

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ATLANTIC RECORDING CORPORATION; )  
 CAPITOL RECORDS, LLC; ELEKTRA )  
 ENTERTAINMENT GROUP INC.; )  
 INTERSCOPE RECORDS; MOTOWN RECORD )  
 COMPANY, L.P.; PRIORITY RECORDS LLC; )  
 UMG RECORDINGS, INC.; )  
 VIRGIN RECORDS AMERICA, INC.; and )  
 WARNER BROS. RECORDS INC., )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 PROJECT PLAYLIST, INC. )  
 )  
 Defendant. )

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Civil Action No. 08-CIV-3922-DC

**ECF CASE**

COMPLAINT FOR  
DAMAGES AND  
INJUNCTIVE RELIEF

Plaintiffs allege as follows:

**INTRODUCTION**

1. Plaintiffs are leaders and innovators in the development, marketing, sales, promotion, and distribution of recorded music around the world. Plaintiffs invest substantial sums of money, as well as time, effort, and creative talent, to discover and develop recording artists, and to create, advertise, promote, sell, and license phonorecords embodying the performances of their exclusive recording artists. Plaintiffs’ extensive and diverse catalogs of music include well-known and legendary recording artists such as U2, Eminem, Elton John, The Beatles, The Beach Boys, Bon Jovi, Coldplay, and Sheryl Crow, to name but a few.

2. Defendant Project Playlist is the owner and operator of the website <http://www.projectplaylist.com>. The Project Playlist website holds itself out as “an information location tool” that enables its users easily to “find, play and share” with others the “world of

music” available on the Internet, “wherever and whenever [they] choose.”<sup>1</sup> In fact, as Defendant well knows, Project Playlist’s exploitation of this “world of music” amounts to nothing more than an enormous infringement of Plaintiffs’ copyrighted sound recordings for Defendant’s commercial gain. Project Playlist performs and reproduces Plaintiffs’ valuable works (and induces and enables others to do so) without any authorization whatsoever and without paying any compensation whatsoever to Plaintiffs. And, by providing to the public the fruits of Plaintiffs’ investment of money, labor, experience and expertise, Defendant’s illegal enterprise inflicts tremendous damage on Plaintiffs’ business.

3. To accomplish its infringement, Project Playlist has compiled (and continues to compile) a vast index of links to sound recordings that are hosted on third-party websites on the Internet as well as, in many cases, on Project Playlist’s own computer servers. Users can quickly and easily search the index for recordings by their favorite artists. At the click of a mouse, Project Playlist instantly streams a digital performance of the selected recording to the user, who can listen to it on his or her computer or mobile device. Project Playlist also promotes a number of additional features, each of which is specially designed to expand Defendant’s illegal exploitation of Plaintiffs’ recordings to the greatest possible extent. Among other things, Project Playlist: (a) instructs users how to download permanent copies of recordings they find on the index; (b) induces users to upload infringing content to third-party sites and then add the associated link to Project Playlist’s index; (c) encourages users to create “playlists” of favorite recordings for later use; and (d) shows users how to embed playlists on other websites, from which Plaintiffs’ sound recordings are performed illegally for countless others. Indeed, Project

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<sup>1</sup> <http://www.playlist.com/static/node/491.html>.

Playlist's entire business model is premised on making Plaintiffs' copyrighted works available, for free, to anyone with a computer and a connection to the Internet.

4. Defendant is well aware that the overwhelming majority of the sound recordings in its index are infringing, and that the overwhelming majority of the third-party websites that host these recordings do so illegally. Defendant also knows that its own hosting of the Plaintiffs' sound recordings is illegal. Nevertheless, Defendant aggressively touts its service as a legitimate enterprise when, in fact, Project Playlist's business is built on and supported by the infringement of Plaintiffs' copyrighted works. As is true of other Internet businesses, the greater the volume of users Project Playlist can attract, the greater its advertising revenue. Project Playlist therefore sets about to increase its user base and profits – all at Plaintiffs' expense – by portraying itself as an innovative way to find music on the Internet. However, theft is not innovation, and the Internet does not grant a license to steal.

5. In short, Defendant's entire business amounts to nothing more than a massive infringement of Plaintiffs' exclusive rights under the Copyright Act and New York law. Plaintiffs thus bring this lawsuit to end Defendant's massive, ongoing infringement of their copyrights and to recover damages for the harm caused by Defendant's activities. Plaintiffs also seek a preliminary and permanent injunction to stop Defendant's brazen violation of Plaintiffs' rights.

#### **NATURE OF THE ACTION**

6. This is a civil action seeking injunctive relief and damages for copyright infringement under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and for unfair competition and common law copyright infringement under New York law with respect to Plaintiffs' sound recordings fixed prior to February 15, 1972. Under Section 106 of the Copyright Act, 17 U.S.C.

§ 101 *et seq.*, Plaintiffs have the distinct, severable and exclusive rights to, among other things, reproduce and distribute their works to the public and to perform those works publicly by means of digital audio transmissions. 17 U.S.C. § 106. Under New York law, Plaintiffs also hold exclusive copyrights with respect to sound recordings fixed prior to February 15, 1972.

7. Plaintiffs seek statutory or actual damages for willful copyright infringement in the maximum amounts allowed under Section 504 of the Copyright Act, as well as compensatory and punitive damages, and an accounting, a constructive trust, and disgorgement to remedy Defendant's violations of New York state law.

### **JURISDICTION AND VENUE**

8. The Court has subject matter jurisdiction over the Copyright Act claims pursuant to 28 U.S.C. §§ 1331 and 1338(a), and over the state law claims pursuant to 28 U.S.C. §§ 1338(b) and 1367(a), as those claims relate to the same case or controversy.

9. The Court has personal jurisdiction over Defendant. Through its interactive online services, Defendant enters into contracts and other arrangements with residents of New York. Performance of those contracts calls for the knowing and repeated transmission of infringing copies of sound recordings over the Internet to and from New York residents. Moreover, Defendant's online services purposely and actively interact with computers located in New York, including those of the Plaintiffs. Defendant regularly solicits business in New York, including through ValueClick Media, an advertising sales agency with an office in New York, and derives substantial revenue from goods and services used in New York. Defendant's conduct has caused and continues to cause injury to Plaintiffs in New York.

10. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), (c), and (d).

## **THE PLAINTIFFS AND THEIR BUSINESS**

11. Plaintiffs are well-known record companies. They are in the business of producing, manufacturing, distributing, selling, licensing, and facilitating the distribution and sale of sound recordings in the United States. The considerable artistic and technical quality of Plaintiffs' sound recordings is known in New York, and throughout both the United States and the world.

12. Plaintiff Atlantic Recording Corporation is a Delaware corporation with its principal place of business in the State of New York.

13. Plaintiff Capitol Records, LLC is a Delaware limited liability company with its principal place of business in the State of New York.

14. Plaintiff Elektra Entertainment Group Inc. is a Delaware corporation with its principal place of business in the State of New York.

15. Plaintiff Interscope Records is a California general partnership, with its principal place of business in the State of California.

16. Plaintiff Motown Record Company, L.P. is a California limited partnership with its principal place of business in the State of California.

