



2. This Court has jurisdiction under 17 U.S.C. § 101 et seq.; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338 (a) (copyright).

**ANSWER:** As the allegations in Paragraph 2 of the Plaintiffs' Complaint call for legal conclusions, Defendant Greubel lacks sufficient knowledge or expertise to respond to such legal conclusions and, therefore, denies them. As to all remaining allegations in Paragraph 2 of the Plaintiffs' Complaint, Defendant Greubel denies all remaining allegations in Paragraph 2 of the Plaintiffs' Complaint.

3. This Court has personal jurisdiction over the Defendant, and venue in this District is proper under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(a), in that the Defendant resides in this District, and the acts of infringement complained of herein occurred in this District.

**ANSWER:** Defendant Greubel admits that he resides in this District. As to the allegations in Paragraph 3 of the Plaintiffs' Complaint that call for legal conclusions, Defendant Greubel lacks sufficient knowledge or expertise to respond to such legal conclusions and, therefore, denies them. As to all remaining allegations in Paragraph 3 of the Plaintiffs' Complaint, Defendant Greubel denies all remaining allegations in Paragraph 3 of the Plaintiffs' Complaint.

**PARTIES**

4. Plaintiff Arista Records LLC is a limited liability company duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

**ANSWER:** Defendant Greubel is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of Plaintiffs' Complaint and therefore denies the allegations contained in Paragraph 4 of the Plaintiffs' Complaint.

5. Plaintiff Capitol Records, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

**ANSWER:** Defendant Greubel is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of Plaintiffs' Complaint and therefore denies the allegations contained in Paragraph 5 of the Plaintiffs' Complaint.

6. Plaintiff UMG Recordings, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California.

**ANSWER:** Defendant Greubel is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of Plaintiffs' Complaint and therefore denies the allegations contained in Paragraph 6 of the Plaintiffs' Complaint.

7. Plaintiff Elektra Entertainment Group Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

**ANSWER:** Defendant Greubel is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of Plaintiffs' Complaint and therefore denies the allegations contained in Paragraph 7 of the Plaintiffs' Complaint.

8. Plaintiff Warner Bros. Records Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California.

**ANSWER:** Defendant Greubel is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of Plaintiffs' Complaint and therefore denies the allegations contained in Paragraph 8 of the Plaintiffs' Complaint.

9. Plaintiffs are informed and believe that Defendant is an individual residing in this District.

**ANSWER:** As to Plaintiffs' belief, Defendant Greubel is without knowledge or information sufficient to form a belief as to the truth of what Plaintiffs believe in Paragraph 9 of the Plaintiffs' Complaint, and therefore denies the allegations concerning Plaintiffs' belief in Paragraph 9 of the Plaintiffs' Complaint. Defendant Greubel admits that he resides in this District. As to all remaining allegations in Paragraph 9 of the

Plaintiffs' Complaint, Defendant Greubel denies all remaining allegations in Paragraph 9 of the Plaintiffs' Complaint.

10. Plaintiffs incorporate herein by this reference each and every allegation contained in each paragraph above.

**ANSWER:** Defendant Greubel hereby incorporates his responses to Paragraphs 1 through 9 above as if fully set forth herein.

11. Plaintiffs are, and at all relevant times have been, the copyright owners or licensees of exclusive rights under the United States copyright with respect to certain copyrighted sound recordings (the "Copyrighted Recordings"). The Copyrighted Recordings include but are not limited to each of the copyrighted sound recordings identified in Exhibit A attached hereto, each of which is the subject of a valid Certificate of Copyright Registration issued by the Register of Copyrights. In addition to the sound recordings listed on Exhibit A, Copyrighted Recordings also include certain of the sound recordings listed on Exhibit B which are owned by or exclusively licensed to one or more of the Plaintiffs or Plaintiffs' affiliate record labels, and which are subject to valid Certificates of Copyright Registration issued by the Register of Copyrights.

**ANSWER:** As to the allegations in Paragraph 11 of the Plaintiffs' Complaint that call for legal conclusions, Defendant Greubel lacks sufficient knowledge or expertise to respond to such legal conclusions and, therefore, denies them. As to all remaining allegations in Paragraph 11 of the Plaintiffs' Complaint, Defendant Greubel is without information or knowledge sufficient to form a belief as to the truth of the remaining

allegations contained in Paragraph 11 of Plaintiffs' Complaint and therefore denies all remaining allegations contained in Paragraph 11 of the Plaintiffs' Complaint.

12. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the exclusive rights to reproduce the Copyrighted Recordings and to distribute the Copyrighted Recordings to the public.

