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KEKER & VAN NEST

1 DAVID E. KENDALL (*pro hac vice*)  
WILLIAMS & CONNOLLY LLP  
2 725 Twelfth Street, N.W.  
Washington, D.C. 20005  
3 Telephone: (202) 434-5000  
Facsimile: (202) 434-5029

4 *Attorneys for the Motion Picture Studio Plaintiffs*  
(*Other than the Time Warner studio plaintiffs*)

5 RUSSELL J. FRACKMAN (SBN 49087)  
6 MITCHELL SILBERBERG & KNUPP LLP  
11377 West Olympic Boulevard  
7 Los Angeles, CA 90064-1683  
Telephone: (310) 312-2000  
8 Facsimile: (310) 312-3100

9 *Attorneys for the Record Company Plaintiffs*  
(*Other than the Time Warner record company plaintiffs*)

10 ROBERT M. SCHWARTZ (SBN 117166)  
O'MELVENY & MYERS LLP  
11 1999 Avenue of the Stars, Seventh Floor  
Los Angeles, CA 90067-6035  
12 Telephone: (310) 553-6700  
Facsimile: (310) 246-6779

13 *Attorneys for the Time Warner Plaintiffs*

CAREY R. RAMOS (*pro hac vice*)  
PAUL, WEISS, RIFKIND,  
WHARTON & GARRISON  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Telephone: (212) 373-3000  
Facsimile: (212) 757-3900

*Attorneys for the Music Publisher Plaintiffs*

14 UNITED STATES DISTRICT COURT

15 CENTRAL DISTRICT OF CALIFORNIA

16 METRO-GOLDWYN-MAYER  
17 STUDIOS INC., et al.,

18 Plaintiffs,

19 v.

20 GROKSTER, LTD., et al.,

21 Defendants.

22 JERRY LEIBER, et al.,

23 Plaintiffs,

24 v.

25 CONSUMER EMPOWERMENT BV  
a/k/a FASTTRACK, et al.,

26 Defendants.

27 AND RELATED COUNTERCLAIMS.  
28

Case No. CV 01 08541 SVW (PJWx)  
(Consolidated with CV 01 09923 SVW  
(PJWx))

**NOTICE OF MOTION AND MOTION  
BY PLAINTIFFS FOR SUMMARY  
JUDGMENT ON LIABILITY OR,  
ALTERNATIVELY, PARTIAL  
SUMMARY JUDGMENT AGAINST  
DEFENDANTS STREAMCAST  
NETWORKS, MUSICCITY  
NETWORKS, INC., GROKSTER, LTD.,  
AND KAZAA B.V.;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

Date: December 2, 2002

Time: 1:30 p.m.

Ctrlm: The Hon. Stephen V. Wilson

**[REDACTED PUBLIC VERSION]**

1 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD HEREIN:

2

3 PLEASE TAKE NOTICE that, on December 2, 2002, at 1:30 p.m., or as soon  
4 thereafter as counsel may be heard, in the Courtroom of the Honorable Stephen V.  
5 Wilson, 312 N. Spring Street, Los Angeles, California 90012, all plaintiffs in Case  
6 Nos. CV 01 08541 SVW (PJWx) and CV 01 09923 SVW (PJWx) (collectively  
7 "Plaintiffs") will and hereby do move the Court pursuant to Federal Rule of Civil  
8 Procedure 56 for summary judgment against defendants Streamcast Networks,  
9 formerly known as MusicCity.com, Inc., MusicCity Networks, Inc., Grokster, LTD.,  
10 and Kazaa B.V., formerly known as Consumer Empowerment B.V. a/k/a FastTrack  
11 ("Kazaa") (collectively "Defendants") on the issue of Defendants' liability to  
12 Plaintiffs for contributory copyright infringement and/or on the issue of Defendants'  
13 liability to Plaintiffs for vicarious copyright infringement.

14 This Motion is made on the grounds that, as to the foregoing, there is no  
15 genuine issue as to any material fact and that Plaintiffs are entitled to judgment on  
16 those issues as a matter of law.

17 This Motion is and will be based on:

- 18 ▪ this Notice of Motion and Motion;
  - 19 ▪ the accompanying Memorandum of Points and Authorities;
  - 20 ▪ the Statement of Uncontroverted Facts and Conclusions of Law filed  
21 concurrently herewith;
  - 22 ▪ the following Declarations filed concurrently herewith (unless otherwise  
23 indicated):
- 24 Mark Eisenberg ("Eisenberg Decl.")  
25 Richard Cottrell ("Cottrell Decl.")  
26 David Seklir ("Seklir Decl.")  
27 Michael Ostroff ("Ostroff Decl.")  
28 Derek Ferguson ("Ferguson Decl.")

- 1 Wade Leak ("Leak Decl.")
- 2 Claire Robinson ("C. Robinson Decl.")
- 3 Jeremy Williams ("Williams Decl.")
- 4 Ben Zinkin ("Zinkin Decl.")
- 5 Paul J. Vidich ("Vidich Decl.")
- 6 Frank Creighton (Creighton Decl.)
- 7 Prof. Leonard Kleinrock ("Kleinrock Decl.")
- 8 Patrick Breslin ("Breslin Decl.")
- 9 Vance Ikezoye ("Ikezoye Decl.")
- 10 David Hyman ("Hyman Decl.")
- 11 Linda Bodenstein ("Bodenstein Decl.")
- 12 George M. Borkowski ("Borkowski Decl.")
- 13 Melanie Breen ("Breen Decl.")
- 14 Lamont Dozier ("Dozier Decl.")
- 15 Petersen W. Jaegerman ("Jaegerman Decl.")
- 16 Jerry Leiber ("Leiber Decl.")
- 17 Mike Stoller ("Stoller Decl.")
- 18 Irwin Z. Robinson ("I. Robinson Decl.")
- 19 Michael Goldsen ("Goldsen Decl.")
- 20 Jacqueline C. Charlesworth ("Charlesworth Decl.")
- 21 Charles J. Sanders ("Sanders Decl.")
- 22 Jonathan Cole ("Cole Decl.")
- 23 Gordon Shock ("Shock Decl.")
- 24 Michael-Ann Brown ("Brown Decl.")
- 25 Ken Jacobsen ("Jacobsen Decl.")
- 26 Mary McGuire ("McGuire Decl.")
- 27 Jared Jussim ("Jussim Decl.")
- 28 Scott M. Martin ("Martin Decl.")

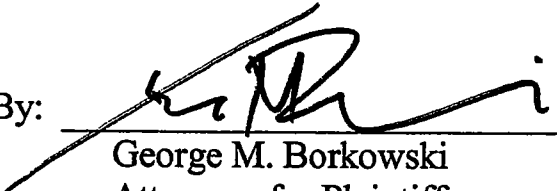
1 Holley Leff-Pressman ("Leff-Pressman Decl.")  
2 Patricia Villalobos ("Villalobos Decl.")  
3 Michael Moore ("Moore Decl.")  
4 the depositions of Steve Griffin ("Griffin Depo."), Darrell Smith ("Smith  
5 Depo."), Michael Weiss ("Weiss Depo."), Daniel Rung ("D. Rung Depo."), Matthew  
6 Rung ("M. Rung Depo."), William Kallman ("Kallman Depo."), Jeffrey Tung ("Tung  
7 Depo."), Kevin Bermeister ("Bermeister Depo."), Anthony Rose ("Rose Depo."), Jeff  
8 Hardison ("Hardison Depo.") and certain exhibits thereto, all attached as Exhibits to  
9 the Borkowski Declaration;

- 10 ▪ Defendants' Answers and Amended Answers in this Action;
- 11 ▪ Defendants' interrogatory and other discovery responses;
- 12 ▪ all matters of which this Court may take judicial notice;
- 13 ▪ all pleadings and papers on file in this action; and
- 14 ▪ any further evidence and argument presented at or prior to the hearing or  
15 ruling on this Motion.

16 This Motion is filed pursuant to this Court's July 12, 2002, Order and,  
17 consequently, the pre-motion conference of counsel requirements of Local Rule 7-3  
18 do not apply with respect to this Motion.

19  
20 Dated: September 9, 2002

MITCHELL SILBERBERG & KNUPP LLP

21  
22 By:   
23 George M. Borkowski  
24 Attorneys for Plaintiffs

25 DAVID E. KENDALL  
26 ROBERT J. SHAUGHNESSY  
27 THOMAS G. HENTOFF  
28 WILLIAMS & CONNOLLY LLP

RUSSELL J. FRACKMAN  
GEORGE M. BORKOWSKI  
STEVEN B. FABRIZIO  
BRIAN A. ROSS  
NICOLE HARRIS  
MITCHELL SILBERBERG & KNUPP LLP

GREGORY P. GOECKNER  
MARK D. LITVACK  
MOTION PICTURE ASSOCIATION

MATTHEW J. OPPENHEIM

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OF AMERICA, INC.

