

Exhibit V

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Recording Industry vs The People

By [Ray Beckerman](#). About the RIAA's attempt to monopolize digital music by redefining copyright law, through the commencement of tens of thousands of extortionate lawsuits against ordinary working people. [*Home Page](#) [*Index of Litigation Documents](#) [*How RIAA Litigation Works](#) [*Directory of Defense Lawyers](#) [*Recent Posts](#) [*Archives](#) [* Defense Funds](#) [* Quotes from Decisions](#) [*Links](#) [*Non-RIAA music](#) [*Feeds](#)

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"The concern of this Court is that in these lawsuits, potentially meritorious legal and factual defenses are not being litigated, and instead, the federal judiciary is being used as a hammer by a small group of plaintiffs to pound settlements out of unrepresented defendants."

-Hon. S. James Otero, District Judge, Central District of California, March 2, 2007, *Elektra v. O'Brien*, 2007 ILRWeb (P&F) 1555

Wednesday, July 09, 2008

MediaSentry's statements in Michigan administrative case contradicted by prior statements in *UMG v. Lindor*

You may recall that several days ago we posted some correspondence between MediaSentry's lawyer and Michigan's Department of Labor and Economic Growth, in connection with administrative proceedings in Michigan over MediaSentry's being engaged in investigation without a license.

MediaSentry's lawyer replied that

SafeNet's activities fall squarely within the 1989 Opinion of the Michigan Attorney General, Frank J. Kelly, which excepts persons who are providing testimony in a lawsuit based on factual information *gathered by application of technical knowledge*. See 1989-1990 Mich. Op. Atty. Gen. . 263 1989 WL 445979 (Mich.A.G.) (the "Opinion"). The Opinion expressly cites the example of a *chemical engineer* who took photographs of, and samples from, the scene of a fire and from them prepared exhibits for use in Court. See *id.* The Opinion also included *physicians, geologists and surveyors* in the category of those who ought to enjoy the exception. *SafeNet utilizes technical expertise* in gathering factual evidence for use in just the same way as those other *professionals*, and thus enjoys the same exception. (Italics supplied)

Just for the heck of it we dug up some of their statements, and the RIAA's statements, from UMG v. Lindor, directly contradicting those representations, and representing to the *Lindor* court the exact opposite: saying that MediaSentry didn't rely on its technical expertise at all, but was just doing what any other Kazaa user does:

Excerpts from 3 documents in UMG v. Lindor denying that MediaSentry relied on its technical expertise.

[Ed. note. These people will say ANYTHING. Now let's hope that the Lindor court finds out about what they've been saying in Michigan, and the Michigan authorities find out what they've been saying in Brooklyn. -R.B.]

Commentary & discussion:

p2pnet.net
Slashdot
Afterdawn.com

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February 27, 2008

BY REGULAR MAIL AND ECF

Hon. Robert M. Levy
United States Magistrate Judge
United States District Court
225 Cadman Plaza East
Brooklyn, NY 11201

Re: UMG Recordings, Inc., et al. v. Lindor
05-Cv-1095 (DGT)(RML)

Dear Magistrate Judge Levy:

I write on behalf non-party SafeNet, Inc, f/k/a MediaSentry, Inc. ("SafeNet") in opposition to the letter application of Ray Beckerman, Esq., dated February 19, 2008 moving to compel the production of documents responsive to Document Requests no. 1-3, and 5-28 (Mr. Beckerman having withdrawn no. 29). SafeNet respectfully asserts that, in a case where the sole remaining contention appears to be that Defendant Lindor was not actually the individual operating her computer when it was used by a jrlindor@KaZaA to illegally distribute music files, a subpoena propounding twenty eight (28) document requests, exclusive of numerous sub-parts, is overly-broad and unduly burdensome on its face. Defendant has also failed to demonstrate her need for the highly sensitive and confidential information sought, from a non-party, to present a defense.

Defendant's counsel attempts to obfuscate the simple facts of this case by erroneously claiming that SafeNet has improperly withheld responsive documents. Contrary to what Defendant represents to the Court, however, every document relevant to the Lindor litigation that SafeNet ever generated was produced to her long ago. Instead, it was her counsel who insisted that SafeNet not produce to her the "Lindor file," precisely because it had already been produced by Plaintiffs. Complying with her counsel's demands does not constitute a fair basis for subsequent motion practice against SafeNet.

