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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SONY BMG MUSIC ENTERTAINMENT,	)	1:08-cv-00590-LJO-SMS
a Delaware general	)	
partnership, et al.,	)	FINDINGS AND RECOMMENDATION RE:
	)	PLAINTIFFS' MOTION FOR DEFAULT
Plaintiffs,	)	JUDGMENT (DOC. 27)
v.	)	
	)	ORDER DIRECTING PLAINTIFFS TO
HEINSOHN CODY,	)	SERVE THESE FINDINGS AND
	)	RECOMMENDATIONS ON THE DEFAULTING
Defendant.	)	DEFENDANT AND FILE PROOF OF SUCH
	)	SERVICE WITHIN TEN DAYS OF THE
	)	DATE OF SERVICE OF THIS ORDER

Plaintiffs are proceeding with a civil action in this Court. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Rules 72-302(c)(19) and 72-303.

Pending before the Court is Plaintiffs' motion for a default judgment against Defendant Heinsohn Cody, filed on August 13, 2009, including a notice of motion and motion, a declaration of Thomas M. Kerr, and a proposed order. Amended proof of service of various documents was also filed on August 13, 2009.<sup>1</sup>

<sup>1</sup>The jurat is made under penalty of perjury under the laws of the state of California, and thus it does not fully conform to the requirement of 28 U.S.C. § 1746.

1 Plaintiffs' motion came on regularly for hearing on October  
2 16, 2009, at 10:00 a.m. in Courtroom 7 before the Honorable  
3 Sandra M. Snyder, United States Magistrate Judge. Thomas M. Kerr  
4 appeared telephonically on behalf of Plaintiff. There was no  
5 appearance on behalf of Defendant.

6 I. Directions to Plaintiffs to Serve the Findings and  
7 Recommendations

8 The remainder of this document constitutes the Court's  
9 findings and recommendations with respect to Plaintiffs' motion  
10 for default judgment.

11 Plaintiff IS DIRECTED to serve the findings and  
12 recommendations on the defaulting Defendant and to file proof of  
13 such service no later than ten days after the date of service of  
14 this order.

15 II. Legal Standards on a Motion for Default Judgment

16 A court has the discretion to enter a default judgment  
17 against one who is not an infant, incompetent, or member of the  
18 armed services where the claim is for an amount that is not  
19 certain on the face of the claim and where 1) the defendant has  
20 been served with the claim; 2) the defendant's default has been  
21 entered for failure to appear; 3) if the defendant has appeared  
22 in the action, the defendant has been served with written notice  
23 of the application for judgment at least three days before the  
24 hearing on the application; and 4) the court has undertaken any  
25 necessary and proper investigation or hearing in order to enter  
26 judgment or carry it into effect. Fed. R. Civ. P. 55(b); Alan  
27 Neuman Productions, Inc. v. Albright, 862 F.2d 1388, 1392 (9<sup>th</sup>  
28 Cir. 1988). Factors that may be considered by courts in

1 exercising discretion as to the entry of a default judgment  
2 include the nature and extent of the delay, Draper v. Coombs, 792  
3 F.2d 915, 924-925 (9<sup>th</sup> Cir. 1986); the possibility of prejudice to  
4 the plaintiff, Eitel v. McCool, 782 F.2d 1470, 1471-72 (9<sup>th</sup>  
5 Cir.1986); the merits of plaintiff's substantive claim, id.; the  
6 sufficiency of the allegations in the complaint to support  
7 judgment, Alan Neuman Productions, Inc., 862 F.2d at 1392; the  
8 amount in controversy, Eitel v. McCool, 782 F.2d at 1471-1472;  
9 the possibility of a dispute concerning material facts, id.;  
10 whether the default was due to excusable neglect, id.; and the  
11 strong policy underlying the Federal Rules of Civil Procedure  
12 that favors decisions on the merits, id.

