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11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

13 JERRY LEIBER individually and ) Case No. 01-09923-SVW(PJW)  
14 d/b/a JERRY LEIBER MUSIC, )  
15 MIKE STOLLER individually and ) [Consolidated With Case No. CV 01-  
16 d/b/a MIKE STOLLER MUSIC, ) 8541-SVW(PJWx)]  
17 PEER INTERNATIONAL )  
CORPORATION, PEER MUSIC )  
18 LTD., SONGS OF PEER, LTD., )  
CRITERION MUSIC )  
CORPORATION, FAMOUS MUSIC ) **[PROPOSED] LEIBER**  
19 CORPORATION, BRUIN MUSIC ) **PLAINTIFFS' FIRST AMENDED**  
COMPANY, ENSIGN MUSIC ) **CLASS ACTION COMPLAINT**  
CORPORATION, and LET'S TALK ) **FOR COPYRIGHT**  
20 SHOP, INC., d/b/a BEAU-DI-O-DO ) **INFRINGEMENT**  
MUSIC, on behalf of themselves and )  
all others similarly situated, )  
Plaintiffs,

21 vs.

22 KAZAA BV f/k/a CONSUMER )  
EMPOWERMENT BV, )  
23 STREAMCAST NETWORKS, INC. )  
f/k/a MUSICCITY.COM, INC., )  
24 MUSICCITY NETWORKS, INC., )  
25 NIKLAS ZENNSTROM, LA )  
GALIOTE BV, JANUS FRIIS )  
DEGNBOL, INDIGO )  
26 INVESTMENT BV, SHARMAN )  
NETWORKS LIMITED, LEF )  
27 INTERACTIVE PTY LTD., and )  
GROKSTER, LTD., )  
28 Defendants.

1 **COMPLAINT**

2 Plaintiffs Jerry Leiber individually and d/b/a Jerry Leiber Music, Mike Stoller  
3 individually and d/b/a Mike Stoller Music, Peer International Corporation, Songs of  
4 Peer, Ltd., Peer Music, Ltd., Criterion Music Corporation, Famous Music  
5 Corporation, Bruin Music Company, Ensign Music Corporation, and Let's Talk  
6 Shop, Inc. d/b/a Beau-Di-O-Do Music (collectively, "plaintiffs"), on behalf of  
7 themselves and all music publishers represented by The Harry Fox Agency, Inc.  
8 ("HFA") that own and/or control at least one musical composition that has been  
9 made available through defendants' respective services defined below (the "Class"),  
10 by their attorneys Paul, Weiss, Rifkind, Wharton & Garrison and Davis Wright  
11 Tremaine LLP, allege upon knowledge as to themselves and upon information and  
12 belief as to all other matters, as follows:

13 **NATURE OF ACTION**

14 1. This is a class action for contributory and vicarious copyright  
15 infringement, pursuant to 28 U.S.C. §§ 1331 and 1338(a) and (b), on behalf of all  
16 music publishers represented by HFA that own and/or control at least one  
17 copyrighted musical composition that has been made available without their  
18 permission through the services owned and operated by defendants Niklas  
19 Zennstrom, Janus Friis Degnbol, La Galiote BV, Indigo Investment BV, Kazaa BV  
20 (f/k/a Consumer Empowerment BV), StreamCast Networks (f/k/a MusicCity.com  
21 Inc.), MusicCity Networks, Inc., Grokster, Ltd., Sharman Networks Ltd., and LEF  
22 Interactive Pty Ltd., and located at <www.Kazaa.com> ("Kazaa service"),  
23 <www.musiccity.com> ("MusicCity service"), and <www.grokster.com> ("Grokster  
24 service").

25 2. Plaintiffs are songwriters and music publishers that own and/or control  
26 copyrights in some of the most recognizable musical compositions recorded in the  
27 Twentieth Century, including "These Boots Are Made For Walking" by Lee  
28 Hazlewood, "Moon River" by Henry Mancini and Johnny Mercer, and "Jailhouse

1 Rock” by Jerry Leiber and Mike Stoller. Plaintiffs bring this action for preliminary  
2 and permanent injunctive relief and damages to halt the pervasive and willful  
3 infringement of their copyrighted musical works.

4 3. Defendants are facilitating, materially contributing to, and encouraging  
5 wholesale infringement of the world’s most popular songs – mostly owned by  
6 plaintiffs and other Class members – by brashly operating a Napster “copycat”  
7 service. Indeed, upon information and belief, defendants’ services were created and  
8 offered by defendants specifically to siphon users of the infamous Napster “peer-to-  
9 peer” music service who, in the wake of federal court rulings ordering Napster to  
10 remove infringing content, are seeking a new haven for music piracy.

11 4. Defendants are fully aware of the massive scale of infringements taking  
12 place on their services. The musical compositions reproduced and distributed  
13 without authorization over the services include virtually every well known musical  
14 composition ever written and recorded. Defendants’ purpose is simple: by acting in  
15 concert and offering plaintiffs’ and Class members’ songs for free, they hope to  
16 attract some or all of Napster’s 40 million or more users, in open defiance of the law.  
17 By offering their commercial services, defendants have generated advertising  
18 revenue and hope to obtain venture capital funding and subscription fees. By this  
19 action, plaintiffs seek to redress this massive and willful infringement that seriously  
20 threatens the livelihoods of songwriters and their music publishers.

21 **JURISDICTION AND VENUE**

22 5. This Court has subject matter jurisdiction over this action pursuant to  
23 28 U.S.C. §§ 1331 and 1338(a) and (b).

24 6. This Court has venue under 28 U.S.C. §§ 1391(b) and (c) and 1400(a).

25 7. This Court has personal jurisdiction over defendants because defendants  
26 reside in and/or are doing business in the State of California and in this District.  
27 Additionally, many of the acts of infringement complained of herein resulted from  
28 defendants’ actions in the State of California and in this District. Defendants have

1 further purposefully engaged in acts targeted at this District that have caused harm in  
2 this District; they have purported to enter into agreements with residents of this State  
3 and District; and they have availed themselves of the privilege of conducting  
4 activities in this State and District.

## 5 BACKGROUND

### 6 The Parties

7 8. Plaintiffs Jerry Leiber individually and d/b/a Jerry Leiber Music and  
8 Mike Stoller individually and d/b/a Mike Stoller Music (“Leiber & Stoller”) are  
9 citizens of California and are professional songwriters who are also engaged in the  
10 business of music publishing whereby they license the recording, reproduction, and  
11 distribution of musical works for which they either own or control the copyrights.  
12 Leiber & Stoller are composers of such famous songs as “Stand By Me,” “Love  
13 Potion # 9,” “On Broadway,” “Yakety Yak,” “Kansas City,” “Poison Ivy,” and  
14 “Hound Dog.” Several of these songs were recently featured in the Broadway show  
15 “Smokey Joe’s Cafe.”

