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The Beth Din of America takes confidentiality very seriously. Before publishing any case, we modify key details to protect the identities of all parties involved. Names, locations, and other identifying information are changed or omitted, and certain unique facts may be altered. Often, the industry in which the dispute took place is modified. For example, the case below did not involve a consultant, a yeshiva, or educational materials.

כ"ה סיון תשפ"ד
July 1, 2024

Psak Din - Ben Sacks v. Noble Education, Inc.

The Beth Din of America, having been chosen by the parties as arbitrators pursuant to an arbitration agreement (the "Arbitration Agreement," attached hereto as Exhibit A) dated as of January 31, 2024, between Ben Sacks, with an address at 123 Main Street, Anytown, USA ("Consultant"), and Noble Education, Inc., with an address at 456 Main Street, Anytown, USA ("Company"), to submit for a binding decision with respect to the alleged improper use of proprietary teaching materials, hereby decides as follows:

FACTS AND CLAIMS

Consultant, an education consultant, was engaged by The Great Yeshiva ("Yeshiva") to create a lecture and accompanying slide deck for an in-house teacher development seminar organized by Yeshiva. The agreement of the parties was that Consultant would retain the intellectual property rights to the materials. Separately, Consultant registered the slides for copyright protection. Without obtaining Consultant's consent, Yeshiva shared the lecture slide deck with Company, a business that produces educational materials and that also operates a website that features lectures and materials relevant to teachers in Jewish schools. Company posted Consultant's materials on its website.

On May 1, 2023, Consultant emailed both Yeshiva and Company demanding that the materials be removed immediately from Company's website as he was the exclusive copyright holder and had not given permission for their public dissemination. Consultant threatened legal action if the materials were not taken down. As of the date of the hearing the article and slides were still posted on the website.

Company acknowledges that it received the materials in question from Yeshiva and it acknowledges that it received a June 14th email from Consultant demanding that it take them down from the website.

Company said that it was under the impression that Yeshiva had purchased the rights to the materials, and Company did not remove the materials since there was no further follow up after the June 14th email. Company claims that if there is any claim to be made, it should be lodged against Yeshiva and not against Company.

Consultant claims that having received and ignored due notice from him to remove the materials in question from its website, Company is a willful copyright infringer and under the relevant statute he is entitled to collect actual or statutory damages.

Section 504 of the US Copyright Act reads in part:

a) In General.—Except as otherwise provided by this title, an infringer of copyright is liable for either—

(1) the copyright owner’s actual damages and any additional profits of the infringer, as provided by subsection (b); or

(2) statutory damages, as provided by subsection (c).

(b) Actual Damages and Profits.—

The copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement, and 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.

(c) Statutory Damages.—

(1) Except as provided by clause (2) of this subsection, the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than \$750 or more than \$30,000 as the court considers just. For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.

(2) In a case where the copyright owner sustains the burden of proving, and the court finds that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than \$150,000. In a case where the infringer sustains the burden of proving, and the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of

copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than \$200.

Consultant argues that he is entitled to up to \$150,000 per infringement. A total of 31 slides were posted without authorization, and Consultant claims he is entitled to \$4,650,000 under the statute.

He further claims that Company removed the copyright management information included on the slides and that he would be entitled to at least \$2,500 per infringement for that under the relevant statute. That statute, Sections 1202 and 1204 of the Copyright Act, reads in part:

1202

No person shall, without the authority of the copyright owner or the law—

- (1) intentionally remove or alter any copyright management information,
- (2) distribute or import for distribution copyright management information knowing that the copyright management information has been removed or altered without authority of the copyright owner or the law.

1204

(3) Statutory damages.—

- (B) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1202 in the sum of not less than \$2,500 or more than \$25,000.

Consultant also seeks to recover attorney's fees in the amount of \$11,070, as allowed for under Section 505 of the Copyright Act, which reads, "... the court may also award a reasonable attorney's fee to the prevailing party as part of the costs."

Finally, Consultant asks that Company be ordered to remove the unauthorized materials from its website.

ANALYSIS AND DECISION

We find that Company did engage in willful infringement of Consultant's copyright. Even if, as Company argues, it was under the impression that Yeshiva had purchased licensing rights for the items, once it received an email from Consultant demanding that it remove the materials from its website it was clearly on notice that it had no right to keep them up on the site. We note that a simple check of the website will reveal that even as of the date of this award the items remain on the website.

Jewish law recognizes protections for intellectual property, either because intellectual assets are considered property under Jewish law and misappropriation of such property would constitute theft (*Shoel U'Meishiv Kama* 1:44),¹ or because Jewish law recognizes local law as binding (*dina d'malchuta dina*)

¹ See also R. Moshe Feinstein (*Iggerot Moshe Orach Chaim* 4:40:19).

even if Jewish law itself does not conceive of intangible property as subject to the prohibition against theft (*Beit Yitzchak Yoreh Deah 2:75:5*).² As such, halacha allows a copyright holder to collect actual damages caused by an infringer.

