

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

----- X
SAMUEL BARTLEY STEELE, :
:
Plaintiff, : Civil Action
v. : No. 10-11458-NMG
:
ANTHONY RICIGLIANO, BOB BOWMAN, BOSTON : **ORAL**
RED SOX BASEBALL CLUB LIMITED : **ARGUMENT**
PARTNERSHIP, BRETT LANGEFELS, CRAIG BARRY, : **REQUESTED**
DONATO MUSIC SERVICES, INC., FENWAY SPORTS :
GROUP a/k/a FSG f/k/a New England Sports Enterprises :
LLC, JACK ROVNER, JAY ROURKE, JOHN :
BONGIOVI, individually and d/b/a Bon Jovi Publishing, :
JOHN W. HENRY, LAWRENCE LUCCHINO, MAJOR :
LEAGUE BASEBALL ADVANCED MEDIA, L.P., :
MAJOR LEAGUE BASEBALL PROPERTIES, INC., :
a/k/a and/or d/b/a Major League Baseball Productions, :
MARK SHIMMEL individually and d/b/a Mark Shimmel :
Music, MIKE DEE, NEW ENGLAND SPORTS :
ENTERPRISES LLC f/d/b/a Fenway Sports Group f/a/k/a :
FSG, RICHARD SAMBORA individually and d/b/a :
Aggressive Music, SAM KENNEDY, THOMAS C. :
WERNER, TIME WARNER INC., TURNER :
BROADCASTING SYSTEM, INC., TURNER SPORTS, :
INC., TURNER STUDIOS, INC., VECTOR :
MANAGEMENT LLC f/k/a and/or a/k/a and/or successor :
in interest to Vector Management, WILLIAM FALCON :
individually and d/b/a Pretty Blue Songs, :
Defendants. :
----- X

THE MOVING DEFENDANTS'
MOTION TO DISMISS AND FOR OTHER RELIEF

Defendants Turner Broadcasting System, Inc. and Boston Red Sox Baseball Club

Limited Partnership (the "Moving Defendants") hereby move this Court for an Order:

1. Pursuant to 28 U.S.C. § 1915(e)(2) and the principles of Rule 12(b)(6) of the Federal Rules of Civil Procedure rejecting Plaintiff's application to proceed *in forma pauperis* and promptly dismissing this lawsuit on claim

preclusion grounds, based on *Steele v. Turner Broadcasting System, Inc.*, No. 08-11727-NMG (D. Mass. filed Oct. 8, 2008) (Gorton, J.) appeal pending, No. 09-2591 (1st Cir.) ("*Steele I*");

2. Pursuant to 28 U.S.C. § 1927 and 17 U.S.C. §§ 505, 1203(b)(5), awarding the Moving Defendants their attorneys' fees and costs incurred in responding to this lawsuit;
3. Alternatively, entering a stay of this case pending (a) entry of an order in the proceeding pending before the U.S. Court of Appeals for the First Circuit in No. 09-2591, (b) resolution of the two motions for entry of default pending before this Court in *Steele I*, and (c) resolution of the forthcoming motion to dismiss the as-yet unserved First Amended Verified Complaint in *Steele v. Bongiovi*, No. 10-11218-DPW (D. Mass. filed July 11, 2010) (Woodlock, J.) ("*Steele II*"); and
4. Enjoining Plaintiff from making additional motions in *Steele I* and this case, or filing new lawsuits related to Plaintiff's "Steele Song" without first obtaining this Court's prior approval.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(D), the Moving Defendants respectfully request oral argument on this motion.

LOCAL RULE 7.1 CERTIFICATION

I, Christopher G. Clark, hereby certify that on August 31, 2010 and September 1, 2010, I conferred with counsel for Plaintiff in a good faith attempt to resolve or narrow the issues raised herein but was unable to obtain the Plaintiff's assent to the relief requested.

Dated: September 1, 2010

/s/ Christopher G. Clark
Christopher G. Clark

Dated: September 1, 2010
Boston, Massachusetts

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Christopher G. Clark, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on September 1, 2010.

Dated: September 1, 2010

/s/ Christopher G. Clark
Christopher G. Clark

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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INC., TURNER STUDIOS, INC., VECTOR :

MANAGEMENT LLC f/k/a and/or a/k/a and/or successor :

in interest to Vector Management, WILLIAM FALCON :

individually and d/b/a Pretty Blue Songs, :

Defendants. :

----- X

**MEMORANDUM OF LAW IN SUPPORT OF THE
MOVING DEFENDANTS' MOTION TO DISMISS AND FOR OTHER RELIEF**

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Dated: September 1, 2010

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PRELIMINARY STATEMENT

On August 25, 2010, plaintiff Samuel Bartley Steele ("Steele") filed yet another lawsuit in this Court, his third (thus referred to herein as "*Steele III*") seeking damages for alleged copyright violations related to his 2004 copyrighted anthem to the Boston Red Sox (the "Steele Song"). This new lawsuit is merely the latest in a growing wave of frivolous and harassing legal filings brought by Steele, who is now represented by counsel.¹ The "Moving Defendants"² respectfully submit that the time has come to stop this proliferation of vexatious and harassing legal tactics, which unnecessarily waste the Court's resources and impose unjustifiable burdens on the ever-expanding group of defendants in the three lawsuits.

This Court should deny Steele's pending request for leave to proceed *in forma pauperis*, dismiss this lawsuit, and award the Moving Defendants their defense costs, including attorneys' fees. Alternatively, at a minimum, the Court should stay this duplicative lawsuit, and not permit the issuance of summonses or service of the Complaint, until the already pending and anticipated motions and appeals are resolved in the two related lawsuits.

Finally, and in any event, the Court should enter an Order that would prevent either Steele or Hunt from filing (1) any new lawsuits concerning the Steele Song, or (2) new or additional motions in Steele's two cases before this Court (*Steele III* and, as described below, *Steele I*), without first obtaining leave of the Court to do so after demonstrating good cause for the proposed new filings.

¹ Steele's lawyer is Christopher A.D. Hunt ("Hunt"), of The Hunt Law Firm, Hopedale, Massachusetts.

² The Moving Defendants are Turner Broadcasting System, Inc. ("TBS") and Boston Red Sox Baseball Club Limited Partnership ("Boston Red Sox"), and those entities are voluntarily appearing herein prior to service of process in an effort to prevent further harassment. The Moving Defendants believe that the issues they are raising are equally applicable to all Defendants named herein even though those Defendants are not parties to this motion.

