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Richard W. Wisking
Clerk, U.S. District Court
Northern District of California
San Jose

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 MP3BOARD, Inc., a California Corporation,

12 Plaintiff,

13 v.

14 RECORDING INDUSTRY ASSOCIATION OF
15 AMERICA, Inc.

16 Defendant

17 **C - 000 20606**
Case No.

18 **PLAINTIFF'S COMPLAINT FOR
DECLARATORY JUDGMENT, DAMAGES
AND INJUNCTIVE RELIEF AND DEMAND
FOR JURY TRIAL**

19 **RMW**
20 **BY FAX**

PVT

ADR

21 This is an action by plaintiff MP3Board, Inc. ("MP3Board") for a declaratory judgment as
22 to its rights to employ automated hypertext linking for the advancement and promotion of
23 independent musicians and music distributors in the face of a campaign by large recording industry
24 companies acting through defendant Recording Industry Association of America, Inc. ("RIAA") to
25 stifle development of emerging technology and retain near-monopolistic control over music
26 production and distribution. **Distilled to its essence this action seeks to declare that Hypertext**
27 **linking, created by automated processes, from one site on the World Wide Web to another**
28 **does not constitute copyright infringement even if the destination of a hypertext link is to a**
website containing materials that infringe upon intellectual property rights.

This action additionally seeks to enjoin RIAA and its agents and employees from

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1 threatening coercive action against Online Service Providers that make plaintiffs' services
2 available to the public over the World Wide Web and to recover damages for RIAA's interference
3 with MP3Board's contracts and prospective business advantage. MP3Board hereby demands a
4 jury trial as to all issues triable by jury and alleges on personal knowledge as to its own activities
5 and the technology pertinent thereto and on information and belief as to the activities of defendant,
6 as follows:

7
8 **JURISDICTION, VENUE AND INTRA-DISTRICT ASSIGNMENT**

9 **1.** This action arises under the Copyright Act in general, including but not limited to
10 17 U.S.C. § 512, part of the Digital Millennium Copyright Act. This Court has jurisdiction over
11 the subject matter of federal claims pursuant to 28 U.S.C. §§ 1331 and 1338.

12 **2.** Supplemental jurisdiction over state law claims is pursuant to 28 U.S.C. § 1367(a).

13 **3.** Venue is proper in this district under 28 U.S.C. § 1391 as this is a judicial district in
14 which a substantial part of the events giving rise to the claims occurred and defendant is subject to
15 personal jurisdiction within it.

16 **4.** Pursuant to Civil L.R. 3-2(e), assignment to the San Jose Division of the U.S.
17 District Court for the Northern District of California is appropriate as the action or a substantial
18 part of it arises from events occurring in Santa Cruz County, California and in Santa Clara County,
19 California.

20 **PARTIES**

21 **5.** MP3Board is a duly organized and existing California Corporation with its principal
22 place of business in the City of Santa Cruz, California.

23 **6.** MP3Board is a pioneer in providing resources for independent music producers and
24 distributors to develop and market their musical creations over the Internet. The chief resources
25 provided by MP3Board involve the use of automated search engines that index, in a mass way,
26 publicly accessible websites on the World Wide Web offering musical materials and that generate
27 lists of hypertext links so that visitors to the MP3Board website can be automatically referred to
28 materials posted on publicly accessible websites related to music, and music files including, but not

1 limited to "MP3" type files. MP3Board does not control or monitor the publicly accessible websites
2 or the materials posted thereon.

3 7. RIAA is a non-profit trade group with its principal place of business in Washington,
4 D.C. and, on information and belief, is a New York non-profit corporation.

5 8. RIAA represents the largest companies ("RIAA represented companies") responsible
6 for creating, manufacturing and/or distributing sound recordings produced and sold in the United
7 States. RIAA represented companies earn approximately \$ 15 billion annually. Companies
8 represented by RIAA include Sony Music Entertainment, Inc., MCA Records, Inc., Atlantic
9 Recording Corporation, Capitol Records, Inc., BMG Music d/b/a The RCA Records Label,
10 Universal Records, Inc., Elektra Entertainment Group, Inc., A&M Records, Inc., Arista Records,
11 Inc., Polygram Records, Inc., Motown Record Company, Virgin Records America, Inc. and Warner
12 Brothers Records, Inc.

13 9. In connection with its representation of the RIAA represented companies, RIAA has
14 aggressively pursued litigation against developers of emerging technology involved in music
15 creation, production and distribution.

16 10. Commencing in October, 1999 and continuing to the present, RIAA, purporting to act
17 on behalf of its members, has demanded that Online Service Providers providing internet services to
18 MP3Board cease to provide such services and has threatened legal action against such Online
19 Service Providers. RIAA has also demanded that MP3Board cease to provide automated hypertext
20 linking to publicly accessible websites on the World Wide Web offering musical materials. Faced
21 with such demands and threats, after a demand letter from RIAA to AboveNet Communications, an
22 Online Service Provider located in San Jose, California, AboveNet Communications interrupted its
23 provision of internet services to MP3Board, to the damage of MP3Board as hereinafter alleged.

24 25 **BACKGROUND FACTS**

26 **I. TECHNOLOGICAL DEVELOPMENT OF RECORDING, STORAGE AND EXCHANGE** 27 **OF MUSIC FILES**

28 11. Prior to approximately 1980, musical creations were distributed in permanent tangible

1 form chiefly through the media of analog impressed discs ("records") and analog cassette tapes.
2 Only large-scale industrial enterprises could press records and mass-produce original tapes.
3 Records and original tapes could be copied onto tape but at a cost of degraded sound quality. It was
4 during this era that the RIAA represented companies achieved dominance over and control of the
5 business of musical creation and distribution.

6 12. In the early 1980's, a digital format for the recording and distribution of music first
7 became widely available. Said digital format directly represents sound in the form of bits. Each bit
8 is either a "1" or a "0".

9 13. An advantage of direct representation of sound by said digital format is that the string
10 of bits can be copied without degradation of sound quality.

11 14. As originally conceived, approximately 80,000,000 bits were required to represent 1
12 minute of two-channel (stereo) music. This is the equivalent of approximately 10,000,000 bytes or
13 10 Mb. (A byte is equal to 8 bits.) By way of comparison, the hard drive first incorporated in an
14 IBM Personal Computer, made available in about 1982, was also 10 Mb.

15 15. Direct representation of sound by digital format was originally distributed in the form
16 of compact discs. Throughout the 1980's only large-scale industrial enterprises could manufacture
17 compact discs. In order to obtain release and promotion of musical creations on compact discs,
18 musicians were required to contract with large recording companies, chiefly RIAA represented
19 companies, and RIAA represented companies maintained dominance over and control of the
20 business of musical creation and distribution.

21 16. Development of technology throughout the 1980's also made possible the
22 introduction and popular acceptance of alternative digital formats for the recording and distribution
23 of musical creations. The most popular alternative digital format was the "MIDI" format (for
24 "Musical Instrument Digital Interface") that allowed interaction between digital musical instruments
25 and computers. A MIDI format is not a direct representation of sound but a code used by a musician
26 to create and arrange music that can then be played back on a computer. Computer files embodying
27 MIDI code require far fewer bytes to represent music than direct representation such as music on
28 compact discs. A typical MIDI file requires only 5,000 bytes to represent a minute of music.

1 17. In the early 1990's, computer technology had advanced to the point where musicians
2 and musical hobbyists could record, store and exchange files containing direct representation of
3 sound on personal computers. Files containing direct representation of sound (such as those copied
4 from a compact disc) are called ".wav" files because the name of the file typically ends in ".wav,"
5 e.g. "my_tune.wav." By way of contrast, the names of MIDI files typically end in ".midi," e.g.
6 "my_tune.midi."

7 18. The advent of the Internet in the middle part of the 1990's opened up new possibilities
8 for the exchange of musical files. Toward the end of the 1990's, file transfer could be effectuated at
9 increasingly rapid rates of speed. By the end of the 1990's, the typical home computer user was able
10 to transmit and receive files at the rate of approximately 56,000 bytes per second. MIDI files were
11 easily exchanged but .wav files were too large for rapid exchange. In addition, although the capacity
12 of hard drive storage on personal computers was rapidly increasing, and the cost thereof was rapidly
13 decreasing, .wav files that could be stored on a the kind of hard drive commercially available to
14 personal computer owners incorporated at most only a small amount of music, typically less than 10
15 hours.

16 19. Meanwhile computer scientists were developing means of reducing the size of files
17 necessary for the storage of digitally formatted direct representation of sound. The means used is a
18 computer program called a "compression algorithm" that reduces, or compresses, the size of a
19 computer file without causing noticeable degradation in sound quality. An associated
20 "decompression algorithm" takes the compressed file and produces a signal that can directly
21 represent sound. The culmination of efforts of the computer scientists was the development and
22 promulgation of compression/decompression software known as the "Motion Picture Expert Group
23 1, Audio Layer 3" abbreviated as MPEG3 or "MP3." The names of files compressed using this
24 algorithm end in ".mp3," e.g. "my_tune.mp3." The size of a compressed .mp3 file is typically 1/12th
25 the size of the corresponding .wav file. The use of "mp3" files for storing music on Internet servers
26 became popular in the late 1990s.

27 20. Software available for free or at low cost through the Internet includes programs that
28 convert .wav files to .mp3 files, programs that convert .midi files to .mp3 files and programs that

1 convert .mp3 files to .wav files.

2 21. Personal computer owners are now able freely to exchange .mp3 files through the
3 Internet. Software available for free or at low cost through the Internet includes programs that are
4 installed on a personal computer and that play .mp3 files on a personal computer sound system or on
5 a separate playback device such as the "Rio" that is approximately the size of an audio cassette, runs
6 on batteries and delivers music to the consumer over headphones.

