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1 GLENN D. POMERANTZ (SBN 112503) Glenn.Pomerantz@mto.com KELLY M. KLAŬS (SBN 161091) Kelly.Klaus@mto.com JONATHAN'H. BLAVIN (SBN 230269) Jonathan.Blavin@mto.com MUNGER, TOLLES & OLSON LLP 355 South Grand Avenue Thirty-Fifth Floor Los Angeles, CA 90071-1560 Telephone: (213) 683-9100 Facsimile: (213) 687-3702 Attorneys for Plaintiffs WARNER BROS. RECORDS INC., ATLANTIC RECORDING CORPORATION. ELEKTRA ENTERTAINMENT GROUP INC., and RHINO ENTERTAINMENT COMPANY UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA WARNER BROS. RECORDS INC., ATLANTIC RECORDING CORPORATION, ELEKTRA ENTERTAINMENT GROUP INC., CONTRIBUTORY, AND and RHINO ENTERTAINMENT VICARIOUS COPÝRIGHT COMPANY, INFRINGEMENT. INDUCEMENT OF COPYRIGHT INFRINGEMENT, Plaintiffs, MISAPPROPRIATION AND UNFAIR COMPETITION VS. **DEMAND FOR JURY TRIAL** SEEQPOD, INC. Defendant. This Court has original subject matter jurisdiction over all claims pursuant to 28 U.S.C. §§ 1331 and 1338(a), and supplemental jurisdiction over Plaintiffs' claims arising under state law under 28 U.S.C. § 1367. Plaintiffs Warner Bros.

Records Inc., Atlantic Recording Corporation, Elektra Entertainment Group Inc., and Rhino Entertainment Company ("Plaintiffs") allege, on personal knowledge as to themselves and on information and belief as to others, as follows:

1. Defendant SeeqPod, Inc. ("SeeqPod") operates a website—
http://www.seeqpod.com—which it publicizes as the Internet's "home for playable search results," a place where users can "crawl the deepest parts of the web" for the "search & discovery of anything that can be played or shared with friends." But SeeqPod is no simple search engine. SeeqPod searches for a particular type of content—music—that SeeqPod knows is overwhelmingly copyrighted. The results that SeeqPod returns are links—many of which SeeqPod itself solicits from its users—to sites containing unauthorized and illegal copies of copyrighted music. With simple clicks of a computer mouse, SeeqPod will play the work without authorization; will add it to a user's "playlist" collection; will give the user the link where an unauthorized copy may be downloaded; and will embed the link on social-networking sites, like MySpace and Facebook, where the entire cycle of willful copyright infringement is repeated without end.

2. SeeqPod aims to capitalize on the illegal use of "free" music to grow its user base rapidly and inexpensively. SeeqPod's expanding user base translates into more dollars in potential advertising revenue and increased corporate valuation. SeeqPod has decided that the fastest—and cheapest—way to grow its user base is with a practically unlimited catalogue of unauthorized sound recordings available for on-demand streaming, including the unauthorized public performance of massive numbers of Plaintiffs' copyrighted works. SeeqPod directly supplants legitimate contractual arrangements that exist for the authorized digital audio transmission and distribution of copyrighted music, including Plaintiffs' works. SeeqPod and its "angel" investors directly profit from the mass infringement occurring through its site by attracting more and more users, increasing advertising revenue and the overall value of the site. In short, SeeqPod is building a business

¹ http://www.seeqpod.com/frequently_asked_questions.php (last visited January 11, 2008).

on the backs of the expropriated copyrighted works of Plaintiffs and other content owners.

3. SeeqPod's liability is clear. SeeqPod directly infringes Plaintiffs' copyrighted works, including by making on-demand and unauthorized digital public performances of those works. SeeqPod secondarily infringes Plaintiffs' copyrights under the well-established doctrines of contributory, vicarious and inducement liability. SeeqPod deliberately facilitates the rampant infringement of Plaintiffs' works by its large and rapidly expanding user base and the unlawful pirate sites whose links SeeqPod solicits and serves up to those users. With full knowledge of the infringing conduct taking place through its site, SeeqPod makes a direct and material contribution to infringing conduct, and it deliberately refrains from taking simple measures to prevent further damage to Plaintiffs' copyrighted works. And SeeqPod derives financial benefit from the mass infringement of others' acts of infringement while declining to exercise SeeqPod's right and ability to stop or limit that infringement. Plaintiffs bring this lawsuit to stop the violation of Plaintiffs' copyrights and SeeqPod's unlawful business activity.

JURISDICTION AND VENUE

- 4. This is a civil action seeking damages and injunctive relief for copyright infringement under the Copyright Act, 17 U.S.C. § 101 et seq.
- 5. The Court has original subject matter jurisdiction over all claims pursuant to 28 U.S.C. §§ 1331 and 1338(a). This Court also has supplemental jurisdiction over Plaintiffs' claims arising under state law under 28 U.S.C. § 1367, as those claims form part of the same case or controversy.
- 6. This Court has personal jurisdiction over SeeqPod in that, among other things, SeeqPod does business in this District, and Plaintiffs do business in and are suffering harm in this District.
- 7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c).

8. Plaintiff Warner Bros. Records Inc. ("WBR") is a Delaware corporation with its principal place of business in Burbank, California. WBR is in the business of, among other things, the distribution and sale of recorded music in the form of compact discs, DVDs, digital streaming, digital downloads, and other audio and audio-visual works. WBR has released albums from such prominent recording artists as Madonna, Linkin Park, Eric Clapton, Cher, Red Hot Chili Peppers, Fleetwood Mac, Tom Petty, Neil Young and Green Day. WBR is the owner of exclusive rights under copyright for numerous sound recordings and audio-visual works.

- 9. Plaintiff Atlantic Recording Corporation ("Atlantic") is a Delaware corporation with its principal place of business in New York, New York. Atlantic is in the business of, among other things, the distribution and sale of recorded music in the form of compact discs, DVDs, digital streaming, digital downloads, and other audio and audio-visual works. Atlantic has released albums from such prominent recording artists as Jewel, Genesis and Led Zeppelin. Atlantic is the copyright owner of exclusive rights under copyright for numerous sound recordings and audio-visual works.
- 10. Plaintiff Elektra Entertainment Group Inc. ("Elektra") is a Delaware corporation with its principal place of business in New York, New York. Elektra is in the business of, among other things, the distribution and sale of recorded music in the form of compact discs, DVDs, digital streaming, digital downloads, and other audio and audio-visual works. Elektra has released albums from such prominent recording artists as Missy Elliot, Emmylou Harris and The Cure. Elektra is the copyright owner of exclusive rights under copyright for numerous sound recordings and audio-visual works.
- 11. Plaintiff Rhino Entertainment Company ("Rhino") is a Delaware corporation with its principal place of business in Burbank, California. Rhino is in

the business of, among other things, the distribution and sale of recorded music in the form of compact discs, DVDs, digital streaming, digital downloads, and other audio and audio-visual works. Rhino is the copyright owner of exclusive rights under copyright for numerous sound recordings and audio-visual works, including works from such prominent recording artists as Chicago and Curtis Mayfield.

