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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:



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9 UNITED STATES DISTRICT COURT
 10 SOUTHERN DISTRICT OF CALIFORNIA

VIA FAX

11 MP3TUNES, LLC,)
)
 12)
)
 13 Plaintiff,)
)
 14 vs.)
)
 15 EMI GROUP, PLC, EMI GROUP NORTH)
 16 AMERICA, INC., EMI GROUP NORTH)
 AMERICA HOLDINGS INC. and EMI)
 17 MUSIC NORTH AMERICA, LLC,)
)
 18 Defendants.)
)
 19)

CASE No. 1844 WQH (NLS)
~~OPEN~~
 COMPLAINT FOR DECLARATORY
 JUDGMENT AND VIOLATION OF THE
 DIGITAL MILLENNIUM COPYRIGHT
 ACT; DEMAND FOR JURY TRIAL

20 Plaintiff MP3tunes, LLC ("Plaintiff"), by its attorneys, Dreier Stein & Kahan LLP,
 21 alleges on knowledge as to its own acts and otherwise upon information and belief as follows:

NATURE OF THE ACTION

23 1. As set forth in more detail below, Plaintiff MP3tunes, LLC ("MP3tunes") owns and
 24 operates MP3tunes.com and Sideload.com (collectively, the "Sites") and offers Oboe lockers and
 25 software to users of the Sites.

26 2. MP3tunes.com is a music service provider and the home of Oboe, a personal music
 27 locker offering unlimited online storage. Oboe users can sync their personal music collections to
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1 enjoy their music through any web browser, as well as through a growing number of home
2 entertainment and mobile devices.

3 3. Sideload.com is a website owned and operated by MP3tunes that aggregates
4 popular free music tracks on the web chosen and posted by users of Sideload.com and/or Oboe.

5 4. MP3tunes feels justifiably threatened that it will be sued by Defendants as a result
6 of the foregoing websites and software because Plaintiff received two threatening – albeit
7 deficient – cease-and-desist letters from Defendants’ counsel, dated September 4, 2007 and
8 September 18, 2007 (collectively, the “Notice”) and because Plaintiff was informed by
9 Defendants’ counsel that the matter would not be resolved without litigation unless there was a
10 substantial monetary payment by Plaintiff.

11 5. By this action, MP3tunes seeks a declaration that (i) MP3tunes.com and
12 Sideload.com are service providers as defined in the Digital Millennium Copyright Act
13 (“DMCA”), 17 U.S.C. § 512(k); (ii) the conduct by MP3tunes.com and Sideload.com
14 challenged by Defendants in the Notice falls within the protections of §§ 512(a), (b), (c) and/or
15 (d); (iii) the Notice served on Plaintiff was deficient under 17 U.S.C. §§ 512(c) and/or (d); (iv) to
16 the extent the Notice was not deficient, Plaintiff complied with its obligations under 17 U.S.C.
17 §§ 512(c) and/or (d); and (v) the activities of Sideload.com, MP3tunes.com and Oboe
18 complained of by Defendants in the Notice do not constitute direct copyright infringement,
19 contributory copyright infringement and/or inducement of copyright infringement.
20

21 **PARTIES**

22 6. Plaintiff MP3tunes, LLC is a Delaware limited liability company with its principal
23 place of business in San Diego, California.

24 7. Defendant EMI Group, PLC (“EMI PLC”) is headquartered in London, England.
25 EMI operates in the United States through its division, EMI Music Group North America, as
26 well as subsidiaries EMI Group North America, Inc., EMI Group North America Holdings Inc.
27 and EMI Music North America, LLC, among others. The record labels EMI purports to
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1 represent in the United States include Capitol, Priority, Blue Note, EMI and Virgin. Defendant
2 EMI Group North America, Inc. ("EMI NA Inc.") is a Delaware corporation with its principal
3 place of business in New York, New York, and transacts business in this district. Defendant
4 EMI Group North America Holdings Inc. ("EMI Holdings") is a Delaware corporation with its
5 principal place of business in New York, New York, and transacts business in this district.
6 Defendant EMI Music North America, LLC ("EMI Music") is a Delaware limited liability
7 company with its principal place of business in New York, New York, and transacts business in
8 this district. Defendants EMI PLC, EMI NA Inc., EMI Holdings and EMI Music are collectively
9 referred to herein as "EMI" or "Defendants".

10 JURISDICTION AND VENUE

11 8. This is an action for declaratory judgment pursuant to 28 U.S.C. § 2201 and Rule
12 57 of the Federal Rules of Civil Procedure seeking a declaration of rights and/or other legal
13 relations of the parties to this litigation with respect to a substantial controversy arising under the
14 copyright laws of the United States, 17 U.S.C. § 101 *et seq.*

15 9. This Court has jurisdiction over the subject matter of this action pursuant to the
16 Copyright Act (17 U.S.C. § 101 *et seq.*); 28 U.S.C. §§ 1331, 1338; and the Declaratory Judgment
17 Act (28 U.S.C. § 2201).

18 10. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400(a) because
19 Defendants transact business in this district. Moreover, Plaintiff resides in this district and/or the
20 acts complained of herein have had, and will have, substantial effects in this district.

21 THE BUSINESS OF MP3TUNES

22 11. Plaintiff MP3tunes, LLC owns and operates MP3tunes.com and Sideload.com.

23 12. MP3tunes.com is a music service provider and the home of Oboe, a personal music
24 locker offering unlimited online storage. Oboe users can sync their personal music collections to
25 enjoy them through any web browser, as well as through a growing number of home
26 entertainment and mobile devices.
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1 13. MP3tunes.com does not control or select the songs in an individual consumer's
2 locker and instead merely provides online storage space for such music. Consumers can
3 organize, add and delete songs as they choose. While MP3tunes.com can identify the songs in a
4 consumer's locker, it has no means of determining where the track came from (*i.e.* from another
5 website, from a CD that the user owns or elsewhere). Only the individual consumer can access
6 his or her own particular songs from the consumer's locker.

7 14. Sideload.com is a website owned and operated by Plaintiff that aggregates popular
8 free music tracks on the web designated by users of the Sites. The songs listed on Sideload.com
9 are designated and posted by users of the Sites. Consumers can also listen to songs on
10 Sideload.com and "sideload" those tracks into their personal lockers, onto their hard drives or
11 elsewhere. Plaintiff plays no role in what songs are designated for Sideload.com by users of the
12 Sites. None of the songs designated by users for sideloading or listening are physically available
13 on Sideload.com. Rather, what is provided is a hyperlink.

