



# COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0082

August 5, 2024

Martin McNeil

CLAIMANT

v.

Blackbelt TV, Inc.

RESPONDENT

## FINAL DETERMINATION

This matter has been fully submitted by the parties. For the reasons that follow, the Copyright Claims Board (“Board”) finds in favor of Claimant Martin McNeil (“McNeil” or “Claimant”) and awards \$1,500 in statutory damages.

McNeil filed this claim for copyright infringement against Blackbelt TV, Inc. (“Blackbelt” or “Respondent”) on July 29, 2022 (“Claim”) (Dkt. 1), alleging that Blackbelt infringed his copyright in a photograph of Jimi Manuwa, a mixed martial artist, by posting it to Blackbelt’s Facebook page to promote an upcoming airing by Blackbelt of a match featuring Manuwa. Following discovery, the parties filed their written testimony, and the case is now ready for final determination.

### I. Factual History

The facts relevant to the Board’s Final Determination are largely undisputed. McNeil is a commercial photographer who photographs, among other things, Mixed Martial Arts (“MMA”) events. He owns a library of images that he licenses to media organizations and other third-parties. Claimant Party Statement at 1 (Dkt. 28); McNeil Declaration (“McNeil Decl.”) ¶¶ 2-4 (Dkt. 41).

McNeil took a photograph (the “Work”) of Jimi Manuwa, an MMA fighter, during an official weigh-in for the “UFC Fuel TV 5 event,” on September 28, 2012, in Nottingham, England (“UFC Event”). McNeil Decl. ¶ 5. The Work was registered for copyright by McNeil as part of a group of published photographs entitled “Photographs from UFC on Fuel TV 5 Fight Week.” Claimant’s Exhibit C (Reg. No. VA 1-842-895) (Dkt. 37); McNeil Decl. ¶ 12. The effective date of registration is October 3, 2012, and the registration states that the photographs were published on September 26, 2012. *Id.*

McNeil states that he created the Work while freelancing for Vox Media (“Vox”) and had granted Vox the right of first refusal to license McNeil’s photographs of the UFC Event. Vox chose not to license the Work, allowing McNeil to license the Work to whomever he wanted. McNeil Decl. ¶¶ 6-7. McNeil knew that Smuggling Duds, Ltd. (“Smuggling Duds”), a clothing retailer, wanted photographs of athletes, like Jimi Manuwa, wearing their products, and McNeil was friendly with one of the company’s executives. On September 28, 2012, McNeil offered and licensed the Work to Smuggling Duds, for a “discounted” rate of £200. McNeil Decl. ¶¶ 7-9. Smuggling Duds added their own graphics to the Work and posted the Work on Facebook on September 29, 2012.<sup>1</sup> Claimant’s Exhibit E (Dkt. 39). Smuggling Duds subsequently posted the Work on their website on October 2, 2012. Claimant’s Exhibit D (Dkt. 38); McNeil Decl. ¶ 11.

On March 13, 2013, Blackbelt posted the Work to its Facebook page to promote an upcoming airing of a match featuring Jimi Manuwa (the “Post”). Respondent Party Statement at 3 (Dkt. 62); Declaration of Lawrence Kasanoff (“Kasanoff Decl.”) ¶¶ 3-4 (Dkt. 57). At the time, Blackbelt was a martial arts cable television channel that had acquired a library of fights from UCMMA-Cage Rage, UK (“UCMMA”). Respondent Party Statement at 3. Blackbelt alleges that under its agreement with UCMMA (the “Agreement”), Blackbelt received promotional materials, including “a reasonable number of color stills, color slides and black and white stills of scenes from the [recorded fights], with fighters appearing therein.” *Id.*; Kasanoff Decl. ¶ 2. Blackbelt further alleges that the Post included a color still that “on information and belief,” was provided by UCMMA under the Agreement. Respondent Party Statement at 3; Kasanoff Decl. ¶¶ 2-5 (“Based on our agreement with UCMMA to provide all materials, we believe this came from UCMMA-Cage Rage, UK. There is no other way we could have or would have gotten it.”). Eve Whitaker, a former Blackbelt employee who had been in charge of content and marketing, testified that Blackbelt’s policy was to only post images of fights or fighters given to it by the fight leagues it aired or photos Blackbelt took at the events it attended. Declaration of Eve Whitaker (“Whitaker Decl.”) ¶¶ 1-3 (Dkt. 55). However, McNeil asserts that the Work was never licensed to any other entities besides Smuggling Duds. McNeil

