

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CAPITOL RECORDS, LLC, CAPITOL	:	12 Civ. 0095 (RJS)
CHRISTIAN MUSIC GROUP, INC. and	:	
VIRGIN RECORDS IR HOLDINGS, INC.,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	
	:	
REDIGI INC., JOHN OSSENMACHER and	:	
LARRY RUDOLPH a/k/a LAWRENCE S.	:	
ROGEL,	:	
	:	
Defendants.	:	
-----	X	

PARTIES' PROPOSED VERDICT FORMS

Pursuant to the Court's Order of October 15, 2015 (Docket No. 177), the parties submit their Proposed Verdict Forms below. Because the parties have been unable to reach agreement, each submits a separate proposed verdict form below.

PLAINTIFFS' PROPOSED VERDICT FORM

WE, THE JURY EMPANELED IN THIS MATTER, HEREBY ANSWER THE VERDICT QUESTIONS PUT TO US AS FOLLOWS:

FEDERAL COPYRIGHT INFRINGEMENT

1. How many sound recordings listed on Plaintiffs' Exhibit 39 were owned by or exclusively licensed to one of the Plaintiffs as of the time of Defendants' infringement?

2. Do you find that Defendants' infringement of the sound recordings you identified in Question 1 was willful?

_____ Yes _____ No

IF YOU ANSWERED "YES" TO QUESTION 2, PROCEED TO QUESTION 3. IF YOU ANSWERED "NO" TO QUESTION 2, SKIP TO QUESTION 4.

3. You have found that Defendants' infringement of the sound recordings you identified in Question 1 was willful. What statutory damages do you award Plaintiffs for **each** of the sound recordings identified in Question 1 (\$750-\$150,000)?

\$ _____

4. You have found that Defendants' infringement of the sound recordings you identified in Question 1 was non-willful. What statutory damages do you award Plaintiffs for **each** of the sound recordings identified in Question 1 (\$750-\$30,000)?

\$ _____

COMMON LAW COPYRIGHT INFRINGEMENT

5. How many sound recordings listed on Plaintiffs' Exhibit 122 were owned by or exclusively licensed to Plaintiff Capitol Records, LLC as of the time of Defendants' infringement?

6. Are Plaintiffs entitled to nominal damages for Defendants' infringement of the sound recordings you identified in Question 5?

_____ Yes _____ No

IF YOU ANSWERED "YES" TO QUESTION 6, PROCEED TO QUESTION 7. IF YOU ANSWERED "NO" TO QUESTION 6, YOU SHOULD NOT ANSWER ANY FURTHER QUESTIONS AND SHOULD GO TO THE SIGNATURE SECTION AT THE END OF THIS FORM.

7. What nominal damages do you award Plaintiffs for **each** of the sound recordings you identified in Question 5?

\$ _____

8. Are Plaintiffs entitled to punitive damages for Defendants' infringement of the sound recordings you identified in question 5?

_____ Yes _____ No

IF YOU ANSWERED "YES" TO QUESTION 8, PROCEED TO QUESTION 9. IF YOU ANSWERED "NO" TO QUESTION 6, YOU SHOULD NOT ANSWER ANY FURTHER QUESTIONS AND SHOULD GO TO THE SIGNATURE SECTION AT THE END OF THIS FORM.

9. What punitive damages do you award Plaintiffs?

\$ _____

STOP HERE. This is the end of the verdict sheet. Notify the Marshall that you have completed the Verdict sheet.

Dated: _____

Foreperson

This the _____ day of _____, 2016

DEFENDANTS' PROPOSED VERDICT FORM

WE, THE JURY EMPANELED IN THIS MATTER, HEREBY ANSWER THE VERDICT QUESTIONS PUT TO US AS FOLLOWS:

FEDERAL COPYRIGHT INFRINGEMENT

1. How many sound recordings have Plaintiffs proved in this case, were owned by or exclusively licensed to one of the Plaintiffs as of _____, that were not on Exhibit 122, if any?

AFTER ANSWERING QUESTION 1 PROCEED TO NEXT QUESTION

2. Out of the total number of sound recordings in your answer to Question 1, how many do you find were uploaded to ReDigi's cloud locker and offered for sale but not sold, if any?

AFTER ANSWERING QUESTION 2 PROCEED TO NEXT QUESTION

3. Out of the total number of sound recordings in your answer to Question 1, how many do you find were purchased by Coleen Hall or Capitol Records, LLC?

AFTER ANSWERING QUESTION 3 PROCEED TO NEXT QUESTION

4. Do you find that Plaintiffs are entitled to damages in connection with the sound recordings purchased by Coleen Hall or Capitol Records, LLC?

