

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

ATLANTIC RECORDING	)	
CORPORATION, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	Civil File Action No.:
v.	)	
	)	1:17-CV-0431-AT
SPINRILLA, LLC, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

**DEFENDANTS’ MOTION IN LIMINE NO. 8 TO PRECLUDE ARGUMENT  
OR EVIDENCE REGARDING HISTORY OF DIGITAL “PIRACY”**

Defendants Spinrilla, LLC (“Spinrilla”) and Jeffrey Dylan Copeland (“Mr. Copeland”) (collectively “Defendants”) request that the Court enter an order precluding Plaintiffs from presenting evidence or argument concerning the history of digital “piracy” by third parties and the harm allegedly caused by that infringement.

**REASON FOR THE MOTION**

Defendants anticipate that Plaintiffs will seek to introduce testimony regarding the history of digital “piracy.” Plaintiffs have offered Dr. Catherine Tucker to opine regarding an historical account of digital “piracy” that is unrelated to Spinrilla and Defendants’ infringement of the 4,082 Works in Suit. Defendants have

moved to preclude that testimony for a number of reasons, including because an historical rendition of the digital “piracy” does not require scientific, technical or other specialized knowledge and it is not tethered to the facts of this case and thus irrelevant and prejudicial. Defendants anticipate that Plaintiffs will also attempt to present the same testimony through their corporate representatives. The testimony should be excluded because it has nothing to do with Spinrilla’s actions at issue in this case and is highly prejudicial.

**ARGUMENT AND CITATION TO LEGAL AUTHORITIES**

***A. Plaintiffs should be precluded from presenting evidence or argument regarding the history of digital “piracy”***

Only relevant evidence is admissible. *Fed. R. of Evidence 401*. Evidence is only relevant if “(a) it has any tendency to make a fact more or less probable than it would be without the evidence; **and** (b) the fact is of consequence in determining the action.” (emphasis added). Irrelevant evidence is inadmissible under *Fed. R. of Evidence 402*. *Mercer v. Alabama DOT*, 2022 U.S. App. LEXIS 24527 (11th Cir. August 31, 2022).

Statutory damages are limited to the infringements in the action. *17 U.S.C. § 504(c)*. Any testimony, evidence, or argument regarding the history of digital piracy by third parties is not relevant to *Defendants* infringement or the amount of statutory damages that should be assessed for that infringement. Testimony regarding the

general state of the music industry from 1999 to 2018 and the history of unlicensed music streaming during that period has no bearing on the factors the jury will consider when determining statutory damages. Spinrilla is not liable for the entirety of online piracy that started with Napster. Nor can Spinrilla be required to pay statutory damages that are calculated based on the injury to record labels (including those that have not brought claims against Spinrilla) by companies that operated years before Spinrilla was formed. Third party infringement is not relevant to alleged impact or harm caused by Spinrilla's infringement of the 4,082 Works in Suit. Accordingly, the Court should preclude Plaintiffs from presenting such evidence, testimony, or argument.

***B. Even if evidence of downloads was relevant, the probative value is outweighed by the risk of prejudice***

A court may exclude relevant evidence if “its probative value is substantially outweighed by a danger of ... unfair prejudice, confusing the issues, [or] misleading the jury.” *Fed. R. Evid. 403*. Even if there were some probative value to evidence and argument regarding user downloads of the Works in Suit, that probative value is outweighed by the unfair prejudice to Defendants as well as the potential to confuse and mislead the jury.

Any probative value that testimony regarding the evolution of the digital music industry and historical infringement by third parties unrelated to Spinrilla is

substantially outweighed by the danger of unfair prejudice, confusing the issues and misleading the jury. The evidence is not tethered to the facts of this case. Rather, it is designed to brand into the brains of the jurors, that Defendants should be punished for the cumulative effects of infringement that Defendants had no hand in creating. Such testimony would distract the jury from its responsibility to determine damages for the infringements in this action.

### **CONCLUSION**

For all reasons shown, the Court should bar Plaintiffs from presenting argument or evidence relating to any downloads of the 4,082 Works in Suit.

Respectfully submitted this the 8th day March, 2023.

### **COHAN LAW GROUP, LLC**

/s/ Robin L. Gentry  
Louis R. Cohan  
Georgia Bar No. 173357  
Robin L. Gentry  
Georgia Bar No. 289899  
3340 Peachtree Road NE  
Tower 100, Suite 2570  
Atlanta, Georgia 30326  
Telephone: (404) 891-1770  
Facsimile: (404) 891-5094  
[lcohan@cohanlawgroup.com](mailto:lcohan@cohanlawgroup.com)  
[rgetnry@cohanlawgroup.com](mailto:rgetnry@cohanlawgroup.com)  
*Attorneys for Defendants*

**CERTIFICATE OF COUNSEL REGARDING FONT SIZE**

I, Robin L. Gentry, 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).

/s/ Robin L. Gentry

Robin L. Gentry

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **MOTION IN LIMINE NO. 8 TO PRECLUDE ARGUMENT OR EVIDENCE REGARDING HISTORY OF DIGITAL “PIRACY”**, on the date stated below, was filed using the Court’s *CM/ECF* system, which automatically and contemporaneously sends electronic notification and a service copy of this filing to counsel of record:

James A. Lamberth, Esq. <a href="mailto:james.lamberth@troutmansanders.com">james.lamberth@troutmansanders.com</a>	Andy Bart <a href="mailto:abart@jenner.com">abart@jenner.com</a>
Owen Keiter <a href="mailto:okeiter@jenner.com">okeiter@jenner.com</a>	Loreal R. Rock <a href="mailto:lrock@jenner.com">lrock@jenner.com</a>
Kara v. Brandeisky <a href="mailto:kbrandeisky@jenner.com">kbrandeisky@jenner.com</a>	Jacob Tracer <a href="mailto:jtracer@jenner.com">jtracer@jenner.com</a>

March 8, 2023

/s/ Robin L. Gentry  
Robin L. Gentry