

FEDERAL COURT

B E T W E E N :

**BMG CANADA INC., EMI MUSIC CANADA, A DIVISION OF EMI GROUP
CANADA INC., SONY MUSIC ENTERTAINMENT (CANADA) INC.,
UNIVERSAL MUSIC CANADA INC., WARNER MUSIC CANADA LTD,
BMG MUSIC, ARISTA RECORDS, INC.,
ZOMBA RECORDING CORPORATION, EMI MUSIC SWEDEN AB,
CAPITOL RECORDS, INC., CHRYSALIS RECORDS LIMITED,
VIRGIN RECORDS LIMITED, SONY MUSIC ENTERTAINMENT INC.,
SONY MUSIC ENTERTAINMENT (UK) LIMITED, UMG RECORDINGS, INC.,
MERCURY RECORDS LIMITED AND WEA INTERNATIONAL INC.**
Plaintiffs

- and -

**JOHN DOE, JANE DOE AND ALL THOSE PERSONS WHO ARE INFRINGING
THE PLAINTIFFS' COPYRIGHT IN SOUND RECORDINGS**
Defendants

STATEMENT OF CLAIM

(Filed on the 10th day of February, 2004)

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Court Rules, 1998*, serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the

United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the *Federal Court Rules, 1998*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

February 10, 2004

Issued by: _____
(Registry
Officer)

Address of local Office:
330 University Avenue
7th Floor
Toronto, Ontario
M5H 3E5

TO: THE ADMINISTRATOR
Federal Court

CLAIM

1. The plaintiffs claim:
 - (a) a declaration that:
 - (i) copyright subsists in each of the Sound Recordings as defined herein;
 - (ii) the plaintiffs are the owners of copyright in the Sound Recordings listed opposite their names in Schedule "A" hereto; and
 - (iii) such copyrights have been infringed by the defendants;
 - (b) an interim, interlocutory and permanent injunction to restrain the defendants from:
 - (i) infringing the plaintiffs' copyright in any of the Sound Recordings;
 - (ii) reproducing any of the Sound Recordings or any substantial part of any of the Sound Recordings in any material form, except as expressly permitted by the *Copyright Act*, R.S.C. 1985, c. C-42, as am. (the "Act");
 - (iii) authorizing reproduction of any of the Sound Recordings or any substantial part of any of the Sound Recordings in any material form, except as expressly permitted by the Act;
 - (iv) distributing unauthorized copies of any of the Sound Recordings to such an extent as to affect prejudicially the owner

of copyright in such Sound Recordings or possessing a copy of a Sound Recording for such purpose;

- (c) an interim, interlocutory and permanent injunction pursuant to section 39.1 of the Act to restrain the defendants from infringing any copyright that any of the plaintiffs own or for which they are licensees in any sound recording, including without limitation sound recordings that are created after the commencement of these proceedings and sound recordings in respect of which a plaintiff acquires ownership of copyright or the grant of an interest by license in copyright after the commencement of these proceedings;
- (d) the plaintiffs' election of either statutory damages or, alternatively, recovery of the plaintiffs' damages and the defendants' profits arising from the defendants' infringing activities;
- (e) their costs of this action on a solicitor and client basis including GST;
- (f) pre-judgment interest from the date any profits were made or the damage suffered to the date of judgment;
- (g) post-judgment interest to the date of payment;
- (h) punitive damages; and
- (i) such further and other relief as to this Honourable Court seems just.

2. BMG Canada Inc. is a corporation formed by amalgamation on January 1, 2002, under the laws of Ontario, with a principal place of business at 190 Liberty Street, Suite 100, Toronto, Ontario M6K 3L5. This plaintiff carries on the business of creating, marketing, and selling sound recordings. It is the exclusive licensee of copyright in sound recordings in Canada that is owned by the plaintiffs BMG Music, Arista Records, Inc. and Zomba Recording Corporation.

3. EMI Music Canada, a division of EMI Group Canada Inc. is a corporation incorporated under the laws of Ontario, with a place of business at 3109 American Drive, Mississauga, Ontario L4V 1B2. This plaintiff carries on business as a recorded music company. It is the exclusive licensee of copyright in sound recordings in Canada that is owned by the plaintiffs EMI Music Sweden AB, Capitol Records, Inc., Chrysalis Records Limited and Virgin Records Limited.

