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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ZOMBA RECORDING CORPORATION, CAROLINE RECORDS, INC., EMI CHRISTIAN MUSIC GROUP, INC., NARADA PRODUCTIONS, INC., NOO TRYBE RECORDS, INC., THE FOREFRONT COMMUNICATIONS GROUP, PRIORITY RECORDS LLC, SONY DISCOS INC., UMG RECORDINGS, INC., BMG MUSIC D/B/A THE RCA RECORDS LABEL MOTOWN RECORD COMPANY, L.P., LOUD RECORDS LLC, HOLLYWOOD RECORDS, Inc., SONY MUSIC ENTERTAINMENT, INC, CAPITOL RECORDS, INC., ARISTA RECORDS, INC., INTERSCOPE RECORDS, VIRGIN RECORDS AMERICA, INC., BMG MUSIC D/B/A WINDHAM HILL BMG MUSIC D/B/A BMG ENTERTAINMENT, BAD BOY RECORDS, and LAFACE RECORDS,

Plaintiffs,

v.

JOHN DEEP, ABOVEPEER , INC., and BUDDY USA, INC,

Defendants.

Civil Action No.

01 CV 4452

COMPLAINT FOR CONTRIBUTORY AND VICARIOUS COPYRIGHT INFRINGEMENT AND UNFAIR COMPETITION

Plaintiffs aver:

NATURE OF ACTION

1 This is an action for contributory and vicarious copyright infringement and related state law claims arising out of the willful conduct of defendants John A. Deep, AbovePeer, Inc., and BuddyUSA, Inc. ("defendants"). Acting in concert, defendants have built, maintain, and control a computer system, known as Aimster, that they designed specifically to facilitate and encourage millions of individual anonymous users to copy and distribute infringing copyrighted works by the millions, if not billions. With a few additional functions, such as the copying and distribution of movies, images and software, Aimster provides the same functions as Napster, which currently is subject to a preliminary injunction as a result of its contributory and vicarious copyright infringement. *A&M Records, Inc., et al v. Napster, Inc.*, N.D. Cal., Case No. C-00-1369 MHP. Among the artists whose works are being unlawfully distributed through the Aimster system are: the Beatles, Britney Spears, Shania Twain, Destiny's Child, Sarah McLachlin, Celine Dion, U2, Nirvana, Pearl Jam, Mariah Carey, Sade, Janet Jackson, Backstreet Boys, Elvis Presley, Sting, Garth Brooks, Marvin Gaye, Sheryl Crow, Paula Abdul, LL Cool J, Ricky Martin, N Sync, Bob Dylan, Lauryn Hill, and numerous others.

2. Defendants well know of the massive infringements occurring by and through the Aimster system. Defendants initially created their system in order to capitalize on the marketplace success that Napster achieved and to supplant Napster as the preferred forum for the unlawful copying and distribution of copyrighted works. Defendant Deep not only admits the desire to take over where Napster has left off, but has boasted to the press that "we're the next technical innovation upon Napster" and has called the Aimster system "Napster squared." Indeed, defendants' press release on the Aimster website <www.aimster.com> announces Aimster as a "Revolutionary Napster-Like Application Unveiled."

3. Defendants clearly have the ability to control the works available on their system, including through the use of a variety of technologies. Aimster also acknowledges the ability to remove users or, alternatively, to exclude certain content. Instead of employing such technologies or policies, defendants have chosen to build a business on the massive infringement of copyrighted works.

4. Prior to the filing of this suit, the Recording Industry Association of America, Inc. ("RIAA"), on behalf of its members, invited Deep and Buddy USA to meet and discuss these issues in an attempt to resolve them and to avoid further infringement. Deep and Buddy USA initially indicated, through their alleged incoming President John Cavalier, that they wanted to engage in such a discourse and ostensibly scheduled a meeting with the RIAA. Defendants abruptly cancelled the meeting shortly before it was to begin, claiming that they could not book a flight from Albany, New York to Washington, D.C.

5. Subsequently, a second meeting was scheduled. Buddy USA, through Mr. Cavalier, indicated it had been taking steps to address the massive infringement occurring over the Aimster system, that, in preparation for the second scheduled meeting, they would send an e-mail to the RIAA outlining the steps they had been taking, and they would make someone available at the meeting to conduct a demonstration of these measures. The day before this second scheduled meeting, Buddy USA sent a letter confirming its intent to add blocking technology to its software, and also indicated that it was transferring the domain name of aimster.com to another entity. Once again, however, Buddy USA and Deep cancelled this second scheduled meeting the day it was to take place. On the very next business day,

defendants BuddyUSA and AbovePeer filed anticipatory declaratory judgment actions against the RIAA, seeking a declaration that defendants' unlawful conduct was, in fact, lawful

6. It is now clear that defendants had "scheduled" those meetings and sent communications to the RIAA solely to delay while they surreptitiously prepared and filed anticipatory strategic lawsuits against the RIAA. After defendants cancelled the meetings and filed their lawsuits, the RIAA again put defendants on notice of the massive infringement occurring on the Aimster system, and again gave defendants, including AbovePeer, an opportunity to address these issues outside of litigation. Defendants have failed to respond to any of the RIAA's overtures, except to amend their complaints to add additional defendants. Given defendants' persistent refusal to rectify their conduct and their failure to provide plaintiffs with any protection for their copyrighted works, plaintiffs had no choice but to file this action to protect their rights, which are being infringed by defendants with impunity and on a massive scale, as described herein.

