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09 CV 1584

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

)
CAPITOL RECORDS, LLC; CAROLINE
)
RECORDS, INC.; VIRGIN RECORDS
)
AMERICA, INC.; COLGEMS-EMI MUSIC
)
INC.; EMI APRIL MUSIC INC.; EMI
)
BLACKWOOD MUSIC; EMI FEIST
)
CATALOG INC.; EMI FULL KEEL MUSIC;
)
EMI GOLDEN TORCH MUSIC CORP.;
)
EMI GOLD HORIZON MUSIC CORP.;
)
EMI GROVE PARK MUSIC, INC.; EMI
)
LONGITUDE MUSIC; EMI MILLER
)
CATALOG INC.; EMI ROBBINS CATALOG
)
INC.; EMI U CATALOG, INC.; EMI VIRGIN
)
MUSIC, INC.; EMI VIRGIN SONGS, INC.;
)
EMI WATERFORD MUSIC, INC.; JOBETE
)
MUSIC CO. INC.; SCREEN-GEMS-EMI
)
MUSIC INC.; STONE DIAMOND MUSIC,
)

No. ___ Civ. _____

Plaintiffs,

COMPLAINT

v.

)
SEEQPOD, INC., FAVTAPE.COM,
)
KAZIAN FRANKS, RAF PODOWSKI,
)
SHEKHAR LODHA, and RYAN SIT,
)

Defendants.

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
APR 20 2016 10:51

Plaintiffs Capitol Records, LLC, Caroline Records, Inc., and Virgin Records America, Inc. (collectively, the “EMI Music Plaintiffs”), and Colgems-EMI Music Inc., EMI April Music

Inc., EMI Blackwood Music, EMI Feist Catalog Inc., EMI Full Keel Music, EMI Golden Torch Music Corp., EMI Gold Horizon Music Corp., EMI Grove Park Music, Inc., EMI Longitude Music, EMI Miller Catalog Inc., EMI Robbins Catalog Inc., EMI U Catalog, Inc., EMI Virgin Music, Inc., EMI Virgin Songs, Inc., EMI Waterford Music, Inc., Jobete Music Co. Inc., Screen Gems-EMI Music Inc. and Stone Diamond Music (collectively, the “EMI Publishing Plaintiffs”) (the EMI Music Plaintiffs and the EMI Publishing Plaintiffs, collectively, “Plaintiffs” or “EMI”), by their attorneys Pryor Cashman LLP, as and for their Complaint against defendants SeeqPod Inc. (“SeeqPod”), Kazian Franks (“Franks”), Raf Podowski (“Podowski”) and Shekhar Lodha (“Lodha”) (SeeqPod, Franks, Podowski and Lodha, collectively, the “SeeqPod Defendants”) and Favtape.com (“Favtape”) and Ryan Sit (“Sit”) (Favtape and Sit, collectively, the “Favtape Defendants”) (the SeeqPod Defendants and the Favtape Defendants, collectively, “Defendants”), on personal knowledge as to matters relating to themselves, and on information and belief as to all other matters, allege as follows:

NATURE OF ACTION

1. This is an action for, *inter alia*, direct, contributory and vicarious copyright infringement, and for inducement of copyright infringement. As more fully described herein, Defendants, through their Internet and mobile sites and services, have been exploiting, and continue to exploit, sound recordings embodying copyrighted content, including sound recordings owned or controlled by the EMI Music Plaintiffs and musical compositions owned or controlled by the EMI Publishing Plaintiffs, without authorization, and in violation of the United States Copyright Act and other state laws.

2. Defendants are willful direct, contributory and vicarious copyright infringers. Defendants reproduce, distribute, and/or publicly perform -- and encourage, induce, contribute

to, and profit from, the reproduction, distribution, display and/or performance by others of -- copyrighted music, including sound recordings and musical compositions owned or controlled by EMI. Defendants have, *inter alia*, knowingly created and employed their sites, services and algorithms for the precise purpose of facilitating the broadest possible use of unlawfully available music, all to secure traffic to their sites and services for their financial benefit. They have actual knowledge that the material that is located, indexed, reproduced, distributed and performed on and via their sites and services is infringing (or at least are aware of facts or circumstances from which infringing activity is apparent). They have the right and ability to control such infringing activity. And they are, in fact, encouraging or inducing infringement.

3. Defendants' infringement is knowing, willful, and massive. Unless enjoined by this Court, Defendants will continue their willful infringing activities in the pursuit of profit built on the uncompensated and unlicensed use of EMI's intellectual property.

THE PARTIES

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

5. Plaintiff Caroline Records, Inc. is a New York corporation, with its principal place of business in New York, New York.

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

7. Plaintiff Colgems-EMI Music Inc. is a Delaware corporation, with its principal place of business in New York, New York.

8. Plaintiff EMI April Music Inc. is a Connecticut corporation, with its principal place of business in New York, New York.

9. Plaintiff EMI Blackwood Music is a Connecticut corporation, with its principal place of business in New York, New York.

10. Plaintiff EMI Feist Catalog Inc. is a New York corporation, with its principal place of business in New York, New York.

11. Plaintiff EMI Full Keel Music is a duly organized corporation, with its principal place of business in New York, New York.

12. Plaintiff EMI Golden Torch Music Corp. is a New York corporation, with its principal place of business in New York, New York.

13. Plaintiff EMI Gold Horizon Music Corp. is a New York corporation, with its principal place of business in New York, New York.

14. Plaintiff EMI Grove Park Music, Inc. is a duly organized corporation, with its principal place of business in New York, New York.

15. Plaintiff EMI Longitude Music is a duly organized corporation, with its principal place of business in New York, New York.

16. Plaintiff EMI Miller Catalog Inc. is a New York corporation, with its principal place of business in New York, New York.

17. Plaintiff EMI Robbins Catalog Inc. is a New York corporation, with its principal place of business in New York, New York.

18. Plaintiff EMI U Catalog, Inc. is a New York corporation, with its principal place of business in New York, New York.

19. Plaintiff EMI Virgin Music, Inc. is a New York corporation, with its principal place of business in New York, New York.

20. Plaintiff EMI Virgin Songs, Inc. is a New York corporation, with its principal place of business in New York, NY.

21. Plaintiff EMI Waterford Music, Inc. is a California corporation, with its principal place of business in New York, New York.

22. Plaintiff Jobete Music Co. Inc. is a Michigan corporation, with its principal place of business in New York, New York.

23. Plaintiff Screen Gems-EMI Music Inc. is a Delaware corporation, with its principal place of business in New York, New York.

24. Plaintiff Stone Diamond Music Corp. is a Michigan corporation, with its principal place of business in New York, New York.

25. Upon information and belief, Defendant SeeqPod is a Delaware corporation with its principal place of business in Emeryville, California.

26. Defendant Franks is the co-founder, co-inventor and chief executive officer of SeeqPod and the website found at <http://www.seeqpod.com> (the "SeeqPod Site"). Upon information and belief, Franks is also an investor in SeeqPod. Upon information and belief, Franks maintains his personal residence in El Cerrito, California.

27. Defendant Podowski is the co-founder and co-inventor of SeeqPod and the SeeqPod Site. Upon information and belief, Podowski is also an investor in SeeqPod. Upon information and belief, Podowski maintains his personal residence in Pleasant Hill, California.

28. Defendant Lodha is the co-founder of SeeqPod and the SeeqPod Site. Upon information and belief, Lodha is also an investor in SeeqPod. Upon information and belief, Lodha maintains his personal residence in California.

29. Upon information and belief, Franks, Podowski and Lodha are primarily responsible for all decisions made with regard to the SeeqPod Site, service, software and algorithms.

30. SeeqPod has been able to attract millions of dollars of financial support from various “angel” investors. Upon information and belief, each of these corporations have also contributed to, facilitated, and profited from the infringing conduct of SeeqPod, the other SeeqPod Defendants, and SeeqPod users. Plaintiffs reserve the right to add as defendants SeeqPod’s investors once the full extent of their contribution to, and facilitation of, the infringing conduct described herein is known.

31. Upon information and belief, Defendant Favtape.com is a website created, owned and operated since 2008 by defendant Sit.

32. Defendant Sit is the founder and owner of Favtape.com (the “Favtape Site”). Upon information and belief, Sit is primarily responsible for all decisions made with regard to the Favtape Site, service, software and algorithms.

33. Upon information and belief, Sit is also an investor in Favtape. Upon information and belief, Sit maintains his personal residence in San Diego, California.

JURISDICTION AND VENUE

34. This is a civil action seeking damages and injunctive relief for copyright infringement under the Copyright Act, 17 U.S.C. § 101, *et seq.*

35. This Court has original subject matter jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338(a) and (b) and pursuant to the supplemental jurisdiction provisions of 28 U.S.C. § 1367.

36. This Court also has personal jurisdiction over Defendants pursuant to CPLR § 302(a).

37. Defendants, acting alone and in concert with others, transact business within New York State and in this District and supply goods and services in New York State, including by distributing copyrighted sound recordings and musical compositions to customers in New York State, and by encouraging, inducing and contributing to the reproduction, distribution and/or performance of copyrighted sound recordings and musical compositions by customers in New York State. CPLR § 302(a)(1).

38. Defendants commit tortious acts of copyright infringement within New York State every time they distribute copyrighted sound recordings and musical compositions to customers in New York State, and/or encourage, induce and/or contribute to the reproduction, distribution and/or performance of copyrighted sound recordings and musical compositions by customers in New York State. CPLR § 302(a)(2).