However, beyond actual damages, the US Copyright Act cited above allows for collection of statutory damages in lieu of actual damages that may be in excess of the actual damages, as a deterrent against repeated infractions. Batei din have the authority under Jewish law to award statutory damages on the basis of *dina d'malchuta dina*. This extends to awarding attorney's fees as well.³

While we are prepared to entertain awarding statutory damages on the basis of *dina d'malchuta dina*, we are skeptical about the argument that each slide should be looked at as a separate infraction, rather than viewing the totality of slides as a single package. The language of the aforementioned citation of the Copyright Act reads, “[f]or the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.” Circuit Courts are split between a “functional test” that analyzes whether each item has independent economic value and an “issuance test” of whether the copyright holder issues its works separately or as a unit.⁴ In the case at hand, both tests point to viewing the 31 slides as a single work for purposes of copyright law. In Consultant's line of work, he prepares lectures and presentation slides for clients. The slides are meant to accompany the lecture, and any single slide would have minimal independent economic value. Indeed, Consultant registered all the presentation slides associated with the lecture as a single group with the Copyright Office. However, even for a single willful infraction, the Copyright Act as cited above gives wide discretion to award between \$750 and \$150,000 in statutory damages.

Consultant further alleged that Company removed the copyright management information included on the slides. Under the Copyright Act, Consultant would be entitled to between \$2,500 and

² See R. Ovadia Yosef (*Yabia Omer 7 Choshen Mishpat 9*) who accepts both approaches. *Chatam Sofer Choshen Mishpat 44* rules that so long as not contrary to Torah law, a *dina d'malchuta* financial regulation intended for the economic betterment of society is binding, especially if a Torah society would have initiated a similar regulation if given the opportunity. For an elaboration and further application of this principle see *Piskei Din Rabani'im* Vol. 6 p. 376 et. seq. (R. Y. Nissim, R. Y. S. Elyashiv and R. B. Zolty). R. Elyashiv (cited in *Mishnat Zechuyot Hayotzer* p. 118-119) accepts Chatam Sofer's analysis.

³ *Ketzot Hachoshen* (259:3) argues that if secular law legislates payment obligations that according to Jewish law are morally advisable (*lifnim mishurat hadin*) but not mandatory, such obligations may be binding on the basis of *dina d'malchuta dina*. R. Daniel Mann of Beit Din Eretz Chemda Jerusalem in a ruling dated September 2011 (file 71036) argues that statutory damages the likes of those assessed for copyright infringement should be included in the *Ketzot Hachoshen's* framework. R. Mann writes further that even if one were to argue that statutory damages should be defined as a *knas* (a penalty that does not correspond to actual damages) which is not generally enforceable in contemporary society (*Shulchan Aruch Choshen Mishpat 1:1*), the restriction on collecting *knasot* does not apply to a *knas* of post-Biblical origin intended to support rabbinic legislation or communal interests (Rema *ibid.* 1:5).

⁴ See Vanessa Yu, Case Note, Calculating Statutory Damages in Copyright Infringement Cases: What Constitutes "One Work"?, 58 *Santa Clara L. Rev.* 375 (2018).

\$25,000 in statutory damages for this infraction. While the slides that we saw that remain on the Company website do not include such information, we note that the original files presented at the hearing by Consultant do not include any copyright management information either. From what we can tell, no such information was on the original slides.

Based on the foregoing, we order Company to pay to Consultant \$5,050 within thirty days after the issuance of this ruling. This amount is based on \$750 in statutory damages, \$50 in additional damages based on the willful nature of the infringement, and \$4,250 as reimbursement of attorneys' fees incurred by Consultant. The \$750 minimal statutory amount seems especially appropriate in this case, where the actual value of Consultant's work was between \$700 and \$800. We are awarding what we consider to be reasonable attorneys' fees. The notion that a tribunal would award damages of hundreds of thousands of dollars in a case like this strikes us as extremely unlikely. While spending a few thousand dollars on attorneys' fees in this case to vindicate one's statutory rights is reasonable, more than that seems like overreach.⁵

We further order Company to remove Consultant's materials from its website within two days of this decision.

All other claims are denied. Any request for modification of this award by the arbitration panel shall be in accordance with the rules and procedures of the Beth Din of America, the provisions set forth herein, and the arbitration agreement of the parties. The obligations set forth herein shall be enforceable in any court of competent jurisdiction, in accordance with the rules and procedures of the Beth Din of America and the arbitration agreement. Any provision of this agreement may be modified with the written consent of both parties. Except as otherwise indicated, all of the provisions of this decision shall take effect immediately.

IN WITNESS WHEREOF, we hereby sign and affirm this order as of the date written above.

Rabbi AA

Rabbi BB

Rabbi CC, Esq.

⁵See *Mango v. BuzzFeed, Inc.* 397 F. Supp. 3d 368 (S.D.N.Y. 2019); *Bryant v. Media Right Productions, Inc.* 603 F.3d 135 (2d Cir. 2010); and *Myeress v. Elite Travel Group USA* (S.D.N.Y. 2010), some of which were cited in briefs submitted by counsel of Consultant, in which New York courts were reluctant to award what they viewed as excessive attorney's fees in copyright infringement cases.