JAN B. NORMAN

*Attorneys for Plaintiffs Metro-Goldwyn-Mayer Studios Inc., Columbia Pictures Industries, Inc., Disney Enterprises, Inc., Paramount Pictures Corporation, Twentieth Century Fox Film Corporation, and Universal City Studios, Inc.*

ROBERT M. SCHWARTZ  
MARVIN S. PUTNAM  
JANE E. LIPPMAN  
O'MELVENY & MYERS LLP

*Attorneys for Plaintiffs Time Warner Entertainment Company, L.P., New Line Cinema Corp., Atlantic Recording Corporation, Rhino Entertainment Company f/k/a Atlantic Rhino Ventures Inc., Elektra Entertainment Group Inc., London-Sire Records Inc., Warner Bros. Records Inc., WEA International Inc., and Warner Music Latina Inc.*

DEAN C. GARFIELD  
RECORDING INDUSTRY  
ASSOCIATION OF AMERICA, INC.

*Attorneys for Plaintiffs Arista Records, Inc., Atlantic Recording Corporation, Bad Boy Records, Capitol Records, Inc., Hollywood Records, Inc., Interscope Records, Lavaca Records, Motown Record Company, LP, The RCA Records Label, a unit of BMG Music d/b/a BMG Entertainment, Sony Music Entertainment Inc., UMG Recordings, Inc., Virgin Records America, Inc., Walt Disney Records, and Zomba Recording Corporation*

CAREY R. RAMOS  
AIDAN SYNNOTT  
THEODORE K. CHENG  
MATTHEW KALMANSON  
MELANIE BREEN  
PAUL WEISS RIFKIND WHARTON &  
GARRISON

KELLI L. SAGER  
A.J. THOMAS  
JEFFREY H. BLUM  
EDWARD M. ANDERSON  
DAVIS WRIGHT TREMAINE LLP

*Attorneys for Plaintiffs Jerry Leiber, individually and d/b/a Jerry Leiber Music, Mike Stoller, individually and d/b/a Mike Stoller Music, Peer International Corporation, Peer Music Ltd., Songs of Peer, Ltd., Criterion Music Corporation, Famous Music Corporation, Bruin Music Company, Ensign Music Corporation, and Let's Talk Shop, Inc. d/b/a Beau-Di-Do Music on behalf of themselves and all others similarly situated*

**TABLE OF CONTENTS**

	Page
1	
2	
3	TABLE OF AUTHORITIES.....iii
4	
5	I. INTRODUCTION AND SUMMARY OF ARGUMENT.....1
6	II. THE UNDISPUTED FACTS.....4
7	A. Defendants Modeled Their Systems On Napster's Infringing System....4
8	B. Defendants Provide The Same Experience Napster Did. ....10
9	C. Defendants Provide And Control The Site And Facilities For
10	Infringement.....11
11	
12	III. PLAINTIFFS ARE ENTITLED TO SUMMARY JUDGMENT.....17
13	IV. PLAINTIFFS OWN THE COPYRIGHTS TO WORKS INFRINGED.....18
14	V. DEFENDANTS' USERS ARE DIRECT INFRINGERS.....18
15	VI. DEFENDANTS ARE LIABLE FOR CONTRIBUTORY
16	INFRINGEMENT.....19
17	A. Defendants Have Induced, Caused, And Materially Contributed To
18	Direct Infringement.....20
19	B. Defendants Have Knowledge Of Their Users' Direct Infringement.....23
20	1. Plaintiffs Have Given Defendants Repeated Notices Of Millions
21	of Infringements.....23
22	2. Defendants Deliberately Set Out To Copy And Surpass Napster's
23	Infringing Business Model.....24
24	3. Defendants Collected Information About, And Have Direct
25	Knowledge Of, The Infringements On Their Systems.....26
26	
27	
28	

1  
2  
3  
4  
5  
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20  
21  
22  
23  
24  
25  
26  
27  
28

4. There Is Substantial Undisputed Evidence Of Defendants'  
Constructive Knowledge Of Infringement: .....28

VII. DEFENDANTS ARE SEPARATELY LIABLE FOR VICARIOUS  
INFRINGEMENT.....30

A. Defendants Financially Benefit From Their Users' Infringing  
Activity.....31

B. Defendants Have The Right And Ability To Supervise Users'  
Conduct.....34

1. Defendants Maintain and Exercise Control Over Their Systems'  
Function.....35

2. Defendants Control Access To Their Systems.....36

3. Defendants Also Have The Ability To Block Infringement.....40

VIII. DEFENDANTS' *SONY-BETAMAX* DEFENSE FAILS AS A  
MATTER OF LAW.....44

IX. CONCLUSION.....50

**TABLE OF AUTHORITIES**

Page

**CASES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
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23  
24  
25  
26  
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In Re: Aimster Copyright Litigation  
 slip op. MDL No. 14265, 2002 WL 31006142  
 (N.D. Ill., September 4, 2002).....3, 11, 17, 18, 20, 22  
 .....22, 23, 25, 26, 27, 29  
 .....30, 33, 44, 45, 46, 47

ALS Scan, Inc. v. RemarQ Communities, Inc.,  
 239 F.3d 619 (4th Cir. 2001).....23

A&M Records, Inc. v. Abdallah,  
 948 F. Supp. 1449 (C.D. Cal. 1996).....45, 47, 48, 49

A&M Records, Inc. v. Heilman,  
 75 Cal. App. 3d 554 (1977).....17

A&M Records, Inc. v. Napster, Inc.,  
 114 F. Supp. 2d 896 (N.D. Cal. 2000) .....1, 2, 4, 11, 27, 44

A&M Records, Inc. v. Napster, Inc.,  
 239 F.3d 1004 (9th Cir. 2001)..... 1, 3, 4, 17-19, 22, 23, 25, 26, 28  
 ..... 28, 30, 32, 33, 37, 43-45, 48

A&M Records, Inc. v. Napster, Inc.,  
 54 U.S.P.Q. 2d 1746 (N.D. Cal. 2000) .....20, 22, 44

Anderson v. Liberty Lobby, Inc.,  
 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).....16

Atari, Inc. v. JS&A Group, Inc.,  
 597 F. Supp. 5 (N.D. Ill. 1983) .....49

Cable/Home Communication Corp. v. Network Product, Inc.,  
 902 F.2d 829 (11th Cir. 1990).....18, 45

1	<u>Cal. Arch. Building Products, Inc. v. Franciscan Ceramics, Inc.,</u>	
2	818 F.2d 1466 (9th Cir. 1987).....	16
3	<u>Casey By &amp; Through Casey v. Old Line Life Insurance Co.,</u>	
4	996 F. Supp. 939 (N.D. Cal. 1998) .....	43
5	<u>Castle Rock Entertainment v. Carol Publishing Group, Inc.,</u>	
6	955 F. Supp. 260 (S.D.N.Y. 1997).....	28
7	<u>Celotex Corp. v. Catrett,</u>	
8	477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).....	16, 43
9	<u>In re Certain Personal Computers,</u>	
10	224 U.S.P.Q. 270 (U.S. Int'l Trade Comm'n 1984) .....	48
11	<u>Chess Music, Inc. v. Sipe,</u>	
12	442 F. Supp. 1184 (D. Minn. 1977) .....	33
13	<u>Columbia Pictures Industries, Inc. v. Aveco, Inc.,</u>	
14	800 F.2d 59 (3d Cir. 1986).....	45
15	<u>Compaq Computer Corp. v. Procom Tech., Inc.,</u>	
16	908 F. Supp. 1409 (S.D. Tex. 1995) .....	47
17	<u>Costar Group, Inc. v. Loopnet, Inc.,</u>	
18	164 F. Supp. 2d 688 (D. Md. 2001) .....	45
19	<u>Danjaq SA v. MGM/UA Communications Co.,</u>	
20	773 F. Supp. 194 (C.D. Cal. 1991).....	18
21	<u>Demetriades v. Kaufman, ,</u>	
22	690 F. Supp. 289 (S.D.N.Y. 1988).....	29
23	<u>Famous Music Corp. v. Bay State Harness Horse Racing</u>	
24	<u>and Breeding Association,</u>	
25	554 F.2d 1213 (1st Cir. 1977) .....	31
26	<u>Fonovisa, Inc. v. Cherry Auction, Inc.,</u>	
27	76 F.3d 259 (9th Cir. 1996).....	18, 19, 22, 23, 33, 38, 45
28		

