This analysis is borne out in other aspects of the Copyright Act -- for example, the Act's abrogation of a common-law presumption regarding the sale of copyrights. At common-law, if an author sold her manuscript, the sale included the author's copyrights in the original work unless the sale agreement specifically excepted them. See, e.g., Yardley v. Houghton Mifflin Co., 108 F.2d 28, 30-31 (2d Cir. 1939); Pushman v. New York Graphic Soc'y, Inc., 287 N.Y. 302, 306-07 (1942). Congress specifically abolished that presumption by distinguishing between the abstract, original work on the one hand, which is the source of the copyrights, and its material incarnation on the other, which is protected by the copyrights. See 17 U.S.C. § 202; House Report at 53, 123, reprinted in 1976 U.S.C.C.A.N. at 5666, 5739-40. Because the two are different, the author can freely sell a copy without disturbing the copyrights.

Thus, any object in which a sound recording can be fixed is a "material object." That includes the electronic files at issue here. When a user on a peer-to-peer network downloads a song from another user, he receives into his computer a digital sequence representing the sound recording. That sequence is magnetically encoded on a segment of his hard disk (or likewise written on other media.) With the right hardware and software, the downloader can use the magnetic sequence to reproduce the sound recording. The electronic file (or, perhaps more accurately, the

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is thus largely, if not entirely, a vehicle for the fixation requirement.

appropriate segment of the hard disk) is therefore a "phonorecord" within the meaning of the statute. See § 101 (defining "fixed" and "phonorecords"); Matthew Bender & Co., 158 F.3d at 703-04. See also New York Times Co. v. Tasini, 533 U.S. 483, 490-91 (2001) (appearing to assume that electronic-only distributions constitute material objects); Stenograph LLC v. Bossard Assocs., Inc., 144 F.3d 96, 100 (D.C. Cir. 1998) (holding that installation of software onto a computer results in "copying"); Working Group on Intellectual Property Rights, Intellectual Property and the National Information Infrastructure 213 (1995), available at http://www.uspto.gov/go/com/doc/ipnii/ipnii.pdf (noting that electronic transmissions implicate copyright holders' rights and strongly implying that electronic files constitute "material objects").

With that background, the Court turns to the movants' and the EFF's arguments.

(2) The Transmission of an Electronic File Constitutes a "Distribution" Within the Meaning of § 106(3)

The movants and the EFF present two reasons why the Court should decline to find that purely electronic transmissions are a violation of the distribution right. First, they note that the distribution right is limited to "phonorecords of the copyrighted work," 17 U.S.C. § 106(3), and that part of the definition of "phonorecords" is that they are "material objects," id. § 101. They focus on the phrase "material objects" to suggest that a

copyright owner's distribution right only extends to "tangible" objects. See EFF Br. at 15-16. Because there was no exchange of tangible objects in this case -- no "hand-to-hand" exchange of physical things -- they argue that the plaintiffs' distribution right was not infringed by the defendants' actions.

The movants' second argument focuses on a different phrase in § 106(3): "distribution" is limited to exchanges "by sale or other transfer of ownership, or by rental, lease, or lending." They note, correctly, that an electronic download does not divest the sending computer of its file, and therefore does not implicate any ownership rights over the sound file held by the transferor. Therefore, they conclude, an electronic file does not fit within the defined limits of the distribution right.

The movants' two arguments appear to be analytically distinct, but in fact each is the obverse of the other: Any time the transfer of copyrighted material takes place electronically, both contentions at least potentially come into play. Electronic transfers generally involve the reading of data at point A and the replication of that data at point B. Whenever that is true, one person might be stationed at point A and another at point B, obviating the need for a "hand-to-hand" transfer. Similarly, because the data at point A is not necessarily destroyed by the process of reading it, the person at point A might retain ownership over the original, forestalling the need for a "sale or other transfer of ownership," as stated in § 106(3).

Clearly, that description accurately characterizes electronic file transfers. The internet makes it possible for a sending computer in Boston and a downloader in California to communicate quickly and easily; the physical distance between the two, as well as the purely electronic nature of the transfer, makes the movants' argument attractive. But the "point A-to-point B" characterization is no less apt for an older technology, such as a fax transfer over a phone line. And it also applies to cases in which point A and point B are very close together -- even in the same room.[24] The movants' argument thus pivots on the nature of the transfer, in which the copyrighted work is read by a machine, translated into data, transmitted (in data form), and re-translated elsewhere.

After carefully considering the parties' and the EFF's arguments, the Court concludes that 17 U.S.C. § 106(3) does reach this kind of transaction. First, while the statute requires that distribution be of "material objects," there is no reason to limit "distribution" to processes in which a material object exists throughout the entire transaction -- as opposed to a transaction in which a material object is created elsewhere at its finish. Second, while the statute addresses ownership, it is the newly

[24] Suppose someone has a copy of a copyrighted poem on a single sheet of paper. He announces, "I'm going to be at the copy machine with the poem pressing the 'Copy' button, but I'm not going to touch the new copies that come out in the tray." If another person takes one of the new copies, no hand-to-hand transfer of a tangible object has occurred, and the person who presses the copy button has not been divested of ownership in his original.

minted ownership rights held by the transferee that concern it, not whether the transferor gives up his own.

The first point requires that the Court closely examine the scope of the distribution right under § 106(3). The statute provides copyright owners with the exclusive right "to distribute . . . phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending." 17 U.S.C. § 106(3). In turn, phonorecords are defined in part as "material objects in which sounds . . . are fixed by any method." Id. § 101. And as discussed above, in the sense of the Copyright Act, "material objects" should not be understood as separating tangible copies from non-tangible copies. Rather, it separates a copy from the abstract original work and from a performance of the work. See supra Section IV.A.1.b.(1).

Read contextually, it is clear that this right was intended to allow the author to control the rate and terms at which copies or phonorecords of the work become available to the public. In that sense, it is closely related to the reproduction right under § 106(1), but it is not the same. As Congress noted, "a printer [who] reproduces copies without selling them [and] a retailer [who] sells copies without having anything to do with their reproduction" invade different rights. House Report at 61, reprinted in 1976 U.S.C.C.A.N. at 5675. Under § 106(3),

> [T]he copyright owner [has] the right to control the first public distribution of an authorized copy or phonorecord of his work, whether by sale, gift, loan, or some rental or

> lease arrangement. Likewise, any unauthorized public distribution of copies or phonorecords that were unlawfully made [is] an infringement. As section 109 makes clear, however, the copyright owner's rights under section 106(3) cease with respect to a particular copy or phonorecord once he has parted with ownership of it.

House Report at 62, reprinted in 1976 U.S.C.C.A.N. at 5675-76. Clearly, § 106(3) addresses concerns for the market for copies or phonorecords of the copyrighted work, and does so more explicitly and directly than the other provisions of § 106.[25]

An electronic file transfer is plainly within the sort of transaction that § 106(3) was intended to reach. Indeed, electronic transfers comprise a growing part of the legitimate market for copyrighted sound recordings. See, e.g., Verne Kopytoff & Ellen Lee, Tech Chronicles, S.F. Chron., Feb. 27, 2008, at C1 (reporting that through its iTunes Store, which operates exclusively via electronic file transfer, Apple has sold more than 4 billion songs to 50 million customers).[26] What matters in the

[25] The House Report does not specifically address the distribution right as a protection of the copyright owner's right to control the market, but it is an inescapable inference from the nature of the right. See, e.g., Harper & Row, 471 U.S. at 558 ("By establishing a marketable right to the use of one's expression, copyright supplies the economic incentive to create and disseminate ideas."); cf. House Report at 62-63, reprinted in 1976 U.S.C.C.A.N. at 5676 (noting that too broad an exception to performance rights for non-profit users could allow free displays and performances to "supplant markets for printed copies"); id. at 80, reprinted in 1976 U.S.C.C.A.N. at 5694 (expressing concern that illegitimate fair use could affect the copyright owner's market for distribution of copies). The Court does not express a view as to the extent to which peer-to-peer file sharing actually does cause economic damage to copyright owners.

