



Successfully Defend Copyright Infringement Claim – Win Attorneys' Fees

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The First Circuit recently confirmed that an alleged copyright infringer who prevails in the copyright infringement action can be entitled to its reasonable attorneys' fees. *Latin American Music Co. v. American Society of Composers, Authors and Publishers*, 98 U.S.P.Q.2d 1409 (1st Cir. 2011).¹ Without getting into the details of this long-running dispute, this decision concerned Latin American Music Co.'s ("LAMCO") appeal from an award of attorneys' fees to the American Society of Composers, Authors and Publishers ("ASCAP") after ASCAP won a jury verdict of non-infringement of the one song still at issue in the proceeding during trial.

Section 505 of the Copyright Act states, in relevant part, "the court may . . . award a reasonable attorney's fee to the prevailing party as part of the costs." 17 U.S.C. § 505. The First Circuit noted that a "prevailing party" is "one who has prevailed on the merits of at least some claims." *LAMCO*, 98 U.S.P.Q.2d at 1411 (quotations omitted). "A showing of frivolity or bad faith is not required; rather, the prevailing party need only show that its opponent's copyright claims . . . were 'objectively weak.'" *Id.* (citations omitted). Here, the First Circuit refused to disturb the district court's finding that LAMCO's claims were weak and its award of fees. The First Circuit stated that it would do so "only if the record persuades us that the trial court indulges in a serious lapse in judgment." *Id.* (citation omitted).

This decision serves as a reminder that, unlike most causes of action in U.S. courts, copyright claims are subject to potential shifting of attorneys' fees – both to the copyright infringement

¹ Available at http://scholar.google.com/scholar_case?case=2581399722402413927.



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plaintiff if it meets the statutory requirements for an award of attorneys' fees and to the copyright infringement defendant if it defeats the copyright infringement claim on the merits.

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