17. Plaintiff Priority Records LLC is a Delaware limited liability company with its principal place of business in the State of California.

18. Plaintiff UMG Recordings, Inc. is a Delaware corporation with its principal place of business in the State of California.

19. Plaintiff Virgin Records America, Inc. is a California corporation with its principal place of business in the State of New York.

20. Plaintiff Warner Bros. Records Inc. is a Delaware corporation with its principal place of business in the State of California.

21. Plaintiffs are the copyright owners or owners of exclusive rights (by way of agreement) with respect to the vast majority of copyrighted sound recordings legitimately sold in the United States. Under the Copyright Act, Plaintiffs have the exclusive rights to, among other things, “reproduce the copyrighted work[s],” “distribute copies or phonorecords of the copyrighted work[s] to the public,” and “perform the copyrighted work[s] publicly by means of a digital audio transmission,” as well as to authorize or license such activities. 17 U.S.C. § 106.

22. Additionally, Plaintiffs have entered into various agreements by which they obtained the common law copyright rights in sound recordings embodying certain performances that were initially “fixed” prior to February 15, 1972 (the “Pre-1972 Recordings”). These performances are subject to protection under state law rather than federal copyright law, and the Copyright Act cannot be used to “annul[] or limit[]” those rights until February 15, 2067.” 17 U.S.C. § 301(c). Pursuant to these agreements and New York common law, Plaintiffs possess, among other things, the exclusive and complete rights to manufacture, reproduce, distribute, sell, and perform these recordings.

23. In addition to manufacturing, distributing, selling, and licensing phonorecords in the form of CDs, cassettes, and other tangible media, Plaintiffs also sell, distribute, and license their sound recordings in the form of digital audio files delivered and performed via the Internet. Many online services provide non-interactive broadcasts of these sound recordings pursuant to a statutory license to do so, while still others – including Apple’s iTunes, Rhapsody, AOL Music, and Yahoo! Music – provide these sound recordings for authorized consumer purchase pursuant to agreements that the services negotiated with Plaintiffs.

24. Plaintiffs have invested and continue to invest significant money, time, effort, and creative talent to discover and develop recording artists, and to create, manufacture, advertise, promote, sell, and license sound recordings embodying their performances. Plaintiffs, their recording artists, and others in the music industry are compensated for their creative efforts and monetary investments largely from the sale and distribution of their sound recordings to the public, and from other exploitation of such sound recordings, including the authorized online sale, distribution, and performances described above.

25. A non-exhaustive, illustrative list of Plaintiffs' federally copyrighted sound recordings that Defendant illegally has reproduced, distributed, and performed for its users is attached hereto as Exhibit A. Plaintiffs have received Certificates of Copyright Registration from the Register of Copyrights for these copyrighted sound recordings.

26. A non-exhaustive, illustrative list of Pre-1972 Recordings in which Plaintiffs hold exclusive rights under New York law and which Defendant illegally has reproduced, distributed, and performed for its users is attached hereto as Exhibit B.

### **THE DEFENDANT AND ITS ILLEGAL BUSINESS**

27. Defendant Project Playlist, Inc., is a California company with its primary place of business in Beverly Hills, California. The company is privately held and, on information and belief, is at least in part owned by KR Capital Partners, LLC. Defendant has been operating <http://www.projectplaylist.com> since at least December 2006, and has become one of the most popular interactive streaming music sites on the Internet,<sup>2</sup> with more than 600,000 daily active

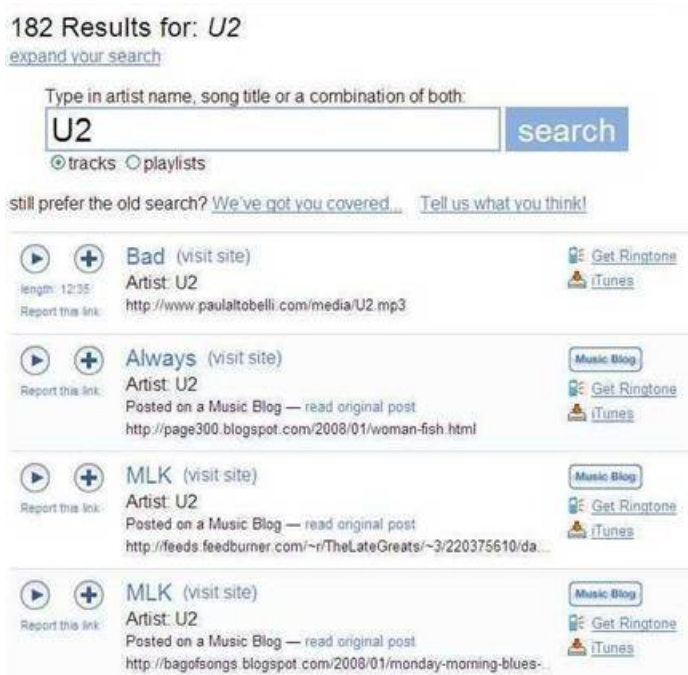
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<sup>2</sup> <http://gigaom.com/2007/09/26/project-playlist>.

users,<sup>3</sup> nearly 9.5 million average pageviews per day,<sup>4</sup> and year-over-year user-base growth of more than 235% in 2007.<sup>5</sup>

### **The Project Playlist Website**

28. Project Playlist describes itself as “an information location tool . . . devoted entirely to the world of music.”<sup>6</sup> From its homepage, users can search for music by typing in an artist name, a song name, or a combination of both. Project Playlist then instantly displays dozens, if not hundreds or thousands, of sites – nearly all infringing – where recordings of the requested song or artist are available for streaming and downloading. The following screenshot is an example of such a list, which contains copyrighted sound recordings by the group U2, owned by Plaintiff UMG Recordings, Inc.:



<sup>3</sup> [http://www.adster.com/buy/panel.php?panel\\_id=10162](http://www.adster.com/buy/panel.php?panel_id=10162).

<sup>4</sup> *Id.*

<sup>5</sup> <http://siteanalytics.compete.com/projectplaylist.com?metric=uv>.

<sup>6</sup> <http://www.playlist.com/static/node/491.html>.



29. Project Playlist makes these works available by compiling an ever-expanding index of links to music files hosted on websites on the Internet. Most of these music files are hosted by third parties that are neither copyright holders nor licensees. In many cases, Project Playlist hosts these music files on its own servers.

30. Project Playlist compiles its index of sound recordings in at least two ways. First, Project Playlist has developed a “spider,” which is a computer program that, at Project Playlist’s direction and according to its specifications, browses the Internet and collects links to music files in a methodical, automated manner. “Spidering” is a purposeful and interactive process that involves sending information to and from Project Playlist’s computer servers to other computer servers around the world, including in New York. The Project Playlist spider searches only for music files. Project Playlist programs its spider to collect these music files and add them to its index, even though it knows that, in the overwhelming majority of cases, neither Project Playlist nor the hosting sites located by its spider are authorized by the copyright owner to reproduce, distribute, or perform those works.

