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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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ODNIL MUSIC LIMITED and FIFTY-  
SIX HOPE ROAD MUSIC LIMITED,

NO. CIV. S-05-0545 WBS JFM

Plaintiffs,

v.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

KATHARSIS LLC, WILLIAM JOSEPH  
SCHECK and NATHANIEL CHRISTOPHER  
SCHECK,

Defendants.

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This matter came on regularly for trial before the court, sitting without a jury, on July 18, 2006. Plaintiffs were represented by Alan M. Steinberg, Esq. Defendant William Joseph Scheck appeared in propria persona. No appearance was made on behalf of defendants Katharsis LLC or Nathaniel Christopher Scheck. Because defendant Nathaniel Scheck failed to appear for trial, and the Magistrate Judge having heretofore made his Findings and Recommendations recommending that default judgment be entered against defendant Katharsis, plaintiffs



1 desire to perform lawfully the copyrighted musical compositions  
2 in the ASCAP repertory.

3           6. At the time of the events which are the subject of  
4 this action, defendant Katharsis, LLC was a California limited  
5 liability company that, at all times pertinent, owned,  
6 controlled, managed, operated and maintained a place of business  
7 for public entertainment, accommodation, amusement and  
8 refreshment known as the "Owl Club," which is located at 109-111  
9 Church Street, Roseville, California.

10           7. The Owl Club commenced operation under the  
11 ownership of Katharsis, LLC in January 2003.

12           8. At all times relevant to this action, defendants  
13 William Joseph Scheck and Nathaniel Christopher Scheck were the  
14 sole owners, members and managers of Katharsis, LLC.

15           9. At all relevant times, defendants William Scheck  
16 and Nathaniel Scheck each had a direct financial interest in the  
17 activities conducted at the Owl Club, including but not limited  
18 to the performance of musical works. They operated, or intended  
19 to operate, Katharsis, LLC and the Owl Club at a profit.

20           10. At all relevant times, defendants William Scheck  
21 and Nathaniel Scheck each exercised control over and management  
22 of the operations of the Owl Club, including but not limited to  
23 direction and supervision of employees, selecting entertainment  
24 at the Club, booking bands, and playing music and music videos  
25 on audiovisual equipment at the Club.

26           11. At all relevant times, defendants William Scheck  
27 and Nathaniel Scheck each had the authority to make decisions  
28 concerning the operation of the Owl Club, including the decision

1 whether to obtain an ASCAP license for the Owl Club.

2 12. During the period August 4, 2003 through August  
3 17, 2004, representatives of ASCAP repeatedly offered the Owl  
4 Club an ASCAP license.

5 13. Also during the period August 4, 2003 through  
6 August 17, 2004, ASCAP representatives on numerous occasions  
7 contacted defendants by letters, telephone calls, and personal  
8 visits as part of ASCAP's unavailing efforts to persuade  
9 defendants to obtain a license for the Owl Club, which would  
10 have enabled defendants to perform publicly and lawfully ASCAP's  
11 members' copyrighted songs, thereby avoiding this litigation.

12 14. ASCAP repeatedly advised defendants that in order  
13 to perform lawfully any of the copyrighted musical compositions  
14 in the ASCAP repertory at the Owl Club, permission is required  
15 from either ASCAP or the individual copyright owners directly.

16 15. Moreover, ASCAP repeatedly reminded defendants of  
17 their potential liability under the United States Copyright Law  
18 for the unauthorized public performance of copyrighted musical  
19 compositions at the Owl Club. Nonetheless, defendants repeatedly  
20 ignored and rejected ASCAP's offers of a license.

21 16. Defendants never obtained permission from ASCAP or  
22 plaintiffs to perform the Copyrighted Works, with the result  
23 that the performances of musical works in the ASCAP repertory  
24 have been, and continue to be, unlicensed.

25 17. The estimated license fees that defendants would  
26 have paid if the Owl Club had been properly licensed by ASCAP  
27 from August 4, 2003 to present are approximately \$3,401.71  
28 (including the applicable license fee of \$1,224.00 for 2006).