FACTUAL BACKGROUND

The facts that justify the requested relief are as follows:

Steele I

This Court will recall that, in October 2008, Steele, proceeding *pro se* (and, with leave of this Court, *in forma pauperis*), filed his first copyright-infringement lawsuit against more than 20 defendants and sought \$400 billion in damages.³ *Steele v. Turner Broadcasting System, Inc.*, No. 08-11727-NMG (D. Mass. filed Oct. 8, 2008) (Gorton, J.) ("*Steele I*").⁴ Two of Steele's claims were dismissed on defendants' motions to dismiss. *Steele I*, 607 F. Supp. 2d 258, 263, 265 (D. Mass. 2009). After a period of discovery on the issue of substantial similarity, this Court dismissed the third claim, copyright infringement, holding that, as a matter of law, the two accused works, a song by the band Bon Jovi (the "Bon Jovi Song") and an audiovisual work used to promote Major League Baseball postseason games (referred to in the *Steele III* Complaint as

³ While in *Steele I* there are two additional plaintiffs, unincorporated business entities owned by Steele, their presence or absence in this series of lawsuits is of no legal consequence, and they will not be referred to further in this brief.

⁴ In resolving this motion to dismiss, the Court may take judicial notice of court filings in *Steele I* and *Steele II*. See *Am. Glue & Resin, Inc. v. Air Prods. & Chems. Inc.*, 835 F. Supp. 36, 40 (D. Mass. 1993) (recognizing that it is "undoubtedly true" that the court may take judicial notice of court records in related proceedings on a motion to dismiss). See also *Airframe Sys., Inc. v. Raytheon Co.*, 601 F.3d 9, 11-12 (1st Cir. 2010) (acknowledging that "[o]ther undisputed documents about the [plaintiff's first copyright lawsuit] were [] properly before the district court").

Additionally, the Court may consider the works at issue in the previous lawsuits, including the Steele Song, the Bon Jovi Song, and the MLB Audiovisual, defined *infra*, even though Steele did not submit them with his Complaint in this case. See *Feldman v. Twentieth Century Fox Film Corp.*, No. 09-10714-DPW, 2010 WL 2787698, at *4 (D. Mass. July 13, 2010) (granting motion to dismiss copyright case and recognizing that a court may consider the parties' works referred to in the complaint without converting the motion into one for summary judgment). See also *Watterson v. Page*, 987 F.2d 1, 3 (1st Cir. 1993) (court may consider materials "central to the plaintiffs' claim" or "sufficiently referred to in the complaint" on a motion to dismiss). Moreover, each of these works were publicly filed in *Steele I* and are therefore properly before this Court on that basis as well.

the "MLB Audiovisual"), were not substantially similar to the Steele Song. *Steele I*, 646 F. Supp. 2d 185, 190-94 (D. Mass. 2009). On August 19, 2009, the Court entered final judgment in favor of all of the remaining defendants. (*Steele I* Docket No. 105.)

Appearance Of Counsel

On November 6, 2009, Hunt, Steele's counsel herein, filed a notice of appearance in *Steele I*, and filed a notice of appeal to the First Circuit. (*Steele I* Docket No. 112.) That appeal has been fully briefed and is awaiting decision. (*See* No. 09-2591 (1st Cir.)) Hunt represents Steele on that appeal, and on all of Steele's subsequent frivolous motions and lawsuits identified herein.

Post-Judgment Motions For Default In *Steele I*

On June 18, 2010, almost ten months after this Court entered final judgment in favor of all defendants and closed *Steele I*, Steele filed a motion for entry of a default against non-party MLB Advanced Media, L.P. (*Steele I* Docket No. 118.) Then, on August 12, 2010, Steele filed yet another post-judgment motion for entry of a default in *Steele I*, this time against an entity named "Vector Management." (*Steele I* Docket No. 125.)

The reasons why these default motions are frivolous are set forth at length in already-filed opposition papers (*see Steele I* Docket Nos. 120 & 129), and will not be repeated here. Suffice it to say, any member of the bar of this Court should recognize that there can be no good faith basis to seek a default judgment based on claims already dismissed as a matter of law, against new parties clearly related to one or more of the 20 defendants already vindicated. The default motion as to "Vector Management" is particularly telling on the issue of lack of good faith, given that this Court in *Steele I* had dismissed another "Vector" entity after finding that Steele failed to plead any substantive allegations against it in either of his two complaints. *Steele I*, 607 F. Supp. 2d at 263-64.

**Filing of *Steele II* Based On An Alleged
"Altered" Document Submitted To This Court In *Steele I***

On July 20, 2010, Steele started a new lawsuit with a complaint that re-pleaded the facts set forth in *Steele I*, with the addition of allegations that, in support of their dispositive motions in *Steele I*, certain of the defendants therein and their attorneys had submitted to this Court an allegedly "altered" version of the MLB Audiovisual. *Steele v. Bongiovi*, No. 10-11218-DPW (D. Mass. filed July 20, 2010) (Woodlock, J.) ("*Steele II*"). The alleged "alteration" was purportedly omitting a copyright notice at the end and adding 12 seconds of lead-in "dead air." (*Steele II* Am. Compl. ¶¶ 149 & 150.) Steele alleged that those asserted "alterations" were made "for the purpose of filing false evidence -- the Altered Audiovisual -- with this Court and the First Circuit Court of Appeals in the ongoing *Steele I*" (*id.* ¶ 157; *see id.* ¶ 162), and therefore allegedly violated Section 1202 of the Digital Millennium Copyright Act.⁵

Steele III

On August 25, 2010, Steele commenced this third lawsuit relating to his Steele Song. (*Steele III* Docket No. 1.) On that same day, Steele filed a motion for leave to proceed *in forma pauperis*. (*Steele III* Docket No. 2.)

The Complaint in *Steele III* retells Steele's fanciful story, all over again in an extended version, in 268 paragraphs covering 44 pages, only this time with at least 15 new defendants not named in *Steele I*. (*See* Table attached as Exhibit A hereto.) It is readily apparent, however, from a review of the party-identification allegations (*Steele III* Compl. ¶¶ 10-35) that each "new" Defendant is related to a defendant named in *Steele I*. For example, new Defendant

⁵ The ten defendants in *Steele II* include four *Steele I* defendants, the law firm which has been defendants' principal outside counsel in *Steele I* (Skadden, Arps, Slate, Meagher & Flom LLP), and five individual Skadden attorneys who appeared for defendants in *Steele I*. Steele has been allowed in *Steele II* to proceed *in forma pauperis* (*see Steele II* Docket No. 5), and following service of process the defendants therein will be moving to dismiss that lawsuit.

