

Case 1:08-cv-11727-NMG

Filed 01/30/09

**United States District Court  
For the District of Massachusetts**

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2009 JAN 30 P 5:01

**Civil Action  
No. 08-11727-NMG**

U.S. DISTRICT COURT  
DISTRICT OF MASS.

Samuel Barley Steele,  
Bart Steele Publishing and  
Steele Recordz,

Plaintiffs

v.

Turner Broadcasting System, Inc.,  
Major League Properties, Inc., Time  
Warner, Inc., Island Def Jam Records,  
Fox Broadcasting Company,  
John Bongiovi, Individually and  
d/b/a Bon Jovi Publishing, Richard  
Sambora, Individually and  
Individually and d/b/a Aggressive  
Music, William Falcon, Individually  
And d/b/a/ Pretty Blue Songs,  
Universal-polygram int. publ. inc.,  
SONY/ATV TUNES, LLC,  
kobalt music group, A & E Television  
Networks, AEG Live LLC, Vector  
2 LLC, and Boston Red Sox, Inc.  
The Bigger Picture Cinema Co.,  
Mark Shimmel Music

**AMENDED COMPLAINT**

Defendants

**Jurisdiction**

This is a suit for copyright infringement under Title 17, U.S.C. and for relief pursuant to G. L. c. 93A. This Court has Jurisdiction pursuant to 28 U.S.C. §1338(a).

**Factual Allegations**

1. Plaintiff Samuel Bartley (Bart) Steele is a natural person who resides at 80 Park Street, Chelsea, Massachusetts 02150

2. Plaintiff Steele Publishing Company is an unincorporated business organization with its principle place of business at 80 Park Street, Chelsea, Massachusetts 02150
3. Plaintiff Steele Recordz is an unincorporated business organization with its principle place of business at 80 Park Street, Chelsea, Massachusetts 02150
4. Defendant Time Warner Inc. is a company located at One Time Warner Center, New York, New York
5. Defendant John Bongiovi (BonJovi) is a lyricist and vocal music performer.
6. Defendant Bon Jovi Publishing is a music publishing company.
7. Defendant Richard Sambora is a lyricist and vocal music performer.
8. Defendant Aggressive Music (Aggressive) is a music publishing company.
9. Defendant William Falcon is a lyricist and vocal music performer.
10. Defendant Pretty Blues Songs (Pretty Blues) is a music publishing company.
11. Defendant Universal Polygram International Publishing Inc. (Universal) is a music publishing company located at 2440 Sepulveda Blvd., Suite 100, Los Angeles, California
12. Defendant Sony/ATV Music Publishing LLC (Sony) is a music publishing company located at 8 Music Square West, Nashville, Tennessee.
13. Defendant Kobalt Music Group (Kobalt) is a music publishing company located at 8733 Sunset Blvd, Suite 205, West Hollywood, California.
14. Defendant Major League Properties, Inc. (MLB) is a company located at Linthicum, Maryland . They are the parent company of MLB Advanced Media & MLB.COM
15. Defendant Turner Broadcasting System (TBS) is a company located at One CNN Center, Atlanta, Georgia.

16. Defendant A & E Television Networks is a company located at 235 E. 45th St. New York, New York.

17. Defendant AEG Live LLC is a company located at 5750 Wilshire Boulevard, Suite 501, Los Angeles, California.

18. Defendant Vector 2 LLC is a company which performs management services on behalf of John Bongiovi.

19. Defendant Boston Red Sox is a corporation with located at 4 Yawkey Way, Boston, Massachusetts.

20. Plaintiff Bart Steele wrote a love anthem for his beloved Red Sox that baseball playoff fans could sing along with. He titled his song "Man I Really Love this Team", also well known as "I Really Love This Team" and "Man I Love this Team". The song was originally released by the plaintiffs in early October 2004. It was publicly performed by the Bart Steele Band and Steele's other band, The Gyromatics. Steele, his bandmates, and friends performed the song outside Fenway Park for the next month, handing out thousands of CDs and lyrics sheets. Enthusiastic Red Sox fans came to know the song very well. There were sing alongs at the two most popular Red Sox bars outside Fenway Park; the The Cask n' Flagon and Boston Beer Works both played the song regularly. Bart's roommate, who was working inside Fenway Park, handed out copies to Red Sox executives inside the park. Bart stood outside the executive's entrance to Fenway Park on Brookline Ave. handing copies to anyone wearing a suit. A friend of Bart's had conversations with a member of the Red Sox organization, who asked her to send the song to him. She emailed it to him at [jrouke@redsox.com](mailto:jrouke@redsox.com) in late October 2004. Bart and bandmate, Peter Bellomo, were invited to play the song live on Channel 7 and Channel 5 and did so on October 26, 2004 (video exhibit CD-R A). An acoustic version of the song

