UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARISTA MUSIC, ARISTA RECORDS LLC, ATLANTIC RECORDING CORPORATION, ELEKTRA ENTERTAINMENT GROUP INC., LAFACE RECORDS LLC, SONY MUSIC ENTERTAINMENT, UMG RECORDINGS, INC., WARNER BROS. RECORDS INC., and ZOMBA RECORDING LLC, *Plaintiffs,* v. ESCAPE MEDIA GROUP INC., SAMUEL TARANTINO, and JOSHUA GREENBERG *Defendants.*	11 Civ. 8407 (TPG) **FILED UNDER SEAL**

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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PRELIMINARY STATEMENT

The remaining defendants in this case, Escape Media Group, Inc. ("Escape"), and its two founders, Samuel Tarantino and Joshua Greenberg (collectively "Defendants"), operate an online music service called Grooveshark.[1] By any objective measure, Grooveshark is a linear descendant of infringing music services such as Napster, Grokster, and LimeWire, all shuttered by federal courts for large-scale copyright infringement. Like those pirate services, Grooveshark illegally provides tens of millions of users with access to a comprehensive library of popular music overwhelmingly comprised of unlicensed copies of Plaintiffs' copyrighted sound recordings.

The claims asserted in this action address a particularly flagrant aspect of Defendants' infringing enterprise – the direct uploading of a massive amount of copyrighted music by Escape's officers and employees. In order to attract users to their service, Defendants expressly and repeatedly instructed Escape employees to upload as many sound recordings to Grooveshark as possible, including the most popular songs from Plaintiffs' catalogs. Simply put, Defendants made it a ***job requirement*** that Escape's employees engage in copyright infringement in order to attract users and thus benefit Defendants.

Defendants' liability has been confirmed through a series of direct admissions, testimony from former employees, contemporaneous emails, and other irrefutable evidence. For example:

- [redacted]

[1] On April 24, 2013, the Court entered Consent Judgments against certain individually-named Defendants in this action (all former employees of Escape), Nicola Arabadjiev, John Ashenden, Chanel Munezero, Paul Geller, and Ben Westermann-Clark, permanently enjoining them from uploading infringing copies of Plaintiffs' copyrighted works to the Grooveshark service. *See* ECF Nos. 57-60.

[redacted]. SUF ¶ 14.[2] In furtherance of this plan, Defendants instructed Escape employees to collect as many digital music files as possible from any possible source, and to "seed" (*i.e.*, upload) those files to other Grooveshark users. *Id*. ¶ 15.

- In an effort to attract new users to Grooveshark, Defendants set up a central music library consisting of central servers that stored copies of music files, which Defendants then made available to Grooveshark users. *Id*. ¶¶ 18-19. This library of content dramatically improved the performance of the service and enhanced the selection of music available to users. *Id*. ¶ 19. To increase the amount of music stored on and available through the library, Defendants instructed Escape employees to upload as many digital music files as possible to the central music library as part of their employment for Escape. *Id*. ¶¶ 20-21.

- Defendants later adopted an advertising-supported "streaming" model for Grooveshark which provided users with access to all of Escape's digital music files directly via the Grooveshark website. *Id*. ¶¶ 23, 52-53. To help launch and sustain their streaming service, Defendants gave renewed instructions to Escape employees to upload as many files as possible to Grooveshark's central servers. *Id*. ¶ 26.

- As part of their job responsibilities, Escape employees regularly uploaded files to Grooveshark (including copies of popular sound recordings owned by Plaintiffs) in order to "test" the functionality of the uploading process. *Id.* ¶ 29. All files

[2] "SUF" refers to Plaintiffs' accompanying Statement of Uncontroverted Facts In Support of Plaintiffs' Motion for Summary Judgment. "Ex." refers to an exhibit annexed to the Declaration of Gianni P. Servodidio.

uploaded as part of these "tests" remained part of the Grooveshark music library and were accessible for streaming to all users of the service. *Id.* ¶ 30.

- Based on these instructions and business practices, Escape's officers and employees (including Tarantino and Greenberg) uploaded well over [redacted] digital music files to Grooveshark. *Id.* ¶¶ 8-9. These uploaded files included billboard hits from legendary artists such as Michael Jackson, Prince, Beyoncé, Jay-Z, Green Day, and Britney Spears, as well as tens of thousands of other popular sound recordings owned by Plaintiffs (the "Infringing Employee Uploads"). *Id.* ¶ 54.

- Escape identified virtually all of its employees, including Tarantino and Greenberg, as serial copyright infringers. [redacted][3] *Id.* ¶¶ 6, 75; *see also* Declaration of Dr. Ellis Horowitz in Supp. of Pls. Mot. for Summ. J. ("Horowitz Decl.") ¶ 62 n.27.

The overwhelming and uncontradicted evidence supporting these points conclusively demonstrates that Defendants are liable for both direct and secondary copyright infringement. Under well-established principles of *respondeat superior*, Escape bears direct liability for the Infringing Employee Uploads because its employees uploaded sound recordings to Grooveshark as part of their job responsibilities.

[3] As described further below, upon receipt of a Digital Millennium Copyright Act ("DMCA") notice from a copyright owner identifying infringing content on Grooveshark, Escape identified the uploader of the file to Grooveshark's servers and forwarded a form letter to the user concerning the infringement. SUF ¶¶ 6, 75.

Further, the evidence compels a finding of secondary copyright infringement against Escape on three independent bases. *First*, Escape is vicariously liable for the infringements at issue herein: (i) Escape received a direct financial benefit from the unauthorized reproduction, distribution, and performance of Plaintiffs' copyrighted sound recordings, which helped attract users and advertisers to its service; and (ii) Escape and its executives failed to exercise their right and ability to prevent such infringement by Escape employees (and, in fact, actively encouraged the infringement).

Second, Escape is liable for inducing copyright infringement. Defendants intentionally fostered the infringement of Plaintiffs' copyrighted works by instructing Escape employees to engage in the massive uploading of sound recordings to Grooveshark in order to develop a comprehensive library of copyrighted music.

Third, Escape is liable for contributory copyright infringement because, with full knowledge of its employees' infringement – indeed, while constantly encouraging it – Escape materially contributed to the Infringing Employee Uploads by, among other things, providing the site and facilities for its employees to engage in the infringing conduct.

Finally, Defendants Tarantino and Greenberg are personally liable for all of the Infringing Employee Uploads. As corporate officers of Escape, Tarantino and Greenberg personally participated in and directed the Infringing Employee Uploads and share liability with Escape for the infringement. Moreover, both Defendants Tarantino and Greenberg uploaded thousands of copies of Plaintiffs' copyrighted sound recordings to Grooveshark in violation of Plaintiffs' exclusive rights and are thus liable as direct infringers.[4]

[4] Plaintiffs have filed herewith a Motion for Sanctions for Spoliation of Evidence against Escape for the willful spoliation of the uploading records of Greenberg and other employees (the "Sanctions Motion").