13 A default judgment generally bars the defaulting party from  
14 disputing the facts alleged in the complaint, but the defaulting  
15 party may argue that the facts as alleged do not state a claim.  
16 Alan Neuman Productions, Inc. v. Albright, 862 F.2d 1388, 1392.  
17 Thus, well pleaded factual allegations, except as to damages, are  
18 taken as true; however, necessary facts not contained in the  
19 pleadings, and claims which are legally insufficient, are not  
20 established by default. Cripps v. Life Ins. Co. of North America,  
21 980 F.2d 1261, 1267 (9<sup>th</sup> Cir. 1992); TeleVideo Systems, Inc. av.  
22 Heidenthal, 826 F.2d 915, 917 (9<sup>th</sup> Cir. 1987).

23 III. Service, Entry of Default, Notice, and Status of  
24 Defendant

25 A. Service

26 The declaration of Thomas M. Kerr, Plaintiffs' counsel,  
27 establishes that after Defendant was identified (¶¶ 1-8),  
28 Plaintiffs' counsel sent Defendant a letter advising him that

1 copyright infringement had been detected and providing contact  
2 information for him to use to communicate with Plaintiffs'  
3 representatives to resolve the matter without litigation. When  
4 there was no response, Plaintiffs filed suit on April 29, 2008.  
5 Kerr further declared that letters concerning possible settlement  
6 sent to Defendant in 2008 did not produce a response. (¶¶ 9-12.)  
7 It appears from the docket and from the declaration of Kerr that  
8 Defendant did not demonstrate a clear purpose to defend the suit  
9 and thus did not appear in the action within the meaning of  
10 55(b) (2). See, In re Roxford Foods v. Ford, 12 F.3d 875, 879-81  
11 (9<sup>th</sup> Cir. 1993).

12         The proof of service filed on July 18, 2008, reflects that  
13 on July 1, 2008, the summons, complaint, and related documents  
14 were served by substituted service on Defendant by a registered  
15 process server. (Doc. 8.) It states that the documents were left  
16 with Tammy Cody, Defendant's mother, an adult female, at the home  
17 or usual place of abode of the Defendant, and that on July 7,  
18 2008, the pertinent documents were mailed to Defendant at the  
19 same address. In the attached "DECLARATION OF REASONABLE  
20 DILIGENCE," the server states:

21         I declare the following attempts were made to effect  
22         service by personal delivery:  
23         6/26/2008 9:30 a.m.: No Answer at the door  
24         (Doc. 8 p. 3.)

25         At hearing, the Court expressed concern over the legal  
26 sufficiency under California law of substituted service after a  
27 single attempt at service was unsuccessful, and Plaintiff was  
28 given an opportunity to submit by October 30, 2009, further  
briefing or evidence on the matter, including evidence of

1 additional efforts to effect service. On October 22, 2009, the  
2 docket reflects that a summons issued to Defendant was issued,  
3 and thus it appears that Plaintiff is attempting to serve  
4 Plaintiff again.

5 In the interim, the Court has reconsidered the matter of the  
6 legal sufficiency of Plaintiff's service on the defaulting  
7 Defendant. Because of the form of Plaintiff's proofs of service,  
8 and in the absence of any briefing or other guidance from  
9 Plaintiff with respect to service, the Court understood that  
10 Plaintiff was basing its position on notice on state law and was  
11 attempting to establish substituted service on an individual  
12 after reasonably diligent effort to effect personal service.  
13 However, it appears to the Court that the previous service was  
14 legally sufficient on a separate basis, namely, pursuant to Fed.  
15 R. Civ. P. 4(e)(2)(B), which provides that an individual may be  
16 served in a judicial district of the United States by leaving a  
17 copy of the summons and complaint at the individual's dwelling or  
18 usual place of abode with someone of suitable age and discretion  
19 who resides there.

20 Accordingly, the Court will proceed to file these findings  
21 and recommendations to grant Plaintiff's motion without further  
22 input from Plaintiff.