7 22. Hardware has recently become available that, for about \$200 dollars, enables a
8 personal computer user to record compact discs. A blank compact disc typically costs about \$1. A
9 personal computer owner can, without technological sophistication and at low cost, obtain .mp3 files
10 over the Internet, convert them to .wav files and record the .wav files on a compact disc.

11 23. In addition, musicians can record their compositions in digital format, compress the
12 files and exchange or sell them through the Internet. Musicians are now able to produce, promote,
13 distribute and sell their musical compositions using emerging technology independently of the large
14 music producers and distributors that RIAA represents.

15 16 **II. HYPERLINK TECHNOLOGY ON THE INTERNET**

17 24. The Internet grew out of computer science research and development that began in
18 1960's under the auspices of the United States Defense Advanced Research Project Agency
19 ("DARPA") and educational institutions such as the Massachusetts Institute of Technology ("MIT").
20 Its original purposes were the development of a highly dispersed computer network that could
21 survive wide-ranging nuclear attack on the United States and the exchange of information among
22 and between academic institutions and defense contractors.

23 25. In keeping with its original purposes, the Internet has always been and remains a
24 highly dispersed communications medium. Standards groups, such as the World Wide Web
25 Consortium, identified below, develop and promulgate protocols for the transmission of information
26 over the Internet but there is no central authority or central monitoring organization.

27 26. With the advent of high-speed modems that provide an interface between personal
28 computers and common telephone lines, some individuals and organizations not directly tied to the

1 main digital transmission lines began connecting and taking advantage of the network's advanced
2 and global communications capacity.

3 27. The Internet allows millions of people around the world to communicate freely and
4 easily with each other, and to exchange ideas and information, including music and an unending and
5 every-changing array of data.

6 28. From shopping for a toy for a newborn infant to the way stockbrokers interact with
7 their customers, the Internet is changing the way people communicate and do business. The Internet
8 has become so prevalent in people's daily lives that individuals and businesses, large and small, of
9 every imaginable age above early childhood and from every walk of life and vocation, have raced to
10 embrace it.

11 29. Music has been at the forefront of the Internet explosion, and for good reason: The
12 Internet offers tremendous opportunities for the music business as well as for everyone who loves
13 music. Indeed the Internet provides distinct advantages for music because, unlike some other
14 products such as sneakers or cars, it is possible not only to market and sell music online, but actually
15 to deliver it to the consumer. Music can be digitalized and distributed almost instantaneously over
16 the Internet.

17 30. In approximately 1993, a working group at CERN, the European Particle Physics
18 Laboratory, released an authoring and distribution system, known as the Hypertext Markup
19 Language ("HTML"), for creating, sharing and accessing multimedia-enabled integrated electronic
20 documents over the Internet. The leader of the group that developed HTML was Tim Berners-Lee,
21 generally identified as the inventor the World Wide Web.

22 31. The "World Wide Web," which collectively identifies millions of websites, is the
23 Internet resource that makes HTML-authored materials available to Internet users. Each website is
24 the product of the effort of an individual or organization. A website consists of one or more files,
25 called "pages," written using HTML. Each page appears as a separate, integrated document to a
26 person accessing that page over the Internet.

27 32. In October 1994, Tim Berners-Lee founded the World Wide Web Consortium
28 ("W3C") at the MIT Laboratory for Computer Science in collaboration with CERN and with support

1 from DARPA. W3C's mission is to lead the evolution of the World Wide Web. Insofar as there is
2 an authoritative source for design, operation and evolution of the World Wide Web, that source is
3 W3C.

4 33. The World Wide Web puts into effect design principles defined by W3C as
5 "interoperability" (access to the World Wide Web by any computer system that follows the basic
6 protocols), "evolution" (the ability to accommodate future technologies) and "decentralization," that,
7 according to policies stated on W3C's website means that "the architecture [of the World Wide Web]
8 (like the Internet) must limit or eliminate dependencies on central registries."

9 34. The only requirements for a website to be accessible on the World Wide Web are the
10 use of HTML and the employment of a computer (or "server") connected to the Internet where the
11 website material is "posted" or made accessible on demand over the Internet. Each website, and
12 each separate page is identified by an "address," that identifies the server where website material is
13 posted, the file so identified that is stored on the server and that makes the server reachable through
14 addressing services provided through the Internet.

15 35. A person accessing a website through the Internet is called a "visitor" to the website.
16 To access materials on the World Wide Web, a visitor uses a software program on the visitor's
17 computer, called a "browser," such as Internet Explorer or Netscape Navigator.

18 36. A website can refer a person to another website and to specific materials posted on
19 such other website through a "hyperlink," also known as a "Web link," "hypertext link" or simply
20 "link." A hypertext link has a "source" and a "destination." From the viewpoint of visitor to a
21 website, a hypertext link is typically a word or phrase in the text of material posted on the source
22 website that is in a contrasting color. The visitor uses his or her computer mouse to position the
23 pointer (or cursor) on the screen of the visitor's computer over the hypertext link and "clicks" the
24 button on the mouse. The visitor's browser then sends a signal to the visitor's Online Service
25 Provider ("OSP") that accesses the destination website (and material in the destination website).

26 37. The hypertext link is passive and consists of a string of characters in HTML such as
27 "click here to access." The
28 visitor to the source page will seek the words "click here to access" in a contrasting color and the

1 visitor's OSP will then look up the server identified by the address "destination_osp.com" and access
2 the page on the server maintained at "destination_osp.com" identified by the code
3 "destination_page.html." Hypertext links can also be used to access files stored on a destination
4 server that embody programs, word-processing documents, images (pictures) and music, including
5 MIDI files and .mp3 files.

6 38. As stated by W3C at its website: "Although a simple concept, the link has been one of
7 the primary forces driving the success of the Web."

8 39. The source web page typically is not informed if the material in the destination
9 website has been changed. The web page source typically does not monitor material on the
10 destination page. For example, RIAA maintains a website at www. Riaa.com that states: "*This site*
11 *contains links to other sites. RIAA.com is not responsible for the privacy practices or the content*
12 *of such websites.*" (emphasis added)

13 14 **III. AUTOMATED INDEXING AND SEARCHES ON THE INTERNET**

15 40. Because the *raison d'etre* of the Internet is interconnectivity and because of the
16 simplicity of the coding used for hypertext links, computer programs called "spiders" have been
17 developed that systematically identify and follow hypertext links on the web. Typically a spider will
18 begin with a single website and identify and record every hypertext link on that website. The spider
19 will then visit every destination page so identified and continue the process. Through this procedure,
20 every page on the World Wide Web can be identified and its address recorded.

21 41. Similarly, computer programs called "indexing programs" identify, record and index
22 every word (except for common words of little informational value such as "the" or "of") on every
23 page on the World Wide Web.

24 42. In addition, computer programs called "search engines" make available to website
25 visitors information obtained by spiders and processed by indexing programs. A visitor types in the
26 words that he or she desires to see on a web page such as "Rio" and "RIAA" and the search engine
27 generates a web page sent to the visitor that contains the address of every page previously searched
28 out and indexed in which the words "Rio" and "RIAA" appear. Search engines are the heart of such

1 widely-used Internet resources as Yahoo and Hotbot.

2 43. Spiders, indexing programs and search engines can and do seek out, identify, record
3 and provide access to millions of .mp3 files posted on the Internet.

4 44. Spiders, indexing programs and search engines cannot distinguish between materials
5 that infringe upon the rights of copyright holders and materials that are protected under the doctrine
6 of fair use (including parody) and/or protected by rights of free speech protected by the Constitution
7 of the United States.

8 45. Websites that employ spiders, indexing programs and search engines include Internet
9 websites operated by large web search facilities such as Yahoo! and Hotbot.

10 46. Attached hereto as Exhibit A is a printout from a search made on Yahoo! for ".mp3."
11 The Yahoo! search provides hypertext links, directly or indirectly, to .mp3 files available through the
12 Internet. Yahoo! identifies 9 categories indexed by the exercise of human judgment by Yahoo!
13 employees and 350 websites indexed, on information and belief, through the use of spiders and
14 indexing programs.

15 47. Attached hereto as Exhibit B is a printout from a search made on the words ".mp3"
16 and "Beatles" on the search engine Hotbot (part of the Lycos Network). Attached hereto as Exhibit
17 C is a printout of the page referenced in item 7 of the search results, "The Beatles Freeserve." The
18 address of the "The Beatles Freeserve" indicates that the server is located in the United Kingdom
19 (the "uk" portion of the address). Upon clicking on the hypertext link, the visitor is redirected to
20 another website whose location is not directly disclosed and the printout of the destination page from
21 the redirection website is attached as Exhibit C. Exhibit C indicates that Beatles' copyrighted songs
22 have been converted to both .mp3 files and MIDI files and that the Beatles Freeserve site offers free
23 downloads from copyrighted Beatles albums. Exhibit C also indicates that images of Beatles Album
24 Covers are also made available for viewing and downloading. Plaintiff is informed, believes and
25 thereon alleges that websites offering such free .mp3 files, MIDI files, album cover images and/or
26 downloads have not obtained the permission of the copyright holders to distribute the files made
27 available thereon.

