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17 Attorneys for Plaintiffs
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19 *Leiber Music, Mike Stoller, individually and*
20 *d/b/a Mike Stoller Music, Peer International*
21 *Corp., Peer Music, Ltd., Songs of Peer, Ltd.,*
22 *Criterion Music Corp., Famous Music*
23 *Corp., Bruin Music Company, Ensign Music*
24 *Corp., and Let's Talk Shop, Inc. d/b/a Beau-*
25 *Di-O-Do Music, on behalf of themselves and*
26 *all others similarly situated*

27 UNITED STATES DISTRICT COURT
28 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

19 JERRY LEIBER, *et al.*,) Case No. CV 01-09923-SVW (FMOx)
20 Plaintiffs,) [Consolidated with Case No. CV 01-
21 vs.) 08541-SVW (PJWx)]
22 CONSUMER EMPOWERMENT BV) **NOTICE OF PENDENCY OF**
23 a/k/a FASTTRACK, *et al.*,) **CLASS ACTION AND PROPOSED**
24 Defendants.) **SETTLEMENT**
25 AND RELATED COUNTERCLAIMS)
26

1 ***PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT***
2 ***INFORMATION THAT MAY AFFECT YOU***

3
4 **TO: ALL PERSONS WHO ARE MUSIC PUBLISHER-PRINCIPALS OF**
5 **THE HARRY FOX AGENCY, INC. THAT OWN OR CONTROL AT**
6 **LEAST ONE COPYRIGHTED MUSICAL WORK THAT HAS BEEN**
7 **MADE AVAILABLE THROUGH THE SERVICES OF DEFENDANT**
8 **GROKSTER, LTD.**

9 Pursuant to Rule 23 of the Federal Rules of Civil Procedure, you are hereby
10 notified:

11 1. A class action lawsuit, Jerry Leiber, et al. v. Consumer
12 Empowerment BV a/k/a FastTrack, et al., Case No. CV 01-09923-SVW (FMOx), is
13 pending in the United States District Court for the Central District of California (the
14 “Leiber action”). It was brought on behalf of the class consisting of all persons who
15 are music publisher-principals of The Harry Fox Agency, Inc. (“HFA”) that own or
16 control at least one copyrighted musical work that has been made available, without
17 their permission, through the online services of defendants Grokster, Ltd.
18 (“Grokster”), Kazaa BV f/k/a/ Consumer Empowerment BV (“Kazaa”), Sharman
19 Networks Limited, LEF Interactive Pty, Ltd. (“Sharman”), MusicCity.com, Inc. (now
20 know as StreamCast Networks, Inc.), and MusicCity Networks, Inc. (“StreamCast”)
21 (collectively, “Defendants”). Plaintiffs seek injunctive relief and damages for
22 copyright infringement.

23 2. Various record companies and motion picture studios also filed
24 suit against Defendants in the action Metro-Goldwyn-Mayer Studios, Inc., et al. v.
25 Grokster, Ltd., et al., Case No. CV 01-08541 SVW (FMOx) (the “MGM action”).
26 The Leiber action and the MGM action were consolidated for discovery and pre-trial
27 purposes. The plaintiffs in the Leiber action and the plaintiffs in the MGM action are
28 referred to collectively herein as “Plaintiffs.”

1 3. On May 14, 2002, the Court granted the Leiber plaintiffs’ motion
2 for class certification. The class was defined as “all music publisher-principals of
3 HFA [The Harry Fox Agency, Inc.] that own and/or control at least one copyrighted
4 musical composition that has been made available without their permission through”
5 the services of the defendants (the “Certified Class”).

