

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

CAPITOL RECORDS INC.,
a Delaware corporation;
SONY BMG MUSIC ENTERTAINMENT,
a Delaware general partnership;
ARISTA RECORDS LLC,
a Delaware limited liability company;
INTERSCOPE RECORDS,
a California general partnership;
WARNER BROS. RECORDS INC.,
a Delaware corporation; and
UMG RECORDINGS, INC.,
a Delaware corporation;

Plaintiffs,

v.

MEMORANDUM OF LAW & ORDER
Civil File No. 06-1497 (MJD/RLE)

JAMMIE THOMAS-RASSET,

Defendant.

Andrew B. Mohraz, David A. Tonini, and Timothy M. Reynolds, Holme Roberts & Owen, LLP; Felicia J. Boyd, Kara L. B. Barrow, and Mary Andreleita Walker, Faegre & Benson, LLP; and Matthew J. Oppenheim, Oppenheim Group, LLP; counsel for Plaintiffs.

Joe Sibley and K. A. D. Camara, Camara & Sibley, LLP, and Brant D. Penney and Garrett D. Blanchfield, Jr., Reinhardt Wendorf & Blanchfield, counsel for Defendant.

I. INTRODUCTION

This matter is before the Court on Defendant's Motion for a New Trial, Remittitur, and to Alter or Amend the Judgment [Docket No. 344] and Plaintiffs' Motion to Amend Judgment. [Docket No. 342]

II. SUMMARY OF THE COURT'S OPINION

After long and careful deliberation, the Court grants in part and denies in part Thomas-Rasset's motion and remits the damages award to \$2,250 per song – three times the statutory minimum. The need for deterrence cannot justify a \$2 million verdict for stealing and illegally distributing 24 songs for the sole purpose of obtaining free music. Moreover, although Plaintiffs were not required to prove their actual damages, statutory damages must still bear *some* relation to actual damages.

The Court has labored to fashion a reasonable limit on statutory damages awards against noncommercial individuals who illegally download and upload music such that the award of statutory damages does not veer into the realm of gross injustice. Finding a precise dollar amount that delineates the border between the jury's wide discretion to calculate its own number to address

Thomas-Rasset's willful violations, Plaintiffs' far-reaching, but nebulous damages, and the need to deter online piracy in general and the outrageousness of a \$2 million verdict is a considerable task. The Court concludes that setting the limit at three times the minimum statutory damages amount in this case is the most reasoned solution.

This award constitutes the maximum amount a jury could reasonably award to both compensate Plaintiffs and address the deterrence aspect of the Copyright Act. **This reduced award is significant and harsh.** It is a higher award than the Court might have chosen to impose in its sole discretion, but the decision was not entrusted to this Court. It was the jury's province to determine the award of statutory damages and this Court has merely reduced that award to the maximum amount that is no longer monstrous and shocking. Plaintiffs have seven days from the date of this Order to decide whether to accept the remittitur or request a new trial on the issue of damages.

The Court denies Thomas-Rasset's motion for a new trial based on the admission of evidence collected by MediaSentry. It further denies her motion for a new trial based on Plaintiffs' failure to produce certified copies of the sound recordings deposited with the Copyright Office.

Finally, the Court grants Plaintiffs' request to amend the Judgment to include a permanent injunction.

III. BACKGROUND

Plaintiffs are recording companies that owned or controlled exclusive rights to copyrights in sound recordings, including 24 at issue in this lawsuit. On April 19, 2006, Plaintiffs filed a Complaint against Defendant Jammie Thomas-Rasset alleging that she infringed Plaintiffs' copyrighted sound recordings pursuant to the Copyright Act, 17 U.S.C. §§ 101, 106, 501-505, by illegally downloading and distributing the recordings via the online peer-to-peer file sharing application known as Kazaa. Plaintiffs sought injunctive relief, statutory damages, costs, and attorney fees.

Trial on this matter began on October 2, 2007. On October 4, 2007, the jury found that Thomas-Rasset had willfully infringed all 24 of Plaintiffs' sound recordings at issue and awarded Plaintiffs statutory damages in the amount of \$9,250 for each willful infringement. [Docket No. 100] The total damages award was \$222,000. On October 5, the Court entered judgment on the jury's verdict. [Docket No. 106]

On October 15, Defendant filed a Motion for New Trial, or in the

Alternative, for Remittitur, based solely on the issue of the constitutionality of the Copyright Act's statutory damages provision in the case. [Docket No. 109] On September 24, 2008, the Court vacated the verdict and granted a new trial based on its conclusion that it had erred in giving Jury Instruction No. 15, which addressed the existence of a making-available right. [Docket No. 197] The Court made no findings regarding the constitutionality of the damages award.

The second trial of this matter began on June 15, 2009. On June 18, 2009, the jury returned a verdict finding that Thomas-Rasset had willfully infringed all 24 sound recordings and awarding statutory damages in the amount of \$80,000 for each song, for a total verdict of \$1,920,000. [Docket No. 336] On June 19, 2009, the Court entered judgment on the jury's verdict. [Docket No. 338]

Now, Thomas-Rasset requests that the Court set aside the award of statutory damages and provides three alternatives: 1) the statutory damages provision of the Copyright Act, as applied to Thomas-Rasset, violates the Due Process Clause of the U.S. Constitution; therefore, Plaintiffs must accept a \$0 verdict; 2) the jury's application of the statutory damages provision of the Copyright Act is excessive and shocking so the Court should remit the verdict to the minimum statutory damages of \$750 per sound recording infringed; or 3) the

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