

[RIAA & Copyright: \\$2 Million Fine Whacky Consequence of Copyright Act](#)Posted on July 8, 2009 Filed Under [Copyright](#), [Intellectual Property](#) | [Leave a Comment](#)

The RIAA, in a new trial of an alleged copyright infringer who had shared 24 songs via the file-sharing service Kazaa, won almost \$2 million in fines against the defendant calculated on the basis of statutory damages under the U.S. Copyright Act. ([See the Wired Story here](#)) This is an almost ten fold increase in the fines awarded to the RIAA against Thomas-Rassert from the original trial in 2007. The basis for these fines is a provision of the Copyright Act, codified at 17 U.S.C. § 504(c)(2), which allows for a maximum fine of \$150,000 on the finding of willful infringement by the defendant. Statutory damages are available to a plaintiff who elects to not seek actual damages for the infringement proved during the trial.

In this case, the defendant Thomas-Rassert had been sharing 24 songs online. Assuming that she had a typical aDSL connection where the upload speed is considerably slower than the download speed, and the average size of each file shared was about 3 megabytes, she would have been able to share about 0.22 songs per minute to other users of Kazaa. If each song would have cost \$1 to purchase as a single from a reputable vendor (like itunes), and she shared these 24 songs continuously for a year, the amount of lost sales to the music industry would have been about \$115,632 (with about 20% of this going to the reseller and not the music companies), or about 1/20th of the damages award against her for her infringement of the plaintiff's copyrights.

Thomas-Rassert's own estimate of the actual damages proved by the plaintiff was even smaller – on the order of \$150. ([See the filing seeking remittitur](#) after the original trial resulted in a \$222,000 verdict against her)

I certainly do not condone copyright infringement, but the damages sought by the RIAA in this case are highly disproportionate to the alleged injury to the copyright holders. Seeking such a large fine against an individual reflects to me, at least, the frustration the RIAA has had in pursuing the makers of the file sharing platforms directly, many of whom are either out of the RIAA's legal reach or otherwise judgment proof. While I would not call Thomas-Rassert an "innocent infringer," nor a "fair user" given the prior Supreme Court jurisprudence holding otherwise, I also would not call her a "pirate" worthy of the civil version of a hanging, either. Let's hope the judge has the good sense to reduce the fines to a more reasonable level.