

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ATLANTIC RECORDING
CORPORATION, et al.,

Plaintiffs,

v.

SPINRILLA, LLC and JEFFERY
DYLAN COPELAND,

Defendants.

Civil Action No.
1:17-CV-00431-AT

CONSOLIDATED/JOINT DISCOVERY STATEMENT

The parties respectfully present this Joint Discovery Statement outlining the issues on which they seek the Court's assistance. The attorneys have conferred through lengthy telephone calls in good faith on several occasions and have been unable to resolve the disputes. Excerpts of the relevant document requests, and Defendants' objections thereto, are attached as Exhibit A.

PLAINTIFFS' FACTS¹

Defendants operate an online service called “Spinrilla” through which users can unlawfully stream and download Plaintiffs’ copyrighted sound recordings. Since Spinrilla launched, Defendants have facilitated *millions* of unauthorized downloads and streams of *thousands of* Plaintiffs’ sound recordings without Plaintiffs’ permission. In connection with their Complaint, Plaintiffs identified 210 illustrative examples of the infringing sound recordings that are available on Spinrilla. (Dkt. No. 13.) As is customary in cases of rampant infringement—and as Plaintiffs indicated in their Complaint (Dkt. No. 1 ¶ 55) and the Joint Preliminary Report (Dkt. No. 25 at 8-9), and as Plaintiffs have repeatedly advised Defendants during meet and confers—Plaintiffs intend to update their list of “Works in Suit” as discovery proceeds. Defendants are simply choosing to ignore the fact that this action is about many more than 210 sound recordings. Defendants have known about rampant infringement on Spinrilla for years and have taken no meaningful

¹ Defendants have declined to cooperate with Plaintiffs in respecting the Court’s Standing Order. (Dkt. No. 5 at 20-21.) Plaintiffs sent Defendants their first version of this document a full month ago—on July 3, 2017. Despite repeated requests from Plaintiffs, Defendants sent their response to Plaintiffs only *yesterday*, a full month later. Defendants’ responses well exceed their fair share of the required page limit. Though Plaintiffs have pointed this out and requested a revision, Defendants have refused to shorten their responses. However, as Plaintiffs are acutely aware that the deadline for fact discovery is fast approaching and Defendants still have not produced some of the most critical evidence in this Action, Plaintiffs join Defendants’ request (made *infra* at footnote 2) that the Court accept the entirety of this Joint Discovery Statement, despite its length.

steps to stop it. Instead, they have knowingly—and handsomely—profited from such unlawful conduct, as they have used Plaintiffs’ content to draw a significant user-base without Plaintiffs’ permission. Plaintiffs have sued to stop Defendants’ unauthorized distribution, performance, and reproduction of Plaintiffs’ copyrighted sound recordings, and for damages.

DEFENDANTS’ FACTS²

99.9998%. This number will come into focus in a minute. Plaintiffs are entitled to spend millions of dollars in attorney fees on this case, but that does not make this a million-dollar case. This is not even *close* to being a million-dollar case.

Since proportionality is now integral to the permissible scope of discovery, here are some facts relevant to that issue. Spinrilla was founded by a hard working, bright Georgia State University college student in 2013 and steadily grew in popularity. Spinrilla was created and continues to be a platform for *independent, unsigned* artists to share their music.

² Plaintiffs complain that Spinrilla’s portion of this Statement occupies too many pages. According to the Case Management Order (p. 21 of Dkt. 5), Defendants are entitled to six pages but have used eight. Because Plaintiffs object to Defendants’ use of eight pages, Defendants apologize for the additional pages and ask the Court for any necessary leave. There is good cause for leave here—the discovery issues presented in this particular Joint Statement are especially important and complicated, making it necessary for Defendants to articulate the proportionality and facts defining this action, and the stakes in this litigation are high (e.g., Plaintiffs’ — the largest record labels in the world -- seek at least \$35 million in damages (Complaint, p. 33, ¶(b) (Dkt. 1)).

From 2013 to the present, Spinrilla users have uploaded about 1 million songs to Spinrilla's servers and Spinrilla published about 850,000 of those. Plaintiffs are complaining that 210 of those songs are owned by them and published on Spinrilla without permission. That means that Plaintiffs make no claim to 99.9998% of the songs on Spinrilla.

