COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0245
April 19, 2024

Say It Visually, Inc.	*v.*	America's Real Estate Force Corporation
CLAIMANT		**RESPONDENT**

PROPOSED DEFAULT DETERMINATION

Respondent, America's Real Estate Force Corporation ("AREF"), has not appeared or participated in this proceeding before the Copyright Claims Board ("Board"), and the claim is now in default. When a respondent fails to appear in a proceeding and the Board proceeds to a default determination, the Board shall require the claimant to submit written direct testimony. 17 U.S.C. § 1506(u)(1); 37 C.F.R. § 227.2(a). The claimant, Say It Visually, Inc. ("SIV" or "Claimant"), has submitted testimony, which the Board has reviewed, and now the Board issues this proposed default determination. 17 U.S.C. § 1506(u)(2). For the reasons that follow, the Board finds that the presented evidence is sufficient to support a finding in favor of SIV and awards $10,200 in statutory damages. **Any determination against AREF, including a monetary award for damages, will be enforceable in a court of law.**

I. Procedural History

This claim was filed on November 17, 2022. (Dkt. 1). SIV filed an amended claim on January 3, 2023 (Dkt. 3), and a second amended claim on March 1, 2023. Claim (Dkt. 5). The Board found the Claim compliant and, on April 11, 2023, directed SIV to serve AREF within ninety days. (Dkt. 9). SIV filed a Proof of Service on June 7, 2023, which affirmed that AREF was served on May 31, 2023. (Dkt. 10). The Board sent a Second Notice to AREF by mail on June 22, 2023. (Dkt. 11). The Board did not receive an opt-out form from AREF.

On August 4, 2023, the Board notified the parties that the proceeding had entered the "active phase" because AREF did not submit a timely opt-out and ordered SIV to pay the second filing fee and AREF to register for the Board's online docketing system (eCCB). (Dkt. 12). On August 22, 2023, the Board issued a Scheduling Order

(Dkt. 14) and a second notice directing AREF to register for eCCB. (Dkt. 15). The Board issued the foregoing orders through eCCB and mailed them to AREF.

In the Scheduling Order, AREF was ordered to submit a response by September 21, 2023, but it did not. Both parties were also ordered to attend a pre-discovery conference to be held on September 28, 2023. (Dkt. 14). While SIV attended the initial conference, AREF did not. After the conference, SIV sent the Board email contact information for AREF.

On September 28, 2023, the Board issued its First Default Notice because AREF did not meet any of the mandatory deadlines set by the Board. (Dkt. 16). The First Default Notice gave AREF another thirty days to file a response and register for eCCB. *Id.* On November 7, 2023, the Board issued its Second Default Notice, which reminded AREF of the October 30, 2023 deadline to cure the missed obligations, and allowed AREF an additional fifteen days to cure, by November 22, 2023. (Dkt. 17). These notices were issued using the same contact procedures described above. The Board also sent AREF the First Default Notice by email.

AREF failed to file a response or register for eCCB by November 22, 2023. The Board received no communication from AREF at all. Accordingly, on November 27, 2023, the Board ordered SIV to submit written direct testimony in support of a default determination. (Dkt. 18). SIV submitted the required written materials on January 8, 2024, consisting of a party statement, an evidence list, and evidence. (Dkt. 19-30).

On January 12, 2024, the Board issued an Order to Submit Additional Evidence in which it gave SIV more time to submit evidence of its actual damages such as licenses of its works for uses similar to the use by AREF in the present claim. (Dkt. 31). SIV submitted its Response to Order to Submit Additional Evidence on January 22, 2024. (Dkt. 32). On February 7, 2024, the Board issued another Order to Submit Additional Evidence in which it gave SIV additional time to submit evidence that describes or states how SIV's and AREF's videos are identical or substantially similar. (Dkt. 33). On February 9, 2024, SIV submitted a statement with links to the allegedly infringed and infringing videos and subsequently submitted side-by-side comparisons of the works. (Dkt. 34-39). On March 6, 2024, the Board issued an order directing the parties to attend an evidentiary hearing, which was held on March 27, 2024. (Dkt. 40-41). The order was sent to AREF by mail and email, but AREF did not attend.

