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CLAIMANT'S WRITTEN DIRECT TESTIMONY: PARTY STATEMENT

Nico Trinkhaus v. Partners for the Arts Abroad LLC

Copyright Claims Board, Docket No. 25-CCB-0527

I. Introduction and relief sought

Claimant Nico Trinkhaus is the author and registered copyright owner of the photograph "The National Palace of Culture in Sofia" (the "Photograph"). Respondent Partners for the Arts Abroad LLC ("Respondent") reproduced the Photograph with a text and logo overlay on the Facebook page of its Sofia Symphonic Summit, beginning on March 24, 2020, and also displayed it on the "About" page of its program website, sofiasymphonicsummit.com, until November 21, 2023, the date on which it handed the website over to Dr. Diogo Carvalho with the Photograph still on it. Respondent never sought or obtained a license.

Claimant elects statutory damages under 17 U.S.C. § 1504(e)(1)(B) and requests an award of **$15,000**, the maximum for a single timely registered work (17 U.S.C. § 1504(e)(1)(A)(ii)(I)). Claimant does not request a hearing.

II. Facts

A. The Photograph and its registration. Claimant took the Photograph in Sofia, Bulgaria, on October 13, 2018 at 7:25 p.m., a six-second exposure at f/8 and ISO 100 with a Nikon D850, and processed it himself (Ex. 1; Ex. 2; Trinkhaus Statement ¶¶ 4-8). The Photograph is registered with the U.S. Copyright Office as part of group registration VA 2-137-965, effective December 31, 2018 (Ex. 3).

B. Ownership. Claimant is the sole author and owns the copyright. He granted exclusive commercial licensing rights to Sumvest Ltd, which granted them onward to Sumfinidade

Unipessoal LDA; both agreements reserve to Claimant the right to enforce the copyright (Ex. 4; Ex. 5; Trinkhaus Statement ¶ 10).

C. Respondent's use. Respondent's own certified interrogatory answers state: "The initial publication of the image with the text overlay appeared on Facebook on March 24, 2020," and "As part of the advertising of the program, I published on FaceBook with a text overlay in the Spring of 2020" (Ex. 17). On April 22, 2023, an independent documentation service, RightsPilot UG, recorded the post, dated "24. März 2020," still online at the Sofia Symphonic Summit Facebook page (Ex. 7; Ex. 8). The same day it recorded the Photograph displayed on Respondent's program website at sofiasymphonicsummit.com/about, captioned "National Palace of Culture" (Ex. 9). Internet Archive captures show the Photograph on that page on six dates between May 16, 2022 and August 25, 2023, all while Respondent ran the program (Ex. 10). The website stated: "This program is brought to you by Partners for the Arts Abroad|LLC" (Ex. 9; Ex. 10), and Respondent's Response confirms that "Partners for the Arts Abroad | LLC is responsible for this program."

D. Commercial purpose. The Sofia Symphonic Summit was a paid program. The website the Photograph appeared on advertised a "Program fee [of] €4295" (Ex. 10). Respondent's profit and loss statement reports gross revenue of $75,166.00 in 2022 and $82,255.22 in 2023 (Ex. 18). The Facebook page on which the Photograph appeared carried recruitment posts during the infringement period, including "So excited to announce our '22 program! Work with the Sofia Philharmonic Orchestra in beautiful Sofia, Bulgaria!" (October 28, 2021) and "Applications have been pouring in from composers/conductors, but there's still time to apply! Come join us this Summer from July 6th-16th!" (February 24, 2022) (Ex. 19).

