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13 Attorneys for Defendant
14 NAPSTER, INC.

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

19 A&M RECORDS, INC., a corporation, et al.
20 Plaintiffs,

21 v.

22 NAPSTER, INC., a corporation, and DOES 1
through 100,
23 Defendants.

24 JERRY LEIBER, individually and doing business
as JERRY LEIBER MUSIC, et al.

25 Plaintiffs,

26 v.

27 NAPSTER, INC.,
28 Defendant.

Case Nos. C 99-5183 MHP (ADR)
C 00-0074 MHP (ADR)

**DECLARATION OF STEVEN
WENDELL ISAACS IN SUPPORT
OF DEFENDANT NAPSTER'S
OPPOSITION TO PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

Date: July 26, 2000
Time: 2:00 p.m.
Courtroom: 15
Hon. Marilyn H. Patel

1 I, Steven Wendell Isaacs, declare pursuant to 28 U.S.C. § 1746, as follows:

2 1. I have been a musician, singer and songwriter since 1988. I know the matters
3 stated herein of my own personal knowledge and, if called to testify, could and would testify
4 competently to them.

5 2. Based on my experience in the music and entertainment industry, I believe Napster
6 is a powerful promotional tool for the many artists and bands that want to reach a large number of
7 listeners but have not been able to get, or have been disappointed by, the support provided by
8 large recording labels.

9 3. From 1988 to 1989, I attended the Music Institute in Hollywood, California, where
10 I studied guitar.

11 4. In 1989, I became a co-owner of the Mad Hatter's Espresso Bar in Los Angeles,
12 where I performed and also promoted a very popular "open mike" show that featured spoken
13 word, singers and songwriters, performance artists, and other live performances.

14 5. In late 1990, I left the Mad Hatter's Espresso Bar to host an open mike at Highland
15 Grounds Café in Hollywood, California. While at Highland Grounds, I started my first band,
16 American Psycho. Also while at Highland Grounds, I was found by an MTV talent scout who
17 asked me to provide a screen test for a position as a VJ (video jockey).

18 6. I became a VJ in September 1991 and moved from Los Angeles to New York. As
19 a VJ, I hosted, among other shows, *Top Twenty Countdown*, *The Daily Most Wanted*, and the live
20 show called *Hanging with MTV*. I left MTV in April of 1993.

21 7. After MTV, I performed the lead role in *The Who's Tommy* and toured with the
22 show from 1993 to January 1995. The play toured 32 cities and we performed over 500 shows,
23 including a show for President Clinton at the Kennedy Center.

24 8. In fall of 1995, I formed the band Skycycle, which now consists of bassist Kelly
25 Castro, guitarist Sven Shenar and drummer Christopher Cano. Skycycle played our first show on
26 October 31, 1995. When we started, we handled our own promotion and booked our own shows.
27 Although a few record labels approached us, there was no serious interest by any label until the
28 fall of 1997.

1 9. On October 31, 1997, Skycycle was offered a recording contract by MCA
2 Records. The deal was typical of most recording deals with new artists. MCA agreed to provide
3 a modest advance for recording costs which was recoupable, meaning that the record company
4 would recoup its investment before the band got any money.

5 10. As part of the deal, MCA financed an extended play record (EP) in January 1998
6 titled *Breathing Water* which consists of six songs. The EP was well received.

7 11. From October 1998 to December 1998, the band recorded 12 songs for our full
8 length album, *Ones and Zeros*.¹

9 12. When the album was completed, MCA pressured us to reformat the album and to
10 rerecord certain tracks. The MCA representative made it clear that the album would not be
11 released unless certain changes were made.

12 13. The album was finally finished, after substantial and unwanted input from the
13 recording label, in July 1999. The release date was set for August 21, 1999. This release date
14 was pushed back for various reasons, including MCA's assertion that the Christmas season was a
15 better season for established artists. It was clear that developing and promoting Skycycle was not
16 a priority for MCA.

17 14. During the time MCA kept delaying the release of our recording, the band decided
18 to post MP3s of our music to make it available to our fans. Shortly thereafter, I received a call
19 from an MCA representative who informed me that the presence of MP3s on our site was
20 "upsetting" MCA executives. Although the contract with MCA did not cover the release or
21 distribution of MP3s, the band was told that any promotional money that was not guaranteed by
22 the contract but which MCA was considering spending on the band for promotion would not be
23 spent on the band if we continued to post MP3s. I was told that this order came from the highest
24 regions of the corporate structure at MCA and Universal, which believed that any support for the
25 MP3 format was unacceptable. As a result, we took down our MP3's even though the band felt
26 that the quickly increasing popularity of the Internet could make MP3 a viable and effective

27 _____
28 ¹ The title and overall concept of *Ones And Zeros* refers to the future of society via the information superhighway and the way that we're able to take the wealth of the world's knowledge - history, science, entertainment, art and commerce – and reduce everything down to ones and zeros.

1 promotional tool. However, not only was there no extra money spent on the band's promotion,
2 the album was never released.

3 15. Even after refusing to ever release our record, MCA refuses to give us a complete
4 release us from our current contract. This means that, should another major recording label show
5 interest in signing us, MCA could demand payment of its recoupable expenses.

6 16. Realizing that, due to the restrictions of our contract with MCA, our album might
7 never be heard by more than a handful of people, the band decided to give away *Ones and Zeros*
8 on www.skycycleonline.com. The band understands the immediate power of music on the
9 Internet and we want our music freely distributed over the Internet and on Napster.

10 17. Skycycle became part of Napster's new artists' program in early May 2000. The
11 band not only authorizes and promotes the trading of its music, it feels honored to have its music
12 traded on Napster. Napster is a powerful promotional tool that allows people all over the world to
13 listen to our music. In fact, the sharing of Skycycle's MP3s on Napster has resulted in Skycycle
14 getting fan mail from all over the country as well as all over the world, including e-mails from
15 fans in Scotland, France, and Japan. We believe that the only way to generate interest for our
16 music is to have people listen to it. If they like the source, the people will keep coming back for
17 more. Tools like Napster are very important for bringing people into our musical world.

18 18. Considering what we, and hundreds of other bands, have been through with the
19 antiquated business model of the major label, a program like Napster is a positive and powerful
20 service for artists like Skycycle. Napster puts the power back into the hands of the artist and
21 listener. Taking Napster away from Skycycle will have a negative impact on the band's ability to
22 reach out to, and create new, fans.

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I declare under penalty of perjury that the foregoing is true and correct. Executed at
_____, California on this 30th day of June, 2000.

Steven Wendell Isaacs

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