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General Docket

US Court of Appeals for the Second Circuit

Second Circuit Court of
Appeals

INDIV

DISPOSED

Court of Appeals Docket #: 08-5637-cv
Nsuit : 3410 Antitrust

In Re: Digital Music Antitrust Litigation v. Filed 11/20/08

Appeal SDNY (NEW YORK CITY)
from:

Case type information:

Civil

Private

None

Lower court information:

District: 06-md-1780

Trial Judge: Loretta A. Preska

MagJudge:

Date Filed: 08/18/06

Date order/judgement: 10/21/2008

Date NOA filed: 11/19/2008

Fee status: Paid

Panel Assignment:

Panel: JON JMW RAK 500 Pearl

Date of decision: 1/13/10

Prior cases: NONE

Current cases NONE

Official Caption 1/

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 Docket No. [s] : 08-5637 -cv

KEVIN STARR, MATT PUTMAN, CINDY SELEY, on behalf of herself and all others similarly situated, DAVID PASCHKETT, on behalf of all others similarly situated, CHRISTOPHER MICHAUD, on behalf of himself and all others similarly situated, LISA OWENS, RICHARD BENHAM, on behalf of himself and all others similarly situated, KEATON LANDRY, individually and on behalf of all others similarly situated, SHERI CLARK RACHAEL HALL and MITCHELL HORTON,

Plaintiffs-Appellants,

v

SONY BMG MUSIC ENTERTAINMENT, SONY CORPORATION OF AMERICA, BERTELSMANN, INC., UNIVERSAL MUSIC GROUP, TIME WARNER INC., formerly known as AOL Time Warner Cable, Inc., WARNER MUSIC GROUP CORP., EMI MUSIC NORTH AMERICA, CAPITOL RECORDS INC., doing business as EMI Music North America, JOHN DOES 1-100 BERTELSMANN MUSIC GROUP, INC., BMG MUSIC, BMG MUSIC PUBLISHING, doing business as The RCA Record Label, CAPITOL-EMI MUSIC, INC. and VIRGIN RECORDS AMERICA, INC.,

Defendants-Appellees,

 Authorized Abbreviated Caption 2/

Docket No. [s] : 08-5637 -cv

In Re: Digital Music Antitrust Litigation v.

 1/ Fed. R. App. P. Rule 12 [a] and 32 [a].
 2/ For use on correspondence and motions only.

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□

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Alexander Justis Clark

Plaintiff

Andrew Edenbaum

Plaintiff

Anthony Brass

Plaintiff

Cato Thornton

Plaintiff

Cheryl Munn

Plaintiff

Claire Barker

Plaintiff

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Dennis Bulcao

Plaintiff

Elise R. DeVore

Plaintiff

George Creamer

Plaintiff

Guy Williams

Plaintiff

James Miller

Plaintiff

Janine Picinich

Plaintiff

Jason Candler

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Plaintiff

Jay S. Ewing

Plaintiff

Kevin Starr

Plaintiff

Kiana F. Sarraf

Plaintiff

Kim Hanson

Plaintiff

Matthew S. Bartel

Plaintiff

McKenna Creamer

Plaintiff

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Nelly Chung

Plaintiff

P. Evans Stephens

Plaintiff

Patricia McAllister

Plaintiff

Paul Hampsch

Plaintiff

Paul Leffler

Plaintiff

Richard Feferman

Plaintiff

Richard D. Warren

Plaintiff

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Robert Bertagnoli

Plaintiff

Sandra Lee Wimbrow

Plaintiff

Scott Ruth

Plaintiff

Scott P. Downey

Plaintiff

Shannon Corkery

Plaintiff

Sheri Clark

Plaintiff

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Susan Doolittle

Plaintiff

Tim Henkels

Plaintiff

Tracy Thomas

Plaintiff

Wayne Gilbert

Plaintiff

Yehuda Spector

Plaintiff

Bertelsmann Music Group, Inc. Alan M. Wiseman Esq.

Defendant-Appellee [LD n]
 Howrey, simon, Arnold & White,
 LLP
 1299 Pennsylvania Avenue, NW
 Washington , DC , 200042402
 202-383-6638

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Bertelsmann, Inc. Alan M. Wiseman Esq. (See above)

Defendant-Appellee [LD n]

Warner Music Group Corp. Chet Alan Kronenberg Esq.

Defendant-Appellee [LD n]
 Simpson Thacher & Bartlett LLP
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 New York , NY , 10017
 310-407-7557

Christopher Michaud Christopher Lovell Esq.

