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I. STATEMENT OF IDENTITY AND INTEREST

The American Association of Law Libraries (AALL) is a nonprofit educational organization with over 5,000 members nationwide. AALL's mission is to promote and enhance the value of law libraries to the legal and public communities, to foster the profession of law librarianship, and to provide leadership in the field of legal information and information policy.

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with over 500,000 members dedicated to the principles of liberty and equality embodied in the U.S. Constitution. The ACLU of Oklahoma Foundation is one of its regional affiliates. The protection of principles of freedom of expression as guaranteed by the First Amendment is an area of special concern to the ACLU. In this connection, the ACLU has been at the forefront in numerous state and federal cases involving freedom of expression on the Internet. Although this case was pled purely as a copyright case, its resolution has clear implications for the development of free speech on the Internet.

The Electronic Frontier Foundation (EFF) is a member-supported, nonprofit public interest organization dedicated to protecting civil liberties and free expression in the digital world. Founded in 1990, EFF represents over 11,000 contributing members. Part of EFF's mission has been protecting the public from the abuse of copyright laws by copyright owners. As such, EFF has opposed the Recording Industry Association of America (RIAA) in its broad dragnet of lawsuits against small-scale individual file sharers that sweeps up the guilty and the innocent alike. EFF's interest in this case is ensuring that the court is adequately briefed on the facts related to the RIAA's mass litigation program and its effects on innocent people ensnared within its nets before ruling on whether Deborah Foster is entitled to attorneys fees.

Public Citizen is a national consumer advocacy organization with approximately 100,000 members, including about 900 members in Oklahoma. Its Internet free speech project is devoted to protecting the right of consumers and others to communicate freely over the Internet. Along with fellow amici EFF and ACLU, Public Citizen has successfully argued in several cases that when a party believes that it has been wronged by Internet speech, it is obligated to show wrongdoing on an individual basis by each proposed defendant, rather than lumping hundreds of otherwise unrelated defendants together and taking advantage of guilt by association. The RIAA and its member companies must comply with this rule like any other plaintiffs. A concomitant of the rule is that, when confronted with a substantial claim of innocence by an individual defendant, the plaintiff must respond reasonably and responsibly, and dismiss the action promptly if that is appropriate, instead of simply proceeding with the litigation in the hope that the defendant will run out of money and agree to a standard settlement. Because awards of attorney fees when music industry plaintiffs fail to behave responsibly are a necessary incentive to reasonable behavior in a litigation program which is itself intended to "send a message" to the general public to induce responsible use of the Internet, Public Citizen joins this brief.

II. SUMMARY OF ARGUMENT

This is an important case. While it may appear to many as just one woman defending herself against several large corporate copyright plaintiffs, as the court is undoubtedly aware, this lawsuit is but one battle in the broader war the RIAA is waging against unauthorized internet copying. As a result of this war, the RIAA has wrought havoc on the lives of many innocent Americans who, like Deborah Foster, have been wrongfully prosecuted for illegal acts they did not commit for over a year despite their clear innocence and persistent denials. Using

questionable methods and suspect evidence, the RIAA has targeted thousands of ordinary people around the country, including grandmothers, grandfathers, single mothers, and teenagers. In its broad dragnet of litigation, the RIAA has knowingly entangled the innocent along with the guilty, dragging them through an expensive and emotionally draining process of trying to clear their names.

In deciding whether or not to grant defendant Deborah Foster's Motion For Attorneys Fees, the court should consider the broader context of the RIAA lawsuit campaign—especially the positive effect that a fee award would have on encouraging the RIAA to be more diligent in conducting its pre-suit investigations, more prompt in dismissing suits when a defendant asserts substantial claims of innocence or mistaken identity, and more responsible in asserting its legal theories. Moreover, a fee award would encourage innocent accused infringers to stand up and fight back against bogus RIAA claims, deter the RIAA from continuing to prosecute meritless suits that harass defendants it knows or reasonably should know are innocent, and further the purposes of the Copyright Act by reaffirming the appropriate limits of a copyright owner's exclusive rights.

III. INTRODUCTION AND BACKGROUND

This case is of critical importance to thousands of people throughout the country. Though Deborah Foster is just one woman, her battle is one that many others hope that they too can fight. The RIAA has sued over 18,000 individuals (and counting) for allegedly sharing music through file sharing networks. Using questionable methods to identify individuals it believes are violating its rights, the RIAA has carelessly cast a broad net of litigation that ensnares both the guilty and the innocent.

