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14 Attorneys for Defendant
NAPSTER, INC.

15
16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 A&M RECORDS, INC., a corporation, et al.
20 Plaintiffs,

21 v.

22 NAPSTER, INC., a corporation, and DOES 1
through 100,
23 Defendants.

24 JERRY LEIBER, individually and doing business
as JERRY LEIBER MUSIC, et al.

25 Plaintiffs,

26 v.

27 NAPSTER, INC.,
28 Defendants.

Case Nos. C 99-5183 MHP (ADR)
C 00-0074 MHP (ADR)

**DECLARATION OF JOHN PERRY
BARLOW. IN SUPPORT OF
DEFENDANT NAPSTER'S
OPPOSITION TO PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

Date: July 26, 2000
Time: 2:00 p.m.
Courtroom: 15
Hon. Marilyn H. Patel

1 I, John Perry Barlow, declare, pursuant to 28 U.S.C. § 1746, as follows:

2 1. I know the facts stated herein of my personal knowledge and, if called upon, could
3 testify competently to them.

4 2. I am a songwriter and an Internet Scholar. From 1971 until 1995, I co-wrote songs
5 with the Grateful Dead.

6 3. I have written and lectured on subjects relating to computer security, Virtual
7 Reality, digitized intellectual property, the social and legal conditions arising in the global
8 network of connected digital devices, and the virtualization of society.

9 4. My writings, which have been widely distributed on the Net, include “Declaration
10 of Independence of Cyberspace” as well as “The Economy of Ideas.” I am a contributing editor
11 of numerous publications, including Communications of the ACM. I have been a contributing
12 writer for *Wired* since its first issue. In 1990, I was the first to apply William Gibson's science
13 fiction term “Cyber-space” to the already existing global electronic social space now generally
14 referred to by that name.

15 5. I have worked as a consultant with the Vanguard Group, the Global Business
16 Network, and Diamond Technology Partners, and am a member of the External Advisory Council
17 of the National Computational Science Alliance.

18 6. In 1990, Mitchell Kapor and I founded the Electronic Frontier Foundation, an
19 organization that promotes freedom of expression in digital media. I currently serve as its Vice
20 Chairman.

21 7. Since May of 1998, I have been a Fellow at Harvard Law School's Berkman
22 Center for Internet and Society.

23 8. There is a significant group of musicians, such as Metallica, Phish, and The
24 Grateful Dead, who allow, and in some cases encourage, their fans to make recordings of their
25 live performances. These musicians have discovered, as the Grateful Dead did, that the best way
26 to make money from music is to give it away. While scarcity may increase the value of physical
27 goods, in the information economy there is an equally strong relationship between familiarity and
28

1 value. If your work is good, allowing what you've done to self-replicate freely increases demand
2 for what you haven't done.

3 9. Napster users are engaged in the online equivalent of tape trading. The free
4 trading of music has fostered the careers of many bands and helped build their fan base. Music
5 trading helps -- not hurts -- artists' careers. For example, the Grateful Dead, the band for whom I
6 wrote music, increased its popularity enormously by letting our fans tape our concerts and
7 allowing them to freely trade the music. Instead of reducing the demand for the product, letting
8 fans freely share concert music made the Grateful Dead one of the largest concert draws in the
9 history of American music. I do not believe that the kid in Ohio is injuring my economic interests
10 by sharing my music with another fan in Los Angeles, Tokyo, or Dublin. Deadheads have been
11 sharing our songs with each other for decades, and it did nothing but increase the demand for our
12 work.

13 10. One-to-one sharing through Napster will allow musicians to break the lock grip of
14 the big five recording companies on marketing, promotion and distribution. Napster allows music
15 to be delivered and heard directly and immediately by a huge consuming public – potentially
16 millions of listeners – without the artist signing away rights and becoming indebted to a recording
17 label. Under the traditional recording company system, only a small percentage of the world's
18 musicians are given the opportunity to have their music heard. Of this small percentage, a
19 smaller percentage is given the promotional support necessary to become successful. Even when
20 an artist reaches a substantial level of popularity, the artist's compensation is minimal. Many
21 industry contracts are such that artists become debt-ridden or go bankrupt, regardless of their
22 success.

23 11. Napster allows the world's artists to bypass the major recording label's "gate-
24 keeping" and, with little cost, begin the distribution of their own music. Further, Napster
25 provides an even lower technological barrier to artists for online distribution because it requires
26 very little technological know-how. Napster's file-sharing technology allows an artist's music to
27 replicate quickly, making every user's hard drive another source for the music.

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