Plaintiff-Appellant [LD n]
 Lovell Stewart & Halebian
 61 Broadway
 New York , NY , 10006
 212-608-1900

Cindy Seley Christopher Lovell Esq. (See
 above)
 Plaintiff-Appellant [LD n]

David Paschkett Christopher Lovell Esq. (See
 above)
 Plaintiff-Appellant [LD n]

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Keaton Landry Christopher Lovell Esq. (See
 above)
 Plaintiff-Appellant [LD n]

Lisa Owens Christopher Lovell Esq. (See

| | | | |
|-----------------------|---|---------|----------|
| Plaintiff-Appellant | above) [LD n] | | |
| Matt Putman | Christopher Lovell Esq. (See above) | | |
| Plaintiff-Appellant | [LD n] | | |
| Mitchell Horton | Christopher Lovell Esq. (See above) | | |
| Plaintiff-Appellant | [LD n] | | |
| Rachael Hall | Christopher Lovell Esq. (See above) | | |
| Plaintiff-Appellant | [LD n] | | |
| Richard Benham | Christopher Lovell Esq. (See above) | | |
| Plaintiff-Appellant | [LD n] | | |
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| Universal Music Group | Glenn D. Pomerantz Esq. | | |
| Defendant-Appellee | [LD n] Munger, Tolles & Olson LLP | | |
| | 355 S. Grand Ave. Los Angeles , CA , 90071 | | |
| | 213-683-9132 | | |
| Christopher Michaud | John Stoia Esq. | | |
| Plaintiff-Appellant | [n] Coughlin Stoia Geller Rudman & Robbins LLP 655 W. Broadway-Ste. 1900 San Diego , CA , 92101 | | |
| | 619-231-1058 | | |
| Cindy Seley | John Stoia Esq. (See above) | | |
| Plaintiff-Appellant | [n] | | |
| David Paschkett | John Stoia Esq. (See above) | | |
| Plaintiff-Appellant | [n] | | |
| Keaton Landry | John Stoia Esq. (See above) | | |
| Plaintiff-Appellant | [n] | | |
| Lisa Owens | John Stoia Esq. (See above) | | |
| Plaintiff-Appellant | [n] | | |

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Matt Putman John Stoia Esq. (See above)

Plaintiff-Appellant [n]

Mitchell Horton John Stoia Esq. (See above)

Plaintiff-Appellant [n]

Richard Benham John Stoia Esq. (See above)

Plaintiff-Appellant [n]

Sony BMG Music Entertainment Joseph Kattan Esq. (See above)

Defendant-Appellee [LD n]

Sony Corporation of America Joseph Kattan Esq. (See above)

Defendant-Appellee [LD n]

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Capitol Records Inc. Kenneth R. Logan Esq. (See above)

Defendant-Appellee [n]

Capitol-EMI Music, Inc. Kenneth R. Logan Esq. (See above)

Defendant-Appellee [ret]

EMI Music North America Kenneth R. Logan Esq. (See above)

Defendant-Appellee [ret]

Sony BMG Music Entertainment Kenneth R. Logan Esq. (See above)

Defendant-Appellee [ret]

Sony Corporation of America Kenneth R. Logan Esq. (See above)

Defendant-Appellee [ret]

Virgin Records America, Inc. Kenneth R. Logan Esq. (See above)

Defendant-Appellee [ret]

Warner Music Group Corp. Kenneth R. Logan Esq. (See above)

Defendant-Appellee [ret]

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Capitol Records Inc. Michael O. Ware Esq. (See above)

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Capitol-EMI Music, Inc. Michael O. Ware Esq. (See above)

Defendant-Appellee [LD n]

EMI Music North America Michael O. Ware Esq. (See above)

Defendant-Appellee [LD n]

John Does 1-100 Michael O. Ware Esq. (See above)

Defendant-Appellee [LD n]

Virgin Records America, Inc. Michael O. Ware Esq. (See above)

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Defendant-Appellee [LD n]

Time Warner Inc. Peter T. Barbur Esq.

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Capitol Records Inc. Richard M. Stever Esq.

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212-506-2500

EMI Group PLC Richard M. Stever Esq. (See
above)
Defendant [LD n]

EMI Music North America Richard M. Stever Esq. (See
above)
Defendant-Appellee [n]

Virgin Records America, Inc. Richard M. Stever Esq. (See
above)

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Defendant-Appellee [n]

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11/20/08 APPELLANT Christopher Michaud, Cindy
Seley, David Paschkett, Keaton Landry, ET
AL , Copy of notice of appeal and district
court docket entries on behalf of APPELLANT
Christopher Michaud, Cindy Seley, David
Paschkett, Keaton Landry, ET A L , filed.
[Entry date Nov 26 2008] [CM]

11/20/08 Copy of district court order dated 10/21/08
RECEIVED. [Entry date Nov 26 2008] [CM]

11/20/08 Record on Appeal Electronically Filed
(Original documents remain in the
originating court).
[Entry date Nov 26 2008] [CM]

