

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CAPITOL RECORDS, INC., et al.,)
Plaintiffs,)
)
v.)
)
NOOR ALAUJAN,)
Defendant. _____)

Case No. 03cv11661-NG
LEAD DOCKET NO.

SONY BMG MUSIC ENTERTAINMENT, et al.,)
Plaintiffs,)
)
v.)
)
JOEL TENENBAUM,)
Defendant. _____)

Case No. 07cv11446-NG
ORIGINAL DOCKET NO.

GERTNER, D.J.:

**PROTECTIVE ORDER GOVERNING INSPECTION OF THE
HARD DRIVE OF DEFENDANT’S GATEWAY COMPUTER**

May 19, 2009

In accordance with this Court’s Order of May 6, 2009 (document # 826), the Court hereby ORDERS as follows:

1. EXPERT DESIGNATION

- a. Within five (5) days of the date of this Order, Plaintiff shall designate a third-party computer forensic expert (the “Mirroring Expert”) of their choosing to produce two mirror images of the hard drive of Defendant’s Gateway computer. Within the same period, Plaintiffs shall also designate another third-party computer forensic expert (the “Examining Expert”) of their choosing to examine the contents of one of those mirror images.
- b. The Mirroring Expert and the Examining Expert, as well as any assistants assigned to assist them in connection with this matter, shall execute Confidentiality Agreements agreeing to abide by the terms of this Order in a form agreed to by the Parties to this case. The Experts and their assistants will maintain any information acquired in the course of their work on this project in the strictest confidence.

- c. Only the Experts and their assistants assigned to this project are authorized to inspect, or otherwise handle, the Defendant's Computer or the mirror images generated. No employee of the Plaintiffs, or their counsel, will inspect or otherwise handle the mirror images produced or electronic files derived therefrom. Further, the Experts and their assistants shall not disclose any results of the hard drive examination to the Plaintiffs, their employees, or their counsel. Rather, disclosure shall be made only to the Defendant or in compliance with Court order, as described below.

2. HARD DRIVE INSPECTION

- a. Within ten (10) days of the entry of this Order, the Defendant shall make his Gateway computer available to the Mirroring Expert at Defendant's counsel's office or at another location at a time mutually agreed upon by the Parties. The Mirroring Expert may not remove the Defendant's computer from the place of inspection. At that time, the Mirroring Expert shall make two mirror images of the Gateway computer's hard drive, one copy to be maintained at all times by the Mirroring Expert (the "Original Copy") and another copy to be provided to the Examining Expert ("the Inspection Copy").
- b. At or before the time of the mirroring of the hard drive, the Defendant may submit to the Mirroring Expert and the Plaintiffs' counsel a privilege log (the "Privilege Log"), consistent with the Federal Rules of Civil Procedure, designating any files on the hard drive (including the full file path) as either attorney-client privileged or attorney work product. In the event that Defendant produces a Privilege Log in accordance with this Paragraph, the Mirroring Expert shall delete any items identified on that Privilege Log from the Inspection Copy. The Mirroring Expert shall not delete any files from the Original Copy. Nothing in this Paragraph shall be interpreted as preventing the Plaintiffs from seeking an Order compelling the disclosure of any items identified on the Privilege Log in accordance with Rules 26 and 37 of the Federal Rules of Civil Procedure.
- c. Unless authorized by the Court, the Mirroring Expert shall not open or examine the contents of any of the files identified on the Privilege Log on either the Original Copy or the Inspection Copy. The Mirroring Expert will maintain the Original Copy until sixty (60) days after the conclusion of all litigation in connection with this matter (including any appeals), at which point it shall be returned to the Defendant.
- d. The Mirroring Expert shall provide only the Inspection Copy to the Examining Expert. The Examining Expert shall retain the Inspection Copy until sixty (60) days after the conclusion of all litigation in connection with this matter (including any appeals), at which point it shall be returned to the Defendant.

- e. The Examining Expert shall examine the Inspection Copy for file-sharing software and any electronic records generated by such software. He or she shall also examine the Inspection Copy for any music sound files, as well as any metadata associated with such files. The Examining Expert shall not examine any files or stored data unrelated to the sharing of music sound files. Under no circumstances shall he or she examine files or stored data belonging to the following categories: e-mails, word-processing documents, .pdf documents, spreadsheet documents, images files, video files, or saved web-pages. Finally, the Examining Expert may review any data indicating that the hard drive has been “wiped” or erased since the initiation of the litigation.
- f. Based upon the examination of the Inspection Copy, the Examining Expert shall produce a report (the “Report”) which describes:
 - i. The music sound files found on the hard drive and any evidence of file-sharing related to music sound files;
 - ii. As appropriate, any evidence that the computer’s hard drive has been “wiped” or erased since the initiation of this litigation; and
 - iii. The methods that the Examining Expert used to identify and analyze the electronic files and data reported in (a) and (b).

In addition, complete copies of all guidance and direction related to the Inspection that the Examining Expert receives from the Plaintiffs or their counsel shall be attached as an appendix to the Report.

3. DISCLOSURE

- a. The Examining Expert’s Report shall initially be produced only to the Defendant’s counsel. Within five (5) business days of his receipt of the Examining Expert’s Report, Defendant’s counsel may submit to Plaintiff’s counsel any objections to the Report based upon privilege. If there is no privilege dispute between the parties relating to the Report, or the parties otherwise reach an agreement allowing such disclosure, the Defendant shall promptly disclose the Report to the Plaintiffs.
- b. In the event that the parties cannot resolve any dispute relating to the disclosure of the Report to the Plaintiffs, the Plaintiffs may file with the Court a Motion to Compel the Production of the Examining Expert’s Report. Separately, if the Plaintiffs seek an electronic copy of any items identified in the Report, they must file a Motion to Compel with the Court, explaining their need for the production of the files under Fed. R. Civ. P. Rules 26 and 37.
- c. In connection with any such Motion to Compel, the Court may require the Defendant to submit the Examining Expert’s Report in camera.

SO ORDERED.

Date: May 19, 2009

/s/ Nancy Gertner
NANCY GERTNER, U.S.D.C.