1           18. The out-of-pocket expenses incurred by ASCAP to  
2 obtain the evidence of defendants' infringing conduct on which  
3 this action is based is \$593.60. In addition, ASCAP incurred  
4 expenses of \$758.42 in connection with a subsequent  
5 investigation to demonstrate defendants' continued infringing  
6 conduct, for a total of \$1,352.02 in out-of-pocket expenses.

7           19. ASCAP engaged an independent investigator, Scott  
8 Greene, to visit the Owl Club on the night of September 2, 2004  
9 when it was open to the public. During the course of his visit  
10 to the Owl Club, at approximately 8:30 p.m., Mr. Greene saw the  
11 bartender load a DVD into the DVD player located behind the bar.  
12 He observed on the television screen that the DVD was "loading."  
13 Mr. Greene then saw and heard the playing of a Bob Marley and  
14 the Wailers filmed concert performed publicly for the enjoyment  
15 of the Owl Club's patrons. Among the songs Mr. Greene saw and  
16 heard being performed on the Owl Club's television and speakers,  
17 Mr. Greene identified the Copyrighted Works - Bob Marley's songs  
18 entitled "EXODUS," "JAMMING," "AMBUSH IN THE NIGHT," and "AFRICA  
19 UNITE."

20           20. Later that evening, at approximately 10:45 p.m.,  
21 Mr. Greene saw defendant Nathaniel Scheck re-start the DVD  
22 player and again saw and heard the same Bob Marley concert  
23 performed publicly for the enjoyment of the Owl Club's patrons  
24 on the television set and speakers. Mr. Greene saw and heard the  
25 four Copyrighted Works publicly performed for a second time  
26 before leaving the Owl Club at approximately 12:15 a.m. on  
27 September 3, 2004.

28           21. Mr. Greene made written notes of his observations

1 at the Owl Club on the night of September 2, 2004, including a  
2 list of the titles of all songs performed during his visit to  
3 the Club, that he was able to recognize. Thereafter, on  
4 September 8, 2004, Mr. Greene prepared an "Investigator's  
5 Report" based upon his notes and recollection.

6           22. Defendants have presented no credible evidence to  
7 contradict Mr. Greene's detailed testimony as to public  
8 performance of the Copyrighted Works at the Owl Club on the  
9 night of September 2-3, 2004.

10           23. Defendants have also presented no evidence  
11 whatsoever, other than the fact that ASCAP is apparently  
12 operating under a sixty year old consent decree with the  
13 Department of Justice, to support William Scheck's repeated  
14 accusation that ASCAP is somehow involved in extortionate or  
15 criminal conduct. No evidence was presented, nor is there  
16 anything to suggest, that ASCAP is not acting in full compliance  
17 with the law.

18           24. All performances of copyrighted material described  
19 above occurred without a license from ASCAP, or permission  
20 obtained from either the plaintiffs or anyone acting on their  
21 behalf.

22           25. Defendants' conduct in causing the Copyrighted  
23 Works to be performed on their premises without a licence was  
24 willful. For more than a year before the infringing performances  
25 on which this action is based occurred, defendants knew that the  
26 Owl Club was not licensed to perform copyrighted musical  
27 compositions in the ASCAP repertory, and that the unlicensed  
28 performances of such music constituted copyright infringement,

1 exposing them to liability and the risk of paying substantial  
2 monetary damages.

3           26. Nevertheless, defendants deliberately chose to  
4 disregard the rights and protection afforded to plaintiffs under  
5 the Copyright Law. Upon receiving the August 4, 2003 letter and  
6 license application from ASCAP, defendants discussed and decided  
7 not to enter into a license agreement with ASCAP. They persisted  
8 in that position despite ASCAP's repeated efforts to persuade  
9 defendants to obtain an ASCAP license.