STATEMENT OF FACTS

I. THE PARTIES

Plaintiffs create and distribute recorded music. Plaintiffs collectively own – or have exclusive rights to – the vast majority of the nation's most popular sound recordings, from famous recording artists such as Michael Jackson, Prince, Beyoncé, Green Day, Elton John, the Red Hot Chili Peppers, and Justin Timberlake. SUF ¶ 1.

Defendant Escape is a Delaware corporation with a principal place of business in Gainesville, Florida and offices in New York City. Tarantino is the co-founder of Escape and its Chief Executive Officer. Greenberg is also a co-founder of Escape and its Chief Technology Officer. Together, Tarantino and Greenberg run all aspects of Escape's business and they have final authority in hiring, firing, and evaluating employee performance. *Id.* ¶¶ 33, 93.

Since the formation of Escape in 2006, Defendants have developed and operated the Grooveshark music service. Their stated goal for Grooveshark is to provide its users with free and unfettered access to copies of the "world's complete music library." SUF ¶ 14; *see also* Horowitz Decl. ¶ 20. Although Grooveshark's music library includes works by all of Plaintiffs' top commercial artists and attracts tens of millions of users each month, Defendants have never obtained any licenses from Plaintiffs to exploit any of their copyrighted sound recordings. SUF ¶ 2.

II. DEFENDANTS' CORPORATE-MANDATED CAMPAIGN OF EMPLOYEE UPLOADING

A. The Foundation of Defendants' Initial Business Plan Was the Infringement of Plaintiffs' Copyrighted Content

Defendants designed and operated the first version of Grooveshark as a "peer-to-peer" network ("P2P Network"). SUF ¶ 13; *see* Horowitz Decl. ¶¶ 21-26. Through this system, Defendants allowed their users to obtain copies of digital music files directly from other users.

Id. In order to launch this P2P Network, Defendants distributed a proprietary software application called "Sharkbyte" that users installed on their local computers. *Id.* This software allowed Grooveshark users to upload, download, or stream copies of sound recordings to and from other users of the service.[5] *Id.* [redacted].[6]

Even though Defendants had not secured licenses from Plaintiffs, Defendants planned to attract users to Grooveshark by providing them with access to a comprehensive library of Plaintiffs' copyrighted music, including "Top 40 hits" and other songs from well-known recording artists. SUF ¶¶ 2, 14. As Tarantino admitted during his deposition, Defendants affirmatively planned to "vacuum in" all of the infringing music available on other infringing P2P Networks into the Grooveshark service and then "monetize[e] [this] illegal content" by selling pirated copies of Plaintiffs' sound recordings to Grooveshark users for profit. *See id.*, Ex. 1 (Tarantino Tr. at 139:7-17, 384:10-385:22).[7]

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[5] As used herein, the terms "uploading" and "downloading" refer to the distribution and copying of audio files from one computer system to another. "Uploading" indicates sending a copy of a file to another computer, while "downloading" indicates making a copy of a file from another computer. "Streaming" refers to the delivery of a file from an Internet-based service to a user's computer for playback. Horowitz Decl. ¶ 14 n.2. Streaming refers generally to the transmission of portions of the file at a time for immediate playback. *Id.* [redacted]

[6] Sharkbyte allowed users to upload digital music files from their computers to other users and, as described below, to Escape owned and operated servers. Sharkbyte also allowed users to download and copy digital music files to their own computers. *See* Section II.D, *infra*. In addition, as described above, Sharkbyte streamed music by copying digital music files in their entirety to users' computers. Horowitz Decl. ¶ 14 n.2.

[7] [redacted]

Defendants were well aware that their business model depended upon the use of infringing content. SUF ¶¶ 14-15, 65, 71, 105. Indeed, they openly acknowledged that they required – but did not have – licenses from Plaintiffs to engage in or facilitate the distribution, performance or sale of their copyrighted sound recordings to Grooveshark users. SUF ¶¶ 2, 14-15, 65. Nonetheless, rather than waiting to obtain licenses before launching Grooveshark, Defendants made a calculated business decision to launch their service utilizing infringing content in order to grow faster and attempt to strike more favorable licensing deals with Plaintiffs. SUF ¶ 65. In the words of Escape's Chairman, Defendants "bet the company on the fact that[it] is easier to ask forgiveness than it is to ask permission" to use Plaintiffs' content. SUF ¶ 65, Ex. 52; [redacted][8] [redacted]

[redacted]

[8] [redacted]

B. Defendants' Uploading of Infringing Content to Launch the Grooveshark Service

In order to attract users to its P2P service, and away from other infringing services, Defendants needed to offer its users access to a large amount of popular music. Grooveshark, like all prototypical P2P services, sourced the available music content from the computers of existing users who were online using the service. Horowitz Decl. ¶ 27. However, when starting, the Grooveshark P2P Network did not have a large user base to leverage as a source of content. To address this deficiency, Defendants made the business decision to direct Escape's employees to procure and make available the content required to launch Grooveshark. SUF ¶¶ 14-15. Specifically, Defendants instructed Escape's employees and officers to create Grooveshark user accounts and store hundreds of thousands of digital music files on their computers in order to upload or "seed" copies of these files to other Grooveshark users.[9] *Id.* ¶ 15. Thus, Defendants provided a substantial portion of the infringing content files used for the initial Grooveshark service. *Id.* ¶¶ 16, 17.

These facts are corroborated by numerous emails and other contemporaneous documents as well as the testimony provided during the Defendants' depositions.[10] [redacted]

[redacted]

9 [redacted]

[redacted]

Defendant Tarantino also mandated that all employees upload as many files as possible to Grooveshark. [redacted]:

[redacted]

Numerous officers and employees of Defendants testified that they received these instructions and uploaded popular works to Grooveshark at the direction of Defendants. SUF ¶ 16; Decl. of John Ashenden ("Ashenden Decl.") ¶ 10 ("[Defendants Tarantino and Greenberg] made it very clear that all employees were expected to upload as much music as possible into the Grooveshark system, including the most popular and current songs"); Decl. of Benjamin Westermann-Clark ("Westermann-Clark Decl.") ¶¶ 6-7 (same); Decl. of Chanel Munezero ("Munezero Decl.") ¶¶ 6-9 (same); Decl. of Nikola Arabadjiev ("Arabadjiev Decl.") ¶¶ 12-13 (same).