7. Defendants' express purpose is to enable and encourage their growing user base -- currently growing by at least one million per month -- to make available anonymously over the Internet to other users of the Aimster system millions of unauthorized copies of plaintiffs' copyrighted sound recordings, as well as other copyrighted works, for copying and further unlawful distribution. As defendant Deep has promoted, "Aimster reflects a significant step toward implementing universal file-sharing." The sound recordings reproduced and distributed without authorization over Aimster are largely comprised of hit songs by most, if not all, of the top artists in the recording industry today. As defendants are well aware, virtually all

of these reproductions and distributions are infringing and in violation of federal copyright and state laws.

8. Defendants enable this infringement to occur by providing Aimster users with a fully integrated infrastructure and facilities – including a hub of central computer servers to which users connect; a continuously updated database and index of infringing recordings; information about the sound quality and download speed of files containing those recordings; proprietary software to facilitate the rapid and efficient identification, copying, and distribution of those recordings; continuous support and back office administration; and a host of other tools – all of which, by design, enable and encourage users of the Aimster system to make their individual, and previously private, libraries of sound recordings available for instantaneous distribution to and copying by countless other Aimster users without authorization of the copyright owners. Defendants thus have deliberately created and are operating and benefitting from a new haven for massive music piracy on the Internet.

9. In exchange for providing (free of charge to Aimster users) the facilities and services through which to infringe plaintiffs' sound recordings, defendants seek to cultivate an extensive user base that will attract investment dollars, advertisers, and business partners. Plaintiffs' copyrighted recordings act as the primary "draw" to attract that user base. Thus, defendants are building a business on – and seek to profit from – the daily, massive copyright infringement of plaintiffs' sound recordings that they enable and encourage.

10. Through their conduct, defendants have misused, and are continuing to misuse, the powerful potential of the Internet in flagrant and knowing disregard of the rights of

copyright holders Each and every day that goes by Aimster is responsible for facilitating the infringement of millions of sound recordings throughout the United States and the world. Defendants actions have caused and continue cause plaintiffs grave and irreparabl harm.

JURISDICTION AND VENUE

This civil action seeking damages and injunctive relief for copyright infringement under the Copyright Law of the United States. U.S.C §§ *et*

This ourt has jurisdiction of thi acti under 7 U. C *et seq* and U.S.C §§ 38(a) and (b).

3 This Court has supplemental jurisdiction over Count III in that this claim is so related to the above federal claims that they form part the same case controversy

This Court has personal jurisdiction over defendants that defendants reside and/or doing business in the State of New York and this District. In addition, many of the acts of infringement and unfair competitio complained herein occurred the State of N York and in this District.

Venue proper this District pursuant to 28 U.S C 400(a) and, with respect to Count III. §§ (b) and

AVERMENTS COMMON TO ALL COUNTS

The Parties

16. Plaintiff Zomba Recording Corporation is a corporation duly organized and existing under the laws of the State of New York, with its principal place of business in New York and in this District, and is duly qualified to transact business in the State of New York.

17. Plaintiff Caroline Records, Inc., is a corporation duly organized and existing under the laws of the State of New York, with its principal place of business in New York and in this District, and is duly qualified to transact business in the State of New York.

18 Plaintiff EMI Christian Music Group, Inc. is a corporation duly organized and existing under the laws of the State of California, and is duly qualified to transact business in the State of New York.

19. Plaintiff Narada Productions, Inc., is a corporation duly organized and existing under the laws of the State of Wisconsin, and is duly qualified to transact business in the State of New York.

20 Plaintiff Noo Trybe Records, Inc., is a corporation duly organized and existing under the laws of the State of Delaware, and is duly qualified to transact business in the State of New York.

21 Plaintiff The ForeFront Communications Group, Inc., is a corporation duly organized and existing under the laws of the State of Tennessee, and is duly qualified to transact business in the State of New York.

22 Plaintiff Priority Records LLC is a corporation duly organized and existing under the laws of the State of California, and is duly qualified to transact business in the State of New York.

23 Plaintiff Sony Discos Inc., is a corporation duly organized and existing under the laws of the State of Florida, and is duly qualified to transact business in the State of New York.

24 Plaintiff UMG Recordings, Inc., is a corporation duly organized and existing under the laws of the State of Delaware, and is duly qualified to transact business in the State of New York.

25 Plaintiff BMG Music d/b/a The RCA Records Label, is a New York general partnership, with its principal place of business in New York and in this District, and is duly qualified to transact business in the State of New York.

26. Plaintiff Motown Record Company, L.P. is a California limited partnership with its principal place of business in New York and in this District, and is duly qualified to transact business in the State of New York.

27. Plaintiff Loud Records LLC is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in New York and in this District, and is duly qualified to transact business in the State of New York.

28. Plaintiff Hollywood Records, Inc., is a corporation duly organized and existing under the laws of the State of California, and is duly qualified to transact business in the State of New York.

