

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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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. )  
 )  
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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

For the Plaintiffs:	Holme, Roberts & Owen RICHARD L. GABRIEL, ESQ. TIMOTHY M. REYNOLDS, ESQ. Suite 4100 1700 Lincoln Street Denver, Colorado 80203
For the Defendant:	Chestnut & Cambronne BRIAN N. TODER, ESQ. Suite 3700 222 South Ninth Street Minneapolis, Minnesota 55402
Court Reporter:	LORI A. SIMPSON, RMR-CRR 1005 U.S. Courthouse 300 South Fourth Street Minneapolis, Minnesota 55415

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

**IN OPEN COURT**

**(JURY NOT PRESENT)**

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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)**

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Arista Records, LLC, a ) Duluth, Minnesota  
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company; Interscope Records, a ) 9:20 a.m.  
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For the Defendant:	Chestnut & Cambronne BRIAN N. TODER, ESQ. Suite 3700 222 South Ninth Street Minneapolis, Minnesota 55402
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1                                    P R O C E E D I N G S

2                                    I N O P E N C O U R T

3                                    ( J U R Y P R E S E N T )

4                    THE COURT: Prospective Members of the Jury, you  
5 have been called up to my courtroom to possibly sit on a  
6 civil matter.

7                    The official title of this matter is Capitol  
8 Records, Incorporated, a Delaware corporation; Sony BMG  
9 Music Entertainment, a Delaware general partnership; Arista  
10 Records, LLC, a Delaware limited liability company;  
11 Interscope Records, a California general partnership; Warner  
12 Bros. Records, Incorporated, a Delaware corporation; and UMG  
13 Recordings, Incorporated, a Delaware corporation,  
14 Plaintiffs, vs. Jammie Thomas.

15                    This is a civil case that involves copyright  
16 infringement and I believe the case will take approximately  
17 three to four days to try. Hopefully we can get the case  
18 done this week. If not, we'll pick up early next week to  
19 finish the case.

20                    The corporations are represented by Richard  
21 Gabriel and Timothy Reynolds. They're from the law firm of  
22 Holme, Roberts & Owen in Denver, Colorado. Also at their  
23 counsel table is Matthew Oppenheim, who is a representative  
24 of the Oppenheim Group, one of the music groups that are  
25 involved in this case. Is that correct?

1 MR. OPPENHEIM: Yes, Your Honor.

2 THE COURT: Representing Jammie Thomas is Brian  
3 Toder from the law firm of Chestnut & Cambronne in  
4 Minneapolis. Also at counsel table is the defendant, Jammie  
5 Thomas, and Carol Dawson, who is Mr. Toder's paralegal.

6 There are a number of witnesses that may be called  
7 in this matter. Counsel, if you would get your witness --  
8 prospective witness lists out and go to the podium and read  
9 those names to the jury.

10 MR. GABRIEL: Good morning. The witnesses that we  
11 expect to call are Jennifer Pariser, Mark Weaver, David  
12 Edgar, Douglas Jacobson, JoAn Cho, Kevin Havemeier, Eric  
13 Stanley, Jammie Thomas, Ryann Maki, Betsy Brown, Christopher  
14 Bavitz, and Cary Sherman.

15 THE COURT: Mr. Toder.

16 MR. TODER: We just will be calling Jammie Thomas.

17 THE COURT: Prospective Members of the Jury, I  
18 have introduced the parties involved in this matter, the  
19 lawyers that are involved in this matter, and the companies  
20 that are involved in this matter.

21 Anyone work for any of the corporations, have  
22 worked or any family members worked for any of the record  
23 companies that I've listed?

24 Does anyone know Mr. Gabriel and Mr. Reynolds, who  
25 is representing those record companies?



1           Mr. Toder is representing Ms. Thomas. Does anyone  
2 know Mr. Toder?

3           The witness list was read off to you. Anyone  
4 recognize any of the names on that list?

5           How many have served on a jury in previous years,  
6 whether or not it's in state court or in federal court?  
7 Keep your hands up for me.

8           Let's go back and we'll talk to Mr. Rossow. If  
9 you would keep your voice up so everyone --

10           UNIDENTIFIED SPEAKER: Your Honor, I do know  
11 Jammie Thomas.

12           THE COURT: We'll get to that later.

13           Mr. Rossow, you've served on a jury in previous  
14 years?

15           PROSPECTIVE JUROR ROSSOW: Yes.

16           THE COURT: Where was that?

17           PROSPECTIVE JUROR ROSSOW: State court, Kanabec  
18 County, Minnesota.

19           THE COURT: Did you sit on a criminal or a civil  
20 case?

21           PROSPECTIVE JUROR ROSSOW: I believe it was a  
22 criminal case.

23           THE COURT: How long ago was that?

24           PROSPECTIVE JUROR ROSSOW: Three years.

25           THE COURT: Can you tell me what the nature of the

1 case was about?

2 PROSPECTIVE JUROR ROSSOW: Yeah. It was a  
3 probation violation, I believe. A woman who was not to be  
4 in possession of firearms due to her criminal history was  
5 charged with in fact being in possession of a firearm and  
6 then she was contesting that.

7 THE COURT: And were you -- did the jury come back  
8 with a verdict in that matter?

9 PROSPECTIVE JUROR ROSSOW: No, we didn't,  
10 actually. That trial ended in a mistrial.

11 THE COURT: Anything about the nature of that  
12 trial that would keep you from being a juror on this matter,  
13 something that happened, something the lawyers did,  
14 something the judge did, or just the nature of the process  
15 that would keep you from being a fair and impartial juror in  
16 this matter?

17 PROSPECTIVE JUROR ROSSOW: No, I don't think so.

18 THE COURT: All right. And let's go down and talk  
19 to -- is it Barbara Veit?

20 PROSPECTIVE JUROR OBERG: Patricia Oberg.

21 THE COURT: Patricia Oberg. And when did you  
22 serve as a juror and where?

23 PROSPECTIVE JUROR OBERG: Down in Rochester,  
24 Minnesota. I don't know. About 20, 25 years ago maybe.

25 THE COURT: Do you remember if it was a civil or a

1 criminal matter that you sat on?

2 PROSPECTIVE JUROR OBERG: It was a robbery case.

3 THE COURT: Robbery. And did you come back with a  
4 verdict in that matter?

5 PROSPECTIVE JUROR OBERG: Yes, sir, we did.

6 THE COURT: And what was your verdict in that  
7 matter?

8 PROSPECTIVE JUROR OBERG: It was guilty.

9 THE COURT: Anything about the nature of that  
10 trial that would keep you from being a fair and impartial  
11 juror in this matter?

12 PROSPECTIVE JUROR OBERG: I don't think so, no.

13 THE COURT: And I saw a hand down here. Bruce  
14 Cornelius?

15 PROSPECTIVE JUROR CORNELIUS: Yes.

16 THE COURT: Where did you serve as a juror?

17 PROSPECTIVE JUROR CORNELIUS: In Virginia,  
18 Minnesota, at the county courthouse.

19 THE COURT: And when was that?

20 PROSPECTIVE JUROR CORNELIUS: About 15 years ago,  
21 sir.

22 THE COURT: Do you know if it was a civil or  
23 criminal matter that you sat on?

24 PROSPECTIVE JUROR CORNELIUS: It was civil, sir.

25 THE COURT: A car accident or --

1 PROSPECTIVE JUROR CORNELIUS: It was actually a  
2 murder trial, sir.

3 THE COURT: And did you come back with a verdict  
4 in that matter?

5 PROSPECTIVE JUROR CORNELIUS: Yes, we did, sir,  
6 innocent.

7 THE COURT: And were you the jury foreperson in  
8 that matter?

9 PROSPECTIVE JUROR CORNELIUS: No, sir.

10 THE COURT: Anything about the nature of that case  
11 or the length of the trial or the way the lawyers handled  
12 it, the way the judge handled it that would keep you from  
13 being a fair and impartial juror in this matter?

