

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Virgin Records America, Inc.,)
a California corporation;) File No. CV-06-1497
Capitol Records, Inc., a) (MJD/RLE)
Delaware corporation; Sony BMG)
Music Entertainment, a) Duluth, Minnesota
Delaware general partnership;) October 2, 2007
Arista Records, LLC, a) 9:05 a.m.
Delaware limited liability)
company; Interscope Records, a)
California general)
partnership; Warner Bros.)
Records, Inc., a Delaware)
corporation; and UMG)
Recordings, Inc., a Delaware)
corporation,)
)
Plaintiffs,)
)
vs.)
)
Jammie Thomas,)
)
Defendant.)
)

BEFORE THE HONORABLE MICHAEL J. DAVIS and a Jury
UNITED STATES DISTRICT COURT JUDGE

(TRIAL - VOLUME I)

Proceedings recorded by mechanical stenography;
transcript produced by computer.

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APPEARANCES

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1 P R O C E E D I N G S

2 IN OPEN COURT

3 (JURY NOT PRESENT)

4 THE COURT: Let's call this matter.

5 THE CLERK: Virgin Records of America,
6 Incorporated vs. Jammie Thomas, Civil Case No. 06-1497.
7 Counsel, will you please state your appearances for the
8 record.

9 MR. GABRIEL: Good morning, Your Honor. My name
10 is Richard Gabriel. I'm the lead counsel for the
11 plaintiffs. And with me at counsel table is Mr. Matt
12 Oppenheim, who is a client representative for my clients,
13 and my colleague Tim Reynolds.

14 THE COURT: Good morning.

15 MR. TODER: Good morning, Your Honor. I'm Brian
16 Toder. I'm here with Jammie Thomas, the defendant. I'm
17 also here with my paralegal from our law firm, Chestnut &
18 Cambronne, Carol Dawson.

19 THE COURT: Good morning. We just have a few
20 matters to deal with this morning; is that correct, Counsel?

21 MR. GABRIEL: I believe that's correct, Your
22 Honor.

23 THE COURT: Dealing with the motion in limine --
24 plaintiffs' motion in limine to preclude defendant from
25 making unfounded prejudicial statements to the jury, has

1 that been taken care of?

2 MR. GABRIEL: Your Honor, I think that it's been
3 taken care of. If I understand -- and Mr. Toder will have
4 to speak for himself.

5 We filed our motion regarding his statements in
6 his statement of the case about our allegedly following a
7 motto from *Soldier of Fortune* in our suing lower income
8 people.

9 As I read his -- we did contact him before we
10 filed it to see if he was really going to say that and we
11 didn't manage to communicate or didn't hear back from him a
12 definitive statement.

13 When he filed his response, he appears to concede
14 the motion. He appears to say -- as I read it, he says he's
15 not going to make any of those statements. Again, we
16 believe it would, of course, be just inflammatory. So I
17 think the issue is resolved, but I guess we need to ask
18 Mr. Toder.

19 MR. TODER: Thank you, Judge. It's half resolved.
20 I believe our response was that we were not going to make
21 any statements that the record companies target people of
22 low income.

23 As far as the first one goes, we have no intention
24 of saying in this courtroom that their motto is like *Soldier*
25 *of Fortune's* "Kill them all; let God sort them out," to use

1 those words, unless they in their opening statement decide
2 to use this as some sort of a soapbox to talk about the
3 danger of piracy running through America.

4 In that case, if they are going to do that, the
5 only way we can counter is the effects of this campaign of
6 theirs, which is that they have very often sued the wrong
7 people, they have sued -- in our district alone they have
8 sued people who were not the people that had done what they
9 said they did, they've sued dead people.

10 If they do not turn this into a campaign regarding
11 piracy and just deal with the evidence regarding this
12 specific case, we will certainly not bring anything up as
13 suggested.

14 THE COURT: All right.

15 MR. GABRIEL: May I respond to that, Your Honor?

16 THE COURT: No, you don't have to. The Court
17 doesn't have to rule at this time. The Court will deal with
18 any objections during the course of any opening or closing
19 statement or during the course of the trial. So that will
20 just continue. I will rule on those issues when they arise.

21 That will deal also with defendant's motion in
22 limine to prohibit the parties from making certain allusions
23 or references during opening statements. If that's done and
24 an objection is made, I will rule on those at that time.

25 Dealing with the last motion that was made late

1 yesterday or sometime yesterday by defense counsel, docket
2 number 93, of course that is something not to be raised
3 during the course of this trial.

4 MR. GABRIEL: Your Honor, if I may on that, just
5 to say that Mr. Toder represents he was made aware that this
6 may happen. I wish he would have called me. I assure the
7 Court he wasn't made aware from us. We would never raise
8 that issue.

9 MR. TODER: Your Honor, I didn't -- I'm not saying
10 that they would have raised it. I did that out of an
11 abundance of caution.

12 THE COURT: I understand. Any other issues that
13 we have to deal with?

14 MR. GABRIEL: One moment, Your Honor.

15 MR. TODER: Your Honor?

16 THE COURT: Yes.

17 MR. TODER: Will we be permitted to conduct any
18 voir dire of our own of the jurors as follow-up?

19 THE COURT: Do you wish to?

20 MR. TODER: We may, depending on what we hear
21 during the course of --

22 THE COURT: What I'll do is give you 15 minutes
23 per side, 15 minutes per side after my voir dire.

24 MR. TODER: And, Your Honor, may we move to have
25 the witnesses sequestered?

1 THE COURT: You may.

2 MR. GABRIEL: Your Honor, there is one preliminary
3 matter.

4 THE COURT: Excuse me, Counsel. Do you object to
5 the witnesses being sequestered?

6 MR. GABRIEL: No. Actually, under the rule I
7 don't think I even can object. If it's requested, I think
8 it's mandatory, as I read it.

9 THE COURT: All right. All witnesses will be
10 sequestered and make sure that rule is enforced.

11 MR. GABRIEL: Yes, Your Honor. And will that be
12 when the evidence starts or from what point will the Court
13 apply that? There is one witness in the courtroom and I'm
14 not sure if she should be hearing --

15 THE COURT: She can stay for this, but once the
16 opening statements start, she has to leave.

17 MR. GABRIEL: Very well. Thank you, Your Honor.

18 Just one preliminary issue. As the Court, I
19 think, knows from our case -- our statement of the case, we
20 were originally proceeding on 27 recordings. In our
21 statement of the case we indicated that there would be 26.
22 For reasons that really aren't important, we dropped one.

23 And then we have decided to drop another one and I
24 will represent to the Court that for purposes of this case
25 we will not proceed on the Virgin Records recording Janet

1 Jackson's "Back," which is the first one in Plaintiffs'
2 Exhibit 1, also Exhibit A to the Complaint.

3 MR. TODER: Exhibit?

4 MR. GABRIEL: It's Plaintiffs' Exhibit 1. The
5 very first recording on there, we will not be proceeding on
6 that.

7 Similarly, Your Honor, in Plaintiffs' Exhibit 2,
8 which is a list of the other recordings at issue, we will
9 not be proceeding on the UMG recording by Godsmack called
10 "Moon Baby."

11 So it will be 24 recordings that we're suing on,
12 Your Honor. 25, excuse me.

13 THE COURT: So it's 24?

14 MR. GABRIEL: 25 total.

15 THE COURT: 25 total?

16 MR. GABRIEL: Yes, Your Honor. So it's all the
17 ones on Plaintiffs' Exhibit 1 and Plaintiffs' Exhibit 2 with
18 the exception of the two that I mentioned.

19 Thank you, Your Honor. We have nothing else.

20 THE COURT: Anything further for defense?

21 MR. TODER: Your Honor, I was not aware that this
22 was going to happen. Does that mean that Virgin Records of
23 America -- they are in this suit all by themselves and
24 therefore are they asking to dismiss the single suit brought
25 by Virgin Records of America against my client?

1 MR. GABRIEL: The answer to that is yes, Your
2 Honor. That was the only recording Virgin Records had in
3 this case, so we would ask that the claims by Virgin Records
4 be dismissed.

5 MR. TODER: And we would ask that they be
6 dismissed without prejudice, Your Honor -- I mean with
7 prejudice.

8 MR. GABRIEL: No objection.

9 THE COURT: The claims by Virgin Records will be
10 dismissed with prejudice against the defendant. So Virgin
11 Records of America is out of this case; is that correct?

12 MR. GABRIEL: Yes, that's correct, Your Honor.

13 THE COURT: So it's Capitol, Arista, Interscope,
14 Warner Bros., and UMG?

15 MR. GABRIEL: Sony BMG is still in the case, Your
16 Honor. I think you said the rest of them.

17 THE COURT: Why don't you go through the
18 plaintiffs for me.

19 MR. GABRIEL: The plaintiffs, Your Honor, are
20 Capitol Records, Sony BMG Music, Arista Records, LLC,
21 Interscope Records, Warner Bros. Records, and UMG
22 Recordings.

23 THE COURT: All right. Anything else before we
24 bring the jury in?

25 MR. GABRIEL: Nothing from the plaintiffs, Your

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Honor.

MR. TODER: Nothing from defense. Thank you.

THE COURT: We'll take a short recess.

(Recess taken at 9:15 a.m.)

* * * * *

(Jury selection, pages 13-62,
transcribed in a separate volume)

* * * * *

1 THE COURT: Please be seated. Members of the
2 Jury, we will take a short recess at this time so we can get
3 organized and take you back to the jury room and so you can
4 get familiar with the surroundings here and where the jury
5 room is, where the restrooms are there and what treats that
6 we have for you for our break. Then we'll come back and we
7 will begin this trial. We will have the opening statements
8 from counsel and start taking testimony.

9 My normal court hours are from 9:00 to 12:30 and
10 from 1:30 to 5:00 or 5:30, depending on the witness that we
11 have on the stand and whether or not we can finish up with
12 that witness.

13 My understanding -- I have not specifically talked
14 to the lawyers, but I suspect that, just looking at the
15 witness list, this case is -- hopefully we can be done with
16 all the testimony and final arguments to the jury by
17 Thursday. If not, we'll have to go into next week.

18 I cannot try this case on Friday. The Eighth
19 Circuit Court of Appeals is coming to Duluth and they have
20 exercised their prerogative to take over this courtroom, so
21 I can't be in it.

22 On Saturday we have a great ceremony. Judge
23 Gerald Heaney, who served on the Eighth Circuit for many,
24 many years, this courthouse is going to be named after him.
25 So everyone is coming to Duluth this weekend to have the

1 renaming of this courthouse for Judge Gerald Heaney. And so
2 that's why if we don't finish this week, we'll go into next
3 week.

4 And so we'll take a short recess, but let me
5 introduce my staff. Mrs. Simpson is my court reporter. She
6 takes down every word that's in this -- uttered in this
7 courtroom. And everyone that sits on a jury thinks that
8 they can get a transcript of what she's doing, and I'm the
9 only one who can do that.

10 And so it's your job -- we will give you notepads
11 and pens for you to take notes, if you so wish, but you will
12 not be able to have written transcripts of the testimony
13 from the witnesses. Your job is to listen and to remember
14 what is said from the witness stand.

15 Kristine Wegner is my courtroom deputy and she
16 controls the courtroom for me and she's here to serve you to
17 make sure that your service is a pleasant one. And she will
18 give you the rules and regulations for the jurors, what's
19 happening, where everything is in the jury room, and what --
20 any needs that you have.

21 Do we have any smokers? We do have smokers. How
22 bad is your habit?

23 (Laughter.)

24 THE COURT: If you need a smoking break, please
25 alert that to -- tell Ms. Wegner about that, Mrs. Wegner

1 about that, and then she'll come to me and we'll talk about
2 taking a break and having you go downstairs and outside the
3 building to have a smoke. I do not allow smoking in the
4 jury room, so I just want to alert you to that fact.

5 All right. We'll take a ten-minute break at this
6 time and then we'll start with the opening statements and
7 then break for lunch and come back with witnesses this
8 afternoon.

9 All right. All rise for the jury. I need you to
10 go through right here (indicating). Leave the placards.
11 We'll pick those up.

12 (Recess taken at 10:45 a.m.)

13 * * * * *

14 (10:55 a.m.)

15 **IN OPEN COURT**

16 **(JURY PRESENT)**

17 THE COURT: Members of the Jury, you have been
18 selected to serve on this case. The official title, again,
19 is Capitol Records, Sony BMG Music Entertainment, Arista
20 Records, Interscope Records, Warner Bros. Records, and UMG
21 Recording, Plaintiffs, vs. Jammie Thomas. This is a case
22 regarding possible copyright infringement, where the
23 plaintiffs are alleging that defendant downloaded
24 copyrighted music over the Internet.

25 You have been selected to serve on this case to

1 exercise an important part in the administration of justice.
2 At the end of the case I will be giving you the law on the
3 case.

4 Your duties during the course of the trial is to
5 be listening to all the testimony and taking that in and
6 then at the end of the case you will hear the arguments of
7 counsel and then get the instructions of law from me and
8 then you will come back with a fair and just verdict in this
9 matter.

10 A fair and impartial and orderly trial by jury is
11 the desire of all the participants in this case. The
12 plaintiffs will first proceed to outline its case and then
13 introduce evidence tending to prove that the defendant has
14 violated the statutes involved in this case. The defendant
15 will have an opportunity to give an opening statement and to
16 call any witnesses they feel are necessary for their case.

17 It is important for you to remember that the
18 questions, remarks, and arguments of the attorneys are not
19 evidence in this case. The duty of a lawyer is to present
20 his client's cause fully, fairly, and vigorously, and to
21 assist you in an important decision that you will have to
22 make based upon the evidence presented to you and in
23 accordance with the law, which I will give you at the
24 conclusion of the final arguments of counsel.

25 To ensure a fair and impartial verdict, the

1 members of the jury must be impartial. You must keep an
2 open mind and you must listen to all the testimony in this
3 case. Do not form any conclusions about how you're going to
4 decide this case until the case has been turned over to you
5 for your decision.

6 By following these instructions and by performing
7 your duties carefully and impartially, the right of trial by
8 jury can be fully realized and justice will be done in
9 upholding the laws of the land.

10 You are the sole and exclusive judges of the fact
11 questions. It will be your duty to decide any disputed
12 questions of fact. You have to determine the truthfulness
13 and credibility of the witnesses and the weight to be given
14 their testimony.

15 I ask you to be patient and listen carefully to
16 the testimony of all the witnesses. Keep it all in mind
17 until you hear the entire case.

18 As you listen to each witness you should take note
19 of such matters as his interest or lack of interest in the
20 outcome of the case, his ability and opportunity to know and
21 to remember and tell the facts, his or her manner, his or
22 her experience, his or her frankness and sincerity or lack
23 thereof, the reasonableness or unreasonableness of a
24 witness's testimony in light of all the other evidence in
25 the case, and any other factors that bear upon the question

1 of believability and weight. You should in the last
2 analysis rely on your own experience, your own judgment, and
3 your own common sense.

4 During the course of the trial, the Court may be
5 called upon to rule on objections to evidence. Whether or
6 not the evidence should be received is governed by rules of
7 law, which it is my duty to apply.

8 If you should consider the evidence, I will
9 overrule the objection. If you should not consider the
10 evidence, I will sustain the objection. If an answer is
11 given to which an objection is made and sustained, you
12 should disregard the answer. You should bear in mind and
13 consider only evidence which is properly submitted to you
14 during the course of the trial.

15 Occasionally during the course of this trial there
16 may be sidebars or conferences with the attorneys in
17 chambers. Because of several technicalities involved in the
18 charge that we are trying here today, our consultations may
19 be held in such a manner as to prevent you from hearing what
20 we say. Please do not feel that you are being ignored or
21 left out of your important task.

22 This we do not to conceal from you anything that
23 is proper or necessary for you to hear in the discharge of
24 your duties as judges of the fact. This we do, rather, to
25 make certain that the parties will receive a fair trial,

1 that nothing will come before you which might jeopardize the
2 fairness of the trial or which might be improper for you to
3 hear under the rules of law which govern jury trials, rules
4 which have been developed through centuries of experience to
5 guarantee a fair jury trial to the parties before the court.

6 You may, if you wish, take notes during the course
7 of this trial, but you should not feel compelled to do so.
8 The most important thing is for you to give your full
9 attention to the testimony as you hear it.

10 Please remember what you should not do during the
11 course of this trial. You are not investigators. You are
12 not to go out and do any looking. You are not to go on the
13 Internet to find out what this case is about or what people
14 think about this case. You are here to hear the testimony
15 in court and follow the law as I give it to you.

16 Above all, you must not talk to anyone who is
17 involved in this case, the lawyers or the witnesses, or
18 anyone that may be in the gallery that may have an interest
19 in this type of lawsuit. You are not to talk to anyone.

20 If anyone approaches you and wants to talk to you
21 and you do not know them, you make sure that you let me know
22 immediately. In the back of the courtroom we always have a
23 court security officer in a blue coat. We call them the
24 blue coats. You have my staff and you have me.

25 Again, I want to make sure that if anyone tries to

1 talk to you about this case or voice an opinion about this
2 case, that I know about it immediately and know who that is
3 so I can take the appropriate action against that person.

4 Also, you should not discuss this case amongst
5 yourselves. At the end of the trial the 12 of you will have
6 as much time as you need to discuss it and that's at the end
7 of the trial.

8 There has been some publicity about this case and
9 I assume that publicity will continue, and you will have to
10 avoid that publicity. You will not be able to read the
11 newspaper articles about this case or listen to any of the
12 TV or radio broadcasts regarding this case. You are the
13 judges of the facts. You will hear all of the evidence and
14 you are not to be persuaded by anything that may be in print
15 or on the air or on the TV.

16 When you go home during the course of this trial,
17 your family and friends will be curious on what you are
18 doing. You can tell them that you are sitting on a civil
19 trial and you can tell them what the nature of the case is,
20 but you cannot talk to them about it because they may say,
21 Oh, I read about this case or I heard something about it or
22 I have an opinion about whether or not someone can download
23 music for free or have to pay.

24 Again, we do not want anyone to influence you in
25 any way on what your verdict should be. That would be a

1 subversion of justice and you have sworn to uphold the laws
2 of the land and you are the finders of the facts in this
3 case and you will apply the law as I give it to you in this
4 case.

5 Neither the parties nor the judge nor the lawyers
6 nor the court personnel will be -- will make any effort to
7 be friendly outside of the courtroom, and this is not a
8 discourtesy. We are endeavoring to avoid any statement or
9 act which may influence the jurors during the course of the
10 trial.

11 If anyone should observe any of us talking to you,
12 the person observing us talking to you will not know what is
13 being said and he or she may believe that we are discussing
14 a portion of the trial. So we wish not only to avoid
15 improper conduct, but also avoid any appearance of improper
16 conduct. If any person persists in discussing this case
17 with you, please refer it immediately to me.

18 During the course of the trial, please be prompt
19 in returning to the courtroom at the hour stated so that any
20 delays will not be attributed to you.

21 Be patient during the course of this trial. We
22 know that it is difficult for most of us, especially those
23 of us who are usually quite active physically, to remain
24 seated quietly for long periods of time. There will be
25 recesses during the course of this trial and you know where

1 the restrooms are located in your jury room.

2 One question that usually arises is whether or not
3 the jurors can ask questions, and the answer to that
4 question is no. You have to listen and come to a decision
5 based on what you've heard.

6 As I've told you, my normal court hours are from
7 9:00 to 12:30, 1:30 to 5:00, 5:30 depending on the course of
8 the trial at that time. Is that going to cause any problems
9 for anyone getting here or leaving, day care problems?

10 I know that maybe one of you have worked the night
11 shift and may be a little tired. If you need a stretch
12 break, need a break, don't feel that you can't raise your
13 hand and say, Judge, let's take a break at this time.

14 That goes for any and all of you, because
15 sometimes I get going here and I can push the lawyers to get
16 the case done so you're not here for long periods of time,
17 but I want to make sure that you're comfortable. I don't
18 know how comfortable those seats are and so you may have to
19 take more stretch breaks than normal, but you just let me
20 know or let Mrs. Wegner know about that.

21 Counsel, any additions or corrections to the
22 Court's opening charge?

23 MR. GABRIEL: No, Your Honor. Thank you.

24 MR. TODER: None from defendant. Thank you.

25 THE COURT: We'll begin with the opening

1 statements.

2 MR. GABRIEL: May it please the Court, Counsel,
3 Ms. Thomas, Ladies and Gentlemen. Again, my name is Rich
4 Gabriel and I represent the plaintiff record companies in
5 this case.

6 And I want to again reintroduce my client, Matt
7 Oppenheim, who is a representative from the record
8 companies, and my partner Tim Reynolds, who is sitting at
9 the table with me.

10 Ladies and Gentlemen, before I launch into my
11 opening remarks, on behalf of my clients -- and I know
12 Mr. Toder will join me in this -- we thank you for your
13 service here today. We all understand how important this is
14 and we know you didn't volunteer, but we appreciate you
15 being here very much.

16 Ladies and Gentlemen, the plaintiffs in this case
17 are record companies that, among other things, record and
18 distribute music. These record companies are made up of
19 real people, ranging from people who find new artists, to
20 people who work to promote new artists, to people who run
21 the sound boards, get the new artists' music recorded, to
22 backup musicians, to graphic artists, to those who deliver
23 my clients' music all around the world.

24 All of these people, Ladies and Gentlemen, face a
25 threat, a significant threat to their livelihoods on a daily

1 basis and that threat is due in large part to the problem of
2 copyright infringement over the Internet, of which the
3 defendant is part. The problem has not only affected the
4 industry generally, it's affected everyone in it, from top
5 to bottom.

6 In this case the defendant, Jammie Thomas, was
7 distributing over 1,700 music files, that's 1,700 music
8 files, through the so-called Kazaa file sharing or file
9 trading service. Kazaa is K-a-z-a-a. She was distributing
10 1,700 music files to millions of other people on the Kazaa
11 network, all without the permission of the copyright owners.
12 Even though the infringement in this case was massive, my
13 clients have chosen to focus on a sampling of that and we're
14 suing in this case on 25 sound recordings.

15 My clients claim that the defendant, Ms. Thomas,
16 infringed on their copyrights and 25 sound recordings made
17 famous by people ranging from Gloria Estefan to Green Day,
18 Sarah McLachlan, Sheryl Crow, Journey, and Aerosmith by
19 copying and distributing, copying and distributing these
20 copyrighted recordings to millions of other people using
21 this so-called Kazaa file sharing or file trading service.
22 We're here, Ladies and Gentlemen, to ask you to hold the
23 defendant responsible for her actions.

24 The case begins, as I've said, with what people
25 call a file sharing or file trading service called Kazaa and

1 you'll hear evidence in the case to explain to you what that
2 is.

3 You'll hear that file sharing is really a bit of a
4 loose term. It isn't sharing in the sense of our kids
5 sharing toys with their friends. Services like Kazaa are
6 designed so that people who use them can trade files, hear
7 music files with users they don't even know. And these
8 services are set up so that the strangers connect to each
9 other completely anonymously, and they do that through
10 made-up user names.

11 Because users connect with each other, directly to
12 each other, sometimes you'll hear the phrase -- and you will
13 hear it in this case, I'm sure -- of peer-to-peer or P2P
14 file sharing because there are people, "people" being peers,
15 communicating with each other, their computers are talking
16 directly to one another.

17 You'll hear in this case how Kazaa works. A user
18 first downloads software. You can search on Google for
19 Kazaa and you can download the software and install it on
20 your own computer.

21 This doesn't happen by accident. When you install
22 it, you have to go through a lot of steps. You go through
23 screen after screen asking -- the computer asking you
24 questions about do you want this, do you want that, and it
25 goes through many, many steps to get this program installed

1 on your computer.

2 Once the program is loaded and installed on the
3 computer, the software creates what is called a share folder
4 or share directory on the user's computer. You can think of
5 it like a file folder.

6 A user then stores all the files that he or she
7 downloads or copies from other people into that folder and
8 the recordings that are in that folder are then being
9 distributed simultaneously to everybody else on the network.

10 Now, how does that happen, how do you share files?
11 The process is quite easy. A user can search for music by
12 artist, song title, album title, or even music category,
13 jazz, top 40 and the like.

14 A user who wants a particular artist, say, types
15 in the artist's name and a screen will come up listing a
16 whole bunch of things available from that artist. You
17 merely click on that entry and in doing so the user gets an
18 exact digital copy into that user's share folder that the
19 user then can listen to as many times as a person wants.

20 We are going to play for you some of these digital
21 files that were recorded as well as legitimate recordings so
22 that you'll be able to hear that they sound exactly the
23 same. These are good, quality digital recordings.

24 So what's happened, then, when this happens,
25 you'll hear, the evidence will show you, the user has made a

1 copy of the recording from somebody else, one of those other
2 peers, that went into the hard drive, no different than if
3 somebody gave someone else a CD and the person had gotten a
4 copy of it. The user then has it and can listen to it
5 forever.

6 But what's important is once the user has made
7 this unauthorized copy in the way I've described, the copy
8 is in the share folder, that share folder I talked about,
9 and is being distributed to everyone else in the network,
10 literally millions of people.

11 And interestingly, the person from whom the
12 user -- the user copied it from somebody else. Well, that
13 person who kind of sent it to the user still has her copy.
14 So at the end of it, you've got two users now who have
15 perfect digital copies of the same recording and both of
16 them are distributing to other people.

17 And when those other people distribute, they then
18 get copies. It's like that old commercial, "and so on and
19 so on and so on." It's an ever multiplying and replicating
20 problem or issue of creating copies and distributing other
21 copies.

22 In this case, Ladies and Gentlemen, my clients
23 will prove that the defendant infringed on their copyright
24 interest by using the Kazaa file sharing service to copy and
25 distribute at least 25 copyrighted sound recordings

1 belonging to them. In fact, as I said, you'll see evidence
2 that there were more than 1,700 sound recordings that the
3 defendant was distributing. We are here to ask you to hold
4 the defendant responsible for her actions.

5 So what happened in this specific case with the
6 background of how Kazaa works? On the evening of
7 February 21, 2005 a company called SafeNet, used to be
8 called MediaSentry -- you may hear those names
9 interchangeably, but it's a company that the record
10 companies hired -- was searching on the Kazaa file sharing
11 service for the record companies' copyrighted sound
12 recordings.

13 In performing this search MediaSentry/SafeNet did
14 exactly what any other user could do, it's searching for
15 recordings. It logged onto Kazaa, searched for recordings.
16 In the course of that search SafeNet found a computer that
17 was distributing a lot of the plaintiffs' copyrighted sound
18 recordings.

19 And the way Kazaa is set up, you can actually
20 search for one recording, Sarah McLachlan. You can then ask
21 Kazaa, I'd like to see what else this person has in his or
22 her share folder. It's set up that way. MediaSentry, just
23 like anybody else, said let me see the entire share folder;
24 and that's how we see a share folder with 1,700 sound
25 recordings in it.

1 The person who was using this share folder had
2 logged in -- remember I talked about anonymous user names --
3 under the screen name tereastarr@kazaa, which will become
4 important for reasons that I will get to in a moment.

5 The user was also connected to the Internet at
6 something called an Internet protocol or IP address. Here
7 the numbers don't matter for the immediate purposes, but it
8 was 24.179.199.117. That's the IP address.

9 And the evidence will describe to you what an IP
10 address is. The evidence will show you that an IP
11 address -- that every computer must have a unique IP
12 address.

13 To ensure that those IP addresses are unique,
14 blocks of IP addresses have been assigned to various
15 organizations, like Internet service providers. So, for
16 example, Charter Communications has one block of IP
17 addresses and Adelphia or Comcast or AOL will have different
18 blocks of IP addresses.

19 Think of the IP address just like a mailing
20 address or a phone number. It's a unique person and I call
21 that number. And you can think of these assignments to
22 Charter and whoever else as the area code.

23 You can tell the way it's assigned, by some of the
24 numbers, who's who, who had the Charter ones. Just like you
25 would know 218 is the Duluth area code, you would know from

1 the numbers you see, okay, this person is a Charter
2 customer, we know that much. And then each ISP then divvies
3 up the block it has to its customers and they send them all
4 out, and they keep records of that.

5 The point is that at any given moment in time an
6 IP address is unique, it's a unique identifier. And the
7 fact is you'll hear evidence that two computers cannot work
8 if they are connected to the Internet with the same IP
9 address at the same time, just physically can't happen.

10 So, as I've said, SafeNet did a search that I
11 described, just like anyone else, and found a computer
12 distributing over 1,700 music files. SafeNet then took
13 screen shots of the share folder at issue.

14 And screen shots are basically photographs. You
15 will see photographs of each page on the screen that SafeNet
16 was looking at. These screen shots are going to show you
17 all of the files, including the 1,700 music files that were
18 being distributed.

19 And as I mentioned to you, you'll see on these
20 screen shots that the person using the Kazaa service used a
21 screen name called tereastarr@kazaa. You'll see it hundreds
22 of times next to virtually every file in that share folder.

23 So what does SafeNet do? It has a share folder
24 and takes these photographs of each page. It also actually
25 downloads -- it starts downloading all 1,700 music files to

1 make sure they're really there and then it downloads fully a
2 sampling to make sure that these really are the record
3 companies' copyrighted music files. And SafeNet then
4 downloads and keeps a whole bunch of computer mumbo jumbo
5 data that it keeps and makes a copy of right then and there.

6 Among other things that you'll see in that
7 computer data is the Internet protocol address that I
8 mentioned to you. When computers talk to each other, you
9 will see in the data that happens that they actually -- the
10 IP address will be shown on there and that's how they figure
11 out the IP address.

12 So we have a whole bunch of that data and these
13 screen shots and we have music files that SafeNet actually
14 downloaded from this particular user that they were at,
15 tereastarr@kazaa.

