

EXHIBIT 3

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11
12 GRACENOTE, INC., a Delaware
corporation,

13 Plaintiff,

14 v.

15 MUSICMATCH, INC., a Washington
16 corporation,

17 Defendant.

CASE NO. C 02-3162 CW

**GRACENOTE, INC.'S FIRST SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS AND THINGS TO
MUSICMATCH, INC.**

(Nos. 1 - 21)

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20 PROPOUNDING PARTY: Plaintiff GRACENOTE, INC.

21 RESPONDING PARTY: Defendant MUSICMATCH, INC.

22 SET NUMBER: One (1)

23 Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff Gracenote, Inc.
24 ("Gracenote") requests that Defendant MusicMatch, Inc. ("MusicMatch") produce the following
25 documents and/or things, in accordance with the Federal Rules of Civil Procedure, the Local
26 Rules, and the definitions contained herein. The requested documents and/or things must be
27 provided within 10 days of the service of these requests. Documents and/or things should be

1 produced at the law offices of Orrick, Herrington & Sutcliffe, LLP, 1000 Marsh Road, Menlo
2 Park, CA 94025, or at such other place as may be agreed upon by counsel for the parties.

3 **DEFINITIONS**

4 A. The terms "MusicMatch," "Defendant," "you" and "your" shall mean, without
5 limitation, MusicMatch, Inc., its past and present parents, subsidiaries, affiliates, predecessors,
6 divisions, officers, directors, trustees, employees, staff members, agents, counsel, representatives,
7 consultants and all persons acting or purporting to act on its behalf.

8 B. The terms "Gracenote" and "Plaintiff" shall mean, without limitation, Gracenote,
9 Inc., its past and present parents, subsidiaries, affiliates, predecessors, divisions, officers,
10 directors, trustees, employees, staff members, agents, counsel, representatives, consultants and all
11 persons acting or purporting to act on its behalf.

12 C. As used herein, the term "document" means the original and each nonidentical
13 copy of any written, printed, typed, recorded, computerized, electronic, taped, graphic, or other
14 matter, in whatever form, whether in final or draft, including but not limited to all materials that
15 constitute "writings" or "recordings" or "photographs" within the broadest meaning of Rule 1001
16 of the Federal Rules of Evidence and all materials that constitute "documents" within the broadest
17 meaning of Rule 34 of the Federal Rules of Civil Procedure. The word "document" includes,
18 without limitation, printed matter, electronic mail, materials stored on computer hard drives,
19 diskettes, tapes, any other computer media, and any other information stored magnetically or
20 electronically.

21 D. The term "Agreement" means the "CDDDB² SDK and DATABASE ACCESS
22 AGREEMENT" entered into between Gracenote and MusicMatch on December 31, 1999.

23 E. To "produce" means to provide the original of the document and/or thing
24 identified, or if that is not available, then the best copy, and to make it available for inspection
25 and copying at the time and place specified above.

26 F. As used herein, the terms "person" or "persons" shall be broadly construed to
27 include natural persons or individuals, firms, partnerships, proprietorships, associations,

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1 governmental bodies, joint ventures, companies, corporations or any other organizations of
2 individuals or other entities.

3 G. As used herein, "communication" includes, without limitation, communications by
4 whatever means transmitted (i.e., whether oral, written, electronic or other methods used), as well
5 as any note, memorandum or other record thereof.

6 H. The terms "referring or relating to," "regarding" and "concerning" mean
7 reflecting, concerning, containing, pertaining, referring, relating to, indicating, showing,
8 describing, evidencing, discussing, mentioning, embodying or computing.

9 I. The term "prior art" shall be construed in keeping with its generally accepted
10 meaning under 35 U.S.C. sections 102 and 103.

11 J. The term "accused products" shall mean the "MusicMatch Jukebox" products.

12 K. Whenever the singular is used, it shall also be taken to include the plural, and vice
13 versa. Whenever the conjunctive is used, it shall also be taken to include the disjunctive, and vice
14 versa.

15 L. The term "'192 patent" shall mean United States Letters Patent No. 6,230,192.

16 M. The term "'593 patent" shall mean United States Letters Patent No. 6,330,593.

17 N. The term "CDDB music recognition database" or "CDDB Database" shall mean
18 the CDDB database of CD-related data on a CDDB server.

19 O. The term "Application Identification" shall mean a set of numbers and/or letters
20 supplied by Gracenote that identify an application to the CDDB Server.

21 P. The term "CD" or "music CD" means music recordings on compact disc, audio
22 CD, ECD, DVD, mini-disc and other digital data formats that record music or sound now known
23 or developed at any time in the future.

24 Q. The term "CDDB Server" shall mean one or more of the Gracenote-owned servers
25 on the Internet that include disk recognition functionality and supply data to authorized Licensed
26 Applications.

27 R. The term "CDDB-Enabled" means a version of a Licensed Application that is
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1 designed to let End-Users obtain data from the CDDB Server and have other functions by means
2 of the CDDB Client.

3 S. The term "CDDB User ID" means an alphanumeric identifier identifier of a
4 particular installed copy of the CDDB Client software in a Licensed Application and installed by
5 an End User.