[26] It is perhaps in recognition of this fact of internet-era life -- and in recognition of the fact that copyrighted material can be "distributed" electronically -- that Congress has made available compulsory licenses "to distribute [phonorecords] to the public for private use, including by means of a digital phonorecord delivery." 17 U.S.C. § 115.

marketplace is not whether a material object "changes hands," but whether, when the transaction is completed, the distributee has a material object. The Court therefore concludes that electronic file transfers fit within the definition of "distribution" of a phonorecord.[27]

For similar reasons, the Court concludes that an electronic file transfer can constitute a "transfer of ownership" as that term is used in § 106(3). As noted above, Congress wrote § 106(3) to reach the "unauthorized public distribution of copies or phonorecords that were unlawfully made." House Report at 62, reprinted in 1976 U.S.C.C.A.N. at 5676. That certainly includes situations where, as here, an "original copy" is read at point A and duplicated elsewhere at point B.[28] Since the focus of § 106(3) is the ability of the author to control the market, it is concerned with the ability of a transferor to create ownership in someone else -- not the transferor's ability simultaneously to retain his own ownership.

This conclusion is supported by a comparison to the "first sale" doctrine, codified at 17 U.S.C. § 109. The "first sale" doctrine provides that once an author has released an authorized

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[27] The reading is not a stretch. The dictionary definition of "to distribute" includes, inter alia, "to disperse through a space . . . ; spread; scatter[;] to promote, sell, and ship or deliver . . . to individual customers . . . [;] to pass out or deliver . . . to intended recipients." Random House Unabridged Dictionary 572 (2d ed. 1993). An electronic file transfer fits comfortably within each.

[28] It is irrelevant that such an action may also infringe the reproduction right secured to the copyright holder under 17 U.S.C. § 106(1). A single action can infringe more than one right held under § 106.

copy or phonorecord of her work, she has relinquished all control over that particular copy or phonorecord. See id. § 109(a); House Report at 79-80, reprinted in 1976 U.S.C.C.A.N. at 5693-94. The person who bought the copy -- the "secondary" purchaser -- may sell it to whomever she pleases, and at the terms she directs. The market implications are clear. The author controls the volume of copies entering the market, but once there, he has no right to control their secondary and successive redistribution. To be sure, the author retains a certain degree of control over the secondary sale, at least to the extent that he can control that redistributions through the terms in the original sales contract. But he must bring a contract suit, not an infringement action. See id. at 79, reprinted in 1976 U.S.C.C.A.N. at 5693. See also, e.g., Am. Int'l Pictures, Inc. v. Foreman, 576 F.2d 661, 664 (5th Cir. 1978) (holding that where copyrighted material is resold subject to restrictions, and the secondary buyer violates those restrictions, no copyright infringement action lies). More often and more practically, however, the author will simply price the new copies or phonorecords to reflect the work's value in a secondary market. See, e.g., Vincent v. City Colleges of Chicago, 485 F.3d 919 (7th Cir. 2007) (citing Stanley M. Besen & Sheila N. Kirby, Private Copying, Appropriability & Optimal Copyright Royalties, 32 J.L. & Econ. 255 (1989)).

Conversely, where ownership is created through an illegal copy, the first sale doctrine does not provide a defense to a

distribution suit. See Quality King Distrib., Inc. v. L'anza Research Int'l, Inc., 523 U.S. 135, 148 (1998). The distinction makes sense: where ownership is created through an illegal copy, the copyright holder has never had the chance to exercise his market rights over the copy. That is precisely the situation here.[29]

2. Whether the Plaintiffs Have Adduced Prima Facie Evidence of Infringement

The second sub-element of the Sony Music test's first factor asks whether the plaintiffs have presented prima facie evidence of infringement. See 326 F.Supp.2d at 564. Just as police cannot invade the privacy of a home without some concrete evidence of wrongdoing inside, plaintiffs should not be able to use the Court to invade others' anonymity on mere allegation. By requiring plaintiffs to make out a prima facie case of infringement, the

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[29] The EFF's reliance on Agee v. Paramount Communications, 59 F.3d 317, 325 (2d Cir. 1995), is misplaced. The plaintiff in Agee claimed the violation of several different rights after Paramount used his music as a soundtrack to a video without authorization; most relevantly, the plaintiff claimed violation of the distribution right protected by § 106(3). The video traveled from Paramount to local affiliate television stations, and from there to the public. The court concluded that the broadcast, as it traveled from the affiliate stations to the public, was a public performance, not the distribution of a copy. The affiliates were only the intermediaries through which Paramount's right to perform was exercised. See Agee, 59 F.3d at 325; see also 17 U.S.C. § 112(e)(1) (permitting retention of "ephemeral recordings" for retransmission). A key fact was that the transmission was designed to be transitory. Electronic files, such as those transferred here, are not.

The Court recognizes that electronic copies can be of varying permanence, see MAI Sys. Corp. v. Peak Computer, Inc., 991 F.2d 511, 518-19 (9th Cir. 1993) (discussing whether loading copyrighted software into temporary random access memory constitutes a "copy" under the Copyright Act), and it is not clear that all of them should be treated equally under the copyright statutes. But this is a clear case, at one end of the spectrum. The files at issue here were downloaded precisely to be copies, indefinitely replayable and transferable. The Court has no need to consider modes of electronic transmission beyond transfers over peer-to-peer networks.

standard requires plaintiffs to adduce evidence showing that their complaint and subpoena are more than a mere fishing expedition. The plaintiffs need not actually prove their case at this stage; they need only present evidence adequate to allow a reasonable fact-finder to find that each element of their claim is supported. See Adelson, 510 F.3d at 48. They have done so.

The first element of a copyright infringement suit is a valid copyright. See T-Peg, 459 F.3d at 108. The plaintiffs have asserted, and the defendants have not challenged, that they hold the copyright to each of the sound recordings incorporated into the complaint. See Compl. at 4-5 (docket no. 07-cv-10834, document # 1).

The second element is violation of one of the copyright holder's exclusive rights. See T-Peg, 459 F.3d at 108. The movants and the EFF argue that because the plaintiffs have not demonstrated an actual infringement, they have not asserted an actual violation.[30] They reason that the investigator downloading

[30] Counsel for one movant also represents that none of the movant's music files were unlicensed. See Suppl. Mem. Supp. Mot. Quash at 9-10 (document # 149). While that may be the case, it is not clear why it is relevant to allegations of unlicensed distribution under 17 U.S.C. § 106(3). And insofar as it is relevant to allegations of unlicensed copying under 17 U.S.C. § 106(1), it is a matter better left for after discovery, when counsel's representation can be supported by evidence.

The same movant further contends that the Linares affidavit, which forms the basis of some of the plaintiffs' prima facie case, should be stricken. The movant claims that MediaSentry, the private investigator who downloaded the files from the Does and recorded their IP addresses, see Linares Decl. at 4-6, Ex. A to Pl. Mot. Leave to Take Immediate Discovery (docket no. 07-cv-10834, document # 5), does not have the license to undertake private investigations required by Massachusetts General Laws ch. 147, §§ 23-25. The Court has no evidence properly before it as to whether or not MediaSentry has a license, how MediaSentry gathers its information, or whether that information is publicly available. It therefore declines to reach the issue

the files from the defendants' computers was an agent of the plaintiffs, and plaintiffs cannot infringe their own copyrights. See Mem. Supp. Mot. Quash at 4-6 (document # 149); EFF Br. at 12 n.8 (document # 152).

The Court need not now decide the precise nature of the evidence MediaSentry gathered. While the parties dispute whether an investigator's download can be a perfected infringement, the downloads are also relevant, as described above, for another purpose: demonstrating that such infringement was technically feasible, thereby demonstrating that distributions could occur.

The plaintiffs have alleged that each defendant shared many, many music files -- at least 100, and sometimes almost 700. See Ex. A to Compl. (docket no. 07-cv-10834, document # 1) (providing information for each Doe, including number of copyrighted music files shared); Linares Decl. at 4, Ex. A to Pl. Mot. Leave to Take Immediate Discovery (docket no. 07-cv-10834, document # 5) (attesting to the veracity of the information contained in Exhibit A to the Complaint).[31] As noted above, that evidence supports an inference that the defendants participated in the peer-to-peer network precisely to share copyrighted files. The evidence and

on this record; the movant may re-file a motion to strike.

[31] From the Linares Declaration, it is easily inferred how this information is gained. MediaSentry, on finding an alleged infringer, requests through the peer-to-peer software a list of all the files available to be shared on the sending computer. It then culls through the resulting list of files to isolate (and count) the plaintiffs' copyrighted sound recordings. See Linares Decl. at 5-6, Ex. A to Pl. Mot. Leave to Take Immediate Discovery (docket no. 07-cv-10834, document # 5).

allegations, taken together, are sufficient to allow a statistically reasonable inference that at least one copyrighted work was downloaded at least once. That is sufficient to make out a prima facie case for present purposes.[32] Discovery may well reveal other factors relevant to the statistical inference, such as the length of time the defendant used peer-to-peer networks.

