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DENVER

December 14, 2006

BY ECF AND TELECOPY

BOULDER

Hon. Robert M. Levy
U.S. District Court, Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

COLORADO SPRINGS

Re: UMG Recordings, Inc. v. Lindor, No. 05 Civ. 1095 (DGT)(RML)

Dear Magistrate Judge Levy:

LONDON

We are responding to defendant's letter to you of December 13, 2006.

LOS ANGELES

First, it should be noted that defendant has never served a document request for any documents relating to the "wholesale pricing of downloads." Notwithstanding that, plaintiffs have indicated their willingness to provide the relevant information voluntarily, and they have worked with defendant in good faith to clarify precisely what defendant requires. As I have told defendant's counsel, however, the issues here are complex. First, as noted above, plaintiffs had to work with defendant to define exactly what defendant required, which they have done. Second, the type of pricing information that defendant seeks is highly proprietary, trade secret information and would require an appropriate protective order, which plaintiffs anticipate the parties can craft (plaintiffs have been working on a draft). Finally, the requested pricing information raises significant issues due to the fact that plaintiffs are competitors and do not share this type of information with each other. This, too, will require the parties to fashion an appropriate protective order.

MUNICH

SALT LAKE CITY

SAN FRANCISCO

I have told defendant's counsel that plaintiffs have been diligently attempting to work through the difficult issues presented and that, once they had done so, they would provide the information that they believe defendant is seeking. Indeed, it might well be possible to reach a stipulation, subject to appropriate protective orders, that would provide the information that defendant requires and avoid the difficult questions noted above, and plaintiffs have been working through this possibility as well. This concept is consistent with what

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we discussed at the August 28, 2006 conference, where I expressly raised and the Court acknowledged the possibility of a stipulation.

Second, so as not to waive any of their positions, plaintiffs reiterate their view, and reserve their argument, that the defense at issue is baseless. Moreover, although plaintiffs, of course, acknowledge the Court's August 30, 2006 Order, plaintiffs believe that defendant is quoting that Order out of context. The issue that was before the Court was whether defendant could question plaintiffs' Rule 30(b)(6) witnesses regarding the wholesale prices of lawful downloads. There was no issue on the table at the time regarding documents, no request for production pending, and no opportunity for plaintiffs to be heard on any such request. Plaintiffs respectfully do not believe that the Court intended to compel plaintiffs to provide documents that had never been requested, and certainly not without giving plaintiffs a chance to respond, as defendant seems to suggest. Rather, plaintiffs understood that the Court was envisioning a process by which defendant would request and plaintiffs would provide relevant documents in advance of a 30(b)(6) deposition, should leave to assert a Constitutionality defense be granted. As noted above, although no formal document request has ever been served, plaintiffs are and have been willing to proceed informally and to provide the information that they understand defendant requires voluntarily. They simply need additional time to work through the issues noted above, while dealing with the various other significant motions that are pending in this case.

Respectfully submitted,

s/Richard L. Gabriel
Counsel for Plaintiffs

RLG:ah

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