39. Defendants' unlawful reproduction, distribution and/or performance of copyrighted sound recordings and musical compositions outside New York State, and/or encouragement, inducement and/or contribution to the reproduction, distribution and/or performance of copyrighted sound recordings and musical compositions by customers outside of New York State, also constitute the commission of tortious acts without the state causing injury to EMI and its properties within New York State by a party that (a) regularly does or solicits business in New York State, (b) engages in a persistent course of conduct in New York State, (c) derives substantial revenue from goods used or consumers or services rendered in New York State, or (d) expects or should reasonably expect its acts to have consequences in New York State and derives substantial revenue from interstate commerce. CPLR § 302(a)(3).

40. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(a).

FACTUAL ALLEGATIONS

A. The Plaintiffs and Their Copyrighted Works

41. The EMI Music Plaintiffs are among the major record companies in the United States and the world. They are in the business of creating, producing, manufacturing, distributing, selling, and licensing the distribution and sale of physical, electronic and digital sound recordings, or arranging to do so, in the United States. The EMI Music Plaintiffs' sound recordings embody the recorded performances of recording artists spanning all musical tastes and genres. Their artist roster, collectively, includes world famous stars and developing artists such as Lily Allen, Corinne Bailey Rae, The Beach Boys, The Beatles, Dierks Bentley, Coldplay, DC Talk, Gorillaz, Norah Jones, The Kooks, Lenny Kravitz, Kylie Minogue, Pink Floyd, Joss Stone, 30 Seconds To Mars, KT Tunstall, Keith Urban and Robbie Williams, plus world renowned classical artists including Angela Gheorghiu, Yehudi Menuhin, Itzhak Perlman and Simon Rattle. The EMI Music Plaintiffs own the copyrights and/or the exclusive rights to reproduce, distribute and publicly perform, and to authorize the reproduction, distribution and performance of, such sound recordings (each, an "EMI Recording") for which the EMI Music Plaintiffs and/or their predecessors-in-interest have obtained or applied for a Certificate of Copyright Registration issued by the Register of Copyrights. The EMI Recordings include, for illustrative purposes, those sound recordings listed on Exhibit A hereto, each of which has been infringed by Defendants in the manner set forth herein.

42. One of the EMI Music Plaintiffs, Capitol Records, LLC, further owns rights to sound recordings that were initially "fixed" prior to February 15, 1972 (each, a "Pre-1972

Recording”) and that are therefore subject to protection under state law. The Pre-1972 Recordings include, for illustrative purposes, those sound recordings listed and so designated on Exhibit A hereto, each of which has been infringed by Defendants in the manner set forth herein.

43. The EMI Publishing Plaintiffs are among the leading music publishers in the United States and the world. They are in the business of acquiring, owning, exploiting, protecting, and administering rights in musical compositions in the United States. They collectively control one of the largest catalogues of copyrighted musical compositions in the world, containing more than one million contemporary and classic titles. The catalogue includes such songs as *Baby Love*, *Bohemian Rhapsody*, *Crazy in Love*, *Daydream Believer*, *Every Breath You Take*, *I Heard It Through The Grapevine*, *The James Bond Theme*, *New York, New York*, *Over the Rainbow*, *Santa Claus is Comin’ to Town*, *Singin’ In The Rain*, *Smells Like Teen Spirit*, *We Will Rock You*, and *Wild Thing*.

44. The EMI Publishing Plaintiffs control copyrighted compositions written and composed by many of the world’s best songwriters including James Blunt, Kurt Cobain, Duffy, Jay-Z, Alicia Keys, Pink, Rob Thomas, Sting, Usher, Kanye West and Amy Winehouse. The EMI Publishing Plaintiffs own the copyrights and/or the exclusive rights to reproduce, distribute and publicly perform, and to authorize the reproduction, distribution and performance of, such compositions (each, an “EMI Composition”) for which the EMI Publishing Plaintiffs and/or their predecessors-in-interest have obtained or applied for a Certificate of Copyright Registration issued by the Register of Copyrights. The EMI Compositions include, for illustrative purposes, those compositions listed on Exhibit B hereto, each of which has been infringed by Defendants in the manner set forth herein.

45. EMI is a leader and innovator in the development, marketing, sales, promotion, and distribution of music around the world. In particular, EMI has been in the vanguard in recognizing the opportunities in the digital age to connect its music with fans, and has led the market in bringing its catalogue of music to fans in a burgeoning number of digital formats and business models in alliance with hundreds of digital partners across the globe. As a result, consumers can today experience EMI's repertoire as embodied in audio and video recordings in a variety of legally-authorized digital formats around the globe, and the artists and writers who create those recordings, and the companies that invest in them, can be fairly compensated for such digital exploitation.

B. The SeeqPod Defendants and Their Infringing Site, Services and Activities

46. The SeeqPod Defendants are the creators, owners and operators of the SeeqPod Site and service. Upon information and belief, the SeeqPod Defendants launched the SeeqPod Site in or about July 2005. The unlawful activities that occur on and via the SeeqPod Site and service and that are more fully described herein are made under the direction, supervision and/or control of the SeeqPod Defendants, and each of them. The SeeqPod Defendants, and each of them, have contributed to and do contribute to those actions.

47. SeeqPod likens itself to a "Google for music," that is, a mere "search engine" that finds playable content that already exists on the web. In truth, SeeqPod is far more nefarious.

48. The SeeqPod Site and service are designed to, and do, encourage and facilitate the search for, and the unlawful reproduction, distribution and public performance of, copyrighted sound recordings and the copyrighted compositions embodied therein. In response to a user's query for a particular recording or recording artist, SeeqPod's proprietary algorithms -- which SeeqPod's CEO and founder, Kazian Franks refers to as SeeqPod's "targeted crawling system" --

crawl the Internet specifically to locate and index unlawful MP3 files of copyrighted sound recordings and compositions. SeeqPod then formats and presents the results as direct links to those unlawful files. A click on any one of these links will automatically cause the recording and composition to be reproduced and performed, via “streaming” technology, on and via SeeqPod’s own MP3 software “player” (the “SeeqPod Player”). On information and belief, SeeqPod retains the links in its massive index.

49. Music and music-related content is plainly the content most sought after by SeeqPod users and the primary if not sole target of SeeqPod’s algorithms. The SeeqPod Site gets, by one estimate, over forty-five million unique visitors per month, and these visitors perform over *seven million* music-related queries per day. According to a 2007 SeeqPod press release in which the SeeqPod Defendants highlighted the top one hundred search terms used on seeqpod.com in 2007, *all one hundred* of the top one hundred search terms were music artists. The number one search term was The Beatles, an EMI recording artist.

50. In fact, one would be hard-pressed to create a SeeqPod search query that would yield something other than music. Searches for on-line games, for example, invariably yield no games, but instead music with words such as “blackjack,” “tetris” or “games” in the title. Searches for sports videos or highlights invariably yield no such clips, but searches for “Philadelphia Eagles” will yield songs by the legendary recording artists, The Eagles.

51. Users can also stream copyrighted music via the SeeqPod Player from so-called “PodLists” generated automatically by SeeqPod’s “PodCrawler.” This feature is also powered by proprietary algorithms designed deliberately by the SeeqPod Defendants to locate -- and, indeed to suggest and induce users to further reproduce and perform -- unlawful reproductions of copyrighted sound recordings and compositions, including recordings and compositions that

such users might not have even known existed if it were not for SeeqPod's site and service and SeeqPod's direct encouragement and inducement to infringe. As SeeqPod has noted in press releases, these "PodLists" are "developed and delivered daily from SeeqPod's Discovery-Curation Team. Each day, fresh PodLists will be featured on the SeeqPod landing page, with the ultimate goal of making digital entertainment discovery easier than ever. The SeeqPod Discovery-Curation team has been charged with the task of leading fans through a labyrinth of SeeqPod playable search results, introducing fresh content you can groove to daily; satisfying a wide variety of tastes."

52. In addition, users can locate and stream copyrighted music via the SeeqPod Player using SeeqPod's "Discover" function. The "Discover" function will "analyze" the recording or artist name entered into by the user and provide links to infringing, copyrighted recordings that the SeeqPod algorithm has related to the recording or artist that is the subject of the query. Again, this feature is deliberately designed by SeeqPod to locate -- and, indeed to suggest and induce users to further reproduce and perform -- unlawful reproductions of copyrighted sound recordings and compositions, including recordings and compositions that such users might not have even known existed were it not for SeeqPod's Site and service and SeeqPod's direct encouragement and inducement to infringe.

53. SeeqPod also encourages and facilitates its users' creation of "personal playlists," as well as the librarying of those playlists for repeated, free and unauthorized future listening. Moreover, the SeeqPod Player is configured such that it can be embedded on third-party web pages or sites (such as Facebook) or mobile devices (such as an iPhone).

54. SeeqPod's algorithm also recognizes and corrects typos or other incorrect search terms entered by users so to ensure that such users get precisely the infringing content they are

looking for. As SeeqPod's CEO and founder, Defendant Franks, has noted: "With spell-check, which serves as a 'Did you mean . . .' function, users are not only more likely to find what they might originally been looking for, but also have the opportunity to explore other suggested terms. For example, if you misspell the query 'The Beatles' by typing in 'The Beetles' take a look at the choices and results you now have that may never have been apparent!" Mr. Frank's candid statement demonstrates not only that SeeqPod is itself suggesting -- and inducing users to infringe -- copyrighted sound recordings that they might not have even known existed if it were not for SeeqPod, but also that the SeeqPod Defendants are quite aware of (and indeed contribute to and encourage) the infringement of copyrighted music on and via their site and service. Indeed, Mr. Franks has also boasted that he only has the music of two artists on his iPod because "everything else is playable via SeeqPod."

