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Attorneys for ERIC PARKE, on behalf of  
The General Public of the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF MARIN  
(Unlimited Jurisdiction)

ERIC PARKE, as a representative of THE  
GENERAL PUBLIC OF THE STATE OF  
CALIFORNIA,

Plaintiff,

vs.

RECORDING INDUSTRY ASSOCIATION  
OF AMERICA, a business association, and  
DOES 1 through 500, inclusive,

Defendants.

No.

**COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF AGAINST  
FRAUDULENT BUSINESS PRACTICES**  
(Business and Professions Code §§ 17200 *et. seq.*) **AND DEMAND FOR JURY TRIAL**

1. Plaintiff ERIC PARKE, as a representative of The General Public of the State of California, brings this action for injunctive relief to put an end to defendant Recording Industry Association Of America’s (“RIAA”) unlawful, unfair and deceptive “Amnesty” or “Clean Slate Program”—which consists of deceptive and misleading representations by the RIAA including a “guarantee not to sue file sharers” designed to induce members of the general public of the State of California (and elsewhere) to incriminate themselves and provide the RIAA and others with actionable admissions of wrong-doing under penalty of perjury while members of the general public actually receive, contrary to RIAA’s publicity campaign, no legally binding release of

1 claims and no actual “amnesty” from litigation in return. In brief, the RIAA’s assurances of  
2 “amnesty” for complying with its “Clean Slate Program” are hollow and deceptive, and provide  
3 members of the general public with no real legally binding assurance that those individuals who  
4 are induced by the RIAA’s empty promises to admit activity objectionable to the RIAA, its  
5 members, or other recording companies, will be free from later prosecution by the government or  
6 lawsuit by Copyright owners for the very copyright infringement admitted under the “Amnesty”  
7 program. The RIAA describes the program as “Clean Slate” but yet does not promise to destroy  
8 any data or evidence collected on members of the general public who submit affidavits under the  
9 “program” leaving the “slate” anything but “clean” for those Copyright owners or Government  
10 prosecutors who subpoena such information from the RIAA. **This lawsuit seeks a remedy to stop**  
11 **the RIAA from engaging in unlawful, misleading, and fraudulent business practices**  
12 **including advertising an “Amnesty Program” that does not provide real amnesty from**  
13 **lawsuit and a “Clean Slate Program” that does not provide a real “clean slate.”**

#### 14 15 THE PARTIES

16 2. Plaintiff ERIC PARKE is an individual residing in the County of Marin, State of  
17 California. Plaintiff brings this action to protect the interests of the General Public of the State of  
18 California, as authorized by Business and Professions Code § 17204. As a representative of the  
19 general public, plaintiff need not show he has suffered direct harm from defendant’s acts. *See*  
20 *Massachusetts Mutual Life Insurance Company v. Superior Court*, 97 Cal.App.4<sup>th</sup> 1282, 1290  
21 (2002).

22 3. Defendant RIAA is a trade association of the music recording industry with its  
23 principle offices located in Washington, D.C. Defendant RIAA does business throughout the  
24 United States and the State of California, including (but not limited to) Marin County, California.

25 4. Plaintiff is informed, believes and thereon alleges that individuals and organizations  
26 whose identities and/or capacities are not presently known are responsible in some manner for the  
27 wrongful acts herein alleged and/or for injuries suffered or threatened by plaintiff against the  
28 General Public of California as herein alleged. Plaintiff therefore sues such individuals and

1 organizations by the fictitious names Doe 1 through Doe 500, as authorized by Code of Civil  
2 Procedure § 474. When the true names of such individuals and organizations become known to  
3 plaintiff, plaintiff will amend this complaint pursuant to Code of Civil Procedure § 474 to so  
4 allege.

5 **FIRST CAUSE OF ACTION AND CLAIM FOR RELIEF**  
6 **(Fraudulent Business Practices, BP&C §17200 et seq.)**

7 5. Plaintiff re-alleges all allegations previously set forth and incorporates such  
8 allegations by this reference.

9 6. Defendant RIAA, in the months preceding the filing of this complaint, has been  
10 engaged in a campaign of threats and intimidation against individuals for what it alleges is the  
11 illegal sharing of digital files of recorded music over peer-to-peer (“P2P”) computer networks.  
12 RIAA’s campaign has included threats of criminal prosecution, civil lawsuits, and, on information  
13 and belief, the issuance of in excess of 1,500 subpoenas to internet service providers (“ISP’s”),  
14 seeking personal and identifying information regarding individuals who are users of P2P  
15 networks, including members of the general public in the State of California.

16 7. On or about September 8, 2003, RIAA was involved in filing approximately 261  
17 civil lawsuits against individual users of P2P networks, seeking injunctive relief and damages for  
18 copyright violations for allegedly unlawful sharing of digital music files. Simultaneously, RIAA  
19 announced what it calls its “Clean Slate Program”, which it promoted, targeted, and advertised as  
20 an offer of “amnesty” to individuals, including members of the general public of the State of  
21 California, who file a notarized affidavit admitting the past commission of copyright violations.  
22 As described below, RIAA’s Clean Slate Program, while publicized as a program offering  
23 amnesty for individuals, is in reality a fraudulent, deceptive, and misleading attempt by RIAA to  
24 obtain admissions of copyright violations by individuals, without giving individuals any  
25 meaningful benefit in return or any binding amnesty from suit.