6 4. Jerry Leiber, individually and d/b/a Jerry Leiber Music, Mike
7 Stoller, individually and d/b/a Mike Stoller Music, Peer International Corporation,
8 PeerMusic Ltd., Songs of Peer, Ltd., Criterion Music Corporation, Famous Music
9 Corporation, Bruin Music Company, Ensign Music Corporation, and Let’s Talk
10 Shop, Inc. d/b/a Beau-Di-O-Do Music were certified as representatives of the
11 Certified Class (collectively, the “Class Representatives”), and their counsel of
12 record, Paul Weiss, Rifkind, Wharton & Garrison LLP (“PWRW&G”) and Davis
13 Wright Tremaine LLP (“DWT”), were certified as counsel for the Certified Class
14 (collectively, “Class Counsel”). The addresses of PWRW&G and DWT are:

15 Paul, Weiss, Rifkind, Wharton & Garrison LLP

16 Carey R. Ramos, Esq.

17 1285 Avenue of the Americas

18 New York, New York 10019-6064

19 Telephone: (212) 373-3000

20 Facsimile: (212) 757-3900

21
22 Davis Wright Tremaine LLP

23 Kelli L. Sager, Esq.

24 865 S. Figueroa Street, Suite 2400

25 Los Angeles, California 90017-2566

26 Telephone: (213) 633-6800

27 Facsimile: (213) 633-6899

1 5. You have received this Notice because the records of HFA
2 indicate that you are currently a music publisher-principal. The purpose of this
3 Notice is to inform you of the pendency of the lawsuit, provide you with the
4 opportunity to opt-out of the Certified Class or object to the proposed terms of a
5 settlement that has been reached with defendant Grokster, Swaptor, Ltd., Daniel B.
6 Rung, Matthew A. Rung, and Michael Rung (collectively, the “Grokster Parties”).
7 The Rungs are the owners/operators of Grokster. Swaptor, Ltd. is a company
8 affiliated with Grokster that also is owned/operated by the Rungs.

9
10 **SUMMARY OF THE ACTION AND PROCEEDINGS TO DATE**

11 6. The Complaint in the Leiber action alleges, among other things,
12 that Grokster has violated the Copyright Act of the United States by inducing,
13 encouraging, materially contributing to, and profiting from the unauthorized
14 reproduction and distribution of copyrighted musical compositions owned and/or
15 controlled by the Class Representatives and the Certified Class. Grokster denied the
16 allegations of the complaint and raised various affirmative defenses.

17 7. The Grokster Parties have distributed software under the names
18 “Grokster” and “Swaptor” (the “Grokster Software”), operated computer servers, and
19 engaged in other activities, including operating the “Grokster.com” and the
20 “Swaptor.com” websites, to allow users of the Grokster Software to connect to and
21 use computer networks to reproduce and distribute digital files utilizing technology
22 known as “FastTrack” and/or technology known as “openNap” (the “Grokster
23 System and Software”). The Grokster System and Software, among other things,
24 enables and facilitates the exchange of digital files, including copyrighted musical
25 works owned by the Plaintiffs.

26 8. In 2002, after engaging in extensive discovery, Plaintiffs and
27 Defendants Grokster and StreamCast filed cross-motions for summary judgment.

1 Summary judgment is a legal device requesting the Court to enter judgment for one
2 party as a matter of law based on the existence of facts that are undisputed.

3 9. In their summary judgment motions, Plaintiffs contended that the
4 undisputed facts demonstrated that Grokster and StreamCast were liable for
5 contributory and vicarious copyright infringement. As to contributory infringement,
6 Plaintiffs argued that Grokster had knowledge of massive copyright infringement
7 taking place on the Grokster System and Software and materially contributed to such
8 infringement. As to vicarious infringement, Plaintiffs argued that Grokster derived a
9 financial benefit from the infringement on the Grokster System and Software and had
10 the ability to control such infringement.

11 10. In their motion for summary judgment, Grokster primarily
12 contended that, because the Grokster System and Software is capable of non-
13 infringing uses, the United States Supreme Court's decision in Sony Corp. of
14 America v. Universal Studios, Inc., 464 U.S. 417 (1984) (the "Sony decision")
15 protected them from any liability for contributory or vicarious infringement.

16 11. On April 25, 2003, the District Court issued an order granting
17 Defendants Grokster's and SteamCast's motions for summary judgment and denying
18 Plaintiffs' motions for summary judgment.