14 PROSPECTIVE JUROR CORNELIUS: Absolutely not, sir.

15 THE COURT: Anyone else?

16 Is anyone presently involved in any type of  
17 litigation? Litigation means that you are involved in a  
18 lawsuit, whether or not at the beginning stages or the trial  
19 stages or the deposition stages or the discovery stages. Is  
20 anyone -- and if you're working for a company, a business,  
21 or a corporation that's involved in a litigation and your  
22 division is helping with that litigation, that you're  
23 providing documents to lawyers or involved in having your  
24 deposition taken, please raise your hand. Is anyone  
25 presently involved in any type of litigation? That includes

1 going to conciliation court, going to divorce court,  
2 anything.

3 All right. We'll start with Jill. Why don't you  
4 tell me what type of litigation that you're involved in with  
5 now.

6 PROSPECTIVE JUROR FORSEEN: Currently going  
7 through a divorce.

8 THE COURT: I'm sorry?

9 PROSPECTIVE JUROR FORSEEN: Currently going  
10 through a divorce.

11 THE COURT: All right. Divorces can be very  
12 contentious and lawyers get involved in that and a judge  
13 gets involved in that. Anything about the nature of that  
14 process that would keep you from being a fair and impartial  
15 juror in this matter?

16 PROSPECTIVE JUROR FORSEEN: No.

17 THE COURT: All right. Anyone else in the back  
18 row? Let's go down and talk to Michele. Is that correct?

19 PROSPECTIVE JUROR NIVALA: Yes. I'm going through  
20 a divorce as well, but the judge just has to sign the  
21 papers, that's it. We did it all on our own. We had no  
22 lawyers or nothing.

23 THE COURT: So nothing about the process, about  
24 the court process, that would keep you from being a fair and  
25 impartial juror in this matter?

1 PROSPECTIVE JUROR NIVALA: (Shaking head.)

2 THE COURT: Anyone else?

3 Change the question just a little bit. Any close  
4 friends or relatives that are involved in litigation at the  
5 present time, any close friends or relatives that are  
6 involved in litigation?

7 Jill.

8 PROSPECTIVE JUROR FORSEEN: My husband has been  
9 charged with a gross misdemeanor.

10 THE COURT: You're going to have to speak up  
11 because I'm hard of hearing.

12 PROSPECTIVE JUROR FORSEEN: My husband has been  
13 charged with a gross misdemeanor.

14 THE COURT: All right. And anything about the  
15 nature of that that would keep you from being a fair and  
16 impartial juror in this matter?

17 PROSPECTIVE JUROR FORSEEN: No.

18 THE COURT: Anyone else?

19 Change the question just a little bit again. In  
20 previous years have you or close friends or relatives been  
21 involved in any type of litigation?

22 Let's go to James Anderson in the back row. Yes,  
23 sir.

24 PROSPECTIVE JUROR ANDERSON: It was a car  
25 accident.

1 THE COURT: Car accident. And was it you that was  
2 involved in that accident or --

3 PROSPECTIVE JUROR ANDERSON: I was a passenger in  
4 the vehicle.

5 THE COURT: All right. Were you injured?

6 PROSPECTIVE JUROR ANDERSON: Yes.

7 THE COURT: And did it go to trial or was it  
8 settled before trial?

9 PROSPECTIVE JUROR ANDERSON: It was settled before  
10 trial.

11 THE COURT: Anything about the nature of that  
12 process, the legal process, the way the lawyers treated you,  
13 the way the judge treated you that would keep you from being  
14 an impartial juror in this matter?

15 PROSPECTIVE JUROR ANDERSON: No.

16 THE COURT: Any other hands in the back row?  
17 Okay. Let's talk to Kathleen Burt.

18 PROSPECTIVE JUROR BURT: It was divorce and that  
19 was -- we settled it ourselves too.

20 THE COURT: So nothing about that process that  
21 would cause you any problems here?

22 PROSPECTIVE JUROR BURT: No.

23 THE COURT: Anyone else? Debra.

24 PROSPECTIVE JUROR KLEIN: Two divorces in the  
25 past.

1           THE COURT: Anything about those matters that  
2 would cause you any problems?

3           PROSPECTIVE JUROR KLEIN: (Shaking head.)

4           THE COURT: I failed to mention to you if there's  
5 anything that you feel that you would like to talk to me in  
6 private about, certainly we can have a sidebar and have a  
7 private conversation.

8           Anyone else in the second row? All right.  
9 Roseanne. Is that correct?

10          PROSPECTIVE JUROR MORISCH: Yes. I've been to  
11 court several times with my husband for DUI, driving without  
12 a license.

13          THE COURT: Anything about the way the lawyers  
14 handled that matter, the way the judge handled that matter  
15 that would keep you from being a fair and impartial juror in  
16 this matter?

17          PROSPECTIVE JUROR MORISCH: No.

18          THE COURT: And we're talking to Patricia again?

19          PROSPECTIVE JUROR OBERG: Yes, sir. We sold a  
20 house and had an issue of a furnace not working properly and  
21 the people we sold the house to took us to court, but we  
22 settled before the case actually went to trial.

23          THE COURT: Anything about that legal problem that  
24 would cause you any problems serving as a juror in this  
25 matter?



1 PROSPECTIVE JUROR OBERG: No, sir.

2 THE COURT: Anyone else?

3 All right. How many of you like music?

4 How many of you have CD's or some type of tape  
5 recordings of music?

6 How many of you have ever downloaded music from  
7 the Internet? We'll get to that in a few minutes.

8 Those of you that -- how many of you are  
9 musicians, whether or not professional or for fun? Keep  
10 your hands up so we can see.

11 And how many of you have recorded your own songs  
12 or someone else's songs for a CD?

13 Let's go back and talk to Benjamin. Do you have a  
14 copyright on your music?

15 PROSPECTIVE JUROR ROSSOW: No, I don't.

16 THE COURT: So you were recording someone else's  
17 songs?

18 PROSPECTIVE JUROR ROSSOW: No, they're my songs,  
19 but I record them at home and don't release them under a  
20 label or anything. It's almost more of a hobby, but -- and  
21 I don't sell them either. I just give them to people for  
22 fun.

23 THE COURT: And do you have an Internet site  
24 that --

25 PROSPECTIVE JUROR ROSSOW: No, I don't.

1 THE COURT: Let me ask you -- well, back up. How  
2 many of you have computers in your home and have an Internet  
3 connection?

4 Now, I've asked about whether or not any of you  
5 are musicians. Let me change that just a little bit. Any  
6 close friends or relatives that are musicians?