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<sup>1</sup> There is a minor inconsistency between the date on which McNeil states he took the photograph and published it – September 28, 2012 – and the date of publication stated on the certificate of registration – September 26, 2012. That two-day difference is immaterial.

Decl. ¶ 20. McNeil also states that after Blackbelt claimed it had received the photograph from UCMMA, he reached out to a UCMMA executive who confirmed that UCMMA never had the photograph and did not provide it to Blackbelt. *Id.* ¶¶ 28-30.

In 2016, Blackbelt canceled its linear distribution agreements and laid off its employees in order to focus on creating a streaming service. Blackbelt's operations have been "virtually dormant" since 2016. Kasanoff Decl. ¶ 6; Respondent Party Statement at 3. Blackbelt maintains that since then, files and materials including those it received from UCMMA were discarded. Respondent Party Statement at 3.

On September 6, 2021, McNeil discovered the Post on the Respondent's Facebook page by searching "Jimi Manuwa" on Facebook. McNeil Decl. ¶ 24. On September 9, 2021, Blackbelt received an email from McNeil's counsel, claiming Blackbelt had infringed the copyright in the Work. Kasanoff Decl. ¶ 8; Respondent Party Statement at 4. Blackbelt immediately removed the Work from its Facebook account. Kasanoff Decl. ¶¶ 8, 11. The Post received a total of seven likes from a total of 92 visitors to the Post. *Id.* ¶ 7; Claimant's Exhibit F (Dkt. 33).

McNeil is seeking the maximum award of \$15,000 statutory damages permitted in a CCB claim proceeding for a timely registered work. Claim; Claimant Party Statement at 9, 12. To demonstrate his licensing fee, McNeil included a hypothetical \$5,216 calculation for an eight-year license for the Work that was generated by entering certain information on his Photoshelter website, which calculates a license fee based on a licensee's desired usage, and extrapolating that data to cover the eight years the Post was on Facebook. Claimant Party Statement at 10-11; McNeil Decl. ¶¶ 14-19. Apart from the license to Smuggling Duds, McNeil submits no evidence regarding licenses he has actually issued for the Work or similar works.

## **II. Analysis**

### **a. Liability**

Blackbelt does not dispute that McNeil owns the copyright in the Work and that Blackbelt copied it. Respondent Party Statement at 4. McNeil's Certificate of Registration for the Work, which was effective as of October 3, 2012, states that the Work was published on September 26, 2012. Claimant's Exhibit C. Because the

Certificate of Registration was effective within five years after first publication of the Work, it is prima facie evidence of the validity of the copyright and of the facts stated in the certificate. 17 U.S.C. § 410(c).

Blackbelt posted a copy of the Work on its Facebook page on May 17, 2013. Claimant's Exhibit F. Such posting constitutes a violation of McNeil's exclusive rights of reproduction and public display. *Doggie Dental v. Shahid*, 2021 WL 4582112 (N.D. Cal. 2021) (unauthorized posting of an image on Facebook violates the reproduction and public display rights); *TeamLab Inc. v. Museum of Dream Space, LLC*, 650 F. Supp.3d 934, 949 (C.D. Cal. 2023).

However, Blackbelt does assert two affirmative defenses: (1) McNeil's claim is barred by the three-year statute of limitations, 17 U.S.C. § 507(b), and (2) Blackbelt's use of the Work was licensed.