29. Plaintiff Sony Music Entertainment Inc., is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in New York and in this District, and is duly qualified to transact business in the State of New York.

30. Plaintiff Capitol Records, Inc., is a corporation duly organized and existing under the laws of the State of Delaware, and is duly qualified to transact business in the State of New York.

31. Plaintiff Arista Records, Inc., is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in New York and in this District, and is duly qualified to transact business in the State of New York.

32. Plaintiff Interscope Records, is a California general partnership and is duly qualified to transact business in the State of New York.

33. Plaintiff Virgin Records America, Inc., is a corporation duly organized and existing under the laws of the State of California, and is duly qualified to transact business in the State of New York.

34. Plaintiff BMG Music d/b/a Windham Hill, is a New York general partnership with its principal place of business in New York and in this District, and is duly qualified to transact business in the State of New York.

35. Plaintiff BMG Music d/b/a BMG Entertainment, is a New York general partnership with its principal place of business in New York and in this District, and is duly qualified to transact business in the State of New York.

36. Plaintiff Bad Boy Records is a joint venture between Arista Good Girls, Inc., a Delaware corporation with its principal place of business in New York, and Bad Boy Entertainment, Inc., a Delaware corporation with its principal place of business in New York, and is duly qualified to transact business in the State of New York.

37. Plaintiff LaFace Records is a joint venture between Arista Ventures, Inc., a Delaware corporation with its principal place of business in New York, and LaFace Records, Inc., a Georgia corporation, and is duly qualified to transact business in the State of New York.

38. Plaintiffs are informed and believe and on that basis aver that defendant AbovePeer, Inc., is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in New York.

39. Plaintiffs are informed and believe and on that basis aver that defendant BuddyUSA, Inc., is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in New York.

40. Plaintiffs are informed and believe and on that basis aver that defendant John A. Deep is an individual residing in the State of New York, and that he is the President of defendants AbovePeer, Inc., and BuddyUSA, Inc., and is personally responsible for and controls the conduct of the defendants and of the Aimster system as averred herein. Defendant Deep also will financially benefit as the Aimster system grows.

41 Each of the defendants named herein is, and at all times averred herein was, a party to the unlawful activities averred herein, and/or acted in concert or combination with each of the other named defendants and/or has aided and abetted such other defendants and/or has acted as an agent for each of the other defendants with respect to the actions and matters described in this Complaint.

42. At all times herein mentioned, each of the defendants has engaged in a conspiracy, common enterprise, and common course of conduct with the other defendants. The purpose of such conspiracy, common enterprise, and common course of conduct has been, among other things, to serve each defendants' own economic benefit by intentionally, purposefully, and willfully contributing to and benefitting from the infringement of plaintiffs' copyrights, exclusive rights under copyright, and state statutory and common law as averred herein, throughout the United States and the world. Each of the defendants knowingly and intentionally has committed

acts in furtherance of the conspiracy, common enterprise, and common course of conduct, and each is liable for the acts and conduct of the others.

Plaintiffs' Business

43 Plaintiffs are engaged in the business of producing sound recordings, and manufacturing, distributing, selling, and/or licensing the distribution and sale of their sound recordings in phonorecords (as defined in 17 U.S.C. §101, and including, without limitation, by compact discs and by digital distribution over the Internet) or arranging to do so in the United States. Plaintiffs are among the leading manufacturers of such phonorecords in the United States. The names and reputations of plaintiffs as manufacturers of phonorecords of high artistic and technical quality are widely and favorably known in the State of New York and throughout the United States and the world.

44 Plaintiffs have invested and continue to invest substantial sums of money, as well as time, effort, and creative talent, to discover and develop recording artists, and create, manufacture, advertise, promote, sell, and license phonorecords embodying the performances of their exclusive recording artists. In order to create such phonorecords, plaintiffs make payments to these recording artists, other musicians, various trust funds established for such musicians' benefit, producers, technicians and other staff personnel, as well as various other payments. Plaintiffs and their recording artists are compensated for their creative efforts and monetary investments largely from proceeds from the sale of phonorecords to the public and license fees from the reproduction, distribution, digital performance, or other exploitation of such phonorecords. Absent such compensation, profits and motivation are siphoned away from artists and the record companies that record, manufacture, promote, and distribute those works. The

pool of resources available for finding and promoting new artists shrinks, and recording integrity are diluted and corrupted. The ultimate result is that the public's access to a wide variety of high-quality musical recordings is sharply curtailed

45. Plaintiffs are the copyright owners or owners of exclusive rights under copyright with respect to certain sound recordings embodied in their phonorecords, including but not limited to those listed on Schedule A hereto and incorporated by reference herein. (All such sound recordings, including but not limited to those identified on Schedule A, are referred to as the "Copyrighted Recordings.") Each plaintiff has applied for and/or received Certificates of Copyright Registration from the Register of Copyrights for its Copyrighted Recordings. Each plaintiff has the exclusive rights, among other things, to reproduce the Copyrighted Recordings in copies or phonorecords and to distribute copies of the Copyrighted Recordings in phonorecords to the public. If necessary, plaintiffs will seek leave to amend this complaint to identify specific Copyrighted Recordings in addition to those identified in Schedule A.

