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6 Plaintiff

7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11
12 ANTHONY MARTINO) Case No. 3:25-cv-10538-RFL
13 Plaintiff,) **PLAINTIFF’S FIRST AMENDED**
14 vs.) **COMPLAINT**
15 INTERNET ARCHIVE) Jury Trial Demanded
16 Defendant.)
17)
18)
19)
20)

21 Plaintiff Anthony Martino, appearing *pro se*, for his First Amended Complaint against
22 Defendant Internet Archive, alleges as follows, on personal knowledge as to matters relating to
23 himself and on information and belief as to all other matters. This First Amended Complaint
24 supersedes and replaces the original Complaint in its entirety.

25 **NATURE OF THE ACTION**

26
27 1. Plaintiff brings this civil action for damages under the Copyright Act, 17 U.S.C. § 101 *et*
28 *seq.*, arising from Defendant’s direct copyright infringement of 59 copyrighted works, consisting of:

1 (a) 5 copyrighted sound recordings and the 5 copyrighted musical compositions embodied
2 therein, infringed through Defendant’s “MySpace Dragon Hoard” collection;

3 (b) 1 additional copyrighted musical composition infringed through Defendant’s “MySpace
4 Dragon Hoard” collection;

5 (c) 24 copyrighted musical compositions infringed by Defendant through (i) unauthorized
6 reproduction and ingestion of Plaintiff’s CDs via digital ripping, and (ii) scanning, creation of
7 digital derivative files, reproduction, and public display of Plaintiff’s printed lyrics contained in the
8 CD liner notes;

9 (d) 24 copyrighted sound recordings corresponding to the same 24 musical compositions
10 listed in subsection (c) above, which Defendant reproduced and ingested through CD ripping and
11 digitization.
12

13
14 1(b). Plaintiff further asserts a claim for contributory copyright infringement against Defendant
15 as to five sound recordings and six musical compositions referenced in paragraph 1 herein, which
16 were infringed by third parties as a direct result of Defendant’s material facilitation, enablement,
17 and distribution of infringing files.

18 2. A list of Plaintiff’s separately infringed works as referenced in paragraphs 1 and 1(B)
19 herein is attached hereto as **EXHIBIT 1** and incorporated herein by reference.
20

21 2(b). All of the works listed in Exhibit 1 were registered with the U.S. Copyright Office prior
22 to Defendant’s infringing acts. Certificates of Registration issued to Plaintiff by the U.S Copyright
23 Office include: SRu507-366 (effective date of registration, March 7, 2003); SRu539-107 (effective
24 date of registration, August 27, 2003); SRu982-184 (effective date of registration, June 10, 2009);
25 PAu3-406-761 (effective date of registration, January 14, 2008); and SRu-628-333 (effective date
26 of registration, July 31, 2006).
27

28 **PARTIES**

1 13. Upon personal knowledge and upon public information and belief, between 2003 and
2 2010, MySpace also allowed artists and musicians the option of voluntarily offering their sound
3 recordings/songs as permanent mp3 downloads to the general public directly from their respective
4 profile page on the site (whether for free or for a monetary fee determined by the respective
5 artist/musician or their record label).

7 14. Upon personal knowledge and upon public information and belief, between 2003 and
8 2010, MySpace's then-applicable written terms and conditions permitted all artists/musicians and/or
9 copyright owners that had uploaded sound recordings/songs to its site as set forth in paragraphs 12
10 & 13 herein, the right to instantaneously remove said sound recordings/songs from their respective
11 profile pages on the site at any given time without notice so that they were no longer publicly
12 accessible thereon to third-parties. Any limited license granted to MySpace arising out of a
13 copyright owner allowing for digital audio streaming of their uploaded recordings on its site was
14 fully and immediately revocable upon the removal of such uploaded recordings by the copyright
15 owner from their respective profile page, as the terms did not allow for MySpace to distribute the
16 uploaded recordings to third-parties for use outside of MySpace's immediate online platform.

18 15. Upon public information and belief, between 2003 and 2015, MySpace had hosted (on
19 its servers) approximately 50 million songs/sound recordings as uploaded by over 14 million
20 different musicians/recording artists and other users of its website.

22 15(b). Plaintiff had voluntarily deleted/removed *any and all* of his recordings from his
23 MySpace artist profile page by approximately the end of 2011 so that none were accessible to the
24 general public, and had entirely ceased using the site in any meaningful capacity whatsoever shortly
25 thereafter.

26 15(c). Some of the recordings/musical compositions at issue in this suit as referenced in
27 paragraphs 1 through 2(B) herein were never made publicly available by Plaintiff on MySpace at
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1 any point in time whatsoever, nor did Plaintiff ever provide a license or other permission to any
2 agent or other third-party to make any of his recordings available in any capacity on MySpace.

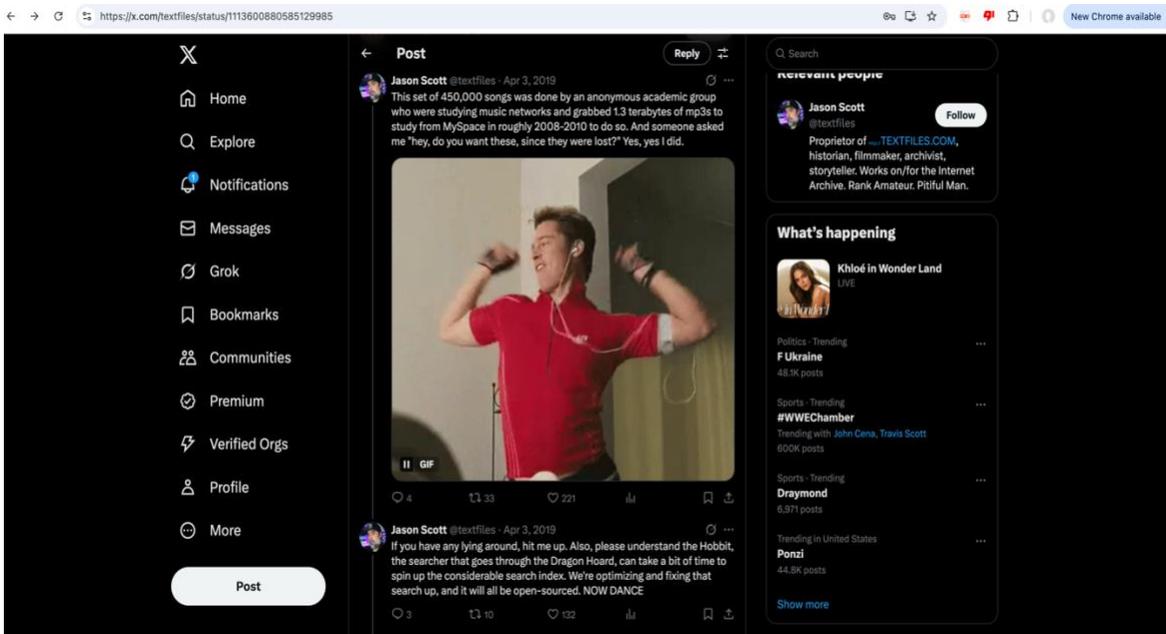
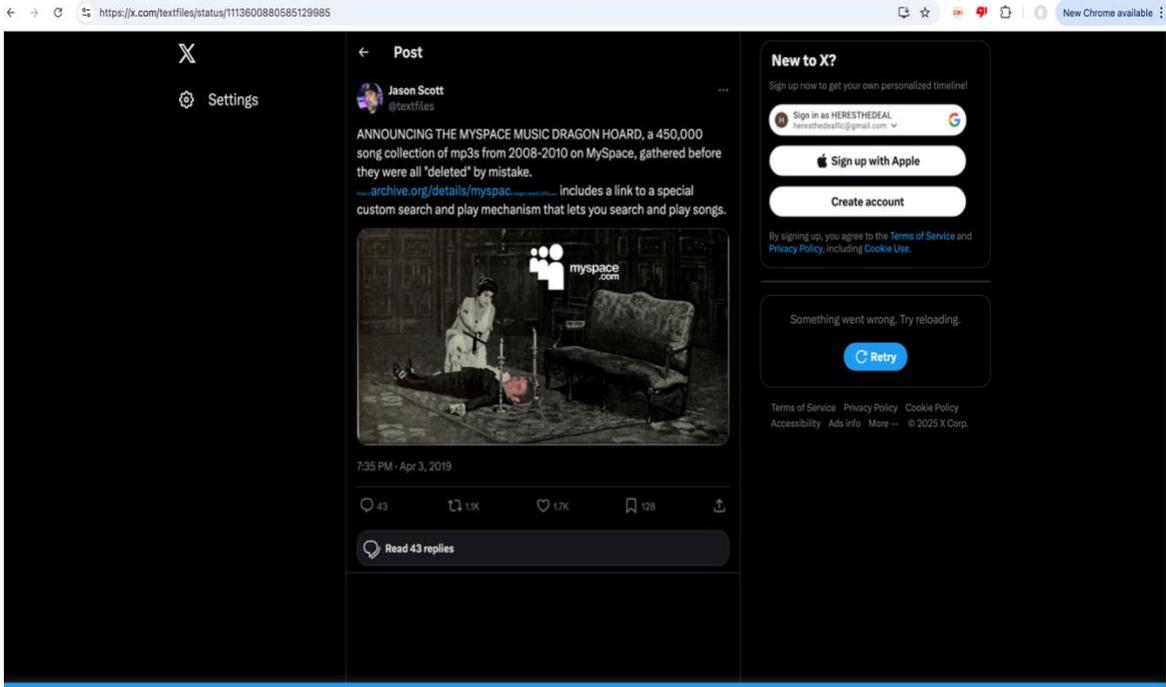
3 16. Upon public information and belief, in or about March of 2019, MySpace’s corporate
4 office publicly announced both on its website and to other worldwide media outlets that due to a
5 botched “server migration” error of which had occurred sometime in 2018, MySpace had allegedly
6 lost all of the sound recordings that had been uploaded to its website by musicians, artists and other
7 users of its site between 2003 and 2015—a total loss of the approximate 50 million
8 songs/recordings as referenced in paragraph 15 herein. *See, e.g., MySpace admits losing 12 years’*
9 *worth of music uploads*, Published by CNN on March 18th, 2019 attached hereto as **EXHIBIT 2.**

10
11 17. Upon public information and belief, on or about April 3rd of 2019, an employee of IA,
12 Jason Scott, of whom held/holds the position of Archivist and Software Curator, publicly
13 announced in a series of posts made on his personal X profile page (formerly known as Twitter):
14

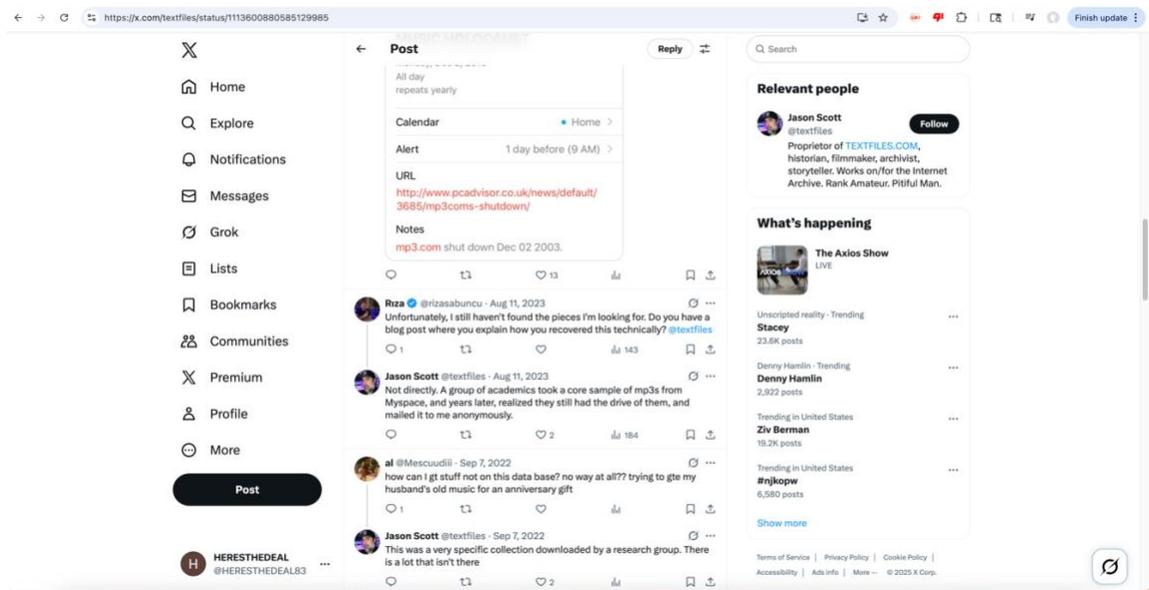
- 15 • “ANNOUNCING THE MYSPACE MUSIC DRAGON HOARD, a 450,000 song
16 collection of mp3s from 2008-2010 on MySpace, gathered before they were all
17 “deleted” by mistake. https://archive.org/details/myspace_dragon_hoard_2010
18 includes a link to a special custom search and play mechanism that lets you search
19 and play songs.”
- 20 • “This set of 450,000 songs was done by an anonymous academic group who were
21 studying music networks and grabbed 1.3 terabytes of mp3s to study from MySpace
22 in roughly 2008-2010 to do so. And someone asked me “hey, do you want these,
23 since they were lost?”” Yes, yes I did.””
- 24 • If you have any lying around, hit me up. Also, please understand the Hobbit, the
25 searcher that goes through the Dragon Hoard, can take a bit of time to spin up the
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1 considerable search index. We're optimizing and fixing that search up, and it will all
2 be open-sourced. NOW DANCE.”

3 These quotes are verified in the screenshots directly below:



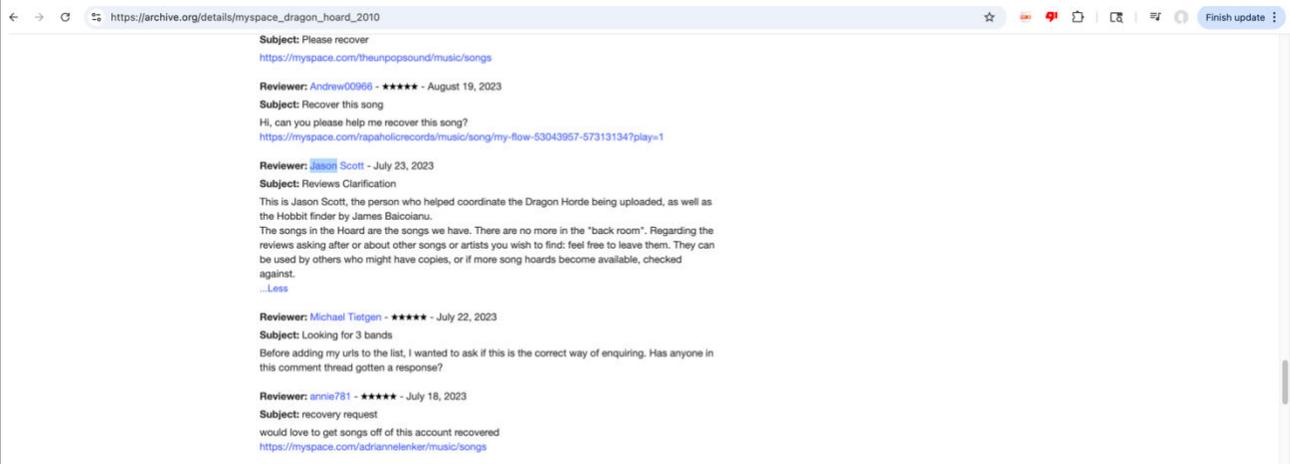
1 18. Upon public information and belief, on or about August 11th of 2023, IA employee
 2 Jason Scott received a public inquiry on his personal X profile page (formerly known as Twitter)
 3 from an individual with the user name “Riza” regarding the content of the IA’s MySpace Dragon
 4 Hoard content, stating “Unfortunately, I still haven't found the pieces I'm looking for. Do you have
 5 a blog post where you explain how you recovered this technically?” In direct response to “Riza’s”
 6 inquiry, Mr. Scott publicly responded on his X profile page to explain as follows: “Not directly. A
 7 group of academics took a core sample of mp3s from Myspace, and years later, realized they still
 8 had the drive of them, and mailed it to me anonymously.” These quotes are verified in the below
 9 screenshot, herein:
 10



21 19. In a separate public post made in the comment section of the MySpace Dragon Hoard
 22 section of IA’s website on or about July 23rd, 2023, Mr. Scott further clarified his direct
 23 involvement in the uploading of the 500,000 sound recordings to the IA website while acting within
 24 the scope of his employment by IA, stating: “This is Jason Scott, the person who helped coordinate
 25 the Dragon Horde being uploaded, as well as the Hobbit finder by James Baicoianu. The songs in
 26 the Hoard are the songs we have. There are no more in the "back room". Regarding the reviews
 27 asking after or about other songs or artists you wish to find: feel free to leave them. They can be
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1 used by others who might have copies, or if more song hoards become available, checked against.”

