

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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SONY BMG MUSIC ENTERTAINMENT;	)	
WARNER BROS. RECORDS, INC.;	)	
ATLANTIC RECORDING	)	
CORPORATION; ARISTA RECORDS,	)	Civ. Act. No. 1:07-cv-11446-RWZ
LLC; AND UMG RECORDINGS, INC.,	)	
	)	(formerly consolidated with Civ. Act.
Plaintiffs,	)	No. 03-cv-11661-NG)
	)	
v.	)	On remand from the First Circuit
	)	Court of Appeals (Nos. 10-1883,
JOEL TENENBAUM,	)	10-1947, 10-2052)
	)	
Defendant.	)	
_____	)	

**DEFENDANT’S RESPONSE TO PLAINTIFF’S MOTION  
TO STRIKE, OR IN THE ALTERNATIVE, TO DISREGARD  
DEFENDANT’S REPLY BRIEFS**

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On February 13, 2012, Plaintiffs filed a Motion to Strike Defendant’s Reply Briefs in which they complain that “the fact that there may have been many other individuals engaging in file sharing also is not relevant to the individualized actions of this Defendant.” at 4. That is true enough, but it is certainly not the position Plaintiffs took throughout the rest of the case. Are Plaintiffs saying they would like the jury to have not considered the mass disregard for copyright and alleged harm that file-sharers do in aggregate?

Tenenbaum had no burden to open on the merits of a procedure that is being imposed against his will. He respectfully asks this Court to grant both Plaintiffs and Intervenor opportunity to respond.

Plaintiffs are mistaken in their claims regarding matters “outside of the record.” This

Court is not expected to proceed tabula rasa as though nothing has occurred between the trial and today. Plaintiffs' acceptance of default judgments in other cases was made the subject of Judge Gertner's prior decision and were cited for precisely the same proposition advanced here. Sony BMG Music Ent'mnt v. Tenenbaum, 721 F. Supp. 2d 85, 109–11 (D. Mass 2010). Plaintiffs complain about a published study by their own expert and a declaration by their own counsel in a related filesharing case regarding the same RIAA litigation campaign Tenenbaum has challenged in this Court and is now challenging in the Supreme Court. *Available at* [http://cyber.law.harvard.edu/eon/TenenbaumCertPetition\\_submittedtoSCOTUS.pdf](http://cyber.law.harvard.edu/eon/TenenbaumCertPetition_submittedtoSCOTUS.pdf). These matters are public record and relevant to understanding the context of this case. On post-trial review, either under remittitur or constitutional standards, our citation is properly directed to the judge to consider as support for argument rather than the existence of fact.

Counsel respectfully begs the Court's pardon for exceeding page limits.

### CONCLUSION

Wherefore, Defendant respectfully requests that the Court deny Plaintiffs' Motion to Strike and provide Plaintiffs and Intervenor opportunity to respond to the arguments presented in Defendant's Reply Briefs.

Respectfully Submitted,



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Date: February 15, 2012

**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).

s/ Charles R. Nesson