Plaintiffs' shouting of "rampant infringement on Spinrilla" (above), accusation that Spinrilla was designed "to allow easy and open access to infringing material (Complaint, ¶57 (Dkt. 1)), and assertion that "Defendants have facilitated *millions* of unauthorized downloads" of those 210 songs is untrue – it is nothing more than a wish and a dream. Again, Spinrilla was created for independent, unsigned artists . . . Spinrilla does not want music by Beyonce, Eminem, and Justin Bieber on Spinrilla.

Additionally, **at Plaintiffs' suggestion**, Spinrilla contracted with Audible Magic, a leading content identification service, to scan each and every song uploaded to Spinrilla's website or application for infringing content, including music belonging to Plaintiffs. No uploaded song was published by Spinrilla unless it passed scans by Audible Magic. During Spinrilla's operation, Audible Magic has flagged more than 80,000 files, all of which were blocked (*i.e.*, never published on Spinrilla). Spinrilla has also immediately responded to approximately 305 takedown requests.

For reasons unknown to Defendants, while Audible Magic blocked more than 80,000 songs from being published, the 210 songs in Plaintiffs' Exhibit A (Dkt. 13) were not blocked. Neither did any Plaintiff send Spinrilla a take-down notice for those 210 songs. Whether machine error, human error, or something else, this case is nothing close to the horrific picture Plaintiffs are trying to paint (*e.g.*, "Defendants acts of infringement are willful, intentional and purposeful, in disregard of and indifferent to the rights of the Plaintiff[s].") (Complaint, ¶73).

Despite the 99.9998% number, Defendants have produced abundant documents and information to Plaintiffs. To be clear, Defendants have been and will continue to work hard to respond to Plaintiffs' written discovery. Spinrilla has produced over 12,000 pages of responsive documents, answered all interrogatories, answered all 35 Requests for Admission, and 56 of Plaintiffs' 75 Requests for Production are satisfied (*i.e.*, not in dispute). When not burdensome and not damaging, Defendants have responded to discovery clearly outside the scope of Rule 26. But Defendants have pushed back on requests that are outside the scope and which would be unfair or damaging to produce.

ISSUES

- 1. Plaintiffs' Request for Production Nos. 5(iv), 54(i)-(xi), 63, and 64**

A. Plaintiffs' Position: Plaintiffs allege that “Defendants have actual and constructive knowledge of the infringing activity of Spinrilla’s users” and that “Defendants have derived a direct financial benefit from their users’ infringement of Plaintiffs’ copyrights.” Compl. ¶¶ 80-81. To that end, Plaintiffs seek communications between Defendants and “funders, investors, or advertisers.” Plaintiffs expect these communications to show that Defendants have attracted investment and obtained favorable valuations by touting the availability of infringing content on Spinrilla and the ability of such content to attract users. The Parties’ Proposed Protective Order, (Dkt. No. 41-1), will meet Defendants’ concerns about undue public access to proprietary, competitive information.

B. Defendants’ Response: As a general comment and with all due respect, Defendants do not believe that Plaintiffs are fairly summarizing their actual Requests. Due to page limitations, Defendants cannot detail this but ask the Court to look at the actual Requests rather than Plaintiffs’ watered down summary. Defendants objected to these Requests because the information sought is confidential and proprietary. This objection is particularly important because Plaintiffs are competitors, potential competitors and/or suitors of Spinrilla. Plaintiffs’ Requests are designed to gather information irrelevant to this litigation in an attempt to assess the value of Defendants’ business or otherwise gain an unfair

competitive advantage. For example, Defendants are aware that at least one Plaintiff owns a service that competes with Spinrilla.

Additionally, communications between Defendants and potential investors as well as Defendants' business plans and presentations to potential investors are not necessary to resolve any of the claims or defenses in this case. Particularly, Plaintiffs seek confidential, competitive business information related to the Spinrilla service based upon a wholly unsupported hunch that Defendants are engaging in nefarious conduct. Even if Plaintiffs' far-fetched speculation were true, the manner in which Defendants market the Spinrilla service and efforts to attract investors have no bearing on whether the Spinrilla service facilitates copyright infringement or whether Defendants are liable for copyright infringement. Moreover, to the extent these Requests seek the amount of any financial benefit derived by Spinrilla from actual investments, as those investments relate to damages, this information may be obtained through less intrusive and more cost-effective means. A simple request for Defendants' profit and loss statements, which Plaintiffs' made in Request No. 55, and a request for the ownership structure of Spinrilla, LLC, which Plaintiffs' made in Request No. 28, provide the only relevant information sought by these Requests without forcing Defendants to divulge confidential, extraneous communications.

