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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JERRY LEIBER, individually and doing  
business as JERRY LEIBER MUSIC; MIKE  
STOLLER, individually and doing business as  
MIKE STOLLER MUSIC; and FRANK  
MUSIC CORP., on behalf of themselves and  
all others similarly situated,

No. C 00-0074 MHP  
MDL No. C 00-1369 MHP

**ORDER**

Plaintiffs,

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 in accordance with this Order.

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

- (A) the title of the work;
- (B) the name of the composer of the work;
- (C) the name(s) of one or more files<sup>1</sup> 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 name of the  
3 composer and title of the copyrighted composition. For compositions for which there might be a  
4 number of compositions of the same name, the burden will rest with plaintiffs to identify those  
5 compositions to which they own or control the copyright.

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

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

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

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

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

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

15           9. Notification by plaintiffs pursuant to this Order shall be provided to Napster in the format  
16 such records are kept in the ordinary course of business.

17           10. This order is effective immediately, a bond in the amount of Five Million Dollars  
18 (\$5,000,000.00) already having been posted with the court.

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Dated: March \_\_\_\_, 2001

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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.