

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

03 MBD 10209

In Re Subpoena to
The Massachusetts Institute of Technology

Civil Action
No. 03- -MBD

(United States District Court
for the District of Columbia
No. 1:03MS002)

**MOTION OF THE MASSACHUSETTS INSTITUTE OF TECHNOLOGY
TO QUASH SUBPOENA AND FOR A PROTECTIVE ORDER
PURSUANT TO FED. R. CIV. P. 45(c)(3)(A)**

Pursuant to Fed. R. Civ. P. 45(c)(3)(A), the Massachusetts Institute of Technology (MIT) moves to quash a subpoena duces tecum served upon it by Recording Industry Association of America, Inc., under provisions of the Digital Millennium Copyright Act, on the ground that the subpoena is invalid because:

- it was issued by the United States District Court for the District of Columbia pursuant to 17 U.S.C. § 512(h)(6), for production of documents in Washington, D.C.
- 17 U.S.C. § 512(h)(6) requires that the procedure for delivery of subpoenas issued pursuant to 17 U.S.C. § 512(h) be governed “to the greatest extent practicable” by the provisions of the Federal Rules of Civil Procedure governing service of a subpoena duces tecum
- the subpoena violates Fed. R. Civ. P. 45(a)(2) and (b)(2) because it was served on MIT in Cambridge, Massachusetts, outside the district of the District Court

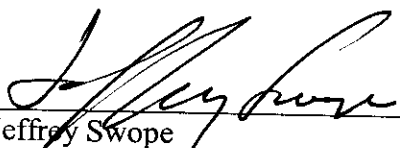
for the District of Columbia, from which the subpoena was issued, and more than 100 miles from Washington, D.C., the place designated for production.

MIT moves, in addition, for a protective order that, if and when it is required to produce documents pursuant to a valid subpoena, it be allowed reasonable time to notify any student whose documents are responsive to the subpoena, to the extent that the documents sought by the subpoena are ones that may constitute "education records" within the meaning of the Family Education Rights and Privacy Act, 20 U.S.C. § 1232g(b)(2), which MIT may not produce without providing prior written notice of the subpoena to the individual or individuals to whom such documents relate.

REQUEST FOR ORAL ARGUMENT

MIT requests oral argument on this Motion because it believes such argument may assist the Court.

By its attorney,

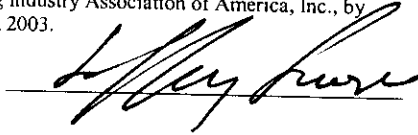


Jeffrey Swope
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Boston, Massachusetts 02199
BBO No. 490760

Dated: July 21, 2003

CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the above document to be served upon Thomas J. Perrelli, Jenner & Block LLC, attorney of record for the Recording Industry Association of America, Inc., by telefacsimile on July 21, 2003.

A handwritten signature in black ink, appearing to read "L. J. Perrelli", is written over a horizontal line.