The plaintiffs have satisfied their burden for a prima facie case. As noted above, merely exposing music files to the internet is not copyright infringement. The defendants may still argue that they did not know that logging onto the peer-to-peer network would allow others to access these particular files, or contest the nature of the files, or present affirmative evidence rebutting the statistical inference that downloads occurred. But these are substantive defenses for a later stage. Plaintiffs need not prove knowledge or intent in order to make out a prima facie case of infringement. See Feist, 499 U.S. at 361; Data Gen. Corp. v. Grumman Sys. Support Corp., 36 F.3d 1147, 1160 n.19 (1st Cir. 1994). As noted above, they are not required to win their case in order to serve the defendants with process.

[32] This general inference of infringement is not inconsistent with the "concrete" criterion discussed below. It bears re-emphasis that this is a preliminary stage of the litigation; the plaintiffs need only show that some infringement was likely and that they have specifically identified at least some of the copyrighted material at issue. This protects the defendants from a fishing expedition in which plaintiffs only wish to investigate specific behavior -- for example, the large use of bandwidth by a single user continuously over a long period of time or the mere use of a peer-to-peer network.

3. Whether the Plaintiffs Have Tied Their Allegations and Evidence to Specific Acts of Infringement

The third sub-element of the first Sony Music factor is that the allegations be "concrete" -- that they be tied to specific acts of infringement. See 326 F.Supp.2d at 564. The movants argue that the plaintiffs have failed to do so. Mot. Quash at 7-10 (document # 115). In considering this question, the Court must keep in mind that transfers on a peer-to-peer network are not observable by outside users. To show infringement,[33] the plaintiffs are obliged to build a chain of inferences. The Court finds that, on this record, the chain is adequately anchored to specific allegations to satisfy this sub-element.

The plaintiffs have alleged that each of the defendants used the peer-to-peer network to distribute copies of specific sound recordings, detailed in Exhibit A to the Complaint. For instance, Doe no. 21, one of the movants here, is alleged to have distributed the song "Clocks," by the artist Coldplay. Capitol Records holds the copyright to that song. See Ex. A to Compl. (docket no. 07-cv-10834, document # 1). The plaintiffs allege that the downloading creates a precise copy of the song. And Doe no. 21 is alleged to have "continuously used, and [to] continue[] to use," a peer-to-peer network. Compl. at 5 (docket no. 07-cv-10834, document # 1). Finally, the fact of MediaSentry's download

[33] At least, absent MediaSentry's downloads -- again, the Court does not decide whether those downloads can constitute direct evidence of actual infringements.

shows that it was, in fact, possible to download "Clocks" from Doe no. 21's computer as of 6:56 a.m. on January 25, 2007. Thus, the plaintiffs have alleged the specific content at issue; the essential nature of the infringement of that content; a rough time period in which the infringement took place; and that at a certain time, the defendant had taken every step necessary for an infringement of Capitol Records's rights in "Clocks" to occur.

While the plaintiffs must eventually prove that an actual infringement of those rights occurred, they may certainly do so through circumstantial proof and inference. And drawing a reasonable inference in the plaintiffs' favor, one did occur. The plaintiffs' current showing is adequate to satisfy both Federal Rule of Civil Procedure 8 and the more exacting standard of Sony Music -- even if they could not directly observe, and thus allege, an infringing act. See, e.g., 5 Patry, Patry on Copyright, §§ 19:3 (listing necessary elements to plead a copyright claim), 19:10 (discussing pleading acts of infringement with specificity).

B. Factors Two, Three, and Four: Need and Narrow Tailoring

The second, third, and fourth factors in the Sony Music test are designed to ensure that the subpoena is appropriate to the plaintiffs' needs, their allegations, and the preliminary evidence they have presented. The Court weighs "(2) specificity of the discovery request, (3) the absence of alternative means to obtain the subpoenaed information, [and] (4) a central need for the subpoenaed information to advance the claim." Sony Music, 326

F.Supp.2d at 565. Thus, the second factor prevents the subpoena from being so overbroad that it unreasonably invades the anonymity of users who are not alleged to have infringed copyright. The third cuts against the subpoena if there is another reasonable and less-intrusive means to gather the same information. And the fourth tests whether the plaintiffs must have the information to proceed. On the circumstances of this case, the third and fourth factors support the disclosure of the defendants' identities. However, the Court is unable to determine on this record whether the plaintiffs' request is adequately specific to satisfy the second factor.

1. **Specificity of the Discovery Request**

The second Sony Music factor examines the breadth of the information sought by the plaintiffs. It has two aspects: first, the breadth of the information the plaintiffs seek, and second, whether the subpoena requires the ISP to reveal identifying information for numerous non-infringing parties, piercing the First Amendment anonymity to which they are entitled.

Under the Court's Order permitting expedited discovery, the plaintiffs are limited to identifying information: "name, address, telephone number, e-mail address, and Media Access Control addresses for each defendant." Amended Order re: Expedited Discovery at 1 (May 9, 2007) (docket no. 07-cv-10834, document #

8).[34] The Court further ordered that "[n]o further information about the Doe defendants shall be revealed." Id. These limits are appropriate because they allow the plaintiffs to discover whom they are suing -- the purpose of the expedited discovery -- but no more. It does not, for example, permit disclosure of any information regarding the defendant's internet use.

Second, the Court must consider whether the information sought can be reasonably traced to a particular defendant. Generally speaking, according to the plaintiffs, the combination of IP address and date and time of access is sufficient to allow identification of the defendant. See Mem. Supp. Ex Parte Application for Leave To Take Immediate Discovery at 2 (docket no. 07-cv-10834, document # 5).

That claim may not always be true. More than one computer may be placed under a single IP number. Thus, it is possible that the ISP may not be able to identify with any specificity which of numerous users is the one in question. See Stengel Decl. at 3 (document # 118). If that is the case, giving the plaintiffs a

[34] The Media Access Control ("MAC") number is a unique identifier embedded in most network adaptors -- the physical piece of hardware that permits a user to connect to a network, and thus to the internet. The MAC address is used by the ISP in routing information through the network and is specific to the user's computer; it is therefore uniquely relevant in allowing a fact-finder to determine whether the defendant was, in fact, infringing the plaintiff's copyright. Although sophisticated users can use software to make MAC addresses appear otherwise than they actually are -- a process called "spoofing" -- the addresses are still highly probative evidence in this litigation. See, e.g., Daniel Kamitaki, Note, Beyond E-Mail: Threats to Network Security and Privileged Information for the Modern Law Firm, 15 S. Cal. Interdisc. L.J. 307, 312 & nn. 30-34 (2006) (discussing MAC addresses generally); United States v. Carter, No. 07-CR-00184-RLH, 2008 WL 623600, at *12 (D.Nev. Mar. 6, 2008) (noting possibility of spoofing).

long list of possible infringers would permit precisely the sort of fishing expedition the Sony Music test is designed to avoid. On the other hand, the ISP may frequently be able to narrow the list to a handful of possible users. In that situation, the plaintiffs should be entitled to use discovery to determine the identity of the alleged infringer. While it still might be possible that an unauthorized user was the actual infringer, see id., that is a matter better left for further discovery and presentation of the plaintiffs' claims on their merits.

The problem calls for a pragmatic solution that carefully respects the anonymity of potentially innocent parties. Therefore, the Court will undertake to review particular cases as they come up, based on the number of users at issue and the degree of particularity with which the plaintiffs would be able to pick out the alleged infringer from a list. The subpoena to be served on Boston University shall be modified as discussed below in Section IV.D.

2. Absence of Alternative Means to Obtain Information

The third Sony Music factor requires that the plaintiffs have no other, less-intrusive way of obtaining the information they seek. This factor appears to be met in this case. Only the ISP has any record of which IP addresses were assigned to which users. To other entities online, those users would appear only as their IP addresses. The movants have not suggested any other method of

obtaining the defendants' information; nor is the Court aware of any.

3. **Central Need to Litigation**

Finally, it is evident that the plaintiffs need the information in order to further the litigation. Without names and addresses, the plaintiffs cannot serve process, and the litigation can never progress. Therefore, the plaintiffs do have a central need for this information.