2 These quotes are verified in the below screenshot, herein:



11 20. Essentially, as part of what IA has titled “The Myspace Dragon Hoard (2008–2010)”

12 collection, IA itself—via the agency of its own employees acting within the scope of their

13 employment and/or via its own contracted content-moderators acting with IA’s explicit permission

14 and authority—directed and uploaded/reproduced low-resolution (96 kbps, 22 kHz) MP3 copies of

15 approximately 500,000 sound recordings originating from MySpace. These MP3 files were

16 purportedly obtained by IA employee Jason Scott on a hard drive mailed to him by an allegedly

17 “anonymous” party or parties, as referenced in paragraphs 17–19 herein, and were then uploaded by

18 IA to a designated area of IA’s own primary website at:

19 https://archive.org/details/myspace_dragon_hoard_2010.

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21 20(b). Upon information and belief, the allegedly “anonymous academic group” (or

22 whomever the true party was/is that provided the hard drive to IA) used an automated computer

23 process of some kind (e.g., web scraping, writing scripts for API downloading, etc.) to amass the

24 approximate 500,000 song collection of downloaded sound recordings from MySpace’s servers

25 (where the recordings were originally hosted), and this process ultimately resulted in the creation of

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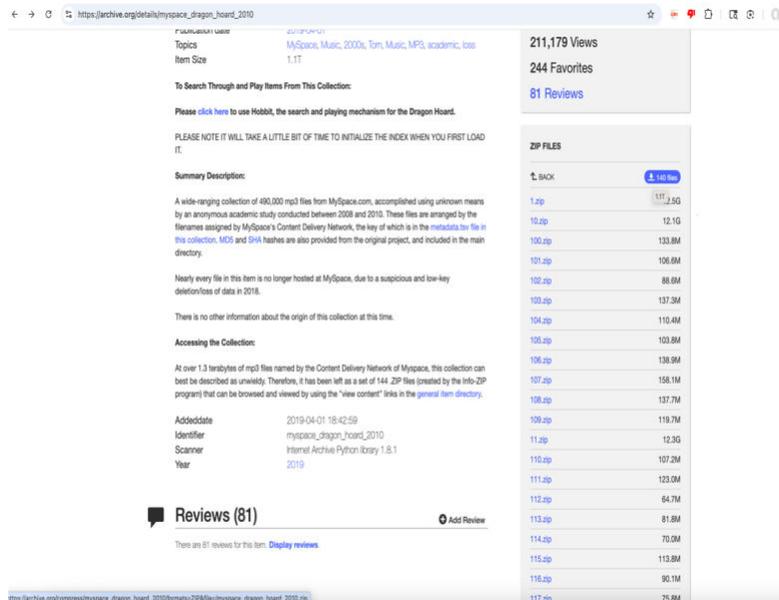
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1 the digital MP3 files that IA later obtained from the allegedly anonymous party and uploaded to its
2 own servers as its “MySpace Dragon Hoard Collection.”

3 21. Of the approximate 500,000 sound recordings/songs that IA received from the alleged
4 “anonymous academic group” and subsequently uploaded/reproduced as MP3 copies to its website
5 as explicitly referenced in paragraph 20 herein, the notoriety of the artists/musicians ranges the
6 gamut, from thousands of copyrighted songs by current and massively popular recording artists
7 such as Taylor Swift, Beyonce, Lady Gaga, Adele, and John Mayer, to legacy artists such as The
8 Beatles, The Beach Boys, Marvin Gaye, and Elvis Presley, to recordings by independent and/or
9 otherwise lesser-known recording artists. Moreover, taken as a whole collection, no reasonable
10 actor in the digital music space, including IA, could conclude that such material was lawfully
11 authorized for free distribution by and from any “anonymous” third-party that had allegedly
12 compiled and mailed copies on a hard drive.
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14

15 22. Through its primary website (as stated in paragraph 20 herein), IA made all of the
16 approximate 500,000 sound recordings & songs comprising its MySpace Dragon Hoard Collection
17 available to the general public for free and unlimited permanent download as a 1.1-terabyte digital
18 MP3 collection, which could be downloaded either in its entirety or in smaller batches (thousands of
19 recordings) via 144 separately numbered zip (.zip) folders, as shown in the screenshot below. This
20 collection included five (5) of Plaintiff’s copyrighted sound recordings and the five (5) musical
21 compositions embodied therein, as well as one (1) additional copyrighted musical composition—
22 eleven (11) works in total—all as referenced in subsections 1(a) and 1(b) of this First Amended
23 Complaint (collectively, “Plaintiff’s MySpace Dragon Hoard Works”):
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23. Furthermore, upon information and belief, every single one of the approximate 500,000 sound recordings/songs that were uploaded/reproduced by IA and comprise its “MySpace Dragon Hoard Collection” on its primary website were uploaded/reproduced without any copyright management information (“CMI”) whatsoever as the term is defined in 17 U.S. Code § 1202(c), such as the name of the performing artist, song title, publisher, author/composer, album title, record label, ISRC code (“International Standard Recording Code”), and/or copyright year—all items of which would normally be embedded as metadata on authentic digital copies authorized by a copyright owner or artist’s record label as standard practice in the recording industry for the purpose of tracking usages and collecting associated revenue therefrom.

24. Instead, IA’s uploaded reproductions of each sound recording in Plaintiff’s MySpace Dragon Hoard Works were distributed with file names consisting of 36 seemingly random or auto-generated characters (letters, numbers, and/or symbols) followed by the extension “.mp3,” and without any embedded copyright management information. For example, Plaintiff’s MySpace Dragon Hoard Works were uploaded and reproduced by IA and made available to the general public as free and unlimited permanent MP3 downloads within four separately numbered zip folders (#76,

1 #77, #84, and #86) on IA’s public website, as referenced in paragraphs 20 and 22 herein, using the
2 following file names:

3 std_72ea6c8562d82c69c16d3095e5125fbc.mp3

4 std_3e4bbb5e4b18d9d53f51ef2f42abb670.mp3

5 std_6c84b7eb17956e0fa2d016ec7a39f1cc.mp3

6 std_0566f35bd764b127f4a8342c14546d8f.mp3

7 std_3101d4d0e70a991ec6b4531c4ae364f7.mp3

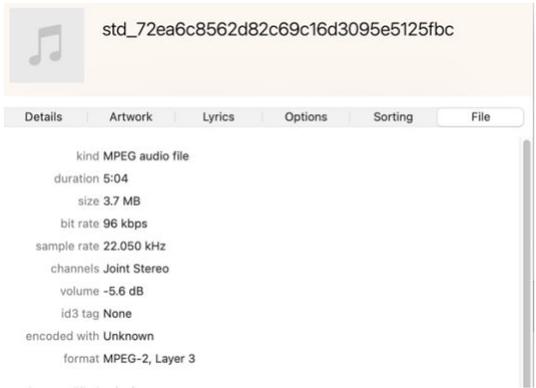
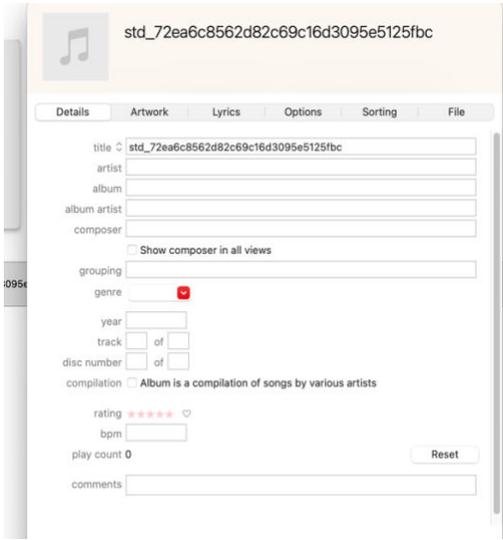
8 std_756409e9767e18ad7bfcc5eb4bb6a50c.mp3

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10 24(b). Furthermore, metadata inspection using ExifTool (version 13.41) confirms that IA’s
11 digital reproductions of Plaintiff’s MySpace Dragon Hoard Works were stripped of substantially all
12 copyright management information (“CMI”) of the types identified in paragraph 23 herein—
13 information that is customarily embedded in commercially released digital sound recordings—
14 information that is customarily embedded in commercially released digital sound recordings—
15 including but not limited to song titles, artist name, album title, copyright year, publisher name,
16 performing rights organization information, and ISRC codes. Representative ExifTool results for a
17 sound recording included within Plaintiff’s MySpace Dragon Hoard Works are shown in the
18 screenshots directly below:



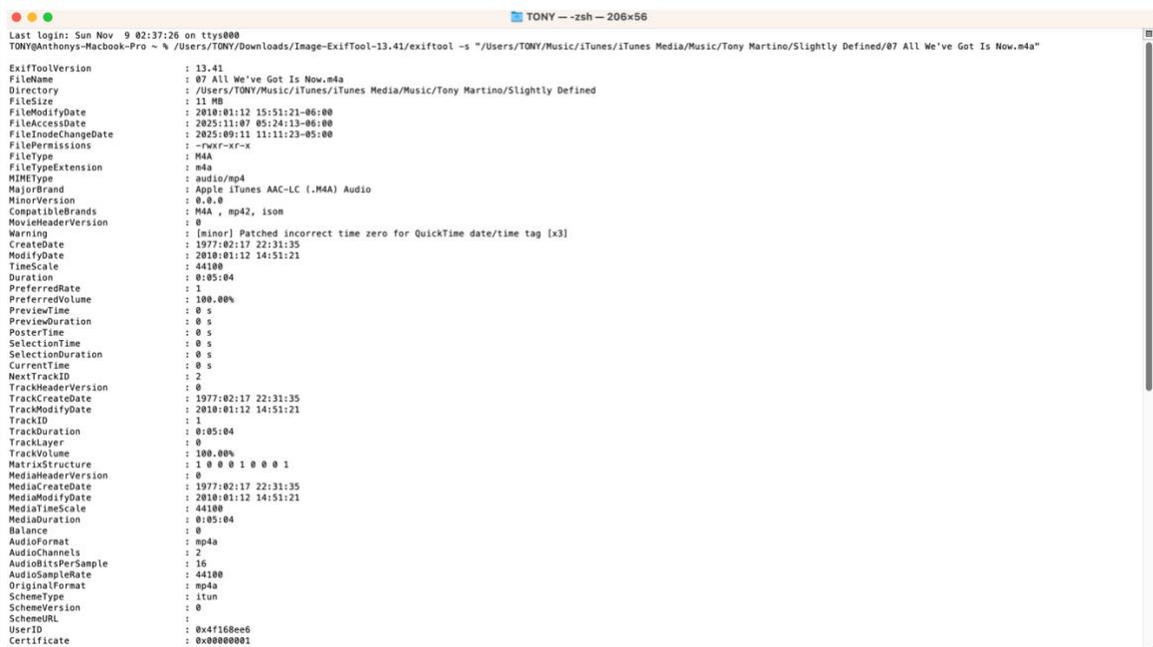
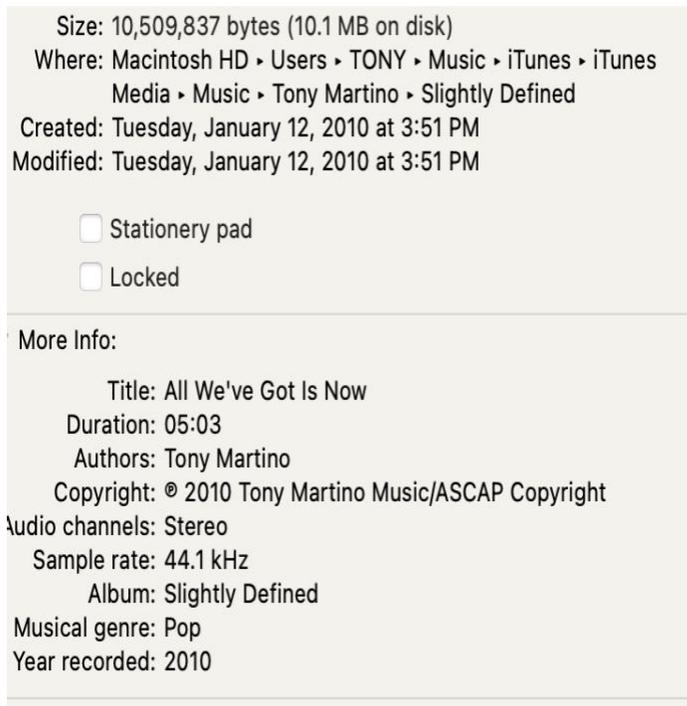
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TONY@Anthony's-Macbook-Pro ~ % TONY@Anthony's-Macbook-Pro ~ % /Users/TONY/Downloads/Image-ExifTool-13.41/exiftool -s "/Users/TONY/Documents/MARTINO VS. INTERNET ARCHIVE/SONG DOWNLOADS/std_72ea6c8562d82c69c16d3095e5125fbc.mp3"
ExifToolVersion      : 13.41
FileName             : std_72ea6c8562d82c69c16d3095e5125fbc.mp3
Directory            : /Users/TONY/Documents/MARTINO VS. INTERNET ARCHIVE/SONG DOWNLOADS
FileSize             : 3.6 MB
FileModifyDate       : 2024:11:13 21:03:12-06:00
FileAccessDate       : 2025:11:09 02:27:08-06:00
FileNodeChangeDate   : 2025:10:05 04:42:15-05:00
FilePermissions      : -r--r--r--
FileType             : MP3
FileTypeExtension    : mp3
MIMEType              : audio/mpeg
MPEGAudioVersion     : 2
AudioLayer            : 3
AudioBitrate         : 96 kbps
SampleRate            : 22050
ChannelMode           : Joint Stereo
MSStereo              : 0n
IntensityStereo      : Off
CopyrightFlag        : False
OriginalMedia         : False
Emphasis              : None
Duration              : 0:05:04 (approx)
TONY@Anthony's-Macbook-Pro ~ %
    
