

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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CAPITOL RECORDS, LLC,

Plaintiff,

Civil Action File No.
12 Civ 0095 RJS/AJP

-against-

REDIGI INC.,

Defendant.

DECLARATION

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RAY BECKERMAN declares under penalty of perjury:

1. I am associated with Ray Beckerman, P.C., attorneys for defendant.
2. The purpose of the within declaration is primarily to point out what the

plaintiff's papers do NOT contain:

-any evidence of any act of copyright infringement;

-any affidavit or declaration of any witness to any act of copyright infringement;

-any explanation of why plaintiff waited two years since it found out about

ReDigi's business to bring an application for a preliminary injunction;

-any explanation of why plaintiff waited two (2) and a half months since the cease

and desist letter sent on its behalf to bring an application for a preliminary injunction;

-any explanation why plaintiff waited two (2) weeks after commencing its action

to bring an application for a preliminary injunction;

-any affidavit or declaration of any person with personal knowledge;

-any proof that a money judgment would not afford an adequate remedy;

-any reason for proceeding by order to show cause other than the statement in Mr. Mandel's declaration that the reason was to avoid the Court's rule requiring a pre-motion letter and conference;

-any showing of irreparable harm;

-any showing of prejudice;

-any showing that defendant would not be prejudiced by the forced shutting down of its business;

-any showing that any of the song files stored or transferred on defendant's site derived from Amazon.com's site, the terms and conditions of which are cited by plaintiffs both in their complaint and in their preliminary judgment application, although entirely irrelevant to this proceeding since the only Eligible Files stored or transferred derive from iTunes, not Amazon;

-any showing of what the iTunes terms and conditions are (exhibit A hereto);

-any showing that the public would be better off without defendant's storage and used music market place;

-any showing that an injunction would help promote competition;

-a single allegation not already set forth in the complaint in virtually identical terms;

-any showing that a preliminary injunction would do anything other than put defendant out of business, thus drastically altering, rather than preserving, the status quo.

3. What the motion papers do contain is rank speculation, and vague, unsupported, and highly confused legal argument, unhampered by the usual courtesy of having at

least some *evidence* prior to bringing suit, and especially prior to seeking the drastic relief of an interlocutory injunction.

-In paragraph 7 counsel refers to iTunes and Amazon as “legitimate” sources of digital music, but in paragraph 20 seems to have forgotten about iTunes, citing only the terms and conditions of Amazon, speculating that Amazon is “a common source and *likely the origin* of many ReDigi uploads” (emphasis supplied); in fact, as set forth in the declarations of Mr. Ossenmacher and Mr. Rudolph, Amazon is the source of *no* ReDigi uploads at all. (A copy of the iTunes terms and conditions is annexed hereto as exhibit A).

-In paragraph 11 Mr. McMullan speculates:

The track “stored” in and offered to consumers from ReDigi’s “cloud” is of course an unauthorized copy of the user’s original file, as no material object could be transferred to the ReDigi “cloud”.

However, he produces no evidence that this is so, and no legal basis for suggesting that one needs ‘authorization’ to store a personal copy for personal use in a personal locker on a cloud drive.

-Although he argues in the same paragraph, this time correctly, that the file which is uploaded is not a “material object”, he bizarrely accuses defendant of infringing plaintiff’s distribution right, even though -- by its terms -- the “distribution” right is defined as being applicable only to “copies” and “phonorecords” which are themselves defined as being “material objects”.

-Also in paragraph 11 he speculates:

ReDigi’s claim that it instantaneously deletes the original file from the user’s computer is impossible to verify....

In the first place, it is quite easy to verify that a file has been deleted. ReDigi’s software does it

every day, and it could likewise be checked in countless other ways. In the second place, Mr. McMullan, although an attorney, seems to have forgotten that the burden of proof is on plaintiff, not on defendant. Since it is part and parcel of plaintiff's complaint, and its preliminary injunction motion, that ReDigi's software does not do what ReDigi has said it does, it is plaintiff's burden to demonstrate that it is in fact the case.

-He goes on to further argue that the deletion of the original file from the computer is "irrelevant" since "whatever the destiny of the original file, a *copy* of that file is what is transferred to and resides in ReDigi's storage medium". It borders on fantastic that he would say that the deletion of any multiple copies is irrelevant, since (a) the very leitmotif of his declaration is the false allegation that "*multiple* unauthorized copies" litter ReDigi's landscape, and (b) it is absurd for a plaintiff which claims to be interested in protecting its copyrights to say that it just doesn't matter that the defendant has devised a technology to ensure that there is a single unique instance, and not multiple instances, of a file.

-In paragraph 12 Mr. McMullan speculates that the "so-called sale...is accomplished by creation and transfer of another copy"; in fact, as set forth in the declaration of Mr. Rudolph, the sale is *not* accomplished by "creation and transfer of another copy", but by a transfer in ownership of the single unique file that was uploaded. The sale is accomplished by modifying a file pointer, which initially points to the seller as the owner; after the sale it points to the buyer rather than the seller. The music file is not copied, transferred, modified, or altered.

-Also again in paragraph 12 Mr. McMullan, incredibly, concedes that "*no material object* – like a CD or painting – passes from one user to another" (emphasis supplied), and yet *in the very same paragraph* states that "copies are.... *distributed*" (emphasis supplied),

thus once again, in one breath, negating any distribution right issue, and in the next breath accusing defendant of infringing plaintiff's distribution right.

-In paragraph 14 Mr. McMullan attacks the upload to cloud storage, saying that "Uploading, by its very nature, can only be accomplished by making an unauthorized copy", yet provides no basis for suggesting that the owner of a lawfully purchased iTunes file has any obligation to seek 'authorization' from anyone in order to store the file in an online personal storage locker. He should also explain what it is about ReDigi's cloud locker that poses such a grave threat, while the cloud storage lockers of Apple iCloud, Google Music, Amazon Cloud Drive and Player, Dropbox, Microsoft LiveMesh & SkyDrive, Apple MobileMe, Rackspace, Amazon AWS, Box.net, Google Docs / GMail Drive, ADrive, Mozy, Asus webstorage, iDrive, Bitspace, Maestro.fm, Mougg, MusicPlayer.fm, Deezer, and a host of others, do not (see articles in Ossenmacher declaration, exhibit A, discussing a few of the players in this burgeoning new field). If Capitol Records's animus against ReDigi is based upon the fact that it offers a used digital music market place, then it ought to confine its meritless attack to that, rather than repeatedly suggest that one needs "authorization" from the copyright holder to store one's own files.

