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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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YESH MUSIC, LLC,

Case No.: 19-cv-5512

Plaintiff,

**ECF CASE**

v.

**COMPLAINT AND JURY DEMAND  
FOR DAMAGES FOR COPYRIGHT  
INFRINGEMENT**

REGENTS OF THE UIVERISITY OF  
MINNESOTA,

Defendant.

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Plaintiff YESH MUSIC, LLC, by and through the undersigned counsel, brings this Complaint and Jury Demand against defendant REGENTS OF THE UIVERISITY OF MINNESOTA for damages based on copyright infringement and related claims pursuant to the Copyright Act, 17 U.S.C. §§ 101, et seq. (“the Copyright Act” or “Act”), the Copyright Remedies Clarification Act, 17 U.S.C. § 511(a), and violations of the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. § 1202-03. Plaintiff alleges below, upon personal knowledge as to itself, and upon information and belief as to other matters so indicated.

**JURISDICTION AND VENUE**

1. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1338(a) (jurisdiction over copyright actions).

2. The Copyright Remedy Clarification Act (“CRCA”) was passed with the intent to subject states to liability for copyright infringement. See The Copyright Clarification Act, Hearing before the Subcommittee on Patents, Copyrights and Trademarks. Pursuant to the CRCA, the Copyright Act was modified to state:

Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State ...shall not be immune, under the Eleventh Amendment ...from suit in Federal Court...for a violation of any of the exclusive rights of a copyright owner ...

17 U.S.C. § 511(a) (1994).

3. The United States Supreme Court granted certiorari on the constitutionality of CRCA on June 5, 2019 in *Allen v. Cooper*, Case No. 18-877 (S. Ct. June 5, 2019).

4. The University of Minnesota is generally subject to liability for its torts under circumstances in which the University, “if a private person, would be liable to the claimant.” Minn.Stat. §§ 3.736, subd. 1 (1998) (waiving governmental immunity for state and its employees); 3.732, subd. 1(1) (1998).

5. CPLR § 302 (a)(3) authorizes this Court to exercise jurisdiction over nondomiciliaries who commit a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if it: (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce.

6. At bar, defendant reproduced, distributed, and publicly displayed the copyrighted image at issue without license or authority from Minnesota. This is a tortious act committed without the state.

7. Defendant frequently solicits students from the New York area for its undergraduate and graduate programs, advertises and promotes the sale of its books in New York, and contracts directly and through the Big 10, to conduct business in New York City.

8. Two days before this Complaint was filed, on September 28, 2019, defendant appeared at the New York Hilton Midtown located at 1335 6th Avenue, New York, NY 10019.

9. Defendant's website stated the purpose of the full day event in New York City was a partnership between The Carlson MBA and MS Programs and the QS World MBA Tour in New York. Defendant stated "We would love the opportunity to meet with you at the fair to discuss your educational goals. The Carlson MBA is also pleased to offer admissions interviews and individual appointments in New York."

10. Defendant relies so much on out-of-state students, that it was forced to raise tuition 15% after out-of-state enrollment dropped in 2018. See **Exhibit 1**.

11. The copyright owner resides in New York, NY, and the injury was felt in this Judicial District.

12. Defendant contracts with New York City. Defendant is also a member of the Big 10 Conference which has two offices in New York City.

13. Defendant publishes journals and books that are advertised, promoted and sold in New York to individuals, business and institutions within the state. UM Press has extensive business contacts in the New York. In 2015, defendant partnered with CUNY Graduate Center to build a hybrid publishing platform.

14. The Minnesota Alumni Association organizes events in New York every week in an effort to increase their endowment.

15. Defendant was served with a notice to cease and desist, but refused. It was, and is, aware that its tortious acts have had consequences in this state. Further, defendant derives substantially all of its revenue from interstate or international commerce.

16. Jurisdiction is conferred over defendants pursuant to CPLR 302(3)(i) and (ii).

### **DUE PROCESS**

17. There are no due process concerns in light of the fact that defendant committed an intentional tort that it knew had an effect in this Judicial District.

