

# **EXHIBIT 16**

**COPYRIGHT DAMAGES—INFRINGEMENTS' PROFITS**

If you decide that the best measure of Oracle's full actual damages is lost profits, you must also determine the amount of profits made by any defendant that are attributable to the stipulated infringement. You may not include in an award of Defendants' profits any amount that you already took into account in determining lost profits.

You may make an award of Defendants' profits only if you find that Oracle showed a causal relationship between the infringement and the Defendants' gross revenue. Defendants' gross revenue is all of the money the Defendants' received in connection with the stipulated infringement. Oracle has the burden of proving Defendants' gross revenue by a preponderance of the evidence.

If you find that Defendants' infringement was willful, then Defendants' profits are equal to all of Defendants' gross revenue that is associated with the stipulated infringement, and no deduction for Defendants' expenses is permitted.

If you find that Defendants' infringement was not willful, then Defendants' profits are equal to Defendants' gross revenue minus expenses. Expenses are all operating costs, overhead costs, and production costs incurred in producing Defendants' gross revenue. Defendants have the burden of proving their expenses by a preponderance of the evidence.

Unless you find that a portion of the profit from the use of the copyrighted works is attributable to factors other than use of the copyrighted works, all of the profit is to be attributed to the infringement. Defendants have the burden of proving the portion of the profit, if any, attributable to factors other than infringing the copyrighted works.

Authority: Previous Final Jury Instruction No. 11 (*See* Dkt. 1005 at 11; Final Trial Tr. 2218:01-2219:04) (modified); Ninth Circuit Manual of Model Jury Instructions, Instructions 17.24 (Civil) and 17.27 (Civil) (modified); Final Trial Tr. 1997:19-1998:10 (“**THE COURT: I AGREE. I AGREE. AND THE JURY WILL DECIDE WHAT THE FULL ACTUAL DAMAGES ARE. AND THEY WILL DO THAT BY EITHER DECIDING THAT THE HYPOTHETICAL**

1 LICENSE REPRESENTS THE FULL ACTUAL DAMAGE OR THAT THE LOST PROFITS  
2 REPRESENTS THE FULL ACTUAL DAMAGE.”).

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