7 Do you know, Patricia, whether or not, your close  
8 friend or relative has ever recorded songs?

9 PROSPECTIVE JUROR OBERG: Both my children are  
10 musicians and, yes, they have.

11 THE COURT: And do they have copyrights on their  
12 songs, if you know?

13 PROSPECTIVE JUROR OBERG: I believe my daughter  
14 does.

15 THE COURT: And does she sell her songs over the  
16 Internet, or do you know?

17 PROSPECTIVE JUROR OBERG: I don't believe she  
18 does, no.

19 THE COURT: Barbara?

20 PROSPECTIVE JUROR VEIT: Yes.

21 THE COURT: Family and friends that are musicians?

22 PROSPECTIVE JUROR VEIT: My brother is a musician.  
23 He's a percussionist. He's usually in a group situation.

24 THE COURT: And as far as you know, he's recorded?

25 PROSPECTIVE JUROR VEIT: I think informally just

1 for himself. Nothing has ever been published or sold.

2 THE COURT: All right. Now, I saw some hands  
3 dealing with using the computer to download music. Those of  
4 you who raised your hands, would you raise your hands again  
5 for me.

6 Let's start in the back. Benjamin, do you  
7 download -- what programs do you use to download music?

8 PROSPECTIVE JUROR ROSSOW: Primarily iTunes.

9 THE COURT: All right. And how long have you been  
10 doing that?

11 PROSPECTIVE JUROR ROSSOW: Oh, probably two or  
12 three years.

13 THE COURT: Anything about that process, other  
14 than you can't use it on other MP3 players?

15 PROSPECTIVE JUROR ROSSOW: No. I've pretty much  
16 accepted the Mac world.

17 THE COURT: I saw some other hands. Lisa, what  
18 programs do you use?

19 PROSPECTIVE JUROR HEYESEN: iTunes.

20 THE COURT: Then we have Daniel. And what do you  
21 use?

22 PROSPECTIVE JUROR GOLDEN: iTunes as well.

23 THE COURT: Roseanne.

24 PROSPECTIVE JUROR MORISCH: It was about five  
25 years ago. I'm not really sure what it was. My significant

1 other is the computer savvy one. I just did it one time, a  
2 couple of songs. I couldn't tell you what program it was.

3 THE COURT: Then we have Michele.

4 PROSPECTIVE JUROR NIVALA: I did it once too,  
5 downloaded on my MP3 player. I have no idea how it got  
6 there, not a clue. I did it once. That's it.

7 THE COURT: The magic of the Internet.

8 PROSPECTIVE JUROR NIVALA: I was just pushing  
9 buttons.

10 THE COURT: Anyone else?

11 Well, there's other uses for the Internet.  
12 Certainly you know this case is about music, but has anyone  
13 downloaded -- I guess you can download movies now and books  
14 and other copyrighted material. Has anyone else done that  
15 sort of thing?

16 All right. Daniel, movies or books?

17 PROSPECTIVE JUROR GOLDEN: Television shows and --  
18 like podcasts. Television shows mostly.

19 THE COURT: Let me ask this question. How many  
20 would consider yourself Internet savvy, that you know  
21 something about the Internet?

22 Since most of you have computers, do you have  
23 family members in your household that download music?

24 Now, has anyone heard of the Napster program?

25 Please raise your hands.

1           Have any of you heard of the lawsuits that have  
2           been brought by record companies against people who download  
3           or share music files over the Internet?

4           All right. Let me talk to you. Benjamin, you had  
5           your hand up. What have you heard about those lawsuits?

6           PROSPECTIVE JUROR ROSSOW: Well, lots, I guess.  
7           Being a big music fan, I have a subscription to *Rolling*  
8           *Stone* magazine. They write about it in their magazine  
9           frequently, about these kinds of lawsuits.

10          I also happen to be a high school English teacher  
11          and my students will often do research papers and especially  
12          more so, I guess, maybe four or five years ago it was a  
13          pretty popular topic because kids were into downloading and  
14          there were lots of issues, so it made for a good  
15          controversial, debatable topic for students to write about.  
16          So, you know, reading a lot of student papers and reviewing  
17          the research they've done, I feel like I've learned quite a  
18          bit about it.

19          THE COURT: This is a lawsuit by record companies  
20          against Ms. Thomas regarding downloading of music. Anything  
21          about the research or your knowledge of the topic that would  
22          keep you from being a fair and impartial juror to either  
23          side?

24          PROSPECTIVE JUROR ROSSOW: I don't think so. I'm  
25          trying to think of the slant that *Rolling Stone* magazine

1 often takes. I don't know that I would necessarily call  
2 them neutral on the issue.

3 I would say that probably most of my students  
4 aren't necessarily on the side of, when it comes to a  
5 lawsuit, on the side of the labels or the corporations.  
6 They're probably more on the side of the downloaders  
7 themselves because that's who they relate to.

8 But having read a lot about it, I know that it's a  
9 very debatable topic and there's lots of issues surrounding  
10 it. So I don't know that I've come to my own conclusions on  
11 it. I feel like I sometimes go back and forth on the issue.

12 THE COURT: Under the copyright laws of the United  
13 States, the music companies have brought a lawsuit here in  
14 this courtroom. And the question is: Will you be able to  
15 follow the law as I give it to you --

16 PROSPECTIVE JUROR ROSSOW: Yes.

17 THE COURT: -- and come back with a fair and  
18 impartial verdict in this matter?

19 PROSPECTIVE JUROR ROSSOW: Yes, I would be able to  
20 follow the law as you give it to me.

21 THE COURT: You may have many opinions on the  
22 subject. The question is whether or not you will be able to  
23 listen to the testimony and follow the law as I give it to  
24 you. Will you be able to do that?

25 PROSPECTIVE JUROR ROSSOW: Yes.

1 THE COURT: All right. Who else? Lisa.

2 PROSPECTIVE JUROR HEYESEN: I basically had only  
3 heard headline topics that lawsuits have been brought to --  
4 I don't know that they've been brought to a jury yet, but I  
5 just have heard about the lawsuits, more the headline.

6 THE COURT: It's gathered headlines.

7 PROSPECTIVE JUROR HEYESEN: Headlines.

8 THE COURT: The question is -- we read headlines,  
9 we hear sound bites on TV. And the question is whether or  
10 not you have formed a strong opinion, one way or the other,  
11 about whether or not it's legal or illegal and whether or  
12 not you could be fair to the music corporations or the  
13 defendant. The question is: Can you be fair and impartial  
14 to both sides?

15 PROSPECTIVE JUROR HEYESEN: Yes, Your Honor, I can  
16 be.

17 THE COURT: Who else has heard about the -- in the  
18 back row first, let's go to Daniel.

19 PROSPECTIVE JUROR GOLDEN: I remember hearing  
20 about it a few years ago on the news and hearing about some  
21 bands suing Napster and I remember something where they  
22 changed their service and made it a pay site. And I tried  
23 to actually set up an account with it and I couldn't figure  
24 out how to do that, just to use it as, like, another means  
25 to get music and -- once it became a pay site at least --

1 and I couldn't figure out how to set up the account. So I  
2 wasn't really sure either way. That's pretty much the  
3 extent of what I heard about it.

4 THE COURT: Any firm opinions, one way or the  
5 other, that would keep you from being a fair and impartial  
6 juror in this matter?

7 PROSPECTIVE JUROR GOLDEN: I don't think so, no.

8 THE COURT: Let's go to the second row. I saw  
9 some hands. Roseanne.

10 PROSPECTIVE JUROR MORISCH: Just a few years ago  
11 just the headlines and all the lawsuits that were being  
12 brought up.

13 And I guess as far as -- I haven't really formed  
14 any strong opinion on either side. I guess I see both sides  
15 and it depends upon how -- I guess to me the songs that I  
16 did download were of such poor quality and other people kind  
17 of mess with them along the way and they add different  
18 sounds and slow them down and stuff so by the time you get  
19 it, it's really not the same as if you go out and buy a CD.  
20 And I guess I prefer when you buy a CD, sometimes you get  
21 songs that you never heard before.