_____ Yes _____ No

AFTER ANSWERING QUESTION 4 PROCEED TO NEXT QUESTION

5. Do you find that **FAIR USE** applies to sound recordings uploaded to the Cloud Locker and offered for sale but NOT sold?

_____ Yes _____ No

AFTER ANSWERING QUESTION 5 PROCEED TO NEXT QUESTION

6. Do you find that ReDigi's users had permission to upload their music files to ReDigi's Cloud Locker or other location, by an express or implied license from either Plaintiffs or iTunes?

_____ Yes _____ No

IF YOU ANSWERED "YES" TO **EITHER** QUESTIONS 5 OR 6, PROCEED TO QUESTION 7. IF YOU ANSWERED "NO" TO **BOTH** QUESTIONS 5 AND 6, SKIP TO QUESTION 8.

7. Please subtract the total from your answer to Question 2 from the total in the answer Question 1 (i.e. Question 1-Question 2) = _____ (This is the total number of federal sound recordings you have found to have been "infringed").

AFTER ANSWERING QUESTION 7 PROCEED TO NEXT QUESTION

8. Do you find that by virtue of Plaintiffs' investigator Coleen Hall purchasing 134 sound recordings that Plaintiffs failed to mitigate their damages as to those 134 sound recordings?

_____ Yes _____ No

IF YOU ANSWERED NO TO QUESTIONS 8, 5, AND 6, AND YOU ANSWERED "YES" TO QUESTION 4 SKIP TO QUESTION 20. OTHERWISE PROCEED TO QUESTION 9.

9. Please subtract the total from your answer to Question 3 from the total in the answer Question 7 (i.e. Question 7-Question 3) = _____ .

IF YOU ANSWERED YES TO QUESTION 8, THEN PROCEED TO QUESTION 10, IF YOU ANSWERED NO TO QUESTION 8 SKIP TO QUESTION 15

10. Do you find that Defendants' infringement of the sound recordings you identified in Question 9 was willful, or not willful?

_____ (WRITE WILLFUL OR NOT WILLFUL)

IF YOU ANSWERED "**WILLFUL**" TO QUESTION 10, PROCEED TO QUESTION 11.

IF YOU ANSWERED “**NOT WILLFUL**” TO QUESTION 10, SKIP TO QUESTION 12.

11. You have found that Defendants’ infringement of the sound recordings you identified in Question 9 was willful.

A. What statutory damages do you award Plaintiffs for **each** one of the sound recordings identified in Question 9 (\$750-\$150,000)?

\$ _____

IF YOU ANSWERED YES TO QUESTION 8 ANSWER QUESTION 11(B). IF YOU ANSWERED NO TO QUESTION 4 STOP AND GO TO THE SIGNATURE SECTION AT THE END OF THIS FORM.

B. What statutory damages do you award Plaintiffs for **each** one of the sound recordings identified in Question 3 given that you have found those damages should be mitigated (\$750-\$150,000)?

\$ _____

STOP AND GO TO THE SIGNATURE SECTION AT THE END OF THIS FORM.

12. Do you find that Defendants’ infringement of the sound recordings you identified in Question 9 was INNOCENT?

_____ Yes _____ No

IF YOU ANSWERED “**YES**” TO QUESTION 12, PROCEED TO QUESTION 13.

IF YOU ANSWERED “**NO**” TO QUESTION 12, SKIP TO QUESTION 14.

13. You have found that Defendants’ infringement of the sound recordings you identified in Question 9 was innocent.

A. What statutory damages do you award Plaintiffs for each of the sound recordings identified in Question 9 (\$200)?

\$ _____

IF YOU ANSWERED YES TO QUESTION 8 ANSWER QUESTION 13(B). IF YOU ANSWERED NO TO QUESTION 4 STOP AND GO TO THE SIGNATURE SECTION AT THE END OF THIS FORM.

B. What statutory damages, if any, do you award Plaintiffs for each of the sound recordings identified in Question 3 given that you have found those damages should be mitigated (\$200)?

\$ _____

STOP AND GO TO THE SIGNATURE SECTION AT THE END OF THIS FORM.

14. You have found that Defendants' infringement of the sound recordings you identified in Question 9 was not willful.

A. What statutory damages do you award Plaintiffs for **each** one of the sound recordings identified in Question 9 (\$750-\$30,000)?

\$ _____

IF YOU ANSWERED YES TO QUESTION 8 ANSWER QUESTION 14(B). IF YOU ANSWERED NO TO QUESTION 4 STOP AND GO TO THE SIGNATURE SECTION AT THE END OF THIS FORM.

B. What statutory damages, if any, do you award Plaintiffs for **each** one of the sound recordings identified in Question 3 given that you have found those damages should be mitigated (\$750-\$30,000)?

\$ _____

STOP AND GO TO THE SIGNATURE SECTION AT THE END OF THIS FORM.