Yet the innocent rarely get a chance to clear their names. When the RIAA threatens suit against an individual, it makes sure to offer her a carefully chosen sum that is substantially smaller than the legal fees required to fight the accusations, even for defendants that are completely innocent non-infringers. Faced with the threat of costly litigation to defend their names and the possibility that hundreds of thousands of dollars in damages might be wrongly assessed against them by a jury, many innocent people accept these unfair settlement offers because they cannot afford the legal costs to fight back. Wielding the threat of copyright lawsuits as a club, the RIAA has already bullied thousands of average Americans into settling. Though the RIAA has the right to enforce its copyrights through lawsuits and settlements, it does not have the right to do so against people it knows or reasonably should know are innocent.

The inequities that Ms. Foster and her fellow wrongfully-accused have faced do not end there. The RIAA is not only continuing to prosecute the innocent in spite of clear evidence to the contrary but also attempting to expand the scope of its copyright protections beyond what the statutes provide. This copyright “grab” stems from the plaintiffs’ erroneous theories of secondary liability in copyright law. These theories, which the RIAA knows are wrong, attempt to put parents, employers, teachers, and other internet account holders on the hook for third-party computer activities—even when the defendant has no knowledge or ability to supervise the actual alleged infringers. Because of the vast differential in resources between plaintiffs and defendants and the strict liability and statutory damages regime of copyright law, these cases often settle, sending the message that these erroneous theories are actually correct. Unless individuals like Deborah Foster can afford to take a stand and fight back, the public may eventually believe that they have fewer rights when accused of responsibility for improper file sharing by others than they do, thus inflicting irreparable harm to

the purposes of copyright law. Thus, an award of attorney's fees helps defend the public's legal rights and furthers the proper administration of copyright law.

In sum, this court's decision will help determine whether defendants like Ms. Foster, who have proven their innocence to the RIAA, can afford to take a stand against their much larger foe. Equity demands that these fees be awarded in order to compensate Ms. Foster for the costs of defending against the RIAA's unwarranted prosecution, to prevent the RIAA from knowingly continuing such erroneous prosecutions in the future, and to encourage future innocent defendants to stand up for their own innocence and advance meritorious defenses that will clarify the scope of copyright law. Thus, for equitable, compensatory, and deterrence reasons, the court should award fees to Ms. Foster.

A. The RIAA's Campaign Against Individual Filesharers

Three years ago, the RIAA began a campaign of mass-produced lawsuits against consumers and music fans accused of sharing files on peer-to-peer (P2P) file sharing networks. Hoping to make examples out of thousands of ordinary Americans, the RIAA commenced investigations of individual file sharers in June 2003 and filed its first round of lawsuits in September 2003, suing 261 individuals for copyright infringement. *Recording Industry To Begin Collecting Evidence And Preparing Lawsuits Against File "Sharers" Who Illegally Offer Music Online*, Jun. 25, 2003, <http://www.riaa.com/news/newsletter/062503.asp>; *Recording Industry Files Copyright Infringement Claims Against P2P Service*, Sept. 19, 2003, <http://www.riaa.com/news/newsletter/091903.asp>. From this beginning, the RIAA gradually expanded its program, ramping up its monthly rounds of lawsuits to as many as 800 per month. To date, over 18,000 lawsuits have been filed against individuals. *See generally RIAA v. The People: Two Years Later* (2005), http://www.eff.org/IP/P2P/RIAAatTWO_FINAL.pdf.

In order to identify file sharers from P2P networks, the RIAA enlists a set of procedures that are of questionable accuracy. The RIAA's investigators sign into file sharing networks hoping to identify users who are sharing particular songs. However, users on P2P networks are difficult to identify. Each user has a "screenname" that represents her presence on the network. This screenname is usually some kind of vague or anonymous nickname, e.g. "musicfan21". Moreover, on many systems, multiple users can have the same screenname, further obfuscating association with a particular identity. Thus, neither that screenname nor anything else available from the P2P network alone can tie a virtual-world user directly to a specific real-world person.

