

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

SONY MUSIC ENTERTAINMENT, *et al.*,
Plaintiffs,

v.

COX COMMUNICATIONS, INC, *et al.*,

Defendants.

Civil No. 1:18-cv-950 (LO / JFA)

**COX'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR
REMITITUR OR, IN THE ALTERNATIVE, A NEW TRIAL
UNDER FEDERAL RULE OF CIVIL PROCEDURE 59(A)**

[PUBLIC VERSION]

TABLE OF CONTENTS

	Page
STANDARD.....	1
ARGUMENT	1
I. The \$1 billion award is a miscarriage of justice; it is shockingly excessive and unlawfully punitive, and should be remitted or result in a new trial.	1
A. This Court has inherent power to remit a grossly excessive statutory damages award.....	2
B. Remittitur is required here; the \$1 billion verdict is completely divorced from the trial evidence and constitutes a miscarriage of justice.....	2
1. The award is grossly excessive in light of statutory damages awards in other copyright cases.	3
2. The \$1 billion award is grossly excessive in light of the evidence and the damages factors the jury was instructed to consider.....	6
3. A substantial remittitur is warranted here.....	17
II. The jury award is so “wholly disproportionate to the offense” that it violates Cox’s right to due process of law.....	19
A. The magnitude of the award is shocking.....	19
B. Cox’s “offense” lacks the reprehensibility that would warrant such a massive damage award.....	20
C. Combined, the shockingly large size of the award and nature of Cox’s “offense” establish that the award must be reduced as a matter of due process.....	21
III. The award is a product of Plaintiffs’ efforts to encourage the jury to “punish” a “deep-pocketed” defendant.....	23
A. At Plaintiffs’ urging, the jury was instructed to “punish” Cox.....	23
B. At Plaintiffs’ insistence, the jury was instructed to consider and improperly heard evidence relating to Cox’s “total profits.”	26
C. The award was based on irrelevant and highly prejudicial evidence of Cox’s revenues untethered to the infringement.....	29
CONCLUSION.....	30

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Atlantic Recording v. Media Group Inc.</i> , 00-CV-6122 (Aug. 23, 2002), 2002 Jury Verdicts LEXIS 52291	3, 4
<i>Basic Books, Inc. v. Kinko's Graphics Corp.</i> , 758 F. Supp. 1522 (S.D.N.Y. 1991).....	28
<i>Benedict v. Hankook Tire Co.</i> , 2018 WL 3352952 (E.D. Va. July 9, 2018).....	6
<i>BMG Rights Mgmt. (US) LLC v. Cox Commc'ns, Inc.</i> , 149 F. Supp. 3d 634 (E.D. Va. 2015), <i>passim</i>	
<i>BMW of North America v. Gore</i> , 517 U.S. 559 (1996).....	15, 20
<i>Capitol Records v. Thomas-Rasset</i> , 680 F. Supp. 2d 1045 (D. Minn. 2010)....., <i>passim</i>	
<i>Cline v. Wal-Mart Stores, Inc.</i> , 144 F.3d 294 (4th Cir. 1998)	1
<i>Columbia Pictures Indus. v. Krypton Broad. of Birmingham, Inc.</i> , 259 F.3d 1186 (9th Cir. 2001)	4, 25
<i>Columbia Pictures Television v. Krypton Broadcasting of Birmingham, Inc.</i> , 106 F.3d 284 (9th Cir. 1997)	25
<i>Cretella v. Kuzminski</i> , 640 F. Supp. 2d 741 (E.D. Va. 2009)	17
<i>Dimick v. Scheidt</i> , 293 U.S. 474 (1935).....	2
<i>Disney Enterprises, Inc. v. VidAngel, Inc.</i> , 371 F. Supp. 3d 708 (C.D. Cal. 2019)	4
<i>Disney Enters., Inc. v. Vidangel, Inc.</i> , 16-cv-04109-AB-PLA, 2019 WL 4565168 (Sept. 5, 2019)	3, 4
<i>Ez-XBRL Sols, Inc. v. Chapke</i> , No. 1:17-cv-700, 2018 U.S. Dist. LEXIS 224803 (E.D. Va. Sep. 25, 2018), <i>adopted in full by</i> 2018 U.S. Dist. LEXIS 224325 (E.D. Va. Oct. 22, 2018).....	5
<i>F.W. Woolworth Co. v. Contemporary Arts</i> , 344 U.S. 228 (1952)....., <i>passim</i>	

..

