

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

NOTICE OF MOTION

TAKE NOTICE THAT THE PLAINTIFFS will make a motion to the Court on Monday, February 16, 2004, at 9:30 a.m. or as soon thereafter as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

1. THE MOTION IS FOR an Order in the form attached as Schedule "A" to this Notice of Motion, requiring certain productions by the non-party respondent, the Internet service provider business unit of Shaw Communications Inc. (the "ISP").

2. THE GROUNDS FOR THE MOTION ARE:

- (a) the Plaintiffs have commenced this action against as yet unknown defendants, seeking remedies for infringement of the Plaintiffs' copyright in certain sound recordings;

- (b) these infringements of copyright have taken place via the Internet;
- (c) an investigation conducted on behalf of the Plaintiffs has determined that these infringements of copyright were committed by, *inter alia*, the individuals with the network usernames and Internet Protocol addresses listed at Schedule "A" to the attached Order (the "Infringers");
- (d) these Internet Protocol addresses are registered to the ISP, which indicates that the Infringers are subscribers to an Internet access service offered by the ISP;
- (e) the Plaintiffs are unable to determine the real names or contact information of the Infringers;
- (f) the Plaintiffs cannot serve pleadings or otherwise enforce their copyright against the Infringers until the Plaintiffs can determine the Infringers' real identities and locations;
- (g) the ISP is able to determine the names and contact information of its subscribers who were using the Internet Protocol addresses identified during the Plaintiffs' investigation;
- (h) it is in the interests of justice that the Plaintiffs be granted the Order requested herein, as it would be unfair to require the Plaintiffs to attempt to proceed without having the opportunity to serve the Infringers with notice of their claims;
- (i) no undue harm, delay, inconvenience or expense will be caused to the ISP, as a result of the granting of this Order;
- (j) the Plaintiffs intend to bring separate applications or actions against each of the Infringers and thus, given the implied undertaking rule and applicable privacy laws, seek leave to use information and documents disclosed pursuant to this Order in all proceedings against the Infringers;

- (k) Rules 3, 4, and 233 of the *Federal Court Rules, 1998*; and
- (l) such further and other grounds as counsel may advise and this Honourable Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) the Affidavit of Gary Millin, sworn February 6, 2004;
- (b) the Affidavit of Kathy Yonekura, sworn February 10, 2004; and
- (c) such further and other materials as counsel may advise and this Honourable Court may permit.

February 10, 2004

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