18. Defendant frequently contracts with companies in this Judicial District such that it reasonably knows it may be haled into this forum.

### **PARTIES**

19. Plaintiff YESH MUSIC, LLC is a New York limited liability company with a headquarters located at 75-10 197th St, 2nd Floor, Flushing, NY 11366.

20. Upon information and belief, defendant REGENTS OF THE UIVERISITY OF MINNESOTA (“UMN”) is an educational institution with a principal place of business located at 3 Morrill Hall, 100 Church St. S.E., Minneapolis, MN 55455.

### **FACTS**

21. Plaintiff is the sole beneficial owner by assignment of an original musical work titled *DEA*- U.S. Copyright Registrations Nos. SR 713-231 (the “Copyrighted Recording”). See **Exhibits 1 and 2.**

22. Defendant is an educational institution in Minnesota.

23. Defendant created a video advertisement which it posted on its YouTube page. The subject advertisement synchronized plaintiff’s Copyrighted Recording without license or

authority. Defendant posted the subject advertisement to

<<https://www.youtube.com/watch?v=SBnuIVOiLYc>>.

24. The subject advertisement is stored at:

<<https://www.dropbox.com/s/23u2wiqh2ksyn18/University%20of%20Minnesota%20Hubbard%20School%20of%20Journalism%20%26%20Mass%20Communication.mp4>>.

25. Defendant infringed plaintiff's exclusive rights to copy, synchronize, distribute, and publicly display the Copyrighted Recording as set forth in 17 U.S.C. § 106 and elsewhere.

26. Defendant's utter disregard for plaintiff's rights, entitled plaintiff to an election of enhanced damages as set forth in 17 U.S.C. § 504(c)(2). As a result, plaintiff may elect an enhanced statutory damage award of up to \$150,000, but in case less than \$30,000.

27. Plaintiff first became aware of defendant's infringement in September 2019 after significant due diligence, and a lot of luck.

28. Plaintiff immediately sent a cease and desist to defendant.

29. Defendant had no authority to synchronize plaintiff's Copyrighted Recording

30. Defendant did not include any identifying information in the subject video which would have allowed plaintiff to identify defendant's use of the Copyrighted Recording.

31. Specifically, the subject video omits the Copyrighted Recording's title, album name, author, label, and copyright owner. Consequently, the subject advertisement did not appear in dozens of searches conducted each year by plaintiff.

32. Defendant's failure to include any copyright management information is a violation of 17 U.S.C. § 1202 – the DMCA. Plaintiff is entitled to up to \$25,000 for each violation of the DMCA pursuant to Section 1203 of the DMCA.

**FIRST CLAIM FOR RELIEF  
COPYRIGHT INFRINGEMENT**

33. Plaintiff incorporates the allegations contained in the preceding paragraphs as if set forth here at length here.

34. It cannot be disputed that the plaintiff has a valid, registered copyright, and owns all rights to the Copyrighted Recording.

35. Defendant without authority from plaintiff, reproduced, synchronized, publicly displayed, and/or publicly distributed plaintiff's Copyrighted Recording through the subject video. Defendant created for the subject video sole purpose of commercial gain.

36. Defendant's use of the Copyrighted Recording was not for criticism, comment, news reporting, teaching, scholarship, or research.

37. Defendant's use was not transformative.

38. Defendant elected to reproduce, synchronize, and distribute plaintiff's Copyrighted Recording, using the entirety of the song, without a license.

39. As a direct and proximate result of defendant's infringement of plaintiff's exclusive rights to the Copyrighted Recording as set forth in Section 106 of the Act, plaintiff has incurred damages, and requests an award of defendant's profits, and plaintiff's loss, plus costs, interest, and attorneys' fees. Plaintiff may also elect to recover statutory damages pursuant to 17 U.S.C. § 504(c)(2) for willful infringement/reckless disregard of up to \$150,000, but not less than \$30,000.