It has long been asserted in this case, without dispute, that SafeNet provided every document relevant to the Lindor "capture" to the Plaintiffs, the so-called "Lindor file", who in turn provided them to Defendant on April 8, 2006. The Lindor file consists of hundreds of pages of documents, and

includes a host of technical documents -- and all of the technical documents relevant to this case. If Defendant's counsel has changed his mind and would like another copy of the Lindor file, SafeNet would be happy to oblige.

The true purpose of Defendant's motion is to extract and expose highly sensitive, proprietary information that far exceeds the scope of this case, for reasons unrelated to her individual defense. A review of the docket sheet demonstrates that the pending application is not the first attempt by defendant to do so, which Your Honor has rebuffed already. On March 30, 2007 this Court denied Defendant's motion to compel the production of certain documents reflecting the contractual relationship between the Recording Industry Association of America and SafeNet, as those confidential, proprietary documents were not likely to lead to the discovery of admissible evidence.

Moreover, Defendant herself has stated that the information now sought from SafeNet is proprietary and confidential. *E.g.*, Letter of Ray Beckerman to Hon. Robert M. Levy, dated March 12, 2007. In that circumstance, it is Defendant's burden to demonstrate her need for SafeNet's proprietary and confidential information. *E.g.*, *Four Star Capital Corp. v. Nynex Corp.*, 183 F.R.D. 91, 110 (S.D.N.Y.). Her counsel's conclusory, and entire, argument that the information sought is "clearly needed to evaluate the integrity of MediaSentry's methods, and the basis for its trial exhibits" does not satisfy that burden.

How Defendant's newly-developed need for production of all of SafeNet's source code, for example, would lead to admissible evidence is left unsaid, probably because it would reveal not only all of the information found problematic by the Court on March 30, but a font of even more sensitive and less relevant proprietary information belonging to a non-party. In fact, Defendant's document requests effectively ask for every page and line of SafeNet's internal techniques, processes and procedures for every facet of the former-MediaSentry's internet security business, whether or not related to Defendant, the KaZaA network, or even the record industry. See, e.g., Document Requests No. 6-7, 9-11, 14-18, 21-22.

A party to a litigation seeking source code and similar proprietary technical documents from a non-party has an especially high burden to satisfy before obtaining such material. *Bell Atlantic Business Sys. Svcs., Inc. v. Hitachi Data Sys. Corp.*, 1995 WL 13115 (S.D.N.Y.1995)(court denied motion to compel production of non-party's source code because "no protective order could possibly be devised which could guarantee [its] security"). Even as to parties, it is well-established that a party seeking another's source code must make a significant showing of need for that sensitive information, which would then be made available only under very strict conditions to protect that information. *E.g.*, *Member Svcs., Inc. v. Security Mut. Life Ins.*, 2007 WL 2907520 (N.D.N.Y. 2007)(expert affidavit required to show need for source code, which could not be disclosed to party or its counsel).

Defendant here has made no showing of need, has not sought this information for the three years this case has been pending, has not shown that she has exhausted other means of obtaining the desired evidence, and has refused to even discuss an appropriate Protective Order. Even if SafeNet were a party to this case, and the litigation alleged that SafeNet had infringed defendant's software patent, its source

code and other software architecture documents would be protected from discovery with Ms. Lindor's deficient showing. *See New York University v. E.piphany, Inc.*, 2006 WL 559573 (S.D.N.Y 1996) (LTS)(RLE) (plaintiffs must demonstrate that they have exhausted others means of attempting to prove patent infringement before obtaining any component of source code). As against a non-party, and asserting a defense much less complicated than patent infringement, defendant's motion to compel is baseless.

Moreover, defendant's counsel, the author of a blog entitled "Recording Industry vs People", that he proudly describes as vitriolic, also appears disconcertingly eager to obtain this information without the encumbrance of an appropriate Protective Order. In that blog, Defendant's counsel accuses Plaintiffs' attorneys and MediaSentry of fabricating evidence, among other crimes and improprieties, and there seems to be strong reason to believe that he has violated a previous Protective Order in this case by disseminating Confidential deposition testimony. Plaintiff's Memorandum Brief in Support of Their Motion For Protective Order, dated September 27, 2006, at p.12. Defendant ought to be required to make an extraordinary showing of need for such sensitive information in this context.