Matthew Dunn ("Dunn"), the sole owner of SIV as well as the writer and director of all of the works at issue in this proceeding, testified at the hearing. *See* Party Statement (Dkt. 21 at 2); Dunn Testimony at March 27, 2024 Hearing ("Hearing"). All three Copyright Claims Officers participated in the hearing, but Officer Carson did not participate in this determination.

II. Factual History

SIV is the owner of copyrights in various "explainer" videos that it produces and licenses to its clients, who in turn, publicly display the videos that they have licensed from SIV. Party Statement at 1; Claim. SIV hosts its videos on a commercial video-hosting platform for its clients who pay monthly subscription fees for access to sets of SIV's videos. (Dkt. 32); Claim at 5. SIV provides clients access only to streams of the videos, rather than downloadable video files; SIV has turned down requests for its actual video files or for clients to upload the videos themselves to YouTube. Claim; Hearing Tr. at 7:49-50, 12:48-13:20, & 19:54-20:20. SIV registered its videos with the U.S. Copyright Office. Party Statement at 1; Claim Exhibits 5, 8, & 14-16. The registered videos at issue in this proceeding (the "Videos" or "Works") are:

- "What Are Discount Points?" (Reg. No. PA 2-318-093);
- "Closing Costs Explained Visually" (Reg. No. PA 2-331-653);
- "Purchasing Vs. Renting A Home" (Reg. No. PA 2-382-246);
- "What Kind of Loans Do TRID Disclosures Cover?" (Reg. No. PA 2-382-250); and
- "How Do I Calculate The Price On My House?" (Reg. No. PA 2-387-019).

Party Statement at 1-2; Claim Exhibits 5, 8, & 14-16.

According to Florida Secretary of State records, AREF is a Florida corporation with its principal place of business in Doral, Florida. Claim Exhibit 13. Its YouTube channel, titled "America's Real Estate Force," displays an "America's Real Estate Force" banner as well as video content that included the Videos ("AREF Channel"). (Dkt. 25-27 & 29-30); Party Statement at 1; Claim at 6. AREF uploaded, posted, and displayed the Videos on the AREF Channel without a license from SIV. Party Statement at 1. According to SIV, AREF evaded the

technological protections it put in place to protect the Works from infringement, and posted them to YouTube, which allowed others to download them. *Id.*

At the Hearing, Dunn testified that in fall 2020, when searching for one of SIV's videos, he accidentally discovered that others were infringing SIV's videos on YouTube. Hearing Tr. at 6:27-7:08. Dunn also explained the difficulties in searching videos on the internet and how it is a laborious, manual task because there is not one global search engine that can reliably find infringing videos. *Id.* at 1:37-2:23 & 10:08-10:47. As a result, Dunn hired a contractor to search YouTube for videos that were infringing SIV's videos. *Id.* at 2:30-2:50. In late April 2022, that contractor found a number of infringing videos including copies of the Works. *Id.* at 2:50 -3:01.

According to the Claim, Respondent's infringement began on May 16, 2017, and Dunn corroborated this in his testimony. Claim & Exhibits 1, 6-7, 9, & 11; Hearing Tr. at 42:12-42:35. The Videos were on YouTube as of the date this claim was filed, November 17, 2022, having remained on YouTube for approximately sixty-six months. Claim. At some point before December 19, 2023, the Works were removed from the AREF Channel on YouTube. *See* Party Statement at 1.

SIV submitted a screenshot of a pricing table that provides the terms and cost of licensing various packages of its videos along with other materials and services. (Dkt. 32 at 1). SIV states that licensed use of its service includes branding the videos for the licensee and requires that the content be delivered from the hosting service provided by SIV, which reduces the risk of infringement. *Id.* The cost depends on the number of videos available to the client - 30, 60, 100, or 163 - and whether the license is on a monthly, quarterly, or yearly basis. *Id.* at 1-2.

