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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

A&M RECORDS, INC., a corporation;
GEFFEN RECORDS, INC., a corporation;
INTERSCOPE RECORDS, a general
partnership; SONY MUSIC
ENTERTAINMENT INC., a corporation;
MCA RECORDS, INC., a corporation;
ATLANTIC RECORDING CORP., a
corporation; ISLAND RECORDS, INC., a
corporation; MOTOWN RECORD
COMPANY L.P., a limited partnership;
CAPITOL RECORDS, INC., a corporation;
LA FACE RECORDS, a joint venture; BMG
MUSIC d/b/a THE RCA RECORDS LABEL,
a general partnership; UNIVERSAL
RECORDS INC., a corporation; ELEKTRA
ENTERTAINMENT GROUP INC., a
corporation; ARISTA RECORDS, INC., a
corporation; SIRE RECORDS GROUP INC.,
a corporation; POLYGRAM RECORDS,
INC., a corporation; VIRGIN RECORDS
AMERICA, INC., a corporation; and
WARNER BROS. RECORDS INC., a
corporation,

Plaintiffs,

v.

NAPSTER, INC.

Defendant.

_____ /

No. C 99-05183 MHP
MDL No. C 00-1369 MHP

ORDER

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

1 engaging in, or facilitating others in, copying, downloading, uploading, transmitting, or distributing
2 copyrighted sound recordings in accordance with this Order.

3 2. Plaintiffs shall provide notice to Napster of their copyrighted sound recordings by
4 providing for each work:

5 (A) the title of the work;

6 (B) the name of the featured recording artist performing the work (“artist name”);

7 (C) the name(s) of one or more files¹ available on the Napster system containing such
8 work; and

9 (D) a certification that plaintiffs own or control the rights allegedly infringed.

10 Plaintiffs shall make a substantial effort to identify the infringing files as well as the names of the
11 artist and title of the copyrighted recording.

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

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

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

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

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

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

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

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

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

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8 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.