10           27. Defendant William Scheck did more than simply  
11 ignore ASCAP's entreaties. It is undisputed that he threatened  
12 ASCAP representatives with physical bodily harm. On August 12,  
13 2004, Tom Janci, an Area Licensing Manager for ASCAP visited the  
14 Owl Club to discuss licensing of copyrighted songs. William  
15 Scheck became verbally abusive, so Mr. Janci left the Owl Club.  
16 William Scheck followed Mr. Janci to his car. Mr. Janci locked  
17 himself in his car as William Scheck threatened him with bodily  
18 harm and demanded that he get out of his car and fight. Mr.  
19 Janci escaped unharmed. A few days later, on August 16, 2004,  
20 Dean Demerritt, a Director of Licensing for ASCAP, spoke with  
21 William Scheck on the telephone. William Scheck confirmed his  
22 intention of harming Mr. Janci and then threatened Mr. Demerritt  
23 and any other ASCAP representative that visits the Owl Club with  
24 bodily harm. William Scheck admitted to, and reaffirmed his  
25 threats in his deposition and trial testimony.

26           28. Defendant William Scheck also wilfully attempted  
27 to frustrate plaintiffs' ability to recover on any judgment  
28 against Katharsis LLC in this action, by taking steps to



1 Title 17 U.S.C. §§ 101, et seq. This court has subject matter  
2 jurisdiction of this action under 28 U.S.C. § 1331 (federal  
3 question) and 28 U.S.C. §1338(a) (United States Copyright Law).  
4 Venue in this District is proper under 28 U.S.C. § 1400(a).

5 2. This court has personal jurisdiction over  
6 defendants.

7 3. The Copyright Act, 17 U.S.C. §§ 101 et seq., gives  
8 a copyright owner the exclusive right to perform its copyrighted  
9 song publicly, 17 U.S.C. § 106(4), and those who publicly  
10 perform the song without permission from the copyright owner  
11 thereby infringe the copyright, id., § 501(a).

12 4. The elements of copyright infringement by  
13 unauthorized public performance in violation of 17 U.S.C. §§ 101  
14 and 106(4) are:

15 (a) the originality and authorship of the compositions  
16 involved;

17 (b) compliance with the formalities required to secure  
18 a copyright Under Title 17, United States Code;

19 (c) plaintiffs' ownership of the copyrights of the  
20 relevant compositions;

21 (d) defendants' public performance of the  
22 compositions; and

23 (e) defendants' failure to obtain permission from the  
24 plaintiffs or their representatives for such performance.

25 Jobete Music Co., Inc. v. Johnson Communications, Inc., 285 F.  
26 Supp. 2d 1077, 1082 (S.D. Ohio 2003); see also Almo Music Corp.  
27 v. 77 East Adams, Inc., 647 F. Supp. 123, 124 (N.D.  
28 Ill. 1986).

1           5. The uncontroverted evidence establishes the  
2 originality and authorship of the Copyrighted Works, plaintiffs'  
3 compliance with the statutory formalities of Title 17, and  
4 defendants' failure to obtain permission from plaintiffs or  
5 their representatives to perform those works.

6           6. Although defendant William Scheck has stated that  
7 he contests plaintiffs' ownership of the copyrights of the  
8 compositions in question, and further denies that those  
9 compositions, or any other copyrighted compositions, were  
10 performed at the Owl Club, plaintiffs have clearly met their  
11 burden of establishing these elements of their claim as well.

12           7. Copyright registration certificates constitute  
13 prima facie evidence of the facts stated therein. 17 U.S.C. §  
14 410(c). Plaintiffs conclusively establish their ownership of  
15 valid copyrights in the four songs in suit by proffering into  
16 evidence the copies of copyright registration certificates and  
17 other pertinent documents. Flick-Reedy v. Hydro-Line Mfg. Co.,  
18 351 F.2d 546, 549 (7th Cir. 1965), cert denied, 383 U.S. 958  
19 (1966); Interstate Hotel Co. v. Remick Music Corp., 157 F.2d 744  
20 (8th Cir. 1946); Flyte Tyme Tunes v. Miskiewicz, 715 F. Supp.  
21 919 (E.D. Wis. 1989) (accepting ASCAP paralegal's affidavit and  
22 copies of copyright documents as proof of plaintiffs' ownership  
23 of valid copyrights). This establishes the first three elements  
24 of proof articulated by the court in Jobete Music Co., Inc.,  
25 supra, 285 F. Supp. 2d at 1082.

