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15 Attorneys for Defendants
16 MusicCity.com, Inc. (now known as
StreamCast Networks, Inc.) and
17 MusicCity Networks, Inc.

18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA
20 WESTERN DIVISION

21 Jerry Leiber, et al.,
22 Plaintiffs,
23 v.
24 Consumer Empowerment BV, et al.,
25 Defendants.
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CASE NO.: CV-01-09923 GAF(SHx)
ANSWER OF MUSICCITY.COM,
INC. (NOW KNOWN AS
STREAMCAST NETWORKS, INC.)
AND MUSICCITY NETWORKS,
INC. TO COMPLAINT
DEMAND FOR JURY TRIAL

1 Defendant MusicCity.com, Inc. (now known as StreamCast Networks, Inc.)
2 and defendant MusicCity Networks, Inc. (referred to together below as “the
3 MusicCity Defendants”) hereby respond to the complaint as follows:

4 1. The MusicCity Defendants admit that this Court has jurisdiction over
5 the action. The MusicCity Defendants deny the remaining allegations of paragraph
6 1 of the complaint.

7 2. The MusicCity Defendants deny that they participate in, facilitate,
8 materially contribute to, or encourage any infringements. The MusicCity
9 Defendants lack sufficient knowledge to admit or deny the remaining allegations of
10 paragraph 2 of the complaint and on that basis deny the allegations.

11 3. The MusicCity Defendants deny the allegations of paragraph 3 of the
12 complaint.

13 4. The MusicCity Defendants deny the allegations of paragraph 4 of the
14 complaint.

15 5. The MusicCity Defendants admit that this Court has subject matter
16 jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a). The MusicCity
17 Defendants deny the remaining allegations of paragraph 5.

18 6. The MusicCity Defendants admit that venue is proper in this district.

19 7. The MusicCity Defendants admit that this Court has personal
20 jurisdiction in this action. The MusicCity Defendants deny the remaining
21 allegations of paragraph 7 of the complaint.

22 8. The MusicCity Defendants lack sufficient knowledge to admit or deny
23 the allegations of paragraph 8 of the complaint and on that basis deny the
24 allegations.

25 9. The MusicCity Defendants lack sufficient knowledge to admit or deny
26 the allegations of paragraph 9 of the complaint and on that basis deny the
27 allegations.

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1 10. The MusicCity Defendants lack sufficient knowledge to admit or deny
2 the allegations of paragraph 10 of the complaint and on that basis deny the
3 allegations.

4 11. The MusicCity Defendants lack sufficient knowledge to admit or deny
5 the allegations of paragraph 11 of the complaint and on that basis deny the
6 allegations.

7 12. The MusicCity Defendants lack sufficient knowledge to admit or deny
8 the allegations of paragraph 12 of the complaint and on that basis deny the
9 allegations.

10 13. The MusicCity Defendants deny that MusicCity Networks, Inc. has a
11 place of business in Woodland Hills, California. Except for the fact that Defendant
12 MusicCity.com, Inc. is now formally known as StreamCast Networks, Inc. (which
13 does business as MusicCity.com, Inc.), the MusicCity Defendants admit the
14 remaining allegations of paragraph 13 of the complaint.

15 14. The MusicCity Defendants lack sufficient knowledge to admit or deny
16 the allegations of paragraph 14 of the complaint and on that basis deny the
17 allegations.

18 15. The MusicCity Defendants deny the allegations of paragraph 15 of the
19 complaint.

20 16. The MusicCity Defendants lack sufficient knowledge to admit or deny
21 the allegations of paragraph 16 of the complaint and on that basis deny the
22 allegations.

23 17. The MusicCity Defendants lack sufficient knowledge to admit or deny
24 the allegations of paragraph 17 of the complaint and on that basis deny the
25 allegations.

26 18. The MusicCity Defendants lack sufficient knowledge to admit or deny
27 the allegations of paragraph 18 of the complaint and on that basis deny the
28 allegations.

1 19. The MusicCity Defendants lack sufficient knowledge to admit or deny
2 the allegations of paragraph 19 of the complaint and on that basis deny the
3 allegations.

4 20. The MusicCity Defendants lack sufficient knowledge to admit or deny
5 the allegations of paragraph 20 of the complaint and on that basis deny the
6 allegations.

7 21. The MusicCity Defendants lack sufficient knowledge to admit or deny
8 the allegations of paragraph 21 of the complaint and on that basis deny the
9 allegations.