Jay Rourke is alleged to be an employee of the Boston Red Sox (*id.* ¶ 18), a defendant in both *Steele I* and *Steele III*. New Defendant Jack Rovner is alleged to have been the manager of the Bon Jovi band. (*Id.* ¶ 17.)

As in *Steele I*, moreover, the central allegations are based on alleged "temp tracking." (*See id.* ¶¶ 100-16, 149, 182, 196-97, 202.) Each and every Defendant in *Steele III*, individual or entity, is alleged to have, as part of purportedly using Steele's Song as a "temp track," "reproduced the Steele Team Song sound recording without Steele's authorization." (*Id.* ¶¶ 207-32.) Steele's "temp tracking" allegations are hardly new, as this Court summarized his "temp tracking" arguments in both of its reported decisions in *Steele I*. *See Steele I*, 607 F. Supp. 2d at 261 (motion to dismiss); *Steele I*, 646 F. Supp. 2d at 188 (motion for summary judgment). Indeed, in the Complaint filed herein, Steele and Hunt expressly acknowledge that "temp tracking" was a central issue in *Steele I*:

In *Steele v. TBS, et al.*, above, No. 08-11727 (D. Mass.), Steele alleged that defendants MLB, MLBAM, Bongiovi, Sambora, Shimmel, Vector, Falcon, TBS, and others used the Steele Team Song as a temp track during the creation of the MLB Audiovisual.

(*See Steele III* Compl. ¶ 196.)

* * *

It is readily apparent from even this brief recitation of the facts that *Steele III* is barred as a matter of law on claim preclusion grounds, because the central "story" here, and the alleged wrongful conduct, is virtually the same as the "story" in *Steele I* and the allegations there, *i.e.*, there is a common nucleus of operative facts, and the defendant parties are fundamentally the same as those already dismissed in *Steele I*. Thus, Steele has had his day in Court; he cannot simply start all over because he is unhappy with this Court's dismissal of his claims.

ARGUMENT

I. STEELE'S MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* SHOULD BE DENIED, AND THIS LAWSUIT DISMISSED, BECAUSE THIS THIRD LAWSUIT IS FRIVOLOUS AND FAILS TO STATE A CLAIM

A plaintiff may proceed *in forma pauperis* only if he establishes that (i) he is indigent and (ii) the action is not "frivolous or malicious" and does not "fail[] to state a claim on which relief may be granted." 28 U.S.C. § 1915(a)(1), (e)(2). Even if Steele can satisfy the poverty requirement, *Steele III* fails this second requirement.

A. Applicable Legal Standard

Section 1915(e)(2) provides that "[n]otwithstanding any filing fee, or any portion thereof, that may have been paid, the court *shall dismiss* the case at any time if the court determines that . . . (B) the action or appeal -- (i) is frivolous or malicious; [or] (ii) fails to state a claim on which relief may be granted" 28 U.S.C. § 1915(e)(2) (emphasis added); *McLarnon v. United States*, No. 09-10049-RGS, 2009 WL 1395462, at *5 (D. Mass. May 19, 2009) (requiring that plaintiff seeking *in forma pauperis* status to "demonstrate good cause, in writing, within thirty-five days" "why this action should not be dismissed" where the court identified multiple bases upon which the complaint lacked merit). In enacting Section 1915, Congress recognized that "some nonpaying litigants would try to abuse the privilege," and therefore specifically "authorized the courts to dismiss a claim filed *in forma pauperis* if the action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks money damages from a defendant who is immune from such relief." *Guy v. Brady*, No. 08-cv-0309, 2008 WL 4603339, at *1 (E.D. Wis. Oct. 16, 2008) (denying plaintiff's motion to proceed *in forma pauperis* and dismissing action on claim preclusion grounds where, as here, the plaintiff had filed multiple actions that were all "rooted in the same factual allegations").

In *Johnson v. Sands*, No. 10-cv-255, 2010 WL 3119539, at *1 (N.D. Ind. Aug. 6, 2010), the court denied plaintiff's request to proceed *in forma pauperis* and dismissed the case with prejudice pursuant to 28 U.S.C. § 1915(e)(2). That action was the second case brought by the same plaintiff against the same or similar defendants after the first case had been dismissed on the merits. *Id.* The court also dismissed the second case, which alleged the same claims, as it was barred by res judicata. *Id.* In its analysis, the court noted that, while one party had been misidentified in a previous complaint and was in fact the same defendant in both cases, this was irrelevant because, even if the claims were brought against different defendants, "the claim [was] still barred by res judicata because both defendants [were] alleged to have acted in privity with the other defendants." *Id.* See also *Mohammed v. Wis. Ins. Sec. Fund*, No. 10-CV-551, 2010 WL 2854286, at *2 (E.D. Wis. July 19, 2010) (denying plaintiff's motion for leave to proceed *in forma pauperis* and dismissing case on preclusion grounds because it was legally frivolous and "there is nothing to indicate [plaintiff's] suit is anything more than an attempt to relitigate issues already disposed of"); *Toegemann v. Selective Serv. U.S.*, No. CA 09-376, 2009 WL 2920394, at *1-2 (D.R.I. Sept. 11, 2009) (denying plaintiff's motion to proceed *in forma pauperis* and dismissing the case because the allegations were "essentially the same" as those in two previously dismissed lawsuits).

B. Steele III Is Barred As A Matter Of Law By The Doctrine Of Claim Preclusion

1. Elements Of Claim Preclusion

The long-established doctrine of claim preclusion prevents parties from "relitigating claims that could have been made in an earlier suit, not just claims that were actually made." *Airframe Sys., Inc. v. Raytheon Co.*, 601 F.3d 9, 14 (1st Cir. 2010). The First Circuit has explained that "[t]he doctrine of claim preclusion serves at least two important interests:

protecting litigants against gamesmanship and the added litigation costs of claim-splitting, and preventing scarce judicial resources from being squandered in unnecessary litigation." *Id.* See also *Allen v. McCurry*, 449 U.S. 90, 94 (1980) (recognizing that preclusion doctrines "relieve parties of the cost and vexation of multiple lawsuits" and "conserve judicial resources").