55. But even that is not all. SeeqPod does not just link to third-party infringers. Rather, on information and belief, SeeqPod itself directly infringes by itself reproducing the copyrighted recordings that are located (deliberately) by its search algorithms. While SeeqPod claims to make no such copies, the evidence appears to put the lie to that "fact." When a recording is streamed via the SeeqPod player, the "source" URL appears. If one chooses to type these URLs directly into his or her browser (as opposed to playing them via the SeeqPod Player with one simple click), he or she will find that, in many cases, the recording is no longer being offered or available at the "source" URL. Thus, the only way this infringing file can be located and played is on and via SeeqPod, which is, in that situation, the (sole) source of the infringing material.

56. As one blogger noted, in response to an article on techcrunch.com that argued (incorrectly) that sites like SeeqPod are “free to link to infringing songs” just “as long as the songs themselves are never stored on their servers”:

Well, you didn't tell the truth. Seeqpod *does* hosting of mp3f files (even if they write on their own page that they don't). Just connect a proxy server and watch. How else could it play songs, which original links aren't existing anymore? . . . Every song (mp3) on Seeqpod refers to <http://4.71.164.199/> -- just check it out.

57. From the user's perspective, SeeqPod is essentially a completely free, on-demand music service offering, at one estimate, over eight million sound recordings, the vast majority of which are infringing. Similar services exist that operate within the bounds of the law; that is, they pay royalties to the owners of the sound recordings and the compositions embodied therein so that those owners and the artists and writers who create the music are adequately compensated. In fact, EMI has negotiated and entered into licenses with several of the on-demand streaming services with whom SeeqPod essentially “competes,” such as imeem and slacker. Of course, it goes without saying that it is difficult for those lawful, licensed services to compete with a service such as SeeqPod that is offering precisely the same product but without paying any of the owners of the content that it reproduces, distributes and performs.

58. Indeed, if there were any doubt that SeeqPod's exploitations described herein are licensable events, that doubt is further put to rest by the recent determination that Internet services may obtain compulsory licenses to make on-demand streams of musical compositions (but not the sound recordings in which they are embodied, which may only be licensed on a negotiated basis) provided they comply with section 115 of the Copyright Act and pay to the music publishers or other owners of the compositions the compulsory rate. SeeqPod's failure to file or serve any notices to obtain compulsory licenses under section 115 forecloses the possibility of such compulsory licenses and, given that SeeqPod has not obtained from EMI

Publishing a negotiated license to exploit EMI Publishing's musical compositions as on-demand streams, renders its making and distribution of on-demand streams embodying EMI compositions actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506 and 509. *See* 17 U.S.C. § 115(b). SeeqPod surely may not avoid the Congressional scheme by arguing that it is not streaming music from its own servers but from third-party links that its own algorithm is specifically designed to locate and aggregate (and particularly where that argument, on information and belief, is not even true given that SeeqPod does reproduce the music onto its own servers).

59. But SeeqPod does not stop even there. SeeqPod does more than just stream the music that it stores on its servers. Whenever a user clicks on a SeeqPod link to a recording (whether located via a search that employs SeeqPod's "targeted crawling system," from a SeeqPod-generated "PodList," via SeeqPod's "Discover" function, or otherwise), the recording is not only delivered to the user via streaming technology, but an MP3 file of that recording is reproduced into the user's temporary Internet file directory. All the user needs to do is save that file permanently and he or she will have a perfect, and free, digital copy of the recording that will completely substitute for the purchase of a full, permanent digital download. As one blogger noted on Wired.com:

Theory: SeeqPod = Napster on steroids

1. SeeqPod displays the URL of the *FULL MP3*
2. These *FULL MP3s* are also automatically downloaded to the Temporary Internet Files directory.
3. Get where I am going at?

60. SeeqPod either has leveraged and intends to further leverage or monetize its user "traffic," including by selling advertisements or by selling other goods or services to users. Indeed, Defendant Franks has stated, "advanced discovery and recommendation engines have the

unique opportunity to monetize every search result and every discovery result. . . . For example, we might include contextually relevant products, services and merchandise along with text and image ads.” SeeqPod does not, however, share any of its revenue with the owners of the music that forms the backbone of its business model.

61. Upon information and belief, SeeqPod plans to make money through advertising with a new product called Echo. With Echo, advertisers and others will be able to market their music-related products against the estimated seven million music-related queries on SeeqPod per day.

62. SeeqPod is also selling (for \$9.95) an application for Windows Mobile devices that allows users to play infringing recordings from any Windows Mobile-powered device. SeeqPod has boasted that “Any Windows Mobile device is now essentially an iPod, but streaming.” But, as one commentator aptly pointed out, “That’s putting it lightly: if this app works well then any Windows Mobile Device becomes an iPod *with all the free music posted around the web on it.*” Ironically, in response to queries from users asking why SeeqPod is charging nearly ten dollars for this application, SeeqPod’s Chief Experience Officer Jim Leftwich stated: “We’d *LOVE* to make it free permanently, if we could figure out how we afford to live for free *and* spend nearly every minute of the past six months working on something like this.” It is unfortunate that Mr. Leftwich and the SeeqPod Defendants do not share the same concern for the artists, songwriters and companies who spend months, if not years (not to mention thousands and sometimes even millions of dollars) creating the music that the SeeqPod Defendants and SeeqPod users are stealing.

63. Similarly, SeeqPod directs users to install a SeeqPod interface on their iPhones. As one commentator put it, “Seeqpod lets you turn the entire Internet into your own personal

iPod.” Unlike music lawfully acquired and placed on an iPod, however, SeeqPod knowingly and intentionally enables its users to acquire music unlawfully available on the Internet. In fact, SeeqPod also offers for download on the SeeqPod Site an application it calls “SeeqPod Music Search and Discovery for the Apple iPod Touch.” This application, like the Windows Mobile application, is designed to make “all the free music posted around the web” playable on an iPod Touch. In a press release for the application available on the SeeqPod Site, Kasian Franks stated “The amount of music on the Internet is much larger than music found in localized catalogs or physical inventories.” The press release encourages users to use the application and the SeeqPod service to “build podlists and instantaneously access them,” and notes that as such “podlists are published to the iPod Touch, they can be shared with anyone else using an iPod Touch, iPhone or the SeeqPod.com Website.”

64. In sum, SeeqPod is a willful direct, contributory and vicarious copyright infringer. SeeqPod itself copies, distributes, and publicly performs, and knowingly facilitates and contributes to the unlawful copying, distribution and public performance by others of, EMI Recordings and EMI Compositions. It has knowingly created and employed its algorithms for the precise purpose of scouring the Internet to locate and facilitate the broadest possible use of unlawfully available music, all to secure traffic to its website which it can then monetize. It has actual knowledge that the material that is located, indexed and streamed on and via its site is infringing (or at least is aware of facts or circumstances from which infringing activity is apparent). It has the right and ability to control such infringing activity. And it is, in fact, encouraging or inducing infringement. For these reasons (among others), SeeqPod can find no comfort in any of the DMCA’s so-called “safe harbor” provisions.

65. Solely by way of example, and without limitation, SeeqPod is exploiting the EMI Recordings listed on the attached Schedule A, including recordings by The Beatles, Coldplay, Radiohead, Smashing Pumpkins, and Yellowcard. SeeqPod is further exploiting the EMI Compositions listed on the attached Schedule B, including compositions by Jermaine Dupri, Marvin Gaye, Dave Grohl, Norah Jones, Brad Paisley, and Smokey Robinson. Each of these EMI Recordings and EMI Compositions has been reproduced and can be searched for and streamed via SeeqPod and the SeeqPod Player. Upon information and belief, the SeeqPod Defendants have themselves reproduced each of these EMI Recordings and EMI Compositions onto their own servers.

C. The Favtape Defendants and Their Infringing Site, Services and Activities

66. The Favtape Defendants are the creators, owners and operators of the Favtape Site and service. Upon information and belief, the Favtape Defendants launched the Favtape Site in or about July 2008. The unlawful activities that occur on and via the Favtape Site and service and that are more fully described herein are made under the direction, supervision and/or control of the Favtape Defendants, and each of them. The Favtape Defendants, and each of them, have contributed to and do contribute to those actions.

67. Like SeeqPod, from the user's perspective, Favtape is essentially a completely free -- but completely unlicensed and infringing -- on-demand music service via which a user may at any time listen to virtually any recording ever created, without paying anything to the owners of such recordings, and without paying the license fees that other lawful on-demand services pay to such owners.