-In paragraph 15 Mr. McMullan characterizes, without evidence, a user's personal streaming of a 30-second clip as an "unauthorized public performance" by ReDigi even though, as pointed out in the declaration of Mr. Ossenmacher, it is not provided by, or streaming on, ReDigi's site at all, but on that of a third party provider pursuant to license, something Mr. McMullan could easily have ascertained by clicking on a 30-second clip and observing the URL. A copy of the applicable license agreement is set forth as exhibit B to the declaration of Mr.

Ossenmacher. And Mr. McMullan falsely claims that the clips themselves are stored in users' "memory banks", when in fact all that is stored in the memory banks are bookmarks to Rdio's clips (See Rudolph declaration, ¶ 13)

-In paragraph 16 counsel falsely accuses ReDigi of displaying artwork in violation of plaintiff's copyrights; again he could have ascertained the falsity of his accusation quite easily, in this instance by right-clicking the artwork and ascertaining the link location. And again, as set forth in Mr. Ossenmacher's declaration, this too is pursuant to license.

-In paragraph 19 Mr. McMullan engages in more of his comical, entirely unsubstantiated, speculation:

ReDigi promises that its "Verification Engine" analyzes each file to ensure that it was "legally downloaded" by the user in the first instance and thus "eligible for sale." Given the widespread piracy of sound recordings on the Internet – an issue with which we have been struggling for more than a decade – *it is questionable whether ReDigi can effectively determine whether files were lawfully obtained in the first instance.* (emphasis supplied)

I.e., because plaintiff is inept and has been wasting its money on frivolous litigation instead of the development of useful technology which protects copyright, therefore it is "questionable" whether ReDigi can have accomplished what plaintiff never could. Well it may be "questionable" to Mr. McMullan, but it is the fact. And he offers not a shred of evidence to the contrary. Again, it is plaintiff's, not defendant's, burden to prove the many frivolous and false allegations with which plaintiff's complaint and motion papers are littered.

-In paragraph 26, Mr. McMullan speculates that an injunction is needed because ReDigi's service is a "moving target". In fact, ReDigi isn't moving anywhere; it is in business, in Cambridge, Massachusetts, a number of people rely on it for employment, and it keeps careful

records, much likely more careful records than plaintiff. The fact is that (a) plaintiff has not shown any infringement, moving or not, and (b) as set forth in the accompanying declarations, there is a detailed record kept of each and every transaction, so that, in the unlikely event that plaintiff were to be able to prove an infringement, there would not be the slightest difficulty in finding the records upon which plaintiff would base its damage calculations.

-In paragraph 27 Mr. McMullan spuriously claims, again without any evidence, that “ReDigi is deliberately deceiving the public into believing that its conduct is legal and approved by record companies like Capitol”. ReDigi has not stated anywhere that record companies, like Capitol, have “approved” of ReDigi. ReDigi does not need Capitol’s approval for anything it is doing, and has never claimed to have had such approval. The only deception is that being practiced by plaintiff, in and out of court (the RIAA sent its frivolous, knowingly dishonest, so-called “cease and desist letter”, which failed utterly to comply with the DMCA, to its friends in the press, three (3) or four (4) days prior to defendant’s receipt of it; defendant only learned of the letter’s existence from a reporter, and had to wait days before receiving a copy).

4. It is clear that plaintiff’s entire case, including its preliminary injunction motion, is based upon a glance at the defendant’s website, speculation as to possibly helpful but nonexistent facts, and a confused view of applicable law.

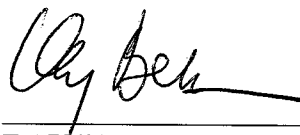
5. It appears that the real reason for plaintiff’s lawsuit is fear of competition from used digital music sales. Mr. McMullan expresses in paragraph 31 of his declaration his fear that ReDigi sales might “supplant Capitol’s market”. Perhaps this is something which he should not fear, since the existence of a resale market enhances the value of the original merchandise, and since ReDigi has gone to great lengths to employ a technology which actually combats, rather

than encourages, infringement. But in any event, 'supplanting' a competitor's 'market' is pretty much what free enterprise is all about.

6. What is certain is that his client has no legal or factual basis for its motion, or for its case¹.

WHEREFORE it is respectfully requested that plaintiff's motion be in all respects denied.

Dated: Forest Hills, New York
January 26 2012



RAY BECKERMAN

¹ Attached hereto are the following exhibits, referred to in defendant's memorandum of law: Exhibit B: Plaintiff's counsel's admissions at oral argument in MGM v. Grokster, March 29, 2005; Exhibit C: Nielsen Company & Billboard's 2011 Music Industry Report, dated January 5, 2012; Exhibit D: "Steve Jobs: The Rolling Stone Interview," Rolling Stone Magazine, Dec. 3, 2003, excerpt (available at http://www.keystonemac.com/pdfs/Steve_Jobs_Interview.pdf)

Exhibit A

TERMS AND CONDITIONS

- A. ITUNES STORE, MAC APP STORE, APP STORE, AND IBOOKSTORE TERMS OF SALE
- B. ITUNES STORE TERMS AND CONDITIONS
- C. MAC APP STORE, APP STORE AND IBOOKSTORE TERMS AND CONDITIONS
- D. PRIVACY POLICY

THE LEGAL AGREEMENTS SET OUT BELOW GOVERN YOUR USE OF THE ITUNES STORE, MAC APP STORE, APP STORE, AND IBOOKSTORE SERVICES. TO AGREE TO THESE TERMS, CLICK "AGREE." IF YOU DO NOT AGREE TO THESE TERMS, DO NOT CLICK "AGREE," AND DO NOT USE THE SERVICES.

- A. ITUNES STORE, MAC APP STORE, APP STORE, AND IBOOKSTORE TERMS OF SALE

PAYMENTS, TAXES, AND REFUND POLICY

The iTunes Store, Mac App Store, App Store, and iBookstore services ("Services") accept these forms of payment: credit cards issued by U.S. banks, payments through your PayPal account, iTunes Cards, iTunes Store Gift Certificates, Content Codes, and Allowance Account balances. If a credit card or your PayPal account is being used for a transaction, Apple may obtain preapproval for an amount up to the amount of the order. Billing occurs at the time of or shortly after your transaction. If you are using 1-Click purchasing or your PayPal account, your order may be authorized and billed in increments during one purchasing session, so it may appear as multiple orders on your statement. If an iTunes Card, iTunes Store Gift Certificate, or Allowance Account is used for a transaction, the amount is deducted at the time of your transaction. When making purchases, content credits are used first, followed by Gift Certificate, iTunes Card, or Allowance Account credits; your credit card or PayPal account is then charged for any remaining balance.

