

August 16, 2002

Hon. Maria-Elena James  
United States Magistrate Judge  
United State District Court  
Northern District of California  
450 Golden Gate Avenue  
San Francisco, CA 94102

**Re: Gracenote, Inc. v. MusicMatch, Inc.**  
**Case No. C 02-3162 CW (MEJ)**

Dear Magistrate James:

Pursuant to this Court's order of July 26, 2002, we are writing on behalf of MusicMatch, Inc. regarding the parties' efforts to meet and confer concerning Gracenote's motion for expedited discovery. At the outset, we apologize for submitting this letter solely on behalf of MusicMatch, instead of jointly as the Court instructed; unfortunately, Gracenote's recent actions have left MusicMatch no choice. As explained more fully below, MusicMatch believed that the parties had reached an agreement in principle regarding Gracenote's motion. Just this morning, however, Gracenote demanded several material and unacceptable changes to the parties' agreement and advised MusicMatch to submit a separate letter to the Court if those changes were unacceptable. When it became clear that the parties could not resolve their differences this afternoon, we invited Gracenote's counsel to jointly contact the clerk to seek a modest two day extension to submit a joint statement (and perhaps resolve any disputes through additional meet and confer). Gracenote's counsel declined our invitation and instructed us to submit a separate letter.

On Friday, August 2, pursuant to the Court's order, the parties had a meet and confer telephone conference to discuss Gracenote's motion and other related litigation scheduling matters. The parties agreed to have a more comprehensive meet and confer session on August 12, the next available business date after Chad Hummel, MusicMatch's lead counsel, returned from a previously scheduled vacation. On the 12th, Mr. Hummel traveled from Los Angeles to the offices of Gracenote's counsel in Menlo Park to participate in that meeting. Counsel discussed not only Gracenote's discovery motion but other scheduling matters, such as a new deadline for Gracenote to file an amended complaint and MusicMatch's deadline to file a response and counterclaims thereto. In particular, we advised Gracenote's counsel that MusicMatch would be alleging counterclaims regarding the validity/enforceability of Gracenote's patents and other related anti-trust issues. Additionally, we advised Gracenote that MusicMatch might move for a prompt summary judgment motion on the validity/enforceability

Hon. Maria-Elena James  
August 16, 2002  
Page 2

of Gracenote's patents, which could possibly be scheduled concurrently with any anticipated preliminary injunction motion filed by Gracenote.

With respect to Gracenote's discovery motion, we represented that MusicMatch was amenable to working out a discovery schedule, provided that the discovery be reciprocal in nature. Gracenote agreed that this was an appropriate condition. Accordingly, the parties agreed that Gracenote's pending discovery requests, which are the subject of its current motion (document requests and deposition notices), be deemed served effective August 13, 2002, and that both parties could serve additional discovery requests by August 19. Additionally, the parties agreed that they would complete their initial disclosures required by FRCP 26(a) contemporaneously with the service of responses and production of documents requested in that supplemental discovery. MusicMatch informed Gracenote that MusicMatch's discovery demands would be directed not only to its efforts to resist any motion for preliminary injunction (the basis for which was still uncertain), but also to support MusicMatch's anticipated motion for summary judgment regarding validity/enforcement.

On Tuesday, August 13, Gracenote's counsel prepared a stipulation purporting to reflect the terms agreed to the previous day. A copy of that stipulation is appended as Attachment 1. Because that stipulation failed to reflect MusicMatch's anticipated discovery regarding the outstanding patent claims related to a possible summary judgment motion, Mr. Hummel revised the stipulation and sent the revised version to Gracenote on Wednesday, August 14. A copy of that revised stipulation is appended as Attachment 2. At approximately 7 p.m. on Thursday, August 15, Gracenote circulated another proposed stipulation. This time, however, Gracenote's proposed draft omitted any reference to MusicMatch's anticipated discovery on patent claims. Instead, in an accompanying cover letter, Gracenote indicated that its preliminary injunction motion would not be based on patent infringement grounds, but instead on claims of breach of contract and tortious interference (a cause of action not in the current complaint and not the subject of the parties' previous discussions about an amended complaint). Apparently, Gracenote reconsidered its previous assent to MusicMatch's proposed discovery regarding patent issues, and then revised its preliminary injunction strategy to suppress/delay that discovery. A copy of this revised stipulation and cover letter is appended as Attachment 3.

This morning, upon his initial receipt of Gracenote's latest proposal, Mr. Hummel promptly responded by e-mail with his disapproval of the material changes to the agreement. That e-mail is appended as Exhibit 4. Shortly thereafter, he sent another e-mail with his latest amendment to Gracenote's proposal. That e-mail and proposed stipulation are appended as Attachment 5. This afternoon, Gracenote's responded that the parties were now too far apart on

Hon. Maria-Elena James  
August 16, 2002  
Page 3

the stipulation terms and advised MusicMatch to submit its position to the Court in a separate statement. See Attachment 6. Mr. Hummel responded promptly. See Attachment 7.

As stated above, MusicMatch believed that the parties had reached an agreement in principle and is disappointed that Gracenote's litigation tactics now require the Court's intervention. At this juncture, inasmuch as the parties have already conferred about discovery, it would be most sensible for the parties to negotiate and conduct discovery on all contested issues, not simply the limited, one-sided issues presently being sought by Gracenote. The complaint in this matter was filed in early July, and it is clear that the parties contemplated that any discovery responses would not occur until mid-September, more than two months after the case's commencement.

MusicMatch is willing (and has offered) to meet and confer further over this dispute. If the Court believes, however, that this matter is now ripe for the Court's resolution, MusicMatch respectfully requests that a formal hearing be scheduled and that MusicMatch have an opportunity to submit further briefing and file its own cross-motion regarding necessary discovery. The opportunity for further briefing is both appropriate and equitable because MusicMatch only learned this morning that Gracenote had altered the terms of the parties' agreement and that position statements would now be required.

Respectfully submitted,

/s/ Eugene L. Hahm  
Eugene L. Hahm

ELH:jas

cc: Gabriel M. Ramsey/ counsel for Gracenote