**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 or that [name of defendant] recklessly disregarded the possibility that [his/her/its] actions infringed a copyright.

If you the Jury find infringement, you must award [name of plaintiff] not less than $750 for each copyrighted work that [name of defendant] has infringed.

There is an exception to the $750 minimum statutory damages you must award if you find infringement by [name of defendant] was an “innocent infringement.” 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] of [name of plaintiff]’s [name of infringed work] 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”/or, in the case of phonorecords, abbreviation “Ⓟ” (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:

 1. Do you find by a preponderance of the evidence that [name of defendant] infringed on [name of infringed work]?

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

If yes, proceed to question 2. If no, skip Questions No. 2 and No. 3, and proceed to the next alleged infringing work. [**If no other alleged infringing works:** If no, sign the verdict form.]

2. Do you find by a preponderance of the evidence 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. 3. If your answer to this question is “Yes,” then proceed to Question No. 2B.

2B. Given that you the jury have found [name of defendant] is an innocent infringer as to [name of infringed work], what amount of statutory damages do you award between $200 and $30,000?

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After calculating statutory damages, skip Question No. 3 and proceed to the next alleged infringing work. [**If no other alleged infringing works:** After calculating statutory damages, sign the verdict form.]

 3. Do you find by a preponderance of the evidence that [name of defendant]’s infringement was willful?

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

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

3B. What is the amount of statutory damages you award for this work?

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After calculating statutory damages, proceed to the next alleged infringing work. [**If no other alleged infringing works:** After calculating statutory damages, sign the verdict form.]