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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

KISS CATALOG, LTD, etc., et al.,
Plaintiffs,
v.
PASSPORT INTERNATIONAL
PRODUCTIONS, INC., etc., et al.,
Defendants.

CASE NO. CV 03-8514 DSF (CWx)
ORDER GRANTING MOTION TO
RECONSIDER, VACATING
FINDING OF
UNCONSTITUTIONALITY, AND
DENYING DEFENDANTS'
MOTION TO DISMISS ON
GROUNDS OF
UNCONSTITUTIONALITY

INTRODUCTION AND PROCEDURAL BACKGROUND

On December 21, 2004, the Honorable William J. Rea, to whom this case was originally assigned, granted Defendants' motion to dismiss the Seventh Claim for Relief for violation of 17 U.S.C. § 1101, the anti-bootlegging statute, finding that § 1101(a)(3) violated the "for limited Times" requirement of the Copyright Clause and was therefore unconstitutional. KISS Catalog, Ltd. v. Passport Int'l Prods., 350 F. Supp. 2d 823, 837 (C.D. Cal. 2004) ("Order").

The United States learned of this finding only after the Order was entered, and sought leave to intervene in the action. On June 7, 2005, Judge Rea granted that request. On August 5, 2005, due to Judge Rea's death, the action was transferred to this Court for all further proceedings. This matter is now before the

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AS REQUIRED BY FRCP, RULE 77(d).

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1 Court on the motion of the United States to reconsider the finding that §
2 1101(a)(3) (“Statute”) is unconstitutional.¹ Plaintiffs have joined in the motion;
3 Defendants have opposed it.

4
5 **DISCUSSION**

6
7 **I. THE MOTION TO RECONSIDER IS GRANTED**

8
9 When the constitutionality of an act of Congress affecting the public
10 interest is drawn in question in any action in which the United States
11 or an officer, agency, or employee thereof is not a party, the court
12 shall notify the Attorney General of the United States as provided in
13 Title 28, U.S.C. § 2403.[²] . . . A party challenging the
14 constitutionality of legislation should call the attention of the court to
15 its consequential duty, but failure to do so is not a waiver of any
16 constitutional right otherwise timely asserted.

17
18
19 ¹ Defendants also moved to dismiss the Seventh Claim for Relief on the grounds that it
20 was inconsistent with the Eighth Claim for Relief for copyright infringement, and that
21 the alleged conduct occurred before the time period covered by § 1101. In addition,
22 Defendants moved to dismiss the Eighth Claim on the grounds that it conflicted with an
23 exhibit attached to the complaint and was inconsistent with the Seventh Claim. Judge
24 Rea denied those portions of the motion. KISS Catalog, Ltd., 350 F. Supp. 2d at 826-
25 29. The United States does not seek reconsideration of those portions of the Order.

26 ² 28 U.S.C. § 2403(a) provides:

27 In any action, suit or proceeding in a court of the United States to which
28 the United States or any agency, officer or employee thereof is not a party,
wherein the constitutionality of any Act of Congress affecting the public
interest is drawn in question, the court shall certify such fact to the
Attorney General, and shall permit the United States to intervene . . . for
argument on the question of constitutionality.

1 Fed. R. Civ. P. 24(c). Neither Defendants nor the Court complied with this Rule.

2 Failure fully to consider the position of the United States would be an abuse
3 of discretion. See Fordyce v. City of Seattle, 55 F.3d 436, 442 (9th Cir. 1995)
4 (failure to allow state attorney general “to participate fully” where constitutionality
5 of state statute was challenged was abuse of discretion). The Court therefore
6 grants the motion of the United States to reconsider the Order.³

7
8 **II. SECTION 1101(a)(3) IS A CONSTITUTIONAL EXERCISE OF**
9 **CONGRESS’ COMMERCE CLAUSE POWER**

10
11 17 U.S.C. § 1101(a) provides:

12 Anyone who, without the consent of the performer or performers
13 involved--

14 (1) fixes the sounds or sounds and images of a live musical
15 performance in a copy or phonorecord, or reproduces copies or
16 phonorecords of such a performance from an unauthorized fixation,

17 (2) transmits or otherwise communicates to the public the sounds or
18 sounds and images of a live musical performance, or

19 (3) distributes or offers to distribute, sells or offers to sell, rents or
20 offers to rent, or traffics in any copy or phonorecord fixed as
21 described in paragraph (1), regardless of whether the fixations
22 occurred in the United States,

23
24
25

³ Defendants argue that the request for reconsideration should be denied because the
26 United States cannot point to any new law or new evidence, and that Local Rule 7-18
27 likewise does not permit reconsideration. The authorities cited by Defendants do not
28 contemplate the situation where a party legally permitted to participate was excluded
from the proceedings.