31. Second, Project Playlist supplements the infringing files found by its spider by encouraging its users “to submit URLs to music files they find while browsing the Internet.”<sup>7</sup> Project Playlist is aware that most of these user-submitted URLs correspond to files that are illegally hosted. Indeed, the site’s discussion board frequently is used as a clearinghouse for users to request that new infringing files be made available by other users.<sup>8</sup>

32. Project Playlist says on its website that it attempts to limit the reach of its spider to websites that “meet reasonable criteria for having the legal right to post the music files,” and

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<sup>7</sup> *Id.*

<sup>8</sup> See, e.g., <http://www.playlist.com/forum/general/topic/2228004> (“Request”).

that it tells users “to add only those hyperlinks to music files that they reasonably believe are hosted legally.”<sup>9</sup> But whatever it claims publicly, even the most cursory review of the Project Playlist index reveals that it is composed primarily of links to sites that have no legal right to perform the music files they host. Project Playlist is well aware of this fact, but it nevertheless advertises all of the content available on its index as “free music.”<sup>10</sup>

33. Once a sound recording appears on the index, Project Playlist will perform the work – at the click of the Play (▶) button – through the proprietary music player built into its website. Project Playlist also is compatible with other music players, such as Windows Media Player, Real Media Player, and Winamp.<sup>11</sup> On information and belief, this “open system” design causes sound recordings to be copied from their original format into other formats before being rendered audible.

34. In addition to performing sound recordings, Project Playlist enables and encourages the reproduction and distribution of infringing material. Every search result returned by Project Playlist displays and provides a link (denoted as “visit site”) to the web address where the content is hosted, so that users easily (and illegally) can download a permanent copy of the infringing content for later, off-line use. Defendant also has enabled and invited users to “podcast” sound recordings found on the Project Playlist index. “Podcasting” is a simple, push-of-the-button mechanism for downloading content, and is of particular concern in the context of

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<sup>9</sup> <http://www.playlist.com/static/node/491.html>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

illicit file-sharing because of “its ability to be syndicated, subscribed to, and downloaded automatically when new content is added.”<sup>12</sup>

35. Project Playlist encourages its users to create personal accounts, though such accounts are not required in order to search for, perform, or download infringing content. These personal accounts require users to enter into a contractual agreement that allows access to additional features of the Project Playlist website. On information and belief, many of these account holders are located in New York. One feature made available to account holders is the ability to create and store personal “playlists,” which are collections of links to music files located on websites on the Internet. Project Playlist characterizes this feature “as a process of bookmarking ‘favorites,’” which then are available for repeated, free and unauthorized future listening.<sup>13</sup> Here is a sample playlist, constructed of a handful of Plaintiffs’ copyrighted works available through Project Playlist:



36. Project Playlist also invites account holders to “embed” their playlists on social networking sites like MySpace, Facebook, and Blogger. Defendant seeks to capitalize on the

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<sup>12</sup> <http://en.wikipedia.org/wiki/Podcasting>.

<sup>13</sup> <http://www.playlist.com/static/node/491.html>.

massive user bases of these sites – MySpace alone already had 22 million users in July 2005<sup>14</sup> – to increase its own user base and, by extension, its corporate valuation. As Defendant explains, by embedding their playlists on a webpage, users “can listen to the playlist and thus the remotely located media files wherever and whenever [they] choose.”<sup>15</sup>

37. Project Playlist also copies to its own servers thousands (if not millions) of the music files identified on its search index, so that it can perform those works to its users more easily.<sup>16</sup> This process of creating server copies ensures that Project Playlist’s users will be able to hear requested recordings instantaneously upon demand, regardless of any service limitations that may exist on the third-party site that originally hosted the files. By making and maintaining copies of sound recordings on its own servers (which itself involves illegal reproductions), Project Playlist thus increases its technical ability to engage in illegal performances of Plaintiffs’ copyrighted sound recordings.

38. Recognizing that the increased availability of wireless broadband service creates a vast potential new market, Project Playlist also has begun optimizing its site for use on iPhones and iPods,<sup>17</sup> as the screenshot below demonstrates. By making its site compatible with iPods and similar music players, Project Playlist further undermines demand for legitimate sales and licensing arrangements.

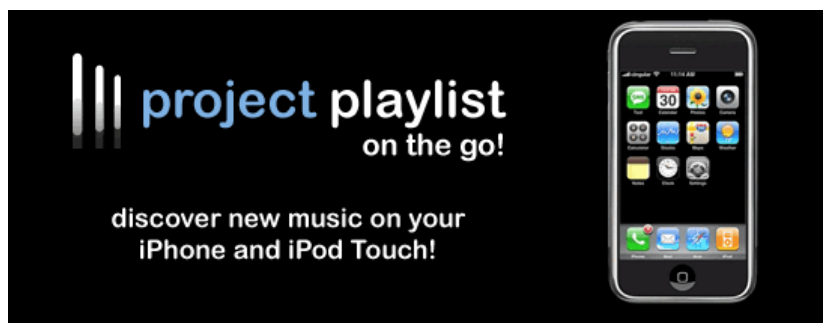
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<sup>14</sup> [http://www.businessweek.com/technology/content/jul2005/tc20050729\\_0719\\_tc057.htm](http://www.businessweek.com/technology/content/jul2005/tc20050729_0719_tc057.htm).

<sup>15</sup> <http://www.playlist.com/static/node/491.html> (emphasis added).

<sup>16</sup> <http://www.playlist.com/static/node/495.html>.

<sup>17</sup> <http://www.playlist.com/node/16067100>.



39. Defendant's domain name – projectplaylist.com – is linked inseparably to Defendant's piracy. Defendant has marketed and promoted its brand and domain name such that they are now well known among Defendant's target consumer audience. The name ProjectPlaylist.com has become synonymous with free music, almost all of which infringes the true owners' copyrights. The name ProjectPlaylist.com is thus part and parcel of Defendant's infringing scheme, and its prominence among Internet users greatly exacerbates the harm to Plaintiffs.

#### **Project Playlist's Infringement of Plaintiffs' Copyrights**

40. Project Playlist infringes Plaintiffs' copyrights, both directly and secondarily. Project Playlist intentionally selects particular sound recordings and creates and stores copies of them on its computer servers without authorization. Project Playlist also makes, and purposely facilitates the making of, unauthorized reproductions of Plaintiffs' sound recordings.

41. Similarly, by purposely displaying and providing a link to the websites where infringing recordings are hosted (which, by its terms, expressly encourages the user to "visit site"), Project Playlist induces, contributes to, and profits from, the illegal reproduction committed by many of its users when they download the recordings from those sites. A discussion forum on the Project Playlist site points users to an instructional video on YouTube

that provides step-by-step instructions for engaging in these unauthorized downloads.<sup>18</sup> Another instructional video – appropriately labeled “Project Playlist – Free Music” – lauds the fact that Defendant makes no attempt to mask the location of the files that it streams.<sup>19</sup>

42. Moreover, Defendant induces, contributes to, and profits from, the illegal reproduction that occurs through its “podcast” feature, which (until recently) allowed full playlists of music – that is, up to one hundred songs at a time – to be downloaded illegally at the push of a single button. Although Project Playlist removed the podcasting button from its site in November 2007, the feature remains fully functional: Both a user discussion forum hosted on Project Playlist,<sup>20</sup> as well as another instructional video on YouTube (this one titled “ProjectPlaylist Podcast No Longer Available . . . Till Now”),<sup>21</sup> instruct users on how to re-enable the illicit downloading feature with minimal effort.

