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ROSS PLANK  
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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **WESTERN DIVISION**

11 FONOVisA, INC., a California corporation; ) Case No. CV03-6371 DT (FMOx)  
BMG Music, a New York general partnership; )  
12 and WARNER BROS. RECORDS INC., a ) **ANSWER OF ROSS PLANK TO**  
Delaware corporation, ) **COMPLAINT**  
13 )  
Plaintiffs, ) DEMAND FOR JURY TRIAL  
14 )  
v. )  
15 )  
ROSS PLANK, )  
16 )  
Defendant. )  
17 )

18 Defendant Ross Plank hereby responds to the complaint as follows:

19 1. Defendant admits that this is a civil action seeking damages and injunctive relief for  
20 copyright infringement.

21 2. Defendant admits that this Court has subject matter jurisdiction over this action  
22 pursuant to 28 U.S.C. §§ 1331 and 1338(a).

23 3. Defendant admits that this Court has personal jurisdiction over the Defendant, that  
24 venue is proper in this District, and that Defendant resides in this District. Defendant denies the  
25 remaining allegations of paragraph 3 of the Complaint.

26 4. Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph  
27 4 of the Complaint and on that basis denies the allegations therein.

28 5. Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph

1 5 of the Complaint and on that basis denies the allegations therein.

2 6. Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph  
3 6 of the Complaint and on that basis denies the allegations therein.

4 7. Defendant admits that he resides in this district.

5 8. Defendant incorporates herein by reference the responses in paragraphs 1-7 above in  
6 response to paragraph 8 of the Complaint.

7 9. Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph  
8 9 of the Complaint and on that basis denies the allegations therein.

9 10. Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph  
10 10 of the Complaint and on that basis denies the allegations therein.

11 11. Defendant lacks sufficient knowledge to admit or deny the allegations in paragraph  
12 11 of the Complaint regarding the sound recordings listed in Exhibit B of the Complaint and on  
13 that basis denies the allegations. Defendant denies the remaining allegations in paragraph 11.

14 12. Defendant denies the allegations in paragraph 12 of the Complaint.

15 13. Defendant denies the allegations in paragraph 13 of the Complaint.

16 14. Defendant denies the allegations in paragraph 14 of the Complaint.

17 **AFFIRMATIVE DEFENSES**

18 Defendant hereby asserts the following Affirmative Defenses in this case:

19 **FIRST AFFIRMATIVE DEFENSE**

20 1. The complaint fails to state a claim upon which relief can be granted.

21 **SECOND AFFIRMATIVE DEFENSE**

22 2. Plaintiffs have failed to join indispensable parties.

23 **THIRD AFFIRMATIVE DEFENSE**

24 3. Plaintiffs' claims are barred by the doctrine of unclean hands.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 4. Plaintiffs' claims for monetary damages, fees, costs and injunctive relief are barred  
27 by the safe harbors set forth in 17 U.S.C. § 512.

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FIFTH AFFIRMATIVE DEFENSE

5. Plaintiffs' claims are barred by license, consent, acquiescence, waiver, laches and estoppel.

SIXTH AFFIRMATIVE DEFENSE

6. Plaintiffs' claims are barred by the doctrine of copyright misuse.

SEVENTH AFFIRMATIVE DEFENSE

7. Plaintiffs' claims with respect to sound recordings are barred by the Audio Home Recording Act, 17 U.S.C. § 1008.

EIGHTH AFFIRMATIVE DEFENSE

8. Plaintiffs' claims are barred by the Fourth Amendment to the United States Constitution.

NINTH AFFIRMATIVE DEFENSE

9. Plaintiffs' claims are barred by the doctrine of fair use.

TENTH AFFIRMATIVE DEFENSE

10. Plaintiffs' claims are barred by the First Amendment to the United States Constitution.

ELEVENTH AFFIRMATIVE DEFENSE

11. Plaintiffs' claims for statutory damages are barred by the U.S. Constitution.

TWELFTH AFFIRMATIVE DEFENSE

12. Plaintiffs' claims are barred for lack of subject matter jurisdiction to the extent Plaintiffs lack valid registrations of copyrights alleged in the complaint.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Plaintiffs' claims are barred to the extent they have caused fraud upon the Copyright Office.

FOURTEENTH AFFIRMATIVE DEFENSE

14. Plaintiffs' claims are barred by the first sale doctrine.

FIFTEENTH AFFIRMATIVE DEFENSE

15. Plaintiffs' claims are barred by their failure to mitigate damages.



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**PRAYER FOR RELIEF**

WHEREFORE, the Defendant asks this Court for judgment as follows:

- A. That Plaintiffs take nothing by their Complaint;
- B. That the Defendant be awarded his costs and attorneys fees with respect to this action; and
- C. For other relief as this Court determines to be just and equitable.

DATED: October 22, 2003

Respectfully submitted,

ELECTRONIC FRONTIER FOUNDATION

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