

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ANTHONY CAMPBELL, p/k/a
“RACKBOY CAM”,

Plaintiff,

v.

RAYSHAWN L. BENNETT, p/k/a
“YFN LUCCI”, RAKIM H. ALLEN,
p/k/a “PnB ROCK”, JUNE JAMES,
and THINK IT’S A GAME
RECORDS, INC.,

Defendants.

CIVIL ACTION NO.

1:18-CV-01064-CAP

ORDER

The plaintiff, Anthony Campbell, brought this action for copyright infringement on March 13, 2018, alleging that the defendants infringed on his copyright for the song “Everything Be Lit” via their song “Everyday We Lit.” The defendants are a record company called Think It’s A Game Records, Inc. (“TIG”), and three individual defendants—Rakim H. Allen, June James, and Rayshawn L. Bennett. Campbell, TIG, and Bennett jointly filed stipulations of dismissal on June 11, 2019. [Doc. Nos. 81, 82].¹ Both Allen and James declined to respond to Campbell’s claims. Allen and James

¹ The clerk entered approval of these stipulations of dismissal with prejudice on June 12, 2019, and TIG and Bennett were subsequently terminated as parties to this action.

“defaulted when they failed to respond to [the] complaint within” the time required by the Federal Rules of Civil Procedure. *W. Union Fin. Servs., Inc. v. Rgaana, Inc.*, No. 1:08-CV-0328-JOF, 2008 WL 11336574, at *1 (N.D. Ga. Sept. 16, 2008). The court has previously determined that default judgment as to Allen and James is appropriate. [Doc. No. 91].

On July 16, 2020, the court held a damages hearing. Prior to the hearing, the court provided the parties with an opportunity to file any documents they believed would be relevant to damages. [Doc. No. 95]. Campbell filed a brief requesting the court award him \$3,348,534 in damages. [Doc. No. 99]. In support of this damages calculation, he submitted an affidavit from his expert, Anthony Gottlieb, the general manager of a copyright and music rights administration business with “40 years of experience in the music industry, and specifically related to identifying and calculating appropriate royalties and/or damages for copyright infringement in musical works.” [Doc. No. 99-1 at 2-3]. Campbell also submitted over 1,800 pages of royalty statements. [Doc. No. 100]. James and Allen did not submit any documents prior to the damages hearing. At the hearing, the court heard argument and evidence from both Campbell and

James.² Both Campbell and James have filed post-hearing briefs. [Doc. Nos. 110, 111].

On September 2, 2020, the court issued a 22-page order analyzing the evidence presented by Campbell. [Doc. No. 113]. In that order, the court determined that the defendants' profit from the infringing work is \$6,697,068. [*Id.* at 16].³ The court also addressed the issue of applying joint and several liability to actual damages and an infringer's profits. Where the defendants act as partners or "practically partners," one defendant may be liable for the profit made by another. *See Frank Music Corp. v. Metro-Goldwyn-Mayer, Inc.*, 772 F.2d 505, 519 (9th Cir. 1985). The court found that the defendants were partners in creating the infringing work, thus joint and several liability of the profits is appropriate. [Doc. No. 113 at 18].

² Allen did not appear for the hearing.

³ It is the defendants' burden to prove "his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work." 17 U.S.C. § 504(b); *Montgomery v. Noga*, 168 F.3d 1282, 1296 (11th Cir. 1999). These deductible expenses are subtracted from the gross revenue to determine the defendants' profit. James and Allen have provided the court with no evidence of deductible expenses. Without any deductions, the revenue proven by the plaintiff becomes the defendants' calculated profit. *See F. W. Woolworth Co. v. Contemporary Arts, Inc.*, 344 U.S. 222, 230 (1952), *Frank Music Corp. v. Metro-Goldwyn-Mayer, Inc.*, 772 F.2d 505, 514 (9th Cir. 1985) (decided under 1909 Act); *Russell v. Price*, 612 F.2d 1123, 1130–31 (9th Cir. 1979).[¶]

Next, the court noted that the one-satisfaction rule applies to copyright infringement cases in the Eleventh Circuit, pursuant to *BUC Int'l. Corp. v. Int'l Yacht Council Ltd.*, 517 F.3d 1271, 1278 (11th Cir. 2008).⁴ The court directed Campbell to file a notice informing the court of the settlement amounts paid by the dismissed defendants, Bennett and TIG. Campbell has complied with this directive. [Doc. No. 114].⁵ On October 1, 2020, James appealed the court's order determining the profits and finding the defendants jointly and severally liable. [Doc. No. 117]. On January 22, 2021, the appeal was dismissed for lack of jurisdiction. [Doc. No. 127].