Instead, Defendant can not even contend that the "integrity of MediaSentry's methods" is a legitimate issue in this case. From prior proceedings it appears that she has repeatedly taken the position that an unknown individual used her computer to infringe copyright, while conceding that her computer was the one used to do so. *Id.*, at p.9. But SafeNet has no role other than to find that computer by connecting to KaZaA users as any other user would, and then providing to Plaintiffs the internet protocol ("ip") address of the infringer, *inter alia*, from which Defendant accessed KaZaA. The internet service provider then supplies the identity of the person assigned that ip address, which is assigned just as an individual with a street address and a telephone would be assigned a telephone number. Because Defendant seems to be admitting that Plaintiff has the right street address and phone number, there is no legitimate cause to "evaluate the integrity" of the process that developed that information. That is doubly so where the ip address was assigned to defendant, Ms. Lindor, and the KaZaA infringer used the name "jrlindor."

This Court has doubtless seen hundreds of defendants before it who were eventually convicted largely or solely on recorded telephone conversations. Where a criminal defendant is recorded saying his name is Lindor, and then the pen register records show the telephone number that "Lindor" used was assigned to someone named Lindor, Courts will unlikely allow that defendant to subpoena the phone company to evaluate the integrity of its processes, because someone else named Lindor may have really been using that phone. This case is no different

Respectfully,



Thomas M. Mullaney

Cc: All Counsel of Record



Holme Roberts & Owen LLP
Attorneys at Law

DENVER

March 14, 2007

BOULDER

BY ECF AND FIRST-CLASS MAIL

Hon. Robert M. Levy
U.S. District Court, Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

COLORADO SPRINGS

Re: UMG Recordings, Inc. v. Lindor, No. 05 Civ. 1095 (DGT)(RML)

LONDON

Dear Magistrate Judge Levy:

Plaintiffs respectfully submit this response to Defendant's March 12, 2007 letter to you, which is apparently intended to supplement Defendant's opposition to Plaintiffs' motion for a protective order regarding the MediaSentry agreement. In her letter, Defendant appears to make two points.

LOS ANGELES

First, Defendant claims, and submits evidence to support the fact, that MediaSentry's processes are proprietary. Plaintiffs not only concede this fact, but also it is precisely why Plaintiffs filed a motion for protective order. Defendant's admission in her letter fully supports Plaintiffs' motion.

MUNICH

Second, Defendant submits a variety of evidence, including evidence from other cases, apparently to show that Tom Mizzone is an expert witness in this case. Defendant is incorrect.

SALT LAKE CITY

As a preliminary matter, Plaintiffs object to Defendant's practice of filing documents and pleadings from other cases (including foreign proceedings) in this case. These documents and pleadings are, of course, irrelevant here. Moreover, with respect to Mr. Mizzone's declaration, Plaintiffs should not be required to litigate in this case whether Mr. Mizzone is offering expert testimony in another case, especially where that issue has not been raised in the other case. Finally, on the merits, the documents that Defendant has submitted here in no way show that Mr. Mizzone is an expert witness in this case. As to the download data that Defendant submits, these are printouts of data exchanged by MediaSentry's computer and Defendant's computer. These are raw data, only, and, as such, are factual in nature (these data support

SAN FRANCISCO

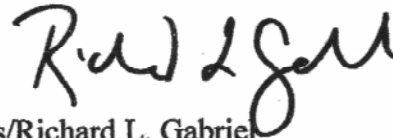
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Hon. Robert M. Levy
March 14, 2007
Page 2

Plaintiffs' claims in this case, because they show that, in fact, substantial copyright infringement was occurring through an Internet account registered to Defendant). Likewise, with respect to Mr. Mizzone's declaration from another case, the sole purpose for that document was to verify that numerous instant messages warning against copyright infringement were sent by MediaSentry to the defendant's computer in that case. Contrary to Defendant's assertion here, MediaSentry's sending of instant messages is fact evidence, not expert opinion.

For all the foregoing reasons, and for the reasons set forth in their prior submissions, Plaintiffs respectfully submit that their motion for protective order should be granted.