6 T. The term "CDDB Unique ID" means an alphanumeric identifier of a particular
7 installed CD track originated by CDDB and embedded in ID3v.2 tag by means of the CDDB
8 SDK and/or the Licensed Application.

9 U. The term "CDDB Data" means data that is supplied by the CDDB Server or is
10 derived from such data.

11 V. The term "End-User Data" means CD-related, artist, title and track information
12 that has been entered by an End-User on his or her computer using the Licensed Application and
13 that is associated with or linked to TOC or disk identification data read by the End-User's
14 computer.

15 W. The term "End-User" means an authorized non-commercial end-user licensee of a
16 Licensed Application. Any reference to an End-User's use of the CDDB Client or access to the
17 CDDB Server applies only to End-Users that have been registered with Gracenote under
18 established procedures set forth in the Agreement.

19 X. The term "Licensed Application" means a software product under MusicMatch's
20 own brand, that consists of one or more of the types listed on Schedule A of the Agreement when
21 licensed solely to End-Users for non-commercial personal use and CDDB-Enabled. Any "plug-
22 in" or program designed or intended to be used with MusicMatch's Licensed Application will be
23 deemed part of the Licensed Application.

24 Y. The term "Proprietary Legends" and "CDDB Logo" means CDDB's intellectual
25 property and proprietary legends, including those listed in Schedule B of the Agreement.

26 Z. The term "CDDB² SDK" or "CDDB² software development kit" shall mean the
27 software development kit licensed under the Agreement, as modified from time to time, in

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1 machine-readable form and the Documentation supplied for use with such programs. The
2 CDDB² SDK includes maintenance releases, and patches to any new release or version that
3 Gracenote may choose to make available.

4 AA. The term "TOC" or "Table of Contents" means a type of data contained on the CD
5 that relates to when and where tracks start and end on the CD disc, as well as an indication
6 whether information on the CD is audio or data.

7 BB. The term "CDDB Client" or "CDDB client software" shall mean an application
8 plug-in, in object code form, as further described in the Documentation, that provides the user
9 interface and lookup functions for accessing CDDB data through the Internet.

10 CC. The term "Documentation" means information from Gracenote including materials
11 in the CDDB² SDK and found from time to time at Gracenote's website consisting of instructions
12 for use of the CDDB² SDK, licensing information, branding and trademark instructions, and End-
13 User help and usage instructions.

14 DD. The term "Limited-Use Application Identification" means an Application
15 Identification from Gracenote that will allow registration of up to 100 copies of the CDDB Client
16 in a Licensed Application.

17 EE. The term "Files" or "music file" shall mean computer files in MP3, wav, au, wma
18 or other computer file or sound format.

19 FF. The term "Tag" shall mean formatted or unformatted text information that is
20 associated with or identifies Files or their contents, including, but not limited to ID3 tags and ID3
21 version 2 tags.

22 GG. The term "Portable Electronic Music Player Device" shall mean a portable
23 handheld electronic music and sound playing device that includes functionality to store and play
24 Files.

25 HH. The term "Text Data" or "text-only portion" shall mean the text-only portion of
26 CDDB Data or End-User Data, that is, CD-related information solely in ASCII text form not
27 associated with or accompanied by TOC or other disk identification data.

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1 II. The term "Uploaded Text Data" shall mean Text Data transmitted to MusicMatch
2 by an End User.

3 JJ. The term "MP3-Related Text" shall mean ASCII text information provided to you
4 by the CDDB Server in response to your sending a CDDB Unique ID to Gracenote for MP3
5 Identification.

6 KK. The term "OEM customer" means any original equipment manufacturer that
7 installs MusicMatch in general purpose computers prior to sale to consumers.

8 **INSTRUCTIONS**

9 The following instructions apply to each of the requests for documents set forth herein:

10 1. Pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, these requests for
11 documents shall be deemed continuous up to and following the trial of this proceeding such that
12 any documents or things requested herein which is either discovered by you or comes within your
13 possession, custody or control subsequent to your initial responses hereto but prior to the final
14 conclusion of this case should be produced in a supplemental response to these Document
15 Requests immediately upon its discovery or receipt by you or your counsel.

16 2. Documents to be identified shall include both documents in your possession,
17 custody and control, and all other documents of which you have knowledge. If you claim that
18 any document was, but is no longer, in your possession or subject to your control, state what
19 disposition was made of such document and when.

20 3. With respect to each document and/or thing otherwise responsive to any of the
21 following Requests to Produce which is withheld, whether under claim of privilege or otherwise,
22 in order that the Court and the parties may determine the validity of the claim of privilege, please
23 provide a privilege log containing the following information:

- 24 a) The date, identity, type and general subject matter of each document and/or
25 thing;
- 26 b) The grounds asserted in support of withholding production of the documents
27 and/or things;

- 1 c) The identity of each person (other than stenographical or clerical assistants)
2 who participated in the preparation of the documents and/or things;
3 d) The identity of each person to whom the contents of the document and/or thing
4 were communicated by copy, distribution, reading or substantial
5 summarization;
6 e) A description of any material transmitted with or attached to the document
7 and/or thing;
8 f) The number of pages in the document and/or thing;
9 g) The particular Request to Produce to which the document and/or thing is
10 responsive; and
11 h) Whether any business or non-legal matter is contained or discussed in the
12 document and/or thing, and if so, the nature of such matter.