Faced with this situation, the RIAA has turned to another source of information to try to match users with identities. Specifically, it records the Internet Protocol (IP) address (a sort of street address on the information superhighway) of the allegedly infringing computer logged into the P2P network and then subpoenas the Internet Service Provider (ISP) that issues the IP address for the identity of the account using that IP address at the time of the alleged infringement. However, this sort of identification is inaccurate and prone to errors in some circumstances. In order to understand why, one must first understand some technical details about IP addresses.

B. IP Addresses as Inadequate Identifiers

As noted above, an IP address is an identifier, much like a street address or telephone number, that is assigned to an internet access point so that other computers on the internet can locate it when they need to send it information, such as a website, a picture, or a music file. However, IP addresses differ from street addresses and telephone numbers in several significant ways. First, IP addresses are often dynamic (as opposed to static), meaning that every time a particular computer signs onto the internet, it can receive a different IP address

than the previous time. ISPs also often share IP addresses back and forth between separate access points to maximize their availability at any given time.

Second, an IP address is not necessarily limited to a single computer or a single user. Often, a group of computers can share the same IP address, much like in a household, where multiple people can share a single telephone number. For instance, some ISPs provide home internet service subscribers with only a single IP address. Families who want to set up a wireless home network so that multiple computers around the house can access the internet can use what is called a wireless "router" to share that IP address among the computers. The router acts like a mailroom in a large company building. All messages get sent to the same physical address (the street address or the IP address) and the mailroom (router) makes sure the message gets to the right person. However, from the point of view of someone outside the building, all the people within the building share the same address. Knowing only the address from which a message originated tells nothing about who in the building sent or received the message. Similarly, knowing only the IP address tells nothing about which computer was using the IP address at the time.¹

Finally, even if it could identify a particular computer that used a particular IP address, the RIAA still would not know what person was using the computer. At most, an ISP can tell the RIAA the name and billing address associated with the account. This information alone is not enough to accurately identify the person who actually engaged in the alleged file sharing. Many homes, business, and universities allow multiple people to use multiple computers throughout the day or night. Many do not even log in under a separate username

¹ In fact, even store-bought devices such as the TiVo Digital Video Recorder can use a home internet network to log into www.tivo.com and download TV schedules for home recording. When the TiVo device does this, it would appear to an outside observer as if one of the family members is logging onto the internet because it would use the same IP address as the family members use when they log in.

and password. So even if a given IP address does identify a particular account or computer being used, there is no way to know which actual person is using it. This is much like identifying the street address of a restaurant or other business and trying to use that information alone to identify a specific customer who might have been shopping or snacking at a particular time and date. While such a system may occasionally yield an accurate result, the possibilities for false positive identifications are serious and significant.

C. The RIAA's Drift Net Litigation

Because of its suspect investigation methods, the RIAA's vast legal campaign against file sharers acts as a blunt instrument, battering both the innocent and the guilty in broad and indiscriminate strokes. The RIAA itself has likened its campaign to drift net fishing, admitting that "[w]hen you go fishing with a net, you sometimes are going to catch a few dolphin." Dennis Roddy, *The Song Remains the Same*, Pittsburgh Post-Gazette, Sept. 14, 2003, available at <http://www.post-gazette.com/columnists/20030914edroddy0914p1.asp>. One of the first innocents caught in the RIAA's net was Sarah Ward, a grandmother in Massachusetts who was accused of using a Windows program to download hardcore rap music, even though her computer was a Macintosh that could not possibly run the program. *RIAA v. The People, supra*, at 4. Another, Marie Lindor, was sued even though she did not own a computer at the time of the alleged infringement. *Download Suit Defense: 'No PC,'* Red Herring, Feb. 3, 2006, available at <http://www.redherring.com/Article.aspx?a=15592>. The RIAA even sued an 83-year-old deceased grandmother, Gertrude Walton, who was accused of sharing files under the user name "smittened kitten" even though she hated computers even when she was alive. See Toby Coleman, *Deceased Woman Named in File-sharing Suit*, Charleston Gazette, Feb. 4, 2005, at P1A.