19 12. On June 18, 2003, the District Court issued an order directing
20 entry of partial Final Judgment in favor of Grokster and StreamCast and,
21 alternatively, certifying the April 25, 2003 Order for immediate appeal, which also
22 amended the April 25, 2003 Order. Plaintiffs appealed the April 25 Order on May
23 23, 2003, and appealed the April 25 and June 18 Orders on July 10, 2003.

24 13. On August 14, 2004, the United States Court of Appeals for the
25 Ninth Circuit recognized that the Grokster and StreamCast services "enable[] the user
26 to participate in the respective peer-to-peer file-sharing networks"; that "the vast
27 majority of the files are exchanged illegally in violation of the copyright law"; that
28 Grokster and StreamCast know their systems are being used for infringement; and

1 that they profit from, and in direct proportion to, the level of infringement. Despite
2 these undisputed facts, the Ninth Circuit, relying on the Sony decision, rejected
3 liability on both recognized theories of secondary liability – contributory
4 infringement and vicarious liability. It thus affirmed the orders of the District Court.

5 14. On October 8, 2004, Plaintiffs timely petitioned for a writ of
6 certiorari from the Supreme Court of the United States, which the Supreme Court
7 granted on December 10, 2004.

8 15. On June 27, 2005, the Supreme Court, in an unanimous opinion
9 authored by Associate Justice David H. Souter, reversed the Ninth Circuit’s decision
10 and ruled that Grokster and StreamCast can be held responsible for distributing their
11 software if they intended their users to use such software to exchange music and
12 motion pictures illegally. The Supreme Court’s decision sent the case back to the
13 lower courts, with an instruction that the District Court revisit the summary judgment
14 motion that had been filed by Plaintiffs. Specifically, the Supreme Court held that
15 “one who distributes a device with the object of promoting its use to infringe
16 copyright, as shown by clear expression or other affirmative steps taken to foster
17 infringement, is liable for the resulting acts of infringement by third parties.” See
18 Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd., 125 S. Ct. 2764, 2780 (2005).

19 16. Thereafter, counsel for Grokster, Class Counsel, and counsel for
20 the plaintiffs in the MGM action have engaged in extensive negotiations with the
21 Grokster Parties to settle this matter. The terms of the settlement (the “Settlement”)
22 are described below.

23
24 **DO I NEED TO DO ANYTHING TO REMAIN A CLASS MEMBER?**

25 17. If you fit within the description of the Certified Class set forth
26 above, you automatically will remain a member of the Certified Class, unless you
27 take the steps to exclude yourself described below. If you remain a member of the
28

1 Certified Class, then Class Counsel will act as your representatives and counsel for
2 purposes of this Settlement.

3 **HOW CAN I EXCLUDE MYSELF FROM THE CLASS?**

4 18. If you do not want to remain a member of the Certified Class and
5 participate in the Settlement (if approved), then you must sign and send, by first-class
6 mail, an exclusion request to Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285
7 Avenue of the Americas, New York, New York, 10019-6064, Attn: Carey R. Ramos,
8 Esq., postmarked no later than **May 5, 2006** (the “Exclusion Request”). The
9 Exclusion Request must include the following statement: “I am opting out of
10 participation in the Certified Class in Jerry Leiber, et al. v. Consumer Empowerment
11 BV a/k/a FastTrack, et al., Case No. CV 01-09923 SVW (FMOx), and I hereby
12 exclude myself from participation in any Settlement approved in that action.” You
13 may enter an appearance through counsel if you so desire.

14 19. The court will exclude from the class any member who requests
15 exclusion. By electing to be excluded from the Certified Class, (1) you will not
16 receive any money, even if you otherwise would be entitled to some under the
17 Settlement; (2) you will not be bound by any further orders or judgments entered for
18 or against the Certified Class; (3) you will have no right to object to the Settlement or
19 be heard at any hearing scheduled for the Court’s consideration of the Settlement;
20 and (4) you may present any claims you have against the Grokster Parties by filing
21 your own lawsuit at your own expense, or by seeking to intervene in this lawsuit as
22 an individual plaintiff at your own expense.