was also played on New England's number one Sports radio station, WEEI / 850 AM-Boston, a Fox Sports Radio Network affiliate. The song was also available for free download on many websites including [www.gyromatics.com](http://www.gyromatics.com), [www.kohit.com](http://www.kohit.com), and, most importantly, [www.fenwaynation.com](http://www.fenwaynation.com). The [www.fenwaynation.com](http://www.fenwaynation.com) site averaged 180,000 "hits" per day in October 2004. The link to the song was also posted at [www.mvn.com](http://www.mvn.com) (the largest independent sports website in the country), [www.phoenix.com](http://www.phoenix.com) and [www.mikehallal.com](http://www.mikehallal.com). Bart sent CDs with lyric sheets to Johnny Damon, Bronson Arroyo, team captain Jason Varitek, Kevin "Cowboy Up" Millar, Jerry Remy (Red Sox NESN announcer), Team owner John Henry, and General Manager Theo Epstein. In December 2005, Bart posted the song at his website [www.myspace.com/thebartsteeleband](http://www.myspace.com/thebartsteeleband).

21. Between 2004 and 2006, Bart also emailed the MP3 and free download links to the song to the Red Sox and MLB. Bart also sent hard copies of the song including lyric sheets entitled "I Really Love This Team".

22. In early November 2004, and throughout the following months, Bart began revising the song and working a marketing concept that permit adaptations to the song for use in *any* town. Bart also shared with MLB his idea that a "country" song would be more marketable for MLB both nationally and internationally.

23. At the same time Bart was finishing his derivative version of his baseball playoff anthem "Man I Really Love This Town", Bart applied for membership to the American Society of Composers Authors and Publishers (ASCAP). Bart registered his song with ASCAP, receiving ASCAP code registration, number 433133272.

24. On or about January 24, 2008, Bart filed a complaint with ASCAP. As a result, on March 28, 2008, ASCAP sent a discrepancy letter to the plaintiffs and defendants Bon Jovi, Sony, Sambura, and Aggressive advising them that there were multiple claims regarding ASCAP licensed work protected by the plaintiff's registration. The defendants have failed to respond to ASCAP's request for documentation.

25. In July 2006, defendants TBS, FOX and MLB announced a seven-year deal in which, for the first time ever, the MLB playoffs would air on cable television rather than free broadcast television networks. Following the 2006 World Series, MLB, TBS and BonJovi formed an agreement to produce a music video to promote the baseball post season. Time Warner Inc. and MLB funded a large advertising campaign anchored by the Bon Jovi MLB promo.

26. Bon Jovi registered his version of the plaintiff's song with ASCAP in June 2007.

27. On August 31, 2007, TBS, the home of the MLB Division Series and the National Championship Series, announced a full length promo featuring Grammy Award winning rock performer BonJovi, featuring a "rollicking new spot" with the band performing "I Love This Town" from their new *Lost Highway* CD. This piece was part of TBS multi-platform marketing to promote its first year of MLB post season coverage. This new baseball marketing campaign was designed to drive awareness about TBS' exclusive post season programming in a fresh and exciting way. The TBS/MLB marketing campaign included radio buys, on line advertising, print advertisement in publications such as USA Today, Sports Illustrated, Sporting News, billboard buys in Times Square and other major markets, as well as a unique Hispanic outreach campaign with specialized outdoor, radio and print advertising in select markets including Los Angeles and New York. Defendants

were engaged in a mutually-beneficial commercial cross-promotion based entirely upon Barts's copyrighted music

28. Bart submitted his song to the Library of Congress and received copyright certificate PAu003052330, dated June 30, 2006. This copyright includes the derivative lyrics Bart told MLB he was working on. Plaintiff owns a copyright on musical pieces know as "Man I Really Love this Team", also known as "Man I Love this Team."

