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# Jenner & Block Hits a High Note in Appellate Copyright Win

By Jenna Greene

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A team from Jenner & Block delivered an appellate win worth millions to its record label clients in a long-running copyright infringement suit against a pair of online music websites.

On Tuesday, the U.S. Court of Appeals for the Second Circuit ruled that the trial court judge wrongly cut a jury verdict from \$48 million to \$13 million in 2014.

“In the context of this case, all it takes to be a ‘repeat infringer’ is to repeatedly upload or download copyrighted material for personal use,” wrote Judge Raymond Lohier for the panel.

The dispute revolves around now-bankrupt MP3tunes.com and Sideload.com and its founder and former CEO, Michael Robertson. The sites allowed users to store and play digital music files and search for free songs on the internet.

Represented by Jenner partners Andrew Bart and Luke Platzer, record label EMI and others sued Robertson and MP3tunes in U.S. District Court for the Southern District of New York, claiming that the venture did not have “any legal right or authority to use or exploit” their music, and that the sites eroded legitimate music sales.

After a four week trial, a jury on March 26, 2014 found MP3Tunes and Robertson liable for infringing more than 2,000 copyrights in sound recordings, compositions and cover art owned by EMI and EMI Music Publishing Ltd.

It was the first time a jury had disqualified a defendant from Digital Millennium Copyright Act “safe harbor” protection on the basis of willful blindness since the standard was set in *Viacom v. YouTube*, according to Jenner & Block.

But U.S. District Judge William Pauley III knocked the verdict down to \$13 million, mainly because he substantially limited the jury’s willful blindness and red flag knowledge findings.

According to the Second Circuit, he got that wrong. “[T]here was sufficient evidence to allow a reasonable jury to conclude that MP3tunes had red-flag knowledge of, or was willfully blind to, infringing activity,” the Second Circuit found.



Courtesy photo

Andrew Bart of Jenner & Block.

The panel did affirm Pauley’s decision that MP3tunes and Robertson reproduced and distributed EMI’s copyrighted works without permission.

In a statement, Bart said, “We are gratified the court reinstated the jury’s verdict finding the defendants were willfully blind to the rampant infringement on their website. Significantly, the court agreed with our position that an [internet service provider] forfeits its DMCA safe harbor protections when it is willfully blind to repeat infringement, including by failing to track users who upload or copy infringing files identified on takedown notices.”

Jenner associate J. Douglas Wilson also worked on the case. Frank Scibilia, Mona Simonian and Ross Bagley from Pryor Cashman also represented the EMI music publishing companies.

MP3tunes was represented by Akerman LLP.

*This story has been updated to include the Pryor Cashman team. Contact Jenna Greene at [jgreene@alm.com](mailto:jgreene@alm.com). On Twitter @jgreenejenna.*

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