I. Damages

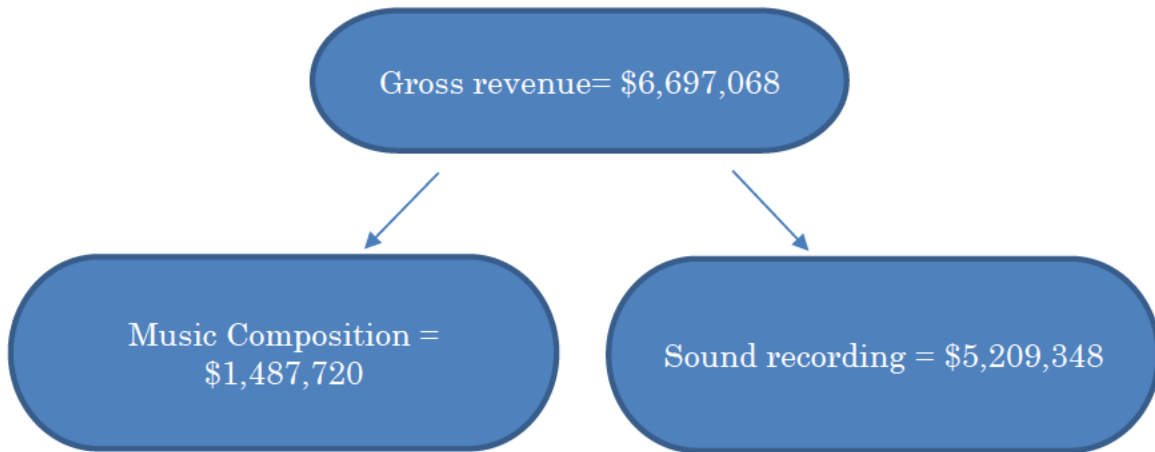
Under the Copyright Act, “an infringer of copyright is liable for either (1) the copyright owner's actual damages and any additional profits of the infringer . . . or (2) statutory damages.” 17 U.S.C. § 504(a). In this case, Campbell has elected to recover actual damages. In order to prove actual

⁴ This “rule generally provides that a plaintiff is entitled to only one satisfaction for a single injury, such that amounts received in the settlement from an alleged tortfeasor are credited against judgments for the same injury against non-settling tortfeasors.” *BUC Int'l. Corp. v. Int'l Yacht Council Ltd.*, 517 F.3d 1271, 1276 (11th Cir. 2008).

⁵ Campbell has sought leave to file this notice under seal. [Doc. No. 115]. He notes that TIG consented to the disclosure as long as it was sealed, and that Bennett did not respond to Campbell's inquiry about disclosing the settlement amount to the court. [Doc. No. 115-1 at 4]. The court hereby GRANTS the motion to file the notice under seal.

damages, a plaintiff must “demonstrate a ‘causal connection’ between the defendant's infringement and an injury to the market value of the plaintiff's copyrighted work at the time of infringement.” *Montgomery v. Noga*, 168 F.3d 1282, 1294 (11th Cir. 1999). “This injury often is measured by the revenue that the plaintiff lost as a result of the infringement.” *Id.* at 1295 n.19. Although Campbell's actual damages include revenue that he would have received absent the existence of the infringing work, Campbell has not argued that he should recover any of his own lost profits. Instead, he seeks solely to recover the defaulting defendants' profits from the infringing work. The Copyright Act states that in addition to recovering “the actual damages suffered by him . . . as a result of the infringement,” Campbell may also recover “any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages. In establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work.” 17 U.S.C. § 504(b).

The gross revenue of the infringing work is \$6,697,068. This amount is calculated as follows:



Sound recording and musical composition have distinct copyrights, as evidenced by their separation in the Copyright Act. *Compare* 17 U.S.C. § 102(a)(2) (protecting “musical works”) with 17 U.S.C. § 102(a)(7) (protecting “sound recordings”). *See also* *VMG Salsoul, LLC v. Ciccone*, 824 F.3d 871, 877 (9th Cir. 2016). The court in *Newton v. Diamond*, 204 F.Supp.2d 1244, 1249-50 (E.D. Cal. 2002) explains the distinction:

A musical composition consists of rhythm, harmony, and melody, and it is from these elements that originality is to be determined. 3 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 2.05[D]. A musical composition captures an artist's music in written form. A. Dustin Mets, *Did Congress Protect the Recording Industry Into Competition? The Irony of the Digital Performance Right in Sound Recordings Act*, 22 U. DAYTON L. REV. 371, 372–73 (1997). A musical composition's copyright protects the generic sound that would necessarily result from any performance of the piece.