The plaintiffs have secured the exclusive rights and privileges in and to the copyright and received a Certificate of Registration for pieces known as –"Man I Really Love This Team" and "Man I Really Love This Town" from the Register of Copyrights.

29. On June 19, 2007, defendants BonJovi, Bon Jovi Publishing, Sambora, Falcon, Universal, Sony, Aggressive, Pretty Blue and Kobalt did register copyright number PA000 1384875 for "I Love This Town".

30. Defendants did agree, aid, abet, and assist, acting individually and in combination, to infringe the plaintiff's copyright by creating a commercial advertisement from the plaintiff pieces known as –"Man I Really Love This Team" and "Man I Really Love This Town". In so doing, the defendants created the Bon Jovi MLB promo that is substantially similar to music and expressions of the ideas encompassed in the plaintiff's copyrighted work.

31. Defendants Bongiovi, Sambora and Falcone assert that they are the writers of songs on the Bon Jovi CD known as "Lost Highway" which CD contains the Bon Jovi song "Man I Really Love This Town", from which the Bon Jovi MLB promo is derived. Said defendants and their respective publishing companies, i.e., defendants Bon Jovi

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Publishing, Aggressive Music and Pretty Blue Songs, did infringe upon the plaintiff's copyright.

32. The use of the plaintiff's copyrighted musical compositions were unauthorized; neither defendants nor any of the defendants' agents, servants or employees, nor any performer was licensed by, or otherwise received permission from any plaintiff or any agent, servant or employee of any plaintiff for such use.

33. In undertaking the conduct complained of in this action, defendants knowingly and intentionally violated plaintiffs' rights.

34. Defendants have not sought or obtained a license agreement from plaintiffs or ASCAP, a performing rights licensing organization of which the plaintiff and some of the defendants are members.

35. Despite letters and other contacts by the plaintiffs giving notice to the defendants of the plaintiffs' claims, defendants have continued to perform copyrighted music without permission.

36. The wrongful acts of the defendants have caused and are causing great injury to the plaintiffs, and unless this Court restrains the defendants from the further commission of said acts, said plaintiffs will suffer irreparable injury, f or all of which the said plaintiffs are without any adequate remedy at law.

37. The defendants actions are unfair and deceptive acts and practices willfully and knowingly committed.

**COUNT 1 - VIOLATION OF TITLE 17, U.S.C.**

38. The plaintiffs incorporate ¶¶ 1 through 37 herein.

39. The defendants did infringe on the plaintiffs' copyright.

WHEREFORE, Plaintiffs pray:

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a. That Defendants and all persons acting under the direction, control, permission or authority of Defendants be enjoined and restrained permanently from publicly performing the aforementioned compositions, or any derivations thereof, or any of them and from causing or permitting the said compositions and from aiding or abetting the public performance of such compositions in any such place or otherwise.

b. That Defendants be ordered to pay such damages to which the plaintiffs are entitled.

c. That Defendants be ordered to pay the costs of this action including reasonable attorneys fee and expenses.

d. For such other and further relief as may be just and equitable.

**COUNT II – VIOLATION OF G. L. c. 93A**

40. The plaintiffs incorporate ¶¶ 1 through 39 herein.

41. The defendants did willfully and knowingly commit unfair and deceptive acts and practices.

WHEREFORE, Plaintiffs pray:

a. That Defendants and all persons acting under the direction, control, permission or authority of Defendants be enjoined and restrained permanently from publicly performing the aforementioned compositions, or any derivations thereof, or any of them and from causing or permitting the said compositions and from aiding or abetting the public performance of such compositions in any such place or otherwise.



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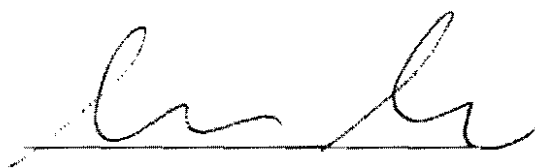
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b. That Defendants be ordered to pay such damages to which the plaintiffs are entitled.

c. That Defendants be ordered to pay the costs of this action including reasonable attorneys fee and expenses.

d. For such other and further relief as may be just and equitable.

The plaintiffs demand a jury trial.

