

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

\_\_\_\_\_  
CAPITOL RECORDS, INC., et al.,  
Plaintiffs,  
v.  
NOOR ALAUJAN,  
Defendant.  
\_\_\_\_\_

Civ. Act. No. 03-cv-11661-NG  
(LEAD DOCKET NUMBER)

\_\_\_\_\_  
SONY BMG MUSIC ENTERTAINMENT,  
et al.,  
Plaintiffs,  
v.  
JOEL TENENBAUM,  
Defendant.  
\_\_\_\_\_

Civ. Act. No. 07-cv-11446-NG  
(ORIGINAL DOCKET NUMBER)

**PLAINTIFFS' RESPONSE TO DECLARATION OF CHARLES NESSON IN  
RESPONSE TO THE COURT'S ORDER TO SHOW CAUSE**

Plaintiffs feel compelled to respond to the Declaration of Charles Nesson in Response to the Court's Order to Show Cause (Doc. 867) to correct multiple misstatements and factual inaccuracies.

1. Contrary to Charles Nesson's declaration, it was not at all evident that Mr. Nesson was recording the deposition of Joel Tenenbaum until approximately 30 minutes into the deposition. The recording of the deposition makes this clear and remains available at <http://blogs.law.harvard.edu/cyberone/category/riaa/>, part 1.

2. Plaintiffs were not on notice of Mr. Nesson's intent to record the deposition of Dr. Pouwelse. While there were multiple conversations between Plaintiffs' counsel and Mr. Nesson regarding the logistics of the Internet videoconferencing, on no occasion did Mr. Nesson ever inform Plaintiffs' counsel that he intended to make an audio-visual recording of

the deposition. Plaintiffs were not aware the deposition was being video recorded until the second day of the deposition.

3. Contrary to Defendant's assertion, the Court made very clear that Mr. Nesson was not to post any portion of the depositions in this case on the Internet. See transcript of June 29, 2009 hearing, p. 48. The Court did not limit the ban on posting to allegedly non-substantive portions of the deposition. Whether or not Mr. Nesson posted material he deemed non-substantive is simply not relevant. There was a clear order of the Court and a clear lack of consent by Plaintiffs' counsel. An effort to influence the public regarding "non-substantive" portions of the deposition or of Plaintiffs' counsel is equally improper.

4. Additionally, and apart from the Court's clear ruling, Plaintiffs have consistently stated that they did not consent to the recording and, therefore, it should not have been posted.

5. Finally, Plaintiffs note that Mr. Nesson did not deny or respond to the fact that he has repeatedly violated Massachusetts law by recording conversations with Plaintiffs' counsel without consent.

6. Plaintiffs seek to litigate this case without it becoming a circus. Neither Plaintiffs nor their counsel want to have these recordings (or the still pictures taken without permission at the deposition of Joel Tenenbaum earlier this week) used for any purpose, now or later. There are official transcripts of the proceedings that function to memorialize the case. It is time for a sense of decorum and professionalism to be imposed on a case that seems to be lacking in it.

Respectfully submitted this 9th day of July, 2009.

SONY BMG MUSIC ENTERTAINMENT;  
WARNER BROS. RECORDS INC.;  
ATLANTIC RECORDING CORPORATION;  
ARISTA RECORDS LLC; and UMG  
RECORDINGS, INC.

By their attorneys,

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ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on July 9, 2009.

s/ Eve G. Burton \_\_\_\_\_