## **b. Defenses**

### **i. Statute of Limitations**

McNeil filed this claim with the Board on July 29, 2022, nine years after the infringement commenced. The statute of limitations for copyright infringement claims provides that "[n]o civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued." 17 U.S.C. § 507(b). Under the "discovery rule," adopted by the Ninth Circuit and most other circuits, a claim accrues "when the plaintiff discovers, or with due diligence should have discovered, the infringing act." *Warner Chappell Music, Inc. v. Nealy*, No. 22-1078, 601 U.S. \_\_\_, 2024 WL 2061137, \*2-\*4 (May 9, 2024). *See also Starz Ent., LLC v. MGM Domestic TV Distrib., LLC*, 39 F.4th 1236, 1237 (9th Cir. 2022) (under the discovery rule, a copyright claim "accrues when the copyright holder knows or reasonably should know that an infringement occurred.").

While acknowledging that copyright owners do not have a general duty to police the internet for infringement, Blackbelt argues that "once a copyright holder becomes aware that his work has been infringed, he cannot simply bury his head in the sand as to easily located additional instances of infringement." Respondent Party Statement at 2. Blackbelt argues that McNeil was not reasonably diligent in discovering the infringement because he had been aware of infringement of some of his other photographs by other persons and had taken repeated legal action against such infringements since 2011. In support of that proposition, Blackbelt submitted a list of three copyright suits filed by McNeil in federal courts in 2011, 2012, and 2014 (Respondent's Exhibit G, (Dkt. 53)), as well as excerpts from three

news articles or interviews relating past instances when McNeil’s copyrights had been infringed. Respondent’s Exhibit E (Dkt. 47).

At best, Blackbelt has established that its alleged infringement of McNeil’s copyright was not the first time McNeil had encountered alleged infringements of his copyrights, and that he has taken action against other alleged infringers in the past. What Blackbelt has not established is that McNeil had any reason to be aware that *Blackbelt* had made *the Work* available on its Facebook page before the time he became aware of that alleged infringement in 2021. It takes far more than three infringement suits to find that a copyright owner is deemed to have had reason to know about an infringement simply because of the copyright owner’s history of policing copyrights. *See Minden Pictures, Inc. v. BuzzFeed, Inc.*, 390 F. Supp.3d 461, 467 (S.D.N.Y. 2019) (concluding that “a reasonable copyright holder in Minden Pictures’ position – that is, a seasoned litigator that has filed 36 lawsuits to protect its copyrights, beginning as early as July of 2010 – should have discovered, with the exercise of due diligence, that its copyright was being infringed within the statutory time period”). *See also Minden Pictures, Inc. v. Complex Media, Inc.*, No. 22-CV-4069 (RA), 2023 WL 2648027, at \*3 (S.D.N.Y. Mar. 27, 2023) (making similar findings about the same plaintiff, noting that “the number of lawsuits Plaintiff has filed since 2012 has now increased to more than one hundred” and that “Plaintiff uses sophisticated methods to detect infringing images, working diligently to detect online infringements of its works, and enlisting technology companies that crawl the internet to identify infringing uses”); *Lixenberg v. Complex Media, Inc.*, No. 22-CV-354 (RA), 2023 WL 144663, at \*3 (S.D.N.Y. Jan. 10, 2023) (concluding that it was “not plausible” that plaintiff, a “‘seasoned litigator,’ having filed nearly twenty lawsuits since 2015” who had “previously filed at least two copyright infringement actions related to this identical Subject Photograph,” would not have discovered the infringing use until five years after it commenced”). In contrast, all that we know about McNeil’s history of policing copyright infringements is that he has filed three previous lawsuits alleging copyright infringement and that there are press reports about other alleged infringements of his copyrights. McNeil falls far short of the mark to be considered such a “seasoned litigator” that he is chargeable with knowledge of Blackbelt’s infringement.

