Our Section continues its work through its Section Council, committees, liaisons and members to promote alternative dispute resolution and benefit our members. Our next Section Council meeting is March 15 in Pinehurst.

Our annual meeting and CLE program will be held on March 16, also in Pinehurst. The program will focus on the importance of communication in mediation and will address the following topics: substance versus process knowledge preference in selecting a dispute resolver, workers’ compensation mediation, implicit bias and cultural issues.

The program includes material that meets CME requirements and provides legal ethics credits. Please mark your calendars and join us in Pinehurst.

Our Arbitration Committee is preparing an international arbitration CLE for Fall 2018. It is lining up an impressive agenda and renowned speakers.

Our Collaborative Law Committee continues to work on training opportunities for persons interested in collaborative law. It held a successful program in November.

Our Section had the honor of working with the Dispute Resolution Commission to celebrate Conflict Resolution Week Oct. 16-20, 2017, to participate in Chief Justice Martin’s proclamation ceremony and to co-sponsor the reception that followed. Many members were in attendance. E-Bar’s coverage of the ceremony, the Chief Justice’s proclamation and the Governor’s proclamation can be found at www.ncbar.org/news/conflict-resolution-week-declared/.

I look forward to seeing many of you at our annual meeting and CLE in March.

Monetary Recovery In Copyright Disputes
By Mitch Tuchman

In a copyright infringement dispute in which the accused was indisputably liable, the plaintiff demanded $25,000 to settle the matter; the defendant countered with $12. You read that correctly. Yet the parties settled. More about that later.

The Copyright Act of 1976, 17 U.S.C. §§ 101 et seq. (the “Act”), grants certain exclusive rights to copyright owners, among them the rights to reproduce protected works (that is, the right to make copies, hence “copyright”) and to distribute those copies. Owners may exercise their rights or authorize others to do so, commonly in the form of a license. Exercise of those exclusive rights without authorization (ab-sent an express exemption provided by law) is infringement, which at its simplest takes the form of an unlicensed use.

A copyright owner who prevails in an infringement action is entitled to mon-etary recovery. Under the Act the sources of recovery are (a) the owner’s actual damages and (b) any additional profits of the infringer or, alternatively, (c) statutory damages. 17 U.S.C. § 504(a). This deceptively simple formula reveals its complexity in practice.

To prevail on an infringement claim, the plaintiff must prove an ownership interest in a valid copyright and unauthorized copying of original elements of the protected work. Lyons P’ship, Ltd. v. Morris Costumes, Inc., 243 F.3d 789, 801 (4th Cir. 2001). Validity and copying are likely to be contentious issues, but as in any mediation the parties might be willing to compromise to avoid the cost and inconvenience of trial. A settlement also may eliminate the uncertainty created by the factual circumstances affecting trial outcomes; for example, the deceptively simple term “damages” is not defined in the Act, so courts have articulated multiple ratio-nales with respect to computations.

Plaintiff’s Actual Damages

“Damages are awarded to compensate the copyright owner for losses from the infringement.” 4 Nimmer on Copyright, § 14.03[A] (2017) (“Nimmer”). Damages claimed by plaintiffs are at times more imaginative than the copyrightable creations at issue, and it is good to recall Judge Posner’s trenchant axiom: “Damages must be proved and not just dreamed. ...” MindGames Inc. v. Western Pub. Co., 218 F.3d 652, 658 (7th Cir. 2000), cert. denied, 531 U.S. 1126 (2001), quoted in Nimmer, op. cit. Defendants will attempt to identify and refute speculative claims.

There are numerous benchmarks for plaintiffs’ computations of damages, the most common of which appears to be the hypothetical fees the infringer might

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