14 15. Until Plaintiff's recent receipt of Defendants' Notice (discussed below), Plaintiff
15 believed that all of the songs on Sideload.com and in the consumer's personal lockers were non-
16 infringing songs. Before using Sideload.com and MP3tunes.com, consumers must agree to the
17 Terms of Use set forth on both websites, which states that the user "acknowledge[s] that by
18 uploading music or any other content to the Site, or requesting that music or any content be
19 uploaded to [the user's] account maintained on the Site, that [the user is] directing [Plaintiff] to
20 store the file in the format in which it is uploaded and to convert and store it in the MP3 format,
21 or such other format in which it may be converted by [Plaintiff]. [The user] agree[s] that
22 [he/she] will not upload music and content, and will not request that any music or content be
23 uploaded to [her/her] account maintained on the Site, that infringes the copyright or other
24 intellectual property rights of any third party."

25 16. The Terms of Use states further that "[u]nder the appropriate circumstances, it is
26 Plaintiff's policy to remove and/or to disable access from MP3tunes to web pages of repeat
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1 infringers, to terminate subscribers and account holders who are repeat infringers, and to remove
2 and/or to disable access from MP3tunes to web pages as to which there have been steps taken for
3 the purpose of affecting MP3tunes's search results such as adding inappropriate 'meta-tags.'"

4 17. Thus, until recently, Plaintiff believed that all of the songs on Sideload.com and in
5 the consumer's personal lockers were non-infringing songs. Indeed, Plaintiff still believes that
6 the songs in the consumer's personal lockers are non-infringing and Plaintiff has no basis to
7 believe, and no means of determining, otherwise.

8 18. For the reasons set forth below, MP3tunes cannot continue to operate
9 MP3tunes.com, Sideload.com and the Oboe lockers without fear of crippling litigation until this
10 action is resolved.

11 **DEFENDANTS' ACTIONS**

12 19. On September 4, 2007 and September 18, 2007, Defendants, through their counsel,
13 sent a deficient Notice to Plaintiff alleging that Plaintiff, through its websites MP3tunes.com and
14 Sideload.com and its "Oboe Software Suite" "is copying and storing to its servers, indexing,
15 publicly performing, and making available for download hundreds (if not thousands) of
16 [Defendants'] copyrighted recordings in violation of the Copyright Act." A true and correct
17 copy of the Notice is attached hereto as Exhibit A.

18 20. The Notice is deficient for a number of reasons. First, it fails to identify the party
19 represented by Jenner & Block LLP sending the Notice. To the contrary, the Notice states that
20 "We are counsel for EMI Music Group North America, whose record labels include (but are not
21 limited to) Capital, Priority, Blue Note, EMI, Virgin and Astralwerks (collectively 'EMI')." EMI
22 Music Group North America is a division of Plaintiff, but is not a legal entity. To date, the
23 EMI entity that served the deficient Notice is unknown.

24 21. Second, the Notice falsely states that "[f]or a variety of reasons, MP3[t]unes is not
25 protected by any of the 'safe-harbors' of the Digital Millennium Copyright Act ('DMCA')." To
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1 the contrary, MP3tunes.com and Sideload.com are service providers as defined in 17 U.S.C. §
2 512(k) and their conduct falls within the enumerated categories of §§ 512(a), (b), (c) and/or (d).

3 22. Third, with the exception of approximately 350 songs about which Defendants
4 properly notified Plaintiff pursuant to 17 U.S.C. § 512(c)(3)(A)(ii) by enclosing a CD-ROM
5 listing the songs and website locations which Defendants alleged infringed the copyrights of
6 EMI and/or parties it allegedly represents, the remainder of the Notice was deficient. As to the
7 songs that Defendants properly identified on the list enclosed with the Notice, those songs were
8 immediately removed from Sideload.com and Defendants were promptly notified of this.

9 23. However, the Notice stated further that the "enclosed representative list reflects
10 only a small portion of the total number of infringing EMI works contained on MP3[t]unes, with
11 more being copied and made available daily. Accordingly, pursuant to 17 U.S.C. §
12 512(c)(3)(A)(ii), based on EMI's representative list, MP3[t]unes is obligated to remove all of
13 EMI's copyrighted works, even those not specifically identified on the attached. A non-
14 exhaustive further listing of EMI's recording artists can be found at
15 <http://www.emigroup.com/About/Music/Default.htm>."

16 24. This notification was inadequate under the DMCA. The Notice did not specifically
17 identify the material that is to be removed or access to which is to be disabled as required by 17
18 U.S.C. § 512(c)(3)(A)(iii).

19 25. Moreover, some of the artists on Defendants' list and/or on Defendants' website are
20 no longer represented by EMI; and some songs listed on the enclosure to the Notice are freely
21 available for digital download. For example, the first band that is listed in Defendants'
22 spreadsheet is "Air". MP3tunes features an "Air" track - "Once Upon A Time" - on the first
23 page of sideload.com. That track is from the popular online music magazine, *Filter*, and is
24 accessed by the URL <http://filter-mag.com/index.php?id=13977&c=6>. Thus, Plaintiff has no
25 reason to believe that the *Filter* track is anything but lawful. Nevertheless, Plaintiff removed this
26 track from availability for sideloading as per Defendants' demand.
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1 26. Similarly, Defendants' list also includes the track "Nobody Move, Nobody Get
2 Hurt" by the band "We Are Scientists" from the URL [http://media.spin.com/features/
3 band_of_the_day/ audio/2005/11/nobody_move_nobody_get_hurt_hi.mp3](http://media.spin.com/features/band_of_the_day/audio/2005/11/nobody_move_nobody_get_hurt_hi.mp3). *Spin* is a popular
4 online music magazine. All the labels distribute MP3s promotionally. Plaintiff believes that it is
5 likely that this track is such a promotional distribution and is lawfully available. The same is
6 true for the tracks that Defendants list from the *Paste Store*, which is a store which often
7 distributes promotional tracks provided to them. Nevertheless, Plaintiff removed these tracks
8 from availability for sideloading as per Defendants' demand.

9 27. Defendants knowingly materially misrepresented that certain material on the Sites
10 — such as the aforementioned material — was infringing in violation of 17 U.S.C. § 512(f)(1)
11 when it was not.