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1 shall be subject to the remedies provided in sections 502 through 505
2 to the same extent as an infringer of copyright.

3 Until Judge Rea’s Order, no published decision had yet addressed the
4 constitutionality of 17 U.S.C. § 1101(a)(3). Only two, United States v.
5 Moghadam, 175 F.3d 1269 (11th Cir. 1999), cert. denied, 529 U.S. 1036 (2000),
6 and United States v. Martignon, 346 F. Supp. 2d 413 (S.D.N.Y. 2004), discuss a
7 related criminal statute, 18 U.S.C. § 2319A.⁴ Moghadam and Martignon, after a
8 careful consideration of whether the anti-bootlegging⁵ legislation is a
9 constitutional exercise of congressional power under the Copyright Clause or the
10 Commerce Clause, reached opposite conclusions.

11 This analysis of the constitutionality of the Statute addresses two separate
12 considerations: (a) did Congress have the power to enact the legislation? and (b) if
13 so, is the legislation “fundamentally inconsistent” with the Copyright Clause?

14 This Court agrees with the analysis of Moghadam: the Statute is
15 constitutional.

16
17 **A. The Commerce Clause Empowers Congress to Enact the**
18 **Statute**

19 Because Congress may exercise only those powers granted to it by the
20 Constitution, e.g., United States v. Lopez, 514 U.S. 549, 552 (1995), the Court
21 must determine whether Congress had the power to enact the Statute in the first
22

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24 _____
25 ⁴ All three decisions are thoroughly and impressively researched. This Court relies on
their discussion of the history of the anti-bootlegging legislation.

26 ⁵ “Bootlegging” is “the making of an unauthorized copy of a commercially unreleased
27 performance,” and is distinct from “piracy,” which is an unauthorized duplication of an
28 authorized recording. Moghadam, 175 F.3d at 1272 n.3 (citation and internal quotation
marks omitted).

1 instance. The Copyright Clause,⁶ U.S. Const. art. I, § 8, cl. 8, the Commerce
 2 Clause, *id.* cl. 3, and the Necessary and Proper Clause, *id.* cl. 18, are the generally
 3 suggested sources of such power.

4 Congress may have believed that it was acting pursuant to the Copyright
 5 Clause, which provides that Congress has the power to “promote the Progress of
 6 Science and useful Arts, by securing for limited Times to Authors and Inventors
 7 the exclusive Right to their respective Writings and Discoveries.” *See*
 8 Moghadam, 175 F.3d at 1272 (“[W]hat little legislative history exists tends to
 9 suggest that Congress viewed the anti-bootlegging provisions as enacted pursuant
 10 to its Copyright Clause authority,” citing 140 Cong. Rec. H 11441, H 11457 (daily
 11 ed. Nov. 29, 1994) (statement of Rep. Hughes)); Martignon, 346 F. Supp. 2d at
 12 419. *But see* 3 Melville B. Nimmer & David Nimmer, Nimmer on Copyright
 13 §8E.05[A] (2005) (“In the context of Chapter 11 [of Title 17], the question arises
 14 how Congress viewed its enactment authority. There is no answer.”). The Statute
 15 was placed within Title 17, and incorporates the statutory remedies for copyright
 16 infringement.⁷ 17 U.S.C. § 1101(a).

17 It appears unlikely, however, that Congress could have derived the power to
 18 enact the Statute from the Copyright Clause. *See, e.g., Moghadam*, 175 F.3d at
 19 1274 (“[A]lthough in the modern era the term ‘Writings’ allows Congress to
 20

21 ⁶ This clause has also been referred to as the Intellectual Property Clause.