26 8. Defendants’ Clean Slate Program consists of a concerted effort to deceive the  
27 general public through misleadingly worded press releases, program descriptions, and a  
28 deceptively ambiguous “Clean Slate Program Affidavit” designed to be executed by individuals

1 who have been fraudulently induced to admit illegal wrongdoing by RIAA's empty promises of  
2 "amnesty." Indeed, some of the members of the general public apparently targeted by the RIAA  
3 appear to be minors who are asked to sign a draconian "Amnesty" or "Clean Slate" affidavit  
4 admitting liability and wrongdoing with no real amnesty from suit in return and no proper  
5 procedural safeguards in place in violation of law and public policy.

6 9. On or about September 8, 2003, defendant RIAA issued a press release in which it  
7 described its newly filed copyright infringement actions against individuals, and its Clean Slate  
8 Program's alleged offer of amnesty to individuals. A true and correct copy of this press release is  
9 attached to this Complaint as Exhibit "A." In it, RIAA announced to the general public of the  
10 United States and the State of California that, "At the same time [as the filing of its lawsuits  
11 against individuals], the RIAA announced that the [music] industry is prepared to grant what  
12 amounts to *amnesty to P2P users who voluntarily identify themselves and pledge to stop illegally  
13 sharing music on the Internet. The RIAA will guarantee not to sue file sharers who have not yet  
14 been identified in any RIAA investigations and who provide a signed and notarized affidavit in  
15 which they promise to respect recording-company copyrights. 'For those who want to wipe the  
16 slate clean and to avoid a potential lawsuit, this is the way to go,' said Mitch Bainwol, RIAA  
17 chairman and CEO." (Emphases added).*

18 10. At or about the same time it made the above announcements to the public, RIAA  
19 issued publicly its "Clean Slate Program Description," a true and correct copy of which is attached  
20 hereto as Exhibit "B." The very first sentence of the Clean Slate Program Description reads: "The  
21 Recording Industry Association of America ("RIAA") *is offering amnesty from copyright  
22 enforcement* to individuals residing in the United States who have, or who believe that they may  
23 have, illegally downloaded or distributed copyrighted sound recordings on peer-to-peer networks  
24 such as Kazaa, Grokster, iMesh, Morpheus, Bearshare, LimeWire, Gnutella, Blubster, OverNet,  
25 Shareaza, Gnucleus, SoulSeek, Earthstation 5 and eDonkey ("P2P Networks"). (Emphases added).

26 11. At or about the same time as issuing to the public the documents described above,  
27 RIAA made available, as part of its "Clean Slate Program," its "Clean Slate Program Affidavit," a  
28 true and correct copy of which is attached hereto as Exhibit "C." Following spaces for the

1 individual to fill in identifying information, the first line of the affidavit states, “I, the individual  
2 whose name appears above, am executing this Clean Slate Program Affidavit *in order to obtain*  
3 *amnesty from copyright infringement litigation* supported or assisted by the Recording Industry  
4 Association of America (“RIAA”) with respect to my unauthorized noncommercial downloading,  
5 copying, or “sharing” (that is uploading/distributing) as of this date on peer-to-peer networks . . . .”  
6 (Emphasis added).

7 12. The net affect of RIAA’s representations and descriptions of its “Amnesty” or  
8 “Clean Slate Program” is to give members of the general public the reasonable belief that in  
9 exchange for executing the Clean Slate Program Affidavit, providing personal identifying  
10 information, admitting wrongdoing, destroying copies of illegally obtained music files, and  
11 complying with other requirements of the program, they will be granted amnesty from copyright  
12 infringement lawsuits arising from the uploading or downloading of music files on P2P networks.  
13 But this belief on the part of the general public, created by RIAA, is false, and RIAA’s acts and  
14 omissions in creating it were, and are, unlawfully fraudulent, deceptive and misleading.

15 13. A close examination of the Clean Slate Affidavit reveals that it gives no legally  
16 binding release of claims for copyright suits and no real assurances of amnesty to members of the  
17 general public. For example – deeper in the document - following its “headline” and statement  
18 that RIAA is “offering amnesty”, the legal affidavit states that RIAA is only “agreeing not to  
19 support or assist in copyright infringement suits based on past conduct against individuals who  
20 meet the conditions outlined below.” This sentence limits the obligations of RIAA to only not  
21 “support or assist in copyright infringement suits.” In other words, according to this language, and  
22 contrary to the reasonable expectations of the general public induced by RIAA’s other above-  
23 described statements, the RIAA is *not* guaranteeing amnesty, release, or immunity from copyright  
24 lawsuits, but only that, at best, it will not support or assist such lawsuits.

25 14. In addition, in a section of the affidavit labeled “Our Privacy Policy”, RIAA states  
26 that the information provided by the executor of the affidavit (including admissions of illegal  
27 activity) “will not be made public or given to third parties, including individual copyright owners,  
28 *except if necessary to enforce a participant’s violation of the pledges set forth in the Affidavit or*

1 *otherwise required by law.*” (Emphases added). This statement reveals, contrary to the reasonable  
2 expectations of the general public induced by RIAA’s other above-described statements, that  
3 RIAA *will* provide the information contained in the affidavit to third parties (including owners of  
4 copyrights bringing lawsuits or government officials pursuing criminal prosecutions) pursuant to a  
5 subpoena, deposition, court order, or *any other legal process*. In other words, the affidavit gives  
6 *no guarantee* that the information provided will not be obtained by third party litigants.

