UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

CAPITOL RECORDS, INC Plain		Civ. Act. No. 03-cv-11661-NG (LEAD DOCKET NUMBER)
٧.)	
NOOR ALAUJAN, Defe	ndant.)	
SONY BMG MUSIC ENTI et al., Plain	,	Civ. Act. No 07-cv-11446-NG (ORIGINAL DOCKET NUMBER)
v. JOEL TENENBAUM,)	
Defe	ndants.)	

APPENDIX OF EXHIBITS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Plaintiffs respectfully submit this Appendix of Exhibits in support of their Motion for Summary Judgment.

Exhibit	Description
A	Declaration of Chris Connelly
В	Supplemental Declaration of Dr. Doug Jacobson
С	Screenshots of Defendant's shared folder (Exhibit B to Complaint)
D	Second Amended Exhibit A and Second Amended Schedule 1
Е	Subpoena to Cox Communications
F	Subpoena Response from Cox Communications
G	Deposition of Randy Cadenhead of Cox Communications
Н	Deposition of Joel Tenenbaum (Volume I)
I	Deposition of Joel Tenenbaum (Volume II)
J	Plaintiffs' Responses to Interrogatories
K	Declaration and Report of Stanley J. Liebowitz

L	Deposition of John G. Palfrey, Jr., J.D.
M	E-mail exchanges between Charles Nesson and Proposed Experts
N	Order, Capitol Records, Inc. v. Jammie Thomas, Case No. 06-CV-1497-
	MJD/RLE (D. Minn. June 11, 2009
0	Deposition of Janis Pouwelse

Respectfully submitted this 13th day of July, 2009

SONY BMG MUSIC ENTERTAINMENT; WARNER BROS. RECORDS INC.; ATLANTIC RECORDING CORPORATION; ARISTA RECORDS LLC; and UMG RECORDINGS, INC.

By their attorneys,

By: s/ Eve G. Burton

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on July 13, 2009.

s/ Eve G. Burton

EXHIBIT A

UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

Civ. Act. No. 03-cv-11661-NG (LEAD DOCKET NUMBER)
Civ. Act. No. 07-cv-11446-NG (ORIGINAL DOCKET NUMBER)

DECLARATION OF CHRIS CONNELLY

- I, Chris Connelly, pursuant to 28 U.S.C. § 1746, declare as follows:
- I am a Manager for the MediaSentry Business Unit of Safenet, Inc., formerly
 MediaSentry, Inc. ("MediaSentry"). I have personal knowledge of all of the matters discussed in this Declaration.
- 2. MediaSentry is one of the principal providers of online anti-piracy services worldwide. It specializes in providing services to detect and prevent unauthorized distribution of music, films, software, and other content on the Internet.
- 3. MediaSentry has been engaged by the Recording Industry Association of America ("RIAA") on behalf of the Plaintiffs to assist them in locating individuals infringing their copyrights over peer-to-peer networks and gathering evidence of their infringement. To perform

this task, MediaSentry searches peer-to-peer networks for individuals distributing infringing files for download and gathers evidence concerning that infringement.

- 4. MediaSentry searches peer-to-peer networks, looking for users distributing files that appear to be digital copies of sound recordings whose copyrights are owned by the RIAA's member record companies. When MediaSentry finds such a file, it may download the file. As part of that downloading process, MediaSentry, like any other peer-to-peer user, receives basic information about the user from whom the work is being downloaded. That information includes, among other things, the Internet Protocol ("IP") address of the user.
- 5. MediaSentry also seeks to determine what other files the individual is distributing to others for download. KaZaA and other file-copying programs permit users to share files stored on their computer, and they may contain a feature that permits users to browse this list of shared files. When available, MediaSentry invokes this feature of a peer-to-peer program, just as any other user could do, and is able to determine which and how many music files the user is distributing.
- 6. Again using a feature of the peer-to-peer software available to any user, MediaSentry can then capture a complete list of all of the files that the user is distributing to others for download. MediaSentry collects this information by capturing as a text file all of the contents of the user's shared directory, such as the names of each file and the size of each file, as well as additional information (called "metadata") about each file. Metadata may include a wide range of information about a file, including, for example, file size, file name, and identifiers such as comments that may be added by the person who first copied the sound recording to his or her computer. Such metadata will be transferred from one peer-to-peer user's computer to another when the second user downloads that sound recording over a peer-to-peer network. MediaSentry

simply records the data that exists on the user's hard drive and is distributed by the user to anyone to whom the user distributes files.

