

*the Street*² (RIAA website billing their legal actions as a method to alter “attitudes, practices, [and] cultural norms”). All Plaintiffs in this case – and thus all defendants in the context of Defendant's counterclaims – are members of the RIAA. This litigation is to further the RIAA's strategy.

Defendant Joel Tenenbaum has brought counterclaims against Plaintiffs that seek to prevent Plaintiffs from abusing the judicial process to further their impermissible crusade against current norms of Internet and digital technology usage. Defendant cannot adequately litigate his counterclaims without joinder of the RIAA, which is the originator and coordinator of this abuse.

Defendant Joel Tenenbaum respectfully requests the Court to join the RIAA as a required defendant to Defendant's counterclaims under Rule 19 of the Federal Rules of Civil Procedure. In the alternative, Defendant requests leave of the Court to join the RIAA as a defendant to Defendant's counterclaim under Rule 20 of the FRCP.

DISCUSSION

I. RULE 19

Under Rule 19(a)(1)(a) of the FRCP, a party must be joined as a defendant if “in that person's absence, the court cannot accord complete relief among existing parties.”³ Here, the court cannot accord complete relief to Defendant Joel Tenenbaum on his claim of abuse without providing recourse against the RIAA, which serves as the coordinating body of the abuses Defendant seeks to prevent.

II. RULE 20

Under Rule 20(a)(2) of the FRCP, the Court may join a party as a defendant if (a) a right to relief is asserted against them that arises out of the same series of transactions or occurrences and (b) any question of law or fact common to all defendants will arise in the action. These requirements are

² Available at http://www.riaa.com/physicalpiracy.php?content_selector=piracy_details_online (last visited October 23, 2008)

³ Rule 19(a)(1) applies only if the party is subject of service of process and if joinder would not defeat federal subject matter jurisdiction. The RIAA as an established trade group is capable of receiving process via its headquarters at 1025 F ST N.W., 10th Floor, Washington, D.C. 20004. Because the RIAA is headquartered in Washington, D.C., it presents no threat to subject matter jurisdiction.

met because Defendant's amended counterclaim target the RIAA as coordinator and originator of the mass-litigation campaign or which this lawsuit against him is part . Questions of law or fact at issue in this cases apply equally to the RIAA and the current Plaintiffs.

CONCLUSION

For the forgoing reasons, the Court should join the RIAA as a required party to Defendant's counterclaims under Rule 19 or as a permissive party under Rule 20 of the FRCP.

Respectfully submitted,

 /S/ Charles R. Nesson

Charles R. Nesson
1575 Massachusetts Avenue
Cambridge, MA 02138
E-mail: nesson@law.harvard.edu
Telephone: (617) 495-4609

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I, Charles Nesson, hereby certify that on November 14, 2008, a true copy of the above document will be served electronically on counsel for Plaintiffs at the addresses below. A true copy of the above was served on November 4, 2008 at Recording Industry Association of America (RIAA), 1025 F Street N.W., 10th Floor, Washington, D.C. 20004.

Charles R. Nesson
1575 Massachusetts Avenue
Cambridge, MA 02138
E-mail: nesson@law.harvard.edu
Telephone: (617) 495-4609

ATTORNEY FOR DEFENDANT

Claire E. Newton
Robinson & Cole LLP
One Boston Place
Suite 2500
Boston, MA 02108
617-557-5900
Fax: 617-557-5999
Email: cnewton@rc.com

Eve G. Burton
Holme Roberts & Owen LLP
Suite 4100
1700 Lincoln Street
Denver, CO 80203-4541
303-866-0551
Email: eve.burton@hro.com

John R. Bauer
Robinson & Cole LLP
One Boston Place, 25th Floor
Boston, MA 02108
617-557-5900
Fax: 617-557-5999
Email: jbauer@rc.com

Laurie Rust
Holme Roberts & Owen LLP
Suite 4100
1700 Lincoln Street
Denver, CO 80203-4541

Nancy M. Cremins
Robinson & Cole LLP
One Boston Place
Boston, MA 02108-4404
617-557-5971
Fax: 617-557-5999
Email: ncremins@rc.com

Timothy M. Reynolds
Holme Roberts & Owen LLP
1801 13th Street
Suite 300
Boulder, CO 80302
393-861-7000
Email: timothy.reynolds@hro.com