16 And when it was done, after that, on February 21st
17 and 22nd, SafeNet sent instant messages to this Kazaa user,
18 tereastarr@kazaa, telling this user she was engaged in
19 copyright infringement and should stop. So instant messages
20 were sent at about that time as well.

21 So the evidence will show you that we come to this
22 point in the chronology that SafeNet had found significant
23 copyright infringement happening at a particular IP address
24 with a user name of tereastarr@kazaa.

25 But remember what I said before, file sharing is

1 anonymous. So the record companies had found significant
2 infringement, but they didn't know specifically who the
3 infringer was. So far we have a computer, we have an IP
4 address, and a name of tereastarr.

5 Remember I told you that the IP addresses are
6 assigned in blocks. So we knew from the numbers that it was
7 Charter Communications. The record companies went through a
8 legal process that allowed them to serve a subpoena on
9 Charter Communications to ask them for identifying
10 information.

11 Specifically, as you'll see, we served a subpoena
12 on Charter that had a list of IP addresses of people that
13 the record companies had caught infringing and we asked
14 Charter to tell us the name, address, phone number, e-mail
15 address, and something called a media access control or MAC
16 address associated with the person in this case who had that
17 IP address, that long string of numbers I gave you, on
18 February 21, 2005 at about 11:00 p.m.

19 Now, the media access control or MAC address is
20 basically a serial number that Charter Communications puts
21 on devices it leases. If you have Internet service, you'll
22 have a modem. There's a little machine there. There's a
23 serial number on it called a media access control device.

24 So we asked Charter for that information. Charter
25 was internally able to search its records and it quickly

1 determined that the individual who was connected to the
2 Internet at the IP address I gave you was the defendant,
3 Jammie Thomas.

4 Now, Charter didn't immediately tell the record
5 companies this. What Charter did first is it wrote a letter
6 to the defendant, its customer, Jammie Thomas, and told her
7 we have a subpoena that indicates there was improper
8 conduct, infringement, on this Internet account and it tells
9 her other things about their policies and it says, We're
10 about to give up your name and address to these people. If
11 you want to take action, you can. It said on the top,
12 "Important Legal Notice." The defendant will tell you that
13 she got it, but she chose not to read it.

14 Shortly after that, not having heard from the
15 defendant, Charter responded to the subpoena and provided
16 the record companies with the information that they had
17 asked for. Charter told the record companies that the user
18 at the particular IP address on the date in time that I
19 mentioned was Jammie Thomas and Charter provided to us her
20 correct address, her mailing address.

21 As it turned out, Charter had also rented to the
22 defendant a modem, a computer modem, so she could access the
23 Internet. Charter provided the MAC address, another series
24 of numbers that are not important to remember now, but it
25 happened to be 00028ACF5590. The evidence will show you

1 that the defendant herself admitted that the MAC address --
2 that MAC address matched the address on the modem that she
3 had.

4 And Charter provided the defendant's e-mail
5 address. Now, this is separate from the Kazaa user name.
6 The e-mail address that she used was tereastarr@charter.net,
7 which, of course, is an obvious match to tereastarr@kazaa.

8 And the evidence is going to show you more than
9 just the identifying information that I just mentioned to
10 you from Charter that connected what our people found to
11 this defendant.

12 The evidence will show, for example, that the
13 defendant used the name tereastarr for everything relating
14 to computers. She's done so for the past 13 or 14 years.
15 Her user name on her computer -- when you boot up the
16 computer, there's kind of account names that come up -- was
17 tereastarr. Her e-mail address is now and in the past
18 tereastarr. Her instant message address was tereastarr.
19 She used the tereastarr name on online accounts,
20 bestbuy.com, walmart.com. She used it for online video
21 games. She uses it on a personal website that she has
22 designed and created and uses at, which some of you will
23 recognize, myspace.com. She uses tereastarr for everything.

24 The evidence will also show you that the computer
25 that we captured was the only computer in the house at the

1 time. It was in the defendant's bedroom and it was password
2 protected. The evidence will show you this defendant was
3 the only one who had access to the password and was the only
4 one that could have used that computer.

5 So the infringement occurred at an IP address that
6 Charter identified as belonging to the defendant and a MAC
7 address that Charter identified as belonging to the
8 defendant, and the only person who was able to use the
9 computer was the defendant.

10 And the evidence will show you that this defendant
11 happened to have a far-ranging and eclectic taste in music.
12 She will identify numerous artists and groups that she
13 listens to and likes, many of which are not household names.

14 The evidence will show you that over 60 of the
15 groups and artists that the defendant listens to were in the
16 Kazaa share folder, over 60 of them matching. And the
17 evidence will show you that this defendant listens to every
18 artist who recorded the sound recordings that are at issue
19 in this case, 25 of them.

20 But, again, Ladies and Gentlemen, that's not all
21 you're going to hear. The evidence will show not only that
22 the defendant, Ms. Thomas, was responsible for the
23 infringements at issue, but also that she took pains to
24 conceal what she had done.

25 I mentioned to you that Charter identified the

1 defendant through which the infringements happened. The
2 record companies then -- what they do when they get the
3 identification, we send a letter to the defendant, you've
4 been caught, we lay out what copyright infringement is about
5 and why it's a bad thing, and we say we'd be delighted to
6 talk with you about this case if you would like to call us
7 and perhaps even try to work it out before we go further.

8 And the defendant did call the record companies'
9 representatives and she said -- and she'll say this in this
10 courtroom -- she didn't do anything, she didn't do it, and
11 we should come and inspect her computer, we're welcome to
12 look at her computer whenever we want, and we will not find
13 any evidence of Kazaa on there.

14 And the defendant, true to her word, provided her
15 computer's hard drive to us. That's where all the
16 computer's data is found, kind of the brain of the computer,
17 that you can take out and give to somebody else.

18 She gave that to us so our expert could inspect it
19 and she told us that's the hard drive that was connected to
20 the Internet on February 21, 2005, the date we discovered
21 infringements at issue, what we call the capture date.

22 In fact, she also told us that the hard drive had
23 been replaced once before in January or February of 2004, a
24 year before. So she represented that we had the right hard
25 drive.

1 Now, our expert, Dr. Doug Jacobson of Iowa State
2 University, inspected that hard drive. He looked at it and,
3 in fact, so did the defendant's expert, a man named Eric
4 Stanley.

5 And it turned out that the hard drive the
6 defendant was anxious for us to look at and review was not
7 the hard drive that was connected to the Internet on
8 February 21, 2005.

9 In fact, Ladies and Gentlemen, you will hear from
10 a witness from Best Buy that this hard drive was put into
11 the computer in March of 2005, a month after we actually
12 caught -- found the infringements at issue and a month after
13 we sent those instant messages I told you about on
14 February 21st and 22nd to tereastarr@kazaa saying, Cut it
15 out, you're infringing.

16 The evidence will show you, Ladies and Gentlemen,
17 the defendant told us to come look at her computer and we
18 would find nothing and then she gave us the wrong hard drive
19 to inspect. It wasn't the one connected to the Internet on
20 February 21, 2005, the date that we found the infringing
21 conduct.

22 And not only did our own expert ultimately figure
23 that out, the defendant's expert, Mr. Stanley, figured that
24 out. And interestingly enough, when he did, the defendant
25 made a choice not to call him as a witness in this trial.

1 The plaintiffs are going to call him as a witness in this
2 trial.

3 Ladies and Gentlemen, at the end of this trial the
4 evidence will show you that the record company plaintiffs
5 own or control the exclusive rights in all of the 25
6 copyrighted sound recordings at issue; the evidence will
7 show that the defendant, without the record companies'
8 permission, copied and/or distributed at least those 25
9 copyrighted sound recordings to SafeNet, the company we
10 hired -- they actually were a distributee because they got
11 it from her -- and also to millions of other people on the
12 Kazaa network; and the evidence will show you that the
13 defendant attempted to conceal her conduct by providing the
14 wrong hard drive to us and not only to us, but even to her
15 own expert.

16 Ladies and Gentlemen, at the end of this trial we
17 will ask you to hold this defendant responsible for her
18 actions.

19 Thank you.

20 MR. TODER: May it please the Court, Counsel,
21 Members of the Jury.

22 This is a tough case for the defendant. It's a
23 real tough case because she's put in a position of trying to
24 prove some alternative theory when she doesn't know what
25 happened out there.

1 We're here today because plaintiffs have evidence
2 that someone was on Kazaa, that someone offered copyrighted
3 material, and then someone who works for plaintiffs,
4 MediaSentry, downloaded that material. But the only
5 identity you're going to find for whoever was doing this is
6 an IP address, an IP address.

7 You're going to find out from plaintiffs' own
8 experts that there are other explanations for how someone
9 can hijack someone else's IP address. You can use your
10 imagination. Someone else in her home could have used this.
11 There's all kinds of things. But, again, we're in a
12 position of trying to prove a negative and we can't do it.
13 We don't have that kind of evidence.

14 But they don't have, the plaintiffs don't have the
15 evidence that she downloaded anything. You're not going to
16 see any evidence that she distributed anything. The best,
17 the best that they can come up with is that somebody out
18 there in cyberland, somebody out there using an IP address,
19 an account that was assigned to Jammie Thomas, offered some
20 Kazaa -- on Kazaa some copyrighted material that was
21 downloaded by plaintiffs. And Jammie Thomas didn't do any
22 of that. It wasn't Jammie Thomas that did that, if
23 somebody, in fact, did that.

24 So why are we here, then, if it's that cut and
25 dried? We're here because plaintiffs believe that because

1 Ms. Thomas's hard drive was replaced, that is somehow
2 covering up something. Because they'll never be able to
3 tell who was the person, the individual. They can't even
4 tell which computer it is.

5 They talk about MAC addresses. A MAC address is
6 assigned from Charter Communications to a particular device
7 and if you take one computer and -- if you unplug her
8 computer and took some other computer and plugged it into
9 the same modem, it would be the same -- no one would
10 know whether it was -- it would still appear to be Jammie
11 Thomas's computer.

12 But they're here because -- we're here today
13 because plaintiffs believe that they can convince you that
14 somehow Jammie Thomas pulled a fast one. By virtue of the
15 fact that her hard drive was replaced, that that somehow
16 proves that, yes, that person out there who offered 1,702
17 titles and distributed it to millions, although you are
18 going to see no evidence that anybody distributed millions
19 to anybody, they are going to say that because she replaced
20 her hard drive, that proves she must have had something to
21 hide, so it must have been her.

22 But the plaintiffs have one thing working against
23 them and that's the calendar, the calendar. It was on
24 February 21, 2005 that somebody out in cyberland offered to
25 share -- there's no evidence that anybody sold anything --

1 somebody offered to share some songs, February 21, 2005, and
2 of course the people that work for plaintiffs captured it.

3 They sent an e-mail -- or they say they sent an
4 e-mail. How would we know? We'll believe them for a
5 second. But they sent an e-mail to tereastarr@kazaa. They
6 didn't send it to tereastarr@chartercommunications, which is
7 Ms. Thomas's address. This is in February, February 21,
8 2005.

9 It was after that, it was after that, in March,
10 specifically March 7th, that Ms. Thomas had a problem with
11 her computer. It had beeping and error codes and she
12 brought this to Best Buy.

13 She didn't bring it to Best Buy asking them to
14 replace her hard drive. You can look at the paperwork,
15 which will be evidence in this case. It was Best Buy's
16 decision to replace the hard drive and that's what they did.

17 And, again, this is before Jammie Thomas had any
18 idea whatsoever that out there somewhere in cyberland
19 plaintiffs, MediaSentry/SafeNet, were putting together a
20 case against her and 20,000 other people.

21 It wasn't until April 22, 2005 that Charter
22 Communications notified Jammie Thomas that they were being
23 subpoenaed because of a John Doe complaint that plaintiffs
24 filed so they could get a subpoena to see what individual
25 owned which accounts, not computers, but which individuals

1 owned which accounts, which is the IP number. And so
2 they -- according to them, the IP address, the IP account
3 was in the name of Jammie Thomas. That was April 22, 2005.

4 It wasn't until August 19, 2005 that Jammie Thomas
5 was notified by plaintiffs that she was targeted, that she
6 was going to be sued for infringing. And they're saying 25
7 songs that they can prove and they're also saying today that
8 there was 1,702 songs that were distributed to millions of
9 people, but you are going to see no evidence of that
10 anywhere in the case.

11 So, you see, this thing about the hard drive, this
12 was something that Jammie Thomas did before, before she got
13 any notice from anybody that had anything to do with this
14 case.

15 The problem, though, that Jammie Thomas has is
16 that she came to our firm and she wanted representation and
17 she said that -- we asked her, Can we look at your hard
18 drive? We made the hard drive available to plaintiffs. And
19 she said, Sure. We did a forensic examination of it, they
20 did a forensic examination of it, and there was no evidence
21 on there whatsoever.

22 Our expert, who is not here today because we can't
23 afford to pay him, he's not here today because he found
24 something. Our expert found nothing on there and their
25 expert found nothing on there.

1 And then it came to pass that Jammie Thomas, she
2 had a problem with the calendar. She had a problem with the
3 calendar because she represented to us that it was in March
4 of 2004 instead of March of 2005. And this whole case is
5 going to turn on that.

6 This case isn't about right or wrong. It's not
7 about whether the record companies are the bad guys suing
8 thousands -- tens of thousands of people or whether people
9 who download are the bad guys because they share music with
10 each other.

11 This case is whether you are going to believe
12 Jammie Thomas as to whether or not it was an honest mistake
13 when she represented what dates it was that Best Buy changed
14 out her hard drive.

15 Plaintiffs also are here today because they have
16 circumstantial evidence, the name tereastarr. And they are
17 really excited about it, tereastarr, because Jammie Thomas
18 uses tereastarr on everything. She uses it on her e-mails.
19 She uses it on other web pages.

20 But ask yourself, if somebody was going to
21 download something illegally or infringe on somebody's
22 copyright, would they use the name that everybody knows that
23 they use? It makes no sense whatsoever. On Kazaa you can
24 use whatever name you can make up, and no one would make up
25 the name that everybody knows him or her by.

1 So this idea about tereastarr being -- somehow
2 proving that it was her computer doesn't get us anywhere
3 because no one can prove which computer actually did this.
4 The only evidence they have is that an IP address assigned
5 to her by Charter Communications was identified by their
6 people as having offered to share a number of files.

7 Again, this is a very, very tough job for us
8 because she didn't do this, she didn't do this. And there
9 are, again, alternative explanations as to how this could be
10 done, but we can't go out there and get evidence of maybe it
11 happened this way, maybe it could happen this way. We don't
12 know what happened.

13 But there is still a level playing field there
14 because, as the Judge will instruct you, the recording
15 companies have the burden, they have the burden of proof.
16 We don't have to prove how it really happened.

17 This is a level playing field because they have to
18 prove that Jammie Thomas, not somebody using Jammie Thomas's
19 computer, not somebody who went into her house with a
20 different computer, not somebody who used a spoof or a drone
21 or used some of these terms you're going to hear about, the
22 mumbo jumbo counsel referred to, somebody else, did this.

23 It is plaintiffs who have to prove that Jammie
24 Thomas actually did this, and I submit that on this record
25 you're not going to be able to find that she did this. They

1 will not meet their burden and I'm going to help you find
2 that.

3 Thank you for your attention.

4 THE COURT: Call your first witness.

5 MR. GABRIEL: The plaintiffs call Jennifer
6 Pariser. She's on the way. I apologize.

7 (Witness sworn.)

8 THE COURT: Good morning.

9 THE WITNESS: Good morning, Your Honor.

10 THE COURT: Would you state your true and correct
11 name for the record, please.

12 THE WITNESS: My name is Jennifer Pariser.

13 THE COURT: Spell your last -- first and last name
14 for the record, please.

15 THE WITNESS: J-e-n-n-i-f-e-r. Last name is
16 P-a-r-i-s-e-r.

17 THE COURT: You may inquire.

18 MR. GABRIEL: Thank you, Your Honor.

19 **(Jennifer Pariser)**

20 **DIRECT EXAMINATION**

21 BY MR. GABRIEL:

22 Q. Good morning, Ms. Pariser.

23 A. Good morning.

24 Q. What do you do for a living?

25 A. I am the head of litigation and antipiracy for Sony BMG

1 Music Entertainment.

2 Q. And what is Sony BMG Music Entertainment?

3 A. Sony BMG is a record company. It happens to be the
4 second largest record company in the world.

5 Q. And how is Sony BMG organized?

6 A. Sony BMG is something of an umbrella organization and
7 underneath it are record labels, the labels that artists are
8 assigned to and marketed by. Columbia, RCA, Epic, Arista
9 are labels underneath the Sony BMG umbrella.

10 Q. Can you explain what a label is.

11 A. A label is the business unit that an artist is
12 associated with and used to market a record.

13 Q. Are any of the Sony BMG entities or labels plaintiffs in
14 this case?

15 A. Yes. Sony BMG Music Entertainment itself is a plaintiff
16 and Arista Records, LLC, which is a label, is a plaintiff as
17 well.

18 Q. Would you, ma'am, please describe for the ladies and
19 gentlemen of the jury what has led Sony BMG and Arista to
20 become in lawsuits -- become involved in lawsuits like this
21 one.

22 A. Sure. This case is about music piracy and piracy is a
23 tremendous problem that is affecting the music industry. It
24 is causing billions of dollars of harm to the industry over
25 the past four or five years.

1 MR. TODER: Objection, relevance.

2 THE COURT: Overruled.

3 THE WITNESS: And it is important for Sony BMG to
4 combat this problem. If we don't, we have no business
5 anymore. And that's why we're here.

6 BY MR. GABRIEL:

7 Q. Would you, ma'am, describe the physical process that
8 brought Sony BMG Music and Arista to this case specifically.

9 A. Sure. It starts with the retention of a company called
10 SafeNet and what SafeNet does is they go on the Internet and
11 they go to various places on the Internet where music can be
12 obtained illegally, what are called peer-to-peer sites, and
13 they go on the Internet and they look for unauthorized
14 copies of the sound recordings owned by Sony BMG and the
15 other plaintiffs in the case.

16 When they find them, they make a request of the
17 person who is making them available and they get a copy from
18 that person, they download copies. After that occurs, they
19 then get additional data from the website where the music is
20 being posted that is associated with the different music
21 files and they deliver all that information to the Recording
22 Industry Association of America, which organizes this for
23 us.

24 Q. And can you just a little bit describe the kind of
25 information they send to the Recording Industry Association.

1 A. Sure. They send -- in the case of one particular user,
2 what they will capture is downloads of a handful of files,
3 the file names associated with those files, and a picture,
4 what we call screen shots, of the entirety of the music that
5 that person is making available or delivering to other
6 people on the Internet.

7 Q. And then what does the recording industry or record
8 companies --

9 A. I'm sorry. There's one other piece of information that
10 is captured which I forget to mention, which is what's
11 called the IP address of the person who is making this
12 available.

13 When these transactions occur, it's done
14 anonymously. What is captured by SafeNet is just a
15 numerical string that is associated with the person who is
16 making those files available, but that numerical string is
17 captured as well and that is also delivered to the RIAA.

18 Q. All right. And then what does the RIAA do with that
19 information?

20 A. Well, they do a few things with it. The first thing
21 they do is they listen --

22 MR. TODER: Objection, foundation, relevance.

23 THE COURT: Overruled.

24 THE WITNESS: The first thing they do is they
25 listen to the files that were downloaded. When I say

1 "files," I mean music. These are music files. They're not
2 documents. They're sound -- copies of sound recordings.
3 And the first thing the RIAA does is they listen to the
4 files that were downloaded to make sure that the music is
5 what the file name represents them to be.

6 After that occurs, they take the IP address, that
7 numerical string, and they deliver it to the RIAA, which
8 then attempts to find out who is behind that numerical
9 string.

10 BY MR. GABRIEL:

11 Q. Can you describe, just briefly, the relationship between
12 your company and the RIAA.

13 A. The RIAA, which stands for the Recording Industry
14 Association of America, is the trade organization of the
15 record industry. It represents the major record companies
16 as well as all of the -- or most of the small record
17 companies around the United States.

18 Q. And in your capacity as head of litigation for Sony BMG,
19 do you work with the RIAA in these lawsuits?

20 A. Yes.

21 Q. So the RIAA now has this information and it's listened
22 to the recordings. Then what happens with the process that
23 brought us here?

24 A. The next thing that happens is because these
25 transactions are anonymous, the next thing that needs to

1 occur is the RIAA needs to figure out who is behind that
2 numerical string.

3 So they look at the numbers and you can
4 determine -- if you're technologically savvy and you know
5 what you're doing, you can look at those numbers and figure
6 out what Internet service provider made available that
7 numerical string. Internet service providers are companies
8 like Charter, Verizon, AT&T, many others.

9 And what will occur is the RIAA will issue a
10 subpoena for information to those Internet service providers
11 to find out who is behind those numerical strings.

12 Q. And did, in fact, the record companies do that?

13 A. They did -- they do it all the time. They did it in
14 this case.

15 MR. GABRIEL: Your Honor, I have a number of
16 exhibit books. May I approach and bring them up to the
17 witness?

18 THE COURT: You may.

19 MR. GABRIEL: Your Honor, we also have a set of
20 exhibit books for the Court and I think we've given them to
21 Mr. Toder. May we approach and give the Court its copies?

22 THE COURT: You may.

23 BY MR. GABRIEL:

24 Q. Ms. Pariser, can I ask you to find Plaintiffs'
25 Exhibit 14 in one of those books in front of you.

1 A. Okay.

2 Q. I think it's in Volume 3.

3 A. Okay. I have it.

4 THE COURT: 14?

5 MR. GABRIEL: 14, yes, Your Honor.

6 BY MR. GABRIEL:

7 Q. Do you recognize this document?

8 A. Yes, I do.

9 Q. What is it, please?

10 A. This is the subpoena that was issued to Charter
11 Communications to get the name of the persons associated
12 with a number of IP addresses.

13 Q. And was this subpoena sent by a law firm?

14 A. Yes, it was.

15 Q. And what's the name of the law firm that sent it?

16 A. The law firm is Shook, Hardy & Bacon, which is another
17 firm that represented the RIAA and the industry at the time.

18 Q. And was this subpoena done at your direction?

19 A. It was.

20 MR. GABRIEL: Move Exhibit 14, Your Honor.

21 MR. TODER: Your Honor, we have no objection to
22 the exhibit, but we have an objection to the attached order
23 under Rule 403.

24 THE COURT: The attached --

25 MR. TODER: There's an order attached to the

1 exhibit from the United States District Court for the
2 Eastern District of Missouri.

3 MR. GABRIEL: If I may, Your Honor, I'll represent
4 the order was attached to the subpoena.

5 THE COURT: The subpoena as marked as Plaintiffs'
6 Exhibit Number 14 will be admitted. The order will be taken
7 off.

8 BY MR. GABRIEL:

9 Q. Ma'am, so we serve the subpoena. Then what happens?

10 A. We serve the subpoena and then in this particular case
11 Charter Communications supplied the RIAA with the name and
12 address associated with each of the people on that numerical
13 string, one of which is the defendant in this case.

14 Q. And that's Jammie Thomas?

15 A. Correct.

16 Q. And after that identification was made, what did the
17 record companies do?

18 A. The RIAA gets from Charter the name and address
19 associated with the IP address from Charter, at which point
20 a letter is sent. A letter -- and in this case that was
21 done, a letter was sent to Jammie Thomas.

22 Q. Can I ask you to look at Exhibit 19, please.

23 A. Okay.

24 Q. Do you recognize Exhibit 19?

25 A. Yes. This is the letter that was sent.

1 Q. And was this also sent by the law firm of Shook, Hardy &
2 Bacon?

3 A. Yes, the same firm.

4 Q. Was this also done at your direction?

5 A. It was.

6 MR. GABRIEL: Move Exhibit 19, Your Honor.

7 MR. TODER: Your Honor, we object under Rule 403
8 and under Rule 802.

9 THE COURT: 19 will be admitted.

10 BY MR. GABRIEL:

11 Q. Ma'am, what was the purpose that this letter was sent?

12 A. This letter has a few purposes. It's two pages, single
13 spaced, so there's a lot of information in it. It describes
14 the fact that the recipient of the letter has been
15 identified by that person's ISP as engaging in unauthorized
16 trading of music. It explains that the music belongs to the
17 major record companies. They are identified. It explains
18 why unauthorized music file trading is harmful to the music
19 industry. It invites the recipient of the letter to get in
20 touch with the RIAA to talk about the situation. If they
21 have any questions, they may ask them. And it invites the
22 person to engage in conversation to settle the matter.

23 Q. Thank you. So after this letter then gets sent, what
24 happens?

25 A. Well, hopefully what happens is that the recipient of

1 the letter will take up the invitation to get in touch with
2 the RIAA. As I understand, that indeed occurred here.

3 Q. Ms. Pariser, I'm going to ask you to --

4 MR. GABRIEL: Your Honor, I am not sure of the
5 Court's practices. Once the document is admitted, may we
6 put it up on the screen so the jurors can see what we're
7 talking about?

8 THE COURT: You may show it.

9 MR. GABRIEL: Mr. Reynolds, if you would.

10 BY MR. GABRIEL:

11 Q. Ms. Pariser, you indicated the letter gives a fair
12 amount of information to the defendant. Did the letter also
13 talk about duties that the defendant has?

14 A. I'm sorry. I neglected that. It does say in the letter
15 that the recipient of the letter may not destroy any
16 evidence that they might be in possession of related to the
17 case. In the unfortunate event that we're not able to
18 resolve it amicably and we have to proceed to litigation, it
19 is legally required that the person maintain their --

20 Q. Is that shown at the bottom of the first page?

21 A. Yes, it is.

22 Q. And then would you look at the second page.

23 MR. GABRIEL: Mr. Reynolds, if you could put that
24 up.

25 THE WITNESS: That's the -- okay.

1 BY MR. GABRIEL:

2 Q. And just the second to the last paragraph, does that
3 basically confirm what you just told us, that it basically
4 invites the person receiving the letter to contact the
5 companies?

6 A. Yes.

7 Q. So after this letter gets -- I'm sorry. We're talking
8 about the second to the last paragraph, the first sentence,
9 are we not?

10 A. The second to the last paragraph, the first sentence.
11 If you have an interest in discussing this matter, including
12 settlement, the record companies request, et cetera, in ten
13 days get in touch with us.

14 Q. What happens after this letter gets sent in the process
15 that brought us here?

16 A. In this particular case what occurred is that Ms. Thomas
17 got in touch with the law firm as directed in the letter,
18 conversations occurred, and unfortunately the matter could
19 not be settled.

20 Q. And then --

21 A. And then what happens is a lawsuit starts. We then have
22 to commence a legal action in the court where the defendant
23 resides -- that's here -- in her name. Previously all
24 papers had been -- had not had her name on it. But a
25 lawsuit is commenced in the place where the defendant

1 resides in her name, discovery is taken, and a trial ensues.

2 Q. Ms. Pariser, at any point in time did you take into
3 consideration any of the individual characteristics of
4 Ms. Thomas?

5 A. Absolutely not. We don't know them. When the process
6 starts with SafeNet, they look for files on the Internet.
7 They have no idea who is at the other end of the computer.
8 They capture those files, they download them. They still
9 don't know. It's just a string of numbers.

10 They then issue a -- we issue a subpoena to
11 Charter. It's a name and an address. There's really no way
12 of knowing what characteristics the person may have who is
13 getting -- who is at the other end. All we know, what we do
14 know is that the person is delivering a huge amount of our
15 copyrighted music to others on the Internet. That's what we
16 know.

17 Q. Have you seen documents indicating a listing of the
18 sound recordings that are at issue in this case?

19 A. I have.

20 Q. Would you look at Exhibit 1, please. It would be in the
21 first binder.

22 A. Okay.

23 Q. Have you seen Exhibit 1 before?

24 A. Yes.

25 Q. And what is it, please?

1 A. It's a list of sound recordings that are at issue in
2 this case.

3 Q. And that would exclude the first recording on there,
4 correct?

5 A. Yes.

6 Q. Plaintiffs, you are aware, have decided not to pursue
7 the first recording, correct?

8 A. I'm aware of that.

9 Q. Does this list accurately reflect some of the recordings
10 at issue in this case?

11 A. Yes. Other than the very first one, all of the
12 remaining titles are in the case.

13 MR. GABRIEL: Move Exhibit 1, Your Honor.

14 MR. TODER: No objection.

15 THE COURT: Exhibit 1 will be admitted. Can you
16 excise the first --

17 MR. GABRIEL: Yes, Your Honor, we'd be happy to.
18 In fact, I won't put it up on the screen for now. We'll
19 black it out, with the Court's permission.

20 MR. TODER: Your Honor, we'd like to keep it there
21 because that is how we got the exhibit and I have questions
22 about why that is necessary here.

23 THE COURT: Show it.

24 BY MR. GABRIEL:

25 Q. Ma'am, Exhibit -- do you see Exhibit 1?

1 A. Yes.

2 Q. Do you see on Exhibit 1 --

3 MR. GABRIEL: And just for explanatory purposes
4 for Your Honor and for Mr. Toder, the Exhibit A refers to --
5 in a past iteration this was Exhibit A to something else.
6 This is Plaintiffs' Exhibit 1 in the case and there's a
7 sticker at the bottom that you'll see.

8 BY MR. GABRIEL:

9 Q. Do you see recordings for which Sony BMG and Arista
10 owned the copyrights or exclusive rights?

11 A. Yes, I do.

12 Q. Which ones, please?

13 A. In the first column it lists the copyright owner, so we
14 are talking about the third, fourth, and fifth titles.
15 That's Journey, "Don't Stop Believin'"; Destiny's Child,
16 "Bills, Bills, Bills"; and Sarah McLachlan, "Building a
17 Mystery."

