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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CASANOVA RECORDS, a Virginia limited liability corporation; NICOLA BATTISTA, an individual; KUTMUSIC, a sole proprietorship; and ECL3CTIC, a sole proprietorship,

No. C 00-2638 MHP
MDL No. C 00-1369 MHP

Plaintiffs,

ORDER

v.

NAPSTER, INC.,

Defendant.

In accordance with the Opinion of the United States Court of Appeals for the Ninth Circuit filed on February 12, 2001, it is this 5th day of March, 2001, HEREBY ORDERED that, during the pendency of this action and until final judgment is entered, defendant Napster, Inc. and its agents, servants, employees, representatives, subsidiaries, assigns and those acting in concert with them or at their direction (collectively, "Napster") are enjoined as follows:

1. Napster is preliminarily enjoined, pursuant to the procedures set forth below, from engaging in, or facilitating others in, copying, downloading, uploading, transmitting, or distributing copyrighted musical compositions or sound recordings in accordance with this Order.

2. Plaintiffs shall provide notice to Napster of their copyrighted musical compositions and sound recordings by providing for each work:

- (A) the title of the work;
- (B) the name of the composer or featured recording artist performing the work;
- (C) the name(s) of one or more files¹ available on the Napster system containing such work; and

1 (D) a certification that plaintiffs own or control the rights allegedly infringed.
2 Plaintiffs shall make a substantial effort to identify the infringing files as well as the names of the
3 title and artist or composer of the copyrighted work.

4 3. All parties shall use reasonable measures in identifying variations of the filename(s), or of
5 the spelling of the titles and artists' or composers' names, of the works identified by plaintiffs. If it
6 is reasonable to believe that a file available on the Napster system is a variation of a particular work
7 or file identified by plaintiffs, all parties have an obligation to ascertain the actual identity (title and
8 artist's or composer's name) of the work and to take appropriate action within the context of this
9 Order.

10 4. The Ninth Circuit held that the burden of ensuring that no copying, downloading,
11 uploading, transmitting or distributing of plaintiffs' copyrighted works occurs on the system is
12 shared between the parties. The court "place[d] the burden on plaintiffs to provide notice to
13 Napster" and imposed on Napster the burden "of policing the system within the limits of the
14 system." See A&M et al. v. Napster, No. 00-164001, slip op. at 2206 (9th Cir. Feb. 12, 2001). It
15 appears to the court on the basis of the factual representations by the parties at the March 2, 2001
16 hearing that it would be difficult for plaintiffs to identify all infringing files on the Napster system
17 given the transitory nature of its operation.² This difficulty, however, does not relieve Napster of its
18 duty. The court anticipates that it may be easier for Napster to search the files available on its system
19 at any particular time against lists of copyrighted works provided by plaintiffs. The court deems that
20 the results of such a search provide Napster with "reasonable knowledge of specific infringing files"
21 as required by the Ninth Circuit. See id. at 2205.

22 5. Once Napster "receives reasonable knowledge" from any source identified in preceding
23 Paragraphs 2, 3 or 4 of specific infringing files containing copyrighted sound recordings or
24 compositions, Napster shall, within three (3) business days, prevent such files from being included in
25 the Napster index (thereby preventing access to the files corresponding to such names through the
26 Napster system).

27 6. Within three (3) business days of receipt of reasonable notice of infringing files, Napster
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1 shall affirmatively search the names of all files being made available by all users at the time those
2 users log on (i.e., prior to the names of files being included in the Napster index) and prevent the
3 downloading, uploading, transmitting or distributing of the noticed copyrighted musical
4 compositions or sound recordings.

5 7. Plaintiffs may provide to Napster in advance of release the artist's name, title of the
6 recording, and release date of sound recordings for which, based on a review of that artist's previous
7 work, including but not limited to popularity and frequency of appearance on the Napster system,
8 there is a substantial likelihood of infringement on the Napster system. Napster shall beginning with
9 the first infringing file block access to or through its system to the identified composition or
10 recording. As Napster presently has the capability (even without enhancing its technology) to store
11 information about and subsequently screen for a particular work, the burden is far less and the
12 equities are more fair to require Napster to block the transmission of these works in advance of their
13 release. To order otherwise would allow Napster users a free ride for the length of time it would take
14 plaintiffs to identify a specific infringing file and Napster to screen the work.

15 8. Within five (5) business days of the date of this Order, and within five (5) business days
16 of service of notice by plaintiffs as provided in Paragraphs 2 or 6 of this Order, Napster shall serve
17 upon plaintiffs and file with the court a Report of Compliance identifying the steps it has taken to
18 comply with this Order.

19 9. If in implementing this preliminary injunction the parties dispute the ability of Napster or
20 of the Napster system to carry out the duties established under this Order, the parties may set the
21 matter for hearing before the court. However, such disputes will not operate to stay this injunction
22 or afford relief from it. The court may appoint an independent third party to serve as a technical
23 expert to assist the court in connection with the dispute.

24 10. Notification by plaintiffs pursuant to this Order shall be provided to Napster in the
25 format such records are kept in the ordinary course of business.

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11. This order shall become effective upon the posting of a bond by plaintiffs jointly and severally in the amount of Fifty Thousand Dollars (\$50,000.00).

Dated: March ____, 2001

MARILYN HALL PATEL
Chief Judge
United States District Court
Northern District of California

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ENDNOTES

1. The Ninth Circuit directed that plaintiffs provide to Napster the names of “specific infringing files” containing copyrighted material. See A&M Records, et al. v. Napster, Inc., No. 00-164001, slip op. at 2205 (9th Cir. Feb. 12, 2001). This language appears to refer to the titles of specific files containing copyrighted material that appear on the Napster system at any given time. The court observes that each file is available only as long as the user offering that file is logged on to the Napster system. Once the user logs off the system, the specific infringing file is no longer available on Napster. Another user may log on and offer a file containing the same copyrighted material, but that user may have assigned a different name for her file.
2. Given the limited time an infringing file may appear on the system and the individual user’s ability to name her files, relief dependent on plaintiffs’ identifying each “specific infringing file” would be illusory.