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24(c). By contrast, an authentic and previously authorized digital copy of the same sound recording corresponding to IA’s file std_72ea6c8562d82c69c16d3095e5125fbc.mp3 contains

1 embedded CMI identifying, among other things, the song title, artist name, album title, copyright
 2 year, publisher information, and ISRC code, as shown in the screenshots directly below:



```

1 ItemVendorID      : 0x0000144c
  Platform         : 0x00000001
  VersionRestrictions : 0x01101000
  TransactionID    : 0xc7729de6
  ItemID          : 0x1450170f
  ItemTool        : P307
2 MediaFlags       : 0x00000001
  ModeFlags       : 0x00000000
  Username        : Frank Martino
  HandlerType     : Metadata
  HandlerVendorID : Apple
3 iTunesMPB       : 0 840 3C0 CC3000 0 0 0 0 0 0 0
  VolumeNormalization : 1CDE 1810 7F93 6957 3F211 31B49 7FFE 7FFE 28582 11806
  Title           : All We've Got Is Now
  Artist          : Tony Martino
  AlbumArtist    : Tony Martino
  Album          : Slightly Defined
4 Genre           : Pop
  TrackNumber    : 7 of 10
  DisNumber      : 1 of 1
  Compilation    : No
  PlayGap        : Insert Gap
5 ContentCreateDate : 2010-01-12 00:00:00Z
  AppleStoreAccount : hemitman@aol.com
  Copyright      : © 2010 Tony Martino Music/ASCAP Copyright
  AppleStoreCatalogID : none
  Rating         : none
6 ArtistID        : 277431179
  AlbumID        : 340793058
  GenreID        : Music/Pop
  AppleStoreCountry : United States
  AppleStoreAccountType : iTunes
  MediaType      : Normal (Music)
  PurchaseDate   : 2010-01-12 21:45:10
7 ISRC           : DittoMusic:isrc:USMF0900007
  Asset-InfoFlavor : 2:256
  CoverArt       : (Binary data 106414 bytes, use -b option to extract)
  MediaDataSize  : 9897096
  MediaDataOffset : 612741
  AvgBitrate     : 261 Abps
8 TONY@Anthony's-Macbook-Pro ~ %

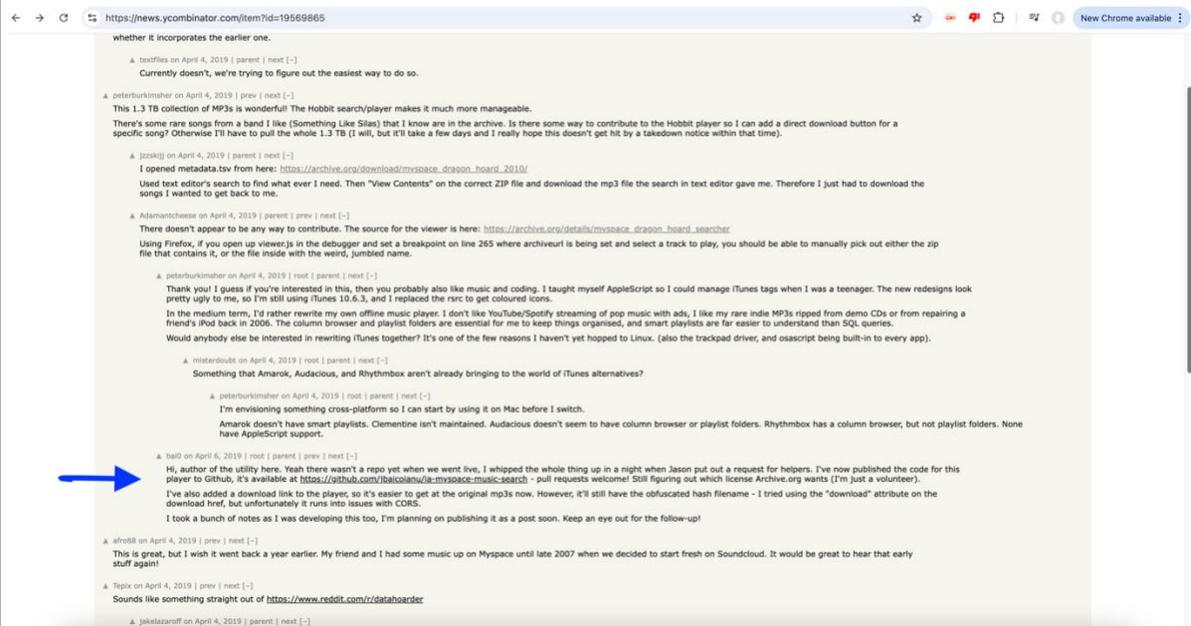
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9 25. At some point in time after IA initially made its MySpace Dragon Hoard collection
10 available to the general public as described in paragraph 22 herein, IA created and launched a
11 separate companion website (www.lostmyspace.com) dedicated entirely to further distributing the
12 collection. This website features a music streaming player and allows visitors to this site to search
13 for songs and artists, and to stream and permanently download (as mp3 files) any of the recordings
14 in its collection on an unlimited basis, individually, in full, and for free.

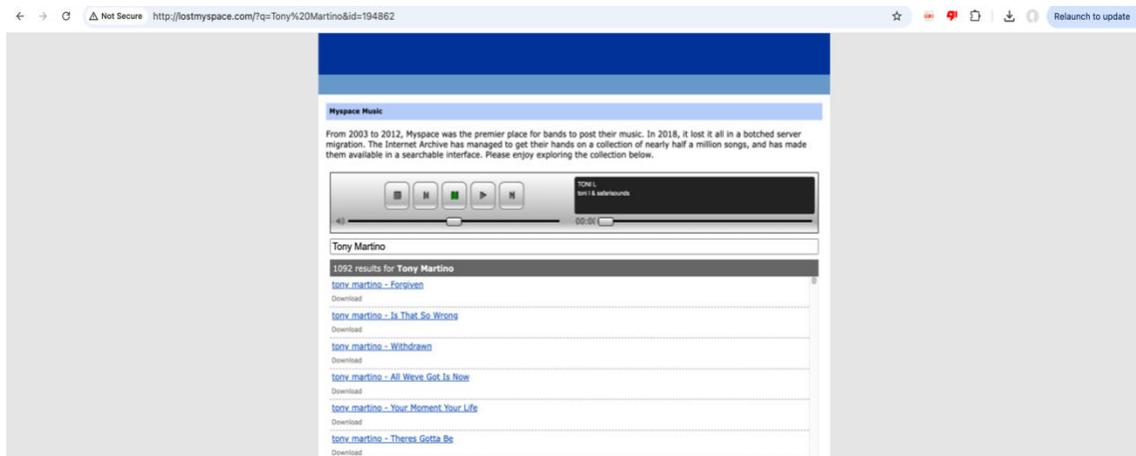
15 25(b). Upon information and belief, the search, streaming, and MP3 download functionality
16 of IA's separate site, www.lostmyspace.com, was developed with the assistance of volunteers who
17 were solicited by IA employee Jason Scott, including an individual named James Baicoianu, further
18 demonstrating that the MySpace Dragon Hoard collection and its accessibility to the general public
19 were directed and facilitated by IA itself, rather than by any random third-party user.

20 25(c). In fact, a public posting made by this individual (Mr. Baicoianu) on Hacker News'
21 website (<http://news.ycombinator.com/>) on April 6, 2019 as shown in the below screenshot (with
22 blue arrow annotation) states: "Hi, author of the utility here. Yeah there wasn't a repo yet when we
23 went live, I whipped the whole thing up in a night when Jason put out a request for helpers. I've
24 now published the code for this player to Github, it's available at [https://github.com/jbaicoianu/ia-](https://github.com/jbaicoianu/ia-myspace-music-search)
25 [myspace-music-search](https://github.com/jbaicoianu/ia-myspace-music-search) - pull requests welcome! Still figuring out which license [Archive.org]
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1 wants (I'm just a volunteer). I've also added a download link to the player so its easier to get at the
 2 original mp3s now...". This public statement further confirms IA's direct involvement in building
 3 tools specifically designed to enable mass streaming and downloading of infringing recordings.



15 26. All of Plaintiff's MySpace Dragon Hoard Works—consisting of five (5) sound
 16 recordings, the five (5) musical compositions embodied therein, and one (1) additional musical
 17 composition—as referenced in subsections 1(a) and 1(b) herein, were made available by IA on its
 18 separate website, www.lostmyspace.com, as referenced in paragraph 25 herein, and were both fully
 19 streamable and downloadable as individual MP3 files for free and on an unlimited basis, as shown
 20 in the screenshot below:
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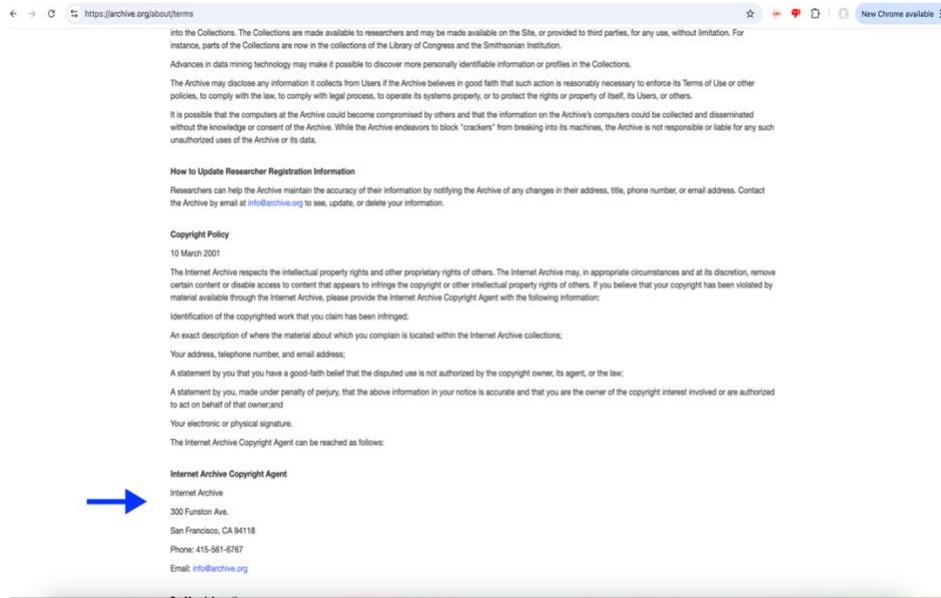


27. At no point in time did Plaintiff ever make any of Plaintiff's MySpace Dragon Hoard Works available to the general public for free permanent download through his former artist profile page on MySpace or anywhere else on MySpace, nor did Plaintiff ever authorize or permit any third parties to do so.

28. Certain of Plaintiff's MySpace Dragon Hoard Works, as referenced in subsections 1(a) and 1(b) herein, were—and remain—unpublished and have never been made publicly available in any capacity anywhere in the world (including on MySpace). Accordingly, IA's reproduction and distribution of those particular works constituted their initial publication, and it is currently unknown to Plaintiff how any such unpublished works could have originated on any hard drive that IA or its employees allegedly obtained for purposes of sourcing content for the MySpace Dragon Hoard collection.

29. Plaintiff first learned of IA's infringement of Plaintiff's MySpace Dragon Hoard Works in or about March of 2024, when an Illinois resident informed Plaintiff that during that month he had discovered Plaintiff's works on IA's website www.lostmyspace.com, as referenced in paragraph 26 herein, and that he was able to fully stream and permanently download each of those works directly from IA's servers.

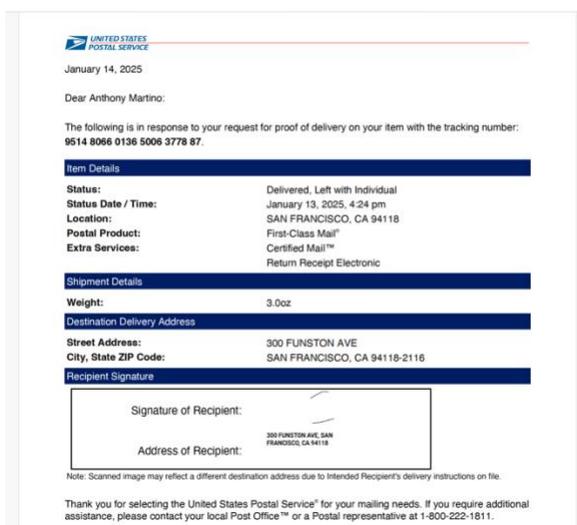
1 30. Thereafter, Plaintiff mailed, via the United States Postal Service, three separate
2 written takedown notices to IA at the designated Copyright Agent address expressly listed on IA’s
3 own website, as shown in the screenshot below (with blue arrow annotation):



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14 31. Plaintiff mailed the first takedown notice in or about March 2024 via standard U.S.
15 Mail; the second via USPS Certified Mail (tracking no. 9514806601264323015390) on November
16 18, 2024; and the third via USPS Certified Mail (tracking no. 9514806601365006377887) on
17 January 6, 2025.

18
19 32. IA received Plaintiff’s two certified mailings as set forth in paragraph 31 herein on
20 November 27, 2024 and January 13, 2025, respectively. Both mailings were signed for by an
21 individual at IA’s listed Copyright Agent address, as referenced in paragraph 30 herein and as
22 confirmed in the screenshots below:
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33. Having received no response from IA, on January 18, 2025 Plaintiff sent a follow-up email to IA through the support desk email address (info@archive.org) listed on IA’s primary website. In that email, Plaintiff attached a copy of his most recent certified letter dated January 6, 2025, together with exhibits, which IA had previously received at its Copyright Agent address on January 13, 2025.

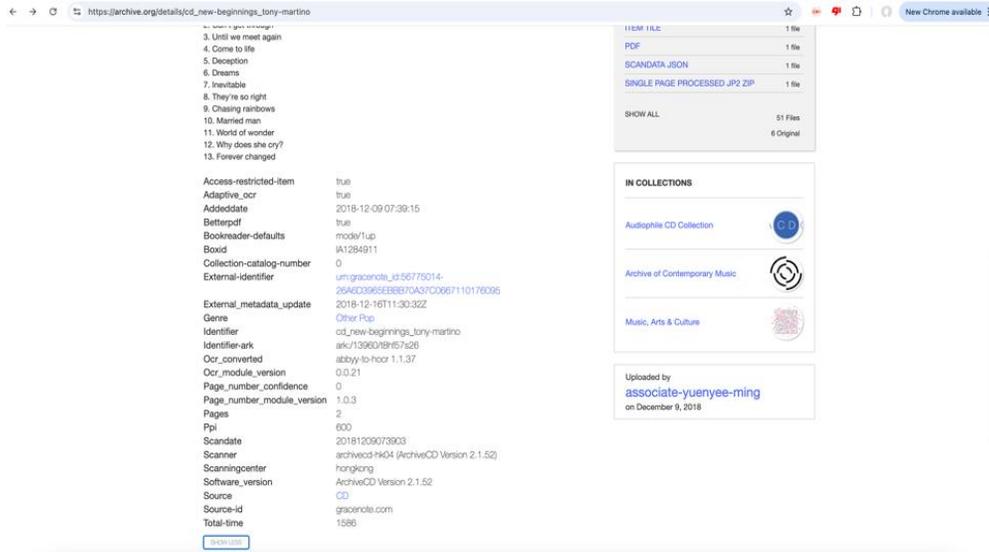
34. Despite Plaintiff’s repeated written takedown requests beginning in March 2024, IA failed and refused to remove Plaintiff’s MySpace Dragon Hoard Works from its two websites, as referenced in paragraphs 30 through 33 herein, until on or about January 28, 2025, when an individual identified as Chris Butler, with the stated title of Office Manager, emailed Plaintiff and advised that the content had finally been disabled from public access.

1 **ADDITIONAL INFRINGEMENTS INVOLVING 24 MUSICAL COMPOSITIONS AND 24**
2 **SOUND RECORDINGS**

3 35. In or about mid-March 2025, Plaintiff first learned that IA had infringed additional
4 copyrighted works beyond the eleven (11) works contained in IA’s MySpace Dragon Hoard
5 collection. Specifically, Plaintiff was informed by an Illinois resident that IA had scanned physical
6 copies of two of Plaintiff’s prior CD albums—one of which was an unauthorized counterfeit
7 pressing of an official release—uploaded digital reproductions of each CD’s printed liner notes
8 (containing twenty-four (24) of Plaintiff’s copyrighted song lyrics) into IA’s digital collections,
9 created derivative digital copies of those materials in downloadable PDF format (using
10 LuraDocument PDF Compressor v2.68), and publicly displayed and distributed those materials on
11 IA’s website without Plaintiff’s authorization.
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13 35(b). Plaintiff later learned, upon further investigation, that IA’s conduct was not limited to
14 the scanning and public display of printed lyrics. Plaintiff is informed and believes, and on that
15 basis alleges, that in connection with the same two CD albums referenced in paragraph 35 herein,
16 IA also reproduced and ingested the underlying audio content of those CDs through a process of
17 digital ripping and digitization, including through software identified on IA’s website as
18 “ArchiveCD Version 2.1.52” as shown in the screenshot accompanying this paragraph, which upon
19 information and belief is a tool used by IA for digitization and audio extraction. The creation of
20 such digital audio files constitutes reproduction within the meaning of 17 U.S.C. § 106.
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35(c). Plaintiff is further informed and believes that IA created and stored digital audio files derived from Plaintiff’s CDs and generated audio samples of the recordings, as indicated by IA’s website statements that each album was “available with audio samples only,” as shown in the screenshots accompanying this paragraph. As a result of this conduct, IA reproduced without license or authorization: (i) twenty-four (24) copyrighted musical compositions embodied on those CDs, and (ii) twenty-four (24) corresponding copyrighted sound recordings fixed therein—forty-eight (48) separate copyrighted works in total. Such reproductions constitute actionable infringement regardless of whether the resulting audio files were ever ultimately made publicly accessible.

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General:

Kind: PDF document
 Size: 5,211,566 bytes (5.2 MB on disk)
 Where: iCloud Drive • Documents • MARTINO VS. INTERNET ARCHIVE • LYRIC & DISPLAY INFRINGEMENTS
 Created: Wednesday, April 2, 2025 at 3:35 PM
 Modified: Wednesday, April 2, 2025 at 3:35 PM

Stationery pad
 Locked

More Info:

Where from: chrome-extension://
 efaidnbmnnnibpcjpcglclefindmkaj/
 Last opened: Thursday, December 18, 2025 at 2:59 AM
 Title: New Beginnings
 Authors: Tony Martino
 Version: 1.5
 Pages: 7
 Resolution: 337x335
 Security: None
 Content Creator: Internet Archive
 Encoding software: Recoded by LuraDocument PDF v2.68

 **cd_hope-in-isolation_the-martino-conspir...** 9.3 MB
 Modified: Wednesday, April 2, 2025 at 3:34 PM

Add Tags...

General:

Kind: PDF document
 Size: 9,314,990 bytes (9.3 MB on disk)
 Where: iCloud Drive • Documents • MARTINO VS. INTERNET ARCHIVE • LYRIC & DISPLAY INFRINGEMENTS
 Created: Wednesday, April 2, 2025 at 3:34 PM
 Modified: Wednesday, April 2, 2025 at 3:34 PM

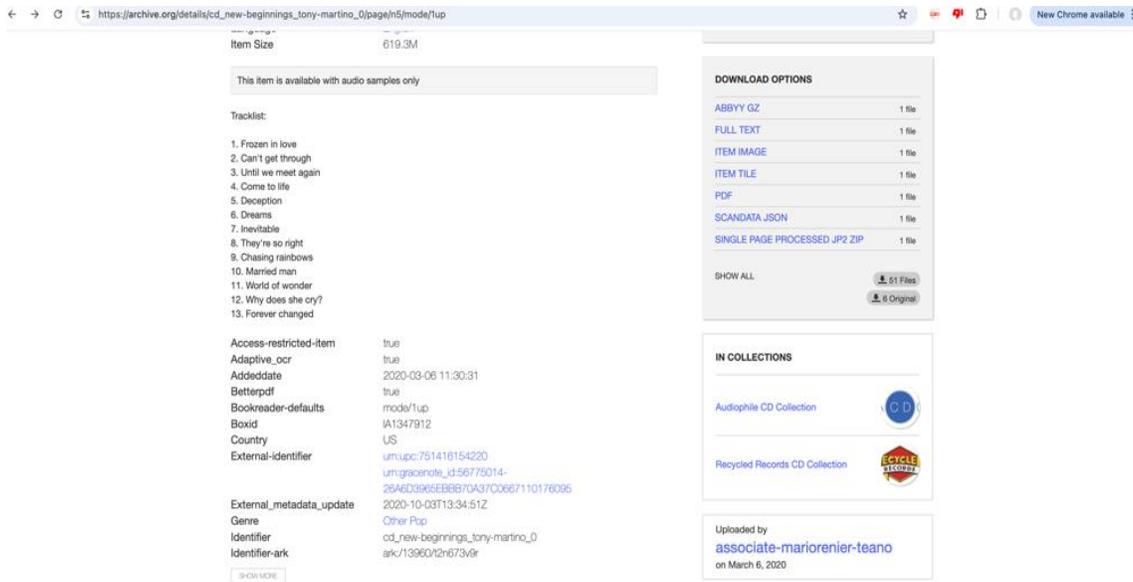
Stationery pad
 Locked

More Info:

Where from: chrome-extension://
 efaidnbmnnnibpcjpcglclefindmkaj/
 Last opened: Saturday, January 3, 2026 at 12:44 AM
 Title: Hope In Isolation
 Authors: The Martino Conspiracy
 Version: 1.5
 Pages: 10
 Resolution: 337x335
 Security: None
