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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 CHUCK D. 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, Chuck D., declare, pursuant to 28 U.S.C. § 1746, as follows:

2 1. I am the leader and co-founder of the rap group Public Enemy. I know the matters  
3 stated herein of my own personal knowledge and, if called to testify, could and would testify  
4 competently to them.

5 2. Public Enemy's first album, *Yo, Bum Rush the Show*, debuted in 1987. Since  
6 then, Public Enemy has released seven albums, many of which met with critical acclaim and  
7 commercial success. The *New York Times* has named Public Enemy's music to their list of the 25  
8 most significant albums of the last century.

9 3. Aside from my work as a musical artist, I have started a record label called Slam  
10 Jamz, been a special correspondent for the Fox News Channel, published a best-selling  
11 autobiography, *Fight the Power*, and spoken widely on the college lecture circuit, lecturing at  
12 Harvard University, Howard University and University of California at Berkeley, among others.  
13 I was the guest editor of the 1999 Year-End Issue of *Red Herring*, a technology magazine, and  
14 wrote an overview for *Time* magazine on the global impact of hip hop for their cover feature on  
15 that subject. I have been profiled in *Forbes*, *Time*, *USA Today* and the *Industry Standard*, and  
16 have been named to *Upside Magazine's* "Elite 100" list of Internet leaders. I have served as a  
17 national spokesperson for Rock the Vote, the National Urban League, the National Alliance of  
18 African-American Athletes, and National Partnership for Drug Free America. April 6, 2000, I was  
19 a keynote speaker at a conference in Boalt Hall School of Law, Berkeley, California, entitled  
20 "Music to Whose Ears? The Debate over Digital Music." A copy of my recent op ed piece in the  
21 New York Times is attached as Exhibit A. I also have been invited to and appeared, in order to  
22 address the issues in this lawsuit, on PBS television's *Charlie Rose Show*, on MTV, on CNN's  
23 *Talkback-Live*. I was requested to and did testify at recent hearings at the House of  
24 Representatives on the subject of Internet Music, of which this case was a part of the discussion.

25 4. In September 1999, I launched Rapstation.com. Rapstation.com is a home for the  
26 vast, global, hip-hop community. Rapstation.com includes a TV and radio station with original  
27 programming, hip hop's most prominent DJs, celebrity interviews, free MP3 downloads, social  
28 commentary, current events, and regular features dedicated to empowering rap artists with the

1 knowledge to turn their craft into a viable living. The site has partnered with Real Networks,  
2 House of Blues Digital, Launch, Tucows, Rioport, Communities.com, NewWorldCulture,  
3 AllEarth, Vitaminic.com (which translates our content into seven languages worldwide),  
4 Listen.com, Audioplay, Live365.com and AudioGalaxy. I also have launched  
5 Bringthenoise.com, an Internet radio station.

6 5. I have absolutely no objection to having any of my music shared on Napster. In  
7 fact, I see Napster as the “New Radio of the ODEC,” as I discuss below.

8 6. The Napster Network is a revolution that can advantage both new artists and  
9 established artists. Based on my extensive involvement in the music industry and the Internet, I  
10 know that the Internet in general, and Napster in particular, allow artists to expose and promote  
11 themselves to the global community of music lovers without relying on the big, corporate  
12 recording labels. Having been connected to the genre of hip hop and rap music as an artist for 22  
13 years, I have witnessed the lack of support provided by the Plaintiff record companies to the  
14 majority of artists, song writers, producers and labels as they seek to reach their fan base. With  
15 radio choosing the more traditional, popular favorites, and the prohibitive expense of video  
16 production and other promotional devices, getting a record to the fans is extremely difficult and  
17 expensive. Napster and its “distributed aggregation” model for use of the Internet represent a  
18 valuable alternative to having artists rely on the large recording companies to select, record,  
19 promote, and sell their music.

20 7. Napster’s great potential benefit to artists and their fans makes it clear that what is  
21 at stake in this lawsuit is not merely the copyrights of sound recordings owned by the Plaintiffs  
22 (who are *not* in fact the creative artists), *but the future of sound recording distribution*. If the  
23 RIAA succeeds in crushing Napster and maintaining its dominance, it will have succeeded in  
24 preserving mastership over the artists and their works. The Big Five (soon only Four) record  
25 companies represent the current, established, traditional and mainstream portion of the music  
26 world. Under the present recording industry paradigm, large recording companies, such as the  
27 Plaintiffs, are the only entities with the necessary capital to take an artist from obscurity to  
28 stardom. In a typical recording industry contract, the artist becomes a virtual employee of the

1 record company, agreeing to a long term exclusive relationship that liken to “digital  
2 sharecropping.” An artist receives an advance and a small percentage of royalties. Although the  
3 advance is not refundable, it is recoupable against royalties, meaning that the artists receive no  
4 additional money until the labels have received sufficient profit to cover their expenses plus the  
5 amount of the advance. The costs of recording an album are relatively low. Many bands can  
6 afford to create their own recordings. What they can’t afford under the traditional system are the  
7 marketing and promotion costs.

