

Paragraph 4.

5. The Defendant has insufficient information to admit or deny the allegation contained in Paragraph 5.
6. The Defendant has insufficient information to admit or deny the allegation contained in Paragraph 6.
7. The Defendant has insufficient information to admit or deny the allegation contained in Paragraph 7.
8. The Defendant has insufficient information to admit or deny the allegation contained in Paragraph 8.
9. The Defendant has insufficient information to admit or deny the allegation contained in Paragraph 9.
10. The Defendant admits that she resides in this District. *See* Complaint, at ¶ 10.

Alleged Infringement of Copy Rights - Count I

11. Paragraph 11 contains no assertion to be admitted or denied.
12. Defendant has insufficient information to admit or deny the allegations contained in paragraph 12. Although the Plaintiffs assert they have valid Certificates of Copyright Registration, none are attached to the Complaint. To the extent that Plaintiffs allege Defendant is associated with any and all information set forth in Plaintiffs' Exhibit 1 and Exhibit 2, Defendant denies these allegations and demands strict proof thereof.
13. Defendant has insufficient information to admit or deny the allegation contained in paragraph 13.

14. Defendant has insufficient information to admit or deny assertions regarding Plaintiffs' information and belief. However, in response to Complaint at ¶ 14, Defendant DENIES each and every assertion of infringement by Tallie Stubbs and requires strict proof thereof.
15. In response to Complaint at ¶ 15, Defendant DENIES that she participated in acts of infringement listed in Plaintiffs' Exhibit 2 to their Complaint as summarized in a table created by Plaintiffs and marked Plaintiffs' Exhibit 1. Defendant objects to Exhibit 1 and the allegations set forth in paragraph 15 and requires strict proof thereof. Defendant DENIES the allegation that ". . . each of the published copies of the sound recordings identified in Exhibit 1 was accessible by Defendant" and demands strict proof thereof. As to the remaining allegations in paragraph 15 concerning Plaintiffs' notices of copyright pursuant to 17 U.S.C. § 401, Defendant has insufficient information to admit or deny the allegations.
16. In response to Complaint at ¶ 16, having denied performing any act of infringement, Defendant DENIES willful and intentional infringement and requires strict proof thereof.
17. Because Defendant has done nothing to infringe any copyright materials owned by, or in the custody or control of, the Plaintiffs, Defendant DENIES that Plaintiffs are entitled to any damages of any kind whatsoever as alleged in the Complaint at ¶ 17 and requires strict proof thereof.
 - a. Defendant by letter dated July 7, 2006, Certified, Return Receipt Requested No. 7006-0810-0003-8004-4368 to Plaintiffs' counsel Donald Kelso for the firm of Holme, Roberts & Owen LLP, informed Plaintiffs that she did not download any

copyrighted files. On July 9, 2006, Defendant also transmitted the July 7, 2006 letter by email to Plaintiffs' settlement office. Defendant's Exhibits 2 & 3.

- b. Defendant has never used KaZaa and is without knowledge sufficient to perform any of the alleged acts of infringement. Defendant informed Plaintiffs that any alleged downloading was not done on Defendant's computer and was not done by Defendant. Defendant requested Plaintiffs provide detailed information to disclose what was downloaded and when information was downloaded. Defendant's Exhibits 2-3. However, Plaintiffs continued to proceed with the filing of a lawsuit against Defendant although Plaintiffs knew or had reason to know that said Defendant should not be a party to any case involving copyright infringement by use of a computer and the internet.
 - c. Plaintiffs filed their Complaint on July 25, 2006 and served Defendant on August 3, 2006.
 - d. Plaintiffs should be required to pay Defendant's attorney's fees and costs, 17 U.S.C. § 505. Defendant's Exhibits 2-4.
18. Because Defendant has done nothing to infringe any copyrighted materials owned by, or in the custody or control of, the Plaintiffs, Defendant DENIES Plaintiffs' assertion of irreparable harm caused by Defendant, Defendant DENIES that she should be enjoined and prohibited from engaging in acts not committed by Defendant, Defendant DENIES that the Court should enter an order directing Defendant destroy all copies of sound recordings made by Defendant. *See*, Complaint at ¶ 18.

