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BOULDER

November 1, 2007

Via Fax (914) 390-4179

COLORADO SPRINGS

Honorable Stephen C. Robinson  
United States District Judge  
United States District Court for the  
Southern District of New York  
300 Quarropas Street  
White Plains, New York 10601

DENVER

Re: Warner Bros. Records Inc., et al. v. Cassin,  
Case No. 06CV3089 (SCR)(GAY)  
Supplemental Authority

LONDON

Dear Judge Robinson:

LOS ANGELES

Plaintiffs respectfully submit the following, in the nature of supplemental authority in support of their "making available" argument at pages 15-16 of their Response in Opposition to Defendant's Motion to Dismiss (Doc. no. 18).

MUNICH

On October 2-4, 2007, undersigned counsel tried the case of Capitol Records, Inc. v. Thomas, Case No.: 06-cv-1497 (MJD/RLE), in the United States District Court for the District of Minnesota. The Thomas case involved claims of copyright infringement that are virtually identical to the claims at issue in this case and resulted in a verdict for the record company plaintiffs totaling \$222,000.00.

SALT LAKE CITY

SAN FRANCISCO

Although undersigned counsel does not have a transcript of the Thomas trial, as an officer of this Court, undersigned counsel notes that, in the course of the trial, an issue arose in the context of jury instructions as to whether it is a violation of the exclusive right of distribution for one to make sound recordings available on a peer-to-peer network, without proof of actual receipt of the sound recording by a third-party. After hearing argument and reviewing the cases cited by undersigned counsel, the court agreed with the record companies' position and instructed the jury as follows:

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The act of making copyrighted sound recordings available for electronic distribution on a peer-to-peer network, without license from the copyright owners, violates the copyright owners' exclusive right of distribution, regardless of whether actual distribution has been shown.

(A copy of this jury instruction is attached).

For the same reasons that the Thomas court concluded that the distribution right includes a right of making available, so, plaintiffs respectfully submit, should this Court determine.

Sincerely yours,



Timothy M. Reynolds

TMR/cp  
Enclosure

cc: Ray Beckerman, Esq.  
Brian Moran  
Richard Gabriel  
Patrick Train-Gutierrez

**JURY INSTRUCTION NO. 15**

The act of making copyrighted sound recordings available for electronic distribution on a peer-to-peer network, without license from the copyright owners, violates the copyright owners' exclusive right of distribution, regardless of whether actual distribution has been shown.