Yet despite being faced with clear evidence of innocence, the RIAA often delays dropping lawsuits against these innocent defendants, causing further unnecessary financial and emotional harm to these defendants until pressed by legal fees and the threat of summary judgment. Ms. Foster first informed the RIAA that she was not involved with the filesharing and that her husband or daughter might have done it in October 2004. (Koransky Decl. ¶ 2). Nevertheless, the RIAA still filed suit against her in November 2004, at which time she again denied any involvement. (Gerber Decl. ¶¶ 2-3). Even when Ms. Foster's daughter offered to admit liability in April 2005, instead of dropping the case against Ms. Foster, the RIAA amended the complaint to allege a frivolous claim of secondary liability. (Cooper Decl. ¶ 2). The RIAA continued to string Ms. Foster along until this court finally granted a voluntary dismissal over a year later. These sorts of tactics unnecessarily burden innocent defendants with undue legal costs and emotional distress, especially when the plaintiff is in possession of uncontested evidence of their non-infringement. Furthermore, by refusing to immediately dismiss frivolous suits, the RIAA also unnecessarily burdens the courts and clogs up judicial resources.

D. Innocent Defendants are Forced to Settle

Because of the disproportionate financial and organizational power exhibited by the RIAA in its lawsuits, most defendants have settled rather than go to court. The settlements have ranged from \$3,000 to \$11,000. *RIAA v. The People, supra*, at 6. Yet these settlements mask the scope of the problem of wrongfully-accused defendants. As a preliminary step in its litigation process, once the RIAA has identified the account holder, it will contact that person offering a settlement. Faced with the Hobson's choice of either settling now or facing large legal costs and potential uncertainty over recovering their attorneys

fees, innocent defendants may find themselves making the logical though unsavory choice of settling.

However, some individuals like Deborah Foster have been brave enough to take a stand against the RIAA's litigation machine and defend their innocence. For these individuals, the costs of mounting a defense can be astronomical, limiting this option to those who have sufficient resources. One person who can afford to mount a defense with his own funds is Shawn Hogan, a millionaire software developer who made his fortunes as CEO of Digital Point Solutions. David Goldenberg, *Shawn Hogan, Hero*, Wired Magazine, available at <http://wired.com/wired/archive/14.08/start.html?pg=3>. Hogan was accused by the Motion Picture Association of America of downloading a movie (one he claimed he already owned on DVD) from a file sharing network. *Id.* Hogan has dedicated himself to fighting the accusations, regardless of the cost, which he expects to surpass \$100,000. *Id.*

While millionaires like Hogan can afford these exorbitant legal fees, the majority of those wrongly targeted by the RIAA cannot. Thus, where wrongly-targeted defendants are successful in their defense and the record demonstrates that the plaintiff knew or, had an adequate investigation been conducted, should have known that the defendant was innocent, the court should award them attorney's fees, not only to undo some of the harm the RIAA has imposed and encourage future innocent defendants to stand up for their innocence, but also to further the purpose of the Copyright Act by providing incentives for the RIAA to limit its campaign to meritorious suits that involve actual copyright infringement and to promptly drop suits against those individuals it knows or reasonably should know are innocent.

IV. ARGUMENT

The RIAA's driftnet litigation campaign unfairly exploits the economic position of an untold number of innocent individuals who cannot afford to defend themselves against its legal machinery. Absent the promise of an award of attorney's fees when the copyright holder unreasonably persists, innocent defendants have little incentive to risk the turbulent and uncharted waters of a protracted legal battle. Congress gave the court the power to alleviate this imbalance of power. Section 505 of the Copyright Act enables a court to award attorney's fees based on equitable discretion. Where, as here, one of these innocent defendants prevails in clearing her name and the plaintiff knew or should have known that she was innocent but continued to harass the defendant, the court should award attorney's fees to compensate the victim, to deter the legal assailant, to encourage future innocent defendants to fight back, and to maintain the proper administration and balance of copyright law.

A. Courts Must Exercise Equitable Discretion in Deciding Whether to Award Attorney's Fees to Prevailing Parties.

In civil cases arising under the Copyright Act, § 505 of the Act provides that "the court may . . . award a reasonable attorney's fee to the prevailing party as part of the costs." 17 U.S.C. § 505. The decision of whether to award attorney's fees is completely up to the discretion of the court, which must apply the same standard for awarding fees to both prevailing plaintiffs and defendants. *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 534 (1994). "There is no precise rule or formula for making these determinations, but instead equitable discretion should be exercised in light of the considerations . . . identified." *Id.* (internal quotation marks omitted). Among the factors a court should consider in using its equitable discretion are "frivolousness, motivation, objective unreasonableness (both in the factual and in the legal components of the case) and the need in particular

circumstances to advance considerations of compensation and deterrence.” *Id.* at 535 n.19 (citing *Lieb v. Topstone Indus., Inc.*, 788 F.2d 151, 156 (3d. Cir. 1986)).