- 12. Plaintiffs have obtained Certificates of Copyright Registration from the Register of Copyrights for their works. Attached hereto as Exhibit A is a non-exhaustive, exemplary list of Plaintiffs' federally copyrighted works that SeeqPod has infringed by the acts complained of herein, identifying the Certificates of Copyright Registration from the Register of Copyrights for works protected by federal copyright.
- 13. Plaintiffs also have entered into various agreements by which they obtained the common-law copyright rights in sound recordings embodying certain musical works that were initially "fixed" prior to February 15, 1972 and for which Plaintiffs possess exclusive exploitation rights under state common law ("Pre-1972 Recordings"). Attached hereto as Exhibit B is a non-exhaustive, exemplary list of Plaintiffs' Pre-1972 Recordings that are the subject of Plaintiffs' state-law claims against SeeqPod.
- 14. Attached hereto as Exhibit C is a non-exhaustive, exemplary collection of screenshots of search results from SeeqPod, reflecting multiple infringements by and through SeeqPod of just some of the works that are the subject of this action.
- 15. Defendant SeeqPod is a Delaware corporation with its principal place of business in Emeryville, California. SeeqPod was founded by Kasian Franks, Raf Podowski, and Shekhar Lodha in 2005 and claims to be financed by an undisclosed group of "angel" investors.² By deliberately underwriting an enterprise whose

http://home.businesswire.com/portal/site/google/index.jsp?ndmViewId=news_view &newsId=20070725005391&newsLang=en (last visited January 11, 2008).

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business model is based upon mass infringing conduct, SeeqPod's "angel" investors intentionally subsidize the infringement of Plaintiffs' works in order to maximize their return when they cash out of their investment.

COMMON ALLEGATIONS

Plaintiffs' Business

- 16. Plaintiffs produce, distribute, sell and license the distribution and sale of sound recordings in phonorecords and digital audio recordings. Plaintiffs are among the leading producers of such works in the United States, and their names and reputations for distributing works of high artistic and technical quality are known favorably and widely throughout the United States and the world.
- 17. 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 to create, produce, advertise, promote, sell and license works embodying the performances of recording artists in whose works Plaintiffs have exclusive rights. In order to create and sell such works, Plaintiffs make payments to these recording artists, other musicians, songwriters, music publishers, 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 monetary investments largely from the sale and distribution of their works to the public and from fees for the reproduction, distribution, digital performance, or other exploitation of such works. Absent such compensation, profits and motivation are siphoned away from artists and from Plaintiffs and the pool of resources available for finding and promoting new artists shrinks. The ultimate result is that the public's access to a continuing and wide variety of high-quality musical recordings is sharply curtailed.
- 18. Under Section 106 of the Copyright Act of 1976, 17 U.S.C. § 101 et seq. (the "Copyright Act"), Plaintiffs have the distinct, severable, and exclusive rights to, among other things, reproduce and distribute their copyrighted works and

to publicly perform them by means of digital audio transmissions. 17 U.S.C. §§ 106(1)-(6). SeeqPod and its users have not received any authorization, permission or consent to use the copyrighted works at issue in this lawsuit.

19. Plaintiffs have entered into legitimate contractual arrangements with digital music services permitting the authorized digital streaming performance of their copyrighted works. For example, Plaintiffs' affiliate, Warner Music Inc., recently entered into an agreement with the online community website imeem.com to stream Plaintiffs' copyrighted music through imeem's site.³

SeeqPod.com

- 20. SeeqPod operates a web site located on the Internet at http://www.seeqpod.com. SeeqPod's service formally was launched in or around May 2007.
- 21. While SeeqPod likes to describe itself as a search engine, SeeqPod in fact targets a particular type of content—music—that SeeqPod knows is overwhelmingly copyrighted and posted without authorization from copyright owners, including Plaintiffs. SeeqPod expressly promotes itself as the "no cost" "home for playable search results." SeeqPod's homepage provides users with three options. They can "Search" for works by typing in the artist name, song name, album name, or other identifiable criteria. Users also can "Discover" works, by asking SeeqPod to "search[] for music recommendations by looking at the context in which the song is found and turning up related songs as results." This advanced tool allows users to find works by artists that are similar to those that they already like. Further, users can directly click on popular music titles provided by SeeqPod's "PodCrawler" technology, which returns a rolling list of works,

COMPLAINT FOR DIRECT, CONTRIBUTORY, AND VICARIOUS COPYRIGHT INFRINGEMENT, ETC.; DEMAND FOR JURY TRIAL

³ http://www.informationweek.com/news/showArticle.jhtml?articleID=201001085 (last visited January 11, 2008).

⁴ http://www.seeqpod.com/frequently_asked_questions.php (last visited January 11, 2008) (emphasis added).

⁵ http://www.seeqpod.com/blog/ (last visited January 11, 2008).

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including copyrighted content, that SeeqPod finds. The following screenshot is an example of this rolling list of artists, which contains copyrighted content by the group Van Halen released by Plaintiff WBR:



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Playable Search results the PodCrawler just found...



2.2. SeeqPod states that it "crawl[s] the entire world wide multilingual deep web in the vertical space of entertainment for the purpose of new kinds of playable search, discovery, recommendation and social experiences." One media publication reported that SeeqPod has access to "millions" of audio files, and said that it had "challenged SeeqPod with some pretty obscure titles, and came away listening to just what we were looking for." SeeqPod also has created a "Did you mean" feature which allows users to search for the names of recording artists based upon popular misspellings. For example, for the band Depeche Mode, which has released and continues to release numerous copyrighted works on Plaintiffs' labels,

⁶ http://www.seegpod.com/ (last visited January 16, 2008).

⁷ http://www.seeqpod.com/frequently asked questions.php (last visited January 11, 2008).