4. Sony Music Entertainment (Canada) Inc. is a corporation incorporated under the laws of Ontario with a principal place of business at 1121 Leslie Street, Toronto, Ontario, M3C 2J9. This plaintiff carries on business as a recorded music company. It is the exclusive licensee of copyright in sound recordings in Canada that is owned by the plaintiffs Sony Music Entertainment Inc. and Sony Music Entertainment (UK) Limited.

5. Universal Music Canada Inc. is a corporation incorporated under the laws of Ontario, with a principal place of business at 2450 Victoria Park Avenue, Toronto, Ontario, M2J 4A2. This plaintiff carries on business as a record company acquiring, manufacturing, distributing and exploiting master recordings. It is the exclusive licensee of copyright in sound recordings in Canada that is owned by the plaintiffs UMG Recordings, Inc. and Mercury Records Limited.

6. Warner Music Canada Ltd. is a corporation incorporated under the laws of Ontario, with a principal place of business at 3751 Victoria Park Avenue, Toronto, Ontario M1W 3Z4. This plaintiff carries on business in the production, marketing, sales and distribution of pre-recorded music products. It is the licensee of copyright in sound recordings in Canada that is owned by the plaintiff WEA International Inc.

7. BMG Music is a general partnership formed in the state of New York, United States of America, on the 6th of August 1985, with a principal place of business at 1540 Broadway, New York, NY, 10036. This plaintiff carries on the business of creating, marketing, and selling sound recordings.

8. Arista Records, Inc. is a corporation incorporated under the laws of the state of Delaware, United States of America, on the 24th of September, 1979, with a principal place of business at 888 7th Ave., New York, NY, 10019. This plaintiff carries on the business of creating, marketing, and selling sound recordings.

9. Zomba Recording Corporation is a corporation incorporated in under the laws of the state of New York, United States of America, on September 23, 1987, with a principal place of business at 137-139 West 25th Street, New York, NY, 10001. This plaintiff carries on the business of creating, marketing, and selling sound recordings.

10. EMI Music Sweden AB is a private limited company registered in Stockholm, Sweden, with a principal place of business and corporate address at Linnegatan 87D, 104 50 Stockholm. This plaintiff carries on business as a recorded music company.

11. Capitol Records, Inc. is a corporation incorporated in the state of Delaware, United States of America, with a principal place of business and corporate address at 150 Fifth Avenue, New York, NY 10011. This plaintiff carries on business as a recorded music company.

12. Chrysalis Records Limited is a limited liability company registered in England, with a place of business at EMI House, 43 Brook Green, London W6 7EF England. This plaintiff carries on business as a recorded music company.

13. Virgin Records Limited is a limited liability company registered in England, with a place of business at Kensal House, 553-579 Harrow Road, London W10 4RH England. This plaintiff carries on business as a recorded music company.

14. Sony Music Entertainment Inc. is a corporation incorporated under the laws of the state of Delaware, United States of America, with a principal place of business at 550 Madison Avenue, New York, New York, 10022. This plaintiff carries on business as a recorded music company.

15. Sony Music Entertainment (UK) Limited is a private limited company incorporated in England and Wales, whose registered office is at 10-12 Great Marlborough Street, London, W1F 7LP. This plaintiff carries on business as a record company and, amongst other things, distributes to wholesalers and retailers in the United Kingdom copies of sound recordings, copyright in respect of which is owned or controlled by Sony Music Entertainment (UK) Limited or by companies that are members of the Sony Music group of companies or are commercially associated with that group.

16. UMG Recordings, Inc. is a company incorporated under the laws of the state of Delaware, United States of America, with a principal place of business at 2220 Colorada Blvd., Santa Monica, CA 90404. This plaintiff carries on business as a record company acquiring, manufacturing, distributing and exploiting master recordings.

17. Mercury Records Limited is a limited liability company registered in England. Its principal place of business is 136-144 New Kings Road, London, SW6 4FX. This plaintiff carries on business as a record company acquiring, manufacturing, distributing and exploiting master recordings.

