



# COPYRIGHT CLAIMS BOARD

Docket number: 22-CCB-0015  
May 13, 2024

Morly Investments Pty Ltd  
(imprint: The High Street Publishing Company)

CLAIMANT

v.

The Walt Disney Company, Disney-Hyperion  
Books, and Disney Publishing Worldwide

RESPONDENTS

## 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 respondents The Walt Disney Company, Disney-Hyperion Books, and Disney Publishing Worldwide (collectively “Disney” or “Respondents”) and dismisses the claim with prejudice.

### I. Procedural History

Claimant Morly Investments Pty Ltd (“Claimant”) filed the initial claim in this proceeding on June 16, 2022. (Dkt. 1). Its amended claim was found compliant and allowed to proceed. Claim (Dkt. 5). Respondents were served and did not opt out. (Dkt. 13-16). They filed their response to the Claim on February 8, 2023. (Dkt. 22). Discovery closed on May 5, 2023, and the parties were directed to file written testimony. (Dkt. 34). Claimant filed Claimant’s Party Statement (Dkt. 36), a witness statement by Rebecca Lim (“Lim”) (Dkt. 35; “Author’s Witness Statement”), a statement as to damages (Dkt. 37), an evidence list (Dkt. 38), and evidence (Dkt. 39-94). Disney filed Respondents’ Party Statement (Dkt. 145), an evidence list (Dkt. 135), and evidence (Dkt. 96-134, 136-144). Finally, Claimant filed a Reply Statement (Dkt. 146).

The case is now ready for final determination.<sup>1</sup>

### II. Factual History

Lim, a resident of Australia and an attorney, is the author of the novels *Mery* and *Exile* (the “Works”). Author’s Witness Statement ¶¶ 4, 18. Claimant is represented in this proceeding by Lim in her capacity as authorized company representative. *Id.* ¶ 20. Claimant states that it enters into publishing agreements on behalf of Lim. *Id.* ¶

<sup>1</sup> Copyright Claims Officer McCabe did not participate in this determination.

8; Claimant’s Party Statement ¶ 1. In 2010, it granted worldwide publishing rights for “four works of young adult fiction in the MERCY series, now entitled *Mercy*, *Exile*, *Muse* and *Fury*” (so, including the Works) to HarperCollins Publishers Australia Pty Limited (“HCA”). Claimant’s Exhibit 2 (Dkt. 40), at 1. HCA subsequently granted English language rights throughout the world, excluding Australia and New Zealand, to HarperCollins Publishers Limited (“HCUK”), and authorized HCUK to grant North American rights to Disney. *Id.* HCUK and Disney entered into a “sub-rights agreement.” Claimant’s Party Statement ¶ 8; Claimant’s Exhibit 4 (Dkt. 42). The HCUK-Disney agreement granted Disney exclusive publishing rights in the United States and its territories and possessions. Claimant’s Exhibit 4 ¶ 2. Pursuant to that agreement, Disney paid substantial advances to HCUK and distributed English language versions of the Works, which were the first two books in the series, in the United States. *Id.* ¶ 4; Respondents’ Party Statement, at 3. Claimant states that over the next few years, Lim came to believe that Disney engaged in various breaches of contract, and on September 15, 2014, she requested that HCUK seek a reversion of rights from Disney. Claimant’s Party Statement ¶ 9; Claimant’s Exhibit 8 (Dkt. 48).

Disney offers a somewhat different perspective on the reasons for reverting the rights. It states that sales of the two Works were disappointing and that in 2014, it notified HCUK that it would not be publishing the third Lim novel that was included in the sub-rights agreement. Respondents’ Party Statement, at 3. Disney states that it sent a letter<sup>2</sup> to HCUK on July 29, 2014, proposing to revert the rights in the Works back to HCUK. *Id.* The letter was dated “As of July 29, 2014” and contained signature lines for both Disney and HCUK. Claimant’s Exhibit 11 (Dkt. 51). However, Claimant’s Exhibit 11 bears redacted signatures dated 11/5/15 for HCUK and 5/28/15 for Disney.<sup>3</sup> The letter concluded:

---

<sup>2</sup> Disney describes the letter as the “Termination Letter” Respondents’ Party Statement, at 3, while Claimant labels it the “Disney Rights Reversion.” Author’s Witness Statement, ¶ 2; *see* Claimant’s Party Statement, at 3. For purposes of this determination, the Board will adopt the term “Disney Rights Reversion.”