7 15. On information and belief, RIAA in fact does not have the “actual” authority to  
8 “guarantee not to sue file sharers” with respect to all its member “recording company copyrights.”  
9 This is another reason that its Clean Slate Program and its associated alleged representations and  
10 promises of amnesty are hollow and unlawfully deceptive as reasonable members of the general  
11 public have likely been deceived by the RIAA to believe that the RIAA has authority to do what  
12 the RIAA cannot do.

13 16. As part of the Clean Slate Program Affidavit, an individual must “represent that I  
14 am eligible for this Clean Slate Program and meet all the conditions herein and in the Clean Slate  
15 Program Description.” Condition number 3, described in the Clean Slate Program Description,  
16 includes that “the RIAA has not begun to investigate you by requesting from an Internet Service  
17 Provider (“ISP”), by subpoena or otherwise, identifying information about you.” This requirement  
18 is also deceptive and misleading because it is likely that there are members of the general public  
19 who will be induced to execute the Clean Slate Program Affidavit, and thereby provide identifying  
20 information and admit copyright violations, who will not know, and can not reasonably know, that  
21 they are under investigation by the RIAA, and who therefore will be induced to make potentially  
22 damaging confessions and statements against interest without receiving any benefit whatsoever. In  
23 addition, there is no document that the RIAA signs and dates as part of the program to confirm  
24 receipt of the affidavit document and confirmation that a member of the general public who  
25 submitted such document has in fact met the Clean Slate “conditions” – including “conditions”  
26 wholly under the control of the RIAA - further leaving members of the public without any real and  
27 legally binding peace or amnesty.

28 17. The RIAA describes the program as “Clean Slate” but yet does not promise to

1 destroy any data or evidence collected on members of the general public who submit affidavits  
2 under the “program” leaving the “slate” anything but “clean” for those Copyright owners or  
3 Government prosecutors who subpoena such information from the RIAA.

4 18. For the reasons stated above, RIAA, and the Doe defendants, have engaged in, and,  
5 unless restrained, will continue to engage in unlawful fraudulent business activity, and advertising,  
6 that has deceived, will deceive, and will likely deceive, reasonable members of the general public  
7 of the State of California to their detriment.

8 19. The hereinabove-alleged unlawful and unfair business practices are in violation of  
9 public policy, unconscionable, deceptive, and are subject to the Unfair Business Practices Act set  
10 forth in Business and Professions Code §§ 17200 *et. seq.*

11 20. Pursuant to Business and Professions Code § 17203, plaintiff requests that the court  
12 preliminary and permanently enjoin such unlawful and unfair business practices and require each  
13 defendant to:

- 14 a. Cease and desist from engaging in the above-described Clean Slate Program;
- 15 b. Destroy all Clean Slate Program Affidavits it has obtained, and all  
16 information it has obtained from individuals who have executed Clean Slate  
17 Program Affidavits;
- 18 c. Provide remedial advertising informing members of the general public of the  
19 State of California that defendants’ promises and implications of amnesty  
20 were and are false and misleading and enjoining defendant from advertising  
21 the program as one of Amnesty or “Clean Slate”.

22 **WHEREFORE**, plaintiff prays for judgment as follows:

- 23 1. An injunction requiring defendants, and each of them, requiring that they:
  - 24 a. Cease and desist from engaging in the above-described Clean Slate Program;
  - 25 b. Destroy all Clean Slate Program Affidavits obtained, and all information  
26 obtained from individuals who have executed Clean Slate Program Affidavits;
  - 27 c. Provide remedial advertising informing members of the general public of the  
28 State of California that defendants’ promises and implications of amnesty were and

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are false and misleading and enjoining defendant from advertising the program as one of Amnesty or "Clean Slate".

- 2. The Court to provide declaratory relief by declaring that hereinabove-alleged conduct constitutes unlawful, fraudulent, misleading, and unfair business practices and violates the Unfair Business Practices Act set forth in Business and Professions Code §§ 17200 *et. seq.*
- 3. Plaintiff's attorney fees pursuant to private attorney general theory, common law, and/or statute including, but not limited to, Code of Civil Procedure § 1021.5.
- 4. Costs of suit;
- 5. Such other and further relief as the court shall deem just and proper.

Plaintiff hereby requests a jury trial on all issues triable by jury.

Dated: September 9, 2003

ROTHKEN LAW FIRM

By: \_\_\_\_\_  
Ira P. Rothken, Esq.,  
Attorneys for plaintiff ERIC PARKE,  
on behalf of The General Public of the State of  
California



EXHIBIT A

**\*\* 1PM EST EMBARGO \*\***

**Embargoed until 1pm EST  
Monday, September 8, 2003  
<http://www.riaa.com>**

**Contact: Amy Weiss  
Jonathan Lamy  
Amanda Collins  
202/775-0101**

**RECORDING INDUSTRY BEGINS SUING P2P FILE SHARERS WHO  
ILLEGALLY OFFER COPYRIGHTED MUSIC ONLINE**

*Will Agree Not to Sue P2P Users Who Voluntarily Pledge to Stop Distributing Music  
Illegally*

**Copyright Infringement Claims Filed Against Hundreds of Major Offenders  
In First Round of Potentially Thousands of Lawsuits**

**Lawsuits Part of Industry's Multi-Prong Approach That Includes  
New Business Models and Education**

WASHINGTON (September 8, 2003) –The Recording Industry Association of America (RIAA) announced today that its member companies have filed the first wave of what could ultimately be thousands of civil lawsuits against major offenders who have been illegally distributing substantial amounts (averaging more than 1,000 copyrighted music files each) of copyrighted music on peer-to-peer networks. The RIAA emphasized that these lawsuits have come only after a multi-year effort to educate the public about the illegality of unauthorized downloading and noted that major music companies have made vast catalogues of music available to dozens of new high-quality, low-cost, legitimate online services.

