

sound recordings and 3,452 copyrighted musical compositions from February 1, 2013 until November 26, 2014 (“Claim Period”). Dkts. 172-1, 172-2.¹

I. BACKGROUND

The undisputed facts in this case are few, but certain of them will provide a framework for discussion. Plaintiffs are record companies that generally produce, manage, acquire, sell, and license sound recordings and musical compositions and their copyrights. Plaintiffs are part of a trade association, the Recording Industry Association of America (“RIAA”). As Plaintiffs’ agent, RIAA hired an anti-piracy company, MarkMonitor, to scan the internet for potentially infringing file-sharing on peer-to-peer (“P2P”) networks. MarkMonitor acted as a participant in the P2P networks to engage with potentially infringing users, gather data from those users, and use that data to generate infringement notices. These are the notices that MarkMonitor sent to Cox on behalf of Plaintiffs.

Defendants operate a broadband communications network and act as an internet service provider (“ISP”) to residential and commercial customers throughout the United States. To monitor and address internet security issues, including copyright infringement, Cox has a department aimed at abuse of its services and has adopted a policy to respond to alleged abuse of its network. During the Claim Period, Cox offered a tiered pricing plan, charging different flat fees for different download speeds. Also during the Claim Period, Cox received and processed notices of infringement from MarkMonitor using the Cox Abuse Tracking System (“CATS”). Cox programmed CATS to automate tickets to send to the subscribers identified in the notices. The CATS system responded in different ways to different numbers of infringement notices,

¹ This refers to the Amended Exhibits to First Amended Complaint which are considered, collectively, as the 10,478 works in suit.

essentially resulting in a thirteen-strike policy. Cox's conduct throughout the thirteen strikes and the management of these accounts is not a subject for summary judgment.

Plaintiffs identified individual Cox accounts that received three or more infringement notices, and have established those subscribers as the basis for Defendants' liability here. This parameter helped determine the 10,478 works in suit, and the four P2P networks involved: BitTorrent, Gnutella, eDonkey, and Ares. This set of subscriber activity is the subject of the suit, and Cox's alleged contributory infringement and vicarious liability.

The Parties filed cross Motions for Summary Judgment on August 30, 2019. In addition, the Parties have filed, collectively, nine *Daubert* motions and 21 motions *in limine* that bear on many of the issues raised in the instant summary judgment motions. As such, the Court only addresses the following, and will resolve the remaining issues either in pending pre-trial motions or at trial as necessary. The two main issues the Court addresses here are (1) ownership of the copyrights, and (2) the knowledge element of contributory infringement.

II. SUMMARY JUDGMENT

Federal Rule of Civil Procedure 56 states that “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.” Fed. R. Civ. P. 56(a). The trial judge is not required to make findings of fact at the summary judgment stage. “The inquiry performed is the threshold inquiry of determining whether there is the need for a trial—whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). While the burden is on the moving party to demonstrate entitlement as a matter of law, the opposing party “must ‘set forth specific facts

showing that there is a genuine issue for trial.” *Dash v. Mayweather*, 731 F.3d 303, 311 (4th Cir. 2013) (quoting *Bouchat v. Balt. Ravens Football Club, Inc.*, 346 F.3d 514, 522 (4th Cir. 2003)).

A. Ownership of Copyrights in Suit

Before the Court is Plaintiffs’ Motion for Summary Judgment (Dkt. 312) as it pertains to Plaintiffs’ claim that they “Own or Control Exclusive Rights Under Copyright for Each of Plaintiffs’ Works.” Pls.’ Br. 17-19. The matter is fully briefed, and the Court heard oral argument on October 24, 2019.

The Court granted Plaintiffs’ Motion to Strike (Mot. Dkt. 420, Order Dkt. 521) on October 23, 2019, which removed from consideration the Declaration of Thomas Patrick Lane on the issue of copyright validity and ownership. As the Court struck it from the record, the Lane Declaration cannot support Defendants’ claims on the ownership issue. Many of Defendants’ arguments are thus precluded, and, accordingly, the Court addresses the remaining issues here.

Plaintiffs assert exclusive control of the copyrights to all works in suit, offering ownership evidence including certificates of registration, registration entries from the online Copyright Catalog,² declarations from executives representing all six plaintiff groups, merger and acquisition agreements, and other business agreements bearing on ownership. These are discussed more specifically below in relation to Defendants’ arguments.

1. Legal Standard

To establish a claim for copyright infringement, a plaintiff must show two things: “(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are

² UNITED STATES COPYRIGHT OFFICE, Public Catalog, cocatalog.loc.gov (last visited November 13, 2019).

original.” *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co., Inc.*, 499 U.S. 340, 361 (1991) (citing *Harper & Row, Publ’rs, Inc. v. Nation Enters.*, 471 U.S. 539, 548 (1985)). The matters in dispute concern the first element, determining if Plaintiffs have standing to bring these claims as owners of the claimed copyrights.

A copyright owner controls the exclusive rights enumerated in Section 106 of Title 17 of the United States Code, including “(1) to reproduce the copyrighted work in copies or phonorecords; . . . [and] (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending.” 17 U.S.C. § 106. Ownership “initially vests in the author of a copyrighted work,” then the author “may transfer all or a subset of these rights ‘by any means of conveyance or by operation of law.’” *John Wiley & Sons, Inc. v. DRK Photo*, 882 F.3d 394, 410 (2d Cir. 2018) (quoting 17 U.S.C. § 201)). While ownership naturally lies with the author of an original work, “the presumption of authorial ownership fails . . . if the work is made ‘for hire,’ such as ‘one prepared by an employee within the scope of his or her employment.’” *Avtec Sys. v. Peiffer*, 21 F.3d 568, 571 (4th Cir. 1994) (quoting *Cnty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 737-38 (1989)).

Although a copyright “owner’s rights exist apart from registration, *see* § 408(a), a registration is akin to an administrative exhaustion requirement that the owner must satisfy before suing to enforce ownership rights.” *Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC*, 139 S.Ct. 881, 887 (2019) (internal citation omitted). Once a copyright is registered, “[a] certificate of registration issued by the Copyright Office is ‘prima facie evidence of the validity of the copyright and of the facts stated in the certificate, such as ownership.’” *Univ. Furniture*

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