15. Do you find that Defendants' infringement of the sound recordings you identified in Question 7 was willful, or not willful?

_____ (WRITE WILLFUL OR NOT WILLFUL)

IF YOU ANSWERED “**WILLFUL**” TO QUESTION 15, PROCEED TO QUESTION 16.

IF YOU ANSWERED “**NOT WILLFUL**” TO QUESTION 15, SKIP TO QUESTION 17.

16. You have found that Defendants’ infringement of the sound recordings you identified in Question 7 was willful. What statutory damages do you award Plaintiffs for **each** one of the sound recordings identified in Question 7 (\$750-\$150,000)?

\$ _____

STOP AND GO TO THE SIGNATURE SECTION AT THE END OF THIS FORM.

17. Do you find that Defendants’ infringement of the sound recordings you identified in Question 7 was INNOCENT?

_____ Yes _____ No

IF YOU ANSWERED “**YES**” TO QUESTION 17, PROCEED TO QUESTION 18.

IF YOU ANSWERED “**NO**” TO QUESTION 17, SKIP TO QUESTION 19.

18. You have found that Defendants’ innocent infringers of the sound recordings you identified in Question 7. What statutory damages do you award Plaintiffs for each of the sound recordings identified in Question 7 (\$200)?

\$ _____

STOP AND GO TO THE SIGNATURE SECTION AT THE END OF THIS FORM.

19. You have found that Defendants’ infringement of the sound recordings you identified in Question 7 was not-willful. What statutory damages do you award Plaintiffs for **each** one of the sound recordings identified in Question 7 (\$750-\$30,000)?

\$ _____

STOP AND GO TO THE SIGNATURE SECTION AT THE END OF THIS FORM.

20. Do you find that Defendants' infringement of the sound recordings you identified in Question 1 was willful, or not willful?

_____ (WRITE WILLFUL OR NOT WILLFUL)

IF YOU ANSWERED "**WILLFUL**" TO QUESTION 15, PROCEED TO QUESTION 16.

IF YOU ANSWERED "**NOT WILLFUL**" TO QUESTION 15, SKIP TO QUESTION 17.

21. You have found that Defendants' infringement of the sound recordings you identified in Question 1 was willful. What statutory damages do you award Plaintiffs for **each** one of the sound recordings identified in Question 1 (\$750-\$150,000)?

\$ _____

STOP AND GO TO THE SIGNATURE SECTION AT THE END OF THIS FORM.

22. Do you find that Defendants' infringement of the sound recordings you identified in Question 1 was INNOCENT?

_____ Yes _____ No

IF YOU ANSWERED "**YES**" TO QUESTION 17, PROCEED TO QUESTION 18.

IF YOU ANSWERED "**NO**" TO QUESTION 17, SKIP TO QUESTION 19.

23. You have found that Defendants' innocent infringers of the sound recordings you identified in Question 1. What statutory damages do you award Plaintiffs for each of the sound recordings identified in Question 7 (\$200)?

\$ _____

STOP AND GO TO THE SIGNATURE SECTION AT THE END OF THIS FORM.

24. You have found that Defendants' infringement of the sound recordings you identified in Question 1 was not-willful. What statutory damages do you award Plaintiffs for **each** one of the sound recordings identified in Question 1 (\$750-\$30,000)?

\$ _____

STOP HERE.

This is the end of the verdict sheet. Notify the Marshall that you have completed the Verdict sheet.

Dated: _____
Foreperson

This the _____ day of _____, 2016

COMMON LAW COPYRIGHT INFRINGEMENT

1. How many sound recordings listed on Plaintiffs' Exhibit 122 were owned by or exclusively licensed to one of the Plaintiffs as of the time of Defendants' infringement?

2. Are Plaintiffs entitled to nominal damages for Defendants' infringement of the sound recordings you identified in Question 1?

_____ Yes _____ No

IF YOU ANSWERED "YES" TO QUESTION 2, PROCEED TO QUESTION 3. IF YOU ANSWERED "NO" TO QUESTION 2, YOU SHOULD NOT ANSWER ANY FURTHER QUESTIONS AND SHOULD GO TO THE SIGNATURE SECTION AT THE END OF THIS FORM.

3. Out of the total number of sound recordings in your answer to Question 1, how many do you find were uploaded to ReDigi's cloud locker and offered for sale but not sold, if any?

AFTER ANSWERING QUESTION 3 PROCEED TO NEXT QUESTION

4. Out of the total number of sound recordings in your answer to Question 1, how many do you find were purchased by Coleen Hall or Capitol Records, LLC?

AFTER ANSWERING QUESTION 4 PROCEED TO NEXT QUESTION

5. Do you find that Plaintiffs are entitled to damages in connection with the sound recordings purchased by Coleen Hall or Capitol Records, LLC?