Claim preclusion applies if the following three factors are satisfied: "(1) the earlier suit resulted in a final judgment on the merits, (2) the causes of action asserted in the earlier and later suits are sufficiently identical or related, and (3) the parties in the two suits are sufficiently identical or closely related." *Airframe*, 601 F.3d at 14. In *Airframe*, the First Circuit affirmed this Court's holding that claim preclusion barred the plaintiff from litigating a second copyright infringement action following the dismissal of its first lawsuit asserting infringement of a copyrighted source code. *Id.* at 12-13, 19. The Court reasoned that the plaintiff's second suit was barred because (1) the first suit had been dismissed on the merits, (2) the claims asserted in both actions shared a "common nucleus of operative facts" related to the same copyrighted work, and (3) a close and significant relationship existed between the defendant in the first action and the defendant in the second. *Id.* at 14-18. Accordingly, "[p]laintiffs cannot obtain a second chance at a different outcome by bringing related claims against closely related defendants at a later date." *Id.* at 14.

2. Application Of Claim Preclusion Here

The three elements of claim preclusion are clearly satisfied here, as shown below.

(a) Dismissal Of The First Lawsuit On The Merits

The first lawsuit was *Steele I*. It was, without doubt, dismissed on the merits. (Judgment dated August 19, 2009 (*Steele I* Docket No. 105).) That *Steele* has appealed the final judgment in *Steele I* does not bar the application of the doctrine. See *Amcast Indus. Corp. v. Detrex Corp.*, 45 F.3d 155, 160 (7th Cir. 1995) (stating that a "final judgment by a district court

has preclusive effect even though the judgment is pending on appeal"). *See also Belmont Realty Corp. v. R.I. Hosp. Nat'l Bank*, 11 F.3d 1092, 1095-96, 1099 (1st Cir. 1993) (finding claim preclusion notwithstanding pending appeal from final judgment); *Hughes v. McMnamon*, 379 F. Supp. 2d 75, 77 (D. Mass. 2005) (same).

(b) Common Nucleus Of Operative Facts

There also is no question regarding the existence of a common nucleus of operative facts between the two lawsuits. Dozens of the *Steele III* factual allegations track, or are identical to, factual assertions made in *Steele I*. A table identifying 30 examples where the *Steele I* factual allegations parallel the *Steele III* Complaint allegations is attached hereto as Exhibit B.

As noted, certainly a central issue herein, if not *the* central issue, relates to alleged use of the Steele Song as a "temp track" in the development of the MLB Audiovisual. (*See* Compl. ¶¶ 100-16, 149, 182, 196-97, 202.) The same "temp tracking" theory was asserted in *Steele I* -- this is readily demonstrated by reference to this Court's two reported decisions dismissing claims in *Steele I*. *See Steele I*, 607 F. Supp. 2d at 261; *Steele I*, 646 F. Supp. 2d at 188. Indeed, in alleging in this case that "[t]he MLB Audiovisual contains numerous audio and visual congruities with the Steele Team Song," Steele expressly relies on arguments he previously made in his *Steele I* filings, and incorporates by reference no fewer than six of those filings in his new pleading.⁶ (*Steele III* Compl. ¶ 89. *See also id.* ¶ 90.)

(c) The Defendants In Both Proceedings Are Identical Or Closely Related

The third element also is easily satisfied. First, eight defendants are *exactly* the same (*see* Exhibit A), and indeed, these include the central actors in Steele's conspiracy theory,

⁶ Steele cites to *Steele I* ten separate times in the *Steele III* Complaint. (*See Steele III* Compl. ¶¶ 39, 57, 89, 90, 178-80, 196-97.)

such as TBS, the Boston Red Sox, Major League Baseball Properties, Inc. ("MLB Properties"), and Bon Jovi band members and songwriters. *Compare, e.g., Compl. passim with Steele I*, 607 F. Supp. 2d at 261; *Steele I*, 646 F. Supp. 2d at 188. Further, the new Defendants added to *Steele III* are alleged to be directors, managers, employees, or affiliates of the defendants named in *Steele I* or, at the very least, purportedly acting in concert with those defendants. (*Steele III* Compl. ¶¶ 10-11, 14-18, 20- 22, 25-26, 28-29, 32-34, 52-53, 139, 156-59, 160, 173, 176-77, 181-82.)

* * *

As noted, the purpose of the claim preclusion doctrine is to prevent a plaintiff from serially relitigating claims actually made, or that could have been made, in an earlier lawsuit. *Airframe*, 601 F.3d at 14. Here, *Steele III* alleges only claims (that the Steele Song was copied as part of a "temp tracking" effort to develop the MLB Audiovisual) that fall squarely within those two categories. Like the plaintiff in *Johnson*, Steele has had his opportunity to litigate these claims and is barred from attempting to relitigate them again in a new lawsuit. *See Johnson*, 2010 WL 3119539, at *1 n.1 (holding that "the claim [was] barred by *res judicata* because both defendants [were] alleged to have acted in privity with the other defendants").

That Steele was *pro se* in *Steele I* does not give him a "free pass" for more than one "bite at the apple." Indeed, this Court went out of its way to make sure Steele understood that he would be bound by the result in *Steele I* whether or not he had legal representation. Thus, at the *Steele I* oral argument on the defendants' motions to dismiss, the Court asked Steele why he had not hired a lawyer, urged him to do so, and cautioned that if he did not do so he would nevertheless be bound by the proceedings. (*Steele I*, March 31, 2009 Hearing Transcript, at 5-6 (Docket No. 86) ("THE COURT: You're involved in a very serious case, and it's going to involve a lot of procedure, about which I presume you don't have much familiarity. And you could very

much use the assistance of counsel I'm just trying to put it in your head once again that it may be -- it may be in your best interests to try to obtain counsel -- or continue to try to obtain counsel because, as this case goes along, you're going to be required to abide by rules of procedure that are sometimes arcane and hard to understand, but, nevertheless, you will be required to abide by them".)

In sum, *Steele III* is barred as a matter of law by the doctrine of claim preclusion. Therefore, Steele's request to proceed *in forma pauperis* should be denied, and the lawsuit dismissed. See 28 U.S.C. § 1915(e)(2).

II. THE COURT SHOULD AWARD THE MOVING DEFENDANTS ALL COSTS OF DEFENDING THIS LAWSUIT

A. Basis For Sanctions Against Hunt

Under federal law, "[a]ny attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case *unreasonably and vexatiously* may be required by the court to satisfy *personally* the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. § 1927 (emphasis added).