- 7. MediaSentry's process for identifying potential infringers and gathering evidence of infringement has multiple fail-safes to ensure that the information gathered is accurate.

 MediaSentry takes numerous steps to check and double-check the IP address of the potential infringer to prevent misidentification.
- 8. In gathering evidence of infringement, MediaSentry does not do anything that any user of a peer-to-peer network cannot do and does not obtain any information that is not available to anyone who logs onto a peer-to-peer network. Thus, when MediaSentry searches for sound recordings on the peer-to-peer network, views the files that each peer-to-peer user is disseminating to others, obtains the IP address and screen name of each user, and downloads copyrighted works distributed by each user, it is using functionalities that are built into the peer-to-peer protocols that each user has chosen to use to upload and download (or copy) music.
- 9. MediaSentry followed the procedures outlined above with respect to the evidence that it gathered in this case. Specifically, on August 10, 2004, at 12:49 a.m. EDT, MediaSentry detected an individual with the username "sublimeguyl4@KaZaA" at Internet Protocol ("IP") address 68.227.185.38 using the KaZaA online file sharing program to distribute Plaintiffs' copyrighted sound recordings. This person was distributing 816 digital audio files from a "shared" folder on his computer to all of the other users on the KaZaA network. Exhibit B to Plaintiffs' Complaint (which is also attached as Exhibit C to Plaintiffs' Appendix in Support of Motion for Summary Judgment) is a series of screen shots showing the contents of the sublimeguyl4@KaZaA shared folder on August 10, 2004. These screen shots state that the

KaZaA user was "not sharing any files." This indicates that MediaSentry was not sharing any files.

- 10 On August 10, 2004, MediaSentry initiated the process of downloading each of the 816 digital audio files stored in the sublimeguy14@KaZaA shared folder. This process allowed MediaSentry to obtain the metadata of each digital audio file in the shared folder and to ensure that there was an actual file being distributed. Had it chosen to do so, MediaSentry could have downloaded complete copies of any of the 816 audio files listed in the shared folder.
- 11. All 30 of the sound recordings listed on Plaintiffs' Second Amended Exhibit A and Plaintiffs' Second Amended Schedule 1 (which are attached as Exhibit D to Plaintiffs' Appendix in Support of Motion for Summary Judgment) were found in the sublimeguy14@KaZaA shared folder on August 10, 2004, and MediaSentry downloaded copies of the 5 recordings listed on Plaintiffs' Second Amended Exhibit A on that same date as a sample. MediaSentry's system log and download data files show proof of this distribution to MediaSentry.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 13th day of July, 2009.

Chris Connelly

EXHIBIT B

Sony BMG Music, et al v. Tenenbaum MA Case Number: 03-cv-1161

Supplemental Declaration and Expert Report

Dr. Doug Jacobson, Ph.D., CFCE

Ph.D. Computer Engineering Certified Forensic Computer Examiner International Association of Computer Investigative Specialists