**ANSWER:** As to the allegations in Paragraph 12 of the Plaintiffs' Complaint that call for legal conclusions, Defendant Greubel lacks sufficient knowledge or expertise to respond to such legal conclusions and, therefore, denies them. As to all remaining allegations in Paragraph 12 of the Plaintiffs' Complaint, Defendant Greubel is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 12 of Plaintiffs' Complaint and therefore denies all remaining allegations contained in Paragraph 12 of the Plaintiffs' Complaint.

13. Plaintiffs are informed and believe that Defendant, without the permission or consent of Plaintiffs, has used, and continues to use, an online media distribution system to download the Copyrighted Recordings, to distribute the Copyrighted Recordings to the public, and/or to make the Copyrighted Recordings available for distribution to others. In doing so, Defendant has violated Plaintiffs' exclusive rights of reproduction and distribution. Defendant's actions constitute infringement of Plaintiffs' copyrights and exclusive rights under copyright.

**ANSWER:** As to Plaintiffs' belief, Defendant Greubel is without knowledge or information sufficient to form a belief as to the truth of what Plaintiffs believe in Paragraph 13 of the Plaintiffs' Complaint, and therefore denies the allegations concerning

Plaintiffs' belief in Paragraph 13 of the Plaintiffs' Complaint. As to the allegations in Paragraph 13 of the Plaintiffs' Complaint that call for legal conclusions, Defendant Greubel lacks sufficient knowledge or expertise to respond to such legal conclusions and, therefore, denies them. As to all remaining allegations in Paragraph 13 of the Plaintiffs' Complaint, Defendant Greubel denies all remaining allegations in Paragraph 13 of the Plaintiffs' Complaint.

14. Plaintiffs have placed proper notices of copyright pursuant to 17 U.S.C. § 401 on each respective album cover of each of the sound recordings identified in Exhibit A. These notices of copyright appeared on published copies of each of the sound recordings identified in Exhibit A. These published copies were widely available, and each of the published copies of the sound recordings identified in Exhibit A was accessible by Defendant.

**ANSWER:** As to the allegations in Paragraph 14 of the Plaintiffs' Complaint that call for legal conclusions, Defendant Greubel lacks sufficient knowledge or expertise to respond to such legal conclusions and, therefore, denies them. As to all remaining allegations in Paragraph 14 of the Plaintiffs' Complaint, Defendant Greubel is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 14 of Plaintiffs' Complaint and therefore denies all remaining allegations contained in Paragraph 14 of the Plaintiffs' Complaint.

15. Plaintiffs are informed and believe that the foregoing acts of infringement have been willful and intentional, in disregard of and with indifference to the rights of Plaintiffs.

**ANSWER:** As to Plaintiffs' belief, Defendant Greubel is without knowledge or information sufficient to form a belief as to the truth of what Plaintiffs believe in Paragraph 15 of the Plaintiffs' Complaint, and therefore denies the allegations concerning Plaintiffs' belief in Paragraph 15 of the Plaintiffs' Complaint. As to the allegations in Paragraph 15 of the Plaintiffs' Complaint that call for legal conclusions, Defendant Greubel lacks sufficient knowledge or expertise to respond to such legal conclusions and, therefore, denies them. As to all remaining allegations in Paragraph 15 of the Plaintiffs' Complaint, Defendant Greubel denies all remaining allegations in Paragraph 15 of the Plaintiffs' Complaint.

16. As a result of Defendant's infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to statutory damages pursuant to 17 U.S.C. § 504(c) for Defendant's infringement of each of the Copyrighted Recordings. Plaintiffs further are entitled to their attorneys' fees and costs pursuant to 17 U.S.C. § 505.

**ANSWER:** As to the allegations in Paragraph 16 of the Plaintiffs' Complaint that call for legal conclusions, Defendant Greubel lacks sufficient knowledge or expertise to respond to such legal conclusions and, therefore, denies them. As to all remaining allegations in Paragraph 16 of the Plaintiffs' Complaint, Defendant Greubel denies all remaining allegations contained in Paragraph 16 of the Plaintiffs' Complaint.

17. The conduct of Defendant is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502 and 503, Plaintiffs are entitled to injunctive relief prohibiting Defendant from further infringing Plaintiffs' copyrights, and ordering Defendant to destroy all copies of sound recordings made in violation of Plaintiffs' exclusive rights.

**ANSWER:** As to the allegations in Paragraph 17 of the Plaintiffs' Complaint that call for legal conclusions, Defendant Greubel lacks sufficient knowledge or expertise to respond to such legal conclusions and, therefore, denies them. As to all remaining allegations in Paragraph 17 of the Plaintiffs' Complaint, Defendant Greubel denies all remaining allegations contained in Paragraph 17 of the Plaintiffs' Complaint. Defendant Greubel further denies that Plaintiffs are entitled to any relief.

Defendant Greubel denies any and all allegations contained in Plaintiffs' Request for Relief and specifically denies that Plaintiffs are entitled to any relief stated therein.

