



# Publications

## CASES OF INTEREST

LOEB & LOEB adds Depth.

### **IP/ENTERTAINMENT LAW WEEKLY CASE UPDATE FOR MOTION PICTURE STUDIOS AND TELEVISION NETWORKS**

April 13, 2011

#### **Table of Contents**

- Arista Records LLC v. Lime Group LLC
- Bean v. Pearson Education, Inc.

**Arista Records LLC v. Lime Group LLC**, USDC S.D. New York, March 29, 2011

 [Click here for a copy of the full decision.](#)

- In copyright infringement litigation against peer-to-peer network, court awards partial summary judgment to plaintiffs on the copyright ownership of the infringed sound recordings where plaintiffs evidenced a valid chain of title, and partial summary judgment to plaintiffs on direct infringement where the same type of electronic evidence held to be sufficient for the summary judgment of secondary liability was presented.

In May 2010, the court granted summary judgment to plaintiff record companies on their claims against defendants for secondary copyright infringement. Defendants were affiliated with the LimeWire online file-sharing network, and the court concluded that they had induced hundreds if not thousands of users to use the system to infringe plaintiffs' copyrights.

Now in the damages phase, plaintiffs moved for partial summary judgment that they have ownership or control of the works that have allegedly been infringed through the defendants' system, and moved for direct infringement of those works. The court granted summary judgment for plaintiffs as to the ownership of 10,808 sound recordings undisputed by defendants.

Defendants challenged ownership of 397 sound recordings on three separate grounds. First, defendants argued that plaintiffs cannot sue for the infringement of copyrights in 55 sound recordings owned by its subsidiary.



# Publications

## CASES OF INTEREST

LOEB & LOEB adds Depth.

While that is a correct statement of the law, summary judgment as to those recordings was granted because plaintiffs submitted evidence showing that their original submission was in error and that the sound recordings were registered to a division of a third party, who then assigned all copyrights held by that division to a plaintiff.

Second, defendants argued that plaintiffs did not sufficiently show an unbroken chain of title between the original copyright owner and a named plaintiff for 303 recordings. The court granted summary judgment for 96 recordings because plaintiff was able to produce an unrefuted affidavit as to the corporate name change of a plaintiff thereby establishing an unbroken chain of ownership.

The court denied summary judgment for the other 207 recordings because plaintiffs failed to provide evidence that they satisfied the formal requirements for the transfer of ownership of copyrights in the disputed sound recordings. Section 204 of the Copyright Act requires all transfers of copyright ownership to be in writing and signed in order to be valid. Though plaintiffs provided affidavit testimony alluding to the existence of licensing agreements, summary judgment was denied because plaintiffs failed to evidence any writings signed by the purported licensors of the copyrights in these recordings. However, the court allowed plaintiffs to submit additional evidence as to the ownership of the sound recordings.

Third, defendants argued that plaintiffs failed to demonstrate ownership or control during the summer of 2010 for 39 recordings. The court granted summary judgment for plaintiffs because plaintiffs did not allege that infringement took place only during the summer of 2010 and because defendants did not dispute that plaintiffs owned the copyrights in the sound recordings at some point during the time period relevant to this lawsuit. Moreover, as to 16 particular recordings challenged by defendants, plaintiffs produced evidence that the previous copyright owner granted plaintiffs all rights of actions in the recordings.

The court granted summary judgment for plaintiffs as to direct infringement. Previously, the court found that electronic storage media data and other documentation showing that plaintiffs' private investigators searched the



# Publications

## CASES OF INTEREST

LOEB & LOEB adds Depth.

network for LimeWire users in the United States who were distributing audio files owned by plaintiffs, and downloaded the files from those users, were sufficient to find secondary liability. Thus, the court found that such evidence, as presented for all the works at issue, was sufficient to demonstrate direct infringement.