16 9. Plaintiff Peer International Corporation (“PIC”) is a New Jersey  
17 corporation, with its principal place of business in New York, New York, and is  
18 actively engaged in the business of music publishing whereby it licenses the  
19 recording, reproduction, and distribution of musical works for which it either owns or  
20 controls the copyrights.

21 10. Plaintiff Songs of Peer, Limited is a Delaware corporation, with its  
22 principal place of business in New York, New York, and is actively engaged in the  
23 business of music publishing whereby it licenses the recording, reproduction, and  
24 distribution of musical works for which it either owns or controls the copyrights.

25 11. Plaintiff Peer Music, Limited is a New York corporation, with its  
26 principal place of business in New York, New York, and is actively engaged in the  
27 business of music publishing whereby it licenses the recording, reproduction, and  
28 distribution of musical works for which it either owns or controls the copyrights.

1 12. Plaintiff Criterion Music Corporation (“Criterion”) is a California  
2 corporation, with its principal place of business in Hollywood, California, and is  
3 actively engaged in the business of music publishing whereby it licenses the  
4 recording, reproduction, and distribution of musical works for which it either owns or  
5 controls the copyrights.

6 13. Plaintiff Famous Music Corporation (“Famous”) is a Delaware  
7 corporation, with its principal place of business in Los Angeles, California, and is  
8 actively engaged in the business of music publishing whereby it licenses the  
9 recording, reproduction, and distribution of musical works for which it either owns or  
10 controls the copyrights.

11 14. Plaintiff Bruin Music Company is a Delaware corporation, with its  
12 principal place of business in Los Angeles, California, and is actively engaged in the  
13 business of music publishing whereby it licenses the recording, reproduction, and  
14 distribution of musical works for which it either owns or controls the copyrights.

15 15. Plaintiff Ensign Music Corporation is a Delaware corporation, with its  
16 principal place of business in Los Angeles, California, and is actively engaged in the  
17 business of music publishing whereby it licenses the recording, reproduction, and  
18 distribution of musical works for which it either owns or controls the copyrights.

19 16. Plaintiff Let’s Talk Shop, Inc. d/b/a Beau-Di-O-Do Music is a California  
20 corporation, with its principal place of business in Encino, California, and is actively  
21 engaged in the business of music publishing whereby it licenses the recording,  
22 reproduction, and distribution of musical works for which it either owns or controls  
23 the copyrights.

24 17. Defendant Kazaa BV f/k/a Consumer Empowerment BV (“Kazaa”) is a  
25 limited liability company organized under the laws of The Netherlands with its  
26 principal place of business in Amsterdam, The Netherlands.  
27  
28

1 18. Defendant StreamCast Networks, Inc. f/k/a MusicCity.com, Inc. is a  
2 corporation organized and existing under the laws of the State of Oregon with its  
3 principal place of business in Franklin, Tennessee. Its affiliate, Defendant MusicCity  
4 Networks, Inc., is a corporation organized and existing under the laws of the State of  
5 California with a place of business in Woodland Hills, California. (Defendants  
6 StreamCast Networks, Inc. and MusicCity Networks, Inc. are collectively referred to  
7 herein as "MusicCity.")

8 19. Defendant Niklas Zennstrom ("Zennstrom") is a resident of Sweden and  
9 a founder and director of Defendant Kazaa. Defendant La Galiote BV ("La Galiote")  
10 is an entity through which Zennstrom conducts business and is a part owner of  
11 Kazaa.

12 20. Defendant Janus Friis Degnbol ("Friis") is a resident of Denmark and a  
13 founder and director of Defendant Kazaa. Defendant Indigo Investment BV  
14 ("Indigo") is an entity through which Friis conducts business and is a part owner of  
15 Kazaa.

16 21. Defendant Sharman Networks Limited ("Sharman") is a company  
17 registered in Vanuatu and based in Australia. Defendant LEF Interactive Pty Ltd.  
18 ("LEF"), which is based in Australia, is an alter ego of Sharman and/or an entity  
19 through which Sharman conducts business.

20 22. Defendant Grokster, Ltd. ("Grokster") is a limited liability company  
21 organized under the laws of the West Indies, with its principal place of business in  
22 Nevis, West Indies.

23 23. Each of the defendants is and has been party to the unlawful activities  
24 complained of herein and/or acted in concert or combination with each of the other  
25 named defendants and/or has aided and abetted such other defendants and/or has  
26 acted as an agent for each of the other defendants with respect to the actions and  
27 matters described in this Complaint.  
28

## Songwriters And Music Publishers

24. Plaintiffs are professional songwriters and music publishers.

Songwriters earn their livelihood, in part, by licensing their exclusive rights to make and distribute sound recordings embodying their musical compositions in the form of CDs, cassette tapes, LPs, and digital downloads. Music publishers are the caretakers of the songwriters' musical compositions. Thus, a record label or Internet music service that wants to distribute a recording of Leiber & Stoller's "Jailhouse Rock" on CD, cassette tape, or as a digital download, must first obtain a license from and pay royalties to Leiber & Stoller, the music publishers and copyright owners.

25. Like thousands of other music publishers, plaintiffs have agency relationships with HFA. HFA is an industry service organization representing over 27,000 music publisher-principals that collectively own or control more than 2.5 million copyrighted musical works. Established in 1927, HFA serves as agent on behalf of its publisher-principals in licensing copyrighted musical compositions for reproduction and distribution as physical phonorecords (CDs, cassette tapes, and phonograph records), and over the Internet as digital phonorecord deliveries. HFA is a wholly owned subsidiary of the National Music Publishers' Association, Inc. ("NMPA"). Founded in 1917, NMPA is the principal trade association of music publishers in the United States. By appointing HFA as their common licensing and collection agent, plaintiffs and other Class members have confirmed their interest in generating royalties by licensing their copyrighted musical works.

## The Copyrighted Musical Compositions

26. Plaintiffs Leiber & Stoller own and/or control the copyrights in the musical compositions "Jailhouse Rock," written and composed by Jerry Leiber and Mike Stoller, for which the Register of Copyrights has duly issued Registration Certificates Nos. Eu 477666 and Ep 112-749, and Renewal Registration Certificates Nos. RE 234-406 and RE 234-387; "Love Potion #9," written and composed by Jerry Leiber and Mike Stoller, for which the Register of Copyrights has duly issued

1 Registration Certificates Nos. Eu 582-484 and Ep 134-716, and Renewal Registration  
2 Certificates Nos. RE 338-201 and RE 338-204; "Yakety Yak," written and composed  
3 by Jerry Leiber and Mike Stoller, for which the Register of Copyrights has duly  
4 issued Registration Certificates Nos. Eu 523-626 and Ep 120-208, and Renewal  
5 Registration Certificates Nos. RE 282-599 and RE 282-181; "Poison Ivy," written  
6 and composed by Jerry Leiber and Mike Stoller, for which the Register of Copyrights  
7 has duly issued Registration Certificates Nos. Eu 590-492 and Ep 133-842, and  
8 Renewal Registration Certificates Nos. RE 327-437 and RE 338-200; and "Stand By  
9 Me," co-written and composed by Jerry Leiber and Mike Stoller, for which the  
10 Register of Copyrights has duly issued Registration Certificates Nos. Eu 683-281, Eu  
11 667-764, and Ep 156-127, and Renewal Registration Certificates Nos. RE 430-902,  
12 RE 430-835, and RE 430-905.

