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13 SHARMAN NETWORKS LIMITED

14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA

16 METRO-GOLDWYN-MAYER, )  
17 STUDIOS INC., et al., )  
18 Plaintiffs, )

16 Consolidated Case Nos.  
17 CV 01-8541-SVW (PJWx)  
18 CV 01-9923-SVW (PJWx)

19 vs. )

20 GROKSTER, LTD., et al., )  
21 Defendants. )

20 **DECLARATION OF ALAN MORRIS IN SUPPORT OF DEFENDANT SHARMAN NETWORKS LIMITED'S EX PARTE APPLICATION**

22 JERRY LEIBER, et al., )  
23 Plaintiffs, )

22 Date: Submitted February 6, 2004  
23 Ctrm: The Hon. Patrick J. Walsh

24 vs. )

25 CONSUMER EMPOWERMENT BV )  
26 aka FASTTRACK, et al., )  
27 Defendants. )

28 AND RELATED COUNTERCLAIMS. )

1 I, Alan Morris, declare as follows:

2 I am Executive Vice President of Sharman Networks Limited

3  
4 testify, I could and would competently testify thereto.

5 2. At approximately 9:00 a.m. on Friday, February 6, 2004, Sharman was  
6 served at its place of business with a Notice of Motion for Ex Parte Relief and an  
7 Order issued by the Federal Court of Australia, New South Wales District Registry.  
8 A copy of the papers served are attached to this declaration.

9 3. Sharman was later informed that the Order had been secured, without  
10 any notice to Sharman, by certain record label companies, including Universal Music,  
11 Festival Records, EMI Music, Sony Music, Warner Music, and BMG. We understand  
12 that these same companies also filed suit against Sharman in New South Wales;  
13 however, Sharman had not been served with the lawsuit. My understanding is that  
14 most, if not all, of these record label companies are plaintiffs in the copyright  
15 infringement action against Sharman pending in the United States District Court for  
16 the Central District of California.

17 4. Service of the order was made by an independent solicitor. The solicitor  
18 was accompanied by a representative of the record company plaintiffs and three  
19 forensic experts. I later learned that solicitors, plaintiffs representatives, and forensic  
20 experts hired by plaintiffs including forensic experts working for the plaintiffs served  
21 identical orders at the homes of Nicola Hemming, President and CEO of Sharman,  
22 and Phil Morle, Chief Technical Officer. The order was also served at the office of  
23 Brilliant Digital Entertainment and the home of Kevin Bermeister, Brilliant's CEO.

24 5. Shortly after plaintiffs' representatives arrived at Sharman's offices,  
25 numerous members of the press and media arrived also. While plaintiffs refused to  
26 extend even the courtesy of notice to Sharman, plaintiff apparently ensured that their  
27  
28

Hennigan, Bennett & Dormer LLP  
Lawyers  
Los Angeles, California

1           6.     The 23 page order allows for the search and examination of Sharman's  
2 electronic information, including documents in electronic format, and non-electronic  
3 documents, as specified in a schedule attached to the order. The order further allows  
4 the representatives to copy and remove from Sharman's premises all documents  
5 specified in the order, and to make bit stream images of any electronic files located at  
6 Sharman's premises. Finally, the order allows the search and inspection to take place  
7 by any technical or forensic means.

8           7.     The order contains no provisions to prevent the plaintiff companies or  
9 their representatives from having access to Sharman's most confidential information,  
10 including its source code. Sharman previously produced its source code to counsel  
11 for plaintiffs in the United States action under the terms of a Software Materials  
12 Protective Order entered in the United States action. That protective order prevents  
13 the disclosure of Sharman's source code to anyone other than plaintiffs' outside  
14 counsel. This restriction was necessary due to the adverse competitive impact that  
15 disclosure to plaintiffs would have on Sharman.

16           8.     The documents that plaintiffs' representatives demanded to seize from  
17 Sharman's premises under the order included many of the documents that Sharman  
18 has produced in the United States action. The order also calls for the seizure of  
19 information that plaintiffs sought in the United States action, but were refused by the  
20 court.

21           9.     Sharman's attempt to comply with the seizure order effectively shut  
22 down Sharman's business on February 6. More than 25 individual computers were  
23 identified for inspection, and offices were searched. During the process, Mr. Morle's  
24 hard drive was destroyed, and it is unlikely that the information in that drive can be  
25 recovered. By 8:00 p.m. on Friday night, plaintiffs and the independent solicitor were  
26 still in Sharman's offices collecting information.

27           10.    The order states that privileged information is exempt from seizure. To  
28 ensure that Sharman's privileges are protected, Sharman's key personnel must review



1 each document seized. Additionally, Sharman will be entitled to refuse production or  
2 seek the return of documents improperly taken. To comply with the order, while  
3 protecting Sharman's legal rights, Sharman's key personnel have been fully occupied  
4 with the seizure demand, and will likely spend hundreds of hours over the new few  
5 weeks reviewing documents.

6 11. These same individuals (including myself, Mr. Morle, Ms. Carreiro, Ms.  
7 Hemming, Mr. Sanders, and Mr. Tyson, among others), were scheduled to meet with  
8 Sharman's United States counsel during this time period to prepare for their  
9 depositions scheduled to begin February 16. For example, Mr. Morle's deposition in  
10 both an individual capacity and on behalf of Sharman with respect to more than 20  
11 topics is scheduled for February 15 and 16. Yet, Mr. Morle will be required to review  
12 the substantial number of documents from technical files for privilege, confidentiality  
13 and responsiveness to the order. It is likely that this task will take weeks of Mr.  
14 Morle's time.

15 12. I am informed by Sharman's Australian counsel that securing an  
16 extraordinary seizure order, as plaintiffs did here, requires a representation that the  
17 applicants have reason to believe that the respondent will destroy documents if not  
18

19 is to prevent the intentional destruction of evidence. For this reason, the order  
20 contained a prohibition against disclosing issuance of the order or its contents to  
21 anyone other than legal counsel before 1:00 p.m. on February 6, 2004. I am further  
22 informed that plaintiffs submitted one or more declarations with the application for  
23 the seizure order which represented that Sharman would likely destroy evidence.

24 13. The claim that Sharman would destroy relevant evidence is knowingly  
25 false and factually absurd. Sharman has produced tens of thousands of documents in  
26 the United States action, including its most highly confidential source code. While  
27 Sharman, with the assistance of the United States court, has taken steps to ensure the  
28 confidentiality of such material, it has willingly complied. Additionally, even though



1 Sharman has objected to the production of certain information, where the United  
2 States court has ordered production, Sharman has complied. Indeed, much of the  
3 information that plaintiffs have seized from Sharman's offices, and intend to seize,  
4  
5  
6 subjected to privilege review before production. Second, the documents were  
7 produced under the terms of protective orders. Plaintiffs' clandestine seizure order  
8 effectively bypasses these safeguards.

9 14. Plaintiffs' actions have been immensely disruptive to Sharman's  
10 business, forced Sharman to secure the services of numerous counsel at an enormous  
11 cost, and will keep the witnesses that plaintiffs identified for deposition in the United  
12 States action (including me) from preparing for and attending those depositions over  
13

14 I declare under penalty of perjury under the laws of the laws of New South  
15 Wales and the United States that the foregoing is true and correct.

16 This Declaration is executed on February 6, 2004, in New South Wales,  
17 Australia

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21 Alan Morris  
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IN THE FEDERAL COURT OF AUSTRALIA  
NEW SOUTH WALES DISTRICT REGISTRY

No. N110 of 2004

UNIVERSAL MUSIC AUSTRALIA PTY LTD  
(ACN 000 158 592)

First Applicant

FESTIVAL RECORDS PTY LTD (ACN 000 111  
197) AND MUSHROOM RECORDS PTY LTD  
(ACN 005 594 043) TRADING AS FESTIVAL  
MUSHROOM RECORDS

Second Applicant

EMI MUSIC AUSTRALIA PTY LIMITED  
(ACN 000 070 235)

Third Applicant

SONY MUSIC ENTERTAINMENT (AUSTRALIA)  
LIMITED (ACN 000 033 581)

Fourth Applicant

WARNER MUSIC AUSTRALIA PTY LIMITED  
(ACN 000 815 565)

Fifth Applicant

BMG AUSTRALIA LIMITED  
(ACN 004 157 564)

Sixth Applicant

SHARMAN LICENSE HOLDINGS LTD

First Respondent

SHARMAN NETWORKS LTD

Second Respondent

LEF INTERACTIVE PTY LTD (ACN 099 675 242)

Third Respondent

NICOLA ANNE HEMMING

Fourth Respondent

PHIL MORLE

Fifth Respondent

ORDER

JUDGE: Wilcox J  
DATE OF ORDERS: 5 February 2004  
WHERE MADE: Sydney

GILBERT + TOBIN

Lawyers

2 Park Street

Sydney NSW 2000

ORDER

Tel (02) 9263 4000  
Fax (02) 9263 4111  
DX 10348 SSE  
Ref MJW:SJS:240017

**NOTICE TO THE RESPONDENTS AND OTHER PERSONS IDENTIFIED IN SCHEDULES 1, 3 and 5:**

You should note the matters set out in the document handed to you with these orders which will be explained to you if you wish by a solicitor who is independent of the applicants and independent of the solicitors for the applicants.

**UPON THE APPLICANTS BY THEIR COUNSEL UNDERTAKING TO THE COURT:**

- (a)** to submit to such order (if any) as the Court may consider to be just for the payment of compensation, to be assessed by the Court or as it may direct, to any person, whether or not a party, adversely affected by the operation of the orders made on 5 February 2004 or any continuation (with or without variation) thereof; and
- (b)** to pay the compensation referred to in (a) to the person there referred to,

**AND NOTING THE WRITTEN UNDERTAKING TO THE COURT OF MICHAEL JOHN WILLIAMS, SOLICITOR FOR THE APPLICANTS, THE COURT MAKES THE FOLLOWING ORDERS:**

**DEFINITIONS**

**In these orders:**

**Applicants' Representatives** means Jarrod Bowdith, Alastair Steel, Ian Jameson, Colin Hobden, Barry Fitzgibbins, Geoff Wegg, Terry Jamison, Brian Single, Alan Holloway, Henry Aramayo, Ross Jones, George Zafiropoulos, Troy Stoker, Luke Moore, David Wilson, Kerry McNamara, Jorg Michael Speck and Bill Bush;

**Applicants' Solicitors** means Michael Williams, Kate Harrison, Brendan Coady, Siabon Seet, John Lee, Sophia Finter, Heather Tropman, Jo Oliver, Elise Ball, Susan O'Connor, Megan Knight, Lavinia Hobman, Lisa Lennon, Richard Taylor and Steven Glass, being partners or employees of Gilbert + Tobin, the solicitors for the applicants;

**Electronic Materials** means computers, computer systems, peripherals, electronic devices and electronic media;

**Forensic Experts** means Nigel Carson, Ben Lyons, Duncan Gardiner, Peter Mercer, Serge Malev, Steve Rogerson, Brent Whale, John Thackray, Michael Spence, Brendon Sturgeon, Bob Mitchell, Graeme Conn, Benny Lee, David Thompson, David Dalton, Peter Murdoch, Paul Black and Matthew Hackling being computer forensic experts appointed by the applicants;



Independent Solicitors means Lisa Ritson, Ben Miller, Karen Gettens, Heidi Schweikert, Ian Oi, Natalie Hazel, Alison Laurie, Caterina Cosentino, Brian Elkington and Sophie Dawson, being partners or employees of Blake Dawson Waldron and independent of the solicitors for the applicants, and Eva Elbourne and Joycia Young, being employees of Abbott Tout and independent of the solicitors for the applicants;

Kazaa Parties means the respondents and third parties identified in Schedule 1.

Supernode Parties means the third parties identified in Schedule 3.

Website Parties means the third parties identified in Schedule 5

#### PROCEDURAL

1. The applicants' Notice of Motion (Ex Parte Relief) dated 4 January 2004 (the Ex Parte Motion) be made returnable *instanter*.
2. The Court be closed for the hearing of the Ex Parte Motion on 5 February 2004.
3. Pursuant to Order 17 rule 2, service of the Ex Parte Motion be dispensed with for the purpose of the Court making these orders as against those persons identified in Schedules 1, 3 and 5 who are not respondents, provided that the Ex Parte Motion must be served pursuant to orders 26 and 29 below.

#### ANTON PILLER STYLE RELIEF – ENTRY AND SEARCH OF KAZAA PARTY PREMISES

4. Subject to the orders below, forthwith upon service of these orders, each Kazaa Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of the premises listed alongside that Kazaa Party in Schedule 1, permit a total of not more than five (5) persons at each premises, being:
  - (a) not more than two (2) of the Applicants' Representatives; *→ Kate*
  - (b) not more than two (2) of the Applicant's Solicitors; *2. Gerald Bandidge*
  - (c) not more than two (2) of the Forensic Experts;(collectively, the Attending Representatives); and
  - (d) one (1) of the Independent Solicitors,

to enter and remain upon the premises listed alongside that Kazaa Party in Schedule 1, including the whole of the buildings thereon, any appurtenant buildings, garages or basements and any vehicles thereon (the **Applicable Kazaa Party Premises**) at any hour between 9 am and 7 pm on 5 and 6 February 2004, and to remain on, or if necessary to re-enter, the **Applicable Kazaa Party Premises** until these orders have been complied with.

5. Subject to the orders below, forthwith upon service of these orders, each Kazaa Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of the **Applicable Kazaa Party Premises**, permit the **Attending Representatives** to:
- (a) search for, identify, observe, monitor and examine (including with the use of facilities to examine, decode or restore data):
    - (i) any **Electronic Materials** which contain information or data listed in **Schedule 2 (Kazaa Party Electronic Materials)**;
    - (ii) any documents in non-electronic format which contain information or data listed in **Schedule 2 (Kazaa Party Documents)**;
  - (b) copy or capture (including with the use of forensic methods) from any **Kazaa Party Electronic Materials** or **Kazaa Party Documents** any information or data listed in **Schedule 2**;
  - (c) subject to order 14 below, remove into the possession and safekeeping of the **Applicants' Solicitors** any information or data copied or captured pursuant to subparagraph (b) above.
6. Subject to the orders below, forthwith upon service of these orders, each Kazaa Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of the **Applicable Kazaa Party Premises**:
- (a) immediately disclose to the **Attending Representatives** the whereabouts of, and make available to the **Attending Representatives**, all **Kazaa Party Electronic Materials** and **Kazaa Party Documents** in the possession, custody or power of any of them, whether located on the **Applicable Kazaa Party Premises** or otherwise;
  - (b) provide to the **Attending Representatives** such assistance as they may require to carry out any of the purposes set out in orders 4 and 5 above;

- (c) operate, or provide information to facilitate the operation of, any Kazaa Party Electronic Materials for a period of up to two (2) hours to enable the observation and recording of the ordinary operation of any of the things listed in Schedule 2.

**ANTON PILLER STYLE RELIEF – ENTRY AND SEARCH OF SUPERNODE PARTY PREMISES**

7. Subject to the orders below, forthwith upon service of these orders, each Supernode Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of the premises listed alongside that Supernode Party in Schedule 3, permit a total of not more than five (5) persons at each premises, being:

- (a) not more than two (2) of the Applicants' Representatives;
- (b) not more than two (2) of the Applicant's Solicitors;
- (c) not more than two (2) of the Forensic Experts;  
  
(collectively, the Attending Representatives); and
- (d) one (1) of the Independent Solicitors,

to enter and remain upon the premises listed alongside that Supernode Party in Schedule 3, including the whole of the buildings thereon and any appurtenant buildings, garages or basements (the Applicable Supernode Party Premises) at any hour between 9 am and 5 pm on 5 and 6 February 2004, and to remain on, or if necessary to re-enter, the Applicable Supernode Party Premises until these orders have been complied with.

