**9.32 Copyright – Damages – Statutory Damages**

[Name of plaintiff] seeks a statutory damage award. “Statutory damages” are damages that are established by Congress in the Copyright Act. The purposes are to compensate the copyright owner, penalize the infringer, and deter future copyright-law violations. The amount awarded must be between $750 and $30,000 for each copyrighted work that you found to be infringed, unless one of the exceptions applies, as I’ll explain later.

To determine the appropriate amount to award, you can consider the following factors:

• the profits [name of defendant] earned because of the infringement;

• the revenues that [name of plaintiff] lost because of the infringement;

• the difficulty of proving [name of plaintiff]’s actual damages;

• the circumstances of the infringement;

• whether [name of defendant] intentionally infringed [name of plaintiff]’s copyright; and

• deterrence of future infringement.

[If [name of plaintiff] proves that [name of defendant] willfully infringed [his/her/its] copyright, you may – but are not required to – increase the statutory damage award to a sum as high as $150,000 per copyrighted work.

Infringement is “willful” if [name of plaintiff] proves that [name of defendant] knew that [his/her/its] actions constituted infringement of [name of plaintiff]’s copyright.]

[If [name of defendant] proves that he innocently infringed [name of plaintiff]’s copyright, you may – but are not required to – reduce the statutory damage award to a sum as low as $200 per copyrighted work. Infringement is “innocent” if [name of defendant] proves that [he/she/it] didn’t know, and had no reason to know, that [his/her/its] acts constituted infringement.]

[You can’t find that [name of defendant] was an innocent infringer if a notice of copyright appeared in the correct form and position on the published [copy/copies/phonorecords] of [name of plaintiff]’s [work/sound recording] to which [name of defendant] had access.

A notice is in correct form if it includes [the symbol © (the letter C in a circle)/the word “Copyright”/the abbreviation “Copr.”/in the case of phonorecords, the & phonorec symbol (the letter p in a circle)], [the name of the copyright owner/an abbreviation by which the copyright owner’s name can be recognized/a generally known designation of the copyright’s owner] [and, in the case of a phonorecord, in addition to the foregoing, if the producer of the sound recording is named on the phonorecord labels or containers, and if no other name appears in conjunction with the notice, the producer’s name must be considered part of the notice], and the year of first publication of the work. A notice is in the correct position if it appears in a manner and location that gives reasonable notice of the claim of copyright.]

**Special Interrogatories to the Jury**

You should answer the following questions for each work infringed:

**Do you find by a preponderance of the evidence:**

That the [name of defendant]’s infringement was innocent?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer to this question is “No,” then proceed to Question No. 2. If your answer to this question is “Yes,” then you may award statutory damages between $200 and $30,000 per work.

What is the amount of statutory damages you award for this work?

$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[If the infringed work is published, then the following Questions Nos. 1A and 1B should be substituted for Question No. 1 above, and should be further modified as necessary in accordance with the type of work at issue in the case. See Note 6 below.

A. That [name of defendant]’s infringement was innocent?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer to this question is “No,” then proceed to Question No. 2. If your answer to this question is “Yes,” then proceed to Question No. 1B.

B. Do you find that the copy of the published work to which [name of defendant] had access contained a copyright notice in the proper form – that is, the word “copyright” or the © symbol, the year of first publication, and identification of the copyright owner?

[This special interrogatory should be modified appropriately in the case of sound recordings.]

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer to this question is “No,” then proceed to Question No. 2. If your answer to this question is “Yes,” then you may award statutory damages between $200 and $30,000 per work.

What is the amount of statutory damages you award for this work?

$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

That [name of defendant]’s infringement was willful?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer to this question is “No,” then you may award statutory damages between $750 and $30,000 per work. If your answer to this question is “Yes,” then you may award statutory damages between $750 and $150,000 per work.

What is the amount of statutory damages you award for this work?

$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_