C. Defendants Created a Central Music Library Significantly Aided by Further Employee Uploading

As noted above, Escape's initial P2P model only allowed users to download or stream music files from other users who were logged in to their computers and running the Sharkbyte software. Horowitz Decl. ¶ 27. Thus, the availability of music files in the Grooveshark music library depended on the number of other users online at any given moment. *Id.* Defendants recognized that this necessarily made the service less commercially desirable. SUF ¶ 19.

In order to overcome this limitation, in June 2007, Defendants began to utilize their central servers – internally referred to as their "cache" – as a vast central storage library for all of the music files available on the Grooveshark P2P Network (hereinafter the "Central Music Library"). SUF ¶ 18-19; Horowitz Decl. ¶ 30. As a result, users had access to all the music in the Central Music Library regardless of the number of users online at the time. Horowitz Decl. ¶ 35.

[redacted]

As a result of Defendants' initial employee seeding and caching policies, Grooveshark began to attract thousands of new users each month. Ex. 3 at p. 2. However, Defendants recognized that they needed to continue to add new music files to their Central Music Library to make the service commercially attractive. SUF ¶ 20. As a result, Defendants repeatedly instructed Escape's employees to obtain copies of digital music files from any possible source and to upload them to the Central Music Library. *Id.* ¶ 21. For example:

[redacted]

Defendants have confirmed these instructions in their sworn testimony. *See* Ex. 6 (Greenberg Tr. 240:8-246:19, 268:24-269:3); Ex. 1 (Tarantino Tr. at 448:18-449:9, 449:25-454:23); *see also* Ex. 22 (DaSilva Tr. 215:23-217:12, 218:3-18). Other Escape employees have testified that they uploaded popular music files to the Central Music Library in response to

Defendants' direct instructions. SUF ¶ 22, 27; Arabadjiev Decl. ¶ 13 (noting that Tarantino instructed employees to locate "popular artists or albums. . . . from peer-to-peer services and upload them to Grooveshark"); Ashenden Decl. ¶18 (same); Westermann-Clark Decl. ¶ 7 (same).

D. Grooveshark Lite: Escape's All-Streaming Music Service

As a direct result of the foregoing efforts, Defendants achieved their goal of amassing a large collection of popular music. By early 2008, the Grooveshark service featured a library of more than [redacted] digital music files, including [redacted] of infringing copies of Plaintiffs' sound recordings that were uploaded by Defendants and their employees. SUF ¶ 8; Horowitz Decl. ¶ 36. [redacted]

In direct response to these concerns, Defendants launched a new "streaming" service in April 2008, which they referred to as Grooveshark Lite. *Id.*; *see also* Horowitz Decl. ¶¶ 37-44. As designed by Escape, Grooveshark Lite provided users with instant access to all of the songs stored in the Central Music Library. SUF ¶¶ 24-25. Anyone with an Internet connection could navigate to the Grooveshark website and, without creating an account or downloading any software, receive a "streamed" copy of any song in the Grooveshark catalog directly from Defendants' central servers. *Id.* ¶ 23.

[redacted]

[redacted]

In the months leading up to the launch of Grooveshark Lite, Defendants continued to instruct Escape employees to upload as much content as possible to the Central Music Library in an effort to reach a benchmark of [redacted] (a benchmark that Defendants reached). SUF ¶ 26, Ex. 31. [redacted]

With an extensive library of popular content available "on demand," Defendants' Grooveshark Lite service attracted an audience of millions of users. SUF ¶ 51. [redacted] Escape also modified the Grooveshark Lite service so that all users, including employees, could upload music files from their personal computers directly to Defendants' central music servers. *Id.*[11]

E. Escape's Employees Uploaded Files to Grooveshark, as Part of Their Job Responsibilities, After the Launch of Grooveshark Light

Defendants' policy of requiring employees to upload music files to Grooveshark, as part of their job responsibilities, did not end with the initial success of Grooveshark Lite. In 2009, Escape received numerous DMCA infringement notices from copyright holders demanding that it remove infringing copies of popular copyrighted songs from Grooveshark. Ashenden Decl. ¶ 20; *see, e.g.*, SUF ¶ 28, Ex. 63. These "takedown" notices threatened to diminish the

[11] [redacted]

Grooveshark music library. *Id.* [redacted]

[redacted] As part of this process, Escape's senior officers searched for infringing songs that Defendants had removed in response to DMCA takedown notices and re-uploaded infringing copies of those songs to Grooveshark to ensure that its music catalog was complete. SUF ¶ 28.

Moreover, Escape employees regularly uploaded files to Grooveshark (including copies of popular sound recordings owned by Plaintiffs) in order to "test" the functionality of the uploading process. *Id.* ¶ 29. Many of Escape's employees engaged in these tests directly reported the results to Greenberg and other senior personnel at Escape. *Id*. All files uploaded as part of these "tests" remained part of the Grooveshark music library and were accessible for streaming to all users of the service. *See* SUF ¶ 30; Arabadjiev Decl. ¶ 22 (noting that he uploaded files to Grooveshark for testing purposes, including tracks from popular artists such as The Beach Boys, Britney Spears, and Bruce Springsteen); Geller ¶ 4 (same). Such testing occurred as a regular part of Escape employees' job responsibilities up to at least the initiation of this action in November 2011. SUF ¶ 29.

F. Escape's Database Records Confirm the Uploading and Exploitation of Infringing Content by Escape's Officers and Employees

[redacted]

[redacted] The following chart reflects a small sample of the files uploaded by Escape employees, which include infringing copies of Plaintiffs' works:

Employee	Title	Number of Uploads	Representative Artists
Samuel Tarantino	CEO	[redacted]	Bob Marley Ben Folds Five Billy Joel
Colin Hostert	Chief Information Officer	[redacted]	Eric Clapton Nirvana
Alex Shifrin	Chief Operating Officer	[redacted]	Green Day The Black Eyed Peas
Jay Paroline	Vice President of Engineering	[redacted]	Sheryl Crow Weezer
Nikola Arabadjiev	Quality Assurance	[redacted]	Jay-Z Beyoncé Madonna Michael Jackson

[12] As set forth in Plaintiffs' pending Sanctions Motion, Escape intentionally deleted all records for Greenberg's user account as well as hundreds of thousands of other uploading records from the UsersFiles table in an effort to conceal the extent of their infringing activities. *See* Sanctions Mot. at 1, 3-4, 7-8. [redacted]

Chanel Munezero	Software Engineer	[redacted]	T.I. Christina Aguilera Prince
Benjamin Westermann-Clark	Vice President of Public Relations	[redacted]	Foo Fighters OutKast
John Ashenden	Senior Vice President, Creative Director, and Chief Designer.	[redacted]	Elton John The Roots Kanye West
Paulo DaSilva	Senior Java Developer	[redacted]	Dave Matthews Band Incubus

Horowitz Decl. at Exs. E-F; Ex. 42 (Escape organizational charts).

