

(filed pursuant to the Order of the Honourable
Mr. Justice Curtis pronounced on March 13, 2009)

No. 086309
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

ISOHUNT WEB TECHNOLOGIES, INC.,

Plaintiff

And

EMI GROUP CANADA INC., doing business as, EMI MUSIC CANADA and said EMI
MUSIC CANADA, UNIVERSAL MUSIC CANADA INC/MUSIQUE UNIVERSAL
CANADA INC., SONY BMG MUSIC (CANADA) INC., WARNER MUSIC CANADA
CO. and CANADIAN RECORDING INDUSTRY ASSOCIATION,

Defendants

STATEMENT OF CLAIM

The Parties

1. The Plaintiff, Isohunt Web Technologies Inc. (“isoHunt”) is a company incorporated under the laws of British Columbia with a registered office located at <redacted>.
2. The Defendant EMI Music Canada, is a division of EMI Group Canada Inc. (“EMI”) which is a corporation incorporated under the laws of Ontario, with a registered office at <redacted>, and being extra-provincially registered in British Columbia with an attorney’s address being c/o Mary Ruhl and Robert Swift, <redacted>.
3. The Defendant Universal Music Canada Inc. (“Universal”) is a corporation incorporated under the laws of Ontario, with a principal place of business at <redacted> and being extra-provincially registered with an attorney’s address being c/o Blakes Vancouver, Services Inc. at <redacted>.
4. The Defendant Sony BMG Music (Canada) Inc. (“Sony”) is a corporation incorporated under the laws of Ontario, with a principal place of business at <redacted> and

being extra-provincially registered with an attorney's address being c/o Ronald Lou-Poy, Crease Harman & Company at <redacted>.

5. The Defendant Warner Music Canada Co. ("Warner") is a corporation incorporated under the laws of Ontario, with a principal place of business at <redacted> and being extra-provincially registered with an attorney's address being c/o Naomi Youngson at <redacted>.
6. The Defendant Canadian Recording Industry Association ("CRIA") is a non-profit society having its principal place of business at <redacted>. The Defendant CRIA is an association of music companies operating in Canada whose members own or hold Canadian copyright rights in the vast majority of all sound recordings manufactured, distributed and sold in Canada.
7. The Defendants, EMI, Universal, Sony and Warner are all members of the Defendant CRIA.

The isoHunt Website.

8. The Plaintiff isoHunt operates a website on the World Wide Web ("Web" or "Internet") called www.isohunt.com (the "isoHunt Website"). The isoHunt Website offers one primary service:
 - a. a search engine or information location tool (the "isoHunt Search Engine") for visitors to the isoHunt Website to use;

and two minor services

 - b. a forum for visitors to the isoHunt Website to interact and to hold discussions; and
 - c. facility for visitors to upload dot-torrent files.
9. The isoHunt Search Engine is an Internet-based location tool that allows a visitor/user to locate metadata for certain content. This content is in the form of a file called in this Statement of Claim a "BT Content File" that is exchanged over the Internet pursuant to a technology protocol called BitTorrent (sometimes abbreviated in this Statement of Claim as "BT").

BT Content Files

10. A BT Content File is any sort of file that has content of interest to users (for examples, photographic, videographic, audiographic or text files). In the end, a user of the BitTorrent protocol seeks to obtain or distribute or exchange a copy of

a given BT Content File. BT Content Files are not, as a general rule, created by the Plaintiff isoHunt.

Dot-torrent files

11. Users of the BitTorrent protocol create and/or use a “dot-torrent” file. A dot-torrent file is a small file that has metadata about a given BT Content File (or several BT Content Files). A dot-torrent file is created by an individual who has a complete copy of a BT Content File and wants to share and distribute that BT Content File by the BitTorrent protocol technology. This individual is known as the (initial) “Seeder”. A dot-torrent file in relation to a given BT Content File has the following metadata:
 - a. the name of the BT Content File conceived of and assigned by the initial Seeder;
 - b. the hash (or a practically unique identifier) of the BT Content File that the particular dot-torrent file is associated with;
 - c. a list of URLs (or equivalently the IP addresses or locations on the Internet) of one or more Trackers as determined by the initial Seeder.
12. The name of the BT Content File is conceived of and assigned by the initial Seeder. The names of dot-torrent files always end with the suffix “.torrent”.