At the time of the infringement alleged in this case, SIV did not offer other kinds of packages to clients, although in the past (more than six years ago), it did offer perpetual licenses to some clients. Hearing Tr. at 11:46-13:25. Dunn testified that while in the past SIV very infrequently offered smaller packages in niche areas, it has not offered smaller packages in recent years. *Id.* at 13:50-15:14. Because of the substantial investment in software animation that SIV has made and the labor required to prepare the videos for each client, the majority of the cost to SIV is setting the client up for a video package, such that each additional video does not substantially increase the cost to SIV or the price to the client. *Id.* at 15:20-17:53.

While Claimant asserts that the infringement continued for "[a]bout 70 months," the use documented in this case continued for only about 66 months. (Dkt. 32 at 2). Claimant requests that the Board use its monthly rate to calculate damages, not its lower quarterly or yearly rates. *Id.* At the $99 per month rate, Respondent would have paid $6,534 licensing Claimant's smallest package for 66 months, which is for up to 30 videos. *See id.* at 1. Dunn described that when selling directly to realtors, "the common choice" was for the realtors to take a monthly license, although Claimant offered the yearly license, and he would attempt to show the savings of a yearly package with the goal of getting customers to sign up for a yearly package or convert them to a yearly package. Hearing Tr. at 23:15-25:10. Claimant's pricing chart shows that, on a yearly basis, Respondent would have paid $708 per year for the 30-video package, which is $4,248 for six years. (Dkt. 32 at 1).

SIV is seeking "appropriate" statutory damages. Party Statement at 1.

III. 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). SIV is listed as the registrant in Certificates of Registration for each of the five Works: (1) "What Are Discount Points?" with an effective registration date of March 17, 2021, and a publication date of October 28, 2013 (Reg. No. PA 2-318-093); (2) "Closing Costs Explained Visually" with an effective registration date of July 6, 2021, and a publication date of March 19, 2014 (Reg. No. PA 2-331-653); (3) "Purchasing Vs. Renting A Home" with an effective registration date of November 16, 2022, and a publication date of October 28, 2013 (Reg. No. PA 2-382-246); (4) "What Kind of Loans Do TRID Disclosures Cover?" with an effective registration date of November 16, 2022, and a publication date of April 5, 2014 (Reg. No. PA 2-382-250); and (5) "How Do I Calculate The Price On My House?" with an effective registration date of November 16, 2022, and a publication date of April 17, 2014 (Reg. No. PA 2-387-019). Claim Exhibits 5, 8, & 14-16; Party Statement at 2. A certificate of registration, if timely obtained, is prima facie evidence both that a copyright is valid, and that the registrant owns the copyright. *See* 17 U.S.C. § 410(c); *Scholz Design, Inc. v. Sard Custom Homes, LLC,* 691 F.3d 182, 186 (2d Cir. 2012). However, this evidentiary presumption applies only when the certificate of registration is obtained before or within five years after

first publication of the work. In this case, all of the effective dates of registration are outside of the five-year period; as such, the evidentiary weight given to the registration is in the Board's discretion. 17 U.S.C. § 410(c).

Regardless of the foregoing, neither the copyrightability of the Works nor SIV's ownership of them is in question. The Videos are clearly creative, and Dunn testified in writing that he wrote and directed the Videos on behalf of SIV. Party Statement at 2. There is no reason to doubt that SIV is the owner of the Works, as stated in the Party Statement and the certificates of registration. *Id.* at 1-2. Furthermore, there is no question that the Works are copyrightable. 17 U.S.C. §102(a)(6); *See Feist Publications*, 499 U.S. 340 at 346 ("originality requires independent creation plus a modicum of creativity").