22 So to me I guess I didn't think it was really -- I  
23 didn't think it was right that all these musicians' songs  
24 were being downloaded for free, but I thought, you know,  
25 they shouldn't be too worried about it because, you know,



1 it's not the quality of the CD's, in my opinion.

2 THE COURT: Do you feel that you could be fair and  
3 impartial to both sides on this issue?

4 PROSPECTIVE JUROR MORISCH: I think I could.

5 THE COURT: Patricia.

6 PROSPECTIVE JUROR OBERG: For me it's more I  
7 think -- of course I've heard of it, but I don't have any  
8 strong feelings about it one way or the other, but I do hear  
9 a lot of conversation when my kids are home since they're  
10 both musicians, you know, kind of both sides of the story.

11 THE COURT: The question here is -- we all hear  
12 certain things. It's whether or not you have such strong  
13 opinions that you could not be fair and impartial to either  
14 side here.

15 PROSPECTIVE JUROR OBERG: I don't think so.

16 THE COURT: Will you be able to listen to the  
17 testimony that comes from the witness stand, follow the law  
18 as I give it, and come back with a fair and just verdict?

19 PROSPECTIVE JUROR OBERG: I believe so, yes.

20 THE COURT: And we'll talk to Barbara.

21 PROSPECTIVE JUROR VEIT: Just several years ago I  
22 remember hearing quite a bit on National Public Radio, on  
23 the news. That's about my only source. And maybe some  
24 headlines in newspapers. I don't have a strong opinion. I  
25 never looked into it, really, to see what the --

1           THE COURT: So you can be fair and impartial to  
2 both sides?

3           PROSPECTIVE JUROR VEIT: I can.

4           THE COURT: Anyone else?

5           All right. Let me ask this question. How many  
6 own an MP3 player or iPod or iPhone?

7           How many in your family own iPods or iPhones?

8           Have any of you ever made a CD compilation from  
9 the CD's that you own or burn your own CD?

10          Okay. Let's go to the sheets that we have. I  
11 would ask you to please stand and tell us who you are and go  
12 through those list of questions. We'll start with Jill.

13          PROSPECTIVE JUROR FORSEEN: Jill Maureen Forseen.  
14 I live in St. Louis County. I do work outside the home. I  
15 work for the City of Mountain Iron. No other jobs besides  
16 that one. Level of school, I did graduate high school and  
17 went to one year of vo-tech for accounting. I'm currently  
18 married. I have three children, three daughters, 30, 23,  
19 and 15. I've never been on a jury before and I don't have  
20 any problems seeing or hearing. I do have a mousy voice,  
21 though.

22          THE COURT: Thank you.

23          PROSPECTIVE JUROR ROSSOW: I'm Benjamin Curtis  
24 Rossow. I do work outside the home. I'm a high school  
25 English teacher at Mora High School, Kanabec County, here in

1 Minnesota. I've been an English teacher for -- this is my  
2 ninth year overall. I have a master's degree in education.  
3 I am married. I have three kids, 6, 3, and 1, all girls.  
4 And I have served on a jury before, which I mentioned  
5 before, so we're good there, and I can see and hear fine.

6 THE COURT: Does your wife work outside the home?

7 PROSPECTIVE JUROR ROSSOW: Oh, I'm sorry. I  
8 skipped that one. She does. My wife is a social worker.

9 THE COURT: Thank you.

10 PROSPECTIVE JUROR HEYESSEN: I'm Lisa Heyesen. I  
11 live in St. Louis County. I do work outside my home. I  
12 work for the Area Partnership for Economic Expansion as a  
13 director of business development. I have had other jobs in  
14 the past five years. I've worked in the medical equipment  
15 industry, in sales. I have graduated from college. I have  
16 a B.S. in marketing. I am married. My husband works for  
17 Compudyne, a managed service IT company. We have no  
18 children. I have not served on a jury and I have no  
19 problems that would prevent me from seeing or hearing.

20 THE COURT: Thank you.

21 PROSPECTIVE JUROR ANDERSON: My name is Jim  
22 Anderson. I live in St. Louis County. I do work outside of  
23 the home. I own a funeral home. I attended college. I'm  
24 married. My wife is a nurse. We have no children and I  
25 have never served on a jury before.

1 THE COURT: Thank you.

2 PROSPECTIVE JUROR BURT: Kathleen Burt and I am a  
3 bartender. I live in St. Louis County. I've been a  
4 bartender for 11 years. I reached two years of college. I  
5 am divorced. I have two children, 31 and 29, and they've  
6 given me five grandchildren. I have never served on jury  
7 duty before and I have no problems seeing or hearing.

8 PROSPECTIVE JUROR KLEIN: I'm Debra Klein. I live  
9 in Benton County. I work for [inaudible].

10 COURT REPORTER: I'm sorry. Could you speak up?  
11 You work for who?

12 PROSPECTIVE JUROR KLEIN: I'm Debra Klein. I live  
13 in Benton County. I've worked as a phlebotomist for Quest  
14 Diagnostics for the last little over six years. I have a  
15 bachelor's of elective studies degree. I'm not married. I  
16 have two children, 30 and 27. Never been on jury duty  
17 before.

18 The only medical problem is I have advanced  
19 degeneration of my spine and I'm currently seeking  
20 professional help, but I haven't seen the specialist quite  
21 yet. I have an appointment next month.

22 THE COURT: Are you in pain right now?

23 PROSPECTIVE JUROR KLEIN: They have me on some  
24 medication.

25 THE COURT: Is it hard for you to sit for long

1 periods of time?

2 PROSPECTIVE JUROR KLEIN: For long periods of  
3 time, yes.

4 THE COURT: We sit for -- we do take breaks. We  
5 take a morning break for approximately 15 minutes, lunch  
6 break for approximately an hour, and then an afternoon  
7 break, but we go from 9:00 to 5:00, 5:30. Is that going to  
8 cause you problems? We're going to go at least three or  
9 four days to try this case, I suspect.

10 PROSPECTIVE JUROR KLEIN: I do believe it probably  
11 would be causing a problem, yes.

12 THE COURT: I'm going to excuse you from this  
13 case. Please leave your placard in your chair.

14 Let's call another juror.

15 THE CLERK: Michael Hegg of Duluth.

16 THE COURT: Michael, we'll come back to you in a  
17 few minutes after we've gone through the panel. We'll  
18 continue with Daniel.

19 PROSPECTIVE JUROR GOLDEN: Daniel Golden, resident  
20 of St. Louis County. I work for a health insurance company.  
21 And the question is work outside the home. Technically I  
22 work in the home, I have a home office. I have been doing  
23 that for a year. I've worked for that company for the last  
24 four years. I worked for a restoration company prior to  
25 that.

1 THE COURT: What do you do for the company that  
2 you're working for now?

3 PROSPECTIVE JUROR GOLDEN: Pencil pusher. I work  
4 in the billing department, just random billing paperwork. I  
5 am married, been married for nine years. I have a  
6 13-year-old stepson and a 6-year-old daughter. My wife also  
7 works for that same health insurance company, although she  
8 works actually at the building. Never served on a jury  
9 before and no problems seeing or hearing. Oh, and very  
10 little college, one semester.