A handwritten signature in black ink, appearing to read 'S. Bartley Steele', written over a horizontal line.

Samuel Bartley Steele, Pro Se

January 30, 2009

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Major League Properties, Inc., Time  
Warner, Inc., Island Def Jam Records,  
Fox Broadcasting Company,  
John Bongiovi, Individually and  
d/b/a Bon Jovi Publishing, Richard  
Sambora, Individually and  
Individually and d/b/a Aggressive  
Music, William Falcon, Individually  
And d/b/a/ Pretty Blue Songs,  
Universal-Polygram Intl. Publishing, inc.,  
SONY/ATV TUNES, LLC, A & E Television  
Networks, AEG Live LLC, Vector  
2 LLC, Boston Red Sox, Inc.  
The Bigger Picture Cinema Co., &  
Mark Shimmel Music

**PLAINTIFFS' AMENDED COMPLAINT AND  
OPPOSITION TO MOTION TO DISMISS**

Defendants.

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Plaintiffs submit this brief and the attached Amended Complaint in response to Defendants'  
Motion to Dismiss.

Introduction

1. Defendants' Motion to Dismiss ignores the central issue of this case, which is the unauthorized, uncompensated use of my song as a "temp track" for the creation of an audio visual work which was, in turn, used to create the final soundtrack song for the video. Several other derivations were made, including the soundtrack version on Bon Jovi's Lost Highway album. There were also several different TBS promo ads, of varying lengths, using the illegal derivative work. The law considers such an audio visual work to be a derivative work of the original music, or the music it was adapted from. Under the Copyright Act, audio visual works are usually works made for hire. Here, MLB illegally claims copyright in the video promo. Because they never had the rights to the music, my song, the original video synched to my song is an unauthorized derivative work. None of the later unauthorized derivative works, nor the illegal reassignments of the rights in them can change this fact. It appears so far that Bon Jovi's performance on the video promo was such a work for hire. That is why MLB claims copyright in the video. However, this was all done to avoid the copyright law. MLB hired Bon Jovi to do the derivation of my song to facilitate their exploitation for commercial purposes. I suspect Bon Jovi agreed to the arrangement in exchange for the promotion and exposure it provided for them and their album which ultimately included yet another unauthorized derivative version of my work. Also if they could successfully claim full writing and publishing credit and submit it into the ASCAP repertory, they stood to earn royalties as well. However, they were not legally allowed to register this derivative work at ASCAP with giving me any credit or royalties. This explains the ASCAP discrepancy as to ownership of the CD unauthorized derivative version. For the record, ASCAP has already frozen any said royalties on the derivative CD version as it was their fiduciary duty to me before anyone else because my original version was registered in their repertory over a year before the unauthorized versions were released. When I registered the song

with ASCAP as writer and publisher, I transferred part ownership of my copyright to them. Thus, the defendants should logically want to settle this quickly or face the imminent lawsuits from ASCAP for exploiting a song from their repertory for commercial purposes to increase their advertising and subscription revenues (the courts recently ruled that ASCAP was due 2.5% of ad revenue, even if one has a blanket license, if the song was exploited for those reasons).

2. Defendants' unauthorized use of my copyrighted song as a temp track constitutes "sampling" and "interpolation" and therefore violates my publisher's copyrights under the law protecting sound recordings. Under the standard applicable to sound recordings, the similarity of the 2 recordings is not an issue; defendants violated my copyright simply by using my song without my permission.

3. Most important to me is the fact that defendants turned my original artistic work into an advertisement. While many artists agree to such promotional uses of their work, I did not do so. Part of the rights guaranteed me by copyright law is the right to refuse to commercial exploitation and the right to control derivative works. I, as the songwriter, publisher and record label have the right of first refusal on any such uses and any licensing. Please see Krasilovsky and Shemel, "This Business of Music", 10th Ed. 2007.

4. None of the cases cited in the Motion to Dismiss deal with the situation before the Court - the use of a song to illegally create a derivative audio visual work, and several other derivative soundtracks. The Court should therefore ignore defendants' attempt to divert attention to these cases, because they provide no useful guidance. As stated in my original complaint, this case presents to the Court a growing trend in the music and advertising business.

