

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

YOUT, LLC,
Plaintiff,

v.

RECORDING INDUSTRY
ASSOCIATION OF AMERICA, INC., and
DOE RECORD COMPANIES 1-10,
Defendants.

No. 3:20-cv-1602 (SRU)

**RULING AND ORDER ON PLAINTIFF'S MOTION FOR ATTORNEYS' FEES
AND DEFENDANT'S MOTION TO STAY THE MOTION FOR ATTORNEYS' FEES**

Before the Court is defendant Recording Industry Association of America's ("RIAA") motion for attorneys' fees and costs pursuant 17 U.S.C. § 505, doc. no. 65, and plaintiff Yout, LLC's ("Yout") motion to stay the RIAA's fee motion, doc. no. 67.

By way of background, after concluding that Yout had not stated and could not state a plausible claim for relief, I dismissed this matter with prejudice on September 30, 2022. Doc. No. 61. Judgment entered in favor of the defendants. Doc. No. 62. Thereafter, Yout timely appealed the judgment to the United States Court of Appeals for the Second Circuit. Doc. No. 63. This matter is currently pending on appeal. *See Yout LLC v. Recording Industry Association of America, Inc.*, 22-2760-CV (2d Cir. Oct. 25, 2022).

Although Yout's notice of appeal does not deprive the Court of jurisdiction to consider the pending motion for attorneys' fees, the Court nevertheless retains discretion to deny the fee motion without prejudice with leave to re-file after disposition of the appeal. *Tancredi v. Metro. Life Ins. Co.*, 378 F.3d 220, 226 (2d Cir. 2004) (citing Fed. R. Civ. P. 54(d) advisory committee's note ("If an appeal on the merits of the case is taken, the [district] court may rule on the claim for fees, may defer its ruling on the motion, or may deny the motion without prejudice,

directing under subdivision (d)(2)(B) a new period for filing after the appeal has been resolved.”)). “Exercising that discretion, courts in this Circuit regularly defer the award of attorneys’ fees or deny the motion without prejudice pending the resolution of an appeal on the merits.” *Costco Wholesale Corp. v. Anthony J. Costello & Son Dev., LLC*, 232 F. Supp. 3d 319, 320 (W.D.N.Y. 2017) (cleaned up).

Here, I choose to exercise my discretion to deny the fee motion without prejudice and grant the RIAA leave to re-file the motion upon resolution of the appeal. The Copyright Act provides for recovery of fees and costs incurred by the prevailing party, including fees and costs incurred on appeal. 17 U.S.C. § 505; *Adsani v. Miller*, 139 F.3d 67, 71 (2d Cir. 1998). The party prevailing on appeal will likely seek fees at that time; therefore, the interests of judicial efficiency, avoidance of piecemeal adjudication, and conservation of judicial resources favor denying the fee motion without prejudice at this time.

In conclusion, the RIAA’s motion for attorneys’ fees, doc. no. 65, is **denied without prejudice** with leave to re-file no later than fourteen days after entry of the mandate by the Second Circuit. Yout’s motion to say, doc. no. 67, is **denied as moot**.

So ordered.

Dated at Bridgeport, Connecticut, this 13th day of January 2023.

/s/ STEFAN R. UNDERHILL
Stefan R. Underhill
United States District Judge