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20 ODIOWORKS, LLC

21 ODIOWORKS, LLC,

22 Plaintiff,

23 v.

24 APPLE INC.,

25 Defendant.

26 UNITED STATES DISTRICT COURT
27 NORTHERN DISTRICT OF CALIFORNIA

28 CV 09 1818

Case No.

**COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

Date:
Time:
Dept:
Judge:

Date Comp. Filed: April 27, 2009

Trial Date:

**MOTION AND PROPOSED ORDER TO FILE
UNDER SEAL EXHIBITS B, C, AND D FILED
HEREWITH**

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09 APR 27 AM 9:29
RICHARD M. BIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-FILED

JCS

1 Plaintiff OdioWorks LLC (“OdioWorks”), by and through its attorneys, brings this action
2 and alleges against Defendant Apple Inc. (“Apple”) as follows:

3 **NATURE OF THE ACTION AND RELIEF SOUGHT**

4 1. This is a declaratory judgment action to vindicate the free speech interests of
5 Internet readers and publishers, as well as those like OdioWorks that operate public “wiki”
6 platforms on the Internet.

7 2. OdioWorks created, operates, and maintains the BluWiki website
8 (<http://www.BluWiki.com>), which provides a noncommercial publishing platform open to the
9 public for collaborative authoring and editing on any topic.

10 3. One set of documents authored and posted by BluWiki users related to efforts to
11 enable certain recent models of Apple’s iPod and iPhone digital media players to interoperate
12 with software other than Apple’s own iTunes software. In November 2008, counsel for Apple
13 demanded that OdioWorks remove several of these documents (the “iTunesDB Pages”),
14 threatening it with “legal liability” if it refused. Ex. A. Fearing legal action, OdioWorks
15 complied.
16

17 4. OdioWorks takes the First Amendment rights of BluWiki users seriously, believes
18 that Apple’s legal claims are baseless, and would like to restore the iTunesDB Pages.
19

20 5. Accordingly, OdioWorks brings this action for declaratory and injunctive relief to
21 clarify the rights of the parties and to refute Apple’s baseless assertions of copyright
22 infringement and violation of the anti-circumvention provisions of the Digital Millenium
23 Copyright Act (“DMCA”).

24 **PARTIES**

25 6. Plaintiff OdioWorks, LLC, is a Virginia limited liability company.

26 7. On information and belief, Defendant Apple Inc., is a California corporation
27 headquartered in Cupertino, California.
28

JURISDICTION AND VENUE

8. This action arises under the copyright laws of the United States, 17 U.S.C. §§ 101 *et seq.* This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331 and 1338 and the Declaratory Judgment Act, 28 U.S.C. § 2201.

9. This court has personal jurisdiction over Defendant Apple because Apple conducts regular business from its headquarters in Cupertino, CA, and is a domiciliary of California.

10. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §§ 1391(b) and 1400(a).

INTRA-DISTRICT ASSIGNMENT

11. This is an intellectual property case. Pursuant to Local Rule 3-2(c), it shall be assigned on a district-wide basis.

FACTUAL ALLEGATIONS

BluWiki

12. BluWiki.com is a website dedicated to enabling members of the public to “say something online”—that is, to provide a platform on which members of the public can collaboratively publish and edit content on the World Wide Web. BluWiki uses open-source, freely available, easy-to-use “wiki” software to make this possible.

13. BluWiki users can author and post information about any topic, without charge.

14. BluWiki users can also add, edit, and/or delete content at will on the BluWiki webpage(s) they create without any action by anyone else (including OdioWorks). BluWiki stores the webpages created by users on its servers.

15. BluWiki is, and at all relevant times has been, a noncommercial website that does not host advertisements or charge users for its service. OdioWorks maintains and operates the website as a public service in order to provide a forum for free expression—in essence, a free

1 digital "printing press."

2 16. While OdioWorks solicits donations to fund BluWiki's continued operation, the
3 donations received have never covered BluWiki's operation costs.

4 **The iTunesDB Pages**

5 17. On July 22, 2008, a BluWiki user created a webpage entitled "Ipodhash,"
6 formerly posted at <<http://BluWiki.com/go/Ipodhash>>. A non-public archived copy of the
7 webpage as it appeared on November 14, 2008, is attached under seal as Exhibit B (filed under
8 seal as a courtesy to Apple pending resolution of this dispute).