22 ⁷ Judge Rea held that the Statute did not incorporate 17 U.S.C. § 302, which limits the
 23 duration of copyright protection. KISS Catalog, Ltd., 350 F. Supp. 2d at 832. At least
 24 one author has touted incorporating that durational limit into the Statute as an approach
 25 to preserving constitutionality. Angela T. Howe, United States v. Martignon and Kiss
 26 Catalog v. Passport International Products: The Anti-Bootlegging Statute and the
 27 Collision of International Intellectual Property Law and the United States Constitution,
 28 20 Berkeley Tech. L.J. 829, 851 (2005). The United States had not addressed this issue
 and the Court requested further briefing. Because the United States agreed that the
 durational limitation of 17 U.S.C. § 302 cannot be incorporated into the Statute, the
 Court assumes, without deciding, that it is not incorporated.

1 extend copyright protection to a great many things, those things have always
 2 involved some fixed, tangible and durable form.”); KISS Catalog, Ltd., 350 F.
 3 Supp. 2d at 831 (“[I]t would seem that a live performance protected by § 1101 is
 4 not a fixed work. . . . Thus, one would be inclined to think that . . . live
 5 performances could not be regulated via the Copyright Clause.”); Martignon, 346
 6 F. Supp. 2d at 424 (“[B]y virtue of the fact that it regulates unfixed live
 7 performances, the anti-bootlegging statute is not within the purview of Congress’
 8 Copyright Clause power.”); 1 Nimmer, Nimmer on Copyright, *supra*, §1.08[C][2]
 9 (“If the word ‘writings’ is to be given any meaning whatsoever, it must, at the very
 10 least, denote ‘some material form, capable of identification and having a more or
 11 less permanent endurance.’” (citation omitted)); Susan M. Deas, Jazzing Up the
 12 Copyright Act? Resolving the Uncertainties of the United States Anti-
 13 Bootlegging Law, 20 Hastings Comm. & Ent. L.J. 567, 578 (1998); David
 14 Nimmer, The End of Copyright, 48 Vand. L. Rev. 1385, 1409 (1995) (“[N]o
 15 respectable interpretation of the word ‘Writings’ embraces an untaped
 16 performance of someone singing at Carnegie Hall.”).

17 This does not end the analysis, however, as Congress’ intent is not
 18 dispositive. See Woods v. Cloyd W. Miller Co., 333 U.S. 138, 144 (1948) (“The
 19 question of the constitutionality of action taken by Congress does not depend on
 20 the recitals of the power which it undertakes to exercise.”). Moreover, “[d]ue
 21 respect for the decisions of a coordinate branch of Government demands that
 22 [courts] invalidate a congressional enactment only upon a plain showing that
 23 Congress has exceeded its constitutional bounds.” United States v. Morrison, 529
 24 U.S. 598, 607 (2000). There is a “presumption of constitutionality.” Id.
 25 Therefore, it is the Court’s obligation to look elsewhere for a source of
 26 congressional power to enact the Statute.

27 The United States argues that the Commerce Clause grants such authority.
 28 This Court agrees with the United States and with the Eleventh Circuit’s analysis

1 in Moghadam, 175 F.3d at 1274-77. Indeed, Judge Rea believed the Statute could
2 be enacted under the Commerce Clause if not for the conflict with the Copyright
3 Clause. KISS Catalog, Ltd., 350 F. Supp. 2d at 833-34 and n.7 (“[T]hat copyright-
4 like protection for live performances touches on commerce is a proposition that
5 should be without serious dispute.”)

6 Though Martignon criticized Moghadam’s “swift conclusion” that the
7 legislation is authorized under the Commerce Clause (potential Copyright Clause
8 limitations aside), this Court agrees that the Statute is well within Congress’
9 Commerce Clause powers as broadly defined by, *inter alia*, Gonzalez v. Raich,
10 125 S. Ct. 2195 (2005), and Lopez. As the United States Supreme Court most
11 recently made clear in these cases,⁸ Congress’ authority to enact legislation
12 pursuant to the Commerce Clause has been interpreted broadly in the modern era.
13 Indeed, Supreme Court “case law firmly establishes Congress’ power to regulate
14 [even] purely local activities that are part of an economic ‘class of activities’ that
15 have a substantial effect on interstate commerce.” Raich, 125 S. Ct. at 2205
16 (citations omitted). This is true even where the affected market is an illegal one.
17 Id. at 2206 (acknowledging an illegal market for marijuana).

