

**REDACTED VERSION
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<p>ARISTA RECORDS LLC; ATLANTIC RECORDING CORPORATION; ARISTA MUSIC, fka BMG MUSIC; CAPITOL RECORDS, INC.; ELEKTRA ENTERTAINMENT GROUP INC.; INTERSCOPE RECORDS; LAFACE RECORDS LLC; MOTOWN RECORD COMPANY, L.P.; PRIORITY RECORDS LLC; SONY MUSIC ENTERTAINMENT, fka SONY BMG MUSIC ENTERTAINMENT; UMG RECORDINGS, INC.; VIRGIN RECORDS AMERICA, INC.; and WARNER BROS. RECORDS INC.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>LIME GROUP LLC; LIME WIRE LLC; MARK GORTON; GREG BILDSON; and M.J.G. LIME WIRE FAMILY LIMITED PARTNERSHIP,</p> <p style="text-align: center;">Defendants.</p>
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ECF Case

06 CV 5936 (KMW)(DF)

**DEFENDANTS' RESPONSIVE BRIEF REGARDING STATUTORY DAMAGES ON A
"PER-TRACK" VERSUS "PER ALBUM" BASIS**

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PRELIMINARY STATEMENT

In its Order dated January 7, 2011 (“Jan. 7 Order”),¹ and again at the status hearing on February 18, 2011, the Court invited further pre-trial briefing on the question of whether the issuance of the sound recordings included in Plaintiffs’ Complaint in “album versus singles” form, and simultaneous issuance or other scenarios, should determine the number of works for which Plaintiffs may seek statutory damages in this action. There is no dispute, as the Second Circuit held in *Bryant v. Media Right Productions, Inc.*, 603 F.3d 135 (2d Cir. 2010), that (1) “[T]he Copyright Act allows only one award of statutory damages for any ‘work’ infringed,” (2) “all the parts of a compilation . . . constitute one work;” (3) “An album falls within the Act’s expansive definition of compilation” as it is “a collection of preexisting materials – songs – that are selected and arranged by the author in a way that results in an original work of authorship – the album;” and (4) “Based on a plain reading of the statute, therefore, infringement of an album should result in only one statutory damage award.” *Bryant*, 603 F.3d at 140-41.

The question now is whether *Bryant* should be narrowly limited to its facts, *i.e.*, to the factual scenario where a plaintiff issues copyrighted songs “*only* in album form.” Jan. 7 Order at 4 & n.2. Plaintiffs say yes, arguing that at least since the iTunes store opened in April 2003, they have generally made their sound recordings available in both individual track and album format.² Tellingly, Plaintiffs do not answer the question twice put to them by the Court (during the February 16 conference call and the February 18 status hearing), namely, whether “after iTunes became available, there was simultaneous issuance of individual songs and

¹ See Order, Dkt. No. 401 (Jan. 7, 2011).

² See Plaintiffs’ Opening Memorandum Regarding Statutory Damages on a “Per-Track” Basis (“Pl. Br.”), Dkt. No. 500 (Feb. 22, 2011), at 5-6.

albums.”³ Despite the representation by Plaintiffs’ counsel at the hearing that “in the overwhelming majority of cases, the album and individual tracks would be released on iTunes on the same day” (*id.*), that assertion appears nowhere in Plaintiffs’ opening brief or in the accompanying declaration (in fact, the word “simultaneous” does not appear anywhere in Plaintiffs’ papers).

Furthermore, despite mentioning a few anecdotal examples of “certain” songs having been released prior to their release as part of an album, Plaintiffs provide no supporting evidence and make no attempt to quantify this atypical phenomenon. And they have yet to comply with Magistrate Judge Freeman’s order to produce documents “sufficient to show any release of a song at issue in this action as a single, *prior to the inclusion of that song as part of an album* or any other compilation.”⁴

Finally, and perhaps most significantly, Plaintiffs concede that of the approximately 9,700 sound recordings on their operative “Schedule A” (the “Final List” of post-1972 sound recordings for which they seek statutory damages in this action), approximately 6,200 (or about 64%) “predate the opening of the iTunes store.” Pl. Br. at 4. While Plaintiffs assert that “no single, all-encompassing rule” defines which sound recordings originally appeared as stand-alone singles prior to iTunes (Pl. Br. at 3), they do not dispute that it was customary to release songs only in album or CD form, not separately as singles, in the pre-iTunes era. Thus, for most of the songs on Schedule A, Plaintiffs have not shown (and we believe

³ See Transcript of Proceedings Held Before Judge Kimba M. Wood on February 18, 2011 (“Feb. 18 Tr.”), at 7 (attached as Exhibit 1 to the Declaration of John R. Oller (“Oller Decl.”)).