Although these database records conclusively demonstrate uploading by Escape's employees, other contemporaneous evidence corroborates these records. As described above, when Escape received a DMCA infringement notice from a copyright owner, Escape generated an automated "notification" letter to each user identifying the files they uploaded that were the subject of the DMCA infringement notice. SUF ¶ 6; Horowitz Decl. ¶¶ 50-56. [redacted] Based on data produced by Escape, it has engaged in this ongoing infringement of Plaintiff's copyrighted works from August 2009 through the filing of this action in 2011. *Id.*

ARGUMENT

I. STANDARD OF REVIEW

Summary judgment "must be granted where the pleadings, the discovery and disclosure materials on file, and any affidavits show 'that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Brown v. Eli Lilly & Co.*, 654 F.3d 347, 358 (2d Cir. 2011) (quoting Fed. R. Civ. P. 56(a)); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986) (summary judgment proper where moving party demonstrates "the absence of a genuine issue of material fact"); *Burt Rigid Box, Inc. v. Travelers Prop. Cas. Corp.*, 302 F.3d 83, 90 (2d Cir. 2002) (same).

II. THE EMPLOYEE UPLOADS OF PLAINTIFFS' COPYRIGHTED WORKS AND SUBSEQUENT COMMERCIAL EXPLOITATION OF THOSE UPLOADS WERE A DIRECT INFRINGEMENT OF PLAINTIFFS' COPYRIGHTS

There is no good faith dispute that Defendants and their employees directly infringed Plaintiffs' copyrights. As described herein, Plaintiffs own the applicable copyrights at issue. Moreover, Defendants and their employees engaged in the reproduction, distribution, and/or public performance of copies of those sound recordings without authorization from Plaintiffs.

A. Plaintiffs Own the Copyrights for the Works-in-Suit

As set forth in the accompanying declarations of Plaintiffs' representatives, Plaintiffs own the copyrights in the relevant sound recordings at issue (hereinafter the "Works-in-Suit"). SUF ¶ 1. For many works, the certificate of copyright registration identified one of the Plaintiffs as the owner of the copyright. This is *prima facie* evidence that Plaintiffs own these copyrights. 17 U.S.C. § 410(c) ("In any judicial proceedings the certificate of a registration made before or within five years after first publication of the work shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate."); *see also Island Software &*

Computer v. Microsoft Corp., 413 F.3d 257, 261 (2d Cir. 2005) (noting that a court is entitled to take judicial notice of copyright registrations as proof of copyright ownership).[13]

For the remainder of the Works-in-Suit, Plaintiffs acquired ownership of the copyrights through written assignments or transfers of title. SUF ¶ 1 (citing declaration of Plaintiffs' representatives). These assignments also prove Plaintiffs' ownership of each copyright. *See* 3 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright*, § 12.11[C] (2013) ("Once plaintiff . . . submit[s] the certificate that he himself filed, or prov[es] his chain of title from the previous registrant[], the burden shifts to the defendant to establish the invalidity of plaintiff's title from the author"); *Jasper v. Bovina Music, Inc.*, 314 F.3d 42, 46-47 (2d Cir. 2002) (signed writings establish copyright ownership); *Sunham Home Fashions, LLC v. Pem-America, Inc.*, No. 02 Civ. 6284(JFK), 2002 WL 31834477, at *7 (S.D.N.Y. Dec. 17, 2002) (same).

B. The Infringement of Plaintiffs' Exclusive Rights

Under the Copyright Act, Plaintiffs have the exclusive rights to engage in, *inter alia*, the reproduction, distribution, and public performance of the Works-in-Suit. *See* 17 U.S.C. § 106(1) (reproduction); *id.* § 106(3) (distribution); *id.* § 106(4) (public performance). As numerous courts have recognized, the unauthorized uploading or transferring of copies of a digital file to another computer violates Plaintiffs' exclusive rights of distribution and reproduction. *See, e.g.*, *Capitol Records, LLC v. ReDigi Inc.*, 934 F. Supp. 2d 640, 648-52 (S.D.N.Y. 2013); *Columbia Pictures Indus., Inc. v. Fung*, 710 F.3d 1020, 1034 (9th Cir. 2013); *see also U.S. v. Am. Soc'y of*

[13] Plaintiffs have produced all of the underlying ownership documents in discovery, each of which is admissible as either a business record or a public record, to Defendants. Servodidio Decl. ¶ 75. Therefore, the Court may rely on these summaries in lieu of the underlying documents themselves. *See* Fed. R. Evid. 1006 ("proponent may use a summary . . . to prove the content of voluminous writings . . . that cannot be conveniently examined in court").

Composers, Authors & Publishers, 485 F. Supp. 2d 438, 442 (S.D.N.Y. 2007), *aff'd in part*, 627 F.3d 64 (2d Cir. 2010).

Moreover, the unauthorized streaming of an audio file over the Internet violates the copyright owner's exclusive right of public performance. *WPIX, Inc. v. ivi, Inc.*, 765 F. Supp. 2d 594, 601 (S.D.N.Y. 2011) (finding that the unauthorized streaming of master copies of video files over the internet infringed copyright holder's right of public performance), *aff'd*, 691 F.3d 275, 277, 286-287 (2d Cir. 2012), *cert. denied*, 133 S.Ct. 1585 (U.S. 2013); *see also ReDigi*, 934 F. Supp. 2d at 652 (internet audio streams are public performances); *Am. Soc'y of Composers, Authors, & Publishers*, 627 F.3d at 74 (same).

Escape's database records definitively establish that their employees uploaded copies of the Works-in-Suit to computer servers owned or operated by Defendants. *See* SUF ¶¶ 3-8; Horowitz Decl. ¶¶ 58-62. [redacted]

Further, the Infringing Employee Uploads correspond to Plaintiffs' copyrighted works. SUF ¶ 8. Plaintiffs conducted a detailed analysis of available MP3 files uploaded by Escape employees and confirmed that each of these files represents a copy of the same sound recordings covered by Plaintiffs' copyright registrations for the Works-in-Suit. *Id*. This process included using industry-recognized audio fingerprinting technology to confirm that the copies of the files

uploaded by Defendants and their employees corresponded to Plaintiffs' copyrighted sound recordings. SUF ¶ 8; Horowitz Decl. ¶¶ 69-72. In order to address the employee uploads for which Escape did not produce MP3 files, Plaintiffs also analyzed the metadata stored by Escape, which was associated with the employee-uploaded files, to confirm that the uploaded files corresponded to Plaintiffs' copyrighted works. SUF ¶ 8; Horowitz Decl.¶¶ 67-68.