23 B. Entry of Default

24 Pursuant to Plaintiffs' request, the Clerk entered default  
25 as to Defendant on September 23, 2008. (Doc. 15.) Plaintiffs  
26 served the clerk's certificate of default on Defendant by mail on  
27 August 12, 2009. (Doc. 26.) Defendant was served with the motion  
28 for default judgment by mailing on August 13, 2009. Thus,

1 regardless of Defendant's lack of appearance, Defendant has  
2 nevertheless received the notice required by Fed. R. Civ. P.  
3 55(b) (2).

4 Further, the notice was adequate pursuant to Fed. R. Civ. P.  
5 55(d) and 54(c), which require that a judgment by default shall  
6 not be different in kind from or exceed in amount that prayed for  
7 in the demand for judgment. Plaintiff expressly sought in the  
8 complaint the types of relief sought by the instant application  
9 for default judgment, including injunctive relief, statutory  
10 damages for each infringement at the election of Plaintiff, and  
11 costs and fees. (Compl. at p. 5.) The failure to allege a  
12 specific sum in the complaint does not prevent entry of a default  
13 judgment for a certain sum or a sum that can be made certain  
14 where appropriate notice has otherwise been given. See Appleton  
15 Elec. Co. v. Graves Truck Line, 635 F.2d 603, 611 (7<sup>th</sup> Cir. 1980).

16 Thus, the Court finds that Plaintiff gave adequate notice of  
17 the nature and amount of its claim.

18 Finally, in the declaration, Kerr states that because  
19 Defendant was of sufficient age to maintain an internet service  
20 account with SBC on June 8, 2007 (the date the infringement was  
21 detected), Kerr is informed and believes that Defendant is  
22 neither a minor nor an incompetent person; further, a search for  
23 Defendant's name conducted in the Department of Defense-Manpower  
24 Data Center revealed no evidence that Defendant is on active duty  
25 in the military service. (Decl. ¶¶ 15-16.)

26 Thus, it appears that with respect to notice and status, a  
27 default judgment would be appropriate with respect to Defendant  
28 Heinsohn Cody.

1 IV. Legal Sufficiency of the Complaint

2 An infringer of copyright is liable for actual damages and  
3 any additional profits of the infringer attributable to the  
4 infringement. 17 U.S.C. § 504(a). An infringer is anyone who  
5 violates any of the exclusive rights of the copyright owner as  
6 provided by sections 106 through 118. 17 U.S.C. § 501(a).  
7 Copyright protection subsists in original works of authorship,  
8 including pictorial and graphic works and sound recordings. 17  
9 U.S.C. § 102. The owner of a copyright has the exclusive rights  
10 to perform or authorize the reproduction of the copyrighted work  
11 in copies, prepare derivative works based on the copyrighted  
12 work, distribute copies to the public by sale or other transfer  
13 of ownership, and display the copyrighted work publicly. 17  
14 U.S.C. § 106.

15 Thus, to prevail on a claim for infringement of copyright  
16 under 17 U.S.C. § 501, Plaintiffs must establish that Defendant  
17 violated an exclusive right of the copyright owner as provided in  
18 17 U.S.C. §§ 106, 501(a). Elektra Entertainment Group Inc. v.  
19 Crawford, 226 F.R.D. 388, 392-93 (C.D.Cal. 2005). This means that  
20 to establish a prima facie case of direct infringement,  
21 Plaintiffs must show 1) ownership of the allegedly infringed  
22 material, and 2) the infringer's violation of at least one  
23 exclusive right granted to copyright holders under 17 U.S.C. §  
24 106. Marder v. Lopez, 450 F.3d 445, 453 (9<sup>th</sup> Cir. 2006).