E. Notice, partial removal and transfer. Claimant's enforcement agent identified the use, which Claimant confirmed as unlicensed on April 4, 2023 (Ex. 6). Counsel for Claimant's licensee wrote to Respondent on September 14, 2023, October 5, 2023, October 31, 2023 and November 14, 2023 about the Photograph, demanding that the use stop and that the license fee be paid (Ex. 11). The letters identified the Facebook post. Respondent states that the post "was removed at [Claimant's] request" (Ex. 17). It did not remove the same Photograph from the About page of its own website, where it had displayed the Photograph itself (Ex. 9; Ex. 10). On November 21, 2023, one week after the last letter, Respondent transferred the website to a third party, Dr. Diogo Carvalho, with the Photograph still on it (Ex. 20). Internet Archive captures show the Photograph on the page on December 4, 2023 and still on June 26, 2024, when the page still stated "This program is brought to you by Partners for the Arts Abroad|LLC" (Ex. 21). No payment was made.

III. Liability

Ownership of a valid copyright. A certificate of registration made before or within five years of first publication is prima facie evidence of the validity of the copyright and of the facts stated in it (17 U.S.C. § 410(c)). The Photograph reflects the creative choices that make a photograph an original work of authorship: the time of day and light, the position and axis of the camera, and the six-second exposure that renders the fountains as continuous streams (Burrow-Giles Lithographic Co. v. Sarony, 111 U.S. 53, 60 (1884); Ex. 2; Trinkhaus Statement ¶¶ 5-8).

Copying. This is not a case of two similar works. Respondent used the Photograph itself, adding text and a logo (Ex. 8; Ex. 17). Posting it on Facebook and on the program website reproduced and publicly displayed it (17 U.S.C. § 106(1), (5)).

No license. A license is an affirmative defense, and "[t]he burden of proof is on the respondent to prove the existence and validity of such license" (Sloan v. Just for Littles LLC, No. 23-CCB-0327, Final Determination at 6 (Apr. 7, 2025)). Respondent has produced no license, invoice, subscription record, or correspondence of any kind. Its explanations have changed over time: stock sites such as Pixabay, Adobe Stock or Shutterstock; "the National Palace of Culture itself"; Maestro Todorov of the Sofia Philharmonic; and, in its interrogatory answers, "a shared service or the Cultural Ministry of Bulgaria" (Response; Ex. 17). It also certifies that it "never" saw Claimant's work (Ex. 17). None of the persons named ever held any right in the Photograph, and Claimant has never licensed it to anyone (Trinkhaus Statement ¶ 12).

Respondent's remaining points.

1. *Good faith.* Respondent states it would never knowingly take another artist's work. Infringement does not depend on intent, and the Board may not consider willfulness in setting statutory damages (17 U.S.C. § 1504(e)(1)(A)(ii)(III)). Claimant does not rely on willfulness.

2. *Transfer of the program in November 2023.* Respondent states that it transferred the website and program to Dr. Diogo Carvalho in November 2023 (Response). The infringement claimed here took place from March 24, 2020 to November 21, 2023, the date on which Respondent handed the website over to Dr. Carvalho, while Respondent ran the program (Ex. 20). That date became known only in discovery, from Respondent's own production.

3. *Respondent's own websites.* That Respondent has not been sued over other images is not evidence that it had permission to use this one.

IV. Damages

The standard. Statutory damages for a timely registered work range from $750 to $15,000 (17 U.S.C. § 1504(e)(1)(A)(ii)(I)). The Board relates statutory damages to the license fee the infringer avoided and applies a multiplier for deterrence: in Hursey v. Lavaca LLC it noted that "[m]any courts characterize that multiplier as being between two and three times the usual license fee" and found "that a multiplier of three times Hursey's lost licensing fee is in line with precedent," based on the claimant's standard rate for the image, unchanged since the infringement, and on licenses that followed it (No. 22-CCB-0056, Final Determination at 8-9 (Aug. 24, 2023) (adopting proposed default determination)). Each of those elements is present here.

