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## **LEADING INTERNET LAWYER TO ARGUE COPYRIGHT THEFT DETERRENCE ACT UNCONSTITUTIONAL**

*Is the Constitution ready to embrace the reality of the Internet?*

Cambridge, MA (October 2008) – The Recording Industry Association of America (RIAA) is in the process of bringing to bear the full might of its combined lobbying and litigating power. And one defendant, Joel Tenenbaum, is fighting back with the help of his mother; Charles Nesson, a leading copyright and internet lawyer; and Nesson’s Harvard Law School cyberlaw class. What makes this counterclaim remarkable is not the legal tit-for-tat that is inherent in any contentious issue, but rather the fact that this legal team has taken its argument to the next level: constitutionality.

Joel is being threatened by the RIAA with punishment of more than a million dollars for downloading seven songs. Charles Nesson and his team of Harvard Law students are counterclaiming for abuse of process. They argue that the statute, which mandates damages of up to \$150,000 for each willful download, is unconstitutional.

But is the Constitution ready to embrace the reality of Internet?

Nesson’s team alleges that the RIAA is abusing law and the civil process of the federal courts. “At its core this counterclaim raises a profoundly conceptual question: Is the law just the grind of a statutory machine to be carried out by judge and jury as cogs, or do judge and jury claim the right and duty and power of constitution and conscience to do justice?” says Nesson. The counterclaim also alleges that the RIAA’s action in the name of “deterrence” constitutes an abuse of process used for the ulterior purpose of intimidating others by extreme example.

In the only previous situation in which an RIAA music-downloading case such as this has gone to trial, Chief Judge Michael Davis set aside a jury verdict of \$221,000, declaring the statutory damage award to be “unprecedented and oppressive.”

Are there limits to how we deal with copyright in the age of ubiquitous information? And that’s exactly the question they hope the courts will finally address.

For more information, please visit: <http://blogs.law.harvard.edu/cyberone/riaa/>.

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*CyberOne is a course for Harvard Law School students learning to make things happen in a cyber world. Projects include furthering work already ongoing, as well as new inspirations expressing our growing ability to use the tools of cyberspace to connect in creativity and peace. Professor Charles Nesson is the William F. Weld Professor of Law at Harvard Law School and Founder of the Berkman Center for Internet & Society.*