

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

MALEK JANDALI,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION
	)	NO. 1:11-cv-01484 (RBW)
	)	
AMERICAN-ARAB ANTI-DISCRIMINATION	)	
COMMITTEE	)	
1732 Wisconsin Avenue, NW,	)	
Washington, DC 20007	)	
	)	
Defendant.	)	
_____	)	

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**LOCAL CIVIL RULE 16.3 REPORT  
AND PROPOSED JOINT DISCOVERY PLAN**

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Pursuant to U.S. District Court for the District of Columbia’s Local Civil Rule 16.3, and Federal Rule of Civil Procedure 26(f), counsel for the parties submit this Report and Proposed Joint Discovery Plan. Counsel for the parties have met and conferred concerning the matters set forth in LCvR 16.3(c).

**I. Statement of the Case**

**(1) Joint Statement.**

This action involves a dispute about whether Defendant American-Arab Anti-Discrimination Committee (“ADC”) is liable for copyright infringement for performing an audio recording of the song “Watani Ana,” at its national convention in June 2011, before hundreds of guests. The song was composed by Plaintiff Malek Jandali and was played by the ADC without

obtaining Mr. Jandali's permission. The ADC contends that it played a YouTube version of the song and did not need Mr. Jandali's permission. Mr. Jandali contends that his permission was required.

The statutory basis for Mr. Jandali's cause of action for copyright infringement is 17 U.S.C. § 504. Mr. Jandali contends he is entitled to temporary, preliminary and permanent injunctive relief pursuant to 17 U.S.C. § 502.

The statutory bases for Defendant ADC's defenses are as follows:

- a. Failure to state a cause of action upon which relief can be granted, and no damages sustained by Plaintiff, Fed.R.Civ.P. 12(b)(6);
- b. Explicit license granted by Plaintiff posting on YouTube, under the Fair Use Exemption, 17 U.S.C. §107;
- c. Limitations on exclusive rights: Exemption of certain performances and displays, 17 U.S.C. § 110(4)(A) and (B); and
- d. Registration and civil infringement actions, 17 U.S.C. § 411(a).

## **II. Matters Discussed at Fed. R. Civ. P. 26(f) Conference**

Pursuant to Fed. R. Civ. Pro. 26(f), counsel for the parties met on November 1, 2011 via telephone. During the conference, the parties discussed the following:

- (1) Whether the case is likely to be disposed of by dispositive motion; and whether, if a dispositive motion has already been filed, the parties should recommend to the court that discovery or other matters should await a decision on the motion.**

Defendant ADC believes it may bring a dispositive motion. Plaintiff Jandali does not believe the case may be disposed of by dispositive motion.

- (2) The date by which any other parties shall be joined or the pleadings amended, and whether some or all the factual and legal issues can be agreed upon or narrowed.**

The parties do not believe that other parties will be joined. Defendant may seek to amend its response to raise additional defenses. It is unclear if the parties can agree upon or narrow the factual or legal issues at this time.

- (3) Whether the case should be assigned to a magistrate judge for all purposes, including trial.**

The Parties do not believe this case is appropriate for assignment to a magistrate judge at this time.

- (4) Whether there is a realistic possibility of settling the case.**

The Parties believe there is a realistic possibility of settlement and are currently engaged in settlement discussions.

- (5) Whether the case could benefit from the Court's alternative dispute resolution (ADR) procedures (or some other form of ADR); what related steps should be taken to facilitate such ADR; and whether counsel have discussed ADR and their response to this provision with their clients. In assessing the above, counsel shall consider:**

- (i) the client's goals in bringing or defending the litigation;**
- (ii) whether settlement talks have already occurred and, if so, why they did not produce an agreement;**
- (iii) the point during the litigation when ADR would be most appropriate, with special consideration given to:
  - (aa) whether ADR should take place after the informal exchange or production through discovery of specific items of information; and**
  - (bb) whether ADR should take place before or after the judicial resolution of key legal issues;****
- (iv) whether the parties would benefit from a neutral evaluation of their case, which could include suggestions regarding the focus of discovery, the legal merits of the claim, an assessment of damages and/or the potential settlement value of the case; and**
- (v) whether cost savings or any other practical advantages would flow from a stay of discovery or of other pre-trial proceedings while an ADR process is pending.**

The parties believe that some form of ADR may be helpful, but unless bilateral settlement discussions result in a settlement, discovery should take place before ADR.