68. Favtape is a music-only site and service that promotes itself as "The easiest way to play music online." The Favtape Site and service use the SeeqPod Defendant's application

programming interface (API) to crawl the Internet specifically to locate unlawful MP3 files of copyrighted sound recordings and compositions. (The Favtape Site lists Seeqpod as a “Featured Partner.”) Favtape associates copyrighted album art, music video stills, and/or logos with those files, and presents the results in a playable “playlist” of direct links to those files. For example, if one types “Norah Jones” into the box captioned “Create a Favtape from a Search,” the SeeqPod API, in conjunction with Favtape’s own proprietary software and algorithms, will locate recordings and compositions from the artist Norah Jones that are copyrighted and owned by the Plaintiffs, associate them with copyrighted Norah Jones album art and photographs, and display the results as a playable “playlist” of Norah Jones music. A click on any one of the song links will automatically cause the recording and composition to be reproduced, distributed and performed, via “streaming” technology, on and via a player on the Favtape Site (a “Favtape Player”). Users may also embed a Favtape Player on a third-party website.

69. Once a user has created a playlist, Favtape will automatically provide the user with a unique URL for that playlist that can be accessed anytime and shared. Favtape also allows its users to embed their Favtape playlists on various websites and browse and rate other user’s Favtape playlists. In addition, if a user provides Favtape with certain information about his or her user account with Pandora or Last.fm, Favtape will automatically create playable playlists using content from those sites (including content that was intended to be, and was, distributed via those sites solely as a non-interactive stream (*i.e.*, a non-on-demand distribution equivalent to a radio play)). This feature allows a user to take content from a non-interactive streaming website and convert it to an on-demand format. Moreover, Internet bloggers have correctly noted that it is incredibly easy to convert any stream from Favtape into a permanent download.

70. Lest there be any confusion or doubt that Favtape is designed to and does locate and create playable “playlists” of popular, copyrighted music, the Favtape Defendants provide (directly underneath the “Create a Favtape from a Search” box“) as suggested or “example” search queries the names of the following popular artists whose recordings and compositions are copyrighted: “Jack Johnson, Pearl Jam, 50 Cent.” But Favtape doesn’t stop there. Using either SeeqPod’s algorithms or its own, it has aggregated playlists of the “Top Songs By Year” for each year from 1901 through 2006, as well as playlists of “iTunes Top Songs,” “Top Billboard Hits,” and the like. It also provides lists of the “Greatest Artists ‘00s,” “Greatest Artists ‘90s,” “Greatest Artists ‘80s,” “Greatest Rock Artists,” “Greatest Rap/Hip-Hop Artists,” etc. These lists, which on information and belief were created entirely by the Favtape Defendants, are lists of popular artists whose music is obviously copyrighted. When a user clicks on the name of any such artist, a playable “playlist” of such artists’ copyrighted music is provided.

71. In fact, in an Ars Technica article featured prominently on the Favtape site, the reporter states that Favtape founder, Defendant Sit, told him that while he admittedly pays nothing to the music industry, he is “open to some kind of licensing deal but has no money for it at the moment. Instead, he is hoping to build the business from its 5,000 unique users per day into something larger that can hopefully be monetized without legal problems at some future date.” Sit’s comments demonstrate a telling recognition on his part that a license is required for the exploitations that are being made on and via his site and service. But, of course, this “steal now and try to cut a deal later after I make money from the material I stole” approach to intellectual property licensing is not countenanced anywhere in the Copyright Act or by any other law.

D. Defendants' Failure to Cease Infringing Activity After Being Put On Notice

72. While the acts of Defendants alleged herein have at all times been undertaken with full knowledge, actual and constructive, of the infringing activities alleged herein, on March 19, 2008, EMI put the SeeqPod Defendants on further notice of their infringing acts and the infringing acts of SeeqPod users by sending a cease and desist letter to SeeqPod. (A copy of EMI's March 19, 2008 letter is annexed hereto as Exhibit C.) The letter was sent by registered mail, overnight courier, and e-mail. The letter included a schedule of recordings owned or controlled by the EMI Music Plaintiffs and a schedule of musical compositions owned or controlled by the EMI Publishing Plaintiffs that were being exploited on and via SeeqPod (and included a seeqpod.com URL for a particular infringing file embodying each such recording or composition).

73. Counsel for SeeqPod responded by a letter dated March 24, 2008, in which it represented that "SeeqPod has commenced the takedown procedure for the materials referenced" in EMI's March 19 letter. (A copy of SeeqPod's March 24, 2008 letter is annexed hereto as Exhibit D.) Nevertheless, the SeeqPod Defendants continued thereafter to, and to this day continue to, copy, distribute and publicly perform, and knowingly facilitate and contribute to the unlawful copying, distribution and public performance by others of, each of the recordings and compositions referenced in EMI's March 19, 2008 letter.

74. The EMI Publishing Plaintiffs also put the Favtape Defendants on further notice of their infringing acts and the infringing acts of Favtape users on December 12, 2008, by sending a cease and desist letter to Favtape. (A copy of EMI's December 12, 2008 letter is annexed hereto as Exhibit E.) The letter was sent by overnight courier. Mr. Sit responded by arguing -- disingenuously, and completely disregarding, *inter alia*, the Favtape-aggregated

playlists and the Favtape-created "Greatest Artists" lists discussed above -- that Favtape is "simply a pass thru to Seeqpod and each song is a text search to find a song with that name. There are many legal derivative works with similar names." For some reason, Mr. Sit also forwarded correspondence between SeeqPod's outside counsel and EMI, which it had somehow obtained from SeeqPod. (The nature of the relationship between the SeeqPod Defendants and the Favtape Defendants, and the extent to which the SeeqPod Defendants have contributed to, inducted, aided and/or abetted the infringing acts of the Favtape Defendants (and *vice versa*) are at this point unknown but will be the subject of discovery.) (Copies of e-mail correspondence from Mr. Sit to EMI are annexed hereto as Exhibit F.)

75. Defendants deliberately refuse to take any meaningful steps to deter the rampant infringing activity readily apparent on their websites, even though they have the ability to do so. Indeed, SeeqPod admits in its Terms of Service that it has the ability to monitor the activity of its users:

You acknowledge that SeeqPod may or may not pre-screen Content, but that SeeqPod and its designees shall have the right (but not the obligation) in their sole discretion to pre-screen, refuse, or move any Content that is available via the Service. Without limiting the foregoing, SeeqPod and its designees shall have the right to remove any Content that violates the TOS or is otherwise objectionable.

(See Ex. G.) Defendants' inaction and blatant disregard for the unlawfulness of their conduct leads to the conclusion that their wrongful conduct will not stop unless it is enjoined by this Court.

FIRST CLAIM FOR RELIEF
(Direct Copyright Infringement)

76. Plaintiffs repeat and reallege each and every allegation contained in the other paragraphs of this Complaint.

77. Defendants have directly infringed the EMI Music Plaintiffs' copyrights in EMI Recordings, and the EMI Publishing Plaintiffs' copyrights in EMI Compositions, including but not limited to those recordings and compositions listed on Exhibits A, B and C hereto. Defendants have reproduced, distributed, and/or publicly performed, without authorization, sound recordings embodying such EMI Recordings and EMI Compositions, in violation of the U.S. Copyright Act, 17 U.S.C. §§101 *et. seq.*

78. Defendants have further directly infringed the state common law copyrights of Plaintiff Capitol Records, LLC in Pre-1972 Recordings, including but not limited to those recordings listed and so designated on Exhibit A hereto. Defendants have reproduced, distributed, and/or publicly performed, without authorization, sound recordings embodying such Pre-1972 Recordings, in violation of state law.

79. The infringement of each such work is a separate and distinct act of infringement.

80. These acts of infringement were willful, intentional, and purposeful and in disregard of and with indifference to the rights of Plaintiffs.

81. As a direct and proximate result of the infringements by Defendants, Plaintiffs are entitled to damages and Defendants' profits in amounts to be proven at trial, which are not currently ascertainable. If necessary, Plaintiffs will seek leave to amend this complaint to state the full amount of such damages and profits when such amounts have been ascertained.

82. Alternatively, with respect to the EMI Recordings and the EMI Compositions, Plaintiffs are entitled to the maximum statutory damages in the amount of \$150,000 with respect to each work infringed, or for such other amounts as may be proper under 17 U.S.C. §504(c).

83. Plaintiffs further are entitled to attorneys' fees and costs pursuant to 17 U.S.C. §505.

84. As a direct and proximate result of the foregoing acts and conduct, Plaintiffs have sustained and will continue to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy at law. Unless enjoined and restrained by this Court, Defendants will continue to infringe Plaintiffs' rights in the EMI Recordings, Pre-1972 Recordings, and EMI Compositions. Plaintiffs are entitled to preliminary and permanent injunctive relief.

SECOND CLAIM FOR RELIEF
(Contributory Copyright Infringement)

85. Plaintiffs repeat and reallege each and every allegation contained in the other paragraphs of this Complaint.

86. Defendants have contributed to the infringement of the copyrights of the EMI Music Plaintiffs in EMI Recordings, of Capitol Records, LLC in Pre-1972 Recordings, and of the EMI Publishing Plaintiffs in EMI Compositions, including but not limited to those recordings and compositions listed on Exhibits A, B and C hereto.

87. Defendants provide the site, means, and facilities for the infringement of, and have otherwise knowingly and systematically contributed to the infringement of, sound recordings embodying such EMI Recordings, Pre-1972 Recordings and/or EMI Compositions. Such infringement takes place each time a Seeqpod user accesses and streams, publicly performs, copies, forwards and/or otherwise transmits an unauthorized copy of such a sound

recording. Each and every one of these infringements is encouraged, and made possible and facilitated by Defendants.