12 28. Defendants' Notice was only directed towards tracks on Sideload.com, although it
13 sought relief with respect to Oboe and consumers' lockers on MP3tunes.com. The list enclosed
14 with the Notice only specified allegedly infringing tracks that could be removed from
15 Sideload.com and did not specify any possible infringements within individual consumer's
16 lockers.

17 29. The Sites are fully protected by the DMCA.

18 30. In connection with the transmitting, routing, or providing connections for, material
19 through the Sites controlled by Plaintiff, or by reason of the intermediate and transient storage of
20 that material in the course of such transmitting, routing or providing connections, the
21 transmission of the material found on the Sites is not initiated by or at the direction of Plaintiff
22 and instead is initiated at the direction of the user.

23 31. In connection with the transmitting, routing, or providing connections for, material
24 through the Sites controlled by Plaintiff, or by reason of the intermediate and transient storage of
25 that material in the course of such transmitting, routing or providing connections, the
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1 transmission, routing, provision of connections, or storage of the material found on the Sites is
2 carried out through an automatic technical process without selection of the material by Plaintiff.

3 32. In connection with the transmitting, routing, or providing connections for, material
4 through the Sites controlled by Plaintiff, or by reason of the intermediate and transient storage of
5 that material in the course of such transmitting, routing or providing connections, Plaintiff does
6 not select the recipients of the material on its Sites, except as an automatic response to the
7 request of another person.

8 33. In connection with the transmitting, routing, or providing connections for, material
9 through the Sites controlled by Plaintiff, or by reason of the intermediate and transient storage of
10 that material in the course of such transmitting, routing or providing connections, no copy of the
11 material made by Plaintiff in the course of its intermediate and transient storage of the material
12 on its Sites is maintained on the system or network in a manner ordinarily accessible to anyone
13 other than the anticipated recipients, and no such copy is maintained on the system or network in
14 a manner ordinarily accessible to such anticipated recipients for a longer period than is
15 reasonably necessary for the transmission, routing, or provision of connections.
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17 34. In connection with the transmitting, routing, or providing connections for, material
18 through the Sites controlled by Plaintiff, or by reason of the intermediate and transient storage of
19 that material in the course of such transmitting, routing or providing connections, the material on
20 Plaintiff's Sites is transmitted through the system or network without modification of its content.

21 35. In connection with the transmitting, routing, or providing connections for, material
22 through the Sites controlled by Plaintiff, or by reason of the intermediate and transient storage of
23 that material in the course of such transmitting, routing or providing connections, the material on
24 Plaintiff's Sites is made available online by a person or website other than Plaintiff's Sites.

25 36. The intermediate and temporary storage of the material on the Sites is transmitted
26 from a person or website other than Plaintiff through the system or network to a user at the
27 direction of the user.
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1 37. The intermediate and temporary storage of the material on the Sites is carried out
2 through an automatic technical process for the purpose of making the material available to users
3 of the system or network who, after the material is transmitted as described above, request access
4 to the material from the person described above.

5 38. The intermediate and temporary storage of the material on the Sites is transmitted to
6 the subsequent users without modification to its content from the manner in which the material
7 was transmitted from the person or website described above.

8 39. When the person or website set forth above makes material available online without
9 the authorization of the copyright owner of the material, Plaintiff responds expeditiously to
10 remove, or disable access to, the material that is claimed to be infringing upon notification of
11 claimed infringement.

12 40. Before receiving the Notice, Plaintiff did not have actual knowledge that the
13 material posted and/or stored on the Sites at the direction of users was infringing.

14 41. Plaintiff does not now have actual knowledge that the material posted and/or stored
15 on the Sites at the direction of users was infringing.

16 42. Before receiving the Notice, Plaintiff was not aware of facts or circumstances
17 relating to the material posted and/or stored on the Sites at the direction of users from which
18 infringing activity is apparent.

19 43. Plaintiff is not now aware of facts or circumstances relating to the material posted
20 and/or stored on the Sites at the direction of users from which infringing activity is apparent.

21 44. Upon obtaining knowledge or awareness that the material posted and/or stored on
22 the Sites at the direction of users is infringing, Plaintiff acts expeditiously to remove, or disable
23 access to, the allegedly infringing material and did so in this instance.

24 45. Plaintiff does not receive a financial benefit directly attributable to the material
25 posted and/or stored on the Sites at the direction of users and Plaintiff does not have the right and
26 ability to control such activity, other than to terminate the user's ability to use the Sites.
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1 46. Upon notification of claimed infringement as described in 17 U.S.C. § 512(c)(3) as
2 to the material posted and/or stored on the Sites at the direction of users, Plaintiff responds
3 expeditiously to remove, or disable access to, the material that is claimed to be infringing or to
4 be the subject of infringing activity and has done so in this instance.

5 47. Plaintiff has designated an agent to receive notifications of claimed infringement
6 described in 17 U.S.C. § 512(c)(3).

7 48. When Plaintiff receives a notification that includes substantially the following it
8 expeditiously complies with its obligations under the DMCA: (i) A physical or electronic
9 signature of a person authorized to act on behalf of the owner of an exclusive right that is
10 allegedly infringed; (ii) identification of the copyrighted work claimed to have been infringed,
11 or, if multiple copyrighted works at a single online site are covered by a single notification, a
12 representative list of such works at that site; (iii) identification of the material that is claimed to
13 be infringing or to be the subject of infringing activity and that is to be removed or access to
14 which is to be disabled, and information reasonably sufficient to permit the service provider to
15 locate the material; (iv) information reasonably sufficient to permit the service provider to
16 contact the complaining party, such as an address, telephone number, and, if available, an
17 electronic mail address at which the complaining party may be contacted; (v) a statement that the
18 complaining party has a good faith belief that use of the material in the manner complained of is
19 not authorized by the copyright owner, its agent, or the law; and (vi) a statement that the
20 information in the notification is accurate, and under penalty of perjury, that the complaining
21 party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
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23 49. Plaintiff does not now have actual knowledge that the Sites link users to online
24 locations containing infringing material or activity and did not have such knowledge before
25 receiving the Notice. When Plaintiff has such knowledge, Plaintiff acts expeditiously to remove,
26 or disable access to, the material and did so in this instance.

1 50. Plaintiff is not now aware of facts or circumstances from which it is apparent that
2 the Sites link users to online locations containing infringing material or activity and was not
3 aware of such facts or circumstances before receiving the Notice. When Plaintiff becomes aware
4 of such facts or circumstances, Plaintiff acts expeditiously to remove, or disable access to, the
5 material and did so in this instance.