13         27. Plaintiff PIC owns and/or controls the copyrights in the musical  
14 compositions "Besame Mucho," written and composed by Consuelo Velasquez, for  
15 which the Register of Copyrights has duly issued Registration Certificate No. E  
16 65106 and Renewal Registration No. RE 436-261; "Granada," written and composed  
17 by Agustin Lara, for which the Register of Copyrights has duly issued Registration  
18 Certificate No. EP 88100 and Renewal Registration No. R 248637; "Blue Moon of  
19 Kentucky," written and composed by Bill Monroe, for which the Register of  
20 Copyrights has duly issued Registration Certificate No. EP 16363 and Renewal  
21 Registration No. R 583185; "Walk Like an Egyptian," written and composed by  
22 Liam Sternberg, for which the Register of Copyrights has duly issued Registration  
23 Certificate No. PA 278-841; and "Preciosa," written and composed by Rafael  
24 Hernandez, for which the Register of Copyrights has duly issued Registration  
25 Certificate No. Eu 156-635 and Renewal Registration No. RE 625-775.



1 28. Plaintiff Peer Music, Limited owns and/or controls the copyright in the  
2 musical composition "Afuera," written and composed by Alfonso Hernandez Estrada  
3 (a/k/a Saul Hernandez), for which the Register of Copyrights has duly issued  
4 Registration Certificate No. PA 721-019.

5 29. Plaintiff Songs of Peer, Limited owns and/or controls the copyright in  
6 the musical composition "Long Neck Bottle," written and composed by Rick Carnes,  
7 for which the Register of Copyrights has duly issued Registration Certificate No. PA  
8 822-250.

9 30. Plaintiff Criterion owns and/or controls the copyrights in the musical  
10 compositions "The End," written and composed by Jimmy Kronides and Sid  
11 Jacobson, for which the Register of Copyrights has duly issued Registration  
12 Certificate No. Eu 526-983 and Renewal Registration No. RE 293-583; "These Boots  
13 Are Made For Walking," written and composed by Lee Hazlewood, for which the  
14 Register of Copyrights has duly issued Registration Certificate No. Eu 915-461 and  
15 Renewal Registration No. RE 612-396; "Pearly Shells," written and composed by  
16 John Kalapana and Leon Paber, for which the Register of Copyrights has duly issued  
17 Registration Certificate No. Eu 733-766 and Renewal Registration No. RE 471-068;  
18 "I Can Love You Like That," written and composed by Jennifer Kimball, Steve  
19 Diamond, and Mary Beth Derry, for which the Register of Copyrights has duly  
20 issued Registration Certificate No. PA 754-016; and "Standing Outside The Fire,"  
21 written and composed by Garth Brooks and Jenny Yates, for which the Register of  
22 Copyrights has duly issued Registration Certificate No. PA 877-473.

23 31. Plaintiff Famous owns and/or controls the copyrights in the musical  
24 compositions "A Time For Us (Romeo and Juliet Love Theme)," written and  
25 composed by Larry Kusik, Eddie Snyder, and Nino Rota, for which the Register of  
26 Copyrights has duly issued Registration Certificate No. Eu 66733 and Renewal  
27 Registration No. RE 722-651; "Theme From Cheers (Where Everybody Knows Your  
28 Name)," written and composed by Gary Portnoy and Judy Hart Angelo, for which the

1 Register of Copyrights has duly issued Registration Certificate No. PA 161-190; "I  
2 Don't Want To Wait," written and composed by Paula Cole, for which the Register  
3 of Copyrights has duly issued Registration Certificate No. PA 823-612; and "Moon  
4 River," written and composed by Henry Mancini and Johnny Mercer, for which the  
5 Register of Copyrights has duly issued Registration Certificate No. Eu 656-109 and  
6 Renewal Registration No. RE 423-686.

7 32. Plaintiff Bruin Music Company owns and/or controls the copyright in  
8 the musical composition "Mission Impossible – Theme," written and composed by  
9 Lalo Schifrin, for which the Register of Copyrights has duly issued Registration  
10 Certificate No. Eu 974-446 and Renewal Registration No. RE 662-987.

11 33. Plaintiff Ensign Music Corporation owns and/or controls the copyright  
12 in the musical composition "I Hope You Dance," written and composed by Tia  
13 Sillers and Mark D. Sanders, for which the Register of Copyrights has duly issued  
14 Registration Certificate No. PA 981-302.

15 34. Plaintiff Let's Talk Shop, Inc. d/b/a Beau-Di-O-Do Music, owns and/or  
16 controls the copyrights in the musical compositions "Two Hearts," written and  
17 composed by Lamont Dozier and Phil Collins, for which the Register of Copyrights  
18 has duly issued Registration Certificate No. PA 417-757; and "Invisible," written and  
19 composed by Lamont Dozier, for which the Register of Copyrights has duly issued  
20 Registration Certificate No. PA 239-393.

### 21 **BACKGROUND ALLEGATIONS**

22 35. The Internet is a worldwide network of millions of computers and  
23 computer networks. With the click of a mouse, a user can locate virtually every  
24 conceivable form of entertainment in just seconds. The Internet has created new  
25 opportunities for songwriters to let their music be heard around the world as never  
26 before. Songwriters and their music publishers have licensed their copyrighted  
27 musical works to Internet music companies to take full advantage of these  
28 opportunities.

1 36. Unfortunately, in addition to creating opportunities for new and creative  
2 models for legitimate businesses, the Internet also has afforded unprecedented  
3 opportunities for piracy. The most notorious example of this is Napster's former  
4 peer-to-peer "file-sharing" service. At its height, the Napster service enabled more  
5 than 40 million users worldwide to upload and download hundreds of thousands of  
6 copyrighted musical compositions at the staggering rate of over 2 billion files per  
7 month. The Napster service was found to be promoting music piracy on an  
8 unprecedented scale and is now the subject of a preliminary injunction. See A&M  
9 Records, Inc. v. Napster, Inc., 239 F.3d 1004 (9th Cir. 2001), aff'g in part and rev'g  
10 in part, 114 F. Supp. 2d 896 (N.D. Cal. 2000), on remand, Leiber v. Napster, Inc.,  
11 Nos. C 00-0074 MHP, MDL C00-1369 MHP, 2001 WL 789461 (N.D. Cal. Mar. 5,  
12 2001), aff'd, A&M Records, Inc. v. Napster, Inc., 284 F.3d 1091 (9th Cir. 2002).

