

EXHIBIT B



March 10, 2009

AUSA Craig Missakian
U.S. Attorney's Office
Central District of California
Suite 1200
312 N. Spring Street
Los Angeles, CA 90012

Re: Victim Impact Statement in the case of Kevin Cogill, CR08-1222

Mr. Missakian:

My name is Carlos Linares. I serve as Vice President, Anti-Piracy Legal Affairs, for the Recording Industry Association of America (the "RIAA"). Please accept this letter as a victim impact statement from the RIAA on behalf of its members in the matter concerning Kevin Cogill, an individual responsible for distributing pre-release sound recordings without authorization. It is my understanding the defendant has claimed responsibility for leaking the Guns N' Roses album "Chinese Democracy" to the public via computer system before its scheduled commercial release date of November 23, 2008. The distribution rights to this record are owned by Geffen / Universal Music Group, which are RIAA member companies. Mr. Cogill's actions have caused the recording industry to sustain economic losses of no less than \$150,000 that can be conclusively shown, though the evidence suggests the true losses are far greater. The RIAA respectfully requests that it be awarded restitution in the above-captioned case of \$30,000 to partially compensate its members for the losses incurred, and that the Court order the defendant to participate in a public service announcement designed to discourage others from engaging in music piracy.

The RIAA is the trade association that represents the United States recording industry. RIAA member companies create, manufacture and distribute approximately 85% of all legitimate sound recordings produced and sold in the United States. A primary function of the RIAA is to investigate the illegal production and distribution of sound recordings, and to assist law enforcement agencies – including prosecutors' offices – in seeking justice when the decision is made to pursue criminal remedies. The RIAA has been granted specific authority by its members to represent their interests in criminal music piracy matters in federal, state and local courts. When restitution is ordered, the RIAA receives the payments on behalf of its members pursuant to their authorization.

A. Economic Losses Owing to Defendant's Conduct

The economic loss caused by the defendant in this case is no less than \$150,000. This figure is based on a representative sample of 30 unauthorized Web sites that offered the music at issue to the public between June 19, 2008, and November 21, 2008. Of the 1,310 Web sites identified offering the record during this time, only 30 provided information revealing the number of downloads made from their sites. A total of 16,976 downloads of "Chinese Democracy" were made from these 30 Web sites prior to its official release. Under this limited study, multiplying the number of unauthorized pre-release downloads (16,976) by the legitimate retail value of the nine tracks leaked by the defendant (\$8.91) demonstrates a loss of \$151,256.16 conclusively.

It is important to note this analysis represents a mere fraction of the unauthorized transfers of RIAA member company music the defendant is responsible for facilitating. In fact, the study cited above references less than 3% of the Web sites that were discovered offering the record to the public. An average of 565 downloads of the record were made from each of the 30 sites referenced. In reviewing the evidence in a light most favorable to the defendant, if 1,250 of the remaining sites offered just half the average number of downloads as the representative sample, the true economic loss associated with the defendant's activity may be estimated at over three million dollars (1,250 sites x 280 downloads per site x \$8.91 legitimate retail value of music = \$3,118,500).

B. Components of the Requested Restitution

Restitution for economic harm to the victims of crime is authorized by the Mandatory Restitution Act of 1996. In the case of digital music piracy, losses are sustained when downloads of music files are made without the authorization of the owners of the sound recordings rather than purchased through legitimate online retailers. Lost sales are an appropriate measure of restitution in criminal cases involving the misappropriation of intellectual property. See *U.S. v. Milstein*, 481 F.3d 132 (2007); 2007 U.S. App. LEXIS 7034. The loss of legitimate sales is the main reason that music piracy costs the United States recording industry more than \$5.33 billion per year.

The economic loss to RIAA's member companies in this case is no less than \$108,000. This value has been determined by multiplying the 16,976 pre-release downloads of the representative sample by their estimated wholesale value of \$6.39, thereby illustrating a definite loss of \$108,476.64. Again, it is important to note that this is a small fraction of the true economic losses sustained by the RIAA member company victims in this case, which likely exceed well over \$2.2 million dollars (1,250 sites x 280 downloads per site x \$6.39 legitimate wholesale value of music = \$2,236,500).

Pursuant to 18 U.S.C. §3663, if the victim consents, the court may order the defendant to make restitution in services in lieu of money. Accordingly, the RIAA would be willing to accept a lesser amount of restitution on behalf of its members in this case, \$30,000, if the defendant will agree to participate in a public service announcement designed to educate the public that music piracy is unlawful.

C. Suitable Punishment is an Important Deterrent to Prevent Further Victimization

The illegal distribution of sound recordings is not a victimless crime. Music piracy deprives musicians, record companies, producers, songwriters, publishers, and legitimate retailers of the profits to which they are entitled, causing the loss of jobs and diminishing the opportunities available to aspiring artists. Local, state and federal governments suffer due to lost revenue from income and sales taxes.

The defendant's conduct here was even more egregious and harmful than the typical music piracy case, since the music he unlawfully distributed had not yet been released to the public. The unlawful distribution of pre-release sound recordings causes irreparable harm to a record label's marketing plan – typically developed with great care and at significant cost – by utterly eliminating the label's ability to control the public presentation of the artist's work. This in turn sharply reduces the artist's sales volume since the consumers most likely to purchase legitimate copies of an album immediately after its release already have access to the pirated version. The defendant's punishment in this case should accordingly reflect that his conduct involved a particularly aggravated form of music piracy.

Please contact me at (202) 857-9643 or at clinares@riaa.com if I may be of any assistance. If asked by your office, we will readily provide in-court testimony in support of our determination of the economic losses sustained in this case. Thank you for your attention in this important matter.

Sincerely,



L. Carlos Linares, Jr., Esq.
Vice President, Anti-Piracy Legal Affairs
Recording Industry Association of America