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DECLARATION OF MICHAEL ROBERTSON

I, Michael Robertson, declare:

1. I am the founder, Chief Executive Officer, and Chairman of the Board of Directors of MP3.com, Inc. ("MP3.com"). MP3.com operates a Website at www.MP3.com ("Website") which contains the largest array of independent music in the so-called MP3 format. I have personal knowledge of the following facts and, if called and sworn as a witness, could competently testify thereto.

2. I am submitting this declaration to make several principal points, discussed in more detail below:

MP3.com operates a successful business based on, among many other things, MP3 music files that have been uploaded to the Website by the artist or record label who owns the rights in that music. The MP3 files that we offer are predominantly of lesser known and independent artists ("MP3.com artists"), the majority of whom have not signed contracts with major record companies. In the operation of our Website, we do not authorize unlawful or pirated MP3 files. We engage in an intensive screening effort to ensure this, which we believe is an appropriate cost of doing business.

While MP3.com typically offers MP3 files for download free of charge, it is vital to MP3.com and to our artists that users actually visit the Website to download these MP3 files. Many of the benefits that MP3.com provides to its artists – as well as our own revenues – depend on attracting as many people as possible to the Website.

MP3.com has not authorized Napster or Napster users to distribute or copy the music of MP3.com artists. Our site provides that users are not permitted to further distribute any files downloaded from MP3.com. Any such distribution would cause potential detriment to both MP3.com and the artists who upload their music to the Website.

3. Since late 1998, the Website has become the prime destination for independent musical artists for the Internet distribution of their music. We average 400,000 to 600,000 unique visitors to our Website each day. We have over 60,000 unique musical artists who have uploaded music to our web page, representing approximately 400,000 different musical tracks. MP3.com has employees who

1 manually screen this music to make sure that, by offering it from the MP3.com site, the posting artist
2 is not infringing anyone else's rights. While this takes time and effort, and occasionally causes friction
3 with someone seeking to post music on MP3.com, it is important to ensure that only authorized MP3
4 files are available for download at MP3.com.

5 4. Visitors to the Website may sort through this music by using various indices that we
6 have created (for example, musicians may be found by searching "genres", "countries," frequencies
7 of listens by other users, or prearranged playlists and charts created by our musicologists). Visitors
8 may either play (by "streaming" the music to their personal computer, which does not result in a
9 permanent copy of the song residing on their computer) or download (which does leave a permanent
10 copy of the song on their computer) songs that are posted to our site by the artist.

11 5. Another way for visitors to obtain the music uploaded to our Website by artists is for
12 them to purchase a DAM (digital audio music) CD. MP3.com has the technology to manufacture CDs
13 for artists from digital music files that are available on the site. Visitors to our site can purchase DAM
14 CDs from over 12,000 different artists.

15 6. MP3.com provides many benefits for its MP3.com artists. MP3.com makes it
16 extremely easy for – indeed, encourages – visitors to the site to find and listen to music by MP3.com
17 artists who otherwise might be unknown to them. Among other things, MP3.com places all of the
18 music on the site into one of numerous genre and sub-genre categories, and, within each sub-genre,
19 creates and regularly updates various lists and charts to promote its artists, including lists of new
20 songs, featured songs, and the songs that are most popular with site visitors. MP3.com creates and
21 updates charts of featured and best-selling DAM CDs. Through the use of genres, sub-genres, lists,
22 charts, and MP3.com recommendations, among other promotional activities, MP3.com helps and
23 encourages users to experience MP3.com artists that they might like, even if they have never before
24 heard of the artist.

25 7. For example, if a user was interested in hearing and learning about Jazz artists, that user
26 could go to the Jazz genre and choose among ten different Jazz sub-genres, including Acid Jazz, Jazz
27 Vocals, Bebop, Latin Jazz, Bossa Nova, Smooth Jazz, General Jazz, Swing/Big Band, Jazz Fusion,
28 and Traditional Jazz. Upon selecting a particular sub-genre that sounds interesting, the user can find

1 an individual artist/song in any number of ways. The user can review a listing of the 40 songs in that
2 sub-genre that have been most popular with other users; the user can view a list of new songs in the
3 sub-genre recently added to MP3.com; the user can view listings of featured songs in the sub-genre;
4 the user can view a listing of those artists in the sub-genre who have sold the most CDs through
5 MP3.com; the user can sign up for our "Music Messenger" service, in which case MP3.com's music
6 experts will e-mail the user with recommendations for artists/songs in the particular sub-genre; and,
7 finally, the user can simply view an alphabetical listing of artists in that sub-genre. Currently,
8 MP3.com offers 16 different genres with over 150 different sub-genres, ranging from Classical (21
9 sub-genres) to Hip Hop/Rap (14 sub-genres) to Latin (14 sub-genres) to World/Folk (5 sub-genres).