46. Additionally, plaintiffs have entered into various agreements by which they obtained the sole, exclusive, and complete right to manufacture, distribute, and sell phonorecords embodying certain recorded musical performances of popular recording artists which initially were "fixed" prior to February 15, 1972, and therefore are subject to protection under state statutory and common law, including but not limited to those identified in Schedule B hereto and incorporated by reference herein. (All such sound recordings, including but not limited to those identified on Schedule B, are referred to as the "Pre-1972 Recordings.")

The Internet and Music Piracy

47. The Internet is a vast collection of interconnected computers and computer networks. It allows hundreds of millions of people around the world to communicate freely and easily with each other, and to exchange ideas and information, including academic research, literary works, financial data, music, movies, graphics, and an unending and ever-changing array of other data.

48. The Internet offers tremendous opportunities for the music business as well as for everyone who loves music. Indeed, the Internet provides distinct advantages for music because, unlike tangible products, it is possible not only to market and sell music online, but also to deliver it to the consumer digitally and instantly over the Internet. Record companies -- including plaintiffs -- technology companies, and Internet companies alike are creating exciting businesses to permit the public to take advantage of the opportunities that these new technologies make possible.

49. Unfortunately, in addition to creating opportunities for new and creative models for legitimate businesses, the Internet also has afforded opportunities for the wide-scale piracy of sound recordings. The most notorious example to date has been Napster, which is now subject to a federal court preliminary injunction to cease its infringing conduct. Notwithstanding the obvious -- and adjudicated -- unlawfulness of much of the conduct on the Napster system, defendants herein are striving to emulate, improve upon, and replace that system (while attempting to co-opt its massive user base) with the Aimster system that they created and control. Defendants already have improved the functionality of their system beyond that of Napster by enabling users to copy and distribute without authorization not only music files, but files

containing visual media, such as motions pictures and photographs, and computer software programs.

50 Technology has been widely distributed that enables individuals to copy a song from a commercially released CD onto the hard drive of their computers (a process known as "ripping") and then to compress this digitized file so that it is small enough to be readily distributed over the Internet. Digitized music files thus can be copied and distributed to thousands, even millions, of people nearly instantaneously. Once downloaded *(i.e.*, copied and saved to a computer hard drive), a music file can be played from the computer, or further copied onto home or car stereo equipment, or portable players designed for use with downloaded music.

51. Most Internet piracy of sound recordings is accomplished using a compression technology. The best-known example is MP3, which stands for Motion Picture Expert Group 1, Audio Layer 3. MP3 is an algorithm that compresses a digital music file by a ratio of approximately 12:1, thereby reducing the size of the file so that it more easily and quickly can be copied, transmitted, and downloaded over the Internet. There are several other compression technologies used for this purpose. Many do not incorporate any security embodied in the music file to limit further copying and distribution of the sound recording. Thus, once a sound recording has been converted into an unsecured compressed format, it can be copied further and distributed an unlimited number of times, without significant degradation in sound quality. It is well known, and has been widely reported, that major record companies have generally not authorized their sound recordings to be reproduced and distributed in unsecured compression formats such as MP3. Instead, these record companies generally have opted to distribute their recordings on the Internet in a secure manner, incorporating "Digital Rights

Management" and technology to ensure that rights holders and artists are compensated when their works are copied or distributed.

The Infringing Aimster System

52. The Aimster system that defendants have created and which they control is an extensive, highly integrated system that anonymously connects people located throughout the United States and the world who otherwise would have no contact with each other, and encourages and enables them to pool their music files into a single database containing millions of such files to enable Aimster users easily to make unlawful copies of any and as many recordings as they choose. Defendants intentionally provide their users with anonymity so as to prevent the owners of the copyrights in those recordings from learning the identities of the infringing users. Defendants also attempt to shield themselves and their users from potential copyright infringement claims by maintaining Terms of Service that speciously purport to prohibit the monitoring of activity on their service, and have adopted encryption technology to make monitoring for infringement more difficult. Defendants provide Aimster users with the infrastructure, facilities, technological means, and ongoing support and services to accomplish these infringements. Defendants collectively are involved in and enable this process from beginning to end.

53. Although defendants AbovePeer, Inc., and BuddyUSA, Inc., have each recently claimed -- *after* being notified of the massive infringement occurring on the Aimster system, as hereinafter averred -- that they are separate and unrelated entities, one (BuddyUSA) purportedly providing software, and the other (AbovePeer) purportedly providing access to the Internet, this is in fact a sham concocted in an attempt to escape liability for their infringing

conduct. The companies are either a single entity or are closely interrelated with each other and conspire together to provide an integrated service to users of the Aimster system. Indeed, BuddyUSA features only two other click-through websites on its Internet home page -- AbovePeer and Aimster. Both BuddyUSA and AbovePeer are managed and controlled by defendant Deep, who is Aimster's founder. The creation of AbovePeer and BuddyUSA were done specifically to attempt to obfuscate the unlawful services defendants are providing.