Further, these Requests are not proportional to the needs of the case because the burden and expense of the proposed discovery outweighs its likely benefit, particularly since the allegedly infringed songs amount to approximately .0002% of all songs uploaded to Spinrilla and the information sought has no relevance.

2. Plaintiffs' Request for Production Nos. 12-16

A. Plaintiffs' Position: Defendants designed Spinrilla to infringe recordings from the most popular artists in the modern era. *See* Compl. ¶¶ 68, 79. Plaintiffs are entitled to discover how the service operates and was designed. Documents explaining the network architecture, functionality and historical development of Spinrilla will tend to prove that Defendants: (a) have known about and intended wide-scale infringement on Spinrilla; (b) designed the Spinrilla system in a manner that materially contributes to and facilitates infringement; (c) have the right and ability to prevent the unauthorized upload, download, and performance of infringing content; (d) have refused to take action to prevent repeat infringement by their users; and (e) have acted willfully. *See* Compl. ¶¶ 71, 80-81, 83. In particular, source code provides critical insight into these factors, all pertinent to Defendants' secondary liability and damages, via programmer check-in comments. Again, any concerns that Defendants may have regarding the proprietary nature of the

information requested can be addressed by a protective order—something Plaintiffs have sought to do.

B. Defendants’ Response: If “Defendants designed Spinrilla to infringe recordings from the most popular artists in the modern era,” Spinrilla is a huge failure because no such recordings exist. Again, the information sought in Requests No. 12-16 is confidential, competitive information that is unnecessary to the prosecution of this case. Plaintiffs’ request for the source code is absolutely wrong. The source code is the crown jewel of any software based business, including Spinrilla. Even worse, Plaintiffs want an “executable” version of Spinrilla’s source code, which would literally enable them to replicate Spinrilla’s entire website. Any Plaintiff could, in hours, delete all references to “Spinrilla,” add its own brand and launch Spinrilla’s exact website. If we sued YouTube for hosting 210 infringing videos, would I be entitled to the source code for YouTube? There is simply no justification for Spinrilla sharing its source code with Plaintiffs. In response to Requests No. 12-16, Defendants offered to stipulate as to Mr. Copeland’s control over the website and mobile application, including the extent to which Mr. Copeland may control the songs added and removed. Any further information sought by Requests No. 12-16 may be obtained through the deposition of either Defendant, which is a less invasive and less risky means of production. Moverover, for security

reasons, Defendants cannot provide its proprietary software (or source code) to any Plaintiff. Providing the software or network configurations requested may place Spinrilla in jeopardy from a cyber security perspective. Further, these Requests are not proportional to the needs of the case because the burden and expense of the proposed discovery outweighs its likely benefit, particularly since the allegedly infringed songs amount to approximately .0002% of all songs uploaded to Spinrilla.

3. **Plaintiffs' Request for Production No. 20**

A. Plaintiffs' Position: Plaintiffs seek “server logs” and similar databases that record technical events in the operation of the Spinrilla service.³ These materials track information such as every time a DJ uploads a sound recording to the website or every time a user downloads or streams a sound recording, as well as other highly-relevant user activities. Such records must exist because information regarding the number of downloads and streams and the association of DJs with particular tracks appears on the Spinrilla user interface. This data has to be recorded in order to be displayed.⁴ This data is critical to demonstrating the scope of the infringement on Spinrilla, and the profits Defendants enjoy as a result. Plaintiffs are plainly entitled

³ Defendants focus only on the server log aspect of Request No. 20 and tellingly ignore the request for “databases of a similar nature, or reports derived from such logs or databases.” Server logs provide the lowest level of information regarding transactions that occur on a website. Databases and reports typically track additional information at a more useful level.

⁴ Defendants' source code would demonstrate that the requested information is tracked. However, Defendants have refused to produce their source code.

to this information. *See, e.g.*, 17 U.S.C. § 504(b) (stating that copyright owners may recover “any profits of the infringer that are attributable to the infringement”).