10 8. Once a user selects an artist, MP3.com further promotes its artists by providing that
11 user with enormous amounts of information about the artist. For example, whenever a visitor clicks
12 on the name of a song the visitor wants to play or download, the visitor is taken directly to a page
13 devoted exclusively to the artist performing the song. This page includes: a list of other songs by the
14 artist, with links for playing or downloading; a list of all CDs by this artist and links for purchasing
15 the CDs; links to e-mail the artist and visit the artists' own Website; personal information about the
16 artist and the artists' style of music; press reviews related to the artist; information about similar artists
17 whose works the user might also enjoy; a link to other available artists from the same city or town as
18 the selected artist; schedules of upcoming live performances by the artist; and even information about
19 radio stations that feature the artist. This information not only educates the user about the artist, but
20 allows the visitor to locate other artists the visitor has never heard of, in an interlocking set of links
21 that is designed to continually expand the visitor's familiarity with MP3.com artists.

22 9. MP3.com also signs MP3.com artists (who do not otherwise have exclusive recording
23 contracts) to non-exclusive agreements, which the artists can terminate at will, that provide the artists
24 with unique exposure through the Website, and which pay the artists a 50% royalty on all sales of that
25 artist's CDs through the site. MP3.com promotes these MP3.com artists on its site using the features
26 discussed above. MP3.com also provides a number of services designed to assist MP3.com artists
27 with their careers, including: maintaining listings of "artist opportunities," such as songwriting
28 competitions and calls for content from the film and television industries; educating artists on effective

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1 promotion and marketing; and providing discussion groups especially for artists.

2 10. The artists who use our site to promote and distribute their music benefit from
3 increased traffic to our site. Artists benefit directly, in the form of royalties and payments, from the
4 sale of their CDs and from MP3.com's "Payback For Playback" program in which MP3.com artists
5 receive a cash payments depending upon the popularity of their songs. As of March 31, 2000,
6 MP3.com had allocated \$1,000,000 to its top performing artists just from the Payback For Playback
7 promotion, and has earmarked an additional \$2,000,000 for May and June. Perhaps even more
8 important is the exposure of visitors not only to MP3.com artists' music but to the varied information
9 about them available on the site. Moreover, because of the interconnecting links on our site, visitors
10 to our site are likely to learn about a given artist even if they are searching for or locate a different
11 artist, especially if that artist is in the same genre or geographical location as the other artist.

12 11. The music that our artists upload to our Website is required to be legitimate MP3 files
13 that the artists and/or their independent record companies have specifically authorized for distribution
14 by MP3.com and copying by the visitors to the site. The artists and record companies have not,
15 however, authorized any visitor to further distribute copies of the downloaded music. In fact, every
16 page of our site that allows a visitor to download music clearly informs the visitors that they may
17 download the music only for themselves, and may not distribute copies to anyone else, with the
18 following notice:

19 "Copyright notice. All material on MP3.com are protected by copyright law and by
20 international treaties. You may download this material and make a reasonable
21 number of copies of this material only for your own personal use. You may not
22 otherwise reproduce, distribute, publicly perform, publicly display, or create
23 derivative works of this material, unless authorized by the appropriate copyright
24 owner(s)."

25 12. I am familiar with the Napster service provided by Napster, Inc. as a result of using the
26 service for purposes of investigation and by reading about it. In my view, Napster is not designed to
27 promote or share the music of unknown or lesser known artists. The only way to find a song on
28 Napster is to enter the name of the song and/or artist that the user wants to find. By definition,

1 unknown artists cannot be found, at least not in any meaningful way. Napster does not contain any
2 of the features of MP3.com discussed above that are designed to help visitors find new artists, such
3 as categorizing music by genre or geography, providing lists of new, featured, and most popular music,
4 or providing information about artists and links to similar artists. Indeed, Napster offers none of the
5 features MP3.com does (or that other legitimate MP3 sites do) to educate users about and to promote
6 lesser known artists.

7 I declare under penalty of perjury under the laws of the United States of America
8 that the foregoing is true and correct. Executed on June 8, 2000, at San Diego, California.

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11 _____
12 Michael Robertson

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