

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CAPITOL RECORDS, LLC,

Plaintiff,

Civil Action No: 12 CIV 0095  
(RJS)

- against -

REDIGI, INC. ,

Defendant.  
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**DECLARATION LARRY RUDOLPH (aka Lawrence S. Rogel)  
IN SUPPORT OF DEFENDANT'S OPPOSITION TO  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

I, LARRY RUDOLPH (aka Lawrence S. Rogel), pursuant to 28 U.S.C. § 1746, declare under the penalty of perjury, as follows:

1. I am Chief Technical Officer and a founder of ReDigi Inc ("ReDigi").
2. This declaration is submitted in support of ReDigi's opposition to Capitol Records LLC's ("Capitol") motion for summary judgment.
3. Capitol has taken many of the statements from ReDigi's previous papers, including the statement in paragraph 6 of my declaration dated January 27, 2012, out of context and tried claim that they should be admitted as judicial admissions of infringement against ReDigi. But Capitol's interpretation of these statements is wrong.
4. In my January 27, 2012 declaration the phrase "such file" in paragraph 6, and the similar statement in paragraph 47 of ReDigi's Answer, refers to the archival copy that could have previously been created for recovery purposes, it does not refer to the Eligible File. Additionally, the term "delete" was meant to focus on the fact that there are no copies of the

Eligible File left on the user's machine after upload, not that the Eligible File itself is deleted because it is not. The Eligible File is migrated.

5. The sentence Capitol has pulled out cannot be read independently of the rest of the paragraph –the sentences must be read together. The following sentence in paragraph 6 of my January 27, 2012 declaration, which Capitol omitted from their motion, makes the meaning clear. As I said “[i]f the user were to attempt to upload the file without first accepting the prompt to delete **the other copy or copies detected by Music Manager**, the upload would be blocked.” (Emphasis Added.) See 1/27/12 Rudolph Decl., ¶6. This clearly refers to the archival copy and any previously existing copies that existed on the user's hard drive. As previously described in my July 20, 2012 declaration there are many instances in which a pre-existing copy of an Eligible File would exist on a user's hard drive prior to ReDigi's installation. See 7/20/12 Rogel Decl. ¶30.

6. ReDigi's system is highly technical and complicated and in opposing the motion for a preliminary injunction, ReDigi sought to explain to the Court in the best way possible how its system worked. However without a protective order in place, ReDigi was also concerned about going into detail as to the details and workings of its technology, as it is highly sensitive, proprietary information.

7. In executing many different user commands, computers move the location of files all the time. For example, computers move the location of electronic files when they go through defragmenting processes or when a person moves their music files from one directory to another because they want to use a new media player. Many editors often make backup copies of files (even editing the MP3 tags, such as changing the ratings or title of the track may cause it to be

copied). Installing a new music player on a machine (which changes the default music player) and double clicking on a music file may make a copy of the file.

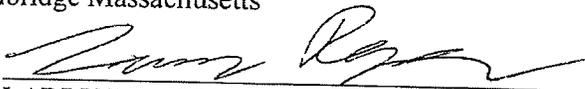
8. ReDigi's system does not have a process of human review of Eligible Files prior to upload. ReDigi's employees have no direct oversight over which files are uploaded to ReDigi's marketplace by users. ReDigi also has no control over which songs content owners sell through iTunes or for that matter which Eligible Files users will choose to upload.

9. To the extent that the patent uses the word "copied," this was not meant to describe the transfer technique. ReDigi's patent sought protection for its business process not over the specific method of uploading files to the cloud. Moreover at the time the patent was filed, prior to ReDigi's launch, the data migration program was not finished.

WHEREFORE, for the foregoing reasons ReDigi respectfully requests that this court deny Capitol's motion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 14, 2012 in Cambridge Massachusetts

  
LARRY RUDOLPH (aka Lawrence S. Rogel)