

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE RODGERS AND HAMMERSTEIN :  
ORGANIZATION on behalf of itself and IRVING :  
BERLIN MUSIC COMPANY and WILLIAMSON :  
MUSIC CO., FREDDY BIENSTOCK individually and :  
d/b/a FREDDY BIENSTOCK MUSIC COMPANY, :  
CRITERION MUSIC CORPORATION, FRANK MUSIC :  
CORP., JERRY LEIBER individually and d/b/a JERRY :  
LEIBER MUSIC, MIKE STOLLER individually and d/b/a :  
MIKE STOLLER MUSIC, MPL COMMUNICATIONS, :  
INC., PEER INTERNATIONAL CORPORATION, :  
JULIAN J. ABERBACH d/b/a ELVIS PRESLEY MUSIC :  
and GLADYS MUSIC and THE SONGWRITERS' :  
GUILD OF AMERICA, INC. o/b/o THE ESTATE OF :  
LOUIS ALTER, ALISON ALTER ARIES and ADAM :  
ALTER d/b/a LOUIS ALTER PUBLICATIONS, :

Case No.:

**COMPLAINT  
FOR  
COPYRIGHT  
INFRINGEMENT**

Plaintiffs,

vs.

UMG RECORDINGS, INC. and THE FARM CLUB  
ONLINE, INC.,

Defendants.

..... X

The Rodgers and Hammerstein Organization on behalf of itself and Irving  
Berlin Music Company and Williamson Music Co., Freddy Bienstock individually and  
d/b/a Freddy Bienstock Music Company, Criterion Music Corporation, Frank Music  
Corp., Jerry Leiber individually and d/b/a Jerry Leiber Music, Mike Stoller, individually  
and d/b/a Mike Stoller Music, MPL Communications, Inc., Peer International

Corporation, Julian J. Aberbach d/b/a Elvis Presley Music and Gladys Music, and The Songwriters' Guild of America, Inc. on behalf of the Estate of Louis Alter, Alison Alter Aries and Adam Alter d/b/a Louis Alter Publications, by their attorneys Paul, Weiss, Rifkind, Wharton & Garrison, upon information and belief (except as to allegations regarding plaintiffs and the rights they assert herein), allege for their complaint as follows:

### **NATURE OF ACTION**

1. This case concerns the unlawful conduct of a major international record company, UMG Recordings, Inc. ("UMG"), which has decided to engage in the very same infringing activities that UMG itself -- in a recent and highly publicized lawsuit -- successfully challenged in this Court. UMG has made hundreds of the world's most popular songs available to the public through an Internet-based music service without the permission of the owners of the copyrights in those songs. The only difference between this case and the one previously brought by UMG is that, this time, the music copyrights that are being violated do not belong to UMG, but to other copyright owners.

2. Plaintiffs are songwriters and music publishers that own or control copyrights in musical compositions, including such renowned titles as "White Christmas" by Irving Berlin, "Jailhouse Rock" by Jerry Leiber and Mike Stoller, "Peggy Sue" by Buddy Holly, Jerry Allison and Norman Petty, "My Favorite Things" by Richard Rodgers and Oscar Hammerstein, II, and "Love Me Tender" by Elvis Presley and Vera Matson.

Plaintiffs bring this action for injunctive relief and damages to halt the pervasive and willful infringement of their copyrighted musical works.

3. Without plaintiffs' permission, UMG has copied hundreds of sound recording tracks embodying plaintiffs' copyrighted musical works for distribution to the public through its "Farmclub.com Music Service" located at [www.farmclub.com](http://www.farmclub.com) ("Farmclub service"). These copyrighted musical works include those specified below, and, on information and belief, many other copyrighted musical compositions owned or controlled by plaintiffs. UMG did not seek or obtain permission from plaintiffs prior to copying plaintiffs' songs onto UMG's public servers. On information and belief, UMG continues to make unauthorized copies of other copyrighted musical works owned and/or controlled by plaintiffs to expand the offerings on its Farmclub service.