11 THE COURT: Thank you.

12 PROSPECTIVE JUROR REINKE: My name is Lisa Reinke.  
13 I live in Koochiching County. I work outside of the home  
14 for United Healthcare. I've worked there for three months.  
15 Before then I worked at Ben Franklin Crafts as a retail  
16 merchandiser for 12 years. I have a high school diploma.  
17 I've been married for 23 years. I have three children, 18,  
18 20, and 22. I've never served on a jury before and I have  
19 no problems.

20 THE COURT: Thank you.

21 PROSPECTIVE JUROR MORISCH: My name is Roseanne  
22 Morisch. I live in Crow Wing County. I work outside the  
23 home. For the last three years I've been working in the  
24 patient accounting department at St. Joseph's Medical Center  
25 in Brainerd and before that, for about a year, I worked at

1     *St. Cloud Times* down in St. Cloud. I have an associate in  
2     applied science degree in accounting. I am married, my 20th  
3     anniversary is coming up here, but me and my husband haven't  
4     lived together for the last five years. We just haven't  
5     filed for a divorce yet. He does construction work and  
6     cement work. Right now he's unemployed. We have a  
7     19-year-old daughter. I have never served on a jury before  
8     and I have no problems hearing, but I have been told I need  
9     to get glasses. When I went to renew my driver's license a  
10    couple months ago, I was told I would have to get glasses  
11    before I can -- by the next time I take my test.

12           THE COURT: Thank you. We'll go on to Kathy.

13           PROSPECTIVE JUROR MESSENGER: I'm Kathy Messenger,  
14    St. Louis County. I am an LPN. I've worked at SMDC for the  
15    past 30 years. High school, technical school. I am not  
16    married. I have two boys, 26 and 27. I have never been on  
17    a jury and I don't have any other problems.

18           THE COURT: And what is SMDC?

19           PROSPECTIVE JUROR MESSENGER: SMDC, St. Mary's  
20    Duluth Clinic. It's a hospital.

21           THE COURT: And what do you do there?

22           PROSPECTIVE JUROR MESSENGER: I'm an LPN.

23           THE COURT: Thank you.

24           PROSPECTIVE JUROR BITZAN: I'm Doug Bitzan. I  
25    live in Mille Lacs County. I'm a foreman for East Central

1 Energy. I've been there for 20 years. I went to vocational  
2 school. I am married. I have a stepson who is 24, a  
3 stepdaughter who is 20; and we have two of our own, 12 and  
4 10, a son and a daughter. My wife would be a homemaker,  
5 stays at home. I've never served on a jury before and I  
6 have no problems hearing or seeing.

7 THE COURT: Thank you.

8 PROSPECTIVE JUROR OBERG: Patricia Oberg of  
9 St. Louis County. I do work outside the home. I work -- I  
10 supervise a small group of people at a golf and ski resort.  
11 That's been for about the past eight years. I have a couple  
12 of years of college, but no degree. I am married. My  
13 husband is a retired systems analyst with IBM Corporation.  
14 I have two children. My son is 39. My daughter is 37. I  
15 have served on a jury, which I explained to you earlier, and  
16 I don't have any problems seeing or hearing.

17 THE COURT: Thank you.

18 PROSPECTIVE JUROR NIVALA: I'm Michele Nivala. I  
19 live in St. Louis County. I work outside the home. I work  
20 at a jewelry store in the mall in Virginia and I've been  
21 there about three months, and prior to that I worked at  
22 Kmart in Virginia. I never went on to school after  
23 graduating. I'm currently going through a divorce. My  
24 husband works at one of the mines up on the Iron Range. We  
25 have no kids. I've never been on a jury and I don't have



1 any other problems.

2 THE COURT: Thank you.

3 PROSPECTIVE JUROR VEIT: My name is Barbara Veit.  
4 I live in Itasca County. I am a retired elementary school  
5 teacher. I have had no other jobs in the last five years.  
6 I have a bachelor's degree in education plus about 75  
7 credits. I've been married for 41 years. My husband is a  
8 retired county forester. We have no children. I have never  
9 served on a jury before and I have no problems seeing or  
10 hearing.

11 THE COURT: Thank you.

12 PROSPECTIVE JUROR CORNELIUS: I'm Bruce Cornelius.  
13 I live in St. Louis County. I'm a retired postal employee.  
14 I was a postmaster for 30 years and now the last five years  
15 I'm just having fun doing odd jobs, worked for the airline  
16 industry and I did computer networking for about five years  
17 as well. Two years of college. I'm married with four  
18 children and four grandkids. My oldest child is 32 and all  
19 the way down to 26. Don't ask me all their ages. That's  
20 more Mom's job than Dad's job. I served on a jury before,  
21 as we discussed, up in northern Minnesota. And I have no  
22 problems seeing or hearing.

23 THE COURT: Thank you.

24 PROSPECTIVE JUROR CURTIS: My name is Dale Curtis.  
25 I reside in Aitkin County. I work down in the Cities,

1 Brooklyn Park, a suburb, for Kraft Nabisco. I got a college  
2 degree back in 1968, bachelor of science. I'm single. No  
3 children. Never served on a jury before, but I was a  
4 witness in a murder trial -- two murder trials 20 some years  
5 ago. And I don't have any problems seeing or hearing.

6 THE COURT: Thank you.

7 All right. Michael.

8 PROSPECTIVE JUROR HEGG: My name is Michael Hegg  
9 and I live in St. Louis County. I do work outside the home.  
10 I'm a steel worker. I've been on the job for ten years  
11 there. I have a two-year degree in firefighting. I am  
12 married. I've been married for 17 years. My wife is a  
13 finance manager at St. Mary's Duluth Clinic. I have two  
14 children, 11 and 17. I've never been on a jury before and I  
15 don't have any problems seeing or hearing.

16 THE COURT: I've got some other questions for you.  
17 Please be seated. Have you -- are you involved in any  
18 litigation now or close friends or relatives involved in any  
19 litigation right now?

20 PROSPECTIVE JUROR HEGG: No.

21 THE COURT: In previous years have you or any  
22 close friends or relatives been involved in any type of  
23 litigation, either as a plaintiff or a defendant?

24 PROSPECTIVE JUROR HEGG: No.

25 THE COURT: Have you served on a jury in past

1 years?

2 PROSPECTIVE JUROR HEGG: No.

3 THE COURT: Have you -- do you have Internet  
4 access?

5 PROSPECTIVE JUROR HEGG: Yes.

6 THE COURT: Do you have a computer at home?

7 PROSPECTIVE JUROR HEGG: Yes.

8 THE COURT: Have you ever downloaded music, books,  
9 magazines, or --

10 PROSPECTIVE JUROR HEGG: I'm computer illiterate.

11 THE COURT: I'm sorry?

12 PROSPECTIVE JUROR HEGG: I'm computer illiterate  
13 in the family.

14 THE COURT: All right. Any of your family members  
15 that have downloaded anything, music or otherwise?

16 PROSPECTIVE JUROR HEGG: No.

17 THE COURT: Do you own an MP3 player, one of those  
18 little digital players, or an iPod or --

19 PROSPECTIVE JUROR HEGG: No.

20 THE COURT: Are you a musician or do you have any  
21 family members or close friends that are musicians?

22 PROSPECTIVE JUROR HEGG: No.

23 THE COURT: Have you ever heard of the company  
24 called Napster?

25 PROSPECTIVE JUROR HEGG: Yes.

1 THE COURT: Have you ever heard about any of the  
2 lawsuits regarding people that have downloaded music over  
3 the Internet illegally?