18 Q. And you understand, ma'am, that Sony BMG and Arista are
19 suing on those recordings in this case?

20 A. Yes.

21 Q. And did Sony BMG and Arista do anything to confirm that
22 these were, in fact, its sound recordings?

23 MR. TODER: Objection, hearsay.

24 THE COURT: Sustained.

25 BY MR. GABRIEL:

1 Q. Have you personally listened to these sound recordings
2 to confirm they're your own?

3 A. I have.

4 Q. And were they?

5 A. They were.

6 Q. Now, you indicated, Ms. Pariser, also earlier in terms
7 of the information that MediaSentry or SafeNet gets to the
8 record companies, that they downloaded the recordings. Do
9 you recall that?

10 A. Yes.

11 Q. In what format do those come?

12 A. They are downloaded from the -- from Kazaa I believe in
13 MP3 format and then they are captured on computers owned by
14 SafeNet and then they can be moved into other forms of
15 media, you can transfer them onto CD's or whatever.

16 Q. And did you actually hear MP3 files of the three
17 recordings that we're talking about?

18 A. I did.

19 Q. Would you look at Exhibit 12, please.

20 A. Okay.

21 Q. Have you seen Exhibit 12 before?

22 A. Yes.

23 Q. What is Exhibit 12?

24 A. Exhibit 12 is a CD. It is a -- technically, this is a
25 CD-R. It is a recordable CD onto which are placed some of

1 the recordings at issue in this case.

2 Q. And are the MP3 files you just referred to on this
3 recording?

4 A. Yes, they are.

5 Q. You listened to them yourself, correct?

6 A. I did.

7 Q. And did you confirm that the three recordings that you
8 identified were the MP3's on that CD?

9 A. Yes.

10 MR. GABRIEL: Your Honor, we would -- I suppose
11 this is a conditional motion. We would move that portion of
12 Exhibit 12 that contains the three recordings owned by Sony
13 BMG and Arista.

14 MR. TODER: No objection.

15 THE COURT: Be admitted, those three songs.

16 MR. GABRIEL: Thank you.

17 BY MR. GABRIEL:

18 Q. And have you seen, ma'am, another document listing the
19 recordings at issue in this case?

20 A. Yes.

21 Q. Would you look at Plaintiffs' Exhibit 2, please.

22 A. Okay.

23 Q. Have you seen Exhibit 2 before?

24 A. Yes.

25 Q. And what is Exhibit 2?

1 A. Exhibit 2 are more recordings at issue in this case.

2 Q. And with the exception of the recording by the group
3 Godsmack, "Moon Baby," are all of those recordings at issue
4 in this case?

5 A. That's my understanding, yes.

6 MR. GABRIEL: Move Exhibit 2, Your Honor.

7 MR. TODER: No objection.

8 THE COURT: Be admitted.

9 BY MR. GABRIEL:

10 Q. Do you, Ms. Pariser, see recordings on Exhibit 2 for
11 which Sony BMG and Arista own the copyrights or the
12 exclusive rights?

13 A. Yes.

14 Q. Which, please?

15 A. Well, again, going down the first column, the first Sony
16 BMG listing is the fourth one. That's Gloria Estefan, "Here
17 We Are." Then after that is Journey, "Faithfully"; Sarah
18 McLachlan, "Possession"; Gloria Estefan, "Coming Out of the
19 Dark"; Gloria Estefan, "Rhythm is Gonna Get You." And
20 that's it.

21 Q. And you understand that Sony BMG and Arista are suing on
22 those recordings as well as the ones you've previously
23 described?

24 A. Yes.

25 Q. And are you -- did you make any efforts in your role as

1 counsel to confirm that these are your recordings?

2 A. Yes.

3 Q. What did you do?

4 A. I've seen the files and they match perfectly the artist
5 and song title associated with the copyrighted work owned by
6 my company.

7 Q. Ma'am, you identified, as I counted them, eight Sony BMG
8 and Arista sound recordings that are at issue in this case,
9 correct?

10 A. Correct.

11 Q. Do you know whether Sony BMG Music and Arista have
12 registered copyrights in any or all of those sound
13 recordings?

14 A. We have registered copyrights in all of them.

15 Q. Would you look at Exhibit 3, please.

16 A. Yes. Okay.

17 Q. And I'd ask you to flip through Exhibit 3 and see if
18 you -- tell us if you see any documents that relate to your
19 testimony that Sony BMG and Arista registered these
20 copyrights.

21 A. Okay. The first one that comes up in the book is
22 Journey and it's SR number 30-088. We register copyrights
23 by album, not by track. So this is for the album *Escape*.
24 That's the first one.

25 The next one --

1 MR. TODER: Counsel, could you refer to Bates
2 numbers?

3 MR. GABRIEL: Yes. Thank you.

4 THE WITNESS: It's Bates 0016.

5 The next one is Destiny's Child for the album
6 *The Writing's On the Wall*. This is SR 268-936 and that is
7 Bates 28 and 29.

8 The next one is *Surfacing* by Sarah McLachlan.
9 That's SR 243-027, Bates 26 and 27.

10 The next one is Gloria Estefan, *Cuts Both Ways*,
11 SR 0 -- I'm sorry -- 107-742. That's Bates 583 and 584.

12 The next one is Journey for the album *Frontiers*,
13 SR 43-228, Bates number 571 and 572.

14 And we have Sarah McLachlan's *Fumbling Towards*
15 *Ecstasy*, SR 200-152, Bates 591 and 592.

16 The next one is Gloria Estefan, *Into the Light*,
17 SR 208-812, Bates 593 and 594.

18 Next is Gloria Estefan, *Let It Loose*, SR 83-468,
19 Bates 577 and 578.

20 I think that's it. That appears to be all of
21 them.

22 BY MR. GABRIEL:

23 Q. Did Sony BMG and Arista register all of these
24 copyrights?

25 A. Yes.

1 MR. GABRIEL: I move Exhibit -- those portions,
2 Your Honor, the eight identified in Exhibit 3.

3 MR. TODER: No objection.

4 THE COURT: Be admitted.

5 BY MR. GABRIEL:

6 Q. Now, Ms. Pariser, as you flipped through and looked at
7 all of those, did you not notice that some -- strike that.

8 Let me ask first: The copyright registration
9 forms have the name of the entity registering the
10 copyrights; isn't that correct?

11 A. That's correct.

12 Q. Did you notice that some of the names of the registrants
13 did not match exactly the name Sony BMG Music or Arista?

14 A. Yes.

15 Q. For example, you saw some that said, "CBS Records,
16 Inc."?

17 A. Yes.

18 Q. And at least one called CBS, Inc.?

19 A. Yes.

20 Q. Do Sony BMG Music and/or Arista own the copyrights in
21 all of those?

22 A. Yes, every one.

23 Q. Can you explain that.

24 A. Yes. The names on the SR's -- we call them SR's. That
25 stands for sound recording. The names on the SR's for

1 copyright registrations were the names of the company as it
2 was at the time the registration was issued. Those are
3 predecessors, predecessor corporations or prior names of the
4 companies that are here today.

5 Q. Ms. Pariser, prior to the issues that bring us here
6 today, did Sony BMG and Arista sell its recordings of
7 these -- of the songs at issue?

8 A. Yes, they did and still do sell to the public copies of
9 each one of these albums.

10 Q. And I take it -- have you seen the CD's themselves?

11 A. Absolutely.

12 Q. And was any language relating to copyright placed on the
13 CD's and on the boxes of the CD's?

14 A. Sure.

15 Q. Would you explain what language is placed on them.

16 A. On the bottom of -- typically on the bottom of the back
17 of a CD case, formerly a vinyl album, there's that small
18 print and there's a lot of stuff in the small print, but
19 among it is something -- there's a "C" in a circle and some
20 words and then there's a "P" in a circle and some words; and
21 those are what we call the copyright notices that we put on
22 the product that we sell.

23 MR. GABRIEL: Your Exhibit, Honor 5 is a set of
24 all of the CD's at issue in the case. I have pulled out, to
25 move us along, just the ones that Ms. Pariser identified.

1 May I approach?

2 THE COURT: You may.

3 MR. TODER: Excuse me, Counsel. Can I see them?

4 MR. GABRIEL: Sure.

5 MR. TODER: Thank you.

6 BY MR. GABRIEL:

7 Q. Ms. Pariser, do you recognize the CD's that I've just
8 handed you?

9 A. Yes, I recognize them. There are eight of them here.

10 Q. And do those CD's contain the recordings you just
11 described for us?

12 A. Yes.

13 Q. And do those CD's have the little "C" in the circle and
14 "P" in the circle that you just described?

15 A. Do you want me to check each one?

16 Q. Please do.

17 MR. TODER: We'll stipulate that they do.

18 MR. GABRIEL: Thank you.

19 THE WITNESS: Okay.

20 BY MR. GABRIEL:

21 Q. And I recognize the ladies and gentlemen of the jury
22 won't be able to see it from there. Could you just point
23 generally where it is.

24 A. On Journey it's down here (indicating), the bottom
25 left-hand corner. This is somewhat unusual in my

1 experience. This Destiny's Child is all the way up here
2 (indicating). Sarah McLachlan, down in the bottom, probably
3 all the way across the bottom.

4 Q. And that's good enough, Ms. Pariser. Are the same
5 notices also on the CD itself?

6 A. Yes. On the actual physical CD there will be typically
7 a logo, a trademark in the stylized font associated with the
8 company, and underneath it will be that copyright notice.

9 Q. Ma'am, have you listened to all these CD's that we just
10 handed you --

11 A. Yes.

12 Q. -- at least as to the recordings that are at issue here?

13 A. Sure.

14 Q. And are they, in fact, the recordings at issue here?

15 A. Yes.

16 MR. GABRIEL: Your Honor, we would move those
17 eight CD's, which are all part of Exhibit 5.

18 MR. TODER: No objection.

19 THE COURT: Be admitted.

20 MR. GABRIEL: Your Honor, what I would like to do
21 now -- and I will take the Court's preference -- we would
22 like to play the MP3 file versus the CD for one recording,
23 or pieces of it, if we may. We just need to put speakers
24 up, perhaps over there (indicating), so the jurors can hear.

25 THE COURT: You may.

1 BY MR. GABRIEL:

2 Q. Ms. Pariser, could I ask you to find Exhibit 12 again.
3 That was the MP3 files.

4 A. Sure.

5 Q. Can I ask you to put it in that player and find track 2,
6 if you would.

7 A. Okay.

8 Q. This is the MP3 files you identified, correct?

9 A. Yep, these are -- this is a compilation of the works at
10 issue in this case that were taken from the defendant's
11 Kazaa files.

12 Q. Would you go to track 2, please.

13 (Audio recording played.)

14 BY MR. GABRIEL:

15 Q. That's good enough. If you can shut that down. And
16 that was the MP3 file of which recording?

17 A. That's Journey.

18 Q. Now would you find the Journey CD of the same recording
19 and play that.

20 A. Sure. That's "Don't Stop Believin'." Here's the
21 authorized version. This is the same sound recording that's
22 on track 1 of the authorized version.

23 (Audio recording played.)

24 BY MR. GABRIEL:

25 Q. All right. That's good enough, Ms. Pariser. Thank you.

1 Now, you have played both the MP3 file and the
2 authorized file or track of the same recording, correct?

3 A. Yes. I have listened to the complete files of all
4 those.

5 Q. Ma'am, did Sony BMG Music or Arista ever give the
6 defendant here, Jammie Thomas, a license or any
7 authorization to copy any of their sound recordings?

8 A. No.

9 Q. Did Sony BMG or Arista ever give the defendant, Jammie
10 Thomas, a license to distribute any of their sound
11 recordings?

12 A. No.

13 Q. You talked earlier about the share directory --

14 A. Yes.

15 Q. -- correct?

16 A. Yes.

17 Q. Have you seen the share directory yourself?

18 A. Yes.

19 Q. Would you look at Exhibit 6, please.

20 A. Okay. I've got it.

21 Q. Is this the share directory you've seen a copy of?

22 A. Yes.

23 Q. I'm sorry. Excuse me. Ms. Pariser, could you -- in the
24 share folder did you see recordings owned by Sony BMG or
25 Arista other than the ones that you are suing on in this

1 case?

2 A. Yeah. There's a lot.

3 Q. Just cite a couple of examples, would you?

4 A. Okay. There's, it looks to be, about 25 or 30 Christina
5 Aguilera. There's some Barbra Streisand. There's more from
6 the same artists we've seen already, Destiny's Child.
7 Celine Dion has a very large number of recordings in here.

8 Q. That's good enough.

9 A. Okay.

10 Q. Could you explain to the ladies and gentlemen of the
11 jury why you didn't assert claims for all of those.

12 A. Copyright damages in a civil case like this one can be
13 based on a couple of different ways of measuring. In this
14 case we're suing for what's called statutory damages.
15 There's a range of damages in the Copyright Act and it's a
16 very large range. It goes all the way to \$150,000 per work.
17 If we had sued on every one of the files in Ms. Thomas's
18 share directory, the damages would be astronomical; and we
19 have no interest in pursuing cases like that.

20 Q. Ma'am, you've heard the actual recordings, the
21 legitimate recordings. Can you again briefly describe what
22 goes into creating and marketing one of the legitimate
23 recordings in this case.

24 A. Sure. It's a very lengthy process. It starts with
25 what's called A&R. That's -- A&R stands for artist and

1 repertoire. We have --

2 THE COURT: Excuse me. Maybe this would be a good
3 place to stop, before she gets into her answer. We'll stop
4 here. We'll start up again at 1:30. Have a good lunch.
5 All rise for the jury.

6 (Jury excused.)

7 **IN OPEN COURT**

8 **(JURY NOT PRESENT)**

9 THE COURT: Please be seated. Counsel, anything
10 that we need to go over before we get started again after
11 lunch?

12 MR. GABRIEL: Not from the plaintiffs, Your Honor.
13 Thank you.

14 MR. TODER: Not from the defendant.

15 THE COURT: All right. We'll recess.

16 (Lunch recess taken at 12:30 p.m.)

17 * * * * *

18 (1:30 p.m.)

19 **IN OPEN COURT**

20 **(JURY NOT PRESENT)**

21 THE COURT: Counsel, you wanted to speak to me.
22 Is there some issue that you wish to --

23 MR. GABRIEL: I'm not sure, Your Honor. I know
24 that there was an e-mail from a witness.

25 THE COURT: Yes.

1 MR. GABRIEL: I mean, it is what it is. We
2 subpoenaed him two weeks ago and his boss called, I guess,
3 this morning and was raising an issue about it. He's a
4 witness. He was properly subpoenaed. I don't know --

5 THE COURT: I just wanted to let you know about
6 it.

7 MR. GABRIEL: We appreciate that.

8 THE COURT: Any other issues?

9 MR. GABRIEL: Yes, Your Honor, one other issue.
10 I'm not quite sure how the Court treats sequestration
11 orders. We would like to have our expert have permission to
12 sit in the courtroom and listen to the testimony because he
13 relies on it for the opinions that he gives. I understand
14 Mr. Toder is going to object to that, but I do believe that
15 experts are permitted to hear the other evidence.

16 MR. TODER: Generally experts are, Your Honor, but
17 we -- he's not an expert yet in this court and we expect to
18 vigorously challenge his status as an expert here.

19 THE COURT: He may sit in and you still will be
20 able to challenge.

21 MR. TODER: We have one other item we would like
22 to bring to your attention. I see that the Court now has
23 instructed the jury that this is Capitol Records, et al. vs.
24 Jammie Thomas, you dropped Virgin.

25 THE COURT: Yes.

1 MR. TODER: We just want to make a point or a
2 record that we certainly hope this isn't changing the
3 caption of the case generally, because as a prevailing party
4 we intend to seek attorney's fees from Virgin Records and I
5 think that will certainly -- there will be more proceedings
6 involving Virgin Records long after we're done here this
7 week.

8 THE COURT: All right. The Court doesn't feel
9 that with the Court dropping Virgin from the caption that's
10 going to stop you from bringing your motions to the Court
11 dealing with attorney's fees.

12 MR. TODER: Thank you, Your Honor.

13 THE COURT: Anything further?

14 MR. GABRIEL: No, Your Honor. Thank you.

15 THE COURT: Let's bring the jury out.

16 **IN OPEN COURT**

17 **(JURY PRESENT)**

18 THE COURT: Let's continue.

19 MR. GABRIEL: May I proceed, Your Honor?

20 THE COURT: You may.

21 MR. GABRIEL: Good afternoon to you. Good
22 afternoon, Ladies and Gentlemen.

23 BY MR. GABRIEL:

24 Q. Ms. Pariser, before we broke for lunch you had played
25 the MP3 recording of Journey and also the actual CD. It

1 occurred to me, as I thought about it, I'm not sure your
2 testimony was clear.

3 A. Okay.

4 Q. Could you explain what the MP3 was that you played for
5 the jury.

6 A. Sure. I believe that's marked as Plaintiffs'
7 Exhibit 12. I described it as a CD-R. It's a recordable CD
8 medium. What's on it is copies of the downloaded files that
9 SafeNet captured from the defendant's share directory on
10 Kazaa. In other words, SafeNet in doing its work downloads
11 a copy of various of the sound recordings at issue in the
12 case.

13 That copy when they first capture it is on
14 SafeNet's computer, it's on the memory of SafeNet's
15 computer. And we couldn't possibly bring that big thing
16 into the courtroom, so we made another copy and that is what
17 is contained on Exhibit 12. And so this, what is on
18 Exhibit 12, is a copy of what was in the share directory
19 that SafeNet downloaded from the defendant's computer.

20 Q. Thank you for that.

21 When we broke I may have asked you or started to
22 ask you the following question and that is if you would
23 explain to the ladies and gentlemen of the jury what goes
24 into creating and marketing recordings at Sony BMG and
25 Arista that are at issue in this case.

1 A. Sure. And can I just get the CD's back? It starts --

2 MR. GABRIEL: May I approach, Your Honor?

3 THE COURT: You may.

4 MR. TODER: I have an objection to relevance.

5 THE COURT: Overruled.

6 THE WITNESS: It starts with A&R. A&R stands for
7 artists and repertoire. That is a group of people within
8 the record company who go out and look for musicians, for
9 talent. They go -- they're all over the country. They go
10 to clubs. They go to performances. They go to -- they're
11 college students, often, who hear bands. They hear local
12 talent. They hear things on the radio.

13 And all of this data gets fed into the company,
14 who then makes decisions about what artists are going to be
15 signed to the label. And it's a rather -- it's thought to
16 be the most important part of making a record because this
17 is where the fundamental creative decisions are made, what
18 artists are going to sell records.

19 Somebody might sound great in a particular venue
20 but isn't going to translate very well or performs a certain
21 genre of music that just isn't popular anymore. I mean, I'm
22 sure everybody has seen sort of waxes and wanes in
23 popularity of certain genres of music.

24 It's the job of the A&R people to have their
25 finger on the pulse of what is going to be -- not what is

1 currently popular, but what is going to be popular. And
2 they go out and look for it and they find it and they bring
3 it back to the record company and then artists are signed to
4 recording contracts.

5 Then more work happens. The artists are given
6 money by the company to make records. They go into --
7 typically they go home for a while and they write music, if
8 they're songwriters in addition to performers. And they go
9 write music wherever they write it, in their home studios or
10 in Starbucks or their basement or whatever. And they write
11 music and they make demos, they make unfinished homemade
12 copies of their music.

13 And they bring it back to the record company and
14 they play it for the executives at the company. And the
15 executives then get involved and say, We like this track a
16 lot. We don't like this one so much. Let's do something --
17 we'll do some more with this. We'll add some more vocals.
18 This one would sound great with a violin, et cetera. And
19 that process goes on for a very long time and a lot of
20 creative energy and money is spent on this process.

21 Then the artist goes to the recording studio,
22 often with a group of other musicians who play along with
23 them. All of these people are paid and compensated for
24 their time. And recording studio time is purchased. It's
25 fairly expensive.

1 And tracks are laid down, often a lot more than
2 the ones that ultimately get on a CD. They might record two
3 dozen tracks at a given recording session, which might take
4 place over a number of days and weeks, and then decisions
5 are made about which of those tracks are going to sound best
6 on a finished album. A group of them are selected.

7 Often a decision will be made about what albums --
8 what tracks are going to be considered the lead-off or hit
9 singles. Those are the ones that go on the radio. Not
10 every track on an album is going to be pulled out as a
11 single. So singles are created.

12 And then there is marketing that goes around the
13 release of an album. Even before an album is distributed to
14 retailers to be sold, there's what we call pre-release
15 marketing. So the company will purchase ads in *Rolling*
16 *Stone* and other music magazines. They will set it up with
17 local radio stations. They'll send advance copies of the
18 single to local radio stations. We'll send the artist to
19 talk shows, radio talk shows and television talk shows, to
20 talk about the album that's going to come out. Often an
21 artist will tour, which is to say perform live in venues,
22 will tour in support of an album before the album is even
23 released. This is all done ahead of time so that by the
24 time the album comes out, you have enthusiasm built into the
25 marketplace before the product even arrives.

1 And then the album is released by the company to
2 retail stores and is made available for sale on the
3 Internet. And then more marketing occurs after the album is
4 released. We also pay for an artist to go on tour. And
5 hopefully we sell records.

6 BY MR. GABRIEL:

7 Q. You mentioned just a minute ago marketing on the
8 Internet. You're talking about legally, correct?

9 A. I'm sorry?

10 Q. When you talked about marketing, the albums are made
11 available on the Internet?

12 A. Oh, yes, yes. I mean through services such as iTunes,
13 Rhapsody, any other legitimate source of acquisition of
14 music.

15 Q. Ms. Pariser, has Sony BMG and Arista been harmed here?

16 A. Yes.

17 Q. Would you describe that harm.

18 A. Sure. There's one thing you have to understand about
19 the record industry that I have found is a very common
20 misperception, which is that we only make money by selling
21 CD's and now by selling digital downloads.

22 Although we use radio as a tool to promote the
23 sale of albums, when a song is played on the radio, record
24 companies make absolutely nothing. When the artists tour,
25 we make absolutely nothing. When artists sell T-shirts or

1 posters or pens, when they perform in videos or in movies,
2 we make nothing. There is one and only one way that a
3 record company makes money and that is selling these CD's or
4 selling them digitally on the Internet.

5 So when people steal it either at Target -- if
6 they steal it, if they shoplift it out of stores, if they
7 copy it off Kazaa, if they take it without compensation, it
8 kills the company. So of course we're harmed.

9 Q. And has the harm been felt in terms of the size of your
10 companies?

11 A. I haven't done an actual study, but it's my personal
12 belief just based on estimates -- I suppose I could find
13 this stuff out if I wanted to -- that the company is half
14 the size today that it was when I started in the year 2000,
15 which is to say it employs half as many people worldwide. I
16 have seen entire divisions cut, I have seen foreign offices
17 closed, I've seen thousands of hardworking people lose their
18 jobs because of piracy.

19 Q. And does that -- when you talk about employees being
20 cut, does that relate to the artist roster as well?

21 A. Oh, for sure. The artist roster is a term of art that
22 means the list of artists that are currently assigned to the
23 company and who are putting out new records. We still sell
24 a catalog of a lot of artists, but the artists who are
25 making new music is on the artist roster and the artist

1 roster represents, you know, how many artists we stand
2 behind and market and promote; and it has shrunk
3 dramatically and that's a lot less music that is made
4 available to the public.

5 Q. And you've heard us talking about and you've talked
6 about copying and distribution on these peer-to-peer file
7 trade networks, correct?

8 A. Yes.

9 Q. Is there any difference in the harm between copying
10 illegally or distributing illegally?

11 A. Yes. The terminology gets a little complicated, but
12 when an individual person makes a copy for themselves, which
13 is a nice way of saying steals one copy and just uses it for
14 their personal consumption, I suppose we've been harmed to
15 the tune of one CD.

16 However, when that person takes that copy and then
17 gives it to tens of thousands of other people, a vast
18 network of people have now gotten a copy for free that they
19 didn't have to buy and so the harm is increased
20 exponentially.

21 MR. GABRIEL: One moment, Your Honor.

22 (Pause.)

23 MR. GABRIEL: I have no further questions. Thank
24 you.

25 THE COURT: You may inquire.

1 MR. TODER: Thank you, Your Honor. I've got to
2 fire this up here. Good, it works.

3 **CROSS EXAMINATION**

4 BY MR. TODER:

5 Q. Good afternoon.

6 A. Hi.

7 Q. Earlier in your testimony today I think you referred to
8 an IP address of a person?

9 A. Yes.

10 Q. IP addresses don't identify individual human beings, do
11 they?

12 A. No.

13 Q. They actually identify accounts that are held by ISP's
14 or Internet service providers, do they not?

15 A. That's true.

16 Q. Let me show you Plaintiffs' Exhibit 6. I'm not real
17 good at this.

18 MR. GABRIEL: While Mr. Toder is doing that, I'd
19 note Exhibit 6 is not yet in evidence. We would stipulate
20 to its admissibility.

21 MR. TODER: I'm sorry. Your Honor, we have no
22 objection to their Exhibit 6, which is right here.

23 THE COURT: 6 will be admitted.

24 BY MR. TODER:

25 Q. Exhibit 6 is a screen shot, is it not?

1 A. Yes.

2 Q. And you were talking about screen shots a little
3 earlier. As best as you can see this, do you see over on
4 the left-hand side we have "tereastarr@kazaa"?

5 A. Yes.

6 Q. Is there an IP address anywhere published on this screen
7 shot?

8 A. I can't see one on the screen shot, no.

9 Q. Well, you know generally that IP addresses don't appear
10 on screen shots, such as the ones we're looking at today?

11 A. That's right.

12 Q. That's true. So really the only way that you have any
13 clue as to who might do this is by virtue of the fact that
14 someone called themselves tereastarr@kazaa.com, correct?

15 A. No, no. Screen shots don't sort of float around out
16 there on their own.

17 Q. I'm not saying that they do. But these screen shots
18 were screen shots that were acquired by MediaSentry, who
19 works for plaintiffs, correct?

20 A. Yeah. It's MediaSentry, SafeNet, same thing, right.

21 Q. Or SafeNet. And when they got these screen shots, I
22 understand that if you put this and some other evidence
23 together you come up with some theory as to who did this,
24 but these in and of themselves don't identify an individual
25 person, correct?

1 A. In and of themselves -- well, let me think about that.
2 I'm not quite sure what you mean by "in and of themselves."
3 We have a host of evidence that --

4 Q. I'm not talking about the other evidence. I'm just
5 looking at this screen shot. I mean, you can look at all
6 kinds of little letters, you can look at numbers, and you
7 can look at all kinds of things on there, but the thing that
8 identifies who that could be is tereastarr@kazaa, correct?

9 A. That's right.

10 Q. Now, you testified that Exhibit 12, these contain some
11 MP3 files?

12 A. Correct.

13 Q. And you compared them to WAV files, the files you have
14 on a CD? You played them here, I believe, didn't you?

15 A. Those aren't WAV files.

16 Q. Well, they're -- what are they? They're the files on
17 the CD, though, right?

18 A. Yeah, you could say that.

19 Q. But you acquired -- or I should say MediaSentry acquired
20 those songs, those MP3 songs, by downloading from a list
21 that was displayed to them on the screen shot, correct?

22 A. In speaking -- breaking it up and putting aside the
23 legitimate copy, what's on Exhibit 12 is copies of the files
24 that were downloaded by SafeNet from the files made
25 available to it on the Kazaa system. I --

1 Q. That's --

2 A. I don't believe that comes from the screen shot.

3 Q. I don't mean to interrupt you, but you testified that
4 these were downloaded from defendant's computer.

5 A. They are downloaded from the share directory on
6 defendant's computer.

7 Q. How do you know it's defendant's computer? Just by
8 looking -- you can't just look at the MP3's to tell what
9 computer it came from.

10 A. You -- that's correct. You need to get the evidence
11 from Charter linking the information back to the defendant,
12 which we did.

13 Q. Okay. But what you did was is that you had MediaSentry
14 download files that were offered by someone on the Internet
15 through Kazaa?

16 A. Right.

17 Q. And copies were made of those files?

18 A. Right.

19 Q. And these are the files that you have on Exhibit 12,
20 correct?

21 A. Yes.

22 Q. So to say that it was actually defendant's computer,
23 that's ultimately what you hope to prove during these
24 proceedings, but there's nothing on the screen shots,
25 there's nothing that came from what MediaSentry brought down

1 that identifies anything other than ultimately defendant's
2 IP address?

3 A. Yes, exactly.

4 Q. And if someone, if someone hypothetically was in
5 defendant's house and took their -- let's just say there's a
6 culprit out there. Let's say there's a culprit out there
7 who calls themselves tereastarr@kazaa and they had a
8 computer with all this information on there and they plugged
9 it into defendant's modem in her home. You could
10 conceivably have what you have here in Exhibit 12, correct?

11 MR. GABRIEL: Objection, calls for speculation.

12 THE COURT: Overruled. It's a hypothetical. Go
13 ahead.

14 THE WITNESS: Somebody masquerading as tereastarr
15 breaks into someone's house, a house that has an IP address
16 associated with it, and calls up Kazaa from that property, I
17 suppose that's hypothetically possible.

18 BY MR. TODER:

19 Q. Well, hypothetically another computer with all this
20 stuff on there could have -- MediaSentry could have
21 downloaded it from it if that was true, correct?

22 A. It could have -- that's true. The person also -- the
23 person has to intend -- as I understand the evidence in the
24 case, that person would have to have intended to implicate
25 the defendant because that hypothetical marauder is using

1 Ms. Thomas's known handle, tereastarr.

2 Q. I didn't mean to come into a hypothetical where we keep
3 adding things to it. My simple point is that you testified
4 that the songs, the MP3 files, that were on Exhibit 12 you
5 said came from defendant's computer.

6 A. It came from the computer that was at the other end of
7 the line associated with the IP address from Charter.

8 Q. Thank you. And you believe that was defendant's?

9 A. Correct.

10 Q. Thank you very much. Now, do you recognize Exhibit A
11 here? I have some highlighting on there.

12 A. Yes.

13 Q. I don't think it's going to get any better. You can
14 read it. Anyway, this is an exhibit that was attached to
15 the Complaint in these proceedings?