In *Fogerty*, the Court acknowledged that awarding fees to prevailing defendants in copyright cases could be just as important to furthering the purposes of copyright law as awarding fees to prevailing plaintiffs.

Because copyright law ultimately serves the purpose of enriching the general public through access to creative works, it is peculiarly important that the boundaries of copyright law be demarcated as clearly as possible. To that end, defendants who seek to advance a variety of meritorious copyright defenses should be encouraged to litigate them to the same extent that plaintiffs are encouraged to litigate meritorious claims of infringement.

Id. at 527. Thus, the Supreme Court has recognized the importance of providing the right incentives to both plaintiffs and defendants to ensure that they will proceed with meritorious claims or defenses without worrying about potential attorney’s fees.

One circuit court has also singled out the particularly important incentives awarding attorney’s fees to a prevailing defendant can create. The 7th Circuit in *Assessment Technologies of Wi, LLC. v. Wire Data, Inc.*, 361 F.3d 434, 437 (7th Cir. 2004), held that “[w]hen the prevailing party is the defendant, who by definition receives not a small award but no award, the presumption in favor of awarding fees is very strong.” There, the plaintiff “was rather transparently seeking to annex a portion of the intellectual public domain” and the defendant needed to be encouraged to fight in order to clarify the boundaries of copyright law. Judge Posner, writing for the majority, worried that “without the prospect of such an award, the party might be forced into a nuisance settlement or deterred altogether from enforcing his rights” because the party “could not obtain an award of damages from which to pay his lawyer—no matter how costly it was for him to defend against the suit.” *Id.*

B. Equity Favors Awarding Attorney's Fees for Deborah Foster's Successful Defense.

In the present case, equitable discretion and “the considerations of compensation and deterrence” both strongly favor awarding Deborah Foster attorney’s fees for her successful defense. First and foremost, an award would provide much needed compensation to Ms. Foster for her personal expenses in defense of the RIAA’s meritless copyright suit against her. This is particularly noteworthy because Ms. Foster defended herself without any assurance that such fees would be forthcoming, even though she had communicated her innocence early and often to plaintiffs and plaintiffs continued to prosecute her case.

Moreover, it would be equitable to do so because, as the record shows, this is a prime example of the RIAA’s inadequate investigation into whether the defendants it names are actually the ones doing the file sharing, instead relying on the questionable methods described above. Though the RIAA has a right to sue those who actually infringe on its copyrights, it does not have the right to carelessly target innocent defendants and subject them to the costs of defending against baseless accusations. Where the RIAA does net an innocent “dolphin” in its drift net, it must release it as soon as possible. Where, as here, it continues to harass the defendant for over a year in spite of clear evidence of innocence, the court should provide restitution using the tool Congress envisioned for this purpose—Section 505.

Awarding attorney’s fees here also provides the necessary incentives for the RIAA to exercise greater care in its mass litigation campaign and avoid bringing similarly frivolous suits in the future. Plaintiffs are multi-billion dollar corporate copyright holders who can easily afford to bring innumerable suits in their efforts to stamp out all possible sharing of their music on the internet. Defendant, on the other hand, is an innocent individual with severely limited resources. Unless the court awards Ms. Foster her fees, plaintiffs will continue

their campaign unchecked and undaunted. They will simply continue to subpoena and sue anyone whom they even remotely suspect might be an alleged infringer, refusing to walk away even when presented with plain and unequivocal evidence that they were wrong. Only a strong fee award can deter such behaviors and prevent future Ms. Fosters from having to subject themselves to this same expensive and draining ordeal after they have put forth prime facie evidence of innocence.

Moreover, the RIAA's mass-produced lawsuits, numbering in the hundreds each month, allow it to take advantage of economies of scale. The marginal cost of each additional lawsuit is minimal for the RIAA, while the return of each settlement is quite high. The economics of this situation provide the RIAA with strong incentives to sue as many people as it can, without regard to actual guilt. Awarding attorney's fees in cases where the RIAA knowingly and wrongfully prosecutes someone would cause the RIAA to more thoughtfully consider the merits of its case before proceeding with the suit and to immediately drop cases against those it knows are innocent.