Qualifications & Prior Testimony

- 1) I am employed as a Professor of Electrical and Computer Engineering at Iowa State University and as the Director of the Iowa State University Information Assurance Center. I also have an appointment with the Iowa State University police department where I aid in computer forensics.
- 2) In addition, I am the Chief Technical Officer and founder of Palisade Systems, a high-tech computer security company that specializes in network monitoring and filtering technologies.
- 3) My employment with Iowa State University began in 1982 as a computer programmer. I completed my Ph.D. in Computer Engineering with a focus in computer networking in December 1985. In January 1986, I was hired by the Department of Electrical and Computer Engineering as an Assistant Professor to teach and research in the area of computer networks. Since that time, I have taught over 25 classes in computer networks at both the undergraduate and graduate level. I have received over 5 million dollars in funding for my research and have written several articles and made numerous presentations on the topic.
- 4) In 1995, I created and taught one of the first computer security classes at Iowa State University and in the country. Under my guidance, in 1999, Iowa State University was recognized by the National Security Agency as a center of excellence. And in 2000, the Iowa State University Information Assurance Center was created. I am its first and only director. I am a Certified Forensics Computer Examiner. My Curriculum Vitae is attached as Exhibit (A)
- 5) On September 9th 2003, I testified in front of the U.S. Senate Judiciary Committee on the uses of peer-to-peer protocols.
- 6) On February 23 2007, I gave a deposition in the case UMG Recordings v. Marie Lindor, Case No. 05-cv-1095 (E.D.N.Y.).
- 7) On October 1 & 2 2007, I testified at the trial in the case of Virgin Records v. Jammie Thomas, Case No. 06-cv-1497 (D. Minn.).
- 8) On April 2 2009, I gave a deposition in the case of Atlantic Recording Corp. v. Jenna Raleigh, Case No. 06-cv-01708 (E.D. MO).
- 9) On June 3 2009, I gave a deposition in the case of Tanya Andersen v. Atlantic Recording Corp, Case Bo. 07-cv-934 (OR)

10) On June 16 2009, I testified at the trial in the case of Virgin Records v. Jammie Thomas, Case No. 06-cv-1497 (D. Minn.).

Prior Experience

- 11) I have been teaching computer networking since 1986 and written papers and performed research on computer networks.
- 12) I have given over 50 presentations on computer security and networks at conferences, workshops, and various meetings.
- 13) I hold two patents in the area of computer network security and have won two R&D 100 awards for technologies I developed at Palisade Systems. One of these technologies is designed to detect and block peer-to-peer network protocols in addition to over 100 other network protocols.
- 14) I have assisted the Iowa State University Police department on several computer cases including cases using peer-to-peer networks to distribute pirated software and child pornography.
- 15) One of my graduate students, under my supervision and guidance, developed a system that monitors peer-to-peer networks and other forms of file-sharing for child pornography.
- 16) My rate for analysis and testimony is \$200.00 per hour. Additional expenses relating to analysis, testimony, and travel are reimbursed at the incurred costs.

Description of Technologies Involved

17) This case involves copyright infringement using computers connected to the Internet and involves the identification of the computers using their IP addresses. How IP addresses are used in the Internet, how IP addresses are assigned within the Internet, and how IP addresses and computers are identified is described below.

The Internet and Addressing

The Internet is a collection of interconnected computers or network devices. In order to be able to deliver traffic from one computer or network device to another, each computer or network device must have a unique address within the Internet. The unique address is called the Internet Protocol (IP) address. This is analogous to the postal system where each mail drop has a unique address.

Each computer or network device is connected to a network which is administered by an organization like a business, internet service provider, college or university. Each network, in turn, is analogous to a zip code.

Information is transported through the Internet in small chunks called packets. Each packet traverses the Internet and is reassembled by the destination machine. Each packet contains both the source and destination IP addresses. The source address is analogous to the return address on a letter and the destination IP address is analogous to the send to address on a letter.

IP Address Assignment

Every computer or network device directly connected to the Internet must have a unique IP address. To ensure each IP address is unique, a block of IP addresses is allocated to an organization such as an Internet Service Provider, business, college or university. The IP address allocation is done in a highly structured manner with each set of IP addresses (a network) allocated by a single centralized authority. Each organization is then responsible for allocating the addresses to individual devices.

There are two allocation methods for the devices connected to the Internet. The first allocation method provides the device with a static IP address and requires the user of the device to provide the IP address to the device during configuration. The owner of the network typically will provide the user of the device with the address information. This method is often used in businesses and colleges or universities. Two devices cannot effectively function if they are directly connected to the Internet simultaneously with the same IP address.