16 A. That's correct.

17 Q. And I believe that you actually signed a verification to
18 the Complaint, among other people?

19 A. Yes.

20 Q. At the time you said that Virgin Records America, Inc.,
21 you identified them as one of the other plaintiffs in this
22 and now we find out that Virgin Records America, Inc., has
23 withdrawn from this case, that they are no longer claiming
24 that that particular song and recording title should be
25 subject to this lawsuit. Can you tell us why?

1 A. I don't know. I didn't verify as to the facts related
2 to the other plaintiffs.

3 Q. But you certainly are associated, you said, with the
4 RIAA. You all seem to sort of work together on this.
5 You're co-plaintiffs. You have the very same lawyer. Are
6 you telling me that you don't know why one of your fellow
7 co-plaintiffs decided to bail out of the case when --
8 recently, today as a matter of fact?

9 A. That's exactly what I'm telling you. I'm doing all I
10 can to keep all the facts related to my own company in my
11 head. If I have to add Virgin in there too, I think I'd
12 explode.

13 Q. We don't want you to explode.

14 A. Okay. Thanks.

15 Q. We don't want you to explode.

16 Speaking of signing things and verifying things
17 under oath, on August 28, 2007 in New York City you signed
18 under oath a declaration that was used in a motion in these
19 proceedings, did you not?

20 A. I did.

21 Q. You did. And one of the things that you said in that is
22 that plaintiffs observed defendant infringing them. Do you
23 recall that?

24 A. Plaintiffs observed defendant infringing the recordings
25 at issue.

1 MR. TODER: May I approach, Your Honor?

2 THE COURT: You may.

3 BY MR. TODER:

4 Q. I don't want to be unfair. Just take a look at
5 paragraph 4 of your declaration.

6 A. Okay.

7 Q. You say there under oath that plaintiffs observed
8 defendant infringing. What plaintiffs actually observed
9 Jammie Thomas infringing something? Was it Virgin? Was it
10 Capitol? Was it somebody that works for Sony? Did you
11 people actually observe defendant infringing?

12 A. Obviously nobody sat next to her in her computer room
13 and watched her infringe the recordings, but it's very clear
14 to us, based on the evidence we received from Charter and
15 from SafeNet, that she infringed our sound recordings.

16 Q. May I have that back?

17 A. Sure.

18 Q. So it's your testimony under oath that you really didn't
19 observe, but you signed this because you said it's clear to
20 you, correct?

21 A. I think "observation" can mean a number of different
22 things. I observe it in the way that people take notice of
23 something. I have taken notice of the fact that Ms. Thomas,
24 who owns a particular IP address --

25 MR. TODER: Object. This is nonresponsive, Your

1 Honor. It was a "yes" or "no" question.

2 THE COURT: Sustained.

3 BY MR. TODER:

4 Q. Do you recall testifying a little bit about what you
5 have here in Exhibit 19?

6 A. Yes.

7 Q. And I again apologize for the fact this is out of focus.
8 I was going to put these in the computer, but --

9 THE COURT: Excuse me. Can you help him out on
10 this?

11 MR. TODER: I hit auto focus. You think computers
12 are a fad that are going to go the way of the Hula Hoop when
13 you use things like this. All you can do is auto, right?
14 That's close. I think we can still read that.

15 BY MR. TODER:

16 Q. Can you read this okay?

17 A. Honestly, no, but I have a copy in front of me.

18 Q. That's great.

19 A. If it's all right, I will refer to the piece of paper.

20 Q. Absolutely. That's great. You were explaining this
21 letter, you were talking about that a little bit. How much
22 are you suing, you Sony, how much are you suing the
23 defendant for?

24 A. We are suing her for a number that will ultimately be
25 the jury's determination, but in the statutory range between

1 750 and 150,000 dollars per work.

2 Q. So you want at least \$750 from her for each song that
3 Sony claims was stolen?

4 A. That is what is derived from the Copyright Act, so yes.

5 Q. You're not suing for actual damages?

6 A. Correct.

7 Q. You actually have a choice, you could sue for actual
8 damages or you could sue for statutory damages, right?

9 A. Exactly.

10 Q. And what are your actual damages caused by whoever
11 downloaded 26 songs, 25 songs now, off the Internet on
12 February 21st? Have you ever stopped to think about what
13 those damages might be?

14 MR. GABRIEL: Objection, relevance.

15 THE COURT: Overruled.

16 THE WITNESS: Yes, but first let me -- can I
17 please correct something you said in your question?

18 THE COURT: Excuse me. You answer the question
19 that's before you.

20 THE WITNESS: Okay. No, we haven't stopped to
21 calculate the number that -- the amount of damage that has
22 been suffered by persons downloading 25 tracks, but I don't
23 think that's what's at issue in this case either.

24 BY MR. TODER:

25 Q. You don't? Well, first of all, you said that people who

1 download, they give it to tens of thousands of other people?

2 A. Exactly.

3 Q. Do you know whether or not whoever downloaded those 26
4 songs on February 21st, do you know if they gave it,
5 actually gave it to tens of thousands of other people; do
6 you know that?

7 A. I know that 25 songs, among others, were distributed on
8 the Internet to any -- to the millions of Internet
9 subscribers.

10 Q. Well, the first -- so the answer to my first question
11 would be no, correct, you don't know?

12 A. Yes, I do know.

13 Q. All right. I'll ask the question again because I think
14 I lost it somewhere in that. Of the 25 songs that were
15 offered on February 21st by someone who used the name
16 tereastarr@kazaa.com --

17 A. Yes.

18 Q. -- do you know that these songs went out to tens of --
19 tens of thousands of people actually acquired those songs
20 and put them on their computer?

21 A. I don't know how many people made downloads from the
22 particular copies available in this share drive, but --

23 Q. The only evidence we have in this case right now is that
24 one entity did that, MediaSentry, who works for you,
25 correct?

1 A. We know that -- I cannot identify the particular other
2 entities, other than SafeNet, who acquired copies from the
3 defendant, but I know that many people did.

4 Q. You do? How do you know that many people did of those
5 25 songs that were allegedly downloaded by someone using
6 Kazaa on February 21st; how do you know that?

7 A. That's the way the system works.

8 Q. Oh. So that's the way the system works, but you don't
9 know about those particular songs, correct, from that screen
10 shot?

11 A. I don't know from the screen shot.

12 Q. What do you know from?

13 A. I know that the music that -- I know that each one of
14 the 25 songs was distributed through the Kazaa network
15 and --

16 Q. What do you mean by -- I'm sorry. What do you mean by
17 "distributed"?

18 A. It is -- they were copied. They were copied from her.
19 They were made available for copying and they were copied.

20 Q. Okay. You have to have two people to -- at least two
21 people to distribute something, do you not?

22 A. Typically, yes.

23 Q. So you've got somebody acting as tereastarr@kazaa.com.
24 In order for them to distribute these 25 songs, somebody had
25 to acquire these 25 songs in order for there to be a

1 distribution, correct?

2 MR. GABRIEL: Objection, Your Honor, relevance and
3 this calls for a legal conclusion.

4 MR. TODER: It's --

5 MR. GABRIEL: There's a legal issue here and I can
6 explain it at the bench if Your Honor prefers.

7 THE COURT: Sustained.

8 BY MR. TODER:

9 Q. You can't identify an entity other than MediaSentry or
10 SafeNet that actually copied songs off of someone using the
11 name tereastarr@kazaa.com on February 21, 2005, correct?

12 A. I don't know particular names of entities.

13 Q. You just think that they exist because that's how it
14 usually happens, right?

15 A. It has to happen that way. Otherwise the system breaks
16 down. That's the way Kazaa works. No one is --

17 THE COURT: Excuse me, ma'am.

18 THE WITNESS: I'm sorry.

19 THE COURT: You are going to have to listen to the
20 question and answer the question. What is your specific
21 knowledge, not some hypothetical, about how the system
22 works? We're talking about a specific song.

23 BY MR. TODER:

24 Q. On February 21st, those 25 songs, as to who they were
25 distributed to.

1 A. I don't know the reference to the particular date. I
2 know that SafeNet acquired copies of them. That's all I
3 know in terms of who I can identify.

4 Q. Thank you. And SafeNet works for you guys, right?

5 A. Correct.

6 Q. Do you work with SafeNet or MediaSentry when they go
7 about acquiring names in their investigations?

8 A. They work for us, yes.

9 Q. Do you supervise them?

10 A. Not directly.

11 Q. Do you make certain that they're careful about what
12 they're doing?

13 A. I hope they are careful, yes.

14 Q. How many dead people have you sued?

15 A. I don't know.

16 MR. GABRIEL: Objection, Your Honor, relevance,
17 403.

18 THE WITNESS: Can I expound on that a little bit?

19 THE COURT: Excuse me.

20 THE WITNESS: I'm sorry.

21 THE COURT: Sustained.

22 BY MR. TODER:

23 Q. Have you sued people that turned out not to be people
24 who ended up sharing or copying or distributing copyrighted
25 materials, as alleged in the complaints?

1 MR. GABRIEL: Same objections, Your Honor.

2 THE COURT: Overruled. She can answer that.

3 THE WITNESS: I know that we have terminated
4 lawsuits against certain defendants who we felt we didn't
5 have sufficient evidence to continue the case against.

6 BY MR. TODER:

7 Q. Do you recall the name Gertrude Walton as being one of
8 them?

9 A. No, actually.

10 Q. You've never heard the name Gertrude Walton?

11 A. I don't want to say I've never heard of it. It doesn't
12 come to mind right now.

13 Q. Perhaps I can refresh your recollection.

14 MR. GABRIEL: Your Honor, objection again,
15 relevance, foundation, 403.

16 MR. TODER: Your Honor, I am testing the witness's
17 credibility about how carefully they're going about their
18 business.

19 THE COURT: Overruled. Continue.

20 BY MR. TODER:

21 Q. You're not aware that Gertrude Walton was deceased at
22 the time that she was sued?

23 A. Deceased at the time she was sued? Well, she might have
24 been, but that doesn't mean that she wasn't alive when the
25 infringements occurred.

1 Q. Do you know whether or not she was -- that when she was
2 alive she did any infringing?

3 A. I assume --

4 Q. We don't want you to assume anything.

5 A. Okay.

6 Q. We want to know what you know.

7 A. Well, I don't remember that case at all, so I don't know
8 anything, but --

9 Q. Thank you. How about the name Sarah Ward, are you
10 familiar with the Sarah Ward case, someone who was sued and
11 it turned out it wasn't Sarah Ward? Have you ever come
12 across that name in your work with MediaSentry?

13 A. It rings a bell, but I don't recollect the
14 circumstances.

15 Q. How about Candy Chan?

16 A. Again, I recollect the name, but I don't recall with
17 precision what the circumstances of that case are.

18 Q. Paul Wilke?

19 A. No memory of that.

20 Q. Do you know what percentage of the people that
21 MediaSentry identifies as having been a culprit of some
22 sort, how many of them turn out not to be, do you have any
23 percentages that you know of as opposed to, you know, assume
24 or guess; or is that something I should take up with
25 MediaSentry?

1 A. They would certainly be a more accurate source than
2 myself.

3 Q. Okay.

4 A. I've been very satisfied with their work and know that
5 any problems we have are exceptional.

6 Q. You've been very satisfied with their work?

7 A. Yes.

8 Q. And that's because -- how many suits do you think the
9 RIAA has filed in the last three or four years?

10 A. A few thousand.

11 Q. Would you say more like 20,000?

12 A. No, I think that's probably a bit of an overstatement.

13 Q. Probably or is it an overstatement? Do you have a
14 number?

15 A. I would have to take out a calculator, but I would say
16 something less than 20,000.

17 Q. Okay. And you guys have gotten millions and millions of
18 dollars from these suits, have you not?

19 MR. GABRIEL: Objection, relevance, 403.

20 MR. TODER: Your Honor, the witness testified
21 about how piracy has killed the company and how it's half
22 the size it is today. She opened this up.

23 THE COURT: Overruled.

24 THE WITNESS: We've lost money on this program.

25 BY MR. TODER:

1 Q. You said that Sony is half the size that it is today
2 because of, you said, piracy?

3 A. Yes.

4 Q. It couldn't be because a CD costs \$18 nowadays, could
5 it?

6 A. A CD doesn't cost \$18 now.

7 Q. Some do, don't they?

8 A. I haven't seen one at that price point in a very long
9 time.

10 MR. TODER: I have no further questions. Thank
11 you.

12 THE COURT: Any redirect?

13 MR. GABRIEL: Yes, Your Honor, just very briefly.
14 Thank you.

15 **REDIRECT EXAMINATION**

16 BY MR. GABRIEL:

17 Q. Mr. Toder asked you a fairly lengthy hypothetical -- I
18 don't remember it all -- about someone getting into
19 Ms. Thomas's house, plugging in a hard drive, using her
20 name. Do you remember generally the hypothetical you were
21 asked?

22 A. Yes.

23 Q. Do you have any evidence, have you seen any evidence in
24 this case to support any such thing?

25 A. No.

1 Q. Do you believe that that's what happened in this case
2 based on what you know about this case?

3 MR. TODER: Objection, opinion, 701.

4 MR. GABRIEL: He opened the door.

5 THE COURT: She may answer.

6 THE WITNESS: No.

7 BY MR. GABRIEL:

8 Q. Why not?

9 A. Well, I've seen the deposition testimony that the
10 defendant gave and that wasn't her contention.

11 Q. Mr. Toder showed you a declaration that you gave in this
12 case about observing Jammie Thomas. Do you believe, ma'am,
13 that the record companies did, in fact, observe who they now
14 know to be Jammie Thomas distributing their recordings on
15 Kazaa?

16 MR. TODER: Objection, relevance, foundation.

17 THE COURT: Foundation. Sustained.

18 BY MR. GABRIEL:

19 Q. You gave a declaration that Mr. Toder showed you,
20 correct?

21 A. Yes.

22 Q. And it indicated or it made a statement to the effect --
23 I don't have it with me -- that you observed Jammie Thomas
24 distributing on Kazaa, correct?

25 A. Yes.

1 Q. Was your testimony under oath true?

2 A. Yes.

3 Q. You've said a couple of times -- or Mr. Toder asked you
4 about whether SafeNet works for us guys, the record
5 companies. What's the relationship between the record
6 companies and SafeNet?

7 A. SafeNet is -- was hired through a contractual
8 arrangement by the Recording Industry Association, which I
9 explained is the industry's trade association. So
10 indirectly they work for the record companies, but they work
11 primarily on a day-to-day basis with the recording industry
12 people.

13 Q. They have a contract with the record --

14 A. Yes, they have a contract.

15 Q. They are not a division of any of the companies?

16 A. No, no.

17 Q. Can I ask you to look at Exhibit 6, the share directory,
18 please. Ma'am, can you see the bottom? There's a line
19 along the bottom that's kind of in fuzz. Can you read it?
20 It's kind of relatively low.

21 A. The one that starts, "Found"?

22 Q. No. We've pulled it out on the screen so you can
23 perhaps see it better. It's at the very bottom.

24 A. I have it.

25 Q. Now, this is the share folder that you believe to be the

1 defendant's, correct?

2 A. Correct.

3 Q. And Mr. Toder asked you questions about how many people
4 were sharing files, did he not?

5 A. He did.

6 Q. Does the Kazaa share folder say how many people were
7 sharing files at the time?

8 A. It does.

9 Q. Can you tell us what it says.

10 MR. TODER: Objection. Can you tell which time?

11 The question propounded was on February 21st.

12 BY MR. GABRIEL:

13 Q. On February -- do you understand when this share folder
14 was shot, the pictures were shot?

15 A. My understanding is that it was February 21st.

16 Q. All right. And does this document show how many files
17 were being shared at the date and time this was shot?

18 A. It does.

19 Q. What does it say?

20 A. It says that 2.3 million users were online at that
21 moment and they were sharing 848 million files.

22 MR. GABRIEL: Thank you. Nothing further.

23 MR. TODER: Can you just leave that up for a
24 second, please?

25

RECROSS EXAMINATION

1
2 BY MR. TODER:

3 Q. Do you know what the date of this screen shot is?

4 A. The screen shot doesn't have a date on it.

5 Q. So we don't know if it was February 21st, do we?

6 A. I assume SafeNet can --

7 Q. We don't have to assume anything. We don't know what
8 day it is we are looking at on the screen?

9 A. We don't know by looking at this piece of paper.

10 MR. TODER: Okay. Thanks. I have no further
11 questions.

12 THE COURT: You may step down.

13 Call your next witness, please.

14 MR. GABRIEL: The plaintiffs call Mark Weaver,
15 Your Honor.

16 Your Honor, while we're waiting, we do not
17 anticipate calling Ms. Pariser again. May she stay in the
18 courtroom?

19 THE COURT: She may.

20 (Witness sworn.)

21 THE COURT: Good afternoon. Would you state your
22 true and correct name for the record, please.

23 THE WITNESS: Mark Weaver.

24 THE COURT: Would you spell your last name for the
25 record.

1 THE WITNESS: W-e-a-v-e-r.

2 THE COURT: And your first name.

3 THE WITNESS: M-a-r-k.

4 THE COURT: You may inquire.

5 MR. GABRIEL: Thank you, Your Honor.

6 (Mark Weaver)

7 DIRECT EXAMINATION

8 BY MR. GABRIEL:

9 Q. Good afternoon, sir.

10 A. Hi.

11 Q. Mr. Weaver, what do you do for a living?

12 A. I am the director of MediaSentry operations at SafeNet.

13 Q. And do you do that today?

14 A. I do.

15 Q. Who did you work for in February of 2005?

16 A. I worked for MediaSentry. MediaSentry was acquired by
17 SafeNet in July of 2005.

18 Q. So if we use MediaSentry and SafeNet interchangeably,
19 we're talking about the same company?

20 A. Certainly, yes.

21 Q. Can you explain to the ladies and gentlemen of the jury
22 what is SafeNet.

23 A. SafeNet is a company that provides Internet information
24 security products and services to companies and to the
25 government. They provide things like secure routers,

1 encryption devices, hardware that enables companies to
2 manage software licenses, things like that. SafeNet is a
3 division of -- excuse me. MediaSentry is a division of
4 SafeNet that focuses on online antipiracy services.

5 Q. You used some phrases that I'm not sure all of us know.
6 You talked about secure routers and encryption devices.
7 What are those? Just at a high level, please.

8 A. Sure. They're pieces of hardware that are used on the
9 Internet to secure transmissions either on the Internet or
10 by phone and so forth. So if you want to -- for example, if
11 the President wants to encrypt his phone conversations, he
12 would use a secure phone, for example. Things like that.

13 Q. Since you have been at SafeNet, Mr. Weaver, has SafeNet
14 done work for the recording industry?

15 A. Yes.

16 Q. And have you personally done work for the recording
17 industry?

18 A. Yes, I have.

19 Q. Could you explain the work that SafeNet has done for the
20 recording industry.

21 A. Basically we search online file trading networks for
22 songs that are owned by the recording companies. We find
23 users that are distributing these songs and then we download
24 a sample of what they are offering and we provide a detailed
25 capture report to the record companies.

1 Q. And can you describe in a little more detail the
2 detailed capture report you just mentioned.

3 A. It's a list of all of the things that we found. It
4 would include the log files for the transactions that we
5 make between the user's computer and our computer. It would
6 contain, of course, the song files that we downloaded.
7 Things like that.

8 Q. Are you familiar with a program called Kazaa?

9 A. I am.

10 Q. What is Kazaa?

11 A. Kazaa is a file sharing application or program that can
12 be used to access the Kazaa or it's also called the
13 FastTrack network to find people that are offering files for
14 download and actually download those files. It can also be
15 used to play your media collection as well.

16 Q. Mr. Weaver, are you familiar with the term "capture" as
17 it relates to SafeNet's work for the recording industry?

18 A. Yes.

19 Q. What does that mean?

20 A. Well, a capture is whenever we would use the Kazaa
21 program to search for users that are distributing our
22 clients' songs. We would find users using the Kazaa
23 program. We would then use the Kazaa program to look at
24 everything that that user is distributing using the view of
25 user's collection feature.

1 We would then take screen shots, which are
2 basically sort of photographs of the screens, the thing that
3 your print screen on your keyboard does. We will take
4 screen shots of that share folder.

5 And then we use the Kazaa application to actually
6 download a sample of the songs that the user is
7 distributing. And while we're doing that, we'll also -- we
8 have a program which monitors the traffic going back and
9 forth.

10 And so when that process is finished, we just
11 combine all of those things up into a bundle of data that we
12 then pass onto the record companies. And that's basically a
13 capture or a capture report.

14 Q. You just used the phrase "monitors traffic." Could you
15 describe --

16 A. When I use the term "traffic," I'm talking about the
17 data that goes back and forth over the Internet. So
18 whenever I, for example, were to download a file, the file
19 has to get to me, so it will be streaming to me. And that's
20 what I mean when I say "traffic."

21 Q. Did you, Mr. Weaver, make a capture that has a bearing
22 on this case?

23 A. I did.

24 Q. And when was that?

25 A. It was on February 21st of 2005 at about 11:00 p.m.

1 Q. And can you explain generally what you did to make the
2 capture that's at issue here.

3 A. Sure. It was pretty much what I just said. We used the
4 Kazaa application to search for users. We found a user by
5 the name of tereastarr that was sharing copyrighted songs.
6 We looked at all of the songs in that user's share folder.
7 We took a screen shot of everything that we saw in that
8 share folder. We downloaded a sample of the songs that were
9 in the share folder and provided that and other evidence
10 that I've already mentioned to the record companies.

11 Q. And what is a share folder, please?

12 A. A share folder is a location on your computer that a
13 user puts material, content, audio files, video files, that
14 the user wants to distribute to other people out on the
15 Internet that are using that particular application.

16 So if I want to distribute a favorite album, I'll
17 put all the audio files from that album into my share
18 folder. So everything that's in the share folder is shared
19 using that application. If it isn't in the share folder,
20 it's not shared in the application.

21 Q. There are a number of notebooks in front of you. If you
22 can find Exhibit 6. It would be in Book 2 of 3.

23 A. Excuse me. If I can ask for a cup of water.

24 MR. GABRIEL: May I approach, Your Honor?

25 THE COURT: (Indicating.)

1 BY MR. GABRIEL:

2 Q. Do you recognize Exhibit 6, Mr. Weaver?

3 A. Yes, I do.

4 Q. What is Exhibit 6, please?

5 A. Exhibit 6 are the screen shots that we took of the share
6 folder of the user tereastarr.

7 Q. And when did you take these screen shots?

8 A. These were taken during the capture on February 21st.

9 Q. About what time?

10 A. 11:00, a little after 11:00 p.m.

11 Q. And can you just explain what this share folder shows.

12 A. Sure. It's just a snapshot of the library of the user.
13 The first column here identifies the user name, which is
14 tereastarr. The second column identifies the file name of
15 ultimately all of the files. Then there is data relating to
16 the artist, the size of the file, and then the media type.

17 If you go forward a couple pages --

18 MR. GABRIEL: Go to page 3, Tim.

19 THE WITNESS: Yeah. Right here you're looking at
20 song files here on this screen capture. You have the file
21 name in the second column, you have the artist in the third
22 column, the size of the file, and then the media type. All
23 of these are audio.

24 BY MR. GABRIEL:

25 Q. Do you know, Mr. Weaver, at the date and time you made

1 this capture how many files were in the share folder?

2 A. Kazaa is advertising 1,955 files.

3 Q. When you say "Kazaa is advertising," that's what Kazaa
4 reports?

5 A. Kazaa is reporting that down in the lower left of the
6 screen capture.

7 Q. And that's based on how Kazaa counts?

8 A. That's correct.

9 Q. And how many music files were in this share folder?

10 A. We counted over 1,700.

11 Q. At the bottom of the screen, maybe you can see --

12 MR. GABRIEL: Tim, can you pull that out?

13 BY MR. GABRIEL:

14 Q. Do you see on the bottom of this Exhibit 6 there's a
15 statement that says, "Not sharing any files"?

16 A. Right.

17 Q. Are you familiar with that?

18 A. I am.

19 Q. Could you explain to the ladies and gentlemen of the
20 jury what that means.

21 A. Yes. As I mentioned, we use the Kazaa application to
22 actually find the user and to look at the user's share
23 directory. So what you're looking at is the MediaSentry
24 computer and what this is indicating is that MediaSentry is
25 not sharing any files. Tereastarr is sharing files, they're

1 indicated on the screen, but MediaSentry is not.

2 Q. So you described your process of capture. So after you
3 have now captured and taken these screen shots, which you
4 have said are like photographs, then what did you do?

5 A. Then what we do is we actually select all of the items
6 in the user's share directory and you do that in Kazaa by
7 just saying select all, and then we select the option to
8 download. We actually start a download of everything that's
9 displayed in the share directory.

10 What that does is Kazaa creates files called DAT
11 files in the MediaSentry -- on the MediaSentry computer,
12 which contain all of this metadata that you are seeing up on
13 this screen and enables us to download these songs.

14 At that point we, however, stop the downloads,
15 shut down the Kazaa application, and we proceed to analyze
16 all of the DAT files that were created on our computer as a
17 result of starting the download from this user's share
18 directory.

19 Q. Let me stop you there for a minute, Mr. Weaver. You
20 used the phrase or term "metadata" in your answer. Could
21 you explain for the ladies and gentlemen of the jury what
22 metadata is.

23 A. Sure. Metadata is the data about the file, about the
24 song. So if you have a file that's an MP3 audio file, the
25 file itself plays music. There's, however, some information

1 in that file that doesn't play music that tells you about
2 the audio portion of the file. And it doesn't inherently
3 tell you anything. It gives users the ability to actually
4 include information about the file.

5 So you may look at this first file. The file name
6 itself is called "08 - Eric Serra" -- I can't quite read
7 it -- "Five Millenia Later.mp3," but a user somewhere has
8 assigned the artist tag in that metadata to be the artist
9 Eric Serra. There's a metatag -- there's metadata in there
10 as well for an audio type of audio. There presumably could
11 be some metadata assigning the album, assigning the artist,
12 assigning the actual song name, et cetera.

13 What this does is gives you the ability to catalog
14 your 1,955 files in a way that you can find things and sort
15 things, et cetera.

16 Q. And I'll come back and talk about metadata a bit more in
17 just a while. You also used the phrase "DAT files." What
18 are DAT files?

19 A. DAT files are specific creations of the Kazaa program.
20 It's the way Kazaa actually handles the download. Without
21 getting too technical, when you start to download a file,
22 the first thing that happens is a DAT file is created on
23 your computer and then as you download information, traffic
24 we talked about before, that DAT file grows in size with the
25 contents of that MP3 file. And when the download is

1 completed, that file becomes, then, your MP3 file. The
2 process is done and you have your music file.

3 Q. Thank you. Now, you indicated -- just picking up where
4 you left off, you said you began the download and it starts
5 running and these DAT files get created and then you stop
6 the download, correct?

7 A. That's right.

8 Q. And what happens after that?

9 A. After that we do an analysis of all of the files in the
10 user's collection. We try to separate out the number of
11 audio files and video files, et cetera, and then from that
12 list we just take a sampling of audio files to actually
13 download.

14 So then using the Kazaa application we download
15 those files. The way we do it is restart the Kazaa
16 application with only the DAT files belonging to the songs
17 we picked in that folder.

18 So when we open it up, Kazaa starts the download
19 from the user in question and we complete the download. We
20 actually get the entire MP3 file that's being distributed
21 from the user, in this case tereastarr.

22 Q. So would it be accurate, Mr. Weaver, you actually
23 started the download for all -- however many files, over
24 1,700?

25 A. We started the process, right.

1 Q. And you stopped, so you don't get complete recordings of
2 all the 1,700, but then you did get complete recordings of a
3 sampling of 11; is that right?

4 A. That's correct. We got complete MP3 files for 11 of the
5 shared files.

6 Q. Would you find Exhibit 12, please.

7 A. For 12 I have a green sheet of paper.

8 Q. There should be a CD somewhere in a box, a white CD.
9 Maybe look around you there.

10 A. Yes.

11 Q. Does that have a label with Exhibit 12 on there?

12 A. It says, "Pltf. #12."

13 Q. Mr. Weaver, did we ask you to listen to the MP3 files
14 that you downloaded?

15 A. We do that as a matter of course.

16 Q. And we asked you to do that before you came here today
17 as well, correct?

18 A. Yes.

19 Q. Could you verify -- or did you verify that Plaintiffs'
20 Exhibit 12 has eight of the recordings that you downloaded?

21 A. Yes, it does.

22 Q. And you did that in the evening of November -- excuse
23 me -- February 21, 2005 at about 11:00 p.m.?

24 A. We didn't listen to them then. We downloaded them at
25 that point. We listened to the files the next business day.

1 Q. And confirmed that those were the ones you downloaded?

2 A. That's correct.

3 MR. GABRIEL: Your Honor, I had moved in three of
4 the MP3 files, I think, in that exhibit, maybe two. I'd
5 move the entire exhibit at this point.

6 MR. TODER: No objection.

7 THE COURT: Be admitted.

8 BY MR. GABRIEL:

9 Q. Mr. Weaver, with respect to these MP3 files, where did
10 those come from?

11 A. The MP3 files came from the share directory of songs
12 distributed by tereastarr on the Kazaa network.

13 Q. So tereastarr distributed at least those to you,
14 correct?

15 A. That's correct.

16 Q. Would you look at Exhibit 1 now, please. Sorry for
17 making you jump around.

18 A. It's a different book.

19 Q. We'll put it up, if that's easier, too.

20 A. Okay.

21 Q. Mr. Weaver, have you seen Exhibit 1 before?

22 A. Yes, I have.

23 Q. To move this along, do you recognize this as the same
24 eight with the exception of the Janet Jackson recording --
25 strike that.

