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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ARISTA RECORDS, LLC., et al.,

Plaintiffs,

v.

MYXER, INC., et al.,

Defendants.

Case No. CV 08-3935 GAF(JCx)

ORDER ADOPTING FINDINGS,  
CONCLUSIONS, AND  
RECOMMENDATIONS OF  
UNITED STATES MAGISTRATE  
JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the attached Report and Recommendation of United States Magistrate Judge, the parties' submissions referenced therein, and the parties' objections and motions seeking review of the Report and Recommendation. The Court has further made a *de novo* determination of those portions of the Report and Recommendation to which objection is made/review is sought.<sup>1</sup>

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<sup>1</sup>This Court, in an exercise of its discretion, declines to consider new evidence and arguments presented for the first time in the parties' objections and motions seeking review of the Report and Recommendation. See United States v. Howell, 231 F.3d 615, 621 (9th Cir. 2000), cert. denied, 534 U.S. 831 (2001).

1 The Court approves and adopts the United States Magistrate Judge's Report  
2 and Recommendation, except that all references to March 8, 2008 are amended to  
3 March 6, 2008.

4 IT IS ORDERED that plaintiffs' request that the Court preclude defendant  
5 from contending that the works reflected on Schedule A of the Complaint have not  
6 been downloaded by users of defendant Myxer, Inc.'s website is granted and that  
7 plaintiffs' request that the Court strike defendant Myxer, Inc.'s Answer or its  
8 Digital Millennium Copyright Act and fair use defenses is denied.

9 IT IS FURTHER ORDERED that the Clerk serve copies of this Order, and  
10 the United States Magistrate Judge's Report and Recommendation, on counsel for  
11 the parties.

12 DATED: August 31, 2010



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15 HONORABLE GARY A. FEESS  
16 UNITED STATES DISTRICT JUDGE  
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