You agree that you will pay for all products you purchase through the Services, and that Apple may charge your credit card or PayPal account for any products purchased and for any additional amounts (including any taxes and late fees, as applicable) that may be accrued by or in connection with your Account. YOU ARE RESPONSIBLE FOR THE TIMELY PAYMENT OF ALL FEES AND FOR PROVIDING APPLE WITH A VALID CREDIT CARD OR PAYPAL ACCOUNT DETAILS FOR PAYMENT OF ALL FEES. All fees will be billed to the credit card or PayPal account you designate during the registration process. If you want to designate a different credit card or if there is a change in your credit card or PayPal account status, you must change your information online in the Account Information section of iTunes; this may temporarily disrupt your access to the Services while Apple verifies your new payment information.

Your total price will include the price of the product plus any applicable sales tax; such sales tax is based on the bill-to address and the sales tax rate in effect at the time you download the product. We will charge tax only in states where digital goods are taxable.

All sales and rentals of products are final.

Prices for products offered via the Services may change at any time, and the Services do not provide price protection or refunds in the event of a price reduction or promotional offering.

If a product becomes unavailable following a transaction but prior to download, your sole remedy is a refund. If technical problems prevent or unreasonably delay delivery of your product, your exclusive and sole remedy is either replacement or refund of the price paid, as determined by Apple.

1-Click®

1-Click is a registered service mark of Amazon.com, Inc., used under license. 1-Click is a convenient feature that allows you to make a purchase from the Services with a single click of your mouse or other input device. When accessing the Services on your computer, 1-Click purchasing may be activated via the dialog that appears when you click a Buy button. (You may reset this selection at any time by clicking Reset Warnings in your Account information). When accessing the Services on your Apple-branded products running iOS such as an iPad, iPod touch, or iPhone ("iOS Device"), 1-Click is activated for each transaction by tapping the button showing the price of the product, which reveals the Buy button. When 1-Click is activated, clicking or tapping the Buy button starts the download immediately and completes your transaction without any further steps.

GIFT CERTIFICATES, ITUNES CARDS, ALLOWANCES, AND CONTENT CODES

Gift Certificates, iTunes Cards, and Allowances are issued and managed by Apple Value Services, LLC ("Issuer").

Gift Certificates, iTunes Cards, Content Codes, and Allowances, in addition to unused balances, are not redeemable for cash and cannot be returned for a cash refund (except as required by law); exchanged; resold; used to purchase Gifts, Gift Certificates, or iTunes Cards; used to provide Allowances; used for purchases on the Apple Online Store; or used in Apple Retail Stores. Unused balances are not transferable.

Gift Certificates, iTunes Cards, Content Codes, and Allowances purchased in the United States may be redeemed through the Services only in the United States, its territories, and possessions.

The Gift Certificate/iTunes Card cash value is 1/10 of one cent.

Neither Issuer nor Apple is responsible for lost or stolen Gift Certificates, iTunes Cards, Content Codes, or Allowances. Risk of loss and title for Gift Certificates, iTunes Cards, and Allowances transmitted electronically pass to the purchaser in Virginia upon electronic transmission to the recipient. Risk of loss and title for Content Codes transmitted electronically pass in California upon electronic transmission from Apple; for avoidance of doubt, such recipient may not always be you.

Apple reserves the right to close accounts and request alternative forms of payment if a Gift Certificate, iTunes Card, Content Code, or Allowance is fraudulently obtained or used on the Service.

APPLE, ISSUER, AND THEIR LICENSEES, AFFILIATES, AND LICENSORS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO GIFT CERTIFICATES, ITUNES CARDS, CONTENT CODES, ALLOWANCES, OR THE ITUNES STORE, APP STORE, MAC APP STORE, OR IBOOKSTORE, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN THE EVENT THAT A GIFT CERTIFICATE, ITUNES CARD, CONTENT CODE, OR ALLOWANCE IS NONFUNCTIONAL, YOUR SOLE REMEDY, AND OUR SOLE LIABILITY, SHALL BE THE REPLACEMENT OF SUCH GIFT CERTIFICATE, ITUNES CARD, CONTENT CODE, OR ALLOWANCE. THESE LIMITATIONS MAY NOT APPLY TO YOU. CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY ALSO HAVE ADDITIONAL RIGHTS.

GIFTS

Gifts purchased from the Services may be purchased only for, and redeemed only by, persons in the United States, its territories, and possessions. Gift recipients must have compatible hardware and parental control settings to utilize some gifts.

PRE-ORDERS

By pre-ordering products, you are authorizing the Services to automatically charge your account and download the product when it becomes available. You may cancel your pre-order prior to the time the item becomes available.

ELECTRONIC CONTRACTING

Your use of the Services includes the ability to enter into agreements and/or to make transactions electronically. YOU ACKNOWLEDGE THAT YOUR ELECTRONIC SUBMISSIONS CONSTITUTE YOUR AGREEMENT AND INTENT TO BE BOUND BY AND TO PAY FOR SUCH AGREEMENTS AND TRANSACTIONS. YOUR AGREEMENT AND INTENT TO BE BOUND BY ELECTRONIC SUBMISSIONS APPLIES TO ALL RECORDS RELATING TO ALL TRANSACTIONS YOU ENTER INTO ON THIS SITE, INCLUDING NOTICES OF CANCELLATION, POLICIES, CONTRACTS, AND APPLICATIONS. In order to access and retain your electronic records, you may be required to have certain hardware and software, which are your sole responsibility.

Apple is not responsible for typographic errors.

B. ITUNES STORE TERMS AND CONDITIONS

THIS LEGAL AGREEMENT BETWEEN YOU AND APPLE INC. ("APPLE") GOVERNS YOUR USE OF THE ITUNES STORE SERVICE (THE "ITUNES SERVICE").

THE ITUNES STORE SERVICE

Apple is the provider of the iTunes Service, which permits you to purchase or rent digital content ("iTunes Products") for end user use only under the terms and conditions set forth in this Agreement.

REQUIREMENTS FOR USE OF THE ITUNES SERVICE

This iTunes Service is available for individuals aged 13 years or older. If you are 13 or older but under the age of 18, you should review this Agreement with your parent or guardian to make sure that you and your parent or guardian understand it.

The iTunes Service is available to you only in the United States, its territories, and possessions. You agree not to use or attempt to use the iTunes Service from outside these locations. Apple may use technologies to verify your compliance.

Use of the iTunes Service requires compatible devices, Internet access, and certain software (fees may apply); may require periodic updates; and may be affected by the performance of these factors. High-speed Internet access is strongly recommended for regular use and is required for video. The latest version of required software is recommended to access the iTunes Service and may be required for certain transactions or features and to download iTunes Products previously purchased from the iTunes Service. You agree that meeting these requirements, which may change from time to time, is your responsibility. The iTunes Service is not part of any other product or offering, and no purchase or obtaining of any other product shall be construed to represent or guarantee you access to the iTunes Service.