43. In addition to making, and facilitating the making of, unauthorized reproductions of Plaintiffs’ sound recordings Defendant also performs, and purposely facilitates the performance of, Plaintiffs’ copyrighted works without authorization. As Project Playlist itself explains, when a user “initiate[s] the linking process from projectplaylist.com, the song appears to play through [the Project Playlist] site.”<sup>22</sup> Project Playlist thus itself infringes Plaintiffs’ exclusive performance right whenever it streams one of Plaintiffs’ copyrighted sound recordings

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<sup>18</sup> See <http://www.playlist.com/forum/general/topic/2180772> (citing <http://www.youtube.com/watch?v=OzbfwYGxLVo>).

<sup>19</sup> <http://www.youtube.com/watch?v=XIg7rhmar58>.

<sup>20</sup> <http://www.projectplaylist.com/forum/general/topic/2015844>.

<sup>21</sup> <http://www.youtube.com/watch?v=ZSJBmBDGrOw>.

<sup>22</sup> <http://www.playlist.com/static/node/491.html>.

to a user. Defendant also has actual and constructive knowledge that it links users to unauthorized third-party sites so that users can initiate infringing performances of Plaintiffs' copyrighted works.

44. Evidence of Defendant's actual and constructive knowledge that it links to infringing sites is overwhelming, as demonstrated not only by Defendant's admission that it "may link to some music files that infringe the copyright owner's copyright interest in that file,"<sup>23</sup> but also by the results returned by its search engine. As Defendant knows, many of the URLs that appear on the index represent sites that obviously are hosted by students (typically at .edu web addresses) or else are sites commonly known to host infringing content (such as [www.rapidshare.com](http://www.rapidshare.com)). There also are numerous discussions in Project Playlist's "forum" about the massive amount of infringing content that is available on Project Playlist.

45. Defendant does not link to this infringing content inadvertently. As the screenshot below demonstrates, instructional material created by Project Playlist's employees helps users to find material that is obviously copyrighted. In fact, those same employees publicly display their own use of Defendant's website to find and stream infringing material:

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<sup>23</sup> <http://images.projectplaylist.com/static/node/147435.html>.



46. Defendant’s search engine also provides a “Did you mean” feature so that common misspellings of popular, copyrighted works will not prevent users from enjoying Project Playlist’s voluminous catalogue of infringing materials. The following screenshot – created by entering a common misspelling of Interscope Records artist Gwen Stefani – illustrates this capability, as well as Defendant’s knowledge that its website is used to conduct and facilitate the performance of copyrighted sound recordings without authorization:



47. Finally, Defendant infringes Plaintiffs’ exclusive distribution rights in their sound recordings by inducing and instructing its users to upload infringing content to third-party



websites, so that it can be indexed and streamed by Project Playlist.<sup>24</sup> Defendant even provides a “forum” designed to teach its users – including users in New York – how to accomplish such illegal distribution of Plaintiffs’ copyrighted works.

48. Defendant commits all these acts of infringement, notwithstanding that it has the capability to distinguish which content is legally hosted on third-party sites and which is not. If it chose to do so, Defendant easily could stop or limit infringement simply by filtering the content it indexes. Instead, Defendant intentionally makes *all* content available to users, regardless of its legality. Defendant refrains from filtering out infringing works precisely because doing so would dramatically decrease the content available to users, thereby undermining Defendant’s illegitimate business model. Defendant’s wide-scale infringement drives its user base, which in turn drives advertising revenues and the company’s valuation.

49. Defendant’s unlawful reproduction, distribution and performance of hundreds of thousands of Plaintiffs’ copyrighted works has harmed, and will continue to harm, Plaintiffs. If Defendant’s users can listen on-demand to any sound recording they want for free, they will have little or no incentive to purchase authorized digital copies of those sound recordings or patronize other streaming music sites that pay for their streaming licenses. Defendant’s services thus have acted and will continue to act as a substitute that displaces significant numbers of legitimate sales and licensing agreements.

50. Defendant’s disregard for Plaintiffs’ rights has been reaffirmed repeatedly over the previous few months. On at least six occasions since October 4, 2007, Plaintiffs’ authorized representative has given Defendant notice, pursuant to 17 U.S.C. § 512(c)(3), of its infringing

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<sup>24</sup> See, *e.g.*, <http://www.playlist.com/forum/support/topic/2223204> (assistance provided by Project Playlist staff member); <http://www.playlist.com/forum/support/topic/2226820> (assistance provided by another user).

behavior, notwithstanding the fact that Defendant was already fully aware of the infringing activity, which is readily apparent to anyone who visits the Project Playlist site. In some cases, Defendant has failed to act in response to these notices and in others has done so only after lengthy periods of inaction.

### **COUNT ONE**

#### **(Direct Infringement in Violation of 17 U.S.C. §§ 106 and 501)**

51. Plaintiffs incorporate by reference the preceding paragraphs as if set forth herein.

52. Defendant, without permission or consent of Plaintiffs, makes unauthorized reproductions of Plaintiffs' copyrighted sound recordings, and engages in unauthorized performances including but not limited to those copyrighted sound recordings listed in Exhibit A hereto. Such reproduction and performance constitutes infringement of Plaintiffs' registered copyrights and the exclusive rights under copyright in violation of 17 U.S.C. §§ 106(1), 106(6).

53. By rendering audible copyrighted sound recordings, Defendant, without permission or consent of Plaintiffs, engages in unauthorized public performances by means of digital audio transmissions. Such public performances constitute infringement of Plaintiffs' registered copyrights and the exclusive rights under copyright in violation of 17 U.S.C. § 106(6).

54. The infringement of Plaintiffs' rights in each of their copyrighted sound recordings constitutes a separate and distinct act of infringement.

55. Defendant's acts of infringement are willful, intentional and purposeful, in disregard of and indifferent to the rights of Plaintiffs.

56. As a direct and proximate result of Defendant's infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to the maximum statutory damages, pursuant to 17 U.S.C. § 504(c), in the amount of \$150,000 with respect to each work

infringed, or such other amounts as may be proper under 17 U.S.C. § 504(c). In the alternative, at Plaintiffs' election pursuant to 17 U.S.C. § 504(b), Plaintiffs are entitled to their actual damages, including Defendant's profits from infringement, in amounts to be proven at trial.

57. Plaintiffs are entitled to their costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

58. Defendant's conduct is causing, and, unless enjoined by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to a preliminary injunction and a permanent injunction prohibiting infringement of Plaintiffs' copyrights and exclusive rights under copyright.

## **COUNT TWO**

### **(Secondary Infringement in Violation of 17 U.S.C. §§ 106(1), 106(3), 106(6), and 501)**

59. Plaintiffs incorporate by reference the preceding paragraphs as if set forth herein.

60. As detailed above, users of and sites associated with Defendant's website and software are engaged in repeated and pervasive infringement of Plaintiffs' exclusive rights to reproduce, distribute and publicly perform their copyrighted recordings. Such acts of infringement include not only the illegal performances made by many sites to which Project Playlist links, 17 U.S.C. § 106(6), but also the uploading of copyrighted material to third-party sites in which Defendant encourages its users to engage, 17 U.S.C. § 106(3).

