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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN JOSE DIVISION**

11 **MEGAUPLOAD LTD.,**  
12 **Plaintiffs,**  
13 **v.**  
14 **UNIVERSAL MUSIC GROUP, INC. and**  
15 **DOES 1 to 100, inclusive**  
16 **Defendants.**

Civil Action No.  
**CV 11**

**CW**  
**6216**

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF FOR  
MISREPRESENTATION PURSUANT TO  
THE DMCA (17 U.S.C. § 512(F))**

**DEMAND FOR JURY TRIAL**

**BY FAX**

18 Plaintiff MEGAUPLOAD LTD ("Plaintiff" or "MEGAUPLOAD") brings this action suit  
19 against UNIVERSAL MUSIC GROUP, INC. ("UMG") and DOES 1 to 100, inclusive  
20 (collectively "Defendants").

21 **NATURE OF THE ACTION**

22 1. This is a civil action seeking injunctive relief and damages for misrepresentation of  
23 copyright claims under the Digital Millennium Copyright Act ("DMCA"), including, but not  
24 limited to Defendants' improper DMCA takedown notices and assertion of copyright  
25 infringement against MEGAUPLOAD for posting MEGAUPLOAD's promotional video,  
26 which MEGAUPLOAD privately produced, obtained all authorizations and releases from  
27 performing artists involved, and published on or about December 9, 2011 ("MEGAUPLOAD  
28 SONG VIDEO") on the Internet, including, but not limited to publication on the popular

1 Internet video website YouTube. The misrepresented takedown notice(s) (“DMCA Notice”)
2 successfully and materially compelled YouTube and others to remove Plaintiff’s original
3 video from public access. Indeed it appears as though UMG and Defendants are abusing the
4 DMCA takedown mechanism to chill free speech they do not like.

5 2. MEGAUPLOAD is further informed and believes that Defendants are engaged in a
6 general attack against MEGAUPLOAD and its services and that Defendants have improperly
7 used the DMCA takedown procedures on the MEGAUPLOAD SONG VIDEO improperly as
8 weapon in their attack against MEGAUPLOAD.

9 **JURISDICTION AND VENUE**

10 3. This Court has subject matter jurisdiction pursuant to the Digital Millennium Copyright
11 Act (“DMCA”) 17 U.S.C. § 512 et seq. and the Copyright Act (17 U.S.C. §§ 101 et seq.), 28
12 U.S.C. §§ 1331 and 1338.

13 4. Venue properly lies in this District pursuant to 28 U.S.C. § 1391.

14 **INTRADISTRICT ASSIGNMENT**

15 5. Intra-district assignment to the San Jose Division is proper pursuant to Local Civil Rule 3-
16 2(d) as Plaintiff is informed and believes that a substantial part of the DMCA notice and
17 counter notice filing and implementation occurred in Santa Clara County.

18 **PARTIES**

19 6. MEGAUPLOAD LTD, is a Hong Kong corporation.

20 7. UNIVERSAL MUSIC GROUP, INC. is a Delaware Corporation, with its principal place
21 of business in Universal City CA 91608.

22 8. Plaintiffs are unaware of the true names of DOES 1 through 100, who are individuals or
23 entities who conspired with or aided and abetted UMG or otherwise involved in and liable for
24 the actions alleged herein, including, but not limited to the misrepresentations and assertion
25 thereof by way of one or more DMCA Notices. When the identity of these individuals or
26 entities sued as Doe defendants are identified, Plaintiffs reserve the right to amend their
27 complaint to name such parties in this Action to the extent feasible.
28

1 9. On information and belief, Defendants acted both independently and jointly, in that they  
2 knowingly authorized, directed, ratified, approved, acquiesced, or participated in the wrongful  
3 acts alleged in this Action by knowingly submitting a DMCA Notice with misrepresentations  
4 regarding copyright infringement in violation of the DMCA.

5 **FACTUAL ALLEGATIONS**

6 10. From on or about October 16, 2011 and October 21, 2011, MEGAUPLOAD had the sole  
7 use of Roundhead Studios, a well-known recording studio in Auckland, primarily for the  
8 purpose of recoding a promotional song and video, referred to herein as the MEGAUPLOAD  
9 SONG VIDEO, produced by MEGAUPLOAD's principal, Kim Dotcom and Printz Board of  
10 the Black Eyed Peas band, at a substantial expense to MEGAUPLOAD.

