

Lawyer: Song swapper on trial doing 'what kids do'

July 28 2009, By ERIC TUCKER , Associated Press Writer

(AP) -- A Boston University graduate student was "a kid who did what kids do" when he swapped songs through file-sharing networks like Kazaa, his lawyer said Tuesday as his copyright-infringement trial began.

In only the second music-downloading case against an individual to go to trial, the major recording labels accuse Joel Tenenbaum, 25, of Providence, R.I., of downloading and distributing songs from bands such as Green Day and Aerosmith. The case centers on 30 shared songs, though the recording companies say he distributed many more than that.

Last month, a federal jury ruled a Minnesota woman must pay \$1.92 million for copyright infringement.

The industry has typically offering to settle cases for about \$5,000, though it has said that it stopped filing such lawsuits last August and is instead working with Internet service providers to fight the worst offenders. Cases already filed, however, are proceeding to trial.

Charles Nesson, the Harvard Law School professor representing Tenenbaum, said his client - a graduate student in physics - started downloading music as a teenager, taking advantage of file-sharing networks that make it possible for computer users to share digital files with a network of strangers.

"He was a kid who did what kids do and loved technology and loved music," Nesson said in opening statements.

Nesson said the recording companies enjoyed decades of success but were slow to adapt to the advancements of the Internet.

"The Internet was not Joel's fault," Nesson said. "The Internet sweeps in like the way the automobile swept into the buggy industry."

But Tim Reynolds, one of the lawyers representing the recording industry, said song-swappers like Tenenbaum take a significant toll on the recording industry's revenues and on backup singers, sound engineers and other people who make a living in music.

Reynolds said Tenenbaum used a computer in his parents' house in Providence and then at Goucher College in Baltimore, where he was a student, to download and distribute digital files. He was flagged in August 2004 by MediaSentry, a private investigation company that was used by the recording industry to identify illegal song distribution.

Reynolds said that Tenenbaum continued distributing songs even after he had been confronted about it and that the defendant blamed his sister, friends and a foster child who had lived at the house.

"This defendant knew what he was doing was wrong at each step of the way," Reynolds said.

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.

In the Minnesota case, the jury ruled Jammie Thomas-Rasset, 32, willfully violated the copyrights on 24 songs and awarded damages of \$80,000 per song.

Nesson urged the jury to "find the minimum number of infringements"

by Tenenbaum, if any at all.

The recording companies involved in the case are subsidiaries of Universal Music Group, Warner Music Group Corp. and Sony Corp.

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