In the First Circuit, an attorney's conduct in multiplying proceedings is considered "vexatious," and thus sanctionable under § 1927, when it is "harassing or annoying, *regardless of whether it is intended to be so.*" *Cruz v. Savage*, 896 F.2d 626, 632, 634-35 (1st Cir. 1990) (emphasis added) (affirming grant of sanctions under § 1927 where the "plaintiffs' attorney continually engaged in obfuscation of the issues, hyperbolism and groundless presumptions," and recognizing that "bad faith is not required for an award of attorneys' fees"). The First Circuit has made clear that allegations in court papers should not be made until there has been an "adequate investigation" and a "realistic basis" has been found upon which to base such a claim. *Nw.*

Bypass Grp. v. U.S. Army Corps of Eng'rs, 569 F.3d 4, 7 (1st Cir. 2009) (affirming grant of sanctions under § 1927 where plaintiff's allegations were "ill-founded, plainly groundless, frivolous, far-fetched and lacked a valid premise").

It seems clear that Hunt, having only appeared for the first time after Steele's claims in *Steele I* were dismissed on the merits, has decided that, now that Steele has an attorney, he and Steele are free to disregard this Court's prior rulings. There is no other explanation for the two default motions in *Steele I*, or the two new lawsuits.

B. Recovery Of Attorneys' Fees And Costs From Steele

A comparable judgment for the costs, including attorneys' fees, of defending *Steele III* should be entered against Steele, in favor of the Moving Defendants as the prevailing parties in this copyright lawsuit.

The Copyright Act authorizes the Court to award in its discretion a "recovery of full costs" and "a reasonable attorney's fee to the prevailing party as part of the costs." 17 U.S.C. §§ 505, 1203(b)(5). The Supreme Court has identified several factors that a court may consider in awarding attorneys' fees and costs: "frivolousness, motivation, objective unreasonableness (both in the factual and in the legal components of the case) and the need in particular circumstances to advance considerations of compensation and deterrence." *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 534 n.19 (1994) (internal quotation marks omitted).

The Supreme Court has further held that attorneys' fees and costs should be awarded to prevailing defendants on an even-handed basis with plaintiffs, and that "a defendant seeking to advance meritorious copyright defenses should be encouraged to litigate them to the same extent that plaintiffs are encouraged to litigate meritorious infringement claims." *Id.* at 518, 521. Indeed, courts have readily awarded attorneys' fees and costs to defendants who prevail on a motion to dismiss a copyright claim. *See, e.g., Scott v. Meyer*, No. CV 09-6076 ODW (RZX),

2010 WL 2569286, at *5 (C.D. Cal. June 21, 2010) (awarding defendant, a "prevailing party" on a motion to dismiss, approximately \$85,000). *See also Matthews v. Freedman*, 157 F.3d 25, 29 (1st Cir. 1998) (affirming award to the defendant where the plaintiff attempted to "extend her copyright protection far beyond what is allowed by law"); *Dahn World Co. v. Chung*, No. 06-2170, 2009 WL 277603, at *2 (D. Md. Feb. 5, 2009) (awarding approximately \$70,000 to the prevailing defendant in a copyright case).

These principles apply here. Upon dismissal of this lawsuit, the Moving Defendants will be the prevailing parties, and should be awarded their full costs, including attorneys' fees, of defending this lawsuit.⁷

III. ALTERNATIVELY, THE COURT SHOULD STAY THIS LAWSUIT UNTIL RESOLUTION OF THE PENDING APPEAL AND MOTIONS IN THE OTHER STEELE LAWSUITS

If the Court does not outright dismiss this lawsuit, it should, alternatively, stay it until there is a ruling on the pending First Circuit appeal in *Steele I*, as well as rulings on the two default motions pending before this Court in *Steele I*. That stay also should be in place until the forthcoming motion to dismiss in *Steele II* is decided. The Moving Defendants submit that those decisions could directly address issues in this case.

Moreover, a stay is warranted because Steele and Hunt have irresponsibly leveled serious allegations of wrongdoing against many of the Defendants herein, without any good faith basis for the charges. To illustrate the point, filed herewithin is the Declaration of Anthony

⁷ Further evidence of bad faith pleading by Steele and Hunt is found in paragraphs 119-38 of the Complaint, where they accuse individual Defendants Bongiovi and Sambora, members of the Bon Jovi band, of improper and unethical conduct over a 30-year period. Such gratuitous and irrelevant "character-assassination" assertions are the type of scandalous allegations typically stricken under Rule 12(f) of the Federal Rules of Civil Procedure. *See, e.g., Alvarado-Morales v. Digital Equip. Corp.*, 843 F.2d 613, 617-618 (1st Cir. 1988) (affirming order striking "scandalous matter which impugned the character of defendants" and which consisted of "superfluous descriptions and not substantive elements of the cause of action").

Ricigliano dated August 30, 2010 ("Ricigliano Decl.").⁸ Mr. Ricigliano, a well known musicologist, was retained by the defendants in *Steele I* as an expert, and submitted an expert report in that case supporting defendants' positions on the issue of substantial similarity. *See Steele I*, 646 F. Supp. 26 at 191 (citing Ricigliano Report); Ricigliano Decl. ¶¶ 1-2, 6, 9.

Apparently relying on nothing more than pure speculation, Steele and Hunt charge Ricigliano (and his company, Donato Music Services, Inc. ("Donato")) with having been deeply involved with the alleged use of the Steele Song as a purported "temp track" to develop the MLB Audiovisual. (*See Steele I* Compl. ¶¶ 187, 193-95, 207, 212, 239, 243.) Ricigliano and Donato are accused of having "cleared" the MLB Audiovisual for TBS and the Boston Red Sox, and with having helped "defendants conceal infringement of the Steele Team Song." (*Steele III* Compl. ¶ 193.) They also are accused of having "reproduced the Steele Song sound recording" without Steele's authorization. (*Id.* ¶¶ 212 & 239.)

Mr. Ricigliano, on his own behalf and on behalf of Donato, categorically denies each and every one of these scandalous charges. (*See* Ricigliano Decl. ¶ 5.) Indeed, Mr. Ricigliano denies ever having worked for TBS, or MLB Properties, or any of their affiliates, before he was first contacted in October 2008 (*i.e.*, after Steele had filed his lawsuit Ricigliano was contacted by counsel and retained as a defense expert). (*Id.* ¶ 10.) He further documents how the *Steele III* Complaint not only relies heavily on media reports for its temp tracking allegations (a highly doubtful basis for allegations of wrongdoing to begin with), but how it completely distorts even the media references. (*See id.* ¶¶ 13-16.)

⁸ The Moving Defendants submit the Ricigliano Declaration to show the recklessness with which Hunt and Steele acted in charging the parties with alleged wrongdoing. In the case of Ricigliano and Donato, the allegations are particularly irresponsible, given that Steele could have taken Ricigliano's deposition during the substantial similarity discovery in *Steele I*.