 Content Creator: Internet Archive
 Encoding software: Recoded by LuraDocument PDF v2.68

Name & Extension:

cd_hope-in-isolation_the-martino-conspiracy.pdf



https://archive.org/details/cd_new-beginnings_tony-martino_0/page/n5/mode/tup

Item Size: 619.3M

This item is available with audio samples only

Tracklist:

1. Frozen in love
2. Can't get through
3. Until we meet again
4. Come to life
5. Deception
6. Dreams
7. Inevitable
8. They're so right
9. Chasing rainbows
10. Married man
11. World of wonder
12. Why does she cry?
13. Forever changed

Access-restricted-item: true
 Adaptive_ocr: true
 Addeddate: 2020-03-06 11:30:31
 Betterpdf: true
 Bookreader-defaults: mode/1up
 Boxid: IA1347912
 Country: US
 External-identifier: um:upc:751416154220
 um:gracenote_id:56775014-26A6D3905EBB870A37C0667110176095
 2020-10-03T13:34:51Z
 External_metadata_update: Other Pop
 Identifier: cd_new-beginnings_tony-martino_0
 Identifier-ark: ark:/13960/t2n673v9r

Download Options:

- ABBY GZ: 1 file
- FULL TEXT: 1 file
- ITEM IMAGE: 1 file
- ITEM TILE: 1 file
- PDF: 1 file
- SCANDATA JSON: 1 file
- SINGLE PAGE PROCESSED JP2 ZIP: 1 file

SHOW ALL: 51 Files, 6 Originals

IN COLLECTIONS:

- Audophile CD Collection
- Recycled Records CD Collection

Uploaded by: associate-marioenier-teano on March 6, 2020

35(d). Plaintiff is further informed and believes, and on that basis alleges, that in connection with IA’s scanning and digitization of Plaintiff’s printed CD liner notes and lyrics as described in paragraphs 35 through 35(c) herein, IA failed to preserve or carry forward copyright management information (“CMI”) associated with those works. Specifically, Plaintiff’s original liner notes and

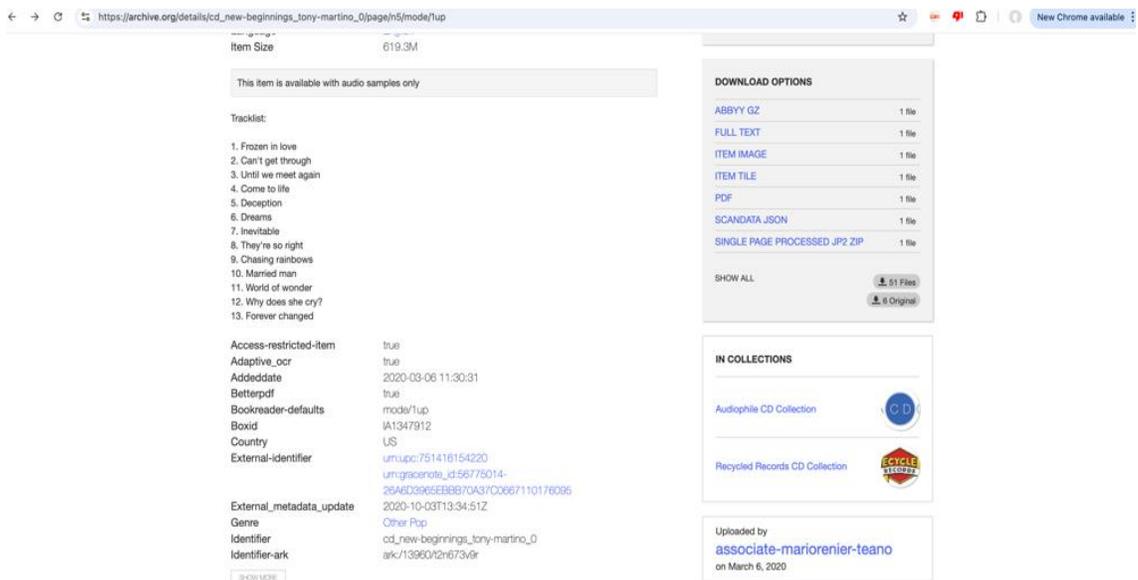
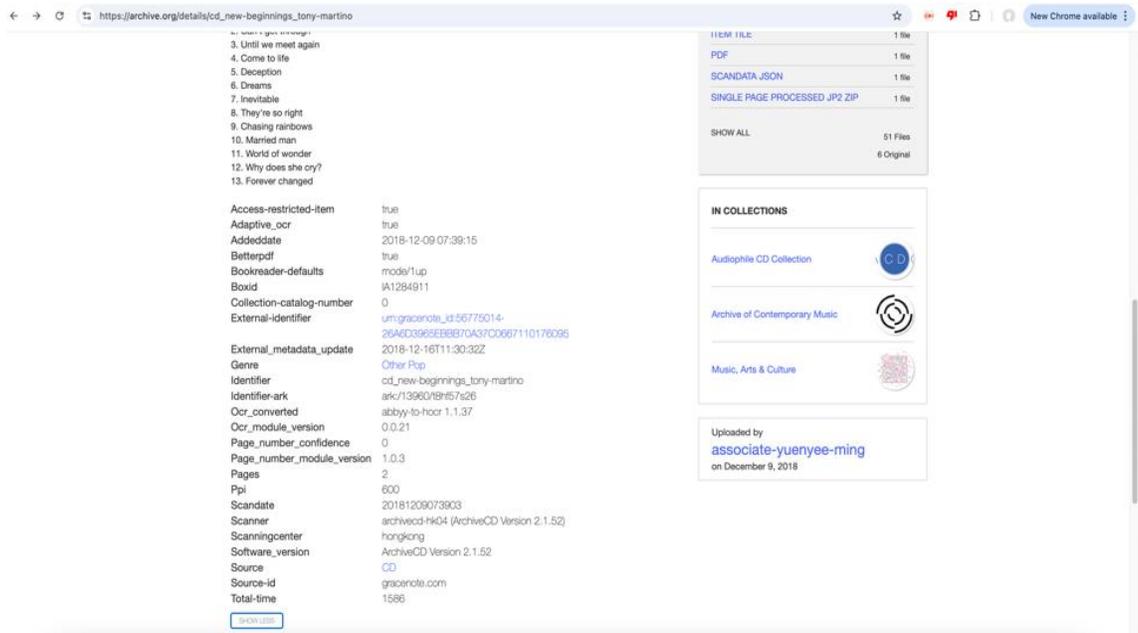
1 lyric sheets contained CMI including, but not limited to, song titles, author/composer credits,
2 copyright notices, copyright years, record label, and publishing information. When IA created
3 derivative digital PDF files from those materials, IA failed to embed or otherwise fully include all
4 such CMI in the resulting digital files or their associated metadata fields. As a result, IA created and
5 distributed digital copies of Plaintiff’s lyrical and musical composition works that were devoid of
6 CMI that was present on the original physical materials.

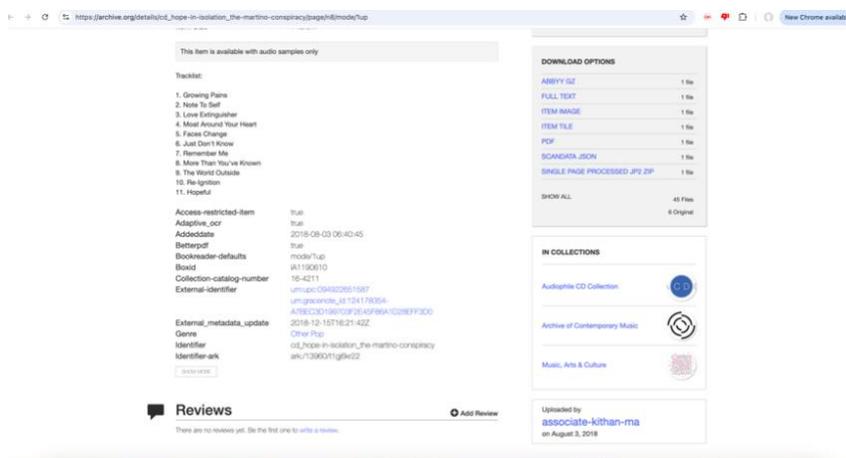
8 35(e). Plaintiff is informed and believes, and on that basis alleges, that IA knew or had
9 reasonable grounds to know that distributing digital PDF reproductions of Plaintiff’s lyrics and liner
10 notes without carrying forward the original CMI would conceal infringement and make it more
11 difficult for Plaintiff to identify, track, or enforce his rights in those works, and would enable or
12 facilitate downstream infringement by third parties who downloaded or further redistributed the
13 digitized files.

15 35(f). Upon information and belief, the “audio samples only” files created by IA from
16 Plaintiff’s sound recordings as referenced in paragraph 35(c) constitute unauthorized derivative
17 works. Specifically, IA created shortened, truncated, edited, or otherwise modified digital audio
18 files derived from Plaintiff’s full-length sound recordings. These files were distinct new audio
19 versions that differed in duration and content from the original recordings and were not mere
20 identical copies, but rather digital adaptations that recast and transformed Plaintiff’s copyrighted
21 sound recordings without authorization.

23 36. The infringing acts described in paragraphs 35 through 35(f) herein—including the
24 scanning of Plaintiff’s printed liner notes, the creation of derivative PDF files, the public display of
25 Plaintiff’s lyrics, and the ripping and digital ingestion of Plaintiff’s sound recordings—were not
26 performed by random third-party users of IA’s website from the general public, but rather by IA
27 itself through the agency of its own employees, partners, interns, volunteers, content moderators,
28

1 and/or other authorized contributors acting within the direct scope of IA’s digitization and
 2 collection activities and under IA’s direction and control. Specifically, the individuals associated
 3 with these infringing uploads and digitization activities include, but are not limited to, accounts
 4 identified as associate-kithan-ma@archive.org, associate-mariorenier-teano@archive.org, and
 5 associate-yuenyee-ming@archive.org, as shown in the screenshots below:
 6





36(b). Plaintiff is informed and believes, and on that basis alleges, that the digital ripping and ingestion of the audio content from Plaintiff's two CDs necessarily resulted in the creation of new unauthorized digital copies of Plaintiff's copyrighted sound recordings and the musical compositions embodied therein. The act of copying and ingesting those recordings onto IA's servers constitutes direct infringement under 17 U.S.C. § 106. Moreover, IA's website expressly represented that each album was "available with audio samples only," as shown in the screenshots referenced in paragraph 36 herein, demonstrating that IA created unauthorized derivative works in the form of modified digital audio samples derived from Plaintiff's copyrighted sound recordings.

37. In fact, the three individuals referenced in paragraph 36 herein who scanned and digitized Plaintiff's two CDs onto IA's website did not do so from general public user-registration accounts, but rather using elevated-privilege accounts identified as IA's "associate accounts," which upon information and belief are internally provisioned accounts approved by IA and tied to official digitization or cataloging work of IA itself, and over which IA has the ability to exercise control, particularly as it concerns the curation of content for its public website.

38. Specifically, upon information and belief, IA creates its "associate accounts" solely for its own employees/interns, content-moderators/curators, staff members, and project collaborators, or it grants access to these accounts only to its verified partners (such as other

1 libraries, archives, or media preservation groups), as users of these associate accounts are able to
2 upload content directly into curated collections on IA’s website, which ordinary registered users of
3 IA’s website from the general public cannot access or modify.

4 38(b). At no time did Plaintiff grant IA any license, permission or other authorization to
5 scan, digitize, ingest, reproduce, display, distribute, or create derivative works from the CDs at
6 issue, the sound recordings, or the musical compositions described in paragraphs 35 through 38
7 herein, including either the printed lyrics or the sound recordings embodied on those CDs.

9 39. At all relevant times, IA had actual knowledge or at least reasonable grounds to know,
10 that a substantial portion of the approximately 500,000 sound recordings it received on a hard drive
11 from an anonymous third party were protected by copyright law, including Plaintiff’s copyrighted
12 sound recordings and the musical compositions embodied therein. Nevertheless, IA performed no
13 investigation of any kind into the copyright status of any of the recordings before ingesting the
14 content and making the entire collection available to the general public for free permanent
15 download and on-demand streaming through its websites as described in paragraphs 20–22 herein.

17 40. At all relevant times, IA knew that its practice of uploading copyrighted sound
18 recordings and the musical compositions embodied therein to its website and making them available
19 to the general public for unlimited streaming and permanent downloading without any license or
20 authorization posed a substantial risk of infringement. In fact, in 2020, IA’s founder and director
21 Brewster Kahle publicly acknowledged that building an audio library “is doable. Except that it’s a
22 very heavily litigated area,” and that “[e]xactly how to do the distribution on the commercial
23 materials, we haven’t quite figured out.” Long Now Foundation, Universal Access to All
24 Knowledge, YOUTUBE, https://www.youtube.com/watch?v=RV_ALIJGU_c (May 25, 2020)
25 (Brewster Kahle speaking & 27:30).
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1 41. Furthermore, IA was actually notified that its various business activities concerning its
2 offering of free sound recordings to the general public for unlimited free downloading and
3 streaming was potentially infringing. On June 10, 2020—just over a year after IA had launched its
4 MySpace Dragon Hoard project—Senator Thom Tillis, then-Chair of the Senate Subcommittee on
5 Intellectual Property, wrote a letter to Mr. Kahle and IA referencing that IA’s practice of “ma[king]
6 recordings available for free through unlimited streaming and download . . . raise numerous
7 potential issues of copyright infringement.” Letter from Sen. Thom Tillis to Brewster Kahle (Jun.
8 10, 2020) 2. Senator Tillis added that “I am concerned that the Internet Archive thinks that it—not
9 Congress—gets to determine the scope of copyright law. . . . Internet Archive seems to be daring
10 copyright owners to sue to enforce their rights, or else effectively forfeit them—something many
11 copyright owners, particularly individuals and smaller enterprises, cannot afford to do.” Id. Tillis
12 Letter to Internet Archive attached hereto as **EXHIBIT 3**.

13
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15 42. At all relevant times, IA had actual knowledge, or at least reasonable grounds to
16 know, that Plaintiff’s works identified in paragraphs 1 through 2(B) herein—including Plaintiff’s
17 copyrighted sound recordings, the musical compositions embodied therein, and Plaintiff’s lyrical
18 compositions—were legally protected by copyright law, and that licenses or other authorization
19 were required in order to reproduce, distribute, publicly display, or publicly perform those works.
20

21 42(b). IA also had actual knowledge, or at least red-flag knowledge, that any anonymous
22 third party offering to provide nearly 500,000 MP3 files originating from MySpace on a hard drive
23 could not lawfully authorize IA to reproduce, distribute, publicly display, or publicly perform those
24 recordings and compositions without valid licenses from the respective copyright owners. IA knew
25 or should have known that the absence of verifiable licensing agreements or other documentation
26 rendered any such mass distribution plainly unauthorized.
27
28

1 42(c). With respect to the additional infringements described in paragraphs 35 through 38
2 herein, IA likewise knew or had reason to know that scanning Plaintiff’s printed CD liner notes,
3 creating derivative PDF files, and digitally ripping and ingesting the audio content of Plaintiff’s
4 CDs would require authorization from Plaintiff as the copyright owner. IA nonetheless proceeded to
5 reproduce, store, and utilize those materials without any license, permission, or inquiry,
6 demonstrating willful disregard for Plaintiff’s rights.
7

8 43. At all relevant times, IA had actual knowledge, or at a minimum reason to know, that
9 the anonymous third party who provided it with a hard drive containing Plaintiff’s sound recordings
10 and the musical compositions embodied therein—as referenced in paragraphs 1(a) and 1(b)
11 herein—possessed no license, permission, or other legal authorization from Plaintiff to reproduce or
12 distribute those works.
13

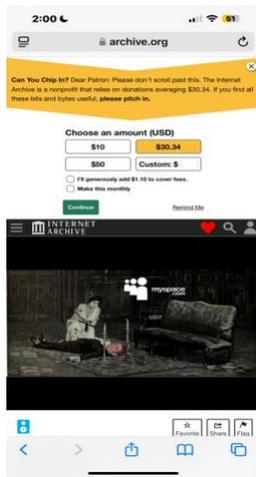
14 44. At all relevant times, IA knew that it possessed no license, permission, or other
15 authorization from Plaintiff—or from any agent or entity authorized to act on Plaintiff’s behalf—to
16 reproduce, distribute, publicly display, or publicly perform any of Plaintiff’s copyrighted works