13 4. If you object to any part of a request for documents and refuse to produce
14 documents responsive to that part, state your objection and respond to the remaining portion of
15 that request. If you object to the scope or time period of a request for documents, state your
16 objection and respond to the request for documents for the scope or time period you believe is
17 appropriate.

18 5. If any of the following requests for documents cannot be responded to in full after
19 exercising due diligence to secure the requested documents, please so state and respond to the
20 extent possible, specifying your inability to respond to the remainder and stating whatever
21 information you have regarding, referring or relating to the unanswered portions. If your
22 response is qualified in any particular manner, set forth the details of such qualification.

23 6. With respect to each document and/or thing otherwise responsive to a Request to
24 Produce which has been lost or destroyed since its preparation or receipt, identify the document
25 and/or thing, state the Request to Produce to which it would otherwise be responsive, and give the
26 full particulars or circumstances whereby the document and/or thing was lost or destroyed.

27 7. For those produced documents and/or things that require other documents and/or
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1 things to render the produced documents and/or things either comprehensible or not misleading,
2 Defendant is requested to include such other documents and/or things as well.

3 REQUESTS FOR PRODUCTION

4 1. All documents referring or relating to Gracenote's CDDB music recognition
5 database, CDDB client software, or CDDB² software development kit.

6 2. All documents referring or relating to MusicMatch's distribution or duplication of
7 products incorporating the CDDB client software.

8 3. All documents referring or relating to distribution or duplication of products
9 incorporating the CDDB client software by MusicMatch's OEM customers.

10 4. All documents referring or relating to efforts taken by MusicMatch to have its
11 OEM customers discontinue distribution or duplication of products incorporating the CDDB
12 client software.

13 5. All documents referring or relating to the music recognition database in use by
14 MusicMatch from March 31, 2002 through the present.

15 6. All documents referring or relating to the use of TOC or other disk identification
16 data by any MusicMatch product.

17 7. All documents referring or relating to the use of the text-only portion of CDDB
18 Data or End-User Data by any MusicMatch product.

19 8. All documents referring or relating to any functionality of any MusicMatch
20 product that uploads or permits transmission of CDDB Data to anyone other than Gracenote.

21 9. All documents referring or relating to any functionality of any MusicMatch
22 product that uploads, aggregates, transfers, transmits, and/or collects CDDB Data.

23 10. All documents referring or relating to any functionality of any MusicMatch
24 product that uploads, aggregates, transfers, transmits, and/or collects End User Data.

25 11. All documents referring or relating to any MusicMatch product which accesses
26 remote data based on playback of a recording by end users.

27 12. All documents referring or relating to any and all "use data" and other information
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1 collected by any MusicMatch product.

2 13. All documents referring or relating to the structure of data records in the music
3 recognition database used by MusicMatch from March 31, 2002 through the present.

4 14. All documents referring or relating to whether data records in the music
5 recognition database used by MusicMatch from March 31, 2002 through the present contains
6 information regarding particular digital music files or music CDs, including artist name, album
7 title, track titles, "TOC" or other disc identification data, or unique identifier information
8 associated with music files.

9 15. All documents referring or relating to the music CD or music file "look up"
10 functionality of the music recognition database used by MusicMatch from March 31, 2002
11 through the present.

12 16. All documents referring or relating to the functionality, from March 31, 2002
13 through the present, of any MusicMatch application which is able to provide to end users artist,
14 title and other information about digital music files and music CDs.

15 17. All documents referring or relating to the functionality, from March 31, 2002
16 through the present, of any MusicMatch application which is able to control playing a digital
17 music file or music CD.

18 18. All documents referring or relating to the functionality, from March 31, 2002
19 through the present, of any MusicMatch application which enables identification of any music file
20 or CD based on a unique identifier.

21 19. All documents referring or relating to the functionality, from March 31, 2002
22 through the present, of any MusicMatch application which perform music recognition functions.

23 20. All documents referring or relating to Gracenote.

24 21. All documents which MusicMatch will assert invalidates any claim of the '192
25 patent or the '593 patent.

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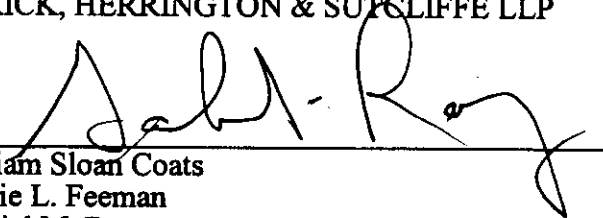
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Dated: July 11, 2002.

ORRICK, HERRINGTON & SUTCLIFFE LLP



William Sloan Coats
Vickie L. Feeman
Gabriel M. Ramsey
Attorneys for Plaintiff
Gracenote, Inc.