Sound recordings are “works that result from the fixation of a series of musical, spoken or other sounds...” *T.B. Harms*, 655 F.Supp. at 1576 n.1 (quoting 17 U.S.C. § 101). “The sound recording is the aggregation of sounds captured in the recording while the song or tangible medium of expression embodied in the recording is the musical composition.” *Id.* (citing H.R.Rep. No. 94–1476, 94th Cong., 2d Sess. 56, reprinted in 1976 U.S.Code Cong. & Ad. News 5659, 5669). *See also BTE*, 43 F.Supp.2d at 627–28; *Jarvis*, 827 F.Supp. at 292. In other words, the sound recording is the sound produced by the performer's rendition of the musical work. *See generally Nimmer on Copyright* § 2.10.

The U.S. Copyright Office likewise defines musical compositions as “[m]usic (melody, rhythm, and/or harmony expressed in a system of musical notation) and accompanying words (lyrics),” and sound recordings as “[f]ixation of a series of sounds (e.g., a particular performance).” Copyright Registration of Musical Compositions and Sound Recordings, Circular 56A, Rev. 07/2020.⁶ Campbell has the copyright for both the sound recording and musical composition of “Everything Be Lit.” [Doc. No. 32-1].

“[A] defaulted defendant is deemed to ‘admit[] the plaintiff’s well-pleaded allegations of fact.’” *Tyco Fire & Sec., LLC v. Alcocer*, 218 F. App’x 860, 863 (11th Cir. 2007) (quoting *Nishimatsu Const. Co. v. Houston Nat’l*

⁶ *See also* the affidavit of Campbell’s expert Anthony Gottlieb, dated July 2, 2020 [Doc. No. 99-1 at 4-5]. (“The music composition of a song is the arrangement of notes, as written (*i.e.* lyrics). The sound recording is the musical, spoken, or other sounds (*i.e.* the audible manifestation of the composition).”)

Bank, 515 F.2d 1200, 1206 (5th Cir. 1975)). In the amended complaint, Campbell alleges that the lyrics and hooks in his work and the infringing work “Everyday We Lit” are similar. [Doc. No. 32 at 10-16, Am. Compl. ¶¶74-85]. The lyrics and hooks fall under the musical composition portion of the copyright. Accordingly, since this is a default judgment and the allegations in the amended complaint pertain only to the musical composition, it is not appropriate for Campbell to recover on the sound recording against the defaulting defendants. Indeed, Campbell initially appeared to be limiting his damages to only the musical composition, as evidenced in his damages request of \$476,410.34 in his first motion for default judgment [Doc. No. 59], and his damages request of \$545,801.50 in his renewed motion for default judgment [Doc. No. 84].⁷

By the time the damages hearing was held, the gross revenue of the infringing work had naturally increased. In preparation for the hearing, Campbell’s expert Anthony Gottlieb submitted an affidavit dated July 2, 2020, containing a revised revenue calculation. [Doc. No. 99-1]. Based on this revised calculation, the gross revenue of the musical composition of the

⁷ These figures represent 50% of the musical composition revenue of the infringing work at the time the respective motion for default judgment was filed. See the court’s order of September 2, 2020, for a detailed explanation of how Gottlieb arrived at these figures. [Doc. No. 113 at 9-11].

infringing work is \$1,487,720. [Doc. No. 100-9]. All four defendants share in these earnings according to Gottlieb. [*Id.*]. Pursuant to the one-satisfaction rule, applied to copyright cases by *BUC Int'l. Corp. v. Int'l Yacht Council Ltd.*, 517 F.3d 1271, 1278 (11th Cir. 2008), the court will apply a dollar-for-dollar reduction, subtracting the settlement amounts for TIG and Bennett from the gross revenue of the musical composition. This reduction leaves \$1,447,720 in profit to be applied to James and Allen. Because the defendants have not provided proof of deductible expenses, the court determines that James and Allen's profit from the infringing work is \$1,447,720. Campbell is entitled to recover this amount from Allen and James, jointly and severally.

II. Prejudgment Interest

Campbell also seeks prejudgment interest at the rate of 7% per annum starting on the date the complaint was filed, March 13, 2018, through the entry date of the final judgment in this action. [Doc. No. 110 at 8].

Although Campbell did not expressly ask for prejudgment interest in the complaint and the Copyright Act does not expressly authorize it, the court has discretion to award it. "Although Congress has enacted a statute governing the award of postjudgment interest in federal court litigation, see 28 U.S.C. § 1961, there is no comparable legislation regarding prejudgment interest. Far from indicating a legislative determination that prejudgment

interest should not be awarded, . . . the absence of a statute merely indicates that the question is governed by traditional judge-made principles.” *City of Milwaukee v. Cement Div., Nat’l Gypsum Co.*, 515 U.S. 189, 194 (1995).