11/26/08 APPELLANT Christopher Michaud, Cindy
Seley, David Paschkett, Keaton Landry, ET
AL , Form C filed, with proof of service.
[Entry date Dec 4 2008] [CM]

11/26/08 APPELLANT Christopher Michaud, Cindy
Seley, David Paschkett, Keaton Landry, ET
AL , Form D filed, with proof of service.
[Entry date Dec 4 2008] [CM]

12/4/08 Notice of appeal acknowledgment letter from
Peter Barbur received. [Entry date Dec 30
2008] [GP]

12/8/08 Pre-Argument Conference Notice and Order
from Vidya Kurella, Scheduled For: Tuesday

December 23, 2008 at 3:00pm, Filed. [Entry
date Dec 12 2008] [CM]

12/8/08 Scheduling order #1 filed. Appellants brief
due 1/13/2009. Appellees brief due
2/12/2009. Ready week 4/13/2009. (VK)
[Entry date Dec 12 2008] [CM]

12/9/08 Notice of appeal acknowledgment letter from
Alan Wiseman received. [Entry date Dec 30
2008] [GP]

12/11/08 Notice of appeal acknowledgment letter from
Glenn Pomerantz received. [Entry date Dec
31 2008] [GP]

12/11/08 Notice of appeal acknowledgment letter from
Richard Stever received. [Entry date Dec
31 2008] [GP]

12/15/08 The new case manager assigned to this case
is: Toft, Hezekiah. [Entry date Dec 15

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2008] [HT]

12/17/08 CORRECTED Scheduling order #1 filed.
Appellants brief due 1/13/2009. Appellees
brief due 2/12/2009. Ready week 4/13/2009.
(VK) [Entry date Dec 17 2008] [AG]

12/17/08 Notice to counsel in re: Corrected
Scheduling Order # 1 dated 12/17/08.
[Entry date Dec 17 2008] [AG]

12/22/08 Letter dated 12/15/08 received from Kenneth
R. Logan, Esq., in re: listing him as
counsel for Warner Music Group Corp.
[Entry date Dec 24 2008] [HT]

1/8/09 Scheduling order #2 filed. Appellants brief
due 1/21/2009. Appellees brief due
2/20/2009. Ready week 5/4/2009. (VK)
[Entry date Jan 8 2009] [HT]

1/8/09 Notice to counsel in re: scheduling order #2.
[Entry date Jan 8 2009] [HT]

1/8/09 APPELLANT Christopher Michaud, Cindy
Seley, David Paschkett, Keaton Landry, ET
AL, reply brief due 03/06/09. [Entry
date Jan 8 2009] [HT]

1/12/09 Notice of appeal acknowledgment letter from
Joseph Kattan received. [Entry date Jan 12

2009] [HT]

- 1/21/09 Notice of Appearance Filed by Peter Barbur on behalf of Time Warner Inc. (Orig in acco, copy to Calendar and Admissions Dept.). [Entry date Jan 22 2009] [HT]
- 1/21/09 Notice of Appearance Filed by Alan Wiseman on behalf of Bertelsmann, Inc. (Orig in acco, copy to Calendar and Admissions Dept.). [Entry date Jan 22 2009] [HT]
- 1/21/09 Notice of Appearance Filed by Kenneth Logan on behalf of Warner Music Group Corp., SONY BMG Music Entertainment, Sony Corporation of America, Capitol Records, Inc. doing business as EMI Music North America, EMI Group North America, Inc., Capitol-EMI Music, Inc., and Virgin Records America, Inc. (Orig in acco, copy to Calendar and Admissions Dept.). [Entry date Jan 22 2009] [HT]
- 1/21/09 APPELLANT Christopher Michaud, Cindy Seley, David Paschkett, Keaton Landry, ET AL , brief FILED with proof of service. [Entry date Jan 23 2009] [HT]
- 1/21/09 APPELLANT Christopher Michaud, Cindy Seley, David Paschkett, Keaton Landry, ET

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AL , joint appendix filed w/pfs. [Entry date Jan 23 2009] [HT]

- 1/21/09 Notice of Appearance Filed by Christopher Lovell on behalf of <Edit Client Name>. (Orig in acco, copy to Calendar and Admissions Dept.). [Entry date Jan 23 2009] [HT]
- 1/21/09 Argument Requested - Local Rule 34 Acknowledgment Returned by APPELLANT Christopher Michaud, Cindy Seley, David Paschkett, Keaton Landry, ET AL , [All parties seek oral argument] [Entry date Jan 30 2009] [CI]
- 1/22/09 Notice of Appearance Filed by Alan Wiseman on behalf of Bertelsmann, Inc. (Orig in acco, copy to Calendar and Admissions Dept.). [Entry date Jan 26 2009] [HT]
- 1/31/09 The CAPTION PAGE for this appeal has been AMENDED. [Entry date Jan 31 2009] [HT]

- 1/31/09 Notice to counsel in re: Amended Caption.
[Entry date Jan 31 2009] [HT]
- 2/13/09 APPELLANT Christopher Michaud, Cindy Seley, David Paschkett, Keaton Landry, ET AL , Correct Covers Received for Brief and Joint Appendix, RECEIVED. [Entry date Feb 19 2009] [HT]
- 2/18/09 Letter dated 02/13/09 received from Christopher Lovell, Esq., in re: change of address.

