

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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UMG RECORDINGS, INC., et al,

Plaintiff,

05 CV 1095 (DGT)(RML)

-against-

MARIE LINDOR,

Defendant.

OBJECTION TO REPORT
AND RECOMMENDATION
DATED DECEMBER 12, 2006

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PLEASE TAKE NOTICE that the defendant objects to the following passages, on page 5 of the Report and Recommendation dated December 12, 2006:

“Specific to file sharing, courts have recently held that distributing copyrighted sound files on an internet file sharing program constitutes copyright infringement. BMG Music v. Gonzalez, 430 F.3d 888, 889 (7th Cir. 2005).”

and

“...that defendant actually shared sound files belonging to plaintiffs.”

Our objection is based on the following:

1. The decision in BMG Music v. Gonzalez, 430 F. 3d 888 (7th Cir. 2005) dealt only with *downloading* and not with *distribution*.

2. There is no generalized “distribution” right under the Copyright Act, but a specifically defined distribution right, the right:

to distribute *copies* or *phonorecords* of the copyrighted work to the public by *sale* or *other transfer of ownership*, or by *rental*, *lease*, or *lending*; (17 USC § 106(3)) (italics supplied)

3. The mere presence of a shared files folder on an individual's computer would not satisfy the requirements of 17 USC § 106(3).

4. Neither of the statements objected are necessary to the Court's report and recommendation.

Accordingly, we respectfully request that the Court amend its Report and Recommendation to remove both passages.

Dated: New York, New York
December 12, 2006

VANDENBERG & FELIU, LLP

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