4. UMG's wholesale infringement of the plaintiffs' copyrighted musical works is particularly remarkable given its recent victory in *UMG Recordings, Inc. v. MP3.com, Inc.*, 92 F. Supp. 2d 349 (S.D.N.Y. 2000), *later proceeding*, *UMG Recordings, Inc. v. MP3.com, Inc.*, No. 00 CIV. 472 (JSR), 2000 WL 1262568 (S.D.N.Y. Sept. 6, 2000), in which this Court held that the Internet-based music service My.MP3.com had willfully infringed UMG's copyrighted sound recordings by copying those sound recordings on its public servers. In that case UMG obtained a judgment in the amount of \$53.4 million encompassing statutory damages, costs and attorneys' fees.

5. By this action, plaintiffs seek (a) a declaration that UMG's unauthorized copying of any copyrighted musical works owned or controlled by plaintiffs

onto UMG's public servers willfully infringes plaintiffs' copyrights in violation of the Copyright Act, 17 U.S.C. § 101 *et seq.* ("Copyright Act"); and (b) legal and equitable relief, as specified below, to remedy defendant's willful and continuing violation of plaintiffs' copyrights in the copyrighted works.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331 and 1338(a). This Court has venue under 28 U.S.C. §§ 1391(b) and (c) and 1400(a).

### **THE PARTIES**

7. Plaintiff The Rodgers and Hammerstein Organization ("R&H"), on behalf of itself and Irving Berlin Music Company and Williamson Music Co., is a joint venture established under the laws of the State of New York, with its principal place of business in this District, and is actively engaged in the business of music publishing, whereby it licenses the recording, reproduction and distribution of musical works for which it either owns or controls the copyrights.

8. Plaintiff Freddy Bienstock individually and d/b/a Freddy Bienstock Music Company ("Bienstock") is a citizen of New York, with his principal place of business in this District, and is actively engaged in the business of music publishing, whereby he licenses the recording, reproduction and distribution of musical works for which he either owns or controls the copyrights.

9. Plaintiff Criterion Music Corporation (“Criterion”) is a California corporation, with its principal place of business in Hollywood, California, and is actively engaged in the business of music publishing, whereby it licenses the recording, reproduction and distribution of musical works for which it either owns or controls the copyrights.

10. Plaintiff Frank Music Corp. (“Frank Music”) is a New York corporation, with its principal place of business in this District, and is actively engaged in the business of music publishing, whereby it licenses the recording, reproduction and distribution of musical works for which it either owns or controls the copyrights.

11. Plaintiffs Jerry Leiber individually and d/b/a Jerry Leiber Music and Mike Stoller individually and d/b/a Mike Stoller Music are citizens of California (“Leiber & Stoller”) and are professional songwriters who are also engaged in the business of music publishing, whereby they license the recording, reproduction and distribution of musical works for which they either own or control the copyrights.

12. Plaintiff MPL Communications, Inc. (“MPL”) is a New York corporation, with its principal place of business in this District, and is actively engaged in the business of music publishing, whereby it licenses the recording, reproduction and distribution of musical works for which it either owns or controls the copyrights.

13. Plaintiff Peer International Corporation (“PIC”) is a New Jersey corporation, with its principal place of business in this District, and is actively engaged in

the business of music publishing, whereby it licenses the recording, reproduction and distribution of musical works for which it either owns or controls the copyrights.

14. Plaintiff Julian J. Aberach d/b/a Elvis Presley Music and Gladys Music (“Presley Music”) is a citizen of New York, with his principal place of business in this District, and is actively engaged in the business of music publishing, whereby he licenses the recording, reproduction and distribution of musical works for which he either owns or controls the copyrights.

15. Plaintiff The Songwriters’ Guild of America, Inc. is a New York membership association with its principal place of business in New Jersey, and is actively engaged in the business of music publishing, whereby it licenses the recording, reproduction and distribution of musical works for which it either owns or controls the copyrights, and administers musical compositions owned and/or controlled by The Estate of Louis Alter, Alison Alter Aries and Adam Alter d/b/a Louis Alter Publications (“Alter”).