1 These recordings are recordings you downloaded
2 from MP3 files that evening --

3 A. Yes, they are.

4 Q. -- February 21st?

5 And is it accurate, then, that every one of these
6 recordings -- with the exception of the Janet Jackson
7 recording, which I'll take out for now, the other ones were
8 in the share directory?

9 A. They were in the share directory, yes.

10 Q. On February 21, 2005 around 11:00 p.m., correct?

11 A. Yes.

12 Q. Would you look at Exhibit 2, please. We can just put
13 that up. Well, you've got it.

14 A. I have it.

15 Q. Mr. Weaver, are you able to confirm that every one of
16 the recordings listed on Exhibit 2 was also in the share
17 directory on the evening of February 21, 2005 at around
18 11:00 p.m.?

19 A. Yes, I can.

20 Q. Now, are these the ones that are among those that you
21 began a download on each of them?

22 A. We began a download of everything in the share
23 directory, so yes.

24 Q. And then did Kazaa report back what was there to you?

25 A. Yes. The DAT files contain information on what is there

1 in the share directory, so yes.

2 Q. And what did Kazaa report back to you regarding these
3 files?

4 A. It reported back that they were available for download
5 with a specific file name and other metadata that's outlined
6 in our system log -- excuse me -- in our user log.

7 Q. Did Kazaa report back that there were MP3 files there?

8 A. Yes.

9 Q. And, again, you've indicated you started a download.
10 You could have downloaded every single one of these,
11 correct?

12 A. We could have, yes, assuming something else didn't
13 happen that would interrupt that process, but yes.

14 Q. Some computer problem or something?

15 A. Right.

16 Q. Okay. And so all of these were there for MediaSentry or
17 SafeNet to download, it started downloading, and then chose
18 not to complete the download?

19 A. We chose not to complete the download, that's right.

20 Q. But you did enough to recognize there were MP3 files
21 there, as reported, correct?

22 A. That's correct.

23 Q. Now, you mentioned that MediaSentry or SafeNet
24 downloaded a bunch of other data, correct?

25 A. Yes.

1 Q. I would like to turn to that now. Would you look at
2 Exhibit 7, please.

3 A. Okay.

4 Q. Do you recognize Exhibit 7?

5 A. I do. It's our system log.

6 Q. Could you describe for the ladies and gentlemen of the
7 jury what a system log is.

8 A. System log is something of MediaSentry's creation. It's
9 an accounting for our purposes of what happened and when we
10 initiated and completed the download process of songs from
11 this user.

12 Q. And was this system log created on the evening of
13 February 21, 2005 at approximately 11:00 p.m.?

14 A. It was actually created about an hour and a half later
15 when we finished the downloads. So that would put it into
16 the following day, the morning of the 22nd of February.

17 Q. And does it accurately reflect the system log
18 information as of that evening?

19 A. It does.

20 Q. And is this the kind of document that's created in the
21 ordinary course of SafeNet's business?

22 A. Yes, it is.

23 Q. And is it maintained in the ordinary course of SafeNet's
24 business?

25 A. Yes, it is.

1 MR. GABRIEL: Move Exhibit 7, Your Honor.

2 MR. TODER: No objection.

3 THE COURT: Be admitted.

4 BY MR. GABRIEL:

5 Q. And can I ask you, Mr. Weaver -- I recognize it's a
6 little hard to read up here. I apologize. Would you give a
7 very high level explanation of what this document shows.

8 A. Sure. The first block of data, everything above the
9 equal signs there, basically says that our system is ready
10 to go on a download process for a particular user, that
11 section right there (indicating). So it identifies the user
12 tereastarr, other internal information.

13 And then we go ahead and start the downloads and
14 the next block of data in the system log shows us when each
15 of those downloads finish. So the first line, we logged on
16 the 21st, February 21st, at 11:41 and 29 seconds and that we
17 finished downloading a file named "08 - Finger Eleven - Last
18 Scene of Struggling.mp3." And then it has the hash ID,
19 which is a unique identifier on that network.

20 And it does that for each of the 11 songs that we
21 downloaded, just one after another. If this was on a wider
22 piece of paper, it wouldn't look so messy. It would be one
23 per line.

24 And then the next block of data is where the
25 system logs when we actually started the transaction, the

1 download transaction through the Kazaa application. So
2 after we finish the download, we'll then go ahead and put in
3 the log when that happened.

4 So you look at the very first line, we logged at
5 12:25 on the 22nd that we started the download, which is the
6 handshake acknowledgement, for the Janet Jackson song "Come
7 Back to Me" at 11:09:01 on the 21st. And we logged that
8 information for each of the 11 songs that we downloaded.

9 Q. Have you described what Exhibit 7 basically shows now?

10 A. I have, yes. I mean, the whole thing finishes up and
11 shows that we finished the downloads. And then we logged
12 into our system in the final section.

13 Q. And that's on the second page here?

14 A. It's on the second page, right. This is an internal use
15 document that we use for just verifying everything is
16 working okay and keeping a log of everything that we did.

17 Q. Would you explain, what is a handshake acknowledgement?

18 A. Whenever you communicate with another machine over the
19 Internet, in essence you say, in painfully layman's terms,
20 you say, Are you there? Yes, I'm there. And so you have a
21 handshake. So we ask for a file. May I have it? Well,
22 sure. And that's the handshake.

23 Q. Thank you for that.

24 There's a question I neglected to ask you. You
25 don't have to go back to the share directory, but you were

1 looking at Exhibit 6. The ladies and gentlemen of the jury
2 haven't seen that yet. We've shown one page at a time.
3 It's a lot of pages, is it not?

4 A. The screen shots of the share, yes, some 63 or 64 pages,
5 yes.

6 Q. Can I ask you, sir, to look at Exhibit 8, please.

7 A. Okay.

8 Q. Do you recognize Exhibit 8?

9 A. I do. This is our user log, the compressed version.

10 Q. And what is that?

11 A. I indicated that we started the download by getting
12 these DAT files from this user. Well, this is a shortened
13 version of everything that we found. So this represents --
14 what the screen shot showed in a visual format, the user log
15 displays in a textual format. So it's everything that the
16 user was distributing.

17 Q. And was this document created in the evening of
18 February 21, 2005 when you were making the capture?

19 A. Yes, it was.

20 Q. And was it -- is everything on here accurate?

21 A. Yes, it is.

22 Q. Is this the kind of document that SafeNet makes in the
23 ordinary course of its business?

24 A. It is.

25 Q. And keeps in the ordinary course of its business?

1 A. It is.

2 MR. GABRIEL: Move Exhibit 8.

3 MR. TODER: No objection.

4 THE COURT: Be admitted.

5 BY MR. GABRIEL:

6 Q. Mr. Weaver, now that the ladies and gentlemen of the
7 jury can see it, can you explain what this shows.

8 A. Sure. The very first block identifies the log and this
9 is a log for the user that goes by the name
10 tereastarr@kazaa, meaning it's a Kazaa user name. It shows
11 the time and date that the log was generated and then gives
12 the Kazaa user information, user tereastarr@Kazaa, and then
13 the IP address for that user, which is 24.179.199.117.

14 Q. Can you explain what an IP address is.

15 A. At a very high level, an IP address is simply the
16 mailing address, I guess, on the Internet. It's the way in
17 which -- it's the address for any device on the Internet.
18 It's a unique number. It's like a phone number. If I want
19 to access a phone on the phone network, I dial a unique
20 number and I'm going to get the device that is assigned to
21 that number. So it's like a phone number on the Internet.
22 That's a layman's example -- explanation, to be sure.

23 Q. Does this document, sir, show -- are you familiar with
24 the term "formats" for files?

25 A. File formats, yes.

1 Q. And what is a file format?

2 A. Well, a file format is a way of describing the type of
3 file. Whenever you save a file that you have composed in
4 Microsoft Word, for example, it can be saved in the Word
5 format, so it will be a DOC file.

6 Q. When you say "DOC file," what --

7 A. I'm sorry. When you save it, by default it's going to
8 get a file name that's going to be myfile.doc; and that .doc
9 is called an extension that reflects the format of the file
10 that has been saved.

11 Q. And you've already described a number of music files you
12 found here. What format were the music files in in the
13 share directory on the evening of February 21, 2005 for the
14 user tereastarr?

15 A. Looking through these, we found all but two were in the
16 format MP3.

17 Q. And we can see an MP3 on this first page of Exhibit 8,
18 true?

19 A. That's correct. You look at -- let's just start at the
20 very bottom because it shows up very easily. The very
21 bottom file there is the name, the file name, "02 - Eric
22 Serra - Mondoshawan.mp3."

23 Q. Thank you. And there are other formats by which you can
24 download music, correct?

25 A. Other formats which music can be formatted, yes. I

1 mean, there's the Windows Media format, WMA. There's the
2 WAV format, which is sort of a raw format, ACC format, AIFF
3 format. There are many different formats for music.

4 Q. And I think you indicated that all but two of the files
5 on the share directory --

6 A. Right. There's one that's in a Real Audio format, which
7 is .ra, I think it's actually on this first page, and
8 there's one which is in a Windows Media Audio format or .wma
9 format.

10 Q. So there's only one in WMA format?

11 A. Just one, yes.

12 Q. And there's 1,700 plus files?

13 A. That's correct.

14 Q. And all the other ones, except the one you just
15 mentioned, are in MP3 format?

16 A. All the other audio files are in .mp3 format.

17 Q. Can I ask you to look now, sir, at Exhibit 9. Are you
18 there?

19 A. I'm there. Sorry.

20 Q. Do you recognize Exhibit 9, please?

21 A. I do.

22 Q. And what is Exhibit 9?

23 A. This is the user log, the uncompressed version.

24 Q. And what is the uncompressed version?

25 A. The uncompressed version contains all the information in

1 the DAT files. So it contains not just the file names and
2 the byte size that you saw on the compressed version, it
3 contains everything, all of the metadata that was associated
4 with these files that was contained in the DAT files that we
5 received after we started the downloads from tereastarr's
6 share directory.

7 Q. And was Exhibit 9 created on the evening of February 21,
8 2005 at approximately 11:00 p.m.?

9 A. Yes, it was.

10 Q. Is it accurate?

11 A. It is accurate.

12 Q. Was it in the ordinary course of SafeNet's business to
13 create a document like this?

14 A. It is.

15 Q. And is it in the ordinary course of SafeNet's business
16 to retain a document like this?

17 A. Yes, it is.

18 MR. GABRIEL: Move Exhibit 9, Your Honor.

19 MR. TODER: No objection.

20 THE COURT: Be admitted.

21 MR. GABRIEL: If I can ask Mr. Reynolds to put it
22 up.

23 BY MR. GABRIEL:

24 Q. Now that the ladies and gentlemen of the jury can see
25 it, could you explain what this shows. And if there's a

1 page that would be better for us to go to, please let us
2 know.

3 A. Okay. The top of the document is identical to the
4 compressed version of this. It simply shows that we're
5 generating a log for a particular user at a particular time
6 and it again identifies the user, tereastarr, and the IP
7 address and then it contains other information about that
8 user's collection. And then from there it goes through and
9 shows in expanded form all of the metadata for every song
10 listed in that user's share directory.

11 Q. And we see at the top the IP address. That's the same
12 one you mentioned before, correct?

13 A. Yes, it is.

14 Q. The 24.179.199.117, true?

15 A. Yes, it is.

16 Q. And this also shows, I think you indicated, there's a
17 total number of audio files here and it's 1,702?

18 A. That's right.

19 Q. Now, Mr. Weaver, based on your experience in doing this
20 work, is there some significance to the metadata? What does
21 that show us?

22 A. Well, from a pirate's perspective, you will often find
23 indicators that the person who was the first to rip this
24 material was, in fact, a pirate.

25 Ripping is the process of taking something from a

1 CD format that you can play in your car CD player and
2 turning it into a digital format that you can play on your
3 computer, that you can distribute over the Internet,
4 et cetera. That's called ripping.

5 The process of getting a lot of these files onto
6 the Internet is initialized -- is instigated by a lot of
7 these pirate rip groups, which are --

8 Q. When you say "pirate" --

9 A. Yeah, let me explain that. Pirate rip groups are --
10 basically they're organized copyright infringers. They're
11 pirates. They are very competitive at trying to be the
12 first people to obtain and to put on the Internet albums
13 that haven't been released in the stores yet.

14 So, for example, they will have members or will
15 know people that work at CD pressing plants, for example,
16 and they will pull the CD off the production line and put it
17 online or they work or know somebody who works at a
18 recording studio where the album was mixed or they'll have
19 access to pre-release review copies that go out to media,
20 like newspapers and radio stations. And through those
21 connections they obtain these files before they're actually
22 available for sale and they'll be the first to distribute
23 them online.

24 They're very competitive, so they want to make
25 sure that they get credit for being the people that actually

1 get this thing out there. So they will usually put some
2 evidence of their exploit, they'll put their group name in
3 there and some other sort of boisterous type of indicator of
4 how good they are.

5 Q. Can you point us to some examples of that.

6 A. Sure. Let me flip through here. It's pretty big. Go
7 to page 104.

8 Q. We can pull that out.

9 A. Just if you could expand one of those blocks right in
10 the middle of the page. That's fine.

11 So, again, this is metadata for a file name. I've
12 got "File Name: 02 - Dream Theater - Invaders.mp3." The
13 song title is "Invaders" and the artist is Dream Theater,
14 et cetera. This is all metadata.

15 Included in that metadata in the description field
16 is this. It says, "Uploaded by Off\$3+." That's the way
17 pirates write. The dollar sign is an "S," the three is an
18 "E," and the plus is a "T." So that's the pirate group
19 Offset and they're claiming props or respect for being the
20 ones to get Dream Theater's album out onto the Internet
21 before anyone else. So Offset is saying we're the ones that
22 uploaded this first.

23 Q. Can you cite maybe one more example.

24 A. Sure. Just kind of flipping through here, 29 --

25 THE COURT: Wait a minute. Let's back up to that

1 last one. How do you know that this album has not been
2 distributed?

3 THE WITNESS: That it's already been commercially
4 distributed?

5 THE COURT: Right.

6 THE WITNESS: I don't know that. What I'm
7 saying --

8 THE COURT: How can you make that statement that
9 they took credit for getting it out first?

10 THE WITNESS: Whenever a CD is produced and sold
11 in the stores, a person, of course, can rip that CD to their
12 own collection. Whenever you rip that CD, there's no
13 metadata which inherently is a part of your MP3 file that
14 you get. You have to put that information in there.

15 BY MR. GABRIEL:

16 Q. I want to make sure everybody understands that. When
17 you buy a CD from the store and you rip it, there is no
18 metadata on it?

19 A. There's no metadata as part of the CD.

20 Now, some of the programs that rip these for you,
21 like Windows Media Player and iTunes, will give you the
22 ability to use these databases that will recognize the CD
23 and will input some of the common things, like the album
24 title, the artist, and the actual song title, but that's in
25 there because the user has chosen to accept that as part of

1 the software.

2 But what you don't get is anything in the
3 description field. And looking at the data which is in the
4 description field, it says, "Uploaded by Off@3+." That
5 simply is an indicator that someone put that in there
6 somewhere.

7 And for those of us that deal with pirate
8 communities a lot, where those typically come from is where
9 a pirate is the first to put something out and they want to
10 get credit for it. So in the versions of the MP3's that
11 they put out, the metadata is going to include a mention of
12 that group.

13 So by the time we found this, this album could
14 very well, Your Honor, have actually been released, but it
15 seems to indicate that at the time this file was first
16 ripped someone put -- someone asked for credit and was
17 claiming credit for having put that on the Internet.

18 THE COURT: Okay.

19 BY MR. GABRIEL:

20 Q. You were citing us one other example.

21 A. Yeah, I was looking at page 29. There's a similar
22 example. Pick any one of these blocks. It's really the
23 same sort of thing where in the metadata you have standard
24 information about the song, but then there's a description
25 that says, "MRO, who else?", implying who else is going to

1 get you this material first. So that is also an indicator
2 that there was a pirate group that was the first to have
3 ripped and to have put data into this -- into the metadata
4 of this file.

5 Q. Thank you, Mr. Weaver. With respect to the data that
6 you downloaded or recovered on the date in question, did you
7 see anything else that are indicators of known pirate
8 groups?

9 A. Sure. Some of the file names themselves have
10 indications in them that they were released by pirate
11 groups. I'm looking at page number 6. I'm waiting for us
12 to get it up.

13 Q. All right. It's there. Which --

14 A. Very, very bottom, take the block at the very bottom.
15 There we go. This file name is -- this is actually a
16 playlist. If you look at the extension, it's M3U. Again,
17 it's the last three letters in that file name there on the
18 second line. That's a playlist.

19 If you look at the name of the file, it's in a
20 format that conforms to the pirate they call them release
21 standards. If you go on Wikipedia, you can actually see the
22 pirate release standards for being the first to put this
23 music online.

24 So it starts -- because it's a playlist, it starts
25 with "00." And then it names the artist, Wumpscut, and then

1 it has the person who released it, DJ Dwarf Four. Then the
2 album name, which is *Bone Peeler*. But then most
3 interestingly, it says, "read_nfo."

4 An NFO file is an information file. NFO just
5 simply stands for information. It's like a read me file
6 that you'll see with some software. It's a file that pirate
7 release groups will include with an album that they've put
8 out that says we were the first to do it, you weren't. It
9 will include standard sort of taunts between these groups.
10 It will thank other members of the group for their
11 assistance. Sometimes it will even solicit help from other
12 people. But it's basically sort of their claim to credit.

13 So this file right now, included in the file name
14 is the words "read_nfo," which indicates that there was an
15 NFO associated with the cluster of files associated with
16 this album whenever this file was created.

17 Q. Thank you. And are there any other things that you saw
18 in the data you collected that would suggest that these were
19 not put here by someone just loading their own CD's?

20 A. Just to summarize, the first thing was evidence of
21 release groups taking credit in the description files. The
22 second was that there are file names themselves that show
23 evidence of conforming to release group standards and make
24 mention of things that only are included with release group
25 releases. And the last, which is rather interesting, is

1 that the file naming conventions throughout the share folder
2 is not consistent.

3 Q. When you talk about naming conventions, what are you
4 talking about?

5 A. Well, you can open up, really, any one of these, but
6 probably the next page would be better because right now
7 you're looking at a bunch of playlists.

8 Q. And can I ask you before you answer that, what's a
9 playlist? I neglected to ask you that.

10 A. A playlist is where a user can create a file that simply
11 defines, according to some criteria, a set of songs to play.
12 So if you want to play a party mix, you'll pick all your
13 party songs, put them in a playlist, and then when you want
14 to play those songs, you play the playlist. You can do it
15 by artist. You can do it by, you know, ratings and these
16 sorts of things. So it's just a user defined file of
17 favorites according to some criteria.

18 Q. Forgive me for interrupting you. You were talking about
19 naming conventions.

20 A. Right. We're on page 7. If you look at some of these
21 files, like the second block, it says, "Pull Me Under." The
22 file is simply named the name of the song, "Pull Me Under."
23 If you go to the next block after that, the file is named
24 the track number, 01, the artist name, and then the song
25 number. The next few are like that. If you just flip

1 ahead, you'll find some that are named just simply the
2 artist's name and the song. You find some that are the
3 album and the song and so forth.

4 Typically when a person burns their own CD's, the
5 format of the file name is determined by settings that take
6 place when you first start to use the program. So there's
7 very little variation whenever someone does that. Whenever
8 you see a whole lot of different file naming conventions, it
9 seems to indicate a whole lot of different sources for these
10 files.

11 Q. And what does that tell you?

12 A. That these files likely didn't come from the user
13 tereastarr burning them from CD's in that user's collection.

14 Q. Thank you for bearing with me with that, Mr. Weaver.

15 And so based on all the things you've testified,
16 do you know, based on your experience, that the files in the
17 share directory that you captured were downloaded from
18 someone else as opposed to ripped by Ms. Thomas?

19 A. The information I pointed out indicates that several of
20 the files came from other sources.

21 Q. All of the things that you pointed out?

22 A. Right.

23 Q. Would you look at Exhibit 10, please.

24 A. I'm there.

25 Q. What is Exhibit 10?

1 A. Exhibit 10 is our download data log.

2 Q. And what is a download data log?

3 A. When we start the download of the songs that the user is
4 distributing, we will also capture the packets of data that
5 go from our machine requesting the file and the packets of
6 data that come from the user's machine starting to give us
7 the file; and that's essentially what this log is.

8 Q. Was this log created on the evening in question,
9 February 21, 2005, at about 11:00 p.m.?

10 A. Yes, it was.

11 Q. And was it created in the ordinary course of SafeNet's
12 business?

13 A. Yes.

14 Q. Was it kept in the ordinary course of SafeNet's
15 business?

16 A. Yes.

17 MR. GABRIEL: Move Exhibit 10, Your Honor.

18 MR. TODER: Your Honor, may I just voir dire the
19 witness on this one document?

20 THE COURT: You may.

21 **VOIR DIRE EXAMINATION**

22 BY MR. TODER:

23 Q. This document, Plaintiffs' Exhibit 10, who physically
24 created this document?

25 A. Who physically created it?

1 Q. Yeah.

2 A. It was created by an automated process. We have a
3 program that looks at the traffic that's coming in and grabs
4 the relevant packets and logs them into a text file such as
5 you see here.

6 Q. Is the information manipulated at all before the --
7 after it comes out of that?

8 A. No, it's not. What we do to make it readable is to
9 clarify what is written in hex. Any binary files that are
10 transmitted over the Internet are in a format that just
11 can't be read. It will be, you know, squiggles and marks
12 and blocks and these kinds of things. So before each packet
13 we have included a translation of the binary component, but
14 beyond that, they are exactly as they came to us.

15 Q. Even the third line from the top would say,
16 "[MediaSentry IP address]"?

17 A. The MediaSentry IP addresses were all redacted from the
18 information that we translated out of the hex data. If you
19 look at the hex data, though, with a hex editor, you will
20 see the MediaSentry IP address.

21 Q. So who changed that, the MediaSentry IP address?

22 A. The service, the program that captures the packets,
23 whenever it does the translation of the hex portion, it goes
24 ahead and does that as well.

25 Q. Automatically?

1 A. Automatically, yes.

2 MR. TODER: I have no objection, Your Honor.

3 Thank you.

4 THE COURT: Admitted.

5 MR. GABRIEL: Would you put up Exhibit 10, please.

6 **DIRECT EXAMINATION (Cont.)**

7 BY MR. GABRIEL:

8 Q. Mr. Weaver, now that the ladies and gentlemen of the

9 jury can see this, would you explain what Exhibit 10 is.

10 A. This is the download data log.

11 Q. And would you -- now that they can see it, can you

12 explain what it shows.

13 A. Sure. It may be helpful if we zoomed in on the first

14 block. The first line here just simply defines what these

15 packets are. The first one says this is the download

16 information for the Janet Jackson file. Okay?

17 And then the next three lines, sent packet,
18 source, and destination, are information from the hex line,
19 which is where you see all the dots and the funny characters
20 and so forth. And that's part of -- this is an IP packet,
21 an Internet protocol packet.

22 And so the Internet protocol packet is like an
23 envelope, if you will, for transmitting information out on
24 the Internet. If I were to mail something, I couldn't just
25 put the letter in the mail. I would have to put it in

1 something that tells it where to go, where it's coming from,
2 et cetera.

3 And so that's the part of the packet that says
4 here's the date, here's who it's to, and here's who it's
5 from. So we render that information there in the sent
6 packet and source and destination lines. And then you have
7 that same information there in hex, which doesn't print
8 well.

9 And then you can see the content of it. It's a
10 get. So basically what this is on a FastTrack network, the
11 Kazaa network, is let's get this song and it's the Janet
12 Jackson "Come Back to Me" song. The rest of that is the
13 detail that Kazaa uses to route this packet.

14 Q. When you said, Mr. Weaver, this is "a get," is this kind
15 of the request that was sent from MediaSentry to capture --

16 A. I'm sorry. Yes, this is the request from MediaSentry to
17 the user tereastarr at IP address 24.179.199.117.

18 Q. And MediaSentry is asking for this recording; is that
19 correct?

20 A. That's correct.

21 Q. And what else does this document show?

22 A. And then you can see the response, which is the next
23 packet, which is the next full block. And, again, the first
24 three lines is just titling that packet, that's a received
25 packet, and then there's the date, the source IP address.

1 So this packet came from 24.179.199.117 and it was addressed
2 to our IP address, which is replaced with that text.

3 You see the hex code, which indicates -- which
4 actually is the information that's in those first three
5 lines, and this is the beginning of the song coming back to
6 us. So we see the information that the Kazaa application
7 uses and we see the -- which actually corresponds to the
8 metadata for the song.

9 And then what would happen after this would be the
10 actual song itself, which was sort of useless to provide
11 because it would just be page after page after page of just
12 gibberish, because that's what music looks like when you
13 print it out.

14 Q. And does it indicate the user name from which this was
15 coming as well?

16 A. It does. Inside the Kazaa packet Kazaa itself
17 identifies the user name as tereastarr.

18 Q. Can I ask you lastly to look at Exhibit 11, please. Oh,
19 I'm sorry. One more before you leave. Do you know,
20 Mr. Weaver, why MediaSentry redacts out its own IP address?

21 A. A lot of these documents are finding their way onto the
22 Internet and in order to avoid malicious action against our
23 servers, we've redacted, we've taken out our IP addresses.

24 In truth, if you look at the hex, they're right in there.

25 If you look at the hex of the actual file, they're right

1 there.

2 Q. Now would you look at Exhibit 11, please. Do you
3 recognize Exhibit 11?

4 A. I do.

5 Q. What is Exhibit 11?

6 A. Exhibit 11 is the trace route that we performed after we
7 downloaded all of the songs. So when the downloads were
8 complete, we did a trace route.

9 Q. What is that?

10 A. A trace route is a standard Internet tool that's used to
11 display all of the different hops, all of the different
12 ports, all of the different routers that a packet took to
13 get from the source to the destination.

14 It's like if I was going to go to send mail from
15 Duluth to Seattle, you know, it might go down to Milwaukee
16 and then to Chicago and then to Kansas City and then to
17 Boise and then to Seattle. A trace route would return
18 Milwaukee, Chicago, Kansas City, Boise, and Seattle, showing
19 the names of those -- of each of those routers that the
20 packet took to get to its destination.

21 It also establishes in another way that the user
22 was live at the point that a trace route was performed
23 because the destination computer doesn't respond if it's not
24 turned on.

25 Q. What do you mean "the user was live"?

1 A. We send a trace route to the IP address 24.179.199.117.
2 If that IP address was not connected to the Internet at the
3 time, this trace route would have been unsuccessful, it
4 would not have been able to route.

5 Q. So this was another check on --

6 A. Just another check verifying that there was a machine
7 live at that IP address.

8 Q. Was this document created in the evening of February 21,
9 2005 at about 11:00 or thereafter?

10 A. Yes, it was created when the downloads were finished, so
11 it would be the following day.

12 Q. And is it accurate?

13 A. It is accurate.

14 Q. And is this the kind of document that SafeNet creates in
15 the ordinary course of its business?

16 A. Yes, it is.

17 Q. And it maintains it in the ordinary course of its
18 business?

19 A. Yes, it does.

20 MR. GABRIEL: Move Exhibit 11, Your Honor.

21 MR. TODER: No objection.

22 THE COURT: Be admitted.

23 BY MR. GABRIEL:

24 Q. Mr. Weaver, have you now actually gone through and
25 described for us -- well, let's do it real quickly now that

1 the jury can see it. Can you just point out again what this
2 shows.

3 A. This is the trace route. If it's expanded, it may be
4 easier to see. Again, it wraps a little bit because of the
5 size of the page. But actually you can see the MediaSentry
6 IP address there. It's on the first line. We are
7 64.132.210.161.

8 You can see the route that the packets took. It
9 goes through each of the routers which are listed. You can
10 see it go outside of our network through the Time -- a lot
11 of these routers will bear names that give some indication
12 of both the locations and the company that maintains them.

13 So you can see it actually going through the Time
14 Warner Telecom system and you can see it going through the
15 AT&T system as you get down to lines 13, 14, and 15, and
16 then it's ending up, lines 17, 18 and 19, out in Charter in
17 Minnesota. You can actually see it says, "dul" --
18 presumably Duluth -- ".minnesota.charter.com" and that's
19 where it terminated. So it says, "Success." The trace is
20 complete.

21 Q. So in terms of -- I think you indicated this is a check,
22 correct?

23 A. Yes, it is.

24 Q. So is it accurate, then, that this also confirms that
25 the recordings that you downloaded from the IP address that

1 you described came from that IP address?

2 A. Strictly speaking, the trace route simply confirms that
3 I could get to that machine.

4 Q. Thank you. Have you now, Mr. Weaver, described the
5 process you went through to get --

6 A. That is the process for each of the captures that we
7 performed.

8 Q. And all of this data was provided to the recording
9 industry?

10 A. Yes, it was.

11 Q. Did SafeNet do anything else relating to the computer
12 that you captured on the evening in question?

13 A. We did.

14 Q. What did you do?

15 A. We sent instant messages through the Kazaa network to
16 this user on two occasions.

17 Q. And perhaps everyone knows, but can you explain what an
18 instant message is.

19 A. An instant message you can think of as sort of real time
20 e-mail. It's a message that pops up in the middle of your
21 screen and says what it has to say.

22 The Kazaa network allows -- the Kazaa application
23 has a program that would allow someone to send an instant
24 message to any other user that was actively sharing files at
25 the time, and so we sent those instant messages using that

1 application.

