

REPORT OF MICHAEL FINE

I. Introduction

I am the CEO of SoundScan, Inc. ("SoundScan"). SoundScan and I have been engaged by the plaintiffs in this action, A&M Records, Inc., et al. v. Napster, Inc., No. C 99-05183MHP (N.D. Cal.) to determine the effect of on-line file sharing made popular by MP3 and Napster on retail music sales.

II. Study Conclusions

The data strongly suggests that on-line file sharing has resulted in a loss of album sales within the college markets.

The data indicates that national retail music sales have grown significantly and consistently on a quarter-to-quarter basis for the period during which music file sharing has been widespread. However, sales at stores near colleges and universities have declined significantly in the same period.

Moreover, when analyzing stores near a subset of colleges and universities where "Napster" use has been recently banned, and stores near a subset of colleges and universities designated as the most "wired", the data shows a steep decline in sales compared to other colleges and universities.

Since the first quarter of 1997, total national album sales have grown by 18%, whereas the sales at stores near colleges and universities have not grown at all, and in fact have declined more than 7% from their peak in the first quarter of 1998. Sales around schools where "Napster" has been recently banned or those colleges and universities designated as highly "wired" have declined even more significantly, to 88% and 87% respectively of their first quarter 1997 levels. Music file sharing and Napster usage appear to have created a significant and detrimental impact on retail music sales.

III. Study Methodology

It was previously determined that music file sharing is prevalent among college students. Therefore, to best quantify the effect of the Napster service, we examined retail music sales trends in stores near college and university locations in the United States.

A dataset of colleges and universities was acquired from Quality Education Data (QED). (A copy of the list of colleges and universities is attached hereto as Exhibit B.) This list of college and university addresses was geo-coded with latitude and longitude co-ordinates, and a list of all stores located within one mile of any college or university was derived. This group of stores is referred to in the analysis as "All College Stores". In order to ensure consistency in the analysis, only stores that had reported sales to SoundScan on a consistent basis during the analysis period were included in the analysis.

We next generated a list of stores located within one mile of any college or university on the list of colleges or universities that have been identified as having banned Napster use. (A copy of the list of colleges or universities that have been identified as having banned Napster is attached hereto as Exhibit C.) This group of stores is referred to in the analysis as the "Napster Banned College Stores".

Finally, we've generated a list of stores within one mile of any college or university listed among the "Top 40 Most Wired Colleges in 1999" by Yahoo Internet Life. See <http://www.zdnet.com/yil/content/college/colleges99/chartkey.html>. These schools are ranked based on criteria such as the number of computers per 100 students, percentage of computers purchased in the last two years, and percentage of on-campus undergraduates registered for dedicated dorm room network connections. Students at these "wired" schools would likely have access to greater bandwidth. This group of stores is referred to in the analysis as the "Top 40 Wired School Stores".

Using SoundScan® Point Of Sale ("POS") data, we examined music sales for the "Napster Banned College Stores" and the "Top 40 Wired College Stores" and compared these sales with national totals. We also compared music sales for the "Napster Banned College Stores" and the "Top 40 Wired College Stores" with sales at "All College Stores". In making these comparisons, we excluded from the "All College Stores" dataset, to ensure consistency, the schools contained in the respective subset being compared (either "Napster Banned College Stores" or the "Top 40 Wired College Stores").

Sales were examined for the first quarter for the years 1997, 1998, 1999, and 2000.

The results were displayed by expressing each quarter's sales as a percent of first quarter 1997 sales.

The data on the attached tables and charts is defined as follows:

- 1) **National Sales.** This is the national sales for the period as reported by SoundScan less the Internet sales for the same period. Internet sales were not collected or tracked prior to the first quarter of 1999.
- 2) **Napster Banned College Stores.** This is the sales for those stores within the one-mile radius of those schools that have been designated as having banned Napster.
- 3) **Top 40 Wired College Stores.** This is the sales for those stores within the one-mile radius of those schools that were in the Top 40 Most Wired Colleges by Yahoo Internet Life in 1999.
- 4) **All Schools.** This is the sales for those stores within the one-mile radius of all colleges and universities excluding the "Napster Banned College Stores" or the "Top 40 Wired College Stores" (depending on the subset being compared).

Counts of schools and stores within each of the groups was:

"All Schools" 3,454 Schools and 2099 Stores

"Napster Banned College Stores" 67 Schools and 48 Stores

"Top 40 Wired College Stores" 40 Schools and 44 Stores.