C. Factor Five: The Defendants' Expectations of Privacy

The final Sony Music factor regards the expectation of privacy held by the Doe defendants, as well as other innocent users who may be dragged into the case (for example, because they shared an IP address with an alleged infringer.) See 326 F.Supp.2d at 565.

As discussed above, see Section III, the alleged infringers have only a thin First Amendment protection. See Harper & Row, 471 U.S. at 559-60.[35] Moreover, many internet service providers require their users to acknowledge as a condition of service that they are forbidden from infringing copyright owners' rights, and that the ISP may be required to disclose their identity in litigation. See, e.g., Sony Music, 326 F.Supp.2d at 559.

The record is unfortunately silent as to Boston University's terms of service agreement, if one exists. That agreement could

[35] Insofar as the defendants wish to assert a more substantial First Amendment value -- fair use, for example -- that is a matter better left for later in the litigation.

conceivably make a substantial difference to the expectation of privacy a student has in his or her internet use. The process through which the plaintiffs determine whether a particular user actually used a peer-to-peer network to distribute music files may be much more intrusive than merely obtaining identities. In one case before the Court,[36] the plaintiffs have sought to obtain an image of a defendant's hard disk,[37] allowing a forensic computer expert to inspect it to determine whether the defendant possessed an electronic copy of the plaintiffs' copyrighted material. See Pls.' Mot. Compel Discovery (docket no. 03-cv-11661, document # 527).[38]

The Court finds that the terms of service arrangement, if one exists, would be extremely helpful in analyzing the privacy interests at issue. As this is an important factor for the Sony Music test, the Court will require that the subpoena served on

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[36] The Court may take judicial notice of related proceedings. See, e.g., Anderson v. Rochester-Genesee Reg'l Transp. Auth., 337 F.3d 201, 205 n.4 (2d Cir. 2003).

[37] That is, a precise copy of the hard drive, exactly as it is in the defendant's computer. This allows the plaintiffs not only to see what is obviously present on the user's computer, but also deleted or concealed files. "'Deleting' a file does not actually erase that data from the computer's storage devices. Rather, it simply finds the data's entry in the disk directory and changes it to a 'not used' status -- thus permitting the computer to write over the 'deleted' data. Until the computer writes over the 'deleted' data, however, it may be recovered by searching the disk itself rather than the disk's directory. Accordingly, many files are recoverable long after they have been deleted -- even if neither the computer user nor the computer itself is aware of their existence." Shira A. Scheindlin & Jeffrey Rabkin, Electronic Discovery in Federal Civil Litigation: Is Rule 34 Up to the Task?, 41 B.C. L. Rev. 327, 337 (2000) (footnotes omitted).

[38] Of course, even an infringer's non-infringing information is entitled to some protection. But the situation is more serious where the defendant asked to permit an image of her computer may not be an infringer at all.

Boston University be modified to require that it submit to the Court its terms of service arrangement.

D. Required Modifications to the Subpoenas

For the reasons explained above in Sections IV.B.1 and IV.C, the Court lacks the information to adjudicate whether the plaintiffs have carried their burden in demonstrating a need for expedited discovery under the Sony Music test. Therefore, the Motions to Quash that assert privacy interests (documents ## 104 and 115) are **GRANTED**. The plaintiffs may renew their motion for expedited discovery, but must attach to such motion a copy of the Rule 45 subpoena to be served on Boston University. **The subpoena must include the following language or language substantially similar:**

> The ISP shall submit to the Court, under seal, the information requested by the plaintiffs for its consideration in camera. For any IP address provided by the plaintiffs for which the ISP is unable to determine, to a reasonable degree of technical certainty, the identity of the user, it shall submit a list of all such users and a brief statement explaining the difficulty in selecting among them the alleged infringer.
>
> The ISP shall simultaneously submit to the Court its terms of service agreement with its users, or, if it does not have a terms of service agreement, a statement to that effect.
>
> The submissions by the ISP shall be made no later than 14 days after service of the subpoena.
>
> The ISP shall not disclose to the plaintiffs any information regarding the identities of the defendants unless ordered to do so by this Court.

The Court, with the Sony Music framework thus in place, will consider the plaintiffs' request for expedited discovery as made in their renewed motion.

V. THE MOTION TO QUASH FOR LACK OF PERSONAL JURISDICTION

In addition to the Motions to Quash filed by the Boston University Does, one other Doe has filed a Motion to Quash. She claims that the Court lacks personal jurisdiction over her. She asserts, among other things, that she has never lived in Massachusetts and that "none of [her] visits to the State of Massachusetts had any relationship to the matter for which [she is] being sued, namely [her] alleged use of filesharing systems from [her] home in Maryland." Doe Aff. at 1, Ex. A to Mot. Quash Due to Lack of Personal Jurisdiction (document # 113). The Court has the discretion to permit jurisdictional discovery. See, e.g., United States v. Swiss Am. Bank, Ltd., 274 F.3d 610, 626 (1st Cir. 2001). It is appropriate to do so in this case.

The only information the Court has before it is Jane Doe's affidavit -- signed as Jane Doe -- attesting that she is not a Massachusetts resident. On the facts of this case, that is an insufficient basis to disallow jurisdictional discovery. Even taking all of the facts in her affidavit as true, it is possible that the Court properly has personal jurisdiction. The Massachusetts long-arm statute permits jurisdiction to the extent allowed by constitutional limits. Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A., 290 F.3d 42, 52 (1st Cir.

2002) (quoting 'Automatic' Sprinkler Corp. of Am. v. Seneca Foods Corp., 361 Mass. 441 (1972)). It is a broad license. For example, Jane Doe might well be subject to jurisdiction if she infringed the plaintiffs' copyrights on a trip into Massachusetts. See Mass. Gen. Laws ch. 223A, § 3(c)-(d). It would be premature to adjudicate personal jurisdiction on this record.

The Motion to Quash Due to Lack of Personal Jurisdiction (document # 113) is **DENIED without prejudice.**

VI. CONCLUSION

For the foregoing reasons, the Motions to Quash (document ## 103 and 115) are **GRANTED. The plaintiffs' Motion for Expedited Discovery may be renewed subject to the requirements on the subpoena set forth above in Section IV.D.** Boston University is **ORDERED** not to destroy the information sought by plaintiffs unless the subpoena is not renewed by April 16, 2008. Furthermore, the Motion to Quash Due to Lack of Personal Jurisdiction (document # 113) is **DENIED without prejudice.**

SO ORDERED.

Date: March 31, 2008

/s/ Nancy Gertner
NANCY GERTNER, U.S.D.C.

APPENDIX A

COURT-DIRECTED NOTICE REGARDING ISSUANCE OF SUBPOENA

A subpoena has been issued directing Boston University, your Internet Service Provider ("ISP"), to disclose your name. The subpoena has been issued because you have been sued in the United States District Court for the District of Massachusetts in Boston, Massachusetts, as a "John Doe" by several major record companies. You have been sued for infringing copyrights on the Internet by uploading and/or downloading music. The record companies have identified you only as a "John Doe" and have served a subpoena on your ISP to learn your identity. This notice is intended to inform you of some of your rights and options.

YOUR NAME HAS NOT YET BEEN DISCLOSED. YOUR NAME WILL BE DISCLOSED IN 14 DAYS IF YOU DO NOT CHALLENGE THE SUBPOENA.

Your name has not yet been disclosed. The record companies have given the Court enough information about your alleged infringement to obtain a subpoena to identify you, but the Court has not yet decided whether you are liable for infringement. You can challenge the subpoena in Court. You have 14 days from the date that you receive this notice to file a motion to quash or vacate the subpoena. If you file a motion to quash the subpoena, your identity will not be disclosed until the motion is resolved (and the companies cannot proceed against you until you are identified). The second page of this notice can assist you in locating an attorney, and lists other resources to help you determine how to respond to the subpoena. If you do not file a motion to quash, at the end of the 14 day period, your ISP will send the record company plaintiffs your identification information.

OTHER ISSUES REGARDING THE LAWSUIT AGAINST YOU

To maintain a lawsuit against you in the District Court of Massachusetts, the record companies must establish jurisdiction over you in Massachusetts. If you do not live or work in Massachusetts, or visit the state regularly, you may be able to challenge the Massachusetts court's jurisdiction over you. If your challenge is successful, the case in Massachusetts will be dismissed, but the record companies may be able to file against you in another state where there is jurisdiction.

