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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

1 I, Darrell Smith, hereby declare:

2 1. My name is Darrell Smith. I reside in Scottsdale, Arizona.

3 2. I am the Chief Technology Officer of MusicCity. I am the chief
4 software developer at MusicCity for the software program called "Morpheus."

5 3. Before working with MusicCity, I was Vice President of Development
6 at Motion Pixel, Inc. and Sirius Publishing, Inc., where I developed advanced
7 video compression and playback software for use in the telecommunications,
8 personal computers and motion picture industries.

9 4. The Morpheus software program is a communications tool that allows
0 users to connect together to form a user network. Using the Morpheus software
program, users may search for and share any kind of computer file (including text,
12 images, audio, video, and software files) with any other user of the network. The
3 network itself creates indexes of resources available to it, without relying upon a
14 central server to index the entire network. The Morpheus software program also
5 has the ability to send and receive instant messages within the network, to organize
6 media files on one's own computer, and to display or play the contents of media
17 files on one's computer.

18 5. The network created by users of the Morpheus software program (and
19 the programs of the other defendants) is "self-organizing," in that the users
20 communicate with each other without assistance from MusicCity. The network
21 itself shares and updates information, and allocates different resources as needed.

22 6. The user network consists of users of the Morpheus, KaZaA, or
23 Grokster software products.

24 7. One particularly useful and innovative feature of the network created
25 by users of the Morpheus software program is the "dynamic," or variable, use of
26 "supernodes." A "node" is an end-point of the Internet, typically a user's
27 computer. A "supernode" is a node that has a heightened function, accumulating
28 information from multiple other nodes. In the network created by users of the

1 Morpheus software program, nodes become supernodes and may revert to being
2 mere nodes depending upon network demands and the nodes' ability to take on
3 heavier network duties. The network self-selects supernodes; a user's node may be
4 a supernode one day and not on the following day, depending on resource needs
5 and availability on the network.

6 8. Supernodes help the network operate efficiently by aggregating
7 information from many nodes so that each node, by searching one supernode,
8 needs to connect with fewer other nodes to find resources.

9 9. MusicCity does not operate any supernodes.

10 0. When a user installs the Morpheus software program, the program
11 comes with an initial list of supernodes, just as a browser generally comes pre-
12 loaded with a list of popular web site addresses and Internet service providers.
13 When the person's computer first connects to one of the supernodes, the supernode
14 updates the initial list that came with the program.

15 11. When a user first operates the Morpheus software program, it interacts
16 briefly with MusicCity's server to establish a username and password. MusicCity
17 itself does not use the username or password for any purpose; instead, the
18 username identifies the user uniquely to other members within the user network. If
19 the software cannot access the MusicCity server, the user may still access the user-
20 created network, but the user's username will not be properly displayed and other
21 users will not know that this is the same user who has connected before. Indeed,
22 this has happened many times when MusicCity's servers have been unavailable.

23 12. After attempting to submit the user's username (and even if
24 MusicCity's server is unavailable), the Morpheus software program connects to the
25 user-created network by connecting to another user who is functioning at that time
26 as a supernode. To search the network, the Morpheus software program sends
27 search requests to a supernode; the supernode reports results from the nodes and
28 supernodes with which it communicates.

1 13. A user who wishes to locate a file on another user's computer enters a
2 search term into a search request page. The software connects the user to a
3 supernode, which searches other nodes connected to it and, if necessary, other
4 supernodes. The local supernode then sends to the requester a list of other users on
5 the network who have files that are associated with the search terms.

6 14. MusicCity has no involvement in making search requests, maintaining
7 file indexes, processing search requests, compiling search results, sending search
8 results to a user, controlling searches or displays of results, or monitoring searches
9 or displays of results.

10 15. Next, to obtain files, a user of the Morpheus software program selects
11 files from the search results and connects directly to the other users' computers and
12 downloads the files directly from the other users' computers. MusicCity's servers
13 are not involved in identifying locations that host user files, requesting those files
14 for transfer, communicating with the host users, transferring files from one user to
15 another, controlling or monitoring transfers of user files, or controlling or
16 monitoring management or use of files. MusicCity's servers have no knowledge of
17 particular files being transferred among users.

18 16. MusicCity's involvement with use of the Morpheus software after
19 delivery of the software is very limited. The software contains two components
20 that activate the user's Microsoft Internet Explorer "browser" software when the
21 software is running on a user's computer, regardless of any activity by the user.
22 One component calls on MusicCity's servers to obtain changeable background
23 graphics for the "start" page of the Morpheus user interface. The background
24 graphics make the software user interface attractive, give MusicCity the chance to
25 broadcast messages to Morpheus software users, and permit advertising. The other
26 component calls on other servers of MusicCity or other companies, which send
27 additional advertisements into a window at the bottom of the software's user
28 interface.

1 17. Both the "start" page graphics and the advertisements are obtained by
2 the user's Microsoft Internet Explorer program whenever the Morpheus software
3 program is running and is connected to the user network, regardless of the activity
4 of the user.