61. Defendant is liable under the Copyright Act for inducing the infringing acts of the users of its website and software. Defendant operates its website and distributes its software with the object of promoting their use to infringe Plaintiffs' copyrights.

62. Defendant's inducement of copyright infringement is obvious from, among other things: (a) Defendant's attempt to attract users by assembling an easily searchable library of recordings consisting overwhelmingly of infringing content available for easy streaming and downloading on any device with access to the Internet; (b) instructional material posted by Defendant itself that provides step-by-step instructions for both uploading and finding infringing material; (c) the many statements and features on Defendant's website that encourage and facilitate copyright infringement by Defendant's users, among them the "podcasting" feature and a forum wherein users can request and exchange information about infringing content that will ultimately be linked to by Project Playlist; (d) Defendant's repeated assurances to users that its site is entirely legal despite actual knowledge otherwise; and (e) Defendant's effort to increase its audience and thereby generate advertising revenue by offering users the ability to stream and download infringing content for free.

63. Defendant knowingly and intentionally entices, persuades, and causes users of its website and software to reproduce, distribute, and publicly perform Plaintiffs' sound recordings, including but not limited to those sound recordings listed in Exhibit A hereto, in violation of Plaintiffs' copyrights.

64. Through these activities, among others, Defendant knowingly and intentionally takes steps that are substantially certain to result in direct infringement of Plaintiffs' sound recordings, including but not limited to those sound recordings listed in Exhibit A hereto, in violation of Plaintiffs' copyrights.

65. Despite its knowledge that infringing material is made available to users by means of Project Playlist, Defendant has failed to take reasonable steps to minimize the infringing capabilities of its site.

66. Defendant is liable as a contributory copyright infringer for the infringing acts of users of its website and software. Defendant has actual and constructive knowledge of both the infringing activity of the sites to which it links and the infringing activity of its users. Defendant knowingly causes and otherwise materially contributes to these unauthorized reproductions, distributions, and public performances of Plaintiffs' copyrighted sound recordings, including but not limited to those sound recordings listed in Exhibit A hereto, in numerous ways. Among these acts of material contribution are Defendant's search engine, its "Did you mean" function, its discussion forum, complete with employee responses and links to off-site instructional videos that provides detailed guides to infringement, and the "podcast" function.

67. Defendant is vicariously liable for the infringing acts of users of its website and software. Defendant has the right and ability to supervise and control the infringing activities that occur through the use of its website and software, and at all relevant times has derived a direct financial benefit from the infringement of Plaintiffs' copyrights. Defendant has refused to take any meaningful action to prevent the widespread infringement by its users. Defendant is therefore vicariously liable for the unauthorized reproduction, distribution, and public performance of Plaintiffs' copyrighted sound recordings, including but not limited to those sound recordings listed in Exhibit A hereto.

68. The infringement of Plaintiffs' rights in each of their copyrighted sound recordings constitutes a separate and distinct act of infringement.

69. Defendant's acts of infringement are willful, intentional and purposeful, in disregard of and indifferent to the rights of Plaintiffs.

70. As a direct and proximate result of Defendant's infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to the maximum statutory

damages, pursuant to 17 U.S.C. § 504(c), in the amount of \$150,000 with respect to each work infringed, or such other amounts as may be proper under 17 U.S.C. § 504(c). In the alternative, at Plaintiffs' election pursuant to 17 U.S.C. § 504(b), Plaintiffs are entitled to their actual damages, including Defendant's profits from infringement, in amounts to be proven at trial.

71. Plaintiffs are entitled to their costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

72. Defendant's conduct is causing, and, unless enjoined by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to a preliminary injunction and a permanent injunction prohibiting infringement of Plaintiffs' copyrights and exclusive rights under copyright.

### **COUNT THREE**

#### **(Common Law Copyright Infringement of Pre-1972 Recordings)**

73. Plaintiffs incorporate by reference the preceding paragraphs as if set forth herein.

74. The Pre-1972 Recordings are subject to common law copyright protection under New York law. As the owners of valid common law copyrights in the Pre-1972 Recordings, Plaintiffs possess the exclusive rights to sell, copy, distribute, and perform these recordings.

75. Plaintiffs have not granted or licensed to Defendant the right to copy, distribute, or perform the Pre-1972 Recordings in any manner, including by digital transmission. Defendant's creation and dissemination of unauthorized copies of the Pre-1972 Recordings, including but not limited to those recordings listed in Exhibit B hereto, therefore constitutes infringement of Plaintiffs' common law copyrights in the Pre-1972 Recordings.

76. As a direct and proximate result of Defendant's deliberate, wanton, and willful copyright violations, Plaintiffs have suffered damages in amounts to be proven at trial. Plaintiffs are entitled to compensatory damages as well as punitive damages.

77. Defendant's conduct is causing, and, unless enjoined by this Court, will continue to cause Plaintiffs irreparable injury that cannot be fully compensated or measured in money damages. Plaintiffs have no adequate remedy at law and are entitled to injunctive relief prohibiting Defendant from further violating Plaintiffs' rights in the Pre-1972 Recordings.

#### **COUNT FOUR**

##### **(Unfair Competition as to Pre-1972 Recordings)**

78. Plaintiffs incorporate by reference the preceding paragraphs as if set forth herein.

79. Defendant has usurped for itself the fruits of Plaintiffs' financial and creative investments. Defendant is profiting from the results of Plaintiffs' expenditures and skill without having to incur any expense or risk of its own in relation to the Pre-1972 Recordings.

80. Defendant's acts constitute a misappropriation of the rights of Plaintiffs in and to the Pre-1972 Recordings, and constitute misappropriation and unfair competition under New York law.

81. As a direct and proximate result of defendant's conduct, the plaintiffs are entitled to recover all proceeds and other compensation received or to be received by Defendant arising from Defendant's infringements of Plaintiffs' rights to the Pre-1972 Recordings. Plaintiffs are entitled to an accounting to ascertain the amount of such profits and compensation.

82. As a direct and proximate result of Defendant's misappropriation and unfair competition, Plaintiffs have been damaged, and Defendant has been unjustly enriched, in amounts to be proven at trial. Plaintiffs are entitled to compensatory damages and/or restitution

and disgorgement, including the imposition on Defendant of a constructive trust for the benefit of Plaintiffs, and an order requiring Defendant to convey to Plaintiffs all gross receipts and benefits received or to be received that are attributable to infringement of the Pre-1972 Recordings.

83. Defendant's violations are wanton and willful, and Plaintiffs are entitled to punitive damages in addition to their actual damages.

84. Defendant's conduct is causing, and, unless enjoined by this Court, will continue to cause Plaintiffs irreparable injury that cannot be fully compensated or measured in money damages. Plaintiffs have no adequate remedy at law and are entitled to injunctive relief prohibiting Defendant from further violating Plaintiffs' rights in the Pre-1972 Recordings.