Finally, Escape's database records confirm that it streamed (*i.e.*, publically performed) the specific files uploaded by their employees [redacted] during the time period from August 2009 through the pendency of this litigation, each time resulting in the direct infringement of Plaintiffs' exclusive performance rights. *See* SUF ¶ 11; Horowitz Decl. ¶¶ 73-78.

As a result, there is no dispute as to Plaintiffs' ownership of the Works-in-Suit and the direct infringement of these works by Defendants and their employees.

III. PLAINTIFFS ARE ENTITLED TO SUMMARY JUDGMENT AS TO ESCAPE'S DIRECT LIABLILITY FOR THE INFRINGING EMPLOYEE UPLOADS UNDER THE DOCTRINE OF *RESPONDEAT SUPERIOR*

Under the well-established doctrine of *respondeat superior*, Escape bears direct liability for acts of copyright infringement committed by its employees while acting within the scope of their employment. *See* Restatement of Agency (Third) § 2.04 (2006); *Shapiro, Bernstein & Co. v. H.L. Green Co.*, 316 F.2d 304, 307 (2d Cir. 1963) ("*respondeat superior* applies to copyright infringement by a servant within the scope of his employment"); *see also Famous Music Corp. v. Bay State Harness Horse Racing & Breeding Ass'n, Inc.*, 554 F.2d 1213, 1214-15 (1st Cir. 1977) (same); *Wihtol v. Crow*, 309 F.2d 777, 782-83 (8th Cir. 1962) (same); *Bradbury v. Columbia*

Broadcasting System, Inc., 287 F.2d 478 (9th Cir. Cal. 1961); 3 *Nimmer on Copyright* § 12.04 [A][1].[14]

Here, based on overwhelming evidence, Escape's employees engaged in repeated acts of direct copyright infringement within the parameters of their employment. Indeed, Defendants *have admitted* that they instructed Escape's employees repeatedly to upload substantial volumes of popular copyrighted music files to Grooveshark to further Escape's business interests. *See* SUF ¶¶ 15, 21, 26. While these admissions alone are dispositive, documentary evidence further confirms the applicability of the doctrine of *respondeat superior*. Greenberg admitted that Escape management directed "all employees of Grooveshark to cache their music libraries to increase the size of" Grooveshark's Central Music Library. *Id.* ¶ 26, Ex. 6 (Greenberg Tr. at 266:15-19). Further, Tarantino – the CEO of the company – made it a "mandatory" job requirement for employees to upload as many music files to Grooveshark as possible in an effort to establish a large library of popular music and attract users to the service. *Id.* ¶ 15, Ex. 16.

[redacted]

[14] While Defendants' conduct occurred in part in Florida and caused injury to many of the Plaintiffs in New York, the Court need not engage in a choice of law analysis because both New York and Florida law equally recognize the doctrine of *respondeat superior*. *Compare Lay v. Roux Lab., Inc.*, 379 So.2d 451, 453 (Fla. Dist. Ct. App. 1st Dist. 1980) ("an employer is liable in damages for the wrongful act of his employee that causes injury to another person, if the wrongful act is done while the employee is acting within the apparent scope of his authority as such employee to serve the interests of the employer") *with Riviello v. Waldron*, 47 N.Y.2d 297, 302 (1979) ("the doctrine of *respondeat superior* renders a master vicariously liable for a tort committed by his servant while acting within the scope of his employment," and an act is within the scope of employment if "done while the servant was doing his master's work") (quotations and citations omitted); s*ee also J. Aron & Co. v. Chown*, 231 A.D.2d 426, 426, 647 N.Y.S.2d 8, 8 (1st Dept. 1996) ("A choice-of-law analysis is not required, since there is no conflict between the law of New York and that of . . . the proposed foreign forum") (cited in *Curley v. AMR Corp.*, 153 F.3d 5, 12 (2d Cir. 1998)).

Apart from Defendants' ongoing campaign to compel employees to upload files to increase the size of the music library available on Grooveshark, Escape employees' job responsibilities required them to "test" the functionality of the service by uploading copyrighted music files. *See* SUF ¶¶ 29-30. Although there was nothing about the testing function that required the use of copyrighted content (indeed, after the commencement of this lawsuit, Escape stopped using copyrighted content to test functionality, *see id.* ¶ 41), Escape employees repeatedly tested the service using copyrighted content and Escape decided to leave that content on the servers after the testing was complete so that it would be available for access by users, *see id.* ¶ 30.

In a recent decision, the First Circuit upheld a finding of infringement based on similar record evidence. *See Soc'y of Holy Transfiguration Monastery, Inc. v. Gregory*, 689 F.3d 29, 55-56 (1st Cir. 2012), *cert. denied*, 133 S. Ct. 1315 (Feb. 19, 2013). In that case, the Court affirmed a grant of summary judgment against a defendant who directed his agent to engage in the uploading of a copyrighted work (a religious text) to a website. In finding the defendant directly liable for the uploading of infringing content by his agent, the Court noted that the defendant: (1) owned and controlled the website in question; (2) supervised the agent who posted infringing content to the website; (3) instructed the agent to upload content; and (4) was aware of and authorized the uploads. *Id*. The court also found that the uploads of copyrighted text in question "clearly fell within [the agent's] actual authority because he knew of the defendant's overall goal" for his church and the uploads furthered those goals. *Id*. at 57.

Similarly, in the instant case, Defendants owned the Grooveshark service and were aware of, supervised, and instructed employees to upload digital music files to Grooveshark. SUF ¶¶ 15, 21, 26, 32-35, and 66-75. [redacted]

[redacted]

Defendants also openly fostered the practice of allowing their employees to "test" the service by uploading copyrighted music files that were accessible to users. *Id.* ¶¶ 29-30. [redacted] As such, the employees' infringing conduct plainly fell within the parameters of their authority from Escape. *Id.* ¶ 31.

Other courts also have held employers directly liable for acts of copyright infringement committed by employees pursuant to instructions from management. In *Dive N' Surf, Inc. v. Anselowitz*, the court applied the doctrine of *respondeat superior* to hold defendants liable for copyright infringement where, like here, they provided instructions to their employees to engage in the infringing activities at issue. 834 F. Supp. 379, 382 (M.D. Fla. 1993). In granting summary judgment to plaintiffs, the court relied on affidavits from defendants' employees confirming that "defendant ordered his employees to recreate plaintiffs' copyrighted . . . properties in large quantities." *Id.* Of course, here, the evidence is even more compelling as Defendants directly admitted they instructed Escape employees to upload copyrighted files to Grooveshark as a "mandatory" part of their jobs. SUF ¶¶ 15, 21, 26.