1	<u>Gershwin Publishing Corp. v. Columbia Artists Management, Inc.,</u>	
2	443 F.2d 1159 (2d Cir. 1971).....	18, 29, 33
3	<u>Herbert v. Shanley Co.,</u>	
4	242 U.S. 591, 37 S. Ct. 232, 61 L.Ed. 511 (1917).....	31
5	<u>Major Bob Music v. Stubbs,</u>	
6	851 F. Supp. 475 (S.D. Ga. 1994).....	32
7	<u>Marobie-FL., Inc. v. National Associate of Fire Equipment District,</u>	
8	983 F. Supp. 1167 (N.D. Ill. 1997) .....	18
9	<u>Matsushita Electric Industrial Co. Ltd. v. Zenith Radio Corp.,</u>	
10	475 U.S. 574, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986).....	16
11	<u>New York Times Co. v. Tasini,</u>	
12	533 U.S. 483, 121 S. Ct. 2381, 150 L. Ed. 2d 500 (2001).....	47
13	<u>Olan Mills, Inc. v. Linn Photo Co.,</u>	
14	23 F.3d 1345 (8th Cir. 1994).....	23
15	<u>Peer International Corp. v. Luna Records, Inc.,</u>	
16	887 F. Supp. 560 (S.D.N.Y. 1995).....	30
17	<u>Perfect 10, Inc. v. Cybernet Ventures, Inc.,</u>	
18	2002 U.S. Dist. LEXIS 7333, 2002 WL 731721	
19	(C.D. Cal. April 22, 2002).....	17, 19, 23, 32, 38
20	<u>Playboy Enterprises, Inc. v. Terri Welles, Inc.,</u>	
21	279 F.3d 796 (9th Cir. 2002).....	24
22	<u>Playboy Enterprises, Inc. v. Russ Hardenburgh, Inc.,</u>	
23	982 F. Supp. 503 (N.D. Ohio 1997).....	18, 29, 32
24	<u>Playboy Enterprises, Inc. v. Webbworld, Inc.,</u>	
25	968 F. Supp. 1171 (N.D. Tex. 1997).....	30, 32, 39
26	<u>PolyGram International Publishing, Inc. v. Nevada/TIG, Inc.,</u>	
27	855 F. Supp. 1314 (D. Mass. 1994) .....	30
28		

1	<u>RCA/Ariola International, Inc. v. Thomas &amp; Grayston Co.,</u>	
2	845 F.2d 773 (8th Cir. 1988).....	30, 33, 43
3	<u>RCA Records v. All-Fast Systems, Inc.,</u>	
4	594 F. Supp. 335 (S.D.N.Y. 1984).....	17, 33, 45, 47
5	<u>RSO Records, Inc. v. Peri,</u>	
6	596 F. Supp. 849 (S.D.N.Y. 1984).....	29
7	<u>Religious Technology Center v. Lerma,</u>	
8	40 U.S.P.Q. 2d 1569 (E.D. Va. 1996).....	19
9	<u>Saenger Organization, Inc. v. Nationwide Insurance</u>	
10	<u>Licensing Associates Inc.,</u>	
11	119 F.3d 55 (1st Cir. 1997).....	29
12	<u>Sega Enterprises, Ltd. v. MAPHIA,</u>	
13	857 F. Supp. 679 (N.D. Cal. 1994) .....	17, 29, 32, 48, 49
14	<u>Sega Enterprises, Ltd. v. MAPHIA,</u>	
15	948 F. Supp. 923 (N.D. Cal. 1996) .....	18, 20
16	<u>Shapiro, Bernstein &amp; Co. v. H.L. Green Co.,</u>	
17	316 F.2d 304 (2d Cir. 1963).....	30, 33
18	<u>Sony Corp. v. Universal City Studios, Inc.,</u>	
19	464 U.S. 417, 104 S. Ct. 774, 78 L. Ed. 2d 574 (1984).....	1, 3, 43, 44, 45, 47, 48
20	<u>Transgo, Inc. v. Ajac Transmission Parts Corp.,</u>	
21	768 F.2d 1001 (9th Cir. 1985).....	17
22	<u>UMG Recordings, Inc. v. MP3.com, Inc.,</u>	
23	92 F. Supp. 2d 349 (S.D.N.Y. 2000).....	19
24	<u>United States v. Moghadam,</u>	
25	175 F.3d 1269 (11th Cir. 1999).....	17
26	<u>Universal City Studios Inc. v. American Invsco Management, Inc.,</u>	
27	217 U.S.P.Q. 1076 (N.D. Ill. 1981).....	29
28		

1	<u>Universal City Studios, Inc. v. Reimerdes,</u>	
2	111 F. Supp. 2d 294 (S.D.N.Y. 2000).....	12
3		
4	<b>STATUTES</b>	
5	17 U.S.C. § 101 .....	32
6	17 U.S.C. § 102(a)(7).....	17
7		
8	17 U.S.C. § 106(1) .....	17
9	17 U.S.C. § 205(c).....	29
10	17 U.S.C. §301(c).....	17
11		
12	17 U.S.C. § 410(c).....	17
13	Cal. Civ. Code § 980(a)(2).....	17
14	<b>Federal Rule of Civil Procedure</b>	
15	Rule 26.....	17
16	Rule 56.....	1, 16
17		
18		
19		
20		
21		
22		
23		
24		
25		
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION AND SUMMARY OF ARGUMENT

3 *"Morpheus has such a high media content with almost every user*  
4 *interested in music in many capacities. If someone were to download a*  
5 ***Pearl Jam** song, and then see a banner ad featuring Spin's cover story*  
6 *on **Pearl Jam**, the probability of them clicking on that ad are through*  
7 *the roof."*

8 MusicCity sales executive soliciting advertising from  
9 Spin magazine SUF 3(l); 33782(emphasis added)<sup>1</sup>

10 \* \* \*

11 *Q: "I downloaded fast and the furious and mummy returns and i can*  
12 *only hear the sound, i can't watch the video. What would i have to*  
13 *download to watch movies."*

14 *A: Grokster uses Windows Media Player as its media player. Please*  
15 *get it and install from: [link provided]"*

16 Grokster Support response to a user inquiry SUF  
17 3(p); GR07574 (emphasis added)

18 This Court has articulated the appropriate framework for analyzing this case:  
19 are Defendants' systems more like the infringing Napster system that was enjoined in  
20 2001, A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004 (9th Cir. 2001) ("Napster  
21 I"), or the video recorder product used for time-shifting of free, over-the-air television  
22 broadcasts at issue in Sony Corp. v. Universal City Studios, Inc., 464 U.S. 417, 104  
23 S. Ct. 774, 78 L. Ed. 2d 574 (1984) ("Sony-Betamax")? See 6/13/02 Tr. at 3. The  
24 uncontroverted facts all point to the inescapable conclusion: Defendants' systems  
25 were designed and intended first to emulate Napster and then to surpass it.  
26 Defendants have succeeded beyond their wildest dreams. Their systems have more  
27 users than Napster (tens of millions by last report) and distribute and copy more types  
28 of copyrighted media files than Napster. Defendants also have more of an ongoing  
relationship with their users, enable and facilitate much more rampant infringement

---

1 Citations to Supporting Facts in Plaintiffs' Statement of Uncontroverted Facts are referred to as "SUF." Documents and deposition excerpts are attached to the Borkowski Declaration.

1 of Plaintiffs' songs and movies, and reap far more financial benefit than Napster ever  
2 did. Defendants succeeded in reaching their goal: to "Do Napster Better." Hardison  
3 Depo. 147:20-24 & Ex. 126; SUF 3(c).

4 The similarity between Defendants' systems and Napster is not accidental.  
5 Their systems were designed to "fill the void" left by Napster's shutdown. KZ1448-  
6 52; SUF(f). Over time, Defendants have evolved Napster's basic business model – to  
7 use pirated copyrighted content as a draw to attract a huge, valuable user base. This  
8 is how Defendants make money: they earn advertising revenue by attracting millions  
9 of users to their systems by offering them a treasure trove of pirated music, movies,  
10 and other copyrighted media for free without any compensation to the copyright  
11 owners. Like Napster, Defendants built and are profiting from businesses where  
12 infringing content is the "glittering object" that attracts users to Defendants' systems.  
13 See A&M Records, Inc. v. Napster, Inc., 114 F. Supp.2d 896, 922 (N.D. Cal. 2000).

14 The undisputed facts (which have come to light in discovery that Defendants  
15 sought to foreclose by filing their original, premature motion for summary judgment)  
16 demonstrate incontrovertibly that Defendants created, operate, and control  
17 sophisticated systems that overwhelmingly are used for copyright infringement.  
18 Defendants remain in continuous contact with their users, providing them with the  
19 tools for infringement and the anonymity in which to infringe with impunity. In their  
20 own words, Defendants provide "an interactive community" – "a community of users  
21 not just [a software] application[.]" MJT0374; SUF 8(b). Defendants have refused to  
22 take meaningful steps to limit infringement in any way, while at the same time adding  
23 features to filter pornography and "offensive content" when it served their business  
24 interests. Defendants – who supervise and control their systems – could do much  
25 more, but they have deliberately chosen to turn a blind eye to the massive  
26 infringement their systems enable, facilitate, and encourage. Instead, "Defendants  
27 manage to do everything but actually steal the music [and movies] off the store shelf  
28

1 and hand" them to their users. In Re: Aimster Copyright Litigation, slip op. MDL  
2 No. 1425 (N.D. Ill., September 4, 2002), at 24.<sup>2</sup>

3 Rather than seeking authorization from copyright owners to exploit their  
4 works, Defendants seek what amounts to a permanent, free license for their  
5 infringement. They ask the Court to adopt an unprecedented expansion of the "staple  
6 article of commerce" doctrine articulated in Sony-Betamax. However, in the eighteen  
7 years since it was decided, Sony-Betamax has never been held to be a defense in any  
8 circumstance remotely similar to these or to any online infringing system and  
9 network. To the contrary, the Ninth Circuit in Napster I, 239 F.3d at 1020, held  
10 Sony-Betamax *inapplicable* to an online infringing system and network, as did the  
11 Court in Aimster, at 25-28.