IV. Qualifications

A. Michael Fine

I have been CEO of SoundScan since it was formed and developed in 1990. As such, I am very familiar with the nature of SoundScan's business as well as the procedures and practices that SoundScan employs to maintain its business records. I was President of George Fine Research from 1976-1999. We conducted opinion polls for media outlets and many Fortune 500 Companies. For example, we conducted the CBS News/New York Times election polls from 1967-90. I am also co-founder and Chief Executive Officer of VideoScan, Inc., which started measuring videocassette sales in 1993. Over the past twenty years, I have been involved in numerous public utility issues and I have testified as an expert witness before the public utility commissions in over twenty states including Virginia, Maryland and the District of Columbia. My testimony was in the areas of statistical analysis and consumer opinion surveys.

I earned a Bachelor of Science in Management from New York University. I also completed all course work requirements towards a Master's degree in Statistics at Baruch College. A copy of my resume is attached hereto as Exhibit A.

B. SoundScan

SoundScan is the premier independent online information system that tracks music sales throughout the United States. Commencing on January 1, 1991, and continuing up to the present, SoundScan has continuously tracked the weekly record sales of virtually all pre-recorded music which is distributed in the United States. SoundScan tracks these records by obtaining actual sales from over 18,000 locations (retail stores, Internet sites, mail order and concert venues) throughout the United States. Using this data, SoundScan employs a statistical formula to extrapolate the actual total weekly record sales in the United States for the records it tracks. SoundScan then summarizes these weekly record sales.

When SoundScan obtains weekly records sales, this raw data is entered into SoundScan's computerized information system in the ordinary course of SoundScan's business at or near the time the information is obtained by SoundScan's personnel who are instructed and trained to record this data into SoundScan's computerized information system as part of the regular course and scope of SoundScan's business. The information is thereafter maintained in SoundScan's computerized information system so that it can be retrieved and printed at any time upon command.

Currently all of the major music labels and most of the independent labels subscribe to SoundScan, as well as concert promoters, artist managers and other music-related businesses. SoundScan charts appear in over 15 newspapers and are the basis for

the Billboard Magazine music charts. SoundScan data is used by Performing Rights groups as well as the basis for distribution of royalties from the DART fund.

V. Compensation

I will be compensated at my usual and customary rate of \$275 per hour for my professional time incurred in performing the work necessary to prepare this report and to testify at trial or deposition.

I declare under penalty of perjury that the information presented in this report truly and accurately reflects my opinions and conclusions.

Dated: June 10, 2000
Jupiter, Florida


Michael Fine

CEO, SoundScan

Data Analysis of College Store Sales

Total Sales	Q1 1997 Sales	Q1 1998 Sales	Q1 1999 Sales	Q1 2000 Sales
National Sales	147,687,000	158,843,000	164,029,138	174,974,199
All College Stores	21,583,882	23,378,932	22,290,598	21,701,689
Napster Banned College Stores	655,705	666,450	630,069	578,740