19. The Court should deny any and all relief sought by Plaintiffs against Defendant.

Affirmative Defenses

Defendant asserts the following additional defenses to Plaintiffs' Complaint for Copyright Infringement. Defendant's Exhibits 2-4.

1. Defendant is not a proper party Defendant. Defendant's Exhibit 2-4. Plaintiffs sued the wrong person. Defendant's Exhibits 2-4.
2. Plaintiffs' Complaint fails to state a claim against Defendant on which relief could be granted.
3. Plaintiffs have failed to identify a Mac address for a computer owned by the Defendant.
4. Plaintiffs' Complaint fails to show:
 - a. Defendant is the user identified as "anonymous@KaZaA" in Plaintiffs' Exhibit 2. *See* Plaintiffs' Exhibit 1 (Plaintiffs' summary of Exhibit 2 naming Defendant).
 - b. Dates and times for any copyright infringement allegedly committed by Defendant in any of the screen shots filed as Plaintiffs' Exhibit 2.
 - c. Any IP address or addresses. Plaintiffs' Exhibit 2.
 - d. Any Mac address issued by a manufacturer of any computer owned by Defendant. Plaintiffs' Exhibit 2; Plaintiffs' Exhibit 1.
 - e. Any causal connection between an IP address and an actual Mac address for a computer owned by Defendant. Plaintiffs' Complaint with Exhibits 1 and 2.
 - f. In support of her defenses and for judicial notice to be taken by the Court of causation problems arising from the flawed technology utilized by Plaintiffs to sue

Defendant, Defendant submits an *amici* brief filed on August 10, 2006 in *Capitol Records, et al. v. Debbie Foster*, Case No. 04-1569-W, U.S. D. C. W.D. OK. as Defendant's Exhibit 4 to her answer. Fed. R. Evid. 201 (Judicial Notice of Adjudicative Facts).

5. The alleged claims made by each Plaintiff against Defendant may be barred by the statute of limitations, 17 U.S.C. § 507 (b) which provides that no civil action may be maintained under the federal Copyright Act unless the same is commenced within three years after the claim accrued.
6. The alleged claims made by each Plaintiff against Defendant are neither well grounded in fact nor warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law. Fed. R. Civ. 11. Plaintiffs' Complaint with Plaintiffs' Exhibits 1-2. *See*, Defendant's Exhibits 1, 2,3,4.
7. Plaintiffs have failed to mitigate their damages, if any, as required by law.
8. Plaintiffs' claims against Defendant are barred by acquiescence.
9. Plaintiffs' claims against Defendant are barred by estoppel.
10. Plaintiffs' claims against Defendant are barred by estoppel by acquiescence.
11. Plaintiffs' claims against Defendant are barred by laches.
12. To the extent that Plaintiffs' claims accuse Defendant of criminal acts, Defendant specifically denies that she has committed any criminal acts and in addition asserts her fifth amendment rights under the United States Constitution.
13. Defendant reserves the right to assert additional affirmative defenses (or cross-claims or

counter claims) based upon discovery.

WHEREFORE, Defendant prays that this Court find judgment for Defendant, DENY Plaintiffs' request for injunctive relief, DENY Plaintiffs' request for statutory damages, DENY Plaintiffs request for costs, DENY Plaintiffs' request for attorney fees, and DENY Plaintiff's request for any relief whatsoever.

Defendant prays that this Court hold that Defendant is the prevailing party, award her relief under Section 505 of the Copyright Act and dismiss Defendant with prejudice. 17 U.S.C. § 505 (2006). *Newborn v. Yahoo! Inc. and Google Inc.*, 391 F. Supp.2d 181 (D.D.C. 2005).

COUNTERCLAIM

The Parties

1. Defendant incorporates herein by this reference thereto each and every allegation contained in each of the above paragraphs.
2. Tallie Stubbs ("Tallie") is an individual residing within this District.
3. On information and belief, Capitol Records, Inc. is a corporation duly organized and existing under the laws of the state of Delaware, with its principal place of business in the State of New York.
4. On information and belief, UMG Recordings, Inc. is a corporation duly organized and existing under the laws of the State of Delaware with its principal place of business in the State of California.
5. On information and belief, Warner Bros. Records Inc., is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the

State of California.