At the same time, the RIAA announced that the industry is prepared to grant what amounts to amnesty to P2P users who voluntarily identify themselves and pledge to stop illegally sharing music on the Internet. The RIAA will guarantee not to sue file sharers who have not yet been identified in any RIAA investigations and who provide a signed and notarized affidavit in which they promise to respect recording-company copyrights.

“For those who want to wipe the slate clean and to avoid a potential lawsuit, this is the way to go,” said **Mitch Bainwol, RIAA Chairman and CEO**. “We want to send a strong message that the illegal distribution of copyrighted works has consequences, but if individuals are willing to step forward on their own, we want to go the extra step and extend them this option.”

“Nobody likes playing the heavy and having to resort to litigation,” said **RIAA president Cary Sherman**. “But when your product is being regularly stolen, there comes a time when you have to take appropriate action. We simply cannot allow online piracy to continue destroying the livelihoods of artists, musicians, songwriters, retailers, and everyone in the music industry.”

Since the recording industry stepped up the enforcement phase of its education program, public awareness that it is illegal to make copyrighted music available online for others to download has risen sharply in recent months. According to a recent survey by Peter D. Hart Research Associates, fully 61% of those polled in August admitted they knew such behavior was against the law—up from 54 percent in July and 37 percent in early June, prior to the announcement.

“We’ve been telling people for a long time that file sharing copyrighted music is illegal, that you are not anonymous when you do it, and that engaging in it can have real consequences,” said **Sherman**. “And the message is beginning to be heard. More and more P2P users are realizing that there are dozens of legal ways to get music online, and they are beginning to migrate to legitimate services. We hope to encourage even the worst offenders to change their behavior, and acquire the music they want through legal means.”

Over the past year, the RIAA has also worked closely with the university community to combat piracy. In recognition of the seriousness of the problem, colleges across the country are implementing new restrictions—and issuing severe warnings—to discourage the swapping of pirated music and movies over high-speed campus Internet connections.

Additional education efforts include more than four million Instant Messages sent since May directly to infringers on the Kazaa and Grokster networks warning them that they are not anonymous when they illegally offer copyrighted music on these networks and that they could face legal action if they didn’t stop. The RIAA sent such a warning notice to virtually every Kazaa and Grokster user who was sued today.

“Obviously, these individuals decided to continue to offer copyrighted music illegally notwithstanding the warnings,” said **Sherman**. “We hope that today’s actions will convince doubters that we are serious about protecting our rights.”

In today’s first round of lawsuits, RIAA member companies filed copyright infringement claims against more than 250 individual file sharers.

The RIAA announced on June 25 that it would be gathering evidence in order to bring lawsuits in September against computer users who illegally distribute copyrighted music through such peer-to-peer file distribution networks as Kazaa and Grokster. Individuals caught distributing copyrighted files on Kazaa, Grokster, Imesh, Gnutella, and Blubster were targeted in this initial round.

Since it announced its lawsuit plans, the RIAA has been contacted by a number of illegal file sharers expressing concern over their actions and wanting to know what they could do to avoid being sued. In response, the RIAA has decided not to pursue users who step forward before being targeted for past illegal sharing of copyrighted works. Instead, those who want to start fresh will be asked to sign a declaration pledging they will delete all illegally obtained music files from their hard drives and never again digitally

distribute or download music illegally. Detailed information on how to apply and qualify for this amnesty is available at the web site [www.musicunited.org](http://www.musicunited.org).

Over the past year, an unprecedented campaign by a coalition of songwriters, recording artists, music publishers, retailers, and record companies has heightened music fans' awareness of the devastating impact of illegal file sharing. A series of print and broadcast ads featuring top recording artists, as well as numerous press interviews by music industry figures, have conveyed the message that file sharing not only robs songwriters and recording artists of their livelihoods, it also undermines the future of music itself by depriving the industry of the resources it needs to find and develop new talent. In addition, it threatens the jobs of tens of thousands of less celebrated people in the music industry, from engineers and technicians to warehouse workers and record store clerks.

At the same time, the industry has responded to consumer demand by making its music available to a wide range of authorized online subscription, streaming and download services that make it easier than ever for fans to get music legally and inexpensively on the Internet. These services also offer music reliably, with the highest sound quality, and without the risks of exposure to viruses or other undesirable material.

Federal law and the federal courts have been quite clear on what constitutes illegal behavior when it comes to "sharing" music files on the Internet. It is illegal to make available for download copyrighted works without permission of the copyright owner. Court decisions have affirmed this repeatedly. In the recent Grokster decision, for example, the court confirmed that Grokster users were guilty of copyright infringement. And in last year's Aimster decision, the judge wrote that the idea that "ongoing, massive, and unauthorized distribution and copying of copyrighted works somehow constitutes 'personal use' is specious and unsupported."

A number of other music community leaders expressed support for strong enforcement against egregious instances of copyright theft.