Moreover, McNeil persuasively points out that he had no reason to suspect that Blackbelt had infringed the copyright in the Work until he conducted a search in September 2021 for possible infringements of his photos on

Facebook after learning of an infringement of another of his photographs on Facebook. McNeil Decl., ¶¶ 21-24; Claimant Party Statement at 6. He observes that Blackbelt itself has asserted that the Work was viewed on its Facebook page less than 100 times in 9 years, with only 7 “likes,” hardly the kind of infringement that was likely to be easily discoverable. Claimant Party Statement at 6-7; *See also* Response (Dkt. 12). In short, Blackbelt offers no reason to conclude that McNeil, using due diligence, should have discovered the alleged infringement before he actually did discover it on September 6, 2021, less than one year before he filed his claim. The Board finds no merit to Blackbelt’s statute of limitations defense.

## **ii. Alleged License**

It is a defense to a claim of copyright infringement that the alleged infringer had a license from the copyright owner and the allegedly infringing conduct was within the scope of the license. *Borrego v. BMG U.S. Latin*, 92 F. App’x 572 (9th Cir. 2004); *Worldwide Church of God v. Philadelphia Church of God, Inc.*, 227 F.3d 1110, 1114 (9th Cir. 2000). Blackbelt argues that “[w]hile it is a defendant’s burden to prove the existence of a license, it is a plaintiff’s burden to prove the scope of that license does not cover the use at issue. BBTV has proven the existence of the Agreement, obligating McNeil to rebut the scope of its coverage.” Respondent Party Statement at 5 (case law citations omitted). However, Blackbelt has not proved the existence of a license. Even assuming the agreement that it characterizes as a license purported to give Blackbelt permission to use the Work in the manner in which it did, Blackbelt has failed to prove that the putative licensor, UCMMA, had the power to license those rights. And McNeil, who is the copyright owner of the Work, has established that UCMMA did not have that power.

Blackbelt alleges that it received the Work from UCMMA under the Agreement in which it acquired a library of fights. Respondent Party Statement at 2, 5-7; Respondent’s Exhibit B (Dkt. 48). Blackbelt alleges that, under the Agreement, it received promotional materials including “a reasonable number of color stills, color slides and black and white stills of scenes from the [recorded fights], with fighters appearing therein” including the Work at issue. Respondent Party Statement at 2, 5-7. In support of this allegation, Blackbelt has submitted the declaration of its CEO Larry Kasanoff, stating that the Agreement provided that UCMMA would provide promotional pictures and materials to be used to promote UCMMA’s fights on Blackbelt’s network, and stating that, based on that

Agreement, Blackbelt relied upon UCMMA to provide the promotional materials for each fight. Kasanoff concluded that “we believe [the Work] came from UCMMA-Cage Rage, UK. There is no other way we could have or would have gotten it.” Kasanoff Decl. ¶ 5. Blackbelt also asserted that it was the company’s “policy ... to utilize only material from licensees.” Respondent Party Statement at 6. To support that assertion, Blackbelt submitted the declaration of a former employee with responsibility for content and marketing who stated that “the policy we had was to only post images of fights or fighters given to us by the fight leagues we aired or photos we took at the events we attended.” Whitaker Decl. ¶ 3. However, Blackbelt speaks in generalizations and does not show proof of an actual license covering the Work, which is not surprising given that McNeil did not license the work to UCMMA.

McNeil testified that apart from a nonexclusive license to Smuggling Duds, he has never licensed the Work “in any manner, or to any person or entity.” McNeil Decl. ¶¶ 7-9, 20. Blackbelt offers no evidence that UCMMA had obtained, from McNeil or anyone else, the right to license the Work. McNeil also notes that the Agreement granted Blackbelt certain rights to a library of ten UCMMA fights (each of which is identified in Exhibit B to the Agreement; *see* Exhibit B), but the Work is a photograph from an event sponsored not by UCMMA, but by UFC, a competitor of UCMMA. Claimant Party Statement at 8. Furthermore, the infringing work posted by Blackbelt included the “Smuggling Duds” logo, making it even less likely that UCMMA had the right to license the Work and provided it to Blackbelt. Claimant’s Exhibit F. Under the circumstances, it is highly unlikely that UCMMA would have legally provided a copy of the Work to Blackbelt, and Blackbelt does not satisfy its burden of proof that UCMMA did.