Moreover, in *Wihtol v. Crow*, the Eighth Circuit held a church liable for the copyright infringement committed by its choral director, who copied a music composition as part of his regular job responsibilities. 309 F.2d at 782; *see Boz Scaggs Music v. KND Corp.*, 491 F. Supp. 908, 913 (D. Conn. 1980) (same); *Broadcast Music, Inc. v. Miller Associates, Inc.*, No. Civ. 04-1711, 2006 WL 3064107, at *6 (W.D. Pa. Oct. 25, 2006) (same); *Spectravest, Inc. v. Fleet*

Street, Ltd., No. C-88-4539, 1989 WL 135386, at *5 (N.D. Cal. Aug. 23, 1989) (same); *Blendingwell Music, Inc. v. Moor-Law, Inc.*, 612 F. Supp. 474, 481 (D. Del. 1985) (same); *Shapiro, Bernstein & Co. v. Veltin*, 47 F. Supp. 648, 649 (W.D. La. 1942) (same).

Based on the foregoing undisputed facts and legal authorities, Escape's employees engaged in acts of direct infringement within the scope of their employment and at the express direction of Defendants. As a matter of law, Escape bears direct responsibility for this corporate-mandated infringement.

IV. PLAINTIFFS ARE ENTITLED TO SUMMARY JUDGMENT AS TO ESCAPE'S SECONDARY LIABILITY FOR THE INFRINGING EMPLOYEE UPLOADS

Escape also has engaged in secondary copyright infringement based on its integral role in its employees' infringement of the Works-in-Suit.[15] Secondary liability can attach under three separate doctrines – vicarious copyright infringement, inducement of copyright infringement, and contributory copyright infringement – all of which are readily satisfied here. *See Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 930, 934-35 (2005) (recognizing separate liability doctrines); *Usenet*, 633 F. Supp. 2d at 150-158 (same).

A. Escape is Vicariously Liable for the Infringing Employee Uploads

Vicarious copyright liability attaches "[w]hen the right and ability to supervise coalesce with an obvious and direct financial interest in the exploitation of copyrighted materials." *Shapiro v. H.L. Green*, 316 F.2d at 307, 309. In other words, parties are vicariously liable for copyright infringement when they "profit[] from direct infringement while declining to exercise a right to stop or limit it." *Grokster*, 545 U.S. at 930; *Arista Records LLC v. Lime Grp. LLC*

[15] Courts have held defendants responsible for online copyright infringement under theories of both direct and secondary liability. *See, e.g., Arista Records LLC v. Usenet.com, Inc.*, 633 F. Supp. 2d 124, 149, 154, 156, 158-9 (S.D.N.Y. 2009) (finding defendants liable for direct and secondary liability).

("*LimeWire*"), 784 F. Supp. 2d 398, 423 (S.D.N.Y. 2011) (same). Escape plainly meets these criteria in this case.

1. Escape Had the "Right and Ability" to Control the Infringing Employee Uploads

A party has the "right and ability" to control infringing behavior when the direct infringer "depend[s] upon [the defendant] for direction." *Gershwin Publ'g Corp. v. Columbia Artists Mgmt., Inc.*, 443 F.2d 1159, 1163 (2d Cir. 1971); *see also Usenet*, 633 F. Supp. 2d at 157 (finding defendant had the right and ability to control infringing behavior where it could suspend or restrict direct infringers' access to online music service); *Disney Enterprises, Inc. v. Hotfile Corp.*, No. 11-20427-CIV, 2013 WL 6336286, at *40 (S.D. Fla. 2013) (finding "right and ability to control" because website "provid[ed] the means to commit direct infringement" by "mandating user registration and hosting infringing materials on its . . . servers.").

Here, Escape's employees engaged in direct infringement under the supervision and direction of the officers of the company. As a result, Escape necessarily maintained control over the nature and scope of its employees' activities on behalf of the company. For example, Tarantino and Greenberg directed Escape's employees to "seed" files to promote the service, to upload as many digital music files to the Central Music Library as possible, to bring music files to the office for uploading, and to test the functionality of Grooveshark by uploading files. *See* SUF ¶¶ 15, 20-21, 26, 29-30, 34-35, 37. Escape's employees readily obeyed these directions, uploading over [redacted] to Grooveshark. *Id.* ¶¶ 8, 16, 22, 27-29, 36-39.

Moreover, there is further compelling evidence of Escape's ability to control its employees' infringement. [redacted] These

belated instructions provide powerful confirmation that Escape had direct influence and control over the infringing conduct of its employees. The fact that Escape only exercised such control after it was sued for infringement merely underscores that it always had this power but only decided to utilize it in an obvious and self-serving attempt to limit its exposure to damages in this action.

Given these undisputed facts, there is no dispute as to Escape's right and ability to control the Infringing Employee Uploads. As one court concluded in a similar case: "[t]here can be no doubt that [an employer has] the right and ability to supervise its own employees." *Lowery's Reports, Inc. v. Legg Mason, Inc.*, 271 F. Supp. 2d 737, 745-46 (D. Md. 2003).

2. Escape Directly Benefited from the Infringing Employee Uploads

Escape undeniably received a "direct financial benefit" from the Infringing Employee Uploads. All that is required to satisfy this element is "a causal relationship between the infringing activity and any financial benefit a defendant reaps, regardless of *how substantial* the benefit is in proportion to a defendant's overall profits." *Ellison v. Robertson*, 357 F.3d 1072, 1079 (9th Cir. 2004) (emphasis in original); *Usenet*, 633 F. Supp. 2d at 157 (same); *Capitol Records, Inc. v. MP3Tunes, LLC*, No. 07 Civ. 9931, 2013 WL 1987225, at *10 (S.D.N.Y. May 14, 2013) (same). This relationship is established when the infringing material acts as a "draw" to attract users to a defendant's service. *Usenet*, 633 F. Supp. 2d at 156-157; *Ellison*, 357 F.3d at 1078-79. "[T]he law is clear that to constitute a direct financial benefit, the 'draw' of infringement need not be the primary, or even a significant, draw – rather, it need only be 'a' draw." *Usenet*, 633 F. Supp. 2d at 157; *Hotfile Corp.*, 2013 WL 6336286, at *39 (same).

