

Capitol Records, Inc. v. Thomas-Rasset 692 F.3d 899 (8th Cir. 2012)

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BACKGROUND

Defendant-Appellee Jammie Thomas-Rasset is a Minnesota woman found liable in district court for illegally distributing copyrighted music over the Internet. Plaintiff-Appellants are Capitol Records, Inc., Sony BMG Music Entertainment, Arista Records LLC, Interscope Records, Warner Bros. Records, and UMG Recordings, Inc. (the “Record Companies”). The Recording Companies own huge catalogs of music, including the rights to 24 songs Thomas-Rasset was found to have distributed.

The factual and procedural history leading up to this case is complicated. It began in 2005 when the recording companies hired MediaSentry, an investigative firm, to help fight Internet piracy. MediaSentry discovered that someone using the Internet username “tereastarr” was participating in a file-sharing site called KaZaA. Tereastarr had a “share folder” that, according to the investigation, contained more than 1,700 music files. MediaSentry tracked tereastarr’s IP address to an Internet service account in Duluth, Minnesota. The Recording Industry Association of America (RIAA), on behalf of the Record Companies, then issued a subpoena to Charter Communications to obtain the name of the person with tereastarr’s IP address. Charter complied, linking Thomas-Rasset to the IP address. The Record Companies and Thomas-Rasset entered into settlement talks, but did not come to an agreement. The matter went to trial in 2007.

The recording companies sued Thomas-Rasset under the Copyright Act, 17 U.S.C. §§ 101 et. seq. They sought statutory damages and injunctive relief, alleging Thomas-Rasset had violated their exclusive rights under 17 U.S.C. § 106, specifically, the right to reproduction and distribution. In the first of three trials, Thomas-Rasset acknowledged she did sometimes use the name “tereastarr” online, but claimed she had never participated in—or had even heard of—KaZaA. The jury, however, found her liable for willful copyright infringement and awarded statutory damages totaling \$222,000—\$9,250 per song. Months after the verdict, however, the district court *sua sponte* questioned whether it had been wrong to instruct the jury that Thomas-Rasset could be found liable for distribution by making recordings available “regardless of whether actual distribution [had] been shown.” The issue was briefed, and the court

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granted Thomas-Rasset a new trial on the ground that making recordings available to the public was not by itself “distribution.”

In the second trial in 2009, the jury was instructed that the “act of distributing copyrighted sound recordings to other users on a peer-to-peer network, without license from the copyright owners, violates the copyright owners’ exclusive distribution right.” Thomas-Rasset was again found liable. The jury this time awarded damages totaling \$1.92 million—\$80,000 per song. Thomas-Rasset moved to reduce the judgment. The district court, stating that the award was “shocking,” remitted the damages to \$54,000. The Record Companies then moved for a new trial solely on damages.

In the third trial in 2010, the jury awarded the recording companies \$1.5 million—\$62,500 per song. Thomas-Rasset again asked that the damages be reduced, and the district court this time held that the Fifth Amendment’s Due Process Clause permitted no more than a \$54,000 judgment. The district court also enjoined Thomas-Rasset from distributing copyrighted works—but not from making such works available absent actual distribution.

The Record Companies appealed, asking the circuit court to (1) rule that making copyrighted music available, even without evidence of actual distribution, violated the Copyright Act; (2) expand the injunction against Thomas-Rasset so that it covered making copyrighted works available; and (3) reinstate the first jury’s award of \$222,000. The Record Companies’ request that the original (and significantly lower) award be reinstated was a strategic attempt to force the circuit court to rule on whether making copyrighted music available was itself a violation of copyright law. Thomas-Rasset cross-appealed, arguing that any award under the statute in her case—even the minimum damages—would have been unconstitutional.

ISSUES

The United States Court of Appeals for the Eight Circuit determined there was no Article III case or controversy on the question of whether making music available violated copyright law. It was possible, the court said, to settle the matters still in dispute—the scope of the injunction and the constitutionality of the statutory damages—without reaching that question. That left two justiciable issues: (1) whether the injunction’s scope would be expanded to prevent Thomas-Rasset from making copyrighted music available to the public and (2) whether statutory damages of \$222,000 violated the Due Process Clause.