23 20. If you do not elect to be excluded from the Certified Class,
24 (1) you will receive the benefits of the Settlement (if approved); (2) you will be
25 bound by any further orders or judgment entered for or against the Certified Class;
26 and (3) you will have the right to object to the Settlement or be heard at any hearing
27 scheduled for the Court’s consideration of the Settlement as described below.

1 have against any party that refuses to honor such revocation of authority or
2 cease-and-desist notice;

3 (f) agree to immediately cease to provide any user support with
4 respect to the Grokster System and Software and to immediately cease any
5 advertising on Grokster.com, or through or for the Grokster System and
6 Software; and

7 (g) agree to be permanently enjoined and restrained from publicly
8 releasing, distributing or giving away any software, other technology, domain
9 names, trademarks, brands, or goodwill in any way related to the Grokster
10 System and Software.

11 (These provisions are referred to collectively as the “Injunction.”)

12 23. The Grokster Parties agree that a Class Action Consent Judgment
13 will be entered against them and in favor of Plaintiffs in the Leiber action (the “Class
14 Action Consent Judgment”), and agree to waive any and all rights to appeal or
15 otherwise challenge the Class Action Consent Judgment and Injunction.¹ The
16 Grokster Parties, and each of them jointly and severally, agree to a judgment ordering
17 them to pay \$16,666,667 in damages to the Leiber plaintiffs (the “Damages”). This
18 amount constitutes one-third of the fifty million dollar (\$50,000,000) stipulated
19 consent judgments to which the Grokster Parties agreed as part of the Settlement.
20 The record company and motion picture studio plaintiffs in the MGM action also are
21 parties to the Settlement. As provided in the Settlement, the \$50 million damages
22 sum is divided in equal one-third amounts among each of the three plaintiff groups.
23 The separate consent judgment in the MGM action orders the Grokster Parties to pay
24 \$50 million, which shall be reduced by the amount of the Class Action Consent
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26
27 ¹ Under the Class Action Consent Judgment, the operative Complaint in the
28 Leiber action would be amended to add Swaptor, Ltd., Daniel B. Rung, Matthew A.
Rung, and Michael Rung as defendants.

1 Judgment in the Leiber action, so that the total amount to be paid to all plaintiffs in
2 the two actions is \$50 million.

3 24. Subject to the conditions and contingencies set forth in the
4 Settlement, Plaintiffs and the Grokster Parties agree that the Grokster Parties shall be
5 in full compliance with the Damages portion of the Class Action Consent Judgment,
6 and shall fully satisfy their obligations to pay Damages under the Class Action
7 Consent Judgment, by complying with the terms of the Injunction.

8 25. The Grokster Parties have disclosed, on a confidential basis,
9 certain financial information to Plaintiffs demonstrating their current inability to pay
10 monies to Plaintiffs at this time. The Grokster Parties have represented and
11 warranted that the bank accounts, other financial accounts, accounts receivable and
12 real property assets of Grokster, Ltd. are insignificant as compared to the \$50 million
13 damages sum. They have further warranted that the co-owners of Grokster, Ltd.,
14 Daniel Rung and Michael Rung, have very limited net assets. In addition, Daniel
15 Rung has had criminal and civil judgments entered against him that include
16 substantial monetary, penalty and restitution amounts, and Michael Rung also has
17 had a substantial civil monetary judgment entered against him.

18 26. Based on the financial information provided by the Grokster
19 Parties, it is, thus, highly unlikely that the Grokster Parties ever would be in a
20 position to satisfy the Damages portion of the Class Action Consent Judgment, and,
21 accordingly, members of the Certified Class should not expect any monies to be
22 distributed as a result of this Settlement. Moreover, under the terms of the
23 Settlement, the Grokster Parties expressly acknowledge and agree that Plaintiffs will
24 agree to treat the Grokster Parties as in full compliance with the Damages portion of
25 the Class Action Consent Judgment as an accommodation to the Grokster Parties and
26 is completely contingent upon the Grokster Parties' strict compliance with the
27 Injunction.