28 48. Item 9 of the results of the Hotbot search (Exhibit B) contains a hypertext link to a

1 site whose address indicates that the server is located in Russia (the ".ru" portion of the address).
2 Attached hereto as Exhibit D is a printout of the destination page of that hypertext link with source
3 code modified to make the text legible on a black-and-white printer but not otherwise. Exhibit D
4 indicates that .mp3 files containing music taken from Beatles records and hypertext links to other
5 websites providing access to music taken from Beatles records are available through the Russian
6 website. Plaintiff is informed, believes and thereon alleges that websites such as the destination
7 website linked to item 9 in the Hotbot search have not obtained the permission of the copyright
8 holders to distribute the files made available thereon.

9 49. Plaintiff is informed, believes and thereon alleges that an organization self-identified
10 as "webring.org" makes available, free of charge, a service, called a "webring," whereby individuals
11 and organizations interested in a particular subject matter can develop and present on the World
12 Wide Web an integrated listing of websites devoted to that subject. Attached hereto as Exhibit E are
13 printouts of the first 40 websites (out of a reported 355) that make .mp3 files and materials
14 accessible to visitors to the webring. Websites identified by hypertext links on the .mp3 webring
15 include .mp3 search engines and free .mp3 downloads, including both an "independent music
16 promotion web sites" and websites offering "bootlegs."

17
18 **IV. USE OF THE INTERNET FOR LEGITIMATE ACTIVITIES, COPYRIGHT**
19 **INFRINGEMENT ON THE INTERNET AND LEGISLATIVE RESPONSE TO**
20 **COMPETING NEEDS.**

21 50. Developing computer technology and the Internet make it possible for individuals and
22 organizations of modest means and with little technical sophistication, by means entirely legitimate,
23 to produce, promote, distribute and sell intellectual property, including text, computerized games,
24 computer programs, images and musical creations in the form of MIDI files and .mp3 files.

25 51. Because of the absence of a central Internet authority, because of its world-wide reach
26 and because of rapidly developing technology, other individuals and organizations, at small cost to
27 themselves, can illegally copy, post and distribute intellectual property materials belonging to others
28 without license or other justification. Intellectual property materials illegally copied and posted on

1 the Internet without license or other justification include text, computerized games (such as those
2 produced by SEGA and Sony), computer programs ("warez"), images (such as video clips of
3 sporting events, pictures of professional athletes and the insignias of professional sports teams), and
4 musical creations. Illegally copied intellectual materials are distributed over the World Wide Web,
5 on newsgroups (where materials can be posted anonymously and in a fashion practically
6 untraceable) and through other means, such as "ftp sites." Infringers are often teen-agers or
7 residents of countries where enforcement of U.S. intellectual property laws is impossible. Some
8 infringers obtain compensation for their wrongful acts but many others carry out their activities for
9 "thrills" or as a protest against powerful industrial and/or financial institutions. Many infringers
10 acquire and exercise skills in concealing their identities by using anonymous posting methods, by
11 obtaining practically untraceable chains of addresses obtained through providers of free email, by
12 taking advantage of free services offered by OSP's and server facilities and by moving their access to
13 the Internet from OSP to OSP and the infringing materials from server to server while redirecting
14 visitors who access their materials through hypertext links, as in Exhibit C above.

15 52. On October 28, 1998, after celebrated and conflicting court decisions involving the
16 alleged liability for copyright infringement by OSP's and companies providing Internet servers,
17 indexing programs and search engines, Congress passed the Digital Millennium Copyright Act
18 ("DMCA") now codified in 17 U.S.C. § 512. The DMCA constituted a compromise that attempted
19 to strike a balance among competing public interests in encouraging development of the Internet,
20 allowing for affordable Internet access, encouraging the free creation, distribution and sale of
21 intellectual property and protecting the legitimate private interests of copyright holders such as the
22 RIAA represented companies.

23 53. In the short time since enactment of the DMCA, development of the Internet has
24 outstripped the anticipations of its drafters.

25

26 **V. RIAA'S ATTEMPT TO STIFLE DEVELOPMENT OF .MP3 TECHNOLOGY**

27 54. RIAA and the RIAA represented companies view the development of emerging
28 musical technology, including the creation and distribution of MIDI and .mp3 files by independent

1 musical creators, as a threat not only to their legitimate interests in protecting intellectual property
2 rights, but also to their domination and control of the business of music creation and distribution.

3 55. RIAA represented companies, with the encouragement, assistance and active
4 participation of RIAA, have instituted a campaign of law and litigation related threats against and
5 have filed a series of lawsuits designed to annoy and financially ruin developers of emerging
6 technology involved in the creation, distribution and enjoyment of MIDI and .mp3 files.

7 56. RIAA represented companies and RIAA have intentionally carried out a campaign of
8 legal action against developers of .mp3 technology and distributors of .mp3 files, including, without
9 limitation, a suit against Diamond Multimedia Systems, Inc., the developer of the Rio device,
10 hereinabove referenced, that allows owners of .mp3 files to transfer such files to a small, portable
11 device and play them back. See *Recording Industry Association of America v. Diamond Multimedia*
12 *Systems, Inc.*, (C.D. Cal. 1998) 29 F.Supp.2d 624 (denying RIAA's motion for a preliminary
13 injunction), *aff'd* (9th Cir. 1999) 180 F.3d 1072.

14 57. In such actions, RIAA and RIAA represented companies have claimed that as much
15 as \$300 million is lost annually through Internet distribution of pirated copyright materials. Such
16 claims have not been and cannot be supported by anything more than speculation. See 180 F.3d at
17 1074, n.1 and associated text.

18 58. RIAA and RIAA represented companies have threatened and filed lawsuits against
19 organizations that do nothing more than provide hypertext links automatically generated, activities
20 protected under DCMA and by the Constitutional right of free speech, while ignoring individuals
21 and organizations that actually infringe copyrights. RIAA and RIAA represented companies have
22 selectively threatened and filed lawsuits against small companies such as MP3Board while ignoring
23 and making arrangements with large and financially secure companies such as the principals of
24 Yahoo! and Hotbot that automatically or through the exercise of judgment provide to Internet
25 visitors lists of hypertext links to infringing websites.

26 59. Through the acts hereinabove alleged, RIAA and RIAA represented companies are
27 attempting to stifle the technology for the creation, distribution and sale of MIDI and .mp3 files by
28 small independent music creators and in violation of rights secured by the copyright laws and the

1 Constitution of the United States.

2
3 **VI. MP3BOARD'S WEBSITE AND ACTIVITIES**

4 60. MP3Board is a small company that, on average, employs no more than 20 persons.

5 61. MP3Board maintains a website ("the site") addressable as Mp3board.com.

6 MP3board has contracted, directly and indirectly, with servers located in, among other locations, the
7 County of Santa Clara, California where its website materials have been posted.

8 62. The site includes access to spiders, indexing programs and search engines, including a
9 search engine developed and distributed by America On-Line ("AOL") called "gnutella." Spiders,
10 indexing programs and search engines accessible through the site search out and index millions of
11 hypertext links to music files, including links to MIDI files and .mp3 files. The destination websites
12 and files linked by such hypertext links are, in general, not associated with MP3Board. A visitor to
13 MP3Board's site can initiate connections through hypertext links to websites containing files so
14 indexed and reported without any active involvement by MP3Board other than providing to such
15 visitors lists of hypertext links previously searched out and indexed and made available according to
16 a search engine inquiry entered by the visitor.

17 63. MP3Board charges no fee to visitors to the site for access to the spiders, indexing
18 programs and search engines employed in connection with the site. MP3Board derives no income
19 directly from reporting on hypertext links. MP3Board derives income from advertisements
20 displayed on the site, based on the number of visitors to MP3Board's site that access websites
21 maintained by the advertisers through hypertext links in the advertisements. MP3Board has never
22 been informed or had reason to believe that advertisements displayed on the site infringe on
23 intellectual property rights held by any person.

24 64. The addresses and contents of destination websites and files contained in or linked
25 from destination websites reported on MP3Board's site change on a daily and sometimes hourly
26 basis. MP3Board does not control or monitor the contents of destination websites or files located
27 thereon. It is not within the practical capacity of MP3Board to monitor said contents or files.

28 65. As an additional service to its visitors, MP3Board automatically and on an ongoing

1 basis compiles and reports on the music files most frequently downloaded by its visitors. It is not
2 within the practical capacity of MP3Board to monitor or review the contents of such compilations
3 and/or reports.

4 66. As an additional service to its visitors, MP3Board provides hypertext links to
5 Amazon.com and other retailers of compact discs so the visitor can purchase such discs through
6 commercially legitimate channels. MP3Board has contracted with Amazon.com to access and
7 display images of the covers of compact discs so offered for sale. Such displays are within the fair
8 use doctrine of copyright law and are within the commercial standards established through custom
9 and usage by compact disc retailers.

10 67. MP3Board has a declared policy of responding in a prompt manner to all claims of
11 intellectual property infringement and has so stated on its site, providing an address to which notices
12 of claimed infringement should be directed.

13 14 **VII. THREATS AND ACTIONS BY RIAA AGAINST MP3BOARD**

15 68. Prior to October 27, 1999, MP3Board contracted with AboveNet Communications,
16 Inc., located in San Jose, California, for the posting and maintenance of its website and associated
17 computer programs.

18 69. On or about October 27, 1999, RIAA delivered to AboveNet Communications a
19 demand letter, a copy of which is attached hereto as Exhibit F. RIAA asserted that destinations of
20 some hypertext links listed and/or generated on MP3Board's site were, based on "a good faith belief"
21 entertained by RIAA, not authorized by the copyright owner, its agent or the law and demanded that
22 AboveNet Communications "remove [MP3Board's] site, delete the infringing links or that you
23 disable access to the site or the infringing links being offered via your system." RIAA generally
24 complained about songs by identified artists but did not specify the files it apparently contended
25 were infringing or the destination addresses of the websites it apparently contended were infringing
26 upon the rights of RIAA represented companies. RIAA declared in the demand letter that "if you
27 ignore this notice, you and/or your company may be liable for any resulting infringement."

