

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 TO INTERVENE AND FILE A MEMORANDUM IN EXCESS  
OF THE PAGE LIMITS ESTABLISHED BY LOCAL RULE**

The United States of America, through undersigned counsel, respectfully moves (1) to intervene in this action, pursuant to Federal Rules of Civil Procedure 5.1 and 24(a) and 28 U.S.C. § 2403(a), to defend the constitutionality of the statutory damages provision of the Copyright Act, 17 U.S.C. § 504(c); and (2) to be permitted to file the contemporaneously-submitted United States of America’s Memorandum in Response to Defendant’s Motion to Dismiss and in Defense of the Constitutionality of the Statutory Damages Provision of the Copyright Act, which is in

excess of the page limits established by LR 7.1(b)(4).

The United States is entitled to intervene in this action pursuant to the Federal Rules of Civil Procedure and statute. Defendant has challenged the constitutionality of the statutory damages provision of the Copyright Act, 17 U.S.C. § 504(c), on numerous grounds. Federal Rule of Civil Procedure 5.1(c) permits the Attorney General to intervene in an action when the constitutionality of a federal statute has been challenged. Federal Rule of Civil Procedure 24(a)(1) further permits a non-party to intervene when the non-party “is given an unconditional right to intervene by a federal statute.” Fed. R. Civ. P. 24(a)(1). The United States is authorized by federal statute 28 U.S.C. § 2403(a) to intervene in any federal court action in which the constitutionality of an Act of Congress is drawn into question.

The United States’ motion to intervene is timely. Rule 5.1(c) grants the Attorney General 60 days to intervene after a notice of constitutional question is filed, “[u]nless the court sets a later time.” Fed. R. Civ. P. 5.1(c); *see also* Fed. R. Civ. P. 24(a) (requiring filing of timely motion to intervene). The Court provided the United States until March 23, 2009 to notify it whether the United States intended to intervene in this action and to file a memorandum in defense of the constitutionality of the Copyright Act’s statutory damages provision. *See* Electronic Order Granting Mot. for Extension of Time (Jan. 13, 2009); Electronic Order Granting Second Mot. for Extension of Time (Feb. 26, 2009). Moreover, permitting the United States to intervene and file a memorandum in support of the constitutionality of 17 U.S.C. § 504(c) will not interfere with the timely adjudication of this action. The Court has stayed all discovery related to Defendant’s constitutional claims pending the Court’s ruling on the viability of those claims. Order Re: Mot. to Stay, at 2 (Feb. 23, 2009). Additionally, Defendant’s Motion to Dismiss, wherein he raises his constitutional claims, will not be fully briefed by the parties until March 23, 2009. *See id.* at 3.

The United States also requests permission to file a memorandum that is in excess of the page limits established by LR 7.1(b)(4). Local Rule 7.1(b)(4) provides that “[m]emoranda supporting or opposing allowance of motions shall not, without leave of court, exceed twenty (20) pages, double-spaced.” The United States of America’s Memorandum in Response to Defendant’s Motion to Dismiss and in Defense of the Constitutionality of the Statutory Damages Provision of the Copyright Act, which is attached to this motion, is thirty-one (31) pages in length. The additional pages are necessary to fully apprise the Court of the history of the Copyright Act’s statutory damages provision and to thoroughly address the numerous constitutional arguments raised by Defendant in documents submitted to the Court. See Def.’s Am. Answer and Countercl.; Def.’s Opp’n to Pls.’ Mot. to Dismiss Countercl.; Def.’s Mot. for Leave to File an Am. Countercl.; Def.’s Mot. to Dismiss.

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

#### **CONCLUSION**

For the foregoing reasons, the United States requests that it be permitted to intervene in this action and file the contemporaneously-submitted memorandum in excess of the page limits established by LR 7.1(b)(4).

Respectfully submitted this 22nd day of March, 2009.

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 22, 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