Trackers

13. A Tracker is a software program on a computer that introduces “Peers” to each other thereby creating a group known as a “Swarm” in respect of a particular BT Content File of interest. A Peer is a user with a computer having BT Client Software installed and activated (“BT Client Software” is described in paragraphs 21 to 27 of this Statement of Claim.). A Swarm is comprised of Seeders (being the initial Seeder having a complete copy of the BT Content File and those Peers who have subsequently a complete copy of the same BT Content File) and of “Leechers” (those Peers who have joined the Swarm and who desire but still do not have a complete copy of the BT Content File).
14. Through the Swarm, Peers can upload or download fragments of the particular BT Content File with each other so that Peers can eventually obtain a complete copy of the BT Content File. The Tracker for a given Swarm in progress keeps track of the Seeders and Leechers.
15. The isoHunt Website does not host any Trackers on it. Trackers (and distributed equivalents) are freely provided by third parties.

How the isoHunt Search Engine is used by a user

16. It is common for a user to find a BT Content File by using a BitTorrent-specific search engine (i.e. a location tool that searches and indexes only dot-torrent files). Outlined in the ensuing paragraphs of this Statement of Claim is the process followed when the isoHunt Search Engine is used by such a user.
17. The user will go on his computer to the isoHunt Website (“www.isohunt.com”). The user will enter into the isoHunt Search Engine text that the user thinks will describe the subject matter desired.
18. The isoHunt Search Engine then searches in its database and “returns” “pointers” or “links” to all, if any, dot-torrent files whose names of associated BT Content Files contain the text that the user has entered.
19. If one or more such links are returned, the user may select to download the associated dot-torrent file by clicking on a link that “points to” (or downloads) the dot-torrent file to the user’s computer.
20. At this point, the participation of the isoHunt Search Engine and of the isoHunt Website is at an end.

The process following the download of the dot-torrent file onto the user’s computer independently of the Plaintiff isoHunt and the isoHunt Website

21. After a user has downloaded a dot-torrent file from the isoHunt Website, the next steps depend on whether the user has BT Client Software installed on his or her computer and on the settings of that BT Client Software.
22. BT Client Software is software that is freely available from third parties and installed on a user’s computer. The BT Client Software, once activated for that computer and once that computer is connected to the Internet, allows that computer to become a Peer for the purposes of sharing a BT Content File through a Swarm as described in paragraphs 13 and 14 of this Statement of Claim without any user action beyond the user’s activation of the BT Client Software and the user’s downloading of the dot-torrent file that points to the BT Content File of interest.
23. If the user has activated BT Client Software installed on his or her computer, then the user’s BT Client Software may automatically “load” the dot-torrent file and obtain the metadata contained in the dot-torrent file. In order to do this, the user’s BT Client Software must have its settings set by the user to allow for automatic

loading of downloaded dot-torrent files. If the user's BT Client Software is neither activated nor been previously set by the user to automatically load the downloaded dot-torrent file, nothing more happens until the user chooses to do something with the downloaded dot-torrent file.

24. Assuming that the user's BT Client Software loads the dot-torrent file, then it obtains the dot-torrent file's metadata that is specific to that particular BitTorrent distribution of the given BT Content File as outlined by paragraph 11 of this Statement of Claim. The user's BT Client Software uses the URLs listed in the dot-torrent file to make contact with the listed Trackers.
25. If the BT Client Software is activated by the user to act on the dot-torrent file, the BT Client Software sends an inquiry to a Tracker that is on the list of Trackers in the dot-torrent file. The inquiry includes the hash that is unique to the BT Content File desired and a request to be introduced to a Swarm that is then currently exchanging fragments of that BT Content File. That Tracker may or may not be handling such a Swarm identified by the hash. If not, the user's BT Client Software sends an inquiry to another Tracker on the list and continues down the list of Trackers until one is successfully contacted.
26. Once the BT Client Software makes contact with a Tracker handling a Swarm identified by the hash of the BT Content File, the Tracker maintains a list of the Internet locations of Peers participating in that Swarm. In response to the initial inquiry from the BT Client Software to the Tracker with respect to a specific hash, the Tracker responds by sending to the BT Client Software a list of the Internet locations of other Peers in the Swarm who are known from their own previous inquiries. In addition, the Tracker adds that user's Internet location to the list, to be sent in response to subsequent inquiries from other Peers.
27. During the download process, the user's BT Client Software periodically sends inquiries to Trackers and updates the user's list of Internet locations of other Peers involved in the BT Content File exchange. During acquisition of a BT Content File, Peers and Trackers drop out of the Swarm and new ones join.
28. Although a user (at first a Leecher) may have, initially, wanted a copy of the BT Content File, whether he or she receives it may or may not happen, depending on a number of factors, all of which are operative independently of the isoHunt Search Engine or isoHunt Website. Once a download is completed, the user (up to that point in the process, a Leecher) automatically becomes a Seeder.
29. Content is obtained only from other Peers in the Swarm and is processed through the user's BT Client Software. No content (not even a fragment of a BT Content File) is obtained from or passes through the isoHunt Website (with the exception

of those requested expressly by their copyright owners that isoHunt assist in their distribution).