**Bart Herbison, Executive Director, Nashville Songwriters Association International:**

"When someone steals a song on the Internet it is not a victimless crime. Songwriters pay their rent, medical bills and children's' educational expenses with royalty income. That income has been dramatically impacted by illegal downloading, so many have reassessed their careers as songwriters. It breaks my heart that songwriters are choosing other professions because they cannot earn a living – in great part due to illegal downloading."

**Thomas F. Lee, President, American Federation of Musicians of the United States and Canada:**

"No one is eager to see copyright infringement lawsuits against individuals. But copyright infringement hurts many thousands of other individuals. Most musicians who depend on CD sales and legal downloading are not wealthy mega-celebrities. They are artists struggling to succeed without a 'day job.' They are ordinary session musicians who depend on union-negotiated payments that fall drastically when sales fall. They are

songwriters who depend on royalties to put food on the table. The AFM has said it before: Musicians make music for love, but they can't afford to do it without an income. The AFM urges all music fans to support artists by using only legal means to distribute and obtain music.”

**Lamont Dozier, Legendary songwriter:**

“I wish people who are practicing illegal file sharing would stop for a moment and think about the damage that is being done here, and step in the shoes of people who have families and children, who have been laid off from jobs they've held for over 20 years. In a time where jobs are very hard to come by, and you find yourself forced to be unemployed, because the business is falling apart, deals aren't being made, record stores are closing, lay-offs are happening world-wide in every aspect of music, from cd packers to guitar players to secretaries to hopeful songwriters and artists, who will not have a music industry any longer., People are being lied to about the damage that piracy and illegal file sharing is doing to our country, not just to the music industry, but it is effecting every aspect of our lives. Each business in this country is linked to each other, and all industries are failing and the economy is falling apart. Illegal file sharing is one of these cancerous straws that are breaking the camel's back.”

**Frances W. Preston, President of BMI:**

“Illegal downloading of music is theft, pure and simple. It robs songwriters, artists, and the industry that supports them of their property and their livelihood. Ironically, those who steal music are stealing the future creativity they so passionately crave. We must end the destructive cycle now.”

**Rick Carnes, President, Songwriters Guild of America:**

“It breaks my heart to see the great songs of American songwriters electronically shoplifted by the millions every day. Like everyone else, songwriters can't make a living if we aren't paid for our hard work. We have done all that we could to educate and warn the public that rampant internet piracy is killing our music. Anyone still sharing copyrighted music files without the permission of the copyright holder should know what they are doing is not only wrong, it is illegal.”

**National Association of Recording Merchandisers:**

“NARM believes the RIAA has the right to act on behalf of copyright holders and recording artists to protect their rights, their interests and their creative works as the law provides.”

**Gary Himelfarb, President, RAS Records:**

“In 1981, as an aspiring entrepreneur and reggae music lover, I started a small label (RAS Records) in the basement of my home right outside of Washington DC. I did this, like so many other independent label owners (of which there are literally thousands of-as compared to only 4 majors) not to make millions of dollars, but instead to create music which I loved and to have a profession that I loved doing each day.

“Over the years we created over three hundred full length CDs and I have been able to support myself and my wife and two kids. I have always considered myself to be very fortunate to do what I love, fairly compensate the artists and writers I work with and build a company that has respect and integrity within the music industry.

“The way independent labels have always made money is by selling catalog, since we are not able to promote our songs on radio and create hits, like the majors. The majors, although they also over time create impressive catalogs, depend on the sales of ‘hit’ records to generate the income they need to run their companies. We independents have always depended on catalog sales.

“We have always had consistent sales of our catalog titles, even if a release was 10 years old. Since the invention of Napster and other illegal file sharing activities, the independent labels have experienced a serious drop in the sales of our catalogs. It is not mere coincidence that this drop off has occurred concurrently with the advent of peoples ability to get music for free on the Internet.

“As an independent label owner who has now seen my sales consistently shrink from year to year, I am firmly against the activities of people and companies who allow my music to be illegally downloaded on the Internet. I am strongly in favor of allowing legal websites to offer my music for a fair price (and sometimes even free-with my prior permission) and look forward to participating in the legal digital distribution of music.

“If it is necessary to prosecute those who are purposely sharing large numbers of music files without regard for the artists, writers and labels that work so hard day in and day out, then so be it. If we do not get this problem under control, the public will suffer as less entrepreneurs like myself will be willing to invest their time or money into creating music catalogs for the world to enjoy.”

**Bill Velez, President and COO, SESAC:**

“In the current atmosphere of widespread online copyright piracy, SESAC endorses efforts to protect the livelihoods of songwriters and music publishers and the sanctity of intellectual property.”

**Bruce Iglauer, President, Alligator Records:**

“No one is hurt more by the illegal ‘sharing’ of copyrighted music than the independent artist and the independent record label. The struggling indies already occupy a much smaller market share than the majors. The independents’ loss of income from the elimination of even a small number of sales can be the difference between whether much independent music is recorded or not. If this proliferation of the theft of the creations of artists continues, less and less music will be recorded. The public must be educated about the real results stealing music from its creators.

“It is unfortunate that the problem of illegal ‘sharing’ of copyrighted music has grown to the point where legal action is necessary, but that is the case. Until such time as the

public is jarred into awareness, it is the sad necessity that the people who create and own the music must aggressively defend themselves from having their creations stolen.”