4 PROSPECTIVE JUROR HEGG: Just what I have read in  
5 the paper.

6 THE COURT: And what you have read in the paper,  
7 would that keep you from being a fair and impartial juror in  
8 this matter, either for the plaintiff or the defendant?

9 PROSPECTIVE JUROR HEGG: No.

10 THE COURT: All right. That's all the questions I  
11 have. Now I'm going to turn the questioning over to the  
12 attorneys for a very short period of time, so they can  
13 follow up with any questions that I've asked you, and then  
14 we'll go into the selection of the jury.

15 Mr. Gabriel.

16 MR. GABRIEL: Thank you, Your Honor. Good  
17 morning, Ladies and Gentlemen. Again, my name is Rich  
18 Gabriel. I'm an attorney representing the record companies  
19 in this case and I have just some follow-ups on questions  
20 that Judge Davis asked all of you.

21 Can I see hands if any of you have heard any news  
22 stories about this case, heard or read any stories about  
23 this case. Nobody?

24 PROSPECTIVE JUROR HEYSEN: I heard something on  
25 the news this morning, just that the case was being tried.

1 That's the only thing I've heard.

2 MR. GABRIEL: It's Ms. Heyesen?

3 PROSPECTIVE JUROR HEYESSEN: Heyesen.

4 MR. GABRIEL: Did anything that you heard affect  
5 your view, one way or the other, how this case should come  
6 out?

7 PROSPECTIVE JUROR HEYESSEN: No.

8 MR. GABRIEL: A number of you, I think, indicated  
9 that you've heard stories through -- over the years  
10 regarding cases like this one brought by the record  
11 companies. Have any of you heard anything that you  
12 believe -- let me ask Mr. -- is it Rossow?

13 PROSPECTIVE JUROR ROSSOW: Rossow.

14 MR. GABRIEL: I know you've heard many stories  
15 about it. Anything that you've heard affected your -- do  
16 you have a bias? I know you've talked about your kids  
17 writing and you've read *Rolling Stone*. Does it lean you one  
18 way or the other, do you think?

19 PROSPECTIVE JUROR ROSSOW: You know, for me  
20 personally it's so complex and I can see it from both sides.  
21 I feel like I've gotten really good at seeing a lot of  
22 issues from both sides with the job that I have. You know,  
23 I think each circumstance is different.

24 I've personally never downloaded music illegally.  
25 I've paid for everything I've ever downloaded. I don't know

1 that I believe that everyone who has -- my brother is a  
2 perfect example. My brother was big into Napster when it  
3 was downloading music for free and he did a lot of that and  
4 he did it for himself. Should he have paid for those?  
5 Should he have been punished because he didn't pay for  
6 those? I don't know. It's complex.

7 MR. GABRIEL: All right.

8 PROSPECTIVE JUROR ROSSOW: Maybe you can ask me  
9 to -- clarify what you want to know.

10 MR. GABRIEL: Sir, I respect your personal  
11 opinions and I'm not trying -- I'm trying to ask gingerly  
12 and not pry.

13 PROSPECTIVE JUROR ROSSOW: Right.

14 MR. GABRIEL: Has anything you have heard leaned  
15 you one way or the other? I recognize you say it's complex.  
16 Do you feel that you're in the middle or is it kind of day  
17 to day?

18 PROSPECTIVE JUROR ROSSOW: I feel like I'm in the  
19 middle. I can certainly understand an artist saying I feel  
20 like I should be compensated for this music that I've  
21 created to sell to people, but I also can feel empathy for  
22 individuals who maybe did some downloading on their own  
23 computer and are suddenly being faced with huge fines or  
24 litigation. I can feel some empathy for them as well. So I  
25 guess I feel like I'm in the middle.

1 MR. GABRIEL: Thank you very much for your candor  
2 on that.

3 Anybody else have -- from what you've heard about  
4 lawsuits by the record companies against people who  
5 downloaded, anyone else have any feelings or come away from  
6 those stories with an opinion about them? Nobody?

7 Does everybody feel that they're -- does anybody  
8 feel they're not in the middle, you know, that they feel  
9 they really couldn't decide fairly based on the evidence?  
10 Everybody is comfortable they can do that?

11 I saw a couple of folks -- when Judge Davis asked  
12 who had computers, there were many, many people that raised  
13 their hand and I couldn't write fast enough, but I think I  
14 saw two people who didn't. Were there some folks who don't  
15 have computers?

16 Okay. And is it Mr. Curtis?

17 PROSPECTIVE JUROR CURTIS: (Nodding.)

18 MR. GABRIEL: Have you ever worked on a computer  
19 before?

20 PROSPECTIVE JUROR CURTIS: At work I do one thing  
21 on a computer. I know how to do that, but as far as -- I  
22 don't even know how to send an e-mail. I wouldn't know how  
23 to get on. I don't know how to do anything.

24 MR. GABRIEL: And I guess my wife tends to tell  
25 people she's computer phobic and afraid of technology.

1       Would you describe yourself as somebody -- if you hear about  
2       computers, do you kind of daze out or are you computer  
3       phobic?

4               PROSPECTIVE JUROR CURTIS:  I don't like them  
5       because I don't understand them.  I hate using new cameras  
6       because I don't know how to operate them.  Any of that kind  
7       of technology thing, I avoid it.  It's not me, I'm not  
8       interested in it, and I don't understand it.  I don't  
9       attempt to understand it.

10              MR. GABRIEL:  Thank you so much for that.

11              Ms. Burt, do you -- you also do not have a  
12       computer?

13              PROSPECTIVE JUROR BURT:  No.

14              MR. GABRIEL:  Have you ever worked on a computer  
15       before?

16              PROSPECTIVE JUROR BURT:  Yes, I have.  I have  
17       taken classes and gone to the library and used the computer.

18              MR. GABRIEL:  Do you use the Internet when you go  
19       elsewhere or have you --

20              PROSPECTIVE JUROR BURT:  No.

21              MR. GABRIEL:  Can you just generally tell us what  
22       you've used a computer for when you've used it.

23              PROSPECTIVE JUROR BURT:  When I went to college it  
24       was doing accounting and then the classes were discontinued.  
25       The library was just looking up information.  I wasn't on



1 the Internet.

2 MR. GABRIEL: Oh, I see. Okay. Would you -- do  
3 you describe yourself as a computer phobic person or are you  
4 okay with --

5 PROSPECTIVE JUROR BURT: No. I'm just afraid if I  
6 got one, I would spend all my time on it and wouldn't do my  
7 other work and the other things I need to get done.

8 MR. GABRIEL: I understand. Thank you.

9 Do any of you have -- following up on one of Judge  
10 Davis's questions, do any of you have a view as to -- a  
11 strong view as to whether materials on the Internet should  
12 be free or not? Let me ask you it this way. Does anyone  
13 feel that things on the Internet are free or should be free;  
14 does anybody think that?

15 Yes, sir.

16 PROSPECTIVE JUROR BITZAN: I guess -- I don't have  
17 the Internet, but from what I've heard, it's kind of free  
18 will on there, you can do what you want, but I've never been  
19 on it.

20 MR. GABRIEL: You anticipated what I was going to  
21 ask you. It's Mr. Bitzan?

22 PROSPECTIVE JUROR BITZAN: Yeah.

23 MR. GABRIEL: You've never used the Internet  
24 itself?

25 PROSPECTIVE JUROR BITZAN: No.

1           MR. GABRIEL:  Anybody else have a view -- yes,  
2           ma'am.  Is it Ms. Veit?

3           PROSPECTIVE JUROR VEIT:  Yes.  I think some things  
4           should be free on the Internet, but other things should not  
5           be.  I have never -- I have to say I've never purchased  
6           programming or things that you pay for on the Internet.  I  
7           use it for e-mailing mostly and looking up information on  
8           the Internet.  And I think one should be able to look up  
9           information and do e-mails for free, but I certainly think  
10          other things should be paid for.