_____ Yes _____ No

AFTER ANSWERING QUESTION 5 PROCEED TO NEXT QUESTION

6. Do you find that **FAIR USE** applies to sound recordings uploaded to the Cloud Locker and offered for sale but NOT sold?

_____ Yes _____ No

AFTER ANSWERING QUESTION 6 PROCEED TO NEXT QUESTION

7. Do you find that ReDigi's users had permission to upload their music files to ReDigi's Cloud Locker or other location, by an express or implied license from either Plaintiffs or iTunes?

_____ Yes _____ No

IF YOU ANSWERED "YES" TO **EITHER** QUESTIONS 6 OR 7, PROCEED TO QUESTION 8. IF YOU ANSWERED "NO" TO **BOTH** QUESTIONS 6 AND 7, SKIP TO QUESTION 9.

8. Please subtract the total from your answer to Question 3 from the total in the answer Question 1 (i.e. Question 1-Question 3) = _____ (This is the total number of federal sound recordings you have found to have been "infringed").

AFTER ANSWERING QUESTION 8 PROCEED TO NEXT QUESTION

9. Do you find that by virtue of Plaintiffs' investigator Coleen Hall purchasing 134 sound recordings that Plaintiffs failed to mitigate their damages as to those 134 sound recordings?

_____ Yes _____ No

IF YOU ANSWERED NO TO QUESTIONS 9, 6, AND 7, AND YOU ANSWERED "YES" TO QUESTION 5 SKIP TO QUESTION 16. OTHERWISE PROCEED TO QUESTION 10.

10. Please subtract the total from your answer to Question 4 from the total in the answer Question 8 (i.e. Question 8-Question 4) = _____ .

11. What nominal damages do you award Plaintiffs for **each** of the sound recordings you identified in Question 10?

\$ _____

IF YOU ANSWERED YES TO QUESTION 9 ANSWER QUESTION 12. IF YOU ANSWERED NO TO QUESTION 9 AND YES TO QUESTION 5, SKIP TO 13.

12. What nominal damages do you award Plaintiffs for **each** of the sound recordings you identified in Question 4, given that you have found those damages should be mitigated?

\$ _____

13. Are Plaintiffs entitled to punitive damages for Defendants' infringement of the sound recordings you identified in Question 8 (i.e. have you found "moral culpability" on the defendants' part, involving "evil and reprehensible motives" or "gross" fraud)?

_____ Yes _____ No

IF YOU ANSWERED "YES" TO QUESTION 13, PROCEED TO QUESTION 14. IF YOU ANSWERED "NO" TO QUESTION 13, YOU SHOULD NOT ANSWER ANY FURTHER QUESTIONS AND SHOULD GO TO THE SIGNATURE SECTION AT THE END OF THIS FORM.

14. What punitive damages do you award Plaintiffs for the sound recordings you identified in Question 10?

\$ _____

IF YOU ANSWERED YES TO QUESTION 9 ANSWER QUESTION 15. IF YOU ANSWERED NO TO QUESTION 9 AND YES TO QUESTION 5, YOU SHOULD NOT ANSWER ANY FURTHER QUESTIONS AND SHOULD GO TO THE SIGNATURE SECTION AT THE END OF THIS FORM.

15. What punitive damages do you award Plaintiffs for the sound recordings you identified in Question 4, given that you have found those damages should be mitigated?

\$ _____

STOP AND GO TO THE SIGNATURE SECTION AT THE END OF THIS FORM.

16. What nominal damages do you award Plaintiffs for **each** of the sound recordings you identified in Question 1?

\$ _____

AFTER ANSWERING QUESTION 16 PROCEED TO NEXT QUESTION

17. Are Plaintiffs entitled to punitive damages for Defendants' infringement of the sound recordings you identified in Question 1 (i.e. have you found "moral culpability" on the defendants' part, involving "evil and reprehensible motives" or "gross" fraud)?

_____ Yes _____ No

IF YOU ANSWERED "YES" TO QUESTION 17, PROCEED TO QUESTION 18. IF YOU ANSWERED "NO" TO QUESTION 17, YOU SHOULD NOT ANSWER ANY FURTHER QUESTIONS AND SHOULD GO TO THE SIGNATURE SECTION AT THE END OF THIS FORM.

18. What punitive damages do you award Plaintiffs?

\$ _____

STOP HERE. This is the end of the verdict sheet. Notify the Marshall that you have completed the Verdict sheet.

Dated: _____
Foreperson

This the _____ day of _____, 2016

Dated: March 11, 2016

By:

COWAN, LIEBOWITZ & LATMAN, P.C.

/s/ Richard S. Mandel

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