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

(a) for a declaration that Defendant, both directly and secondarily, willfully infringes Plaintiffs' copyrights, and engages in unfair competition and other violations of New York law;

(b) as to Counts One through Four, for such equitable relief under Titles 17 and 28 as is necessary to prevent or restrain infringement of Plaintiffs' copyrights, including a preliminary injunction and a permanent injunction requiring that Defendant and its officers, agents, servants, employees, attorneys, and others in active concert or participation with each or any of them, (i) cease infringing, or causing, enabling, facilitating, encouraging, promoting and inducing or participating in the infringement of, any of Plaintiffs' copyrights or exclusive rights protected by the Copyright Act or common law, whether now in existence or hereafter created; and (ii) surrender, and cease to use, the domain name of [www.projectplaylist.com](http://www.projectplaylist.com) unless and until Defendant satisfies the Court that Defendant has ceased to infringe Plaintiffs' copyrighted sound recordings;



(c) as to Counts One and Two, for statutory damages pursuant to 17 U.S.C. § 504(c), in amounts to be proven at trial, arising from Defendant's violations of Plaintiffs' rights under the Copyright Act or, in the alternative, at Plaintiffs' election pursuant to 17 U.S.C. § 504(b), Plaintiffs' actual damages, including Defendant's profits from infringement, in amounts to be proven at trial;

(d) as to Counts Three and Four, for compensatory and punitive damages in amounts to be proven at trial;

(e) as to Count Four, for an accounting, the imposition of a constructive trust, and restitution and disgorgement of Defendant's unlawful proceeds and benefits obtained by its misappropriation and unfair competition;

(f) for Plaintiffs' costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505 and otherwise;

(g) for prejudgment and post-judgment interest; and

(h) for such other relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Eva A. Temkin

Gary A. Orseck (application for admission  
*pro hac vice* pending)

Alison C. Barnes (application for admission  
*pro hac vice* pending)

Ariel Lavinbuk (application for admission  
pending)

Eva A. Temkin

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*Counsel for Plaintiffs*

Dated: April 28, 2008

# **Exhibit A**

<b>Plaintiff</b>	<b>Artist</b>	<b>Song Title</b>	<b>Album Title</b>	<b>SR</b>
Atlantic Recording Corporation	Bad Religion	New America	The New America	284-353
Atlantic Recording Corporation	Beth Hart	Mama	Screamin' For My Supper	271-297
Atlantic Recording Corporation	Collective Soul	Perfect Day	Blender	303-603
Atlantic Recording Corporation	Hootie & The Blowfish	Let Her Cry	Cracked Rear View	193-960
Atlantic Recording Corporation	INXS	Never Tear Us Apart	Kick	85-232
Atlantic Recording Corporation	Jewel	Pieces of You	Pieces of You	198-481
Atlantic Recording Corporation	Kevin Lyttle	Turn Me On	Kevin Lyttle	368-171
Atlantic Recording Corporation	Kid Rock	Cold and Empty	Kid Rock	352-774
Atlantic Recording Corporation	MC Lyte	Ruffneck	Ain't No Other	168-042
Atlantic Recording Corporation	OPM	Brighter Side	Menace To Sobriety	303-751
Atlantic Recording Corporation	P.O.D.	Boom	Satellite	303-757
Atlantic Recording Corporation	Phil Collins	Long Long Way to Go	No Jacket Required	60-788
Atlantic Recording Corporation	Sean Paul	Get Busy	Dutty Rock	352-634
Atlantic Recording Corporation	Sister Sledge	We Are Family	We Are Family	6-182
Atlantic Recording Corporation	Sugar Ray	Fly	Floored	208-769
Atlantic Recording Corporation	Yes	Love Will Find a Way	Love Will Find a Way (single)	84-690
Atlantic Recording Corporation	Yes	Owner of a Lonely Heart	Owner of a Lonely Heart (single)	50-667
Capitol Records, LLC	Beastie Boys	Hey Ladies	Paul's Boutique	154-345
Capitol Records, LLC	Beastie Boys	Flute Loop	Ill Communication	213-461
Capitol Records, LLC	Billy Idol	Cradle of Love	Charmed Life	115-717
Capitol Records, LLC	Blondie	Heart of Glass	Parallel Lines	4-090
Capitol Records, LLC	Chingy	Right Thurr	Jackpot	343-105
Capitol Records, LLC	Coldplay	God Put a Smile Upon Your Face	A Rush of Blood to the Head	322-958
Capitol Records, LLC	Coldplay	Speed Of Sound	Speed of Sound (single)	376-817
Capitol Records, LLC	Everclear	Father of Mine	So Much for the Afterglow	181-328
Capitol Records, LLC	Everclear	Santa Monica	Sparkle And Fade	279-015
Capitol Records, LLC	Grand Funk Railroad	Some Kind of Wonderful	All the Girls in the World Beware!!!	N-20414
Capitol Records, LLC	Heart	All I Wanna Do Is Make Love to You	Brigade	114-803
Capitol Records, LLC	Jane's Addiction	True Nature	Strays	333-443
Capitol Records, LLC	Joss Stone	Less Is More	Mind Body & Soul	539-917
Capitol Records, LLC	Keith Urban	Better Life	Be Here	353-271
Capitol Records, LLC	Keith Urban	You're Not Alone Tonight	Golden Road	323-344
Capitol Records, LLC	Kim Wilde	Kids In America	Kim Wilde	33-474
Capitol Records, LLC	Kylie Minogue	Fever	Fever	322-960
Capitol Records, LLC	Lisa Marie Presley	Lights Out	To Whom It May Concern	330-007
Capitol Records, LLC	Liz Phair	Everything to Me	Everything to Me (single)	375-882
Capitol Records, LLC	Megadeth	Hangar 18	Rust In Peace	125-168
Capitol Records, LLC	Trace Adkins	Honky Tonk Badonkadonk	Songs About Me	361-541
Capitol Records, LLC	Vanilla Ice	Ice Ice Baby	To The Extreme	125-259
Capitol Records, LLC	Westside Connection	Terrorist Threats	Terrorist Threats	350-349
Capitol Records, LLC	Yellowcard	Back Home	Ocean Avenue	343-413
Elektra Entertainment Group Inc.	Alana Davis	32 Flavors	Blame it on Me	245-201
Elektra Entertainment Group Inc.	Bjork	Bachelorette	Homogenic	245-199

