

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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CAPITOL RECORDS, INC., et al.,)
)
Plaintiffs,)
)
v.)
)
NOOR ALAUJAN,)
)
Defendant.)
<hr/>)
<hr/>)
SONY BMG MUSIC ENTERTAINMENT, et al.,)
)
Plaintiffs,)
)
v.)
)
JOEL TENENBAUM,)
)
Defendant.)
<hr/>)

Civ. Act. No.
03-CV-11661-NG
(LEAD DOCKET NUMBER)

Civ. Act. No.
07-CV-11446-NG
(ORIGINAL DOCKET NUMBER)

DECLARATION OF JOHN PERRY BARLOW

1. I, John Perry Barlow, am the vice-chairman of the board of directors of the Electronic Frontier Foundation, an organization I co-founded in 1990. Since May of 1998, I have been a Fellow at the Berkman Center for Internet and Society. I am a poet and musician, and between 1971 and 1995, I was a lyricist for the Grateful Dead, a well renowned American music group. I previously served on the masthead of Wired magazine. In the past I have contributed articles to Wired, the New York Times, and Communications of the Association for Computing

Machinery. I speak, consult, and write for a living.

2. Given my personal experiences in the music industry, and my position as a public intellectual in discourse on copyright, music, and technology, I am able to testify about the historical context of the record industry's anti-file sharing campaign, its larger merits and shortcomings, and the social implications of litigation such as that before this court. I am, in particular, aware of how the economics of "file-sharing" can work to the great benefit of musicians and creators. The Grateful Dead allowed our fans to tape our concerts, essentially giving our music away for "free." In doing so, we may have invented viral marketing, solving an advertising problem that our record companies were never to address and becoming enormously successful in the process.

3. I will testify that the Internet, and peer-to-peer technology in particular, allow us to do that which we, as humans, fundamentally need to do: share art. I will explain how digital technology has finally freed us from the physical medium of CDs and other increasingly antiquated mediums, how this conversion challenges conventional application of the institution of copyright, and why this natural evolution should be welcomed.

4. I will testify that the music industry will never be endangered because, for reasons I will not presume to know with

certainty, we as humans absolutely require music, and because in the music business as I know it, familiarity, not scarcity, creates value. I will explain why this means that the industry surrounding music will never cease to exist in some form. I will explain that the online world presents us with a "gift economy," where no moral blameworthiness attaches to non-commercial sharing, and I will explain why this does not threaten the music industry.

5. I will testify that the recording industry is complicit in allowing itself to hold on to antiquated business models rather than adjust to the changing landscape around them. I will explain why the recording industry must evolve and why it is improper for the industry to attempt to institutionalize stagnation through their litigation and legislation efforts.

6. I will present no exhibits at trial.

7. I have not presented expert testimony, neither by deposition nor at trial, in the past four years.

8. I am receiving no compensation for my testimony in this case.

9. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


JOHN PERRY BARLOW

Dated: **April 1, 2009**

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

<hr/>)
CAPITOL RECORDS, INC., <i>et al.</i> ,)
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Plaintiffs,)
)
v.)
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NOOR ALAUJAN,)
)
Defendant.)
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)
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SONY BMG MUSIC ENTERTAINMENT, <i>et al.</i> ,)
)
Plaintiffs,)
)
v.)
)
JOEL TENENBAUM,)
)
Defendant.)
<hr/>)

AMENDED DECLARATION OF JOHN PERRY BARLOW

1. I, John Perry Barlow, am the vice-chairman of the board of directors of the Electronic Freedom Foundation, an organization I co-founded in 1990. Since May of 1998, I have been a Fellow at the Berkman Center for Internet and Society. I am a poet and musician, and between 1971 and 1995, I was a lyricist for the Grateful Dead, a well renowned American music group. I previously served on the masthead of Wired magazine. In the past I have contributed articles to Wired, the New York

Times, and Communications of the Association for Computing Machinery. I speak, consult, and write for a living. These positions and experiences qualify me to speak about the fairness of peer-to-peer file sharing in the context of the recording industry and the technological environment in which such actions occur.

