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July 7, 2010

**BY ECF FILING**

Margaret Carter  
Clerk of the Court  
United States Court of Appeals for the First Circuit  
John Joseph Moakley United States Courthouse  
1 Courthouse Way, Suite 2500  
Boston, Massachusetts 02210

Re: Steele v. Turner Broadcasting System, Inc., Appeal No. 09-2571

Dear Ms. Carter:

Pursuant to Fed. R. App. P. 28(j), Appellees hereby respond to Appellant's June 22, 2010 letter bringing to the Court's attention an opinion the Second Circuit issued more than 10 years ago in a case that did not involve claims for copyright infringement. EMI Catalogue P'ship v. Hill, Holliday, Connors, Cosmopulos Inc., 228 F.3d 56 (2d Cir. 2000). Appellees respectfully submit that EMI is irrelevant to the copyright infringement issue before the Court on this appeal.

As an initial matter, EMI is a trademark infringement case -- not a copyright infringement case. EMI does not address the proper standard for analyzing a copyright infringement claim, nor does it opine on the appropriate framework for conducting the mandatory substantial similarity analysis (as this Court set forth in Johnson v. Gordon, 409 F.3d 12 (1st Cir. 2005)). Those critical distinctions alone render EMI inapposite to the current case.

As to Appellant's three specific arguments:

1. The EMI opinion does not make any legal rulings concerning the process Appellant has termed "temp tracking." Indeed, the term "temp tracking" is never mentioned in the EMI opinion.

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2. The EMI court's finding that, on the specific facts of that trademark case, the District Court did not apply the required summary judgment standard is irrelevant to whether the District Court in this case properly concluded as a matter of law that there is no substantial similarity between Appellant's copyrighted song and the TBS Promo.
3. The EMI court's analysis of the factors that should be considered in evaluating the potential infringement of "plaintiff's trademark phrase" (see Steele Letter at 2) similarly has no bearing on the appropriate framework for analyzing a copyright infringement claim.

Accordingly, Appellees respectfully submit that EMI is far from "extremely similar to this case" (see Appellant's Letter at 1) and is therefore inapposite to this Court's analysis.

Respectfully submitted,

/s/ Clifford M. Sloan

Clifford M. Sloan  
Counsel for Appellees

cc: Counsel of Record (via ECF filing)