<i>Gentry v. East West Partners Club Management Co.,</i> 816 F.3d 228 (4th Cir. 2016)	26
<i>Golan v. FreeEats.com,</i> 930 F.3d 950 (8th Cir. 2019)	19, 21, 22
<i>Golan v. Veritas Entertainment,</i> 2017 WL 3923162 (E.D. Mo. Sept. 7, 2017).....	21, 22
<i>Graduate Mgmt. Admission Council v. Raju,</i> 267 F. Supp. 2d 505 (E.D. Va. 2003)	5
<i>John Wiley & Sons, Inc. v. Book Dog Books, LLC,</i> 327 F. Supp. 3d 606 (S.D.N.Y. 2018).....	5, 27, 28
<i>King v. McMillan,</i> 594 F.3d 301 (4th Cir. 2010)	1, 17
<i>LifeNet Health v. LifeCell Corp.,</i> 93 F. Supp. 3d 477 (E.D. Va. 2015)	6
<i>Louis Vuitton Malletier, S.A. v. Akanoc Sols., Inc.,</i> 658 F.3d 936 (9th Cir. 2011)	5
<i>Lowry's Reports, Inc. v. Legg Mason, Inc.,</i> 271 F. Supp. 2d 737 (D. Md. 2003).....	25
<i>Maryland v. Universal Elections Inc.,</i> 862 F. Supp. 2d 457 (D. Md. 2012).....	2
<i>N.A.S. Imp., Corp. v. Chenson Enterprises, Inc.,</i> 968 F.2d 250 (2d Cir. 1992).....	24
<i>Nat'l Football League v. PrimeTime 24 Joint Venture,</i> 131 F. Supp. 2d 458 (S.D.N.Y. 2001).....	5
<i>Oracle Corp. v. SAP AG,</i> 765 F.3d 1081 (9th Cir. 2014)	17
<i>Parker v. Time Warner Entertainment Co.,</i> 331 F.3d 13 (2d Cir. 2003).....	5, 20
<i>Sara Lee Corp. v. Bags of New York, Inc.,</i> 36 F. Supp. 2d 161 (S.D.N.Y. 1999).....	28
<i>Sony BMG Music Entm't v. Tenenbaum,</i> 2012 WL 3639053 (D. Mass. Aug. 23, 2012)	22
<i>Sony BMG Music Entm't v. Tenenbaum,</i> 660 F.3d 487 (1st Cir. 2011).....	2

...

<i>Sony BMG Music Entm't v. Tenenbaum,</i> 719 F.3d 67 (1st Cir. 2013).....	20, 22, 24
<i>St. Louis, I.M. & S. Railway Co. v. Williams,</i> 251 U.S. 63 (1919).....	19, 20, 21, 22
<i>Superior Form Builders, Inc. v. Dan Chase Taxidermy Supply Co.,</i> 74 F.3d 488 (4th Cir. 1996)	24
<i>S. Union Co. v. Irvin</i> , 563 F.3d 788, 790 (9th Cir. 2009)	23
<i>TVB Holdings (USA), Inc. v. HTV Int'l Ltd.,</i> No. 16-CV-1489, 2018 U.S. Dist. LEXIS 41323 (E.D.N.Y. Mar. 9, 2018).....	5
<i>U.S. Equal Employment Opportunity Comm'n v. Consol Energy, Inc.,</i> 860 F.3d 131 (4th Cir. 2018)	1
<i>UMG Recordings, Inc. v. MP3.Com, Inc.,</i> 2000 U.S. Dist. LEXIS 17907 (S.D.N.Y. Nov. 14, 2000)	3
<i>UMG Recordings, Inc. v. MP3.Com, Inc.,</i> 92 F. Supp. 2d 349 (S.D.N.Y. 2000).....	3, 4
<i>Warner Records, Inc. et al. v. Charter Communications, Inc.,</i> Case No. 1:19-cv-00874-RJB-MEH (D. Colo.).....	30

Other Authorities

Fed. R. Civ. P. 50(b)	1
Fed. R. Civ. P. 59(a)	1
4 Nimmer on Copyright § 14.04 (2019)	3
6 Patry on Copyright § 22:208.....	3

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.