1 27. The Grokster Parties further acknowledge and agree that, in the
2 event any court or judicial body ever finds that the Grokster Parties have failed to
3 comply strictly with any provision of the Injunction, the entire balance of the
4 \$16,666,667 Damages shall become immediately due and payable to the Leiber
5 Plaintiffs from the Grokster Parties, and any of them jointly and severally, without
6 further notice to the Grokster Parties, and without opportunity to cure, and Plaintiffs
7 may immediately execute on the whole judgment.

8 28. To the extent the Grokster Parties receive any funds after the
9 effective date of the Settlement, the Grokster Parties agree that they (a) shall hold
10 those funds in trust for Plaintiffs, (b) shall promptly report such transactions and
11 funds to Plaintiffs, and (c) shall pay such funds to the Plaintiffs in the event it is
12 determined that the Grokster Parties have failed to comply strictly with the terms of
13 the Injunction, unless another pre-existing bona fide creditor, unrelated to the
14 Grokster Parties has demonstrable legal priority over Plaintiffs and such funds are in
15 fact paid to such other creditor.

16 29. Under the terms of the Settlement, the Grokster Parties further
17 agree that if they sell, lease, convey, transfer, or assign all or any significant part of
18 the business, equity, operations, or assets of Grokster, Ltd. or the Grokster System
19 and Software, they agree to require, as a condition of any such transaction, that the
20 purchaser, lessee, or other transferee or assignee (a) submit to this Court's
21 jurisdiction and venue, (b) agree to be bound by the terms of the Settlement and
22 Injunction, and (c) apply to the Court for an order adding them as a party to the
23 permanent injunction entered by the Court against the Grokster Parties.

24 30. The Grokster Parties agree to cooperate fully with the Plaintiffs'
25 investigation of the other Defendants to the litigation and other infringing activities.
26 Among other things, the Grokster Parties shall provide voluntary testimony (written
27 and/or oral) under oath, at the Plaintiffs' request. The Grokster Parties acknowledge
28

1 and agree that providing complete, forthright and truthful information shall be
2 deemed a material aspect of the Settlement.

3 31. Upon the Grokster Parties' execution of the Settlement, the
4 Grokster Parties agree that they shall provide Plaintiffs with copies of all documents
5 related to the Grokster System and Software subject only to Plaintiffs' agreement that
6 Michael Page, counsel for the Grokster Parties, shall be permitted to remove purely
7 personal, non-Grokster related materials.

8 32. Upon Plaintiffs' request, for a period of time to be solely
9 determined by Plaintiffs, the Grokster Parties agree that they shall maintain the home
10 page for the Grokster.com website and/or any web page or advertising space,
11 including but not limited to the start page and the search pages, and that on those web
12 pages the Grokster Parties shall display to users of the Grokster System and Software
13 any messages requested by Plaintiffs. Such messages shall be drafted solely by
14 Plaintiffs and the content is solely within the discretion of Plaintiffs, except that
15 Plaintiffs shall not include content that disparages the Rungs personally.

16 33. The Grokster Parties also agree that they shall permanently
17 destroy all unauthorized copies of any Copyrighted Works in their possession,
18 custody or control and shall certify that such destruction has occurred.

19 34. Effective upon the Grokster Parties fully complying with their
20 obligations described above in Paragraph 22, 31 and 33, Plaintiffs agree to fully and
21 forever release the Grokster Parties from any and all claims, known or unknown, in
22 law or equity, relating to or arising out of the Grokster Parties' operation of the
23 Grokster System and Software, including the development or support of any related
24 software.

25 35. The Grokster Parties agree that they shall release the Plaintiffs,
26 their predecessors, successors, parents, subsidiaries, affiliates, assigns, and each of
27 their officers, directors, attorneys, agents, and representatives from any and all claims
28 of any kind, known or unknown, in law or equity, on any theory whatsoever.

1 36. If any monies are paid by the Grokster Parties pursuant to the
2 Settlement, Class Counsel will petition to the Court for an equitable distribution of
3 such funds to the Certified Class less any amount for attorneys' fees found to be fair
4 and reasonable by this Court.