In the absence of direct evidence, copying is proved by circumstantial evidence of access to the copyrighted work and substantial similarities as to protectible material in the two works. *See, e.g., Boisson v. Banian, Ltd.*, 273 F.3d 262, 267-68 (2d Cir. 2001); *Armour v. Knowles*, 512 F.3d 147, 152 (5th Cir. 2007); *Soc'y of the Holy Transfiguration Monastery, Inc. v. Archbishop Gregory of Denver, Colo.*, 689 F.3d 29, 49 (1st Cir. 2012); *Reader's Digest Ass'n, Inc. v. Conservative Digest, Inc.*, 821 F.2d. 800, 806 (D.C. Cir. 1987). Copying can also be inferred without additional evidence of access if the allegedly infringed work and the allegedly infringing work are "so strikingly similar as to preclude the possibility of independent creation." *Lipton v. Nature Co.,* 71 F.3d 464, 471 (2d Cir. 1995) (internal quotation marks and citation omitted). *See also Unicolors, Inc. v. Urban Outfitters, Inc.*, 853 F.3d 980, 985 (9th Cir. 2017); *JCW Investments, Inc. v. Novelty, Inc.*, 482 F.3d 910, 915 (7th Cir. 2007).

In order to prove substantial similarity, the claimant must show that the allegedly infringing work is substantially similar to protectable elements of the infringed work. When "duplication is literal or verbatim, then clearly substantial similarity exists." *Bell v. Wilmott Storage Services, LLC*, 12 F.4th 1065, 1074 (9th Cir. 2021) (*quoting* 4 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 13.03[A][1] (2019)). *See also Novelty Textile Mills v. Joan Fabrics Corp.*, 558 F.2d 1090, 1093 (2d Cir. 1977) (finding defendant's work substantially similar to plaintiff's work when the former, "to our 'lay' eyes, is almost identical").

SIV has shown that, without its consent, AREF copied and publicly displayed exact copies of the Works on AREF's branded YouTube channel. Party Statement at 1. SIV has provided copies of the Works and the infringing

videos in side-by-side comparisons, which clearly demonstrate that the infringing videos are exact copies of the Works. (Dkt. 35-39). In addition, SIV states that the content of AREF's videos as well as the copyright management information included in each are identical to the Works. Claim at 5. Thus, AREF's videos are both strikingly and substantially similar to SIV's.

IV. Defenses

When reviewing the evidence provided by a claimant in support of a default determination, the Board must consider whether the respondent has a meritorious defense. 37 C.F.R. § 227.3(a). The Board has considered the facts in this case and finds that no such defense exists to this claim.

V. Damages

SIV has not specified the amount of damages it is seeking but asks for "appropriate" statutory damages. Party Statement at 1. 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); *Fitzgerald Publishing Co. v. Baylor Publishing Co.*, 807 F.2d 1110, 1116 (2d Cir. 1986); *Bryant v. Media Right Productions, Inc.*, 603 F.3d 135, 143 (2d Cir. 2010). "[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). *See also Alouf v. Expansion Products, Inc.*, 417 F.2d 767, 769 (2d Cir. 1969); *Peer Int'l Corp. v. Pausa Records, Inc.*, 909 F.2d 1332, 1336 (9th Cir. 1990) (*quoting F.W. Woolworth*, 344 U.S. at 232); 17 U.S.C. § 1504(e)(1)(A)(ii).

Furthermore, various courts have explained that (regardless of willfulness or lack thereof) statutory damage awards should significantly exceed the amount of unpaid license fees because the 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) (internal quotation marks and citation omitted). As the court noted in *Werner v. Evolve Media, LLC*, No. 2:18-CV-7188-VAP-SKx, 2020 WL 4012784, at *3 (C.D. Cal. June 22, 2020):

> Such an approach is consistent with the Copyright Act's purpose of deterring copyright infringement. Indeed, as the Supreme Court has held, "a rule of liability which merely takes away the profits from an infringement would offer little discouragement to infringers. It would fall short of an effective sanction for enforcement of copyright policy. The statutory rule, formulated after long experience, not merely compels restitution of profit and reparation for injury but also is designed to discourage wrongful conduct."