16. Defendant UMG is a Delaware corporation which transacts business in this District. Defendant UMG recently has availed itself of the jurisdiction of this Court to enforce its own copyrights in *UMG Recordings, Inc. v. MP3.com, Inc.*, *supra*. Defendant The Farm Club Online, Inc. (“Farmclub.com”), also a Delaware corporation, is a subsidiary of UMG, and transacts business in this District. The Farmclub service operated by and through UMG and Farmclub.com is targeted to and

used by residents of this District, among others, and infringes plaintiffs' copyrights in this District. (UMG and Farmclub.com are hereinafter collectively referred to as "UMG".)

## **FACTS**

### **The Copyrighted Works**

17. R&H owns and/or controls the copyright in the musical composition "White Christmas," written and composed by Irving Berlin, for which the Register of Copyrights has duly issued Registration Certificate No. E 238624 and Renewal Registration No. R 435930; and "My Favorite Things," written and composed by Richard Rodgers and Oscar Hammerstein, II, for which the Register of Copyrights has duly issued Registration Certificate No. EP 134313 and Renewal Registration No. RE 329-351.

18. Bienstock owns and/or controls the copyright in the musical compositions "Out of Sight," written and composed by James Brown a/k/a Ted Wright, for which the Register of Copyrights has duly issued Registration Certificate No. EU 863076 and Renewal Registration No. RE 610204; and co-owns and/or controls the copyright in "Salt and Pepper," written and composed by Paul Gonsalves and Sonny Stitt, for which the Register of Copyrights has duly issued Registration Certificate No. EP 182345 and Renewal Registration No. RE 538596.

19. Criterion owns and/or controls the copyright in the musical compositions "A Ballad," written and composed by Gerry Mulligan, for which the Register of Copyrights has duly issued Registration Certificate No. EU 463992 and

Renewal Registration No. RE 211424; “Blueport,” written and composed by Art Farmer, for which the Register of Copyrights has duly issued Registration Certificate No. EU 573111 and Renewal Registration No. RE 328547; “The End,” written and composed by Jimmy Kronides and Sid Jacobson, for which the Register of Copyrights has duly issued Registration Certificate No. EU 526983 and Renewal Registration No. RE 293583; “Evening Rain,” written and composed by Leon Pober, for which the Register of Copyrights has duly issued Registration Certificate No. EU 551782 and Renewal Registration No. RE 278736; “Flower of Paradise,” written and composed by Mary Johnston and Tony Todaro, for which the Register of Copyrights has duly issued Registration Certificate No. EU 593755 and Renewal Registration No. RE 328873; “E Maliu Mai (Hawaiian Love Call),” written and composed by Irmgard Farden Aluli, for which the Register of Copyrights has duly issued Registration Certificate No. EU 579715 and Renewal Registration No. RE 278721; “These Boots are Made for Walking,” written and composed by Lee Hazlewood, for which the Register of Copyrights has duly issued Registration Certificate No. EU 915461 and RE 612396; and “Pearly Shells,” written and composed by John Kalapana and Leon Paber, for which the Register of Copyrights has duly issued Registration Certificate No. EU 733766 and Renewal Registration No. RE 471068.

20. Frank Music owns and/or controls the copyright in the musical composition “Unchained Melody,” written and composed by Alex North and Hy Zaret, for which the Register of Copyrights has duly issued Registration Certificates No. EU

382542 and No. EP 87381 and Renewal Registration Certificates No. RE 153688 and No. RE 151142.

21. Leiber & Stoller own and/or control the copyright in the musical composition “Jailhouse Rock,” written and composed by Jerry Leiber and Mike Stoller, for which the Register of Copyrights has duly issued Registration Certificate No. EU 477666 and Renewal Registration Certificate No. RE 234406.