Respectfully submitted,



s/Richard L. Gabriel
Counsel for Plaintiffs

RLG:jmr

cc: Ray Beckerman, Esq. (by ECF and e-mail)
Richard Guida, Esq. (by ECF and e-mail)
Timothy M. Reynolds, Esq. (by e-mail)
Kathrin H. Weston, Esq. (by e-mail)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

UMG RECORDINGS, INC., et al.,

05 CV 1095 (DGT)(RML)

Plaintiffs,

- against

MARIE LINDOR,

Defendant

-----x

**PLAINTIFFS' REPLY MEMORANDUM IN FURTHER
SUPPORT OF THEIR MOTION FOR PROTECTIVE ORDER**

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Plaintiffs respectfully submit this reply memorandum in further support of their motion for a protective order prohibiting defendant from obtaining discovery of plaintiffs' contract with MediaSentry Managed Services Unit of Safenet, Inc. f/k/a MediaForce ("MediaSentry"), the terms thereof, or the instructions and parameters provided by plaintiffs to MediaSentry for conducting on-line investigations into the illegal infringement of plaintiffs' copyrighted works.

INTRODUCTION

In their opening brief, plaintiffs demonstrated at length, and supported by substantial and detailed declarations, that plaintiffs' contract with its anti-piracy investigator, MediaSentry (the "MediaSentry Agreement"), has no possible relevance to any issue in this case, and that it contains and itself comprises highly proprietary information that is subject to the attorney-client and work-product privileges. Defendant's opposition brief all but ignores plaintiffs' arguments demonstrating the lack of potential relevance of the MediaSentry Agreement and the highly proprietary nature of the information contained therein. Defendant chooses, instead, to respond, if at all, with conclusory assertions that are unsupported by any facts and with rhetoric. For this reason alone, plaintiffs' motion should be granted, and this Court need not even reach the issues of attorney-client and work-product privilege.

Should this Court reach the privilege issues, however, defendant's argument regarding the attorney-client privilege is also conclusory at best, asserting no more than that plaintiffs have failed to satisfy any of the criteria necessary to support a claim of attorney-client privilege. To make this argument, defendant simply ignores the evidence that plaintiffs have presented, because there is no legitimate response to that evidence.

With respect to work-product privilege, defendant proceeds under the incorrect premise that MediaSentry is a testifying expert witness for plaintiffs. From that faulty premise, defendant

then argues that the MediaSentry Agreement is discoverable, that defendant has shown substantial need for that Agreement, and that plaintiffs have waived any work-product privilege, allegedly because plaintiffs somehow relied on the information contained in the MediaSentry Agreement to provide an expert opinion in this case. Because defendant's central premise is incorrect, defendant's entire work-product argument fails. Specifically, MediaSentry has not been designated as an expert witness in this case and is not offering any expert opinions. Rather, the MediaSentry investigator who detected the infringement at issue, Tom Mizzone, is a fact witness, having downloaded information from defendant's Kazaa share folder that any other Kazaa user could have downloaded. As such, all of the case law on which defendant relies is inapposite, and defendant's various challenges to plaintiffs' assertion of work-product privilege fail.

ARGUMENT

I. Defendant has Failed to Show Any Possible Relevance of the MediaSentry Agreement or of Any of the Information Contained Therein

In their Opening Brief, at 7-9, plaintiffs demonstrated that defendant's request for the MediaSentry Agreement is not reasonably calculated to lead to the discovery of admissible evidence. Specifically, plaintiffs noted that defendant had previously made only two arguments as to potential relevance, namely, that the information sought was somehow relevant to her alleged copyright misuse defense and that the information sought would be relevant, if, for example, payment to MediaSentry were on a contingency fee basis. Plaintiffs then showed that the information sought is not potentially relevant to either of such issues.

In response, defendant first claims that undersigned counsel "took the liberty of fabricating defendant's arguments for discoverability or 'substantial need,' and then rebutting them. These 'arguments' were never uttered by [defense counsel] in [their] objection to the

also United States v. Kovel, 296 F.2d 918, 920-21 (2d Cir. 1961) (attorney-client privilege may extend to communications with third-parties such as private investigators); accord In re Grand Jury Proceeding, 79 Fed. Appx. 476, 477 (2d Cir. 2003).

In response, defendant asserts, without any factual support whatsoever, that plaintiffs have failed to establish any of the factors to be considered in determining the applicability of the attorney-client privilege. Defendant is wrong.

