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7 INTERSCOPE RECORDS; BMG MUSIC; VIRGIN
RECORDS AMERICA, INC.; MOTOWN RECORD
8 COMPANY, L.P.; SONY MUSIC ENTERTAINMENT
INC.; ARISTA RECORDS, INC.; ATLANTIC
9 RECORDING CORP.; CAPITOL RECORDS, INC.;
ELEKTRA ENTERTAINMENT GROUP INC.;
10 WARNER BROS. RECORDS INC.; and UMG
RECORDINGS, INC.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 PRIORITY RECORDS LLC, et al.,

15 Plaintiffs,

16 vs.

17 DOES 1-8,

18 Defendants.

Case No. C-04-1136 SC

**DECLARATION OF JONATHAN
WHITEHEAD IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO AMICUS
BRIEF OF ELECTRONIC FRONTIER
FOUNDATION ET AL.**

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

3 1. I am Vice President and Counsel for Online Copyright Protection for the
4 Recording Industry Association of America, Inc. (“RIAA”), where I have been employed for over
5 6 years. My office is located at 1330 Connecticut Avenue, N.W., Washington, DC 20036.

6 2. I previously submitted a declaration in support of Plaintiffs’ Miscellaneous
7 Administrative Request for Leave to Take Immediate Discovery. I submit this declaration in
8 support of Plaintiffs’ response to the Amicus Brief submitted in this case by Electronic Frontier
9 Foundation, et al.

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

12 **The Defendants Use the Same FastTrack Network**

13 4. RIAA members have filed numerous so-called “John Doe” lawsuits in United
14 States District Courts, including the instant case. These lawsuits include several thousand Doe
15 Defendants, the vast majority of whom are using the so-called “FastTrack” network to trade
16 copyrighted works, including all of the Defendants in this case. FastTrack is the largest current
17 peer-to-peer network.

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

26 **Geographic Issues Relating to P2P Users**

27 6. As I explained in my previous declaration in this case, much of the unlawful
28 distribution of copyrighted sound recordings over the Internet occurs via “peer-to-peer” (“P2P”)

1 file copying networks. Examples of P2P networks include KaZaA, iMesh, Grokster and Gnutella.
2 When a user downloads a file on a P2P network, the user may download the same file from
3 multiple computers at one time. For example, when a user in New Jersey downloads a file using
4 a P2P network, he or she may receive parts of the same file, at the same time, from computers in
5 multiple geographical locations, e.g., from a computer in the Georgia, a computer in California,
6 and a computer in Florida.

7 7. As discussed in my previous declaration in this case, copyright owners cannot
8 know the exact location of users disseminating copyrighted works over P2P networks. They can,
9 however, identify the Internet Protocol (“IP”) addresses of infringers. IP addresses are allotted to
10 Internet Service Providers (“ISPs”) in blocks or ranges (such as 12.34.1.1 to 12.34.255.255).
11 Only the ISP can determine which subscriber was using a particular IP address at a given date and
12 time. ISPs have complete control over the assignment of IP addresses to subscribers, and
13 generally maintain logs that enable them to match IP addresses with subscribers. In addition,
14 there is no requirement that ISPs assign IP addresses according to where a subscriber resides.

15 8. I have reviewed the Declaration of Seth Schoen submitted in this case. That
16 declaration states that certain web-based tools enable people to access data to identify the
17 geographic location of Internet users who are engaged in copyright infringement. This data,
18 however, is nowhere near as accurate as Mr. Schoen implies.

19 9. Mr. Schoen’s declaration overstates the precision of this data in several ways.
20 First, the process described in the Schoen Declaration requires that an ISP use geographic
21 information, such as geographic abbreviations, to identify routers that transmit messages to users.
22 ISPs have complete control over how to name their routers. Many ISPs do not use geographic
23 codes at all. For these ISPs, a copyright owner can glean no information about the location of a
24 subscriber disseminating copyrighted works from a particular IP address based on IP search
25 results described in the Schoen Declaration. Second, even when an ISP does use geographic
26 codes, my experience at RIAA is that the codes fall far short of being 100% accurate in even
27 identifying the region in which the infringer is located. When the codes are inaccurate, they are
28 often extremely inaccurate. Third, even if the process described in the Schoen Declaration leads

