

The Magistrate Judge is concerned that the plaintiffs' requests have been outstanding for a considerable period of time, and it appears that many of the defendants have yet to produce any information much less a single multi-track master for copying or inspection. It also appears that the parties are not even close to arriving at a protective order concerning such productions. Additionally, the defendants have complained that the multi-track masters are unnecessary and that the plaintiffs should be satisfied with masters other than multi-track or with the actual item offered for sale.

The Magistrate Judge believes that the multi-track masters are clearly relevant. While the defendants have strenuously argued that the multi-track masters, at best, would be relevant only on a very small number of cases, the Magistrate Judge believes otherwise. The test for discovery is not ultimate admissibility, but whether it may lead to relevant evidence. In this case, listening to the multi-track masters may indeed prove to be the best evidence of what is or is not in the final production. While certainly there may be arguments that unless a particular copyrighted item can be heard with the ear in the final product there is no infringement, those are factual items that may well have to be resolved by a jury, the Magistrate Judge is simply

unwilling to say that the multi-track masters are not relevant at this point.

Accordingly, the defendants are **directed** to continue their efforts to locate all multi-track masters. To the extent the defendants never had multi-track masters or no longer have multi-track masters, they are **directed** to forthwith notify the plaintiffs of those facts. If the multi-track masters have been transferred to others, full details of the transfer will be provided.

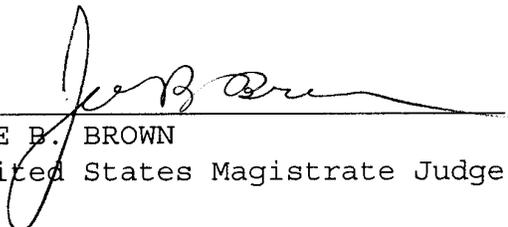
To the extent the defendants do have multi-track masters, they should locate them and the parties are **directed** to consult to see if they can arrive at an appropriate protective order to cover the handling of the masters. The defendants are cautioned that the Magistrate Judge is not overly impressed with the various difficulties concerning the copying of these multi-track masters and is also of the opinion that the security concerns are somewhat overstated. Extremely sensitive documents are turned over to opposing counsel in many cases and the Magistrate Judge has no reason to believe that the plaintiffs would not be able to appropriately handle copies. The defendants are cautioned that failure to produce multi-track masters could lead to a jury instruction that an adverse inference could be drawn against them.

To the extent the parties are unable to resolve the protective order, they are **directed** to schedule a telephone conference with the Magistrate Judge on **December 26, 2001**. To the extent the defendants insist they need witnesses or a further hearing on the matter, the motion will be taken up and finally decided to the extent the parties cannot resolve it at the **January 7, 2002** hearing. This hearing is scheduled to start at **3:00 p.m.** in the afternoon and the parties should be prepared for this matter to be taken up at the end of the hearing and to continue as long as necessary that evening.

As the Magistrate Judge has repeatedly told the parties, the District Judge has set this matter for trial and it is the Magistrate Judge's duty to ensure as best he is able that the matters are ready for trial. Both sides need to be reasonable in both their demands and in their responses. The Magistrate Judge remains distressed that the parties still insist on using boilerplate in their pleadings without actually addressing the merits of the case. Judge Campbell has made it clear that this case is going to be tried as scheduled. The parties must conform their action to this schedule.

The Clerk will post this on the Court's webpage, www.tnmd.uscourts.gov, under Selected Opinions, Bridgeport Music, Inc. Cases, with the title Order: Re Multi-track Masters.

It is so **ORDERED**.



JOE B. BROWN
United States Magistrate Judge