11          MR. GABRIEL:  What kind of things do you think  
12          should be paid for?

13          PROSPECTIVE JUROR VEIT:  I think if you're going  
14          to subscribe to a service of some kind, that should be paid  
15          for, a magazine or newspaper or music, I guess, although  
16          I've never looked into that at all.

17          MR. GABRIEL:  And you can be open-minded in this  
18          case?

19          PROSPECTIVE JUROR VEIT:  Yes.

20          MR. GABRIEL:  Anybody else have a view on whether  
21          things should be free on the Internet?

22          The case, as Judge Davis will tell you, involves  
23          copyrights and music copyrights.  Do any of you have  
24          opinions as to whether there are certain kinds of music that  
25          shouldn't be copyrighted or shouldn't be allowed to be

1 copyrighted for whatever reason?

2 Can everybody accept as a premise that  
3 copyrighted -- music should be copyrighted no matter what  
4 the content of it is?

5 Does anyone think the content makes a difference  
6 on whether you should be able to -- the content, you know,  
7 what the song is, think that makes a difference on whether  
8 you should be allowed to have a copyright? Nobody thinks  
9 that?

10 Judge Davis asked -- just a couple of more  
11 questions. I appreciate all of your patience. Judge Davis  
12 asked whether -- those of you who may have used a service to  
13 download, a bunch of you have talked about iTunes. Have any  
14 of you used any service where you were trading files over  
15 the Internet with somebody else?

16 Yes, ma'am. Is it Ms. Morisch?

17 PROSPECTIVE JUROR MORISCH: Yes.

18 MR. GABRIEL: Okay. And I think you said you may  
19 have downloaded some time ago just trying to --

20 PROSPECTIVE JUROR MORISCH: I don't even remember  
21 how I did it, but it seemed like, like I said, the quality  
22 was bad on some of the stuff. And the way my significant  
23 other explained to me is that people can manipulate them and  
24 stuff and they are sharing their files or whatever. I  
25 didn't really like it, so I'm not into getting music, but

1 yet my significant other, he has an MP3 player and he's got  
2 all kinds of songs. When I listen to them, you know, some  
3 are okay, some of them aren't. It's just you really get  
4 what you pay for. If it was free, then it's not very good  
5 quality.

6 MR. GABRIEL: Was this some time ago when you  
7 downloaded this?

8 PROSPECTIVE JUROR MORISCH: Yeah, yeah. I would  
9 say probably 2003.

10 MR. GABRIEL: And I think you told us you didn't  
11 remember which service you used.

12 PROSPECTIVE JUROR MORISCH: No, I'm not sure what  
13 it was. It had all kinds of radio stations that you could  
14 go to, including other countries and stuff. I have no idea  
15 what it was called. And I'm not sure what my significant  
16 other uses at this time. I don't even know how he does it  
17 or anything.

18 MR. GABRIEL: And from your -- did your experience  
19 affect, one way or the other, whether you think it was right  
20 to trade files over the Internet?

21 PROSPECTIVE JUROR MORISCH: Well, I think that was  
22 before I heard about people getting in trouble for  
23 downloading music. You know, I felt -- I was, like, oh, I  
24 didn't even realize I was doing something wrong because, you  
25 know, if it's there and you have access to it and nobody is

1 charging you for it, you don't really think anything of it  
2 and I was just using it just for myself.

3 You know, the music, if I wanted to listen to it,  
4 I had to sit at the computer and use the computer speakers,  
5 which I don't do very often, you know. I usually listen to  
6 a CD on the stereo or a tape in the car or the radio.

7 So, yeah, I guess I was surprised when people were  
8 getting in trouble for it, for downloading it free. I guess  
9 I felt like if you are just using it for yourself, it  
10 doesn't seem like it's wrong, you know. I could see if you  
11 are copying it and selling it to other people, you know,  
12 that obviously seems wrong.

13 MR. GABRIEL: And is that your view -- do you have  
14 that view today?

15 PROSPECTIVE JUROR MORISCH: Yeah, I still kind of  
16 feel that way. You know, I don't feel like I did  
17 something -- at the time you don't really think of it and  
18 then when it all came out, then you kind of realize, well,  
19 you know, maybe that was wrong, you know, getting it for  
20 free. But then, like I said, it was such poor quality and  
21 it is other people's files that, you know, it seemed like no  
22 big deal.

23 MR. GABRIEL: Okay. And is it your -- would it  
24 make a difference if the quality was better? You said the  
25 quality was really --

1 PROSPECTIVE JUROR MORISCH: Well, yeah, because I  
2 know there's that newer stuff out there and that you can buy  
3 songs for like 99 cents or \$1.99 or whatever it is. If you  
4 are paying that, yeah, they better be good quality.

5 MR. GABRIEL: And in terms of your view as to  
6 what's right and wrong about trading files, does the quality  
7 make a difference, does the quality affect your view?

8 PROSPECTIVE JUROR MORISCH: Well, so you're  
9 saying, like, if I got some really good quality music, if I  
10 was getting that from another person --

11 MR. GABRIEL: Yes.

12 PROSPECTIVE JUROR MORISCH: -- sharing the files?  
13 Well, there again, if it's just for me, for my own, you  
14 know -- and most of these songs I've listened to over the  
15 last 30 years of my life and I have probably already bought  
16 the CD's and the tapes over and over and they've gotten lost  
17 and technology keeps changing and pretty soon the CD's will  
18 be -- it's like you have to keep buying your whole record  
19 collection over and over again.

20 You are only getting maybe -- it's not like you're  
21 getting the whole tape with all the songs. I guess it  
22 just -- you know, if you are just using it for yourself, it  
23 doesn't seem like it's, you know --

24 MR. GABRIEL: Okay. And you mentioned when you're  
25 trading files for pay, that you are getting money for that.

1       Would it make a difference if you're trading files and there  
2       was no money? So, in other words, you were trading files,  
3       but you weren't getting any money for it. Does that affect  
4       your view, one way or the other?

5               PROSPECTIVE JUROR MORISCH: Well, I guess I could  
6       look at it like when I was a teenager and we would tape  
7       stuff, you know, when tape recorders first came out and  
8       somebody would make a tape and they would share it with you  
9       and stuff. I guess I never, growing up, never thought there  
10      was anything wrong with that.

11             But there again, you would maybe get poor quality  
12      with the taping and stuff. If I really liked something, I  
13      would go out and buy it. I want to own the CD, you know,  
14      have it.

15             MR. GABRIEL: Okay. Thank you. I didn't mean to  
16      monopolize all your time. Thank you very much.

17             Does anyone -- and I appreciate very much  
18      Ms. Morisch's candor. Does anyone have a different view?  
19      Does everybody generally agree with Ms. Morisch's view?

20             THE COURT: One of the -- let me stop here. I  
21      want to make it clear that we all have different opinions on  
22      what happens in our community, but in a courtroom you will  
23      hear the evidence and then you will have to follow the law  
24      that I give you.