The record companies may be willing to discuss the possible settlement of their claims against you. The parties may be able to reach a settlement agreement without your name appearing on the public record. You may be asked to disclose your identity to the record companies if you seek to pursue settlement. If a settlement is reached, the case against you will be dismissed. It is possible that defendants who seek to settle at the beginning of a case will be

offered more favorable settlement terms by the record companies. You may contact the record companies' representatives by phone at (206) 973-4145, by fax at (206) 242-0905, or by email at info@settlementsupportcenter.com.

You may also wish to find your own lawyer (see resource list below) to help you evaluate whether it is in your interest to try to reach a settlement or to defend against the lawsuit.

RESOURCE LIST

The organizations listed below provide guidance on how to find an attorney. If you live in or near Massachusetts or Boston, the second and third listings below provide referrals for local attorneys.

American Bar Association
http://www.abanet/org/legalservices/findlegalhelp/home.htm

Massachusetts Bar Association
http://www.massbar.org
Lawyer referral service - (617) 338-0610

Boston Bar Association
http://www.bostonbar.org
Lawyer referral service - (617) 742-0625

The organizations listed below have appeared before other courts around the country in similar lawsuits as "friends of the court" to attempt to protect what they believe to be the due process and First Amendment rights of Doe defendants.

Electronic Frontier Foundation
454 Shotwell Street
San Francisco, California 94110-1914
email: RIAAcases@eff.org

Public Citizen
1600 20th Street, NW
Washington, DC 20009
phone: (202) 588-7721
email: litigation@citizen.org

Exhibit D

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
SONY BMG MUSIC ENTERTAINMENT; ARISTA RECORDS LLC; UMG RECORDINGS, INC.; and BMG MUSIC

(b) County of Residence of First Listed Plaintiff **New York County, NY**
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS
DENISE CLOUD
County of Residence of First Listed Defendant **Bucks**
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Howard M. Klein (No. 33632)
Andrew Hanan (No. 69682)
Jennifer Welsh (No. 203154)
Conrad O'Brien Gellman & Rohn, P.C.
1515 Market Street, 16th Floor
Philadelphia, PA 19102-1916
Telephone: (215).864.9600
Facsimile: (215).864.9620

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3. Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an 'X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury—Med. Malpractice
- ☐ 365 Personal Injury—Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities-Employment
- ☐ 446 Amer. w/Disabilities-Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☒ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW 405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes
- ☐ 890 Other Statutory Actions

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity)**
17 U.S.C. § 501 et seq.
Brief description of the cause: *copyright infringement*

VII. REQUESTED IN COMPLAINT
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND $ Statutory damages; injunction
CHECK YES only if demanded in complaint
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY (See instructions)
JUDGE _____ DOCKET NUMBER _____

DATE
March 11, 2008

SIGNATURE OF ATTORNEY OF RECORD
s/ Jennifer Welsh

203154

FOR OFFICE USE ONLY

RECEIPT# _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA – DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: See Attachment A

Address of Defendant: Denise Cloud
83 Forrest Dr.
Southampton, PA 18966

Place of Accident, Incident or Transaction: The acts of infringement complained of herein occurred in this judicial district
(Use Reverse Side for Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed. R.Civ. P. 7.1(a)) Yes ☒ No ☐

Does this case involve multidistrict litigation possibilities? Yes ☐ No ☒

RELATED CASE, IF ANY:
Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes ☐ No ☒
3. Does this case involve the validity or infringement of a parent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes ☐ No ☒

Civil (Place √ in ONE CATEGORY ONLY):

A. *Federal Question Cases:*
1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Notice Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☑ All other Federal Question Cases
(Please specify) Copyright

B. *Diversity Jurisdiction Cases:*
1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability -- Asbestos
9. ☐ All other Diversity Cases
(Please specify)

ARBITRATION CERTIFICATION
(check appropriate Category)

I, Howard M. Klein, counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule Issue 53.2, Section 3 (c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of $150,000.00 exclusive of interest and costs;

☒ Relief other than monetary damages is sought.

DATE: March 11, 2008 s/ Jennifer Welsh Attorney-at-Law 203154 Attorney I.D.

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: March 11, 2008 **s/ Jennifer Welsh** **203154**

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
ATTACHMENT A

SONY BMG MUSIC
ENTERTAINMENT
550 Madison Avenue
New York, NY 10022-3211
County of New York

Arista Records LLC
888 Seventh Avenue, 40th Floor
New York, NY 10019
County of New York

UMG Recordings, Inc.
2220 Colorado Avenue
Santa Monica, CA 90404
County of Los Angeles

BMG Music
1540 Broadway
New York, NY 10036
County of New York

SUMMONS IN A CIVIL ACTION

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SONY BMG MUSIC ENTERTAINMENT, a Delaware general partnership; ARISTA RECORDS LLC, a Delaware limited liability company; UMG RECORDINGS, INC., a Delaware corporation; and BMG MUSIC, a New York general partnership, Plaintiffs, v. DENISE CLOUD, Defendant.	CIVIL ACTION NO. TO: Denise Cloud 83 Forrest Dr. Southampton, PA 18966

YOU ARE HEREBY SUMMONED and required to serve upon

Plaintiffs' Attorney
Howard M. Klein (No. 33632)
Andrew Hanan (No. 69682)
Jennifer Welsh (No. 203154)
Conrad O'Brien Gellman & Rohn, P.C.
1515 Market Street, 16th Floor
Philadelphia, PA 19102-1916
Telephone 215.864.9600
Facsimile 215.864.9620

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint

Michael E. Kunz, Clerk of the Court	Date:
(By) Deputy Clerk	

OAO 440 (Rev. 10/93) Summons in a Civil Action

RETURN OF SERVICE

DATE

Service of the Summons and complaint was made by me[1]

NAME OF SERVER *(PRINT)* TITLE

Check one box below to indicate appropriate method of service

G Served personally upon the defendant. Place where served: _____

_____

G Left copies thereof at the defendant=s dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left: _____

G Returned unexecuted: _____

_____

_____

G Other (specify): _____

_____

_____

STATEMENT OF SERVICE FEES

TRAVEL SERVICES TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____ _____

Date Signature of Server

_____

Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

SONY BMG MUSIC ENTERTAINMENT, a Delaware general partnership; ARISTA RECORDS LLC, a Delaware limited liability company; UMG RECORDINGS, INC., a Delaware corporation; and BMG MUSIC, a New York general partnership, Plaintiffs, v. DENISE CLOUD, Defendant.	CIVIL ACTION NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

(a)	Habeas Corpus – Cases brought under 28 U.S.C. §2241 THROUGH §2255	( )
(b)	Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying a plaintiff Social Security Benefits	( )
(c)	Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2.	( )
(d)	Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos	( )
(e)	Special Management – cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.)	( )
(f)	Standard Management – Cases that do not fall into any one of the other tracks.	(x)

March 11, 2008	**s/ Jennifer Welsh**	
Date	**Attorney-at-Law**	**Attorney for Plaintiffs**
(215) 864-9600	**(215) 864-9620**	**jwelsh@cogr.com**
Telephone	**FAX Number**	**E-Mail Address**

(Civ. 660) 10/02

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

SONY BMG MUSIC ENTERTAINMENT, a Delaware general partnership; ARISTA RECORDS LLC, a Delaware limited liability company; UMG RECORDINGS, INC., a Delaware corporation; and BMG MUSIC, a New York general partnership,	:	CIVIL ACTION NO.
Plaintiffs,	:	
v.	:	
DENISE CLOUD,	:	
Defendant.	:	

DISCLOSURE STATEMENT FORM

Please check one box:

~ The nongovernmental corporate party, _____, in the above listed civil action does not have any parent corporation and publicly held corporation that owns 10% or more of its stock.

☒ The nongovernmental corporate parties, all Plaintiffs, in the above listed civil action have the following parent corporation(s) and publicly held corporation(s) that owns 10% or more of its stock:

See Attachment A

March 11, 2008
Date

s/ Jennifer Welsh
Signature

Counsel for: PLAINTIFFS

DISCLOSURE STATEMENT FORM

ATTACHMENT A

Pursuant to Federal Rule of Civil Procedure 7.1, Plaintiffs identify below persons, associations of persons, firms, partnerships, corporations, guarantors, insurers, affiliates, parent and subsidiary corporations, or other legal entities that are financially interested in the outcome of the case, as well as all publicly held corporations that own 10% or more of any Plaintiff's stock.