26           8. The testimony of ASCAP's investigator, Scott  
27 Greene, proves performances of plaintiffs' songs at the Owl  
28 Club. See, e.g., Flyte Tyme Tunes, supra, 715 F. Supp. at 921;

1 Milene Music v. Gotauco, 551 F. Supp. 1288, 1293 (D. R.I. 1982).

2           9. At the time of the performances of plaintiffs' four  
3 songs, none of the defendants had permission from plaintiffs or  
4 ASCAP, or any of ASCAP's members, or anyone acting of their  
5 behalf to perform publicly any of the musical compositions in  
6 the ASCAP repertory. Defendants concede this point. This  
7 establishes that performances of plaintiffs' songs were  
8 unauthorized. See, e.g., Flyte Tyme Tunes, supra, 715 F. Supp.  
9 at 921; Milene Music, supra, 551 F. Supp. at 1294.

10           10. Defendants have no excuse for not having obtained  
11 proper authorization to use copyrighted music at the Owl Club.  
12 Their reliance on Twentieth Century Music Corporation v. Aiken,  
13 421 U.S. 151 (1975), is misplaced. That case applies only to the  
14 listening of radio broadcasts of copyrighted compositions.  
15 Likewise, 17 U.S.C. § 110 is inapplicable to the facts here.  
16 That statute makes an exception for the performance or display  
17 of musical works ". . . intended to be received by the general  
18 public, originated by a radio or television broadcast . . ."  
19 The public playing of a DVD is not excepted under either Aiken  
20 or § 110.

21           11. ASCAP undertook extensive efforts to inform  
22 defendants of their responsibilities under the Copyright Act and  
23 their potential liability. In light of ASCAP's numerous contacts  
24 with the defendants about the need for permission to perform  
25 publicly copyrighted music, and defendants' refusal to obtain a  
26 license for any performances of music, defendants' public  
27 performance of the Copyrighted Works on September 2, 2004 was  
28 deliberate and willful. International Korwin Corp. v. Kowalczyk,

1 855 F.2d 375, 381 (7th Cir. 1988); Swallow Turn Music v. Wilson,  
2 831 F. Supp. 575, 579-580 (E.D. Tex. 1993).

3 12. Moreover, defendant William Scheck threatened  
4 ASCAP representatives with physical bodily harm on multiple  
5 occasions. Mr. Scheck was fully aware of the necessity to  
6 obtain permission to perform copyrighted music; yet, he  
7 responded to ASCAP's offers of a license with belligerence and  
8 blatant disregard for the Copyright Law.

9 13. "[C]opyright infringement is a tort, for which all  
10 who participate in the infringement are jointly and severally  
11 liable." Jobete Music Co., Inc., supra, 285 F. Supp. 2d at  
12 1083.

13 14. Liability for copyright infringement extends to  
14 those who own or control the premises where the infringing  
15 conduct occurred, have the right and ability to supervise those  
16 responsible for the infringing conduct, and derive direct  
17 financial benefit from infringing performances on those  
18 premises. See, e.g., Ellison, supra, 357 F.3d at 1076; A & M  
19 Records v. Napster, Inc., 239 F.3d 1004, 1013 (9th Cir.2001);  
20 Fonovisa, Inc. v. Cherry Auction, Inc., 76 F.3d 239 (9th Cir.  
21 1996); Broadcast Music, Inc. v. Blueberry Hill Family  
22 Restaurants, Inc., 899 F. Supp. 474, 480-81 (D. Nev. 1995);  
23 Milene Music, supra, 551 F. Supp. at 1295.

24 15. In this case, the company defendant, Katharsis,  
25 LLC, has failed to make an appearance and default judgment has  
26 been requested by plaintiffs. Katharsis, LLC's liability is  
27 nonetheless clear, as defendants admit it has owned and operated  
28 the Owl Club since January 2003. See Almo Music, supra, 647 F.

1 Supp. 124.

2           16. Mr. Greene's testimony establishes that defendant  
3 Nathaniel Scheck was responsible for the re-playing of the DVD  
4 containing the Copyrighted Works on the night of September 2-3,  
5 2004. Defendant William Scheck was present at the Club at that  
6 time, and may also be liable for such conduct, even though he  
7 did not himself perform the copyrighted work. See, e.g., Boz  
8 Scaggs Music v. KND Corp., 491 F. Supp. 908, 913 (D. Conn.  
9 1980); Jobete Music, supra, 285 F. Supp. 2d at 1083.