The second method involves dynamic addressing. With this method the device asks the network provider for an IP address when it wishes to use the network. The device will send a request, and the network provider will respond back with a packet that contains an IP address. The IP address is often allocated for a short period of time, and the device must request a renewal from the network provider. This method is called DHCP and is commonly used by Internet Service Providers (ISPs). The network provider will maintain a log of address allocations. As in the static case, two devices cannot effectively function if they are directly connected to the Internet simultaneously with the same IP address.

18) This case involves illegal file distribution using peer-to-peer networks. Peer-to-peer networks are a method used to distribute files from a user's computer to other users on the internet. They can also be used to obtain files from other users. Peer-to-peer networks are often used to distribute copyrighted material like songs and movies. In addition, peer-to-peer networks are also used to distribute other files including pornography, child pornography, computer virus, and data files. A more detailed explanation of peer-to-peer network is included below.

Peer-to-Peer Networks

The basic idea behind peer-to-peer networks is to allow people to connect to each other and distribute files or other information. Unlike the World Wide Web (web sites) where data is stored on central web services and users connect to a central web server to download information from the web site, peer-to-peer networks allow users to connect to each other and transfer files directly from user to user. The users of peer-to-peer networks typically do not know each other nor do they have any relationship outside the peer-to-peer network. The users of the peer-to-peer network often think they are anonymous when they distribute files. In reality, they can be identified using the IP

address. The IP address of the computer offering the files for distribution can be captured by a user during a search or a file transfer. That IP address can be associated with an organization such as, an ISP, business, college or university which can identify the user by the IP address.

Peer-to-peer networks are designed to facilitate the searching and transfer of data. Two basic types of peer-to-peer networks are decentralized and semi-decentralized.

With the decentralized peer-to-peer network, every computer that is part of the network has its own list of files that are offered for distribution, and each computer is connected to a small number of other computers (neighbors). Each neighbor is connected to a small number of computers and so on. When a user wishes to search for a file, a request is sent to each neighbor and each neighbor sends the request to the next neighbor and so on. If a computer gets the request and has a match, it will send a message back to the requester telling them it has the file(s) and providing them with information about the file(s).

The semi-decentralized peer-to-peer network uses a central index server that contains an index of files that are offered for distribution by the users of the network. The files themselves are still stored on the user's computer and not on the central server. Files are transferred directly from one user to another user. In addition, users can connect directly to each other like in the decentralized peer-to-peer networks. The central server makes searching more efficient. The semi-decentralized model can have more than one central server interconnected in their own peer-to-peer network. Benefits of this model include speeding up searches and distributing the work load. This also provides redundancy so that if one server node quits, the other nodes can still function and the network is still usable.

KaZaA

KaZaA was one of the most popular semi-decentralized based peer-to-peer software programs in use. KaZaA uses a protocol referred to as Fasttrack to create the semidecentralized peer-to-peer network. When KaZaA is installed, it creates a folder called the "shared folder" on the user's computer that is used to store files that are downloaded from other users and for distribution to other users. By default this shared folder is located in the KaZaA program directory. KaZaA also provides the ability for the user to set up additional sharing folders that are used to share files with other KaZaA users. When a user starts KaZaA, they are connected to a central index server (super node) and KaZaA offers or advertises the files they have available for distribution.

Distributing files requires that the files must be in a shared folder. The distributing computer uploads information about the files it is distributing to the index server. Any changes to the list of files in the shared folder are reported by the distributing computer to The user of the sharing computer can disable the sharing function, which would prevent the sharing computer from uploading the file list to the index server and would also prevent the distribution of files in the shared folder.

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When files are distributed, there is a set of identifiers that are used to tie the files back to the user. These identifiers include the IP address of the client distributing the files, the name of the file, file size, the content hash, and the port information. In addition, there are file descriptors that provide information like the artist name, album name, and description field. This information is used in the search process. The description field is used to provide a description of the files and is part of the KaZaA system. This field is not part of the original data stored on a CD, but rather is generally added by users who rip the songs to the computer. This field is sometimes employed by the user who made the copy or "ripped" the original copyrighted material to brand the file with their name or handle (a fake name). The content hash is a mathematical function that is used to identify files that are the same. This allows the user to search for the file if the original download fails or to increase the transfer speed.