22. MPL owns and/or controls the copyrights in the musical compositions “It’s So Easy,” written and composed by Buddy Holly and Norman Petty, for which the Register of Copyrights has duly issued Registration Certificates No. EU 541427 and No. EP 124212 and Renewal Registration Certificates No. RE 290-920 and No. RE 290-926; “Not Fade Away,” written and composed by Charles Hardin (Buddy Holly) and Norman Petty, for which the Register of Copyrights has duly issued Registration Certificates No. EU 498473 and No. EP 115814 and Renewal Registration Certificates No. RE 251-159 and No. RE 251-163; “Peggy Sue,” written and composed by Buddy Holly, Jerry Allison and Norman Petty, for which the Register of Copyrights has duly issued Registration Certificates No. EU 494979 and No. EP 114124 and Renewal Registration Certificates No. RE 251-207 and No. RE 251-166; and “That’ll Be the Day,” written and composed by Buddy Holly, Jerry Allison and Norman Petty, for which the Register of Copyrights has duly issued Registration Certificates No. EU 474437 and No. EP 110700 and Renewal Registration Certificates No. RE 239-939 and No. RE 239-969.

23. PIC owns and/or controls the copyright in the musical compositions “Besame Mucho,” written and composed by Consuelo Velasquez, for which the Register of Copyrights has duly issued Registration Certificate No. EF 65106 and Renewal Registration No. R 436261; “Granada,” written and composed by Agustin Lara, for which the Register of Copyrights has duly issued Registration Certificate No. EP 88100 and Renewal Registration No. R 248637; and “Blue Moon of Kentucky,” written and composed by Bill Monroe, for which the Register of Copyrights has duly issued Registration Certificate No. EP 16363 and Renewal Registration No. R 583185.

24. Presley Music owns and/or controls the copyrights in the musical compositions “Love Me Tender,” written and composed by Elvis Presley and Vera Matson, for which the Register of Copyrights has duly issued Registration Certificate Nos. EP 102756, EP 103751, EU 450831 and EU 449310 and Renewal Registration Nos. R 203-829, RE 213-492, RE 203-831 and RE 260-464; and “Don’t Be Cruel,” written and composed by Elvis Presley and Otis Blackwell, for which the Register of Copyrights has duly issued Registration Certificates No. EU 444688 and No. EP 128493 and Renewal Registration Certificates No. RE 195-606 and No. RE 193-250.

25. Alter co-owns and/or controls the copyright in the musical composition “You Turned The Tables On Me,” written and composed by Sydney Mitchell and Louis Alter, for which the Register of Copyrights has issued Registration Certificate No. EP 56705 and Renewal Registration No. R 319497.

### **The Infringing Activities**

26. UMG is in the business of marketing and distributing music. Like other major record labels, UMG for many years has obtained licenses from plaintiffs to make sound recordings embodying plaintiffs' copyrighted musical works for distribution as CDs, audio tapes and vinyl records ("phonorecords"). UMG pays plaintiffs a royalty fee for each such phonorecord that is manufactured and distributed.

27. In October 2000, in an effort to enter the Internet music market, UMG launched its new Farmclub service. According to promotional material on UMG's website, the Farmclub service allows users to "[l]isten to over 25,000 songs," and to "create up to 20 custom playlists of songs you want to hear, when you want to hear them." The site assures visitors that by using the Farmclub service, the "music you want is easy to find."

28. To make good on this offer, UMG copied sound recordings embodying the musical works specified above onto its public servers so as to be able to offer those works to its subscribers.

29. On information and belief, UMG copied -- and continues to copy -- sound recordings embodying other musical works owned or controlled by plaintiffs in addition to those specified above onto its public servers so as to be able to offer those works to its subscribers.

30. UMG did not seek or obtain the permission of any of the plaintiffs prior to copying their musical works onto UMG's public servers. Plaintiffs have not granted UMG such permission.

31. When a user accesses sound recordings through the Farmclub service, the user accesses the copies placed by UMG onto its public servers without plaintiffs' authorization. Upon request, a copy of a sound recording embodying a copyrighted musical work is digitally transmitted to the user's personal computer from the Farmclub website.

32. The Farmclub service requires its users to accept a user agreement (located at <http://farmclub.com>). With utter disregard for plaintiffs' copyrights, the user agreement asserts that the Farmclub service

and all the content offered through it, including, but not limited to, audio clips, video clips, other music and video files and everything else you see and hear through the Service (all of these things are collectively referred to as "Content") are owned exclusively by us *or others that have licensed their material to us*. (Emphasis added.)

