



1 pages each month. For each recording we sell, EMusic.com pays either the artists or their record  
2 company a royalty based on a negotiated percentage of the sale price.

3  
4 3. EMusic.com features top artists in all musical genres, such as Alternative  
5 (Bush, They Might Be Giants, Violent Femmes, Frank Black), Punk (Blink-182, Pennywise,  
6 Rancid), Jazz (Duke Ellington, Dizzy Gillespie, Louis Armstrong, Concord Records), Blues  
7 (John Lee Hooker, B.B. King, Buddy Guy), Hip Hop (Kool Keith, The Coup), Country (Merle  
8 Haggard, Patsy Cline, June Carter Cash), Rock (Phish, Elvis Costello, Goo Goo Dolls, David  
9 Crosby), World (Nusrat Fatch Ali Kahn, Lee 'Scratch' Perry) and Vintage Pop (Liza Minnelli,  
10 Eartha Kitt, Judy Garland). We also sell recordings by many new and emerging artists.

11  
12 4. Visitors to our site can find recordings to purchase in several ways. They  
13 can browse by genres (e.g., jazz, blues, rock/pop, classical), search by artist, or review indices of  
14 artists and record labels. Our home page also features newly available albums, headlines from  
15 the music world, a list of the top 10 albums for the past week, and special promotions. Attached  
16 hereto as Exhibit 1 is a true and correct copy of a printout of the EMusic.com home page. We  
17 also offer a limited number of free promotional tracks in a variety of genres. Attached hereto as  
18 Exhibit 2 is a true and correct copy of a printout of a page offering promotional downloads.  
19 (EMusic.com never gives away entire albums for free.) In addition, for every album we sell,  
20 visitors can sample all or several tracks on the album by simply clicking on the name of the track  
21 and streaming a 30-second excerpt in either MP3 or Real Player format. Attached hereto as  
22 Exhibit 3 is a true and correct copy of a printout of a page for an album, showing that the visitor  
23 can purchase the entire album or individual tracks, or sample individual tracks.

24  
25 5. Since its launch in January 1998, EMusic.com has sold over 1 million  
26 recordings in the MP3 format, including single-track sales as well as tracks included as part of  
27 albums and special collections. I believe we have been successful in large part because we are  
28 user-friendly. We make it easy for consumers to use and navigate our site, and to find and

1 purchase the music that they want. We also give our users flexibility in managing their own  
2 music collection once they have purchased a recording from our site, in part by using the MP3  
3 format.

4  
5 6. EMusic.com makes money primarily in two ways -- by selling recordings  
6 and by selling advertising on our site. See Exhibits 2 and 3 for examples of the advertising that  
7 appears on our site. The amount that we can charge for advertising is based in large part on the  
8 number of visitors to our site. The more traffic on our site, the greater our advertising revenue  
9 and our sales of products, and therefore, the greater our market value. The number of visitors to  
10 our site is driven primarily by the quality and popularity of the recordings we can make available  
11 to our visitors.

12  
13 7. All of the recordings that EMusic.com sells are legitimate MP3 files that  
14 the copyright holders have specifically authorized for sale by EMusic.com. As with the sale of a  
15 CD in a traditional retail store, people who buy an MP3 recording or album from EMusic.com  
16 are not authorized to further distribute copies of the recordings. In the FAQ (Frequently Asked  
17 Questions) section of our site, we explain the terms on which users purchase our recordings (a  
18 true and correct copy of a printout of the relevant part of the section is attached hereto as Exhibit  
19 4):

20 Can I send my friends a copy of an MP3 I purchased from you?

21  
22 Unauthorized duplication of any recordings downloaded from this  
23 site, while it may appear convenient, is a violation of copyright law  
24 and international treaties. *In other words, you may not re-post the*  
25 *recordings on the Internet or make copies for others.*

26 EMusic.com uses every effort to see that the labels and artists who  
27 contributed to these recordings receive a substantial portion of all  
28 revenue generated from sales of their recordings, so please, don't

1 steal them or allow others to steal them. What are a few pennies to  
2 guarantee fairness for all who contributed to your listening  
3 enjoyment? (Emphasis added.)  
4

5 8. I am familiar with the Napster service provided by Napster, Inc. To my  
6 knowledge, nothing on its web site suggests that it has obtained even a single license with a  
7 single copyright holder of any of the millions of recordings that Napster enables its users to freely  
8 copy and distribute. I know that Napster has not obtained a license from us to distribute any  
9 EMusic.com recordings, most of which are licensed pursuant to agreements with artists and  
10 record companies that provide EMusic.com with exclusive rights to distribute the recordings in  
11 MP3 format.  
12

13 9. Unlike EMusic.com, to my knowledge Napster does not inform its users  
14 that they may not copy their recordings for others or post them on the Internet. Instead, Napster  
15 uses very general terminology, telling its users that they "are responsible for complying with all  
16 applicable federal and state laws applicable to such content, including copyright laws," and that,  
17 "[a]s a condition to your account with Napster, you agree that you will not use the Napster  
18 service to infringe the intellectual property rights of others in any way," but significantly  
19 weakens even these ineffective warnings by saying merely that "some MP3 files may have been  
20 created or distributed without copyright owner authorization." Given that virtually all of the  
21 recordings that Napster makes available on its service are well-known and obviously  
22 copyrighted, these statements appear disingenuous at best. The entire purpose of the Napster  
23 service is clearly to facilitate the copying and mass distribution of MP3 music files without any  
24 regard for those who hold the copyrights to the recordings.  
25

26 10. Because of Napster's system, it is extremely easy for an EMusic.com  
27 customer to buy one copy of a recording from EMusic.com, and then make that recording  
28 available for free to thousands of users on Napster. Recordings by every one of the artists listed

1 in paragraph 3, above, are available on Napster, as are recordings that are available only in MP3  
2 format, i.e., not on a CD or any other format, and only from EMusic.com. The only possible  
3 source for the latter group of recordings is EMusic.com, which, as noted above, does not license  
4 purchasers to copy and distribute those recordings.

5  
6 11. By operating illegally, Napster is gaining an unfair competitive advantage  
7 over EMusic.com. Every time a Napster user illegally copies a recording that is available in MP3  
8 format from EMusic.com, whether or not the Napster user who distributes the recording obtained  
9 it from EMusic.com, that is one more person who does not need to visit the EMusic.com site to  
10 purchase the recording legally. Each such copy thus potentially deprives EMusic.com of both a  
11 visitor to our site and a sale of that recording, our two sources of revenue. Each such lost sale  
12 also obviously hurts the artist or label to whom we would be paying a royalty on the sale.

13  
14 I declare under penalty of perjury under the laws of the United States of America  
15 that the foregoing is true and correct. Executed on June 7, 2000, at  
16 New York, New York.

17   
18 Robert H. Kahn