⁴ See Order, Dkt. No. 482 (Feb. 16, 2011), at 2-3 (emphasis added).

cannot show) that the single was released on a stand-alone basis either prior to, or simultaneous with, the album on which they were included.

Defendants submit that under Section 504(c)(1) of the Copyright Act, as construed by the courts, the only question is whether the works being sued on are “parts of a compilation.” 17 U.S.C. § 504(c)(1) (2010). Plaintiffs do not and cannot dispute that the vast majority of the songs they are suing on in this case are parts of compilations, that is, albums or CDs. In fact, their Schedule A makes clear that in the vast majority of cases, the single and the album are part of the same compilation copyright. The plain text of the statute limits Plaintiffs to one award per each of those works, regardless of whether the component parts were issued separately as singles at one time or another.

Indeed, other courts in this Circuit and elsewhere, including Judge Rakoff in the seminal *UMG Recordings v. MP3.com* case that Plaintiffs unsuccessfully try to distinguish, have rejected the very same argument based on “separate singles” made by these same Plaintiffs. In the “Joan Jett” case from this district discussed below,⁵ the court also limited Plaintiffs to a single award per album, notwithstanding that some of the most popular songs on the album had been released by the plaintiff record companies as singles and were infringed as singles. Thus, Plaintiffs’ principal argument – that the majority of their sound recordings, even if originally issued only in album format, are entitled to separate awards because they are now available as singles on iTunes – should be rejected.

Even if the *original* release of a song as a single prior to its inclusion on an album (the subject of Magistrate Judge Freeman’s discovery order) warrants different treatment than the

⁵ See *Jett v. Ficara*, No. 04 Civ. 9466, 2007 WL 2197834 (S.D.N.Y. June 29, 2007).

songs in *Bryant*, that hypothesized scenario is largely academic here. With respect to the songs included on Plaintiffs' Schedule A, Plaintiffs have made no showing that they were released separately prior to the album (and we highly doubt they can for any but a handful of songs).

As for sound recordings originally released simultaneously as stand-alone tracks and albums, Defendants submit that Section 504(c)(1) mandates a single award, because in that scenario, as in *Bryant*, Plaintiffs chose to issue their sound recordings as album compilations. That they may have *also* issued the *same songs* as singles does not, by the plain terms of the Copyright Act, give them an additional statutory award for that single. In any event, here too, Plaintiffs have offered no proof as to "simultaneous" releases – certainly not as to the 64% of songs on their list that pre-dated iTunes, nor even with respect to post-iTunes releases. Accordingly, the "simultaneous release" fact scenario does not justify increasing the number of works at issue to those beyond the compilations.

ARGUMENT

I. PLAINTIFFS ARE ENTITLED TO A SINGLE AWARD PER ALBUM COMPILATION REGARDLESS OF ANY SEPARATE ISSUANCE OF SINGLES FROM THE SAME ALBUM.

In *Bryant*, the Second Circuit held that where copyright holders "cho[o]se" to issue their works as "compilations" in the form of albums, they must be limited to one statutory damages award for each album, not for every song contained within that album. *See* 603 F.3d at 141. In so holding, the Court followed a number of earlier decisions from courts in this district and elsewhere similarly limiting the owners of copyrighted sound recordings to one statutory award per album. *See, e.g., UMG Recordings, Inc. v. MP3.COM, Inc.*, 109 F. Supp. 2d 223, 224-25 (S.D.N.Y. 2000) ("*MP3.com*") (for purposes of statutory damages, an entire compact disc, not individual songs therein, is the relevant work); *Country Rd. Music, Inc. v MP3.COM, Inc.*, 279 F.