**Sharon Corbitt, Nashville Studio Manager:**

“As studio manager of Ocean Way Nashville and my 19 years on Music Row, I have seen our industry go through many changes. We are faced with even larger obstacles than ever due to the illegal downloading of music on the internet. It may seem extreme to people to pursue legally those who continue to "illegally obtain music on a daily basis" . Illegal downloading of music is the same as someone walking into your home and stealing something that you had created and was of value. People make their livings creating music. The cost of a recording is covered by that recording being sold to consumers. In the end, the consumer suffers from illegal downloading because proper funding will not be available to cover the cost to produce that recording.

“A songwriter has a job just like an electrician or a computer programmer. They sit down and write songs in the hopes that their creation will be recorded by an artist and eventually purchased by the consumer. That's how they make their money. By illegally downloading music we are effecting the creation of the music itself. The quality of music will suffer and the consumer will in return suffer. Music is healing. You would only want the best medicine and doctors to fight a disease. Illegal downloading is not allowing the ‘best cure’ to find its way to the person seeking healing. Something has got to change or we are all going to regret what the final outcome will be, no more quality music, fewer healing words...”

**Courtney Proffitt, Executive Director of the Association for Independent Music:**

“The Association for Independent Music has been educating people for the past year that online music piracy is hurting everyone in the music industry – not just the major labels. The independent sector has been hard hit the past few years, even though this is the sector that often has the most innovative and creative music production. The small indie labels are struggling to promote and sell their music, in order to stay in business. If they are not getting paid for the music they create, they cannot continue to operate. This results in a loss to our overall culture.

“Many talented musicians are no longer receiving royalty payments that they have been depending upon as income. These royalty payments were supporting them and helping them to continue their craft: creating new music for the public’s enjoyment. With the loss of this revenue, many musicians have had to quit and find “day jobs” to make a living. I consider this to be a loss for everyone.

“Additionally, my organization has independent music retail as members. Many of the independent music stores have lost revenue due to illegal downloading, and loss of customer base. They are having trouble continuing to stay in business as the “local record store.” Many have been forced to close their doors due to this downturn in business, and it also affects the economy of the community where they are located.

“I urge people to be aware of this situation, and the consequences that are the result of illegal downloading of music. It is not just hurting an anonymous “music industry”. It is hurting real people such as the artists who create the music, people who promote and distribute the music, all the way to the music store clerk who works at your local music retailer.”

**Chuck Cannon, President, Wacissa River Music, Incorporated:**

“I’m a professional songwriter. This means I provide for my family by receiving a royalty when a CD containing one of my songs sells. This also means if you acquire possession of one of my songs without paying for it, you have intercepted my paycheck. That makes you a criminal.

“If you engage in illegal downloading, that is, if you download a song without paying for it, you are a common thief. If you allow your children to engage in illegal downloading, you are telling them ‘in our home, thievery is acceptable.’ If you are a college administrator and you turn a blind eye to illegal downloading on your campus, you are encouraging larceny in your hallowed halls of education.”

**Mike Negra, President, Mike’s Video:**

“Mike’s Video continues to see the effects of illegal downloading and burning. Our chain has shrunk from five stores to one, resulting in a loss of 12 music-oriented jobs and over \$2 million dollars a year in music revenue. Even with that consolidation, we face an uncertain future due to the core customers of our town, 42,000 Penn State University students. This year’s results to date show sales down 45% overall versus 2002. The single store comparable is down 6.2%.

“The message of zero tolerance towards digital thievery needs to be delivered to those who continue to ignore the obvious. The facts of the situation are people are buying less music and record stores are going out of business. This is a direct result of illegal downloading and burning and is especially prevalent in college towns such as State College.

“The story of stores like Mike’s is being played out across the country next to or on college campuses. It is one the downloading public isn’t aware of or concerned about. I applaud the effort the RIAA has given this problem but I don’t believe either of us are satisfied with the results. The continuation of lawsuits and awareness towards the overall ill effects throughout the industry is paramount if we hope to save the industry we all love.

“I’m willing to do whatever it takes to help save or reshape the music business and change the attitudes that exist. Maybe it will help personalize the deep effects this so-called victimless crime has had.”

**Cecilia Carter, the R&B Foundation:**

“The R&B Foundation provides medical and financial assistance to older musicians. Many of the people we serve can barely survive without our help and the few dollars they



receive from royalty payments. The downloading and sharing of music files, negatively impacts the amount of royalty payments received by our artists. Although the amount of money may seem insignificant at the time you are getting it for free, it can mean the difference in a musician's ability to pay rent or face homelessness. We strongly support the music industry's effort to stop free downloading and file sharing. It is a matter of survival to our constituents."

**John W. Styll, President, Gospel Music Association:**

"The gospel music community has not been immune from the financial damage caused by those who illegally obtain music through downloading. Some may argue that it is an act of ministry to give Christian music away. The GMA certainly believes that it is good for people to be exposed to the message of gospel music, just as it would be good for people to read the Bible, but stealing either music or Bibles cannot be justified. It's unfortunate that the music industry has had to resort to prosecution to deter theft, but there seems to be no other choice and thus we lend our support. And as believers in the concept of grace, we are glad to support the amnesty program as well."

**Dale Mathews, President, Christian Music Publishers Association:**

"The surge and volume of illegal file-sharing over the past several years cry out for action rooted in strength. This latest legal action by the Music Coalition meets that criteria and is supported by the Church Music Publishers Association. We feel it is the small, grass roots writer who is most severely damaged by the all too common illegal acts of file-sharing."