8. Subject to the orders below, forthwith upon service of these orders, each Supernode Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of the Applicable Supernode Party Premises, permit the Attending Representatives to:

- (a) search for, identify, observe, monitor and examine (including with the use of facilities to examine, decode or restore data):
  - (i) any Electronic Materials which contain information or data listed in Schedule 4 (Applicable Supernode Party Electronic Materials);
  - (ii) any documents in non-electronic format which contain information or data listed in Schedule 4 (Applicable Supernode Party Documents);



- (b) copy or capture (including with the use of forensic methods) from any Applicable Supernode Party Electronic Materials or Supernode Third Party Documents any information or data listed in Schedule 4;
- (c) subject to order 14 below, remove into the possession and safekeeping of the Applicants' Solicitors any information or data copied or captured pursuant to sub-paragraph (b) above.

9. Subject to the orders below, forthwith upon service of these orders, each Supernode Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of the Applicable Supernode Party Premises:

- (a) immediately disclose to the Attending Representatives the whereabouts of, and make available to the Attending Representatives, all Applicable Supernode Party Electronic Materials and Applicable Supernode Party Documents in the possession, custody or power of any of them, whether located on the Applicable Supernode Party Premises or otherwise;
- (b) provide to the Attending Representatives such assistance as they may require to carry out any of the purposes set out in orders 7 and 8 above;
- (c) without limiting sub-paragraphs (a) and (b) above, direct the Applicants' Representatives to any premises being the physical location of any computer having the IP address listed alongside that Supernode Party in Schedule 3;
- (d) operate, or provide information to facilitate the operation of, any Applicable Supernode Party Electronic Materials for a period of up to two (2) hours to enable the observation and recording of the ordinary operation of any of the things listed in Schedule 4.

**ANTON PILLER STYLE RELIEF – ENTRY AND SEARCH OF WEBSITE PARTY PREMISES**

10. Subject to the orders below, forthwith upon service of these orders, each Website Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of the premises listed alongside that Website Party in Schedule 5, permit a total of not more than five (5) persons at each premises, being:

- (a) not more than two (2) of the Applicants' Representatives;
- (b) not more than two (2) of the Applicant's Solicitors;

(c) not more than two (2) of the Forensic Experts;

(collectively, the Attending Representatives); and

(d) one (1) of the Independent Solicitors,

to enter and remain upon the premises listed alongside that Website Party in Schedule 5, including the whole of the buildings thereon and any appurtenant buildings, garages or basements (the Applicable Website Party Premises) at any hour between 9 am and 5 pm on 5 and 6 February 2004, and to remain on, or if necessary to re-enter, the Applicable Website Party Premises until these orders have been complied with.

11 Subject to the orders below, forthwith upon service of these orders, each Website Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of the Applicable Website Party Premises, permit the Attending Representatives to:

(a) search for, identify, observe, monitor and examine (including with the use of facilities to examine, decode or restore data):

(i) any Electronic Materials which contain information or data listed in Schedule 6 (Applicable Website Party Electronic Materials);

(ii) any documents in non-electronic format which contain information or data listed in Schedule 6 (Applicable Website Party Documents);

(b) copy or capture (including with the use of forensic methods) from any Applicable Website Party Electronic Materials or Website Third Party Documents any information or data listed in Schedule 4;

(c) subject to order 14 below, remove into the possession and safekeeping of the Applicants' Solicitors any information or data copied or captured pursuant to subparagraph (b) above.

12. Subject to the orders below, forthwith upon service of these orders, each Website Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of the Applicable Website Party Premises:

(a) immediately disclose to the Attending Representatives the whereabouts of, and make available to the Attending Representatives, all Applicable Website Party Electronic Materials and Applicable Website Party Documents in the possession,

custody or power of any of them, whether located on the Applicable Website Party Premises or otherwise;

- (b) provide to the Attending Representatives such assistance as they may require to carry out any of the purposes set out in orders 10 and 11 above;
- (c) without limiting sub-paragraphs (a) and (b) above, direct the Applicants' Representatives to any premises being the physical location of any computer having any of the IP addresses listed alongside that Website Party in Schedule 5;
- (d) operate, or provide information to facilitate the operation of, any Applicable Website Party Electronic Materials for a period of up to two (2) hours to enable the observation and recording of the ordinary operation of any of the things listed in Schedule 6.

#### SEARCHING AND IMAGING OF ELECTRONIC MATERIALS

13. For the avoidance of doubt, orders 5, 8 and 11 above extend to:

- (a) undertaking a search of all of the contents of Electronic Materials by appropriate technical or forensic means, including gaining of access to drives by non-destructive mechanical means;
- (b) making bitstream images of files and records as follows:
  - (i) where the files are in a static environment, extracting the files and securing a copy;
  - (ii) where the files are in a dynamic environment, isolating the files, making a bitstream image and then securing a copy,

whether or not those contents or images include information or data in addition to information or data constituting, evidencing or referring to any of the things listed in Schedules 2, 4 or 6.

14. Any images of the kind referred to in paragraph 13(b) above must be kept in the secure custody of one or more of the Forensic Experts and not subjected to further analysis without a further order of the Court.



RESTRICTIONS ON THE SERVICE AND CARRYING OUT OF ORDERS 4 TO 13

15. Orders 4 to 13 are subject to the following restrictions:

- (a) these orders must be served by one of the Independent Solicitors, and orders 4 to 13 must be carried out in his or her presence and under his or her supervision;
- (b) at the time these orders are served on any of the Kazaa Parties, Supernode Parties, Website Parties or the person in charge of the applicable premises, the Independent Solicitor serving the orders must also serve a notice in the form set out in Schedule 7;
- (c) these orders do not require the person served with the orders to allow anyone to enter the applicable premises who in the view of the Independent Solicitor serving the orders could gain commercially from anything he or she might read or see on the applicable premises if the person served with the orders objects;
- (d) nothing may be removed from the applicable premises until a list of the items to be removed has been prepared and a copy of the list has been supplied to the person served with the orders and he or she has been given a reasonable opportunity to check the list.

*Michael Speck*

OBTAINING LEGAL ADVICE AND APPLYING TO THE COURT

- 16. Before permitting entry to the applicable premises by any person other than the Independent Solicitor serving these orders and one of the Attending Representatives, any Kazaa Party, Supernode Party or Website Party may seek legal advice and apply to the Court to vary or discharge these orders, provided that any such application is made promptly upon service of these orders and further provided that if a Kazaa Party, Supernode Party or Website Party wishes to seek legal advice as permitted by these orders, the Kazaa Party, Supernode Party or Website Party must first inform the Independent Solicitor serving the orders and keep him or her informed of the steps being taken.
- 17. While any Kazaa Party, Supernode Party or Website Party seeks legal advice in accordance with paragraph 16 above, entry to the applicable premises by any person other than the Independent Solicitor serving the orders and one of the Attending Representatives may be refused, and permission for the search to begin may be refused, for a period not to exceed one (1) hour (unless the Independent Solicitor serving the orders agrees to a longer period).

**PROHIBITED DISCLOSURE AND ACTS**

18. Forthwith upon the service of these orders, each Kazaa Party, Supernode Party and Website Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of any Applicable Kazaa Party Premises, Applicable Supernode Party Premises or Applicable Website Party Premises, be restrained from informing any other person of the existence of these orders or their proposed execution, except for the purpose of obtaining legal advice, until 1 pm on 6 February 2004.
  
19. Forthwith upon the service of these orders, each Kazaa Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of the Applicable Kazaa Party Premises, be restrained:
  - (a) until further order of the Court, from moving, destroying, altering, concealing, removing from the Applicable Kazaa Party Premises or parting with possession or control of any items which are or could be considered to be Applicable Kazaa Party Electronic Materials or Applicable Kazaa Party Documents (except by delivery to the Attending Representatives in accordance with these orders);
  - (b) until 7 pm on 6 February 2004, from turning off or disconnecting any items which are or could be considered to be Applicable Kazaa Party Electronic Materials.
  
20. Forthwith upon the service of these orders, each Supernode Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of the Applicable Supernode Party Premises, be restrained until 5 pm on 6 February 2004, or such earlier time as the Applicants' Representatives may indicate that execution of these orders is complete, from:
  - (a) moving, destroying, altering, concealing, removing from the Applicable Supernode Party Premises or parting with possession or control of any items located at the Applicable Supernode Party Premises which are or could be considered to be Applicable Supernode Party Electronic Materials or Applicable Supernode Party Documents (except by delivery to the Attending Representatives in accordance with these orders);
  - (b) turning off or disconnecting any computer having the IP address listed alongside that Supernode Party in Schedule 3.
  
21. Forthwith upon the service of these orders, each Website Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of the Applicable Website Party Premises, be restrained until 5 pm on 6 February 2004, or such

earlier time as the Applicants' Representatives may indicate that execution of these orders is complete, from:

- (a) moving, destroying, altering, concealing, turning off, disconnecting, removing from the Applicable Website Party Premises or parting with possession or control of any items located at the Applicable Website Party Premises which are or could be considered to be Applicable Website Party Electronic Materials or Applicable Website Party Documents (except by delivery to the Attending Representatives in accordance with these orders);
- (b) turning off or disconnecting any computer having any of the IP addresses listed alongside that Website Party in Schedule 5.

#### INDEPENDENT SOLICITOR

- 22. Each of the Independent Solicitors who attends the execution of these orders prepare a written report about the execution of the orders and as soon as practicable serve a copy of that report on each respondent and on any other Kazaa Party, Supernode Party or Website Party on whom these orders were served by that Independent Solicitor and present a copy of that report to the Court.
- 23. Each of the Independent Solicitors who attends the execution of these orders at the premises listed in item 2 of Schedule 1 and any other domestic premises where these orders may be executed, be, or be accompanied in the execution of these orders by, a woman (who may be one of the Attending Representatives).

#### FURTHER PROCEDURAL ORDERS

- 24. The applicants have leave to file an Application in the form dated 3 February 2004, such application to be made returnable for directions before Wilcox J at 9.30 am on Tuesday 10 February 2004.
- 25. The applicants have leave to file the following notices of motion:
  - (a) the Ex Parte Motion;
  - (b) Notice of Motion (Inter Partes Relief) dated 3 February 2004 (the Inter Partes Motion).
- 26. The time for service of the Application, the Ex Parte Motion, the Inter Partes Motion and the supporting affidavits be abridged and service be effected by 7 pm on 6 February 2004.

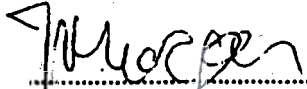
27. The Ex Parte Motion be stood over before Wilcox J at 9.30 am on Tuesday 10 February 2004 (including for the purpose of determining what reasonable costs (if any) of complying with these orders are payable to any Supernode Party or Website Party by the applicants).
28. The Inter Partes Motion be made returnable for directions before Wilcox J at 9.30 am on Tuesday 10 February 2004.
29. Service of the following documents on the following parties be effected by serving copies of the following documents on the following parties or any person apparently occupying or in charge of the applicable premises:
  - (a) on the Kazaa Parties: sealed copies of these orders, the Application, the Ex Parte Motion, the Inter Partes Motion, the supporting affidavits (including non-confidential documentary exhibits) and the signed undertaking of Michael John Williams;
  - (b) on the Supernode Parties and the Website Parties: sealed copies of these orders and the Ex Parte Motion, and copies of sealed copies of the Application, the supporting affidavits (without exhibits) and the signed undertaking of Michael John Williams,

subject to the Supernode Parties and the Website Parties being given reasonable access to non-confidential exhibits on request.

30. Within 48 hours after service of these orders pursuant to order 29, further service on the first respondent and the second respondent be effected by leaving at First Floor BDO House, Lini Highway, Port Vila, Vanuatu sealed copies of these orders, the Application, the Ex Parte Motion, the Inter Partes Motion, the supporting affidavits (without exhibits) and the signed undertaking of Michael John Williams.
31. Pursuant to Order 8 rule 2(2), the applicants be granted leave to serve the first respondent and the second respondent in Vanuatu and outside the Commonwealth of Australia in the manner described in order 30.
32. Pursuant to Order 7 rule 9, upon the taking of the steps set out in orders 30 and 31, service of the documents referred to in order 29 be taken to have occurred.
33. Entry of these orders be expedited.

34. Any other District Registry of the Court forthwith re-seal any copies of these orders and any other document referred to in order 29 transmitted by fax for service in that District.
35. During the service and execution of these orders and during the period in which any Kazaa Party, Supernode Party or Website Party is obtaining legal advice, the applicants, the Kazaa Parties, the Supernode Parties and the Website Parties have liberty to apply to the Duty Judge instanter, including by telephone on (02) 9230 8025.
36. The Kazaa Parties, the Supernode Parties and the Website Parties otherwise have liberty to apply on twelve (12) hours' notice.
37. The applicants otherwise have liberty to apply on twenty four (24) hours' notice.
38. Pursuant to section 50 of the *Federal Court of Australia Act 1976* (Cth), the transcript of the proceedings of any application for ex parte relief in this matter not be distributed to any person without the leave of the Court, before 7 pm on 6 February 2004.

Date that entry is stamped:

  
Deputy District Registrar

**TAKE NOTICE** that failure to comply with this order may make you liable to imprisonment or to sequestration of property for contempt of Court.

SCHEDULE 1

KAZAA PARTIES AND PREMISES

Item	Kazaa Party	Kazaa Party Premises
1.	First to fifth respondents	Suite 10 Level 1 Cremorne Town Centre, 287-305 Military Road, Cremorne, New South Wales
2.	Fourth respondent	31 Headland Road, Castle Cove, New South Wales
3.	Fifth respondent	17 Bowral Close, Hornsby Heights, New South Wales
4.	Brilliant Digital Entertainment Pty Ltd (ACN 075 711 974)	Level 1, 91 Reservoir Street, Surry Hills, New South Wales
5.	Kevin Glen Bermeister	10A & B, Dalley Avenue, Vauchuse New South Wales Unit1, 12 Bulga Road, Dover Heights New South Wales

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## SCHEDULE 2

### KAZAA PARTY INFORMATION AND DATA

#### DEFINITIONS

In this Schedule 2:

**Kazaa Software** means the software applications Kazaa Media Desktop and Kazaa Plus;

**Kazaa System** means the Kazaa peer-to-peer file sharing system or any network involving the use of any of the Kazaa Software;

**Kazaa Websites** means the websites (in any language) accessible at [www.kazaa.com](http://www.kazaa.com) and [www.kazaaplus.com](http://www.kazaaplus.com), and any substantially identical websites.

#### RELEVANT INFORMATION AND DATA

##### Kazaa System

1. Information recording the number or location of:
  - (a) users of the Kazaa Software;
  - (b) supernodes in the Kazaa System;
  - (c) other central servers forming any part of the Kazaa System,  
in Australia.
  
2. Information recording communications between the respondents and any one or more of the following:
  - (a) users of the Kazaa Software;
  - (b) supernodes in the Kazaa System;
  - (c) other central servers forming any part of the Kazaa System,

in Australia.

3. Information recording the function or management of Australian supernodes in the Kazaa System.
4. Information recording the administration, management or monitoring of the functions of:
  - (a) users of the Kazaa Software;
  - (b) supernodes in the Kazaa System;
  - (c) other central servers forming any part of the Kazaa System,

in Australia.

5. Information recording the hosting of any of the Kazaa Websites in Australia.
6. Information recording the creation or transfer of any digital music files (including MP3 files) in Australia by or to any user of the Kazaa Software or by means of the Kazaa Software in Australia.
7. Information recording the means by which communications over the Kazaa System are or can be encrypted.
8. Information recording the processes by which users of the Kazaa Software in Australia can search for digital music files by means of the Kazaa Software.
9. Information recording the processes by which files recognised as gold files by the Kazaa Software are delivered to users of the Kazaa Software in Australia by means of the Kazaa Software.
10. Information recording the process by which the Kazaa Software distinguishes between different files types, including gold files and blue files.