28 70. As a proximate result of the delivery by RIAA of the above-alleged demand letter,

1 AboveNet Communications interrupted the services it provided to MP3Board. As a proximate result
2 of such interruption of service, MP3Board suffered monetary damages that are difficult of
3 ascertainment.

4 71. Prior to April 18, 2000, MP3Board contracted with Metromedia Company for the
5 posting and maintenance of its website and associated computer programs.

6 72. On or about April 18, 2000, RIAA delivered to Metromedia Company a demand
7 letter, a copy of which is attached hereto as Exhibit G. RIAA asserted on the basis of a "good faith
8 belief" that hypertext links listed on and/or by MP3Board's site infringed upon copyrights held by its
9 member companies and demanded that Metromedia Company "remove [MP3Board's] site or the
10 infringing links from your system." RIAA generally complained about songs by identified artists but
11 did not specify the files it apparently contended were infringing or the destination addresses of the
12 websites it apparently contended contained infringing materials.

13 73. As a proximate result of the delivery by RIAA of the above-alleged demand letter,
14 Metromedia Company interrupted the services it provided to MP3Board. As a proximate result of
15 such interruption of service, MP3Board suffered monetary damages that are difficult of
16 ascertainment.

17 74. On or about May 25, 2000, RIAA delivered to MP3Board in California a demand
18 letter, a copy of which is attached hereto as Exhibit H. In its demand letter, RIAA asserted "a good
19 faith belief" that hypertext links posted on and/or generated through MP3Board's site constituted
20 copyright infringement. RIAA identified through an attached "Exhibit C" some of the links on one
21 area of the website that it contended, based on "a good faith belief," were infringing, but expressly
22 declared that "Other areas of the Site contain hundreds or thousands of additional infringing links.
23 We do not limit our copyright notification to the links marked in Exhibit C but hereby expressly
24 object to any and all links located on the Site which allow users to download sound recordings that
25 are copyrighted by our member companies." RIAA further objected to the display of album cover
26 art and declared that the appearance on MP3Board's site of album cover art constituted copyright
27 infringement. RIAA demanded that MP3Board "remove all infringing links and artwork," generally
28 without identifying the links and artwork it contended were infringing, and threatened legal remedies

1 if its demands were not met.

2
3 **FIRST CLAIM FOR RELIEF**
(Request for Declaratory Judgment)

4 75. MP3Board seeks a declaratory judgment pursuant to 28 U.S.C. § 2201 and Federal
5 Rule of Civil Procedure 57 for the purpose of determining and adjudicating questions of actual
6 controversy between the parties.

7 76. MP3Board contends that, consistent with copyright law, including, without
8 limitation, the DMCA, and with provisions of the Constitution of the United States protecting
9 freedom of speech:

10 a. Hypertext linking from one site on the World Wide Web to another, under the
11 circumstances surrounding the activities of MP3Board, does not by itself constitute
12 copyright infringement even if the destination of a hypertext link is to a website containing
13 materials that infringe upon the rights of an owner of intellectual property.

14 b. The automated searching out of hypertext links, under the circumstances
15 surrounding the activities of MP3Board, does not by itself constitute copyright
16 infringement even if the destination of a hypertext link is to a website containing materials
17 that infringe upon the rights of an owner of intellectual property.

18 c. The automated indexing of hypertext links, under the circumstances surrounding
19 the activities of MP3Board, does not by itself constitute copyright infringement even if the
20 destination of a hypertext link is to a website containing materials that infringe upon the
21 rights of an owner of intellectual property.

22 d. The automated generation, by a search engine, of a list of hypertext links, under the
23 circumstances surrounding the activities of MP3Board, does not by itself constitute
24 copyright infringement even if the destination of a hypertext link is to a website posting
25 materials that infringe upon the rights of an owner of intellectual property

26 e. Reporting to a website visitor a list of hypertext links obtained through automated
27 searching and indexing and through the use of an automated search engine, under the
28 circumstances surrounding the activities of MP3Board, does not by itself constitute

1 copyright infringement even if the destination of a hypertext link is to a website containing
2 materials that infringe upon the rights of an owner of intellectual property.

3 f. MP3Board owes no duty to an owner of intellectual property, under the
4 circumstances surrounding the activities of MP3Board, to identify hypertext links obtained
5 through automated search programs that link to websites containing materials that infringe
6 upon the owner's intellectual property rights.

7 g. MP3Board owes no duty to an owner of intellectual property, under the
8 circumstances surrounding the activities of MP3Board, to identify hypertext links indexed
9 through automated programs that link to websites containing materials that infringe upon
10 the owner's intellectual property rights.

11 h. MP3Board owes no duty to an owner of intellectual property, under the
12 circumstances surrounding the activities of MP3Board, to identify hypertext links reported
13 by an automated search engine to a website visitor that link to websites containing
14 materials that infringe upon the owner's intellectual property rights.

15 i. A company providing server facilities to MP3Board owes no duty to an owner of
16 intellectual property, under the circumstances surrounding the activities of MP3Board, to
17 identify hypertext links obtained through MP3Board's automated search programs that link
18 to websites containing materials that infringe upon the owner's intellectual property rights.

19 j. A company providing server facilities to MP3Board, under the circumstances
20 surrounding the activities of MP3Board, owes no duty to an owner of intellectual property
21 to identify hypertext links indexed through MP3Board's automated programs that link to
22 websites containing materials that infringe upon the owner's intellectual property rights.

23 k. A company providing server facilities to MP3Board, under the circumstances
24 surrounding the activities of MP3Board, owes no duty to an owner of intellectual property
25 to identify hypertext links reported by MP3Board's automated search engine to a website
26 visitor that link to websites containing materials that infringe upon the owner's intellectual
27 property rights.

28 l. The activities of MP3Board, under the circumstances surrounding the activities of

1 MP3Board, are protected by the DMCA including, without limitations, the provisions of 17
2 U.S.C. §§ 512(a), 512(b), 512(c) and/or 512(d).

3 m. The activities of companies providing servers to MP3Board, under the
4 circumstances surrounding the activities of MP3Board, are protected by the DMCA
5 including, without limitations, the provisions of 17 U.S.C. §§ 512(a), 512(b), 512(c) and/or
6 512(d).

7 77. MP3Board is informed, believes and thereon alleges that RIAA contends the
8 contrary of each of the above-stated propositions.

9 78. Wherefore, MP3Board requests that the court determine and adjudge that each and
10 every of the above-stated propositions states the law applicable to the facts surrounding the
11 activities of MP3Board.

12 **SECOND CLAIM FOR RELIEF**
13 **(Request for Injunctive Relief)**

14 79. MP3Board requests that, pursuant to Federal Rule of Civil Procedure 65, the court,
15 after notice and hearing, issue a preliminary injunction and, after trial, a permanent injunction,
16 enjoining RIAA, its agents, principals, employees and its represented companies, from any and all
17 of the following acts:

- 18 a. Demanding that MP3Board remove its site from the Internet;
- 19 b. Demanding that any company providing a server that connects MP3Board's website
20 to the Internet remove MP3Board's site from the Internet;
- 21 c. Demanding that MP3Board delete hypertext links from indices maintained by
22 MP3Board that are contended be linked to infringing materials without providing
23 admissible evidence of such copyright infringement and of RIAA's rights to protect the
24 owner of the subject copyright from such infringement;
- 25 d. Demanding that any company providing a server that connects MP3Board's website
26 to the Internet delete hypertext links from indices maintained by MP3Board that are
27 contended to be linked to infringing materials without providing admissible evidence of
28

1 such infringement and of RIAA's rights to protect the owner of the subject copyright from
2 such infringement;

3 e. Demanding that MP3Board delete hypertext links from indices maintained by
4 MP3Board that are contended to be linked to infringing materials without providing coded
5 references that are readable by machine and through the use of which infringing links can
6 be automatically deleted;

7 f. Demanding that any company providing a server that connects MP3Board's website
8 to the Internet delete hypertext links from indices maintained by MP3Board that are
9 contended to be linked to infringing materials without providing coded references that are
10 readable by machine and through the use of which infringing links can be automatically
11 deleted;

12 g. Demanding that MP3Board cease to display album cover art on its website;

13 h. Demanding that MP3Board cease to display album cover art on its website without
14 providing admissible evidence that the display of such album cover art infringes upon
15 intellectual property rights enforceable by RIAA;

16 i. Demanding that MP3Board cease to display album cover art contended to constitute
17 copyright infringement without providing admissible evidence of such infringement and of
18 RIAA's rights to protect the owner of the subject copyright from such infringement;

19 j. Demanding that any company providing a server that connects MP3Board's website
20 to the Internet interdict the display of album cover art by MP3Board contended to
21 constitute copyright infringement without providing admissible evidence of such
22 infringement and of RIAA's rights to protect the owner of the subject copyright from such
23 infringement.

24
25
26 **THIRD CLAIM FOR RELIEF**
(Tortious Interference with Contract and/or with Prospective Economic Advantage)

27 80. MP3Board seeks damages, pursuant to the court's supplemental jurisdiction and the
28 laws of the State of California

1 81. As hereinabove alleged, MP3Board had contractual relations with AboveNet
2 communications and Metromedia Company and an expectation of prospective economic advantage
3 from the actions of visitors to its site.

4 82. RIAA interfered with and disrupted said contractual relations with AboveNet
5 Communications and Metromedia company and interfered with the access of potential visitors to
6 MP3Board's site that provided MP3Board with a prospective economic advantage.