25 Here, Plaintiffs alleged that Plaintiffs owned the  
26 copyrights or were the licensees of exclusive rights under the  
27 United States copyright law with respect to ten specific  
28

1 recordings<sup>2</sup>; each sound recording was the subject of a valid  
2 certificate of copyright registration issued by the Register of  
3 Copyrights; Plaintiffs owned the exclusive rights under copyright  
4 law in the United States to reproduce and distribute the  
5 copyrighted recordings. (Cmplt. ¶¶ 13-18.) Plaintiffs then  
6 alleged that without Plaintiffs' permission or consent, Defendant  
7 used and continues to use an online media distribution system to  
8 download the recordings, as well as additional sound recordings  
9 owned by or exclusively licensed to Plaintiffs or Plaintiffs'  
10 affiliate record labels, and distribute them to the public in  
11 violation of Plaintiffs' exclusive rights of reproduction and  
12 distribution; Defendant thereby infringed Plaintiffs' exclusive  
13 rights. (Cmplt. p. 4.) Plaintiff further alleged expressly that  
14 the acts of infringement were willful, intentional, and with  
15 disregard and indifference for Plaintiffs' rights. (Id. at ¶ 20.)

16 Accordingly, Plaintiffs have adequately stated claims for  
17 copyright infringement.

18 V. Discretionary Considerations

19 Here, it does not appear that there is any risk of mistake  
20 or excusable neglect on the part of anyone with a potential  
21 interest in the subject matter of the instant action. Further,  
22 there is no apparent likelihood of a dispute as to a material  
23 fact essential to the Plaintiffs' case. No just cause for delay  
24 appears. It is apparent from the declaration submitted to the  
25 Court that Defendant is not an infant, incompetent, or member of  
26

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27 <sup>2</sup> The recordings' titles were listed as Wish You Were Here, Addicted, Hotel California, My Life, Locked  
28 Up, Here I Go Again, I'm Gonna Miss Her, Somebody Up There Likes Me, Over and Over, and Celebrity. (Cmplt ¶  
17, Ex. A.)



1 the armed services. There does not appear to be any reason why  
2 the general policy in favor of a decision on the merits would  
3 warrant refusing to enter the requested default judgment.

4 Accordingly, the Court finds that Plaintiffs have shown  
5 their entitlement to a default judgment.

6 VI. Damages

7 Plaintiffs request statutory damages pursuant to 17 U.S.C. §  
8 504(c) for Defendant's infringement of each of the ten  
9 recordings.

10 Title 17 U.S.C. § 504 provides in pertinent part:

11 (a) **In General.** Except as otherwise provided by  
12 this title, an infringer of copyright is liable  
for either--

13 (1) the copyright owner's actual damages  
14 and any additional profits of the infringer,  
as provided by subsection (b); or

15 (2) statutory damages, as provided by  
16 subsection (c).

16 ....

17 (c) Statutory Damages.--

18 (1) Except as provided by clause (2) of this  
19 subsection, the copyright owner may elect, at  
20 any time before final judgment is rendered,  
21 to recover, instead of actual damages and  
22 profits, an award of statutory damages for  
23 all infringements involved in the action,  
24 with respect to any one work, for which any  
25 one infringer is liable individually, or for  
26 which any two or more infringers are liable  
27 jointly and severally, in a sum of not less  
28 than \$750 or more than \$30,000 as the court  
considers just. For the purposes of this  
subsection, all the parts of a compilation or  
derivative work constitute one work.

26 (2) In a case where the copyright owner  
27 sustains the burden of proving, and the court  
28 finds, that infringement was committed  
willfully, the court in its discretion may  
increase the award of statutory damages to a  
sum of not more than \$150,000. In a case

