

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

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SONY BMG MUSIC ENTERTAINMENT, )  
et al., )  
Plaintiffs, )  
)  
v. )  
)  
JOEL TENENBAUM, )  
Defendant. )  
\_\_\_\_\_

Civil Action No. 07cv11446-NG

**GERTNER, D.J.:**

**MEMORANDUM REGARDING PLAINTIFFS' MOTION FOR INJUNCTIVE RELIEF  
AND ENTRY OF JUDGMENT**

December 7, 2009

Plaintiffs have moved for entry of judgment and for a permanent injunction that (1) orders defendant to refrain from infringing on plaintiffs' copyrights now and in the future; (2) requires defendant to destroy all copies of plaintiffs' recordings that defendant has downloaded without plaintiffs' authorization; and (3) bars defendant from "promot[ing] or advertis[ing] using the Internet or any online media distribution system to infringe copyrights." (Pls.' Mot. for Entry of J. & Proposed J., document #13.) Defendant opposes plaintiffs' motion. Many of the arguments raised in defendant's opposition are more appropriately included in a motion for new trial or remittitur. Defendant is welcome to renew these arguments in such a motion, and the Court will address them after plaintiffs have had an opportunity to respond.

Although plaintiffs are clearly entitled to entry of judgment in accordance with the jury's verdict, their request for a permanent injunction is another matter. As plaintiffs recognize, a motion for a permanent injunction under 17 U.S.C. §§ 502 and 503 invokes the equitable discretion of the Court. Courts have traditionally considered four factors in determining whether to grant a request for a permanent injunction: (1) whether the plaintiff "has suffered an irreparable injury"; (2) whether "remedies available at law, such as monetary damages, are

inadequate to compensate for that injury”; (3) whether, “considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted”; and (4) whether “the public interest would not be disserved by a permanent injunction.”<sup>1</sup> CoxCom, Inc. v. Chaffee, 536 F.3d 101, 112 (1st Cir. 2008) (quoting eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391 (2006)). Here, these factors clearly weigh in favor of granting an injunction that prohibits defendant from infringing on plaintiffs’ copyrights in the future and requires him to destroy copies of copyrighted works that he has downloaded without plaintiffs’ authorization. Once copyright infringement is established, irreparable injury is generally presumed, as is the conclusion that monetary damages alone are inadequate to compensate plaintiffs. See Universal City Studios, Inc. v. Reimerdes, 111 F. Supp. 2d 294, 344 (S.D.N.Y. 2000) (noting that courts have generally presumed “that copyright and trademark infringement cause irreparable injury, i.e., injury for which damages are not an adequate remedy” (footnote omitted)). Requiring defendant to refrain from future copyright violations and to destroy copies of unlicensed downloads would not impose any hardship on him because it would merely enjoin him to relinquish the fruits of his copyright violations and to comply with the law in the future. In addition, the public interest would be served by enjoining defendant to abide by federal copyright laws. See Concrete Mach. Co. v. Classic Lawn Ornaments, Inc., 843 F.2d 600, 612 (“[I]t is virtually axiomatic that the public interest can only be served by upholding copyright protections . . . .” (quoting Apple Computer, Inc. v. Franklin Computer Corp., 714 F.2d 1240,

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<sup>1</sup> The First Circuit has suggested that this four-factor test may not apply in cases, such as this one, “where Congress has specifically authorized injunctive relief.” CoxCom, Inc. v. Chaffee, 536 F.3d 101, 112 n.14 (1st Cir. 2008). However, since plaintiffs’ request for an injunction prohibiting defendant from infringing on their copyrights and requiring him to destroy copies of illegally downloaded recordings satisfies the four-factor test, the Court need not decide the question of whether the test applies to injunctions issued under 17 U.S.C. §§ 502 and 503.

1255 (3d Cir. 1983))).

Plaintiffs' request for an injunction curtailing defendant's expressive activity is a different story. This Court must refrain from issuing an injunction that imposes an unconstitutional prior restraint on defendant's right to free speech. See, e.g., New York Times Co. v. United States, 403 U.S. 713, 714 (1971) (per curiam). Accordingly, any injunction issued by this Court must "burden no more speech than necessary to serve a significant government interest." Madsen v. Women's Health Center, Inc., 512 U.S. 753, 765 (1994). Plaintiffs' proposed injunction falls far short of meeting this test. Plaintiffs request that the Court bar defendant from "promot[ing] . . . using the Internet or any online media distribution system to infringe copyrights." The word "promote" is far too vague to withstand scrutiny under the First Amendment. Although plaintiffs are entitled to statutory damages, they have no right to silence defendant's criticism of the statutory regime under which he is obligated to pay those damages. This Court has neither the desire nor the authority to serve as the censor of defendant's public remarks regarding online file sharing. The Court will instead enter an injunction that is similar to the injunction requested in plaintiffs' original complaint, which did not include any language about defendant promoting or advertising online file sharing.

Accordingly, **Plaintiffs' Motion for Entry of Judgment (document #13)** is **GRANTED IN PART AND DENIED IN PART**, as reflected in the Judgment that accompanies this memorandum.

**SO ORDERED.**

**Date: December 7, 2009**

*/s/ Nancy Gertner*  
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**NANCY GERTNER, U.S.D.C.**