**Members of the Tennessee Songwriters Association:**

**Tom Mobley:**

"It is, of course, illegal. It robs from everyone. Many great songs will never be heard because they will not be on a CD or cassette with a hit song. If a CD sells a million so does every song on it. If someone downloads only one song, the others will never be heard."

**Jan Johnson:**

"I am a songwriter, and even though I have not received any royalties to this date, I think it is so absolutely absurd that people have the mentality about using someone else's product for free."

**Clark Snyder:**

"I think we need TV and radio spots like Hollywood is doing for illegal movie downloading. Creating a legal downloading system is the key. I would infiltrate illegal sites with legal downloading options that pop up like some other sites are now doing effectively. More artists & writers need to take the risk and stand up and take a public stand on this matter."

**Donna DeSopo:**

“Doesn’t illegal say it all? This is against the law. Music is a creative intellectual property and the creators are entitled to earn a profit. They own it and no one should steal their work. Great music comes with a price, because it is priceless.”

**Harry Date:**

“It’s wrong, but people won’t stop doing it until they fear the penalty for doing so. The current industry approach is the correct response – go after them.”

**Ann Roux:**

“I’d like to ask one question of those who defend this illegal activity. How would you like it if I just waltzed into your house and walked out carrying every belonging of yours I felt like owning and not paying for? That’s how I feel about it.”

**D.R. Theroux:**

“Illegal music downloading is a form of theft, the taking of intellectual property. Such theft degrades the songwriting profession greatly.”

**Donna Dean:**

“More education is needed on illegal downloading to let people know that even though the record companies and recording artists may be filthy rich, most songwriters are not.”

**Rodney Hayden:**

“Downloading music from the Internet is nothing more than stealing, plain and simple. It is also an easy way steal. It’s about time people in the music industry come together and legally put an end to this abomination.”

**Hugh Prestwood, number-one Country Music hit songwriter:**

Dear File-sharers,

What is becoming increasingly clear is that the great majority of you truly feel no guilt about the "sharing" of what I have created and own -- my music. You have lumped together many professions – artists, songwriters, engineers, producers, publishers, etc. into one big ugly corporate caricature -- a rich and corrupt industry that can be stolen from remorselessly. Additionally, in your “yes, Virginia, there is a free lunch” mentality, you have unthinkingly devalued songs to the extent that you perceive them as trifles – something of little value to be partaken and enjoyed at no cost. Moreover, you have unfairly condemned me and my record industry peers for bringing the law to bear against you. In classic "blame the victim" reasoning, you lay the responsibility for my losses at my feet, saying, in essence, that the problem is not your theft, but rather my inability to prevent it.

Well, file-sharers, I righteously say "bull." I, songwriter/publisher, labored for years to create those songs, and I *really do* legally own them. I – not you -- have the right to control what happens to them, a right your technology does not trump. You are dead wrong to simply give my songs away and undermine my only chance to profit from my

creations. Don't tell me that I should gracefully pardon your hand in my pocket. Don't insinuate to me that, because your thievery is so facile, perhaps I should find some other way to make a living. Your "hobby" is taking the bread off my table, and I have every right to use any and all legal means possible to discourage your destructive practices.

Let us come together. You often love what I create, and I need to make a living. I have been trying for several years now to find a way for us both to be happy – where you can easily acquire my songs and I can be justly rewarded for my creativity. Try as I might, however, thus far I have been unable to find a way to compete with "free". You must help me.

First, you must wake up from your fantasy that songs should rightly be free, and that no one is being hurt by your theft. I and all my fellow songwriters (among others) are seeing our futures seriously threatened. Second, you must "raise your consciousness" to where you understand that a career in music is brutally serendipitous and difficult to maintain. The ability of artists and songwriters to have any kind of dependable, longer-term, income is entirely linked to their ability to control their copyrights. Without copyright protection, aspiring artists and songwriters had best not ever consider quitting their day jobs.

Finally, you must realize that in real life you really do get what you pay for. If you won't pay for music, you will soon be receiving a product commensurate with your thriftiness. A society that doesn't value a commodity enough to pay for it will soon see the creation and production of that commodity cease.

**--Hugh Prestwood**

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## EXHIBIT B

## **CLEAN SLATE PROGRAM DESCRIPTION**

The Recording Industry Association of America (“RIAA”) is offering amnesty from copyright enforcement to individuals residing in the United States who have, or who believe that they may have, illegally downloaded or distributed copyrighted sound recordings on peer-to-peer networks such as Kazaa, Grokster, iMesh, Morpheus, Bearshare, LimeWire, Gnutella, Blubster, OverNet, Shareaza, Gnucleus, SoulSeek, Earthstation 5 and eDonkey (“P2P Networks”). As part of this Clean Slate Program, RIAA is agreeing not to support or assist in copyright infringement suits based on past conduct against individuals who meet the conditions outlined below. Only individual persons are eligible for the Clean Slate Program; businesses, groups and other organizations or entities may not participate.