#### Supernodes

11. Information recording communications between each Australian supernode in the Kazaa System and any one or more of the following:
  - (a) users of the Kazaa Software;

- (b) other supernodes in the Kazaa System;
  - (c) other central servers forming any part of the Kazaa System.
12. Information recording the administration or monitoring by the respondents of Australian supernodes in the Kazaa System and any software applications used for this purpose.
  13. Information recording digital music files located on computers of other users of the Kazaa Software, including index files.
  14. Information recording the configuration and administration of any Australian supernode in the Kazaa System, including registry keys and configuration files.
  15. Information recording the creation on or transfer of any digital music files (including MP3 files) by means of any computer at the Applicable Kazaa Party Premises.
  16. Digital music files (including MP3 files) located on any computer at the Applicable Kazaa Party Premises.

**Edge servers**

17. Information recording the physical or network locations of Australian edge servers being used in relation to the Kazaa System.
18. Information recording all communications between Australian edge servers being used in relation to the Kazaa System and any one or more of the following:
  - (a) users of the Kazaa Software;
  - (b) supernodes in the Kazaa System;
  - (c) other central servers forming any part of the Kazaa System.
19. Information recording the administration or monitoring by the respondents of Australian edge servers being used in relation to the Kazaa System and any software applications used for that purpose.
20. Information recording digital music files located on computers of other users of the Kazaa Software, including index files.

SCHEDULE 3

SUPERNODE PARTIES AND PREMISES

Item	Supernode Party	Supernode Party Premises
1.	University of Queensland	University of Queensland, IT Services Operations, Prentice Building, enter via College Road, St Lucia, Queensland  The premises being the physical location of any computer having the IP address 152.98.198.43
2.	Monash University	Monash University, IT Services Building, Wellington Road, Clayton, Victoria  The premises being the physical location of any computer having the IP address 130.194.139.130
3.	University of New South Wales	University of New South Wales, Communications Unit, Level 13, Library Building, enter via Gate 11 Botany Street, Kensington, New South Wales  The premises being the physical location of any computer having the IP address 149.171.209.148

## SCHEDULE 4

### SUPERNODE PARTY INFORMATION AND DATA

#### DEFINITIONS

In this Schedule 4:

**Kazaa Software** means the software applications Kazaa Media Desktop and Kazaa Plus;

**Kazaa System** means the Kazaa peer-to-peer file sharing system or any network involving the use of any of the Kazaa Software.

#### RELEVANT INFORMATION AND DATA

- Information recording communications between each Australian supernode in the Kazaa System and any one or more of the following:
- (a) users of the Kazaa Software;
  - (b) other supernodes in the Kazaa System;
  - (c) other central servers forming any part of the Kazaa System.
2. Information recording the administration or monitoring by the respondents of Australian supernodes in the Kazaa System and any software applications used for this purpose.
  3. Information recording digital music files located on computers of other users of the Kazaa Software, including index files.
  4. Information recording the configuration and administration of any Australian supernode in the Kazaa System, including registry keys and configuration files.
  5. Information recording the creation or transfer by means of the Kazaa Software of any digital music files (including MP3 files) located on any computer at the Applicable Supernode Premises functioning as a supernode in the Kazaa System.

Digital music files (including MP3 files) located "My Shared Folder" any  
computer at the Applicable Supernode Premises functioning supernode Kazaa  
System



SCHEDULE 5

WEBSITE PARTIES AND PREMISES

Item	Website Party	Website Party Premises
1.	Akamai Technologies AAP Pty Ltd (ACN 101 812 097)	Level 20, Tower 2 Darling Park, 201 Sussex Street, New South Wales
2.	Telstra Corporation Ltd (ACN 051 775 556)	Level 4, 400 George Street, Sydney, New South Wales  The premises being the physical location of any computer having any of the following the IP addresses: 144.135.8.207; 144.135.8.142; 61.9.193.194; 61.9.193.142
3.	NTT Australia IP Pty Ltd (ACN 080 394 645)	Level 7, 209 Castlereagh Street, Sydney, New South Wales  The premises being the physical location of any computer having any of the following the IP addresses: 203.111.15.231; 203.111.15.229
4.	The Internet Group Ltd (ACN 076 837 351)	Level 1, 83-85 Commonwealth Street, Surry Hills, New South Wales  The premises being the physical location of any computer having any of the following the IP addresses: 203.109.140.38; 203.109.140.75

## SCHEDULE 6

### WEBSITE PARTY INFORMATION AND DATA

#### DEFINITIONS

In this Schedule 6:

**Kazaa Software** means the software applications Kazaa Media Desktop and Kazaa Plus;

**Kazaa System** means the Kazaa peer-to-peer file sharing system or any network involving the use of any of the Kazaa Software.

#### RELEVANT INFORMATION AND DATA

- 1 Information recording the physical or network locations of Australian edge servers being used in relation to the Kazaa System.
2. Information recording all communications between Australian edge servers being used in relation to the Kazaa System and any one or more of the following:
  - (a) users of the Kazaa Software;
  - (b) supernodes in the Kazaa System;
  - (c) other central servers forming any part of the Kazaa System.
3. Information recording the administration or monitoring by the respondents of Australian edge servers being used in relation to the Kazaa System and any software applications used for that purpose.
4. Information recording digital music files located on computers of other users of the Kazaa Software, including index files.

## SCHEDULE 7

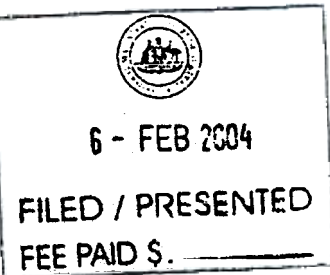
### NOTICE

- 1 This Order orders you to permit the persons mentioned in the Order to enter the Premises described in the Order and to search for, examine and remove or copy the defined material referred to or specified in the Order. The persons mentioned will have no right to enter the Premises or, having entered, to remain at the Premises, if you do not permit them to do so. If, however, you do not permit them to enter and remain on the Premises, you will be in breach of this Order and may be held to be in Contempt of Court. The Order also requires you to make available any of the defined materials which are in your possession, custody or power and to provide information to the applicant's solicitor, and prohibits you from doing certain acts. This part of the Order is subject to restrictions.
- 2 You should read the terms of the Order very carefully. You are advised to consult a lawyer as soon as possible.
- 3 Before you or the person apparently occupying or in charge of the Premises allow anybody onto the Premises to carry out this Order you are entitled to have the solicitor who serves you with this Order explain to you what it means in everyday language.
- 4 You are entitled to request that there is nobody present who could gain commercially from anything he might read or see on the Premises.
- 5 You may be entitled to refuse to permit disclosure of any documents which may incriminate you (incriminating documents) or to answer any questions if to do so may incriminate you. It may be prudent to take advice, because if you so refuse, your refusal may be taken into account by the Court at a later stage.
- 6 You are entitled to refuse to permit disclosure of any documents passing between you and your solicitors for the purpose of obtaining advice (privileged documents).
- 7 You are entitled to seek legal advice, and to ask the Court to vary or discharge this Order, provided you do so at once, and provided that meanwhile you do not disturb or move any of the defined materials in the interim and meanwhile you permit the independent solicitor (who is a solicitor acting independently of the applicants) and one of the applicant's representatives to enter, but not start to search.
- 8 If you, the respondent or the person apparently occupying or in charge of the Premises, disobey this Order you may be found guilty of Contempt of Court.
- 9 If any person with knowledge of this Order procures, encourages or assists in its breach, that person may also be guilty of Contempt of Court.

IN THE FEDERAL COURT OF AUSTRALIA  
NEW SOUTH WALES DISTRICT REGISTRY



No. N110 of 2004



UNIVERSAL MUSIC AUSTRALIA PTY LTD  
(ACN 000 158 592)

First Applicant  
FESTIVAL RECORDS PTY LTD (ACN 000 111  
197) AND MUSHROOM RECORDS PTY LTD  
(ACN 005 594 043) TRADING AS FESTIVAL  
MUSHROOM RECORDS

Second Applicant  
EMI MUSIC AUSTRALIA PTY LIMITED  
(ACN 000 070 235)

Third Applicant  
SONY MUSIC ENTERTAINMENT (AUSTRALIA)  
LIMITED (ACN 000 033 581)

Fourth Applicant  
WARNER MUSIC AUSTRALIA PTY LIMITED  
(ACN 000 815 565)

Fifth Applicant  
BMG AUSTRALIA LIMITED  
(ACN 004 157 564)

Sixth Applicant  
SHARMAN LICENSE HOLDINGS LTD

First Respondent  
SHARMAN NETWORKS LTD

Second Respondent  
LEF INTERACTIVE PTY LTD (ACN 099 675 242)

Third Respondent  
NICOLA ANNE HEMMING

Fourth Respondent  
PHIL MORLE

Fifth Respondent

**ORDER**

JUDGE: Wilcox J  
DATE OF ORDER: 6 February 2004  
WHERE MADE: Sydney

GILBERT + TOBIN  
Lawyers  
2 Park Street  
Sydney NSW 2000

Tel (02) 9263 4000  
Fax (02) 9263 4111  
DX 10348 SSE  
Ref MJW:SJS:240017

**UPON THE APPLICANTS BY THEIR COUNSEL UNDERTAKING TO THE COURT:**

- (a)** to submit to such order (if any) as the Court may consider to be just for the payment of compensation, to be assessed by the Court or as it may direct, to any person, whether or not a party, adversely affected by the operation of the orders made on 6 February 2004 or any continuation (with or without variation) thereof; and
- (b)** to pay the compensation referred to in (a) to the person there referred to,

**AND NOTING THE WRITTEN UNDERTAKING TO THE COURT OF MICHAEL JOHN WILLIAMS, SOLICITOR FOR THE APPLICANTS, THE COURT ORDERS THAT:**

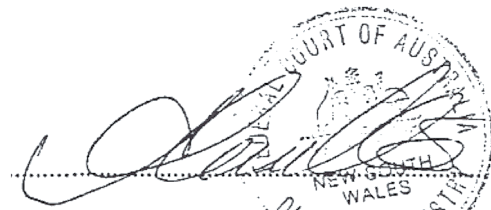
1. Paragraph 8(b) of the orders made by Wilcox J on 5 February 2004 be varied by deleting "Supernode Third Party Documents" and replacing it with "Applicable Supernode Party Documents".
2. Paragraph 11(b) of the orders made by Wilcox J on 5 February 2004 be varied by:
  - (a)** deleting "Website Third Party Documents" and replacing it with "Applicable Website Party Documents";
  - (b)** deleting "Schedule 4" and replacing it with "Schedule 6".
3. Paragraph 19 of the orders made by Wilcox J on 5 February 2004 be varied by:
  - (a)** deleting "Applicable Kazaa Party Electronic Materials" (both occurrences) and replacing it with "Kazaa Party Electronic Materials";
  - (b)** deleting "Applicable Kazaa Party Documents" and replacing it with "Kazaa Party Documents".
4. Paragraph 30 of the orders made by Wilcox J on 5 February 2004 be varied by deleting "48 hours" and replacing it with "5 business days".
5. Entry of these orders be expedited.
6. Any other District Registry of the Court forthwith re-seal any copies of these orders transmitted by fax for service in that District.

**THE COURT DIRECTS THAT:**

7. A consolidated document entitled "Amended Order" be entered and served.

Date that entry is stamped:

6/2/04

  
Deputy District Registrar

COURT OF AUSTRALIA  
DISTRICT REGISTRY  
NEW SOUTH WALES

IN THE FEDERAL COURT OF AUSTRALIA  
NEW SOUTH WALES DISTRICT REGISTRY

No. N110 of 2004

- 6 FEB 2004  
D  
Fee paid \$

UNIVERSAL MUSIC AUSTRALIA PTY LTD  
(ACN 000 158 592)

First Applicant

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197) AND MUSHROOM RECORDS PTY LTD  
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First Respondent

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Second Respondent

LEF INTERACTIVE PTY LTD (ACN 099 675 242)

Third Respondent

NICOLA ANNE HEMMING

Fourth Respondent

PHIL MORLE

Fifth Respondent

AMENDED ORDER

JUDGE: Wilcox J  
DATE OF ORDERS: 6 February 2004  
WHERE MADE: Sydney

GILBERT + TOBIN  
Lawyers  
2 Park Street  
Sydney NSW 2000  
ORDER

Tel (02) 9263 4000  
Fax (02) 9263 4111  
DX 10348 SSE  
Ref MJW:SJS:240017



**NOTICE TO THE RESPONDENTS AND OTHER PERSONS IDENTIFIED IN SCHEDULES 1, 3 and 5:**

You should note the matters set out in the document handed to you with these orders which will be explained to you if you wish by a solicitor who is independent of the applicants and independent of the solicitors for the applicants.

**UPON THE APPLICANTS BY THEIR COUNSEL UNDERTAKING TO THE COURT:**

- (a)** to submit to such order (if any) as the Court may consider to be just for the payment of compensation, to be assessed by the Court or as it may direct, to any person, whether or not a party, adversely affected by the operation of the orders made on 5 and 6 February 2004 or any continuation (with or without variation) thereof; and
- (b)** to pay the compensation referred to in (a) to the person there referred to,

**AND NOTING THE WRITTEN UNDERTAKING TO THE COURT OF MICHAEL JOHN WILLIAMS, SOLICITOR FOR THE APPLICANTS, THE COURT MAKES THE FOLLOWING ORDERS:**

**DEFINITIONS**

In these orders:

**Applicants' Representatives** means Jarrod Bowdith, Alastair Steel, Ian Jameson, Colin Hobden, Barry Fitzgibbins, Geoff Wegg, Terry Jamison, Brian Single, Alan Holloway, Henry Aramayo, Ross Jones, George Zafiropoulos, Troy Stoker, Luke Moore, David Wilson, Kerry McNamara, Jorg Michael Speck and Bill Bush;

**Applicants' Solicitors** means Michael Williams, Kate Harrison, Brendan Coady, Siabon Seet, John Lee, Sophia Finter, Heather Tropman, Jo Oliver, Elise Ball, Susan O'Connor, Megan Knight, Lavinia Hobman, Lisa Lennon, Richard Taylor and Steven Glass, being partners or employees of Gilbert + Tobin, the solicitors for the applicants;

**Electronic Materials** means computers, computer systems, peripherals, electronic devices and electronic media;

**Forensic Experts** means Nigel Carson, Ben Lyons, Duncan Gardiner, Peter Mercer, Serge Malev, Steve Rogerson, Brent Whale, John Thackray, Michael Spence, Brendon Sturgeon, Bob Mitchell, Graeme Conn, Benny Lee, David Thompson, David Dalton, Peter Murdoch, Paul Black and Matthew Hackling being computer forensic experts appointed by the applicants;

**Independent Solicitors** means Lisa Ritson, Ben Miller, Karen Gettens, Heidi Schweikert, Ian Oi, Natalie Hazel, Alison Laurie, Caterina Cosentino, Brian Elkington and Sophie Dawson, being partners or employees of Blake Dawson Waldron and independent of the solicitors for the applicants, and Eva Elbourne and Joycia Young, being employees of Abbott Tout and independent of the solicitors for the applicants;

**Kazaa Parties** means the respondents and third parties identified in Schedule 1.

**Supernode Parties** means the third parties identified in Schedule 3.

**Website Parties** means the third parties identified in Schedule 5.

#### **PROCEDURAL**

1. The applicants' Notice of Motion (Ex Parte Relief) dated 4 January 2004 (the Ex Parte Motion) be made returnable instanter.
2. The Court be closed for the hearing of the Ex Parte Motion on 5 February 2004.
3. Pursuant to Order 17 rule 2, service of the Ex Parte Motion be dispensed with for the purpose of the Court making these orders as against those persons identified in Schedules 1, 3 and 5 who are not respondents, provided that the Ex Parte Motion must be served pursuant to orders 26 and 29 below.