18 Moghadam assumed, without deciding, that the anti-bootlegging legislation
19 could not stand under the Copyright Clause. 175 F.3d at 1274. It simply turned to
20 an alternate source, the Commerce Clause, noting that the test of constitutionality
21 under that clause is “whether a rational basis existed for concluding that a
22 regulated activity sufficiently affected interstate commerce.” Id. at 1275 (quoting
23 Lopez, 514 U.S. at 557). Even in the absence of legislative findings of an
24 interstate commerce nexus, the court easily concluded: “The link between bootleg
25 compact discs and interstate commerce and commerce with foreign nations is self-

27 ⁸ Raich, of course, was issued after both Judge Rea and the court in Martignon
28 considered the issue.

1 evident.” *Id.* at 1276. “Bootleggers depress the legitimate markets because
2 demand is satisfied through unauthorized channels.” *Id.* In addition, that § 1101
3 was enacted in connection with an international treaty called for by the World
4 Trade Organization establishes its connection with -- if not its reliance on --
5 interstate and international commerce. *Id.*; accord *Howe, supra*, at 846 (citing,
6 *inter alia*, Office of United States Trade Representative, at <http://www.ustr.gov>.
7 (last visited March 19, 2005)).

8 This Court finds that the Commerce Clause grants Congress the power to
9 enact the Statute.⁹

11 **B. The Statute Is Not “Fundamentally Inconsistent” With the** 12 **Copyright Clause**

13 Though Judge Rea and the court in *Martignon* next considered whether the
14 anti-bootlegging law was fundamentally inconsistent with the Copyright Clause,
15 that step is not necessarily mandated. Arguably, a determination that the Statute
16 does not fall within the ambit of the Copyright Clause ends the analysis.

17 In general, the various grants of legislative authority contained in the
18 Constitution stand alone and must be independently analyzed. In
19 other words, each of the powers of Congress is alternative to all of the
20 other powers, and what cannot be done under one of them may very
21 well be doable under another.

22 *Moghadam*, 175 F.3d at 1277 (citing *Heart of Atlanta Motel, Inc. v. United States*,
23 379 U.S. 241 (1964), and *The Trade-Mark Cases*, 100 U.S. 82 (1879)).

25 ⁹ Because the Court finds § 1101(a)(3) valid under the Commerce Clause, the Court
26 need not consider whether it might alternatively be authorized under the Necessary and
27 Proper Clause. There has been some suggestion that the Necessary and Proper Clause
28 would even more clearly provide a constitutional source for the Statute. *Howe, supra*, at
847-50.

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1 In contrast, Martignon, concluded:

2 In order to give meaning to the express limitations provided in the
3 Copyright Clause, when enacting copyright-like legislation, such as
4 the anti-bootlegging statute, . . . Congress may not, if the Copyright
5 Clause does not allow for such legislation, enact the law under a
6 separate grant of power, even when that separate grant provides
7 proper authority.

8 346 F. Supp. 2d at 424-25. The court provides no authority for this conclusion,
9 however. Instead, as discussed below, it reads the Copyright Clause too broadly,
10 and circumscribes Congress' power under other constitutional grants of authority
11 too narrowly.

12 Judge Rea, following Martignon, deemed the Statute "copyright-like," KISS
13 Catalog, Ltd, 350 F. Supp. 2d at 830, and then proceeded to the conclusion that the
14 power to regulate a subject matter that admittedly does not fall within the
15 parameters of the Copyright Clause is nevertheless subject to the limitations
16 imposed by that clause. Id. at 837. This characterization, even if valid, is not
17 particularly helpful. As the United States points out, nothing prohibits Congress
18 from protecting similar things in different ways -- so long as some provision of the
19 United States Constitution allows it to do so. Railway Labor Executives'
20 Association v. Gibbons, 455 U.S. 457 (1982) is not to the contrary. There the
21 Supreme Court examined the definition of "bankruptcy," the language of the
22 challenged legislation, the events surrounding its passage, and its legislative
23 history, and concluded that "Congress was exercising its powers under the
24 Bankruptcy Clause." Id. at 466-68. In other words, it was a bankruptcy statute --
25 not a "bankruptcy-like" statute. Neither the appellant nor the United States argued
26 that Congress could have enacted the law pursuant to the Commerce Clause. Id. at
27 468. The Supreme Court noted that the Commerce Clause does not require
28 uniformity of regulation; therefore, if it held that the Commerce Clause did

1 provide authority for nonuniform bankruptcy laws, the Court “would eradicate
2 from the Constitution a limitation on the power of Congress to enact bankruptcy
3 laws.” Id. at 468-69.