Supp. 2d 325, 332 (S.D.N.Y. 2003) (“*Country Road*”) (“[E]ach CD . . . constitutes one work and the basis for one statutory damage award, even though it might contain multiple copyrighted musical compositions.”); *Arista Records, Inc. v. Flea World, Inc.*, Civ. A. No. 03-2670, 2006 U.S. Dist. LEXIS 14988 (D.N.J. Mar. 31, 2006) (“*Flea World*”).⁶

Nothing in *Bryant* or any of these cases, and certainly nothing in the Copyright Act, suggests that a different result should obtain merely because the constituent parts of the album compilations have been released separately as singles at one time or another. In fact, that very argument has been made by these same Plaintiffs and has been rejected. In *MP3.com*, which involved an infringing digital music service, the record labels argued that they were entitled to separate statutory damages awards for each song on their CDs because, among other reasons, the labels themselves “commonly sold” their individual titles as “singles” and marketed them “electronically” on a “per-song basis.”⁷ Judge Rakoff nonetheless expressly declined to grant an award per song because the songs were part of CD compilations. 109 F. Supp. 2d at 225.

⁶ See also *U2 Home Entm't, Inc. v. Hong Wei Int'l Trading, Inc.*, No. 04 Civ. 6189, 2008 WL 3906889, at *13 (S.D.N.Y. Aug. 21, 2008) (agreeing that “the fact that the CD at issue in UMG Recordings was identified as a compilation essentially foreclosed the plaintiff’s argument that the constituent songs were each separate works for purposes of computing statutory damages”); *Teevee Toons, Inc. v. MP3.Com, Inc.*, 134 F. Supp. 2d 456, 548 (S.D.N.Y. 2001) (plaintiffs owning copyrights on musical compositions and sound recordings may each recover statutory damages, “though each is limited to a single recovery per CD.”)

⁷ See Memorandum of Plaintiffs UMG Recordings, Inc., Sony Music Entertainment, Inc., Capitol Records, Inc. and Interscope Records in Support of Their Motion for Partial Summary Judgment as to the Assessment of Statutory Damages Per Song Infringed, 2000 WL 34475036, at 7-8 (attached as Exhibit 2 to the Oller Decl.) (“UMG Brief”).

Plaintiffs purport to distinguish *MP3.com* on the basis that “what the defendant actually copied were the complete CDs” and not individual songs, ostensibly unlike this case, where LimeWire users uploaded and downloaded individual tracks. (Pl. Br. at 8 , citing *MP3.com*, 109 F. Supp. 2d at 225). But the “complete CDs” were not *all* that was copied in *MP3.com*. As these same Plaintiffs themselves argued in that case, their copyrighted works were “copied to and stored on defendant’s servers *by song-title*,” the defendant’s internet service “*list[ed] individual songs and encourage[d] users to create their own playlists without regard to album*,” the “[u]sers may choose the order in which they listen to multiple artists’ songs . . . *by song-title, not by CD*,” users could search for MP3 music *by song “but not by CD or album*,” and the defendant *MP3.com*’s “own website [was] designed for users to download MP3 *versions of individual songs, not entire albums*.”⁸ Thus, as these Plaintiffs themselves know, the *MP3.com* case did not and could not have turned on the fact that the infringements were solely of “complete CDs.”⁹

The “released as singles” argument was also rejected in *Flea World*, a post-iTunes case again involving these same Plaintiffs. There, the labels resisted a “per album” award limitation, arguing that “Any individual track may be released as a ‘single’ (either to the public

⁸ See *id.* (emphasis added).

⁹ Nor does it make any difference whether the format in which the defendant infringes a compilation is the entire album or only a portion thereof, as “the copyright of a collection of sound recordings in the form of an album extends copyright protection to both the album and the individual sound recordings contained therein.” *King Records, Inc. v. Bennett*, 438 F. Supp. 2d 812, 843 (M.D. Tenn. 2006); see *id.* at 864-66 & n.20 (plaintiff record companies were limited to one statutory damages award per compilation even where some songs were individually copied and infringed by the defendant, because “whether the registrations are considered compilations and a constituent part has been infringed, or the registrations are that of separate works and one work on each registration has been infringed, the result is the same: one statutory award for each.”).

or in the form of ‘promotional copies’ to radio stations), may be made available for digital download over the Internet (*through, for example, services such as Apple's iTunes Music Store*), or may be licensed to third parties for use . . . or for myriad other uses.”¹⁰ The district court in *Flea World* held that this did not matter: “Moreover, Plaintiffs’ argument that statutory damages should be calculated on a ‘per-song’ basis runs afoul of the very subsection of the Copyright Act that authorizes the award of statutory damages.” *Flea World*, 2006 U.S. Dist. LEXIS 14988, at *72.