13 37. Defendants provide users with an enhanced peer-to-peer service for  
14 infringing copyrighted musical compositions. Like Napster, defendants provide their  
15 respective users with the infrastructure, facilities, technological means, and ongoing  
16 support and services to infringe copyrighted musical compositions. Defendants  
17 participate in, facilitate, materially contribute to, and encourage these infringements  
18 from start to finish. Their systems and services combine to form an extensive,  
19 highly-integrated closed network that anonymously connects users and encourages  
20 and enables them to pool their previously private music files into what is effectively  
21 a massive database of millions of such files so that they can all make free copies. To  
22 shield this pirate's haven, Defendants have made their services anonymous and have  
23 employed encryption technology.

24 38. Defendants provide their users, at no cost, via on-line download, three  
25 versions of proprietary application software that allow their users to connect to and  
26 use the same closed computer network, controlled by defendants, to locate,  
27 reproduce, and distribute infringing digital files. Although the versions differ in  
28 cosmetic ways, they are based upon the same software program known as

1 “FastTrack.” The versions contain substantially identical code and employ the same  
2 protocols. Regardless of which version their users employed, the user was or is  
3 connected to the same network controlled by Defendants. Thus, Defendants’  
4 respective user populations have had and have mutual visibility and access to each  
5 other’s infringing digital files.

6 39. The FastTrack technology is designed to take advantage of a network  
7 effect: the more people who use each individual company’s system and service, the  
8 more copyrighted content that is available on the FastTrack network for copying and  
9 distribution. This in turn attracts even more users and, of course, even more revenue  
10 for Defendants. Although Defendants operate individual systems and services,  
11 acting together, Defendants have formed and maintained the largest infringing  
12 network ever created: a virtual swap meet of free, unlicensed, and unauthorized,  
13 copyrighted content.

14 40. Defendants Kazaa, Zennstrom, La Galiote, Friis, and/or Indigo  
15 (collectively, “Kazaa”) created, and/or directed others to create, the technology that  
16 spawned the “FastTrack” network. Kazaa offered a version of its technology to the  
17 public and, either currently or in the past, licensed it to Defendants MusicCity,  
18 Grokster, and Sharman/LEF. Defendants Kazaa, Sharman, and LEF call its version  
19 “KaZaA Media Desktop.” Defendant MusicCity termed its version “Morpheus.”  
20 Defendant Grokster’s version is called simply “Grokster.” As described in  
21 paragraphs 45-78, the FastTrack software is only one part of the system and service  
22 that defendants provide or provided to its users, in order to facilitate, encourage,  
23 enable, and materially contribute to the wholesale infringement of plaintiffs’ and  
24 other Class members’ copyrights.

25 41. Defendants created their systems and services for the specific purpose of  
26 building commercial businesses by exploiting plaintiffs’ and other Class members’  
27 copyrighted musical compositions – in fact – that is their modus operandi. Before  
28 licensing the FastTrack technology, Defendant MusicCity operated an infringing

1 network using a technology known as “openNap,” which was based on a reverse  
2 engineering of Napster’s notorious infringing system. MusicCity operated one of the  
3 largest “openNap” networks in the world. When Napster was shut down by the 9th  
4 Circuit, MusicCity migrated to the FastTrack network. After Plaintiffs commenced  
5 this action, MusicCity continued its infringing ways utilizing new technology.

6 42. Like MusicCity, Defendant Grokster is no stranger to the business of  
7 providing infringing material over the Internet. Before entering into business with  
8 Defendants Kazaa, Zennstrom, Friis, La Galiote, and Indigo, the principals of  
9 Grokster operated “Swaptor,” an openNap system and service. Swaptor then became  
10 a licensee of the FastTrack network and assigned its rights under that license to  
11 Defendant Grokster. Grokster and Swaptor were formed and are owned by the same  
12 principals, and there is a unity of interest between the two entities.

13 43. Defendants Kazaa, Zennstrom, Friis, La Galiote, and Indigo are also  
14 determined to profit from the copying and distribution of content that they do not  
15 own, and in furtherance of this plan, have engaged in a “shell game” with Defendants  
16 Sharman/LEF in an attempt to mask the true owners of the Kazaa system and service  
17 and avoid liability. After this action was filed, Kazaa, Zennstrom, Friis, La Galiote,  
18 and Indigo sold and transferred certain of their assets to Sharman/LEF, including the  
19 Kazaa website, the Kazaa name and logo, as well as a license for the Kazaa software.  
20 At the same time, various agreements were executed permitting Kazaa, Zennstrom,  
21 Friis, La Galiote, and Indigo to retain significant rights to the FastTrack technology  
22 and to receive income from the infringing service, while allowing Sharman/LEF to  
23 operate and control the infringing network. Sharman/LEF are the successors to  
24 Kazaa in the control, maintenance, and further modification and development of the  
25 underlying FastTrack technology.

26 44. Defendants MusicCity, Grokster, Kazaa, Sharman, LEF, Zennstrom,  
27 Friis, La Galiote, and Indigo, acting individually and in concert, have engaged in a  
28 conspiracy, common enterprise, and common course of conduct through which they

1 have, among other things, developed, maintained, and controlled the FastTrack  
2 technology; implemented uniform upgrades and updates of FastTrack; exploited each  
3 other's user base; and sold, transferred, and/or licensed the rights to the FastTrack  
4 technology between and among each other. The purpose of such conspiracy,  
5 common enterprise, and common course of conduct has been, among other things, to  
6 serve each of these Defendant's own economic benefit by knowingly, willfully, and  
7 intentionally infringing Plaintiffs' and other class members' copyrighted musical  
8 compositions and to attempt to escape liability to Plaintiffs and other Class members.  
9 Each of these Defendants knowingly, willfully, and intentionally has committed the  
10 acts described above in furtherance of the conspiracy, common enterprise, and  
11 common course of conduct.

## 12 **THE INFRINGING SERVICES**

### 13 **The Infringing Kazaa Service**

14 45. On or about July 28, 2000, Kazaa publicly launched its infringing  
15 service by releasing its version of the FastTrack software program on its website,  
16 <www.Kazaa.com>, with the name "Kazaa" ("Kazaa software"). On this website,  
17 Kazaa made the following claim: "Kazaa is a media community, where millions [of]  
18 community members can share their media files – audio, video, images and  
19 documents – with each other. You can search for and download media files with any  
20 of our three products – Kazaa.com (this web site), Kazaa Media Desktop and the new  
21 Kazaa Winamp Plug-in."