The following companies are parents of, or partners in Plaintiff SONY BMG MUSIC ENTERTAINMENT: USCO Holdings Inc.; BeSo Holding LLC; Sony Music Entertainment Inc.; Bertelsmann Music Group; Bertelsmann, Inc.; Arista Holding, Inc.; Zomba US Holdings, Inc.; Bertelsmann AG; and Sony Corporation, of which only Sony Corporation is publicly traded. Sony Corporation is publicly traded in the U.S.

The following companies are parents of, or partners in Plaintiff ARISTA RECORDS LLC: BMG Music; SONY BMG MUSIC ENTERTAINMENT; Ariola Eurodisc LLC; USCO Holdings Inc.; BeSo Holding LLC; Sony Music Entertainment Inc.; Bertelsmann Music Group; Bertelsmann, Inc.; Arista Holding, Inc.; Zomba US Holdings, Inc.; Bertelsmann AG; and Sony Corporation, of which only Sony Corporation is publicly traded. Sony Corporation is publicly traded in the U.S.

The following companies are parents of, or partners in Plaintiff UMG RECORDINGS, INC.: Polygram Holding, Inc.; Universal Music Group, Inc.; Vivendi Holding I Corp.; Vivendi Holdings Company; Vivendi Holding S.A.S.; SPC S.A.S.; and Vivendi S.A., of which only Vivendi S.A. is publicly traded. Vivendi S.A. is publicly traded in France.

The following companies are parents of, or partners in Plaintiff BMG MUSIC: Ariola Eurodisc LLC; USCO Holdings Inc.; BeSo Holding LLC; Sony Music Entertainment Inc.; Bertelsmann Music Group; Bertelsmann, Inc.; Arista Holding, Inc.; Zomba US Holdings, Inc.; Bertelsmann AG; and Sony Corporation, of which only Sony Corporation is publicly traded. Sony Corporation is publicly traded in the U.S.

Dated: March 11, 2008

By: s/ Jennifer Welsh

Howard M. Klein (No. 33632)
Andrew Hanan (No. 69682)
Jennifer Welsh (No. 203154)
Conrad O'Brien Gellman & Rohn, P.C.
1515 Market Street, 16th Floor
Philadelphia, PA 19102-1916
Telephone 215.864.9600
Facsimile 215.864.9620

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SONY BMG MUSIC ENTERTAINMENT, a Delaware general partnership; ARISTA RECORDS LLC, a Delaware limited liability company; UMG RECORDINGS, INC., a Delaware corporation; and BMG MUSIC, a New York general partnership,	:	CIVIL ACTION NO.
Plaintiffs,	:	
v.	:	
DENISE CLOUD,	:	
Defendant.	:	

COMPLAINT

JURISDICTION AND VENUE

1. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States (17 U.S.C. §101 *et seq.*).

2. This Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. §1331 (federal question); and 28 U.S.C. §1338(a) (copyright).

3. This Court has personal jurisdiction over the Defendant, Denise Cloud, and venue in this District is proper under 28 U.S.C. § 1391(b) and (c) and 28 U.S.C. § 1400, because, on information and belief, the Defendant resides in this District and/or a substantial part of the acts of infringement complained of herein occurred in this District.

PARTIES

4. Plaintiff SONY BMG MUSIC ENTERTAINMENT is a Delaware general partnership, with its principal place of business in the State of New York.

5. Plaintiff Arista Records LLC is a limited liability company duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

6. Plaintiff UMG Recordings, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California.

7. Plaintiff BMG Music is a general partnership duly organized and existing under the laws of the State of New York, with its principal place of business in the State of New York.

8. Plaintiffs are informed and believe that Defendant is an individual who resided in Southampton, Pennsylvania, within this District at the time of the infringement complained of herein. Upon information and belief, Defendant may still be found in this District.

COUNT I
INFRINGEMENT OF COPYRIGHTS

9. Plaintiffs incorporate herein by this reference each and every allegation contained in each paragraph above.

10. Plaintiffs are, and at all relevant times have been, the copyright owners or licensees of exclusive rights under United States copyright law with respect to certain copyrighted sound recordings, including but not limited to, all of the copyrighted sound recordings on Exhibit A to this Complaint (collectively, these copyrighted sound recordings shall be identified as the "Copyrighted Recordings"). Each of the Copyrighted Recordings is the subject of a valid Certificate of Copyright Registration issued by the Register of Copyrights, for which the Plaintiffs are the owners as specified on Exhibit A.

11. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the exclusive rights to reproduce the Copyrighted Recordings and to distribute the Copyrighted Recordings to the public.

12. Much of the unlawful distribution of copyrighted sound recordings over the Internet occurs via "peer-to-peer" ("P2P") file copying networks or so-called online media distribution systems. P2P networks, at least in their most popular form, refer to computer systems or processes that enable Internet users to search for files (including audio recordings) stored on other users' computers and transfer exact copies of files from one computer to another via the Internet, which can include both downloading an exact copy of that file onto the user's own computer and distributing an exact copy of that file to other Internet users on the same P2P network. P2P networks enable users who otherwise would have no connection with, or knowledge of, each other to provide a sophisticated search mechanism by which users can locate these files for downloading and to reproduce and distribute files off of their personal computers.

13. Users of P2P networks who distribute files over a network can be identified by using Internet Protocol ("IP") addresses because the unique IP address of the computer offering the files for distribution can be captured by another user during a search or a file transfer. Users of P2P networks can be identified by their IP addresses because each computer or network device (such as a router) that connects to a P2P network must have a unique IP address within the Internet to deliver files from one computer or network device to another. Two computers cannot effectively function if they are connected to the Internet with the same IP address at the same time.

14. Plaintiffs identified an individual using LimeWire on the P2P network Gnutella at IP address 71.185.73.209 on June 13, 2007 at 09:39:07 EDT distributing 337 audio files over the

Internet. The Defendant was identified as the individual responsible for that IP address at that date and time. Plaintiffs are informed and believe that as of June 13, 2007, Defendant, without the permission or consent of Plaintiffs, had continuously used, and continued to use, a P2P network to download and/or distribute to the public the Copyrighted Recordings. Exhibit A identifies the date and time of capture and a list of Copyrighted Recordings that Defendant has, without the permission or consent of Plaintiffs, downloaded and/or distributed to the public. Through Defendant's continuous and ongoing acts of downloading and/or distributing to the public the Copyrighted Recordings, which acts Plaintiffs believe to have been ongoing for some time, Defendant has violated Plaintiffs' exclusive rights of reproduction and distribution. Defendant's actions constitute infringement of Plaintiffs' copyrights and exclusive rights under copyright.

15. In addition to the sound recordings listed on Exhibit A, Plaintiffs are informed and believe that Defendant has, without the permission or consent of Plaintiffs, continuously downloaded and/or distributed to the public additional sound recordings owned by or exclusively licensed to Plaintiffs or Plaintiffs' affiliate record labels, and Plaintiffs believe that such acts of infringement are ongoing.

16. Plaintiffs have placed proper notices of copyright pursuant to 17 U.S.C. § 401 on each respective album cover of each of the sound recordings identified in Exhibit A. These notices of copyright appeared on published copies of each of the sound recordings identified in Exhibit A. These published copies were widely available, and each of the published copies of the sound recordings identified in Exhibit A was accessible by Defendant.

17. Plaintiffs are informed and believe that the foregoing acts of infringement have been willful and intentional, in disregard of and indifference to the rights of Plaintiffs.

18. As a result of Defendant's infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to statutory damages pursuant to 17 U.S.C. § 504(c) for Defendant's infringement of each of the Copyrighted Recordings. Plaintiffs further are entitled to their attorneys' fees and costs pursuant to 17 U.S.C. § 505.

19. The conduct of Defendant is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502 and 503, Plaintiffs are entitled to injunctive relief prohibiting Defendant from further infringing Plaintiffs' copyrights, and ordering Defendant to destroy all copies of sound recordings made in violation of Plaintiffs' exclusive rights.

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

1. For an injunction providing:

> "Defendant shall be and hereby is enjoined from directly or indirectly infringing Plaintiffs' rights under federal or state law in the Copyrighted Recordings and any sound recording, whether now in existence or later created, that is owned or controlled by Plaintiffs (or any parent, subsidiary, or affiliate record label of Plaintiffs) ("Plaintiffs' Recordings"), including without limitation by using the Internet or any online media distribution system to reproduce (i.e., download) any of Plaintiffs' Recordings, to distribute (i.e., upload) any of Plaintiffs' Recordings, or to make any of Plaintiffs' Recordings available for distribution to the public, except pursuant to a lawful license or with the express authority of Plaintiffs. Defendant also shall destroy all copies of Plaintiffs' Recordings that Defendant has downloaded onto any computer hard drive or server without Plaintiffs' authorization and shall destroy all copies of those downloaded recordings transferred onto any physical medium or device in Defendant's possession, custody, or control."