- (6) Whether the case can be resolved by summary judgment or motion to dismiss; dates for filing dispositive motions and/or cross-motions, oppositions, and replies; and proposed dates for a decision on the motions.**

Plaintiff Jandali does not believe that the case can be resolved by summary judgment or a motion to dismiss. Defendant ADC believes that the case may be resolved by summary judgment or a motion to dismiss. The parties propose the following deadlines for dispositive motions:

- Deadline for filing dispositive motions: **March 19, 2012**
- Deadline for filing oppositions to dispositive motions: **April 10, 2012**
- Deadline for filing replies to dispositive motions: **April 20, 2012**

- (7) Whether the parties should stipulate to dispense with the initial disclosures required by Rule 26(a)(1), F.R.Civ.P., and if not, what if any changes should be made in the scope, form or timing of those disclosures.**

Pursuant to Fed. R. Civ. P. 26(a)(1), the Parties will serve their Initial Disclosures on or before **November 15, 2011**.

- (8) The anticipated extent of discovery, how long discovery should take; what limits should be placed on discovery; whether a protective order is appropriate; and a date for the completion of all discovery, including answers to interrogatories, document production, requests for admissions, and depositions.**

The parties believe that typical discovery for an alleged copyright case will take place within the existing discovery permitted under the Federal Rules of Civil Procedure and that deadline for discovery to be complete should be **March 15, 2012**.

**(9) Whether the requirement of exchange of expert witness reports and information pursuant to Rule 26(a)(2), F.R.Civ.P., should be modified, and whether and when depositions of experts should occur.**

- The Parties do not anticipate the need to call expert witnesses.
- To the extent that expert witnesses are necessary, Plaintiff's and Defendant's Fed. R. Civ. P. 26(a)(2) disclosures of experts and expert reports, should be due on: **February 6, 2012**.
- Plaintiff's and Defendant's rebuttal Fed. R. Civ. P. 26 (a)(2) disclosures of experts and reports, should be due on: **March 6, 2012**.
- Expert discovery, including depositions, to be completed by: **March 15, 2012**.

**(10) In class actions, appropriate procedures for dealing with Rule 23 proceedings, including the need for discovery and the timing thereof, dates for filing a Rule 23 motion, and opposition and reply, and for oral argument and/or an evidentiary hearing on the motion and a proposed date for decision.**

Not applicable in this case.

**(11) Whether the trial and/or discovery should be bifurcated or managed in phases, and a specific proposal for such bifurcation.**

The Parties do not believe that discovery should be conducted in phases, nor is there any reason to bifurcate the case.

**(12) The date for the pretrial conference (understanding that a trial will take place 30 to 60 days thereafter).**

The Parties request that the date for a pre-trial conference be set following the close of discovery.

**(13) Whether the Court should set a firm trial date at the first scheduling conference or should provide that a trial date will be set at the pretrial conference from 30 to 60 days after that conference.**

The Parties request that the Court set a trial date at the pretrial conference.

**(14) Such other matters that the parties believe may be appropriate for inclusion in a scheduling order.**

None at this time.

**III. Proposed Rule 16(b) Scheduling Order**

The parties were able to agree to a Proposed Discovery Plan. A joint proposed Rule 16(b) Scheduling Order is attached hereto as Exhibit A.

Dated: November 15, 2011

Respectfully submitted,

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**EXHIBIT A**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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**JOINT DISCOVERY PLAN**

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Upon consideration of the record and the Parties’ Local Civil Rule 16.3 Report and Proposed Joint Discovery Plan, the Court makes the following rulings:

1. The Proposed Joint Discovery Plan filed by the Parties is approved and shall control discovery to the extent of its application unless modified by the Court.
2. All written discovery must be served to the responding party 30 days in advance of the fact discovery deadline.
3. The following schedule shall apply, subject to further modification by this Court:
  - Completion of fact discovery (including depositions): March 15, 2012
  - Disclosures of initial experts and expert reports: February 6, 2012
  - Disclosures of rebuttal experts and expert reports: March 6, 2012
  - Completion of expert discovery (including depositions): March 15, 2012
  - Dispositive motions filed by: March 19, 2012

- Oppositions to dispositive motions filed by: April 10, 2012
- Replies to dispositive motions filed by: April 20, 2012
- Pretrial conference: To be set by Court
- Trial: To be set by Court

It is so Ordered.

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Hon. Reggie B. Walton  
United States District Court Judge