88. Such acts have been undertaken with full knowledge, actual and constructive, of the infringing activities alleged herein. Moreover, notwithstanding such knowledge, Defendants have refused to take simple measures clearly within their capabilities that would prevent further infringement of Plaintiffs' copyrighted works.

89. The infringement of each such work is a separate and distinct act of infringement.

90. These acts of infringement were willful, intentional, and purposeful and in disregard of and with indifference to the rights of Plaintiffs.

91. As a direct and proximate result of the infringements by Defendants, Plaintiffs are entitled to damages and Defendants' profits in amounts to be proven at trial, which are not currently ascertainable. If necessary, Plaintiffs will seek leave to amend this complaint to state the full amount of such damages and profits when such amounts have been ascertained.

92. Alternatively, with respect to the EMI Recordings and the EMI Compositions, Plaintiffs are entitled to the maximum statutory damages in the amount of \$150,000 with respect to each work infringed, or for such other amounts as may be proper under 17 U.S.C. § 504(c).

93. Plaintiffs further are entitled to attorneys' fees and costs pursuant to 17 U.S.C. § 505.

94. As a direct and proximate result of the foregoing acts and conduct, Plaintiffs have sustained and will continue to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy at law. Unless enjoined and restrained by this Court, Defendants will continue to contribute to the infringement of Plaintiffs' rights in EMI Recordings, Pre-1972

Recordings, and EMI Compositions. Plaintiffs are entitled to preliminary and permanent injunctive relief.

THIRD CLAIM FOR RELIEF
(Vicarious Copyright Infringement)

95. Plaintiffs repeat and reallege each and every allegation contained in the other paragraphs of this Complaint.

96. Defendants have vicariously infringed the copyrights of the EMI Music Plaintiffs in EMI Recordings, of Capitol Records, LLC in Pre-1972 Recordings, and of the EMI Publishing Plaintiffs in EMI Compositions, including but not limited to those recordings and compositions listed on Exhibits A, B and C hereto.

97. The SeeqPod Defendants and the Favtape Defendants have the right and the ability to supervise and/or control the infringing conduct of the users of the SeeqPod Site and service and the Favtape Site and service, respectively. Defendants have refused to exercise such supervision and/or control over the users of their sites and services to the extent required by law. As a direct and proximate result of such refusal, the SeeqPod and Favtape users have infringed and continue to infringe Plaintiffs' copyrights in such EMI Recordings, Pre-1972 Recordings, and EMI Compositions, including by reproducing, adapting, distributing, and publicly performing such EMI Recordings, Pre-1972 Recordings, and EMI Compositions.

98. Defendants derive a direct financial benefit from the "draw" of infringing EMI Recordings, Pre-1972 Recordings, and EMI Compositions, including, without limitation, from advertising revenue, from the sale of software and other services, and from an increase in user traffic and in the value of Defendants' business resulting therefrom.

99. The infringement of each such work is a separate and distinct act of infringement.

100. These acts of infringement were willful, intentional, and purposeful and in disregard of and with indifference to the rights of Plaintiffs.

101. As a direct and proximate result of the infringements by Defendants, Plaintiffs are entitled to damages and Defendants' profits in amounts to be proven at trial and which are not currently ascertainable. If necessary, Plaintiffs will seek leave to amend this complaint to state the full amount of such damages and profits when such amounts have been ascertained.

102. Alternatively, with respect to the EMI Recordings and the EMI Compositions, Plaintiffs are entitled to the maximum statutory damages in the amount of \$150,000 with respect to each work infringed, or for such other amounts as may be proper under 17 U.S.C. § 504(c).

103. Plaintiffs further are entitled to attorneys' fees and costs pursuant to 17 U.S.C. § 505.

104. As a direct and proximate result of the foregoing acts and conduct, Plaintiffs have sustained and will continue to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy at law. Unless enjoined and restrained by this Court, Defendants will continue to vicariously infringe Plaintiffs' rights in EMI Recordings, Pre-1972 Recordings, and EMI Compositions. Plaintiffs are entitled to preliminary and permanent injunctive relief.

FOURTH CLAIM FOR RELIEF
(Inducing Copyright Infringement)

105. Plaintiffs repeat and reallege each and every allegation contained in the other paragraphs of this Complaint.

106. Defendants have induced others to infringe the copyrights of the EMI Music Plaintiffs in EMI Recordings, of Capitol Records, LLC in Pre-1972 Recordings, and of the EMI Publishing Plaintiffs in EMI Compositions including but not limited to those recordings and compositions listed on Exhibits A, B and C hereto.

107. Defendants have designed, distributed, and made available technology, devices and services with the object and intent of promoting their use to infringe copyrighted materials. As a direct and proximate result of such inducement, users of Defendants' technology, devices and services have infringed Plaintiffs' copyrights in such EMI Recordings, Pre-1972 Recordings, and EMI Compositions, including by reproducing, adapting, distributing, and publicly performing such EMI Recordings, Pre-1972 Recordings, and EMI Compositions.

108. The infringement of each such work is a separate and distinct act of infringement.

109. These acts of infringement were willful, intentional, and purposeful and in disregard of and with indifference to the rights of Plaintiffs.

110. As a direct and proximate result of the infringements by Defendants, Plaintiffs are entitled to damages and Defendants' profits in amounts to be proven at trial and which are not currently ascertainable. If necessary, Plaintiffs will seek leave to amend this complaint to state the full amount of such damages and profits when such amounts have been ascertained.

111. Alternatively, with respect to the EMI Recordings and the EMI Compositions, Plaintiffs are entitled to the maximum statutory damages in the amount of \$150,000 with respect to each work infringed, or for such other amounts as may be proper under 17 U.S.C. § 504(c).

112. Plaintiffs further are entitled to attorneys' fees and costs pursuant to 17 U.S.C. § 505.

113. As a direct and proximate result of the foregoing acts and conduct, Plaintiffs have sustained and will continue to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy at law. Unless enjoined and restrained by this Court, Defendants will continue to induce infringement of Plaintiffs' rights in EMI Recordings, Pre-1972

Recordings, and EMI Compositions. Plaintiffs are entitled to preliminary and permanent injunctive relief.

FIFTH CLAIM FOR RELIEF
(Unfair Competition as to Pre-1972 Recordings)

114. Plaintiffs repeat and reallege each and every allegation contained in the other paragraphs of this Complaint.

115. Defendants are violating the rights of Plaintiff Capitol Records, LLC in Pre-1972 Recordings, including but not limited to those recordings listed and so designated on Exhibit A hereto, and are guilty of unfair competition under the common law of the State of New York. By performing, reproducing, distributing, and otherwise commercially exploiting unauthorized copies of such Pre-1972 Recordings, Defendants compete directly with Capitol Records, LLC and its lawful licensees, and further take advantage of and undermine the substantial creative and financial investment of Capitol Records, LLC in such Pre-1972 Recordings. Defendants are willfully, wantonly and unfairly appropriating the rights of Capitol Records, LLC in and to such Pre-1972 Recordings for their own commercial benefit.

116. As a direct and proximate result of the foregoing acts and conduct, Capitol Records, LLC is entitled to compensatory damages in such amounts as will be proven at trial, as well as punitive damages. If necessary, Capitol Records, LLC will seek leave to amend this complaint to state the full amount of such damages when such amounts have been ascertained.

117. As a direct and proximate result of the foregoing acts and conduct, Capitol Records, LLC has sustained and will continue to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy at law. Unless enjoined and restrained by this Court, Defendants will continue to cause Capitol Records, LLC great and irreparable injury that cannot fully be compensated or measured in money damages. Capitol Records, LLC has no

adequate remedy at law and is entitled to preliminary and permanent injunctive relief prohibiting Defendants from further violating its rights in the Pre-1972 Recordings.

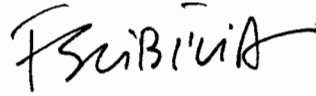
* * *

WHEREFORE, Plaintiffs pray for judgment against Defendants, as follows:

1. For a declaration that Defendants have directly and/or secondarily infringed Plaintiffs' copyrights under the Copyright Act and the common law of the State of New York;
2. For a declaration that such infringement is willful;
3. For a declaration that Defendants have engaged in unfair competition and other violations of New York state law;
4. For a preliminary and permanent injunction enjoining Defendants and Defendants' agents, servants, employees, officers, attorneys, successors, licensees, partners, and assigns, and all persons acting in concert or participation with each or any of them, from directly infringing, and/or aiding, encouraging, enabling, inducing, causing, materially contributing to, or otherwise facilitating the infringement of, any of Plaintiffs' copyrights or exclusive rights protected by the Copyright Act or common law, whether now in existence or hereafter created;
5. On the First through Fourth Claims for Relief, all damages to which Plaintiffs may be entitled, including Defendants' profits, in such amounts as may be found, or, in the alternative and at Plaintiffs' election, for statutory damages in the maximum amount allowed by law;
6. On the Fifth Claim for Relief, compensatory damages in such amounts as will be proven at trial, as well as punitive damages;
7. For Plaintiffs' costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505;

8. For prejudgment interest according to law; and
9. For such other and further relief as the Court may deem just and proper.