2. For statutory damages for each infringement of each Copyrighted Recording pursuant to 17 U.S.C. § 504.

3. For Plaintiffs' costs in this action.

4. For Plaintiffs' reasonable attorneys' fees incurred herein.

5. For such other and further relief as the Court may deem just and proper.

Dated: March 11, 2008

By: s/ Jennifer Welsh

Howard M. Klein (No. 33632)
Andrew Hanan (No. 69682)
Jennifer Welsh (No. 203154)
Conrad O'Brien Gellman & Rohn, P.C.
1515 Market Street, 16th Floor
Philadelphia, PA 19102-1916
Telephone 215.864.9600
Facsimile 215.864.9620

Attorneys for Plaintiffs

EXHIBIT A

DENISE CLOUD

IP Address: 71.185.73.209 2007-06-13 09:39:07 EDT **CASE ID#** 132796714

P2P Network: Gnutella **Total Audio Files:** 337

Copyright Owner	Artist	Recording Title	Album Title	SR#
SONY BMG MUSIC ENTERTAINMENT	Pearl Jam	Nothingman	Vitalogy	206-558
Arista Records LLC	Whitney Houston	I Wanna Dance With Somebody	Whitney	89-966
UMG Recordings, Inc.	3 Doors Down	Be Like That	The Better Life	277-407
BMG Music	Keith Anderson	Every Time I Hear Your Name	Three Chord Country And American Rock & Roll	369-354
SONY BMG MUSIC ENTERTAINMENT	Destiny's Child	Lose My Breath	Destiny Fulfilled	363-786
BMG Music	Dave Matthews Band	Satellite	Under the Table and Dreaming	285-688
SONY BMG MUSIC ENTERTAINMENT	Pearl Jam	Elderly Woman Behind the Counter in a Small Town	Vs.	207-219
SONY BMG MUSIC ENTERTAINMENT	Howie Day	Collide	Stop All The World Now	377-947

AO 121 (6/90)

TO:	REPORT ON THE FILING OR DETERMINATION OF AN ACTION OR APPEAL REGARDING A COPYRIGHT
Register of Copyrights Copyright Office Library of Congress Washington, D.C. 20559	

In compliance with the provisions of 17 U.S.C. 508, you are hereby advised that a court action or appeal has been filed on the following copyright(s):

☒ ACTION ~ APPEAL		COURT NAME AND LOCATION United States District Court Eastern District of Pennsylvania United States Courthouse 601 Market Street Philadelphia, PA 19106-1797	
DOCKET NO.	DATE FILED		
PLAINTIFF SONY BMG MUSIC ENTERTAINMENT; ARISTA RECORDS LLC; UMG RECORDINGS, INC.; and BMG MUSIC			DEFENDANT DENISE CLOUD
COPYRIGHT REGISTRATION NO.	TITLE OF WORK		AUTHOR OF WORK
1	See Exhibit A, attached.		
2			
3			
4			
5			

In the above-entitled case, the following copyright(s) have been included:

DATE INCLUDED	INCLUDED BY Amendment Answer Cross Bill Other Pleading	
COPYRIGHT REGISTRATION NO.	TITLE OF WORK	AUTHOR OF WORK
1		
2		
3		

In the above-entitled case, a final decision was rendered on the date entered below. A copy of the order or judgment together with the written opinion, if any, of the court is attached:

COPY ATTACHED Order Judgment	WRITTEN OPINION ATTACHED Yes No	DATE RENDERED

CLERK	(BY) DEPUTY CLERK	DATE

*U.S.G.P.O. 1982-374-279

Copy 1 – Upon initiation of action, mail this copy to Register of Copyrights.

EXHIBIT A

DENISE CLOUD

IP Address: 71.185.73.209 2007-06-13 09:39:07 EDT **CASE ID#** 132796714

P2P Network: Gnutella **Total Audio Files:** 337

Copyright Owner	Artist	Recording Title	Album Title	SR#
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AO 121 (6/90)

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1	See Exhibit A, attached.		
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COPYRIGHT REGISTRATION NO.	TITLE OF WORK	AUTHOR OF WORK
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2		
3		

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COPY ATTACHED Order Judgment	WRITTEN OPINION ATTACHED Yes No	DATE RENDERED

CLERK	(BY) DEPUTY CLERK	DATE

*U.S.G.P.O. 1982-374-279

Copy 2 – Upon filing of document adding copyright(s), mail this copy to Register of Copyrights.

EXHIBIT A

DENISE CLOUD

IP Address: 71.185.73.209 2007-06-13 09:39:07 EDT **CASE ID#** 132796714

P2P Network: Gnutella **Total Audio Files:** 337

Copyright Owner	Artist	Recording Title	Album Title	SR#
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AO 121 (6/90)

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Register of Copyrights Copyright Office Library of Congress Washington, D.C. 20559	

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COPYRIGHT REGISTRATION NO.	**TITLE OF WORK**	**AUTHOR OF WORK**
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COPY ATTACHED Order Judgment	WRITTEN OPINION ATTACHED Yes No	DATE RENDERED
CLERK	(BY) DEPUTY CLERK	DATE

*U.S.G.P.O. 1982-374-279

Copy 3 – Upon termination of action, mail this copy to Register of Copyrights.

EXHIBIT A

DENISE CLOUD

IP Address: 71.185.73.209 2007-06-13 09:39:07 EDT **CASE ID#** 132796714

P2P Network: Gnutella **Total Audio Files:** 337

Copyright Owner	Artist	Recording Title	Album Title	SR#
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AO 121 (6/90)

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CLERK	(BY) DEPUTY CLERK	DATE

*U.S.G.P.O. 1982-374-279

Copy 4 – In the event of an appeal, forward this copy to the Appellate Court so they can prepare a new A0 279 for the appeal.

EXHIBIT A

DENISE CLOUD

IP Address: 71.185.73.209 2007-06-13 09:39:07 EDT **CASE ID#** 132796714

P2P Network: Gnutella **Total Audio Files:** 337

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AO 121 (6/90)

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CLERK	(BY) DEPUTY CLERK	DATE

*U.S.G.P.O. 1982-374-279

Copy 5 – Case file copy.

EXHIBIT A

DENISE CLOUD

IP Address: 71.185.73.209 2007-06-13 09:39:07 EDT **CASE ID#** 132796714

P2P Network: Gnutella **Total Audio Files:** 337

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SONY BMG MUSIC ENTERTAINMENT	Howie Day	Collide	Stop All The World Now	377-947

Exhibit E

Holme Roberts & Owen LLP
Attorneys at Law

DENVER
BOULDER
COLORADO SPRINGS
LONDON
LOS ANGELES
MUNICH
SALT LAKE CITY
SAN FRANCISCO

February 27, 2008

[redacted]

Re: Settlement Agreement

ID# [redacted]

This law firm represents the following recording companies and their respective United States record company and record label affiliates and subsidiaries involved in the marketing and distribution of sound recordings for which they have authority to settle:

- EMI Music North America
- BMG Music
- SONY BMG MUSIC ENTERTAINMENT (successor-in-interest to Sony Music Entertainment Inc.)
- Warner Music Group Inc.
- UMG Recordings, Inc.
- Univision Music, Inc.

These companies (the "Record Companies") own or control many copyrighted sound recordings that they allege you have infringed upon.

This letter confirms an agreement (the "Agreement") between you and the Record Companies, as follows:

1. You shall pay to the Record Companies the total sum of [redacted] ("Settlement Amount") by **cashier's check** or **credit card**. The **cashier's check** made payable to "**RIAA Client Trust Account**," or the completed and signed **Credit**

Donald J. Kelso
1700 Lincoln Street, Suite 4100 Denver, Colorado 80203-4541 *tel* 720.528.2641 *fax* 720.528.2642

Card Authorization, shall be delivered to Holme Roberts & Owen LLP, Attention: Donald J. Kelso, 1700 Lincoln Street, Suite 4100, Denver, Colorado 80203-4541, with a signed copy of this Agreement. You have agreed to pay the Settlement Amount in six (6) equal monthly payments of [redacted] due on or before the 20th day of each month, with the first such payment due on or before March 20, 2008, and the final such payment due on or before **August 20, 2008** ("Payment Date). Your payment and a copy of this Agreement signed by you must be received by Holme Roberts & Owen LLP in order for this Agreement to take effect. For your record-keeping purposes, you may want to consider sending your payment by Federal Express, certified mail, or some other traceable delivery service.