2 Q. Could you look at Exhibit 13, please.

3 A. Okay.

4 Q. Do you recognize Exhibit 13, sir?

5 A. I do.

6 Q. What is it, please? And I know there are two pages.

7 Describe one page at a time, if you would.

8 A. The first page is a log indicating when we sent the
9 message, to whom it was sent, by both Kazaa user name and by
10 IP address. The second page is the text of the instant
11 message that was sent.

12 Q. And can you confirm that these are accurate?

13 A. They are accurate.

14 Q. This was the instant message that was sent to tereastarr
15 at that IP address, correct?

16 A. At the time, yes.

17 Q. And the log of when it was sent is a document that
18 MediaSentry created?

19 A. Yes, it is.

20 Q. And did so in the ordinary course of its business?

21 A. Yes, we did.

22 Q. And kept it in the ordinary course of its business?

23 A. Yes, we did.

24 MR. GABRIEL: Move Exhibit 13.

25 MR. TODER: Your Honor, may I voir dire the

1 witness on this exhibit, please?

2 THE COURT: You may.

3 **VOIR DIRE EXAMINATION**

4 BY MR. TODER:

5 Q. At the top of this exhibit --

6 A. Yes.

7 Q. -- you'll see there's some -- above the box.

8 A. "IM Log, Thomas, Jammie."

9 Q. Is that something that MediaSentry did or something the
10 lawyers put on?

11 A. I didn't put that on there.

12 Q. MediaSentry didn't put that on?

13 A. No.

14 MR. TODER: Your Honor, I would have no objection
15 as long as the stuff the lawyers put on is redacted.

16 MR. GABRIEL: No problem with that, Your Honor.

17 THE COURT: Be admitted with the redaction.

18 MR. GABRIEL: We won't put it up for now.

19 **DIRECT EXAMINATION (Cont.)**

20 BY MR. GABRIEL:

21 Q. Mr. Weaver, could you just tell us, now that the
22 document is in, when instant messages were sent to
23 tereastarr at the IP address that you described.

24 A. Yes. The first one was sent on February 21, 2005 at
25 11:00.

1 Q. Is that Eastern Time?

2 A. That is Eastern Time.

3 The second one was sent on February 22, 2005 at --
4 let me convert the military time -- 10:34 p.m., also Eastern
5 Time.

6 Q. So the first one was sent right about the time you were
7 making the capture, correct?

8 A. Right before it, yes.

9 Q. And then the second one was sent the next day?

10 A. Right.

11 Q. And would you look at the second page now.

12 MR. GABRIEL: Mr. Reynolds, would you put that up.

13 MR. REYNOLDS: I have to pull up the first page
14 first.

15 MR. GABRIEL: Then we won't. We can't show the
16 first page until it's redacted.

17 BY MR. GABRIEL:

18 Q. This is the text of the instant message, correct?

19 A. Page 2 is, yes.

20 Q. And it indicates, "Copyright Infringement Warning,"
21 correct?

22 A. Yes.

23 Q. And --

24 A. The title is "Copyright Infringement Warning."

25 Q. I think the last question I have for you, Mr. Weaver,

1 after SafeNet collected all of the data that you've
2 described, did it provide the data to the record companies?

3 A. Yes, it did.

4 Q. And did that conclude SafeNet's role in the
5 investigation of this particular user?

6 A. Until today, yes.

7 MR. GABRIEL: I have no further questions.

8 THE COURT: All right. We'll take our afternoon
9 break. We'll take a 15-minute break at this time, 15
10 minutes. All rise for the jury.

11 (Recess taken at 3:10 p.m.)

12 * * * * *

13 (3:30 p.m.)

14 **IN OPEN COURT**

15 **(JURY PRESENT)**

16 THE COURT: You may continue.

17 **CROSS EXAMINATION**

18 BY MR. TODER:

19 Q. Good afternoon.

20 A. Hello.

21 Q. I just have a few questions. I want to start with
22 looking at Exhibit 6. At the bottom down here, do you see
23 where it says, "Not sharing any files"?

24 A. Yes, I do.

25 Q. And you testified that what that meant was is that

1 MediaSentry, SafeNet, you guys weren't sharing any files,
2 correct?

3 A. That's correct, yes.

4 Q. But what I think you said was is that tereastarr@kazaa,
5 whoever he or she is, they were sharing files, correct?

6 A. Yes. You're looking at the share directory.

7 Q. But isn't it a more accurate statement to say that they
8 were actually offering files for sharing as opposed to
9 sharing files?

10 A. Well, in the parlance of P2P, this is file sharing.

11 Q. That's a term of art?

12 A. I believe so, yes.

13 Q. Exhibit 7, there's no IP address here, correct?

14 A. No, there's not.

15 Q. And you really can't identify from this the real name of
16 a human being, you can only identify it as tereastarr@kazaa,
17 correct?

18 A. Right. According to this, tereastarr, that's correct.

19 Q. And then we'll go to Exhibit 8. I just want to look at
20 the top of this. Here, now, we have an IP address. Now,
21 the IP address is part of the metadata, correct?

22 A. The metadata for the MP3 files, no.

23 Q. Well, can -- metadata can be manipulated, correct?

24 A. I'm not sure I understand what you mean.

25 Q. Well, where did whoever used tereastarr@kazaa -- and

1 this is not part of the stuff you have below. Where did you
2 actually get the IP address you have there?

3 A. We got that from our processes, which were -- which
4 pulled down the DAT files, which monitored the transactions
5 between the target user and our computer to produce a user
6 name and an IP address.

7 Q. And how does it actually extricate it, an IP address?

8 A. It does it two ways. One, when we start the downloads
9 the DAT files will reveal the IP address of the user. And
10 then also whenever we look at the packets, we'll also see an
11 IP address in there. The system goes and confirms that the
12 two are the same before allowing any more of the process to
13 finish.

14 Q. How do you get the IP address in the DAT files?

15 A. You just open a DAT file and it will be displayed there.

16 Q. And who creates the DAT file?

17 A. The DAT file is created by the Kazaa application or
18 program.

19 Q. And where does the application get the information to
20 put in the DAT file?

21 A. It gets it from the Kazaa network. Whenever you search
22 for a user -- when you search for a song, it will return to
23 you the users that are offering it. When you select one and
24 start to download any one of the songs from that user, the
25 network says here's where you go to get that. So that's

1 what really enables you to get the file, is having the
2 user's IP address.

3 Q. And the other method you talked about was through the
4 packet?

5 A. That's really the same. The two confirm one another.
6 In other words, I'll get it from the program and then I'll
7 confirm it, I'll confirm what the program is doing through
8 the packet. Think of the packet as standing over the
9 program looking at what it's doing.

10 Q. Is there any way that a user can manipulate what IP
11 address is ultimately shown?

12 A. Not that I'm aware of.

13 Q. Can someone -- strike that. We'll go to Exhibit 10.

14 A. Can I have clarification on that question?

15 Q. Yes.

16 A. If it were possible -- and, again, I'm not so sure that
17 it is -- when I got that DAT file, if it had an incorrect IP
18 address, the rest of the process wouldn't work. You
19 wouldn't be able to get the songs that were advertised there
20 because my computer would be using that wrong information to
21 go nowhere.

22 Q. And that IP address could -- is actually an account
23 number that's with Charter Communications, correct?

24 A. I'm not so sure it's an account number, but it's a
25 routing number. Again, to use very much layman's terms, it

1 is managed by Charter Communications.

2 Q. And there has to be some device attached to -- in
3 conjunction with that IP address?

4 A. That's right. It's like a phone number. If there's no
5 phone, then it really isn't going to work even if it's
6 assigned.

7 Q. And one of the devices could be a modem, correct?

8 A. That's correct.

9 Q. And that modem -- you could have any number
10 of computers, maybe one at a time, but you could put one
11 computer in and come back and use another computer?

12 A. Sure.

13 Q. So if people were having a computer party and they each
14 had a computer, they could just take turns using that modem?

15 A. Yes, they could.

16 Q. And whoever was -- if they were communicating with
17 people, whoever they were communicating with, they would all
18 see the same IS -- the IP address for all these, correct?

19 A. On the Kazaa network?

20 Q. No. Just generally speaking.

21 A. Just generally, yes.

22 Q. On the Kazaa network as well?

23 A. You see the same IP address, but you would see different
24 user names.

25 Q. But if they used different user names, correct?

1 A. If everyone -- in the scenario of the computer party, if
2 everyone decided to be tereastarr on their individual
3 computers and then connect to the modem, then they would
4 look the same.

5 Q. So if you've got five people and a modem and they all
6 connected to Kazaa using tereastarr, whoever was looking at
7 this, the screen shots, they would see tereastarr and they
8 would see, ultimately see -- your information, your software
9 would pull down the IP address that we've seen here,
10 correct?

11 A. Yes.

12 Q. And if the next person came along with tereastarr and
13 had the same tereastarr and used the same modem, again, it
14 would be a different human being, but you would still pull
15 down tereastarr and the same IP address, correct?

16 A. If I was to -- to see that user, I would have to try to
17 download some songs. So they would also have to have the
18 same songs on the computer as well. But if they had the
19 same songs as well, same user name, and plugged into the
20 same router, then they would continue to look the same.

21 MR. TODER: I have no further questions. Thank
22 you.

23 THE COURT: Mr. Weaver.

24 THE WITNESS: Oh, I'm sorry. I heard that and I'm
25 out of here. I apologize.

1 THE COURT: Not yet.

2 MR. GABRIEL: I'll make this very brief.

3 **REDIRECT EXAMINATION**

4 BY MR. GABRIEL:

5 Q. There were 1,700 music files in this case; is that
6 correct?

7 A. That's right, yes.

8 Q. I may have --

9 A. 1,702, yes.

10 Q. Based on your experience, how long does it take someone
11 to download from Kazaa that many files? You don't have to
12 give an exact time.

13 A. Yeah, I mean, I would say I've never tried to download
14 1,700 files simultaneously. It would depend upon a user's
15 connection speed, but that many files would probably take
16 more than a day.

17 Q. And for just the average user?

18 A. For the average user it would probably take more than a
19 day.

20 Q. A long time to download 1,700 --

21 A. Yes.

22 Q. Does that tend to undermine this theory that there was a
23 party and everyone plugging in and replugging in?

24 A. Well, in what way? I'm sorry.

25 Q. The fact that it takes a long time, does that suggest to

1 you that this party that Mr. Toder suggested to you didn't
2 happen?

3 A. Well, the party just seems incredible to me in the sense
4 that everyone would have to have the same number of songs
5 actually already on the computer, not that they were
6 downloading them, but actually already be on there, and then
7 have different machines which were then plugged in and have
8 the Kazaa application set up using the same user name.
9 That's what sounds strange. I don't think that that
10 scenario has them actually downloading them.

11 Q. You saw no evidence of anything like that, did you?

12 A. No.

13 MR. GABRIEL: Nothing further.

14 MR. TODER: Nothing further.

15 THE COURT: Sir, now you may step down.

16 Call your next witness, please.

17 MR. GABRIEL: Plaintiffs call David Edgar.

18 (Witness sworn.)

19 THE COURT: Good afternoon, sir.

20 THE WITNESS: Good afternoon.

21 THE COURT: Would you state your true and correct
22 name for the record, please.

23 THE WITNESS: Yes. It's David Loring Edgar.

24 THE COURT: Spell your first, middle, and last
25 name for the record.

1 THE WITNESS: D-a-v-i-d. Middle name Loring,
2 L-o-r-i-n-g. Last name Edgar, E-d-g-a-r.

3 THE COURT: You may inquire.

4 MR. GABRIEL: Thank you, Your Honor.

5 (David Edgar)

6 DIRECT EXAMINATION

7 BY MR. GABRIEL:

8 Q. Good afternoon, sir.

9 A. Good afternoon.

10 Q. Mr. Edgar, who do you work for?

11 A. I work for Charter Communications.

12 Q. And what is Charter Communications?

13 A. Charter Communications is a company that provides cable,
14 telephone, and high-speed Internet.

15 Q. And what are your responsibilities for Charter
16 Communications?

17 A. I am a manager in the Internet security department.

18 Q. And what does that involve?

19 A. We -- I manage a group of investigators that fulfill
20 requests from our legal department for customer information.

21 Q. And would that include things like subpoenas for
22 information?

23 A. Absolutely, yes.

24 Q. Would you look at Exhibit 14, which is in evidence,
25 please. There are a number of books in front of you. I

1 think it's Volume 3 or Book 3.

2 A. Okay.

3 Q. Have you found that, sir?

4 A. Yes, I have.

5 Q. Do you recognize this as a subpoena received by Charter?

6 A. Yes, I do.

7 Q. And did you -- you've seen this before, I take it?

8 A. Yes.

9 Q. And this subpoena sought certain identifying
10 information; is that correct?

11 A. Yes, it does.

12 Q. And can you confirm --

13 MR. GABRIEL: Tim, if you would turn to
14 the second -- I'm sorry. Let me start out on the first
15 page. Bring that out.

16 BY MR. GABRIEL:

17 Q. Specifically the subpoena asks for information,
18 including name, address, telephone number, e-mail address,
19 and media access control addresses, sufficient to identify
20 the alleged infringers of copyrighted sound recordings
21 listed by IP address in Attachment A, correct?

22 A. Yes.

23 MR. GABRIEL: Could you turn us to Attachment A.

24 BY MR. GABRIEL:

25 Q. And this is the list of -- or the beginning, at least,

1 of a list of IP addresses, correct?

2 A. Yes, it is.

3 Q. And would you confirm, sir, that the third one down --

4 you can look either in the book or there -- is

5 24.179.199.117 and a date of February 21, 2005 at 11:09

6 Eastern.

7 A. Yes.

8 Q. So you were being asked to provide identifying

9 information for the person who had that IP address, correct?

10 A. Yes.

11 Q. And you saw in the first page that there was also

12 requesting information about a modem or MAC address,

13 correct?

14 A. Yes.

15 Q. What is a modem -- or media access control address?

16 A. A MAC address is an address assigned to a piece of

17 hardware by the manufacturer.

18 Q. And does Charter use the MAC address for some purpose?

19 A. Yes, we do. We use the MAC address to identify the

20 modem that we have leased to our subscribers.

21 Q. And I take it Charter keeps a record of who has what

22 modems?

23 A. We do.

24 Q. And what is an IP address?

25 A. An IP address is an Internet protocol address. It is an

1 address that is used to communicate on a network. This
2 particular IP address is a public IP address. It is an
3 address that is assigned to a subscriber to communicate on
4 the Internet.

5 An address on the Internet is like an address for
6 your home address. It is -- if you are going to send
7 information to this person, you need to know what their IP
8 address is. Just like if you were going to send something
9 in the postal mail, you need to know what the person's home
10 address is.

11 Q. Does Charter keep records of who had what IP address at
12 what date and time?

13 A. We do.

14 Q. Is there some reason for that?

15 A. We keep a record because we run dynamic hosting
16 configuration protocol.

17 Q. What does that mean?

18 A. We have a finite amount of IP space that is assigned to
19 Charter to use for our residential customers. So dynamic
20 hosting configuration protocol is a protocol where the
21 subscriber doesn't have to configure their Internet
22 connection, it's automatically done for them. We provide
23 them a pool -- from a pool of IP's we provide them and
24 dynamically configure their equipment to talk on the
25 Internet. And we need to keep a record of what IP's are

1 being used and what IP's are available.

2 Q. And what does Charter use the IP address for?

3 A. The IP address for -- is used by us, you know, as I
4 said, to allow our customers to communicate on the Internet.

5 Q. And what does Charter use the MAC address for?

6 A. We use the MAC address and it is actually kept in our
7 billing system and it's identifying the modem that has been
8 leased to a subscriber.

9 Q. And you say it's in the billing system. Do you actually
10 use the MAC address to identify who gets a bill?

11 A. Yes.

12 Q. That's somewhat important to Charter?

13 A. Yes.

14 Q. After Charter received the subpoena that we're looking
15 at, Exhibit 14, did it take action to determine the
16 information requested?

17 A. Yes, we did.

18 Q. Could you describe for the ladies and gentlemen of the
19 jury what it did.

20 A. Yes. We received a request, my team of investigators
21 received a request from legal for subscriber information
22 based upon an IP address and a date in time. So our
23 investigators went to our logging tool that has the DHCP
24 IP's in there with the accordant modem MAC address. We put
25 in the date range and specify the time as per the order and

1 request from legal, and we were provided and returned
2 results of a modem MAC address assigned to that IP address.

3 Q. You talked about a DHCP IP address, I think. What is
4 that?

5 A. DHCP, again, is dynamic hosting configuration protocol
6 and it is from the DHCP server that says this IP address is
7 associated to this MAC address during this particular time
8 period.

9 Q. And so you've done this search looking for these IP
10 addresses. And with respect to that 24.179.199.117 number,
11 what did Charter determine?

12 A. We were able to identify a modem MAC address assigned to
13 that IP.

14 Q. And who was that? Was there a person connected to that?

15 A. After we received the modem MAC address, we then went to
16 our billing system to see which Charter account had that
17 modem MAC address associated to it for that time period and
18 we were able to identify a Charter subscriber.

19 Q. And what was the name of the Charter subscriber?

20 A. The name on the Charter subscriber account was Jammie
21 Thomas.

22 Q. And, sir, if I understood, you took the IP address and
23 that connected you to the modem MAC address, which connected
24 you to the identity of the person?

25 A. Correct.

1 Q. And does Charter do something to confirm the accuracy of
2 a search like that?

3 A. Absolutely. We have -- my team of investigators has a
4 primary investigator, a lead primary investigator. That
5 person will do their investigation and they're also
6 responsible for recording the information that they keep --
7 or that they find, rather, electronically. We also have a
8 second person on our team considered the verifier. The
9 verifier does their own independent investigation. Then the
10 verifier and the primary investigator compare notes and sign
11 off and agree that it is a successful identification.

12 Q. And did that happen in this case?

13 A. In this case, yes.

14 Q. So this backup check confirmed the identification of
15 Jammie Thomas?

16 A. Correct.

17 Q. Was anyone else associated with IP address
18 24.179.199.117 on February 21, 2005 at 11:09 p.m.?

19 A. No.

20 Q. Before responding to the subpoena that we were just
21 looking at, did Charter communicate with its customer,
22 Ms. Thomas, about the subpoena?

23 A. Prior to releasing the information back to the
24 requester, we did notify the subscriber that we had a
25 request for their customer information. We are compelled by

1 a subpoena to release this information and we have a date
2 upon which we are compelled to reply. And we did send a
3 letter to the subscriber in this case.

4 Q. And is it Charter's policy and practice to do that?

5 A. Yes.

6 Q. Would you look at Exhibit 15, please. Do you have that?

7 A. Yep.

8 Q. Is this the letter that you sent to Ms. Thomas?

9 A. Yes.

10 Q. And it's dated April 22, 2005?

11 A. Yes.

12 Q. Is this letter prepared in the ordinary course of
13 Charter's business?

14 A. Yes.

15 Q. Was it prepared on or about April 22, 2005?

16 A. Yes.

17 Q. And is it kept in Charter's records in the ordinary
18 course of its business?

19 A. Yes.

20 MR. GABRIEL: Move Exhibit 15, Your Honor.

21 MR. TODER: No objection.

22 THE COURT: Be admitted.

23 BY MR. GABRIEL:

24 Q. Now the ladies and gentlemen can see the letter, sir.

25 Is it the practice of Charter to indicate at the top that

1 this is an important legal notice?

2 A. Yes.

3 Q. You want to make sure your customer understands that?

4 A. Yes.

5 MR. GABRIEL: Mr. Reynolds, can you blow up the
6 last paragraph on the first page here.

7 BY MR. GABRIEL:

8 Q. If I can ask you, Mr. Edgar, to look at the last
9 paragraph of the page, it refers to something called the
10 terms of use of your Charter high-speed account and
11 Charter's Acceptable Use Policy. Are you familiar with
12 Charter's Acceptable Use Policy?

13 A. Yes.

14 Q. Could you generally describe what is an Acceptable Use
15 Policy.

16 A. In general the Acceptable Use Policy is that we set
17 forth terms and conditions with our subscribers of what our
18 service we believe is acceptable use.

19 We also believe that our customer's privacy is
20 paramount. But if we are asked and compelled to by a
21 court of law or subpoena for customer information, we will
22 do so.

23 We also state that things -- in accordance with
24 the law, Charter will be in accordance with the law as well.
25 Specifically, copyrighted material, we do not allow that to

1 be disseminated illegally on our network.

2 Q. Why does Charter have such a policy?

3 A. Because we conform with the laws, you know, in the way
4 that we operate.

5 Q. You expect -- Charter conforms with the law?

6 A. Correct.

7 Q. And you are asking, by this policy, your customers to do
8 the same?

9 A. Yes.

10 Q. Did Charter receive a response from Ms. Thomas after
11 this letter was sent, to your knowledge?

12 A. In response to this letter?

13 Q. Yes, sir.

14 A. No.

15 Q. And ultimately did Charter respond to the subpoena?

16 A. Yes, we did.

17 Q. Could you look at Exhibit 16, please.

18 A. Okay.

19 Q. Do you see that, sir?

20 A. Yes, I see it.

21 Q. And what is Exhibit 16?

22 A. Exhibit 16 is our response to the requesters of the
23 customer information for the subpoena that we received.

24 Q. And the requesters are a law firm called Shook, Hardy &
25 Bacon; is that correct?

1 A. Yes, it is.

2 Q. And if you would look at the third page of the document,
3 did, in fact, Charter provide the information regarding IP
4 address 24.179.199.117 in response to the subpoena?

5 A. Yes, we did.

6 Q. And was this response prepared on or about May 19, 2005?

7 A. Yes.

8 Q. Was it prepared in the ordinary course of Charter's
9 business?

10 A. Yes.

11 Q. And was this document kept and maintained in the
12 ordinary course of Charter's business?

13 A. Yes.

14 MR. GABRIEL: Move Exhibit 16.

15 MR. TODER: May we approach?

16 **(At sidebar.)**

17 MR. TODER: I don't anticipate a problem, but I
18 would just like to know the nature of their redactions.

19 MR. GABRIEL: Your Honor, the document reflected
20 other people's identifications. What was redacted was
21 everybody other than Jammie Thomas's name, address, and
22 identifying information that were included.

23 MR. TODER: Thank you.

24 THE COURT: Okay.

25 **(In open court.)**

1 MR. TODER: We have no objection, Your Honor.

2 THE COURT: 16 will be admitted. Go ahead.

3 MR. GABRIEL: Thank you.

4 BY MR. GABRIEL:

5 Q. Now that the ladies and gentlemen of the jury can see
6 it, Mr. Edgar, is this the response that was provided?

7 A. Yes.

8 Q. And some identifying information that related to people
9 other than the defendant here is redacted, correct?

10 A. Yes.

11 Q. Could I ask you to look at the third page of this
12 Exhibit 16, please.

13 MR. GABRIEL: Tim, would you maybe highlight that
14 or bring it out.

15 BY MR. GABRIEL:

16 Q. Mr. Edgar, is this the information that you -- that
17 Charter provided in response to the subpoena?

18 A. Yes.

19 Q. And so Charter does indicate the IP address that was
20 asked about, and the date and time, correct?

21 A. Yes.

22 Q. And it shows the name of Jammie Thomas?

23 A. Yes.

24 Q. And her address?

25 A. Yes.

1 Q. And the telephone number there, correct?

2 A. Yes.

3 Q. It also shows an e-mail address here as
4 tereastarr@charter.net?

5 A. Yes.

6 Q. And you keep records of that information?

7 A. Yes, we do.

8 Q. And then it shows that modem MAC address that you
9 referred to before, correct?

10 A. Yes.

11 Q. And, again, that's a serial number on the modem that you
12 leased out?

13 A. Yes.

14 Q. So you actually leased, physically leased a modem to
15 Ms. Thomas, correct?

16 A. Yes.

17 Q. And that number is on there?

18 A. Um-hmm.

19 Q. Yes?

20 A. Yes, it is.

21 Q. And it acts as a serial number, does it not?

22 A. Yes, it is.

23 Q. At some point after you provided this information did
24 you have communications with Mr. Toder here, with

25 Ms. Thomas's counsel?

1 A. Yes, we did.

2 Q. Can I ask you to look at Exhibit 17, please. Have you
3 found that, sir?

4 A. Yes, I have.

5 Q. Do you recognize Exhibit 17?

6 A. Yes.

7 Q. And would you explain what that is.

8 A. Yes. This is our response to Mr. Toder for his request
9 for account records for Jammie Thomas.

10 Q. So Mr. Toder had asked for certain information and you
11 provided it, correct?

12 A. Yes.

13 Q. And was this a letter that Charter sent on or about
14 April 3, 2007?

15 A. Yes.

16 Q. Is it a letter prepared in the ordinary course of
17 Charter's business?

18 A. Yes.

19 Q. And maintained in the ordinary course of Charter's
20 business?

21 A. Yes.

22 Q. And are all the records kept -- made on or about the
23 dates that they bear?

24 A. Yes.

25 Q. Are they created in the ordinary course of Charter's

1 business?

2 A. Yes.

3 Q. And are they maintained in the ordinary course of
4 Charter's business?

5 A. Yes.

6 MR. GABRIEL: Move Exhibit 17.

7 MR. TODER: No objection.

8 THE COURT: Be admitted.

9 BY MR. GABRIEL:

10 Q. Mr. Edgar, is all the information provided in Exhibit 17
11 consistent with the information that you provided to my
12 clients, the record companies, in response to the subpoena?

13 A. Yes.

14 Q. I'd ask you, sir, to turn to -- you get to kind of a
15 horizontal page that I think says, "Page 1 of 11." It has
16 five or six, seven columns.

17 A. Yes, I have it.

18 Q. Have you found that?

19 A. Yes.

20 Q. And do you see a line -- a date and time for
21 February 21, 2005 that starts at 4:00 in the morning and
22 goes on to 9:00 in the morning on February 23rd?

23 A. Yes.

24 MR. GABRIEL: Mr. Reynolds, will you highlight
25 that line, please. Just bring it out. I'm sorry. Well,

1 maybe highlight it. That didn't help too much.

2 BY MR. GABRIEL:

3 Q. All right. Mr. Edgar, do you see that there's an IP
4 address here in the column "Client IP" of 24.179.199.117?

5 A. Yes.

6 Q. And that's the same IP address you were asked about in
7 the subpoena that we looked at before, correct?

8 A. Yes.

9 Q. And then there's a modem number. Do you see that? It's
10 on the left.

11 A. Yes, "Modem MAC."

12 Q. That's the number that's on the modem, correct, that was
13 leased?

14 A. Yes.

15 Q. And does this indicate that between the times of
16 February 21, 2005 at 4:00 a.m. and February 23, 2005 at
17 9:00 a.m. the same person had the same IP address and the
18 same modem MAC address?

19 A. Yes.

20 Q. And does this tend to show what you mentioned before,
21 that the IP addresses will change or get recycled over time?

22 A. Yes.

23 Q. But your records do show that in the date range of
24 February 21, '05 at 4:00 in the morning through February 23,
25 '05 at 9:00 in the morning the subscriber here, Jammie

1 Thomas, had the IP address 24.179.199.117, correct?

2 A. This shows us that an IP address of 24.179.199.117 is
3 assigned to a modem MAC address of 0002.8acf.5590.

4 Q. And, in fact, that doesn't change because the customer
5 has the same modem, correct?

6 A. Correct.

7 Q. And you were able to tie that to the defendant, Jammie
8 Thomas, correct?

9 A. Yes.

10 Q. Mr. Edgar, do you have any doubt in your own mind that
11 Charter identified the person that was asked for in the
12 subpoena?

13 A. I believe that Charter was successful in this
14 identification based on IP address and time. We
15 successfully identified the modem MAC address and we
16 successfully identified that modem MAC address to a Charter
17 subscriber.

18 Q. And that Charter subscriber was Jammie Thomas?

19 A. Yes.

20 MR. GABRIEL: No further questions.

21 **CROSS EXAMINATION**

22 BY MR. TODER:

23 Q. Mr. Edgar, the MAC address identifies the modem,
24 correct?

25 A. The MAC address identifies the modem, yes.

1 Q. It doesn't identify the computer that's being used
2 behind the modem, correct?

3 A. The modem MAC identifies the modem.

4 Q. And as a matter of fact, you don't have a MAC address
5 that you can see -- you can't see what computer is hooked up
6 to your system when you issue an IP address, you can only
7 see what modem ID, what modem MAC address is used?

8 A. We can see -- after a cable modem, right, that has a
9 modem MAC we can see the very next device that is after that
10 cable modem and that we consider the CP or client premise
11 equipment. And we do have -- we do not keep in the billing
12 system a record of that, but in the logs that we just were
13 looking at, yes, we can see a client -- a CPE MAC address.

14 Q. And when you say "a CPE MAC address," are you talking
15 about the computer?

16 A. We have no way of knowing. It's the next device located
17 right after the cable modem. It could be a router. It
18 could be a computer. It is a piece of hardware, but we
19 don't know what that would be.

20 Q. You don't know what it would be?

21 A. No.

22 Q. Do you know whether Ms. Thomas had a wireless or a hard
23 wired modem?

24 A. I do not know.

25 Q. Well, if it was a wireless modem, somebody else could

1 intercept that signal, could they not, someone who was,
2 let's say, right outside her window?

3 A. Are you talking about a wireless cable modem?

4 Q. Yeah.

5 A. I do not know if she had a wireless cable modem.

6 Q. But if she did, if she did have a wireless cable
7 modem -- you guys lease those out, don't you?

8 A. Actually, Charter Communications had leased out wireless
9 routers, but those are not the same as a modem.

10 Q. Do you know whether Ms. Thomas had a wireless router or
11 not?

12 A. I do not know.

13 Q. But if she did have a wireless router and someone was
14 outside her window with a wireless card in their computer,
15 they could intercept that signal, could they not?