10 22. The MusicCity Defendants admit that the Internet is a worldwide
11 network of millions of computers and that the Internet has created new
12 opportunities for distribution of music. The MusicCity Defendants deny the
13 remaining allegations of paragraph 22 of the complaint.

14 23. The MusicCity Defendants lack sufficient knowledge to admit or deny
15 the allegations of paragraph 23 of the complaint and on that basis deny the
16 allegations.

17 24. The MusicCity Defendants deny the allegations of paragraph 24 of the
18 complaint.

19 25. The MusicCity Defendants deny the allegations of paragraph 25 of the
20 complaint.

21 26. The MusicCity Defendants lack sufficient knowledge to admit or deny
22 the allegations of paragraph 26 of the complaint and on that basis deny the
23 allegations.

24 27. The MusicCity Defendants admit that Consumer Empowerment BV
25 calls its software “KaZaA.” The MusicCity Defendants lack sufficient knowledge
26 to admit or deny whether the alleged quote appears on the www.kazaa.com website
27 and on that basis deny those allegations. The MusicCity Defendants deny the
28 remaining allegations of paragraph 27 of the complaint.

1 28. The MusicCity Defendants lack sufficient knowledge to admit or deny
2 the allegations of paragraph 28 of the complaint and on that basis deny the
3 allegations.

4 29. The MusicCity Defendants deny the allegations of paragraph 29 of the
5 complaint.

6 30. The MusicCity Defendants lack sufficient knowledge to admit or deny
7 the allegations of paragraph 30 of the complaint and on that basis deny the
8 allegations.

9 31. The MusicCity Defendants lack sufficient knowledge to admit or deny
10 the allegations of paragraph 31 of the complaint and on that basis deny the
11 allegations.

12 32. The MusicCity Defendants lack sufficient knowledge to admit or deny
13 the allegations of paragraph 32 of the complaint and on that basis deny the
14 allegations.

15 33. The MusicCity Defendants lack sufficient knowledge to admit or deny
16 the allegations of paragraph 33 of the complaint and on that basis deny the
17 allegations.

18 34. The MusicCity Defendants lack sufficient knowledge to admit or deny
19 the allegations of paragraph 34 of the complaint and on that basis deny the
20 allegations.

21 35. The MusicCity Defendants lack sufficient knowledge to admit or deny
22 the allegations of paragraph 35 of the complaint and on that basis deny the
23 allegations.

24 36. The MusicCity Defendants lack sufficient knowledge to admit or deny
25 the allegations of paragraph 36 of the complaint and on that basis deny the
26 allegations.

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1 37. The MusicCity Defendants lack sufficient knowledge to admit or deny
2 the allegations of paragraph 37 of the complaint and on that basis deny the
3 allegations.

4 38. The MusicCity Defendants lack sufficient knowledge to admit or deny
5 the allegations of paragraph 38 of the complaint and on that basis deny the
6 allegations.

7 39. The MusicCity Defendants lack sufficient knowledge to admit or deny
8 the allegations of paragraph 39 of the complaint and on that basis deny the
9 allegations.

10 40. The MusicCity Defendants deny the allegations of paragraph 40 of the
11 complaint.

12 41. The MusicCity Defendants lack sufficient knowledge to admit or deny
13 the allegations of paragraph 41 of the complaint and on that basis deny the
14 allegations.

15 42. The MusicCity Defendants lack sufficient knowledge to admit or deny
16 the allegations of paragraph 42 of the complaint and on that basis deny the
17 allegations.

18 43. The MusicCity Defendants admit that MusicCity licensed software
19 from Consumer Empowerment BV. The MusicCity Defendants deny the
20 remaining allegations of paragraph 43 of the complaint.

21 44. The MusicCity Defendants deny that MusicCity launched or offers an
22 infringing service and deny that MusicCity releases software on its website. The
23 MusicCity Defendants admit the remaining allegations of paragraph 44.

24 45. The MusicCity Defendants admit that the Morpheus software provides
25 users with tools to search the user-created network to look for files on other
26 computers. The MusicCity Defendants admit that a user of Morpheus can
27 download a file directly from a fellow user who hosts it. The MusicCity
28 Defendants admit that the following quote appears on the musiccity.com website:

1 “Where traditional search engines search the World Wide Web, Morpheus searches
2 thousands of computers at once, all connected through MusicCity network of
3 users.” The MusicCity Defendants deny the remaining allegations of paragraph
4 45.

