

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LUX VIDE FINANZIARIA PER INIZIATIVE  
AUDIOVISIVE E TELEMATICHE S.P.A.,

Plaintiff,

CASE NO. 1:19-cv-680

v.

HON. ROBERT J. JONKER

SVEN HANSCHÉ,

Defendant.

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**ORDER**

Lux Vide Finanziaria Per Iniziative Audiovisive e Telematiche S.p.A (“Plaintiff” or “Lux Vide”) is an international film production company that owns a library of protected films and a television company. (ECF No. 30, PgID.172). Sven Hansche (“Defendant” or “Hansche”) owns Greatshaw Limited, and through this corporation, owns and operates the online file storage and distribution website easybytez.com. (ECF No. 12 PgID.105). Lux Vide alleges that the Defendant, through the easybytez website, committed numerous copyright violations by illegally posting many of its works to the website for third-party users to download. (ECF No. 12). Before this litigation began, Lux Vide sent takedown notices to the Defendant, demanding removal of the copyrighted work. (ECF No. 30). The Defendant largely disregarded these requests. Even those works the Defendant did remove from easybytez.com he soon uploaded to other URLs. (*Id.*) In total, Lux Vide alleges 748 separate infringements of its copyrighted work. (*Id.*)

The Defendant was served on September 24, 2021. (ECF No. 18). The Court entered default against the Defendant on September 9, 2022. (ECF No. 22). Lux Vide filed its motion for default judgment in March 2023. (ECF No. 28). Lux Vide opted not to seek actual damages. Instead, it is asking for statutory damages at the statutory maximum of \$150,000 for each violation. In total, Lux Vide is seeking an award of \$112,200,000. The Court has determined that statutory damages are appropriate for this case, albeit not at the statutory maximum.

### DISCUSSION

There are two basic types of damages available to the Plaintiffs – actual and statutory. 17 U.S.C. § 504(a). Actual damages depend upon proof of actual economic harm. Statutory damages, in contrast, do not require proof of actual harm. “Because actual damages are often difficult to prove in copyright infringement cases, statutory damages ensure that infringers are adequately deterred and copyright owners are adequately compensated.” *Smith v. Thomas*, 911 F.3d 378, 381 (6th Cir. 2018). For statutory damages, the statute authorizes an award between \$750 and \$30,000 per violation. Section 504(c)(1). If the court finds that the infringement was committed willfully, the court “in its discretion” may award damages up to \$150,000. Section 504(c)(2). “Merely proving willfulness does not automatically entitle a copyright holder to the statutory maximum. The Court retains broad discretion to determine an appropriate damages figure in each case.” *AF Holdings LLC v. Bossard*, 976 F.Supp. 2d 927, 930 (W.D. Mich. 2013) (citing 17 U.S.C. § 504(c)(2); *Zomba Enterprises, Inc. v. Panorama Records, Inc.*, 491 F.3d 574, 578 (6th Cir. 2007)). In setting the appropriate award, the Court weighs (1) the infringer's state of mind; (2) the expenses saved, and profits earned, by the infringer; (3) the revenue lost by the copyright holder; (4) the deterrent effect on the infringer and third parties; (5) the infringer's cooperation in providing evidence concerning the value of the infringing material; and (6) the

conduct and attitude of the parties. *DeYoung v. Royce Wear, LLC*, No. 1:20-CV-549, 2021 WL 5496386, at \*7 (W.D. Mich. Mar. 29, 2021) (citing *Bryant v. Media Right Productions, Inc.*, 603 F.3d 135, 144 (2d Cir. 2010)).

In a default case, such as this, the basic facts are established by the well-pleaded allegations in the complaint. *See Thomas v. Miller*, 489 F.3d 293,299 (6th Cir. 2007) (entry of default judgment “conclusively establishes every factual predicate of a claim for relief”). The facts put forth by Lux Vide establish that the Defendant committed intentional copyright violations. Specifically, the Defendant displayed and distributed unauthorized copies of Lux Vide’s works through the website, easybytez.com. (ECF No. 12). Using this website, the Defendant’s financially benefitted at the expense of the Lux Vide. (*Id.*) Furthermore, when Lux Vide sent takedown notices to the Defendant, the website continued to re-upload Lux Vide’s works, and it continued to do so throughout this litigation process. (ECF No. 30). These facts alone sufficiently establish that there were numerous willful copyright infringements on the part of the Defendant.