4 The analysis here is different. All parties, and all authorities cited, agree
5 that Congress does not have the authority to legislate concerning live
6 performances under the Copyright Clause. Finding that Congress does have the
7 authority to do so under the Commerce Clause does not negate any of the purposes
8 of, protections afforded by, or limitations established by, the Copyright Clause.
9 Thus the Railway Labor analysis does not apply. Accord Adam Giuliano, Steal
10 This Concert? The Federal Anti-Bootlegging Statute Gets Struck Down, But Not
11 Out, 7 Vand. J. Ent. L. & Prac. 373 (2005); cf. United States v. Elcom Ltd., 203 F.
12 Supp. 2d 1111, 1138-42 (N.D. Cal. 2002) (Digital Millenium Copyright Act
13 within Congress’ Commerce Clause power due to lack of fundamental
14 inconsistency with Copyright Clause).

15 The Court again agrees with the United States (and Moghadam) that the
16 analysis of The Trade-Mark Cases is more to the point. There, the Supreme Court
17 noted that legislation that could not be permitted under the Copyright Clause could
18 nevertheless pass muster under the Commerce Clause -- if the independent
19 requirements of that clause were met. 100 U.S. at 94-96. Under the more
20 restrictive view of the Commerce Clause that prevailed at the time, those
21 requirements were not met. Id. As noted above, modern case law has expanded
22 the interpretation of the Commerce Clause and modern cases upholding trademark
23 protection are based on the Commerce Clause. See, e.g., Jellibeans, Inc. v.
24 Skating Clubs of Ga., Inc., 716 F.2d 833, 838 (11th Cir. 1983). Therefore, once
25 the Court concludes that the Statute does not fall within the purview of the
26 Copyright Clause, it need no longer consider whether it complies with the
27 limitations of the Copyright Clause. To do so imports into the Commerce Clause
28 limits that clause does not have. That the Statute might provide “copyright-like”

1 or "copyright-related" protection to matters clearly not covered by the Copyright
2 Clause is not important. One need only find an alternative source of constitutional
3 authority. This Court finds such authority in the Commerce Clause. Cf. Authors
4 League of Am., Inc. v. Oman, 790 F.2d 220, 224 (2d Cir. 1986) (manufacturing
5 clause of the Copyright Act constitutional under the Commerce Clause).

6 Neither the court in Martignon nor Judge Rea gave sufficient deference to
7 the fundamental premise that legislation is presumed to be constitutional. See
8 Morrison, 529 U.S. at 607. Rather, they seemed to feel compelled to choose
9 between the several enumerated powers that might apply -- and to choose in a way
10 that rendered the Statute unconstitutional (at least in their view) for failure to meet
11 the "for limited Times" limitation. The Martignon court concluded: "That the
12 anti-bootlegging statute has its roots in an inter-country initiative cannot save the
13 statute; it does not serve to transform what appears on its face to be an intellectual
14 property statute into one whose primary purpose is to regulate commerce." 346 F.
15 Supp. 2d at 421. But nowhere does the court explain why only a statute's
16 "primary purpose" can be considered in determining its constitutionality.

17 As noted, the Copyright Clause allows Congress to protect a narrowly
18 defined subject matter within defined parameters. The Statute addresses a similar,
19 but different, subject matter. This Court agrees with Moghadam:

20 We hold that the Copyright Clause does not envision that Congress is
21 positively forbidden from extending copyright-like protection under
22 other constitutional clauses, such as the Commerce Clause, to works
23 of authorship that may not meet the fixation requirement inherent in
24 the term "Writings." The grant itself is stated in positive terms, and
25 does not imply any negative pregnant that suggests that the term
26 "Writings" operates as a ceiling on Congress' ability to legislate
27 pursuant to other grants. Extending quasi-copyright protection to
28 unfixed live musical performances is in no way inconsistent with the

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1 Copyright Clause, even if that Clause itself does not directly
2 authorize such protection.

3 175 F.3d at 1280.