2. You agree not to infringe any sound recording protected under federal or state law, whether now in existence or later created, that is owned or controlled by any of the Record Companies. This agreement not to infringe shall include, but not be limited to, using the Internet or any online media-distribution system to upload or download the Record Companies' sound recordings or otherwise to distribute or make available for distribution to others any such recordings, except pursuant to a lawful license or with the express authority of the Record Companies. You further agree to destroy all copies in your possession of any of the Record Companies' sound recordings that you have downloaded onto any computer hard drive or server without the Record Companies' authorization and also to destroy all copies of such downloaded recordings that you have made onto any physical medium (e.g., CD-R) or device in your possession, custody, or control.

3. So long as you continue to comply with the obligations under this Agreement, the Record Companies agree not to pursue claims against you for infringement of the sound-recording copyrights in any sound recording protected under federal or state law, whether now in existence or later created, that is owned or controlled by any of the Record Companies, based solely on your use of the Internet or any online media-distribution system to upload or download such sound recordings prior to the date set forth at the top of this Agreement. However, if you breach your obligations under this Agreement at any time, the Record Companies shall have the right, among other things, to assert copyright claims for infringement against you based on your infringement of any sound recording in which any of them owns or controls the copyright. You agree that the statute of limitations applicable to any such

claims shall be tolled pending receipt of full payment of the Settlement Amount set forth in paragraph 1 above.

4. You acknowledge that we have advised you that you may consult with counsel of your choosing prior to entering into this Agreement and that you have entered into this Agreement of your own free will, without any promise or inducement not stated in this Agreement. You further acknowledge that nothing contained in this Agreement constitutes an admission or denial of wrongdoing by you. The Record Companies each reserve all rights not expressly waived herein.

5. If you fail to pay the full Settlement Amount by the Payment Date, you agree that the Settlement Amount due and owing from you shall immediately increase t[redacted], less that portion of the Settlement Amount paid to the Record Companies to date, if any.

6. Your payment and signature, together with the signature of the attorney below who is authorized by the Record Companies to execute this Agreement on their behalf, creates an enforceable contract binding on you personally. This Agreement is not transferable or assignable.

Donald Kelso

Dated: 2/26/08

Donald J. Kelso, Esq.
HOLME ROBERTS & OWEN LLP
Attorneys for the Record Companies

Dated: _____

[redacted]

Residential Address:
Residential Phone:
Date of Birth:

Holme Roberts & Owen LLP
Attorneys at Law

1700 Lincoln Street, Suite 4100
Denver, Colorado 80203-4541
tel 303.861.7000 *fax* 303.866.0200

CREDIT CARD AUTHORIZATION

[redacted]

Name of cardholder (as shown on card): _____

Billing address
(for credit card or bank statement): _____

_____

_____

_____

Type of credit card (circle one): **Visa / Mastercard / Discover**

Account No.: _____

Expiration Date: _____

Recurring Payment Beginning Date: _____

Ending Date: _____

Interval: Monthly

Amount: _____

I, _____, hereby authorize Holme Roberts & Owen LLP
(print full name of cardholder)

to charge $_____ to the above credit card.

Dated: _____ By: _____
(signature of cardholder)

Exhibit F

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Priority
Send
Enter
Closed
JS-5/JS-6
Scan Only

ORIGINAL

CIVIL MINUTES - GENERAL

CASE NO.: CV 06-5289 SJO (MANx) **DATE:** March 2, 2007

TITLE: Elektra Entertainment Group Inc., et al. v. Catherin O'Brien et al.

PRESENT: THE HONORABLE S. JAMES OTERO, UNITED STATES DISTRICT JUDGE

Victor Paul Cruz Courtroom Clerk	Not Present Court Reporter
COUNSEL PRESENT FOR PLAINTIFF(S):	**COUNSEL PRESENT FOR DEFENDANT(S):**
Not Present	Not Present

PROCEEDINGS (in chambers): Order to Show Cause re First Amended Complaint

This lawsuit is one of thousands of "peer to peer" file-sharing lawsuits which have been filed in the federal courts over the last few years. In most of these cases, as in this one, the plaintiffs are represented by counsel and the defendants are not. While the Court cannot act as de facto counsel for the pro se defendants, *GJR Investments, Inc. v. County of Escambia, Fla.*, 132 F.3d 1359, 1369 (11th Cir. 1998), the Court has an obligation to read the pleadings and supporting papers liberally and interpret them as stating the strongest arguments the pleadings and papers suggest. *Boguslavsky v. Kaplan*, 159 F.3d 715, 719 (2d Cir. 1998).

In other lawsuits, the same Plaintiffs are currently litigating legal issues which, if determined adversely to the Plaintiffs and applied to this lawsuit, would result in this lawsuit being terminated or the damages being capped at a very low amount. In the Southern District of New York, in the case *Elektra Entertainment v. Denise Barker*, Judge Karas is considering a motion to dismiss on the basis that the pleadings in these file-sharing cases do not sufficiently allege copyright infringement. *Elektra Entm't Group, Inc., et al. v. Denise Barker*, No.05-7340 (S.D.N.Y. Jan. 26, 2007) (minutes stating argument held and decision reserved). In the Eastern District of New York, in the case *UMG Recordings v. Marie Lindor*, a case which involves two of the five Plaintiffs in the present case, Judge Trager allowed an amended answer to be filed which states the affirmative defense that the statutory damages sought substantially exceed the 10:1 ratio of awarded damages to actual damages permitted by the Supreme Court in *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003). *UMG Recordings, Inc., et al. v. Marie Lindor*, No. 05-1095 (E.D.N.Y. Nov. 9, 2006) (order granting motion to file second amended answer). The damage ratio concern was previously raised by this Court in a case where the statutory damages appeared to compel an award of $174,000 against a man who sold one unauthorized DVD box set of the television comedy *Friends* on an online auction site. *Warner Bros. Entm't, Inc v. Marc Foitzik, et al.*, No. 06-921 (C.D. Cal. Sept. 15, 2006) (order granting default judgment). In the Western District of Oklahoma, in the case *Capitol Records,*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Priority ____
Send ____
Enter ____
Closed ____
JS-5/JS-6 ____
Scan Only ____

CASE NO.: CV 06-5289 SJO (MANx) **DATE:** March 2, 2007

Inc. v. Debbie Foster, a case which involved four of the five Plaintiffs in the present case, Judge West awarded attorney fees to the defendant, after the plaintiffs continued to litigate even after it was shown that it had been another user of the defendant's Internet access account who had engaged in the file-sharing. *Capitol Records, Inc., et al. v. Debbie Foster, et al.*, No. 04-1569 (W.D. Okla. Feb. 6, 2007) (order granting attorney fees). Certainly, there are even more legal arguments being raised against the plaintiffs in these file-sharing cases. The concern of this Court is that in these lawsuits, potentially meritorious legal and factual defenses are not being litigated, and instead, the federal judiciary is being used as a hammer by a small group of plaintiffs to pound settlements out of unrepresented defendants.

In this case, the First Amended Complaint names Defendants Catherin O'Brien and Michael Tubman, whereas the original Complaint merely named Defendant O'Brien. The declaration of Jonathan G. Fetterly filed on February 20, 2006 alleges that the multiple parties in this case are properly joined but says nothing specific to the facts of this case. There are no factually specific allegations that the defendants are in any way related to each other, acted in concert, or acted as a group in the offending actions. The Western District of Texas, encountering the problem that plaintiffs in file-sharing suits were naming unrelated parties in order to economize on filing fees, ordered that all but the first named defendant be dismissed from the file-sharing cases. *Fonovisa v. Does 1-41*, No. 04-550 (W.D. Tex. Nov. 17, 2004). The Plaintiffs are ordered to show cause in writing no later than **March 21, 2007** as to why Defendant Michael Tubman should not be dismissed from this action.

The First Amended Complaint names Defendant Michael Tubman without dismissing the case against Defendant Catherin O'Brien. It is possible that the Plaintiffs are engaging in the same tactics as they did in the Oklahoma case mentioned above. The Plaintiffs are ordered to show cause in writing no later than **March 21, 2007** as to why Defendant Catherin O'Brien should not be dismissed from this action.

It is so ordered.