

# PATENT ASSIGNMENT

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SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNMENT		
CONVEYING PARTY DATA			
Name		Execution Date	
Shawn Fanning		05/10/1999	
RECEIVING PARTY DATA			
Name:	NAPSTER, INC.		
Street Address:	600 CHESAPEAKE DRIVE		
City:	REDWOOD CITY		
State/Country:	CALIFORNIA		
Postal Code:	94063		
PROPERTY NUMBERS Total: 1			
Property Type	Number		
Application Number:	10115714		
CORRESPONDENCE DATA			
Fax Number:	(408)749-6901		
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>			
Phone:	4087746927		
Email:	rajeev@mpiplaw.com		
Correspondent Name:	Rajeev Madnawat, Esq.		
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Address Line 4:	Sunnyvale, CALIFORNIA 94085		
ATTORNEY DOCKET NUMBER:	NAPSP281		
NAME OF SUBMITTER:	Rajeev Madnawat (Reg. No. 57,190)		
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## ASSIGNMENT OF TECHNOLOGY AGREEMENT

This Assignment of Technology Agreement (this "*Agreement*") is made and entered into effective as of May 10, 1999 by and between Napster Inc., a Delaware corporation (the "*Company*"), and Shawn Fanning (the "*Assignor*").

### RECITALS

A. Assignor is the inventor and owner of the Technology (as defined below), and Assignor desires to assign and transfer to the Company all of Assignor's right, title and interest in and to the Technology and other related rights [REDACTED]

B. [REDACTED]

NOW THEREFORE, the parties hereby agree as follows:

1. Certain Definitions. As used herein, the following terms will have the meanings set forth below:

1.1 Technology. The term "*Technology*" means the business plan and concepts described in Exhibit A attached hereto, and all technology, trade secrets and know-how related thereto.

1.2 Derivative. The term "*Derivative*" means: (i) any derivative work of the Technology (as defined in Section 101 of the U.S. Copyright Act); (ii) all improvements, modifications, alterations, adaptations, enhancements and new versions of the Technology (the "*Technology Derivatives*"); and (iii) all technology, inventions, products or other items that, directly or indirectly, incorporate, or are derived from, any part of the Technology or any Technology Derivative.

1.3 Intellectual Property Rights. The term "*Intellectual Property Rights*" means, collectively, all worldwide patents, patent applications, patent rights, copyrights, copyright registrations, moral rights, trade names, trademarks, service marks, domain names and registrations and/or applications for all of the foregoing, trade secrets, know-how, mask work rights, rights in trade dress and packaging, goodwill and all other intellectual property rights and proprietary rights relating in any way to the Technology, any Derivative or any Embodiment, whether arising under the laws of the United States of America or the laws of any other state, country or jurisdiction.

1.4 Embodiment. The term "*Embodiment*" means all documentation, drafts, papers, designs, schematics, diagrams, models, prototypes, source and object code (in any form or format and for all hardware platforms), computer-stored data, diskettes, manuscripts and other items describing all or any part of the Technology, any Derivative, any Intellectual Property Rights or any information related thereto or in which all of any part of the Technology, any

Derivative, any Intellectual Property Right or such information is set forth, embodied, recorded or stored.

1.5 Assigned Assets. The term "*Assigned Assets*" refers to the Technology, all Derivatives, all Intellectual Property Rights and all Embodiments, collectively.

2. Assignment. In consideration of the issuance by the Company to Assignor of the Shares, receipt of which is hereby acknowledged, Assignor hereby forever sells, assigns, transfers, releases and conveys to the Company, and its successors and assigns, Assignor's entire right, title and interest in and to each and all of the Assigned Assets.

3. Delivery. Assignor agrees to deliver all Embodiments of all Assigned Assets to the Company at a location designated by the Company no later than May 10, 1999.

4. Assignor Representations and Warranties. Assignor represents and warrants to the Company that Assignor is the sole owner, inventor and/or author of, and that Assignor owns, and can grant exclusive right, title and interest in and to, each of the Assigned Assets and that none of the Assigned Assets are subject to any dispute, claim, prior license or other agreement, assignment, lien or rights of any third party, or any other rights that might interfere with the Company's use, or exercise of ownership of, any Assigned Assets. Assignor further represents and warrants to the Company that the Assigned Assets are free of any claim of any prior employer or third party client of Assignor or any school, university or other institution Assignor attended, and that Assignor is not aware of any claims by any third party to any rights of any kind in or to any of the Assigned Assets. Assignor agrees to immediately notify the Company upon becoming aware of any such claims.