<sup>3</sup> Disney states that the letter was signed by HCUK on May 11, 2015, noting that the “11/5/15” date beneath the HCUK signature “used the dating convention typically employed in the U.K. of day–month–year.” Respondents’ Party Statement, at 4 n. 8. The Board finds that conclusion to be credible. *See* <https://dictionary.cambridge.org/grammar/british-grammar/dates>. It is also consistent with the timeline of relevant events, preceding Disney’s signature by thirteen days, and consistent with the description of the letter in Claimant’s evidence list (Dkt. 38), which is: “Reversion of rights letter between HCUK and Disney-Hyperion Books an imprint of Disney Book Group, LLC stated to be ‘As at 29 July 2014’ and *executed by HCUK on 11 May 2015* and Disney-Hyperion Books an imprint of Disney Book Group, LLC on 28 May 2015 (Disney Rights Reversion)” (emphasis added).

If the above proposal is acceptable to you, please sign where indicated below and return this letter to us. This letter shall be deemed validly delivered, and effective for all purposes, upon exchanging fully-executed facsimile or PDF transmission copies of the letter. For the avoidance of doubt, upon full execution of this letter the Agreement is terminated, all rights in Book #1, Book #2, Book #3 and Book #4 revert to you and we are subject to all termination obligations (and any other applicable terms) in accordance with the Agreement. We shall have three months from your signature of this letter to sell off any remaining stock of the print copies of Books #1 and #2 and then we are responsible for pulping any remaining stock. Upon full execution of this letter, we also will immediately make a request to all distributors of the eBook versions of Books #1 and #2 to withdraw these eBooks from sale.

*Id.*

Regardless of the reasons for the Disney Rights Reversion, the parties agree that at some point in 2014 or 2015, the sub-rights agreement with Disney terminated and Disney no longer had the right to distribute copies of the Works. The date when that occurred is a matter of dispute between the parties. Claimant asserts that it terminated “on or around 29 July 2014,” noting that the Disney Rights Reversion stated that it was “As of July 29, 2014.” Claimant’s Party Statement ¶¶ 9, 24(ii). Disney argues that the license terminated on May 11, 2015, when HCUK signed the Disney Rights Reversion. Respondents’ Party Statement, at 4-5, 6, 8.

Disney states that after HCUK signed the Disney Rights Reversion, Disney proceeded to notify its e-book distributors to cease distribution of the Works. Respondents’ Party Statement, at 5; Respondents’ Exhibits 1 & 2 (Dkt. 113, 140). Depending on the distributor and the requirements of its platform, Disney states, it either accessed the distributor’s system and deactivated the Works or sent an email notification instructing the distributor to remove the Works from sale effective immediately. Respondents’ Party Statement, at 5. Email exchanges between Disney and HCUK from June 24 to 25, 2015, relate that *Exile* had already been removed from all accounts and that *Mery* had been removed from all but BN.com and Google Play, noting that the latter two distributors’ processes were more “manual,” which could be the reason for their delay. Respondents’ Exhibit 1 (Dkt. 140), at 1-2. Disney explains that because the notices were sent approximately eight years ago in 2015, it no longer has copies of them. Respondents’ Party Statement, at 5 n. 10.

As early as May 5, 2015 (before HCUK signed the Disney Rights Reversion), Lim complained to HCA that Disney was making unauthorized sales. *See* Author’s Witness Statement ¶ 22; Claimant’s Exhibit 9 (Dkt. 49), at 2 (emails from May 5 through May 7, 2015 discussing sales via Barnes & Noble and Indigo.ca). She continued to

complain about such sales after HCUK signed the Disney Rights Reversion. *See* Author’s Witness Statement ¶ 22; Claimant’s Exhibit 10 (Dkt. 50) (May 26, 2015 emails stating, “Hyperion are back selling titles 1 and 2 on Amazon while HCUK has ceased selling titles 3 and 4” and “Hyperion is still selling titles 1 and 2 via Barnes and Noble while HCA and HCUK have ceased selling any of the titles”); Claimant’s Exhibit 12 (Dkt. 52) (January 29, 2016 email).

