the infringement." *Fitzgerald Publ'g Co. v. Baylor Publ'g Co.,* 807 F.2d 1110, 1118 (2d Cir. 1986). To secure actual damages, a claimant typically establishes impairment of market value by demonstrating lost sales or other lost profits that would have been obtained from the sale or license of the infringed work but for the respondent's infringement. *See Stevens Linen Associates v. Mastercraft Corp.,* 656 F.2d 11, 15 (2d Cir. 1981); *Baker v. Urban Outfitters, Inc.,* 254 F. Supp. 2d 346, 356 (S.D.N.Y. 2003). Such amounts should be based on a "factual basis" and not "'undue speculation.'" *Davis v. The Gap, Inc.,* 246 F.3d 152, 163 (2d Cir. 2001) (citation omitted).

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. 2:15-cv-254, 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) (citation omitted); *Philpot v. L.M. Commc'ns II of S.C., Inc.,* 343 F. Supp. 3d 694, 702–03 (E.D. Ky. 2018) (citation omitted); *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 Pub'g, Ltd. v. Chronicle Books, LLC,* No. Civ. A. 03-4962, 2005 WL 67077, at *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).

Nagle received a total of $1,340.00 in sales of the DVDs to five university libraries at a price ranging from $250 to $295 per DVD. Respondent Ex. I. Gervasi has not provided any evidence of additional sales by Nagle. Meanwhile, Gervasi was selling copies of the Work for $15 per copy and has records for only one sale. Claimant Party Statement at 5-6. In the proposed licensing agreement Nagle offered to Gervasi, he noted expenses of "$12.50 per dvd sale to cover duplication and shipping," as well as a "one-time amount to Sarasota Fringe Films

LLC of $350 to cover start-up marketing charges." Respondent Ex. E. However, the invoices Nagle provided show that he directly charged the university libraries the shipping and handling of $12.50. Respondent Ex. I. Accordingly, the Board concludes that it is appropriate to take the $1,340.00 it believes was attributable to the infringement based on the evidence and arguments supplied by the parties, minus $350.00 ($990.00), and multiply it by three, resulting in a statutory damages award of $2,970.00.

## V. Conclusion

The Copyright Claims Board finds Respondent Nagle liable for infringement and awards Claimant Gervasi $2,970.00 in statutory damages.

Copyright Claims Board