



[REDACTED] 2007

[REDACTED]

Re: Recording Industry Copyright Matters

Dear [REDACTED]

As you know, over the last few years, the RIAA has been actively protecting the copyrights of its members on peer-to-peer networks by filing suits against infringers. The purpose of this letter is three-fold: 1) to share [REDACTED] some of the feedback we have heard from consumers about communications with their ISPs; 2) to ask you to forward settlement offers from us to targeted users so that they have an opportunity for an early decreased settlement amount; 3) to clarify that we will subpoena slightly different information going forward than we requested in the past because of ISP confusion. This letter is a direct result of the communications we have had with your subscribers about our enforcement program, and we hope will address some of the issues they have raised.

#### *A Little Background*

Since 2004, our members have been filing Doe lawsuits against the infringers we find on peer-to-peer networks. We have obtained the identities of the defendants through expedited discovery in the form of subpoenas served on internet service providers like yourself, asking that you identify the internet subscriber assigned that IP address at the particular time and date at issue.

In the past, we have provided an early preservation notice to you by email. You may have noticed a recent decline in such notices. We anticipate that we will begin providing such notices to you again soon and that our members will follow such notices with new Doe lawsuits and subpoenas.

Holme Roberts & Owen LLP will continue to serve as our national coordinating counsel for these cases. Your primary contact there, Katheryn

Coggon, will also continue to serve in that role. Should you have any questions about the program or this letter, feel free to contact Ms. Coggon directly at 303-866-0408 or [katheryn.coggon@hro.com](mailto:katheryn.coggon@hro.com).

### *1. Communicating with Subscribers*

It is in the best interests of [REDACTED] subscribers and our members that we have good communication about the enforcement program. We want to make sure that when we target one of your subscribers he or she has complete and accurate information about what is happening. Ideally, communication should begin as early as possible -- upon your receipt of the preservation notice email. Many ISPs already do this and we have heard repeatedly from ISP users that they appreciate this early notification. Importantly, as we discuss below, an early notification will give your customer the opportunity to settle any claims before a suit is filed against them at a reduced rate (discounts of \$1000 or more). Enclosed is a model notice to subscribers that reflects similar notices provided by ISPs in the past. Based on our experience with this program and the feedback we have received from ISP users, we are confident that your subscribers will appreciate receiving these early notifications from you.

Whether in a notice to a subscriber at the preservation or Doe stage, or in subsequent communication with subscribers, it is vital that you avoid providing incorrect or misleading information. For example, subscribers have made us aware of the following issues:

- The subscriber claims that the ISP recommended that she cease all communications with the Record Companies' attorneys and representatives and essentially ignore the letters sent to her by the Record Companies;
- ISPs have given the wrong phone number for contacting the Record Companies' representatives;
- ISP customer service personnel, not in the legal department, have told the subscriber that the letter received from the record company lawyers was probably a hoax and to ignore it;
- The ISP told a subscriber that "it seems likely that RIAA could have been incorrect in identifying your IP address as the source of the infringement it

claims” and directed the subscriber to certain websites, instead of having him contact the RIAA.

While these examples may seem extreme, they are not uncommon. In each case, the subscriber was deprived of the opportunity to resolve his or her liability at an early stage, before a lawsuit naming that individual was filed.

To avoid any unintended relay of misinformation, the following details may be of assistance:

The record companies’ representatives can be reached at 913-234-8181 or [info@SettlementInformationLine.com](mailto:info@SettlementInformationLine.com). The RIAA is developing and will launch later this year a website with information about the copyright lawsuits that should facilitate early settlement. That website will be located at [www.p2plawsuits.com](http://www.p2plawsuits.com).

We also ask you to caution your help center staff about providing misinformation to your subscribers regarding this program. In particular, we ask that your help center staff refrain from issuing opinions about the validity of the copyright claims. If you or your staff determine that you have misidentified a subscriber account in response to a subpoena or if you become aware of technical information in your possession that causes you to question the information that you provided in response to our clients’ subpoena, we ask that you promptly notify our national counsel by contacting Katheryn Coggon directly. Obviously, our members do not want to perpetuate a mistake by filing a named lawsuit against such an individual.

## ***2. Pre-Suit Settlement Opportunity***

As mentioned above, our members will offer infringers the opportunity to settle claims before we file a Doe suit against them. We have heard repeatedly from targets that they want the ability to settle as early as possible at the lowest amount possible. To accommodate this request, we are instituting a new Pre-Doe settlement option that will allow infringers to settle at a discounted rate if they do so prior to our filing a Doe suit.