How the isoHunt Search Engine locates particular dot-torrent files

30. The isoHunt Search Engine indexes over 500 BitTorrent index sites on the Internet that are run by different operators who support each other through caching of dot-torrent files.
31. Users of the isoHunt Website can also upload dot-torrent files thereto and the isoHunt Search Engine will include in its own index any user-uploaded dot-torrent files for others to search. The number of dot-torrent files uploaded on isoHunt's website www.isohunt.com is negligible compared to those found by indexing those over 500 BitTorrent index sites.
32. Trackers and Peers all exist in collectives and all functions are dispersed. There is no central position for any participant. There is no power of control for anyone to exercise except for the user. There are over 7000 Trackers on the Internet on the Internet run by a plurality of independent operators.
33. The isoHunt Search Engine is general in that it indexes the entirety of the publicly accessible Internet for dot-torrent files and caches them in its database. It is also general in the sense that it is content-agnostic and accordingly, ends up indexing, files of all types and categories. The isoHunt Search Engine is a general aggregator, indexing other BitTorrent index sites to collect any and all dot-torrent files and make them readily accessible to any visitor to search.
34. The isoHunt Search Engine is not a typical BitTorrent Search Engine because it indexes other BitTorrent index sites. In other words, it is an indexer of other indexers, and can be considered a "super-indexer".
35. The isoHunt Search Engine uses automated processes (sometimes called "bots", "spiders" or "crawlers"). The isoHunt Search Engine's "spiders" "crawl the Web", as it were, to index other BitTorrent index sites and, in particular, to index their dot-torrent files.
36. The goal of isoHunt Search Engine is to construct a general and broad index of dot-torrent files on the Internet. There are now over 500 public BitTorrent index sites that are indexed by isoHunt Search Engine. Operators of other sites are invited to suggest their sites to be added to isoHunt's list of sites to index.
37. The isoHunt Search Engine does not organize files in a manual or deliberate way to foster copyright infringement. Categories found on the isoHunt Website are generalizations such as "Video", "Audio", "Applications", "Books" and the like, and as such, are based on the technical format of the BT Content File referred to

in the dot-torrent file that is indexed. In particular, the Plaintiff isoHunt's automated process categorizes files according to their technical extensions, e.g., ".wmv" stands for "Windows Media Video" and means that the file will be automatically classified as "Video"; and ".mp3" means that the file will be classified as "Audio."

Maintenance and Human Alterations to the isoHunt Website

38. The isoHunt Website runs automatically 24 hours per day, day after day (indexing, performing automated self-maintenance, being open for users to visit and use the isoHunt Search Engine).
39. Although the vast bulk of the isoHunt Search Engine processes runs without human knowledge or intervention, the Plaintiff isoHunt performs some intervention measures beyond basic system maintenance. All such interventions are responsive to a human or other serious stimulus from outside the isoHunt Website.
40. The most significant human intervention undertaken by the Plaintiff isoHunt relates to copyright issues. The Plaintiff isoHunt seeks to comply with the copyright law of the United States of America. In particular, the United States Digital Millennium Copyright Act ("DMCA") provides a "notice and take-down" policy and process. When requested, the Plaintiff isoHunt removes the requested files (specifically, dot-torrent files that have indirect links or pointers to BT Content Files residing on computers somewhere that are alleged to infringe copyright of the requester). Provided sufficient detail is provided by the requester, the Plaintiff isoHunt strives to meet the request within 1 to 7 days of receipt of the request. Most of the time, the Plaintiff isoHunt responds within the same day.
41. The same "notice and take-down" policy is applied in relation to dot-torrent files that are alleged to infringe Canadian copyrights. Again, provided sufficient detail is provided by the requester, the Plaintiff isoHunt strives to meet the request within 1 to 7 days of the receipt of the request. Most of the time, the Plaintiff isoHunt responds within the same day.
42. In the past, the Defendant Canadian Recording Industry Association has asked the Plaintiff isoHunt to "take down" certain links on the isoHunt Website that it alleged were related to music files that one of its members had rights to and were unauthorized to be available on the Internet. (In this Statement of Claim, the term "CRIA Files" will mean BT Content Files which are audio files whose contents the members of the Canadian Recording Industry Association have alleged ownership of (or licensed rights to) the copyrights in Canada.) The Plaintiff isoHunt did take down certain links to such files, according to its copyright "notice and take-down" policy and process.