#### **ANTON PILLER STYLE RELIEF – ENTRY AND SEARCH OF KAZAA PARTY PREMISES**

4. Subject to the orders below, forthwith upon service of these orders, each Kazaa Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of the premises listed alongside that Kazaa Party in Schedule 1, permit a total of not more than five (5) persons at each premises, being:
  - (a) not more than two (2) of the Applicants' Representatives;
  - (b) not more than two (2) of the Applicant's Solicitors;
  - (c) not more than two (2) of the Forensic Experts;  
(collectively, the Attending Representatives); and
  - (d) one (1) of the Independent Solicitors,

to enter and remain upon the premises listed alongside that Kazaa Party in Schedule 1, including the whole of the buildings thereon, any appurtenant buildings, garages or basements and any vehicles thereon (the **Applicable Kazaa Party Premises**) at any hour between 9 am and 7 pm on 5 and 6 February 2004, and to remain on, or if necessary to re-enter, the **Applicable Kazaa Party Premises** until these orders have been complied with.

5. Subject to the orders below, forthwith upon service of these orders, each Kazaa Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of the **Applicable Kazaa Party Premises**, permit the **Attending Representatives** to:
- (a) search for, identify, observe, monitor and examine (including with the use of facilities to examine, decode or restore data):
    - (i) any Electronic Materials which contain information or data listed in Schedule 2 (**Kazaa Party Electronic Materials**);
    - (ii) any documents in non-electronic format which contain information or data listed in Schedule 2 (**Kazaa Party Documents**);
  - (b) copy or capture (including with the use of forensic methods) from any Kazaa Party Electronic Materials or Kazaa Party Documents any information or data listed in Schedule 2;
  - (c) subject to order 14 below, remove into the possession and safekeeping of the **Applicants' Solicitors** any information or data copied or captured pursuant to subparagraph (b) above.
6. Subject to the orders below, forthwith upon service of these orders, each Kazaa Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of the **Applicable Kazaa Party Premises**:
- (a) immediately disclose to the **Attending Representatives** the whereabouts of, and make available to the **Attending Representatives**, all **Kazaa Party Electronic Materials** and **Kazaa Party Documents** in the possession, custody or power of any of them, whether located on the **Applicable Kazaa Party Premises** or otherwise;
  - (b) provide to the **Attending Representatives** such assistance as they may require to carry out any of the purposes set out in orders 4. and 5 above;

- (c) operate, or provide information to facilitate the operation of, any Kazaa Party Electronic Materials for a period of up to two (2) hours to enable the observation and recording of the ordinary operation of any of the things listed in Schedule 2.

ANTON PILLER STYLE RELIEF – ENTRY AND SEARCH OF SUPERNODE PARTY PREMISES

7. Subject to the orders below, forthwith upon service of these orders, each Supernode Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of the premises listed alongside that Supernode Party in Schedule 3, permit a total of not more than five (5) persons at each premises, being:

- (a) not more than two (2) of the Applicants' Representatives;
- (b) not more than two (2) of the Applicant's Solicitors;
- (c) not more than two (2) of the Forensic Experts;  
(collectively, the Attending Representatives); and
- (d) one (1) of the Independent Solicitors,



to enter and remain upon the premises listed alongside that Supernode Party in Schedule 3, including the whole of the buildings thereon and any appurtenant buildings, garages or basements (the Applicable Supernode Party Premises) at any hour between 9 am and 5 pm on 5 and 6 February 2004, and to remain on, or if necessary to re-enter, the Applicable Supernode Party Premises until these orders have been complied with.

8. Subject to the orders below, forthwith upon service of these orders, each Supernode Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of the Applicable Supernode Party Premises, permit the Attending Representatives to:

- (a) search for, identify, observe, monitor and examine (including with the use of facilities to examine, decode or restore data):
  - (i) any Electronic Materials which contain information or data listed in Schedule 4 (Applicable Supernode Party Electronic Materials);
  - (ii) any documents in non-electronic format which contain information or data listed in Schedule 4 (Applicable Supernode Party Documents);

- (b) copy or capture (including with the use of forensic methods) from any Applicable Supernode Party Electronic Materials or Applicable Supernode Party Documents any information or data listed in Schedule 4;
  - (c) subject to order 14 below, remove into the possession and safekeeping of the Applicants' Solicitors any information or data copied or captured pursuant to sub-paragraph (b) above.
9. Subject to the orders below, forthwith upon service of these orders, each Supernode Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of the Applicable Supernode Party Premises:
- (a) immediately disclose to the Attending Representatives the whereabouts of, and make available to the Attending Representatives, all Applicable Supernode Party Electronic Materials and Applicable Supernode Party Documents in the possession, custody or power of any of them, whether located on the Applicable Supernode Party Premises or otherwise;
  - (b) provide to the Attending Representatives such assistance as they may require to carry out any of the purposes set out in orders 7 and 8 above;
  - (c) without limiting sub-paragraphs (a) and (b) above, direct the Applicants' Representatives to any premises being the physical location of any computer having the IP address listed alongside that Supernode Party in Schedule 3;
  - (d) operate, or provide information to facilitate the operation of, any Applicable Supernode Party Electronic Materials for a period of up to two (2) hours to enable the observation and recording of the ordinary operation of any of the things listed in Schedule 4.

**ANTON PILLER STYLE RELIEF – ENTRY AND SEARCH OF WEBSITE PARTY PREMISES**

10. Subject to the orders below, forthwith upon service of these orders, each Website Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of the premises listed alongside that Website Party in Schedule 5, permit a total of not more than five (5) persons at each premises, being:
- (a) not more than two (2) of the Applicants' Representatives;
  - (b) not more than two (2) of the Applicant's Solicitors;

- (c) not more than two (2) of the Forensic Experts;  
  
(collectively, the Attending Representatives); and
- (d) one (1) of the Independent Solicitors,

to enter and remain upon the premises listed alongside that Website Party in Schedule 5, including the whole of the buildings thereon and any appurtenant buildings, garages or basements (the Applicable Website Party Premises) at any hour between 9 am and 5 pm on 5 and 6 February 2004, and to remain on, or if necessary to re-enter, the Applicable Website Party Premises until these orders have been complied with.

Subject to the orders below, forthwith upon service of these orders, each Website Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of the Applicable Website Party Premises, permit the Attending Representatives to:

- (a) search for, identify, observe, monitor and examine (including with the use of facilities to examine, decode or restore data):
  - (i) any Electronic Materials which contain information or data listed in Schedule 6 (Applicable Website Party Electronic Materials);
  - (ii) any documents in non-electronic format which contain information or data listed in Schedule 6 (Applicable Website Party Documents);
- (b) copy or capture (including with the use of forensic methods) from any Applicable Website Party Electronic Materials or Applicable Website Party Documents any information or data listed in Schedule 6;
- (c) subject to order 14 below, remove into the possession and safekeeping of the Applicants' Solicitors any information or data copied or captured pursuant to subparagraph (b) above.

12. Subject to the orders below, forthwith upon service of these orders, each Website Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of the Applicable Website Party Premises:

- (a) immediately disclose to the Attending Representatives the whereabouts of, and make available to the Attending Representatives, all Applicable Website Party Electronic Materials and Applicable Website Party Documents in the possession,



custody or power of any of them, whether located on the Applicable Website Party Premises or otherwise;

- (b) provide to the Attending Representatives such assistance as they may require to carry out any of the purposes set out in orders 10 and 11 above;
- (c) without limiting sub-paragraphs (a) and (b) above, direct the Applicants' Representatives to any premises being the physical location of any computer having any of the IP addresses listed alongside that Website Party in Schedule 5;
- (d) operate, or provide information to facilitate the operation of, any Applicable Website Party Electronic Materials for a period of up to two (2) hours to enable the observation and recording of the ordinary operation of any of the things listed in Schedule 6.

#### SEARCHING AND IMAGING OF ELECTRONIC MATERIALS

13. For the avoidance of doubt, orders 5, 8 and 11 above extend to:

- (a) undertaking a search of all of the contents of Electronic Materials by appropriate technical or forensic means, including gaining of access to drives by non-destructive mechanical means;
- (b) making bitstream images of files and records as follows:
  - (i) where the files are in a static environment, extracting the files and securing a copy;
  - (ii) where the files are in a dynamic environment, isolating the files, making a bitstream image and then securing a copy,

whether or not those contents or images include information or data in addition to information or data constituting, evidencing or referring to any of the things listed in Schedules 2, 4 or 6.

14. Any images of the kind referred to in paragraph 13(b) above must be kept in the secure custody of one or more of the Forensic Experts and not subjected to further analysis without a further order of the Court.

**RESTRICTIONS ON THE SERVICE AND CARRYING OUT OF ORDERS 4 TO 13**

15. Orders 4 to 13 are subject to the following restrictions:
- (a) these orders must be served by one of the Independent Solicitors, and orders 4 to 13 must be carried out in his or her presence and under his or her supervision;
  - (b) at the time these orders are served on any of the Kazaa Parties, Supernode Parties, Website Parties or the person in charge of the applicable premises, the Independent Solicitor serving the orders must also serve a notice in the form set out in Schedule 7;
  - (c) these orders do not require the person served with the orders to allow anyone to enter the applicable premises who in the view of the Independent Solicitor serving the orders could gain commercially from anything he or she might read or see on the applicable premises if the person served with the orders objects;
  - (d) nothing may be removed from the applicable premises until a list of the items to be removed has been prepared and a copy of the list has been supplied to the person served with the orders and he or she has been given a reasonable opportunity to check the list.

**OBTAINING LEGAL ADVICE AND APPLYING TO THE COURT**

16. Before permitting entry to the applicable premises by any person other than the Independent Solicitor serving these orders and one of the Attending Representatives, any Kazaa Party, Supernode Party or Website Party may seek legal advice and apply to the Court to vary or discharge these orders, provided that any such application is made promptly upon service of these orders and further provided that if a Kazaa Party, Supernode Party or Website Party wishes to seek legal advice as permitted by these orders, the Kazaa Party, Supernode Party or Website Party must first inform the Independent Solicitor serving the orders and keep him or her informed of the steps being taken.
17. While any Kazaa Party, Supernode Party or Website Party seeks legal advice in accordance with paragraph 16 above, entry to the applicable premises by any person other than the Independent Solicitor serving the orders and one of the Attending Representatives may be refused, and permission for the search to begin may be refused, for a period not to exceed one (1) hour (unless the Independent Solicitor serving the orders agrees to a longer period).

**PROHIBITED DISCLOSURE AND ACTS**

18. Forthwith upon the service of these orders, each Kazaa Party, Supernode Party and Website Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of any Applicable Kazaa Party Premises, Applicable Supernode Party Premises or Applicable Website Party Premises, be restrained from informing any other person of the existence of these orders or their proposed execution, except for the purpose of obtaining legal advice, until 1 pm on 6 February 2004.
19. Forthwith upon the service of these orders, each Kazaa Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of the Applicable Kazaa Party Premises, be restrained:
- (a) until further order of the Court, from moving, destroying, altering, concealing, removing from the Applicable Kazaa Party Premises or parting with possession or control of any items which are or could be considered to be Kazaa Party Electronic Materials or Kazaa Party Documents (except by delivery to the Attending Representatives in accordance with these orders);
  - (b) until 7 pm on 6 February 2004, from turning off or disconnecting any items which are or could be considered to be Kazaa Party Electronic Materials.
20. Forthwith upon the service of these orders, each Supernode Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of the Applicable Supernode Party Premises, be restrained until 5 pm on 6 February 2004, or such earlier time as the Applicants' Representatives may indicate that execution of these orders is complete, from:
- (a) moving, destroying, altering, concealing, removing from the Applicable Supernode Party Premises or parting with possession or control of any items located at the Applicable Supernode Party Premises which are or could be considered to be Applicable Supernode Party Electronic Materials or Applicable Supernode Party Documents (except by delivery to the Attending Representatives in accordance with these orders);
  - (b) turning off or disconnecting any computer having the IP address listed alongside that Supernode Party in Schedule 3.
21. Forthwith upon the service of these orders, each Website Party, whether by itself, its servants, agents or otherwise, and any person apparently occupying or in charge of the Applicable Website Party Premises, be restrained until 5 pm on 6 February 2004, or such

earlier time as the Applicants' Representatives may indicate that execution of these orders is complete, from:

- (a) moving, destroying, altering, concealing, turning off, disconnecting, removing from the Applicable Website Party Premises or parting with possession or control of any items located at the Applicable Website Party Premises which are or could be considered to be Applicable Website Party Electronic Materials or Applicable Website Party Documents (except by delivery to the Attending Representatives in accordance with these orders);
- (b) turning off or disconnecting any computer having any of the IP addresses listed alongside that Website Party in Schedule 5.

#### INDEPENDENT SOLICITOR

- 22. Each of the Independent Solicitors who attends the execution of these orders prepare a written report about the execution of the orders and as soon as practicable serve a copy of that report on each respondent and on any other Kazaa Party, Supernode Party or Website Party on whom these orders were served by that Independent Solicitor and present a copy of that report to the Court.
- 23. Each of the Independent Solicitors who attends the execution of these orders at the premises listed in item 2 of Schedule 1 and any other domestic premises where these orders may be executed, be, or be accompanied in the execution of these orders by, a woman (who may be one of the Attending Representatives).

#### FURTHER PROCEDURAL ORDERS

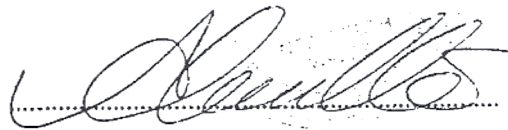
- 24. The applicants have leave to file an Application in the form dated 3 February 2004, such application to be made returnable for directions before Wilcox J at 9.30 am on Tuesday 10 February 2004.
- 25. The applicants have leave to file the following notices of motion:
  - (a) the Ex Parte Motion;
  - (b) Notice of Motion (Inter Partes Relief) dated 3 February 2004 (the Inter Partes Motion).
- 26. The time for service of the Application, the Ex Parte Motion, the Inter Partes Motion and the supporting affidavits be abridged and service be effected by 7 pm on 6 February 2004.

27. The Ex Parte Motion be stood over before Wilcox J at 9.30 am on Tuesday 10 February 2004 (including for the purpose of determining what reasonable costs (if any) of complying with these orders are payable to any Supernode Party or Website Party by the applicants).
28. The Inter Partes Motion be made returnable for directions before Wilcox J at 9.30 am on Tuesday 10 February 2004.
29. Service of the following documents on the following parties be effected by serving copies of the following documents on the following parties or any person apparently occupying or in charge of the applicable premises:
- (a) on the Kazaa Parties: sealed copies of these orders, the Application, the Ex Parte Motion, the Inter Partes Motion, the supporting affidavits (including non-confidential documentary exhibits) and the signed undertaking of Michael John Williams;
  - (b) on the Supernode Parties and the Website Parties: sealed copies of these orders and the Ex Parte Motion, and copies of sealed copies of the Application, the supporting affidavits (without exhibits) and the signed undertaking of Michael John Williams,
- subject to the Supernode Parties and the Website Parties being given reasonable access to non-confidential exhibits on request.
30. Within 5 business days after service of these orders pursuant to order 29, further service on the first respondent and the second respondent be effected by leaving at First Floor BDO House, Lini Highway, Port Vila, Vanuatu sealed copies of these orders, the Application, the Ex Parte Motion, the Inter Partes Motion, the supporting affidavits (without exhibits) and the signed undertaking of Michael John Williams.
31. Pursuant to Order 8 rule 2(2), the applicants be granted leave to serve the first respondent and the second respondent in Vanuatu and outside the Commonwealth of Australia in the manner described in order 30.
32. Pursuant to Order 7 rule 9, upon the taking of the steps set out in orders 30 and 31, service of the documents referred to in order 29 be taken to have occurred.
33. Entry of these orders be expedited.