A Disney report appears to show each month’s sales of e-books of the Works from June 2015 through March 2022, totaling 84 sales of *Mercy* and 26 sales of *Exile* via seven Disney distributors: Amazon, Apple, Barnes & Noble, Google, Hoopla, Kobo, and Overdrive. Claimant’s Exhibit 49 (Dkt. 92) (“E-Book Sales Report”).

### **III. Analysis**

#### **a. Statute of Limitations**

Claimant filed its claim with the Board on June 16, 2022, more than seven years after the alleged infringements commenced. Disney asserts that the statute of limitations bars any claims for alleged infringements that occurred before June 16, 2019, three years before Claimant filed the claim. Respondents’ Party Statement, at 8. Claimant also does not appear to challenge Disney’s assertion.

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). Generally, a copyright infringement claim “‘accrues’ when the infringement or violation of one of the copyright holder’s exclusive rights occurs, known as the “‘incident of injury rule.’” *Starz Entertainment, LLC v. MGM Domestic Television Distribution, LLC*, 39 F.4th 1236, 1237 (9th Cir. 2022). Alternatively, under the “discovery rule,” a claim can accrue at a later point in time “when the copyright holder knows or reasonably should know that an infringement occurred.” *Id.*; *see Warner Chappell Music, Inc. v Nealy*, No. 22-1078, 601 U.S. \_\_\_, 2024 WL 2061137, \*2-\*4 (May 9, 2024) (describing the incident of injury rule and the discovery rule without resolving “which of those two rules should govern a copyright claim’s timeliness”), available at

[https://www.supremecourt.gov/opinions/23pdf/22-1078\\_4gci.pdf](https://www.supremecourt.gov/opinions/23pdf/22-1078_4gci.pdf). Claimant does not assert that it was unaware of the acts of infringement that allegedly took place more than three years prior to the claim, and Claimant’s evidence shows that Lim was aware of allegedly infringing sales, both before and soon after the Disney

Rights Reversion.<sup>4</sup> As noted in section II above, Lim expressed her concerns to HCA that Disney was engaging in unauthorized distribution of the Works as early as May 2015 (shortly before HCUK signed the Disney Rights Reversion) and continued to complain to HCA about unauthorized distribution by Disney in 2016 after the Reversion was clearly in effect.

Based on these facts, the discovery rule would lead to the same result as the incident of injury rule because Claimant became aware of the alleged infringements as soon as or shortly after they commenced. Therefore, the only allegedly infringing acts that fall within the statute of limitations period are those acts that took place on or after June 16, 2019, three years before the day that Claimant filed the claim with the Board.

### **b. Liability**

Disney notes that its E-Book Sales Report shows that only thirteen ebook copies of *Mery* and no copies of *Exile* were distributed after June 2019. Respondents' Party Statement, at 8; Claimant's Exhibit 49 (Dkt. 92). The report shows that for the period from June 2015 through May 2019, 97 copies (71 copies of *Mery* and 26 of *Exile*) were distributed. *Id.* Claimant does not challenge the figures offered by Disney, apart from asserting that it cannot verify whether the figures are accurate. Claimant Reply Statement, at 4-5. There is no evidence of any other unlicensed distributions since June 16, 2019 by Disney or anyone connected to Disney.

There is also no evidence that Disney itself distributed any of those copies. According to the E-book Sales Report, all thirteen of those distributions were made by an entity called Hoopla. Apart from the entries in that report, the record appears to provide next to no information about Hoopla. Claimant refers to it once in its party statement, when identifying the entities named in the sales report. Claimant's Party Statement ¶ 24(ii). The only other reference in the record to Hoopla that the Board can find is in a February 16, 2023 internal Disney email that refers to Hoopla as an "institutional partner." Respondents' Exhibit 2 (Dkt. 113). The email notes that although "takedown codes" are provided to Disney's distributor Inscribe as part of an automated process to remove a title

