

Big fine could be big trouble in downloading case

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FILE - This Oct. 4, 2007 file photo shows Jammie Thomas-Rasset of Brainerd, Minn., outside federal court in Duluth, Minn. A federal jury ruled Thursday, June 18, 2009 that Thomas-Rasset willfully violated the copyrights on 24 songs, and awarded recording companies \$1.92 million, or \$80,000 per song. (AP Photo/Julia Cheng, File)

(AP) -- The \$1.92 million verdict against a Minnesota woman accused of sharing 24 songs over the Internet could ratchet up the pressure on other defendants to settle with the recording industry - if the big fine can withstand an appeal.

"Normally in our American legal system, we say the punishment should fit the crime," said Ken Port, director of the Intellectual Property Institute at William Mitchell College of Law in St. Paul. "Now she's being ordered to pay, in some ways, an incomprehensible amount of damages."

Port has closely watched the recording industry's case against Jammie Thomas-Rasset, 32, of Brainerd and wrote a brief that helped persuade the judge in her first trial in 2007 to grant her the retrial that ended Thursday.

In the latest trial, a federal jury in Minneapolis ruled that she must pay \$1.92 million for willful infringement of the recording industry's copyrights by posting the music on the file-sharing site Kazaa.

Under federal law, the recording companies are entitled to \$750 to \$30,000 per infringement but the law allows the jury to raise that to as much as \$150,000 per track if it finds the infringements were willful. The jury decided on \$80,000 per song.

"They now have a verdict they can use in other cases around America," Port said of the recording industry. "The prices that they will charge for settling is going to go up."

Thomas-Rasset was the first - and so far only - music file-sharing defendant to go to trial.

The music industry has threatened about 35,000 people with charges of [copyright infringement](#) over the past five years, typically offering to settle the cases for \$3,000 to \$5,000. The recording industry estimates that a few hundred of those cases remain unresolved, with fewer than 10 defendants actively fighting them.

In December, the industry said it dropped its strategy of going after individuals to instead focus on Internet service providers.

Cara Duckworth, a spokeswoman for the Recording Industry Association of America, said Friday the verdict should remind those who share music illegally about the penalties in copyright law. "For the few existing cases, this verdict is a reminder of the clarity of the law," she said.

She noted that the \$1.92 million was not a figure requested by the industry. "That was not our number, that was what 12 regular folks rendered," she said of the jury, adding that the industry remains open to settling the case with Thomas-Rasset.

Kiwi Camara, one of Thomas-Rasset's attorneys, said his client planned to appeal the ruling, but the legal team would take a few days to settle on its legal arguments. The damage award will probably be part of it.

"There really is a problem with the statute, because she's been fined \$1.9 million for stealing 24 songs that went for about \$1.99 on iTunes," he said, slightly overstating the cost of songs on the site. "There's no way that can be the correct result."

Even the presiding judge in the case might find the \$1.9 million excessive. When Judge Michael Davis ordered the retrial, he also implored Congress to change copyright laws after Thomas-Rasset was ordered to pay \$222,000 in the first trial, an amount he called "wholly disproportionate." The new fine is more than eight times the first amount.

Camara and co-counsel Joe Sibley represent two other people being sued by the recording industry - Brittany English, a student at Case Western Reserve University in Ohio, and Joel Tenenbaum, a student at Boston University.

He said the Thomas-Rasset verdict wouldn't change how he approaches those cases. "Every jury is different," he said. "So the conclusions of this jury really has no precedential effect on the conclusions of the next jury."

Fred von Lohmann, a senior staff attorney with the Electronic Frontier Foundation, said the nearly \$2 million verdict may even hurt the recording industry, making it more vulnerable on appeal and bolstering the argument that the copyright system is broken if it can impose such huge penalties for noncommercial activity.

"A \$2 million verdict for sharing 24 songs?" he said.

Unlike Port, von Lohmann didn't believe the verdict would raise settlement costs for file-sharing defendants because the industry doesn't want more trials like Thomas-Rasset's.

"It's not about getting a big number," he said. "It's about getting a number that people will pay without

a fight."

And the verdict will do nothing at all, he said, for the millions of people who share music but haven't been targeted by the recording industry. "The word on the street is that they are no longer going after people to sue," he said.

However, the Progress & Freedom Foundation, a free-market think tank, defended the verdict and said \$1.92 million was reasonable.

"Legally acquiring a license to give copies of a song to potentially millions of Kazaa users might well have cost \$80,000 per song," said Tom Sydnor, director of the foundation's Center for the Study of Digital Property. "Moreover, if the jury concluded that the defendant falsified her testimony, it could fairly seek to punish and deter such flagrant wrongdoing."

The companies that sued Thomas-Rasset are subsidiaries of all four major recording companies, Warner Music Group Corp., Vivendi SA's Universal Music Group, EMI Group PLC and Sony Corp.'s Sony Music Entertainment.

The recording industry has blamed online piracy for declines in music sales, although other factors include the rise of legal music sales online, which emphasize buying individual tracks rather than full albums.

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