11 11. The MEGAUPLOAD SONG VIDEO features endorsements by numerous famous  
12 celebrities and artists, including, but not limited to 1. Kasseem Dean (Swizz Beatz), 2.  
13 Kanye West (Kanye West) 3. Mary Jane Blige (Mary Jane Blige) 4. Estelle Swaray  
14 (Estelle), 5. Ciara Harris (Ciara), 6. Jayceon Taylor (Game), 7. Carmelo Anthony (Carmelo  
15 Anthony), 8. Will Adams (Will.i.am), 9. Kim Kardashian (Kim Kardashian), 10. Sean  
16 Combs (Diddy), 11. Alicia Keys, 12. Chris Brown (Chris Brown), 13. Floyd Mayweather  
17 (Floyd Mayweather), 14. Jamie Foxx (Jamie Foxx), 15. Jonathan Smith (Lil Jon), 16. Brett  
18 Ratner (Brett Ratner ), 17. Serena Williams (Serena Williams), and 18. Russell Simmons  
19 (Russell Simmons), all of whom executed full releases of any intellectual property rights to  
20 the promotional video, including use of likeness and promotional rights to  
21 MEGAUPLOAD.

22 12. Performers in the MEGAUPLOAD SONG VIDEO included Printz Board and George  
23 Pajon Jnr of the Black Eyed Peas band and Sleep Deez and Tex out of Los Angeles,  
24 California and Macy Gray.

25 13. YouTube is a video-sharing website where millions of Internet users post videos to make  
26 them available to others for viewing. These videos range from traditional home recordings of  
27 personal events to news reports, advertisements, and television programs. YouTube's website  
28

1 is available at the web address www.youtube.com. On information and belief, YouTube, LLC  
2 is located in Mountain View, California in Santa Clara County, UMG and Defendants agreed  
3 to jurisdiction in Santa Clara County through YouTube's terms of service and a substantial  
4 number of witnesses and documents relevant to this action are located in Santa Clara County.

5 14. On information and belief, Defendants are music publishing companies.

6 15. On information and belief, Defendants are sophisticated music industry companies, have  
7 extensive experience with copyright law, and employ staff who are familiar with the Digital  
8 Millennium Copyright Act (including the Section 512 "good faith" requirements and the  
9 obligation to submit Section 512 notices under penalty of perjury), as well as the principles  
10 and application of the fair use doctrine.

11 16. On or about December 9, 2011, Defendants, and/or their representatives, viewed the  
12 MEGAUPLOAD SONG VIDEO and decided to issue one or more DMCA takedown notices  
13 to YouTube and others despite their knowledge that the use of the MEGAUPLOAD SONG  
14 VIDEO did not infringe on any of Defendants' copyrights.

15 17. On information and belief, on or about December 9, 2011, Defendants, via an electronic  
16 system controlled by UMG, demanded under the DMCA notice provisions that YouTube  
17 remove the MEGAUPLOAD SONG VIDEO from the YouTube website because the video  
18 allegedly infringed a copyright owned or administered by Defendants. By authorizing the  
19 demand, Defendants affirmed under penalty of perjury that the notice of infringement was  
20 accurate and that they were authorized to make the infringement claim arising from the  
21 MEGAUPLOAD SONG VIDEO.

22 18. On information and belief, the notice precisely tracked the language specified for a notice  
23 of claimed infringement under Section 512(c)(3) of the DMCA.

24 19. On information and belief, YouTube treated the demand as a request for takedown  
25 pursuant to the Section 512(c)(3) of the DMCA.