7 83. The acts of RIAA in interfering with and disrupting said contractual relations and
8 said prospective economic advantage were intentional.

9 84. As a proximate result of the inference with and disruption of said contractual
10 relations and said prospective economic advantage by RIAA, MP3Board suffered monetary
11 damages in an amount subject to proof.

12 85. The acts of RIAA in interfering with and disrupting said contractual relations and
13 said prospective economic advantage were infected with fraud, malice and oppression that justifies
14 an award of punitive damages against RIAA and in favor of MP3Board.

15
16 **WHEREFORE**, MP3Board prays for judgment as follows:

17 1. That the court determine, adjudge and declare that:

18 a. Hypertext linking from one site on the World Wide Web to another, under
19 the circumstances surrounding the activities of MP3Board, does not by itself
20 constitute copyright infringement even if the destination of a hypertext link is to a
21 website containing materials that infringe upon the rights of an owner of intellectual
22 property.

23 b. The automated searching out of hypertext links, under the circumstances
24 surrounding the activities of MP3Board, does not by itself constitute copyright
25 infringement even if the destination of a hypertext link is to a website containing
26 materials that infringe upon the rights of an owner of intellectual property.

27 c. The automated indexing of hypertext links, under the circumstances
28 surrounding the activities of MP3Board, does not by itself constitute copyright

1 infringement even if the destination of a hypertext link is to a website containing
2 materials that infringe upon the rights of an owner of intellectual property.

3 d. The automated generation, by a search engine, of a list of hypertext links,
4 under the circumstances surrounding the activities of MP3Board, does not by itself
5 constitute copyright infringement even if the destination of a hypertext link is to a
6 website posting materials that infringe upon the rights of an owner of intellectual
7 property

8 e. Reporting to a website visitor a list of hypertext links obtained through
9 automated searching and indexing and through the use of an automated search
10 engine, under the circumstances surrounding the activities of MP3Board, does not
11 by itself constitute copyright infringement even if the destination of a hypertext link
12 is to a website containing materials that infringe upon the rights of an owner of
13 intellectual property.

14 f. MP3Board owes no duty to an owner of intellectual property, under the
15 circumstances surrounding the activities of MP3Board, to identify hypertext links
16 obtained through automated search programs that link to websites containing
17 materials that infringe upon the owner's intellectual property rights.

18 g. MP3Board owes no duty to an owner of intellectual property, under the
19 circumstances surrounding the activities of MP3Board, to identify hypertext links
20 indexed through automated programs that link to websites containing materials that
21 infringe upon the owner's intellectual property rights.

22 h. MP3Board owes no duty to an owner of intellectual property, under the
23 circumstances surrounding the activities of MP3Board, to identify hypertext links
24 reported by an automated search engine to a website visitor that link to websites
25 containing materials that infringe upon the owner's intellectual property rights.

26 i. A company providing server facilities to MP3Board owes no duty to an
27 owner of intellectual property, under the circumstances surrounding the activities of
28 MP3Board, to identify hypertext links obtained through MP3Board's automated

1 search programs that link to websites containing materials that infringe upon the
2 owner's intellectual property rights.

3 j. A company providing server facilities to MP3Board, under the
4 circumstances surrounding the activities of MP3Board, owes no duty to an owner of
5 intellectual property to identify hypertext links indexed through MP3Board's
6 automated programs that link to websites containing materials that infringe upon
7 the owner's intellectual property rights.

8 k. A company providing server facilities to MP3Board, under the
9 circumstances surrounding the activities of MP3Board, owes no duty to an owner of
10 intellectual property to identify hypertext links reported by MP3Board's automated
11 search engine to website visitor that link to websites containing materials that
12 infringe upon the owner's intellectual property rights.

13 l. The activities of MP3Board, under the circumstances surrounding the
14 activities of MP3Board, are protected by the DMCA including, without limitations,
15 the provisions of 17 U.S.C. §§ 512(a), 512(b), 512(c) and/or 512(d).

16 m. The activities of companies providing servers to MP3Board, under the
17 circumstances surrounding the activities of MP3Board, are protected by the DMCA
18 including, without limitations, the provisions of 17 U.S.C. §§ 512(a), 512(b), 512(c)
19 and/or 512(d).

20 2. That the court, after notice and hearing, issue a preliminary injunction and, after
21 trial, a permanent injunction, enjoining RIAA, its agents, principals, employees and its represented
22 companies, from any and all of the following acts:

23 a. Demanding that MP3Board remove its site from the Internet;

24 b. Demanding that any company providing a server that connects MP3Board's
25 website to the Internet remove MP3Board's site from the Internet;

26 c. Demanding that MP3Board delete hypertext links from indices maintained
27 by MP3Board that are contended be linked to infringing materials without
28

1 providing admissible evidence of such copyright infringement and of RIAA's rights
2 to protect the owner of the subject copyright from such infringement;

3 d. Demanding that any company providing a server that connects MP3Board's
4 website to the Internet delete hypertext links from indices maintained by MP3Board
5 that are contended to be linked to infringing materials without providing admissible
6 evidence of such infringement and of RIAA's rights to protect the owner of the
7 subject copyright from such infringement;

8 e. Demanding that MP3Board delete hypertext links from indices maintained
9 by MP3Board that are contended to be linked to infringing materials without
10 providing coded references that are readable by machine and through the use of
11 which infringing links can be automatically deleted;

12 f. Demanding that any company providing a server that connects MP3Board's
13 website to the Internet delete hypertext links from indices maintained by MP3Board
14 that are contended to be linked to infringing materials without providing coded
15 references that are readable by machine and through the use of which infringing
16 links can be automatically deleted;

17 g. Demanding that MP3Board cease to display album cover art on its website;

18 h. Demanding that MP3Board cease to display album cover art on its website
19 without providing admissible evidence that the display of such album cover art
20 infringes upon intellectual property rights enforceable by RIAA;

21 i. Demanding that MP3Board cease to display album cover art contended to
22 constitute copyright infringement without providing admissible evidence of such
23 infringement and of RIAA's rights to protect the owner of the subject copyright
24 from such infringement;

25 j. Demanding that any company providing a server that connects MP3Board's
26 website to the Internet interdict the display of album cover art by MP3Board
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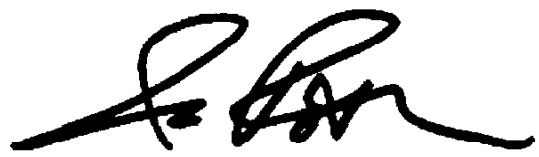
subject copyright from such infringement.

- 3. That the court award MP3Board compensatory and punitive damages;
- 4. That MP3Board recover its reasonable attorneys' fees and costs according to law;
- 5. That MP3Board have all other further relief that the court may deem just and

proper.

Dated. June 2, 2000

ROTHKEN LAW FIRM



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Attorney for Plaintiff MP3Board, Inc.

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Fax: 415-924-2905
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EXHIBIT A

YAHOO! [Personalize](#)

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	Web Sites	Web Pages	Related News	Net Events
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Inside Yahoo! Matches



Shopping: [Over 300 MP3 Players](#) listings on Yahoo! Shopping
Player: [Listen to MP3s](#) with the Yahoo! Player
Digital: Get [MP3](#) on Yahoo! Digital
Auctions: [Over 250 MP3](#) items on Yahoo! Auctions
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[amazon.com](#)

- [MP3](#)
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Yahoo! Category Matches (1 - 9 of 9)

Home > Full Coverage > Tech

- [Digital Music](#)

Home > Computers and Internet > Multimedia > Audio > Formats

- [MP3](#)

Home > Business and Economy > Shopping and Services > Consumer Electronics > Stereo Equipment

- [MP3 Players](#)

Home > Computers and Internet > Product Reviews > Peripherals

- [MP3 Players](#)

Home > Computers and Internet > Internet > Distributed File Sharing

- [MP3](#)

Home > Net Events > Chat Rooms > Computers and Internet

- [MP3](#)

Home > Business and Economy > Shopping and Services > Music > Digital Distribution

- [MP3.com](#)

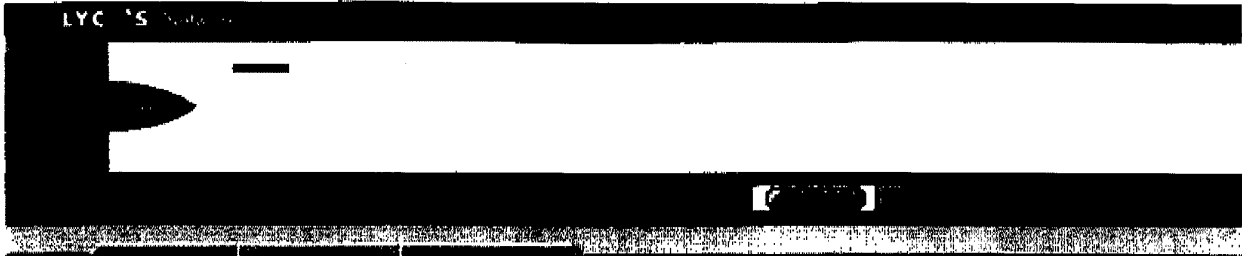
Home > Business and Economy > Shopping and Services > Automotive > Accessories > Mobile Electronics > Audio

- [MP3 Players](#)

Home > Net Events > Computers and Internet

- [MP3](#)

EXHIBIT B



Search Partners

- Shop: Find the lowest prices for ".mp3 Beatles" at DealTime.com.
- Find books on ".mp3 Beatles" at bn.com.
- Shop smarter! Compare ".mp3 Beatles" at Deja.com.