1 where the infringer sustains the burden of  
2 proving, and the court finds, that such  
3 infringer was not aware and had no reason to  
4 believe that his or her acts constituted an  
5 infringement of copyright, the court in its  
6 discretion may reduce the award of statutory  
7 damages to a sum of not less than \$200. The  
8 court shall remit statutory damages in any  
9 case where an infringer believed and had  
10 reasonable grounds for believing that his or  
11 her use of the copyrighted work was a fair  
12 use under section 107, if the infringer was:  
13 (i) an employee or agent of a nonprofit  
14 educational institution, library, or archives  
15 acting within the scope of his or her  
16 employment who, or such institution, library,  
17 or archives itself, which infringed by  
18 reproducing the work in copies or  
19 phonorecords; or (ii) a public broadcasting  
20 entity which or a person who, as a regular  
21 part of the nonprofit activities of a public  
22 broadcasting entity (as defined in subsection (g)  
23 of section 118) infringed by performing a published  
24 nondramatic literary work or by reproducing a  
25 transmission program embodying a performance of  
26 such a work. (Emphasis added.)

14 A district court has wide discretion in determining the amount of  
15 statutory damages to be awarded and should consider what is just  
16 in the particular case in light of the nature of the copyright  
17 and the circumstances of the infringement. Los Angeles News  
18 Service v. Reuters Television International, Ltd., 149 F.3d 987,  
19 996 (9<sup>th</sup> Cir. 1998). The statutory damages serve both compensatory  
20 and punitive purposes, so in order to effectuate the statutory  
21 policy of discouraging infringement, recovery of statutory  
22 damages is permitted even absent evidence of the actual damages  
23 suffered by a plaintiff or of the profits reaped by a defendant.  
24 Id.

25 Defendant seeks the minimum statutory amount of \$7,500.00,  
26 or \$750.00 for each of the ten infringements. Statutory damages  
27 are particularly appropriate for cases in which the defendant  
28

1 defaults because the difficulty of ascertaining the plaintiff's  
2 actual damages is increased in such cases. Jackson v. Sturkie,  
3 255 F.Supp.2d 1096, 1101 (N.D.Cal. 2003). Further, the Court  
4 considers the fact that the copyright relates to a sound  
5 recording. Considering all of the pertinent circumstances as  
6 demonstrated by the declaration and attachments submitted by  
7 Plaintiffs, and in order to effectuate the purposes of the  
8 statute, the Court concludes that the minimum amount of  
9 \$7,500.00 in damages for the multiple infringements is just and  
10 reasonable.

11 VII. Injunctive Relief

12 Plaintiffs pray for an injunction that states the following:

13 Defendant shall be and hereby is enjoined from  
14 directly or indirectly infringing Plaintiffs' rights  
15 under federal or state law in the Copyrighted  
16 Recordings and any sound recording, whether now in  
17 existence or later created, that is owned or controlled  
18 by Plaintiffs (or any parent, subsidiary, or affiliate  
19 record label of Plaintiffs) ("Plaintiffs' Recordings"),  
20 including without limitation by using the Internet or  
21 any online media distribution system to reproduce  
22 (i.e., download) any of Plaintiffs' Recordings, to  
23 distribute (i.e., upload) any of Plaintiffs'  
24 Recordings, or to make any of Plaintiffs' Recordings  
25 available for distribution to the public, except  
26 pursuant to a lawful license or with the express  
27 authority of Plaintiffs. Defendant also shall destroy  
28 all copies of Plaintiffs' Recordings that Defendant has  
downloaded onto any computer hard drive or server  
without Plaintiffs' authorization and shall destroy all  
copies of those downloaded recordings transferred onto  
any physical medium or device in Defendant's  
possession, custody, or control.

24 (Mot. pp. 15-20, Cmpl. p. 5.)

25 Title 17 U.S.C. § 502 states:

26 (a) Any court having jurisdiction of a civil  
27 action arising under this title may, subject to the  
28 provisions of section 1498 of title 28, grant temporary  
and final injunctions on such terms as it may deem  
reasonable to prevent or restrain infringement of a

1        copyright.