**AFFIRMATIVE DEFENSES**

DEFENDANT GREUBEL asserts the following affirmative defenses:

**FIRST AFFIRMATIVE DEFENSE**

**JOINT and SEVERAL LIABILITY/**

**SATISFACTION OF ANY LIABILITY**

1. Defendant Greubel asserts as an affirmative defense that the Plaintiffs have been fully satisfied for any liability and damages arising from the alleged conduct of Defendant Greubel through their settlement with Sharman Networks and the application of joint and several liability to the claims for copyright infringement brought against Defendant Greubel and Sharman Networks.

2. Plaintiffs, by and through themselves, their representatives, and/or their agents, filed suit against Sharman Networks Ltd. and other related parties (collectively, “Sharman Networks”) relating to the distribution and sale of the Peer-to-Peer (“P2P”) platform, product, and network KaZaA (collectively, “KaZaA”), an online media distribution system.

3. Plaintiffs alleged that individuals used KaZaA (“KaZaA Users”) to download and upload (or share) Plaintiffs’ copyrighted sound recordings without their permission or license.

4. Upon information and belief, Plaintiffs alleged that Sharman Networks was liable to Plaintiffs for copyright infringement arising from the alleged infringing conduct of KaZaA Users.

5. Plaintiffs, by and through themselves, their representatives, and/or their agents, have entered into a settlement agreement with Sharman Networks in which Sharman Networks shall, upon information and belief, remit a settlement payment of \$115,000,000.

6. In this action, Plaintiffs have alleged that Defendant Greubel used an online media distribution system to infringe the copyrights of their copyrighted sound recordings and seek recovery of damages for alleged arising therefrom.

7. Although Defendant Greubel denies the factual and legal allegations in Plaintiffs' Complaint, any recovery from Defendant Greubel for alleged copyright infringement arising from the use of KaZaA would be duplicative of the damages obtained from Sharman Networks.

8. Although Defendant Greubel denies the factual and legal allegations in Plaintiffs' Complaint, defendants who have joined in or contributed to particular infringements of particular copyrighted works (such as those identified in Exhibit A and B of the Plaintiffs' Complaint) are jointly and severally liable for such copyright infringement. 17 U.S.C. § 504(c)(1); Fitzgerald Publishing Co. v. Baylor Publ. Co., 807 F.2d 1110 (2d Cir. 1986).

9. Through the settlement with Sharman Networks, the Plaintiffs have elected to accept a settlement that fully compensates them for the injuries allegedly caused by Defendant Greubel, among others.

10. The settlement with Sharman Networks bars Plaintiffs' ability to recover any damages from Defendant Greubel.

11. The settlement with Sharman Networks fully satisfies any liability arising from the alleged conduct of David Greubel.

12. Plaintiffs have received satisfaction for any alleged injuries caused by Defendant David Greubel through the settlement with Sharman Networks.

13. For these reasons, this matter should be dismissed with prejudice.

**SECOND AFFIRMATIVE DEFENSE**

**FAILURE TO JOIN INDISPENSABLE PARTY**

14. Defendant Greubel further asserts the affirmative defense of failure to join an indispensable party.

15. Defendant Greubel did not engage in any of the downloading and/or infringement alleged by Plaintiffs.

16. Plaintiffs failed to include the individual(s) who allegedly engaged in the downloading in question and who is/are indispensable parties pursuant to Rules 12(b)(7) and 19 of the Federal Rules of Civil Procedure.

17. For these reasons, this matter should be dismissed with prejudice as to Defendant Greubel.

**THIRD AFFIRMATIVE DEFENSE**

**UNCONSTITUTIONALITY OF STATUTORY DAMAGES AS APPLIED**

18. Defendant Greubel further asserts the affirmative defense that the statutory damages sought by Plaintiffs are unconstitutionally excessive as applied.

19. Plaintiffs seek statutory damages of \$750.00 per song for the songs set forth in Exhibit A of their Complaint.

20. The total cost of licensing the songs would have been 99 cents per song.

21. The total revenue to Plaintiffs from the licensing of the songs would have been even less – approximately 70 cents per song.

22. Plaintiffs seek statutory damages equivalent to 1,071 times the amount of their actual damages.

23. As courts have recognized statutory damages to be punitive in nature, On Davis v. The Gap, Inc., 246 F.3d 152, 172 (2d Cir. 2001), statutory damages must necessarily have a reasonable relationship to the Plaintiffs' alleged actual damages caused by the alleged infringement (not some ephemeral speculation on the cause of lost CD sales). See Peer Int'l Corp. v. Luna Records, Inc., 887 F.Supp. 560, 568 (S.D.N.Y. 1995); RSO Records, Inc. v. Peri, 596 F.Supp. 849, 826 (S.D.N.Y. 1984); Dae Han Video Production, Inc. v. Chun, 1990 U.S. Dist. LEXIS 18496, \*22 (D. Va. June 18, 1990).