YOUR ACCOUNT

As a registered user of the iTunes Service, you may establish an account ("Account"). Don't reveal your Account information to anyone else. You are solely responsible for maintaining the confidentiality and security of your Account and for all activities that occur on or through your Account, and you agree to immediately notify Apple of any security breach of your Account. Apple shall not be responsible for any losses arising out of the unauthorized use of your Account.

In order to purchase and download iTunes Products from the iTunes Service, you must enter your Apple ID and password to authenticate your Account. Once you have authenticated your Account, you will not need to authenticate again for fifteen minutes. During this time, you will be able to purchase and download iTunes Products without re-entering your password. You can turn off the ability to make iTunes Product purchases by adjusting the settings on your computer or iOS Device. For more information, please see <http://support.apple.com/kb/HT1904> or <http://support.apple.com/kb/HT4213>.

You agree to provide accurate and complete information when you register with, and as you use, the iTunes Service ("iTunes Registration Data"), and you agree to update your iTunes Registration Data to keep it accurate and complete. You agree that Apple may store and use the iTunes Registration Data you provide for use in maintaining and billing fees to your Account.

AUTOMATIC DELIVERY AND DOWNLOADING PREVIOUS PURCHASES

When you first acquire music iTunes Products and music video iTunes Products (collectively, "iTunes Auto-Delivery Content"), you may elect to automatically receive ("auto-download") copies of such iTunes Auto-Delivery Content on additional compatible iOS Devices and iTunes-authorized computers with compatible software by associating such iOS Devices and computers subject to the association rules below (each, an "Associated Device"). For each Associated Device, you may specify which type of iTunes Auto-Delivery Content, if any, may be auto-downloaded to it. On an Associated Device that is capable of receiving push notifications ("Push-Enabled"), including iOS Devices, the iTunes Auto-Delivery Content will auto-download to that Associated Device when it has an Internet connection; on an Associated Device that is not Push-Enabled, including those running on the Windows operating system, iTunes Auto-Delivery Content will automatically appear in the download queue and you may manually initiate the download within iTunes.

As an accommodation to you, subsequent to acquiring iTunes Auto-Delivery Content and TV show iTunes Products (each, "iTunes Eligible Content"), you may download certain of such previously-purchased iTunes Eligible Content onto any Associated Device. Some iTunes Eligible Content that you previously purchased may not be available for subsequent download at any given time, and Apple shall have no liability to you in such event. As you may not be able to subsequently download certain previously-purchased iTunes Eligible Content, once you download an item of iTunes Eligible Content, it is your responsibility not to lose, destroy, or damage it, and you may want to back it up.

Association of Associated Devices is subject to the following terms:

- (i) You may auto-download iTunes Auto-Delivery Content or download previously-purchased iTunes Eligible Content from an Account on up to 10 Associated Devices, provided no more than 5 are iTunes-authorized computers.
- (ii) An Associated Device can be associated with only one Account at any given time.
- (iii) You may switch an Associated Device to a different Account only once every 90 days.
- (iv) You may download previously-purchased free content onto an unlimited number of devices while it is free on the iTunes Service, but on no more than 5 iTunes-authorized computers.

An Apple TV is not an "Associated Device." However, TV show iTunes Products may be played back on compatible Apple TVs, provided that you may only play back any such TV show on a limited number of Apple TVs at the same time.

Some pieces of iTunes Eligible Content may be large, and significant data charges may result from delivery of such iTunes Eligible Content over a data connection.

ITUNES MATCH

iTunes Match permits you to remotely access your matched or uploaded songs, and music videos you have purchased with your Account, along with related metadata, playlists, and other information about your iTunes Library ("iTunes Match Content").

You may subscribe to iTunes Match for an annual fee. You must have a valid credit card on file with iTunes to subscribe. The subscription is non-refundable (except as required by applicable law), and will automatically renew for one-year periods until you cancel. Your account will be charged no more than 24 hours prior to the expiration of the current subscription period. You may cancel automatic renewal by adjusting the iTunes Store account settings on your computer. You will no longer be able to access your iTunes Match Content from iTunes Match after the end of your subscription period.

iTunes Match works with libraries that contain up to 25,000 songs which are either (i) not currently available on the iTunes Service, or (ii) not purchased from the iTunes Service with your Account. Songs with quality less than 96 kbps or that are not authorized for your computer are not eligible for iTunes Match.

iTunes Match will automatically scan the song files and collect other information that may be used to identify media in your iTunes library, such as the names of songs, song artists or song durations. iTunes Match will use this information to match songs to those currently available on the iTunes Store, and will make matched songs available to you in the format then available on the iTunes Store. If the song is not successfully matched, your copy of the song will be uploaded to Apple in the same format or a format determined by Apple. Apple reserves the right to limit types of content uploaded (for example, excessively large files). Matched or uploaded songs and related metadata will be available for access from an Associated Device that has been enabled for iTunes Match. Association of Associated Devices for iTunes Match is subject to the same terms as Automatic Delivery and Downloading Previous Purchases, and uploaded or matched songs and related information are deemed to be "iTunes Eligible Content." You may also access iTunes Match Content from compatible Apple TVs, provided that you may only do so on a limited number of Apple TVs at the same time.

When you use iTunes Match, Genius will begin associating information about the media in your iTunes library with your Account; the association with your Account will continue for a period of time after your subscription ends. Apple will otherwise use this information as described in the Privacy Section of this Agreement. You will not be able to disable Genius while using iTunes Match, so if you prefer that we do not collect and use information from your iTunes library in this manner, you should not use iTunes Match.

You hereby agree to use iTunes Match only for lawfully acquired content. Any use for illegitimate content infringes the rights of others and may subject you to civil and criminal penalties, including possible monetary damages, for copyright infringement.

iTunes Match is provided on an "AS IS" basis and may contain errors or inaccuracies that could cause failures, corruption or loss of data and/or information, including music, playlist, and play history, from your computer or device and from peripherals (including, without limitation, servers and other computers) connected thereto. You should back up all data and information on your computer or device and any peripherals prior to using iTunes Match. You expressly acknowledge and agree that all use of iTunes Match is at your sole risk. To the extent permitted by law, Apple shall have no liability with respect to your use of iTunes Match, including the inability to access matched or uploaded content.

PRIVACY

The iTunes Service is subject to Apple's Privacy Policy at <http://www.apple.com/privacy/>.

