

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ELEKTRA ENTERTAINMENT GROUP,
INC., et al.

Plaintiff,

-against-

RAE J. SCHWARTZ

Defendant.
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ORDER

Civil Action No.
CV-06-3533(DGT)

Trager, J:

In accordance with this Court's Individual Motion Practice, defendant has requested a pre-motion conference in connection with her proposed motion for summary judgment to dismiss the complaint against her. Defendant seeks to move for summary judgment before discovery has even begun.

In support of her motion, defendant alleges that plaintiffs have no evidence that she downloaded and/or distributed music; that the only evidence plaintiffs have is that defendant paid for an internet access account. See Defendant's October 28, 2006 Letter; Defendant's December 1, 2006 Letter.

Plaintiffs assert that defendant's Internet Service Provider, America Online, Inc. ("America Online"), has confirmed that defendant "was the owner of the internet access account through which hundred of [p]laintiffs' sound recordings were downloaded and distributed to the public without [p]laintiffs'

consent." Plaintiffs' November 1, 2006 Letter. Plaintiffs further assert that defendant indicated that she has information concerning the alleged infringement and that, when plaintiffs invited defendant to share that information, defendant withheld it instead of "engaging in a productive dialogue to resolve the matter". Id. Defendant vehemently denies the veracity of those statements and further accuses plaintiffs of suing innocent people without first conducting adequate investigations. See Defendant's December 1, 2006 Letter.

In contrast to defendant's allegations that plaintiffs are improperly using the federal judicial system to conduct a fishing expedition, the fact that America Online confirmed that defendant owned an internet access account through which copyrighted sound recordings were downloaded and distributed provides a good faith basis for the current lawsuit against defendant.

Additionally, as there appear to be disputed issues of material fact, a motion for summary judgment at this juncture is premature. Although the Court cannot stop the defendant from filing its motion for summary judgment, it is unlikely to be