To find a file the user submits a query using the KaZaA application, which forwards the query to the super node. The super node looks in its database for the file(s) that match the search parameters. If one or more of the users connected to the super node has the files(s) that match the request, then the super node returns the IP address(s) and the file description(s) of all matches. Super nodes send queries between each other thus expanding the search capability. Users may also connect directly between each other, so if a user finds a file on another user's machine he or she may then query the machine directly to see what other files are offered for distribution.

Once a user has found the file they want to download they send a request to the computer sharing the file requesting a copy of the file. The sharing computer will copy the file from the shared folder(s), set up by the KaZaA user, into the computer's memory. The sharing computer then transmits the copy of the file contained in its memory to the computer that requested the file as a sequence of network packets. The network packets are transferred across the Internet. The requesting computer takes the packets it receives and places them into a file in the shared folder on the receiving computer.

KaZaA cannot be used to listen to music that is stored on another computer in the KaZaA network. In order to listen to or preview music that was stored on another computer, the file has to be downloaded to the user's computer. KaZaA will allow, however, a user to listen to small samples of music that can be purchased from the KaZaA web site.

In addition to KaZaA, there are several other applications that use the Fasttrack protocol. These applications include iMesh, Grokster, and iSwipe. These applications are available on computers using Microsoft Windows, Apple OS, and Linux. Since these applications use the Fasttrack protocol, users with one application can share files with users using another application. The name KaZaA is often used to refer to the applications running the Fasttrack protocol.

Limewire and Bearshare

LimeWire and Bearshare are based on the Gnutella protocol which is an ad hoc peer-to-peer network. When a user installs LimeWire or Bearshare, the user creates a shared folder on his or her computer to store files downloaded from other users on the Gnutella network and to distribute files to other users on the network. When a user starts a Gnutella based program like LimeWire or Bearshare, they are connected to the entire Gnutella network. A LimeWire or Bearshare user can also set up additional shared folders that are used to share files with other users on the Gnutella network.

To advertise files for sharing the user must put the files into either the shared folder to which files are downloaded from other Gnutella users or into one of the additional shared folders that they set up. Any files within these shared folders are advertised and can be downloaded by other users of the Gnutella network. The advertisement consists of a set of identifiers that are used to tie the file back to the users. These identifiers include the IP address of the client offering the files, the name of the file, file size and the content hash. In addition, there are file descriptors that provide information like the artist name, album name, and user text. This information is used in the search process. The user text field is used to provide a description of the files and is part of the Gnutella system. This field is not part of the original data stored on a CD and is added by users who put files into the Gnutella shared folder(s). This field is sometimes employed by the user who made the copy of the original copyrighted material to put their name or handle (a fake name). The content hash is a mathematical function that is used to identify files that are the same. This allows the user to search for the file if the original file download fails.

A LimeWire or Bearshare user wishing to download a file from another user on the network uses the LimeWire or Bearshare program to submit a query to the Gnutella network for the particular artist or song title the user is looking for. If one or more of the users connected to the network has the files(s) that match the request, then the server node returns the IP address(s) of the user that has the file(s) and the file description(s) of all matches.

Once a LimeWire or Bearshare user has found the file he or she wants to download, he or she sends a request to copy the file to the computer sharing the file. The sharing computer copies the file from the sharing computer's shared folder into the computer's memory. The sharing computer then transmits the copy of the file contained in its memory to the requesting computer as a sequence of network packets. The network packets are transferred across the Internet from the sharing computer to the requesting computer. At the end of the process, each computer has a copy of the file.

The Gnutella programs cannot be used to listen to music that is stored on another computer in the Gnutella network. The file has to download to the user's computer.

Hard Drive Forensics

19) This case also involved the examination of a hard drive. Several terms need to be defined relative to a hard drive examination.