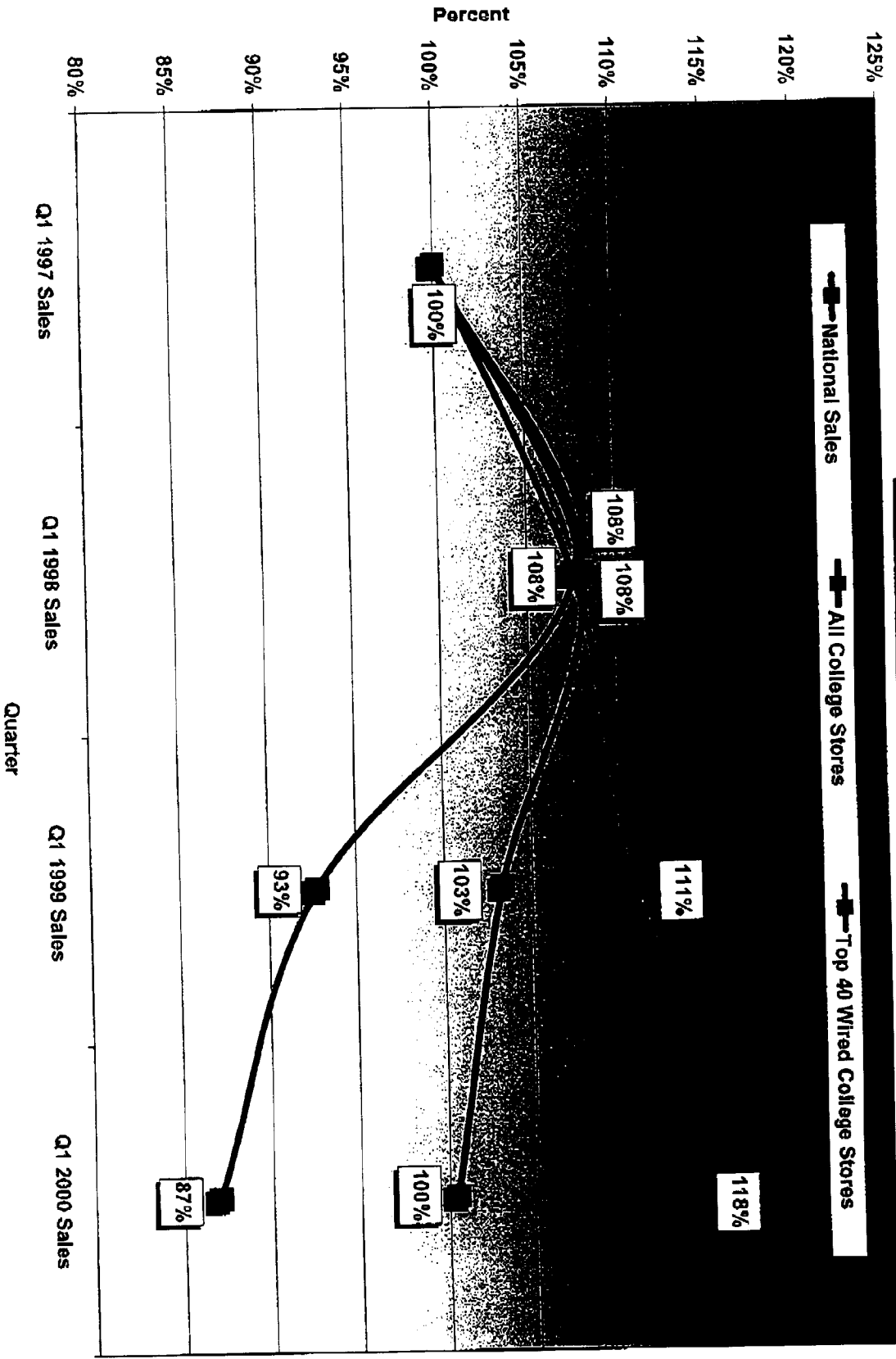
Total Sales	Q1 1997 Sales	Q1 1998 Sales	Q1 1999 Sales	Q1 2000 Sales
National Sales	147,687,000	158,843,000	164,029,138	174,974,199
All College Stores	21,762,881	23,531,957	22,478,456	21,865,775
Top 40 Wired College Stores	476,706	513,425	442,211	414,654

Total Sales	Q1 1997 Sales	Q1 1998 Sales	Q1 1999 Sales	Q1 2000 Sales
National Sales	100%	108%	111%	118%
All College Stores	100%	108%	103%	101%
Napster Banned College Stores	100%	102%	96%	88%

Total Sales	Q1 1997 Sales	Q1 1998 Sales	Q1 1999 Sales	Q1 2000 Sales
National Sales	100%	108%	111%	118%
All College Stores	100%	108%	103%	100%
Top 40 Wired College Stores	100%	108%	93%	87%



