

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
CAPITOL RECORDS, INC., <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	Civ. Act. No.
	)	03-CV-11661-NG
v.	)	(LEAD DOCKET NUMBER)
	)	
NOOR ALAUJAN,	)	
	)	
Defendant.	)	
_____	)	
	)	
SONY BMG MUSIC ENTERTAINMENT, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	Civ. Act. No.
	)	07-CV-11446-NG
v.	)	(ORIGINAL DOCKET NUMBER)
	)	
JOEL TENENBAUM,	)	
	)	
Defendant.	)	
_____	)	

**RESPONSE OF CHARLES NESSON TO COURT ORDER OF JUNE 16, 2009**

I wish to make two points in response to the Court's Order of June 16, 2009.

I. I represent Joel Tenenbaum in my individual pro bono capacity as a member of the law faculty of Harvard Law School and member of the Bars of the Commonwealth of Massachusetts, the United

States District Court, the First Circuit Court of Appeals, and the United States Supreme Court.

The Court is under a misconception that I am backed by the resources and staff of the Berkman Center for Internet & Society at Harvard University, or by the resources and staff of Harvard University. I do not have the institutional backing of the Berkman Center or Harvard. The Berkman Center and Harvard University have been scrupulously careful not to take a partisan institutional stance. Institutionally, the Berkman Center for Internet & Society declined my request to make the defense of Joel Tenenbaum part of its clinical program, which would have given me access to legal staff and other support resources. I have independently supervised students for school credit, with nothing beyond an allowance from the school to buy pizza for them every once in a while.

It is true that the Berkman Center for Internet & Society agreed to serve as host of the proposed narrowcast which was to originate from the Court, but this was nonpartisan service to the Court and to the internet public, not resource-support for representing Joel Tenenbaum. The resources available to support Joel Tenenbaum's defense have all been personally contributed by individuals and are minimal (under \$1000).

II. I am not overshadowing important issues in this case by my tactics. Throughout these proceedings, I have come under ridicule and attack for attempting to make the process and public proceedings of this case accessible to the digital public. Whatever the ultimate outcome of these campaigns, which have now gone so far as to accuse me of committing a felony, I will continue to try to make as much of this case open to the internet as is possible under the law. I believe that the capacity to inform and educate the digital public is at the heart of this case and that my efforts to record the proceedings in this case are both lawful and in the best interest of my client.

The issue presented here is not only whether Joel Tenenbaum unfairly infringed copyright by sharing in music free on the open net. It is whether an entire digital generation did so and whether Joel will be individually punished for it. That generation needs to hear and see a case made on its behalf. The world needs to see and hear it.

Will Joel Tenenbaum be allowed to defend himself in a fair jury trial open and accessible to the cyber public? At present, this trial is to go forward under cloak of closure to all digital

transmission. That is a travesty, as it was in the Minnesota trial of Jammie Thomas Rasset. All of the court filings by both sides and public proceedings before the court should be made available to the digital public.

What you disparage as a tactic and what my opponents and critics deride as felonious incompetence is for me a principle that demands my adherence. I believe my client's best defense is the light of understanding on the issue of fairness in relation to infringement of copyright at the heart of this case.

To the best of my ability I have tried to digitally record and publish each step of this proceeding. I have done so even when that publication included opinions that directly contravene my own, and derogatory and satirical comments about my competence and legal strategy. Unlike the RIAA, which claims it is educating the public but acts to shut down such education, i would like to make it possible for the world to follow this case. i would like every citizen interested in the future of the net to follow the trial, hear the arguments, listen to the songs at issue, experience the witnesses, deliberate the issues, and learn the law as i believe it can and should be taught and as i do my best to teach it. Open publication of relevant court documents and commentary opens the courts to the digital public,

allowing the people as much access as is possible under the law to view the trial of this case. Repressing this potential through aspersion and threats is part of what Joel is fighting back against.

Respectfully submitted,

Dated: June 24, 2009

/s/Charles Nesson  
Weld Professor of Law  
Counsel for Joel Tenenbaum

**CERTIFICATE OF SERVICE**

I, the undersigned hereby certify that on June 24, 2009, I caused a copy of the foregoing RESPONSE OF CHARLES NESSON TO COURT ORDER OF JUNE 16, 2009 to be served upon the Plaintiffs via the Electronic Case Filing (ECF) system:

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