22 46. Kazaa.com is a web search engine employing the Kazaa software to  
23 search the "Kazaa community" for media files. It permits users to find, among other  
24 things, audio and video files and download them directly to their individual  
25 computers. Kazaa claimed that, "[w]here traditional search engines search the World  
26 Wide Web, Kazaa searches thousands of computers at once, all connected through  
27 the file-sharing network of Kazaa."  
28

1 47. Users designate the files they wish to share with other Kazaa service  
2 users through the Kazaa Media Desktop, which specifies folders on the users' hard  
3 drives that the software program recognizes. All files in the shared folders are  
4 accessible by any other Kazaa service user. When a user shares files on the Kazaa  
5 service, they "make them instantly available to an audience who are [sic] specifically  
6 looking to download 'media' files."

7 48. Kazaa Winamp Plug-in permits users to find audio files among other  
8 users in the "Kazaa community" and play them directly on their individual  
9 computers. According to Kazaa, a user "can search for music by artist, album  
10 or keywords, and play or enqueue [sic] the tracks directly in Winamp."

11 49. The Kazaa software interacts seamlessly with Kazaa's "server side"  
12 software, maintained on Kazaa's computer servers, thus enabling Kazaa service users  
13 to connect their computers to one or more central computer servers controlled and  
14 maintained by Kazaa.

15 50. After the central server registers, identifies, and logs-in the user, the  
16 Kazaa service connects the user to a "SuperNode" or "Content SuperNode."  
17 According to the Kazaa service, "[a] Content SuperNode is a special version of  
18 Kazaa that is specifically designed for one purpose: sharing a large number of files  
19 on the Kazaa community. A Content SuperNode can be run by anyone who wants to  
20 distribute large volumes of 'media' content on Kazaa." Specifically, a SuperNode is  
21 a powerful computer with a high-bandwidth connection that is operated by another  
22 user already connected to the Kazaa service. After a user connects to a SuperNode,  
23 these "local search hubs" compile an index of digital files being offered by the user  
24 on his/her computer hard disk drives for downloading by other Kazaa service users.  
25 The Kazaa software also enables users to search for and import pre-existing libraries  
26 of music files – such as libraries that users built using Napster – to make them  
27 available through the Kazaa service. The SuperNode performs a similar function for  
28 all other users that have been connected to it by the Kazaa service. In response to a

1 search request, the SuperNode reviews its own index of files and, if necessary, the  
2 indices maintained by other SuperNodes. It then displays the search results to the  
3 user, thereby permitting the user to download any and all files displayed by that  
4 search.

5 51. Any Kazaa service user can become a SuperNode by affirmatively  
6 choosing that option in the Kazaa software. The Kazaa service encourages its users  
7 to become SuperNodes because "it does not cost anything to distribute content on  
8 Kazaa with a Content SuperNode" and such distribution "can serve approximately  
9 500.000 (yes, half a million!) files!" Kazaa's central servers maintain  
10 communications with all SuperNodes and assist in administering the entire Kazaa  
11 service.

12 52. The Kazaa media desktop comes with a pre-installed, updated list of  
13 SuperNodes, ensuring that a new user knows where to find copyrighted material.  
14 And if a Kazaa user has difficulty finding an on-line SuperNode, the Kazaa Media  
15 Desktop sends a query to a server, operated by one of the Defendants, to get an  
16 updated list of SuperNodes.

17 53. The Kazaa service continuously monitors its thousands of users to keep  
18 track of when they log on and off. As soon as a user logs on, that user's music files  
19 are inventoried and added to the distributed database. As soon as a user logs off, that  
20 user's files are eliminated from the database. Thus, the Kazaa service continually  
21 updates its database thousands of times each day.

22 54. Kazaa provides its users with sophisticated tools to search the network  
23 to locate the copyrighted musical works they want. Users can search by song title  
24 and/or recording artist. For example, when a user types in the title of one of  
25 plaintiffs' musical compositions, the Kazaa software displays a search result list  
26 showing all currently available audiovisual files containing the title of the musical  
27 composition in their name and purporting to contain all or part of that musical  
28



1 composition. With simple commands, the user can download a file directly from the  
2 hard drive of a fellow user.

3 55. Digital music files come in varying levels of audio quality and also can  
4 be expected to download at widely varying speeds – depending, among other things,  
5 on the type of Internet connection maintained by the Kazaa service user posting the  
6 song. Kazaa provides its users with information about the sound quality and  
7 connection speed of available files and allows users to specify these parameters when  
8 formulating their searches. This enables users to tailor their searches to locate only  
9 those songs that are of a selected audio quality and/or that can be downloaded at the  
10 desired speed. Thus, a user could search the distributed database for Leiber &  
11 Stoller’s “Jailhouse Rock” at a specified audio quality level and download speed.

12 56. Kazaa does more than simply tell users what songs are available and  
13 which users have them; it creates the connection between the user who has selected a  
14 music file for copying and the user who is offering the selected file. Thus, all users  
15 need to do is select the file they want and it automatically downloads – i.e., copies  
16 and saves – to their individual computer hard drive. Kazaa makes the entire  
17 transaction possible.

18 57. Kazaa assists users in circumventing “firewalls,” which are maintained  
19 by computer networks to prevent the importation of unknown, unlawful, or suspect  
20 data into the network. Kazaa also provides its users with ongoing technical help and,  
21 when necessary to fix “bugs” or provide new services, updated versions of the  
22 software.

23 58. Communications on the Kazaa service between its users’ computers and  
24 its central servers, between the user and a SuperNode, between SuperNodes and the  
25 central servers, and between and among SuperNodes are all encrypted. Kazaa  
26 created and controls the means of encryption. The encryption ensures that the Kazaa  
27 service remains “closed” (i.e., cannot be accessed without permission from Kazaa  
28

1 and the use of its proprietary software program) and thus that the service is under  
2 Kazaa's control.

3 59. To further facilitate their users' activities, Kazaa provides them with a  
4 host of other features and services, including a bulletin board "forum" that permits  
5 users to exchange information about the location of infringing files to enable them to  
6 locate songs better and an on-line "chat" area where users can talk in real time.  
7 However, a user need not take advantage of all or any of these features in order to  
8 copy and distribute copyrighted music over the Kazaa service.

9 60. Each time a recording of a musical composition is downloaded using the  
10 Kazaa software, the user making the recording available engages in an unauthorized  
11 distribution of that composition and the user who downloads it makes an  
12 unauthorized copy. That copy is then available for further uploading and  
13 downloading – known as a "viral" distribution – by other Kazaa service users. At  
14 any given time, millions of files are available for downloading through the Kazaa  
15 service.

16 61. The copyrights to the overwhelming majority of songs available through  
17 the Kazaa service belong to plaintiffs and other Class members. Kazaa, Zennstrom,  
18 Friis, La Galiote, Indigo, and Sharman/LEF, acting individually and in concert,  
19 knowingly and systematically participate in, facilitate, and materially contribute to  
20 the infringement of those musical works.