34. Any other District Registry of the Court forthwith re-seal any copies of these orders and any other document referred to in order 29 transmitted by fax for service in that District.
35. During the service and execution of these orders and during the period in which any Kazaa Party, Supernode Party or Website Party is obtaining legal advice, the applicants, the Kazaa Parties, the Supernode Parties and the Website Parties have liberty to apply to the Duty Judge instanter, including by telephone on (02) 9230 8025.
36. The Kazaa Parties, the Supernode Parties and the Website Parties otherwise have liberty to apply on twelve (12) hours' notice.
37. The applicants otherwise have liberty to apply on twenty four (24) hours' notice.
38. Pursuant to section 50 of the *Federal Court of Australia Act 1976* (Cth), the transcript of the proceedings of any application for ex parte relief in this matter not be distributed to any person without the leave of the Court, before 7 pm on 6 February 2004.

Date that entry is stamped:

6/2/04



Deputy District Registrar

**TAKE NOTICE** that failure to comply with this order may make you liable to imprisonment or to sequestration of property for contempt of Court.

SCHEDULE 1

KAZAA PARTIES AND PREMISES

Item	Kazaa Party	Kazaa Party Premises
1.	First to fifth respondents	Suite 10 Level 1 Cremorne Town Centre, 287-305 Military Road, Cremorne, New South Wales
2.	Fourth respondent	31 Headland Road, Castle Cove, New South Wales
3.	Fifth respondent	17 Bowral Close, Hornsby Heights, New South Wales
4.	Brilliant Digital Entertainment Pty Ltd (ACN 075 711 974)	Level 1, 91 Reservoir Street, Surry Hills, New South Wales
5.	Kevin Glen Bermeister	10A & B, Dalley Avenue, Vaucluse New South Wales Unit1, 12 Bulga Road, Dover Heights New South Wales

## SCHEDULE 2

### KAZAA PARTY INFORMATION AND DATA

#### DEFINITIONS

In this Schedule 2:

**Kazaa Software** means the software applications Kazaa Media Desktop and Kazaa Plus;

**Kazaa System** means the Kazaa peer-to-peer file sharing system or any network involving the use of any of the Kazaa Software;

**Kazaa Websites** means the websites (in any language) accessible at [www.kazaa.com](http://www.kazaa.com) and [www.kazaaplus.com](http://www.kazaaplus.com), and any substantially identical websites.

#### RELEVANT INFORMATION AND DATA

**Kazaa System**

1. Information recording the number or location of:
  - (a) users of the Kazaa Software;
  - (b) supernodes in the Kazaa System;
  - (c) other central servers forming any part of the Kazaa System,  
in Australia.
  
2. Information recording communications between the respondents and any one or more of the following:
  - (a) users of the Kazaa Software;
  - (b) supernodes in the Kazaa System;
  - (c) other central servers forming any part of the Kazaa System,



in Australia.

3. Information recording the function or management of Australian supernodes in the Kazaa System.
4. Information recording the administration, management or monitoring of the functions of:
  - (a) users of the Kazaa Software;
  - (b) supernodes in the Kazaa System;
  - (c) other central servers forming any part of the Kazaa System,

in Australia.

5. Information recording the hosting of any of the Kazaa Websites in Australia.
6. Information recording the creation or transfer of any digital music files (including MP3 files) in Australia by or to any user of the Kazaa Software or by means of the Kazaa Software in Australia.
7. Information recording the means by which communications over the Kazaa System are or can be encrypted.
8. Information recording the processes by which users of the Kazaa Software in Australia can search for digital music files by means of the Kazaa Software.
9. Information recording the processes by which files recognised as gold files by the Kazaa Software are delivered to users of the Kazaa Software in Australia by means of the Kazaa Software.
10. Information recording the process by which the Kazaa Software distinguishes between different files types, including gold files and blue files.

#### Supernodes

11. Information recording communications between each Australian supernode in the Kazaa System and any one or more of the following:
  - (a) users of the Kazaa Software;

- (b) other supernodes in the Kazaa System;
  - (c) other central servers forming any part of the Kazaa System.
- 12. Information recording the administration or monitoring by the respondents of Australian supernodes in the Kazaa System and any software applications used for this purpose.
- 13. Information recording digital music files located on computers of other users of the Kazaa Software, including index files.
- 14. Information recording the configuration and administration of any Australian supernode in the Kazaa System, including registry keys and configuration files.
- 15. Information recording the creation on or transfer of any digital music files (including MP3 files) by means of any computer at the Applicable Kazaa Party Premises.
- 16. Digital music files (including MP3 files) located on any computer at the Applicable Kazaa Party Premises.

**Edge servers**

- 17. Information recording the physical or network locations of Australian edge servers being used in relation to the Kazaa System.
- 18. Information recording all communications between Australian edge servers being used in relation to the Kazaa System and any one or more of the following:
  - (a) users of the Kazaa Software;
  - (b) supernodes in the Kazaa System;
  - (c) other central servers forming any part of the Kazaa System.
- 19. Information recording the administration or monitoring by the respondents of Australian edge servers being used in relation to the Kazaa System and any software applications used for that purpose.
- 20. Information recording digital music files located on computers of other users of the Kazaa Software, including index files.

SCHEDULE 3

SUPERNODE PARTIES AND PREMISES

Item	Supernode Party	Supernode Party Premises
1.	University of Queensland	University of Queensland, IT Services Operations, Prentice Building, enter via College Road, St Lucia, Queensland  The premises being the physical location of any computer having the IP address 152.98.198.43
2.	Monash University	Monash University, IT Services Building, Wellington Road, Clayton, Victoria  The premises being the physical location of any computer having the IP address 130.194.139.130
3.	University of New South Wales	University of New South Wales, Communications Unit, Level 13, Library Building, enter via Gate 11 Botany Street, Kensington, New South Wales  The premises being the physical location of any computer having the IP address 149.171.209.148

## SCHEDULE 4

### SUPERNODE PARTY INFORMATION AND DATA

#### DEFINITIONS

In this Schedule 4:

**Kazaa Software** means the software applications Kazaa Media Desktop and Kazaa Plus;

**Kazaa System** means the Kazaa peer-to-peer file sharing system or any network involving the use of any of the Kazaa Software.

#### RELEVANT INFORMATION AND DATA

1. Information recording communications between each Australian supernode in the Kazaa System and any one or more of the following:
  - (a) users of the Kazaa Software;
  - (b) other supernodes in the Kazaa System;
  - (c) other central servers forming any part of the Kazaa System.
2. Information recording the administration or monitoring by the respondents of Australian supernodes in the Kazaa System and any software applications used for this purpose.
3. Information recording digital music files located on computers of other users of the Kazaa Software, including index files.
4. Information recording the configuration and administration of any Australian supernode in the Kazaa System, including registry keys and configuration files.
5. Information recording the creation or transfer by means of the Kazaa Software of any digital music files (including MP3 files) located on any computer at the Applicable Supernode Premises functioning as a supernode in the Kazaa System.

6. Digital music files (including MP3 files) located in a "My Shared Folder" on any computer at the Applicable Supernode Premises functioning as a supernode in the Kazaa System.

SCHEDULE 5

WEBSITE PARTIES AND PREMISES

Item	Website Party	Website Party Premises
1.	Akamai Technologies AAP Pty Ltd (ACN 101 812 097)	Level 20, Tower 2 Darling Park, 201 Sussex Street, New South Wales
2.	Telstra Corporation Ltd (ACN 051 775 556)	Level 4, 400 George Street, Sydney, New South Wales  The premises being the physical location of any computer having any of the following the IP addresses: 144.135.8.207; 144.135.8.142; 61.9.193.194; 61.9.193.142
3.	NTT Australia IP Pty Ltd (ACN 080 394 645)	Level 7, 209 Castlereagh Street, Sydney, New South Wales  The premises being the physical location of any computer having any of the following the IP addresses: 203.111.15.231; 203.111.15.229
4.	The Internet Group Ltd (ACN 076 837 351)	Level 1, 83-85 Commonwealth Street, Surry Hills, New South Wales  The premises being the physical location of any computer having any of the following the IP addresses: 203.109.140.38; 203.109.140.75

## SCHEDULE 6

### WEBSITE PARTY INFORMATION AND DATA

#### DEFINITIONS

In this Schedule 6:

**Kazaa Software** means the software applications Kazaa Media Desktop and Kazaa Plus;

**Kazaa System** means the Kazaa peer-to-peer file sharing system or any network involving the use of any of the Kazaa Software.

#### RELEVANT INFORMATION AND DATA

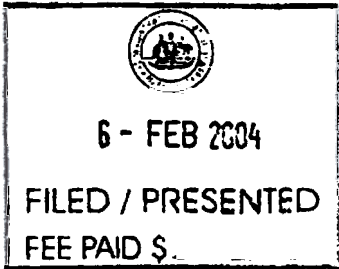
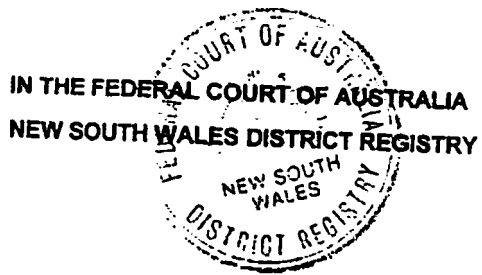
- 1 Information recording the physical or network locations of Australian edge servers being used in relation to the Kazaa System.
- 2 Information recording all communications between Australian edge servers being used in relation to the Kazaa System and any one or more of the following:
  - (a) users of the Kazaa Software;
  - (b) supernodes in the Kazaa System;
  - (c) other central servers forming any part of the Kazaa System.
- 3 Information recording the administration or monitoring by the respondents of Australian edge servers being used in relation to the Kazaa System and any software applications used for that purpose.
- 4 Information recording digital music files located on computers of other users of the Kazaa Software, including index files.

## SCHEDULE 7

### NOTICE

1. This Order orders you to permit the persons mentioned in the Order to enter the Premises described in the Order and to search for, examine and remove or copy the defined material referred to or specified in the Order. The persons mentioned will have no right to enter the Premises or, having entered, to remain at the Premises, if you do not permit them to do so. If, however, you do not permit them to enter and remain on the Premises, you will be in breach of this Order and may be held to be in Contempt of Court. The Order also requires you to make available any of the defined materials which are in your possession, custody or power and to provide information to the applicant's solicitor, and prohibits you from doing certain acts. This part of the Order is subject to restrictions.
2. You should read the terms of the Order very carefully. You are advised to consult a lawyer as soon as possible.
3. Before you or the person apparently occupying or in charge of the Premises allow anybody onto the Premises to carry out this Order you are entitled to have the solicitor who serves you with this Order explain to you what it means in everyday language.
4. You are entitled to request that there is nobody present who could gain commercially from anything he might read or see on the Premises.
5. You may be entitled to refuse to permit disclosure of any documents which may incriminate you (incriminating documents) or to answer any questions if to do so may incriminate you. It may be prudent to take advice, because if you so refuse, your refusal may be taken into account by the Court at a later stage.
6. You are entitled to refuse to permit disclosure of any documents passing between you and your solicitors for the purpose of obtaining advice (privileged documents).
7. You are entitled to seek legal advice, and to ask the Court to vary or discharge this Order, provided you do so at once, and provided that meanwhile you do not disturb or move any of the defined materials in the interim and meanwhile you permit the independent solicitor (who is a solicitor acting independently of the applicants) and one of the applicant's representatives to enter, but not start to search.
8. If you, the respondent or the person apparently occupying or in charge of the Premises, disobey this Order you may be found guilty of Contempt of Court.
9. If any person with knowledge of this Order procures, encourages or assists in its breach, that person may also be guilty of Contempt of Court.





No. N110 of 2004

UNIVERSAL MUSIC AUSTRALIA PTY LTD  
(ACN 000 158 592)

First Applicant  
FESTIVAL RECORDS PTY LTD (ACN 000 111  
197) AND MUSHROOM RECORDS PTY LTD  
(ACN 005 594 043) TRADING AS FESTIVAL  
MUSHROOM RECORDS

Second Applicant  
EMI MUSIC AUSTRALIA PTY LIMITED  
(ACN 000 070 235)

Third Applicant  
SONY MUSIC ENTERTAINMENT (AUSTRALIA)  
LIMITED (ACN 000 033 581)

Fourth Applicant  
WARNER MUSIC AUSTRALIA PTY LIMITED  
(ACN 000 815 565)

Fifth Applicant  
BMG AUSTRALIA LIMITED  
(ACN 004 157 564)

Sixth Applicant  
SHARMAN LICENSE HOLDINGS LTD  
First Respondent

SHARMAN NETWORKS LTD  
Second Respondent  
LEF INTERACTIVE PTY LTD (ACN 099 675 242)

Third Respondent  
NICOLA ANNE HEMMING

Fourth Respondent  
PHIL MORLE

Fifth Respondent

**ORDER**

JUDGE: Wilcox J  
DATE OF ORDER: 6 February 2004  
WHERE MADE: Sydney

GILBERT + TOBIN  
Lawyers  
2 Park Street  
Sydney NSW 2000  
ORDER 2

Tel (02) 9263 4000  
Fax (02) 9263 4111  
DX 10348 SSE  
Ref MJW:SJS:240017

UPON THE APPLICANTS BY THEIR COUNSEL UNDERTAKING TO THE COURT:

- (a) to submit to such order (if any) as the Court may consider to be just for the payment of compensation, to be assessed by the Court or as it may direct, to any person, whether or not a party, adversely affected by the operation of the orders made on 6 February 2004 or any continuation (with or without variation) thereof; and
- (b) to pay the compensation referred to in (a) to the person there referred to,

AND NOTING THE WRITTEN UNDERTAKING TO THE COURT OF MICHAEL JOHN WILLIAMS, SOLICITOR FOR THE APPLICANTS, THE COURT ORDERS THAT:

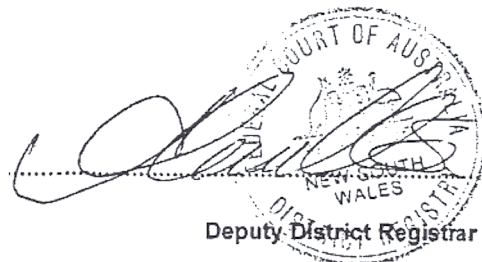
1. Paragraph 8(b) of the orders made by Wilcox J on 5 February 2004 be varied by deleting "Supernode Third Party Documents" and replacing it with "Applicable Supernode Party Documents".
2. Paragraph 11(b) of the orders made by Wilcox J on 5 February 2004 be varied by:
  - (a) deleting "Website Third Party Documents" and replacing it with "Applicable Website Party Documents";
  - (b) deleting "Schedule 4" and replacing it with "Schedule 6".
3. Paragraph 19 of the orders made by Wilcox J on 5 February 2004 be varied by:
  - (a) deleting "Applicable Kazaa Party Electronic Materials" (both occurrences) and replacing it with "Kazaa Party Electronic Materials";
  - (b) deleting "Applicable Kazaa Party Documents" and replacing it with "Kazaa Party Documents".
4. Paragraph 30 of the orders made by Wilcox J on 5 February 2004 be varied by deleting "48 hours" and replacing it with "5 business days".
5. Entry of these orders be expedited.
6. Any other District Registry of the Court forthwith re-seal any copies of these orders transmitted by fax for service in that District.