9
10 18. On July 26, 2008, a BluWiki user created a webpage entitled
11 "Itunes_obfuscation," formerly posted at <http://BluWiki.com/go/Itunes_obfuscation>. A non-
12 public archived copy of the webpage as it appeared on November 14, 2008, is attached under
13 seal as Exhibit C (filed under seal as a courtesy to Apple pending resolution of this dispute).

14 19. On July 30, 2008, a BluWiki user created a webpage entitled
15 "IPodHash_test_data_contribution," formerly posted at
16 <http://BluWiki.com/go/IPodHash_test_data_contribution> (these three webpages are
17 collectively referred to as the "iTunesDB Pages"). A non-public archived copy of the webpage as
18 it appeared on November 14, 2008, is attached under seal as Exhibit D (filed under seal as a
19 courtesy to Apple pending resolution of this dispute).

20
21 20. Neither OdioWorks nor any of its agents, officers, or employees had any
22 involvement in the development or authorship of the iTunesDB Pages.

23 21. Until brought to their attention by Apple counsel on November 10, 2008, neither
24 OdioWorks nor any of its agents, officers, or employees had any knowledge of the existence or
25 contents of the iTunesDB Pages.

26 22. The iTunesDB Pages appear to relate to an effort by hobbyists to reverse engineer
27 certain aspects of recent models of iPod and iPhone digital media players in order to enable them
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1 to interoperate with software other than Apple's own iTunes software.

2 23. On information and belief, by design, every Apple iPod and iPhone digital media
3 player includes a file known as the "iTunes DB" file, the purpose of which is to catalog the
4 user's media files, including information such as artist names, album titles, song titles, and other
5 metadata about the media files stored on the iPod or iPhone by its owner. The information
6 contained in the iTunesDB file is stored "in the clear" (i.e., is not encrypted).

7 24. On information and belief, when an iPod or iPhone owner fills her device with
8 media files (e.g., music files, podcasts, video files, playlists) from her computer (a process
9 known as "syncing"), Apple's iTunes media management software automatically writes to the
10 iTunesDB file to reflect the media files on the device. In other words, the iTunesDB file is
11 authored by the iPod or iPhone owner, with its content dictated by the media files that she
12 decides to "sync" from her computer to her iPod or iPhone.

13 25. On information and belief, the iPod or iPhone accesses the iTunesDB file in order
14 to provide the device owner with convenient methods to access the media files stored on the
15 device (e.g., permitting the user to access media files by artist name, playlist, or song title).

16 26. In addition to Apple's iTunes software, there are many third-party media
17 management software products, such as Songbird, Rockbox, Banshee, and Winamp, that can also
18 write to the iTunesDB file in the course of "syncing" media files between a computer and an
19 iPod or iPhone.

20 27. On information and belief, since approximately September 2007, Apple has
21 designed its iPod and iPhone products to check a hash value associated with the iTunesDB file.
22 This hash value is generated automatically by Apple's iTunes software, and if it is absent or
23 improperly calculated, the iPod or iPhone will react as though the iTunesDB file is empty,
24 thereby making it impossible for the iPod or iPhone owner to play media files stored on her
25 device.
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1 28. The introduction of the hash value check on iPods and iPhones released after
2 September 2007 stymied the syncing functions of third-party media management software that
3 were previously capable of syncing earlier iPods and iPhones.

4 29. On information and belief, hobbyists successfully reverse engineered Apple's
5 hash value generation mechanism on or about September 17, 2007, making it possible once again
6 for iPod and iPhone owners to manage their media with whatever program they chose.

7 30. On information and belief, in or around July 2008, Apple revised its hash value
8 generation mechanism for new models of its iPhone and iPod Touch digital media players. Once
9 again, this modification had the effect of making it impossible to use third party media
10 management software to sync these new iPod and iPhone models.

