

1 KENNETH B. WILSON, State Bar No. 130009
2 JUDITH B. JENNISON, State Bar No. 165929
3 KURT B. OPSAHL, State Bar No. 191303
4 STEFANI E. SHANBERG, State Bar No. 206717
5 PERKINS COIE LLP
180 Townsend Street, 3rd Floor
San Francisco, California 94107-1909
Telephone: (415) 344-7000
Facsimile: (415) 344-7050

6 Attorneys for Defendant and Counterclaimant
7 Kazaa BV (formerly known as Consumer Empowerment BV)

8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

10 METRO-GOLDWYN-MAYER
11 STUDIOS INC., COLUMBIA
12 PICTURES INDUSTRIES, INC.,
13 DISNEY ENTERPRISES, INC., NEW
14 LINE CINEMA CORPORATION,
15 PARAMOUNT PICTURES
16 CORPORATION, TIME WARNER
17 ENTERTAINMENT COMPANY, L.P.,
18 TWENTIETH CENTURY FOX FILM
19 CORPORATION, UNIVERSAL CITY
20 STUDIOS, INC., ARISTA RECORDS,
21 INC., ATLANTIC RECORDING
22 CORPORATION, ATLANTIC RHINO
23 VENTURES INC. d/b/a RHINO
24 ENTERTAINMENT COMPANY, BAD
25 BOY RECORDS, CAPITOL
26 RECORDS, INC., ELEKTRA
27 ENTERTAINMENT GROUP INC.,
28 HOLLYWOOD RECORDS, INC.,
INTERSCOPE RECORDS, LAFACE
RECORDS, LONDON-SIRE
RECORDS INC., MOTOWN RECORD
COMPANY, L.P., 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, WARNER BROS.
RECORDS INC., WEA
INTERNATIONAL INC., WEA
LATINA INC., and ZOMBA
RECORDING CORPORATION,

Plaintiffs,

CASE NO. CV 01-08541 SVW
(RNBx)

KAZAA BV'S ANSWER TO
COMPLAINT AND
COUNTERCLAIM FOR
DECLARATORY RELIEF

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v.

GROKSTER, LTD.,
MUSICCITY.COM, INC., MUSICCITY
NETWORKS, INC., and CONSUMER
EMPOWERMENT BV,

Defendants.

KAZAA BV,

Counterclaimant,

v.

METRO-GOLDWYN-MAYER
STUDIOS INC., COLUMBIA
PICTURES INDUSTRIES, INC.,
DISNEY ENTERPRISES, INC., NEW
LINE CINEMA CORPORATION,
PARAMOUNT PICTURES
CORPORATION, TIME WARNER
ENTERTAINMENT COMPANY, L.P.,
TWENTIETH CENTURY FOX FILM
CORPORATION, UNIVERSAL CITY
STUDIOS, INC., ARISTA RECORDS,
INC., ATLANTIC RECORDING
CORPORATION, ATLANTIC RHINO
VENTURES INC. d/b/a RHINO
ENTERTAINMENT COMPANY, BAD
BOY RECORDS, CAPITOL
RECORDS, INC., ELEKTRA
ENTERTAINMENT GROUP INC.,
HOLLYWOOD RECORDS, INC.,
INTERSCOPE RECORDS, LAFACE
RECORDS, LONDON-SIRE
RECORDS INC., MOTOWN RECORD
COMPANY, L.P., 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, WARNER BROS.
RECORDS INC., WEA
INTERNATIONAL INC., WEA
LATINA INC., and ZOMBA
RECORDING CORPORATION,

Counterdefendants.

