

885 Third Avenue
Suite 2800
New York, NY 10022
Main (212) 451-2900
Fax (212) 451-2999
vkao@rc.com
Direct (212) 451-2912

March 17, 2008

Via Fax (914) 390-4179
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

Re: Warner Bros. Records Inc., et al. v. Cassin,
Case No. 06CV3089 (SCR)(GAY)
Request To Lift Stay of Discovery

Dear Judge Robinson:

We represent Plaintiffs in the above-referenced action. We write respectfully to request entry of an order lifting the stay of discovery and adopting Plaintiffs' proposed case management plan and discovery schedule (attached hereto as Exhibit A), so that the parties may proceed with discovery in this matter. The parties have conferred, and Defendant opposes this request.

Plaintiffs brought suit against Defendant on April 21, 2006 for infringement of their copyrighted sound recordings. (Doc. No. 1.) Defendant was served on May 25, 2006. (Doc. No. 7.) On June 22, 2006, the Court stayed discovery in this matter pending its ruling on Defendant's proposed motion to dismiss Plaintiffs' Complaint. (Doc. No. 8.) Defendant did not file a motion to dismiss until over one year later on July 10, 2007. (Doc. No. 14.) This motion was fully briefed as of August 22, 2007 and is currently pending before the Court. (Doc. Nos. 21, 27.)

Nearly two years have passed since Plaintiffs filed the Complaint in this matter, and Plaintiffs are concerned that the delay in discovery may seriously prejudice Plaintiffs' ability to obtain meaningful discovery. As numerous courts have recognized, the passage of time

raises the possibility that critical evidence from defendant's computer hard drive could have been altered, removed, or simply written over in the course of time. The passage of



Law Offices

BOSTON

HARTFORD

NEW LONDON

STAMFORD

WHITE PLAINS

NEW YORK CITY

SARASOTA

www.rc.com

March 17, 2008

Page 2

time also means that some witnesses will be difficult or impossible to locate, and that other material evidence . . . will have been lost.

Atlantic Recording Corp. v. Rodriguez, Cause No. SA-06-ca-748-OG, slip op. at 2-3 (W.D. Tex. Sept. 12, 2007) (attached hereto as Exhibit B); *see also Elektra Entm't Group, Inc. v. Conte*, Case No. CV 07-25-ODW(RZx), slip op. at 4(C.D.Cal. Feb. 13, 2008) (finding that the plaintiffs would be "severely prejudiced" if default judgment was set aside because the delay in proceedings "has cause[d] increased difficulties in discovery") (attached hereto as Exhibit C); *Arista Records, Inc. v. Musemeci*, Civ. Act. No. CV-03-4465 (DGT), slip op. at 3 (E.D.N.Y. Oct. 25, 2007) ("[S]etting aside the judgment would prejudice plaintiffs because evidence has been lost or destroyed.") (attached hereto as Exhibit D).

For these reasons, Plaintiffs respectfully request that the stay of discovery be lifted and that the Court adopt Plaintiffs' proposed discovery plan.

Respectfully submitted,


Victor B. Kao

Encl.

cc: Ray Beckerman, Esq. (by e-mail)
Morlan Ty Rogers, Esq. (by e-mail)
Patrick Train-Gutierrez, Esq. (by e-mail)



EXHIBIT A

4. Initial Disclosures

Plaintiffs propose that Initial Disclosures be served on or before April 15, 2008.

5. Fact Discovery Deadline

Plaintiffs propose that all fact discovery, including depositions, be completed by September 30, 2008.

6. Expert Discovery

Plaintiffs propose that all expert discovery, including depositions, be completed by September 30, 2008.

7. Motions to Compel Discovery

Plaintiffs propose that all motions to compel discovery, if any, be filed with the Court on or before September 1, 2008.

8. Dispositive Motion Deadline

Plaintiffs propose that any and all dispositive motions be filed with the Court on or before October 31, 2008.

9. Alternate Dispute Resolution

Plaintiffs believe that alternative dispute resolution is not necessary in this case.

10. Length of Trial

Plaintiffs anticipate that a trial of this case will take two to three days.

Dated: March 17, 2008

ROBINSON & COLE LLP
Attorneys for Plaintiffs

By: 

Brian E. Moran (BM-8573)
Victor B. Kao (VK-6967)
885 Third Avenue, Suite 2800
New York, NY 10022-4834
Telephone: (212) 451-2900
Facsimile: (212) 451-2999