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April 21, 2008

By Fax (914-390-4177)
The Honorable Stephen C. Robinson
United States District Judge
United States District Court for the
Southern District of New York
300 Quarropas Street
White Plains, New York 10601

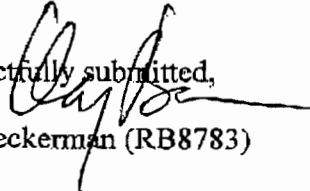
MEMO ENDORSED

Re: Warner Bros. Records Inc. v. Cassin
SDNY No. 06 Civ. 3089 (SCR)

Dear Judge Robinson:

This is to confirm that defendant opposes the setting of a discovery schedule at this time, as the complaint clearly fails to state a claim and should be dismissed. *See Atlantic v. Brennan*, 534 F. Supp. 2d 278 (D. Conn. Feb. 13, 2008) and *Interscope v. Rodriguez*, 2007 WL 2408484 (Aug. 17, 2007), following *Bell Atlantic v. Twombly*, - U.S. -, 127 S. Ct. 1955 (May 21, 2007). *See also* "The Recent Making Available Cases", William F. Patry, *The Patry Copyright Blog*, April 3, 2008, <http://williampatry.blogspot.com/2008/04/recent-making-available-cases.html>. Under such circumstances, defendant's incurring the expense and invasiveness of discovery would be an unnecessary hardship. Both *Brennan* and *Rodriguez* rejected each and every aspect of plaintiffs' pleading, identical to the instant pleading, and *Brennan* did so expressly in a correctly reasoned 9-page decision, spelling out not only why the "making available" allegation is without basis in the law, but also why the conclusory boilerplate allegations of actual distribution and actual downloading are also insufficient under *Twombly*. Plaintiffs simply have not met the threshold which the law requires of them before subjecting a defendant to the formidable expense of defending a federal litigation. And their oversight is substantive, not merely procedural, because they simply have no case. If given leave to replead, their amended complaint will fail as well.

Respectfully submitted,

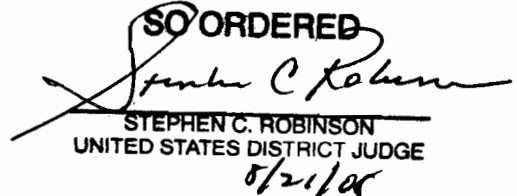


Ray Beckerman (RB8783)

cc: Victor B. Kao, Esq. (By Email)

No discovery schedule will be set at this time.

SO ORDERED


STEPHEN C. ROBINSON
UNITED STATES DISTRICT JUDGE
8/21/08

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