The Board finds that Blackbelt’s defense that its use of the Work was licensed has no merit.

### **III. Damages**

McNeil requests statutory damages in the amount of \$15,000 (Dkt. 1), the maximum permitted statutory damages award per work in a CCB proceeding. 17 U.S.C. § 1504(e)(1)(A)(ii).

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); *Peer Int’l Corp. v. Pansa Records, Inc.*, 909 F.2d 1332,

1336 (9th Cir. 1990). “[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); *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 here ‘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).

In support of its request for statutory damages, McNeil stated that he publishes his license fees on his Photoshelter website, which uses an online fee calculator. Claimant Party Statement at 10-11; McNeil Decl. ¶¶ 14-



19. However, he neither asserts nor offers any evidence that he has ever actually issued a license for the fee generated by the online calculator. In the absence of such evidence, the Board concludes that the price listings are not probative of what a reasonable license fee would have been for use of the Work. “[I]n situations where the infringer could have bargained with the copyright owner to purchase the right to use the work, actual damages are what a willing buyer would have been reasonably required to pay to a willing seller for plaintiffs' work.” *Jarvis v. K2 Inc.*, 486 F.3d 526, 533 (9th Cir. 2007). “The question is not what the owner would have charged, but rather what is the fair market value.” *Id.* The fees generated on McNeil’s website are, at best, evidence of the price at which McNeil has offered a license. They tell the Board nothing about whether any willing buyer has agreed to that price. See *Bell v. Taylor*, 827 F.3d 699, 709 (7th Cir. 2016) (concluding that “the price that Bell listed on his website is not sufficiently concrete to show the fair market value of his photo”).

McNeil asserts that his fee calculator “uses the industry-standard” fotoQuote software whose numbers are based on surveys of photographers and buyers as well as additional real-world research,” and that the calculator generated a one-year license fee of \$1,432 and a five-year license fee of \$3,344 for Blackbelt’s use of the Work.<sup>2</sup> Claimant Party Statement at 10-11; see McNeil Decl. ¶¶ 14-19. However, he offers no evidence regarding how the fotoQuote software works or the reliability of the data that it uses. The Board finds no basis to rely on the fotoQuote calculations. See *Oppenheimer v. Griffin*, 2019 WL 7373784, at \*6-7 (W.D.N.C. Dec. 31, 2019) (rejecting fotoQuote calculation because it “is not reflective of the Plaintiff’s lost revenue here” and “does not accurately reflect the price that the Defendants would have paid to license the Work”); *Fey v. Panacea Management Group LLC.*, 261 F. Supp.3d 1297, 1305 (N.D. Ga. 2017) (rejecting evidence of online price calculators including fotoQuote because plaintiff did “not know how the price calculators work or what data they rely on, and she has not shown the calculators are reasonably relied on by experts in establishing licensing fees”).

McNeil has, however, provided concrete evidence of the value of a license for the Work itself: he actually did license the work to Smuggling Duds, for a fee of £200 (approximately \$260 at current exchange rates). McNeil

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<sup>2</sup> Noting that the use by Blackbelt was for eight years, McNeil engaged in additional calculations (because the fotoQuote pricing engine has a five-year limit) to arrive at an eight-year fee of \$5,216. Claimant Party Statement at 10.