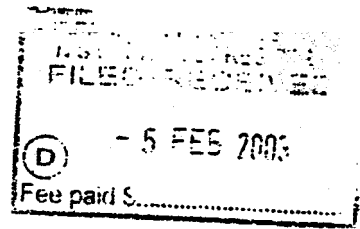
THE COURT DIRECTS THAT:

7. A consolidated document entitled "Amended Order" be entered and served.

Date that entry is stamped:

6/2/04





IN THE FEDERAL COURT OF AUSTRALIA  
NEW SOUTH WALES DISTRICT REGISTRY

No. of 2004

UNIVERSAL MUSIC AUSTRALIA PTY LTD  
(ACN 000 158 592) & ORS

Applicants

SHARMAN LICENSE HOLDINGS LTD & ORS

Respondents

**UNDERTAKING**

1 I undertake that I will:

- (a) cause the Attending Representatives (as defined in the Notice of Motion for Ex Parte Relief) to provide each Respondent or his or her servant or agent with a receipt for any articles supplied by that person to the Attending Representative in accordance with the Orders made today; and
- (b) cause all such articles to be held in a safe keeping of the Attending Representatives or either of them, or my firm and to be delivered up in accordance with any further order or direction of the Court.

2. I undertake on behalf of the Applicants that each of the Applicants:

- (a) will submit to such order (if any) as the Court may consider to be just for the payment of compensation, to be assessed by the Court or as it may direct, to any person, whether or not a party, adversely affected by the operation of the Orders made today or any continuation thereof; and
- (b) will pay compensation referred to in (a) to the person there referred to.

GILBERT + TOBIN  
Lawyers  
2 Park Street  
Sydney NSW 2000

Tel (02) 9263 4000  
Fax (02) 9263 4111  
DX 10348 SSE  
Ref 240017

3. I undertake on behalf of the Applicants that each of the Applicants will not use without the leave of the Court any information or thing obtained as a result of the execution of the Orders made today otherwise than for the purposes of these proceedings.

DATED: 5 February 2004



**MICHAEL JOHN WILLIAMS**  
Solicitor for the Applicants



**UNIVERSAL MUSIC AUSTRALIA PTY LTD & ORS v  
SHARMAN LICENSE HOLDINGS LTD & ORS**

**APPLICANTS' OUTLINE OF SUBMISSIONS IN RELATION TO THEIR  
MOTION FOR ANTON PILLER AND OTHER EX PARTE RELIEF**

**Introduction**

1. The applicants are Australian record companies with extensive catalogues of copyright sound recordings.<sup>1</sup>
2. The second applicant, Festival Mushroom Records, is a partnership of Australian companies which also exclusively controls sound recordings from overseas licensors. The other five applicants (Universal Music Australia, EMI Music Australia, Sony Music Entertainment Australia, Warner Music Australia and BMG Music Australia) are the Australian branches of international record companies.
3. These proceedings relate to large scale infringement of copyright in sound recordings by the operation of a so-called "peer to peer" internet "file sharing" system and associated computer software generally known as "Kazaa".
4. Technological developments in recent years have greatly increased opportunities for, and the scale of, piracy of sound recordings. This has been particularly so with the availability of a range of technologies, including compact discs (CDs), personal computers and the internet, which have together enabled the copying and online transmission of digitally accessible versions of sound recordings.<sup>2</sup>
5. There is in Australia no right of private copying of copyright sound recordings. Accordingly, it is an infringement of copyright for an individual to "rip" (copy) the

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<sup>1</sup> Don 27.01.04; Blakey 29.01.04; Robinson 29.01.04, Rinaldi 27.01.04, Narborough 27.01.04; Dubery 28.01.04.

<sup>2</sup> Banks 30.01.04; Speck 03.02.04, particularly paras 26-36.

content of a copyright commercial CD, or to download a digital music file that is a copyright sound recording, unless specifically authorised to do so.<sup>3</sup>

6. The developments described in paragraph 4 above have led to the promotion of various schemes designed to facilitate the exchange between computer users of copyright sound recordings, including the so-called "peer to peer" technology.<sup>4</sup>
7. The first and most celebrated such scheme was "Napster", which has been the subject of proceedings in the United States. Those proceedings saw the grant of injunctive relief to restrain the infringing operation of the Napster system.<sup>5</sup> Following that decision, it appears that those interested in promoting schemes for infringement of copyright moved to adopt "file sharing" systems whose structure was more diffuse.

#### The Kazaa system

8. One such scheme which began to appear was called "Kazaa". It was a system using software known as "Kazaa Media Desktop" (referred to in these submissions as the Kazaa software) that permitted users to distribute and receive digital music files to and from each other. The software first appeared to emanate from the Netherlands.
9. The Kazaa software has been the subject of two sets of proceedings relating to the infringement of copyright in other countries. The first set of proceedings was brought in the Netherlands against the suppliers of the Kazaa software in relation to copyright infringements occurring in that country. The applicants were industry associations representing the music industry, including the record industry, and companies affiliated with some of the present applicants. Very rapidly, there was a relocation of the entities apparently associated with supplying the software to countries outside the

<sup>3</sup> A legislative scheme by which some private copying would have been permitted was declared unconstitutional by the High Court in *Australian Tape Manufacturers Association Ltd v Commonwealth* (1993) 176 CLR 480.

<sup>4</sup> *Banks* 30.01.04.

<sup>5</sup> In February 2001, the Court of Appeals for the Ninth Circuit upheld the finding of the District Court for the Northern District of California that a "preliminary injunction against Napster's participation in copyright infringement" was warranted and required, although the breadth the injunction itself was altered: *A&M Records Inc v Napster Inc* 239 F 3d 1004 (2001).

Netherlands. By early 2002, news stories began to appear which suggested that a number of those interests had relocated in some form to Australia.<sup>6</sup>

10. The second set of proceedings was commenced in the United States in relation to infringement of United States copyright. The applicants in those proceedings include but are not limited to five of the applicants in the present case.<sup>7</sup> In October 2002, certain of the present respondents were joined to those proceedings.<sup>8</sup> Those proceedings remain on foot. Ancillary proceedings (relating to a letter of request to obtain evidence and documents in Australia pursuant to the *Hague Convention*) are on foot in the Supreme Court of New South Wales.<sup>9</sup> These are not substantive proceedings and they do not relate to Australian copyright.
11. Investigations and monitoring activities conducted on behalf of the applicants have revealed recent significant changes to the Kazaa software and the corporate structure of those apparently responsible for supplying the system. These changes have been accompanied by public statements and advertising campaigns relating to the system.<sup>10</sup>
12. In particular, from June 2003, new versions of the Kazaa software were released incorporating features not previously seen in the software. These included certain features (support for licensed content, a user reward system and a traffic counter) which suggested that the system was capable of tracking use and charging fees for the legitimate exchange of copyright material. In September 2003, for the first time, a subscription-based version of the Kazaa software was released. Then, in December 2003, the current version of the non-subscription software, version 2.6, was released.

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<sup>6</sup> Speck 03.02.04, particularly paras 84-86.

<sup>7</sup> The applicants included major United States movie studios, recording companies and music publishers.

<sup>8</sup> *Metro-Goldwyn Mayer Studios Inc v Grokster Ltd*, United States District Court for the Central District of California, Case No CV 01 08541; *Jerry Leiber v Consumer Empowerment BV a/k/a Fasttrack*, United States District Court for the Central District of California, Case No CV 01 09923.

<sup>9</sup> *Metro-Goldwyn Mayer Studios Inc & Ors*, plaintiffs, Common Law Division, File No 11429 of 2002.

<sup>10</sup> Speck 03.02.04, particularly paras 87-114.



This contains a number of more advanced searching mechanisms, additional content elements and an interface that gives greater access to licensed content.<sup>11</sup>

13. By reason of the matters revealed in these investigations, it has become apparent that the Kazaa scheme, which promotes enormous infringement of sound recording copyright, is now substantially administered from Australia. Further, it has become apparent that representations previously made by those associated with the Kazaa scheme about their inability or the inability of the Kazaa system to track or distinguish between legitimate and illegitimate (infringing) sound recordings, are not (or are no longer) correct.<sup>12</sup>
14. However, there remain significant features of the Kazaa system about which the applicants have not been able to obtain detailed knowledge. These include the nature and extent of communications passing between various elements of the Kazaa system, including encrypted communications, the content of such communications, and the existence and operation of mechanisms used by the operators, programmers and administrators of the Kazaa system to control or monitor aspects of the system.<sup>13</sup>

#### Motion for *ex parte* relief

15. Accordingly, the applicants move for *ex parte* relief in the nature of *Anton Piller* orders against the respondents, and analogous orders against a number of third parties whose computer systems are believed to be involved in the operation or facilitation of the Kazaa system or the provision of the Kazaa software and are likely to contain specific information relevant to these proceedings.<sup>14</sup> In essence, the relief currently sought relates to the inspection and (in certain cases) preservation of information and data relating to aspects of the Kazaa system and its operation.

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<sup>11</sup> Speck 03.02.04, particularly paras 87-114.

<sup>12</sup> Speck 03.02.04, particularly paras 115-121.

<sup>13</sup> Carson 27.02.04.

<sup>14</sup> Notice of Motion (Ex Parte Relief) dated 3 February 2004.

16. Significant parts of the system have been diffused or devolved – eg to the computer systems of certain Kazaa users which (often unknown to those users) function as local index points for infringing files residing on the computer systems of other users; these index points are called “supernodes”.<sup>15</sup> This fragmentation of the Kazaa system seems to be dynamic: it changes frequently, at any given time different supernodes provide the index points for Kazaa users. The operation of crucial features (such as the identification of the supernodes and the way in which users are directed to them, and how they index the users’ files) is not able to be determined by observing the system from outside, despite efforts by technical experts retained by the applicants.<sup>16</sup>
17. Thus, from the applicants’ investigations, it appears that aspects of the system are or are capable of being controlled, supplied or facilitated by a range of parties, including the present respondents, a joint enterprise partner of one of the respondents and those associated with it, and a third party engaged in the provision of distributed website hosting facilities. Further, it appears that a range of entities, some possibly unwittingly, are involved by the operation of the Kazaa software on their computer systems in facilitating indexing functions which are critical to the effective operation of the system (the so-called “supernodes”).
18. However, the overall architecture of the system is plainly a creature of the respondents.<sup>17</sup>
19. The diverse and dynamic nature of the Kazaa system coupled with the sheer scale of its operations has meant that the investigations conducted by the applicants have been detailed and involved. The applicants have endeavoured to coordinate their inquiries and the sources of information presently available to them so as to ascertain as much as possible about the structure and function of the Kazaa system. It has also been necessary to carefully study and monitor the technical operation of the system, to the extent that this is possible from the outside, so as to identify potential sites at which

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<sup>15</sup> See Speck 03.02.04, paras 64-69; see also Carson 27.01.04.

<sup>16</sup> Carson 27.01.04.

<sup>17</sup> See, eg, Speck 03.02.04, Ex JMS-3, pp 82-107.

materials that will complete the picture are likely to be located and to fashion an appropriate form of proposed orders (see further paragraphs 85 below). During the period of the investigations, two significant further developments have occurred with the introduction of new versions of the software ("Kazaa Plus" and "Kazaa version 2.6").<sup>18</sup> The applicants' investigations have proceeded diligently and as quickly as possible in the circumstances, but have necessarily taken some time.<sup>19</sup>

20. The scale of infringement of the applicants' rights can be seen from reports of confidential technical investigations provided in the evidence. For example, over a 10 month period, and using a small sample of just 25 Australian recording artists, over 850,000 digital music files, the majority infringing, were believed to be made available by over 2,500 different Australian users of the Kazaa software for download by other users.<sup>20</sup> This is indicative of infringement on an enormous and unprecedented scale in Australia.

#### Supporting evidence

21. The evidence in support of the motion for *ex parte* relief may be summarised as follows:
- (a) Affidavits of Speck, Banks and Williams – these are the principal affidavits that deal with the applicants' investigations and the activities of the respondents. See, especially, Speck 03.02.04, particularly paras 37-44, 45-83, 84-114, 125-131; Williams 29.01.04.
  - (b) Affidavits of Carson and Lyons – these affidavits deal at a more technical level with the infringing activities of the respondents and the involvement of the third parties and identify what it is that the applicants seek to preserve and

<sup>18</sup> Speck 03.02.04, paras 92-93, 113.

<sup>19</sup> See, generally, Speck 03.02.04; Carson 27.01.04.

<sup>20</sup> Speck 03.02.04, paras 70-81.

discovery by the use of *Anton Piller* style relief. See, in particular, Carson 27.01.04, paras 13-21; Carson 03.02.04; Lyons 02.02.04, paras 11-26.

- (c) Affidavits of Ball and Brooks – these deal with the particular infringements monitored and detected in the course of the applicants' investigations.
  - (d) Affidavits of Don, Blakey, Robinson, Rinaldi, Narborough and Dubery – these are in similar form to one another and deal, on behalf of each applicant, with subsistence of copyright, absence of licence and balance of convenience.
22. Some general principles relating to copyright in sound recordings with which the Court will be familiar are set out for convenience below; this is followed by an outline of the applicants' case for *ex parte* relief.

#### Copyright in sound recordings

23. Copyright in sound recordings arises under ~~Part IV~~ of the *Copyright Act* 1968 (Cth) (the "Act"). It is a species of copyright in subject-matter other than works (ie literary work, musical works, etc). Copyright in works arises under Part III of the Act.
24. Thus, for example, the copyright in a sound recording of a popular musical work (say the current number 1 single *What About Me* by Shannon Noll of *Australian Idol* fame) is quite distinct from the separately subsisting copyright in that work (in that case, written by Gary Frost and F Swan for the band *Moving Pictures* in 1982). It is the former species of copyright with which these proceedings are concerned.
25. Section 89 of the Act provides for sound recordings in which copyright subsist. The primary operation of the section confers copyright on recordings made by Australians, or made or first published in Australia: see ss. 89, 84. By regulations made pursuant

to s. 184, copyright protection is extended to sound recordings made by non-Australians or made or first published in countries other than Australia.<sup>21</sup>

26. Copyright in sound recordings subsists in Australia for 50 years from their first publication: s. 93. Thus, by way of illustration, sound recordings covering virtually the entire recorded history of rock and roll, and of the popular music styles that have developed since the 1950s, remain in copyright.<sup>22</sup>
27. The owner of the copyright in a sound recording has the exclusive right to do the acts set out in s. 85(1) of the Act. These acts include "to make a copy of the sound recording"<sup>23</sup> and "to communicate the recording to the public".<sup>24</sup> The nature of the exclusive right to "communicate ... to the public", which was introduced by the *Copyright Amendment (Digital Agenda) Act 2000 (Cth)* (the "Digital Agenda amendments") and is significant for the present case, is examined in detail below.
28. Infringement of copyright in sound recordings is dealt with in ss. 101, 102 and 103 of the Act.
29. Pursuant to s. 101, copyright in a sound recording is infringed (so-called "primary infringement") by a person who, without the licence of the owner, does or authorises the doing of any of the acts comprised in the copyright.
30. Infringement by "authorisation" under s. 101 is a separate statutory tort: see *WEA International Inc v Hanimex Corp Ltd* (1987) 17 FCR 274. It is not necessary to proceed also against the person who infringes by doing the act: see, eg, *University of New South Wales v Moorhouse* (1975) 133 CLR 1. There is a considerable body of

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<sup>21</sup> See s. 184; *Copyright (International Protection) Regulations*, reg 4 and Sch 1, which extend copyright to sound recordings originating in the great majority of other countries; in particular the United States, Canada, the United Kingdom and other European countries.

<sup>22</sup> For pre-1969 sound recordings, copyright subsists for 50 years from the date of first making: see *Copyright Act 1911 (UK)* s. 19(1).