Courts around the nation have determined that an award of prejudgment interest is warranted in copyright cases. *See McRoberts Software, Inc. v. Media 100, Inc.*, 329 F.3d 557, 572 (7th Cir. 2003); *Polar Bear Productions v. Timex Corp.*, 384 F.3d 700, 718 (9th Cir. 2004); *Kleier Advertising, Inc. v. Premier Pontiac, Inc.*, 921 F.2d 1036, 1040 (10th Cir. 1990); *Frank Music Corp. v. Metro-Goldwyn-Mayer, Inc.*, 886 F.2d 1545, 1550-52 (9th Cir. 1989); *Arista Records, Inc. v. Beker Ent., Inc.*, 298 F.Supp.2d 1310, 1314 (S.D. Fla. 2003); *Garden World Images Ltd v. Wilsonbrosgardens.com LLC*, No. 1:19-cv-01035-AT, 2019 WL 8017802, at *7 (N.D. Ga. Oct. 31, 2019). The court therefore agrees with Campbell that prejudgment interest is within the scope of the requested relief, and will award him prejudgment interest at the rate of 6.25% per annum starting on the date the complaint was filed, March 13, 2018, through the entry date of the final judgment in this action.⁸

⁸ The court may look to Georgia’s post-judgment interest rate to determine the rate for prejudgment interest. *Lyons v. Georgia- Pacific Corp. Salaried Employees Retirement Plan*, 196 F. Supp. 2d 1260, 1271 (N.D. Ga. 2002). Georgia law provides for post-judgment interest at a rate “equal to the prime rate as published by the Board of Governors of the Federal Reserve System, as published in statistical release H. 15 or any publication that may

III. Injunctive Relief

Campbell seeks an order enjoining the defaulting defendants from infringing on his copyright and “designing, importing, distributing, promoting, displaying, offering for sale, selling, and publicly performing the Infringing Work.” [Doc. No. 32 at 17].⁹ Injunctive relief is provided for under the Copyright Act, 17 U.S.C. § 502(a), and is favored where there is both a history of infringement and a substantial threat of continued infringement, *Walt Disney Co. v. Powell*, 897 F.2d 565, 567-68 (D.C. Cir. 1990).

Before such relief may be granted, however, a plaintiff must satisfy a four-factor test. *eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388, 392 (2006) (explaining that the Supreme Court has “consistently rejected invitations to replace traditional equitable considerations with a rule that an injunction automatically follows a determination that a copyright has been infringed.”). These four factors include: 1) irreparable harm; 2) success on the merits; 3) a

supersede it, on the day the judgment is entered plus 3 percent,” where the rate percent is not established by written contract. O.C.G.A. § 7-4-2(a). The prime rate is currently 3.25%.

⁹ In his renewed motion for default judgment, Campbell seeks to enjoin Allen and James “from receiving revenue, royalties, profits, or other payments from the exploitation of ‘Everyday We Lit’ until the full amount of Campbell’s judgment is paid plus statutory interest.” [Doc. No. 84-1 at 15]. This is not the scope of the injunction he requests in his amended complaint.

balancing of competing claims of injury to the parties; and 4) consideration of the public interest. *Warren Pub., Inc. v. Microdos Data Corp.*, 115 F.3d 1509, 1516 (11th Cir. 1997).

As to the first factor, “copyright infringement is presumed to give rise to irreparable injury.” *Capitol Records, Inc. v. Zahn*, No. 3:06-0212, 2007 WL 542816, *4 (M.D. Tenn. Feb.16, 2007). *See also Am. Family Life Ins. Co. v. Assurant, Inc.*, No. 1:05-cv-1462-BBM, 2006 WL 4017651, at *12 (N.D. Ga. Jan. 11, 2006) (“[I]n the Northern District of Georgia, it has plainly been held that, once a copyright holder has made out a *prima facie* case of copyright infringement, irreparable injury is presumed.”). By defaulting, Allen and James have admitted the well-pleaded facts, including that they willfully infringed on Campbell’s copyright. This default satisfies the element of success on the merits. *See Caribbean Produce Exchange v. Caribe Hydro-Trailer, Inc.*, 65 F.R.D. 46, 48 (D.P.R. 1974) (“When a court determines . . . that a defendant is in default, its liability to the plaintiff is deemed established and the plaintiff is not required to establish his right to recover.”). In balancing the hardships to the parties, the court finds that the hardship to Campbell outweighs any hardship to Allen or James. Without an injunction, the defendants could continue to perform the infringing work, thereby diluting Campbell’s control over the dissemination of his own