12 Stripped of the Sony-Betamax defense, Defendants' liability is manifest. First,  
13 they are liable for contributory infringement because they materially facilitate their  
14 users' infringement of Plaintiffs' copyrighted works. Infringement of such staggering  
15 proportions would be impossible without the systems and tools Defendants created,  
16 maintain, and continue to provide. Defendants also know (actual and constructive  
17 knowledge) exactly what their users do on their systems – they infringe massively.  
18 Second, Defendants separately are vicariously liable because they benefit financially  
19 from the infringement rampant on their systems, and refuse to exercise their reserved  
20 right and ability to police and supervise their systems to prevent that infringement.  
21 The material facts are few, and they are undisputed or indisputable. Accordingly,  
22 Plaintiffs are entitled to summary judgment on the issue of Defendants' liability for  
23 both contributory and vicarious infringement.

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25  
26 <sup>2</sup> Just last week, Chief Judge Aspen in the Northern District of Illinois issued a  
27 preliminary injunction against Aimster, another infringing system that followed in  
28 Napster's footsteps and that is very similar to Defendants' systems. In his detailed  
opinion, Judge Aspen rejected the same arguments Defendants here are advancing or  
could advance. The slip opinion is attached as Ex. 74 to the Borkowski Decl.

1 **II. THE UNDISPUTED FACTS**

2 As demonstrated in the accompanying Statement of Uncontroverted Facts and  
3 Conclusions of Law and the evidence that it cites, Defendants' systems enable and  
4 facilitate tens of millions of their users to distribute digital files containing Plaintiffs'  
5 copyrighted sound recordings, musical compositions, motion pictures, and other  
6 filmed entertainment from their personal computers for copying by other users. A  
7 user sitting at his computer today may use any of Defendants' systems easily to find,  
8 make, and distribute illegal copies of hit motion pictures that are in first-run theatrical  
9 release, and of an endless variety of musical works owned by Plaintiffs yet provided  
10 for free by Defendants. SUF 2(a)-(c), (e), (f). Users who search for and copy those  
11 songs and movies by downloading them into their own computers then make these  
12 new copies available for further distribution to even more users in an ever-expanding  
13 cycle of infringement. The user experience, and the resulting massive infringement,  
14 is the same on Defendants' systems as it was on Napster, except on an even greater  
15 scale, and extending well beyond music. See A&M Records, 114 F. Supp. 2d at 905-  
16 07; Napster I, 239 F.3d at 1011-12 (descriptions of Napster system); Kleinrock Decl.  
17 ¶¶ 17-23 (same).

18 **A. Defendants Modeled Their Systems On Napster's Infringing System.**

19 From their inception, Defendants modeled their systems on the infringing  
20 Napster system. SUF 3 (c) Around the time that Napster was enjoined by the Ninth  
21 Circuit and began to take steps to block some infringing content from its system,  
22 Defendants went into business to fill Napster's shoes. They first built and operated  
23 some of the largest infringing "openNap" systems – essentially Napster clones that  
24 Defendants based on unauthorized versions of Napster software. SUF 3(c); Ex.  
25 145/ID171303 ("We have put this network in place so that when Napster pulls the  
26 plug on their free service (or if the Court orders them shut down prior to that), we will  
27 be positioned to capture the flood of their 32 million users that will be actively  
28 looking for an alternative."); KVO000040-43 ("Initially, we launched our Alternative

1 Napster Network so there could be a solid network that could handle the load of  
2 disenfranchised Napster users"); ID171405 ("We have commandeered nearly 35% of  
3 all the alternative Napster users."); ID171405 (MusicCity's then-CEO reports to  
4 board member that MusicCity's OpenNap "client has similar functionality to the  
5 Napster client."); Kleinrock Decl. ¶ 24.

6 Based directly on Napster, Defendants' systems offered users massive amounts  
7 of infringing content. MusicCity operated "the largest single non-corporate Napster  
8 server in existence," which it promoted as "The #1 Alternative to Napster." SUF  
9 3(c); ID281607/Ex. 116; ID171327 (MusicCity refers to their network as "Our  
10 'MusicCity OpenNap Alternative Napster Network'"); ID281520, ID281525,  
11 ID169135; Hardison Depo. 58:11-22. It openly bragged about this in its advertising  
12 and in presentations designed to secure investment capital: "When the lights went off  
13 at Napster . . . where did the users go? MusicCity.com"; "Frustrated Napster fans can  
14 turn to MusicCity.com"; and "Napster meet MusicCity." Exs. 113, 250; Ex.  
15 146/ID169022. MusicCity's openNap system experienced "staggering growth." SUF  
16 3(c); Griffin Depo. 117:16-24 & Ex. 250. Grokster's principals similarly operated a  
17 large "openNap"-based system under the accurately descriptive name "Swaptor." M.  
18 Rung Depo. 17:6-18:14; 22:14-22; D. Rung Depo. 36:24-37(5); Kleinrock Decl.  
19 ¶¶ 25-26.

20 Defendants ultimately recognized the risk in operating a blatantly infringing  
21 openNap system. As MusicCity's own lawyer warned it: "I recommend taking the  
22 current service down *now*. In my view, the service, which has always been risky, is  
23 now unbelievably risky." [KV062 (emphasis in original)]. Thus, after they  
24 accumulated millions of users to their systems, Defendants "migrated" their users to  
25 the even more efficiently infringing "FastTrack"-based system. SUF 3(e); see Griffin  
26 Depo. 148:18-24; 152:3-8; Weiss Depo. 598:8-599(3); D. Rung Depo. 221:5-222:24;

27  
28

1 M. Rung Depo. 31:10-17. FastTrack was developed by or at the direction of Kazaa<sup>3</sup>,  
2 and licensed by Kazaa to Defendants MusicCity and Grokster. MusicCity (which  
3 called its system "Morpheus"), Grokster, and Kazaa all initially ran their systems  
4 interoperably on the FastTrack network. M. Rung Depo. 77:80-78:11 (Music City,  
5 Grokster, and Kazaa are "pretty much all clones of each other"); Kleinrock Decl.  
6 ¶ 31. More and more users flocked to Defendants' infringing systems, which  
7 Defendants recognized were competitors of Napster's. Hardison Depo. 12-18; Ex.  
8 311 ("I am bringing 5 or 6 Napster users a night into [MusicCity's] Morpheus").  
9 Defendants reportedly now have *tens of millions of users* – many of whom are  
10 former Napster users –trafficking in *billions* of infringing copyrighted files. SUF  
11 5(a).

12 MusicCity recognized that "if we do not get the consumers migrated we do not  
13 have a company[.]" Griffin Depo. 166:20-167:3 & Ex. 262; ID172786 ("Since  
14 data/content on a P2P network is solely dependent upon peers [users], you can have  
15 the best technology in the world, but it is of no value without peers and data").  
16 MusicCity retained a public relations firm to help migrate existing openNap users to  
17 FastTrack "as quickly as possible." SUF 3(e); MUS014521; see also ID174571  
18 (MusicCity e-mail to openNap users urging them to make the switch to FastTrack,  
19 promising among other things that "[e]verything is FULLY ENCRYPTED to protect  
20 privacy"); T001083-85 (MusicCity's then-CEO to a board member: "88% of Napster  
21 users polled (sample 3,000) will not pay to use Napsters subscription service and will  
22 turn to other 'free' file swapping services ... we are the logical choice to pick up the  
23 bulk of the 74 million users that are about to 'turn Napster off'."). Even after  
24 Defendants evolved to FastTrack-based systems, they continued to market themselves  
25 through comparisons to Napster (although perhaps a bit more coyly, no less  
26

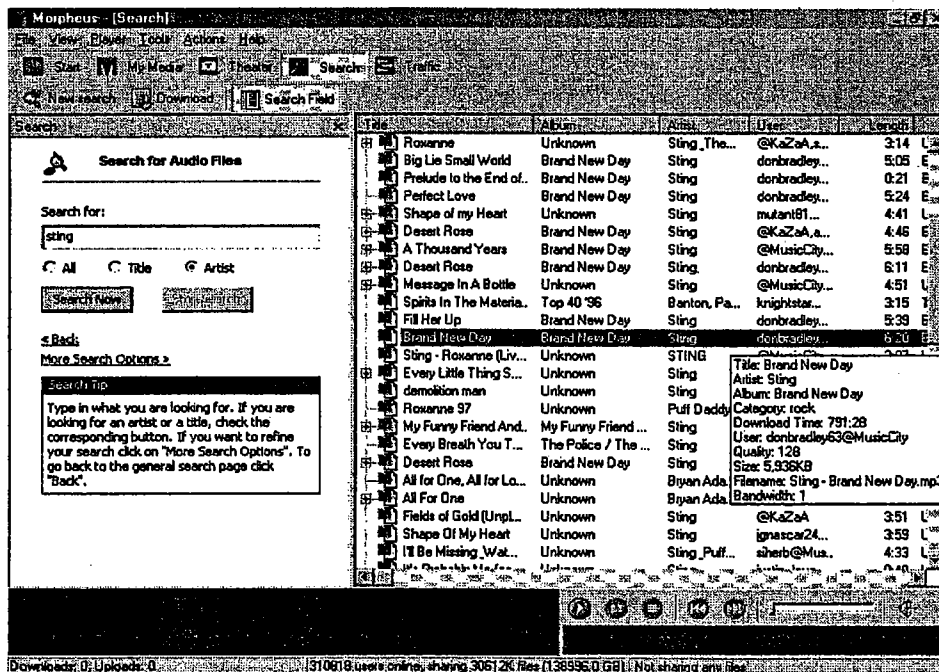
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27 <sup>3</sup> The evidence in support of this motion is drawn from, inter alia, the discovery  
28 obtained from defendants MusicCity and Grokster, but almost entirely not from  
defendant Kazaa. Kazaa has refused to obey the Court's July 12, 2002, Order.