Also highly instructive is *Jett v. Ficara*, No. 04 Civ. 9466, 2007 WL 2197834 (S.D.N.Y. June 29, 2007), likewise involving separate releases of singles. There, plaintiffs alleged infringement of sound recording copyrights in, among other works, the albums “I Love Rock N’Roll” and “Bad Reputation,” *as well as* the singles “I Love Rock N’Roll” and “You Don’t Know What You’ve Got” that appeared on those two albums.¹¹ Notwithstanding that the singles had been separately released, the district court applied the per compilation limitation to plaintiffs’ statutory damages claims for defendants’ infringement of the two albums. *Id.* at *3-5. The district court held that “only two ‘works’ were infringed [by defendants] – the albums . . . – and that plaintiffs are, therefore, entitled to statutory damages for the infringement of two works only.” *Id.* at *8.

These cases, as well as *Bryant* and the text of the Copyright Act, make clear that where *the works being sued on are parts of a compilation*, it makes no difference whether those

¹⁰ See Brief in Opposition to Defendants’ Motion for Summary Judgment, *Arista Records, Inc. v. Flea World, Inc.*, 2005 U.S. Dist. Ct. Motions LEXIS 23708, at **19-20 (D.N.J. Sept. 30, 2005) (emphasis added) (attached as Exhibit 3 to the Oller Decl.).

¹¹ See Complaint and Jury Demand, *Joan Jett, et al. v. Thomas Ficara d/b/a Reach Entertainment, et al.*, at ¶¶ 32, 35, 37 (attached as Exhibit 4 to the Oller Decl.).

works are separately released or marketed. To hold otherwise is simply to resurrect, in a different guise, the “independent economic value” test that was rejected in *Bryant*. See 603 F.3d at 142 (the statutory language “provides no exception for a part of a compilation that has independent economic value, and the Court will not create such an exception. We cannot disregard the statutory language *simply because digital music has made it easier for infringers to make parts of an album available separately.*”) (emphasis added).

Neither *Twin Peaks Productions v. Publications International*, 996 F.2d 1366 (2d Cir. 1993), nor *WB Music Corp. v. RTV Communication Group, Inc.*, 445 F.3d 538 (2d Cir. 2006), cited by Plaintiffs, supports a different rule. Those cases are inapposite because they did not involve any compilations created and authorized by the *copyright holders*. See, e.g., *WB Music*, 445 F.3d at 540-41. In *Bryant*, the Court expressly distinguished *WB Music* and *Twin Peaks* on this basis, because in *Bryant*, it was “*the copyright holders* who issued their works as ‘compilations’; they chose to issue Albums.” 603 F.3d at 141. That is true here as well.

To be clear, though, Defendants’ position is *not* based merely on the “form in which a plaintiff chose to register its sound recordings with the Copyright Office.” See Jan. 7 Order at 5 n.3 (emphasis added). What the copyright registrations *do* establish, however, is the fact that the particular songs on which Plaintiffs are suing are “parts of a compilation,” and were so at the time of their release to the public in album form. As testified to by one of Plaintiffs’ witnesses, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See Oller Declaration Ex. 5.

When properly aggregated to remove “double counting” of songs that are part of album compilations, the number of works on Schedule A is reduced from approximately 10,000 to approximately 2,500.¹² That this is the proper analysis is further illustrated by the court’s discussion of the same issue in the *Flea World* case:

In their motion, Defendants argue that Plaintiffs should be entitled to recover statutory damages for only the 832 copyright registrations produced by Plaintiffs and referenced in the Second Amended Comp rather than the over 7,000 separate song titles as Plaintiffs claim. (See SAC P30, Schedule A.) This limitation is based on the fact that Plaintiffs produced only 832 copyright registrations with each registration directed to recordings containing collections of individual songs. As such, according to Defendants, the registrations are compilations, and under Section 504(c) of the Copyright Act, Plaintiffs may only collect statutory damages for infringement of each compilation rather than the individual songs contained in the collective works.

...

