

A symphony was scheduled to perform a famous songwriter's music at a concert in 10 days. After a disagreement with the symphony's conductor, the songwriter told the conductor that he could no longer use her songs. The conductor stated that he was going to proceed with the concert as planned.

The songwriter filed a verified complaint against the conductor and the symphony in a federal district court for copyright infringement. The songwriter also moved for a temporary restraining order (TRO) to stop the concert from proceeding. The songwriter did not provide notice to the defendants but argued that the court should immediately issue an ex parte TRO.

How will the federal district court likely rule on the songwriter's motion?

- A. Deny the motion, because notice must be given to an opposing party before a court may issue a TRO.
- B. Deny the motion, because the songwriter's attorney failed to certify in writing why the defendants need not be notified.
- C. Grant the motion, because an ex parte TRO is justified under the circumstances.
- D. Grant the motion, because federal courts have exclusive jurisdiction over claims based on copyright infringement.

## Explanation:

### Preliminary relief

(FRCP 65)

Type		Required contents	Effect
<b>Preliminary injunction</b>	Notice of hearing	<ul style="list-style-type: none"><li>• State reasons issued</li></ul>	Persons bound upon receiving actual notice of order:
<b>Temporary restraining order</b>		<ul style="list-style-type: none"><li>• Reasonably describe acts restrained or required</li><li>• Specify terms</li></ul>	<ul style="list-style-type: none"><li>• parties to the case</li><li>• parties' officers, agents, employees &amp; attorneys</li><li>• anyone in active concert/participation with above persons</li></ul>
	Ex parte	Above requirements plus:	
	(no notice)	<ul style="list-style-type: none"><li>• date &amp; hour issued</li><li>• why injury is irreparable</li><li>• why issued without notice</li><li>• promptly filed with clerk &amp; entered into record</li></ul>	

**FRCP** = Federal Rule of Civil Procedure.

A **temporary restraining order** (TRO) is a court order that commands a party to do or stop doing a specified action for 14 days or until a preliminary-injunction hearing can take place—whichever occurs first. This preserves the parties' status quo until the court can fully consider the issue at a hearing. Unlike a preliminary injunction, a TRO may be **issued without notice** to the nonmovant (ie, ex parte). But to prevent abuse and protect the rights of all involved, a federal court can issue an ex parte TRO only if:

- the movant files an **affidavit or verified complaint** containing specific facts showing that he/she will suffer **immediate and irreparable harm** before the nonmovant can be heard *and*
- the movant's attorney **certifies** in writing any efforts made to give notice and the **reasons why notice should not be required (Choice A)**.\*

Here, even if the songwriter's verified complaint specifically shows that she will suffer immediate and irreparable harm, the songwriter's attorney failed to certify in writing why

the defendants need not be notified. As a result, an ex parte TRO is *not* justified under the circumstances, and the court will likely deny the songwriter's motion **(Choice C)**.

\*Additionally, a federal court will issue a preliminary injunction or TRO only if the movant provides security (eg, a bond) sufficient to pay the costs and damages if the nonmovant is improperly restrained.

**(Choice D)** Although federal courts have [exclusive jurisdiction](#) over copyright infringement claims, this does not provide a basis to grant a TRO.

**Educational objective:**

A temporary restraining order can be issued without notice only if (1) the movant files an affidavit or verified complaint that specifically shows he/she will suffer immediate and irreparable harm and (2) the movant's attorney certifies in writing any efforts made to give notice and why notice is not required.

**References**

- Fed. R. Civ. P. 65(b) (requirements for an ex parte TRO).
- 11A Charles Alan Wright et al., Federal Practice and Procedure § 2952 (3d ed. 2020) (explaining the process for issuing an ex parte TRO).