

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GRANT HEILMAN PHOTOGRAPHY, INC.	:	CIVIL ACTION
	:	
Plaintiff,	:	
v.	:	
	:	
THE MCGRAW-HILL COMPANIES, INC., and	:	NO. 12-2061
JOHN DOES PRINTERS 1-10,	:	
	:	
Defendants	:	

ORDER RE REQUEST FOR CLARIFICATION

AND NOW, this 10th day of August, 2015, plaintiff Grant Heilman Photography, Inc. has submitted a letter dated July 30, 2015 (ECF 261) requesting clarification of a portion of this Court’s June 30, 2015 Memorandum (ECF 255) and Order (ECF 256) ruling on the motion for reduction of damages filed by Defendants McGraw-Hill Global Education Holdings, LLC and McGraw-Hill School Education Holdings, LLC (“McGraw-Hill”).

Plaintiff requests clarification from the Court on how it should submit its proposed damages in light of the Court’s June 30, 2015 Memorandum and Order. In its letter, plaintiff cites from the bellwether trial record a number of instances in which it produced evidence that McGraw-Hill had paid additional amounts over the contractual license fees for unpermitted uses or license overruns of plaintiff’s images.

McGraw-Hill has taken the position that plaintiff’s actual damages should be reduced to \$16,435 in lost license fees for the 53 bellwether trial claims (ECF 260). McGraw-Hill has also submitted a letter (ECF 264) in response to plaintiff’s letter in which it asserts that no clarification of the Court’s June 30, 2015 Order is necessary. McGraw-Hill contends that the three instances identified by the Court when McGraw-Hill purportedly paid additional amounts

for unauthorized use of plaintiff's images only arose post-infringement, incorporated an impermissible penalty, and did not involve photo uses or books at issue in the bellwether trial.

The Court will **GRANT** plaintiff's request for clarification in part. To the extent that the trial record reveals that McGraw-Hill actually paid, either in response to plaintiff's request or voluntarily, amounts in addition to the contractual license fees for the use of plaintiff's images, plaintiff is entitled to those additional sums proven by competent evidence at the bellwether trial.

Plaintiff detailed several of these instances in its July 30 letter, and plaintiff should complete and quantify all instances in which plaintiff contends its actual damages should be greater than the contractual license fee based on McGraw-Hill's actual past payment of additional amounts.

The Court thought that the original Memorandum and Order dated June 30, 2015 made a satisfactory explanation, but will now require plaintiff to go ahead and make the computation, with appropriate record citations, by Monday, August 17, 2015.

As previously noted, the Court will have a recorded telephone conference on August 18, 2015 at 3:30 p.m. to further discuss completion of the judgment in favor of plaintiff and against defendant resulting from the bellwether trial, and future proceedings.

BY THE COURT:

MICHAEL M. BAYLSON, U.S.D.J.