6 51. Plaintiff does not receive a financial benefit directly attributable to any link to
7 online locations containing infringing material and Plaintiff does not have the right and ability to
8 control such activity absent termination of the user's ability to use the Sites.

9 52. Upon notification of claimed infringement as described in 17 U.S.C. § 512(c)(3) as
10 to any links the Sites have to online locations containing infringing material, Plaintiff responds
11 expeditiously to remove, or disable access to, the material that is claimed to be infringing or to
12 be the subject of infringing activity and has done so in this instance.

13 53. Plaintiff is an entity offering the transmission, routing, or providing of connections
14 for digital online communications, between or among points specified by a user, of material of
15 the user's choosing, without modification to the content of the material as sent or received and/or
16 a provider of online services or network access, or the operator of facilities therefor.

17 54. Plaintiff did not (1) directly infringe Defendants' copyrights; (2) have knowledge of
18 any infringement of Defendants' copyrights; or (3) have a material contribution to any
19 infringement of Defendants' copyrights.

20 55. Plaintiff did not set up its Sites with the intent to encourage copyright infringement.

21 56. After receiving the Notice, despite its deficiencies, Plaintiff contacted Defendants'
22 counsel and was informed that the matter was unlikely to be settled absent a substantial monetary
23 payment.

24 57. In response to the Notice, on September 13, 2007, Plaintiff's counsel responded by
25 notifying Defendants that (i) its Notice was deficient (ii) the approximately 350 songs that
26 Defendants properly notified Plaintiff about had been removed from Sideload.com; and (iii)
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1 requesting that Defendants send a list of additional tracks to which EMI (and the labels it
2 purports to represent) own the copyrights, provide information reasonably sufficient to permit
3 Plaintiff to locate the material, and accurately represent that the listed tracks are not legally
4 digitally available for copying (along with the remaining required elements of 17 U.S.C. §
5 512(c)(3)(A)), so that Plaintiff could disable those songs from sideloading as well. A true and
6 correct copy of this letter is attached hereto as Exhibit B.

7 58. On September 18, 2007, in response to the afore-mentioned letter, Defendants'
8 counsel responded by claiming that Plaintiff's interpretation of the DMCA was wrong and that if
9 "MP3tunes has made an informed decision to litigate the issue of its copyright liability, so be it."
10 See Exhibit A.

11 59. As a result, there exists a substantial controversy between Plaintiff and Defendants
12 as to whether Plaintiff's activities on MP3tunes.com, Sideload.com and Oboe will subject it to
13 direct or indirect liability to Defendants for copyright infringement.

14
15 **FIRST CLAIM FOR RELIEF**
(DECLARATORY JUDGMENT)

16 60. MP3tunes repeats and realleges paragraphs 1 through 59 above, as if fully set forth
17 herein.

18 61. Declaratory relief is warranted because the facts herein show that there is a
19 substantial controversy between parties having adverse legal interests, of sufficient immediacy
20 and reality to warrant relief. Specifically, there exists a substantial controversy between Plaintiff
21 and Defendants as to whether Plaintiff's activities constitute direct or indirect copyright
22 infringement.

23 62. Accordingly, Plaintiff seeks a declaratory judgment pursuant to 28 U.S.C. § 2201
24 and Rule 57 of the Federal Rules of Civil Procedure that: (i) MP3tunes.com and Sideload.com
25 are service providers as defined in the DMCA, 17 U.S.C. § 512(k); (ii) the conduct by
26 MP3tunes.com and Sideload.com challenged by Defendants in the Notice falls within the
27 protections of §§ 512(a), (b), (c) and/or (d); (iii) the Notice served on Plaintiff was deficient
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1 under 17 U.S.C. §§ 512(c) and/or (d); (iv) to the extent the Notice was not deficient, Plaintiff
2 complied with its obligations under 17 U.S.C. §§ 512(c) and/or (d); and (v) the activities of
3 Sideload.com, MP3tunes.com and Oboe complained of by Defendants in the Notice do not
4 constitute direct copyright infringement, contributory copyright infringement and/or inducement
5 of copyright infringement.

6 **SECOND CLAIM FOR RELIEF**
7 **(VIOLATION OF THE DMCA, 17 U.S.C. § 512(f))**

8 63. MP3tunes repeats and realleges paragraphs 1 through 62 above, as if fully set forth
9 herein.

10 64. In its Notice Defendants knowingly materially misrepresented that certain material
11 on the Sites was infringing in violation of 17 U.S.C. § 512(f)(1) when it was not.

12 65. Plaintiff has been injured by Defendants' misrepresentations because (1) it relied
13 upon such misrepresentations and removed or disabled access to the allegedly infringing
14 material; and (2) Plaintiff was forced to bring this action as a result of the inaccuracies and
15 deficiencies in Defendants' Notice.

16 66. Pursuant to 17 U.S.C. § 512(f), as a result of such knowing material
17 misrepresentations, Defendants shall be liable for any damages, including costs and attorneys'
18 fees, incurred by Plaintiff.

19 WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in its favor
20 and against Defendants, as follows:

21 A. On the First Claim for Relief, a declaratory judgment that:

22 (i) MP3tunes.com and Sideload.com are service providers as defined in the DMCA,
23 17 U.S.C. § 512(k);

24 (ii) the conduct by MP3tunes.com and Sideload.com challenged by Defendants in
25 the Notice falls within the protections of §§ 512(a), (b), (c) and/or (d);

26 (iii) the Notice served on Plaintiff was deficient under 17 U.S.C. §§ 512(c) and/or
27 (d);

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(iv) to the extent the Notice was not deficient, Plaintiff complied with its obligations under 17 U.S.C. §§ 512(c) and/or (d); and

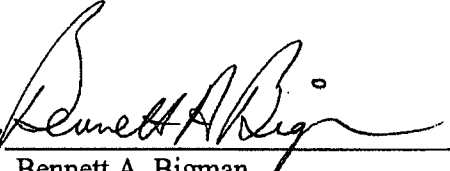
(v) the activities of Sideload.com, MP3tunes.com and Oboe complained of by Defendants in the Notice do not constitute direct copyright infringement, contributory copyright infringement and/or inducement of copyright infringement; and

B. On the Second Claim for Relief, awarding Plaintiff its damages, including its costs and attorneys' fees pursuant to 17 U.S.C. § 512(f)(1); and

