

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CAPITOL RECORDS, INC., et al.)
)
 Plaintiffs,) Civil Action No. 03-cv-11661-NG
) (Lead Docket Number)
 v.)
)
 NOOR ALAUJUN,)
)
 Defendant.)
 _____)

SONY BMG MUSIC ENTERTAINMENT,)
 et al.)
 Plaintiffs,) Civil Action No. 07-cv-11446-NG
) (Original Docket Number)
 v.)
)
 JOEL TENENBAUM,)
)
 Defendant.)
 _____)

**UNITED STATES OF AMERICA'S
UNOPPOSED MOTION FOR A SECOND EXTENSION OF TIME
TO DETERMINE IF INTERVENTION IS APPROPRIATE**

The United States of America respectfully moves for a further extension of time to determine if intervention is appropriate, and in support thereof, states as follows:

1. On or about August 19, 2008, Defendant filed an amended answer and counterclaim in the above-captioned case alleging, among other things, that the statutory damages provision of the Copyright Act, 17 U.S.C. § 504(c), is unconstitutional. Dkt. No. 625,

at 2 3. Plaintiffs moved to dismiss the counterclaim under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted. Dkt. No. 670.

2. On or about November 11, 2008, Defendant moved for leave to file an amended counterclaim to assert a claim for abuse of federal process. Dkt. No. 686. Defendant's proposed amended counterclaim appears to rely in part on the alleged unconstitutionality of the Copyright Act. *See* Dkt. No. 686, Attach. 1 ¶ 18. Plaintiffs also opposed this motion. *See* Dkt. No. 703.

3. On or about January 9, 2009, the United States filed a motion acknowledging Defendant's challenge to the constitutionality of the Copyright Act's statutory damages provision and requesting until February 27, 2009 to determine whether to intervene in the case and to file a brief regarding the constitutionality of 17 U.S.C. § 504(c). Dkt. No. 724. The Court granted the United States' motion. Dkt. Entry (Jan. 13, 2009).

4. On or about February 23, 2009, the Court entered an order indicating Defendant's constitutional counterclaims were actually defenses more properly asserted in a motion to dismiss. Dkt. No. 759. The Court therefore granted Defendant until March 9, 2009 to file a motion to dismiss asserting any constitutional defenses. The Court granted Plaintiffs until March 23, 2009 to file a response.

5. To avoid unnecessary duplicative briefing of the constitutional questions raised in this case and to conserve judicial resources, the United States respectfully moves that it be allowed until March 23, 2009 to notify the Court whether it intends to intervene in this case and to file a brief regarding the constitutionality of 17 U.S.C. § 504(c). *See* Fed. R. Civ. P. 5.1(c) ("Unless the court sets a later time, the attorney general may intervene within 60 days after the notice [of constitutional question] is filed."). This date corresponds to the deadline set by the Court for Plaintiffs to respond to Defendant's motion to dismiss. If the Court grants this motion

and the United States decides to intervene, the United States would file a single brief on March 23, 2009 addressing all constitutional issues raised in the parties' briefing before that date.

6. Counsel for the United States spoke with counsel for Plaintiffs and Defendant regarding this motion. None of the parties opposes the motion.

Respectfully submitted this 24th day of February, 2009.

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By: /s/ Michelle R. Bennett
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CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2009, I filed a true copy of the above document with the CM/ECF System, which will send an electronic notice to the attorney of record for each party.

/s/ Michelle Bennett
MICHELLE R. BENNETT