10           17. Defendant William Joseph Scheck has personal  
11 liability for the infringing performances of plaintiffs'  
12 Copyrighted Works under the doctrine of vicarious liability, the  
13 prerequisites for which are that: (1) the individual has the  
14 right and ability to supervise the infringing activity, and (2)  
15 the individual has a direct financial interest in such  
16 activities. Ellison, supra, 357 F.3d at 1076; see also Gershwin  
17 Publ'g Corp. v. Columbia Artists Mgmt., Inc., 443 F.2d. 1159 (2d  
18 Cir. 1971); and Jobete Music, supra, 285 F. Supp. 2d at 1083.

19           18. As the sole members and owners of Katharsis, LLC,  
20 William and Nathaniel Scheck jointly exercised control over the  
21 daily operations of the Owl Club and make all business  
22 decisions, including what music is to be performed at the Club.  
23 Also, as Katharsis' sole members and owners, both Schecks earned  
24 money from alcohol sales at the Owl Club while music was being  
25 performed for the entertainment of the Club's patrons - a direct  
26 financial interest in the infringing activities that occurred as  
27 part of the operation of the business. Defendant William Scheck  
28 is, therefore, jointly liable with his son as an infringer. See,

1 e.g., Marvin Music Co. v. BHC Ltd. Partnership, 830 F. Supp.  
2 651, 655 (D. Mass. 1993) (the court held that "by virtue of his  
3 multiple roles in the club's management and ownership, [the  
4 individual defendant] had a substantial financial stake in the  
5 infringing activity, which undoubtedly attracted patrons to the  
6 Club"); Ellison, supra, 357 F.3d at 1076; A & M Records, supra,  
7 239 F.3d at 1013; Fonovisa, Inc., supra, 76 F.3d 239.

8 19. The Copyright Law, 17 U.S.C. § 502(a), provides in  
9 pertinent part:

10 Any court having jurisdiction of a civil action arising  
11 under this title may . . . grant temporary and final  
12 injunctions on such terms as it may deem reasonable to  
13 prevent or restrain infringement of copyright.

14 20. Recognizing that plaintiffs in this type of action  
15 represent all of ASCAP's members, the courts now routinely  
16 enjoin defendants from performing any and all music in the  
17 ASCAP repertory. See Sailor Music v. IML Corp., 867 F. Supp.  
18 565, 569-570 (E.D. Mich. 1994); Swallow Turn Music, supra, 831  
19 F. Supp. at 581. Plaintiffs are entitled to similar relief here.

20 21. The Copyright Act, 17 U.S.C. § 504(c)(1), provides  
21 in pertinent part:

22 [T]he copyright owner may elect . . . to recover, instead  
23 of actual damages and profits, an award of statutory  
24 damages for all infringements involved in that action, with  
25 respect to any one work . . . in a sum not less than \$750  
26 or more than \$30,000 as the Court considers just.

27 22. "The court has wide discretion in determining the  
28 amount of statutory damages to be awarded, constrained only by  
the specified maxima and minima." Harris v. Emus Records Corp.,  
734 F.2d 1329, 1335 (9th Cir.1984); see, e.g., F. W. Woolworth  
Co. v. Contemporary Arts, Inc., 344 U.S. 228, 231-32 (1952).

1           23. In F. W. Woolworth Co. v. Contemporary Arts, Inc.,  
2 the United States Supreme Court held that merely awarding  
3 plaintiffs damages equal to lost profits does not sufficiently  
4 deter infringements. Thus, courts should formulate a damage  
5 award that will achieve the deterrent purposes served by the  
6 statutory damages provision. The Supreme Court said:

7           . . . [A] rule of liability which merely takes away the  
8 profits from an infringement would offer little  
9 discouragement to the infringers. It would fall short of an  
10 effective sanction for enforcement of the copyright policy.  
11 The statutory rule, formulated after long experience, not  
12 merely compels restitution of profit and reparation for  
13 injury but also is designed to discourage wrongful conduct.  
The discretion of the court is wide enough to permit a  
resort to statutory damages for such purposes. Even for  
uninjurious and unprofitable invasions of copyright the  
court may if it deems it just, impose a liability within  
the statutory limits to sanction and vindicate statutory  
policy.