C. Granting Plaintiff such other, further and different relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

Dated: September 20, 2007

DREIER STEIN & KAHAN LLP

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MP3tunes, LLC

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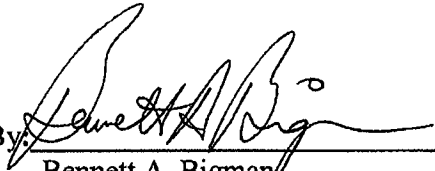
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JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: September 20, 2007

DREIER STEIN & KAHAN LLP

By: 
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Exhibit “A”

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VIA OVERNIGHT MAIL

September 4, 2007

MP3Tunes, LLC
5960 Cornerstone Court
First Floor
San Diego, CA 92121

Attn: Emily Richards

Re: *EMI Music Group/Infringement of Copyrighted Works*

Dear Ms. Richards:

We are counsel for EMI Music Group North America, whose record labels include (but are not limited to) Capitol, Priority, Blue Note, EMI, Virgin, and Astralwerks (collectively, "EMI"). EMI is the owner of copyright, exclusive rights under copyright or related common law and statutory rights, in sound recordings. Among the recordings whose rights are owned by EMI are some of the most popular recordings in the world, including recordings by the Beatles, the Beastie Boys, the Beach Boys, Coldplay, David Bowie, Norah Jones, Lenny Kravitz, Radiohead, the Red Hot Chili Peppers, Tina Turner, and many others.

MP3Tunes, through its websites, MP3Tunes.com and Sideload.com, and its "Oboe Software Suite" (collectively, "MP3Tunes"), among other things, is copying and storing to its servers, indexing, publicly performing, and making available for download hundreds (if not thousands) of our client's copyrighted recordings in violation of the Copyright Act. For example, MP3Tunes.com provides (based on a user's search query) URL links to "source sites" that host unauthorized music files. Through the "Oboe Software Suite" and the "Oboe Sideload Plug-in," which MP3Tunes provides for no charge at MP3Tunes.com and Sideload.com, MP3Tunes' users can click a button MP3Tunes presents beside every link; when they do so, MP3Tunes automatically and instantly copies and "sideloads" the selected music from the source site into the user's Oboe locker on the MP3Tunes.com website (which offers free storage and indexing of the user's "sideloaded" files). Thus, MP3Tunes unlawfully copies, and enables and induces its users to unlawfully copy, countless audio recordings of EMI artists, such as Coldplay's "Clocks" or Radiohead's "Karma Police." All of these unauthorized music files are available for download or immediate playback via the MP3Tunes.com website's proprietary integrated online audio player, and can be further transferred to most portable music devices, or copied to a compact disc. Searches using the names of virtually every other EMI artist returned similar results. However, EMI has not authorized any of its recordings to be copied, distributed, or performed in this manner on or by MP3Tunes or its users.

Emily Richards
September 4, 2007
Page 2

As we are certain that you are aware, the foregoing conduct constitutes copyright infringement under the United States Copyright Act and under laws of other countries, international law, and/or international treaty obligations. For a variety of reasons, MP3Tunes is not protected by any of the "safe-harbors" of the Digital Millennium Copyright Act ("DMCA").

Without waiver of the foregoing position and without conceding that MP3Tunes is entitled to any of the protections of the DMCA, including that it is a "Service Provider," falls within any of the enumerated categories of Section 512(a)-(d), or has effectively complied with any of the requirements contained therein, we are enclosing herewith a CD-ROM containing a spreadsheet identifying, by artist, song title and URL location, a representative sample, pursuant to 17 U.S.C. § 512(c)(3)(A)(ii), of EMI's copyrighted works that are copied, performed, stored, distributed, and made available for download on or by MP3Tunes. We demand that MP3Tunes immediately take the following actions with respect to each work identified in the attached spreadsheet: (1) remove or disable access to the work; (2) notify the MP3Tunes end user or uploader of the infringement(s); and (3) take appropriate action against the account holder pursuant to the MP3Tunes Terms of Use and End User Agreement. Please confirm in writing that you have done so. Additionally, please provide us with a complete accounting of all of the identified EMI recordings that have been copied, performed or distributed by MP3Tunes including the number of times each recording has been accessed by MP3Tunes users.

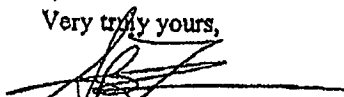
The enclosed representative list reflects only a small portion of the total number of infringing EMI works contained on MP3Tunes. Our initial investigation suggests that hundreds, if not thousands, of additional copies of EMI's copyrighted works are being made available on or by MP3Tunes, with more being copied and made available daily. Accordingly, pursuant to 17 U.S.C. § 512(c)(3)(A)(ii), based on EMI's representative list, MP3Tunes is obligated to remove all of EMI's copyrighted works, even those not specifically identified on the attached. A non-exhaustive further listing of EMI's recording artists can be found at <http://www.ernigroup.com/About/Music/Default.htm>. In addition to the foregoing, we demand that MP3Tunes immediately take any and all appropriate action to ensure that each and every one of the works identified in the attached spreadsheet, and all other EMI copyrighted recordings, remain unavailable on or through MP3tunes.

The information in this notification is accurate and we have a good faith belief that use of the material in the manner complained of is not authorized by EMI, its respective agents, or the law. I further hereby state, under penalty of perjury, that we are authorized to act on behalf of EMI as set forth in this letter.

Emily Richards
September 4, 2007
Page 3

Your immediate attention to this letter is required. Nothing herein is intended to or shall be construed as a waiver of any of EMI's rights and remedies, all of which hereby are expressly reserved.

