

**EXHIBIT 2 TO THE DECLARATION OF
RICHARD S. MANDEL, ESQ.**

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CAPITOL RECORDS, LLC

CERTIFIED COPY

Plaintiff,

v.

No. 12 Civ. 0095 (RJS)

REDIGI INC.,

Defendant.
-----X

RULE 30(b)(6)

DEPOSITION OF LAWRENCE S. RUDOLPH ROGEL

New York, New York

Monday, June 18, 2012

Reported by:

ANNETTE ARLEQUIN, CCR, RPR

JOB NO. 50449

1 L. Rudolph

2 Q. Okay. And at some point did ReDigi
3 stop offering audio streams from 7digital?

4 A. Yes, we did.

5 Q. Okay. And did it start off running
6 audio streams from a different service?

7 A. We started offering audio streams
8 from Rdio.

9 Q. Okay. Did ReDigi have an agreement
10 with Rdio?

11 A. I believe so.

12 Q. And there was reference to that
13 agreement in your preliminary injunction
14 declaration; is that correct?

15 A. I believe so.

16 Q. Okay. And is it your understanding
17 that pursuant to the terms of that agreement
18 with Rdio, you were authorized to offer audio
19 streams of Capitol sound recordings?

20 MR. ADELMAN: Objection. Outside the
21 topics. More better asked to
22 Mr. Ossenmacher.

23 However I will -- he can answer if he
24 knows.

25 BY MR. KING:

1 L. Rudolph

2 the form.

3 A. For that and other reasons.

4 Q. But that's the reason ReDigi is doing
5 it, offering the 30-second clips, is to help
6 users considering the purchase of sound
7 recordings, correct?

8 MR. ADELMAN: Objection. Asked and
9 answered.

10 You can answer.

11 A. So as I said, it's one of the
12 reason -- it helps you buy songs, helps you
13 identify songs.

14 (Plaintiff's Exhibit 13, Rdio API
15 terms of use, marked for identification, as
16 of this date.)

17 BY MR. KING:

18 Q. We're placing in front of you
19 Plaintiff's Exhibit 13. This is actually an
20 exhibit from the preliminary injunction papers,
21 but you can ignore the exhibit tab at the front.

22 If you'll just flip through this
23 document and tell me if you recognize it as the
24 Rdio API terms of use that was referenced in the
25 preliminary injunction papers.

1 L. Rudolph

2 A. It appears to be.

3 Q. And this would be the agreement by
4 which ReDigi stated in those papers that it was
5 authorized to play clips of Capitol or to stream
6 clips of Capitol sound recordings?

7 MR. ADELMAN: Objection. Out of the
8 topics for Mr. Rudolph. More appropriate
9 for Mr. Ossenmacher.

10 You can answer.

11 A. It looks like it.

12 Q. And are you the person who was
13 involved in setting up the RDO streaming service
14 via an API for ReDigi?

15 THE WITNESS: Can you just repeat the
16 question?

17 (Question was read back as follows:

18 "QUESTION: And are you the person
19 who was involved in setting up the RDO
20 streaming service via an API for ReDigi?")

21 A. Yes, but I didn't write the code. I
22 told our engineer what to do.

23 Q. Okay. And are you the person who
24 determined to use RDO as a source of audio
25 streams?

1 L. Rudolph

2 understand what the words mean. I also know
3 that at various times license agreements put
4 words in that may not hold up in court.

5 Q. Okay.

6 A. And so you're asking me to say
7 whether I think that we're bound by this legally
8 or something and I don't know.

9 Q. No. I'm actually asking did ReDigi
10 agree by accepting these terms of use, the
11 transmitted content providers could terminate
12 this license?

13 MR. ADELMAN: Calls for a legal
14 conclusion.

15 I would agree that's a different
16 question so I won't say asked and answered.

17 You can answer.

18 A. Yes.

19 Q. Okay. Now RDO did terminate ReDigi's
20 license, correct, or ReDigi's account?

21 A. RDO shut off our access to the API.

22 Q. Right.

23 And you asked them why, right?

24 A. Yes, we did.

25 Q. And what did they tell you?

1 L. Rudolph

2 A. We did not abide by the terms of the
3 service.

4 Q. And do you remember, did you ask them
5 in what way you did not abide by the terms of
6 service?

7 A. I don't remember. I think they did
8 not -- I don't know what the answer to that
9 question is. We plainly asked them. I don't
10 remember what their answer was.

11 Q. But under the terms of the service,
12 RDO could terminate you for any reason, right,
13 they didn't have to give a justification.

14 MR. ADELMAN: Asked and answered.
15 Calls for a legal conclusion. Objection.

16 MR. KING: That one wasn't asked and
17 answered.

18 MR. ADELMAN: Yeah, it was.

19 MR. KING: No.

20 MR. ADELMAN: Three times.

21 BY MR. KING:

22 Q. RDO could terminate you for --

23 A. Yeah.

24 Q. That's my question but it doesn't
25 matter.

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L. Rudolph
C E R T I F I C A T E

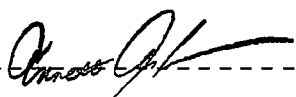
STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

I, ANNETTE ARLEQUIN, a Notary Public
within and for the State of New York, do
hereby certify:

That LAWRENCE S. RUDOLPH ROGEL, the
witness whose deposition is hereinbefore
set forth, was duly sworn by me and that
such deposition is a true record of the
testimony given by such witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage; and that I am
in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 25th day of June, 2012.


ANNETTE ARLEQUIN, CLR, CSR, RPR