2            (b) Any such injunction may be served anywhere in  
3        the United States on the person enjoined; it shall be  
4        operative throughout the United States and shall be  
5        enforceable, by proceedings in contempt or otherwise,  
6        by any United States court having jurisdiction of that  
7        person. The clerk of the court granting the injunction  
8        shall, when requested by any other court in which  
9        enforcement of the injunction is sought, transmit  
10       promptly to the other court a certified copy of all the  
11       papers in the case on file in such clerk's office  
12       (emphasis added).

13       As a general rule, absent a great public injury, a permanent  
14       injunction will be granted when liability has been established  
15       and there is a threat of a continuing violations. Cadence Design  
16       Systems, Inc. v. Avant! Corp., 125 F.3d 824, 829 (9<sup>th</sup> Cir. 1997);  
17       MAI Systems Corp. v. Peak Computer, Inc., 991 F.2d 511, 520 (9<sup>th</sup>  
18       Cir. 1993) (issuing an injunction against further infringement of  
19       protected software rights where the plaintiff demonstrated that  
20       the defendant had computers in its loaner inventory with the  
21       protected software on it). Generally a party seeking a  
22       preliminary injunction must show either a likelihood of success  
23       on the merits and the possibility of irreparable injury, or that  
24       serious questions going to the merits were raised and the balance  
25       of hardships tips sharply in its favor; however, because in a  
26       copyright infringement claim a showing of a reasonable likelihood  
27       of success on the merits raises a presumption of irreparable  
28       harm, a plaintiff need only show a likelihood of success on the  
29       merits to obtain a preliminary injunction. Micro Star v. Formgen,  
30       Inc., 154 F.3d 1107, 1109 (9<sup>th</sup> Cir. 1998).

31       Here, Plaintiffs seek a permanent injunction. They have  
32       already shown actual success on the merits because their  
33       complaint states a claim for wilful infringement, and Defendant

1 has defaulted; further, Plaintiffs have alleged that unless  
2 restrained, Defendant will continue to cause irreparable injury  
3 for which there is no full monetary compensation. (Cmplt. pp. 4-  
4 5.) This is sufficient for a permanent injunction. Sony Music  
5 Entertainment, Inc. v. Global Arts Productions, 45 F.Supp.2d  
6 1345, 1347 (S.D.Fla. 1999). An injunction against further  
7 infringement and even infringement of future works is permitted,  
8 and it is appropriate to grant an injunction on an application  
9 for default judgment. Princeton University Press v. Michigan  
10 Document Services, Inc., 99 F.3d 1381, 1392-93 (6<sup>th</sup> Cir. 1996)  
11 (noting that an injunction of works copyrighted in the future is  
12 supported by the weight of authority); Elektra Entertainment  
13 Group Inc. v. Crawford, 226 F.R.D. 388, 393-94 (C.D.Cal. 2005)  
14 (granting a final injunction on default judgment to enjoin  
15 defendant from directly or indirectly infringing plaintiffs'  
16 rights under federal or state law in copyrighted recordings,  
17 whether then in existence or later created, where the requested  
18 terms of the injunction were the same as those prayed for in  
19 complaint, proposed injunctive relief was appropriate, the  
20 plaintiffs sent two letters to defendant before plaintiffs sought  
21 entry of default which warned of default judgment, defendant  
22 failed to respond to serious claims brought against him despite  
23 receiving adequate notice, and failure to grant injunction would  
24 have resulted in plaintiffs' continued exposure to harm with no  
25 method of recourse). If infringement is established, then it is  
26 appropriate as part of a final judgment to order the destruction  
27 or other reasonable disposition of all copies or phonorecords  
28 found to have been made or used in violation of the copyright

1 owner's exclusive rights and of all other articles by means of  
2 which such copies might be reproduced. 17 U.S.C. § 503(b).

3 Here, Plaintiffs alleged that Defendant infringed and  
4 wilfully continues to use the on-line distribution system to  
5 distribute to the public the obviously copyrighted sound  
6 recordings and thereby is causing irreparable injury that cannot  
7 be measured or compensated in money. Further, it is alleged that  
8 Plaintiffs have no adequate remedy at law. (Cmplt. ¶¶ 17-22.)