17 identified in paragraphs 1 through 2(B) herein. Despite this knowledge, IA nonetheless intentionally
18 reproduced and distributed Plaintiff’s works without authorization and further facilitated ongoing
19 infringement by third parties through its websites and services.
20

21 45. Upon information and belief, IA generates substantial annual revenue, including
22 millions of dollars in monetary donations from the general public. IA’s practice of offering free
23 access to copyrighted content—including sound recordings, books, and other media that IA does not
24 own—serves as an enticement for such donations and as a means of driving continued traffic to its
25 websites for commercial benefit.

26 46. In fact, IA’s former Director of Finance, Jacques Cressaty, testified under oath on
27 October 22, 2021 in the copyright litigation matter of *Hachette Book Group, Inc. v. Internet*
28

1 *Archive*, No. 20-cv-4160 (JGK), 664 F.Supp.3d 370 (S.D.N.Y. 2023), that “every single page of the
2 Archive is monetized.” (McN Decl. ¶61; Jacques Cressaty Dep. Tr. 207:1–208:4), attached hereto
3 as **EXHIBIT 4**.

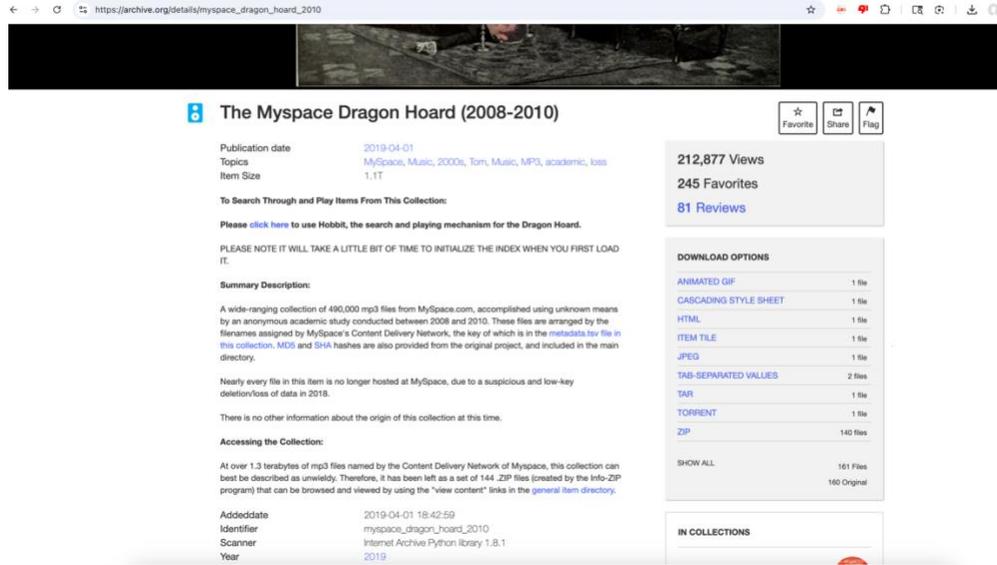
4 47. Consistent with IA’s practice of soliciting monetary donations in exchange for free
5 access to digital content, the webpages through which IA distributed Plaintiff’s works—including
6 the MySpace Dragon Hoard collection—prominently displayed banners requesting monetary
7 donations from visitors, as shown in the screenshots directly below:
8



1 47(b). IA likewise knew, or at a minimum had reason to know, that scanning Plaintiff's
2 printed CD liner notes and digitally ripping and ingesting the audio content of Plaintiff's CDs—as
3 described in paragraphs 35 through 38 herein—required authorization from Plaintiff as the
4 copyright owner. IA proceeded to reproduce, store, display, and create derivative digital files from
5 those materials without making any inquiry to Plaintiff or seeking any license, further evidencing
6 willful disregard for Plaintiff's exclusive rights.
7

8 48. IA willfully ingested, copied, and distributed the approximately 500,000 sound
9 recordings comprising its MySpace Dragon Hoard project—including Plaintiff's works identified in
10 paragraphs 1(a) and 1(b) herein—without any license or authorization and in disregard of existing
11 copyright law and the rights of the copyright owners whose works make up the collection. A
12 substantial portion of the collection consists of recordings by independent or lesser-known artists
13 that may not have the means or ability to enforce copyrights, a fact that IA knew or reasonably
14 should have known at the time it undertook this project.
15

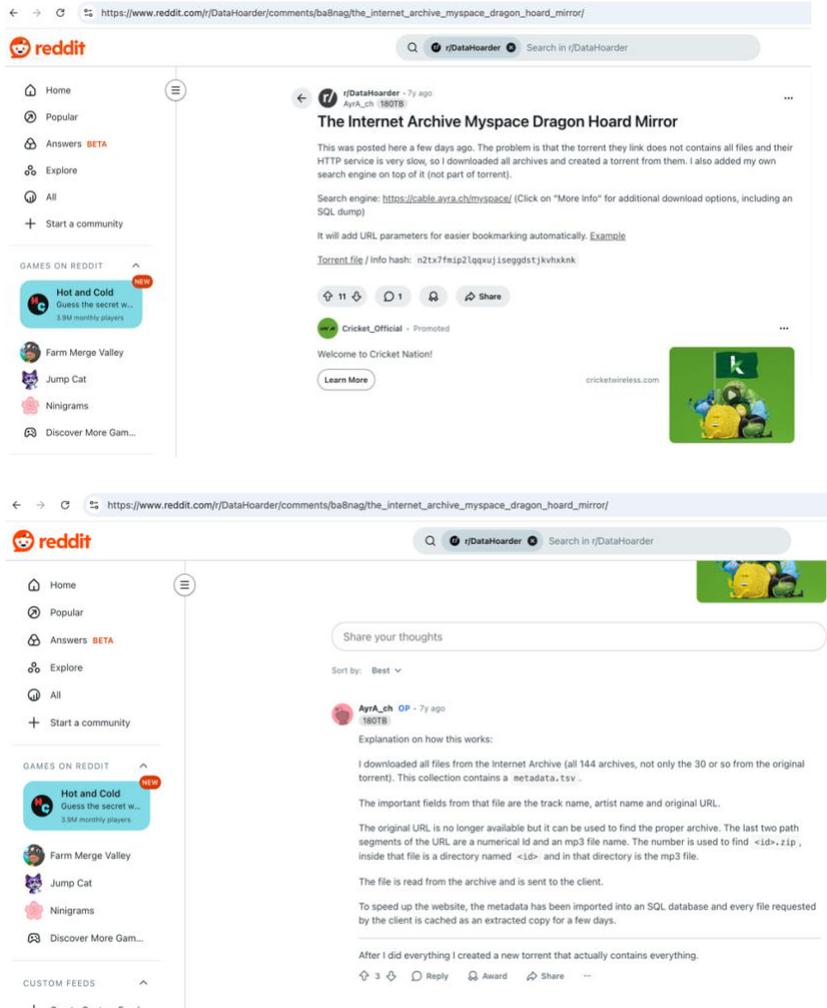
16 49. Upon information and belief, IA possesses exclusive knowledge of the exact number
17 of visitors who downloaded the entire 1.1-terabyte MySpace Dragon Hoard collection—which
18 included Plaintiff's works—as well as the number of visitors who downloaded any of the individual
19 zip folders that contained Plaintiff's recordings, as described in paragraph 24 herein. IA likewise
20 possesses records of how many times Plaintiff's works were streamed or individually downloaded
21 through its websites. As of the filing of this First Amended Complaint, the public download area for
22 the MySpace Dragon Hoard collection reflects a total view count in excess of 200,000, as shown in
23 the screenshot below:
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50. Moreover, some members of the general public who downloaded the MySpace Dragon Hoard collection from IA—both within the United States and internationally—have engaged in further downstream infringement by re-uploading the collection to their own servers and making it available for unlimited streaming and permanent download through independent websites and services. Such downstream infringement was a foreseeable and natural consequence of IA’s conduct and forms part of the basis for Plaintiff’s contributory infringement claim.

51. For example, upon information and belief, an individual located in Switzerland publicly posted on the social media platform Reddit in or about 2019 that he had downloaded the entire MySpace Dragon Hoard collection from IA, created a torrent file from the collection, and added a search engine allowing users to directly stream and download the recordings from an independent website located at <https://cable.ayra.ch/myspace/>, as shown in the screenshots below:

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52. As shown in the screenshot below, the user referenced in paragraph 51 herein downloaded from IA’s website all of Plaintiff’s works contained within the MySpace Dragon Hoard collection—namely, the five (5) sound recordings and five (5) musical compositions embodied therein, as well as the one (1) additional musical composition—identified in paragraphs 1(a) and 1(b) herein. That user then made those works available for further streaming and permanent download on his own website, thereby engaging in downstream infringement directly facilitated by IA’s conduct.

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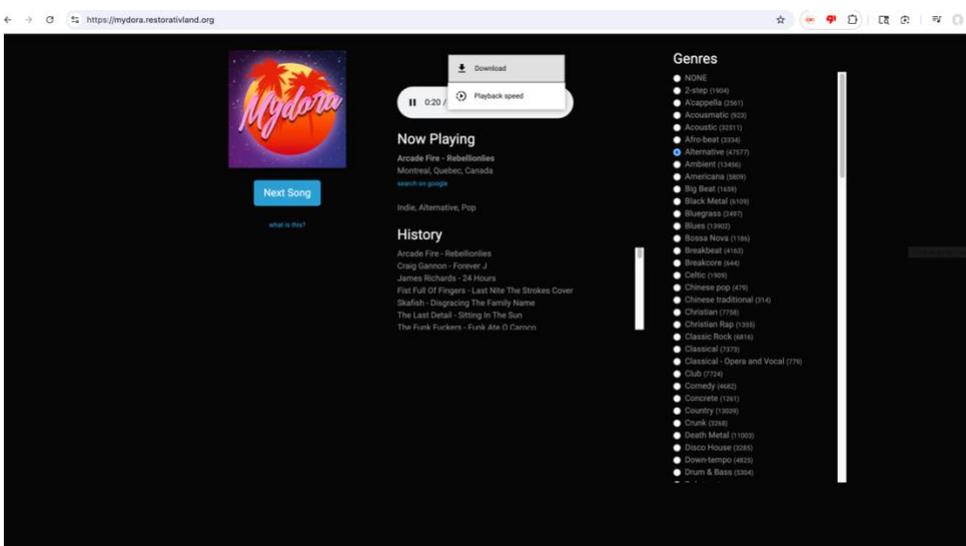
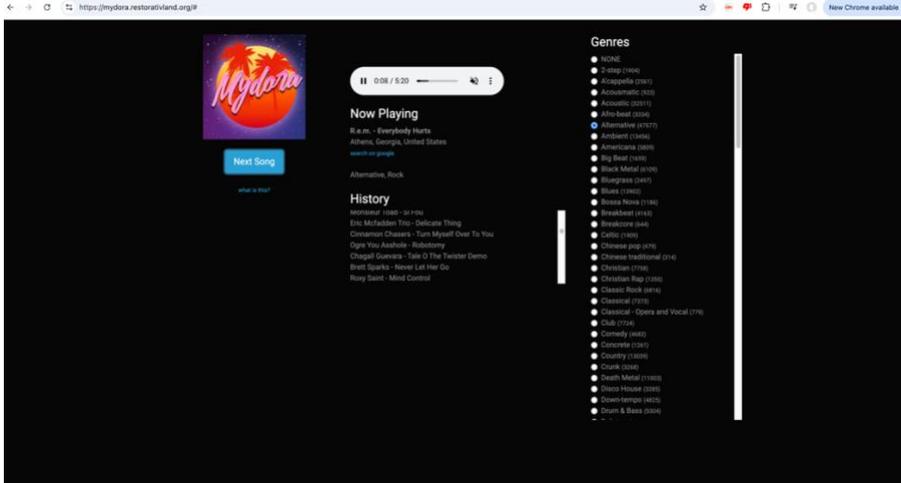
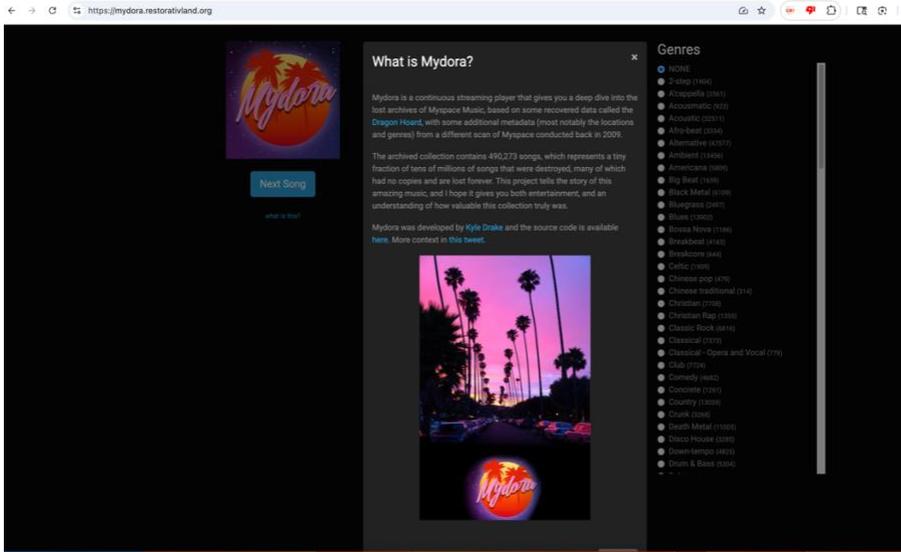
The screenshot shows a web browser window with the URL <https://babel.aynr.ch/myspace/#search/Tony%20Martino&asac=0&id=314897>. The page title is "Myspace Dragon Hoard Search Engine". Below the title, there is a search bar with "Tony Martino" entered and a search button. A table of search results is displayed below the search bar. The table has three columns: "id", "Song", and "Artist". The results are as follows:

id	Song	Artist
314897	Forgiven	tony martino
314898	Is That So Wrong	tony martino
314899	Withdrawn	tony martino
314900	All We've Got Is Now	tony martino
314901	Your Moment Your Life	tony martino
314902	Theres Gotta Be	tony martino

Total results: 6
Copyright © 2019 by Kevin Gut [x](#) | [More services](#) | Generated for 76.150.185.157

7 52(b). The downstream redistribution of Plaintiff's works by third parties, as described above,
8 was a direct and foreseeable result of IA's unauthorized copying and distribution. Such secondary
9 dissemination further expanded the scope of infringement, diminished the market value of
10 Plaintiff's works, and made it substantially more difficult for Plaintiff to police and enforce his
11 copyrights.

12
13 53. In a further example of downstream infringement, upon information and belief,
14 another member of the general public located in Minneapolis, Minnesota downloaded the entire 1.1-
15 terabyte MySpace Dragon Hoard collection from IA's website and re-uploaded the collection to his
16 own website known as "MyDora" (<https://mydora.restorativland.org/>). That website features a
17 continuous music streaming player containing every song in the collection, filterable by genre, and
18 allowed visitors to stream and permanently download individual MP3 files for free and on an
19 unlimited basis, as shown in the screenshots below:



1 54. All of Plaintiff’s works contained within the MySpace Dragon Hoard collection—
 2 namely, the five (5) sound recordings, the five (5) musical compositions embodied therein, and the
 3 one (1) additional musical composition, as identified in paragraphs 1(a) and 1(b) herein—were
 4 individually streamed and downloaded from the MyDora website referenced in paragraph 53 by an
 5 Illinois resident in March of 2024 and again in March of 2025.

7 55. A metadata inspection using ExifTool (version 13.41) confirms that the copies of
 8 Plaintiff’s recordings downloaded from the MyDora website originated directly from IA’s MySpace
 9 Dragon Hoard collection. The files are identical between the two sources, including identical file
 10 names and identical absence of embedded metadata, as shown in the comparison table below:

Field / Property	Apple iTunes (Official)	Internet Archive (Downloaded)	MyDora (Streamed) <input type="checkbox"/>
File Name	07 All We've Got Is Now.m4a	std_72ea6c8562d82c69c16d3095e5125fbc.mp3	std_72ea6c8562d82c69c16d3095e5125fbc.mp3
File Size	11 MB	3.6 MB	3.6 MB
Bitrate	261 kbps	96 kbps	96 kbps
Sample Rate	44100 Hz	22050 Hz	22050 Hz
Duration	0:05:04	0:05:04	0:05:04
Artist	Tony Martino	N/A	N/A
Album Artist	Tony Martino	N/A	N/A
Copyright / CMI	© 2010 Tony Martino Music / ASCAP	False	False
ISRC	DittoMusic:isrc:USNFK0900007	N/A	N/A
Original Media Flag	N/A	False	False
Where From Metadata	N/A	http://lostmyspace.com/ https://ia800900.us.archive.org/view_archive.php?archive=/3/items/myspace_dragon_hoard_2010/86.zip&file=86%2Fstd_72ea6c8562d82c69c16d3095e5125fbc.mp3	about:client https://mydora.restorativland.org/songs/86/std_72ea6c8562d82c69c16d3095e5125fbc.mp3

22 56. As the comparison table in paragraph 55 herein demonstrates, the copies of
 23 Plaintiff’s sound recordings distributed by IA and subsequently redistributed through the MyDora
 24 website contain no embedded copyright management information (“CMI”) whatsoever. By contrast,
 25 an authentic digital copy of the same recording previously distributed through authorized channels
 26 (such as Apple iTunes) contains numerous categories of embedded CMI, including song title, artist
 27
 28

1 name, album title, copyright year, publishing company, distributor information, ISRC code, and
2 performing rights organization information.

3 57. Likewise, authentic and authorized digital copies of Plaintiff’s other four (4) sound
4 recordings and one (1) additional musical composition referenced in paragraphs 1(a) and 1(b) herein
5 contain the same categories of embedded CMI described in paragraph 56, whereas the copies
6 reproduced and distributed by IA and the MyDora website contain no such information.
7

8 58. Upon information and belief, all of the approximately 500,000 sound recordings that
9 IA copied, uploaded, and distributed as part of its MySpace Dragon Hoard collection—including
10 Plaintiff’s works—contain no embedded copyright management information of any kind.

11 59. Upon information and belief, at the time IA received the hard drive allegedly
12 containing approximately 500,000 sound recordings and before uploading that content to its own
13 servers and website, IA knew or reasonably should have known that the recordings had been
14 compressed to lower audio quality and were entirely devoid of embedded CMI.
15

16 60. Upon information and belief, the absence of embedded CMI in the recordings
17 comprising the MySpace Dragon Hoard collection resulted either from (a) removal or alteration by
18 IA itself during ingestion or processing, (b) removal or alteration by the third party that provided the
19 recordings to IA, or (c) removal or alteration by MySpace at the time the recordings were originally
20 uploaded. Regardless of the precise mechanism, IA knowingly reproduced and distributed
21 recordings that lacked all categories of CMI.
22

23 61. Nowhere on IA’s primary website within the section dedicated to the MySpace Dragon
24 Hoard collection, nor on its companion website www.lostmyspace.com, did IA post any
25 disclaimers, warnings, or notifications to users that the sound recordings being offered—including
26 Plaintiff’s works—were likely protected by copyright or that downloading and redistributing them
27 could constitute infringement. By offering the recordings without any such notice, IA implicitly
28

1 represented to users that it possessed the legal right to distribute the recordings and that users were
2 authorized to stream and download them.

3 62. As an organization that regularly digitizes, handles, and distributes digital audio
4 recordings to the general public, IA knew or had reasonable grounds to know that distributing sound
5 recordings from which all embedded CMI had been removed would likely conceal infringement and