5. Further Assurances. The parties agree to execute such further documents and instruments and to take such further actions as may be reasonably necessary to carry out the purposes and intent of this Agreement. Assignor further agrees, promptly upon request of the Company, or any of its successors or assigns, to execute and deliver, without further compensation of any kind, any power of attorney, assignment, application for copyright, patent or other intellectual property right protection, or any other papers which may be necessary or desirable to fully secure to the Company, its successors and assigns, all right, title and interest in and to each of the Assigned Assets, and to cooperate and assist in the prosecution of any opposition proceedings involving said rights and any adjudication of the same. Further, Assignor agrees never to assert any claims, rights or moral rights in or to any of the Assigned Assets.

6. Indemnity. Assignor will indemnify and hold the Company harmless from and against any loss, damages or expense (including without limitation reasonable attorneys' fees) incurred by the Company in connection with any claim, suit or other proceeding in which a third party asserts any claim to any right, title, license or other interest in or to any Assigned Asset, any claim that any Assigned Asset infringes any patent, copyright, trade secret or other intellectual property right of such third party, or that, if true, would be inconsistent with any representation made by Assignor in Section 4 above.

7. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, and all of which together shall constitute one and the same agreement.

8. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California, without giving effect to that body of laws pertaining to conflict of laws.

9. Entire Agreement. This Agreement and the documents referred to herein, [REDACTED] constitute the entire agreement and understanding of the parties with respect to the subject matter of this Agreement, and supersede all prior understandings and agreements, whether oral or written, between or among the parties hereto with respect to the specific subject matter hereof.

10. Successors and Assigns; Assignment. Except as otherwise provided in this Agreement, this Agreement, and the rights and obligations of the parties hereunder, will be binding upon and inure to the benefit of their respective successors, assigns, heirs, executors, administrators and legal representatives. The Company may assign any of its rights and obligations under this Agreement. No other party to this Agreement may assign, whether voluntarily or by operation of law, any of its rights and obligations under this Agreement, except with the prior written consent of the Company. An assignment by operation of law includes, without limitation, (i) a merger, reorganization, consolidation or other transaction in which the shareholders of such party before such merger, reorganization, consolidation or other transaction own less than fifty percent (50%) of the outstanding voting equity securities of the surviving corporation, (ii) a sale or other transfer of all or substantially all of the assets of such party, or (iii) a transfer of more than fifty percent (50%) of the outstanding voting equity securities of such party in one transaction or a series of related transactions.

11. Notices. Any and all notices required or permitted to be given to a party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed to provide such party sufficient notice under this Agreement on the earliest of the following: (i) at the time of personal delivery, if delivery is in person; (ii) at the time of transmission by facsimile, addressed to the other party at its facsimile number specified herein (or hereafter modified by subsequent notice to the parties hereto), with confirmation of receipt made by both telephone and printed confirmation sheet verifying successful transmission of the facsimile; (iii) one (1) business day after deposit with an express overnight courier for United States deliveries, or two (2) business days after such deposit for deliveries outside of the United States, with proof of delivery from the courier requested; or (iv) three (3) business days after deposit in the United States mail by certified mail (return receipt requested) for United States deliveries.

All notices for delivery outside the United States will be sent by facsimile or by express courier. All notices not delivered personally or by facsimile will be sent with postage and/or other charges prepaid and properly addressed to the party to be notified at the address or facsimile number set forth below the signature lines of this Agreement, or at such other address or facsimile number as such other party may designate by one of the indicated means of notice herein to the other parties hereto. Notices by facsimile shall be machine verified as received.

12. Titles and Headings. The titles, captions and headings of this Agreement are included for ease of reference only and will be disregarded in interpreting or construing this Agreement. Unless otherwise specifically stated, all references herein to "sections" and "exhibits" will mean "sections" and "exhibits" to this Agreement.

13. **Severability.** If any provision of this Agreement is determined by any court or arbitrator of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such provision will be enforced to the maximum extent possible given the intent of the parties hereto. If such clause or provision cannot be so enforced, such provision shall be stricken from this Agreement and the remainder of this Agreement shall be enforced as if such invalid, illegal or unenforceable clause or provision had (to the extent not enforceable) never been contained in this Agreement. Notwithstanding the forgoing, if the value of this Agreement based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

14. **Amendment and Waivers.** This Agreement may be amended only by a written agreement executed by each of the parties hereto. No amendment of or waiver of, or modification of any obligation under this Agreement will be enforceable unless set forth in a writing signed by the party against which enforcement is sought. Any amendment effected in accordance with this section will be binding upon all parties hereto and each of their respective successors and assigns. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. No waiver granted under this Agreement as to any one provision herein shall constitute a subsequent waiver of such provision or of any other provision herein, nor shall it constitute the waiver of any performance other than the actual performance specifically waived.