1 Defendant and Counterclaimant Kazaa BV (formerly known as Consumer
2 Empowerment BV) (“Kazaa” or “Counterclaimant”) hereby answers the
3 Complaint of plaintiffs Metro-Goldwyn-Mayer Studios Inc., Columbia Pictures
4 Industries, Inc., Disney Enterprises, Inc., New Line Cinema Corporation,
5 Paramount Pictures Corporation, Time Warner Entertainment Company, L.P.,
6 Twentieth Century Fox Film Corporation, Universal City Studios, Inc., Arista
7 Records, Inc., Atlantic Recording Corporation, Atlantic Rhino Ventures Inc. d/b/a
8 Rhino Entertainment Company, Bad Boy Records, Capitol Records, Inc., Elektra
9 Entertainment Group, Inc., Hollywood Records, Inc., Interscope Records, LaFace
10 Records, London-Sire Records Inc., Motown Record Company, L.P., The RCA
11 Records Label, a unit of BMG Music d/b/a BMG Entertainment, Sony Music
12 Entertainment Inc., UMG Recordings, Inc., Virgin Records America, Inc., Walt
13 Disney Records, Warner Bros. Records Inc., WEA International Inc., WEA Latina
14 Inc., and Zomba Recording Corporation (collectively, “Plaintiffs” or
15 “Counterdefendants”), on personal knowledge as to its own activities and on
16 information and belief as to the activities of others, as follows:

17 **RESPONSE TO SPECIFIC ALLEGATIONS**

18 **NATURE OF THE ACTION**

- 19 1. Kazaa denies the allegations of Paragraph 1.
- 20 2. Answering the allegations of Paragraph 2, Kazaa admits that
21 Plaintiffs have purported to bring an action for copyright infringement under the
22 Copyright Act, 17 U.S.C. §101, *et seq.*, and that this Court has subject matter
23 jurisdiction over this action. Except as thus expressly admitted, Kazaa denies the
24 allegations of Paragraph 2.
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1 **JURISDICTION AND VENUE**

2 3. Answering the allegations of Paragraph 3, Kazaa admits that venue is
3 proper in this Court. Except as thus expressly admitted, Kazaa denies the
4 allegations of Paragraph 3.

5 **THE PARTIES**

6 4. Kazaa admits the allegations of Paragraph 4.
7 5. Kazaa admits the allegations of Paragraph 5.
8 6. Kazaa admits the allegations of Paragraph 6.
9 7. Kazaa admits the allegations of Paragraph 7.
10 8. Kazaa admits the allegations of Paragraph 8.
11 9. Kazaa admits the allegations of Paragraph 9.
12 10. Kazaa admits the allegations of Paragraph 10.
13 11. Kazaa admits the allegations of Paragraph 11.
14 12. Kazaa admits the allegations of Paragraph 12.
15 13. Kazaa lacks knowledge or information sufficient to form a belief as to
16 the truth of the allegations of Paragraph 13, and on that basis denies those
17 allegations.

18 14. Kazaa admits the allegations of Paragraph 14.
19 15. Kazaa admits the allegations of Paragraph 15.
20 16. Kazaa admits the allegations of Paragraph 16.
21 17. Kazaa admits the allegations of Paragraph 17.
22 18. Kazaa admits the allegations of Paragraph 18.
23 19. Kazaa admits the allegations of Paragraph 19.
24 20. Kazaa admits the allegations of Paragraph 20.
25 21. Kazaa admits the allegations of Paragraph 21.
26 22. Kazaa admits the allegations of Paragraph 22.
27 23. Kazaa admits the allegations of Paragraph 23.

1 **BACKGROUND ALLEGATIONS**

2 41. Answering the allegations of Paragraph 41, Kazaa admits that the
3 Internet is a worldwide network of millions of computers and computer networks
4 that enables computer users to communicate with one another through digital
5 transmissions of information from one computer to another, and that recent years
6 have seen the development and refinement of technologies that can be used for the
7 reproduction and distribution via the Internet of various types of digital data,
8 including files containing motion pictures, music and other content. Except as
9 thus expressly admitted, Kazaa denies the allegations of Paragraph 41.

10 42. Kazaa denies the allegations of Paragraph 42.

11 43. Answering the allegations of Paragraph 43, Kazaa admits that it
12 created certain peer-to-peer software that can be downloaded at no cost. Kazaa
13 also admits that it licensed certain technology to Defendants MusicCity and
14 Grokster. Kazaa further admits that it developed an application software program
15 entitled the “KaZaA Media Desktop” (hereafter “Media Desktop”). Kazaa admits
16 that MusicCity’s peer-to-peer software is called “Morpheus” and that Grokster’s is
17 called “Grokster.” Except as thus expressly admitted, Kazaa denies the allegations
18 of Paragraph 43.