6 would enable and facilitate downstream infringement by third parties who downloaded and
7 redistributed those recordings.
8

9 63. As a library that regularly handles and offers digital audio recordings to the general
10 public, IA was fully aware of the relevance of ISRC codes as CMI to sound recordings, such as that
11 ISRC codes distinguish one recording or version from another; that they are used by streaming
12 services (e.g., Spotify, Apple, Tidal, etc.), collection societies (e.g., PPL, SoundExchange),
13 broadcasters, and content sharing websites such as YouTube, for the purposes of identifying which
14 recording was played, who owns it, and so as to route performer and master owner royalties
15 correctly; and that they are used by copyright owners to track usages (downloads, streams, etc.) and
16 to assert rights internationally.
17

18 64. IA knew that by reproducing and distributing copies of sound recordings that were
19 missing ISRC codes and other embedded CMI—including the copies of Plaintiff’s recordings—it
20 would make it substantially more difficult or impossible for Plaintiff and other copyright owners to
21 track downstream uses, discover infringement, assert their rights, and collect licensing revenue and
22 royalties.
23

24 65. IA further knew that by reproducing and distributing copies of sound recordings
25 entirely stripped of all categories of CMI, it would conceal infringement and create a significant
26 barrier to enforcement, making discovery of infringement dependent on happenstance, third-party
27
28

1 notification, or other non-traditional means. IA nevertheless distributed such recordings to the
2 general public on a massive scale.

3 65(b). Likewise, with respect to the twenty-four (24) musical compositions infringed
4 through IA's scanning and digitization of Plaintiff's printed lyrics and liner notes, IA removed,
5 altered, or failed to carry forward CMI that appeared on the original materials when creating its
6 derivative digital PDF files. IA distributed those digitized files without proper author credits,
7 copyright notices, publishing information, or other identifying metadata, knowing or having
8 reasonable grounds to know that such conduct would conceal infringement and facilitate further
9 unauthorized distribution.
10

11 **CLAIMS FOR RELIEF**

12 **FIRST CAUSE OF ACTION**
13 **Infringing Reproduction against IA**

14 66. Plaintiff repeats and realleges paragraphs 1-65(b) above as if fully set forth herein.

15 67. As the sole copyright registrant, Plaintiff owns the exclusive rights in the 59
16 copyrighted works at issue in this action, consisting of:

17 (a) five (5) copyrighted sound recordings and the five (5) copyrighted musical compositions
18 embodied therein that were infringed through IA's MySpace Dragon Hoard collection;

19 (b) one (1) additional copyrighted musical composition infringed through IA's MySpace
20 Dragon Hoard collection;

21 (c) twenty-four (24) copyrighted musical compositions embodied on two of Plaintiff's CD
22 albums that IA scanned, digitized, and reproduced without authorization; and
23

24 (d) twenty-four (24) copyrighted sound recordings fixed on those same two CDs that IA
25 reproduced and ingested through unauthorized digital ripping and digitization, all as
26 explicitly listed in paragraph 2 herein.
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28

1 68. By the acts set forth above, IA has infringed Plaintiff's exclusive rights under 17
2 U.S.C. § 106(1) by reproducing, copying, digitizing, ingesting, and storing on its servers each of the
3 protected sound recordings and musical compositions identified in paragraph 67 herein and in
4 Exhibit 1 to this First Amended Complaint, without Plaintiff's authorization.

5 69. At no time did IA have any authorization, permission, license, or consent to reproduce
6 or otherwise use any of Plaintiff's copyrighted works identified in paragraph 67 herein.

7 70. Each unauthorized reproduction of a protected sound recording or musical
8 composition by IA constitutes a separate and distinct act of copyright infringement.

9 71. IA's acts of infringement were willful, intentional, purposeful, and undertaken in
10 disregard of and with indifference to the rights of Plaintiff.

11 72. As a direct and proximate result of IA's infringements, Plaintiff is entitled to
12 statutory damages pursuant to 17 U.S.C. § 504(c), including in an amount ranging from \$30,000 to
13 \$150,000 for each protected sound recording and each protected musical composition infringed, or
14 in such other amount as may be found to be proper under 17 U.S.C. § 504(c).

15 73. Plaintiff is entitled to seek attorneys' fees and full costs pursuant to 17 U.S.C. § 505.

16
17
18 **SECOND CAUSE OF ACTION**

19 **Infringing Public Performance by Means of a Digital Audio Transmission against IA**

20 74. Plaintiff repeats and realleges paragraphs 1-65(b) above as if fully set forth herein.

21 75. As the sole copyright registrant, Plaintiff owns the exclusive rights in the 5 sound
22 recordings/5 embodied musical compositions, and 1 additional musical composition, the list of
23 which is explicitly set forth in paragraph 2 herein.

24 76. By the acts set forth above, IA has infringed Plaintiff's exclusive rights in each of the
25 protected sound recordings and musical compositions that are explicitly set forth in paragraph 2
26 herein, by performing them publicly by means of a digital audio transmission without authorization
27 in violation of 17 U.S.C. §§ 106(6).

1 77. At no time did IA have any authorization, permission, license, or consent to perform
2 publicly by means of a digital transmission or otherwise use Plaintiff's copyrighted works of which
3 are explicitly set forth in paragraph 2 herein.

4 78. Each such infringement by IA constitutes a separate and distinct act of infringement.

5 79. IA's acts of infringement are willful, intentional, purposeful, and in disregard of and
6 indifferent to the rights of Plaintiff.
7

8 80. As a direct and proximate result of the infringements by IA, Plaintiff is entitled to
9 statutory damages pursuant to 17 U.S.C. § 504(c), including in an amount ranging from \$30,000 to
10 \$150,000 per each protected sound recording and each protected musical composition infringed, or
11 in such other amount as may found to be proper under 17 U.S.C. § 504(c);
12

13 81. Plaintiff is entitled to seek attorneys' fees and full costs pursuant to 17 U.S.C. § 505.
14

15 **THIRD CAUSE OF ACTION**
16 **Infringing Distribution against IA**

17 82. Plaintiff repeats and realleges paragraphs 1-65(b) above as if fully set forth herein.

18 83. As the sole copyright registrant, Plaintiff owns the exclusive rights in the copyrighted
19 works at issue, consisting of: (a) five (5) sound recordings and the five (5) musical compositions
20 embodied therein; (b) one (1) additional musical composition; (c) twenty-four (24) musical
21 compositions embodied on two CD albums digitized by IA; and (d) twenty-four (24) corresponding
22 sound recordings fixed on those same CDs, all as explicitly set forth in paragraph 2 herein.
23

24 84. By the acts set forth above, IA has infringed Plaintiff's exclusive rights in each of the
25 protected sound recordings and musical compositions that are explicitly set forth in paragraph 2
26 herein, by distributing copies of them publicly without authorization in violation of 17 U.S.C. §§
27 106(3).
28

1 85. At no time did IA have any authorization, permission, license, or consent to distribute
2 or otherwise use Plaintiff's copyrighted works of which are explicitly set forth in paragraph 2
3 herein.

4 86. Each such infringement by IA constitutes a separate and distinct act of infringement.

5 87. IA's acts of infringement are willful, intentional, purposeful, and in disregard of and
6 indifferent to the rights of Plaintiff.
7

8 88. As a direct and proximate result of the infringements by IA, Plaintiff is entitled to
9 statutory damages pursuant to 17 U.S.C. § 504(c), including in an amount ranging from \$30,000 to
10 \$150,000 per each protected sound recording and each protected musical composition infringed, or
11 in such other amount as may found to be proper under 17 U.S.C. § 504(c);
12

13 89. Plaintiff is entitled to seek attorneys' fees and full costs pursuant to 17 U.S.C. § 505.
14
15

16 **FOURTH CAUSE OF ACTION**
17 **Infringing Public Display against IA**

18 90. Plaintiff repeats and realleges paragraphs 1-65(b) above as if fully set forth herein.

19 91. As the sole copyright registrant, Plaintiff owns the exclusive rights in twenty-four (24)
20 copyrighted musical compositions, including the lyrics embodied therein, that were scanned,
21 digitized, and publicly displayed by IA, as explicitly set forth in paragraph 2 herein.

22 92. By the acts set forth above, IA infringed Plaintiff's exclusive rights in each of those
23 twenty-four (24) musical compositions by publicly displaying unauthorized digital copies of the
24 works on IA's website without Plaintiff's authorization, in violation of 17 U.S.C. § 106(5).
25

26 93. At no time did IA have any authorization, permission, license, or consent to publicly
27 display any of Plaintiff's copyrighted musical compositions identified in paragraph 2 herein.
28

1 94. Each such unauthorized public display constitutes a separate and distinct act of
2 infringement.

3 95. IA’s acts of infringement were willful, intentional, purposeful, and undertaken in
4 disregard of and with indifference to the rights of Plaintiff.

5 96. As a direct and proximate result of IA’s infringements, Plaintiff is entitled to
6 statutory damages pursuant to 17 U.S.C. § 504(c), including in an amount ranging from \$30,000 to
7 \$150,000 for each protected musical composition publicly displayed, or in such other amount as
8 may be found proper under 17 U.S.C. § 504(c).

9 97. Plaintiff is entitled to seek attorneys’ fees and full costs pursuant to 17 U.S.C. § 505.

10
11 **FIFTH CAUSE OF ACTION**
12 **Infringing Derivative Work against IA**

13 98. Plaintiff repeats and realleges paragraphs 1-65(b) above as if fully set forth herein.

14 99. As the sole copyright registrant, Plaintiff owns the exclusive rights in:
15 (a) twenty-four (24) copyrighted musical compositions, including the lyrics embodied therein, that
16 IA scanned and converted into derivative digital PDF files; and (b) twenty-four (24) copyrighted
17 sound recordings that IA converted into modified digital “audio samples only” files through
18 truncation, editing, or other alteration, all as explicitly set forth in paragraph 2 herein.

19 100. By the acts set forth above, IA infringed Plaintiff’s exclusive rights under 17 U.S.C. §
20 106(2) by preparing unauthorized derivative works, namely: (a) downloadable digital PDF
21 reproductions derived from Plaintiff’s pre-existing physical CD liner notes and printed song lyrics;
22 and (b) shortened, truncated, edited, or otherwise modified digital audio files created from
23 Plaintiff’s copyrighted sound recordings and made available as “audio samples only,” all without
24 any license, permission, or other authorization from Plaintiff.
25
26
27
28

1 101. At no time did IA have any authorization, permission, license, or consent to prepare
2 derivative works based upon Plaintiff’s copyrighted musical compositions identified in paragraph 2
3 herein.

4 102. Each such unauthorized derivative work constitutes a separate and distinct act of
5 infringement.

6 103. IA’s acts of infringement were willful, intentional, purposeful, and undertaken in
7 disregard of and with indifference to the rights of Plaintiff.

8 104. As a direct and proximate result of IA’s infringements, Plaintiff is entitled to