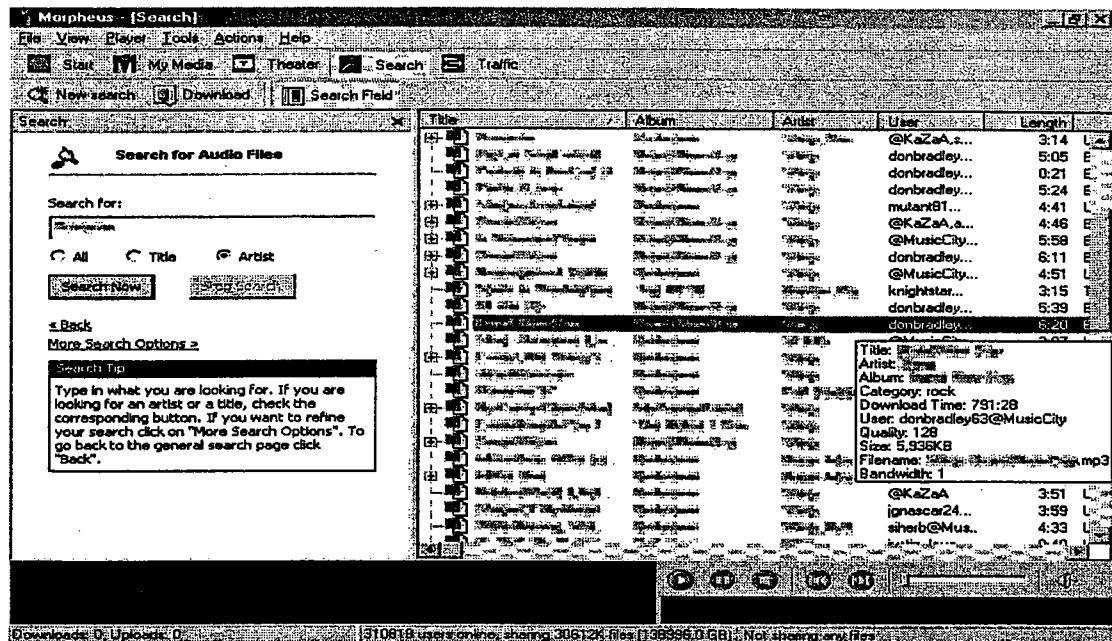
1 blatantly). For example, in its media kit, MusicCity promotes its system with  
 2 reference to the following press article headlines: "Morpheus: The Better Napster";  
 3 "As Napster Shuts, Others Carry The Tune"; "A Possible Successor To Napster"; and  
 4 "Napster Users Fall In The Arms Of Morpheus." SUF 3(f); Exs. 384-389.

5 Once they arrived at Defendants' systems, users found a candy store of free  
 6 music, movies, and other copyrighted works free for the taking. As Kazaa boasted on  
 7 its web site: "Welcome to the Kazaa community! . . . You can find your favourite  
 8 music, movies, pictures, artists, documents and more." Borkowski Decl. Ex. 32. And  
 9 indeed, that promise was fulfilled. As Defendants well-know, popular motion  
 10 pictures and music abound on Defendants' systems. SUF 2. Songs by top-selling  
 11 artists, such as Garth Brooks, Madonna, The Eagles, Jennifer Lopez, Janet Jackson,  
 12 Staind, and Eminem are all available with the click of a mouse, as is music that has  
 13 not yet been released to the public. SUF 2(a). Motion pictures, many of them still  
 14 playing in first-run theaters, also are available, including *Signs*, *Blue Crush*, *Lilo &*  
 15 *Stitch*, *Lord of the Rings*, *The Matrix*, *Gladiator*, and many others. Cole Decl. ¶ 4.

16 MusicCity even developed promotional materials featuring infringing content:



1 In a clear recognition of its culpability, MusicCity then blurred the titles of  
2 those works – stating "[h]ere is an example of keeping the examples but covering our  
3 asses":



15 SUF 3(n); ID169490; ID169502. It is no surprise that MusicCity's founder  
16 admitted in his deposition: "I fully understand that consumers are making choices to  
17 put copyrighted material in shared folders and share it with other consumers around  
18 the world." SUF 3(t); Griffin Depo. 278:5-10 & Ex. 291. This is not quite what  
19 MusicCity told the Court when it filed for summary judgment in January:  
20 "MusicCity has no particular knowledge, at the time it delivers its product, that the  
21 product will be used by a specific consumer for infringing or noninfringing uses." –  
22 Music City's January 22, 2002, Motion for Partial Summary Judgment at 2:24-26.

23 Defendants' users feasted on the virtual smorgasbord of pirated media  
24 Defendants provided. As one user gushed: "I used to use Napster all the time, and  
25 when they began battling in court I decided to look for a new place to look for all the  
26 music I love. I wanted to tell you that *I have never had a problem finding any songs*  
27 *I want* .... It is also easy to search by category and even years, so *its easy to find the*  
28 *latest tunes*. Great Job people, keep it up!" SUF 3(j); 126794 (emphasis added).

1 Another user agreed: "[we] just started using ur [sic] site and we think its great,  
2 better than napster just don't get caught!" SUF 3(j); 127155. MusicCity's advertising  
3 agents also knew what the system was all about: "Better Music Programming: ...a  
4 search on Morpheus resulted in pages of Madonna tracks, while the same search on  
5 MP3.com resulted in only two Madonna tracks." [MUS 007980-81]

6 Against the backdrop of such skyrocketing popularity, and cognizant of its  
7 clear liability, Kazaa began to play an international shell game to try to avoid  
8 liability. In early 2002, Kazaa and its principals sold Kazaa's name, web site, domain  
9 names, goodwill, and certain other assets to defendant Sharman Networks Ltd., a  
10 company registered in the South Pacific island chain of Vanuatu. However, Kazaa  
11 retained ownership of its most important asset: the FastTrack technology that is the  
12 heart of Kazaa's infringing system. KZ 001009-1046; KZ 001048-1055<sup>4</sup>

13 In late 2002, MusicCity had a payment dispute with Kazaa. In response, in  
14 February 2002, Kazaa, with Grokster's complicity, exercised ultimate control over the  
15 network and disabled *all* MusicCity users from the FastTrack network, rendering  
16 them unable to use their software to access that network or even communicate with  
17 each other. SUF 6(m); see Smith Depo. 398:2-416:17; Kleinrock Decl. ¶¶ 39, 65.  
18 Both MusicCity and Grokster admitted that this constituted control over the network  
19 and the systems. MusicCity's Chief Technology Office testified as follows:

20 ***“Q. Did your experience with Kazaa over this period of time evidence to you  
21 that Kazaa had ultimate control of the network?”***

22 ***A. Yes, it did.”***

23 Smith Depo. 416:14-17, Ex. 214; see also D. Rung Depo. 257:16-24, Ex. 40.  
24 MusicCity reacted quickly to maintain its user base, distributing new user software to  
25 continue its infringing system with "Gnutella" technology – another type of peer to  
26

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27 <sup>4</sup> Sharman, Kazaa's principals, and other related parties have been added as  
28 defendants in Plaintiffs' First Amended Complaints.

1 peer technology that achieves the same ends as the Napster and FastTrack-based  
2 systems. Like the FastTrack-based system that preceded it, MusicCity's Gnutella-  
3 based system facilitates searching directories of files available on users' computers  
4 and enables user-to-user distribution and copying. Kleinrock Decl. ¶¶ 40-44.  
5 Regardless which technology they have employed at any given time, however, –  
6 whether openNap, FastTrack, or some other – the systems organized and controlled  
7 by Defendants consistently have enabled, facilitated, and encouraged the massive  
8 infringement of Plaintiffs' copyrighted works on a scale that far surpasses Napster.

9 **B. Defendants Provide The Same Experience Napster Did.**

10 When a user accesses Defendants' systems through proprietary software that  
11 Defendants supply for free, the user enters a protected environment established for  
12 making piracy quick, easy, and failsafe. SUF 4(a), (b), (l)-(n). From the perspective  
13 of the user – easily finding, copying, and then re-distributing Plaintiffs' copyrighted  
14 works – the experience is virtually the same as Napster, except that Defendants'  
15 systems provide users not just with music, but with motion pictures, television  
16 programs, and other copyrighted content as well. As one employee of MusicCity  
17 stated, "I work for Streamcast Networks (aka Morpheus), which is similar to what  
18 Napster was[.]" SUF 3(f); Ex. 309.