5 46. The MusicCity Defendants admit that a user of the Morpheus software
6 may designate files he or she wishes to share with other users of Morpheus
7 software. The MusicCity Defendants admit that the Morpheus software can
8 specify folders on a user’s hard drive that the software program recognizes. The
9 MusicCity Defendants deny the remaining allegations of paragraph 46.

10 47. The MusicCity Defendants deny the allegations of paragraph 47 of the
11 complaint.

12 48. The MusicCity Defendants deny the allegations of paragraph 48 of the
13 complaint.

14 49. The MusicCity Defendants deny the allegations of paragraph 49 of the
15 complaint.

16 50. The MusicCity Defendants admit that MusicCity provides users with
17 on-line chat rooms and message boards. The MusicCity Defendants admit that a
18 user need not take advantage of MusicCity’s chat rooms or message boards in
19 order to use the Morpheus software. The MusicCity Defendants deny the
20 remaining allegations of paragraph 50 of the complaint.

21 51. The MusicCity Defendants deny the allegations of paragraph 51 of the
22 complaint.

23 52. The MusicCity Defendants deny that they participate in, facilitate, and
24 materially contribute to any infringement. The MusicCity Defendants lack
25 sufficient knowledge to admit or deny the remaining allegations of paragraph 52 of
26 the complaint and on that basis deny those allegations.

27 53. The MusicCity Defendants deny the allegations of paragraph 53 of the
28 complaint.

1 54. The MusicCity Defendants lack sufficient knowledge to admit or deny
2 the allegations of paragraph 54 of the complaint and on that basis deny the
3 allegations.

4 55. The MusicCity Defendants lack sufficient knowledge to admit or deny
5 the allegations of paragraph 55 of the complaint and on that basis deny the
6 allegations.

7 56. The MusicCity Defendants lack sufficient knowledge to admit or deny
8 the allegations of paragraph 56 of the complaint and on that basis deny the
9 allegations.

10 57. The MusicCity Defendants lack sufficient knowledge to admit or deny
11 the allegations of paragraph 57 of the complaint and on that basis deny the
12 allegations.

13 58. The MusicCity Defendants lack sufficient knowledge to admit or deny
14 the allegations of paragraph 58 of the complaint and on that basis deny the
15 allegations.

16 59. The MusicCity Defendants lack sufficient knowledge to admit or
17 deny the allegations of paragraph 59 of the complaint and on that basis deny the
18 allegations.

19 60. The MusicCity Defendants lack sufficient knowledge to admit or deny
20 the allegations of paragraph 60 of the complaint and on that basis deny the
21 allegations.

22 61. The MusicCity Defendants lack sufficient knowledge to admit or deny
23 the allegations of paragraph 61 of the complaint and on that basis deny the
24 allegations.

25 62. The MusicCity Defendants lack sufficient knowledge to admit or deny
26 the allegations of paragraph 62 the complaint and on that basis deny the
27 allegations.

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1 63. The MusicCity Defendants lack sufficient knowledge to admit or deny
2 the allegations of paragraph 63 of the complaint and on that basis deny the
3 allegations.

4 64. The MusicCity Defendants lack sufficient knowledge to admit or deny
5 the allegations of paragraph 64 of the complaint and on that basis deny the
6 allegations.

7 65. The MusicCity Defendants admit that the MusicCity Terms of Service
8 state that “Unauthorized copying, distribution, modification, public display, or
9 public performance of copyrighted works is an infringement of the copyright
10 holders’ rights” and that users are “put on notice that you are entirely responsible
11 for your content and for ensuring that it comports with all applicable laws,
12 including all copyright and data-protection laws.” The MusicCity Defendants lack
13 sufficient knowledge to admit or deny the allegation that identical language
14 appears on the other defendants’ websites. The MusicCity Defendants deny the
15 remaining allegations of paragraph 65.

16 66. The MusicCity Defendants deny that MusicCity operates an infringing
17 service or induces the unauthorized distribution and reproduction of copyrighted
18 works. The MusicCity Defendants lack sufficient knowledge to admit or deny the
19 remaining allegations of paragraph 66 of the complaint and on that basis deny
20 those allegations.

21 67. The MusicCity Defendants admit that MusicCity reserves the right to
22 unilaterally terminate a user’s account. The MusicCity Defendants deny the
23 remaining allegations of paragraph 67.

24 68. The MusicCity Defendants deny the allegations of paragraph 68.