43. The isoHunt Search Engine does not host any BT Content Files. No BT Content Files are posted on or pass through the isoHunt Website (except on the express request of their copyright owners that such BT Content Files be posted on the isoHunt Website).

isoHunt's Other Websites: www.torrentbox.com and www.podtropolis.com

44. The Plaintiff isoHunt also operates two other websites on the Web called www.torrentbox.com and www.podtropolis.com (the "Other Websites").
45. The Other Websites are operated on a virtually identical basis as the isoHunt Website (www.isohunt.com).
46. Like on www.isohunt.com, there is on both of these Other Websites, a forum for users to discuss matters of common interest. Users of these Other Websites can also upload dot-torrent files (but not BT Content Files) which are then indexed on the website in question. Each of these Other Websites has an internal search engine which users can use to search the website's index of uploaded dot-torrent files. The Other Websites do not, however, index dot-torrent files from other BitTorrent index sites.
47. When the isoHunt Search Engine indexes the over 500 BitTorrent index sites, it includes the Other Websites in its search.
48. The Other Websites host Trackers but only for users outside Canada and the United States of America.
49. The Other Websites use and employ an identical "notice and-take-down" policy and process as used for the isoHunt Website.

Threats from the Defendant Canadian Recording Industry Association and Other Defendants

50. On or about May 23, 2008, in a letter from its legal counsel, the Defendant CRIA on behalf of its members, including the other Defendants EMI, Sony, Universal and Warner, threatened legal proceedings against isoHunt in relation to alleged breaches of the *Copyright Act*, RSC 1985, c. C-42 by the Plaintiff isoHunt by virtue of the Plaintiff isoHunt's operation of the isoHunt Website.
51. In the letter from its legal counsel, the Defendant CRIA advised that it was,

"an association of music companies operating in Canada. CRIA members own or hold Canadian copyright rights in the vast majority of all sound recordings manufactured, distributed and sold in Canada. CRIA's members include, but are not limited to: EMI Music Canada, Sony BMG

Music (Canada) Inc., Universal Music Canada Inc., and Warner Music Canada Co. CRIA is acting on their behalf in giving you this notice.”

52. The notice, amongst other things, accused the isoHunt Website of being a “... tracker and indexing BitTorrent site” and “...for causing, authorizing, and contributing to a staggering amount of illegal music uploading, downloading and file sharing”, and demanded, among other actions, that the isoHunt website be removed from the Internet, failing which it would seek court remedies pursuant to the *Copyright Act*, including legal costs, punitive damages, injunctive relief, and statutory damages of up to \$20,000 for each sound recording infringed.
53. A limited number of specific CRIA Files but not all CRIA Files were identified in the letter.
54. The Plaintiff isoHunt has sought clarification of CRIA’s position in respect of CRIA Files and has offered to take down any dot-torrent files in accordance with the isoHunt Website’s “notice and take-down” policy. The Defendant CRIA and the Defendants EMI, Sony, Universal and Warner have not resiled from their threat.
55. Also, on or about May 23, 2008, in two separate letters from its legal counsel, the Defendant CRIA on behalf of its members, including the other Defendants EMI, Sony, Universal and Warner, threatened legal proceedings against the Plaintiff isoHunt in relation to alleged breaches of the *Copyright Act*, RSC 1985, c. C-42 by virtue of the Plaintiff isoHunt’s operation of the Other Websites, namely, the website www.torrentbox.com and the website www.podtropolis.com .
56. The threats of imminent litigation against the Plaintiff isoHunt cause the Plaintiff isoHunt uncertainty in the conduct of its business and threaten the ability of the Plaintiff isoHunt to conduct what it considers to be its lawful business in an orderly fashion.
57. The Plaintiff isoHunt does not consider that its operation of the isoHunt Website www.isohunt.com violates the CRIA members’ copyrights under the *Copyright Act* for a number of reasons including, without limiting the generality of the foregoing, the following reasons:
 - a. It is the user having activated BT Client Software, and not the Plaintiff isoHunt, who selects which dot-torrent file and the associated BT Content File to obtain;
 - b. The isoHunt Website is an indexer of BitTorrent index sites and does not provide any BT Content Files;