5. Defendants' actions violate both the spirit and the letter of the copyright law, the Lanham Act, Mass General Law c 93A, and other laws and equitable principles governing fair business practices. The fact that temp tracking usually flies beneath the radar of the legal system does not mean it is legal. It simply means that artists usually lack the resources needed to enforce their copyrights through the legal system.

6. There is an urgent need to declare temp tracking what it is- -copyright infringement. Allowing temp tracking to go unpunished allows someone other than the creator of an original work to profit from use of that work without paying for mechanical, master use, and synch licenses as required by copyright law.

7. My original complaint adequately states a claim for copyright infringement. Nonetheless, I submit an Amended Complaint to provide the Court with a clearer statement of my claim: Defendants had access to my song (please note that the Motion to Dismiss does not deny access), and the similarities I show between my song and defendants' unauthorized derivative works are substantial enough to survive a motion to dismiss. Moreover, the illegal use of my soundtrack in a movie or audio visual medium does not depend upon a showing of substantial similarity. Defendants violated my copyright when they used my song to create the derivative video and the Bon Jovi soundtrack used in the promo ad.

8. Regarding my claim for damages in the amount of \$400 billion, I request the Court's guidance on the issue of damages. This Amended Complaint simply requests damages in an unspecified amount. I made my original \$400 billion claim in part to draw attention to the fact that current

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law and statutory damages as set out in the Copyright Act are inadequate because they do not address the issue of temp tracking, and the current ease of copying and altering copyrighted musical works. Furthermore, this was one of the most commercial ly exploited songs in history. The law, with the possible exception of the recent AOL/ASCAP case d iscussed below, simply has not kept pace with all the new ways of exploiting copyrighted original and derivative works, such as ringtones and internet downloading. Or especially taking the unauthorized derivative soundtrack that BJ recorded for the video promo and illegally inviting millions of fans around the world to illegally synch video images to their unauthorized CD version which they made for an illegally synched derivative audio visual .

9. I believe that defendants did what they did in order to cut me out of the deal, a nd to avoid paying ASCAP/BMI/&SEASAC (known as PRO's,or Performance Rights Organizations) large fees for the the high profile expensive slots the promo ad would be performed in. Since the defendants mostly all have PRO blanket licenses, t hey wouldn't have to pay anything extra for the countless public performance of their audio visual promo ad in countless medium around the world. Defendants thus avoided spending more money o n the unauthorized promo creation in order to spend that money to promote the 'brand' jingle hook, b ased on my chorus, all to promote MLB both in the United States, a nd in more than 74 countries around the world, and throughout the worldwide web. In fact, MLB and Bon Jovi "the band", Island Records, and their respective publishing companies may not have legally been able to claim copyright in the first place.

10. At the same time I was finishing my derivative version of my baseball playoff anthem "Man I Really Love This Town", I applied for membership to the American Society of Composers Authors and Publishers (ASCAP) I registered my song with ASCAP, receiving ASCAP code registration, number 433133272. Not only did the defendants clearly have access through the many channels already mentioned as well as the internet, they had access through ASCAP. They

all have access to any PRO's song repertoires. I again emailed and sent the Boston Red Sox and MLB the song and lyrics letting them know about the derivative version "Man I Really Love This Town" asking them to call if they wanted to use the musical work or soundtrack. The defense spent most of their time in their motion to dismiss my complaint referencing this derivative work and cases they thought related to this case. However, the defense did not have access to this new version, only the knowledge that I was recording it. The MLB promo ad is a derivative of my original copyrighted song, the song they clearly had access to. The fact that we both made similar derivative works based on the same copyrighted song that are both substantially similar is no surprise. I wrote the song I told the defendants I was writing. The defendants wrote the song they wanted to use and exploit to get their advertising message out, all based on my original copyrighted work. The only difference is, I alone had the right to create derivative works under the current copyright laws.

11.. The defendants also cut ASCAP out of any performance rights money by directly licensing the derivative soundtrack from Bon Jovi. Again, I believe this was done to save more money that would be better spent on this ad campaign, the largest and most expensive in sports & entertainment history. In summation, the defendants took my song, made a derivative work, cut ASCAP out of the deal, and put a derivative of the derivative back into the ASCAP repertory (clearly breaking the rules they sign in their license agreements with them), either to make more money for performance rights royalties or to facilitate the corporate entities exploitation of the work. One of the most guilty defendants in my opinion, TBS, is the producer in the MLB promo according to the defendants. Not only did TBS have direct access through the client and 'product' whom the ad was for, MLB, they also had access through the internet and through the ASCAP repertory.