15. **Facsimile Signatures.** This Agreement may be executed and delivered by facsimile and upon such delivery the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party. The original signature copy shall be delivered to the other party by express overnight delivery. The failure to deliver the original signature copy and/or the nonreceipt of the original signature copy shall have no effect upon the binding and enforceable nature of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date and year first above written.

NAPSTER INC.

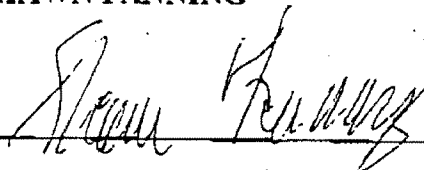
SHAWN FANNING

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Fax Number: \_\_\_\_\_

  
\_\_\_\_\_

Address: \_\_\_\_\_

Fax Number: \_\_\_\_\_

**EXHIBIT A**

Description of Technology



RESTATED ASSIGNMENT OF TECHNOLOGY AGREEMENT

This Restated Assignment of Technology Agreement (this "*Agreement*") is made and entered into effective as of May 10, 1999 by and between Napster Inc., a Delaware corporation (the "*Company*"), and Shawn Fanning (the "*Assignor*").

RECITALS

A. Assignor is a founder, officer or employee of the Company.

B. Assignor [REDACTED] and, in connection therewith, entered into an Assignment of Technology Agreement, dated as of May 10, 1999 (the "*Prior Agreement*") to transfer to the Company all his proprietary and contractual rights, title and interest in technology, business plans and concepts related to the current or future business of the Company.

C. The Prior Agreement, as executed on May 10, 1999, did not include Exhibit A thereto as an attachment. The parties acknowledge that failure to include such Exhibit was an inadvertent omission inconsistent with their oral agreement to transfer the Technology and that there is no dispute between them concerning the Technology that was assigned.

D. [REDACTED]

E. Assignor desires to amend and restate the Prior Agreement in order to confirm the transfer to the Company of all his proprietary and contractual rights, title, and interest in the Technology (as defined below) [REDACTED]

F. The execution and delivery of this agreement is a condition precedent to the obligations of the Company and the Investors to enter into the Series C Preferred Stock Purchase Agreement.

NOW THEREFORE, the parties hereby agree as follows:

1. Certain Definitions. As used herein, the following terms will have the meanings set forth below:

1.1 Technology. The term "*Technology*" shall have the meaning set forth on Exhibit A, and shall include all technology, trade secrets and know-how related thereto.

1.2 Derivative. The term "*Derivative*" means: (i) any derivative work of the Technology (as defined in Section 101 of the U.S. Copyright Act); (ii) all improvements, modifications, alterations, adaptations, enhancements and new versions of the Technology (the "*Technology Derivatives*"); and (iii) all technology, inventions, products or other items that,

directly or indirectly, incorporate, or are derived from, any part of the Technology or any Technology Derivative.

1.3 Intellectual Property Rights. The term "*Intellectual Property Rights*" means, collectively, all worldwide patents, patent applications, patent rights, copyrights, copyright registrations, moral rights, trade names, trademarks, service marks, domain names and registrations and/or applications for all of the foregoing, trade secrets, know-how, mask work rights, rights in trade dress and packaging, goodwill and all other intellectual property rights and proprietary rights relating in any way to the Technology, any Derivative or any Embodiment, whether arising under the laws of the United States of America or the laws of any other state, country or jurisdiction.

1.4 Embodiment. The term "*Embodiment*" means all documentation, drafts, papers, designs, schematics, diagrams, models, prototypes, source and object code (in any form or format and for all hardware platforms), computer-stored data, diskettes, manuscripts and other items describing all or any part of the Technology, any Derivative, any Intellectual Property Rights or any information related thereto or in which all of any part of the Technology, any Derivative, any Intellectual Property Right or such information is set forth, embodied, recorded or stored.

1.5 Assigned Assets. The term "*Assigned Assets*" refers to the Technology, all Derivatives, all Intellectual Property Rights and all Embodiments, collectively.