Other new Defendants as to whom the allegations of wrongdoing are clearly questionable on the face of the *Steele III* Complaint include Jack Rovner, who is alleged to be the manager of the Bon Jovi band. (*Steele III* Compl. ¶ 17.) Mr. Rovner also is alleged to be associated with Vector Management, yet in *Steele I*, Steele named a "Vector" entity as a defendant but failed to make any "Vector" factual allegations in either of his complaints therein. *Id.* See *Steele I*, 607 F. Supp. 2d at 263. Similarly highly questionable allegations in the *Steele III* Complaint are leveled at Defendants Rourke (*Steele III* Compl. ¶ 18), Henry (*id.* ¶ 20), Lucchino (*id.* ¶ 21), and Dee (*id.* ¶ 25), whose alleged involvement in the "temp tracking" conspiracy seems based on "guilt-by-association," as they all are or were connected with the Boston Red Sox. It is readily apparent that Steele and Hunt have simply let their imaginations run wild to expand the number of Defendants, no doubt hoping thereby to extract a settlement for already dismissed claims, by confronting an ever-expanding group of defendants with seemingly endless, costly, and frivolous litigation. This is Internet-search pleading at its worst, and should not be countenanced.

Accordingly, if this Court does not dismiss *Steele III* outright, it should, at a minimum, stay this case until there are rulings on the pending First Circuit appeal in *Steele I*, the two default motions pending before this Court in *Steele I*, and the forthcoming motion to dismiss in *Steele II*.

IV. THE COURT SHOULD ENJOIN STEELE AND HUNT FROM MAKING ADDITIONAL MOTIONS IN *STEELE I* AND *STEELE III*, OR FILING NEW LAWSUITS RELATED TO THE STEELE SONG, WITHOUT THIS COURT'S PRIOR APPROVAL

The unrelenting persistence of Steele and Hunt in filing baseless papers establishes the justification here for prospective injunctive relief. In a factually analogous case, *Hughes v. McMemon*, this Court warned the *pro se* plaintiff there that the filing of additional

frivolous papers would result in an order enjoining him from further proceedings. 379 F. Supp. 2d at 81. In that case, the plaintiff had similarly filed three actions and multiple appeals arising out of the same facts. *Id.* See also *Liberty Mut. Ins. Co. v. Foremost-McKesson, Inc.*, 751 F.2d 475, 477 (1st Cir. 1985) (affirming district court's grant of motion to stay proceedings pending the outcome of a related action); *Travelers Cas. & Sur. Co. v. Boston Gas Co.*, 76 F. Supp. 2d 59, 67-68 (D. Mass. 1999) (staying proceedings pending the outcome of a related state action, in part, to avoid "piecemeal and duplicitous litigation").

Steele and Hunt have now filed three lawsuits, as well as two frivolous, post-judgment motions for entry of default. Moreover, as set forth above, Steele and Hunt have asserted many irresponsible allegations without a good faith basis to do so. Further, unlike the plaintiff in *Hughes*, Steele is represented by counsel who, as an officer of this Court, should certainly know better. The Moving Defendants accordingly respectfully request that this Court enjoin both Steele and Hunt from filing (1) any new lawsuits concerning the Steele Song, or (2) new or additional motions in Steele's two other cases before this Court, without first obtaining leave of the Court to do so after demonstrating good cause for the proposed new filings.

CONCLUSION

For the foregoing reasons, the Court should deny Steele's request to proceed *in forma pauperis*, dismiss the lawsuit, and award the Moving Defendants their full defense costs, including attorneys' fees, against both Steele and Hunt. Alternatively, the Court should stay the lawsuit, and enjoin Steele and Hunt from filing any new lawsuits or motions related to the Steele Song without first applying to the Court and obtaining leave to do so.

Dated: September 1, 2010
Boston, Massachusetts

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Counsel for Defendants
Turner Broadcasting System, Inc. and
Boston Red Sox Baseball Club Limited Partnership

CERTIFICATE OF SERVICE

I, Christopher G. Clark, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on September 1, 2010.

Dated: September 1, 2010

/s/ Christopher G. Clark
Christopher G. Clark

EXHIBIT A

Defendant	Steele I	Steele II	Steele III
A&E Television Networks	X		
AEG Live LLC	X		
Craig Barry			X
John Bongiovi and d/b/a Bon Jovi Publishing	X	X	X
Boston Red Sox Baseball Club Limited Partnership	X		X
Bob Bowman			X
Scott D. Brown		X	
Christopher G. Clark		X	
Mike Dee			X
Donato Music Services, Inc.			X
William Falcon and d/b/a Pretty Blue Songs	X		X
Fenway Sports Group a/k/a FSG f/k/a New England Sports Enterprises LLC			X
Fox Broadcasting Company	X		
John W. Henry			X
Island Def Jam Records (never served)	X		
Sam Kennedy			X
Kobalt Music Publishing America, Inc.	X		
Brett Langefels			X
Lawrence Lucchino			X
Major League Baseball Productions			X
Major League Baseball Advanced Media, L.P.			X
Major League Baseball Properties, Inc.	X	X	X
Matthew J. Matule		X	
Kenneth A. Plevan		X	
Anthony Ricigliano			X
Jack Rovner			X
Jay Rourke			X
Richard Sambora and d/b/a Aggressive Music	X	X	X
Mark Shimmel and d/b/a Mark Shimmel Music	X		X
Skadden, Arps, Slate, Meagher & Flom LLP		X	
Clifford M. Sloan		X	
Sony/ATV Tunes LLC	X		
The Bigger Picture Cinema Co.	X		
Time Warner, Inc.	X		X
Turner Broadcasting System, Inc.	X	X	X
Turner Sports, Inc.			X
Turner Studios, Inc.			X
Universal-Polygram International Publishing, Inc.	X		
Universal Music Publishing, Inc.	X		
Vector 2 LLC	X		
Vector Management LLC			X
Thomas C. Werner			X