Decl. ¶ 8. He characterized the fee as “a discounted rate” that he granted to Smuggling Duds, but said nothing about how deep of a discount the rate represented, explaining only that he gave the discount “because of my professional relationship with company director Ben Warman, and the understanding that the company was in an ongoing effort to expand their brand awareness by sponsoring mixed martial arts athletes.” *Id.*

Given that the Board has wide discretion to “consider what is just in the particular case,” including the need for deterrence, the Board determines that based on the slim record regarding damages that the parties have given the Board, the licensing fee paid by Smuggling Duds is the best evidence of what a reasonable licensing fee for the use of the Work would be. To the extent that McNeil describes the nature of the use of the Work by Smuggling Duds, it appears to have been generally similar to that made by Blackbelt. *Compare* McNeil Decl. ¶¶ 7-11 and Claimant Party Statement at 1-2 (Smuggling Duds) *with* Claimant Party Statement at 4 and Kasanoff Decl. ¶¶ 3-4, 8, 10 (Blackbelt).

While McNeil asserts that he is entitled to a license fee for eight years of usage of the Work by Blackbelt because Blackbelt did not remove the photo from its Facebook page until after it was contacted by McNeil’s counsel in 2021 (see Kasanoff Decl. ¶ 11), Blackbelt observes that “[b]ecause the photograph was intended to promote a single sporting event, it would have been nonsensical to structure the license with a recurring yearly fee, as the photograph ceased to have any significant value once the event was no longer being promoted.” Respondent Party Statement at 8. The Board agrees. The infringing Facebook post, dated May 17, 2013, promoted a broadcast of the Jimi Manuwa fight that was apparently being transmitted at 9:00 pm on the same day. *See* Claimant’s Exhibit F (“Respondent’s Infringing use”). The fact that the Post had only 92 views and 7 “likes” also indicates that its audience was very small.

The Board also notes that the licensed use of the Work by Smuggling Duds appears to continue to this day, and no evidence has been presented that Smuggling Duds has paid – or McNeil has demanded – any additional license fees from Smuggling Duds. *See* <https://smugglingduds.com/blogs/news/at-the-ufc-weigh-ins-with-dan-the-outlaw-hardy-and-jimi-the-posterboy-manuwa? pos=5& sid=5656a696d& ss=r> (fifth photograph on

the page) (last visited on July 19, 2024). This suggests that Smuggling Duds' license was at least coextensive with Blackbelt's use of the Work.

Taking into account McNeil's characterization of the license fee to Smuggling Duds as being "discounted," the Board concludes that a reasonable licensing fee for Blackbelt's use would be \$500, based on the assumption that McNeil gave Smuggling Duds a discount of approximately 50%.<sup>3</sup>

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., Broadcast Music, Inc. v. Paden*, No. 5:11-02199-EJD, 2011 WL 6217414, at \*5 (N.D. Cal. Dec. 14, 2011); *Barcroft Media, Ltd. v. Coed Media Group, LLC*, 297 F. Supp. 3d 339, 359 (S.D.N.Y. 2017); *Sixxx 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. 2:15cv254, 2015 WL 12803458, at \*3 (E.D. Va. Dec. 29, 2015); *Broadcast Music, Inc. v. Ken V, Inc.*, 159 F. Supp. 3d 981, 990 (E.D. Mo. 2016); *Minden Pictures, Inc. v. Buzznick, LLC*, No. 2:22-cv-00369-RJS-CMR, 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). 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); *Philpot v. L.M. Comm'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.").

Following that practice, the Board concludes that an appropriate multiplier would be three times the estimated licensing fee and that the statutory damages award should be in the amount of \$1,500.

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<sup>3</sup> Although there is insufficient evidence to support McNeil's calculated license fee, a reasonable license fee of \$500 is not far off from McNeil's own calculation when the limited use is considered. McNeil's request of \$5,216 for eight years amounts to an average yearly license fee of \$652.

#### **IV. Conclusion**

The Copyright Claims Board finds Respondent, Blackbelt TV Inc., liable for infringement, and awards Claimant, Martin McNeil, \$1,500 in statutory damages.