Current Internet History —Internet history on the computer that has not been altered. This history can be tied to a specific user account on the computer, if the operating system permits it.

Forensically Sound – The preservation of evidence surrounding a case such that the evidence is kept exactly the way it was received. In computer terms, "forensically sound" relates to the preservation of the state of the data – no information has been added, edited or removed from the forensic media during the examination.

Initiating Party – The party that brings the forensic media in for analysis, and provides the scope of the investigation to the investigators.

Internet Cache – A location on a piece of media that contains downloaded images, movies, sounds and web pages of locations users have visited on the Internet. The Internet Cache is often cleared to make more space available on the media, and can be configured to be emptied when the user closes the Internet browser.

Investigators – Those performing the forensic analysis of the media for the specified parameters.

Media – The items that contain digital evidence, which are brought to the investigators for analysis. Media includes, but is not limited to, hard drives, USB devices, CD-ROM's, floppy discs, ZIPTM discs and DVD's.

Past/Removed Internet History – Internet history on the computer that had to be recovered from unallocated (deleted) file space.

Unallocated Space — When files are deleted from media, references to them are removed, but the actual data may still exist on the media. Unallocated space is the term used to describe any part on the media where a file may have existed. Since unallocated space is eventually overwritten, the usage of the computer dictates how long a deleted file will exist here.

20) The hard drive examination followed several steps as outlined below, which are consistent with the process outlined by the International Association of Computer Investigative Specialists.

Evidence Acquisition Phase

During the acquisition phase, the initiating party provides the investigators with all relevant media associated with the case. The initiating party also provides investigators with information surrounding the investigation that will be applied in the analysis stage.

Evidence Preservation Phase

During the preservation phase, an exact, forensically sound copy is made of each medium obtained in the acquisition phase. This ensures the original media is not tainted in any

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way. Further, hash values are created of the original media, and compared against the copies, to ensure that the copied data accurately represents the original media. This keeps the forensic process sound.

Analysis Stage

During the analysis stage, information that relates to the case is searched for over all the media obtained. This information is retrieved during the acquisition phase. This ensures that the investigators are only looking for information pertaining to this case. Investigations outside these parameters will not take place, unless otherwise explicitly stated by the initiating party.

Conclusion Stage

The conclusion stage will draw together everything analyzed in the analysis stage. Here, the investigator will review the recovered data, and provide explanations of why the data exists where it does, and how the data relates to the case.

Materials Considered

- 21) I have reviewed the underlining investigative data for the Tenenbaum case. This includes all of the data supplied by MediaSentry. I also have reviewed information supplied by Defendant's Internet Service Provider (ISP) Cox Communications. Below is a list of the materials I considered in developing my conclusions and findings.
 - a) MediaSentry Screenshots (Exhibit B to the Complaint)
 - b) MediaSentry Systemlog
 - c) MediaSentry UserLog (compressed)
 - d) MediaSentry UserLog
 - e) MediaSentry Download Logs
 - f) Certificate of Registration
 - g) MediaSentry Trace
 - h) Cox Communications subpoena response
 - i) Complaint and Answer
 - j) Hard drive supplied by the Mr. Tenenbaum.

Conclusions and Findings

- 22) I will testify to the procedures used and results obtained by MediaSentry coupled with the information supplied by Defendants ISP, to demonstrate the Defendant's Internet account and computer were used to download and upload Copyrighted music from the Internet using the KaZaA peer-to-peer network.
- 23) I will testify that MediaSentry found over 1100 files shared on a computer using the KaZaA file sharing program based on the MediaSentry Screenshots. The KaZaA user id is "sublimeguy14@KaZaA".