5 18. Thus, even if one engages in no searching, sharing, downloading, or
6 playing of media files, the graphics and advertising will be displayed on the
7 software interface.

8 19. Once a user has obtained the Morpheus software program, neither
9 MusicCity nor any of its computer servers participates in, or contributes in any
10 way to, the transfer of media files on the network created by users of the Morpheus
software program.

12 20. As noted above, once the user obtains the Morpheus software
13 program, MusicCity has no involvement in any of the steps for searching and the
14 transfer of files. In addition, the Morpheus software program does not
15 communicate to MusicCity or its servers any information about possession, receipt,
16 transfer, searching, or indexing of the media files by the user. Nor does it use
17 MusicCity or its servers to search for, index, transfer, download, manage, display
18 or play any files of the Plaintiffs' media content.

19 21. To foster a sense of community among users of the Morpheus
20 software program, MusicCity operates at its web site a chat service and a
21 discussion board, but the Morpheus software has no direct connection to those
22 services. A user of the software may click on a link displayed in the "Start" page
23 graphical interface in order to go to MusicCity's web-based chat or discussion
24 services, but the access to those services is through a web interface that exists
25 regardless of whether one arrives from the Morpheus interface or directly from the
26 web via its Internet address www.musiccity.com. Morpheus usernames and
27 passwords do not gain access to the chat and discussion services; one must register
28 a username and password separately for those services.

1 22. In sum, once a user has installed a copy of the Morpheus software
2 program, MusicCity has no effective involvement with or control over what a user
3 does with the program. Users must elect to run the software, determine what (if
4 any) files they wish to store on their hard drive or to share, decide what bandwidth
5 to allocate to the application, and indicate whether they may be designated to serve
6 as a transient supernode. Users decide whether to use the software to join and
7 form a public, user-created network. Users decide whether to search for, find,
8 send, or receive files over the user-created network. The Morpheus product does
9 not report any information about a user's conduct to MusicCity's servers. It sends
10 only username/password information when the user starts running Morpheus.

1 23. If MusicCity ceased to operate, if its servers became inoperative (as
12 has happened on occasion owing to technical malfunctions or maintenance) or if
13 all network connections to MusicCity are severed, the searching, indexing,
14 transferring, downloading, managing, display and play functions of the software
15 would continue unaffected.

16 24. The only changes would be that (1) the display of advertisements and
17 the display of graphics on the software user interface would be interrupted, and (2)
18 the user's username would be displayed on the user network without identifying
19 the user as using the Morpheus software program.

20 25. MusicCity does not "operate" the Morpheus user network, and it does
21 not operate a file-indexing service. Morpheus software program users can (and, in
22 fact, do) take advantage of the program's full communication functionality without
23 MusicCity's continuing involvement. Even when MusicCity's servers have been
24 down, Morpheus use has been ongoing, with Morpheus users able to find and
25 download files on their own.

26 26. The Morpheus product is widely available from third parties on its
27 user-created network or the Internet at large. MusicCity cannot reliably stop a
28 particular person or computer from obtaining a copy of the Morpheus product.

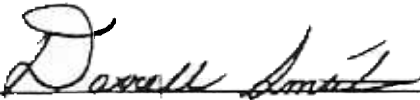
1 27. A variety of related digital technologies, some of which may be used
2 in conjunction with Morpheus, may equally be accused of being “essential tools”
3 for copying files and other data regardless of the legal status of those files. They
4 include:

- 5 a) high-speed communications devices such as DSL and cable modems,
6 favored by those who want to download video or sound files;
- 7 b) browser software (such as Microsoft Internet Explorer or America
8 Online’s Netscape Communicator), for viewing, editing and copying
9 files that are posted to the Web;
- 10 c) server software (such as Microsoft Internet Information Server and
11 Apache HTTP Server) for distributing content across the Internet
- 12 d) media player software (such as Microsoft Media Player), for viewing
13 and displaying media files;
- 14 e) e-mail and instant messaging software, favored by those who want to
15 send or receive files privately;
- 16 f) internet relay chat servers, commonly used for file-sharing activities;
- 17 g) newsgroup software (often bundled into e-mail software), favored by
18 those who want to choose and download music and video files from
19 newsgroups;
- 20 h) file transfer protocol software for obtaining files over the Internet;
- 21 i) scanners, fax modems, and printers, for those who want to copy
22 and/or transmit images over the Internet and otherwise; and
- 23 j) large-capacity storage devices such as hard drives, CD-ROM burners,
24 DVD burners, and Zip drives, and their recording media, favored by
25 those who want to keep libraries of video or sound files.

26 28. Attached hereto as Exhibit A is a true and correct copy of a print-out
27 of the screen displays of the Morpheus software program’s “Start” interface.
28

1 29. Attached hereto as Exhibit B is a true and correct copy of a print-out
2 of the screen display of the Morpheus software program's "Search" interface.

3 I declare under penalty of perjury under the laws of the United States of
4 America that the foregoing is true and correct and that this declaration is executed
5 in Scottsdale, Arizona on January 21, 2002.

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9 Darrell Smith
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