FROM THE LYCOS NETWORK

- **Beatles** - Download music from The Beatles at Lycos Music.
- **Beatles Multimedia** - The world's largest integrated multimedia site. View, play, a

WEB RESULTS fewer than 100 **1 - 10** [next >>](#)

Get the **Top 2 sites for ".mp3 Beatles"**

1. Tripod

Tripod Sorry, but the page or file that you're looking for is not here. Please check to s has

2/11/2000 <http://members.tripod.com/~waveman2/mp3.html>
See results from [this site only](#).

2. MP3 THE BEATLES

MP3 THE BEATLES Archivos MP3 1. Blackbird (Versión Anthology 3) 2. Eleanor Rigby ENCUESTRA

12/10/1999 <http://www.geocities.com/Broadway/Alley/9890/beatmp3.html>
See results from [this site only](#).

3. Krummy's Beatles Page

Krummy's Beatles Page Krummy's Beatles Page All files on this page are available to
1/28/2000 <http://beatles.freehosting.net/>
See results from [this site only](#).

4. Beatles, Mp3, Tintin, Phantasmagoria

Beatles, Mp3, Tintin, Phantasmagoria BIENVENUE sur ma PAGE ENGLISH VERSION C paroles de le

2/19/2000 <http://www.multimania.com/benoitchoulnard>
See results from [this site only](#).

5. The Oasis, Homepage, music, files, mp3, rare, sound, files, liam, noel, england, n

best viewed

2/19/2000 <http://www.angelfire.com/ms/oasishomepage>
See results from [this site only](#).

6. Music= Mp3, Facts about The Beatles and Toto cheats to games and fonts

Music= Mp3, Facts about The Beatles and Toto cheats to games and fonts Music= Mp
ra,
11/15/1998 http://members.xoom.com/poppe83
See results from [this site only](#).

7. The Beatles Freeserve

The Beatles Freeserve Deejay and the Beatles You are being redirected, the site has r
davidjwillson@ibrox7
1/12/2000 http://www.ibrox72.freeserve.co.uk/
See results from [this site only](#).

8. BeatlesMp3.Musicpage.com - Beatles Mp3!

BeatlesMp3.Musicpage.com - Beatles Mp3! BeatlesMp3.Musicpage.com - Beatles Mp3
help,
2/19/2000 http://beatlesmp3.musicpage.com/
See results from [this site only](#).

9. Index of /beatles/mp3

Index of /beatles/mp3 Index of /beatles/mp3 Name Last modified Size Description Pa
2/19/2000 http://kulichki-lat.rambler.ru/beatles/mp3
See results from [this site only](#).

10. AudioFind - The beatles - Master Artist List

AudioFind - The beatles - Master Artist List Search - New Files - Master Artist List - St
2/11/2000 http://www.audiofind.com/the_beatles.html
See results from [this site only](#).

1 - 10 [next](#) >>

SECOND OPINION

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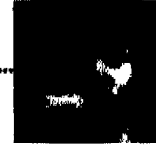
powered by  

EXHIBIT C

Welcome to the virtual home of

Deejay

and



The Beatles



Thank you for taking the time to visit my humble domain, please enjoy your stay here.

By just clicking **Buttons** below, this will take you to the main beatles album pages.

Browse through my Beatles albums, listen to the midi songs, even view my homepage.

If you are searching for files of the following topics then look no further, you will find them at Deejay's Beatles Page. Album covers, Beatles songs with downloads of midi files, music samples, links to Beatles MP3 files, free downloads from Abbey Road, Help, Let It Be, Sgt Peppers Lonely Hearts Club Band, Yellow Submarine, as well as other mp3 music from albums by John Lennon, Paul McCartney, George Harrison, Ringo Starr, collectively but not individually.

To get Beatles MP3 downloads, access to the beatles albums, free mp3 songs, midi files, album covers, click on the The Beatles picture below

[The Beatles Albums](#)



[The Beatles songs](#)

[Beatles Album Covers](#)

Beatles MP3 downloads of songs like Across The Universe, Come Together, Eleanor Rigby, Here Comes The Sun, Hey Bulldog, Hey Jude, I Am The Walrus, I Want To Hold Your Hand, I'm Only Sleeping, In My Life, Lucy In The Sky With Diamonds, Oh Darling, Please Mr Postman, PS I Love You, Rain, Revolution, Rock n Roll Music, Rocky Raccoon, Strawberry Fields Forever, Till There Was You, Twist & Shout, While My Guitar Gently Weeps, A Little Help From My Friends, Yesterday, You're Gonna Lose That Girl, links to winamp plus winamp skins. You will discover a musical information packed website.

If you wish to visit my Beatles site again, you can use the following URL:
<http://browse.to/abbeyroad>





P100

EXHIBIT D

□ MUZYKA V MP3

0 - 50

Nazvanie saita: GenDrive
Adres saita: gendrive.sakhalin.ru
port: 21
ratio: none
login: mp3
parol': zic

/Not_Russian/The Beatles/(Paul McCartney) - Bip Bop.MP3 (3 960 163b)
/Not_Russian/The Beatles/(The Beatles) - Come Together.mp3 (3 108 049b)
/Not_Russian/The Beatles/(The Beatles) - Girl.mp3 (2 117 485b)
/Not_Russian/The Beatles/(The Beatles) - Help.mp3 (1 971 931b)
/Not_Russian/The Beatles/(The Beatles) - Here Comes the Sun.mp3 (2 607 177b)
/Not_Russian/The Beatles/(The Beatles) - Hey Jude.mp3 (4 580 205b)
/Not_Russian/The Beatles/(The Beatles) - Let it be.mp3 (3 889 946b)
/Not_Russian/The Beatles/(The Beatles) - LSD.mp3 (3 335 732b)
/Not_Russian/The Beatles/(The Beatles) - Michelle.mp3 (2 263 040b)
/Not_Russian/The Beatles/(The Beatles) - When Im Sixty-four.mp3 (2 524 055b)
/Not_Russian/The Beatles/(The Beatles) - Yesterday.mp3 (2 002 152b)

Sait: 24.112.48.34
Adres saita: 24.112.48.34
port: 21
ratio: YES
login: anonymous
parol': user@domain.com

/Master_Processed_Files_List_Only!/B/[Beatles]_ADayIntheLife.mp3.lnk (543b)
/Master_Processed_Files_List_Only!/B/[Beatles]_AHardDaysNight.mp3.lnk (543b)
/Master_Processed_Files_List_Only!/B/[Beatles]_ALittleHelpFromMyFriends.mp3.lnk (546b)
/Master_Processed_Files_List_Only!/B/[Beatles]_AllMyLoving.mp3.lnk (537b)
/Master_Processed_Files_List_Only!/B/[Beatles]_AndYourBirdCanSing.mp3.lnk (527b)
/Master_Processed_Files_List_Only!/B/[Beatles]_BabyYou'reARichMan.mp3.lnk (555b)
/Master_Processed_Files_List_Only!/B/[Beatles]_BeingForTheBenefitOfMrKite.mp3.lnk (579b)
/Master_Processed_Files_List_Only!/B/[Beatles]_000000bird.mp3. (528b)
/Master_Processed_Files_List_Only!/B/[Beatles]_Can'tBuyMeLove.mp3.lnk (516b)
/Master_Processed_Files_List_Only!/B/[Beatles]_DayTripper.mp3.lnk (534b)
/Master_Processed_Files_List_Only!/B/[Beatles]_EightDaysAWeek.mp3.lnk

(516b)

/Master_Processed_Files_List_Only!/B/[Beatles] EleanorRigby.mp3.lnk (540b)

/Master_Processed_Files_List_Only!/B/[Beatles] FixingAHole.mp3.lnk (534b)

/Master_Processed_Files_List_Only!/B/[Beatles] GettingBetter.mp3.lnk (540b)

/Master_Processed_Files_List_Only!/B/[Beatles] HardDay'sNight.mp3.lnk

(543b)

/Master_Processed_Files_List_Only!/B/[Beatles] Help!.mp3.lnk (516b)

/Master_Processed_Files_List_Only!/B/[beatles] helpfrommyfriends.mp3.lnk

(555b)

/Master_Processed_Files_List_Only!/B/[Beatles] HereComesTheSun.mp3.lnk

(549b)

/Master_Processed_Files_List_Only!/B/[Beatles] HeyJude.mp3.lnk (522b)

/Master_Processed_Files_List_Only!/B/[Beatles] I'mLookingThroughYou.mp3.lnk

(561b)

/Master_Processed_Files_List_Only!/B/[Beatles] InMyLife.mp3.lnk (525b)

/Master_Processed_Files_List_Only!/B/[Beatles] LetItBe.mp3.lnk (335b)

/Master_Processed_Files_List_Only!/B/[Beatles] Michelle.mp3.lnk (525b)

/Master_Processed_Files_List_Only!/B/[Beatles] Ob-La-Di.mp3.lnk (525b)

/Master_Processed_Files_List_Only!/B/[Beatles] ObladiOblada.mp3.lnk (510b)

/Master_Processed_Files_List_Only!/B/[Beatles] PaperbackWriter.mp3.lnk

(546b)

/Master_Processed_Files_List_Only!/B/[Beatles] RealLove.mp3.lnk (525b)

/Master_Processed_Files_List_Only!/B/[Beatles] SoTired.mp3.lnk (522b)

/Master_Processed_Files_List_Only!/B/[Beatles] StrawberryFieldsForever.mp3.lnk

(425b)

/Master_Processed_Files_List_Only!/B/[Beatles] TwistAndShout.mp3.lnk (347b)

/Master_Processed_Files_List_Only!/B/[Beatles] TwoOfUs.mp3.lnk (522b)

/Master_Processed_Files_List_Only!/B/[BEATLES] YELLOWSUBMARINE.mp3.lnk

(546b)

/Master_Processed_Files_List_Only!/B/[Beatles] Yesterday.mp3.lnk (491b)

/Master_Processed_Files_List_Only!/B/[Beatles] You'veGotToHideYourLoveAway.mp3.ln

(582b)

/Uploads/Beatles - A Day In The Life.mp3 (5 343 190b)

Nazvanie saita: CubicCircle mp3s
Adress saita: <ftp.cubiccircle.dynip.com>
port: 21
ratio: 1:3
login: mp3
parol': mp3

/MP3_files/(Beatles)/(Beatles) - A day in the life.mp3 (5 343 318b)

Muzyka v MP3

Nazvanie saita: 208.151.241.141
Adress saita: 208.151.241.141
port: 21
ratio: none
login: anonymous
parol': user@domain.com

/pub/music/John_K_Fitzpatrick_-_Baby's_in_000000_(Beatles).mp3 (1 195 073b)

Nazvanie saita: MP3
Adress saita: ltough.dyn.ml.org
port: 777
ratio: 1:3
login: anonymous
parol': user@host.com

/Incoming Mp3's/Beatles - A Little Help From My Friends.mp3 (2 199 040b)

/Incoming Mp3's/Beatles - All My Loving.mp3 (2 068 324b)

eshe ne vse...

