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10 UNITED STATES DISTRICT COURT
11 DISTRICT OF OREGON AT PORTLAND

12 Atlantic Recording Corporation, a)	No. CV 05-933 AS
Delaware corporation; Priority Records,)	
13 LLC, a California limited liability)	Memorandum in Support of
company; Capitol Records, Inc., a)	Defendant’s Motion to Dismiss
14 Delaware corporation; UMG Recordings,)	Plaintiffs’ Claims for Copyright
Inc., a Delaware corporation; and BMG)	Infringement of File Names Listed in
15 Music, a New York general partnership,)	Exhibit B to their Complaint
)	
16 Plaintiffs,)	
)	
17 v.)	
)	
18 Tanya Andersen,)	
)	
19 Defendant.)	

20
21 **I. INTRODUCTION**

22 Since February 2005, Tanya Andersen, a 42 year-old disabled single mother of an 8
23 year-old daughter, has been trying to get the record companies to do one thing: look at her
24 computer so that this nightmare of wrongful accusations will end. Ms. Andersen, who lives off
25 of a fixed income from Social Security and has no ability to pay to defend a lawsuit, offered her
26 computer to the record companies to inspect well before this lawsuit was ever filed. The record

1 companies have refused to look at her computer. Ms. Andersen has never downloaded or
2 distributed music online. She has not infringed on any of plaintiffs' alleged copyright interests.

3 She has nothing to hide.

4 Ms. Andersen finds herself in an unimaginable position where the record companies have
5 refused to inspect her computer, but continue to wrongfully accuse her of using that computer to
6 downloading songs. The record companies have not even identified what copyrighted songs
7 they claim she infringed. Plaintiffs have failed to provide the specific information required by
8 Rule 8 and Local Rule 10.7(b) to put Ms. Andersen on notice of their claims. Instead,
9 plaintiffs refer in a broad, sweeping and indefinite manner to "certain of the sound recordings"
10 listed in Exhibit B to their complaint. This exhibit lists 1,406 file names. Plaintiffs' complaint
11 has failed to provide Ms. Andersen with fair notice of any act of alleged infringement and should
12 be dismissed.
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15 II. ARGUMENT AND AUTHORITIES

16 A. The Record Companies Failed to State a Claim for Infringement of "Sound 17 Recordings" Allegedly Listed in Exhibit B.

18 In ruling on a Rule 12(b)(6) motion to dismiss, a claim must be dismissed where, as
19 here, "it is clear that no relief could be granted under any set of facts that could be proved
20 consistent with the allegations." Neitzke v. Williams, 490 U.S. 319, 327 (1989); see also
21 Goodwin v. Best Plan, Int'l, Ltd., 2004 WL 1924147 at *1 (N.D. Cal 2004) (granting motion to
22 dismiss where party alleging infringement failed to provide copyright registration information
23 in complaint); Jefferson Airplane v. Berkeley Systems, Inc., 886 F. Supp. 713, 715
24 (N.D.Cal.1994) (proof of copyright registration "is a jurisdictional prerequisite to a suit for
25 infringement").
26

1 To prove copyright infringement, a plaintiff must prove two elements: (1) the ownership of
2 a valid copyright, and (2) infringement of one of the copyright holder's exclusive rights under §
3 106 of the Copyright Act. Baxter v. MCA, Inc., 812 F.2d 421, 423 (9th Cir. 1987). In copyright
4 infringement cases, a plaintiff is required to "plead with specificity the acts by which a defendant
5 has committed copyright infringement. [...] The complaint must set out the 'particular infringing
6 acts ... with some specificity. Broad, sweeping allegations of infringement do not comply with
7 Rule 8.'" Marvullo v. Gruner & Jahr, 105 F. Supp.2d 225, 230 (S.D.N.Y. 2000). Thus, to
8 withstand a motion to dismiss, a copyright infringement claim must allege the following elements:
9

- 10 1. which specific original work is the subject of the claim,
- 11 2. that plaintiff owns the copyright in the work,
- 12 3. that the copyright has been registered in accordance with the statute, and
- 13 4. by what acts during what time the defendant infringed the copyright.

14 Kelly v. L.L. Cool J., 145 F.R.D. 32, 35 (S.D.N.Y.1992); see also Marvullo, 105 F. Supp.2d at
15 230.

16 It is unclear from the record companies' complaint what copyrighted sound recordings
17 it alleges were infringed. The complaint seeks damages for the alleged infringement of all
18 "Copyrighted Recordings." Complaint at ¶ 13. The complaint defines "Copyrighted
19 Recordings" as all sound recordings which "include but are not limited to" the six songs listed
20 in Exhibit A and "certain of the [1,406] sound recordings listed on Exhibit B." Complaint at ¶
21 11.

22 Besides making this sweeping allegation, the complaint does not specify what sound
23 recordings from Exhibit B were allegedly infringed upon. In fact, plaintiffs have failed to
24 provide any of the required copyright information relating to the 1,406 file names listed in
25 Exhibit B to put Ms. Andersen on notice of their infringement claims:
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