

Strict Proportionality Not Required Between Attorneys' Fees and Damages

Article By:

G. Matthew McCloskey

In a recent action for **copyright infringement**, the U.S. Court of Appeals for the First Circuit upheld the district court's **award of attorneys' fees**, noting that **strict proportionality between fees and damages is not required**. *Spooner v. EEN, Inc.*, Case No. 10-2393 (1st Cir., July 5, 2011) (Selya, J.).

Jason Spooner, a musician, filed suit against defendants EEN and Dan Egan for copyright infringement arising from unauthorized use of Spooner's musical compositions in TV and internet advertisements for Sugarloaf/USA ski resort. The district court found that the defendants had **willfully infringed**, imposed a **permanent injunction** against them and awarded Spooner statutory damages of \$40,000, as well as attorneys' fees of almost \$100,000. The defendants appealed, claiming that the district court should have denied all attorneys' fees because Spooner's request for more than \$175,000 in attorneys' fees was outrageously high.

As a preliminary matter, the First Circuit recognized a jurisdictional "obstacle" arising from the fact that the defendants' appealed the fee award without the district court having decided whether to award other costs. The court explained that as a general rule, a post-verdict fee award is treated as distinct from an award of costs. However due to the language of the **Copyright Act**, copyright cases differ because attorney's fees are a part of the overall costs, and not a separate inquiry. Since the district court had yet to decide whether to award overall costs, at the time of filing the appeal, the narrower question of whether to award fees was not, an appealable issue. Noting that a court is duty-bound to notice and act upon defects in its subject-matter jurisdiction *sua sponte* and that jurisdictional defects can sometime be remedied by corrective measures even after an appeal is filed, the court stayed the proceedings so that the parties could address the issue. The parties corrected this jurisdictional defect by stipulating to the value of the other recoverable costs with the lower court, which entered an appropriate order, certifying the result to the 1st Circuit.

In its main analysis, the court affirmed the district court's award of fees to Spooner, based on **lodestar method analysis** in which reduced billed hours are multiplied by approved rates. The court noted "[t]he law ... does not demand strict proportionality between fees and damages." Such a rule, the court explained, would run contrary to the purpose of awarding attorneys' fees, which is to "afford private parties the opportunity to vindicate rights that serve some broad public good." The court recognized, though, that some fee requests may be so "gluttonously high" that courts should

award no fees at all. The court cautioned that such an action, however, is “powerful medicine” and should be used in only the “most egregious cases,” such as when the fee request is outrageously inflated or when the attorney has logged unnecessary hours.

In this case, the record showed that the plaintiff had “pared” down his fee request before filing it. The plaintiff had written off many hours before submitting the fee request, and the defendants did not show that the number of hours the attorney billed or the hourly rate charged were unreasonable.

© 2025 McDermott Will & Emery

National Law Review, Volume I, Number 223

Source URL: <https://natlawreview.com/article/strict-proportionality-not-required-between-attorneys-fees-and-damages>