11 31. The iTunesDB Pages posted on BluWiki appear to be initial discussions and
12 information intended to assist those interested in reverse engineering Apple's revised July 2008
13 hash generation mechanism to enable third party media management software to interoperate
14 with new models of Apple's iPod and iPhone devices. The information posted included portions
15 of computer code identified as "memcpy." Nothing on the iTunesDB Pages suggests that the
16 authors had succeeded in their effort to reverse engineer the revised Apple hash generation
17 mechanism.
18
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20 **Apple's Threats and Demands for Removal**

21 32. On November 10, 2008, counsel for Apple sent an email to Sam Odio, the owner
22 of OdioWorks, claiming that BluWiki was "disseminating information designed to circumvent
23 Apple's FairPlay digital rights management system" and demanding that Mr. Odio take down the
24 discussion on the "Ipodhash" webpage. Ex. A. Apple's attorney wrote in the email that "[t]he
25 DMCA explicitly prohibits the dissemination of information that can be used to circumvent such
26 technology." *Id.*

27 33. Apple's counsel sent another email to Mr. Odio the following day, demanding
28

1 that he also take down the “Itunes_obfuscation” webpage “for the same reason.” Ex. A. Apple’s
2 attorney threatened Mr. Odio that “[f]ailure to do so will result in legal liability” and demanded
3 that he identify his lawyers, if he had any. *Id.*

4 34. Apple’s attorney then sent a third email to Mr. Odio on November 13, 2008,
5 declaring that the iTunesDB Pages “violate the DMCA.” Ex. A.

6 35. On November 14, 2008, OdioWorks, fearing legal action by Apple, edited the
7 iTunesDB Pages to replace the user-generated content with an explanation of Apple’s demands,
8 a statement regarding BluWiki’s fear of being “sued out of existence,” and a plea for legal
9 counsel.
10

11 36. Neither OdioWorks, nor anyone acting at the direction or on behalf of
12 OdioWorks, posted any content on any of the iTunesDB Pages before posting this explanation.

13 37. On December 3, 2008, counsel for OdioWorks contacted Apple’s counsel by
14 letter to dispute Apple’s legal claims in particular and specific detail. Ex. E. OdioWorks’
15 counsel told Apple’s attorney that OdioWorks intended to restore the iTunesDB Pages in ten
16 business days.
17

18 38. Apple’s counsel responded by letter dated December 17, 2008. Ex. F. In that
19 letter, Apple claimed for the first time that the “memcpy” code displayed on the
20 Itunes_obfuscation page “belongs to both the iTunesDB signing mechanism and the FairPlay
21 [Digital Rights Management] system.” Ex. F. Apple’s attorney went on to outline specific
22 theories of liability against Mr. Odio and OdioWorks for direct and indirect copyright
23 infringement and violation of the DMCA’s anti-circumvention provisions in connection with the
24 iTunesDB Pages. *Id.*

25 39. Apple further asserted in its December 17, 2008, letter that publication of
26 “information that can be used to circumvent the FairPlay DRM is a violation of sections
27 1201(a)(2) and/or 1201(b) of the DMCA.” *Id.*
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1 40. Apple further asserted there that “publication” of the “memcpy” code “constitutes
2 direct copyright infringement by [OodioWorks] and...may also constitute contributory
3 infringement [by] material[ly] assist[ing...] others who have copied or reproduced the code.” *Id.*
4 For that reason, Apple claimed, the reverse engineering exception to the DMCA’s anti-
5 circumvention provisions (17 U.S.C. § 1201(f)) does not apply. *Id.*

6 41. Finally, Apple demanded specifically that the iTunesDB Pages not be restored on
7 BluWiki. *Id.*

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9 **FIRST CAUSE OF ACTION**

10 **Declaratory Judgment – No Circumvention**

11 **17 U.S.C. § 1201**

12 42. OodioWorks incorporates by reference the allegations in each of the proceeding
13 paragraphs as if fully set forth in this paragraph.

14 43. A real and actual controversy of sufficient immediacy and reality to warrant
15 declaratory relief exists between the parties as to whether the display of any of the information
16 posted on the iTunesDB Pages violates the DMCA’s anti-circumvention provisions. Apple’s
17 conduct has forced OodioWorks to choose between risking legal liability or stifling the free
18 expression BluWiki was created to promote. The controversy between OodioWorks and Apple is
19 thus real and substantial and demands specific relief through a decree of a conclusive character,
20 namely, that OodioWorks may restore the iTunesDB Pages without legal liability. The nature and
21 extent of the adverse legal interests between the OodioWorks and Apple are apparent, and the
22 controversy is definite and concrete.