1. A standard rate that applies to this Photograph. Claimant licenses his photographs, including this one, on a published tariff by medium, duration and industry exclusivity (Ex. 12; Ex. 13). For online use for up to five years, the tariff is €2,860 when the licensee credits "Nico Trinkhaus / sumfinity.com" and twice that, €5,720, without credit. The April 2019 price list stated the same rule: "Up to 5 years: 2.860€" and, for use "without an accompanying credit line, a surcharge of 100% to the total licensing fee" (Ex. 12, §§ 2, 11). The current published tariff lists "Online / Industry Exclusive / Up to 5 Years € 5,720.00," with 50% off for attribution (Ex. 13). The rate has not changed between 2019 and today (Trinkhaus Statement ¶¶ 13-15).

2. Licenses that follow the rate. In discovery, Claimant produced 68 license invoices issued between December 2020 and June 2026. Sixty-six of them are at exactly the tariff amount for the use licensed: fifty-two at the credited rate and fourteen at the doubled rate for use without credit. Seventeen are five-year licenses at €2,860 with credit. The two remaining invoices are a two-photograph license with a negotiated reduction and a two-year license (Trinkhaus Statement ¶

16). Ten representative invoices are attached (Ex. 14). Four are five-year licenses at the credited rate of €2,860, among them a 2023 license to a U.S. education business (FT 2023/122). Six are licenses without credit at twice the tariff, three of which show the doubling as a separate line: a six-month license at €1,465 plus a €1,465 "Waiver for credit lines" (FT 2020/17), a one-year license at €1,615 plus a €1,615 "Credit Line Waiver" (FT 2021/133), and a three-year license at €2,330 plus a 100% waiver (FT 2024/126).

3. The applicable fee. Respondent used the Photograph online for more than three and a half years (March 24, 2020 to November 21, 2023, the date on which it handed the website over to Dr. Carvalho) and gave no credit (Ex. 7; Ex. 8; Ex. 9; Ex. 10; Ex. 20). The applicable tariff cell is therefore online, up to five years, without credit: **€5,720**, which was $6,682 at the exchange rate on the date the claim was filed. That is the same fee counsel demanded in 2023, before this proceeding (Ex. 11).

4. Extent of the use. The use ran for more than three and a half years, in two places (the Facebook page and the program website), in connection with a paid program that reported $157,421.22 in gross revenue for 2022 and 2023 (Ex. 18), with a text and logo overlay and without credit.

5. Deterrence. Claimant is a professional photographer whose income depends on licensing (Ex. 14; Ex. 15; Ex. 16). If using a photograph without permission costs no more than the license fee, there is no reason to buy a license. As the Board reasoned in Hursey, a licensing photographer's "ability ... to continue to license his ... images depends, in part, on his enforcement of unlicensed usage" (Final Determination at 9).

6. Respondent's conduct after notice. The Board may consider whether the infringer has agreed to cease or mitigate (17 U.S.C. § 1504(e)(1)(A)(ii)(IV)). Respondent did not. The post remained online for more than three years and was removed only after Claimant's notice (Ex. 11; Ex. 17). Respondent removed only the post that the letters named, kept the Photograph on its own website, and one week after the last letter handed that website to a third party with the Photograph still on it (Ex. 20; Ex. 21). The removal of the post does not reduce the license fee that was due for the use already made. Respondent's conduct after notice supports a multiplier of three rather than two.

Calculation. Three times the applicable fee of €5,720 ($6,682) is $20,046, and two times is $13,364. Given the extent of the use and Respondent's conduct after notice, a multiplier of three is warranted; the result exceeds the statutory maximum. An award of **$15,000**, the statutory maximum for one timely registered work, is consistent with the Board's approach and is respectfully requested.

V. Conclusion

Claimant requests a determination that Respondent infringed his copyright in the Photograph and an award of statutory damages of $15,000.

I certify that this testimony is accurate and truthful.



Nico Trinkhaus, Claimant

October 19, 2026

Proof of Delivery

I hereby certify that on Monday, October 19, 2026, I provided a true and correct copy of the Claimant Party Statement to the following:

PARTNERS FOR THE ARTS ABROAD LLC, represented by Michael Polo, served via ESERVICE at mjpolo30@gmail.com

Signed: /s/ Nico Trinkhaus