When you opt in to the Genius feature, Apple will, from time to time, automatically collect information that can be used to identify media in your iTunes library on this computer, such as your play history and playlists. This includes media purchased through iTunes and media obtained from other sources. This information will be stored anonymously and will not be associated with your name or Account. When you use the Genius feature, Apple will use this information and the contents of your iTunes library, as well as other information, to give personalized recommendations to you.

Apple may only use this information and combine it with aggregated information from the iTunes libraries of other users who also opt in to this feature, your iTunes Store purchase history data, aggregated purchase history data from other iTunes Store users, and other information obtained from third parties, to:

- Create personalized playlists for you from your iTunes library.
- Provide you with recommendations regarding media and other products and services that you may wish to purchase.
- Provide recommendations regarding products and services to other users.

At all times your information will be treated in accordance with Apple's Privacy Policy.

Once you opt in to the Genius feature in iTunes, you will be able to create Genius playlists on Genius-capable devices. To enable the Genius feature on a device, you must sync it with your iTunes library after you have opted in.

If you prefer that we do not collect and use information from your iTunes library in this manner, you should not enable the Genius feature. You can revoke your opt-in choice at any time by turning off the Genius feature from the Store menu in iTunes on your computer. After you opt out, iTunes will no longer send information about your iTunes library to Apple. If you have elected to share your library from multiple computers, you need to turn off the Genius feature from each computer. The Genius feature cannot be enabled or disabled from your device.

By opting in to the Genius feature, you consent to the use of your information as described above and as described in Apple's Privacy Policy.

CONTENT AVAILABILITY

Apple reserves the right to change content options (including eligibility for particular features) without notice.

USE OF PURCHASED OR RENTED CONTENT

You agree that the iTunes Service and certain iTunes Products include security technology that limits your use of iTunes Products and that, whether or not iTunes Products are limited by security technology, you shall use iTunes Products in compliance with the applicable usage rules established by Apple and its licensors ("Usage Rules"), and that any other use of the iTunes Products may constitute a copyright infringement. Any security technology is an inseparable part of

the iTunes Products. Apple reserves the right to modify the Usage Rules at any time. You agree not to violate, circumvent, reverse-engineer, decompile, disassemble, or otherwise tamper with any of the security technology related to such Usage Rules for any reason—or to attempt or assist another person to do so. Usage Rules may be controlled and monitored by Apple for compliance purposes, and Apple reserves the right to enforce the Usage Rules without notice to you. You agree not to access the iTunes Service by any means other than through software that is provided by Apple for accessing the iTunes Service. You shall not access or attempt to access an Account that you are not authorized to access. You agree not to modify the software in any manner or form, or to use modified versions of the software, for any purposes including obtaining unauthorized access to the iTunes Service. Violations of system or network security may result in civil or criminal liability.

USAGE RULES

(i) You shall be authorized to use iTunes Products only for personal, noncommercial use.

(ii) You shall be authorized to use iTunes Products on five iTunes-authorized devices at any time, except for Content Rentals (see below).

(iii) You shall be able to store iTunes Products from up to five different Accounts at a time on compatible devices, provided that each iPhone may sync one iTunes Product with only a single iTunes-authorized device at a time, and syncing an iPhone with a different iTunes-authorized device will cause one iTunes Product stored on that iPhone to be erased.

(iv) You shall be authorized to burn an audio playlist up to seven times.

(v) You shall not be entitled to burn video iTunes Products or one iTunes Product.

(vi) iTunes Plus Products do not contain security technology that limits your usage of such products, and Usage Rules (ii) – (v) do not apply to iTunes Plus Products. You may copy, store, and burn iTunes Plus Products as reasonably necessary for personal, noncommercial use.

(vii) You shall be able to manually sync a movie from at least one iTunes-authorized device to devices that have manual sync mode, provided that the movie is associated with an Account on the primary iTunes-authorized device, where the primary iTunes-authorized device is the one that was first synced with the device or the one that you subsequently designate as primary using iTunes.

(viii) An HDCP connection is required to view content transmitted over HDMI.

(ix) Content Rentals

(a) Content rentals are viewable on only one device at a time. You must be connected to the iTunes Service when moving rentals, and you may do so only between your computer and other compatible devices. Content rented using your Apple TV, iPad, iPhone 4, or iPod touch (4th generation) may not be moved. If you move a rental to a compatible device and then use the iTunes Service to restore that device, or choose Settings > Reset > Erase all content and settings on that device, the rental will be permanently deleted.

(b) You have thirty (30) days after downloading a rental to begin viewing. Once you begin viewing, you have twenty-four (24) hours to finish viewing a movie. Stopping, pausing, or restarting a rental does not extend the available time for viewing.

Some iTunes Products, including but not limited to Content rentals, may be downloaded only once and cannot be replaced if lost for any reason. It is your responsibility not to lose, destroy, or damage iTunes Products once downloaded, and you may wish to back them up.

The delivery of iTunes Products does not transfer to you any commercial or promotional use rights in the iTunes Products. Any burning or exporting capabilities are solely an accommodation to you and shall not constitute a grant, waiver, or other limitation of any rights of the copyright owners in any content embodied in any iTunes Product.

You acknowledge that, because some aspects of the iTunes Service, iTunes Products, and administration of the Usage Rules entails the ongoing involvement of Apple, if Apple changes any part of or discontinues the iTunes Service, which Apple may do at its election, you may not be able to use iTunes Products to the same extent as prior to such change or discontinuation, and that Apple shall have no liability to you in such case.

PING

If you opt in to Ping, you can share information with people who have also opted in to Ping, such as your name, your image, and your interests. The name and image provided will also be associated with all reviews posted about an iTunes Product via your Account, including posts prior to opting in. People whom you have permitted to follow you will be able to see your activity on iTunes, such as events you are attending, music that you have indicated that you like, and purchases made with your Account. Your activity on another user's profile, such as comments you make about their activity, is subject to that user's privacy settings and can be viewed by all of that user's followers. You are solely responsible for the information that is associated with your Account that is made available on Ping. Apple may also use information provided, as well as information iTunes sends to Apple about the content you select in your iTunes library in order to provide you with Ping personal recommendations, such as suggesting other users you may want to follow, concerts and related information, or other iTunes Products you may want to purchase. By opting in to Ping, you consent

to the use of such information in the manner described above. At all times your information will be treated in accordance with Apple's Privacy Policy. You should not opt in to Ping, or should opt out of Ping in your Account settings if you don't want others to view any information provided using your Account, including activity on iTunes. When you opt out, your information will be removed from view, and then deleted after seven days. If you opt out of Ping, or hide the Ping Sidebar, iTunes will no longer send information associated with the content you select in your iTunes library for Ping. You will be able to remove items from your Recent Activity if you do not want them to be visible to other users. Please take extra care when using these features.