Very truly yours,


Steven B. Fabrizio

Enclosure

cc: Alasdair McMullan, Esq.
Scott Schreiber, Esq.
EMI Music North America

Artist	Song	Link to Download
Nitty Gritty Dirt Band	Mr. Bogart	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Mr. Bogart	Express Yourself	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
OMD	Enola Gay	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Orion, Beth	Caravan	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Orion, Beth	Safe in Your Arms	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Over the Rhine	Born	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Over the Rhine	Born	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Over the Rhine	Drunkard's Prayer	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Over the Rhine	I Want You to Be My Love	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Over the Rhine	Nobody Number One	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Over the Rhine	Grow Me	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Over the Rhine	Suitcase	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Oye, Erland	No Train to Stockholm	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Oye, Erland	Symptom of a Disease	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Pat Shop Boys	It's a Sin	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Phish, Liz	Extraordinary	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Phish, Liz	Long Distance Call	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Pink Floyd	Comfortably Numb	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Pink Floyd	Julia Dream	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Plebeian	Lead	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Plebeian	Without You I'm Nothing	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Public Image Ltd	Rise	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
R.E.M.	Drive	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
R.E.M.	So, Central Rain	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	(Nice Dream)	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	Black Star	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	Bornes	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	Butterfly...	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	Creep	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	Everything in Its Right Place	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	Fake Plastic Trees	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	Fake Plastic Trees	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	High and Dry	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	I Want Name of This	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	Just	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	Karma Police	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	Karma Police	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	Karma Police	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	Karma Police	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	Let Down	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	My Iron Lung	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	No Surprises	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	No Surprises	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	Nobody Does It Better	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	Street Spirit (Fade Out)	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	Street Spirit (Fade Out)	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	Street Spirit (Fade Out)	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	Sulk	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm
Radiohead	The Bends	https://www.gutenberg.org/files/20184/20184-h/20184-h.htm

Artist	Song	Link to Download
We Are Scientists	Nobody Move, Nobody Get Hurt	http://media.zip.net/musical/albums/band_of_the_day/audio/2005/11/nobody_move_nobody_get_hurt_hd.mp3
We Are Scientists	The Great Escape	http://www.ezarchive.com/musical/albums/albums/741xvcl/7028/11/6%20We%20Are%20Scientists%20-%20The%20Great%20Escape.mp3
Westside Connection	Bow Down	http://65.185.117.180/3pm/1ca%20Cuba%20Featuring..._by%20Cuba%20Featuring%20Down.mp3
Westside Connection	Terrorist Threats	http://www.lucio.pro/conv-mp3/album/music/rap/Westside%20Connection.mp3
Wilson, Cassandra	Run the Voodoo Down	http://www.ezarchive.com/musical/albums/albums/6123P/11/4/2d-672265/oper-Cassandra_Wilson-01_Run_the_Voodoo_Down1.mp3
Yellowcard	Only One	http://www.bw3.net/album/music/bongofellow%20card%20-%20Only%20One.mp3
Yellowcard	Times, Flights Down	http://www.ezarchive.com/musical/albums/albums/3KRITTELL/7A/02%20Three%20Flights%20Down.wma

JENNER & BLOCK

Jenner & Block LLP
601 Thirteenth Street, NW
Suite 1200 South
Washington, DC 20005-3823
Tel 202 639-6000
www.jenner.com

Chicago
Dallas
New York
Washington, DC

Steven B. Fabrizio
Tel 202 639-6040
Fax 202 661-4823
sfabrizio@jenner.com

September 18, 2007

VIA ELECTRONIC MAIL
AND U.S. MAIL

Ira S. Sacks, Esq.
Dreier LLP
499 Park Avenue
New York, NY 10022

Re: MP3tunes Infringement of EMI Works

Dear Ira:

Thank you for your letter of September 13, 2007. It is not our intention to engage in an extended exchange of letters. However, because your client appears to fundamentally misunderstand the DMCA, in an effort to avoid litigation born of misunderstanding, we offer the four observations set forth below. Beyond that, we invite MP3tunes to make a substantive proposal both to redress past infringement of EMI works and to ensure that there will be no future infringement of EMI works. When Michael Robertson and I spoke last week, it was my impression that MP3tunes would be making such a proposal. If MP3tunes does not intend to make a meaningful proposal to resolve this matter, kindly let us know and we will proceed accordingly.

As for the substance of your September 13 letter:

o First, respectfully, you are simply wrong in your interpretation of the DMCA. While you correctly recite the text of § 512(c)(3), you completely ignore § 512(d), which addresses information location tools. To the extent MP3tunes can take advantage of the DMCA at all, it must respond to notices compliant under § 512(d). As you undoubtedly know, § 512(d)(3) expressly modifies § 512(c)(3)(A)(iii) on the very issue of alleged non-compliance you raise in your letter. In relevant part, § 512(d)(3) provides that for purposes of § 512(d):

the information described in subsection (c)(3)(A)(iii) shall be identification of the *reference or link*, to material or activity claimed to be infringing, that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate that *reference or link*.

17 U.S.C. § 512(d)(3) (emphasis added); see also S.R. Rep. No. 105-190, at 47-48 (1998) ("The reference to 'infringing activity' is intended to refer to wrongful activity that is occurring at the

location to which the link or reference refers ... [and] the information submitted by the complaining party under subsection (c)(3)(A)(iii) is identification of the reference or link to infringing material or activity"). Accordingly, our notice is absolutely compliant with the DMCA in all respects.

o Second, we agree with the acknowledgement in your September 13 letter, at page 3, that we have "correctly supplied a representative list of multiple copyrighted works located on a single site in [our] notification as per 17 U.S.C. § 512(c)(A)(ii)." MP3tunes, however, does not appear to grasp the legal implications of that. The DMCA does not provide "safe harbor" just because a service provider responds to a notification by blocking access to the specifically identified works on a representative list. The statutory text and the legislative history make crystal clear that, once a copyright holder has provided a compliant "representative list" of its works, the obligation shifts to the service provider to remove or disable access to *all* copyrighted works owned by that copyright holder. The pertinent legislative history is as follows:

Where multiple works at a single online site are covered by a single notification, *a representative list of such works at that site is sufficient*. Thus, where a party is operating an unauthorized Internet jukebox from a particular site, it is not necessary for a compliant notification to list every musical composition or sound recording that has been or could be infringed at that site, so long as a representative list of those compositions or recordings is provided so that the service provider *can understand the nature and scope of the infringement being claimed*.