5 **WHAT IS THE SETTLEMENT APPROVAL PROCEDURE?**

6 37. The Court will hold a final approval hearing on **May 22, 2006**, at
7 1:30 p.m., in Courtroom 6 of the Honorable Stephen V. Wilson, United States
8 District Court, Central District of California, 312 N. Spring Street, Los Angeles, CA
9 90012 (the "Approval Hearing") to consider whether the Settlement should be
10 approved as fair, reasonable, and adequate and in the best interests of the Class.
11 Without further notice to the Class, the Court may adjourn or continue this hearing
12 and approve changes to the Settlement or the Proposed Class Action Consent
13 Judgment.

14 38. If you exclude yourself from the Class, you are not entitled to
15 submit objections to or comments on the Settlement, or to be heard at the fairness
16 hearing.

17 39. If you decide to remain a member of the Certified Class and you
18 wish to object to or comment on the Settlement ("Objections"), you must send, by
19 first-class mail, your Objections in writing to the Clerk of the Court, United States
20 District Court, Central District of California, 312 N. Spring Street, Los Angeles, CA
21 90012 with a copy by first-class mail to Paul, Weiss, Rifkind, Wharton & Garrison
22 LLP, 1285 Avenue of the Americas, New York, New York, 10019-6064, Attn: Carey
23 R. Ramos, Esq.; and to Michael Page, Kecker & Van Nest, 710 Sansome Street, San
24 Francisco, CA 94111-1704 (attorneys for the Grokster Parties). Your Objections
25 must be postmarked no later than **May 5, 2006** and must mention Jerry Leiber, et al.
26 v. Consumer Empowerment BV a/k/a FastTrack, et al., Case No. CV 01-09923-SVW
27 (FMOx). If you do not comply with these procedures, you will not be entitled to
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1 contest the approval of the Settlement, or to appeal from any orders or judgments of
2 the Court. Objections that are not timely made shall be forever barred.

3 40. Any member of the Certified Class who timely files and serves
4 Objections pursuant to Paragraph 39 above also may appear at the Approval Hearing,
5 either in person or through counsel hired at the Certified Class member's expense, to
6 object to the fairness, reasonableness, or adequacy of the Settlement. Members of the
7 Certified Class or their counsel intending to appear at the Approval Hearing must
8 send, by first-class mail, to the counsel listed in Paragraph 39 above and to the Court,
9 a notice of intention to appear, setting forth (1) the name and address of the Certified
10 Class member (and, if applicable, the name, address, and telephone number of the
11 Certified Class member's attorney), and (2) the objection, including any papers in
12 support thereof ("Intention to Appear"). Your Intention to Appear must be
13 postmarked no later than **May 12, 2006**. If you do not comply with these procedures,
14 you will not be entitled to be heard at the fairness hearing.

15 41. If the Court approves the Settlement, the approval will bind all
16 members of the Certified Class, except those who exclude themselves pursuant to the
17 procedure in Paragraph 18 above.

18 **WHERE DO I GET ADDITIONAL INFORMATION?**

19 42. **DO NOT CONTACT THE COURT OR THE COURT CLERK**
20 **WITH QUESTIONS REGARDING THIS NOTICE.** Any inquiry you or your
21 counsel may wish to make concerning this notice should be addressed in writing to
22 Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New
23 York, New York, 10019-6064, Attn: Carey R. Ramos, Esq. All such
24 communications must state in bold face type on the outside of the envelope or other
25 mailer that the communication "RELATES TO GROKSTER CLASS ACTION
26 LITIGATION."

27 43. The foregoing is only a summary of the lawsuit and the proposed
28 Settlement. For more detailed information, you may review the pleadings, records,

1 and other papers on file in the lawsuit, which may be inspected during regular
2 business hours at the Clerk of the Court, United States District Court, Central District
3 of California, 312 N. Spring Street, Los Angeles, CA 90012. Copies of the
4 Complaint, the Settlement Agreement, and the papers filed in support of approval of
5 the proposed Settlement are available upon written request to Class Counsel at the
6 address stated above.

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