

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

METALLICA, a California general  
partnership; E/M VENTURES, a New York  
joint venture; and CREEPING DEATH  
MUSIC, a California general partnership,

No. C 00-4068 MHP  
MDL No. C 00-1369 MHP

Plaintiffs,

v.

NAPSTER, INC.,

Defendant.

\_\_\_\_\_ /

**ORDER**

ANDRE YOUNG, p/k/a Dr. Dre, a California  
resident; and AFTERMATH  
ENTERTAINMENT, a California joint  
venture

No. C 00-3997 MHP  
MHP No. C 00-1369 MHP

Plaintiffs,

v.

NAPSTER, INC.,

Defendant.

\_\_\_\_\_ /

In accordance with the Opinion of the United States Court of Appeals for the Ninth Circuit filed on February 12, 2001, it is this 5th day of March, 2001, HEREBY ORDERED that, during the pendency of these actions and until final judgment is entered, defendant Napster, Inc. and its agents, servants, employees, representatives, subsidiaries, assigns and those acting in concert with them or at their direction (collectively, "Napster") are enjoined as follows:

1. Napster is preliminarily enjoined, pursuant to the procedures set forth below, from engaging in, or facilitating others in, copying, downloading, uploading, transmitting, or distributing copyrighted musical compositions or sound recordings in accordance with this Order.

1           2. Plaintiffs shall provide notice to Napster of their copyrighted musical compositions and  
2 sound recordings by providing for each work:

3                   (A) the title of the work;

4                   (B) the name of the composer or the featured recording artist performing the work;

5                   (C) the name(s) of one or more files<sup>1</sup> available on the Napster system containing such  
6 work; and

7                   (D) a certification that plaintiffs own or control the rights allegedly infringed.

8 Plaintiffs shall make a substantial effort to identify the infringing files as well as the names of the  
9 artist and title of the copyrighted composition or recording.

10           3. All parties shall use reasonable measures in identifying variations of the filename(s), or of  
11 the spelling of the titles, composers' or artists' names, of the works identified by plaintiffs. If it is  
12 reasonable to believe that a file available on the Napster system is a variation of a particular work or  
13 file identified by plaintiffs, all parties have an obligation to ascertain the actual identity (title and  
14 artist name) of the work and to take appropriate action within the context of this Order.

15           4. The Ninth Circuit held that the burden of ensuring that no copying, downloading,  
16 uploading, transmitting or distributing of plaintiffs' copyrighted works occurs on the system is  
17 shared between the parties. The court "place[d] the burden on plaintiffs to provide notice to  
18 Napster" and imposed on Napster the burden "of policing the system within the limits of the  
19 system." See A&M et al. v. Napster, No. 00-164001, slip op. at 2206 (9th Cir. Feb. 12, 2001). It  
20 appears to the court on the basis of the factual representations by the parties at the March 2, 2001  
21 hearing that it would be difficult for plaintiffs to identify all infringing files on the Napster system  
22 given the transitory nature of its operation.<sup>2</sup> This difficulty, however, does not relieve Napster of its  
23 duty. The court anticipates that it may be easier for Napster to search the files available on its system  
24 at any particular time against lists of copyrighted works provided by plaintiffs. The court deems that  
25 the results of such a search provide Napster with "reasonable knowledge of specific infringing files"  
26 as required by the Ninth Circuit. See id. at 2205.

27           5. Once Napster "receives reasonable knowledge" from any source identified in preceding  
28

1 Paragraphs 2, 3 or 4 of specific infringing files containing copyrighted sound recordings or musical  
2 compositions, Napster shall, within three (3) business days, prevent such files from being included in  
3 the Napster index (thereby preventing access to the files corresponding to such names through the  
4 Napster system).

5         6. Within three (3) business days of receipt of reasonable notice of infringing files, Napster  
6 shall affirmatively search the names of all files being made available by all users at the time those  
7 users log on (i.e., prior to the names of files being included in the Napster index) and prevent the  
8 downloading, uploading, transmitting or distributing of the noticed copyrighted musical  
9 compositions or sound recordings.

10         7. Plaintiffs may provide to Napster in advance of release the artist name, title of the  
11 recording, and release date of sound recordings for which, based on a review of that artist's previous  
12 work, including but not limited to popularity and frequency of appearance on the Napster system,  
13 there is a substantial likelihood of infringement on the Napster system. Napster shall beginning with  
14 the first infringing file block access to or through its system to the identified composition or  
15 recording. As Napster presently has the capability (even without enhancing its technology) to store  
16 information about and subsequently screen for a particular work, the burden is far less and the  
17 equities are more fair to require Napster to block the transmission of these works in advance of their  
18 release. To order otherwise would allow Napster users a free ride for the length of time it would take  
19 plaintiffs to identify a specific infringing file and Napster to screen the work.

20         8. Within five (5) business days of the date of this Order, and within five (5) business days  
21 of service of notice by plaintiffs as provided in Paragraphs 2 or 6 of this Order, Napster shall serve  
22 upon plaintiffs and file with the court a Report of Compliance identifying the steps it has taken to  
23 comply with this Order.

24         9. If in implementing this preliminary injunction the parties dispute the ability of Napster or  
25 of the Napster system to carry out the duties established under this Order, the parties may set the  
26 matter for hearing before the court. However, such disputes will not operate to stay this injunction  
27 or afford relief from it. The court may appoint an independent third party to serve as a technical  
28

1 expert to assist the court in connection with the dispute.

2 10. Notification by plaintiffs pursuant to this Order shall be provided to Napster in the  
3 format such records are kept in the ordinary course of business.

4 11. This order shall become effective upon the posting of a bond by plaintiffs jointly and  
5 severally in the amount of Fifty Thousand Dollars (\$50,000.00).

6

7

8 Dated: March \_\_\_\_, 2001

9

---

MARILYN HALL PATEL  
Chief Judge  
United States District Court  
Northern District of California

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ENDNOTES

1. The Ninth Circuit directed that plaintiffs provide to Napster the names of “specific infringing files” containing copyrighted material. See A&M Records, et al. v. Napster, Inc., No. 00-164001, slip op. at 2205 (9th Cir. Feb. 12, 2001). This language appears to refer to the titles of specific files containing copyrighted material that appear on the Napster system at any given time. The court observes that each file is available only as long as the user offering that file is logged on to the Napster system. Once the user logs off the system, the specific infringing file is no longer available on Napster. Another user may log on and offer a file containing the same copyrighted material, but that user may have assigned a different name for her file.

2. Given the limited time an infringing file may appear on the system and the individual user’s ability to name her files, relief dependent on plaintiffs’ identifying each “specific infringing file” would be illusory.