(*quoting F.W. Woolworth*, 344 U.S. at 233). *See also Philpot v. L.M. Commc'ns II of S.C., Inc.*, 343 F. Supp. 3d 694, 702–03 (E.D. Ky. 2018) ("Merely awarding statutory damages in the amount of the profits reaped from a copyright infringement would do little to discourage infringers."), *rev'd and remanded on other grounds sub nom. Philpot v. LM Commc'ns II of S.C.*, 776 F. App'x 906 (6th Cir. 2019).

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); *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 (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 asserted statutory damages should bear some relation to the actual damages suffered") (citations omitted).

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*, 807 F.2d at 1118. 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." *On Davis v. The Gap, Inc.*, 246 F.3d 152, 165 (2d Cir. 2001).

Across the country, courts typically award statutory damages in a range from approximately two to six times the lost licensing fee for the infringed work, with around three times the lost fee being most prevalent. *See, e.g.*, *Barcroft Media, Ltd. v. Coed Media Group, LLC,* 297 F. Supp. 3d 339, 359 (S.D.N.Y. 2017); *Broadcast Music, Inc. v. Paden*, No. 11-02199-EJD, 2011 WL 6217414, at *5 (N.D. Cal. Dec. 14, 2011); *Sixx Gunner Music v. The Quest, Inc.,* 777 F. Supp. 2d 272, 274 (D. Mass. 2011); *Broadcast Music, Inc. v. Amici III, Inc.,* No. 14-CV-5002, 2014 WL 7271915, at *1 (D.N.J. Dec. 16, 2014); *Broadcast Music, Inc. v. Eatnout, LLC*, No. 15-cv-254, 2015 WL 12803458, at *3 (E.D. Va. Dec. 29, 2015); *Philpot,* 343 F. Supp. 3d at 702; *Broadcast Music, Inc. v. Ken V, Inc.*, 159 F. Supp. 3d 981, 990 (E.D. Mo. 2016); *Minden Pictures, Inc. v. Buzznick, LLC*, No. 22-cv-00369-RJS, 2023 WL 2243177, at *5 (D. Utah Feb. 27, 2023); *Broadcast Music, Inc. v. Entertainment Complex, Inc.*, 198 F. Supp. 2d 1291, 1296 (N.D. Ala. 2002); *MOB Music Publ'g v. Zanzibar on the Waterfront, LLC*, 698 F. Supp. 2d 197, 207-08 (D.D.C. 2010).

SIV has provided the Board with evidence and information needed to establish a lost license fee in this proceeding. SIV has provided credible evidence of its standard pricing and terms for its video libraries for real estate, which SIV also makes available to the public at **fastforwardstories.com/real-estate** (last accessed on February 20, 2024). (Dkt. 32 at 1). The evidence shows that SIV offers its videos and services in packages that range from "Premium" (access to up to 163 videos) at $399 per month to "Starter" (access to up to 30 videos) at $99 per month, for clients who only want monthly licenses, although the prices are reduced to $249 per month ($2,988 per year) for the Premium package and $59 per month ($708 per year) for the Starter package on a yearly basis. *Id.* In addition to videos, SIV's packages also include custom branding, web articles, pre-made video pages, and social media files. *Id.*; Hearing Tr. at 25:21-30:20.

Although Section 507(b) of the Copyright Act provides that "[n]o civil action shall be maintained . . . unless it is commenced within three years after the claim accrued," the Act does not state when a claim accrues. *See* 17 U.S.C. § 507(b). When applying the "discovery rule," a copyright claim "accrues" when the copyright owner knows or should have known of the infringement of its work, not on the date a particular infringement occurs. *See, e.g., Nealy*