4 At least one author opined that Judge Rea “wrongly ignor[ed] the basic tenet
5 that courts should when possible protect the constitutionality of statutes through
6 their interpretive judgments.” 1 Raymond T. Nimmer, Information Law §6:30
7 (2005).

8 The “fundamental conflict” standard gives deference to the separate,
9 co-equal character of constitutional grants, creating preemptive
10 conflict only where the separate enactment conflicts with a core and
11 explicit, broad limitation of the other constitutional power. In this
12 respect, the Copyright Clause speaks only to the creation of a
13 separate, limited constitutional grant and, unlike concepts such as are
14 in Due Process and Fourth Amendment rules, does not place broad
15 limitations on any and all exercises of congressional power. Thus the
16 [Moghadam] court’s analysis was clearly correct.

17 Id. As Nimmer goes on to state:

18 An important aspect of the *Kiss Catalog* result was its further
19 conclusion that, while the statute could have been enacted under the
20 Commerce Clause (which contains no time limitation), Commerce
21 Clause powers could not be invoked to subvert an express limitation
22 in the Copyright Clause. This conclusion creates an unwarranted
23 hierarchy among otherwise seemingly co-equal constitutional grants
24 and is particularly suspect in a modern era in which Commerce
25 Clause authority is broadly construed. It hinges entirely on the
26 court’s belief that, in some fashion, this statute was a “copyright-like”
27 enactment and, thus, governed entirely and solely by the Copyright
28 Clause.

1 Id.

2 With regard to Martignon's holding that the criminal version of the statute
3 also violates the "Writings" provision (an issue not addressed by Judge Rea),

4 Nimmer comments:

5 This . . . analysis . . . only holds if one assumes that the limitations of the
6 Copyright Clause dominate other provisions of the Constitution, a
7 conclusion that is conducive in this instance to a restrictive view of
8 Congressional power to provide for rights in information products, but that
9 has little grounding in constitutional history or the purpose of a clause that
10 was intended to create a power, rather than comprehensively limit
11 governmental conduct.

12 Id.

13 Even if a "fundamental conflict" with the Copyright Clause would
14 invalidate the Statute, none exists here. Considering whether the Copyright
15 Clause prevents Congress from exercising its Commerce Clause power perpetually
16 to prohibit bootlegging -- or more specifically, the dissemination of bootlegged
17 recordings¹⁰ -- the Court concludes it does not. As indicated previously, the
18 Statute merely proscribes conduct not otherwise addressed, prohibited or protected
19 by the Copyright Clause: the non-consensual recording of a live performance.
20 Stated differently, what Congress regulates here is an unauthorized and (by this
21 statute) unlawful recording of a live performance, not an authorized, protected,
22 and constitutionally-encouraged fixation of an author's original work. Thus, the
23 Statute complements, rather than violates, the Copyright Clause by addressing
24 similar subject matter, not previously protected -- or protectible -- under the
25 Copyright Clause. See Giuliano, supra, at 373 ("Properly construed, the anti-
26 bootlegging statute serves as a complement to copyright regulation, rather than a

27

28 ¹⁰ Only § 1101(a)(3) is at issue here.

1 derogation from it.”).

2 In contrast to Railway Labor, the question is not whether legislation
3 empowered by the Copyright Clause -- but invalid under it -- can otherwise be
4 empowered by the Commerce Clause. The question is whether matters not
5 encompassed within the Copyright Clause can be addressed by the Commerce
6 Clause free of the restrictions of the Copyright Clause. The answer to that
7 question is, clearly, yes.

8 One does not have to stretch the presumption of constitutionality to
9 conclude that legislation that prevents dissemination in perpetuity of an
10 unauthorized videotape by a third-party of a live performance does not conflict
11 with a clause that protects, “for limited Times,” the voluntarily disseminated
12 “Writings” of authors. That portion of the Order that holds the Statute
13 unconstitutional is hereby vacated.

14
15 **CONCLUSION**

16
17 For the reasons stated above, the motion to reconsider is granted, the portion
18 of the Order holding 17 U.S.C. §1101(a)(3) unconstitutional is vacated, and
19 Defendants’ motion to dismiss the Seventh Claim for Relief on the grounds that 17
20 U.S.C. § 1101(a)(3) is unconstitutional is DENIED.

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24 Dated: December 21, 2005



DALE S. FISCHER
United States District Judge