Dated: New York, New York
February 20, 2009



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EXHIBIT A

SCHEDULE OF REPRESENTATIVE EMI MUSIC PLAINTIFF RECORDINGS INFRINGED BY DEFENDANTS

COMPOSITION TITLE	ARTIST	EMI MUSIC PLAINTIFF	REGISTRATION NUMBER	REGISTRATION DATE
A Beautiful Lie	30 Seconds to Mars	Virgin Records America, Inc.	SR377-457	9/20/2005
Attack	30 Seconds to Mars	Virgin Records America, Inc.	SR377-457	9/20/2005
From Yesterday	30 Seconds to Mars	Virgin Records America, Inc.	SR377-457	9/20/2005
God Only Knows	Beach Boys	Capitol Records, LLC	Pre-1972	
Wouldn't It Be Nice	Beach Boys	Capitol Records, LLC	Pre-1972	
Body Movin'	Beastie Boys	Capitol Records, LLC	SR277-731	8/25/1998
Egg Man	Beastie Boys	Capitol Records, LLC	SRu154-345	6/27/1989
Intergalactic	Beastie Boys	Capitol Records, LLC	SR277-731	8/25/1998
Pass The Mic	Beastie Boys	Capitol Records, LLC	SR197-458	4/10/1995
Pow	Beastie Boys	Capitol Records, LLC	SR197-458	4/10/1995
Sabotage	Beastie Boys	Capitol Records, LLC	SR213-461	9/11/1995
Blackbird	Beatles	Capitol Records, LLC	Pre-1972	
Come Together	Beatles	Capitol Records, LLC	Pre-1972	
Help!	Beatles	Capitol Records, LLC	Pre-1972	
In My Life	Beatles	Capitol Records, LLC	Pre-1972	
Lady Madonna	Beatles	Capitol Records, LLC	Pre-1972	
Penny Lane	Beatles	Capitol Records, LLC	Pre-1972	
White Wedding	Billy Idol	Capitol Records, LLC	SR39-673	6/16/1982
No Rain	Blind Melon	Capitol Records, LLC	SR384-161	3/3/2006
Song 2	Blur	Virgin Records America, Inc.	SR231-938	3/12/1997

COMPOSITION TITLE	ARTIST	EMI MUSIC PLAINTIFF	REGISTRATION NUMBER	REGISTRATION DATE
Sunday Sunday	Blur	Virgin Records America, Inc.	SR345-280	12/31/2003
Don't Panic	Coldplay	Capitol Records, LLC	SR328-762	3/18/2003
The Scientist	Coldplay	Capitol Records, LLC	SR322-958	9/9/2002
Viva La Vida	Coldplay	Capitol Records, LLC	SRu870-150	4/22/2008
Ordinary World	Duran Duran	Capitol Records, LLC	SR32-401	1/6/1982
Stacy's Mom	Fountains of Wayne	Virgin Records America, Inc.	SR335-616	7/7/2003
I Kissed A Girl	Katy Perry	Capitol Records, LLC	Pending	Pending
Suddenly I See	KT Tunstall	Virgin Records America, Inc.	SR388-462	3/7/2006
LDN	Lily Allen	Capitol Records, LLC	SR392-060	6/20/2007
Littlest Things	Lily Allen	Capitol Records, LLC	SR392-058	6/20/2007
Smile	Lily Allen	Capitol Records, LLC	SR 392-059	6/20/2007
Why Can't I?	Liz Phair	Capitol Records, LLC	SR 335-600	7/16/2003
Inertia Creeps	Massive Attack	Virgin Records America, Inc.	SR 261-537	3/5/1999
Like This	Mims	Capitol Records, LLC	SRu638-624	3/9/2007
This Is Why I'm Hot	Mims	Capitol Records, LLC	SR 401-208	3/9/2007
Shoot the Moon	Norah Jones	Capitol Records, LLC	SR 337-829	6/2/2003
Turn Me On	Norah Jones	Capitol Records, LLC	SR 357-551	8/23/2004
Get Over It	OK Go	Capitol Records, LLC	SR 322-969	9/23/2002
Here It Goes Again	OK Go	Capitol Records, LLC	SR 377-392	9/20/2005
Straight Up	Paula Abdul	Virgin Records America, Inc.	SR 093-688	8/9/1988
Creep	Radiohead	Capitol Records, LLC	SR 190-976	6/16/1994
Fake Plastic Trees	Radiohead	Capitol Records, LLC	SR 280-260	5/16/2000
Karma Police	Radiohead	Capitol Records, LLC	SR 330-613	3/20/2003

Exhibit B

Schedule of Representative EMI Publishing Plaintiff Compositions Infringed by Defendants

COMPOSITION TITLE	WRITERS	EXAMPLE ARTIST	EMI PUBLISHING PLAINTIFF	REGISTRATION NUMBER	REGISTRATION DATE
ABC's	Alphonso J. Mizell; Freddie Perren; Dennis Lussier; Gordy Berry, Jr.	Jackson 5	Jobete Music Co. Inc.	EP 270 975	2/27/1970
Alcohol	Brad Paisley	Brad Paisley	EMI April Music Inc.	PA 1-162-291	9/1/2005
All The Small Things	Tom De Longe; Mark Hoppus	Blink 182	EMI April Music Inc.	PA 1-062-025	12/28/1999
Always On My Mind	Mark James; Wayne Thompson; Johnny Christoper	Willie Nelson	Screen Gems-EMI Music Inc.	EP 293 227	11/16/1973
Aquarius	Galt MacDermot; James Fado; Gerome Ragni	The Fifth Dimension	EMI U Catalog Inc.	EU 39993	3/1/1968
Bat Country	Matthew Charles Sanders; James Owen Sullivan; Brian Elwin Haner, Jr.; Zachary James Baker	Avenged Sevenfold	EMI April Music Inc.	PA 1-162-004	6/27/2005
Batman Theme	Neal Hefti	Neal Hefti	EMI Miller Catalog Inc.	EP 225 496	12/14/1966
Boston	Daniel Layus; Jared Palomar; Josiah Rozenowajg; Justin South	Augustana	EMI April Music Inc.	PA 1-162-841	12/2/2005
Buleria	Kike Santander; Gustavo Santander	David Bisbal	EMI Blackwood Music	PA 1-159-133	12/12/2005
Burn It Down	Matthew Charles Sanders; James Owen Sullivan; Brian Elwin Haner, Jr.; Zachary James Baker	Avenged Sevenfold	EMI April Music Inc.	PA 1-162-008	6/27/2005
But Its Better If You Do	Brendon Urie; Ryan Ross; Spencer Smith; Brent Wilson	Panic At The Disco	EMI April Music Inc.	PA 1-162-936	12/12/2005
Carousel	Scott Raynor; Mark Hoppus; Tom De Longe	Blink 182	EMI April Music Inc.	PA 1-050-625	5/30/2001
Check On It	Stayve Thomas; Angela Beyince; Kasseem Dean; Sean Garrett; Beyonce Knowles	Beyonce	EMI April Music Inc.	PA 1-163-316	1/24/2006
Cherry Pie	John Oswald; Joey Cagle; Jerry Dixon; Steven Chamberlin; Eric Turner	Warrant	EMI Virgin Songs, Inc.	PA 510 151	11/27/1990
December 1963 (Oh What A Night)	Bob Gaudio; Judy Parker	The Temptations	Jobete Music Co. Inc.	EP 344 838	11/7/1975
Ding Dong (The Witch is Dead)	E. Y. Harburg; Harold Arlen	Wizard of Oz Soundtrack	EMI Feist Catalog Inc.	EU 175 157	8/24/1938
Don't Forget About Us	Jermaine Dupri; Bryan Michael Paul Cox; Johnata Austin; Mariah Carey	Mariah Carey	EMI April Music Inc.	PA 1-162-868	12/7/2005
Fat Lip	Deryck Jason Whibley; Greig Andrew Nori; Steve Jocz; Dave Baksh	Sum 41	EMI April Music Inc.	PA 1-065-069	10/1/2001