19 The Defendants' FastTrack-based systems work as follows: A user connects to  
20 Defendants' systems using software Defendants have supplied. The systems enable  
21 users to make copies of songs and movies available from their computer hard drives  
22 to other users of the systems. A user searches for files meeting certain criteria,  
23 reviews a list of results, downloads selected items, and then repeats the process as  
24 often as he or she wants. For example, a user seeking music by Frank Sinatra would  
25 simply click "Audio" (to conduct a search for audio files only), click "Artist," type  
26 "Frank Sinatra," and click a search button. Seconds later, a list of audio files will  
27 appear, containing numerous Sinatra recordings. Shock Decl. ¶ 22. Clicking one  
28 item in the list initiates the downloading (copying) of the corresponding work to the

1 user's computer from that of another user, who must be connected at that time to  
2 Defendants' system. A search to obtain a copy of a feature film proceeds similarly:  
3 click "Video," click "Title," type "Black Hawk Down," and click a search button.  
4 Results showing infringing copies of the hit motion picture will be displayed. Shock  
5 Decl. ¶¶ 14-15; Kleinrock Decl. ¶ 28. Again, a click on one such selection initiates  
6 copying of the selected movie.

7 Defendants' systems copied or improved on Napster in other ways, some of  
8 which are discussed below. See Kleinrock Decl. ¶¶ 28-38 for a more detailed  
9 description of Defendants' systems' similarities with and improvements over the  
10 Napster system.

11 **C. Defendants Provide And Control The Site And Facilities For**  
12 **Infringement.**

13 When connected to Defendants' FastTrack-based systems, much occurs that is  
14 invisible to the user. The systems connect the user to a so-called "supernode."  
15 Supernodes are other users, running the standard user software, that the systems have  
16 determined have significant available computing resources and other relevant  
17 characteristics. One supernode typically supports hundreds of nodes (regular users)  
18 connected to it. At any given moment, there may be several thousand active  
19 supernodes. The systems automatically elevate users from node to supernode (and  
20 vice versa) as needed for the systems' efficient operation. SUF 4(m); Kleinrock Decl.  
21 ¶ 35.

22 The supernode maintains a composite index comprised of the names,  
23 descriptions, and Internet addresses of the files offered for distribution and copying  
24 by all users connected to that particular supernode at that time. Kleinrock Decl. ¶ 36.  
25 As soon as a user logs on to the system, a listing of the works that user is offering for  
26 distribution and copying is added to the index. When a user logs off the system, the

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28

1 listing of those works no longer is available from the index. Defendants' systems  
2 update the indices in this manner thousands of times each day.<sup>5</sup>

3 To enable users to access their systems, Defendants have selected and  
4 embedded in their software the addresses of multiple supernodes. SUF 4(i); Smith  
5 Depo. 250:6-18, 365:24-367:10, 375:13-376:10; Ex. 174/ID172758 (adding  
6 supernode IP addresses into user software was done at MusicCity's request);  
7 Kleinrock Decl. ¶¶ 37(b), 48. To ensure the system is functional, Defendants are able  
8 to, and do, periodically modify and update this list of supernode addresses. SUF 4(i).  
9 Further, the identities and activities of the supernodes are based on directions  
10 provided and updated by Defendants. SUF 4(h).<sup>6</sup> Defendants also have controlled  
11 servers that handed out lists of available supernodes to users' computers. SUF 4(h);  
12 Smith Depo. 122:15-18, 125:13-17, 125:18-24, 128:8-18; Kleinrock Decl. ¶¶ 37(b),  
13 48.

14 As a user searches Defendants' systems for a work, the search is processed by  
15 the supernode to which that user is assigned. The supernode then returns the results  
16 of the search to the user. Those results identify the users who are offering music,

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18 <sup>5</sup> Defendants claim that, because the indices of infringing files are available on  
19 supernodes (selected by Defendants' systems) and not on a server operated directly by  
20 Defendants, this distinguishes their systems from Napster. First, this argument is  
21 technically unsound. See Kleinrock Decl. ¶¶ 83-97; Hardison Depo. 215:21-216:5  
22 (Morpheus is *not* a decentralized directory). Second, it is a distinction without a  
23 difference. See Weiss Depo. 202:12-18 ("supernode acts as a *server* for a  
24 neighborhood of servers"). The fact that Defendants may "outsource" the index  
25 function (to conserve their computer resources [Weiss Depo. 94:9-19] is irrelevant to  
26 their liability for infringement, as was the fact that both Defendants and Napster  
27 farmed out the actual storage and transfer of infringing material to their users instead  
28 of storing it on their own servers. See *A&M Records*, 114 F. Supp. 2d at 907 ("The  
content of the actual . . . file is transferred over the Internet between users, not  
through the Napster servers. . . . However, *users would not be able to access the  
uploaded file names and corresponding routing data without signing on to the  
Napster system*") (emphasis added). As the Court in the Aimster copyright  
infringement litigation noted when it issued a preliminary injunction against a service  
similar to Defendants', the reasoning supporting its decision "would hold regardless  
of whether or not Aimster maintains a central database of files available for transfer."  
*Aimster* at 7 n.6.

<sup>6</sup> Certain versions of MusicCity's current Gnutella-based system have utilized the  
equivalent of supernodes as well. See Smith Depo. 482:4-20; Kleinrock Decl. ¶ 41.

1 movies, and other works for distribution and copying that match the search request.  
2 In addition to searching the files of the users connected to that particular supernode,  
3 the supernode may forward the search request to one or more other supernodes,  
4 which may in turn forward it on further. The scope of this search can be regulated by  
5 Defendants' central servers. SUF 4(g), 5(a); Smith Depo. 192:6-193:22, 195:2-23,  
6 196:10-19, 197:18-198:3, 199:10-23; Ex. 163/ID168257, 164/176100; Kleinrock  
7 Decl. ¶49(a). The search results also contain the IP addresses, or locations on the  
8 Internet, of the users' computers that are offering the sought after works for copying.

9       Once a user selects a particular work for downloading from among those listed  
10 in the search results, he or she merely clicks on the name of the file containing the  
11 work. Defendants' systems connect the requesting user to the computer of the other  
12 user offering the desired work and request a download of the music or movie. The  
13 work is then copied onto the hard drive of the requesting user's PC, creating a new  
14 copy that users can access at any time, "burn" to a CD-R or DVD-R, and/or distribute  
15 further. Unless users take affirmative steps to prevent it, they automatically and  
16 immediately begin offering the unauthorized works they have copied for further  
17 distribution and copying in a rapidly multiplying "viral" distribution. See Universal  
18 City Studios, Inc. v. Reimerdes, 111 F. Supp. 2d 294, 331-332 (S.D.N.Y. 2000)  
19 (describing harm caused through "exponential" distribution of infringing digital files  
20 over the Internet).

21       Defendants also provide features that ensure that users will be successful in  
22 downloading and copying the music and movies they want. For example, if the  
23 download of a work is interrupted or broken, the systems search for other users  
24 offering the same work, and resume the download from the point it was interrupted.  
25 Additionally, to enhance download speed, Defendants' systems often locate the  
26 identical song or motion picture on several users' computers and simultaneously  
27 download different parts of it from several users, thereby increasing the speed of the  
28

1 download. D. Rung Depo. Ex. 19 (GR 10916); Kleinrock Decl. ¶¶ 78-79.<sup>7</sup>  
2 Defendants even provide their users with information about file quality and size and  
3 allow users to take this into account when formulating their searches: this enables  
4 users to tailor their searches to locate only those files that are of a selected quality or  
5 only those that can be downloaded at the desired speed, or any combination of the  
6 above. ID545447 (screen shot of search page showing multiple search parameters).

7 Defendants also controlled their systems through their operation of servers that  
8 enabled Defendants to adjust the functioning of their systems from a central location,  
9 including to fix system performance problems. One way Defendants did this was to  
10 initiate "auto-updates" of the user software. In this process, users logging onto the  
11 network would receive a notice that an upgrade was available and an invitation to  
12 download the upgrade. SUF 4(e), 6(a); Smith Depo. 107:3-14; 151:12-152:4; ID  
13 168207; Kleinrock Decl. ¶¶ 50, 52. Another way Defendants controlled their systems  
14 was by using central servers to ensure that supernodes were always running the most  
15 recent version of the user software. Smith Depo. 254:7-255:16. Users ultimately had  
16 to upgrade in order to continue connecting to the systems. SUF 6(a); Smith Depo.  
17 318:18-319:15. Each active supernode communicated with Defendants' central  
18 servers every 12 hours to check for auto-updates. SUF 4(a); Smith Depo. 253:9-  
19 254:23; 260:10-261:4; ID 168312; Kleinrock Decl. ¶ 51. Eventually, Defendants no  
20 longer needed these servers in order to centrally affect the functioning of their users'  
21 software. Defendants now communicate a control message to supernodes, which, in  
22 turn, propagate that message to other supernodes and nodes. Smith Depo. 411-15;  
23 Kleinrock Decl. ¶ 53. In addition, Defendants at various times have themselves  
24 operated their own special supernodes, known as "root" supernodes, from their own  
25

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26 <sup>7</sup> The fact that Defendants' systems provide for such functions refutes their claim that  
27 the systems are designed for "noninfringing uses." Simultaneous downloads make  
28 sense only if users are downloading the same content from multiple sources at the  
same time, such as popular media content. This feature would have no utility when  
"sharing" an individual's home movies, family photographs, or recipes.

