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## not all the plaintiff “desires”: only one statutory damages award available

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On February 2, 2021, the Ninth Circuit issued *Desire, LLC v. Manna Textiles, Inc.*, 2021 WL 345583 (9th Cir. 2021), holding that where one upstream infringer was jointly and severally liable with various downstream infringers (who were not jointly and severally liable with each other) in three distinct infringing distribution chains, plaintiff could only be awarded one statutory award rather than the five awards granted by the district court for each defendant’s infringement of the single work.

By way of background, plaintiff Desire sold fabric with the floral print design at issue to Top Fashion of N.Y., Inc, which then used the fabric with the design to secure a garment order from Ashley Stewart, Inc. When Desire and Top Fashion could not agree on a price for the fabric with the design, Top Fashion showed the floral print design to Manna, which recreated the design with some changes. Manna then sold the fabric with the “new” design to three textile manufacturers, which sold garments to retailers, which then in turn sold the garments to consumers. So, there were three distinct distribution chains—with Manna as the start of each—for a total of seven potential copyright infringers. Desire sued seven defendants: Manna, three manufacturers, and three retailers. (Two defendants settled before trial, reducing seven potential statutory awards to five.)

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