EXHIBIT B

Comparison of the Allegations in Steele III with the Allegations in Steele I

Allegations in Steele III	Allegations in Steele I
<p>"In September 2004, Steele composed and wrote a country-rock Boston Red Sox and baseball-themed musical work entitled 'Man I Really Love This Team', i.e. the Steele Team Song." (Compl. ¶ 36.)</p>	<p>"In September of 2004, Plaintiff Bart Steele wrote a love song for his beloved Red Sox and a baseball playoff anthem He titled his song '(Man I Really) Love this Team', also known as 'Man I Love this Team.'" (Compl., Docket No. 1 ¶ 6.)</p>
<p>"The Steele Team Song was also distributed in various other digital audio formats . . . via e-mail and on the internet through several websites." (Compl. ¶ 43.)</p>	<p>"The song was also available for free download on many websites" (Compl., Docket No. 1 ¶ 6; Am. Compl., Docket No. 41 ¶ 20.)</p>
<p>"In the fall of 2004 the Steele Team Song was played on Boston Sports Radio 850 AM, sing-alongs were held at the Cask 'n Flagon sports bar (among others) outside Fenway Park" (Compl. ¶ 44.)</p>	<p>"There were sing alongs at the two most popular Red Sox bars outside Fenway Park (The Cask 'n Flagon and Boston Beer Works both played the song regularly) An acoustic version of the song was also played on New England's number one Sports radio station, WEEI / 850 AM-Boston." (Compl., Docket No. 1 ¶ 6.)</p> <p>"There were sing alongs at the two most popular Red Sox Bars outside Fenway Park; the Cask 'n Flagon and Boston Beer Works both played the song regularly." (Am. Compl., Docket No. 41 ¶ 20.)</p>
<p>"The website www.Fenwaynation.com posted the Steele Team Song and it was played thousands of times from that site in 2004-2005. During the fall of 2004, www.Fenwaynation.com regularly received more than 180,000 daily 'hits,' or visitors to their website, during which time the Steele Team Song was posted. The Steele Team Song was also posted at www.mvn.com, . . . www.phoenix.com, and www.mikehallal.com." (Compl. ¶¶ 45-47.)</p>	<p>"The song was also available for free download on many websites... most importantly, www.fenwaynation.com. The fenwaynation site averaged 180,000 'hits' per day in October 2004. The song was also posted at www.mvn.com, . . . www.phoenix.com, and www.mikehallal.com." (Compl., Docket No. 1 ¶ 6; <i>see also</i> Am. Compl., Docket No. 41 ¶ 20.)</p>

Allegations in Steele III	Allegations in Steele I
"During the fall of 2004 Steele gave out thousands of CDs containing the Steele Team Song to fans and Boston Red Sox officials at Fenway Park." (Compl. ¶ 48.)	"The song was released in early October 2004 . . . Steele, his bandmates, and friends performed the song outside Fenway Park for the next month handing out thousands of cd's and lyrics sheets." (Compl., Docket No. 1 ¶ 6; <i>see also</i> Am. Compl., Docket No. 41 ¶ 20.)
"Steele sent CDs of the Steele Team Song with lyric sheets to defendant John Henry, defendant Boston Red Sox players Johnny Damon, Bronson Arroyo, team captain Jason Varitek, and Kevin Millar, Red Sox NESN announcer Jerry Remy, and General Manager Theo Epstein." (Compl. ¶ 49.)	"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, & GM Theo Epstein." (Compl., Docket No. 1 ¶ 7.)
"Steele's roommate in 2004 and 2005 worked inside Fenway Park and handed out CDs of the Steele Team Song to Boston Red Sox executives inside the park during 2004 and 2005." (Compl. ¶ 50.)	"Bart's roommate, who still works inside Fenway Park to this day, handed out copies to Red Sox executives inside the park." (Compl., Docket No. 1 ¶ 6; <i>see also</i> Am. Compl., Docket No. 41 ¶ 20.)
"In the fall of 2004, Steele often stood outside the Boston Red Sox's executives' entrance to Fenway Park on Brookline Avenue . . . handing CDs of the Steele Team Song to anyone in a suit using the executive entrance." (Compl. ¶ 51.)	"Bart stood outside the executive's [sic] entrance to Fenway Park on Brookline Ave. handing out copies to anyone wearing a suit." (Compl., Docket No. 1 ¶ 6; Am. Compl., Docket No. 41 ¶ 20.)
"In October 2004, Irene Barr, a music agent acting on Steele's behalf, spoke with defendant Jay Rourke of defendant Boston Red Sox about the Red Sox using the Steele Team Song as part of a baseball promotion." (Compl. ¶ 52.)	"A friend of Bart's had conversations with a member of the Red Sox organization, who asked her to send the song to him." (Compl., Docket No. 1 ¶ 6; Am. Compl., Docket No. 41 ¶ 20.)
"[Irene] Barr e-mailed the Steele Team Song to [Jay] Rourke on that same day, October 20, 2004." (Compl. ¶ 55.)	"[A friend] emailed [the Steele Song] to him at jrouke@redsox.com [sic] in late October 2004." (Compl., Docket No. 1 ¶ 6; Am. Compl., Docket No. 41 ¶ 20.)

Allegations in Steele III	Allegations in Steele I
"In June 2005, early into the Red Sox' first season in 86 years as reigning World Champions, Chelsea City Council member Ron Morgese honored Steele for writing the 'Song that Broke the Curse of the Bambino.'" (Compl. ¶ 58.)	"In fact, my song was the June 2005 recipient of an award, given by the (real) Chelsea City Council, for writing 'The Song That Broke the Curse of the Bambino.'" (Docket No. 125-2 at 34 & Exhibit 4.)
"Later in 2005, Steele performed the Steele Team Song on Chelsea Community Television as part of a Hurricane Katrina relief effort." (Compl. ¶ 59.)	"[I]n October 2005, Bart played the song on live TV (Chelsea Cable Channel 3) for a hurricane [sic] Katrina relief fundraiser." (Compl., Docket No. 1 ¶ 10.)
"From October 2004 through June 2006, Steele sent numerous hard copy letters (enclosing CDs of the Steele Team Song as well as paper lyric sheets) and e-mails (with digital copies of the Steele Team Song attached and/or links to a website from which the Steele Team Song could be played) to defendants Boston Red Sox, MLB, and MLBAM." (Compl. ¶ 60.)	"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.'" (Am. Compl., Docket No. 41 ¶ 20.)
"Steele repeatedly contacted Boston Red Sox, MLBAM, MLB.com, and MLB online through 'contact us' submission web pages on www.mlb.com ." (Compl. ¶ 62.)	"I repeatedly sent internet "links" to my copyrighted song, '(Man I Really) Love This Team' ('Song') . . . to MLB.com at its 'Contact Us' link, http://wlb.mlb.com/mlb/help/contact_us.jsp ." (Docket No. 119-13 at 2.)
"Steele's 2004 letters, e-mails, and online submissions to the Boston Red Sox, MLB, and MLBAM suggested that the Steele Team Song's lyrics could be adapted to other teams and towns in addition to the Boston Red Sox and thereby used as part of a nationwide – but locally targeted – baseball marketing campaign." (Compl. ¶ 64.)	"In 2004 through 2006, . . . [I submitted] my ideas for how my song could be used as a national marketing campaign by changing the lyrics to fit with any team and town (not just Boston)" (Docket No. 119-13 at 2.)
"In November 2004 Steele, despite not having heard back from the Boston Red Sox, MLB, or MLBAM, began working on a derivative of his Steele Team Song that would be marketable to any city with a big-league baseball team." (Compl. ¶ 65.)	"In early November 2004 and throughout the following months, Bart began revising the song and working a marketing concept that would adapt the song for use in any town." (Compl., Docket No. 1 ¶ 9.)

