COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0277
August 14, 2024

Catalina Maria Jaramillo	*v.*	Juliana Andrea Duque
CLAIMANT		**RESPONDENT**

ORDER REGARDING EVIDENCE FILED AS PRIVATE

On April 2, 2024, the Board ordered Claimant Catalina Maria Jaramillo (Claimant) to submit written testimony in support of a default determination, including a party statement, evidence, and any witness statements, by May 17, 2024. (Dkt. 41.) Claimant submitted evidence (Dkt. 47-72) and a witness statement (Dkt. 46) on May 13, 2024. Following correspondence with Board staff regarding her failure to submit a party statement, Claimant submitted a document (identical in content with the witness statement) labeled "Party Statement" on May 17, 2024. (Dkt. 73.)

Claimant designated eight of the exhibits (Dkt. 53 & 66-72) she filed as evidence to be "Private," making them unavailable to the public.[1] On May 20, 2024, after correspondence with Board staff, Claimant filed a document labeled "confidential request" (available on the docket as Dkt. 74) asking that "copies of my interview" (i.e., the copyrighted video that Claimant alleges Respondent infringed) "remain confidential."

Because this is an infringement claim, the Board must determine whether the evidence shows that Respondent infringed the copyright in Claimant's work. That determination will require the Board to review at least some exhibits currently filed as "Private." Of the eight "Private" exhibits, five are either excerpts from Claimant's allegedly infringed video or excerpts from allegedly infringing videos disseminated by Respondent. Claimant has submitted no other copies of the allegedly infringing work or the allegedly infringed work. If those exhibits are not available to the public, the public will be unable to judge the basis of the Board's ultimate determination in this proceeding.

Under common law and the First Amendment, there is a right of public access to documents or materials filed in a court. "Publicity of such records, of course, is necessary in the long run so that the public can judge the product of the courts in a given case." *Columbus-America Discovery Group v. Atlantic Mutual Insurance Co.*, 203 F.3d 291, 303 (4th Cir. 2000). The right of access extends to materials on which a court relies in determining the litigants' substantive rights, including videotapes and audiotapes that have been admitted into evidence. *In re Providence Journal*

[1] Claimant labeled each of these exhibits as "EVIDENCE" followed by a number (e.g., "EVIDENCE 2"). The numbers Claimant assigned to the exhibits filed as "Private" are 2, 5, 6, 9, 10, 12 (mislabeled by Claimant on the docket as EVIDENCE 9 (Dkt. 53)), 13, and 19. Claimant also designated her witness statement (Dkt. 46) as "Private," although the identical Party Statement (Dkt. 73) was designated as "Public."

Co., Inc., 293 F.3d 1, 16 (1st Cir. 2002); *see Chicago Tribune Co. v. Bridgestone/Firestone, Inc.,* 263 F.3d 1304, 1312 (11th Cir. 2001). The right of access also applies to administrative agencies that conduct "'quasi-judicial' administrative proceedings," and "the principles governing adjudication do not lose validity when the adjudication moves to another branch of government." *New York C.L. Union v. New York City Transit Auth.,* 684 F.3d 286, 299–300 (2d Cir. 2012).

In making its final determination, the Board will only consider exhibits that are available to the public.

It is therefore ORDERED that Claimant advise the Board, no later than August 21, 2024, which, if any, of the exhibits designated as "Private" may be redesignated as "Public." The Board will review those exhibits in making its final determination, but will **not** review any exhibits that remain designated as "Private."

Claimant does not necessarily have to redesignate all of the "Private" exhibits. In making her decision, Claimant should take care to ensure that there will be sufficient "Public" information before the Board to permit it to determine whether Respondent has infringed Claimant's copyright. Claimant may also resubmit edited versions of any of the "Private" exhibits, designated as "Public," if she concludes that only portions of those exhibits should be reviewed by the Board. Such exhibits must be submitted no later than August 21, 2024.

Claimant should also consider all issues that the Board may need to address when Claimant makes the decision as to what to redesignate as "Public" or what not to redesignate. For example, in determining the amount of damages Claimant may recover if she prevails on the infringement claim, the Board may take into account the nature and amount of the infringing material included in Respondent's videos.

If you have questions, please contact **asktheboard@ccb.gov**. Include your docket number in the subject line. The Board is unable to provide legal advice. We can only provide legal information and assistance concerning Board procedures and requirements.

Copyright Claims Board