



## Court Limits Copyright Statutory Damages to Number of Registrations Owned

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The availability of statutory damages in copyright cases provides plaintiffs with significant leverage in litigation. Statutory damages under the Copyright Act can rise as high as \$150,000 per infringed work if the infringement is willful. Assigning damages based on the number of infringed works is different from setting damages based on each act of infringement. Thus, when a defendant makes multiple infringing copies of a single work the plaintiff is entitled to one statutory award for the infringement, although the plaintiff may choose to receive actual damages instead. Questions arise, however, regarding what constitutes a "work" when calculating statutory damages, both because significant differences in potential damages can hinge on the answer and because the Copyright Act does not define "work."

In *MCS Music America Inc. v. Yahoo! Inc.*, 93 U.S.P.Q.2d (M.D. Tenn. 2010), the court confirmed that, as a matter of law, a plaintiff can recover only as many statutory damages awards as registrations it owns. The plaintiffs in this case pled ownership of copyright registrations for 215 musical compositions and accused defendants of distributing copies of 308 distinct digital sound recordings of those 215 songs without authorization. For instance, plaintiffs alleged that defendants transmitted eight different versions or recordings of John McCutcheon's copyrighted musical composition entitled "Christmas in the Trenches." Plaintiffs owned copyright registrations for the songs' underlying musical compositions, but they did not own separate registrations for different sound recordings of the same song. Plaintiffs argued that each sound recording constituted a distinct "work" protected by the copyright registration in its underlying musical composition, which entitled plaintiffs to a distinct statutory award for each copied sound recording.

The court rejected plaintiffs' interpretation and limited their potential statutory recovery to the number of distinct *registered* works—here, only the 215 musical compositions—explaining:



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Sound recordings and their underlying musical compositions are separate works with their own distinct copyrights. To the extent a disputed musical composition is actually a different musical composition, it is a separate work which requires a separate registration to recover statutory damages. The touchstone for recovery of statutory damages is registration.

93 U.S.P.Q.2d at 1610. The court stated that "a sound recording that is simply a variation of a copyrighted musical composition does not in and of itself make it a separate 'work' for which statutory damages may be awarded." *Id.* at 1611. Accordingly, the court granted defendants' motion on the pleadings to limit any possible statutory damages award to plaintiffs' 215 registrations in the musical compositions.

This decision highlights that authors should secure copyright registrations for each applicable category of work set out in 17 U.S.C. § 102(a)<sup>1</sup> to maximize the potential recovery for infringement. Copyright registrations for the various Section 102(a) categories of works protect against different forms of infringement, so it is worthwhile to register at each level of artistic production; therefore, the composer should register a copyright for his musical composition when he writes a song and the singer should register a copyright for his sound recording when he records it. Because the plaintiffs in *MCS Music America* did not own registrations for each of the 308 allegedly infringed sound recordings, they lost the ability to claim as much as \$13.95 million in additional statutory damages.<sup>2</sup> Had the plaintiffs registered each sound recording, these additional damages could have been available to them.

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<sup>1</sup> 17 U.S.C. § 102(a) sets out the subject matter of copyright as being each of the following works: "(1) literary works; (2) musical works, including any accompanying words; (3) dramatic works, including any accompanying music; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; (7) sound recordings; and (8) architectural works."

<sup>2</sup> The difference between the statutory damages award potentially available to plaintiffs had they registered each sound recording, as compared to their actual potential statutory award by virtue of owning registrations only for musical compositions is computed as: (308 allegedly infringed sound recordings plaintiffs could have registered – plaintiffs' 215 actual registrations for the underlying musical compositions) \* (\$150,000 maximum possible statutory damages award per willfully infringed work) = \$13,950,000 in lost potential statutory damages award. Although this marginal difference reflects a best-case plaintiff's recovery that likely is overly optimistic, this additional potential liability surely would affect defendants' strategy when determining whether to settle the litigation and for how much.