21 62. Kazaa, Zennstrom, Friis, La Galiote, Indigo, and Sharman/LEF, acting  
22 individually and in concert, have derived a significant financial benefit from the  
23 infringement by users of their service of Class members' copyrights, which Kazaa,  
24 Zennstrom, Friis, La Galiote, Indigo, and Sharman/LEF at all relevant times have had  
25 the right and ability to supervise and control.

## The Infringing MusicCity Service

1  
2 63. Kazaa licensed its FastTrack software program to MusicCity to enable  
3 MusicCity to establish a substantially identical infringing service.

4 64. On or about April 21, 2001, MusicCity launched its infringing service  
5 by, among other things, releasing the FastTrack software on its website,  
6 <www.musiccity.com>, under the name “Morpheus.” Users of the MusicCity  
7 service could now interact within the closed FastTrack network; they could copy and  
8 distribute copyrighted works with each other and with users of the Kazaa and  
9 Grokster services.

10 65. On its website, MusicCity made the following claim: “You can use  
11 Morpheus to find and download all kinds of media files – Audio, Video, Images,  
12 Documents and more. We have included an integrated media library – My Media –  
13 that automatically organizes your media files, a Theater where you can enjoy your  
14 media files, and a Playlist so you can create your own custom playlists. . . .  
15 MusicCity is a media community; it means that you can share all types of media files  
16 with other MusicCity members.”

17 66. The MusicCity service operated in a manner indistinguishable from the  
18 Kazaa service. The software program, Morpheus, employed the same peer-to-peer  
19 technology found in the Kazaa software. Like the Kazaa software, Morpheus  
20 permitted users to find, among other things, audio and video files, and to download  
21 them directly to their individual computers. MusicCity, like Kazaa, also explained  
22 on the MusicCity service website that, “[w]here traditional search engines search the  
23 World Wide Web, Morpheus searches thousands of computers at once, all connected  
24 through [the] MusicCity network of users.”

25 67. MusicCity facilitated, encouraged, enabled and materially contributed to  
26 its users’ copyright infringement in the same way as Kazaa, Sharman/LEF, and  
27 Grokster. MusicCity provided its users with chat rooms, bulletin boards and a list of  
28 Supernodes to find copyright material, encryption to assure anonymity, and ongoing

1 technical assistance, bug “fixes,” and software updates to keep MusicCity users on-  
2 line.

3 68. Each time a recording of a musical composition was downloaded using  
4 Morpheus, the user making the recording available engaged in an unauthorized  
5 distribution of that composition and the user who downloaded it made an  
6 unauthorized copy. That copy is then available for further uploading and  
7 downloading – known as a “viral” distribution – by other MusicCity service users.  
8 Millions of files have been available for downloading through MusicCity.

9 69. The copyrights to the overwhelming majority of songs that were  
10 available through the MusicCity service belong to plaintiffs and other Class  
11 members. MusicCity knowingly and systematically participated in, facilitated, and  
12 materially contributed to the infringement of those musical works.

13 70. MusicCity has derived a significant financial benefit from infringement  
14 by users of its service of plaintiffs and other Class members’ copyrights, which  
15 MusicCity at all relevant times has had the right and ability to supervise and control.

### 16 **The Infringing Grokster Service**

17 71. Kazaa also licensed its FastTrack software program to Grokster and/or  
18 Swaptor, to enable Grokster to establish a substantially identical infringing service.

19 72. On or about August 2, 2001, Grokster publicly launched its infringing  
20 service by releasing the software on its website, <www.grokster.com>, with the  
21 name “Grokster” (“Grokster software”). Users of the Grokster system and service  
22 could now interact within the closed FastTrack network; they could copy and  
23 distribute copyrighted works with each other and with users of the Kazaa and  
24 MusicCity services.

25 73. On its website, Grokster made the following claim: “You can use  
26 Grokster to find and download all kinds of media files – Audio, Video, Images,  
27 Documents and Software. We have included an integrated media library – My  
28 Grokster – that automatically organizes all your media files, a Theatre where you can

1 | enjoy your media files, and a Playlist so you can create your own custom playlists.  
2 | . . . Grokster is a so called media community; it means you can share your media files  
3 | with other Grokster members.”

4 |         74. The Grokster service operates in a manner indistinguishable from both  
5 | the services of Kazaa and MusicCity. The Grokster software employs the same peer-  
6 | to-peer technology found in the Kazaa software and Morpheus. Like the Kazaa  
7 | software and Morpheus, the Grokster software permits users to find, among other  
8 | things, audio and video files, and to download them directly to their individual  
9 | computers. Like both Kazaa and MusicCity, Grokster also explained on the Grokster  
10 | service website that, “[w]here traditional search engines search the World Wide Web,  
11 | Grokster searches thousands of computers at once, all connected through the file-  
12 | sharing network of Grokster.”

13 |         75. Grokster facilitates, encourages, enables, and materially contributes to  
14 | its users’ copyright infringement in the same way as Kazaa, Sharman/LEF, and  
15 | MusicCity. Grokster provides its users with chat rooms, bulletin boards and a list of  
16 | Supernodes to find copyright material, encryption to assure anonymity, and ongoing  
17 | technical assistance, bug “fixes,” and software updates to keep Grokster users on-  
18 | line.

19 |         76. Each time a recording of a musical composition is downloaded using the  
20 | Grokster software, the user making the recording available engages in an  
21 | unauthorized distribution of that composition and the user who downloads it makes  
22 | an unauthorized copy. That copy is then available for further uploading and  
23 | downloading – known as a “viral” distribution – by other Grokster service users. At  
24 | any given time, millions of files are available for downloading through the Grokster  
25 | service.

1 77. The copyrights to the overwhelming majority of songs available through  
2 the Grokster service belong to plaintiffs and other Class members. Grokster  
3 knowingly and systematically participates in, facilitates, and materially contributes to  
4 the infringement of those musical works.

5 78. Grokster has derived a significant financial benefit from infringement by  
6 users of its service of Class members' copyrights, which Grokster at all relevant  
7 times has had the right and ability to supervise and control.

8 **DEFENDANTS' RESPONSIBILITY FOR THE RAMPANT**  
9 **INFRINGEMENTS ON THEIR SERVICES**

10 79. Each of the defendants has or had full knowledge of the infringements  
11 occurring on their respective services. Indeed, in the agreements between defendants  
12 and their respective users (which appears or has appeared on their respective  
13 services' websites), each defendant acknowledged, in identical language, that  
14 "UNAUTHORISED COPYING, DISTRIBUTION, MODIFICATION, PUBLIC  
15 DISPLAY, OR PUBLIC PERFORMANCE OF COPYRIGHTED WORKS IS AN  
16 INFRINGEMENT OF THE COPYRIGHT HOLDERS' RIGHTS." Yet, defendants  
17 purported to reject unilaterally any responsibility, stating, again in identical language,  
18 that users were "PUT ON NOTICE THAT YOU ARE ENTIRELY RESPONSIBLE  
19 FOR YOUR CONTENT AND FOR ENSURING THAT IT COMPORTS WITH  
20 ALL APPLICABLE LAWS, INCLUDING ALL COPYRIGHT AND DATA-  
21 PROTECTION LAWS."

