

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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ELEKTRA ENTERTAINMENT
GROUP INC., et al,

Civil action file no. 05-CV-7340-RJS

Plaintiffs,

-against-

DENISE BARKER,

Defendant.

**NOTICE OF
CONSTITUTIONAL
QUESTION**

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PLEASE TAKE NOTICE pursuant to Fed. R. Civ. P. 5.1(a)(1)(A), Local Rule 24.1(a), and 28 USC 2403(a), that the Second Affirmative Defense in the Defendant's Answer filed on July 28, 2008, questions the constitutionality of 17 U.S.C. § 504 as follows:

Only insofar as plaintiffs seek to apply said statute to (a) compel the allowance of statutory damages of 2,142 times the actual damages sustained, and (b) authorize the allowance of up to 428,571 times the actual damages sustained, as against a single noncommercial user of file sharing software for a single upload or download of an MP3 file for personal use only.

Dated: New York, New York
July 28, 2008

RAY BECKERMAN, P.C.

By: /s/Ray Beckerman
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