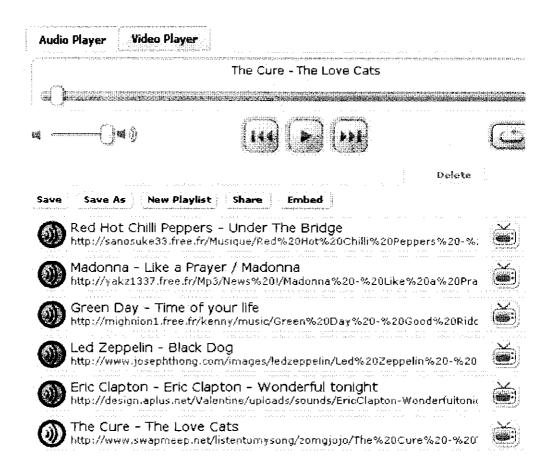
⁸ http://www.iphonefaq.org/archives/97182 (last visited January 11, 2008).

SeeqPod states: "Hey, we all know how to spell 'Depeche Mode.' But rest assured, if you type in 'Depesh Mode' you'll still have access to over 650 related tracks and will be afforded the fun of clicking on any of the other 'Did you mean' suggestions" SeeqPod employs no filtering technology to screen out search terms seeking the copyrighted works of Plaintiffs or other copyright holders.

- 23. SeeqPod does not just scour the web for copyrighted music. SeeqPod also performs the works whose location is revealed through SeeqPod's seach. With the simple click of a computer mouse, users can have SeeqPod play the song they were searching for—at "no cost" over their computers or mobile devices.
- 24. SeeqPod also encourages and facilitates its users' creation of "personal playlists," as well as the librarying of those playlists for repeated, free and unauthorized future listening. A sample playlist, constructed of just a handful of Plaintiffs' copyrighted works available through SeeqPod, looks like the following:

⁹ http://www.seeqpod.com/blog/ (last visited January 14, 2008).

¹⁰ http://www.seeqpod.com/frequently_asked_questions.php (last visited January 11, 2008).



25. Individual sound recordings and playlists also are available for online digital streaming to everyone with whom the user shares the content or views a website where the user has embedded the content. SeeqPod urges its users to share individual sound recordings and playlists "with friends by emailing a link to the playlist or embedding a player and playlist in a web page" SeeqPod's embedding feature allows users to create links to content provided through SeeqPod on *other* websites, such as popular social networking sites like MySpace or Facebook. Using unauthorized content as the bait, SeeqPod uses the embedding feature to lure even more users to SeeqPod from the massive user bases of social-networking sites. A single Facebook user can bring his or her entire network of friends onto SeeqPod simply by embedding a SeeqPod playlist into his or her

 $\overline{^{11}}$ Id.

Facebook profile. The "embed" feature is just one more example of the way that SeeqPod uses copyrighted content to propagate the viral growth of its user base.

- 26. In addition to searching the Internet for requested music, SeeqPod expressly invites its users to "submit URLs to SeeqPod to be crawled and indexed" as "new content becomes available on the web." Websites submitted "will appear visible, searchable, mashable and playable to the Universe" SeeqPod does not filter or otherwise screen the submitted URLs for copyrighted content, just as SeeqPod deliberately refrains from filtering copyrighted content that its web crawling search engine recovers. SeeqPod refrains from such filtering because it knows that screening out unauthorized copyrighted content would dramatically decrease the content that SeeqPod uses for free and undermine SeeqPod's illegitimate business model.
- 27. SeeqPod also has released what it calls "widgets" for mobile devices, stating in a recent press release that "Millions of Songs" are "Now Accessible Over Any Network, Via Mobile Devices." SeeqPod claims that this "widget" technology "allows users to *instantly* . . . search for, discover and play music from the Internet" on a variety of popular mobile devices, including the iPhone. Users can "access and share playlists on the spot within most any social network." As one reviewer described the SeeqPod mobile device technology, "you can search for any artist and play their songs within seconds, for free." SeeqPod also provides

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¹³ http://www.seeqpod.com/galactic_upload.php (last visited January 17, 2008).

http://home.businesswire.com/portal/site/google/index.jsp?ndmViewId=news_view &newsId=20070725005391&newsLang=en (last visited January 11, 2008).

¹⁵ *Id.* (emphasis added).

¹⁶ *Id*.

¹⁷ http://blog.wired.com/music/2007/07/play-mp3-blog-m.html (last visited January 11, 2008).

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video demonstrations of how to obtain instant streaming of any requested sound recording or video over the iPhone and other devices. 18

28. SeeqPod not only allows users to listen to, save, and share copyrighted content whenever they want, but it also facilitates the unauthorized uploading and downloading of copyrighted works. In its search results, SeeqPod provides users with the precise Internet address where SeeqPod's users can find and download unauthorized copies of copyrighted sound recordings. A typical example, featuring one of Plaintiffs' copyrighted works, appears as follows:

Madonna - Cherish http://web.tiscali.it/ytnlsovlvrp/Madonna-Cherish.mp3

29. SeeqPod flaunts and promotes the fact that it is a site for finding and playing copyrighted music for free. Just within the past month, SeegPod issued a press release that touted the top 100 search terms used on SeegPod in 2007. Kasian Franks, SeeqPod's CEO and co-founder, explained that SeeqPod released the list because "we thought it would be fun to release the terms that have been most sought after."²⁰ Not surprisingly, what is "sought after" on SeeqPod is music by popular recording artists that is overwhelmingly copyrighted. Nearly one out of every four artists on SeeqPod's "top 100" is an artist whose sound recordings are owned by Plaintiffs. For example, the popular recording group Linkin Park, whose works have been released by Plaintiff WBR, appears at number two on the list just behind The Beatles. The fact that SeeqPod's "top 100" list is comprised of popular recording artists provides further evidence of what is obvious: that

http://www.seegpod.com/news 2007.09.19.html (last visited January 11, 2008).

¹⁹ http://www.seeqpod.com/music/ (last visited January 11, 2008).

http://www.businesswire.com/portal/site/google/index.jsp?ndmViewld=news_view&newsId=20071220005576&newsLang=en (last visited January 11, 2008).

²¹ http://www.seegpod.com/blog/ (last visited January 11, 2008).

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²⁵ Jango and Seeqpod Hope to Monetize Music, http://gigaom.com/2008/01/09/jango-and-seeqpod-hope-to-monetize-music/ (last

²³ *Id.* (ellipses in original).