The user agreement brazenly continues:

The Content is therefore protected by copyrights, trade secrets, or other proprietary rights . . . . To be clear, you can't reproduce, copy or distribute the Content by any means (including but not limited to downloading or saving such Content to a computer hard drive) . . . .

33. UMG, one of the world's largest record labels, was fully aware that its new service would infringe the copyrights in hundreds of musical works. Indeed, as noted, UMG recently obtained a judgment from this Court that the operator of another

Internet music service, MP3.com, Inc., had willfully infringed UMG's sound recording copyrights by placing copies of those sound recordings on its public servers -- precisely what UMG has done here without plaintiffs' permission.

34. Weeks after launching the Farmclub service -- and after being told that its activities were indistinguishable from those found to be unlawful in the MP3.com case -- UMG, in a transparent attempt to deflect charges of intentional infringement, sent a letter to plaintiffs' agent, The Harry Fox Agency (the "UMG letter").

35. The UMG letter falsely purports to seek licenses to operate an unnamed "subscription-based music service" that UMG "intends" to offer in the future. In the next breath, however, the letter proceeds to question whether UMG needs licenses at all. Rather than request a genuine license, with actual terms, the letter concludes by suggesting that UMG be allowed to operate its service without paying royalties for an indefinite period of time -- until (the letter says "if") "it is determined" that a license is required and an industry-wide royalty rate is agreed upon or is set by the Copyright Office at some time in the future, after which UMG would purportedly pay royalties "retroactive[ly]."

36. As UMG was well aware at the time it sent the letter, HFA does not have authority from the copyright owners it represents to issue licenses based upon indeterminate royalty payments to be paid at an unspecified future date. Moreover, the copyright owners have no obligation to grant such illusory licenses.

37. The Farmclub service is a commercial use of plaintiffs' copyrighted works. UMG posts paid banner advertising on the Farmclub website as well as information about related programming on cable television. UMG is currently offering its Farmclub service without charge in order to attract users to its website and build its subscriber base, but UMG makes clear on the site that subscribers will need to pay to use the service in the future.

**CAUSE OF ACTION**  
**(Copyright Infringement)**

38. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-37 as if fully set forth herein.

39. The unauthorized copying of plaintiffs' copyrighted works onto defendants' computer servers infringes plaintiffs' exclusive rights to reproduce those works under Section 106 of the Copyright Act.

40. Defendants have the right and ability to supervise, and have a direct financial interest in, the aforesaid infringing activities.

41. Defendants have knowingly induced, caused, participated in, materially contributed to and derived economic benefit from the infringement of plaintiffs' copyrights, and plaintiffs have been damaged and continue to be damaged thereby.

42. Defendants' aforesaid conduct has been and continues to be intentional, willful, and with full knowledge of plaintiffs' copyrights and the infringement thereof.

43. Defendants' conduct, as set forth herein, is causing and, unless enjoined and restrained by this Court, will continue to cause plaintiffs irreparable harm.

WHEREFORE, plaintiffs respectfully request judgment against defendants as follows:

(a) declaring that defendants' unauthorized copying of plaintiffs' copyrighted works onto defendants' computer file servers willfully infringes plaintiffs' copyrights in violation of the Copyright Act;

(b) ordering defendants to remove all copies of plaintiffs' copyrighted works from defendants' computer servers and Farmclub website;

(c) ordering defendants to deliver up for destruction all infringing materials, including all discs, drives or other storage media, that contain infringing copies of plaintiffs' copyrighted works;

(d) awarding plaintiffs, at their election, either (i) actual damages and profits derived by defendant as a result of their infringing activities, pursuant to 17 U.S.C. § 504(b), or (ii) statutory damages in the maximum amount of \$150,000 with respect to each of plaintiffs' copyrighted works, pursuant to 17 U.S.C. § 504(c);

(e) enjoining defendants and their respective agents, employees, officers and directors, attorneys, successors, licensees, and assigns, and all those persons acting in concert and combination therewith, from further infringement of plaintiffs' copyrighted works; and

(f) granting plaintiffs such other and further relief as this Court deems just and proper.

Dated: New York, New York  
December 7, 2000

Respectfully submitted,

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

By: \_\_\_\_\_

Carey R. Ramos (CR-7880)  
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