1 central servers. SUF 6(g); ID18154; 168335; D. Rung Depo. 87; Smith Depo.  
2 122:15-18; 128:13-17. (Even after they stopped, Defendants retained a contractual  
3 relationship with their users, who were acting as Defendants' licensees and operating  
4 the supernodes for them. SUF 6(c) (Terms of Service).<sup>8</sup>

5 Defendants also monitored the performance of their systems, and centrally and  
6 actively worked to address performance problems to improve the user experience.  
7 SUF 4(l). Smith Dep. 88-89, 227; Kleinrock Depo. ¶ 54. At a more basic level,  
8 Defendants have supervised users of their systems by supporting e-mail help lines  
9 and giving technical advice to users on how to use the systems – going so far as to  
10 help users download and play infringing music and movies. SUF 3(p), 4(p); GR4524;  
11 ID137081; ID144169; ID143398; ID137925; ID136947; ID136945; ID136716 (each  
12 showing MusicCity assisting a user in connection with an infringing recording, video  
13 or feature film); Kleinrock Decl. ¶ 56.<sup>9</sup>

14 Hand in hand with creating systems for the purpose of infringing copyrighted  
15 works, Defendants refuse to do anything to stop, or even decrease, the rampant  
16

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17 <sup>8</sup> Defendants also operate or have operated numerous other central servers. Until  
18 early 2002, users of Defendants' systems initially registered accounts on a central  
19 server, and communicated with this central server on each use thereafter in order to  
20 have their unique usernames verified (SUF 4(d), 8(c); Smith Depo. 106:9-20);  
21 Defendants have used central servers to deliver "web" content inside the client  
22 application while a user is connected to the network (SUF 8(c); Smith Depo. 117:3—  
23 119:5); other central servers, hosted by Defendants or third party advertisers,  
24 continually have transmitted advertisements to other windows inside the user  
25 software while users are connected to Defendants' systems (SUF 9(b); Smith Depo.  
26 298:11-19); at various times, Defendants have provided, also from central servers,  
27 chat room, bulletin board and "help" services that users used to seek and obtain  
28 assistance on how to use the system (SUF 3(p), 4(p); D. Rung Depo. 64:12-65:6;  
134:8-21; 136:12-137:7; 213:22-217:8; M. Rung Depo. 60:21-23; 61:14-23; 70:14-  
25; Smith Depo. 75:20-76:8; 142:1-147:2; Kleinrock Decl. ¶ 37).

25 <sup>9</sup> MusicCity's current Gnutella-based system exhibits many of the same  
26 characteristics of participation and central control, including hourly communications  
27 between user nodes and central servers during which MusicCity can centrally change  
28 and fine-tune the search priorities carried out by the client applications, frequent auto  
updates of user software initiated by a communication with a central MusicCity  
server, communication with their users via web content served into and displayed in  
users' computers from MusicCity central servers, and a continual and extensive  
development effort to improve the features and performance of the systems. Smith  
Depo. 484-86, 517-23; Kleinrock Decl. ¶ 57.

1 infringement, even though they have both the legal right and technical ability to do  
2 so. Defendants expressly reserve the right to ban or exclude users, and claim to have  
3 done so in the past (recently jettisoning that function). SUF 6(c), (k); Smith Depo.  
4 17:15-18:12; 154:11-23; 301:19-22; 302:7-23; 303:5-16; 304:12-15; 311:14-19; Ex.  
5 190/ID545672; Kleinrock Decl. ¶¶ 60-61. Defendants are able to police their systems  
6 by excluding unwanted users, including hackers and others utilizing unauthorized  
7 software. SUF 6(i); Smith Depo. 312:18-313:1; 335:20-336:19; Kleinrock Decl. ¶¶  
8 61, 63-64. ***Defendants have even blocked content owners and their representatives***  
9 ***from locating infringing activity on their systems.*** SUF 6(i); Smith Depo. 211:9-  
10 212:2, 214:6-17, 215:5-216:3, 218:10-16, 220:22-25, 221:11-13; 531:1-13; Ex.  
11 168/ID545361, 229/ID544361; Kleinrock Decl. ¶ 62. Once again, the true facts are  
12 contrary to what MusicCity told this Court in January: "[MusicCity] cannot take  
13 action against a particular user based on knowledge that the user has abused the  
14 product." 1/22/02 Motion for Summary Judgment at 2:28-3:2.

15 Defendants could operate like legitimate companies, including Internet  
16 companies, that deal in copyrighted material and secure licenses for the works  
17 distributed and copied on their systems. Defendants also have access to existing  
18 technology through which they could identify, and then block, infringing works from  
19 their systems. SUF 7(e); Kleinrock Decl. ¶¶ 82-97; Breslin Decl.; Ikezoye Decl.;  
20 Hyman Decl. There is nothing about Defendants' systems that would prevent them  
21 from taking these steps. Smith Depo. 94:24-95:10; Kleinrock Decl. ¶ 82. Instead,  
22 Defendants deliberately chose to base their systems on infringement, building value  
23 based on the quantity and quality of infringing content available to their tens of  
24 millions of users. In a misguided effort to shield their users – and themselves – from  
25 the legal consequences of the rampant piracy on their systems, Defendants maintain  
26 the anonymity of their users and also encrypt many of the communications between  
27 users and Defendants, users and supernodes, and the users themselves. D. Rung  
28 Depo. 138:7-22; Hardison Depo. 167:13-20 & Ex. 126 ("RIAA can't penetrate the

1 Streamcast Networks network to see what files are being transferred because the  
2 network is encrypted").

3 They did so for an obvious reason that Defendants themselves repeatedly  
4 acknowledge: "the core value of a peer-to-peer network was the network itself and  
5 not necessarily the technology." SUF 5(b); ID280697. Thus, Defendants set out, at  
6 all costs, "to become the network with the most nodes [users] because in a peer-to-  
7 peer world, those with the most nodes will win." SUF 5(b); ID280697. And, as one  
8 of MusicCity's Board members aptly put it, "music is just the first huge and pivotal  
9 vertical for monetizing" their systems. SUF 5(c); ID166941.

### 10 **III. PLAINTIFFS ARE ENTITLED TO SUMMARY JUDGMENT**

11 A party seeking summary judgment has the initial burden of "informing the  
12 district court of the basis for its motion, and identifying those portions of 'the  
13 pleadings, depositions, answers to interrogatories, and admissions on file, together  
14 with the affidavits, if any,' which it believes demonstrate the absence of a genuine  
15 issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548,  
16 91 L. Ed. 2d 265 (1986). Once the moving party has met its burden under Rule 56,  
17 "its opponent must do more than simply show that there is some metaphysical doubt  
18 as to the material facts [in question]." Matsushita Elec. Indus. Co. Ltd. v. Zenith  
19 Radio Corp., 475 U.S. 574, 586, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). "The  
20 mere existence of a scintilla of evidence in support of the [opposing party's] position  
21 will be insufficient[.]" Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252, 106 S.  
22 Ct. 2505, 91 L. Ed. 2d 202 (1986). "No longer can it be argued that any disagreement  
23 about a material issue of fact precludes the use of summary judgment." Cal. Arch.  
24 Bldg. Prods., Inc. v. Franciscan Ceramics, Inc., 818 F.2d 1466, 1468 (9th Cir. 1987).  
25 As explained below, Plaintiffs have met their burden and are entitled to summary  
26 judgment.

27  
28

1 **IV. PLAINTIFFS OWN THE COPYRIGHTS TO WORKS INFRINGED**

2 Musical compositions have been protected by copyright since 1831. 17 U.S.C.  
3 § 102(a)(2); United States v. Moghadam, 175 F.3d 1269, 1271 (11th Cir. 1999);  
4 Sanders Decl. *All* sound recordings – the reproduction of sounds as opposed to  
5 musical notation – are protected by either federal or state law. They have been  
6 protected by copyright since 1972. *Id.*; 17 U.S.C. § 102(a)(7). Sound recordings  
7 "fixed" before February 15, 1972, are protected under state law. 17 U.S.C. §301(c);  
8 *see, e.g.*, Cal. Civ. Code § 980(a)(2); A&M Records, Inc. v. Heilman, 75 Cal. App.  
9 3d 554, 560 n.6 (1977). Motion pictures and other audiovisual works also are  
10 protected by copyright. 17 U.S.C. § 102(a)(6). Each of these works is protected from  
11 the moment it is "fixed in any tangible medium of expression." 17 U.S.C § 102(a).

12 The Motion Picture Studio Plaintiffs own or control copyrights in the works  
13 listed in Exhibit A to their First Amended Complaint. SUF 1(b). The Record  
14 Company Plaintiffs own or control copyrights in the works listed in Exhibit B. SUF  
15 1(a). The Music Publisher Plaintiffs own or control copyrights in the works listed in  
16 their Second Supplemental Rule 26 disclosures. SUF 1(c). Plaintiffs' copyright  
17 certificates constitute prima facie evidence of the validity of the copyrights and of the  
18 facts stated in the certificates, including ownership. 17 U.S.C. § 410(c); Transgo, Inc.  
19 v. Ajac Transmission Parts Corp., 768 F.2d 1001, 1019 (9th Cir. 1985); Perfect 10,  
20 Inc. v. Cybernet Ventures, Inc., 2002 U.S. Dist. LEXIS 7333, \*36-37 (C.D. Cal.  
21 April 22, 2002).