COMPLETE MY ALBUM ("CMA")

In some circumstances, you will have no more than 180 days from the time you acquire your first CMA-eligible song or video from a particular CMA-eligible album to accept that CMA offer, and upgrading previous purchases to iTunes Plus does not affect any such time limits.

SEASON PASS, MULTI-PASS, ITUNES PASS

The full price of the Season Pass, Multi-Pass, or iTunes Pass is charged upon purchase. You must connect to the iTunes Service and download any remaining Pass content within 90 days after the final Pass content becomes available (or such other time period as may be specified on the purchase page), after which that content may no longer be available for download as part of the purchase. If automatic renewal is selected when you purchase a Multi-Pass, you will be charged the full price of each subsequent Multi-Pass cycle, unless and until you cancel automatic renewal prior to the beginning of the subsequent Multi-Pass cycle (in the Manage Passes section of your Account information). If a network or studio delivers fewer TV episodes than planned when you purchased a Season Pass, we will credit to your Account the retail value of the corresponding number of episodes.

HIGH-DEFINITION (HD) ITUNES PRODUCTS

HD iTunes Products are viewable only on HD capable devices; however, HD iTunes Products purchased (not rented) include a standard-definition version for use on non-HD devices.

SUBMISSIONS TO THE ITUNES SERVICE

The iTunes Service may offer interactive features that allow you to submit materials (including links to third-party content) on areas of the iTunes Service accessible and viewable by the public. You agree that any use by you of such features, including any materials submitted by you, shall be your sole responsibility, shall not infringe or violate the rights of any other party or violate any laws, contribute to or encourage infringing or otherwise unlawful conduct, or otherwise be obscene, objectionable, or in poor taste. You also agree that you have obtained all necessary rights and licenses. You agree to provide accurate and complete information in connection with your submission of any materials on the iTunes Service. You hereby grant Apple a worldwide, royalty-free, nonexclusive license to use such materials as part of the iTunes Service, and in relation to iTunes Products, without any compensation or obligation to you. Apple reserves the right to not post or publish any materials, and to remove or edit any material, at any time in its sole discretion without notice or liability.

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You understand that by using the iTunes Service, you may encounter material that you may deem to be offensive, indecent, or objectionable, and that such content may or may not be identified as having explicit material. Nevertheless, you agree to use the iTunes Service at your sole risk and Apple shall have no liability to you for material that may be found to be offensive, indecent, or objectionable. iTunes Product types and descriptions are provided for convenience, and you agree that Apple does not guarantee their accuracy.

IMPORTANT SAFETY INFORMATION

To avoid muscle, joint, or eye strain during your use of the products offered through the iTunes Service, you should always take frequent breaks, and take a longer rest if you experience any soreness, fatigue, or discomfort. A very small percentage of people may experience seizures or blackouts when exposed to flashing lights or patterns, including but not limited to while playing video games or watching videos. Symptoms may include dizziness, nausea, involuntary movements, loss of awareness, altered vision, tingling, numbness, or other discomforts. Consult a doctor before using the products offered through the iTunes Service if you have ever suffered these or similar symptoms, and stop using

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MISCELLANEOUS

This Agreement constitutes the entire agreement between you and Apple and governs your use of the iTunes Service, superseding any prior agreements between you and Apple. You also may be subject to additional terms and conditions that may apply when you use affiliate services, third-party content, or third-party software. If any part of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. Apple's failure to enforce any right or provisions in this Agreement will not constitute a waiver of such or any other provision. Apple will not be responsible for failures to fulfill any obligations due to causes beyond its control.

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C. MAC APP STORE, APP STORE AND IBOOKSTORE TERMS AND CONDITIONS

THIS LEGAL AGREEMENT BETWEEN YOU AND APPLE INC. ("APPLE") GOVERNS YOUR USE OF THE MAC APP STORE, APP STORE AND IBOOKSTORE SERVICES (THE "APP AND BOOK SERVICES").

THE MAC APP STORE, APP STORE AND IBOOKSTORE SERVICES

Apple is the provider of the App and Book Services that permit you to license software products and digital content (the "App and Book Products") for end user use only under the terms and conditions set forth in this Agreement. For App Store Products (defined below), end users may be individuals acting in their own capacities, commercial enterprises or educational institutions.

Exhibit B

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IN THE SUPREME COURT OF THE UNITED STATES

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METRO-GOLDWYN-MAYER STUDIOS, INC., :
ET AL., :
Petitioners, :
v. : No. 04-480
GROKSTER, LTD, ET AL. :
----- x

Washington, D.C.

Tuesday, March 29, 2005

The above-entitled matter came on for oral
argument before the Supreme Court of the United States at
10:13 a.m.

APPEARANCES:

DONALD B. VERRILLI, JR., ESQ., Washington, D.C.; on behalf
of the Petitioners.

PAUL D. CLEMENT, ESQ., Acting Solicitor General,
Department of Justice, Washington, D.C.; for United
States, as amicus curiae, supporting the Petitioners.

RICHARD G. TARANTO, ESQ., Washington, D.C.; on behalf of
the Respondents.

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1 Are you sure that you could recommend to the iPod inventor
2 that he could go ahead and have an iPod, or, for that
3 matter, Gutenberg, the press? I mean, you see the
4 problem.

5 MR. VERRILLI: Yes, I think my answer to --

6 JUSTICE BREYER: What's the answer?

7 MR. VERRILLI: -- those questions are: yes, yes,
8 yes, and yes.

9 [Laughter.]

10 JUSTICE BREYER: Because in each case -- for all
11 I know, the monks had a fit when Gutenberg made his press
12 --

13 [Laughter.]

14 JUSTICE BREYER: -- but the problem, of course,
15 is that it could well be, in each of those instances, that
16 there will be vast numbers of infringing uses that are
17 foreseeable.

18 MR. VERRILLI: I disagree with that, Your Honor.
19 Certainly not -- I don't think there's any empirical
20 evidence to suggest, with respect to any of the things
21 that Your Honor just identified -- and let me pick out the
22 iPod as one, because it's the most current example, I
23 guess. From the moment that device was introduced, it was
24 obvious that there were very significant lawful commercial
25 uses for it. And let me clarify something I think is

1 unclear from the amicus briefs. The record companies, my
2 clients, have said, for some time now, and it's been on
3 their Website for some time now, that it's perfectly
4 lawful to take a CD that you've purchased, upload it onto
5 your computer, put it onto your iPod. There is a very,
6 very significant lawful commercial use for that device,
7 going forward.