intellectual property. An injunction will not prevent James and Allen from continuing to work in the record industry or continuing to be successful. As James explained to the court during the damages hearing, he has other songs that have received platinum certification. [Doc. No. 124 at 56-57]. As for the public interest, “[i]njunctive relief is regularly issued pursuant to the mandate of Section 502 [of the Copyright Act] because the public interest is the interest in upholding copyright protection.” *Arista Recordings, Inc. v. Beker Ent., Inc.*, 298 F. Supp. 2d 1310, 1314 (S.D. Fla. 2003) (quotation and citation omitted). An injunction will prevent consumer confusion and deception in the marketplace, as well as protect Campbell’s interest in his intellectual property. Accordingly, the court finds that injunctive relief is appropriate and should be entered in order to prevent the defaulting defendants from continuing to engage in such infringing activity.

IV. Running royalty

Campbell requests that the court award him a perpetual 50% running royalty on each of Allen and James’ writer’s share of royalties generated by the infringing work. [Doc. No. 110 at 12]. Because the permanent injunction applies only to Allen and James, and not to TIG, the actual record company, the court finds that a running royalty is appropriate. In all likelihood, the infringing work will continue to be disseminated, thereby continuing the

threat of future infringement. “Because a running royalty is, in part, analogous to a permanent injunction, the appropriate factors to consider in assessing this relief are similar to those that apply to a request for an injunction.” *Williams v. Bridgeport Music, Inc.*, No. LA CV13–06004 JAK (AGRx), 2015 WL 4479500, at *42 (C.D. Cal. July 14, 2015) overturned on other grounds by 895 F.3d 1106 (9th Cir. 2018). As explained above, Campbell has been irreparably harmed by this infringement and the defaulting defendants have, by virtue of admitting his well-pleaded allegations, established the likelihood that he would succeed on the merits. The court has found that the hardship of continued infringement to Campbell outweighs any such hardship to Allen and James. A running royalty is in the public interest because it punishes willful violation of a copyright where the copyright owner is unable to prevent further dissemination of the infringing work. *See Williams* at *42 (“An ongoing royalty will fully compensate [the plaintiff] for the injury caused by . . . continued exploitation”). Given that the infringement by Allen and James was willful, the court finds that a 50% running royalty is appropriate. The royalty will begin to run on the date the judgment is entered.

V. Costs

The Copyright Act authorizes the court to award the prevailing party in an infringement action his “full costs.” 17 U.S.C. § 505. Campbell has submitted declarations from his counsel establishing his costs as \$4,578.62. [Doc. Nos. 110-1, 110-2]. The court finds that Campbell is entitled to recover his costs in the amount of \$4,576.82.

VI. Conclusion

The clerk is DIRECTED to enter default judgment against Allen and James as follows:

The defendants, Rakim Hasheem Allen and June James, having willfully infringed the plaintiff’s copyright, in violation of 17 U.S.C. §§ 106 and 501, judgment is hereby entered in favor of the plaintiff, Anthony Campbell, against the defendants James and Allen, jointly and severally, in the amount of \$1,447,720. The plaintiff is awarded prejudgment interest at the rate of 6.25% per annum starting on the date the complaint was filed, March 13, 2018, through the entry date of the final judgment in this action. James and Allen, as well as their officers, directors, agents, servants, employees, affiliates, members, parents, and subsidiaries are permanently enjoined from designing, importing, distributing, promoting, displaying, offering for sale, selling, and publicly performing the infringing work “Everyday We Lit.” The plaintiff is awarded a running royalty at the rate of 50% of each Allen and James’ writer’s share of royalties generated by “Everyday We Lit” and “Everyday We Lit Remix” in perpetuity. The plaintiff is awarded his costs incurred in this action in the amount of \$4,576.82.

The clerk is DIRECTED to mail a copy of this order to Allen¹⁰ at the following addresses:

Rakim Hasheem Allen
76 W. Johnson Street
Philadelphia, PA 19144-1910

Rakim Hasheem Allen
4630 Kraydor Street
Philadelphia, PA 19136

As no matters remain pending before the court, the clerk is DIRECTED to close this case.

SO ORDERED this 2nd day of March, 2021.

/s/CHARLES A. PANNELL, JR.
CHARLES A. PANNELL, JR.
United States District Judge

¹⁰ At this stage in the proceedings, James is represented by counsel who will receive a copy of this order via the court's electronic filing system.