<sup>23</sup> *Copyright Act* s. 85(1)(a).

<sup>24</sup> *Copyright Act* s. 85(1)(c).

case law about what amounts to "authorisation": see paragraphs 61-64 below. Much of that case law was codified by the recent insertion of s. 101(1A).

31. (Under s. 103, copyright is also infringed (so-called "secondary infringement") by a person who (*inter alia*) sells an article the making of which constituted an infringement of the copyright. "Sale" in s. 103 includes "distribution ... for the purpose of trade ... or ... for any other purchase to an extent that affects prejudicially the owner of the copyright concerned". The applicants allege secondary infringement here but it need not be relied upon for the present purpose of seeking *ex parte* relief.)

#### The respondents and third parties

32. Kazaa is, in effect, an engine of piracy. The applicants submit that it is beyond doubt that by reason of the Kazaa system there is enormous, continuing, widespread and very damaging infringement of their sound recording copyright in Australia.
33. The first and second respondents, Sharman License Holdings Ltd and Sharman Networks Ltd (the "Sharman companies"), which provide and run the Kazaa system,<sup>25</sup> are, apparently, incorporated as "international companies" under the *International Companies Act* (No 32 of 1992) of the Republic of Vanuatu.<sup>26</sup> While described in that Act as "international companies", as is plain from s. 2 of that Act, they are in fact Vanuatuan incorporated companies.
34. Under that Act, Vanuatuan "international companies" are prohibited from carrying on business in Vanuatu: see s. 10 of the Act. Section 125 of the Act is an extraordinary provision to the effect that any person who, except when required by a court of competent jurisdiction, discloses or induces disclosure of (whether in Vanuatu or elsewhere) information concerning the ownership of shares in or management or affairs of an "international company", is guilty of an offence punishable by a fine or imprisonment.

<sup>25</sup> Speck 03.02.04, Ex JMS-3; see also Ex JMS-4/1, 4/2, 4/3 and 4/4.

<sup>26</sup> Speck 03.02.04, paras 101-103; Williams 29.01.04.

35. Neither of the Sharman companies is registered as a foreign company in Australia pursuant to the *Corporations Act* 2001 (Cth).<sup>27</sup> However, it appears from the evidence that virtually all the ordinary indicia of carrying on business are present at the Cremorne premises.<sup>28</sup> See, for example, the admission of the fourth respondent, Ms Hemming, in a letter to Philips Fox in relation to the Attorney-General's Digital Agenda Review.<sup>29</sup> The Sharman companies boast to the contrary on their website.<sup>30</sup> In addition, Sharman License Holdings Ltd is the applicant for an Australian registered trade mark.<sup>31</sup>
36. Plainly, wherever the Sharman companies are carrying on business, each is involved in the widespread infringement of the applicants' rights in Australia. Accordingly, whether or not they are present in the jurisdiction (the applicants say they are), they are proper respondents to this action under O 8 of the *Federal Court Rules* on a number of bases: at least those set out in O 8 r 1(a); 1(ac); 1(ad); 1(b). It appears that they are carrying on business in Australia at Cremorne, in which case service at the place where that business is carried on will be sufficient: see *Okura & Co Limited v Forbacka Jernverks Atiebolag* [1914] 1 KB 715.
37. To the extent that leave to serve the Sharman companies outside the Commonwealth and in Vanuatu is necessary, it should be granted. Inquiries conducted by the applicants to date suggest that Vanuatu is not a Convention Country. Accordingly, the Court has discretion to make orders on a broad variety of bases under O 8 r 2(2).
38. It is appropriate to draw the inference that the first and second respondents have deliberately adopted an ephemeral identity with the aim of not being amenable to the reach of the Court. They are incorporated in Vanuatu under a statute that prohibits

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<sup>27</sup> See *Corporations Act* 2001 (Cth) s. 601CD.

<sup>28</sup> See, generally, *Speck* 03.02.04, paras 94-114 and the exhibits there referred to.

<sup>29</sup> *Speck* 03.02.04, Ex JMS-1, pp 489-492.

<sup>30</sup> See, eg, *Speck* 03.02.04, Ex JMS-3, p 80.

<sup>31</sup> *Speck* 03.02.04.

them doing business there;<sup>32</sup> they do business in Australia without observing the statutory requirement that they register as doing business here. These factors not only support the granting of leave and the making of orders, if necessary, for substituted service; they also support the availability of *Anton Piller* style relief. Such a respondent is inherently in a position to evade the Court's orders and the coercive procedures of the Court.

39. Third respondent, LEF Interactive Pty Ltd, an Australian company, is described by the respondents as "the management services company for Sharman Networks", through which "Sharman Networks ... maintains its presence in Australia".<sup>33</sup> The fourth respondent, Nicola Hemming, describes herself as the CEO of Sharman; Sharman describes her the same way.<sup>34</sup> The fifth respondent, Phil Morle, is the architect of the technology of the infringing scheme.<sup>35</sup>

#### Principles relevant to the grant of *Anton Piller* style relief

40. The jurisdiction of the Federal Court to grant *Anton Piller* style relief is well-established: see *Polygram Records Pty Ltd v Monash Records (Australia) Pty Ltd* (1985) 10 FCR 332 (a case involving copyright in sound recordings), referring to *Calsil Ltd v Ferald Pty Ltd* (Toohey J, 12 July 1985, unreported).
41. See, also, more recently, *JC Techforce Pty Limited v Pearce* (1996) 35 IPR 196; *Microsoft v Goodview Electronics* (1999) 46 IPR 159 (but see (2000) 49 IPR 578 at [13], indicating that in fact an *Anton Piller* order was granted in the *Goodview* case on re-application a short time after the original refusal).
42. The jurisdiction of the Court to grant *Anton Piller* style relief at least in part arises under the *Federal Court Rules*: see O 17, read in conjunction with O 25. The equivalent rules of the Supreme Court were the foundation for the jurisdiction in

<sup>32</sup> Yet it shrouds their ownership and management in secrecy.

<sup>33</sup> See *Speck* 03.02.04, Ex JMS-3, p 80.

<sup>34</sup> Eg *Speck* 03.02.04, Ex JMS-3, p 79; see also *Speck* 03.02.04, paras 153-160.

<sup>35</sup> See *Speck* 03.02.04, Ex JMS-3, p 79.



*Anton Piller KG v Manufacturing Processes* [1976] 1 Ch 55. The rules are supported by ss. 22 and 23 of the *Federal Court of Australia Act 1976* (Cth).

43. There are three important guideposts in considering the grant of such relief:

- First, the applicants must have a clear case. This has been expressed in various ways, eg “an extremely strong prima facie case” (*Polygram*); “a strong prima facie case” (*Goodview*).
- Secondly, the potential or actual damage must be very serious for the applicants.
- Thirdly, there must be a strong likelihood (or a “grave danger” or “real possibility”); again, the expressions vary although the sentiment does not) that evidence will be lost; in effect, that the *Anton Piller*-style relief is, balancing all factors, the most appropriate way to ensure that all appropriate evidence is preserved. Thus, in some cases, evidence of an actual intention to destroy or conceal evidence, or of facts supporting a strong inference of such an intention, will be available. In other cases, even though such an intention is not proved or inferred, the nature of the subject-matter is such that intervention by way of seizure and preservation is appropriate: see *Sky Channel Pty Ltd v Yahmoc Pty Ltd* (2003) 58 IPR 63 at [7].

44. In the *Anton Piller* case itself ([1976] 1 Ch 55) and in many, perhaps most, of the cases since, the relief has been sought and obtained against the defendant or respondent (the person against whom a claim for final relief is to be made). However, the power to grant such an order is plainly not confined to an actual or proposed respondent: see O 17 r 1; *Pearson v Heathwoods Pty Limited* (1967) 68 SR(NSW) 27; *Barton v Australian Consolidated Press Ltd* [1970] 3 NSWLR 14; *Evatt v Australian Consolidated Press Ltd* [1970] 1 NSWLR 97; *Herman v Douglas* (1922) 22 SR (NSW) 317. See also, eg, O 15A rr 8 and 12; *Pacific Dunlop Ltd v Australian Rubber Gloves Pty Ltd* (1982) 23 IPR 456; *Star Micronics Pty Ltd v General Synthetics Pty Ltd* (1991) (Federal Court of Australia, Heerey J, 19 December 1991, unreported).

45. In the present case, the applicants seek *Anton Piller* and related orders against the first to fifth respondents to the proceedings, being those against whom a claim for infringement of copyright is propounded. In addition, the applicants seek orders for the preservation and inspection of property against a number of third parties whose computer systems, it is believed, are involved in the operation of the Kazaa system.<sup>36</sup>
46. The three "guideposts" referred to in paragraph 43 above and the evidence relating to them are examined in turn below.

#### Strong prima facie case

47. The evidence shows that each of the applicants is the owner or exclusive licensee of a very large catalogue of sound recordings, including particular recordings that have, during the course of the investigations, been dealt with through the Kazaa system.<sup>37</sup>
48. Copyright in the sound recordings is sufficiently established for the purpose of interlocutory relief. See also ss. 126, 126A, 126B and 130 of the Act.<sup>38</sup>
49. None of the applicants has licensed any of the activity concerning the respective sound recordings through the Kazaa system.<sup>39</sup> Thus the burden in *Avel Pty Ltd v Multicoin Amusements Pty Ltd* (1990) 171 CLR 88 is discharged.
50. The first to third respondents are three companies which, based on available evidence, appear to be involved in the development, promotion and supply to end users of the computer software by which the Kazaa system operates, and possibly also its development. See especially the letter from Ms Hemming referred to in paragraph 35 above.<sup>40</sup> As discussed above, it appears that the first and second respondents are so-

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<sup>36</sup> Notice of Motion (Ex Parte Relief) dated 4 February 2004.

<sup>37</sup> See, in particular, Brooks 23.01.04.

<sup>38</sup> See Don 27.01.04; Blakey 29.01.04; Robinson 29.01.04, Rinaldi 27.01.04, Narborough 27.01.04; Dubery 28.01.04.

<sup>39</sup> See Speck 03.02.04, paras 132-134; see also Don 27.01.04; Blakey 29.01.04; Robinson 29.01.04, Rinaldi 27.01.04, Narborough 27.01.04; Dubery 28.01.04.

<sup>40</sup> Speck 03.02.04, Ex JMS-1, pp 489-492.

called "international companies" registered in Vanuatu but whose operations are conducted substantially in Australia. The third respondent is an Australian company. All three companies have a place of business in Cremorne, New South Wales, which is one of the primary locations for the execution of the *Anton Piller* style orders.

51. The involvement of the fourth and fifth respondents, Ms Hemming and Mr Morle, in the administration and architecture of the Kazaa system is abundantly clear from the respondents' own materials, which are in evidence.<sup>41</sup>
52. The different kinds of liability for copyright infringement were outlined above. In the present case, the applicants put their claim of infringement for the purposes of the present *ex parte* application against each of the first to fifth respondents on several bases, namely:
- (a) direct infringement of the right "to communicate ... to the public" under s. 85(1)(c);
  - (b) authorisation of the infringing acts of end users of the Kazaa system (viz. making copies of or communicating sound recordings to the public under s. 85(1)(a) or (c)); and
  - (c) engaging as joint tortfeasors in the infringing acts of each other and of the end users of the Kazaa system.
53. (As noted above, the applicants will propound a case of "secondary" infringement under s. 103 of the Act (see paragraph 31 above) on a final (or *inter partes* interlocutory) basis, but need not rely upon this claim for present purposes.)

*Primary infringement*

54. Section 85(1)(c) of the Act makes it an exclusive right of the owner of copyright in a sound recording "to communicate the recording to the public". Section 10(1) defines

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<sup>41</sup> See, eg, *Speck* 03.02.04, paras 153-164 and Ex-JMS-3.

“communicate” as “make available online or electronically transmit (whether over a path, or a combination of paths, provided by a material substance or otherwise) a work or other subject matter”.

55. Accordingly, there are two limbs to the definition of “communicate”:

- (a) to “make available online” the relevant copyright subject-matter; and
- (b) to “electronically transmit” that subject-matter.

56. In the present case, the applicants rely on the first limb. On the evidence, the respondents (as those responsible for the development, promotion and provision to end users of the Kazaa software) are substantial contributors to a process whereby copyright sound recordings are “made available online” in the operation of the Kazaa system. The evidence indicates that the copyright sound recordings are not in truth “available” except by reason of the index function specifically designed by the respondents and devolved to the supernodes (wittingly or unwittingly).

57. To infringe the exclusive right of s. 85(1)(c), any “communication” must be “to the public”. This means “to the copyright owner’s public”: see *Telstra Corporation Ltd v Australasian Performing Right Association Ltd* (1997) 191 CLR 140 (dealing with the former right to “broadcast” a work by transmitting it by wireless telegraphy “to the public”, a form of words on which this aspect of the new communication right was plainly based).

58. In the present case, those to whom copyright sound recordings are made available free of charge by the operation of the Kazaa system – internet users – are or include persons who would otherwise be potential customers of the applicants, either by the purchase of conventional CDs or by downloading of licensed sound recordings via recently established services.<sup>42</sup> They are, relevantly, the “public”.

<sup>42</sup> See Speck 03.02.04; Banks 27.01.04.

59. Accordingly, the applicants submit that there is little doubt that (certainly the first and second) respondents' activities in connection with the Kazaa system fall within the scope of the communication right in s. 85(1)(c).

60. (There are some provisions that may deflect liability from online activity in some circumstances: eg ss. 22(6), 111A, 112E. They do not diminish the strength of the prima facie case here.)

*Infringement by authorisation*

61. Under s. 101(1) of the Act, a person who "does ... or authorizes the doing ... of" an act comprised in the copyright without the licence of the copyright owner infringes copyright.

62. It is also noteworthy that, by the operation of ss. 13 and 85(1) of the Act, the act of authorising the doing of any of the things set out in s.85(1)(a)-(d) is itself taken to be "an act comprised in the copyright"; the concept of infringement by authorisation therefore may well extend to authorising the authorisation of infringing acts. See *WEA International Inc v Hanimex Corp Ltd* (1987) 17 FCR 274 at 281.

63. Here, "authorise" is to be given its ordinary dictionary meaning of "sanction, approve or countenance". It involves an element of control over the primary infringer or some power to prevent the infringing act. It also involves a mental element, such that mere inactivity without any knowledge or reason to suspect that an infringing act might be committed will not itself amount to authorisation: see generally *University of New South Wales v Moorhouse* (1975) 133 CLR 1 and later cases. See also s. 101(1A).

64. In the present case, there are three categories of infringing acts authorised by the respondents:

- (a) the infringing acts of end users of the Kazaa software who "make a copy of" sound recordings for the purposes of s. 85(1)(a) by downloading and placing a copy of sound recordings on the hard drives of their computer by means of the Kazaa software;

- (b) the infringing acts of end users who “communicate ... to the public” copyright sound recordings by making them available online for upload by other users of the Kazaa software; and
- (c) the acts of certain end users functioning as supernodes for the purposes of the Kazaa system who, by carrying out an indexing function, authorise the infringing acts of other end users falling within the two preceding subparagraphs.

65. The respondents, through the Kazaa system, sanction, approve and countenance the widespread infringement of the applicants’ copyright; indeed, users are rewarded for infringement.<sup>43</sup> The applicants have proved specific infringement flowing from the respondents’ authorisation.<sup>44</sup>

*Joint tortfeasor liability*

66. Copyright infringement is a statutory tort. It is therefore subject to the general law principles relating to liability of joint tortfeasors: see *Microsoft Corporation v Auschina Polaris Pty Ltd* (1996) 71 FCR 231; *WEA v Hanimex* at 283. Thus, a person may infringe copyright by entering into a common design with, participating with or inducing or procuring another person to commit an act of infringement.