16 MR. GABRIEL: Object, lack of foundation.

17 THE COURT: Overruled.

18 THE WITNESS: It depends on her security settings
19 of the wireless router. It depends if it was secure or not.

20 BY MR. TODER:

21 Q. Okay. So if it was not secure, someone could, right?

22 A. Yes.

23 Q. A neighbor could do that too, correct?

24 A. Yes.

25 MR. TODER: Nothing further. Thank you.

1 MR. GABRIEL: Nothing further, Your Honor.

2 **EXAMINATION**

3 BY THE COURT:

4 Q. Is that called spoofing?

5 A. No, that's actually not spoofing. That's just what we
6 would consider stealing somebody's Internet --

7 Q. What's spoofing, then?

8 A. Spoofing would be when you are not -- I'm David Edgar
9 and I've got a cable modem and I've got a wireless router
10 and then somebody actually spoofs the wireless router IP or
11 spoofs the wireless router's MAC address. That would be
12 considered spoofing. They would do that -- they would look
13 like me, but they're actually not me.

14 THE COURT: Anything further?

15 MR. GABRIEL: No, Your Honor. Thank you.

16 MR. TODER: Well, I do, actually.

17 **RECROSS EXAMINATION**

18 BY MR. TODER:

19 Q. You say that if someone spoofed a wireless router they
20 would look like you, but they wouldn't really be you, right?
21 They could convince someone else that they were you,
22 correct?

23 A. With spoofing, yes.

24 MR. TODER: Thank you. Nothing further.

25 MR. GABRIEL: Nothing, Your Honor. Thank you.

1 THE COURT: You may step down.

2 Call your next witness, please.

3 MR. GABRIEL: The plaintiffs call Dr. Doug
4 Jacobson.

5 (Witness sworn.)

6 THE COURT: Good afternoon.

7 THE WITNESS: Good afternoon.

8 THE COURT: Would you state your true and correct
9 name for the record, please.

10 THE WITNESS: Doug Jacobson.

11 THE COURT: Would you spell it for the record.

12 THE WITNESS: D-o-u-g, J-a-c-o-b-s-o-n.

13 THE COURT: You may inquire.

14 MR. GABRIEL: Thank you, Your Honor.

15 (Doug Jacobson)

16 **DIRECT EXAMINATION**

17 BY MR. GABRIEL:

18 Q. Good afternoon, sir.

19 A. Good afternoon.

20 Q. Would you tell the ladies and gentlemen of the jury
21 where you work.

22 A. I'm employed by Iowa State University and I'm also
23 employed by a company called Palisade Systems.

24 Q. And what do you do for Iowa State University?

25 A. I am a professor of electrical and computer engineering

1 at Iowa State University. I'm also the director of
2 undergraduate programs with the Department of Electrical and
3 Computer Engineering.

4 THE COURT: You are going to have to speak up.

5 THE WITNESS: I'm sorry. All right. There we go.

6 BY MR. GABRIEL:

7 Q. What are your responsibilities, sir, in those positions
8 you just described?

9 A. As a professor in the department, my responsibilities
10 include teaching. I teach courses in computer security,
11 computer networking, information warfare. I also direct the
12 center we have on campus in computer security. We have
13 about 3,500 members that are part of the center, all of
14 which do research in the area of computer security, computer
15 networking.

16 As the director of undergraduate programs, I'm in
17 charge of the undergraduate curriculum in the department.
18 I'm chair of the curriculum committee. So I manage the
19 curriculum and manage the development of the curriculum as
20 it moves forward in time.

21 Q. You mentioned a few times, sir, the phrase "computer
22 security." What does that mean?

23 A. Computer security in a broad sense -- actually the term
24 we like to use is "information assurance." Basically it's
25 keeping information safe, digital information that may be

1 stored on a computer, information that is transmitted across
2 the network, keeping it safe from people who intend on doing
3 harm either to the computer or to the data.

4 Q. And then you mentioned a company called Palisade Systems
5 that you're involved in, did you not?

6 A. Correct.

7 Q. What is Palisade Systems?

8 A. Palisade Systems is a company that I founded 11 years
9 ago based off of patented technology that I created at Iowa
10 State, and the company focuses on computer security. My
11 primary product today is in the area of what they call data
12 loss prevention. Basically it's a product that tries to
13 keep your Social Security numbers from leaking out on the
14 Internet from banks and credit card companies and other
15 organizations that tend to use those things.

16 Q. Thank you. Dr. Jacobson -- and you are a Ph.D., are you
17 not?

18 A. Yes.

19 Q. You are Dr. Jacobson?

20 A. Yes. I have a Ph.D. in computer engineering.

21 Q. You have prepared a CV that has been provided in this
22 case, correct --

23 A. Correct.

24 Q. -- or resumé?

25 Would you look at Exhibit 21, please.

1 A. All right.

2 Q. Have you found that, sir?

3 A. Yes.

4 Q. Do you recognize Exhibit 21?

5 A. Yes.

6 Q. What is it, please?

7 A. It is my curriculum vitae last revised January '06.

8 Q. And that was provided earlier in this case, correct?

9 A. Correct.

10 Q. Since that time have there been some updates to it?

11 A. Yeah, there's been a few additions to the vita. I was
12 recently promoted to professor, so my title has changed, and
13 there's been a few more awards and a few more students have
14 graduated. So just the general things that you find as time
15 marches on.

16 Q. And with those additions to your CV or your resumé, is
17 the document Exhibit 21 accurate?

18 A. Yes.

19 MR. GABRIEL: Move Exhibit 21.

20 MR. TODER: Objection, hearsay.

21 THE COURT: Overruled. Be admitted.

22 BY MR. GABRIEL:

23 Q. Dr. Jacobson, I know your CV is quite long. Could you
24 just perhaps start -- just give us the educational
25 highlights. The jurors will get a chance to see it, so keep

1 it brief, but would you trace your educational highlights
2 for us.

3 A. Yes. I received a bachelor's degree in computer
4 engineering in 1980, a master's degree in electrical
5 engineering in 1982, and a Ph.D. in computer engineering in
6 1985, all from Iowa State University.

7 Q. And did you have a focus of your study?

8 A. Yeah. My Ph.D. dissertation was in the area of local
9 area networks, which is basically the study of computers
10 that are close together, in close proximity, and how they
11 intercommunicate.

12 Q. And you've indicated, sir, that you teach at Iowa State,
13 correct?

14 A. Correct.

15 Q. Can you highlight again for the jury experience that is
16 relevant to your task here today, your academic experience.

17 A. Yeah, I teach -- I actually developed and teach a couple
18 courses in the area of computer network security.

19 Iowa State University was one of the first seven
20 universities that was designated as a Center of Excellence
21 by the National Security Agency in the area of computer
22 security. And so as a Center of Excellence, we have to meet
23 a certain set of standards as far as the courses that we
24 offer and the material that we teach.

25 And I teach two of the core courses. One is

1 network security, which deals with all the aspects of how a
2 network can be used or misused by bad people. And I teach a
3 course on information warfare, which is a course that sort
4 of teaches the dark side. We actually have students go
5 through exercises of attacking computers and learning the
6 tools and then learning the defenses to protect against
7 that.

8 Q. You were talking about networks. What are you talking
9 about when you're talking about a network?

10 A. Basically our focus is on the Internet and the security
11 of the Internet, and so the course on network security
12 really could probably better be called a course on Internet
13 network security because it does focus on security of the
14 applications and things like the Web or e-mail and security
15 of the computers themselves.

16 Q. Dr. Jacobson, do you have nonacademic experience
17 pertinent to your work here?

18 A. Yeah. I have, of course, industrial experience through
19 the founding of Palisade Systems. The company employs about
20 20 people right now. As I said, it works in the area of
21 computer security and selling computer security product.
22 And so that's my primary --

23 Q. All right. Have you received honors -- some honors and
24 awards in connection with your work?

25 A. Yes, I have received several honors and awards. Some of

1 the more recent ones:

2 The national chapter of InfraGard, which is an FBI
3 organization. It's a public/private partnership focusing on
4 computer security. I was given a national award last year
5 for my work in the area of education and computer security.

6 I was given the state award Educator of the Year
7 in the state of Iowa in the area of technology teaching.

8 I've received a couple R&D 100 awards, which are
9 awards given out each year to the top 100 research and
10 development based products. And so I have received two of
11 those over the last several years.

12 And then I've gotten various awards from the
13 university, teaching awards and the like.

14 Q. All right. Were you, in fact, teacher of the year last
15 year?

16 A. Yeah, the Technology Association of Iowa's teacher of
17 the year.

18 Q. Have you done research, Dr. Jacobson, that's pertinent
19 to the work that brings you here today?

20 A. Yeah. My area of research is the area of network
21 security. My primary focus is in recreating the Internet
22 for the study of network security. I received close to
23 \$2 million from the Department of Justice to build a
24 recreation of the Internet that we call ISEAGE, and that
25 recreation is used for us to study network attacks and study

1 how attackers attack the Internet.

2 Q. And I think you've indicated you supervise grad
3 students?

4 A. Yes, I have supervised -- over my tenure at Iowa State
5 I've supervised over 150 graduate students at the master's
6 and Ph.D. level.

7 Q. Have you written papers or publications pertinent to
8 your work here today?

9 A. Yes, I have some papers in the area of computer network
10 security. I'm also under contract to write a book in the
11 area -- on network security. The book is close to
12 completion, not done.

13 Q. All right. And I think you mentioned you're an inventor
14 yourself, correct?

15 A. Yes, I hold two patents. One patent was the patent that
16 started Palisade Systems and I have another patent that is
17 currently under review by the Patent Office.

18 Q. And those relate to Internet security as well or network
19 security?

20 A. Yes, all three of the patents relate to Internet network
21 security.

22 Q. Are you a member of any professional societies,
23 Dr. Jacobson?

24 A. Yes. I'm a member of IEEE, which is the organization
25 that is a professional society for electrical and computer

1 engineers. I'm a member of ACM, which is the professional
2 society for computer scientists. I'm a member of ASEE,
3 which is the professional society for engineering educators.
4 I'm a member of the International Association of Computer
5 Investigating Specialists, which is an organization that
6 certifies computer forensic analysts.

7 Q. And do you hold any certifications?

8 A. Yes, I hold a certification by that organization as a
9 certified computer forensic examiner.

10 Q. And what is a certified computer forensic examiner?

11 A. Well, the certification process involves, of course,
12 education to learn what to do and then we're given eight
13 cases to work on. In those cases we have to write detailed
14 reports and those reports are then graded. And then you
15 take a comprehensive exam and you basically have to get --
16 there's 80 questions on the exam and the passing score is
17 80. And then every three years you have to be recertified
18 by the organization.

19 Q. Have you done forensics work yourself?

20 A. Yes, I have.

21 Q. For whom? And I'm sorry. Let me back up. What is
22 forensic work?

23 A. Okay. Computer forensics is examining the computer,
24 examining other digital information. It's a little bit like
25 *CSI* where you're looking for information on the computer.

1 It's a lot more boring than *CSI*, which is why you've never
2 seen a *CSI* episode focusing around the computer forensics
3 person. But it basically is going through and examining and
4 analyzing all the digital evidence on the computer and
5 drawing conclusions based on that evidence.

6 Q. And have you done this kind of work?

7 A. Yes, I have.

8 Q. For whom?

9 A. I've done this work for the Iowa State Police
10 Department, done this work for various individual
11 organizations, school boards, companies in the area, and
12 I've done this work for the recording industry.

13 Q. Have you given testimony before -- maybe not in a
14 courtroom, but have you given testimony in various places
15 relating to these issues?

16 A. Yes. I testified in front of the Senate Judiciary
17 Subcommittee on peer-to-peer networks back in 2003.

18 Q. That's the United States Senate?

19 A. I'm sorry. The United States Senate.

20 MR. GABRIEL: At this point, Your Honor -- strike
21 that.

22 BY MR. GABRIEL:

23 Q. Is everything you just described in your resumé just in
24 more detail?

25 A. Yeah.

1 MR. GABRIEL: Your Honor, we would move
2 Dr. Jacobson's admission as an expert in computer networking
3 security and forensics.

4 MR. TODER: We would object. May I voir dire the
5 witness?

6 THE COURT: You may.

7 **VOIR DIRE EXAMINATION**

8 BY MR. TODER:

9 Q. Dr. Jacobson, good afternoon.

10 A. Hello.

11 Q. You're an engineer?

12 A. I have three degrees in engineering, yes.

13 Q. But you're not a professional engineer?

14 A. That's correct.

15 Q. You don't have a PE license?

16 A. That's correct.

17 Q. How familiar are you with the processes and procedures
18 used by MediaSentry?

19 A. I understand the processes and procedures from an
20 operational standpoint. I do not have knowledge of the
21 actual inner workings of the organization.

22 Q. Do you have knowledge of the inner workings of the
23 MediaSentry processes and procedures that were talked about
24 earlier?

25 A. I have knowledge of the process that was described

1 earlier, yes.

2 Q. So when you say you don't have the knowledge of the
3 inner workings, are you talking about the inner workings of
4 MediaSentry or their procedures and processes?

5 A. The inner workings of MediaSentry, I don't know how many
6 employees, what those employees do to carry -- I don't know
7 how many people are sitting in front of a computer, that
8 type of information.

9 Q. But are you intimately familiar with the actual software
10 that they use in getting the information that they acquired?

11 A. I'm familiar with the Kazaa program that they use, yes.

12 Q. No, not the Kazaa program. MediaSentry's proprietary
13 programs that they use to extricate information.

14 A. I'm familiar with -- you know, first of all, as I
15 stated, they use Kazaa to initiate all the file transfers.
16 The software they would use that would be proprietary in
17 nature would be the software they use to generate the
18 reports. The software they use to process the DAT files
19 that came down and then the software that they use to log
20 the traffic that goes back and forth, I have not seen the
21 code or any of those applications.

22 Q. You have not seen the code. Do you know whether their
23 software has been peer reviewed or published?

24 A. I do not.

25 Q. Have you ever testified as an expert in a court of law

1 as opposed to the Senate testimony you talked about?

2 A. No, I have not.

3 Q. Have you ever testified as an expert in any other type
4 of proceeding?

5 A. I was deposed.

6 Q. You were deposed on February 23rd in another one of
7 these kinds of cases?

8 A. I believe that was the date.

9 Q. Specifically, your deposition was taken in UMG
10 Recordings vs. Mary Marie Lindor, correct?

11 A. Correct.

12 Q. And UMG Recordings, that's the same plaintiff in these
13 proceedings today?

14 A. Yes, UMG, I believe it's the same.

15 Q. There was no judge involved in that, that was a
16 deposition, correct?

17 A. Correct.

18 Q. So do you have a certain process that you are -- that
19 you use in order to come to conclusions or opinions that you
20 might ultimately testify about today?

21 A. Yes.

22 Q. And does this methodology, does that include the
23 protocol? Is there software involved that you have created
24 for this?

25 A. No.

1 Q. Can you just describe your methodology in broad terms.

2 A. Yeah. There's two parts that I am going to be talking
3 about, so I will break them into two pieces.

4 One is looking at the data that MediaSentry
5 provides and I analyze the data provided me, looking through
6 that data to -- one is to check that data. You know, as
7 MediaSentry pointed out, they produce redundancy in their
8 data. I look at that redundancy also and basically I apply
9 knowledge that's common among people who are experts in
10 networking to draw conclusions based on the data provided by
11 MediaSentry.

12 The second piece that will come up in this case is
13 the forensics exam, and the processes and procedures I used
14 in the forensics exam are outlined by the professional
15 organization that I'm certified with.

16 Q. But there's no forensic exam that you conducted in this
17 case?

18 A. Yes, there is.

19 Q. Which one was that?

20 A. I did a forensics exam of the hard drive provided by the
21 defendant.

22 Q. Okay. This method that you used analyzing MediaSentry's
23 data, the approach that you take to this, is this pretty
24 much the same approach that someone similarly situated with
25 your educational background would use or is there some

1 methodology that you use that is -- I won't say proprietary,
2 but something that you've developed?

3 A. No. The process that goes into it is something that
4 anybody versed in the area -- the only thing that I've
5 developed is a worksheet that helps me keep track of the
6 information.

7 Q. Has anyone other than the recording companies ever hired
8 you to give an opinion on whether a particular computer has
9 been used for uploading or downloading?

10 A. I had a school -- a case with a school where a teacher
11 was accused of downloading pornography during school time.

12 Q. And the same question but for copyrighted works.

13 A. No, not for copyrighted works.

14 Q. Just the recording companies, correct?

15 A. Yes.

16 Q. How long have you been using this present -- this method
17 that you've been using to determine whether a particular
18 computer was used for uploading or downloading copyrighted
19 works, how long have you been doing that?

20 A. Are you asking how long I've been employed by the
21 recording industry?

22 Q. Yeah, your relationship with the recording industry.

23 A. I believe it was September '05 is when I had my first
24 interactions with the law firm and I think I started -- I
25 think my first case may have been January of '06.

1 Q. Your method of determining from MediaSentry materials
2 whether a particular computer was used for uploading or
3 downloading of copyrighted works, has that ever been, your
4 method, been tested by any kind of testing body?

5 A. I've not submitted it to any testing body. It's common
6 knowledge how this fits together.

7 Q. Is there any known rate of error for your method of
8 doing this?

9 A. Given the way the Internet operates, in order for
10 MediaSentry to do what they did, there really can't be any
11 error. In order for them to transfer a file, those
12 addresses have to be what they are.

13 Q. There's no potential rate of error?

14 A. Not that I'm aware of.

15 Q. Have you had any communications with MediaSentry?

16 A. No, other than I met the MediaSentry person at these
17 proceedings.

18 Q. Do you know how accurate MediaSentry's -- not your
19 analysis of using MediaSentry material, but just
20 MediaSentry's protocols, do you know what their rate of
21 error is for what they do, if there's any?

22 A. I have not seen any published error rate.

23

24

25

1 MR. TODER: We have no objection to Dr. Jacobson
2 being an expert for the plaintiffs.

3 **DIRECT EXAMINATION (Cont.)**

4 BY MR. GABRIEL:

5 Q. Dr. Jacobson, would you describe for the ladies and
6 gentlemen of the jury what you were asked to do here. I
7 think you described there are two pieces. By all means
8 break it up if you need to.

9 A. Yeah. What I'm asked to do is I'm asked to take the
10 information from MediaSentry and to look at that information
11 and to see if there's evidence of file sharing and to -- and
12 what evidence exists to tie that file sharing back to an
13 individual.

14 I'm also asked to provide testimony as to how the
15 Internet operates and testimony as to how the peer-to-peer
16 networks work, depending on the particular peer-to-peer
17 network that is in use in the case.

18 Q. And then there was a second part of the work that you
19 did?

20 A. And then in some cases I'm provided a hard drive, a
21 forensics copy of a hard drive, and I'm asked to look at
22 that drive looking for evidence of file sharing software,
23 looking for evidence of any music, any copyrighted material.
24 Also looking for identifiers that may be part of the
25 computer, user names, e-mail addresses, web pages, or

1 anything that can tie an individual to the computer.

2 MR. GABRIEL: Your Honor, I may have overstepped
3 or misstepped. I'm not sure if the Court ruled on my
4 request that Dr. Jacobson be admitted as an expert. I
5 apologize.

6 THE COURT: He's an expert. Go ahead.

7 BY MR. GABRIEL:

8 Q. Dr. Jacobson, you did all the work that you described?

9 A. Yes.

10 Q. And did you issue a report on the work you did?

11 A. Yes, I did.

12 Q. And at some point did you supplement the -- you did a
13 report and then supplemented that?

14 A. Yes, I did.

15 Q. When did you do that?

16 A. I can't remember the exact date of the first report.

17 The supplement would have come out in the May time frame, I
18 think, of --

19 Q. Of this year?

20 A. Of this year, yeah.

21 Q. And was there a reason you supplemented the first
22 report?

23 A. Yeah. After receiving the hard drive and doing a
24 forensics examination of the hard drive and also receiving
25 deposition testimony from various individuals, I

1 supplemented my report. The supplement was just an addition
2 to the original report. So all the information was taken
3 out of the original report and just added to the report.

4 Q. So the document that's called supplemental report is
5 cumulative and has all of your conclusions?

6 A. That's correct.

7 Q. Could I ask you to look at Exhibit 22, please.

8 A. 22, is that what you said?

9 Q. Yes, sir. Do you recognize Exhibit 22, Dr. Jacobson?

10 A. Yes, I do.

11 Q. What is that, please?

12 A. 22 is my supplemental report and Exhibit B with the
13 supplemental report. Exhibit A is my vita, which is not
14 part of that.

15 Q. And we already saw your vita, correct?

16 A. Yes.

17 Q. Does the report accurately reflect your findings?

18 A. Yes.

19 Q. Is everything in the report accurate to the best of your
20 knowledge, information, and belief?

21 A. Yes.

22 MR. GABRIEL: Move Exhibit 22.

23 MR. TODER: Objection, hearsay.

24 THE COURT: Overruled.

25 BY MR. GABRIEL:

1 Q. Dr. Jacobson, I would like to now turn to your initial
2 analysis in the case, that is, the one you did prior to your
3 forensic inspection. Are you with me?

4 A. Um-hmm.

5 Q. Okay. How did you go about your task here?

6 A. What I do when I receive the information from
7 MediaSentry is I'll look through all of the data, most of
8 which you saw earlier from the MediaSentry testimony, and I
9 look for those things that -- the IP address. I look at the
10 screen -- I first look at the screen shots.

11 I basically follow the same steps that they did
12 when they created the data. I go through those steps to
13 help tie the pieces together. So I look at the screen
14 shots, see how many files were there. I know the user name.
15 I go through the download logs, which would show me the IP
16 address.

17 And I look at the system log, which shows me dates
18 and times and gives me the time frame for which the files
19 were being transferred from that system. I use that time
20 frame to then re-verify the information that is there from
21 the ISP. So I go back and I look at the dates and times to
22 make sure that what the ISP has provided also matches the
23 date and times of the capture.

24 And then I also look at the metadata which was
25 presented. I look through the metadata looking for evidence

1 of those descriptions that indicate the pirate groups and I
2 note a few of those pages. I don't go through every one of
3 them. Sometimes it may be three, four hundred pages in
4 length and so I look for a few for a pattern. And then I
5 take that information and that information is then used to
6 create that report.

7 And so I can take -- a little bit depends on what
8 I get back from the ISP. In this case the ISP provided an
9 e-mail address and provided a MAC address that indicates a
10 modem. And so that's additional information that I could
11 use, again, to try to make that correlation between what you
12 saw in the screen shots and an individual using the computer
13 to distribute software.

14 And so I basically take all those pieces of
15 MediaSentry and connect the dots in order to show that what
16 you saw in the screen shot was what was being distributed by
17 the plaintiff -- or by the defendant in the case.

18 Q. And so basically you're interpreting -- the first part
19 of your analysis before the forensic inspection is to
20 interpret the data you have, correct?

21 A. That's correct.

22 Q. And you just described at length what you went through.
23 Is that method of analysis of a type reasonably relied on by
24 experts in your field?

25 A. Yes.

1 Q. In fact, sir, is there any other way to do it?

2 A. Not that I'm aware of.

3 Q. I would like to, Dr. Jacobson, walk through your
4 findings, if I can, and get more focused on the first piece
5 before your forensic inspection.

6 A. Yes.

7 Q. Can you explain, first of all, sir, how Internet
8 addressing works.

9 A. Okay. You've heard several of these terms throughout
10 the afternoon. The Internet address -- everything is based
11 on an IP address and people use all sorts of different
12 metaphors to describe that. I like the Post Office metaphor
13 myself. Every source, every destination at a snapshot in
14 time has to have a unique set of addresses. Otherwise you
15 couldn't get the information to where you want it to go to.

16 These addresses, these IP addresses look like a
17 bunch of rather strange numbers and have -- in some sense
18 may look like they have no rhyme or reason to them. They're
19 actually allocated in groups.

20 There's an authority that allocates Internet
21 addresses to organizations. Those organizations may be
22 corporations. They may be Internet service providers like
23 Charter Communications, Verizon, AOL and so on. Educational
24 institutions can get blocks of Internet addresses.

25 And so these groups are assigned those blocks and

1 then they hand those individual addresses out to the actual
2 end user. That way you can -- by this hierarchy you can
3 guarantee that there's uniqueness. It's not just Wild, Wild
4 West. There is an order to how these things are handed out
5 so we can guarantee that they are unique.

6 Q. Can two devices function if they're connected to the
7 Internet at the same time at the same IP address?

8 A. No, because you wouldn't know how to get the traffic to
9 them and you wouldn't -- if there were two like that and
10 they sent it, they were sending out traffic, the traffic has
11 a "to" and "from" address, so when the traffic was
12 returned -- we talked a little bit about handshaking. When
13 you send the response back, where would it go to? If there
14 are two that are the same, it wouldn't work.

15 Q. And you indicated, I think a moment ago, that an IP
16 address is unique. Would it be more accurate to say it's
17 unique at a given time, correct?

18 A. Right. At a certain moment in time, yes.

19 Q. Dr. Jacobson, have you also drawn some conclusions about
20 so-called peer-to-peer networks?

21 A. Yes.

22 Q. Have you created a demonstrative aid that would help you
23 explain to the ladies and gentlemen of the jury how a P2P
24 network works?

25 A. Yes, I have.

1 Q. Will that assist you in doing so?

2 A. Yes.

3 MR. GABRIEL: Your Honor, this is one of the
4 demonstratives we provided. May we put it up?

5 THE COURT: You may.

6 BY MR. GABRIEL:

7 Q. Dr. Jacobson, do you recognize this demonstrative
8 exhibit?

9 A. Yes, I do.

10 Q. Did you create it?

11 A. Yes, I did.

12 Q. With the demonstrative in hand, would you please explain
13 for us how a peer-to-peer network works.

14 A. As shown in this picture, we have a large number of
15 computers and --

16 Q. If I can interrupt, Dr. Jacobson. Would it help if you
17 had a laser pointer?

18 A. It might, although I'm kind of shooting through -- we'll
19 try without it and you may follow along or something.

20 Q. I will. Thank you.

21 A. And so, as you see, there's a large number of computers
22 up there. And the way the peer-to-peer network works is
23 there's nobody really in charge. Now, there are some people
24 that are in charge of keeping track of information. These
25 supernodes are individuals that have taken on

1 responsibility. They volunteer. Anybody can be a
2 supernode. And they keep the lists.

3 One of the complex things of a peer-to-peer
4 network is the goal behind it is to be able to share
5 information. How do you find it? How do you search?
6 Supernodes let you do that. So there's a catalog, sort of
7 like your library. If you didn't have a catalog index in
8 your library, you would never find a book.

9 So these supernodes keep these catalog indexes and
10 the goal behind the peer-to-peer network is to allow you to
11 share whatever information you have with everybody else that
12 belongs to this peer-to-peer network.

13 Q. Dr. Jacobson, let me ask you about the supernodes. Are
14 they just also other users?

15 A. Yeah, they're just other users.

16 Q. And they happen to have indexes as well?

17 A. Yes.

18 Q. But they're using like all the other people who are not
19 supernodes, right?

20 A. Yes. They're being helpful.

21 Q. Okay. Please continue. I'm sorry.

22 A. No, that was -- and so, again, this picture shows
23 actually a very small peer-to-peer network. As we saw
24 earlier, these networks can have millions of users across
25 the world interconnected on an ad hoc basis. You join these

1 networks by getting the software and you join the network.

2 Q. Based on your experience and training in this field,
3 sir, what are peer-to-peer networks used for?

4 A. Their primary use is file distribution primarily in the
5 area of copyrighted materials.

6 Q. Now, Dr. Jacobson, you're aware, are you not, that the
7 file sharing service that's at issue in this case is called
8 Kazaa, correct?

9 A. Yes.

10 Q. You're familiar with Kazaa?

11 A. Yes, I am.

12 Q. What is Kazaa?

13 A. Kazaa is one of several programs that support
14 peer-to-peer. We call these things typically by the program
15 name and so Kazaa is a program that uses -- communicates
16 with something they call FastTrack, which is just a language
17 that these peer-to-peers use to talk with each other. So
18 Kazaa is a program that implements basically a picture just
19 like that.

20 Q. Sir, have you created a demonstrative exhibit that will
21 help you explain to the ladies and gentlemen of the jury how
22 Kazaa works?

23 A. Yes, I have.

24 Q. And will that assist you in explaining how Kazaa works
25 to the ladies and gentlemen of the jury?

1 A. Yes, it will.

2 MR. GABRIEL: Your Honor, may we put up that
3 demonstrative? It was provided to the other side.

4 THE COURT: Yes, you may.

5 BY MR. GABRIEL:

6 Q. Dr. Jacobson, do you recognize the demonstrative exhibit
7 that's now on the screen?

8 A. Yes, I do.

9 Q. Did you create this?

10 A. Yes, I did.

11 Q. Using this demonstrative aid, Dr. Jacobson, would you
12 explain to the jury how Kazaa works.

13 A. Yes. As we see in this picture, this is -- imagine this
14 is just a real small part of that picture you saw before.
15 So we are showing a supernode and we're showing two other
16 individuals on this network.

17 And so when an individual joins a peer-to-peer
18 network, they start up their software and they join, they
19 provide a user name. And as part of joining, their computer
20 provides the supernode with a list of everything that's in
21 the share folder.

22 Again, back to that thought of using a library
23 index, well, how do you populate the index of the library?
24 People who join the network provide their list of what files
25 that they have.

1 Q. Where is that shown on your --

2 A. That is shown in arc number 1. So if that was Bob in
3 Denver, Bob would connect to a supernode and the shared
4 files -- the files in the share folder listing those files,
5 basically metadata, would be transferred to the supernode,
6 which could be in California or anywhere.

7 Then when user 3 called Alice, when Alice wants to
8 gain access to material, Alice can enter a search string.
9 Just like you do in Google or go to the library, you can
10 search for something and that search string is presented to
11 the supernode. The supernode will return --

12 Q. I'm sorry, Dr. Jacobson. Where is that shown here?

13 A. That's shown in number 2, search supernode index. And
14 so Alice could, for example, search for Elvis. You can
15 search very specifically for a particular song or just type
16 in Elvis and you would get all of the Elvis songs.