23
24 44. Neither the iTunesDB Pages nor any information posted on any of them
25 constitutes a “technology, product, service, device, component, or part thereof” within the scope
26 of 17 U.S.C. § 1201.
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1 45. On information and belief, neither the hash value associated with the iTunesDB
2 file nor any other part of the iTunes software limits the ability of any program to read or write to
3 the iTunesDB file, or otherwise controls access to or limits the exercise of rights in any works
4 whatsoever. Accordingly, neither the hash value nor its method of generation constitutes a
5 technological measure within the meaning of 17 U.S.C. § 1201.

6 46. iPod and iPhone users, not Apple, own whatever copyright may inhere in the
7 iTunesDB files contained in their iPods and iPhones, and therefore are authorized to access and
8 modify these files as they see fit.

9 47. The information contained on the iTunesDB Pages has no nexus with any
10 potential infringement of any copyrights that may inhere in the iTunesDB files contained on
11 iPods and iPhones or any other copyright interest of Apple.

12 48. On information and belief, the sole purpose of the iTunesDB Pages is to enable
13 interoperability of current iPod and iPhone software with independently created media
14 management programs.

15 49. OdioWorks is entitled to a declaratory judgment that the publication of the
16 iTunesDB Pages does not violate any of the DMCA's anti-circumvention provisions.
17
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19 **SECOND CAUSE OF ACTION**

20 **Declaratory Judgment – Non-Infringement**

21 **17 U.S.C. §§ 101 *et seq.***

22 50. OdioWorks incorporates by reference the allegations in each of the proceeding
23 paragraphs as if fully set forth in this paragraph.

24 51. A real and actual controversy of sufficient immediacy and reality to warrant
25 declaratory relief exists between the parties as to whether any of the information posted on the
26 iTunesDB Pages infringes any copyright owned by Apple. The nature and extent of the adverse
27
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1 legal interests between OdioWorks and Apple are apparent, and the controversy is definite and
2 concrete.

3 52. None of the information posted on the iTunesDB Pages infringes any of the
4 exclusive rights secured by the Copyright Act.

5 53. The computer code posted on the iTunesDB Pages constitutes a small portion of
6 the iTunes software, relates to common functions used in virtually all computer code, and is not
7 original creative expression owned by Apple. Its availability on the iTunesDB Pages has had no,
8 and could have no, effect on the market for the iTunes software.

9
10 54. The information posted on the iTunesDB Pages is protected by the fair use
11 doctrine.

12 55. The information posted on the iTunesDB Pages is protected by the *de minimis*
13 doctrine.

14 56. OdioWorks is therefore entitled to a declaration that the material posted on the
15 iTunesDB Pages does not infringe any copyrights owned by Apple.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, OdioWorks request this Court to enter judgment:

18 1. Declaring that the iTunesDB Pages do not violate any of the DMCA's anti-
19 circumvention provisions;

20 2. Declaring that the material posted on the iTunesDB Pages does not infringe any
21 copyrights held by Apple;

22 3. Enjoining Apple, its agents, attorneys, and assigns from asserting copyright or
23 circumvention claims against OdioWorks in connection with the iTunesDB Pages;

24 4. Awarding OdioWorks its reasonable attorneys' fees and costs; and

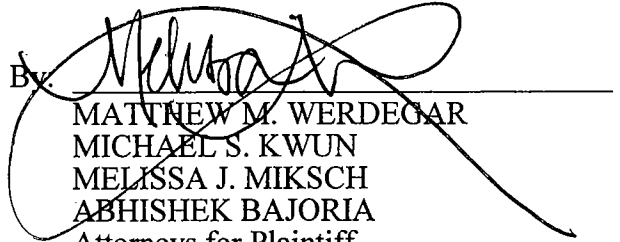
25 5. Awarding any other relief the Court deems just and proper.
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1 Dated:

KEKER & VAN NEST LLP

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By: 
MATTHEW M. WERDEGAR
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