B. Defendants’ Response: As Defendants have informed Plaintiffs, Defendants do not possess server logs that show what songs were uploaded from a particular account, nor can songs that were taken down be determined from the server logs. Any server logs in Defendants possession or control merely show the web server requests for roughly the last 30 days, which are not important to the issues in this action because the logs will not demonstrate the information Plaintiffs seek in Request No. 20. Additionally, production of the server logs is not proportional to the needs of the case because Defendants servers gather approximately 2.34 GB of total logs per day, which would be costly and unnecessarily burdensome to produce. Moreover, “each Spinrilla File” is not in dispute in this litigation. To the contrary, .0002% of all songs uploaded to Spinrilla are subject to this litigation. Plaintiffs request for information on millions of songs, the majority of which are not Plaintiffs, exceeds the bounds of permissible discovery.

4. Plaintiffs’ Request for Production No. 24

A. Plaintiffs’ Position: Plaintiffs are entitled to discovery regarding the extent to which Defendants can block Spinrilla users’ activities but have failed to do so to prevent copyright infringement. This issue bears directly on Defendants’

vicarious and contributory liability, and their intent to provide their service for the purpose of promoting infringing activities. *See* Compl. ¶¶ 80, 81.

B. Defendants' Response: A request for all documents “concerning the feasibility” of preventing users from performing certain actions does not “specify with particularity the title and description of documents or records requested.” (*See* Guidelines, p. 15). Defendants cannot determine what information Plaintiffs seek through Request No. 24. Defendants offered to stipulate as to Mr. Copeland’s control over the website and mobile application, including the extent to which Mr. Copeland may control the songs added and removed. Any further information sought by Requests No. 24 may be obtained through the deposition of either Defendant.

5. Plaintiffs’ Request for Production Nos. 26 and 58

A. Plaintiffs’ Position: Plaintiffs seek Defendants’ IRS filings and the identity of the financial institutions where they hold assets in order to demonstrate the substantial profits that Defendants have earned from the infringing activities on Spinrilla. The requested documents bear directly on the issue of damages, as well as Defendants’ ability to pay any judgment. Plaintiffs are plainly entitled to this information. *See* 17 U.S.C. § 504(b).

B. Defendants’ Response: While Plaintiffs are entitled to documents related to damages, IRS filings and the identity of financial institutions utilized by

Defendants are outside the bounds of permissible discovery (as they are confidential and proprietary). Such a request is more appropriate for post-judgment discovery. Plaintiffs may obtain the information they seek through Request No. 55, which seeks Spinrilla, LLC's financial books and records, including profit and loss statements.

6. Plaintiffs' Request for Production No. 60

A. Plaintiffs' Position: Plaintiffs have sued Defendant Copeland in his personal capacity. Accordingly, they are entitled to understand the extent to which he has personally profited from infringing activities and the extent to which he is able to pay any judgment. *See* 17 U.S.C. § 504(b).

B. Defendants' Response: During the parties' efforts to meet and confer, Defendants requested Plaintiffs narrow Request No. 60 to revenues, income, assets, and liabilities *from Spinrilla, LLC*. Defendants have not proposed any such revision. As drafted, this Request encompasses all revenues ever received by Mr. Copeland regardless of timeframe or relation to Spinrilla, LLC. Information related to income derived from sources other than Spinrilla, LLC is confidential and has no relevance to this lawsuit or any party's claims or defenses.

7. Plaintiffs' Request for Production No. 34

A. Plaintiffs' Position: Because of its widespread infringement, Spinrilla has become massively popular. Communications regarding Spinrilla's storage,

distribution, reproduction, and performance needs will tend to prove Defendants' material contribution to infringing uses. These documents will also establish Spinrilla's scope and prospective growth, proving the financial benefit Defendants have obtained by promoting infringing uses.

B. Defendants' Response: A request for all communications "regarding Spinrilla's storage, distribution, reproduction, and performance needs" does not "specify with particularity the title and description of documents or records requested." (*See* Guidelines, p. 15). Defendants cannot determine what information Plaintiffs seek through Request No. 24. Moreover, Defendants will not provide its proprietary information to any Plaintiff. Defendants' data storage needs are not relevant to any issue in this lawsuit and its proprietary nature makes this information an extremely valuable asset of Spinrilla.

