

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UMG RECORDINGS, INC., *et al.*,

Plaintiffs,

v.

Case No: 8:19-cv-710-MSS-TGW

BRIGHT HOUSE NETWORKS,
LLC.,

Defendants.

ORDER

THIS CAUSE comes before the Court for consideration of Plaintiffs' Motion for Partial Summary Judgment, ([Dkt. 589](#)), ("Plaintiffs' Motion"), Bright House Network, LLC's Response in Opposition to Plaintiffs' Motion for Partial Summary Judgment, ([Dkt. 602](#)), and Plaintiffs' Reply Memorandum In Support of Their Motion for Partial Summary Judgment. ([Dkt. 612](#))

Upon consideration of all relevant filings, case law, and being fully otherwise advise, the Court **DENIES** Plaintiffs' Motion for Partial Summary Judgment.

I. BACKGROUND

This matter arises out of Plaintiffs' suit against Bright House for contributory copyright infringement and claims for statutory damages, pursuant to 17 U.S.C. § 504(c). ([Dkt. 94](#) at ¶¶ 90–98) In sum, Plaintiffs claim that Bright House, by its receipt of Plaintiffs' infringement notices, "had knowledge that its network was being used for

infringement of Plaintiffs’ copyrighted works on a massive scale, and also knew of specific subscribers engaged in such repeated and flagrant infringement.” (Id. at ¶ 93) Instead of terminating the service of these subscribers, Plaintiffs claim that Bright House “knowingly caused and materially contributed to the unlawful reproduction and distribution of Plaintiffs’ copyrighted works.” (Id. at ¶ 94) Now, Plaintiffs move for partial summary judgment for the alleged purpose of “narrow[ing] the issues for trial and streamline the presentation of the evidence to the jury in two significant areas[.]” (Dkt. 589 at 3) *First*, Plaintiffs argue that there is no reasonable dispute as to the “foundational issues” that: “(1) [they] own or control the copyright in each work identified in their accompanying declarations, each of which has been validly registered; and (2) the files that Plaintiffs contend B[right House’s] subscribers distributed and are infringing do indeed contain copies of Plaintiffs’ copyrighted works.” (Id.) *Second*, Plaintiffs “seek summary judgment finding that they have established both the knowledge and material contribution elements necessary to hold B[right House] liable for contributory infringement.” (Id. at 3–4) Thus, according to Plaintiffs, the only remaining issue for trial is whether Bright House’s subscribers “distributed or reproduced the infringing files, which will establish direct infringement.” (Id. at 4)

In its Response in Opposition, Bright House argues that Plaintiffs cannot prove that Bright House had requisite knowledge because they “cannot prove knowledge based on notices not sent to or received by Bright House,” (Dkt. 602 at 14), and that “notices received by Bright House do not establish knowledge of future infringement.”

(Id. at 15) Bright House also disputes Plaintiffs’ claims concerning the “foundational issues.” Specifically, Bright House contends that Plaintiffs “have failed to prove ownership of many of their asserted works” because they have failed to submit “evidence of ownership for 113 of the works listed in Exhibit A and B to their Amended Complaint and are thus not entitled to summary judgment for these works.”

(Id. at 17) Additionally, Bright House argues that Plaintiffs are not entitled to summary judgment as to whether copies of Plaintiffs’ Works are included in files that were downloaded to a hard drive by non-party MarkMonitor. (Id. at 19–20)

In its Reply, Plaintiffs argue that, because “B[right] House does not contest Plaintiffs’ ownership of, or the validity of the copyright registrations for 6,821 of the 7,151 works at issue[,]” the Court should grant summary judgment on those works. (Dkt. 612 at 1) Next, Plaintiffs contend that “B[right House] does not dispute that each of Plaintiffs’ Works is copied in the corresponding file on the MarkMonitor hard drive[,]” so the Court should grant summary judgment “on each of those works at a minimum.” (Id. at 3) Plaintiffs assert that, Bright House’s alleged continued provision of services to “known repeat infringers establishes intent and gives rise to contributory liability.” (Id. at 4) Additionally, Plaintiffs, relying on the Eastern District of Virginia’s finding in Sony Music Ent. v. Cox Commc’ns, Inc., 426 F. Supp. 3d 217, 233 (E.D. Va. 2019), claim that Bright House had knowledge of its subscribers’ infringement because it received the same notices that the Court there found “established Cox’s

knowledge, as a matter of law, for purposes of contributory infringement under the higher, actual knowledge standard. (Id. at 9)¹