19 44. Answering the allegations of Paragraph 44, Kazaa admits that the
20 Media Desktop allows users of the software to connect to a registration server
21 controlled by Kazaa. Kazaa lacks knowledge or information sufficient to form a
22 belief as to the truth of the allegations regarding Defendants MusicCity and
23 Grokster and on that basis denies those allegations. Except as thus expressly
24 admitted, Kazaa denies the allegations of Paragraph 44.

25 45. Kazaa admits that users of the Media Desktop can connect to
26 SuperNodes (which are themselves other Media Desktop users), that SuperNodes
27 compile an index of digital data made available for download by users connected

1 to the SuperNodes and that SuperNodes process search requests. Kazaa further
2 admits that with simple commands, the user can download data directly from the
3 hard drive of a fellow user who hosts it. Kazaa lacks knowledge or information
4 sufficient to form a belief as to the truth of the allegations regarding Defendants
5 MusicCity and Grokster and on that basis denies those allegations. Except as thus
6 expressly admitted, Kazaa denies the allegations of Paragraph 45.

7 46. Kazaa admits that the Media Desktop provides encryption for certain
8 communications to and from the users of its software. Except as thus expressly
9 admitted, Kazaa denies the allegations of Paragraph 46.

10 47. Kazaa admits that Kazaa, Music City and Grokster all provide chat
11 rooms and/or message boards on their Web sites. Except as thus expressly
12 admitted, Kazaa denies the allegations of Paragraph 47.

13 48. Kazaa denies the allegations of Paragraph 48.

14 49. Kazaa denies the allegations of Paragraph 49.

15 **PLAINTIFFS' CLAIM FOR RELIEF**

16 **(By All Plaintiffs Against All Defendants, for**

17 **Copyright Infringement Pursuant to 17 U.S.C. §501, et seq.)**

18 50. Kazaa incorporates by reference its responses to the allegations set
19 forth in Paragraphs 1 through 49 as if fully set forth herein.

20 51. Kazaa denies the allegations of Paragraph 51.

21 52. Kazaa denies the allegations of Paragraph 52.

22 53. Kazaa denies the allegations of Paragraph 53.

23 54. Kazaa denies the allegations of Paragraph 54.

24 55. Kazaa denies the allegations of Paragraph 55.

25 56. Kazaa denies the allegations of Paragraph 56.

26 57. Kazaa denies the allegations of Paragraph 57.

27 58. Kazaa denies the allegations of Paragraph 58.

1 59. Kazaa denies the allegations of Paragraph 59.

2 60. Kazaa denies the allegations of Paragraph 60.

3 61. Kazaa denies the allegations of Paragraph 61.

4 **AFFIRMATIVE DEFENSES**

5 **FIRST AFFIRMATIVE DEFENSE**

6 (Failure to State a Cause of Action)

7 62. Plaintiffs' complaint fails to state a claim upon which relief can be
8 granted against Kazaa.

9 **SECOND AFFIRMATIVE DEFENSE**

10 (First Amendment)

11 63. Plaintiffs' claim is barred by the First Amendment to the United
12 States Constitution.

13 **THIRD AFFIRMATIVE DEFENSE**

14 (Digital Millennium Copyright Act, 17 U.S.C. § 512)

15 64. Plaintiffs' claim is barred by the limitations on copyright liability in
16 Title 17, Section 512, of the United States Code.

17 **FOURTH AFFIRMATIVE DEFENSE**

18 (Fair Use)

19 65. Plaintiffs' claim is barred by the by the defense of fair use.

20 **FIFTH AFFIRMATIVE DEFENSE**

21 (Implied License)

22 66. Plaintiffs' claim is barred because Plaintiffs have granted an implied
23 license to some or all of the works at issue.

24 **SIXTH AFFIRMATIVE DEFENSE**

25 (Copyright Misuse)

26 67. Plaintiffs' claim is barred because Plaintiffs engage in copyright
27 misuse.