S.R. Rep. No. 105-190, at 46 (emphasis added); H.R. Rep. No. 105-551, at 55 (1998) (same); *see also, e.g., ALS Scan, Inc. v. Remarq Communities, Inc.*, 239 F.3d 619, 625 (4th Cir. 2001) (DMCA safe harbor "is not presumptive, but granted only to 'innocent' service providers who can prove they do not have actual or constructive knowledge of the infringement"; eligibility for safe harbor "disappears at the moment the service provider loses its innocence, *i.e.*, at the moment it becomes aware that a third party is using its system to infringe"). Therefore, MP3tunes' commitment to remove the specific links identified on our representative list is not an act of compliance, but rather an acknowledgement of non-compliance. EMI has provided more than sufficient notice such that MP3tunes can understand the nature and scope of the infringement being claimed. If MP3tunes wants any argument as to compliance with § 512(d)(3), it must act accordingly. As observed below, it has not.

o Third, as of this morning, countless EMI works, including works that were identified in our notice, and the works of EMI artists who were identified in the notice, continue to be infringed by and through MP3tunes. MP3tunes is liable for each of these infringements.

o Fourth, many in your client's position conveniently view the DMCA as providing safe harbor as long as copyright infringement notices are appropriately responded to. That is not correct. Whether or not notices are sent to or responded to by a service provider, the DMCA

Ira S. Sacks, Esq.
September 18, 2007
Page 3

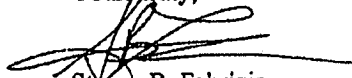
disqualifies a service provider from all safe harbor if that service provider *either*: (i) has "actual knowledge that the material or activity is infringing," 17 U.S.C. § 512(d)(1)(A); *or* (ii) is "aware of facts or circumstances from which infringing activity is apparent," 17 U.S.C. § 512(d)(1)(B); *or* (iii) "receive[s] a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity," 17 U.S.C. § 512(d)(2). Separate and apart from its failure to comply with EMI's notice, MP3tunes would be disqualified from DMCA safe harbor based on *each* of these provisions. Moreover, in addition to EMI works that are protected under the federal copyright laws, MP3tunes infringes and is responsible for the infringement of innumerable EMI works that were first fixed prior to February 1972 ("pre-72 works") and which are protected under state law. *E.g., Capitol Records, Inc. v. Naxos of America, Inc.*, 4 N.Y.3d 540, 830 N.E.2d 250 (N.Y. 2005). As the DMCA is a provision of the United States Copyright Act, it provides no conceivable protection for MP3tunes' infringement of EMI's pre-72 works.

"The complex marvels of cyberspatial communications may create difficult legal issues; but not in this case." *UMG Recordings, Inc. v. MP3.com, Inc.*, 92 F. Supp. 2d 349, 350 (S.D.N.Y. 2000) (Rakoff, J.). Judge Rakoff's comment is equally applicable here. MP3tunes is building a business by leveraging the popularity of creative works that MP3tunes did not create and does not own. It will be held liable for copyright infringement under federal and state laws.

If MP3tunes has made an informed decision to litigate the issue of its copyright liability, so be it. If, on the other hand, MP3tunes has a meaningful proposal to make for an overall resolution, the time to make it is now.

Finally, EMI is compelled to expressly reserve all of its rights with respect to the conflict of interest your firm, Dreier LLP, has in representing MP3tunes in a matter adverse to EMI. Dreier LLP *currently* is representing EMI's affiliate, Caroline Records, Inc., in an ongoing litigation in the New York State Supreme Court captioned *Caroline Records v. Jetset*. The rules of professional conduct governing lawyers practicing in New York prohibit Dreier LLP from acting adverse to its EMI client absent receiving an express waiver from EMI, which Dreier LLP has neither sought nor received.

Yours truly,



Steven B. Fabrizio

cc: Alasdair McMullan, Esq.
Scott Schreiber, Esq.
EMI Music North America

Andrew H. Bart, Esq.
Thomas J. Perrelli, Esq.
Jenner & Block LLP

Exhibit “B”

DREIER^{LLP}

ATTORNEYS AT LAW

The Gursky Group

Ira S. Sacks *Partner*
Direct 212 652 3730
isacks@dreierllp.com

September 13, 2007

VIA FEDERAL EXPRESS

Steven B. Fabrizio, Esq.
Jenner & Block LLP
601 Thirteenth Street, NW
Suite 1200 South
Washington, DC 20005-3823

Re: MP3tunes, LLC

Dear Mr. Fabrizio,

We represent MP3tunes, LLC ("MP3tunes"). We write in response to your cease-and-desist letter, dated September 4, 2007 to MP3tunes, regarding your allegations that MP3tunes, through its websites, MP3tunes.com and Sideload.com, and its "Oboe Software Suite" is "copying and storing to its servers, indexing, publicly performing, and making available for download hundreds (if not thousands) of [your] client's copyrighted recordings in violation of the Copyright Act."

While we find your allegations baseless and believe that you failed to comply with the requirements of the Digital Millennium Copyright Act ("DMCA") when notifying our client of its alleged infringement, in an effort to resolve this matter and to fulfill our obligations under the DMCA, MP3tunes has removed the approximately 350 songs you provided with your cease-and-desist letter from availability for sideloading. If you provide another list with additional songs to which EMI and/or its affiliates represent they own the copyrights, MP3tunes will promptly remove those songs from availability for sideloading as well.

EMI needs to understand the function of MP3tunes and sideload.com. MP3tunes plays no role in what songs are designated for sideload.com by users of MP3tunes. None of the songs designated by users for sideloading are physically available on sideload.com. Rather, what is provided is a hyperlink.

Notwithstanding MP3tunes' continued willingness to resolve this matter amicably, your attempt to place the burden on MP3tunes to determine which of the songs on its website

499 Park Avenue New York, New York 10022
Telephone 212 328 6100 Facsimile 212 328 6101
Los Angeles · Stamford · Albany

Exhibit B -- 30

are infringing simply by providing (i) a link to the EMI website which provides a "non-exhaustive further listing of EMI's recoding artists" and (ii) a representative list of songs which you demand be disabled, fails to comply with EMI's obligations under the DMCA. What is more, having quickly analyzed the list of songs that you attached to your letter, we believe that your assertion that "EMI has not authorized any of its recordings to be copied, distributed or performed" as is done on sideload.com and that "EMI has a good faith belief that use of the material in the manner complained of is not authorized by EMI, its respective agents or the law" is factually incorrect.

First, your notice is inadequate under the DMCA. Specifically, as you know, the 17 U.S.C. § 512(c)(3)(A) provides that:

To be effective under this subsection, a notification of claimed infringement must be a written communication provided to the designated agent of a service provider that includes substantially the following:

- (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- (ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.
- (iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.
- (iv) Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.
- (v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.
- (vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Steven B. Fabrizio, Esq.
September 13, 2007
Page 3 of 3

Thus, while you correctly supplied a representative list of multiple copyrighted works located on a single site in your notification as per 17 U.S.C. § 512(c)(3)(A)(ii), you still must comply with the requirements of § 512(c)(3)(A)(iii) – that is, you must specifically identify the material that is to be removed or access to which is to be disabled. A representative list such as the one you have provided is insufficient to comply with 17 U.S.C. § 512(c)(3)(A)(iii).