v. Warner Chappell Music, Inc., 60 F.4th 1325, 1330 (11th Cir. 2023); *William A. Graham Co. v. Haughey*, 568 F.3d 425, 438 (3d Cir. 2009). The majority of courts, including the Eleventh Circuit, where Respondent resides, have also held that "a copyright plaintiff with a timely claim under the discovery rule may recover retrospective relief for infringement that occurred more than three years prior to the filing of the lawsuit." *Nealy,* 60 F.4th at 1334.[1] In the current case before the Board, Dunn has testified that he did not learn of Respondent's infringement until late April 2022, after he hired a contractor to search for infringements of SIV's videos, so it appears that SIV was not aware of the infringements at the time that they occurred in 2017. Hearing Tr. at 2:50-3:01. Dunn also testified that he first discovered that others were infringing SIV's videos in 2020 when searching for one of SIV's videos. *Id.* at 6:27-7:08. Dunn explained the difficulties in searching video on the internet because there is not one global search engine that can reliably find infringing videos. *Id.* at 1:37-2:23; 10:40-10:47. Therefore, the Board finds that under the circumstances presented in this case, it is credible that Dunn reasonably did not discover the infringement until 2022, and should be allowed damages from the beginning of the infringement under Eleventh Circuit law.

The "Starter" is the smallest package that SIV offers and includes thirty videos plus the other services, such as web articles as described above. (Dkt. 32 at 1). The cost for the Starter package is $59 per month ($708 per year) for a yearly license, $249 for a quarterly license or $99 per month for a monthly license. *Id.* Here, AREF infringed five videos for about sixty-six months. SIV argues that AREF is not entitled to the favorable pricing offered to its licensed customers for longer-term licenses. *Id.* at 2. However, if AREF had sought a six-year license from SIV, it is clear that it would have been offered the lower $708 per year rate because of the length of the license. *See* Hearing Tr. at 23:15-25:10. Based on Dunn's testimony, it is also clear that AREF would have had to pay for a package of up to thirty videos even if it only wanted five videos. *See id.* at 14:52-16:01. Because that is the most likely willing buyer-willing seller scenario, the Board believes that the yearly license for the Starter package is the

[1] The Board follows Eleventh Circuit substantive copyright law where there may be conflicting precedent. *See* 17 U.S.C. § 1506(a)(2). The Board notes that the pending Supreme Court case of *Warner Chappell Music, Inc. v. Nealy* could change the scope of damages available in cases where infringements occurred more than three years before bringing suit but were discovered later. *See id.*, No. 22-1078, 144 S. Ct. 478 (Sept. 29, 2023) (granting certiorari). However, as of this moment, the law of the Eleventh Circuit (and *Nealy* is an appeal from an Eleventh Circuit case) is to allow damages beyond three years where the discovery rule applies.

most appropriate starting point for calculating SIV's damages. Using a yearly fee of $708 per year for six years (the minimum yearly package for sixty-six months), the amount of AREF's forgone license would be $4,248.

However, that is not the end of the calculation because the standard SIV Starter package includes other materials and services that AREF did not receive. Dunn testified that the other materials and services provided to clients are very valuable partly because clients would have pay someone a substantial fee to be able to use the Videos on their website and on their social media accounts. Hearing Tr. at 25:30-30:50; 30:59-32:54. Dunn's testimony demonstrated that the Videos are the most important and expensive part of the packages offered by SIV, but that the other services and materials included are valuable because they made the Videos more useable for clients. *Id.* at 39:00-40:17. As a result, the Board discounts the total lost license fee to $3,400.

SIV is a professional producer and licensor of explainer videos which it regularly licenses to its approximately 500 active clients. Party Statement at 1; Claim. It has taken significant measures to deter copying of its videos and does not provide actual video files or uploads of them on YouTube because such copying can cause its business such substantial harm as it enables others to download SIV's videos from that platform. *Id.*; (Dkt. 32 at 1-2). It is thus clear that deterrence is an important consideration in awarding damages in this case. Awarding damages of three times SIV's lost license fee for the infringed Works in this case is in line with precedent throughout the country and is appropriate to deter AREF and others from using and uploading SIV's videos without paying the appropriate license fees. SIV's ability to continue to license its videos depends, in part, on its enforcement against unlicensed usage of its videos; otherwise, others will believe they can utilize SIV's works for commercial purposes without paying any license fees.

Based on the record before it, the Board awards a total of $10,200, which is approximately three times the amount of SIV's proven actual damages.

VI. Conclusion

The Board's proposed default determination finds that AREF has committed copyright infringement and awards SIV $10,200 in statutory damages.