---

<sup>4</sup> As noted in section II above, Claimant asserts that the Disney Rights Reversion was effective "on or around 29 July 2014," but Disney asserts that it was effective on May 11, 2015, when HCUK signed it. While the Board is inclined to agree with Disney's interpretation, there is no need to resolve that dispute because in either case, Claimant was aware of alleged acts of infringement soon after the Disney Rights Reversion was in effect but did not file the claim until June 16, 2022.

from sale, “[o]ccasionally, we may need to place a ticket with Inscribe to contact retailers directly to remove a title from sale. It’s rare and tends to be specific to the institutional partner Hoopla.” *Id.*

Therefore, the Board must determine whether Disney is liable for the thirteen acts of unauthorized distribution that appear to have been made by Hoopla.<sup>5</sup> Claimant has the burden of proof on this issue. “To prove a claim of direct copyright infringement, a plaintiff must show that he owns the copyright and that the defendant himself violated one or more of the plaintiff’s exclusive rights under the Copyright Act.” *Ellison v. Robertson*, 357 F.3d 1072, 1076 (9th Cir. 2004). Because there is no evidence that Disney itself engaged in distribution of copies after June 16, 2019, we conclude that Claimant has not proved that Disney engaged in direct infringement.<sup>6</sup> However, Disney might still be held liable for Hoopla’s alleged infringement under a theory of secondary liability – either contributory or vicarious infringement.

### **i. Contributory Infringement**

“One who, with knowledge of the infringing activity, induces, causes or materially contributes to the infringing conduct of another may be liable as a ‘contributory’ [copyright] infringer.” *Ellison*, 357 F.3d at 1076 (*quoting Gershwin Publishing Corp. v. Columbia Artists Management, Inc.*, 443 F.2d 1159, 1162 (2d Cir. 1971)). The knowledge requirement for contributory copyright infringement can include both those with actual knowledge and those who have reason to know of direct infringement. *Id.* (citing *A&M Records v. Napster, Inc.*, 239 F.3d 1004, 1020 (9th Cir. 2001) (“*Napster II*”). It is a close call whether Disney knew or had reason to know that Hoopla was infringing Claimant’s copyrights during the relevant period commencing on June 16, 2019. As noted above, Disney asserts that at the time of the Disney Rights Reversion, it notified its e-book distributors to cease distribution, and Disney has

---

<sup>5</sup> We assume, but cannot conclude, that the distributions were made by Hoopla and were unauthorized because there is insufficient evidence in the record to reach any conclusions on those matters. Claimant barely mentioned Hoopla, and the only evidence that Hoopla engaged in infringing acts is found in the E-Book Sales Report that appears to show sales of the Works from June 2015 by seven distributors including Hoopla. Hoopla is not a party in this proceeding. Because we ultimately conclude that Disney is not liable for copyright infringement, we need not make a finding whether Hoopla actually engaged in unauthorized distributions of either of Claimant’s Works.

<sup>6</sup> We assume for present purposes that Claimant owns the copyright in the Works. Because we have not found any basis to hold Disney liable for infringement, we need not rule definitively on that question, but it is not actually clear from the evidence regarding copyright ownership and copyright registrations that Claimant was the legal or beneficial owner of the copyrights at any point during the time the alleged infringements occurred. *See* 17 U.S.C. § 1504(c)(1).

produced evidence that it made notifications to its distributors, although there is no evidence specifically showing that Disney notified Hoopla. On the other hand, Disney’s own royalty statements to HCUK, *see, e.g.*, Respondents’ Exhibits 18-23 (Dkt. 100, 102, 110, 112, 127, 132), as well as its internal data, *see* Claimant’s Exhibit 49 (Dkt. 92), show that Disney had information about and received revenue from apparently infringing sales by Hoopla after June 2019. At a minimum, one or more persons at Disney, presumably Disney personnel responsible for accounting for royalties received from Hoopla, must have been aware of those sales, although they would not necessarily have been aware that those sales were unauthorized or, indeed, known anything about the Disney Rights Reversion. It is certainly arguable, based on the evidence in the record, that Disney had knowledge of the infringing activities.