9 The requested terms of the injunction are the same as those  
10 prayed for in the complaint. Defendant's lack of intent to comply  
11 with the copyright restrictions is demonstrated by the  
12 Defendant's failure to reply to Plaintiffs' correspondence, and  
13 by Defendant's further failure to respond to various forms of  
14 notice of serious claims brought against her despite receiving  
15 adequate notice. It appears that the failure to grant the  
16 requested injunction would result in Plaintiffs' continued  
17 exposure to harm with no method of recourse. There does not  
18 appear to be any public injury that would result from issuance of  
19 the injunction. Accordingly, the Court concludes that injunctive  
20 relief is appropriate.

21 However, the injunctive relief sought is too broad.  
22 Generally an injunction must be narrowly tailored to remedy only  
23 the specific harms shown by the plaintiffs rather than to enjoin  
24 all possible breaches of the law; injunctive relief concerning a  
25 copyright will be limited to works that infringe on the  
26 Plaintiffs' copyright. Iconix, Inc. v. Tokuda, 457 F.Supp.2d 969,  
27 998-1002 (N.D.Cal.2006) (preliminary injunction in copyright  
28 case). Further, it is established that every order granting an

1 injunction shall set forth the reasons for its issuance; shall be  
2 specific in its terms; shall describe in reasonable detail, and  
3 not by reference to the complaint or other document, the act or  
4 acts sought to be restrained; and is binding only upon the  
5 parties to the action, their officers, agents, servants,  
6 employees, and attorneys, and upon those persons in active  
7 concert or participation with them who receive actual notice of  
8 the order by personal service or otherwise. Fed. R. Civ. P.  
9 65(d). Even without objections by a party, a court has an  
10 independent duty to assure that an injunction is specific in its  
11 terms and describes in reasonable detail the acts sought to be  
12 restrained. See, EFS Marketing, Inc. v Russ Berrie & Co., 76 F.3d  
13 487, 493-94 (2<sup>nd</sup> Cir. 1996); 4 Nimmer on Copyright, § 14.06(C)  
14 (2006).

15 Here, the injunction purports to forbid infringing  
16 Plaintiffs' rights under "federal or state law" in the  
17 copyrighted recordings. However, the sole subject of the  
18 complaint and this action is infringement of rights created by  
19 the Copyright Act, not any other federal or state law.

20 Further, the injunction sought would enjoin infringement not  
21 only of copyrighted sound recordings, but also of any sound  
22 recording owned or controlled by Plaintiffs; thus, it would  
23 include recordings that are not copyrighted. This exceeds the  
24 scope of the infringement, which was limited to copyrighted  
25 works.

26 Likewise, the proposed injunction would cover infringement  
27 not only of recordings copyrighted by Plaintiffs, but also those  
28 owned or controlled by any parent, subsidiary, or affiliate

1 record label of Plaintiffs. Such a provision does not give  
2 reasonable notice of what conduct would be included within the  
3 scope of the injunction because a reasonable person would not  
4 know what entities or operations constitute parents,  
5 subsidiaries, or affiliate record labels of Plaintiffs. This  
6 aspect of the injunction would be unclear and also would exceed  
7 the scope of the infringement.

8 Accordingly, these aspects should be eliminated from the  
9 injunctive relief sought.

10 VIII. Costs

11 Plaintiffs seek \$420.00 in costs, consisting of \$350.00 in  
12 filing fees and \$70.00 for service of process. (Decl. of Kerr, ¶  
13 18.)

14 Title 17 U.S.C. § 505 states:

15 In any civil action under this title, the court  
16 in its discretion may allow the recovery of full  
17 costs by or against any party other than the  
18 United States or an officer thereof. Except as  
19 otherwise provided by this title, the court may  
20 also award a reasonable attorney's fee to the  
21 prevailing party as part of the costs.