Plaintiffs argue that the calculation of statutory damages should not be limited to the 832 copyright registrations submitted. Rather, Plaintiffs contend that they are entitled to statutory damages for each individual song/track that a Market vendor has infringed. “Works,” according to Plaintiffs, and registrations are two different things. See H.R. Rep. No. 1476, 94th Cong., 2d Sess. at 162 (1970) (showing that Congress intended to draw a sharp distinction between the number of “works” and the number of registrations.) Thus, Plaintiffs argue that, even though they have submitted one “registration” of a collective work consisting of several songs, each song is a “work” for the purposes of calculating statutory damages under § 504(c)(1) because each song has an “independent economic value.”

Two recent cases from the Southern District of New York have examined the exact issue before the court - i.e., whether statutory damages should be computed on a “per song” or “per-CD” basis and have both concluded that, under § 504(c)(1) “works” means “per-CD.” *UMG Recordings, Inc. v. MP3 Com, Inc.*, 109 F. Supp. 2d 223, 224-25 (S.D.N.Y. 2000); *Country Road Music, Inc. v. MP3. Com, Inc.*, 279 F. Supp. 2d 325, 332 (S.D.N.Y. 2003). Although neither decision is binding on this Court, having considered these cases

¹² In their Rule 12(c) motion, Defendants showed that although 10,011 works then appeared on Schedule A, the number of works properly at issue was reduced to 2,533 when songs that were parts of album compilations were not counted separately. See Declaration of Todd R. Cosenza (Dkt. No. 332, dated October 22, 2010). Plaintiffs have since further reduced their “Final List” to 9,715, so the properly included number will be somewhat smaller than 2,533. Defendants calculate that number to be 2,497.

and concluding that they are well-reasoned, this Court will follow the rule established in them.

Flea World, 2006 U.S. Dist. LEXIS 14988, at *68-72.

II. NEITHER THE “SIMULTANEOUS ISSUANCE” NOR THE “PRIOR RELEASE AS SINGLES” SCENARIO ASSISTS PLAINTIFFS HERE.

As noted earlier, if Plaintiffs released any of the songs on the list prior to their inclusion on albums, they have not made that showing nor produced the documents to support such a contention.¹³

To the extent Plaintiffs initially issued any of the songs as singles “simultaneously” with a release in album form, that still should not give rise to separate awards, for it would remain the case that the same songs would have been released by Plaintiffs as “parts of a compilation.” In any event, Plaintiffs have not shown how often or in which cases that fact pattern pertains, either with respect to songs released prior to 2003 or in the iTunes era. At the

¹³ On October 15, 2010, in advance of filing their Rule 12(c) motion, Defendants requested documents concerning the publication and release of each song included on Plaintiffs’ final list of sound recordings at issue in this action. On December 28, Magistrate Judge Freeman denied Defendants’ motion to compel the production of these documents pending the outcome of the Rule 12(c) motion, with the right to renew the motion to compel after the 12(c) ruling. (Dkt. No. 397). After Defendants’ Rule 12(c) motion was denied on January 7, 2011, Defendants served Rule 30(b)(6) notices of deposition calling for each of the four major labels to provide testimony regarding how each sound recording in dispute was issued. Plaintiffs refused to produce a witness to testify on these topics, and Defendants renewed their motion to compel document discovery. On February 16, Magistrate Judge Freeman ordered that Plaintiffs produce by “no later than February 23” documents sufficient to show “whether recordings were released as singles prior to any release as an album or compilation, a factual matter which may be relevant to the question of whether Plaintiffs would be entitled to statutory damages awards on a per song or a per album basis.” (Dkt. No. 482). After Plaintiffs indicated that they could not comply with that deadline, Defendants agreed to allow an extension (until March 4) for the completion of production of such documents, with substantial production to be completed by February 28.

October 13, 2010 conference, although Plaintiffs claimed that these various hypothesized factual scenarios “actually happen frequently,” Defendants pointed out that they were “hypothetical at this point.”¹⁴ They remain hypothetical today.

Of course, it is Plaintiffs, not Defendants, who have the information necessary to make that showing. “The ordinary rule, based on considerations of fairness, does not place the burden upon a litigant of establishing facts peculiarly within the knowledge of his adversary.” *Novelty Textile Mills, Inc. v. C.T. Eastern, Inc.*, 743 F. Supp. 212, 218 (S.D.N.Y. 1990) (quoting *United States v. N.Y., N.H. & Hartford R.R. Co.*, 355 U.S. 253, 256 n.5 (1957)). Furthermore, as Judge Rakoff has made clear, it is “plaintiffs’ burden to establish *each element of their claims of statutory damages* by a preponderance of the credible evidence.” *UMG Recordings, Inc. v. MP3.com, Inc.*, No. 00 Civ. 472, 2000 U.S. Dist. LEXIS 13293, at *4 (S.D.N.Y. Sept. 6, 2000) (emphasis added).