9 statutory damages pursuant to 17 U.S.C. § 504(c), including in an amount ranging from \$30,000 to
10 \$150,000 for each protected musical composition for which an unauthorized derivative work was
11 created, or in such other amount as may be found proper under 17 U.S.C. § 504(c).

12 105. Plaintiff is entitled to seek attorneys’ fees and full costs pursuant to 17 U.S.C. § 505.

13
14 **SIXTH CAUSE OF ACTION**
15 **Contributory Infringement against IA**

16 106. Plaintiff repeats and realleges paragraphs 1-65(b) above as if fully set forth herein.

17 107. As the sole copyright registrant, Plaintiff owns the exclusive rights in the 5 sound
18 recordings/5 embodied musical compositions, and 1 additional musical composition all as set forth
19 in paragraph 2 herein.

20 108. By the acts set forth above, Plaintiffs’ exclusive rights in each of the protected sound
21 recordings and musical compositions as listed in paragraph 2 herein, were directly infringed by
22 unlawful reproductions and distributions to IA by an alleged third-party “anonymous academic
23 group” or some other currently unknown third-party or parties, in violation of 17 U.S.C. §§ 106.

24 109. The reproductions and distributions by an alleged third-party “anonymous academic
25 group” or some other currently unknown third-party or parties as described herein, lacked
26 authorization, permission, license, or consent to reproduce and distribute.
27
28

1 110. IA is contributorily liable for the direct infringements of the alleged third-party
2 “anonymous academic group” or some other currently unknown third-party or parties as described
3 herein. By willfully accepting a hard drive in the mail from an anonymous third-party or parties
4 that contained digital copies of nearly 500,000 sound recordings (including Plaintiff’s as set forth in
5 paragraph 2 herein) all fully-stripped of CMI and produced to IA without any evidence of an
6 existing license or other authorization from Plaintiff for such distribution, IA had actual knowledge
7 or at least red flag knowledge that ingesting said content onto its own servers, hosting said content,
8 uploading copies, making such copies available to the general public at large for free streaming and
9 permanent download through its websites constituted infringement, and thereby materially
10 facilitated and contributed to the anonymous third-party or parties’ infringements of same.
11

12 111. Upon information and belief, IA knows the true identity of the allegedly
13 “anonymous” party or parties that sent it the 1.1 terabyte collection of sound recordings that
14 comprised/comprises its MySpace Dragon Hoard, and only has abetted the “anonymity” by reason
15 that IA is aware that having accepted the allegedly “anonymous” party’s distribution of
16 approximately 500,000 sound recordings fully stripped of CMI and in which no valid license for
17 their distribution and subsequent upload/re-distribution was provided to it, was likely unlawful
18 conduct under the Copyright Act.
19

20 112. By virtue of providing the storage facilities and hosting servers that enabled the
21 anonymous third-party or parties’ infringements via its unlawful reproductions and distributions of
22 Plaintiff’s sound recordings and musical compositions to IA, IA had the ability to stop the
23 reproduction, distribution and public performance by means of a digital audio transmission of
24 Plaintiff’s protected sound recordings and musical compositions. IA failed to do so, and instead
25 purposefully and knowingly facilitated, encouraged, and materially contributed to the infringements
26 of same as described herein.
27
28

1 113. Each infringement of Plaintiff’s protected sound recordings and musical compositions
2 constitutes a separate and distinct act of infringement.

3 114. IA’s acts of infringement are willful, intentional, purposeful, and in disregard of and
4 indifferent to the rights of Plaintiff.

5 115. As a direct and proximate result of the infringements by IA, Plaintiff is entitled to
6 statutory damages pursuant to 17 U.S.C. § 504(c), including in an amount ranging from \$30,000 to
7 \$150,000 per each protected sound recording and each protected musical composition infringed, or
8 in such other amount as may found to be proper under 17 U.S.C. § 504(c);
9

10 116. Plaintiff is entitled to seek attorneys’ fees and full costs pursuant to 17 U.S.C. § 505.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff respectfully requests a judgment in his favor and against Defendant as
13 follows:
14

15 A. For a declaration that Defendant has willfully infringed Plaintiff’s protected sound
16 recordings and musical compositions as set forth in paragraph 2 herein;

17 B. For statutory damages pursuant to 17 U.S.C. § 504(c) arising from Defendant’s willful
18 violations of Plaintiff’s rights, including in an amount ranging from \$30,000 to \$150,000 per work
19 infringed, or in such other amount as may found to be proper under 17 U.S.C. § 504(c);
20

21 C. For such equitable relief under Title 17, Title 28, and/or the Court’s inherent authority as
22 is necessary to prevent or restrain infringement of Plaintiff’s protected sound recordings and
23 musical compositions, including a permanent injunction requiring that Defendant and its officers,
24 agents, servants, employees, attorneys, directors, successors, assigns, licensees, and all others in
25 active concert or participation with any of them, cease infringing, or causing, aiding, enabling,
26 facilitating, encouraging, promoting, inducing, or materially contributing to or participating in the
27
28

1 infringement of any of Plaintiff's exclusive rights under federal law, including without limitation all
2 of the works set forth in paragraph 2 herein;

3 D. For an award of Plaintiff's costs and disbursements in this action, including any
4 reasonably incurred attorney's fees, pursuant to 17 U.S.C. § 505;

5 E. For an award of pre-judgment and post-judgment interest, to the fullest extent available,
6 on any monetary award made part of the judgment against Defendants; and
7

8 F. For such other and further relief as the Court deems just and proper.

9 **JURY DEMAND**

10 Pursuant to Federal Rule of Civil Procedure 38, Plaintiff hereby respectfully demands a jury
11 trial on all issues so triable in this action.
12

13
14 DATED: January 20th, 2026

Respectfully Submitted,

15 /s/ Anthony Martino
16 Anthony Martino
17 Plaintiff

18 **CERTIFICATE OF SERVICE**

19 I certify that on January 20th, 2026, I filed the foregoing document via the Court's CM/ECF
20 system, which will serve a copy on all counsel of record.

21 /s/ Anthony Martino
22 Anthony Martino
23 Plaintiff
24
25
26
27
28

EXHIBIT 1

**EXHIBIT 1 – LIST OF SEPARATELY INFRINGED WORKS
BY CATEGORY, TITLE, AND COPYRIGHT REGISTRATION NUMBER**

A.) Sound Recordings

1. Forgiven (SRu982-184, effective date of registration, 6/10/2009)
2. Is That So Wrong? (SRu982-184, effective date of registration, 6/10/2009)
3. All We've Got Is Now (SRu982-184, effective date of registration, 6/10/2009)
4. Your Moment, Your Life (SRu982-184, effective date of registration, 6/10/2009)
5. There's Gotta Be (SRu982-184, effective date of registration, 6/10/2009)
6. Frozen In Love (SRu539-107, effective date of registration, 8/27/2003)
7. Can't Get Through (SRu507-366, effective date of registration, 3/7/2003)
8. Until We Meet Again (SRu507-366, effective date of registration, 3/7/2003)
9. Come To Life (SRu507-366, effective date of registration, 3/7/2003)
10. Deception (SRu507-366, effective date of registration, 3/7/2003)
11. Dreams (SRu507-366, effective date of registration, 3/7/2003)
12. Inevitable (SRu539-107, effective date of registration, 8/27/2003)
13. They're So Right (SRu507-366, effective date of registration, 3/7/2003)
14. Chasing Rainbows (SRu507-366, effective date of registration, 3/7/2003)
15. Married Man (SRu507-366, effective date of registration, 3/7/2003)
16. World Of Wonder (SRu507-366, effective date of registration, 3/7/2003)
17. Why Does She Cry? (SRu507-366, effective date of registration, 3/7/2003)
18. Forever Changed (SRU628-333, effective date of registration, 7/31/2006)
19. Growing Pains (SRU628-333, effective date of registration, 7/31/2006)
20. Note To Self (SRU628-333, effective date of registration, 7/31/2006)
21. Love Extinguisher (SRU628-333, effective date of registration, 7/31/2006)
22. Moat Around Your Heart (SRU628-333, effective date of registration, 7/31/2006)
23. Faces Change (SRU628-333, effective date of registration, 7/31/2006)
24. Just Don't Know (SRU628-333, effective date of registration, 7/31/2006)
25. Remember Me (SRU628-333, effective date of registration, 7/31/2006)
26. More Than You've Known (SRU628-333, effective date of registration, 7/31/2006)
27. The World Outside (SRU628-333, effective date of registration, 7/31/2006)
28. Re-Ignition (SRU628-333, effective date of registration, 7/31/2006)
29. Hopeful (SRU628-333, effective date of registration, 7/31/2006)

B.) Musical Compositions (Lyrics and Music) (*Certain registrations listed herein are Sound Recording ("SR") registrations that also cover the underlying musical compositions embodied therein, as Plaintiff is the sole author of both the sound recordings and the musical compositions.)

30. Forgiven (Pau3-406-761, effective date of registration, 1/14/2008)
31. Is That So Wrong? (Pau3-406-761, effective date of registration, 1/14/2008)
32. All We've Got Is Now (Pau3-406-761, effective date of registration, 1/14/2008)
33. Your Moment, Your Life (Pau3-406-761, effective date of registration, 1/14/2008)
34. There's Gotta Be (Pau3-406-761, effective date of registration, 1/14/2008)

35. Withdrawn (Pau3-406-761, effective date of registration, 1/14/2008)
36. Frozen In Love (SRu539-107, effective date of registration, 8/27/2003)
37. Can't Get Through (SRu507-366, effective date of registration, 3/7/2003)
38. Until We Meet Again (SRu507-366, effective date of registration, 3/7/2003)
39. Come To Life (SRu507-366, effective date of registration, 3/7/2003)
40. Deception (SRu507-366, effective date of registration, 3/7/2003)
41. Dreams (SRu507-366, effective date of registration, 3/7/2003)
42. Inevitable (SRu539-107, effective date of registration, 8/27/2003)
43. They're So Right (SRu507-366, effective date of registration, 3/7/2003)
44. Chasing Rainbows (SRu507-366, effective date of registration, 3/7/2003)
45. Married Man (SRu507-366, effective date of registration, 3/7/2003)
46. World Of Wonder (SRu507-366, effective date of registration, 3/7/2003)
47. Why Does She Cry? (SRu507-366, effective date of registration, 3/7/2003)
48. Forever Changed (SRU628-333, effective date of registration, 7/31/2006)
49. Growing Pains (SRU628-333, effective date of registration, 7/31/2006)
50. Note To Self (SRU628-333, effective date of registration, 7/31/2006)
51. Love Extinguisher (SRU628-333, effective date of registration, 7/31/2006)
52. Moat Around Your Heart (SRU628-333, effective date of registration, 7/31/2006)
53. Faces Change (SRU628-333, effective date of registration, 7/31/2006)
54. Just Don't Know (SRU628-333, effective date of registration, 7/31/2006)
55. Remember Me (SRU628-333, effective date of registration, 7/31/2006)
56. More Than You've Known (SRU628-333, effective date of registration, 7/31/2006)
57. The World Outside (SRU628-333, effective date of registration, 7/31/2006)
58. Re-Ignition (SRU628-333, effective date of registration, 7/31/2006)
59. Hopeful (SRU628-333, effective date of registration, 7/31/2006)

EXHIBIT 2

Myspace apologizes after losing 12 years' worth of music

By Matthew Robinson, CNN

🕒 2 min read · Published 2:34 PM EDT, Mon March 18, 2019



ADVERTISEMENT



Martin Keene/AP

(CNN) — Social networking company Myspace has apologized for apparently losing 12 years' worth of music uploaded to its site, following a server migration error – a loss potentially amounting to 50 million songs.