25 69. The MusicCity Defendants admit that the Morpheus software
26 interface displays advertisements from, among other companies, DirecTV-DSL,
27 Multi Technology Equipment LLC, and Iomegadirect. The MusicCity Defendants
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1 lack sufficient knowledge to admit or deny the remaining allegations of paragraph
2 69 of the complaint and on that basis deny those allegations.

3 70. The MusicCity Defendants deny the allegations of paragraph 70.

4 71. The MusicCity Defendants deny the allegations of paragraph 71.

5 72. The MusicCity Defendants admit that plaintiffs purport to bring this
6 action as a class action pursuant to Federal Rule of Civil Procedure 23(a), (b)(2) &
7 (3) on behalf of a Class, which plaintiffs purport to define.

8 73. The MusicCity Defendants deny the allegations in the last sentence of
9 paragraph 73. The MusicCity Defendants lack sufficient knowledge to admit or
10 deny the remaining allegations of paragraph 73 of the complaint and on that basis
11 deny those allegations.

12 74. The MusicCity Defendants deny the allegations of paragraph 74.

13 75. The MusicCity Defendants deny that plaintiffs will adequately protect
14 the class and that plaintiffs have no interests that are in conflict with the class. The
15 MusicCity Defendants lack sufficient knowledge to admit or deny the remaining
16 allegations of paragraph 75 and on that basis deny those allegations.

17 76. The MusicCity Defendants deny the allegations of paragraph 76.

18 77. The MusicCity Defendants deny the allegations of paragraph 77.

19 78. The MusicCity Defendants deny the allegations of paragraph 78.

20 79. The MusicCity Defendants lack sufficient knowledge to admit or deny
21 the allegations of paragraph 79 and on that basis deny those allegations.

22 **FIRST CAUSE OF ACTION**

23 80. The MusicCity Defendants hereby incorporate their responses to
24 paragraphs 1-79 above.

25 81. The MusicCity Defendants deny the allegations of paragraph 81.

26 82. The MusicCity Defendants deny the allegations of paragraph 82.

27 83. The MusicCity Defendants deny the allegations of paragraph 83.

28 84. The MusicCity Defendants deny the allegations of paragraph 84.

1 85. The MusicCity Defendants deny the allegations of paragraph 85.

2 86. The MusicCity Defendants deny the allegations of paragraph 86.

3 87. The MusicCity Defendants deny the allegations of paragraph 87.

4 88. The MusicCity Defendants deny the allegations of paragraph 88.

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SECOND CAUSE OF ACTION

7 89. The MusicCity Defendants hereby incorporate their responses to

8 paragraphs 1-88 above.

9 90. The MusicCity Defendants deny the allegations of paragraph 90.

10 91. The MusicCity Defendants deny the allegations of paragraph 91.

11 92. The MusicCity Defendants deny the allegations of paragraph 92.

12 93. The MusicCity Defendants deny the allegations of paragraph 93.

13 94. The MusicCity Defendants deny the allegations of paragraph 94.

14 95. The MusicCity Defendants deny the allegations of paragraph 95.

15 96. The MusicCity Defendants deny the allegations of paragraph 96.

16 97. The MusicCity Defendants deny the allegations of paragraph 97.

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AFFIRMATIVE DEFENSES

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FIRST AFFIRMATIVE DEFENSE

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

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SECOND AFFIRMATIVE DEFENSE

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2. Plaintiffs have failed to join indispensable parties.

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THIRD AFFIRMATIVE DEFENSE

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

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FOURTH AFFIRMATIVE DEFENSE

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4. Plaintiffs' claims are barred because they cannot establish that Defendants' products are incapable of substantial non-infringing uses.

1 **FIFTH AFFIRMATIVE DEFENSE**

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

4 **SIXTH AFFIRMATIVE DEFENSE**

5 6. Plaintiffs' claims are barred by the Digital Millennium
6 Copyright Act.

7 **SEVENTH AFFIRMATIVE DEFENSE**

8 7. Plaintiffs' claims with respect to sound recordings are barred by
9 the Audio Home Recording Act.

10 **EIGHTH AFFIRMATIVE DEFENSE**

11 8. Plaintiffs' claims are barred by the doctrine of the privilege of
12 competition.

13 **NINTH AFFIRMATIVE DEFENSE**

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

15 **TENTH AFFIRMATIVE DEFENSE**

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

18 **ELEVENTH AFFIRMATIVE DEFENSE**

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

21 **TWELFTH AFFIRMATIVE DEFENSE**

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

25 **THIRTEENTH AFFIRMATIVE DEFENSE**

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

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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.