There is, however, nothing in the Complaint or the record that provides any information on the basic economics of the transaction. There is no showing of expenses saved or profits earned on the part of Defendant, nor any showing of revenue lost by Lux Vide. Nor is there any record of interactions that provide a meaningful basis to evaluate infringer cooperation or attitude of the parties. Without this information, it is impossible to know the extent of economic loss that Lux Vide incurred, making it more difficult to evaluate the appropriate award of damages. *See Royce Wear*, 2021 WL 5496386, at \*7 (“Because no discovery occurred, there is no evidence about the expenses saved or the profits reaped by Defendants. Other factors can be considered . . . but without some concrete starting point, these factors are difficult to monetize

and compare with economic reality.”); *see also* *Clever Covers, Inc. v. Sw. Fla. Storm Def., LLC*, 554 F. Supp. 2d 1303, 1313 (M.D. Fla. 2008) (“Statutory damages are not intended to provide a plaintiff with a windfall recovery; they should bear some relationship to the actual damages suffered.”) (internal quotation omitted). Proof of economic loss is not essential to an award of statutory damages, but it is a relevant factor to consider in fixing the proper amount of damage.

When no such economic record exists, this Court will look for other relevant or comparable awards. This Court found nothing involving this particular work or party. But this Court did find analogous cases. One such case arose in the Central District of California. *Warner Bros. Ent. v. Tusa*, No. 2:21-cv-05456-VAP-ASx, 2021 WL 6104399 (C.D. Cal. Oct. 25, 2021). In *Tusa*, the Defendant operated an unauthorized streaming service that allowed subscribers to download infringed content directly to their computers or smartphones. *Id.* at \*1. In total, the Defendant committed over a hundred violations, which is partly why the Court deemed these actions “particularly egregious.”<sup>1</sup> *Id.* at \*6. Although “particularly egregious,” the *Tusa* Court concluded that awarding the statutory maximum for each infringement would have resulted in an excessively large award of \$16,350,000. *Id.* at \*7.

Our case and *Tusa* contain multiple factual similarities. Each Defendant operated an illegal streaming service that allowed people to download Plaintiff’s content illegally, and each Defendant committed hundreds of infringements. And most importantly, in each case, awarding the statutory maximum would result in an “excessively large award.” Here, the total award

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<sup>1</sup> In addition to the large number of violations, the Defendant “signed a written settlement agreement in which he promised to never again operate a similar illegal streaming service. Nevertheless, Defendant instead relaunched and continued to operate his infringing business under a different name. Defendant has thus shown that a binding contractual commitment will not deter his brazen infringement.” *Tusa*, 2021 WL 6104399, at \*7 (internal quotations omitted).

would be more than \$112 million. To put this number in perspective, the 2023 Oscar’s best-picture winner *Everything Everywhere All at Once* has grossed roughly \$77 million in the United States and \$139 million worldwide. *Everything Everywhere All at Once (2022)*, Box Office Mojo by IMDbPro, <https://www.boxofficemojo.com/title/tt6710474/>. The independent production company that produced that movie, A24 Films, grossed roughly \$113 million from all the films it released in 2019 – more than any year before that.<sup>2</sup> *A24 Annual Report 16*, (2019) [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjQg-vS88CAAxVbF1kFHS4YCjYQFnoECBAQAQ&url=https%3A%2F%2Fsarahriedlinger.com%2Fa24%2FA24\\_2019.pdf&usg=AOvVaw2IG6sxy155SRWFJvgtt2zN&opi=89978449](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjQg-vS88CAAxVbF1kFHS4YCjYQFnoECBAQAQ&url=https%3A%2F%2Fsarahriedlinger.com%2Fa24%2FA24_2019.pdf&usg=AOvVaw2IG6sxy155SRWFJvgtt2zN&opi=89978449). Thus, Lux Vide is asking for an award that is roughly the same as the gross box office revenue of an Oscar-winning film. Or the gross revenue of a high-quality production company. Simply, that amount would be excessive as a remedy for the copyright infringements in this case.

Although the large number of infringements suggests that the Defendant’s behavior was egregious, that does not restrict this Court to the statutory maximum, nor has it restricted other district courts in the past. *See Columbia Pictures Indus., Inc. v. Galindo*, No. 2:20-cv-03129-MEMF-(GJSx), 2022 WL 17094713, at \*12 n.13 (C.D. Cal. Nov. 18, 2022) (“Courts have reduced the requested award amount where defendants have similarly displayed “egregious” behavior when “the number of copyrighted works at issue would amount to an excessively large award.”); *see also China Cent. Television v. Create New Tech. (HK) Ltd.*, No. CV 15—01869 MMM (AJW), 2015 WL 12732432, at \*18 (C.D. Cal. Dec. 7, 2015) (holding that the award should be reduced from \$300,900,000 to \$30,000,000 for 2,006 infringements). As in *Tusa*, an

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<sup>2</sup> In 2019, A24 films released movies such as *Midsommar*, *Uncut Gems*, *The Last Black Man in San Francisco*, *The Lighthouse*, and *The Farewell*. These films, and many others A24 has produced, received excellent critic reviews. Overall, the company released 21 movies in 2019.

award of the statutory maximum damages would be excessively large on this record. As in *Tusa*, this Court finds an award of \$2,500 per violation appropriate after weighing all the relevant factors.

