

# BakerHostetler

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December 29, 2016

### VIA ECF

Hon. Richard J. Sullivan, U.S.D.J.  
Thurgood Marshall United States Courthouse  
40 Foley Square, Room 2104  
New York, NY 10007

*Re: Capital Records, LLC v. ReDigi Inc., et al., 12 cv. 0095 (RJS)*

Dear Judge Sullivan:

We are appellate counsel for defendants and appellants ReDigi, Inc. (“ReDigi”), John Ossenmacher and Larry Rogel, aka Larry Rudolf (collectively “Appellants”).

We write briefly to correct a statement made by Capitol’s counsel in his December 29, 2016 letter to the Court, in which Capitol responded to the Court’s request for additional information objecting to the unsealing of Docket Nos. 57 (Exhibit 6), 74 (Exhibit 3), 76, 78, 90, and 91 (Exhibit 1). As Capitol acknowledges, each of these documents “contain excerpts from Plaintiffs’ 2003 “Digital Music Download Agreement” with Apple and various later amendments to such agreement (collectively, the “Apple Agreements”), as well as further references to and discussion of such agreement and Capitol’s contractual arrangement with Apple.”

Capitol argues that such information should remain confidential because it has “no bearing on the outcome of the case.” Capitol is mistaken. Regardless of the arguments advanced by ReDigi’s prior counsel, ReDigi intends to rely on the Apple Agreements in support of its first sale defense. ReDigi believes the Apple Agreements to show that (1) Capitol specifically authorized Apple to sell the iTunes music files to consumers and (2) that consumers who lawfully purchased iTunes music files from Apple acquired ownership of those music files. ReDigi also believes the Apple Agreements are relevant as they show that Apple and Capital regarded the transfer of an iTunes music file as the sale of a phonorecord. ReDigi intends to quote various provisions of the Apple Agreements in support of these arguments.

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ReDigi respectfully submits that in considering whether Capitol has made a sufficient showing to justify continuing to maintain these documents under seal, the Court should be aware that ReDigi believes the Apple Agreements to be highly relevant to its appeal.

Sincerely,  
Baker & Hostetler LLP

*/s/ C. Dennis Loomis*

C. Dennis Loomis  
Partner

cc: All Parties Receiving Notice via ECF