As more fully set forth in plaintiffs' Opening Br., at 6-7, plaintiffs have demonstrated, through appropriate and detailed declarations, that MediaSentry was intimately involved in the formulation of the legal strategy developed by the RIAA's anti-piracy team, including the record companies' counsel, that this strategy formed the basis for the legal advice that was provided to the record companies, and that this information was kept confidential at all times. As such, the MediaSentry Agreement reflects confidential communications made to agents of an attorney hired to assist in the rendition of legal services, as well as confidential communications between and among attorneys, clients, and their agents, none of which have been disclosed to third-parties or waived. These facts establish all eight of the factors alleged to be relevant by defendant and establish that the MediaSentry Agreement and the information contained therein are protected by the attorney-client privilege.

IV. Defendant's Assertions that the Work-Product Privilege is Inapplicable Because MediaSentry is a Testifying Expert, Because Defendant Has a Substantial Need for this Information, and Because Plaintiffs Have Waived Their Work-Product Objections are Baseless

In their Opening Brief, at 14-16, plaintiffs demonstrated that work-product protection applies to documents prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representatives, including investigators working for attorneys.

Plaintiffs further demonstrated that the United States Supreme Court has noted that the work-

product doctrine is a practical one, grounded in the realities of litigation, including the reality that attorneys must rely on the assistance of investigators and other agents in preparing for trial. See Opening Br., at 14 (citing cases). Plaintiffs also noted that the Second Circuit has recognized the “strong public policy” underlying the work-product privilege and has extended the privilege to documents that “can be fairly said to have been prepared or obtained because of the prospect of litigation.” Opening Br., at 15 (quoting United States v. Adlman, 134 F.3d 1194, 1202 (2d Cir. 1998)). The Second Circuit has also noted that, once a party shows that the document at issue was prepared because of potential litigation, then the burden shifts to the other part to make “a highly persuasive” showing of a need for such information. See id. (quoting Adlman, 134 F.2d at 1204). Finally, plaintiffs demonstrated that the information contained in the MediaSentry Agreement and the Agreement itself were generated directly and exclusively because of potential litigation and that these documents reflect the mental impressions of counsel, particularly as to the record companies’ and their counsel’s strategy for enforcing the record companies’ substantial copyright interests. See Opening Br., at 7, 15-16.

In response, defendant contends that plaintiffs are not entitled to rely on the work-product privilege because (1) MediaSentry is a testifying expert, and, therefore, the work-product privilege does not apply; (2) even if the privilege did apply, defendant has shown substantial need for this information; and (3) plaintiffs have waived their claim of work-product protection by relying on the information contained in the MediaSentry Agreement as part of their analysis. See Def. Br., at 3-12. Each of these arguments is baseless.

First, contrary to defendant’s assertion, MediaSentry is not an expert witness in this case. MediaSentry is a fact witness, and it gathered facts and documents that have all been produced to defendant. As such, the cases on which defendant relies, as, for example, Lugosch v. Congel,

219 F.R.D. 220 (N.D.N.Y. 2003) and Manufacturing Administration & Management Systems, Inc. v. ICT Group, Inc., 212 F.R.D. 110 (E.D.N.Y. 2002), are inapposite, because those cases relate to information that a testifying expert had relied on in his expert analysis but that the party calling the expert sought to protect as work-product.

Here, MediaSentry is not an expert at all. As such, plaintiffs are entitled to rely on work-product privilege, just as they would be entitled to assert work-product privilege with respect to documents created in anticipation of litigation that were exchanged between plaintiffs themselves and their counsel.

Moreover, plaintiffs have not proffered any opinion testimony from MediaSentry. Rather, as noted above, MediaSentry collected documents from defendant's share folder, and all of those documents have been produced to defendant. As such, notwithstanding defendant's assertions to the contrary, there is no issue of MediaSentry's having relied on any information contained in the MediaSentry Agreement to present any expert opinion. For these reasons alone, defendant's contention that the work-product privilege does not apply in this case is incorrect.

Second, defendant claims that, even if the work-product privilege applies, she has shown substantial need for the information requested. Again, defendant is incorrect.