8 And, remember, I -- what our test -- our test is
9 not "substantial." Our test is that it's a -- it's a --
10 when it's a vast-majority use, like here, it's a clear
11 case of contribution --

12 JUSTICE SCALIA: How do you -- how do you know,
13 going in, Mr. Verrilli? I mean, I'm about to start the
14 business. How much time do you give me to bring up the
15 lawful use to the level where it will outweigh the
16 unlawful use? I have to know, going in.

17 MR. VERRILLI: Well, I --

18 JUSTICE SCALIA: And it's one thing to sit back
19 and, you know, calculate with this ongoing business, it's
20 90 percent/10 percent. But I'm a new inventor, and I'm --
21 you know --

22 MR. VERRILLI: I think the weight --

23 JUSTICE SCALIA: -- I'm going to get sued right
24 away. I know I'm going to get sued right away, before I
25 have a chance to build up a business.

Exhibit C



January 05, 2012 08:05 AM Eastern Time

The Nielsen Company & Billboard's 2011 Music Industry Report

Album Sales Up for the First Time Since 2004

Digital Track & Digital Album Sales Reach New Highs

Overall Music Sales Break 1.6 Billion Mark for First Time

NEW YORK--(BUSINESS WIRE)--Nielsen SoundScan, the entertainment industry's data information system that tracks unit point-of-purchase sales of recorded music product and Nielsen BDS, the music industry's leading music performance monitoring service- which power many of the Billboard charts- have announced the 2011 calendar year sales and airplay monitoring data for the 52-week period January 3, 2011 through January 1, 2012.

OVERALL MUSIC SALES (1/3/11 – 1/1/12)

(ALBUMS, SINGLES, MUSIC VIDEO, DIGITAL TRACKS – IN MILLIONS)

UNITS SOLD	<u>2011</u>	<u>2010</u>	<u>% Chg.</u>
	*1,611	1,507	6.9%

TOTAL ALBUM SALES (1/3/11 – 1/1/12)

(INCLUDES CD, CS, LP, DIGITAL ALBUMS - IN MILLIONS)

UNITS SOLD	<u>2011</u>	<u>2010</u>	<u>% Chg.</u>
	330.6	326.2	1.3%

DIGITAL TRACK SALES

(1/3/11 – 1/1/2012 - IN MILLIONS)

UNITS SOLD	<u>2011</u>	<u>2010</u>	<u>% CHG.</u>
	*1,271	1,172	8.5%

TOTAL CD ALBUM SALES (1/3/11 – 1/1/12)

(CD ALBUMS - IN MILLIONS)

UNITS SOLD	<u>2011</u>	<u>2010</u>	<u>% Chg.</u>
	223.5	236.9	- 5.7%

HOLIDAY SEASON ALBUM SALES (11/7/11 – 1/1/12)

(Physical & Digital ALBUM SALES DURING HOLIDAY SEASON: IN MILLIONS)

UNITS SOLD	<u>2011</u>	<u>2010</u>	<u>% Chg.</u>
	75.1	78.7	- 4.6%

TOTAL NEW ALBUM RELEASES

(Based on new albums released 1/3/11 - 1/1/12)

OVERALL ALBUM SALES (1/3/11 – 1/1/12)

(INCLUDES ALL ALBUMS & TRACK EQUIVALENT ALBUMS – IN MILLIONS)

UNITS SOLD	<u>2011</u>	<u>2010</u>	<u>% Chg.</u>
	457.7	443.4	3.2%

INTERNET ALBUM SALES (1/3/11 – 1/1/12)

(PHYSICAL ALBUM PURCHASES VIA E-COMMERCE SITES, IN MILLIONS)

UNITS SOLD	<u>2011</u>	<u>2010</u>	<u>% Chg.</u>
	29.3	24.9	17.7%

DIGITAL ALBUM SALES

(1/3/2011 – 1/1/2012 - IN MILLIONS)

UNITS SOLD	<u>2011</u>	<u>2010</u>	<u>% CHG.</u>
	*103.1	86.3	19.5%

TOTAL LP ALBUM SALES (1/3/11 – 1/1/12)

(LP/VINYL ALBUMS - IN MILLIONS)

UNITS SOLD	<u>2011</u>	<u>2010</u>	<u>% Chg.</u>
	*3.9	2.8	36.3%

HOLIDAY SEASON TRACK SALES (11/7/11 – 1/1/12)

(Digital Track SALES DURING HOLIDAY SEASON: IN MILLIONS)

UNITS SOLD	<u>2011</u>	<u>2010</u>	<u>% Chg.</u>
	216.0	214.6	0.7%

ALBUM SALES PLATEAUS

(Based on all albums sold 1/3/11 – 1/1/12)

2	Black Eyed Peas	42,405,000
3	Eminem	42,290,000
4	Lady Gaga	42,078,000
5	Taylor Swift	41,821,000
6	Katy Perry	37,620,000
7	Lil' Wayne	36,788,000
8	Beyonce	30,439,000
9	Kanye West	30,242,000
10.	Britney Spears	28,665,000

2011 Year-End Factoids

- For the first time, total music purchases reached the **1.6 Billion** mark for the year.
- Overall Album sales (including Albums and Track Equivalent Album sales) were up 3.2% compared to 2010.
- Total Album sales were up for the first time since 2004 (1.3%) with sales totaling 330.6 million, compared to 326.2 million in 2010.
- There were 228 million physical album sales in 2011, a decline of 5% over 2010. This is significantly less than the 19.5% decline in 2010.
- During 2011 there were 76,875 new albums released that sold at least one copy, that's up slightly from 2010 when there were just over 75,000 new albums released.
 - The nearly 77,000 new album releases accounted for 113.2 million sales - or **34%** of ALL album sales for the entire year.
 - The top 1,500 best selling new album releases accounted for over 100 million (nearly 90%) of the 113 million sales generated by new releases.
- Similar to a year ago, there were 11 albums that sold 1 million or more copies and 35 albums that sold 500,000 – 999,999 copies.
- While there were a number of album genres that had saw growth over the previous year, 3 smaller genres experienced double digital growth in 2011: Jazz, New Age and Electronic grew by 26%, 16% and 15%, respectively.
- For the fourth consecutive year, more vinyl albums were purchased than any other year in the history of Nielsen SoundScan.
 - In 2011, vinyl album sales reached 3.9 million in sales, shattering the previous record of 2.8 million LP album sales in 2010.
 - Note that 67% of all vinyl albums were purchased at an independent music store during 2011.
 - Vinyl album sales in 2011 were up 36% compared to 2010 and accounted for 1.2% of all album sales.
 - Nearly three out of every four vinyl albums purchased in 2011 were a Rock album.