[Na glavnuyu
stranicu](#)

EXHIBIT E



[Join This Ring](#) - [Help](#) - [WebRing Directory](#)



Official MP3 Music Webring

Participate in the WebRing community [Read More Here](#)

Sites 1 - 20 of 355

MP3 Zone - Mp3 Zone, what do you want to hear today. Feature's include Mp3 Search engine players and news about the hottest music format on the internet today!!!

Mp3 Music - New Mp3s and a HUGE Mp3 Archive, free Mp3 players and skins.

MP3 Power Search - We've got the new automatic archive, updated every 8 hours, plus the with lyrics capabilities. You can search on 30 search engines at the moment. Plus new tools like coming up.

Mp3 Music Ring - New Mp3s and a HUGE Mp3 Archive, free Mp3 players and skins

AllAdvantage - Get Paid to Surf the Net! All you need is the banner viewer and your on you doing what your doing RIGHT NOW!!

Official Mp3 Music Ring - New Mp3s and a HUGE Mp3 Archive, free Mp3 players and **S_SENSES** - Music to simulate your nerves!

Punk Rock and Pop - Mp3s, news, links and much more.

Fondlemp3z - We dont have banners, porn, redirects, or sponsors either. Come and have a lo heavy metal or punk/alternative stuff, or youre very strange.

FreeMP3 - The FREE Online MP3 Archive, organized and catologed extremely well, NO TRI Downloads)

1- Mp3 Future -1 - Definetely one of the best resource for MP3s, News and Reviews on the

MP3Z ARCHIVE - We have a huge collection of mp3z, including FULL ALBUMS and la ROCK, DANCE, POP

Welcome to the Headquarters for the Band VACANT - The Band Vacant! The fa These guys are one of the hottest up and coming bands in the nation. Come join the web music r pioneered! Download their MP3 music for free!

Mp3 Matrix - Free mp3 downloads, links, chat, search, buy music and all in a matrix theme.

Paul's MP3 of The every-Week-or-so - Classics and Standards from Sinatra, Louis Ar Harry Belafonte, Sarah Vaughan, Jimmy Durante and more!

Music.Player.3 - MP3 portable players guide : reviews, specifications ,prices ...

Richy's MP3 Site - Over 300 mp3 cd's to trade with, come vist my site, youve got nothing t gain.....

max's punk mp3 archive - a huge archive of just about any punk mp3 you could ever wan 160kbps!

XtreamSound - Latst news, reviews, mp3z for cars, full albums, archives, players, rippers en **s o u n d s p i d e r . n e t** - free MP3 : dance music : various artists : infos : news : picture:



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Official MP3 Music Webring

What's happening at WebRing? [Read More Here](#)

Sites 21 - 40 of 355

SIMPLICITY - this site is about music, mp3s and full albums. It also has links to other great

MP3CDz - Full albums and bootlegs for sale/trade. Lots of Oasis, the beatles and others. Also

CloneWar MP3s - Not just another mp3 site dedicated to the same songs that circulate around source to the underground... your source to the best post-punk, indie, and darkwave mp3s on the

Oasis MP3 Bootlegs - Loads of oasis bootlegs/MP3's plus full MPEG movies. Loads of other the beatles songs :)

Dance Land 2000 - Dance Land 2000, Scotlands No.1 Dance Music MP3 site, massive MP3 dating from the days of acid house to present.

MP3 Jack 2000 - Techno, Club, Pop, Rock, Charts, Billboard 50, European 100, MTV Top 2 MP3's This site has it all!! The latest hits in all the most popular charts around.

easy!MP3 - The easiest site out there to get started, or expand your MP3 music library.

100% MP3 : Fast Direct Download - Features over 100,000 free working mp3 download large collection of the newest mp3 albums available.

matts punky page of cool stuff - check out my site! mp3's - tons of em!

MP3-2K - YOU WANT ANY MP3 IN THE WORLD AND IT WILL BE YOURS WITH THE MILLENNIUM!!!!!!

Adam's Music Page - has many mp3 downloads. also has many cool links to mp3 players :

JDusty4's Alt/Rock MP3s - Come here for daily updated alt/rock MP3s. No broken links No BS, just good alt/rock MP3s.

Definitive MP3 - A Winamp and General MP3 site. The site contains downloads of just about as long as it is digital audio related. Includes pro quality MP3 encoders, rippers, players, as well as section.

Punk Songs - Mp3s and just mp3s, and soon some band pages.

French Touch Connection - Promotion and resource for french indie pop/rock bands

Kweevak's Music Promotion/MP3 Site - Independent music promotion web site with industry links, rare live & studio tracks, music promotion services and autographed CD giveaways

MP3 Today - The #1 Site for the Latest MP3 Releases. Download over 3000 FREE MP3's. C

MP3 KIX - Here you can find more than 2.500 MP3 of a lot of bands!!!.

MP3 Greatest Christmas Hits - MP3 Greatest Christmas hits

Allan's Mp3 Page - Mp3 Downloads and links. updated constantly

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EXHIBIT F



October 27, 1999

Abovenet Communications
Suite 1010 50 W San Fernando
San Jose, CA 95113

Dear Sir or Madam:

I am counsel for the Recording Industry Association of America, Inc. (RIAA) and for its member record companies. RIAA is a trade association whose member companies create, manufacture and distribute approximately ninety (90) percent of all legitimate sound recordings sold in the United States.

We have determined that a user/customer of your system or network is infringing our member record companies' copyrighted sound recordings.

Enclosed is a subpoena and notice of copyright infringement compliant with the Digital Millennium Copyright Act. The subpoena requires that you provide the RIAA with contact information concerning the individual(s) operating the Internet site described in the attached notice.

As is stated in the subpoena, you are required to disclose to the RIAA information sufficient to identify the infringer. This would include the infringer's name, address, and telephone number.

Thank you for your cooperation in this matter. If you have any questions please contact me at 202.775.0101 or jwhitehead@riaa.com.

Very truly yours,


Jonathan Whitehead
Associate Anti-Piracy Counsel



VIA HAND DELIVERY

October 27, 1999

Administrative Contact
Abovenet Communications
Suite 1010 50 W San Fernando
San Jose, CA 95113

RE: <http://www.mp3board.com>

Dear Sir or Madam:

I am contacting you on behalf of the Recording Industry Association of America, Inc. (RIAA) and its member record companies. RIAA is a trade association whose member companies create, manufacture and distribute approximately ninety (90) percent of all legitimate sound recordings sold in the United States. Under penalty of perjury, we submit that the RIAA is authorized to act on behalf of its member companies in matters involving the infringement of their sound recordings, including enforcing their copyrights and common law rights on the Internet.

We believe your service is hosting the above referenced site on its system. This site, which we accessed on October 25, 1999 at 5:41 p.m. (EST), offers over one thousand direct links to sound files on other Internet sites for download. Many of these files contain recordings owned by our member companies, including songs by such artists as Sugar Ray, Ricky Martin, Radiohead, TLC, Red Hot Chili Peppers, Madonna, Shania Twain, Lou Bega, the Fugees and Ace of Base. We have a good belief that the above-described activity is not authorized by the copyright owner, its agent, or the law.

We are asking for your immediate assistance in stopping this unauthorized activity. Specifically, we request that you remove the site, delete the infringing links or that you disable access to this site or the infringing links being offered via your system. In addition, please inform the site operator of the illegality of his or her conduct and confirm with the RIAA, in writing, that this activity has ceased.

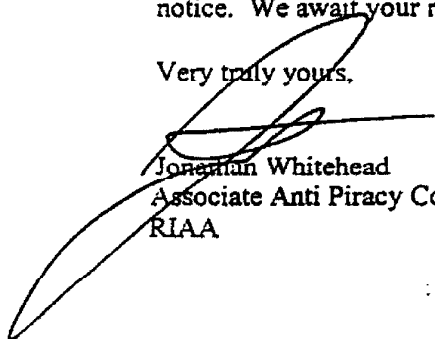
You should understand that this letter constitutes notice to you that this site operator may be liable for the infringing activity occurring on your server. In addition, under

RECORDING INDUSTRY ASSOCIATION OF AMERICA
1775 AVENUE OF THE STARS, SUITE 1500 WASHINGTON, DC 20006
PHONE: (202) 386-1111 FAX: (202) 386-1110 WWW: WWW.RIAA.COM

the recently enacted Digital Millennium Copyright Act, if you ignore this notice, you and/or your company may be liable for any resulting infringement. This letter does not constitute a waiver of any right to recover damages incurred by virtue of any such unauthorized activities, and such rights as well as claims for other relief are expressly retained.