8. Plaintiffs' Request for Production No. 35

A. Plaintiffs' Position: Defendants have infringed Plaintiffs copyrighted sound recordings in part by authorizing "DJs" to upload those sound recordings to Spinrilla. Defendants have the ability to terminate any DJ that they wish. Rather than doing so, they have knowingly allowed repeat infringers to continue their unlawful uploads. Plaintiffs seek information concerning the uploading "DJs" who have worked with Defendants to infringe Plaintiffs' copyrights.

Plaintiffs also seek certain information concerning Spinrilla's users. For example, Plaintiffs have requested documents sufficient to identify how many users purchased a "Pro" membership from Defendants for \$0.99 a month. This information will demonstrate the extent to which Defendants have profited from infringing activities. *See* 17 U.S.C. § 504(b). Plaintiffs have also requested "usage history" for each Spinrilla user. This data will show that most Spinrilla users use the service principally to download and stream Plaintiffs' highly-valuable sound recordings, a fact that has been well known to Defendants.

B. Defendants' Response: Plaintiffs' frustration here is the result of their failure to make a narrow document request. Plaintiffs seek information related to *every* past or present Spinrilla user or DJ. This Request unnecessarily invades the privacy of hundreds of thousands of people who have nothing to do with the alleged infringement and requires Defendants to provide competitive, confidential, and proprietary information to a competitor. Defendants suggested providing Plaintiffs a list of users who uploaded the songs listed on Exhibit A to the Complaint. However, Plaintiffs have not agreed to a narrowed request.

9. **Plaintiffs' Request for Production No. 36(ii), (iii)**

A. Plaintiffs' Position: Plaintiffs allege that Defendants knew about the infringing content uploaded by various "DJs" to Spinrilla. Indeed, Defendants may

have actively solicited DJs to upload infringing content. To prove these allegations, Plaintiffs are entitled to Defendants' communications with DJs concerning sound recordings that were uploaded.

B. Defendants' Response: Plaintiffs, again, fail to formulate a narrowly tailored request. Request 36(ii) and (iii) seeks communications with *every* past or present Spinrilla user or DJ related to *any* mixtape or sound recording, regardless of timeframe or relation to Plaintiffs. This Request unnecessarily invades the privacy of hundreds of thousands of people who have nothing to do with the alleged infringement and requires Defendants to provide competitive, confidential, and proprietary information to a competitor.

10. **Plaintiffs' Request for Production No. 62**

A. Plaintiffs' Position: Plaintiffs are entitled to discover whether Defendants have worked with any third parties in the course of promoting and monetizing the infringing uses of the Spinrilla system. This information bears directly on the scope of Defendants' infringing activities as well as the extent of profits they have derived therefrom.

B. Defendants' Response: Defendants incorporate and reference their position set forth in Defendant's Response to Requests No. 5(iv), 54(i)-(xi), 63, and 64, above.

11. Plaintiffs' Request for Production No. 68

A. Plaintiffs' Position: Documents in Defendants' possession or control comparing Spinrilla with other online music streaming or download services are relevant to the extent to which Defendants know that the infringing uses of the Spinrilla system are unlawful, for purposes of contributory infringement, and the extent to which Defendants' infringement is willful, for purposes of damages.

B. Defendants' Response: The documents sought by Request No. 68 are not important to resolve any issue in this case and Plaintiffs' Position related to their production demonstrates this fact. Plaintiffs have failed to articulate any viable reason why Defendants should undergo the burden and expense of searching thousands of email communications to determine if any requested references exist.

Respectfully submitted this 4th day of August, 2017.

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LOCAL RULE 7.1 CERTIFICATE OF COMPLIANCE

I, Ava U. McAlpin, an attorney, hereby certify that the foregoing has been prepared with a font size and point selection (Times New Roman, 14 pt.) which is approved by the Court pursuant to Local Rules 5.1(C) and 7.1(D).

Dated: August 4, 2017

/s/ Ava U. McAlpin
AVA U. McALPIN

CERTIFICATE OF SERVICE

I, Ava U. McAlpin, an attorney, hereby certify that on this 3rd day of August, 2017, the foregoing papers were electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send electronic notification and a service copy of this filing to all counsel of record who have appeared in this matter.

Dated: August 4, 2017

/s/ Ava U. McAlpin
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