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12. My research into the issue of synch rights has determined that Sequoia Media Group has agreements with several of the defendants. Sequoia licenses synchronization rights (the copyright owners and publishers rights to allow or disallow music being synched up with video images) or 'synch rights' as well as 'master rights' for these defendants to legally protect the rights of their copyrights. They collect 'synch fees' and 'master use' fees for Universal, Warner Music, and Sony BMGs' music and pay the fees to these defendants. Sequoia's CEO, Chett Paulsen, explains why synch rights are so important, "Music profoundly effects the emotion of a video production". VP of Sequoia, Terry Dickson, explains "Synchronization and master rights are protected by law and there are stiff penalties for non-compliance." A Sequoia press release about protecting the defendants 'synch rights' states, "Because synchronization rights are difficult to obtain and often expensive, the photo and video industry has largely ignored the requirements associated with legal use of soundtracks and implicitly encourage the illegal synchronization of licensed music. As Sequoia continues to provide groundbreaking relationships with the owners of music rights, enforcement of copyright laws in the music industry will likely increase." It is important to note that the bulk of songwriters' income comes from mechanical and synchronization licenses, because the writer receives 50% of the income for the rights.

13. To transform my song into a promotional audio visual piece, defendants took my original copyrighted musical work and sound recording and decided that it was perfect song for the audio visual promo ad. The defendants never got any 'synch license' from either me or my publishing company, nor did they contact ASCAP in order to get publishing info for the song in their repertory that they wanted to use. Nor did they get or attempt to get a 'master use license' from me or my record label, Steele Recordz, which owns the master recordings, thus illegally creating an audio visual based on my copyrighted work voiding several copyright laws in the process. The defendants then illegally re-arranged and transformed this audio visual work into a derivative



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commercial audio visual work (video/music/lyric,etc. ), thus violating more of my sacred copyright privileges (commercial control of the work, right of refusal, right to control derivative works, etc.). Defendants changed the song lyrically so that the the song had a 'bigger picture' in the words of the musical director Craig Barry, ie: the same song and chorus jingle could work for any teams' hometown advertising market. This is the very concept I had proposed to them.

14. The third license which they never got nor attempted to get from ASCAP, me, or my publishing company was the right to perform this derivative audio visual work. Let's get the record straight, MLB Advanced Media and MLB.COM claimed copyright for the audio visual and not TBS. They did all of this because either MLB was the author of the audio visual, or they commissioned the audio visual work, and thus MLB/BJ/and TBS could be considered joint authors. As supposed copyright owner, MLB would be allowed to publicly perform the promo license free whenever and wherever they wanted to, and possibly license it to its own partner networks that aired it. However, here lies the problem, MLB did not have the right to claim copyright for an audio visual that was illegally made from my copyrighted work. The law states that a 'derivative work' includes any other form in which a work may be rewritten/transformed/adapted, even a motion picture version. Since the ways that motion pictures and audio visuals are made are the same, and since the MLB audio visual was clearly adapted/transformed from my song, thus it is an audio visual (or motion picture) unauthorized derivative version of my song.

15. This case is very unusual because of the new digital ways that one can use, exploit and adapt audio visual medium. Please see Kalem Co. vs Harper Bros. 222 U.S. 55 (1911) This case discusses the time when audio visual pictures were brand new in the early 1900's, when defendants made a movie to what a copyrighted book's words were describing, the movie was found to be derivative version / infringement of the copyrighted book even though they were

different media. In this case, temp tracking, as will be discussed later is the brand new medium. The audio visual promo based on the 'heart', or feel and concept, is derived from my song. The music is derived from my song. The video and some of the changed lyrics are derived directly from my song's lyrics or what the original audio visual images suggested lyrically (as noted, more than 50% of the lyrics in the BJ MLB promo were plagiarised directly from my copyrighted lyrics and music). This case represents the reason for copyright law: To prevent anyone from transforming/adapting/commercially exploiting in any medium whatsoever. The law must address this method of copyright law violations. As in the Kalem Co. vs Harper Bros. case, the law needs to recognize this new digital technique as a way to exploit and avoid the copyright laws.

