**ANNOTATIONS AND COMMENTS**

By statute, the “copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement.” 17 U.S.C. 504. The damages suffered are to compensate of the copyright for any injury to the market value of the copyrighted work, and it “often is measured by the revenue that the plaintiff lost as a result of the infringement.” *Montgomery v. Noga*, 168 F.3d 1282, 1294, 1295 n.19 (11th Cir. 1999). To collect actual damages, a copy right claimant must demonstrate a causal connection between the infringing party’s activity and any injury to the market value of the copyrighted work at the time of infringement. Id. at 1294.

A plaintiff’s statutory burden must also be read in conjunction with the well-established principle that any claim of damages may not be based on pure speculation. *See, e.g.*, *Telecom Tech. Servs. Inc. v. Rolm Co.*, 388 F.3d 820, 830 (11th Cir. 2004) (addressing claim that damages were too speculative); *Univ. Computing Co. v. Lykes-Youngstown Corp.*, 504 F.2d 518, 536 (5th Cir. 1974) (noting that “the defendant is normally not assessed damages on wholly speculative expectations of profits”). “[O]nce a copyright holder establishes with reasonable probability the existence of a causal connection between the infringement and the loss of revenue, the burden shifts to the infringer to show that this damage would have occurred had there been no taking of copyrighted expression.” *Harper & Row Publishers v. National Enterprises*, 471 U.S. 539, 567 105 S. Ct. 2218, 2233, 85 L. Ed. 2d 588 (1985).

Such a claim for actual damages may include a retroactive license fee measured by what the Plaintiff would have earned by licensing the infringing use to the Defendant. *See, e.g.*, *Montgomery*, 168 F.3d at 1295-96 (affirming jury award of actual damages based on retroactive license fee).