The Los Angeles-based company, which was once a leading music-sharing platform, announced that content uploaded to its site from its inception in 2003 up until 2015 may no longer be accessible.

“As a result of a server migration project, any photos, videos and audio files you uploaded more than three years ago may no longer be available on or from Myspace,” the company said in a statement on its website. “We apologize for the inconvenience.”

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Myspace was the most popular social media site between 2005 and 2008, before Facebook overtook it.



The site is credited with helping launch the careers of numerous artists, including Kate Nash. Matt Cardy/Getty Images Europe/Getty Images

The site is credited with helping launch the careers of numerous international artists, including Kate Nash, Arctic Monkeys and Calvin Harris, who were discovered on the platform.

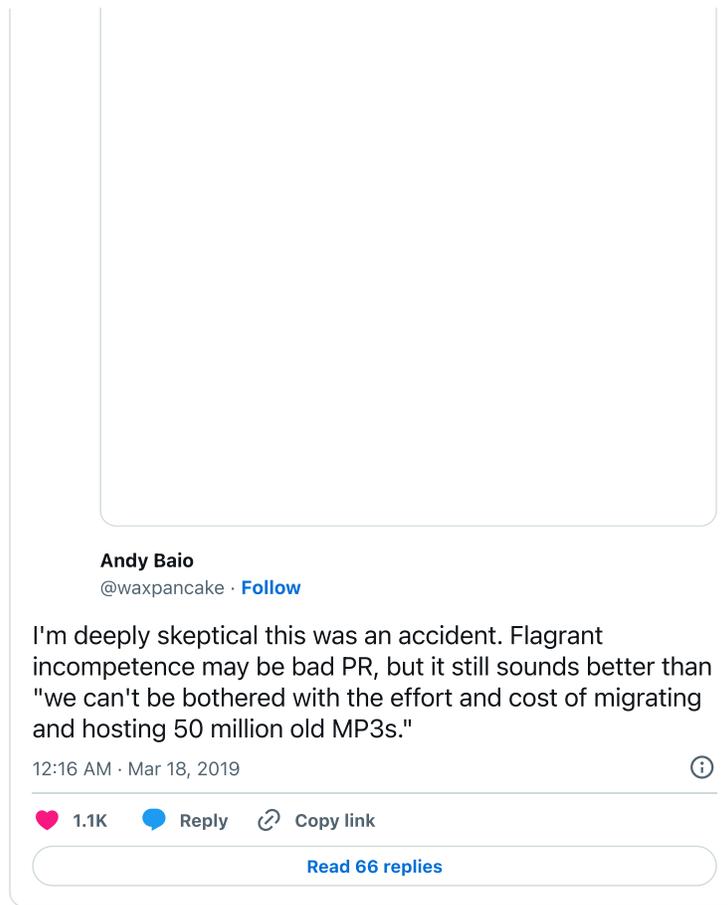
It has nevertheless been in decline for years, failing to compete with other leading social media and music-sharing platforms including Facebook and YouTube, despite multiple redesigns of the site.

In 2009, the platform employed approximately 1,600 people. It now has a staff of 150, according to the company website.

Andy Baio, a tech expert and former chief technology officer of crowdfunding platform Kickstarter, warned that the music of up to 14 million artists may have been lost. The exact number of tracks lost has yet to be confirmed.

Andy Baio · Mar 17, 2019 
@waxpancake · [Follow](#)
Myspace accidentally lost all the music uploaded from its first 12 years in a server migration, losing over 50 million songs from 14 million artists. [x.com/textfiles/stat...](#)

Jason Scott @textfiles
[reddit.com/r/technology/c...](#) Just in case you're wondering how it's going.



“Myspace accidentally lost all the music uploaded from its first 12 years in a server migration, losing over 50 million songs from 14 million artists,” Baio wrote on Twitter.

CNN has contacted Myspace’s data protection officer for comment.

Steven Battelle, the former lead vocalist of British rock band LostAlone, expressed sadness at the data loss and said the platform played a pivotal role in the establishment of his group.

“This makes me really sad, so much of the start of my band came from the exposure and community Mspace had,” he wrote on Twitter. “I still think it was the best platform for artists / bands. Just music and people who loved the music commenting on it.”

Rupert Murdoch’s News Corporation bought Myspace in 2005 for \$580 million. In 2011, it was sold to digital ad company Specific Media for just \$35 million.

Up next

New BTS single ‘Take Two’ celebrates their 10th anniversary

1 minute read



BBC apologizes to Trump over editing blunder, rejects defamation claim

4 minute read



The Beats Pill speaker is finally back — and it’s awesome

6 minute read



BBC leaders resign amid scandal over misleading edit of Trump speech



EXHIBIT 3

THOM TILLIS
NORTH CAROLINA

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WASHINGTON, DC 20510
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United States Senate

WASHINGTON, DC 20510

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VIA ELECTRONIC TRANSMISSION

June 10, 2020

Mr. Brewster Kahle
Founder and Digital Librarian
Internet Archive
300 Funston Avenue
San Francisco, CA 94118

Dear Mr. Kahle:

I write to you again as Chairman of the Senate Judiciary Committee Subcommittee on Intellectual Property. In my April 8, 2020 letter, I expressed my concern that the Internet Archive's announcement of a National Emergency "Library" filled with 1.4 million books that had been digitized and made available to the public without restrictions and without the permission of copyright owners appeared to be a blatant infringement of thousands—if not more—of copyrights.¹ Indeed, the U.S. Copyright Office analyzed publicly available facts and concluded that though some works included in the National Emergency "Library" might be permitted under fair use, many would not be. The Copyright Office went on to say that "while the Internet Archive's goal of making research and educational materials publicly available may be laudable, so is respect for copyright."² I write now after learning that the Internet Archive is engaged in other initiatives that involve the unauthorized digitization and dissemination of copyright-protected creative works—in this case sound recordings.

According to a May 15, 2020 article in the *Seattle Times*, the Internet Archive has purchased Bop Street Records' full collection of 500,000 sound recordings with the "inten[t] to digitize the recordings and put them online, where they can be streamed for free."³ It is not clear from the

¹ Since then, I understand that major American book publishers—Hachette Book Group, HarperCollins Publishers, John Wiley & Sons and Penguin Random House—filed a lawsuit alleging copyright infringement and seeking to enjoin uses of their copyrighted books in the National Emergency Library or the Internet Archive's "Open Library," which had offered the same catalog of books but with some limitations, such as checkout waitlists. *See Hachette Book Grp. v. Internet Archive*, No. 1:20-cv-04160 (S.D.N.Y. filed June 1, 2020).

² Letter from Maria Strong, Acting Register of Copyrights, U.S. Copyright Office, to Sen. Tom Udall, at 21 (May 15, 2020).

³ Paul de Barros, *A Happy Ending for Seattle's Bop Street Records: A Nonprofit Buys Up the Entire Collection*, SEATTLE TIMES (May 15, 2020), <https://www.seattletimes.com/entertainment/music/a-happy-ending-for-seattles-bop-street-records-a-nonprofit-buys-up-the-entire-collection/>.

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HENDERSONVILLE, NC 28792
PH: (828) 693-8750

article, or others, if you intend to digitize all of the sound recordings acquired from Bop Street. But it is clear that these sound recordings were very recently for sale in a commercial record shop and likely contain many sound recordings that retain significant commercial value. This raises serious alarms about copyright infringement.

As I understand, Bop Street Records, which the *Wall Street Journal* once deemed a top-five record shop in the country, focuses on collectible-quality vinyl records across a diverse range of musical genres. According to its website, their sound recordings include “Rock, Soul/R&B, Jazz, Blues, Classical, Country, World and many other genres from the 1920’s to 1990’s.” The overwhelming majority—if not all—of these sound recordings are protected by U.S. copyright law, and thus may not be digitized and streamed or downloaded without authorization.

In a similar vein, I am aware of the Internet Archive’s “Great 78 Project,” which has already digitized—and continues to digitize daily—a vast trove of 78 rpm recordings, many of which are also commercially valuable recordings already in the marketplace, and has made those recordings available to the public for free through unlimited streaming and download. I understand that the Internet Archive is framing this and its other sound recording projects—which include both obscure gems for music fans and hits from the likes of Elvis Presley, Chuck Berry, and Johnny Cash—as preservation, but your current practices raise numerous potential issues of copyright infringement. The Bop Street collection is likely to add to that. Among other things, your sound recording projects do not appear to comply with the relevant provisions of the Orrin G. Hatch–Bob Goodlatte Music Modernization Act (MMA), which deals only with pre-1972 sound recordings and would not allow for streaming or downloading. Moreover, there are additional copyrights, such as the musical composition and the album artwork, that are displayed on the Internet Archive website and would not be covered by an exception for preservation.

I recognize the value in preserving culture and ensuring that it is accessible by future generations, such as the Library of Congress’s Recorded Sound Collection and National Recording Registry projects. But I am concerned that the Internet Archive thinks that it—not Congress—gets to determine the scope of copyright law. With its sound recording projects, the Internet Archive does not even pretend that a national emergency like the Covid-19 pandemic creates a special need for these sound recordings to be freely streamed or downloaded. Rather, the Internet Archive seems to be daring copyright owners to sue to enforce their rights, or else effectively forfeit them—something many copyright owners, particularly individuals and smaller enterprises, cannot afford to do.

Our copyright system is designed with important limitations and exceptions that ensure that the public can make appropriate uses of copyrighted works even when the copyright owner seeks to prevent such uses—but those are the exception, and free use for those who disagree with the concept of exclusive rights is not one of them. Accordingly, I once again invite you to share with me the legal support, in copyright law or elsewhere, for reproducing and distributing copyrighted works that are owned by others. In particular, how do the Internet Archive’s sound recording digitization and streaming projects—in particular the Great 78 Project—fit within case law interpreting the fair use doctrine and within the relevant provisions of section 108 and the MMA?

Please respond by July 10, 2020. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Thom Tillis". The signature is written in a cursive style with a horizontal line underneath the name.

Thom Tillis
Chairman
Subcommittee on Intellectual Property

EXHIBIT 4

1 library, specifically looking for this Wolf Hall book,
2 would be presented with the donate button. We can agree
3 on that; right?

4 A. Yes.

5 Q. And would you agree with me that this is another
6 way in which Internet Archive monetizes its lending
7 library web pages?

8 MS. LANIER: Objection. Scope, vague.

9 THE WITNESS: That is a very broad
10 interpretation.

11 Q. BY MR. BROWNING: Of monetizing? You know, if
12 you want to define it, but I mean, as I understand
13 monetize is makes money from, and what -- you know, do
14 you disagree with me that the donate button is not a way
15 to make money from the lending library?

16 MS. LANIER: Same objection.

17 THE WITNESS: It's -- the donate button takes
18 you to the general page of the Internet Archive, and it
19 doesn't mean that the money that's being given would
20 specifically go to the Open Library.

21 Q. BY MR. BROWNING: I understand that, but it will
22 go to Internet Archive.

23 A. It will go to Internet Archive.

24 Q. Okay. So I'm going to have one more try at
25 this. So would you agree with me that this web page is

1 monetized?

2 MS. LANIER: Objection. Scope, vague.

3 THE WITNESS: I mean, every single page of the
4 Archive is monetized.

5 Q. BY MR. BROWNING: Okay. Mr. Cressaty, let's
6 move on.

7 MR. BROWNING: Carl, there's going to be a jump
8 here. Can we go to Tab 28, please?

9 MR. MAZUREK: Yes.

10 (Exhibit 89, INTARC00138102, marked for
11 identification electronically by counsel.)

12 MR. MAZUREK: It should be in the shared folder.

13 Q. BY MR. BROWNING: And before I pull -- or we
14 pull this up, Jacques, I have a question for you. Do you
15 believe that Internet Archive is a public library?

16 A. I do.

17 Q. What is the basis for that belief?

18 A. We make the books available to patrons for free.

19 Q. Are you aware of Internet Archive being
20 accredited as a library by any governmental institution?

21 A. Yes, I am.

22 MS. LANIER: Objection. Scope.

23 Q. BY MR. BROWNING: Who -- what -- tell me what
24 you know about that.

25 MS. LANIER: Same objection.