- c. Without sufficient information from the user and a person claiming to be the copyright holder, the Plaintiff isoHunt cannot effectively determine in respect of a given dot-torrent file selected by the user and the associated BT Content File:
 - i. whether the name of the selected BT Content File accurately describes the material contained in the selected BT Content File;
 - ii. whether the selected BT Content File associated with the dot-torrent file in fact contains material that may be protected by copyright;
 - iii. if the material in the selected BT Content File is protected by copyright, which country's copyright laws are applicable;
 - iv. if the material in the selected BT Content File is protected by applicable copyright laws, whether under such applicable copyright laws, the user's copying or distribution of such BT Content File is a permitted or licenced activity; and
 - v. if the material in the selected BT Content File is protected by applicable copyright laws, whether under such applicable copyright laws, the user's copying or distribution of such BT Content File is an exception to infringement.
 - d. The Plaintiff isoHunt expressly provides for and implements a "notice and take-down" policy for a person claiming that a dot-torrent file is related to a BT Content File containing material in respect of which the person holds the copyright.
58. The Plaintiff isoHunt does not consider that its operation of the isoHunt Website violates the *Copyright Act*.
59. The Plaintiff isoHunt does not consider that its operation of the Other Websites www.torrentbox.com and www.podtrolis.com violates the CRIA members' copyrights under the *Copyright Act* for a number of reasons including, without limiting the generality of the foregoing, the following reasons:
- a. It is the user having activated BT Client Software, and not the Plaintiff isoHunt, who selects which dot-torrent file and the associated BT Content File to obtain;
 - b. The Other Websites are indexers of dot-torrent files and do not provide any BT Content Files;

- c. Without sufficient information from the user and a person claiming to be the copyright holder, the Plaintiff isoHunt cannot effectively determine in respect of a given dot-torrent file selected by the user and the associated BT Content File:
 - i. whether the name of the selected BT Content File accurately describes the material contained in the selected BT Content File;
 - ii. whether the selected BT Content File associated with the dot-torrent file in fact contains material that may be protected by copyright;
 - iii. if the material in the selected BT Content File is protected by copyright, which country's copyright laws are applicable;
 - iv. if the material in the selected BT Content File is protected by applicable copyright laws, whether under such applicable copyright laws, the user's copying or distribution of such BT Content File is a permitted or licenced activity; and
 - v. if the material in the selected BT Content File is protected by applicable copyright laws, whether under such applicable copyright laws, the user's copying or distribution of such BT Content File is an exception to infringement.
- d. The Plaintiff isoHunt expressly provides for and implements a "notice and take-down" policy for a person claiming that a dot-torrent file is related to a BT Content File containing material in respect of which the person holds the copyright.

60. The Plaintiff isoHunt does not consider that its operation of the Other Websites violates the *Copyright Act*.

Relief Sought

- 61. The Plaintiff isoHunt seeks the protection of this Honourable Court in the form of declaratory relief to clarify its legal rights in respect of:
 - a. its operation of the isoHunt Website and the isoHunt Search Engine; and
 - b. its operation of the Other Websites.
- 62. Specifically, the Plaintiff isoHunt applies for orders declaring that:

- a. the Plaintiff isoHunt's operation of the isoHunt Website (www.isoHunt.com) does not violate the *Copyright Act*, RSC 1985, c. C-42 insofar as CRIA Files are concerned;
- b. the Plaintiff isoHunt's operation of the isoHunt Search Engine does not violate the *Copyright Act*, RSC 1985, c. C-42 insofar as CRIA Files are concerned;
- c. the Plaintiff isoHunt's operation of the website www.torrentbox.com does not violate the *Copyright Act*, RSC 1985, c. C-42 insofar as CRIA Files are concerned;
- d. the Plaintiff isoHunt's operation of the website www.podtropolis.com does not violate the *Copyright Act*, RSC 1985, c. C-42 insofar as CRIA Files are concerned; and
- e. costs.

Dated November 19, 2009

Plaintiff [*or Plaintiff's solicitor*]

THIS STATEMENT OF CLAIM is filed by Arthur M. Grant of Grant Kovacs Norell, Barristers and Solicitors, whose place of business and address for delivery is #400 – 900 Howe Street, Vancouver, BC V6Z 2M4, Tel: (604) 609-6699 / Fax: (604) 609-6688. File 1725-001