Digital Factoids:

- For the first time, digital music sales are larger than physical sales; accounting for 50.3% of all music purchases in 2011.
- Digital track sales set a new record with 1.27 billion sales in 2011; an increase of 100 million sales (8.4%) over 2010.

Exhibit D

Steve Jobs: The Rolling Stone Interview

He changed the computer industry. Now he's after the music business

By Jeff Goodell

When Steve Jobs cruises into the airy reception area on the Apple Computer campus in Cupertino, California, on a recent morning, nobody pays much attention to him, even though he's the company's CEO. He's wearing shorts, a black T-shirt and running shoes. Tall and a little gawky, Jobs has a fast, loping walk, like a wolf in a hurry. These days Jobs seems eager to distance himself from his barefoot youth -- who was that crazy kid who once called the computer "a bicycle for the mind"?-- and driven to prove himself as a clear-thinking Silicon Valley capitalist.

Jobs punches the elevator button to the fourth floor, where his small office is located. For a man who is as responsible as anyone for the wonder and chaos of Silicon Valley, Jobs' view of it all is surprisingly modest: shrubby treetops extending out toward San Francisco Bay, the distant whoosh of the freeway below.

There is nothing modest, however, about Apple's recent accomplishments. In the past few months, Jobs' company has rolled out the PowerMac G5, arguably the fastest desktop computer on the planet; has redesigned the Powerbook and iBook laptops; and introduced Panther, a significant upgrade of the OS X operating system. But Jobs' biggest move, and certainly the one closest to his heart, has been Apple's plunge into the digital-music revolution. It began two years ago, with the introduction of the iPod portable music player, which may be the only piece of Silicon Valley hardware that has ever come close to matching the lust factor of the original Macintosh. Then, in April of this year, Apple introduced its digital jukebox, the iTunes Music Store, first for the Mac, and then, in October, for Windows. The result: 20 million tracks downloaded, close to a million and a half iPods sold, aggressive deals with AOL and Pepsi,

and lots of good PR for Apple as the savior of the desperately fucked-up music industry.

Still, Jobs' bet on digital music is a hugely risky move in many ways, not only because powerhouses such as Dell and Wal-Mart are gunning for Apple (and Microsoft will be soon, as well), but because success may depend on how well Jobs, a forty-eight-year-old billionaire, is able to understand and respond to the fickle music-listening habits of eighteen-year-olds in their college dorms.

Do you see any parallel between music revolution today and PC revolution in 1984?

Well, obviously, the biggest difference is that we're on Windows. It's still very early in the music revolution. Remember there are 10 billion songs that are distributed in the U.S. every year -- legally, on CDs. So far on iTunes, we've distributed about 16 million [as of October]. So we're at the very beginning of this. It will take years to unfold.

Bringing iTunes to Windows was obviously a bold move. Did you do much hand-wringing over it?

I don't know what hand-wringing is. We did a lot of *thinking* about it. The biggest risk, obviously, was that we saw people buying Macs just to get their hands on iPods. So taking iPods to Windows was really the choice. That was the big decision. We knew once we did that that we were going to go all the way. I'm sure we're losing some Mac sales, but half our sales of iPods are to the Windows world already.

How did the the record companies react when you initially approached them about getting on-board with Apple?

Well, there's a lot of smart people at the music companies. The problem is, they're not technology people. The good music companies do an amazing thing. They have people who can pick the person that's gonna be successful out of 5,000 candidates. And there's not enough information to do that -- it's an intuitive process. And the best music companies know how to do that with a reasonably high success rate.

I think that's a good thing. The world needs more smart editorial these days. The problem is, is that that has nothing to do with technology. And so when the Internet came along, and Napster came along, they didn't know what to make of it. A lot of these folks didn't use computers -- weren't on e-mail; didn't really know what Napster was for a few years. They were pretty doggone slow to react. Matter of fact, they still haven't really reacted, in many ways. And so they're fairly vulnerable to people telling them technical solutions will work, when they won't.

Because of their technological ignorance.

Because of their technological innocence, I would say. When we first went to talk to these record companies -- you know, it was a while ago. It took us 18 months. And at first we said: None of this technology that you're talking about's gonna work. We have Ph.D.'s here, that know the stuff cold, and we don't believe it's possible to protect digital content.

Of course, music theft is nothing new. Didn't you listen to bootleg Bob Dylan?

Of course. What's new is this amazingly efficient distribution system for stolen property called the Internet -- and no one's gonna shut down the Internet. And it only takes one stolen copy to be on the Internet. And the way we expressed it to them is: Pick one lock -- open every door. It only takes one person to pick a lock. Worst case: Somebody just takes the analog outputs of their CD player and rerecords it -- puts it on the Internet. You'll never stop that. So what you have to do is compete with it.

At first, they kicked us out. But we kept going back again and again. The first record company to really understand this stuff was Warner. They have some smart people there, and they said: We agree with you. And next was Universal. Then we started making headway. And the reason we did, I think, is because we made predictions.

We said: These [music subscription] services that are out there now are going to fail. Music Net's gonna fail, Press Play's gonna fail. Here's why: People don't want to buy their music as a subscription.

They bought 45's; then they bought LP's; then they bought cassettes; then they bought 8-tracks; then they bought CD's. They're going to want to buy downloads. People want to own their music. You don't want to rent your music -- and then, one day, if you stop paying, all your music goes away.

And, you know, at 10 bucks a month, that's \$120 a year. That's \$1,200 a decade. That's a lot of money for me to listen to the songs I love. It's cheaper to buy, and that's what they're gonna want to do.

They didn't see it that way. There were people running around -- business-development people -- who kept pointing out AOL as the great model for this and saying: No, we want that -- we want a subscription business. We said: It ain't gonna work.

Slowly but surely, as these things didn't pan out, we started to gain some credibility with these folks. And they started to say: You know, you're right on these things -- tell us more.

Well, despite the success of iTunes, it seems that it's a little early to call all of your competitors failures. Real Network's Rhapsody, for example, has already won over some critics.

One question to ask these subscription services is how many subscribers they have. It's around 50,000. And that's not just for Rhapsody, it's for the old Pressplay and the old MusicMatch. 50,000 subscribers, total.

The subscription model of buying music is bankrupt. I think you could make available the Second Coming in a subscription model and it might not be successful.

When you went to see music execs, was there much comment about Apple's "Rip, Mix, Burn" campaign? A lot of music execs regarded it as a subtle invitation to steal music. Well, when we did the Rip, Mix, Burn thing -- I mean, "rip" is the phrase that means "take the bits off the CD and put 'em on your hard drive." Rip the bits off your CD -- as if you're physically ripping them off and putting them on your hard drive. The person who assailed us over it was