6. On information and belief, BMG Music is a general partnership duly organized and existing under the laws of the State of New York, with its principal place of business in the State of New York.
7. On information and belief, Arista Records LLC is a limited liability company duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.
8. On information and belief, Sony BMG Music Entertainment is a Delaware general partnership, with its principal place of business in the State of New York.

Jurisdiction And Venue

9. This action arises under the Copyright Laws of the United States for a declaratory judgment of non-infringement pursuant to the Declaratory Judgement Act, 28 U.S.C. §§ 2201 and 2202, to the extent that an actual controversy exists between Defendant and Plaintiffs.
10. Jurisdiction in this Court is proper under 28 U.S.C. §1338 by virtue of this action being a question of Federal Law arising under the Copyright Laws of the United States, United States Code Title 17. 17 U.S.C. § 505 (2006).
11. Venue is proper in this District under 28 U.S.C. §1391(b)(2), as a substantial part of the events or omissions giving rise to the claims occurred in this District.

Facts

12. Tallie Stubbs (“Tallie”) is an individual who resides in Oklahoma County, Oklahoma. Tallie is 45 years old. Defendant’s Exhibit 3.

13. Tallie is an account holder with Cox Communications for cable, telephone, and internet services. Tallie became an account holder with Cox Communications in March 2005.
14. On information and belief, Plaintiffs' only evidence to support their claims against Tallie is her status as an account holder with Cox Communications.
15. Plaintiffs' alleged claims are neither well grounded in fact nor warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, Rule 11, Federal Rule Civil Procedure. Defendant's Exhibits 1-4.
16. Tallie seeks relief pursuant to 28 U.S.C. § 1927 (2006) from Plaintiffs (their agents and their counsel) because they have multiplied the proceedings unreasonably and vexatiously. Tallie is entitled to recover costs, expenses, and attorneys' fees reasonably incurred because of such conduct. Defendant's Exhibits 1-4.
17. Tallie denies that she had any knowledge of KaZaa. Defendant's Exhibits 2-4.
18. Tallie is and continues to be without knowledge of how to download music off of the internet. Defendant's Exhibits 2-4.
19. Despite being placed on notice that Tallie did not download any songs, the Plaintiffs filed this action against Tallie. Plaintiffs impugn Tallie's character and subject her to demands which are closely akin to extortion. Defendant's Exhibits 2-4.
20. Plaintiffs have a pattern and practice of the action complained of by Tallie in her counter-claim. *See, e.g., Capitol Records v. Debbie Foster*, Case No. 04-1569-W, U.S. D. C. W.D. OK. *See, e.g., Priority Records LLC et al., v. Ron Pierce*, Case No. Civ-04-1448-R, U.S. D.C. W.D. OK, and, *Sony BMG Music Entertainment, et al*, Case No. Civ-04-1445-C, U.S.

D. C. W.D. OK. Defendant's Exhibits 1-4.

Count 1. Declaratory Judgment For Non-Infringement

Defendant repeats and realleges each and every allegation contained in previous paragraphs of this answer, defenses and COUNTERCLAIM as if full set forth herein and further alleges as follows:

21. Because Tallie did nothing improper regarding Plaintiffs' copyrighted materials, Tallie is entitled to a declaratory judgment of non-infringement.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for relief as follows:

- A. Declaratory judgment that Tallie Stubbs has not infringed upon any of Plaintiffs' copyrighted materials;
- B. Judgment against Plaintiffs (their agents and attorneys) for Defendant's attorneys' fees and costs against the Plaintiffs. 17 U.S.C. § 505 (2006) (Copyright Act). 28 U.S.C. § 1927 (2006).
- C. Such other and further relief as is warranted and justified by the pleadings and the evidence.

Dated: August 23rd, 2006.

Respectfully submitted,
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CERTIFICATE OF SERVICE

This is to certify that on this 23rd day of August, 2006 a true and correct copy of the above and foregoing was transmitted to the following Counsel of Record via the Court's Notice of Electronic Filing System:

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