Beethoven.com v. Librarian of Congress

394 F.3d 939 (Fed. Cir. 2005)

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Internet webcasters and copyright owners appealed the decision of the Librarian of Congress ("Librarian") establishing copyright license rates for the period between October 28, 1998 and December 31, 2002. Non-participants in the Copyright Arbitration Royalty Panel ("CARP") proceeding, including Beethoven.com, sought to join or intervene in the appeal as well. The Court of Appeals for the Federal Circuit held that non-participants in a CARP proceeding lacked standing to challenge the Librarian's rate and fee determination and under the applicable "exceptionally deferential" standard of review, the court found no compelling evidence to provide a substantially different award than the one provided by the Librarian.

Under the Digital Millennium Copyright Act ("DMCA"), copyright owners and statutory licensees privately negotiate rates and fees for webcasting licenses. If the parties fail to reach an agreement within six months, the issue is brought before the CARP to determine rates and terms closely reflecting what would have been negotiated in the marketplace between a willing buyer and a willing seller. The CARP then reports its determination to the Librarian, who must adopt its decision unless the rates and terms are arbitrary or contrary to the applicable provisions of the statute. If the Librarian decides to reject the CARP report, he may set a fee based on the record before the CARP. Any aggrieved party may appeal the Librarian's decision to the Federal Circuit, which has the authority to modify or vacate his decision only if it finds the Librarian acted in an arbitrary manner. Under this "exceptionally deferential" standard, the court will uphold the Librarian's decision so long as the Librarian has provided a "facially plausible" explanation for it in terms of the record evidence.

At the CARP proceeding, the Recording Industry Association of America ("RIAA") provided evidence of the 26 agreements it had negotiated with prospective webcasting licensees during the private negotiation period, arguing that these agreements demonstrated the market value of the licenses. To further support their valuation, the RIAA also submitted 115 label agreements. The CARP rejected the label agreements because they involved rights not subject to a statutory license and reflected rates below the RIAA's proposed valuation. As to the webcasting agreements, the CARP determined the RIAA only accepted agreements hitting the RIAA's established "sweet spot" for royalty rates, creating a favorable record before the CARP. Specifically, the Carp found 25 of these agreements could not provide a reliable market valuation, settling on higher rates than the majority of buyers were willing to pay. The CARP, however, did accord great weight to the agreement reached between the RIAA and Yahoo! Inc., reasoning that Yahoo!'s dominant role in the industry would cause it to bear a significant portion of any arbitration costs, which would in turn motivate Yahoo! to accept a higher rate to bypass arbitration. While Yahoo! may have accepted an inflated rate, this rate was substantially lower when compared to the 25 other agreements. Thus, the CARP set rates and terms using the Yahoo! agreement's 8.8 percent of performance fees as a starting point, raising it to nine percent when factoring in the other 25 unreliable agreements. Upon challenge to the CARP decision, the Librarian, relying solely on the Yahoo! Agreement, found it arbitrary and lowered the royalty rate back down to 8.8 percent.

With copyright owners wanting the royalty rate increased and the webcasters wanting the royalty rate decreased, the parties, including those who did not participate in the

CARP proceeding, appealed the Librarian's decision to the D.C. Circuit. First, the Court decided that the statute's meaning of the term "any aggrieved party" limited standing to those parties having participated in the CARP proceeding, denying standing to all challenges by non-participants. Second, non-participants' motion to intervene failed because it impermissibly raised new issues. Third, the Librarian provided "sufficiently plausible" reasons to withstand the court's "exceptionally deferential" review. The Librarian carefully detailed his decision to set the rate according to the Yahoo! agreement because it exhibited actual marketplace rates, explaining that the CARP's decision to give weight to the other 25 agreements was arbitrary because, by initially rejecting them as unreliable, the CARP had not provided any explanation in using them to raise the royalty rate from 8.8 percent to nine percent. Additionally, Yahoo! was a successful and sophisticated business; and its resources and bargaining power were comparable to the RIAA. Therefore, there was no compelling evidence for the court to require a substantially different royalty rate. Finding no reversible error, the Federal Circuit denied the internet webcasters and copyright owners' petitions for review.