



Unnecessary and Disproportionate: Rationalizing Statutory Damages

Corynne McSherry



Shoplifting 6 \$15 CDs or 4 \$25 DVDs (MA)

Fine: \$250



Subway Fare Evasion (NYC)

Fine: \$100



Selling tobacco to a minor:

Fine:\$200



Speeding:

Fine: \$300



Accepting Over-Limit State
Campaign Donations

Fine: \$1000



Setting a Kitten on Fire



Fine: \$2000 and/or 1 year jail (max, SD)

Image courtesy Michael Richardson



Non-Commercial Copyright Infringement

Fine: \$9250-80,000 per song



Capitol v. Thomas

Verdict 1: \$222,000

Verdict 2: \$1.92 million

Verdict 3: \$1.5 million



“The Court would be remiss if it did not take this opportunity to implore Congress to amend the Copyright Act to address liability and damages in peer-to-peer network cases such as the one currently before this Court. . . . [Defendant’s] status as a consumer who was not seeking to harm her competitors or make a profit does not excuse her behavior. But it does make the award of hundreds of thousands of dollars in damages unprecedented and oppressive.”

-- Judge Michael Davis



Steele | Hansmeier, PLLC
A leading anti-piracy law firm

May 16, 2011

VIA U.S. MAIL
[REDACTED]

Re: *First Time Videos LLC, v. Does 1-500*
Case No. 1:10-cv-06254, Ref [REDACTED]

Dear M [REDACTED]:

Steele | Hansmeier, PLLC has been retained by First Time Videos, LLC to pursue legal action against people who illegally downloaded their copyrighted content (i.e., "digital pirates"). Digital piracy is a very serious problem for adult content producers, such as our client, who depend on revenues to sustain their businesses and pay their employees.

On September [REDACTED] 2010 at [REDACTED] AM (UTC), our agents observed the IP address with which you are associated illegally downloading and sharing with others via the BitTorrent protocol the following copyrighted file(s):

FTV Madeline 3000kbps

The ISP you were connected to: Comcast Cable

Your IP Address you were assigned during your illegal activity: [REDACTED]

We have received a subpoena return from your ISP confirming that you are indeed the person that was associated with the IP address that was performing the illegal downloading of our client's content listed above on the exact date(s) listed above.

On September 29, 2010 we filed a lawsuit in United States Federal Court in the Northern District of Illinois against several anonymous digital pirates (Case No. 1:10-cv-06254). Under the Federal Rules of Civil Procedure, our lawsuit against you personally will not commence until we serve you with a Complaint, which we are prepared to do if our settlement efforts fail. While it is too late to undo the illegal file sharing associated with your IP address, we have prepared an offer to enable our client to recover damages for the harm caused by the illegal downloading and to allow both parties to avoid the expense of a lawsuit.

Legal Correspondence – Settlement Purposes Only – Not Admissible Under FRCP 400

Fax: 312.893.5677 | 161 N. Clark St. 4700, Chicago, IL 60601 | Tel: 312.880.9160
www.wefightpiracy.com



“ Under the Copyright Law of the United States, copyright owners may recover up to \$150,000 in statutory damages . . . per infringing file plus attorney’s fees in cases, whereas here, infringement was willful. In at least one case . . . over \$20,000 per pirated file. . . .

In light of these factors, we believe that providing you with an opportunity to avoid litigation by working out a settlement with use, versus the costs of attorneys’ fees and the uncertainty associated with jury verdicts, is very reasonable and in good faith.”



Irrational \$\$ chills speech

Irrational \$\$ chills innovation

Irrational \$\$ exacerbates other © problems

Irrational \$\$ does not serve copyright's
purpose



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We can do better



Toward A Rational Damages Regime

- 1) No \$\$ where reasonable good faith belief that use was noninfringing
- 2) Minimum \$\$ unless some actual harm
- 3) No (or minimal) \$\$ where personal noncommercial use
- 4) Clear and reasonable guidelines



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