<b>Plaintiff</b>	<b>Artist</b>	<b>Song Title</b>	<b>Album Title</b>	<b>SR</b>
Elektra Entertainment Group Inc.	Brand Nubian	Punks Jump Up to Get Beat Down	In God We Trust	152-095
Elektra Entertainment Group Inc.	Eagles	Hotel California	Hotel California	N38950
Elektra Entertainment Group Inc.	Jackson Browne	For America	Lives In The Balance	69-519
Elektra Entertainment Group Inc.	Jason Mraz	Curbside Prophet	Waiting for My Rocket to Come	357-729
Elektra Entertainment Group Inc.	Keith Sweat	Nobody	Keith Sweat	226-496
Elektra Entertainment Group Inc.	Nada Surf	Popular	High/Low	225-933
Elektra Entertainment Group Inc.	Staind	So Far Away	14 Shades of Grey	332-424
Elektra Entertainment Group Inc.	The Cars	Let's Go	Let's Go (single)	10-639
Elektra Entertainment Group Inc.	The Cure	A Letter to Elise	Wish	148-543
Elektra Entertainment Group Inc.	The Cure	Just Like Heaven	Kiss Me, Kiss Me, Kiss Me	82-714
Elektra Entertainment Group Inc.	The Prodigy	Out Of Space	Experience	168-434
Elektra Entertainment Group Inc.	Third Eye Blind	An Ode to Maybe	Blue	278-241
Elektra Entertainment Group Inc.	Tracy Chapman	Fast Car	Fast Car (single)	90-386
Elektra Entertainment Group Inc.	Vast	Free	Music For People	267-227
Elektra Entertainment Group Inc.	Ween	Bananas And Blow	White Pepper	281-379
Interscope Records	Black Eyed Peas	Lil' Lil'	Bridging The Gap	214-650
Interscope Records	Eminem	Mockingbird	Encore	364-769
Interscope Records	Limp Bizkit	Behind Blue Eyes	Results May Vary	346-261
Interscope Records	Limp Bizkit	No Sex	Significant Other	279-827
Interscope Records	Mya	If You Were Mine	Mya	255-973
Interscope Records	Nine Inch Nails	Closer	The Downward Spiral	190-639
Interscope Records	No Doubt	Bathwater	Return Of Saturn	279-727
Interscope Records	No Doubt	Just A Girl	Tragic Kingdom	206-724
Interscope Records	No Doubt	Underneath It All	Rock Steady	305-872
Interscope Records	Puddle of Mudd	Blurry	Come Clean	301-465
Interscope Records	Ruff Ryders	Down Bottom	Ryde Or Die Compilation Volume 1	179-239
Interscope Records	The Wallflowers	One Headlight	Bringing Down The Horse	221-889
Motown Record Company, L.P.	Boyz II Men	Song For Mama	Evolution	240-088
Motown Record Company, L.P.	Brian McKnight	Back At One	Back At One (single)	280-025
Motown Record Company, L.P.	Lionel Richie	Stuck on You	Can't Slow Down	49-235
Motown Record Company, L.P.	Marvin Gaye	Let's Get It On	Let's Get It On (single)	N7555
Priority Records LLC	Ice Cube	You Can Do It	War & Peace: Vol. 2	287-151
Priority Records LLC	Snoop Dogg	The One and Only	Paid Tha Cost To Be Da Bo\$\$	324-295
UMG Recordings, Inc.	3 Doors Down	Landing In London	Seventeen Days	368-870
UMG Recordings, Inc.	50 Cent	In da Club	In Da Club (single)	323-562
UMG Recordings, Inc.	Aerosmith	Amazing	Get A Grip	153-061
UMG Recordings, Inc.	Aerosmith	Angel	Permanent Vacation	85-369
UMG Recordings, Inc.	Aerosmith	Dude (Looks Like A Lady)	Dude (Looks Like a Lady) (single)	87-670
UMG Recordings, Inc.	Aerosmith	Livin' on the Edge	Livin' on the Edge (single)	152-755
UMG Recordings, Inc.	Aqua	Lollipop	Aquarium	243-903
UMG Recordings, Inc.	Audioslave	Your Time Has Come	Out Of Exile	373-489
UMG Recordings, Inc.	Beck	Debra	Midnite Vultures	276-479
UMG Recordings, Inc.	Beck	Earthquake Weather	Guero	372-955

<b>Plaintiff</b>	<b>Artist</b>	<b>Song Title</b>	<b>Album Title</b>	<b>SR</b>
UMG Recordings, Inc.	Black Eyed Peas	Let's Get Retarded	Elephunk	334-398
UMG Recordings, Inc.	Black Eyed Peas	My Humps	Monkey Business	378-166
UMG Recordings, Inc.	Blink-182	Down	Blink-182	345-359
UMG Recordings, Inc.	Blink-182	First Date	Take Off Your Pants And Jacket	301-317
UMG Recordings, Inc.	Blink-182	Going Away to College	Enema of the State	279-826
UMG Recordings, Inc.	Blue October	Hate Me	Foiled	388-117
UMG Recordings, Inc.	Bon Jovi	Who Says You Can't Go Home	Have a Nice Day	382-027
UMG Recordings, Inc.	Bon Jovi	You Give Love a Bad Name	Slippery When Wet	71-794
UMG Recordings, Inc.	Boyzone	No Matter What	Where We Belong	181-155
UMG Recordings, Inc.	Common	Chi-City	Be	377-106
UMG Recordings, Inc.	Counting Crows	Colorblind	This Desert Life	271-316
UMG Recordings, Inc.	Def Leppard	Gods of War	Hysteria	90-420
UMG Recordings, Inc.	DMX	Angel	...And Then There Was X	279-017
UMG Recordings, Inc.	Elton John	Candle in the Wind	Goodbye Yellow Brick Road	N10950
UMG Recordings, Inc.	Fall Out Boy	Dance, Dance	From Under The Cork Tree	371-909
UMG Recordings, Inc.	Flaw	Payback	Through The Eyes	303-118
UMG Recordings, Inc.	George Strait	Cowboys Like Us	Honkytonkville	333-733
UMG Recordings, Inc.	Godsmack	I Stand Alone	Faceless	329-097
UMG Recordings, Inc.	Godsmack	Sick Of Life	Awake	293-376
UMG Recordings, Inc.	Guns N Roses	November Rain	Use Your Illusion I	134-647
UMG Recordings, Inc.	Guns N Roses	Welcome to the Jungle	Appetite for Destruction	85-358
UMG Recordings, Inc.	Gwen Stefani	Crash	Love.Angel.Music.Baby.	364-759
UMG Recordings, Inc.	Hinder	Better Than Me	Extreme Behavior	379-192
UMG Recordings, Inc.	Hoobastank	The Reason	The Reason	339-555
UMG Recordings, Inc.	Ja Rule	Mesmerize	The Last Temptation	322-388
UMG Recordings, Inc.	Jay-Z	December 4th	The Black Album	337-758
UMG Recordings, Inc.	Jay-Z	So Ghetto	Do It Again (Put Ya Hands Up) (single)	279-081
UMG Recordings, Inc.	Jimmy Buffett	Changes In Latitude, Changes In Attitude	Changes In Latitude, Changes In Attitude	N39665
UMG Recordings, Inc.	Jimmy Buffett	Jamaica Farewell	Feeding Frenzy	124-218
UMG Recordings, Inc.	Joe Budden	She Wanna Know	Joe Budden	334-117
UMG Recordings, Inc.	Kanye West	Jesus Walks	College Dropout	347-391
UMG Recordings, Inc.	Keane	Somewhere Only We Know	Hopes and Fears	355-429
UMG Recordings, Inc.	Kem	Heaven	Album II	365-756
UMG Recordings, Inc.	Lifhouse	All In All	Lifhouse	370-643
UMG Recordings, Inc.	Mariah Carey	Shake It Off	The Emancipation of Mimi	370-795
UMG Recordings, Inc.	Melissa Etheridge	Bring Me Some Water	Melissa Etheridge	85-587
UMG Recordings, Inc.	Nelly	Pimp Juice	Nellyville	315-537
UMG Recordings, Inc.	Nelly Furtado	Maneater	Loose	387-509
UMG Recordings, Inc.	New Found Glory	All Downhill From Here	Cataylst	356-117
UMG Recordings, Inc.	U2	Bullet The Blue Sky	The Joshua Tree	78-949
UMG Recordings, Inc.	U2	Drowning Man	War	42-944
UMG Recordings, Inc.	U2	In A Little While	All That You Can't Leave Behind	294-631
UMG Recordings, Inc.	U2	Sometimes You Can't Make It On Your Own	How To Dismantle An Atomic Bomb	362-201

