

infringement occurred through Internet Protocol (“IP”) address 68.227.185.38.

Plaintiffs attempted to resolve their claims against Defendant prior to filing this lawsuit. When Defendant declined their settlement offer, Plaintiffs filed suit against Defendant on August 7, 2007. In order to facilitate a final disposition of this case, Plaintiffs offered to settle the case for \$4500. *See* Declaration of Laurie J. Rust, at ¶ 3, attached as Exhibit A (“Rust Declaration”). Defendant repeatedly declined this offer. *See id.* at ¶¶ 3, 5. On November 23, 2007, Defendant filed a Motion to Amend, Motion for Summary Judgment, and Motion to Dismiss (the “November 23, 2007 Motions”). *See* Doc. nos. 484-488. Upon receiving the November 23, 2007 Motions, Plaintiffs’ counsel once again reached out to Defendant in an attempt to settle this case. *See* Rust Declaration, at ¶ 5. During the course of negotiations, Plaintiffs’ counsel lowered the settlement offer to \$4,000 and made clear that this was Plaintiffs’ final offer; Defendant could accept the settlement offer or Plaintiffs would proceed with litigation. *See id.* at ¶ 6. Plaintiffs also made clear to Defendant that if they were required to respond to his November 23, 2007 Motions, the settlement offer would increase to reflect the time spent preparing responses. *See id.* Defendant declined this offer and instead filed the present Motion on December 3, 2007. *See* Doc. no. 480.

ARGUMENT

Section 1927 provides that the court may require any attorney who “so multiplies the proceedings in any case unreasonably and vexatiously” to pay as a sanction the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct. Defendant seems to argue that Plaintiffs’ refusal to lower their settlement amount from \$4,000 to \$3,000 is a violation of Section 1927.

It seems totally unreasonable, vexacious [sic], and in bad faith to this Defendant that Sony BMG Music Entertainment, Warner Bros. Records, Inc., Atlantic Recording Corporation, Arista Records, LLC and UMG Recordings, Inc., the Plaintiffs in this matter[,] would wish to go forward with a time-consuming and costly lawsuit due to a difference of \$1,000.

Motion, Affidavit of Joel Tenenbaum, at ¶14.

Contrary to Defendant's argument, Plaintiffs are under no duty to settle this case, reduce their claims, or compromise on settlement amounts. *Perez v. Maine*, 760 F.2d 11, 12 (1st Cir. 1985) (“[The parties] would seem free to settle, or not, as they choose.”); *Del Rio v. Northern Blower Co.*, 574 F.2d 23, 26 (1st Cir. 1978) (“There is no duty, however, to settle cases, or to reduce one's claims”) (citing *La Buy v. Howes Leather Co.*, 352 U.S. 249, 258 (1957); *Cropp v. Woleslagel*, 485 P.2d 1271, 1276 (Kan. 1971) (“The court should never work to coerce or compel a litigant to make a settlement.”); *Wolff v. Laverne, Inc.*, 233 N.Y.S.2d 555 (1962); *Padovani v. Bruchhausen*, 293 F.2d 546 (2d Cir. 1961); 3 J. Moore, Federal Practice, 1129, at ¶¶16,17 (2d ed. 1974)). Further, a litigant may not be sanctioned for failing to settle a case. *Kothe v. Smith*, 771 F.2d 667 (2d Cir. 1985). This is even true where the court urges settlement. *Id.*; *Wolff v. Laverne, Inc.*, 233 N.Y.S.2d 555 (1962), cited with approval in *Del Rio*, 574 F.2d at 26.

Defendant's Motion seeks to twist Section 1927 into a tool to coerce or compel a litigant to make a settlement or to “go back and forth . . . until all parties are in agreement.” See Motion, Affidavit of Joel Tenenbaum, ¶7. However, such pressure tactics designed to coerce a party into settling its claim are impermissible. See *Kothe*, 771 F.2d 667; *Del Rio*, 574 F.2d 23; *Padovani*, 293 F.2d 546. As established above, no party is obligated to continue negotiating until the other is satisfied with the settlement offer.

Moreover, Defendant's Motion is based on a misunderstanding of the potential liability he faces for the infringement of Plaintiffs' copyrighted sound recordings. Contrary to Defendant's argument, Plaintiffs' settlement offer represents a considerable compromise of their claim. Minimum statutory damages under the Copyright Act are \$750 per infringement. 17 U.S.C. § 504(c). In addition, the Copyright Act provides for an award of costs and attorneys' fees. 17 U.S.C. § 505. As Plaintiffs are currently proceeding on the seven sound recordings listed on Exhibit A to the Complaint and certain of the over 800 sound recordings listed on Exhibit B to the Complaint, Defendant faces potential liability far greater than Plaintiffs' settlement offers. Thus, while Plaintiffs are under no obligation to compromise, they have attempted to settle this case for an amount far below the statutory minimum damages, costs, and fees to which they are entitled under the Copyright Act.

CONCLUSION

For all of the above reasons, Plaintiffs respectfully request that the Court deny Defendant's Motion for Sanctions in its entirety.

Respectfully submitted,

/s/ Nancy M. Cremins

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ATTORNEYS FOR PLAINTIFFS

Dated: December 19, 2007

CERTIFICATE OF SERVICE

In addition to filing this motion through the ECF procedure, the undersigned hereby certifies that a true and correct copy of the above and foregoing **MOTION TO EXTEND DEADLINES** was forwarded in accordance with the Federal Rules of Civil Procedure on this 19th day of December, 2007, via first class mail as follows:

/s/ Nancy M. Cremins
Nancy M. Cremins