22 80. Nonetheless, the bulletin board forums maintained by each of the  
23 infringing services on their websites make extensive reference to the infringing  
24 conduct taking place on their respective services by their users. Kazaa admitted on  
25 the Kazaa service website that it is fully aware of its users' communications by  
26 acknowledging that "some of the files other Kazaa users designate to share may have  
27 been created or distributed without the copyright owners' authorisation" and further  
28 induced the unauthorized distribution and reproduction of copyrighted works by

1 encouraging its users to “[t]ell a friend about Kazaa” because “the more people who  
2 use[ ] it, the better it gets!” Indeed, on another webpage, Kazaa stated that its “best  
3 advice is to take advantage of these networks [the MusicCity and Kazaa services]  
4 while they’re free and help proliferate the growth of the [peer-to-peer] community.”  
5 Likewise, Grokster admitted on its service’s website that it was fully aware of its  
6 users’ communications by acknowledging that “some of the files other Grokster users  
7 designate to share may have been created or distributed without the copyright  
8 owners’ authorisation.” Like Kazaa, both Grokster and MusicCity further induced  
9 the unauthorized distribution and reproduction of copyrighted works by encouraging  
10 their users on their respective services’ websites to “[t]ell a friend about Grokster”  
11 and “Invite-A-Friend” to the “MusicCity community” because “the more people who  
12 use it, the better it gets!”

13 81. Defendants at all relevant times have had the right and ability to  
14 supervise and control the infringing activities of their users. For example, in the  
15 agreements between defendants and their respective users, defendants, in identical  
16 language, “reserve the right to unilaterally terminate the account” of any user of their  
17 respective services who infringed a copyright holders’ rights.

18 82. Defendants have derived substantial financial benefit from the  
19 infringement of Plaintiffs’ and other Class members’ copyrighted musical works.  
20 Defendants have drawn users to their services by offering them free and unfettered  
21 access to Plaintiffs’ and other Class members’ copyrighted musical works, thereby  
22 attracting commercial advertising revenues and investors. Defendants have  
23 displayed extensive paid advertising on their network and charge fees for such  
24 advertising. The amount of those fees has been directly related to the number of each  
25 service’s users, which depends directly on defendants having a wide range and  
26 selection of pirated musical compositions. The availability of such content attracts  
27 new users and further increases the library of infringing content available – thus  
28

1 further enhancing the lure of defendants' services for investors and advertisers, as  
2 well as even more infringing users.

3 83. For example, among the companies that have chosen to advertise on  
4 defendants' services are half.com, DirecTV-DSL, Multi Technology Equipment LLC  
5 at <www.mteweb.com>, Iomegadirect, The Mayan Casino, and Jiveplayer.

6 84. Each of the defendants, individually and acting in concert, have engaged  
7 and continue to engage in the business of knowingly and systematically participating  
8 in, facilitating, materially contributing to, and encouraging the above-described  
9 unauthorized reproductions and/or distributions of copyrighted musical works owned  
10 or controlled by plaintiffs (including but not limited to the Initial Works) and other  
11 Class members, and thus the infringement of plaintiffs' and other Class members'  
12 copyrights in their respective copyrighted musical works.

13 **HARM TO THE MARKET FOR PLAINTIFFS' AND OTHER CLASS**  
14 **MEMBERS' COPYRIGHTED MUSICAL WORKS**

15 85. Defendants' wholesale infringement harms the market for licensed  
16 recordings of Class members' copyrighted musical compositions. That market is the  
17 bread and butter of songwriters and their music publishers. Songwriters and music  
18 publishers do not earn royalties when a user on the Kazaa, MusicCity, or Grokster  
19 services downloads for free the same songs that have been licensed to others for  
20 reproduction and distribution as physical phonorecords and digital phonorecord  
21 deliveries. Defendants have made their services available throughout the United  
22 States and the world. At any given time, an enormous number of infringing digital  
23 files are available for downloading through the defendants' services. Indeed, on their  
24 services' websites, Kazaa claimed to have been responsible, at one time, for 16  
25 million downloads so far, and MusicCity claimed over 1 million downloads per  
26 week. According to a report by the U.S. research firm Webnoize, a combined total of  
27 1.81 billions files were downloaded using the defendants' services in October 2001  
28 alone. The overwhelming majority of the digital files are being distributed and



1 reproduced in violation of copyright law. Unless defendants' pervasive infringement  
2 of plaintiffs' and other Class members' copyrighted compositions is halted,  
3 songwriters and their music publishers will be substantially and irreparably harmed.

#### 4 CLASS ACTION ALLEGATIONS

5 86. Plaintiffs bring this action as a class action pursuant to Federal Rule of  
6 Civil Procedure 23(a), (b)(2) & (3) on behalf of the Class (as defined above).

7 87. The members of the Class are so numerous that joinder of all members  
8 is impracticable. HFA represents more than 27,000 music publishers that own and/or  
9 control more than 2.5 million copyrighted musical works. Hundreds of thousands of  
10 Class members' songs are being made available through defendants' services at any  
11 given time.

12 88. Plaintiffs' claims are typical of the claims of the Class because the  
13 copyrights owned or controlled by plaintiffs and other Class members are being  
14 infringed in the same way and are causing substantially the same injury and because  
15 Class members seek the same relief as plaintiffs seek here.

16 89. Plaintiffs will adequately protect the interests of the Class. Plaintiffs are  
17 prominent songwriters and music publishers with catalogs that include some of the  
18 most recognizable musical works recorded in the Twentieth Century. Plaintiffs have  
19 retained counsel who are experienced and competent in class action copyright  
20 infringement litigation. Plaintiffs have no interests that are in conflict with those of  
21 the Class.

22 90. A class action is superior to other available methods for the fair and  
23 efficient adjudication of this controversy.

24 91. Because of the uniformity of defendants' practices, an award of  
25 injunctive relief would be applicable to every member of the Class.

26 92. Common questions of law and fact predominate over questions that  
27 affect only individual members. Questions of law and fact common to the Class,  
28 without limitation, include:

1 (a) the manner in which defendants' services make copyrighted  
2 musical works available for unauthorized distribution and copying;

3 (b) whether defendants have knowledge that infringing activity is  
4 taking place on their respective services;

5 (c) whether defendants are capable of controlling the infringing  
6 activity on their respective services;

7 (d) whether defendants derive a financial benefit from the infringing  
8 activity taking place on their respective services; and

9 (e) whether defendants' conduct is willful.

10 93. Plaintiffs intend to request that this Court direct to the members of the  
11 Class the best notice practicable under the circumstances, pursuant to Federal Rule of  
12 Civil Procedure 23(c)(2).

