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of America, Settlement Support Center, LLC, and SafeNet, Inc., f/k/a Media Sentry, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

TANYA ANDERSEN,

Civil No. 3:07-CV-934-BR

Plaintiff,

v.

**ATLANTIC RECORDING
CORPORATION, et al.,**

Defendants'
**CONCISE STATEMENT OF
MATERIAL FACTS IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Defendants.

Pursuant to LR 56.1(a)(2), defendants Atlantic Recording Corporation, Priority Records,
LLC, Capitol Records, Inc., UMG Recordings, Inc., BMG Music, Recording Industry

PAGE 1 - DEFENDANTS' CONCISE STATEMENT OF MATERIAL FACTS IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT

Association of America and Settlement Support Center, LLC (collectively “Record Companies”) and MediaSentry, Inc., submit that the following facts, none of which are in dispute, provide probable cause for the Record Companies’ having sued Ms. Andersen:

1. On the morning of May 20, 2004, a person using the screen name “gotenkito” was logged on to the KaZaA network. (Declaration of Christopher Connelly (Connelly Decl.”), ¶ 7).

2. That person, Gotenkito, had, in a “shared” file folder, a large number of unauthorized copies of copyrighted sound recordings, the copyrights for which belonged to the Record Companies. Connelly Decl. ¶ 7.

3. When MediaSentry, acting on behalf of the Record Companies, downloaded several of the sound recordings from the group of recordings made available by Gotenkito, it observed this user’s Internet Protocol (“IP”) address to be 4.41.209.23. Connelly Decl. ¶¶ 9-10.

4. The Record Companies sued this person on a “John Doe” basis. Complaint [Doc. No. 1]; Declaration of Jeffrey S. Jacobson, Esq. (“J. Jacobson Decl.”), ¶ 3.

5. Using the subpoena process, the Record Companies learned from Verizon Online, the Internet Service Provider (“ISP”) responsible for assigning IP address 4.41.209.23, that, on the date and time MediaSentry downloaded songs from the Gotenkito user at IP address 4.41.209.23, Verizon Online had assigned that address to plaintiff Tanya Andersen’s internet account. Connelly Decl. ¶ 12; J. Jacobson Decl. ¶¶ 4-5, Ex. A.

6. On two subsequent occasions, Verizon Online confirmed that 4.41.209.23 was registered to Ms. Andersen at the specified date and time. J. Jacobson Decl. ¶ 6.

The Record Companies submit that the above facts are all those necessary to determine that they had probable cause to initiate suit against Ms. Andersen and, therefore, to obtain summary judgment against all of her claims. To the extent that additional facts may be relevant to the decision, however, the Record Companies submit that the following facts are not subject to dispute and demonstrate that they acted reasonably to protect their copyrights in sound

recordings from “infringement on a gigantic scale.” *Metro-Golden-Mayer Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913, 940 (2005).

7. The Record Companies engaged defendant MediaSentry, Inc. (“MediaSentry”) to observe and document instances of infringement on various P2P networks, including the KaZaA network. Connelly Decl. ¶ 2.

8. MediaSentry accomplished this by (a) logging on to the particular P2P network; (b) querying that network for the availability of copyrighted sound recordings; (c) observing the results of these queries, and (d) downloading copies of requested sound recordings. Connelly Decl. ¶¶ 2, 6-12, Exs. 1-4.

9. MediaSentry documented each step of this process. *Id.*

10. No P2P network that MediaSentry used permits one user to alter or manipulate the contents of another user’s shared folder. These networks only allow one user to view the contents of another user’s shared folder. Connelly Decl. ¶ 8.

11. Once MediaSentry recorded the IP addresses of persons who had unlawfully shared copyrighted sound recordings and gathered evidence that the computer at this IP address had been used to commit infringement, the Record Companies chose cases they wished to pursue and commenced “Doe” actions against the (as of that point) unnamed individuals responsible for the IP addresses. *See* J. Jacobson Decl. ¶ 3.

[Remainder of this page intentionally left blank.]

12. The Record Companies used the subpoena process in those Doe actions to obtain the relevant records from ISPs. See J. Jacobson Decl. ¶¶ 4-5.

DATED: May 8, 2009

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