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SEVENTH AFFIRMATIVE DEFENSE

(Audio Home Recording Act, 17 U.S.C. § 1001 *et seq.*)

68. The Record Company Plaintiffs’ claims are barred by the Audio Home Recording Act, Title 17, Section 1001 *et seq.*, of the United States Code.

EIGHTH AFFIRMATIVE DEFENSE

(Waiver)

69. Plaintiffs’ claims are barred by the equitable doctrine of waiver.

NINTH AFFIRMATIVE DEFENSE

(Unclean Hands)

70. Plaintiffs’ claim is barred due to Plaintiffs’ unclean hands.

TENTH AFFIRMATIVE DEFENSE

(Laches)

71. Plaintiffs’ claim is barred by the equitable doctrine of laches.

ELEVENTH AFFIRMATIVE DEFENSE

(Estoppel)

72. Plaintiffs’ claim is barred by the equitable doctrine of estoppel.

TWELFTH AFFIRMATIVE DEFENSE

(Knowledge, Consent and Acquiescence)

73. Plaintiffs’ claim is barred by Plaintiffs’ knowledge, consent and acquiescence.

COUNTERCLAIM FOR DECLARATORY RELIEF

Defendant and Counterclaimant Kazaa hereby asserts the following counterclaim against plaintiffs/counterdefendants Metro-Goldwyn-Mayer Studios, Inc., Columbia Pictures Industries, Inc., Disney Enterprises, Inc, New Line Cinema Corporation, Paramount Pictures Corporation, Time Warner Entertainment Company, L.P., Twentieth Century Fox Film Corporation, Universal City Studios, Inc., Arista Records, Inc., Atlantic Recording Corporation,

1 Atlantic Rhino Ventures Inc. d/b/a Rhino Entertainment Company, Bad Boy
2 Records, Capitol Records, Inc., Elektra Entertainment Group, Inc., Hollywood
3 Records, Inc., Interscope Records, LaFace Records, London-Sire Records Inc.,
4 Motown Record Company, L.P., The RCA Records Label, a unit of BMG Music
5 d/b/a BMG Entertainment, Sony Music Entertainment Inc., UMG Recordings,
6 Inc., Virgin Records America, Inc., Walt Disney Records, Warner Bros. Records
7 Inc., WEA International Inc., WEA Latina Inc., and Zomba Recording
8 Corporation (collectively, “Counterdefendants” or “Plaintiffs”), on personal
9 knowledge as to its own activities and on information and belief as to the activities
10 of others, as follows:

11 **JURISDICTION AND VENUE**

12 74. Kazaa’s counterclaim for declaratory relief is brought pursuant to the
13 Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*, and the Copyright Act, 17
14 U.S.C. § 101, *et seq.*

15 75. This Court has subject matter jurisdiction over Kazaa’s counterclaim
16 pursuant to 28 U.S.C. §§ 1331 and 1338.

17 76. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391
18 because Counterdefendants are subject to personal jurisdiction within it.

19 **THE PARTIES**

20 77. Counterclaimant Kazaa BV is a limited liability company organized
21 under the laws of The Netherlands with offices in Sweden, Denmark and The
22 Netherlands.

23 78. Counterdefendant Metro-Goldwyn-Mayer Studios Inc. is a Delaware
24 corporation, with its principal place of business in California.

25 79. Counterdefendant Columbia Pictures Industries, Inc. is a Delaware
26 corporation, with its principal place of business in California.

1 80. Counterdefendant Disney Enterprises, Inc. is a Delaware corporation,
2 with its principal place of business in California.

3 81. Counterdefendant New Line Cinema Corporation is a Delaware
4 corporation that is qualified to transact business in California.

5 82. Counterdefendant Paramount Pictures Corporation is a Delaware
6 corporation, with its principal place of business in California.

7 83. Counterdefendant Time Warner Entertainment Company, L.P. is a
8 Delaware limited partnership that is qualified to transact business in California.

9 84. Counterdefendant Twentieth Century Fox Film Corporation is a
10 Delaware corporation, with its principal place of business in California.

11 85. Counterdefendant Arista Records, Inc. is a Delaware corporation that
12 is qualified to transact business in California.

13 86. Counterdefendant Atlantic Recording Corporation is a Delaware
14 corporation that is qualified to transact business in California.

15 87. Counterdefendant Atlantic Rhino Ventures Inc. d/b/a Rhino
16 Entertainment Company is a Delaware corporation with it principal place of
17 business in California.

18 88. Counterdefendant Bad Boy Records is a joint venture of Arista Good
19 Girls, Inc., a Delaware corporation with its principal place of business in New
20 York, and Bad Boy Entertainment, a Delaware corporation with its principal place
21 of business in New York, and is qualified to transact business in California.

22 89. Counterdefendant Capitol Records, Inc. is a Delaware corporation
23 that is qualified to transact business in California.

24 90. Counterdefendant Elektra Entertainment Group Inc. is a Delaware
25 corporation that is qualified to transact business in California.

26 91. Counterdefendant Hollywood Records, Inc. is a California
27 corporation with its principal place of business in California.

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1 92. Counterdefendant Interscope Records is a California general
2 partnership with its principal place of business in California.

3 93. Counterdefendant LaFace Records is a joint venture between Arista
4 Ventures, Inc., a Delaware corporation, and LaFace Records, Inc., a Georgia
5 corporation that is qualified to transact business in California.

6 94. Counterdefendant Motown Record Company, L.P. is a California
7 limited partnership that is qualified to transact business in California.

8 95. Counterdefendant The RCA Records Label, a unit of BMG Music
9 d/b/a BMG Entertainment, is a New York general partnership that is qualified to
10 transact business in California.

11 96. Counterdefendant Sony Music Entertainment Inc. is a Delaware
12 corporation that is qualified to transact business in California.

13 97. Counterdefendant UMG Recordings, Inc. is a Delaware corporation
14 that is qualified to transact business in California.

15 98. Counterdefendant Virgin Records America, Inc. is a California
16 corporation with its principal place of business in California.

17 99. Counterdefendant Walt Disney Records is a division of ABC, Inc., a
18 New York corporation that is qualified to transact business in California.

19 100. Counterdefendant Warner Bros. Records Inc. is a Delaware
20 corporation with its principal place of business in California.

21 101. Counterdefendant WEA International Inc. is a Delaware corporation
22 that is qualified to transact business in California.

23 102. Counterdefendant WEA Latina Inc. is a Delaware corporation that is
24 qualified to transact business in California.

25 103. Counterdefendant Zomba Recording Corporation is a New York
26 corporation that is qualified to transact business in California.

1 **GENERAL ALLEGATIONS**

2 104. Kazaa is a software company that develops and licenses innovative
3 peer-to-peer data-sharing technology. Peer-to-peer data transfer technology
4 allows users wishing to transfer electronic information to do so by connecting
5 directly to each other, rather than going through a centralized server, such as the
6 technology employed with the World Wide Web. Some of the advantages of a
7 peer-to-peer system are cost savings on bandwidth and storage, stability and
8 protection from denial of service attacks, and efficient search capabilities. Peer-
9 to-peer technology is recognized as one of the more important innovations on the
10 Internet, and presents opportunities for significant improvements in the field of
11 computing and networking. The efficiencies provided by peer-to-peer enables
12 users to place their individual computers into a larger network, and allow users to
13 gain the benefits of the shared resource. This new technological paradigm has the
14 potential to better utilize computing and network resources.

15 **The Fast Track Peer-to-Peer Stack**

16 105. Kazaa’s peer-to-peer product is known as the Fast Track Peer-to-Peer
17 Stack. In a self-generated network that uses the Fast Track Peer-to-Peer Stack,
18 certain user computers (known as “SuperNodes”) provide the routing information
19 and information location tools for the data transferred by other users’ computers.
20 This peer-to-peer method of data distribution allows the increasing power of
21 desktop computers to be harnessed for networking, thereby decreasing the need for
22 expensive servers and saving operating costs. Likewise, by distributing the
23 network management functions, the Fast Track Peer-to-Peer Stack allows the
24 network to remain operational even if certain computers go offline, increasing the
25 data’s survivability should problems arise in particular components or
26 connections.

1 109. Kazaa makes the Fast Track Peer-to-Peer Stack available to be
2 licensed to third-party software developers interested in more efficient, scalable,
3 cost-advantageous, and distributed data transfers and storage. The Fast Track
4 Peer-to-Peer Stack also includes application-program interfaces (APIs), which
5 allow the underlying technology to interoperate with specially designed front-end
6 software applications. Thus, licensees can create software applications that utilize
7 the underlying technology, but are customized to fit their particular business
8 needs. The technology is equally suited for a consumer oriented data sharing
9 service as for a large corporate information retrieval service. For example, Kazaa
10 has licensed the Fast Track Peer-to-Peer Stack to two of the Defendants,
11 MusicCity.com, Inc. and Grokster, Inc.

12 **The Kazaa Media Desktop**

13 110. In addition to its Fast Track Peer-to-Peer Stack, Kazaa has developed
14 a separate software application known as the Kazaa Media Desktop (“The Media
15 Desktop”). The Media Desktop is a peer-to-peer data-transfer software program
16 that uses the Fast Track Peer-to-Peer Stack. Individuals running the software can
17 search and download media files from other users on the self-organized network.
18 The Media Desktop supports any and all data types, including audio, video,
19 software, images, and documents.

20 111. Users also can organize and play or view their media files through a
21 media viewing application integrated with the Media Desktop software, publish
22 their own works to a large audience, and communicate with other users of the
23 software.

24 112. Once a user downloads the Media Desktop software, he or she may
25 register with an authentication server and obtain a list of SuperNodes from a
26 variety of sources, including other users’ copies of the Media Desktop or from a
27 server located at supernode.kazaa.com. Neither registration nor login is necessary

1 to operate the software. The user's computer thereafter interacts directly with the
2 computers of other users of the software.

3 113. Kazaa does not maintain a central server for transferring data using
4 the Fast Track P2P Stack, nor does it monitor or control the data being shared by
5 individual users through either KaZaA or the other software applications that
6 interoperate with the Fast Track Peer-to-Peer Stack.

7 114. While Kazaa may in some cases initially help new users find the self-
8 organized network, Kazaa does not provide a data-sharing service. Rather, like
9 the makers of a Web browser who do not control the sites being browsed, or the e-
10 mail software providers who do not monitor the attachments to its users'
11 messages, Kazaa simply provides a data-sharing software application and a peer-
12 to-peer software stack without monitoring the specific data being shared or
13 controlling its users' behavior. Indeed, the Media Desktop and the self-organized
14 network would continue to operate even if all computers maintained by Kazaa
15 were offline.

16 115. Kazaa's Fast Track Peer-to-Peer Stack does not harm or threaten any
17 lawful rights of Plaintiffs and Kazaa is entitled to a declaration to that effect in this
18 action.

19 **FIRST COUNTERCLAIM**

20 **(Declaratory Relief)**

21 116. Kazaa realleges and incorporates by reference paragraphs 74 through
22 115 above as though fully set forth herein.

23 117. An actual controversy under 28 U.S.C. § 2201 has arisen and now
24 exists between Kazaa and the Plaintiff/Counterdefendants relating to the legal
25 rights of Kazaa to develop and license the Fast Track Peer-to-Peer Stack
26 technology to software developers.

1 118. On October 2, 2001, Plaintiffs/Counterdefendants filed suit in this
2 Court alleging that Defendant/Counterclaimant Kazaa has engaged in copyright
3 infringement under the Copyright Act, 17 U.S.C. § 501, *et seq.*

4 119. Plaintiffs allege in their Complaint that “Defendants have created and
5 control an extensive and integrated network” that “enables [consumers] to pool
6 various types of infringing digital files . . .”. Plaintiffs allege that software was
7 created by Defendant Kazaa and licensed to defendants MusicCity and Grokster,
8 and that such software connects consumers to the above-alleged “network
9 controlled by Defendants.”

10 120. Plaintiffs bring a claim for copyright infringement, alleging that
11 “[t]hese infringements occur . . . whenever one of [Defendants’] users, without
12 authorization of the copyright owner, uses Defendants’ network to download a
13 copyrighted content file from another user’s computer . . .”.

14 121. Plaintiffs’ claim appears to be for contributory and/or vicarious
15 liability for copyright infringement, based on the alleged direct infringements of
16 users of an alleged “network” jointly created and controlled by Defendants.

17 122. Accordingly, a declaratory judgment is necessary in that the Plaintiffs
18 contend and Kazaa denies that, by developing and licensing the Fast Track Peer-
19 to-Peer Stack technology, Kazaa directly or indirectly infringes the Plaintiffs’
20 copyrights or other exclusive rights.

21 **Prayer for Relief**

22 WHEREFORE, Kazaa requests entry of judgment in its favor on both
23 Plaintiffs’ Complaint and on Kazaa’s Counterclaim and prays that the Court:

- 24 A. Dismiss Plaintiffs’ Complaint with prejudice;
25 B. Declare that Kazaa has not infringed, contributed to the
26 infringement of or induced infringement of any valid copyright of Plaintiffs’;
27

1 C. Declare that the development of the Fast Track Peer to Peer Stack,
2 does not infringe, contribute to the infringement of or induce others to infringe
3 any copyrights held by the Plaintiffs;

4 D. Declare that the licensing of the Fast Track Peer to Peer Stack to
5 MusicCity or Grokster, does not infringe, contribute to the infringement of or
6 induce others to infringe any copyrights held by the Plaintiffs;

7 E. Declare that the licensing of the Fast Track Peer to Peer Stack to
8 third-parties, does not infringe, contribute to the infringement of or induce others
9 to infringe any copyrights held by the Plaintiffs;

10 F. Declare that Kazaa may not be enjoined from licensing the Fast
11 Track Peer to Peer Stack to third-parties;

12 G. Declare that Kazaa's Fast Track Peer to Peer Stack has not caused
13 harm to Plaintiffs or brought any unjust enrichment to Kazaa;

14 H. Award Kazaa its costs, disbursements, and attorneys' fees incurred
15 in this action, to the extent allowed by law;

16 I. Award Kazaa such other and further relief as is just and equitable.

17
18 DATED: January 2, 2001.

PERKINS COIE LLP

19
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21 By _____
22 Kenneth B. Wilson
23 Attorneys for Defendant-Counterclaimant
24 Kazaa BV, formerly known as Consumer
25 Empowerment BV.
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1 **PROOF OF SERVICE**

2 I, Steve Dennison, declare:

3 I am a citizen of the United States and am employed in the County of San
4 Francisco, State of California. I am over the age of 18 years and am not a party to
5 the within action. My business address is Perkins Coie LLP, 180 Townsend
6 Street, 3rd Floor, San Francisco, California 94107-1909. I am personally familiar
7 with the business practice of Perkins Coie LLP. On January 2, 2001, I served the
8 following document(s):

9 **ANSWER TO COMPLAINT AND COUNTERCLAIM FOR
10 DECLARATORY RELIEF**

11 by placing a true copy thereof enclosed in a sealed envelope addressed to the
12 following parties:

13 David E. Kendall, Esq.
14 Williams & Connolly LLP
15 725 Twelfth St., NW
16 Washington, DC 20005

17 Andrew P. Bridges, Esq.
18 Wilson Sonsini Goodrich & Rosati PC
19 650 Page Mill Road
20 Palo Alto, CA 94304

21 Jan B. Norman, Esq.
22 15503 Ventura Blvd.
23 Encino, CA 91436

24 Michael H. Page, Esq.
25 Keker & Van Nest LLP
26 710 Sansome Street
27 San Francisco, CA 94111

28 Robert M. Schwartz, Esq.
O'Melveny & Myers LLP
1999 Avenues of the Stars
Suite 700
Los Angeles CA 90067

Russell J. Frackman, Esq.
Mitchell Silberberg & Knupp LLP
11377 West Olympic Blvd.
Los Angeles, CA 90064

X (By Overnight Courier) I caused each envelope, with postage fully
prepaid, to be sent by Federal Express.

I declare under penalty of perjury under the laws of the State of California
that the above is true and correct and that this declaration was executed at San
Francisco, California.

DATED: January 2, 2001.

Steve Dennison