67. (This is distinct from the situation where liability is sought to be imposed on a director or officer of a company for the infringing acts of the company. Although the wording used in the cases is similar, the two bases of liability are distinct: see, eg, *Microsoft v Auschina* at 291.)

*The respondents’ air of legitimacy*

68. The respondents go to some lengths to create an impression of legitimacy of Kazaa; it can be inferred that they do so to bolster an argument that their system has real and

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<sup>43</sup> By the award of “participation levels”: eg *Speck* 03.02.04, Ex JMS-4/1, pp 108-112.

<sup>44</sup> *Ball* 27.01.04; *Brooks* 23.01.04; *Carson* 03.02.04; see also *Speck* 03.02.04.

meaningful non-infringing uses.<sup>45</sup> This is the type of argument that was made by the defendants in the United States proceedings.

69. It is a smokescreen. In truth the system is only substantially attractive and useful to users if the users are searching for desirable files with known names. For example, the features of the "Kazaa Plus" version of the Kazaa software highlighted in the evidence include 3,000 results per search and downloads from 40 sources at one time.<sup>46</sup> It is inherently implausible that, eg, a user's holiday photos or home-recorded original songs are intended to be searched and accessed by this method. The searching user would simply not know the titles of such documents. Similarly, users are rewarded for tidying up and properly naming files (ie digital music files) – the reasons must be so that the files are better accessible through searching.<sup>47</sup>
70. This indicates that, whatever the respondents' protestations, the system is in fact tailored to the infringement of the applicants' copyright sound recordings, with their known names or known artists.
71. In any event, if there were any real and meaningful legitimate uses of the Kazaa system, relief could be fashioned, in due course, to accommodate such uses.

#### Actual or potential damage to the applicants

72. The evidence demonstrates that the continued unrestricted operation of the Kazaa system will result in very serious damage, both actual and potential, to the applicants.
73. The overwhelming majority of the music files distributed via the Kazaa system appear to be copies of sound recordings in which the applicants own or control copyright. At present, the distribution of that content via the Kazaa system is large scale and virtually unrestricted.<sup>48</sup>

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<sup>45</sup> See, eg, Speck 03.02.04, Ex JMS-3, pp 118-119.

<sup>46</sup> Speck 03.02.04, Ex JMS-3, p 88.

<sup>47</sup> See, eg, Speck 03.02.04, Ex JMS-4/1, pp 113-115.

<sup>48</sup> See, in particular, Speck 03.02.04, para 49(a) and following.

74. Simultaneously, the organisations and individuals who appear to be behind Kazaa use the Kazaa system to market their own rights protected digital content and vigorously defend their own intellectual property.<sup>49</sup>
75. The following further aspects of the Kazaa software and the Kazaa system highlight the potential for damage to the applicants:<sup>50</sup>
- (a) The Kazaa software is particularly suited for handling music files.
  - (b) The Kazaa software is technologically capable of distinguishing between licensed and unlicensed content. Despite the existence of this technical capability, the substantial trade in unlicensed content is allowed by the respondents to continue.
  - (c) By default, users of the Kazaa software automatically share all content, whether licensed or unauthorised. The operation of the Kazaa software is such that, unless a user specifically disables the sharing function, all files located in that user's "My Shared Folder" are made available to other users worldwide.
  - (d) Similarly, the computer of each user is eligible to function as a supernode<sup>51</sup> (a function crucial to the operation of the Kazaa system) unless that user specifically disables this function in the software. Whether or not a user in fact becomes a supernode is otherwise outside the control of that user. In this way, the number of potential supernodes is maximised, thereby increasing the potential for infringement.
  - (e) Further, users are specifically encouraged by the respondents to "share" content, and not to disable the "sharing" or "supernode" functions. The self-proclaimed philosophy of the Kazaa system is built upon sharing, and the system would not operate without these features. In particular, without the

<sup>49</sup> Speck 03.02.04, paras 122-124.

<sup>50</sup> See Speck 03.02.04, especially paras 45-69.

<sup>51</sup> See paragraph 16 above.



supernodes indexing the files on other users' computers, users of the Kazaa software would be unable efficiently to locate and download those files.

- (f) There is no effective warning given by the respondents to counter the potential for infringement by users (both as end users and as potential authorisers of the infringements of other end users where they function as supernodes) by the ordinary operation of the Kazaa software.

76. These factors, and the general speed and efficiency with which the Kazaa system facilitates the infringement of copyright, mean that the ongoing impact on the applicants' interests is very significant. The widespread infringement of copyright impacts not only on traditional sales of CDs and other "hard copy" versions of sound recordings, but also on the viability of a number of legitimate online services offering legal downloads of sound recordings licensed by the applicants.<sup>52</sup>

#### Strong likelihood of destruction or non-preservation of evidence

77. As noted above, applicants seek *ex parte* relief against both the respondents and various other parties believed to be involved in the provision or operation of the Kazaa systems. In considering the risk of destruction or non-preservation of evidence and the need for *Anton Piller* style relief to safeguard against such risk, it is necessary to distinguish between these various groups of parties.

#### *Respondents*

78. The Kazaa system is a very diversified and dynamic system. It is appropriate to draw an inference that its diversification has been created, at least in part, with the aim of avoiding infringement. The applicants' case is that that aim has not been achieved.
79. The respondents are the Sharman companies and those intimately involved in their activities. These companies are prohibited from conducting business in their country

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<sup>52</sup> Banks 27.01.03, particularly paras 11-33; see also Don 27.01.04; Blakey 29.01.04; Robinson 29.01.04, Rinaldi 27.01.04, Narborough 27.01.04; Dubery 28.01.04.

of incorporation. They are "headquartered" in Sydney but supposedly do not carry on business there; rather it is said that their management company, LEF Interactive Pty Limited, does.

80. The whole structure of Kazaa is thus the product of an attempt to exist ephemerally; this applies both to the respondents' corporate structure and the technical structure of the Kazaa system itself.

*Third Parties*

81. The third parties against whom *Anton Piller* style relief is sought are as follows:<sup>53</sup>
- (a) Brilliant Digital Entertainment Pty Ltd and Kevin Bermeister – though not a respondent to the present application, it appears that Mr Bermeister and companies with which he is associated, including a United States corporation called Altnet Inc, are closely involved with the respondents in several ways, including via a "joint enterprise" agreement for the provision of certain technology used in the Kazaa software. Brilliant Digital Entertainment Pty Ltd appears to be the Australian arm of Mr Bermeister's operations. Because of this involvement, Mr Bermeister and his company are dealt with in the proposed form orders on the same basis as the respondents; they are referred to collectively as the "Kazaa Parties".
  - (b) The "Supernode Parties" – three computer systems presently functioning as supernodes in the operation of the Kazaa system have been identified. These computers are controlled by three Australian Universities. Unique "internet protocol" (IP) addresses have been identified for these computers so that they can be physically located and isolated and information can be extracted from them without disruption to the operation of other systems on the subject premises.<sup>54</sup> It is expected that these sources will contain information crucial to

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<sup>53</sup> See, generally, Speck 03.02.04, paras 165-183.

<sup>54</sup> See Lyons 02.02.04.

an understanding of the functioning of the Kazaa system, including in particular various technical aspects of the supernode function.

- (c) The "Website Parties" – these include a company called Akamai Technologies AAP Pty Ltd, which is the Australian arm of a third party supplier of certain website hosting technology and facilities utilised by the Kazaa system. This technology involves decentralising the hosting of the Kazaa website (where the Kazaa software can be obtained and where, it is believed, the computers of Kazaa users "log in" to register or receive certain information) across a large number of computer servers in different physical locations across the world. The other "Website Parties" are internet service providers whose computers appear to be involved in the hosting of the Kazaa website in Australia by means of the Akamai technology. As with the Supernode Parties, care has been taken in the fashioning of the orders for these entities by the identification of unique IP addresses for the computers concerned.

82. The need to inspect and preserve aspects of the systems of these third parties is a direct result of the intentional diversification by the respondents of their infringing activities to those third parties. By the execution of the orders, the information captured will be preserved until a regime can be put in place for its use in the applicant's case against the respondents.
83. Also, in particular, information is sought from these third parties for a purpose falling well within old and settled principles, ie to enable the proper framing of the claim and the relief sought: see the authorities cited in paragraph 44 above in relation to O 17 and its antecedents. For this purpose, orders such as order 13(c) in the Notice of Motion (Ex Parte Relief) require the operation of computer systems involved in the Kazaa system for a period of observation. Analogous activities have been a feature of *Anton Piller* relief since before the *Anton Piller* case itself: see *EMI Ltd v Pandit* [1975] 1 All ER 418.

84. The disruption to the third parties will be relatively minimal in the circumstances; as explained below the relief sought has been tailored with this object in mind.<sup>55</sup> As can be seen from order 28 in the Notice of Motion (Ex Parte Relief) dated 4 February 2004, the applicants accept that in due course ordinary conduct money and costs of the kind ordinarily payable in relation to a subpoena may be assessed.

#### Procedural matters

85. In order to simplify the documentation and to avoid tedious repetition, the various stages of the relief sought by the applicants in these proceedings have been separated into different documents: the Application sets out the final relief sought and formal parts but, rather than setting out the interlocutory relief sought, refers to two notices of motion which deal with that matter. These are a Notice of Motion (Ex Parte Relief) dated 4 February 2004 which sets out the form of *Anton Piller* style relief sought, and a Notice of Motion (Inter Partes Relief) dated 3 February 2004 which sets out interlocutory relief the applicants propose to seek on an *inter partes* basis in due course (and which may need to be further tailored).
86. The applicants have sought to focus the orders relating to third parties to a select group of third parties who have been identified as being recently and particularly involved in the Kazaa system. The orders have been focussed to create minimum interference and disruption and with regard for the need to protect the confidentiality of sensitive material.<sup>56</sup>
87. The structure of the *Anton Piller* relief is that the entry and search orders have been modelled as closely as possible on recent *Anton Piller* orders settled by judges of the Court,<sup>57</sup> although necessarily significantly adapted to the circumstances of this

<sup>55</sup> Carson 03.02.04.

<sup>56</sup> See, generally, Carson 03.02.04 (detailed execution plan).

<sup>57</sup> Eg *Sky Channel Pty Ltd v Roseline Enterprises Pty Ltd*, N2193 of 2003 (Hely J, 1 December 2003); *Universal Music Australia Pty Ltd v Cooper*, N1551 of 2003 (Emmett J, 17 October 2003); *Sky Channel Pty Ltd v Yahmoc Pty Ltd*, N451 of 2003 (Allsop J, 9 April 2003, see 58 IPR 63); *Sky Channel Pty Ltd v Inter-Twine Pty Ltd*, N93 of 2003 (Lindgren J, 7 February 2003, see [2003] FCA 67); *Hasbro Australia Ltd v Raad*, N66 and 68 of 2003

particular case (including the tailoring for third parties referred to in the preceding paragraph). In particular, the ancillary and safeguard orders are very closely modelled on such orders as have been made recently by judges of the Court.

88. Accordingly, the applicants submit that it is appropriate that orders in accordance with the Notice of Motion (Ex Parte Relief) dated 4 February 2004 be made. Draft short minutes of order to this effect are accordingly submitted,<sup>58</sup> with dates suggested for the return date of the application.

R Cobden

C Dimitriadis

Counsel for the Applicants

4 February 2004

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(Wilcox J, 30 January 2003); *Sky Channel Pty Ltd v Darcy's Tavern Pty Ltd*, N31 of 2003 (Gyles J, 14 January 2003, see [2003] FCA 19).

<sup>58</sup> Tab 6 in the Judge's Bundle.



## Record industry enforcer raids Kazaa offices

By Sam Varghese  
February 6, 2004

The enforcement arm of the Australian record industry has raided the premises of Sharman Networks and its proprietor, Nicola Hemming, in what it says is a bid to stop illegal copying of music through the Kazaa network.

Yesterday, Music Industry Privacy Investigations obtained court orders allowing its investigators to obtain documents and other electronic records about Kazaa's activities in Australia. Twelve premises were raided in three states this morning.

The premises of Brilliant Digital Entertainment and those of three universities - the University of Queensland, the University of New South Wales and Monash University - were among those raided.

Among other premises raided were those of Akamai Technologies AAP, NTT Australia, Telstra Corporation and NTT Australia IP. MIPI said proceedings had begun in the Federal Court after a six-month investigation.

MIPI said evidence had been obtained during the raids which would be used in the court proceedings.

Court action commenced in Sydney as Kazaa operates from offices in the suburb of Cremorne even though it is registered in the Pacific island of Vanuatu.

MIPI general manager Michael Speck said the action had been taken "to stop the illegal use of music through use of the Kazaa network."

"Kazaa has built a large international business through encouraging and authorising the illegal copying of music users of its network. It authorises this copying without seeking the licence or permission of the owners and creators of the music, nor does it pay any royalties to either the owners or creators of the music," he said.

The matter will return to court on Tuesday.

Sharman Networks described the actions as "a knee-jerk reaction by the recording industry to discredit Sharman Networks and the Kazaa software, following a number of recent court decisions around the world that have ruled against the entertainment industry's agenda to stamp out peer-to-peer technology."

"There is no doubt this is a cynical attempt by the industry to disrupt our business, regain lost momentum, and garner publicity. The assertions by plaintiffs are hackneyed and worn out. It is a gross misrepresentation of Sharman's business to suggest that the company in any way facilitates or encourages copyright infringement."

"Sharman bought the Kazaa software two years ago with the express purpose of building it into a legitimate channel for the distribution of licensed, copyright protected content which in turn financially benefits artists. This model has already proven to be successful."

MIPI is established and funded by record companies and music publishers and acts as an anti-piracy arm for these organisations. It is affiliated with the Australian Record Industry Association.

*This story was found at: <http://www.smh.com.au/articles/2004/02/06/1075854054236.html>*

1 **PROOF OF SERVICE**

2  
3 STATE OF CALIFORNIA, )  
4 COUNTY OF LOS ANGELES ) SS )

5 I am employed in the County of Los Angeles, State of California. I am over the age of 18  
6 years and not a party to the within action; my business address is 601 South Figueroa Street, Suite  
7 3300, Los Angeles, California 90017.

8 On February 6, 2004, I served the foregoing document described as **DECLARATION OF**  
9 **ALAN MORRIS IN SUPPORT OF DEFENDANT SHARMAN NETWORKS LIMITED'S EX**  
10 **PARTE APPLICATION** on the interested parties in this action by e-mail and by placing the true  
11 copy thereof enclosed in sealed envelopes addressed as follows:

- 12  By electronic transmission. I caused to be transmitted the documents described  
13 above to the individuals on the service list.  
14  By placing the document listed above in a sealed envelope with postage thereon  
15 fully prepaid, in the United States mail at Los Angeles, California addressed as set  
16 forth below.

17 **SEE ATTACHED SERVICE LIST**

18 I caused such envelope with postage thereon fully prepaid to be placed in the United States  
19 mail at Los Angeles, California. I am readily familiar with the firm's practice of collection and  
20 processing correspondence for mailing. Under that practice it would be deposited with U.S. postal  
21 service on that same day with postage thereon fully prepaid at Los Angeles, California in the  
22 ordinary course of business. I am aware that on motion of the party served, service is presumed  
23 invalid if postal cancellation date or postage meter date is more than one day after date of deposit for  
24 mailing in affidavit.

25 I declare that I am employed in the office of a member of this bar of this court at whose  
26 direction the service was made.

27 Executed on February 6, 2004 at Los Angeles, California.

28  

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Lisa Spears



**MGM, et al. v. GROKSTER, U.S.D.C. No. CV 01-8541 SVW (PJWx)**

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*LEIBER, et al. v. GROKSTER, LTD., et al.*, U.S.D.C. No. CV 01-9923 SVW (PJWx)

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