Here, the undisputed record evidence confirms that Escape received a financial benefit from the Infringing Employee Uploads, which plainly acted as a "draw" for Grooveshark users. SUF ¶¶ 14-15, 17, 24-25, 42-44, 46, 48-53. As noted above, the Infringing Employee Uploads

contained well-known and popular music, including Billboard hits from popular artists such as Michael Jackson, Prince, Beyoncé, Jay-Z, Green Day, and Britney Spears. *See* SUF ¶ 54; *see also* Horowitz Decl. at Ex. F. Escape relied on these and other popular sound recordings to build a comprehensive music catalog in order to attract users to the service and then "monetize" the illegal content by generating advertising revenues and other fees. *Id.* ¶¶ 14, 17, 25-26 &

Moreover, direct evidence confirms that the Infringing Employee Uploads functioned as a draw for the service. Escape's database records confirm that Grooveshark streamed over in response to requests from users over a period from at least August 2009 through September 2013. SUF ¶ 11-12. Thus, Escape actively exploited these uploads to satisfy requests from users and generated revenues from the sales of advertising to their user base. SUF ¶¶ 52-53. Accordingly, Escape's financial interest in its employees' copyright infringement is manifest.

B. Escape Is Liable for Inducement of its Employees' Infringing Uploads

Escape also induced copyright infringement when it mandated that the its employees engage in the infringing conduct at issue herein. To establish inducement, Plaintiffs must show that Escape: "(1) engaged in purposeful conduct that encouraged copyright infringement, with (2) the object or intent to encourage such infringement." *LimeWire*, 784 F. Supp. 2d at 425

(citing *Grokster*, 545 U.S. at 936-37, 940 n. 13); *Usenet*, 633. F. Supp. 2d at 150-52 (same); *see also Fung*, 710 F.3d at 1031-32.

As set forth above, Escape and its executives disseminated written and oral instructions to their employees expressly encouraging – indeed requiring – them to engage in the massive uploading of digital music files to Grooveshark. For example, Defendant Greenberg wrote the following email to all Escape personnel: [redacted]

By overtly instructing Escape's employees to upload as many files as possible to Grooveshark as a condition of their employment, the company engaged in purposeful conduct with a manifest intent to foster copyright infringement via the Grooveshark service. *See* SUF ¶¶ 14-15, 19, 21, 25, 26-27, 40, 56-65. Although these facts alone establish inducement liability, Defendants also have admitted that: (i) they fully expected and intended their employees to upload infringing copies of popular copyrighted sound recordings owned by Plaintiffs in order to attract users to their service; and (ii) they made a calculated business decision that they could "beg forgiveness" from the Plaintiffs for the infringing use of their content. *See id.* ¶¶ 14-15, 20-21, 26, 65, 105; *see LimeWire*, 710 F.3d at 425, 427 (illegal business model evidence of inducement of infringement). As a result, this is a "classic case" of inducement liability as

Defendants have conceded that Escape acted with an improper intent to foster infringement. *See, e.g., Usenet*, 633. F. Supp. 2d at 150-52, 154 (granting summary judgment for inducement where defendants expressly manifested an object to foster infringement via the direct solicitation of infringing uses of service); *Fung*, 710 F.3d at 1036-37 (same).

C. Escape Has Engaged in Contributory Copyright Infringement for the Infringing Employee Uploads

Escape has engaged in contributory copyright infringement for its role in Infringing Employee Uploads. In the Second Circuit, a party commits contributory copyright infringement if the party had "knowledge of the infringing activity, induce[d], cause[d], or materially contribute[d] to the infringing conduct of another." *Arista Records, LLC v. Doe 3*, 604 F.3d 110, 117-18 (2d Cir. 2010) (internal quotation and citation omitted).

1. Escape Had Knowledge of the Infringing Employee Uploads

The knowledge of infringing activity sufficient to support a finding of contributory liability is assessed through an objective standard and can be either "actual or constructive." *Usenet*, 633 F. Supp. 2d at 154. The relevant inquiry is if the parties "know ***or have reason to know***" of the direct infringement. *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1020 (9th Cir. 2001) (emphasis added); *Arista Records, LLC v. Doe 3*, 604 F.3d at 118; *ReDigi*, 934 F. Supp. 2d at 658. In the context of an employer-employee relationship, employee knowledge is imputed to the employer. *Usenet*, 633 F. Supp. 2d at 152 n.19, 155; *see also Smith v. Little Brown & Co.*, 245 F. Supp. 451, 459 (S.D.N.Y. 1965), *aff'd*, 360 F.2d 928 (2d Cir. 1966).

Here, Escape had both actual and constructive knowledge that its employees were uploading copyright-protected files, including the Infringing Employee Uploads. Escape and its officers ordered its employees to upload as much music as possible – [redacted] – knowing that these uploads would include popular copyrighted sound recordings

owned by Plaintiffs. *See* SUF ¶¶ 8, 14, 15, 21-22, 26-27, 66-72. [redacted] Moreover, Escape's employees had actual knowledge of the digital music files they directed to be uploaded to Grooveshark and virtually [redacted]

2. Escape Materially Contributed to the Infringing Employee Uploads

The record evidence further confirms that Escape materially contributed to the infringing conduct of its employees. Such material contribution exists "if the defendant engages in personal conduct that encourages or assists the infringement." *Napster*, 239 F.3d at 1019 (citation and quotation marks omitted).

Here, Escape actively directed, encouraged, and condoned the massive company-wide infringement through, *inter alia*, unambiguous directives where the company and its officers instructed employees to upload files, as described at length above, through the implementation of "seeding points" and a Central Music Library and related software that Escape created to store and stream copies of Plaintiffs' works. SUF ¶¶ 15-22, 24-27, 78-82, 84-85, 87, 90. Moreover, senior Escape officers and personnel personally participated in the corporate piracy campaign, with Escape senior officers and personnel making their home internet connections available to increase the number of uploaded files. *Id.* ¶¶ 20-21, 26, 82-83, 88-89. Escape employees even restocked popular tracks removed following DMCA takedowns. *Id.* ¶¶ 28, 86.

Based on the above, Escape materially contributed to the Infringing Employee Uploads and had objective knowledge of the infringements. As a result, the Court should grant Plaintiffs summary judgment holding that Escape is liable for contributory infringement.

V. ESCAPE'S CO-FOUNDERS, TARANTINO AND GREENBERG, ARE PERSONALLY LIABLE FOR INFRINGEMENT

As senior corporate officers of Escape, Defendants Tarantino and Greenberg are jointly and severally liable for Escape's direct and secondary copyright infringement based on their central roles as the driving forces behind the corporate-mandated employee infringement campaign. Moreover, as a result of their own unauthorized uploading of Plaintiffs' copyrighted works to Grooveshark, Tarantino and Greenberg are direct copyright infringers.