SeeqPod is a site that is designed, operated and used for the free and unauthorized use of copyrighted music.

- 30. Unsurprisingly, SeeqPod's users emphatically have expressed their enthusiasm for the free copyrighted music available on SeeqPod. For example, in SeeqPod's user feedback section, one user stated: "You ROCK!!!!! This is the best music site on the web. I ABSOLUTELY LOVE IT. The fact that I can search for any song or artist and hear the music instantly (for the most part) is great. The coup de grâce is the fact that you can create a playlist, WHEHEW!!! I hope for your sake you are the next GOOGLE!"²² Similarly, another user said: "Music isn't a hassle to find anymore. Instead, it finds me with blue font and a play button.
- 31. SeeqPod is hardly indifferent to the rampant infringement taking place through its site. On the contrary, SeeqPod is building a business based on mass infringement, because that infringement fuels a growing user base. On the Internet, a larger user base translates into higher potential advertising revenue and increased capitalization for investors anxious to maximize the returns of a growing user base. SeeqPod states on its site that it uses personal information collected from registered users to "customize the advertising" they "see" and to "display[] targeted advertisements."24
- SeeqPod's CEO and co-founder Kasian Franks has made it clear that 32. SeeqPod intends to expand its revenues by attracting more and more users to the site through the enticement of free copyrighted music. In a recent article, he stated that "music is the best way to get user adoption and for Seegpod to garner the ad revenue associated with a successful search engine."25 Franks further stated that

²² http://www.seegpod.com/user feedback.php (last visited January 11, 2008).

²⁴ http://www.seeqpod.com/privacy.html (last visited January 11, 2008).

COMPLAINT FOR DIRECT, CONTRIBUTORY, AND

"[m]usic is a superb strategic platform for rolling out services and promotion," and that "consumers don't care about the search engine; [search engines] are a transition point that enables them to get to another place on the web."²⁶

33. SeeqPod is a direct—but illegitimate—competitor to legitimate streaming music websites. Legitimate websites obtain permission to disseminate works through their system. SeeqPod simply helps itself to that content for free and without authorization. A recent "VentureBeat" article, for example, described "SeeqPod" as a "competitor" to the streaming site "Imeem," but noted that, unlike Imeem, SeeqPod had not "cut" licensing "deals" – *i.e.*, SeeqPod had not obtained permission for the use of copyrighted content – with content owners such as Plaintiffs.²⁷

SeeqPod's Direct Infringement Of Plaintiffs' Copyrights And Intentional Facilitation of Users' Infringing Activity for Financial Gain

34. SeeqPod has actively engaged in, facilitated and fostered countless acts of infringement. It intentionally entices users to flock to its website through offering what it describes as a "no cost" "home for playable search results" that allows users to stream on-demand performances of copyrighted works, generate countless playlists of the same, save playlists, and "share[]" them "with friends by emailing a link to the playlist or embedding a player and playlist in a web page" linked to SeeqPod.²⁸ SeeqPod's business model is based upon the free and unauthorized availability of Plaintiffs' popular copyrighted works and the works of other copyright owners.

visited January 11, 2008).

²⁶ Id

http://venturebeat.com/2007/07/12/warner-streams-entire-catalog-of-music-for-free-on-imeem/ (last visited January 11, 2008).

http://www.seeqpod.com/frequently_asked_questions.php (last visited January 11, 2008).

- 35. SeeqPod engages in direct copyright infringement, including by violating Plaintiffs' exclusive right to publicly perform their works by means of digital audio transmissions. SeeqPod's "Playable Search" technology locates, aggregates, and plays on-demand digital streams of vast numbers of copyrighted works. As one article aptly described SeeqPod, it provides "Millions of Songs on your iPhone for free. . . . SeeqPod gives you immediate, playable access to countless songs from across the internet. . . . Now you've got them, except for free." SeeqPod exacerbates its massive direct infringement of Plaintiffs' public performance rights by encouraging its users to save playlists of sound recordings, to have SeeqPod repeatedly play those playlists, and to have users email and embed those playlists in other websites, such as MySpace or Facebook, in the hopes of drawing additional users from those sites who will use SeeqPod in the same way and thereby fuel SeeqPod's viral growth.
- 36. SeeqPod also deliberately induces and facilitates the rampant infringement of copyrighted works by its large and rapidly expanding user base. It provides users with the means to locate, aggregate, play, and distribute its "playable" search results. SeeqPod is not simply aware of how its service is being used, but is actively promoting it as a free, interactive on-demand service. Among other things, SeeqPod provides video demonstrations showing users how to use the site to obtain instant streaming of any requested work over their iPhone or other mobile device. Further, SeeqPod actively solicits users to submit links to sites that host unauthorized copies of copyrighted music, and SeeqPod serves those links to other users. Moreover, SeeqPod provides users with the means to download unauthorized copies of copyrighted works to their computers or mobile devices by giving them the Internet source location of the digital music files behind its "playable" search results. In an article entitled "SeeqPod is a Google for illegal

²⁹ http://www.iphonefaq.org/archives/97182 (last visited January 11, 2008).

music?," the author describes how SeeqPod provides the Internet location for each "playable" search result, how the user can download the file based upon this location, and "how easy" SeeqPod makes it "to get music for which you would otherwise have to pay." 30

- 37. SeeqPod knows full well the substantial infringement occurring through its website. It explicitly invites users to "search for and discover artists and songs," content that SeeqPod knows is copyrighted. SeeqPod admits that the music sites it links to may contain copyrighted content, stating that "[m]aterial available on or through other web sites may be protected by copyright and the intellectual property laws of the United States and/or other countries." Even a cursory review of SeeqPod's website demonstrates massive infringement of Plaintiffs' copyrighted works. SeeqPod also has knowledge of the mass infringement of copyright taking place through its system from notifications SeeqPod has received from copyright holders or their representatives, including the Recording Industry Association of America ("RIAA"). The RIAA has notified SeeqPod of the infringement of thousands of copyrighted works, including Plaintiffs', by and through the SeeqPod system.
- 38. In its public statements, SeeqPod adopts a "head in the sand" approach to the massive copyright infringement taking place on its site. SeeqPod states that as a purportedly simple "search engine" it should be "shield[ed]" from "liability" because it does no more than "search[] and display[] search results." ³³ As discussed above, however, SeeqPod, is no simple "search engine." SeeqPod is what it appears to be from the first instant that a user encounters its site: an

http://tech-buzz.net/2007/10/21/seeqpod-is-a-google-for-illegal-music/ (last visited January 11, 2008).

http://www.seeqpod.com/frequently_asked_questions.php (last visited January 11, 2008).

