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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

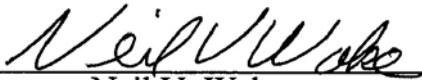
Atlantic Recording Corporation, et. al.,) No. CV 06-02076-PHX-NVW
Plaintiffs,) **ORDER**
vs.)
Pamela and Jeffery Howell, wife and)
husband,)
Defendants.)

IT IS ORDERED that the parties submit further briefing and prepare themselves to discuss at oral argument on October 18, 2007, the following questions:

1. Does the record in this case show that it is impossible for plaintiff to prove particular instances of defendant Howell's illegal distribution of the copyrighted material through Kazaa, and that defendant Howell is responsible for the absence of such records of distribution?
2. Does the record in this case show that defendant Howell possessed an "unlawful copy" of the plaintiff's copyrighted material, and that he actually disseminated that copy to the public?
3. Does the record in this case show that defendant Howell offered to distribute the plaintiff's copyrighted work "for purposes of further distribution, public performance, or display?"
4. Did defendant Howell admit on the record that he is responsible for the plaintiff's copyrighted material appearing in his Kazaa shared folder?

1 The court is particularly interested in the following cases regarding the need to show an
2 actual transfer of an identifiable copy of a copyrighted work to prove infringement of the
3 right to distribute: *Hotaling v. Church of Jesus Christ of Latter-Day Saints*, 118 F.3d 199
4 (4th Cir. 1997); *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (9th Cir. 2000); *In Re.*
5 *Napster, Inc. Copyright Litigation*, 377 F. Supp. 2d 796 (N.D. Cal. 2005); *Perfect 10, Inc.*
6 *v. Google, Inc.*, 487 F.3d 701 (9th Cir. 2007). The parties briefs should be submitted to the
7 court by Thursday, October 11, 2007, one week before the scheduled oral argument. If
8 plaintiff needs more time to brief these questions, the court will reschedule the oral argument.

9 DATED this 3rd day of October 2007.

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13 Neil V. Wake
14 United States District Judge
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