COMPOSITION TITLE	WRITERS	EXAMPLE ARTIST	EMI PUBLISHING PLAINTIFF	REGISTRATION NUMBER	REGISTRATION DATE
For Once In My Life	Orlando Murden; Ronald N. Miller	Stevie Wonder	Jobete Music Co. Inc.	EP 205 134	7/15/1965
Free Ride	Dan Hartman	Edgar Winter Group	EMI Blackwood Music	EU 353 226	9/1/1972
Get Down Tonight	Harry Wayne Casey; Richard Raymond Finch	KC and the Sunshine	EMI Longitude Music	EU 591 389	6/12/1975
I Hate Everything About You	Adam Gontier; Brad Walst; Neil Sanderson; Gavin Brown	Three Days Grace	EMI April Music Inc.	PA 1-215-642	11/13/2003
I Miss You	Travis L. Barker; Tom De Longe; Mark Hoppus	Blink 182	EMI April Music	PA 1-198-516	12/11/2003
Inside Your Heaven	Savan Kotecha; Pelle Nylen; Andreas Carlsson	Carrie Underwood	EMI Blackwood Music	PA 1-162-032	7/18/2005
Just Like You	Adam Gontier; Brad Walst; Neil Sanderson; Gavin Brown	Three Days Grace	EMI April Music Inc.	PA 1-215-642	11/13/2003
Learn to Fly	Dave Grohl; Nate Mendel; Taylor Hawkins	Foo Fighters	EMI Virgin Songs, Inc.	PA 893-365	5/7/1998
Let's Get Retarded	George Paion, Jr.; Will Adams; Michael Fratantuno; Jamie Gomez; Terrence Yoshiaki Graves; Allan Pineda	Black Eyed Peas	EMI Blackwood Music	PA 1-158-945	3/23/2004
Mercy Mercy Me	Marvin P. Gaye	Marvin Gaye	Jobete Music Co. Inc.	EP 288-939	7/30/1971
Mud On The Tires	Chris Dubois; Brad Paisley	Brad Paisley	EMI April Music Inc.	PA 1-131-533	8/28/2003
My Girl	Ronald White; Smokey Robinson	The Temptations	Jobete Music Co. Inc.	EP 196 315	12/15/1964
No More Drama	James Samuel Harris, III; Terry Lewis; Barry De Vorzon; Perry L. Botkin	Mary J. Blige	EMI April Music Inc.	PA 1-092-111	11/13/2001
On Bended Knee	James Samuel Harris, III; Terry Lewis	Boyz II Men	EMI April Music Inc.	PA 833-180	2/26/1997
Pardon Me	Brandon Charles Boyd; Michael Aaron Einzinger; Alex Katunich; Jose Anthony Pasillas, II	Incubus	EMI April Music	PA 978-102	12/30/1999
Seize The Day	Matthew Charles Sanders; James Owen Sullivan; Brian Elwin Harner, Jr.; Zachary James Baker	Avenged Sevenfold	EMI April Music Inc.	PA 1-162-009	6/27/2005
Shake It Off	Jermaine Dupri; Bryan Michael Paul Cox; Johnata Austin; Mariah Carey	Mariah Carey	EMI April Music Inc.	PA 1-161-182	4/28/2005
So Anxious	Stephen Ellis Garrett; Benjamin A. Bush; Timothy Z. Mosley	Ginuwine	EMI April Music Inc.	PA 939-880	6/25/1999
Stay With You	John Rzeznik; Glen Ballard	Goo Goo Dolls	EMI Virgin Music, Inc.	PA 1-164-320	5/25/2005
Sunrise	Lee Alexander; Norah Jones	Norah Jones	EMI April Music Inc.	PA 1-158-822	4/8/2004
Superman	John Ondrasik	Five For Fighting	EMI Blackwood Music	PA 1-029-927	12/12/2000
Teenage Dirtbag	Brandan B. Brown	Wheatus	EMI Blackwood Music	PA 1-023-858	10/4/2000

COMPOSITION TITLE	WRITERS	EXAMPLE ARTIST	EMI PUBLISHING PLAINTIFF	REGISTRATION NUMBER	REGISTRATION DATE
The Freshman	Brian Vander Ark; Donny Brown; Doug Corella; A.J. Dunning; Brad Vander Ark	The Verve Pipe	EMI April Music Inc.	PA 854-926	6/19/1997
The Greatest Love of All	Linda Creed; Michael Masser	Whitney Houston	EMI Gold Horizon Music Corp. EMI Golden Torch Music Corp.	EU 774309	4/5/1977

From: Scibilia, Frank P.
Sent: Wednesday, March 19, 2008 2:48 PM
To: 'podbin@seeqpod.com'; 'copyright@seeqpod.com'
Cc: Zakarin, Donald S.
Subject: Unauthorized Exploitation of EMI Recordings and EMI Compositions

Please see the attached letter and accompanying schedules. These materials are also being delivered today to Seeqpod's offices via Registered Mail and by Overnight Courier.

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March 19, 2008

**By Registered Mail Return Receipt Requested,
By Overnight Courier, and
By Email (to podbin@seeqpod.com and copyright@seeqpod.com)**

Kazian Franks
Co-Founder and Chief Executive Officer
SeeqPod, Inc.
6475 Christie Avenue Suite 475
Emeryville, CA 94608

Re: Unauthorized Exploitation of EMI Recordings and EMI Compositions

Dear Mr. Franks:

I write on behalf of EMI Music North America and each of its affiliated record labels (collectively, "EMI Music"), and EMI Music Publishing and each of its affiliated music publishing companies (collectively "EMI Publishing") in order to provide SeeqPod, Inc. ("SeeqPod") with written notice of SeeqPod's unlawful activities. As you are undoubtedly aware, SeeqPod has been exploiting, and continues to exploit, sound recordings owned or controlled by EMI Music (the "EMI Recordings") without authorization from EMI Music, and musical compositions owned or controlled by EMI Publishing (the "EMI Compositions") without authorization from EMI Publishing, in violation of, *inter alia*, the U.S. Copyright Act.

SeeqPod is designed to and does encourage and facilitate the search for, and the unlawful reproduction, distribution and public performance of, copyrighted sound recordings and the copyrighted compositions embodied therein. In response to a user's query for a particular recording or recording artist, SeeqPod's algorithm crawls the Internet specifically to locate unlawful MP3 files of copyrighted sound recordings and compositions. SeeqPod then formats and presents the results as direct links to those unlawful files. A click on any one of these links will automatically cause the recording and composition to be reproduced and performed, via "streaming" technology, on and via SeeqPod's own MP3 software "player" (the "SeeqPod Player").

Alternatively, users can stream music via the SeeqPod Player from links generated automatically by SeeqPod's "PodCrawler," or from links generated from SeeqPod's "Discover" function. Both of these features are powered by algorithms deliberately designed by SeeqPod to locate -- and,

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Kazian Franks
Co-Founder and Chief Executive Officer
SeeqPod, Inc.
March 19, 2008
Page 2

indeed to suggest and induce users to reproduce and perform -- unlawful reproductions of copyrighted sound recordings and compositions that such users might not have even known existed if it were not for SeeqPod's site and service, and its direct encouragement and inducement to infringe.

SeeqPod also encourages and facilitates its users' creation of "personal playlists," as well as the librarying of those playlists for repeated, free and unauthorized future listening. Moreover, the SeeqPod Player is configured such that it can be embedded on third-party web pages or sites (such as Facebook) or mobile devices (such as an iPhone). Indeed, SeeqPod now apparently directs users to install a SeeqPod interface on their iPhones. As one commentator put it, "Seeqpod lets you turn the entire Internet into your own personal iPod." Unlike music lawfully acquired and placed on an iPod, however, SeeqPod knowingly and intentionally enables its users to acquire music unlawfully available on the Internet.

When SeeqPod users stream recordings and compositions, they do so via the SeeqPod site, using the SeeqPod Player. SeeqPod can then leverage this user "traffic" to sell advertisements, revenue which, we presume, it does not intend to share with the owners of the music that forms the backbone of its business model.

From the user's perspective, SeeqPod is essentially a completely free, on-demand music service offering, at one estimate, over eight million sound recordings, the vast majority of which are infringing. As you are no doubt aware, similar services exist that operate within the bounds of the law; that is, they pay royalties to the owners of the sound recordings and the compositions embodied therein so that those owners and the artists and writers who create the music are adequately compensated. If SeeqPod believes that it can provide the same service without having to pay the artists and writers for the use of their music, well-settled case law establishes that any such belief is misplaced.

Solely by way of example, and without limitation, SeeqPod is exploiting the EMI Recordings listed on the attached Schedule A, including recordings by The Beatles, Coldplay, Radiohead, Smashing Pumpkins, and Yellowcard. SeeqPod is further exploiting the EMI Compositions listed on the attached Schedule B, including compositions by Kurt Cobain, Alicia Keys, Regina Spektor, Rob Thomas, and Pharrell Williams. Each of these EMI Recordings and EMI Compositions can be searched for and streamed via SeeqPod and the SeeqPod Player from the URL listed on the Schedules; many can be streamed from multiple URLs.

SeeqPod is a willful direct, contributory and vicarious copyright infringer. SeeqPod itself copies, distributes, and publicly performs, and knowingly facilitates and contributes to the unlawful copying, distribution and public performance by others of, EMI Recordings and EMI Compositions. It has knowingly created and employed its algorithms for the precise purpose of

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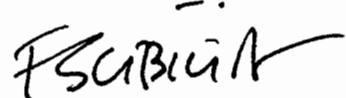
Kazian Franks
Co-Founder and Chief Executive Officer
SeeqPod, Inc.
March 19, 2008
Page 3

scouring the Internet to locate and facilitate the broadest possible use of unlawfully available music, all to secure traffic to its website to garner advertising revenues. It has actual knowledge that the material that is located, indexed and streamed on and via its site is infringing (or at least is aware of facts or circumstances from which infringing activity is apparent). It has the right and ability to control such infringing activity. And it is, in fact, encouraging or inducing infringement. For these reasons (among others), SeeqPod can find no comfort in any of the DMCA's so-called "safe harbor" provisions.

SeeqPod has an obligation to cease its infringing activity with respect to *all* EMI Recordings and *all* EMI Compositions -- including but not limited to those listed on the attached Schedules -- regardless of the particular file in which any such EMI Recording or EMI Composition is embodied, or the particular URL from which the file can be downloaded via SeeqPod. SeeqPod, further, has a continuing obligation to "police its premises" on an on-going basis, to ensure that EMI Recordings and EMI Compositions are not exploited via the site.

Nothing herein shall be deemed a complete recitation of all of the claims, rights, or remedies available to EMI Music, EMI Publishing, their affiliates, and/or their artists or writers, all of which are expressly reserved

Very truly yours,



Frank P. Scibilia

Attachment

cc: "DMCA Requests" c/o SeeqPod, Inc.,
6475 Christie Avenue Suite 475, Emeryville, CA 94608
Alasdair McMullan, Esq.
Clark Miller
Christopher Bavitz, Esq.
Michael Abitbol, Esq.
Donald S. Zakarin, Esq.

