



Publications

CASES OF INTEREST

LOEB & LOEB adds Depth.

MUSIC LAW WEEKLY CASE UPDATE FOR MUSIC INDUSTRY EXECUTIVES

September 21, 2011

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- Sony BMG Music Entertainment, et al. v. Tenenbaum

Sony BMG Music Entertainment, et al. v. Tenenbaum, USCA First Circuit, September 16, 2011

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

- First Circuit holds district court committed reversible error by reducing jury award in favor of recording companies and against individual copyright infringer on constitutional grounds without first considering issue of remittitur.

Plaintiff recording companies Sony BMG Music Entertainment, Warner Brothers Records, Inc., Arista Records, LLC, Atlantic Recording Corp. and UMG Recordings, Inc., brought an action for copyright infringement against defendant Joel Tenenbaum, alleging that Tenenbaum illegally downloaded thousands of copyrighted music recordings and other copyrighted works using file-sharing software. Plaintiffs sought injunctive relief and statutory damages relating to 30 of those music recordings. After a five-day jury trial, the court found that, as a matter of law, the recording companies owned the copyrights to the 30 music recordings and that defendant infringed those copyrights by downloading and distributing the copyrighted works.

The court left to the jury the issues of whether Tenenbaum's violation was willful and the amount of damages. Under Section 504(c) of the Copyright Act, the jury was permitted to award between \$750 and \$30,000 for each non-willful infringement, and up to \$150,000 for each willful infringement. Because defendant continued file sharing after being warned several times – by his parents, his school and the recording companies – that it was illegal, the jury found Tenenbaum liable for a willful infringement for each of the 30 copyrighted works and awarded the recording companies \$22,500 per infringement, for a total award of \$675,000.

Defendant moved for remittitur and a reduction of the judgment to the statutory minimum due to the excessiveness of the award. In the case of remittitur, the recording companies would have the option of accepting a reduced award or seeking a new trial. Instead of reaching a decision on remittitur, however, the district court found that the \$675,000 award was unconstitutionally excessive and that it violated due process. The court reduced the award to \$67,500, and did not give plaintiffs an opportunity to seek a new trial in lieu of accepting the reduced award.



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On appeal, the recording companies argued that the district court impermissibly reduced the jury's damages award, since the award was within the range of damages allowed by the Copyright Act. The United States, intervening to defend the constitutionality of the Copyright Act, argued that the court impermissibly bypassed the issue of remittitur to reach the constitutional question. The First Circuit agreed, finding that the lower court was obligated to consider the issue of remittitur before reaching any constitutional question. The court reinstated the jury award of \$675,000 and remanded the case to the lower court for consideration of the remittitur issue.

Tenenbaum also appealed, arguing that the Copyright Act is unconstitutional because the Supreme Court has allowed juries to determine statutory damages, whereas Congress intended for judges only to impose those damages. He also argued that Congress did not intend for the act to apply to "consumer copying" and that statutory damages were unavailable absent a showing of actual harm to the recording companies. The court of appeals rejected all of these arguments, finding that the defendant had waived his constitutional challenge, that he was not a mere "consumer copier" of the copyrighted works, and that the recording companies had shown actual harm resulting from Tenenbaum's activities.

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