You are eligible for this Clean Slate Program if:

1. You delete or destroy all copyrighted sound recordings that you or others illegally downloaded to your computer(s) or devices (including all storage and portable devices) using a P2P Network, and all copies you have of those files in any format (including CD-R).
2. In the future you do not illegally download copyrighted sound recordings using a P2P Network, you do not allow others to illegally download copyrighted sound recordings to your computer(s), you do not make copies of any such downloaded files in any format, and you do not “share” (that is, upload/distribute) such files on P2P Networks.
3. As of the date your Clean Slate Program Affidavit is received, you have not been sued for copyright infringement by an RIAA member company for the activities that are covered by this Clean Slate Program and RIAA has not begun to investigate you by requesting from an Internet Service Provider (“ISP”), by subpoena or otherwise, identifying information about you.
4. Any downloading or file-distribution that you engaged in was done on a noncommercial basis. Individuals who undertook these activities for commercial purposes or for payment are not eligible for this Clean Slate Program.

## **INSTRUCTIONS**

In order to take advantage of this Clean Slate Program, please take the following steps. Note that all information sent will be used solely in connection with the Clean Slate Program and will not be used for marketing or other promotional purposes. See our Privacy Policy for further details.

1. Carefully read the Clean Slate Program Affidavit and make sure that you have taken all necessary steps to delete any copyrighted music files you or others illegally downloaded to your computer(s) or devices (including all storage and portable devices) using a P2P Network, and to destroy any copies you have of those files in any format.

2. Complete the Clean Slate Program Affidavit, except for your signature (since it must be signed in the presence of a notary public to be valid). If there is more than one person in your household who seeks to participate in the Clean Slate Program, each participant in the household must complete a separate Clean Slate Program Affidavit.
3. Take the completed, unsigned form to a notary public, together with identification (such as your driver's license or passport), which will allow the notary to verify that you are the person whose information is listed on the form. Have the notary witness your signature. If you are under the age of 18 a parent or legal guardian also must sign the Clean Slate Program Affidavit.
4. Make a copy of the Clean Slate Program Affidavit for your own records. Send the original, signed and notarized version of the Clean Slate Program Affidavit to: Clean Slate Program Coordinator, RIAA, 1330 Connecticut Avenue, N.W., Suite 300, Washington, D.C. 20036. (For your recordkeeping purposes, you may want to consider sending your Clean Slate Program Affidavit by Federal Express, certified mail, or some other traceable delivery service.)

### **OUR PRIVACY POLICY**

Information provided on the Clean Slate Program Affidavit will be used solely in connection with conducting and enforcing the Clean Slate Program. Information will not be used for marketing, promotional or public relations purposes. Information will not be made public or given to third parties, including individual copyright owners, except if necessary to enforce a participant's violation of the pledges set forth in the Affidavit or otherwise required by law.

# EXHIBIT C

## CLEAN SLATE PROGRAM AFFIDAVIT

### IDENTIFYING INFORMATION

Full Name:

Address of Primary Residence (United States only):

Telephone Number:

E-mail Address:

Internet Service Provider:

I, the individual whose name appears above, am executing this Clean Slate Program Affidavit in order to obtain amnesty from copyright infringement litigation supported or assisted by the Recording Industry Association of America (“RIAA”) with respect to my unauthorized noncommercial downloading, copying, or “sharing” (that is, uploading/distributing) as of this date on peer-to-peer networks such as Kazaa, Grokster, iMesh, Morpheus, Bearshare, LimeWire, Gnutella, Blubster, OverNet, Shareaza, Gnucleus, SoulSeek, Earthstation 5 and eDonkey (“P2P Networks”). I represent that I am eligible for this Clean Slate Program and meet all the conditions herein and in the Clean Slate Program Description.

I have deleted from my computer(s) and storage devices (including portable devices) all copyrighted sound recordings illegally downloaded, copied or “shared” (that is, uploaded/distributed) using P2P Networks, and have destroyed all copies of those sound recordings I have in any format (including CD-R). I agree from today forward to stop any and all illegal downloading, copying, or “sharing” (that is, uploading/distributing) of files of copyrighted sound recordings on P2P Networks.

Provided that I have in fact deleted from my computer(s) and storage devices (including portable devices) all copyrighted sound recordings illegally downloaded from P2P Networks, and destroyed all copies of those sound recordings in any format, and do not engage in illegal downloading, copying or “sharing” (that is, uploading/distributing) of copyrighted sound recordings on P2P Networks in the future, I understand that RIAA agrees not to support or assist in any copyright infringement lawsuit against me based on these past activities.

I understand that if I am found in the future to have done any illegal downloading, copying or “sharing” (that is, uploading/distributing) of copyrighted sound recordings using P2P Networks on or after today’s date or if I am found to have not met the conditions of the Clean Slate Program, RIAA may support or assist in an action for willful copyright infringement.

I acknowledge that I have signed this Clean Slate Program Affidavit voluntarily and that nothing herein prevents me from consulting with counsel of my own choosing.

**Signature:**

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**Signature of Parent or Guardian if Person Listed Above is Under 18:**

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STATE OF )  
 ) SS:  
COUNTY OF )

I, \_\_\_\_\_, a Notary Public in and for this jurisdiction, certify that  
\_\_\_\_\_ [name(s) of person signing above]  
\_\_\_\_\_ [parent or guardian, if necessary], who is known to me to  
be the person signing this Clean Slate Affidavit, personally appeared before me in this  
jurisdiction.

IN WITNESS WHEREOF, I sign below and set my official seal on this document on  
\_\_\_\_\_, 20\_\_.

Signature:

\_\_\_\_\_

Name printed or typed:

\_\_\_\_\_