25             Most consumers don't know what the copyright law

1 is, and you will find out what that is and you will have to  
2 apply that to the facts in this case. And so let me -- it  
3 may come as a surprise that something may be illegal that  
4 you didn't know about or something that you thought was  
5 illegal is legal. You just don't know until I give you the  
6 law.

7 So will you be able to follow the law as I give it  
8 to you? That's the big thing.

9 MR. GABRIEL: Thank you for that, Your Honor.

10 Really just one more question I think to you,  
11 Ms. Veit. You indicated that you listen to National Public  
12 Radio?

13 PROSPECTIVE JUROR VEIT: Yes.

14 MR. GABRIEL: Did you hear stories about cases  
15 like this very recently, in the last two weeks?

16 PROSPECTIVE JUROR VEIT: No.

17 MR. GABRIEL: Ladies and Gentlemen, thank you so  
18 much for your time and patience with me.

19 THE COURT: Mr. Toder.

20 MR. TODER: Thank you. Hello. I just have a few  
21 follow-up questions. Mr. Gabriel took the words out of my  
22 mouth for most of these.

23 Ms. Oberg, you said a little while ago that your  
24 kids tell you a lot of things about downloading and the  
25 things that we're talking about today.



1 PROSPECTIVE JUROR OBERG: Um-hmm.

2 MR. TODER: What are the things that they've told  
3 you?

4 PROSPECTIVE JUROR OBERG: I think kind of  
5 generally about the current state for musicians. The  
6 industry seems to be in such a flux and it doesn't seem to  
7 be as simple as it used to be. You used to go out and get  
8 your band and make your recordings. Now there's a lot of  
9 technology involved. It seems like copyright comes into  
10 play. Fairness to the artist, both my children are  
11 musicians and I'm a visual artist, so, you know, that's  
12 always a big issue. Things like that in general. We  
13 haven't specifically discussed Napster or any of the other  
14 things that have come up today.

15 MR. TODER: Did you form any kind of opinion based  
16 on what your children told you?

17 PROSPECTIVE JUROR OBERG: I would have to say I  
18 don't believe I have really because I don't feel like I know  
19 enough about it at this point in time. I just kind of  
20 listen to their conversation and take it in. You know,  
21 since it doesn't directly affect me on a day-to-day basis, I  
22 haven't researched it or done, you know, any kind of further  
23 information gathering.

24 MR. TODER: Are any of you familiar with copyright  
25 law?

1 Ms. Morisch.

2 PROSPECTIVE JUROR MORISCH: My significant other  
3 is a professional photographer and that's a very big deal to  
4 him. He puts "copyright" on everything that he does.

5 MR. TODER: Has he actually registered copyrights  
6 too?

7 PROSPECTIVE JUROR MORISCH: I'm not sure. He  
8 might do that online. I don't know. I don't get real  
9 involved with all the technical stuff. I just know that he  
10 puts "copyright" on every one of his pictures.

11 MR. TODER: Ms. Foreseen.

12 PROSPECTIVE JUROR FORSEEN: Well, I work for a  
13 government office and you just know what you need to buy and  
14 what you can copy as far as the copyright laws. Like I  
15 teach election classes. Everything we get we can print, but  
16 there is certain things that are copyrighted that you have  
17 to purchase everything for.

18 MR. TODER: Do any of you have strong feelings  
19 about lawsuits in general?

20 Ms. Reinke, am I pronouncing your name right?

21 PROSPECTIVE JUROR REINKE: Yes.

22 MR. TODER: We don't know each other, right?

23 PROSPECTIVE JUROR REINKE: No.

24 MR. TODER: I'm from International Falls too. Do  
25 you know me by reputation or my family or anything like

1 that?

2 PROSPECTIVE JUROR REINKE: No.

3 MR. TODER: You work for United Healthcare?

4 PROSPECTIVE JUROR REINKE: Yes.

5 MR. TODER: Are you aware of some litigation right  
6 now involving United Healthcare and Mr. McGuire?

7 PROSPECTIVE JUROR REINKE: No. I've only been  
8 there three months.

9 MR. TODER: Where were you before then?

10 PROSPECTIVE JUROR REINKE: I worked at Ben  
11 Franklin Crafts.

12 MR. TODER: Mr. Hegg, you're not from  
13 International Falls, are you?

14 PROSPECTIVE JUROR HEGG: No.

15 MR. TODER: That's all, Your Honor. I think all  
16 my questions have been answered. Thanks.

17 THE COURT: Sidebar with the attorneys, please.

18 **(At sidebar.)**

19 MR. GABRIEL: We would move to strike juror  
20 number 9 for cause. She indicated -- well, everyone heard  
21 her responses to my questions. She indicated that she  
22 thinks it's okay to share files unless someone paid for it  
23 and we believe that -- recognizing she also said she thought  
24 she could be fair, we don't believe that she could be fair  
25 given her fairly strong conviction.

1 THE COURT: Admit or deny the challenge for cause?

2 MR. TODER: We will deny the challenge for cause.  
3 We think that you asked her if she could still be fair in  
4 spite of her opinions, and she obviously doesn't know what  
5 the law is and that's why she has the opinion. When she's  
6 instructed to what the law is and she's wrong, it will be  
7 fine.

8 THE COURT: Challenge for cause denied. Any other  
9 challenges?

10 MR. GABRIEL: No, Your Honor.

11 THE COURT: Other challenges for cause?

12 MR. TODER: No, Your Honor.

13 THE COURT: Thank you. Counsel, did you get a  
14 sheet?

15 MR. GABRIEL: Yeah, we have one.

16 MR. TODER: Yes.

17 THE COURT: You may begin.

18 MR. TODER: Thank you.

19 **(In open court.)**

20 THE COURT: Let's take a stretch break while the  
21 attorneys are making their final selections. Those in the  
22 back in the gallery can stretch and those of you --  
23 Prospective Members of the Jury, those of you that need to  
24 use the restrooms, go ahead and use the restrooms, but  
25 please come back -- you cannot talk about this case with the

1 parties or anybody else that's in the gallery. Just use the  
2 restrooms and then come back to the seat that you're in.

3 (Recess taken at 10:30 a.m.)

4 \* \* \* \* \*

5 (10:40 a.m.)

6 **IN OPEN COURT**

7 **(JURY PRESENT)**

8 THE COURT: Prospective Members of the Jury, when  
9 you hear your name called, would you please stand. When you  
10 hear your name called, please stand.

11 THE CLERK: Daniel Golden, Roseanne Morisch,  
12 Patricia Oberg, and Barbara Veit.

13 THE COURT: Thank you for your time and  
14 consideration. You are excused from this jury. Please  
15 leave the placards in your chair. The prospective -- and  
16 you can leave now.

17 Prospective members of the jury that are in the  
18 back, I wish to thank you for the time and consideration of  
19 coming down to the courthouse to possibly serve on this  
20 case. We needed a number of jurors for this case because of  
21 the nature of the case and the length of the trial, but you  
22 are excused. So those of you that are in the back, you are  
23 excused.

24 Let's get organized. Bruce, if you would take the  
25 second chair in the second row. Dale, if you would take the

1 fifth chair in the second row.

2 If you would all rise.

3 THE CLERK: Members of the Jury, please raise your  
4 right hand.

5 (Jury panel sworn.)

6 \* \* \*

7

8

9 I, Lori A. Simpson, certify that the foregoing is a  
10 correct transcript from the record of proceedings in the  
11 above-entitled matter.

12

13 Certified by: s/ Lori A. Simpson

14 Lori A. Simpson, RMR-CRR

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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

**REXCROSS 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 **REXCROSS 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