

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 OF JOHN OSSENMACHER  
IN SUPPORT OF DEFENDANT'S OPPOSITION TO  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

I, JOHN OSSENMACHER pursuant to 28 U.S.C. § 1746, declare under the penalty of perjury, as follows:

1. I am the CEO of defendant ReDigi Inc. ("ReDigi"). I submit this declaration in support of ReDigi's opposition to Capitol Records LLC's ("Capitol") motion for partial summary judgment against ReDigi.

2. Capitol's accusation that ReDigi was built to encourage infringement could not be further from the truth. As testified to during my deposition the idea of the ReDigi marketplace grew out of trying to find a way for people to lawfully donate their music as charity. That idea expanded dramatically as ReDigi grew into a copyright verification and protection software application and an online marketplace for the resale of legally purchased music. As a company we have invested substantial time and resources into building a system that operates within the confines of copyright law.

3. In fact a major benefit of providing a marketplace for the resale of legally verified and purchased digital music is a significant discouragement to piracy. The idea is that if people find that their legally acquired music has real "resale" value they are more often willing to make

the purchase knowing that they can resell the music if they don't like it or grow tired of it. Also, the secondary market attracts the value buyer who may not be interested in purchasing a music track for \$1.29 through iTunes, but would purchase a previously owned track for half that amount.

4. Additionally, ReDigi discourages piracy by providing ongoing value to lawfully acquired digitally downloaded music. One of the factors contributing to widespread digital music piracy is that individuals do not view digital music as a type of personal property that has value, the secondary market changes this forever.

5. Without a secondary marketplace for digital goods a lawful buyer, consumer, has no ability to exercise their right to commerce and to sell their lawfully acquired property, the digital good will take up disk space or be deleted, there was no other alternative until our service was launched. Like the eBay and Amazon marketplaces for used CD's, it is proven that when consumers receive value for their personal property, in this case digital property, they are more likely to protect it, they are less likely to steal it. As a result of this software and marketplace a person who legally purchases digital music can gift, sell or donate that music. Showing consumers that legally acquired digital personal property has real value just as their other personal property like CD's and vinyl records.

6. ReDigi has reached out to the Music Industry and has openly offered to help them incentivize consumers to legally acquire music. ReDigi has implemented many well thought out features to make this market viable and at the same time supportive to the interest of the industry such as limiting the use of credits earned from the sale of used music, for the purchase of new music, keeping the "value" in the industry it is offering to support and serve. Capitol has refused to allow ReDigi to sell new Capitol music tracks, which perpetuates their own loss, currently

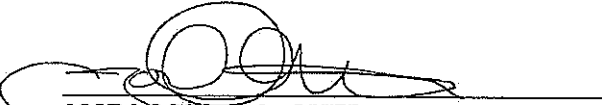
credits can be used to purchase other used music or music through iTunes because ReDigi, as of yet, does not have the authorization from Capitol to sell new music.

7. Capitol's attempt to make it seem like our company was designed for the purpose of fostering infringement could not be further from the truth. Even before we launched the details of how our service works have been open to Capitol. From day one we have been an open book to the labels, we have done significant research and have built a system whereby the rights of copyright holders are protect to a far greater extent than they ever have been in the past. Our service is a tremendous benefit to consumers and could be a tremendous benefit to the labels but Capitol seems more interested in preventing consumers rights in digital ownership than embracing and building upon them. It is apparent that Capitol has NOT considered the reality of "how ReDigi works" but would rather bury their head like an ostrich and just keep repeating blatant falsehoods in hopes that their persistence will take the place of evidence, logic and reason hoping the truth will go away, but it will not. Capitol does not want a secondary market place for digital goods, it is apparent they do not believe their rights are ever exhausted and that the first sale doctrine is a thing of the past, we have proven them wrong on all points. We have built a solid, well thought out, detailed, service that balances the needs of the copyright holders and consumers alike.

**WHEREFORE**, for all of the reasons herein, and those outlined in the accompanying memorandum of law, ReDigi respectfully requests that the 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

  
JOHN OSSENMACHER