As noted above, the Second Circuit has established a high standard for substantial need, requiring a "highly persuasive showing" of such need. Adlman, 134 F.3d at 1204. Courts have generally found such need to exist in two circumstances: (1) where the object or condition at issues has been destroyed or has deteriorated after a non-testifying expert has observed it but before the other side's expert has had the opportunity to do so, thus establishing a situation in which one party's expert may be the only expert who had observed the object or condition at issue, see, e.g., Spearman Industries, Inc. v. St. Paul Fire & Marine Insurance Co., 128

F. Supp. 2d 1148, 1151 (N.D. Ill. 2001); Bank of Brussels Lambert v. Chase Manhattan Bank, N.A., 175 F.R.D. 34, 44-45 (S.D.N.Y. 1997); and (2) where it might be impossible for a party to obtain its own expert because there are no other available experts in the same field or subject area. See Spearman Industries, 128 F. Supp. 2d at 1151.

Here, defendant has not made – and could not make – the highly persuasive showing of substantial need required by the Second Circuit. Defendant has not even attempted to show that the object or condition at issue has been destroyed or has deteriorated after MediaSentry had observed it. Indeed, the computer at issue is fully within defendant's control. Nor has defendant attempted to argue that it would be impossible for her to obtain her own expert because there are no other available experts in the same field or subject area. Instead, defendant does no more than argue, in a conclusory fashion, that the information sought may be relevant. For the reasons set forth above, this does not suffice to meet the high standard needed to overcome the work-product protection.

Finally, defendant claims that plaintiffs have waived work-product protection because they relied upon information contained in the MediaSentry Agreement in their analysis. This, too, is incorrect. First, for the reasons set forth above, the issue of waiver does not even apply, because MediaSentry is not a testifying expert and has not offered any expert opinion (or any other opinion or testimony) based on anything in the MediaSentry Agreement. Unless plaintiffs seek to make testimonial use of such information, there is no issue of waiver. See, e.g., United States v. Nobles, 422 U.S. 225, 239-40 (1975). Similarly, as set forth above, there is no basis for defendant's assertion that plaintiffs have relied upon the general parameters and instructions set forth in the MediaSentry Agreement as the mainstay of their case. Rather, as plaintiffs have consistently stated throughout this case, MediaSentry did no more than any other individual on

Kazaa could have done, and it recorded all of the information that it found, all of which has been produced to defendant. On these facts, there is no basis for any assertion of waiver.

For these reasons as well, plaintiffs respectfully submit that the entry of a protective order is necessary and appropriate here.

CONCLUSION

For all the foregoing reasons, and for the reasons set forth in Plaintiffs' Opening Brief, plaintiffs respectfully request that this Court (1) enter a protective order prohibiting defendant from obtaining discovery of plaintiffs' contract with MediaSentry, the terms thereof, or the instructions and parameters provided by plaintiffs to MediaSentry for conducting on-line investigations into the illegal infringement of plaintiffs' copyrighted works, and (2) order such other and further relief as this Court deems just and proper.

Respectfully submitted this 10th day of November, 2006.

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STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

KEITH W. COOLEY
DIRECTOR

February 22, 2008

Media Sentry
4690 Mellenium Dr., Ste. 400
Belcamp, MD 21017

RE: File No. 308967
Complaint of Randy L. Kruger

Dear Respondent:

It has been noted during a review of the above matter by the Department of Labor & Economic Growth that you are not licensed at the address provided. You may be in violation of Section 3(1) & (2) of 1965 PA 285, MCL 338.823(1) & (2).

"338.823.amended License required; violation; penalty.

Sec. 3. (1) A person, firm, partnership, company, limited liability company, or corporation shall not engage in the business of private detective or investigator for hire, fee or reward, and shall not advertise his or her business to be that of detective or of a detective agency without first obtaining a license from the department.

(2) A person, firm, partnership, company, limited liability company, or corporation shall not engage in the business of furnishing or supplying, for hire and reward, information as to the personal character of any person or firm, or as to the character or kind of business and occupation of any person, firm, partnership, company, limited liability company, or corporation and shall not own, conduct, or maintain a bureau or agency for the purposes described in this subsection except as to the financial rating of persons, firms, partnerships, companies, limited liability companies, or corporations without having first obtained a license from the department."

