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PLAINTIFF SUCCEEDS IN STATING A CLAIM THAT INVESTOR IS VICARIOUSLY LIABLE FOR NAPSTERS' INFRINGEMENT

[UMG Recordings, Inc. v. Bertelsmann AG et al., 2004 U.S. Dist. LEXIS 13143 (N.D. Cal. July 14, 2004)]

Plaintiffs brought an action against Bertelsmann, et al. ("Bertelsmann") alleging that Bertelsmann "engaged in vicarious and contributory copyright infringement in the course of their involvement with Napster."ⁱ Among other things, plaintiffs' allege in its complaint that "[a]s Napster's only available source of funding, Bertelsmann held significant power and control over Napster's operations. But Bertelsmann chose not to exercise its position to stop the rampant infringement by requiring that Napster immediately discontinue its infringing service until such time as it could operate lawfully."ⁱⁱ Defendants filed a motion to dismiss for failure to state a claim. The court denied defendants' motion.

The Copyright Act (17 U.S.C. §§ 101, et seq) provides no express provision for liability other than direct infringers. However, the court noted that "courts have long recognized that in certain circumstances vicarious or contributory liability will be imposed."ⁱⁱⁱ In order to qualify as contributory infringement a party must have knowingly "contribute[d] to the infringing conduct of another."^{iv} The factors for showing a prima facie case of contributor infringement are: "(1) direct infringement by a third party; (2) knowledge that by the defendant that third parties were directly infringing; and (3) substantial participation by the defendant in the infringing activities."^v

The court noted in its discussion that although "[p]laintiff's allegations that defendants exercised full operation control over Napster during periods in which Napster remained a conduit for infringing activity may be wholly

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unfounded . . . such questions must be left for resolution upon motions for summary judgment or at trial, as th[e] court is obligated . . . to accept the facts and allegations plead in plaintiffs' complaint as true."^{vi}

ⁱ2004 U.S. Dist. LEXIS 13143 (N.D. Cal. July 14, 2004) at *2.

ⁱⁱ*Id.* At *13, citing paragraph 41 of Plaintiff's Complaint.

ⁱⁱⁱ*Id.* At *8.

^{iv}*Id.* Citing *Gerswhin Publ'Corp. v. Columbia Artists Mgmt., Inc.* 443 F.2d. 1159, 1162 (2nd Cir. 1971).

^v2004 U.S. Dist. LEXIS 13143 (N.D. Cal. July 14, 2004) at *8.

^{vi}*Id.* At *17.