16. Violations of synch rights prove more than just intent, these violations make applicable a lower threshold of similarity. That is, if the synch and master use violations occurred before the defendants' works were published, and access is clear, then the law requires less similarity to prove copyright infringement. This is the only way to apply the protections of the copyright law to current industry practices. The temp track evidence puts my song at the scene of the crime and the courts should increase the penalties for both synch and master rights violations. This temp tracking scourge makes it simple to steal any parts of any song with the click of a mouse. If downloading free music is a crime, then taking unlicensed music, synching video images, adapting, transforming, and exploiting illegally should carry more more serious legal consequences than they currently do.

17. The copyright law states ASCAP must grant a license to perform both the original audio visual 'synched' to my original copyrighted work and derivative audio visual promos created by TBS for MLB as it is an unlicensed illegally made derivative audio visual work, and the

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underlying musical work from which it was derived. Please see the Opinion and Order in a case from last April 2008, United States of America v. ASCAP in the matter of America Online, Inc et al for the determination of reasonable license fees. (United States District Court for the Southern District of New York, Civil Action 41-1395. ) In that case, ASCAP was awarded 2.5% of all advertising revenue from Yahoo, Realnetworks, and AOL, whose parent company is defendant Time Warner. Although these entities all had blanket licenses to perform the songs in the ASCAP repertory, they were using the music to increase ad revenue and thus had to share profits over \$100 million. The court ruled that 'the blanket license fee must reflect its use'. To MLB, Fox, TBS, Time Warner, 2.5% of ad revenue the past two infringing baseball playoff seasons is an unusually large dollar value. The current plaintiffs are the least of the defendants' worries, as you probably have figured out already.

17. The plaintiffs respectfully request that this Court, or ASCAP or any arbitrator apply the ASCAP/AOL decision to this case. ASCAP has already analyzed my evidence, made obvious comments about the defendants' obvious access to my song, and already knows there is a discrepancy as to % ownership of the version illegally in their repertory from the Bon Jovi CD. ASCAP's fiduciary duty as administrator of my company's publishing/performance rights is to protect our original work before the unauthorized derivative versions. ASCAP's fiduciary duty is not to care who sings on the BJ CD version on 'Lost Highway', or who sings on the various different promo versions that were all released by the same defendants that infringed my copyrights. Nor do they care when any derivative versions were released. Rather, ASCAP's primary reason for existing is to document the origin of the song, or the underlying work, and keep straight who created it and should get royalties when it (or any derivative version) is played by anyone, even Bon Jovi. Please see these letters between ASCAP and me, included with my

original complaint. When I went to ASCAP for help, I alleged that the video images and the music were both derived originally from my copyrighted musical work. I also alleged that this 2:30 audio visual promo was why the BJ soundtrack was recorded, and that TBS or MLB wrote most of the lyrics derived from the audio visual illegally made from my song. I also alleged that Bon Jovi probably did write the 2nd verse of the derivative soundtrack on the CD 'Lost Highway' with a 'silly verse' about a kid and cop and train that had nothing to do with the 2:30 baseball audio visual for which they recorded it. Thus they added some originality in order to be able to claim copyright on the soundtrack side. However, they didn't have that right. Regardless of the fact that only some of the defendants committed the wilful infringement and transformation of my song, all defendants were involved in the chain of events that transferred rights they never had. Bon Jovi did not have the right to claim the PA copyright in the song. If you remove the common elements taken from my song and the other elements that MLB or TBS added, you are left with the 2nd verse. BJ's original contribution to their CD sound recording and the only thing that they could legally claim copyrights in is the 2nd verse on their CD unauthorized version. The overall feel, purpose, and spirit is the same as my song. Indeed, more than 50% of the words in the Bon Jovi soundtrack were taken from my original lyrics. The MLB/TBS video was adjusted to fit the new unauthorized TBS/MLB version of my song when they got their BJ film footage on 07/12/07, then the illegal promo campaign ensued...screwing me the artist, and ASCAP as well.