17 And then in arc number 3 we show the supernode
18 returning back to Alice the results of the searches and
19 these search results basically contain information about the
20 song and where to get the song. Supernodes do not store the
21 files that are being shared. So Bob's files are still on
22 Bob's computer. And so that's shown in arc 3, getting
23 results back.

24 Q. What do they look like -- if we were on Kazaa, when that
25 result comes back, what does that look like to Alice?

1 A. It looks basically like the screen shot that we saw
2 earlier except if I typed in Elvis, all the songs would have
3 Elvis in them, all the artists would have Elvis in them.
4 And so I would get this list. I get to click on which ones
5 I wanted and then I can say I want those files. And that is
6 shown in arc number 4. And so Alice's Kazaa program would
7 actually go to Bob's computer, ask Bob's computer for
8 Elvis -- an Elvis song.

9 Q. Dr. Jacobson, does that happen in the form of those data
10 packets that Mr. Weaver described?

11 A. Yes, those data packets that he showed with the requests
12 where it said "get." And it actually goes after the song
13 based on a number of identifiers as opposed to the actual
14 name of the song, but it is that song.

15 Q. And are the IP addresses related in that get and
16 request?

17 A. Yeah, because, again, if you look at that picture, if
18 you think about what Alice knows, when Alice made that
19 search, Alice gets back here's all the Elvis songs. Here's
20 the one I want, but the supernode who Alice has been talking
21 to doesn't have the song. So Alice needs to know who has
22 the song. So as part of the information that comes back
23 from the supernode is Bob's IP address so Alice can ask
24 Bob's computer for the Elvis song.

25 Q. And that's depicted on --

1 A. That's number 4.

2 Q. All right. Then what happens?

3 A. And then Bob's computer takes the song out of the share
4 folder and makes a copy of it. The song stays in Bob's
5 computer. The digital copy of that song is transmitted over
6 the Internet to Alice. That song is then placed in Alice's
7 share folder. And that is shown in arc number 5.

8 And then now that Alice has a new song, Alice's
9 computer tells the supernode that it has one more song in
10 its share folder and so the supernode is updated. And that
11 way if somebody else, if Carol came along and was looking
12 for the Elvis song, Carol could now get the Elvis song from
13 Bob or Alice. And so that's how these things sort of
14 geometrically grow as they spread.

15 Q. And that last step was 6?

16 A. The last step is 6, that's correct.

17 Q. So at the end of the day, in your example if Bob was 1
18 and Alice was 3, they both have a copy now of that same
19 song?

20 A. That's correct.

21 Q. And then they both can -- someone else can take that
22 song from either one of them now?

23 A. That's correct.

24 Q. Dr. Jacobson, with respect to -- you are familiar with
25 how Kazaa gets downloaded and installed, are you not?

1 A. Yes.

2 Q. Does Kazaa get downloaded and installed by accident?

3 A. No.

4 Q. Could you describe the process that it takes to download
5 and install Kazaa on someone's computer.

6 A. Yeah. You retrieve Kazaa from a website and it is
7 downloaded as an executable on your computer. You then need
8 to open that up and that will launch an install process. I
9 don't know if you have ever installed software on your
10 computer, but it ends up with all these messages about I am
11 installing this and it may have a license agreement that you
12 actually have to click "accept," and that's the one you read
13 every time. And you go through that process and that will
14 install the software.

15 Then you need to tell Kazaa sort of about
16 yourself. That's where -- the first time you start up Kazaa
17 it asks you what do you want as a user name, it asks you
18 what preferences do you have. It will ask you a bunch of
19 setup information as you're installing the Kazaa program.

20 Q. And there are a number of screens that you have to go
21 through?

22 A. Yes, there's a number of screens that you have to
23 navigate through.

24 Q. And I neglected to ask you this as you described how
25 Kazaa works. You referred to Bob and Alice. Do Bob and

1 Alice have to know each other?

2 A. No.

3 Q. And we talked about file sharing. Is file sharing in
4 the sense of two kids, two friends sharing toys?

5 A. No, because there's only one -- the toy doesn't get
6 replicated. So here we're talking about sharing as in I'm
7 going to make a copy of what you have and walk away with my
8 copy of what you have and now we have two.

9 Q. And those persons talking to each other may not even
10 know each other?

11 A. No.

12 Q. In fact, that's typically the case, right?

13 A. That's typically the case, yes.

14 Q. You described at some length the process on your
15 demonstrative for how a file gets requested and distributed,
16 correct?

17 A. Yes.

18 Q. You're aware -- and you've been sitting here, I know,
19 for some of the day today -- that there were 1,702 sound
20 recordings in the share folder, music files in the share
21 folder at issue, correct?

22 A. Correct.

23 Q. Do you have a view, Dr. Jacobson, as to how long it
24 would take a user to go through that process that you
25 described and download 1,702 sound recordings?

1 A. Boy, if you count the search time, imagine going in
2 and -- even if you searched by an artist, you would get the
3 hits, you would have to pick the ones you wanted, and then
4 you could start the download process. And it's going to
5 take, you know, minutes per song to download plus the search
6 time plus sorting through what you want. It's going to take
7 days to do 1,700. That would be, you know, 24/7 days. So
8 it would take many, many hours.

9 Q. Dr. Jacobson, can a user listen to music that is stored
10 on another computer in the Kazaa network?

11 A. No.

12 Q. Why not?

13 A. Again, Kazaa was designed to share files and so the idea
14 behind Kazaa is that I make a copy of somebody's file and
15 put it on my computer. The idea of streaming, they call it
16 streaming audio, which is what radio stations and so on do,
17 that's a pretty complex process to get it to sound right.
18 And so that's just not something Kazaa was designed to do.
19 You can use Kazaa to listen to things you already
20 downloaded, but those are listening to things that you
21 already have on your system.

22 Q. To listen to something that someone else has, you need
23 to go through the process that you described and make a copy
24 of it, correct?

25 A. Correct.

1 Q. You indicated, Dr. Jacobson, you have reviewed the
2 various investigative data provided by SafeNet or
3 MediaSentry, correct?

4 A. Correct.

5 Q. Dr. Jacobson, do you have any opinions, based on your
6 education, training, and experience, as to whether the
7 computer with IP address 24.179.199.117 on February 21, 2005
8 at about 11:00 p.m. was used to copy or distribute any of
9 the plaintiffs' copyrighted sound recordings?

10 A. Yes.

11 MR. TODER: Object to the form of the question.
12 May we approach?

13 THE COURT: No. Overruled.

14 BY MR. GABRIEL:

15 Q. What opinions do you hold, sir?

16 A. It is my opinion that the computer with that IP address
17 during that time was distributing over 1,700 music files
18 through the Kazaa peer-to-peer network.

19 Q. And was it also used to download files, to the best of
20 your knowledge?

21 A. To the best of my knowledge, that computer was used to
22 download files from the Kazaa peer-to-peer network.

23 Q. I would like to break that up and take them one at a
24 time. Would you tell the ladies and gentlemen of the jury,
25 Dr. Jacobson, the basis for your opinion that this

1 particular computer was used to distribute music on the
2 Internet using Kazaa.

3 A. Again, there's several indicators and several of which
4 you have seen as exhibits earlier.

5 The screen shot shows the files available, made
6 available, being distributed. Going from the screen shot,
7 the data that was collected from the screen shot, that data
8 comes up with the IP address of that computer.

9 That IP address then -- the fact that MediaSentry
10 was able to download all of those metadata files goes to
11 show you that computer was involved in the Kazaa network and
12 offering files for distribution.

13 The fact that MediaSentry downloaded 11 complete
14 songs means that there was proof that there were songs on
15 that computer and those songs were able to be completely
16 downloaded.

17 Q. All right. Does the -- we've heard earlier today about
18 a MAC address. Does that factor into your opinion as to
19 distribution?

20 A. Yeah. The MAC address is another piece of information
21 that really helps tie the IP address to the user, to the
22 computer.

23 As was pointed out earlier, the MAC address is a
24 unique identifier actually within the Charter network. So
25 Charter has to maintain unique MAC addresses in their

1 networks, otherwise the network would also fail. So Charter
2 uses that MAC address as not only a way to make their
3 network continue to function correctly, but, as was pointed
4 out, as a way to collect revenue.

5 So having that MAC address, being able to tie the
6 IP to the MAC adds, again, further evidence that that ties
7 the IP -- songs, to IP, to MAC, to computer.

8 Q. And you saw that Charter data, did you not?

9 A. Yes, I did.

10 Q. Does the user name play into your opinion?

11 A. Yes. The user name, we get the user name from
12 MediaSentry and then the user name in this case matched the
13 user name of the e-mail address given by Charter. And so
14 that helps, again, make that tie-in between what we saw on
15 the screen shot to files, to the computer, and now one step
16 further to the person.

17 Q. And the computer -- and that user name was what?

18 A. tereastarr.

19 Q. Dr. Jacobson, you've seen -- you've been on Kazaa a fair
20 amount yourself in terms of your research and study?

21 A. Um-hmm.

22 Q. Yes?

23 A. Yes.

24 Q. Sir, have you seen, based on the work you have done,
25 people who go on Kazaa and use their own e-mail addresses as

1 their user name on Kazaa?

2 A. Yeah. Of the cases I've looked at where I had the
3 e-mail address -- I don't always know the e-mail address --
4 I would say about 50 percent of the time the e-mail address
5 matches the Kazaa user name. There may be a couple numbers
6 added on the end, but the text part of the e-mail address
7 matches about 50 percent of the time.

8 Q. So that would not be uncommon?

9 A. No.

10 Q. Dr. Jacobson, when you're looking at the data that you
11 looked at from either MediaSentry or SafeNet, are you able
12 to tell whether a wireless router was being used at the date
13 and time of the capture?

14 A. I can tell by looking at the download log information
15 that the computer in question was on the public Internet.
16 When you use a wireless router, the addresses on the inside,
17 on the house side of the router are what they call private
18 IP addresses. Those are IP addresses that cannot exist on
19 the public Internet. There's no way -- the Internet would
20 go crazy and so these private IP addresses are on the inside
21 of a wireless router.

22 Q. Let me stop you for a minute.

23 A. Yes. I'm sorry.

24 Q. This is getting a little technical. If you can explain
25 what -- in terms of numbers, what might that look like? You

1 said there's a public IP address and a private IP address.

2 A. The private IP addresses are divvied out to people.

3 There are three ranges that have been allocated to private
4 IP space. Most wireless access points or wireless routers
5 have the internal address of 192.168 is how it starts and
6 then the rest is up to the person at home.

7 Q. So would a person like that have -- would there be a
8 public ID address that says one thing and then a private IP
9 address as well?

10 A. Yeah. If you look at the download data example that
11 was -- I can't remember what exhibit that was -- that was
12 put forth by MediaSentry, if you recall, the person from
13 MediaSentry commented on the public IP, the source, and then
14 the other IP said MediaSentry IP. But if you noticed in the
15 packets that came back from the computer that had the files,
16 in the payload, in the metadata was the IP address that that
17 computer said it had.

18 So think of it as when we mail a letter, right, we
19 put the "to" and "from" address on the outside of the
20 letter. Think of this as also putting the "from" address on
21 the inside of the letter also. So when you open it up, the
22 "from" address is also there. That's the "from" address of
23 the actual computer.

24 And so if it's behind a wireless router, you would
25 see typically 192.168 dot something as the address inside

1 the envelope. The address on the outside of the envelope
2 needs to be a public address and so the router puts a public
3 address on that envelope. That way you could actually have
4 multiple computers in your house, yet there's one mailing
5 address.

6 So, again, you open up the envelope. You would
7 look inside. Oh, this piece of mail is for you, this piece
8 of mail is for you, this is for you. That's what the
9 wireless router does as it opens it up.

10 Q. So if a wireless router was in use, what would you see?
11 Would you see a private IP address?

12 A. Yeah, you would see a private IP address in the payload
13 of that download.

14 Q. You don't have to look for this.

15 MR. GABRIEL: Can you put up Exhibit 10,
16 Mr. Reynolds.

17 BY MR. GABRIEL:

18 Q. You were talking about payload. Is this the document
19 that you were referring to?

20 A. Yes, it is.

21 Q. And this shows data packets going back and forth?

22 A. Right. So we would be interested in the received
23 packet, which is the second block down. So you see, as was
24 already previously testified to, we have the source -- let's
25 see. There we go. We have the source address up above.

1 That is the identifier. That first source address is the
2 identifier of the actual packet on the Internet. That is
3 the public address. That's what's used to route e-mail.

4 If you see down where it says, "X-Kazaa-IP,"
5 that's the IP address that the Kazaa software is saying
6 belongs to the computer that is running Kazaa. So the Kazaa
7 software is reporting back the IP address of the computer
8 that is running the Kazaa application.

9 Q. And, in fact, this also shows the supernode's IP
10 address?

11 A. It shows the supernode's IP address also.

12 Q. Based on all of the data that you saw, Dr. Jacobson, do
13 you have an opinion as to whether a wireless router was
14 being used in this case?

15 A. There was no wireless router used in this case.

16 Q. And that's based on all the reasons you described?

17 A. Yes.

18 Q. There is no private IP address, is there?

19 A. Correct.

20 Q. So -- and you were sitting in the courtroom for much of
21 the afternoon?

22 A. Yes.

23 Q. So there was no one outside the window who was, you
24 know, accessing a computer in Ms. Thomas's house through a
25 wireless router; is that right?

1 A. Based on this information, that's correct.

2 Q. I would like to turn now -- so based on all of what you
3 have described, is it your -- it's your opinion, is it not,
4 that the computer with that IP address, the 24.179,
5 et cetera, on February 21, 2005 in the evening was
6 distributing files on Kazaa, correct?

7 A. That's correct.

8 Q. You indicated that it is also your opinion that the same
9 computer was downloading files, music files, on Kazaa at
10 that IP address at that date and time, correct?

11 A. Yes, that that computer downloaded files from Kazaa.

12 Q. Would you please explain the basis for your conclusion
13 that that computer downloaded files using Kazaa.

14 A. This goes back to the metadata that was earlier
15 testified to by MediaSentry, about the nature of the
16 metadata and the fact that many of the songs had in the
17 metadata the bragging rights of the various groups that
18 placed that music in the network.

19 Also due to the fact that the naming conventions
20 were inconsistent among the files. If somebody were to rip
21 their own CD's with a particular piece of software, that
22 would have a default naming convention and it's very
23 unlikely that an individual changed the default naming
24 convention several times through the process of ripping
25 their own music.

1 Q. In other words, someone who is ripping their own music
2 would likely use the same convention?

3 A. It makes it easier to find your own music, yes.

4 Q. Dr. Jacobson, are you familiar with file formats?

5 A. Yes.

6 Q. And did you note in the share folder that you saw from
7 February 21, 2005 with that IP address, 24.179, et cetera,
8 what format were the music files in?

9 A. All but, I think, two were in the MP3 format.

10 Q. And that's different from the WMA format, correct?

11 A. That's one of several file formats for audio.

12 Q. Now, with respect to metadata, a minute ago you just
13 described the kind of indicators of pirate groups on there,
14 the ripped by, the name, et cetera, correct?

15 A. Yes.

16 Q. If a file does not have that metadata, does not have
17 that kind of description, does that mean that it was not
18 ripped improperly by someone?

19 A. No. Just because they're not bragging about it doesn't
20 mean that they didn't -- that somebody didn't rip the song
21 and put it up there.

22 Q. So if someone is bragging about it in the way you
23 described, that would be an indicator of a pirate group, but
24 if there's nothing on there, that really doesn't say one way
25 or the other?

1 A. Right.

2 Q. Have you told us, Dr. Jacobson, all of the reasons, the
3 bases for your opinion that this computer was used to
4 download sound recordings on the date and time in question?

5 A. Yes.

6 Q. Now, you indicated, sir, that there was a second piece
7 of the work that you did in this case, correct?

8 A. That is correct.

9 Q. And that was a forensic inspection?

10 A. Yes, that was a forensic inspection.

11 Q. Could you describe for the ladies and gentlemen of the
12 jury what that involved.

13 A. Yeah. I received --

14 THE COURT: Excuse me. Before we move on, let's
15 take a stretch break, stand and stretch.

16 (Pause.)

17 THE COURT: Let's continue.

18 MR. GABRIEL: Thank you, Your Honor.

19 BY MR. GABRIEL:

20 Q. Dr. Jacobson, would you describe what was involved in
21 the forensic inspection that you did in this case.

22 A. Yes. I received a hard drive, which was what they call
23 a forensics copy of the original drive.

24 Q. Can you explain what that is.

25 A. Yes. The copy was created by -- there's various groups,

1 organizations, companies that actually do this for a living,
2 that make forensic copies.

3 A forensics copy is basically taking all of the
4 information on the hard drive, making an exact copy of
5 everything, including the unused space in a hard drive, and
6 that is then placed in a file format that is compatible with
7 forensics examiner software. And so I received a disk with
8 the hard drive in this file format.

9 One of the advantages of -- the reason you do this
10 is that you don't want to touch or play with the original
11 hard drive, so you make -- you need to make a copy of it.
12 And this forensics software makes a copy in such a way that
13 during the process of making the copy, it creates an
14 identifier which can be used later on to tell if anybody
15 tampered with the evidence. So this identifier is used to
16 ensure that nobody manipulates the data. You can always go
17 back and re-verify that, yes, what I have is an exact copy
18 of the original hard drive. And so that's what I received.

19 Q. Are there protocols based on -- now we're talking about
20 your experience as a certified forensic examiner. Are there
21 protocols that you have to follow?

22 A. Yeah, there's protocols that the person who actually
23 collects the evidence has to follow. Again, these are
24 reputable organizations that do this. Those protocols are
25 there to ensure that you don't write on the hard drive and

1 don't destroy any of the evidence.

2 Then when I receive the hard drive, since it's in
3 this format I can open up the contents of the hard drive
4 using this software and the software basically opens up the
5 hard drive in a read only manner. So it lets me read every
6 last aspect of the hard drive and I can't change anything.

7 And I can search through the hard drive. I can
8 search for key words. I can search for strings of data. I
9 can get a listing of absolutely every file on the hard drive
10 in a giant -- usually on a modern computer there's over
11 100,000 files on a hard drive if you count all the
12 applications and Windows and so on. So you can get a list
13 of all the files, sort through it.

14 And so this software is a tool. This is the
15 most common -- the software is called EnCase by Guidance
16 Software and it is probably the most widely used tool in law
17 enforcement for forensics examination.

18 Q. And you used that tool?

19 A. I used that tool, yes.

20 Q. Is the method -- have you described the method that you
21 used to inspect the hard drive here?

22 A. In very high level terms. There's a more detailed
23 process or steps that I go through, but that's sort of the
24 high level.

25 Q. And are the steps -- are there protocols that dictate

1 your taking certain steps?

2 A. Yeah. Again, the hard drive is a read only, so I can't
3 manipulate any of the data on the hard drive.

4 Generally what you do is you take a -- like you do
5 any time you're investigating something new, you take a
6 cursory look and see what's out there. And then based on
7 what you're trying to discover, then you start to dig down
8 and follow where the path takes you.

9 When you're actually examining the evidence,
10 there's no preset set of steps you can take because it's a
11 puzzle that you're trying to solve and so you see this and
12 then you go there and you see this and you see this. And so
13 you're following the evidence on the computer.

14 So it's difficult to say there's an actual step
15 by -- I look at this file, I look at this file, I look at
16 this file, because the files take you in various places as
17 you're examining.

18 Q. Is the method that you've described, Dr. Jacobson, a
19 method reasonably relied on by other experts in your field?

20 A. Yes. It's the method outlined by the forensics
21 examiners association that I belong to.

22 Q. Is there any other way to do it properly?

23 A. No, not that I'm aware of.

24 Q. Could you describe generally, sir, what you found in the
25 course of your forensic inspection.

1 A. On the hard drive I found a large number of audio files,
2 almost all in the Media -- Windows Media Player format.
3 They were all nicely tucked away in a directory and a series
4 of subdirectories. I found several instances of the user
5 name tereastarr, both as associated with e-mail addresses
6 and as the user name associated with the computer. I found
7 no evidence of the Kazaa peer-to-peer network software or
8 any other peer-to-peer network software.

9 I found that the computer appeared to be fairly up
10 to date as far as Windows, running the latest service packet
11 of Windows. It appeared to have had at least some amount of
12 virus checking and spyware checking software on it, so it
13 appeared to be reasonably secure.

14 Q. Are you working with a forensic copy of the hard drive?

15 A. That's correct.

16 Q. You did not have Ms. Thomas's original hard drive?

17 A. That is correct.

18 Q. So there wouldn't be any markings or dates on what you
19 saw that would matter because it's a copy?

20 A. That's correct. The hard drive I get is one that the
21 company bought probably just prior to providing me the data.

22 Q. The company that was making the image, the copy, gets a
23 hard drive and copies it on --

24 A. One of the steps in the process they take is that the
25 hard drive that receives the forensics copy has to be

1 cleaned and so you have to forensically -- what's called
2 forensically wipe the drive so it's clean. It's sort of
3 like if you're dealing with DNA. You wouldn't want to go in
4 with a DNA sample and put it in the same beaker as the last
5 DNA sample without thoroughly cleaning that. So oftentimes
6 these are brand-new drives that I get the data on.

7 Q. Prior to the time you were reviewing the drive, had you
8 heard testimony as to whether this drive -- when this drive
9 was last replaced or did that come later?

10 A. I believe that came later.

11 Q. Can I ask you to look at Exhibit 24, please. Have you
12 found that document?

13 A. Yes.

14 Q. Could you describe what is in Exhibit 24, please.

15 A. Yeah. Exhibit 24 shows the contents of three different
16 files that were found on the computer. These files were
17 left over from using the Internet, what they call the
18 Internet cache.

19 Whenever you go somewhere on the Internet, the
20 pictures that you see and often a lot of the text that you
21 see is actually stored on your computer and it stays there
22 for a while. The reason it does is so the next time you go
23 to that web page, it will come up quicker because the
24 pictures are already there and some of the pages are there.
25 So it's done to speed up the Internet.

1 So these are three of the cache -- so-called cache
2 files.

3 Q. And these were on the hard drive that you inspected?

4 A. That's correct.

5 Q. And that you received from the defendant, correct?

6 A. That's correct.

7 MR. GABRIEL: Move Exhibit 24, Your Honor.

8 MR. TODER: Your Honor, we object. The last
9 couple pages are personal e-mails between my client and her
10 boyfriend. If they want to show the first two pages, that
11 should certainly --

12 THE COURT: Any relevance to those last two pages?

13 MR. GABRIEL: Well, yes, Your Honor, there's
14 relevance, but we can work with Mr. Toder and redact out the
15 private e-mails. I don't have a problem with that. They
16 show, for example, the e-mail address, that would be the
17 relevance, but we can white out the text for sure.

18 MR. TODER: That's fine with me.

19 THE COURT: All right. Be admitted, 24 will be
20 admitted with the whiting out of the contents of the text
21 except for the e-mail address.

22 MR. GABRIEL: Mr. Reynolds, would you put up
23 Exhibit 24, please.

24 BY MR. GABRIEL:

25 Q. The copy is not great, Dr. Jacobson, but can you explain

1 what this shows that's relevant to your opinion in this
2 case.

3 A. The relevant piece is the --

4 Q. I'm sorry. First, could you tell us what this one is,
5 the first page.

6 A. This is a page from a site called Club Pogo. I didn't
7 go to the site, so I'm not exactly sure what that is. The
8 relevant information is you notice at the top it says,
9 "Welcome, tereastarr." And it says if it's not you, you
10 should sign in as who you really are. And then her name
11 also -- the name also appears on the left, down just a
12 little bit farther.

13 Q. Where is that, please?

14 A. Right there (indicating), yep.

15 Q. Thank you. All right. Would you look at the second
16 page of Exhibit 24, please.

17 A. Yes.

18 Q. And what is this?

19 A. This again is going to a site and again indicates -- the
20 user name is right above the picture and just slightly above
21 that you will also see it there.

22 Q. This was on the hard drive you reviewed?

23 A. This was also on the hard drive, yes.

24 Q. I won't ask you to put up the third page because of the
25 things we're going to redact, but can you describe what the

1 third page is.

2 A. The third page is an e-mail message and it's an e-mail
3 message from tereastarr@charter to tereastarr@yahoo. And
4 so it's an e-mail from a Charter account to a Yahoo
5 account.

6 And one of the other interesting -- or one of the
7 other pieces of this is that the "from" also expands the
8 name Jammie Thomas, which is common for e-mail services to
9 do. You know, often e-mail names don't make a lot of sense
10 and so when you see the e-mail message in the inbox, you'll
11 see the person's full name. That's not their e-mail
12 address. The e-mail systems do that to help you with your
13 e-mail.

14 Q. And the jurors can't see this, but it says, "Jammie
15 Thomas," and then there's a little caret, a little mark,
16 tereastarr@charter.net, and then a closed mark?

17 A. Right. The two little marks, the greater than and less
18 than symbols, are used to bracket the actual e-mail address
19 itself and then in quotes is where the user's name shows up.

20 Q. Dr. Jacobson, I think you indicated you also found a lot
21 of music files in the hard drive that you reviewed, did you
22 not?

23 A. That's correct.

24 Q. Could you look at Exhibit 26, please. Do you see that,
25 Dr. Jacobson?

1 THE COURT: Excuse me. I think we should stop. I
2 think they turned off the ventilation.

3 MR. GABRIEL: It's pretty warm in here. That
4 would be fine.

5 THE COURT: I think they turned off the
6 ventilation on us, so let's stop here. We'll pick up
7 tomorrow at 9:00, 9:00. Have a good evening. All rise for
8 the jury.

9 (Jury excused.)

10 **IN OPEN COURT**

11 **(JURY NOT PRESENT)**

12 THE COURT: Counsel, anything that we need to go
13 over before tomorrow morning?

14 MR. GABRIEL: Not from the plaintiffs' side, Your
15 Honor.

16 THE COURT: Where are you in your case?

17 MR. GABRIEL: Going faster than I thought we were
18 going to, Your Honor. We will call tomorrow the
19 representatives of the three other record companies. We
20 will call Ms. Thomas. I believe we'll call her
21 ex-boyfriend, Mr. Havemeier, if he shows up. That's the guy
22 who sent the e-mail. We would call the defendant's expert,
23 Mr. Stanley, and then Cary Sherman.

24 I anticipate the witnesses will be fairly short.
25 I never promise because I don't want to be a liar, but I

1 think there's some chance we could get done tomorrow with
2 our evidence, probably more likely Thursday morning, but the
3 case is going actually quicker than I thought it would go.
4 I'm almost finished with my direct of Dr. Jacobson.

5 THE COURT: And defense, if the plaintiff calls
6 your client, will you do an examination at that time or will
7 you wait until after plaintiff rests? You don't have to
8 make a decision at this time, but if you have an idea, let
9 me know.

10 MR. TODER: I won't call her back in the case in
11 chief unless for some unusual reason I have to, as long as I
12 have leeway as to what I can --

13 THE COURT: All right. Your examination, how long
14 do you think your examination of your witness will go? One
15 or two hours? Three hours?

16 MR. TODER: My witness? You mean Ms. Thomas?

17 THE COURT: Yes.

18 MR. TODER: It all depends on what happens in
19 their cross examination, Your Honor. It could go -- there's
20 no way of knowing.

21 THE COURT: All right. How much time do you need
22 for your final arguments?

23 MR. GABRIEL: I would say, Your Honor, half an
24 hour, but I'd ask for 45 minutes just in case, but I think I
25 can get it done in half an hour.

1 MR. TODER: I can certainly get mine done in half
2 an hour.

3 THE COURT: All right. Well, let's -- we'll see
4 where we're at tomorrow, but we'll shoot for half an hour.
5 The jury has heard everything and they don't need you to
6 repeat it.

7 So we need to meet for jury instructions.
8 Hopefully tomorrow morning I will have a set of jury
9 instructions that we can work off of. And then depending on
10 how things are going, maybe we can have a working lunch
11 without the court reporter, because she needs a break, and
12 go over the instructions. And then one final time make --
13 after the corrections are made, we'll have the objections
14 for you to put on the record and then we'll be able to argue
15 either tomorrow or Thursday. How does that sound?

16 MR. GABRIEL: That sounds fine, Your Honor.

17 MR. TODER: Sounds good to us.

18 MR. GABRIEL: Your Honor, I did think of one --
19 really just a question. I do understand the local rules
20 here generally have in closing the defendant goes first. Is
21 that the Court's practice as well? I was surprised to see
22 that.

23 THE COURT: Counsel.

24 MR. TODER: What?

25 MR. GABRIEL: In terms of order of closing, do you

1 have -- I think the local rules say the defendant goes
2 first.

3 MR. TODER: That's what we were expecting.

4 MR. GABRIEL: It makes no difference to me, Your
5 Honor.

6 THE COURT: Okay. Welcome to Minnesota.

7 MR. GABRIEL: Thank you.

8 THE COURT: Anything else?

9 MR. GABRIEL: Not from the plaintiffs, Your Honor.
10 Thank you.

11 THE COURT: Have a good evening. Enjoy our
12 beautiful city by Lake Superior.

13 MR. GABRIEL: Your Honor, I did have one question.
14 Can we leave things here?

15 THE COURT: Yes. I am going to leave my things
16 here. Hopefully they'll be here tomorrow.

17 (Court adjourned at 5:30 p.m.)

18 * * *

19

20 I, Lori A. Simpson, certify that the foregoing is a
21 correct transcript from the record of proceedings in the
22 above-entitled matter.

23

24 Certified by: s/ Lori A. Simpson

25 Lori A. Simpson, RMR-CRR