22 **V. DEFENDANTS' USERS ARE DIRECT INFRINGERS**

23 Defendants' users directly infringe at least two of the copyright owners'  
24 exclusive rights: the rights of reproduction (17 U.S.C. § 106(1)) and distribution (17  
25 U.S.C § 106(3)). Users who download files containing copyrighted works using  
26 Defendants' systems violate Plaintiffs' reproduction rights. *See Napster I*, 239 F.3d at  
27 1014; Sega Enters., Ltd. v. MAPHIA, 857 F. Supp. 679, 686 (N.D. Cal. 1994) ("Sega  
28 I"); Aimster at 19 ("there is no doubt that input of a copyrighted work onto a

1 computer constitutes the making of a copy under the Copyright Act"). Users who  
2 make copyrighted works available in their computer "share directories" to enable  
3 others to copy those works violate Plaintiffs' distribution rights. Id.; see also Playboy  
4 Enters., Inc. v. Russ Hardenburgh, Inc., 982 F. Supp. 503, 513 (N.D. Ohio 1997);  
5 Marobie-FL, Inc. v. Nat'l Assoc. of Fire Equip. Dist., 983 F. Supp. 1167, 1173 (N.D.  
6 Ill. 1997). Evidence of direct infringement on Defendants' systems is overwhelming.  
7 Plaintiffs have downloaded scores of their copyrighted works from users of  
8 Defendants' systems – works copied and distributed without authorization by  
9 Defendants' users. SUF 2. Plaintiffs do not need to sue these direct infringers in  
10 order to prevail against Defendants. See Danjaq SA v. MGM/UA Communications  
11 Co., 773 F. Supp. 194, 201 (C.D. Cal. 1991).

## 12 **VI. DEFENDANTS ARE LIABLE FOR CONTRIBUTORY** 13 **INFRINGEMENT**

14 Contributory infringement consists of two elements: "[O]ne who, with  
15 knowledge of the infringing activity, induces, causes or materially contributes to the  
16 infringing conduct of another, may be held liable as a 'contributory' infringer."  
17 Napster I, 239 F.3d at 1019; accord, Fonovisa, Inc. v. Cherry Auction, Inc., 76 F.3d  
18 259, 264 (9th Cir. 1996); Aimster at 20. For the first element, constructive  
19 knowledge is sufficient. Napster I, 239 F.3d at 1020 ("Contributory liability requires  
20 that the secondary infringer 'know or have reason to know' of direct infringement."),  
21 citing Cable/Home Communication Corp. v. Network Prod., Inc., 902 F.2d 829, 846  
22 n.29 (11th Cir. 1990); see also, e.g., Sega Enters., Ltd. v. MAPHIA, 948 F. Supp.  
23 923, 933 (N.D. Cal. 1996) ("Sega II"); Aimster at 23. Summary judgment for  
24 contributory copyright infringement is common. See, e.g., Gershwin Publishing  
25 Corp. v. Columbia Artists Management, Inc., 443 F.2d 1159, 1162-63 (2d Cir. 1971);  
26 Cable/Home Communication, 902 F.2d at 845-47.

27 As the Court in Napster I made clear, traditional copyright law principles apply  
28 to the Internet. 239 F.3d at 1021-24. Defendants are not entitled to "special treatment

1 under copyright law"; rather, "[n]ew technologies – from television, to video cassette  
2 recorders, to digitized transmissions – have been made to fit within the overall  
3 scheme of copyright law and to serve the ends which copyright was intended to  
4 promote." Religious Technology Center v. Lerma, 40 U.S.P.Q.2d 1569, 1574 (E.D.  
5 Va. 1996); see also UMG Recordings, Inc. v. MP3.com, Inc., 92 F. Supp. 2d 349, 350  
6 (S.D.N.Y. 2000).

7 **A. Defendants Have Induced, Caused, And Materially Contributed To**  
8 **Direct Infringement.**

9 As the Ninth Circuit held in Fonovisa, "providing the site and facilities for  
10 known infringing activity is sufficient to establish contributory liability." 76 F.3d at  
11 264, citing Columbia Pictures Indus., Inc. v. Aveco, Inc., 800 F.2d 59 (3rd Cir. 1986);  
12 accord, Napster I, 239 F.3d at 1022 ("Napster provides 'the site and facilities' for  
13 direct infringement."); Perfect 10, 2002 U.S. Dist. LEXIS 7333, at \*51. Fonovisa  
14 involved a swap meet operated by the defendants. Vendors paid a daily fee to have  
15 booths at the swap meet and shoppers paid an entrance fee. Additionally, the  
16 defendants "supplie[d] parking, conduct[ed] advertising and retain[ed] the right to  
17 exclude any vendor for any reason, at any time." 76 F.3d at 261. Some vendors at  
18 the swap meet sold counterfeit copyrighted musical recordings, and defendants had  
19 been placed on notice of this fact. The plaintiff, whose copyrights had been infringed  
20 by virtue of the sale of counterfeit recordings at the swap meet, sued the defendant for  
21 contributory copyright infringement. The Ninth Circuit noted that the defendants  
22 provided "the environment and the market for counterfeit recording sales to thrive."  
23 Id. at 264. "Indeed," the Court further observed, "it would be difficult for the  
24 infringing activities to take place in the massive quantities alleged without the support  
25 services provided by the swap meet." Id.

26 Defendants plainly satisfy the standard of Fonovisa and Napster I: they have  
27 provided the means, environment, and support (including software, software updates  
28 and upgrades, servers, ongoing support and maintenance of their systems, explicit

1 instructions and assistance, indexing functions, search functions, resume functions,  
2 firewall circumvention, moderators and other staff) that enable their users to access  
3 each others' computer hard drives, and locate, distribute, and copy music, motion  
4 pictures, and other copyrighted works so that infringement can take place. SUF 4.  
5 Defendants are the material and proximate cause of their users' infringements – "the  
6 steps necessary to make that connection could not take place without" Defendants'  
7 systems. See A&M Records, Inc. v. Napster, Inc., 54 U.S.P.Q.2d 1746, 1747 (N.D.  
8 Cal. 2000); Aimster at 24. Defendants' integrated systems are predicated on being a  
9 "road map" to find and infringe music and motion pictures. See, e.g., Sega II, 948 F.  
10 Supp. at 933 (defendant who "provided the facilities for copying the games by  
11 providing, monitoring, and operating the BBS software, hardware, and phone lines  
12 necessary for the users to upload and download games" and "provided a road map on  
13 his BBS for easy identification of Sega games available for downloading" was  
14 contributorily liable).

15 It is only through Defendants' contribution that mass infringement is possible,  
16 and their ongoing participation to support and maintain their systems is pervasive.  
17 Defendants have:

18 •Provided an infrastructure for users to search for, copy, and distribute  
19 copyrighted music, motion pictures, and other works without the authorization of the  
20 copyright owner. SUF 4(b).

21 •Provided their users free of charge with the proprietary software that is  
22 required to become part of and to access their systems. SUF 4(a).

23 •Engaged in regular communication with users' software from their central  
24 servers for the purpose of communicating that a updated version of the user software  
25 was available. SUF 4(f).

26 •Provided their users with upgrades and updates of their proprietary software,  
27 free of charge, to add features to enhance the user experience. SUF 4(c).

28

1           ▪Modified and upgraded the user software and the various server-side programs  
2 that run on their central servers in order to maintain or improve the performance  
3 and/or security of the systems. SUF 4(e).

4           ▪Operated from their own central servers server-side programs to handle user  
5 registration and login functions. SUF 4(d).

6           ▪Engaged in regular communication with supernodes (up to every 12 hours) for  
7 the purpose of causing supernodes to cease operating as supernodes if they are not  
8 running the latest version of the user software. SUF 4(g).

9           ▪Operated from their own central servers specialized supernodes, known as  
10 "root" or "seed server" supernodes, that have maintained directories of files available  
11 from the users connected to those root supernodes, and processed search requests  
12 from those connected users. SUF 4(j).

13           ▪Selected and embedded the Internet addresses of multiple supernodes in the  
14 user software, and periodically updated this list of supernode addresses, to enable or  
15 facilitate users' connection to their systems. SUF 4(i).

16           ▪Employed central servers under their control to monitor supernodes and  
17 centrally to increase or decrease the numbers of supernodes on the system to facilitate  
18 the efficient performance of the system. SUF 4(m).

19           ▪Monitored the performance of their systems and user software centrally, and  
20 actively worked to address performance problems and/or to improve the user  
21 experience. SUF 4(l).

22           ▪Affected and/or improved the performance, security and/or functioning of  
23 their systems or user software centrally, by modifying variables in programs running  
24 on their central servers. SUF 4(k).

25           ▪Taken steps to maintain the anonymity of their users and the secrecy of their  
26 activities, and to protect their systems, by encrypting many of the computer-to-  
27 computer communications that take place on their FastTrack systems. SUF 4(n).

28