Allegations in Steele III	Allegations in Steele I
"After the 2004 World Series – and Red Sox victory – in November 2004, Steele continued to send letters, e-mails, and online submissions to the Boston Red Sox, MLB, and MLBAM through June 2006." (Compl. ¶ 66.)	"In 2004 through 2006, I repeatedly sent internet 'links' to my copyrighted song, '(Man I Really) Love This Team' ('Song') . . . to MLB.com . . ." (Docket No. 119-13 at 2.)
"Steele's 2004-2006 letters, e-mails, and online submissions to the Boston Red Sox, MLB, and MLB.com also suggested that a 'country' song would be more marketable for baseball, both nationally and internationally." (Compl. ¶ 71.)	"Bart also shared with MLB his idea that a 'country' song would be more marketable for MLB both nationally and internationally." (Compl., Docket No. 1 ¶ 9.)
"The MLB Audiovisual was exactly 2:38:90-long from beginning to fade-ending." (Compl. ¶ 81.)	"[A]t exactly 02:38:90, both Team and promo begin 'fade-out' to end." (Docket No. 106-2 at 6.)
"Steele First [sic] learned of the MLB Audiovisual in early October 2007 when a friend called Steele to congratulate him on selling his song to Major League Baseball, TBS, and Bon Jovi." (Compl. ¶ 84.)	"On October 4, 2007, Bart received the first of many phone calls and email messages from friends 'congratulating' him on selling his baseball anthem . . ." (Compl., Docket No. 1 ¶ 18.)
"One example of the dozens of congruities pointing to defendants' use of Steele's Song as a temp track is that, at the exact moment Steele sings 'Yawkey Way,' the MLB Audiovisual features an image of the Yawkey Way Street sign--with a digitally superimposed adjacent TBS 'street sign.'" (Compl. ¶ 91.)	"Defendants' use of lyrical and musical 'spotting cues,' for example, the 'Yawkey Way' street sign (lyrical) . . ." (Docket No. 101 at 10.)
"On March 25, 2008 the American Society of Composers, Authors, and Publishers ("ASCAP") issued "discrepancy letters" to Bon Jovi band members . . ." (Compl. ¶ 95.)	"[O]n 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." (Am. Compl., Docket No. 41 ¶ 24.)

Allegations in Steele III	Allegations in Steele I
"ASCAP shortly thereafter froze royalties on the work registered with ASCAP by Bon Jovi called 'I Love This Town'." (Compl. ¶ 96.)	"ASCAP eventually did freeze--and continue to freeze--Bon Jovi's royalties as requested [on 'I love This Town']." (Docket No. 125-1 at n.5.)
ASCAP's freeze on Bon Jovi's royalties remains in place." (Compl. ¶ 99.)	"ASCAP eventually did freeze--and continue to freeze--Bon Jovi's royalties as requested [on 'I love This Town']." (Docket No. 125-1 at n.5.)
"The unauthorized and infringing use of a sound recording as a temporary soundtrack (a 'temp track') while creating and editing an audiovisual ('temp tracking') is a widespread and common practice in the music, advertising, and film industries." (Compl. ¶ 100.)	"'Temp tracking' has become standard industry practice . . ." (Compl., Docket No. 1 ¶ 32.)
"Use of a temp track, as described and defined above, also sometimes called a 'reference' or 'guide' track, without the owner's permission, violates the temp track copyright owner's exclusive rights to reproduce their work and constitutes unauthorized use of a copyrighted work . . ." (Compl. ¶ 114.)	"Temp tracking involves using one song as a kind of working draft (sometimes called the 'reference track') for the creation . . . of an audio visual work such as a television advertisement." (Compl., Docket No. 1 ¶ 16.)
"Of the MLB Audiovisual's 155 visual sequences, 149 of them or 96%, are 'beat matched' to the Steele Team Song sound recording . . ." (Compl. ¶ 108.)	"Defendants synchronized 149 of 155 (96%) visual images to Team's tempo, beat and measure . . ." (Docket No. 106-2 at 6.)
"According to the 'Temp Talk: Copyright Issues and Legal Liabilities' article, Ricigliano advises his temp track-using clients on how to defend against copyright claims, for example advising his clients to use more than one temp track where possible: 'There is a big difference between one and five temp tracks . . . [More than one piece] of music makes the final track more defensible,' and recommended that circulation of temp tracks be limited." (Compl. ¶ 113 (citations omitted).)	"Plaintiffs refer to temp track articles in which defense 'expert' Ricigliano explains how temp tracking works . . . He willingly helps people avoid copyright laws . . . He advises ripping off 5 songs at one time (using 5 temp tracks instead of 1 is) so any subsequent infringement suit will "make the final track more defensible . . ." (Docket No. 101 at 11-12 (citations omitted).)

Allegations in Steele III	Allegations in Steele I
<p>"On August 27, 2007 defendants Time Warner, MLBAM, TBS, Turner Sports, MLB, Bongiovi, and Sambora, released on MLB.com an audiovisual commercial--the MLB Audiovisual--to advertise 2007 baseball post-season television coverage by defendant TBS as well as Fox Sports." (Compl. ¶ 161.)</p>	<p>"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 BonJ ovi [sic], featuring a 'rollicking new spot' with the band performing 'I Love This Town' from their new <i>Lost Highway CD</i>. This piece was part of TBS multi-platform marketing to promote its first year of MLB post season coverage." (Am. Compl., Docket No. 41 ¶ 27.)</p>
<p>"Time Warner spent \$386 million promoting the major league baseball playoffs being broadcast on its networks." (Compl. ¶ 166)</p>	<p>"Time Warner provided \$386 million to help promote its networks being the new home of MLB." (Compl., Docket No. 1 ¶ 15.)</p>