54. Specifically, defendants provide to Aimster users, at no cost, proprietary "Aimster" software. This software, developed by defendants, enables users to connect their computers to a hub of computer servers maintained by defendants, and interacts seamlessly with "server side" software developed and maintained by defendants on their computer servers. Using the Aimster software, users connect to the Aimster system's servers and choose which of their own music files stored on their computer hard drives they want to make available for copying by other Aimster users. The Aimster software also enables users to import preexisting libraries of files -- including libraries that users have built through use of other infringing systems such as the Napster system -- to make them available on the Aimster system. The Aimster system then takes an inventory of the music files each user has so designated and combines and organizes a listing of those files into a detailed and extensive database and directory, which is maintained on the Aimster system's servers and which defendants make available to all Aimster users. Defendants further gather information about each file to uniquely identify it and, if it is a music file, to determine the sound quality of each file.

55. Defendants continuously monitor thousands of users to keep track of when they log on and off. As soon as a user logs on, that user's files are inventoried and added to the

database. As soon as user ogs off, that user files liminated from the database. Thus, the Aimster system updates its database continuously throughout the day

56 Defendants also maintain and provide Aimster users with sophisticated tools to search the Aimster system directory to ocate the sound recordings they U: search for particular artist or ılar song titl or combination both Compressed files come arying levels aud uality and also can be expected to download at widel varying speeds depending, among other things, the type of nternet connecti maintained by the user posting the sound recording. Defendants provide Aimster users with information about sound quality and connection speed and allow users to take this into account when formulating their searches this enables users tailor their searches to ocate only those music files that of selected audio quality onl those recordings that be downloaded at the desired speed, or an combination of the above. Thus user coul search the Aimster system database not just for the famous Beatles ng *sterday* but for copies of that song at certai audio ual ty level, and only copies of that song that will download at certain speed

The Aimster system does more than simply tell users what recordings vailable and which users ha them; creates connecti to each responsi music file so that be do oaded to the who has selected that musi fil for copying Thus, all users need to do is select the fil they want and it automaticall downloads is copied and saved to their individual computer hard drives A user desiring recording does not have do anything to contact the user ffering the recording other than click the connection provided by defendants The Aimster system facilitates that tire transaction. assists users

circumventing "firewalls," which are maintained by computer networks to prevent the importation of unknown, unlawful, or suspect data into the network.

58 To further facilitate Aimster users' activities, defendants provide users with a host of other features and services, including an "instant messaging" function that permits users to exchange information about the location of infringing files to better enable them to download music; a "chat" area where users can talk in real time and where users can and do indicate to other users recordings they are making available for download or which they are looking to download; and a "buddy list" feature that allows users to keep track of and download from their favorite music libraries posted by other users. Defendants also maintain a website, <www.aimster.com>, accessible from the Aimster system, in which defendants provide, among other things, a bulletin board "forum" where users can post information, usually about infringing conduct and locations on the Internet where users can download players on which to play the music files they have copied from other Aimster users. However, a user does not need to take advantage of all or any of these features in order to copy and distribute copyrighted music over the Aimster system.

59. Each time a sound recording is downloaded over Aimster, the Aimster user making the recording available engages in unauthorized distribution of that recording, and the user who downloads it makes an unauthorized copy of it. That sound recording is then made available by the downloading user for further viral distribution throughout the Aimster system. At any given time, millions of files are available for download through the Aimster system. The overwhelming majority of sound recordings that defendants make available on the Aimster system are being distributed and copied in violation of the copyright law and other laws.

60. The recordings made available on the Aimster system include many recently released recordings that are available for copying within days of their release to the public and, plaintiffs are informed and believe, some even before their official release dates. Among the recordings made available by defendants for copying are those of some of the most popular recording artists including, but in no way limited to, the Beatles, Britney Spears, Shania Twain, Destiny's Child, Sarah McLachlin, Celine Dion, U2, Nirvana, Pearl Jam, Radiohead, Mariah Carey, Sade, Blur, Ben Harper, Janet Jackson, Lenny Kravitz, Backstreet Boys, Frank Sinatra, Elvis Presley, Sting, Lit, The Notorious B.I.G., OutKast, Enigma, Garth Brooks, Marvin Gaye, Michael Jackson, Sheryl Crow, Smash Mouth, Paula Abdul, Beck, LL Cool J, Everclear, DMX, Ricky Martin, N Sync, Bob Dylan, and Lauryn Hill. It is well known that artists of this caliber have recording agreements that grant exclusive rights to recording companies like plaintiffs, and that often limit the manner in which their recordings can be used. Defendants are consequently aware that the reproduction and distribution of these works through the Aimster system is infringing.

61. Defendants have ample additional knowledge of the infringements occurring on the Aimster system. Indeed, defendants have created their system and promote it specifically to capitalize on its infringing use. News reports quoting defendant Deep are replete with references to Aimster's role as the new Napster and to the vast infringements taking place on the Aimster system. Defendants have proudly posted several such articles on their website.