Moreover, we believe that some of the artists on your list and/or on your website are no longer represented by EMI; and that some songs you listed are freely available for digital download. For example, the first band that is listed in your spreadsheet is "Air". MP3tunes features an "Air" track – "Once Upon A Time" – on the first page of sideload.com. That track is from the popular online music magazine, *Filter*, and is accessed by the URL <http://filter-mag.com/index.php?id=13977&c=6>. We have no reason to believe that the *Filter* track is anything but lawful.

Similarly, your list also includes the track "Nobody Move, Nobody Get Hurt" by the band "We Are Scientists" from the URL http://media.spin.com/features/band_of_the_day/audio/2005/11/nobody_move_nobody_get_hurt_hi.mp3. *Spin* is a popular online music magazine. All the labels distribute MP3s promotionally. We believe that it is likely that this track is such a promotional distribution and is lawfully available. The same is true for the tracks that you list from the *Paste Store*, which is a store which often distributes promotional tracks provided to them.

Nonetheless, as previously stated, if you send us a list of additional tracks to which EMI and its affiliates own the copyrights, provide information reasonably sufficient to permit our client to locate the material, and accurately represent that the listed tracks are not legally digitally available for copying (along with the remaining required elements of 17 U.S.C. § 512(c)(3)(A)), MP3tunes will disable those songs from sideloading as well.

Please feel free to contact me if you would like to discuss this matter further. This letter is written without prejudice to the rights, claims and/or defenses of MP3tunes or its affiliates, all of which are hereby expressly reserved.

Sincerely,



Ira S. Sacks

ISS/es
cc: Michael Robertson (via email)

Service of Process Instruction Sheet

a full support attorney service

Work Order No:

86114

Firm:

Wertz McDade Wallace Moot & Brower
945 Fourth Avenue

San Diego CA 92101

Phone: 619 233-1888

Fax No: 619 696-9476

Date: 9/18/2007

Court: SDSC

Case No.: 37-2007-00039849-CL- File No.: 5564.002

Pltf: San Diego Community College District

Deft: Voz Alta Project, a suspended CA Corp.

Attention: Patrick

RUSH DO TODAY

Extra Charges Will Apply

Person or Entity Served: [Indicate Entity Exactly As You Want It To Appear On Your Proof Of Service]

Entity: Court Filing

Documents

Request for Dismissal

Address

CT 330 West Broadway

San Diego

CA

92101

Phone:

Map Page:

Hearing Date:

Time:

Dept./Div.:

Last Day For Personal Service:

Last Day For Substituted Service

Description: Race: Sex: Age: Height: Weight: Hair: Glasses Yes No

Special Instructions:

- Personal Service
 Substituted Service
 Posted and Mailed
 Bad Address
 Property Inspection:

Date Served:

Time Served:

Server:

Central Attorney Service, Inc.

1241 State Street , San Diego, CA 92101 (619)233-3344 Fax (619)233-3350

**UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

142672 - KD

**September 20, 2007
15:18:48**

Civ Fil Non-Pris

USAO #: CIVIL FILING; 07CV1844
Judge.: WILLIAM Q HAYES
Amount.: \$350.00 CK
Check#: BC 6702

Total-> \$350.00

**FROM: MP3TUNES, LLC V. EMI GRP, PLC,
CIVIL FILING**

CIVIL COVER SHEET

JS 44 (Rev. 11/04)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS: MP3TUNES, LLC; DEFENDANTS: EMI GROUP, PLC, EMI GROUP NORTH AMERICA, INC., EMI GROUP NORTH AMERICA HOLDINGS INC. and EMI MUSIC NORTH AMERICA, LLC

(b) County of Residence of First Listed Plaintiff: San Diego; County of Residence of First Listed Defendant: London, England

(c) Attorney's (Firm Name, Address, and Telephone Number): Bennett Bigman (No. 115426), Dreier Stein & Kahan LLP, 1620 26th Street, 6th Floor, Santa Monica, CA 90404-4012

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)

'07 CV 1844 WQH (NLS)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excl. Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise
REAL PROPERTY: 210 Land Condemnation, 220 Foreclosure, 230 Rent Lease & Ejectment, 240 Torts to Land, 245 Tort Product Liability, 290 All Other Real Property
PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury
TORTS: 362 Personal Injury—Med. Malpractice, 365 Personal Injury—Product Liability, 368 Asbestos Personal Injury Product Liability, 370 Other Fraud, 371 Truth in Lending, 380 Other Personal Property Damage, 385 Property Damage Product Liability
PRISONER PETITIONS: 510 Motions to Vacate Sentence, Habeas Corpus, 530 General, 535 Death Penalty, 540 Mandamus & Other, 550 Civil Rights, 555 Prison Condition
FORFEITURE/PENALTY: 610 Agriculture, 620 Other Food & Drug, 625 Drug Related Seizure of Property 21 USC 881, 630 Liquor Laws, 640 R.R. & Truck, 650 Airline Regs., 660 Occupational Safety/Health, 690 Other
LABOR: 710 Fair Labor Standards Act, 720 Labor/Mgmt. Relations, 730 Labor/Mgmt. Reporting & Disclosure Act, 740 Railway Labor Act, 790 Other Labor Litigation, 791 Empl. Ret. Inc. Security Act
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157
PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 840 Trademark
SOCIAL SECURITY: 861 HIA (1395f), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g))
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609
OTHER STATUTES: 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit, 490 Cable/Sat TV, 810 Selective Service, 850 Securities/Commodities/Exchange, 875 Customer Challenge 12 USC 3410, 890 Other Statutory Actions, 891 Agricultural Acts, 892 Economic Stabilization Act, 893 Environmental Matters, 894 Energy Allocation Act, 895 Freedom of Information Act, 900 Appeal of Fee Determination Under Equal Access to Justice, 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC § 2201; 17 USC § 512(f)
Brief description of cause: Action for declaratory relief and violations of the Digital Millennium Copyright Act.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$0.00 UNKNOWN CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE: September 20, 2007 SIGNATURE OF ATTORNEY OF RECORD: [Signature]

FOR OFFICE USE ONLY: RECEIPT # 192672 AMOUNT \$350 APPLYING IFF 10/9/2007 JUDGE MAG. JUDGE