2. Confirmation of Assignment; Delivery. In consideration of the issuance by the Company to Assignor of the Shares (as defined in the Prior Agreement) and in consideration of investments to be made by the Investors in the Company, Assignor (i) has transferred and assigned effective as of May 10, 1999 Assignor's entire right, title and interest in and to each and all of the Assigned Assets, (ii) hereby confirms and makes a memorandum of such transfer and assignment, and (iii) hereby irrevocably and forever sells, assigns, transfers, releases and conveys to the Company, its successors and assigns, Assignor's entire right, title and interest in and to each and all of the Assigned Assets. Consistent with the parties' agreement, Assignor confirms that Assignor transferred and delivered all Embodiments of the Assigned Assets on or around May 10, 1999. Notwithstanding the foregoing, to the extent any Embodiments of any Assigned Assets have not previously been delivered to the Company, Assignor agrees to deliver all Embodiments of all Assigned Assets to the Company at a location designated by the Company no later than May 19, 2000 and further confirms and makes a memorandum of the assignment of all Technology pursuant to the Employee Invention and Assignment and Confidentiality Agreement since May 10, 1999.

3. Assignor Representations and Warranties. Assignor represents and warrants to the Company that Assignor (together with John Fanning) is the sole owner, inventor and/or author of, and that Assignor owns, and can grant exclusive right, title and interest in and to, each of the Assigned Assets and that none of the Assigned Assets are subject to any dispute, claim, prior license or other agreement, assignment, lien or rights of any third party, or any other rights that might interfere with the Company's use, or exercise of ownership of, any Assigned Assets. Assignor further represents and warrants to the Company that the Assigned Assets are free of any claim of any prior employer or third party client of Assignor or any school, university or other institution Assignor attended, and that Assignor is not aware of any claims by any third party to

any rights of any kind in or to any of the Assigned Assets. Assignor agrees to immediately notify the Company upon becoming aware of any such claims.

4. **Further Assurances; Appointment of Attorney-in-Fact.** The parties agree to execute such further documents and instruments and to take such further actions as may be reasonably necessary to carry out the purposes and intent of this Agreement. Assignor further agrees, promptly upon request of the Company, or any of its successors or assigns, to execute and deliver, without further compensation of any kind, any power of attorney, assignment, application for copyright, patent or other intellectual property right protection, or any other papers which may be necessary or desirable to fully secure to the Company, its successors and assigns, all right, title and interest in and to each of the Assigned Assets, and to cooperate and assist in the prosecution of any opposition proceedings involving said rights and any adjudication of the same. Assignor hereby irrevocably designates and appoints the Company and its duly authorized officers and agents, as Assignor's agents and attorneys-in-fact to act for and on behalf of Assignor and instead of Assignor, to execute and file any documents and to do all other lawfully permitted acts to further the above purposes with the same legal force and effect as if executed by Assignor. Further, Assignor agrees never to assert any claims, rights or moral rights in or to any of the Assigned Assets.

5. **Indemnity.** Assignor will indemnify and hold the Company harmless from and against any loss, damages or expense (including without limitation reasonable attorneys' fees) incurred by the Company in connection with any claim, suit or other proceeding in which a third party asserts any claim to any right, title, license or other interest in or to any Assigned Asset, any claim that any Assigned Asset infringes any patent, copyright, trade secret or other intellectual property right of such third party, or that, if true, would be inconsistent with any representation made by Assignor in Section 3 above. Notwithstanding the foregoing, Assignor will not be liable for the Company's attorneys fees or other defense costs in the absence of a final judicial determination on the merits against the Company in connection with the referenced claims.

6. **Non-Disparagement.** Assignor agrees not to disparage the Company or any of its products, services, agents, representatives, officers, directors or stockholders (including the Investors), by any written or oral statement or comments, whether solicited or unsolicited, upon or following any termination, resignation or other departure of Assignor from the Company.

7. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, and all of which together shall constitute one and the same agreement.

8. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California, without giving effect to that body of laws pertaining to conflict of laws.

9. **Entire Agreement.** This Agreement and the documents referred to herein, constitute the entire agreement and understanding of the parties with respect to the subject matter of this Agreement, and merge and supersede all prior understandings and agreements, whether oral or written, between or among the parties hereto with respect to the subject matter hereof, including the Prior Agreement.

10. Successors and Assigns; Assignment. Except as otherwise provided in this Agreement, this Agreement, and the rights and obligations of the parties hereunder, will be binding upon and inure to the benefit of their respective successors, assigns, heirs, executors, administrators and legal representatives. The Company may assign any of its rights and obligations under this Agreement. No other party to this Agreement may assign, whether voluntarily or by operation of law, any of its rights and obligations under this Agreement, except with the prior written consent of the Company. An assignment by operation of law includes, without limitation, (i) a merger, reorganization, consolidation or other transaction in which the shareholders of such party before such merger, reorganization, consolidation or other transaction own less than fifty percent (50%) of the outstanding voting equity securities of the surviving corporation, (ii) a sale or other transfer of all or substantially all of the assets of such party, or (iii) a transfer of more than fifty percent (50%) of the outstanding voting equity securities of such party in one transaction or a series of related transactions.