8 8. For example, the record labels give free CDs to retail stores and radio stations,  
9 plus an additional payments via “independent promotion,” to get new works featured in listening  
10 stations or on the radio. The label produces an inventory of CDs that may or may not be sold.  
11 The label charges the cost of the CD and the payment to the retail store or radio station against the  
12 artist’s royalties, even though the artist may be earning royalties of only a few cents on the dollar.  
13 By this practice, an artist who sells a million units may yet receive no royalties and still be  
14 considered “unrecouped.” Exposure to the listening public is key to driving sales. Labels are  
15 intermediaries who specialize in selling artists their connections in the music industry marketing  
16 and promotion.

17 9. However, only a tiny fraction of all recording artists, around two percent, are  
18 signed by these major labels. Even when signed to a major label, most artists have little say over  
19 how their product is marketed and sold, and most of that 2% therefore never flourish. If the artist  
20 does not sell well, the label generally has the power to cease selling the art, but owns the art  
21 forever. The record company’s focus on generating greater profits virtually ensures only a small  
22 group of selected predetermined artists participate on a major level.

23 10. In contrast to the “selected” artists promoted by the Plaintiffs, there is a vast  
24 universe of artists and small recording companies that exist outside the control, limitations, or  
25 influence of large record labels. Napster allows these artists and labels, for the first time, to reach  
26 millions of music enthusiasts for a fraction of the cost required by the mainstream recording  
27 industry as it currently exists. With very little capital, artists can record, market and sell their  
28 music through the Internet. Artists no longer need to rely on any special relationships with radio

1 stations or on radio's programming limitations in order to distribute their music to millions of  
2 consumers at a time. In short, artists no longer need to rely on a major label's backing in order to  
3 participate in the music industry.

4 11. "Peer-to-peer" trading operates as massive "word of mouth," or "word of mouse"  
5 promotion. And artists can hold on to the composition, performance *and* recording rights of their  
6 music and thus increase the amount of revenue directed to the artist per recording sold. In this  
7 way, artists can make a good living selling a modest number of recordings, and the musical career  
8 can belong to more artists, not just the handful of acts that the major labels decide to promote. In  
9 fact, Rapstation.com and Napster recently jointly promoted a songwriting contest in which  
10 participants write original lyrics to be downloaded onto Public Enemy's song entitled "Power To  
11 The People And The Beat." Contestants were invited to use the Napster system to download this  
12 and other Public Enemy songs for inspiration. The new artists then lay their lyrics over the Public  
13 Enemy soundtrack. Once completed, contestants can share their new rap recording with the  
14 Napster community. This contest reflects the potential of Napster to help independent artists gain  
15 an audience and to develop their careers through independent distribution on the Napster System.  
16 Over 350 artists participated in this project. Tens of thousands of downloads of these new artists'  
17 songs were enabled by links between the Napster site and Rapstation.com.

18 12. Besides establishing an infrastructure that was previously nonexistent for artists,  
19 Napster is creating new fan interest in the acquisition of music. Sharing music through Napster  
20 generates a healthy enthusiasm about music that expands rapidly as more and more people listen  
21 to and share music to which they may not have been otherwise exposed. Napster functions as a  
22 new radio for the new decade (the "ODEC") and millennium, allowing users to sample all kinds  
23 of music. But unlike current radio stations, which work with the current big music labels, Napster  
24 is a truly democratic medium where the individual Napster users drive their musical experience.  
25 Through Napster, popular music is traded alongside music by emerging artists and artists who  
26 have struggled outside of the mainstream.

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13. The major recording labels have created a system that makes it very expensive to promote and market a song, thus totally squeezing the small, independent entrepreneur out of the distribution business. This structure has hurt the artist by keeping him out of the game, and it has also hurt the music enthusiast by limiting the world of music to which he or she is exposed. Napster represents the future of music distribution -- a future with a decreasing need for large recording companies and their accountants, lawyers, and million-dollar executives, and increasing reward and opportunity for artists to reach the public and excel.

I declare under penalty of perjury that the foregoing is true and correct. Executed at \_\_\_\_\_, on this \_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
Chuck D.

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