13 **FIRST CAUSE OF ACTION**

14 **(Contributory Copyright Infringement)**

15 94. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 93.

16 95. As described above, defendants provide the infrastructure and facilities  
17 for the copyright infringements that takes place on, and by virtue of, their respective  
18 services on a massive scale every day. An infringement occurs each and every time  
19 one of their millions of users, without authorization of the copyright owner, uploads  
20 the title of a copyrighted music file to the indexed databases, thus offering it for  
21 distribution, and each time a user downloads another user's music file from that  
22 person's computer into his/her own computer, resulting in an unauthorized copy.  
23 Each and every one of these infringements is facilitated, encouraged, and made  
24 possible by defendants.

25 96. Through their conduct averred herein, defendants have engaged and  
26 continue to engage in the business of knowingly and systematically inducing,  
27 causing, and materially contributing to, and participating in the above-described  
28 unauthorized reproductions and/or distributions of copyrighted musical works.

1 97. The infringement of each copyrighted musical work constitutes a  
2 separate and distinct act of infringement.

3 98. The foregoing acts of infringement by defendants have been willful,  
4 intentional, and purposeful, in disregard of, and in indifference to, the rights of  
5 plaintiffs and other Class members.

6 99. Defendants' conduct, as averred herein, constitutes contributory  
7 infringement of plaintiffs' and other Class members' copyrights in violation of  
8 Sections 106, 115, and 501 of the Copyright Act, 17 U.S.C. §§ 106, 115, and 501.

9 100. As a direct and proximate result of the contributory infringements by  
10 defendants of plaintiffs' and other Class members' copyrights and exclusive rights  
11 under copyright, plaintiffs and other Class members are entitled to damages and  
12 defendants' profits pursuant to 17 U.S.C. §504(b) for each separate infringement.

13 101. Alternatively, plaintiffs and other Class members are entitled to  
14 statutory damages, pursuant to 17 U.S.C. § 504(c), in the amount of \$150,000 with  
15 respect to each work infringed, or such other amounts as may be proper under 17  
16 U.S.C. § 504(c).

17 102. Plaintiffs and other class members further are entitled to their attorneys'  
18 fees and full costs pursuant to 17 U.S.C. § 505.

19 103. Defendants' conduct is causing and, unless enjoined and restrained by  
20 this Court, will continue to cause plaintiffs and other Class members great and  
21 irreparable injury that cannot fully be compensated or measured in money damages.  
22 Plaintiffs and other Class members have no adequate remedy at law. Pursuant to 17  
23 U.S.C. § 502, plaintiffs and other Class members seek preliminary and permanent  
24 injunctive relief prohibiting further contributory infringement of their copyrights by  
25 defendants.  
26  
27  
28

**SECOND CAUSE OF ACTION**

**(Vicarious Copyright Infringement)**

104. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 103.

105. At all times relevant herein, defendants had the right and ability to supervise and/or control their respective systems and the infringing conduct of their users by, without limitation, preventing or terminating a user's access to the services' computer servers and/or by refusing to index and provide connections to infringing music files and to prevent copying and distribution of those music files, but have failed to do so. As a direct and proximate result of such failure, the users are infringing plaintiffs' and other Class members' copyrighted musical compositions.

106. At all times relevant herein, defendants derived substantial financial benefit from infringement of plaintiffs' and other Class members' copyrighted musical compositions. Virtually the entire value of these infringing services is based on the availability of unauthorized content. Plaintiffs' and other Class members' copyrighted songs serve as the principal attraction to the services. Defendants are further undertaking a purposeful strategy by means of the conduct alleged herein to generate future revenue and to enhance the value of their businesses by making their services more attractive to potential investors, advertisers, business partners, and others.

107. Defendants' acts of infringement have been willful, intentional, and purposeful, in disregard of, and in indifference to, the rights of plaintiffs and other Class members.

108. Defendants' conduct constitutes vicarious infringement of plaintiffs' and other Class members' copyrights and exclusive rights under copyright, in violation of Sections 106, 115, and 501 of the Copyright Act, 17 U.S.C. §§ 106, 115, and 501.

1 109. As a direct and proximate result of defendants' vicarious infringement  
2 of plaintiffs' and other Class members' copyrights, plaintiffs and other Class  
3 members are entitled to damages and defendants' profits pursuant to 17 U.S.C.  
4 § 504(b) for each separate infringement.

5 110. Alternatively, plaintiffs and other Class members are entitled to  
6 statutory damages in the amount of \$150,000 with respect to each work infringed, or  
7 for such other amounts as may be proper under 17 U.S.C. § 504(c).

8 111. Plaintiffs and other Class members further are entitled to their attorneys'  
9 fees and full costs pursuant to 17 U.S.C. § 505.

10 112. Defendants' conduct is causing and, unless enjoined and restrained by  
11 this Court, will continue to cause plaintiffs and other Class members great and  
12 irreparable injury that cannot fully be compensated or measured in money damages.  
13 Plaintiffs and other Class members have no adequate remedy at law. Pursuant to 17  
14 U.S.C. § 502, plaintiffs and other Class members seek preliminary and permanent  
15 injunctive relief prohibiting further vicarious infringements of their copyrights by  
16 defendants.

17 WHEREFORE, plaintiffs and other Class members pray for judgment against  
18 defendants as follows:

19 1. For damages in such amount as may be established at trial; alternatively,  
20 for statutory damages in the amount of not less than \$150,000 with respect to each  
21 copyrighted musical work infringed, or for such other amount as may be proper  
22 pursuant to 17 U.S.C. § 504(c).

23 2. For a preliminary and a permanent injunction prohibiting defendants and  
24 their respective agents, servants, employees, officers, attorneys, successors, licensees  
25 and assigns, and all persons acting in concert or participation with each or any of  
26 them, from: (i) directly or indirectly infringing in any manner any of plaintiffs' and  
27 other Class members' copyrights (whether now in existence or hereafter created); and  
28

1 (ii) causing, contributing to, enabling, facilitating, or participating in the infringement  
2 of any of plaintiffs' and other Class members' respective copyrights.

3 3. For prejudgment interest according to law.

4 4. For plaintiffs' and other Class members' attorneys' fees, costs, and  
5 disbursements in this action.

6 5. For such other and further relief as the Court may deem just and proper.

7  
8 DATED: June 17, 2002

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17  
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22 CORPORATION, PEER MUSIC LTD., SONGS OF  
23 PEER, LTD., CRITERION MUSIC  
24 CORPORATION, FAMOUS MUSIC  
25 CORPORATION, BRUIN MUSIC COMPANY,  
26 ENSIGN MUSIC CORPORATION, and LET'S  
27 TALK SHOP, INC., d/b/a BEAU-DI-O-DO MUSIC,  
28 on behalf of themselves and all others similarly  
situated.