The court rejected defendants' argument that evidence of downloads by an investigator is not sufficient to establish both unauthorized copying and distribution of a plaintiff's work though it noted that plaintiffs retained the burden to show broader downloading by LimeWire's users in order to establish actual damages and/or to satisfy the factors for calculating damages.

**Bean v. Pearson Education, Inc.**, USDC D. Arizona, March 28, 2011

 [Click here for a copy of the full decision.](#)

- Court denies plaintiffs' motion for preliminary injunction in copyright infringement action, holding that plaintiffs failed to establish irreparable harm.

Plaintiffs are professional photographers who licensed their copyrighted works to defendant, a publisher of textbooks and other educational material, alleging that defendant exceeded the scope of the licenses by using the works in more copies of books and materials than the licenses allowed. Plaintiffs sought a preliminary injunction to halt distribution of the defendant's textbooks and other materials. The court, citing *eBay Inc. v. MercExchange, LLC*, noted that the Supreme Court has made clear that an injunction does not automatically follow a determination that a copyright has been infringed.

According to the court, a copyright plaintiff seeking injunctive relief must satisfy the traditional four-factor test by showing (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in its favor; and (4) that an injunction is in the public interest. A plaintiff must demonstrate that irreparable harm is real and significant, not speculative or remote, and the plaintiff must also establish that remedies available at law, such as monetary



# Publications

## CASES OF INTEREST

LOEB & LOEB adds Depth.

damages, are inadequate to compensate for that injury.

Defendant asserted that “[t]o the extent Pearson printed publications in excess of the quantities stated in the licenses, any harm to Plaintiffs is purely monetary and can be adequately remedied with money damages.” The court agreed, stating that “[n]othing Plaintiffs have presented indicates otherwise. Indeed, as Defendant argues, the evidence suggests that Plaintiffs themselves regard monetary damages as adequate compensation for the unauthorized use of their photographs.”

The court stated that the cases cited by plaintiffs did not support their position that monetary damages would be an insufficient remedy. “Plaintiffs do not contend that their losses cannot be quantified, that the market for their product has been damaged, or that their ‘brand, business reputation, and goodwill . . . would be irreparably harmed,’” citing *Apple Inc. v. Paystar Corp.*, 673 F. Supp. 2d 943, 948-49 (N.D. Cal. 2009), *Microsoft Corp. v. Marturano*, No. 1:06-CV-1747, 2009 U.S. Dist. LEXIS 44450, (E.D. Cal. May 27, 2009), and *Designer Skin, LLC, v. S&L Vitamins, Inc.*, No. CV 05-3699, 2008 U.S. Dist. LEXIS 68467 (D. Ariz. Sept. 5, 2008).

The court also rejected plaintiffs’ allegation that that they would be subjected to future copyright infringement by defendant if the court does not order an injunction, explaining that “the mere likelihood of future infringement by a defendant does not by itself allow for an inference of irreparable harm” because “future copyright infringement can always be redressed via damages, whether actual or statutory.” See *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 518 F.Supp.2d 1197, 1215 (C.D. Cal. 2007).

---

For more information, please contact Jonathan Zavin at [jzavin@loeb.com](mailto:jzavin@loeb.com) or at 212.407.4161.

Westlaw decisions are reprinted with permission of Thomson/West. If you wish to check the currency of these cases, you may do so using KeyCite on Westlaw by visiting <http://www.westlaw.com/>.



# Publications

## CASES OF INTEREST

LOEB & LOEB adds Depth.

Circular 230 Disclosure: To assure compliance with Treasury Department rules governing tax practice, we inform you that any advice (including in any attachment) (1) was not written and is not intended to be used, and cannot be used, for the purpose of avoiding any federal tax penalty that may be imposed on the taxpayer, and (2) may not be used in connection with promoting, marketing or recommending to another person any transaction or matter addressed herein.

*This publication may constitute "Attorney Advertising" under the New York Rules of Professional Conduct and under the law of other jurisdictions.*

*© 2011 Loeb & Loeb LLP. All rights reserved.*