DECISION

On the first issue, the circuit court expanded the injunction to include making music available, noting that Thomas-Rasset had shown “a proclivity for unlawful conduct.” On the second, the court held that damages totaling \$222,000 did not violate the Due Process Clause. The

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court drew a distinction between punitive and statutory damages, and ruled that the award was not “so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable.”

REASONING

In weighing whether to broaden the injunction, the court noted that even if the district court was right that the scope of the Copyright Act did not provide an exclusive right to the Record Companies to making recordings available, that did not mean that such activity could not be enjoined. The district court was permitted to enjoin lawful conduct if that was needed to stop the defendant from violating the plaintiffs’ rights. Thomas-Rasset’s willful infringement of the Copyright Act and subsequent attempts to cover it up comprised “a proclivity for unlawful conduct.” The Record Companies had shown the district court’s injunction would be hard to enforce because of the difficulty involved in findings instances of actual transfer of files. The court granted the recording companies’ request for a broader injunction—one that covered making copyrighted music available to the public.

In determining whether a \$222,000 statutory award violated the Due Process Clause, the court addressed Thomas-Rasset’s argument that it should consider the “guideposts” used by the United States Supreme Court for reviewing punitive damage awards. The factors that are considered when someone brings a Due Process challenge to a punitive damages award are: “(1) the degree of reprehensibility of the defendant’s misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.”¹ However, the court here drew a sharp line between statutory damages and punitive damages. It noted that the Supreme Court “never has held that the punitive damages guideposts are applicable in the context of statutory damages.” *Campbell* stressed the importance of a defendant having “fair notice” before being subject to dramatic punitive damages, the court stated. However, in the context of statutory damages, the defendant is already on notice because the damages in question are identified within the statute. Furthermore, applying the guideposts would be unworkable in the context of statutory damages. First, considering “the disparity between ‘actual harm’ and an award of statutory damages” would make “no sense” because statutory damages are established specifically for cases in which calculating actual harm is difficult. Second, a court could never consider the difference between a statutory damage award and the civil penalties permitted in comparable cases because the statutory damages *are* the civil penalties that are permitted. The court rejected Thomas-Rasset’s argument that it should adopt the punitive damages guideposts in the statutory context.

1. *State Farm Mutual Auto Insurance Co. v. Campbell*, 538 U.S. 408, 418 (2003).

The court then relied on the decades-old standard set out in *St. Louis, I.M. & S. Ry. Co. v. Williams*² *Williams* held that statutory damages violate the Due Process Clause if they are “so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable.”³ In determining that the \$222,000 award did not violate the *Williams* standard, the court gave deference to Congress’s “wide latitude of discretion,”⁴ to set damages for willful copyright infringement. It noted that the damages—\$9,250 per song—were actually on the low end of the scale given that the statute allowed damages of \$750 to \$150,000 per infringed work. (Had the maximum per-song award been given in Thomas-Rasset’s case, the damages would have totaled \$3.6 million.) Importantly, the court stressed that a public interest (supporting and rewarding authors and inventors) was at stake rather than a “special private benefit.” This logic was crucial toward disposing of Thomas-Rasset’s argument that even an award of \$750 per violation would be disproportionate to her offense. She argued that the even the statutory minimum was unconstitutional because it was not based on any evidence of actual harm caused by her specific infringement. However, the court stressed that given that protecting copyright is a public interest, the statutory damages are imposed as a substitute for unprovable actual damages. The court held the \$222,000 award did not violate the *Williams* standard.

Finally, the court upheld the damages despite the fact that Thomas-Rasset was not involved in a for-profit venture. It noted that nowhere in the statute was there an exception for those who acted without a profit motive. Further, the legislative record suggested that Congress was concerned about the threat of noncommercial copyright infringement when established the damages at the lower end of the range. And the court refused to engage in a game of hypotheticals in which Thomas-Rasset noted that, had she been sued based on an infringement of 1,000 copyrighted songs instead of 24, the damages would have been much, much larger. The court stated: “The recording companies here opted to sue over twenty-four recordings . . . If and when a jury returns a multi-million dollar award for noncommercial online copyright infringement, then there will be time enough to consider it.”

2. *St. Louis, I.M. & S. Ry. Co. v. Williams*, 251 U.S. 63 (1919).

3. *Id.* at 67.

4. *Id.* at 66.