Because Plaintiffs bear the burden to establish the number of works for which they may seek statutory damages, and because Plaintiffs have consistently declined to produce the evidence necessary to make the determination, it is Plaintiffs, not Defendants, who should suffer the consequences of any failure of proof. Neither the hypothetical “prior or simultaneous” release of singles can in fairness be used, at this late stage, to support separate statutory awards for songs that are part of album compilations.

¹⁴ A copy of the October 13, 2010 hearing transcript is attached as Exhibit 6 to the Oller Decl.

III. PLAINTIFFS' POLICY ARGUMENTS ARE UNPERSUASIVE.

Plaintiffs' argument that Defendants' position would give them a "free pass to induce the infringement of every other separately issued sound recording" on an album (Pl. Br. at 9) is the same argument made (unsuccessfully) by appellants in *Bryant*:

To value multiple independently copyrighted works in a compilation as "one work" for purposes of calculation of statutory damages is counter to deterrence. Online download infringers could claim that the infringement of digital downloading of thousands or even millions of all of Led Zeppelin's Definitive Collection Complete Box Set (each containing 100 Led Zeppelin compositions) would amount to the infringement of only one work. Such a result was clearly not the intent of Congress in framing the Copyright statute or its subsequent amendments.

See Appellants' Brief in *Bryant*, at 37, relevant portions attached as Oller Decl. Ex. 7.

Nor does the value of "deterrence" justify a different result. Congress amended the 1976 Copyright Act to change the focus of damages from a "per infringement" to a "per work" precisely to *lessen* the risk of excessive damage awards.¹⁵ Deterrence is at most one of only several factors courts consider in determining statutory damages awards, including plaintiffs' alleged lost profits and the "conduct and attitude of the parties." *Bryant*, 603 F.3d at 144; *see also Warner Bros. Inc. v. Dae Rim Trading, Inc.*, 877 F.2d 1120, 1126 (2d Cir. 1989). To the extent relevant, the deterrence rationale does not in this case, any more than in *Bryant*, justify ignoring the per work, per compilation limitation found in the text of the Copyright Act.

¹⁵ See Pamela Samuelson & Tara Wheatland, *Statutory Damages in Copyright Law: A Remedy in Need of Reform*, 51 Wm. & Mary L. Rev. 439, 453 (2009) ("The legislative history of the 1976 Act reveals that Congress was persuaded that the 'per infringement' standard had sometimes resulted in excessive awards. The change to a 'per infringed work' standard was intended to lessen this risk."). The authors point out that notwithstanding this intent, "Congress did not anticipate many circumstances in which a per work rule would lead to excessive liability, as it has in recent p2p filesharing cases." *Id.* at 455.

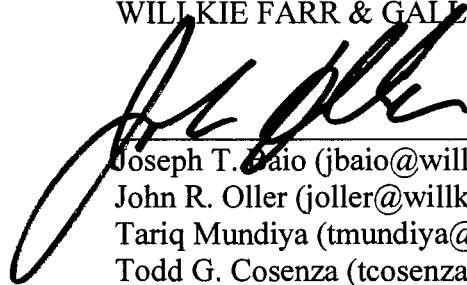
It bears emphasis, too, that Plaintiffs had it within their power to avoid any such limitations by electing to prove actual damages, if any, for any and all individual songs and any and all of the infringements they claim. *See* 17 U.S.C. § 504(a) (2010) (providing for election between seeking actual damages and statutory damages). The record labels have opted for statutory damages in this case, and are bound by the statutory language. As the *MP3.com* court stated: “When, as here, Congress’ statement is clear, to disregard that message would be nothing less than an unconstitutional arrogation of power by the judiciary.” 109 F. Supp. 2d at 225. The Court should “decline[] plaintiffs’ invitation to tread that treacherous path.” *Id.*

CONCLUSION

For the foregoing reasons, Plaintiffs are entitled to a single statutory award per album compilation on Schedule A.

Dated: February 24, 2011

Respectfully Submitted,
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