This award is within the range that other courts, including this one, have used in other internet piracy cases. *See e.g., Malibu Media, LLC v. Wells*, No. 1:13-CV-531, 2014 WL 12461958 (W.D. Mich. Jan. 21, 2014) (held that Plaintiff is entitled to \$2,250 per infringement, resulting in \$49,500 in total); *Malibu Media, LLC v. Dragt*, No. 1:13-CV-158, 2013 WL 12085478 (W.D. Mich. Oct. 29, 2013) (held that Plaintiff is entitled to \$2,250 per infringement, resulting in \$42,750 in total); *Disney Enterprises v. Farmer*, 427 F. Supp. 2d 807 (E.D. Tenn. 2006) (finding that \$1,200 per infringement is appropriate); *Malibu Media, LLC v. Brenneman*, No. 3:13-cv-00332-PPS-CAN, 2013 WL 6560387, at \*3 (N.D.Ind. Dec.13, 2013) (Court found damages award of \$1,500.00 per infringed work will suffice to compensate Plaintiff and deter future infringement); *Malibu Media, LLC v. Cowham*, No. 3:13-cv-00162-PPS-CAN, 2014 WL 2453027, at \*2 (N.D.Ind. June 2, 2014) (\$1,500.00 per infringed work was found reasonable); *Malibu Media, LLC v. Ling*, 80 F. Supp. 3d 1231, 1243 (D. Colo. 2015) (\$2,250 per infringed work was found to be appropriate); *PHE, Inc. v. Does*, 1-122, No. 13-cv-786, 2014 WL 1856755 at \*3 (N.D.Ill. May 7, 2014) (\$1,500 per infringed work was found reasonable).

To be sure, there are courts that have awarded the statutory maximum in cases involving production companies. *Galindo*, 2022 WL 17094713, at \*11; *see Warner Bros Ent't Inc. v. Caridi*, 346 F. Supp. 2d 1068, 1074 (C.D. Cal. 2004) (awarding the maximum amount of \$150,000 per work where only two infringed works were at issue). Many of these cases, however, do not include any discussion or analysis. The ones that do include analysis indicate key distinguishing features. For example, the *Galindo* Court notes that the statutory maximum

for a selection of 344 works represented only a fraction (about 18%) of Defendant’s actual infringement of at least 1,872 works. *Galindo*, 2022 WL 17094713, at \*10. Thus, the amount per infringement would be roughly \$27,000 – a number far below the statutory maximum. The *Cardidi* Court also awarded the statutory maximum, but it did so for only two infringements, both involving “particularly egregious” conduct.<sup>3</sup> *Caridi*, 346 F. Supp. 2d at 1074. There, however, the total amount of damages was only \$300,000. These key distinctions are telling, and these cases are not persuasive for the damages claim here.

An award of \$2,500 per violation, resulting in an overall award of \$1,870,000, is an appropriate balance of the relevant statutory factors on this record. It will generate meaningful deterrence, and it is consistent with other statutory damage awards in comparable cases.

#### CONCLUSION

Accordingly, the Court **GRANTS** Lux Vide’s motion for default judgment as to Defendant Sven Hansche and determines that statutory damages are to be awarded. After balancing the statutory damages factors and evaluating relevant case law, the Court determines that an award of \$1,870,000 is the appropriate amount of statutory damages. This amounts to \$2,500 per violation for each of the 748 violations claimed.

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<sup>3</sup> Warner Bros. submitted two movies, *The Last Samurai* and *Mystic River* to the Academy of Motion Pictures and Sciences to be considered for their awards. *Id.* at 1069. The Defendant was a member of the Academy and was entitled to receive copies of the screeners. *Id.* at 1070. Upon receiving them, the Defendant knew of the limited nature of the copyrights. *Id.* The Courts noted that “[s]hortly after Caridi received the screeners, he made them available to Sprague for unauthorized copying and distribution on the Internet and via other delivery mediums” and that [s]hortly after converting the screeners to digital format, Caridi and Sprague transmitted the digital files embodying Caridi's screeners of *The Last Samurai* and *Mystic River* to a third party or third parties for unauthorized use, distribution, and exhibition on the Internet . . . . Caridi and Sprague produced and distributed numerous additional copies of the films in DVD and VHS formats, and distributed them to third parties.” *Id.* at 1070-71.

**IT IS SO ORDERED.**

Dated: August 7, 2023

/s/ Robert J. Jonker  
ROBERT J. JONKER  
UNITED STATES DISTRICT JUDGE