

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

ELEKTRA ENTERTAINMENT GROUP	*	
INC., a Delaware corporation; SONY BMG	*	
MUSIC ENTERTAINMENT, a Delaware general	*	
Partnership; UMG RECORDINGS, INC., a	*	
Delaware corporation; BMG MUSIC, a New York	*	
general partnership; WARNER BROS.	*	
RECORDS INC., a Delaware corporation; and	*	Civil Action
ARISTA RECORDS, LLC, a Delaware limited	*	
liability company,	*	File No.: 4-06-CV-115 (CDL)
Plaintiffs,	*	
	*	
	*	
Vs.	*	
	*	
	*	
SARAH MCDOWELL,	*	
Defendant.	*	

DEFENDANT'S RESPONSE TO
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND MEMORANDUM OF LAW

COMES NOW the Defendant, and makes this Response to Plaintiff's Motion for Summary Judgment and Memorandum of Law and shows unto this honorable Court as follows:

The Defendant has admitted innocently downloading copyrighted material from the Plaintiffs when she was 13 or 14 years old. Defendant's date of birth is April 16, 1989. (Defendant's deposition page 6 – Excerpt 4 to Plaintiff's Motion, hereinafter referred to as "Depo".) The issue for determination by the Court is what amount of damages, if any, the Plaintiffs are entitled to and whether the Defendant is entitled to a jury trial as to the status of an innocent infringer as defined by U.S.C. 504(c)(2).

The Defendant has testified under oath that she did not know that her actions were a violation of Federal Copyright Law because she was 13 or 14 years old at the time that she and her friends downloaded some songs from the internet. (Depo page 9; 12) She testified that there were no warnings from any copyright holders associated with the download and she was not on notice that her actions may have been improper. (Depo page 25) "In a case where the infringer sustains the burden of proving, and the court

finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than \$200.00." 17 U.S.C. 504(c)(2). In determining an award of statutory damages for copyright infringement the court should weigh the expenses saved and profits reaped by the Defendant in connection with the infringements, revenue loss by the Plaintiffs, and whether the infringement was willful and knowing or whether it was accidental and innocent. Major Bob Music v. Stubbs, S.D. Ga. 1994, 851 F. Supp. 475.

In this case there is no allegation nor is there any proof to sustain a claim that 13 year old Sarah attempted to profit by downloading some of her favorite songs onto a CD on her home computer with her friends. While age is not a defense to the violation it is clearly a factor that should be considered by the Court in determining which statutory damages, if any, to impose. Plaintiffs cite Chavez v. Arte Publico Press, 204 F. 3d 601, 607 (5th Cir. 2000) as authority for their contention that copyright infringement actions ordinarily require no showing of intent to infringe. While this may be true, Chavez goes on to say that "(A)lthough defendant's innocent intent is not a defense to an infringement action, it may affect recoverable damages." Citing 1 Neil Boorstyn, Boorstyn on Copyright §12.15 (2d ed. 1999)

This Court should rule that the record only supports the finding that the Defendant was an innocent infringer or find that the Defendant has the right to a jury trial determination of that status at trial. The stated purpose of the copyright law to compensate the Plaintiffs and punish and deter the Defendant and this is not accomplished by the imposition of a gross award of statutory damages to the Plaintiffs herein.

Respectfully submitted this 2nd day of July, 2007.

s/ William J. Mason

William J. Mason
Attorney for Defendant
Georgia State Bar No.: 475690

18 Ninth Street, Suite 101
Post Office Box 1011
Columbus, Georgia 31902-1011
Phone: 706-323-6220

CERTIFICATE OF SERVICE

I, WILLIAM J. MASON, Attorney for Defendant, hereby certify that on the 2nd day of July, 2007, I electronically filed the within and foregoing DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM OF LAW with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

T. JOSHUA R. ARCHER
M. ANNE KAUFOLD-WIGGINS
ELIZABETH L. BALLARD
30 ALLEN PLAZA SUITE 700
30 IVAN ALLEN, JR. BOULEVARD NW
ATLANTA, GEORGIA 30308

By: s/William J. Mason
Attorney for Defendant
Georgia State Bar No.: 475690
18 Ninth Street, Suite 101
Post Office Box 1011
Columbus, Georgia 31902-1011
Phone: 706-323-6220
Fax: 706-323-8863