11. Notices. Any and all notices required or permitted to be given to a party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed to provide such party sufficient notice under this Agreement on the earliest of the following: (i) at the time of personal delivery, if delivery is in person; (ii) at the time of transmission by facsimile, addressed to the other party at its facsimile number specified herein (or hereafter modified by subsequent notice to the parties hereto), with confirmation of receipt made by both telephone and printed confirmation sheet verifying successful transmission of the facsimile; (iii) one (1) business day after deposit with an express overnight courier for United States deliveries, or two (2) business days after such deposit for deliveries outside of the United States, with proof of delivery from the courier requested; or (iv) three (3) business days after deposit in the United States mail by certified mail (return receipt requested) for United States deliveries.

All notices for delivery outside the United States will be sent by facsimile or by express courier. All notices not delivered personally or by facsimile will be sent with postage and/or other charges prepaid and properly addressed to the party to be notified at the address or facsimile number set forth below the signature lines of this Agreement, or at such other address or facsimile number as such other party may designate by one of the indicated means of notice herein to the other parties hereto. Notices by facsimile shall be machine verified as received.

12. Titles and Headings. The titles, captions and headings of this Agreement are included for ease of reference only and will be disregarded in interpreting or construing this Agreement. Unless otherwise specifically stated, all references herein to "sections" and "exhibits" will mean "sections" and "exhibits" to this Agreement.

13. Severability. If any provision of this Agreement is determined by any court or arbitrator of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such provision will be enforced to the maximum extent possible given the intent of the parties hereto. If such clause or provision cannot be so enforced, such provision shall be stricken from this Agreement and the remainder of this Agreement shall be enforced as if such invalid, illegal or unenforceable clause or provision had (to the extent not enforceable) never been contained in this Agreement. Notwithstanding the forgoing, if the value of this Agreement based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

14. Amendment and Waivers. This Agreement may be amended only by a written agreement executed by each of the parties hereto. No amendment of or waiver of, or modification of any obligation under this Agreement will be enforceable unless set forth in a writing signed by the party against which enforcement is sought. Any amendment effected in accordance with this section will be binding upon all parties hereto and each of their respective successors and assigns. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. No waiver granted under this Agreement as to any one provision herein shall constitute a subsequent waiver of such provision or of any other provision herein, nor shall it constitute the waiver of any performance other than the actual performance specifically waived.

15. Facsimile Signatures. This Agreement may be executed and delivered by facsimile and upon such delivery the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party. The original signature copy shall be delivered to the other party by express overnight delivery. The failure to deliver the original signature copy and/or the nonreceipt of the original signature copy shall have no effect upon the binding and enforceable nature of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Restated Assignment of Technology Agreement effective as of the date and year first above written.

COMPANY: NAPSTER INC.

ASSIGNOR

By: 

By: 

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

**EXHIBIT A**  
**TECHNOLOGY**

The term Technology shall mean all of Assignor's right, title and interest, if any, existing as of May 10, 1999 an/or existing as of the date of execution of this Agreement, in and to any and all inventions, original works of authorship, computer software programs, proprietary information, designs, processes, manufacturing techniques, trade secrets, improvements, ideas, procedures, systems methods of operation, principles, discoveries, databases or copyrightable works, including, but not limited to, business plans, business methods, concepts, know-how, architecture, algorithms, block-diagrams and techniques, for all media types and delivery systems (whether now known or hereafter devised), necessary or useful to enable, or to be used in connection with, the finding, sharing, and/or downloading of data or otherwise related to the current or future business of the Company.

The Technology includes, but is not limited to all right, title and interest (subject only to any interest therein owned by John Fanning) to: a Webserver, a client application, an application server, a user data repository, and a load balancer. The client is a C++ Win32 application with a simple GUI that implements the user interactions and a file transfer component. Thus, it acts as both a client and server. The client uses TCP/IP (originally UDP) to talk with both the server and directly with other clients for file transfers. It also shares files by validating them and then uploading the list of available files to the server. The server is a C++ Linux application daemon that services user requests. The application server is a TCP/IP-based application that listens on a dedicated port for requests from clients. It keeps a real-time index of files that are shared by the currently connected users, and a static connection to each user connected to that server process. It authenticates and logs in users, manages chat channels, conducts searches and coordinates file transfers between users. The data repository stores username, password, and notify lists, among other data. The data repository was initially hosted as files in the Unix file system.