

ROBINSON & COLE LLP

RICHARD J. GUIDA

885 Third Avenue
Suite 2800
New York, NY 10022
Main (212) 451-2900
Fax (212) 451-2999
rguida@rc.com
Direct (212) 451-2948

November 1, 2006

***Electronically Filed and
By Fax (718) 613-2518***

Hon. David G. Trager
Senior United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

**Re: *Elektra Entertainment Group, Inc., et al. v. Rae J. Schwartz,*
1:06-cv-03533-DGT-RML**

Dear Judge Trager:

We write on behalf of Plaintiffs in the above matter in response to Defendant's October 28, 2006 request for a pre-motion conference regarding Defendant's proposed motion for summary judgment. Plaintiffs object to Defendant's request and ask that it be denied.

Defendant's request to file a motion for summary judgment is premature. Defendant's answer to Plaintiffs' complaint was filed only just two days ago. There has been no Rule 26(f) conference among the parties, no scheduling order issued by the Court, and no discovery. Until Plaintiffs have had a fair opportunity to complete their discovery in this matter, any motion for summary judgment by Defendant would be premature. If Defendant were to file a motion for summary judgment, Plaintiffs would file an affidavit under Rule 56(f) and would request an extension of time to respond. Given the infancy of this case, Plaintiffs believe that such a request would be granted.

Defendant's October 28, 2006 letter also provides no basis for a motion for summary judgment. Defendant's Internet Service Provider, America Online, Inc., has confirmed that Defendant was the owner of the internet access account through which hundreds of Plaintiffs' sound recordings were downloaded and distributed to the public without Plaintiffs' consent. Defendant does not dispute this fact. Nor does Defendant dispute Plaintiffs' copyright ownership in the sound recordings at issue. For these and other reasons, Defendant would not likely succeed on a motion for summary judgment, notwithstanding her bald assertion of innocence.



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Defendant has indicated that she has information concerning the infringement alleged in Plaintiffs' complaint. Plaintiffs have invited Defendant to provide any information she has concerning the alleged infringement and have conveyed to Defendant their willingness to settle claims with whomever is responsible. Instead of engaging in a productive dialogue to resolve this matter, Defendant has decided to withhold information from Plaintiffs and to file a motion that is obviously premature. Both of these decisions by Defendant serve only to increase the costs of this lawsuit unnecessarily.

For all of these reasons, Plaintiffs ask that the Court reject Defendant's request so that this matter might proceed to resolution without unnecessary expense to the parties or the Court. This matter is set for conference before the Honorable Magistrate Judge Robert M. Levy on November 14, 2006. In the event the Court is not inclined to deny Defendant's request without a conference, Plaintiffs ask that the matter be addressed at the November 14, 2006 conference.

Thank you.

Respectfully submitted,



Richard J. Guida

RJG:kc

cc: Ray Beckerman, Esq. (via facsimile 212-763-6810)