Innocent defendants like Deborah Foster, on the other hand, cannot take advantage of the RIAA's economies of scale. Only those with significant resources and fortitude will be able to take a stand against the RIAA's juggernaut litigation campaign. Failure to award fees to a prevailing defendant would work a grave injustice, not only upon the present defendant, but also upon all future innocent defendants who want to mount a defense but cannot afford the legal costs.

C. Awarding Deborah Foster Attorney's Fees Would Further the Policies of the Copyright Act.

Awarding attorney's fees here would also further the policies of the Copyright Act by encouraging innocent defendants to fight against erroneous legal theories rather than settle. As the Court recognized in *Fogerty*, "a successful

defense of a copyright infringement action” could help further the policies of copyright law by demarcating the boundaries of copyright law “as clearly as possible.” *Fogerty*, 510 U.S. at 527. The RIAA’s drift net legal strategy blurs rather than sharpens the boundaries of copyright law by sending misleading messages about the scope of secondary infringement doctrines. Such overenforcement tips the balance of copyright in favor of the copyright owners and allows them to steal away from the public a set of rights that legitimately belong to them.

The core of copyright law is a balance between the rights of copyright owners to exploit a limited monopoly as an incentive to create new works and the rights of the public to have access to those works created. *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417, 429 (1984). This balance must be accurately communicated to the public so that the public can take full advantage of the rights to which it is entitled. Copyright owners and courts can communicate such a message through litigation. By indiscriminately suing parents like Ms. Foster and other account holders as part of its mass litigation legal strategy, the RIAA knowingly sends a distorted message to the public—that any account holder is secondarily liable for the actions of anyone who uses her account to download music. Though this message about secondary liability is wrong and would not hold up in court², it can only be corrected if defendants successfully defend themselves. If innocent defendants cannot recover attorney’s fees by successfully challenging the RIAA’s baseless claims, the majority of defendants will settle rather than fight. As a result, the public may take the RIAA’s incorrect message as the truth. Instead, courts should use attorney’s fee

² In order to be held liable, the account holder must either have knowledge and materially contribute to the infringement, *Ellison v. Robertson*, 357 F.3d 1072, 1076 (9th Cir. 2004) or have the right and ability to supervise the infringing activity and a direct financial interest in it, *A&M Records v. Napster, Inc.*, 239 F.3d 1004, 1022 (9th Cir. 2001).

awards to encourage legitimate defenses of copyright infringement against clearly erroneous theories advanced by plaintiffs to help affirm the correct boundaries of copyright law and send the correct message to the public. *Fogerty*, 510 U.S. at 527.

Overenforcement of copyrights also cuts against the primary purpose of copyright law and steals from the public the set of benefits copyright law was intended to provide it. “The copyright law . . . makes reward to the owner a secondary consideration. . . . Creative work is to be encouraged and rewarded, but private motivation must ultimately serve the cause of promoting broad public availability of literature, music, and the other arts.” *Sony*, 464 U.S. at 429, 431-32. In *Assessment Technologies*, the Seventh Circuit recognized that harms to the public would occur where a copyright owner used “an infringement suit to obtain property protection . . . that copyright law clearly does not confer, hoping to force a settlement or even achieve an outright victory over an opponent that may lack the resources or the legal sophistication to resist effectively.” 361 F.3d at 437. Here, the RIAA is attempting to do just that. If the RIAA is allowed to misinform the public about the scope of secondary liability law, the public will refrain from behaviors that are actually encouraged by copyright law. Fearing secondary liability, parents may restrict their children’s internet access. Hotels, public spaces, and businesses may stop providing public internet access to their patrons. Access to creative works may be chilled.

Unless innocent defendants can recoup their fees after a successful defense against copyright claims holders that unreasonably persisted in claims that they knew or should have known were fallacious, the RIAA will be able to expand its control over behavior beyond what is sanctioned by copyright law. Therefore, to support the strong copyright public policy of access to information, the court should award fees in this case.

V. CONCLUSION

For the reasons discussed above, the defendant Deborah Foster should be awarded attorney's fees.

Dated: August 9, 2006

Respectfully submitted,

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