Sales as a percent of 1997 Sales
Top 40 Wired College Stores



Sales as a percent of 1997 Sales Napster Banned College Stores

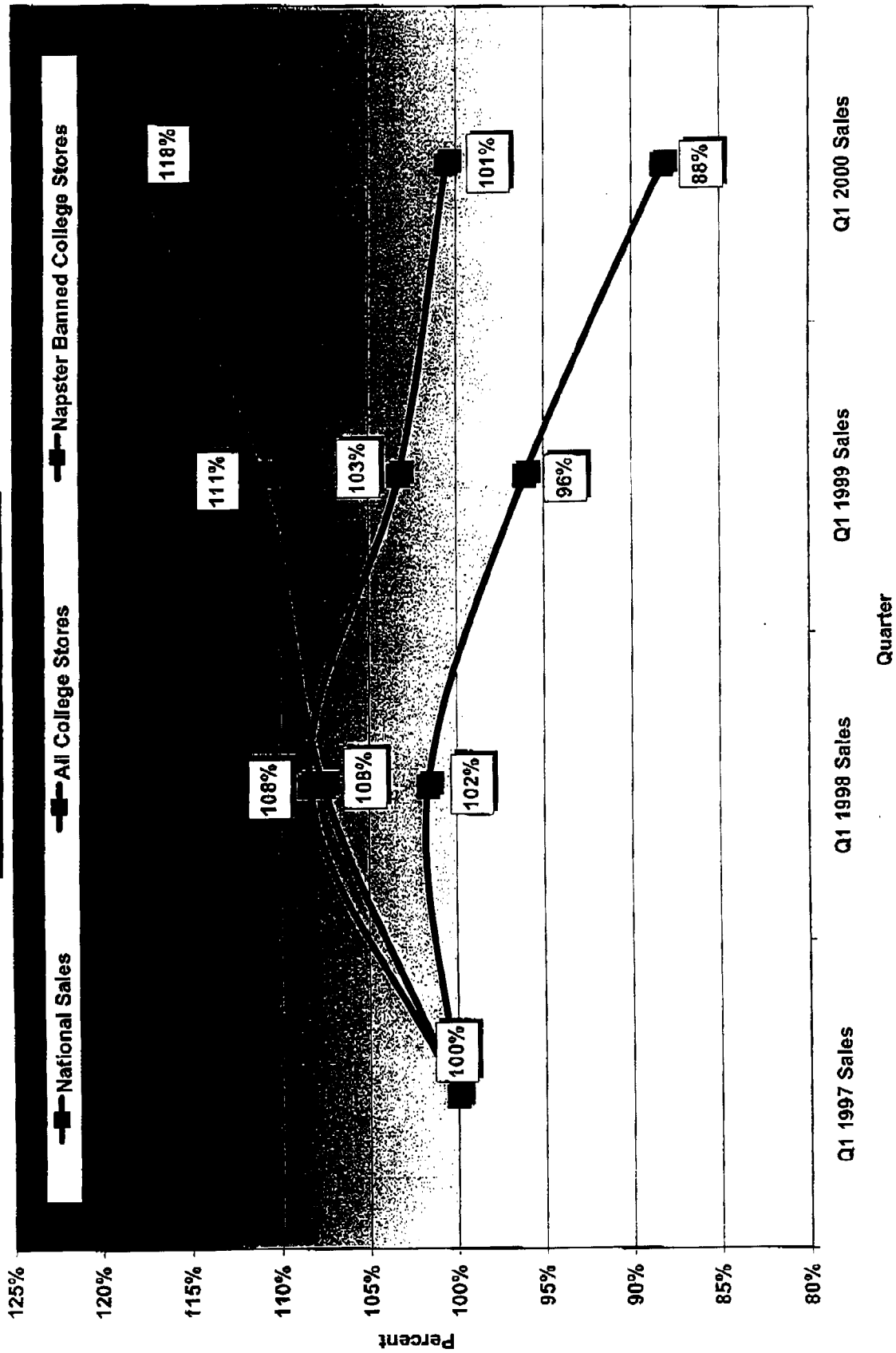


EXHIBIT A

MICHAEL FINE

- **Chief Executive Officer – SoundScan**
- **Co-founder – Soundata National Music Consumer Panel**
- **Chief Executive Officer – VideoScan**
- **President, George Fine Research**

Mike is recognized as one of the nation's leading research professionals. He attended Purdue University and received a Bachelor of Science degree from New York University in 1964. He has completed all course work necessary for a Master of Arts Degree in Statistics from Baruch College, the Graduate School of the City of New York. Fine began work for George Fine Research Inc. in 1963 and became president of the company in 1976.

George Fine Research is a full-service, national and international market research and public opinion company founded in 1935. The company's roots in the communication industry date to early Crossley Radio Coincidental surveys and evaluations of movie previews for MGM. Today the company is most widely recognized as the company that developed the methodology for exit polling and for conducting the CBS News exit polls between 1967 and 1990.

Clients of George Fine Research include CBS News, The Washington Post, Ameritech, AT&T, NYNEX, and Product Evaluation Systems, Inc., which evaluates products to determine the relationship between customer satisfaction and production costs.

Fine's professional associations include memberships in the American Marketing Association, the American Statistical Association and the American Association for Public Opinion Research.

The expertise Fine has developed in his prestigious research career has been applied to the music industry since 1987, when George Fine Research entered a joint venture with the Street Pulse Group to form the Soundata National Music Consumer Panel.

In January of 1991 Mike Fine, along with his partner Mike Shalett, formed SoundScan, Inc. and developed a Management Information System to immediately capture point-of-sale data in the music industry. By the summer of 1992, more than 10,000 retail stores were linked to SoundScan's computers. All of the nation's largest record companies, as well as a growing number of independent record labels, the vast majority of concert promoters, performance rights societies, booking agents, and artists' managers subscribe to this service. In 1996, SoundScan Canada was launched.

In 1993, Mike and his partner launched VideoScan. This company does for the video industry what SoundScan has done for the music industry, namely provide accurate point-of-sale data.

Mike has appeared on CNN's Showbiz Today, FOX-TV's Personalities, ABC's World News Tonight, Entertainment Tonight, and P.M. Magazine, and has been included in Entertainment Weekly's 101 Most Influential People In Entertainment Today. In addition, Mike been featured in articles appearing in such national publications as the Wall Street Journal, Newsweek, Time, Adweek, AdAge, USA Today, Variety, and American Demographics.