

responses would be due by January 15, 2002, with certain exceptions. From this point forward, any party answering any request for production of materials by stating that the materials will be provided at a later time will specify a specific time by which such materials will be produced, and they will ensure that they comply with the appropriate scheduling orders. The deadline for completion of all discovery was set in the scheduling order as May 21, 2002, with certain very limited exceptions. This case is scheduled and will proceed to trial as set by the District Judge. Parties who continue to delay producing materials run the risk of having the District Judge preclude them from introducing evidence on the issue at trial, or having him deem various matters admitted, or having him allow an inference that the failure to produce such materials indicates that the evidence would be adverse to the recalcitrant parties.

It also appears that in some cases there have been substantial delays in producing materials but neither side has raised the failure to produce issue in a timely fashion with the Court. If material is truly vital and truly not being produced properly, the parties should promptly schedule a hearing with the Magistrate Judge and file the necessary motions to compel or to protect.

After considering the materials presented before, during, and after the hearing on January 7, 2002, the Magistrate Judge believes that the ownership issues concerning whether or not the

plaintiffs own the "Clinton catalogs" should be resolved at an early date. It is apparent that there has been substantial litigation involving these catalogs and the validity of the 1983 and 1984 and later transfers of the catalogs from Mr. Clinton to the plaintiffs in New York, California, and Florida. The defendants strenuously urge that no final resolution of ownership has been made and that they are not precluded from raising ownership issues concerning these documents and catalogs at this time, since they were not parties to the earlier litigation. The plaintiffs just as strenuously contend that these ownership issues have now been fully resolved in their favor and that the defendants are bound by these earlier ownership decisions.

Accordingly, because of the central importance of the ownership issue to all the cases, the defendants are **directed** to file their motions concerning this basic ownership question on or before **February 4, 2002**. The plaintiffs shall have until **March 4, 2002**, to respond. The parties are again reminded that there is a 25-page limit on pleadings and the parties may not continue to exceed that limitation, absent prior Court approval. Further, absent prior Court approval there will be no replies filed. In their submissions, the parties should specifically address the application of the doctrines of claim and/or issue preclusion.

The District Judge has previously imposed a "meet and confer" requirement on the parties. Bridgeport Music, et al., v. 11C Music, et al., Case No. 3:01-0412 (Docket Entry No. 328). The

Magistrate Judge, as promised at the case management conference, has subsequently conferred with Judge Campbell concerning this matter, and the "meet and confer" requirement is **LIFTED** with respect to those issues raised and discussed at the January 7, 2002, hearing.¹ These issues include: (1) where the defendants claim they have no ownership, use, or other connection with the alleged infringing work, and where they have called this alleged lack of connection to the plaintiffs' attention,² (2) lack of substantial similarity, (3) co-ownership, and (4) statute of limitation issues.

The Magistrate Judge would caution the parties, however, that they should be very circumspect in filing motions for summary judgment where it appears that there will be factual disputes. For instance, the Magistrate Judge notes that some of the defendants claim that various songs have been out of print for a number of years, while the plaintiffs point out in their submissions that these catalogs are listed in various publications and are available for purchase on the internet.

Likewise, it would undoubtedly take an extremely clear case for the District Judge to be able to rule as a matter of law that a particular piece of music is or is not infringed just from

¹It is noted that the parties have always been free to file a request with the Court to lift or modify the meet and confer requirement for good cause shown.

²See, for example, Sony submission in Case No. 3:01-0931, Docket Entry No. 19, p. 22-27. Of course, this pleading is another example of a disregard of the 25-page limit.

listening to it. It further appears likely that motions regarding this issue will not be ripe until the completion of discovery and the taking of depositions of various experts.

Many of the defendants have raised as a defense the proposition that a "de minimis or trivial sampling" of a piece of existing music is not actionable. The plaintiffs have consistently insisted that any recognizable use of their material is an actionable infringement. The issue of whether such a sampling is actionable appears to be a key to many of the claims in this case. Should the plaintiffs wish to file a motion for summary judgment on this issue they may do so. Should the plaintiffs desire to file such a motion, the Magistrate Judge would suggest that they file such motion in a very limited number of cases so that the District Judge would have an opportunity to rule on the issue as a matter of law on a specific set of facts. If the plaintiffs wish to file such a motion they should do so by **February 21, 2002**, and a response should be filed by **March 21, 2002**.

The parties are further requested when filing their summary judgment motions to provide Judge Campbell's office with a courtesy copy. Because of the number of cases involved, it takes the Clerk's Office an appreciable amount of time to docket pleadings and to provide the original to Chambers.

Particularly the major defendants in this matter are requested to consider filing joint submissions on basic questions like ownership, which are common to all of them, and to remember

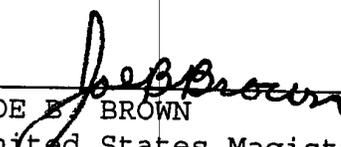
the procedures for filing such motions in the lowest numbered case with notice in the other cases so that the Court is not overburdened with paper.

If the parties have any question as to whether they have properly met and conferred about an issue, they may schedule a telephone conference with the Magistrate Judge for clarification.

The parties are again strongly encouraged to consider alternate dispute resolution in this matter.

The Clerk shall post this Order on the Court's webpage, www.tnmd.usdc.gov, under Selected Opinions, Bridgeport Music, Inc. Cases, with the title Order: Re Discovery Deadlines and Dispositive Motions.

It is so ORDERED.



JOE E. BROWN
United States Magistrate Judge