14 Id., 344 U.S. at 233.

15           24. Another court has put it more bluntly: infringers  
16 should not be free to "sneer" in the face of the Copyright Act;  
17 courts must put defendants on notice that it costs less to obey  
18 the Copyright Act than to violate it. International Korwin Corp.  
19 v. Kowalczyk, 665 F. Supp. 652, 659 (N.D. Ill. 1987), aff'd, 855  
20 F.2d 375 (7th Cir. 1988); see also Flyte Type Tunes, supra, 715  
21 F. Supp. at 922 ("a violation of Copyright Law [is] a serious  
22 matter requiring deterrence . . ."). Recognizing the important  
23 deterrent purpose served by statutory damages, the courts  
24 routinely award as statutory damages in cases such as this  
25 amounts that are between two and three times license fees. See,  
26 e.g., Frank Music Corp. v Metro-Goldwyn-Mayer, Inc., 886 F.2d  
27 1545, 1554 (9th Cir. 1989), cert. denied, 494 U.S. 1017 (1990)  
28 ("Statutory damages are available in order to effectuate two

1 purposes underlying the remedial provisions of the Copyright  
2 Act: to provide adequate compensation to the copyright holder  
3 and to deter infringement."); Broadcast Music, Inc. v. Star  
4 Amusements, Inc., 44 F.3d 485, 488 (7th Cir. 1995);  
5 International Korwin Corp., supra, 855 F.2d 375 (license fees  
6 owed would have been approximately \$3,500; damages totaled  
7 \$10,500); and Fermata Int'l Melodies, Inc. v. Champions Golf  
8 Club, Inc., 712 F. Supp. 1257, 1264 (S.D. Tex. 1989) (awarding  
9 \$8,000 when \$2,400 in license fees owed); Boz Scaggs Music, 491  
10 F. Supp. 908 (\$1,000 for each of 23 infringements; license fees  
11 would have totaled approximately \$6,000).

12           25. In this case, because defendants repeatedly  
13 rejected and ignored ASCAP's offers of a license; acted as if  
14 they are not subject to the copyright laws; threatened ASCAP  
15 representatives with bodily harm on at least two occasions;  
16 wilfully attempted to frustrate plaintiffs' ability to recover  
17 any judgment against Katharsis LLC in this action by taking  
18 steps to dissolve the corporation and transfer its liquor  
19 license; and have continued to perform copyrighted works in the  
20 ASCAP repertory even after the filing of this lawsuit and as  
21 recently as February 3, 2006, defendants are willful infringers.

22           26. Given the defendants' blatantly willful conduct,  
23 an appropriate statutory damages award in this case is \$3,000.00  
24 per infringement for a total of \$12,000.00 (approximately four  
25 times the license fees "saved") -- well within the statutory  
26 range of \$750 to \$30,000 per infringement under 17 U.S.C.  
27 §504(c)(1). This amount will hopefully serve as a deterrent to  
28 defendants' further infringing conduct and serves as well the

1 other objectives of the Copyright Law. To award less would  
2 reward defendants for their deliberate failure to comply with  
3 the law and send the wrong message to other potential  
4 infringers.

5 27. The Copyright Act provides for the imposition of  
6 costs and attorneys' fees in favor of the prevailing party:

7 In any civil action under this title, the court in its  
8 discretion may allow the recovery of full costs by or  
9 against any party other than the United States or an  
10 officer thereof. Except as otherwise provided by this  
11 title, the court may also award a reasonable attorney's fee  
12 to the prevailing party as part of the costs.

13 17 U.S.C. § 505.

14 28. "Plaintiffs in copyright actions may be awarded  
15 attorney's fees simply by virtue of prevailing in the action: no  
16 other precondition need be met, although the fee awarded must  
17 be reasonable." Frank Music Corp., supra, 886 F.2d at 1556. See  
18 also Fogerty v. Fantasy, Inc., 510 U.S. 517 (1994).