However, we cannot find that Disney, during the three years prior to June 16, 2022, induced, caused, or materially contributed to Hoopla’s unauthorized acts of distribution. We know only that Hoopla was an “institutional partner” of Disney (Respondents’ Exhibit 2 (Dkt. 113)) and that Disney’s records indicate that during the relevant period of time, Hoopla distributed 13 copies of *Mercy*, resulting in receipts or “net dollars” to Disney totaling \$6.94. *See* Respondents’ Party Statement, at 8; Respondents’ Exhibits 18-24, 39-45; Claimant’s Exhibit 49. We can infer from the facts noted above that Disney authorized Hoopla to distribute copies of the Works at the time it actually **had** the exclusive U.S. distribution right to Claimant’s Works. However, there is no evidence that after the effective date of the Disney Rights Reversion, and in particular on or after June 16, 2019, Disney engaged in any activities that induced, caused, or materially contributed to Hoopla’s acts of distribution. Claimant has failed to come forward with evidence that would support a finding that Disney is liable for contributory infringement of Claimant’s copyrights.

## **ii. Vicarious Infringement**

A defendant is vicariously liable for copyright infringement if it enjoys a direct financial benefit from another’s infringing activity and “has the right and ability to supervise” the infringing activity. *Napster II*, 239 F.3d at 1022 (quoting *Gershwin Publishing Corp.*, 443 F.2d at 1162). The record supports a finding that Disney enjoyed a financial benefit (albeit a benefit of less than seven dollars) from Hoopla’s distribution of copies of Claimant’s Works.

However, the record is devoid of any evidence that on or after June 16, 2019, Disney had the right and ability to supervise Hoopla’s distribution of copies of Claimant’s Works. Indeed, the record tells us next to nothing about Disney’s relationship with Hoopla, and any conclusion that Disney had the right and ability to supervise Hoopla’s activities would be mere speculation. Claimant has failed to come forward with evidence that would support a finding that Disney is liable for vicarious infringement of Claimant’s copyrights.

### **iii. Moral Rights**

Although the Claim makes no reference to moral rights, Claimant asserts in its Party Statement that it “represents the Author in her breach of moral rights claim.” Claimant’s Party Statement ¶ 2; *see also id.* ¶¶ 24(ii), 24(v), 26; Author’s Witness Statement ¶¶ 1, 2, 19. Although arguably newly raised, the Board will address this argument briefly.

Lim refers specifically to the right of integrity, which she says is “recognized under U.S. copyright law and various U.S. state and federal laws, as it is under Australian law.” Author’s Witness Statement ¶ 1. The precise actions Disney is alleged to have taken that would violate the moral right of integrity are not clearly set forth, but the Board need not search the record to determine whether such a violation has been proved because it has no jurisdiction to entertain a claim for a breach of moral rights.

The Board’s jurisdiction is governed by section 1504(c) of the CASE Act, which specifies three kinds of claims that may be presented to the Board: claims for copyright infringement, for a declaration of noninfringement, or under 17 U.S.C. § 512(f) for a misrepresentation made in connection with a takedown notice or counter notification. 17 U.S.C. § 1504(c). Presumably, Claimant considers the moral rights claim to be a claim for copyright infringement, but it is not the kind of copyright infringement claim that the Board can consider. We can only hear claims for “infringement of an exclusive right . . . under section 106.” *Id.* § 1504(c)(1). Section 106 of the Copyright Act provides copyright owners with six specific economic rights, none of which appear to have any relationship to Claimant’s right of integrity claim. *See* 17 U.S.C. § 106. *Compare* 17 U.S.C. § 106A. The right of integrity and other moral rights exist “independent of the economic rights granted in section 106.” William F. Patry, 5 *Patry on Copyright* § 16:1 (2024).



#### **iv. Conclusion on Liability**

There is insufficient evidence to conclude that Disney engaged in actions during the relevant period commencing on June 16, 2019 that would give rise to direct, contributory, or vicarious liability to Claimant for copyright infringement.

#### **IV. Conclusion**

The Board dismisses the claim against respondents Disney Publishing Worldwide, Disney-Hyperion Books, and The Walt Disney Company, with prejudice.

Copyright Claims Board