[Entry date Feb 23 2009] [HT]
- 2/20/09 APPELLEE Bertelsmann Music Group, Inc., Bertelsmann, Inc., BMG Music, Capitol Records Inc., ET AL , brief filed with proof of service. [Entry date Feb 23 2009] [HT]
- 3/6/09 Scheduling order #3 filed. Appellant`s Reply brief due 3/20/2009. Ready week 5/4/2009. (VK) [Entry date Mar 6 2009] [CI]
- 3/6/09 Notice to counsel in re: Scheduling Order #3, filed 3/6/2009. [Entry date Mar 6 2009] [CI]
- 4/3/09 Appellant Matt Putman, Appellant Mitchell Horton, Appellant Cindy Seley, et al motion to file late brief filed with proof of service. [Entry date Apr 6 2009] [HT]
- 4/6/09 APPELLANT Christopher Michaud, Cindy Seley, David Paschkett, Keaton Landry, ET

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AL , reply brief received. Problem Awaiting motion to file late, missing PDF of brief.
[Entry date Apr 6 2009] [HT]

- 4/7/09 Notice to counsel in re: motion order filed 04/07/09. [Entry date Apr 7 2009] [HT]
- 4/7/09 APPELLANT Christopher Michaud, Cindy Seley, David Paschkett, Keaton Landry, ET AL , reply brief filed with proof of service. [Entry date Apr 7 2009] [HT]
- 4/7/09 Order FILED GRANTING motion to file late reply brief by Appellant Matt Putman, Appellant Mitchell Horton, Appellant Cindy Seley, Appellant David Paschkett, Appellant

Christopher Michaud, Appellant Lisa Owens,
Appellant Richard Benham, Appellant Keaton
Landry, Appellant Rachael Hall, endorsed on
motion dated 4/3/2009. [Entry date Apr 7
2009] [HT]

6/29/09 Proposed for argument the week of 9/21/09 A
Panel [Entry date Jun 29 2009] [CA]

7/20/09 Set for argument on 9/21/09 A Panel at 10am
[Entry date Jul 20 2009] [DC]

7/22/09 Calendar argument notice mailed to
attorneys/parties. [Entry date Jul 22 2009
] [AG]

9/21/09 Case heard before panel: NEWMAN, WALKER,
KATZMANN, C.JJ. [Entry date Sep 21 2009]
[AG]

10/5/09 Letter received from Jeffrey Kabacinski
w/Berger & Mortague, P.C. requesting an oral
argument tape. Fee pd. Forward to calendar.
[Entry date Oct 5 2009] [VM]

10/29/09 Oral argument cd mailed to Jeffrey
Kabacinski w/Berger & Mortague, P.C. .
[Entry date Oct 29 2009] [AG]

1/13/10 Judgment of the district court is VACATED
and REMANDED by published signed opinion
filed. (RAK) [Entry date Jan 13 2010]
[ML]

1/13/10 Judge Jon O. Newman concurs in a separate
opinion, filed. [Entry date Jan 13 2010]
[ML]

1/13/10 Judgment filed. [Entry date Jan 13 2010]
[ML]

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1/13/10 The CAPTION PAGE for this appeal has been
AMENDED. (as per Opinion filed 01/13/2010)
[Entry date Jan 13 2010] [ML]

1/13/10 Notice to counsel in re: Opinion filed
01/13/2010. [Entry date Jan 13 2010]
[ML]

1/14/10 The new case manager assigned to this case
is: Lain, Margaret. [Entry date Jan 14
2010] [ML]

1/27/10 PETITION FOR REHEARING AND REHEARING EN BANC,

on behalf of Appellee Bertelsmann, Inc.,
Appellee Bertelsmann Music Group, Inc.,
Appellee EMI Music North America, et al.,
FILED. [Entry date Jan 29 2010] [ML]

2/19/10 ERRATA SHEET, for Opinion dated 01/13/2010,
by RAK, FILED. [Entry date Feb 19 2010]
[ML]

2/19/10 Notice to counsel in re: Errata filed
02/19/2010. [Entry date Feb 19 2010]
[ML]

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