To assist you in extending this option to your subscribers we will e-mail to you, along with the evidence preservation notice, a letter for you to forward to the subscriber. That letter will explain that the subscriber has been targeted for suit and that he or she has the opportunity, in advance of that suit being filed, to

contact us to resolve the claims. Whether they want to contact us at that time will be entirely up to them, but if they do not, they will not be eligible for a discounted settlement rate.

We can extend this Pre-Suit settlement option only to those ISPs who agree to maintain the log files for the IP address for at least 180 days. This timeframe is necessary to allow sufficient time to pursue the Doe lawsuit and subpoena if settlement discussions are not fruitful. If you will not agree to forward the early notices to subscribers and maintain the log files for 180 days, then our members will simply proceed as before with an immediate Doe lawsuit against the subscriber, followed by a subpoena as allowed by the courts.

We would like to hear as early as possible whether you would like to participate in this program to benefit your subscribers.

### *3. Responding to Subpoenas*

We have also noticed some confusion over how ISPs should respond to our subpoenas and what information the ISP needs to maintain after providing its response. In this respect, we have encountered a number of problems, such as:

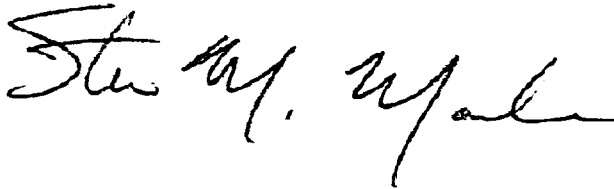
- In response to a subpoena, the ISP identified a customer who was not even a subscriber at the time of the infringement; the ISP had not checked its enrollment records, just the current modem assignment records;
- The ISP identified a subscriber who believes she was misidentified, but because the ISP failed to maintain the log files it used to do the identification, it could not exculpate the subscriber;
- The ISP has not provided us with a telephone number, or an up-to-date telephone number, thereby preventing us from contacting the subscriber by telephone in order to give them an early opportunity to resolve the claims before a suit is filed.

First and foremost, we encourage you to check your log files as completely and carefully as possible before providing a subpoena response. Second, we ask that you provide us with the most up-to-date information that you have on the subscriber, including any updates to the subscriber's name, address and phone number. Finally, on a going forward basis, we will request that [REDACTED]

██████████ not only provide an identification of the subscriber, but that the log files used by ██████████ to do the identification be provided as well. We are taking this step to address the occasional problem we have had where an ISP does not maintain the log files and cannot later exculpate a subscriber who claims to have been misidentified. If ██████████ would prefer not to provide the complete log files at the time we issue the initial subpoena, but will agree to maintain those log files, we would be happy to discuss such an arrangement with you.

We are hopeful that, by providing early and accurate information to subscribers, we can greatly diminish the need for prolonged litigation. We are also hopeful that the initiatives we are taking will facilitate a clear process for your subscribers who may be targeted. Again, if you have any questions or concerns, please contact me or Katheryn Coggon at Holme Roberts & Owen, LLP at 303-866-0408. We look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script that reads "Steve Marks". The signature is written in black ink and is positioned above the printed name.

Steve Marks

Enclosure

██████████

Dear Customer:

Re: Preservation Notice from Recording Industry Association of America

<<ISP>> has received a notice from the Recording Industry Association of America (“RIAA”) requesting that we preserve documents regarding your identity. The RIAA has indicated that it intends to file a lawsuit and seek leave to serve a subpoena upon <<ISP>> requiring disclosure of documents that identify the user located at an IP address that our files indicate was assigned to you at the time identified by the RIAA.

If you have any questions regarding why the RIAA is interested in your account, please contact the record companies’ representatives by phone at (913) 234-8181, by facsimile at (913) 234-8182, or by email at [info@SettlementInformationLine.com](mailto:info@SettlementInformationLine.com).

Please be advised that if the RIAA follows this notice with a subpoena, we will forward a copy of that subpoena to you but we will be legally obligated to provide the requested information.

Our purpose in sending you this letter is to provide you with advance notice of the RIAA’s request. <<ISP>> is not taking any action against you, and there is no need for you to communicate with us regarding this issue.

Sincerely,

<<ISP representative>>