Court Reinstates Jury Finding in Disney Motion Capture Copyright Dispute

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By W. Drew Kastner and Edward Baxter

The Ninth Circuit recently issued a partial reversal of a grant of summary judgment to Disney in a dispute stemming from the misuse of motion capture software. This case arose when Disney's visual effects contractor, Digital Domain 3.0 “DD3,” allegedly used Rearden's copyrighted MOVA motion capture software without authorization during production of the 2017 *Beauty and the Beast* film. While a jury found Disney vicariously liable and awarded $250,638 in actual damages plus $345,098 in profits, the district court granted Disney's motion for judgment as a matter of law, concluding that Disney lacked the ability to supervise DD3's directly infringing conduct. The ability of Disney to supervise DD3’s misuse constitutes a necessary element of vicarious liability.

The Ninth Circuit disagreed on appeal, holding that sufficient evidence supported the jury's finding that Disney had the practical ability to supervise and control DD3's conduct. The court rejected Disney's arguments that it was impractical to conduct due diligence on every piece of software used by vendors and that it had no way to identify the infringement, finding that the jury could reasonably conclude Disney had the reasonable ability to identify DD3's potentially infringing use of MOVA. However, the court affirmed the district court's decision to treat the jury's profit award as advisory, ruling that there is no jury trial right for profit remedies under the Copyright Act. This decision has the potential to motivate large studios such as Disney to rethink their due diligence obligations in cases involving large-scale productions with multiple vendors and complex technological workflows.