18. Bon Jovi did not have the right to claim copyright for the musical work because neither they, MLB, TBS nor Island Def Jam Records had the right to claim copyright in anything or license anything to anybody, not audio visual or soundtrack, master use license, mechanical license, synchronization license, performance right, rights to make derivative works. Finally, and most importantly, they were not legally allowed to submit an unauthorized derivative soundtrack in to

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ASCAP's repertory as writer/publisher without giving me the due credit they know I deserve. This explains ASCAP's letter acknowledging the discrepancy, and the statements ASCAP employees made to me that they " found it very hard to believe this was original creation on their [defendants'] part with the whole base thing and video." Please do not let the defense mislead the court to interpret their words and actions any other way. From my original lyrics /music/ and expression ,TBS & MLB illegally adapted and transformed the audio visual to include its own messages within the derivative lyrics, music and video derived from my copyrighted work. The derivative versions of the song were recorded by BJ for MLB & TBS. The defendants most likely paid Island Records for their studio time as well . If it was done for the baseball audio visual promo derived from my work, then it is a baseball audio visual and a baseball song. Please do not let the defense lead you to believe otherwise. The defendants tried to change the audio visual music and lyrics enough to have Bon Jovi do their so called ' original work'. Please listen to Exhibit \_\_\_\_, a CDR. Listening to both country style baseball playoff anthem hooks back-to-back or side-by-side is pretty obvious where the latter baseball song was derived from.

19. ASCAP's discrepancy letter as to ownership of writing and publishing royalties of the BJ CD version and their desire to 'get the parties together' meant they wanted to get the publishers together to settle it quickly by cutting me a percentage which they seemed opened to negotiating with me...that is until BJ's lawyers stopped any negotiating with threats to me. Their subsequent statements regarding they "found it hard to believe this was independent creation on their ( the defendants' ) part" only confirm my allegations. Their words to me were "Sounds like the party you should be going after is Turner". ASCAP deals with this 'temp track' scourge very often according to them.

Similarities and How my Song was Transformed.

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20. I believe that the MLB promo video was created with my song, that is, that the video images were selected to track my song and its lyrics. Standard computer programs such as Pro Tools make it possible to rearrange and transform any audio visual work in a matter of seconds with a few mouse clicks .

21. It seems that defendants liked my copyrighted lyrics rhyming 'goin round 'hometown' & 'bound' in the 1st & 2nd lines. It is safe to assume that all defendants had access to the copyrighted lyric sheets I sent to MLB. In the first line, ' goin round' is rhymed directly with derivative copyrighted lyrics " town". The defendants took these rhymes and made them the 'heart' of the advertisement's choral hook and added in their commercial messages (the Bon Jovi MLB promo): 'spinnin round, down, town'...pretty original TBS & MLB!!!

22. The 2:30 second promo that MLB owns was never played on TBS. I believe they did this in order to maximize the revenue and royalties from their unauthorized derivative works. They wouldn't waste precious funds they could reap from all the overpriced advertising rates they could charge to other advertisers wanting to place their ads in between the Bon Jovi "teasers". According to their publicly available earnings statements, some of the defendants advertising revenue doubled in the 3rd quarter of 2007 because of "the ability to charge more for ad time in the MLB playoffs because of the power of the BJ promo to keep viewers watching" as the defendants said. Profit from the ad revenue went up because of the unauthorized public display of the unauthorized derivative MLB/BJ Promo. Bud Selig, and MLB (who refused the US Marshall's attempts to serve them with this lawsuit) put it best in early 2008, "we want to get the message about our product out there in as many countries around the world as possible" . Turner Sports President David Levy stated in a press release in 2007 that they only "own postseason baseball" for 5 more years. "Only bumps and teases", as TBS put it, were ever played on TBS (:15 & :30 second versions). MLB was the only one that played it in full length at MLB ballparks

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throughout the country, and at least 11,500 movies theaters in the past 2 years. In doing so, M LB has put at risk of infringement not only the owners of every one of these theaters, but the owners of the ballparks where it was illegally publicly performed.

Conclusion

For the reasons stated, Plaintiffs request the Court deny defendants' motion to dismiss, and accept Plaintiffs' Amended Complaint.

Dated: January 30, 2009

Samuel Bartley Steele  
Bart Steele Publishing  
Steele Recordz

A handwritten signature in black ink, appearing to read 'S. Steele', is written over a horizontal line. The signature is cursive and somewhat stylized.