

Exhibit B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UMG RECORDINGS, INC., et al.,)
)
 Plaintiffs,)
)
 v.) Civil Action No. 04-0093 (CKK)
)
 DOES 1-199,)
)
 Defendants.)
_____)

SECOND DECLARATION OF JONATHAN WHITEHEAD

I, Jonathan Whitehead, have personal knowledge of the facts stated below and, under penalty of perjury, hereby declare:

1. I am Vice President and Counsel for Online Copyright Protection for the Recording Industry Association of America, Inc. (“RIAA”), where I have been employed for over 6 years. My office is located at 1330 Connecticut Avenue, N.W., Washington, DC 20036.

2. I previously submitted a declaration in support of Plaintiffs’ motion for leave to take expedited discovery in this case, which I executed on January 21, 2004. I submit this declaration in support of Plaintiffs’ Response to Motion of Public Citizen, et al., for Leave to File Memorandum as Amici Curiae Addressing Motion for Expedited Discovery.

3. This declaration is based on my personal knowledge, and if called upon to do so, I would be prepared to testify to its truth and accuracy.

The Defendants Use the Same FastTrack Network

4. RIAA members have filed three so-called “John Doe” lawsuits in the United States District Court for the Southern District of New York, and one such lawsuit in the United States District Court for the District of Columbia (the instant case). There are a total of 532 Doe

Defendants in the four lawsuits. Over 99% of the Defendants in these four lawsuits are using the so-called “FastTrack” network to trade copyrighted works. FastTrack is the largest current peer-to-peer network.

5. Based on the steps described in paragraph 16 of the declaration I previously submitted in this case, RIAA was able to determine that each Defendant in this case has offered hundreds or thousands of copyrighted sound recordings unlawfully on P2P networks. As described in paragraphs 16 and 17 of that declaration, RIAA has collected a list of the files that each Doe Defendant in this case has made available to the public. Exhibit 1 to that declaration contains such lists for three of the Defendants. The same detailed information of the lists of files that the other Defendants have made available to the public can be provided to this Court, if necessary.

Geographic Issues Relating to P2P Users

6. As I explained in my previous declaration in this case, much of the unlawful distribution of copyrighted sound recordings over the Internet occurs via “peer-to-peer” (“P2P”) file copying networks. Examples of P2P networks include KaZaA, iMesh, Grokster and Gnutella. When a user downloads a file on a P2P network, the user may download the same file from multiple computers at one time. For example, when a user in New Jersey downloads a file using a P2P network, he or she may receive parts of the same file, at the same time, from computers in multiple geographical locations, e.g., from a computer in the District of Columbia, a computer in California, and a computer in Florida.

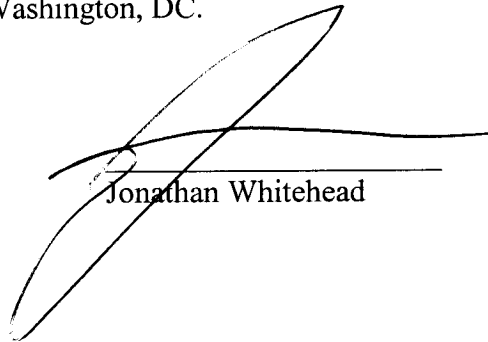
7. I have reviewed the Declaration of Wendy Seltzer submitted in this case. That declaration states that certain web-based tools enable people to identify the geographic location

of Internet users who are engaged in copyright infringement. These tools, however, are nowhere near as accurate as Ms. Seltzer implies.

8. Ms. Seltzer's declaration overstates the precision of these tools in several ways. First, many ISPs (including Verizon) use dynamic IP addressing; thus an IP address may be assigned to the computer of an infringing subscriber at one moment, but be assigned to an entirely different computer in an entirely different location the next hour or day. Second, the process described in the Declaration of Wendy Seltzer requires that an ISP use geographic information, such as geographic abbreviations or airport codes, to identify routers that transmit messages to users. ISPs, however, have complete control over how to name their routers. Many ISPs do not use geographic codes at all. For these ISPs, a copyright owner can glean no information about the location of a subscriber disseminating copyrighted works from a particular IP address based on the web-based tools described in the Seltzer Declaration. Third, even for ISPs that do use some form of geographical codes, my experience at RIAA is that the codes fall far short of being 100% accurate in even identifying the region in which the infringer is located. When the codes are inaccurate, they are often extremely inaccurate. Fourth, even if the process described in the Seltzer Declaration leads to a particular metropolitan area, such as New York, this information does not necessarily identify the state or judicial district in which the infringer resides. Notably, Ms. Seltzer does not seek to identify for certain what state any of the infringers live in – because the web-based tools do not permit that.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on February 13, 2004, in Washington, DC.



Jonathan Whitehead