

EXHIBIT D

Anthony T. Falzone

Executive Director
Fair Use Project
Center for Internet
and Society

Crown Quadrangle
559 Nathan Abbott Way
Stanford, CA 94305-8610
Tel 650 736-9050
Fax 650 723-4426
falzone@stanford.edu

Via Facsimile & U.S. Mail

May 16, 2007

Anna E. Raimer
Jones Day
555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071

Re: Shloss v. Sweeney, et al.
Case No.: 06-3718 JW

Dear Anna:

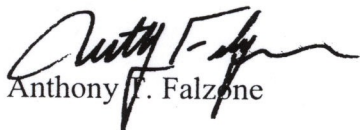
In your letter of May 14, you ask why we failed to contact you in advance of filing our motion for attorneys' fees. The reason we did not do so was simple inadvertence. As explained in my prior letter, we remedied this oversight the day we filed the motion by contacting Maria Nelson. We did so again on April 19 when we asked Ms. Nelson to elaborate on her cryptic assertion that the motion was "improperly filed." Your office disregarded that request for weeks until shortly before your opposition papers were due.

If the Copyright Act contained a mandatory fee shifting provision, and the issue before the Court were simply how much the Estate should pay in fees, it would have made good sense to discuss the amount of fees the Estate would be willing to pay. But the issue presently before the Court is whether Professor Shloss is entitled to fees in the first place. Your May 14 letter confirms that there was no point in meeting and conferring about that issue. While you again complain about our failure to meet and confer, you still fail to identify any specific issue you think we should have talked about, or what any such discussion could have accomplished, except to complain that we did not meet and confer about the hearing date for this motion. But as I'm sure you recall, the June 4 hearing date was chosen at the suggestion of your colleague Maria Nelson when we contacted her the day the motion was filed to ensure that the hearing date and briefing schedule would be mutually convenient.

Our discussions concerning this motion now date back more than a month. You have not identified any specific issue that we should have discussed other than the agreed-upon hearing date. Nor do you identify any issue you wish to discuss now. So while we regret not contacting you prior to filing our fee motion, we fail to see how any failure to do so caused your clients any prejudice.

If there is any issue you feel would benefit from discussion, please identify it, and we will make ourselves available to discuss it. The rest of the points you raise in your letter are appropriately addressed in our reply papers and we will respond to them there.

Sincerely yours,



Anthony J. Falzone

cc: Maria K. Nelson
David S. Olson