<b>Plaintiff</b>	<b>Artist</b>	<b>Song Title</b>	<b>Album Title</b>	<b>SR</b>
UMG Recordings, Inc.	Vanessa Carlton	A Thousand Miles	A Thousand Miles (single)	306-656
UMG Recordings, Inc.	Vince Gill	Go Rest High on That Mountain	When Love Finds You	190-152
UMG Recordings, Inc.	Weezer	Beverly Hills	Beverly Hills (single)	377-899
UMG Recordings, Inc.	Weezer	December	Maladroit	316-397
UMG Recordings, Inc.	Weezer	Tired Of Sex	Pinkerton	226-562
UMG Recordings, Inc.	Whitesnake	Here I Go Again	Whitesnake	82-749
UMG Recordings, Inc.	Yeah Yeah Yeahs	Y Control	Fever to Tell	332-650
UMG Recordings, Inc.	Young Jeezy	Bottom Of The Map	Let's Get It: Thug Motivation 101	375-159
UMG Recordings, Inc.	Afroman	Hush	The Good Times	301-429
Virgin Records America, Inc.	A Perfect Circle	Imagine	Emotive	375-835
Virgin Records America, Inc.	A Perfect Circle	The Noose	Thirteenth Step	341-312
Virgin Records America, Inc.	Ben Harper	Burn to Shine	Burn To Shine	273-400
Virgin Records America, Inc.	Ben Harper	By My Side	Fight For Your Mind	210-135
Virgin Records America, Inc.	Blur	Song 2	Blur	231-938
Virgin Records America, Inc.	Fountains of Wayne	Hey Julie	Welcome, Interstate Managers	335-616
Virgin Records America, Inc.	Gang Starr	Rite Where U Stand	The Ownerz	337-281
Virgin Records America, Inc.	Gorillaz	Dare	Demon Days	379-135
Virgin Records America, Inc.	Kelis	Suspended	Kaleidoscope	277-087
Virgin Records America, Inc.	Smashing Pumpkins	Bullet With Butterfly Wings	Mellon Collie and the Infinite Sadness	183-904
Virgin Records America, Inc.	Smashing Pumpkins	Mayonaise	Siamese Dream	169-635
Virgin Records America, Inc.	The Rolling Stones	Miss You	Some Girls	1-522
Virgin Records America, Inc.	The Rolling Stones	Waiting on a Friend	No Security	262-974
Virgin Records America, Inc.	UB40	Can't Help Falling In Love	Promises And Lies	186-039
Warner Bros. Records Inc.	A-Ha	Take On Me	Hunting High and Low	63-603
Warner Bros. Records Inc.	Barenaked Ladies	One Week	Stunt	257-724
Warner Bros. Records Inc.	Barenaked Ladies	The Old Apartment	Born on a Pirate Ship	261-190
Warner Bros. Records Inc.	Big & Rich	Save a Horse (Ride a Cowboy)	Horse of a Different Color	354-900
Warner Bros. Records Inc.	Blake Shelton	Nobody But Me	Blake Shelton's Barn & Grill	359-309
Warner Bros. Records Inc.	Depeche Mode	Never Let Me Down Again	Music For The Masses	87-111
Warner Bros. Records Inc.	Disturbed	Darkness	Believe	316-958
Warner Bros. Records Inc.	Disturbed	Deify	Ten Thousand Fists	380-289
Warner Bros. Records Inc.	Disturbed	Stricken	Stricken (single)	380-288
Warner Bros. Records Inc.	Eric Clapton	Hoochie Coochie Man	From The Cradle	199-841
Warner Bros. Records Inc.	Fleetwood Mac	Dreams	Rumours	N39857
Warner Bros. Records Inc.	Fourplay	Magic Carpet Ride	Elixir	169-234
Warner Bros. Records Inc.	Green Day	Macy's Day Parade	Warning	288-352
Warner Bros. Records Inc.	John Michael Montgomery	Letters from Home	Letters From Home	356-591
Warner Bros. Records Inc.	Linkin Park	From the Inside	Meteora	346-247
Warner Bros. Records Inc.	Linkin Park	One Step Closer	Hybrid Theory	288-402
Warner Bros. Records Inc.	Madness	One Step Beyond	One Step Beyond	16-959
Warner Bros. Records Inc.	Madonna	Don't Cry For Me Argentina	Evita	229-813
Warner Bros. Records Inc.	Morrissey	Suedehead	Viva Hate	90-903
Warner Bros. Records Inc.	My Chemical Romance	I'm Not Okay (I Promise)	Three Cheers for Sweet Revenge	360-197

<b>Plaintiff</b>	<b>Artist</b>	<b>Song Title</b>	<b>Album Title</b>	<b>SR</b>
Warner Bros. Records Inc.	Nina Gordon	Fade To Black	Tonight and the Rest of My Life	285-809
Warner Bros. Records Inc.	Trapt	Echo	Trapt	317-667
Warner Bros. Records Inc.	Van Halen	Jump	Jump (single)	53-832
Warner Bros. Records Inc.	Van Halen	Not Enough	Balance	206-396
Warner Bros. Records Inc.	Wilco	Forget the Flowers	Being There	229-793
Warner Bros. Records Inc.	Wilco	How to Fight Loneliness	Summerteeth	263-434
Warner Bros. Records Inc.	ZZ Top	Cheap Sunglasses	Deguello	13-884
Warner Bros. Records Inc.	ZZ Top	Rough Boy	Afterburner	66-959
Warner Bros. Records Inc.	ZZ Top	Sharp Dressed Man	Eliminator	45-132



# **Exhibit B**

<b>Plaintiff</b>	<b>Artist</b>	<b>Song Title</b>
Capitol Records, LLC	Beatles	Revolution
Capitol Records, LLC	Beatles	You've Got To Hide Your Love Away
Capitol Records, LLC	Beatles	All My Loving
Motown Record Company, L.P.	Jackson 5	ABC
UMG Recordings, Inc.	The Mamas And The Papas	California Dreamin'
UMG Recordings, Inc.	James Brown	I Got You (I Feel Good)
Elektra Entertainment Group Inc.	The Doors	L.A. Woman
Elektra Entertainment Group Inc.	The Doors	Roadhouse Blues
Elektra Entertainment Group Inc.	The Doors	People Are Strange