³² http://www.seeqpod.com/copyright.php (last visited January 11, 2008).

http://www.seeqpod.com/frequently_asked_questions.php (last visited January 11, 2008).

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unlawful music service that directly engages in, encourages, and facilitates the mass infringement of Plaintiffs' and other intellectual property owners' copyrighted works. This is well known to SeeqPod. Co-founder and CEO Kasian Franks aptly described SeeqPod's own business dynamic, stating, "[m]usic is a superb strategic platform for rolling out services and promotion," and "consumers don't care about the search engine . . . "34

- 39. SeeqPod receives a direct and substantial financial benefit from the infringing activity occurring on its website. An increased user base for SeeqPod, drawn by the lure of free music, translates into higher potential future advertising revenue and corporate valuation, all inuring to the benefit of the company, its owners and its "angel" investors.
- SeeqPod has the right and ability to supervise and to limit the 40. infringing content that occurs through its site. SeeqPod expressly reserves the right "to disable and/or terminate the accounts of users who may infringe or repeatedly infringe the copyrights or other intellectual property rights of SeeqPod and/or others."³⁵ SeegPod also expressly retains the right in its "sole discretion to prescreen, refuse, or [re]move any Content that is available via the Service. Without limiting the foregoing, SeeqPod and its designees shall have the right to remove any Content that violates the [Terms of Service] or is otherwise objectionable."³⁶ SeeqPod further states that it is its policy, "in appropriate circumstances and at its discretion, to disable and/or terminate the accounts of users who may infringe or repeatedly infringe the copyrights or other intellectual property rights of SeeqPod and/or others."37

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³⁴ Jango and Seeqpod Hope to Monetize Music, http://gigaoin.com/2008/01/09/jango-and-seeqpod-hope-to-monetize-music/ (last

²⁵ visited January 11, 2008). 26

³⁵ http://www.seegpod.com/copyright.php (last visited January 11, 2008).

³⁶ http://www.seegpod.com/terms of service.php (last visited January 11, 2008).

³⁷ http://www.seeqpod.com/copyright.php (last visited January 11, 2008).

41. SeeqPod, however, has made no effort to implement any copyright protection or screening technologies to stop or limit the rampant infringing conduct occurring on the site. It has not undertaken any measures—such as the simple task of filtering out the names of copyrighted works by popular recording artists in users' search criteria—that would reduce the damage to Plaintiffs' copyrights. On the contrary, as demonstrated most recently by SeeqPod's "top 100" list, SeeqPod flaunts its indifference to taking any measures that would reduce the harm to Plaintiffs.

CLAIMS FOR RELIEF FIRST CLAIM

(Direct Copyright Infringement)

- 42. Plaintiffs incorporate herein by reference each and every averment contained in paragraphs 1 through 41 inclusive.
- 43. Through its conduct averred herein, SeeqPod has infringed Plaintiffs' copyrights in their works, including by publicly performing audio works embodying the copyrighted material (including by means of digital audio transmissions) without authorization in violation of Sections 106 *et seq.* and Section 501 of the Copyright Act. 17 U.S.C. §§ 106 *et seq.*, and 501.
- 44. Each infringement by SeeqPod of Plaintiffs' copyrighted works constitutes a separate and distinct act of infringement.
- 45. SeeqPod's acts of infringement were willful, in disregard of and with indifference to the rights of Plaintiffs.
- 46. As a direct and proximate result of the infringements by SeeqPod, Plaintiffs are entitled to damages and SeeqPod's profits in amounts to be proven at trial which are not currently ascertainable.
- 47. Alternatively, Plaintiffs are entitled to the maximum 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.

- 48. Plaintiffs further are entitled to recover their attorneys' fees and full costs pursuant to 17 U.S.C. § 505.
- 49. As a direct and proximate result of the foregoing acts and conduct, Plaintiffs have sustained and will continue to sustain substantial, immediate and irreparable injury, for which there is no adequate remedy at law. Unless enjoined and restrained by this Court, SeeqPod will continue to infringe Plaintiffs' rights in their copyrighted works. Plaintiffs are entitled to preliminary and permanent injunctive relief.

SECOND CLAIM

(Contributory Copyright Infringement)

- 50. Plaintiffs incorporate herein by reference each and every averment contained in paragraphs 1 through 41, inclusive.
- SeeqPod knowingly and systematically has materially contributed to, intentionally induced, and/or caused its users to infringe Plaintiffs' copyrights in their works, including by materially contributing to, intentionally inducing, and/or causing unauthorized reproductions, distributions, and public performances of audio works embodying the copyrighted material (including by means of digital audio transmissions) without authorization in violation of Sections 106 et seq. and Section 501 of the Copyright Act. 17 U.S.C. §§ 106 et seq., and 501. Notwithstanding such knowledge, SeeqPod has failed to take simple measures, readily available to SeeqPod, that could prevent further damage to Plaintiffs' copyrighted works.
- Each infringement by SeeqPod of Plaintiffs' copyrighted works 52. constitutes a separate and distinct act of infringement.
- 53. SeeqPod's acts of infringement were willful, in disregard of and with indifference to the rights of Plaintiffs.

- 54. As a direct and proximate result of the infringements by SeeqPod, Plaintiffs are entitled to damages and SeeqPod's profits in amounts to be proven at trial which are not currently ascertainable.
- 55. Alternatively, Plaintiffs are entitled to the maximum 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.
- 56. Plaintiffs further are entitled to recover their attorneys' fees and full costs pursuant to 17 U.S.C. § 505.
- 57. As a direct and proximate result of the foregoing acts and conduct, Plaintiffs have sustained and will continue to sustain substantial, immediate and irreparable injury, for which there is no adequate remedy at law. Unless enjoined and restrained by this Court, SeeqPod will continue to infringe Plaintiffs' rights in their copyrighted works. Plaintiffs are entitled to preliminary and permanent injunctive relief.