62. The bulletin board "forums" provided and maintained by defendants on the Aimster website make numerous references to the infringing conduct taking place on the Aimster system, Aimster's similarity to Napster, and the fact that many Napster users are now using the

Aimster service to copy and distribute plaintiffs' music because is more difficult to find such musi on Napster in light of the pre minary injuncti against that system

Defendants also provide Aimste system users ith the abil ty to search the Napster system (which defendants know source of infringing recordings for infringing music files supplement to searching the Aimster ystem for such files, thereby greatly enhancing the chances that users of the Aimster system will find whatever infringing recordings they are searching for

urther lear idence of A ster actual knowledg of infringements system, as well as its blatan promot massive copyright infringement, the fact that Aimster created and distributed its websi cost, soft program that con erted user file names into form of Pig Latin. The Pig Latin encoder was intended to permit Napster users circumvent filters that Napster was ordered Implement ursuant to the federal court preliminary injunction issued against Napster That Pig Latin encoder remains readily available in the Internet as wel as the Aimster system due to Aimster actions

Defendants wel know the infringements occurring and through their Aimster system from their wn intent the widespread coverage of their system the media, the messages on their own bulletin boards and defendants own statements. Defendants also have knowledge by virtue of having received specific notice of this massive nfringement laintiffs have contacted defendants several times concerning their infringing activities On about April 3 200 plaintiffs, through the RIAA, notified defendants writing of their infringing conduct and of their violation of plaintiffs rights, copy of which notice is attached hereto Exhibit C

and incorporated by reference herein. In that notice, plaintiffs even provided defendants with an electronic list (for ease of use) of more that 500,000 sound recordings owned or controlled by plaintiffs and demanded that defendants ensure that those works be blocked from the Aimster system. Defendants have refused to do so.

66. On May 9, 2001, the RIAA provided further written notice of infringement to defendants with specific examples of approximately 2,900 sound recordings owned or controlled by plaintiffs that are available for copying and distribution over the Aimster system, a copy of which is attached hereto as Exhibit D (without attachments) and incorporated by reference herein. In that second notice, plaintiffs demanded, among other things, that defendants immediately remove the specifically identified sound recordings from the Aimster system. Defendants have refused to do so, and have continued their unlawful conduct unabated. The very sound recordings the RIAA had advised defendants were infringing are still available on the Aimster system today.

67. Unchecked Internet piracy of the type engaged in by defendants poses grave risks to the sale of sound recordings fixed in CDs and tapes and to the sale of sound recordings on the Internet, as well as development of a legitimate online market for music. Plaintiffs suffer lost sales of albums and singles when consumers are able to download for free over the Aimster system the same sound recordings that plaintiffs are offering to them for sale. Additionally, plaintiffs have invested enormous amounts of time, effort, and money in actual or planned entry into the market for the digital downloading of music. Having digital downloads available for free on the Aimster system necessarily and directly harms plaintiffs' attempts to charge for the same downloads, as consumers will choose free downloads over the Aimster

system rather than paying plaintiffs for these downloads. The Aimster service thus creates substantial barriers to plaintiffs' entry into this market and has a deleterious effect on the present and future digital download market.

COUNT I

CONTRIBUTORY INFRINGEMENT OF COPYRIGHTS

[Against All Defendants]

68. Plaintiffs incorporate herein by this reference each and every averment contained in paragraphs1 through 67, inclusive.

69. As described above, defendants provide the site and facilities for the tremendous amount of copyright infringement that takes place on and by virtue of the Aimster system every day. An infringement occurs each and every time one of the millions of Aimster users, without authorization of the copyright owner, uploads the title of a music file to the Aimster system's centralized index, thus offering it for distribution, and each time an Aimster user downloads another user's music file from that person's computer into his or her own, resulting in an unauthorized copy. Each and every one of these infringements is facilitated, encouraged, and made possible by defendants. Because the recordings that defendants make available for unauthorized copying and distribution are stored on individual users' hard drives, these sound recordings would not be available for illicit copying at all were it not for defendants.

70. Through their conduct averred herein, defendants, and each of them, have engaged and continue to engage in the business of knowingly and systematically inducing,

causing, and materially contributing to the above-described unauthorized reproduction and/or distribution of copies of the Copyrighted Recordings and thus to the infringement of plaintiffs' copyrights and exclusive rights under copyright in the Copyrighted Recordings.

71 The infringement of each of plaintiffs' rights in and to the Copyrighted Recordings constitutes a separate and distinct act of infringement.

72. The foregoing acts of infringement by defendants have been willful, intentional, and purposeful, in disregard of and indifference to the rights of plaintiffs.

73 Defendants' conduct, as averred herein, constitutes contributory infringement of plaintiffs' copyrights and plaintiffs' exclusive rights under copyright in violation of Sections 106, 115, and 501 of the Copyright Act, 17 U.S.C. §§ 106, 115, and 501

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

75. Alternatively, plaintiffs, and each of them, are entitled to statutory damages, pursuant to 17 U.S.C. § 504(c), in the amount of $150,000 with respect to each work infringed, or such other amounts as may be proper under 17 U.S.C. § 504(c). Plaintiffs are informed and believe, and on that basis aver, that such statutory damages shall exceed $100,000,000.

76. Plaintiffs further are entitled to their attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

77. Defendants' conduct, as hereinabove averred, is causing and, unless enjoined and restrained by this Court, will continue to cause plaintiffs great and irreparable injury that cannot fully be compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, plaintiffs, and each of them, are entitled to preliminary and permanent injunctions prohibiting further contributory infringements of plaintiffs' copyrights by defendants, and each of them.

COUNT II

VICARIOUS INFRINGEMENT OF COPYRIGHTS

[Against All Defendants]

78. Plaintiffs incorporate herein by this reference each and every averment contained in paragraphs 1 through 67, inclusive.

79. At all times relevant herein, defendants, and each of them, had the right and ability to police the Aimster system and to supervise and/or control the infringing conduct of Aimster users by, without limitation, preventing or terminating a user's access to the Aimster system's 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 so police the Aimster system and to exercise such supervision and/or control. As a direct and

proximate result of such failure, Aimster users infringed plaintiffs' copyrights in the Copyrighted Recordings, as set forth above.

80. At all times relevant herein, defendants, and each of them, derived substantial financial benefit from infringements of plaintiffs' copyrights by the users of the Aimster service, in that, among other things, virtually the entire value of the Aimster system is derived from infringement of plaintiffs' sound recordings. The nature and number of infringing recordings acts as a draw to users and serves as the major inducement for users to join the Aimster system. Defendants are further undertaking a purposeful strategy to generate future revenue and to make themselves more attractive to potential investors, advertisers, business partners, and others by increasing the number of users of the Aimster system by attracting users by providing them with the ability unlawfully to copy and distribute an ever-increasing volume of plaintiffs' recordings. The value of the Aimster system grows as the quantity and quality of available music increases.

81. The foregoing acts of infringement by defendants, and each of them, have been willful, intentional, and purposeful, in disregard of and indifference to the rights of plaintiffs

82. Defendants' conduct, as averred herein, constitutes vicarious infringement of plaintiffs' 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

83. As a direct and proximate result of defendants' vicarious infringement of plaintiffs' copyrights and exclusive rights under copyright, plaintiffs are entitled to damages and defendants' profits pursuant to 17 U.S.C. § 504(b) for each separate infringement.

84. Alternatively, plaintiffs, and each of them, are entitled to statutory damages in the amount of $150,000 with respect to each work infringed, or for such other amounts as may be proper under 17 U.S.C. § 504(c). Plaintiffs are informed and believe, and on that basis aver, that such statutory damages shall exceed $100,000,000.

85. Plaintiffs further are entitled to their attorneys' fees and full costs pursuant to 17 U.S.C. § 505

86. Defendants' conduct, as hereinabove averred, is causing and, unless enjoined and restrained by this Court, will continue to cause plaintiffs great and irreparable injury that cannot fully be compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, plaintiffs, and each of them, are entitled to preliminary and permanent injunctions prohibiting further vicarious infringements of plaintiffs' copyrights by defendants, and each of them.

COUNT III

STATUTORY AND COMMON LAW UNFAIR COMPETITION

[Against All Defendants]

87. Plaintiffs incorporate herein by this reference each and every averment contained in paragraphs 1 through 67 , inclusive.

88 The foregoing acts and conduct of defendants, and each of them, constitute an appropriation and invasion of the property rights of plaintiffs in and to the Pre-1972 Recordings, and constitute misappropriation and unfair competition under state statutory and common law.

89. As a direct and proximate result of defendants' conduct, as averred herein, plaintiffs are further entitled to recover all proceeds and other compensation received or to be received by defendants, and each of them, arising from infringements by users of the Aimster system of the Pre-1972 Recordings. Plaintiffs request the Court to order each defendant to render an accounting to ascertain the amount of such profits and compensation.

90. As a direct and proximate result of defendants' misappropriation and unfair competition, plaintiffs, and each of them, have been damaged, and defendants, and each of them, have been unjustly enriched, in an amount that shall be proved at trial for which damages and/or restitution and disgorgement is appropriate. Such damages and/or restitution and disgorgement include a declaration by this Court that each defendant is a constructive trustee for

the benefit of plaintiffs and an order that each defendant convey to plaintiffs all the gross receipts received or to be received that attributabl to infringement of the Pre- 72 Recordings

Through their di verred herein, defendants, and them, guilty f oppression, fraud, and/ lice and laintiffs addition to their actual damages, by reason hereof entitled to recover exemplary and punitive damages against defendants, and each them.

92 Defendants conduct, hereinabove a/erred, causing and, unless enjoined and restrained by this Court, will continue to cause plaintiffs great and irreparable injury that cannot fully be compensated or measured in money Plaintiffs have adequate remedy at la Plaintiffs entitled to preliminary and permanent injunctions prohibiting further acts of misappropriation and unfair competition by defendants, and each f them.

WHEREFORE, plaintiffs pray for judgment against defendants, and each of them, foll

On Counts and II for damages in such amount as may be found; alternative for statutory damages in the amount of not ess than 50,000 with respect to each copyrighted work infringed, or for such other amount may be proper pursuant U.S.C § 04(:).

