United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued October 15, 2019 Decided January 28, 2020

No. 18-7141

ALLIANCE OF ARTISTS AND RECORDING COMPANIES, INC., ON BEHALF OF ITSELF AND ALL OTHERS SIMILARLY SITUATED, APPELLANT

v.

DENSO INTERNATIONAL AMERICA, INC., ET AL., APPELLEES

Consolidated with 18-7172

Appeals from the United States District Court
for the District of Columbia
(No. 1:14-cv-01271)

Richard B. Dagen argued the cause for appellant. With him on the briefs was *Russell Steinthal*. *Daniel K. Oakes* entered an appearance.

Andrew Grimm was on the brief for *amicus curiae* Digital Justice Foundation, Inc. in support of plaintiff-appellant and reversal.

Scott A. Keller argued the cause for appellees. With him on the brief were *Paul J. Reilly*, *Benjamin A. Geslison*, *Steven*

J. Routh, *Melanie L. Bostwick*, *Annette L. Hurst*, *Andrew Phillip Bridges*, *David Hayes*, *Armen Nercessian*, *Seth David Greenstein*, *Robert S. Schwartz*, *David D. Golden*, *Jessica L. Ellsworth*, *Kirti Datla*, *William D. Coston*, *Megan S. Woodworth*, and *Frank C. Cimino*, *Jr. E. Desmond Hogan* entered an appearance.

Jonathan Band was on the brief for *amici curiae* The Computer & Communications Industry Association, et al. in support of affirmance.

Before: HENDERSON and ROGERS, *Circuit Judges*, and EDWARDS, *Senior Circuit Judge*.

Opinion for the Court filed by *Senior Circuit Judge* EDWARDS.

EDWARDS, *Senior Circuit Judge*: This case involves actions filed by Appellant Alliance of Artists and Recording Companies, Inc. ("AARC" or "Appellant") pursuant to the Audio Home Recording Act of 1992 ("Act" or "AHRA"), 17 U.S.C. §§ 1001-1010. On July 25, 2014, AARC filed a lawsuit against General Motors LLC, DENSO International America, Inc., Ford Motor Company, and Clarion Corporation of America ("GM/Ford action") for alleged violations of the Act. A second, substantially similar lawsuit was filed by AARC on November 14, 2014, against FCA US LLC and Mitsubishi Electric Automotive America, Inc. ("FCA action"). On February 9, 2015, the District Court consolidated the cases.

In each case, AARC claimed that in-vehicle audio recording devices that copy music from CDs onto hard drives within the devices, allowing the music to be played back inside the vehicle even without the CDs, are "digital audio recording device[s]" under the Act. 17 U.S.C. § 1001(3). Based on this

assertion, AARC alleged that the three suppliers of the devices (DENSO, Clarion, and Mitsubishi), along with the three automobile manufacturers that sold vehicles containing the recording devices (General Motors, Ford, and FCA) (collectively "Appellees") had violated the Act by failing to pay royalties and adopt the required copying control technology with respect to the devices.

On March 23, 2018, after several years of litigation, *see All. of Artists & Recording Cos., Inc. v. Gen. Motors Co.* (*AARC I*), 162 F. Supp. 3d 8 (D.D.C. 2016); *All. of Artists & Recording Cos., Inc. v. Gen. Motors Co.* (*AARC II*), 306 F. Supp. 3d 413 (D.D.C. 2016); *All. of Artists & Recording Cos., Inc. v. Gen. Motors Co.* (*AARC III*), 306 F. Supp. 3d 422 (D.D.C. 2018), the District Court granted Appellees' joint motion for summary judgment, *see AARC III*, 306 F. Supp. 3d at 441. On the same date, the District Court entered an Order confirming its judgments. This Order resolved all the claims in the FCA action and all but the claims based on GM's flash-drive devices in the GM/Ford action. On September 18, 2018, AARC filed a notice of appeal in the FCA action. On October 23, 2018, the District Court granted AARC's unopposed Rule 54(b) motion to enter final judgment as to the hard-drive claims in the GM/Ford action. However, the court reserved judgment on the flash-drive claims and those claims remain pending before the District Court. AARC then filed a timely notice of appeal in the GM/Ford action, and this court consolidated the appeals.

This appeal raises challenging issues regarding the coverage of the AHRA. The Act was passed to address important questions emanating from the advent of digital audio tape ("DAT") recordings in the late 1980s. As digital audio recorders became more common, the prospect of "home copying" loomed as a major issue. Both the companies that

produced the devices and the consumers who used them faced uncertain liabilities under prevailing copyright law. And musicians and record companies, for their part, were concerned that high-quality digital copies would cause serious drops in authorized sales of music recordings. The enactment of the AHRA embodied "a historic compromise" intended to address these issues. S. REP. NO. 102-294, at 33 (1992).

The AHRA exempts the manufacture and use of certain digital audio recorders from copyright infringement actions, thereby dispelling legal uncertainties and ensuring that consumers will have access to the technology. In exchange, the AHRA imposes royalties on certain digital audio recorders and media. The Act also requires covered digital audio recorders to include systems that prevent them from making second-generation copies (*i.e.*, copies of copies), thereby offering some protection to the rights of copyright holders.

In this case, Appellant contends that the "AHRA covers all consumer devices that (1) are capable of digitally reproducing recorded music, and (2) the recording functions of which are designed or marketed for the primary purpose of doing so." Br. for Appellant at 10. Appellant contends that the District Court erred in holding "that the output of Defendants' recording devices must contain 'only sounds' and material 'incidental' to such sounds" to be subject to the proscriptions of the Act. *Id*. at 2. Finally, Appellant argues that, in any event, "Defendants' devices met the district court's test because they stored music to hard drive partitions, which function essentially as separate hard drives, that met this purported 'only sounds' requirement." *Id*. The District Court rejected Appellant's claims. *AARC III*, 306 F. Supp. 3d 422. We do as well.

As a preliminary matter, Appellees argue that AARC's appeal of the District Court's judgment in the FCA action is

untimely because it was filed 179 days after the District Court's Order issued on March 23, 2018. As we explain below, there is no reason for us to address this issue. Our jurisdiction over AARC's appeal in the GM/Ford action is clear. Therefore, we have jurisdiction in a "*companion case*" that presents the same merits questions as the FCA action, and this permits us to "decline[] to decide th[e] jurisdictional question" in the FCA action. *Emory v. United Air Lines, Inc.*, 720 F.3d 915, 920 (D.C. Cir. 2013) (alterations in original) (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 98 (1998)).

On the merits, we affirm the judgments of the District Court. First, we hold that a digital audio recorder is covered by the AHRA only if it can make a "digital audio copied recording" that is also a "digital musical recording" as that term is defined by the Act. Second, we hold that, because it is undisputed that the hard drives in Appellees' devices do not contain "only sounds," they do not qualify as "digital musical recording[s]" and, therefore, the devices do not qualify as "digital audio recording device[s]" subject to the Act. Third, we reject AARC's partition theory. We hold that, at least where a device fixes a reproduction of a digital musical recording in a single, multi-purpose hard drive, the entire disk, and not any logical partition of that disk, is the "material object" that must satisfy the definition of a "digital musical recording" for the recording device to qualify under the Act. These matters are explained in detail in the succeeding sections of the opinion.

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