

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CAPITOL RECORDS, LLC, :
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 Plaintiff, :
 :
 -against- :
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 REDIGI INC., :
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 Defendant. :
 :
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12 Civ. 0095 (RJS)

**AMENDED CASE MANAGEMENT
PLAN AND SCHEDULING ORDER**

USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: <u>4-30-12</u>

RICHARD J. SULLIVAN, District Judge:

Pursuant to Rules 16-26(f) of the Federal Rules of Civil Procedure, the Court hereby adopts the following Case Management Plan and Scheduling Order.

1. All parties do not consent to disposition of this case by a Magistrate Judge, pursuant to 28 U.S.C. § 636(c).
2. This case is not to be tried to a jury.
3. No additional parties may be joined or amended pleadings served except with the opposing party's written consent or leave of the Court, in accordance with Fed. R. Civ. P. 15(a)(2). Because of the dynamic nature of the ReDigi website at issue in this case, the parties contemplate that the list of plaintiff's recordings allegedly infringed will have to be supplemented prior to a final adjudication in the case based on information obtained through discovery.
4. Initial disclosures pursuant to Rule 26(a)(1) were served by email by March 5, 2012.
5. All *fact* discovery is to be completed no later than June 20, 2012.
6. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York. The following interim deadlines may be extended by the parties on consent without application to the Court, provided the parties meet the deadline for completing fact discovery set forth in ¶ 5 above.
 - a. Initial requests for production of documents and initial requests to admit were served by email by March 5, 2012.
 - b. Interrogatories were served by email by March 5, 2012.
 - c. Depositions shall be completed by June 20, 2012.

- i. Absent an agreement between the parties or an order from the Court, depositions are not to be held until all parties have responded to initial requests for document production.
- ii. There is no priority in deposition by reason of a party's status as a plaintiff or defendant.
- iii. Absent an agreement between the parties or an order from the Court, non-party depositions shall follow initial party depositions.

d. Second Set of Requests to Admit shall be served by email no later than June 25, 2012. Answers and/or objections thereto shall be served by email no later than July 13, 2012.

7. The parties both presently contemplate that all or most issues regarding liability can be potentially resolved by summary judgment following completion of fact discovery. Accordingly, they jointly request that the Court set a schedule for the filing of summary judgment motions following fact discovery and that a schedule for possible expert disclosures and discovery, as well as trial, be deferred until after resolution of the summary judgment motions. The parties would be prepared, subject to the Court's approval, to proceed with summary judgment motions without the need for further pre-motion letters in view of the previously submitted letters and extensive briefing and argument on the relevant legal issues in connection with Capitol's preliminary injunction motion, and to submit cross-motions for summary judgment simultaneously on the following schedule:

- a. Both sides' moving papers to be filed by July 20, 2012.
- b. Both sides' opposition papers to be filed by August 10, 2012.
- c. Both sides' reply papers to be filed by August 20, 2012.

8. The Court will conduct an oral argument on Oct. 5, 2012 at 10:00 am.

9. Parties have conferred and their present best estimate of the length of trial is three (3) days.

SO ORDERED.

DATED: April 30, 2012
New York, New York


RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE