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17 MusicCity.com, Inc. (now known as
StreamCast Networks, Inc.) and
18 MusicCity Networks, Inc.

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

21 METRO-GOLDWYN-MAYER
22 STUDIOS INC., et al.,

23 Plaintiffs,

24 vs.

25 GROKSTER, LTD., et al.,

26 Defendants.

) Case No. 01-08541 SVW (PJWx)

) MEMORANDUM OF POINTS AND
) AUTHORITIES OF DEFENDANTS
) STREAMCAST NETWORKS, INC.
) (FORMERLY KNOWN AS
) MUSICCITY.COM, INC.) AND
) MUSICCITY NETWORKS, INC. IN
) SUPPORT OF MOTION FOR PARTIAL
) SUMMARY JUDGMENT:
) DECLARATIONS OF DARRELL
) SMITH, WILLIAM CLAY SHIRKY,
) ANDREW P. BRIDGES, GREGORY

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NEWBY, M. TALLY GEORGE, SEAN
L. MAYERS, JOHN PERRY BARLOW,
BREWSTER KAHLE, RICHARD
PRELINGER, STEVE W. GRIFFIN AND
RICHARD NESSARY IN SUPPORT OF
MOTION

[Notice of Motion and Motion, and
Statement of Uncontroverted Facts and
Conclusions of Law, filed concurrently
herewith]

Date: February 25, 2002
Time: 1:30 p.m.
Ctm: 6 (Spring Street)
Hon. Stephen V. Wilson

, Richard Prelinger, hereby declare:

2 1 My name is Richard Prelinger. I reside in San Francisco, California.

3 2. I am currently founder and president of Prelinger Associates, Inc.,
4 known in the trade as Prelinger Archives, which I founded in 1985. Prelinger
5 Archives is a for-profit archive of historical moving images that furnishes stock
6 footage to the media production community through Getty Images, Inc., its
exclusive representative.

8 3 I served on the Board of Directors of the Association of Moving
9 Image Archivists (AMIA), a professional organization, between 1993 and 1997,
10 and am currently AMIA's representative on the National Film Preservation Board,
as appointed by the Librarian of Congress.

12 4. Before founding Prelinger Archives, I worked as a researcher and
13 archival consultant on motion pictures and television programs. Between 1989 and
14 1995, I was Director of Archival Development at The Comedy Channel and Home
Box Office, both in New York City. In 1989, my company published Footage 89:
16 North American Film and Video Sources, the definitive compendium of public and
17 private moving image collections. I attended the University of California at
18 Berkeley, completing four years of classwork in 1979.

19 5. Prelinger Archives has assembled and owns a collection of over
20 48,000 "ephemeral" (advertising, educational, industrial, documentary and
21 amateur) films produced between 1903 and 1990. Approximately 60% of this
22 material is in the public domain; we own rights to approximately 5%; and the
23 remainder, currently under copyright, is available for on-site reference use only.
24 We are known in the industry for both breadth of imagery and high image quality,
25 and for our exclusive coverage of many aspects of American cultural and social
26 history.

27 6. Prelinger Archives is a commercial, for-profit venture. The market
28 for our stock images and sounds is wide and continues to broaden as the number of

1 media outlets increases. We license footage to motion picture producers both in
2 and out of Hollywood; broadcast and cable television networks and production
3 companies; software developers and publishers; educational media producers;
4 corporate video producers for both in-house and external use; to advertising
5 agencies for commercials, print advertisements and presentations; to concert
6 promoters and theatrical promoters for use in conjunction with their events and
7 productions; to government agencies at every level; to artists and nonprofit
8 organizations for a wide variety of projects; and clients in many other market
9 areas.

10 7 Historically, collectors or custodians of public domain materials have
11 exercised a high degree of physical and contractual control over the material in
12 their possession, in an attempt to monopolize their purported exclusivity of
13 imagery and to prevent unauthorized copying. Though we shared this perspective
14 when we began in business, we quickly found this to be short-sighted.

15 8 In 1987, we partnered with The Voyager Company, a pioneer
16 publisher of videodiscs and CD-ROMs, to publish two one-hour anthologies of key
17 ephemeral films from our collection. Though the first two compilations sold only
18 some 20,000 copies, they proved influential in building our reputation as a source
19 for unique and evocative historical imagery within the production community, and,
20 though we had not anticipated that they would so function, ended up serving as
21 excellent "demo reels" of our holdings, bringing us new business (as well as
22 national publicity on every major television network).

23 9 In 1994, we began production on an expanded anthology of 12 CD-
24 ROMs, 0 of which were published, that contained a substantial number of
25 historical films from our collection together with contextual material. This
26 anthology also brought us a good deal of press attention and new business. It is
27 important to note that we did not prohibit users of this second anthology from
28 copying the movies and using them for their own purposes.

10. Our experience with these digital anthologies convinced us that widespread distribution of our films, along with the resultant publicity, built our "brand" in the area of archival footage. Our willingness to distribute freely in digital formats also served to differentiate us from the growing pool of other companies specializing in this area.

11. As a result of our early experiences with digital distribution, in 2001 Prelinger Archives arranged to have 1,001 of our most popular public domain films digitized and made available through the Internet Archives at www.moviearchive.org. In an effort to maximize the commercial value of this wide distribution, further reuse and redistribution of the digitized films (whether by the community of peer-to-peer software users or otherwise) was left unrestricted.

12. Our partnership with the Internet Archive has addressed many business issues for us in a promising way.

13. First, by building the largest publicly available archival film collection on the Web, we have accomplished an enviable goal -- the capability of providing demo reels to anyone, anywhere, at no cost to ourselves. When a prospective client requests a copy of a given film or image, odds are that it is available online for free. This means that our active involvement with the transaction begins after the choice has been made, and we don't have to pass through the laborious research stage.

14. Second, free distribution through the Internet Archive, and from there further redistribution through other sources, has increased brand visibility for Prelinger Archives.

15. Third, since the images in the Internet Archive are freely downloadable, we believe that they will be used more readily than images in other collections. In the stock image business, ubiquity equals sales. Some years ago, the director of the Time-Life Photo Collection told me that the most used, yet also most remunerative image in her collection was the famous photograph of the 3-D

1 film audience, all seated wearing stereoscopic glasses. This picture has been
2 reproduced so often as to become a cliché, but this has actually increased sales.
3 From our perspective, frequent use of our images will increase the frequency of
4 demand for them.

5 16. Fourth, we can now refer worthy but financially-challenged users to
6 the website, where they can get material for free without ourselves having to incur
7 any costs. We will still gain from the publicity they generate for us, and the
8 visibility of the images they use will ultimately benefit us.

9 17. Peer-to-peer networks represent a very exciting opportunity, as they
10 will propagate images even more widely without increasing our costs. As
11 discussed above, Prelinger Archives believes that widespread, unrestricted digital
12 distribution of our films brings important commercial benefits. As a result, we
13 welcome further redistribution of the Prelinger films made available at the Internet
14 Archive by individuals using peer-to-peer software products like Morpheus,
15 KaZaA and Grokster.

16 8. By voluntarily "hosting" our films and making them available to the
17 millions of others in the peer-to-peer community, the users of these peer-to-peer
18 software products are amplifying the availability of the Prelinger films, extending
19 our reach beyond that of the Internet Archive alone. To the extent this is done
20 without imposing any additional costs on Prelinger Archives, whether in the form
21 of hosting or bandwidth charges, this is great for us.

22 I declare under penalty of perjury under the laws of the United States of
23 America that the foregoing is true and correct and that this declaration is executed
24 in San Francisco, California on
25 January 17, 2002.

26 Richard Prelinger
27 Richard Prelinger
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