19 29. In Milene Music, Inc., on facts very similar to  
20 this case, the Rhode Island District Court concluded that:

21 . . . The defendants have deliberately and knowingly  
22 infringed upon plaintiffs' copyrights; and subsequent to  
23 such infringement, have forced the plaintiffs to engage  
24 lawyers and to resort to the courts to enforce the  
25 proprietary interests in the copyrights. The defendants, in  
26 the court's view, have come forward with no justification  
27 for their actions, nor any colorable grounds upon which  
28 defense or mitigation could be predicted. The Court  
believes that this litigation fairly cries out for an award  
of attorneys' fees.

551 F. Supp. at 1298.

30. Here, defendants knowingly and deliberately  
infringed upon plaintiffs' copyrights, continue to perform  
copyrighted materials in the ASCAP repertory, refused to obtain

1 permission to perform copyrighted materials, threatened ASCAP  
2 representatives with bodily harm, and forced this matter to be  
3 litigated through trial. Plaintiffs are therefore entitled to  
4 recover reasonable attorneys' fees and costs.

5           31. The precise amount of fees and costs incurred by  
6 plaintiffs shall be determined by this court upon plaintiffs'  
7 post-trial motion in accordance with Local Rule 54-293.

8           32. 28 U.S.C. § 1961 specifies that "[i]nterest shall  
9 be allowed on any money judgment in a civil case recovered in a  
10 district court." Plaintiffs are entitled to post-judgment  
11 interest on the monetary award.

12           IT IS THEREFORE ORDERED THAT:

13           1. The Findings and Recommendations of the Magistrate  
14 Judge, filed June 14, 2006, are adopted in full.

15           2. Defendants Katharsis, LLC, and William Joseph  
16 Scheck, and all persons in active concert or participation with  
17 one or both of them, are hereby permanently enjoined and  
18 restrained:

19           (a) from publicly performing, without a license to do  
20 so, the musical compositions in the repertory of the American  
21 Society of Composers, Authors & Publishers ("ASCAP"), including  
22 but not limited to the following four copyrighted musical  
23 compositions: "EXODUS," "JAMMING," "AMBUSH IN THE NIGHT," and  
24 "AFRICA UNITE."

25           (b) from causing or permitting any of those musical  
26 compositions to be publicly performed, without a license to do  
27 so, in, at, or by the Owl Club, or any other business owned,  
28 controlled, operated, maintained, or conducted, in whole or in

1 part, directly or indirectly, by one or more of the Defendants;

2 (c) from aiding or abetting the unlicensed public  
3 performance of any of those musical compositions; and

4 (d) from otherwise infringing the copyright in any of  
5 those musical compositions.

6 3. Plaintiffs shall recover from Defendants Katharsis  
7 LLC, and William Joseph Scheck, jointly and severally, statutory  
8 damages in the amount of twelve thousand dollars (\$12,000.00),  
9 which is an award of three thousand dollars (\$3,000.00) for each  
10 of the four copyrighted musical works infringed at the Owl Club  
11 on the night of September 2, 2004.

12 4. Plaintiffs also shall recover from Defendants  
13 Katharsis LLC, and William Joseph Scheck, jointly and severally,  
14 reasonable attorneys' fees and costs of suit, in an amount to be  
15 determined upon plaintiffs' post-trial motion for fees and  
16 memorandum of costs.

17 5. Plaintiffs shall further recover from Defendants  
18 Katharsis LLC, and William Joseph Scheck, jointly and severally,  
19 interest on the aforementioned statutory damages, costs, and  
20 attorneys' fees from the date of entry of judgment at the  
21 applicable statutory rate.

22 LET JUDGMENT BE ENTERED ACCORDINGLY.

23 DATED: July 20, 2006

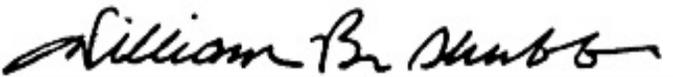
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WILLIAM B. SHUBB  
UNITED STATES DISTRICT JUDGE