THIRD CLAIM

(Vicarious Copyright Infringement)

- 58. Plaintiffs incorporate herein by reference each and every averment contained in paragraphs 1 through 41, inclusive.
- 59. SeeqPod has the right and ability to supervise and/or control the infringing conduct of its users. SeeqPod has refused to exercise such supervision and control to the extent required by law. As a direct and proximate result of such refusal, SeeqPod's users have infringed Plaintiffs' copyrights, including by reproducing, distributing, and publicly performing audio works embodying the copyrighted material (including by means of digital audio transmissions) without authorization in violation of Sections 106 et seq. and Section 501 of the Copyright Act. 17 U.S.C. §§ 106 et seq., and 501. SeeqPod derives a direct financial benefit, including but not limited to from advertising revenue from the increased traffic to its website, and from the increase in the value of SeeqPod, that flows directly from

the draw of unauthorized music files illegally copied, distributed and publicly performed using its service in violation of Plaintiffs' copyrights.

- 60. Each infringement by SeeqPod of Plaintiffs' copyrighted works constitutes a separate and distinct act of infringement.
- 61. SeeqPod's acts of infringement were willful, in disregard of and with indifference to the rights of Plaintiffs.
- 62. As a direct and proximate result of the infringements by SeeqPod, Plaintiffs are entitled to damages and SeeqPod's profits in amounts to be proven at trial which are not currently ascertainable.
- 63. Alternatively, Plaintiffs are entitled to the maximum 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.
- 64. Plaintiffs further are entitled to recover their attorneys' fees and full costs pursuant to 17 U.S.C. § 505.
- 65. As a direct and proximate result of the foregoing acts and conduct, Plaintiffs have sustained and will continue to sustain substantial, immediate and irreparable injury, for which there is no adequate remedy at law. Unless enjoined and restrained by this Court, SeeqPod will continue to infringe Plaintiffs' rights in their copyrighted works. Plaintiffs are entitled to preliminary and permanent injunctive relief.

FOURTH CLAIM

(Inducing Copyright Infringement)

- 66. Plaintiffs incorporate herein by reference each and every averment contained in paragraphs 1 through 41, inclusive.
- 67. Through its conduct averred herein, SeeqPod has infringed Plaintiffs' copyrights by inducing SeeqPod's users to reproduce, distribute, and/or publicly perform audio works embodying the copyrighted material (including by means of

digital audio transmissions) without authorization in violation of Sections 106 et seq. and Section 501 of the Copyright Act. 17 U.S.C. §§ 106 et seq., and 501.

- 68. Each infringement by SeeqPod of Plaintiffs' copyrighted works constitutes a separate and distinct act of infringement.
- 69. SeeqPod's acts of infringement were willful, in disregard of and with indifference to the rights of Plaintiffs.
- 70. As a direct and proximate result of the infringements by SeeqPod, Plaintiffs are entitled to damages and SeeqPod's profits in amounts to be proven at trial which are not currently ascertainable.
- 71. Alternatively, Plaintiffs are entitled to the maximum 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.
- 72. Plaintiffs further are entitled to recover their attorneys' fees and full costs pursuant to 17 U.S.C. § 505.
- 73. As a direct and proximate result of the foregoing acts and conduct, Plaintiffs have sustained and will continue to sustain substantial, immediate and irreparable injury, for which there is no adequate remedy at law. Unless enjoined and restrained by this Court, SeeqPod will continue to infringe Plaintiffs' rights in their copyrighted works. Plaintiffs are entitled to preliminary and permanent injunctive relief.

FIFTH CLAIM

(Statutory and Common Law Misappropriation)

- 74. Plaintiffs incorporate herein by reference each and every averment contained in paragraphs 1 through 41, inclusive.
- 75. Plaintiffs possess exclusive ownership interests in and to the Pre-1972 Recordings under applicable statutory and common law.
- 76. Through its conduct, SeeqPod has violated Plaintiffs' exclusive ownership interest in and to the Pre-1972 Recordings.

- 77. As a direct and proximate result of SeeqPod's conduct, Plaintiffs are entitled to recover all proceeds and other compensation received or to be received by SeeqPod arising from the infringements of the Pre-1972 Recordings. Plaintiffs request the Court to order SeeqPod to render an accounting to ascertain the amount of such profits and compensation.
- 78. As a direct and proximate result of SeeqPod's conduct in violation of Plaintiffs' exclusive ownership interests in and to the Pre-1972 Recordings, SeeqPod has been unjustly enriched and Plaintiffs have been damaged in an amount to be proven at trial for which damages and/or restitution and disgorgement is appropriate. Such damages and/or restitution and disgorgement should include a declaration by this Court that SeeqPod is a constructive trustee for the benefit of Plaintiffs, and an order that SeeqPod convey to Plaintiffs all the gross receipts received or to be received that are attributable to infringement of the Pre-1972 Recordings.
- 79. Through its conduct, SeeqPod is guilty of oppression, fraud or malice; Plaintiffs, in addition to their actual damages, are by reason thereof entitled to recover exemplary and punitive damages against SeeqPod.
- 80. As a direct and proximate result of the foregoing acts and conduct, Plaintiffs have sustained and will continue to sustain substantial, immediate and irreparable injury, for which there is no adequate remedy at law. Unless enjoined and restrained by this Court, SeeqPod will continue to infringe Plaintiffs' rights in their Pre-1972 Recordings. Plaintiffs are entitled to preliminary and permanent injunctive relief.

SIXTH CLAIM

(Statutory and Common Law Unfair Competition)

81. Plaintiffs incorporate herein by reference each and every averment contained in paragraphs 1 through 41 and 74 through 80, inclusive.

- 82. The acts and conduct of SeeqPod constitute an appropriation and invasion of the property rights of Plaintiffs in and to the Pre-1972 Recordings, and constitute unfair competition under applicable statutory and common law.
- 83. As a direct and proximate result of SeeqPod's conduct, Plaintiffs are further entitled to recover all proceeds and other compensation received or to be received by Defendants arising from the infringements of Pre-1972 Recordings. Plaintiffs request the Court to order SeeqPod to render an accounting to ascertain the amount of such profits and compensation.
- 84. As a direct and proximate result of SeeqPod's unfair competition, Plaintiffs have been damaged, and SeeqPod unjustly enriched, in an amount to be proven at trial for which damages and/or restitution and disgorgement is appropriate. Such damages and/or restitution and disgorgement should include a declaration by this Court that SeeqPod is a constructive trustee for the benefit of Plaintiffs, and an order that SeeqPod convey to Plaintiffs all the gross receipts received or to be received that are attributable to infringement of Pre-1972 Recordings.
- 85. Through its conduct, SeeqPod is guilty of oppression, fraud or malice. Plaintiffs, in addition to their actual damages, are by reason thereof entitled to recover exemplary and punitive damages against SeeqPod.
- 86. As a direct and proximate result of the foregoing acts and conduct, Plaintiffs have sustained and will continue to sustain substantial, immediate and irreparable injury, for which there is no adequate remedy at law. Unless enjoined and restrained by this Court, SeeqPod will continue to infringe Plaintiffs' rights in their Pre-1972 Recordings. Plaintiffs are entitled to preliminary and permanent injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against SeeqPod as follows:

- 1. For Plaintiffs' damages and SeeqPod's profits in such amount as may be found; alternatively, for maximum statutory damages in the amount of \$150,000 with respect to each copyrighted work infringed either directly or indirectly, or for such other amounts as may be proper pursuant to 17 U.S.C. § 504(c).
- 2. For preliminary and permanent injunctions enjoining SeeqPod, and all persons acting in concert or participation with SeeqPod, from: (a) directly or indirectly reproducing, distributing, publicly performing, or otherwise infringing in any manner on Plaintiffs' copyrighted works, whether now in existence or hereinafter created, or on Plaintiffs' Pre-1972 Recordings; (b) causing, contributing to, inducing, enabling, facilitating, or participating in the infringement of any of Plaintiffs' copyrighted works or Pre-1972 Recordings; and (c) from displaying their mark and/or logo in connection with the dissemination of unauthorized copies of Plaintiffs' copyrighted works or Pre-1972 Recordings.
 - 3. For restitution of SeeqPod's unlawful proceeds.
 - 4. For an accounting and the imposition of a constructive trust.
- 5. For punitive and exemplary damages, as authorized for Plaintiffs' state law claims, in such amount as may be awarded at trial.
 - 6. For prejudgment interest according to law.
 - 7. For Plaintiffs' attorneys' fees and full costs incurred in this action.

1	8. For such other and	further relief as the Court may deem just and
2	proper.	
3	DATED: January 18, 2008	MUNGER, TOLLES & OLSON LLP
4	-	GLENŃ D. POMERANTZ KELLY M. KLAUS
5		JONATHAN H. BLAVIN
6		10015
7		By: COUNTY OF THE STANT OF THE
8		Attorneys for Plaintiffs
9		WARNER BROS. RECORDS INC., ATLANTIC RECORDING
10		CORPORATION, ELEKTRA ENTERTAINMENT GROUP INC., and
11		RHINO ENTERTAINMENT COMPANY
12		
13	DEM	AND FOR JURY TRIAL
14	Plaintiffs hereby re	equest a trial by jury on all issues triable by jury.
15		
16	DATED: January 18, 2008	MUNGER, TOLLES & OLSON LLP
16 17	DATED: January 18, 2008	MUNGER, TOLLES & OLSON LLP GLENN D. POMERANTZ KELLY M. KLAUS
	DATED: January 18, 2008	MUNGER, TOLLES & OLSON LLP GLENN D. POMERANTZ KELLY M. KLAUS JONATHAN H. BLAVIN
17	DATED: January 18, 2008	GLENN D. POMERANTZ KELLY M. KLAUS
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17 18 19 20 21 22 23	DATED: January 18, 2008	GLENN D. POMERANTZ KELLY M. KLAUS JONATHAN H. BLAVIN By: GLENN D. POMERANTZ Attorneys for Plaintiffs WARNER BROS. RECORDS INC., ATLANTIC RECORDING CORPORATION, ELEKTRA ENTERTAINMENT GROUP INC., and RHINO ENTERTAINMENT
17 18 19 20 21 22 23 24	DATED: January 18, 2008	GLENN D. POMERANTZ KELLY M. KLAUS JONATHAN H. BLAVIN By: GLENN D. POMERANTZ Attorneys for Plaintiffs WARNER BROS. RECORDS INC., ATLANTIC RECORDING CORPORATION, ELEKTRA ENTERTAINMENT GROUP INC., and RHINO ENTERTAINMENT

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EXHIBIT A

Plaintiff	Sound Recording	Recorded By	Copyright Registration Number
Warner Bros. Records Inc.	Neil Young Greatest Hits	Neil Young	SR 362-313
Warner Bros. Records Inc.	American Life	Madonna	SR 330-200
Warner Bros. Records Inc.	Evita	Madonna et. al	SR 229-813
Warner Bros. Records Inc.	Die Another Day Soundtrack	Madonna et al.	SR 323-350
Warner Bros. Records Inc.	Nimrod	Green Day	SR 390-775
Warner Bros. Records Inc.	Hybrid Theory	Linkin Park	SR 288-402
Warner Bros. Records Inc.	Californication	Red Hot Chili Peppers	SR 174-922
Warner Bros. Records Inc.	Stadium Arcadium	Red Hot Chili Peppers	SR 244-558
Warner Bros. Records Inc.	Road to Ruin	Ramones	SR 4-335
Warner Bros. Records Inc.	Hunting High and Low	a-ha	SR 63-603

Plaintiff	Sound Recording	Recorded By	Copyright Registration Number
Warner Bros. Records Inc.	The Old Apartment / Lovers in a Dangerous Time	Barenaked Ladies	SR 234-360
Atlantic Recording Corporation	Yaga Yaga	Terror Fabulous	SR 190-383
Atlantic Recording Adrenaline Rush Corporation		Twista	SR 238-303
Atlantic Recording Yourself or Someone Corporation Like You		Matchbox 20	SR 227-755
Elektra Entertainment Group Inc. Meet the Girl Next Door		Lil' Mo	SR 353-787
Elektra Entertainment Group Inc. More Street Dreams		Fabolous	SR 354-869
Elektra Entertainment Group Inc. Make It Last Forever		Keith Sweat	SR 86-761
Elektra Entertainment Group Inc. Supa Dupa Fly		Missy Misdemeanor Elliot	SR 245-232
Elektra Entertainment Group Inc.	The Coming	Busta Rymes	SR 225-705

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EXHIBIT B

Plaintiff	Sound Recording	Recorded By
Warner Bros. Records Inc.	Masters of Reality	Black Sabbath
Warner Bros. Records Inc.	Paranoid	Black Sabbath
Rhino Entertainment Company	Chicago Transit Authority	Chicago
Rhino Entertainment Company	Superfly	Curtis Mayfield
Atlantic Recording Corporation	Lady Soul	Aretha Franklin
Atlantic Recording Corporation	I Never Loved a Man the Way I Love You	Aretha Franklin
Atlantic Recording Corporation	Save the Last Dance For Me	Drifters
Atlantic Recording Corporation	Led Zeppelin II	Led Zeppelin
Atlantic Recording Corporation	Led Zeppelin IV	Led Zeppelin
Elektra Entertainment Group Inc.	L.A. Woman	The Doors

