

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UMG RECORDINGS, INC., *et al.*,

Plaintiffs,

v.

Case No: 8:19-cv-710-MSS-TGW

BRIGHT HOUSE NETWORKS,
LLC.,

Defendants.

ORDER

THIS CAUSE comes before the Court for consideration of Bright House Networks, LLC's Motion *In Limine*, ([Dkt. 657](#)), and the Response in opposition thereto filed by Plaintiffs. ([Dkt. 663](#)) Upon consideration of all relevant filings, case law, and being otherwise fully advised, the Court hereby **ORDERS**

1. Bright House's motion titled, "MarkMonitor Evidence and Testimony[,]" ([Dkt. 657](#) at 1-4), **DENIED without prejudice**. Bright House may reassert this argument at trial, in light of the Court's order, ([Dkt. 660](#)), permitting Ms. Barbara Frederiksen-Cross to amend her expert report and directing Bright House to review the MarkMonitor late-discovered source code.
2. Bright House's motion titled, "Expert Testimony/Opinions By Lay Witnesses[,]" ([id.](#) at 4-5), is **DENIED without prejudice**. At this time, this

argument lacks sufficient basis, but Bright House may reassert this at trial if appropriate.

3. Bright House’s motion titled, “Evidence of Other Litigations and Verdicts[,]” (id. at 5–6), is **GRANTED**.
4. Bright House’s motion titled, “Charter’s Copyright Program[,]” (id. at 6), is **GRANTED without prejudice**. Plaintiffs may attempt to revisit at trial.
5. Bright House’s argument titled, “The Financial Condition of BHN, Charter, Advance/Newhouse[,]” (id. at 6–8) is **GRANTED**.
6. Bright House’s motion titled, “Safe Harbor Defense[,]” (id. at 8–9) is **GRANTED**; however, Plaintiffs are permitted to state that this defense was not raised in this case—not that the defense was raised and then withdrawn.
7. Bright House’s argument titled, “Number of Notices and Counts of Customers[,]” (id. at 9–10), is **GRANTED**, as Plaintiffs are limited to evidence and arguments regarding the number of Bright House subscribers who received three or more Recording Industry Association of America (“RIAA”) notices.
8. Bright House’s argument titled, “Duplicate and Misdirected Notices[,]” (id. at 10–11), is **DENIED**.
9. Bright House’s motion titled, “Subscriber ‘Admissions’ of Infringement[,]” (id. at 11–12), is **GRANTED** as to the “admissions” not related to the claimed infringement in this action.

10. Bright House's motion titled, "Prejudicial and Legally Conclusory Language[,]" ([id.](#) at 12), is **DENIED** other than what has already been discussed in previous Orders. Experts and witnesses who have not been retained to offer infringement opinions may not speak to infringement; however, the complete prohibition of the use of the word infringement and its variants is impossible, given that this is a trial about alleged infringement.
11. Bright House's motion titled, "Purported 'Observations' of 'Infringement' of Unasserted Works[,]" ([id.](#) at 13), is **GRANTED**.
12. Bright House's motion titled, "Works-in-Suit of Music Publisher Plaintiffs[,]" ([id.](#) at 13), is **GRANTED**, subject to reconsideration if a foundation can be laid at side bar before any attempted introduction.
13. Bright House's motion titled, "Subscriber Monitoring[,]" ([id.](#) at 14), is taken under advisement.
14. Bright House's motion titled, "Throttling and Port Blocking[,]" ([id.](#) at 15), is **DENIED without prejudice**. The argument may be raised at trial.
15. Bright House's motion titled, "Settlement Negotiations[,]" ([id.](#) at 15–16), is **GRANTED**.
16. Bright House's motion titled, "Terminations for Nonpayment[,]" ([id.](#) at 16–17), is **DENIED**.

17. Bright House's motion titled, "BHN's Document Retention[,]" (id. at 17–18), is **DENIED AS MOOT**. This argument is addressed in the Court's Order on the various sanctions' motions.

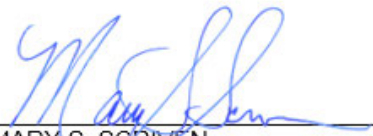
18. Bright House's motion titled, "Unauthenticated Blog Posts[,]" (id. at 18), **GRANTED** subject to authentication and argument at trial before any attempt to use this evidence.

19. Bright House's motion titled, "Communications by Former BHN Employees[,]" (id. at 19), is **GRANTED**.

20. Bright House's argument titled, "Allegations of Witness Coaching[,]" (id. at 19–20), is **GRANTED**.

21. Bright House's motion titled, "Dr. Furchtgott-Roth's Opinions About The Music Industry and P2P[,]" (id. at 20), is **DENIED without prejudice** but may be reasserted if Plaintiffs are unable "to lay a foundation for his qualification to opine on [the music industry and P2P]." (Dkt. 638 at 9)

DONE and **ORDERED** in Tampa, Florida, this 22nd day of July, 2022.



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Any Unrepresented Person