2. On Count III, for damages such amount may be found,

3. On Counts I through III, for a preliminary and a permanent injunction enjoining defendants, and each of them, and their respective agents, servants, employees, officers, attorneys, successors, licensees and assigns, and all persons acting in concert or participation with each or any of them, from: (i) directly or indirectly infringing in any manner any of plaintiffs' copyrights (whether now in existence or hereafter created), including, without limitation, the Copyrighted Recordings listed on Schedule A; (ii) from causing, contributing to, enabling, facilitating, or participating in the infringement of any of plaintiffs' respective copyrights, including, without limitation, the Copyrighted Recordings listed on Schedule A; (iii) directly or indirectly infringing in any manner any of plaintiffs' Pre-1972 Recordings, including without limitation those listed on Schedule B; and (iv) from causing, contributing to enabling, facilitating, or participating in the reproduction or distribution of any of plaintiffs' Pre-1972 Recordings, including without limitation those listed on Schedule B.

4. On Count III, for an accounting, the imposition of constructive trust, and damages according to proof.

5. On Count III, for punitive and exemplary damages in such amount as may be awarded at trial

6. For prejudgment interest according to law.

7. For plaintiffs' attorneys' fees, costs, and disbursements in this action.

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

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EXHIBIT A

SCHEDULE A

[illegible]	ARTIST NAME	ALBUM TITLE	TRACK TITLES	SPO
ista Records, Inc.	OutKast	Aquemini	Skew It On The Bar-B	264-091
ista Records, Inc.	OutKast	Aquemini	Aquemini	264-091
ista Records, Inc.	Sarah McLachlan	Surfacing	Adia	243-027
ista Records, Inc.	The Notorious B.I.G.	Ready To Die	One More Chance	206-849
ista Records, Inc.	The Notorious B.I.G.	Ready To Die	Gimme The Loot	206-849
ista Records, Inc.	The Notorious B.I.G.	Ready To Die	Juicy	206-849
ad Boy Records	Mase	Harlem World	Feel So Good	252-542
ad Boy Records	Notorious BIG	Life After Death	Hypnotize	220-411
ad Boy Records	The Notorious B.I.G.	Life After Death	Long Kiss Goodnight	220-411
ad Boy Records	The Notorious B.I.G.	Life After Death	Mo Money Mo Problems	220-411
ad Boy Records	The Notorious B.I.G.	Life After Death	Last Day	220-411
ad Boy Records	The Notorious B.I.G.	Life After Death	What's Beef?	220-411
ad Boy Records	The Notorious B.I.G.	Life After Death	Ten Crack Commandments	220-411
Bad Boy Records	The Notorious B.I.G.	Life After Death	Nasty Boy	220-411
Bad Boy Records	The Notorious B.I.G.	Life After Death	Miss U	220-411
Bad Boy Records	The Notorious B.I.G.	Life After Death	Notorious Thugs	220-411
Bad Boy Records	The Notorious B.I.G.	Life After Death	Another	220-411
Bad Boy Records	The Notorious B.I.G.	Life After Death	Sky's The Limit	220-411
Bad Boy Records	The Notorious B.I.G.	Life After Death	I Got A Story To Tell	220-411
Bad Boy Records	The Notorious B.I.G.	Life After Death	You're Nobody	220-411
Bad Boy Records	The Notorious B.I.G.	Life After Death	Kick In The Door	220-411
BMG Music d/b/a BMG Entertainment	Lit	A Place In The Sun	My Own Worst Enemy	264-272
BMG Music d/b/a BMG Entertainment	Lit	A Place In The Sun	A Place In The Sun	264-272
BMG Music d/b/a BMG Entertainment	Lonestar	Lonely Grill	What About Now	187-003
BMG Music d/b/a BMG Entertainment	Lonestar	Lonely Grill	Smile	187-003
BMG Music d/b/a BMG Entertainment	Lonestar	Lonely Grill	Amazed	187-003
BMG Music d/b/a BMG Entertainment	Vertical Horizon	Everything You Want	Best I Ever Had (Grey Sky Morning)	268-875
BMG Music d/b/a BMG Entertainment	Vertical Horizon	Everything You Want	Everything You Want	268-875
BMG Music d/b/a BMG Entertainment	Vertical Horizon	Everything You Want	Give You Back	268-875
BMG Music d/b/a BMG Entertainment	Vertical Horizon	Everything You Want	Shackled	268-875
BMG Music d/b/a BMG Entertainment	Vertical Horizon	Everything You Want	Finding Me	268-875
BMG Music d/b/a BMG Entertainment	Vertical Horizon	Everything You Want	All Of You	268-875
BMG Music d/b/a BMG Entertainment	Vertical Horizon	Everything You Want	We Are	268-875
BMG Music d/b/a The RCA Records Label	Eurythmics	Sweet Dreams (Are Made Of This)	Sweet Dreams (Are Made Of This)	46-186
BMG Music d/b/a The RCA Records Label	Eve 6	Eve 6	Inside Out	257-983
BMG Music d/b/a The RCA Records Label	Republica	Republica	Ready to Go	224-451
BMG Music d/b/a The RCA Records Label	Robyn	Show Me Love (single)	Show Me Love	252-213
BMG Music d/b/a The RCA Records Label	The Verve Pipe	Villains	The Freshmen	219-544
BMG Music d/b/a Windham Hill Records	Jim Brickman	By Heart	If You Believe	208-655
BMG Music d/b/a Windham Hill Records	Jim Brickman	The Gift	The Gift	242-241