

**FRIERI CONROY & LOMBARDO, LLC**

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*Attorneys for Defendants*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

SONY MUSIC ENTERTAINMENT  
INC., a Delaware corporation; UMG  
RECORDINGS, INC., a Delaware  
general partnership; MOTOWN RECORD  
COMPANY, L.P., a California limited  
Partnership; and SONY MUSIC  
ENTERTAINMENT, INC., a Delaware  
Corporation,

Plaintiffs,

v.

MICHELE SCIMECA,

Defendant.

CIVIL ACTION  
Case No.: 03-5757

ANSWER

Defendant, Michele Scimeca (“Defendant”), improperly named as Michell Scimeca in the Complaint, by and through her attorneys, Frieri Conroy & Lombardo, LLC, by way of answer to the complaint of plaintiff, Sony Music Entertainment, Inc., et al. (“Plaintiff” or “Plaintiffs”) now answers the Complaint against her alleging copyright infringement, and denies any and all such allegations, and further admits or denies the specific allegations of the Complaint and states affirmative defenses, as follows:

**JURISDICTION AND VENUE**

1. Defendant admits the allegations of the nature of the case in paragraph 1.

2. Defendant admits the allegations of subject matter jurisdiction in paragraph 2.

3. Defendant admits the allegations of personal jurisdiction of paragraph 3.

### **PARTIES**

4. Answering paragraph 4 of the Complaint, Defendant lacks information sufficient to form a belief as to the facts alleged, and on that basis, Defendant denies them.

5. Answering paragraph 5 of the Complaint, Defendant lacks information sufficient to form a belief as to the facts alleged, and on that basis, Defendant denies them.

6. Answering paragraph 6 of the Complaint, Defendant lacks information sufficient to form a belief as to the facts alleged, and on that basis, Defendant denies them.

7. Answering paragraph 7 of the Complaint, Defendant lacks information sufficient to form a belief as to the facts alleged, and on that basis, Defendant denies them.

8. Answering paragraph 8 of the Complaint, Defendant lacks information sufficient to form a belief as to the facts alleged, and on that basis, Defendant denies them.

9. Defendant admits that she resides in this District, as alleged in paragraph

### **ALLEGED INFRINGEMENT OF COPYRIGHTS**

10. Defendant repeats each answer in paragraphs 1 through 9 as if set forth herein at length.

11. Answering paragraph 11 of the Complaint, Defendant lacks information sufficient to form a belief as to the facts alleged, and on that basis, Defendant denies them.

12. Answering paragraph 12 of the Complaint, Defendant lacks information sufficient to form a belief as to the facts alleged, and on that basis, Defendant denies them.

13. Defendant denies the allegations of paragraph 13.

14. Defendant denies the allegations of paragraph 14.
15. Defendant denies the allegations of paragraph 15.
16. Defendant denies the allegations of paragraph 16.

#### **AFFIRMATIVE DEFENSES**

Defendant hereby asserts the following Affirmative Defenses in this case:

1. Plaintiffs' subpoena to the Defendant's Internet provider is invalid under RIAA v. Verizon Internet Services, Inc., No. 03-7015, 2003 U.S. App. LEXIS 25735 (D.C. Cir. Dec.19, 2003), accordingly the identification of the Defendant is null and renders the Plaintiffs' claims invalid.

2. Plaintiffs' claims are barred by the constitutional right to privacy.

3. Plaintiffs fail to state a claim against Defendant on which relief can be granted.

4. Plaintiffs' claims would infringe upon the First, Fourth, and Fifth Amendments to the U.S. Constitution.

5. Plaintiffs have failed to join indispensable parties.

6. Plaintiffs' claims for relief are barred by the safe harbors of 17 U.S.C. §512.

7. Plaintiffs' claims are barred by the First Sale Doctrine.

8. Plaintiffs' claims are barred by the Audio Home Recording Act, 17 U.S.C. §1008.

9. Plaintiffs' claims are barred by the Doctrine of Fair Use.

10. The action is barred by the Doctrine of Laches, as Plaintiffs did not make a diligent attempt to enjoin the file-sharing practices of which they complain, and have allowed the website of [www.kazaa.com](http://www.kazaa.com) to continue to make music freely available on the Internet. Due to the Plaintiffs' prolonged inaction, the practice of music file-sharing from websites such as [www.kazaa.com](http://www.kazaa.com) has become common practice among children and other Internet users. Plaintiffs' inaction or ineptitude in preventing the practice of the use of the [www.kazaa.com](http://www.kazaa.com) website, allowing [www.kazaa.com](http://www.kazaa.com)'s continued viability, has allowed individuals, including members of Defendant's household, to justifiably assume that any such file-

sharing was a wholly legal practice. Plaintiffs are thus guilty of the Doctrine of Laches, as their inaction thereby lulled such individuals into the belief that any such file-sharing was acceptable to Plaintiffs. Plaintiffs' unjustifiable delay and inaction in allowing such file-sharing by the network of [www.kazaa.com](http://www.kazaa.com) users through [www.kazaa.com](http://www.kazaa.com) is indefensible and prejudicial to Defendant and members of her household by reason of their change of position in reliance as a result of such delay.