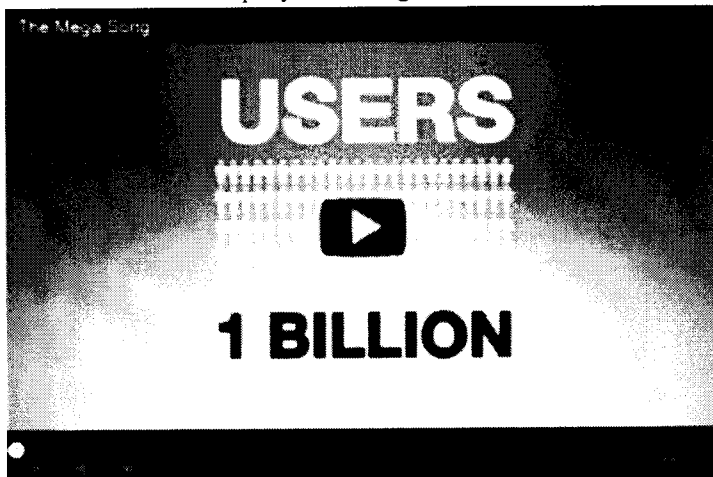
26 20. MEGAUPLOAD learned that YouTube had removed the MEGAUPLOAD SONG  
27 VIDEO pursuant to Defendants' notification that the material infringed their copyright.

28 21. In response, on or about December 9, 2011, MEGAUPLOAD, by and through its

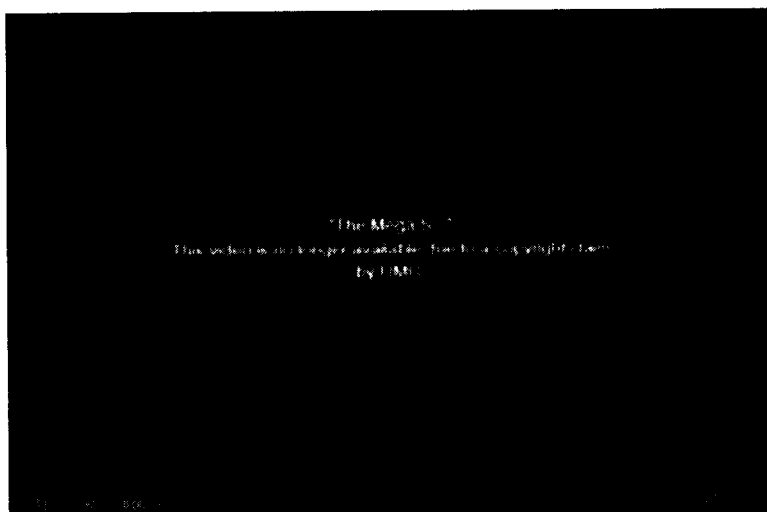
1 authorize agent(s), sent YouTube a counter-notice, pursuant to Section 512(g) of the DMCA,  
2 demanding that the MEGAUPLOAD SONG VIDEO be reposted because it did not infringe  
3 Defendants' copyright in any way.

4 22. On information and belief, Defendants have filed further DMCA takedown notices on  
5 various postings of the MEGAUPLOAD SONG VIDEO, each notice containing substantially  
6 the same misrepresentations by Defendants regarding copyright infringement by  
7 MEGAUPLOAD, which YouTube has taken down pursuant to the DMCA.

8 23. The results of Defendants' unlawful takedown actions is apparent all over the Internet, as  
9 illustrated by articles containing embedded YouTube videos of the MEGAUPLOAD SONG  
10 VIDEO. In such articles, the picture of the MEGAUPLOAD SONG VIDEO has appears with  
11 a clickable link to play the song as shown here:



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19 Upon clicking the link, however, the viewer receives a message that the song is not available due  
20 to a UMG copyright claim, as illustrated here:



1 24. Defendants' acts in filing improper DMCA notices to materially cause Internet  
2 intermediaries such as YouTube to take down the MEGAUPLOAD SONG VIDEO has  
3 caused MEGAUPLOAD substantial injury and money damages. Indeed, it appears as though  
4 UMG permits recording artists to exercise their views and free speech only when UMG agrees  
5 with such speech. The type of wrongful behavior alleged against UMG and Defendants  
6 herein is exactly the type of behavior that the DMCA Sec 512(f) was designed to remedy.

7 **CAUSES OF ACTION**

8 **FIRST CAUSE OF ACTION**

9 **17 U.S.C. § 512(F) MISREPRESENTATION**

10 25. Plaintiff repeats and incorporates herein by reference the allegations in the preceding  
11 paragraphs of this complaint.

12 26. The MEGAUPLOAD SONG VIDEO does not infringe any copyright owned or  
13 administered by Defendants.