24. As the Supreme Court has held, due process will prohibit an award of statutory damages meeting or exceeding a proportion of ten times or more actual damages. See State Farm Mutual Automobile Insurance Co. v. Campbell, 538 U.S. 408, 123 S. Ct. 1513, 1524 (2003); see also Parker v. Time Warner Entertainment Co., 331 F. 3d 13, 22 (2nd Cir. 2003); In Re Napster, Inc., 2005 WL 1287611, 77 U.S.P.Q. 2d 1833, 2005 Copr. L. Dec. P 29,020 (N.D. Cal. 2005). In fact, an award of statutory damages at four times actual damages "might be close to the line of constitutional impropriety." Id.

25. Pursuant to applicable law concerning the constitutionality of statutory damages, the Plaintiffs' recovery, if any, must necessarily have a reasonable relationship to the Plaintiffs' alleged actual damages caused by the alleged infringement.

26. The ratio of Plaintiffs' recovery, if any, to its actual damages must be limited such that the ratio and the recovery comport with due process.

27. At the minimum, the Plaintiffs' recovery, if any, must not exceed nine (9) times the amount of their actual damages to so comport with due process and constitutional propriety.

28. Defendant Greubel contends that the Plaintiffs' recovery, if any, must not exceed four (4) times the amount of their actual damages to so comport with due process and constitutional propriety.

29. For these reasons, this Court must limit Plaintiffs' recovery, if any, to a ratio that comports with due process and constitutional propriety.

#### **FOURTH AFFIRMATIVE DEFENSE**

##### **ESTOPPEL**

30. Plaintiffs are barred from maintaining their claims on obtaining the relief sought in the case at bar under the doctrine of estoppel.

#### **FIFTH AFFIRMATIVE DEFENSE**

##### **STATUTE OF LIMITATIONS**

31. Plaintiffs' claims are barred, in whole or in part by the appropriate statute of limitations.

#### **SIXTH AFFIRMATIVE DEFENSE**

##### **LACHES**

32. Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.

#### **SEVENTH AFFIRMATIVE DEFENSE**

##### **DOCTRINE OF WAIVER**

33. Plaintiffs' claims are barred, in whole or in part, by the doctrine of waiver.

**EIGHTH AFFIRMATIVE DEFENSE**

**FAILURE TO MITIGATE**

34. Plaintiffs failed to mitigate their damages, if any.

**NINTH AFFIRMATIVE DEFENSE**

**FAIR USE**

35. While Defendant Greubel denies the allegations of facts and conclusions of law alleged in Plaintiffs' Complaint, Defendant Greubel asserts, in the alternative, that any downloading would have solely been for private entertainment and not for commercial use, and accordingly invokes the doctrine of fair use as an affirmative defense. Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417 (1984).

**TENTH AFFIRMATIVE DEFENSE**

**FAILURE TO STATE A CLAIM**

36. Plaintiffs have failed to state a claim against Defendant Greubel upon which relief may be granted.

**ELEVENTH AFFIRMATIVE DEFENSE**

37. Defendant Greubel did not intentionally or otherwise deprive or cause Plaintiffs to be deprived of any of their rights.

**TWELFTH AFFIRMATIVE DEFENSE**

38. Defendant Greubel did not violate or cause the violation of any of Plaintiffs' rights.

**THIRTEENTH AFFIRMATIVE DEFENSE**

39. Defendant Greubel specifically denies all allegations, if any, and conclusions of law, if any, to which he did not specifically reply in the Answer to the Plaintiffs' Complaint.

40. Defendant Greubel reserves his right to plead additional defenses that may be identified during investigation and/or course of discovery.

**DEFENDANT GREUBEL'S DEMAND FOR JURY TRIAL**

Defendant Greubel asserts his rights under the Seventh Amendment to the U.S. Constitution and demands, in accordance with Federal Rule of Civil Procedure 38, a trial by jury on all issues.

WHEREFORE, PREMISES CONSIDERED, DEFENDANT GREUBEL respectfully requests that the Court enter judgment dismissing Plaintiffs' claims against Defendant Greubel; sustaining Defendant Greubel's affirmative defenses; and granting Defendant Greubel such other and further relief, in law and in equity, to which Defendant Greubel may show himself to be entitled.

Dated: Chicago, Illinois  
November 17, 2006

Respectfully submitted,  
DEFENDANT DAVID GREUBEL

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HIS ATTORNEYS

**CERTIFICATE OF SERVICE**

I, Charles Lee Mudd, Jr., do hereby certify that service of this **ANSWER** was accomplished pursuant to Electronic Case Filing as to ECF Filing Users and shall be served upon all other parties listed below by sending said documents via postage pre-paid U.S. mail on the 17th day of November 2006:

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