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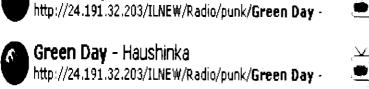
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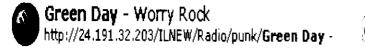
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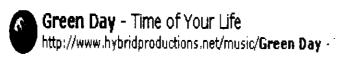
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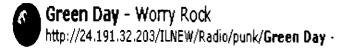












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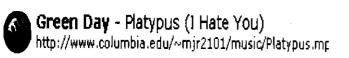
















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Green Day - Time of Your Life

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Lightspeed Champion & Florence - Scattered http://www.box.net/shared/static/s4281m595j.mp3



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Keith Fullerton Whitman





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Linkin Park - A Place For My Head http://www.angelfire.com/gundam/noamaxwell_secret/Linkin



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http://duesti209.dyndns.org/root/Musik/Interpreten L-N/Linki



Linkin Park - In The End

http://duesti209.dyndns.org/root/Musik/Interpreten L-N/Linki



Linkin Park - A Place for My Head

http://ghostofmars.free.fr/RUSH/Lincon Park - A Place for My



linkin park - In The End

http://web.ics.purdue.edu/~cmerle/Linking Park - End.mp3



Linkin Park - Crawling

http://www.seatigers.us/media/Lincoln_Park_-_crawl_1_.mp3



Linkin Park - crawling

http://www.lexacehardware.com/vip3rinc/Music/Linking Parl



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96 results found for **linkin park hybrid theory** - showing 49 - 56

1 - 48

57 -

Other searches:

Linkin Park

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Little Jonny and the Giants

6 L

Linkin Park - Papercut

http://prgk-42.terror.org.pl/Kowal/mjuzik/Papercut.mp3



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Linkin Park - crawling

http://www.geocities.com/ikadena_tito/crawling.mp3



🔼 Linkin Park - Carousel

http://lprussia.com/music/ht_ep/carousel.mp3



Linkin Park - Crawling

http://mobile-shark.com/resources/music/1938005 - Crawling



linkin park - In The End

http://www.this-is-tom.com//end.mp3



Carrier Linkin Park - Papercut

http://www.hellfire0218.com/music/linkin_park/hybrid_the



Linkin Park - One Step Closer

http://www.hellfire0218.com/music/linkin_park/hybrid_the



Linkin Park - Points Of Authority
http://rtwk.ath.cx/xnp/music/pea56.mp3

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Linkin Park - And One http://musik.hybrid-dimensions.com/musik/AndOne.mg	p3 🕌	
Linkin Park - Papercut http://speedinjection.org/music/papercut.mp3		
Linkin Park - Crawling http://mobile-shark.com/resources/music/1938105 - Cr	awling 😅	
Linkin Park - Runaway http://exchristian.com//way.mp3		
Linkin Park - Papercut http://www.oxygen-inc.com/music/01 - Papercut.mp3		
Linkin Park - Cure for the Itch http://hellfire0218.com/music/linkin_park/hybrid_the	eory/1	
Linkin Park - Part Of Me http://lprussia.com/music/ht_ep/part_of_me.mp3		

http://lprussia.com/music/ht_ep/step_up.mp3

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http://duesti209.dyndns.org/root/Musik/Interpreten L-N/M

Madonna - AMERICAN LIFE (RA'S MAGIC MI http://www.ra-star.com/media/Madonna_-_American_L



Madonna - Mother And Father http://www.eltawil.eu/media/music/Artists/Madonna/Am



Madonna - Love Profusion http://www.eltawil.eu/media/music/Artists/Madonna/Am

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30 results found for madonna american life - showing 9 - 16 1 - 8	8 17 - 24
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Madonna - X-static Process http://www.eltawil.eu/media/music/Artists/Madonna/Ame	Save Save As New Playlist
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Madonna - Nobody Knows Me http://www.eltawil.eu/media/music/Artists/Madonna/Ame	
Madonna - Nothing Fails http://www.eltawil.eu/media/music/Artists/Madonna/Ame	
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Madonna - 10_Die_Another_Day__From_Die_Auhttp://www.freewebs.com/jelliclewind/DieAnotherDay.mp3



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Madonna - Die Another Day http://www.american-buddha.com/bulletin_board/files/10_



Madonna - Easy Ride http://blog.kokoom.com/uploads/n/nikollah/129240.mp3



-x-madonna - american life http://www.xakep.ru/post/18205/-x-madonna_-_american



Madonna - American Life (full version)
http://www.almelehy.ecommerce.hct.ac.ae/radiostation/Mai



Madonna-American Life
http://www.csinszka.com/zene/Madonna-American_Life.r



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2 results found for madonna evita - showing 1 - 2

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Madonna Over Yorkshire

Madina Lake



Madonna - Evita (remix) http://tent.xs4all.nl/mediacontent/MADONNA - Evita (



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Andrew Lloyd Webber - Requiem For Evita http://tent.xs4all.nl/mediacontent/Madonna - Andrew I



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 http://file.humour25.free.fr/musique/rhcp/The Red Hot Chili Pepper
- Red Hot Chili Peppers Californication
 http://spy12x.free.fr/Mp3/_Non Classé_/Red Hot Chili Peppers Ca
- Red Hot Chili Peppers Californication
 http://cybermesa.com/~equus/Sounds/Red Hot Chili Peppers Cal
- Red Hot Chili Peppers Californication
 http://musiquesmp3.free.fr/mp3s/Red Hot Chili Peppers 06 Cali
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Red Hot Chili Peppers - Californication http://musiquesmp3.free.fr/mp3s/Red Hot Chili Peppers - 06 - Cali

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Radium

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 http://kari.goshlucky.com/Red Hot Chili Peppers/Stadium Arcadium/1
- Red Hot Chili Peppers Make You Feel Better
 http://nfs2006.free.fr/Musique/08, Red Hot Chili Peppers Stadium Arc
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 http://www.adoptedaustralian.net/glorylibertymix/scars/Red Hot Chili Per
- The Red Hot Chili Peppers Slow Cheetah

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