14 27. On information and belief, Defendants had actual subjective knowledge of the contents of,  
15 the artist contributing to the MEGAUPLOAD SONG VIDEO, that Plaintiff was fully  
16 authorized to produce and publish and held all rights in the MEGAUPLOAD SONG VIDEO  
17 and that it did not infringe any of Defendants' copyrights on the date Defendants sent  
18 YouTube the takedown notice regarding the MEGAUPLOAD SONG VIDEO. With this  
19 actual subjective knowledge, Defendants acted in bad faith when they sent the takedown  
20 notice, knowingly and materially misrepresenting that they had concluded that the video was  
21 infringing.

22 28. In the alternative, Defendants should have known, if they had acted with reasonable care  
23 or diligence, or would have no substantial doubt had they been acting in good faith, that the  
24 MEGAUPLOAD SONG VIDEO did not infringe any of Defendants' copyrights on the date  
25 they sent YouTube their takedown notice(s) under the DMCA.

26 29. Defendants violated 17 U.S.C. § 512(f) by knowingly materially misrepresenting that  
27 MEGAUPLOAD SONG VIDEO infringed Defendants' copyright using DMCA takedown  
28 notices to materially cause the removal of such content from the Internet.

As a direct and proximate result of Defendants' actions, Plaintiff has been injured

1 substantially and irreparably. Such injury includes, but is not limited to, the financial and  
2 personal expenses associated with responding to the claim of infringement and harm to its free  
3 exercise of its copyrights in the MEGAUPLOAD SONG VIDEO and its speech rights under  
4 the First Amendment.

5 **DECLARATORY RELIEF**

6 31. Plaintiff repeats and incorporates herein by reference the allegations in the preceding  
7 paragraphs of this complaint.

8 32. An actual controversy has arisen and now exists between Plaintiff and Defendants  
9 regarding their respective rights to the MEGAUPLOAD SONG VIDEO and Plaintiff's right  
10 to post the video on the Internet, including, but no limited to, on YouTube.

11 33. Plaintiff seeks the following judicial declarations: (a) that Defendants have no legal rights  
12 in the MEGAUPLOAD SONG VIDEO; (b) that the MEGAUPLOAD SONG VIDEO is not  
13 infringing in any manner copyright rights or other rights of any Defendant; and (c) that the  
14 MEGAUPLOAD SONG VIDEO may legally be posted on YouTube by MEGAUPLOAD.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff, prays for judgment and relief against the defendants as follows:

- 17 a. Interim and permanent injunctive relief: (1) restraining Defendants, their agents, servants,  
18 employees, successors and assigns, and all others in concert and privity with Defendants,  
19 from bringing any lawsuit or threat against Plaintiff for copyright infringement in  
20 connection with the MEGAUPLOAD SONG VIDEO, including, but not limited to, the  
21 video's publication, distribution, performance, display, licensing, or the ability to host it  
22 online or link to it from any website; (2) restraining Defendants, their agents, servants,  
23 employees, successors and assigns, and all others in concert and privity with Defendants,  
24 from submitting any further take-down notices pursuant to the DMCA related to the  
25 MEGAUPLOAD SONG VIDEO; and (3) directing Defendants to cease implementation  
26 of and withdraw existing takedown notices related to the MEGAUPLOAD SONG  
27 VIDEO;
- 28 b. Judicial declarations: (a) that Defendants have no legal rights in the MEGAUPLOAD  
SONG VIDEO; (b) that the MEGAUPLOAD SONG VIDEO is not infringing in any

1 manner copyright rights or other rights of any Defendant; and (c) that the  
2 MEGAUPLOAD SONG VIDEO may legally be posted on YouTube by  
3 MEGAUPLOAD;

- 4 c. Damages according to proof;  
5 d. Attorneys' fees pursuant to 17 U.S.C. § 512(f), other portions of the Copyright Act  
6 including Section 505, on a Private Attorney General basis, or otherwise as allowed by  
7 law;  
8 e. Plaintiff's costs and disbursements; and  
9 f. Such other and further relief as the Court shall find just and proper.

10 **JURY DEMAND**

11 Plaintiffs request a jury trial as to all issues triable by jury.

12 Dated: December 12, 2011

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14  
15 By: 

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