22 The Court exercises its discretion to award Plaintiffs costs of  
23 \$420.00.

24 IX. Recommendation

25 Accordingly, it IS RECOMMENDED that

26 1) Plaintiffs' motion for default judgment against Defendant  
27 Cody Heinsohn, aka Heinsohn Cody, BE GRANTED; and

28 2) The Clerk BE DIRECTED to enter judgment in favor of  
Plaintiffs and against Defendant Cody Heinsohn, aka Heinsohn  
Cody, in the amount of \$7,500.00 of statutory damages, and  
\$420.00 in costs; and



1           3) The Clerk BE DIRECTED to enter judgment in favor of  
2 Plaintiffs and against Defendant Cody Heinsohn, aka Heinsohn Cody  
3 enjoining Defendant from directly or indirectly infringing  
4 Plaintiffs' rights in the following copyrighted sound recordings:  
5 "Wish You Were Here," on album "Morning View," by artist  
6 "Incubus" (SR# 306-181); "Addicted," on album "No Pad, No  
7 Helmets... Just Balls," by artist "Simple Plan" (SR# 351-060);  
8 "Hotel California," on album "Hotel California," by artist  
9 "Eagles" (SR# N38950); "My Life," on album "52<sup>nd</sup> Street," by  
10 artist "Billy Joel" (SR# 4-681); "Locked Up," on album "Trouble,"  
11 by artist "Akon" (SR# 361-456); "Here I Go Again," on album  
12 "Whitesnake," by artist "Whitesnake" (SR# 82-749); "I'm Gonna  
13 Miss Her," on album "Part II," by artist "Brad Paisley" (SR# 298-  
14 930); "Somebody Up There Likes Me," on album "Young Americans,"  
15 by artist "David Bowie" (SR# N22804); "Over and Over" on album  
16 "Suit" by artist "Nelly" (SR# 358-551); "Celebrity" on album "Mud  
17 on the Tires" by artist "Brad Paisley" (SR# 336-114); and any  
18 copyrighted sound recording, whether now in existence or later  
19 created, which is owned or controlled by Plaintiffs ("Plaintiffs'  
20 recordings"), including without limitation by using the Internet  
21 or any online media distribution system to reproduce (i.e.,  
22 download) any of Plaintiffs' recordings, to distribute (i.e.,  
23 upload) any of Plaintiffs' recordings, or to make any of  
24 Plaintiffs' recordings available for distribution to the public,  
25 except pursuant to a lawful license or with the express authority  
26 of Plaintiffs; Defendant also shall destroy all copies of  
27 Plaintiffs' recordings that Defendant has downloaded onto any  
28 computer hard drive or server without Plaintiffs' authorization

1 and shall destroy all copies of those downloaded recordings  
2 transferred onto any physical medium or device in Defendant's  
3 possession, custody, or control.

4 This report and recommendation is submitted to the United  
5 States District Court Judge assigned to the case, pursuant to the  
6 provisions of 28 U.S.C. § 636 (b) (1) (B) and Rule 72-304 of the  
7 Local Rules of Practice for the United States District Court,  
8 Eastern District of California. Within thirty (30) days after  
9 being served with a copy, any party may file written objections  
10 with the Court and serve a copy on all parties. Such a document  
11 should be captioned "Objections to Magistrate Judge's Findings  
12 and Recommendations." Replies to the objections shall be served  
13 and filed within ten (10) court days (plus three days if served  
14 by mail) after service of the objections. The Court will then  
15 review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636  
16 (b) (1) (C). The parties are advised that failure to file  
17 objections within the specified time may waive the right to  
18 appeal the District Court's order. Martinez v. Ylst, 951 F.2d  
19 1153 (9th Cir. 1991).

20 **IT IS SO ORDERED.**

21 **Dated: October 26, 2009**

/s/ Sandra M. Snyder  
**UNITED STATES MAGISTRATE JUDGE**

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