- 24) I will testify that MediaSentry downloaded 7 songs as shown in Systemlog and the MediaSentry download logs and that these songs are copyrighted as shown in the Certificates of Registration.
- 25) I will testify that the information from MediaSentry (Systemlog, UserLog (compressed), and the Download Logs) shows that the computer with IP address 68.227.185.38 offered 816 audio and music files, most of them are copyrighted music files, for distribution using the KaZaA program on 8/10/2004 starting at or around 12:46:24 AM EDT through at least 1:29:17 AM EDT.
- 26) I will testify that the information from MediaSentry provided in the MediaSentry trace shows that Cox Communications is the Internet provider for the computer with the IP address of 68.227.185.38 on 8/10/2004 starting at or around 12:46:24 AM EDT through at least 1:29:17 AM EDT, during which time the 816 audio and music files were being distributed using the KaZaA program.
- 27) I will testify that the subpoena response from Cox Communications identifies J. Tenenbaum (email addresses of sublimeguy14@cox.net and bulshevik@cox.net) as the subscriber of record for the IP address 68.227.185.38 on 8/10/2004 at 12:49:12 AM EDT.
- 28) I will testify, based on all of the information provided that the computer that had the IP address of 68.227.185.38 on 8/10/2004 starting at or around 12:46:24 AM EDT through at least 1:29:17 AM EDT was registered to J. Tenenbaum and that the said computer was used to distribute the music files shown in the MediaSentry Screenshots (Exhibit B to the Complaint).
- 29) I will testify that, based on the MetaData shown in the MediaSentry UserLog, the music found on the Defendant's computer was downloaded from other users on the Internet.
- 30) After my initial analysis I was asked to review a hard drive in this case for evidence of file sharing and evidence of data removal. It is my understanding this is not the hard drive from the computer that was connected to the Internet at the IP address identified by MediaSentry on the date of capture discussed above. Below is a summary of my review of the hard drive.
- 31) I conducted a forensic examination of a hard drive supplied by Mr. Tenenbaum, which hard drive was forensically imaged on 6/1/09.
- 32) I found on the hard drive supplied by Mr. Tenenbaum that the computer produced by Mr. Tenenbaum (the "Tenenbaum computer") had the LimeWire peer to peer application installed. The LimeWire application was first installed and used on this computer on or about February 12, 2004. LimeWire was reinstalled or updated to version 4.13 on or before February 27th 2007. LimeWire was last used on or after May 28th 2008. I also found evidence of versions of LimeWire dating back to version 3, however this was all located in the unallocated space on the hard drive so no date or time information could be obtained for the earlier versions of LimeWire. I also found evidence that the following versions of LimeWire had been installed on this computer (3.8, ,4.0.6, 4.12, and 4.13). A precise analysis of the use of LimeWire on this computer is hampered by the reinstallation of the windows operating system (see finding 36 below) and by the deletion of two windows registry files (see finding 37 below).
- 33) I found based on the hard drive supplied that the Tenenbaum computer had Limewire configured to share the contents of the directory "C:\My Music" with Gnutella users. LimeWire was using this directory as its share directory at least as late as February 27th 2007.