Unlicensed violations are considered serious by the Department. Continuation of this practice could result in criminal prosecution. Referral of this matter may be made to the local prosecutor or police department. The prosecutor can prosecute these cases as felonies with a maximum penalty of \$5,000 and/or up to four years in prison.

If you intend to perform activities that require a private detective agency license, you must obtain a license immediately. Please call (517) 241-9288 to obtain information on how to become licensed.

If you are licensed and we do not have correct information, please notify me at the number below.

Sincerely,

Ann Paruk
Administrative Law Specialist
Commercial Enforcement Division
(517) 241-9202

AP:ld

LAW OFFICES OF
THOMAS M. MULLANEY
708 THIRD AVENUE, SUITE 2500
NEW YORK, NEW YORK 10017
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March 17, 2008

BY REGULAR MAIL

Ann Paruk
Administrative Law Specialist
Commercial Enforcement Division
State of Michigan
Department of Labor & Economic Growth
P.O. Box 30018
Lansing, MI 48909

Re: Complaint of Randy L. Kruger
File No. 308967

Dear Ms. Paruk:

I write on behalf SafeNet, Inc, f/k/a MediaSentry, Inc. ("SafeNet") in response to your letter of February 22, 2008. SafeNet respectfully asserts that it does not furnish or supply information as to the personal character of any person or firm, or kind of business or occupation of any person or firm, that it does not fall within the requirements of Section 3(1) & (2) of 1965 PA 285, MCL 338.823(1) & (2).

Specifically, SafeNet provides a litigation-support service to the Recording Industry Association of America ("RIAA"), and would play a limited role in the eventual litigation that the RIAA members might bring against infringers of copyrights in certain music being illegally distributed over the internet. That role generally is to identify the computer that is being used to illegally distribute music files. SafeNet does so by using the internet as any other user would. SafeNet connects to the internet, often on a peer-to-peer network, as any other user would, and participates in the process of swapping music files with another party. It is a function of the peer-to-peer networks that certain information is exchanged by individuals who are trading, swapping, or distributing copyrighted music, because it is this information that allows the exchanged music file to arrive at the correct destination, just as a street address allows the receipt of regular mail.

SafeNet connects with a large number of these infringers throughout the United States, and gathers and stores that exchanged information, which will include the internet protocol ("ip") address of

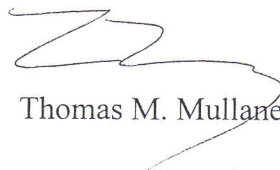
the infringer (essentially the internet analogue of a street address). SafeNet then gives that ip address to the RIAA, who then obtains the identity of the occupant or owner of that ip address from the internet service provider (usually the local telephone company). SafeNet is simply not involved in the private investigation activities associated with companies like Pinkerton's, who might surreptitiously follow and photograph individuals for whatever reason.

Instead, SafeNet's activities fall squarely within the 1989 Opinion of the Michigan Attorney General, Frank J. Kelly, which excepts persons who are providing testimony in a lawsuit based on factual information gather by application of technical knowledge. See 1989-1990 Mich. Op. Atty. Gen. 263 1989 WL 445979 (Mich.A.G.)(the "Opinion"). The Opinion expressly cites the example of a chemical engineer who took photographs of, and samples from, the scene of a fire and from them prepared exhibits for use in Court. *See id.* The Opinion also included physicians, geologists and surveyors in the category of those who ought to enjoy the exception. SafeNet utilizes technical expertise in gathering factual evidence for use in just the same way as those other professionals, and thus enjoys the same exception. If the computer software engineering technology that SafeNet employs had existed when Attorney General Kelly rendered his opinion, there seems little doubt that SafeNet and its competitors would have been named specifically.

Moreover, SafeNet's operations are conducted at the specific direction of an attorney, which brings SafeNet within another exception to the private investigator's licensing requirement of Michigan. Notably, no defendant in any copyright infringement action is prejudiced by the extension of these exceptions to SafeNet, because that party will have ample opportunity to examine SafeNet witnesses on any appropriate topic.

Moreover, SafeNet has no personnel, offices, real estate or bank accounts in Michigan used for the purposes of data collection, or any other purpose. In fact, because the copyright infringer projects its ip address, *inter alia*, out of Michigan, and to the entire world, when distributing music files, SafeNet respectfully asserts that it never comes within the State of Michigan in the course of its business.

Respectfully,



Thomas M. Mullaney