

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA**

**WARNER BROS. RECORDS INC., a  
Delaware corporation; CAPITOL  
RECORDS, INC., a Delaware corporation;  
UMG RECORDINGS, INC., a Delaware  
corporation; SONY BMG MUSIC  
ENTERTAINMENT, a Delaware general  
partnership; ARISTA RECORDS LLC, a  
Delaware limited liability company; and  
BMG MUSIC, a New York general  
partnership,**

**Case No. Civ -06-00793-VML**

Plaintiffs,

v.

**TALLIE STUBBS,**

Defendant.

**PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO STRIKE**

Plaintiffs respectfully submit this Response to Defendant's Motion to Strike and in support thereof state:

1. Prior to filing a Complaint in this matter, Plaintiffs' investigator, MediaSentry, Inc., discovered that, on January 18, 2006, someone using the Internet Protocol ("IP") address 68.227.120.206 was infringing Plaintiffs' copyrighted sound recordings.

2. Plaintiffs subsequently filed a John Doe lawsuit to obtain the true identity of this infringer. Specifically, after obtaining leave of the Court, Plaintiffs served a subpoena on Cox Communications, Inc. ("Cox"), asking Cox to identify the user of IP address 68.227.120.206 at the relevant time. In response to this subpoena, Cox identified Defendant Tallie Stubbs.

3. Thereafter, Plaintiffs communicated with Defendant in an effort to resolve this matter. The parties' efforts were unsuccessful, and, on July 25, 2006, based on the foregoing information, Plaintiffs filed a Complaint against Defendant for copyright infringement.

4. After Plaintiffs filed this lawsuit, and following further investigation, Plaintiffs decided to dismiss this matter without prejudice.

5. On August 23, 2006, Plaintiffs drafted a Notice of Dismissal Without Prejudice, which they intended to file that day. Just before they filed this pleading, however, Plaintiffs received Defendant's Answer and Counterclaims. Plaintiffs immediately attempted to contact counsel for Defendant to discuss Plaintiffs' desire to dismiss this matter, but counsel for Defendant was not responsive.

6. Having received no response from Defendant's counsel, on August 24, 2006, Plaintiffs filed a Motion to Dismiss Without Prejudice, in an effort to resolve this matter in the least costly and least burdensome manner possible.

7. On September 12, 2006, rather than allowing this case to be dismissed, as Plaintiffs seek to do, Defendant filed a pleading entitled Defendant's Brief in Opposition to Plaintiffs' Motion to Dismiss Without Prejudice. Within that brief, Defendant appeared to ask not only that Plaintiffs' Motion to Dismiss Without Prejudice be denied, but also for affirmative relief in the form of a dismissal with prejudice, or, in the alternative, summary judgment.

8. Plaintiffs initially sought leave to reply/respond to Defendant's filing because Defendant appeared to be seeking affirmative relief. The caption of Defendant's filing did not state that it was a motion; however the language in the prayer for relief, combined with the attached exhibits, amounted to a request that the Court grant summary judgment for Defendant.

9. Plaintiffs are willing to withdraw their Motion for Leave to Reply/Respond if the Court finds that Defendant's apparent request for affirmative relief was improper, or if the Court

determines that it need not reach such issues and grants Plaintiffs' motion to dismiss this matter without prejudice, which, Plaintiffs respectfully submit, will end these proceedings expeditiously and without further costs or expense to the parties.

10. Should the Court decide, however, to entertain Defendant's apparent requests for affirmative relief, then Plaintiffs submit that they should be granted the opportunity to respond to such requests for relief.

WHEREFORE, Plaintiffs respectfully request that the Court dismiss their claims without prejudice and dismiss as moot Defendant's declaratory judgment counterclaim, with each party to bear her or its own fees and costs.

Respectfully submitted,

Dated: October 10, 2006

By: /s/ Colin G. Martin  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing **PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO STRIKE** was served upon counsel for the defendant in the above entitled case via First Class United States mail, with postage fully paid, on the 10<sup>th</sup> day of October, 2006.

s/ Colin G. Martin

Colin G. Martin

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