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

12. Plaintiffs' claims are barred as they have caused fraud upon the Copyright Office.

13. Plaintiffs' action is barred by Estoppel, such that, although Plaintiff knew the fact of any alleged file-sharing by Defendant or her household, Plaintiffs acted in such a manner that said household member were entitled to, and did, believe that the continued availability of music on the [www.kazaa.com](http://www.kazaa.com) website was intended by Plaintiffs, and any actions to download were induced by and done in reliance of, Plaintiffs' conduct.

14. Any file sharing by Defendant or members of her householder was done, if at all, with Innocent Intent, in that said persons believed in good faith that any such conduct did not constitute an infringement of copyright.

15. Some or all of the purported infringement alleged by Plaintiffs are barred by the statutes of limitations set forth in the Copyright Act, 17 U.S.C. §507.

16. Plaintiffs are not entitled to equitable relief, as each of them unduly restricts access to music by assertion of rights beyond those provided in the Copyright Act. As such, Plaintiffs have misused their copyrights and have wrongfully attempted to extend the scope of the limited monopoly granted by the Copyright Act and thereby violate the antitrust laws. Defendant reserves her right to bring an action against Plaintiffs, or any of them, for antitrust violations.

17. Plaintiffs are not entitled to equitable relief, as each is guilty of conduct directly related to the merits of the controversy between the parties, sufficient to affect the equitable relations between the parties, and sufficient to invoke the doctrine of unclean hands. Defendant and her household have been personally

been injured by Plaintiffs' said conduct, which continued at least through the time of filing of this action.

18. Plaintiffs' action is barred by the doctrine of Collateral Estoppel, as there has been a prior copyright infringement action that determined that file-sharing analogous to that which Plaintiffs' here assert was not unlawful.

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

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

21. Plaintiffs cannot recover as Plaintiffs heretofore waived, licensed, abandoned or forfeited any rights previously held under the Copyright Act, surrendered by operation of law.

WHEREFORE, Defendant prays this Honorable Court for the following relief:

1. For dismissal of the Plaintiffs' action with prejudice;
2. For an order that Plaintiffs' shall take no relief from their complaint herein;
3. For an award of Defendant's costs and attorneys' fees herein incurred; and
4. For such further and other relief and the Court deems fair and just.

DATED: January 14, 2004

By:

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Bart W. Lombardo (8896)  
Attorney for Defendant  
FRIERI CONROY & LOMBARDO

ANSWER

**PROOF OF SERVICE**

The undersigned declares as follows:

I am employed in the County of Union, State of New Jersey I am over the age of eighteen years and not a party to the within action. My business address is 777 Walnut Avenue, Cranford, New Jersey.

On January 14, 2003, I served the foregoing **Answer to Complaint Denying Allegations of Copyright Infringement** on the attorneys of record/interested parties in this action by placing a true copy(ies) enclosed in an envelope for mailing to the following address on the date shown above following our ordinary business practices. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with New Jersey Lawyer's Service. Correspondence so collected and processed is deposited with the New Jersey Lawyer's Service that same day in the ordinary course of business.

Karen A. Confoy  
Sterns & Weinroth, P.C.  
50 West State Street, Suite 1400  
Trenton, NJ 08607-1298

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

Executed on January 14, 2004 at Cranford, New Jersey.

DATED: January 14, 2004

By: \_\_\_\_\_  
Bart W. Lombardo (8896)  
Attorneys for Defendant  
FRIERI CONROY & LOMBARDO

**LOCAL RULE 11.2 CERTIFICATION**

I, Bart W. Lombardo, attorney for the Defendant, Michelle Scimeca, hereby certify, in accordance with Local Rule 11.2, that to the best of my knowledge and belief, the matter in controversy is not the subject of any other action pending in any court or in any arbitration or administrative proceeding.

Dated: January 14, 2004

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BART W. LOMBARDO (8896)