

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VHT, INC.,

CASE NO. C15-1096JLR

Plaintiff,

## ORDER

ZILLOW GROUP, INC., et al.,

## Defendants.

Before the court are the parties' motions for judgment as a matter of law, which court took under advisement during trial. (See Dkt. ## 264-67, 269, 271.); Fed. R. P. 50 advisory committee's note to 1991 amendment ("The court may often wisely leave to rule on a motion for judgment as a matter of law made at the close of the cause."); *Runnings v. Ford Motor Co.*, 461 F.2d 1145, 1148 n.4 (9th Cir. 1972) ("This once again demonstrates the desirability of withholding action on motions for directed verdicts and permitting the jury to reach a verdict."). The jury returned its verdict on February 9, 2017. (Verdict Form (Dkt. # 281) at 6.)

## ORDER - 1

1       The court has not ruled on the Rule 50(a) motions, which if granted would  
 2 overturn at least part of the jury's verdict. (*See id.*) Some courts have held that "a court's  
 3 deferred consideration effectively converts the Rule 50(a) motion into a post-verdict Rule  
 4 50(b) motion." *Op Art, Inc. v. B.I.G. Wholesalers, Inc.*, No. 3:03 CV 0887 P, 2006 WL  
 5 3347911, at \*1 (N.D. Tex. Nov. 17, 2006); *see also Merino v. Marchon, Inc.*, No.  
 6 92 4662 WDK (JRX), 1994 WL 695826, at \*5 (N.D. Cal. Apr. 4, 1994). However, the  
 7 court finds it more appropriate to deny the Rule 50(a) motions as moot.<sup>1</sup> *See Rose v.*  
 8 *Barrett Twp.*, No. 3:09 CV 01561, 2014 WL 2039621, at \*6 (M.D. Pa. May 9, 2014)  
 9 ("Once the Court submits the matter to the jury, the 50(a) motion has effectively been  
 10 mooted and no further briefing is necessary, unless the movant seeks to renew the Motion  
 11 in accordance with 50(b)."); *Asahi Glass Co. v. Guardian Indus. Corp.*, 886 F. Supp. 2d  
 12 369, 378 & n.6 (D. Del. 2012) (dismissing as moot the parties' Rule 50(a) claims because  
 13 the jury rendered its verdict and the court took up the defendant's Rule 50(b) motion).  
 14 The court denies the parties' Rule 50(a) motions as moot, without prejudice to re-raising  
 15 the same legal questions in motions under Rule 50(b). Any renewed motion must cite the  
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17       <sup>1</sup> Converting the Rule 50(a) motions into Rule 50(b) motions without requiring the  
 18 movants to renew the motions would contravene the requirement that a movant "file a renewed  
 19 motion for judgment as a matter of law" "[n]o later than 28 days after the entry of judgment."  
 20 Fed. R. Civ. P. 50(b); *see Johnson v. N.Y. N.H., & H.R. Co.*, 344 U.S. 48, 49 (1952) ("[I]n the  
 21 absence of a motion for judgment notwithstanding the verdict made in the trial court within [the  
 22 time allotted by Rule 50(b)] after reception of a verdict the rule forbids the trial judge . . . to enter  
 such a judgment."); *E.E.O.C. v. Go Daddy Software, Inc.*, 581 F.3d 951, 961 (9th Cir. 2009) ("If  
 the judge denies or defers ruling on the motion, and if the jury then returns a verdict against the  
 moving party, the party may renew its motion under Rule 50(b)."); 9B Charles Alan Wright &  
 Arthur R. Miller, *Federal Practice and Procedure* § 2537 (3d ed. 1998) ("The motion must be  
 made even though the trial court expressly has reserved decision on the motion at the close of the  
 evidence."). Moreover, written briefing would aid the court's analysis of the parties' motions.

1 relevant law and reference specific evidence presented at trial that supports the parties'  
2 respective positions. The court takes no position on the merits of the motions.

3 The court seeks briefing on an additional matter related to entry of judgment.

4 VHT has elected to receive statutory damages. (2/10/17 Not. (Dkt. # 274).) VHT  
5 contends that it is entitled to \$8,247,300.00 in statutory damages for the 19,312 infringed  
6 works that were eligible for statutory damages, and \$25,028.92 in actual damages for the  
7 8,813 infringed works that were not eligible for statutory damages. (*Id.* at 1 (citing  
8 Verdict Form at 5-6).) However, the Copyright Act is ambiguous as to whether a party  
9 may receive actual damages for some of the works at issue and statutory damages for  
10 others:

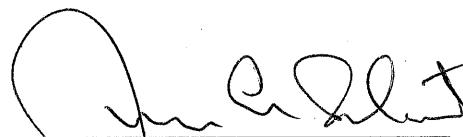
11 [T]he copyright owner may elect . . . to recover . . . an award of statutory  
12 damages *for all infringements involved in the action*, with respect to any one  
work, for which any one infringer is liable individually, or for which any two  
or more infringers are liable jointly and severally . . . .

13 17 U.S.C. § 504(c)(1) (emphasis added). The emphasized text could be read to require  
14 VHT to make an all-or-nothing election between statutory and actual damages. *See id.*  
15 On the other hand, the clause following the emphasized text—"with respect to any one  
16 work"—could be read to allow VHT to make that election as to each work involved in  
17 this case. *See id.* VHT's notice tacitly embraces the latter reading but provides no  
18 analysis or authority for this interpretation. (See 2/10/17 Not. at 1.) The court seeks  
19 briefing on this question before entering judgment.

20 The court DIRECTS the parties to meet and confer on this issue and submit a joint  
21 statement of the parties' positions no later than February 21, 2017. If the parties disagree,  
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1 the parties must file opening briefs not to exceed four pages by February 24, 2017, and  
2 response briefs not to exceed two pages by March 1, 2017. The court will enter judgment  
3 after resolving this legal question.<sup>2</sup>

4 Dated this 14 day of February, 2017.

5   
6 JAMES L. ROBART  
7 United States District Judge

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22 <sup>2</sup> Motions for judgment notwithstanding the verdict must be filed no later than 28 days  
after the entry of judgment. *See* Fed. R. Civ. P. 50(b). Accordingly, the court's determination of  
this legal question and subsequent entry of judgment will not prejudice the parties' ability to  
bring timely Rule 50(b) motions.