

Federal Court



CANADA

Cour fédérale

Date: 20040301

Docket: T-292-04

Ottawa, Ontario this 1st day of March, 2004

Present: THE HONOURABLE MR. JUSTICE von FINCKENSTEIN

BETWEEN:

BMG CANADA INC., EMI MUSIC CANADA, A DIVISION OF EMI GROUP
CANADA INC., SONY MUSIC ENTERTAINMENT (CANADA) INC.,
UNIVERSAL MUSIC CANADA INC., WARNER MUSIC CANADA LTD.,
BMG MUSIC, ARISTA RECORDS, INC.,
ZOMBA RECORDING CORPORATION, EMI MUSIC SWEDEN AB,
CAPITOL RECORDS, INC., CHRYSALIS RECORDS LIMITED,
VIRGIN RECORDS LIMITED, SONY MUSIC ENTERTAINMENT INC.,
SONY MUSIC ENTERTAINMENT (UK) INC., UMG RECORDINGS, INC.,
MERCURY RECORDS LIMITED AND WEA INTERNATIONAL INC.

Plaintiffs

and

JOHN DOE, JANE DOE AND ALL THOSE PERSONS WHO ARE INFRINGING
COPYRIGHT IN THE PLAINTIFFS' SOUND RECORDINGS

Defendants

ORDER

UPON MOTION by the applicant, the Canadian Internet Policy and Public Interest
Clinic (CIPPIC), for an order pursuant to Rule 109 of the *Federal Court Rules, 1998*, S.O.R/98-
106;

UPON considering that there was a significant amount of publicity related to this case even before the first motion on the matter was heard;

UPON concluding that the proposed interveners had an opportunity to bring a motion for intervention in the matter prior to February 16th, 2004, when the underlying motion first came before this Court;

UPON concluding, on one hand, that there is a need to avoid further delay and complication in this matter, but that, on the other hand, this is a new area of law and that any order made after the March 12th motion may have wider ramifications than the mere disclosure of the names of the 29 unnamed defendants in this action;

UPON concluding that the proposed interveners will bring a point of view to the proceedings not put forward by the Internet Service Providers (ISPs) or the plaintiffs and that their intervention will, therefore, be of assistance to the Court in dealing with the issues raised in the underlying motion;

UPON concluding that the proposed interveners meet the key criteria of Rule 109 of the *Federal Court Rules, 1998*, S.O.R./98-106 but that their intervention should be restricted so as to allow for an efficient processing of the underlying motion;

THIS COURT GRANTS LEAVE TO INTERVENE to the applicant in the motion to be heard on March 12th, 2004 in Toronto, Ontario on the following terms:

1. CIPPIC's intervention shall be limited to making argument and shall not include cross-examination or the filing of further evidence;
2. CIPPIC shall file and serve a written memorandum of points of argument by March 5th, 2004;
3. CIPPIC shall cooperate with all other parties, non-party respondents and interveners to expedite the hearing and avoid duplication;
4. CIPPIC shall not seek or be made subject to any order as to costs;
5. CIPPIC shall be served with all materials filed and to be filed by other parties, non-party respondents and interveners; and
6. CIPPIC's argument and submissions shall be limited to the following issues:
 - a. the test to be applied by the Court on the hearing of the motion,
 - b. the due process rights of the unnamed defendants,
 - c. the privacy rights of the unnamed defendants, and

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d. whether or not the plaintiffs have made out a *prima facie* case of infringement under the *Copyright Act*, R.S.C. 1985, c. C-42.

"K. von Finckenstein"

Judge