18. WEA International Inc. is a corporation incorporated under the laws of the state of Delaware, United States of America, with an address at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801 and a principal place of business at 75 Rockefeller Plaza, New York, New York 10019. This plaintiff carries on business as a holding company for Warner Music Group foreign recorded music subsidiaries.

19. The defendants are persons, the identities of whom are presently unknown to the plaintiffs, who have infringed and continue to infringe the plaintiffs' copyright as set out in more detail below.

20. Each plaintiff owns the Canadian copyright in certain original sound recordings or has been granted an interest in copyright in original sound recordings by license (the "Sound Recordings"). The plaintiffs collectively own copyright in more than 80% of the sound recordings that are sold to the public in Canada.

21. With respect to each of the Sound Recordings in which copyright has been infringed, as set out in more detail herein: (a) the maker of the Sound Recording met the citizenship, residence or headquarters requirements set out in paragraph 18(2)(a) of the Act, as of the date of the first fixation of the Sound Recording or if that first fixation was extended over a considerable period, during any substantial part of that period; or (b) the first publication of the Sound Recording met the requirements set out in paragraph 18(2)(b) of the Act.

22. Copies of the Sound Recordings, which have been authorized by the plaintiffs, have been distributed and sold through retail stores in Canada and such material has been identified to the Canadian public as copyrighted through the use of notices on compact discs, records, audio tapes and other media containing reproductions of the Sound Recordings. In most cases, the plaintiffs or their predecessors-in-title have been identified as the makers of the Sound Recordings.

23. Pursuant to subsection 27(1) of the Act, it is an act of copyright infringement for any person to do, without the consent of the copyright owner, anything that only the owner of copyright has the right to do.

24. Pursuant to section 18 of the Act, with respect to each Sound Recording, the plaintiff that owns copyright in such Sound Recording has the sole right to *inter alia* reproduce such Sound Recording or any substantial part thereof in any material form.

25. Pursuant to the Act, with respect to each Sound Recording, the plaintiff that owns copyright in such Sound Recording has the sole right *inter alia* to authorize the reproduction of such Sound Recording or any substantial part in any material form.

26. Pursuant to subsection 27(2) of the *Copyright Act*, it is an act of copyright infringement for any person to: (i) distribute to such an extent as to affect prejudicially the owner of copyright; or (ii) possess for the purpose of doing anything referred to in paragraph (i) a copy of a sound recording that the person knows or should have known infringes copyright or would infringe copyright if it had been made in Canada by the person who made it.

27. At times unknown to the plaintiffs but known to the defendants, the defendants reproduced the plaintiffs' Sound Recordings and authorized the reproduction of the Sound Recordings in a manner that is not permitted by the Act. The defendants also: (i) distributed to such an extent as to affect prejudicially the owner of copyright and (ii) possessed for the purpose of doing the things referred to in paragraph (i) unauthorized copies of the Sound Recordings that the defendants knew or should have known infringe copyright or would infringe copyright if they had been made in Canada by the person who made them.

28. The defendants conducted these activities using peer-to-peer file-sharing services such as those found at www.kazaa.com, www.imesh.com or other services unknown to the plaintiffs but known to the defendants. All such activities were done without the consent or authorization of the plaintiffs.

29. Full particulars of the dates and extent of the defendants' activities with respect to any particular Sound Recordings are known to the defendants but unknown to the plaintiffs. The plaintiffs claim relief in respect of all such acts.

30. The defendants at all material times were aware, or in the alternative had reasonable grounds to suspect, that copyright subsists in the Sound Recordings. The defendants further knew that their activities set out in paragraphs 12 and 13 were not done with the authorization or consent of the owners of the copyright in the Sound Recordings.

31. As a result of the defendants' activities set out above, the defendants have infringed the plaintiffs' copyright in the Sound Recordings. Pursuant to section 27 of the Act, the plaintiffs' copyright in the Sound Recordings is deemed to be infringed by the defendants.

32. By reason of the aforesaid acts of the defendants, the plaintiffs have suffered and will continue to suffer extensive damages.

33. It is necessary to deter other infringements of the copyright in the plaintiffs' Sound Recordings in order to prevent further extensive damages to the plaintiffs.

The plaintiffs propose that this action be tried at Toronto.

DATE: February 10, 2004

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TO: **THE ADMINISTRATOR**
The Federal Court of Canada