Please contact me at RIAA, 1330 Connecticut Avenue, N.W., Suite 300, Washington, D.C., 20036, Tel. (202) 775-0101, or e-mail antipiracy@riaa.com, to discuss this notice. We await your response.

Very truly yours,



Jonathan Whitehead
Associate Anti Piracy Counsel
RIAA

EXHIBIT G

Antipiracy

04/18/2000 01:42 PM

To: awadler@metromediacompany.com
cc:
Subject: unauthorized distribution of music

VIA EMAIL

Arnold L. Wadler
General Counsel
Metromedia Company
One Meadowlands Plaza
East Rutherford, NJ 07073

RE: <http://www.mp3board.com/category.smx?cat=2>

Dear Mr. Wadler:

I am a paralegal at the Recording Industry Association of America, Inc. (RIAA). I am contacting you on behalf of the RIAA and its member record companies. The RIAA is a trade association whose member companies create, manufacture and distribute approximately ninety (90) percent of all legitimate sound recordings sold in the United States. Under penalty of perjury, we submit that the RIAA is authorized to act on behalf of its member companies on matters involving the infringement of their sound recordings, including enforcing their copyrights and common law rights on the Internet.

We have learned that your service is hosting the above Web site on your network. This site is offering direct links to files on other Internet sites containing full-length sound recordings for other users to download, including songs by such artists as Third Eye Blind, Rage Against the Machine, No Doubt, Rammstein and the Bloodhound Gang. We have a good faith belief that the above-described activity is not authorized by the copyright owner, its agent, or the law. We assert that the information in this notification is accurate, based upon the data available to us.

We are asking for your immediate assistance in stopping this unauthorized activity. Specifically, we request that you remove the site or the infringing links from your system and that you inform the site operator of the illegality of his or her conduct.

You should understand that this letter constitutes notice to you that this site operator may be liable for the infringing activity occurring on your server. In addition, under the Digital Millennium Copyright Act, if you ignore this notice, you and/or your company may be liable for any resulting infringement. This letter does not constitute a waiver of any right to recover damages incurred by virtue of any such unauthorized activities, and such rights as well as claims for other relief are expressly retained.

Please communicate with Jonathan Whitehead, Anti-Piracy Counsel, at RIAA, 1330 Connecticut Avenue, N.W., Suite 300, Washington, D.C., 20036, Tel. (202) 775-0101, or e-mail antipiracy@riaa.com, to discuss this notice. We await your response. Kind regards.

Very truly yours,
Sarah Ehrlich
Senior Paralegal, Anti-Piracy

RIAA

EXHIBIT H



VIA HAND DELIVERY

May 25, 2000

Mr. Lars Mapstead
MP3Board, Inc.
2419 L Street
Bakersfield, CA 93301

Re: Copyright Infringement: www.mp3board.com

Dear Mr. Mapstead:

I am counsel for the Recording Industry Association of America, Inc. (the "RIAA") and for its member record companies. The RIAA is a trade association whose member companies create, manufacture and distribute approximately ninety (90) percent of all legitimate sound recordings sold in the United States. Under penalty of perjury, we submit that the RIAA is authorized to act on behalf of its member companies on matters involving the infringement of their sound recordings, including enforcing their copyrights and common law rights on the Internet.

I am writing to alert you once again to the existence of infringing activity that is occurring on the Web site "mp3board.com" (the "Site"), and am addressing this notice to you for two reasons. First, your contact information was supplied to us by AboveNet Communications pursuant to subpoena No. 99-357 issued by the U.S. District Court for the District of Columbia and requesting the identity of the Site operator. Second, you are the individual that authored on behalf of MP3Board, Inc. the "counter notification" dated April 21, 2000. We presume, therefore, that you are authorized to act on behalf of the company.

You and/or agents of the Site have received at least two previous notices from the RIAA regarding the existence of infringing materials on the Site. The first notice ("First Notice") was sent on October 27, 1999 to AboveNet Communications, the provider of Internet connectivity to the Site. A copy of the First Notice is attached as Exhibit A. It

RECORDING INDUSTRY ASSOCIATION OF AMERICA
1330 CONNECTICUT AVE, NW, SUITE 300, WASHINGTON, DC 20036
PHONE: 202.775.0101 FAX: 202.775.7262 WEB: www.riaa.com

was our understanding at the time that the First Notice was forwarded to you and that the Site was no longer publicly accessible.

Earlier this year, we discovered that the Site was again active. On April 18, 2000, the RIAA sent a Second Notice ("Second Notice") to Metromedia Fiber Network Service, Inc. ("Metromedia"), the new parent company of AboveNet Communications and the provider of Internet connectivity to the Site. A copy of the Second Notice is attached as Exhibit B. It is our understanding based upon correspondence from Mr. Rothken (counsel to MP3Board, Inc.) that you and/or agents of the Site received a copy of the Second Notice, as well. It is also our understanding that Metromedia subsequently disabled Internet access to the Site, presumably based upon the Site's status as a repeat infringer.

Despite having been the subject of two prior infringement notices, and despite having the Site's access denied by Metromedia, we have learned that the Site is once again active. This Site continues to offer links to files on other Internet sites containing full-length copyrighted sound recordings for users to download. Some of the relevant sound recordings that are owned by our member companies include, but are not limited to, works by artists such as: Madonna (American Pie); Mariah Carey (Bliss); Britney Spears (Oops I Did It Again); Abba (The Name of the Game, Dancing Queen); Bloodhound Gang (The Bad Touch); Christina Aguilera (I Turn Into You); Korn (Got the Life); Kiss (Detroit Rock City); Toni Braxton (He Wasn't Man Enough for Me); Ace of Base (Cruel Summer); Shania Twain (Come on Over); Alanis Morissette (Uninvited); Jimi Hendrix (Red House); the Beatles (All You Need is Love); Blink 182 (Adams Song); Nirvana (The Man Who Sold the World); Cypress Hill (Rock Superstar); Santana (Maria Maria); Bryan Adams (Getaway); Rage Against the Machine (Guerrilla Radio); Beck (Ramshackle); and many more. This list constitutes just a representative sample of the infringing files, and does not begin to address the totality of infringing links on the Site.

For your convenience, and in order to demonstrate the pervasiveness of infringing links involved, we have attached at Exhibit C printouts of the various "genre categories" posted to the Site on May 5, 2000. Of the 857 links listed under the various genres on that date, our initial review located at least 662 (or over 77%) that we believe to be infringing. These infringing files are both highlighted and marked with an asterisk on Exhibit C. Please be aware that this is a conservative estimate based upon our initial review; further research into the remaining links would undoubtedly uncover additional instances of infringement. Please also be aware that this list constitutes only an initial representative sample from one area of the Site. Other areas of the Site also contain hundreds or thousands of additional infringing links. We do not limit our copyright notification to the links marked in Exhibit C, but hereby expressly object to any and all links located anywhere on the Site which allow users to download sound recordings that are copyrighted by our member companies.

Because the RIAA's member companies own over 90% of all legitimate sound recordings released in the United States, it is highly likely that most links containing the

names of recognizable artists are linking to copyrighted material. There exist several public resources (such as www.cdnow.com or www.allmusic.com) through which you can confirm the ownership of any particular sound recording, and thereby determine whether a recording label owns the rights to that recording.

In addition to the numerous links to copyrighted material, we further object to the frequent use on the Site of album cover art relating to member company albums. Our member companies typically also copyright such images, and their appearance on the Site constitutes numerous acts of direct infringement.

We have a good faith belief that none of the above-described activity is authorized by the copyright owner, its agent, or the law. As such, this activity at a minimum constitutes direct, contributory and/or vicarious copyright infringement.

We demand that you immediately disable the site or all of the infringing links from the Site. We reiterate that our objection is not limited to the links specially identified in Exhibit C, and that we demand the removal of any and all links to sound recordings that are copyrighted by our member companies. We further demand that you remove all infringing use of album artwork that is copyrighted by our member companies

Please remove all infringing links and artwork by Friday, June 2, 2000. If any infringing links or artwork remain posted on the Site by close of business on that date, we will be forced to pursue alternative legal remedies.

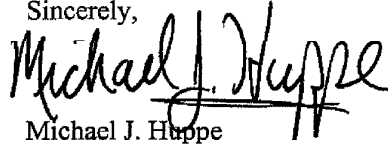
This letter does not constitute a waiver of any right to recover damages incurred by virtue of any such unauthorized activities, and such rights as well as claims for other relief are expressly retained. We assert that the information in this notification is accurate, based upon the data available to us.

Nothing in this letter should be construed to indicate either that you are an Internet Service Provider, or that you are eligible for any of the "safe harbor" provisions of the Digital Millennium Copyright Act. We expressly refute either of these potential claims.

If you wish to discuss this notice further, you may contact me at the RIAA, 1330 Connecticut Avenue, N.W., Suite 300, Washington, D.C., 20036, Tel. (202) 775-0101. You can also reach me by e-mail at antipiracy@riaa.com.

We await your response.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Huppe". The signature is written in a cursive style with a horizontal line underlining the name.

Michael J. Huppe
Anti-Piracy Counsel
RIAA

Enclosures

cc: Karen Nations, Esq., Metromedia Fiber Network Services, Inc. (via U.S. Mail)