2. Given my personal experiences in the music industry, and my position as a public intellectual in discourse on copyright, music, and technology, I am able to testify about the historical context of the record industry's anti-file sharing campaign, its larger merits and shortcomings, and the social implications of litigation such as that before this court. I am, in particular, aware of how the economics of "file-sharing" can work to the great benefit of musicians and creators. The Grateful Dead allowed our fans to tape our concerts, essentially giving our music away for "free." In doing so, we essentially invented viral marketing, solving an advertising problem that our record companies were never to address and becoming enormously successful in the process.

3. I will testify that the Internet, and peer-to-peer technology in particular, allow us to do that which we, as humans, fundamentally need to do: share art. I will explain how digital technology has finally freed us from the physical medium of CDs and other increasingly antiquated mediums, how this

conversion challenges conventional application of the institution of copyright, and why this natural evolution should be welcomed.

4. I will testify that the music industry will never be endangered because, for reasons I will not presume to know with certainty, we as humans absolutely require music, and because in the music business as I know it, familiarity, not scarcity, creates value. I will explain why this means that the industry surrounding music will never cease to exist in some form. I will explain that the online world presents us with a "gift economy," where no moral blameworthiness attaches to non-commercial sharing, and I will explain why this does not threaten the music industry.

5. I will testify that the recording industry is complicit in allowing itself to hold on to antiquated business models rather than adjust to the changing landscape around them. I will explain why the recording industry must evolve and why it is improper for the industry to attempt to institutionalize stagnation through their litigation and legislation efforts.

6. I will present no exhibits at trial.

7. I have not presented expert testimony, neither by deposition nor at trial, in the past four years.

8. I am receiving no compensation for my testimony in this case.

9. I have no publications that I must list.

10. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

JOHN PERRY BARLOW

Dated: **May 10, 2009**

EXHIBIT C

Eve Burton

From: Charles Nesson [nesson@gmail.com]
Sent: Tuesday, June 23, 2009 2:47 PM
To: Eve Burton
Cc: Anne Allen
Subject: Re: Barlow

i am not withdrawing barlow and will oppose your motion to strike

On Tue, Jun 23, 2009 at 4:33 PM, Eve Burton <Eve.Burton@hro.com> wrote:

Charlie:

Unless you agree to voluntarily withdraw Barlow, we will be forced to file a motion to strike. The Court's order is very clear that "the Court's indulgence is at an end" and "failure to meet the requirements and the time-limits set in [the Court's] Order may cause [you] to forfeit crucial elements of [your] case" and finally that "failure to provide complete and sufficient materials describing the experts' opinions and the basis for those opinions by [June 22, 2009], will work a substantial prejudice on the Plaintiffs - one that the Court will not allow." Doc. 850.

If, despite this clear Order, you require us to file a motion to strike Barlow, we will seek fees from you. Please confirm that you are not withdrawing Barlow and that you will oppose our Motion to Strike, immediately.

Eve

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From: Charles Nesson [mailto:nesson@gmail.com]
Sent: Tuesday, June 23, 2009 11:37 AM
To: Eve Burton
Cc: John Perry Barlow
Subject: Re: Barlow

i have nothing further to offer on barlow at this time, except his willingness to be deposed as you have noticed, though this is not yet absolutely confirmed.

On Tue, Jun 23, 2009 at 12:44 PM, Eve Burton <Eve.Burton@hro.com> wrote:

Charlie:

We received supplemental reports re Pouwelse and Palfrey but not Barlow. Please confirm that you are

withdrawing Barlow as an expert witness. If not, we will be filing a renewed motion to strike. Please let me know today. Thanks.

Eve

Eve G. Burton

303.866.0551 (direct line)

eve.burton@hro.com

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| San Francisco

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when appropriate (in my judgment) to an open project and not sensitive (in my judgment) in terms of privacy, i may post email to my blog. all privacy requests respected.

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when appropriate (in my judgment) to an open project and not sensitive (in my judgment) in terms of privacy, i may post email to my blog. all privacy requests respected.