**SECOND CLAIM FOR RELIEF  
VIOLATION OF DMCA OF 1998, AS AMENDED,  
17 U.S.C. §§ 1201, et seq.**

40. Plaintiff incorporates the allegations contained in the preceding paragraphs as if set forth at length here.

41. Section 1202 provides in part: “(b) [n]o person shall, without the authority of the copyright owner or the law - (1) intentionally remove or alter any copyright management information, [or] (3) distribute . . . works [or] copies of works . . . knowing that copyright management information has been removed or altered without authority of the copyright owner or the law, knowing, or having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right under this title.” 17 U.S.C. § 1202(b).

42. The DMCA states: “[d]efinition.—As used in this section, the term “copyright management information” means any of the following information conveyed in connection with copies or phonorecords of a work or performances or displays of a work, including in digital form, except that such term does not include any personally identifying information about a user of a work or of a copy, phonorecord, performance, or display of a work: (1) The title and other information identifying the work, including the information set forth on a notice of copyright. (2) The name of, and other identifying information about, the author of a work. (3) The name of, and other identifying information about, the copyright owner of the work, including the information set forth in a notice of copyright. (4) With the exception of public performances of works by radio and television broadcast stations, the name of, and other identifying information about, a performer whose performance is fixed in a work other than an audiovisual work. (5) With the exception of public performances of works by radio and television broadcast stations, in the case of an audiovisual work, the name of, and other identifying information about, a writer,

performer, or director who is credited in the audiovisual work. (6) Terms and conditions for use of the work. (7) Identifying numbers or symbols referring to such information or links to such information. (8) Such other information as the Register of Copyrights may prescribe by regulation, except that the Register of Copyrights may not require the provision of any information concerning the user of a copyrighted work.” 17 U.S.C. § 1202(C); S.Rep. No. 105-190 (1988), note 18.

43. Plaintiff always distributes its Recordings, including the Copyrighted Recording, with embedded copyright management information including the title, author, label, and copyright owner.

44. Defendant could not have obtained a copy of the master recording for the Copyrighted Recording without this information.

45. Master recordings are tightly controlled by plaintiff to prevent unauthorized commercial use – like the subject use at issue here.

46. A master recording is an authenticated and unbroken version of a musical Recording (typically 96 kHz / 24 bit) with the highest-possible resolution—as flawless as it sounded in the mastering suite.

47. Defendant’s Amity Advertisement is synchronized to a very high resolution copy of the Copyrighted Recording. This high-resolution version cannot be obtained without copyright management information being included.

48. Defendant removed plaintiff’s copyright management information, and copied, synchronized, publicly displayed, and/or distributed the Copyrighted Recording.



49. Defendant failed to include any information which identified the Copyrighted Recording, the author of the Copyrighted Recording, the owner of any right in the Copyrighted Recording, or information about the terms and conditions of use of the Copyrighted Recording.

50. Defendant violated the DMCA each time it wrongfully distributed the Amity Advertisement.

51. Defendant did the forgoing with the intent to conceal the infringement.

52. Plaintiff seeks award of statutory damages for each violation of Section 1202 of the DMCA in the sum of \$25,000.

### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays for judgment against defendant, and awarding plaintiff as follows:

1. restitution of defendant's unlawful proceeds in excess of plaintiff's actual damages;
2. compensatory damages in an amount to be ascertained at trial;
3. a statutory damage award including all penalties authorized by the Copyright Act (17 U.S.C. §§ 504(c)(1), 504(c)(2));
4. an award of statutory damages for each violation by defendant of the DMCA, 17 U.S.C. § 1202;
5. reasonable attorneys' fees and costs (17 U.S.C. § 505);
6. pre- and post-judgment interest to the extent allowable; and,
7. such other and further relief that the Court may deem just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: September 30, 2019  
New York, New York

**GARBARINI FITZGERALD P.C.**

By:   
Richard M. Garbarini (RG 5496)