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- 34) I discovered based on the hard drive supplied (the Tenenbaum computer) that the directory "C:\My Music" has been deleted.
- 35) I discovered based on the hard drive supplied that the Tenenbaum computer's unallocated disk space contained the names of over 2000 music files that were in the "C:\My Music" folder (see Exhibit A). This directory contained multiple user created subdirectories used to organize the files by album, genre, or file type. The deletion of the sound recordings from the "C:\My Music" folder resulted in the deletion of Metadata associated with the sound recordings as they would have been found in the shared folder including download dates and times and last accessed dates and times and this Metadata is no longer recoverable. I compared the list of files names associated with the "C:\My Music" folder that were found in unallocated space on the hard drive to the files listed in the MediaSentry's Userlog and found 251 matches. A list of these matched file names is shown in Exhibit B.
- 36) I discovered that the Windows operating system had been reinstalled on March 31st, 2009. This action causes many of the windows log files to be cleaned, thus making it hard to determine activity prior to the reinstallation of the operating system.
- 37) In addition several key registry files are no longer on the hard drive (see Exhibit C). This makes it difficult to determine the dates of software installation for certain users on the computer. These registry files appear to have been intentionally removed, and not caused by the reinstallation of the windows operating system.
- 38) I discovered based on the hard drive supplied that the Tenenbaum computer has a "Documents and Settings\Joel\My Documents\My Music" folder which contains over 2400 MP3 music files (see Exhibit D). This directory was created on March 31st, 2009. Many of these songs are an exact match to the songs shown in the MediaSentry capture. Exhibit E shows a list of these exact matches along with the date they were created. Exhibit F shows the metadata captured by MediaSentry for these songs, and Exhibit G shows the metadata from hard drive for these songs. Because these are exact matches it shows that either these songs were transferred from the computer MediaSentry connected to on 8/10/2004 or that the same songs were again downloaded from the Internet.
- 39) Exhibit H shows a list of all of the files found in the "Documents and Settings\Joel\My Documents\My Music" folder (not just the MP3 files shown in Exhibit D). In addition to the exact MP3 file matches described above, a comparison of Exhibit H to the Userlog provided by MediaSentry shows that many more songs were found in both the Userlog and on the hard drive that I inspected. The primary differences were in capitalization or slight misspellings of the files names.
- 40) I discovered from my review of a LimeWire data file that was located on the hard drive that LimeWire was distributing over 3700 files from the "C:\My Music" folder on or after February 28th, 2007. A list of these files is shown in Exhibit I. There are indications that the LimeWire application was used on or after May 28th 2008 and may have been sharing the "C:\My Music" folder on or after that date. The exact date is difficult to determine due to the reinstallation of the operating system and missing registry files discussed in findings 36 and 37.
- 41) I compared the subdirectory structure associated with the "C:\My Music" folder to the subdirectory structure found in the "Documents and Settings\Joel\My Documents\My Music" folder and found that many of the subdirectories were identical. A comparison of the subdirectories is shown in Exhibit J. The identical subdirectories are those that appear

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in both columns. I also compared the file names associated with "C:\My Music" folder to the files found in the "Documents and Settings\Joel\My Documents\My Music" folder and found that approximately 2700 file names matched exactly. Exhibit K shows a list of these exact matches. These comparisons show that someone copied the contents of the "C:\My Music" folder to the "Documents and Settings\Joel\My Documents\My Music" folder on or after March 31st 2009.

- 42) I discovered based on the hard drive supplied that the Tenenbaum computer had numerous references to the username sublimeguy14.
- 43) I discovered based on the hard drive supplied that the Tenenbaum computer had numerous references to KaZaA in the unallocated space. It appears that if KaZaA was ever installed on this computer it was installed some time ago and it has been overwritten.
- 44) Exhibit L is a series of screenshots showing the installation of the Limewire program version 4.13.
- 45) I reserve the right to review additional discovery materials, as they are made available for my review, and use any of the material considered as exhibits in my testimony. My investigation and forensics analysis of the hard drive is not complete and I reserve the right supplement my report based upon further forensic examination and investigation.

Attachments:

List of file names associated with the "C:\My Music" folder – Exhibit (A)

MediaSentry Userlog (compressed) – Exhibit (B)

Registry failure log file – Exhibit (C)

List of MP3 files found on the hard drive – Exhibit (D)

List of matching songs – Exhibit (E)

Metadata from MediaSentry for matching songs – Exhibit (F)

Metadata from matching songs on the hard drive – Exhibit (G)

List of all files found in the "Documents and Settings\Joel\My Documents\My Music" folder -Exhibit (H)

List of the files being shared by LimeWire – Exhibit (I)

Comparison of "C:\My Music" and the "Documents and Settings\Joel\My Documents\My Music" folders – Exhibit (J)

List of files that found in the "Documents and Settings\Joel\My Documents\My Music" folder that matched the files names associated with the "C:\My Music" folder – Exhibit (K) Installation screenshots of LimeWire 4.13 – Exhibit (L)

I declare under penalty of perjury and the laws of the United States that foregoing is true and correct. Executed this 13 day of 50/2, 2009, at 2:30 pm

Dr. Doug Jacobson

EXHIBIT C

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