

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CAPITOL RECORDS, INC., et al.,)
Plaintiffs,)
)
v.) Civ. Action No. 03CV11661-NG
) LEAD DOCKET NO.
NOOR ALAUJAN,)
Defendant.)

SONY BMG MUSIC ENTERTAINMENT, et al.,)
Plaintiffs,)
)
v.) Civ. Action No. 07CV11446-NG
) ORIGINAL DOCKET NO.
JOEL TENENBAUM,)
Defendant.)

GERTNER, D.J.:

ORDER RE: MOTION TO STAY
January 20, 2009

The Plaintiffs' Motion to Stay (document # 733) is **GRANTED in part and DENIED in part**. The motion is denied to the extent that it seeks an unlimited stay of the hearing scheduled for January 22, 2009. The Court, however, will postpone the hearing until **February 24, 2009** for the reasons stated below.

The Court grants a limited continuance, first and foremost, because there is no emergency related to the hearing originally slated for January 22, 2009. The motions set for argument at the hearing raise legal issues which can be properly addressed at a later date. Just as importantly, postponing the hearing will allow the First Circuit an opportunity to fully consider the petition before it, particularly because a number of claims presented in the petition for mandamus were never raised in their current form in the district

court. Indeed, several of the Plaintiffs' claims involve questions of "how" the recording will be made and distributed and not "whether" the hearing can be recorded under Local Rule 83.3:

1. With respect to the Plaintiffs' objections about who will record the proceedings, these matters can be readily addressed. The Court's Order permitted the Courtroom View Network ("CVN") to provide audio-visual coverage of a single upcoming hearing. CVN is a private company that regularly records courtroom proceedings for various subscribers; it is not a party in this case. See Decl. of John Shin at ¶ 4 (document # 719) (stating that CVN has covered more than 200 proceedings in courtrooms around the country); see, e.g., In re Zyprexa Products Liability Litigation, 2008 WL 1809659 (E.D.N.Y. Mar. 4, 2008); E*Trade Financial Corp. v. Deutsche Bank AG, 582 F.Supp.2d 528 (S.D.N.Y. Oct 14, 2008); Nov. 26, 2007 Order, GVA Market Neutral Master Limited v. Veras Capital Partners, No. 07-cv-00519 (S.D.N.Y.). Neither the Plaintiffs nor the Defendant specifically proposed another entity -- either non-profit or for-profit -- to record the proceedings. As a result, the Court authorized only CVN, making clear that its Order did not permit any and all recordings, but only the recording specifically presented for the Court's approval.
2. The question of where and how CVN's recording is made available on the internet is a separate but related issue. Because CVN

offers a "narrowcast" service, its recordings are generally only available to subscribers -- i.e., those who pay for access to CVN's recording. Because of this ability to limit viewers, CVN audiences vary according to the explicit directions of the presiding judge. In this case, the Court has sought to ensure that the audio-visual recording is publicly available for all non-commercial uses. In response, the Defendant proposed that the Berkman Center for Internet and Society would act as a subscriber to the CVN recording and would make that recording publicly available on its website. In the absence of a counterproposal from the Plaintiffs, the Court accepted this arrangement, allowing to Berkman Center to host the video recording so long as it was not edited and provided gavel-to-gavel coverage.

3. The Order, however, did not limit the availability of the recording to the Berkman Center's website. The Plaintiffs are also free to subscribe to the CVN recording and to make it available to the public at a website of their choosing, subject to the same conditions.
4. If there are further issues with respect to the way in which the Berkman Center presents the video recording, those concerns can surely be addressed. They do not go to the question of "whether"

a recording of this hearing should be made available to the public, but "how."

SO ORDERED.

Date: January 20, 2009

/s/ Nancy Gertner
NANCY GERTNER, U.S.D.C.