

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:19-cv-00874-RBJ-MEH

**WARNER RECORDS INC., et al.,**

Plaintiffs,

v.

**CHARTER COMMUNICATIONS, INC.,**

Defendant.

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**PLAINTIFFS' OBJECTION TO SPECIAL MASTER'S JANUARY 22, 2021  
ORDER DENYING DISCOVERY INTO CHARTER'S DETERRENCE DEFENSE**

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Plaintiffs object to the Special Master's January 22, 2021 Order denying discovery necessary to rebut a statutory damages defense that Charter has asserted. Specifically, if found liable, Charter intends to argue that (1) deterrence is "one of the main issues" in determining the amount of statutory damages, Ex. 1 at 109:5-19; (2) peer-to-peer infringement is "no longer a problem," such that there is nothing to deter, *id.*; and (3) because there is nothing to deter, Plaintiffs should not be awarded significant damages, *id.*; *see also* Sept. 9, 2020 Hr'g. Tr. at 34:1-10.

Plaintiffs served the nine requests at issue to rebut this defense. *See* Ex. 2. These requests seek information that would show that (i) peer-to-peer infringement is still rampant on Charter's network (Exs. 3-4 at RFP 89, Interrogatory 20); (ii) Charter still contributes to the infringement by continuing to provide its services to—and collect fees from—known, repeat infringers (*id.* at RFPs 98, 110, 112, 128; Interrogatory No. 21); and (iii) Charter does terminate

those same repeat infringers when they do not pay Charter—*i.e.* when the infringers threaten Charter’s pocketbook rather than Plaintiffs’ (*id.* at RFP 101, Interrogatory No. 22).

Charter refuses to provide Plaintiffs this discovery, or any discovery regarding whether peer-to-peer infringement remains a problem on Charter’s network today. Plaintiffs moved the Special Master for an order compelling this discovery. Exs. 5-6. The Special Master denied Plaintiffs’ request without mentioning Charter’s defense, and accepting Charter’s claim that Plaintiffs were seeking backdoor discovery into their now-stricken counter-counterclaims. Ex. 6 at 73:12-74:6.

That ruling was an abuse of discretion because it had “no basis in fact.” *See Lee v. State Farm Mut. Auto. Ins. Co.*, 249 F.R.D. 662, 671 (D. Colo. 2008) (Special Master abuses her discretion where she “articulates a reason which has no basis in fact or the reason so articulated is contrary to law”). Plaintiffs do not seek to put at issue any new works they asserted in the counter-counterclaims through this discovery. They seek only the core information necessary to rebut Charter’s defense. Charter does not dispute that it will assert its defense that “*today* the [peer-to-peer] problem is no longer here,” Sept. 9, 2020 Hr’g. Tr. at 34:1-10; nor that the discovery Plaintiffs seek is relevant to that defense; nor that Plaintiffs have heretofore received no such discovery.

Plaintiffs should be permitted this limited discovery to rebut Charter’s argument that peer-to-peer piracy is no longer a phenomenon to which Charter contributes and which contribution must be deterred.

Dated: January 29, 2021

/s/ Jonathan Sperling

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 29, 2021, I caused the foregoing document and all supporting materials thereto to be filed electronically with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record registered with CM/ECF.

*/s/ Jonathan Sperling* \_\_\_\_\_  
Jonathan M. Sperling