SIXTEENTH AFFIRMATIVE DEFENSE

16. Plaintiffs' claims are barred to the extent they have forfeited or abandoned copyright.

SEVENTEENTH AFFIRMATIVE DEFENSE

17. Plaintiffs' claims are barred to the extent they claim copyright in works that are immoral, illegal, or libelous.

EIGHTEENTH AFFIRMATIVE DEFENSE

18. Plaintiffs' claims are barred because of deceptive and misleading advertising in connection with distribution of the copyrighted works.

NINETEENTH AFFIRMATIVE DEFENSE

19. Plaintiffs' claims are barred to the extent any persons, based on whose behavior Plaintiffs seek to hold Defendants liable, are innocent infringers.

TWENTIETH AFFIRMATIVE DEFENSE

20. Plaintiffs' claims are barred because they are preempted by patent law.

TWENTY-FIRST AFFIRMATIVE DEFENSE

21. Plaintiffs' claims are barred because they are asserted in violation of Article I, Section 8, Clause 8 of the U.S. Constitution and the doctrine of separation of powers.

TWENTY-SECOND AFFIRMATIVE DEFENSE

22. Plaintiffs' claims are barred to the extent they lack standing to assert claims for each claimed copyright.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, the MusicCity Defendants ask the Court for judgment as
3 follows:

4 A. That Plaintiffs take nothing by their complaint;

5 B. That the MusicCity Defendants be awarded their costs and attorneys
6 fees with respect to this action; and

7 C. For other relief as the Court determines to be just and equitable.

8 Respectfully submitted,

9 WILSON SONSINI GOODRICH & ROSATI
10 Professional Corporation

11 Dated: December 17, 2001

12 By: _____
Andrew P. Bridges

13 Attorneys for Defendants
14 MusicCity.com, Inc. (now known as StreamCast
15 Networks, Inc.) and MusicCity Networks, Inc.
16

17 **DEMAND FOR JURY TRIAL**

18 The MusicCity Defendants hereby demand trial by jury of all issues that
19 may be tried by jury.
20

21 Respectfully Submitted,

22 WILSON SONSINI GOODRICH & ROSATI

23
24 Dated: December 17, 2001

25 By: _____
Andrew P. Bridges

26 Attorneys for Defendants
27 MusicCity.com, Inc. (now known as StreamCast
28 Networks, Inc.) and MusicCity Networks, Inc.

1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California, over the age of eighteen years,
3 and not a party to this action. My business address is Liner Yankelevitz Sunshine & Regenstreif
4 LLP, 3130 Wilshire Boulevard, Suite 200, Santa Monica, California 90403. On December 17,
5 2001, I served the within document: **ANSWER OF MUSICCITY.COM, INC. (NOW
6 KNOWN AS STREAMCAST NETWORKS, INC.) AND MUSICCITY NETWORKS,
7 INC. TO COMPLAINT** in this action, by placing a true copy thereof enclosed in a sealed
8 envelope as follows:

9 * by transmitting via facsimile the document(s) listed above to the fax number(s)
10 set forth below on this date between the hours of 8:00 a.m. and 6:00 p.m. The
11 facsimile transmission was reported as complete and without error by the
12 transmitting facsimile machine.

13 * by Mail; I am readily familiar with the firm's practice of collection and
14 processing correspondence for mailing with the U.S. Postal Service. Under
15 that practice it would be deposited with the U.S. Postal Service on that same
16 day with postage thereon fully prepaid in the ordinary course of business. I am
17 aware that on motion of the party served, service by mail is presumed invalid if
18 the postal cancellation date or postage meter date on the envelope is more than
19 one day after date of deposit for mailing contained in this affidavit.

20 * by Federal Express, or other express service carrier providing for overnight
21 delivery, by depositing the document in a box or other facility regularly
22 maintained by the express service carrier, in an envelope or package designated
23 by the express service carrier with delivery fees paid or provided for, addressed
24 to the person on whom it is to be served, at the address(es) set forth below.

25 * by causing the document(s) listed above to be personally delivered to the
26 address(es) set forth below.

27 David E. Kendall
28 Robert J. Shaughnessy
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Palo Alto, CA 94304

29 I declare under penalty of perjury under the laws of the United States and the
30 State of California that the above is true and correct. I declare that I am employed in the office
31 of a member of the bar of this court at whose direction the service was made.

32 Executed on December 17, 2001, at Santa Monica, California.

33 _____
34 Natalia Speer

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