II. STANDARD OF REVIEW

The Court must “grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); see also Waddell v. Valley Forge Dental Assocs., Inc., 276 F.3d 1275, 1279 (11th Cir. 2001) (explaining that “[s]ummary judgment is proper if the pleadings, depositions, and affidavits show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law”). For a factual dispute between the parties to defeat summary judgment, the factual dispute must be “both genuine and material.” Miccosukee Tribe of Indians of Fla. v. United States, 516 F.3d 1235, 1243 (11th Cir. 2008). A fact is material if it “affect[s] the outcome of the suit under the governing law,” and is genuine “if a reasonable trier of fact could return judgment for the non-moving party.” Id.

A court will “construe the facts and draw all inferences in the light most favorable to the nonmoving party and when conflicts arise between the facts evidenced by the parties, [the court will] credit the non[-]moving party’s version.” Davis v. Williams, 451 F.3d 759, 763 (11th Cir. 2006) The role of the jury is to weigh the

¹ The Sony court, in denying defendants’ summary judgment motion, found that “as a matter of law there [was] no genuine issue of fact regarding the sufficiency of the RIAA notices in this case, and that [plaintiffs] can support the knowledge element of a contributory infringement claim” 426 F. Supp. 3d at 232.

evidence and determine credibility, “[t]herefore, if the determination of the case rests on which competing version of the facts or events is true, the case should be submitted to the trier of fact and the motion for summary judgment denied.” Hodgetts v. City of Venice, Fla., 794 F. Supp. 2d 1265, 1271 (M.D. Fla. 2011)

A moving party discharges its burden on a motion for summary judgment by showing or pointing out to the Court that there is an absence of evidence to support the non-moving party's case. Denney v. City of Albany, 247 F.3d 1172, 1181 (11th Cir. 2001) (citation omitted). When a moving party has discharged its burden, the non-moving party must then designate specific facts (by its own affidavits, depositions, answers to interrogatories, or admissions on file) that demonstrate there is a genuine issue for trial. Porter v. Ray, 461 F.3d 1315, 1320-1321 (11th Cir. 2006) (citation omitted). The party opposing a motion for summary judgment must rely on more than conclusory statements or allegations unsupported by facts. Evers v. Gen. Motors Corp., 770 F.2d 984, 986 (11th Cir. 1985) (“conclusory allegations without specific supporting facts have no probative value.”). “If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact . . . the court may grant summary judgment if the motion and supporting materials . . . show that the movant is entitled to it.” Fed. R. Civ. P. 56(e).

III. DISCUSSION

After reviewing the Plaintiffs’ Motion for Partial Summary Judgment, Bright House Networks, LLC’s Response in Opposition to Plaintiffs’ Motion for Partial Summary Judgment, and Plaintiffs’ Reply, the Court finds there are a myriad of issues

that preclude the entry of summary judgment in this case, including, without limitation, the following:

1. Plaintiffs' ownership or control of the copyright in each work identified in Plaintiffs' declarations accompanying its Partial Summary Judgment motion;
2. The files that Plaintiffs contend Bright House's subscribers distributed and are infringing contain copies of Plaintiffs' copyrighted works, *i.e.*, whether copies of Plaintiffs' works are included in files that were downloaded to a hard drive by MarkMontior;
3. Bright House's knowledge of the alleged infringement on the basis of notices allegedly sent and disputedly not sent to or received by Bright House; and
4. Bright House's provision of services to alleged repeat infringers.


As to the foregoing issues, the Court finds that factual disputes preclude resolution on summary judgment. The Court holds in abeyance the issue raised in Plaintiffs' Motion concerning the ownership of copyrights rights in the listed works in suit. The Court will address at the beginning of trial whether there are some works for which there is no factual dispute of ownership. All other matters are incapable of resolution on summary judgment. This matter will proceed to trial, and the jury will be called upon to review the evidence and resolve the factual disputes on these questions.

IV. CONCLUSION

Upon consideration of the foregoing, it is hereby **ORDERED** as follows:

1. Plaintiffs' Motion for Partial Summary Judgment, ([Dkt. 589](#)), is **DENIED**.

DONE and **ORDERED** in Tampa, Florida, this 1st day of July, 2022.



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Any Unrepresented Person