A. Escape's Co-Founders Are Jointly and Severally Liable with Escape for the Infringing Employee Uploads

Under well-established Second Circuit precedent, corporate officers "who participate in, exercise control over, or benefit from the infringement are jointly and severally liable as copyright infringers." *Sygma Photo News, Inc. v. High Soc'y Magazine, Inc.*, 778 F.2d 89, 92 (2d Cir. 1985); *see also, e.g.*, *Usenet*, 633 F. Supp. 2d at 149, 158-59 (finding CEO of corporate defendants personally liable for corporate infringement); *Peer Intern. Corp. v. Luna Records, Inc.*, 887 F. Supp. 560, 565 (S.D.N.Y. 1995) (Sotomayor, J) (finding liability against corporate defendant's president who "determine[d] what [was] done and what [was]n't done in the corporation"); *Bentley Motors Ltd. Corp. v. McEntegart*, No. 8:12-cv-1582-T-33TBM, 2013 WL 5487212, at *13 (M.D. Fla. Sept. 30, 2013) (finding president of corporation jointly and severally liable for trademark infringement).

Such joint and several liability of corporate officers applies to cases where, as here, the corporate entity bears direct liability for its employees' infringement based on *respondeat superior* and secondary liability for such infringement under the doctrines of vicarious infringement, inducement, and/or contributory infringement. *See, e.g.*, *Shapiro v. H.L. Green*, 316 F.2d at 307; *Boz Scaggs Music*, 491 F. Supp. at 913-14; *Blendingwell Music*, 612 F.Supp. at

482; *Usenet*, 633 F. Supp. 2d at 158-59; *Peer Intern. Corp.*, 887 F. Supp. at 565; *LimeWire*, 784 F. Supp. 2d at 438-39.

Tarantino and Greenberg easily satisfy the criteria for corporate officer liability. As demonstrated above, both executives directed all the infringements here at issue. For example: (i) they created the initial business model of [redacted] (iii) Greenberg implemented the use of the Central Music Library which Tarantino used to attract investment, *id.* ¶¶ 18-19, 46, 96-97; (iv) they were responsible for directing employees to upload files to same, *id.* ¶¶ 21, 26, 99, 104; and (iv) they made the decision to launch the "Grooveshark Lite" streaming service and to instruct Escape employees to upload files for that service, *id.* ¶¶ 25, 100; and (v) they were direct infringers [redacted]

Thus, as the two senior officers of Escape, Tarantino and Greenberg plainly had the right and ability to control the infringing conduct of the employees but declined to do so (as evidenced by the post-litigation requirement that employees not upload infringing files to Grooveshark). They also had substantial equity interest in Escape and therefore had a direct financial interest in exploiting the Infringing Employee Uploads to attract users to Grooveshark. *Id.* ¶ 106.

In addition, Tarantino and Greenberg directly induced Escape employees to engage in infringement. As noted above, they personally instructed Escape employees to upload files to Grooveshark as a mandatory part of their jobs. *Id.* ¶¶ 15, 21, 26, 96, 98-99, 102. Further, they both intended for Escape employees to upload copies of popular music files that would help to

attract users to the service. *Id.* ¶¶ 14, 20-21, 24, 26, 28, 47, 54, 98-99, 102, 104-105. As a result, both acted with an object to foster infringement subjecting them to personal liability for inducement.

Moreover, Tarantino and Greenberg had knowledge of – and materially contributed to – the Infringing Employee Uploads. As described above, they intended Escape employees to upload copyrighted files to Grooveshark and therefore plainly had the requisite knowledge of their own business practices. *Id.* Further, they were the driving force that caused this infringement when they affirmatively required all employees to upload files to Grooveshark as part of the corporate-policy of Escape. [redacted]

Thus, the facts before the Court present a clear case where summary judgment is appropriate against Tarantino and Greenberg for joint and several liability with Escape for direct and secondary copyright infringement.

B. Escape's Co-Founders Personally Uploaded Infringing Works to Grooveshark

Finally, Defendants Tarantino and Greenberg are direct infringers of Plaintiffs' works based on their uploads of copyrighted files to Grooveshark. As discussed above, a copyright holder's exclusive right of distribution and reproduction encompasses the uploading and transferring a copyrighted work. *ReDigi Inc.*, 934 F. Supp. 2d at 649-51; *Fung*, 710 F.3d at 1034. Thus, a finding of infringement against Tarantino and Greenberg for their own uploads only requires that they uploaded Works-in-Suit to Grooveshark without authorization. *Island Software*, 413 F.3d at 261.

Here, Tarantino and Greenberg uploaded [redacted] of Plaintiffs' copyrighted works to Grooveshark directly via their user accounts as confirmed by Escape's database records. As with the other Infringing Employee Uploads, these are not in genuine dispute. Defendants' own records show that Tarantino personally uploaded nearly [redacted] to Grooveshark, including 46 Works-in-Suit, from popular bands like the Doors, Bon Jovi, John Mayer, and Bob Marley. SUF ¶ 108. And, the non-despoiled record shows that Greenberg uploaded nearly [redacted], including [redacted] at issue from well-known artists such as Avril Lavigne, Billy Joel, and Britney Spears, as well as submitted up to [redacted] to Grooveshark for upload. SUF ¶¶ 110-12; *see also* Sanctions Mot. at 1, 3-4.

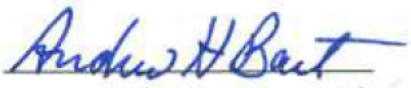
Therefore, Greenberg and Tarantino should be found liable – at a minimum – for uploading these works and summary judgment should be awarded for this infringement.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant their motion for summary judgment.

Dated: February 18, 2014

Respectfully submitted,

By: 

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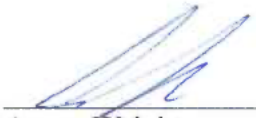
CERTIFICATE OF SERVICE

I, Aaron Wright, hereby affirm that on this 18th day of February, 2014, I caused the foregoing Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment and the accompanying Notice of Motion, Declarations of Nikola Arabadjiev, John Ashenden, Paul Geller, Ellen Hochberg, Dr. Ellis Horowitz, Vance Ikezoye, Wade Leak, Chanel Munezero, Darren J. Schmidt, and Gianni P. Servodidio, Benjamin Westermann-Clark, and Aaron Wright with attached exhibits , and Local Rule 56.1 Statement of Uncontroverted Facts to be served via this Court's Electronic Case Filing system and caused same to be served via first class mail upon Matthew H. Giger, John J. Rosenberg, and Brett T. Perala, *Attorneys for Defendants*.

Dated: New York, New York
February 18, 2014



Aaron Wright