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March 24, 2008

Via Email and U.S. Mail

Frank P. Scibilia
Pryor Cashman LLP
410 Park Avenue, New York, NY 10022
Tel: 212-421-4100
Fax: 212-326-0806

Re: Allegation of copyright infringement by EMI against SeeqPod
Subject to Rule 408 of the Federal Rules of Evidence

Dear Mr. Scibilia:

I am counsel for SeeqPod and I write in response to your letter of March 19, 2008 directed to Mr. Kasian Franks, the Chief Executive Officer of SeeqPod. I respectfully disagree with your characterization of SeeqPod's technology, its business model and its legality. This letter provides information about SeeqPod, provides notice that SeeqPod has commenced the process of taking down links to materials posted by third-parties that you identified in your letter, and proposes information regarding settlement of our clients' dispute (specifically identifying ways in which our companies might work together).

SeeqPod aspires to be the Internet's leading playable search engine. SeeqPod's core search technology was conceived and developed at the Lawrence Berkeley National Laboratory and SeeqPod has an industry-leading design and engineering team.

The volume of authorized playable content on the Internet is increasing daily. A number of artists and companies are using free Internet audio and video streams as a promotional medium for their revenue-generating businesses. For example, EMI has created a YouTube channel that contains a number of free streams. See <http://www.youtube.com/emirecordsuk>.

As a search engine, SeeqPod is protected by the safe harbors of the Digital Millennium Copyright Act and the fair use doctrine. In recognition of the inherent difficulty facing search engines on the Internet -- because they cannot make an automated determination of whether any given file they are indexing is subject to a claim of copyright infringement -- Congress created the search engine safe harbor, stating, "Information location tools are essential to the operation of



Frank P. Scibilia, Esq.
March 24, 2008
Page 2

the Internet; without them, users would not be able to find the information they need.” See 3-12B Nimmer on Copyright § 12B.05[A][2], citing Congressional Reports. The Ninth Circuit recently applied the fair use doctrine to the Google search engine holding that “a search engine provides social benefit by incorporating an original work into a new work, namely, an electronic reference tool.” *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1165-66 (9th Cir. 2007). SeeqPod hopes that EMI too will recognize the benefit of search and the potential that SeeqPod holds for EMI.

Please be assured that SeeqPod has no intention of aiding or encouraging online copyright infringement. On the contrary, SeeqPod works with copyright owners. To the extent third-parties may post unauthorized copies of EMI’s materials on the Internet, SeeqPod’s comprehensive DMCA takedown procedures are available to help copyright holders police this issue. Though EMI’s letter fails to comply with the DMCA notice requirements, e.g., 17 U.S.C. § 512(c)(3) (requiring explicit statement of good faith belief that the materials identified are unauthorized, and requiring formal attestation subject to penalty of perjury regarding authority to act on behalf of EMI Music), SeeqPod has commenced the takedown procedure for the materials referenced.

Beyond helping you by taking down links to materials on the web that you identify, SeeqPod sees an opportunity to work with EMI in a business capacity. SeeqPod is presently in the process of deploying digital fingerprinting. With this technology, copyright holders like EMI may monetize their content. Under SeeqPod’s implementation, EMI can elect to share in advertising and merchandising revenue generated using EMI-owned content. I would be pleased to put the business decision-makers at EMI in touch with their counterparts at SeeqPod to work out a deal along these lines.

I look forward to working with you in a positive way to resolve any differences between our clients.

Sincerely,

Deepak Gupta

Jennifer Rosen
VP, Infringement &
Compliance Unit
Phone: 212-492-1810
FAX: 212-506-1325
jrosen@emimusicpub.com

VIA UPS OVERNIGHT

December 12, 2008

Mr. Ryan Sit
Favtape.com
16914 Silver Pine Court
San Diego, CA 92127

Re: Unlicensed musical compositions used on FAVTAPE.COM

Mr. Sit:

EMI Music Publishing and each of its affiliated music publishing companies ("EMI") are the owners and/or administrators of various musical compositions (the "EMI Compositions") currently being exploited without authorization on your website, Favtape.com (the "Website"), a sampling of which is attached. As owners / administrators of these musical compositions, EMI is charged with protecting their value.

As you know, EMI has not entered into any licensing arrangement with Favtape.com. Licenses are needed in order for Favtape.com to legally aggregate, reproduce, distribute, and perform the songs that appear on this website.

This letter shall serve as EMI's notice to you that your use of EMI Compositions on Favtape.com constitutes willful copyright infringement, in violation of the United States Copyright Act. Accordingly, please remove all EMI Compositions from Favtape.com no later than the close of business on January 7, 2009 and contact me to discuss. Should you fail to comply with the foregoing request by the stated deadline, this matter will be referred to our legal department and we may proceed with legal action.

This letter is written without prejudice to the rights and remedies of EMI and its songwriters at law or in equity, all of which are hereby expressly reserved. Thank you.

Very truly yours,

Jennifer Rosen

EMI Owned / Administered Songs

24's
ABC
Adam's Song
Ain't Nobody
Ain't Nothing Like the Real Thing
Ain't Too Proud To Beg
Alcohol
All Jacked Up
All My Life
All The Small Things
Always Be My Baby
Always On My Mind
And I
Angel
Aquarius
Are You In
Baby I Need Your Loving
Bat Country
Batman Theme
Beast and the Hartot
Big Pimpin'
Big Star
Blue Moon
Boston
Bring 'Em Out
Buffalo Soldier
Build God, Then We'll Talk
Buleria
Bullets
Burn
Burn It Down
But It's Better If You Do
Can U Handle It?
Carousel
Celebrity
Check On It
Cherry Pie
Come Away With Me
Confessions (Part II)
Dammit
Dancing in the Street
December 1963 (Oh What A Night)
Ding Dong! The Witch Is Dead
Do You Realize
Don't Forget About Us
Drive
Everlong
Fat Lip
First Date
For Once In My Life
Free Ride
Get Down Tonight
Ghostbusters
Grillz
Honky Tonk Badonkadonk
How Sweet Is Is (To Be Loved By You)
I Can't Get Next To You
I Can't Help Myself (Sugar Pie Honey Bunch)
I Hate Everything About You
I Hate Myself For Loving You
I Miss You
I Wish I Wasn't
I Write Sins Not Tragedies
If This World Were Mine
I'll Be There
I'm Not In Love
Inside Your Heaven
Jump
Just Like You
Just My Imagination
Learn To Fly
Let's Get Retarded
Little Moments
Love Shack
Mayor Que You
Megalomaniac
Mercy Mercy Me (The Ecology)
Mony Mony
Motivation
Mud on the Tires
My Girl
My Own Worst Enemy
My Place
Never Can Say Goodbye
No More Drama
On Bended Knee
Over and Over
Over the Rainbow
Oye Como Va
Pain
Papa Was A Rollin' Stone
Pardon Me
Pink Panther Theme
Reach Out I'll Be There
Seize the Day
Semi-Charmed Life
Shake It Off
Shout
Sing, Sing, Sing (With a Swing)
So Anxious
Stand By Your Man
Stay Together for the Kids
Stay With You
Stellar
Still Tippin'
Stop in the Name of Love
Stray Cat Strut
Sunrise
Superman
Surrender
SWAT Theme
Teenage Dirtbag
That's the Way (I Like It)
The Freshman
The Great Escape
The Greatest Love of All
The Love You Save
The Rock Show
Time to Dance
To Be With You
Try a Little Tenderness
Turning Lane
U Got It Bad
Wanksta
War
Warning
We Belong Together
We Danced
What's Going On
What's My Age Again
Where Did Our Love Go
Wild Thing
Wish You Were Here
You Can't Hurry Love

From: Ryan Sit
To: Jennifer Rosen
Sent: Thu Dec 18 23:44:46 2008
Subject: Fwd: EMI

Hello Jennifer,

Thank you for speaking to me this morning. Here is a forward of the correspondences between Seeqpod and EMI Music North America. It notes some safe harbor and fair use sections in "Letter to Scibilia.DOC". After the response from Seeqpod, EMI did not respond with a counter argument. Could you please have your legal go over these to get a better understanding of what Favtape does/uses. Favtape does not cache any music, and does a real-time search to Seeqpod for every song.

Also as an alternative, would it be legal for Favtape to stop playing MP3s, and just play music videos from Youtube instead?

Thank you for all your help,
Ryan Sit

Begin forwarded message:

From: mario@seeqpod.com
Date: December 18, 2008 1:52:47 PM PST
To: "Ryan Sit" <ryansit@gmail.com>
Subject: RE: EMI

Dear Ryan,

Here are the letters SeeqPod Sent to EMI.

All the best,

Mario Wilson
VP Business Development

From: Ryan Sit <ryansit@gmail.com>
To: Jennifer Rosen
Sent: Wed Dec 24 20:11:28 2008
Subject: Favtape

Merry Christmas Jennifer,

Favtape has no intention of aiding or encouraging online copyright infringement. I have been in contact with my lawyers and they have noted that your notice does not conform to the requirements of the DMCA. Please send a formal takedown notice listing the songs with URLs and we will fully comply with all songs you list.

We are simply a pass thru to Seeqpod and each song is a text search to find a song with that name. There are many legal derivative works with similar names. Seeqpod fully complies with all DMCA takedown notices. Full details are here:
<http://www.seeqpod.com/copyright.php>

Regards,
Ryan Sit